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Monday
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federal register

Monday
May 3, 1999

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: May 18, 1999 at 9:00 am.

WHERE: Office of the Federal Register
Conference Room
800 North Capitol Street, NW.
Washington, DC
(3 blocks north of Union Station Metro)

RESERVATIONS: 202–523–4538

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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 351

RIN 3206–AI09

Reduction in Force Service Credit

AGENCY: Office of Personnel Management.

ACTION: Correction to final regulations.

SUMMARY: The Office of Personnel Management (OPM) is issuing a correction to the final regulations that were published on Wednesday, April 7, 1999. This correction covers service credit for reduction in force purposes.

DATES: These regulations are effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqui R. Yeatman at (202) 606–0960, FAX (202) 606–2329.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 1999, OPM published final regulations (64 FR 16797) that cover the crediting of civilian and uniformed service for purposes of reduction in force competition under part 351 of this title. These regulations are effective on May 7, 1999.

The final regulations contained a typographical error that resulted in the inadvertent omission of a cross-reference to § 351.504(e) in final § 351.503(c)(3), and in final § 351.503(e). These corrections do not make a substantive change in the procedures that agencies use in determining employees' retention standing.

Reason for Correction

1. Final § 351.503(c)(1) provides that the agency is responsible for determining an employee's retention service computation date. Final § 351.503(c)(2) provides that an employee's retention service computation date includes all actual creditable civilian and uniformed service, as authorized under final §§ 351.503 (a) and (b). Final § 351.503(c)(3) provides that an employee's adjusted retention service computation date includes both the employee's actual service creditable service, and additional retention service credit for performance. As published, final § 351.503(c)(3) contains a reference to § 351.504(d), which covers the amount of additional retention service credit awarded to competing employees covered by a single rating pattern. However, final § 351.503(c)(3) inadvertently omitted a reference to § 351.504(e), which covers additional retention reference credit awarded to competing employees covered by multiple rating patterns. This document corrects that omission.

2. Final § 351.503(e) covers how the agency calculates the adjusted retention service date. As published, final § 351.503(e) contains a reference to § 351.504(d), which covers the amount of additional retention service credit awarded to competing employees covered by a single rating pattern, but inadvertently omits a reference to § 351.504(e), which covers additional retention reference credit awarded to competing employees covered by multiple rating patterns. This document corrects that omission.

Correction

In rule document 99–8587 beginning on page 16797 in the issue of Wednesday, April 7, 1999, make the following corrections:

On page 16800, in the third column, correct § 351.503(c)(3) and § 351.503(e) to read as follows:

§ 351.503 Length of service.

* * * * *

(c) * * *

(3) The adjusted service computation date includes all actual creditable service under paragraph (a) and paragraph (b) of this section, and additional retention service credit for performance authorized by §§ 351.504 (d) and (e).

* * * * *

(e) The adjusted service computation date is calculated by subtracting from the date in paragraph (d)(1) or (d)(2) of this section the additional service credit for retention authorized by §§ 351.504 (d) and (e).

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–10960 Filed 4–30–99; 8:45 am]

BILLING CODE 6325–01–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI68

Prevailing Rate Systems; Change in Survey Cycle for the Southwestern Michigan Appropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule to change the full-scale survey cycle of the Southwestern Michigan appropriated fund Federal Wage System wage area from odd to even-numbered fiscal years. This change is being made to help even out the local wage survey workload of the Department of Defense (DOD), which recently assumed responsibility for conducting all Federal Wage System surveys.

DATES: This interim rule is effective on June 2, 1999. Comments must be received on or before June 2, 1999.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415, FAX: (202) 606–0824, or email to payleave@opm.gov.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email to jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Department of Defense has requested that the Office of Personnel Management change the survey cycle for full-scale wage surveys in the Southwestern Michigan wage area from odd to even-numbered fiscal years. Under § 532.207 of title 5, Code of Federal Regulations, the scheduling of wage surveys takes into consideration the best timing in relation to wage

adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

This request was made to even out DOD's wage survey workload and stems from DOD's recent acquisition of lead agency responsibility for 23 Federal Wage System (FWS) wage areas from the Department of Veterans Affairs. In October 2000 (FY 2001), DOD's Central Regional Office will conduct full-scale wage surveys in the Ft. Wayne-Marion, IN, Indianapolis, IN, and St. Louis, MO, wage areas. In the St. Louis wage area, the same office will also conduct a special printing and lithographic survey. In October 1999 (FY 2000), that office will conduct full-scale wage surveys in the Davenport and Dubuque, IA, wage areas. DOD requested that a full-scale wage survey for the Southwestern Michigan wage area be conducted in October 1999. A wage change survey would be conducted in October 2000. This change will help balance the number of full-scale wage surveys conducted each year. The timing of the Southwestern Michigan wage survey relative to private sector wage adjustments would remain unchanged.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Southwestern Michigan wage area from odd to even-numbered fiscal years.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking. The notice is being waived because of the urgent need for administrative procedures and planning to be completed by DOD and the local wage survey committee for the Southwestern Michigan wage area before a full-scale wage survey begins in October 1999 in the Southwestern Michigan wage area. Planning for the full-scale wage survey in the Southwestern Michigan wage area must begin by June 1999.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346, § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532—[Amended]

2. Appendix A to Subpart B is amended by revising under the State of Michigan the listing of fiscal year of full-scale survey from "odd" to "even" for the Southwestern Michigan wage area.

[FR Doc. 99–10959 Filed 4–30–99; 8:45 am]

BILLING CODE 6325–01–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1307 and 1308

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission amends the method for determining the amount of the administrative assessment charged to milk handlers. The amended rule gives the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current rate of 3.2 cents, or less, per hundredweight of fluid milk. The Commission also promulgates a new rule that requires handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

EFFECTIVE DATES: The amendments to part 1308 are effective July 1, 1999. The amendments to part 1307 are effective May 13, 1999.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 27, 1998, the Commission issued a notice of proposed rulemaking proceedings on several subjects and issues, including whether the amount of, or method for determining, the administrative assessment should be amended.[4] The Commission held a public hearing to receive testimony on December 11, 1998 in Boxborough, Massachusetts and comments were received until 5:00 p.m. on December 31, 1998.

On January 13, 1999, the Commission held its deliberative meeting, pursuant to 7 CFR 1361.8, to consider all oral and written comments received at the public hearing and the additional comments received by the Commission's published comment deadline of December 31, 1998, and to deliberate and act on the proposed subjects and issues rulemaking regarding whether the

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (Nov. 25, 1997).

[3] 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); and 63 FR 65517 (Nov. 27, 1998).

[4] 63 FR 65563 (Nov. 27, 1998).

amount of, or method for determining, the administrative assessment should be amended.[5]

Based on the oral testimony and written comments received in that proceeding, the Commission proposed to amend the method for determining the amount of the administrative assessment charged to milk handlers and also proposed to add a new rule that would require handlers to make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000.[6] The Commission held a public hearing in Concord, New Hampshire on March 3, 1999 and accepted written comments until March 17, 1999. The Commission held its deliberative meeting on April 7, 1999 to consider all the comments and testimony received regarding the administrative assessment regulation, including all testimony and comments previously received in the December 1998 proceeding.[7] Based on the December 1998 and March 1999 rulemaking records, the Commission amends the administrative assessment regulation, 7 CFR Part 1308, to give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current flat rate of 3.2 cents, or less, per hundredweight of fluid milk.

In addition to the amendments to the administrative assessment regulation, the Commission also promulgates a new rule at 7 CFR Part 1307, to require milk handlers to make payment to the Compact Commission by electronic funds transfer, if the total amount due is greater than $25,000.

Article V, Section 11 of the compact delineates the administrative procedure the Commission must follow in deciding whether to adopt or amend a price regulation. That section requires the Commission to conduct an informal rulemaking proceeding governed by section four of the federal Administrative Procedures Act ("APA"), as amended, 5 U.S.C. 553, to provide interested persons with an opportunity to present data and views. The informal rulemaking proceeding must include public notice and opportunity to participate in a public hearing and to present written comment. In addition, section 553(d) of the APA provides that "publication or service of a substantive rule shall be made not less than 30 days before its effective date," subject to several enumerated exceptions, including situations where the agency finds "good cause" for dispensing with this requirement. *See*, 5 U.S.C. 553(d)(3).

The Commission finds that there is good cause for dispensing with the 30-day waiting period of § 553(d), with regard to only the new rule at section 1307 requiring payment by electronic funds transfer, because compliance is impracticable, unnecessary, and contrary to the public interest. The Commission emphasizes that the new rule requiring payment by electronic funds transfer was adopted by the Commission after a comprehensive administrative process, including public hearing and notice-and-comment rulemaking.[8] The Commission received no public comments regarding the electronic funds transfer rule. The Commission has provided actual notice of this new rule to all effected milk handlers no later than April 13, 1999 and the first day of required compliance with this new rule will be May 18, 1999.

II. Summary and Analysis of Issues and Comments

Administrative Assessment

The Commission received oral and written testimony and comments from the Commission's Regulations Administrator, Carmen Ross, and eight commenters in the December 1998 subjects and issues rulemaking proceeding, regarding whether the amount of, or method for determining, the administrative assessment should be amended.[9] In the subsequent March 1999 proposed rule proceedings, the Commission received oral testimony from Mr. Ross and written comments from two commenters.[10] The Commission confirms its published analysis of the testimony and written comments received in the December 1998 proceeding.[11] Therefore, the Commission herein supplements that analysis by reviewing the testimony and comments received in the March 1999 proceedings.

Mr. Ross opened his testimony on March 3, 1999 by repeating the main points of his testimony of December 11, 1998. Mr. Ross reiterated that the Compact authorizes the Commission to impose an assessment on milk handlers to cover the costs of the administration and enforcement of the over-order price regulation. He explained the principle of milk market regulation that the milk handlers, not the dairy farmers, are assessed to pay the costs of the administration and enforcement of the milk market regulation and that this assessment is a cost of doing business in the milk market.[12]

Mr. Ross also explained that the Compact requires the Commission to establish a reserve for the ongoing operating expenses.[13] The current administrative assessment is a flat rate of 3.2 cents per hundredweight and results in a variance in income of up to 13% per month.[14] Mr. Ross stated that the Commission regulation is, in all material respects, the same as corresponding provisions of the Federal Order #1 regulations.[15]

Mr. Ross explained that under the Federal Market Order #1 regulation, "the federal market order [Administrator] can, when conditions warrant it, reduce or even waive the administrative assessment."[16] Under Federal Market Administrator Instruction 1207, the United States Department of Agriculture Dairy Division (USDA) recommends that budgeted operating reserves be maintained within a range of 80% to 120% of the designated reserve level.[17]

At the subjects and issues hearing in December 1998, a milk processor testified in support of an amendment to the Commission's administrative assessment regulation that would recognize the Commission's budget process, impose a limitation on the Commission's reserves and provide for an adjustment or waiver of the administrative assessment based on the budget and the reserves.[18] As is explained in more detail below, the Commission adopts this commenter's recommendations in all material respects.

Of the two commenters who participated in the March 1999 public hearing and comment part of this rulemaking proceeding, one commenter supported the proposed rule to allow

[5] 64 FR 533 (Jan. 5, 1999).

[6] 64 FR 4353 (Jan. 28, 1999).

[7] 64 FR 4353, 4355 (Jan. 28, 1999), 64 FR 14943 (March 29, 1999) and Transcript of March 3, 1999 public hearing at 9.

[8] 64 FR 4353 (Jan. 28, 1999).

[9] Carmen L. Ross, Transcript ("Tr.") at 4; Charles Arbing, Tr. at 30; Diane Bothfeld Tr. at 54 and Written Comment ("WC") at 32; Leon J. Berthiaume, WC 13 ; Robert D. Wellington, WC 16; Edward W. Gallagher, WC 18; Sally J. Beach, WC 21; Michael L. Altman, WC 25; and Leon Graves, WC 34;

[10] Ross, Record ("R.") at 9; Michael L. Altman, on behalf of Suiza GTL, LLC, H.P. Hood, Inc. and the Stop & Shop supermarket Companies, Inc., R. at 38–42; Diane Bothfeld, R. 43.

[11] 64 FR 4353 (Jan. 28, 1999).

[12] Ross, R. at 15.

[13] Ross, R. at 10; *See also*, Compact Article IV, Section 10(9) and Article VII, Section 18(a).

[14] Ross, R. at 14–15.

[15] Ross, R. at 11–12.

[16] Ross, R. at 16.

[17] Market Administrator Instruction #207, December 1998 rulemaking record, WC at 3–11, and referenced in March 1999 rulemaking record, R. at 17.

[18] Arbing, Tr. at 53–53 (December 1998 rulemaking record).

the Commission to adjust the administrative assessment rate, upward or downward, as needed.[19]

The other commenter,[20] on behalf of the three major fluid milk handlers in New England, generally supported the Commission's proposal to permit it the discretion to adjust or waive the administrative assessment rate and further reiterated his two main objections (as submitted in the December 1998 subjects and issues proceeding)[21] to the Commission's administrative assessment regulation: (1) That the Commission should not use the funds generated by the administrative assessment for any purpose other than the actual costs of computing, announcing, collecting or distributing the over-order obligation; and (2) that the administrative assessment is an unfair burden on the milk handlers. The Commission has carefully considered these arguments and respectfully disagrees.

In making his first main objection, this commenter relies on a narrow, and inaccurate, reading of the language of the Compact to argue the Commission must only use the assessment to administer the over-order obligation provisions of the Compact Over-order Price Regulation. The commenter asserts that the Compact restricts the administrative assessment provision of Article VII, Section 18(a) to the administration of the over-order *obligation* only.[22] However, the full sentence, of which the commenter quotes only a portion, plainly and clearly references the over-order *price regulation*. The section of the Compact in question provides, in relevant part, as follows: "In addition, if regulations establishing an over-order price or a compact marketing order are adopted, they may include an assessment for the specific purpose of their administration. These regulations shall provide for establishment of a reserve for the commission's ongoing operating expenses." The Commission concludes that the language of the Compact itself is clear and for this reason respectfully rejects the commenter's suggested interpretation.

In addition to the plain language of the Compact, accepted principles of statutory interpretation also compel rejection of this commenter's suggested reading of Section 18(a), because to do so would render other provisions of the Compact meaningless. The commenter's restrictive interpretation of the language of the Compact would, for example, render meaningless the provisions of Article IV, Section 10. That section provides eleven separate paragraphs of provisions that the Commission is specifically authorized to include in a compact over-order price.[23] Those provisions are not restricted to the physical activities of computing, announcing, collecting or distributing the over-order obligation, as the commenter's narrow interpretation of Section 18(a) would require. "[L]egislative enactments should not be construed to render their provisions mere surplusage." *Dunn* v. *Commodity Futures Trading Comm'n*, 117 S.Ct. 913, 917 (1997). In light of the plain language of the Compact, reinforced by application of accepted principles of statutory construction, the Commission respectfully rejects this commenter's interpretation of the Compact.

The Commission also declines to accept the narrow interpretation of Section 18(a) of the Compact advanced by the commenter because his interpretation would lead to such illogical results as to leave the Commission without the funds to carry out its obligations and responsibilities under the Compact and the Over-order Price Regulation as a whole.[24] For example, the commenter's suggestion that the administrative assessment be used only for the direct costs associated with the actual computing, announcing, collecting or distributing the over-order obligation,[25] would leave the Commission without funds for amending the over-order price regulation, as authorized by Compact Article V, for providing handler exemption petition proceedings, as required by Compact Article VI, Section 16, or for conducting and administering the activities authorized, or required by, Articles I, II, IV, or VII of the Compact.[26] Furthermore, as explained below, the Compact is designed to have the administration and enforcement activities of the Commission supported by assessments on handlers. Article VII, Section 18(b) specifically prohibits the Commission from pledging the credit of any participating state, or the United States. Although the Commission may, at times, obtain funding from other sources, such funds cannot be obtained with any predictability, and Section 18 does not compel any state to contribute funds to support the activities of the Commission. However, if the receipt of such unanticipated funds are sufficient, the amendments to the administrative assessment rule will allow the Commission to reduce or waive the assessment on handlers.

Therefore, the Commission reaffirms its interpretation of its authority under the Compact that the administrative assessment may be used to fund all administration and enforcement activities to implement the entire over-order price regulation and to effectuate its obligations and responsibilities under the Compact.[27]

The core of this commenter's second main argument is that the administrative assessment places an unfair burden on milk handlers. The commenter suggests that the Commission should fund its statutory and regulatory activities through voluntary contributions of states, cooperatives and handlers. However, that interpretation is contrary to the underlying principles of milk market regulation, which establishes the handler's cost of raw milk, including the amount that must be paid to producers and the cost of administration of the federal regulation, the compact regulation and even the cost of fluid milk promotion.[28] The interpretation is also contrary to the design of the Compact, which specifies that the Commission should fund its administration and enforcement costs through an administrative assessment on milk handlers. Compact Article IV, Section 10(9) and Article VII, Section 18(a). Carmen Ross explained the "regulatory techniques historically associated with milk marketing,"[29] as they specifically relate to the administrative assessment component of the milk regulation principle, as follows:

As I just stated, the Compact administration assessment regulation is consistent with the Federal Market Order #1 regulation in its applicability to fluid milk

[19] Bothfeld, R. at 43.

[20] Altman, R. at 38–42.

[21] Altman, December 1998 rulemaking record, WC at 26–30; See also, Commission analysis of these comments at 64 FR 4354–4355 (Jan. 28, 1999).

[22] Altman, R. at 41.

[23] In authorizing the Compact, Congress specifically prohibited the Commission from including a provision in the over-order price regulation for compensatory payments, as included in Section 10(6). 7 U.S.C. 7256(7).

[24] *See, e.g. Green* v. *Bock Laundry Machine Co.*, 490 U.S. 504, 509–10 (1989); *In re Pacific-Atlantic Trading Co.*, 64 F.3d 1292, 1303 (9th Cir. 1995) ("Legislative enactments should never be construed as establishing statutory schemes that are illogical, unjust or capricious.") (internal citations omitted). In addition, for the reasons discussed more fully below, the Compact producer-settlement funds are not used for administrative purposes and principles of milk market regulation assess the costs of the administration of milk price regulation to handlers, as a cost of doing business in the milk marketplace, not to farmers or to cooperatives, as suggested by the commenter.

[25] Altman, R. at 42.

[26] See also, 64 FR 4354–55 (Jan. 28, 1999).

[27] 64 FR 4354–4355 (Jan. 28, 1999); See also, Ross, R. at 12–14.

[28] Ross, R. at 15–16, 27–29.

[29] Compact Article II, Section 3(b).

handlers. The principle is that the milk handlers, not the dairy farmer, pay for the administration and enforcement of the milk price regulation. This is a cost of doing business in the milk market. The same as all other costs associated with the assembly and receipts of milk at the plant.

The cost of milk includes the announced Federal Order Class I price, Federal Order Administrative Assessment, Federal Order Processor Assessment, Federal Order differential, Federal Order plant zone, hauling, handling, farmer or cooperative premiums, plant loss and the Compact over-order obligation and the Compact administrative assessment.

The total of all the above is the handler's cost of raw milk. To this cost, a handler will add the processing cost, container cost, delivery cost and margins to arrive at the handler's sale price. The Compact assessment is only one of the many components that is included to arrive at the sale price of milk. The Compact administrative assessment, like all other costs, are ultimately paid by the market, the consumer, not the handler.[30]

The Federal Market Administrator announces the raw milk price on the fifth day of the month preceding the month the announced price will be applied. This advance price announcement allows the milk handlers to set their prices accordingly and to recover those costs from the milk marketplace. If, after receiving advance notice of the price, a handler does not choose to include a particular component in his selling price, that is the handler's decision and not within the control of either the Federal Market Order Administrator or the Compact Commission. Therefore, the administrative assessment, as well as all other costs associated with milk market regulation, is a cost of doing business in the milk market.[31] The regulation does not require the assessment to come from the handler's profit line and the advance price announcement allows the handlers the opportunity to pass the costs on in setting their sale price for the milk. Therefore, the consumer, and not the milk handler, is paying the incremental cost of administering the Compact Over-order Price Regulation.[32] Accordingly, the Commission respectfully disagrees with the commenter's assertion that the Compact administrative assessment portion of the regulated milk price places an unfair burden on milk handlers.

Contrary to this commenter's [33] broad complaints, the Commission seeks to, and indeed does, incorporate the interests of all the affected constituencies in its regulatory decisions. The Commission is itself made up of state officials, consumers, producers and processors. The delegation members to the Commission are appointed, as provided in the Compact, as passed by all six participating states and approved by Congress. Compact, Article III, Section 4. Two of the states specifically require processors to be a part of the state delegation. Vermont, 6 V.S.A. 1823 ("A fourth voting member shall be a milk handler") and New Hampshire, RSA 184-A:2 ("One owner or officer of a fluid milk processing or distribution plant.") Two other states have appointed members to the delegation who are associated with fluid milk processors. Therefore, the interests of milk processors are clearly, and actively, represented and protected through membership in the state delegations to the Compact Commission.

In addition, the Commission always provides the opportunity for regulated handlers to participate in each of its rulemaking proceedings through attending and testifying at the public hearings and/or submitting written comments and testimony.[34]

After careful review of both the December 1998 and March 1999 rulemaking records relating to the administrative assessment regulation, the Commission concludes that the model used by the USDA is an appropriate standard for the Commission to use in the establishment of its administrative assessment rate. Therefore, the Commission amends the administrative assessment provision of the over-order price regulation to give the Commission discretion, in any given month, to waive the administrative assessment entirely, or to set the rate at the current flat rate of 3.2 cents, or less, per hundredweight of fluid milk. In establishing this rate-setting flexibility, the Commission's goal is to maintain a reserve account in the range of 80% to 120% of four-months operating expenses, as determined to be necessary in the budget approved by the Commission. This range is not binding on the Commission and the Commission at all times retains the discretion whether to waive or adjust the rate of the administrative assessment.

The Commission also sought testimony and comment on whether the administrative assessment regulation should be amended to permit the Commission to adjust the rate upward, from the current rate of 3.2 cents, in exceptional circumstances. The Commission's Regulations Administrator, Carmen Ross, testified that there may be times that the Commission needs to increase the assessment rate to "cover operating expenses because of unknown extraordinary or exceptional circumstances." [35] One commenter supported the proposal to allow the Commission the flexibility to increase the administrative assessment rate "to maintain the solvency of the Compact so it can maintain its operations and fulfill the responsibilities as established under the law." [36]

The Commission carefully considered this option and concluded that it is not necessary at this time to amend the administrative assessment rule to permit an increase over the current rate of 3.2 cents. The Commission income from the administrative assessment is sufficient to cover the anticipated and budgeted expenses. Although, as explained above, the Commission disagrees with some processors' assertions that the administrative assessment constitutes an unfair burden on milk handlers, the Commission is nevertheless sensitive to the concerns of these processors. Accordingly, the Commission chooses not to add a rate increase provision to the regulation in cognizance of some processors' perception of the Commission's administrative assessment.

Method of Payment

The Commission also promulgates a new regulation which requires milk handlers to make payment of the over-order obligation and administrative assessment to the Commission by electronic transfer of funds if the aggregate total due for the month is greater than $25,000. The Commission adds this rule in order to best ensure the efficient and timely transfer of funds into the producer-settlement fund and the corresponding timely distribution of funds from the producer-settlement

[30] Ross, R. at 15–16.

[31] Ross, R. at 15–16 and 28–29.

[32] Ross, R. at 16 and 28–29.

[33] Altman, R. at 39–42.

[34] As always, the Commission encourages and welcomes full participation by all those affected by the Commission's regulations. The Commission notes, however, that although this commenter has submitted written arguments, he has not availed himself of the opportunity to attend either of the public hearings held in December 1998 or March 1999 by the full Commission regarding the administrative assessment regulation. The opportunity for interactive discourse with the full Commission, offered in the public hearing forum, is very beneficial to and instructive for the Commission and such participation significantly advances the rulemaking proceeding. Indeed, as discussed above, the final rule adopted by the Commission includes major elements proposed in the testimony of one commenter, a processor, in the December 1998 hearing. Arbing, Tr. at 53–54 (December 1998 rulemaking record).

[35] Ross, R. at 18–19.

[36] Bothfeld, R. at 43.

fund.[37] Based on the experience of the Commission in administering the producer-settlement fund, most handlers already use electronic transfer of funds. The Commission also uses electronic transfer of funds for distribution to handlers of monies from the producer-settlement fund.[38] The Commission received no comments on this proposed rule.

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments to the Over-Order Price Regulation

The first finding considers whether the amendments to the Compact Over-order Price Regulation serves the public interest. The Commission determines that the public interest is served by allowing the Commission discretion to waive entirely or set the administrative assessment at the current rate of 3.2 cents, or less, per hundredweight of fluid milk, in any given month, to support the Commission's administration and enforcement of the Over-order Price Regulation, as authorized by Article VII, Section 18(a) of the Compact.

The Commission also determines that the public interest is served by requiring all regulated milk handlers to make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000. This rule ensures the Commission's timely processing of the monthly pool, when payments are received and distributed within two business days.

b. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The amendments to the Compact Over-order Price Regulation adopted in this rulemaking proceeding are related to the administration of the Over-order Price Regulation and do not affect the local supply of milk or price received by producers, other than through ensuring timely receipt of payment by adoption of the electronic funds transfer rule.

[37] Ross, R. at 19–26.
[38] Ross, R. at 24–25.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonable Designed To Achieve the Purposes of the Order

The Commission concludes that, for the same reasons identified in the first finding, the amendments adopted in this rulemaking proceeding are in the public interest. The Commission further concludes that the Over-order Price Regulation, as hereby amended, remains in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendments Are Approved by Producers

The fourth finding, requiring the determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact is invoked in this instance given that the amendment will affect the level of the price regulation on the producer side. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of April 16 through April 26, 1999. All producers who were producing milk pooled in Federal Order #1 or for consumption in New England, during December 1998, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before April 16, 1999 by the Federal Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on April 26, 1999. The ballots were opened and counted in the Commission offices on April 27, 1999 under the direction and supervision of Commission Chair Mae S. Schmidle, designated "Referendum Agent."

Twelve Cooperative Associations were notified of the procedures necessary to block vote by letter dated April 9, 1999. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on April 26, 1999. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by April 20, 1999 with notice mailed to the Commission offices no later than April 22, 1999.

Notice

On April 27, 1999, the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. The ballots cast on the administrative assessment amendment and the electronic funds transfer amendment were separately reviewed and counted. A total of 3987 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity, appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following for the ballot on the administrative assessment amendment:

A total of 3,987 ballots were mailed to eligible producers.

A total of 3,010 ballots were returned to the Commission.

A total of 34 ballots were disqualified—late, incomplete or duplicate.

A total of 2,976 ballots were verified.

A total of 2,960 verified ballots were cast in favor of the administrative assessment amendment.

A total of 16 verified ballots were cast in opposition to the administrative assessment amendment.

Accordingly, notice is hereby provided that of the 2,976 verified ballots cast, 2,960, 99.5 %, or, a minimum of two-thirds were in the affirmative.

The referendum agent then certified the following for the ballot on the electronic funds transfer amendment:

A total of 3,987 ballots were mailed to eligible producers.

A total of 3,010 ballots were returned to the Commission.

A total of 35 ballots were disqualified—late, incomplete or duplicate.

A total of 2,975 ballots were verified.

A total of 2,967 verified ballots were cast in favor of the electronic funds transfer amendment.

A total of 8 verified ballots were cast in opposition to the electronic funds transfer amendment.

Accordingly, notice is hereby provided that of the 2,975 verified ballots cast, 2,967, 99.7%, or, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the administrative assessment and electronic funds transfer amendments are approved by producers.

IV. Good Cause for Effective Date Within 30 Day Notice Period

The Administrative Procedure Act, 5 U.S.C. 553(d), requires that the Compact Commission publish a substantive rule not less than 30 days before its effective date, except that this time period is not required for a substantive rule as otherwise provided by the agency for good cause found and published with the rule. The Commission concludes that, to the extent that the electronic funds transfer rule is a substantive rule, the Commission nevertheless finds that there is good cause for non-compliance with the 30-day advance publication provision of 553(d) and publishes this final rule on May 3, 1999, with an effective date of May 13, 1999.

In promulgating this new regulation, the Commission specifically finds good cause to set an effective date within thirty days of publication in the **Federal Register**. As described by Carmen Ross, the Commission's Regulations Administrator, the time line for the Commission to receive funds from milk handlers on the 18th of the month and make payments from the producer-settlement fund on the 20th of the month places a tremendous burden on the Commission to clear the pool in two business days.[39] If a handler makes payment by check, the funds, although received by the Commission on the 18th of the month, are not always available to be paid out on the 20th of the month.[40] The Commission disburses funds through electronic transfer and must have the funds available to make the payments out of the producer settlement fund.[41]

If the payments received from handlers by check exceed the Commission's reserve amount in the producer-settlement account, the Commission can uniformly reduce payments back to handlers or establish a line of credit with the bank.[42] As Mr. Ross stated in his testimony: "Reducing payments to the handlers would create havoc since all handlers would have already included the anticipated amount due from the Commission on their payroll and handlers would face a shortage of funds."[43] Alternatively, either the producer-settlement fund or the Commission administrative fund would have to incur the cost of establishing a line of credit.[44] Based on the price announcement on March 5, 1999 for April milk, the Commission will be faced with the possibility of confronting this problem during the pool to be run on May 18 through 20. In order to ensure timely receipt of available funds to the producer-settlement fund, and the timely distribution from that fund, the Commission finds good cause, to the extent necessary, to set an effective date of this new regulation of May 13, 1999.

The Commission determines that, in promulgating the electronic funds transfer rule, compliance with the 30-day waiting period, in this instance, is excused for three separate reasons: it is (1) impracticable, (2) unnecessary, and (3) contrary to the public interest. *See, e.g., Service Employees Intern Union, Local 102* v. *County of San Diego*, 60 F.3rd 1346 (9th Cir. 1994) (good cause exemption to § 553(d) includes situations where compliance is impracticable, unnecessary, or contrary to the public interest); *Buschmann* v. *Schweiker*, 676 F. 2d 352 (9th Cir. 1982) (same).

1. It would be impracticable to provide the thirty-day interval because, based on the April price of milk announced by the Federal Market Administrator on March 5, 1999, the Commission will run its largest pool ever on May 18 through 20, and the anticipated over-order obligation of several handlers will exceed the Commission's reserve fund. The Commission must have access to the handlers' payments by May 20 in order to distribute the funds for payment to producers. Although the Commission began this proceeding by published notice on January 28, 1999, and voted to adopt the rule on April 7, 1999, Article V, Section 21 requires the Commission to conduct a producer referendum before issuing the final rule. Based on the Commission's producer referendum procedure, the earliest publication date is May 3, 1999. Therefore, the thirty-day notice interval is impracticable and compliance with that rule would impair the Commission's ability to clear the pool on May 20, 1999.

2. The full thirty-day post-publication notice period is unnecessary because the Commission provided actual notice, by certified mail, return receipt, to all affected handlers no later than April 13, 1999.

3. In this instance, the full thirty-day notice requirement is contrary to the public interest. Based on the anticipated volume of milk in the pool to be run on May 18 through 20, several handlers will owe sums in excess of the reserve balance in the producer-settlement fund. If just one of those handlers makes payment by check that does not clear by May 20, the Commission will be forced to uniformly reduce payments out of the producer-settlement fund to all handlers, thereby interfering with those handlers already prepared payments to producers. The public interest requires that producers receive their payments in a timely manner. Most of the handlers already make payment by electronic funds transfer, and the Commission disburses funds by electronic transfer. This rule will only affect a few handlers, but failure to implement this rule prior to May 18, 1999 could result in an otherwise unnecessary reduction in the producer payments to all producers supplying the New England milk market. The Commission emphasizes that it received no comments opposing promulgation of this requirement. Therefore, the Commission concludes that the thirty-day notice period is not in the public interest.

Finally, the purpose of the procedural requirement that a rule be published thirty days prior to its effective date is to permit those affected by the amendment a reasonable amount of time to prepare to take whatever action is prompted by the final rule. As noted above, all affected handlers have received actual notice of the action required by the rule in excess of thirty

[39] Ross, R. at 20.
[40] Ross, R. at 21.
[41] Ross, R. at 24–25.
[42] Ross, R. at 25.
[43] Ross, R. at 25.
[44] Ross, R. at 26.

days of the date the action is first required, May 18, 1999.

Accordingly, for all the reasons described above, the Commission concludes that the full thirty-day post-publication notice period is not required.

V. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

1. That the public interest continues to be served by establishment of minimum milk prices to dairy farmers under Article IV, as amended to: (1) permit the Commission discretion, in any given month, to waive entirely or to set the rate of the administrative assessment at the current rate of 3.2 cents, or less, per hundredweight of fluid milk; and (2) require handlers make payment to the Commission by electronic funds transfer, if the total amount due is greater than $25,000.

2. That the previously established level price of $16.94 (Zone 1) to dairy farmers under Article IV, is unaffected by these amendments, and will continue to assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

3. That the major provisions of the order, other than those fixing minimum milk prices, are and continue to be in the public interest and are reasonably designed to achieve the purposes of the order.

4. That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V, Section 13.

List of Subjects in 7 CFR Parts 1307 and 1308

Milk.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR parts 1307 and 1308 as follows:

PART 1307—PAYMENTS FOR MILK

1. The authority citation for part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

§ 1307.4 [Redesignated]

2. Section 1307.4 is redesignated as § 1307.5.

3. A new § 1307.4 is added to read as follows:

§ 1307.4 Method of payment.

If the combined total of the handler's producer-settlement fund debit for the month as determined under § 1307.2(a) and the handler's obligation for the month as determined under § 1308.1 of this chapter is greater than $25,000, then the handler must make payment to the compact commission by electronic transfer of funds on or before the 18th day after the end of the month.

PART 1308—ADMINISTRATIVE ASSESSMENT

1. The authority citation for part 1308 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Section 1308.1 is amended by revising the introductory text to read as follows:

§ 1308.1 Assessment for pricing regulations administration.

On or before the 18th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The compact commission may waive, or set the rate at an amount less than 3.2 cents, pursuant to § 1308.2. The payment shall apply to:

* * * * *

3. A new § 1308.2 is added to read as follows:

§ 1308.2 Method to waive or change the administrative assessment.

The compact commission may waive or change the assessment for pricing regulation administration to maintain the operating reserve in the range of 80% to 120% of four months operating expenses, as determined in the budget approved by the compact commission. The compact commission will announce, pursuant to § 1305.2 of this chapter, the waiver or change in rate of assessment.

Dated: April 27, 1999.

Kenneth M. Becker,

Executive Director.

[FR Doc. 99–10967 Filed 4–30–99; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–3]

Amendment of Class E Airspace; Toccoa, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the spelling of the name of the municipality and the abbreviation of the navigation aid reference point in the airspace description of a final rule that was published in the **Federal Register** on April 5, 1999, (64 FR 16343), Airspace Docket No. 99–ASO–3.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document DOCID: fr05ap99–5, Airspace Docket No. 99–ASO–3, published on April 5, 1999, (64 FR 16343), revised the description of the Class E airspace area at Toccoa, GA. Errors were discovered in the spelling of the municipality and the abbreviation of the navigation aid reference point in the airspace description. This action corrects those errors.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the municipality spelling and the abbreviation of the navigation aid reference point in the airspace description for the Class E airspace area at Toccoa, GA, as published in the **Federal Register** on April 5, 1999, (64 FR 16343), (Federal Register Document DOCID: fr05ap99–5), page 16343, third column, lines 3 and 16 from the bottom, are corrected as follows:

§ 71.71 [Corrected]

* * * * *

ASO GA E Toccoa, GA [Corrected]

By removing "Toccoca" and substituting "Toccoa" and by removing "VOR" and substituting "VORTAC"

* * * * *

Issued in College Park, Georgia, on April 15, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–10442 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Chlortetracycline Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by PennField Oil Co. The supplemental NADA provides for a revised withdrawal period of 1-day following feeding of Type B and Type C chlortetracycle feeds to cattle.

EFFECTIVE DATE: May 3, 1999

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0212.

SUPPLEMENTARY INFORMATION: PennField Oil Co., 14040 Industrial Rd., Omaha, NE 68144, is the sponsor of NADA 138–935 that provides for feeding Type B and Type C chlortetracycline medicated feeds to poultry cattle, swine, and sheep. The firm has filed a supplemental NADA that provides for a revised withdrawal period of 1-day in cattle. The supplemental NADA is approved as of March 24, 1999, and the regulations are amended in 21 CFR 558.128 to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(3) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.128 [Amended]

2. Section 558.128 *Chlortetracycline* is amended in the table in paragraph (d)(1) in entries (xi) and (xvii) by revising the entry under the "Limitations" column, and in entry (xii) by revising the entry under the "Indications for use" column to read as follows:

(d)(1) * * *

Chlortetracycline amount	Combination	Indications for use	Limitations	Sponsor
* * *	* * *	* * *	* * *	* * *
(xi) * * *	* * *	* * *	Withdraw 48 h prior to slaughter. For sponsor 000004 zero withdrawal time. For sponsor 053389 1 d withdrawal time.	* * *
(xii) * * *	* * *	1. Calves, beef and nonlactating dairy cattle; treatment of bacterial enteritis caused by *E. coli* and bacterial pneumonia caused by *P. multocida* organisms susceptible to chlortetracycline. For sponsor 053389 1 d withdrawal time. 2. * * *	* * *	* * *
* * *	* * *	* * *	* * *	* * *
(xvii) * * *	* * *	* * *	Withdraw 48 h prior to slaughter. For sponsor 000004 zero withdrawal time. For sponsor 053389 1 d withdrawal time.	* * *
* * *	* * *	* * *	* * *	* * *

* * * * *

Dated: April 22, 1999.

Margaret Ann Miller,

Acting Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 99–10983 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 943

[SPATS No. TX–045–FOR]

Texas Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Texas regulatory program (Texas program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Texas proposed deletions, revisions, and addition of regulations concerning air pollution control plans; reclamation plans: general requirements; air resources protection; stabilization of surface areas; and coal processing plants: performance standards. Texas intends to bring its regulations into alignment with Federal regulations that were revised in 1983.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6548. Telephone: (918) 581–6430. Internet: mwolfrom@mcrgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Texas Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Texas Program

On February 16, 1980, the Secretary of the Interior conditionally approved the Texas program. You can find background information on the Texas program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the February 27, 1980, **Federal Register** (45 FR 12998). You can find later actions concerning the Texas program at 30 CFR 943.10, 943.15, and 943.16.

II. Submission of the Proposed Amendment

By letter dated January 28, 1999 (Administrative Record No. TX–647), Texas sent us an amendment to its program under SMCRA. The amendment included changes to the Texas Administrative Code (TAC) made at Texas' own initiative.

We announced receipt of the amendment in the February 12, 1999 **Federal Register** (64 FR 7145). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the adequacy of the proposed amendment. The public comment period closed on March 15, 1999. Because no one requested a public hearing or meeting, we did not hold one.

III. Director's Findings

Following, under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are our findings concerning the amendment.

A. Regulations Deleted From Texas' Program

1. Sections 12.379 and 12.546, Air Resources Protection (Surface and Underground Mining, Respectively)

Texas proposed to delete the above regulations. The Federal counterparts to these State regulations were previously found at 30 CFR 816.95 and 817.95 for surface and underground mining, respectively. We deleted these Federal counterpart regulations from our own regulations. See the **Federal Register** dated January 10, 1983 (48 FR 1163). Therefore, we are approving the deletion of the above Texas regulations.

2. Sections 12.389 and 12.554, Regrading or Stabilizing Rills and Gullies (Surface and Underground Mining, Respectively)

Texas proposed to delete the above regulations. The Federal counterparts to these State regulations were previously found at 30 CFR 816.106 and 817.106 for surface and underground mining, respectively. We deleted these Federal counterpart regulations from our own regulations. See the **Federal Register** dated January 10, 1983 (48 FR 1163). Therefore, we are approving the deletion of the above Texas regulations.

B. Revisions to Texas' Regulations That Have the Same Meaning as the Corresponding Provisions of the Federal Regulations

The State regulations listed in the table below contain language that is the same as or similar to the corresponding sections of the Federal regulations. Differences between the State regulations and the Federal regulations are minor.

Topic	State regulation (TAC)	Federal counterpart regulation (30 CFR)
Air pollution control plan	Sections 12.143(a)(2), (b)(1) and (b)(2); 12.199(2).	780.15(a)(2), (b)(1) and (b)(2); 784.26(b).
Stabilization of surface areas	Sections 12.389 and 12.554	816.95 and 817.95.
Coal processing plants: performance standards.	Section 12.651(9)	827.12(j).

Because the above State regulations have the same meaning as the corresponding Federal regulations, we find that they are no less effective than the Federal regulations.

C. Revisions to Texas' Regulations That Are Not the Same as the Corresponding Provisions of the Federal Regulations

1. Sections 12.145 and 12.187, Reclamation Plan: General Requirements (Surface and Underground Mining, Respectively) [30 CFR 780.18(a)(3) and 784.13(b)(3)]

Texas proposed to update and change one of the reference citation titles in paragraph (b)(3) from "Regrading or Stabilizing Rills and Gullies" to "Stabilization of Surface Areas." We are approving this change because it is not inconsistent with our Federal regulations at 30 CFR 780.18(a)(3) and 784.13(b)(3).

2. Section 12.651, Coal Processing Plants: Performance Standards

Texas proposed to update and change one of the reference citation titles in paragraph (13) from "Regrading or Stabilizing Rills and Gullies" to "Stabilization of Surface Areas." We are approving this change because it is not inconsistent with our Federal regulations at 30 CFR 827.12(1).

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. In a letter dated March 12, 1999 (Administrative Record No. TX–647.07), Texas Utilities Services, Inc. states that it strongly supports the proposed amendments.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Texas program (Administrative Record No. TX–647.03). In a letter dated February 12, 1999 (Administrative Record No. TX–647.05), the U.S. Army Corps of Engineers responded that it found the amendment satisfactory. In a letter dated February 22, 1999 (Administrative Record No. TX–647.06), the U.S. Department of Agricultural Natural Resources Conservation Service responded that it had no comments pertaining to the revised regulations.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), we are required to get a written agreement from the EPA for those provisions of the program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*) None of the revisions that Texas proposed to make in this amendment pertain to air or water quality standards. Therefore, we did not ask the EPA to agree on the amendment.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from the EPA (Administrative Record No. TX–647.01), The EPA did not respond to our request.

State Historical Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On February 2, 1999, we requested comments on Texas' amendment (Administrative Record No. TX–647.02), but neither responded to our request.

V. Director's Decision

Based on the above findings, we approve the amendment as sent to us by Texas on January 28, 1999. We approve the regulations that Texas proposed with the provisions that they be published in identical form to the regulations sent to and reviewed by OSM and the public.

To implement this decision, we are amending the Federal regulations at 30 CFR Part 943, which codify decisions concerning the Texas program. We are making this final rule effective immediately to speed the State program amendment process and to encourage Texas to bring its program into conformity with the Federal standards. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12866

The Office of Management and Budget (OMB) exempts this rule from review under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each program is drafted and published by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on State regulatory programs and program amendments must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

This rule does not require an environmental impact statement since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously published by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the corresponding Federal regulations.

Unfunded Mandates

OSM has determined and certifies under the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*) that this rule will not impose a cost of $100 million or more in any given year on local, state, or tribal governments or private entities.

List of Subjects in 30 CFR Part 943

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1999.

Brent Wahlquist,

Regional Director, Mid-Continent Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR Part 943 is amended as set forth below:

PART 943—TEXAS

1. The authority citation for Part 943 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 943.15 is amended in the table by adding a new entry in chronological order by "Date of final publication" to read as follows:

§ 943.15 Approval of Texas regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
January 28, 1999	May 3, 1999	Sections 12.143(a)(2), (b)(1) and (b)(2); .145(b)(3); .187(b)(3); .199(2); .379; .389; .546; .554; and .651(9) and (13).

[FR Doc. 99–11034 Filed 4–30–99; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 946

[VA–110–FOR]

Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving a proposed amendment to the Virginia permanent regulatory program (hereinafter referred to as the Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment changes the Virginia Coal Surface Mining Control and Reclamation Act to add "letter of credit" as an acceptable form of collateral bond to satisfy the performance bonding requirements of the Virginia Act. The amendment is intended to revise the State program to be consistent with the Federal regulations.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Robert A. Penn, Director, Big Stone Gap Field Office, Office of Surface Mining Reclamation and Enforcement, 1941 Neeley Road, Suite 201, Compartment 116, Big Stone Gap, Virginia 24219, Telephone: (540) 523–4303.

SUPPLEMENTARY INFORMATION:

I. Background on the Virginia Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Virginia Program

On December 15, 1981, the Secretary of the Interior conditionally approved the Virginia program. You can find background information on the Virginia program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the December 15, 1981, **Federal Register** (46 FR 61085–61115). You can find later actions on conditions of approval and program amendments at 30 CFR 946.11, 946.12, 946.13, 946.15, and 946.16.

II. Submission of the Amendment

By letter dated July 31, 1997, (Administrative Record Number VA–921), the Virginia Department of Mines, Minerals and Energy (DMME) stated that the Virginia legislature has amended, effective July 1, 1997, the Virginia Coal Surface Mining Control and Reclamation Act at Section 45.1–241(C). The amendment adds "letter of credit" as an acceptable form of collateral bond that the DMME may accept to satisfy the performance bonding requirements of the Virginia Act.

We announced receipt of the proposed amendment in the August 25, 1997, **Federal Register** (62 FR 44924), invited public comment, and provided an opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on September 24, 1997. No one requested to speak at a public hearing, so no hearing was held.

During our review of the amendment, we identified concerns with the language of the amendment. We notified Virginia of our concerns on October 20, 1997 (Administrative Record Number VA–932). Virginia responded to our questions by letter dated October 23, 1997 (Administrative Record Number VA–933).

We reviewed the State's comments and responded to them by letter dated November 26, 1997 (Administrative Record Number VA–942). In our response, we asked the State to provide an attorney general's opinion that cites the statutory and/or regulatory basis for the interpretation submitted by the DMME in its October 23, 1997, letter. The DMME obtained an opinion from the Virginia Office of the Attorney General by Memorandum dated October 27, 1998 (Administrative Record Number VA–958). By letter dated June 4, 1998 (Administrative Record Number VA–956) Virginia deleted two sentences that were proposed in the July 31, 1997 submission. In a separate request we asked the DMME whether its use of the term "financial institution authorized to do business in the United States," at 45.1–241(C), is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which states that letters of credit may be issued only by a bank organized or authorized to do business in the United States. The DMME responded by letter dated February 23, 1999 (Administrative Record Number VA–972).

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Virginia program.

As amended, Section 45.1–241(C) of the Virginia Coal Surface Mining Control and Reclamation Act provides for letters of credit as follows.

> The Director may also accept a letter of credit on certain designated funds issued by a financial institution authorized to do business in the United States. The letters of credit shall be irrevocable, unconditional, shall be payable to the Department upon demand, and shall afford to the Department protection equivalent to a corporate surety's bond. The issuer of the letter of credit shall give prompt notice to the permittee and the Department of any notice received or action filed alleging the insolvency or bankruptcy of the issuer, or alleging any violations of regulatory requirements which could result in suspension or revocation of the issuer's charter or license to do business. In the event the issuer becomes unable to fulfill its obligations under the letter of credit for any reason, the issuer shall immediately notify the permittee and the Department. Upon the incapacity of an issuer by a reason of bankruptcy, insolvency or suspension or revocation of its charter or license, the permittee shall be deemed to be without proper performance bond coverage and shall promptly notify the Department, and the Department shall then issue a notice to the permittee specifying a reasonable period, which shall not exceed ninety days, to replace the bond coverage. If an adequate bond is not posted by the end of the period allowed, the permittee shall cease coal extraction and coal processing operations and shall immediately begin to conduct reclamation operations in accordance with the reclamation plan. Coal extraction and coal processing operations shall not resume until the Department has determined that an acceptable bond has been posted. If an acceptable bond has not been posted by the end of the period allowed, the Department may suspend the permit until acceptable bond is posted. The letter of credit shall be provided on the form and format established

by the Director. Nothing herein shall relieve the permittee of responsibility under the permit or the issuer of liability on the letter of credit.

After we reviewed the amendment, we made the following comments to the DMME. First, for letters of credit, there is no requirement that there be an indemnity agreement for a sum certain executed by the permittee, as is required by the Federal regulations at 30 CFR 800.5(b). Second, there is no requirement that when a letter of credit is used as security in areas requiring continuous bond coverage it shall be forfeited and shall be collected by the regulatory authority if not replaced by other suitable bond or letter of credit at least 30 days before its expiration date as is required by 30 CFR 800.21(b)(2).

The DMME responded to our comments by letter dated October 23, 1997 (Administrative Record Number VA–933). The DMME explained their interpretation of the proposed amendment, how the amendment would be implemented, and why they believe the amendment is consistent with the Federal standards. The federal definition of "collateral bond" at 30 CFR 800.5(b) states that it is "an indemnity agreement in a sum certain executed by the permittee as principal" which then lists types of collateral, that includes irrevocable letters of credit. Virginia's proposed statutory amendment does not state that a letter of credit is a collateral bond nor that the permittee will execute an indemnity agreement. Virginia's regulatory definition of "collateral bond" at 4 VAC 25–130–700.5 also requires an indemnity agreement in a sum certain executed by the permittee which then lists types of collateral but it does not include irrevocable letters of credit. The DMME stated that the Virginia definition of "collateral bond" (at 4 VAC 25–130–700.5) and the Federal definition at 30 CFR 800.5 differ only to the extent the Virginia definition does not specifically list "letter of credit" as a form of collateral bond, while the Federal definition does. The DMME explained that it omitted references to "letters of credit" from the rule because authority to accept a letter of credit as a performance bond did not previously exist under the enabling legislation (45.1–241). Virginia obtained a revision to 45.1–241(C) in mid-1997. The Virginia Act now provides for the acceptances of "letters of credit" as a performance bond. The DMME stated that it believes that a "letter of credit" is a type of collateral bond even though it is not specifically listed as such in the Virginia rule at VAC 25–130.700.5. The DMME further stated that since a "letter of credit" is considered to be a collateral bond, the DMME interprets the standards for collateral bonds to be applicable. The DMME stated, therefore, that it intends that any "letter of credit" accepted as a performance bond will meet the standards for "collateral bonds" and will be an indemnity agreement in a sum certain executed by the permittee and deposited with the DMME as is required for collateral bonds (Administrative Record No. VA–933). Also, Virginia's proposed amendment to its statute and its existing regulation concerning collateral bonds at 4 VAC 25–130–800.21 lacks a counterpart to the Federal requirements concerning collateral bonds at 30 CFR 800.21(b)(2). Section 800.21(b)(2) requires that thirty days before the letter of credit expires that it be replaced with another bond or be forfeited. The DMME explained that the enabling statutory revision to 45.1–241(C) does provide DMME with the authority to collect the proceeds from a letter of credit should the term of the letter of credit expire before the bond is replaced or released. Section 45.1–241(C) specifies that the letter of credit "shall be payable to the Department upon demand." The DMME stated that it will interpret the phrase "shall be payable to the Department upon demand" as Virginia's "intent to demand payment at least 30 days prior to an expiration date of such a letter of credit." (Admin. record no. VA–933).

We reviewed the DMME's interpretation, and in our response, we asked the State to provide an attorney general's opinion that cites the statutory and/or regulatory basis for the interpretation submitted by the DMME in its October 23, 1997, letter. By memorandum dated October 27, 1998 (Administrative Record Number VA–958) the Virginia Attorney General's Office provided the DMME with its opinion that the provisions of Section 45.1–241.C, Code of Virginia, are consistent with the requirements of the Federal surface mining program. That opinion further states that Section 45.1–241.C may be implemented by the Virginia Division of Mined Land Reclamation (DMLR) in a manner consistent with both the Federal and Virginia program bonding requirements under the authority of Section 45.1–230, Code of Virginia.

Finally, Virginia's statute states that a letter of credit may be accepted on certain designated funds issued by a financial institution authorized to do business in the United States. We asked the DMME whether its use of the term "financial institution authorized to do business in the United States," at 45.1–241(C), is consistent with the Federal regulation at 30 CFR 800.21(b)(1) which states that letters of credit may be issued only by a bank organized or authorized to do business in the United States. In its response, the DMME stated that its intention is to apply all the criteria specified at subsection (b), including (b)(1).

We find that the amendments to Section 45.1–241(C) concerning letters of credit are not inconsistent with SMCRA and can be approved. We are making this finding and approving the amendment to (1) the extent that Virginia will implement this amendment as it stated in its letters dated October 23, 1997, and February 23, 1999, and (2) to the extent that a bank issues letters of credit. In addition, and as we discussed above, the Virginia program regulations lack certain counterparts to the Federal provisions concerning letters of credit at 30 CFR 800.5(b)(4) and 800.21(b)(2). Specifically, Virginia's definition of "collateral bond" at 4 VAC 25–130–700.5 lacks a counterpart to the letter of credit provision in the Federal definition of "collateral bond" at 30 CFR 800.5(b)(4). Also, Virginia's regulation concerning collateral bonds at 4 VAC 25–130–800.21 lacks a counterpart to the Federal requirements concerning collateral bonds at 30 CFR 800.21(b)(2). Lastly, Virginia's use of the term "financial institution" needs to be amended or defined so that letters of credit are only issued by banks organized or authorized to transact business in the United States as required in 30 CFR 800.5(b)(4) and 800.21(b)(2). Therefore, we are requiring that the Virginia program regulations be further amended, or the Virginia program be otherwise amended, to be no less effective than the Federal regulations concerning letters of credit at 30 CFR 800.5(b)(4) and 800.21(b)(2).

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to section 503(b) of SMCRA and 30 CFR 732.17(h)(11)(I), comments were solicited from various interested Federal agencies. The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded (Administrative Record Number VA–924) and recommended that the proposed language be denied. MSHA stated that the proposed changes do not appear to offer the financial surety of the present system. MSHA stated that a letter of credit does not reflect the financial solvency sufficient for the authorization of surety and could be obtained under inflated values of

property, equipment, or other collateral. Completion of reclamation operations after mining is completed or reimbursement to the State, if the bond is forfeited, seems more a positive objective under the present system, MSHA stated.

The Director does not concur with the concern. The Director notes that the Federal regulations at 30 CFR 800.5(b) and 800.21(b)(2) authorized the use of letters of credit as a form of collateral bond to meet the performance bond requirements of 30 CFR 800.11. If a letter of credit bond is forfeited, the bank must pay the bond amount to the regulatory authority.

The U.S. Fish and Wildlife Service (USFWS) responded (Administrative Record Number VA–923). USFWS stated that the proposed amendment is not likely to adversely affect Federally listed species or designated critical habitat in Virginia.

Public Comments

The Virginia Department of Historic Resources commented and stated that it finds that the amendments submitted by the DMME will not affect historic properties.

Environmental Protection Agency (EPA)

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the EPA with respect to any provisions of a State program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no provisions in these categories and that EPA's concurrence is not required.

Pursuant to 732.17(h)(11)(I), OSM solicited comments on the proposed amendment from EPA. The EPA did not provide any comments.

V. Director's Decision

Based on the findings above we are approving Virginia's amendment concerning letters of credit as submitted by letter dated July 31, 1997, amended by letter dated June 4, 1998, and clarified by letters dated October 23, 1997 and February 23, 1999, and Memorandum dated October 27, 1998. We are approving this amendment to the extent that Virginia will implement this amendment as it stated in its letters dated October 23, 1997, and February 23, 1999, and to the extent that a bank issues letters of credit. In addition, we are requiring that the Virginia program regulations be further amended, or the Virginia program be otherwise amended, to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit.

The Federal regulations at 30 CFR Part 946 codifying decisions concerning the Virginia program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA [30 U.S.C. 1292(d)] provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 946

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 16, 1999.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 946—VIRGINIA

1. The authority citation for Part 946 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 946.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 946.15 Approval of Virginia regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
* * * * * * *		
July 31, 1997	May 3, 1999	Code of Virginia at § 45.1–241(C) concerning letter of credit.

3. Section 946.16 is amended by amending paragraph (a) to read as follows:

Section 946.16 Required regulatory program amendments.

* * * * *

(a) By July 2, 1999, Virginia must submit either a proposed amendment or a description of an amendment to be proposed, together with a timetable for adoption, to revise the Virginia program regulations, or otherwise amend the Virginia program, to be no less effective than the Federal regulations at 30 CFR 800.5(b), and 30 CFR 800.21(b)(2) concerning letters of credit.

* * * * *

[FR Doc. 99–11035 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–031]

Drawbridge Operation Regulations: Hutchinson River, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The District Commander, First Coast Guard District has issued a temporary deviation from the Drawbridge Operation Regulations governing the operation of the Pelham Parkway Bridge, mile 0.4, across the Hutchinson River in New York City, New York. This deviation from the regulations authorizes the bridge owner, the New York City Department of Transportation (NYCDOT), to not open the bridge for vessel traffic from March 28, 1999 through May 22, 1999, Monday through Friday, between 7 a.m. and 5 p.m., daily. This action is necessary to facilitate needed repairs to the bridge.

DATES: This deviation is effective from March 28, 1999 through May 22, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Bridge Management Specialist, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Pelham Parkway Bridge, mile 0.4, across the Hutchinson River has a vertical clearance of 13 feet at mean high water and 20 feet at mean low water in the closed position. Vessels that can pass under the bridge without an opening may do so at all times.

The NYCDOT requested a temporary deviation from the operating regulations for the Pelham Parkway Bridge in order to facilitate necessary repairs to the bridge. This work is essential for public safety and continued operation of the bridge.

This deviation from the normal operating regulations is authorized under 33 CFR § 117.35.

Dated: April 15, 1999.

R. M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–10993 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 500, 501, 503, 504, 506, 507, 508, 540 and 582

[Docket No. 99–09]

Amendments to Regulations Governing Employee Ethical Conduct Standards, the Federal Maritime Commission—General, Public Information, Environmental Policy Analysis, Monetary Penalty Inflation Adjustments, Nondiscrimination on the Basis of Handicap, Passenger Vessel Financial Responsibility, and Certification of Policies and Efforts To Combat Rebating

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is amending its regulations relating to agency organization, public information, procedures for environmental policy analysis, civil monetary penalty inflation adjustments, nondiscrimination on the basis of handicap, passenger vessel operations, and anti-rebating certifications, and is redesignating its regulation relating to employee ethical conduct standards, in order to incorporate certain amendments made by the Ocean Shipping Reform Act of 1998 as well as to clarify and reorganize existing regulations.

DATES: This rule is effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT: Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001, (202) 523–5740.

SUPPLEMENTARY INFORMATION: The Ocean Shipping Reform Act of 1998 ("OSRA"), Public Law 105–258, 112 Stat. 1902, amends the Shipping Act of 1984 ("1984 Act") in several areas. The Commission's rules at 46 CFR Parts 500, 501, 503, 504, 506, and 507 address employee ethical conduct standards, the organization of the Commission, public information, environmental policy analysis, civil monetary inflation adjustment, and nondiscrimination on the basis of handicap. The Commission's rules at 46 CFR Part 540 address passenger vessel financial responsibility, and the rules at 46 CFR Part 582 address anti-rebating certifications. The Commission now amends these rules both to make certain changes required by OSRA and to update, redesignate, and clarify the rules more generally. Because the changes made in this proceeding are routine and ministerial in nature, this rulemaking is published as a final rulemaking as to which no notice and comment period is necessary.

Redesignation of Former 46 CFR Part 500

The Commission's regulations at 46 CFR part 500 address employee ethical conduct standards. The rule redesignates former part 500 as part 508.

Amendments to 46 CFR Part 501

OSRA amended Reorganization Plan No. 7 of 1961, 75 Stat. 840, to change the Commission's quorum requirements. Accordingly, the Commission has determined to amend 46 CFR 501.2(d) to track the new statutory language.

Amendments to 46 CFR Part 503

The Commission's regulations at 46 CFR part 503 address access to public information. OSRA's elimination of tariff filing with the Commission has rendered unnecessary those portions of 46 CFR 514 relating to fees for the provision of copies of tariffs. See 46 CFR 514.21. While tariffs will no longer be filed with the Commission, the

Commission has determined to provide public access to historical tariff records. Accordingly, we have removed from part 503 the references to part 514 involving public access to information, but have included reference to public access to historical ATFI records. We have also added, at 46 CFR 503.24, two entries to the list of information available over the internet, to include a list of the location of common carrier and conference tariffs and marine terminal operator schedules, as well as a list of ocean transportation intermediaries who have provided the Commission with evidence of their financial responsibility.

Also, Subpart F—Information Security Program of Part 503, is revised to implement changes required by Executive Order 12958 of April 17, 1995, "Classified National Security Information" and Executive Order 12968 of August 2, 1995 "Access to Classified Information." Changes are primarily to remove references to Executive Order 12356 of April 6, 1982, which was revoked by Executive Order 12958, and to keep pace with the requirements of the National Archives and Records Administration, 32 CFR Part 2001, made pursuant to Executive Order 12958.

Finally, in section 503.71(c), we have amended the Commission's definition of the term "meeting," to reflect changes in the Commission's quorum rules prescribed by OSRA. Several other changes have been made to Part 503 that are of a purely ministerial nature.

Amendments to 46 CFR Part 504

This part addresses the Commission's procedures for environmental policy analysis. We have removed references to the Shipping Act, 1916, in the Authority citation, in 504.1, and in 504.2, because that Act, to the extent it involved the Commission's jurisdiction, has been repealed. We have redefined "marine terminal operator" in 504.2 pursuant to changes required by OSRA. We have updated the Commission's address in 504.3. We have deleted categorical exclusions (a)(5) and (a)(7) in 504.4 pursuant to OSRA, and amended (a)(6) to reflect the recently proposed redesignation of part 514 as part 520. Throughout the part, we removed references to the Office of Environmental Analysis, which no longer exists, and have indicated that for the purposes of part 504, the term "Commission" includes any office or bureau to which the Commission may delegate its environmental policy analysis responsibilities.

Amendments to 46 CFR Part 506

This part addresses civil monetary penalty inflation adjustments. Pursuant to OSRA, we removed the penalty for failure to pay ATFI fees, and removed the penalty for failure to file an anti-rebate certification. We also added the suspension of service contracts as a penalty under the Merchant Marine Act of 1920 as amended by OSRA.

Amendment to 46 CFR Part 507

This part addresses the Commission's enforcement of nondiscrimination on the basis of handicap. Section 507.170(b) is amended to correct a citation error. Section 507.170(c) is updated to reflect the Commission's current street address.

Amendments to 46 CFR Part 540

This part addresses the financial responsibility of passenger vessel operators. The Commission has decided to clarify the regulation by renaming it "Passenger Vessel Financial Responsibility," to replace its old title, "Security for the Protection of the Public." The Commission has also removed an outdated reference in the authority section of the rule to the Shipping Act, 1916, which, to the extent it involved the Commission's jurisdiction, has been repealed.

Removal of 46 CFR Part 582

This part addresses the requirements that govern the submission of anti-rebating certifications by common carriers and other entities in the foreign commerce of the United States. Such certifications were based upon the statutory authority of section 15(b) of the Shipping Act of 1984. However, OSRA has eliminated section 15(b); accordingly, the Commission has determined to remove 46 CFR part 582 from its regulations.

List of Subjects

46 CFR Parts 500 and 508

Conflicts of interest.

46 CFR Part 501

Authority delegations, Organization and functions.

46 CFR Part 503

Classified information, Freedom of information, Privacy, Sunshine act.

46 CFR Part 504

Environmental impact statements, Reporting and recordkeeping requirements.

46 CFR Part 506

Fines and penalties.

46 CFR Part 507

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination.

46 CFR Part 540

Insurance, Maritime carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

46 CFR Part 582

Maritime carriers, Penalties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Commission amends 46 CFR parts 500, 501, 503, 504, 506, 507, 508, 540, and 582 as follows:

PART 500—EMPLOYEE ETHICAL CONDUCT STANDARDS AND FINANCIAL DISCLOSURE REGULATIONS

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 553; 5 U.S.C. 7301; 46 U.S.C. app. 1716

2. Redesignate part 500 as part 508.

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 551–557, 701–706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501–520 and 3501–3520; 46 U.S.C. app. 801–848, 876, 1111, and 1701–1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub.L. 89–56, 79 Stat. 195; 5 CFR Part 2638.

2. Revise § 501.2(d) to read as follows:

§ 501.2 General.

* * * * *

(d) A vacancy or vacancies in the Commission shall not impair the power of the Commission to execute its functions. The affirmative vote of a majority of the members of the Commission is required to dispose of any matter before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient. Proxy votes of absent members shall be permitted.

PART 503—PUBLIC INFORMATION

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552, 552a, 552b, 553; 31 U.S.C. 9701; E.O. 12958 of April 20, 1995 (60 FR 19825), sections 5.2(a) and (b).

2. Remove § 503.11(b) and (c), redesignate paragraph (a) introductory text as the section's introductory text, redesignate paragraphs (a)(1) through (a)(5) as paragraphs (a) through (e), and revise the introductory text to read as follows:

§ 503.11 Materials to be published.

The Commission shall publish the following materials in the **Federal Register** for the guidance of the public:

* * * * *

3. Revise § 503.22(b) to read as follows:

§ 503.22 Records available at the Office of the Secretary.

* * * * *

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part.

4. In § 503.23, remove paragraph (a)(3) and redesignate paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4), and revise redesignated paragraph (a)(3) and paragraph (b) to read as follows:

§ 503.23 Records available upon written request.

(a) * * *

(3) Tariff data filed in the Commission's ATFI system prior to May 1, 1999.

* * * * *

(b) Certain fees may be assessed for duplication of records made available by this section as prescribed in subpart E of this part.

5. In § 503.24, revise paragraph (b)(5)(iii), revise paragraph (b)(10), and add paragraphs (b)(11) and (b)(12) to read as follows:

§ 503.24 Information available via the Internet.

* * * * *

(b) * * *

(5) * * *

(iii) Access to statements of policy and interpretations as published in part 545 of this chapter; and

* * * * *

(10) Privacy Act information;

(11) Lists of the location of all common carrier and conference tariffs and publicly available terminal schedules of marine terminal operators; and

(12) A list of licensed ocean transportation intermediaries which have furnished the Commission with evidence of financial responsibility.

* * * * *

6. Revise § 503.51 to read as follows:

§ 503.51 Definitions.

(a) *Access* means the ability or opportunity to gain knowledge of classified information.

(b) *Classification* means the act or process by which information is determined to be classified information.

(c) *Classification guide* means a documentary form of instruction or source that prescribes the classification of specific information issued by an original classification authority that identifies the elements of information regarding a specific subject that must be classified and establishes the level and duration of classification for each such element.

(d) *Classified national security information (hereafter "classified information")* means information that has been determined pursuant to Executive Order 12958 or any predecessor order in force to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Commission* means the Federal Maritime Commission.

(f) *Declassification* means the authorized change in the status of information from classified information to unclassified information.

(g) *Derivative classification* means the incorporating, paraphrasing, restating or generating in new form information that is already classified, and marking the newly developed material consistent with the classification markings that apply to the source information. Derivative classification includes the classification of information based on classification guidance. The duplication or reproduction of existing classified information is not derivative classification.

(h) *Downgrading* means a determination by a declassification authority that information classified and safeguarded at a specified level shall be classified and safeguarded at a lower level.

(i) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) information received and treated as "Foreign Government Information" under the terms of Executive Order 12958 or any predecessor order.

(j) *Mandatory declassification review* means the review for declassification of classified information in response to a request for declassification that meets the requirements under section 3.6 of Executive Order 12958.

(k) *Multiple sources* means two or more source documents, classification guides, or a combination of both.

(l) *National security* means the national defense or foreign relations of the United States.

(m) *Need to know* means a determination made by an authorized holder of classified information that a prospective recipient requires access to specific classified information in order to perform or assist in a lawful and authorized governmental function.

(n) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(o) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(p) *Self-inspection* means the internal review and evaluation of individual Commission activities and the Commission as a whole with respect to the implementation of the program established under Executive Order 12958 and its implementing directives.

(q) *Senior agency official ("security officer")* means the official designated by the Chairman under section 5.6 of Executive Order 12958 to direct and administer the Commission's program under which classified information is safeguarded.

(r) *Source document* means an existing document that contains classified information that is incorporated, paraphrased, restated, or generated in new form into a new document.

(s) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

7. Revise § 503.52 to read as follows:

§ 503.52 Senior Agency Official.

The Chairman of the Commission shall designate a senior agency official to be the Security Officer for the Commission, who shall be responsible for directing, administering and

reporting on the Commission's information security program, which includes oversight (self-inspection) and security information programs to ensure effective implementation of Executive Orders 12958 and 12968, and 32 CFR part 2001.

8. Amend § 503.53 to revise paragraphs (a) and (d) to read as follows:

§ 503.53 Oversight Committee.

* * * * *

(a) Establish a Commission security education program to familiarize all personnel who have or may have access to classified information with the provisions of Executive Order 12958 and directives of the Information Security Oversight Office. The program shall include initial, refresher, and termination briefings;

* * * * *

(d) Recommend appropriate administrative action to correct abuse or violations of any provision of Executive Order 12958; and

* * * * *

9. Amend § 503.54 to revise paragraphs (a) and (b) to read as follows:

§ 503.54 Original classification.

(a) No Commission Member or employee has the authority to originally classify information.

(b) If a Commission Member or employee develops information that appears to require classification, or receives any foreign government information as defined in section 1.1(d) of Executive Order 12958, the Member or employee shall immediately notify the Security Officer and appropriately protect the information.

* * * * *

10. Amend § 503.55 to revise paragraphs (a), (b) and (c) and delete paragraph (d) to read as follows:

§ 503.55 Derivative classification.

(a) In accordance with Part 2 of Executive Order 12958 and directives of the Information Security Oversight Office, the incorporation, paraphrasing, restating or generation in new form of information that is already classified, and the marking of newly developed material consistent with the classification markings that apply to the source information, is derivative classification.

(1) Derivative classification includes the classification of information based on classification guidance.

(2) The duplication or reproduction of existing classified information is not derivative classification.

(b) Members or employees applying derivative classification markings shall:

(1) Observe and respect original classification decisions; and

(2) Carry forward to any newly created documents the pertinent classification markings.

(3) For information derivatively classified based on multiple sources, the Member or employee shall carry forward:

(i) The date or event for declassification that corresponds to the longest period of classification among the sources; and

(ii) A listing of these sources on or attached to the official file or record copy.

(c) Documents classified derivatively shall bear all markings prescribed by 32 CFR 2001.20 through 2001.23 and shall otherwise conform to the requirements of 32 CFR 2001.20 through 2001.23.

11. Amend § 503.56 to revise the section heading and the first sentence of paragraph (a) to read as follows:

§ 503.56 General declassification and downgrading policy.

(a) The Commission exercises declassification and downgrading authority in accordance with section 3.1 of Executive Order 12958, only over that information originally classified by the Commission under previous Executive orders. * * *

* * * * * *

12. Amend § 503.57 to revise paragraphs (a) introductory text, (a)(1), (c), (e), and (i), and add paragraph (j), to read as follows:

§ 503.57 Mandatory review for declassification.

(a) Information originally classified by the Commission but which has not been automatically declassified shall be subject to a review for declassification by the Commission, if:

(1) A declassification request is made; and

* * * * *

(c) If the request requires the provision of services by the Commission, fair and equitable fees may be charged pursuant to 31 U.S.C. 9701.

* * * * *

(e) If the information was originally classified by the Commission, the Commission Security Officer shall forward the request to the Chairman of the Commission for a determination of declassification. If the information was originated by another agency, the Commission Security Officer shall refer the review and the pertinent records to the originating agency. The final determination will be issued within 180 days of the receipt of the request.

* * * * *

(i) In response to a request for information under the Freedom of Information Act, the Privacy Act of 1974, or the mandatory review provisions of Executive Order 12958, the Commission shall refuse to confirm or deny the existence or non-existence of requested information whenever the fact of its existence or non-existence is itself classifiable under Executive Order 12958.

(j) When a request has been submitted both under mandatory review and the Freedom of Information Act (FOIA), the requester must elect one process or the other. If the requester fails to so elect, the request will be treated as a FOIA request unless the requested materials are subject only to mandatory review.

* * * * *

13. Amend § 503.58 to revise paragraph (c) to read as follows:

§ 503.58 Appeals of denials of mandatory declassification review requests.

* * * * *

(c) In accordance with section 5.4 of Executive Order 12598 and 32 CFR 2001.54, within 60 days of such issuance, the requester may appeal a final determination of the Commission under paragraph (b) of this section to the Interagency Security Classification Appeals Panel. The appeal should be addressed to, Executive Secretary, Interagency Security Classification Appeals Panel, Attn: Classification Challenge Appeals, c/o Information Security Oversight Office, National Archives and Records Administration, 7th and Pennsylvania Avenue, N.W., Room 5W, Washington DC 20408.

14. Revise § 503.59 paragraphs (d), (e) introductory text, (g)(2), (h), and (q)(1),(2) and (3), to read as follows:

§ 503.59 Safeguarding classified information.

* * * * *

(d) Classified information shall be made available to a recipient only when the authorized holder of the classified information has determined that:

(1) The prospective recipient has a valid security clearance at least commensurate with the level of classification of the information; and

(2) The prospective recipient requires access to the information in order to perform or assist in a lawful and authorized governmental function.

(e) The requirement in paragraph (d)(2) of this section, that access to classified information may be granted only to individuals who have a need-to-know the information, may be waived for persons who:

* * * * *

(g)* * *

(2) To protect the classified information in accordance with the provisions of Executive Order 12958; and

* * * * *

(h) Except as authorized by the originating agency, or otherwise provided for by directives issued by the President, the Commission shall not disclose information originally classified by another agency.

* * * * *

(q)* * *

(1) Knowingly, willfully, or negligently disclose to unauthorized persons information properly classified under Executive Order 12958 or predecessor orders in force;

(2) Knowingly and willfully classify or continue the classification of information in violation of Executive Order 12958 or any implementing directive; or

(3) Knowingly and willfully violate any other provision of Executive Order 12958 or implementing directive.

* * * * *

15. Revise § 503.71(c) introductory text to read as follows:

§ 503.71 Definitions.

* * * * *

(c) *Meeting* means the deliberations of a majority of the members serving on the agency which determine or result in the joint conduct of or disposition of official agency business, but does not include:

* * * * *

16. Revise § 503.86(b) to read as follows:

§ 503.86 Public access to records.

* * * * *

(b) Requests for access to the records described in this section shall be made in accordance with procedures described in subparts C and D of this part.

* * * * *

PART 504—PROCEDURES FOR ENVIRONMENTAL POLICY ANALYSIS

1. The authority citation for part 504 is revised to read as follows:

Authority: 5 U.S.C. 552, 553; 46 U.S.C. app. 1712 and 1716; 42 U.S.C. 4332(2)(b), and 42 U.S.C. 6362.

2. Revise § 504.1(c) to read as follows:

§ 504.1 Purpose and scope.

* * * * *

(c) Information obtained under this part is used by the Commission to assess potential environmental impacts of proposed Federal Maritime Commission actions. Compliance is voluntary but may be made mandatory by Commission order to produce the information pursuant to section 15 of the Shipping Act of 1984. The penalty for violation of a Commission order under section 13 of the Shipping Act of 1984 may not exceed $5,000 for each violation, unless the violation was willfully and knowingly committed, in which case the amount of the civil penalty may not exceed $25,000 for each violation, as adjusted by § 506.4 of this chapter. (Each day of a continuing violation constitutes a separate offense.)

3. Revise § 504.2 paragraphs (a), (b), (h), and (i) to read as follows:

§ 504.2 Definitions.

(a) *Shipping Act of 1984* means the Shipping Act of 1984 (46 U.S.C. app. 1701—1720).

(b) *Common carrier* means any common carrier by water as defined in section 3 of the Shipping Act of 1984, including a conference of such carriers.

* * * * *

(h) *Marine Terminal Operator* means a person engaged in the United States in the business of furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier, or in connection with a common carrier and a water carrier subject to subchapter II of chapter 135 of Title 49, United States Code.

(i) *Commission* means the Federal Maritime Commission, including any office or bureau to which the Commission may delegate its environmental policy analysis responsibilities.

4. Revise § 504.3 to read as follows:

§ 504.3 General information.

(a) All comments submitted pursuant to this part shall be addressed to the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

(b) A list of recent Commission actions, if any, for which a finding of no significant impact has been made or for which an environmental impact statement is being prepared will be maintained by the Commission in the Office of the Secretary and will be available for public inspection.

(c) Information or status reports on environmental statements and other elements of the NEPA process can be obtained from the Secretary, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, D.C. 20573–0001.

5. In § 504.4, remove and reserve paragraph (a)(7), revise paragraphs (a)(1), (a)(3), (a)(5), (a)(6), (a)(19), (b), and (c) to read as follows:

§ 504.4 Categorical exclusions.

(a) * * *

(1) Issuance, modification, denial and revocation of ocean transportation intermediary licenses.

(2) * * *

(3) Receipt of surety bonds submitted by ocean transportation intermediaries.

(4) * * *

(5) Receipt of service contracts.

(6) Consideration of special permission applications pursuant to part 520 of this chapter.

(7) [Reserved]

* * * * *

(19) Action taken on special docket applications pursuant to § 502.271 of this chapter.

* * * * *

(b) If interested persons allege that a categorically-excluded action will have a significant environmental effect (e.g., increased or decreased air, water or noise pollution; use of recyclables; use of fossil fuels or energy), they shall, by written submission to the Secretary, explain in detail their reasons. The Secretary shall refer these submissions for determination by the appropriate Commission official, not later than ten (10) days after receipt, whether to prepare an environmental assessment. Upon a determination not to prepare an environmental assessment, such persons may petition the Commission for review of the decision within ten (10) days of receipt of notice of such determination.

(c) If the individual or cumulative effect of a particular action otherwise categorically excluded offers a reasonable potential of having a significant environmental impact, an environmental assessment shall be prepared pursuant to § 504.5.

6. Revise § 504.5(b) to read as follows:

§ 504.5 Environmental assessments.

* * * * *

(b) A notice of intent to prepare an environmental assessment briefly describing the nature of the potential or proposed action and inviting written comments to aid in the preparation of the environmental assessment and early identification of the significant environmental issues may be published in the **Federal Register**. Such comments must be received by the Commission no later than ten (10) days from the date of publication of the notice in the **Federal Register**.

7. Revise § 504.6 to read as follows:

§ 504.6 Finding of no significant impact.

(a) If upon completion of an environmental assessment, it is determined that a potential or proposed action will not have a significant impact on the quality of the human

environment of the United States or of the global commons, a finding of no significant impact shall be prepared and notice of its availability published in the **Federal Register**. This document shall include the environmental assessment or a summary of it, and shall briefly present the reasons why the potential or proposed action, not otherwise excluded under § 504.4, will not have a significant effect on the human environment and why, therefore, an environmental impact statement (EIS) will not be prepared.

(b) Petitions for review of a finding of no significant impact must be received by the Commission within ten (10) days from the date of publication of the notice of its availability in the **Federal Register**. The Commission shall review the petitions and either deny them or order prepared an EIS pursuant to § 504.7. The Commission shall, within ten (10) days of receipt of the petition, serve copies of its order upon all parties who filed comments concerning the potential or proposed action or who filed petitions for review.

8. Revise § 504.7 paragraphs (a)(1), (b)(1) and (c)(1) to read as follows:

§ 504.7 Environmental impact statements.

(a) *General.* (1) An environmental impact statement (EIS) shall be prepared when the environmental assessment indicates that a potential or proposed action may have a significant impact upon the environment of the United States or the global commons.

* * * * *

(b) *Draft environmental impact statements.* (1) A draft environmental impact statement (DEIS) will initially be prepared in accordance with 40 CFR part 1502.

* * * * *

(c) *Final environmental impact statements.* (1) After receipt of comments on the DEIS, a final environmental impact statement (FEIS) will be prepared pursuant to 40 CFR part 1502, which shall include a discussion of the possible alternative actions to a potential or proposed action. The FEIS will be distributed in the same manner as specified in paragraph (b)(2) of this section.

* * * * *

9. Revise § 504.9 paragraphs (a) introductory text, (c), and (d) to read as follows:

§ 504.9 Information required by the Commission.

(a) Upon request, a person filing a complaint, protest, petition or agreement requesting Commission action shall submit, no later than ten (10) days from the date of the request, a statement setting forth, in detail, the impact of the requested Commission action on the quality of the human environment, if such requested action will:

* * * * *

(c) If environmental impacts, either adverse or beneficial, are alleged, they should be sufficiently identified and quantified to permit meaningful review. Individuals may contact the Secretary of the Federal Maritime Commission for informal assistance in preparing this statement. The Commission shall independently evaluate the information submitted and shall be responsible for assuring its accuracy if used by it in the preparation of an environmental assessment or EIS.

(d) In all cases, the Secretary may request every common carrier by water, or marine terminal operator, or any officer, agent or employee thereof, as well as all parties to proceedings before the Commission, to submit, within ten (10) days of such request, all material information necessary to comply with NEPA and this part. Information not produced in response to an informal request may be obtained by the Commission pursuant to section 15 of the Shipping Act of 1984.

PART 506—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

1. The authority citation for Part 506 continues to read as follows:

Authority: 28 U.S.C. 2461.

2. Revise § 506.4 (d) to read as follows:

§ 506.4 Cost of living adjustments of civil monetary penalties.

(d) *Inflation adjustment.* Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

United States Code citation	Civil monetary penalty description	Maximum penalty amount as of 10/23/96	New adjusted maximum penalty amount
46 U.S.C. app. sec. 817d	Failure to establish financial responsibility for death or injury	5,000	5,500
		200	220
46 U.S.C. app. sec. 817e	Failure to establish financial responsibility for nonperformance of transportation.	5,000	5,500
		200	220
46 U.S.C. app. sec. 876	Failure to provide required reports, etc.—Merchant Marine Act of 1920.	5,000	5,500
46 U.S.C. app. sec. 876	Adverse shipping conditions—Merchant Marine Act of 1920	1,000,000	1,100,000
46 U.S.C. app. sec. 876	Operating after tariff or service contract suspension/ Merchant Marine Act of 1920.	50,000	55,000
46 U.S.C. app. sec. 1710a	Adverse impact on US carriers by foreign shipping practices	1,000,000	1,100,000
46 U.S.C. app. sec. 1712	Operating in foreign commerce after tariff suspension	50,000	55,000
46 U.S.C. app. sec. 1712	Knowing and willful violation/Shipping Act of 1984 or Commission regulation or order.	25,000	27,500
46 U.S.C. app. sec. 1712	Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful.	5,000	5,500
31 U.S.C. sec. 3802(a)(1)	Program Fraud Civil Remedies Act/giving false statement	5,000	5,500
31 U.S.C. sec. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	5,000	5,500

PART 507—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL MARITIME COMMISSION

1. The authority citation for part 507 continues to read as follows:

Authority: 29 U.S.C. 794.

2. In § 507.170(b), remove "29 CFR part 1613" and replace with "29 CFR part 1614".

3. Revise § 507.170(c) to read as follows:

§ 507.170 Compliance Procedures.

* * * * *

(c) The Director, Bureau of Administration shall be responsible for coordinating implementation of this section. Complaints may be sent to the Director, Bureau of Administration, Federal Maritime Commission, 800 North Capitol Street, N.W., Washington, DC 20573.

* * * * *

PART 540—PASSENGER VESSEL FINANCIAL RESPONSIBILITY

1. In part 540, revise the part heading to read as set forth above:

2. Revise the authority citation of part 540 to read as follows:

Authority: 5 U.S.C. 552, 553; 31 U.S.C. 9701; secs. 2 and 3, Pub. L. 89–777, 80 Stat. 1356–1358, 46 U.S.C. app. 817e, 817d; 46 U.S.C. 1716.

PART 582—[REMOVED]

Under the authority of 5 U.S.C. 553, 6 U.S.C. app. 1701, 1702, 1707, 1709, 1712, and 1714–1716, remove part 582.

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10896 Filed 4–30–99; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 502, 545, and 571

[Docket No. 98–21]

Miscellaneous Amendments to Rules of Practice and Procedure; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 17, 1999, a final rule making corrections and changes to existing regulations to update and improve them, and to conform them to and implement the Ocean Shipping Reform Act of 1998. Inadvertently, several amendatory instructions were omitted.

DATES: Effective on May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The FMC published a final rule in the **Federal Register** of February 17, 1999 (64 FR 7804), which made corrections and changes to existing rules of practice and procedure. Inadvertently, several amendatory instructions were omitted.

In Docket No. 98–21, published on February 17, 1999 (64 FR 7804), make the following corrections:

1. On page 7807, in the first column, after the text of instruction 4(c) add the following amendatory instructions:

d. In paragraph (b)(2), revise the phrase "paragraphs (b)(5), (6) and (7)" to read "paragraphs (e), (f) and (g)."

e. In paragraph (b)(4)(iii), revise the phrase "(b)(4)(i) and (b)(4)(ii)" to read "(d)(1) and (d)(2)."

f. In paragraph (b)(5), revise the reference "(b)(4)" to read "(d)."

2. On page 7808, in the first column, revise amendatory instruction 15 to read as follows:

In § 502.61, remove "[Rule 61.]" from the end of paragraph (c) and add "[Rule 61.]" to the end of paragraph (d).

3. On page 7810, in the first column, revise amendatory instruction 39(c) to read as follows:

c. Amend redesignated paragraph (a) by removing "[Rule 144.]" and revising the last sentence to read as set forth below;

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10899 Filed 4–30–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 550, 551, 555, 560, 565, 585, 586, 587, and 588

[Docket No. 98–25]

Amendments to Regulations Governing Restrictive Foreign Shipping Practices, and New Regulations Governing Controlled Carriers; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of February 18, 1999, a final rule revising and redesignating regulations governing restrictive foreign shipping practices and controlled carriers to incorporate amendments made by the Ocean Shipping Reform Act of 1998. A filing fee was inadvertently removed in the revision process.

DATES: Effective on May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The FMC published a final rule in the **Federal Register** of February 18, 1999 (64 FR 8007), revising and redesignating regulations governing restrictive foreign shipping practices, and controlled carriers. A final rule published September 22, 1998 at 63 FR 50537, effective November 2, 1998, amended § 588.4(a) to include a filing fee for filing of petitions under part 588. In the process of revising that section for this final rule, reference to the filing fee was inadvertently omitted from redesignated § 555.4(a).

In Docket No. 98–25, published on February 18, 1999 (64 FR 8007), make the following correction. On page 8010, in the third column, at the end of § 555.4, paragraph (a), add the following sentence: "The petition shall be accompanied by remittance of a $177 filing fee."

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10898 Filed 4–30–99; 8:45 am]

BILLING CODE 6730–01–M

Proposed Rules

Federal Register
Vol. 64, No. 84
Monday, May 3, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–63–AD]

RIN 2120–AA64

Airworthiness Directives; Dassault Model 2000, 900EX, and Mystere Falcon 900 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Dassault Model Falcon 2000 series airplanes; and certain Dassault Model 900EX, and Mystere Falcon 900 series airplanes. This proposal would require repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair, if necessary; repetitive replacement of the inboard flap jackscrews with new jackscrews; repetitive measurement of the screw/nut play to detect discrepancies; and corrective action, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent jamming of the flap jackscrews, which could result in the inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

DATES: Comments must be received by May 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–63–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–63–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Dassault Model Falcon 2000 series airplanes. The DGAC advises that several operators of these airplanes have reported jamming of the inboard flap jackscrew during extension of the flaps while the airplanes were in the approach-to-landing phase of the flight. The same inboard flap jackscrew is installed on certain Dassault Model 900EX, and Mystere Falcon 900 series airplanes, therefore, the identified unsafe condition may also exist on these airplane models. Such jamming of the flap jackscrews, if not corrected, could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive operational tests of the flap asymmetry detection system to verify proper functioning, and repair of any discrepancy. The proposal also would require repetitive replacement of the inboard flap jackscrews with new jackscrews; and repetitive measurement of the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, and corrective action, if necessary. The corrective action consists of replacement of any discrepant jackscrew with a new jackscrew.

The actions would be required to be accomplished in accordance with the applicable Dassault Aviation Falcon 2000, 900EX, or Mystere Falcon 900 Airplane Maintenance Manual, and/or a

method approved by the FAA or the DGAC (or its delegated agent).

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Cost Impact

The FAA estimates that 159 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed operational test, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational test proposed by this AD on U.S. operators is estimated to be $9,540, or $60 per airplane, per test cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed flap jackscrew replacement, at an average labor rate of $60 per work hour. Required parts would cost approximately $21,200 per airplane. Based on these figures, the cost impact of the replacement proposed by this AD on U.S. operators is estimated to be $3,447,120 or $21,680 per airplane, per replacement cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed measurement, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $76,320, or $480 per airplane, per measurement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation [Formerly Avions Marcel Dassault-Breguet Aviation (AMD/BA)]: Docket 99–NM–63–AD.

Applicability: All Model Falcon 2000 series airplanes; Falcon 900EX series airplanes, serial numbers 161 and subsequent; and Mystere Falcon 900 series airplanes, serial numbers 04 and subsequent; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent jamming of the flap jackscrews, which could result in inability to move the flaps or an asymmetric flap condition, and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Operational Test

(a) Within 5 flight cycles after the effective date of this AD: Perform an operational test of the flap asymmetry detection system to ensure that the system is functioning correctly, in accordance with the procedures specified in Falcon.2000 Airplane Maintenance Manual (AMM) 27–502, dated November 1995; Falcon 900 AMM 27–502, dated January 1995; or Falcon 900EX AMM 27–502, dated September 1996, as applicable. Prior to further flight, repair any discrepancy detected in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (or its delegated agent). Repeat the operational test thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Repetitive Replacement

(b) Prior to the accumulation of 1,000 total flight cycles on the inboard flap jackscrews, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Replace the inboard flap jackscrews with new jackscrews in accordance with the procedures specified in Falcon 2000 AMM 27–510, dated November 1995; Falcon 900 AMM 27–521, dated December 1998; or Falcon 900EX AMM 27–510, dated September 1996, as applicable. Repeat the replacement thereafter at intervals not to exceed 1,000 flight cycles.

Repetitive Inspection

(c) Prior to the accumulation of 1,000 total flight cycles on the outboard and center flap jackscrews, or within 25 flight cycles after the effective date of this AD, whichever occurs later: Measure the screw/nut play of the outboard and center flap jackscrews to detect discrepancies, in accordance with the procedures specified in Falcon 2000 AMM, Temporary Revision (TR) 27–504, dated October 1998; Falcon 900 AMM, TR 27–514, dated February 1999; or Falcon 900EX AMM, TR 27–514, dated February 1999, as applicable.

Note 2: The AFM revisions required by paragraph (c) of this AD may be accomplished by inserting a copy of the TR's into the applicable AFM. When these TR's have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the TR's.

(1) If the measurement is greater than 0.014 inch, prior to further flight, replace the discrepant flap jackscrew with a new jackscrew in accordance with the procedures specified in Falcon 2000 AMM 27–510, dated November 1995; Falcon 900 AMM 27–521, dated December 1998; or Falcon 900EX AMM 27–510, dated September 1996, as applicable. Repeat the inspection thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

(2) If the measurement is less than or equal to 0.014 inch, repeat the measurement

thereafter at intervals not to exceed 330 flight hours or 7 months, whichever occurs first.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in French airworthiness directives 1999–038–008(B), dated January 27, 1999 (for Falcon 2000 series airplanes); and 1999–082–024(B) dated February 24, 1999 (for Falcon 900 and Mystere Falcon 900EX series airplanes).

Issued in Renton, Washington, on April 26, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10962 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 108

[Docket No. FAA–1999–5536; Notice No. 99–05]

RIN 2120–AG51

Security of Checked Baggage on Flights Within the United States; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking; correction.

SUMMARY: This document contains a correction to the notice of proposed rulemaking, published in the **Federal Register** on April 19, 1999 (64 FR 19220). That NPRM clarified that each certificate holder required under § 108.5 to adopt and implement an FAA-approved security program screen checked baggage or conduct passenger-to-bag matching for scheduled passenger operations within the United States when using an airplane having a passenger seating configuration of more than 60 seats.

FOR FURTHER INFORMATION CONTACT: Lon M. Siro, 202–267–3414.

Correction of Publication

In proposed rule FR Doc. 99–9635, beginning on page 19220 in the **Federal Register** issue of April 19, 1999, make the following corrections:

1. On page 19220, in column 1, in the **ADDRESSES** section, beginning on line 5, correct the "Docket No. FAA–1999–5336" to read "Docket No. FAA–1999–5536".

2. On page 19220, in column 2, in Comments Invited section, beginning on line 7 in the fourth paragraph, correct the "Docket No. FAA–1999–5336" to read "Docket No. FAA–1999–5536".

Issued in Washington, DC on April 22, 1999.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 99–10734 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–106004–98]

RIN 1545–AW71

Guidance Under Section 355(d); Recognition of Gain on Certain Distributions of Stock or Securities

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to recognition of gain on certain distributions of stock or securities of a controlled corporation. These proposed regulations affect corporations and their shareholders. Proposed regulations are necessary because of statutory changes made by the Omnibus Budget Reconciliation Act of 1990. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 2, 1999. Outlines of topics to be discussed at the public hearing scheduled for September 21, 1999, at 10 a.m. must be received by August 31, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–106004–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–106004–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in room 2615, Internal Revenue Building, 1111 Constitution Avenue, N.W., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert Hawkes (202) 622–7530 or Phoebe Bennett (202) 622–7750; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

If the requirements of section 355(a) are met, a distributing corporation (Distributing) may distribute the stock or securities of a controlled corporation (Controlled) to its shareholders or security holders (Distributees) with no gain or loss recognized to the Distributees. A Distributee allocates its basis in Distributing stock or securities between the Controlled stock or securities received in the distribution and any Distributing stock or securities retained in proportion to the fair market value of each. See section 358; §§ 1.358–1 and 1.358–2. If neither section 355 (d) nor (e) applies, then Distributing generally recognizes no gain on the distribution of stock or securities. See section 355(c)(2) or 361(c)(2).

With limited exceptions, the Tax Reform Act of 1986 (Public Law 99–514, 100 Stat. 208) (TRA), repealed the doctrine of *General Utilities & Operating Co.* v. *Helvering*, 296 U.S. 200 (1935), by requiring a corporation to recognize gain on both liquidating and nonliquidating distributions of appreciated property. In retaining section 355 as an exception to *General Utilities* repeal, Congress intended to permit historic shareholders to carry on their historic corporate businesses in separate corporations. See H. R. Rep. 101–881, at 341 (1990). However, Congress became concerned that, after the TRA, a person could purchase a historic shareholder's

interest, receive a distribution of Controlled stock tax-free to both Distributing and the purchaser, and obtain a fair market value basis in the Controlled stock. Accordingly, Congress amended section 355(b)(2)(D) in the Omnibus Budget Reconciliation Act of 1987 (Public Law 100–203, section 10223, 101 Stat. 1330–411) (1987 OBRA) to make section 355 inapplicable where a Distributee acquired control (as defined in section 368(c)) of a corporation conducting a business in a taxable transaction during the five-year period ending on the date of the distribution. See H. R. Rep. No. 100–391, at 1082–83 (1987). However, section 355(b)(2)(D) did not apply to noncorporate purchasers or purchasers of less than 80 percent of Distributing stock.

Section 355(d), enacted as part of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508, section 11321(a), 104 Stat. 1388–460) (1990 OBRA), followed the purposes of the 1987 OBRA provisions but substantially expanded their scope. See H. R. Rep. 101–881, at 341 (1990). In section 355(d), Congress intended to prevent the use of section 355 either to "dispose of subsidiaries in transactions that resemble sales, or to obtain a fair market value stepped-up basis for any future dispositions, without incurring corporate-level tax." Id.

Section 355(d) requires recognition of gain on a distribution of Controlled stock (as though the Controlled stock were sold to the Distributee at its fair market value) if, immediately after the distribution, any person holds disqualified stock of Distributing or any distributed Controlled that constitutes a 50 percent or greater interest. See section 355(d) (1) and (2). Disqualified stock is stock in Distributing acquired by purchase after October 9, 1990 and during the five-year period (taking into account section 355(d)(6)) ending on the date of distribution (the five-year period), or Controlled stock either (1) acquired by purchase during the five-year period or (2) distributed with respect to either disqualified Distributing stock or on Distributing securities acquired by purchase during the five-year period. See section 355(d)(3). A *50 percent or greater interest* means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. See section 355(d)(4). Section 355(d) also contains a definition of *purchase* (section 355(d)(5)), a provision suspending the five-year period for certain stock or securities (section 355(d)(6)), and aggregation and attribution provisions (section 355(d) (7) and (8)). Section 355(d)(9) authorizes regulations to carry out the purposes of section 355(d), including regulations to prevent the avoidance of its purposes through the use of related persons, intermediaries, pass-through entities, options, or other arrangements, and regulations modifying the definition of *purchase*.

Explanation of Provisions

(a) General Rules and Purposes of Section 355(d)

As stated above, section 355(d) is intended to prevent taxpayers from using section 355 to dispose of subsidiaries in sale-like transactions, or to obtain a fair market value stepped-up basis for future dispositions, without incurring a corporate-level tax. See H. R. Rep. 101–881, at 341 (1990). The legislative history to section 355(d) describes transactions generally not violating the purposes of section 355(d):

> The purposes of [section 355(d)] are not generally violated if there is a distribution of a controlled corporation within 5 years of an acquisition by purchase and the effect of the distribution is neither (1) to increase ownership in the distributing corporation or any controlled corporation by persons who have directly or indirectly acquired stock within the prior five years, nor (2) to provide a basis step-up with respect to the stock of any controlled corporation.

H. R. Rep. No. 101–964 (Conference Report), at 1093 (1990).

The Conference Report, at page 1091, clarifies that the grant of regulatory authority in section 355(d)(9) includes the authority to exclude from section 355(d) transactions not violating its purposes. The proposed regulations provide that a distribution is not a disqualified distribution under section 355(d)(2) and proposed § 1.355–6(b)(1) if the distribution and any related transactions do not violate the purposes of section 355(d). The proposed regulations describe transactions not violating the purposes of section 355(d) in a manner similar to the legislative history and provide some examples of those transactions. If a distribution does not violate the purposes of section 355(d) under proposed § 1.355–6(b)(3), such distribution is a distribution to which section 355(d) does not apply. Accordingly, such a distribution still could be a distribution to which section 355(e) applies. See section 355(e)(2)(D).

The exception in the proposed regulations for transactions that do not violate the purposes of section 355(d) applies to transactions in which a disqualified person neither increases an interest nor obtains a purchased basis in Controlled stock. A disqualified person is any person that, immediately after a distribution, holds disqualified stock in Distributing or Controlled that constitutes a 50-percent or greater interest (under section 355(d)(4) and proposed § 1.355–6(c)). Based on examples in the Conference Report, the proposed regulations define *purchased basis* as basis in Controlled stock that is disqualified stock, unless the Controlled stock and the Distributing stock on which the Controlled stock is distributed are treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and proposed § 1.355–6(e)(1). Examples in the proposed regulations demonstrate the application of the two-pronged purpose test.

The proposed regulations also provide that a person that acquires an interest in any entity by purchase is not treated as having acquired by purchase stock owned by the entity under section 355(d)(8)(B) and paragraph (e)(1) of this section when the person no longer holds the directly purchased interest. Examples demonstrate the operation of this rule when purchased stock is eliminated in a liquidation or upstream merger.

The proposed regulations provide an anti-avoidance rule that permits the Commissioner to treat any distribution as a disqualified distribution under section 355(d)(2) and proposed § 1.355–6(b)(1) if the distribution or another transaction or transactions are engaged in or structured with a principal purpose to avoid the purposes of section 355(d) or the regulations thereunder with respect to the distribution. For example, the Commissioner may determine that the existence of a related person, intermediary, pass-through entity, or similar person (an intermediary) should be disregarded, in whole or in part, if the intermediary is formed or availed of with a principal purpose to avoid the purposes of section 355(d) or the regulations thereunder.

(b) Whether a Person Holds a 50 Percent or Greater Interest

Under section 355(d)(4), *50 percent or greater interest* means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock. The proposed regulations provide rules relating to that definition.

Valuation

The proposed regulations provide that, for purposes of section 355(d)(4) and proposed § 1.355–6, all shares of stock within a single class are

considered to have the same value. But see proposed § 1.355–6(c)(3)(vii), which applies a special valuation rule to determine whether options are reasonably certain to be exercised.

Effect of Options, Warrants, Convertible Obligations, and Other Similar Interests

Section 355(d)(9) provides regulatory authority to prevent the avoidance of the purposes of section 355(d) through the use of options. The Conference Report states, at page 1092, that Congress intends that regulations be issued to treat an option to acquire stock as exercised if two criteria are satisfied. The first is that a deemed exercise would cause a person to have a 50 percent or greater interest acquired by purchase. The second is that, under all the facts and circumstances (including projected earnings or appreciation and including the risk shifting or other effects of any other arrangements with the option holder or related parties), the effect of the option would be to avoid the application of section 355(d).

In general, the proposed regulations disregard options in determining whether any person holds disqualified stock constituting a 50 percent or greater interest. However, under the proposed regulations, an option to acquire stock that has not been exercised when a distribution occurs is treated as exercised on the date it was issued or most recently transferred if two criteria are satisfied. The first, based on the Conference Report, is that a deemed exercise would cause a person to become a disqualified person. An option is not treated as exercised under this criterion, however, if the effect of the treatment is to prevent a person who would otherwise be a disqualified person from being treated as a disqualified person. The second criterion is that, immediately after the distribution of Controlled, and based on all the facts and circumstances, it is reasonably certain that the option will be exercised. The IRS and Treasury believe that the proposed regulations, which employ a "reasonably certain" standard to treat options as exercised in potentially abusive situations, is consistent with the guidance given in the Conference Report with respect to options. The proposed regulations generally except certain instruments not ordinarily having an abuse potential from treatment as options, such as escrow, pledge, or other security agreements, compensatory options, and options exercisable only upon death, disability, mental incompetency, or retirement.

When an option is treated as exercised, it is treated as exercised both for purposes of determining the percentage of the voting power of stock owned and for purposes of determining the percentage of the value of stock owned. The effect of control premiums and minority and blockage discounts on stock value is taken into account only for purposes of applying the "reasonably certain" test. If the "reasonably certain" test is met, so that an option is treated as exercised, all shares of a single class are considered to have the same value for purposes of determining the amount of stock deemed acquired under the option.

The option rules of proposed § 1.355–6(c)(3) determine when an option is treated as exercised only for purposes of section 355(d) (but not for purposes of section 355(d)(6)) and do not apply for purposes of any other sections of the Internal Revenue Code. The option rules are proposed to apply generally to options outstanding in distributions occurring after the regulations are published as final regulations in the **Federal Register**. See proposed § 1.355–6(g). However, the Service may apply substance over form principles in determining whether options outstanding in distributions before the effective date are treated as stock or as exercised in appropriate circumstances.

Plan or Arrangement

Under section 355(d)(7)(B), if two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock or securities in Distributing or Controlled, those persons are treated as one person for purposes of section 355(d). The proposed regulations provide a rule to determine when shareholders act pursuant to a plan or arrangement. Under the rule (which does not apply for purposes of any other section of the Internal Revenue Code), two or more shareholders act pursuant to a plan or arrangement only if they have a formal or informal understanding among themselves to make a coordinated acquisition of stock. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of one or more other existing or prospective shareholders. Thus, in general, a public offering is not treated as a plan or arrangement if each investor makes an independent investment decision. This rule applies regardless of the amount of stock the shareholders own or acquire. The rule is based on the entity rule contained in § 1.382–3(a)(1), and the IRS and Treasury intend that the two provisions be administered in a similar manner.

The proposed regulations provide that creditors' participation in an insolvency workout or reorganization in a title 11 or similar case, and the receipt of stock in satisfaction of indebtedness in a workout or reorganization, are not treated as a plan or arrangement among the creditors. The IRS and Treasury request comments as to whether additional provisions are appropriate for workout or bankruptcy situations, such as rules regarding the timing of purchases of stock received by creditors, or rules regarding whether rights created in favor of creditors in a bankruptcy case should be treated as options.

(c) Purchase

Under section 355(d)(5)(A), except as otherwise provided in section 355(d)(5)(B) and (C), a purchase means any acquisition, but only if (1) the basis of the property acquired in the hands of the acquirer is not determined in whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired, or under section 1014(a), and (2) the property is not acquired in an *exchange* to which section 351, 354, 355, or 356 applies. The proposed regulations clarify that the term *exchange* in the statute includes a reference to all section 355 distributions (for example, spin-offs, even though no property is conveyed in exchange for the distributed stock).

Exceptions to Definition of Purchase Under Section 355(d)(5)(A)

The proposed regulations provide that an acquisition of stock permitted to be received by a transferor of property without the recognition of gain under section 351(a), or permitted to be received without the recognition of gain under section 354 or 355, is not a purchase to the extent section 358(a)(1) applies to determine the recipient's basis, whether or not the recipient also recognizes gain under section 351(b) or 356. The Conference Report suggests, at page 1092, that regulations generally should treat stock received by a target corporation shareholder in a reorganization as acquired by purchase if the shareholder also receives boot. The Conference Report states that purchase treatment is warranted because the basis in the shareholder's acquiring corporation stock is increased by the gain the shareholder recognizes. However, under section 358(a)(1)(A), the basis in the stock also is reduced by the amount of the boot received. Thus, the shareholder will not receive a net basis increase in the acquiring corporation stock. The proposed regulations also provide that, to the extent stock that is "other property" under section 351(b) or 356(a)(1) is

received in addition to stock excepted from purchase treatment under the basic rule, the boot stock is treated as purchased on the date of the exchange or distribution for purposes of section 355(d).

The proposed regulations provide that an acquisition of stock by a corporation is generally not a purchase to the extent section 334(b) or 362 (a) or (b) applies to determine the corporation's basis in the stock received. However, because of the basis results, stock is treated as purchased on the date of the stock acquisition for purposes of section 355(d) if the liquidating corporation recognizes gain or loss with respect to the transferred stock as described in section 334(b)(1), or to the extent the basis of the transferred stock is increased through the recognition of gain by the transferor under section 362 (a) or (b).

The proposed regulations provide that, subject to certain restrictions, section 305(a) and section 1036(a) transactions are not purchases.

Certain Section 351 Exchanges Treated as Purchases

Under section 355(d)(5)(B), a purchase includes any acquisition of property in an exchange to which section 351 applies to the extent the property is acquired in exchange for any cash or cash item, any marketable stock or security, or any debt of the transferor. The property treated as acquired by purchase is the property received by the transferor in the exchange. If the transferor receives more than one class of stock or securities, or receives both stock and securities, the proposed regulations provide that the amount of stock or securities purchased is determined in a manner that corresponds to the basis allocation under section 358. The proposed regulations define the terms *cash item* and *marketable stock* to include personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1, without giving effect to section 1092(d)(3).

The proposed regulations provide certain exceptions to purchase treatment under section 355(d)(5)(B). Under the first exception, an acquisition of stock in a corporation in a section 351(a) transaction by one or more persons in exchange for an amount of stock in another corporation (the transferred corporation) that meets the requirements of section 1504(a)(2) is not a purchase by the transferor or transferors, regardless of whether the stock of the transferred corporation is marketable stock. Under the second exception, an acquisition of stock in exchange for any cash or cash item, any marketable stock, or any debt of the transferor in a section 351 transaction generally is not a purchase if the transferor transfers the items as part of an active trade or business and the transferred items do not exceed the reasonable needs of the trade or business. This exception is based on the Conference Report, at page 1093. The proposed regulations provide guidance based on § 1.355–3(b) (2) and (3) for determining active conduct of a trade or business and guidance on the reasonable needs of the trade or business. All facts and circumstances are considered in applying the exception.

The third exception, also based on the Conference Report, at pages 1092–93, provides that an acquisition of stock in exchange for any cash or cash item, marketable stock or security, or debt of the transferor in a section 351 transaction is generally not a purchase if the transferor corporation or corporations, the transferee corporation, and any distributed controlled corporation of the transferee corporation are members of the same affiliated group as defined in section 1504(a) before the section 351 transaction (if the transferee corporation is in existence before the transaction) and do not cease to be members of such affiliated group in any transaction related to the section 351 transaction (including any distribution of a controlled corporation by the transferee corporation). An example illustrates that, under the anti-avoidance rule of proposed § 1.355–6(b)(4), this exception does not apply if the section 351 transaction is engaged in or structured with a principal purpose to avoid the purposes of section 355(d).

The proposed regulations provide purchase rules for certain triangular asset reorganizations. For purposes of section 355(d), the proposed regulations generally treat the controlling corporation as having acquired the assets and liabilities of the target corporation in a transaction in which basis in the acquired assets is determined under section 362(b) and then transferred the assets and liabilities to its subsidiary corporation in a section 351 transaction. This treatment is consistent with the determination of basis in the stock of the acquiring subsidiary or target corporation under § 1.358–6. The application of section 351 to the deemed asset contribution causes section 355(d)(5)(B) (and proposed § 1.355–6(d)(3) (i) through (iv)) to apply.

The proposed regulations provide special rules for transactions qualifying as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) and also as either a reorganization under section 368(a)(1)(B) or a section 351 transfer. Special rules are necessary for these transactions because, under § 1.358–6(c)(2)(ii) or 1.1502–30(b), a controlling corporation may determine its basis in surviving corporation stock by choosing from two alternative methods, but the taxpayer need not choose a method until a basis determination is relevant. The proposed regulations describe corresponding methods for determining the amount of surviving corporation stock treated as purchased for purposes of section 355(d). The proposed regulations provide that, regardless of which method the controlling corporation may actually employ to determine its basis in the surviving corporation stock under § 1.358–6(c)(2)(ii) or 1.1502–30(b), the total amount of surviving corporation stock treated as purchased immediately after the distribution equals the higher of the amount of surviving corporation stock that would be treated as purchased under the two alternative methods described in proposed § 1.355–6(d)(5)(i). The proposed regulations allow a controlling corporation to select one of the two alternative methods if the controlling corporation obtains a letter ruling and enters into a closing agreement under section 7121 in which it agrees to determine its basis in surviving corporation stock using the corresponding method under § 1.358–6(c)(2)(ii) (A) or (B). This option allows the taxpayer to conform the section 355(d) results with the section 358 basis results it chooses.

Finally, the proposed regulations explain the treatment of group structure changes to which § 1.1502–31 applies, and provide rules adjusting purchase treatment to conform to basis treatment in triangular reorganizations and group structure changes.

(d) Deemed Purchase and Timing Rules

Attribution and Aggregation

Under section 355(d)(8)(B), if any person purchases an interest in an entity, and any stock held by the entity is attributed to the person under section 355(d)(8)(A), the person is treated as purchasing the stock on the later of the date the person purchased the interest in the entity or the date the entity purchased the stock.

The proposed regulations adopt three additional timing rules based on the Conference Report, at page 1090. First, if a person and an entity are treated as a single person under section 355(d)(7), and the person later purchases an

additional interest in the entity, the person is treated as purchasing, at the time the additional interest is purchased, the amount of stock attributed from the entity to the person as a result of the additional interest. This timing rule applies even though the person was (prior to purchasing the additional interest in the entity) already treated as owning all of the stock owned by the entity under the aggregation rules of section 355(d)(7). Second, if two persons are treated as one person under section 355(d)(7) and one later purchases stock from the other, the date of the later purchase is used. Third, if a person who is already treated as holding stock under section 355(d)(8)(A) later directly purchases such stock, the date of the later direct purchase is used. The proposed regulations contain a series of examples, similar to those on pages 1090 and 1091 of the Conference Report, demonstrating the operation of these rules.

Transferred Basis Rule

Under section 355(d)(5)(C), if any person acquires property from another person who acquired the property by purchase, and the adjusted basis of the property in the hands of the acquirer is determined in whole or in part by reference to the adjusted basis of the property in the hands of the other person, the acquirer is treated as having acquired the property by purchase on the date it was acquired by the other person. This rule applies, for example, where stock of a corporation with a purchased basis is acquired in a section 351 transfer or a reorganization qualifying under section 368(a)(1)(B), but does not apply if the stock of a former common parent is acquired in a group structure change.

Under proposed § 1.355–6(d)(2)(i)(B)(*2*), transferred stock is treated as purchased on the date of a transfer if the stock is transferred in a liquidation, and the liquidating corporation recognizes gain or loss with respect to the transferred stock as described in section 334(b)(1), or to the extent the basis of the transferred stock is increased through the recognition of gain by the transferor under section 362(a) or (b).

Exchanged Basis Rule

Based on the Conference Report, at page 1092, the proposed regulations adopt a rule that, if any person acquires an interest in an entity (the first interest) by purchase, and the first interest is exchanged for an interest in another entity (the second interest) where the adjusted basis of the second interest is determined by reference to the adjusted basis of the first interest, then the second interest is treated as having been purchased on the date the first interest was purchased. This rule applies, for example, where stock of a corporation acquired by purchase is subsequently exchanged for other stock in a section 351, 354, or 1036(a) exchange. Under proposed § 1.355–6(d)(2)(i)(A)(*2*), stock that is other property under section 351(b) or 356(a)(1) is treated as purchased on the date of the exchange or distribution.

Substantial Diminution of Risk

As in section 355(d)(6), the proposed regulations provide that the running of the five-year period under section 355(d)(3) is suspended for any period during which the holder's risk of loss is substantially diminished by an option, a short sale, any special class of stock (including tracking stock), or any other device or transaction.

(e) Duty to Determine Stockholders and Presumptions

The proposed regulations provide that, in determining whether section 355(d) applies to a distribution, Distributing must determine whether a disqualified person holds its stock or the stock of any distributed Controlled. For this purpose, a corporation is deemed to have knowledge of the existence and contents of all schedules, forms, and other documents filed with or under the rules of the Securities and Exchange Commission, including, without limitation, any Schedule 13D or 13G (or any similar schedules) and amendments, with respect to any relevant corporation.

The proposed regulations provide that, absent actual knowledge to the contrary, with respect to reporting stock, Distributing may presume that all schedules, forms, or other documents are timely filed, accurate, and complete. *Reporting stock* is defined as stock that is described in Rule 13d-1(i) of Regulation 13D promulgated under the Securities and Exchange Act of 1934. In addition, the proposed regulations provide a presumption with respect to *less-than-five-percent shareholders,* which are defined as persons that, at no time during the five-year period, hold directly (or under the option rules contained in the proposed regulations) stock possessing five percent or more of the total combined voting power of all classes of stock entitled to vote and the total value of shares of all classes of stock of a corporation. Absent actual knowledge (or deemed knowledge regarding reporting stock) immediately after a distribution to the contrary regarding a particular shareholder, Distributing may generally presume that no less-than-five-percent shareholder of a corporation acquired stock by purchase during the five-year period. This presumption does not apply to any less-than-five-percent shareholder that, at any time during the five-year period, is related to, acted pursuant to a plan or arrangement with, or holds stock that is attributed to a shareholder that is not a less-than-five-percent shareholder at any time during the five-year period. If an acquiring corporation acquires Distributing in a transferred basis transaction, Distributing may apply both the reporting stock presumption and the less-than-five-percent shareholder presumption to determine whether section 355(d) applies to a distribution of Controlled stock to the acquiring corporation due to preacquisition stock purchases by Distributing's former shareholders.

Proposed Effective Date

The proposed regulations would apply to distributions occurring after the regulations are published as final regulations in the **Federal Register**, except that they would not apply to any distributions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations are published as final regulations in the **Federal Register**, and at all times thereafter.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and, because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (preferably a signed original and eight (8) copies, if written) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All

comments will be available for public inspection and copying.

A public hearing has been scheduled for September 21, 1999, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, N.W. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written or electronic comments and an outline of the topics to be discussed and the time to be devoted to each topic (preferably a signed original and eight (8) copies, if written) by August 31, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting information. The principal author of these proposed regulations is Phoebe Bennett, Office of the Assistant Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.355–6 also issued under 26 U.S.C. 355(d)(9). * * *

Par. 2. Section 1.355–0 is amended by;

1. Revising the section heading.
2. Revising the entries for § 1.355–6.

The revisions read as follows:

§ 1.355–0 To facilitate the use of §§ 1.355–1 through 1.355–6, this section lists the major paragraphs in those sections.

* * * * *

§ 1.355–6 Recognition of gain on certain distributions of stock or securities in controlled corporation.

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(1) Distributing securities.
(2) Marketable securities.
(3) Examples.
(4) Five-year period.
(b) General rules and purposes of section 355(d).
(1) Disqualified distributions in general.
(2) Disqualified stock.
(i) In general.
(ii) Purchase.
(3) Certain distributions not disqualified distributions because purposes of section 355(d) not violated.
(i) In general.
(ii) Disqualified person.
(iii) Purchased basis.
(iv) Purchased interest no longer held.
(v) Examples.
(4) Anti-avoidance rule.
(i) In general.
(ii) Example.
(c) Whether a person holds a 50 percent or greater interest.
(1) In general.
(2) Valuation.
(3) Effect of options, warrants, convertible obligations, and other similar interests.
(i) Application.
(ii) General rule.
(iii) Options deemed newly issued.
(A) Exchange, adjustment, or alteration of existing option.
(B) Certain compensatory options.
(iv) Effect of treating an option as exercised.
(A) In general.
(B) Cash settlement options, phantom stock, stock appreciation rights, certain notional principal contracts, or similar interests.
(C) Stock purchase agreement or similar arrangement.
(v) Instruments treated as options.
(vi) Instruments generally not treated as options.
(A) Escrow, pledge, or other security agreements.
(B) Compensatory options.
(*1*) General rule.
(*2*) Exception.
(C) Certain stock conversion features.
(D) Options exercisable only upon death, disability, mental incompetency, or retirement.
(E) Rights of first refusal.
(F) Other enumerated instruments.
(vii) Reasonably certain that the option will be exercised.
(A) In general.
(B) Stock purchase agreement or similar arrangement.
(viii) Examples.
(4) Plan or arrangement.
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(ii) Understanding.
(iii) Examples.
(d) Purchase.
(1) In general.
(i) Definition of purchase under section 355(d)(5)(A).
(ii) Section 355 distributions.
(iii) Examples.
(2) Exceptions to definition of purchase under section 355(d)(5)(A).
(i) Acquisition of stock in a transaction which includes other property or money.
(A) Transferors and shareholders of transferor or distributing corporations.
(*1*) In general.
(*2*) Exception.
(B) Transferee corporations.
(*1*) In general.
(*2*) Exception.
(C) Examples.
(ii) Acquisition of stock in a distribution to which section 305(a) applies.
(iii) Section 1036(a) exchange.
(3) Certain section 351 exchanges treated as purchases.
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Par. 3. Section 1.355–6 is revised to read as follows:

§ 1.355–6 Recognition of gain on certain distributions of stock or securities in controlled corporation.

(a) *Conventions*—(1) *Distributing securities.* Unless otherwise stated, any reference in this section to stock of a corporation that is (or becomes) a distributing corporation includes a reference to securities of the corporation. See section 355(d)(3)(B)(ii)(II) (disqualified controlled corporation stock includes controlled corporation stock distributed with respect to purchased distributing corporation securities).

(2) *Marketable securities.* Unless otherwise stated, any reference in this section to marketable stock includes a reference to marketable securities.

(3) *Examples.* For purposes of the examples in this section, unless otherwise stated, assume that P, S, T, X, Y, N, RC, D, D1, D2, D3, and C are corporations, A and B are individuals, shareholders are not treated as one person under section 355(d)(7), stock has been owned for more than five years and section 355(d)(6) and paragraph (e)(4) of this section do not apply, no election under section 338 (if available) is made, and all transactions described are respected under general tax principles, including the step transaction doctrine. No inference should be drawn from any example as to whether any requirements of section 355 other than those of section 355(d), as specified, are satisfied.

(4) *Five-year period.* For purposes of this section, the term *five-year period* means the five-year period (determined after applying section 355(d)(6) and paragraph (e)(4) of this section) ending on the date of the distribution, but in no event beginning earlier than October 10, 1990.

(b) *General rules and purposes of section 355(d)*—(1) *Disqualified distributions in general.* In the case of a disqualified distribution, any stock or securities in the controlled corporation shall not be treated as qualified property for purposes of section 355(c)(2) or 361(c)(2). In general, a *disqualified distribution* is any distribution to which section 355 (or so much of section 356 as relates thereto) applies if, immediately after the distribution—

(i) Any person holds disqualified stock in the distributing corporation that constitutes a 50 percent or greater interest in such corporation; or

(ii) Any person holds disqualified stock in the controlled corporation (or, if stock of more than one controlled corporation is distributed, in any controlled corporation) that constitutes a 50 percent or greater interest in such corporation.

(2) *Disqualified stock*—(i) *In general. Disqualified stock* is—

(A) Any stock in the distributing corporation acquired by purchase during the five-year period; and

(B) Any stock in any controlled corporation—

(*1*) Acquired by purchase during the five-year period; or

(*2*) Received in the distribution to the extent attributable to distributions on any stock in the distributing corporation acquired by purchase during the five-year period.

(ii) *Purchase.* For the definition of a *purchase* for purposes of section 355(d) and this section, see section 355(d)(5) and paragraph (d) of this section.

(3) *Certain distributions not disqualified distributions because purposes of section 355(d) not violated*—(i) *In general.* Notwithstanding the provisions of section 355(d)(2) and this paragraph (b), a distribution is not a disqualified distribution if the distribution and any related transactions do not violate the purposes of section 355(d) as provided in this paragraph (b)(3). A distribution does not violate the purposes of section 355(d) if the effect of the distribution and any related transactions is neither—

(A) To increase direct or indirect ownership in the distributing corporation or any controlled corporation by a disqualified person; nor

(B) To provide a disqualified person with a purchased basis in the stock of any controlled corporation.

(ii) *Disqualified person.* A *disqualified person* is any person (taking into account section 355(d)(7) and paragraph (c)(4) of this section) that, immediately after a distribution, holds (directly or indirectly under section 355(d)(8) and paragraph (e)(1) of this section) disqualified stock in the distributing corporation or controlled corporation that constitutes a 50 percent or greater interest in such corporation (under section 355(d)(4) and paragraph (c) of this section).

(iii) *Purchased basis.* A *purchased basis* is basis in controlled corporation stock that is disqualified stock, unless the controlled corporation stock and any distributing corporation stock with respect to which the controlled corporation stock is distributed are treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section.

(iv) *Purchased interest no longer held.* A person that acquires an interest in any entity by purchase ceases to be treated as having acquired by purchase stock owned by the entity under section 355(d)(8)(B) and paragraph (e)(1) of this section at the time when the person no longer holds the directly purchased interest.

(v) *Examples.* The following examples illustrate this paragraph (b)(3):

Example 1. *Stock distributed in spin-off; no purchased basis.* D owns all of the stock of D1, and D1 owns all the stock of C. A purchases 60 percent of the D stock for cash. Within five years of A's purchase, D1 distributes the C stock to D. A is treated as having purchased 60 percent of the stock of both D1 and C on the date A purchases 60 percent of the D stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. The C stock received by D is attributable to a distribution on purchased D1 stock under section 355(d)(3)(B)(ii). Accordingly, the D1 and C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. However, the purposes of section 355(d) under paragraph (b)(3)(i) of this section are not violated. A did not increase direct or indirect ownership in D1 or C. In addition, D's basis in the C stock is not a purchased basis under paragraph (b)(3)(iii) of this section because both the D1 and the C stock are treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, D1's distribution of the C stock to D is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 2. *Stock distributed in spin-off; purchased basis.* The facts are the same as *Example 1*, except that D immediately further distributes the C stock to its shareholders (including A) pro rata. The D and C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated. A did not increase direct or indirect ownership in D or C. However, A's basis in the C stock is a purchased basis under paragraph (b)(3)(iii) of this section because the D stock is not treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, the further distribution is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 3. *Stock distributed in split-off with ownership increase; purchased basis.* The facts are the same as *Example 1*, except

that D immediately further distributes the C stock to A in exchange for A's purchased stock in D. The C stock received by A is attributable to a distribution on purchased D stock under section 355(d)(3)(B)(ii), and A's basis in the C stock is determined by reference to the adjusted basis of A's purchased D stock under paragraph (e)(3) of this section. Accordingly, the D stock and the C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated because A increased its ownership in C from a 60 percent indirect interest to a 100 percent direct interest, and because A's basis in the C stock is a purchased basis under paragraph (b)(3)(iii) of this section. Accordingly, the further distribution is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 4. *Stock distributed in spin-off; purchased basis.* D1 owns all the stock of C. D purchases all of the stock of D1 for cash. Within five years of D's purchase of D1, P acquires all of the stock of D1 from D in a section 368(a)(1)(B) reorganization that is not a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E), and D1 distributes all of its C stock to P. P is treated as having acquired the D1 stock by purchase on the date D acquired it under the transferred basis rule of section 355(d)(5)(C) and paragraph (e)(2) of this section. P is treated as having purchased all of the C stock on the date D purchased the D1 stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section, and the C stock received by P is attributable to a distribution on purchased D1 stock under section 355(d)(3)(B)(ii). Accordingly, the D1 and C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and P is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated because P did not increase direct or indirect ownership in D1 or C. However, P's basis in the C stock is a purchased basis under paragraph (b)(3)(iii) of this section because the D1 stock is not treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, D1's distribution of the C stock to P is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 5. *Stock distributed in split-off with ownership increase; no purchased basis.* P owns 50 percent of the stock of D, the remaining D stock is owned by unrelated persons, D owns all the stock of C, and A purchases all of the P stock from the P shareholders. Within five years of A's purchase, D distributes all of the C stock to P in exchange for P's D stock. A is treated as having purchased 50 percent of the stock of both D and C on the date A purchases the P stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. The C stock received by P is attributable to a distribution on purchased D stock under section 355(d)(3)(B)(ii). Accordingly, the D stock and the C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. The purposes of section 355(d) under paragraph (b)(3)(i) of this section are violated because, even though P's basis in the C stock is not a purchased basis under paragraph (b)(3)(iii) of this section, A increased its direct or indirect ownership in C from a 50 percent indirect interest to a 100 percent indirect interest. Accordingly, D's distribution of the C stock to P is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 6. *Stock distributed in split-off with no ownership increase; no purchased basis.* A purchases all of the stock of T. T later merges into D in a section 368(a)(1)(A) reorganization and A exchanges its purchased T stock for 60 percent of the stock of D. D owns all of the stock of D1 and D2, D1 and D2 each owns 50 percent of the stock of D3, and D3 owns all of the stock of C. Within five years of A's purchase of the T stock, D3 distributes the C stock to D1 in exchange for all of D1's D3 stock. A is treated as having acquired 60 percent of the D stock by purchase on the date A purchases the T stock under paragraph (e)(3) of this section. A is treated as having purchased 60 percent of the stock of D1, D2, D3, and C on the date A purchases the T stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. The C stock received by D1 is attributable to a distribution on purchased D3 stock under section 355(d)(3)(B)(ii). Accordingly, the D3 stock and the C stock each is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section, and A is a disqualified person under paragraph (b)(3)(ii) of this section. However, the purposes of section 355(d) under paragraph (b)(3)(i) of this section are not violated. A did not increase direct or indirect ownership in D3 or C, and D1's basis in the C stock is not a purchased basis under paragraph (b)(3)(iii) of this section because the D3 stock is treated as acquired by purchase solely under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. Accordingly, D3's distribution of the C stock to D1 is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 7. *Purchased basis eliminated by liquidation; stock distributed in spin-off.* P owns 30 percent of the stock of D, D owns all of the stock of D1, and D1 owns all of the stock of C. P purchases the remaining 70 percent of the D stock for cash. Within five years of P's purchase, P liquidates D in a transaction qualifying under sections 332 and 337(a), and D1 then distributes the stock of C to P. Prior to the liquidation, P is treated as having purchased 70 percent of the stock of D1 and C on the date P purchases the D stock under the attribution rules of section 355(d)(8)(B) and paragraph (e)(1) of this section. After the liquidation, however, under paragraph (b)(3)(iv) of this section, P is not treated as having acquired by purchase the D1 or the C stock under section 355(d)(8)(B) and paragraph (e)(1) of this section because P no longer holds the directly purchased interest in D. Under section 334(b)(1), P's basis in the D1 stock is determined by reference to D's basis in the D1 stock and not by reference to P's basis in D. Paragraph (d)(2)(i)(B) of this section does not treat the D1 stock as newly purchased in P's hands because no gain or loss was recognized by D in the liquidation. Accordingly, neither the D1 stock nor the C stock is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section in P's hands, and the distribution is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 8. *Purchased basis eliminated by upstream merger; stock distributed in spin-off.* D owns all of the stock of D1, and D1 owns all of the stock of C. P purchases 60 percent of the D stock for cash. Within five years of P's purchase, D merges into P in a section 368(a)(1)(A) reorganization, with the D shareholders other than P receiving solely P stock in exchange for their D stock, and D1 then distributes the stock of C to P. Prior to the merger, P is treated as having purchased 60 percent of the stock of D1 and C on the date P purchases the D stock under the attribution rules of section 355(d)(8) and paragraph (e)(1) of this section. After the merger, however, under paragraph (b)(3)(iv) of this section, P is not treated as having acquired by purchase the D1 or the C stock under section 355(d)(8)(B) and paragraph (e)(1) of this section because P no longer holds the directly purchased interest in D. Under section 362(b), P's basis in the D1 stock is determined by reference to D's basis in the D1 stock and not by reference to P's basis in D. Paragraph (d)(2)(i)(B) of this section does not treat the D1 stock as newly purchased in P's hands because no gain or loss was recognized by D in the merger. Accordingly, neither the D1 stock nor the C stock is disqualified stock under section 355(d)(3) and paragraph (b)(2) of this section in P's hands, and the distribution is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

(4) ***Anti-avoidance rule*—(i)** ***In general.*** **Notwithstanding any provision of section 355(d) or this section, the Commissioner may treat any distribution as a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section if the distribution or another transaction or transactions are engaged in or structured with a principal purpose to avoid the purposes of section 355(d) or this section with respect to the distribution. Without limiting the preceding sentence, the Commissioner may determine that the existence of a related person, intermediary, pass-through entity, or similar person (an intermediary) should be disregarded, in whole or in part, if the intermediary is formed or availed of with a principal purpose to avoid the purposes of section 355(d) or this section.**

(ii) ***Example.*** **The following example illustrates this paragraph (b)(4):**

Example. *Post-distribution redemption.* B wholly owns D, which wholly owns C. With a principal purpose to avoid the purposes of

section 355(d), A, B, D, and C engage in the following transactions. A purchases 45 of 100 shares of the only class of D stock. Within five years after A's purchase, D distributes all of its 100 shares in C to A and B pro rata. D then redeems 20 shares of B's D stock, and C redeems 20 shares of B's C stock. After the redemption, A owns 45 shares and B owns 35 shares in each of D and C. Under paragraph (b)(4)(i) of this section, the Commissioner may treat A as owning disqualified stock in D and C that constitutes a 50 percent or greater interest in D and C immediately after the distribution. Under that treatment, the distribution is a disqualified distribution under section 355(d)(2).

(c) *Whether a person holds a 50 percent or greater interest*—(1) *In general.* Under section 355(d)(4), *50 percent or greater interest* means stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of shares of all classes of stock.

(2) *Valuation.* For purposes of section 355(d)(4) and this section, all shares of stock within a single class are considered to have the same value. But see paragraph (c)(3)(vii)(A) of this section (determination of whether it is reasonably certain that an option will be exercised).

(3) *Effect of options, warrants, convertible obligations, and other similar interests*—(i) *Application.* This paragraph (c)(3) provides rules to determine when an option is treated as exercised for purposes of section 355(d) (other than section 355(d)(6)). Except as provided in this paragraph (c)(3), an option is not treated as exercised for purposes of section 355(d). This paragraph (c)(3) does not affect the determination of whether an instrument is an option or stock under general principles of tax law (such as substance over form).

(ii) *General rule.* In determining whether a person has acquired by purchase a 50 percent or greater interest under section 355(d)(4), an option to acquire stock (as described in paragraphs (c)(3) (v) and (vi) of this section) that has not been exercised when a distribution occurs is treated as exercised on the date it was issued or most recently transferred if—

(A) Its exercise (whether by itself or in conjunction with the deemed exercise of one or more other options) would cause a person to become a disqualified person; and

(B) Immediately after the distribution, it is reasonably certain (as described in paragraph (c)(3)(vii) of this section) that the option will be exercised.

(iii) *Options deemed newly issued*—(A) *Exchange, adjustment, or alteration of existing option.* For purposes of this paragraph (c)(3), each of the following is treated as a new issuance or transfer of an existing option only if it materially increases the likelihood that an option will be exercised—

(*1*) An exchange of an option for another option or options;

(*2*) An adjustment to the terms of an option (including an adjustment pursuant to the terms of the option);

(*3*) An adjustment to the terms of the underlying stock (including an adjustment pursuant to the terms of the stock);

(*4*) A change to the capital structure of the issuing corporation; and

(*5*) An alteration to the fair market value of issuing corporation stock through an asset transfer (other than regular, ordinary dividends) or through any other means.

(B) *Certain compensatory options.* An option described in paragraph (c)(3)(vi)(B)(*2*) of this section is treated as issued on the date it becomes transferable.

(iv) *Effect of treating an option as exercised*—(A) *In general.* For purposes of section 355(d), an option that is treated as exercised under this paragraph (c)(3) is treated as exercised both for purposes of determining the percentage of the voting power of stock owned by the holder and for purposes of determining the percentage of the value of stock owned by the holder.

(B) *Cash settlement options, phantom stock, stock appreciation rights, certain notional principal contracts, or similar interests.* If a cash settlement option, phantom stock, stock appreciation right, notional principal contract described in paragraph (c)(3)(v)(B) of this section, or similar interest is treated as exercised, the option is treated as having been converted into stock of the issuing corporation. If the amount to be received upon the exercise of such an option is determined by reference to a multiple of the increase in the value of a share of the issuing corporation's stock on the exercise date over the value of a share of the stock on the date the option is issued, the option is treated as converted into a corresponding number of shares of such stock. Appropriate adjustments must be made in any situation in which the amount to be received upon exercise of the option is determined in another manner.

(C) *Stock purchase agreement or similar arrangement.* If a stock purchase agreement or similar arrangement is deemed exercised, the purchaser is treated as having purchased of the stock under the terms of the agreement or arrangement as though all covenants had been satisfied and all contingencies met. The agreement or arrangement is deemed to have been exercised as of the date it is entered into or most recently assigned.

(v) *Instruments treated as options.* For purposes of this paragraph (c)(3), except to the extent provided in paragraph (c)(3)(vi) of this section, the following are treated as options:

(A) A call option, warrant, convertible obligation, the conversion feature of convertible stock, put option, redemption agreement (including a right to cause the redemption of stock), notional principal contract (as defined in § 1.446–3(c)) that provides for the payment of amounts in stock, stock purchase agreement or similar arrangement, or any other instrument that provides for the right to purchase, issue, redeem, or transfer stock (including an option on an option).

(B) A cash settlement option, phantom stock, stock appreciation right, notional principal contract (as defined in § 1.446–3(c)) that provides for payment based on the price of stock, or any other similar interest (except for stock).

(vi) *Instruments generally not treated as options.* For purposes of this paragraph (c)(3), the following are not treated as options, unless issued, transferred, or listed with a principal purpose to avoid the application of section 355(d) or this section:

(A) *Escrow, pledge, or other security agreements.* An option that is part of a security arrangement in a typical lending transaction (including a purchase money loan), if the arrangement is subject to customary commercial conditions. For this purpose, a security arrangement includes, for example, an agreement for holding stock in escrow or under a pledge or other security agreement, or an option to acquire stock contingent upon a default under a loan.

(B) *Compensatory options*—(*1*) *General rule.* An option to acquire stock in a corporation with customary terms and conditions provided to an employee, director, or independent contractor in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed) and that—

(*i*) Is nontransferable within the meaning of § 1.83–3(d); and

(*ii*) Does not have a readily ascertainable fair market value as defined in § 1.83–7(b).

(*2*) *Exception.* Paragraph (c)(3)(vi)(B)(*1*) of this section ceases to apply to an option that becomes transferable.

(C) *Certain stock conversion features.* The conversion feature of convertible stock, provided that—

(*1*) The stock is not convertible for at least five years after issuance or transfer; and

(*2*) The terms of the conversion feature do not require the tender of any consideration other than the stock being converted.

(D) *Options exercisable only upon death, disability, mental incompetency, or retirement.* Any option entered into between stockholders of a corporation (or a stockholder and the corporation) with respect to the stock of either stockholder that is exercisable only upon the death, disability, mental incompetency of the stockholder, or, in the case of stock acquired in connection with the performance of services for the corporation or a person related to it under section 355(d)(7)(A) (and that is not excessive by reference to the services performed), the stockholder's retirement.

(E) *Rights of first refusal.* A bona fide right of first refusal regarding the corporation's stock with customary terms, entered into between stockholders of a corporation (or between the corporation and a stockholder).

(F) *Other enumerated instruments.* Any other instruments specified in regulations, a revenue ruling, or a revenue procedure. See § 601.601(d)(2) of this chapter.

(vii) *Reasonably certain that the option will be exercised*—(A) *In general.* The determination of whether, immediately after the distribution, an option is reasonably certain to be exercised is based on all the facts and circumstances. In applying the previous sentence, the fair market value of stock underlying an option is determined by taking into account control premiums and minority and blockage discounts.

(B) *Stock purchase agreement or similar arrangement.* A stock purchase agreement or similar arrangement is treated as reasonably certain to be exercised if the parties' obligations to complete the transaction are subject only to reasonable closing conditions.

(viii) *Examples.* The following examples illustrate this paragraph (c)(3):

Example 1. D owns all of the stock of C. A purchases 40 percent of D's only class of stock and an option to purchase an additional 20 percent of the D stock. Assume that no control premium or minority or blockage discount applies to the D stock underlying the option. The option permits A to acquire the stock at $30 per share, and D's stock has a fair market value of $27 per share on the date the option is issued. The option is subject to no contingencies or restrictive covenants, may be exercised within five years after its issuance, and is not described in paragraph (c)(3)(vi) of this section (regarding instruments generally not treated as options). Within five years of A's purchase of the D stock and option, D distributes the stock of its subsidiary C pro rata and A receives 40 percent of the C stock in the distribution. Immediately after the distribution, D's stock has a fair market value of $30 per share and C's stock has a fair market value of $15 per share. At the time of the distribution, A exchanges A's option for an option to purchase 20 percent of the D stock at $20 per share and an option to purchase 20 percent of the C stock at $10 per share. Based on all the facts and circumstances, it is reasonably certain, immediately after the distribution, that A will exercise its options. Under paragraph (c)(3)(iii)(A)(*1*) of this section, the substituted options are treated as issued on the date the original option was issued. Accordingly, the options are treated as exercised by A on the date that A purchased the original option. A is treated as owning 60 percent of the D stock and 60 percent of the C stock that is disqualified stock, and the distribution is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 2. D owns all of the stock of C. A purchases 37 percent of D's only class of stock. B owns 38 percent of the D stock, and the remaining 25 percent is owned by 20 individuals, each of whom owns less than five percent of D's stock. A purchases an option to purchase an additional 14 percent of the D stock from shareholders other than B for $50 per share. The option is subject to no contingencies or restrictive covenants, may be exercised within five years after its issuance, and is not described in paragraph (c)(3)(vi) of this section. Within five years of A's purchase of the option and 37 percent interest in D, D distributes the stock of its subsidiary C pro rata and A receives 37 percent of the C stock in the distribution. At the time of the distribution, A exchanges its option for an option to purchase 14 percent of the D stock at $25 per share and an option to purchase 14 percent of the C stock at $25 per share. Assume that, although a shareholder that owned no D or C stock would pay only $20 per share for D or C stock immediately after the distribution, a shareholder in A's position would pay $30 per share for 14 percent of the stock of D or C because of the control premium which attaches to the shares. The control premium is taken into account under paragraph (c)(3)(vii)(A) of this section to determine whether A is reasonably certain to exercise the options. Based on all the facts and circumstances, it is reasonably certain, immediately after the distribution, that A will exercise its options. Under paragraph (c)(3)(iii)(A) of this section, the substituted options are treated as issued on the date the original option was issued. Accordingly, the options are treated as exercised by A on the date that A purchased the original option. Under paragraph (c)(2) of this section, all shares of D and C are considered to have the same value to determine the amount of stock A is treated as purchasing under the options. A is treated as owning 51 percent of the D stock and 51 percent of the C stock that is disqualified stock, and the distribution is a disqualified distribution under section 355(d)(2).

(4) *Plan or arrangement*—(i) *In general.* Under section 355(d)(7)(B), if two or more persons act pursuant to a plan or arrangement with respect to acquisitions of stock in the distributing corporation or controlled corporation, those persons are treated as one person for purposes of section 355(d).

(ii) *Understanding.* For purposes of section 355(d)(7)(B), two or more persons who are (or will after an acquisition become) shareholders (or are treated as shareholders under paragraph (c)(3)(ii) of this section) act pursuant to a plan or arrangement with respect to an acquisition of stock only if they have a formal or informal understanding among themselves to make a coordinated acquisition of stock. A principal element in determining if such an understanding exists is whether the investment decision of each person is based on the investment decision of one or more other existing or prospective shareholders. However, the participation by creditors in formulating a plan for an insolvency workout or a reorganization in a title 11 or similar case (whether as members of a creditors' committee or otherwise) and the receipt of stock by creditors in satisfaction of indebtedness pursuant to the workout or reorganization do not cause the creditors to be considered as acting pursuant to a plan or arrangement.

(iii) *Examples.* The following examples illustrate paragraph (c)(4)(ii) of this section:

Example 1. D has 1,000 shares of common stock outstanding. A group of 20 unrelated individuals who previously owned no D stock (the Group) agree among themselves to acquire 50 percent or more of D's stock. The Group is not a person under section 7701(a)(1). Subsequently, pursuant to their understanding, the members of the Group purchase 600 shares of D common stock from the existing D shareholders (a total of 60 percent of the D stock), with each member purchasing 30 shares. Under paragraph (c)(4)(ii) of this section, the members of the Group have a formal or informal understanding among themselves to make a coordinated acquisition of stock. Their interests are therefore aggregated under section 355(d)(7)(B), and they are treated as one person who purchased 600 shares of D's stock for purposes of section 355(d).

Example 2. D has 1,000 shares of outstanding stock owned by unrelated individuals. D's management is concerned that D may become subject to a takeover bid. In separate meetings, D's management meets with potential investors who own no stock and are friendly to management to convince them to acquire D's stock based on an understanding that D will assemble a group

that in the aggregate will acquire more than 50 percent of D's stock. Subsequently, 15 of these investors each purchases four percent of D's stock. Under paragraph (c)(4)(ii) of this section, the 15 investors have a formal or informal understanding among themselves to make a coordinated acquisition of stock. Their interests are therefore aggregated under section 355(d)(7)(B), and they are treated as one person who purchased 600 shares of D stock for purposes of section 355(d).

Example 3. (i) D has 1,000 shares of outstanding stock owned by unrelated individuals. An investment advisor advises its clients that it believes D's stock is undervalued and recommends that they acquire D stock. Acting on the investment advisor's recommendation, 20 unrelated individuals each purchases 30 shares of D stock. Each client's decision was not based on the investment decisions made by one or more other clients. Because there is no formal or informal understanding among the clients to make a coordinated acquisition of D stock, their interests are not aggregated under section 355(d)(7)(B) and they are treated as making separate purchases.

(ii) The facts are the same as in paragraph (i) of this *Example 3*, except that the investment advisor is also the underwriter (without regard to whether it is a firm commitment or best efforts underwriting) for a primary or secondary offering of D stock. The result is the same.

(iii) The facts are the same as in paragraph (i) of this *Example 3*, except that, instead of an investment advisor recommending that clients purchase D stock, the trustee of several trusts qualified under section 401(a) sponsored by unrelated corporations causes each trust to purchase the D stock. The result is the same, provided that the trustee's investment decision made on behalf of each trust was not based on the investment decision made on behalf of one or more of the other trusts.

(d) *Purchase*—(1) *In general*—(i) *Definition of purchase under section 355(d)(5)(A).* Under section 355(d)(5)(A), except as otherwise provided in section 355(d)(5)(B) and (C), a *purchase* means any acquisition, but only if—

(A) The basis of the property acquired in the hands of the acquirer is not determined—

(*1*) In whole or in part by reference to the adjusted basis of such property in the hands of the person from whom acquired; or

(*2*) Under section 1014(a); and

(B) The property is not acquired in an exchange to which section 351, 354, 355, or 356 applies.

(ii) *Section 355 distributions.* Paragraph (d)(1)(i)(B) of this section includes all section 355 distributions, whether in exchange (in whole or in part) for stock or pro rata.

(iii) *Examples.* The following examples illustrate this paragraph (d)(1):

Example 1. *Section 304(a)(1) acquisition.* A, who owns all of the stock of P and T, sells the T stock to P for cash. The T stock is not marketable stock under section 355(d)(5)(B)(ii) and paragraph (d)(3)(ii) of this section. A is treated under section 304(a)(1) as receiving a distribution in redemption of the P stock. Under section 302(d), the deemed redemption is treated as a section 301 distribution. Assume that under sections 304(b)(2) and 301(c)(1), all of the distribution is a dividend. A and P are treated in the same manner as if A had transferred the T stock to P in exchange for stock of P in a transaction to which section 351(a) applies, and P had then redeemed the stock P was treated as issuing in the transaction. Under section 362(a), P's basis in the T stock is determined by reference to A's adjusted basis in the T stock, and there is no basis increase in the T stock because A recognizes no gain on the deemed transfer. Accordingly, P's acquisition of the T stock from A is not a purchase by P under section 355(d)(5)(A)(i)(I) and paragraphs (d)(1)(i)(A)(*1*) and (d)(2)(i)(B) of this section.

Example 2. *Section 338 election.* P owns all of the stock of S and no other assets. X acquires all of the P stock from the P shareholders and makes an election under section 338. Under section 355(d)(5)(A), X has acquired the P stock by purchase. Under section 338(a) and (b), P is treated as having sold all of its assets at fair market value and purchased the assets as a new corporation as of the beginning of the day after the acquisition date for an amount equal to the purchase price of the P stock. Accordingly, P is treated as having purchased all of the S stock under section 355(d)(5)(A).

(2) *Exceptions to definition of purchase under section 355(d)(5)(A).* The following acquisitions are not treated as purchases under section 355(d)(5)(A):

(i) *Acquisition of stock in a transaction which includes other property or money*—(A) *Transferors and shareholders of transferor or distributing corporations*—(*1*) *In general.* An acquisition of stock permitted to be received by a transferor of property without the recognition of gain under section 351(a), or permitted to be received without the recognition of gain under section 354 or 355, is not a purchase to the extent section 358(a)(1) applies to determine the recipient's basis in the stock received, whether or not the recipient also recognizes gain under section 351(b) or 356. But see paragraph (e)(3) of this section (interest received in exchange for purchased interest in exchanged basis transaction treated as purchased).

(*2*) Exception. To the extent there is received in the exchange or distribution, in addition to stock described in paragraph (d)(2)(i)(A)(*1*) of this section, stock that is other property under section 351(b) or 356(a)(1), the stock is treated as purchased on the date of the exchange or distribution for purposes of section 355(d).

(B) *Transferee corporations*—(*1*) *In general.* An acquisition of stock by a corporation is not a purchase to the extent section 334(b) or 362(a) or (b) applies to determine the corporation's basis in the stock received. But see section 355(d)(5)(C) and paragraph (e)(2) of this section (purchased property transferred in transferred basis transaction is treated as purchased by transferee).

(*2*) *Exception.* If a corporation acquires stock, the stock is treated as purchased on the date of the stock acquisition for purposes of section 355(d)—

(*i*) If the liquidating corporation recognizes gain or loss with respect to the transferred stock as described in section 334(b)(1); or

(*ii*) To the extent the basis of the transferred stock is increased through the recognition of gain by the transferor under section 362(a) or (b).

(C) *Examples.* The following examples illustrate this paragraph (d)(2)(i):

Example 1. (i) A owns all the stock of T. T merges into D in a transaction qualifying under section 368(a)(1)(A), with A exchanging all of the T stock for D stock and $100 cash. Under section 356(a)(1), A recognizes $100 of the realized gain on the transaction. Under section 358(a)(1), A's basis in the D stock equals A's basis in the T stock, decreased by the $100 received and increased by the gain recognized, also $100. Under paragraph (d)(2)(i)(A) of this section, A is not treated as having purchased the D stock for purposes of section 355(d)(5).

(ii) The facts are the same as in paragraph (i) of this *Example*, except that rather than D stock and $100 cash, A receives D stock and stock in C, a corporation not a party to the reorganization, with a fair market value of $100. Under section 358(a)(2), A's basis in the C stock is its fair market value, or $100. Under paragraph (d)(2)(i)(A)(*2*) of this section, A is treated as having purchased the C stock, but not the D stock, for purposes of section 355(d)(5).

Example 2. A purchases all of the stock of D, which is not marketable stock, on Date 1 for $90. Within five years of A's purchase, on Date 2, A contributes the D stock to P in exchange for P stock worth $90 and $10 cash in a transaction qualifying under section 351. Under section 362(a), P's basis in D is $100. P is treated as having purchased 90 percent ($90 worth) of the D stock on Date 1 under section 355(d)(5)(C) and paragraph (e)(2)(i) of this section and as having purchased 10 percent ($10 worth) of the D stock on Date 2 under paragraph (d)(2)(i)(B)(*2*) of this section.

(ii) *Acquisition of stock in a distribution to which section 305(a) applies.* An acquisition of stock in a distribution qualifying under section 305(a) is not a purchase to the extent section 307(a) applies to determine the recipient's basis. However, to the extent

the distribution is of rights to acquire stock, see paragraph (c)(3) of this section for rules regarding options, warrants, convertible obligations, and other similar interests.

(iii) *Section 1036(a) exchange.* An exchange of stock qualifying under section 1036(a) is not a purchase by either party to the exchange to the extent the basis of the property acquired equals that of the property exchanged under section 1031(d).

(3) *Certain section 351 exchanges treated as purchases*—(i) *In general*—(A) *Treatment of stock received by transferor.* Under section 355(d)(5)(B), a purchase includes any acquisition of property in an exchange to which section 351 applies to the extent the property is acquired in exchange for any cash or cash item, any marketable stock, or any debt of the transferor. The property treated as acquired by purchase is the property received by the transferor in the exchange.

(B) *Multiple classes of stock.* If the transferor in a transaction described in section 355(d)(5)(B) receives stock or securities of more than one class, or receives both stock and securities, then the amount of stock or securities purchased is determined in a manner that corresponds to the allocation of basis to the stock or securities under section 358. See § 1.358–2(b).

(ii) *Cash item, marketable stock.* For purposes of section 355(d)(5)(B) and this paragraph (d)(3), either or both of the terms *cash item* and *marketable stock* include personal property within the meaning of section 1092(d)(1) and § 1.1092(d)–1, without giving effect to section 1092(d)(3).

(iii) *Exception for certain acquisitions*—(A) *In general.* Except to the extent provided in paragraph (e)(3) of this section (interest received in exchange for purchased interest in exchanged basis transaction treated as purchased), an acquisition of stock in a corporation in a section 351 transaction by one or more persons in exchange for an amount of stock in another corporation (the transferred corporation) that meets the requirements of section 1504(a)(2) is not a purchase by the transferor or transferors, regardless of whether the stock of the transferred corporation is marketable stock under section 355(d)(5)(B)(ii) and paragraph (d)(3)(ii) of this section.

(B) *Example.* The following example illustrates this paragraph (d)(3)(iii):

Example. D's two classes of stock, voting common and nonvoting preferred, are both widely held and publicly traded. The nonvoting preferred stock is stock described in section 1504(a)(4). Assume that all of the D stock is marketable stock under section 355(d)(5)(B)(ii) and paragraph (d)(3)(ii) of this section. D's board of directors proposes that, for valid business purposes, D's common stock should be held by a holding company, HC, but its preferred stock should not be transferred to HC. As proposed, the D common shareholders exchange their D stock solely for HC common stock in a section 351(a) transaction. The D preferred shareholders retain their stock. HC acquires an amount of D stock that meets the requirements of section 1504(a)(2). Although the D common stock was marketable stock in the hands of the D shareholders immediately before the transfer, and the D nonvoting preferred stock is marketable stock after the transfer, the D shareholders are not treated as having acquired the HC stock by purchase (except to the extent the exchanged basis rule of paragraph (e)(3) of this section may apply to treat HC stock as purchased on the date the exchanged D stock was purchased).

(iv) *Exception for assets transferred as part of an active trade or business*—(A) *In general.* Except to the extent provided in paragraph (e)(3) of this section, an acquisition not described in paragraph (d)(3)(iii) of this section of stock in exchange for any cash or cash item, any marketable stock, or any debt of the transferor in a section 351 transaction is not a purchase if—

(*1*) The transferor is engaged in the active conduct of a trade or business under paragraph (d)(3)(iv)(B) of this section and the transferred items (including debt incurred in the ordinary course of the trade or business) are used in the trade or business;

(*2*) The transferred items do not exceed the reasonable needs of the trade or business under paragraph (d)(3)(iv)(C) of this section;

(*3*) The transferor transfers the items as part of the trade or business; and

(*4*) The transferee continues the active conduct of the trade or business.

(B) *Active conduct of a trade or business.* For purposes of this paragraph (d)(3)(iv), whether, with respect to the trade or business at issue, the transferor and transferee are engaged in the active conduct of a trade or business is determined under § 1.355–3(b)(2) and (3), except that—

(*1*) Conduct is tested before the transfer (with respect to the transferor) and after the transfer (with respect to the transferee) rather than immediately after a distribution; and

(*2*) The trade or business need not have been conducted for five years before its transfer, but it must have been conducted for a sufficient period of time to establish that it is a viable and ongoing trade or business.

(C) *Reasonable needs of the trade or business.* For purposes of this paragraph (d)(3)(iv), the reasonable needs of the trade or business include only the amount of cash or cash items, marketable stock, or debt of the transferor that a prudent business person apprised of all relevant facts would consider necessary for the present and reasonably anticipated future needs of the business. Transferred items may be considered necessary for reasonably anticipated future needs only if the transferor and transferee have specific, definite, and feasible plans for their use. Those plans must require that items intended for anticipated future needs rather than present needs be used as expeditiously as possible consistent with the business purpose for retention of the items.

Future needs are not reasonably anticipated if they are uncertain or vague or where the execution of the plan for their use is substantially postponed. The reasonable needs of a trade or business are generally its needs at the time of the transfer of the business including the items. However, for purposes of applying section 355(d) to a distribution, events and conditions after the transfer and through the date immediately after the distribution (including whether plans for the use of transferred items have been consummated or substantially postponed) may be considered to determine whether at the time of the transfer the items were necessary for the present and reasonably anticipated future needs of the business.

(D) *Consideration of all facts and circumstances.* All facts and circumstances are considered in determining whether this paragraph (d)(3)(iv) applies.

(v) *Exception for transfer between members of the same affiliated group*—(A) *In general.* Except to the extent provided in paragraph (e)(3) of this section, an acquisition of stock (whether actual or constructive) not described in paragraphs (d)(3)(iii) and (iv) of this section in exchange for any cash or cash item, marketable stock, or debt of the transferor in a section 351 transaction is not a purchase if the transferor corporation or corporations, the transferee corporation, and any distributed controlled corporation of the transferee corporation are members of the same affiliated group as defined in section 1504(a) before the section 351 transaction (if the transferee corporation is in existence before the transaction) and do not cease to be members of such affiliated group in any transaction that is related to the section 351 transaction (including any distribution of a controlled corporation by the transferee corporation). But see paragraph (b)(4) of this section where the transfer is made

for a principal purpose to avoid the purposes of section 355(d).

(B) *Examples.* The following examples illustrate this paragraph (d)(3)(v):

Example 1. Publicly traded P has wholly owned S since 1990. S is engaged in the business of computer software development and is developing a new software platform for use in the managed health care industry. Over a period of four years beginning on January 31, 2000, P contributes a substantial amount of cash to S solely for the purpose of funding the software platform development. On completion of the software platform in January of 2004, 60 percent of the value of the S stock is attributable to the cash contributions made within the last four years. The P group's primary lender requires that S separately incorporate the software platform and related assets and distribute the new subsidiary to P as a condition of providing required funding to market the platform. Accordingly, on February 1, 2004, S forms N, contributes the platform and related assets to N, and distributes all of the N stock to P in a transaction intended to qualify under section 355(a). P, S, and N will not leave the affiliated group in any transaction related to the cash contributions. Under paragraph (d)(3)(v)(A) of this section, P's cash contributions to S are not treated as purchases of additional S stock, and the distribution of N from S to P is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

Example 2. On Date 1, P contributes cash to its subsidiary S with a principal purpose to increase its stock basis in S. Sixty percent of the value of P's S stock is attributable to the cash contribution. Under paragraph (b)(4) of this section (anti-avoidance rule), 60 percent of the S stock is treated as purchased under section 355(d)(5)(B), notwithstanding paragraph (d)(3)(v)(A) of this section. Accordingly, any distribution of a subsidiary of S to P within the five-year period after Date 1 will be a disqualified distribution, regardless of whether P, S, and any distributed S subsidiary remain affiliated after the distribution and any transactions related to the cash contribution.

(4) *Triangular asset reorganizations*—(i) *Definition.* A *triangular asset reorganization* is a reorganization that qualifies under—

(A) Section 368(a)(1) (A) or (G) by reason of section 368(a)(2)(D);

(B) Section 368(a)(1)(A) by reason of section 368(a)(2)(E) (regardless of whether section 368(a)(3)(E) applies), unless the transaction also qualifies as either a section 351 transfer or a reorganization under section 368(a)(1)(B); or

(C) Section 368(a)(1)(C), and stock of the controlling corporation rather than the acquiring corporation is exchanged for the acquired corporation's properties.

(ii) *Treatment.* Notwithstanding section 355(d)(5)(A), for purposes of section 355(d), the controlling corporation in a triangular asset reorganization is treated as having—

(A) Acquired the assets of the acquired corporation (and as having assumed any liabilities assumed by the controlling corporation's subsidiary corporation or to which the acquired corporation's assets were subject (the acquired liabilities)) in a transaction in which the controlling corporation's basis in the acquired corporation's assets was determined under section 362(b); and

(B) Transferred the acquired assets and acquired liabilities to its subsidiary corporation in a section 351 transfer.

(iii) *Example.* The following example illustrates this paragraph (d)(4):

Example. *Forward triangular reorganization.* P forms S with $10 cash and T merges into S in a reorganization qualifying under section 368(a)(1)(A) by reason of section 368(a)(2)(D) in which the T shareholders receive solely P stock in exchange for their T stock. T is not a common parent of a consolidated group of corporations. The $10 cash with which P formed S will not be used in the acquired business. T's assets consist only of assets part of and used in its business with a value of $80, and $10 cash that is not part of or used in T's business. T has no liabilities. S will use T's business assets in T's business (which will become S's business), but will invest the $20 cash in an unrelated passive investment. Under paragraph (d)(4)(ii) of this section, P is treated as acquiring the T assets in a transaction in which P's basis in the T assets was determined under section 362(b) and contributing them to S in a section 351 transfer. The exception in paragraph (d)(3)(v) of this section does not apply because P and S became affiliated in the same transaction in which the section 351 transfer is deemed to occur. Accordingly, P is treated under section 355(d)(5)(B) and paragraph (d)(3)(iv) of this section as having purchased $20 of the S stock, but is not deemed to have purchased the remaining $80 of the S stock.

(5) *Reverse triangular reorganizations other than triangular asset reorganizations*—(i) *In general.* Except as provided in paragraph (d)(5)(ii) of this section, if a transaction qualifies as a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E) and also as either a reorganization under section 368(a)(1)(B) or a section 351 transfer, then either section 355(d)(5)(B) (and paragraph (d)(3) (i) through (iv) of this section) or 355(d)(5)(C) (and paragraph (e)(2) of this section) applies. Regardless of which method the controlling corporation employs to determine its basis in the surviving corporation stock under § 1.358–6(c)(2)(ii) or 1.1502–30(b), the total amount of surviving corporation stock treated as purchased by the controlling corporation will equal the higher of—

(A) The amount of surviving corporation stock that would be treated as purchased (on the date of the deemed section 351 transfer) by the controlling corporation if the controlling corporation acquired the surviving corporation's assets and assumed its liabilities in a transaction in which the controlling corporation's basis in the surviving corporation assets was determined under section 362(b), and then transferred the acquired assets and liabilities to the surviving corporation in a section 351 transfer (see §§ 1.358–6(c)(1) and (2)(ii)(A) and 1.1502–30(b)); or

(B) The amount of surviving corporation stock that would be treated as purchased (on the date the surviving corporation shareholders purchased their surviving corporation stock) if the controlling corporation acquired the stock of the surviving corporation in a transaction in which the basis in the surviving corporation's stock was determined under section 362(b) (see §§ 1.358–6(c)(2)(ii)(B) and 1.1502–30(b)).

(ii) *Letter ruling and closing agreement.* If a controlling corporation obtains a letter ruling and enters into a closing agreement under section 7121 in which it agrees to determine its basis in surviving corporation stock under § 1.358–6(c)(2)(ii)(A), or under § 1.1502–30(b) by applying § 1.358–6(c)(2)(ii)(A) (deemed asset acquisition and transfer by controlling corporation), then section 355(d)(5)(B) and paragraph (d)(3) (i) through (iv) of this section apply, and section 355 (d)(5)(C) and paragraph (e)(2) of this section do not apply. If a controlling corporation obtains a letter ruling and enters into a closing agreement under section 7121 under which it agrees to determine its basis in surviving corporation stock under § 1.358–6(c)(2)(ii)(B), or under § 1.1502–30(b) by applying 1.358–6(c)(2)(ii)(B) (deemed stock acquisition), then section 355 (d)(5)(C) and paragraph (e)(2) of this section apply, and section 355 (d)(5)(B) and paragraphs (d)(3) (i) through (iv) of this section do not apply.

(iii) *Example.* The following example illustrates this paragraph (d)(5):

Example. *Reverse triangular reorganization; purchase.* (i) A purchases 60 percent of the stock of D on Date 1. D owns no cash items, marketable stock, or transferor debt, but holds cash that is not part of or used in D's trade or business under paragraph (d)(3)(iv) of this section and that represents 20 percent of D's value. On Date 2, P forms S, and S merges into D in a reorganization qualifying under section 368(a)(1)(B) and under section 368(a)(1)(A) by reason of section 368(a)(2)(E). In the reorganization, P acquires all of the D stock in exchange solely for P stock. After Date 2, and within five years after Date 1, D

distributes its wholly owned subsidiary C to P. P does not obtain a letter ruling and enter into a closing agreement under paragraph (d)(5)(ii) of this section. P would acquire 20 percent of the D stock by purchase on Date 2 under paragraph (d)(5)(i)(A) of this section by operation of section 355(d)(5)(B) and paragraph (d)(3)(iv) of this section. The exception in paragraph (d)(3)(v) of this section does not apply because P and S became affiliated in the same transaction in which the section 351 transfer is deemed to occur. P would acquire 60 percent of the D stock by purchase on Date 1 under paragraph (d)(5)(i)(B) of this section because, under the transferred basis rule of section 355(d)(5)(C) and paragraph (e)(2) of this section, P is treated as though P purchased the D stock on the date A purchased it. Accordingly, under paragraph (d)(5)(i) of this section, P is treated as acquiring the higher amount (60 percent) by purchase on Date 1. D's distribution of C to P is a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section. In addition, A is treated as acquiring the P stock by purchase on Date 1 under paragraph (e)(3) of this section because A's basis in the P stock is determined by reference to A's basis in the D stock.

(ii) The facts are the same as in paragraph (i) of this *Example*, except that P obtains a letter ruling and enters into a closing agreement under which it agrees to determine its basis in the D stock under § 1.358–6(c)(2)(ii)(A). Under paragraph (d)(5)(ii) of this section, section 355(d)(5)(B) (and paragraphs (d)(3) (i) through (iv) of this section) applies, and section 355(d)(5)(C) (and paragraph (e)(2) of this section) does not apply. Accordingly, P is treated as acquiring only 20 percent of the D stock by purchase on Date 2. D's distribution of C to P is not a disqualified distribution under section 355(d)(2) and paragraph (b)(1) of this section.

(6) *Treatment of group structure changes*—(i) *In general.* Notwithstanding section 355(d)(5)(A), for purposes of section 355(d), if a corporation succeeds another corporation as the common parent of a consolidated group in a group structure change to which § 1.1502–31 applies, the new common parent is treated as having acquired the assets and assumed the liabilities of the former common parent in a transaction in which the new common parent's basis in the former common parent's assets was determined under section 362(b), and then transferred the acquired assets and liabilities to the former common parent (or, if the former common parent does not survive, to the new common parent's subsidiary) in a section 351 transfer, with the new common parent and former common parent being treated as not in the same affiliated group at the time of the transfer (notwithstanding § 1.1502–31(c)(2)).

(ii) *Adjustments to basis of higher-tier members.* A higher-tier member that indirectly owns all or part of the former common parent's stock after a group structure change is treated as having purchased the stock of an immediate subsidiary to the extent that the higher-tier member's basis in the subsidiary is increased under § 1.1502–31(d)(4).

(iii) *Example.* The following example illustrates this paragraph (d)(6):

Example. P is the common parent of a consolidated group, and T is the common parent of another group. P has owned S for more than five years, and the fair market value of the S stock is $50. T's assets consist only of non-marketable stock of direct and indirect wholly owned subsidiaries with a value of $50, assets used in its business with a value of $50, and $50 of marketable stock that is not part of or used in T's business. T has no liabilities. T merges into S with the T shareholders receiving solely P stock with a value of $150 in exchange for their T stock in a section 368(a)(2)(D) reorganization. S will use T's business assets in T's business (which will become S's business), but will hold the $50 of marketable stock for investment purposes. Assume that the transaction is a reverse acquisition under § 1.1502–75(d)(3) because the T shareholders, as a result of owning T stock, own more than 50 percent of the value of P's stock immediately after the transaction. Thus, the transaction is a group structure change under § 1.1502–33(f)(1). Under paragraph (d)(6) of this section, P is treated as having acquired the assets of T in a transaction in which P's basis in the T assets was determined under section 362(b), and then transferred the acquired assets to S in a section 351 transfer, with P and T being treated as not in the same affiliated group at the time of the transfer. The exception in paragraph (d)(3)(v) of this section (transfers within an affiliated group) does not apply. Accordingly, P is treated under section 355(d)(5)(B) and paragraph (d)(3)(iv) of this section as having purchased $50 of the S stock (attributable to the marketable stock), but is not deemed to have purchased the remaining $150 of the S stock.

(7) *Special rules for triangular asset reorganizations, other reverse triangular reorganizations, and group structure changes.* The amount of acquiring subsidiary, surviving corporation, or former common parent stock that is treated as purchased under paragraph (c)(4), (5)(i)(A), or (6) of this section (by operation of section 355(d)(5)(B) and paragraphs (d)(3) (i) through (iv) of this section) is adjusted to reflect any basis adjustment under—

(i) Section 1.358–6(c)(2)(i) (B) and (C) (reduction of basis adjustment in reverse triangular reorganization where controlling corporation acquires less than all of the surviving corporation stock), § 1.1502–30(b) (applying § 1.358–6(c)(2)(i) (B) and (C) to a consolidated group), and § 1.1502–31(d)(2)(ii) (reduction of basis adjustment in group structure change where new common parent acquires less than all of the former common parent stock); or

(ii) Section 1.358–6(d) (reduction of basis adjustment in any triangular reorganization to the extent controlling corporation does not provide consideration), § 1.1502–30(b) (applying § 1.358–6(d) (except § 1.358–6(d)(2)) to a consolidated group), and § 1.1502–31(d)(1) (reduction of basis adjustment in group structure change to the extent new common parent does not provide consideration).

(e) *Deemed purchase and timing rules*—(1) *Attribution and aggregation*—(i) *In general.* Under section 355(d)(8)(B), if any person acquires by purchase an interest in any entity, and the person is treated under section 355(d)(8)(A) as holding any stock by reason of holding the interest, the stock shall be treated as acquired by purchase on the later of the date of the purchase of the interest in the entity or the date the stock is acquired by purchase by such entity.

(ii) *Purchase of additional interest.* If a person and an entity are treated as a single person under section 355(d)(7), and the person later purchases an additional interest in the entity, the person is treated as purchasing on the date of the later purchase the amount of stock attributed from the entity to the person under section 355(d)(8)(A) as a result of the additional interest.

(iii) *Purchase between persons treated as one person.* If two persons are treated as one person under section 355(d)(7), and one later purchases stock or securities from the other, the date of the later purchase is used for purposes of determining when the five-year period commences.

(iv) *Purchase by a person already treated as holding stock under section 355(d)(8)(A).* If a person who is already treated as holding stock under section 355(d)(8)(A) later directly purchases such stock, the date of the later direct purchase is used for purposes of determining when the five-year period commences.

(v) *Examples.* The following examples illustrate this paragraph (e)(1):

Example 1. On Date 1, A purchases 10 percent of the stock of P, which has held 100 percent of the stock of T for more than five years at the time of A's purchase. A is deemed to have purchased 10 percent of P's T stock on Date 1. If A later purchases an additional 41 percent of the stock of P on Date 2, A is deemed to have purchased an additional 41 percent of P's T stock on Date 2. Because A and P are now related persons under section 267(b), they are treated as one person under section 355(d)(7)(A), and A is treated as owning all of P's T stock. A is treated as acquiring 51 percent of the T stock by purchase at the times of A's respective purchases of P stock on Date 1 and Date 2. The remaining 49 percent of T stock is

treated as acquired when P acquired the T stock, more than five years before Date 1. If P distributes T within five years after Date 1, the distribution will be a disqualified distribution under section 355 (d)(2) and paragraph (b)(1) of this section.

Example 2. A has owned 60 percent of the stock of P for more than five years, and P has owned 40 percent of the stock of T for more than five years. A and P are treated as one person, and A is treated as owning 40 percent of the stock of T for more than five years. If P later purchases an additional 20 percent of the stock of T on Date 1, A is treated as acquiring by purchase the additional 20 percent of T stock on Date 1. If A then purchases an additional 10 percent of the stock of P on Date 2, under the attribution rule and the deemed purchase rule, A is deemed to have purchased on Date 2 an additional four percent of the T stock (10 percent of the 40 percent that P originally owned). In addition, even though A and P were already treated as one person under section 355(d)(7)(A), A is also deemed to have purchased two percent of the T stock on Date 2 (10 percent of the 20 percent of the T stock that it was treated as purchasing on Date 1). A is still treated as owning all 60 percent of the T stock owned by P. However, of the 60 percent, A is treated as having purchased 18 percent of the T stock on Date 1 and 6 percent of the T stock on Date 2, for a total of 24 percent purchased stock.

Example 3. A purchases a 20 percent interest in partnership M on Date 1. M has owned 30 percent of the stock and 25 percent of the securities of P for more than five years. P has owned 40 percent of the stock and 100 percent of the securities of T for more than five years. Under section 318(a)(2)(C) as modified by section 355(d)(8)(A), M is deemed to own 12 percent of the stock (30 percent of the 40 percent P owns) and 30 percent of the securities (30 percent of the 100 percent P owns) of T. Under sections 318(a)(2)(A) and 355(d)(8)(B), A is deemed to have purchased 2.4 percent of the stock (20 percent of the 12 percent M is deemed to own) and 6 percent of the securities (20 percent of the 30 percent M is deemed to own) of T on Date 1. Similarly, A is deemed to have purchased 6 percent of the stock (20 percent of the 30 percent M owns) and five percent of the securities (20 percent of the 25 percent M owns) of P on Date 1. If M later purchases an additional 10 percent of P stock on Date 2, M is deemed to have purchased four percent of the stock (10 percent of the 40 percent P owns) and 10 percent of the securities (10 percent of the 100 percent P owns) of T on Date 2. A is deemed to have purchased two percent of the stock of P on Date 2 (20 percent of the 10 percent M purchased). A is also deemed to have purchased 0.8 percent of the stock (20 percent of the four percent M is deemed to have purchased) and two percent of the securities (20 percent of the 10 percent M is deemed to have purchased) of T on Date 2.

Example 4. A and B are brother and sister. For more than five years, A has owned 75 percent of the stock of P, and B has owned 25 percent of the stock of P. A and B are treated as one person under section 267(b), and the stock of each is treated as purchased on the date it was purchased by A and B, respectively. If B later purchases 50 percent of the P stock from A on Date 1, A and B are still treated as one person. However, the 50 percent of P stock that B purchased from A is treated as purchased on Date 1.

(2) *Transferred basis rule.* If any person acquires property from another person who acquired the property by purchase (determined with regard to section 355(d)(5) and paragraphs (d) and (e)(2) and (3) of this section, but without regard to section 355(d)(8) and paragraph (e)(1) of this section), and the adjusted basis of the property in the hands of the acquirer is determined in whole or in part by reference to the adjusted basis of the property in the hands of the other person, the acquirer is treated as having acquired the property by purchase on the date it was so acquired by the other person. The rule in this paragraph (e)(2) applies, for example, where stock of a corporation acquired by purchase is subsequently acquired in a section 351 transfer or a reorganization qualifying under section 368(a)(1)(B), but does not apply if the stock of a former common parent is acquired in a group structure change to which § 1.1502–31 applies. But see paragraph (d)(2)(i)(B)(*2*) of this section for situations where the stock is treated as purchased on the date of a transfer.

(3) *Exchanged basis rule*—(i) *In general.* If any person acquires an interest in an entity (the first interest) by purchase (determined with regard to section 355(d)(5) and paragraphs (d) and (e)(2) and (3) of this section, but without regard to section 355(d)(8) and paragraph (e)(1) of this section), and the first interest is exchanged for an interest in another entity (the second interest) where the adjusted basis of the second interest is determined in whole or in part by reference to the adjusted basis of the first interest, then the second interest is treated as having been purchased on the date the first interest was purchased. The rule in this paragraph (e)(3) applies, for example, where stock of a corporation acquired by purchase is subsequently exchanged for other stock in a section 351, 354, or 1036(a) exchange. But see paragraph (d)(2)(i)(A)(*2*) of this section for situations where the stock is treated as purchased on the date of an exchange or distribution.

(ii) *Example.* The following example illustrates this paragraph (e)(3):

Example. A purchases 50 percent of the stock of T on Date 1. On Date 2, T merges into D in a section 368(a)(1)(A) reorganization, with A exchanging all of the T stock solely for stock of D. Under section 358(a), A's basis in the D stock is determined by reference to the basis of the T stock it purchased. Accordingly, A is treated as having purchased the D stock on Date 1, and has a purchased basis in the D stock under paragraph (b)(3)(iii) of this section.

(4) *Substantial diminution of risk*—(i) *In general.* If section 355(d)(6) applies to any stock for any period, the running of any five-year period set forth in section 355(d)(3) is suspended during such period.

(ii) *Property to which suspension applies.* Section 355(d)(6) applies to any stock for any period during which the holder's risk of loss with respect to such stock, or with respect to any portion of the activities of the corporation, is (directly or indirectly) substantially diminished by an option, a short sale, any special class of stock, or any other device or transaction.

(iii) *Risk of loss substantially diminished.* Whether a holder's risk of loss is substantially diminished under section 355(d)(6) and paragraph (e)(4)(ii) of this section will be determined based on all facts and circumstances relating to the stock, the corporate activities, and arrangements for holding the stock.

(iv) *Special class of stock.* For purposes of section 355(d)(6) and paragraph (e)(4)(ii) of this section, the term *special class of stock* includes a class of stock that grants particular rights to, or bears particular risks for, the holder or the issuer with respect to the earnings, assets, or attributes of less than all the assets or activities of a corporation or any of its subsidiaries. The term includes, for example, tracking stock and stock (or any related instruments or arrangements) the terms of which provide for the distribution (whether or not at the option of any party or in the event of any contingency) of any controlled corporation or other specified assets to the holder or to one or more persons other than the holder.

(f) *Duty to determine stockholders*—(1) *In general.* In determining whether section 355(d) applies to a distribution of controlled corporation stock, a distributing corporation must determine whether a disqualified person holds its stock or the stock of any distributed controlled corporation. This paragraph (f) provides rules regarding this determination and the extent to which a distributing corporation must investigate whether a disqualified person holds stock.

(2) *Deemed knowledge of contents of securities filings.* A distributing corporation is deemed to have knowledge of the existence and contents of all schedules, forms, and other documents filed with or under the rules of the Securities and Exchange Commission, including without limitation any Schedule 13D or 13G (or

any similar schedules) and amendments, with respect to any relevant corporation.

(3) *Presumption as to securities filings.* Absent actual knowledge to the contrary, in determining whether section 355(d) applies to a distribution, a distributing corporation may presume, with respect to stock that is reporting stock (while such stock is reporting stock), that every shareholder or other person required to file a schedule, form, or other document with or under the rules of the Securities and Exchange Commission as of a given date has filed the schedule, form, or other document as of that date and that the contents of filed schedules, forms, or other documents are accurate and complete. *Reporting stock* is stock that is described in Rule 13d–1(i) of Regulation 13D (17 CFR 240.13d–1(i)) (or any rule or regulation to generally the same effect) promulgated by the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a et seq.).

(4) *Presumption as to less-than-five-percent shareholders.* Absent actual knowledge (or deemed knowledge under paragraph (f)(2) of this section) immediately after the distribution to the contrary with regard to a particular shareholder, a distributing corporation may presume that no less-than-five-percent shareholder of a corporation acquired stock by purchase under section 355(d) (5) or (8) and paragraphs (d) and (e) of this section during the five-year period. For purposes of this paragraph (f), *a less-than-five-percent shareholder* is a person that, at no time during the five-year period, holds directly (or by application of paragraph (c)(3)(ii) of this section, but not by application of section 355(d) (7) or (8)) stock possessing five percent or more of the total combined voting power of all classes of stock entitled to vote and the total value of shares of all classes of stock of a corporation. However, this presumption does not apply to any less-than-five-percent shareholder that, at any time during the five-year period—

(i) Is related under section 355(d)(7)(A) to a shareholder in the corporation that is, at any time during the five-year period, not a less-than-five-percent shareholder;

(ii) Acted pursuant to a plan or arrangement, with respect to acquisitions of the corporation's stock under section 355 (d)(7)(B) and paragraph (c)(4) of this section, with a shareholder in the corporation that is, at any time during the five-year period, not a less-than-five-percent shareholder; or

(iii) Holds stock that is attributed under section 355(d)(8)(A) to a shareholder in the corporation that is, at any time during the five-year period, not a less-than-five-percent shareholder.

(5) *Examples.* The following examples illustrate this paragraph (f):

Example 1. *Publicly traded corporation; no schedules filed.* D is a widely held and publicly traded corporation with a single class of reporting stock and no other class of stock. Assume that applicable federal law requires any person that directly holds five percent or more of the D stock to file a schedule with the Securities and Exchange Commission within 10 days after an acquisition. D distributes its wholly owned subsidiary C pro rata. D determines that no schedule, form, or other document has been filed with respect to its stock or the stock of any other relevant corporation during the five-year period or within 10 days after the distribution. Immediately after the distribution, D has no knowledge that any of its shareholders are (or were at any time during the five-year period) not less-than-five-percent shareholders, or that any particular shareholder acquired D stock by purchase under section 355(d) (5) or (8) and paragraphs (d) and (e) of this section during the five-year period. Under paragraph (f)(3) of this section, D may presume it has no shareholder that is or was not a less-than-five-percent shareholder during the five-year period due to the absence of any filed schedules, forms, or other documents. Under paragraph (f)(4) of this section, D may presume that none of its less-than-five-percent shareholders acquired D's stock by purchase during the five-year period. Accordingly, D may presume that section 355(d) does not apply to the distribution of C.

Example 2. *Publicly traded corporation; schedule filed.* The facts are the same as those in *Example 1*, except that D determines that, as of 10 days after the distribution, only one schedule has been filed with respect to its stock. That schedule discloses that X acquired 15 percent of the D stock one year before the distribution. Absent contrary knowledge, D may rely on the presumptions in paragraph (f)(3) of this section and so may presume that X is its only shareholder that is or was not a less-than-five-percent shareholder during the five-year period. D may not rely on the presumption in paragraph (f)(4) of this section with respect to X. In addition, D may not rely on the presumption in paragraph (f)(4) of this section with respect to any less-than-five-percent shareholder that, at any time during the five-year period, is related to X under section 355(d)(7)(A), acted pursuant to a plan or arrangement with X under section 355 (d)(7)(B) and paragraph (c)(4) of this section with respect to acquisitions of D stock, or holds stock that is attributed to X under section 355(d)(8)(A). Accordingly, under paragraph (f)(1) of this section, to determine whether section 355(d) applies, D must determine: whether X acquired its directly held D stock by purchase under section 355(d)(5) and paragraphs (d) and (e)(2) and (3) of this section during the five-year period; whether X is treated as having purchased any additional D stock under section 355 (d)(8) and paragraph (e)(1) of this section during the five-year period; and whether X is related to, or acquired its D stock pursuant to a plan or arrangement with, one or more of D's other shareholders during the five-year period under section 355(d)(7) (A) or (B) and paragraph (c)(4) of this section, and if so, whether those shareholders acquired their D stock by purchase under section 355(d) (5) or (8) and paragraphs (d) and (e) of this section during the five-year period.

Example 3. *Acquisition of publicly traded corporation.* The facts are the same as those in *Example 1*, except that P acquires all of the D stock in a section 368(a)(1)(B) reorganization that is not also a reorganization under section 368(a)(1)(A) by reason of section 368(a)(2)(E), and D distributes C to P one year later. Under the deemed purchase rule of section 355 (d)(5)(C) and paragraph (e)(2) of this section, P is treated as having acquired the D stock by purchase on the date the D shareholders acquired the D stock by purchase. Even though D has no less-than-five-percent shareholder immediately after the distribution, D may rely on the presumptions in paragraphs (f)(3) and (4) of this section to determine whether and to what extent the D stock is treated as purchased during the five-year period in P's hands under the deemed purchase rule of section 355 (d)(5)(C) and paragraph (e)(2) of this section. Accordingly, D may presume that section 355(d) does not apply to the distribution of C to P.

Example 4. *Non-publicly traded corporation.* D is owned by 20 shareholders and has a single class of stock that is not reporting stock. D knows that A owns 40 percent of the D stock, and D does not know that any other shareholder has owned as much as five percent of the D stock at any time during the five-year period. D may not rely on the presumption in paragraph (f)(3) of this section because its stock is not reporting stock. D may not rely on the presumption in paragraph (f)(4) of this section with respect to A. In addition, D may not rely on the presumption in paragraph (f)(4) of this section for any less-than-five-percent shareholder that, at any time during the five-year period, is related to A under section 355(d)(7)(A), acted pursuant to a plan or arrangement with A under section 355 (d)(7)(B) and paragraph (c)(4) of this section with respect to acquisitions of D stock, or holds stock that is attributed to A under section 355(d)(8)(A). D may rely on the presumption in paragraph (f)(4) of this section for less-than-five-percent shareholders that during the five-year period are not related to A, did not act pursuant to a plan or arrangement with A, and do not hold stock attributed to A. Accordingly, under paragraph (f)(1) of this section, to determine whether section 355(d) applies, D must determine: that A is its only shareholder that is (or was at any time during the five-year period) not a less-than-five-percent shareholder; whether A acquired its directly held D stock by purchase under section 355 (d)(5) and paragraphs (d) and (e)(2) and (3) of this section during the five-year period; whether A is treated as having purchased any additional D stock under section 355 (d)(8) and paragraph (e)(1) of this

section during the five-year period; and whether A is related to, or acquired its D stock pursuant to a plan or arrangement with, one or more of D's other shareholders during the five-year period under section 355(d)(7)(A) or (B) and paragraph (c)(4) of this section, and if so, whether those shareholders acquired their D stock by purchase under section 355(d)(5) or (8) and paragraphs (d) and (e) of this section during the five-year period.

(g) *Effective date.* The regulations in this section apply to distributions occurring after the regulations in this section are published as final regulations in the **Federal Register**, except that they do not apply to any distributions occurring pursuant to a written agreement which is (subject to customary conditions) binding on the date the regulations in this section are published as final regulations in the **Federal Register**, and at all times thereafter.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–10818 Filed 4–29–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 09–99–007]

Safety Zone, Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering the establishment of a temporary safety zone on the American side of the Detroit River for the Windsor Can-Am Offshore Power Boat Race. The zone would be between the Ambassador Bridge mile 19.5 and William Livingstone Memorial Lt located on Belle Isle mile 25.5, Fleming Channel. The zone would temporarily suspend vessel operations on the Detroit River and close the Belle Isle Anchorage on 22 August from 10:00 a.m. to 1:00 p.m. The Captain of the Port would require all vessels to notify the Coast Guard before transiting the waters affected by the safety zone, and may allow transits case by case.

DATES: Comments must be received on or before 31 May 1999.

ADDRESSES: Comments may be mailed to Commanding Officer, USCG MSO Detroit, 110 Mt. Elliott Avenue, Detroit, MI 48207, or delivered to the same address between 7 a.m. and 4 p.m. Monday through Friday, except federal holidays. Comments will become part of this docket and will be available for inspection and copying at the above address.

FOR FURTHER INFORMATION CONTACT: LTJG French, Coast Guard Marine Safety Office Detroit, 110 Mt Elliott Ave., Detroit, MI 48207, at 313–568–9580.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 09–99–007) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying. Persons wanting acknowledgement of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The Windsor Can-Am Offshore Race would involve off-shore race boats competing in a circular 2½-mile track operating at speeds in excess of 100 miles per hour. The race would run exclusively in Canadian waters. The approving authority for the Canadian Government is the Windsor Harbor Commission. The Captain of the Port has determined that a safety zone would be necessary to ensure the safety of the American boating public and of commercial vessel traffic. The proposed event would enjoy support from the Canadian Government and volunteer patrol under the direction of the Windsor Harbour Master and the event sponsor. The U.S. Coast Guard would be on scene to enforce the river closure along the American side and would help to monitor and advise the Canadian Government on overall safety considerations related to the event.

Drafting Information

The drafter of this regulation is the U.S. Coast Guard Marine Safety Office Detroit, 110 Mt Elliott Ave., Detroit MI 48207, project officer: LTJG French, 313–568–9580. The originator of the race application is the Canadian Boating Federation, Canadian Offshore Race Association, 2740 Jefferson Blvd., Windsor, Ontario N8T 3C7, project officer: Ed Lauzon 519–251–9733. The approving Canadian authority is the Windsor Harbour Commission, 502 Westcourt Place, 251 Goyeau St., Windsor, Ontario N9A 6V4, Harbour Master: Bill Marshall, (519) 258–5741.

Regulatory Evaluation

The proposed rule would instate a 3-hour river closure that would be publicized well in advance of the event to allow vessel traffic to adjust accordingly. The event sponsor has also agreed to compensate commercial vessels that are delayed. The Captain of the Port Detroit considers this regulation to be nonsignificant under Executive Order 12866 on Regulatory Planning and Review and nonsignificant under Department of Transportation regulatory policies and procedures [(44 FR 11034 February 26, 1979)]. If comments received indicate otherwise, the Captain of the Port may reconsider this determination.

Federalism

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and the Coast Guard has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under section 2.B.2.c of Coast Guard Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation.

Collection of Information

This proposed rule contains no collection-of-information requirements under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Subpart

C of Part 165 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, and 160.5; and 49 CFR 1.46.

2. Add a new temporary rule to read as follows:

165.T09007 Safety Zone: Detroit River.

(a) *Location.* The following area is a safety zone: Detroit River—enclosed area between the Ambassador Bridge mile 19.5 and William Livingston Memorial Lt mile 25.5 located on Belle Isle, Fleming Channel, including the Belle Island Anchorage.

(b) *Effective times and dates.* This regulation is effective from 10:00 a.m. to 1:00 p.m. on Sunday 22 August 1999, unless terminated earlier by the Coast Guard Captain of the Port.

(c) *Restrictions.* In accordance with § 165.23 of this part, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port.

Dated: April 16, 1999.

Stephen P. Garrity,

Commander, U.S. Coast Guard, Captain of the Port Detroit.

[FR Doc. 99–10951 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 22, 24, 26, 27, 73, 74, 80, 87, 90, 95, 97, and 101

[WT Docket No. 99–87, RM–9332; FCC 99–52]

Revised Competitive Bidding Authority

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rule making.

SUMMARY: By this *Notice of Proposed Rule Making* (*"NPRM"*), the Commission commences a proceeding to implement changes to its statutory auction authority made by the Balanced Budget Act of 1997 ("Balanced Budget Act"). The *NPRM* seeks comment on the scope of the Balanced Budget Act's exemption from competitive bidding for public safety radio services. The *NPRM* also seeks comment on how the Balanced Budget Act's revision of the Commission's auction authority affects its determinations of which wireless telecommunications services licenses are potentially auctionable and its determinations of the appropriate licensing scheme for new and existing services. The Commission also seeks comment on how to implement competitive bidding for services that it may determine are auctionable as a result of its revised authority. The Commission also solicits comment on some additional issues relating to the implementation of the Balanced Budget Act's amendments to its auction authority.

DATES: Comments must be filed on or before July 2, 1999. Reply comments must be filed on or before August 2, 1999.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Room TW–A325, Washington, D.C. 20554. Alternatively, comments may be filed by using the Commission's Electronic Comment Filing System (ECFS). Comments filed through the ECFS can be sent as an electronic file via the Internet to http://www.fcc.gov/e-file/ecfs.html.

FOR FURTHER INFORMATION CONTACT: Gary D. Michaels, Auctions & Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, or Scot Stone Public Safety & Private Wireless Division, Wireless Telecommunications Bureau, at (202) 418–0680.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, WT Docket No. 99–87, RM–9332, FCC 99–52, adopted March 19, 1999, and released March 25, 1999. The complete text of this *NPRM* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room CY–A257, 445 Twelfth Street, S.W., Washington, D.C. 20554. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036, (202) 857–3800. The complete *NPRM* is also available on the Internet at the Commission's web site: http://www.fcc.gov/wtb/.

Synopsis of Notice of Proposed Rule Making

I. Introduction

1. This *Notice of Proposed Rule Making* (*"NPRM"*) commences a proceeding to implement Sections 309(j) and 337 of the Communications Act of 1934 ("Communications Act"), as amended by the Balanced Budget Act of 1997, Public Law No. 105–33, Title III, 111 Stat. 251 (1997) ("Balanced Budget Act"). The Balanced Budget Act revised the Commission's auction authority for wireless telecommunications services. The purpose of this *NPRM* is to seek comment on changes to the Commission's rules and policies to implement the revised auction authority. This *NPRM* first reviews the Commission's auction authority as provided by the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, Title VI, § 6002(a), 107 Stat. 312 (1993) ("1993 Budget Act"), and how the Commission implemented that authority. The *NPRM* next discusses the statutory changes to the Commission's auction authority made by the Balanced Budget Act. The *NPRM* then seeks comment on the following matters:

- The scope of the Balanced Budget Act's exemption from competitive bidding for public safety radio services and the regulatory provisions that could be established to ensure that frequencies assigned without auctions meet the statutory requirements for exemption.
- How the Balanced Budget Act's amendments to Section 309(j)(1) affect the categories of services that previously were determined to be nonauctionable by the Commission.
- The extent to which Section 337(c) of the Communications Act, gives eligible providers of public safety services a means to obtain unassigned spectrum not otherwise allocated for public safety purposes.
- A Petition for Rule Making filed by parties proposing that the Commission establish a third radio service pool in the private land mobile bands below 800 MHz for use by electric, gas, and water utilities, petroleum and natural gas pipeline companies, and railroads, and whether the Commission should adopt separate public safety radio services eligibility standards for (1) public safety and (2) public service entities.
- Whether changes in the rules governing multiple-licensed systems would be appropriate to avoid artificial distinctions between such systems and commercial providers, which must obtain spectrum through competitive bidding.
- Whether the Balanced Budget Act requires the Commission to revise its licensing schemes and license assignment methods to provide for competitive bidding in services previously determined not to be auctionable, and how such schemes and methods for new services might be revised.
- How the Commission might implement competitive bidding to award licenses and permits for those services and frequency bands, if any, that will be auctionable for the first time, including what auction procedures would best promote the four public interest objectives listed in 47 U.S.C. 309(j)(3)(A)–(D).

II. Background

A. Commission Implementation of the 1993 Auction Standard

2. The 1993 Budget Act added Section 309(j) to the Communications Act, authorizing the Commission to award licenses for use of the electromagnetic spectrum through competitive bidding where mutually exclusive applications are filed. The 1993 Budget Act expressly authorized, but did not require, the Commission to use competitive bidding to choose among mutually exclusive applications for initial licenses or construction permits. Following enactment of the 1993 Budget Act, the Commission instituted a rule making proceeding to implement Section 309(j). *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Notice of Proposed Rule Making*, 58 FR 53489, October 15, 1993 (*"Competitive Bidding Notice"*). Based on the record in that proceeding and the requirements of the statute, the Commission established rules governing the types of services and licenses that may be subject to auctions in the *Competitive Bidding Second Report and Order*, 59 FR 22980, May 4, 1994. See also Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Second Memorandum Opinion and Order*, 59 FR 44272, August 26, 1994 (*"Competitive Bidding Second M O & O"*). The Commission also conducted several subsequent proceedings in which it established, for specific services, rules and procedures for the competitive bidding process that it believed would best achieve Congress's objectives. *See, e.g.*, Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93–253, *Fifth Report and Order*, 59 FR 37566, July 22, 1994 (Broadband PCS); Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93–144, *First Report and Order and Eighth Report and Order*, 61 FR 6138, February 16, 1996; Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220–222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89–552, *Third Report and Order*, 62 FR 15978, April 3, 1997 (*"220–222 MHz Third Report and Order"*).

3. Pursuant to the 1993 Budget Act, Section 309(j)(1), "General Authority," only permitted the Commission to use competitive bidding if mutual exclusivity existed among applications that the Commission has accepted for filing. Indeed, Section 309(j)(6)(E) made clear that the Commission was not relieved of its obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations and other means to avoid mutual exclusivity. The legislative history of the 1993 Budget Act, which added Section 309(j)(6)(E), indicates that Congress intended the Commission to use tools that avoid mutual exclusivity "when feasible and appropriate." See H.R. Rep. No. 103–111, 103d Cong., 1st. Sess., at 258–259 (1993). The Commission has determined that applications are "mutually exclusive" if the grant of one application would effectively preclude the grant of one or more of the other applications. Where the Commission receives only one application that is acceptable for filing for a particular license that is otherwise auctionable, there is no mutual exclusivity, and thus no auction. Therefore, mutual exclusivity is established when competing applications for a license are filed. For example, a request to provide service on the same frequency in the same or overlapping service area would trigger mutual exclusivity where both applicants could not offer service without causing electromagnetic interference to one another.

4. Section 309(j)(1) also restricted the use of competitive bidding to applications for "initial" licenses or permits. Renewal licenses and permits were excluded from the auction process. As a result, the *Competitive Bidding Second Report and Order*, made clear that applications to modify existing licenses were generally not subject to competitive bidding. The Commission recognized, however, that if a modification is "major," i.e., one that substantially alters a licensee's currently authorized facilities, and if the modification application is mutually exclusive with other applications, the Commission would consider treating the "major" modification as an initial application that would be subject to competitive bidding.

5. In addition, Section 309(j)(2), "Uses to Which Bidding May Apply," set forth conditions beyond mutual exclusivity that had to be satisfied in order for spectrum to be auctionable. Specifically, it required the Commission to determine that:

> (A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee—
>
> (i) Enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate; or
>
> (ii) Enables those subscribers to transmit directly communications signals utilizing frequencies on which the licensee is licensed to operate.

In the *Competitive Bidding Second Report and Order*, the Commission explained that, in making this assessment, it would evaluate classes of licenses and permits, rather than make a principal use determination on a license-by-license basis. The Commission concluded that it would consider the principal use requirement to be met if, comparing the amount of non-subscription use made by the licensees with the amount of use rendered to subscribers for compensation, at least a majority of the use of a service or class of service was operated for the benefit of subscribers.

6. Section 309(j)(2) further directed the Commission—in evaluating the "uses to which bidding may apply"—to determine whether "a system of competitive bidding will promote the [public interest] objectives described in [Section 309(j)(3)]." Section 309(j)(3), entitled "Design of Systems of Competitive Bidding," directs that these factors be addressed in both identifying classes of licenses to be issued by competitive bidding, and designing particular methodologies of competitive bidding. The objectives are listed as follows:

> (A) The development and rapid deployment of new technologies, products, and services for the benefit of the public, including those residing in rural areas, without administrative or judicial delays;
>
> (B) Promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women;
>
> (C) Recovery for the public of a portion of the value of the public spectrum resource made available for commercial use and avoidance of unjust enrichment through the methods employed to award uses of that resource; and
>
> (D) Efficient and intensive use of the electromagnetic spectrum.

1. Services Determined to Be Auctionable

7. Employing the criteria outlined above, the Commission identified a number of services and classes of services that were auctionable under the 1993 Budget Act if mutually exclusive applications are accepted for filing. Among the services the Commission found auctionable under the 1993

Budget Act (all of which involve commercial use of the spectrum) were narrowband and broadband Personal Communications Services (PCS), Public Mobile Services, 218–219 MHz Service, Specialized Mobile Radio Services (SMR), Private Carrier Paging (PCP) Services, Multipoint Distribution Service (MDS), Multichannel Multipoint Distribution Service (MMDS), General Wireless Communications Service (GWCS), Local Multipoint Distribution Service (LMDS), Wireless Communications Service (WCS), Digital Audio Radio Service (DARS), Direct Broadcast Satellite (DBS) Service, 220–222 MHz radio service, Location and Monitoring Service (LMS), and VHF Public Coast Stations. The Commission also adopted competitive bidding for assignment of licenses in the 39 GHz band after enactment of the Balanced Budget Act.

2. Services Determined To Be Nonauctionable

8. Based on the statutory criteria contained in the 1993 Budget Act, the Commission also determined that a number of services were not auctionable, including "private services" that were for "internal use," and thus not subscriber-based. The legislative history of the 1993 Budget Act refers to "private services" as services that do not involve the receipt of compensation from subscribers, "*i.e.*, that were for internal use." *See* H.R. Rep No. 103–111 at 253. Generally, private radio services are used by government or business entities to meet internal communications needs, or by individuals for personal communications. Private radio services that the Commission decided were not auctionable under the 1993 Budget Act include the Public Safety Radio Services (subsequently combined with the Special Emergency Radio Services to form the Public Safety Radio Pool), 220 MHz channels reserved for private service, the Instructional Television Fixed Service (ITFS), the Citizens Band Service, the Radio Control Service, the General Mobile Radio Service, the Amateur Radio Service, Non-SMR licensees above 800 MHz, Multiple Licensed Systems below 800 MHz, and the Private Land Mobile Radio Service (PLMRS) below 470 MHz. *See Competitive Bidding Second Report and Order; Competitive Bidding Notice.*

9. The plain language of the 1993 Budget Act also excluded traditional broadcast services from competitive bidding, because broadcast licensees do not receive compensation from subscribers. Consistent with the clear legislative intent, the Commission excluded from the competitive bidding process broadcast television (VHF, UHF, and LPTV), broadcast radio (AM and FM), and the Instructional Television Fixed Service (ITFS).

10. *Licensing in the Private Radio Services.* The services deemed nonauctionable under the 1993 statute were largely private and noncommercial offerings operating on a variety of frequency bands. In contrast to its extensive use of geographic area licensing for services determined to be auctionable under the 1993 Budget Act, to date, the Commission has employed a variety of alternative licensing approaches for these private radio services.

11. PLMRS frequencies below 470 MHz represent the majority of the frequencies allocated to the private radio services. Formerly, these frequencies were divided into twenty separate and diverse radio services, such as the Local Government, Telephone Maintenance, and Motor Carrier Radio Services. In 1997, however, the Commission consolidated these twenty services into two pools—the Public Safety Radio Pool and the Industrial/Business Radio Pool—in order to increase licensee flexibility to manage spectrum more efficiently by giving users access to a larger set of frequencies. Eligibility in the Industrial/Business pool is open to persons primarily engaged in the operation of a commercial activity; the operation of educational, philanthropic, or ecclesiastical institutions; clergy activities; or the operation of hospitals, clinics, or medical associations. *See* 47 CFR 90.35(a). The majority of communications systems utilizing these frequencies are used to support day-to-day business operations (such as dispatching and diverting personnel or work vehicles, coordinating the activities of workers and machines on location, or remotely monitoring and controlling equipment), but many also are used for responding to emergencies.

12. The private radio services also include PLMRS frequencies above 470 MHz, specifically, in the 806–821/851–866 MHz band (the 800 MHz band) and the 896–901/935–940 MHz band (the 900 MHz band). The Commission divided PLMRS frequencies above 800 MHz into three categories—Public Safety, Business, and Industrial/Land Transportation, each consisting of one or more of the radio services consolidated into the two pools below 470 MHz, and a General category open to entities eligible in the other three categories and the Specialized Mobile Radio category. *See* 47 CFR 90.615, 90.617. The Commission designated private radio spectrum in the 800 and 900 MHz bands as shared, see 47 CFR 90.173(a), but concluded that a licensee may obtain exclusive use of a frequency by showing that it will meet certain loading requirements, *i.e.*, that it will have a minimum number of mobile units operating on the frequency. *See* 47 CFR 90.625(a), 90.631, 90.633.

13. In the *Competitive Bidding Second Report and Order*, the Commission excluded from competitive bidding those services in which mutual exclusivity between applications cannot exist because channels are shared by multiple licensees. In the *Competitive Bidding Second Report and Order*, the Commission also found that for services in which licenses are assigned on a "first-come, first-served" basis, mutual exclusivity among applications will not exist. Specifically, the Commission concluded that use of "first-come-first-served" procedures generally avoids mutual exclusivity because the Commission does not consider competing applications. Rather, the applications are processed in sequence based on filing date and the first acceptable application is granted.

14. The traditional approach to the licensing of users of private spectrum generally does not result in the filing of mutually exclusive applications because the frequencies are intensively shared, assigned on a first-come, first-served basis, and/or subject to frequency coordination. For example, PLMRS spectrum is licensed on a site-by-site basis. Thus, a prospective licensee applies for authority to construct and operate transmission facilities at a specifically designated location or locations using a particular antenna height and signal strength. Historically, site-based licensing has met the needs of PLMRS users like railroads or petroleum pipelines, which need to cover long but narrow areas rather than the wider areas that ordinarily constitute geographic licensing regions. Many other PLMRS users, such as manufacturers seeking to link their raw material, processing, and finishing operations, also have unique configuration requirements.

15. Within the PLMRS services, Industrial/Business frequencies are licensed on a shared, non-exclusive basis, which allows multiple users with different coverage and capacity requirements to use the same frequencies effectively. Shared use increases the amount of frequency reuse that is possible compared to exclusive use with set distance separations, but requires that private system users must be able to tolerate interference and manage potential blocked access to channels. Such problems are

minimized, however, by the frequency coordination process, which involves the use of certified coordinators who analyze applications before they are submitted to the Commission to select a frequency that will meet the applicant's needs while minimizing interference to licensees already using the frequency band. Specifically, the frequency coordinator makes a recommendation to the Commission regarding the best available frequency for the applicant's proposed operations in the relevant area, based on the nature, size, and purpose of the radio systems already authorized on that frequency.

16. The Commission had certified one coordinator for each radio service in the bands below 800 MHz, but now that those frequencies have been consolidated, applicants for those PLMR frequencies generally may use the services of any frequency coordinator certified in the pool. This introduction of competition among coordinators was intended to foster lower coordination costs and better service to the public. However, applicants for those frequencies still sometimes contend that receiving a coordinator's recommendation takes too long and costs too much. Indeed, the Commission has acknowledged that the changes made to date may not be sufficient to maximize the efficiency of its PLMR licensing procedures.

17. Some private radio frequencies are available for shared use without any frequency coordination. One example is private coast station spectrum. Private coast stations serve the business and operational needs of vessels and may not charge fees for the provision of communications services. For example, a private coast station may be used by a vessel towing company to communicate with potential customers, or by a fishing company to maintain radio contact with its fleet. Frequencies are available in the 2–27.5 MHz band for communicating with vessels hundreds or thousands of miles away, and in the 156–162 MHz band for communications in a port area. Users are required to limit their communications to the minimum practicable transmission time. General use of tools to maximize spectrum efficiency, other than sharing of spectrum, have not been deemed necessary for private coast spectrum because, except in certain areas, the available spectrum generally has been sufficient to meet demand.

18. Another example of private radio frequencies available for shared use without any frequency coordination are those services that are "licensed by rule," meaning that no licenses are issued, such as the CB Radio Service. *See* 47 CFR 95.404. The CB Radio Service is a private, two-way, short-distance voice communications service for personal or business activities of the general public. Users may transmit communications about their personal or business activities, emergencies, and traveler assistance, but users must limit their communications to the minimum practicable time. Licensing by rule must be authorized by Congress, and is appropriate only for low-power, short-distance services with multiple, shared channels, where users can avoid congestion fairly easily.

B. The Balanced Budget Act of 1997

19. In the summer of 1997, Congress revised the Commission's auction authority. Specifically, the Balanced Budget Act of 1997 amended Section 309(j)(1) to require the Commission to award mutually exclusive applications for initial licenses or permits using competitive bidding procedures, except as provided in Section 309(j)(2). Sections 309(j)(1) and 309(j)(2) now state:

> (1) General Authority.—If, consistent with the obligations described in paragraph (6)(E), mutually exclusive applications are accepted for any initial license or construction permit, then, except as provided in paragraph (2), the Commission shall grant the license or permit to a qualified applicant through a system of competitive bidding that meets the requirements of this subsection.
>
> (2) Exemptions.—The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission—
>
> (A) For public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that—
>
> (i) Are used to protect the safety of life, health, or property; and
>
> (ii) Are not made commercially available to the public;
>
> (B) For initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses; or
>
> (C) For stations described in section 397(6) of this title.

Section 397(6), defines the terms "noncommercial educational broadcast station" and "public broadcast station." *See* 47 U.S.C. 397(6).

20. Prior to the Balanced Budget Act of 1997, Sections 309(j)(1) and 309(j)(2) granted the Commission the authority to use competitive bidding to resolve mutually exclusive applications for initial licenses or permits if the principal use of the spectrum was for subscription-based services and competitive bidding would promote the objectives described in Section 309(j)(3). As amended by the Balanced Budget Act of 1997, Section 309(j)(1) states that the Commission *shall* use competitive bidding to resolve mutually exclusive initial license or permit applications, unless one of the three exemptions provided in the statute applies.

21. As noted, the Balanced Budget Act of 1997 left unchanged the restriction that competitive bidding may only be used to resolve mutually exclusive applications. Moreover, the general auction authority provision of Section 309(j)(1) now references the obligation under Section 309(j)(6)(E) to use engineering solutions, negotiation, threshold qualifications, service regulations, or other means to avoid mutual exclusivity where to do so is in the public interest. In addition, the portion of the Conference Report that accompanies this section of the legislation emphasizes that notwithstanding the Commission's expanded auction authority, its determinations regarding mutual exclusivity must still be consistent with and not minimize its obligations under Section 309(j)(6)(E). The conferees expressed concern that the Commission not interpret its expanded auction authority in a manner that overlooks engineering solutions or other tools that avoid mutual exclusivity. The conferees emphasized that, notwithstanding its expanded auction authority, the Commission must still ensure that its determinations regarding mutual exclusivity are consistent with the Commission's obligations under section 309(j)(6)(E). *See* H.R. Conf. Rep. No. 105–217, 105th Cong., 1st Sess., at 572 (1997) ("Conference Report")

22. Section 309(j)(2), as amended by the Balanced Budget Act of 1997, exempts from auctions licenses and construction permits for public safety radio services, digital television service licenses and permits given to existing terrestial broadcast licensees to replace their analog television service licenses, and licenses and construction permits for noncommercial educational broadcast stations and public broadcast stations. The Commission recently observed that the list of exemptions from its general auction authority set forth in Section 309(j)(2) is exhaustive, rather than merely illustrative, of the types of licenses or permits that may not be awarded through a system of competitive bidding. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, MM Docket No. 97–234, *First Report and Order*, 63 FR 48615,

September 11, 1998 ("*Commercial Broadcast Competitive Bidding First Report & Order*"). Although the reference to Section 309(j)(3) is now deleted from Section 309(j)(2), it is worth noting that Section 309(j)(3), "Design of Systems of Competitive Bidding," was not amended by the Balanced Budget Act of 1997 and still directs the Commission to consider the public interest objectives in identifying classes of licenses and permits to be issued by competitive bidding.

23. The Conference Report for Section 3002(a) of the Balanced Budget Act of 1997 states that the exemption for public safety radio services includes "private internal radio services" used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, such as the American Automobile Association (AAA). The Conference Report also notes that the exemption is "much broader than the explicit definition for 'public safety services' " included in Section 337(f)(1) of the Communications Act, 47 U.S.C. 337(f)(1), for the purpose of determining eligibility for licensing in the 24 MHz of spectrum reallocated for public safety services.

24. The 1997 amendments also eliminate the Commission's authority to issue licenses or permits by random selection after July 1, 1997, with the exception of licenses or permits for noncommercial educational radio and television stations. *See* 47 U.S.C. 309(i)(5).

III. Discussion

A. General Approach to Implementing Legislation

25. In this *NPRM*, the Commission seeks comment on which radio services or classes of services Congress intended to exempt from competitive bidding. The Commission also seeks comment on how the Balanced Budget Act's modification of its statutory auction authority affects its analysis of whether spectrum licenses for non-exempt wireless services are auctionable. Specifically, the Commission inquires about the scope and content of its obligation to continue to avoid mutual exclusivity under Sections 309(j)(1) and 309(j)(6)(E). The Commission also inquires whether alternative licensing schemes and techniques would more readily give effect to the goals expressed in the relevant Balanced Budget Act changes. In addition, in view of the above-mentioned statutory changes, the Commission explores the criteria to be used in establishing licensing schemes both for existing wireless services and for wireless services as to which no licensing rules have yet been adopted.

26. The Commission has concluded in other proceedings that the revised statute does not require it to re-examine its determinations that specific services or frequency bands were auctionable under the 1993 Budget Act's more restrictive definition of our auction authority. *See* Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92–257, *Third Report and Order and Memorandum Opinion and Order*, 63 FR 40059, July 27, 1998 ("*Maritime Third Report and Order*"); Amendment of the Commission's Rules to Adopt Regulations for Automatic Vehicle Monitoring Systems, PR Docket No. 93–61, *Second Report and Order*, 63 FR 40659, July 30, 1998. Consistent with its conclusions in those previous proceedings, this proceeding will not re-examine the Commission's previous determinations that specific services or frequency bands were auctionable under the 1993 Budget Act.

B. Principles for Determining Whether a License is Subject to Auction

27. By requiring the Commission to use auctions to resolve mutually exclusive applications for all categories of spectrum licenses except those that are expressly exempt, Congress established a new approach to determining the auctionability of spectrum. Under the revised Section 309(j)(1), whether a particular service or class of frequencies is used principally for subscriber-based services is no longer dispositive. With the elimination of this criterion for determining auctionability of mutually exclusive applications, unless a service is expressly exempt from competitive bidding, the only remaining requirement for auctionability is that, subject to the Commission's "obligation in the public interest * * * to avoid mutual exclusivity in application and licensing proceedings," 47 U.S.C. 309(j)(6)(E), there be mutually exclusive applications accepted for licenses in that service. Thus, in enacting the Balanced Budget Act, Congress simplified the statute, apparently expanding its potential scope, by requiring spectrum auctions with certain limited exceptions. Accordingly, the Commission seeks comment on how the Balanced Budget Act's amendments to Section 309(j)(1) affect its determinations of which services are potentially auctionable and which are not.

C. Public Safety Radio Services Exemption

28. Of particular importance to determining the auctionability of wireless services is the express exemption from the Commission's auction authority for "public safety radio services," added by the Balanced Budget Act's amendment to Section 309(j)(2). The exemption is provided for certain *public safety radio services* meeting the conditions contained in the statutory language, rather than for a certain class of public safety licensees (*i.e.*, police, fire, etc.). Thus the Commission seeks comment on how to apply this exemption.

29. This *NPRM* does not seek comment on the exemptions from competitive bidding for digital television or noncommercial educational broadcast stations and public broadcast stations. The Commission has addressed the competitive bidding exemption for noncommercial educational broadcasters and sought further comment in another rule making proceeding. *See* Reexamination of the Comparative Standards for New Noncommercial Educational Applicants, *Further Notice of Proposed Rule Making*, MM Docket No. 95–31, FCC 98–269, 63 FR 58358, October 30, 1998. To the extent the Commission determines that it is necessary to clarify the exemption for digital television or adopt implementing regulations for that exemption, it intends to do so in a proceeding specifically addressing broadcast services.

30. The Balanced Budget Act defines "public safety radio services" to include private internal radio services used by State and local governments and non-government entities, and including emergency road services provided by not-for-profit organizations, that (i) are used to protect the safety of life, health, or property, and (ii) are not made commercially available to the public. The relevant legislative history states that "public safety radio services" is much broader than the explicit definition of "public safety services" contained in Section 337 of the Communications Act, which determines eligibility for licensing in the 24 MHz of spectrum reallocated for public safety services. In view of the express statutory language and legislative history, the Commission tentatively concludes that "public safety radio services" should include, at a minimum, all of the Private Land Mobile Radio Services that are currently assigned to the Public Safety Radio Pool, which is comprised of those services formerly housed in the Public

Safety Radio Services and the Special Emergency Radio Service. *See* 47 CFR 90.16. The Public Safety Radio Services included the Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Emergency Medical Radio Services. The Special Emergency Radio Service covered the licensing of radio communications of hospitals and clinics, ambulance and rescue services, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, persons or organizations in isolated areas, and emergency standby and repair facilities for telephone and telegraph systems. Thus, the Commission proposes to include the spectrum allocated to the Public Safety Radio Pool in our definition of "public safety radio services," because such spectrum is used for communications directly related to the safety of life, health, or property and is not made commercially available to the public.

31. The Commission also tentatively concludes that its definition of "public safety radio services" should include the 24 MHz of newly allocated public safety spectrum at 764–776 MHz and 794–806 MHz ("the 700 MHz band"). *See* 47 U.S.C. 337(a). Licensing in the 700 MHz band is restricted to a more narrow class than licensing in the public safety radio services, which does not appear to be limited to particular entities. Moreover, the 700 MHz band, like public safety radio services spectrum, must be used to protect the safety of life, health, or property, and may not be made commercially available to the public. *See* 47 U.S.C. 337(f)(1)(A),(C). The Commission therefore seeks comment on its tentative conclusion that spectrum in the 700 MHz band should be included within the public safety radio services spectrum that is exempt from competitive bidding.

32. Further, in the *220–222 MHz Third Report and Order*, the Commission concluded that it would be in the public interest to allocate ten 220 MHz non-nationwide channel pairs for the exclusive use of public safety eligibles. Therefore, consistent with this decision, the Commission tentatively concludes that its definition of public safety radio services should include the ten 220 MHz channel pairs. Similarly, in the *Maritime Third Report and Order*, the Commission concluded that it would be in the public interest to set aside two contiguous channel pairs in each of the thirty-three inland VHF Public Coast areas (VPC) for public safety users. Although the Commission stated that the ultimate use for these reserved frequencies would be decided as part of its pending public safety proceeding, the Commission concluded that these inland VPC channel pairs were a part of the public safety radio services that the Balanced Budget Act expressly exempted from competitive bidding. The Commission tentatively concludes that it should continue to include the VPC spectrum that it has set aside for public safety uses in its definition of public safety radio services. The Commission seeks comment on these tentative conclusions.

33. In light of the exemption's focus on *public safety radio services* rather than certain classes of public safety licensees, the Commission also seeks comment on whether it should interpret the exemption to apply only to spectrum that the Commission specifically allocates to public safety radio services. Should the Commission designate certain radio services or classes of frequencies within certain services as "public safety radio services" for which licenses will be assigned without competitive bidding? And, if such designations are warranted, upon what basis should the Commission make such designations? Should, for example, such designations be based on the "principal use of the spectrum" as determined by the Commission, or would other bases be more appropriate? Additionally, the Commission seeks comment on whether there are any other private radio services or frequency bands that satisfy the criteria of the public safety radio services exemption, i.e., that are used to protect the safety of life, health or property and that are not made commercially available to the public. For example, it appears that frequencies used by medical telemetry equipment may fall within this exemption.

1. Private Internal Radio Services

34. Private internal systems are traditionally operated by licensees that require highly customized mobile radio facilities for the conduct of the licensee's underlying business. In the *Competitive Bidding Second Report and Order*, the Commission concluded that the term "private services" refers to services "that were for internal use." However, private internal services are a subclassification of private services, because some private services, such as the Amateur Radio Service and the Aviation Services, are not used for internal communications. The Commission's Part 90 rules governing private land mobile radio services currently define an "internal system" as a system in which "all messages are transmitted between the fixed operating positions located on the premises controlled by the licensee and the associated mobile stations or paging receivers of the licensee." 47 CFR 90.7.

35. Because the Balanced Budget Act's exemption for public safety radio services includes "private internal radio services used by State and local governments and non-government entities," the Commission seeks comment on the definition of "private internal radio services." The Commission recognizes, for example, that for the purpose of implementing the public safety radio services exemption, its definition of "private internal radio services" will need to cover private fixed as well as private mobile radio services. The Commision therefore proposes to define private internal radio services by incorporating its definition of "private services" with its definition of internal systems in its Part 90 rules, and expanding the definition to include both fixed and mobile services. Accordingly, the Commission seeks comment on whether it should define a private internal radio service as a service in which the licensee does not receive compensation, and all messages are transmitted between fixed operating positions located on premises controlled by the licensee and the associated fixed or mobile stations or other transmitting or receiving devices of the licensee.

36. Additionally, the Commission seeks comment on whether its definition of private internal radio services should include services in which private internal systems operate on a cooperative or multiple-license basis. The term "private mobile service" as defined in Section 332(d)(3) of the Communications Act, includes mobile service that may be licensed on an "individual, cooperative, or multiple basis." *See* 47 U.S.C. 153(27). In Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services, GN Docket No. 93–252, *Second Report and Order*, 59 FR 18493 (1994) ("*CMRS Second Report and Order*"), the Commission observed that shared-use arrangements are beneficial because they allow radio users to combine resources to meet compatible needs for specialized internal communications facilities, and it decided that such arrangements would be deemed to be not-for-profit and presumptively classified as PMRS. Private internal radio systems operating on a cooperative basis or as multiple-licensed systems would fall outside a definition of private internal radio services that was strictly based on the absence of compensation to the licensee, because such arrangements may involve

cost reimbursements that could be considered compensation. Nevertheless, systems operated on a cooperative basis and multiple-licensed systems possess one of the most common characteristics of private internal radio systems: the systems are not operated as a direct source of revenue, but rather as a means of internal communications to support the day-to-day needs of the licensees' business operations or to protect the safety of their employees, customers, or the general public. Accordingly, the Commission seeks comment on whether licensees operating systems on a not-for-profit basis and under a cost-sharing agreement, on a cooperative basis, or as a multiple licensed system for internal communications to support their own operations should be classified as private internal radio services, and considered exempt, even though the licensee receives compensation.

a. Emergency Road Services

37. Section 309(j)(2)(A) stipulates that licenses issued for private internal radio services used by providers of emergency road services will be awarded without competitive bidding only if the service provider is a not-for-profit organization. The Conference Report that accompanied the legislation states that Congress did not intend this exemption to include internal radio services used by automobile manufacturers and oil companies to support emergency road services provided by those parties as part of the competitive marketing of their products. *See* Conference Report at 572. This distinction between for-profit and not-for-profit entities is not required for any other user of public safety radio services.

38. The Commission invites comment on how it should carry out Congress's intent regarding treatment of providers of emergency road services. Should the Commission limit licensee eligibility in the public safety radio services by excluding emergency road service providers that are not organized as not-for-profit entities under the laws of the state in which they reside and/or provide such services? Alternatively, should the Commission use the categories that are found in its regulations governing eligibility to hold authorizations in the Automobile Emergency Radio Service? Although both categories are eligible licensees under those regulations, the Commission distinguishes between operation of a private emergency road service for disabled vehicles by associations of owners of private automobiles and the business of providing to the general public an emergency road service for disabled vehicles. *See* 47 CFR 90.95(a)(1), (2). The Commission seeks comment on whether it should use similar definitions to distinguish between emergency road service providers that are eligible and noneligible to obtain auction-exempt licenses or permits for public safety radio spectrum.

b. State and Local Governments

39. In establishing eligibility for licensing in the newly-allocated public safety spectrum in the 700 MHz band, the Commission concluded that all state and local government entities would be presumed eligible without further showing as to eligibility. *See* The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, WT Docket No. 96–86, *First Report and Order*, FCC 98–191, 63 FR 58645, November 2, 1998 ("*Public Safety First Report and Order*"). The Conference Report accompanying the Balanced Budget Act makes clear that Congress intended the public safety radio services exemption to be broader than the definition of "public safety services" eligible for licensing in the 700 MHz band. The Commission therefore tentatively concludes that it would be consistent with legislative intent for the Commission to presume that all state and local government entities are eligible for licensing in the auction-exempt public safety radio services without further showing as to eligibility, subject to the statutory requirement that this spectrum be used to protect the safety of life, health or property and not made commercially available to the public. The Commission seeks comment on this tentative conclusion.

c. Non-government Entities

40. In establishing the eligibility of non-governmental organizations (NGOs) for licensing in the 700 MHz band, the Commission concluded in the *Public Safety First Report and Order* that NGOs must obtain written governmental approval to be eligible for licensing. However, as observed above, Congress intended the public safety radio services exemption to be much broader than the definition of "public safety services" eligible for licensing in the 700 MHz band and eligible to invoke Section 337. Unlike the definition of "public safety services," which requires NGOs to be authorized by a governmental entity whose primary mission is the provision of such services to be eligible for public safety spectrum in the 700 MHz band, the public safety radio services exemption in Section 309(j)(2) is not restricted to NGOs that are "authorized by a governmental entity." In light of this distinction, the Commission seeks comment on whether it should establish any eligibility criteria for non government entities to ensure that public safety radio services spectrum licensed to non-government entities is used to protect the safety of life, health, or property and not made commercially available to the public. Does the absence of this restriction on "non-government entities" in Section 309(j)(2)(A) suggest that non-government entities should not be required to obtain written governmental approval of their public safety radio service licenses, as they are required to do for licenses in the 700 MHz band?

41. The Commision notes that Section 309(j)(2)(A) exempts public safety radio services from auctions, but does not appear to restrict the entities that may apply for public safety radio services spectrum. The Commission recognizes that in some cases public safety entities may wish to obtain communications services on a contract basis from a commercial service provider. Comments are invited on whether it may be appropriate to permit commercial providers or other non-government entities that intend to provide public safety radio services on a contract basis to apply directly for auction-exempt spectrum, subject to the statutory requirement that this spectrum be used to protect the safety of life, health or property and not made commercially available to the public. If this were permitted, how might the Commission ensure that this spectrum is used only to protect the safety of life, health, or property and not to provide non-qualifying services to the public?

2. Frequency Pools

42. The Commission provides a pool of frequencies for public safety radio services (*i.e.*, the Public Safety Pool). The Commission recognizes that the exemption for public safety radio services provided in Section 309(j)(2)(A) is broader than the criteria the Commission has applied in determining eligibility for frequencies in the Public Safety Pool. The Commission invites comment on the ramifications of the revised Section 309(j)(2)(A) on its assignment of frequencies for public safety radio services. The Commission believes that it would be imprudent and potentially disruptive to current public safety communications to overhaul the existing frequency assignment approach for public safety pool spectrum. Therefore, the Commission seeks alternatives, such as establishing categories or frequency pools for various

types of users of public safety radio services spectrum and allocating specific frequencies within the public safety radio services to each category or frequency pool.

43. The Commission also seeks comment on how such spectrum categories or pools should be defined if it were to decide to establish such categories or pools. Should a separate pool be established for state and local government licensees or for nonprofit organizations providing emergency road services? Based on past experience, frequency pools can sometimes lead to inefficiencies where spectrum is exhausted in one pool but not another. If the Commission were to establish such a separate frequency pool, how should frequencies be apportioned with eligibles in the existing Public Safety Pool so that the Commission can minimize inefficiencies?

44. UTC, The Telecommunications Association, the American Petroleum Institute, and the Association of American Railroads have submitted a rulemaking petition that includes a proposal to create a third radio pool, in addition to the Public Safety and Industrial/Business Radio Pools already used for private radio frequencies below 470 MHz, to be known as the Public Service Radio Pool and open to entities that do not qualify for Public Safety Radio Pool spectrum, but are eligible to use the public safety radio services that the Balanced Budget Act exempted from the Commission's auction authority. *See* UTC, The Telecommunications Association, American Petroleum Institute, and Association of American Railroads Petition for Rulemaking (filed Aug. 14, 1998). The Commission notes that this approach may be feasible for other frequency bands, including PLMR frequencies above 470 MHz. The Commission seeks comment on this proposal.

45. Alternative proposals on ways to categorize public safety radio service spectrum and other PLMR spectrum also are welcome. Commenters discussing the creation of a third pool or any other means of separating auctionable from non-auctionable spectrum should consider the use of frequency coordination, the resolution of mutually exclusive applications, eligibility requirements, and the appropriate treatment of public safety radio service eligibles operating on frequencies not reallocated to the new pool, and of non-eligibles operating on frequencies that are reallocated. In addition, commenters are encouraged to submit specific quantitative information regarding the spectrum needs of public safety and non-public safety PLMR users. Necessary amendments to the Commission's Rules should also be noted.

3. Restrictions On Use

46. The Commission also seeks comment on what regulatory provisions should be established to ensure that the licensee's assigned frequencies continue to be utilized only for purposes that meet the requirements of the Balanced Budget Act's exemption from competitive bidding. For example, private wireless licensees using their systems noncommercially to protect the safety of their employees in the course of conducting routine business operations also would have the capability to use those systems for communications of a routine business nature. Section 309(j)(2)(A) requires that spectrum exempt from auctions under the public safety radio services exemption be used to protect the safety of life, health, or property and not be made commercially available to the public. In contrast, Section 337(f)(1)(A) requires spectrum in the 700 MHz band to be used for services "*the sole or principal purpose*" of which is to protect the safety of life, health, or property. 47 U.S.C. 337(f)(1)(A) (emphasis added).

47. The Commission seeks comment on the scope of permissible uses for auction-exempt services. Does the absence of the words "or principal purpose" in Section 309(j)(2) signify that licensees in these services may use their frequencies only for safety-related purposes? Alternatively, should the Commission permit licensees of auction-exempt spectrum to use their frequencies for ineligible as well as eligible purposes? If the Commission were to allow public safety radio services to be used incidentally for purposes other than safety protection, what standard should it adopt to ensure that licensees that obtain these frequencies do not circumvent the statutory mandate that spectrum be licensed without competitive bidding only for the limited purposes expressed in Section 309(j)(2)?

4. Noncommercial Proviso

48. In addition to being used to protect the safety of life, health, or property, the public safety radio services exemption to our general auction authority requires that the radio services not be "made commercially available to the public." 47 U.S.C. 309(j)(2)(A)(ii). Thus, private internal radio services that are made "commercially available to the public" would be required to be licensed through auctions. The Commission sought comment above on whether commercial providers should be eligible for licenses in the public safety radio services, provided that they do not make the radio services commercially available to the public. The Commission now addresses how the term "not made commercially available to the public" should be defined.

49. In determining what Congress meant by radio services "not made *commercially* available," the Commission is presented with some of the same considerations raised in its discussion of how to interpret "private internal radio services." One of the criteria Congress has used to distinguish commercial mobile radio services from private mobile radio services is whether service is provided for a profit. *See* 47 U.S.C. 332(d). However, the Commission has found that the distinction between CMRS and PMRS is not relevant for purposes of determining the meaning of "private services" in the context of Section 309(j). Similarly, the Commission believes that the distinction between CMRS and PMRS need not be determinative of how it defines "not made commercially available" for purposes of the auction exemption in Section 309(j)(2). Accordingly, the Commission seeks comment on how it should interpret the prohibition against public safety radio services being made commercially available. Should "not made commercially available" be defiined to have the same meaning as "private internal," *i.e.*, that the radio services are not made available for compensation? If the Commission adopts such a definition, should it also adopt an exception that would consider services to be not commercially available even though the licensee receives compensation, if the compensation is received under a nonprofit cost-sharing or cooperative agreement, or as a multiple licensed system?

50. In addition to seeking comment regarding shared use and multiple licensing with respect to the meaning of "not made commercially available," the Commission also seeks more general comment regarding multiple licensing. A "multiple-licensed" system, also known as a "community repeater," is a system for which the same transmitting equipment and spectrum is licensed to and used by more than one entity, each of whom is eligible in the same service. If the station is interconnected with the public switched network, the telephone service must be provided on a cost-shared, non-profit basis, and detailed records must be maintained. No consideration is paid, either directly or indirectly, by any participant to any

other participant for or in connection with the use of the multiple-licensed facilities.

51. In 1992, the Commission proposed eliminating multiple licensing, on the grounds that, from a user's standpoint, such facilities were indistinguishable from SMR facilities, and that users' needs could adequately be met by SMR and private carrier licensees. When the Commission implemented the 1993 Budget Act, however, it concluded that Congress recognized the benefits of allowing private radio users to enter into legitimate cost-sharing arrangements, and did not intend such arrangements to be classified as a "for-profit" CMRS service. *See CMRS Second Report and Order.* This conclusion was based upon the definition of "mobile service" adopted in the 1993 Budget Act, which defines "private" communications systems as systems that may be licensed on an "individual, cooperative, or multiple basis." The Commission discerned that the legislative intent was to provide for shared-use and multiple-licensed "private" communications systems, exempt from the competitive bidding process.

52. Thus, despite concern that these systems are often indistinguishable from commercial systems, the Commission deemed it appropriate to retain multiple licensing. To ensure that only legitimate cost-sharing arrangements were treated as not-for-profit, the Commission continued to impose on licensees disclosure requirements to prevent PMRS licensees from providing *de facto* for-profit service in competition with CMRS providers. Nevertheless, the current licensing rules have sometimes resulted in *de facto* commercial mobile service operations by the managers of multiple licensed stations, who were permitted, after the implementation of the 1993 Budget Act, to continue to assist in the operation of multiple-licensed systems.

53. A not-for-profit system structured to give an unlicensed manager sufficient operational control to provide for-profit service to customers without Commission approval is a violation of Section 310(d) of the Communications Act and the Commission's rules, for which the system license can be revoked. In addition, the licensee could be subject to reclassification as CMRS. *De facto* for-profit operations, on frequencies on which for-profit activities are prohibited, offends concepts of regulatory symmetry and interferes with the establishment of a level economic playing field. Such sham not-for-profit operations compete with CMRS licensees who are required to obtain their licenses through competitive bidding. With the potential expansion of our auction authority to include private radio services, the Commission thinks it is appropriate to revisit this issue. Accordingly, the Commission seeks comment on whether eliminating or modifying the multiple licensing rules would be appropriate.

54. In addition to seeking comment on the meaning of "not made commercially available," the Commission also invites comment on how it should define radio services "not made commercially available *to the public.*" In the *CMRS Second Report and Order,* the Commission determined the meaning of "available to the public" in the context of defining commercial mobile radio service. The Commission found in the CMRS proceeding that a service is available "to the public" if it is offered to the public without restriction on who may receive it. However, because in that rule making the Commission was determining the meaning of *commercial* mobile service, as defined in Section 332(d) of the Communications Act, it was required to include in its definition those services that are "effectively available to a substantial portion of the public." *See* 47 U.S.C. 332(d)(1)(B). The Commission found that if service is provided exclusively for internal use or is offered only to a significantly restricted class of eligible users, it is made available only on a limited basis to insubstantial portions of the public. Examples of services cited as being available only to insubstantial portions of the public were the Public Safety Radio Services, Special Emergency Radio Service, Radiolocation Services, most of the Industrial Radio Services, Maritime Service Stations, and Aviation Service Stations. The Commission seeks comment on whether it should interpret the requirement that public safety radio services not be made commercially available to the public to mean that such services may be made available only to an insubstantial portion of the public. Under such a definition, a public safety radio service could not be made available to the public without restriction *or* to any substantial portion of the public.

5. Resolution of Mutually Exclusive Applications for Services Exempt From Competitive Bidding

55. If applications for auction-exempt public safety radio services were to continue to be frequency coordinated prior to their filing with the Commission, the Commission would expect that under either site-based or geographic area licensing, incidents of mutual exclusivity in these services would be rare. However, because it is possible for mutual exclusivity to arise, the Commission seeks comment below on how it should avoid or resolve mutual exclusivity between applications for spectrum exempt from competitive bidding.

56. The Commission seeks comment on whether engineering solutions, negotiation, threshold qualifications, service regulations, or other means should be used to resolve mutual exclusivity in cases where frequency coordination is unsuccessful in avoiding mutually exclusive applications. As noted previously, the Balanced Budget Act terminated the Commission's authority to use lotteries to choose among mutually exclusive applications. Therefore, the Commission is foreclosed from using random selection in the event it receives mutually exclusive applications for licenses to use channels in a public safety radio service. Two of the remaining methods by which such applications could be resolved are comparative hearings and licensing on a first-come-first-served basis. The Commission seeks comment on these and other possible alternatives to resolving such applications in public safety radio services.

6. Application of Section 337

57. In addition to the statutory exemption for public safety radio services, providers of public safety services may obtain spectrum without engaging in competitive bidding if they are granted the use of a frequency under Section 337. Section 337, among other things, gives eligible providers of public safety services a means to obtain unassigned spectrum not otherwise allocated for public safety purposes. *See* 47 U.S.C. 337(c)(1).

58. In considering applications under Section 337, the Commission must make an initial determination as to whether the applicant is an "entity seeking to provide public safety services," which the statute defines as "services—

(A) The sole or principal purpose of which is to protect the safety of life, health, or property;

(B) That are provided—

(i) By State or local government entities; or

(ii) By nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) That are not made commercially available to the public by the provider."

47 U.S.C. 337(f)(1).

59. The Commission must grant applications filed pursuant to Section 337 if an eligible applicant demonstrates that (a) no other spectrum allocated to public safety services is immediately

available to satisfy the requested use, (b) the requested use will not cause harmful interference to other spectrum users entitled to protection from such interference, (c) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in that geographic area, (d) the unassigned frequency has been allocated for its present use for at least two years, and (e) granting the application is in the public interest. 47 U.S.C. 337(c)(1). If an applicant's showing fulfills these criteria, the Commission must then waive any requirement of its regulations or the Communications Act (other than regulations regarding harmful interference) to the extent necessary to permit the requested use. After analysis and consideration of these criteria, the Commission must either disapprove the request or assign the specifically requested spectrum to the applicant. The statutory criteria indicate that an eligible applicant must request specific unassigned frequencies. Thus, the Commission tentatively concludes that an eligible entity must specify the spectrum it seeks to use, and cannot simply apply for the assignment of any unassigned spectrum and require the Commission to locate and select an appropriate frequency. If any one of the five criteria is unfulfilled, the application will not be granted.

60. The Commission seeks comment on its application of the statutory criteria. The Commission particularly seeks comment regarding the showing necessary to demonstrate that the grant of the application would be in the public interest, and the requirement that the frequency applied for be "unassigned." Specifically, the Commission requests comment on whether it would be in the public interest for applicants seeking to provide public safety services to apply for frequencies that, while not yet licensed to another entity, have already been identified and designated by the Commission as frequencies to be licensed by auction.

D. Establishing the Appropriate Licensing Scheme

1. Obligation to Avoid Mutual Exclusivity

61. The Commission inquires about how the revisions to Sections 309(j)(1) and 309(j)(2) affect its licensing obligations and methodologies. As discussed above, the Balanced Budget Act makes the acceptance of mutually exclusive license applications the only criterion for auctionability, subject to the obligation to avoid mutual exclusivity. Because services previously determined to be nonauctionable are generally licensed by processes that do not result in the filing of mutually exclusive license applications, unless the Commission alters these licensing schemes, licenses in these services will not be auctionable under the Balanced Budget Act.

62. The Balanced Budget Act of 1997 simplified the Commission's determinations of which services are auctionable under Section 309(j). Section 309(j)(2) no longer requires the Commission to base its determinations on whether the service is used principally for subscriber-based services. Unless a service is expressly exempted, subject to its obligation under Section 309(j)(6)(E) avoid mutual exclusivity in the public interest, the Commission is required to assign initial licenses by auctions when it has accepted mutually exclusive applications for such licenses. Thus, if not exempted by the statute, a service will be auctionable if the Commission implements a licensing process that permits the filing and acceptance of mutually exclusive applications.

63. In revising the Commission's auction authority, Congress retained and highlighted its obligation under Section 309(j)(6)(E) to continue to use various means to avoid mutual exclusivity." The Commission seeks comment on whether the express reference to its obligation under Section 309(j)(6)(E) in the general auction authority provision changes the scope or content of that obligation. In addition, the Comission notes that the Balanced Budget Act has not altered the criteria in Section 309(j)(3) that it must use to determine that a particular licensing scheme is in the public interest. In establishing licensing schemes or methodologies under the Balanced Budget Act (for both new and existing, commercial and private services), how should the Commission apply the public interest factors in Section 309(j)(3)? With respect to services currently using licensing schemes in which mutually exclusive applications are not filed, did Congress, in emphasizing the Commission's obligation to avoid mutual exclusivity, intend that it give greater weight to that obligation and less to other public interest objectives?

64. The Commission has previously interpreted Section 309(j)(6)(E) to impose an obligation to avoid mutual exclusivity in defining licensing schemes for commercial services only when it would further the public interest goals of Section 309(j)(3). For example, in the 800 MHz Specialized Mobile Radio ("SMR") service, after considering the appropriateness of other license assignment methods, the Commission concluded that those other methods were not in the public interest and that competitive bidding was the most appropriate method of assigning licenses because it would allow the most expeditious access to the spectrum. The Commission formerly used site-by-site licensing and a "first-come, first-served" license assignment method in the 800 MHz SMR service for channels that were primarily used to provide dispatch radio service. In recent years, however, a number of SMR licensees have expanded the geographic scope of their services, aggregated channels, and developed digital networks to enable them to provide a type of service comparable to that provided by cellular and PCS operators. The Commission found site-by-site licensing procedures cumbersome for systems comprised of several hundred sites, and was concerned that site-by-site licensing impaired an SMR licensee's ability to respond to changing market conditions and consumer demand. The Commission therefore replaced site-specific licensing with geographic area licensing and adopted competitive bidding procedures for the upper 200 channels in the 800 MHz SMR band. On reconsideration of its decision, the Commission rejected arguments by petitioners contending that Section 309(j)(6)(E) prohibits it from conducting an auction unless it first attempts alternative licensing mechanisms to avoid mutual exclusivity. *See also Fresno Mobile Radio, Inc.* v. *FCC*, No. 97–1459 (D.C. Cir. Feb. 5, 1999) (Commission's decision to award geographic area licenses in the 800 MHz SMR band by auction was within its discretion).

65. In licensing direct broadcast satellite ("DBS") channels, the Commission similarly determined that it would best serve the public interest to reassign reclaimed DBS channels by auction. This decision was based on a conclusion that the pro rata distribution of reclaimed channels among existing permittees would result in too few channels to provide any single permittee sufficient capacity for a viable system. The Commission therefore decided that even if reassigning channels on a pro rata basis could avoid mutual exclusivity, it would be more consistent with the public interest to award the channels by auction, in a block large enough to provide competitive DBS service. The U.S. Court of Appeals upheld this decision, ruling that Section 309(j)(6)(E) does not require

that the Commission adhere to a particular licensing scheme or methodology that is not found to serve the public interest in order to avoid mutual exclusivity in licensing proceedings. *See DIRECTV, Inc.* v. *FCC*, 110 F.3d 816, 828 (D.C. Cir. 1997). The court of appeals held that the statutory obligation to avoid mutual exclusivity requires the Commission to do so within the framework of its existing policy of promoting competition and prompt provision of DBS service.

66. The Commission notes that its decisions to establish geographic licensing have affected its balancing of its Section 309(j)(6)(E) obligation with the public interest objectives in Section 309(j)(3). Under the 1993 Budget Act, the Commission implemented its auction authority by establishing geographic licensing for particular auctionable services, finding in each case that such a licensing scheme furthered the public interest objectives of efficient spectrum use, expeditious licensing, and rapid delivery to the public of new technologies and services as expressed in Section 309(j)(3). In particular, the Commission found that pre-defined geographic service areas for many services have significant advantages over site-by-site licensing. The Commission has also found that licensing by geographic area facilitates aggregation by licensees of smaller service areas into seamless regional and national service areas and allows development of strategic regional and national business plans. In addition, the Commission has found that geographic area licensing provides licensees with greater buildout flexibility and is easier for the Commission to administer. For a number of services, these changes represent dramatic reductions in the regulatory burdens on both licensees and the Commission. The Commission made these findings even though geographic licensing could lead to the filing of mutually exclusive applications, which, under Section 309(j)(6)(E), the Commission has an obligation to attempt to avoid.

67. Against this historical backdrop, the Commission seeks comment on whether its previous analysis of its obligation under Section 309(j)(6)(E) is still appropriate in view of the revisions to Section 309(j)(1) and 309(j)(2). When choosing a licensing scheme for new services and in deciding whether to change the licensing scheme for existing services, should the Commission continue to evaluate its obligation to avoid mutual exclusivity by weighing the public interest objectives of Section 309(j)(3)? Alternatively, does the specific incorporation in Section 309(j)(1) of the Commission's obligation under Section 309(j)(6)(E) suggest an independent obligation to pursue strategies that avoid mutual exclusivity?

2. Exclusion of Satellite Services

68. The Commission specifically notes that the authorization of satellite services, due to international concerns, may justify the use of licensing procedures that provide a means to continue to avoid mutual exclusivity. In the Direct Broadcast Satellite Service and the Digital Audio Radio Satellite Service, the Commission has found that auctions of satellite licenses would serve the public interest. In both cases, the spectrum in question had been identified in international treaties as uniquely within the regulatory authority of the United States. Most other satellite systems, however, operate in frequency bands not similarly identified, which are allocated for mobile satellite services on a world-wide basis. As a consequence, how much money entities might bid and even their willingness to bid at all will be affected by the degree of their interest in providing global service and by their expectations concerning licensing requirements and costs in other countries. For example, a satellite system operator proposing to serve only the United States may be willing to bid higher for a U.S. license than a satellite system operator proposing to serve multiple regions, because the U.S.-only system would face considerably fewer contingencies. Thus, auctions might prevent entry by satellite systems interested in providing global service, even though these systems may provide services valued more highly by consumers. Coordinated multinational auctions might properly address the interdependency between national licensing decisions and international provision of service. However, international arrangements for transnational use of such frequency bands currently are premised on coordination—using engineering solutions and other methods to avoid harmful interference—among systems. A coordinated multilateral auction is likely to demand substantial time and resources by multiple administrations, could raise national sovereignty and other spectrum access issues, and thus, could substantially delay service to the public. Thus, bearing in mind the goals of Sections 309(j)(3) (A), (B) and (D), the Commission has undertaken considerable efforts to develop solutions that would avoid mutual exclusivity among satellite systems. For these reasons, the Commission is not seeking comment in this proceeding on satellite services. Nor are any conclusions the Commission reaches in this proceeding intended to constrain its discretion under Section 309(j)(6)(E) as it relates to satellite services, or to specify any particular process for resolution of potential mutual exclusivity among satellite service applications.

3. Considerations of License Scope

69. The Commission also seeks comment on several issues that may influence its choice of a licensing scheme in some of the frequency bands currently being licensed in ways that do not allow the filing of mutually exclusive applications. The Commission asks whether the use of geographic area licensing in these bands would be feasible and whether geographic area licensing or another licensing scheme would better serve its public interest goals. In services or classes of frequencies for which the Commission may ultimately adopt geographic area licensing, it seeks comment on how to convert existing licensing to geographic licensing and on the size of the licensing area that would be desirable.

70. In light of Congress's mandate to use competitive bidding to promote rapid provision of new services to the public without administrative delay, the Commission seeks comment on whether resolution of mutually exclusive applications on a "per station" basis is feasible. Would the use of geographic area licensing speed assignment of new channels and facilitate further build-out of wide-area systems? Specifically, the Commission seeks comment on the costs and benefits of geographic licensing in the frequency bands discussed above. What are the likely effects on incumbent systems and potential new entrants for such services if geographic area licensing is utilized? The Commission also seeks comment on whether any of the shared bands are so heavily used that adopting a geographic area licensing scheme would serve no purpose, because so little "white space" would be available to geographic area licensees that there would be no interest in applying for the geographic area licenses.

71. The Commission seeks comment in particular on the PLMRS frequencies below 470 MHz that are licensed on a shared basis and are heavily used by many smaller PLMRS licensees. The Commission recently completed a complex multi-year proceeding to maximize spectrum efficiency in these bands through engineering solutions. In light of the extensive modifications to its regulatory and technical framework adopted to further the efficient use of these bands, the Commission seeks comment on whether the public interest

would best be served by retaining the current licensing scheme rather than adopting geographic licensing and competitive bidding.

72. The Commision notes that some of the spectrum currently allocated for private internal use is also used to provide subscriber-based services, pursuant to intercategory sharing or rule waiver. Similarly, for some frequencies licensed on a shared basis, a licensee can nonetheless obtain exclusive use of a frequency by meeting certain loading requirements. Thus, the Commission seeks comment on whether, in deciding if geographic area licensing would be appropriate for a given radio service or class of frequencies, it should consider the actual purpose for which the spectrum is used or proposed to be used, as well as the purpose for which the spectrum is currently allocated.

73. For services in which the Commission decides to adopt competitive bidding, is there a licensing scheme that it could use as an alternative to geographic area licensing? Are there any services in which the Commission presently uses site-specific licensing that it should continue to license on a site-by-site basis? The Commission notes, in particular, that some private users have argued that their unique geographic coverage requirements make it difficult for these needs to be met through geographic area licensing schemes. The Commission also seeks comment on how, assuming geographic area licensing is used, its implementation could affect the private land mobile radio frequency coordination process. In its *39 GHz Report and Order*, ET Docket No. 95–183, FCC 97–391, 63 FR 6079, February 6, 1998, the Commission observed that frequency coordination techniques for emerging point-to-point technologies are no longer adequate. When geographic area licenses are to be awarded through competitive bidding, what role, if any, should the frequency coordinators serve? In which services and frequency bands, and on what conditions would frequency coordination continue to serve the public interest?

74. The Commission also seeks comment on ways in which it might convert existing licensing to geographic licensing. A Petition for Rulemaking filed by the American Mobile Telecommunications Association, Inc., (AMTA) proposes to require most Part 90 licensees in the bands between 222 MHz and 896 MHz, excluding Public Safety licensees, to use technology that achieves the equivalent of one voice path per 12.5 kHz of spectrum, using a 25 kHz frequency, and to involuntarily modify to secondary status the licenses of licensees that fail to meet this requirement after a transition period. *See* AMTA Petition for Rulemaking, RM–9332, Public Notice, Report No. 2288 (rel. July 31, 1998). Alternatively, the Commission could deal with licensees that fail to migrate to more efficient equipment by relocating them to shared frequency bands, which would be more compatible with the incumbents' present use because it would prevent inefficient users from benefiting from the capacity created by other, more spectrum-efficient, licensees. Relocating incumbents to shared spectrum might also be appropriate for site-based incumbents in bands that are converted to geographic area licensing, for similar reasons of compatibility. The Commission seeks comment on the use of relocation to facilitate the conversion of spectrum to geographic licensing.

75. Because the Commission believes that the geographic definition used should correspond as much as possible to the geographic area that licensees seek to serve, it proposes to establish the size of geographic licensing areas in service-specific proceedings, as it has done in the past. However, the Commission seeks comment on whether smaller geographic areas would be desirable for private internal radio services, because they would best approximate the service area desired by the small businesses and other users that typically characterize the private radio services. The Commission also seeks comment on whether in any of the services that will be subject to competitive bidding for the first time, it would be beneficial to establish geographic licensing areas smaller than EAs. Are there any other geographic boundaries that could be used to establish smaller geographic licensing areas, such as the boundaries of existing counties or boundaries established by the U.S. Postal Service to assign zip codes?

76. The Commission has found the short-form application process used in conjunction with its auctions to be the most efficient means of determining if mutual exclusivity exists. The Commission seeks comment on whether, in those services or classes of services, if any, for which it will be required to assign licenses by competitive bidding, it should continue to use a short-form application process to determine which license applications are mutually exclusive. The Commission seeks comment on whether there is a cost-effective alternative to use of the short-form application process as a means of determining when applications are mutually exclusive. The Commission also seeks comment on whether there are any other auction designs or procedures, or service regulations that could be used to limit the occurrence of mutual exclusivity in services that have become auctionable under its expanded authority.

77. Finally, the Commission notes that it traditionally has established licensing on a service-specific basis, taking into account the particular characteristics of the service, including its purposes and the technology to be used. Similarly, although the Commission adopted a uniform set of competitive bidding rules in the *Part 1 Third Report and Order*, to provide for a more consistent and efficient licensing process for all auctionable services, it also indicated that it would continue to adopt service-specific auction procedures where it finds that its general competitive bidding procedures are inappropriate. Thus, although the Commission seeks comment in this *NPRM* on the licensing schemes and various aspects of auction design and methodology that should be applied to services newly auctionable under the revised statute, it recognizes that many issues are more appropriately addressed on a service-specific basis. The Commission may therefore use service-specific proceedings to tailor licensing, service, and auction rules of specific services or classes of services to implement decisions ultimately taken in this and any subsequent dockets.

IV. Auction Design

A. Competitive Bidding Methodology and Design

78. As explained in paragraph 23, *supra*, even though a reference to the public interest objectives outlined in Section 309(j)(3) is no longer included in Section 309(j)(2), the objectives of the Commission's competitive bidding system remain unchanged. In designing competitive bidding methodologies, Section 309(j)(3) requires that the Commission promote development and rapid deployment of new technologies and services; promote economic opportunity and competition, and ensure that new and innovative technologies are readily accessible to Americans; recover for the public a portion of the value of the spectrum; and promote efficient and intensive use of the electromagnetic spectrum. For those services that the Commission determines are potentially auctionable as a result of the Balanced Budget Act redefining its auction authority, the Commision seeks comment below on how to implement competitive bidding

in a manner that will further those objectives.

79. The Commission has previously observed that the use of competitive bidding to assign geographic overlay licenses in private radio services would promote spectrum efficiency. This approach would promote competition among licensees, which, in turn, would provide market-based incentives for efficient spectrum use. In particular, incumbents would be able to continue existing operations without harmful interference, and overlay licensees would be able to negotiate voluntary mergers, buyouts, frequency swaps, or similar arrangements with incumbents. Thus, the overlay licensee would incur an opportunity cost if spectrum is not used as efficiently as possible and would have incentives to promote spectrum efficiency. Another method for introducing market-based incentives and encouraging greater spectrum efficiency in the private radio service bands is to implement market-based user fees as an alternative to, or in conjunction with, competitive bidding. The Commission has previously sought comment on the implementation of user fees and it continues to believe that market-based user fees are a desirable means for encouraging greater spectrum efficiency. However, the Commission does not currently have statutory authority to impose spectrum user fees.

80. The Commission is cognizant of private wireless operators' concerns about their ability to compete for spectrum in the open market with commercial wireless service providers operating their systems as a direct source of revenue. The Commission realizes that some private wireless licensees may be concerned that auctioning licenses for private internal radio services will lead to a concentration of licenses in the hands of a few operators in each market to the detriment of small businesses. With these concerns in mind, the Commission seeks to develop a competitive bidding process that is tailored to the specific characteristics of the private radio services, the various purposes for which spectrum in those services is used, and the needs of the various types of entities holding licenses in those services.

81. In many of its previous auctions, the Commission has used the simultaneous multiple-round competitive bidding design. In a simultaneous multiple-round auction, bidding is open on all licenses or permits at once, and may remain open on all licenses until no more bids are received on any license. By contrast, in a sequential auction, licenses or permits are auctioned one at a time, and bidding ends on one license before bids are accepted for another license. Simultaneous multiple-round bidding has the advantage of affording bidders more information during the auction concerning the value that competing bidders place on what is being auctioned than is the case with single-round or sequential bidding. For this reason, simultaneous multiple-round bidding is more likely to result in the party that values the spectrum the most acquiring the license. Section 1.2103(a) of the Commission's rules, 47 CFR 1.2103(a), sets out the various types of auction designs from which the Commission may choose to award licenses for services or classes of services subject to competitive bidding. However, under Section 309(j) the Commission also has authority to design and test other auction methodologies. For example, in Section 3002(a) of the Balanced Budget Act, Congress directed that the Commission design and test competitive bidding using a contingent combinatorial bidding system. Combinatorial bidding, also known as package bidding, allows bidders to place single bids for groups of licenses.

82. The Commission seeks comment on whether alternate competitive bidding designs and methodologies should be considered for any private radio services that may be determined to be auctionable as a result of the Balanced Budget Act. Would the same auction methodology be appropriate for all newly auctionable services or are different methodologies warranted? Should the type of auction vary depending on the type of private service involved, the number of licenses at stake, the number of bidders that are likely to participate, and the degree to which interdependence may be important to those likely to bid on a license in a particular service or band?

83. The Commission also recognizes that private internal radio service licensees using spectrum to conduct their day-to-day business operations may not be able to wait a significant amount of time to obtain authorizations for the frequencies they need to conduct their businesses. The Commission therefore seeks comment on the frequency with which it should conduct auctions of private radio services spectrum that it determines is auctionable, and whether it should conduct such auctions at regularly scheduled intervals.

B. Eligibility Requirements

84. Because private radio services are dedicated to use by a defined group of eligible users, the Commission's service regulations set forth specific limitations on who is eligible to use each service. For private services that may be subject to competitive bidding for the first time, the Commission seeks comment below on whether such eligibility restrictions should limit who is eligible to participate in the auctions of spectrum in those services. The Commission also seeks comment on other means by which it can tailor a competitive bidding system to ensure that private wireless users have a reasonable opportunity to obtain sufficient spectrum to meet the needs of their day-to-day business operations.

85. With respect to private radio services that may be licensed using competitive bidding, the Commission seeks comment on whether it should conduct limited-eligibility auctions by establishing eligibility criteria that restrict the types of entities that may bid on such auctionable spectrum. If the Commission decides to conduct limited-eligibility auctions, how should it define the class of eligible bidders? For services that may be auctionable for the first time, should the Commission define eligibility to bid in the same manner as it has previously defined eligibility to hold an authorization in that service? For each auctionable service, should the Commission establish multiple classes of eligible applicants and assign priority status to certain classes, so that applicants with higher priority classifications would be allowed to bid on licenses before applicants with lower priority classifications?

86. Should the class or classes of entities eligible to bid in a spectrum auction for private radio services be based only on the purpose for which the spectrum will be used, or should the Commission also establish eligibility criteria based on the size of the applicant? What other standards could the Commission use to establish eligibility to bid on auctionable private radio services spectrum? If the Commission establishes size standards for eligibility, should it adopt the Small Business Administration's (SBA) size standards under the Standard Industrial Classifications ("SIC"), *see* 13 CFR 121.201, or should it establish size standards on a service-specific basis, taking into account the characteristics and capital requirements of particular private services?

87. If the Commission decides to establish size standards on a service-specific basis, should it measure an applicant's size by gross revenues, total assets, or some other standard? In the *Part 1 Third Report and Order*, the Commission decided that its service-

specific small business definitions will be expressed in terms of average gross revenues over the preceding three years "not to exceed" particular amounts, because it believes that average gross revenues provide an accurate, equitable, and easily ascertainable measure of business size. Should the Commission similarly adopt average gross revenues as a measure of business size for the purpose of determining eligibility for auctionable private radio services spectrum? If the Commission decides to use average gross revenues as its measure of applicant size, should it use the uniform definition of gross revenues that it adopted for all auctionable services in its Part 1 rules? *See* 47 C.F.R. 1.2110(m). If applicant eligibility is to be based on gross revenues or total assets, what dollar amounts should be set as the eligibility thresholds?

88. The Commission seeks comment on whether entities eligible for licenses in the public safety radio services should also be eligible to bid competitively with other applicants for frequencies allocated for private internal or commercial use. Applicants seeking spectrum for public safety radio services without bidding competitively are able to apply for spectrum that the Commission has specifically allocated for that purpose or file a waiver request for unassigned spectrum pursuant to Section 337(c). However, the Commission could allow those same entities to participate in auctions of other spectrum that it has designated for private or commercial radio services. The Commission seeks comment on this proposal.

89. The Commission also requests comment on whether providers of commercial wireless telecommunications services should be included in one or more of the classes of entities eligible to bid on auctionable private radio service spectrum. The Commission seeks comment on the criteria that should be used to distinguish between applicants seeking spectrum for use in conducting their underlying businesses and those seeking to use spectrum as providers of commercial wireless telecommunications services. Should commercial telecommunications service providers be allowed to bid on spectrum allocated for private radio services, only if they commit to using the spectrum to meet the private communications needs of other entities eligible to hold licenses in the private radio services?

90. Another approach to auctioning spectrum for private radio services would be to permit any qualified entity to bid on such spectrum, but to establish rules that either set aside specific licenses or confer certain financial benefits, such as bidding credits, on applicants that meet certain criteria. The Commission seeks comment on what eligibility criteria it should employ if it decides to establish a special class of licensee for the private internal radio services. As an alternative to business size standards, should the Commission establish spectrum caps that, if exceeded, would preclude eligibility for such spectrum set-asides or favorable financial treatment?

C. Band Manager Licenses

91. Today, applicants for PLMRS licenses must obtain a frequency recommendation from a certified coordinator in order to prosecute a license application before the Commission. The certified coordinators base their frequency recommendations on detailed operational and technical requirements set forth in Part 90 of our Rules. In considering how private radio services should be licensed to meet current and projected needs for internal communications capacity, the Commission seeks comment on whether the public interest would be served by establishing a new class of licensee called a "Band Manager."

92. As considered here, a Band Manager would be eligible to apply for a private radio license, with mutually exclusive applications subject to resolution through competitive bidding. The Commission's principal role would be to allocate spectrum for private services, establish the size and scope of the Band Manager license, and conduct auctions if mutually exclusive applications are received. As a condition of the Band Manager license, the Band Manager would be required to restrict its operations to the offering of internal communications services and/or capacity to an identified class of private radio eligibles. A Band Manager would be authorized to sublicense portions of its license to specific eligible users for a length of time not to exceed the expiration of the initial license term. Under this approach, the Band Manager would remain a Commission licensee, and would be held solely responsible for its sublicensor's compliance with the Commission's rules. The Commission notes that the Band Manager may be akin to a commercial licensee that offers capacity on its system, via resale, for example, to an end user that is not directly licensed by the Commission. Band Manager sublicense arrangements would be accomplished through private contractual arrangements between the Band Manager and eligible users, in a manner similar to agreements reached between commercial licensees and resellers.

93. At the outset, the Commission seeks comment on how the concept of a Band Manager fits within its overall spectrum management responsibilities. For example, would the creation of a Band Manager be consistent with the Commission's spectrum management obligations under various sections of the Communications Act? *See, e.g.*, 47 U.S.C. 1, 301, 303(c), (d). The Commission also seeks comment on whether this concept is consistent with its obligation to determine whether the public interest, convenience and necessity will be served by the grant of each application filed with the Commission for use of the radio spectrum. *See* 47 U.S.C. 309(a). In this regard, the Commission seeks comment on whether Band Managers, as described above, would effectively be allocating spectrum or assuming the Commission's spectrum management responsibilities, or simply acting as licensees with various types of end user customers.

94. The Commission notes that private radio systems serve a wide variety of specialized communications needs that historically have not been fulfilled by commercial service providers. Because market forces have not, to date, played a role in the availability and licensing of private spectrum, the Commission lacks a reliable method for objectively gauging current and future demand for private spectrum. Making a Band Manager license available at auction for the sole purpose of making spectrum available for private radio service users may enable the Commission to use market forces to determine private spectrum requirements.

95. Creation of the Band Manager license could further privatize the Commission's licensing of private radio spectrum. Competition among Band Managers would serve to regulate price, quality, and availability of services. Private radio users could generally benefit through assured availability of the types of quality, customized services that may not be readily available from cellular, paging, PCS or SMR service providers. Competition among Band Managers would ensure that the available spectrum is used in the most economically efficient manner to meet the varied and assorted needs of the private user community. The Commission seeks comment on the costs and benefits of Band Manager licenses relative to alternative methods of providing internal communications services. To what extent can licensees such as PCS providers currently meet

the requirements of private users with commercial services? Can such licensees already exercise some, or all, of the functions of a Band Manager licensee by sublicensing spectrum to private users? If so, to what extent are they doing so? Are they likely to expand such sublicensing arrangements in the future as the demand for private uses increases? Would restrictions on eligible users and uses attached to Band Manager licenses be an appropriate response to a market failure that discourages current licensees from acting as Band Managers? To what extent can partitioning and disaggregation of current licenses meet the demand for internal communications capacity? Compared to the current system of frequency coordination and direct licensing of private users, would Band Managers ensure that spectrum is used more efficiently? Would allowing Band Managers to charge private users for spectrum use tend to discourage spectrally wasteful and low value uses? Would Band Managers have a greater incentive than frequency coordinators to consider future spectrum requirements when making spectrum available for current uses because their profit is more closely tied to maximizing the value of the spectrum over the entire expected license term?

96. In addition to comment on the general concept of the Band Manager license, the Commission asks for comment on the full range of implementation issues. If adopted, where might Band Manager licenses best be applied? Should they be limited to any newly available spectrum for private radio services or should they be created as overlay licenses on certain bands already allocated for private radio services? Should the Commission establish any additional eligibility or use restrictions in connection with the Band Manager license, and if so, what are the public interest benefits that would result from such additional restrictions? In this respect, the Commission seeks comment on how it can ensure fair and nondiscriminatory access by private radio users to spectrum licensed to a Band Manager in the user's geographic area. Additionally, should the Commission adopt rules that limit to private uses spectrum that is licensed to Band Managers and/or sublicensed to eligible users? The Commission asks for comment on whether the Band Manager should be authorized to partition and disaggregate its license, and if so, should there be any limitations on this authority, or should the Band Manager be required to retain some portion of its license? The Commission also seeks comment on whether it should impose buildout or use requirements on Band Managers to ensure that spectrum assigned to Band Managers is used efficiently. The Commission seeks comment on other requirements that it could adopt to ensure that spectrum licensed to Band Managers would be used to meet the varied needs of the private user community. Finally, the Commission seeks comment on the enforcement measures, including license cancellation, to which a Band Manager licensee should be subject if it administers its spectrum in a manner that is inconsistent with the requirements of the Commission's service rules.

97. The Commission also seeks comment on whether an applicant for a Band Manager license should receive priority over other competing bidders through use of some level of bidding credit. Commenters should also address whether the Commission should conduct auctions that are limited to the grant of Band Manager licenses, or whether it should hold auctions for particular blocks of spectrum, with the Band Manager licenses being one of many potential uses.

98. As noted, it would be essential that each geographic area have several competing Band Managers so that market forces would substitute for regulation of rates and services. The Commission therefore seeks comment on whether it should grant more than one Band Manager license in a geographic area to allow for competition among Band Managers. The Commission also asks for comment on what types of limitations on ownership and control of Band Manager licenses should be imposed to preserve competition and market-based incentives. Commenters should address both the amount of spectrum contained in each Band Manager license, as well as the geographic area that each such license might encompass. In addition, commenters should provide recommendations for attribution of ownership and control of Band Manager licenses.

D. Processing of New Applications

99. In services where the Commission has transitioned to geographic area licensing and auction rules, it has suspended acceptance of new license applications until such time as it adopts final rules and begins accepting applications to participate in the auction for spectrum in those services. The Commission has stated that the purpose of such an application freeze is to deter speculative applications and ensure that the goals of the rule making are not compromised.

100. For services in which licenses will be assigned by auction for the first time, the Commission seeks comment on the measures it should take to prevent applicants from using the current application and licensing processes to engage in speculative activity prior to its adoption of auction rules, thus limiting the effectiveness of the decisions made in this proceeding. One approach would be to temporarily suspend acceptance of applications for new licenses, amendments, or major modifications in frequency bands for which the Commission proposes to adopt competitive bidding in the future. Alternatively, the Commission could adopt interim rules imposing shorter time periods for construction or build-out. For example, the Commission could impose a construction deadline as short as five months from licensing, which might be an effective means of ensuring that applicants seek only those licenses for which they have an immediate need. The Commission seeks comment on this proposal and on whether there are any other measures that would deter speculative applications in services where it proposes to assign licenses by auction.

V. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

101. This is a permit-but-disclose notice and comment rule making proceeding. Ex parte presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in Commission rules. *See generally* 47 CFR 1.1202, 1.1203, and 1.1206.

B. Initial Regulatory Flexibility Analysis

102. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") of the possible impact on small entities of the proposals suggested in the *Notice of Proposed Rule Making*. The IRFA is set forth below and in Appendix A of the *NPRM*. Written public comments are requested on the IRFA. These comments must be filed in accordance with the same filing deadlines as comments on the *NPRM*, and they must have a separate and distinct heading designating them as responses to the Initial Regulatory Flexibility Analysis. The Commission's Office of Public Affairs, Reference Operations Division, will send a copy of this *NPRM*, including the IRFA, to the

Chief Counsel for Advocacy of the Small Business Administration, in accordance with the Regulatory Flexibility Act, *see* 5 U.S.C. 603(a).

C. Initial Paperwork Reduction Act of 1995 Analysis

103. This *NPRM* contains neither a new nor a modified information collection.

D. Comment Dates

104. Pursuant to Sections 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before July 2, 1999, and reply comments on or before August 2, 1999. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 Fed. Reg. 24121, May 1, 1998.

105. Comments filed through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

106. Parties who choose to file by paper must file an original and four copies of each filing. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. If more than one docket or rulemaking number appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Room TW–A325, Washington, DC 20554. In addition, a courtesy copy should be delivered to Gary D. Michaels, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Washington, DC 20554.

107. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Information Center, 445 Twelfth Street, SW, Room CY–A257, Washington, DC 20554.

E. Further Information

108. For further information concerning this *Notice of Proposed Rule Making*, contact Gary D. Michaels, Auctions and Industry Analysis Division, (202) 418–0660, or Scot Stone, Public Safety and Private Wireless Division, (202) 418–0680, Wireless Telecommunications Bureau, Federal Communications Commission, Washington, DC 20554.

F. Ordering Clauses

109. Accordingly, it is ordered that, pursuant to Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C.154(i), 303(r), and 309(j), this *Notice of Proposed Rule Making* is hereby adopted.

110. It is further ordered that the Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Initial Regulatory Flexibility Analysis

111. As required by the Regulatory Flexibility Act (RFA), *see* 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Notice of Proposed Rule Making (NPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided above in paragraph 104. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a).

A. Need for and Objectives of the Proposed Rules

112. This rule making proceeding is initiated to evaluate the impact of the Balanced Budget Act of 1997 on the Commission's auction authority for wireless telecommunications services. The Balanced Budget Act revised the original auction standard established under the Omnibus Budget Reconciliation Act of 1993. The *NPRM* seeks comment on how the Balanced Budget Act's amendments to Section 309(j) affect the Commission's determinations of what services are auctionable. The *NPRM* also seeks comment on the scope of the Balanced Budget Act's exemption from competitive bidding for licenses and permits issued for public safety radio services. The *NPRM* also seeks comment on a Petition for Rule Making that proposes the establishment of a new radio service pool for use by electric, gas, and water utilities, petroleum and natural gas pipeline companies, and railroads, and on implementation of Section 337(c), which provides for the licensing of unassigned frequencies under certain circumstances to entities seeking to provide public safety services. In addition, the *NPRM* seeks comment on whether the Balanced Budget Act's amendments to Section 309(j) require the Commission to revise its licensing schemes and license assignment methods to provide for competitive bidding in services that it previously determined were not auctionable, and on how such schemes for new services might be established. Additionally, the *NPRM* seeks comment on how the Commission might implement competitive bidding to award licenses in services that will be auctionable for the first time.

B. Legal Basis

113. This action is authorized under Sections 4(i), 303(r), and 309(j) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 309(j).

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

114. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. *See* 5 U.S.C. 601(3). Under the Small Business Act, a "small business

concern" is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the Small Business Administration (SBA). 15 U.S.C. 632. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." 5 U.S.C. 601(4). Nationwide, as of 1992, there were approximately 275,801 small organizations. "Small governmental jurisdiction" generally means "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than 50,000." 5 U.S.C. 601(5). As of 1992, there were approximately 85,006 such jurisdictions in the United States. This number includes 38,978 counties, cities, and towns; of these, 37,566, or 96 percent, have populations of fewer than 50,000. The U.S. Bureau of the Census estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 81,600 (91 percent) are small entities. The policies and rules proposed in the *NPRM* would affect a number of small entities who are either licensees or who may choose to become applicants for licenses in wireless services. Below, the Commission further describes and estimates the number of small entity licensees and regulatees that may be affected by the proposed policies and rules, if adopted.

a. Cellular Radiotelephone Service

115. The Commission has not developed a definition of small entities applicable to cellular licensees. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone (wireless) companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. *See* 13 CFR 121.201 (Standard Industrial Classification (SIC) Code 4812). The size data provided by the SBA does not enable us to make a meaningful estimate of the number of cellular providers which are small entities because it combines all radiotelephone companies with 1000 or more employees. The 1992 Census of Transportation, Communications, and Utilities, conducted by the Bureau of the Census, is the most recent information available. This document shows that only twelve radiotelephone firms out of a total of 1,178 such firms which operated during 1992 had 1,000 or more employees. Therefore, even if all twelve of these firms were cellular telephone companies, nearly all cellular carriers were small businesses under the SBA's definition. The Commission assumes, for purposes of this IRFA that nearly all of the current cellular licensees are small entities, as that term is defined by the SBA.

116. The most reliable source of information regarding the number of cellular service providers nationwide appears to be data the Commission publishes annually in its Telecommunications Industry Revenue report, regarding the Telecommunications Relay Service (TRS). The report places cellular licensees and Personal Communications Service (PCS) licensees in one group. According to the data released in November, 1997, there are 804 companies reporting that they engage in cellular or PCS service. It seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees; however, the Commission is unable at this time to estimate with greater precision the number of cellular service carriers qualifying as small business concerns under the SBA's definition. For purposes of this IRFA, the Commission estimates that there are fewer than 804 small cellular service carriers.

b. Broadband and Narrowband PCS

117. Broadband PCS. The broadband PCS spectrum is divided into six frequency blocks designated A through F, and the Commission has auctioned licenses in each block. Frequency blocks C and F have been designated by the Commission as "entrepreneurs' blocks," and participation in auctions of C and F block licenses is limited to entities qualifying under the Commission's rules as entrepreneurs. The Commission's rules define an entrepreneur for purposes of C and F block auctions as an entity, together with affiliates, having gross revenues of less than $125 million and total assets of less than $500 million at the time the FCC Form 175 application is filed. For blocks C and F, the Commission has defined "small business" as a firm that had average gross revenues of less than $40 million in the three previous calendar years, and "very small business" has been defined as an entity that, together with its affiliates, has average gross revenues of not more than $15 million for the preceding three calendar years. *See* 47 CFR 24.720(b)(1), (2). These definitions of "small business" and "very small business" in the context of broadband PCS auctions have been approved by the SBA. No small businesses within the SBA-approved definitions bid successfully for licenses in blocks A and B. In the first two C block auctions, there were 90 bidders that qualified as small entities and won licenses in block C. In the first auction of D, E, and F block licenses, a total of 93 small and very small business bidders won approximately 40% of the 1,479 licenses. Based on this information, the Commission concludes that the number of small broadband PCS licensees will include the 90 winning C block bidders and the 93 winning bidders in the D, E, and F blocks, for a total of 183 small entity PCS providers as defined by the SBA and the Commission's auction rules.

118. Narrowband PCS. The Commission has auctioned nationwide and regional licenses for narrowband PCS. There are 11 nationwide and 30 regional licensees for narrowband PCS. The Commission does not have sufficient information to determine whether any of these licensees are small businesses within the SBA-approved definition for radiotelephone companies. At present, there have been no auctions held for the major trading area (MTA) and basic trading area (BTA) narrowband PCS licenses. The Commission anticipates a total of 561 MTA licenses and 2,958 BTA licenses will be awarded in the auctions. Given that nearly all radiotelephone companies have no more than 1,500 employees, and that no reliable estimate of the number of prospective MTA and BTA narrowband licensees can be made, the Commission assumes, for purposes of this IRFA, that all of the licenses will be awarded to small entities, as that term is defined by the SBA.

c. 220 MHz Radio Services

119. The Commission recently auctioned licenses in the 220–222 MHz band. The license blocks include five licenses in each of the 172 Economic Areas (EAs) and three EA-like areas; five licenses in six Economic Area groupings (EAGs); and three Nationwide licenses, comprising the same territory as all of the EAGs combined. For this auction, a small business was defined as an entity with average annual gross revenues of not more than $15 million for the preceding three years; and very small business was defined as a firm with average annual gross revenues of not more than $3 million for the preceding three years. *See* 47 CFR 90.1021. A total of 373 licenses were won by 39 small business bidders and 320 licenses were won by five other bidders. Given that nearly all radiotelephone companies employ no more than 1,500 employees, for purposes of this IRFA, the

Commission will consider the approximately 3,800 incumbent licensees as small businesses under the SBA definition.

d. Paging

120. The Commission has adopted a two-tier definition of small businesses in the context of auctioning geographic area paging licenses in the Common Carrier Paging and exclusive Private Carrier Paging services. This definition has been approved by the SBA. Under the definition, a very small business is an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. At present, there are approximately 24,000 Private Paging licenses and 74,000 Common Carrier Paging licenses. According to Telecommunications Industry Revenue data, there were 172 "paging and other mobile" carriers reporting that they engage in these services. Consequently, the Commission estimates that there are fewer than 172 small paging carriers. The Commission estimates that the majority of private and common carrier paging providers would qualify as small entities under the SBA definition.

e. Air-Ground Radiotelephone Service

121. The Commission has not adopted a definition of small business specific to the Air-Ground radiotelephone service. *See* 47 CFR 22.99. Accordingly, the Commission will use the SBA definition applicable to radiotelephone companies, i.e., an entity employing no more than 1,500 persons. There are approximately 100 licensees in the Air-Ground radiotelephone service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

f. Specialized Mobile Radio (SMR)

122. The Commission has adopted a two-tier bidding credit in auctions for geographic area 800 MHz and 900 MHz SMR licenses. A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues for the three preceding years of not more than $3 million. A small business is defined as an entity that, together with affiliates and controlling principals, has average gross revenues for the three preceding calendar years of not more than $15 million. The definitions of "small business" and "very small business" in the context of 800 MHz and 900 MHz SMR have been approved by the SBA. The Commission does not know how many firms provide 800 MHz or 900 MHz geographic area SMR service pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than $15 million. One firm has over $15 million in revenues. The Commission assumes for purposes of this IRFA that all of the remaining existing extended implementation authorizations are held by small entities, as that term is defined by the SBA. The Commission has held auctions for geographic area licenses in the 900 MHz SMR band and 800 MHz SMR band. There were 60 winning bidders who qualified as small entities in the 900 MHz auction. In the 800 MHz SMR auction there were 524 licenses won by winning bidders, of which 38 licenses were won by small or very small entities.

g. Private Land Mobile Radio Services (PLMR)

123. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. The Commission has not developed a definition of small entities specifically applicable to PLMR licensees due to the vast array of PLMR users. Therefore, the applicable definition of small entity is the definition under the SBA rules applicable to radiotelephone companies. This definition provides that a small entity is a radiotelephone company employing no more than 1,500 persons. For the purpose of determining whether a licensee is a small business as defined by the SBA, each licensee would need to be evaluated within its own business area. The Commission is unable at this time to estimate the number of small businesses which could be impacted by the rules. The Commission's 1994 Annual Report on PLMRs indicates that at the end of fiscal year 1994 there were 1,087,267 licensees operating 12,481,989 transmitters in the PLMR bands below 512 MHz. Because any entity engaged in a commercial activity is eligible to hold a PLMR license, the proposed rules could potentially impact every small business in the United States.

h. Aviation and Marine Radio Service

124. Small entities in the aviation and marine radio services use a marine very high frequency (VHF) radio, any type of emergency position indicating radio beacon (EPIRB) and/or radar, a VHF aircraft radio, and/or any type of emergency locator transmitter (ELT). The Commission has not developed a definition of small entities specifically applicable to these small businesses. Therefore, the applicable definition of small entity is the definition under the SBA rules. Most applicants for individual recreational licenses are individuals. Approximately 581,000 ship station licensees and 131,000 aircraft station licensees operate domestically and are not subject to the radio carriage requirements of any statute or treaty. Therefore, for purposes of the evaluations and conclusions in this IRFA, the Commission estimates that there may be at least 712,000 potential licensees that are individuals or are small entities, as that term is defined by the SBA.

i. Offshore Radiotelephone Service

125. This service operates on several ultra high frequency (UHF) TV broadcast channels that are not used for TV broadcasting in the coastal area of the states bordering the Gulf of Mexico. *See* 47 CFR 22.1001–22.1037. At present, there are approximately 55 licensees in this service. The Commission is unable at this time to estimate the number of licensees that would qualify as small entities under the SBA definition for radiotelephone communications. The Commission assumes, for purposes of this IRFA, that all of the 55 licensees are small entities, as that term is defined by the SBA.

j. General Wireless Communication Service (GWCS)

126. This service was created by the Commission on July 31, 1995 by transferring 25 MHz of spectrum in the 4660–4685 MHz band from the federal government to private sector use. The Commission sought and obtained SBA approval of a refined definition of "small business" for GWCS. According to this definition, a small business is any entity, together with its affiliates and entities holding controlling interests in the entity, that has average annual gross revenues over the three preceding years that are not more than $40 million. *See* 47 CFR 26.4. The Commission will offer 875 geographic area licenses, based on Economic Areas, for GWCS. In estimating the number of small entities that may participate in the GWCS auction, the Commission anticipates that the makeup of current wireless services licensees is representative of future auction winning bidders.

k. Fixed Microwave Services

127. Microwave services includes common carrier fixed, *see* 47 CFR 101 *et seq.*, private-operational fixed, *see* 47

CFR 80.1 *et seq.*, 90.1 *et seq.*, and broadcast auxiliary radio services, *see* 47 CFR 74.1 *et seq.* At present, there are 22,015 common carrier fixed licensees and approximately 61,670 private operational fixed licensees and broadcast auxiliary radio licensees in the microwave services. The Commission has not yet defined a small business with respect to microwave services. For purposes of this IRFA, the Commission will utilize the SBA definition applicable to radiotelephone companies, i.e., an entity with less than 1,500 persons. The Commission estimates that for purposes of this IRFA all of the Fixed Microwave licensees (excluding Multiple Address Systems broadcast auxiliary radio licensees) would qualify as small entities under the SBA definition for radiotelephone communications.

l. Amateur Radio Service

128. The Commission estimates that 10,000 applicants applied for vanity call signs in FY 1998. All are presumed to be individuals. Amateur Radio service licensees are coordinated by Volunteer Examiner Coordinators (VECs). The Commission has not developed a definition for a small business or small organization that is applicable for VECs. The RFA defines the term "small organization" as meaning "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field . * * *" 5 U.S.C. 601(4). The Commission's rules do not specify the nature of the entity that may act as a VEC. All of the sixteen VEC organizations would appear to meet the RFA definition for small organizations.

m. Personal Radio Services

129. Personal radio services provide short-range, low power radio for personal communications, radio signaling, and business communications not provided for in other services. These services include citizen band (CB) radio service, general mobile radio service (GMRS), radio control radio service, and family radio service (FRS). *See* 47 CFR Part 95. Inasmuch as the CB, GMRS, and FRS licensees are individuals, no small business definition applies for these services. To the extent any of these licensees may be small entities under the SBA definition, the Commission is unable at this time to estimate the exact number.

n. Rural Radiotelephone Service

130. The Commission has not adopted a definition of small entity specific to the Rural Radiotelephone Service. *See* 47 CFR 22.99. A significant subset of the Rural Radiotelephone Service is the Basic Exchange Telephone Radio Systems (BETRS). *See* 47 CFR 22.757, 22.729. The Commission will use the SBA definition applicable to radiotelephone companies; i.e., an entity employing no more than 1,500 persons. There are approximately 1,000 licensees in the Rural Radiotelephone Service, and the Commission estimates that almost all of them qualify as small entities under the SBA definition.

o. Marine Coast Service

130. The Commission recently concluded its auction of Public Coast licenses in the 157.1875–157.4500 MHz (ship transmit) and 161.775–162.0125 MHz (coast transmit) bands. For purposes of this auction, the Commission defined a "small" business as an entity that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $15 million. A "very small" business is one that, together with controlling interests and affiliates, has average gross revenues for the preceding three years not to exceed $3 million. There are approximately 10,672 licensees in the Marine Coast Service, and the Commission estimates that almost all of them qualify as small under the SBA definition.

p. Wireless Communications Services (WCS)

132. This service can be used for fixed, mobile, radiolocation, and digital audio broadcasting satellite uses. The Commission defined "small business" for the WCS auction as an entity with average gross revenues of $40 million for each of the three preceding years. The Commission auctioned geographic area licenses in the WCS service. In the auction, there were seven winning bidders that qualified as very small business entities, and one that qualified as a small business entity. Based on this information, the Commission concludes that the number of geographic area WCS licensees affected includes these eight entities.

q. Public Safety Radio Services and Governmental Entities

133. Public Safety radio services include police, fire, local governments, forestry conservation, highway maintenance, and emergency medical services. *See* 47 CFR 90.15–90.27, 90.33–90.55. There are a total of approximately 127,540 licensees within these services. Governmental entities as well as private businesses comprise the licensees for these services. As noted, governmental entities with populations of less than 50,000 fall within the SBA definition of a small entity. There are 85,006 governmental entities in the nation, as of the last census. This number includes such entities as states, counties, cities, utility districts, and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000; however, this number includes 38,978 counties, cities, and towns and of those, 37,566 or 96 percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all governmental entities. Thus, of the 85,006 governmental entities, the Commission estimates that 96 percent or 81,600 are small entities that may be affected by its rules.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

134. At this time, the Commission does not anticipate the imposition of new reporting, recordkeeping, or other compliance requirements as a result of this *NPRM*. The Commission seeks comment on this tentative conclusion.

E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

135. Section 309(j) of the Communications Act directs the Commission to disseminate licenses among a wide variety of applicants, including small businesses and other designated entities. Section 309(j) also requires that the Commission ensure the development and rapid deployment of new technologies, products, and services for the benefit of the public, and recover for the public a portion of the value of the public spectrum resource made available for commercial use. In addition, Section 337 gives eligible providers of public safety services a means to obtain unassigned spectrum not otherwise allocated for public safety purposes. The Commission believes the policies and rules proposed in this *NPRM* help meet those goals and promote efficient competition while maintaining the fair and efficient execution of the auctions program. The Commission seeks comment, therefore, on all proposals and alternatives described in the *NPRM*, and the impact that such proposals and alternatives might have on small entities.

F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

136. None.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 99–10989 Filed 4–30–99; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 605

[Docket No. FTA–99–5082]

RIN (213) AA67)

School Bus Operations; Amendment of Tripper Service Definition

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of Proposed rulemaking.

SUMMARY: This notice of proposed rulemaking (NPRM) seeks to amend and clarify the definition of tripper service, set out in the Federal Transit Administration's (FTA) school bus regulation. In FTA's experience, the current definition does not sufficiently specify which student transportation operations are inconsistent with FTA requirements. This NPRM describes and requests comment on FTA's proposed amendment of the definition of tripper service.

DATES: Comments must be submitted by July 2, 1999.

ADDRESSES: The public is invited to submit written comments on this notice. Written comments should refer to the docket number appearing at the top of this notice and be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Nassif Building, 400 Seventh Street, SW Washington, DC 20590. All comments received will be available for examination at the above address. Docket hours at the Nassif Building are Monday through Friday, 10 a.m. to 5 p.m., excluding Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Elizabeth S. Martineau, Office of Chief Counsel, Federal Transit Administration, (202) 366–1936 or (202) 366–3809 (fax).

SUPPLEMENTARY INFORMATION:

I. Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL):http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communication software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nars.

II. FTA's Tripper Service Requirements

Under FTA's school bus requirements, set out at 49 U.S.C. 5323(f) and 49 CFR Part 605, recipients may not engage in school bus operations exclusively for the transportation of students. These provisions derive from 49 U.S.C. 5302(a), which authorizes FTA assistance for mass transportation, but specifically excludes school bus service from such Federal assistance.

Section 605.3 of the regulation allows grantees to provide "tripper" service, which is mass transit service modified to accommodate the needs of school students and personnel. Buses used for tripper service must be clearly marked as open to the public and may not carry designations such as "School Bus" or "School Special." These buses may stop only at a grantee's regular service stop. All routes traveled by tripper buses must be within a grantee's regular route service as indicated in their published route schedules. The purpose of this provision is to ensure that buses acquired with Federal assistance are clearly perceived by the public as available to their use.

III. FTA's Proposed Amendment

It has recently come to FTA's attention that certain grantees have been providing service to school children that is inconsistent with FTA's tripper service requirements. The results of reviews of grantee tripper operations have shown that certain grantees are providing tripper service that creates the public perception that the buses used are for the exclusive use of school children. One grantee uses swing-arm signs reading "Caution Students" on tripper buses. Another grantee's tripper buses bear markings indicating that the vehicles are transporting children certain times of day. Buses operated by other grantees pick up and discharge students on school property and not at bus stops that are accessible to the general public. FTA recognizes that such practices are not specifically proscribed under the tripper service provision; however, they do undermine its purpose, which is to ensure that the general public is aware that tripper buses are available for their use.

In order to make it clear to grantees that any type of signage that designates vehicles as school buses, and any stops that are not accessible to the general public, is impermissible exclusive school service, FTA proposes to amend the tripper service provision. Under the proposed amendment, buses used in tripper service may not carry "School Bus," "School Special," "Student," or any other markings indicating that they are carrying school children. Moreover, the buses may stop only at stops that are clearly marked by the grantee or operator as available to the public. FTA believes that tripper buses operated in accordance with this proposal will be clearly perceived by members of the general public as available for their use. FTA requests comment on this proposed amendment.

IV. Regulatory Impacts

A. Regulatory Analyses and Notices

FTA has determined that this action is not significant under Executive Order 12866 or the regulatory policies and procedures of Department of Transportation regulatory policies and procedures. Because this rule merely clarifies an existing regulatory provision, it is anticipated that the impact of this rulemaking will be minimal; therefore, a full regulatory evaluation is not required. There are not sufficient Federalism implications to warrant the preparation of a Federalism Assessment under Executive Order 12612. Because this rule does not mandate a business process change or require modifications to computer systems, its issuance will not affect a recipient's ability to respond to Year 2000 issues.

B. Regulatory Flexibility Act

In accordance with 5 U.S.C. 603(a), as added by the Regulatory Flexibility Act, Pub. L. 96–354, FTA certifies that this rule will not have a significant impact on a substantial number of small entities within the meaning of the Act, because it requires only minor adjustments to the manner in which certain grantees are providing tripper service.

C. Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1995.

List of Subjects in 49 CFR Part 605

Mass transit: grants; school bus.

Accordingly, for the reasons described in the preamble, Part 605 of Title 49 of

the Code of Federal Regulations is proposed to be amended as follows:

PART 605—[AMENDED]

1. By revising the authority citation to read as follows:

Authority: 49 U.S.C. 5323(f); 49 CFR 1.51.

2. In § 605.3, revise the definition for "tripper service" in paragraph (b) to read as follows:

605.3 Definitions.

* * * * *

Tripper service means regularly scheduled mass transportation service that is open to the public and designed or modified to accommodate the needs of school students and personnel, using various fare collection or subsidy systems. Buses used in tripper service must be clearly marked as open to the public and may not carry destination signs such as "school bus," "school special," "student," or any other marking indicating that they are carrying school children. These buses may stop only at stops that are accessible to the public and that are clearly marked as available to the public. All routes traveled by tripper buses must be within a grantee's or operator's regular route service as indicated in their published route schedules.

* * * * *

Issued on: April 28, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–10996 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 64, No. 84
Monday, May 3, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Plan Amendment for the Curlew National Grassland; Caribou National Forest, Oneida County, Idaho

AGENCY: Forest Service; Department of Agriculture.

ACTION: Notice of Intent to Prepare Environmental Impact Statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental impacts of the proposed actions to amend the direction for resource management on the Curlew National Grassland (Grassland) as contained in the Land and Resource Management Plan for the Caribou National Forest and Curlew National Grassland. The Grassland is located approximately 17 air miles west of Malad City, Idaho. The proposed actions are located entirely within the 47,600-acre Grassland. The need for the proposal is to amend existing and create new management direction for the vegetation, riparian, livestock grazing, wildlife and other resources and uses on the Grassland based on a proposed desired range of future conditions.

Direction from the Chief of the Forest Service requires that a separate management plan for each of the National Grasslands be developed. The Caribou National Forest proposes to complete an EIS to amend existing and create new management direction for the Curlew National Grassland. Current direction is found in the 1985 Land and Resource Management Plan for the Caribou National Forest and Curlew National Grassland.

The EIS will address ecological patterns, processes, and management direction for both riparian and upland resources; develop direction for restoration of rangeland vegetation composition; develop and implement livestock grazing standards; develop soil and watershed management direction; develop and implement direction for sagebrush associated/obligate wildlife species habitat; and develop policy for future utility proposals. The amendment will include ecosystem management goals, objectives, standards and guidelines, and monitoring strategies specific to the Grassland.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before June 2, 1999.

ADDRESSES: Send written comments to: Forest Supervisor, Caribou National Forest, Curlew National Grassland Amendment, Federal Building, 250 South 4th Avenue, Pocatello, Idaho 83201. Electronic mail may be sent to: pcomment/r4__caribou@fs.fed.us. Please reference the Curlew Amendment on the subject line.

FOR FURTHER INFORMATION: Questions concerning the proposed action and EIS should be directed to Scott Feltis, Interdisciplinary Team Leader, Caribou National Forest, Pocatello, Idaho, phone: (208) 236–7500.

SUPPLEMENTARY INFORMATION: This EIS will tier to the final 1985 EIS for the Land and Resource Management Plan for the Caribou National Forest and Curlew National Grassland (Forest Plan). This Forest Plan provides the overall guidance (goals, objectives, standards and guidelines, and management area direction) to achieve the desired future condition for the area being analyzed, and contains specific management area prescriptions for the Grassland. The specific objectives of this proposal are:

- To develop direction for restoration of rangeland vegetation composition.
- To develop and implement livestock grazing standards.
- To develop soil and watershed management direction.
- To develop direction for sagebrush associated/obligate wildlife species habitat.
- To develop policy for future utility proposals.
- To develop management direction for both riparian and upland resources.

Public scoping for this proposal will be initiated with the publication of this Notice. An Analysis of the Management Situation (AMS) was released to the public on February 25, 1999 and is available electronically at www.fs.fed.us/r4/curlew or by written request to the address provided above. Opportunities will be provided to discuss the Grassland Plan with the public. The public is invited to help identify issues that will be considered in defining the range of alternatives in the Environmental Impact Statement.

Preliminary Issues/Concerns

- Riparian Condition. Some riparian areas and stream channels have deteriorated and are no longer functioning properly. This has resulted in a deterioration or loss of deep-rooted riparian vegetation, reduced water quality, and degraded habitat for many aquatic and terrestrial species. Some upper watersheds, not managed by the Forest Service, have contributed to past flooding, channel scouring and sediment within the Grassland.
- Sage Grouse and Other Sagebrush-Associated Species and Habitats. Sage grouse populations on and adjacent to the Grassland have declined over the past 20–25 years. Historic expansion of agriculture on non-federal lands has reduced the extent of sagebrush habitats in the Curlew Valley area. Changes in some of the remaining habitat from fragmentation, invasion of exotic plant species, disruption of natural fire cycles, use by livestock and loss of native species diversity have contributed to declines in sagebrush habitat quality and wildlife species, some to the point of needing special attention.
- Forage Utilization. Grazing utilization standards for seeded and native vegetation types currently do not exist in the 1985 Forest Plan. Livestock forage utilization needs to consider, and be compatible with, other resource values and needs. During the analysis of Grassland resources, a determination of rangeland capability and suitability will be made.
- Vegetation Composition and Structure. Vegetation seedings have changed species composition, reduced biological diversity, changed species interactions, reduced wildlife habitat quality and forage availability. When compared with native plant communities, seedings have reduced the system's.ability to buffer against changes. Sagebrush structure is trending toward older age classes, resulting in a lack of understory diversity, reduced herbaceous production and reduced watershed condition due to losses of

ground cover. Bulbous bluegrass, a non-native grass species, was seeded on 18,000 acres of the Grassland during the 1940's and 1950's. While having value as a sod forming, ground cover species, it is not desirable from a wildlife habitat or forage production perspective. Opportunities exist to treat bulbous bluegrass-dominant sites and revegetate with a desirable mix of native and non-native grass, forb and shrub species.

• Intermingle Lands. A mix of private and state and federal land ownerships lie within, and surround the Grassland. Activities on adjacent ownerships within the Curlew Valley are not always compatible with Grassland management objectives and sometimes influence activities, management options and resource conditions on the Grassland. Because of these influences, ability to fully implement the 1985 Forest Plan direction is hindered in some instances.

• Cumulative Effects. Cumulative impacts of the proposal need to be identified and evaluated, including past, ongoing, and future management on the Grassland, given the geographic setting of the Grassland in relation to the ownerships and activities.

The Forest Service is seeking information and comments from Tribes, Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The Forest Service invites written comments and suggestions on the issues related to the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS and Final EIS. For most effective use, comments should be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register.**

Preparation of the EIS will include the following steps:

1. Define the purpose and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analysis.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 1 and 2 have started; steps 2 through 4 will be completed through the scoping process. Step 5 will consider a range of alternatives developed from the key issues. To date, two alternatives have been drafted The No Action Alternative continues the direction and management of the 1985 Forest Plan. The Proposed Action was developed in response to issues listed above. Step 6 will described the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected. Step 7 will analyze the environmental effects of each alternative. The direct, indirect and cumulative effects of each alternative will be analyzed and documented. Additional alternatives will be developed in response to public issues, management concerns, and resource opportunities identified during the scoping process. In describing alternatives, desired vegetation and resource conditions will be defined. Preliminary information, including a map of the Proposed Action is available for review at the Westside Ranger District Offices (Malad and Pocatello) and the Supervisor's Office (Pocatello). Elements of the Proposed Action are presented below.

The Proposed Action

The Proposed Action applies a riparian/wetland areas prescription which establishes a zone of special emphasis that restricts activities to those which will not compromise prescription goals or reduce water quality below that needed to comply with state water quality requirements and sustain beneficial uses. Riparian forage utilization is not to exceed 30 percent or a 6-inch minimum stubble height (whichever is attained first) directly adjacent to the stream channel. In contrast, the 1985 Forest Plan (No Action Alternative) manages riparian areas at a minimal custodial level, limiting actions to those activities required to comply with existing laws, regulations, and executive orders. Also, no forage utilization standards are identified.

The Proposed Action applies Grassland-wide forage utilization levels not to exceed approximately 50 percent on seeded sites and 45 percent on native vegetation sites. In contrast, the 1985 Forest Plan does not specifically identify forage utilization levels. However, the Grassland has been managed (through allotment management plan direction) to not exceed 60 percent forage utilization regardless of vegetation type.

The Proposed Action sets a goal of managing for a diversity of sagebrush canopy cover class ranges on the Grassland: ten to 30 percent of the Grassland acres in early seral status (0–5 percent canopy cover; early age and structure); 40–60 percent of the Grassland acres in mid seral status (6–15 percent canopy cover; mid-age and structure); 30–50 percent of the Grassland acres in late seral status (>15 percent canopy cover; mature and overmature age and structure). In contrast, the 1985 Forest Plan does not provide management goals for sagebrush canopy cover.

Other vegetation management direction found in the Proposed Action includes an objective to treat 4,000 to 6,000 acres of bulbous bluegrass (an undesirable grass species) dominant sites and revegetate with desirable native and non-native grass, forb and shrub species over a ten year period. In contrast, the 1985 Forest Plan does not provide specific direction for the treatment of bulbous bluegrass. The 1985 Forest Plan does provide direction for revegetation proposals which includes a avoiding establishing monocultures and maintaining a variety of desirable grass, forb and shrub species; however, there is no reference to native versus non-native plan species. In addition to the treatment of bulbous bluegrass sites, the Proposed Action would treat, over a ten-year period, between 1,000 and 3,000 acres of sagebrush with canopy covers greater than 15 percent. Vegetation treatments under the Proposed Action would total between 5,000 and 9,000 acres over a ten-year period (an average of 500 to 900 acres annually). The 1985 Forest Plan proposes to treat approximately 18,700 acres over a ten-year period (1,870 acres annually).

The Proposed Action designates the Sweeten Pond and tree row acres as special wildlife areas and sets forth objectives to construct an additional impoundment in the Sweeten Pond area and establish an additional ten miles of tree rows over the next ten years. In contrast, the 1985 Forest Plan does not identify additional improvements specifically for wildlife. The Proposed Action provides guidance for the management of Forest Service designated sensitive species; the 1985 Forest Plan does not provide such guidance. The Proposed Action provides guidance for sage grouse habitat management including deferring habitat manipulation practices within a 0.25 mile radius of active sage grouse leks and provides for a seed mix that includes vegetation species preferred by upland birds during the pre-nesting, nesting and brood rearing periods, and guidance to provide residual cover to meet the needs of spring period ground nesting wildlife. In contrast, the 1985 Forest Plan guidance defers habitat manipulation practices within 1.9 miles of active sage grouse leks; no sagebrush

control where sagebrush cover is less than 20 percent or on steep slopes; no sagebrush control along streams, meadows or secondary drainages; application of sagebrush treatments in irregular patterns; and where possible, avoid complete kill or removal of sagebrush.

The Proposed Action includes the identification and development of monitoring protocols specific to Grassland resources.

The Proposed Action sets a goal to engage in collaborative efforts with adjacent landowners, Soil Conservation District and the Natural Resource Conservation Service to conserve soil, watershed and riparian resources. In contrast, the 1985 Forest Plan does not provide direction for such efforts.

Agency representatives and other interested people are invited to visit with Forest Service officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment periods are, (1) during the scoping process (the next 30 days following publication of this Notice in the **Federal Register**) and, (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review and comment in January, 2000. At that time the EPA will publish an availability notice of the Draft EIS in the **Federal Register**.

The comment period on the Draft EIS will be 45 days from the date the EPA notice of availability appears in the **Federal Register**. It is important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519:553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*, (9th Circuit, 1986) and *Wisconsin Heritages, Incl.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can be meaningful to consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be as specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3 in addressing these points.

The Final EIS is expected to be released in August, 2000.

The Regional Forester, Intermountain Region, who is the responsible official for the EIS, will then make a decision regarding this proposal, after considering the comments, responses, and environmental consequences discussed in the Final Environmental Impact Statement, and applicable laws, regulations, and policies. The reason for the decision will be documented in a Record of Decision.

Dated: April 21, 1999.

Jerry B. Reese,

Forest Supervisor, Caribou National Forest.

[FR Doc. 99–10946 Filed 4–30–99; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Minnesota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Minnesota Advisory Committee to the Commission will convene: (1) Tuesday, May 25, 1999, at 1:00 p.m. and recess at 6:00 p.m.; and (2) reconvene Wednesday, May 26, 1999, at 9:00 a.m. and adjourn at 1:00 p.m. at the Red River Inn and Conference Center, 600 30th Avenue, Moorhead, Minnesota. The Committee will hold a two day factfinding meeting to gather information on "Civil Rights Issues Facing Minorities in Moorhead, Minnesota."

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, April 27, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–10931 Filed 4–30–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

1999—2001 Company Organization Survey; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Paul Hanczaryk, Bureau of the Census, Room 2747, Federal Building 3, Washington, DC 20233–6100; telephone (301) 457–2580.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau conducts the annual Company Organization Survey (COS) in order to update and maintain a central, multipurpose business register, known as the Standard Statistical Establishment List (SSEL). In particular, the COS supplies critical information to the SSEL concerning the establishment composition, organizational structure, and operating

characteristics of multi-establishment companies.

The SSEL serves two fundamental purposes:

• First and most important, it provides sampling populations and enumeration lists for the Census Bureau's economic surveys and censuses, and it serves as an integral part of the statistical foundation underlying those programs. Essential for this purpose is the SSEL's ability to identify all known United States business establishments and their parent companies. Further, the SSEL must accurately record basic business attributes needed to control sampling and enumeration. These attributes include industrial and geographic classifications, measures of size and economic activity, ownership characteristics, and contact information (for example, name and address).

• Second, it provides establishment data that serve as the basis for the annual County Business Patterns (CBP) statistical series. The CBP reports present data on a number of establishments, first quarter payroll, annual payroll, and mid-March employment summarized by industry and employment size class for the United States, states, the District of Columbia, Puerto Rico, counties, and county-equivalents. No other annual or more frequent series of industry statistics provides comparable detail, particularly for small geographic areas.

II. Method of Collection

The Census Bureau will conduct the 1999–2001 COS in the same manner as the 1998 COS. These collections will direct inquiries to approximately 80,000 multi-establishment companies, which operate over 1.1 million establishments. This panel will be drawn from the SSEL universe of nearly 200,000 multi-establishment companies, which operate 1.6 million establishments. Additionally, the panel will include approximately 10,000 new single-establishment companies that will become active during 1999.

The mailing list for the 1999 COS will include a certainty component, consisting of all multi-establishment companies with 50 or more employees, and those multi-establishment companies with administrative record values that indicate organizational changes. The mailing list also will include new entities that are most likely to report affiliation with multi-establishment companies. A non-certainty component will be drawn from the remaining multi-establishment companies based on employment size.

All companies will receive the COS inquiries by mail, and most will respond by mail. As a test of new electronic reporting methods, a very small number of companies will receive and return responses by secure Internet transmission. Additionally, more than 1,300 larger enterprises (accounting for approximately 36 percent of covered establishments) will return their COS reports by other electronic means. All other survey respondents will return a paper questionnaire. Data content is identical for all reporting modes.

The instrument will include inquiries on ownership or control by a domestic parent, ownership or control by a foreign parent, and ownership of foreign affiliates. Further, the instrument will list an inventory of establishments belonging to the company and its subsidiaries, and will request updates to these inventories, including additions, deletions, and changes to information on EIN, name and address, industrial classifications, payroll, end-of-year operating status, mid-March employment, first quarter payroll, and annual payroll.

Additionally, the Census Bureau will pilot certain questions in the 1999—2001 COS in order to enhance future content. We will include questions on the number of leased employees working in the multi-establishment company, questions designed to improve the accuracy of establishment-level industrial classification codes, and questions on the inventory of Federal employer identification numbers belonging to the company. These additional questions will be directed to less than 500 companies.

III. Data

OMB Number: 0607–0444.
Form Number: NC–9901.
Type of Review: Regular submission.
Affected Public: Businesses or other for-profit, not-for-profit institutions.
Estimated Number of Respondents: 90,000 enterprises.
Estimated Time Per Response: 1.55 hours.
Estimated Total Annual Burden Hours: 140,000.
Estimated Total Annual Cost: $2,100,000 @ $15/hr.
Respondent's Obligation: Mandatory.

Legal Authority: Title 13 of United States Code, Sections 182, 195, 224, and 225.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 27, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–10936 Filed 4–30–99; 8:45 am]
BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Employment Inquiry

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 2, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Joyce A. Price, Bureau of the Census, 4301 Suitland Road, Room 1408, FB 2, Suitland, MD 20746, (301) 457–4899.

SUPPLEMENTARY INFORMATION:

I. Abstract

The BC–170, Census Employment Inquiry, is used by the Census Bureau to collect information such as personal data and work experience from job applicants. The BC–170 is used throughout the census and intercensal

years for short-term time limited employment. Applicants completing the form are applying for temporary jobs in office and field positions (clerks, enumerators, crew leaders, supervisors). This form is completed by job applicants before or at the time they are tested. Selecting officials review the information shown on the form to determine the best qualified applicants.

The BC–170 is intended to facilitate speedy hiring and selection in situations requiring large numbers of temporary employees for assignments of a limited duration. The use of this form is limited to only situations which require the establishment of a temporary office and/or involve special, one-time survey operations. The form has been demonstrated to meet our recruitment needs for temporary workers and requires significantly less burden than the Office of Personnel Management Optional Forms that are available for use by the public when applying for Federal positions.

Current efforts to hire an enormous temporary workforce for Census 2000 will significantly increase the usage of the BC–170. The 2000 Census is the largest peacetime mobilization of civilians that enumerate and account for the population of the United States. We expect to recruit approximately 2,900,000 applicants for census jobs.

Since the BC–170 is used regularly and does not change often we are planning to discontinue displaying the expiration date of the collection on the form to avoid needless reprinting. We are also redesigning the form to allow efficient keying of applicant information into the fully automated personnel/payroll system designed for use for the 2000 Census.

II. Method of Collection

We collect this information at the time of testing for temporary positions. Potential employees being tested complete a four-page paper application.

III. Data

OMB Number: 0607–0139.
Form Number: BC–170.
Type of Review: Regular submission.
Affected Public: Individuals.
Estimated Number of Respondents: 2,950,000 annually.
Estimated Time Per Response: 15 minutes.
Estimated Total Annual Burden Hours: 737,500 hours.
Estimated Total Annual Cost: The only cost to the individual is his/her time for completing the BC–170.
Respondent's Obligation: Voluntary.
Legal Authority: Title 13, USC, Section 23.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 26, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–10937 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year ("Sunset") Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year ("Sunset") Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping and countervailing duty orders or suspended investigations listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of *Institution of Five-Year Reviews* covering these same orders.

FOR FURTHER INFORMATION CONTACT:

Melissa G. Skinner, Scott E. Smith, or Martha V. Douthit, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–1560, (202) 482–6397 or (202) 482–3207, respectively, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (*see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping and countervailing duty orders or suspended investigations:

DOC case No.	ITC case No.	Country	Product
A–583–008	A–132	Taiwan	Small Diameter Carbon Steel Pipe and Tube.
C–489–502	C–253	Turkey	Welded Carbon Steel Pipes and Tubes.
C–489–502	C–253	Turkey	Welded Carbon Steel Line Pipe.
A–549–502	A–252	Thailand	Welded Carbon Steel Pipes and Tubes.
A–533–502	A–271	India	Welded Carbon Steel Pipes and Tubes.
A–489–501	A–273	Turkey	Welded Carbon Steel Pipes and Tubes.
A–122–506	A–276	Canada	Oil Country Tubular Goods.
A–583–505	A–277	Taiwan	Oil Country Tubular Goods.
A–559–502	A–296	Singapore	Small Diameter Standard & Rectangular Pipe & Tube.
A–508–602	A–318	Israel	Oil Country Tubular Goods.
C–508–601	C–271	Israel	Oil Country Tubular Goods.
A–583–803	A–410	Taiwan	Light Walled Rectangular Tubing.
A–357–802	A–409	Argentina	Light Walled Rectangular Tubing.
A–351–809	A–532	Brazil	Circular-Welded Non-Alloy Steel Pipe.
A–580–809	A–533	Korea (South)	Circular-Welded Non-Alloy Steel Pipe.
A–201–805	A–534	Mexico	Circular-Welded Non-Alloy Steel Pipe.
A–583–814	A–536	Taiwan	Circular-Welded Non-Alloy Steel Pipe.

DOC case No.	ITC case No.	Country	Product
A–307–805	A–537	Venezuela	Circular-Welded Non-Alloy Steel Pipe.
A–588–707	A–386	Japan	Granular Polytetraflouroetheylene Resin.
A–475–703	A–385	Italy	Granular Polytetraflouroetheylene Resin.
A–351–602	A–308	Brazil	Carbon Steel Butt-Weld Pipe Fittings.
A–583–605	A–310	Taiwan	Carbon Steel Butt-Weld Pipe Fittings.
A–588–602	A–309	Japan	Carbon Steel Butt-Weld Pipe Fittings.
A–570–814	A–520	China, PR	Carbon Steel Butt-Weld Pipe Fittings.
A–549–807	A–521	Thailand	Carbon Steel Butt-Weld Pipe Fittings.
A–588–802	A–389	Japan	Micro Disks.
A–484–801	A–406	Greece	Electrolytic Manganese Dioxide.
A–588–806	A–408	Japan	Electrolytic Manganese Dioxide.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the *Sunset Regulations* and *Sunset Policy Bulletin*, the Department's schedule of sunset reviews, case history information (e.g., previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address:

"http://www.ita.doc.gov/import__admin/records/sunset/"

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1998). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (*see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of n Protective Order*, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1998)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. Because the case number is the same for two countervailing duty orders covering differing classes or kinds of steel pipe from Turkey, we request that all submissions clearly identify the order for which the submission is being made by product name as listed above. In accordance with the *Sunset Regulations*, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the *Sunset Regulations* provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the *Sunset Regulations* at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the *Sunset Regulations* for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1998) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: April 27, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11007 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (*Sunset Regulations*, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1998), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Notice of Extension of Time Limit for Antidumping Duty Administrative Review; Certain Cold-Rolled Carbon Steel Flat Products From the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of Time Limit.

EFFECTIVE DATE: May 3, 1999.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands. This review covers one manufacturer/exporter, Hoogovens Staal BV and Hoogovens Steel USA, Inc., and the period August 1, 1997 through July 31, 1998.

FOR FURTHER INFORMATION CONTACT: Ilissa Kabak at (202) 482–1395 or Robert James at (202) 482–5222, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Tariff Act), the Department is extending the time limit for completion of the preliminary results until Tuesday, August 31, 1999. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, April 14, 1999, on file in Room B–099 of the main Commerce building. The final results of this administrative review will continue to be due no later than 120 days after the date on which the preliminary results are published.

This extension is in accordance with section 751(a)(3)(A) of the Tariff Act, as amended.

Dated: April 16, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–11015 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–802]

Gray Portland Cement and Clinker: Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of antidumping duty administrative review.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: George Callen, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0180.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act.

Extension of Time Limits for Preliminary Results

The Department of Commerce (the Department) received a request to conduct an administrative review of the antidumping duty order on Gray Portland Cement and Clinker from Mexico. On September 29, 1998, the Department initiated this administrative review covering the period August 1, 1997, through July 31, 1998.

Because of the complexity of certain issues in this case, it is not practicable to complete this review within the time limits mandated by section 751(a)(3)(A) of the Act. Therefore, in accordance with that section, the Department is extending the time limits for the preliminary results to August 31, 1999 (*see* Memorandum from Richard Moreland to Robert LaRussa, Re: Extension of Preliminary Results). The Department intends to issue the final results of review 120 days after the publication of the preliminary results. This extension of the time limit is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 27, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11013 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–505; A–549–601]

Malleable Cast Iron Pipe Fittings From Brazil and Thailand: Extension of Time Limit for Preliminary Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset reviews on the antidumping duty orders on malleable cast iron pipe fittings from Brazil and Thailand. Based on adequate responses from domestic and respondent interested parties, the Department is conducting full sunset reviews to determine whether revocation of these orders would be likely to lead to continuation or recurrence of dumping. As a result of this extension, the Department intends to issue its preliminary results not later than July 23, 1999.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Jason M. Appelbaum or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–5050, or (202) 482–1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset reviews of the antidumping duty orders on malleable cast iron pipe fittings from Brazil and Thailand are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of these reviews until not later than July 23, 1999, in accordance with

section 751(c)(5)(B) of the Act. The final results of these reviews will, therefore, be due not later than November 30, 1999.

Dated: April 26, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11017 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–333–401]

Cotton Shop Towels From Peru: Extension of Time Limit for Preliminary Results of Five-Year Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of five-year ("sunset") review.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the preliminary results of the sunset review on the suspended countervailing duty investigation on cotton shop towels from Peru. Based on adequate responses from domestic and respondent interested parties, the Department is conducting a full sunset review to determine whether revocation of the order would be likely to lead to continuation or recurrence of a countervailable subsidy. As a result of this extension, the Department intends to issue its preliminary results not later than July 23, 1999.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–3207 or (202) 482–1560 respectively.

Extension of Preliminary Results

The Department has determined that the sunset review of the suspended countervailing duty investigation on cotton shop towels from Peru is extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the preliminary results of this review until not later than July 23, 1999, in accordance with section 751(c)(5)(B) of the Act. The final results of this review will, therefore, be due not later than November 30, 1999.

Dated: April 26, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11016 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–9097–04]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice.

SUMMARY: ITA promotes U.S. exports and works to improve the global competitiveness of the United States, creating jobs for Americans. ITA administers the Market Development Cooperator Program (MDCP) to build public/private export marketing partnerships. The MDCP is a competitive matching grants program that provides federal assistance to export multipliers such as state trade departments, trade associations, chambers of commerce, world trade centers and other non-profit industry organizations that are particularly effective in reaching small-and medium-size enterprises (SMEs). MDCP awards help to underwrite the start-up costs of new export promotion ventures which these groups are often reluctant to undertake without federal government support.

The MDCP aims to:

- Challenge the private sector to think strategically about foreign markets;
- Be the catalyst that spurs private-sector innovation and investment in export marketing; and
- Increase the number of American companies, particularly SMEs, taking decisive export actions.

The advantage of a joint effort is that it permits the federal government to pool expertise and funds with non-federal sources so that each maximizes its market development resources. Partnerships of this sort can provide a sharper focus on long-term export market development than do traditional trade promotion activities. These partnerships also serve as a mechanism for improving government-industry relations.

While ITA sponsors, guides and partially funds MDCP projects, ITA expects applicants to develop, initiate and provide matching funding to carry out market development project activities. As an active partner, ITA will, as appropriate, provide assistance that the applicant identifies as essential to the achievement of project goals and objectives. U.S. industry is best able to assess its problems and needs in the foreign marketplace and to recommend innovative solutions and programs that can be the formula to success in international trade.

Examples of activities that might be included in an applicant's project proposal are described below under "Program Description." No one or any combination of these activities must be included for a proposal to receive favorable consideration. ITA encourages applicants to propose activities that (1) would be most appropriate to the market development needs of their industry or industries; and (2) display the imagination and innovation of the applicants working in partnership with the government to obtain the maximum market development impact.

A public meeting will be held to provide general information to potential applicants regarding MDCP procedures, selection process, and proposal preparation. No discussion of specific proposals will occur at this meeting. Attendance at this public meeting by potential applicants is not required.

DATES: *Public Meeting:* ITA will hold a public meeting to discuss MDCP proposal preparation, procedures, and selection process on May 21, 1999. The meeting will begin at 10:00 a.m. in Room 1863, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C.

Pre-Application Counseling: The Office of Planning, Coordination and Resource Management (OPCRM) is available to answer questions regarding the application process. ITA invites all prospective applicants to contact OPCRM as soon as possible with any questions about application requirements, evaluation factors, and the selection process. Prospective applicants are particularly encouraged to seek advice on their eligibility to apply for and receive MDCP funding. Applicants with questions are advised to continue working on their proposals. Absolutely no extensions of the deadline for submitting complete applications will be granted.

Applications: Complete applications must be received no later than 5:00 p.m.

Eastern Daylight Time, June 21, 1999. Late or incomplete applications will not be accepted. They will be returned to the sender or destroyed if the applicant prefers.

Please send complete applications (original with at least two (2) copies) to the Office of Planning, Coordination and Resource Management (OPCRM), Trade Development, Room 3221, 14th & Constitution Avenue, N.W., Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, Room 3221, Washington, D.C. 20230, (202) 482–3197.

Web Site: Additional information is available at the following Internet address: http://www.ita.doc.gov/industry/opcrm/mdcp.html.

Application Kit: Application kits are now available. The application kit contains all forms necessary to participate in the MDCP application process.

Application kits are available at the web site identified above. To obtain an application kit via first class mail, send a written request with a self-addressed mailing label to Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development/OPCRM, Room 3221, U.S. Department of Commerce, Washington, D.C. 20230. Application kits can also be picked up in Room 3209, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C.

SUPPLEMENTARY INFORMATION:

Authority: The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723.

Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.

Program Description: The goal of the MDCP as set out in authorizing legislation is to develop, maintain, and expand foreign markets for non agricultural goods and services produced in the United States. For purposes of this program, nonagricultural goods and services means goods and services other than agricultural products as defined in 7 U.S.C. 451. "Produced in the United States" means having substantial inputs of materials and labor originating in the United States, such inputs constituting at least 50 percent of the value of the good or service to be exported. The intended beneficiaries of the program are U.S. producers of non-agricultural goods or services that seek to export such goods or services.

MDCP funds should not be viewed as a replacement for funding from other sources, either public or private. An important aspect of this program is to increase the sum of federal and non-federal export market development activities. This result can best be achieved by using program funds to encourage new initiatives.

In addition to new initiatives, expansion of the scope of an existing project also may qualify for funding consideration. Eligible organizations that have previously received an MDCP award may propose a new project or expansion of an existing project (but see *Evaluation Criteria* (4) below).

ITA encourages applicants to propose activities that would be most appropriate to the market development needs of their U.S. industry or industries. Examples of activities which applicants might include in an application are set forth below. No one of these activities or any combination of these activities must be included for an application to receive favorable consideration. Many of these activities have been undertaken by current and past MDCP award winners:

(1) Opening an overseas office or offices to perform a variety of market development services for companies joining a consortium to avail themselves of such services; such an office should not duplicate the programs or services of the U.S. and Foreign Commercial Service (US&FCS) post(s) in the region, but could include co-location with a US&FCS Commercial Center;

(2) Detailing a private-sector representative to a US&FCS post in accordance with 15 U.S.C. 4723(c);

(3) Commissioning overseas market research, participating in overseas trade exhibitions and trade missions to promote U.S. exports, and/or hosting reverse trade missions;

(4) Conducting U.S. product demonstrations abroad;

(5) Conducting export seminars in the United States or market penetration seminars in the market(s) to be developed;

(6) Establishing technical trade servicing that helps overseas buyers choose the right U.S. goods or services and to use the goods or services efficiently;

(7) Conducting joint promotions of U.S. goods or services with foreign partners;

(8) Training foreign nationals to perform after-sales service or to act as distributors for U.S. goods or services;

(9) Improving market access for U.S. goods or services by working with organizations in the foreign marketplace responsible for setting standards and product testing;

(10) Publishing an export resource guide or an export product directory for the U.S. industry or industries in question, if no comparable one exists; and

(11) Establishing an electronic business information system to identify overseas trade leads and facilitate matches with foreign partners for U.S. businesses.

Funding Availability: The total funds expected to be available for this program are $2.0 million for fiscal year 1999. ITA expects to conclude a minimum of five (5) cooperative agreements with eligible entities for this competition. No award will exceed $400,000, regardless of the duration of the cooperative agreement.

Matching Requirements: To receive MDCP funding, the applicant must contribute at least two dollars for each federal dollar provided. In satisfying this matching requirement, the applicant must make at least one dollar of new cash outlays expressly for the project for each federal dollar of MDCP funding. The balance of the applicant's support may consist of in-kind contributions (goods and services). Recipient cash contributions are defined in 15 CFR Part 14, Sec. 14.2(g) as the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties. In order for a recipient to outlay cash contributed by a third party, the third party must transfer the funds to the recipient. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions. For example, an applicant requesting $200,000 of federal funds must supply, at a minimum, $200,000 of new cash outlays expressly for the project. The remaining $200,000 of the required match, and any additional match proposed, can be made up of additional new cash outlays or in-kind contributions.

Applicants may propose projects for which the matching funding will exceed two applicant dollars to each federal dollar. Applicants should note that a cost-share ratio is established for each award winner based upon the award winner's share of the total cost of the project. Funds are disbursed using this ratio. For example, a project for which the applicant will assume ¾ of the total cost will have a cost share ratio of 75 percent applicant/25 percent federal. In requesting a disbursement of federal dollars, the award winner will have to generate $3 in grant expenditures for each dollar it wants to obtain in federal grant monies.

In the proposed budget, all in-kind contributions to be used in meeting the applicant's share of costs should be listed in a separate column from cash contributions. A separate budget narrative describing these in-kind contributions should also be included with the proposal. This information should be in sufficient detail for a determination to be made that the requirements of 15 CFR Part 14.23(a), and 15 CFR Part 24.24 (a) and (b) are met.

No indirect costs will be paid with ITA funding under this program, but they may be included in the matching share. ITA will support only a portion of the direct costs of each project. Each applicant will support a portion of the direct costs (to be specified in the application). Generally, direct costs are those that are specifically associated with an award, and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations relating directly to program activity. Allowable costs will be determined on the basis of the applicable cost principles, i.e., OMB Circulars A–21, A–87, and A–122; 45 CFR Part 74, Appendix E; and 48 CFR Part 31.

Applicants may charge companies in the industry or other industry organizations reasonable fees to take part in or avail themselves of services provided as part of applicants' projects. Applicants should describe in detail any plans to charge fees. Fees generated under the award are program income and must be used for project-related purposes during the award period.

Type of Funding Instrument: Since ITA will be substantially involved in the implementation of each project for which an award is made, the funding instrument for this program will be a cooperative agreement. To administer each cooperative agreement, a project team is established including key personnel from the award winning organization and officials from ITA who can help the award winner achieve MDCP project objectives. If representatives from other federal agencies can make a meaningful contribution to the achievement of project objectives, they are invited to participate on the project team.

Each project team acts as a "board of directors" establishing direction for the project, recommending changes in the direction of the project, when necessary, and determining mode of project operations and other management processes, coupled with close monitoring or operational involvement during the performance of project activities. At the beginning of each fiscal year, the project team negotiates an annual operating plan setting forth specific activities that will take place, project responsibilities and the cost of each activity. In addition to participating on project teams, ITA staff may work directly on individual MDCP project activities.

Eligibility Criteria: U.S. trade associations, non-profit industry organizations, state trade departments and their regional associations including centers for international trade development, and private industry firms or groups of firms in cases where no entity described above represents that industry, are eligible to apply for cooperative agreements under this program. For the purpose of this program, a "trade association" is defined as a fee-based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

For the purpose of this program, a "non-profit industry organization" is an organization that is classified as a non-profit organization under Title 26 U.S.C. Section 501(c)(3), (4), (5), or (6) and operates as one of the following:

(1) A local, state, regional, or national chamber of commerce;

(2) A local, state, regional, or national board of trade;

(3) A local, state, regional, or national business, export or trade council/interest group;

(4) A local, state, regional, or national visitors bureau or tourism promotion group;

(5) A local, state, regional, or national economic development group;

(6) A Small Business Administration Small Business Development Center;

(7) A world trade center; or

(8) A port authority.

Prospective applicants are strongly encouraged to seek advice on their eligibility to enter the MDCP competition, according to the criteria above. To obtain advice regarding eligibility, the applicant should submit basic organizational documents (e.g., charters, articles of incorporation) and information on types of members, membership fees, ties to state trade departments or their regional associations, organization's purpose, and activities, and non-profit status under Internal Revenue Code provisions. All requests for advice regarding eligibility should be made as soon as possible, allowing enough time before the application deadline for a response to be useful. Applicants are advised to continue working on proposals while waiting for a response. Absolutely no extensions of the deadline for submitting complete applications will be granted.

Eligible U.S. entities may join together to submit an application as a joint venture and to share costs. For joint venture applicants, one organization meeting the above eligibility criteria must be designated as the prospective MDCP grant recipient organization for administrative purposes. For example, two trade associations representing different segments of a single industry or related industries may pool their resources and submit one application. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share the costs of proposed projects.

ITA will accept applications from eligible entities representing any industry, subsector of an industry or related industries. Each applicant must permit all companies in the industry in question to participate, on equal terms, in all activities that are scheduled as part of a proposed project whether or not the company is a member or constituent of the eligible organization.

Eligible entities desiring to participate in this program must demonstrate the ability to provide an established, competent, experienced staff and other resources to assure adequate development, supervision, and execution of the proposed project activities. Applicants must describe in detail all assistance expected from ITA or other federal agencies to implement project activities successfully. Each applicant must provide a description of the membership/qualifications, structure and composition of the eligible entity, the degree to which the entity represents the industry or industries in question, and the role, if any, foreign membership plays in the affairs of the eligible entity. Applicants should summarize both the recent history of their industry or industries' competitiveness in the international marketplace and the export promotion history of the eligible entity or entities submitting the application.

Project proposals must be compatible with U.S. trade and commercial policy. ITA priorities are set forth under the "Project Funding Priorities" heading below. Additional information delineating U.S. commercial policy may be obtained from the 1998 Trade Promotion Coordinating Committee's (TPCC's) *National Export Strategy*. Copies of the *National Export Strategy*

are available from TPCC Secretariat by calling (202) 482–5455.

Award Period: Funds may be expended over the period of time required to complete the scope of work, but not to exceed three (3) years from the date of the award.

Indirect Costs: ITA funds cannot be used to pay indirect costs. The total dollar amount of the indirect costs proposed in an application under this program (using recipient funds) must not exceed the indirect cost rate negotiated and approved by a cognizant federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Application Forms and Kit: Standard Forms 424 (Rev. 4–92) Application for Federal Assistance, 424A (Rev. 4–92) Budget Information—Non-Construction Programs, 424B (Rev. 4–92) Assurances—Non-Construction Programs, SF–LLL, Disclosure of Lobbying Activities and other Department of Commerce forms (CD–511, Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying; CD–512, Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying), are required as part of the application. See the "**FURTHER INFORMATION**" section for instructions on getting an application kit.

Submission of Applications: Applicants must submit a signed original and two (2) copies of the application and supporting materials. In addition to the required original plus two copies, applicants are encouraged to submit four (4) additional copies. ITA recognizes that submitting four additional copies may be a financial burden for some applicants. Accordingly, the four additional copies are not required, and applicants who submit only the required original plus two copies will not be scored lower for doing so.

Retention of Applications: For each award winner, the Department of Commerce will retain the signed original of the application for seven years. Copies of winning applications will be distributed to project team members for their use in managing winning projects.

For each eligible application which does not win an award, the Department of Commerce will retain the signed original of the application for seven years and will return copies to the applicant. The return of copies of applications normally occurs immediately following a debriefing for the unsuccessful applicant. For unsuccessful applicants who do not request a debriefing, ITA returns copies normally within six months of the announcement of the winners of the awards.

If an application is found to be ineligible, ITA will retain the signed original application for seven years and will return all copies of the ineligible application within ten days of the final finding of ineligibility.

Project Funding Priorities: ITA is especially interested in receiving proposals that focus on the ITA priorities listed below. A proposal does not need to encompass all of these priorities to be competitive:

(1) Targeting export-ready SMEs, and offering export assistance services designed to meet the special needs of SMEs as opposed to just offering SMEs the opportunity to participate in activities aimed broadly at the entire export marketing community;

(2) Helping SMEs overcome obstacles to using the Internet and e-commerce effectively;

(3) Providing technical assistance to developing economies to build commercial infrastructure such as regulatory practices;

(4) Building private-sector trade finance knowledge and expertise;

(5) Developing non-traditional approaches to creating demand for the products/services developed from new U.S. technologies;

(6) Improving communication with and outreach to old and new private-sector international trade constituencies and initiating or enhancing public/private export partnerships;

(7) Monitoring foreign compliance with our trade agreements such as sector-specific agreements, the North American Free Trade Agreement, and the World Trade Organization agreements;

(8) Identifying and working to eliminate tariff and non-tariff barriers to market access for U.S. goods or services, including working with organizations in the foreign marketplace responsible for setting standards and for product testing;

Applications may be targeted for any geographic market in the world and/or any industry sector.

Background Research: Developing a project plan requires solid background research. Applications should reflect the findings of the applicant's study of the following:

(1) The market potential of the U.S. good(s) or service(s) to be promoted in a particular market(s);

(2) The competition from host-country and third-country suppliers; and

(3) The economic situation and prospects that bear upon the ability of a country to import the U.S. good(s) or service(s).

In their applications, applicants should present an assessment of industry resources that can be brought to bear on developing a market; the industry's ability to meet potential market demand expeditiously; and the industry's after-sales service capability in a particular foreign market(s).

After describing their completed basic research, applicants should develop marketing plans that set forth the overall objectives of the projects and the specific activities applicants will undertake as part of these projects. Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact.

Evaluation Criteria: ITA is interested in projects that demonstrate the possibility of both significant results during the project period and lasting benefits extending beyond the project period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

(1) Potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term. For purposes of this program, an export initiative is defined as a significant expenditure of resources (time, people, or money) by the Chief Executive Officer (CEO) of a company in the active pursuit of export sales. Examples of export initiatives include, but are not limited to, the following:

(a) Participating in an overseas trade promotion event;

(b) Hiring an export manager;

(c) Establishing an export department;

(d) Exploring a new market through an overseas trip by the CEO;

(e) Developing an export marketing/business plan;

(f) Translating product literature into a foreign language;

(g) Making product modifications to comply with foreign market requirements;

(h) Commissioning an in-depth market research study;

(i) Advertising in a foreign business publication;

(j) Undertaking an overseas direct-mail campaign to create product awareness;

(k) Signing an agent/distributor;

(l) Getting introduced to a potential foreign buyer;

(m) Signing an export contract/filling an export order; or

(n) Co-locating with a US&FCS Commercial Center.

Applicants should provide detailed explanations of projected project results.

(2) Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will help the industry in question increase or maintain market share in the market(s) selected. Applicants should provide quantifiable estimates of projected increases.

(3) The degree to which the proposal furthers or is compatible with ITA's priorities stated above and the degree to which the proposal initiates or enhances partnership with ITA.

(4) Creativity, innovation, and realism displayed by the work plan as well as the institutional capacity of the applicant to carry out the work plan. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried before to promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are inherently more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long-term export capacity. In addition to promoting current sales of existing products, market development promotes future sales and future products.

Current or past MDCP applicants should be aware that to be in a position to earn the maximum number of points under this criterion, they should propose projects that are entirely new. A current or past MDCP recipient may propose an expansion of an existing or past MDCP project. In order to earn a high score on criterion (4), the expansion should be the majority of the total project for the proposal. In addition, current or past MDCP applicants that apply proposing an expansion of an existing or past project must clearly demonstrate how the expansion, standing alone, is creative and innovative in accordance with the above definition.

(5) Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award.

Current or past MDCP recipients who propose an expansion of an existing project must show how the expansion will achieve self-sustainability independent of current or past projects funded under the MDCP.

Each of the above criteria is worth a maximum of 20 points. The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

Evaluation and Selection Procedures: OPCRM staff will review each application for completeness as soon as practicable after the application is received. If the application deadline has not passed, OPCRM staff will endeavor to notify the applicant of any deficiency in the application that it has found. The applicant may submit additional information to correct the deficiency. ITA, however, must receive any additional information before the deadline for applications. Responsibility for submitting a complete application in a timely manner remains with the applicant.

Prior to selection, each complete application receives a thorough evaluation. The steps of the evaluation and selection process are set forth below.

(1) OPCRM staff, in consultation with the Department of Commerce's Office of General Counsel, reviews all applications to determine the eligibility of each applicant. If an applicant's eligibility is in question, the applicant is contacted to supply additional information or clarification.

(2) When the eligibility review has been completed, the OPCRM Director invites comments on applications from relevant offices within ITA (e.g,. Trade Development (TD), Market Access & Compliance (MAC), and US&FCS). This review allows ITA experts in the industry sector or geographical region to assess the claims made in the applications. The ITA staff comments also provide insights into both the potential benefits and the potential difficulties associated with the applications.

(3) At least three representatives of OPCRM review and comment on all applications. The comments of these OPCRM reviewers will include a score for each application based on the evaluation criteria identified above. The MDCP Manager prepares a summary of OPCRM staff comments and organizes all comments by ITA staff and applications for the Selection Panel. The scores, the summary, and the staff comments afford the Selection Panel the insights and breadth of experience of ITA professionals. However, they have no official weight, and the Selection Panel is free to consider or disregard them as it sees fit.

(4) The MDCP Manager forwards all of the applications, along with all related materials, to a Selection Panel of senior ITA managers. This panel is chaired by the OPCRM Director and typically includes three other members, one each from ITA's TD, MAC, and US&FCS bureaus. Panel members are Office Directors or higher.

(5) Each Selection Panel member reviews each eligible application and assigns a score for each of the five criteria stated above. The individual criteria scores are averaged to determine the total score for each application.

(6) Based on the scores assigned by Selection Panel members and deliberations by the Selection Panel, the Selection Panel forwards the applications with the ten highest total scores to the Assistant Secretary for Trade Development and recommends which of the ten proposals should receive funding. The Selection Panel's recommendation will not deviate from the rank order. This means that the Selection Panel cannot recommend funding for the application ranked 7th without recommending funding for applicants ranked 1 through 6. The Selection Panel recommendation includes the Panel's written assessment of the strengths and weaknesses of the top ten applications.

(7) From the top ten applications recommended by the Selection Panel, the Assistant Secretary for Trade Development selects those applications which will receive funding. In addition to the evaluation criteria stated above, the Assistant Secretary for Trade Development may consider the following in making his decision:

(a) The evaluations of the individual reviewers of the Selection Panel;

(b) The degree to which applications satisfy ITA priorities as established under the Project Funding Priorities listed above;

(c) The geographic distribution of the proposed awards;

(d) The diversity of industry sectors and overseas markets covered by the proposed awards;

(e) The diversity of project activities represented by the proposed awards;

(f) Avoidance of redundancy and conflicts with the initiatives of other federal agencies; and

(g) The availability of funds.

Announcement of Award Decisions: Award winners will be notified by letter. Once award winners formally

accept their awards, the Department of Commerce will issue a press release and list the award winners on the MDCP Web Site.

Within ten days of the announcement of the issuance of the press release, unsuccessful applicants will be notified in writing and invited to receive a debriefing from MDCP officers.

Performance Measures: On August 3, 1993, the Government Performance and Results Act (GPRA) was enacted into law (Public Law 103–62). GPRA requires each federal agency to submit a strategic plan for program activities to OMB. Among other things, each strategic plan must include "performance indicators to be used in measuring or assessing the relevant outputs, service levels and outcomes of each program activity." While not abandoning outputs (units of products, including services, of an activity) as a measure of achievement, OMB directed agencies to focus more on outcomes (the resulting effect of the use or application of an output) as the primary indicator of the success of programs and activities.

ITA reports results using the GPRA measures defined for its programs and activities. Many of these measures apply only to the programs and activities of ITA and have little relevance to the activities of MDCP award winners. The following performance measures, however, have particular applicability to MDCP projects:

(1) *Outcome Measures:*

a. Dollar value of exports resulting from outputs.

b. Number of new-to-export firms participating in activities.

c. Number of new-to-market firms participating in activities.

d. Degree of customer satisfaction (value of outputs determined by perception of the customer based on their expectation of the output versus the plan, an agreed-upon specification, or other criteria).

(2) *Output Measures:*

a. Number of counseling sessions.

b. Number of clients counseled.

c. Number of reports (publications) prepared.

d. Number of copies of reports (publications) distributed.

e. Number of trade events.

f. Number of firms participating in trade events.

Applicants for this year's MDCP competition should be mindful of these performance measures and should use them wherever possible when estimating projected results in their proposals. Award recipients will use these measures in their quarterly reports and in their end-of-year assessments of project accomplishments. Each applicant should describe its recording and reporting system in its proposals. In order to demonstrate the success of their projects, applicants are encouraged to develop and utilize additional performance measures. Each recipient of an award should be prepared to record and report the results achieved from project activities.

Other Requirements

(1) *Federal Policies and Procedures.* Recipients and subrecipients are subject to all federal laws and federal and Department of Commerce policies, regulations, and procedures applicable to federal financial assistance awards.

(2) *Past Performance.* Unsatisfactory performance under prior federal awards may result in an application not being considered for funding.

(3) *Pre-Award Activities.* If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

(4) *No Obligation for Future Funding.* If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

(5) *Delinquent Federal Debts.* No award of federal funds shall be made to an applicant who has an outstanding delinquent federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department of Commerce are made.

(6) *Name Check Review.* All applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(7) *Primary Applicant Certifications.* All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

a. *Non-Procurement Debarment and Suspension.* Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. *Drug-Free Workplace.* Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. *Anti-Lobbying.* Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. *Anti-Lobbying Disclosures.* Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

(8) *Lower Tier Certifications.* Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or sub-recipients should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

(9) *False Statements.* A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(10) *Intergovernmental Review.* Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(11) *Buy American-Made Equipment and Products.* Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(12) *Fly America Act.* All award recipients must comply with the provisions of the Fly America Act 49 U.S.C. 40118.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: April 28, 1999.

Jerome S. Morse,

Director, Resource Management and Planning Staff, Office of Planning, Coordination and Resource Management Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 99–11018 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned invention available for licensing.

SUMMARY: The invention listed below is owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Technology Partnerships Program, Stop 2200, Gaithersburg, MD 20899–2200; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the invention for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 97–044US.

Title: Multi-Wavelength Cross-Correlator For Ultrashort Radiation Pulses.

Abstract: This invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, and the University of Colorado. The measurement of cross correlations and time delays between ultrashort laser pulses of widely different tunable wavelengths has been demonstrated in a greatly simplified device employing semiconductor photodiode materials. Two-color, two-photon induced photoconductivity in a commercial GaAsP photodiode is used for the first time to obtain femtosecond cross-correlation functions for different wavelength pairs. The invention requires no non-linear crystals, no phase matching and no separate detector, as is the case for conventional optical cross-correlation measurements. In the invention, zero time delays and accurate cross correlations were measured for 100 femtosecond laser pulses of dramatically different wavelengths, e.g. 775 nm and 1300 nm. The only restriction for applicable wavelengths is that the sum of the photon energies of the two incident laser beams is above the band gap energy of the semiconductor.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11002 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 040599C]

Incidental Take of Marine Mammals; Bottlenose Dolphins and Spotted Dolphins

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of issuance of letters of authorization.

SUMMARY: In accordance with the Marine Mammal Protection Act (MMPA), as amended, and implementing regulations, notification is hereby given that 1-year letters of authorization to take bottlenose and spotted dolphins incidental to oil and gas structure removal activities were issued on December 29, 1998, to Amerada Hess Corporation, of Houston, TX; on January 27, 1999, to Taylor Energy Company, of New Orleans, LA; on March 1, 1999, to Vastar Resources, Inc., and to Sonat Exploration Co., both of Houston, TX; and on April 27, 1999, to Samedan Oil Corporation, of Houston, TX and Chevron U.S.A. Production Company, of New Orleans, LA.

ADDRESSES: The applications and letters are available for review in the following offices: Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910, and the Southeast Region, NMFS, 9721 Executive Center Drive N, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, Office of Protected Resources, NMFS, (301) 713–2055 or David Bernhart, Southeast Region (813) 570–5312.

SUPPLEMENTARY INFORMATION: Section 101(a)(5)(A) of the MMPA (16 U.S.C. 1361 *et seq.*) directs NMFS to allow, on request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region, if certain findings are made and regulations are issued. Under the MMPA, the term "taking" means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture or kill marine mammals.

Permission may be granted for periods up to 5 years if NMFS finds, after notification and opportunity for public comment, that the taking will have a negligible impact on the species or stock(s) of marine mammals and will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses. In addition, NMFS must prescribe regulations that include permissible methods of taking and other means effecting the least practicable adverse impact on the species and its habitat, and on the availability of the species for subsistence uses, paying particular attention to rookeries, mating grounds, and areas of similar significance. The regulations must include requirements pertaining to the monitoring and reporting of such taking. Regulations governing the taking of bottlenose and spotted dolphins incidental to oil and gas structure removal activities in the Gulf of Mexico were published on

October 12, 1995 (60 FR 53139), and remain in effect until November 13, 2000.

Issuance of these letters of authorization are based on a finding that the total takings will have a negligible impact on the bottlenose and spotted dolphin stocks of the Gulf of Mexico.

Dated: April 27, 1999.

Hilda Diaz-Soltero,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11030 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad-Hoc Allocation Committee (Committee) will hold a meeting which is open to the public.

DATES: The meeting will begin on Tuesday, May 25, 1999, at 8 a.m. and will continue through Wednesday, May 26, 1999, as necessary.

ADDRESSES: The meeting will be held at the Pacific Fishery Management Council Office, 2130 SW Fifth Avenue, Suite 224, Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to develop preliminary options for allocations involved in rebuilding plans for lingcod and bocaccio rockfish. The Committee will discuss allocations of lingcod and bocaccio rockfish between the recreational and commercial fisheries and between gear sectors of the limited entry fleet. The Committee will begin work on a report to present to the Council at its June meeting. The Committee will also review a draft Request for Proposals for an external facilitator to assist the Council in long-term strategic planning for groundfish management.

Although other issues not contained in this agenda may come before this Committee for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: April 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11027 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Groundfish Stock Assessment Review (STAR) Panels will hold two work sessions which are open to the public.

DATES: The cowcod/black rockfish review panel will meet beginning at 8:00 a.m., May 24, 1999 and continue until 5 p.m. on May 28, 1999 or as necessary to complete business. The canary rockfish/ petrale sole review panel will begin at 10:00 am, June 14, 1999 and continue until 5:00 p.m. on June 18, 1999, or as necessary to complete business.

ADDRESSES: The cowcod/black rockfish review panel will be held in Room C–127 at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA. The canary rockfish/ petrale sole review panel will meet in the main conference room, Guin Library, Hatfield Marine Science Center, 2030 S Marine Science Drive, Newport, OR 97365.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Julie Walker, Fishery Management Analyst; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meetings is to review draft stock assessment documents and any other pertinent information, work with Stock Assessment Teams to make necessary revisions, and produce STAR Panel reports for use by the Council family and other interested persons.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326-6352 at least 5 days prior to the meeting date.

April 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11028 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042699E]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Council (Council) will hold its 71st meeting of its Scientific and Statistical Committee (SSC) in Honolulu, HI.

DATES: The SSC meeting will be held on May 18–20, 1999, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The 71st SSC meeting will be held at the Council office conference room, 1164 Bishop St., Suite 1400, Honolulu, HI; telephone: (808–522–8220).

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1400, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The SSC will discuss and may make recommendations to the Council on the agenda items here. The order in which agenda items will be addressed can change.

Tuesday, 18 May 18, 1999, 8:30 a.m.

A. Draft coral reef ecosystem fishery management plan (FMP)

B. Bottomfish FMP issues

1. Draft 1998 bottomfish annual report (by island area with recommendations)
2. Addition of Bottomfish Management Unit Species [BMUS] (bottomfish common in catch but not yet listed as BMUS)
3. Status of Northwestern Hawaiian Islands (NWHI) bottomfish management system (Mau Zone limited entry)
4. Main Hawaiian Islands (MHI) bottomfish management
   a. Status of NMFS list of overfished stocks
   b. Final report on genetic stock structure of onaga and ehu
   c. Genetic research needs for hapuupuu
   d. Status of State's MHI management program (closed area concerns)
5. Recommendations of the Advisory Panel
6. Recommendations of the Plan Team

C. Precious Corals FMP issues

1. Proposed State regulations for black corals
2. Adjustments to established measures in the FMP

Wednesday, May 19, 1999, 8:30 a.m.

D. Pelagic FMP issues

1. 1st quarter reports for Hawaii and American Samoa longline fisheries
2. Akule and opelu study
3. Yellowfin and bigeye tagging in Hawaii
4. New gear application for coastal shark fishery
5. Shark incidental catch
6. Albatross/longline interactions
7. Turtle/longline interactions
8. Marine debris and protected species
9. American Samoa longline closed area
10. International meetings
11. Revision of State of Hawaii catch data forms
12. Recreational fisheries data task force
13. Pelagic Advisory Panel recommendations

Thursday, May 20, 1998, 8:30 a.m.

E. Crustaceans FMP issues (NWHI lobster fishery)

1. 1998 draft annual report
2. Bank-specific harvest guideline measure
3. NMFS 1999 harvest guidelines
4. NMFS research on NWHI lobster stocks
   a. Tagging experiments
   b. Spiny and slipper time-series data and stock status at Necker and Maro
5. Marine Mammal Commission's concern regarding monk seals and lobster fishing
6. Recommendations of the Advisory Panel
7. Recommendations of the Plan Team

F. Council's Program Planning document

G. Status of amendment addressing Sustainable Fisheries Act (SFA) provisions

1. Bycatch
2. Overfishing
3. Fishing communities

H. Other Business.

Although other issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: April 27, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11029 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042799C]

Marine Mammals; File No. 486–1506

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Dr. Brent Stewart, Hubbs-Sea World Research Institute, 2595 Ingraham St., San Diego, CA 92109, has applied in due form for a permit to take California sea lions (*Zalophus californianus*), northern elephant seals (*Mirounga angustirostris*), harbor seals (*Phoca vitulina richardsi*), northern fur seals (*Callorhinus ursinus*), Guadalupe fur seals (*Arctocephalus townsendi*) and Steller sea lions (*Eumetopias jubatus*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (phone: 562/980–4001, Fax: 562/980–4018).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

The applicant seeks authorization to continue long-term research on the demography and community ecology of California pinnipeds and to further characterize the resource and habitats used by each species, including patterns of spatial and temporal similarities and

differences. Requested activities include: tagging, blood and lavage sample collection, VHF and satellite-linked instrumentation, dye-marking, and harassment.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11026 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 041699B]

Marine Mammals; File No. 540–1502–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that John Calambokidis has applied in due form for a permit to take several species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 2, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426); and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting to harass several species of cetaceans during the course of photo-identification, aerial survey, biopsy sampling, and/or tagging activities; and several species of pinnipeds during the course of aerial surveys. Blue whales (*Balaenoptera musculus*), fin whales (*Balaenoptera physalus*), humpback whales (*Megaptera novaeangliae*), gray whales (*Eschrichtius robustus*), and sperm whales (*Physeter macrocephalus*) may be harassed during photo-identification, aerial survey, biopsy sampling, and tagging activities. Sei whales (*Balaenoptera borealis*) and Brydes whales (*Balaenoptera edeni*) may be harassed during photo-identification, aerial survey, and biopsy sampling activities. Minke whales (*Balaenoptera acutorostrata*), right whales (*Balaena glacialis*), Baird's beaked whales (*Berardius bairdii*), Cuvier's beaked whales (*Ziphius cavirostris*), Bottlenose dolphins (*Tursiops truncatus*), short-finned pilot whales (*Globicephala macrorhyncus*), false killer whales (Pseudorca crassidens), and killer whales (*Orcinus orca*) may be harassed during photo-identification and aerial survey activities. Pygmy sperm whales (*Kogia breviceps*), dwarf sperm whales (*Kogia simus*), Mesoplodon beaked whales (*Mesoplodon sp.*), Pacific white-sided dolphins (*Lagenorhynchus obliquidens*), northern right whale dolphins (*Lissodelphis borealis*), short-beaked common dolphins (*Delphinus delphis*), long-beaked common dolphins (*Delphinus capensis*), striped dolphins (*Stenella coeruleoalba*), Risso's dolphins (*Grampus griseus*), harbor porpoise (*Phocoena phocoena*), Dall porpoise (*Phocoenoides dalli*), Califrnia seal lions (Zalophus californianus), Steller sea lions (*Eumetopias jubatus*), northern fur seals (*Callorhinus ursinus*), harbor seals (*Phoca vitulina*), and elephant seals (*Mirounga angustirostris*) may be harassed during aerial surveys. The research will be carried out over a 5-year period in the North Pacific Ocean, including the waters off California, Oregon, and Washington.

The purposes of the proposed research are to: determine the abundance and distribution of marine mammals off the coasts of California, Oregon, and Washington; to determine the abundance, movements, population structure, diving behavior and feeding behavior of large whales in the North Pacific. These studies are a continuation of research that the applicant has been conducting over the past several years.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: April 27, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11031 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Technical Information Service

NTIS Advisory Board Meeting

AGENCY: National Technical Information Service, Technology Administration, U.S. Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet

on Wednesday, May 19, 1999, from 9:00 a.m. to 11:30 a.m., and from 1:00 p.m. to 4:00 p.m. The session from 9:00 a.m. to 11:30 a.m.; will be closed to the Public.

The Board was established under the authority of 15 U.S.C. 3704b(c), and was Chartered on September 15, 1989. The Board is composed of five members appointed by the Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include a progress report on NTIS activities, an update on the progress of FedWorld, and a discussion on NTIS' long range plans. The closed session discussion is scheduled to begin at 9:00 a.m. and end at 11:30 a.m. on May 19, 1999. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plans.

DATES: The meeting will convene on May 19, 1999, at 9:00 a.m. and adjourn at 4:00 p.m.

ADDRESSES: The meeting will be held in Room 2029 Sills Building, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161.

PUBLIC PARTICIPATION: The meeting will be open to public participation from 1;00 p.m. to 4:00 p.m. on May 19, 1999. Approximately thirty minutes will be set aside on May 19, 1999, for comments or questions from the public. Seats will be available for the public and for the media on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time. Copies of the minutes of the open session meeting will be available within thirty days of the meeting from the address given below.

FOR FURTHER INFORMATION CONTACT: Linda Lucas, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161, Telephone: (703) 605–6400; Fax (703) 605–6700.

Dated: April 27, 1999.

Ron Lawson,

Director.

[FR Doc. 99–10932 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

April 27, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used in 1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 59944, published on November 6, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 27, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 3, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 3, 1999, you are directed to reduce the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
336/836	74,332 dozen.
338	392,157 dozen.
339	1,637,779 dozen.
341	247,896 dozen.
345	68,888 dozen.
347/348/847	920,168 dozen.
351/851	85,893 dozen.
633/634/635	674,888 dozen.
638/639/838	2,070,000 dozen.
Sublevel in Group II	
445/446	79,444 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–10988 Filed 4–30–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Associated Form, and OMB Number: Statement of Personal Injury—Possible Third Party Liability CHAMPUS; DD Form 2527; OMB Number 0720–0003.

Type of Request: Reinstatement.

Number of Respondents: 29,500.

Responses Per Respondent: 1.

Annual Responses: 29,500.

Average Burden Per Response: 20 minutes.

Annual Burden Hours: 9,833.

Needs and Uses: The Federal Medical Care Recovery Act, 42 U.S.C. 2651–2653 as implemented by Executive Order Number 11060 and 28 CFR 43 provides for recovery of the reasonable value of medical care provided by the United States to a person who is injured or

suffers a disease under circumstances creating tort liability in some third person. DD Form 2527 is required for investigating and asserting claims in favor of the United States arising out of such incidents. When a claim for CHAMPUS benefits is identified as involving possible third person liability and the information is not submitted with the claim, the TRICARE/CHAMPUS contractor requests that the injured party (or a designee) complete DD Form 2527. To protect the interests of the Government, the contractor suspends claims processing until the requested third party liability information is received. The contractor conducts a preliminary evaluation based upon the collection of information and refers the case to a designated legal officer of the Uniformed Services. The responsible legal officer uses the information as a basis for asserting and settling the Government's claim. When appropriate, the information is forwarded to the Department of Justice as a basis for litigation.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD (Health Affairs), Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–2402.

Dated: April 26, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaision Officer, Department of Defense.

[FR Doc. 99–10939 Filed 4–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0070]

Submission for OMB Review; Comment Request Entitled Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Payments. A request for public comments was published at 64 FR 9132, February 24, 1999. No comments were received.

DATES: Comments may be submitted on or before June 2, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Federal Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Firms performing under Federal contracts must provide adequate documentation to support requests for payment under these contracts. The documentation may range from a simple invoice to detailed cost data. The information is usually submitted once, at the end of the contract period or upon delivery of the supplies, but could be submitted more often depending on the payment schedule established under the contract (see FAR 52.232–1 through 52.232–11). The information is used to determine the proper amount of payments to Federal contractors.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *1* minute for small purchases and fixed-price contracts, and *30* minutes for T&M and Labor Hour contracts per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *80,000*; responses per respondent, *120*; total annual responses, *9,600,000*; preparation hours per response, *.025*; and total response burden hours, *240,000*.

Obtaining Copies of Proposals

Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0070, Payments, in all correspondence.

Dated: April 27, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–10975 Filed 4–30–99; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

National Security Education Board Meeting

AGENCY: Office of the Assistant Secretary of Defense, Strategy and Requirements.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of the National Security Education Board. The purpose of the meeting is to review and make recommendations to the Secretary of Defense concerning requirements established by the David L. Boren National Security Education Act, Title VIII of Public Law 102–183, as amended.

DATES: May 13, 1999.

ADDRESSES: The Crystal City Marriott Hotel, 1999 Jefferson Davis Highway, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Dr. Edmond J. Collier, Deputy Director, National Security Education Program, 1101 Wilson Boulevard, Suite 1210, Rosslyn, Virginia 22209–2248; (703)

696–1991. Electronic mail address: colliere@ndu.edu.

SUPPLEMENTARY INFORMATION: The Board meeting is open to the public.

Dated: April 22, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–10938 Filed 4–30–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–391–004]

Colorado Interstate Gas Company; Notice of Tariff Filing

April 27, 1999.

Take notice that on April 22, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, Second Sub Fourth Revised Sheet No. 176, Second Sub Third Revised Sheet No. 177, and Second Sub Third Revised Sheet No. 178 to be effective March 5, 1999.

CIG states the tariff sheets are filed in compliance with the Order issued April 7, 1999 in Docket No. RP98–391–002. This Order approved a compliance filing CIG made for Swing Service subject to conditions.

CIG states that copies of this compliance filing have been served on CIG's jurisdictional customers and public bodies.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10957 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–321–000]

Kentucky West Virginia Gas Company, L.L.C., et. al.; Notice of Petition for Declaratory Order

April 27, 1999.

Take notice that, on April 14, 1999, Kentucky West Virginia Gas Company, L.L.C. (Kentucky West), Nora Transmission Company (Nora), and Equitable Production Company (Equitable Production), One Oxford Center, Suite 3300, Pittsburgh, PA 15219, filed a petition pursuant to Section 1(b) of the Natural Gas Act (NGA), and Rule 207(a) (2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207). The Applicants request a declaratory order stating that after transfer to Equitable Production, all of Kentucky West's and Nora's facilities will be non-jurisdictional gathering facilities and services, exempt from the provision of the NGA. All of this is more fully set forth in the application, which is on file with the Commission and open to public inspection. The application may also be viewed on the web at http//www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Applicants state that service for existing shippers on the Kentucky West and Nora systems will continue under either negotiated contracts or default contracts. Applicants state further, that the tow year default contracts will have the same terms, conditions and service that Kentucky West and Nora are currently providing. Applicants state. that all of the facilities are located in the Appalachian region and that Kentucky West's facilities have, for the most part been recognized as performing a gathering function.

Applicants state that Nora obtained certification from the Commission because it sought to be the link permitting the flow of gas between two interstate pipelines, Kentucky West and East Tennessee Natural Gas Company. Applicants state further, that if the declaration sought in this proceeding is granted, that Kentucky West's facilities are used for non-jurisdictional gathering after transfer to Equitable Production, the circumstances which made it necessary for Nora to obtain a certificate will have been eliminated.

Any person desiring to be heard or make any protest with reference to said application should no or before May 18, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protesters parties to the proceeding. Any person wishing to become a party to a proceeding or to participant as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believe that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the Applicants to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10954 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–284–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 27, 1999.

Take notice that on April 20, 1999, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets in attachment A to the filing, to be effective June 1, 1999.

The purpose of this filing is to replace Kern River's current fuel reimbursement mechanism, which is based on estimated fuel requirements and daily

fuel imbalances, with an improved fuel reimbursement mechanism that allows shippers to determine actual fuel requirements before transactions begin.

Kern River states that a copy of this filing has been served upon its customers and interested state regulatory commissions.

Any person desiring to be heard or protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10956 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP96–52–004]

Pine Needle LNG Company, LLC; Notice of Filing of Substitute Tariff Sheet

April 27, 1999.

Take notice that on April 22, 1999, Pine Needle LNG Company, LLC (Pine Needle) filed Substitute Original Sheet No. 89 of its FERC Gas Tariff, Original Volume No. 1, Pine Needle requests that this sheet be made effective on May 1, 1999, which is the expected in service date for the Pine Needle facilities.

Pine Needle states that copies of this filing have been served on customers and interested state Commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the Internet at *http//www.ferc.fed.us/online/rims.htm* (Call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10953 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–166–000]

Stingray Pipeline Company; Notice of Informal Settlement Conference

April 27, 1999.

Take notice that an informal settlement conference in this proceeding will be convened on Wednesday, May 5, 1999, at 10:00 a.m. The settlement conference will be held at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold Meltz at (202) 208–2161 or Robert Young (202) 208–5705.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10958 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–20–000]

Williston Basin Interstate Pipeline Company; Notice of Tariff Filing

April 27, 1999.

Take notice that on April 20, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58501, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed on Appendix A to that filing to become effective April 19, 1999.

Williston Basin states that on April 19, 1999, it moved its offices from Suite 300, 200 North Third Street to 1250 West Century Avenue, Bismarck, North Dakota 58501 and obtained a post office box number, P.O. Box 5601, Bismarck, North Dakota 58506–5601. All telephone numbers at this Bismarck office have also recently been changed. The filing is being made simply to reflect this change of address and telephone numbers on the applicable sheets to its FERC Gas Tariff, Second Revised Volume No. 1 and Original Volume No. 2.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–10955 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL99–56–000, et al.]

Town of Norwood, Massachusetts, et al.; Electric Rate and Corporate Regulation Filings

April 23, 1999

Take notice that the following filings have been made with the Commission:

1. Town of Norwood, Massachusetts

[Docket No. EL99–56–000]

Take notice that on April 8, 1999, the Town of Norwood, Massachusetts (Norwood or Town) filed a Petition for Declaratory Order ruling (1) that the Power Contract between the New England Power Company (NEP) and Norwood of April 11, 1983 on file at the Commission expressly terminated on October 31, 1998; (2) that NEP has made no filing with the Commission of any agreement by Norwood to extend the Power Contract between the parties dated April 12, 1983 beyond its express termination date of October 31, 1998 and (3) that NEP has no basis for claiming any "contract termination charges" under its filing of March 18, 1998 in Docket No. ER98–2233–000 against Norwood subsequent to October 31, 1998.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Puget Sound Energy, Inc.

[Docket Nos. EC99–66–000 and ER99–2552–000]

Take notice that on April 20, 1999, Puget Sound Energy, Inc. (the Company) and PP&L Montana, LLC tendered for filing a joint application, under Part 33 of the Commission's regulations for Commission approval of disposition of certain jurisdictional transmission facilities and agreements related to a proposed transaction.

The Company states that it has provided copies of its application to the Washington Utilities and Transportation Commission, and all current firm wholesale power customers, as well as certain other potentially interested parties.

Comment date: May 20, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Aquila Energy Marketing Corporation v. Niagara Mohawk Power Corporation, Niagara Mohawk Energy Marketing, Inc.

[Docket No. EL99–62–000]

Take notice that on April 19, 1999, Aquila Energy Marketing Corporation (AEMC) filed a Complaint against Niagara Mohawk Power Corporation (Niagara Mohawk) and Niagara Mohawk Energy Marketing, Inc. (NMEM). AEMC asserts in its Complaint that Niagara Mohawk unlawfully displaced AEMC's request for capacity on the Niagara Mohawk transmission system in order to provide transmission service to its affiliate NMEM.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. TransCanada Power

[Docket No. ER95–692–016]

Take notice that on April 19, 1999, the above-mentioned power marketer filed their quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Cleveland Electric Illuminating Company

[Docket No. ER96–371–004]

Take notice that on April 16, 1999, Cleveland Electric Illuminating Company, which has previously been authorized to engage in the sale of electricity at wholesale at market-based rates, notified the Federal Energy Regulatory Commission that it is now affiliated with entities that own inputs into electric power production.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Toledo Edison Company

[Docket No. ER97–455–003]

Take notice that on April 16, 1999, Toledo Edison Company, which has previously been authorized to engage in the sale of electricity at wholesale at market-based rates, notified the Federal Energy Regulatory Commission that it is now affiliated with entities that own inputs into electric power production.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Pelican Energy Management, Inc., Aurora Power Resources, Inc.

[Docket Nos. ER98–3084–003, ER98–573–001]

Take notice that on April 20, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. California Independent System Operator Corporation

[Docket No. ER99–1770–000]

Take notice that on April 19, 1999, the California Independent System Operator Corporation (ISO), tendered for filing certain documents containing information about Existing Contracts with transmission rights on Path 15. These documents were referenced in a revision to Appendix B of the Transmission Control Agreement among the ISO and Transmission Owners submitted by the ISO in the above-captioned docket on February 11, 1999. The ISO submits these documents in compliance with the Commission's letter order in the above-referenced docket, dated March 19, 1999.

The ISO states that this filing has been served upon all parties on the official service list compiled by the Secretary in the above-captioned docket.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. SCC–L1, L.L.C., SCC–L2, L.L.C., SCC–L3, L.L.C.

[Docket Nos. ER99–1914–001, ER99–1915–001, ER99–1942–001]

Take notice that on April 19, 1999, SCC–L1, L.L.C., SCC–L2, L.L.C. and SCC–L3, L.L.C. filed revised tariff sheets and code of conduct.

Comment date: May 19, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Cleco Trading & Marketing LLC

[Docket No. ER99–2300–000]

Take notice that on April 19, 1999, Cleco Trading & Marketing LLC (Cleco Trading), petitioned the Commission for acceptance of two amendments, First Superseding Original Sheet No. 27, dated April 17, 1999, to Rate Schedule No. 1 and Supplement No. 1, Original Sheet Nos. 1 and 2, dated April 17, 1999, to FERC Rate Schedule No. 1, to its Petition For Acceptance of Initial Rate Schedule, Waivers and Blanket Authority. The First Superseding Original Sheet No. 27 adds a new section 14.14 (Reassignment of Transmission Capacity) containing the Commission's standard form transmission capacity reassignment provision. Supplement No. 1 contains the Code of Conduct with Respect to the Relationship Between Cleco Trading & Marketing LLC and its Affiliates.

Cleco Trading intends to engage in wholesale electric power and energy purchases and sales as a marketer. Cleco Trading is not in the business of generating or transmitting electric power. Cleco Trading is an affiliate of

Cleco Corporation, a public utility subject to the Commission's jurisdiction under the Federal Power Act, 16 U.S.C. § 791a, *et seq.*

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Genstar Energy, L.L.C.

[Docket No. ER99–2364–000]

Take notice that on April 19, 1999 Genstar Energy, L.L.C. (Genstar), tendered for filing an amendment to its petition for acceptance of Genstar Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

Genstar intends to engage in wholesale electric power and energy purchases and sales as a marketer. Genstar is not in the business of generating or transmitting electric power.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Ameren Services Company

[Docket No. ER99–2544–000]

Take notice that on April 19, 1999, Ameren Services Company tendered for filing notice that effective February 26, 1999, Coordination Sales Tariff Service Agreement for Docket No. ER98-980–000, dated November 24, 1997, filed with the Federal Energy Regulatory Commission by Central Illinois Public Service Company is canceled.

Notice of the proposed cancellation has been served upon Entergy Power Marketing Corporation.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Northern States Power Company (Minnesota), Northern States Power Company (Wisconsin)

[Docket No. ER99–2545–000]

Take notice that on April 19, 1999, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP), tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Manitoba Hydro Electric Board.

NSP requests that the Commission accept both the agreements effective March 31, 1999, and requests waiver of the Commission's notice requirements in order for the agreements to be accepted for filing on the date requested.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. EME Homer City Generation, L.P.

[Docket No. ER99–2546–000]

Take notice that on April 19, 1999, EME Homer City Generation, L.P., tendered for filing a long-term service agreement under its market-based rate schedule, FERC Electric Rate Schedule No. 1, with Edison Mission Marketing and Trading Company.

Comment date: May 7, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Orange and Rockland Utilities

[Docket No. ER99–2553–000]

Take notice that on April 20, 1999, the above-mentioned public utility filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–10991 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–117–000, et al.]

Wisest-Connecticut, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 21, 1999.

Take notice that the following filings have been made with the Commission:

1. Wisest-Connecticut, L.L.C.

[Docket No. EG99–117–000]

Take notice that on April 16, 1999, Wisest-Connecticut, L.L.C. (Wisest-Connecticut) filed an Application for Determination of Exempt Wholesale Generator Status pursuant to Section 32(a)(1) of the Public Utility Holding Company Act of 1935, all as more fully explained in the Application.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Novarco Ltd.; Starghill Alternative Energy Corporation; Texaco Energy Services; Tosco Power, Inc.; North American Energy, Inc.; PanCanadian Energy Services Inc.; Progress Power Marketing, Inc.; Spokane Energy, L.L.C.; and Western Power Services, Inc.

[Docket Nos. ER98–4139–002, ER97–4680–005, ER95–1787–013, ER96–2635–009, ER98–242–006, ER90–168–041, ER96–1618–012, ER98–4336–002, and ER95–748–016.]

Take notice that on April 19, 1999, power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Montaup Electric Company

[Docket No. ER99–1663–000]

Take notice that on April 15, 1999, Montaup Electric Company (Montaup), tendered for filing pursuant to section 205 of the Federal Power Act and part 35 of the Commission's Regulations, an Amendment to an agreement for the resale to Constellation Power Source, Inc. (CPS), of electricity which Montaup had contracted to purchase under four unit power contracts. The Amendment is being filed pursuant to the Commission's Letter Order issued April 1, 1999 in this docket directing

Montaup to file the agreement on a nonconfidential basis.

Copies of the filing have been served on the regulatory agencies of the Commonwealth of Massachusetts and the State of Rhode Island and on all parties shown on the Commission's official service list in this proceeding.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Cinergy Services, Inc.

[Docket No. ER99–2511–000]

Take notice that on April 16, 1999, Cinergy Services, Inc. (Cinergy Services), on behalf of its Operating Companies (The Cincinnati Gas & Electric Company and PSI Energy, Inc.), tendered for filing unexecuted Service Agreements for service under the Cinergy Operating Companies FERC Electric Market-Based Power Sales Tariff, Original Volume No. 6–MB applicable to customers which Cinergy Services has individual negotiated agreements for the sale of electric energy by the Cinergy Operating Companies.

Cinergy Services requests an effective date of May 1, 1999. Said date coincides with the effective date of the Notices of Cancellation for sales by the Cinergy Operating Companies under individual negotiated agreements with these counterparts.

Copies of the filing were served upon all parties listed in Attachment B of the filing.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. FirstEnergy Corp.

[Docket No. ER99–2512–000]

Take notice that on April 16, 1999, FirstEnergy Corp. (FirstEnergy), as agent for Ohio Edison Company, Pennsylvania Power Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, submitted a Service Agreement and an Operating Agreement for Network Integration Transmission Service to be provided by FirstEnergy to American Municipal Power—Ohio, Inc. (AMP-Ohio) on behalf of the Boroughs of Ellwood City and Grove City, Pennsylvania. FirstEnergy also filed a revised Index of Customers to be incorporated into the Tariff.

FirstEnergy requests that these agreements be made effective as of April 1, 1999.

FirstEnergy states that a copy of the filing has been served on the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Central Power and Light Company

[Docket No. ER99–2513–000]

Take notice that on April 16, 1999, Central Power and Light Company (CPL), tendered for filing an Interconnection Agreement between CPL and Frontera Generation Limited Partnership (Frontera).

CPL requests an effective date for the Interconnection Agreement of March 30, 1999. Accordingly, CPL requests waiver of the Commission's notice requirements.

CPL states that a copy of the filing was served on Frontera and the Public Utility Commission of Texas.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Maine Public Service Company

[Docket No. ER99–2514–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for firm point-to-point transmission service under Maine Public's open access transmission tariff with FPL Energy Power Marketing, Inc.

Main Public requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on March 23, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER99–2515–000]

Take notice that on April 16, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the Service Agreement for Long Term Firm Transmission Service on Direct Assignment Facilities (DAF Agreement) between PacifiCorp's Transmission Function and Foote Creek III, LLC (Foote Creek III) dated March 24, 1999.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Maine Public Service Company

[Docket No. ER99–2517–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for firm point-to-point transmission service under Maine Public's open access transmission tariff with Florida Power & Light Company.

Maine Public requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Main Public Service Company; Bangor Energy Resale, Inc.

[Docket Nos. ER99–2518–000; ER99–2526–000]

Take notice that on April 16, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp

[Docket No. ER99–2519–000]

Take notice that on April 16, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, the March 29, 1999, Service Agreement for Network Integration Transmission Service (Service Agreement) between PacifiCorp and Illinova Energy Partners, Inc. (Illinova) under PacifiCorp's Open Access Transmission Tariff, FERC Electric Tariff, First Revised Volume No. 11 (Tariff).

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Wisconsin Public Service Corporation

[Docket No. ER99–2520–000]

Take notice that on April 16, 1999, Wisconsin Public Service Corporation (WPSC), tendered for filing an executed Service Agreement with Wisconsin Energy Corporation, providing for transmission service under FERC Electric Tariff, Volume No. 1.

WPSC requests that the agreement be accepted for filing and made effective on March 19, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. PJM Interconnection, L.L.C.

[Docket No. ER99–2522–000]

Take notice that on April 16, 1999, PJM Interconnection, L.L.C. (PJM),

tendered for filing a signature page of a party to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the party to the RAA.

PJM requests a waiver of the Commission's notice requirements to permit an effective date of February 22, 1999.

PJM states that it served a copy of its filing on all parties to the RAA, including the party for which a signature page is being tendered with this filing, and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Bangor Hydro-Electric Company

[Docket No. ER99–2523–000]

Take notice that on April 16, 1999, Bangor Hydro-Electric Company filed an executed service agreement for firm point-to-point transmission service with DukeSolutions, Inc.

Bangor Hydro requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Maine Public Service Company

[Docket No. ER99–2524–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with Florida Power & Light Company.

Maine Public requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Atlantic City Electric Company, Delmarva Power & Light Company, and Conectiv Energy Supply, Inc.

[Docket No. ER99–2525–000]

Take notice that on April 16, 1999, Atlantic City Electric Company (Atlantic), Delmarva Power & Light Company (Delmarva) and Conectiv Energy Supply, Inc. (CES) (collectively, the Companies) requested that the Commission eliminate the requirement for an updated market analysis in the orders granting the Companies' market-based rate authority and make the Companies subject to all future updated market analyses provided by the PJM Supporting Companies' pursuant to the Commission's order in Atlantic City Electric Company, et al., 86 FERC ¶61,248 (1999).

The Companies have served the affected customers and state commissions with this filing.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Bangor Hydro-Electric Company

[Docket No. ER99–2527–000]

Take notice that on April 16, 1999, Bangor Hydro-Electric Company filed an executed service agreement for non-firm point-to-point transmission service with DukeSolutions, Inc.

Bangor Hydro requests waiver of the Commission's 60-day notice requirements so that the enclosed agreement can become effective on April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Maine Public Service Company

[Docket No. ER99–2528–000]

Take notice that on April 16, 1999, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for non-firm point-to-point transmission service under Maine Public's open access transmission tariff with FPL Energy Power Marketing, Inc.

Maine Public requests waiver of the Commission's 60-day notice requirement so that the enclosed agreement can become effective on March 23, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Delmarva Power & Light Company

[Docket No. ER99–2529–000]

Take notice that on April 16, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a First Revised Supplement to its FERC Rate Schedule No. 110, with respect to Delmarva's full requirements service agreement with the Town of Berlin. The proposed change would decrease base demand and energy rates by 0.05111% or about $367.00 annually (based on actual billing data for calendar year 1995).

Delmarva proposes an effective date of June 1, 1999. Delmarva asserts that the decrease and the proposed effective date is in accord with the service agreement with the Town of Berlin as accepted for filing as Rate Schedule No. 110, eight supplements, and one exhibit in Docket No. ER96–852–000, which service agreement provides for changes in rates that correspond to the level of changes in rates approved by the Maryland Public Service Commission for Delmarva's non-residential retail customers.

Copies of the filing were served on the Town of Berlin and the Maryland Public Service Commission.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. FirstEnergy Corp.

[Docket No. ER99–2530–000]

Take notice that on April 16, 1999, FirstEnergy Corp., tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with ACN Energy, Inc., pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is April 1, 1999.

Comment date: May 6, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–10992 Filed 4–30–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6334–9]

Notice of Public Meeting of the National Environmental Education Advisory Council

Notice is hereby given that the National Environmental Education Advisory Council, established under section 9 of the National Environmental Education Act of 1990 (the Act), will hold a public meeting on May 13 and 14, 1999. The meeting will take place at the River Inn, 924 Twenty-Fifth Street, NW, Washington, DC from 9:00 am to 5:00 pm on Thursday, May 13 and Friday, May 14. The purpose of this meeting is to provide the Council with an opportunity to advise EPA's Office of Communications, Education and Media Relations (OCEMR) and the Office of Environmental Education (OEE) on its implementation of the Act. Members of the public are invited to attend and to submit written comments to EPA following the meeting.

For additional information regarding the Council's upcoming meeting, please contact Ginger Keho, Office of Environmental Education (1704), Office of Communications, Education and Media Relations, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 or call (202) 260–4129.

Dated: April 27, 1999.

Ginger Keho,

Designated Federal Official, National Environmental Education Advisory Council.

[FR Doc. 99–11041 Filed 4–30–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30477; FRL–6076–7]

Certain Companies; Applications to Register Pesticide Products

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments must be submitted by June 2, 1999.

ADDRESSES: By mail, submit written comments identified by the document control number [OPP–30477] and the file symbols to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Environmental Protection Agency, Rm. 119, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted as a comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The public docket is available for public inspection in Rm. 119 at the Virginia address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Marion Johnson (PM 10)	Rm. 210, CM #2, 703–305–6788, e-mail: johnson.marion@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 247, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.
Leonard Cole (PM 4)	Rm. 211, CM #2, 703–305–5412, e-mail: cole.leonard@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

I. Products Containing Active Ingredients Not Included In Any Previously Registered Products

1. File Symbol: 4582–TR. Applicant: Colgate-Palmolive Company, P.O. Box 1343, 909 River Road, Piscataway, NJ 08855–1343. Product Name: MNDA M-9011 Technical. Insecticide. Active ingredient: *N*-Methyl neodecanamide at 96.3%. Proposed classification/Use: None. For formulation of multipurpose cleaner/insect repellent products. (PM 10)

2. File Symbol: 4582–TN. Applicant: Colgate-Palmolive Co. Product Name: Ajax with Expel. Insecticide. Active ingredient: *N*-Methyl neodecanamide (MNDA) at 2%. Proposed classification/Use: None. Ajax is an all purpose cleaner with insect repellent for use on crawling insects in kitchens and bathrooms such as roaches and ants. (PM 10)

3. File Symbol: 100–ORE. Applicant: Novartis Crop Protection, P.O. Box 18300, Greensboro, NC 27419. Product Name: Fulfill 50 WG. Insecticide. Active ingredient: Pymetrozine at 50%. Proposed classification/Use: None. For control of certain aphids in fruiting, leafy and curcurbit vegetables, cole crops, tuberous and corn vegetables, tobacco, cotton, and hops. (PM 4)

4. File Symbol: 100–ORU. Applicant: Novartis Crop Protection. Product Name: Relay 50 WG. Insecticide. Active ingredient: Pymetrozine: 1,2,4-triazin-3(2*H*)-one,4,5-dihydro-6-methyl-4-[(3-pyridinyl methylene)amino] at 50.0%. Proposed classification/Use: None. For control of aphids and whiteflies in landscape and container grown ornamentals, non-bearing fruit and nut trees in nurseries, christmas tree plantations, ground covers, greenhouses, lath- and shade house ornamentals and interiorscapes. (PM 4)

5. File Symbol: 100–ORG. Applicant: Novartis Crop Protection. Product Name: Technical Pymetrozine.

Insecticide. Active ingredient: Pymetrozine: 1,2,4-triazin-3(2*H*)-one,4,5-dihydro-6-methyl-4-[(3-pyridinyl methylene)amino] at 98.3%. Proposed classification/Use: None. For use only in the manufacture of EPA registered insecticidal formulations. (PM 4)

6. File Symbol: 100–OER. Applicant: Novartis Crop Protection. Product Name: Acibenzolar-S-Methyl Technical. Plant activator. Active ingredient: Benzo (1,2,3) thiadiazole-7-carbothioic acid-*S*-methyl ester at 98.6%. Proposed classification/Use: None. For formulation into end-use fungicide products. (PM 22)

7. File Symbol: 100–OEE. Applicant: Novartis Crop Protection. Product Name: Actigard 50WG. Plant activator. Active ingredient: Benzo (1,2,3) thiadiazole-7-carbothioic acid-*S*-methyl ester at 50%. Proposed classification/Use: None. For protection against certain diseases of leafy vegetables, tomato, and tobacco. (PM 22)

Notice of approval or denial of an application to register a pesticide product will be announced in the **Federal Register**. The procedure for requesting data will be given in the **Federal Register** if an application is approved.

Comments received within the specified time period will be considered before a final decision is made; comments received after the time specified will be considered only to the extent possible without delaying processing of the application.

II. Public Record and Electronic Submissions

The official record for this notice, as well as the public version, has been established for this notice under docket number [OPP–30477] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official notice record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in Wordperfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number [OPP–30477]. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pest, Product registration.

Dated: April 22, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–11042 Filed 4–30–99; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

Community Reinvestment Act; Interagency Questions and Answers Regarding Community Reinvestment

AGENCY: Federal Financial Institutions Examination Council.

ACTION: Notice and request for comment.

SUMMARY: The Consumer Compliance Task Force (we) of the Federal Financial Institutions Examination Council (FFIEC) is supplementing, amending, and republishing its Interagency Questions and Answers Regarding Community Reinvestment, as well as proposing for comment three new or revised questions and answers. The Interagency Questions and Answers have been prepared by staff of the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively, the agencies) to answer frequently asked questions about community reinvestment. These Interagency Questions and Answers contain informal staff guidance for agency personnel, financial institutions, and the public. We seek public comment on the proposed questions and answers. In addition, we invite public comment on any of the new and revised questions and answers, as well as other community reinvestment issues that are not addressed in these Interagency Questions and Answers.

DATES: Effective date of amended Interagency Questions and Answers on Community Reinvestment: May 3, 1999. We request that comments on the proposed questions and answers be submitted on or before: July 2, 1999.

ADDRESSES: Questions and comments may be sent to Keith J. Todd, Executive Secretary, Federal Financial Institutions Examination Council, 2000 K Street, NW, Suite 310, Washington, DC 20006, or by facsimile transmission to (202) 872–7501.

FOR FURTHER INFORMATION CONTACT:

OCC: Malloy Harris, National Bank Examiner, Community and Consumer Policy Division, (202) 874–4446; or Margaret Hesse, Senior Attorney, Community and Consumer Law Division, (202) 874–5750, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: Catherine M.J. Gates, Senior Review Examiner, (202) 452–3946; James H. Mann, Attorney, (202) 452–2412; or Kathleen C. Ryan, Attorney, (202) 452–3667, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

FDIC: Robert W. Mooney, Senior Fair Lending Specialist, Division of Compliance and Consumer Affairs, (202) 942–3090; or A. Ann Johnson, Counsel, Legal Division, (202) 898–3573, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Theresa A. Stark, Project Manager, Compliance Policy, (202) 906–7054; or Richard R. Riese, Project Manager, Compliance Policy, (202) 906–6134, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Background

In 1995, the agencies revised the Community Reinvestment Act (CRA) regulations by issuing a joint final rule, which was published on May 4, 1995 (60 FR 22156). *See* 12 CFR parts 25, 228, 345 and 563e, implementing 12 U.S.C. 2901 *et seq.* The agencies published related clarifying documents on December 20, 1995 (60 FR 66048) and May 10, 1996 (61 FR 21362).

The revised regulations are interpreted primarily through "Interagency Questions and Answers Regarding Community Reinvestment," which provide informal staff guidance for use by agency personnel, financial institutions, and the public, and which are supplemented periodically. We published our most recent guidance on October 7, 1997 (1997 Interagency Questions and Answers). *See* 62 FR 52105. In addition to issuing the 1997 Interagency Questions and Answers, we proposed several questions and answers in the accompanying supplementary information. These questions and answers were proposed to clarify what

is meant by "primary purpose of community development." We specifically requested comment addressing the proposed questions and answers, as well as general comments and questions regarding the CRA regulations. *See* 62 FR at 52108–09.

We received 44 letters in response to our request for comments in the 1997 Interagency Questions and Answers. Comments came from financial institutions (16), community groups (14), trade associations (6), federal entities (6), and state/local agencies (2). This document supplements, revises, and republishes the 1997 Interagency Questions and Answers based, in part, on questions and comments received from examiners, financial institutions, and other interested parties, and on comments received in response to our request for comments.

This document adopts the four questions and answers proposed in 1997 and thirteen new questions and answers, revises seven other questions and answers, and proposes three new or revised questions and answers for comment. A discussion of these questions and answers follows.

Questions and answers are grouped by the provision of the CRA regulations that they discuss and are presented in the same order as the regulatory provisions. The Interagency Questions and Answers employ an abbreviated method to cite to the regulations. Because the regulations of the four agencies are substantially identical, corresponding sections of the different regulations usually bear the same suffix. Therefore, the Interagency Questions and Answers typically cite only to the suffix. For example, the small bank performance standards for national banks appear at 12 CFR 25.26; for Federal Reserve System member banks supervised by the Board, they appear at 12 CFR 228.26; for nonmember state banks, at 12 CFR 345.26; and for thrifts, at 12 CFR 563e.26. Accordingly, the citation in this document would be to § ____.26. In the few instances in which the suffix in one of the regulations is different, the specific citation for that regulation is provided.

Adopting Questions and Answers Proposed in 1997

We are adopting the four questions and answers addressing "primary purpose" of community development activities that were proposed in 1997. The definitions of "community development loan," "community development service," and "qualified investment" all require a "primary purpose of community development." *See* 12 CFR 25.12 (i)(1), (j)(1), and (s); 228.12 (i)(1), (j)(1), and (s); 345.12 (i)(1), (j)(1), and (s); and 563e.12 (h)(1), (i)(1), and (r). In response to inquiries about whether certain activities have the necessary "primary purpose" of community development to qualify as a community development loan, qualified investment or community development service, we proposed four questions and answers (Q&As) to explain what is meant by "primary purpose." With one clarifying change, which is discussed below, we are adopting the previously proposed Q&A7 addressing §§ ____.12(i) and 563e.12(h), Q&A1 addressing § ____.22(b)(4), Q&A1 addressing § ____.23(e), and Q&A3 addressing § ____.42(b)(2).

Twenty commenters addressed topics related to the proposed Q&As. The commenters were generally in favor of the proposed Q&As. Seven commenters supported greater flexibility for examiners when considering whether to give CRA consideration to certain loans. (These seven commenters also raised issues regarding the definition of "community development" in the regulations, which is discussed below.) Three commenters, however, felt that examiners rely too heavily on mathematical formulas in making this determination, such as the amount of the low- or moderate-income set-aside, the number of units constructed, or the number of jobs for low-income persons actually created. Six commenters supported giving CRA consideration to community development loans, even if 50% or less of the proceeds are used for community development purposes. One commenter suggested, however, that an institution should receive CRA consideration only for that portion of a loan or investment expressly devoted to the community development purpose.

The agencies have generally stated that a "primary purpose" of community development exists when the loan, investment or service is divisible and measurable in terms of the number of dollars spent, housing units built, or individuals benefited, and when an identifiable majority of the dollars expended, units built or individuals benefited is clearly attributable to one of the community development purposes enumerated in the regulations. However, this answer does not address other activities that are subject to certain legal or market restraints, such that they do not reach this threshold, even though they have community development as their purpose and result in real, long-term community development benefits. Many of these projects are "designed for the express purpose" of achieving a qualifying community development purpose, even though less than half the dollars involved in the entire project are concentrated on that purpose. For example, federal tax-incentive affordable housing projects, where less than half the units or half the dollars go into the portion of the project that represents affordable housing for low- or moderate-income persons, fall into this category. Accordingly, we are adopting without change the proposed guidance that emphasizes the quantitative and qualitative distinctions to be made when evaluating eligible community development loans, qualified investments, or community development services.

Q&A 7 addressing §§ ____.12(i) and 563e.12(h) is based on the preamble to the final rule set forth at 60 FR 22,156, 22,159 (May 4, 1995), which states that activities not designed for the express purpose of community development (as defined in the regulations) are not eligible for consideration as community development loans or services or qualified investments. The preamble further states that providing indirect or short-term benefits to low- or moderate-income persons does not make an activity community development. In addition to incorporating this guidance into these Interagency Questions and Answers, the answer identifies the kind of information used to determine whether an activity was designed for the express purpose of community development. The answer adopts a simplified threshold rule (i.e., majority) and an alternative approach for finding sufficient bases to conclude that an activity possesses the requisite primary purpose.

We are also adopting Q&A1 addressing § ____.22(b)(4) and Q&A1 addressing § ____.23(e), which provide guidance on the evaluation of activities that have a primary purpose of community development, as well as the reporting of community development loans. This additional guidance emphasizes that once loans or investments are found to possess a primary purpose of community development, examiners may differentiate among community development loans or qualified investments under the relevant performance criteria. This differentiation may be based not only on the differing dollar amounts attributable to the underlying community development purpose, but also on a loan's innovation or complexity under § ____.22(b)(4) or an investment's innovation, complexity, responsiveness or non-routine characteristics under § ____.23(e).

Finally, we are adopting Q&A3 addressing § ____.42(b)(2), which

explains that a loan may be reported as a community development loan if its express primary purpose is to finance an affordable housing project for low- or moderate-income individuals, although, for example, only 40% of the project's units will actually be occupied by individuals or families with low or moderate incomes. Although an institution would report the entire amount of the loan, we are expanding upon the answer proposed in 1997 to clarify that examiners may make qualitative distinctions among community development loans on the basis of how well each loan advances its community development purpose.

New Questions and Answers

What is "affordable" housing? Institutions and others have asked how to determine whether a housing development will provide "affordable" housing for low- and moderate-income individuals, particularly in a new project where the units are not yet leased or sold, or in other projects where the income of renters cannot be verified. It has been suggested that a simple formula might be appropriate, such as if the mortgage payments or rental expenses amount to less than 30% of the income of individuals or families who are low- or moderate-income (i.e., have an income that is less than 80% of the area median income). We believe, however, that the critical consideration is the extent to which a project is or likely will be utilized by low- or moderate-income individuals. A formula based solely on rents as a percentage of median family income may determine this accurately in some circumstances, but may fail to do so in others. For example, in an area with relatively low-cost housing, such a formula may result in a calculation above even the median housing cost for the area. Therefore, we believe that it is appropriate to look at several factors, such as median rents of the assessment area and the project, the median home value of either the assessment area, low- and moderate-income geographies or the project, the low- and moderate-income population in the area of the project, or the past performance record of the organization(s) undertaking the project in determining whether a housing development does or likely will benefit low- and moderate-income individuals.

To clarify this position, we are adopting Q&A1 addressing §§ ___.12(h)(1) and 563e.12(g)(1), which discusses the types of factors that examiners consider when determining whether housing is "affordable" to low- and moderate-income individuals.

Do institutions receive consideration for originating or purchasing loans that are fully guaranteed? We are adopting a new Q&A, designated as Q&A4 addressing § ____.22(a)(2), to stress that the lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through the origination and purchase of specified types of loans, but that the test criteria do not take into account whether or not the loans are guaranteed.

What is the range of practices that examiners may consider in evaluating the innovativeness, complexity, or flexibility of an institution's lending? We have been asked whether contracting programs, under which institutions may commit to contracting with small business borrowers, may receive consideration under the CRA regulations. To date, examiners generally have not been considering such programs in reviewing an institution's CRA performance. New Q&A1 addressing § ____.22(b)(5) discusses the range of factors that examiners may consider in evaluating the innovativeness and flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending). It makes clear that, even though contracting programs are not, standing alone, considered in connection with a CRA evaluation, such programs may enhance the success and effectiveness of a related lending program. Therefore, certain contracting programs may warrant consideration as examiners review the innovativeness, complexity, and flexibility of an institution's lending practices. The Q&A also provides another example of when examiners may consider related program activities in connection with an evaluation of an institution's lending performance.

May an institution receive consideration for a qualified investment if it invests indirectly through a fund with a community development purpose, as that is defined in the CRA regulations? We are adopting a new Q&A, designated as Q&A1 addressing § ____.23(a), that incorporates guidance previously provided in interagency staff interpretive letters. *See, e.g.,* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 800, (1997 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–227 (Sept. 11, 1997). In those letters, staff stated that the direct or indirect nature of a qualified investment does not affect whether an institution will receive consideration for the investment during its CRA evaluation. As long as the primary purpose of the investment is community development, as defined in the CRA regulations, an institution's investment in a fund, which in turn invests in a community development project (e.g., affordable housing for low- and moderate-income individuals that benefits the institution's assessment area(s) or a broader statewide or regional area that includes one or more of the institution's assessment area(s)), is a qualified investment.

How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as that is defined in the CRA regulations? Many financial institutions have made qualified investments in community development funds that operate regionally or nationally. Examiners, institutions, and the funds have asked for guidance on how to evaluate these investments. We are adopting a new Q&A, designated as Q&A2 addressing § ____.23(e), reiterating guidance previously provided in an interagency staff CRA interpretive letter. *See* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 800, *supra*.

The new Q&A explains that examiners evaluate investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s) using the investment test's four performance criteria. When determining the dollar amount of the investment (the first criterion), examiners rely on the figures the institution records according to generally accepted accounting principles. Even though different institutions may employ different investment strategies, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the same level of consideration.

The remaining three performance criteria—the "qualitative" criteria of innovativeness and complexity, responsiveness, and the degree to which the investment is not routinely provided by private investors—will provide the basis for examiner differentiation among investments. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

How do examiners evaluate an institution's activities in connection with "Individual Development Accounts"? Individual Development Accounts (IDAs) generally are matched savings accounts designed to help low-

and moderate-income families accumulate savings for education or job training, down-payment and closing costs on a new home, or start-up capital for a small business. Once IDA participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity, such as a state or local government, church, foundation, or financial institution. Participating depositors often receive training in the basics of money management, including budgeting, saving, and credit repair. In addition, an entity, such as a community organization, typically monitors participants' withdrawals from their IDAs.

Financial institutions may participate in IDA programs in a number of ways, including: offering accounts, which may be structured as traditional savings accounts; enhancing accounts by offering special account benefits, including higher interest rates, ATM services, or waived minimum balance requirements; providing funding in the form of matching funds for participants or operating support for community organizations running the IDA program; helping to design and implement IDA programs, including developing and teaching financial literacy courses; and making loans to participants once they have achieved their savings goals.

The extent of each financial institution's involvement in IDAs and the products and services offered in connection with the accounts will vary. Therefore, examiners will evaluate the actual services and products provided by each institution in connection with the IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans. We are adopting a Q&A, designated as Q&A2 addressing § ____.24(d), which articulates this opinion.

How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide, the purpose of which is community development, as that term is defined in the CRA regulations? We are adopting a new Q&A, designated as Q&A1 addressing § ____.25(e), memorializing guidance previously provided in interagency staff interpretive letters, which clarifies how examiners evaluate qualified investments made by wholesale or limited purpose institutions in a community development fund that invests in projects nationwide. *See, e.g.,* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 801, (1997 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–228 (Sept. 11, 1997). Examiners first determine whether the institution has adequately addressed the needs of its assessment area(s). In doing so, examiners also consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s). If examiners find that the institution has adequately addressed the needs of its assessment area(s), they will give consideration to nationwide qualified investments, community development loans, and community development services.

Are innovative loan products, innovative or complex qualified investments, and innovative community development services necessary for a "satisfactory" or "outstanding" CRA rating? Two commenters expressed concern that examiners might discount community development loans if they are not considered to be "innovative." As one commenter stated, innovation is only one of the four criteria considered when examiners evaluate an institution's responsiveness to community development needs.

We are adopting a new Q&A1, addressing § ____.28, to clarify that innovative practices are not required for an "outstanding" or "satisfactory" rating. Innovative loan products, innovative or complex qualified investments, and innovative community development services may augment consideration of an institution's performance under the quantitative criteria of the performance tests, resulting in a higher level of performance and rating. The Q&A also makes clear that the lack of innovative or complex investments, loans, or services alone will not result in a "needs to improve" rating.

How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating? The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these criteria are quantitative (number and amount), while others are qualitative (innovativeness, complexity, responsiveness, or flexibility). The qualitative performance criteria recognize that certain loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a direct benefit to the community that would not otherwise be possible.

We are adopting a new Q&A, designated as Q&A2 addressing § ____.28, which explains that the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by the community. These qualitative aspects of an institution's performance may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

When collecting and reporting, if applicable, the gross annual revenue or income of small business or farm or consumer borrowers, do institutions use the gross annual or the adjusted gross annual revenue or income? In response to questions from financial institutions, we are adopting two new Q&As clarifying that institutions should collect and report gross annual revenue (for small businesses and small farms) and gross annual income (for consumers) rather than adjusted gross annual revenue or income. The new Q&As are designated as Q&A4 addressing § ____.42(a)(4) and Q&A3 addressing § ____.42(c)(1)(iv).

The purpose of collecting and reporting gross annual revenue data for small businesses and small farms is to enable examiners and the public to judge whether an institution is lending to small businesses and farms, or whether it is only making small loans to larger businesses and farms. Similarly, gross annual income information is collected from consumer borrowers to help examiners determine the distribution of the institution's consumer loans based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers.

May an institution keep the compact disc that contains its CRA Disclosure Statement, which is distributed by the FFIEC, in its public file, rather than a paper copy of the information? Several institutions asked whether they may retain the compact disc that contains the CRA Disclosure Statement provided by the FFIEC in its public file rather than a paper copy. We are adopting a new Q&A2 addressing § ____.43(b)(1), which clarifies that an institution may keep the compact disc (or a duplicate of the compact disc) in its public file at its main office and the designated branch in each state as long as the institution

can readily print the information upon request.

Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating? We are adopting a new Q&A1 addressing Appendix A to Part ____—Ratings to clarify that exceptionally strong performance by an institution in some aspects of a particular rating profile may compensate for weak performance in others, thus permitting the institution to earn that rating. The Q&A describes retail institutions that use non-branch delivery systems to obtain deposits and to deliver loans, as an example. Almost all of the loans originated by such an institution may be outside of its assessment area(s). The Q&A assumes, for purposes of illustration, that examiners may find, after considering the institution's performance context and other regulatory considerations, that such an institution shows weak performance under the lending test criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. It clarifies that the institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Revised Questions and Answers

What does "promote economic development" mean? The CRA regulations define the term "community development" to include "activities that promote economic development by financing businesses or farms that meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs (13 CFR 121.301) or have gross annual revenues of $1 million or less." 12 CFR 25.12(h)(3), 228.12(h)(3), 345.12(h)(3) and 563e.12(g)(3).

The 1996 Interagency Questions and Answers included a Q&A, Q&A1 addressing §§ ____.12(h)(3) and 563e.12(g)(3), concerning whether all activities that finance small businesses or farms promote economic development. The 1997 Interagency Questions and Answers revised that Q&A in response to public comments. Since publication of the 1997 Interagency Questions and Answers, we have received 11 comments about this revised Q&A.

One commenter asserted that the description of the purpose test, i.e., that the activity must promote economic development, was too restrictive. Specifically, the commenter believed that limiting the purpose test to activities that, for example, provide jobs in low- and moderate-income areas targeted for redevelopment by the government would exclude financing to open a facility in a low- or moderate-income area that is not targeted by the government for redevelopment.

We determined that the explanation of the purpose test in the 1997 Interagency Questions and Answers was incomplete. We are revising the answer to be less restrictive by stating that an activity promotes economic development if it supports "permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement *either* in low- or moderate-income geographies *or in areas* targeted for redevelopment by Federal, state, local or tribal governments."

Examiners will continue to presume that any loan or investment in or to a SBDC or SBIC promotes economic development. Funding provided in connection with other SBA programs, as well as similar state and local programs, may also promote economic development; however, examiners will make their determinations based on business types, funding purposes, and other relevant information.

Consistent with Q&A2 addressing § ____.28, Q&A1 addressing §§ ____.12(h)(3) and 563e.12(g)(3) also clarifies that examiners will make qualitative assessments in connection with an institution's community development activities in addition to the quantitative assessment of its activities.

Does "rehabilitation of affordable housing or community facilities" include the abatement of environmental hazards, such as lead-based paint, that are present in the housing or facilities? Three commenters asked us to state that loans for the removal of environmental hazards (particularly lead-based paint) may be community development loans. We believe the abatement of environmental hazards could be a part of rehabilitating affordable housing or community facilities targeted to low- and moderate-income individuals; rehabilitation of these facilities has already been identified as an example of a community development purpose. To clarify this position, we are adding a sentence to Q&A1 addressing §§ ____.12(i) and 563e.12(h).

Are an institution's activities in connection with the Federal Home Loan Banks' Affordable Housing Program (AHP) considered when the institution's CRA performance is evaluated? We have consistently stated that the mere purchase of stock in the Federal Home Loan Banks (FHLBs) does not have a sufficient connection to community development to be considered as a qualified investment.

Institutions, however, have asked us about how their activities in connection with certain specific AHP projects are considered during their CRA evaluations. Institutions that are members of a FHLB typically provide a high level of technical assistance to prospective borrowers in preparing the application for AHP funds and ensuring that the borrower meets the eligibility criteria. Although an institution does not necessarily provide a loan in connection with an AHP project, it does disburse the funds for the FHLB and monitor the continued qualified use of the funds. We believe these activities to be community development services and are revising the second bullet in Q&A 3 addressing §§ ____.12(j) and 563e.12(i) to so state.

If an institution's employees develop or teach financial education curricula for low- or moderate-income students, are such activities community development services? We are revising the fifth bullet of Q&A3 addressing §§ ____.12(j) and 563e.12(i) to incorporate guidance previously provided in interagency staff interpretive letters. *See, e.g.,* Interagency Staff CRA Interpretive Letter, published as OCC Interpretive Letter No. 802, (1997 Transfer Binder) Fed. Banking L. Rep. (CCH), ¶ 81–229 (Sept. 17, 1997). Specifically, we are clarifying that institutions may receive CRA consideration for the services provided by its employees in developing financial education curricula or teaching financial education courses to low- or moderate-income students.

Is providing Electronic Transfer Accounts pursuant to the Debt Collection Improvement Act of 1996 a community development service? The terms, costs, and features of low-cost accounts offered by financial institutions may vary depending on the particular needs of the institutions' low- and moderate-income customers. In response to an inquiry we received concerning whether a particular account for federal benefits payments would be considered to be a community development service, we are revising Q&A3 addressing §§ ____.12(j) and 563e.12(i) by amending the seventh bullet to provide an example of one low-cost transaction account targeted to low- and moderate-income individuals.

Under the provisions of the Debt Collection Improvement Act of 1996 relating to electronic payment of federal

benefits payments (EFT "99), codified at 31 U.S.C. 3332, insured depository institutions may offer basic, low-cost "electronic transfer accounts" (ETAs) specified in Treasury Department regulations (63 FR 51490) to recipients of federal benefits payments. These accounts are designed to attract low-income persons who do not currently have account relationships with insured depository institutions. A demographic and market analysis commissioned by the Treasury Department in connection with EFT "99 concluded that ETA account holders are likely to be primarily individuals with less than $10,000 in annual income. Therefore, the ETA is an account targeted to low- and moderate-income individuals and providing such accounts qualifies as a community development service.

Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography? We received 24 letters commenting on Q&A5 addressing § ____.22(b) (2) & (3). The commenters generally were in agreement that loans to middle- or upper-income individuals in a low- or moderate-income geography should receive CRA consideration. Some commenters were concerned that requiring that there be a revitalization or stabilization plan for the area may be too restrictive, especially in rural communities, where a formal plan may not exist. However, a "formal" plan is not necessary. An informal plan, such as town council resolutions, or a plan developed by a private entity, such as a community-based development organization, may be sufficient evidence, so long as it offers evidence of a plan for development designed to ensure economic diversity among the prospective residents and not just displacement of low- and moderate-income individuals.

One commenter stated that examiners should compare an institution's percentage of lending to low- and moderate-income households to the aggregate percentage of lending by all reporting institutions to these households and to the percentage of low- and moderate-income households in the area. The agencies' examination procedures already suggest that examiners may perform these types of comparisons and others, if appropriate, to help them explain examination findings.

One commenter asked whether multifamily housing loans in low- and moderate-income geographies would be considered in the same fashion as loans for single family housing. In response to the comment, we are clarifying the answer by adding the phrase, "or multifamily housing." In addition, examiners may also consider loans for multifamily housing as community development loans if they are targeted to low- and moderate-income individuals, or if they benefit middle- or upper-income borrowers as part of a plan to encourage attracting mixed-income residents to stabilize and create an economically diverse area out of a low- or moderate-income geography.

How should an institution collect and report the location of a loan made to a small business or small farm if the borrower provides an address consisting of a post office box number or rural route and box number?

We adopted Q&A10 addressing § ____.42(a) in the 1997 Interagency Questions and Answers answering this question. In response to this Q&A, we received nine comments. Several commenters questioned the accuracy and usefulness of data collected and/or reported without the census tract or block numbering area (BNA). One commenter stated that we should allow institutions more lead time when providing interpretations of data collection and reporting provisions to allow the institutions to change their reporting systems, if necessary. We believe that data collection according to this Q&A results in the most accurate data, even though in some cases no information about census tract or BNA is provided, but agree that sufficient time should be provided to implement changes to data collection procedures, whenever possible.

In addition to formal comments on the Q&As, regulated institutions requested clarification about whether an institution should report the census tract or block numbering area (BNA) of a location, if known, even if there is no street address for that location. We are amending Q&A10 addressing § ____.42(a) to clarify that if the census tract or BNA is known, it should be reported, even if the institution does not know the street address for that particular location (or there is no street address). We are also revising the Q&A to delete obsolete 1997 data collection instructions.

What small business and small farm data should be reported?

We are making a technical change to Q&A1 addressing § ____.42(b)(1). The regulations define a "small farm loan" as those included in "loans to small farms" as defined in the instructions for preparation of the Consolidated Report of Condition and Income or the Thrift Financial Report. These instructions define such loans as having original amounts of $500,000 or less. Accordingly, we are clarifying in Q&A1 that institutions need not report small farm loan data as to loans having original amounts greater than $500,000.

What are the data requirements regarding consumer loans?

We have revised Q&A1 addressing § ____.42(c)(1) to clarify that our questions and answers written with respect to data collection (and reporting) in connection with small business and small farm loans also apply to the collection of consumer loan data.

Discussion of Other Comments Received

We received several other comments that are not addressed by specific questions and answers.

Community development. Several commenters suggested that the current definition of "community development" does not include all the types of activities that institutions engage in and that should be considered as having a community development purpose.

Before adopting the definition of "community development" in the revised regulations in 1995, the agencies received and considered a number of comments on the characteristics of activities with community development purposes. The agencies also committed to conduct a complete review of the regulations in 2002. *See* 60 FR 22,177. We will ensure that comments on the definition of "community development" are considered at that time.

Loan-to-deposit ratio. Two commenters raised issues regarding the use of a loan-to-deposit ratio as a measure of performance in the small institution performance test. One stated that the loan-to-deposit ratio should not be the only indicator of performance. The other suggested that, due to their volatility, public funds should be subtracted from the deposit side of the ratio prior to calculation.

The first concern, the relative importance of the loan-to-deposit ratio in the overall rating of a small institution, is one that the agencies routinely address in examiner training. As a general matter, we agree that the loan-to-deposit ratio is not the only indicator of lending activity performance. However, there may be cases in which a loan-to-deposit ratio is so low that it indicates that the institution is not lending. In such cases, the proportion of lending inside the institution's assessment area, together with the geographic and borrower distribution of those loans, will not excuse the low level of lending overall.

The second concern, the subtraction of public funds from the calculations of loan-to-deposit ratios, is a performance

context issue. We believe that examiners have the flexibility to consider the level of public funds on deposit, and their volatility, in determining whether a particular loan-to-deposit ratio is reasonable.

Letters of credit. One commenter asserted that lenders should receive consideration under the CRA regulations for providing letters of credit because institutions often use letters of credit to meet small business needs. Q&A1 addressing § ____.22(a)(2) specifically addresses this issue and permits information about letters of credit to be used by examiners to enhance their understanding of an institution's performance.

Loans to nonprofit organizations. One commenter suggested that loans under $1 million for business purposes, or under $500,000 for farm purposes, made to nonprofit organizations, should be considered community development loans even though they are secured by real property. Under the CRA regulations, these loans often must be counted as loans to small businesses or small farms rather than community development loans, depending on the type of property securing the loan. Q&A1 addressing § ____.12(u) addresses instances in which loans to nonprofit organizations may be considered as community development loans.

The number and dollar amount of community development loans is a criterion under the lending test that is meant to capture any loans for a community development purpose that are otherwise not reported as home mortgage, small business or small farm loans. Institutions may wish to highlight the community development purpose of particular loans that are considered as home mortgage, small business or small farm loans during an examination. Such information may be relevant to the examiners' evaluation of qualitative lending test criteria or to the performance context within which community development loans are evaluated. The regulation is clear, however, that, except for loans for multifamily housing targeted for low- and moderate-income individuals, home mortgage, small farm, and small business loans may not be reported as community development loans.

Assessment areas and non-branch delivery systems. We received several letters requesting clarification of how examiners evaluate a retail institution's lending, investment, and service activities outside the institution's assessment area(s) and the broader statewide or regional area that includes its assessment area(s). This question has been of special concern to commenters in the context of institutions that obtain deposits and deliver products and services through non-branch systems, such as the Internet. We are adopting Q&A1 addressing Appendix A to Part ____—Ratings, and are proposing a revision to Q&A5 addressing §§ ____.12(i) and 563e.12(h), which may be particularly relevant to issues arising in this context. Furthermore, we expect to address comments relating to out-of-assessment area activities through materials issued for public comment later this year.

Proposed Questions and Answers and Request for Comment

Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the assessment area(s)? Q&A5 addressing §§ ____.12(i) and 563e.12(h) in the 1997 Interagency Questions and Answers states that there does not need to be a direct benefit to the institution's assessment area(s) to satisfy the regulation's requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area.

The Q&A addresses organizations and activities, operating statewide or regionally, that may ultimately have a direct benefit on an assessment area. However, it does not specifically address local community development organizations or activities serving a locale somewhere in the broader statewide or regional area surrounding an institution's assessment area(s), which may not benefit low- and moderate-income areas or individuals located inside the assessment area(s). We are proposing to revise that Q&A to address both types of organizations or activities. The proposed Q&A would clarify that an institution's assessment area(s) need not receive an immediate or direct benefit from the institution's specific participation in a community development organization or activity provided the purpose, mandate, or activity benefits the broader statewide or regional area by servicing geographies or individuals located somewhere within the broader statewide or regional area that includes the institution's assessment area(s).

The text of the proposed Q&A follows:

Sections ____.12(i) and 563e.12(h)

Proposed Q5. *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

Proposed A5. No. The regulations, for example, recognize that community development organizations and programs are frequently efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a local, statewide, or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but is located in, the broader statewide or regional area that includes the institution's assessment area(s). The institution's assessment area need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the statewide or regional area that includes the institution's assessment area. Furthermore, the regulations permit a wholesale or limited purpose institution to consider community development loans, community development services, and qualified investments wherever they are located, as long as the institution has otherwise adequately addressed the credit needs within its assessment area(s).

In addition to general comments agreeing or disagreeing with the proposed revisions to this Q&A, we would like comments on whether community development organizations and programs that operate on a local, statewide, or even multi-state basis ultimately provide benefit to all surrounding areas.

May an institution receive consideration under the investment test for mortgage-backed securities backed by home mortgages that the same institution originated or purchased? We have received inquiries about whether examiners will consider as qualified investments mortgage-backed securities backed by home mortgages to low- and

moderate-income individuals that the investing institution initially originated or purchased.

The revised regulations, at 12 CFR ____.23(b), provide that activities considered under the lending or service tests may not be considered under the investment test. Examiners consider the home mortgages underlying mortgage-backed securities, if originated or purchased by the institution, under the lending test when they examine an institution. Therefore, examiners would not be permitted also to consider as qualified investments mortgage-backed securities, purchased or securitized by an institution, that are backed primarily or exclusively by loans that the institution originated or purchased, because the examiners would be considering the same activities under both the lending and investment tests.

To clarify our opinion, we are proposing, and requesting public comment specifically on, the following question and answer:

Section ____.23(b)

Proposed Q2: *If home mortgage loans to low-and moderate-income borrowers have been considered under an institution's lending test, may the institution that originated or purchased them also receive consideration under the investment test if it subsequently purchases mortgage-backed securities that are primarily or exclusively backed by such loans?*

Proposed A2: No. Because the institution received lending test consideration for the loans that underlie the securities, the institution may not also receive consideration under the investment test for its purchase of the securities. Of course, an institution may receive investment test consideration for purchases of mortgage-backed securities that are backed by loans to low-and moderate-income individuals as long as the securities are not backed primarily or exclusively by loans that the same institution originated or purchased.

Should renewals and refinancings of small business and small farm loans be collected and reported? Six commenters inquired whether loans to small businesses and small farms, when renewed or refinanced, should be reported for CRA purposes. The 1997 Interagency Questions and Answers, at Q&A5 addressing § ____.42(a), provided guidance that "refinancing" such loans should be reported as originations, but that "renewing" them should not. According to the guidance, the primary distinction between "refinancing" and "renewing" a loan is that, in connection with a loan refinancing, the existing obligation or note is satisfied, and a new note is written. Distinguishing refinancings and renewals on this basis is consistent with the guidance provided by the Board in connection with home mortgage loan data reporting pursuant to the Home Mortgage Disclosure Act (HMDA) regulation (12 CFR part 203).

Commenters asserted that small business and small farm lending practices are sufficiently different from home mortgage lending practices that renewals and refinancings of small business and small farm loans should be treated differently from renewals and refinancings of home mortgage loans for CRA reporting and evaluation purposes. Further, they suggested that there is very little distinction between refinancings and renewals of small business and small farm loans. Based on these comments and other inquiries from financial institutions, we propose that refinancings and renewals of small business and small farm loans be treated uniformly for CRA purposes. To that end, we are proposing two alternative revised Q&A5s addressing § ____.42(a).

Alternative I: The first proposed Q&A states that, for CRA purposes, financial institutions should report neither renewals nor refinancings of small business and small farm loans as loan originations. However, if institutions increase the amount of a small business or small farm loan or line of credit, the amount of the increase should be reported as a loan origination. Institutions should continue to report home mortgage loans according to the instructions provided in 12 CFR part 203.

Reporting neither renewals nor refinancings of small business or small loans reflects that the lending test's performance criteria emphasize loan originations and purchases. Renewals and refinancings, especially if made frequently, would inflate the actual amounts of small business and small farm lending. In addition, we believe that recordkeeping and reporting burden of large institutions will be lessened if they need not collect and report information about small business and small farm loan refinancings and renewals.

If this proposed Q&A is adopted, institutions would not collect or report as loan originations data on either small business and small farm loan refinancings or renewals. However, any institution could bring to its examiners' attention data on small business and small farm loan refinancing or renewals by providing "other loan data" pursuant to § ____.22(a)(2), including information about its small business and small farm loans outstanding. The text of the first alternative proposed Q&A follows:

Section ____.42(a)—Alternative I:

Proposed Q5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

Proposed A5: No. When an institution extends the term of one of its existing small business or small farm loans in the same or a lesser amount as the existing obligation, the institution should not report this event as a small business or small farm loan origination. If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, however, it should report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase; the original or remaining amount of the loan is not reported again as an origination. For example, a financial institution extends a loan (as opposed to a line of credit) for $25,000; principal payments have resulted in a present outstanding balance of $15,000. The customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report the $5,000 increase.

An institution may provide "other loan data," including information about small business or small farm loans outstanding, to examiners for consideration as part of the institution's lending test performance evaluation.

Alternative II: Several institutions have stressed that ongoing credit availability is important to the economic condition of small businesses and small farms, as well as the community as a whole. These institutions suggested that both refinancings and renewals of small business and small farm loans should be considered by examiners when evaluating an institution's small business and small farm lending performance. The second alternative proposed Q&A would take these concerns into consideration.

Because small business and small farm loan refinancings and renewals are nearly indistinguishable, Alternative II, like Alternative I, would not treat small business and small farm refinancings and renewals differently. Institutions would collect and report data about both refinancings and renewals as loan originations. However, because institutions often write small business and small farm loans for short terms and refinance or renew them at the end of the term, in order to avoid inflation of amounts actually lent, institutions

would be limited to reporting only one origination per year.

The text of the second alternative proposed Q&A follows:

Section ____.42(a)—Alternative II:

Proposed Q5: *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

Proposed A5: An institution should collect information about small business and small farm loans that they refinance or renew as loan originations. (A *refinancing* generally occurs when the existing loan obligation or note is satisfied, and a new note is written, while a *renewal* refers to an extension of the term of a loan.) When reporting small business and small farm loan data, however, an institution may only report one origination per loan per year unless an increase in the loan amount is granted.

If an institution increases the amount of a small business or small farm loan when it extends the term of the loan, it should always report the amount of the increase as a small business or small farm loan origination. The institution should report only the amount of the increase if the original or remaining amount of the loan has already been reported one time that year. For example, a financial institution makes a loan (as opposed to a line of credit) for $25,000; principal payments have resulted in a present outstanding balance of $15,000. The customer requests an additional $5,000, which is approved, and a new note is written for $20,000. In this example, the institution should report the $5,000 increase. The bank may also report the renewal or refinancing of the $15,000 balance one time that year.

An institution may provide "other loan data," including information about small business or small farm loans outstanding, to examiners for consideration as part of the institution's lending test performance evaluation.

In addition to general comments about these proposed questions and answers, we would also appreciate receiving your views on the following questions:

- Are there other fair and meaningful alternative methods of collecting data on small business and small farm loan renewals and refinancings? If so, please describe.
- Does allowing collection and reporting data of one renewal or refinancing per year make sense?
- Will these proposed questions and answers increase or decrease substantially the data collection and reporting burden of financial institutions? Which alternative is less burdensome?
- Which alternative (including the guidance currently in effect) best promotes accurate data that reflects the actual lending activity of financial institutions?

Depending on what final guidance we eventually adopt, we understand that we may have to make conforming changes to other Q&As.

Until a new Q&A has been adopted through publication in the **Federal Register**, the existing Q&A5 addressing § ____.42(a) remains in effect. This means that, for the time being, financial institutions will continue to collect and report data about small business and small farm loan refinancings, but not renewals.

General Comments

In addition to the specific request for comments on the proposed questions and answers, we invite public comment on the new and revised questions and answers. We also invite public comment on a continuing basis on any issues raised by the CRA and these Interagency Questions and Answers. If, after reading the Interagency Questions and Answers, financial institutions, examiners, community organizations, or other interested parties have unanswered questions or comments about the agencies' community reinvestment regulations, they should submit them to the agencies or the FFIEC. We will consider addressing such questions in future revisions to the Interagency Questions and Answers.

Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA)

The SBREFA requires an agency, for each rule for which it prepares a final regulatory flexibility analysis, to publish one or more compliance guides to help small entities understand how to comply with the rule.

Pursuant to section 605(b) of the Regulatory Flexibility Act, the agencies certified that their proposed CRA rule would not have a significant economic impact on a substantial number of small entities and invited public comments on that determination. *See* 58 FR 67478 (Dec. 21, 1993); 59 FR 51250 (Oct. 7, 1994). In response to public comment, the agencies voluntarily prepared a final regulatory flexibility analysis for the joint final rule, although the analysis was not required because it supported the agencies' earlier certification regarding the proposed rule. Because a regulatory flexibility analysis was not required, section 212 of the SBREFA does not apply to the final CRA rule. However, in their continuing efforts to provide clear, understandable regulations and to comply with the spirit of the SBREFA, the agencies have compiled the Interagency Questions and Answers. The Interagency Questions and Answers serve the same purpose as the compliance guide described in the SBREFA by providing guidance on a variety of issues of particular concern to small banks and thrifts.

The text of the Interagency Questions and Answers follows:

Text of the Interagency Questions and Answers

Interagency Questions and Answers Regarding Community Reinvestment

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§ ____.42(d) Data on affiliate lending

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information available to the public
§ ____.43(a)(1) Public comments
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§ ____.43(b)(1) Institutions other than small institutions
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§ ____.44—Public Notice by Institutions

§ ____.45—Publication of Planned Examination Schedule

Appendix A to Part ____—Ratings

Appendix B to Part ____—CRA Notice

The body of the Interagency Questions and Answers Regarding Community Reinvestment follows:

§ ____.11—Authority, Purposes, and Scope

§ ____.11(c) Scope

§ 25.11(c)(3), 228.11(c)(3) & 345.11(c)(3) Certain special purpose banks.

Q1. *Is the list of special purpose banks exclusive?*

A1. No, there may be other examples of special purpose banks. These banks engage in specialized activities that do not involve granting credit to the public in the ordinary course of business. Special purpose banks typically serve as correspondent banks, trust companies, or clearing agents or engage only in specialized services, such as cash management controlled disbursement services. A financial institution, however, does not become a special purpose bank merely by ceasing to make loans and, instead, making investments and providing other retail banking services.

Q2. *To be a special purpose bank, must a bank limit its activities in its charter?*

A2. No. A special purpose bank may, but is not required to, limit the scope of its activities in its charter, articles of association or other corporate organizational documents. A bank that does not have legal limitations on its activities, but has voluntarily limited its activities, however, would no longer be exempt from Community Reinvestment Act (CRA) requirements if it subsequently engaged in activities that involve granting credit to the public in the ordinary course of business. A bank that believes it is exempt from CRA as a special purpose bank should seek confirmation of this status from its supervisory agency.

§ ____.12—Definitions

§ ____.12(a) Affiliate

Q1. *Does the definition of "affiliate" include subsidiaries of an institution?*

A1. Yes, "affiliate" includes any company that controls, is controlled by, or is under common control with another company. An institution's subsidiary is controlled by the institution and is, therefore, an affiliate.

§§ ____.12(f) & 563e.12(e) Branch

Q1. *Do the definitions of "branch," "automated teller machine (ATM)," and "remote service facility (RSF)" include mobile branches, ATMs, and RSFs?*

A1. Yes. Staffed mobile offices that are authorized as branches are considered "branches" and mobile ATMs and RSFs are considered "ATMs" and "RSFs."

Q2. *Are loan production offices (LPOs) branches for purposes of the CRA?*

A2. LPOs and other offices are not "branches" unless they are authorized as branches of the institution through the regulatory approval process of the institution's supervisory agency.

§§ ____.12(h) & 563e.12(g) Community Development

Q1. *Are community development activities limited to those that promote economic development?*

A1. No. Although the definition of "community development" includes

activities that promote economic development by financing small businesses or farms, the rule does not limit community development loans and services and qualified investments to those activities. Community development also includes community- or tribal-based child care, educational, health, or social services targeted to low- or moderate-income persons, affordable housing for low- or moderate-income individuals, and activities that revitalize or stabilize low- or moderate-income areas.

Q2. *Must a community development activity occur inside a low- or moderate-income area in order for an institution to receive CRA consideration for the activity?*

A2. No. Community development includes activities outside of low- and moderate-income areas that provide affordable housing for, or community services targeted to, low- or moderate-income individuals and activities that promote economic development by financing small businesses and farms. Activities that stabilize or revitalize particular low- or moderate-income areas (including by creating, retaining, or improving jobs for low- or moderate-income persons) also qualify as community development, even if the activities are not located in these low- or moderate-income areas. One example is financing a supermarket that serves as an anchor store in a small strip mall located at the edge of a middle-income area, if the mall stabilizes the adjacent low-income community by providing needed shopping services that are not otherwise available in the low-income community.

Q3. *Does the regulation provide flexibility in considering performance in high-cost areas?*

A3. Yes, the flexibility of the performance standards allows examiners to account in their evaluations for conditions in high-cost areas. Examiners consider lending and services to individuals and geographies of all income levels and businesses of all sizes and revenues. In addition, the flexibility in the requirement that community development loans, community development services, and qualified investments have as their "primary" purpose community development allows examiners to account for conditions in high-cost areas. For example, examiners could take into account the fact that activities address a credit shortage among middle-income people or areas caused by the disproportionately high cost of building, maintaining or acquiring a house when determining whether an institution's loan to or investment in an organization that funds affordable housing for middle-income people or areas, as well as low- and moderate-income people or areas, has as its primary purpose community development.

§§ ____.12(h)(1) & 563e.12(g)(1) Affordable Housing (Including Multifamily Rental Housing) for Low- or Moderate-Income Individuals

Q1. *When determining whether a project is "affordable housing for low- or moderate-income individuals," thereby meeting the definition of "community development," will it be sufficient to use a formula that relates the cost of ownership, rental or borrowing to the income levels in the area as the only factor, regardless of whether the users, likely users, or beneficiaries of that affordable housing are low- or moderate-income individuals?*

A1. The concept of "affordable housing" for low- or moderate-income individuals does hinge on whether low- or moderate-income individuals benefit, or are likely to benefit, from the housing. It would be inappropriate to give consideration to a project that exclusively or predominately houses families that are not low- or moderate-income simply because the rents or housing prices are set according to a particular formula.

For projects that do not yet have occupants, and for which the income of the potential occupants is not knowable in advance, examiners will review factors such as demographic, economic and market data to determine the likelihood that the housing will "primarily" accommodate low- or moderate-income individuals. For example, examiners may look at median rents of the assessment area and the project; the median home value of either the assessment area, low- or moderate-income geographies or the project; the low- or moderate-income population in the area of the project; or the past performance record of the organization(s) undertaking the project. Further, such a project could receive consideration if its express, bona fide intent, as stated, for example, in a prospectus, loan proposal or community action plan, is community development.

§§ ____.12(h)(3) and 563e.12(g)(3) Activities That Promote Economic Development by Financing Businesses or Farms That Meet Certain Size Eligibility Standards

Q1. *"Community development" includes activities that promote economic development by financing businesses or farms that meet certain size eligibility standards. Are all activities that finance businesses and farms that meet these size eligibility standards considered to be community development?*

A1. No. To be considered as "community development" under §§ ——.12(h)(3) and 563e.12(g)(3), a loan, investment or service, whether made directly or through an intermediary, must meet both a size test and a purpose test. An activity meets the size requirement if it finances entities that either meet the size eligibility standards of the Small Business Administration's Development Company (SBDC) or Small Business Investment Company (SBIC) programs, or have gross annual revenues of $1 million or less. To meet the purpose test, the activity must promote economic development. An activity is considered to promote economic development if it supports permanent job creation, retention, and/or improvement for persons who are currently low- or moderate-income, or supports permanent job creation, retention, and/or improvement either in low- or moderate-income geographies or in areas targeted for redevelopment by Federal, state, local or tribal governments. The agencies will presume that any loan to or investment in a SBDC or SBIC promotes economic development.

In addition to their quantitative assessment of the amount of a financial institution's community development activities, examiners must make qualitative assessments of an institution's leadership in community development matters and the complexity, responsiveness, and impact of the community development activities of the institution. In reaching a conclusion about the impact of an institution's community development activities, examiners may, for example, determine that a loan to a small business in a low- or moderate-income geography that provides needed jobs and services in that area may have a greater impact and be more responsive to the community credit needs than does a loan to a small business in the same geography that does not directly provide additional jobs or services to the community.

§§ ____.12(i) and 563e.12(h) Community Development Loan

Q1. *What are examples of community development loans?*

A1. Examples of community development loans include, but are not limited to, loans to:

- Borrowers for affordable housing rehabilitation and construction, including construction and permanent financing of multifamily rental property

serving low- and moderate-income persons;

- Not-for-profit organizations serving primarily low- and moderate-income housing or other community development needs;
- Borrowers to construct or rehabilitate community facilities that are located in low- and moderate-income areas or that serve primarily low- and moderate-income individuals;
- Financial intermediaries including Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds or pools, and low-income or community development credit unions that primarily lend or facilitate lending to promote community development.
- Local, state, and tribal governments for community development activities; and
- Borrowers to finance environmental clean-up or redevelopment of an industrial site as part of an effort to revitalize the low- or moderate-income community in which the property is located.

The rehabilitation of affordable housing or community facilities, referred to above, may include the abatement of environmental hazards, such as lead-based paint, that are present in the housing or facilities.

Q2. *If a retail institution that is not required to report under the Home Mortgage Disclosure Act (HMDA) makes affordable home mortgage loans that would be HMDA-reportable home mortgage loans if it were a reporting institution, or if a small institution that is not required to collect and report loan data under CRA makes small business and small farm loans and consumer loans that would be collected and/or reported if the institution were a large institution, may the institution have these loans considered as community development loans?*

A2. No. Although small institutions are not required to report or collect information on small business and small farm loans and consumer loans, and some institutions are not required to report information about their home mortgage loans under HMDA, if these institutions are retail institutions, the agencies will consider in their CRA evaluations the institutions' originations and purchases of loans that would have been collected or reported as small business, small farm, consumer or home mortgage loans, had the institution been a collecting and reporting institution under the CRA or the HMDA. Therefore, these loans will not be considered as community development loans. Multifamily dwelling loans, however, may be considered as community development loans as well as home mortgage loans. *See also* Q&A2 addressing § ____.42(b)(2).

Q3. *Do secured credit cards or other credit card programs targeted to low- or moderate-income individuals qualify as community development loans?*

A3. No. Credit cards issued to low- or moderate-income individuals for household, family, or other personal expenditures, whether as part of a program targeted to such individuals or otherwise, do not qualify as community development loans because they do not have as their primary purpose any of the activities included in the definition of "community development."

Q4. *The regulation indicates that community development includes "activities that revitalize or stabilize low- or moderate-income geographies." Do all loans in a low- to moderate-income geography have a stabilizing effect?*

A4. No. Some loans may provide only indirect or short-term benefits to low- or moderate-income individuals in a low- or moderate-income geography. These loans are not considered to have a community development purpose. For example, a loan for upper-income housing in a distressed area is not considered to have a community development purpose simply because of the indirect benefit to low- or moderate-income persons from construction jobs or the increase in the local tax base that supports enhanced services to low- and moderate-income area residents. On the other hand, a loan for an anchor business in a distressed area (or a nearby area), that employs or serves residents of the area, and thus stabilizes the area, may be considered to have a community development purpose. For example, in an underserved, distressed area, a loan for a pharmacy that employs, and provides supplies to, residents of the area promotes community development.

Q5. *Must there be some immediate or direct benefit to the institution's assessment area(s) to satisfy the regulations' requirement that qualified investments and community development loans or services benefit an institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A5. No. The regulations, for example, recognize that community development organizations and programs are frequently efficient and effective ways for institutions to promote community development. These organizations and programs often operate on a statewide or even multi-state basis. Therefore, an institution's activity is considered a community development loan or service or a qualified investment if it supports an organization or activity that covers an area that is larger than, but includes, the institution's assessment area(s). The institution's assessment area need not receive an immediate or direct benefit from the institution's specific participation in the broader organization or activity, provided the purpose, mandate, or function of the organization or activity includes serving geographies or individuals located within the institution's assessment area. Furthermore, the regulations permit a wholesale or limited purpose institution to consider community development loans, community development services, and qualified investments wherever they are located, as long as the institution has otherwise adequately addressed the credit needs within its assessment area(s).

Q6. *What is meant by a "regional area" in the requirement that a community development loan must benefit the institution's assessment area(s) or a broader statewide or regional area that includes the institution's assessment area(s)?*

A6. A "regional area" may be as small as a city or county or as large as a multistate area. For example, the "mid-Atlantic states" may comprise a regional area. When examiners evaluate community development loans that benefit a regional area that includes the institution's assessment area, however, the examiners will consider the size of the regional area and the actual or potential benefit to the institution's assessment area(s). In most cases, the larger the regional area, the more diffuse the benefit will be to the institution's assessment area(s). Examiners may view loans with more direct benefits to an institution's assessment area(s) as more responsive to the credit needs of the area(s) than loans for which the actual benefit to the assessment area(s) is uncertain or for which the benefit is diffused throughout a larger area that includes the assessment area(s).

Q7. *What is meant by the term "primary purpose" as that term is used to define what constitutes a community development loan, a qualified investment or a community development service?*

A7. A loan, investment or service has as its primary purpose community development when it is designed for the express purpose of revitalizing or stabilizing low- or moderate-income areas, providing affordable housing for, or community services targeted to, low- or moderate-income persons, or

promoting economic development by financing small businesses and farms that meet the requirements set forth in §§ ____.12(h) or 563e.12(g). To determine whether an activity is designed for an express community development purpose, the agencies apply one of two approaches. First, if a majority of the dollars or beneficiaries of the activity are identifiable to one or more of the enumerated community development purposes, then the activity will be considered to possess the requisite primary purpose. Alternatively, where the measurable portion of any benefit bestowed or dollars applied to the community development purpose is less than a majority of the entire activity's benefits or dollar value, then the activity may still be considered to possess the requisite primary purpose if (1) the express, bona fide intent of the activity, as stated, for example, in a prospectus, loan proposal, or community action plan, is primarily one or more of the enumerated community development purposes; (2) the activity is specifically structured (given any relevant market or legal constraints or performance context factors) to achieve the expressed community development purpose; and (3) the activity accomplishes, or is reasonably certain to accomplish, the community development purpose involved. The fact that an activity provides indirect or short-term benefits to low- or moderate-income persons does not make the activity community development, nor does the mere presence of such indirect or short-term benefits constitute a primary purpose of community development. Financial institutions that want examiners to consider certain activities under either approach should be prepared to demonstrate the activities' qualifications.

§§ ____.12(j) and 563e.12(i) Community Development Service

Q1. *In addition to meeting the definition of "community development" in the regulation, community development services must also be related to the provision of financial services. What is meant by "provision of financial services"?*

A1. Providing financial services means providing services of the type generally provided by the financial services industry. Providing financial services often involves informing community members about how to get or use credit or otherwise providing credit services or information to the community. For example, service on the board of directors of an organization that promotes credit availability or finances affordable housing is related to the provision of financial services. Providing technical assistance about financial services to community-based groups, local or tribal government agencies, or intermediaries that help to meet the credit needs of low- and moderate-income individuals or small businesses and farms is also providing financial services. By contrast, activities that do not take advantage of the employees' financial expertise, such as neighborhood cleanups, do not involve the provision of financial services.

Q2. *Are personal charitable activities provided by an institution's employees or directors outside the ordinary course of their employment considered community development services?*

A2. No. Services must be provided as a representative of the institution. For example, if a financial institution's director, on her own time and not as a representative of the institution, volunteers one evening a week at a local community development corporation's financial counseling program, the institution may not consider this activity a community development service.

Q3. *What are examples of community development services?*

A3. Examples of community development services include, but are not limited to, the following:

- Providing technical assistance on financial matters to nonprofit, tribal or government organizations serving low- and moderate-income housing or economic revitalization and development needs;
- Providing technical assistance on financial matters to small businesses or community development organizations, including organizations and individuals who apply for loans or grants under the Federal Home Loan Banks' Affordable Housing Program;
- Lending employees to provide financial services for organizations facilitating affordable housing construction and rehabilitation or development of affordable housing;
- Providing credit counseling, home-buyer and home-maintenance counseling, financial planning or other financial services education to promote community development and affordable housing;
- Establishing school savings programs and developing or teaching financial education curricula for low- or moderate-income individuals;
- Providing electronic benefits transfer and point of sale terminal systems to improve access to financial services, such as by decreasing costs, for low- or moderate-income individuals; and
- Providing other financial services with the primary purpose of community development, such as low-cost bank accounts, including "Electronic Transfer Accounts" provided pursuant to the Debt Collection Improvement Act of 1996, or free government check cashing that increases access to financial services for low- or moderate-income individuals.

Examples of technical assistance activities that might be provided to community development organizations include:

- Serving on a loan review committee;
- Developing loan application and underwriting standards;
- Developing loan processing systems;
- Developing secondary market vehicles or programs;
- Assisting in marketing financial services, including development of advertising and promotions, publications, workshops and conferences;
- Furnishing financial services training for staff and management;
- Contributing accounting/bookkeeping services; and
- Assisting in fund raising, including soliciting or arranging investments.

§ ____.12(k) & 563e.12(j) Consumer Loan

Q1. *Are home equity loans considered "consumer loans"?*

A1. Home equity loans made for purposes other than home purchase, home improvement or refinancing home purchase or home improvement loans are consumer loans if they are extended to one or more individuals for household, family, or other personal expenditures.

Q2. *May a home equity line of credit be considered a "consumer loan" even if part of the line is for home improvement purposes?*

A2. If the predominant purpose of the line is home improvement, the line may only be reported under HMDA and may not be considered a consumer loan. However, the full amount of the line may be considered a "consumer loan" if its predominant purpose is for household, family, or other personal expenditures, and to a lesser extent home improvement, and the full amount of the line has not been reported under HMDA. This is the case even though there may be "double counting" because part of the line may also have been reported under HMDA.

Q3. *How should an institution collect or report information on loans the proceeds of which will be used for multiple purposes?*

A3. If an institution makes a single loan or provides a line of credit to a

customer to be used for both consumer and small business purposes, consistent with the Call Report and TFR instructions, the institution should determine the major (predominant) component of the loan or the credit line and collect or report the entire loan or credit line in accordance with the regulation's specifications for that loan type.

§ ____.12(m) & 563e.12(l) Home Mortgage Loan

Q1. *Does the term "home mortgage loan" include loans other than "home purchase loans"?*

A1. Yes. "Home mortgage loan" includes a "home improvement loan" as well as a "home purchase loan," as both terms are defined in the HMDA regulation, Regulation C, 12 CFR part 203. This definition also includes multifamily (five-or-more families) dwelling loans, loans for the purchase of manufactured homes, and refinancings of home improvement and home purchase loans.

Q2. *Some financial institutions broker home mortgage loans. They typically take the borrower's application and perform other settlement activities; however, they do not make the credit decision. The broker institutions may also initially fund these mortgage loans, then immediately assign them to another lender. Because the broker institution does not make the credit decision, under Regulation C (HMDA), they do not record the loans on their HMDA–LARs, even if they fund the loans. May an institution receive any consideration under CRA for its home mortgage loan brokerage activities?*

A2. Yes. A financial institution that funds home mortgage loans but immediately assigns the loans to the lender that made the credit decisions may present information about these loans to examiners for consideration under the lending test as "other loan data." Under Regulation C, the broker institution does not record the loans on its HMDA–LAR because it does not make the credit decisions, even if it funds the loans. An institution electing to have these home mortgage loans considered must maintain information about all of the home mortgage loans that it has funded in this way. Examiners will consider this other loan data using the same criteria by which home mortgage loans originated or purchased by an institution are evaluated.

Institutions that do not provide funding but merely take applications and provide settlement services for another lender that makes the credit decisions will receive consideration for this service as a retail banking service. Examiners will consider an institution's mortgage brokerage services when evaluating the range of services provided to low-, moderate-, middle- and upper-income geographies and the degree to which the services are tailored to meet the needs of those geographies. Alternatively, an institution's mortgage brokerage service may be considered a community development service if the primary purpose of the service is community development. An institution wishing to have its mortgage brokerage service considered as a community development service must provide sufficient information to substantiate that its primary purpose is community development and to establish the extent of the services provided.

§ ____.12(n) & 563e.12(m) Income Level

Q1. *Where do institutions find income level data for geographies and individuals?*

A1. The income levels for geographies, i.e., census tracts and block numbering areas, are derived from Census Bureau information and are updated every ten years. Institutions may contact their regional Census Bureau office or the Census Bureau's Income Statistics Office at (301) 763–8576 to obtain income levels for geographies. See Appendix A of these Interagency Questions and Answers for a list of the regional Census Bureau offices. The income levels for individuals are derived from information calculated by the Department of Housing and Urban Development (HUD) and updated annually. Institutions may contact HUD at (800) 245–2691 to request a copy of "FY [year number, e.g., 1996] Median Family Incomes for States and their Metropolitan and Nonmetropolitan Portions."

Alternatively, institutions may obtain a list of the 1990 Census Bureau-calculated and the annually updated HUD median family incomes for metropolitan statistical areas (MSAs) and statewide nonmetropolitan areas by calling the Federal Financial Institution Examination Council's (FFIEC's) HMDA Help Line at (202) 452–2016. A free copy will be faxed to the caller through the "fax-back" system. Institutions may also call this number to have "faxed-back" an order form, from which they may order a list providing the median family income level, as a percentage of the appropriate MSA or nonmetropolitan median family income, of every census tract and block numbering area (BNA). This list costs $50. Institutions may also obtain the list of MSA and statewide nonmetropolitan area median family incomes or an order form through the FFIEC's home page on the Internet at "http://www.ffiec.gov/".

§ ____.12(o) & 563e.12(n) **Limited Purpose Institution**

Q1. *What constitutes a "narrow product line" in the definition of "limited purpose institution"?*

A1. An institution offers a narrow product line by limiting its lending activities to a product line other than a traditional retail product line required to be evaluated under the lending test (i.e., home mortgage, small business, and small farm loans). Thus, an institution engaged only in making credit card or motor vehicle loans offers a narrow product line, while an institution limiting its lending activities to home mortgages is not offering a narrow product line.

Q2. *What factors will the agencies consider to determine whether an institution that, if limited purpose, makes loans outside a narrow product line, or, if wholesale, engages in retail lending, will lose its limited purpose or wholesale designation because of too much other lending?*

A2. Wholesale institutions may engage in some retail lending without losing their designation if this activity is incidental and done on an accommodation basis. Similarly, limited purpose institutions continue to meet the narrow product line requirement if they provide other types of loans on an infrequent basis. In reviewing other lending activities by these institutions, the agencies will consider the following factors:

- Is the other lending provided as an incident to the institution's wholesale lending?
- Are the loans provided as an accommodation to the institution's wholesale customers?
- Are the loans made only infrequently to the limited purpose institution's customers?
- Does only an insignificant portion of the institution's total assets and income result from the other lending?
- How significant a role does the institution play in providing that type(s) of loan(s) in the institution's assessment area(s)?
- Does the institution hold itself out as offering that type(s) of loan(s)?
- Does the lending test or the community development test present a more accurate picture of the institution's CRA performance?

Q3. *Do "niche institutions" qualify as limited purpose (or wholesale) institutions?*

A3. Generally, no. Institutions that are in the business of lending to the public,

but specialize in certain types of retail loans (for example, home mortgage or small business loans) to certain types of borrowers (for example, to high-end income level customers or to corporations or partnerships of licensed professional practitioners) ("niche institutions") generally would not qualify as limited purpose (or wholesale) institutions.

§ ____.12(s) & 563e.12(r) Qualified Investment

Q1. *Does the CRA regulation provide authority for institutions to make investments?*

A1. No. The CRA regulation does not provide authority for institutions to make investments that are not otherwise allowed by Federal law.

Q2. *Are mortgage-backed securities or municipal bonds "qualified investments"?*

A2. As a general rule, mortgage-backed securities and municipal bonds are not qualified investments because they do not have as their primary purpose community development, as defined in the CRA regulations. Nonetheless, mortgage-backed securities or municipal bonds designed primarily to finance community development generally are qualified investments. Municipal bonds or other securities with a primary purpose of community development need not be housing-related. For example, a bond to fund a community facility or park or to provide sewage services as part of a plan to redevelop a low-income neighborhood is a qualified investment. Housing-related bonds or securities must primarily address affordable housing (including multifamily rental housing) needs in order to qualify.

Q3. *Are Federal Home Loan Bank stocks and membership reserves with the Federal Reserve Banks "qualified investments"?*

A3. No. Federal Home Loan Bank (FHLB) stock and membership reserves with the Federal Reserve Banks do not have a sufficient connection to community development to be qualified investments. However, FHLB member institutions may receive CRA consideration for technical assistance they provide on behalf of applicants and recipients of funding from the FHLB's Affordable Housing Program. *See* Q&A 3 addressing §§ ____.12(j) and 563e.12(i).

Q4. *What are examples of qualified investments?*

A4. Examples of qualified investments include, but are not limited to, investments, grants, deposits or shares in or to:

- Financial intermediaries (including, Community Development Financial Institutions (CDFIs), Community Development Corporations (CDCs), minority- and women-owned financial institutions, community loan funds, and low- income or community development credit unions) that primarily lend or facilitate lending in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, such as a CDFI that promotes economic development on an Indian reservation; Organizations engaged in affordable housing rehabilitation and construction, including multifamily rental housing;
- Organizations, including, for example, Small Business Investment Companies (SBICs) and specialized SBICs, that promote economic development by financing small businesses;
- Facilities that promote community development in low- and moderate-income areas for low- and moderate-income individuals, such as youth programs, homeless centers, soup kitchens, health care facilities, battered women's centers, and alcohol and drug recovery centers;
- Projects eligible for low-income housing tax credits;
- State and municipal obligations, such as revenue bonds, that specifically support affordable housing or other community development;
- Not-for-profit organizations serving low- and moderate- income housing or other community development needs, such as counseling for credit, home-ownership, home maintenance, and other financial services education; and
- Organizations supporting activities essential to the capacity of low- and moderate-income individuals or geographies to utilize credit or to sustain economic development, such as, for example, day care operations and job training programs that enable people to work.

Q5. *Will an institution receive consideration for charitable contributions as "qualified investments"?*

A5. Yes, provided they have as their primary purpose community development as defined in the regulations. A charitable contribution, whether in cash or an in-kind contribution of property, is included in the term "grant." A qualified investment is not disqualified because an institution receives favorable treatment for it (for example, as a tax deduction or credit) under the Internal Revenue Code.

Q6. *An institution makes or participates in a community development loan. The institution provided the loan at below-market interest rates or "bought down" the interest rate to the borrower. Is the lost income resulting from the lower interest rate or buy-down a qualified investment?*

A6. No. The agencies will, however, consider the innovativeness and complexity of the community development loan within the bounds of safe and sound banking practices.

Q7. *Will the agencies consider as a qualified investment the wages or other compensation of an employee or director who provides assistance to a community development organization on behalf of the institution?*

A7. No. However, the agencies will consider donated labor of employees or directors of a financial institution in the service test if the activity is a community development service.

§ ____.12(t) Small Institution

Q1. *How are the "total bank and thrift assets" of a holding company determined?*

A1. "Total banking and thrift assets" of a holding company are determined by combining the total assets of all banks and/or thrifts that are majority-owned by the holding company. An institution is majority-owned if the holding company directly or indirectly owns more than 50 percent of its outstanding voting stock.

Q2. *How are Federal and State branch assets of a foreign bank calculated for purposes of the CRA?*

A2. A Federal or State branch of a foreign bank is considered a small institution if the Federal or State branch has less than $250 million in assets and the total assets of the foreign bank's or its holding company's U.S. bank and thrift subsidiaries that are subject to the CRA are less than $1 billion. This calculation includes not only FDIC-insured bank and thrift subsidiaries, but also the assets of any FDIC-insured branch of the foreign bank and the assets of any uninsured Federal or State branch (other than a limited branch or a Federal agency) of the foreign bank that results from an acquisition described in section 5(a)(8) of the International Banking Act of 1978 (12 U.S.C. 3103(a)(8)).

§ ____.12(u) Small Business Loan

Q1. *Are loans to nonprofit organizations considered small business loans or are they considered community development loans?*

A1. To be considered a small business loan, a loan must meet the definition of "loan to small business" in the instructions in the "Consolidated Reports of Conditions and Income" (Call

Report) and "Thrift Financial Reports" (TFR). In general, a loan to a nonprofit organization, for business or farm purposes, where the loan is secured by nonfarm nonresidential property and the original amount of the loan is $1 million or less, if a business loan, or $500,000 or less, if a farm loan, would be reported in the Call Report and TFR as a small business or small farm loan. If a loan to a nonprofit organization is reportable as a small business or small farm loan, it cannot also be considered as a community development loan, except by a wholesale or limited purpose institution. Loans to nonprofit organizations that are not small business or small farm loans for Call Report and TFR purposes may be considered as community development loans if they meet the regulatory definition.

Q2. *Are loans secured by commercial real estate considered small business loans?*

A2. Yes, depending on their principal amount. Small business loans include loans secured by "nonfarm nonresidential properties," as defined in the Call Report and TFR, in amounts less than $1 million.

Q3. *Are loans secured by nonfarm residential real estate to finance small businesses "small business loans"?*

A3. No. Loans secured by nonfarm residential real estate that are used to finance small businesses are not included as "small business" loans for Call Report and TFR purposes. The agencies recognize that many small businesses are financed by loans secured by residential real estate. If these loans promote community development, as defined in the regulation, they may be considered as community development loans. Otherwise, at an institution's option, the institution may collect and maintain data separately concerning these loans and request that the data be considered in its CRA evaluation as "Other Secured Lines/Loans for Purposes of Small Business."

Q4. *Are credit cards issued to small businesses considered "small business loans"?*

A4. Credit cards issued to a small business or to individuals to be used, with the institution's knowledge, as business accounts are small business loans if they meet the definitional requirements in the Call Report or TFR instructions.

§ ____.12(w) Wholesale Institution

Q1. *What factors will the agencies consider in determining whether an institution is in the business of extending home mortgage, small business, small farm, or consumer loans to retail customers?*

A1. The agencies will consider whether:

- The institution holds itself out to the retail public as providing such loans; and
- The institution's revenues from extending such loans are significant when compared to its overall operations.

A wholesale institution may make some retail loans without losing its wholesale designation as described above in Q&A2 addressing §§ ____.12(o) and 563e.12(n).

§ ____.21—Performance Tests, Standards, and Ratings, in General

§ ____.21(a) Performance Tests and Standards

Q1. *Are all community development activities weighted equally by examiners?*

A1. No. Examiners will consider the responsiveness to credit and community development needs, as well as the innovativeness and complexity of an institution's community development lending, qualified investments, and community development services. These criteria include consideration of the degree to which they serve as a catalyst for other community development activities. The criteria are designed to add a qualitative element to the evaluation of an institution's performance.

§ ____.21(b) Performance Context

Q1. *Is the performance context essentially the same as the former regulation's needs assessment?*

A1. No. The performance context is a broad range of economic, demographic, and institution- and community-specific information that an examiner reviews to understand the context in which an institution's record of performance should be evaluated. The agencies will provide examiners with much of this information prior to the examination. The performance context is not a formal or written assessment of community credit needs.

§ ____.21(b)(2) Information Maintained by the Institution or Obtained From Community Contacts

Q1. *Will examiners consider performance context information provided by institutions?*

A1. Yes. An institution may provide examiners with any information it deems relevant, including information on the lending, investment, and service opportunities in its assessment area(s). This information may include data on the business opportunities addressed by lenders not subject to the CRA. Institutions are not required, however, to prepare a needs assessment. If an institution provides information to examiners, the agencies will not expect information other than what the institution normally would develop to prepare a business plan or to identify potential markets and customers, including low- and moderate-income persons and geographies in its assessment area(s). The agencies will not evaluate an institution's efforts to ascertain community credit needs or rate an institution on the quality of any information it provides.

Q2. *Will examiners conduct community contact interviews as part of the examination process?*

A2. Yes. Examiners will consider information obtained from interviews with local community, civic, and government leaders. These interviews provide examiners with knowledge regarding the local community, its economic base, and community development initiatives. To ensure that information from local leaders is considered—particularly in areas where the number of potential contacts may be limited—examiners may use information obtained through an interview with a single community contact for examinations of more than one institution in a given market. In addition, the agencies will consider information obtained from interviews conducted by other agency staff and by the other agencies. In order to augment contacts previously used by the agencies and foster a wider array of contacts, the agencies will share community contact information.

§ ____.21(b)(4) Institutional Capacity and Constraints

Q1. *Will examiners consider factors outside of an institution's control that prevent it from engaging in certain activities?*

A1. Yes. Examiners will take into account statutory and supervisory limitations on an institution's ability to engage in any lending, investment, and service activities. For example, a savings association that has made few or no qualified investments due to its limited investment authority may still receive a low satisfactory rating under the investment test if it has a strong lending record.

§ ____.21(b)(5) Institution's Past Performance and the Performance of Similarly Situated Lenders

Q1. *Can an institution's assigned rating be adversely affected by poor past performance?*

A1. Yes. The agencies will consider an institution's past performance in its overall evaluation. For example, an institution's past performance may support a rating of "substantial noncompliance" if the institution has not improved performance rated as "needs to improve."

Q2. *How will examiners consider the performance of similarly situated lenders?*

A2. The performance context section of the regulation permits the performance of similarly situated lenders to be considered, for example, as one of a number of considerations in evaluating the geographic distribution of an institution's loans to low-, moderate-, middle-, and upper-income geographies. This analysis, as well as other analyses, may be used, for example, where groups of contiguous geographies within an institution's assessment area(s) exhibit abnormally low penetration. In this regard, the performance of similarly situated lenders may be analyzed if such an analysis would provide accurate insight into the institution's lack of performance in those areas. The regulation does not require the use of a specific type of analysis under these circumstances. Moreover, no ratio developed from any type of analysis is linked to any lending test rating.

§ ____.22—Lending Test

§ ____.22(a) Scope of Test

§ ____.22(a)(1) Types of Loans Considered

Q1. *If a large retail institution is not required to collect and report home mortgage data under the HMDA, will the agencies still evaluate the institution's home mortgage lending performance?*

A1. Yes. The agencies will sample the institution's home mortgage loan files in order to assess its performance under the lending test criteria.

Q2. *When will examiners consider consumer loans as part of an institution's CRA evaluation?*

A2. Consumer loans will be evaluated if the institution so elects; and an institution that elects not to have its consumer loans evaluated will not be viewed less favorably by examiners than one that does. However, if consumer loans constitute a substantial majority of the institution's business, the agencies will evaluate them even if the institution does not so elect. The agencies interpret "substantial majority" to be so significant a portion of the institution's lending activity by number or dollar volume of loans that the lending test evaluation would not meaningfully reflect its lending performance if consumer loans were excluded.

§ ____.22(a)(2) Loan Originations and Purchases/Other Loan Data

Q1. *How are lending commitments (such as letters of credit) evaluated under the regulation?*

A1. The agencies consider lending commitments (such as letters of credit) only at the option of the institution. Commitments must be legally binding between an institution and a borrower in order to be considered. Information about lending commitments will be used by examiners to enhance their understanding of an institution's performance.

Q2. *Will examiners review application data as part of the lending test?*

A2. Application activity is not a performance criterion of the lending test. However, examiners may consider this information in the performance context analysis because this information may give examiners insight on, for example, the demand for loans.

Q3. *May a financial institution receive consideration under CRA for modification, extension, and consolidation agreements (MECAs), in which it obtains loans from other institutions without actually purchasing or refinancing the loans, as those terms have been interpreted under CRA?*

A3. Yes. In some states, MECAs, which are not considered loan refinancings because the existing loan obligations are not satisfied and replaced, are common. Although these transactions are not considered to be purchases or refinancings, as those terms have been interpreted under CRA, they do achieve the same results. An institution may present information about its MECA activities to examiners for consideration under the lending test as "other loan data."

Q4: *Do institutions receive consideration for originating or purchasing loans that are fully guaranteed?*

A4: Yes. The lending test evaluates an institution's record of helping to meet the credit needs of its assessment area(s) through the origination or purchase of specified types of loans. The test does not take into account whether or not such loans are guaranteed.

§ ____.22(b) Performance Criteria

Q1. *How will examiners apply the performance criteria in the lending test?*

A1. Examiners will apply the performance criteria reasonably and fairly, in accord with the regulations, the examination procedures, and this Guidance. In doing so, examiners will disregard efforts by an institution to manipulate business operations or present information in an artificial light that does not accurately reflect an institution's overall record of lending performance.

§ ____.22(b)(1) Lending Activity

Q1. *How will the agencies apply the lending activity criterion to discourage an institution from originating loans that are viewed favorably under CRA in the institution itself and referring other loans, which are not viewed as favorably, for origination by an affiliate?*

A1. Examiners will review closely institutions with (1) a small number and amount of home mortgage loans with an unusually good distribution among low- and moderate-income areas and low- and moderate-income borrowers and (2) a policy of referring most, but not all, of their home mortgage loans to affiliated institutions. If an institution is making loans mostly to low- and moderate-income individuals and areas and referring the rest of the loan applicants to an affiliate for the purpose of receiving a favorable CRA rating, examiners may conclude that the institution's lending activity is not satisfactory because it has inappropriately attempted to influence the rating. In evaluating an institution's lending, examiners will consider legitimate business reasons for the allocation of the lending activity.

§ ____.22(b)(2) & (3) Geographic Distribution and Borrower Characteristics

Q1. *How do the geographic distribution of loans and the distribution of lending by borrower characteristics interact in the lending test?*

A1. Examiners generally will consider both the distribution of an institution's loans among geographies of different income levels and among borrowers of different income levels and businesses of different sizes. The importance of the borrower distribution criterion, particularly in relation to the geographic distribution criterion, will depend on the performance context. For example, distribution among borrowers with different income levels may be more important in areas without identifiable geographies of different income categories. On the other hand, geographic distribution may be more important in areas with the full range of geographies of different income categories.

Q2. *Must an institution lend to all portions of its assessment area?*

A2. The term "assessment area" describes the geographic area within which the agencies assess how well an

institution has met the specific performance tests and standards in the rule. The agencies do not expect that simply because a census tract or block numbering area is within an institution's assessment area(s) the institution must lend to that census tract or block numbering area. Rather the agencies will be concerned with conspicuous gaps in loan distribution that are not explained by the performance context. Similarly, if an institution delineated the entire county in which it is located as its assessment area, but could have delineated its assessment area as only a portion of the county, it will not be penalized for lending only in that portion of the county, so long as that portion does not reflect illegal discrimination or arbitrarily exclude low- or moderate-income geographies. The capacity and constraints of an institution, its business decisions about how it can best help to meet the needs of its assessment area(s), including those of low- and moderate-income neighborhoods, and other aspects of the performance context, are all relevant to explain why the institution is serving or not serving portions of its assessment area(s).

Q3. *Will examiners take into account loans made by affiliates when evaluating the proportion of an institution's lending in its assessment area(s)?*

A3. Examiners will not take into account loans made by affiliates when determining the proportion of an institution's lending in its assessment area(s), even if the institution elects to have its affiliate lending considered in the remainder of the lending test evaluation. However, examiners may consider an institution's business strategy of conducting lending through an affiliate in order to determine whether a low proportion of lending in the assessment area(s) should adversely affect the institution's lending test rating.

Q4. *When will examiners consider loans (other than community development loans) made outside an institution's assessment area(s)?*

A4. Consideration will be given for loans to low- and moderate-income persons and small business and farm loans outside of an institution's assessment area(s), provided the institution has adequately addressed the needs of borrowers within its assessment area(s). The agencies will apply this consideration not only to loans made by large retail institutions being evaluated under the lending test, but also to loans made by small institutions being evaluated under the small institution performance standards. Loans to low- and moderate-income persons and small businesses and farms outside of an institution's assessment area(s), however, will not compensate for poor lending performance within the institution's assessment area(s).

Q5. *Under the lending test, how will examiners evaluate home mortgage loans to middle- or upper-income individuals in a low- or moderate-income geography?*

A5. Examiners will consider these home mortgage loans under the performance criteria of the lending test, i.e., by number and amount of home mortgage loans, whether they are inside or outside the financial institution's assessment area(s), their geographic distribution, and the income levels of the borrowers. Examiners will use information regarding the financial institution's performance context to determine how to evaluate the loans under these performance criteria. Depending on the performance context, examiners could view home mortgage loans to middle-income individuals in a low-income geography very differently. For example, if the loans are for homes or multifamily housing located in an area for which the local, state, tribal, or Federal government or a community-based development organization has developed a revitalization or stabilization plan (such as a Federal enterprise community or empowerment zone) that includes attracting mixed-income residents to establish a stabilized, economically diverse neighborhood, examiners may give more consideration to such loans, which may be viewed as serving the low- or moderate-income community's needs as well as serving those of the middle- or upper-income borrowers. If, on the other hand, no such plan exists and there is no other evidence of governmental support for a revitalization or stabilization project in the area and the loans to middle- or upper-income borrowers significantly disadvantage or primarily have the effect of displacing low- or moderate-income residents, examiners may view these loans simply as home mortgage loans to middle- or upper-income borrowers who happen to reside in a low- or moderate-income geography and weigh them accordingly in their evaluation of the institution.

§ ____.22(b)(4) Community Development Lending

Q1. *When evaluating an institution's record of community development lending, may an examiner distinguish among community development loans on the basis of the actual amount of the loan that advances the community development purpose?*

A1. Yes. When evaluating the institution's record of community development lending under § ____.22(b)(4), it is appropriate to give greater weight to the amount of the loan that is targeted to the intended community development purpose. For example, consider two $10 million projects (with a total of 100 units each) that have as their express primary purpose affordable housing and are located in the same community. One of these projects sets aside 40% of its units for low-income residents and the other project allocates 65% of its units for low-income residents. An institution would report both loans as $10 million community development loans under the § ____.42(b)(2) aggregate reporting obligation. However, transaction complexity, innovation and all other relevant considerations being equal, an examiner should also take into account that the 65% project provides more affordable housing for more people per dollar expended.

Under § ____.22(b)(4), the extent of CRA consideration an institution receives for its community development loans should bear a direct relation to the benefits received by the community and the innovation or complexity of the loans required to accomplish the activity, not simply to the dollar amount expended on a particular transaction. By applying all lending test performance criteria, a community development loan of a lower dollar amount could meet the credit needs of the institution's community to a greater extent than a community development loan with a higher dollar amount, but with less innovation, complexity, or impact on the community.

§ ____.22(b)(5) Innovative or Flexible Lending Practices

Q1. *What is the range of practices that examiners may consider in evaluating the innovativeness or flexibility of an institution's lending?*

A1. In evaluating the innovativeness or flexibility of an institution's lending practices (and the complexity and innovativeness of its community development lending), examiners will not be limited to reviewing the overall variety and specific terms and conditions of the credit products themselves. In connection with the evaluation of an institution's lending, examiners also may give consideration to related innovations when they augment the success and effectiveness of the institution's lending under its community development loan programs or, more generally, its lending under its loan programs that address the credit needs of low- and moderate-income

geographies or individuals. For example:

• In connection with a community development loan program, a bank may establish a technical assistance program under which the bank, directly or through third parties, provides affordable housing developers and other loan recipients with financial consulting services. Such a technical assistance program may, by itself, constitute a community development service eligible for consideration under the service test of the CRA regulations. In addition, the technical assistance may be favorably considered as an innovation that augments the success and effectiveness of the related community development loan program.

• In connection with a small business lending program in a low- or moderate-income area and consistent with safe and sound lending practices, a bank may implement a program under which, in addition to providing financing, the bank also contracts with the small business borrowers. Such a contracting arrangement would not, standing alone, qualify for CRA consideration. However, it may be favorably considered as an innovation that augments the loan program's success and effectiveness, and improves the program's ability to serve community development purposes by helping to promote economic development through support of small business activities and revitalization or stabilization of low- or moderate-income geographies.

§ ____.22(c) Affiliate Lending

§ ____.22(c)(1) In General

Q1. *If an institution elects to have loans by its affiliate(s) considered, may it elect to have only certain categories of loans considered?*

A1. Yes. An institution may elect to have only a particular category of its affiliate's lending considered. The basic categories of loans are home mortgage loans, small business loans, small farm loans, community development loans, and the five categories of consumer loans (motor vehicle loans, credit card loans, home equity loans, other secured loans, and other unsecured loans).

§ ____.22(c)(2) Constraints on Affiliate Lending

§ ____.22(c)(2)(i) No Affiliate May Claim a Loan Origination or Loan Purchase if Another Institution Claims the Same Loan Origination or Purchase

Q1. *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits one affiliate from claiming a loan origination or purchase claimed by another affiliate. However, an institution can count as a purchase a loan originated by an affiliate that the institution subsequently purchases, or count as an origination a loan later sold to an affiliate, provided the same loans are not sold several times to inflate their value for CRA purposes.

§ ____.22(c)(2)(ii) If an institution elects to have its supervisory agency consider loans within a particular lending category made by one or more of the institution's affiliates in a particular assessment area, the institution shall elect to have the agency consider all loans within that lending category in that particular assessment area made by all of the institution's affiliates.

Q1. *How is this constraint on affiliate lending applied?*

A1. This constraint prohibits "cherry-picking" affiliate loans within any one category of loans. The constraint requires an institution that elects to have a particular category of affiliate lending in a particular assessment area considered to include all loans of that type made by all of its affiliates in that particular assessment area. For example, assume that an institution has one or more affiliates, such as a mortgage bank that makes loans in the institution's assessment area. If the institution elects to include the mortgage bank's home mortgage loans, it must include all of mortgage bank's home mortgage loans made in its assessment area. The institution cannot elect to include only those low- and moderate-income home mortgage loans made by the mortgage bank affiliate and not home mortgage loans to middle- and upper-income individuals or areas.

Q2. *How is this constraint applied if an institution's affiliates are also insured depository institutions subject to the CRA?*

A2. Strict application of this constraint against "cherry-picking" to loans of an affiliate that is also an insured depository institution covered by the CRA would produce the anomalous result that the other institution would, without its consent, not be able to count its own loans. Because the agencies did not intend to deprive an institution subject to the CRA of receiving consideration for its own lending, the agencies read this constraint slightly differently in cases involving a group of affiliated institutions, some of which are subject to the CRA and share the same assessment area(s). In those circumstances, an institution that elects to include all of its mortgage affiliate's home mortgage loans in its assessment area would not automatically be required to include all home mortgage loans in its assessment area of another affiliate institution subject to the CRA. However, all loans of a particular type made by any affiliate in the institution's assessment area(s) must either be counted by the lending institution or by another affiliate institution that is subject to the CRA. This reading reflects the fact that a holding company may, for business reasons, choose to transact different aspects of its business in different subsidiary institutions. However, the method by which loans are allocated among the institutions for CRA purposes must reflect actual business decisions about the allocation of banking activities among the institutions and should not be designed solely to enhance their CRA evaluations.

§ ____.22(d) Lending by a Consortium or a Third Party

Q1. *Will equity and equity-type investments in a third party receive consideration under the lending test?*

A1. If an institution has made an equity or equity-type investment in a third party, community development loans made by the third party may be considered under the lending test. On the other hand, asset-backed and debt securities that do not represent an equity-type interest in a third party will not be considered under the lending test unless the securities are booked by the purchasing institution as a loan. For example, if an institution purchases stock in a community development corporation ("CDC") that primarily lends in low- and moderate-income areas or to low- and moderate-income individuals in order to promote community development, the institution may claim a pro rata share of the CDC's loans as community development loans. The institution's pro rata share is based on its percentage of equity ownership in the CDC. Q&A1 addressing § ____.23(b) provides information concerning consideration of an equity or equity-type investment under the investment test and both the lending and investment tests.

Q2. *How will examiners evaluate loans made by consortia or third parties under the lending test?*

A2. Loans originated or purchased by consortia in which an institution participates or by third parties in which an institution invests will only be considered if they qualify as community development loans and will only be considered under the community development criterion of the lending test. However, loans originated directly on the books of an institution or purchased by the institution are considered to have been made or

purchased directly by the institution, even if the institution originated or purchased the loans as a result of its participation in a loan consortium. These loans would be considered under all the lending test criteria appropriate to them depending on the type of loan.

Q3. *In some circumstances, an institution may invest in a third party, such as a community development bank, that is also an insured depository institution and is thus subject to CRA requirements. If the investing institution requests its supervisory agency to consider its pro rata share of community development loans made by the third party, as allowed under 12 CFR ____.22(d), may the third party also receive consideration for these loans?*

A3. Yes, as long as the financial institution and the third party are not affiliates. The regulations state, at 12 CFR ____.22(c)(2)(i), that two affiliates may not both claim the same loan origination or loan purchase. However, if the financial institution and the third party are not affiliates, the third party may receive consideration for the community development loans it originates, and the financial institution that invested in the third party may also receive consideration for its pro rata share of the same community development loans under 12 CFR ____.22(d).

§ ____.23—Investment Test

§ ____.23(a) Scope of Test

Q1: *May an institution receive consideration under the CRA regulations if it invests indirectly through a fund, the purpose of which is community development, as that is defined in the CRA regulations?*

A1. Yes, the direct or indirect nature of the qualified investment does not affect whether an institution will receive consideration under the CRA regulations because the regulations do not distinguish between "direct" and "indirect" investments. Thus, an institution's investment in an equity fund that, in turn, invests in projects that, for example, provide affordable housing to low- and moderate-income individuals, would receive consideration as a qualified investment under the CRA regulations, provided the investment benefits one or more of the institution's assessment area(s) or a broader statewide or regional area(s) that includes one or more of the institution's assessment area(s). Similarly, an institution may receive consideration for a direct qualified investment in a nonprofit organization that, for example, supports affordable housing for low- and moderate-income individuals in the institution's assessment area(s) or a broader statewide or regional area(s) that includes the institution's assessment area(s).

§ ____.23(b) Exclusion

Q1. *Even though the regulations state that an activity that is considered under the lending or service tests cannot also be considered under the investment test, may parts of an activity be considered under one test and other parts be considered under another test?*

A1. Yes, in some instances the nature of an activity may make it eligible for consideration under more than one of the performance tests. For example, certain investments and related support provided by a large retail institution to a CDC may be evaluated under the lending, investment, and service tests. Under the service test, the institution may receive consideration for any community development services that it provides to the CDC, such as service by an executive of the institution on the CDC's board of directors. If the institution makes an investment in the CDC that the CDC uses to make community development loans, the institution may receive consideration under the lending test for its pro-rata share of community development loans made by the CDC. Alternatively, the institution's investment may be considered under the investment test, assuming it is a qualified investment. In addition, an institution may elect to have a part of its investment considered under the lending test and the remaining part considered under the investment test. If the investing institution opts to have a portion of its investment evaluated under the lending test by claiming a share of the CDC's community development loans, the amount of investment considered under the investment test will be offset by that portion. Thus, the institution would only receive consideration under the investment test for the amount of its investment multiplied by the percentage of the CDC's assets that meet the definition of a qualified investment.

§ ____.23(e) Performance Criteria

Q1. *When applying the performance criteria of § ____.23(e), may an examiner distinguish among qualified investments based on how much of the investment actually supports the underlying community development purpose?*

A1. Yes. Although § ____.23(e)(1) speaks in terms of the dollar amount of qualified investments, the criterion permits an examiner to weight certain investments differently or to make other appropriate distinctions when evaluating an institution's record of making qualified investments. For instance, an examiner should take into account that a targeted mortgage-backed security that qualifies as an affordable housing issue that has only 60% of its face value supported by loans to low- or moderate-income borrowers would not provide as much affordable housing for low- and moderate-income individuals as a targeted mortgage-backed security with 100% of its face value supported by affordable housing loans to low- and moderate-income borrowers. The examiner should describe any differential weighting (or other adjustment), and its basis in the Public Evaluation. However, no matter how a qualified investment is handled for purposes of § ____.23(e)(1), it will also be evaluated with respect to the qualitative performance criteria set forth in § ____.23(e)(2), (3) and (4). By applying all criteria, a qualified investment of a lower dollar amount may be weighed more heavily under the Investment Test than a qualified investment with a higher dollar amount, but with fewer qualitative enhancements.

Q2: *How do examiners evaluate an institution's qualified investment in a fund, the primary purpose of which is community development, as that is defined in the CRA regulations?*

A2. When evaluating qualified investments that benefit an institution's assessment area(s) or a broader statewide or regional area that includes its assessment area(s), examiners will look at the following four performance criteria:

(1) The dollar amount of qualified investments;

(2) The innovativeness or complexity of qualified investments;

(3) The responsiveness of qualified investments to credit and community development needs; and

(4) The degree to which the qualified investments are not routinely provided by private investors.

With respect to the first criterion, examiners will determine the dollar amount of qualified investments by relying on the figures recorded by the institution according to generally accepted accounting principles (GAAP). Although institutions may exercise a range of investment strategies, including short-term investments, long-term investments, investments that are immediately funded, and investments with a binding, up-front commitment that are funded over a period of time, institutions making the same dollar amount of investments over the same number of years, all other performance criteria being equal, would receive the

same level of consideration. Examiners will include both new and outstanding investments in this determination. The dollar amount of qualified investments also will include the dollar amount of legally binding commitments recorded by the institution according to GAAP.

The extent to which qualified investments receive consideration, however, depends on how examiners evaluate the investments under the remaining three performance criteria—innovativeness and complexity, responsiveness, and degree to which the investment is not routinely provided by private investors. Examiners also will consider factors relevant to the institution's CRA performance context, such as the effect of outstanding long-term qualified investments, the pay-in schedule, and the amount of any cash call, on the capacity of the institution to make new investments.

§ ____.24—Service Test

§ ____.24(d) Performance Criteria—Retail Banking Services

Q1. *How do examiners evaluate the availability and effectiveness of an institution's systems for delivering retail banking services?*

A1. Convenient access to full service branches within a community is an important factor in determining the availability of credit and non-credit services. Therefore, the service test performance standards place primary emphasis on full service branches while still considering alternative systems, such as automated teller machines ("ATMs"). The principal focus is on an institution's current distribution of branches; therefore, an institution is not required to expand its branch network or operate unprofitable branches. Under the service test, alternative systems for delivering retail banking services, such as ATMs, are considered only to the extent that they are effective alternatives in providing needed services to low- and moderate-income areas and individuals.

Q2. *How do examiners evaluate an institution's activities in connection with Individual Development Accounts (IDAs)?*

A2. Although there is no standard IDA program, IDAs typically are deposit accounts targeted to low- and moderate-income families that are designed to help them accumulate savings for education or job-training, down-payment and closing costs on a new home, or start-up capital for a small business. Once participants have successfully funded an IDA, their personal IDA savings are matched by a public or private entity. Financial institution participation in IDA programs comes in a variety of forms, including providing retail banking services to IDA account holders, providing matching dollars or operating funds to an IDA program, designing or implementing IDA programs, providing consumer financial education to IDA account holders or prospective account holders, or other means. The extent of financial institutions' involvement in IDAs and the products and services they offer in connection with the accounts will vary. Thus, subject to § ____.23(b), examiners evaluate the actual services and products provided by an institution in connection with IDA programs as one or more of the following: community development services, retail banking services, qualified investments, home mortgage loans, small business loans, consumer loans, or community development loans.

§ ____.24(d)(3) Availability and Effectiveness of Alternative Systems for Delivering Retail Banking Services

Q1. *How will examiners evaluate alternative systems for delivering retail banking services?*

A1. The regulation recognizes the multitude of ways in which an institution can provide services, for example, ATMs, banking by telephone or computer, and bank-by-mail programs. Delivery systems other than branches will be considered under the regulation to the extent that they are effective alternatives to branches in providing needed services to low- and moderate-income areas and individuals. The list of systems in the regulation is not intended to be inclusive.

Q2. *Are debit cards considered under the service test as an alternative delivery system?*

A2. By themselves, no. However, if debit cards are a part of a larger combination of products, such as a comprehensive electronic banking service, that allows an institution to deliver needed services to low- and moderate-income areas and individuals in its community, the overall delivery system that includes the debit card feature would be considered an alternative delivery system.

§ ____.25 Community Development Test for Wholesale or Limited Purpose Institutions

§ ____.25(d) Indirect Activities

Q1. *How are investments in third party community development organizations considered under the community development test?*

A1. Similar to the lending test for retail institutions, investments in third party community development organizations may be considered as qualified investments or as community development loans or both (provided there is no double counting), at the institution's option, as described above in the discussion regarding §§ ____.22(d) and ____.23(b).

§ ____.25(e) Benefit to Assessment Area(s)

Q1. *How do examiners evaluate a wholesale or limited purpose institution's qualified investment in a fund that invests in projects nationwide and which has a primary purpose of community development, as that is defined in the regulations?*

A1. If examiners find that a wholesale or limited purpose institution has adequately addressed the needs of its assessment area(s), they will give consideration to qualified investments, as well as community development loans and community development services, by that institution nationwide. In determining whether an institution has adequately addressed the needs of its assessment area(s), examiners will consider qualified investments that benefit a broader statewide or regional area that includes the institution's assessment area(s).

§ ____.25(f) Community Development Performance Rating

Q1. *Must a wholesale or limited purpose institution engage in all three categories of community development activities (lending, investment and service) to perform well under the community development test?*

A1. No, a wholesale or limited purpose institution may perform well under the community development test by engaging in one or more of these activities.

§ ____.26—Small Institution Performance Standards

§ ____.26(a) Performance Criteria

Q1. *May examiners consider, under one or more of the performance criteria of the small institution performance standards, lending-related activities, such as community development loans and lending-related qualified investments, when evaluating a small institution?*

A1. Yes. Examiners can consider "lending-related activities," including community development loans and lending-related qualified investments, when evaluating the first four performance criteria of the small institution performance test. Although lending-related activities are specifically mentioned in the regulation in

connection with only the first three criteria (i.e., loan-to-deposit ratio, percentage of loans in the institution's assessment area, and lending to borrowers of different incomes and businesses of different sizes), examiners can also consider these activities when they evaluate the fourth criteria—geographic distribution of the institution's loans.

Q2. *What is meant by "as appropriate" when referring to the fact that lending-related activities will be considered, "as appropriate," under the various small institution performance criteria?*

A2. "As appropriate" means that lending-related activities will be considered when it is necessary to determine whether an institution meets or exceeds the standards for a satisfactory rating. Examiners will also consider other lending-related activities at an institution's request.

Q3. *When evaluating a small institution's lending performance, will examiners consider, at the institution's request, community development loans originated or purchased by a consortium in which the institution participates or by a third party in which the institution has invested?*

A3. Yes. However, a small institution that elects to have examiners consider community development loans originated or purchased by a consortium or third party must maintain sufficient information on its share of the community development loans so that the examiners may evaluate these loans under the small institution performance criteria.

Q4. *Under the small institution performance standards, will examiners consider both loan originations and purchases?*

A4. Yes, consistent with the other assessment methods in the regulation, examiners will consider both loans originated and purchased by the institution. Likewise, examiners may consider any other loan data the small institution chooses to provide, including data on loans outstanding, commitments and letters of credit.

Q5. *Under the small institution performance standards, how will qualified investments be considered for purposes of determining whether a small institution receives a satisfactory CRA rating?*

A5. The small institution performance standards focus on lending and other lending-related activities. Therefore, examiners will consider only lending-related qualified investments for the purposes of determining whether the small institution receives a satisfactory CRA rating.

§ ____.26(a)(1) Loan-to-deposit Ratio

Q1. *How is the loan-to-deposit ratio calculated?*

A1. A small institution's loan-to-deposit ratio is calculated in the same manner that the Uniform Bank Performance Report/Uniform Thrift Performance Report (UBPR/UTPR) determines the ratio. It is calculated by dividing the institution's net loans and leases by its total deposits. The ratio is found in the Liquidity and Investment Portfolio section of the UBPR and UTPR. Examiners will use this ratio to calculate an average since the last examination by adding the quarterly loan-to-deposit ratios and dividing the total by the number of quarters.

Q2. *How is the "reasonableness" of a loan-to-deposit ratio evaluated?*

A2. No specific ratio is reasonable in every circumstance, and each small institution's ratio is evaluated in light of information from the performance context, including the institution's capacity to lend, demographic and economic factors present in the assessment area, and the lending opportunities available in the assessment area(s). If a small institution's loan-to-deposit ratio appears unreasonable after considering this information, lending performance may still be satisfactory under this criterion taking into consideration the number and the dollar volume of loans sold to the secondary market or the number and amount and innovativeness or complexity of community development loans and lending-related qualified investments.

Q3. *If an institution makes a large number of loans off-shore, will examiners segregate the domestic loan-to-deposit ratio from the foreign loan-to-deposit ratio?*

A3. No. Examiners will look at the institution's net loan-to-deposit ratio for the whole institution, without any adjustments.

§ ____.26(a)(2) Percentage of Lending Within Assessment Area(s)

Q1. *Must a small institution have a majority of its lending in its assessment area(s) to receive a satisfactory performance rating?*

A1. No. The percentage of loans and, as appropriate, other lending-related activities located in the bank's assessment area(s) is but one of the performance criteria upon which small institutions are evaluated. If the percentage of loans and other lending related activities in an institution's assessment area(s) is less than a majority, then the institution does not meet the standards for satisfactory performance only under this criterion. The effect on the overall performance rating of the institution, however, is considered in light of the performance context, including information regarding economic conditions, loan demand, the institution's size, financial condition and business strategies, and branching network and other aspects of the institution's lending record.

§ ____.26(a)(3) & (4) Distribution of Lending Within Assessment Area(s) by Borrower Income and Geographic Location

Q1. *How will a small institution's performance be assessed under these lending distribution criteria?*

A1. Distribution of loans, like other small institution performance criteria, is considered in light of the performance context. For example, a small institution is not required to lend evenly throughout its assessment area(s) or in any particular geography. However, in order to meet the standards for satisfactory performance under this criterion, conspicuous gaps in a small institution's loan distribution must be adequately explained by performance context factors such as lending opportunities in the institution's assessment area(s), the institution's product offerings and business strategy, and institutional capacity and constraints. In addition, it may be impracticable to review the geographic distribution of the lending of an institution with few demographically distinct geographies within an assessment area. If sufficient information on the income levels of individual borrowers or the revenues or sizes of business borrowers is not available, examiners may use proxies such as loan size for estimating borrower characteristics, where appropriate.

§ ____.26(b) Performance Rating

Q1. *How can a small institution achieve an "outstanding" performance rating?*

A1. A small institution that meets each of the standards for a "satisfactory" rating and exceeds some or all of those standards may warrant an "outstanding" performance rating. In assessing performance at the "outstanding" level, the agencies consider the extent to which the institution exceeds each of the performance standards and, at the institution's option, its performance in making qualified investments and providing services that enhance credit availability in its assessment area(s). In some cases, a small institution may qualify for an "outstanding"

performance rating solely on the basis of its lending activities, but only if its performance materially exceeds the standards for a "satisfactory" rating, particularly with respect to the penetration of borrowers at all income levels and the dispersion of loans throughout the geographies in its assessment area(s) that display income variation. An institution with a high loan-to-deposit ratio and a high percentage of loans in its assessment area(s), but with only a reasonable penetration of borrowers at all income levels or a reasonable dispersion of loans throughout geographies of differing income levels in its assessment area(s), generally will not be rated "outstanding" based only on its lending performance. However, the institution's performance in making qualified investments and its performance in providing branches and other services and delivery systems that enhance credit availability in its assessment area(s) may augment the institution's satisfactory rating to the extent that it may be rated "outstanding."

Q2. *Will a small institution's qualified investments, community development loans, and community development services be considered if they do not directly benefit its assessment area(s)?*

A2. Yes. These activities are eligible for consideration if they benefit a broader statewide or regional area that includes a small institution's assessment area(s), as discussed more fully in Q&A6 addressing §§ ____.12(i) and 563e.12(h).

§ ____.27—Strategic Plan

§ ____.27(c) Plans in General

Q1. *To what extent will the agencies provide guidance to an institution during the development of its strategic plan?*

A1. An institution will have an opportunity to consult with and provide information to the agencies on a proposed strategic plan. Through this process, an institution is provided guidance on procedures and on the information necessary to ensure a complete submission. For example, the agencies will provide guidance on whether the level of detail as set out in the proposed plan would be sufficient to permit agency evaluation of the plan. However, the agencies' guidance during plan development and, particularly, prior to the public comment period, will not include commenting on the merits of a proposed strategic plan or on the adequacy of measurable goals.

Q2. *How will a joint strategic plan be reviewed if the affiliates have different primary Federal supervisors?*

A2. The agencies will coordinate review of and action on the joint plan. Each agency will evaluate the measurable goals for those affiliates for which it is the primary regulator.

§ ____.27(f) Plan Content

§ ____.27(f)(1) Measurable Goals

Q1. *How should "measurable goals" be specified in a strategic plan?*

A1. Measurable goals (e.g., number of loans, dollar amount, geographic location of activity, and benefit to low- and moderate-income areas or individuals) must be stated with sufficient specificity to permit the public and the agencies to quantify what performance will be expected. However, institutions are provided flexibility in specifying goals. For example, an institution may provide ranges of lending amounts in different categories of loans. Measurable goals may also be linked to funding requirements of certain public programs or indexed to other external factors as long as these mechanisms provide a quantifiable standard.

§ ____.27(g) Plan Approval

§ ____.27(g)(2) Public Participation

Q1. *How will the public receive notice of a proposed strategic plan?*

A1. An institution submitting a strategic plan for approval by the agencies is required to solicit public comment on the plan for a period of thirty (30) days after publishing notice of the plan at least once in a newspaper of general circulation. The notice should be sufficiently prominent to attract public attention and should make clear that public comment is desired. An institution may, in addition, provide notice to the public in any other manner it chooses.

§ ____.28—Assigned Ratings

Q1. *Are innovative lending practices, innovative or complex qualified investments, and innovative community development services required for a "satisfactory" or "outstanding" CRA rating?*

A1. No. Moreover, the lack of innovative lending practices, innovative or complex qualified investments, or innovative community development services alone will not result in a "needs to improve" CRA rating. However, the use of innovative lending practices, innovative or complex qualified investments, and innovative community development services may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance rating.

Q2. *How is performance under the quantitative and qualitative performance criteria weighed when examiners assign a CRA rating?*

A2. The lending, investment, and service tests each contain a number of performance criteria designed to measure whether an institution is effectively helping to meet the credit needs of its entire community, including low- and moderate-income neighborhoods, in a safe and sound manner. Some of these performance criteria are quantitative, such as number and amount, and others, such as the use of innovative or flexible lending practices, the innovativeness or complexity of qualified investments, and the innovativeness and responsiveness of community development services, are qualitative. The performance criteria that deal with these qualitative aspects of performance recognize that these loans, qualified investments, and community development services sometimes require special expertise and effort on the part of the institution and provide a benefit to the community that would not otherwise be possible. As such, the agencies consider the qualitative aspects of an institution's activities when measuring the benefits received by a community. An institution's performance under these qualitative criteria may augment the consideration given to an institution's performance under the quantitative criteria of the regulations, resulting in a higher level of performance and rating.

§ ____.28(a) Ratings in General

Q1. *How are institutions with domestic branches in more than one state assigned a rating?*

A1. The evaluation of an institution that maintains domestic branches in more than one state ("multistate institution") will include a written evaluation and rating of its CRA record of performance as a whole and in each state in which it has a domestic branch. The written evaluation will contain a separate presentation on a multistate institution's performance for each metropolitan statistical area and the nonmetropolitan area within each state, if it maintains one or more domestic branch offices in these areas. This separate presentation will contain conclusions, supported by facts and data, on performance under the performance tests and standards in the regulation. The evaluation of a multistate institution that maintains a domestic branch in two or more states in a multistate metropolitan area will

include a written evaluation (containing the same information described above) and rating of its CRA record of performance in the multistate metropolitan area. In such cases, the statewide evaluation and rating will be adjusted to reflect performance in the portion of the state not within the multistate metropolitan statistical area.

Q2. *How are institutions that operate within only a single state assigned a rating?*

A2. An institution that operates within only a single state ("single-state institution") will be assigned a rating of its CRA record based on its performance within that state. In assigning this rating, the agencies will separately present a single-state institution's performance for each metropolitan area in which the institution maintains one or more domestic branch offices. This separate presentation will contain conclusions, supported by facts and data, on the single-state institution's performance under the performance tests and standards in the regulation.

Q3. *How do the agencies weight performance under the lending, investment and service test for large retail institutions?*

A3. A rating of "outstanding," "high satisfactory," "low satisfactory," "needs to improve," or "substantial noncompliance," based on a judgment supported by facts and data, will be assigned under each performance test. Points will then be assigned to each rating as described in the first matrix set forth below. A large retail institution's overall rating under the lending, investment and service tests will then be calculated in accordance with the second matrix set forth below, which incorporates the rating principles in the regulation.

POINTS ASSIGNED FOR PERFORMANCE UNDER LENDING, INVESTMENT AND SERVICE TESTS

	Lending	Service	Investment
Outstanding	12	6	6
High Satisfactory	9	4	4
Low Satisfactory	6	3	3
Needs to Improve	3	1	1
Substantial Noncompliance	0	0	0

COMPOSITE RATING POINT REQUIREMENTS

[Add points from three tests]

Rating	Total points
Outstanding	20 or over.

COMPOSITE RATING POINT REQUIREMENTS—Continued

[Add points from three tests]

Rating	Total points
Satisfactory	11 through 19.
Needs to Improve	5 through 10
Substantial Noncompliance	0 through 4.

Note: There is one exception to the Composite Rating matrix. An institution may not receive a rating of "satisfactory" unless it receives at least "low satisfactory" on the lending test. Therefore, the total points are capped at three times the lending test score.

§ ____.29—Effect of CRA Performance on Applications

§ ____.29(a) CRA Performance

Q1. *What weight is given to an institution's CRA performance examination in reviewing an application?*

A1. In cases in which CRA performance is a relevant factor, information from a CRA performance examination of the institution is a particularly important consideration in the applications process because it represents a detailed evaluation of the institution's CRA performance by its Federal supervisory agency. In this light, an examination is an important, and often controlling, factor in the consideration of an institution's record. In some cases, however, the examination may not be recent or a specific issue raised in the application process, such as progress in addressing weaknesses noted by examiners, progress in implementing commitments previously made to the reviewing agency, or a supported allegation from a commenter, is relevant to CRA performance under the regulation and was not addressed in the examination. In these circumstances, the applicant should present sufficient information to supplement its record of performance and to respond to the substantive issues raised in the application proceeding.

Q2. *What consideration is given to an institution's commitments for future action in reviewing an application by those agencies that consider such commitments?*

A2. Commitments for future action are not viewed as part of the CRA record of performance. In general, institutions cannot use commitments made in the applications process to overcome a seriously deficient record of CRA performance. However, commitments for improvements in an institution's performance may be appropriate to address specific weaknesses in an otherwise satisfactory record or to address CRA performance when a financially troubled institution is being acquired.

§ ____.29(b) Interested Parties

Q1. *What consideration is given to comments from interested parties in reviewing an application?*

A1. Materials relating to CRA performance received during the applications process can provide valuable information. Written comments, which may express either support for or opposition to the application, are made a part of the record in accordance with the agencies' procedures, and are carefully considered in making the agencies' decision. Comments should be supported by facts about the applicant's performance and should be as specific as possible in explaining the basis for supporting or opposing the application. These comments must be submitted within the time limits provided under the agencies' procedures.

Q2. *Is an institution required to enter into agreements with private parties?*

A2. No. Although communications between an institution and members of its community may provide a valuable method for the institution to assess how best to address the credit needs of the community, the CRA does not require an institution to enter into agreements with private parties. These agreements are not monitored or enforced by the agencies.

§ ____.41—Assessment Area Delineation

§ ____.41(a) In General

Q1. *How do the agencies evaluate "assessment areas" under the revised CRA regulations compared to how they evaluated "local communities" that institutions delineated under the original CRA regulations?*

A1. The revised rule focuses on the distribution and level of an institution's lending, investments, and services rather than on how and why an institution delineated its "local community" or assessment area(s) in a particular manner. Therefore, the agencies will not evaluate an institution's delineation of its assessment area(s) as a separate performance criterion as they did under the original regulation. Rather, the agencies will only review whether the assessment area delineated by the institution complies with the limitations set forth in the regulations at § ____.41(e).

Q2. *If an institution elects to have the agencies consider affiliate lending, will this decision affect the institution's assessment area(s)?*

A2. If an institution elects to have the lending activities of its affiliates considered in the evaluation of the institution's lending, the geographies in which the affiliate lends do not affect the institution's delineation of assessment area(s).

Q3. *Can a financial institution identify a specific ethnic group rather than a geographic area as its assessment area?*

A3. No, assessment areas must be based on geography.

§ ____.41(c) Geographic Area(s) for Institutions Other Than Wholesale or Limited Purpose Institutions

§ ____.41(c)(1) Generally Consist of One or More MSAs or One or More Contiguous Political Subdivisions

Q1. *Besides cities, towns, and counties, what other units of local government are political subdivisions for CRA purposes?*

A1. Townships and Indian reservations are political subdivisions for CRA purposes. Institutions should be aware that the boundaries of townships and Indian reservations may not be consistent with the boundaries of the census tracts or block numbering areas ("geographies") in the area. In these cases, institutions must ensure that their assessment area(s) consists only of whole geographies by adding any portions of the geographies that lie outside the political subdivision to the delineated assessment area(s).

Q2. *Are wards, school districts, voting districts, and water districts political subdivisions for CRA purposes?*

A2. No. However, an institution that determines that it predominantly serves an area that is smaller than a city, town or other political subdivision may delineate as its assessment area the larger political subdivision and then, in accordance with § ____.41(d), adjust the boundaries of the assessment area to include only the portion of the political subdivision that it reasonably can be expected to serve. The smaller area that the institution delineates must consist of entire geographies, may not reflect illegal discrimination, and may not arbitrarily exclude low- or moderate-income geographies.

§ ____.41(d) Adjustments to Geographic Area(s)

Q1. *When may an institution adjust the boundaries of an assessment area to include only a portion of a political subdivision?*

A1. Institutions must include whole geographies (i.e., census tracts or block numbering areas) in their assessment areas and generally should include entire political subdivisions. Because census tracts and block numbering areas are the common geographic areas used consistently nationwide for data collection, the agencies require that assessment areas be made up of whole geographies. If including an entire political subdivision would create an area that is larger than the area the institution can reasonably be expected to serve, an institution may, but is not required to, adjust the boundaries of its assessment area to include only portions of the political subdivision. For example, this adjustment is appropriate if the assessment area would otherwise be extremely large, of unusual configuration, or divided by significant geographic barriers (such as a river, mountain, or major highway system). When adjusting the boundaries of their assessment areas, institutions must not arbitrarily exclude low- or moderate-income geographies or set boundaries that reflect illegal discrimination.

§ ____.41(e) Limitations on Delineation of an Assessment Area

§ ____.41(e)(3) May Not Arbitrarily Exclude Low- or Moderate-income Geographies

Q1. *How will examiners determine whether an institution has arbitrarily excluded low- or moderate-income geographies?*

A1. Examiners will make this determination on a case-by-case basis after considering the facts relevant to the institution's assessment area delineation. Information that examiners will consider may include:

- Income levels in the institution's assessment area(s) and surrounding geographies;
- Locations of branches and deposit-taking ATMs;
- Loan distribution in the institution's assessment area(s) and surrounding geographies;
- The institution's size;
- The institution's financial condition; and
- The business strategy, corporate structure and product offerings of the institution.

§ ____.41(e)(4) May Not Extend Substantially Beyond a CMSA Boundary or Beyond a State Boundary Unless Located in a Multistate MSA

Q1. *What are the maximum limits on the size of an assessment area?*

A1. An institution shall not delineate an assessment area extending substantially across the boundaries of a consolidated metropolitan statistical area (CMSA) or the boundaries of an MSA, if the MSA is not located in a CMSA. Similarly, an assessment area may not extend substantially across state boundaries unless the assessment area is located in a multistate MSA. An institution may not delineate a whole state as its assessment area unless the entire state is contained within a CMSA. These limitations apply to wholesale and limited purpose institutions as well as other institutions.

An institution shall delineate separate assessment areas for the areas inside and outside a CMSA (or MSA if the MSA is not located in a CMSA) if the area served by the institution's branches outside the CMSA (or MSA) extends substantially beyond the CMSA (or MSA) boundary. Similarly, the institution shall delineate separate assessment areas for the areas inside and outside of a state if the institution's branches extend substantially beyond the boundary of one state (unless the assessment area is located in a multistate MSA). In addition, the institution should also delineate separate assessment areas if it has branches in areas within the same state that are widely separate and not at all contiguous. For example, an institution that has its main office in New York City and a branch in Buffalo, New York, and each office serves only the immediate areas around it, should delineate two separate assessment areas.

Q2. *Can an institution delineate one assessment area that consists of an MSA and two large counties that abut the MSA but are not adjacent to each other?*

A2. As a general rule, an institution's assessment area should not extend substantially beyond the boundary of an MSA if the MSA is not located in a CMSA. Therefore, the MSA would be a separate assessment area, and because the two abutting counties are not adjacent to each other and, in this example, extend substantially beyond the boundary of the MSA, the institution would delineate each county as a separate assessment area (so, in this example, there would be three assessment areas). However, if the MSA and the two counties were in the same CMSA, then the institution could delineate only one assessment area including them all.

§ ____.42—Data Collection, Reporting, and Disclosure

Q1. *When must an institution collect and report data under the CRA regulations?*

A1. All institutions except small institutions are subject to data collection and reporting requirements. A small institution is a bank or thrift that, as of December 31 of either of the prior two calendar years, had total assets of less

than $250 million and was independent or an affiliate of a holding company that, as of December 31 of either of the prior two calendar years, had total banking and thrift assets of less than $1 billion.

For example:

Date	Institution's asset size ($ million)	Data collection required for following calendar year? (million)
12/31/94	$240	No.
12/31/95	260	No.
12/31/96	230	No.
12/31/97	280	No.
12/31/98	260	Yes, beginning 1/01/99.

All institutions that are subject to the data collection and reporting requirements must report the data for a calendar year by March 1 of the subsequent year. In the example, above, the institution would report the data collected for calendar year 1999 by March 1, 2000.

The Board of Governors of the Federal Reserve System is handling the processing of the reports for all of the primary regulators. The reports should be submitted in a prescribed electronic format on a timely basis. The mailing address for submitting these reports is: Attention: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Avenue, N.W., 5th Floor, Washington, DC 20006.

Q2. *Should an institution develop its own program for data collection, or will the regulators require a certain format?*

A2. An institution may use the free software that is provided by the FFIEC to reporting institutions for data collection and reporting or develop its own program. Those institutions that develop their own programs must follow the precise format for the new CRA data collection and reporting rules. This format may be obtained by contacting the CRA Assistance Line at (202) 872–7584.

Q3. *How should an institution report data on lines of credit?*

A3. Institutions must collect and report data on lines of credit in the same way that they provide data on loan originations. Lines of credit are considered originated at the time the line is approved or increased; and an increase is considered a new origination. Generally, the full amount of the credit line is the amount that is considered originated. In the case of an increase to an existing line, the amount of the increase is the amount that is considered originated and that amount should be reported.

Q4. *Should renewals of lines of credit be reported?*

A4. No. Similar to loan renewals, renewals of lines of credit are not considered loan originations and should not be reported.

Q5. *When should merging institutions collect data?*

A5. Three scenarios of data collection responsibilities for the calendar year of a merger and subsequent data reporting responsibilities are described below.

- Two institutions are exempt from CRA collection and reporting requirements because of asset size. The institutions merge. No data collection is required for the year in which the merger takes place, regardless of the resulting asset size. Data collection would begin after two consecutive years in which the combined institution had year-end assets of at least $250 million or was part of a holding company that had year-end banking and thrift assets of at least $1 billion.
- Institution A, an institution required to collect and report the data, and Institution B, an exempt institution, merge. Institution A is the surviving institution. For the year of the merger, data collection is required for Institution A's transactions. Data collection is optional for the transactions of the previously exempt institution. For the following year, all transactions of the surviving institution must be collected and reported.
- Two institutions that each are required to collect and report the data merge. Data collection is required for the entire year of the merger and for subsequent years so long as the surviving institution is not exempt. The surviving institution may file either a consolidated submission or separate submissions for the year of the merger but must file a consolidated report for subsequent years.

Q6. *Can small institutions get a copy of the data collection software even though they are not required to collect or report data?*

A6. Yes. Any institution that is interested in receiving a copy of the software may send a written request to: Attn.: CRA Processing, Board of Governors of the Federal Reserve System, 1709 New York Ave, N.W., 5th Floor, Washington, DC 20006.

They may also call the CRA Assistance Line at (202) 872–7584 or send Internet e-mail to CRAHELP@FRB.GOV.

Q7. *If a small institution is designated a wholesale or limited purpose institution, must it collect data that it would not otherwise be required to collect because it is a small institution?*

A7. No. However, small institutions must be prepared to identify those loans, investments and services to be evaluated under the community development test.

§ ____.42(a) Loan Information Required to be Collected and Maintained

Q1. *Must institutions collect and report data on all commercial loans under $1 million at origination?*

A1. No. Institutions that are not exempt from data collection and reporting are required to collect and report only those commercial loans that they capture in the Call Report, Schedule RC–C, Part II, and in the TFR, Schedule SB. Small business loans are defined as those whose original amounts are $1 million or less and that were reported as either "Loans secured by nonfarm or nonresidential real estate" or "Commercial and Industrial loans" in Part I of the Call Report or TFR.

Q2. *For loans defined as small business loans, what information should be collected and maintained?*

A2. Institutions that are not exempt from data collection and reporting are required to collect and maintain in a standardized, machine readable format information on each small business loan originated or purchased for each calendar year:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination; The loan location; and
- An indicator whether the loan was to a business with gross annual revenues of $1 million or less.
- The location of the loan must be maintained by census tract or block numbering area. In addition, supplemental information contained in the file specifications includes a date associated with the origination or purchase and whether a loan was originated or purchased by an affiliate. The same requirements apply to small farm loans.

Q3. *Will farm loans need to be segregated from business loans?*

A3. Yes.

Q4. *Should institutions collect and report data on all agricultural loans under $500,000 at origination?*

A4. Institutions are to report those farm loans that they capture in the Call Report, Schedule RC–C, Part II and Schedule SB of the TFR. Small farm loans are defined as those whose original amounts are $500,000 or *less* and were reported as either "Loans to finance agricultural production and other loans to farmers" or "Loans

secured by farmland" in Part I of the Call Report and TFR.

Q5. *Should institutions collect and report data about small business and small farm loans that are refinanced or renewed?*

A5. An institution collects and reports information about refinancings but does not collect and report information about renewals. A *refinancing* typically involves the satisfaction of an existing obligation that is replaced by a new obligation undertaken by the same borrower. When an institution refinances a loan, it is considered a new origination, and loan data should be collected and reported, if otherwise required. Consistent with HMDA, however, if under the original loan agreement, the institution is unconditionally obligated to refinance the loan, or is obligated to refinance the loan subject to conditions within the borrower's control, the institution would not report these events as originations.

For purposes of the CRA data collection and reporting requirements, an extension of the maturity of an existing loan is a *renewal*, and is not considered a loan origination. Therefore, institutions should not collect and report data on loan renewals.

Q6. *Does a loan to the "fishing industry" come under the definition of a small farm loan?*

A6. Yes. Instructions for Part I of the Call Report and Schedule SB of the TFR include loans "made for the purpose of financing fisheries and forestries, including loans to commercial fishermen" as a component of the definition for "Loans to finance agricultural production and other loans to farmers." Part II of Schedule RC–C of the Call Report and Schedule SB of the TFR, which serve as the basis of the definition for small business and small farm loans in the revised regulation, capture both "Loans to finance agricultural production and other loans to farmers" and "Loans secured by farmland."

Q7. *How should an institution report a home equity line of credit, part of which is for home improvement purposes, but the predominant part of which is for small business purposes?*

A7. The institution has the option of reporting the portion of the home equity line that is for home improvement purposes under HMDA. That portion of the loan would then be considered when examiners evaluate home mortgage lending. If the line meets the regulatory definition of a "community development loan," the institution should collect and report information on the entire line as a community development loan. If the line does not qualify as a community development loan, the institution has the option of collecting and maintaining (but not reporting) the entire line of credit as "Other Secured Lines/Loans for Purposes of Small Business."

Q8. *When collecting small business and small farm data for CRA purposes, may an institution collect and report information about loans to small businesses and small farms located outside the United States?*

A8. At an institution's option, it may collect data about small business and small farm loans located outside the United States; however, it cannot report this data because the CRA data collection software will not accept data concerning loan locations outside the United States.

Q9. *Is an institution that has no small farm or small business loans required to report under CRA?*

A9. Each institution subject to data reporting requirements must, at a minimum, submit a transmittal sheet, definition of its assessment area(s), and a record of its community development loans. If the institution does not have community development loans to report, the record should be sent with "0" in the community development loan composite data fields. An institution that has not purchased or originated any small business or small farm loans during the reporting period would not submit the composite loan records for small business or small farm loans.

Q10. *How should an institution collect and report the location of a loan made to a small business or farm if the borrower provides an address that consists of a post office box number or a rural route and box number?*

A10. Prudent banking practices dictate that an institution know the location of its customers and loan collateral. Therefore, institutions typically will know the actual location of their borrowers or loan collateral beyond an address consisting only of a post office box.

Many borrowers have street addresses in addition to post office box numbers or rural route and box numbers. Institutions should ask their borrowers to provide the street address of the main business facility or farm or the location where the loan proceeds otherwise will be applied. Moreover, in many cases in which the borrower's address consists only of a rural route number or post office box, the institution knows the location (i.e., the census tract or block numbering area) of the borrower or loan collateral. Once the institution has this information available, it should assign a census tract or block numbering area to that location (geocode) and report that information as required under the regulation.

For loans originated or purchased in 1998 or later, if the institution cannot determine the borrower's street address, and does not know the census tract or block numbering area, the institution should report the borrower's state, county, MSA, if applicable, and "NA," for "not available," in lieu of a census tract or block numbering area code.

§ ____.42(a)(2) Loan Amount at Origination

Q1. *When an institution purchases a small business or small farm loan, which amount should the institution collect and report—the original amount of the loan or the amount at purchase?*

A1. When collecting and reporting information on purchased small business and small farm loans, an institution collects and reports the amount of the loan at origination, not at the time of purchase. This is consistent with the Call Report's and TFR's use of the "original amount of the loan" to determine whether a loan should be reported as a "loan to a small business" or a "loan to a small farm" and in which loan size category a loan should be reported. When assessing the volume of small business and small farm loan purchases for purposes of evaluating lending test performance under CRA, however, examiners will evaluate an institution's activity based on the amounts at purchase.

Q2. *How should an institution collect data about multiple loan originations to the same business?*

A2. If an institution makes multiple originations to the same business, the loans should be collected and reported as separate originations rather than combined and reported as they are on the Call Report or TFR, which reflect loans outstanding, rather than originations. However, if institutions make multiple originations to the same business solely to inflate artificially the number or volume of loans evaluated for CRA lending performance, the agencies may combine these loans for purposes of evaluation under the CRA.

Q3. *How should an institution collect data pertaining to credit cards issued to small businesses?*

A3. If an institution agrees to issue credit cards to a business' employees, all of the credit card lines opened on a particular date for that single business should be reported as one small business loan origination rather than reporting each individual credit card line, assuming the criteria in the "small

business loan" definition in the regulation are met. The credit card program's "amount at origination" is the sum of all of the employee/business credit cards" credit limits opened on a particular date. If subsequently issued credit cards increase the small business credit line, the added amount is reported as a new origination.

§ ____.42(a)(3) The Loan Location

Q1. *Which location should an institution record if a small business loan's proceeds are used in a variety of locations?*

A1. The institution should record the loan location by either the location of the business headquarters or the location where the greatest portion of the proceeds are applied, as indicated by the borrower.

§ ____.42(a)(4) Indicator of Gross Annual Revenue

Q1. *When indicating whether a small business borrower had gross annual revenues of $1 million or less, upon what revenues should an institution rely?*

A1. Generally, an institution should rely on the revenues that it considered in making its credit decision. For example, in the case of affiliated businesses, such as a parent corporation and its subsidiary, if the institution considered the revenues of the entity's parent or a subsidiary corporation of the parent as well, then the institution would aggregate the revenues of both corporations to determine whether the revenues are $1 million or less. Alternatively, if the institution considered the revenues of only the entity to which the loan is actually extended, the institution should rely solely upon whether gross annual revenues are above or below $1 million for that entity. However, if the institution considered and relied on revenues or income of a cosigner or guarantor that is not an affiliate of the borrower, the institution should not adjust the borrower's revenues for reporting purposes.

Q2. *If an institution that is not exempt from data collection and reporting does not request or consider revenue information to make the credit decision regarding a small business or small farm loan, must the institution collect revenue information in connection with that loan?*

A2. No. In those instances, the institution should enter the code indicating "revenues not known" on the individual loan portion of the data collection software or on an internally developed system. Loans for which the institution did not collect revenue information may not be included in the loans to businesses and farms with gross annual revenues of $1 million or less when reporting this data.

Q3. *What gross revenue should an institution use in determining the gross annual revenue of a start-up business?*

A3. The institution should use the actual gross annual revenue to date (including $0 if the new business has had no revenue to date). Although a start-up business will provide the institution with pro forma projected revenue figures, these figures may not accurately reflect actual gross revenue.

Q4: *When collecting and reporting the gross annual revenue of small business or farm borrowers, do institutions collect and report the gross annual revenue or the adjusted gross annual revenue of its borrowers?*

A4: Institutions collect and report the gross annual revenue, rather than the adjusted gross annual revenue, of their small business or farm borrowers. The purpose of this data collection is to enable examiners and the public to judge whether the institution is lending to small businesses and farms or whether it is only making small loans to larger businesses and farms.

The regulation does not require institutions to request or consider revenue information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect and report the borrowers' gross annual revenue for purposes of CRA. The CRA regulations similarly do not require institutions to verify revenue amounts; thus, institutions may rely on the gross annual revenue amount provided by borrowers in the ordinary course of business. If an institution does not collect gross annual revenue information for its small business and small farm borrowers, the institution would not indicate on the CRA data collection software that the gross annual revenues of the borrower are $1 million or less. (*See* Q&A2 regarding § ____.42(a)(4).)

§ ____.42(b) Loan Information Required to be Reported

§ ____.42(b)(1) Small Business and Small Farm Loan Data

Q1. *For small business and small farm loan information that is collected and maintained, what data should be reported?*

A1. Each institution that is not exempt from data collection and reporting is required to report in machine-readable form annually by March 1 the following information, aggregated for each census tract or block numbering area in which the institution originated or purchased at least one small business or small farm loan during the prior year:

- The number and amount of loans originated or purchased with original amounts of $100,000 or less;
- The number and amount of loans originated or purchased with original amounts of more than $100,000 but less than or equal to $250,000;
- The number and amount of loans originated or purchased with original amounts of more than $250,000 but not more than $1 million, as to small business loans, or $500,000, as to small farm loans; and
- To the extent that information is available, the number and amount of loans to businesses and farms with gross annual revenues of $1 million or less (using the revenues the institution considered in making its credit decision).

§ ____.42(b)(2) Community Development Loan Data

Q1. *What information about community development loans must institutions report?*

A1. Institutions subject to data reporting requirements must report the aggregate number and amount of community development loans originated and purchased during the prior calendar year.

Q2. *If a loan meets the definition of a home mortgage, small business, or small farm loan AND qualifies as a community development loan, where should it be reported? Can FHA, VA and SBA loans be reported as community development loans?*

A2. Except for multifamily affordable housing loans, which may be reported by retail institutions both under HMDA as home mortgage loans and as community development loans, in order to avoid double counting, retail institutions must report loans that meet the definitions of home mortgage, small business, or small farm loans only in those respective categories even if they also meet the definition of community development loans. As a practical matter, this is not a disadvantage for retail institutions because any affordable housing mortgage, small business, small farm or consumer loan that would otherwise meet the definition of a community development loan will be considered elsewhere in the lending test. Any of these types of loans that occur outside the institution's assessment area can receive consideration under the borrower characteristic criteria of the lending test. *See* Q&A4 under § ____.22(b)(2) & (3).

Limited purpose and wholesale institutions also must report loans that meet the definitions of home mortgage, small business, or small farm loans in those respective categories; however, they must also report any loans from those categories that meet the regulatory definition of "community development loans" as community development loans. There is no double counting because wholesale and limited purpose institutions are not subject to the lending test and, therefore, are not evaluated on their level and distribution of home mortgage, small business, small farm and consumer loans.

Q3. *When the primary purpose of a loan is to finance an affordable housing project for low-or moderate-income individuals, but, for example, only 40% of the units in question will actually be occupied by individuals or families with low or moderate incomes, should the entire loan amount be reported as a community development loan?*

A3. Yes. As long as the primary purpose of the loan is a community development purpose, the full amount of the institution's loan should be included in its reporting of aggregate amounts of community development lending. However, as noted in Q&A1 addressing § ____.22(b)(4), examiners may make qualitative distinctions among community development loans on the basis of the extent to which the loan advances the community development purpose.

§ ____.42(b)(3) Home Mortgage Loans

Q1. *Must institutions that are not required to collect home mortgage loan data by the HMDA collect home mortgage loan data for purposes of the CRA?*

A1. No. If an institution is not required to collect home mortgage loan data by the HMDA, the institution need not collect home mortgage loan data under the CRA. Examiners will sample these loans to evaluate the institution's home mortgage lending. If an institution wants to ensure that examiners consider all of its home mortgage loans, the institution may collect and maintain data on these loans.

§ ____.42(c) Optional Data Collection and Maintenance

§ ____.42(c)(1) Consumer Loans

Q1. *What are the data requirements regarding consumer loans?*

A1. There are no data reporting requirements for consumer loans. Institutions may, however, opt to collect and maintain data on consumer loans. If an institution chooses to collect information on consumer loans, it may collect data for one or more of the following categories of consumer loans: motor vehicle, credit card, home equity, other secured, and other unsecured. If an institution collects data for loans in a certain category, it must collect data for all loans originated or purchased within that category. The institution must maintain these data separately for each category for which it chooses to collect data. The data collected and maintained should include for each loan:

- A unique number or alpha-numeric symbol that can be used to identify the relevant loan file;
- The loan amount at origination or purchase;
- The loan location; and
- The gross annual income of the borrower that the institution considered in making its credit decision.

Generally, guidance given with respect to data collection of small business and small farm loans, including, for example, guidance regarding collecting loan location data, and whether to collect data in connection with refinanced or renewed loans, will also apply to consumer loans.

§ ____.42(c)(1)(iv) Income of Borrower

Q1. *If an institution does not consider income when making an underwriting decision in connection with a consumer loan, must it collect income information?*

A1. No. Further, if the institution routinely collects, but does not verify, a borrower's income when making a credit decision, it need not verify the income for purposes of data maintenance.

Q2. *May an institution list "0" in the income field on consumer loans made to employees when collecting data for CRA purposes as the institution would be permitted to do under HMDA?*

A2. Yes.

Q3. *When collecting the gross annual income of consumer borrowers, do institutions collect the gross annual income or the adjusted gross annual income of the borrowers?*

A3. Institutions collect the gross annual income, rather than the adjusted gross annual income, of consumer borrowers. The purpose of income data collection in connection with consumer loans is to enable examiners to determine the distribution, particularly in the institution's assessment area(s), of the institution's consumer loans, based on borrower characteristics, including the number and amount of consumer loans to low-, moderate-, middle-, and upper-income borrowers, as determined on the basis of gross annual income.

The regulation does not require institutions to request or consider income information when making a loan; however, if institutions do gather this information from their borrowers, the agencies expect them to collect the borrowers' gross annual income for purposes of CRA. The CRA regulations similarly do not require institutions to verify income amounts; thus, institutions may rely on the gross annual income amount provided by borrowers in the ordinary course of business.

§ ____.42(c)(2) Other Loan Data

Q1. *Schedule RC–C, Part II of the Call Report and schedule SB of the TFR do not allow financial institutions to report loans for commercial and industrial purposes that are secured by residential real estate. Loans extended to small businesses with gross annual revenues of $1 million or less may, however, be secured by residential real estate. Is there a way to collect this information on the software to supplement an institution's small business lending data at the time of examination?*

A1. Yes. If these loans promote community development, as defined in the regulation, the institution should collect and report information about these loans as community development loans. Otherwise, *at an institution's option,* it may collect and maintain data concerning loans, purchases, and lines of credit extended to small businesses and secured by residential real estate for consideration in the CRA evaluation of its small business lending. To facilitate this optional data collection, the software distributed free-of-charge by the FFIEC provides that an institution may collect this information to supplement its small business lending data by choosing loan type, "Other Secured Lines/Loans for Purposes of Small Business," in the individual loan data. (The title of the loan type, "Other Secured Lines of Credit for Purposes of Small Business," which was found in the instructions accompanying the 1996 data collection software, is being changed to "Other Secured Lines/Loans for Purposes of Small Business" in order to accurately reflect that lines of credit and loans may be reported under this loan type.) This information should be maintained at the institution but should not be submitted for central reporting purposes.

Q2. *Must an institution collect data on loan commitments and letters of credit?*

A2. No. Institutions are not required to collect data on loan commitments and letters of credit. Institutions may, however, provide for examiner

consideration information on letters of credit and commitments.

Q3. *Are commercial and consumer leases considered loans for purposes of CRA data collection?*

A3. Commercial and consumer leases are not considered small business or small farm loans or consumer loans for purposes of the data collection requirements in 12 CFR § ____.42(a) & (c)(1). However, if an institution wishes to collect and maintain data about leases, the institution may provide this data to examiners as "other loan data" under 12 CFR § ____.42(c)(2) for consideration under the lending test.

§ ____.42(d) Data on affiliate lending

Q1. *If an institution elects to have an affiliate's home mortgage lending considered in its CRA evaluation, what data must the institution make available to examiners?*

A1. If the affiliate is a HMDA reporter, the institution must identify those loans reported by its affiliate under 12 CFR part 203 (Regulation C, implementing HMDA). At its option, the institution may either provide examiners with the affiliate's entire HMDA Disclosure Statement or just those portions covering the loans in its assessment area(s) that it is electing to consider. If the affiliate is not required by HMDA to report home mortgage loans, the institution must provide sufficient data concerning the affiliate's home mortgage loans for the examiners to apply the performance tests.

§ ____.43—Content and Availability of Public File

§ ____.43(a) Information Available to the Public

§ ____.43(a)(1) Public Comments

Q1. *What happens to comments received by the agencies?*

A1. Comments received by a Federal financial supervisory agency will be on file at the agency for use by examiners. Those comments are also available to the public unless they are exempt from disclosure under the Freedom of Information Act.

Q2. *Is an institution required to respond to public comments?*

A2. No. All institutions should review comments and complaints carefully to determine whether any response or other action is warranted. A small institution subject to the small institution performance standards is specifically evaluated on its record of taking action, if warranted, in response to written complaints about its performance in helping to meet the credit needs in its assessment area(s) (§ ____.26(a)(5)). For all institutions, responding to comments may help to foster a dialogue with members of the community or to present relevant information to an institution's Federal financial supervisory agency. If an institution responds in writing to a letter in the public file, the response must also be placed in that file, unless the response reflects adversely on any person or placing it in the public file violates a law.

Q3. *May an institution include a response to its CRA Performance Evaluation in its public file?*

A3. Yes. However, the format and content of the evaluation, as transmitted by the supervisory agency, may not be altered or abridged in any manner. In addition, an institution that received a less than satisfactory rating during its most recent examination must include in its public file a description of its current efforts to improve its performance in helping to meet the credit needs of its entire community. The institution must update the description on a quarterly basis.

§ ____.43(b) Additional Information Available to the Public

§ ____.43(b)(1) Institutions Other Than Small Institutions

Q1. *Must an institution that elects to have affiliate lending considered include data on this lending in its public file?*

A1. Yes. The lending data to be contained in an institution's public file covers the lending of the institution's affiliates, as well as of the institution itself, considered in the assessment of the institution's CRA performance. An institution that has elected to have mortgage loans of an affiliate considered must include either the affiliate's HMDA Disclosure Statements for the two prior years or the parts of the Disclosure Statements that relate to the institution's assessment area(s), at the institution's option.

Q2. *May an institution retain the compact disc provided by the Federal Financial Institution Examination Council that contains its CRA Disclosure Statement in its public file, rather than printing a hard copy of the CRA Disclosure Statement for retention in its public file?*

A2. Yes, if the institution can readily print out from the compact disc (or a duplicate of the compact disc) its CRA Disclosure Statement for a consumer when the public file is requested. If the request is at a branch other than the main office or the one designated branch in each state that holds the complete public file, the bank should provide the CRA Disclosure Statement in a paper copy, or in another format acceptable to the requestor, within 5 calendar days, as required by § ____.43(c)(2)(ii).

§ ____.43(c) Location of Public Information

Q1. *What is an institution's "main office"?*

A1. An institution's main office is the main, home, or principal office as designated in its charter.

§ ____.44—Public Notice by Institutions

Q1. *Are there any placement or size requirements for an institution's public notice?*

A1. The notice must be placed in the institution's public lobby, but the size and placement may vary. The notice should be placed in a location and be of a sufficient size that customers can easily see and read it.

§ ____.45—Publication of Planned Examination Schedule

Q1. *Where will the agencies publish the planned examination schedule for the upcoming calendar quarter?*

A1. The agencies may use the **Federal Register**, a press release, the Internet, or other existing agency publications for disseminating the list of the institutions scheduled to for CRA examinations during the upcoming calendar quarter. Interested parties should contact the appropriate Federal financial supervisory agency for information on how the agency is publishing the planned examination schedule.

Q2. *Is inclusion on the list of institutions that are scheduled to undergo CRA examinations in the next calendar quarter determinative of whether an institution will be examined in that quarter?*

A2. No. The agencies attempt to determine as accurately as possible which institutions will be examined during the upcoming calendar quarter. However, whether an institution's name appears on the published list does not conclusively determine whether the institution will be examined during that quarter. The agencies may need to defer a planned examination or conduct an unforeseen examination because of scheduling difficulties or other circumstances.

Appendix A to Part ____—Ratings

Q1. *Must an institution's performance fit each aspect of a particular rating profile in order to receive that rating?*

A1. No. Exceptionally strong performance in some aspects of a particular rating profile may compensate for weak performance in others. For example, a retail institution

that uses non-branch delivery systems to obtain deposits and to deliver loans may have almost all of its loans outside the institution's assessment area. Assume that an examiner, after consideration of performance context and other applicable regulatory criteria, concludes that the institution has weak performance under the lending test criteria applicable to lending activity, geographic distribution, and borrower characteristics within the assessment area. The institution may compensate for such weak performance by exceptionally strong performance in community development lending in its assessment area or a broader statewide or regional area that includes its assessment area.

Appendix B to Part____—CRA Notice

Q1. *What agency information should be added to the CRA notice form?*

A1. The following information should be added to the form:

OCC-supervised institutions only: The address of the deputy comptroller of the district in which the institution is located should be inserted in the appropriate blank. These addresses can be found at 12 CFR 4.5(a).

OCC-, FDIC-, and Board-supervised institutions: "Officer in Charge of Supervision" is the title of the responsible official at the appropriate Federal Reserve Bank.

Appendix A—Regional Offices of the Bureau of the Census

To obtain median family income levels of census tracts, MSAs, block numbering areas and statewide nonmetropolitan areas, contact the appropriate regional office of the Bureau of the Census as indicated below. The list shows the states covered by each regional office.

Atlanta

(404) 730–3833

Alabama, Florida, Georgia

Boston

(617) 424–0510

Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont

Charlotte

(704) 344–6144

District of Columbia, Kentucky, North Carolina, South Carolina, Tennessee, Virginia

Chicago

(708) 562–1740

Illinois, Indiana, Wisconsin

Dallas

(214) 640–4470 or (800) 835–9752

Louisiana, Mississippi, Texas

Denver

(303) 969–7750

Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming

Detroit

(313) 259–1875

Michigan, Ohio, West Virginia

Kansas City

(913) 551–6711

Arkansas, Iowa, Kansas, Minnesota, Missouri, Oklahoma

Los Angeles

(818) 904–6339

California

New York

(212) 264–4730

New York, Puerto Rico

Philadelphia

(215) 597–8313 or (215) 597–8312

Delaware, Maryland, New Jersey, Pennsylvania

Seattle

(206) 728–5314

Alaska, Hawaii, Idaho, Montana, Nevada, Oregon, Washington

End of Text of the Interagency Questions and Answers

Dated: April 27, 1999.

Keith J. Todd,

Executive Secretary, Federal Financial Institutions Examination Council.

[FR Doc. 99–10841 Filed 4–30–99; 8:45 am]

BILLING CODE 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 18, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Edward Salomon, Chicago, Illinois and Salvatore Scambiatterra (also known as Sam Scott), Park Ridge, Illinois, individually and as voting trustees of shares in a voting trust), to acquire additional voting shares of Greater Chicago Financial Corp., Chicago, Illinois, and thereby indirectly acquire Austin Bank of Chicago, Chicago, Illinois.

Board of Governors of the Federal Reserve System, April 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11033 Filed 4–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 28, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104

Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. East Alabama Financial Group, Inc., Wedowee, Alabama; to become a bank holding company by acquiring 100 percent of the voting shares of Small Town Bank, Wedowee, Alabama (in organization).

Board of Governors of the Federal Reserve System, April 28, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11032 Filed 4–30–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 9910112]

Rohm and Haas Company et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis To Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 2, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Timothy Feighery and Wallace Easterling, FTC/S–3627, 601 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326–3520 or (202) 326–2936.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis To Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 22, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Order ("Agreement") from Rohm and Haas Company ("Rohm & Haas") and Morton International, Inc. ("Morton") to resolve competitive concerns arising out of Rohm & Haas's proposed acquisition of Morton. Under the proposed Order, Rohm & Haas and Morton ("respondents") would divest the Morton business of producing and selling acrylic water-based polymers for use in the formulation of floor care products.

The proposed Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will review the agreement and comments received and decide whether to withdraw its acceptance of the agreement or make final the agreement's proposed Order.

The proposed complaint alleges that the acquisition, if consummated, would violate section 7 of the Clayton Act, 15 U.S.C. 18, as amended, and section 5 of the Federal Trade Commission Act ("FTC Act"), 15 U.S.C. 45, as amended, in the market for the sale of acrylic water-based polymers for use in formulation of floor care products ("Water-Based Floor Care Polymers"). According to the proposed complaint, Water-Based Floor Care Polymers impart essential properties, such as hardness, slip resistance and gloss, to floor care products. Major customers of Water-Based Floor Care Polymers are product formulators, who sell finished floor care products, such as polishes, mainly to industrial and institutional users, including factories, schools and retail stores. The proposed complaint alleges that the Water-Based Floor Care Polymers market in North America is highly concentrated, with Rohm & Haas and Morton each controlling a significant share of the market. The proposed complaint further alleges that the effect of the acquisition may be to substantially lessen competition and to tend to create a monopoly by, among other things, eliminating direct competition between Rohm & Haas and Morton, increasing the likelihood that purchasers of Water-Based Floor Care Polymers will be forced to pay higher prices, increasing the likelihood that technical and sales services provided to customers will be reduced, and increasing the likelihood that innovation will be reduced. Customers have complained that the effect of the transaction, if permitted to close, would be increased prices for floor care polymers and reduced technical service, support, and innovation.

The proposed complaint further alleges that entry into the Water-Based Floor Care Polymers market would not be timely, likely, or sufficient to deter or offset the adverse effects of the acquisition on competition. Entry is difficult in this market because of the length of time it would take and the expense that would be incurred in building appropriate chemical production facilities, the difficulty in acquiring the technical expertise necessary to produce the polymers, and the difficulty in gaining recognition in a marketplace in which customers are reluctant to switch from proven suppliers.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the North American market for Water-Based Floor Care Polymers, as alleged in the complaint, by requiring the divestiture of Morton's Water-Based Floor Care Polymers business. Under the terms of the proposed Order, respondents are required to divest, no later than ten (10) days after the date the Commission accepts the Agreement for public comment, Morton's worldwide Water-Based Floor Care Polymers business to GenCorp, Inc. ("GenCorp"). GenCorp currently produces water-based polymers for use in the graphics industry, a technology and production area closely related to Water-Based Floor Care Polymers. Divestiture of the Morton Water-Based Floor Care Polymers business to GenCorp is

designed to promote the viability and competitiveness of the divested business by taking advantage of the synergies that may be afforded through its combination with GenCorp, including expertise in related chemistries and economies of scale resulting from shared research and development, overhead and production.

The proposed Order requires that respondents divest all trade secrets, know-how, trade marks and trade names, intellectual property, intangible assets, and business information (including purchasing, sales, marketing, licensing, and similar information) relating to Morton's Water-Based Floor Care Polymers business. The proposed Order also requires that respondents provide incentives to certain employees identified by the acquirer as important to the continued competitiveness and viability of the Water-Based Floor Care Polymers business, to facilitate their transfer and the transfer of know-how, to the acquirer.

The proposed Order requires that respondents provide a transitional supply of products to the acquirer. The first supply arrangement provides that respondents supply to the acquirer, for a period not to exceed two years, the full line of Morton Water-Based Floor Care Polymers. The second transitional supply agreement requires that respondents supply to the acquirer, for a period not to exceed four years, Conrez® resin, a hard resin that enhances the flow characteristics of water-based polymers. These supply arrangements are designed to ensure the initial viability and success of the acquirer in the Water-Based Floor Care Polymers market by providing a seamless and continuous supply of Morton products to customers. The transitional supply agreements are intended to be of sufficient duration to give the acquirer time to assimilate the Morton polymers and perfect the production processes, in its own plants. This provision also provides the acquirer the time it needs to work with customers to build technical relationships and gain approvals for the products it manufactures in its own facilities, a critical requirement in this market.

The proposed Order also provides for the appointment of an Interim Trustee to ensure that respondents expeditiously perform their responsibilities under the proposed Order. The Interim Trustee will oversee the divestiture to ensure the adequacy of the transfer, to ensure that disputes between the parties will be identified and resolved quickly, clearly, and impartially, and to identify possible violations of the proposed Order.

If, following receipt and review of public comments regarding the proposed Order, the Commission determines to disapprove the divestiture to GenCorp, respondents are required to rescind the transaction with GenCorp, within five months, and divest Morton's Water-Based Floor Care Polymers business to an acquirer that receives the prior approval of the Commission. The proposed Order also provides that if respondents fail to divest the Morton Water-Based Floor Care Polymers business as required by the proposed Order, the Commission may appoint a Divestiture Trustee to divest the business, together with Morton's Greenville, South Carolina, manufacturing facility. This provision gives the Trustee the flexibility to divest the business to an entity not already in the water-based polymers business.

The proposed Order requires respondents to provide the Commission, within thirty (30) days of the date of Agreement is signed, with an initial report setting forth in detail the manner in which respondents will comply with the provisions relating to the divestiture of assets and the appointment and work of the Interim Trustee. The Order further requires respondents to provide the Commission with a report of compliance with the Order within sixty (60) days following the date the Order becomes final and every ninety (90) days thereafter until they have complied with the terms of the Order.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Agreement or the proposed Order or in any way to modify the terms of the Agreement or the proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–10997 Filed 4–30–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–15]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. National Birth Defects Prevention Study—(0920–0010)—Revision—National Center for Environmental Health (NCEH). The Division of Birth Defects and Pediatric Genetics (DBDPG), NCEH has been monitoring the occurrence of serious birth defects and genetic diseases in Atlanta since 1967 through the Metropolitan Atlanta Congenital Defects Program (MACDP). The MACDP is a population-based surveillance system for birth defects in the 5 counties of Metropolitan Atlanta. Its primary purpose is to describe the spatial and temporal patterns of birth defects occurrence and serve as an early warning system for new teratogens. Since 1993, the DBDPG has also been conducting the Birth Defects Risk Factor Surveillance (BDRFS) study, a case-control study of risk factors for selected birth defects.

Infants with birth defects are identified through MACDP and maternal interviews. Clinical/laboratory tests are conducted on approximately 300 cases and 100 controls per year. Controls are selected from among normal births in the same population. OMB approval (OMB 0920–0010) for MACDP and BDRFS was renewed in 1996 and will expire 30 September 1999.

This request is for a 3-year renewal with several changes listed below including a change in the study name:

1. In 1996, MACDP was still obtaining assistance from more than 10 Atlanta hospitals to conduct birth defects surveillance. Therefore, MACDP renewed its OMB approval at that time. In 1997, however, the State of Georgia exercised its option to require the reporting of birth defects under the state's disease reporting regulations, which list birth defects as a condition whose reporting is required by law. The Georgia Division of Health authorized the CDC to serve as its agent in the collection of these case reports. MACDP findings are shared with the state. Since birth defects surveillance in Atlanta is now a state requirement, the CDC is no longer requesting OMB clearance for this activity. Therefore, the Division of Birth Defects and Pediatric Genetics is not seeking renewal of its OMB clearance for the surveillance activities involved in MACDP.

2. The BDRFS is now called the National Birth Defects Prevention Study. The major components of this study have not changed. Infants with birth defects are identified through MACDP. Control infants are selected from birth hospitals in the same population. Mothers of case and control infants are interviewed by phone about their medical history, pregnancies, environmental exposures and lifestyle. The interview still takes about 1 hour but it is now a computer-based interview and answers are entered directly into the database instead of recorded on paper. Another change from the BDRFS is that we are no longer asking participants to come to a clinic for blood drawing. Instead of using blood to study genetic risk factors for birth defects, we will be studying DNA from cheek cells. After completing the interview, participants are sent a packet in the mail and are asked to collect cheek cells using small brushes from the mother, father, and infant. The brushes containing cheek cells are then sent back to the lab by mail. The cheek cell kits will include $20.00 as an incentive to complete them and send them back. The cost to the respondents is $0.00.

Forms	No. of respondents	No. of responses/respondents	Avg. burden/response (in hrs.)	Total Burden (in hrs.)
NBDPS case/control interview	400	1	1	400
Biologic specimen collection	1,200	2	.1666	400
Total				800

2. Case-Control Study of Lifetime Exposure to Drinking Water Disinfection By-products (DBPs) and Bladder Cancer in Pet Dogs—New—National Center for Environmental Health (NCEH). Current drinking water treatment practices in the U.S. typically include disinfection to control the pathogenic organisms responsible for waterborne diseases. Chlorine is the most commonly used chemical for drinking water disinfection; however, chlorine reacts with other drinking water contaminants to generate compounds that may cause cancer (e.g., bladder cancer) in people. The long latency period for the development of bladder cancer and the difficulty in reconstructing water consumption and exposure history make it difficult to verify the association between DBPs exposure and bladder cancer occurrence that has been reported in human epidemiologic studies. It would be useful to have an alternative method to examine this association. We propose to conduct a case-control study of pet dogs to test the hypothesis that consumption of water containing chlorination DBPs increases the dogs' risk for canine bladder cancer in a dose-dependent manner. Specifically, we are interested in examining the type of water disinfection treatment (chlorination, chloramination, or no disinfection) of the tap water consumed by dogs with and without bladder cancer. The total cost to respondents is $0.00.

Respondents	No. of respondents	Responses/respondents	Avg. burden per respondent (in hrs.)	Total burden (in hrs.)
Recruiting Project Participants	430	1	.26666	115
Telephone Interview	400	1	.08333	33
Total				148

Nancy Cheal,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–10971 Filed 4–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[30DAY–11–99]

Agency Forms Undergoing Paperwork Reduction Act Review

The Centers for Disease Control and Prevention (CDC) publishes a list of information collection requests under review by the Office of Management and Budget (OMB) in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these requests, call the CDC Reports Clearance Officer at (404) 639–7090. Send written comments to CDC, Desk Officer; Human Resources and Housing Branch, New Executive Office Building, Room 10235; Washington, DC 20503. Written comments should be received within 30 days of this notice.

Proposed Project

1. Evaluation of Customer Satisfaction of the Centers for Disease Control and Prevention (CDC) Internet Home Page and Links—New—CDC proposes to conduct consumer satisfaction research

around its Internet site in order to determine whether the information, services, and materials on this web-site are presented in an appropriate technological format and whether it meets the needs, wants, and preferences of visitors or "customers" to the Internet site.

Information on the site focuses on disease prevention, health promotion, and epidemiology. The site is designed to serve the general public, persons at risk for disease, injury, and illness, and health professionals. This research will ensure that these audiences have opportunity to provide "customer feedback" regarding the value and effectiveness of the information, services, and products of the CDC web-site and whether these materials are easy to access, clear, and informative. The initial 60 day **Federal Register** Notice was solely for the evaluation of the National Center for HIV, STD, and TB Prevention (NCHSTP) website, but has since been modified to include the entire Agency. The total annual burden hours are 30,667.

Respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hrs)
Visitors to CDC Internet Site	184,000	1	0.1

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–10970 Filed 4–30–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The 2000 FDA Science Forum—FDA and the Science of Safety: New Perspectives

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of meeting.

The Food and Drug Administration (FDA), Office of Science, is announcing the following meeting entitled "The 2000 FDA Science Forum—FDA and the Science of Safety: New Perspectives." The forum is devoted to the presentation and sharing of data, knowledge, and ideas among the diverse disciplines of risk management. The forum will bring FDA scientists together with industry, academia, government agencies, consumer groups, and the public to explore the scientific and practical issues related to the safety evaluation and risk management of FDA-regulated products.

Co-sponsored by FDA's Office of Science, the American Association of Pharmaceutical Scientists, FDA's Office of Women's Health, FDA's Chapter of Sigma Xi, and the Scientific Research Society.

Date and Time: The forum will be held on Monday, February 14, 2000, from 8:30 a.m. to 6 p.m., and Tuesday, February 15, 2000, from 8:30 a.m. to 5 p.m.

Location: Washington Convention Center, rms. 29 to 32 (lower level), and Hall C (upper level), 900 Ninth St. NW., Washington, DC 20001.

Contact: Susan A. Homire, Food and Drug Administration, Office of Science (HF–33), 5600 Fishers Lane, Rockville, MD 20857, 301–827–3366, e-mail "shomire@oc.fda.gov".

Registration: Registration information will be provided at a later date.

SUPPLEMENTARY INFORMATION: Speakers and panelists will address emerging issues in the safety assessment of foods, drugs, biologics, and medical devices. Plenary lectures and discussion groups will provide perspectives on the following topics: (1) Walking and Talking: The Art and Science of Risk Communication, (2) Contemporary Issues in Risk Assessment, (3) Postmarket Surveillance—Beyond Passive Surveillance, (4) The Food Safety Initiative—The Risk Perspective, (5) Risk and Gender Effects, and (6) Risk Assessment in Action.

Dated: April 26, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11057 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Microbiology Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed to the public.

Name of Committee: The Microbiology Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA regulatory issues.

Date and Time: The meeting will be held on May 20, 1999, 9:45 a.m. to 6:30 p.m., and May 21, 1999, 8:30 a.m. to 4:30 p.m.

Location: Corporate Bldg., conference room 020B, 9200 Corporate Blvd., Rockville, MD.

Contact Person: Freddie M. Poole, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD. 20850, 301–594–2096, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12517. Please call the Information Line for up-to-date information on this meeting.

Agenda: On May 20, 1999, the committee will discuss and make recommendations on a premarket notification submission for a qualitative in vitro diagnostic assay intended for the detection of human cytomegalovirus (CMV) deoxyribonucleic acid (DNA) in human peripheral white blood cells and its labeling. The focus of the discussion will be the appropriate use of signal amplification terminology. The committee will also discuss, make recommendations, and vote on a premarket approval application (PMA) supplement for an in vitro diagnostic target-amplified nucleic acid probe test used for the detection of *Mycobacterium tuberculosis* complex in sediments prepared from sputum (induced or expectorated), bronchial specimens, or tracheal aspirates. The device as modified is indicated for use of acid-fast bacilli (AFB) smear negative and AFB smear positive respiratory specimens for the diagnosis of active pulmonary tuberculosis disease. On May 21, 1999, the committee will discuss, make recommendations, and vote on a PMA for an in vitro diagnostic qualitative

device to detect immunoglobulin G (IgG) antibodies to parvovirus B19 as a marker of previous infection in human serum and plasma. The IgG test is indicated for use in all women where there is a suspicion of exposure to parvovirus B19. The committee will also discuss, make recommendations, and vote on a PMA for an in vitro diagnostic qualitative device to detect IgM antibodies to parvovirus B19 in human serum and plasma. The IgM test is indicated for use in conjunction with the parvovirus B19 IgG enzyme immunoassay to determine immunological status during the first trimester of pregnancy and for the testing of pregnant women who have sonographic evidence of abnormal fetal development, such as hydrops fetalis, or who had an adverse outcome, such as fetal death or premature delivery with fetal abnormalities.

Procedure: On May 20, 1999, from 9:45 a.m. to 6:30 p.m., and on May 21, 1999, from 9:30 a.m. to 4:30 p.m., the meeting is open to the public. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by May 10, 1999. On May 20, 1999, oral presentations from the public will be scheduled between approximately 11:15 a.m. and 11:45 a.m. and between approximately 3:30 p.m. and 4 p.m. On May 21, 1999, oral presentations from the public will be scheduled between approximately 10:15 a.m. and 10:45 a.m. and between approximately 2 p.m. and 2:30 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before May 10, 1999, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberation: On May 21, 1999, from 8:30 a.m. to 9:30 a.m., the meeting will be closed to the public to permit discussion and review of trade secret and/or confidential commercial information (5 U.S.C. 552b(c)(4)) relating to present and future agency issues.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 26, 1999.

Michael A. Friedman,

Deputy Commissioner for Operations.

[FR Doc. 99–10982 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–1101–N2]

Medicare Program; Meetings of the Competitive Pricing Demonstration Area Advisory Committee, Maricopa County, AZ

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Revised notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces meetings of the Area Advisory Committee for the Maricopa County Competitive Pricing Demonstration.

The Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology. The BBA requires the Secretary to appoint an Area Advisory Committee (AAC) in the designated area to advise on implementation of the project, including the marketing and pricing of the plan and other factors. AAC meetings are open to the public.

DATES: The revised schedule for meetings is May 18 and 19, 1999, from 8:30 a.m. until 5 p.m., m.s.t., and June 7 and 8, 1999, from 8:30 a.m. until 5 p.m., m.s.t.

ADDRESSES: The meetings on May 18 and 19, 1999, and June 7 and 8, 1999, will be held at the YWCA of the USA, Leadership Development Conference Center, 9440 North 25th Avenue, Phoenix, AZ 85021, (602) 944–0569.

FOR FURTHER INFORMATION CONTACT: Elizabeth C. Abbott, Regional Administrator, Health Care Financing Administration, 75 Hawthorne Street, 4th Floor, San Francisco, CA 94105, (415) 744–3501.

SUPPLEMENTARY INFORMATION: Section 4011 of the Balanced Budget Act of 1997 (BBA) requires the Secretary of the Department of Health and Human Services (the Secretary) to establish a demonstration project under which payments to Medicare+Choice organizations in designated areas are determined in accordance with a competitive pricing methodology.

Section 4012(a) of the BBA requires the Secretary to appoint a Competitive Pricing Advisory Committee to make recommendations concerning the designation of areas for the project and appropriate research designs for implementation. Once an area is designated as a demonstration site, section 4012(b) of the BBA requires the Secretary to appoint an Area Advisory Committee (AAC) to advise on the marketing and pricing of the plan in the area and other factors.

This notice announces the revised schedule of meetings of the Maricopa County AAC. We originally published a schedule of the Maricopa County AAC meetings in the March 11, 1999, issue of the **Federal Register**, at 64 FR 12173. This notice adds one day to the third AAC meeting and adds a fourth meeting. The second day of both meetings (May 19 and June 8) may be subject to cancellation.

The Maricopa County AAC will meet for the purpose of advising the Secretary on how the project will be implemented. The AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The AAC is composed of representatives of health plans, providers, employers, and Medicare beneficiaries in the area. The Maricopa County AAC members are: Joseph Anderson, Schaller Anderson Inc.; Rick Badger, Pacificare of Arizona; Reginald Ballantyne III, PMH Health Resources, Inc.; Donna Buelow, Arizona State Retirement System; Charles Cohen, Arizona Department of Insurance; John Hensing, M.D., Samaritan Health Systems; Mary Lynn Kasunic, Area Agency on Aging; Anne Lindeman, Governor's Advisory Council on Aging; Ben Lopez, Honeywell Corp., Thomas Marreel, William M. Mercer Associates; Anthony Mitten, Maricopa County Medical Society; Edward Munno, Jr., Intergroup of Arizona; Susan Navran, Blue Cross Blue Shield of Arizona; Erik Olsen, D.D.S., American Association of Retired Persons; Leland Peterson, Sun Health Corp.; Donna Redford, Arizona Bridge to Independent Living; Herb Rigberg, M.D., Health Services Advisory Group; Martha Taylor, Arizona SHIP; Clyde Wright, M.D., Cigna of Arizona; Arthur Pelberg, M.D., Schaller Anderson Inc.; Joseph Hanss, M.D., physician; and Phyllis Biedess, Director, AHCCCS. In accordance with section 4012(b) of the BBA, the AAC will exist for the duration of the project in the area, expected to be 5 years from the January 1, 2000, start date.

The Maricopa County AAC held its first two meetings on March 31, 1999, and April 20, 1999.

The third meeting will be extended for a second day. The third meeting will now take place on May 18 and 19, 1999.

However, the second day of the meeting (May 19) is subject to cancellation. The agenda will include a detailed discussion of a standard benefit package, a detailed discussion and possible decision on the government contribution, and any other issues outstanding.

A fourth meeting of the Maricopa County AAC will take place on June 7 and 8, 1999. However, the second day of the meeting (June 8) is subject to cancellation. This meeting will summarize the decisions made in earlier meetings, decide on the standard benefit package, and continue the discussions and make final decisions on any outstanding issues from the previous meetings.

Individuals or organizations that wish to make 5-minute oral presentations on the agenda issues mentioned in the three preceding paragraphs should contact the San Francisco Regional Administrator by 12 noon for each of the following days:

May 7, 1999, for the third meeting.
May 27, 1999, for the fourth meeting.

Anyone who is not scheduled to speak may submit written comments to the San Francisco Regional Administrator by:

May 11, 1999, for the third meeting.
May 28, 1999, for the fourth meeting.

These meetings are open to the public, but attendance is limited to space available.

Authority: Section 4012 of the Balanced Budget Act of 1997, Pub. L. 105–33 (42 U.S.C.1395w–23 note) and section 10(a) of Pub. L. 92–463 (5 U.S.C. App.2, Section 10(a)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 28, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–11062 Filed 4–30–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Uncompensated Services Reporting and Recordkeeping—42 CFR 124, Subpart F (OMB No. 0915–0077): Revision

Titles VI and XVI of the Public Health Service Act, commonly known as the Hill-Burton Act, provide for government grants and loans for construction or renovation of health care facilities. As a condition of receiving this construction assistance, facilities are required to provide a "reasonable volume" of services to persons unable to pay. Facilities are also required to provide assurances periodically that the required level of uncompensated care is being provided, and to follow certain notification and recordkeeping procedures. These requirements are referred to as the uncompensated services assurance.

The regulations contain provisions for reporting to the government the amount of free care provided, as well as provisions for following certain notification and recordkeeping procedures. All of these regulations are included in this clearance request. The Uncompensated Services Assurance Report (USAR) (HRSA form 710) is one of the methods of reporting the amount of free care provided. There are no changes to the USAR form. There will be a significant reduction in the burden from the previous request for OMB approval since many facilities have met their obligations over the last 3 years. In addition, now that most now facilities are having a substantial compliance review done annually, very few facilities need to submit the USAR form. Burden estimates are as follows:

Requirement	Number of respondents	Responses per respondent	Total responses	Burden per response	Total burden hours
Disclosure requirements (42 CFR):					
Published Notices (124.504 (a))	389	1	389	.75	292
Individual Notices (124.504 (c))	389	1	389	43.6	16,960
Determinations of Eligibility (124.507)	389	396	154,044	.75	115,533
Reporting Requirements Form 710:					
USAR (124.509 (a))	10	1	10	11	110
Complaint Information 124.511 (a):					
Individuals	10	1	10	.25	3
Facilities	10	1	10	.5	5
Application for Compliance Alternative for Public Facilities (124.513 (c))	4	1	4	6	24
Annual Certification for Public Facilities (124.509 (b))	195	1	195	.5	98
Application for Compliance Alternative for Small Obligation Facilities (124.514(c))	0	0	0	0	0
Annual Certification for Small Obligation Facilities (124.509(c))	1	1	1	.5	1
Application for Compliance Alternative for Charitable Facilities (124.516(c))	2	1	2	6	12

Requirement	Number of respondents	Responses per respondent	Total responses	Burden per response	Total burden hours
Annual Certification for Charitable Facilities (124.516(c))	26	1	26	.5	13
Subtotal: Reporting and Disclosure					133,051

Requirement	Number of recordkeepers	Hours	Recordkeeping burden
Nonalternative Facilities (124.510(a))	389	50	19,450
Small Obligation Facilities (124.510(b))	*0	0	0
Public Facilities (124.510(b))	*0	0	0
Charitable Facilities (124.510(b))	0	0	0
Subtotal: Recordkeeping			19,450

*Requires facilities under the public facilities compliance alternative, the charitable facilities compliance alternative, and the small obligation compliance alternative to maintain qualification documents. These are ordinarily retained by facilities, so there is no burden.

Total burden for this project is estimated to be 152,501 hours. Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11050 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Progress Reports for Continuation Training Grants (OMB No. 0915–0061)—Extension

The HRSA Progress Reports for Continuation Training Grants are used for the preparation and submission of continuation applications for Title VII and VIII health professions and nursing education and training programs. The Uniform Progress Report measures grantee success in meeting (1) the objectives of the grant project and (2) the cross-cutting outcomes developed for the Bureau's education and training programs. The first part of the progress report is designed to collect information to determine whether sufficient progress has been made on the approved project objectives, as grantees must demonstrate satisfactory progress to warrant continuation of funding. The second part of the progress report contains selected tables from the Comprehensive Performance Management System (CPMS) reflecting the seven indicators that have been identified. Progress will be measured based on the objectives of the grant project and outcome measures and indicators developed by the Bureau to meet requirements of the Government Performance and Results Act (GPRA).

To respond to the requirements of GPRA, the Bureau developed goals, outcomes and indicators that provide a framework for collection of outcome data for its Titles VII and VIII programs. An outcome based performance system is critical for measuring whether program support is meeting national health workforce objectives. At the core of the performance measurement system are found cross-cutting goals with respect to workforce quality, supply, diversity and distribution of the health professions workforce. A demonstration project to assess availability of the data needed to support the indicators was conducted, and data from this project are currently being analyzed.

The progress report will be completely automated in fiscal year 2000, allowing the grantees to obtain, complete, and submit the report electronically.

The burden estimate is as follows:

Form	Number of respondents	Response per respondent	Total responses	Hours per response	Total burden hours
Progress Report	800	1	800	20	16,000

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11051 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources And Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Health Professions Student Loan (HPSL) and Nursing Student Loan (NSL) Programs: Forms (OMB No. 0915–0044)—Revision

The HPSL Program provides long-term, low-interest loans to students attending schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, and pharmacy. The NSL Program provides long-term, low-interest loans to students who attend eligible schools of nursing in programs leading to a diploma in nursing, an associate degree, a baccalaureate degree, or a graduate degree in nursing. Participating HPSL and NSL schools are responsible for determining eligibility of applicants, making loans, and collecting monies owed by borrowers on their outstanding loans. The deferment form (HRSA form 519) provides the schools with documentation of a borrower's eligibility for deferment. The Annual Operating Report (AOR—HRSA form 501) provides the Federal Government with information from participating and non-participating schools (schools that are no longer granting loans but are required to report and maintain program records, student records, and repayment records until all student loans are repaid in full and all monies due the Federal Government are returned) relating to HPSL and NSL program operations and financial activities.

The estimated annual response burden is as follows:

Form	Number of responses	Responses per respondent	Total responses	Hours per respondent	Total burden hours
Deferment 519	10,358	1	10,358	10 minutes ..	1,726
AOR 501	1,302	1	1,302	4	5,208
Total			11,660		6,934

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11052 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Public Law 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Faculty Loan Repayment Program (FLRP) Application (OMB No. 0915–0150)—Extension

Under the Health Resources and Services Administration Faculty Loan Repayment Program, disadvantaged graduates from certain health professions schools may enter into a contract under which HRSA, with the Department of Health and Human Services, will make payments on eligible graduate educational loans in exchange for a minimum of two years of service as a full-time or part-time faculty member of a health professions school. Applicants must complete an application and provide information on all eligible education loans. Upon selection of participants, HRSA will

request verification from their lenders of loan balances and terms of their outstanding educational loans.

The estimated response burden is as follows:

Respondent	Number of respondents	Responses per response	Total responses	Hours per response	Total burden hours
Applicants	75	1	75	1	75
Lenders	112	1	112	.5	56
Total			187		131

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11053 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301) 443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Education Assistance Loan (HEAL) Program: Lender's Application for Insurance Claim Form and Request for Collection Assistance Form (OMB No. 0915–0036)—Revision

This clearance request is for a revision of two forms that are currently approved by OMB. HEAL lenders use the Lenders Application for Insurance Claim to request payment from the Federal Government for federally insured loans lost due to borrowers' death, disability, bankruptcy, or default. The Lenders Application for Insurance Claim form (HRSA form 510) has been revised to reflect information necessary to approve a claim and identify supporting documentation submitted with the claim request. These revisions will facilitate the Department's efforts towards electronic claim request submissions. The Request for Collection Assistance form (HRSA form 513) is used by HEAL lenders to request federal assistance with the collection of delinquent payments from HEAL borrowers. No changes are proposed for the Request for Collection Assistance form.

The estimates of annualized burden are as follows:

Form	Number of respondents	Responses per respondent	Total responses	Hours per response	Total burden hours
HRSA—510	20	75	1,500	30 minutes	750
HRSA—513	20	1,260	25,200	10 minutes	4,208
Total Burden	20				4,958

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11054 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Health Resources and Services Administration (HRSA) publishes abstracts of information collection requests under review by the Office of Management and Budget, in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). To request a copy of the clearance requests submitted to OMB for review, call the HRSA Reports Clearance Office on (301)-443–1129.

The following request has been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1995:

Proposed Project: Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program Administrative Requirements (Regulations and Policy) (0915–0047)—Revision

The regulations for the Health Professions Student Loan (HPSL) Program and Nursing Student Loan (NSL) Program contain a number of reporting and recordkeeping requirements for schools and loan applicants. The requirements are essential for assuring that borrowers are aware of rights and responsibilities, that

schools know the history and status of each loan account, that schools pursue aggressive collection efforts to reduce default rates, and that they maintain adequate records for audit and assessment purposes. Schools are free to use information technology to manage the information required by the regulations. The estimated burden is as follows:

Estimated total annual burden: 47,471 hours. There have been no changes in the reporting requirements. The burden is reduced because the number of schools participating in the programs has been reduced.

RECORDKEEPING REQUIREMENTS

Regulatory/section requirements	Number of recordkeepers	Hours per year	Total burden hours
HPSL Program:			
57.206(b)(2) Documentation of Cost of Attendance	281	1.17	329
57.208(a) Promissory Note	281	1.25	351
57.210(b)(1)(i) Documentation of Entrance Interview	281	1.25	351
57.210(b)(1)(ii) Documentation of Exit Interview	*307	0.33	101
57.215(a) and (d) Program Records	*307	10	3,070
57.215(b) Student Records	*307	10	3,070
57.215(c) Repayment Records	*307	18.75	5,756
HPSL Subtotal	307	42.44	13,028
NSL Program:			
57.306(b)(2)(ii) Documentation of Cost of Attendance	382	0.3	115
57.308(a) Promissory Note	382	0.5	191
57.310(b)(1)(i) Documentation of Entrance Interview	382	0.5	191
57.310(b)(1)(ii) Documentation of Exit Interview	*814	0.17	138
57.315(a)(1) and (a)(4) Program Records	*814	5	4,070
57.315(a)(2) Student Records	*814	1	814
57.315(a)(3) Repayment Records	*814	2.5	2,035
NSL Subtotal	814	9.28	7,554

*Includes active and closing schools.

REPORTING REQUIREMENTS

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total burden hour
HPSL Program:					
57.205(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.206(a)(2) Student Financial Aid Transcript	5,000	1	5,000	0.25	1,250
57.208(c) Loan Information Disclosure	281	74.73	21,000	0.0833	1,749
57.210(a)(3) Deferment Eligibility	[Burden included under 0915–0044]				
57.210(b)(1)(i) Entrance Interview	281	74.73	21,000	0.167	3,507
57.210(b)(1)(ii) Exit Interview	*307	16.28	5,000	0.5	2,500
57.210(b)(1)(iii) Notification of Repayment	*307	35.83	11,000	0.167	1,837
57.210(b)(1)(iv) Notification During Deferment	*307	29.32	9,000	0.0833	750
57.210(b)(1)(vi) Notification of Delinquent Accounts	*307	15.28	5,000	0.167	835
57.210(b)(1)(x) Credit Bureau Notification	*307	13.03	4,000	0.6	2,400
57.210(b)(4)(i) Write-off of Uncollectible Loans	24	1.67	40	0.5	20
57.211(a) Disability Cancellation	12	1	12	.75	9
57.215(a) Reports	[Burden included under 0915–0044]				
57.215(a)(2) Administrative Hearings	0	0	0	0	0
57.216(a)(d) Administrative Hearings	0	0	0	0	0
HPSL Subtotal	5,307	15.27	81,052	0.183	14,857
NSL Program:					
57.305(a)(2) Excess Cash	[Burden included under 0915–0044 and 0915–0046]				
57.306(a)(2) Student Financial Aid Transcript	3,000	1	3,000	0.25	750
57.310(b)(1)(i) Entrance Interview	382	31.41	12,000	0.167	2,004
57.310(b)(1)(ii) Exit Interview	*814	4.91	4,000	0.5	2,000
57.301(b)(1)(iii) Notification of Repayment	*814	8.23	6,700	0.167	1,119
57.310(b)(1)(iv) Notification During Deferment	*814	0.86	700	0.083	58
57.310(b)(1)(vi) Notification of Delinquent Accounts	*814	6.14	5,000	0.167	835
57.310(b)(1)(x) Credit Bureau Notification	*814	11.06	9,000	0.6	5,400
57.310(b)(4)(i) Write-off of Uncollectible Loans	40	1.0	40	0.5	20
57.311(a) Disability Cancellation	10	1.0	10	0.8	8
57.312(a)(3) Evidence of Educational Loans	[Inactive provision]				
57.315(a)(1) Reports	[Burden included under 0915–0044]				
57.315(a)(1)(ii) Administrative Hearings	0	0	0	0	0
57.316(a)(d) Administrative Hearings	0	0	0	0	0

REPORTING REQUIREMENTS—Continued

Regulatory/section requirements	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hour burden
NSL Subtotal	3,814	10.61	40,450	0.30	12,194

*Includes active and closing schools.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Wendy A. Taylor, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 27, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11055 Filed 4–30–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: May 5, 1999.

Time: 12:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg., Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Barbara Detrick, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11043 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group Diabetes, Endocrinology and Metabolic Diseases B Subcommittee.

Date: June 3, 1999.

Time: 8:30 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, National Institutes of Health, Building 45, Room 6AS25S, 9000 Rockville Pike, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS).

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11044 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB–1 (M3)P.

Date: May 5–7, 1999.

Time: May 5, 1999, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Westin Copley Place, 10 Huntington Avenue, Boston, MA 02116.

Contact Person: Carolyn Miles, Scientific Research Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–43A, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11045 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Dental & Craniofacial Research; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–51, Review of F32, R03s.

Date: April 28, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–52, F30, K23, K24, R03.

Date: May 3, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–36, Review of F32, K24, R03.

Date: May 4, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–35, Review of R03, K24, T32.

Date: May 5, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–44, Review of R01.

Date: May 5, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Washko, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–43 Review of R01s.

Date: May 6, 1999.

Time: 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: PHILIP WASHKO, PHD, DMD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–53, Review of F32, K23, K24, T35.

Date: May 6, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: William J. Gartland, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Dental Research Special Emphasis Panel 99–56, RFP NIH–NIDCR–12–99–2R.

Date: May 21, 1999.

Time: 2:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Natcher Building, Rm. 4AN44F, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: H. GEORGE HAUSCH, PHD, CHIEF, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institutes of Health, Bethesda, MD 20892, (301) 594–2372.

Name of Committee: National Institute of Dental Research Special Emphasis Panel Review of RFA DE98–009.

Date: June 7–10, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton Hotel, Darnestown Conference Room, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: YASAMAN SHIRAZI, PHD, Scientific Review Administrator, 4500 Center Drive, Natcher Building, Rm. 4AN44F, National Institute of Dental & Craniofacial Res., Bethesda, MD 20892, (301) 594–2372.

(Catalogue of Federal Domestic Assistance Program Nos. 93.121, Oral Diseases and Disorders Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11046 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Prevention Trials Network—Leadership Group

Date: June 7–8, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Kevin W. Ryan, Ph.D., Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C12, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8694.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11047 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel HIV Vaccine Trials Network-Leadership Group.

Date: June 3–4, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Arlington Hyatt, 1325 Wilson Boulevard, Arlington, VA 22209.

Contact Person: Hagit S. David, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, HIAID, NIH, Solar Building, Room 4C03, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–4596.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11048 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases, Notice of Close Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice if hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel Research on Topical Microbicides for Prevention of STDs/HIV.

Date: May 19–20, 1999.

Time: 9:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave., N.W., Washington, DC 20007.

Contact Person Anna Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8536.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 27, 1999.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11049 Filed 4–30–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Technical Assistance Workshop

AGENCY: Center for Substance Abuse Treatment (CSAT) and Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Health and Human Services (HHS).

Notice is hereby given of a workshop for the provision of technical assistance to potential applicants for SAMHSA grants.

The Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Treatment and Center for Substance Abuse Prevention are offering a regional Technical Assistance Workshop for prospective applicants. The workshop will be conducted to provide support to prospective applicants in preparing their applications to respond to published grant announcements.

The following three SAMHSA grant announcements will be featured at the workshop:

Center for Substance Abuse Treatment

Targeted Capacity Expansion Program for Substance Abuse Treatment and HIV/AIDS Services Community-Based Substance Abuse and HIV/AIDS Outreach Program

Center for Substance Abuse Prevention

Substance Abuse Prevention/HIV Care Targeted Capacity Expansion Cooperative Agreements

These GFAs are available from the SAMHSA Web Site at www.SAMHSA.gov or from the National Clearinghouse for Alcohol and Drug Information (NCADI) at 800–729–6686. Potential participants are strongly encouraged to check these resources and be familiar with the GFAs in which they are interested prior to attending the workshop.

The Technical Assistance Workshop will be held on May 10, 1999 at the U.S. Court of International Trade, 1 Federal

Plaza, New York, NY 10278. On-site registration will begin at 12:30 p.m.; workshop hours are 1 p.m. to 4 p.m.

Preliminary Agenda Highlights for the TA Workshop include: (1) Review of SAMHSA programs and priorities; (2) technical/practical aspects of the grant application process; (3) discussion of specific grant announcements; and (4) opportunity for questions and answers.

TA Workshop Arrangements and Contacts

There is no registration fee for the workshop. Participants do not need to preregister but are encouraged to call in advance to indicate their intention to attend; please call Ms. Renee Bell at (301) 984–1471, extension 353. Registrants will be responsible for costs associated with their own travel, meals, and lodging. For information regarding the content of the TA Workshop, please contact Mr. Stephen Sawmelle at (301) 443–1249.

SAMHSA suggests that the attendees be those persons having the responsibility for conceptualizing and writing the application.

Dated: April 28, 1999.

Sandra Stephens,

Team Leader, Extramural Activities Team, SAMHSA.

[FR Doc. 99–11056 Filed 4–30–99; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Intent To Revise the Comprehensive Conservation Plan and To Prepare an Environmental Impact Statement for Kodiak National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and Solicitation of Comments.

SUMMARY: The U.S. Fish and Service is revising the comprehensive conservation plan (comprehensive plan) for Kodiak National Wildlife Refuge, Alaska. This notice advises agencies and the public of our intent to gather information necessary to revise the plan and associated environmental impact statement (EIS) pursuant to the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3100 *et seq.*), the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd-668ee), and the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347) and its implementing regulations. Specifically, we are seeking suggestions and information regarding the scope of issues to be addressed in the revised comprehensive plan and EIS. The comprehensive plan, completed in 1987, needs to be updated in response to new and revised laws, regulations and policies, and changing circumstances, and to provide management direction for about 175,000 acres of land acquired since completion of the comprehensive plan. In addition, we will re-evaluate the wilderness review and wild and scenic rivers study that were completed previously for refuge lands and waters.

DATES: Comments should be received no later than June 30, 1999.

ADDRESSES: Address comments to: Mike Haase, Refuge Planning, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503; fax: 907/786–3965; electronic mail (E-mail): Mikel__Haase@fws.gov (submit as ASCII without special characters or any form of encryption or as WordPerfect files up to Version 8).

FOR FURTHER INFORMATION CONTACT: Contact Mike Haase at 907/786–3402.

SUPPLEMENTARY INFORMATION: On August 19, 1941, President Franklin D. Roosevelt established Kodiak National Wildlife Refuge by Executive Order 8857. The purpose of the refuge was to preserve the natural feeding and breeding range of the brown bear and other wildlife.

The Alaska National Interest Lands Conservation Act (ANILCA) was signed into law on December 2, 1980. This law clarified how federally owned lands in Alaska would be managed and used. Section 303 of ANILCA redesignated Kodiak National Wildlife Refuge and added about 50,000 acres on Afognak and Ban islands to the refuge. The purposes for which Kodiak Refuge was established and shall be managed, as stated in ANILCA, include: to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence use by local residents; and to ensure water quality and necessary water quantity within the refuge.

Section 304(g) of ANILCA states that comprehensive plans shall be prepared and "from time to time" revised for each refuge. Before these comprehensive plans are prepared the following shall be identified and described: the populations and habitats of the fish and wildlife resources of the refuge; the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge; areas of the refuge that are suitable for use as administrative sites or visitor facilities, or for visitor services; present and potential requirements for access; and significant problems which may adversely affect the populations and habitats of fish and wildlife. The comprehensive plans shall: designate areas within the refuge according to their respective resources and values; specify programs for conserving fish and wildlife and maintaining the special values of the refuge; specify uses which may be compatible with the major purposes of the refuge; and identify opportunities to be provided for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of refuge resources and values, if they are compatible with the purposes of the refuge.

The National Wildlife Refuge System Improvement Act of 1997, which amended the Refuge Administration Act, includes provisions for system wide refuge planning. This direction is being incorporated into national planning policy for the refuge system and will apply to refuges in Alaska. Should any provisions of the Refuge Administration Act conflict with the provisions of ANILCA, the provisions of ANILCA shall prevail for refuges in Alaska.

The Kodiak comprehensive plan, wilderness review, and environmental impact statement was completed in 1987. A public use management plan was prepared for the refuge and approved in 1993.

In preparing and revising comprehensive plans ANILCA requires consultation with appropriate State agencies and Native corporations and public hearings are to be held at appropriate locations to insure that those primarily affected by administration of the refuge (residents of local villages and political subdivisions of the State) have the opportunity to present their views with respect to the comprehensive plan revision. Before adopting a comprehensive plan, public notice in the **Federal Register** and an opportunity for public review and comment are required.

The comprehensive plan states that a full review and updating of the comprehensive plan will occur every 10 to 15 years, more often if necessary.

In late 1998 we began reviewing the comprehensive plan for the refuge to determine if it should be revised.

Implementation of on-the-ground management actions is generally moving forward and refuge objectives are being accomplished. However, some of the management direction provided in the comprehensive plan needs to be updated. New and amended laws (e.g., the Refuge Improvement Act), new or revised regulations and policies, and changes in circumstances (e.g., federal management of subsistence hunting on Alaska refuges) need to be included in the management policies and guidelines. Management direction for approximately 175,000 acres of land acquired since the comprehensive plan was completed also needs to be incorporated into the plan. In addition, we believe that a re-evaluation of the wild and scenic river study (completed in the late 1970's) and the wilderness review (part of the original comprehensive plan/EIS) is necessary, given the amount of time that has passed since the original recommendations were made. Therefore, the Service has decided that a revision of the Kodiak comprehensive plan is necessary.

This notice formally begins the revision of the comprehensive plan for the Kodiak National Wildlife Refuge. As the first step, we are soliciting comments on the issues to be addressed in the revised plan/EIS. Comments should be specific and should address refuge resources, how we manage those resources, and how the public is affected. In addition to soliciting public comments through this notice, public comments will be solicited through a newsletter to be mailed to approximately 2,000 individuals and organizations on our mailing list. The comprehensive plan revision will be addressed during a series of community meetings to be held in Akhiok, Karluk, Larsen Bay, Old Harbor, Ouzinkie, and Port Lions in March and April 1999. Meetings will be scheduled during May in Kodiak and Anchorage. Once issues are identified, we will develop options to address the issues and prepare a draft comprehensive plan/EIS. This document is scheduled to be released for public review in the fall of 2000. After public review and comment on the draft comprehensive plan/EIS, including public hearings, a final comprehensive plan/EIS will be prepared and released.

Hannibal Bolton,

Acting Deputy Regional Director, Anchorage, Alaska.

[FR Doc. 99–10947 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P; AA–6688–A]

Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(a) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Ouzinkie Native Corporation for approximately 79.99 acres. The lands involved are in the vicinity of Port Lions, Alaska, situated on Kodiak Island.

U.S. Survey No. 9278, Alaska.

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Kodiak Daily Mirror.* Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, shall have until June 2, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR part 4, subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner, ANCSA Team, Branch of 962 Adjudication.

[FR Doc. 99–10966 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–SS–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–99–1610–00; GP9–0171]

Notice of Prohibited Acts in the Lakeview District, Bureau of Land Management

AGENCY: Bureau of Land Management.

SUMMARY: The Lakeview District is publishing certain closures and restrictions for the purpose of establishing a supplemental rule for the protection of persons and resources. Pursuant to 43 CFR 8365.1–6, all camping within 300 feet of any water source is prohibited, except where designated. Water sources are defined, for this rule, as any fenced spring exclosure, flowing spring, or man-made metal or concrete water tank/trough. Camping is defined, for this rule, as any establishment of occupancy on public lands in the Lakeview Resource Area. The intent of this rule is (1) to protect water sources from overuse and pollution, and (2) to provide free and unimpeded access for wildlife who are dependent on these water sources in a dry, desert environment.

AUTHORITY AND PENALTIES: Authority for this penalty is found in 43 CFR 8365.1–6 and section 303(a) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1733(a)). Any person who violates this supplemental rule may be tried before a United States Magistrate and fined no more than $1,000 or imprisoned for no more that 12 months, or both. Such violations may also be subject to the enhanced fines provided for by Title 18 U.S.C. 3571. This supplemental rule is issued under the approval and authority of the Oregon State Office, State Director.

EFFECTIVE DATE: This supplemental rule will become effective 30 days from the published date to allow for consideration of public comments.

FOR FURTHER INFORMATION CONTACT: Steven A. Ellis, District Manager, Lakeview District, HC 10, Box 337, Lakeview, Oregon 97630, or telephone (541) 947–2177.

Dated: April 16, 1999.

M. Joe Tague,

Acting District Manager.

[FR Doc. 99–10943 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–015–99–1610–00: GP9–0172]

Notice of Correction, Lakeview District

AGENCY: Bureau of Land Management (BLM).

SUMMARY: The following represents corrections to previous **Federal Register** notices published by the Lakeview District, BLM:

(1) **Federal Register** notice: October 20, 1998, Volume 63, Number 202, Page 56042, under Penalties: The appropriate regulation citation should be 43 CFR 8365.1–6.

(2) **Federal Register** notice: June 12, 1998, Volume 63, Number 113, Pages 32244–32245, under Penalties: The appropriate regulation citation should be 43 CFR 8364.1(d).

(3) All **Federal Register** notices related to the publication of supplemental rules previously issued from the Lakeview District, BLM were issued under the approval and authority of the Oregon State Office, State Director.

DATES: These corrections will become mandatory after a 30-day public review period.

FOR FURTHER INFORMATION CONTACT: Steven A. Ellis, District Manager, Lakeview District, HC 10, Box 337, Lakeview, Oregon 97630, or telephone (541) 947–2177.

Dated: April 16, 1999.

M. Joe Tague,

Acting District Manager.

[FR Doc. 99–10944 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[T–926–09–1420–00]

Montana: Filing of Amended Protraction Diagram Plats

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plats of the amended protraction diagrams accepted April 14, 1999, of the following described lands, are scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Tps. 1, 2, 3, and 4 S., Rs. 21, 22, 23, and 24 W.

The plat, representing the Amended Protraction Diagram 52 Index of unsurveyed Townships 1, 2, 3, and 4 South, Ranges 21, 22, 23, and 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 1 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 1 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 1 S., R. 24 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 1 South, Range 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 2 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 2 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 2 S., R. 24 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 2 South, Range 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 3 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 3 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 3 S., R. 24 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 3 South, Range 24 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 4 S., R. 21 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 4 South, Range 21 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 4 S., R. 22 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 4 South, Range 22 West, Principal Meridian, Montana, was accepted April 14, 1999.

T. 4 S., R. 23 W.

The plat, representing Amended Protraction Diagram 52 of unsurveyed Township 4 South, Range 23 West, Principal Meridian, Montana, was accepted April 14, 1999.

The amended protraction diagrams were prepared at the request of the U.S. Forest Service to accommodate Revision of Primary Base Quadrangle Maps for the Geometronics Service Center.

A copy of the preceding described plats of the amended protraction diagrams, accepted April 14, 1999, will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against these amended protraction diagrams, accepted April 14, 1999, as shown on these plats, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests. These particular plats of the amended protraction diagrams will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 222 North 32nd Street, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 20, 1999.

Daniel T. Mates,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 99–10945 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–950–5700–77; AZA 28487]

Public Land Order No. 7387; Withdrawal of National Forest System Land for Oak Creek Canyon Recreation Area; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 10,500 acres of National Forest System land from location and entry under the United States mining laws for 20 years to protect the Oak Creek Canyon Recreation Area. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Cliff Yardley, BLM Arizona State Office, 222 North Central Ave., Phoenix, Arizona 85004–2203, 602–417–9437.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System land is hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Oak Creek Canyon Recreation Area:

Gila and Salt River Meridian

Coconino National Forest

T. 17 N., R. 6 E.,
- Sec. 2, lots 3 to 6, inclusive, lots 11 to 14, inclusive, and lots 19 and 20;
- Sec. 3, lots 1 to 12, inclusive, and S½; sec. 4, lots 1 to 8, inclusive, and W½;
- Sec. 5, lots 1 to 5, inclusive, S½N½, NE¼SW¼, N½N½NW¼SW¼, N½SE¼SW¼, N½SE¼, and SE¼SE¼;
- Sec. 8, NE¼, S½NE¼NE¼NE¼NW¼, SE¼NE¼NE¼NW¼, SE¼NE¼NW¼, E½SE¼NW¼, E½SW¼SE¼NW¼, SW¼SW¼SE¼NW¼, E½NE¼SW¼, N½SE¼SW¼, N½S½SE¼, and N½SE¼;
- Sec. 9, lots 1 to 9, inclusive, and NW¼;
- Sec. 10, N½, N½N½SW¼, N½NW¼SE¼, and NW¼NE¼SE¼;
- Sec. 11, lots 3 and 4.

T. 18 N., R. 6 E.,
- Sec. 4, lots 2 and 5, SE¼NW¼, and SW¼;
- Sec. 5, lot 1, S½NE¼, and SE¼, excluding HES 579;
- Sec. 8, E½ and E½E½W½, excluding HES 369 and HES 579;
- Sec. 9, W½NW¼;
- Sec. 16, W½NW¼, SW¼, and SW¼SE¼, excluding HES 368;
- Sec. 17, E½, excluding HES 368;
- Sec. 20, E½NE¼NE¼;

Sec. 21, NE¼, N½NW¼, E½SW¼NW¼, SE¼NW¼, N½NE¼SW¼, SE¼NE¼SW¼, and SE¼, excluding HES 367;
Sec. 22, W½SW¼;
Sec. 23, SE¼SW¼SW¼, NE¼SE¼SW¼, S½SE¼SW¼, S½NE¼SE¼, SE¼NW¼SE¼, and S½SE¼;
Sec. 24, S½S½NE¼ and S½;
Sec. 25, N½N½NE¼, SE¼NE¼NE¼, N½NE¼NW¼, SW¼NE¼NW¼, and NW¼NW¼;
Sec. 26, N½, N½SW¼, N½S½SW¼, SW¼SW¼SW¼, and N½NW¼SE¼;
Sec. 27, lots 2, 3, 4, N½, SE¼, and those portions of lot 5, Tract 37, and HES 94 reconveyed to the U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within lot 5, Tract 37, HES 94, and SE¼;
Sec. 28, E½NE¼, E½W½NE¼, E½E½SE¼, and those portions of HES 94 reconveyed to the U.S. in warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within HES 94;
Sec. 33, lots 1, and 2, and lots 6 to 11, inclusive, E½E½NE¼, SW¼SE¼NE¼, and SE¼SW¼NE¼, excluding Pat. No. 731068;
Sec. 34, lot 1, lots 3 to 5, inclusive, lots 8 to 10 inclusive, NE¼, SE¼NW¼, NE¼SW¼, N½SE¼, and those portions of Tract 37, lot 7, and NW¼SW¼ reconveyed to the U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within Tract 37, lot 7, and NW¼SW¼;
Sec. 35, lots 3 and 4.
T. 18 N., R. 7 E.,
Sec. 20, lots 6, 7, and 12;
Sec. 29, lot 1.
T. 19 N., R. 6 E.,
Sec. 14, lot 8 and lots 16 to 19, inclusive;
Sec. 15, E½SE¼;
Sec. 22, lots 2, 3, 4, 11, 12, 15, 16, 23 and 24;
Sec. 27, lots 1 to 3, inclusive, lots 10 to 15, inclusive, lots 21 to 25, inclusive and those portions of HES 95 reconveyed to the U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within HES 95;
Sec. 34, lots 2 to 5, inclusive, lots 9, 17, 18, and 25, and those portions of lots 10, 11, 12, 19, 20, 23, and 24, reconveyed to U.S. by warranty deeds recorded in Coconino County, Arizona, excluding those portions of private land within lots 10, 11, 12, 19, 20, 23, and 24.

The area described contains 10,500 acres in Coconino County.

2. The withdrawal made by this order does not alter the applicability of those land laws governing the use of the National Forest System land under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: April 12, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–10999 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–05; N–63252]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and Public Purpose Lease/Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The City of Las Vegas proposes to use the land for a Public Park to include soccer fields, playgrounds, administration building, parking area, boundary fence, picnic areas and restrooms.

Mount Diablo Meridian, Nevada

T. 20S. R. 60E.
Sec. 22, SE¼NW¼

Containing 40 acres, more or less.

The land is not required for any federal purpose. Although the land is currently withdrawn (60 FR 25149) under Public Land Order 7142 for a Bureau of Land Management administrative office site, it has been determined that the lands are no longer needed for that purpose. Concurrence has been received to allow for a lease/patent for the Public Park while the withdrawal is in process of revocation. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

An easement 50 feet in width along the South boundary, 40 feet in width along the East boundary, 50 feet in width along the West boundary, 30 feet in width along the North boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes. This lease/conveyance will also be subject to the Nevada Power Co., right-of-way case file NEV–061618. Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/ conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, 4765 Vegas Dr., Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a Public Park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a Public Park.

Any adverse comments will be reviewed by the State Director. In the

absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: April 15, 1999.

Sharon DiPinto,

Acting Assistant Field Office Manager Division of Lands, Las Vegas, NV.

[FR Doc. 99–10950 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service, Interior.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at The Westin Alyeska Prince in Girdwood, Alaska, on May 26–27, 1999.

The agenda will cover the following principal subjects:

—Secretary's Lands Legacy Proposal
—Distribution of OCS Revenues: Alternative Coastal Impact Assistance Proposals
—Future Role of Natural Gas
—DOE Projections
—Supply—Lower 48/North Slope/Canada
—State of the Oil and Gas Industry
—Global Perspective
—U.S. Perspective
—Alaska Specific
—MMS Response
—Georges Bank Review Board: "What Can We Learn from the Canadian Experience on Georges Bank?"
—Exxon Valdez: 10 Years After the Oil Spill
—Outlook for Energy Production from Alaska
—Future Role of Alaska in National Energy Policy
—Environmental Perspective
—State and Local Government Outlook
—Challenges in Arctic Development
—Alyeska Pipeline System
—Unique Technological/Environmental Issues
—North Slope Inupiat/Native Views
—Onshore/Offshore
—Importance of Subsistence
—Traditional Knowledge
—MMS Regional Updates: Alaska, Gulf of Mexico, and Pacific Regions
—Hard Minerals Update
—OCS Scientific Committee Update
—Congressional Updates

The meeting is open to the public. Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 14, 1999, to the Minerals Management Service, 381 Elden Street, MS–4001, Herndon, Virginia 20170, Attention: Jeryne Bryant.

Requests to make oral statements should be accompanied by a summary of the statement to be made. For more information, call Jeryne Bryant at (703) 787–1211.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at the MMS in Herndon.

DATES: Wednesday, May 26 and Thursday, May 27, 1999.

ADDRESSES: The Westin Alyeska Prince, 1000 Arlberg Avenue, Girdwood, Alaska 99587—(907) 754–1111 or (800) 880–3880.

FOR FURTHER INFORMATION CONTACT: Jeryne Bryant at the address and phone number listed above.

Authority: Federal Advisory Committee Act, P.L. No. 92–463, U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: April 27, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–10940 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Grand Portage National Monument; Intent To Prepare a General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to Prepare a General Management Plan and Environmental Impact Statement for Grand Portage National Monument, Minnesota.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Grand Portage National Monument, Minnesota, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including newsletters and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters, or requests to be added to the project mailing list should be directed to: Mr. Tim Cochrane, Superintendent, Grand Portage National Monument, PO Box 668, Grand Marais, Minnesota 55604–0668, 218–387–2788, tim___cochrane@nps.gov

FOR FURTHER INFORMATION CONTACT: Superintendent, Grand Portage National Monument, at the address and telephone number above.

SUPPLEMENTARY INFORMATION: Grand Portage National Historic Site was designated September 15, 1951. It was redesignated Grand Portage National Monument when it was established September 2, 1958 (72 Stat. 1751). The park consists of three distinct contiguous areas: (1) The site of the Northwest Company's Lake Superior trading post where, during the late 18th and early 19th centuries, trade goods were offloaded for transport by the voyageurs into western Canada and the United States and where furs from the interior were loaded for the return trip east, (2) the route of the nine mile portage that connected the trading post to Fort Charlotte, and (3) the site of Fort Charlotte at the northern end of the portage where goods were loaded into canoes for the trip into the interior and furs from the interior collected for shipment down the portage to Lake Superior. In all, the National Monument consists of 709.97 acres, all in Federal ownership.

In accordance with NPS park planning policy, the GMP will ensure Grand Portage National Monument has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts,

and costs of alternative courses of action.

The environmental review of the GMP/EIS for Historic Site will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR parts 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The NPS estimates the draft GMP and draft EIS will be available to the public by November 2000.

Dated: April 26, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99–10973 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 24, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 18, 1999.

Carol D. Shull,

Keeper of the National Register.

ARKANSAS

Sebastian County

Fort Smith National Cemetery (Civil War Era National Cemeteries MPS), 522 Garland Ave. and S. 6th St., Fort Smith, 99000578

CALIFORNIA

Los Angeles County

Willmore, The, 315 W. Third St., Long Beach, 99000579

Modoc County

Jess Valley Schoolhouse, Cty. Rd. 64, Likely vicinity, 99000582

San Francisco County

Building at 465 Tenth St., 465 Tenth St., San Francisco, 99000581

Santa Clara County

Allen, Theophilus, House, 601 Melville Ave., Palo Alto, 99000580

FLORIDA

Broward County

Nyberg—Swanson House, 102 W. Dania Beach Blvd., Dania Beach, 99000583

ILLINOIS

Fulton County

Palmer, Hiram, House, 703 E. Fort St., Farmington, 99000589

Kane County

Holy Cross Church, 14 N. Van Buren St., Batavia, 99000587

Macon County

Union Church, 2.5 mi. SE of Oreana, on Kirby Rd., Oreana vicinity, 99000588

Stephenson County

Central House, 210 W. High St., Orangeville, 99000585

Tazewell County

Third St. Bridge, Third St., bet. Pine and Elm Sts., Delavan, 99000586

LOUISIANA

East Baton Rouge Parish

Port Hudson National Cemetery (Civil War Era National Cemeteries MPS), 20978 Port Hickey Rd., Zachary, 99000591

Southern University Historic District, Netterville Dr. and Swan Ave., Baton Rouge, 99000590

La Salle Parish

Trout—Good Pine School, School Rd., Good Pine, 99000592

MASSACHUSETTS

Suffolk County

Woodbourne Historic District, Roughly bounded by Walk Hill, Goodway, and Wachusett Sts., Boston, 99000593

MISSISSIPPI

Wilkinson County

Woodville Historic District (Boundary Increase II), Roughly along Depot, First West, Main, Second South, Sligo, Third South, and Water Sts., Woodville, 99000594

MISSOURI

Buchanan County

St. Joseph Public Library—Carnegie Branch, 316 Massachusetts St., St. Joseph, 99000595

MONTANA

Gallatin County

Adams Block, 123 Main St., Three Forks, 99000597

Lewis and Clark County

Mann Gulch Wildfire Historic District,

Mann Gulch, tributary of the Missouri River, Helena vicinity, 99000596

NEW MEXICO

Santa Fe County

Jackson, J.B., House, 268 Los Pinos Rd., Santa Fe vicinity, 99000598

NORTH CAROLINA

Carteret County

Cape Lookout Village Historic District, Cape Lookout, from Lighthouse to Cape Point, Harkers Island vicinity, 99000599

Perquimans County

Belvidere Historic District,

Roughly bounded by the Perquinmans R., NC 37, NC 1200, and NC 1213, Hertford vicinity, 99000600

OKLAHOMA

Muskogee County

Fort Gibson National Cemetery (Civil War Era National Cemeteries MPS), 1423 Cemetery Rd., Fort Gibson, 99000601

OREGON

Clatsop County

Leinenweber, Christian, House, 3480 Franklin Ave., Astoria, 99000604

Deschutes County

Moore, Robert D., House, 545 NW Congress St., Bend, 99000603

Lincoln County

Pacific Spruce Saw Mill Tenant Houses, 146, 162, 178, and 192 NE Sixth St., Toledo, 99000602

Multnomah County

Cobb, Samuel, House, 1314 SE 55th Ave., Portland, 99000607

Holden, William B., House, 6347 SE Yamhill, Portland, 99000605

Miller, Claude Hayes, House, 13051 SE Claybourne St., Portland, 99000606

PENNSYLVANIA

Bradford County

Welles, Ellen and Charles F., House, 1 Grovedale Ln., Wyalusing Township, 99000608

Philadelphia County

SS UNITED STATES (Steamship), Pier 82, Philadelphia, 99000609

TEXAS

Hardin County

Kirby—Hill House, 210 Main St., Kountze, 99000610

Waller County

Anderson, L.C., Hall (Praire View A&M University MPS), L.W. Minor St., building #0541, Prairie View, 99000611

Banks, W.R., Library (Praire View A&M University MPS), L.W. Minor St., building #0508, Prairie View, 99000612

Evans, Annie Laurie, Hall (Praire View A&M University MPS), L.W. Minor St., building #0544, Prairie View, 99000613

Fry—Thomas Power Plant (Praire View A&M University MPS), A.G. Cleaver St., Building #0529, Prairie View, 99000615

Hilliard Hall (Praire View A&M University MPS), A.G. Cleaver St., building #0537, Prairie View, 99000614

Veterinary Hospital (Praire View A&M University MPS), E.M. Norris St., building #0517, Prairie View, 99000617

Woolfolk, G.R., Social and Political Science Building (Praire View A&M University MPS), A.G. Cleaver St., building t0503, Prairie View, 99000616

UTAH

Carbon County

Clerico Commercial Building, 4985 N. Spring Glen Rd., Spring Glen, 99000619
Manina, Camillo, House, Approx. 1756 W 400 N, Spring Glenn, 99000618

Salt Lake County

Ramsey, Lewis A., House, 128 S 1000 E, Salt Lake City, 99000621
Silver Brothers' Iron Works Office and Warehouse (Salt Lake City Business District MRA), 550 W 700 S, Salt Lake City, 99000622

Summit County

House at 463 Park Ave. (Mining Boom Era Houses TR), 463 Park Ave., Park City, 99000620

VERMONT

Caledonia County

Mathewson Block, Jct. of Main St. and Maple St., Lyndon, 99000623

A Request for a Move has been made for the following resource:

FLORIDA

Dade County

Halissee Hall, 1700 NW 10th Ave., Miami, 74000618

[FR Doc. 99–10990 Filed 4–30–99; 8:45 am]
BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Realty Action: Proposed Exchange of Federally-Owned Lands for State Owned Lands Within the Commonwealth of Virginia, and Boundary Revision at Fredericksburg and Spotsylvania County Battlefields National Military Park

I. The following described Federally owned land acquired by the National Park Service, has been determined to be suitable for exchange. The authority for this exchange is the Land and Water Conservation Fund Act, as amended (16 U.S.C. 460l–22b).

These selected Federal lands lie and will remain inside the boundaries of Fredericksburg and Spotsylvania County Battlefields National Military Park (NMP), Appomattox Court House National Historical Park (NHP), and Colonial National Historical Park (NHP). There are no threatened or endangered species or other species of management concern. No cultural or archeological resources are known to exist on these properties.

The United States-owned property to be exchanged to the Commonwealth of Virginia Department of Transportation (VDOT) is located in three parks. All three parks are located within the Commonwealth of Virginia. The first tract is at Appomattox Court House NHP. It is a 0.89 of an acre parcel needed for the widening of Route 701. The next tract is located at Fredericksburg and Spotsylvania County Battlefields NMP. Tract 01–159 is a 0.51 of an acre tract needed for the widening of Route 3. The next tract is at Colonial NHP. It is Tract 01–134 and is a 0.51 of an acre tract needed for the widening of Route 634.

The exchange will protect park resources and facilitate the administration of the park. The National Park Service will retain mineral rights. A reverter clause will be included in the deed to the Commonwealth of Virginia Department of Transportation in the circumstance where the roads are no longer needed.

Title will be conveyed subject to reservations and exceptions as contained in the original deeds as well as existing easements for public roads and highways, public utilities and pipelines. VDOT is responsible for the provision and maintenance of the respective roads.

The values of the properties to be exchanged were determined to be equal by a current fair market value appraisal.

II. In exchange for the lands identified in Paragraph I, the United States will acquire Tracts 01–171, 01–172 and 06–118 at Fredericksburg and Spotsylvania County Battlefields NMP. Tract 01–171 is a 0.06 of an acre tract currently outside the boundary near the historic Salem Church. Tract 01–172 is a 0.63 of an acre tract near the Salem Church and located within the Fredericksburg and Spotsylvania County Battlefields NMP boundary. This will allow for better protection of this historic structure. Tract 06–118 is a 0.11 of an acre tract near the 15th New Jersey monument and is located within the Fredericksburg and Spotsylvania County Battlefields NMP boundary. This will provide a buffer area for this monument.

Acquisition will include all right, title and interest to mineral rights. Also the Commonwealth of Virginia will convey to the National Park Service an easement over tract 01–135 at Colonial NHP. This is that portion of Old Surrender Road (Route 634) from the intersection with Route 704, continuing 1.5 miles north until an intersection again with Route 704. This will provide a tour road for the park.

III. Section 5 of Pub. L. 95–42, dated June 10, 1977, authorizes the Secretary of the Interior to make minor revisions of the boundary of an area, whenever he determines that to do so will contribute to, and is necessary for, the proper preservation, interpretation, or management of the unit. A minor boundary revision to Fredericksburg and Spotsylvania County Battlefields NMP involves land that is needed to protect the historic Salem Church by providing sufficient land area between the Church and the adjacent roads to enable visitors to gain access. The tract proposed for addition is Tract 01–171 and contains 0.06 of an acre of land. It is depicted on a map entitled Boundary Revision for Fredericksburg and Spotsylvania County Battlefields National Military Park No. 326–80,050, dated May 1998.

This parcel of land is located near the Old Salem Church property, which is within the boundary of the park. Old Salem Church was the site of a Union and Confederate encounter that proved pivotal to Lee's ultimate success, believed to be the South's greatest victory, in Chancellorsville, just a few short miles to the west. The Church is surrounded in a sea of commercialism, all but destroying any historic scene. The park is in the process of establishing natural scenes along its boundary to preserve what is left of this valuable resource. This small tract is needed to add to this important preservation effort.

Detailed information concerning this exchange, and boundary revision, including precise legal descriptions, Land Protection Plans, environmental assessments and cultural reports are available at the following parks: Superintendent, Appomattox Court House, PO Box 218, Route 24, Appomattox, VA 24522; or Superintendent, Fredericksburg and Spotsylvania County Battlefields National Military Park, 120 Chatham Lane, Fredericksburg, VA 22405; or Superintendent, Colonial National Historical Park, PO Box 210, Yorktown, VA 23690.

Adverse comments will be evaluated and this action may be modified or vacated accordingly. In the absence of any action to modify or vacate, this realty action will become the final determination of the Department of the Interior.

Dated: April 12, 1999.

Warren D. Beach,

Acting Regional Director, Northeast Region.

[FR Doc. 99–10974 Filed 4–30–99; 8:45 am]
BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet to discuss several issues including: Preview of the draft programmatic EIS/EIR, including the draft preferred alternative, Phase II report and Water Management Strategy. There will also be an in-depth discussion with Policy Group members on major issues. This meeting is open to the public. Interested persons may make oral statements to the BRAC or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council meeting will be held from 9 a.m. to 5 p.m. on Wednesday, May 12, 1999.

ADDRESSES: The Bay-Delta Advisory Council will meet at the DoubleTree Hotel, 2001 Point West Way, Sacramento, CA (916) 929–8855.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 654–4214. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystems, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA) as the Bay-Delta Advisory Council (BDAC) to advise CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: April 27, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc. 99–10972 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information under 30 CFR Part 705, Restriction on financial interests of State employees. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 2, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to approve the collection of information in 30 CFR Part 705, Restriction on financial interests of State employees. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information will be placed on the forms once approved and the control number assigned.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on October 27, 1998 (63 FR 57311). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 705—Restrictions on financial interests of State employees.

OMB Control Number: 1029–0067.

Summary: Respondents supply information on employment and financial interests. The purpose of the collection is to ensure compliance with section 517(g) of the Surface Mining Control and Reclamation Act of 1977, which places an absolute prohibition on having a direct or indirect financial interest in underground or surface coal mining operations.

Bureau Form Number: OSM–23.

Frequency of Collection: Entrance on duty and annually.

Description of Respondents: Any state regulatory authority employee or

member of advisory boards or commissions established in accordance with state law or regulation to represent multiple interests who performs any function or duty under the Act.

Total Annual Responses: 3,321.

Total Annual Burden Hours: 1,111.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following addresses. Please refer to the appropriate OMB control number in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Office, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave., NW, Room 210–SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 27, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–11036 Filed 4–30–99; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Agency Form Submitted for OMB Review

AGENCY: United States International Trade Commission.

ACTION: The U.S. International Trade Commission (USITC) has submitted the following information collection requirements to the Office of Management and Budget (OMB) requesting emergency processing for review and clearance under the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The Commission has requested OMB approval of this submission by COB May 7, 1999.

EFFECTIVE DATE: April 26, 1999.

PURPOSE OF INFORMATION COLLECTION: The forms are for use by the Commission in connection with investigation No. 332–406, Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan, instituted under the authority of section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)). This investigation was requested by the Committee on Ways and Means of the U.S. House of Representatives. The Commission expects to deliver the results of its investigation to the Committee by September 17, 1999.

SUMMARY OF PROPOSAL:

(1) *Number of forms submitted:* one.

(2) *Title of form:* Overview and Analysis of the Economic Impact of U.S. Sanctions with Respect to India and Pakistan—Telephone Survey for U.S. Businesses.

(3) *Type of request:* new.

(4) *Frequency of use:* Telephone survey, single data gathering, scheduled for 1999.

(5) *Description of respondents:* Representative selection of U.S. firms which do business with India and Pakistan.

(6) *Estimated number of respondents:* 100.

(7) *Estimated total number of hours to complete the forms:* 100.

(8) Information obtained from the form that qualifies as confidential business information will be so treated by the Commission and not disclosed in a manner that would reveal the individual operations of a firm.

ADDITIONAL INFORMATION OR COMMENT: Copies of the forms and supporting documents may be obtained from Scott Ki, Industry Coordinator, USITC (202–205–2160). Comments about the proposals should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 10102 (Docket Library), Washington, DC 20503, Attention: Docket Librarian. All comments should be specific, indicating which part of the survey is objectionable, describing the concern in detail, and including specific suggested revisions or language changes. Copies of any comments should be provided to Robert Rogowsky, Director, Office of Operations, U.S. International Trade Commission, 500 E Street S.W., Washington, DC 20436, who is the Commission's designated Senior Official under the Paperwork Reduction Act.

Hearing impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal (telephone No. 202–205–1810). General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Issued: April 27, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11005 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–389 (Review)]

3.5″ Microdisks From Japan

AGENCY: International Trade Commission.

ACTION: Institution of a five-year review concerning the antidumping duty order on 3.5″ microdisks from Japan.

SUMMARY: The Commission hereby gives notice that it has instituted a review pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty order on 3.5″ microdisks from Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–008, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On April 3, 1989, the Department of Commerce issued an antidumping duty order on imports of 3.5″ microdisks from Japan (54 FR 13406). The Commission is conducting a review to determine whether revocation of the order would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct a full review or an expedited review. The Commission's determination in any expedited review will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to this review:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year review, as defined by the Department of Commerce.

(2) The Subject Country in this review is Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determination, the Commission defined a single Domestic Like Product: 3.5 inch microdisks and coated media therefor, irrespective of density. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determination, the Commission defined a single Domestic Industry: producers of coated media for 3.5 inch microdisks and converters of coated media into 3.5 inch microdisks. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty order under review became effective. In this review, the Order Date is April 3, 1989.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Review and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this review available to authorized applicants under the APO issued in the review, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the review. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this review must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct an expedited or full review. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the review you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determination in the review.

Information To Be Provided in Response to This Notice of Institution

As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the

Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this review by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty order on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Country that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in units and value data inthousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s'') production; and

(b) The quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Country, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Country accounted for by your firm's(s'') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Country.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Country, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in units and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Country accounted for by your firm's(s'') production; and

(b) The quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Country accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Country since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Country, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11009 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–308–310 and 520–521 (Review)]

Carbon Steel Butt-Weld Pipe Fittings From Brazil, China, Japan, Taiwan, and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on carbon steel butt-weld pipe fittings from Brazil, China, Japan, Taiwan, and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–007, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to

consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205-3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued antidumping duty orders on the subject imports:

Order date	Product/country	Investigation No.	FR Cite
12/17/86	Carbon steel butt-weld pipe fittings/Brazil	731–TA–308	51 FR 45152.
12/17/86	Carbon steel butt-weld pipe fittings/Taiwan	731–TA–310	51 FR 45152.
2/10/87	Carbon steel butt-weld pipe fittings/Japan	731–TA–309	52 FR 4167.
7/6/92	Carbon steel butt-weld pipe fittings/China	731–TA–520	57 FR 29702.
7/6/92	Carbon steel butt-weld pipe fittings/Thailand	731–TA–521	57 FR 29702.

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Brazil, China, Japan, Taiwan, and Thailand.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, whether finished or unfinished.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations concerning Brazil, Japan, and Taiwan, the Commission defined a single Domestic Industry: producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. One Commissioner defined the Domestic Industry differently in the determinations concerning Brazil, Japan, and Taiwan. In its original determinations concerning China and Thailand, the Commission defined a single Domestic Industry: producers of finished and unfinished carbon steel butt-weld pipe fittings having an inside diameter of less than 14 inches, including integrated producers, converters, and combination producers which perform both integrated production and conversion. However, in the determinations concerning China and Thailand, the Commission excluded two domestic producers, Tube Line and Weldbend, from the Domestic Industry under the related parties provision. For purposes of this notice, you should report information separately on each of the following two Domestic Industries: (1) the Domestic Industry including Tube Line and Weldbend and (2) The Domestic Industry excluding Tube Line and Weldbend.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews

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the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in Brazil, Japan, and Taiwan that currently export or have exported Subject Merchandise to the United States or other countries since 1986. A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in China and Thailand that currently export or have exported Subject Merchandise to the United States or other countries since 1991.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties)

of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11010 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–20–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–406 and 408 (Review)]

Electrolytic Manganese Dioxide From Greece and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on electrolytic manganese dioxide from Greece and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.

On April 17, 1989, the Department of Commerce issued antidumping duty orders on imports of electrolytic manganese dioxide from Greece and Japan (54 FR 15243). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Greece and Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–009, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: electrolytic manganese dioxide.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single Domestic Industry: producers of electrolytic manganese dioxide.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is April 17, 1989.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service list

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. § 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the

Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1988.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) The quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11008 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–385–386 (Review)]

Granular Polytetrafluoroethylene Resin From Italy and Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on granular polytetrafluoroethylene resin from Italy and Japan would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the rules of practice and procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–006, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server *(http://www.usitc.gov)*.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 1988, the Department of Commerce issued an antidumping duty order on imports of granular polytetrafluoroethylene resin from Japan (53 FR 32267). On August 30, 1988, the Department of Commerce issued an antidumping duty order on imports of granular polytetrafluoroethylene resin from Italy (53 FR 33163). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Italy and Japan.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined a single Domestic Like Product: granular polytetrafluoroethylene resin.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined a single Domestic Industry: producers of granular polytetrafluoroethylene resin.

(5) The Order Dates are the dates that the antidumping duty orders under review became effective. In the review concerning Japan, the Order Date is August 24, 1988. In the review concerning Italy, the Order Date is August 30, 1988.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability To Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one

Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1987.

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production; and

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports; and

(b) The quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1998 (report quantity data in pounds and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s') production; and

(b) the quantity and value of your firm's(s') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11012 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–253 and 271 (Review) and 731–TA–132, 252, 271, 273, 276–277, 296, 318, 409–410, 532–534, and 536–537 (Review)]

Certain Pipe and Tube From Argentina, Brazil, Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the countervailing duty and antidumping duty orders on certain pipe and tube from Argentina, Brazil,

Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the countervailing duty and antidumping duty orders on certain pipe and tube from Argentina, Brazil, Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission; [1] to be assured of consideration, the deadline for responses is June 22, 1999. Comments on the adequacy of responses may be filed with the Commission by July 16, 1999.

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 FR 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at *http://www.usitc.gov/rules.htm.*

EFFECTIVE DATE: May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193) or Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On the dates listed below, the Department of Commerce issued countervailing duty and antidumping duty orders on the subject imports:

Order date	Product/Country	Inv. No	F.R. cite
5/7/84	Small diameter carbon steel pipe & tube/Taiwan	731–TA–132	49 F.R. 19369
3/7/86	Welded carbon steel pipe & tube/Turkey	701–TA–253	51 F.R. 7984
3/7/86	Welded carbon steel line pipe/Turkey	701–TA–253	51 F.R. 7984
3/11/86	Welded carbon steel pipe & tube/Thailand	731–TA–252	51 F.R. 8341
5/12/86	Welded carbon steel pipe & tube/India	731–TA–271	51 F.R. 17384
5/15/86	Welded carbon steel pipe & tube/Turkey	731–TA–273	51 F.R. 17784
6/16/86	Oil country tubular goods/Canada	731–TA–276	51 F.R. 21782
6/18/86	Oil country tubular goods/Taiwan	731–TA–277	51 F.R. 22098
11/13/86	Small diameter standard & rectangular pipe & tube/Singapore	731–TA–296	51 F.R. 41142
3/6/87	Oil country tubular goods/Israel	731–TA–318	52 F.R. 7000
3/6/87	Oil country tubular goods/Israel	701–TA–271	52 F.R. 6999
3/27/89	Light-walled rectangular tube/Taiwan	731–TA–410	54 F.R. 12467
5/26/89	Light-walled rectangular tube/Argentina	731–TA–409	54 F.R. 22794
11/2/92	Circular welded nonalloy steel pipe/Brazil	731–TA–532	57 F.R. 49453
11/2/92	Circular welded nonalloy steel pipe/Korea	731–TA–533	57 F.R. 49453
11/2/92	Circular welded nonalloy steel pipe/Mexico	731–TA–534	57 F.R. 49453
11/2/92	Circular welded nonalloy steel pipe/Taiwan	731–TA–536	57 F.R. 49454
11/2/92	Circular welded nonalloy steel pipe/Venezuela	731–TA–537	57 F.R. 49453

The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions

The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are Argentina, Brazil, Canada, India, Israel, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. The Domestic Like Products the Commission defined in its original affirmative determinations are listed below:

Investigation	Domestic like product
Small diameter carbon steel pipe and tube/Taiwan.	One Domestic Like Product: circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches.

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 99–5–005, expiration date June 30, 1999. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

Investigation	Domestic like product
Welded carbon steel line pipe and pipe and tube/Turkey. Welded carbon steel pipe and tube/Thailand Welded carbon steel pipe and tube/India	One Domestic Like Product: circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches. The countervailing duty determination with respect to Turkey found a second Domestic Like Product, defined as circular welded carbon steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches.
Oil country tubular goods/Canada Oil country tubular goods/Taiwan	Two Domestic Like Products: (1) oil country tubular goods (OCTG), i.e., green tubes and finished, seamless and welded, casing and tubing, and (2) drill pipe. Certain Commissioners defined the Domestic Like Product differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Oil country tubular goods/Israel	One Domestic Like Product: all OCTG, including drill pipe. Certain Commissioners defined the Domestic Like Product differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Small diameter standard and rectangular pipe and tube/Singapore. Light-walled rectangular tube/Taiwan Light-walled rectangular tube/Argentina	One Domestic Like Product: rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness.
Circular welded nonalloy steel pipe/Brazil Circular welded nonalloy steel pipe/Korea Circular welded nonalloy steel pipe/Mexico Circular welded nonalloy steel pipe/Taiwan Circular welded nonalloy steel pipe/Venezuela	One Domestic Like Product: standard and structural pipes and tubes, including unfinished conduit pipe.

For purposes of this notice, you should report information separately on each of the following Domestic Like Products: (1) Circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches, (2) circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (3) circular welded carbon steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (4) OCTG excluding drill pipe, i.e., green tubes and finished, seamless and welded, casing and tubing, (5) drill pipe, (6) OCTG including drill pipe, (7) rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness, and (8) standard and structural pipes and tubes, including unfinished conduit pipe.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. The Domestic Industries the Commission defined in its original determinations are listed below:

Investigation	Domestic industry
Small diameter carbon steel pipe and tube/Taiwan.	One Domestic Industry: producers of circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches.
Welded carbon steel line pipe and pipe and tube/Turkey. Welded carbon steel pipe and tube/Thailand Welded carbon steel pipe and tube/India	One Domestic Industry: producers of circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches. The countervailing duty determination with respect to Turkey found a second Domestic Industry, defined as producers of circular welded carbon steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches.
Oil country tubular goods/Canada Oil country tubular goods/Taiwan	Two Domestic Industries: (1) producers of OCTG, i.e., green tubes and finished, seamless and welded, casing and tubing, and (2) producers of drill pipe. Certain Commissioners defined the Domestic Industry differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Oil country tubular goods/Israel	One Domestic Industry: producers of all OCTG, including drill pipe. Certain Commissioners defined the Domestic Industry differently. The Commission examined the impact of the subject imports on all OCTG because the available data in the investigations did not permit the identification of drill pipe as a separate industry.
Small diameter standard and rectangular pipe and tube/Singapore. Light-walled rectangular tube/Taiwan Light-walled rectangular tube/Argentina	One Domestic Industry: producers of rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness.
Circular welded nonalloy steel pipe/Brazil Circular welded nonalloy steel pipe/Korea Circular welded nonalloy steel pipe/Mexico Circular welded nonalloy steel pipe/Taiwan Circular welded nonalloy steel pipe/Venezuela	One Domestic Industry: producers of standard and structural pipes and tubes, including unfinished conduit pipe.

For purposes of this notice, you should report information separately on each of the following Domestic Industries: (1) Producers of circular welded carbon steel pipes and tubes with an outside diameter of at least 0.375 inch but not more than 4.5 inches, (2) producers of circular welded carbon steel standard pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (3) producers of circular welded carbon

steel line pipes and tubes with outside diameter of at least 0.375 inch but not more than 16 inches, (4) producers of OCTG excluding drill pipe, i.e., green tubes and finished, seamless and welded, casing and tubing, (5) producers of drill pipe, (6) producers of OCTG including drill pipe, (7) producers of rectangular welded carbon steel pipes and tubes having less than 0.156 inch wall thickness, and (8) producers of standard and structural pipes and tubes, including unfinished conduit pipe.

(5) The Order Date is the date that the countervailing duty and antidumping duty orders under review became effective. In these reviews, the Order Dates are as shown in the preceding tabulation.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the Reviews and Public Service List

Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and APO Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. § 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification

Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written Submissions

Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is June 22, 1999. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is July 16, 1999. All written submissions must conform with the provisions of §§ 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to Provide Requested Information

Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided In Response to This Notice of Institution

Please provide the requested information separately for each Domestic Like Product, as defined above, and for each of the products identified by Commerce as Subject Merchandise. If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product to which your response pertains, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the countervailing duty and antidumping duty orders on each Domestic Industry for which you are filing a response in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of each Domestic Like Product for which you are filing a response. Identify any

known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since the years the petitions were filed. The Subject Merchandise, the Subject Countries, and the years the petitions were filed are listed below:

Subject merchandise/subject country	Years
Small diameter carbon steel pipe and tube/Taiwan	1983
Welded carbon steel pipe and tube/Turkey	1985
Welded carbon steel line pipe/Turkey	1985
Welded carbon steel pipe and tube/Thailand	1985
Welded carbon steel pipe and tube/India	1985
Welded carbon steel pipe and tube/Turkey	1985
Oil country tubular goods/Canada	1985
Oil country tubular goods/Taiwan	1985
Small diameter standard and rectangular pipe and tube/Singapore	1985
Oil country tubular goods/Israel	1986
Oil country tubular goods/Israel	1986
Light-walled rectangular tube/Taiwan	1988
Light-walled rectangular tube/Argentina	1988
Circular welded nonalloy steel pipe/Brazil	1991
Circular welded nonalloy steel pipe/Korea	1991
Circular welded nonalloy steel pipe/Mexico	1991
Circular welded nonalloy steel pipe/Taiwan	1991
Circular welded nonalloy steel pipe/Venezuela	1991

(7) If you are a U.S. producer of a Domestic Like Product, provide the following information separately on your firm's operations on each product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of each Domestic Like Product accounted for by your firm's(s'') production; and

(b) the quantity and value of U.S. commercial shipments of each Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') imports; and

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s'') operations on that product during calendar year 1998 (report quantity data in short tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s'') production; and

(b) the quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for each Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Dates, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

Issued: April 26, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11011 Filed 4–30–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Revisions to Existing Collection in Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; Notice of entry of Appearance as Attorney or representative Before the Board of Immigration Appeals, Executive Officer for Immigration Review.

Notice of this existing collection in use without an OMB Control Number is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this existing collection of information in use without an OMB Control Number. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the revised information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *Revisions to existing collection in use without an OMB Control Number.*

(2) Title of the Form/Collection: Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–27, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information collected on EOIR–27 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Board of Immigration Appeals, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 26,000 responses per year at 6 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 2,600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated; April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10976 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Revisions to Existing Collection In Use Without an OMB Control Number; Comment Request

ACTION: Notice of information collection under review; Notice of entry of appearance as attorney or representative before the immigration court.

Notice of this existing collection in use without an OMB Control Number is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this existing collection of information in use without an OMB Control Number. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the revised information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone: (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *Revisions to existing collection in use without an OMB Control Number.*

(2) Title of the Form/Collection: Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–28, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information collected on EOIR–28 will be used (i) to determine whether or not a responding attorney or representative is duly authorized to represent aliens before the Immigration Court, (ii) to provide the responding represented party an opportunity to expressly consent to such representation and to release of Executive Office for Immigration Review records to the representative as required by law, and (iii) to notify the Immigration and Naturalization Service and the Executive Office for Immigration Review of such representation.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 77,000 responses per year at 6 minutes per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 7,700 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10977 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; Immigration practitioner complaint form, Executive Office for Immigration Review.

Notice of this new information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this new collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *New Collection of Information.*

(2) Title of the Form/Collection: Immigration Practitioner Complaint Form, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–44, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information on this form will be used to determine whether or not, assuming the truth of the factual allegations raised therein, the Office of the General Counsel of the Executive Office for Immigration Review should conduct a preliminary disciplinary inquiry, request additional information from the responding complainant, refer the matter to a state bar disciplinary authority or other law enforcement agency, or take no further action.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 500 responses per year at 2 hours per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 1000 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10978 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: New Collection; Comment Request

ACTION: Notice of information collection under review; Immigration practitioner appeal form from decision of adjudicating official, Board of Immigration Appeals, Executive Office for Immigration Review.

Notice of this new information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted until July 2, 1999.

The agency requests written comments and suggestions from the public and affected agencies concerning this new collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

If you have additional comments, suggestions, or need a copy of the information collection instrument with instructions, or additional information, please contact Margaret M. Philbin, Acting General Counsel, Executive Office for Immigration Review, U.S. Department of Justice, Suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041; telephone (703) 305–0470. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Ms. Philbin.

Overview of this information collection:

(1) Type of Information Collection: *New Collection of Information.*

(2) Title of the Form/Collection: Immigration Practitioner Appeal Form from Decision of Adjudicating Official, Board of Immigration Appeals, Executive Office for Immigration Review.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form EOIR–45, Executive Office for Immigration Review, U.S. Department of Justice.

(4) Affected public who will be asked to respond, as well as a brief abstract: The information on this form will be used by immigration practitioners to appeal an adverse decision of an Adjudicating Official in a disciplinary proceeding to the Board of Immigration Appeals, Executive Office for Immigration Review.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 50 responses per year at 1 hour per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 50 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: April 28, 1999.

Robert B. Briggs,

Clearance Officer, U.S. Department of Justice.

[FR Doc. 99–10979 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Advisory Board Meeting

Time and Date: 9:00 a.m. to 5:00 p.m. on Monday, June 7, 1999; and 9:00 a.m. to 12 noon on Tuesday, June 8, 1999.

Place: Raintree Plaza Hotel & Conference Center, 1900 Ken Pratt Boulevard, Longmont, Colorado 80501.

Status: Open.

Matters to be Considered: FY 2000 Service Plan Recommendations; Updates on Strategic Planning and Interstate Compact Activities; Discussions of Mentally Ill in Jails and Prisons and Policy Regarding Private-for-Profit Organizations and NIC Services; and Program Division Reports.

CONTACT PERSON FOR MORE INFORMATION: Larry Solomon, Deputy Director, (202) 307–3106, ext. 155.

Morris L. Thigpen,

Director,

[FR Doc. 99–10949 Filed 4–30–99; 8:45 am]

BILLING CODE 4410–36–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information pertaining to the requirement to be submitted:

1. The title of the information collection: 10 CFR part 35, "Medical Use of Byproduct Material."

2. Current OMB approval number: 3150–0010.

3. How often the collection is required: Required reports are collected and evaluated on a continuing basis as needed due to a change in programs or as events occur.

4. Who is required or asked to report: Physicians and medical institutions who are applicants for, or hold, an NRC license authorizing the administration of byproduct material, or its radiation to humans for medical use.

5. The number of annual respondents: 1,891 NRC licensees and 4,728 Agreement State licensees.

6. The number of hours needed annually to complete the requirement or request: 369,916 hours for NRC licensees and 924,765 hours for Agreement State licensees, for a total burden of 1,294,681 hours (196 hours per licensee).

7. Abstract: 10 CFR part 35, "Medical Use of Byproduct Material," contains requirements that apply to NRC licensees who are authorized to administer byproduct material or its radiation to humans for medical use. The information in the required reports and records is used by the NRC to ensure that the health and safety of the public is protected, and that the licensee's possession and use of byproduct material is in compliance with the license and regulatory requirements. The revision is a net decrease adjustment in burden resulting from a decrease in the number of affected licensees.

Submit, by July 2, 1999 comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–0001, by telephone at 301–415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Md., this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer

[FR Doc. 99–11024 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corp; Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by the Florida Power Corporation (FPC) to withdraw its October 16, 1998, application, with supplement dated December 22, 1998, for an amendment to Facility Operating License No. DPR 72, issued to FPC for operation of the Crystal River Nuclear Generating Unit 3 (CR–3) located in Citrus County, Florida. Notice of consideration of issuance of this amendment was published in the **Federal Register** on November 18, 1998 (63 FR 64116).

The proposed amendment would have changed the CR–3 Final Safety Analysis Report (FSAR), Improved Technical Specifications (ITS) and ITS Bases to resolve an Unreviewed Safety Question (USQ). This USQ was created by changing the normal standby position of valves DHV–34 and DHV–35 (low pressure injection (LPI) pump suction valves from borated water storage tank) from normally open to normally closed. Maintaining these valves normally closed had been determined to be necessary to ensure assumptions used in fire protection analyses remain valid. The proposed amendment would have also added new ITS surveillance requirements for verifying on a periodic basis that the LPI system components and piping, and the

building spray suction piping, were full of water.

FPC's letter of April 12, 1999, informed the staff that the request was being withdrawn because FPC had resolved the fire protection analyses concerns in a manner that allows valves DHV–34 and DHV–35 to be restored to the normally open standby configuration. With restoration of the valves to the normally open standby position, the need for the proposed amendment no longer existed.

For further details with respect to this action, see the application for amendment dated October 16, 1998, as supplemented December 22, 1998, and FPC's withdrawal letter dated April 12, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida.

Dated at Rockville, MD, this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Leonard A. Wiens,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11021 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–361 and 50–362]

Southern California Edison Company (San Onofre Nuclear Generating Station, Unit Nos. 2 and 3); Exemption

I

Southern California Edison Company (SCE, the licensee) is the holder of Facility Operating License Nos. NPF–10 and NPF–15, which authorize operation of the San Onofre Nuclear Generating Station, Units 2 and 3. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized water reactors located at the licensee's site in San Clemente, California.

II

Section 50.71 of Title 10 of the Code of Federal Regulations (10 CFR), "Maintenance of records, making reports," paragraph (e)(4) states, in part, that "Subsequent revisions must be filed annually or 6 months after each refueling outage provided the interval between successive updates to the FSAR does not exceed 24 months." The two San Onofre Nuclear Generating Station (SONGS) units share a common Final Safety Analysis Report (FSAR); therefore, this rule requires the licensee to update the same document within six months after a refueling outage for each unit.

III

Section 50.12(a) of 10 CFR, "Specific exemptions," states that:

> The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are (1) Authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.* * *" The licensee's proposed schedule for FSAR updates, 6 months following every Unit 3 refueling outage, but not exceeding 24 months, will ensure that the SONGS FSAR will be maintained current within 24 months of the last revision. The proposed schedule fits within the 24-month duration specified by 10 CFR 50.71(e)(4). Literal application of 10 CFR 50.71(e)(4) would require the licensee to update the same document within 6 months following a refueling outage for either unit, a more burdensome requirement than intended. Accordingly, the Commission has determined that special circumstances are present as defined in 10 CFR 50.12(a)(2)(ii).

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Southern California Edison Company an exemption from the requirements of 10 CFR 50.71(e)(4) to submit updates to the SONGS UFSAR within 6 months following every Unit 3 refueling, not to exceed 24 months, beginning 6 months after the next Unit 3 refueling outage or 24 months from the last update of the SONGS UFSAR, whichever is sooner.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the environment (64 FR 14470).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 27th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11022 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–2 (50–280/281)]

Virginia Electric and Power Co. Surry Independent Spent Fuel Storage Installation; Exemption

I

Virginia Electric and Power Company (Virginia Power), the licensee, holds Materials License SNM–2501 for receipt and storage of spent fuel from the Surry Power Station at an independent spent fuel storage installation (ISFSI) located on the Surry Power Station site. The facility is located in Surry County, Virginia.

II

Pursuant to 10 CFR 72.7, the Nuclear Regulatory Commission (NRC) may grant exemptions from the requirements of the regulations in 10 CFR part 72 as it determines are authorized by law, will not endanger life or property or the common defense and security, and are otherwise in the public interest.

Section 72.72(d) of 10 CFR part 72 requires each licensee to keep duplicate records of spent fuel and high-level radioactive waste in storage. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records. The applicant stated that, pursuant to 10 CFR 72.140(d), the Virginia Power Operational Quality Assurance (QA) Program Topical Report will be used to satisfy the QA requirements for the ISFSI. The QA Program Topical Report states that QA records are maintained in accordance with commitments to ANSI N45.2.9–1974. ANSI N45.2.9–1974 allows for the storage of QA records in a duplicate storage location sufficiently remote from

the original records or in a record storage facility subject to certain provisions designed to protect the records from fire and other adverse conditions. The applicant seeks to streamline and standardize recordkeeping procedures and processes for the Surry Power Station and ISFSI spent fuel records. The applicant states that requiring a separate method of record storage for ISFSI records diverts resources unnecessarily.

ANSI N45.2.9–1974 provides requirements for the protection of nuclear power plant QA records against degradation. It specifies design requirements for use in the construction of record storage facilities when use of a single storage facility is desired. It includes specific requirements for protection against degradation mechanisms such as fire, humidity, and condensation. The requirements in ANSI N45.2.9–1974 have been endorsed by the NRC in Regulatory Guide 1.88, "Collection, Storage and Maintenance of Nuclear Power Plant Quality Assurance Records," as adequate for satisfying the recordkeeping requirements of 10 CFR Part 50, Appendix B. ANSI N45.2.9–1974 also satisfies the requirements of 10 CFR 72.72 by providing for adequate maintenance of records regarding the identity and history of the spent fuel in storage. Such records would be subject to and need to be protected from the same types of degradation mechanisms as nuclear power plant QA records.

III

By letter dated September 10, 1998, Virginia Power requested an exemption from the requirement in 10 CFR 72.72(d) which states in part that "Records of spent fuel and high-level radioactive waste in storage must be kept in duplicate. The duplicate set of records must be kept at a separate location sufficiently remote from the original records that a single event would not destroy both sets of records." The applicant proposes to maintain a single set of spent fuel records in storage at a record storage facility that satisfies the requirements set forth in ANSI N45.2.9–1974.

IV

The staff considered the applicant's request and determined that granting the proposed exemption from the requirements of 10 CFR 72.72(d) is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. The staff grants the exemption, subject to the following conditions:

(1) Virginia Power may maintain records of spent fuel and high-level radioactive waste in storage either in duplicate as required by 10 CFR 72.72(d), or alternatively, a single set of records may be maintained at a record storage facility that satisfies the standards set forth in ANSI N45.2.9–1974.

(2) All other requirements of 10 CFR 72.72(d) shall be met.

The documents related to this proposed action are available for public inspection and for copying (for a fee) at the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room at the College of William and Mary, Swem Library, Williamsburg, Virginia 23185.

Pursuant to 10 CFR 51.32, NRC has determined that granting this exemption will have no significant impact on the quality of the human environment (64 FR 14277).

This exemption is effective upon issuance.

Dated at Rockville, MD, this 22nd day of April 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11023 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company; Diablo Canyon Power Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an exemption from certain requirements of its regulations for Facility Operating License Nos. DPR–80 and DPR–82 that were issued to Pacific Gas and Electric Company (the licensee) for operation of the Diablo Canyon Power Plant (DCPP) Units 1 and 2, located in San Luis Obispo County, California.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt Pacific Gas and Electric Company (PG&E) from the requirements of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, to allow use of the American Society of Mechanical Engineers (ASME) Code Case N–514 as an alternate method for establishing the setpoints for the low temperature overpressure protection (LTOP) systems that have been installed for overpressure protection of the DCPP reactor coolant pressure boundary.

The proposed action is in accordance with the licensee's application for exemption dated September 3, 1998, as supplemented by letters dated January 22, February 5, and March 17, 1999.

The Need for the Proposed Action

The provisions of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, restrict the operating conditions for the DCPP reactor coolant systems from exceeding the pressure/temperature (P/T) limits established in compliance with Appendix G to Section XI of the ASME Boiler and Pressure Vessel Code. The requirements in 10 CFR Part 50 were established to protect the integrity of the reactor coolant pressure boundary in nuclear power plants. As part of these requirements, 10 CFR Part 50, Appendix G, requires that the P/T limits be established for reactor pressure vessels during normal and hydrostatic or leak rate testing conditions. Specifically, 10 CFR Part 50, Appendix G, states that "The appropriate requirements on : . . . the pressure-temperature limits and minimum permissible temperature must be met for all conditions." Pressurized water reactor licensees have installed cold overpressure mitigation systems(COMS)/low temperature overpressure protection systems (LTOP) in order to protect the reactor coolant pressure boundaries from being operated outside of the boundaries established by the P/T limit curves and to provide pressure relief of the reactor coolant pressure boundaries during low temperature overpressurization events. DCPP technical specifications require them to update and submit the changes to its LTOP setpoints whenever PG&E is requesting approval for amendments to the P/T limit curves. The use of Code Case N–514 would provide an acceptable level of safety against overpressurization events of the DCPP reactor pressure vessels. Based on the conservatism that is incorporated into the methods of Appendix G of the Section XI to the ASME Code for calculating P/T limit curves, it is concluded that permitting the LTOP setpoints to be established in accordance with the Code Case (e.g., at a level ≤110 percent of the limit defined by the P/T limit curves) would provide an adequate margin of safety against brittle fracture failure of the reactor pressure vessels. Therefore, the requirements of 10 CFR Part 50, Appendix G and Appendix G to Section XI of the ASME Code, are not necessary

to prevent brittle fracture of the reactor pressure vessel from occurring during low temperature operation.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the use of Code Case N–514 as an alternative method for establishing the setpoints for the LTOP systems at DCPP Units 1 and 2 would provide an adequate margin of safety against brittle fracture of the DCPP reactor vessels.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Diablo Canyon Power Plant dated May 1973, and the Addendum dated May 1976.

Agencies and Persons Consulted

In accordance with its stated policy, on April 22, 1999, the staff consulted with the California State official, Mr. Steve Hsu of the Radiologic Health Branch of the State Department of Health Services, regarding the environmental impact of the proposed amendments. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed amendments will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's application dated September 3, 1998, as supplemented dated January 22, February 5, and March 17, 1999, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Steven D. Bloom,

Project Manager, Section 2, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11117 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Co., South Texas Project, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from Facility Operating License No. NPF–76 and Facility Operating License No. NPF–80, issued to STP Nuclear Operating Company (the licensee), for operation of the South Texas Project (STP), Units 1 and 2, located in Matagorda County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt STP Nuclear Operating Company from the requirements of Title 10 of the Code of Federal Regulations (10 CFR) § 50.60, which requires all power reactors to meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H to 10 CFR part 50. The proposed exemption would allow STP Nuclear Operating Company to apply American Society of Mechanical Engineers (ASME) Code Case N–514 for determining STP's cold overpressurization mitigation system (COMS) pressure setpoint.

The proposed action is in accordance with the licensee's application for exemption dated March 18, 1999.

The Need for the Proposed Action

The proposed exemption is needed to support an amendment to the STP Technical Specifications which will revise the heatup, cooldown, and COMS curves. The use of ASME Code Case N–514 would allow an increased operating band for system makeup and pressure control.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of South Texas Project, Units 1 and 2," dated August 1996, in NUREG–1171.

Agencies and Persons Consulted

In accordance with its stated policy, on March 30, 1999, the staff consulted with Texas State Official, Mr. Arthur C. Tate of the Texas Department of Health regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated March 18, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas.

Dated at Rockville, Md., this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11025 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Thermal-Hydraulic Phenomena; Notice of Meeting

The ACRS Subcommittee on Thermal-Hydraulic Phenomena will hold a meeting on May 26, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

Portions of this meeting may be closed to public attendance to discuss Electric Power Research Institute (EPRI) proprietary information pursuant to 5 U.S.C. 552b(c)(4).

The agenda for the subject meeting shall be as follows:

Wednesday, May 26, 1999—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review the: (1) Proposed resolution of Generic Safety Issue 23, "Reactor Coolant Pump Seal Failures," (2) proposed rule to revise Appendix K to 10 CFR 50.46 to allow small, cost beneficial power uprates, and (3) status of the EPRI RETRAN–3D transient thermal-hydraulic code review and proposed ACRS Structured Discussion on development of code review guidelines. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 27, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–11019 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Severe Accident Management; Meeting

The ACRS Subcommittee on Severe Accident Management will hold a meeting on May 27, 1999, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The agenda for the subject meeting shall be as follows:

Thursday, May 27, 1999—8:30 a.m. until the conclusion of business.

The Subcommittee will review the application of the Southern California Edison Company for an exemption to the hydrogen control requirements for the San Onofre Nuclear Generating Station. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman. Written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the Southern California Edison Company, the NRC staff, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the scheduling of sessions which are open to the public, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Paul A. Boehnert (telephone 301/415–8065) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are

urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 27, 1999.

Richard P. Savio,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 99–11020 Filed 4–30–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27010]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 23, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 18, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 18, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Energy Group, et al. (70–9127)

Columbia Energy Group ("Columbia"), 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, a registered holding company, and its nonutility subsidiary companies, Columbia Energy Group Service Corporation, Columbia LNG Corporation, CLNG Corporation, Columbia Atlantic Trading Corporation, Columbia Energy Services Corporation, Columbia Energy Power Marketing Corporation, Columbia Energy Marketing Corporation, Energy.Com Corporation, Columbia Service Partners, Inc., Columbia Assurance Agency, Inc., Columbia Energy Group Capital Corporation, Columbia Deep Water Services Corporation, Columbia Electric Corporation, Columbia Electric Pedrick Limited Corporation, Columbia Electric Pedrick General Corporation, Columbia Electric Binghamton Limited Corporation, Columbia Electric Binghamton General Corporation, Columbia Electric Vineland Limited Corporation, Columbia Electric Vineland General Corporation, Columbia Electric Rumford Limited Corporation, Columbia Electric Limited Holdings Corporation, Columbia Electric Liberty Corporation, all located at 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600; Columbia Energy Resources, Inc., Columbia Natural Resources, Inc., Alamco-Delaware, Inc., Hawg Hauling & Disposal, Inc., Clarksburg Gas, L.P., Phoenix-Alamco Ventures, L.L.C., Columbia Natural Resources Canada, Ltd. ("CNR Canada"), all located c/o 900 Pennsylvania Avenue, Charleston, West Virginia 25302; Columbia Gas Transmission Corporation, 12801 Fair Lakes Parkway, Fairfax, Virginia 22030–0146; Columbia Gulf Transmission Company, 2603 Augusta, Suite 125, Houston, Texas 77057; Columbia Network Services Corporation and CNS Microwave, Inc., both located at 1600 Dublin Road, Columbus, Ohio 43215–1082; Columbia Propane Corporation, 9200 Areboretum Parkway, Suite 140, Richmond, Virginia 23236; and Columbia Insurance Corporation, Ltd., Craig Appin House, 8 Wesley Street, Hamilton HM EX, Bermuda, have filed a post-effective amendment with this Commission under section 9(a) of the Act and rules 45 and 54 under the Act to an application-declaration filed under sections 6(a), 7, 9(a), 10 and 13(b) of the Act, and rule 54 under the Act.

By order dated January 23, 1998 (HCAR No. 26820), the Commission authorized Columbia to invest up to $5 million to acquire oil and natural gas leasehold interests in properties located in southern Ontario, Canada from Paragon Petroleum Corporation, a Canadian corporation. These interests were acquired through CNR Canada, which is currently pursuing oil and gas exploration activities on the properties.

Columbia now seeks authority to expand its oil and gas exploration activities to other properties in Canada. These activities would be conducted by one or more, direct or indirect, existing or to-be-formed, non-utility subsidiaries. In connection with the proposed expansion, Columbia also seeks authority to increase its investment in these activities from $5 million to $55 million.

Columbia plans to use the increased investment for three purposes. The first purpose is for development activities on previously acquired properties with proven reserves. The second purpose is for drilling and development of proven and probable undeveloped reserves. Third, Columbia plans to invest in the acquisition of additional acreage, or the drilling rights to additional acreage.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10987 Filed 4–30–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41325 ; File No. SR–CBOE–98–54]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Update and Reorganize Its Rules Relating to Designated Primary Market-Makers

April 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 22, 1998, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[3] On February 18, 1999, the Exchange submitted an amendment to the proposed rule filing.[4] The Commission is publishing this notice to solicit

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] As discussed below, CBOE filed a substantially similar proposal in 1998, which it subsequently withdrew. *See* note 5 below.

[4] The amendment deleted a proposed change to CBOE Rule 8.7.07 because the proposed change amended language proposed by another pending CBOE rule filing that has not been approved by the Commission. Letter from Arthur B. Reinstein, Assistant General Counsel, CBOE is Kelly McCormick, Division of Market Regulation, SEC, dated February 11, 1999 ("Amendment No. 1").

comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to update and reorganize its rules relating to designated primary market-makers ("DPMs"). The text of the proposed rule change is as follows. Additions are italicized, deletions are bracketed.

Chapter III—Membership

* * * * *

Rule 3.27.—Membership Options Trading Permits

* * * * *

(c) DPMs. *The DPM trading system described in Section C of Chapter VIII* [Modified Trading System established in Rule 8.80] will be employed in NYSE Options. Each specialist firm to which a Permit is issued pursuant to subparagraph (a)(2) of this Rule shall be appointed as the DPM in the same classes of NYSE Options as those for which it was designated as a specialist on NYSE. Subject to the provisions of the Rules, a Permit holder qualified to act as a DPM pursuant to the Rules shall be appointed to act as the DPM for each class of equity options designated by the Exchange pursuant to the last sentence of paragraph (b) of this Rule. Each specialist firm appointed as a DPM in a class of NYSE Options pursuant to the foregoing two sentences shall, subject to the provisions of the Rules, continue to act as such DPM during the term of the Permits and thereafter so long as it is a regular member or member organization of the Exchange.

* * * * *

Chapter VI—Doing Business on the Exchange Floor

* * * * *

Rule 6.8.—RAES Operations in Equity Options

* * * * *

[(a)(iii) This rule shall apply to RAES in classes handled by DPM's except that the MTS Appointments Committee may make available additional series or raise the size of eligible orders in a DPM's classes pursuant to Rule 8.80.]

* * * * *

Chapter VIII—Market-Makers, Trading Crowds and Designated Primary Market-Makers

* * * * *

Section A: Market-Makers

* * * * *

Rule 8.3.—Appointment of Market-Makers

* * * * *

[Interpretations and Policies:]

[01 The Exchange has adopted the policy that no Market-Maker may act as an independent Market-Maker in a class of options for which the Market-Maker has been approved to act as a DPM.]

* * * * *

Rule 8.16.—RAES Eligibility in Option Classes Other Than DJX

* * * * *

(a)(ii) The Market-Maker may designate that his trades be assigned to and clear into either his individual account or a joint account in which he is a participant. Each individual member of the joint account must be physically present in the trading crowd while that member is signed onto RAES and each joint account member is subject to all of the following provisions of this rule. [DPM participation shall also be governed by the MTS Committee as provided in Rule 8.80.]

* * * * *

Section C: *Designated Primary Market-Makers* [Modified Trading System]

DPM Defined

Rule 8.80. A "Designated Primary Market-Maker" or "DPM" is a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker (as defined in Rule 8.1), as a Floor Broker (as defined in Rule 6.70), and as an Order Book Official (as defined in Rule 7.1). Determinations concerning whether to grant or withdraw the approval to act as a DPM are made by the Modified Trading System Appointments Committee ("MTS Committee") in accordance with Rules 8.83 and 8.90. DPMs are allocated securities by the Allocation Committee and the Special Product Assignment Committee in accordance with Rule 8.95.

DPM Designees

Rule 8.81. (a) A DPM may act as a DPM solely through its DPM Designees. A "DPM Designee" is an individual who is approved by the MTS Committee to represent a DPM in its capacity as a DPM. The MTS Committee may subclassify DPM Designees and require that certain DPM Designees be subject to specified supervision and/or be limited in their authority to represent a DPM.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be a DPM Designee of a DPM:

(i) The individual must be a member of the Exchange;

(ii) The individual must be a nominee of the DPM or of an affiliate of the DPM or must own a membership that has been registered for the DPM or for an affiliate of the DPM;

(iii) The individual must be registered as a Market-Maker pursuant to Rule 8.2 and as a Floor Broker pursuant to Rule 6.71;

(iv) On such form or forms as the Exchange may prescribe, the DPM must authorize the individual to enter into Exchange transactions on behalf of the DPM in its capacity as a DPM, must authorize the individual to represent the DPM in all matters relating to the fulfillment of the DPM's responsibilities as a DPM, and must guaranty all obligations arising out of the individual's representation of the DPM in its capacity as a DPM in all matters relating to the Exchange; and

(v) The individual must be approved by the MTS Committee to represent the DPM in its capacity as a DPM.

Notwithstanding the provisions of subparagraph (b)(ii) of this Rule, the MTS Committee shall have the discretion to permit an individual who is not affiliated with a DPM to act as a DPM Designee for the DPM on an emergency basis provided that the individual satisfies the other requirements of subparagraph (b) of this Rule.

(c) The approval of an individual to act as a DPM Designee shall expire in the event the individual does not have trading privileges on the Exchange for a six month time period.

(d) Each DPM shall have at least two DPM Designees who are nominees of the DPM or who own a membership that has been registered for the DPM.

(e) A DPM Designee of a DPM may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. When acting on behalf of a DPM in its capacity as a DPM, a DPM Designee is exempt from the provisions of Rule 8.8.

MTS Committee

Rule 8.82. (a) The MTS Committee shall consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine members elected by the membership of the Exchange.

(b) The nine elected MTS Committee members shall include: four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker and who is not associated with a member organization that conducts a

public customer business, and two persons associated with member organizations that conduct a public customer business. No more than two of the nine elected MTS Committee members may be associated with a DPM. The nine elected MTS Committee members shall have three-year terms, three of which shall expire each year.

(c) The election procedures for the nine elected MTS Committee members shall be the same as the election procedures for elected Directors that are set forth in Article IV and Article V of the Exchange Constitution. Accordingly, the following shall occur as part of these procedures: During October of each year, the Nominating Committee shall select nominees to fill expiring terms and vacancies on the MTS Committee. Nominations may also be made by petition, signed by not less than 100 members and filed with the Secretary of the Exchange no later than 5:00 p.m. (Chicago time) on November 15, or the first business day thereafter in the event November 15 occurs on a holiday or a weekend. The election to fill the expiring terms and vacancies on the MTS Committee shall be held as part of the annual election.

Approval To Act as a DPM

Rule 8.83. (a) A member organization desiring to be approved to act as a DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe.

(b) The MTS Committee shall determine the appropriate number of approved DPMs. Each DPM approval shall be made by the MTS Committee from among the DPM applications on file with the Exchange, based on the MTS Committee's judgment as to which applicant is best able to perform the functions of a DPM. Factors to be considered in making such a selection may include, but are not limited to, any one or more of the following:

(i) Adequacy of capital;

(ii) Operational capacity;

(iii) Trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(iv) Number and experience of support personnel of the applicant who will be performing functions related to the applicant's DPM business;

(v) Regulatory history of and history of adherence to Exchange Rules by the applicant, its associated persons, and the DPM Designees who will represent the applicant in its capacity as a DPM;

(vi) Willingness and ability of the applicant to promote the Exchange as a marketplace;

(vii) Performance evaluations conducted pursuant to Rule 8.60; and

(viii) In the event that one or more shareholders, directors, officers, partners, managers, members, DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, DPM Designee, or other principal in another DPM, adherence by such DPM to the requirements set forth in this Section C of Chapter VIII respecting DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the DPM.

(c) Each applicant for approval as a DPM will be given an opportunity to present any matter which it wishes the MTS Committee to consider in conjunction with the approval decision. The MTS Committee may require that a presentation be solely or partially in writing, and may require the submission of additional information from the applicant or individuals associated with the applicant. Formal rules of evidence shall not apply to these proceedings.

(d) In selecting an applicant for approval as a DPM, the MTS Committee may place one or more conditions on the approval, including, but not limited to, conditions concerning the capital, operations, or personnel of the applicant and the number or type of securities which may be allocated to the applicant.

(e) Each DPM shall retain its approval to act as a DPM until the MTS Committee relieves the DPM of its approval and obligations to act as a DPM or the MTS Committee terminates the DPM's approval to act as a DPM pursuant to Rule 8.90.

(f) If a member organization resigns as a DPM or if pursuant to Rule 8.90 the MTS Committee terminates or otherwise limits its approval to act as a DPM, the MTS Committee shall have the discretion to do one or both of the following:

(i) Approve an interim DPM, pending the final approval of a new DPM pursuant to paragraphs (a) through (d) of this Rule; and

(ii) Allocate on an interim basis to another DPM or to other DPMs the securities that were allocated to the affected DPM, pending a final allocation of such securities pursuant to Rule 8.95.

Neither an interim approval or allocation made pursuant to this paragraph (f) should be viewed as a prejudgment with respect to the final approval or allocation.

Conditions on the Allocation of Securities to DPMs

Rule 8.84. (a) The MTS Committee may establish (i) restrictions applicable to all DPMs on the concentration of securities allocable to a single DPM and to affiliated DPMs and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

(b) The MTS Committee has the authority under other Exchange rules to restrict the ability of particular DPMs to receive allocations of securities, including but not limited to, Rules 8.88(b) and 8.60, Rule 8.83(d), and Rule 8.90.

DPM Obligations

Rule 8.85. (a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) assure that disseminated market quotations are accurate;

(ii) assure that each displayed market quotation is honored for at least the number of contracts prescribed pursuant to Rule 8.51;

(iii) in the case of option contracts, comply with the bid/ask differential requirements of Rule 8.7(b)(iv);

(iv) assure that the number of DPM Designees and support personnel continuously present at the trading station throughout every business day is not less than the minimum required by the MTS Committee;

(v) trade in all securities allocated to the DPM only in the capacity of a DPM and not in any other capacity;

(vi) segregate in a manner prescribed by the MTS Committee (A) all transactions consummated by the DPM in securities allocated to the DPM and (B) any other transactions consummated by or on behalf of the DPM that are related to the DPM's DPM business;

(vii) with respect to any security traded pursuant to Chapter XXX that is allocated to the DPM, fill any odd lot portion combined with a round lot order in that security at a price determined in accordance with Rule 30.22, Interpretation and Policy .05;

(viii) participate at all times in any Exchange sponsored automated order handling system, including the Retail Automatic Execution System (RAES); and

(ix) determine a formula for generating automatically updated

market quotations and disclose the following components of the formula to the other members trading at the trading station at which the formula is used: option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying.

Notwithstanding the provisions of subparagraph (a)(ix) of this Rule, the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(ix) of this Rule and the general obligations of a Market-Maker under the Rules, subparagraphs (a)(i) through (a)(ix) of this Rule shall govern.

(b) Agency Transactions. Each DPM shall fulfill all of the obligations of a Floor Broker (to the extent that the DPM acts as a Floor Broker) and of an Order Book Official under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(i) place in the public order book any order in the possession of the DPM which is eligible for entry into the book unless (A) the DPM executes the order upon its receipt or (B) the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were a displayed order in the public order book;

(ii) not remove from the public order book any order placed in the book unless (A) the order is canceled, expires, or is executed or (B) the DPM returns the order to the member that placed the order with the DPM in response to a request from that member to return the order;

(iii) accord priority to any order which the DPM represents as agent over the DPM's principal transactions, unless the customer who placed the order has consented to not being accorded such priority;

(iv) not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal, unless the customer who placed the order has consented to paying a brokerage commission to the DPM with respect to the DPM's execution of the order while acting as both agent and principal;

(v) act as a Floor Broker to the extent required by the MTS Committee; and

(vi) not represent discretionary orders as a Floor Broker or otherwise. Notwithstanding the provisions of subparagraph (b)(vi) of this Rule, the MTS Committee shall have the discretion to authorize a DPM, on a temporary basis, to accept and represent types of orders in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. In addition, to the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (b)(i) through (b)(vi) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraphs (b)(i) through (b)(vi) of this Rule shall govern.

(c) Other Obligations. In addition to the obligations described in paragraphs (a) and (b) of this Rule, a DPM shall fulfill each of the following obligations:

(i) resolve disputes relating to transactions in the securities allocated to the DPM, subject to Floor Official review, upon the request of any party to the dispute;

(ii) promote the Exchange as a marketplace, including meeting and educating market participants, maintaining communications with member firms in order to be responsive to suggestions and complaints, and performing other like activities;

(iii) act to increase the Exchange's order flow in the securities which are allocated to the DPM and respond to competitive developments by improving market quality and service and otherwise acting to increase the Exchange's market share in those securities;

(iv) promptly inform the MTS Committee of any desired change in the DPM Designees who represent the DPM in its capacity as a DPM and of any material change in the financial or operational condition of the DPM;

(v) supervise all persons associated with the DPM to assure compliance with the Rules;

(vi) segregate in a manner prescribed by the MTS Committee the DPM's business and activities as a DPM from the DPM's other businesses and activities; and

(vii) continue to act as a DPM and to fulfill all of the DPM's obligations as a DPM until the MTS Committee relieves the DPM of its approval and obligations to act as a DPM or the MTS Committee terminates the DPM's approval to act as a DPM pursuant to Rule 8.90.

(d) Obligations of DPM Associated Persons. Each person associated with a DPM shall be obligated to comply with the provisions of this Rule when acting on behalf of the DPM.

* * * Interpretations and Policies:

.01 The Exchange may make personnel available to assist a DPM in the DPM's performance of the obligations of an Order Book Official, for which the Exchange may charge the DPM a reasonable fee.

DPM Financial Requirements

Rule 8.86. Each DPM shall maintain (i) net liquidating equity in its DPM account of not less than $100,000, and in conformity with such guidelines as the MTS Committee may establish from time to time, and (ii) net capital sufficient to comply with the requirements of Exchange Act Rule 15c3–1. Each DPM which is a Clearing Member shall also maintain net capital sufficient to comply with the requirements of the Clearing Corporation.

Participation Entitlement of DPMs

Rule 8.87. (a) Subject to the review of the Board of Directors, the MTS Committee may establish from time to time a participation entitlement formula that is applicable to all DPMs.

(b) To the extent established pursuant to paragraph (a) of this Rule, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in securities allocated to the DPM that occur at the DPM's previously established principal bid or offer.

Review of DPM Operations and Performance

Rule 8.88. (a) The MTS Committee or a subcommittee of the MTS Committee may conduct a review of a DPM's operations or performance at any time and at a minimum shall conduct a review of each DPM's operations and performance on an annual basis. A DPM and its associated persons shall submit to the MTS Committee such information requested by the Committee in connection with a review of the DPM's operations or performance.

(b) The MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to DPMs and the Market-Makers and Floor Brokers that regularly trade at DPM trading stations.

The MTS Committee may combine a review conducted pursuant to paragraph (a) of this Rule with an evaluation conducted pursuant to Rule 8.60.

(c) Members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations.

Transfer of DPM Appointments

Rule 8.89. (a) A DPM proposing any sale, transfer, or assignment of any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give not less than thirty (30) days prior written notice thereof to the MTS Committee. No such transaction that is deemed to involve the transfer of a DPM appointment within the meaning of paragraph (b) of this Rule may take place unless (i) the transferee is qualified to act as a DPM in accordance with the Rules, and (ii) the transaction has received the prior approval of the MTS Committee.

(b) For purposes of this Rule 8.89, the following transactions are deemed to involve the transfer of a DPM appointment: (i) any sale, transfer, or assignment of any significant share of the ownership of a DPM; (ii) any change or transfer of control of a DPM; [sic](iii) any merger, sale of assets, or other business combination or reorganization of a DPM. A sale, transfer, or assignment of a five percent (5%) or more interest in the equity or profits or losses of a DPM (or any series of smaller changes that in the aggregate amount to a change of five percent or more) shall be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM; provided, however, that any sale, transfer, or assignment of a less than five percent interest may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances, in which event the MTS Committee shall notify the DPM within fifteen (15) days after receiving notice thereof that the approval of the transaction by the MTS Committee is required.

(c) An application for the approval of a transaction deemed to involve the transfer of a DPM appointment shall be submitted in writing to the MTS Committee at least thirty (30) days prior to the proposed effective date of the transaction, unless the MTS Committee approves a shorter period for its review. The application shall contain a full and complete description of the proposed transaction, including (i) the identity of the transferee, (ii) a description of the transferee's ownership and capital structure, (iii) the identity of those persons who will be the partners, shareholders, directors, officers, and other managers or affiliates of the transferee, as well as those persons who will be responsible for performing the duties of the DPM following the transfer, (iv) the terms of the transaction including the consideration proposed to be paid by the transferee, (v) the terms of any other business relationships between the parties to the transaction, and (vi) any other material information pertaining to the transaction that the MTS Committee may request.

(d) Promptly after receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee shall post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin. The MTS Committee shall not ordinarily consider a proposed transfer sooner than ten (10) business days following the day notice is posted on the Bulletin Board, unless the MTS Committee finds it necessary to give earlier consideration to the matter in the interest of the maintenance of fair and orderly markets and the protection of investors. During this period, the MTS Committee will accept written comments on the proposed transfer from any member, and will accept written proposals from other members or from Market-Maker crowds who wish to be considered for appointment in some or all of the classes that are the subject of the proposed transfer.

(e) No application shall be finally approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer (all corporate or partnership documents and amendments thereto, voting trust, "buy-sell" or similar agreements, employment agreements, pro forma financial statements), except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown. In considering the approval of a proposed transfer of a DPM appointment, the MTS Committee shall give due consideration to all relevant facts and circumstances, including but not limited to each of the following factors, if applicable: (i) the financial and operational capacity of the transferee; (ii) continuity of control, management, and persons responsible for the operation of the DPM; (iii) avoiding undue concentration of DPM appointments on the Exchange; (iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period; and (v) the best interests of the Exchange. If the proposed transferee is not approved to act as a DPM at the time the application is considered by the MTS Committee, the approval of the transfer may be made contingent on the transferee's being so approved within a stated period of time.

(f) The approval or failure to approve a proposed transfer of a DPM appointment is subject to direct review by the Board of Directors upon receipt by the Secretary of the Exchange, within ten (10) days of the time the decision of the MTS Committee is announced, of (i) a written request for such review made by the applicant, specifying why the applicant believes the decision of the Committee should be reversed or modified (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least five Directors of the Exchange (in any case).

** * * Interpretations and Policies*

.01 For purposes of paragraph (b) of this Rule, a transfer of an interest in the profits (but not the ownership) of a DPM to an associated person of the DPM solely as compensation for the associated person's services in support of the business of the DPM shall not ordinarily be deemed to be a sale, transfer, or assignment of a significant share of the ownership of the DPM.

Termination, Conditioning, or Limiting Approval to Act as a DPM

Rule 8.90. (a) The MTS Committee may terminate, place conditions upon, or otherwise limit a member organization's approval to act as a DPM under any one or more of the following circumstances:

(i) if the member organization incurs a material financial, operational, or personnel change;

(ii) if the member organization fails to comply with any of the requirements under this Section C of ChapterVIII, including, but not limited to, any conditions imposed under Rule 8.83(d), Rule 8.84(a)(ii), or this Rule; or

(iii) if for any reason the member organization should no longer be eligible for approval to act as a DPM or to be allocated a particular security or securities.

Before the MTS Committee takes action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. Such proceedings shall be conducted in the same manner as MTS

Committee proceedings concerning DPM approvals which are governed by Rule 8.83(c).

(b) Notwithstanding the provisions of paragraph (a) of this Rule, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if it incurs a material financial, operational, or personnel change warranting such action or if the member organization fails to comply with any of the financial requirements of Rule 8.86.

(c) Limiting a member organization's approval to act as a DPM may include, among other things, limiting or withdrawing the member organization's DPM participation entitlement provided for under Rule 8.87, withdrawing the right of the member organization to act in the capacity of a DPM in a particular security or securities which have been allocated to the member organization, and/or requiring the relocation of the member organization's DPM operation on the Exchange's trading floor.

(d) If a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to this Rule, the member organization may seek review of that decision under Chapter XIX of the Rules.

Limitations on Dealings of DPMs and Affiliated Persons of DPMs

RULE 8.91. (a) No person or entity affiliated with a DPM shall purchase or sell on the Exchange, for any account in which such person or entity has a direct or indirect interest, any security which is allocated to the DPM. Any such person or entity may, however, reduce or liquidate an existing position in a security which is allocated to an affiliated DPM provided that any order to consummate such a transaction is (i) identified as being for an account in which such person or entity has a direct or indirect interest, (ii) approved for execution by a Floor Official, and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price. This paragraph (a) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.

(b) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security that underlies the equity option or with any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall engage in any material business transaction with the issuer of the security or with any officer, director, or 10% shareholder of the issuer of the security. For the purposes of this paragraph (b), a material business transaction shall be deemed to be a transaction which is material in value either to the issuer or the DPM, would provide access to material non-public information relating to the issuer, or would give rise to a control relationship between the issuer and the DPM. Notwithstanding the foregoing, the receipt of routine business services, goods, materials, or insurance, on terms that would be generally available shall not be deemed a material business transaction for the purposes of this paragraph (b).

(c) Neither a DPM for an equity option, nor any member affiliated with the DPM, shall accept any orders directly from the issuer of the security that underlies the equity option or directly from any officer, director, or 10% shareholder of the issuer of the security. Neither a DPM for a security traded pursuant to Chapter XXX, nor any member affiliated with the DPM, shall accept any orders directly from the issuer of the security or directly from any officer, director, or 10% shareholder of the issuer of the security.

(d) No member affiliated with a DPM may act as a Floor Broker in any trading crowd in which the DPM acts as a DPM. This paragraph (d) shall not apply to a DPM Designee of a DPM acting on behalf of the DPM in its capacity as a DPM.

(e) Paragraphs (a), (b), and (c) of this Rule shall not apply to any member affiliated with a DPM that has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate and market information (i.e., a "Chinese Wall") between such member on the one hand and the DPM and persons affiliated with the DPM on the other hand. Any such procedures shall comply with the following Guidelines:

Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs

These Guidelines set forth the steps that a member affiliated with a DPM must undertake, at a minimum, to seek to obtain an exemption under Rule 8.91(e) from the requirements of paragraphs (a) through (c) of Rule 8.91. These Guidelines may be supplemented or modified by the Exchange in individual cases when the Exchange deems it appropriate to do so.

(a) Generally, an affiliated member seeking a Rule 8.91(e) exemption should establish its operational structure along the lines discussed below.

(i) The affiliated member and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records, and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member and the DPM to be under common management, in no instance may persons on the affiliated member's side of the "Wall" exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market-making responsibilities pursuant to the Rules.

(ii) The affiliated member and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member to influence the DPM's conduct and to avoid the misuse of DPM market information to influence the affiliated member's conduct. Specifically, the affiliated member and the DPM must ensure that material non-public corporate information relating to trading positions taken by the affiliated member in a DPM security are not made available to the DPM or to any shareholder, director, officer, partner, manager, member, principal, DPM Designee, or employee associated therewith; that no trading is done by the DPM while in possession of non-public corporate information derived by the affiliated member from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the affiliated member's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's "book" in a DPM security is kept confidential and is not made available to the affiliated member except to the extent that such information is made available to the affiliated member in accordance with subparagraph (b)(iii) of these Guidelines.

(b) An affiliated member seeking a Rule 8.91(e) exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which the affiliated member intends to satisfy each of the

conditions stated in subparagraphs (a)(i) and (a)(ii) of these Guidelines, and the compliance and audit procedures the affiliated member proposes to implement to ensure that the functional separation is maintained between the affiliated member and the DPM;

(ii) The designation and identification of the individuals associated with the affiliated member responsible for maintenance and surveillance of such procedures;

(iii) That the DPM shall make available to the affiliated member only the sort of market information that the DPM would make available in the normal course of its DPM activity to any other member; that the DPM shall only make such information available to the affiliated member in the same manner that it is made available to any other member; and that the DPM shall only make such information available to the affiliated member pursuant to a request by the affiliated member for such information;

(iv) That where the affiliated member "popularizes" a security in which the DPM acts as DPM the affiliated member shall disclose that an associated DPM makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Exchange in the security; and that the affiliated member shall forward to the Exchange, immediately after its issuance, a copy of any research report or written recommendation which "popularizes" a security in which the DPM acts as DPM;

(v) That the affiliated member shall file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a security in which the DPM acts as DPM;

(vi) That the affiliated member shall take appropriate remedial action against any person violating these Guidelines and/or the affiliated member's internal compliance and audit procedures adopted pursuant to subparagraph (b)(i) of these Guidelines, and that the affiliated member and the DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) removal of securities from the DPM and/or revocation of the Rule 8.91(e) exemption, in the event of such a violation;

(vii) Whether the affiliated member intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's "Chinese Wall" (the procedures followed shall, at a minimum, be the same as those used by the affiliated member to clear for unaffiliated third parties); and

(viii) That no individual associated with the affiliated member shall trade on the Exchange as a Market-Maker in any security in which the DPM acts as DPM. (Any written statements submitted pursuant to this paragraph (b) shall be collectively referred to herein as the "Exemption Request".)

(c) In the event that, notwithstanding the procedures established pursuant to these Guidelines, any DPM Designee of a DPM becomes aware of the fact that the Designee has received from the affiliated member any material non-public corporate or market information relating to any of the DPM securities, the DPM Designee shall promptly communicate that fact and disclose the information so received to the person associated with the affiliated member responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether the DPM Designee should, as a consequence of the Designee's receipt of such information, give up the DPM Designee's appointment as a DPM Designee in the security involved. If the compliance officer determines that the DPM Designee should give up the Designee's appointment as a DPM Designee, the DPM Designee shall, at a minimum, give the appointment up to another DPM Designee who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM Designee to recover the Designee's appointment as a DPM Designee and recommence acting as DPM Designee in the security involved. Procedures shall be established by the affiliated member to assure that in any instance when the compliance officer determines that a DPM Designee should give up the Designee's appointment as a DPM Designee, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the remaining DPM Designees.

The compliance officer shall keep a written record of each request received from a DPM Designee for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM Designee, the determination made by the compliance officer, and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM Designee reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM Designee should give up the DPM Designee's appointment and also of the determination that the DPM Designee should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from DPM Designees for a determination as referred to above shall be furnished to the Exchange for its review. Members are cautioned that any trading by any person while in possession of material non-public information received as a result of any breach of the internal controls required by these Guidelines may violate Exchange Act Rule 10b–5, Exchange Act Rule 14e–3, just and equitable principles of trade, or one or more other provisions of the Exchange Act, regulations thereunder, or Rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.

(d) Subparagraph (b)(vii) of these Guidelines permits an affiliated member to clear the DPM transactions of the DPM provided that the affiliated member establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the affiliated member's "Chinese Wall." Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) associated with the affiliated member that are in senior management positions and are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day

trading decisions for the affiliated member, or in making recommendations to the customers or potential customers of the affiliated member. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of the DPM to meet market-making or other obligations under Exchange Rules.

(e) The Exemption Request shall detail the internal controls which both the affiliated member and the DPM intend to adopt to satisfy each of the conditions stated in paragraphs (b)(i) through (b)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the affiliated member and the DPM are acceptable under these Guidelines, the Exchange shall so inform the affiliated member and the DPM, in writing, at which point a Rule 8.91(e) exemption shall be granted with or without conditions. Absent such prior written Exchange approval, an exemption shall not be available. The Exemption Request should identify the individuals associated with the affiliated member that are in senior management positions (and their titles/levels of responsibility) to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which the information is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any shareholder, director, officer, partner, manager, member, principal, or employee of the affiliated member intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a shareholder, director, officer, partner, manager, member, principal, or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel, or similar types of functions) from performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified in the Exemption Request, and all requirements in paragraph (a) of these Guidelines as to maintaining the confidentiality of information are satisfied.

(f) In the event that the Exchange grants a Rule 8.91(e) exemption to an affiliated member: (i) the affiliated member and DPM shall abide by any representations and undertakings set forth in the Exemption Request and shall comply with any conditions placed by the Exchange upon the grant of such exemption; (ii) the affiliated member shall promptly notify the Exchange in writing in the event that any of the information set forth in the Exemption Request changes or becomes inaccurate; and (iii) the Exchange may amend or revoke its grant of exemptive relief pursuant to Rule 8.91(e) in the event that there is a change in the policies, procedures, or organizational structure of the affiliated member or DPM or in any of the information set forth in the Exemption Request.

[Modified Trading System]

[RULE 8.80. (a) Deleted April 16, 1998. (See Rule 8.95.)]

[(b) The MTS Designated Primary Market-Makers ("DPM") shall be selected and removed as follows:]

[(1) The selection and removal of DPMs will be conducted by the MTS Appointments Committee ("MTS Committee" or "Committee"). The Committee will consist of the Vice-Chairman of the Exchange, the Chairman of the Market Performance Committee, and nine other members, to be nominated by the Nominating Committee and appointed by the Board, whose business functions are as follows: Six market-makers, one floor broker not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. The nine appointed committee members shall have two year terms four or five of which will expire each year.]

[(2) Any regular member or member organization is eligible for appointment as a DPM. The MTS Committee will select that candidate who appears best able to perform the functions of DPM in the designated options class or classes. Factors to be considered for selection include the following: adequacy of capital, experience with trading the option class or a similar option class, willingness to promote the Exchange as a marketplace, operational capacity, support personnel, history of adherence to Exchange rules and to all criteria specified in this Rule as DPM responsibilities, and trading crowd evaluations under Rule 8.60.]

[(3) Applications for DPM appointment by member organizations shall include the name of specified nominees. The MTS Committee shall specify whether a DPM appointment is as an individual, or as a member organization. The Committee may also specify any one or more conditions on the appointment, in respect of any representations made in the application process, including but not limited to capital, operations, or personnel. The DPM is obligated promptly to inform the Committee of any material change in financial or operational condition, or in personnel. The appointment may not be transferred without approval of the MTS Committee. The DPM shall serve until he is relieved of his obligations by the Committee.]

[(4) The MTS Committee may, in its discretion, open an option class or classes to a new DPM selection process under any of the following circumstances:

(i) If upon review, the Committee determines that a DPM has not performed satisfactorily any condition of his appointment under Subpart (b)(3) or his functions as described in subpart (c) hereof. The Committee may conduct reviews of appointments at any time, and shall do so at least quarterly.

(ii) If a DPM incurs a material financial, operational, or personnel change. Provided, however, that the Committee shall open an option class or classes to a new DPM selection process upon request, if a DPM member organization changes its specified nominee and the former nominee so requests.

(iii) If for any reason the DPM should no longer be eligible for appointment, should resign appointment, or fail to perform his duties. The incumbent DPM may apply for the appointment in the new selection process.]

[(5) The MTS Committee has discretion to relieve a DPM of his appointment due to a material financial, operational, or personnel change warranting immediate action.]

[(6) If a DPM has been relieved of his appointment or the appointment otherwise becomes vacant, the MTS Committee has discretion to appoint an interim DPM pending the conclusion of a new DPM selection process. The appointment as interim DPM is not a

prejudgment of the new DPM selection process.]

[(7) Deleted April 16, 1998. (See Rule 8.95.)]

[(8) If the MTS Committee decides to terminate a DPM's appointment under subpart (b)(7) of this Rule, the terminated DPM will receive a proportionate share of the net book revenues, not to exceed one-half, for any period specified by the Committee up to a maximum of five years. This award will take into account the length of time of DPM service, capital commitment and efforts expended during the DPM appointment.]

[(9) The hearing process before the MTS Committee will be as follows:

(i) Appointment Decisions: Each applicant for appointment as DPM will be given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the appointment decision. The Committee may require that presentation to be solely or partially in writing, and may require the submission of additional information from an applicant, member, or any person associated with a member. Formal rules of evidence do not apply to these proceedings.

(ii) Decisions to Terminate Appointments: The DPM who is the subject of Committee review in conjunction with the termination of a DPM appointment will be so advised and given an opportunity to present any matter which he wishes the Committee to consider in conjunction with the termination decision. The procedure shall be as described in paragraph 9(i) above.

(iii) Review: A DPM relieved of an appointment under subpart (b)(5), (6) or (7) of this Rule, and, in the case of a member organization DPM, the relieved nominee, may seek review of that decision under Chapter XIX of the Rules. A DPM relieved of an appointment under subpart (b)(4) of this Rule may also seek review of that decision under Chapter XIX of the Rules, but only if he applies for reappointment and is denied.]

[(10) The MTS Committee may perform all functions of the Market Performance Committee under the Rules in respect of review and evaluation of the conduct of DPMs in the classes of his DPM appointment, including but not limited to Rules 6.71, 8.1, 8.2, 8.3, 8.7, and 8.60. The process for review of any action taken by the MTS Committee under this subpart shall be the same as if the action had been taken by the Market Performance Committee.]

[(c) The DPM is a member who functions in approved classes as a market-maker, floor broker, and in the place of the Order Book Official ("OBO") exempt from Rule 8.8. In acting as a market-maker, the DPM shall fulfill all obligations of a market-maker in his appointed option class or classes. In acting as a floor broker, and in place of the OBO in appointed options classes, the DPM shall fulfill his obligation of due diligence (and all other obligations associated with these functions). In addition, the DPM shall:]

[(1) assure that disseminated market quotations are accurate.]

[(2) assure that each disseminated market quotation in appointed options classes shall be honored up to five contracts, or such other minimum number as set from time to time by the MTS Committee.]

[(3) determine any formula for generating the automatically updated market quotations, disclosing the elements of the formula to the members of the trading crowd.]

[(4) in addition to fulfilling general market-maker obligations under Rule 8.7, be present at the trading post throughout every business day, and, with respect to his trading as market-maker, effect trades which have a high degree of correlation with the overall pattern of trading for each series in the options classes involved.]

[(5) participate at all times in any automated execution system which may be open in appointed option classes.]

[(6) resolve trading disputes, subject to Floor Official review upon the request of any party to the dispute.]

[(7) In executing transactions for his own account as market-maker, the DPM shall (i) accord priority to orders he represents as floor broker over his activity as market-maker; (ii) have a right to participate pro rata with the trading crowd in trades that take place at the DPM's principal bid or offer; and (iii) not initiate a transaction for his own account that would result in putting into effect any stop or stop limit order which may be in the book or which he represents as floor broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction.]

[(8) In appointed options classes and in other securities traded subject to the rules in Chapter XXX for which a DPM has been appointed, the DPM shall perform all functions of the Order Book Official, pursuant to Rules 7.3 through 7.10, and may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed on the public order book, and to represent such orders as a Floor Broker. The DPM may not represent discretionary orders as a Floor Broker or otherwise. All orders in the DPM's possession which are eligible to be booked shall be booked.]

[(9) The DPM is designated to disclose book information under Rule 7.8.]

[(d) The Exchange shall continue to be responsible for the maintenance, handling, and billing of the book in option classes in which a DPM has been appointed, and shall retain and compensate the DPM for performing the OBO function. The Exchange will make personnel available to assist the DPM, as the DPM shall require in the DPM's OBO function, for which personnel the Exchange may charge the DPM a reasonable fee.]

* * * [Interpretations and Policies:]

[.01 Willingness to promote the Exchange as a marketplace includes assisting in meeting and educating market participants (and taking the time for travel related thereto), maintaining communications with member firms in order to be responsive to suggestions and complaints, responding to suggestions and complaints, responding to competition in offering competitive markets and competitively priced services, and other like activities.]

[.02 Every registered DPM shall maintain a cash or liquid asset position in the amount of $100,000 or in an amount sufficient to assume a position of twenty trading units of each security in which the DPM holds an appointment, whichever amount is greater. In the event that two or more DPMs are associated with each other and deal for the same DPM account, this requirement shall apply to such DPMs as one unit, rather than to each DPM individually.]

[.03 In addition to his responsibilities as a Market-Maker, a person appointed to serve as DPM in one or more securities traded subject to the rules in Chapter XXX shall continuously maintain on the floor of the Exchange a two-sided market in the securities for which he has been appointed, consisting of a current bid and a current offer for his account, at prices reasonably calculated, under existing circumstances, to contribute to the maintenance of a supply of and demand for such securities sufficient to afford liquidity to other buyers and sellers of such securities whose orders are represented on the Exchange floor.]

[Limitations on Dealings of Designated Primary Market-Makers]

[Rule 8.81. (a) No member (other than a Designated Primary Market Maker ("DPM") acting pursuant to Rule 8.80 above), limited partner, officer, employee, approved person or party

approved, who is affiliated with a DPM or member organization, shall, during the period of such affiliation, purchase or sell any option in which such DPM is registered for any account in which such person or party has a direct or indirect interest. Any such person or party may, however, reduce or liquidate an existing position in an option in which such DPM is registered provided that such orders are (i) identified as being for an account in which such person or party has a direct or indirect interest; (ii) approved for execution by a Floor official; and (iii) executed by the DPM in a manner reasonably calculated to contribute to the maintenance of price continuity with reasonable depth. No order entered pursuant to this paragraph (a) shall be given priority over, or parity with, any order represented in the market at the same price.]

[(b) Notwithstanding the provisions of Rule 8.80, an approved person or member organization which is affiliated with a DPM shall not be subject to Rule 8.81(a), provided that it has established and obtained Exchange approval of procedures restricting the flow of material non-public corporate or market information between itself and the DPM and any member, officer, or employee associated therewith.]

[(c) For such member organization which controls or is controlled by or is under common control with, another organization, the exemption provided in paragraph (b) of this Rule shall be available to it only where the Exchange has determined that the relationship between the DPM, each person associated therewith, and such other organization satisfies all the conditions specified in the guidelines.]

[(d) The procedures referred to in paragraph (b) of this rule shall comply with such guidelines as are promulgated by the Exchange.]

[Guidelines for Exemptive Relief Under Rule 8.81 for Members or Member Organizations Affiliated with a Designated Primary Market-Maker]

[(a) The following restrictions apply to a member or member organization which is affiliated with a designated primary market-maker ("DPM"):

It may not purchase or sell for any account in which it has a direct or indirect interest any security in which its affiliate is a DPM.

It may not engage in any business transaction with the issuer of a security or its insiders in which its affiliate is a DPM.

The member firm may not accept orders directly from the issuer, its insiders or certain designated parties in securities in which its affiliate is a DPM.]

[This Rule provides a means by which an affiliated firm doing business with the public as defined in Rule 9.1 (hereafter "member organization") may obtain an exemption from the restrictions discussed above. This exemption is only available to a member firm which obtains prior Exchange approval for procedures restricting the flow of material, non-public information between it and its affiliated DPM, i.e., a "Chinese Wall." This Rule sets forth the steps a member firm must undertake, at a minimum, to seek to qualify for exemptive relief. Any firm that does not obtain Exchange approval for its procedures in accordance with these Guidelines shall remain subject to the restrictions set forth above.]

[(b) These Guidelines require that an affiliated member firm establish procedures which are sufficient to restrict the flow of information between itself and the DPM. Generally, an affiliated member firm seeking an exemption from the Rules discussed in paragraph (a) above should establish its operational structure along the lines discussed below.

(i) The affiliated member firm and the DPM must be organized as separate and distinct organizations. At a minimum, the two organizations must maintain separate and distinct books, records and accounts and satisfy separately all applicable financial and capital requirements. While the Exchange will permit the affiliated member firm and the DPM to be under common management, in no instance may persons on the member firm's side of the "Wall" exercise influence over or control the DPM's conduct with respect to particular securities or vice versa. Any general managerial oversight must not conflict with or compromise in any way the DPM's market making responsibilities pursuant to the Rules of the Exchange.

(ii) The affiliated member firm and the DPM must establish procedures designed to prevent the use of material non-public corporate or market information in the possession of the affiliated member firm to influence the DPM's conduct and avoid the misuse of DPM market information to influence the affiliated member firm's conduct. Specifically, the affiliated member firm and the DPM organization must ensure that material non-public corporate information relating to trading positions taken by the affiliated member firm in a DPM security are not made available to the DPM; or to any member, partner, director or employee thereof; by a DPM while in possession of non-public corporate information derived by the affiliated member firm from any transaction or relationship with the issuer or any other person in possession of such information; that advantage is not taken of knowledge of pending transactions or the member firm's recommendations; and that all information pertaining to positions taken or to be taken by the DPM and to the DPM's "book" in a DPM security is kept confidential and is not made available to the affiliated member firm.]

[(c) An affiliated member firm seeking exemption shall submit to the Exchange a written statement which shall set forth:

(i) The manner in which it intends to satisfy each of the conditions stated in subparagraphs (b)(i) and (b)(ii) of these Guidelines, and the compliance and audit procedures it proposes to implement to ensure that the functional separation is maintained;

(ii) The designation and identification of the individual(s) within the affiliated member firm responsible for maintenance and surveillance of such procedures;

(iii) That the DPM may make available to a broker affiliated with it only the sort of market information that it would make available in the normal course of its DPM activity to any other broker and in the same manner that it would make information available to any other broker; and that the DPM may only make such information available to a broker affiliated with the member firm pursuant to a request by such broker for such information and may not, on its own initiative, provide such broker with such information;

(iv) That where it "popularizes" a security in which it acts as DPM it must disclose that an associated DPM makes a market in the security, may have a position in the security, and may be on the opposite side of public orders executed on the Floor of the Exchange in the security, and the firm will notify the Exchange immediately after the issuance of a research report or written recommendation;

(v) That it will file with the Exchange such information and reports as the Exchange may, from time to time, require relating to its transactions in a specialty security;

(vi) That it will take appropriate remedial action against any person violating these Guidelines and/or its internal compliance and audit procedures adopted pursuant to subsection (c)(i) of these Guidelines, and that it and its associated DPM each recognizes that the Exchange may take appropriate remedial action, including (without limitation) reallocation of

securities in which it serves as DPM and/or revocation of the exemption, in the event of such a violation;

(vii) Whether the firm intends to clear proprietary trades of the DPM and, if so, the procedures established to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall (the procedures followed shall, at a minimum, be the same as those used by the firm to clear for unaffiliated third parties); and

(viii) That no individual associated with it may trade as a market-maker in any security in which the associated DPM has an appointment.]

[(d) Paragraph (b) of these Guidelines requires the establishment of procedures designed to prohibit the flow of certain market sensitive information from a member firm to its affiliated DPM or to any member, partner, director or employee thereof. In the event that, notwithstanding these procedures, any DPM becomes aware of the fact that he has received any such information relating to any of his DPM securities from his organization's affiliated member firm, the DPM shall promptly communicate that fact and disclose the information so received to the person in the affiliated member firm responsible for compliance with securities laws and regulations (the compliance officer) and shall seek a determination from the compliance officer as to whether he should, as a consequence of his receipt of such information, give up the appointment in the option class involved. If the compliance officer determines that the DPM should give up the DPM appointment, the DPM shall, at a minimum, give it up to another member who is registered as DPM in the security and who is not in possession of the information so received. In any such event, the compliance officer shall determine when it is appropriate for the DPM to recover the DPM security and recommence acting as DPM in the DPM security involved. Procedures shall be established by the affiliated member firm to assure that in any instance when the compliance officer determines that a DPM should give up the appointment, such transfer is effected in a manner which will prevent the market sensitive information from being disclosed to the temporary DPM.]

[The compliance officer shall keep a written record of each request received from a DPM for a determination as referred to above. Such record shall be adequate to record the pertinent facts and shall include, at a minimum, the identification of the security, the date, a description of the information received by the DPM, the determination made by the compliance officer and the basis therefor. If the appointment is given up, the record shall also set forth the time at which the DPM reacquired the appointment and the basis upon which the compliance officer determined that such reacquisition was appropriate. The Exchange shall be given prompt notice of any instance when the compliance officer determines that a DPM should give up the appointment and also of the determination that such DPM should be permitted to reacquire the appointment. In accordance with such schedules as the Exchange shall from time to time prescribe (at least monthly), the written record of all requests received by the compliance officer from the affiliated DPM for a determination as referred to above shall be furnished to the Exchange for its review. Members and member organizations are cautioned that any trading by any person while in possession of material, non-public information received as a result of any breach of the internal controls required by the Guidelines may have violated Rule 10b–5, Rule 14e–3, just and equitable principles of trade or one or more other provisions of the Exchange Act, or regulations thereunder or rules of the Exchange. The Exchange intends to review carefully any such trading of which it becomes aware to determine whether any such violation has occurred.]

[(e) Subparagraph (c)(vii) of these Guidelines permits a member firm to clear the DPM transactions of its affiliated DPM provided it establishes procedures to ensure that information with respect to such clearing activities will not be used to compromise the firm's Chinese Wall. Such procedures should provide that any information pertaining to security positions and trading activities of the DPM, and information derived from any clearing and margin financing arrangements between the affiliated member firm and the DPM, may be made available only to those (other than employees actually performing clearing and margin financing functions) in senior management positions in the affiliated member firm who are involved in exercising general managerial oversight over the DPM. Generally, such information may be made available only to the affiliated member firm's chief executive officer, chief operations officer, chief financial officer, and senior officer responsible for managerial oversight of the DPM, and only for the purpose of exercising permitted managerial oversight. Such information may not be made available to anyone actually engaged in making day-to-day trading decisions for the affiliated member firm, or in making recommendations to the customers or potential customers of the affiliated member firm. Any margin financing arrangements must be sufficiently flexible so as not to limit the ability of any DPM to meet market-making or other obligations under Exchange Rules.]

[(f) The written statement required by Paragraph (c) of these Guidelines shall detail the internal controls which both the affiliated member firm and the DPM intend to adopt to satisfy each of the conditions stated in subparagraphs (c)(i) through (c)(viii) of these Guidelines, and the compliance and the audit procedures they propose to implement to ensure that the internal controls are maintained. If the Exchange determines that the organizational structure and the compliance and audit procedures proposed by the member firm and its affiliated DPM are acceptable under the Guidelines, the Exchange shall so inform the member firm and its affiliated DPM, in writing, at which point an exemption shall be granted. Absent such prior written approval, an exemption shall not be available. The written statement should identify the individuals in senior management positions (and their titles/levels of responsibility) of the affiliated member firm to whom information concerning the DPM trading activities and security positions, and information concerning clearing and margin financing arrangements, is to be made available, the purpose for which it is to be made available, the frequency with which the information is to be made available, and the format in which the information is to be made available. If any partner, director, officer or employee of the affiliated member firm intends to serve in any such capacity with the DPM, or vice versa, the written statement must include a statement of the duties of the particular individual at both entities, and why it is necessary for such individual to be a partner, director, officer or employee of both entities. The Exchange will grant approval for service at both entities only if the dual affiliation is for overall management control purposes or for administrative and support purposes. Dual affiliation will not be permitted for an individual who intends to be active in the day-to-day business operations of both entities. Nothing in the foregoing, however, shall preclude an employee of one entity who performs strictly administrative or support functions (such as facilities, accounting, data processing, personnel and similar types of services) from

performing similar functions on behalf of the other entity, provided that such individual is clearly identified, and the functions performed on behalf of each entity are specified, in the written statement described above, and all requirements in Paragraph (b) above as to maintaining the confidentiality of information are met.]

Section D: Allocation of Securities and Location of Trading Crowds and DPMs

RULE 8.95—Allocation of Securities and Location of Trading Crowds and DPMs.

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* * * Interpretations and Policies.

.01 Subject to Rule *8.83(f)*[8.80(b)(6)], it shall be the responsibility of the Allocation Committee and the Special Product Assignment Committee pursuant to paragraph (a) of this Rule to reallocate a security in the event that the security is removed pursuant to another Exchange Rule from the trading crowd or DPM to which the security has been allocated or in the event that for some other reason the trading crowd or DPM to which the security has been allocated no longer retains such allocation.

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Chapter XXIII—Interest Rate Option Contracts

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RULE 23.7.—RAES.

The Retail Automated Execution System (RAES) for interest rate options uses the provisions established for equity options except as otherwise provided in this Rule.

(i) The *appropriate Floor Procedure Committee* [Modified Trading System Committee] ("Committee") shall determine what series will be eligible for RAES and the size of eligible orders.

(ii) Eligible orders must be market or marketable limit orders for one hundred or fewer contracts, as determined by the Committee, in series placed on the system.

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Chapter XXX—Stocks, Warrants and Other Securities

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RULE 30.40.—Market-Makers.

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(b) Classes of Contracts Other Than Those to Which Appointed. With respect to securities in which he does not hold an appointment, a Market-Maker should not engage in transactions for an account in which he has an interest which are disproportionate in relation to, or in derogation of, the performance of his obligations, as specified in paragraph (a) of this Rule, with respect to those securities to which he does hold appointments. Whenever a Market-Maker enters the trading crowd for securities in which he does not hold an appointment in other than a floor brokerage capacity, he shall fulfill the obligations established by paragraph (a) of this Rule. On a day on which a transaction in a non-appointed security is effected for the account of a Market-Maker, such Market-Maker may be required to undertake the obligations specified in paragraph (a) of this Rule upon request by a Floor Broker, or by the Order Book Official or DPM in accordance with Rules 7.5 and *8.85(b)* [8.80(c)], as applicable. Furthermore, Market-Makers should not:

(i) Congregate in a particular security; or

(ii) Individually or as a group, intentionally or unintentionally, dominate the market in a particular security; or

(iii) Effect purchases or sales on the floor of the Exchange except in a reasonable and orderly manner.

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RULE 30.73—Application of Exchange Rules.

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* * * Interpretations and Policies.

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.02 Any acceptance of a commitment or obligation to trade received on the floor through ITS or any other application of the System shall comply with the rules applicable to the making of bids and offers and transactions on the floor, except where the context otherwise requires. In addition, the following rules shall be applicable in the case where commitments or obligations to trade are issued (transmitted) from the floor of the Exchange Rules 6.3, 6.6, 6.21, 6.22, 6.24, 8.1 through 8.6, 8.8, *8.85, 8.87, 8.91,* [8.80, 8.81], 30.3, 30.4, 30.16, 30.18 and 30.40.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange's DPM program began as a pilot program in 1987 with 4 DPMs allocated a total of 11 equity option classes. The DPM program was granted permanent approval by the Commission in 1994.[5] In the more than 11 years since its introduction, the DPM program has experienced significant growth and success. Currently, the program includes 30 DPMs which have been allocated over 725 equity option classes, as well as numerous index option classes and structured products.

Over the course of the program's evolution, the Exchange has developed various procedures for implementing the rule provisions that govern the program. The current rules are set forth in CBOE Rules 8.80 and 8.81 and the Exchange has made relatively few changes to these rules since they were promulgated in 1987. The purpose of the current proposed rule change is to update the DPM rules to incorporate the various procedures that the Exchange implemented pursuant to Rules 8.80 and 8.81 and to incorporate various proposed improvements and enhancements that the Exchange believes will be beneficial to the operation of the DPM program. In addition, the Exchange proposes to reorganize the rules governing the DPM program by segregating them into 12 separate rules that each address 1 of the 12 primary aspects of the DPM program. The Exchange believes that this restructuring will improve the organization of the rules relating to DPMs making it easier for the Exchange's members to reference and understand the provisions.

The proposed rule changes are the product of a comprehensive review and evaluation by the Exchange of the current rules relating to DPMs. This thorough and detailed review and evaluation was conducted by Exchange staff, the Exchange's Modified Trading System Appointments Committee ("MTS Committee"), the Exchange's Floor Directors Committee, and the Exchange's Board of Directors, and involved numerous meetings and discussions by and among these groups over several years.

The Exchange filed substantially similar proposed rule change with the

[5] Securities Exchange Act Release No. 34999 (November 22, 1994), 59 FR 61361 (November 30, 1994) (File No. SR–CBOE–94–36).

Commission in 1998.[6] After the submission of this proposed rule change, the Exchange received a member petition concerning the portion of the proposed rule change that related to the transfer of DPM appointments. Although the petition only addressed the portion of the proposed rule change that related to the transfer of DPM appointments, the Board of Directors decided to withdraw the entire proposal from the Commission because it believed the proposed rule change to be an integrated reorganization of all of the rule provisions relating to the operation of the DPM program. The Exchange then engaged in a period of dialogue with the Exchange's members regarding DPM transferability which included, among other things, Exchange membership meetings at which member roundtable discussions were held regarding this issue. Following this period of dialogue, the Board of Directors re-approved a substantially similar proposed rule change to update and reorganize the Exchange's rules relating to DPMs, subject to the approval of the proposed rule change by a membership vote. The proposed rule change was submitted to the Exchange's membership for a vote and approved on December 14, 1998.

The proposed rule change amends the Exchange's rule provisions relating to DPMs and are proposed to be segregated into proposed Rules 8.80 through 8.91. Set forth below is a summary of each of the proposed rules.

Rule 8.80—DPM Defined. Proposed Rule 8.80 defines a DPM as a member organization that is approved by the Exchange to function in allocated securities as a Market-Maker, Floor Broker, and Order Book Official. The only change to this definition from the current DPM definition is that proposed Rule 8.80 requires a DPM to be a member organization. The purpose of this additional requirement is to ensure that each DPM has a formal organizational structure in place to govern the manner in which it will operate and to define the relationship between the individuals associated with the DPM. Proposed Rule 8.80 also clarifies that DPMs are approved by the MTS Committee and are allocated securities by the Exchange's Allocation Committees.[7]

Rule 8.81—DPM Designees. Proposed Rule 8.81 is divided into five subparagraphs, (a) through (e), and sets forth the requirements applicable to DPM Designees.

Proposed Rule 8.81(a) makes explicit that a DPM may act as a DPM solely through its DPM Designees. A DPM Designee is defined as an individual who is approved by the MTS Committee to represent a DPM in its capacity as a DPM. Proposed Rule 8.81(a) also provides that the MTS Committee may subclassify DPM Designees and require certain DPM Designees to be subject to specified supervision and/or be limited in their authority to represent the DPM. For example, the MTS Committee may wish to require that less experienced DPM Designees only act in this capacity when a more experienced DPM Designee is also present at the trading station to provide supervision.

Proposed Rule 8.81(b) requires each DPM Designee to (i) be an Exchange member, (ii) be a nominee of, or have a membership that has been registered for, the DPM or an affiliate of the DPM, (iii) be registered with the Exchange as a Market-Maker and a Floor Broker, (iv) have in place an authorization and guarantee from the DPM, and (v) be approved by the MTS Committee. Additionally, proposed Rule 8.81(b) provides that the MTS Committee shall have the discretion to permit an individual who is not affiliated with a DPM to act as a DPM Designee for the DPM on an emergency basis as long as the individual satisfies the other requirements of proposed Rule 8.81(b).

Proposed Rule 8.81(c) provides that a DPM Designee approval will expire if the individual does not have trading privileges on the Exchange for a 6 month period. This provision is intended to ensure that any DPM Designee who has not had trading privileges for 6 months (and therefore does not engage in trading activities during that period) and who then desires to act again in the capacity of a DPM Designee will be reviewed by the MTS Committee. This will allow the Committee to evaluate whether the individual remains qualified to act as a DPM Designee.

Proposed Rule 8.81(d) requires each DPM to have at least two DPM Designees who are nominees of the DPM or who have a membership that has been registered for the DPM.

Exchange rules require that each member organization have at least one nominee or person who has registered his or her membership for the organization. The purpose of proposed Rule 8.81(d) is to help ensure that a DPM remains qualified to act as a member organization, and hence a DPM, if a nominee or person who has registered his or her membership for the organization departs from the organization.

Proposed Rule 8.81(e) incorporates two existing rule provisions. First, proposed Rule 8.81(e) provides that a DPM Designee may not trade as a Market-Maker or Floor Broker in securities allocated to the DPM unless the DPM Designee is acting on behalf of the DPM in its capacity as a DPM. This provision is currently embodied in CBOE Rule 8.3.01 (which is proposed to be deleted) and in current Rule 8.81 (which is proposed to be restated in proposed Rule 8.91). Second, proposed Rule 8.81(e) provides that a DPM Designee is exempt from the provisions of CBOE Rule 8.8 when acting on behalf of the DPM in its capacity as a DPM. CBOE Rule 8.8 generally prohibits a member from acting as both a Market-Maker and Floor Broker in a trading station on the same day, and the exemption to CBOE Rule 8.8 for DPMs is currently set forth in current Rule 8.80(c).

Rule 8.82—MTS Committee. Proposed Rule 8.82 governs the composition of the MTS Committee. It retains the current 11 member composition of the Committee which consists of the Vice-Chairman of the Exchange, the Chairman of the Exchange's Market Performance Committee, four members whose primary business is as a Market-Maker, two members whose primary business is as a Market-Maker or as a DPM Designee, one member whose primary business is as a Floor Broker who is not associated with a member organization that conducts a public customer business, and two persons associated with member organizations that conduct a public customer business. Currently, the nine members of the MTS Committee, other than the Vice-Chairman and the Chairman of the Market Performance Committee, are nominated by the Nominating Committee and appointed by the Board of Directors to serve two-year terms. Under proposed Rule 8.82, these nine members of the Committee will be elected by the Exchange's membership in the same manner that Exchange Directors are elected by the membership. In addition, proposed Rule 8.82 increases the terms served by these nine members of the Committee to three-year terms[8] and provides that no

[6] Securities Exchange Act Release No. 40041 (May 28, 1998), 63 FR 30525 (June 4, 1998) (File No. SR–CBOE–98–15).

[7] The Exchange's process for allocating securities to DPMs and Market-Maker trading crowds is set forth in CBOE Rule 8.95.

[8] Upon effectiveness of this proposed rule change, the MTS Committee members at the time will remain as members of the Committee until their then current terms expire. Because MTS Committee members currently serve two-year terms (with 4 or 5 of those terms expiring each year) and because proposed Rule 8.82 provides that the MTS Committee members will serve three-year terms

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more than two of the nine elected MTS Committee members may be associated with a DPM. Because of the important responsibilities of the MTS Committee, the Exchange believes that the MTS Committee should be composed of individuals who have been elected by the membership. The Vice-Chairman is already elected by the membership and the Chairman of the Market Performance Committee is typically one of the Exchange's elected Directors. Moreover, the Exchange believes that increasing the terms of the MTS Committee members by one year will provide the Committee with more continuity and expertise in addressing issues that comes before it.

Rule 8.83—Approval to Act as a DPM. Proposed Rule 8.83 addresses the DPM approval process. It is substantially similar to the current provisions that govern the DPM approval process set forth in current Rule 8.80. For example, proposed Rule 8.83 describes the criteria that may be considered by the MTS Committee in deciding whether to approve an applicant as a DPM (including such factors as adequacy of capital, operational capacity, trading experience, regulatory history, and market performance), and provides that each applicant will be given an opportunity to present any matter that it wishes the MTS Committee to consider in conjunction with the approval decision. In addition, as with any decision of the MTS Committee (other than an approval or disapproval a proposed transfer of a DPM appointment which is subject to direct review by the Board of Directors as discussed below), any applicant not approved by the MTS Committee to act as a DPM may appeal that decision to the Exchange's Appeals Committee under Chapter XIX of the Exchange's Rules. The appeal procedures provide the right to a formal Appeals Committee hearing concerning any approval decision, and the decision of the Appeals Committee may be appealed to the Board of Directors pursuant to CBOE Rule 19.5.

Rule 8.84—Conditions on the Allocation of Securities to DPMs. Proposed Rule 8.84 grants the MTS Committee new authority to establish (i) restrictions applicable to all DPMs regarding the concentration of securities allocable to a single DPM and to affiliated DPMs, and (ii) minimum eligibility standards applicable to all DPMs which must be satisfied in order for a DPM to receive allocations of securities, including but not limited to, standards relating to adequacy of capital and number of personnel. One of the reasons for granting the MTS Committee the authority to limit the concentration of securities allocable to a single DPM and to affiliated DPMs is to promote competition on the Exchange's trading floor. Moreover, the Exchange believes this authority should help ensure that no DPM or group of affiliated DPMs is allocated such a large number of securities as to make it difficult for the Exchange to quickly reallocate those securities to other DPMs and/or Market-Maker trading crowds in the event that a DPM or group of affiliated DPMs is no longer able to perform in its DPM capacity. The reasons for granting the MTS Committee the authority to establish minimum eligibility standards for DPMs to receive allocations of securities is to help ensure that a DPM has the financial and operational ability to handle additional allocations of securities. Similarly, the MTS Committee may utilize this Rule to establish specific minimum market performance standards that must be satisfied by DPMs in order to receive allocations of securities so that a DPM that is not performing adequately with respect to the securities that have already been allocated to the DPM is not allocated additional securities.

Rule 8.85—DPM Obligations. Proposed Rule 8.85 describes the obligations of a DPM. The proposed rule change states the general obligation of a DPM, with respect to each of its allocated securities, is to fulfill all of the obligations under Exchange Rules of a Market-Maker, a Floor Broker (to the extent that the DPM acts as a Floor Broker), and an Order Book Official.

Most of the obligations and other provisions contained in proposed Rule 8.85 are contained in current Rule 8.80. In some instances, these provisions are proposed to be slightly modified to clarify their scope. For example, proposed Rule 8.85(a)(vi) requires a DPM to segregate in a manner prescribed by the MTS Committee (i) all transactions consummated by the DPM in securities allocated to the DPM and (ii) any other transactions consummated by or on behalf of the DPM that are related to the DPM's DPM business. This will permit the Exchange to monitor each DPM's trading positions in order to ensure that each DPM is in compliance with DPM financial and other requirements.

In addition, the Exchange proposes to charge a $250 processing fee for each DPM Designee that will be executing transactions on behalf of a DPM in that DPM's segregated account(s). This is the same fee amount that is charged for each participant in a joint account established pursuant to CBOE Rule 8.9. Since DPMs currently utilize joint accounts to segregate their transactions, the proposed $250 fee will essentially replace the $250 joint account fee that DPMs are currently being assessed in this regard.

Currently, Rule 8.80(c)(3) requires each DPM to determine a formula for generating automatically updated market quotations and to disclose the components of the formula to the other members trading at the DPM's trading station. Proposed Rule 8.85(a)(ix) restates this requirement and clarifies the requirement by specifying that the components of the formula that are required to be disclosed include the option pricing calculation model, volatility, interest rate, dividend, and what is used to represent the price of the underlying. Proposed Rule 8.85(a) also provides that the MTS Committee shall have the discretion to exempt DPMs using proprietary automated quotation updating systems from having to disclose proprietary information concerning the formulas used by those systems. Most DPMs utilize the Exchange's Auto Quote System to generate automatically updated market quotations and therefore would not be eligible for an exemption of this kind. However, proposed Rule 8.85(a) will permit the MTS Committee to exempt those DPMs that utilize proprietary automated quotation updating systems from disclosing confidential information concerning those systems.

Proposed Rule 8.85(b)(i) restates the current requirement that a DPM is obligated to place in the public order book any order in the DPM's possession which is eligible for entry, subject to two limited exceptions. First, proposed Rule 8.85(b)(i)(A) clarifies that a DPM is not obligated to book a book-eligible order if the DPM immediately executes the order upon its receipt. This permits a DPM to immediately execute a marketable customer order without having to delay the execution by first placing the order in the public order book. Second, proposed Rule 8.85(b)(i)(B) provides that a DPM may refrain from booking a book-eligible order if the customer who placed the order has requested that the order not be booked, and upon receipt of the order, the DPM announces in public outcry the information concerning the order that would be displayed if the order were displayed in the public order book. Proposed Rule 8.85(b)(i)(B) is intended

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(with three of those terms expiring each year), the Exchange's Nominating Committee will shorten the length of some of the terms of the MTS Committee members elected in the first two years following the effectiveness of the proposed rule change to ensure that three positions will come up for election each year once the three-year terms are fully phased in.

to accommodate the wishes of customers who desire an opportunity for price improvement before the execution of a limit order at its limit price, while at the same time requiring the information concerning the order that would have been displayed in the public order book to be disclosed to the other members of the trading crowd, so that the other members of the trading crowd are not at an informational disadvantage.

Proposed Rule 8.85(b)(ii) elaborates upon the requirement set forth in proposed Rule 8.85(b)(i) by requiring that a DPM not remove any order from the public order book except in two circumstances. First, proposed Rule 8.85(b)(ii) clarifies that a DPM may remove an order from the book if the order is canceled, expires, or is executed. Second, proposed Rule 8.85(b)(ii) clarifies that a DPM may return an order to the member that placed the order upon the member's request. For example, a Floor Broker may desire to leave an order with a DPM temporarily while the Floor Broker attends to business elsewhere on the trading floor, or until such time as the prevailing market moves closer to the order's limit price. Proposed Rule 8.85(b)(ii) is intended to clarify that a DPM may return an order to a Floor Broker in such situations.

Proposed Rule 8.85(b)(iii) restates the current requirement that a DPM is obligated to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, and sets forth one narrow exception to this requirement—when the customer who placed the order consents to not being accorded this priority. This exception is intended to address situations such as the following. Under both the current and proposed DPM rules, a DPM may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed in the public order book, such as orders from a competing specialist or other broker-dealer. Competing specialists have on occasion inquired as to whether a DPM would be willing to represent an order on behalf of the competing specialist if the competing specialist were to agree to waive the priority requirement and/or allow the DPM to participate (or match) with the competing specialist's order. Under the current rules, regardless of the DPM's and customer's desire to have such an arrangement, they are unable to do so because the current rules do not allow a DPM to give priority to the orders it represents. Proposed Rule 8.85(b)(iii) would permit a DPM to accommodate a customer who desires to have a DPM represent an order and to waive this priority requirement with respect to the order.

Proposed Rule 8.85(b)(iv) restates the current requirement that a DPM may not charge any brokerage commission with respect to the execution of any order for which the DPM has acted as both agent and principal. There is, however, an exception to the requirement set forth in proposed Rule 8.85(b)(iv) if the customer consents. The reasons for this exception are the same as the reasons for the exception to the priority requirement in proposed Rule 8.85(b)(iii). It should also be noted that although proposed Rule 8.85(b)(iv) would not permit a DPM to charge a brokerage commission with respect to the execution of an order for which the DPM acts as both agent and principal (subject to the limited exception described above), the DPM would be permitted under proposed Rule 8.85(b)(iv) to bill back to the customer any Exchange fees charged to the DPM with respect to the execution of the order.

As noted above, a DPM may, but is not obligated to, accept non-discretionary orders which are not eligible to be placed in the public order book. Proposed Rule 8.85(b)(v), however, also provides that a DPM is required to act as a Floor Broker to the extent required by the MTS Committee. The purpose of proposed Rule 8.85(b)(v) is to permit the MTS Committee to require a DPM to act as a Floor Broker if there is a need for the DPM to act in this capacity. For example, the MTS Committee may require a DPM to act as a Floor Broker if regular Floor Brokers are not available to represent orders in the securities allocated to the DPM.

Proposed Rule 8.85(b)(vi) restates the current requirement that a DPM may not represent discretionary orders as a Floor Broker or otherwise. Proposed Rule 8.85 also provides that the MTS Committee may authorize a DPM, on a temporary basis, to accept and represent types of orders in one or more of the securities allocated to the DPM which vest the DPM with limited discretion, if the MTS Committee determines that unusual circumstances are present and that the acceptance and representation of such orders by the DPM is necessary in order to assure that there will be adequate representation in such securities of those types of orders. As with proposed Rule 8.85(b)(v), the purpose of this provision is to grant the MTS Committee the ability to invoke this provision if there is a need for a DPM to act in this capacity, such as if regular Floor Brokers are not available to do so.

Proposed Rule 8.85(c)(vi) sets forth a new requirement that each DPM is required to segregate, in a manner prescribed by the MTS Committee, the DPM's business and activities as a DPM from the DPM's other businesses and activities. This provision will permit the MTS Committee to establish segregation requirements that will help to reduce the risk that a DPM's financial integrity will be adversely impacted by financial losses that may be incurred by the DPM in connection with its other businesses and activities.

Rule 8.86—DPM Financial Requirements. Proposed Rule 8.86 restates the current requirement that each DPM is required to maintain net liquidating equity in its DPM account of not less than $100,000. It also includes two requirements which, although currently applicable to DPMs, are not referenced in the current DPM rules. Specifically, proposed Rule 8.86 requires that each DPM maintain sufficient net capital to comply with the requirements of Rule 15c3–1 under the Act and that each DPM which is an Exchange Clearing Member also maintain sufficient net capital to comply with the requirements of The Options Clearing Corporation. Although there are other rules which already subject DPMs to these requirements, the Exchange believes that it is worthwhile to also include these requirements in proposed Rule 8.86 so that the Rule is more informative and complete.

Moreover, proposed Rule 8.86 requires DPMs to maintain net liquidating equity in their DPM accounts to conform with such guidelines as the MTS Committee may establish from time to time. The Exchange currently uses DPM financial guidelines in connection with the process of allocating securities to DPMs. Proposed Rule 8.86 would permit the Exchange to implement and enforce such guidelines and other future equity guidelines. The MTS Committee has established the financial guidelines it intends to use under proposed Rule 8.86, which are set forth in a draft regulatory circular that is available for inspection at the places specified in Section IV. The guidelines require that a DPM applying for the allocation of securities must have in its DPM account $350,000 plus $25,000 in equity for each security that has been allocated to the DPM in excess of the initial eight securities allocated to the DPM. Because these guidelines are more stringent than the current requirement, which states that a DPM must maintain an equity amount sufficient to assume a position of 20 trading units of each security which has been allocated to the DPM, the current requirement has been eliminated.

Rule 8.87—Participation Entitlement of DPMs. A DPM's right to participate as principal in a transaction is generally governed by the principles of time and price priority as set forth in CBOE Rule 6.45. Under these principles, if a DPM announces a bid (offer) for the DPM's own account ahead of other members in response to a request for a market from a member not acting on behalf of the DPM, the DPM is entitled to participate up to 100% in any resulting transaction. In addition to the rights granted by Rule 6.45, current Rule 8.80(c)(7)(ii) grants each DPM a right to participate "pro rata" with the Market-Makers present in the trading crowd, in any transaction in a security that has been allocated to the DPM if the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd, even if the DPM's bid (offer) is not entitled to priority under CBOE Rule 6.45. Because the term "pro rata" is not precisely defined by current Rule 8.80(c)(7)(ii), the scope of that term, and hence the participation right, has historically been interpreted by the MTS Committee.

Since 1993, the MTS Committee has interpreted a DPM's participation right in transactions that occur in an allocated security (when the DPM's previously established principal bid (offer) was equal to the highest bid (lowest offer) in the trading crowd) to consist of the following: an initial 40% participation right, a 30% participation right when average daily volume in the security over the previous calendar quarter reaches 2501 contracts, and no guaranteed participation right when average daily volume in the security over the previous calendar quarter reaches 5,000 contracts. Additionally, the MTS Committee has determined to maintain all multiply traded securities at the 40% participation level until further notice.

Proposed Rule 8.87 formalizes the authority of the MTS Committee to determine the appropriate participation right for DPMs by providing that the MTS Committee, subject to review by the Board of Directors, may establish from time to time a participation entitlement formula that is applicable to all DPMs. Additionally, proposed Rule 8.87 further provides that, in accordance with the established formula, each DPM shall have a right to participate for its own account with the Market-Makers present in the trading crowd in transactions in the DPM's allocated securities that occur at the DPM's previously established principal bid or offer.

Rule 8.88—Review of DPM Operations and Performance. Proposed Rule 8.88(a) restates the current rule provision that the MTS Committee may conduct a review of a DPM's operations or performance any time, and clarifies that the reviews may be conducted by a subcommittee of the MTS Committee. Proposed Rule 8.88(a) also clarifies that a DPM and its associated persons are obligated to submit information requested by the MTS Committee in connection with a review. The current rule provision which contemplates that these reviews will be conducted at least quarterly has been revised to provide that, at a minimum, a review of each DPM's operations and performance shall be conducted on an annual basis. The reason for this change is that the Exchange does not believe it is necessary to conduct a formal and detailed operational and performance review of each DPM more than once a year. In the interim, the MTS Committee will review information regarding each DPM's operations and performance on an ongoing basis and will conduct a review of, and/or speak with, any DPM that has any operational or performance issues that need to be addressed prior to that DPM's next annual review. The Exchange believes that this approach is more effective than quarterly reviews, since it will permit the MTS Committee to timely address any operational or performance issues that require immediate attention, while allowing more time to be spent on each formal and detailed DPM review.

Proposed Rule 8.88(b) provides that the MTS Committee shall perform the market performance evaluation and remedial action functions set forth in CBOE Rule 8.60 with respect to DPMs and that the MTS Committee may combine a review conducted pursuant to proposed Rule 8.88(a) with an evaluation conducted pursuant to Rule 8.60. This is consistent with current Rule 8.80(b)(10) which also provides that the MTS Committee may review and evaluate the conduct of DPMs pursuant to Rule 8.60.

In addition, current Rule 8.80(b)(10) grants the MTS Committee market performance authority with respect to other issues relating to DPMs that the Exchange now believes should be handled by other Exchange committees. The Exchange believes that this authority should be transferred from the MTS Committee to these other committees because these other committees already have responsibility concerning these issues for non-DPMs and because consolidating responsibility for these issues will result in greater efficiency. Thus, for example, the authority to determine the series eligible for the Exchange's Retail Automatic Execution System (RAES) and the eligible size of RAES orders for securities allocated to DPMs, which is currently exercised by the MTS Committee pursuant to CBOE Rule 6.8, has been consolidated in the Exchange's Floor Procedure Committees since they have responsibility for these issues for securities that are allocated to non-DPM trading crowds. Similarly, the authority under the Rules with respect to DPM RAES participation and eligibility, which is currently exercised by the MTS Committee pursuant to CBOE Rule 8.16, has been consolidated in the Exchange's Market Performance Committee since it has responsibility for these issues for non-DPMs.

One market performance related authority that the Exchange has determined the MTS Committee should retain is Floor Official authority. Thus, proposed Rule 8.88(c) provides that members of the MTS Committee may perform the functions of a Floor Official at DPM trading stations. MTS Committee members currently possess this authority by virtue of current Rule 8.80(b)(10), which provides that the MTS Committee may perform all of the functions of the Market Performance Committee under the Rules, and CBOE Rule 6.20.09, which provides that members of the Market Performance Committee may perform the functions of a Floor Official for the purpose of enforcing trading conduct policies. The Exchange believes that MTS Committee members should retain Floor Official authority with respect to DPM trading stations because MTS Committee members have expertise with respect to the trading conduct rules that are applicable to DPMs. In addition, acting as Floor Officials at DPM trading stations allows MTS Committee members to stay abreast of issues that may arise at these stations and provides the MTS Committee with a valuable source of information which the Committee utilizes in connection with its oversight of the performance and operations of DPMs.

Proposed Rule 8.88 expands the market performance responsibilities of the MTS Committee by providing that the MTS Committee shall perform the market performance evaluation and remedial action functions set forth in Rule 8.60 with respect to the Market-Makers and Floor Brokers that regularly trade at DPM trading stations, in addition to performing these functions with respect to DPMs. The primary reason for this change is that the performance of a DPM trading crowd is influenced by both the DPM and the Market-Makers and Floor Brokers that trade in the crowd. Accordingly, the

Exchange believes that it will be more efficient if one committee exercises the market performance and remedial action responsibilities with respect to both the DPM and the Market-Makers and Floor Brokers that trade in a DPM trading crowd, instead of the current bifurcated structure in which the MTS Committee has market performance authority with respect to the DPM and the Market Performance Committee has market performance authority with respect to the Market-Makers and Floor Brokers.

Rule 8.89—Transfer of DPM Appointments. Current Rule 8.80(b)(3) provides that a DPM appointment may not be transferred without the approval of the MTS Committee. Proposed Rule 8.89 expands upon this provision by setting forth both a detailed procedure for the consideration of any proposal to sell, transfer, or assign an interest in a DPM, and the standards that apply to such consideration. This procedure is set forth in proposed Rules 8.89(a) through 8.89(f).

Proposed Rule 8.89(a) provides that a DPM proposing any sale, transfer, or assignment of any ownership interest or any change in its capital structure, voting authority, or distribution of profits or losses shall give at least 30 days prior written notice of the proposed change to the MTS Committee. Proposed Rule 8.89(a) further provides that if the transaction is deemed to involve the transfer of a DPM appointment, the transaction is required to be approved by the MTS Committee before it may be consummated.

Proposed Rule 8.89(b) defines the transfer of a DPM appointment to include, among other things, any sale, transfer, or assignment of any significant share of the ownership of a DPM. A significant share of the ownership of a DPM is defined to include any sale, transfer, or assignment of a 5% or more interest in the equity or profits or losses of the DPM (or a series of smaller changes that in the aggregate amount to a change of 5% or more). Additionally, proposed Rule 8.89(b) provides that a sale, transfer, or assignment of less than 5% may also be found by the MTS Committee to represent a significant share of the ownership of a DPM depending on the surrounding facts and circumstances.

Proposed Rule 8.89(c) provides that any DPM desiring to obtain approval of a transaction deemed to involve the transfer of a DPM appointment is required to submit a written application to the MTS Committee at least 30 days prior to the proposed effective date of the transaction. Proposed Rule 8.89(c) also requires that the application contain a full and complete description of the proposed transaction, including among other things, the transferee's ownership and capital structure, the identity of those persons who will perform the duties of the DPM following the transaction, the terms of the transaction, and any other material information pertaining to the transaction that the MTS Committee may request.

Proposed Rule 8.89(d) provides that promptly after the receipt of a completed application for the approval of a proposed transfer of a DPM appointment, the MTS Committee will post notice of the proposed transfer on the Exchange Bulletin Board and in the Exchange Bulletin and that the MTS Committee will not ordinarily consider the proposed transfer until it has been posted on the Bulletin Board for at least 10 business days. Proposed Rule 8.89(d) also provides that during this posting period the MTS Committee will accept written comments on the proposed transfer from any member and will accept written proposals from other members and from Market-Maker trading crowds who wish to be considered for appointment in some or all of the classes that are the subject of the proposed transfer.

Proposed Rule 8.89(e) sets forth the factors that may be considered by the MTS Committee in determining whether to approve a proposed transfer of a DPM appointment. These factors include (i) the financial and operational capacity of the transferee, (ii) the continuity of control, management, and persons responsible for the operation of the DPM, (iii) avoiding undue concentration of DPM appointments on the Exchange, (iv) available alternatives for reallocating the DPM's appointment taking into account comments made and alternatives proposed by other members during the posting period, and (v) the best interests of the Exchange. In addition, proposed Rule 8.89(e) provides that no application relating to a proposed transfer of a DPM appointment will be approved by the MTS Committee until it is accompanied by complete and final documents pertaining to the transfer, except as the MTS Committee may agree to defer the delivery of specific documents for good cause shown.

Proposed Rule 8.89(f) provides that the approval or disapproval of a proposed DPM appointment transfer is subject to direct review by the Board of Directors. The Secretary of the Exchange must receive within 10 days of the announcement of the MTS Committee's decision either: (i) a written request for review made by the applicant (in the case of a failure to approve an application as submitted) or (ii) a request for review made by at least five Directors of the Exchange (in any case). In the event of a request for review, the Board will appoint a panel of Directors to review the matter. Following this review, the panel, with the assistance of Board counsel, will prepare a proposed written decision of the Board concerning the matter and will submit the proposed decision to the full Board for discussion and consideration. The Board will then decide whether to adopt or modify the proposed decision and will issue its final decision to the applicant and to the MTS Committee.

In conjunction with proposed Rule 8.89, the Board of Directors has also issued a memo to the MTS Committee which conveys the Board's views with respect to the various factors that may bear upon whether a request to transfer an interest in a DPM appointment should be approved. The memo is available for inspection at the places specified in Section IV. The purpose of the memo is to provide guidance to the MTS Committee concerning the types of considerations that the Board believes should be taken into account in evaluating such requests. For example, the memo states Board's view that a DPM's franchise in its allocated securities is not a transferable property interest owned by the DPM. Thus, the Board does not believe that the outright sale of all or a part of a DPM's business should ordinarily be approved. Nevertheless, the Board also states that it recognizes that there are circumstances where it may be in the best interests of both the DPM and the Exchange to permit the transfer of some or all of the DPM's interest in its DPM appointment, even though this may result in the DPM being paid for the value of the goodwill in its DPM business. For example, the Board states that such circumstances might include situations where a transfer is for the purpose of attracting new capital to an existing successful DPM to enable it to expand its market-making activities, or to enable the DPM to bring in a new partner or other principal, or in response to an emergency need for capital where there is reason to permit the existing DPM to remain involved in the operation and therefore not to reallocate its appointment, assuming in each case that the expansion or increase in capital is found to be necessary or desirable in the best interests of the Exchange.

The Exchange believes that proposed Rule 8.89 and the accompanying memo from the Board of Directors will improve the current rule provision regarding transfer of DPM appointments

both by setting forth a detailed procedure for considering such requests, which will help to ensure that the MTS Committee has sufficient information on which to base decisions regarding such requests, including member input, and by setting forth the appropriate criteria to be utilized in evaluating such requests.

Rule 8.90—Termination, Conditioning, or Limiting Approval to Act as a DPM. Proposed Rule 8.90 governs the termination, conditioning, and limiting of approval to act as a DPM. For the most part, it restates, with certain clarifications, provisions that are contained in current Rule 8.80. For example, proposed Rule 8.90(a) clarifies that the MTS Committee may condition or limit a DPM's appointment (in addition to being permitted to terminate the appointment) if the DPM (i) incurs a material financial, operational, or personnel change, (ii) fails to comply with the DPM rules or any conditions placed on its DPM appointment, or (iii) is no longer eligible to act as DPM. In addition, proposed Rule 8.90(c) clarifies that limiting a DPM's appointment may include, among other things, limiting or withdrawing a DPM's participation entitlement, withdrawing a DPM's right to act as DPM in one or more of its allocated securities, and requiring a relocation of the DPM on the trading floor.

As is the case under current Rule 8.80, proposed Rule 8.90(a) generally provides that before the MTS Committee may take any action to terminate, condition, or otherwise limit a member organization's approval to act as a DPM, the member organization will be given notice of a possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take action. The only exception to this provision is that, as under current Rule 8.80, the MTS Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as a DPM if the DPM incurs a material financial, operational, or personnel change warranting action or if the DPM fails to comply with any of the financial requirements applicable to DPMs.

As is also the case under the current DPM rules, if a member organization's approval to act as a DPM is terminated, conditioned, or otherwise limited by the MTS Committee pursuant to proposed Rule 8.90, proposed Rule 8.90(d) provides that the member organization may appeal that decision to the Appeals Committee under Chapter XIX. In addition, as described above, these appeal procedures provide the right to a formal Appeals Committee hearing concerning a MTS Committee's decision. The decision of the Appeals Committee may be appealed to the Board of Directors.

Rule 8.91—Limitations on Dealings of DPMs and Affiliated Persons of DPMs Guidelines for Exemptive Relief Under Rule 8.91(e) for Members Affiliated with DPMs. Proposed Rule 8.91 and the accompanying proposed guidelines for exemptive relief under proposed Rule 8.91(e) restate the rule provisions that are currently contained in current Rule 8.81 and the current guidelines for exemptive relief that accompany that Rule. Proposed Rule 8.91 and its accompanying guidelines are intended to more clearly reflect those provisions and how they have historically been interpreted by the Exchange. For example, the Exchange believes that the organization of these provisions has been improved by including in proposed Rule 8.91 all of the restrictions on DPM affiliates that are set forth in the current provisions, instead of including only one of these restrictions in the Rule and including other restrictions in the accompanying guidelines, as is currently the case. In addition, the restrictions on DPM dealings with an issuer are restated to include in the case of options, which are nominally issued by The Options Clearing Corporation, that these restrictions are intended to apply to dealings with the issuer of the underlying security, whereas in the case of securities other than options, they apply to dealings with the issuer of the security itself. Moreover, other clarifying revisions of a similar nature have been made to the current provisions without changing the substance of those provisions as they have been interpreted by the Exchange.

In addition, consistent with the Exchange's long-standing interpretation of current Rule 8.80, proposed Rule 8.91(d) explicitly prohibits any member affiliated with a DPM from acting as a Floor Broker in any trading crowd in which the DPM acts as a DPM, unless the member is a DPM Designee of the DPM acting on behalf of the DPM in its capacity as a DPM. The Exchange has interpreted current Rule 8.80 to provide for such a prohibition since permitting a Floor Broker affiliated with a DPM to represent orders in the DPM's trading crowd could potentially allow the DPM to direct orders to the Floor Broker and thus circumvent certain of the DPM's obligations such as the obligation to place eligible orders in the public order book , the obligation to accord priority to any order which the DPM represents as agent over the DPM's principal transactions, the obligation not to charge any brokerage commission with respect to the execution of any order for which the DPM acts as both agent and principal, and the obligation not to represent discretionary orders.

Deletions from Current DPM Rules. Current Rule 8.80(b)(4)(ii) provides that the MTS Committee shall open a DPM's allocated option classes to a new DPM selection process if the DPM changes its specified nominee and the former nominee so requests. The Exchange no longer believes that this provision is appropriate because DPM organizations are generally much larger than they used to be. Today, DPMs often have many nominees, and nominees are added to and depart from DPM organizations more frequently than in the early years of the DPM program. For this reason, most DPM nominees no longer have the same stake in their DPM organizations that many DPM nominees may have had in the past. Thus, it is often no longer equitable to allow a DPM nominee to request a new DPM selection process for that DPM's allocated securities following the nominee's departure from the DPM organization.

Two provisions relating to maintenance of the public order book have also been deleted. First, current Rule 8.80(b)(8), which provides that under certain circumstances a terminated DPM will receive a proportionate share of the net book revenues for a period specified by the MTS Committee (up to a maximum of 5 years), has not been retained in the proposed DPM rules. The original purpose of this provision was to provide incentive to members to apply to be appointed as a DPM. Because the interest in becoming a DPM has grown throughout the years, the Exchange believes this incentive is no longer necessary to attract DPM candidates.

Second, the Exchange is eliminating the provision of current Rule 8.80(d) which provides that the Exchange shall be responsible for the maintenance, handling, and billing of the public order book and shall retain and compensate the DPM for performing the Order Book Official function. The reason for this deletion is that over time DPMs have taken on the responsibility for the maintenance, handling, and billing of the public order book, and the Exchange no longer retains this responsibility nor compensates DPMs for performing these functions. The current provision of Rule 8.80(d), however, which contemplates that the Exchange may make personnel available to assist a DPM in the DPM's performance as an Order Book Official, for which the Exchange may charge the DPM a reasonable fee, has been retained

in proposed Rule 8.85.01 with one minor modification. Specifically, proposed Rule 8.85.01 merely permits, and does not require, the Exchange to provide this assistance when it is requested. This change has been made because, although the Exchange is often able to provide such assistance to DPMs, the Exchange may not always be able to do so.

Finally, current Rule 8.80(c)(7)(iii) is being deleted because the Exchange believes the procedure called for under the Rule is cumbersome and because the concern that the Rule addresses is adequately addressed by another Exchange Rule. Current Rule 8.80(c)(7)(iii) provides that a DPM may not initiate a transaction for its own account that would result in putting into effect any stop or stop limit order which may be in the public order book or which the DPM represents as Floor Broker, except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction. The Exchange believes that this procedure is cumbersome because it necessitates that a Floor Official be summoned to the trading station each of the many times this situation arises. Moreover, the required approval mechanism leads to delay in the execution of customer orders. The Exchange believes that the concern addressed by current Rule 8.80(c)(7)(iii) is adequately addressed by CBOE Rule 6.73(a), which requires a Floor Broker handling an order, including a DPM, to use due diligence to execute the order at the best price or prices available to the Floor Broker, in accordance with the Rules. Thus, if a DPM were to initiate a transaction for its own account in order to disadvantage a customer by putting into effect a stop or stop limit order, the Exchange would have the ability to discipline the DPM for such activity under Rule 6.73 for failure to exercise due diligence with respect to the representation of the order.

Conforming Rule Changes. The Exchange also proposes to make conforming changes to other CBOE rules to make them consistent with the proposed rule changes described above.

2. Basis

The Exchange believes the proposed rule change will improve the operation of the DPM trading system which, in accordance with Section 11A(a)(1)(C)(i) of the Act,[9] assures the economic and efficient execution of securities transactions. Accordingly, the Exchange beleives that the proposed rule change is consistent with Section 6(b) of the Act,[10] in general, and further the objectives of Section 6(b)(5)[11] in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

As set forth above, the Exchange filed a substantially similar proposed rule change with the Commission in 1998 as part of CBOE Rule File No. SR–CBOE–98–15 and received a member petition concerning the proposed rule change prior to the Exchange's withdrawal of the filing from the Commission. The petition objected to proposed Rule 8.89 and requested a membership vote regarding whether proposed Rule 8.89 should be approved or should be revised to absolutely prohibit any sale, transfer, or assignment of a DPM appointment or a DPM's allocated securities.

Current Rule 8.80(b)(3) provides the MTS Committee with the discretion to determine whether to approve the transfer of a DPM appointment by setting forth that a DPM appointment may not be transferred without the approval of the MTS Committee. As is more fully described in the section entitled *Rule 8.89—Transfer of DPM Appointments*, the Exchange believes that proposed Rule 8.89 and the accompanying memo from the Board of Directors improve the current rule provision by setting forth a detailed procedure for considering proposals to sell, transfer, or assign an interest in a DPM, which will help to ensure that the MTS Committee has sufficient information on which to base decisions regarding such proposals, including member input, and by setting forth the appropriate criteria to be utilized in evaluating such proposals. In addition, the Exchange does not believe that it is in the best interest of the Exchange, customers, or the market to prohibit the Exchange from approving any sale, transfer, or assignment of a DPM appointment. To the contrary, the Exchange believes that there are circumstances where it may be in the best interests of the Exchange, customers, and the market to permit the transfer of some or all of the DPM's interest in its DPM appointment. Therefore, the Exchange believes that it is important for the Exchange to have the flexibility to approve such transfers in appropriate circumstances. For example, a transfer for the purpose of attracting new capital to an existing successful DPM can benefit the Exchange, customers, and the market by allowing the DPM to increase its personnel, to service its customers better, and to make tighter and deeper markets. Accordingly, the Exchange believes that proposed Rule 8.89 is in the best interest of the Exchange, customers, and the market as well as in furtherance of the objectives of the Act.

The Exchange also notes that since the time the member petition concerning proposed Rule 8.89 was submitted to the Exchange, the Exchange has engaged in a period of dialogue with the Exchange's membership regarding the issue of DPM transferability and that the proposed rule changes to update and reorganize the Exchange's rules relating to DPMs, including proposed Rule 8.89, have been approved by the Exchange's membership in a membership vote.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549-0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[9] 15 U.S.C. 78k–1(a)(1)(C)(i).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–54 and should be submitted by May 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary

[FR Doc. 99–10985 Filed 4–30–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41324; File No. SR–NYSE–99–13]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. Relating to Amendments to the Listed Company Manual Regarding Original and Continued Listing Criteria and Procedures

April 22, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 21, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to the Listed Company Manual ("Manual")[3] with regards to the original and continued listing criteria and procedures of the Exchange. The text of the proposed rule change follows. New text is italicized. Deleted text is bracketed.

NYSE Listed Company Manual

* * * * *

Section 1

The Listing Process

101.00 Introduction

* * * * *

The Exchange has broad discretion regarding the listing of a company. The Exchange is committed to list only those companies that are suited for auction market trading and that have attained the status of being eligible for trading on the Exchange. Thus, the Exchange may deny listing or apply additional or more stringent criteria based on any event, condition, or circumstance that makes the listing of the company inadvisable or unwarranted in the opinion of the Exchange. Such determination can be made even if the company meets the standards set forth below.

102.01 Minimum Numerical Standards

—Domestic Standards [Companies]
—Equity Listings

102.01A. A company must meet one of the following size/volume criteria:

* * * * *

102.01B. A company must demonstrate an [A]aggregate market value of publicly-held shares [(C) , subject to adjustment depending on market conditions, as described below].....[$40,000,000] *of $60,000,000 for companies that list either at the time of their initial public offerings ("IPOs") (C) or as a result of spin-offs, and $100,000,000 for other companies (D).* [(While greater emphasis is placed on market value, an additional measure of size is $40,000,000 in net tangible assets.)]

* * * * *

(C) For companies that list at the time of their IPOs, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard. Similarly, for spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) in order to estimate the market value based upon the as disclosed distribution ratio. For purpose of this paragraph, an IPO is an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Securities Exchange Act of 1934. An IPO includes a carve-out, which is defined for purposes of this paragraph as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (which may be a subsidiary, division, or business unit).

[C] *(D)* Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. *If a company either has a significant concentration of stock, or changing market forces have adversely impacted the public market value of a company which otherwise would qualify for listing on the Exchange, such that its public market value is no more than 10 percent below $60,000,000 or $100,000,000, as applicable, the Exchange will generally consider $60,000,000 or $100,000,000, as applicable, in stockholders' equity as an alternate measure of size and therefore as an alternate basis on which to list the company.*

* * * * *

[Calculation of Aggregate market Value Adjustment—On January 15 and July 15 of each year the NYSE Composite Index, at the close of business for that date, or on the next succeeding business day if the Exchange is closed, is divided by the base value of 55.06 (the NYSE Composite Index for July 15, 1971). The $40,000,000 standard multiplied by the adjustment factor as so calculated (after rounding up to the nearest thousandth). The resulting product is rounded to the nearest $100,000.

The adjustment is made only when the NYSE Composite Index is lower than that of the base value, and is limited to a maximum reduction of 50 *percent* of the standard which will be in effect for the succeeding six months following the calculation.

Since the NYSE Composite Index has remained above 55.06 in recent years, no adjustment has been necessary]

* * * * *

[Demonstrated earning power—income before federal income taxes and under competitive conditions:

Latest fiscal year	$2,500,000
Each of the preceding two fiscal years	$2,000,000

[12] 17 CFR 200.30–30(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange notes that it has a pending filing to make certain amendments to its listing standards (SR–NYSE–98–21). The instant filing is marked against the Manual in its current form, not the Manual as proposed to be amended in the already pending filing.

OR

Demonstrated earning power—income before federal income taxes and under competitive conditions:

Aggregate for last 3 fiscal years	$6,500,000
together with	
A minimum in most recent fiscal year	$4,500,000

(All three years must be profitable.)

OR

For companies with not less than $500,000,000 market capitalization and $200,000,000 revenues in the most recent fiscal year:

Demonstrated earning power—adjusted net income*:

Aggregate for last 3 fiscal years—$25,000,000

(Each year must report a positive amount.)]

102.01C. A company must meet one of the following financial standards:

(I) (1) Pre tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted (E) for items specified in (2)(a) through (i) below (F) must total at least:

$2,500,000 in the latest fiscal year together with $2,000,000 in each of the preceding two years; or

$6,500,000 in the aggregate for the last three fiscal years together with a minimum of $4,500,000 in the most recent fiscal year, and positive amounts for each of the preceding two years.

(2) Adjustments that must be included in the calculation of the amounts required in paragraph (1) are as follows:

(a) Application of Use of Proceeds.

If a company is in registration with the SEC and is in the process of an equity offering, adjustments should be made to reflect the net proceeds of that offering, and the specified intended application(s) of such proceeds to:

(i) Pay off existing debt. The adjustment will include elimination of the actual historical interest on debt being retired with offering proceeds for all relevant periods. If the event giving rise to the adjustment occurred during a time-period such that pro forma amounts are not set forth in the SEC registration statement (typically, the pro forma effect of repayment of debt will be provided in the current registration statement only with respect to the last fiscal year plus any interim period in accordance with SEC rules), the company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(ii) Fund an acquisition.

(1) The adjustments will include those applicable with respect to acquisition(s) to be funded with the proceeds. Adjustments will be made that are disclosed as such in accordance with Rule 3–05 "Financial Statements of Businesses Acquired or to be Acquired and Article 11 of Regulation S–X. Adjustments will be made for all the relevant periods for those acquisitions for which historical financial information of the acquiree is required to be disclosed in the SEC registration statement; and

(2) Adjustments applicable to any period for which pro forma numbers are not set forth in the registration statement shall be accompanied by the relevant adjusted financial data to combine the historical results of the acquiree (or relevant portion thereof) and acquiror, as disclosed in the company's SEC filing. Under SEC rules, the number of periods disclosed depends upon the significance level of the acquiree to the acquiror. The adjustments will include those necessary to reflect (a) the allocation of the purchase price, including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation), and (b) the effects of additional financing to complete the acquisition. The company must prepare the relevant adjusted financial data to reflect the adjustment to its historical financial data, and its outside audit firm must provide a report of having applied agreed-upon procedures with respect to such adjustments. Such report must be prepared in accordance with the standards established by the American Institute of Certified Public Accountants.

(b) Acquisitions and Dispositions

In instances other than acquisitions (and related dispositions of part of the acquiree) funded with the use of proceeds, adjustments will be made for those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 "Financial Statements of Businesses Acquired or to be Acquired" and Article 11 of Regulation S–X. If the disclosure does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, then such data must be prepared by the company's outside audit firm for the Exchange's consideration. In this regard, the audit firm would have to issue an independent accountant's report on applying agreed-upon procedures in accordance with the standards established by the American Institute of Certified Public Accountants.

(c) Exclusion of Merger or Acquisition Related Costs Recorded under Pooling of Interests

(d) Exclusion of Charges or Income Specifically Disclosed in the Applicant's SEC Filing for the Following:

(i) In connection with exiting an activity for the following:

(1) Costs of severance and termination benefits

(2) Costs and associated revenues and expenses associated with the elimination and reduction of product lines

(3) Costs to consolidate or re-locate plant and office facilities

(4) Loss or gain on disposal of long-lived assets

(ii) Environmental clean-up costs

(iii) Litigation settlements

(e) Exclusion of Impairment Charges on Long-lived Assets (goodwill, property, plant, and equipment, and other long-lived assets)

(f) Exclusion of Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock

(g) Exclusion of In-Process Purchased Research and Development Charges

(h) Regulation S–X Article 11 Adjustments

Adjustments will include those contained in a company's pro forma financial statements provided in a current filing with the SEC pursuant to SEC rules and regulations governing Article 11 "Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements."

(i) Exclusion of the Cumulative Effect of Adoption of New Accounting Standard (APB Opinion No.20)

OR

(II) A Company with not less than $500,000,000 market capitalization and $200,000,000 in revenues during the most recent 12 month period must demonstrate from the operating activity section of its cash flow statement that its cash flow, which represents net income adjusted to (a) reconcile such amounts to cash provided by operating activities, and (b) exclude changes in operating assets and liabilities, is at least

$25,000,000 in the aggregate for the last three fiscal years, and each year is reported as a positive amount as adjusted (E)(F) pursuant to Para. 102.01C (I)(2)(a) and (b) as applicable. With respect to reconciling amounts pursuant to this Paragraph, all such amounts are limited to the amount included in the company's income statement.

(E) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustment applies only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Para. 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request.

(F) The above-referenced adjustments are measured and recognized in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

102.01D. Policy on restated financial statements due to a change from an unacceptable to acceptable accounting principle or a correction of errors

If at any time following the Exchange's initial determination that a company meets the Exchange's original listing criteria, the company restates its financial statements due to a change from an unacceptable to an acceptable accounting principle or a correction of errors, and the restatement encompasses financial statements included in its SEC filings at the time of application for listing on the Exchange, the Exchange will re-evaluate the company's listing status. In this regard, the Exchange will determine whether, at the time of the original clearance, the company would have qualified under the Exchange's original listing standards utilizing the restated financial data. If not, unless the company meets original listing standards at the time of the restatement, the company will be notified that it does not meet the original listing standards and, if its securities have been listed, such securities will be suspended from trading and the company will immediately be subject to the delisting procedures in Para. 804.

[*Net income, adjusted to remove the effects of all items whose cash effects are investing or financing cash flows (determined pursuant to paragraph 28(b) of Statement of Financial Accounting Standards No. 95, Statement of Cash Flows, subject to the following limitations: the adjustment to net income with respect to the cash effects of discontinued operations, the cumulative effect of an accounting change, an extraordinary item or the gain or loss on extinguishment of debt will be limited to reversing the amount charged or credited in determining net income for the period.)

The adjusted net income standard is designed to provide the opportunity for substantial companies that are valued more on the basis of "cash flow" than reported income to list on the Exchange. The NYSE will consider each company on a case by case basis and will look not only at the specifics of the company's business but will also look to its industry, peer group and other relevant factors in performing its due diligence with respect to the application of this standard.]

102.05 Minimum Numerical Standards—Real Estate Investment Trusts

For Real Estate Investment Trusts (REITs) that do not have a three-year operating history, the following listing standards apply:

- *For such companies with at least $60,000,000 in stockholders' equity, the Exchange will generally authorize the listing of the REIT. For those REITs listing in conjunction with an offering, this requirement must be evidenced by a written commitment from the underwriter (or, in the case of a spin-off or carve-out, from the parent company's investment banker or other financial advisor) on behalf of the REIT;*
- *For such companies with stockholders' equity below $60,000,000, the Exchange will not consider the REIT eligible for listing.*

* * * * *

103.00 Non-U.S. Companies

* * * * *

103.01 Minimum Numerical Standards—Non U.S Companies—Equity Listings

103.01A. A company must meet the following distribution and size requirements:
[Distribution]

Number of shareholder, holders of 100 or more shares.	5,000 Worldwide
Number of shares publicly held.	2.5 million Worldwide
Market value of publicly-held shares *(A)*.	$100 million Worldwide *(B)*

(A) Shares held by directors, officers, or their immediate families and other concentrated holdings of 10 percent or more are excluded in calculating the number of publicly-held shares. If a company either has a significant concentration of stock, or if changing market forces have adversely impacted the public market value of a company which otherwise would qualify for listing on the Exchange such that its public market value is no more than 10 percent below $100,000,000, the Exchange will generally consider $100,000,000 in stockholders' equity as an alternate measure of size and therefore, as an alternative basis to list the company.

(B) For companies that list at the time of their initial public offerings ("IPOs"), if necessary, the Exchange will rely on a written commitment from the underwriter to represent the anticipated value of the company's offering in order to determine a company's compliance with this listing standard. Similarly, for spin-offs, the Exchange will rely on a representation from the parent company's investment banker (or other financial advisor) or transfer agent in order to estimate the market value based upon the as disclosed distribution ratio. For purpose of this paragraph, an IPO is an offering by an issuer which, immediately prior to its original listing, does not have a class of common stock registered under the Securities Exchange Act of 1934. An IPO includes a carve-out, which is defined for purposes of this paragraph as the initial offering of an equity security to the public by a publicly traded company for an underlying interest in its existing business (may be a subsidiary, division, or business unit).

[Size and Earnings

Net tangible assets.	$100 million Worldwide
Pre-tax income ..	$100 million cumulative for latest 3 years with $25 million minimum for any one of the 3 years]

103.01B. A company must meet one of the following financial standards:

(I) (1) Pre tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted (C)(D) for items specified in para. 102.01C(I)(2)(a) through (i) above, and 103.01B(I)(2) below, must total at least:

$100,000,000 in the aggregate for the last three fiscal years together with a minimum of $25,000,000 in each of the three years.

(2) Additional Adjustment Available for Foreign Currency Devaluation. Non-operating adjustments when associated with translation adjustments representing a significant devaluation of a country's currency (e.g., the currency of a company's country of domicile devalues by more than 10 percent against the U.S. dollar within a six-month period). Adjustments may not include those associated with normal currency gains or losses.

OR

(II) Companies with not less than $500,000,000 market capitalization and $200,000,000 revenues in the most recent 12 month period must demonstrate from the operating activity section of its cash flow statement that its operating cash flow excluding changes in operating assets and liabilities is at least $25,000,000 in the aggregate for the last three fiscal years, where each year is reported as a positive amount as adjusted (C)(D) for Para. 102.01C(I)(2)(a) and (b).

(C) Only adjustments arising from events specifically so indicated in the company's SEC filing(s) as to both categorization and amount can and must be made. Any such adjustment applies only in the year in which the event occurred except with regard to the use of proceeds or acquisitions and dispositions. Any company for which the Exchange relies on adjustments in granting clearance must include all relevant adjusted financial data in its listing application as specified in Para. 702.04, and disclose the use of adjustments by including a statement in a press release (i) that additional information is available upon which the NYSE relied to list the company and is included in the listing application and (ii) that such information is available to the public upon request.

(D) Interested parties should apply the list of adjustments in accordance with any relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC. Any literature is intended to guide issuers and investors regarding the affected adjustment listed. If successor interpretations (or guidelines) are published with respect to any particular adjustment, the most recent relevant interpretations (or guidelines) should be consulted.

103.01C. Policy on restated financial statements due to a change from an unacceptable to acceptable accounting principal or a correction of errors

If at any time following the Exchange's initial determination that a company meets the Exchange's original listing criteria, the company restates its financial statements due to a change from an unacceptable to an acceptable accounting principle or a correction of errors, and the restatement encompasses financial statements included in its SEC filings at the time of application for listing on the Exchange, the Exchange will re-evaluate the company's listing status. In this regard, the Exchange will determine whether, at the time of the original clearance, the company would have qualified under the Exchange's original listing standards utilizing the restated financial data. If not, unless the company meets original listing standards at the time of the restatement, the company will be notified that it does not meet the original listing standards and, if its securities have been listed, such securities will be suspended from trading and the company will immediately be subject to the delisting procedures in Para. 804.

* * * * *

Section 7

Listing Applications

* * * * *

702.04 Supporting Documents

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Financial Statements—

* * * * *

Adjustments to historical financial data—

If the Exchange requires any adjustments to historical financial data submitted by the company during the financial eligibility review process and such data is necessary to demonstrate that the company meets the Exchange's listing standards, the company must include such data in its listing application. Exchange Staff will advise the company as to which, if any, adjustments to historical financial data submitted to it by the company must be included in the listing application. Such information must include the agreed upon procedures report, if any, submitted to the Exchange.

* * * * *

Section 8

Suspension and Delisting

* * * * *

801.00 Policy

* * * * *

In connection with this rule, the Exchange has adopted certain quantitative and qualitative continued listing criteria. When a company falls below any criterion, the Exchange will review the appropriateness of continued listing. The Exchange may give consideration to any definitive action that a company would propose to take that would bring it [in line with original listing standards] *above continued listing standards. The specific procedures and timelines regarding such proposals are delineated in Para. 802.02 and 802.03.* [However, changes that a company might consider or make that would bring it above continued listing standards but not in line with original listing standards would normally not be adequate reason to warrant continued listing.]

* * * * *

802.00 Continued Listing [Criteria]

802.[00] *01 Continued Listing Criteria*

* * * * *

Earnings—

• Aggregate market value of shares outstanding (excluding treasury stock) is less than	$12,000,000
and average net income (*A*) after taxes for past 3 years is less than	$600,000
• Net tangible assets available to common stock are less than	$12,000,000
and average net income (*A*) after taxes for past 3 years is less than	$600,000

(A) For a company that included in its original listing application adjustments to historical financial data, during the first three years following the date of its original listing, the Exchange will calculate the company's average net income after taxes for any year considered in assessing its qualification for listing taking into consideration those specific adjustments made to the company's historical financial data for that year in the original listing application.

802.02 Continued Listing

Evaluation and Follow-Up Procedures for Domestic Companies

The following procedures shall be applied by the Exchange to domestic companies which are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

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802.03 Continued Listing

Evaluation and Follow-up Procedures for Non-U.S. Companies

The following procedures shall be applied by the Exchange to non-U.S. companies who are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones against which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange will promptly initiate suspension and delisting procedures.

NYSE Rules

Delisting of Securities

Suspension from Dealings or Removal from List by Action of the Exchange

The aim of the New York Stock Exchange is to provide the foremost auction market for securities of well-established companies in which there is a broad public interest and ownership.

Rule 499.

.20 NUMERICAL AND OTHER CRITERIA.—WHEN A COMPANY FALLS BELOW ANY OF THESE CRITERIA, THE EXCHANGE MAY GIVE CONSIDERATION TO ANY DEFINITIVE ACTION THAT A COMPANY WOULD PROPOSE TO TAKE THAT WOULD BRING IT *ABOVE CONTINUED LISTING STANDARDS.* [IN LINE WITH ORIGINAL LISTING STANDARDS. ON THE OTHER HAND, CHANGES THAT A COMPANY MIGHT CONSIDER OR MAKE THAT WOULD BRING IT ABOVE THE DELISTING CRITERIA BUT NOT IN LINE WITH ORIGINAL LISTING STANDARDS WOULD NORMALLY NOT BE ADEQUATE REASON TO WARRANT CONTINUED LISTING.]

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.50 [Procedure for Delisting.—] *Continued Listing Evaluation and Follow-up Procedures for Domestic Companies*

The following procedures shall be applied by the Exchange to domestic companies which are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 10 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific quarterly milestones against which the Exchange will evaluate the company's progress.

The company has 45 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 45 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the company fails to issue this press release during the allotted 45 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a quarterly basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the quarterly milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures.

.60 [Procedure for Delisting.—] *Continued Listing Evaluation and Follow-up Procedures for Non-US Companies*

The following procedures shall be applied by the Exchange to non-U.S. companies who are identified as being below the Exchange's continued listing criteria. Notwithstanding the above, when the Exchange deems it necessary for the protection of investors, trading in any security can be suspended immediately, and application made to the SEC to delist the security.

Once the Exchange identifies, through internal reviews or notice (a press release, news story, company communication, etc.), a company as being below the continued listing criteria set forth in Para. 802.01, the Exchange will notify the company by letter of its status within 10 business days. This letter will also provide the company with an opportunity to provide the Exchange with a plan (the "Plan") advising the Exchange of definitive action the company has taken, or is taking, that would bring it into conformity with continued listing standards within 18 months of receipt of the letter. Within 30 business days after receipt of the letter, the company must contact the Exchange to confirm receipt of notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it plans to present a Plan; otherwise, suspension and delisting procedures will commence. If the company submits a Plan, it must identify specific semi-annual milestones against which the Exchange will evaluate the company's progress.

The company has 90 days from the receipt of the letter to submit its Plan to the Exchange for review; otherwise, suspension and delisting procedures will commence. Exchange staff will evaluate the Plan, including any additional documentation that supports the Plan, and make a determination as to (1) whether the Plan shows the company meeting the continued listing standards within the 18 months and (2) whether the company has made a reasonable demonstration in the Plan of an ability to come into conformity with continued listing standards. The Exchange will make such determination within 45 days of receipt of the proposed Plan, and will promptly notify the company of its determination in writing.

The company also has 90 days from receipt of the letter to issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange. If the

company fails to issue this press release during the allotted 90 days, the Exchange will issue the requisite press release.

If the Exchange does not accept the Plan, the Exchange will promptly initiate suspension and delisting procedures and issue a press release disclosing the forthcoming suspension and application to the SEC for delisting of the company's securities.

If the Exchange accepts the Plan, the Exchange will review the company on a semi-annual basis for compliance with the Plan. If the company fails to meet the material aspects of the Plan or any of the semi-annual milestones, the Exchange will review the circumstances and variance, and determine whether such variance warrants commencement of suspension and delisting procedures.

Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time. In any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange will promptly initiate suspension and delisting procedures.

.70 Procedure for Delisting.—

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of this proposed rule change is to clarify and codify how the Exchange evaluates a company's listing eligibility, codify the Exchange's application and interpretation of certain original listing standards, change the benchmark used as an alternate measure of size, codify its original listing standard for real estate investment trusts, and codify both existing and enhanced procedures applicable to companies identified as being below the Exchange's continued listing criteria. Where applicable, conforming changes are proposed regarding non-U.S. listings. In proposing these rule codifications and changes, the Exchange seeks to ensure that its original and continued listing standards are fully transparent, applied consistently and easily auditable.

Original Listing Criteria and Procedures. The Exchange's numerical listing criteria include requirements regarding size, earnings and share distribution of a company. With regard to the size component of the financial eligibility criteria, and general eligibility, the Exchange proposes to make four amendments:

- The proposed amendment clarifies and codifies the Exchange staff's authority to delve further into the suitability of the applicant company for auction market trading on the Exchange even if the applicant meets the Exchange's quantitative criteria. The Exchange notes that such authority is specifically codified in the suspension and delisting section of the Manual and believes that it is equally appropriate to codify its authority in the original listing section.
- The current original listing criteria include a requirement that a company have an aggregate market value of publicly-held shares of $40 million. The Exchange proposes to raise this requirement to $100 million for all listings other than spin-offs and initial public offerings ("IPOs") (including carve-outs[4]), as to which the Exchange proposes raising the standard to $60 million. The Exchange proposes to raise the current $40 million standard somewhat less for IPOs, carve-outs and spin-offs because these are companies that have not had the opportunity to establish themselves as public companies.[5]
- The current additional measure of a company's size is a net tangible assets ("NTAs") test. The Exchange proposes two changes:

a. First, the word "additional in this context has been read by some to imply that NTAs are a stand-alone measure of size that must be met in addition to the market value standard. This reading was never intended. The Exchange clarifies that the test, as modified below, is an alternate measure of size to be relied upon in those instances where circumstances warrant an alternate measure and where the public market capitalization is no more than 10 percent below the public market value listing standard. Such circumstances would include occurrences such as large private holdings that drive down the public market capitalization or changing market forces that drive down the price of the stock.

b. Second, the Exchange proposes to replace the NTA test with a stockholders' equity test ($60 million for IPOs or spin-offs and $100 million for all other domestic listings[6] The Exchange views stockholders' equity as a better reflection of a company's value in the current economy, where a company's value often is not based solely on hard assets, but also on intangibles. The Exchange would, in reviewing a company, look to the composition of the stockholders' equity in order to determine the origination of such equity. Furthermore, stockholders' equity is a more straight-forward calculation than NTAs.

- The Exchange proposes to codify its practice of accepting a written commitment from the underwriter for IPOs (for spin-offs, from the parent company's investment banker or other financial advisor) to demonstrate that the company will satisfy the public market value requirement of $60 million ($100 million worldwide for non-U.S. issuers).

Original Financial Listing Criteria and Procedures. i. Overview and Discussion of Current Practice Regarding Financial Listing Standards.

In addition to specific criteria regarding the size of a listing applicant, the Manual also contains criteria regarding a company's earnings. The Exchange is proposing a series of amendments relating to this section of the Manual.

Under the current provisions of the Manual, a company that seeks to qualify for listing on the Exchange under its domestic standards must meet one of three financial tests. Two of the tests call for an analysis of the company's "demonstrated earning power under competitive conditions." The third test, which only applies to companies with at least $500,000,000 in market capitalization and $200,000,000 in revenues during the most recent fiscal year, analyzes the company's "demonstrated earning power—adjusted net income," as such latter term is defined in the current accompanying

[4] The Exchange proposes to define a carve-out as the initial offering of an equity security to the public by a publicly-traded company for an underlying interest in its existing business (which may be a subsidary, division, or business unit). In the case of a "target stock," the security is treated in the same way as any other second class of stock of the issuer.

[5] The Exchange proposes to define an IPO as a company that, prior to its original listing did not have a class of common stock registered under the Act. The Exochange notes that this definition differs from the definition of an IPO in Section 12(f)(1)(G)(i) of the Act, which turns on whether a company has a reporting obligation under the Act prior to a stock offering. Because the Exchange is applying its definition of IPO in the context of the original listing of common stock, the Exchange believes it is more appropriate to focus on the existense of U.S. publicly-traded stock rather than on prior reporting requirement. For example, while a company could have a reporting requirement under the Act if it conducted a public sale of debt securities, that would not be relevant in considering the appropriateness of listing a company's first public class of common stock.

[6] For non-U.S. companies, the $100 million requirement applies to all issuers and will be measured under this proposal in stockholders' equity instead of the current NTA valuation.

footnotes. The Exchange proposes both to codify its current policies and practices with respect to the interpretation of these criteria and to amend certain of its policies. In doing so, the Exchange seeks to ensure that the financial criteria applied to companies seeking to list on the Exchange are fully transparent, applied consistently and easily auditable.

The Exchange seeks to ascertain the financial strength of the company as it will exist on the day of listing. For more than 60 years, it has been the policy and practice of the Exchange to give consideration to certain adjustments to assure that at the time of listing the company has the earnings capacity—the "demonstrated earning power" requisite to auction-agency trading of its securities on the Exchange.

In conducting its review of the financial condition of an applicant company, the Exchange historically relied upon financial statements presented to it by the company, both historical and pro forma; in many cases, such financial information included that obtained from SEC filings (*e.g.*, for an acquisition, pro forma financial statements may have been provided by the listing applicant acquiror and presented to Exchange staff from the relevant past SEC filings for the acquiree if it was a reporting company). Finally, if the Exchange relied on the adjustments in granting financial clearance to the company, the company would be required to include them in its original listing application as a condition to eligibility clearance. Thus, any adjustments were available to the public because the listing application is a matter of public record.

The Exchange has not accepted all pro forma adjustments presented by the listing applicant. Moreover, the Exchange has required pro forma adjustments from companies in instances where the outcome was not favorable to the company if the adjustments were considered necessary to accurately evaluate the company's financial eligibility.

While the Exchange believes that the current process has served investors and the listed company community well, the Exchange recognizes the need to provide more transparency as to the application of the financial criteria and the financial analysis used in the listing process. Thus, the proposed rule change sets forth more explicit standards and enumerates specifically the applicable adjustments. In addition, the proposed rule change makes conforming, clarifying changes to the non-U.S. financial listing standards in Section 103.01 of the Manual.

ii. Proposed Changes to Financial Eligibility Standards. *The proposed rule change codifies the Exchange's financial listing standards and current practices, as well as clarifies and modifies the relevant interpretations. The modifications have been made to ensure transparency, auditability, replicability and certainty in the application of the standards. In detailing its standards, the Exchange has sought to preserve its goal of analyzing the financial strength of a listing applicant as the entity will exist at the time of listing. Specifically, the Exchange seeks to continue to be able to determine whether the company in its current form is financially suited for trading on the Exchange, taking into account (1) changes in capitalization, (2) acquisitions completed or committed to, and (3) excluding certain items which, based upon the Exchange's experience, should not be considered in assessing earnings strength on a going forward basis, because, by their nature, they are not necessarily recurring.*

a. Standard #1—"Pre-Tax Adjusted Earnings. The Exchange proposes to replace its current requirement that applicants "demonstrate earning power under competitive conditions" with a standard providing more specificity. The proposed standard is "pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted". In turn, the "as adjusted" phrase refers the reader to various items that are a part of the test. Each element of the restated test is discussed separately below.

First, "pre-tax earnings" captures the current standard of "income before federal income taxes." Thus, the Exchange proposes to continue to begin its analysis with a company's income before the application of all income taxes (state income taxes, although removed for NYSE analysis purposes in the past, have not materially altered any listing eligibility decision and, therefore, are now excluded as such) in order to create a picture of the company's gross income potential.

Second, "from continuing operations" focuses our analysis on ongoing operations and excludes any discontinued operations included in the company's historical financial statements. Discontinued operations by definition do not go forward and thus are not considered to be relevant to the entity being considered for listing. The Exchange notes that accounting rules specify that, upon management's commitment to discontinue an operation, financial statements for all relevant periods presented must be restated. Therefore, if the commitment is made after the period under Exchange review and the historical financial statements have not yet been restated, the Exchange will rely on the company to prepare this presentation of the adjusted data and accompany such presentation with an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to calculating the pre-tax earnings from continuing operations and after minority interest and equity in the earnings or losses of investees as adjusted giving effect to the discontinuance for each period under review.

Third, "after minority interest" removes results of an affiliate of the applicant company accrued to owners other than the applicant company due to its less than 100 percent ownership. The Exchange does not consider those results to be reflective of the equity interest in the security that would be trading on the Exchange. For example, in the case of a subsidiary that has a 20 percent privately held interest (*i.e.*, a 20 percent minority interest), only 80 percent of the interest in the subsidiary is reflected in the public stock. In this scenario, although 100 percent of the subsidiary is consolidated into the applicant parent's operations, only 80 percent of the subsidiary's earnings will accrue to common stock holders of the applicant parent company, as the 20 percent minority interest will be reflected as a liability on the company's books and removed from its consolidated operations. The Exchange would make the appropriate adjustment in its analysis to essentially include 80 percent of the earnings in the subsidiary by adjusting the pre-tax income for the reported minority interest provided such minority interest is not included as part of the company's pre-tax income on the face of the financial statement.[7]

Fourth, "after equity in the earnings or losses of investees" arises when an applicant company has an ownership interest in another corporation, the results of which are not consolidated into the applicant company's financial statements due to the application of the governing accounting principles. The Exchange considers these results to be part of the financial picture of the applicant company because they

[7] The Exchange notes that in the case of equity in the earnings or losses of investees, the reporting of the amount may not necessarily be included in "pre-tax earnings" but might be reported by the company below this presentation in its income statement. Accordingly, the Exchange would make the requisite adjustment for these amounts if necessary.

represent income or losses that will affect its income stream on an ongoing basis. Thus, any results of investments that accrue to the company will be accounted for in the Exchange's analysis to determine whether or not the company is eligible for listing in order to reflect all of the earnings accruing to the common shareholders. This will be effected by including these results from the company's income statement provided such results are not included as part of the company's pre-tax income on the face of the financial statement.

Fifth, the Exchange proposes to enumerate the adjustments to be made to the amount computed pursuant to the preceding four paragraphs. These adjustments would be part of the proposed standard and, as such, apply to every listing applicant. Applicant companies may only apply those adjustments arising from events specifically identified in the company's SEC filing(s) as to both categorization and amount. Thus, in order for an adjustment to be appropriately applied, it must be specifically identified and the amount applied must be specifically disclosed in the SEC filing, or subject to an agreed upon procedures letter in certain cases as discussed below. The following discussion itemizes and clarifies the Exchange's interpretation of the adjustments to be made to pre-tax income from continuing operations after minority interest and equity in the earnings and losses of investees.

The above-referenced adjustments are measured and recognized in accordance with the relevant accounting literature, such as that published by the Financial Accounting Standards Board ("FASB"), the Accounting Principles Board ("APB"), the Emerging Issues Task Force ("EITF"), the American Institute of Certified Public Accountants ("AICPA"), and the SEC.

Use of Proceeds. When the financial status of a company is evaluated in anticipation of an equity offering, whether an IPO or a secondary offering, the application of its intended use of proceeds to the company's historical financial statements can affect its ongoing earnings strength. Because it is this post-offering and recapitalized entity that is applying to list on the Exchange, its financial eligibility can best be analyzed by taking into account the application and intended use of the offering proceeds.

The Exchange has a long-standing policy of using the proceeds for all periods in determining the financial eligibility of a company seeking to list its securities on the Exchange. The company's registration documents (*e.g.*, Form S–1) often include pro-forma capitalization information that takes into effect the net proceeds and the ultimate intended use. The Exchange's practice is conceptually consistent with the Commission's rules governing pro forma statements, which permit the application and use of proceeds in the capitalization table with regard to deleveraging, and in the pro forma financial statement section of a registration statement with regard to both deleveraging and acquisitions and dispositions.

With respect to the scope of the application, however, the Exchange has a three-year eligibility review period and evaluates companies accordingly. In reviewing a company's historical results, the Exchange will continue to consider the effect of the offering on that three-year review period where the proceeds are used to pay existing indebtedness or to fund an acquisition. Thus, for a company that is in registration with the SEC and is in the process of an equity offering, the Exchange proposes to give effect to the pro forma presentation in the registration statement and to continue to give effect to the net proceeds of that offering, and its specified intended application, in two circumstances—deleveraging and acquisitions and dispositions.

With regard to use of proceeds for deleveraging, the Exchange's practice is to analyze the financial data that reflect the recapitalized entity seeking to qualify for listing on the Exchange. In doing so, because a recapitalization can fundamentally change the financial viability of a company, the Exchange will conduct its review as if the recapitalization occurred on the first day of the first year of its three-year analysis. In applying the standard, the actual historic interest paid each year on the debt to be retired by the application of the proceeds will be removed, and the principal amount of the debt will be retired. The pro forma effects of the deleveraging for the latest fiscal year and the interim period will be reflected in the company's SEC filing. If that specific debt was incurred prior to that period, the company would need to prepare adjusted financial statement data to account for the relevant preceding periods. Adjustments will not be made on any interest or principal payment(s) made on indebtedness other than that specifically being retired. To ensure reliability and accuracy of the adjusted data, the Exchange proposes to require that this adjustment be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to: (1) The existence of the debt and (2) the accuracy of the adjustments applied to the company's historical pre-tax earnings reflecting the retirement of the principal amount of the debt and the actual historic interest payments made.

Similarly, with regard to use of proceeds for acquisitions, the Exchange conducts its review as if the acquisition occurred on the first day of the first year of its analysis, provided the historical financial statements of the acquiree for such period are included in the company's SEC filings. The starting point for this analysis is the company's SEC filing, which will include a pro forma presentation for the latest fiscal year and the subsequent interim period. This pro forma presentation will give effect to those acquisitions that meet the significance test of SEC Rule 3–05 of Regulation S–X ("Rule 3–05"). Generally, the historical financial statements of the acquiree included in the filing also will be limited to the requisite periods disclosed pursuant the Rule 3–05 significance test.[8]

The second step of the analysis is to review the historical financials of the company included in the registration statement and record the acquisition as if it was consummated on the first day of the earliest fiscal year included in the acquiree's financial statements presented in the filing. The requisite document preparation entails combining the historical results of the company with the historical results of the acquiree and reflects the purchase accounting of the acquisition for the periods presented. Specifically, the adjustments would be limited to the combination, as well as (1) the allocation of the purchase price including adjusting assets and liabilities of the acquiree to fair value recognizing any intangibles (and associated amortization and depreciation) and (2) the effects of any additional financing to complete the acquisition.

The Exchange notes that the heading "acquisitions" encompasses the purchase of complete companies, divisions, subsidiaries, and underlying equity interests. For instance, if company A intends to use proceeds from an offering to acquire company B, and company B has a division that will not be part of the transaction, then company B's financial statements excluding that division would be relevant financials of the acquiree. In

[8] The Exchange notes that, depending upon the industry group of the listed company, other SEC rules and regulations may govern this concept. For example, real estate operations would be guided by SEC Rule 3–14 of Regulation S–X.

sum, if an acquisition includes only a portion of a company or if, as part of a transaction, the acquiror simultaneously discontinues a portion of the acquiree, the net purchase effect would be deemed to be the acquisition component applicable to the Exchange's financial review during the full applicable review period (*i.e.*, for all periods presented in the SEC filing).

As in the deleveraging analysis described above, to ensure reliability and accuracy of the adjusted data provided, the Exchange proposes to require that these adjustments, if not set forth in the SEC filing, be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter would state the procedures performed with respect to showing the effect of the relevant acquisition on the applicant company.

In conclusion, the proposed process of giving effect to the use of proceeds of an offering to fund an acquisition or pay down existing debt differs from current practice in four respects: (1) all historic annual financial statements used in the analysis will be included in the SEC filing, (2) the Manual will contain a concise, transparent guideline as to both when and for how many periods adjustments will be made, (3) the financial data and related adjustments used in the eligibility analysis will be limited to the four corners of the SEC filing, and (4) an agreed upon procedures letter will be required with respect to use of proceeds and acquisitions.

Acquisitions and Dispositions. In instances other than those associated with the use of proceeds, the Exchange proposes to limit its analysis to those acquisitions and dispositions that are disclosed as such in a company's financial statements in accordance with Rule 3–05 and Article 11–01(b)(2) of Regulation S–X. Unlike the use of proceeds to fund an acquisition, in this instance, the adjustment for the acquisition or disposition will be limited to those periods for which pro forma financial data are presented in the SEC filing. The analysis again begins with the pro forma presentation prepared in accordance with Article 11 of Regulation S–X and included in the company's SEC filing. Depending upon the significance test of Rule 3–05, the company's SEC filing will have a number of periods of historical financial statements of the acquiree. The filing also will have certain pro forma presentations that vary in their specificity depending upon the significance test of Rule 3–05.

For purposes of conducting the financial eligibility review, if there is a pro forma presentation included in the company's SEC filing that does not specify pre-tax earnings from continuing operations, minority interest, and equity in the earnings or losses of investees, the company must prepare the relevant data. As with the use of proceeds in the context of an acquisition, the presentation of the adjusted data will need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to showing the effect of the expansion of the pro forma presentation from the SEC filing into a more comprehensive income statement that contains the itemizations necessary for the Exchange to conduct its analysis (*i.e.*, pre-tax earnings from continuing operations after minority interest and equity in the earnings or losses of investees). If no detailed disclosure is provided for a particular acquisition or disposition, and the acquisition or disposition is only a factual, non-material, un-quantified reference, then the acquisition or disposition will not be given effect because it cannot be substantiated within the four corners of the company's SEC filing.

In the event that the applicant company has less than three years of operating history and is acquiring (either completed or committed) an entity with the requisite operating history, the Exchange will consider the combined operating history of the acquiror and acquiree for the preceding period(s) in conducting its financial eligibility review. If it is necessary to combine historical financial statements of the acquiree and aquiror in order to enable the Exchange to conduct its analysis (*e.g.*, overlapping fiscal years), then the combined data would need to be accompanied by an agreed upon procedures letter provided by the company's outside audit firm at the request of the company. The auditor's letter will state the procedures performed with respect to any necessary combination of historical data.

The Exchange notes that, in conducting a financial eligibility review for a company with an acquisition or disposition (either completed or committed), the agreed upon procedures letter will not be required if the SEC filing under review makes it self-evident that the company would qualify for listing on the Exchange irrespective of the acquisition or disposition. Thus, if the filing on its face shows that the company would qualify both before and after using proceeds to consummate the acquisition (*e.g.*, a de minimus acquisition or an acquisition where both entities independently qualify for listing), an agreed upon procedures letter would not be required. Similarly, for other acquisitions or dispositions, if the filing on its face shows that the company would qualify on both a stand-alone and combined basis, an agreed upon procedures letter would not be required. For instance, if the combined entity resulting from two major companies, each of which have several hundred million dollars in market capitalization and no losses over the past three years, was to be subject to an original listing eligibility review, the Exchange would be unnecessarily imposing a cost and burden upon the applicant entity by requiring the company to provide an agreed upon procedures letter to the Exchange, provided there was no other information that would lead the Exchange to another conclusion.

Merger or Acquisition Related Costs Recorded under Pooling of Interests. The Exchange proposes to exclude legal and accounting fees and other costs incurred by a company in effecting a merger or acquiring another entity accounted for as a pooling of interests (whether or not the transaction is consummated). When the transaction is accounted for under the pooling of interests method, merger and acquisition costs are recorded on the company's income statement. To remove the effect of this transaction from the company's financial statements, the company will make the requisite adjustment. For business combinations requiring purchase accounting, there is no need to separately address this issue as the cost does not affect the company's current income (the cost is considered part of the purchase price and any goodwill is amortized prospectively over the appropriate amoritization period).

Certain Charges or Income Specifically Disclosed in the Filing. Consistent with past practice, the Exchange proposes to exclude several items in assessing the applicant company's earnings strength or its cash flow. These items have been excluded either because they are associated with a company's adopted exit plan as defined in the accounting literature or, based on the Exchange's experience in assessing ongoing earnings strength, they are not necessarily recurring. Thus, the Exchange has found that making adjustments for these items presents a more accurate picture of the applicant company's earnings strength on a going forward basis. The items subject to adjustment are somewhat more limited

than those previously considered by the Exchange. In the interest of enhancing the transparency of the listing standards, the list of adjustments has been limited to those that can be objectively defined.

—Charges or Income Related to an Adopted Exit Plan

When a company adopts a specified exit plan, the charges or income of four items, if disclosed in the company's SEC filing, recorded in the company's financial statements in accordance with GAAP, and associated with the implementation of that plan, would be excluded by the Exchange in its proposed financial analysis: first, the costs of severance and termination benefits that are incurred as part of an exit plan (*e.g.*, involuntary termination of employees associated with a corporate down-sizing); second, costs and associated revenues and expenses associated with the elimination or reduction of product lines for which an exit plan has been adopted; third, costs incurred to consolidate, close, or re-locate plant or office facilities associated with an exit plan; and fourth, loss or gain on disposal of long-lived assets, which, by its definition, relates to assets that will no longer be held by the company.

—Environmental Clean-Up Costs

Environmental clean-up costs incurred in the remediation of environmental problems would be removed from the company's historical financial results. However, companies may not make adjustments for annual maintenance or on-going costs of compliance with environmental laws.

—Litigation Settlements

Litigation settlement costs, including any settlement amounts, interest payments and penalties so disclosed in a company's filings would be removed from the company's historic financial results. Companies may not make an adjustment for on-going, customary legal fees.

Impairment Charges on Long-lived Assets. Asset write downs that reflect the net realizable value of a long-lived asset (*e.g.*, property, plant and equipment, and goodwill) would be excluded from historic financial results. For instance, company A previously acquires company B and, at that time, establishes goodwill of $100 million. Two years later, company B's business significantly deteriorates. The recoverability of the previously recorded $100 million in goodwill can no longer be fully realized and the company determines that the net realizable amount is $60 million. The $40 million difference would represent the impairment charge (less any amortization to date). Because current assets are more likely to be operating assets, and thus akin to the day-to-day working capital of the company, no adjustment is made for any loss in their value. For instance, a company may not take write-downs on inventory or loans.

Gains or Losses Associated with Sales of a Subsidiary's or Investee's Stock. If a company has an ownership interest in another entity, or has a wholly-owned subsidiary, any gain or loss associated with the sale of all or part of the company's interest would be excluded from the company's historic results. For instance, if an applicant company owns 30 percent of another entity, for which it paid $1 million, the company has a cost basis of $1 million representing the purchase price of the acquisition. Were the company to sell that interest for $2 million, it would not be permitted to include that $1 million gain in the adjusted earnings submitted to the Exchange for evaluation of the company's financial eligibility status. These types of gains or losses would be reported separately by the company as non-operating items.

In Process Purchased Research and Development Charges. Purchased in-process research and development represents the value assigned in a purchase business combination to research and development projects of the acquired business that were commenced, but not yet completed, at the date of acquisition, and which, if unsuccessful, have no alternative future use in research and development activities or otherwise. Amounts assigned to purchased in-process research and development meeting this description must be charged to expense at the date of consummation of the business purchase combination. The Exchange will exclude this charge from a company's historical financial results.

Regulation S–X Article 11 Adjustments. Pro forma adjustments contained in a company's pro forma financial presentation provided in a current filing with the SEC are required to be made in accordance with SEC rules and regulations governing Article 11 "Pro forma information of Regulation S–X Part 210—Form and Content of and Requirements for Financial Statements." The Exchange will review the company's financial statements in the context of any such adjustments, which are subject to SEC review. These adjustments would be limited to the current registration statement as to types of adjustments, amounts and years disclosed (except for use of proceeds as discussed above).

Adoption of New Accounting Standard. When an accounting rule is changed, a company may adopt it prospectively or record the cumulative effect of the adjustment. Typically, when the new rule is announced, it is either specifically indicated that the implementation must be cumulative or companies are given the option regarding implementation. When the adoption of a new standard results in a cumulative effect of the accounting standard, the company will take a charge in the current year to make up for all past years as if the change had been previously in place. The effect of change in accounting principle disclosed in accordance with APB 20 is excluded from the company's financial statement for purposes of the Exchange's review.

b. Standard #2—"Adjusted Cash Flow". In addition to the Pre-Tax Adjusted Earnings standard discussed above, a second standard is available to companies with at least $500 million of market capitalization and $200 million of revenues in the most recent 12 month period. Companies that meet the size criteria may, in the current Manual, use an "adjusted net income" test, as that term is defined in the current accompanying footnote, of an aggregate for the last three years of at least $25 million with all years being positive.

The Exchange proposes to restate the standard applicable to the companies meeting the above-stated $500 million/ $200 million threshold to make the standard more transparent by incorporating the fundamental aspects of the footnote in the current Manual into the standard itself. In addition, the standard will explicitly indicate that the test includes adjustments for two purposes: the use of proceeds and acquisitions. Both of these categories of adjustments are discussed in detail in the discussion of the "Pre-Tax Adjusted Earnings" standard discussed above. The Exchange is proposing to limit the adjustments incorporated into this standard because the remaining adjustments may or may not have cash-flow implications for a particular company. Those that do have a cash flow effect will already have been accounted for in the operating activity section of the company's cash flow statement.

Policy Clarifications. The Exchange is also proposing to adopt several policies clarifying the use of the adjustments enumerated above, requiring the issuance of a press release by companies whose adjusted financial data were relied upon by the Exchange in granting

eligibility clearance, and delineating the consequences of restated financial statements.

First, all adjustments must be disclosed as such in the SEC filing of the applicant company—the amount must be within the four corners of the SEC filing or subject to an agreed upon procedures letter as discussed above. For example, if a company reports a consolidated line item for all losses or gains on disposal of assets without something in the filing providing specificity as to what portion of that number accounts for long-lived assets, the Exchange will not venture outside of the SEC filing to attempt to ascertain the appropriate amount for purposes of applying the test. This is because the cumulative number could include items such as inventory write-downs, which are not subject to adjustment.

Second, as noted above, as a general rule, the Exchange will only accept the application of an adjustment in the year in which the event giving rise to the adjustment occurred. Thus, no event can give rise to an adjustment in the financial statements for any prior year. The two exceptions are (1) the use of proceeds for deleveraging and acquisitions and dispositions (for companies currently in registration for an equity offering) and (2) acquisitions and dispositions. The reason for a proposed longer scope of application for the two exceptions is detailed in the discussion above.

Third, any company for which the Exchange relies on adjustments to historical financial figures in granting financial eligibility clearance must take steps to ensure full public disclosure of how it qualified. The Exchange recognizes that, although listing applications are a matter of public record, many investors may not be aware that they are available and may believe that only the most recent publicly available SEC document is relied upon in evaluating a company. Thus, the Exchange proposes to impose two requirements on issuers. First, the Exchange proposes to codify its requirement that any adjusted financial data relied upon by the Exchange in granting financial clearance to the company must be included in the company's listing application. Second, the Exchange proposes to require these issuers to issue a press release stating that (1) pro forma financial adjustments were used to qualify the company and (2) all relevant additional information is available to the public upon request.

With respect to companies that restate financial statements due to a change from unacceptable to acceptable accounting principles and/or correction of errors, the Exchange proposes to codify its policy of reviewing the company's status at the time of the restatement. Once a company issues a restatement that affects one of the years used by the Exchange to qualify the company for listing, the Exchange will determine whether or not the company would have qualified at the time of its original financial clearance with the restated numbers. If not, the company will be subject to suspension and delisting procedures unless the company meets the original listing standards at the time of the restatement using the most recent three fiscal years of financial statements as restated. The Exchange is adopting this policy because it would be unnecessarily disruptive to delist a company for its failure to meet the standards of the Exchange at some point in the past, when the company could immediately reapply for listing and qualify for listing the very next day.

Non-U.S. Standards. The Exchange is proposing several changes to Section 103 of the Manual pertaining to non-U.S. companies (1) to carry forward relevant items from the revisions pertaining to domestic companies, and (2) to clarify the drafting of this section. Four aspects of these changes deserve mention:

- The non-U.S. public market value requirement is already $100 million worldwide; thus, no change is required.
- Replacement of NTAs with stockholders' equity as an alternate measure of size is the same except that the threshold for non-U.S. companies will remain at $100 million.
- The definition of IPOs is the same as for domestic issuers, but the representation of market value to be received in connection with a spin-off may also come from the parent company's transfer agent.
- Adjustments for foreign currency are appropriate for non-U.S. companies because their operations are inherently tied to the underlying fundamentals of their respective national economies. Thus, the Exchange does not consider their effect to be a part of the company's on-going operations if it is due to a significant economic devaluation. For purposes of this adjustment, the Exchange deems a currency devaluation of more than ten percent as against the U.S. dollar to be significant.

A domestic issuer with foreign operations would not be able to make this adjustment because the Exchange deems currency losses to be a cost of doing business in a foreign country.

Real Estate Investment Trusts. The Exchange is also proposing to codify a policy it has applied regarding the original listing criteria for real estate investment trusts (REITs). The Exchange generally lists REITs either in connection with an IPO or shortly thereafter, when the REIT does not have a three-year operating history. Specifically, the standard proposed for such newly-formed REITs, similar conceptually to that recently adopted for Funds,[9] is:

- If the REIT has at least $60 million in stockholders' equity, the Exchange will generally authorize the listing of the REIT.
- For those REITs listing in conjunction with an offering, this requirement would need to be evidenced by a written commitment from the underwriter (or, in the case of a spin-off or carve-out, from the parent company's investment banker or other financial advisor). In this regard, the Exchange notes that this is the minimum stockholders' equity requirement for listing.
- The Exchange retains the discretion to deny listing to a REIT if it determines that, based upon a comprehensive financial analysis, it is unlikely to be able to maintain its financial status.
- Any newly-formed REIT with less than $60 million in stockholders' equity will not be considered for listing.

Continued Listing Procedures. The Exchange is proposing two amendments regarding the continued listing of a company. The first is a codification of existing practice with respect to companies that qualify for listing based, at least in part, upon adjusted historical data.

Specifically, the Exchange's continued listing criteria subjects a company to delisting if it had NTAs or an aggregate market value of its common stock of less than $12 million and average net income of less than $600,000 for the past three years. In calculating average net income for a company during the initial three years following its listing, the Exchange takes into consideration those specific adjustments made to the company's historical financial data for the relevant year in the original listing application. This consideration is limited both as to the specific adjustment made during the initial clearance as well as to the year in which the adjustment was made. Otherwise, companies often would be subject to suspension and delisting immediately upon listing—an inconsistent outcome.

The second amendment proposed by the Exchange is a revision and codification of the procedures to be

[9] Securities Exchange Act Release No. 40979 (January 26, 1999), 64 FR 5332 (February 3, 1999).

instituted when a company is identified by Exchange staff as being below the continued listing criteria. The Exchange is proposing to impose specific time frames with respect to the notification, monitoring, and suspension and delisting, where appropriate, of these companies' securities. In addition, the Exchange proposes to change its current practice of requiring companies to return to original listing standards within 36 months of falling below continued listing standards. Instead, the Exchange proposes to require these companies to return to good standing by emerging from the below continued listing standards status within six quarters of being notified of this status, as described in more detail below. Specifically, the changes are as follows:

- Once the Exchange identifies a company as being below the continued listing criteria, the Exchange will notify the company by letter within 10 business days;
- The notification letter will provide the company with an opportunity to provide the Exchange with a plan to return to compliance within 18 months of receipt of the letter (the "Plan), identify quarterly (semi-annual for non-U.S. issuers) milestones against which the company's progress would be measured by Exchange staff, and allow 45 days (90 days for non-U.S. issuers) for the submission of such a Plan;
- The company will be required to contact the Exchange within 10 business days (30 business days for non-U.S. issuers) of receipt of the letter, or be subject to suspension and delisting, to confirm receipt of the notification, discuss any possible financial data of which the Exchange may be unaware, and indicate whether or not it intends to submit a Plan;
- The Exchange's procedures for evaluating the qualification of non-U.S. companies for continued listing are substantively identical to those for domestic issuers, but makes allowances for somewhat longer time zone and communication differences and the absence of a quarterly filing requirement;
- Failure to submit a Plan within the allotted 45 days (90 days for non-U.S. issuers) will subject the company to suspension and delisting procedures;
- Upon receipt of a Plan, Exchange staff will evaluate the Plan and make a determination within 45 days of receipt of the Plan as to whether or not to accept the Plan;
- If the Exchange does not accept the Plan, the company will be subject to suspension and delisting procedures;
- If the Exchange does accept the Plan, the company will be subject to quarterly (semi-annual for non-U.S. issuers) monitoring against the Plan's milestones. If the company fails to meet the material aspects of the Plan, any of the quarterly (semi-annual for non-U.S. issuers) milestones, or the 18-month deadline, the Exchange will review the circumstances and variance, and take appropriate action that may include the initiation of suspension and delisting procedures. Should the Exchange determine to proceed with suspension and delisting procedures, it may do so regardless of the company's continued listing status at that time (in any event, if the company does not meet continued listing standards at the end of the 18-month period, the Exchange promptly will initiate suspension and delisting procedures); and
- Within the aforementioned 45-day (90-day for non-U.S. issuers) period, the company must issue a press release disclosing the fact that it has fallen below the continued listing standards of the Exchange; if it fails to do so, then the Exchange will issue the requisite press release.

2. Statutory Basis

The basis under the Act for the proposed rule change is the requirement under Section 6(b)(5) [10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange represents that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–13 and should be submitted by May 24, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10984 Filed 4–30–99; 8:45 am]

BILLING CODE 8010–01–U

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41333; File No. SR–PCX–99–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange Inc. Relating to Broker Hand Held Terminal Fees and Independent Broker Fees

April 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934[1] ("Act"), and Rule 19b–4 thereunder,[2] notice is hereby given that on March 31, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. PCX has designated this proposal as one establishing or changing a due, fee or other charge imposed by PCX under Section 19(b)(3)(A)(ii) of the Act,[3] which renders the proposal effective upon filing by the Commission. The Commission is publishing this notice to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to change its Schedule of Fees and Charges for Exchange Services by modifying charges for the use of exchange sponsored hand held terminals for options floor brokers and eliminating independent broker charges. The text of the proposed rule change is available at the Office of the Secretary, PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Background. The Commission recently approved a proposal by the Exchange relating to fees for use of exchange sponsored hand held terminals for options floor brokers.[4] In the filing the Exchange proposed a monthly equipment fee of $200 for each exchange sponsored hand held terminal and a $0.03 per contract charge for orders of 10 contracts or less which are not directed to the Pacific Options Exchange Trading System ("POETS")[5] through a Member Firm Interface ("MFI").

With the use of hand held terminals, PCX Member Firms have the advantage of sending their orders electronically to either (1) a Floor Broker's exchange sponsored terminal located in the trading crowd;[6] (2) a Member Firm booth located on the trading floor; or (3) to POETS, where they will be automatically executed by Auto-Ex or maintained in Auto-Book.

Proposal. The Exchange now proposes to change its monthly equipment fee of $200 for each exchange sponsored hand held terminal to $300 to be billed to the Floor Broker registered to use it. The Exchange believes the change in the monthly fee more accurately reflects the costs of device and support hardware for the system over the useful life to the system. In addition, the Exchange proposes to permanently eliminate the charge of $0.03 per contract for orders of 10 contracts of less which are not directed to POETS through an MFI. Given the need to dedicate technology resources to other projects, the Exchange does not have the resources to make the necessary changes to implement the $0.03 per contract charge at this time.

In addition, the Exchange charges Independent Floor Brokers a transaction charge of $0.02 per contract. In an effort to provide relief to the independent brokers on the Exchange floor, the Exchange proposes to permanently eliminate this charge.[7] The Exchange proposes to eliminate this charge to help offset the high costs that Independent Floor Brokers incur while conducting business on the Options Floor. The Exchange notes that Indepdendent Brokers perform an important function on the Options Floor, particularly when a large influx of orders needs to be executed.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b)[8] of the Act, in general, and furthers the objectives of Section 6(b)(4),[9] in particular, because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A) of the Act[10] and subparagraph (f) of Rule 19b–4 thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to file number SR–PCX–99–08, and should be submitted by May 24, 1999.

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[4] Securities Exchange Act Release No. 40644 (November 5, 1998), 63 FR 63766 (November 16, 1998) (File No. SR–PCX–98–44).

[5] POETS is the Exchange's automated options trading system. *See* generally Securities Exchange Act Release No. 27633 (January 18, 1990), 55 FR 2466 (January 24, 1990) (Order approving File No. SR–PSE–89–26).

[6] Securities Exchange Act Release No. 39970 (May 7, 1998), 63 FR 2662 (May 13, 1998).

[7] On February 13, 1998, PCX filed to waive the $0.02 per option contract charge to Independent Floor Brokers until further notice. The current filing eliminates the fee permanently. *See*, Exchange Act Release No. 39695 (February 24, 1998), 63 FR 10420 (March 3, 1998).

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 19b–4(f).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–10986 Filed 4–30–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Comments should be submitted by July 2, 1999.

FOR FURTHER INFORMATION CONTACT: Curtis B. Rich, Management Analyst, Small Business Administration, 409 3rd Street, S.W., Suite 5000, Washington, D.C. 20416. Phone Number: 202–205–6629.

SUPPLEMENTARY INFORMATION:

Title: "SBIC Licensing Application Part 1, Part 2 and Guidelines for Applications".

Form No: 415.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 60.

Annual Burden: 160.

Title: "SBIC Licensing Application Management Assessment Form".

Form No: 415A.

Description of Respondents: Applicants for SBIC Licenses.

Annual Responses: 60.

Annual Burden: 160.

Comments: Send all comments regarding this information collection to Saunders Miller, Senior Policy Advisor, Office of Investment Division, Small Business Administration, 409 3rd Street S.W., Suite 6300, Washington, D.C. 20416. Phone No: 202–205–3646.

Send comments regarding whether this information collection is necessary for the proper performance of the function of the agency, accuracy of burden estimate, in addition to ways to minimize this estimate, and ways to enhance the quality.

Jacqueline K. White,

Chief, Administrative Information Branch.

[FR Doc. 99–10941 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–P

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

National Small Business Development Center Advisory Board; Public Meeting

The U.S. Small Business Administration National Small Business Development Center Advisory Board will hold a public meeting on Sunday, July 18, 1999, from 9:00 am to 5:00 pm at the University of Alaska Conference Center, Anchorage, Alaska to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, please write or call Ellen Thrasher, U.S. Small Business Administration, 409 Third Street, SW, Fourth Floor, Washington, DC 20416, telephone number (202) 205–6817.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–10942 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

New England States Regional Fairness Board Public Hearing

The U.S. Small Business Administration Region I Advisory Council located in the geographical area of Hartford, CT, will hold a public meeting at 9:30 a.m. on June 24, 1999, at the Legislative Office Building Broadway Street and Capitol Avenue Hartford, CT 06106. The space is being provided by the State Government. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, please write or call Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–11000 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Northwestern States Regional Fairness Board Public Hearing

The U.S. Small Business Administration Region X Advisory Council located in the geographical area of Portland, OR, will hold a public meeting at 9:00 a.m. on July 7, 1999, at the Portland Building Auditorium 120 SW 5th Portland, OR. To receive comments and testimony from small businesses and representatives of trade associations concerning regulatory enforcement or compliance taken by federal agencies. Transcripts of these proceedings will be posted on the Internet. These transcripts are subject only to limited review by the National Ombudsman.

For further information, please write or call Gary P. Peele (312) 353–0880.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–11001 Filed 4–30–99; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

[Public Notice #2998]

Advisory Committee to the U.S. Section of the Inter-American Tropical Tuna Commission (Committee Renewal)

The Department of State has renewed the Charter of the Advisory Committee to the U.S. Section of the Inter-American Tropical Tuna Commission (IATTC) for another two years.

The IATTC was established pursuant to section 4 of the Tuna Conventions Act of 1950 (U.S.C. 953, as amended). The goal of the Advisory Committee is to serve the U.S. Section of the IATTC, the Department of State, and other agencies of the U.S. Government, as advisors on matters relating to the conservation and management of international stocks of tuna and dolphins in the eastern tropical Pacific Ocean, in particular, on the development of U.S. policy and positions associated with such matters.

The Committee is composed of representatives of the major U.S. tuna harvesting, processing, and marketing sectors. Additionally, Committee membership includes representatives of recreational fishing interests and environmental interests.

The Advisory Committee will continue to follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will continue to be open to the public unless a determination is made in accordance with Section 10 of the FACA, 5 U.S.C. 552b(c) (1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting continues to be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information on the renewal of the Advisory Committee, please contact Brian S. Hallman, Deputy

Director, in the Office of Marine Conservation in the Department of State, (202) 647–2335.

Dated: March 22, 1999.

Brian S. Hallman,

Deputy Director, Office of Marine Conservation.

[FR Doc. 99–11006 Filed 4–30–99; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5042]

Agency Information Collection Activities Under OMB Review

AGENCY: Coast Guard, DOT.

ACTION: Request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Information Collection Reports (ICRs) abstracted below have been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICRs describe the nature of the information collections and their expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collections of information was published on February 5, 1999 (64 FR 5851). The Coast Guard received no comments on that notice.

DATES: Comments must be submitted on or before June 2, 1999.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention USCG Desk Officer.

Copies of the complete Information Collection Requests are available in the public docket USCG–1999–5042 on the Internet at http:dms.dot.gov and also from Commandant (G–SII–2), U.S. Coast Guard Headquarters, room 6106, (Attn: Barbara Davis), 2100 2nd Street, SW., Washington, DC 20593–0001. The telephone number is 202–267–2326.

FOR FURTHER INFORMATION CONTACT: Barbara Davis, Office of Information Management, 202–267–2326, for questions on this document. Documents as indicated in this notice are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation (DOT), room PL–401, 400 Seventh Street SW., Washington, DC 20590–001, between 10 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329. You may also electronically access the public docket for this notice on the Internet at *http://dms.gov.gov*. For questions on viewing material in the docket, contact Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard requests comments on the purposed collection of information to determine whether it is necessary for the proper performance of the functions of the Department, including: (1) its practical utility; (2) the accuracy of the Department's estimated burden of the proposed information collection; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Information Collection Requests

Title: Tank Vessel Examination Letter (CG–840S–1 & 2) Certificate of Compliance, Boiler/Pressure Vessel Repairs, Cargo Gear Records, and Shipping Papers.

OMB Control Number: 2115–0504.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners and operators.

Form(s): CG–840S–1 and CG–840S–2.

Abstract: The requirements for reporting Boiler/Pressure/Valve Repairs, maintaining Cargo Gear Records, and Shipping Papers, issuing Certificate of Compliance and Tank Vessel Examination Letters provide the marine inspector with available information on the condition of a vessel and its equipment. It also contains information on the vessel owner and lists the type and amount of cargo that has been or is being transported. These requirements all relate to the promotion of safety of life at sea and protection of the marine environment.

Annual Estimated Burden Hours: 21,531.

Title: Self-propelled Liquefied Gas Vessels.

OMB Control Number: 2115–0113.

Type of request: Extension of currently approved collection.

Affected Public: Vessel owners and operators.

Form(s): N/A.

Abstract: The reporting and recordkeeping requirements are needed to ensure compliance with U.S. regulations for the design and operation of liquefied gas carriers. The regulations also address cargo operations, handling and safety.

Annual Estimated Burden Hours: 4,070.

Title: Instructional Material for Lifesaving, Fire Protection and Emergency Equipment.

OMB Control Number: 2115–0576.

Type of Request: Extension of currently approved collection.

Affected Public: Equipment manufacturers.

Form(s): N/A.

Abstract: Manufacturers are required to produce instructional materials for vessel operators on lifesaving, fire protection, and emergency equipment. The material is used during training sessions and emergencies.

Annual Estimated Burden Hours: 8,512.

Title: Alternate Compliance Program—Record of Inspections.

OMB Control Number: 2115–0626.

Type of Request: Extension of currently approved collection.

Affected Public: Classification societies.

Form(s): N/A.

Abstract: Information for this report is only collected when an owner or operator of an inspected vessel voluntarily decides to participate in the U.S. Coast Guard's Alternate Compliance Program. The information collected will be used to assess compliance prior to issuance of a Certificate of Inspection.

Annual Estimated Burden Hours: 190.

Title: Requirements for Lightering of Oil and Hazardous Material Cargoes.

OMB Control Number: 2115–0539.

Type of Request: Extension of currently approved collection.

Affected Public: Vessel owners and operators.

Form(s): N/A.

Abstract: The information for this report allows crew members of U.S. vessels to provide proper and timely response to an emergency, to minimize personnel injuries or deaths and prevent environmental damage from an oil or hazardous material spill. The information is used during training sessions and during emergencies.

Annual Estimated Burden Hours: 315.

Issued in Washington, DC on April 19, 1999.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Director of Information and Technology.

[FR Doc. 99–10994 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5451]

Waiver Application; Tank Vessel; Reduction of Gross Tonnage

AGENCY: Coast Guard, DOT.

ACTION: Notice; request for comments.

SUMMARY: The Coast Guard is requesting comments on the Reinauer Transportation Companies' waiver application to reduce the gross tonnage of the tank barge R.T.C. 90, Official Number 625082. Approval of this waiver application will change the vessel's double hull compliance date prescribed by 46 U.S.C. 3703a. The company has met all the requirements for issuance of a waiver and this document provides the required public notice and sixty-day comment period concerning the application. The Coast Guard will consider all comments received during the comment period before taking final action on the Reinauer Transportation Companies application.

DATES: Comments and related material must reach the Docket Management Facility on or before July 2, 1999.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1999–5451), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and materials referred to in this notice will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Mr. Bob Gauvin, Project Manager, Office of Operating and Environmental Standards, Commandant (G–MSO–2), Coast Guard, telephone 202–267–1053. For questions on viewing, or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit written data, views, or arguments concerning the waiver application. Please include your name and address, identify the docket number (USCG–1999–5451), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. Submitted materials should be in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

We do not now plan to hold a public meeting. But, you may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would be helpful, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background

The Oil Pollution Act of 1990 (OPA 90) requires most single hull tank vessels carrying oil in bulk as cargo or cargo residue to either convert to double hull configuration or to stop operating in U.S. waters by the dates specified in the statute. These dates, in 46 U.S.C. 3703a, are based on the vessel's age, gross tonnage, and hull configuration. In general, the latest operational date for single hull tank vessels is January 1, 2010, and for tank vessels with double sides or double bottoms is January 1, 2015.

Before July 1, 1997, a tank vessel owner could extend a single hull tank vessel's operational life by converting cargo tanks into voids or segregated ballast tanks and reducing its gross tonnage. If the reduction in gross tonnage placed the vessel under a different subsection of 3703a, the vessel then had a later date for double hull compliance.

In 1997, Pub. L. 105–85 added a new subsection (e) to 46 U.S.C. 3703a mandating that after July 1, 1997, a tank vessel's gross tonnage could not be altered for the purpose of determining its double hull compliance date without a waiver from the Secretary of Transportation. The new provision required that all waiver applications be received by January 1, 1998. We received requests from six U.S. and one foreign tank vessel owners for conversions of fourteen tankships, two integrated tug-barge units (ITBs), and fifteen barges. On January 6, 1998, the Secretary of Transportation delegated his authority to the Commandant to act on these waiver requests.

In February 1998, we contracted a study entitled *An Investigation Into the Re-Admeasurement of Single Hull Tankships and Barges By Means of Protectively Located Segregated Ballast Tanks.* The study determined which conversions of cargo tanks into protectively-located segregated ballast tanks (PL/SBT) would result in a significant reduction in oil outflow when specific parameters are met. The study, looking at three sizes of tankships and tank barges, evaluated the risk of oil discharge and used the probabilistic oil outflow applications we had previously established under the OPA 90 requirements of § 3703a to evaluate new tank vessel hull designs. The study found that in order for tank vessels to significantly reduce the risk of oil discharge, enough cargo tanks must be converted to PL/SBT to meet an equivalent oil spill (EOS) number of at least 15% less than the vessel's existing outflow signature.

We provided a copy of the study and the conversion parameters to each waiver applicant so they could submit their plans for modifications and complete the supporting materials for their waiver applications. A copy of the Coast Guard study is available for review in the public docket at the address under **ADDRESSES**.

Requirements for issuance of a waiver

As required by § 3703a, a completed waiver application package consists of—

- An application received by January 1, 1998;
- Reliable evidence that the tank vessel had not undergone, nor contracted to undergo, alterations that reduce the gross tonnage of the vessel before July 1, 1997; and
- Supplementary materials that demonstrate the proposed alterations to the tank vessel will result in a

significant reduction in the risk of a discharge of oil.

We must then determine if both—

• The owner of the tank vessel has entered into a binding agreement to alter the tank vessel in a shipyard in the United States to reduce the gross tonnage of the tank vessel by converting a portion of the cargo tanks of the vessel into PL/SBT; and

• The conversion will result in a significant reduction in the risk of a discharge of oil.

Section 3703a requires that we must then provide public notice and a sixty-day comment period on each application before we can issue a waiver.

Alterations under this waiver must be completed by the later of either July 1, 1999, or the date of the vessel's next special hull survey after November 18, 1997.

Application for the R.T.C. 90

Our records show that the Reinauer Transportation Companies (RTC) tank vessel R.T.C. 90, Official Number 625082, is a U.S. certificated single hull oil tank barge which was built in 1980. The barge was originally admeasured with a gross tonnage of 5,455. According to 46 U.S.C. 3703a(c)(3), the barge's double hull compliance date is January 1, 2005.

With an approved waiver, RTC will reduce its vessel's gross tonnage to less than 5,000 gross tons (GT). Its new double hull compliance date under § 3703a(e) would be January 1, 2008.

The application from RTC meets the requirements for a waiver under § 3703a(e) by having provided the following:

• Waiver application for the tank vessel R.T.C. 90, received on December 19, 1997;

• "Statement of Attestation" that the R.T.C. 90's gross tonnage was not reduced by a contract or shipyard alteration on or before July 1, 1997;

• Copy of its repair contract with Caddell Drydock and Repair Company Inc, of Staten Island, New York, to complete the modifications to the R.T.C. 90 by installing a new bulkhead at frame 6 and converting the spaces forward of this bulkhead to PL/SBT for the vessel's reduction of tonnage; and

• Appropriate supplementary materials.

Based on the supplementary materials provided by RTC for the tank vessel R.T.C. 90, we have determined the following:

• RTC can complete the tank barge modifications before September 2000, the date of the vessel's next classification society special survey.

• RTC's probabilistic oil outflow signature of the proposed vessel modifications will reduce the EOS by 21%.

RTC's complete waiver application has been placed in the docket for public review at the address under **ADDRESSES**. We will consider all comments received during the comment period before taking final action on the RTC waiver application for the modification and reduction of tonnage to the tank vessel R.T.C. 90.

Dated: April 25, 1999.

R.G. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–10952 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of a Final Environmental Impact Statement on the Potomac Consolidated Terminal Radar Approach Control (TRACON) Facility

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of a Final Environmental Impact Statement for the Potomac Consolidated TRACON.

SUMMARY: The Federal Aviation Administration (FAA) has released a Final Environmental Impact Statement (FEIS) for construction of a new Terminal Radar Approach Control (TRACON) facility in the Baltimore-Washington area. The proposed action is to consolidate four stand-alone TRACONs located at Baltimore-Washington International Airport, Ronald Reagan Washington National Airport, and Washington Dulles International Airport; and the FAA operated TRACON located at Andrews Air Force Base, Maryland. The new Potomac Consolidated TRACON (PCT) would be located at a site in Northern Virginia. The preferred site is at the former Vint Hill Farms Station near Warrenton, VA.

DATES: Written comments on the FEIS will be accepted until June 1, 1999. Written comments may be sent to: FAA Potomac TRACON Project, c/o Mr. Fred Bankert, PRC Inc., 12005 Sunrise Valley Drive, Reston, VA 20191–3423.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Champley, Project Support Specialist, Federal Aviation Administration, (800) 762–9531, Email:joe.champley@faa.gov.

SUPPLEMENTARY INFORMATION: A TRACON facility provides radar air traffic control services to aircraft operating on Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) procedures generally beyond 5 miles and within 50 miles of the host airport at altitudes from the surface to approximately 17,000 feet. These distances and altitudes may vary depending on local conditions and infrastructural constraints such as adequate radar and radio frequency coverage. The primary function of the TRACON is to provide a variety of air traffic control services to arrival, departure, and transient aircraft within its assigned airspace. These services include aircraft separation, in flight traffic advisories and navigational assistance. The four existing TRACON facilities provide terminal radar air traffic control services to the four major airports and a number of small reliever airports located within the Baltimore-Washington area.

In accordance with regulations implementing the National Environmental Policy Act, a range of alternatives is considered in the FEIS including replacement or refurbishment of three of the four existing TRACONs, partial consolidation, No Action and full consolidation. The full consolidation alternative would not cause significant environmental impact in any of the 23 impact categories assessed.

Since there was minimal comment on the Draft Environmental Impact Statement during the 45-day comment period, the entire document has not been republished. Copies of the comments and responses are available for review at major libraries in the study area. A summary of the FEIS can be viewed on the Internet at http://www.faa.gov/ats/potomac.

Dated: April 19, 1999 in Washington, DC.

John Mayrhofer,

Director, TRACON Development Program.

[FR Doc. 99–10995 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Reports, Forms and Recordkeeping Requirements; Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44

U.S.C. et seq.), this notice announces that the Information Collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The nature of the information collection is described as well as its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on February 12, 1999, [64 FR 7233].

DATES: Comments must be submitted on or before June 2, 1999.

FOR FURTHER INFORMATION CONTACT: Crawford Ellerbe, Office of Maritime Labor, Training, and Safety, Maritime Administration, MAR–250, Room 7302, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–2643 or fax 202–493–2288. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Regulations for Making Excess or Surplus Federal Property Available to the U.S. Merchant Marine Academy, State Maritime Academies, and Approved Nonprofit Maritime Training Institutions.

OMB Control Number: 2133–0504.

Type of Request: Extension of a currently approved information collection.

Affected Public: Maritime training institutions interested in acquiring the excess or surplus property from MARAD.

Form Number(s): None.

Abstract: In accordance with 46 U.S.C. 12959, MARAD requires approved maritime training institutions seeking excess or surplus property to provide a statement of need/justification prior to acquiring the excess or surplus property. The information provided is used by MARAD officials to determine compliance with applicable statutory requirements.

Annual Estimated Burden Hours: 120 Hours.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW, Washington, DC 20502, Attention MARAD Desk Officer.

Comments Are Invited On: Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: April 27, 1999.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 99–10963 Filed 4–30–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TREASURY

Internal Revenue Service

Announcement of Open Membership Application Period for the Information Reporting Program Advisory Committee

AGENCY: Internal Revenue Service (IRS), Treasury.

SUMMARY: In 1991 the Internal Revenue Service (IRS) established the Information Reporting Program Advisory Committee (IRPAC) at the request of the United States Congress. The primary purpose of IRPAC is to provide an organized public forum for discussion of relevant information reporting issues between officials of the IRS and representatives of the payer community. IRPAC offers constructive observations about current or proposed policies, programs, and procedures, and when necessary, suggests ways to improve the operation of the Information Reporting Program. IRPAC is currently comprised of 20 representatives from various segments of the private-sector payer community. About half of these appointments to IRPAC will expire at the end of 1999. Additional members will be selected for two-year terms beginning in January 2000. The IRS is interested in representation from different areas of the payer community.

SUPPLEMENTARY INFORMATION: IRPAC reports to the National Director, Office of Specialty Taxes, who is the executive responsible for ensuring and facilitating compliance by payers with information reporting requirements. IRPAC is instrumental in providing advice to enhance the IRP Program. Increasing participation by external stakeholders in the planning and improvement of the tax system will help achieve the goals of increasing voluntary compliance, reducing burden, and improving customer service. IRPAC members are not paid for their time or services, but consistent with Federal regulations, they will be reimbursed for their travel and lodging expenses to attend two public meetings each year. IRPAC members are expected to attend and pay their own way to four working sessions each year, which are generally held in Washington, DC. Occasionally, a meeting will be held in New York, NY; Martinsburg, WV; Austin, TX; or elsewhere.

Anyone wishing to be considered for membership on IRPAC should so advise the IRS. Please complete the following application questionnaire (or a facsimile thereof prepared on a word processor), and forward it to Ms. Kate LaBuda of the Office Payer Compliance, at the address below.

ADDRESSES: Internal Revenue Service, OP:EX:ST:PC, 1111 Constitution Avenue, NW., Room 2013, Washington, DC 20224.

DATES: Completed questionnaires (or facsimiles) should be received by IRS no later than Friday, June 3, 1999. Questionnaires received after this date will not be considered. An acknowledgment letter will be sent upon receipt.

FOR FURTHER INFORMATION CONTACT: To have a copy of the application questionnaire mailed or faxed to you, please call Ms. Gloria Wilson at 202–622–4393 (not a toll-free number). For general information about the application process or IRPAC in general, call Kate LaBuda at 202–622–3404 (not a toll-free number).

Approved: April 22, 1999.

Kate LaBuda,

Acting Director, Office of Payer Compliance.

Information Reporting Program Advisory Committee Membership Application Questionnaire

The following questions must be answered by anyone interested in becoming a member of the Information Reporting Program Advisory Committee (IRPAC). Applications (or facsimiles produced on a word processor) must be received at the address listed below by June 3, 1999. Those received after this date will not be considered. All applications received will be acknowledged. Questions may be directed to Kate LaBuda at 202–622–3404.

Ms. Kate LaBuda, OP:EX:ST:PC, Internal Revenue Service, Room 2013, 1111 Constitution Avenue. NW, Washington, DC 20224

1. Name: _____
2. Title: _____
3. Employer Name: _____
4. Business Address: _____
5. Business Phone: _____
6. Fax Number: _____

7. E-Mail Address: _____

8. If you are applying on behalf of an organization or association other than your employer, please state the name, and address of that organization. Also, provide a letter of reference from that organization stating that you are nominated on their behalf to represent them. This letter should contain the name of a contact and this contact's phone number.

9. Home Address: _____

10. Home Phone: _____

11. Have you ever served on IRPAC or any other IRS advisory committee such as the Commissioner's Advisory Group (CAG), the Internal Revenue Service Advisory Council (IRSAC), the Electronic Tax Administration Advisory Committee (ETAAC), or any other one? If so, please explain. Do you currently have an application pending for membership on any other IRS advisory committee?

12. Check the one segment of the Information Reporting Program (IRP) payer community to which the organization that you represent, and your experience, most closely relate:

____Real Estate
____Transmitter/Forms Developer
____Software Developer
____Insurance: Property & Casualty
____Insurance: Life
____Insurance: Health
____Securities
____Mutual Funds
____Payroll
____State & Local Government
____Corporate Compliance
____Small Business Compliance
____Public Accounting
____Employee Plans
____Trust Company
____Corporate Transfer Agent/Utilities
____Large Banks/Financial Institution
____Small Banks/Financial Institution
____Restaurant Industry
____Other (Please specify. _____).

13. List the number of years of IRP-related experience you have, and specific sources of this IRP experience. (Please account for all years of IRP experience claimed.)

14. List professional credentials (e.g., Ph.D., CPA, Enrolled Agent, Attorney, Accountant, etc.)

15. Identify organizations to which you belong and any relevant leadership positions you have held.

16. List any previous IRS employment (please state position(s), title(s), and time in each position):

17. Please propose two topic ideas that you feel would be appropriate for discussion by IRPAC. Include a short description (three sentences) of each topic.

The Following Three Items are Required for an FBI Name Check

18. Date of Birth: _____

19. Place of Birth: _____

20. Other names ever used: _____

The Following Items are Required for an IRS Tax Check. (Please Note That a Tax Check is Not a Tax Audit.)

The Internal Revenue Service will perform the standard Federal Advisory Committee member tax check, (pursuant to 26 U.S.C. 6103; 5 U.S.C. 1303; Executive Orders 9397, 11222, 10450; CFR 5.2; 31 CFR Part O, Treasury Department Order Nos. 82 (Revised) and 150–87) and provide the information obtained to the Assistant Secretary (Administration) of the Treasury Department. The purpose of this tax check is to promote public confidence in the integrity of the Treasury Department and its administration of the Federal tax system. Your Social Security Number is required to identify your tax records accurately. This tax check must be completed prior to any appointment to this Federal Advisory Committee and you are now being asked to voluntarily provide the following information and, at a later time, you will be asked to sign a formal tax check waiver:

21. Social Security Number (SSN): _____

22. Spouse's name and SSN (if married and filing jointly): _____

The Following Item is Required Because of the Foreign Agents Registration Act (FARA), as Amended

23. I presently ____am / ____am not required to register as an agent of a foreign principal under FARA, as amended.

Note: Pursuant to 18 U.S.C. sec. 219, an individual who is required to register as an agent of a foreign principal under FARA is prohibited from serving on IRPAC. By executing this questionnaire, you agree that (1) if you are required to register as an agent of a foreign principal under the FARA before your term commences on IRPAC, you will terminate any and all such agencies prior to beginning your tenure and will provide appropriate verification therefor; and (2) you will immediately resign from IRPAC if you become such an agent at any time during your term.

Certification

24. I certify that, to the best of my knowledge and belief, all of my statements are true, correct, complete, and made in good faith. I also agree to the background checks set forth herein.

_____

Signature

_____

Date

[FR Doc. 99–10935 Filed 4–30–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Renewable Electricity Production Credit, Publication of Inflation Adjustment Factor and Reference Prices for Calendar Year 1999

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Publication of inflation adjustment factor and reference prices for calendar year 1999 as required by section 45(d)(2)(A) (26 U.S.C. 45(d)(2)(A)).

SUMMARY: The 1999 inflation adjustment factor and reference prices are used in determining the availability of the renewable electricity production credit under section 45(a).

DATES: The 1999 inflation adjustment factor and reference prices apply to calendar year 1999 sales of kilowatt hours of electricity produced in the United States or a possession thereof from qualified energy resources.

Inflation Adjustment Factor

The inflation adjustment factor for calendar year 1999 is 1.1269.

Reference Prices

The reference prices for calendar year 1999 are 4.836¢ per kilowatt hour for facilities producing electricity from wind and 0¢ per kilowatt hour for facilities producing electricity from closed-loop biomass. The reference price for electricity produced from closed-loop biomass, as defined in section 45(c)(2), is based on a determination under section 45(d)(2)(C) that in calendar year 1998 there were no sales of electricity generated from closed-loop biomass energy resources under contracts entered into after December 31, 1989.

Because the 1999 reference prices for electricity produced from wind and closed-loop biomass energy resources do not exceed 8¢ multiplied by the inflation adjustment factor, the phaseout of the credit provided in section 45(b)(1) does not apply to electricity sold during calendar year 1999.

Credit Amount

As required by section 45(b)(2), the 1.5¢ amount in section 45(a)(1) is adjusted by multiplying such amount by the inflation adjustment factor for the calendar year in which the sale occurs. If any amount as increased under the

preceding sentence is not a multiple of 0.1¢, such amount is rounded to the nearest multiple of 0.1¢. Under the calculation required by section 45(b)(2), the renewable electricity production credit for calendar year 1999 under section 45(a) is 1.7¢ per kilowatt hour on the sale of electricity produced from closed-loop biomass and wind energy resources.

FOR FURTHER INFORMATION CONTACT: David A. Selig, IRS, CC:DOM:P&SI:5, 1111 Constitution Ave., NW, Washington, DC 20224, (202) 622–3040 (not a toll-free call).

Dated: April 21, 1999.

Judith Dunn,

Associate Chief Counsel (Domestic).

[FR Doc. 99–10934 Filed 4–30–99; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Youth Leadership Program for Bosnia and Herzegovina; Request for Concept Papers

SUMMARY: The Office of Citizen Exchanges, Youth Programs Division, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for a Youth Leadership Program for Bosnia and Herzegovnia. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit concept papers to conduct a minimum three-week program for B–H secondary school students in the United States in August/September 1999. The maximum amount of the grant is $33,000.

Program Information

USIA is implementing a new project for youth from Bosnia-Herzegovina on the theme of leadership. As this project is being initiated on a small scale and with short lead time, USIA is seeking concept papers from organizations that can provide a substantive, U.S.-based program on leadership and civic education.

Concept papers should propose a project idea for the Youth Leadership Program. From the concept papers received, a USIA review panel will select the most highly qualified concept papers to be expanded into full proposals for an award that will contribute to the implementation of the proposed project. Please see the guidelines for preparing the concept paper later in this document.

The goals of this project are: (1) To provide a civic education program that helps the students understand civic participation and the rights and responsibilities of citizens in a democracy; (2) to develop leadership skills among B–H secondary school students appropriate to their needs; and (3) to build personal relationships among high school students and teachers from Bosnia-Herzegovina and the United States.

Applicants: USIA invites concept papers from any eligible private or public non-profit organization or institution. The primary objective is to identify an organization that has the capability to provide a high-quality leadership and civic education program and that has experience conducting such programs for international participants. Secondarily, USIA seeks an organization with experience working specifically with the people of Bosnia and Herzegovnia. Applicants need not have a partner in Bosnia and Herzegovina, as the USIA post in Sarajevo will assume that role for this project; i.e., select and orient students and make international travel arrangements.

Guidelines

Participants: The participants will be (1) ten high school students between the ages of 14 and 18 who have demonstrated leadership in their schools and/or communities and who are high academic achievers, and (2) two teachers who have demonstrated leadership and are expected to remain in positions where they can continue to do so. Participants will be proficient in the English language.

Selection and orientation: USIS Sarajevo will select the participants. The CIVITAS network in Bosnia and Herzegovina will help publicize the program and help USIS identify current and potential civic leaders. USIS will also be responsible for providing a pre-departure orientation for the participants and arranging international air travel from Bosnia and Herzegovina to the specific destination in the United States.

Program dates: The grant should begin in July 1999 and conclude after the exchange program. The preferred time period for the program is August/ /September 1999. Alternatively, the participants would be able to travel in January of 2000, provided substantive programming can be arranged. The program should be no less than three weeks in duration.

Program: The program should focus primarily on interactive activities, practical experiences, and other hands-on opportunities to learn about the fundamentals of a civil society and building leadership skills. Suggestions include simulations, a community service project, and leadership training exercises. Secondarily, the program may include some briefings, discussions, and classroom visits (if local schools are in session). Programming should include American participants wherever possible. Cultural and recreational activities may be used to balance the schedule. The program need not be specifically arranged for the B-H participants; that is, arranging for them to participate in pre-established camp or workshop is acceptable. If this is proposed, however, it needs to fulfill all of the stated objectives or do so in conjunction with other activities scheduled just for this delegation.

Applicant organizations may propose a program along the lines described above. Additional suggestions for the student program include youth leadership workshops; exercises or simulations related to rule of law and citizen participation in government and in addressing societal problems (*e.g.*, the environment, development, drug addiction prevention); meetings with government, community, and business leaders to see real-life examples of leadership in action; exposure to student government and peer mediation groups; team-building exercises; computer training for access to Internet resources and for follow-on communication; and cultural and historical tours.

Although some of their activities may overlap with the students, the educators should have some opportunities to work with their American peers and other professionals and volunteers to discuss civic education curricula, extracurricular youth leadership activities, volunteerism, civic participation activities for youth, and the organization and management of youth activities.

The recipient organization should conduct a welcome orientation for the participants upon arrival in the United States and host a closing meeting for them just prior to departure.

Sites of program: The delegation should spend its time in the United States in no more than two locations so that the participants have time to familiarize themselves with a community. Desirable locations are those with schools or community organizations that have a demonstrated interest in Bosnia and Herzegovina or those with universities involved in the USIA undergraduate program for B-H students. We will also consider proximity to state capitals and other sites of interest, access to organizations that can conduct appropriate

workshops, and representation of the geographic and ethnic diversity of the United States.

Housing: Homestays with local families are desirable for some or all of the exchange period. A dormitory or other inexpensive group housing is also an acceptable arrangement.

Overall responsibilities of the assistance award recipient include:

1. Design and planning of activities that provide a substantive program on civic education and leadership through both academic and extracurricular components;
2. Domestic travel and logistical arrangements
   a. Homestay or group housing
   b. Disbursement of per diem
   c. Local travel
   d. Travel between sites
   e. Enrollment of the participants in USIA's accident and sickness insurance program
   f. Confirmation of and changes in return international travel
3. timely reporting of progress to USIA
4. Monitoring, evaluation, and follow-on activities
5. Fiscal management of all accounting and contractual relations
6. Financial and program reporting

The grant recipient will not need to purchase international airline tickets for the participants nor will it need to arrange for visas for entry to the United States. USIA will issue IAP–66 forms so that participants may obtain J–1 visas.

Application process: USIA invites organizations to submit a concept paper, no less than three and no more than five pages, single-sided, single-spaced, that outlines a plan to conduct the above program.

Concept Paper Format: After clearly marking the title and number of this solicitation, please include all of the following information in your concept paper:

1. U.S. organization, department, and project director, with complete contact information including address, telephone, fax, and e-mail
2. Project summary
3. Dates of project
4. Project objectives and desired outcomes, based on the goals stated in this solicitation
5. Outline of proposed activities and sites
6. Details on proposed activities, including workshops, excursions, community service, welcome and closing sessions, opportunities to interact with Americans, etc.
7. Housing, transportation, and logistical arrangements
8. Project evaluation
9. Organization's capacity to implement proposed project

Budget Guidelines

The award may not exceed $33,000. The budget must cover all participant expenses once they have arrived at the U.S. airport closest to the site of the activities. Administrative expenses should not exceed $10,000. Significant cost-sharing will be expected; homestays are not allowed as a cost-share item. A detailed budget will be requested with the full proposal.

Announcement Title and Number

All correspondence with USIA concerning this RFP should reference the above title and number *E/PY–99–52.*

For Further Information, Contact

The Youth Programs Division, E/PY, Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, Telephone: (202) 619–6299, Fax: (202) 619–5311, E-mail: clantz@usia.gov. Please specify USIA Program Officer Carolyn Lantz on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before making inquiries or submitting concept papers. Once the deadline has passed, Agency staff may not discuss this competition with applicants until the review process has been completed.

Deadline for Concept Papers

All copies of the concept papers must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on *Friday, May 21, 1999.* Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the concept papers are received by the above deadline.

The original and 7 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/PY–99–52,* Office of Grants Management, Room 568, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the concept paper on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to the USIS post overseas for their review, with the goal of reducing the time it takes to gets posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Review Process

All eligible concept papers will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIA post overseas. Eligible concept papers will be forwarded to panels of USIA officers for advisory review. USIA will notify respondents about the status of the concept papers by June 7, 1999.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below.

1. *Quality of the program idea:* Concept papers should exhibit originality, substance, precision, and relevance to the Agency's mission.

2. *Program planning:* An agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Institutional capacity/Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Concept papers should clearly demonstrate how the institution will meet the program's objectives and plan. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

4. *Support of Diversity:* Concept papers should demonstrate substantive support of the Bureau's policy on diversity.

5. *Project Evaluation:* Concept papers should describe a plan to evaluate the activity's success, both as the activities unfold and at the end of the program.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through Support for Eastern European Democracies (SEED) legislation.

Notice

The terms and conditions published in this Request for Concept Papers are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFCP does not constitute an award commitment on the part of the Government. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: April 26, 1999.

Judith S. Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–10981 Filed 4–30–99; 8:45 am]

BILLING CODE 8230–01–M

federal register

Monday
May 3, 1999

Part II

Environmental Protection Agency

40 CFR Part 35

Revised Allotment Formulas for State and Interstate Monies Appropriated Under Section 106 of the Clean Water Act; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR PART 35

[FRL–6332–1]

Revised Allotment Formulas for State and Interstate Monies Appropriated Under Section 106 of the Clean Water Act

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: This regulation revises the formulas for allotting funds appropriated under Section 106 of the Clean Water Act (CWA) to States and to interstate agencies for administering water quality programs. Section 106 of the CWA authorizes the Environmental Protection Agency (EPA) to provide grants to States and interstate agencies, and Indian Tribes qualified under CWA Section 518(e), to assist them in administering programs for the prevention, reduction, and elimination of pollution.

The allotment formula for the tribal portion of the Section 106 Grant Program was revised in 1997 and is not affected by this action.

The CWA directs EPA to allocate Section 106 funds "on the basis of the extent of the pollution problem in the respective States." The Section 106 allotment formulas were previously based on data more than 25 years old, including population data from the 1960s and data on pollution sources from the early 1970s. Reports of current water quality conditions around the country, provided by States under CWA Section 305(b), indicate that the location and nature of the sources of water pollution have changed significantly since the early 1970s. Utilizing the more recent data, EPA revised the CWA Section 106 State and interstate allotment formulas to better comply with the statutory directive to allocate funds to States and interstate agencies based on the "extent of the pollution problem." Notice of revised State and interstate agency allotment formulas for Fiscal Year (FY) 1999 was published in the **Federal Register** (63 FR 59870 (1998)).

Based on public comments received on the FY 1999 formulas, EPA has revised the CWA Section 106 State allotment formula to incorporate a perpetual "hold harmless" provision, which ensures that all States will receive an allotment at least equal to their FY 2000 allotment level for FY 2001 and beyond unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level.

These revised Section 106 State and interstate allotment formulas will be effective for Fiscal Year 2000 and beyond.

DATES: This rule is effective May 3, 1999.

FOR FURTHER INFORMATION CONTACT: Carol Crow, Office of Wastewater Management (4201), 401 M Street, S.W., Washington, D.C. 20460; Telephone: (202) 260–6742; Facsimile: (202) 260–1156; E-mail: crow.carol@epa.gov

SUPPLEMENTARY INFORMATION:

Regulated Entities

States, the District of Columbia, Puerto Rico, the Insular Areas, and interstate agencies eligible to receive grants under Section 106 of the Clean Water Act are regulated by this rule.

Background

Section 106(a) provides general authority for grants to States, interstate agencies, and Indian Tribes qualified under CWA Section 518(e), to assist them in administering programs for the prevention, reduction, and elimination of water pollution. Section 106(b) of the CWA requires the Administrator of the Environmental Protection Agency (EPA) to make allotments from sums appropriated by Congress in each fiscal year "on the basis of the extent of the pollution problem in the respective States."

The Section 106 allotment formulas were previously based on data that is now more than 25 years old, including population data from the 1960s and inventory data for large cattle feedlots, industrial and municipal point sources, and power plants dating from the early 1970s. Reports of current water quality conditions around the country, provided by States to EPA under CWA Section 305(b), indicate that the location and nature of the sources of water pollution have changed significantly since the early 1970s.

For the FY 1999 formula revision process, EPA organized a work group consisting of geographically-balanced representation from the Agency, seven States, and an interstate agency to review the former formula and to consider other approaches. The State representatives were recommended by the Environmental Council of States (ECOS), the Association of State and Interstate Water Pollution Control Administrators (ASIWPCA) and the Ground Water Protection Council (GWPC). The representatives selected by these organizations were encouraged to share information and gather opinions from other States in their region and in their associations. The work group evaluated a wide range of alternative approaches and ultimately developed and recommended revised State and interstate allocation formulas for use in determining Section 106 State and interstate allotments for FY 1999.

Utilizing the more recent data, EPA revised the allotment formulas for FY 1999 to ensure the allotment of funds to States and interstate agencies based on the "extent of the pollution problem in the respective States." Notice of revised allotment formulas for States and interstate agencies for Fiscal Year (FY) 1999 was published in the November 5, 1998, **Federal Register** (63 FR 59870).

Based on a significant increase in the appropriation for the Section 106 Grant Program in FY 1999, the revised formula specifically provided that no State's FY 1999 allotment would be less than its FY 1998 allotment. For FY 1999, the funding increase also provided additional resources to most States. In subsequent years, under the FY 1999 formula, States would not lose more than 5 percent of their Section 106 allotment in any one year, or more than a total of 20 percent from their FY 1998 Section 106 allotment.

The funding set-aside for interstate agencies was returned to its historical (FY 1976) high level of 2.6 percent of the total State monies appropriated for States under the Section 106 Grant Program.

EPA published the revised FY 1999 formulas in the November 5, 1998, **Federal Register** Notice and requested public comments be submitted no later than January 4, 1999. In response to public comments, EPA reconvened an expanded Section 106 Formula work group comprised of EPA and State representatives to develop final Section 106 allotment formulas for FY 2000 and beyond. To ensure that States from each EPA Region were provided with an opportunity to participate directly in the development of the final revised allotment formulas, the membership of the original Section 106 Formula work group was expanded to include four additional State representatives. Work group representatives were encouraged to share information and gather opinions from other States in their regions and in their associations.

In response to specific concerns raised in the comments, EPA recommended incorporation of a perpetual "hold harmless" provision in the final Section 106 State allotment formula. After extensive discussion, the work group members unanimously agreed to implement a perpetual "hold harmless" provision in the final State

formula. This provision will (1) ensure that all States will be eligible to receive an allotment at least equal to their FY 2000 allotment for FY 2001 and beyond, provided that the appropriation for States under the Section 106 Grant Program does not decline from its FY 2000 level; and (2) all States will be eligible to receive a portion of any increase in the appropriation for States under the Section 106 Grant Program. For FY 2000, each of the 21 entities [1] that did not receive an increase in its allotment from FY 1998 to FY 1999 (i.e., the entity received the same allotment in FY 1999 that it received in FY 1998) will receive at least its FY 1999 allotment plus an allowance for inflation based on the Consumer Price Index (CPI). Each of the 35 entities [2] that received a funding increase from FY 1998 to FY 1999 will receive its FY 1999 allotment minus a pro rata share of the funds necessary to ensure the inflation allowance for the aforementioned 21 entities.

Once the work group members reached agreement on the implementation of the "hold harmless" provision, accordingly they agreed to maintain the components, data sources, and weights used in the FY 1999 formula as published in the November 5, 1998, **Federal Register** in the final Section 106 allotment formulas for FY 2000 and beyond.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., as amended by SBREFA, EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under Section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 604(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

This rule imposes no new requirements on small entities, nor does it adversely impact them. It updates existing funding allotment formulas for States and interstate agencies to ensure that the allotments of CWA Section 106 funds to States and interstate agencies are based on the "extent of the pollution problem in the respective States." Based on the incorporation of a perpetual "hold harmless" provision in the State allotment formula, all States will receive an allotment at least equal to their FY 2000 allotment level for FY 2001 and beyond, unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level. The set-aside funding for interstate agencies was restored to its historical high of 2.6 percent of the total funds appropriated for States under the Section 106 Grant Program.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. The UMRA excludes from the definition of "Federal intergovernmental mandate" duties that arise from conditions of federal assistance. Thus, today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule contains no regulatory provisions that might significantly or uniquely affect small governments, as those are defined at 2 U.S.C. 658(11) (i.e. governments of cities, counties, towns, townships, villages, school districts, or special districts with populations of less than 50,000). The Section 106 allotment formula for the tribal portion of the Section 106 Grant Program is not affected by this rule. Thus, today's rule is not subject to the requirements of Section 203 of UMRA.

National Technology Transfer and Advancement Act

Under Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), EPA is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used, the Act requires EPA to provide Congress, through the Office of Management and Budget (OMB), an explanation of the reasons for not using such standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Paperwork Reduction Act

Under the Paperwork Reduction Act (PRA), as amended, 44 U.S.C. 3501 *et seq.* information collection requirements contained in rules must be approved by OMB before they are effective. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a current valid OMB control number. This rule does not contain any collection of information requirements. Since this action imposes no information collection, reporting or record-keeping requirements, this rule is not subject to the PRA.

Executive Order 12866

Under Executive Order 12866, [58 FR 51735 (October 4, 1993)] "Regulatory Planning and Review," the Agency must determine whether the regulatory action is "significant" and is therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

[1] 17 States, the District of Columbia, Guam, Puerto Rico, and the U.S. Virgin Islands

[2] 33 States, American Samoa, and the Northern Mariana Islands

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject ot OMB review."

Executive Order 13045

Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that is: (1) determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under Section 5–501 of the Order has the potential to influence the regulation. EPA has determined that the proposed rule is not a covered regulatory action because it is not economically significant as defined under Executive Order 12866, and it does not establish an environmental standard to mitigate health or safety risks. As a result, this rule is not subject to the requirements of the Executive Order 13045.

Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule merely establishes formulas for the allotment of Federal funds to States and interstate agencies. Accordingly, the requirements of Section 1(a) of Executive Order 12875 do not apply to this rule.

Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian tribal governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not affect the communities of Indian tribal governments, because Tribes are covered under 40 CFR Part 35, 35.265, which remains in effect as published. Accordingly, the requirements of Section 3(b) of Executive Order 13084 do not apply to this rule.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. Section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. Section 804(2). This rule will be effective May 3, 1999.

List of Subjects in 40 CFR Part 35

Environmental protection, Administrative practices and procedures, Evaluation of performance, Grant programs—environmental protection, Work plan requirements.

Dated: April 20, 1999.

Carol M. Browner,

Administrator.

EPA amends 40 CFR part 35 as follows:

PART 35—STATE AND LOCAL ASSISTANCE

1. The authority citation for part 35, subpart A continues to read as follows:

Authority: Secs. 105 and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7405 and 7601(a)); Secs. 106, 205(g), 205(j), 208, 319, 501(a) and 518 of the Clean Water Act, as amended (33 U.S.C. 1256, 1285(g), 1285(j), 1288, 1361(a) and 1377); secs. 1443, 1450, and 1451 of the Safe Drinking Water Act (42 U.S.C. 300j–2, 300j–9 and 300j–11); secs. 202(a) and 3011 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 (42 U.S.C. 6912(a), 6931, 6947, and 6949); and secs. 4, 23, and 25(a) of the Federal Insecticide, Fungicide and Rodenticide Act, as amended (7 U.S.C. 136(b), 136(u) and 136w(a)).

2. Subpart A is amended by adding § 35.251 and § 35.252 to read as follows:

§ 35.251 Definitions.

As used herein, the following words and terms shall have the meaning set forth below:

(a) The term *allotment* means the sum reserved for each State or interstate agency from funds appropriated by the Congress. The allotment is determined by formula based on the extent of the water pollution problem in the respective States. It represents the maximum amount of money potentially available to the State or interstate agency for its program grant.

(b) The term *program grant* means the amount of federal assistance awarded to a State or interstate agency under Section 106 of the Clean Water Act to assist in administering programs for the prevention, reduction and elimination of water pollution.

(c) The term *State* means a State, the District of Columbia (DC), the Commonwealth of Puerto Rico (PR), the U.S. Virgin Islands (VI), Guam (GU), American Samoa (AS), and the Commonwealth of the Northern Mariana Islands (CNMI).

(d) The term *interstate agency* means an agency that meets the requirements of Section 502(2) of the Clean Water Act (CWA) and which is determined to be eligible for receipt of a grant under CWA Section 106 and these regulations by the Administrator.

(e) The term *component* refers to one of the six factors selected for use in the Section 106 State allotment formula. Each component of the formula was selected based on its potential contribution to the extent of water pollution problems within the respective States and to the workload of State water pollution control programs.

(f) The term *element* refers to one of the constituent factors used to provide greater specificity to a component in the Section 106 State allotment formula. Certain components are composed of two or more "elements." For example, the nonpoint source component of the Section 106 State allotment formula is composed of an agricultural element, a logging element, and an abandoned mine element.

(g) The term *sub-element* refers to one of the constituent factors used to provide greater specificity to an element in the Section 106 State allotment formula. Certain elements are composed of two or more "sub-elements." For example, the abandoned mine element of the nonpoint source component is composed of a soft-rock mining sub-element and a hard-rock mining sub-element.

(h) The term *funding floor* refers to the minimum amount of funding that a State will be allotted in any fiscal year.

(i) The term *maximum level of funding* refers to the ceiling on the amount of funding that a State can be allotted in any fiscal year.

§ 35.252 State and interstate allotments.

(a) *Allotments.* Each fiscal year funds appropriated for States under Section 106 will be allotted to States and interstate agencies on the basis of the extent of the pollution problems in the respective States. A portion of the funds available to States under the Section 106 Grant Program will be set-aside for allotment to eligible interstate agencies. For FY 2000 and subsequent years, the interstate set-aside will be set at the level of 2.6 percent of the total funds appropriated for States under the Section 106 Grant Program.

(b) *State allotment formula.* The Section 106 State allotment formula establishes an allotment ratio for each State based on six components selected to reflect the extent of the water pollution problem in the respective States. A funding floor is established for each State with provisions for periodic adjustments for inflation. The formula also provides for a maximum funding level that a State can receive in any fiscal year (150% of its previous fiscal year allotment).

(1) *Components and component weights.* (i) *Components.* The six components used in the Section 106 State allotment formula are: Surface Water Area; Ground Water Use; Water Quality Impairment; Point Sources; Nonpoint Sources; and Population of Urbanized Area. The components for the formula are presented in Table 1 of this section, with their associated elements, sub-elements, and supporting data sources.

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Table 1: Components of the Section 106 State Allotment Formula

Formula Component	Element	Sub-Element	Data Source
1. Surface Water Area			U.S. Department of Commerce, Bureau of the Census, *Statistical Abstract of the United States*.
2. Ground Water Use	**a. Non-agricultural withdrawals**		U.S. Department of the Interior, U.S. Geological Survey, *Estimates of Water Use in the United States*.
	b. Population served by CWSs that use GW for the majority of their source water		U.S. Environmental Protection Agency, Office of Water, *Safe Drinking Water Information System*.
3. Water Quality Impairment	**a. Impaired rivers and streams** (miles)		U.S. Environmental Protection Agency, Office of Water, *National Water Quality Inventory* [based on State-submitted §305(b) reports].
	b. Impaired lakes, ponds, and reservoirs (acres)		
	c. Impaired estuaries (square miles)		
	d. Impaired wetlands (acres)		
	e. Impaired ocean waters (shoreline miles)		
	f. Impaired Great Lake waters (shoreline miles)		
4. Point Sources	**a. Agriculture** (total animal units)		U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture*.
	b. Industrial	**i. Manufacturers**	U.S. Department of Commerce, Bureau of the Census, *Census of Manufactures*.
		ii. Mining operations	U.S. Department of Commerce, Bureau of the Census, *Census of Mineral Industries*.
		iii. Power plants	U.S. Department of Energy, Office of Coal, Nuclear, Electric, and Alternate Fuels, *Inventory of Power Plants in the U.S.*
	c. Municipal dischargers		U.S. Environmental Protection Agency, Office of Water, *Wastewater Facilities Database*.
5. Nonpoint Sources	**a. Agriculture**		U.S. Department of Commerce, Bureau of the Census, *Census of Agriculture*.
	b. Logging		U.S. Department of Commerce, Bureau of the Census, Economic Census, *Census of Manufactures*.
	c. Abandoned mines	**i. Abandoned soft-rock (coal) mining operations**	U.S. Department of the Interior, Office of Surface Mining, *Abandoned Mine Land Inventory System*.
		ii. Abandoned hard-rock mining operations	U.S. Department of the Interior, Bureau of Mines, *Minerals Availability System/ Mineral Industry Location System*.
6. Population of Urbanized Areas			U.S. Department of Commerce, Bureau of the Census, *Census of Population and Housing*.[1]

[1] The population living in urban areas (*Census* designated places with 2,500 or more residents) rather than population living in urbanized areas (one or more *Census* designated places and the associated urban fringe that together have 50,000 or more residents) will be used for PR and the Insular Areas (VI, AS, GU, and CNMI).

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(ii) *Component weights.* To account for the fact that not all of the selected formula components contribute equally to the extent of the pollution problem within the States, each formula component is weighted individually. Final component weights will be phased-in by FY 2004, according to the schedule presented in Table 2 of this section:

TABLE 2.—COMPONENT WEIGHTS IN THE SECTION 106 STATE ALLOTMENT FORMULA

Component	FY 2000 (percent)	FY 2001 (percent)	FY 2004+ (percent)
Surface Water Area	13	13	12
Ground Water Use	11	12	12
Water Quality Impairment	13	25	35
Point Sources	25	17	13
Nonpoint Sources	18	15	13
Population of Urbanized Area	20	18	15
Total	100	100	100

(2) *Funding floor.* A funding floor is established for each State. Each State's funding floor will be at least equal to its FY 2000 allotment in all future years unless the appropriation for States under the Section 106 Grant Program decreases from its FY 2000 level.

(3) *Funding decrease.* If the appropriation for the State Section 106 Grant Program decreases in future years, the funding floor will be disregarded and all States allotments will be reduced by an equal percentage.

(4) *Inflation adjustment.* Funding floors for each State will be adjusted for inflation when the appropriation for the State Section 106 Grant Program increases from the preceding fiscal year. These adjustments will be made on the basis of the cumulative change in the Consumer Price Index (CPI), published by the U.S. Department of Labor, since the most recent year in which State Section 106 funding last increased. Inflation adjustments to State funding floors will be capped at the lesser of the percentage change in appropriated funds or the cumulative percentage change in the inflation rate.

(5) *Cap on annual funding increases.* The maximum allotment to any State will be 150 percent of that State's allotment for the previous fiscal year.

(6) *Cap on component ratio.* A component ratio is equal to each State's share of the national total of a single component. The cap on each of the six State formula components ratios is 10 percent. If a State's calculated component ratio for a particular component exceeds the 10 percent cap, the State will instead be assigned 10 percent for that component. The component ratios for all other States will be adjusted accordingly.

(7) *Update cycle.* The data used in the State formula will be periodically updated. The first update will impact allotments for FY 2001, and will consist of updating the data used to support the Water Quality Impairment component of the State formula. These data will be updated using the most currently available CWA Section 305(b) reports. After this initial update, the data used to support all six components of the Section 106 State allotment formula will be updated in FY 2003 (for use in the determination of FY 2004 allotments). Thereafter, all data will be updated every five years (i.e., in FY 2008 for FY 2009 allotments, in FY 2013 for FY 2014 allotments, etc.) Note there will be an annual adjustment to the funding floor for all States, based on the appropriation for the Section 106 Grant Program and changes in the CPI.

(c) *Interstate allotment formula.* EPA will set-aside 2.6 percent of funds appropriated for States under the Section 106 Grant Program for interstate agencies. The Section 106 interstate allotment formula consists of two parts: a base allotment; and a variable allotment.

(1) *Base allotment.* Each eligible interstate agency is provided with $125,000 as a base allotment to help fund coordination activities amongst its member States. However, no more than 50 percent of the total available interstate set-aside may be allocated as part of the base allotment. If, given the 50 percent limitation placed on the base allotment the amount of interstate set-aside funds is insufficient to provide each interstate agency with $125,000, then each interstate agency will receive a base allotment equal to 50 percent of the total interstate set-aside divided by the total number of eligible interstate agencies.

(2) *Variable allotment.* The variable allotment provides for funds to be distributed to interstate agencies on the basis of "the extent of the pollution problems in the respective States." Funds not allotted under the base allotment will be allotted to eligible interstate agencies based on each interstate agency's share of their member States' Section 106 formula allotment ratios. Updates of the data for the six components of the Section 106 State allocation formula will automatically result in corresponding updates to the variable allotment portion of the interstate allotments. The allotment ratios for those States involved in compacts with more than one interstate agency will be allocated amongst such interstate agencies based on the percentage of each State's territory that is situated within the drainage basin or watershed area covered by each compact.

[FR Doc. 99–10631 Filed 4–30–99; 8:45 am]

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Monday
May 3, 1999

Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Bird Hunting; Proposed 1999–2000 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AF24

Migratory Bird Hunting; Proposed 1999–2000 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter we) proposes to establish annual hunting regulations for certain migratory game birds for the 1999–2000 hunting season. We annually prescribe outside limits (frameworks) within which States may select hunting seasons. We also request proposals from Indian tribes that wish to establish special migratory bird hunting regulations on Federal Indian reservations and ceded lands. Migratory game bird hunting seasons provide hunting opportunities for recreation and sustenance; aid Federal, State, and tribal governments in the management of migratory game birds; and permit harvests at levels compatible with migratory bird population status and habitat conditions.

DATES: You must submit comments for proposed early-season frameworks by July 27, 1999; and for proposed late-season frameworks by September 7, 1999. Tribes should submit proposals and related comments by June 2, 1999.

ADDRESSES: Send your comments on the proposals to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours in room 634, Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Ron W. Kokel at: Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634–ARLSQ, 1849 C Street, NW., Washington, DC 20240 (703) 358–1714.

SUPPLEMENTARY INFORMATION: For administrative purposes, this document consolidates the notice of intent and request for tribal proposals with the preliminary proposals for the annual hunting regulations-development process. We will publish the remaining proposed and final rulemaking documents separately. For inquiries on tribal guidelines and proposals, tribes should contact the following personnel.

Region 1—Brad Bortner, U.S. Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; (503) 231–6164.

Region 2—Jeff Haskins, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, New Mexico 87103; (505) 248–7885.

Region 3—Steve Wilds, U.S. Fish and Wildlife Service, Federal Building, One Federal Drive, Fort Snelling, Minnesota 55111–4056; (612) 713–5432.

Region 4—Frank Bowers, U.S. Fish and Wildlife Service, 1875 Century Boulevard, Room 324, Atlanta, Georgia 30345; (404) 679–4000.

Region 5—George Haas, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589; (413) 253–8576.

Region 6—John Cornely, U.S. Fish and Wildlife Service, P.O. Box 25486, Denver Federal Building, Denver, Colorado 80225; (303) 236–8145.

Region 7—Robert Leedy, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, Alaska 99503; (907) 786–3423.

Notice of Intent To Establish Open Seasons

This notice announces our intent to establish open hunting seasons and daily bag and possession limits for certain designated groups or species of migratory game birds for 1999–2000 in the contiguous United States, Alaska, Hawaii, Puerto Rico, and the Virgin Islands, under §§ 20.101 through 20.107, 20.109, and 20.110 of subpart K of 50 CFR part 20.

"Migratory game birds" are those bird species so designated in conventions between the United States and several foreign nations for the protection and management of these birds. Hunting of all other birds designated as migratory (under § 10.13 of Subpart B of 50 CFR Part 10) is not permitted. For the 1999–2000 hunting season, we will propose regulations for certain designated members of the avian families Anatidae (ducks, geese, and swans); Columbidae (doves and pigeons); Gruidae (cranes); Rallidae (rails, coots, moorhens, and gallinules); and Scolopacidae (woodcock and snipe). We describe these proposals under Proposed 1998–99 Migratory Game Bird Hunting Regulations (Preliminary) in this document. We published definitions of waterfowl flyways and mourning dove management units, as well as a description of the data used in and the factors affecting the regulatory process, in the March 14, 1990, **Federal Register** (55 FR 9618).

Regulatory Schedule for 1999–2000

This is the first in a series of proposed and final rulemaking documents for migratory game bird hunting regulations. We will make proposals relating to the harvest of migratory game birds initiated after this publication available for public review in supplemental proposed rulemakings. Also, we will publish additional supplemental proposals for public comment in the **Federal Register** as population, habitat, harvest, and other information become available.

Because of the late dates when certain portions of these data become available, we anticipate abbreviated comment periods on some proposals. Special circumstances limit the amount of time we can allow for public comment on these regulations. Specifically, two considerations compress the time for the rulemaking process: the need, on one hand, to establish final rules early enough in the summer to allow resource agencies to select and publish season dates and bag limits prior to the beginning of hunting seasons and, on the other hand, the lack of current status data on most migratory game birds until later in the summer.

Because the regulatory process is strongly influenced by the times when information is available for consideration, we divide the overall regulations process into two segments. Early seasons are those seasons that generally open prior to October 1, and include seasons in Alaska, Hawaii, Puerto Rico, and the Virgin Islands. Late seasons are those seasons opening in the remainder of the United States about October 1 and later, and include most of the waterfowl seasons.

Major steps in the 1999–2000 regulatory cycle relating to open public meetings and **Federal Register** notifications are illustrated in the accompanying diagram. All publication dates of **Federal Register** documents are target dates.

All sections of this and subsequent documents outlining hunting frameworks and guidelines are organized under numbered headings. These headings are:

1. Ducks
2. Sea Ducks
3. Mergansers
4. Canada Geese
5. White-fronted Geese
6. Brant
7. Snow and Ross's (Light) Geese
8. Swans
9. Sandhill Cranes
10. Coots

11. Moorhens and Gallinules
12. Rails
13. Snipe
14. Woodcock
15. Band-tailed Pigeons
16. Mourning Doves
17. White-winged and White-tipped Doves
18. Alaska
19. Hawaii
20. Puerto Rico
21. Virgin Islands
22. Falconry
23. Other

Later sections of this and subsequent documents will refer only to numbered items requiring your attention. Therefore, it is important to note that we will omit those items requiring no attention and remaining numbered items will be discontinuous and appear incomplete.

Public Hearings

In past years, we have annually conducted two public hearings pertaining to migratory game bird hunting regulations. The first hearing held in late June reviewed the status of migratory shore and upland game birds and discussed proposed hunting regulations for these species plus regulations for migratory game birds in Alaska, Hawaii, Puerto Rico, and the Virgin Islands; special September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; extended falconry seasons; and proposed regulatory alternatives for the duck hunting season. The second hearing held in early August reviewed the status and proposed regulations for waterfowl not previously discussed at the June public hearing. Because of declining attendance and interest the past several years, we are not planning to hold the public hearings this year.

Requests for Tribal Proposals

Background

Beginning with the 1985–86 hunting season, we have employed guidelines described in the June 4, 1985, **Federal Register** (50 FR 23467) to establish special migratory bird hunting regulations on Federal Indian reservations (including off-reservation trust lands) and ceded lands. We developed these guidelines in response to tribal requests for our recognition of their reserved hunting rights, and for some tribes, recognition of their authority to regulate hunting by both tribal and non-tribal members throughout their reservations. The guidelines include possibilities for:

(1) On-reservation hunting by both tribal and non-tribal members, with hunting by non-tribal members on some reservations to take place within Federal frameworks, but on dates different from those selected by the surrounding State(s);

(2) On-reservation hunting by tribal members only, outside of usual Federal frameworks for season dates and length, and for daily bag and possession limits; and

(3) Off-reservation hunting by tribal members on ceded lands, outside of usual framework dates and season length, with some added flexibility in daily bag and possession limits.

In all cases, tribal regulations established under the guidelines must be consistent with the annual March 10 to September 1 closed season mandated by the 1916 Convention Between the United States and Great Britain (for Canada) for the Protection of Migratory Birds (Convention). The guidelines are capable of application to those tribes that have reserved hunting rights on Federal Indian reservations (including off-reservation trust lands) and ceded lands. They also apply to the establishment of migratory bird hunting regulations for non-tribal members on all lands within the exterior boundaries of reservations where tribes have full wildlife management authority over such hunting, or where the tribes and affected States otherwise have reached agreement over hunting by non-tribal members on non-Indian lands.

Tribes usually have the authority to regulate migratory bird hunting by nonmembers on Indian-owned reservation lands, subject to our approval. The question of jurisdiction is more complex on reservations that include lands owned by non-Indians, especially when the surrounding States have established or intend to establish regulations governing hunting by non-Indians on these lands. In such cases, we encourage the tribes and States to reach agreement on regulations that would apply throughout the reservations. When appropriate, we will consult with a tribe and State with the aim of facilitating an accord. We also will consult jointly with tribal and State officials in the affected States where tribes may wish to establish special hunting regulations for tribal members on ceded lands. As explained in previous rulemaking documents, it is incumbent upon the tribe and/or the State to request consultation as a result of the proposal being published in the **Federal Register**. We will not presume to make a determination, without being advised by a tribe or a State, that any issue is/is not worthy of formal consultation.

One of the guidelines provides for the continuation of harvest of migratory game birds by tribal members on reservations where it is a customary practice. We do not oppose this harvest, provided it does not take place during the closed season required by the Convention, and it is not so large as to adversely affect the status of the migratory bird resource. For several years, we have reached annual agreement with tribes for hunting by tribal members on their lands or on lands where they have reserved hunting rights. We will continue to consult with tribes that wish to reach a mutual agreement on hunting regulations for on-reservation hunting by tribal members.

Tribes should not view the guidelines as inflexible. Nevertheless, we believe that they provide appropriate opportunity to accommodate the reserved hunting rights and management authority of Indian tribes while ensuring that the migratory bird resource receives necessary protection. The conservation of this important international resource is paramount. Use of the guidelines is not required if a tribe wishes to observe the hunting regulations established by the State(s) in which the reservation is located.

Details Needed in Tribal Proposals

Tribes that wish to use the guidelines to establish special hunting regulations for the 1999–2000 hunting season should submit a proposal that includes:

(1) The requested hunting season dates and other details regarding regulations;

(2) Harvest anticipated under the requested regulations;

(3) Methods that will be employed to measure or monitor harvest (mail-questionnaire survey, bag checks, etc.);

(4) Steps that will be taken to limit level of harvest, where it could be shown that failure to limit such harvest would seriously impact the migratory bird resource; and

(5) Tribal capabilities to establish and enforce migratory bird hunting regulations.

A tribe that desires the earliest possible opening of the waterfowl season should specify this in their proposal, rather than request a date that might not be within the final Federal frameworks. Similarly, unless a tribe wishes to set more restrictive regulations than Federal regulations will permit, the proposal should request the same daily bag and possession limits and season length for ducks and geese that Federal regulations are likely to permit the States in the Flyway in which the reservation is located.

Tribal Proposal Procedures

We will publish tribal proposals details for public review in later **Federal Register** documents. Because of the time required for our and public review, Indian tribes that desire special migratory bird hunting regulations for the 1999–2000 hunting season should submit their proposals as soon as possible, but no later than June 2, 1999. Tribes should direct inquiries regarding the guidelines and proposals to the appropriate Service Regional Office listed under the caption **SUPPLEMENTARY INFORMATION**. Tribes that request special hunting regulations for tribal members on ceded lands should send a courtesy copy of the proposal to officials in the affected State(s).

Public Comments Solicited

The Department of the Interior's policy is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, we invite interested persons to submit written comments, suggestions, or recommendations regarding the proposed regulations. Before promulgation of final migratory game bird hunting regulations, we will take into consideration all comments received. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. We invite interested persons to participate in this rulemaking by submitting written comments to the address indicated under the caption **ADDRESSES**.

You may inspect comments received on the proposed annual regulations during normal business hours at the Service's office in room 634, 4401 North Fairfax Drive, Arlington, Virginia. For each series of proposed rulemakings, we will establish specific comment periods. We will consider, but possibly may not respond in detail to, each comment. As in the past, we will summarize all comments received during the comment period and respond to them after the closing date.

Flyway Council Meetings

Departmental representatives will attend the following winter meetings of the various Flyway Councils:

March 25 and 29, 1999

National Waterfowl Council, 1:00 p.m.

March 26, 1999

Atlantic Flyway Council, 8:00 a.m.
Central Flyway Council, 8:00 a.m.
Mississippi Flyway Council, 8:00 a.m.
Pacific Flyway Council, 10:30 a.m.

The Council meetings will be held at the Hyatt Regency at San Francisco Airport, 1333 Bay Shore Highway, Burlingame, California.

NEPA Consideration

NEPA considerations are covered by the programmatic document, "Final Supplemental Environmental Impact Statement: Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FSES 88–14)," filed with the Environmental Protection Agency on June 9, 1988. We published Notice of Availability in the **Federal Register** on June 16, 1988 (53 FR 22582). We published our Record of Decision on August 18, 1988 (53 FR 31341). In addition, an August 1985 environmental assessment entitled "Guidelines for Migratory Bird Hunting Regulations on Federal Indian Reservations and Ceded Lands" is available from the address indicated under the caption **ADDRESSES**.

Endangered Species Act Consideration

Prior to issuance of the 1999–2000 migratory game bird hunting regulations, we will consider provisions of the Endangered Species Act of 1973, as amended, (16 U.S.C. 1531–1543; hereinafter the Act) to ensure that hunting is not likely to jeopardize the continued existence of any species designated as endangered or threatened or modify or destroy its critical habitat and is consistent with conservation programs for those species. Consultations under Section 7 of this Act may cause us to change proposals in this and future supplemental proposed rulemaking documents.

Executive Order (E.O.) 12866

This rule is economically significant and was reviewed by the Office of Management and Budget (OMB) under E.O. 12866.

E.O. 12866 requires each agency to write regulations that are easy to understand. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the rule? What else could the Service do to make the rule easier to understand?

Regulatory Flexibility Act

These regulations have a significant economic impact on substantial numbers of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). We analyzed the economic impacts of the annual hunting regulations on small business entities in detail and a Small Entity Flexibility Analysis (Analysis) was issued by the Service in 1998. The Analysis documented the significant beneficial economic effect on a substantial number of small entities. The primary source of information about hunter expenditures for migratory game bird hunting is the National Hunting and Fishing Survey, which is conducted at 5-year intervals. The Analysis utilized the 1996 National Hunting and Fishing Survey and the U.S. Department of Commerce's County Business Patterns from which it was estimated that migratory bird hunters would spend between $429 and $1,084 million at small businesses in 1998. Copies of the Analysis are available upon request from the Office of Migratory Bird Management.

Small Business Regulatory Enforcement Fairness Act

This rule is a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. For the reasons outlined above, this rule has an annual effect on the economy of $100 million or more. However, because this rule establishes hunting seasons, we do not plan to defer the effective date under the exemption contained in 5 U.S.C. 808 (1) .

Paperwork Reduction Act

We examined these regulations under the Paperwork Reduction Act of 1995. The various recordkeeping and reporting requirements imposed under regulations established in 50 CFR part 20, Subpart K, are utilized in the formulation of migratory game bird hunting regulations. Specifically, OMB has approved the information collection requirements of the Migratory Bird Harvest Information Program and assigned clearance number 1018–0015 (expires 09/30/2001). This information is used to provide a sampling frame for voluntary national surveys to improve our harvest estimates for all migratory game birds in order to better manage these populations. OMB has also approved the information collection requirements of the Sandhill Crane Harvest Questionnaire and assigned clearance number 1018–0023 (expires 09/30/2000). The information from this survey is used to estimate the magnitude, the geographical and

temporal distribution of harvest, and the portion its constitutes of the total population.

A Federal agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Unfunded Mandates Reform Act

We have determined and certify, in compliance with the requirements of the Unfunded Mandates Act, 2 U.S.C. 1502 et seq., that this rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

The Department, in promulgating this proposed rule, has determined that these regulations meet the applicable standards found in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, these rules allow hunters to exercise otherwise unavailable privileges; and, therefore, reduce restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal government has been given responsibility over these species by the Migratory Bird Treaty Act. We annually prescribe frameworks from which the States make selections and employ guidelines to establish special regulations on Federal Indian reservations and ceded lands. This process preserves the ability of the States and Tribes to determine which seasons meet their individual needs. Any State or Tribe may be more restrictive than the Federal frameworks at any time. The frameworks are developed in a cooperative process with the States and the Flyway Councils. This allows States to participate in the development of frameworks from which they will make selections, thereby having an influence on their own regulations. These rules do not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 12612, these regulations do not have significant federalism effects and do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

The rules that eventually will be promulgated for the 1999–2000 hunting season are authorized under 16 U.S.C. 703–711, 16 U.S.C. 712, and 16 U.S.C. 742 a–j.

Dated: March 19, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

Proposed 1999–2000 Migratory Game Bird Hunting Regulations (Preliminary)

Pending current information on populations, harvest, and habitat conditions, and receipt of recommendations from the four Flyway Councils, we may defer specific framework proposals (including opening and closing dates, seasons lengths, and bag limits). Unless otherwise specified, we are proposing no change from the final 1998–99 frameworks of August 28 and September 29, 1998, (63 FR 46124 and 51998). Specific preliminary proposals that vary from the 1998–99 frameworks and issues requiring early discussion, action, or the attention of the States or tribes are contained below:

1. Ducks

A. Harvest Strategy Considerations

We propose to continue the use of Adaptive Harvest Management (AHM) to guide the establishment of duck hunting regulations. The AHM approach recognizes we cannot predict the consequences of hunting regulations with certainty, and provides a framework for making objective decisions despite this uncertainty. Also inherent in the adaptive approach is an awareness that we can maximize the success of our long-term management programs, in terms of sustainable hunting opportunities, only if we reduce the uncertainty about regulatory effects. Thus, AHM relies on a tightly integrated cycle of monitoring, assessment, and decision-making to better understand the relationships among hunting regulations, harvests, and waterfowl abundance.

Because of the structured approach and formal nature of the AHM process, Federal and State managers must continue to consider those factors that influence the outcome of regulatory strategies and, thus, the potential harvest impacts on waterfowl populations. We have identified three areas critical to the success of AHM which require additional consideration:

(1) Setting objectives—Waterfowl harvest managers must rely on clear, definitive statements about management objectives. This requires formal agreement among stakeholders about how to place a value on harvest benefits and how to share those benefits. AHM cannot operate as intended with vague, unclear management objectives;

(2) System control—Our ability to control harvest levels is dependent on understanding the relationship between hunting regulations, hunter behavior, and harvest. However, we do not have complete control over all these factors. Ultimately, hunting regulations only partially control hunter activity and success, and variable environmental conditions often have a pronounced effect on harvest levels. Thus, our ability to only partially control harvest imposes limits on both short-term hunting opportunity and the learning needed to increase long-term management performance;

(3) Management scale—As waterfowl managers, we continue to try to account for increasingly more spatial, temporal, and organizational variability in waterfowl biology. However, serious questions remain about the cost-effectiveness of this approach because costs can sometimes outweigh benefits. Moreover, the appropriate scale, or resolution, of harvest management is often limited by the availability of resources for monitoring and assessment, rather than by determinations of the highest net benefit.

These institutional issues pose our greatest challenge to the long-term success of AHM. Managing these issues will require innovative ways to maintain productive dialogue, and resolve differences within a process that all stakeholders can support. We intend to work diligently with our management partners to organize these discussions, so that we can collectively explore and appreciate the technical and sociological implications of these issues.

B. Framework Dates

During 1995 and 1996, the first two years of implementation of AHM, three regulatory alternatives characterized as "liberal", "moderate", and "restrictive" were defined based on regulations used during 1979–84, 1985–87, and 1988–93, respectively. In 1997, we attempted to further accommodate State and Flyway

concerns by modifying the regulatory alternatives to include: (1) the addition of a very restrictive alternative; (2) additional days and a higher duck bag limit in the moderate and liberal alternatives; and (3) an increase in the bag limit of hen mallards in the moderate and liberal alternatives.

The subsequent set of four regulatory alternatives was acceptable to the majority of States. However, the issue of framework-date extensions continued to be discussed and because of its contentiousness has drawn increasing political interest. Finally in 1998, Congressional action interceded and allowed certain States in the Mississippi Flyway (Alabama, Arkansas, Kentucky, Louisiana, Mississippi, and Tennessee) to select a framework closing date of January 31, provided it was accompanied by a commensurate reduction in season length.

The issue of duck hunting framework-date extensions and possible modifications to regulatory alternatives remains unresolved for the 1999–2000 hunting season. Although we have not received specific proposals for changes in the regulatory alternatives, we believe that any forthcoming proposals for modification of framework dates should be consistent with existing biological constraints, while not disrupting the intended functioning of AHM. We believe that framework dates should remain a viable tool in regulating harvests and an important component of any set of regulatory alternatives. Further, we believe that application of framework dates should continue to be incorporated at the Flyway level. Additional application of date changes or options with harvest offsets at scales below the Flyway level, such as the State or zone level, would result in unprecedented technical challenges in terms of predicting cumulative impacts and evaluating the effects of various regulatory tools and severely strain our capability to reliably predict and control harvests at levels commensurate with the biological capacity of waterfowl populations.

The ability to predict, at least probabilistically, the harvests achieved under the regulatory alternatives is an essential feature of the AHM process. Therefore, we believe that a limited set of Flyway-based regulatory alternatives that are stable over time is necessary to maintain or improve our understanding of the relationships between regulations and harvest, and between harvest and population response. The ability of AHM to operate as intended is premised on a set of well-defined regulatory alternatives, which are small in number and which lead to recognizable differences in harvest (or harvest rate). To this end, we are interested in cooperatively working with States, Flyway Councils, and the public to explore changes in Flyway-wide regulatory alternatives to resolve the frameworks issue. This approach will assure the integrity of the AHM process, while maintaining a Flyway-based regulatory system.

G. Special Seasons/Species Management

i. Scaup

We remain concerned about the declining trend in the size of the scaup breeding population and believe that substantial reductions in hunting opportunity are needed, particularly in light of recent harvest increases. As we announced last September, we intend to cooperate with the Flyway Councils in an effort to develop a strategy for guiding scaup harvest management beginning this year. A preliminary draft strategy was sent to each Flyway in February for comment. This strategy will build upon information in a recently completed scaup status report (copies available from MBMO).

ii. Canvasbacks

We continue to support the canvasback harvest strategy adopted in 1994. Last year, we reviewed data collected since implementation of the strategy to assess the strategy's performance. Subsequently, we prepared a report for the Flyways detailing our review and distributed the report to the Flyway Technical Sections for comment during their March meetings. Overall, we believe the strategy has performed adequately, and have not found sufficient reason to alter it. We will continue to monitor its performance as annual information from population and habitat surveys are available.

2. Sea Ducks

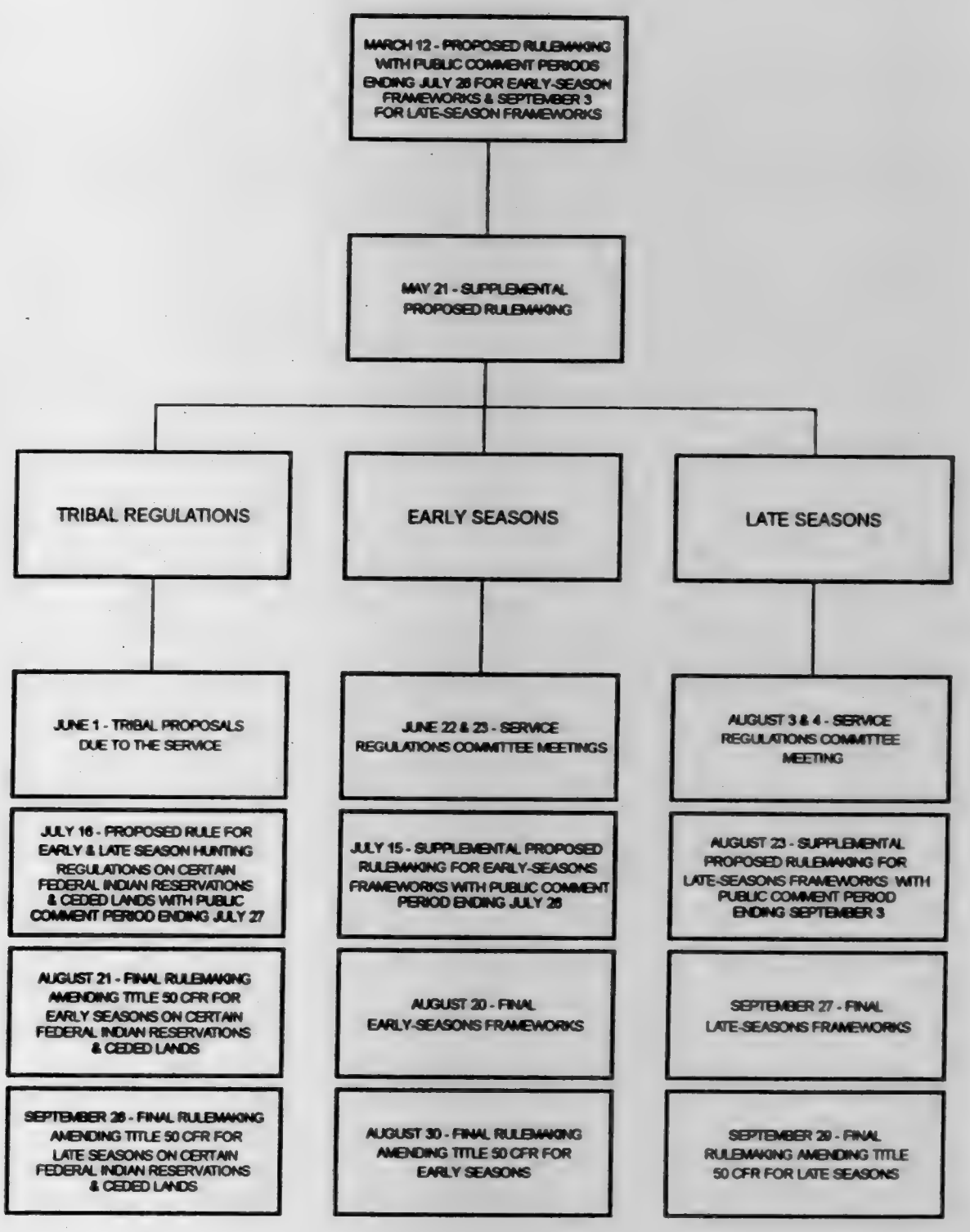
We continue to be concerned about recent population trends in sea ducks throughout North America. Last year, we provided a report titled "Status of Sea Ducks in Eastern North America and a Review of the Special Sea Duck Season in the Atlantic Flyway" to the Flyways. This report summarized our current state of knowledge regarding several sea duck species and highlighted our management concerns. In light of these concerns, we requested the Atlantic and Pacific Flyways to review the special regulations for sea duck seasons currently in place in each Flyway. In the Atlantic Flyway, we continue to ask the Council to consider changes to sea duck seasons and to develop management goals for sea ducks. In the Pacific Flyway, we encourage the Flyway, and particularly the State of Alaska to give consideration to changes in existing sea duck regulations in light of current population status and trends. In addition, we continue to support and encourage participation by the Atlantic and Pacific Flyways in the development and implementation of the sea duck joint venture to address management and information needs for this unique group of waterfowl in North America.

4. Canada Geese

We support the Atlantic Flyway Council's position that hunting seasons on Atlantic Population (AP) Canada Geese remain closed until the breeding population index exceeds 60,000 pairs and there is evidence of a sustained population recovery. Following the season closure in 1995 and favorable production in 1997 and 1998, we expect this population to begin expansion and begin to show an increase in the breeding pair survey index. In this context, we encourage the Council to give serious consideration to specific criteria for resuming the hunting season. Additionally, if these criteria are triggered in 1999, we believe that appropriate regulatory strategies and harvest controls will be necessary to effectively manage the harvest in order to prevent harvest levels that would deter the AP from making a full recovery to objective levels.

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1999 SCHEDULE OF REGULATIONS MEETINGS AND FEDERAL REGISTER PUBLICATIONS



DATES SHOWN RELATIVE TO PUBLICATION OF FEDERAL REGISTER DOCUMENTS ARE TARGET DATES

[FR Doc. 99–10961 Filed 4–30–99; 8:45 am]
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The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

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H.R. 911/P.L. 106–23

To designate the Federal building located at 310 New Bern Avenue in Raleigh, North Carolina, as the "Terry Sanford Federal Building". (Apr. 27, 1999; 113 Stat. 38)

S. 388/P.L. 106–24

To authorize the establishment of a disaster mitigation pilot

program in the Small Business Administration. (Apr. 27, 1999; 113 Stat. 39)

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period July 1, 1997 to June 30, 1998. The volume issued July 1, 1997, should be retained.

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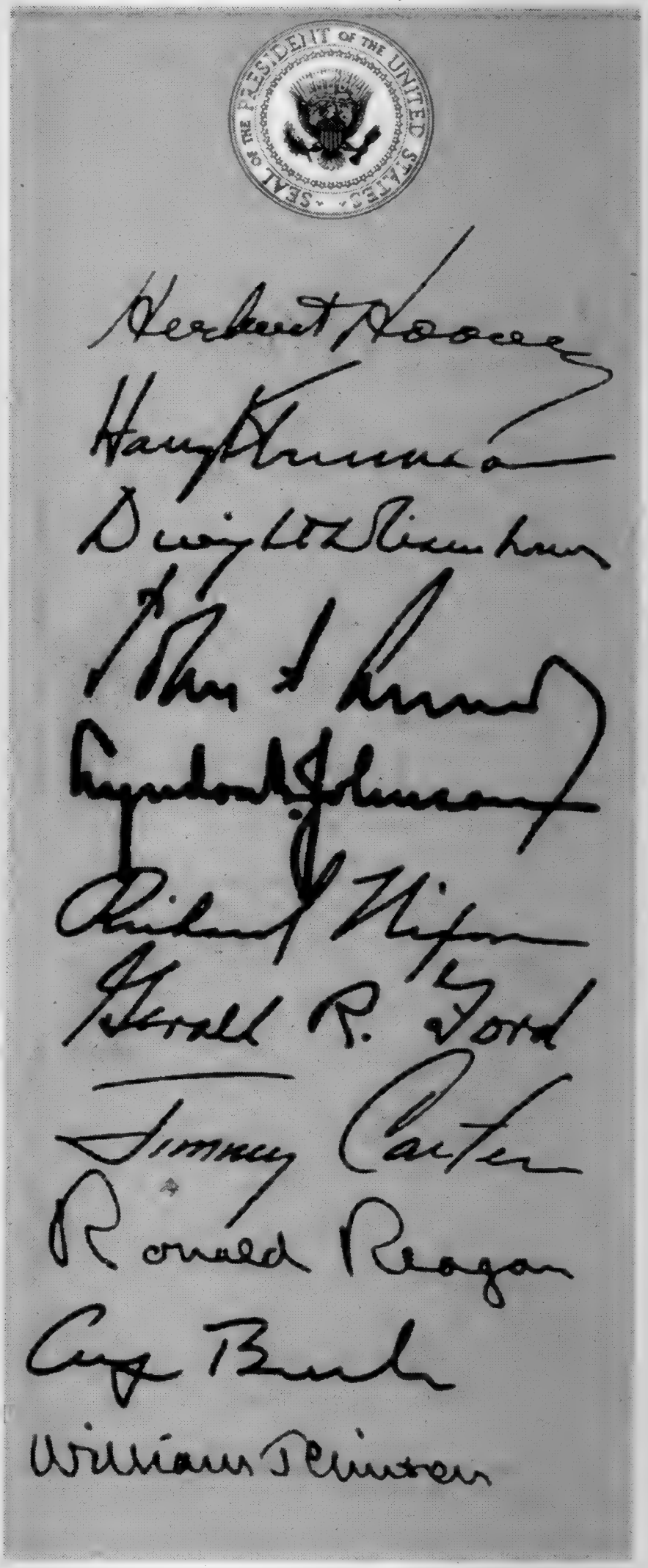
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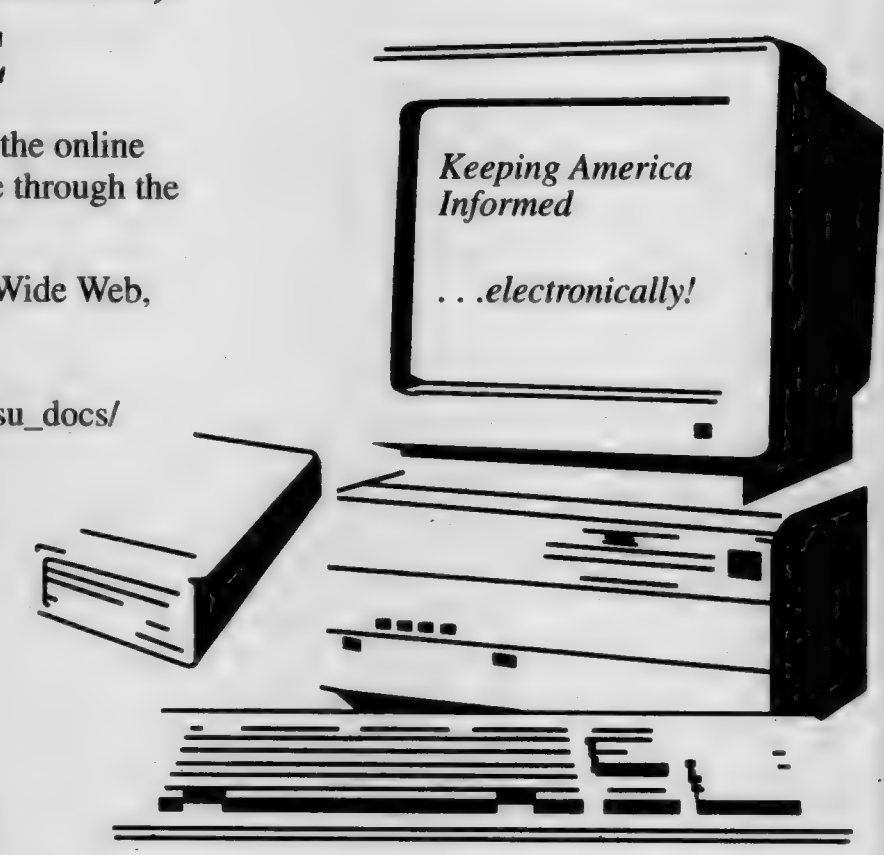
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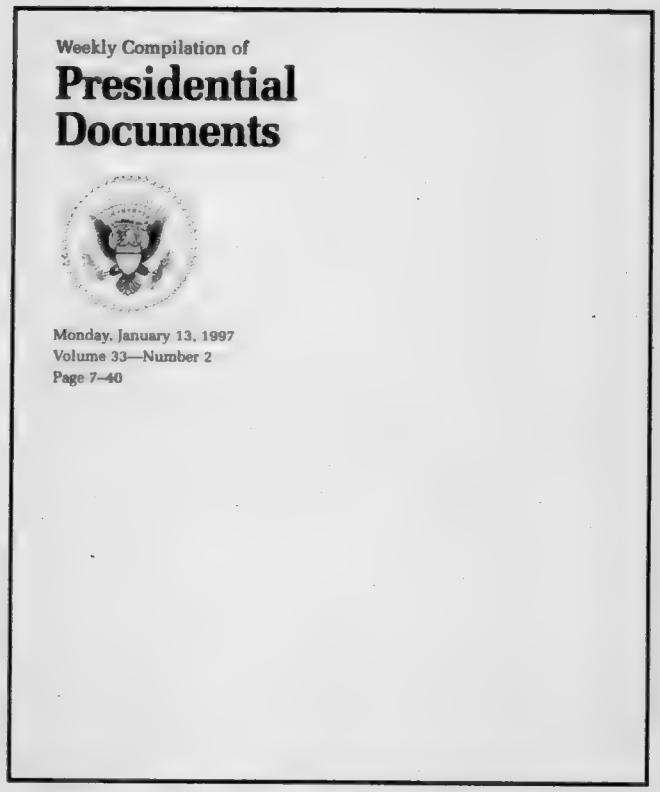
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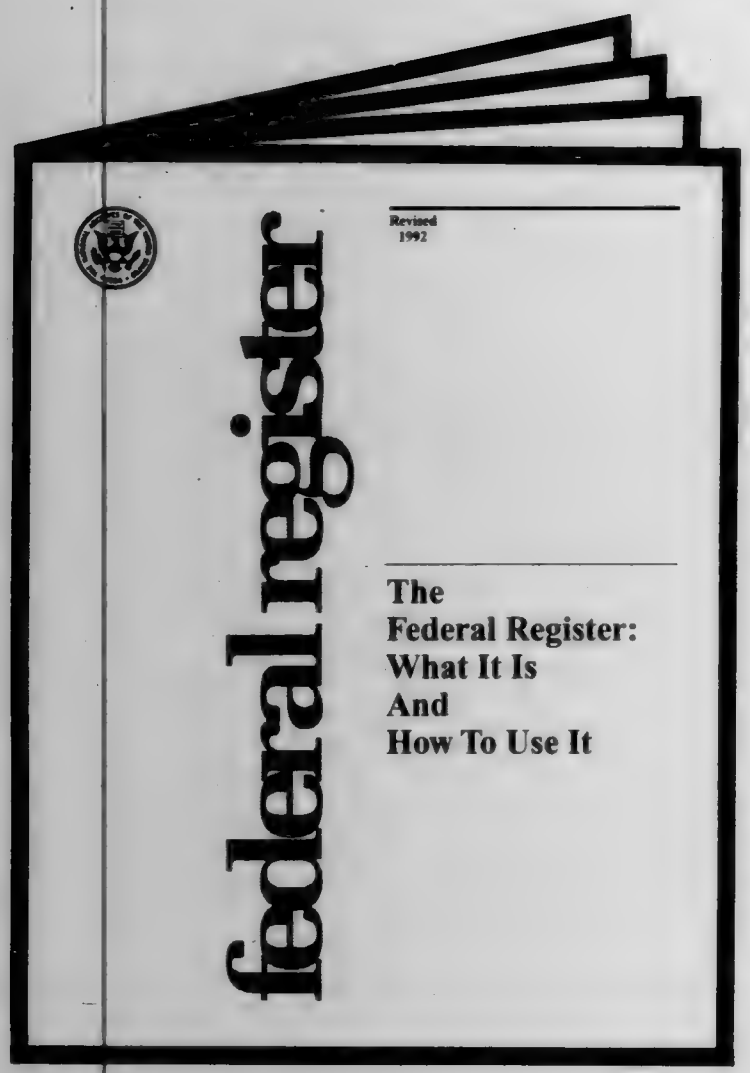
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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 96–016–36]

RIN 0579–AA83

Karnal Bunt; Reclassification of Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Karnal bunt regulations by removing the restricted and surveillance area categories of regulated areas and replacing them with a single classification. As part of this change in the regulations, we are releasing from regulation most of the areas that had been designated as restricted areas for seed; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and removing the cleaning requirement for vegetables grown in those fields. Removing those areas that had been designated as restricted areas for seed from the regulations greatly reduces the total area in the southwestern United States that is regulated for Karnal bunt, and removing the planting prohibition and the vegetable cleaning requirement eases restrictions on field owners in the regulated areas. We are also amending the list of regulated areas to add several fields or areas in three Arizona counties to the list of regulated areas. These additions to the list of regulated areas are necessary due to the detection of bunted kernels in fields in those counties during 1998.

EFFECTIVE DATE: April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Domestic and Emergency Programs, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; telephone (301) 734–8899; fax 301–734–8584; e-mail: Stephen.R.Poe@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Karnal bunt is a fungal disease of wheat (*Triticum aestivum*), durum wheat (*Triticum durum*), and triticale (*Triticum aestivum* X *Secale cereale*), a hybrid of wheat and rye. Karnal bunt is caused by the smut fungus *Tilletia indica* (Mitra) Mundkur and is spread by spores, primarily through the movement of infected seed. In the absence of measures taken by the U.S. Department of Agriculture (USDA) to prevent its spread, the establishment of Karnal bunt in the United States could have significant consequences with regard to the export of wheat to international markets. The regulations regarding Karnal bunt in the United States are set forth in "Subpart—Karnal Bunt" (7 CFR 301.89–1 through 301.89–16, referred to below as the regulations).

On March 9, 1999, we published in the **Federal Register** (64 FR 11392–11401, Docket No. 96–016–34) a proposed rule to amend the regulations by simplifying the classification criteria for regulated articles; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and modifying the descriptions of the regulated areas in Arizona, California, New Mexico, and Texas to reflect the elimination of the restricted area for seed classification and to add new areas of Arizona in which bunted kernels were detected during sampling conducted in 1998. We also proposed to remove the requirement for cleaning soil and plant debris from vegetable crops grown in fields associated with Karnal bunt.

We solicited comments concerning our proposal for 30 days ending April 8, 1999. We received six comments by that date. They were from State agricultural agencies, a State wheat commission, and a grain and seed company. All six commenters supported the proposed rule. Five of those commenters did, however, raise issues related to the proposed rule or the Karnal bunt program. Those issues are discussed below.

Deregulation

Comment: The final rule should state that a regulated field will be released from regulation once it has produced a Karnal bunt host crop that tests negative for spores and bunted kernels.

Response: Although we have not made the change suggested by the commenter in this final rule, we are considering that suggestion as an option for the future, especially with regard to the fields that were determined in 1996 to have been planted with seed from a lot found to contain a bunted wheat kernel, since no bunted kernels were found in wheat grown in those fields. Because the planting of Karnal bunt host crops in regulated fields will only now be possible as a result of this final rule, the first host crop could not be planted until the fall of 1999 and would not be harvested until the spring of 2000. We will use that time to consider the opportunities that we may have for further deregulation such as that suggested by the commenter. In the event that we determine that it would be appropriate to pursue a deregulatory approach such as that suggested by the commenter, we will initiate rulemaking to amend the regulations in time for the results of post-harvest testing in the spring of 2000 to be taken into account.

Comment: APHIS should provide producers with a description of the long-term future of the Karnal bunt regulations that includes the specifics of a regulatory protocol for the eventual deregulation of Karnal bunt.

Response: We cannot, at the present time, predict the long-term future of the Karnal bunt regulations or specify a regulatory protocol for the eventual deregulation of Karnal bunt. Outstanding issues, most notably the continuing discussions with our trading partners as to whether Karnal bunt should be regarded as a quarantine pest or a grading issue, make it difficult to predict with any degree of certainty what our regulations might look like in the future. In addition, as noted in the response to the previous comment, we are exploring whether there may be opportunities for further deregulation. Our continuing Karnal bunt program, as well as any changes that might be made to it in the future, will be guided by the program's stated objectives of protecting export markets, protecting producers in uninfected areas, and providing as many

options as possible for producers in regulated areas.

Timeliness of Regulations

Comment: The 1999 growing season regulatory protocols must be provided in order for growers to be able to make educated decisions about their production and contract plans for the coming year.

Response: We have made every effort to ensure that this final rule is published and effective prior to the 1999 harvest season. By doing this, we will not only relieve restrictions on the movement of grain and seed harvested in the areas released from regulation, but we will also ensure that this rule is in place with ample time for growers to be able to consider their options prior to the fall planting season.

Surveys

Comment: The deregulation of areas appears to be legitimate as long as adequate and timely surveys will be conducted to ensure that the boundaries of the regulated area adequately encompass the infected area. However, the National Survey protocol for detecting Karnal bunt outside of regulated areas does not appear to be adequate for those purposes, especially in areas where spores have been found. (Conversely, another commenter stated that the grain produced in the areas removed from regulation should not be subjected to more stringent tests than grain from any other non-regulated area in the United States.)

Response: We agree that there is a need for maintaining adequate delimiting surveys and detection programs. In addition to the survey and detection activities that are carried out as part of the regulatory program within those areas of Arizona, California, New Mexico, and Texas that have been designated as regulated areas, we will continue to conduct our National Survey of all wheat production areas in the United States in order to gather information about the presence or absence of Karnal bunt. In the National Survey, composite wheat samples are collected, in proportion to wheat production, at points of aggregation near wheat production so that all samples are identifiable to at least the county level. The intensity of the National Survey provides a high level of confidence that Karnal bunt is not detectable in those parts of our wheat production system that contribute to the export trade and generates information about potential infections in new areas. Therefore, we believe that our ongoing regulatory program and National Survey activities will continue to provide the assurances sought by the commenter and by our trading partners regarding the Karnal bunt status of areas released from regulation, as well as areas outside the regulated areas.

Testing

Comment: The bunted kernel standard for the movement of grain from regulated areas is a concern because most of our trading partners have not recognized that standard. The standard for movement should not place our exports in jeopardy, as that would be in conflict with the Karnal bunt program's stated objective of protecting export markets. To that end, operational procedures should be developed that define the testing methodology and that new technologies should be considered that meet that objective.

Response: Although our use of the bunted kernel standard was not among the issues raised in the proposed rule, we would like to respond to this comment by stating that we are currently engaged in discussions with our trading partners regarding the appropriateness of using the bunted kernel standard—as opposed to a teliospore standard—to certify grain for international movement. Considerations such as new technologies and operational procedures that define testing methodology are part of those discussions. Using the bunted kernel standard, which we have followed since 1997, is consistent with our conclusion that the detection of spores alone does not allow us to make a conclusive determination that Karnal bunt disease is present in an area or article, but we believe that we must take the concerns of our trading partners seriously if we are to continue to protect our grain export markets. To that end, we are preparing a position paper on the use of the bunted kernel standard as opposed to a teliospore standard. That position paper, and our trading partners' response to it, will be used as we continue our consideration of this issue.

Quarantine Status of Karnal Bunt

Comment: Karnal bunt is not a dangerous plant pest, and the USDA has failed to educate the United States' trading partners as to the insignificance of the disease.

Response: The position that Karnal bunt is a grading or quality issue rather than a quarantine issue is one that has been discussed in international trade and scientific circles. Indeed, we have raised that issue at every opportunity with our trading partners. However, until such time as our trading partners view the disease as a grading issue rather than a quarantine issue, we believe that it will be necessary to continue our Karnal bunt-related regulatory activities and restrictions in order to protect our international agricultural standing.

Compensation

Comment: Compensation should continue to be made available to growers located in the areas that remain under regulation.

Response: The issue of compensation was not raised in the proposed rule and is, therefore, outside the scope of this final rule. Rather, compensation has been, and will continue to be, addressed in separate rulemakings that focus exclusively on that issue.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**.

By removing the restricted and surveillance area categories of regulated areas and replacing them with a single classification, this rule releases certain areas in Arizona, California, New Mexico, and Texas from their designation as restricted areas for seed, which means that those areas will no longer be regulated areas under the Karnal bunt regulations. This will eliminate the requirement for the testing and treatment of seed grown in those areas. Further, this rule removes the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt and removes the cleaning requirement for vegetables grown in those fields. These changes will greatly reduce the total area in the southwestern United States that is regulated for Karnal bunt and will ease restrictions on field owners in those areas that remain under regulation. Although this rule also adds several fields or areas in three Arizona counties to the list of regulated areas, their addition to that list will not result in any new restrictions because those fields and areas have been designated as regulated areas under the temporary designation provisions of § 301.89–3(d) since 1998 based on the detection of bunted kernels. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be effective upon signature.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are amending the Karnal bunt regulations by removing the restricted and surveillance area categories of regulated areas and replacing them with a single classification. As part of this change in the regulations, we are releasing from regulation most of the areas that had been designated as restricted areas for seed; removing the prohibition on planting wheat, durum wheat, and triticale in fields associated with Karnal bunt; and removing the cleaning requirement for vegetables grown in those fields. We are also adding several fields or areas in three Arizona counties to the list of regulated areas based on the detection of bunted kernels in fields in those counties during 1998.

Our modifications to the way regulated areas are classified will benefit the growers who have fields that had been designated as restricted areas for regulated articles other than seed and fields that are located in restricted areas for seed lying outside the surveillance areas. Growers in the areas that had been designated as surveillance areas will be largely unaffected by these changes. Removing those areas that had been designated as restricted areas for seed from the regulations will greatly reduce the total area in the southwestern United States that is regulated for Karnal bunt.

Even though the restricted area for regulated articles other than seed classification will be removed under this rule, those fields that had been designated as such will remain under regulation because they are still either part of a regulated area or are themselves regulated areas. However, this rule will have the effect of relaxing the restrictions that have applied to the fields. Growers will have the option of planting wheat, durum wheat, or triticale in the fields, which is an option that had not been available to them. Wheat, durum wheat, or triticale grown as grain (not seed) in those fields will be eligible for unrestricted movement under a certificate if it is tested and found free from bunted kernels prior to its movement from the field or before it is commingled with other grain. If bunted kernels are found, the grain will still be eligible for movement, but only under a limited permit that requires that the grain be moved to a specified destination for specified handling, utilization, or processing that will destroy the Karnal bunt or mitigate the risk of its spread. These are the same conditions that had been applied to the movement of grain from surveillance areas.

There are about 60 growers located in areas that had been designated as restricted areas for regulated articles other than seed (approximately 18,000 agricultural acres). The number, if any, of these growers who will now choose to plant wheat is unknown. In deciding on whether to plant wheat rather than another crop, growers will no doubt weigh a variety of factors, including the likelihood of producing Karnal-bunt-positive wheat, the likelihood of receiving compensation for any positive wheat that is produced, and the profitability of the alternative crop (which can be comparable, or nearly comparable, to the profitability of wheat). However, information as to how individual growers might respond to those factors, and thus whether they will choose to resume planting wheat, is not available.

Vegetable growers with fields that had been in areas designated as restricted areas for regulated articles other than seed will also benefit from the removal of that regulatory category, as it will result in the lifting of the cleaning requirement that had applied to vegetables grown in those fields. The benefit is not likely to be significant for most growers, since about 90 percent of the soil is routinely removed from vegetables during harvesting. There are about 10 vegetable growers with fields in areas that had been designated as restricted areas for regulated articles other than seed.

Wheat seed growers with fields in areas that had been designated as restricted areas for seed, but that are located outside the areas that had been designated as surveillance areas, will also benefit from the modifications to the classification of regulated areas, since most will no longer be regulated. In the absence of regulation, they will be able to grow and move commercial wheat seed without restriction. These growers had been able to move commercial wheat seed outside the regulated area only if it tested negative for Karnal bunt, had been chlorine drenched, and had been treated with a fungicide. The cost of treatment, but not testing, was borne by those growers. The cost of seed treatment varies widely among seed handlers, depending largely on labor and overhead costs. One handler, for example, calculated the total cost of treating 100 lbs. of seed at $7.10, while another handler calculated that cost at $3.10. Regardless of the cost, there is reason to believe that most seed handlers will continue the fungicide treatments, even with this final rule, with the costs of those fungicide treatments continuing to be passed along to purchasers of the seed. Several handlers reported that they routinely treated seed prior to 1996, before Karnal bunt was detected and restrictions were imposed. That, plus the likelihood that only a small portion of the acreage in the restricted areas for seed will be planted with seed, suggest that the benefits of this rule will be minimal in this respect. We estimate that only about 7 percent of the agricultural acreage in restricted areas for seed is planted with wheat, and of that acreage, only about 10 percent is planted for seed. This disparity in favor of grain over seed is not expected to change in the near term, regardless of this regulatory change, given the current poor market conditions for seed and the fact that stored seed from previous years remains available. There are approximately 563 wheat growers in areas that had been designated as restricted areas for seed. The restricted areas for seed encompassed about 1,958,000 agricultural acres, or 88 percent of the total regulated area of 2,214,000 agricultural acres.

Wheat growers in areas that had been designated as surveillance areas will be largely unaffected by this rule because they will remain regulated and will be subject to the same restrictions on the movement of regulated articles as they had been. There are 149 wheat growers in areas that had been designated as surveillance areas, which together comprise about 239,000 agricultural acres.

Also, this rule adds certain areas in Arizona to the list of regulated areas due to the detection of bunted kernels in those areas during sampling conducted in 1998. Because all of these new areas are located in areas that had been designated as restricted areas for seed, their proposed designation as regulated areas under this rule is not expected to have a significant effect. The changes that will result from the redesignation are that commercial lots of wheat seed will no longer be eligible for movement from those areas and grain grown in those areas will have to be tested for bunted kernels before being moved from the regulated area. We do not believe that adding these fields or areas to the list of regulated areas will have a significant economic impact on growers because, as noted above, little commercial seed was produced in those areas. Further, growers have been able to plant alternative crops without

restriction and grain could be grown subject to testing prior to movement from the regulated area.

Economic Impact on Small Entities

The Regulatory Flexibility Act requires that agencies consider the economic impact of rule changes on small businesses, organizations, and governmental jurisdictions. Those entities most likely to be affected by this rule are wheat growers located in areas that had been designated as restricted areas for seed that will no longer be regulated, vegetable growers who will no longer have to clean their crops before movement, and wheat growers located in areas that are being added to the regulated areas due to the detection of Karnal bunt in 1998.

We estimate that there are approximately 588 wheat growers (324 in Arizona, 21 in California, 200 in New Mexico, and 43 in Texas) located in those portions of the former restricted areas that will no longer be regulated. We estimate that there are 60 growers of non-wheat crops located in areas that had been designated as restricted areas for regulated articles other than seed who will no longer be required to clean their crops as a condition of movement. Finally, we estimate that there are seven wheat growers in Arizona who have fields located in areas that had been designated as restricted areas for seed that have been added to the list of regulated areas. Most of the wheat growers are assumed to have gross receipts of less than $0.5 million, the U.S. Small Business Administration's threshold for classifying wheat producers as small entities. Accordingly, the economic impact of the rule will be mostly on small entities.

Growers located in areas that had been designated as restricted areas for regulated articles other than seed and growers in areas that had been designated as restricted areas for seed will benefit from this rule. The addition of certain areas in Arizona to the list of regulated areas will have a negative economic impact on affected growers. However, for the reasons discussed above, neither aspect of this rule is expected to have a significant economic impact on a substantial number of entities, large or small.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 147a, 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.22, 2.80, and 371.2(c).

§ 301.89–1 [Amended]

2. In § 301.89–1, the definition of *distinct definable area* is amended by removing the words ", or, in the case of restricted areas, as determined by an inspector".

3. In § 301.89–3, paragraphs (e) and (f) are revised to read as follows:

§ 301.89–3 Regulated areas.

* * * * *

(e) The Administrator will classify a field or area as a regulated area when:

(1) It is a field planted with seed from a lot found to contain a bunted wheat kernel; or

(2) It is a distinct definable area that contains at least one field that was found during survey to contain a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field found during survey to contain a bunted kernel); or

(3) It is a distinct definable area that contains at least one field that was found during survey to contain spores consistent with Karnal bunt and has been determined to be associated with grain at a handling facility containing a bunted wheat kernel (the distinct definable area may include an area where Karnal bunt is not known to exist but where intensive surveys are required because of the area's proximity to a field that has been associated with grain at a handling facility containing a bunted kernel).

(f) The following areas or fields are designated as regulated areas (maps of the regulated areas may be obtained by contacting the Animal and Plant Health Inspection Service, Plant Protection and Quarantine, 4700 River Road, Unit 134, Riverdale, MD 20737–1236):

Arizona

La Paz County. Beginning at the point where the Colorado River intersects the north side of sec. 32, T. 8 N., R. 21 W.; then east to the northeast corner of sec. 36, T. 8 N., R. 21 W.; then south to the southeast corner of sec. 1, T. 6 N., R. 21 W.; then west to the southwest corner of sec. 6, T. 6 N., R. 21 W.; then north to the intersection of the Colorado River; then northwest along the Colorado River to the point of beginning; and

Beginning at the northeast corner of sec. 22, T. 6 N., R. 21 W.; then south to the southeast corner of sec. 34, T. 5 N., R. 21 W.; then west to the Colorado River; then north along the Colorado River to the northern side of sec. 21, T. 6 N., R. 22 W.; then east to the point of beginning.

Maricopa County. Beginning at the southeast corner of sec. 33, T. 6 S., R. 5 W.; then west to the southwest corner of sec. 32, T. 6 S., R. 7 W.; then north to the northwest corner of sec. 5, T. 5 S., R. 7 W.; then east to the northeast corner of sec. 4, T. 5 S., R. 5 W.; then south to the point of beginning; and

Beginning at the southeast corner of sec. 25, T. 1 S., R. 1 E. and the intersection of the Maricopa/Pinal County line; west to the southwest corner of sec. 28, T. 1 S., R. 5 W.; then north to the northwest corner of sec. 4, T. 1 N., R. 5 W.; then east to the southwest corner of sec. 31, T. 2 N., R. 2 W.; then north to the northwest corner of sec. 31, T. 4 N., R. 2 W.; then east to the northeast corner of sec. 36, T. 4 N., R. 1 W.; then south to the southeast corner of sec. 36, T. 4 N., R. 1 W.; then east to the northeast corner of sec. 5, T. 3 N., R. 2 E.; then south to the southeast corner of sec. 32, T. 2 N., R. 2 E.; then east to the northeast corner of sec. 6, T. 1 N., R. 3 E.; then south to the southeast corner of sec. 7, T. 1 S., R. 3 E.; then west to the southwest corner of sec. 10, T. 1 S., R. 2 E.; then south to the southeast corner of sec. 28, T. 1 S., R.

2 E.; then west to the intersection of the Maricopa/Pinal county line; then north, west and south along the county line to the point of beginning; and

Beginning at the intersection of Interstate 10 and the Maricopa/Pinal County line; then east and north along the county line to the northeast corner of sec. 1, T. 2 S., R. 7 E.; then west to the southeast corner of sec. 31, T. 1 S., R. 7 E.; then north to the northeast corner of sec. 31, T. 1 N., R. 7 E.; then west to the northwest corner of sec. 31, T. 1 N., R. 6 E.; then north to the northeast corner of sec. 1, T. 2 N., R. 5 E.; then west to the northwest corner of sec. 6, T. 2 N., R. 5 E.; then south to the southwest corner of sec. 31, T. 2 N., R. 5 E.; then west to the northwest corner of sec. 2, T. 1 N., R. 4 E.; then south to the northwest corner of sec. 35, T. 1 S., R. 4 E.; then east to the intersection of Interstate 10; then south and east to the point of beginning; and

The following individual fields in Maricopa County are regulated areas:

301060505
301060506
301060601
301060602
301060603
301060604
304073004
304073005
304073010
304081410
304081413
304081415
304081417
304081505
304081506
304082202
304082302
304082303
304082607
304082703
306013222
306013231
306020404
306020501
306020601
306020623
316131901
316131904
316132302
316132604

Pinal County. Beginning at the intersection of the Maricopa/Pinal County line and the northwest corner of sec. 6, T. 2 S., R. 8 E.; then east to the northeast corner of sec. 2, T. 2 S., R. 8 E.; then south to the southeast corner of sec. 14, T. 3 S., R. 8 E.; then west to the southeast corner of sec. 14, T. 3 S., R. 6 E.; then south to the southeast corner of sec. 26, T. 4 S., R. 6 E.; then west to the southeast corner of sec. 26, T. 4 S., R. 4 E.; then south to the southeast corner of sec. 22, T. 6 S., R. 4 E.; then west to the southwest corner of sec. 19, T. 6 S., R. 3 E.; then north to the southeast corner of sec. 13, T. 6 S., R. 2 E.; then west to the southwest corner of sec. 16, T. 6 S., R. 2 E.; then north to the northwest corner of sec. 9, T. 4 S., R. 2 E.; then east to the southwest corner of sec. 6, T. 4 S., R. 4 E.; then north to the northwest corner of sec. 6, T. 4 S., R. 4 E.; then east to the northwest corner of sec. 6, T. 4 S., R. 5 E.; then north to the intersection of the Maricopa/Pinal County line; then east and north along the county line to the point of beginning; and

The following individual fields in Pinal County are regulated areas:

308102604
308102605
309021801
309021804
309021812
309031304
309033507
309042544
309042545
309042601
309042607
309042619
309050104
309050109
309050207

Yuma County. The following individual fields in Yuma County are regulated areas:

321010208
321010210
321010211
321010224
321010301
321010302
321011103
321033501
321033502
321033503
321033516
321033517
321033518
321033519
321040405
321040911
321040912
321040915
321040917
321040918
321040921
321040922
321041903
321041904
321041908
321041919
321042903
323030401
323030402
323030403
323030404
323030405
323030406
323030501
323030502
323030512
323030513
323030514
323030515
323030521

California

Imperial County. Beginning at the intersection of the Riverside/Imperial County line and the California/Arizona State line; then west to the northwest corner of sec. 1, T. 9 S., R. 21 E.; the south to the California/Arizona State line; then east and north along the State line to the point of beginning.

Riverside County. Beginning at the intersection of the Riverside/ Imperial County line and the California/Arizona State line; then west to the southwest corner of sec. 31, T. 8 S., R. 22 E.; then north to the northwest corner of sec. 30, T. 7 S., R. 22 E.; then north and northeast along the Palo Verde Valley agriculture area to the intersection of the California/Arizona State line; then south along the State line to the point of beginning.

New Mexico

Dona Ana County. The following individual fields in Dona Ana County are regulated areas:

113040501
113040502
113040506
113040507
113040508
113040601
113040602
113040702
113040902
113042601
113042602
113042707
113042708
113043401
113043407
113043503
113043508
113043509
113050201
113050202
113050301
113060701
113060702
113060703
113060801
113060809
113060901
113060902
113070702
113072701
113072702
113072703
113072704
113072705
113072706
113173103
113210401
113210402
113210403
113210406
113210407
113210808
113212103
113212802
113212806
113241601
113242708

Hidalgo County. The following individual fields in Hidalgo County are regulated areas:

123272403
123353001

Luna County. The following individual fields in Luna County are regulated areas:

129011301
129012201
129013003
129013006
129022502
129060806
129060901
129060902
129062001
129062801
129062802
129232801
129232804
129232805
129232806
129292404
129300506
129300608
129301104
129301301
129301401
129301701
129301801
129301806
129302001
129302702
129303802
129440601
129440602
129440701
129440702
129440703
129440708
129440801
129441701

Sierra County. The following individual fields in Sierra County are regulated areas:

151013401
151441201
151441202
151441306
151442201
151442601
151442602
151442603
151442604
151442605
151442606
151442607
151442608
151442609
151442610
151442611
151442612
151442613
151442614
151442701
151443501
151443502
151443503
151443601
151443602
151443603
151443604
151451306
151453001
151453101
151453102
151453103
151453104
151502801

Texas

El Paso County. The following individual fields in El Paso County are regulated areas:

441141301
441142301
441142302
441142303
441142304
441142305
441142306
441142307
441142401
441142402
441142403
441142404
441241301
441241302
441252801
441252803
441252804
441252901
441253201
441253302
441253401

Hudspeth County. The following individual fields in Hudspeth County are regulated areas:

429050701
429050702
429070101
429070102

McCulloch County. Beginning at the McCulloch/San Saba County line and the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the line of longitude –99.13473 W.; then north along the line of longitude –99.13473 W to the line of latitude 31.31004 N.; then east along the line of latitude 31.31004 N. to the line of longitude –99.11427 W.; then north along the line of longitude –99.11427 W to the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the McCulloch/San Saba County line; then south to the point of beginning.

San Saba County. Beginning at the San Saba/Mills County line and the line of longitude –98.5851 W.; then south along the line of longitude –98.5851 W to the line of latitude 31.167959 N.; then west along the line of latitude 31.167959 N. to the line of longitude –98.903233 W.; then north along the line of longitude –98.903233 W. to the line of latitude 31.310819 N.; then east along the line of latitude 31.3100819 N. to the San Saba/Mills County line; then south along the San Saba/Mills County line to the point of beginning; and

Beginning at the San Saba/McCulloch County line and the line of latitude 31.283487 N.; then east along the line of latitude 31.283487 N. to the line of longitude –99.063487 W.; then south along the line of longitude –99.063487 W. to the line of latitude 31.232299 N.; then west along the line of latitude 31.232299 N. to the San Saba/McCulloch County line; then north along the San Saba/McCulloch County line to the point of beginning.

4. Section 301.89–4 is revised to read as follows:

§ 301.89–4 Planting.

Wheat, durum wheat, and triticale may be planted in all fields within a regulated area. All wheat seed, durum wheat seed, and triticale seed that originates within a regulated area must be tested and found free from spores and bunted wheat kernels, then treated with a fungicide in accordance with § 301.89–13(d), before it may be planted within a regulated area.

§ 301.89–6 [Amended]

5. Section 301.89–6 is amended as follows:

a. In paragraph (b), the word "surveillance" is removed and the word "regulated" is added in its place.

b. Paragraph (d) is removed and paragraph (e) is redesignated as paragraph (d).

§ 301.89–12 [Amended]

6. In § 301.89–12, paragraph (b) is removed and reserved.

§ 301.89–13 [Amended]

7. In § 301.89–13, paragraph (f) is removed.

Done in Washington, DC, this 28th day of April 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–11128 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 979

[Docket No. FV99–979–1 IFR]

Melons Grown in South Texas; Change in Container Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the handling regulation

currently prescribed under the South Texas melon (cantaloupes and honeydews) marketing order. The marketing order regulates the handling of melons grown in South Texas and is administered locally by the South Texas Melon Committee (committee). This rule changes the dimensions of bulk containers used for shipping honeydew melons, requires these containers to be octagonal or rectangular in shape, and adds a dimension tolerance for that container. It also adds provisions allowing the committee to approve the use of experimental containers and melon shipments for experimental purposes, and removes two experimental containers that have not been used by the industry for several years. These changes were unanimously recommended by the committee and are expected to enable handlers to compete more effectively in the marketplace.

DATES: Effective May 5, 1999; comments received by July 6, 1999, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone: (956) 682–2833, Fax: (956) 682–5942; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 156 and Order No. 979 (7 CFR part 979), regulating the handling of melons grown in South Texas, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the dimensions and specifies the shapes of bulk containers used for shipping honeydew melons, adds a dimension tolerance for that container, adds procedures that allow the committee to approve the use of experimental containers and melon shipments for experimental purposes, and removes two experimental containers that have not been used by the industry for several years. These changes are expected to enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion in the industry. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack for any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate the handling of melons for special purposes. Section 979.55 requires adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purposes.

Changes to the Bulk Container Requirements for Honeydew Melons

Section 979.304 of the order's rules and regulations sets container requirements for both cantaloupes and honeydew melons. Only honeydews are authorized to be packed in bulk containers. Thus, these changes to bulk container requirements do not apply to cantaloupes.

Currently, § 979.304(b)(4) authorizes the use of a bulk container for honeydew melons and specifies that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The phrase "or similar dimensions" was included to provide flexibility recognizing that the dimensions of containers sometimes are a little less or more than those specified in the regulation. The committee now believes, however, that the provisions are too flexible, and that the lack of specificity could result in administrative, compliance, and enforcement problems.

It now believes that a more precise tolerance is needed so that there is no room for misinterpretation by the industry. The committee, therefore, recommended removing the phrase "or similar dimensions" and adding in its place provisions establishing a dimension tolerance of 1½ inch for each dimension. The 1½ inch tolerance for each dimension for this container will allow handlers to pack honeydew melons in containers with dimensions slightly different from the sizes specified in the regulation. Identifying a specific dimension tolerance in the regulation will prevent misunderstandings, and provide handlers the flexibility to use bulk containers with slight dimension variations when packing honeydew melons.

The committee also recommended allowing the depth of the bulk container to range between 24 and 36 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container, if they desire. The

industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to this committee recommendation for increased container flexibility.

The committee further recommended that the shape of bulk containers used for honeydew melons be rectangular or octagonal. Currently, these are the only shapes used by handlers, and the limitation will not impose an added burden on handlers. The change is expected to foster compliance and simplify enforcement. Last season a total of 1,727 bulk containers were shipped by the industry, compared to 1,655 containers in 1997. Demand for bulk containers has increased in recent years because their use results in reduced costs to receivers. Bulk bins can be re-used, whereas other containers cannot. The cost of disposing of used containers has increased.

Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The market for both cantaloupes and honeydew melons continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Currently, except for an experimental honeydew pony carton that is removed by this rule, there are no provisions in place allowing the committee to approve melon shipments for experimental purposes nor in experimental containers unless informal rulemaking is initiated. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those currently authorized by the regulations. The industry currently uses only fiberboard containers, and they are interested in experimenting with plastic bins.

Not being able to respond quickly to market demands for testing different types of melon containers could cause the South Texas melon industry to lose sales to competing melon-producing areas. Competition from other melon production areas demands that the Texas melon industry have the ability to quickly respond to buyer, retailer, and consumer demands for new containers. The committee may become aware of the need for new containers during the shipping season. The shipping season normally runs from May 1 through June 20 each year. For the committee to respond quickly to market needs for containers not currently authorized, it should have flexibility to approve the use of experimental containers whenever the need arises. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility will allow handlers to better meet buyers' needs.

In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed to meet competition from other growing areas, and buyers' needs. Some handlers have expressed an interest in experimenting with the shipment of cantaloupe and honeydew melons in the same container.

Establishing provisions in the regulations to allow the committee to approve the use of experimental containers would allow the industry to respond quickly to market needs for containers not currently approved under the order's container regulations. Establishing provisions in the regulations to allow the committee to approve shipments for experimental purposes would allow the industry to test different types of melon shipments when needed.

Safeguards for these types of shipments are currently specified in paragraph (f) of § 979.304. A handler wanting an exemption for an experimental container or experimental use would apply to the committee for a Certificate of Privilege. The Certificate would be issued by the committee after consideration of the application. Handlers using a Certificate of Privilege would then be required to report each exempt shipment to the committee. This will enable the committee to easily track such shipments, and ensure they are in compliance with the order's rules and regulations.

Once the committee approves the use of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers and other types of shipments. Also, allowing handlers to ship melons in test containers will enable the committee to determine whether such containers should be added to the permanent list of approved containers in the regulations.

Removal of Two Experimental Containers

An experimental honeydew pony carton added in 1985 to paragraph (e)(3) and a cantaloupe carton added in 1990 to paragraph (e)(4) in § 979.304 have not been used for several years. The committee, therefore, recommended that they be removed from the handling regulation.

Other Changes in the Regulations

Currently, in § 979.304(c)(4) the name of one of the designated inspection offices and the telephone area codes of the designated inspection offices are incorrect. The name of the inspection office has been changed to "Texas Cooperative Inspection Program" office and the telephone area codes have changed from "210" to "956". The committee recommended that the regulation be updated to reflect these changes.

In addition, in § 979.180 and § 979.304, the word "cantaloup" is misspelled. To correct the misspelling, all references to "cantaloup" should be changed to "cantaloupe."

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 14 handlers of South Texas melons who are subject to regulation under the marketing order and approximately 33 melon growers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural growers are defined as those having annual receipts of less than $500,000.

Most of the handlers are vertically integrated corporations involved in producing, shipping, and marketing melons. For the 1997–98 marketing year, 6,770 acres of production were shipped by the industry's 14 handlers; the average acreage and median acreage handled totaled 484 acres and 417 acres, respectively. In terms of production value, total revenues from the 14

handlers were estimated to be $16.4 million.

The Rio Grande Valley melon industry is characterized by growers and handlers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of melons. Alternative crops provide an opportunity to utilize many of the same facilities and equipment not in use when the melon production season is complete. For this reason, typical melon growers and handlers either double-crop melons during other times of the year or produce alternate commodities, like onions.

Based on the SBA's definition of small entities, the committee estimates that a majority of the 14 handlers regulated by the order would be considered small entities if only their spring melon revenues are considered. However, revenues from other productive enterprises would likely push a large number of these handlers above the $5,000,000 annual receipt threshold. Of the 33 growers within the production area, few have sufficient acreage to generate sales in excess of $500,000; therefore, the majority of growers may be classified as small entities.

This rule changes the container regulation to accurately identify the shapes and dimensions of bulk containers handlers use for shipping honeydew melons, adds procedures allowing the committee to approve the use of experimental containers and melon shipments for experimental purposes, removes two experimental containers that have not been used by the industry for several years, and makes several minor modifications to update the regulations. These changes are expected to enable handlers to compete more effectively in the marketplace, better meet market needs, and prevent confusion. A subcommittee met on January 28, 1999, and unanimously recommended that the committee approve these changes to the regulation. The committee met and unanimously recommended the changes on March 30, 1999.

Section 979.52 authorizes the issuance of regulations for grade, size, maturity, quality, and pack for any or all varieties of melons during any period. Section 979.54 authorizes the issuance of regulations that modify, suspend, or terminate requirements issued under §§ 979.42, 979.52, or 979.60 to facilitate handling of melons for special purposes. Section 979.55 requires adequate safeguards to ensure that melons handled under § 979.54 are used for the stated purposes.

At its meeting on March 30, 1999, the committee unanimously recommended revising § 979.304 as follows:

(1) Modify the bulk container to accurately identify the shapes and dimensions of bulk containers used for shipping honeydew melons;

(2) Add provisions to allow the committee to approve the use of experimental containers and melon shipments for experimental purposes;

(3) Remove two experimental containers that have not been used by the industry for several years; and

(4) Make several minor modifications to update the regulations.

Changes to the Bulk Container Requirements for Honeydew Melons

Currently, § 979.304(b)(4) authorizes the use of a bulk container for honeydew melons and specifies that the container be 48 inches long by 40 inches wide by 24 inches deep or similar dimensions. The committee recommended that the regulation specify that the bulk containers be rectangular or octagonal, the types of containers currently being used by the industry, in order to help administer the program. Making the regulation more specific will foster compliance and simplify enforcement. (Last season 1,727 of these bulk containers were shipped by the industry.) Specifying the shape of the bulk container in the regulation would clear up any misunderstanding that all shapes of bulk containers may be used for shipping honeydew melons.

The regulation currently does not provide specific tolerances on the container dimensions, and the committee does not know exactly how "similar dimensions" is being interpreted. Differences in interpretation among handlers and the industry regarding the phrase "or similar dimensions" could cause problems enforcing the marketing order program. A more precise tolerance is needed so that there is no room for misinterpretation by the industry. In order to clarify the industry's intentions, the committee recommended removing the phrase "or similar dimensions" and adding in its place, "A tolerance of 1½ inch for each dimension shall be permitted." The committee believes the recommendation to provide a 1½ inch tolerance for each dimension on this container will provide handlers some flexibility, with some preciseness, to pack honeydew melons in containers with slightly different dimensions from the sizes specified in the regulation. Identifying specific dimension tolerances in the regulation would prevent possible misunderstanding and would give handlers the flexibility to use bulk containers with slightly different dimensions from the sizes specified in the regulation.

The committee also recommended increasing the depth allowance of the bulk container by 12 inches to permit melon handlers to pack larger or a greater number of honeydew melons in the container.

Adding tolerances to the dimensions of the currently approved bulk container and increasing the depth allowance will allow the melon industry to accept containers with slight dimension variations from box manufacturers, which will give handlers additional flexibility.

The industry's need to pack larger or a greater number of honeydews in the bulk container, depending on buyer or retailer needs, led to the committee's recommendation to increase the depth allowance of the container by an additional 12 inches to permit a range from 24 to 36 inches deep.

Addition of Provisions Allowing the Committee To Approve the Use of Experimental Containers and Melon Shipments for Experimental Purposes

The marketplace continues to undergo rapid changes. Buyers, retailers, and consumers continually demand flexibility in container availability. The committee is always looking for ways to strengthen and expand the market for melons. Currently, except for an experimental honeydew pony carton provision that is removed by this rule, there are no procedures in place to allow the committee to approve melon shipments for experimental purposes nor in experimental containers unless they initiate informal rulemaking. There are times during the melon shipping season when the trade is interested in receiving melons in containers other than those currently authorized by the regulations. The industry currently uses only fiberboard containers and they are interested in experimenting with plastic bins. The committee does not currently have the flexibility to react quickly to the need for containers not currently approved for South Texas melon shipments. Not being able to respond quickly to market demands for testing different types of melon containers could cause the South Texas melon industry to lose sales to competing melon-producing areas.

Competition from other melon production areas demands that the Texas melon industry be able to quickly respond to buyer, retailer, and consumer demands for new containers. Because

the melon regulatory period begins May 1 each year and runs through June 20, the committee is not able to meet, approve regulatory changes, and promptly complete the rulemaking process in order to approve various types of experimental containers. The industry may not be aware of the need for new containers until they are in the middle of their shipping season. For the committee to respond quickly to market needs for containers which are not currently authorized, it must have the flexibility to approve the use of experimental containers whenever the need arises. Also, melon-producing areas without marketing orders are not bound by container restrictions and have the flexibility to use different types and sizes of containers as needed by consumers and retailers. The added flexibility will allow handlers to meet the competition from other areas and better meet buyers' needs. In addition, the committee recommended that provisions be added to the regulations to permit it to approve shipments for experimental purposes to allow the industry to test different types of melon shipments whenever needed. As mentioned before, some handlers have expressed an interest in experimenting with the shipment of cantaloupes and honeydew melons in the same container.

Establishing provisions to allow the committee to approve the use of experimental containers would allow the industry to respond quickly to market needs for containers not currently approved under the order's container regulations, and establishing procedures to authorize the committee to approve shipments for experimental purposes would allow the industry to test different types of melon shipments when needed. Because the committee has established safeguards for these types of experimental shipments under paragraph (f) of the handling regulation, they will be able to easily track their use. Once the committee authorizes the use of experimental containers or experimental shipments, the industry will be able to determine the benefits and market acceptance of the containers or other types of shipments. Also, allowing handlers to ship melons in test containers will enable the committee to determine whether such containers should be added to the permanent list of approved containers.

Removal of Two Experimental Containers

Two experimental containers in (e)(3) (a honeydew pony carton added in 1985) and (e)(4) (a cantaloupe carton added in 1990) are obsolete and have not been used for several years, and the committee recommended that they be removed from the handling regulation.

Other Changes in the Regulations

Currently, in § 979.304(c)(4) the name and telephone area codes of the inspection office are incorrect. The name of the inspection office has been changed to "Texas Cooperative Inspection Program" office and the telephone area codes have changed from "210" to "956." The committee recommended that the regulation be updated to reflect these changes.

In Marketing Order No. 979 the correct spelling of "cantaloupe" is used, and in § 979.180 and § 979.304, "cantaloup" is misspelled. To correct the misspelling and for consistency, all references to "cantaloup" should be changed to "cantaloupe."

This rule change would permit the South Texas melon industry to experiment with different types of containers prior to adding them to their approved container list. The committee believes this would effectively accommodate retailer and customer needs.

The committee recommended these changes to assist the consuming public in receiving Texas melons in containers they desire. Permitting the South Texas melon industry to experiment with different types of containers without the need for rulemaking and adding tolerances to the currently approved honeydew bulk container has small entity orientation.

An alternative to the recommended changes would be to keep the regulations as they are, however:

(1) It was the committee's desire to come up with a more workable bulk honeydew container regulation to make it more precise and eliminate potential problems. Not permitting a 1½ inch tolerance for each dimension on the bulk container could prevent the industry from marketing honeydew melons in containers which might be manufactured slightly different from the sizes specified in the regulation.

(2) Not permitting the committee to quickly approve shipments for experimental purposes exempt from regulations or in experimental containers without rulemaking could hinder the industry's ability to quickly respond to market needs and prevent them from marketing more melons. Not providing the committee the flexibility to quickly respond to market demands for test containers or shipments could result in the industry losing opportunities to other melon-producing areas.

(3) The two permanent experimental containers are no longer needed because the containers have not been used for a number of years and a new section is being added to make it possible for the committee to quickly approve the use of experimental containers.

(4) Not updating the name and telephone numbers of the inspection office to accurately reflect the correct information could cause confusion in the industry.

Although authorizing melon shipments for experimental purposes and the use of experimental containers would impose some additional reporting and recordkeeping requirements on melon handlers, this would be minimal. Currently, handlers making shipments of melons for special purposes, including experimental, are required to obtain a Certificate of Privilege to notify the committee of their intent to ship melons for these purposes. Also, handlers must prepare a special purpose shipment report on each shipment and forward it to the committee. The committee estimates that approximately two to four handlers might request approval for the use of experimental containers, which would increase the total reporting and recordkeeping burden by approximately .1 to .2 hours, and this time is currently approved under OMB No. 0581–0178 by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction of 1995 (44 U.S.C. Chapter 35).

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the committee's meeting was publicized throughout the melon industry and all interested persons were invited to attend the meeting and participate in committee deliberations. Like all committee meetings, the March 30, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The committee itself is composed of 10 members, of which 9 are growers and handlers, and one represents the public. Also, the committee has a subcommittee to review certain issues and make recommendations to the committee. The subcommittee met on January 28, 1999, and discussed this issue in detail. The meeting was a public meeting and both large and small entities were able to participate and express their views. Finally, interested

persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

After consideration of all relevant material presented, including the committee's recommendation, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on changes to the handling regulation currently prescribed under the South Texas melon marketing order. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule relaxes requirements for bulk containers for honeydew melons and provides additional opportunities for the industry to ship melons; (2) the committee needs this rule to be in place for the 1999 season beginning May 1, 1999, so the industry may take advantage of these options; (3) the committee unanimously recommended these changes at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 60-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 979

Marketing agreements, Melons, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 979 is amended as follows:

PART 979—MELONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 979 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 979.180 [Amended]

2. In § 979.180, the word "cantaloups" is revised to read "cantaloupes" everywhere it appears.

3. In § 979.304, paragraphs (b)(4), (c)(4), and (e)(3) are revised, paragraph (e)(4) is removed, and paragraph (e)(5) is redesignated as paragraph (e)(4) to read as follows:

§ 979.304 Handling regulation.

* * * * *

(b) * * *

(4) Honeydew melons may be packed in rectangular or octagonal bulk containers having dimensions of 48 inches long by 40 inches wide by 24 to 36 inches deep. A tolerance of 1½ inch for each dimension shall be permitted.

* * * * *

(c) * * *

(4) Designated inspection stations will be located at the Texas Cooperative Inspection Program Office, 1301 W. Expressway, Alamo (Phone (956) 787–4091 or 6881) and the Matt Dietz Packing Co., 4700 N. Santa Maria, Laredo (Phone (956) 723–9178 or 9170), to be available for handlers who do not have permanent packing facilities recognized by the committee.

* * * * *

(e) * * *

(3) *Experimental shipments.* (i) Upon approval by the committee, melons may be shipped for experimental purposes exempt from the container requirements specified in paragraph (b) of this section, but shall meet the grade and inspection requirements of paragraphs (a) and (c) of this section and the assessment requirements specified in § 979.219: *Provided,* That the melons are handled in accordance with safeguard provisions of paragraph (f) of this section.

(ii) Upon approval of the committee, melons may be shipped for testing in types and sizes of containers other than those specified in paragraphs (b) and (e)(4) of this section: *Provided,* That the melons are handled in accordance with the provisions of paragraph (f) of this section.

* * * * *

4. In § 979.304, the words "cantaloup", "cantaloups", and "Cantaloups" are revised to read "cantaloupe", "cantaloupes" and "Cantaloupes", respectively everywhere they appear.

Dated: April 28, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11077 Filed 5–3–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV99–993–2 FR]

Dried Prunes Produced in California; Undersized Regulation for the 1999–2000 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 1999–2000 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets, and allows handlers to dispose of undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes expected at the end of the 1998–99 crop year by approximately 6,700 tons, leaving sufficient prunes to fulfill foreign and domestic trade demand.

EFFECTIVE DATE: August 1, 1999.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 1999–2000 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 23/32 to 24/32 of an inch in diameter, and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. The rule will be in effect from August 1, 1999, through July 31, 2000, and was unanimously recommended by the Committee at a December 1, 1998, meeting.

Section 993.19b of the prune marketing order defines undersized prunes as prunes which pass freely through a round opening of a specified diameter. Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the Secretary, upon a recommendation of the Committee, may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation. Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes * * *" Pursuant to § 993.52, minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the Secretary, on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes, and 28/32 or 30/32 of an inch for non-French prunes.

During the 1974–75 and 1977–78 crop years, the undersized prune regulation was established by the Department at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and the Department established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15, 1975 and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes, particularly small sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77 and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products, such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes, particularly in the smaller sizes. During the 1998–99 crop year, the undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). At its meeting on December 1, 1998, the Committee recognized that the 1998–99 prune crop is about 50% of the normal size; however, with the large inventories and anticipated large 1999–2000 prune crop, the Committee unanimously recommended continuing with volume controls for the 1999–2000 crop year by proposing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. This regulation will be in effect from August 1, 1999, through July 31, 2000.

The Committee estimated that there will be an excess of about 18,700 natural condition tons of dried prunes as of July 31, 1999. This rule will continue to remove primarily small sized prunes from human consumption channels, consistent with the undersized regulation that was implemented for the 1998–99 crop year. It is estimated that approximately 6,700 natural condition tons of small prunes will be removed from human consumption channels during the 1999–2000 crop year. This will leave sufficient prunes to fill domestic and foreign trade demand during the 1999–2000 crop year, and provide an adequate carryout on July 31, 2000, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop is about 38,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A

worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing into the next century (estimated at 350,845 natural condition tons by the year 2003); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 1997–98 crop years, the yield ranged from 1.5 to 2.8 versus a 10 year average of 2.2 tons per acre); and (4) California's continued excess supply situation. The production of these small sizes ranged from 2,575 to 8,778 natural condition tons during the 1990–91 through the 1997–98 crop years. The Committee concluded that it had to continue utilizing supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. The changes to the undersized regulation for the 1999–2000 crop year are the result of these deliberations, and the Committee's desire to bring supplies more in line with market needs.

The current oversupply situation facing the California prune industry has been caused by four consecutive large crops (1994–95 through 1997–98) of over 180,000 natural condition tons. Further burdening this oversupply situation will be large California prune crops over the next few years caused by the new prune plantings in recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1995–96, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over a three-year period from the 1995–96 through the 1997–98 crop years, compared to a 10-year average of 2.2 tons to the acre. The 1998–99 crop prune is exceptionally light, about 50% of normal size (103,000 tons), due to the unusually cool and wet weather conditions caused by the weather phenomenon known as El Nino. Even though this year's small prune crop and the 1998–99 undersized prune regulation will help reduce the existing oversupply, the prune supply has been outstripping demand over the past nine years. Another large crop of about 200,000 natural condition tons is expected for the 1999–2000 crop year, partly because of an anticipated increase in bearing acreage, and this will add to the continuing oversupply.

Because of the oversupply situation during the 1997–98 crop year, producer prices for the 24/32 of an inch in diameter French prunes declined to $40–50 per ton. Consequently, producers lost about $260–270 per ton on every ton they delivered to handlers during 1997–98. The lower pricing of the smaller prunes continued in 1998–99, and is expected to continue as an incentive in future crop years to convince producers to produce the larger sizes needed to help the industry better meet the increasing market demand for larger size prunes used for pitted prunes.

The 1998–99 undersized prune rule of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes has expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 1998, was 88,840 natural condition tons, and only about 2,400 natural condition tons of dried prunes are expected to be removed from the 1998–99 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 1999–2000 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 1999–2000 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. It further states that any change (i.e., increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings will only be applicable when supply conditions warrant the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers averaged about 54 percent of parity during the 1992 through 1997 seasons, and is in a downward trend. As discussed later, the average grower price for prunes during the 1999–2000 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control. The smaller diameter openings of 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes were implemented to improve product quality. The recommended increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control. Therefore, the increased diameters will not be applied to imported prunes.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,250 producers of dried prunes in the production area and approximately 20 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 8 out of 20 handlers (40%) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Twelve of the 20 handlers (60%) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 90 producers, or about 7% of the 1,250 total producers, could be considered large growers with annual income over $500,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

This rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 1999–2000 crop year for

volume control purposes. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes, and is expected to benefit producers, handlers, and consumers. Since prune handlers already use 24/32 and 30/32 grader screens, small and large producers and handlers will not incur extra costs to purchase new screen sizes. Moreover, because the quality related undersized regulation has been in place continuously since the early 1980's, the only additional cost resulting from the increased openings will be the disposal of additional undersized prune tonnage (about 6,700 natural condition tons) to nonhuman consumption outlets as required by the order. With the less restrictive openings, only 5,635 natural condition tons or 3.3 percent of the marketable production has been removed on average over the past eight crop years since 1990–91. The more restrictive openings currently in place for 1998–99 are expected to remove only 2,400 tons of dried prunes from the excess marketable supply. The Committee estimated that there will be an excess of about 18,700 natural condition tons of dried prunes on July 31, 1999. Implementation of the more restrictive openings in 1999–2000 is expected to reduce the surplus by about 6,700 tons.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys, which account for over 99 percent of the State's production, the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependant on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or lesser for small handlers or producers than for larger entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 6,700 tons) to nonhuman consumption outlets. These costs are expected to be minimal, and will be offset by the benefits derived by the elimination of some of the excess supply of small sized prunes.

At the December 1, 1998, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for these small sizes is quite bleak with producers losing about $260–270 on every ton they deliver to handlers. The 1998–99 grower field price for 24/32 screen French prunes is ranging between $40 and $50 per ton, just like last crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion and research) is $30 per ton. The total cost is about $310 per ton which equates to a loss of about $260-270 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, the Department has evaluated the impact of the undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories will result in higher season-average prices which will benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets will eliminate an estimated 6,700 tons of small-sized dried prunes during the 1999–2000 crop year from the marketplace. This will help lessen the negative marketing and pricing effects resulting from the excess supply situation facing the industry. California prune handlers reported that they held 126,485 tons of natural condition prunes on July 31, 1998, the end of the 1997–98 crop year. This was the largest year-end inventory reported since the Committee began collecting such statistics in 1949. The desired industry inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 38,000 natural condition tons. This leaves an inventory surplus of over 88,000 tons which will likely take the industry several years to market. The small 1998–99 prune crop and undersized regulation will help reduce the surplus, but the anticipated large 1999–2000 prune crop is expected to bring supplies further out-of-balance with demand.

Further burdening this oversupply situation will be large California prune crops over the next few years caused by the new prune plantings of recent years and higher yields per acre. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres, but by 1995–96, the non-bearing acreage had quadrupled to more than 23,000 acres. Yields have ranged from 2.3 to 2.8 tons per acre over a three-year period from the 1995–96 through the 1997–98 crop year, compared to a 10-year average of 2.2 tons to the acre. The 1998–99 prune crop is expected to be about 50% of normal size (103,000 natural condition tons). Even though this year's small prune crop and the 1998–99 undersized prune regulation will help reduce the existing oversupply, the prune supply has been outstripping demand over the past nine years. In addition, the 1999–2000 prune crop is expected to be about 200,000 tons, further increasing the industry's oversupply problems.

As the marketable dried prune production and surplus prune inventories are reduced through this action, the trade should begin taking a position early in the season for its dried prune needs, which will help firm up market prices and eventually reflect a higher overall price to the producers. In addition, as producers implement improved cultural and thinning practices, the overall size of the prunes will get larger. As a result, producer returns will increase because producers will be producing less tonnage of small sized fruit at a $260–270 per ton loss. Instead producers will be receiving the higher prices paid for the larger sizes.

For the 1993–94 through the 1997–98 crop years, the season average price received by the producers ranged from a high of $1,120 per ton to a low of $827 per ton during the 1997–98 crop year. The season average price received by producers averaged about 54 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for the 1998–99 season is expected to be about $790 per ton, or about 41 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee

believed that the undersized rule change was needed to expedite that reduction. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation. These initiatives were not supported because they would not specifically eliminate the smallest, least valuable prunes which are in oversupply. Instead, the reserve pool and diversion program would eliminate larger size prunes from human consumption outlets. Reserve pools for prunes have historically been implemented on dried prunes regardless of the size of the prunes. While the marketing order also allows handlers to remove the larger prunes from the pool by replacing them with small prunes and the value difference in cash, this exchange would be cumbersome and expensive to administer compared to this rule.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for volume control, not quality control, purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of volume control.

Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, as noted in the initial regulatory flexibility analysis, the Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the December 1, 1998, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members, of which seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been reviewing this supply management problem for the second year, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on January 25, 1999 (64 FR 3660). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the rule was made available through the Internet by the U.S. Government Printing Office. The rule provided a comment period which ended April 15, 1999. No comments were received.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.406 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 993.406 Undersized prune regulation for the 1999–2000 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 1999–2000 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: For French prunes, 24/32 of an inch in diameter; for non-French prunes, 30/32 of an inch in diameter.

Dated: April 27, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11078 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AF96

Codes and Standards: IEEE National Consensus Standard; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Correction.

SUMMARY: This document corrects a final rule appearing in the **Federal Register** on April 13, 1999 (64 FR 17944), that incorporates by reference IEEE Std. 603–1991, a national consensus standard for power, instrumentation, and control portions of safety systems in nuclear power plants. This action is necessary to correct an erroneous reference.

EFFECTIVE DATE: The final rule is effective on May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, **Federal Register** Liaison Officer, telephone (301) 415–7163.

SUPPLEMENTARY INFORMATION: On page 17946, in the third column, in the codified text at § 50.55a(h)(1), on the fourteenth and twenty-first lines from the top, and at § 50.55a(h)(2) on the twenty-eighth line from the top "Std. 279–1971" should be corrected to read "Std. 279."

Dated at Rockville, Maryland, this 28th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11111 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–202–AD; Amendment 39–11151; AD 99–09–18]

RIN 2120–AA64

Airworthiness Directives; Fokker Model F.28 Mark 0070 and Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series

airplanes, that currently requires a one-time inspection for heat damage of the fuselage skin and stubwing structure; either repetitive tests of certain seals or repair of heat damage, as necessary; and eventual replacement of corrujoint seals with new, improved seals. This amendment adds a requirement for repetitive inspections for heat damage of the subject area, and provides for a new optional terminating action for the repetitive inspections. This action is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent leakage of hot air from the corrujoint seals of certain valves in the stubwings, and subsequent heat damage of the fuselage skin and stubwing structure, which could result in reduced structural integrity of the airplane.

DATES: Effective June 8, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 8, 1999.

The incorporation by reference of certain other publications as listed in the regulations, was approved previously by the Director of the **Federal Register** as of May 14, 1998 (63 FR 17318, April 9, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–08–01, amendment 39–10450 (63 FR 17318, April 9, 1998), which is applicable to certain Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes, was published in the **Federal Register** on November 10, 1998 (63 FR 62970). The action proposed to continue to require a one-time visual inspection to detect heat damage of the fuselage skin and stubwing structure; either repetitive leak tests of the seals of the bleed air system or repair of any heat-damaged structure, as necessary; and replacement of corrujoint seals with new, improved seals. Additionally, that action proposed to require repetitive inspections of the fuselage skin and stubwing connection angles to detect heat damage, and an additional detailed inspection of the fuselage and stubwing structure and repair when heat damage is detected. That action also proposed to provide for a new optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposal.

Request to Delay Requiring Repetitive Testing

One commenter, an airline operator, requests that data derived from the initial inspection mandated by AD 98–08–01, which has a May 1999 compliance time, be analyzed before a decision is made in regard to the need for additional testing.

The commenter states that it has no objection to accomplishing the repetitive inspections specified in the proposal, if they are required. However, the commenter contends that mandating those repetitive inspections at this time would be acting prematurely, since all data from the initial inspections are not available to analyze.

The FAA does not concur with the commenter's request to delay requiring repetitive inspections. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, advised the FAA that a sufficient number of operators have already accomplished the one-time inspection described in Fokker Service Bulletin SBF100–53–084, dated July 6, 1996 (the referenced source of service information in the proposal and AD 98–08–01). Consequently, the RLD included requirements for repetitive inspections in Revision 3 of the Dutch airworthiness directive BLA 1995–076/3 (A), dated November 28, 1997, to ensure continued airworthiness. That revision is referenced in this AD.

Therefore, the FAA has determined that the repetitive inspections required by this AD are necessary in order to adequately address the identified unsafe condition. However, as specified in paragraph (h) of this AD, operators have the option of modifying the airplane in accordance with Fokker Proforma Service Bulletin F100–36–027, dated March 21, 1997, which would provide terminating action for the repetitive inspection requirements of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 141 Fokker Model F.28 Mark 0070 and Mark 0100 series airplanes of U.S. registry that will be affected by this AD.

The one-time visual inspection that is currently required by AD 98–08–01, and retained in this AD, takes approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection requirement of this AD on U.S. operators is estimated to be $180 per airplane.

The seal replacement that is currently required by AD 98–08–01, and retained in this AD, takes approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts cost approximately $80 per airplane. Based on these figures, the cost impact of the seal replacement requirement of this AD on U.S. operators is estimated to be $500 per airplane.

The new actions that are required by this new AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $25,380, or $180 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10450 (63 FR 17318, April 9, 1998), and by adding a new airworthiness directive (AD), amendment 39–11151, to read as follows:

99–09–18 Fokker Services B.V.: Amendment 39–11151. Docket 98–NM–202–AD. Supersedes AD 98–08–01, Amendment 39–10450.

Applicability: Model F.28 Mark 0070 and Mark 0100 series airplanes equipped with any corrujoint seal having part number (P/N) BE20061 (Rolls-Royce P/N 3405891) or on which Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, has not been accomplished; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (i)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent leakage of hot air from the corrujoint seals of the low- and high-pressure check valves located in the stubwings, and subsequent heat damage of fuselage skin and stubwing structure adjacent to bleed air system components in the stubwings, which could result in reduced structural integrity of the airplane, accomplish the following:

Restatement of Requirements of AD 98–08–01, Amendment 39–10450:

(a) For Model F28 Mark 0070 and Mark 0100 series airplanes as listed in Fokker Service Bulletin SFB100–53–084, dated July 6, 1996; if equipped with any corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891): Within 3,000 flight hours or 12 months after May 14, 1998 (the effective date of AD 98–08–01, amendment 39–10450), whichever occurs first, perform a one-time visual inspection of the fuselage skin in the left- and right-hand stubwings to detect heat damage; in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SFB100–53–084, dated July 6, 1996.

(b) If no heat damage is found during the inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new, improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(2) Perform a leak test of each corrujoint seal at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems, in accordance with Part 3 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(i) If any leakage is found at a seal, prior to further flight, replace that seal with a new, improved seal having part number EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(ii) If no leakage is found at a seal, perform an additional leak test of that seal within 250 flight hours after the initial test.

(A) If no leakage is found during the additional test of the seal, within 3,000 flight hours after the additional test, replace the seal with an improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(B) If any leakage is found during the additional test of the seal, prior to further flight, replace the seal with a new, improved seal having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; and inspect the fuselage skin in the applicable left- or right-hand stubwing to detect heat damage, in accordance with Part 2 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996.

(c) If any heat damage is found during the inspection required by paragraph (a) or paragraph (b)(2)(ii)(B) of this AD, prior to further flight, perform a detailed inspection of the fuselage skin and stubwing structure to detect the extent of heat damage, in accordance with Parts 4 and 5 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and accomplish paragraphs (c)(1) and (c)(2) of this AD.

(1) Except as provided by paragraph (g) of this AD: Repair the affected structure in accordance with Part 6 of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996. And

(2) Replace all corrujoint seals having P/N BE20061 (Rolls-Royce P/N 3405891) at the 7th stage low-pressure and 12th stage high-pressure check valves of the left- and right-hand bleed air systems with new, improved corrujoint seals having P/N EU15969, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996.

(d) As of May 14, 1998, no person shall install a corrujoint seal having P/N BE20061 (Rolls-Royce P/N 3405891) on any airplane.

New Requirements for This AD

(e) For Model F.28 Mark 0070 and Mark 0100 series airplanes on which Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, has not been accomplished; Perform a visual inspection of the fuselage skin in the left-and right-hand stubwings to detect heat damage, in accordance with the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, at the latest of the times specified in paragraphs (e)(1), (e)(2), and (e)(3) of this AD, as applicable. Repeat the inspection required by paragraph (e) of this AD thereafter at intervals not to exceed 6,000 landings.

(1) Within 6,000 landings after the effective date of this AD.

(2) Within 6 months after the effective date of this AD.

(3) Within 6,000 landings after accomplishment of the inspection required by paragraph (a) of this AD.

(f) If any heat damage is detected during any inspection required by paragraph (e) of this AD, prior to further flight, perform a detailed visual inspection to determine the extent of heat damage, in accordance with paragraph 2.B.(2) of the Accomplishment Instructions of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997. Except as provided by paragraph (g) of this AD, prior to further flight, repair in accordance with the service bulletin.

Note 2: Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, refers to

Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, as an additional source of service information for the detailed inspection procedures, repair limits, and repair procedures.

(g) If any damage is found during accomplishment of any action specified by paragraph (c)(1) or (f) of this AD, and Fokker Service Bulletin SBF100–53–084, dated July 6, 1996, or Fokker Service Bulletin SBF100–53–087, dated November 17, 1997, specifies to contact the manufacturer for an appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the RLD (or its delegated agent).

(h) Installation of new heat shields, relocation of the aft bay overheat switch, and replacement of the insulation blankets of the bleed air ducts with new, improved insulation blankets, in accordance with Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997, constitutes terminating action for the repetitive inspection requirements of paragraph (e) of this AD.

Alternative Method of Compliance

(i)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–08–01, amendment 39–10450, are approved as alternative methods of compliance with paragraphs (a), (b), and (c) of this AD.

(3) Airplanes repaired in accordance with alternative methods of compliance, approved previously in accordance with AD 98–08–01, amendment 39–10450, are not considered exempt from the repetitive inspection requirements of paragraph (e) of this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(j) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(k) Except for the actions specified in paragraphs (g) and (h) of this AD, the actions shall be done in accordance with Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; or Fokker Service Bulletin SBF100–53–087, dated November 17, 1997. The terminating action specified in paragraph (h) of this AD, if accomplished, shall be accomplished in accordance with Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997.

(1) The incorporation by reference of Fokker Service Bulletin SBF100–53–087, dated November 17, 1997; and Fokker Proforma Service Bulletin SBF100–36–027, including Appendix I, both dated March 21, 1997; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Fokker Service Bulletin SBF100–53–084, dated July 6, 1996; and Fokker Service Bulletin SBF100–36–026, Revision 1, dated July 6, 1996; was approved previously by the Director of the Federal Register as of May 14, 1998 (63 FR 17318, April 9, 1998).

(3) Copies may be obtained from Fokker Services B.V., Technical Support Department, P.O. Box 75047, 1117 ZN Schiphol Airport, the Netherlands. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Dutch airworthiness directive 1995–076/3 (A), dated November 28, 1997.

(l) This amendment becomes effective on June 8, 1999.

Issued in Renton, Washington, on April 21, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10605 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–50–AD; Amendment 39–11152; AD 99–09–19]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Aerospatiale Model ATR42 and ATR72 series airplanes. This action requires revising the Airplane Flight Manual to provide the flightcrew with modified procedures and limitations for operating in severe icing conditions. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent the airplane from stalling due to prolonged exposure to severe icing conditions, which could result in reduced performance and controllability of the airplane.

DATES: Effective May 19, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 19, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 3, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–50–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Aerospatiale Model ATR42 and ATR72 series airplanes. The DGAC advises that during an in-flight incident an ATR airplane stalled in severe icing conditions and lost 4,000 feet of altitude before recovery.

Experience has shown that the currently recommended airspeeds in icing conditions provide adequate stall margins when flying in normal icing conditions, but provide little margin to stall speeds when the airplane has accreted a large amount of ice following prolonged flight in severe icing conditions. The current procedures in the FAA-approved Airplane Flight Manual (AFM) require immediate exit when severe icing conditions are detected. However, even if the exit maneuver is initiated immediately, a few minutes may elapse before the airplane is out of the severe icing conditions. Late detection of severe icing conditions and nonapplication or

late application of appropriate AFM procedures can contribute to prolonged exposure to severe icing conditions that may be outside the certification envelope (as required by Appendix C of part 25 of the Federal Aviation Regulations). Such prolonged exposure can cause the airplane to stall, resulting in reduced performance and controllability of the airplane.

Explanation of Relevant Service Information

Aerospatiale has issued AFM Temporary Revisions (TR) for the affected airplanes (Model ATR42–200, –300, and –320; Model ATR72–212A, Model ATR72–100, –200, and –210; and Model ATR42–500) to provide the flightcrew with modified limitations and procedures for operating in severe icing conditions. The TR for Chapter 2.06.01, dated February 1999, revises the AFM to aid in the early detection of severe icing by adding criteria related to unusual performance degradation. The TR for Chapter 4.05.05, dated February 1999, revises the AFM to increase the speed during the exit maneuver in order to provide improved margin to stall.

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, issued French airworthiness directives 1999–014–076(B) and 1999–015–040(B), both dated January 13, 1999, in order to ensure the continued airworthiness of these airplanes in France. (Errata to those French airworthiness directives were issued January 27, 1999, to correct typographical errors that referred to compliance times.)

U.S. Type Certification of the Airplane

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

FAA's Determinations

The FAA has examined the circumstances and reviewed all available information related to the incident described previously. The FAA finds that the Limitations and Emergency Procedures sections of the FAA-approved AFM's for ATR42 and ATR72 series airplanes must be revised to prevent prolonged exposure to severe icing conditions that may be outside the certification envelope, which could result in reduced performance and controllability of the airplane. In light of this, the FAA considers that revision of the AFM's is necessary to ensure early detection of severe icing conditions and to provide improved margin to a stall.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent prolonged exposure to severe icing conditions that may be outside the certification envelope (as defined previously), which could result in reduced performance and controllability of the airplane. This AD requires revising the Limitations and Emergency Procedures sections of the AFM's to provide the flightcrew with modified procedures and limitations for operating in severe icing conditions.

Differences Between Rule and Foreign AD

Although the compliance time for the French airworthiness directives is 3 days, this rule requires accomplishment within 10 days. In determining an appropriate compliance interval for timely accomplishment of the AFM revisions for this AD, the FAA considered the safety implications and operators' maintenance schedules. In consideration of these factors, the FAA has determined that 10 days represents an appropriate interval in which the AFM revisions can be accomplished in a timely manner within the fleet and still maintain an adequate level of safety.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–50–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

98–09–19 Aerospatiale: Amendment 39–11152. Docket 99–NM–50–AD.

Applicability: All Model ATR42 and ATR72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the airplane from stalling due to prolonged exposure to severe icing conditions, which could result in reduced performance and controllability of the airplane, accomplish the following:

(a) For Model ATR42–200, –300, and –320 series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting a copy of Chapter 2.06.01, page 2, of ATR 42 AFM Temporary Revision (TR), dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

(b) For Model ATR42–500 series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Chapter 2.06.01, page 2, of ATR AFM Temporary Revision, dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

(c) For Model ATR72 series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Chapter 2.06.01, page 2, of ATR 72 AFM Temporary Revision, dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

(d) For Model ATR72–212A series airplanes: Within 10 days after the effective date of this AD, revise the Limitations section of the FAA-approved Airplane Flight Manual (AFM) by inserting into the AFM a copy of Chapter 2.06.01, page 2, of ATR 72 A AFM Temporary Revision, dated February 1999; and revise the Emergency Procedures section of the AFM by inserting a copy of Chapter 4.05.05, pages 5 and 6, of the TR.

Note 1: The AFM revisions required by paragraphs (a), (b), (c), and (d) of this AD may be accomplished by inserting a copy of the TR's into the applicable AFM. When these TR's have been incorporated into the general revisions of the AFM, the general revisions may be inserted into the AFM, provided that the information contained in the general revisions is identical to that specified in the TR's.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The AFM revisions shall be done in accordance with the following, as applicable:

- ATR 42 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR 42 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6
- ATR Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6
- ATR 72 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR 72 Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6
- ATR 72 A Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 2.06.01, page 2
- ATR 72 A Airplane Flight Manual Temporary Revision, dated February 1999, Chapter 4.05.05, pages 5 and 6

(**Note:** The AFM temporary revisions for Chapter 4.05.05 contain only pages 5 and 6 of the Emergency Procedures Section; no other page of that section has been revised. The AFM temporary revisions for Chapter 2.06.01 contain only page 2 of the Limitations Section; no other page of that section has been revised that pertains to this AD.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 1999–014–076(B) and 1999–015–040(B), both dated January 13, 1999.

(h) This amendment becomes effective on May 19, 1999.

Issued in Renton, Washington, on April 22, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10644 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 73

[Airspace Docket No. 98–ANM–22]

RIN 2120–AA66

Establishment of Temporary Restricted Area, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes a temporary Restricted Area 3203D (R–3203D) at Orchard, ID, for the period June 5–26, 1999. The temporary area will be established adjacent to the existing Restricted Area R–3203A. The Idaho Army National Guard will use this temporary restricted area to support its annual training requirements.

EFFECTIVE DATE: 901 UTC, June 5, 1999.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On February 26, 1999, the FAA proposed to establish a temporary restricted area, R–3203D, at Orchard, ID, from June 5–26, 1999, to provide essential ground maneuvering space needed to meet the Idaho Army National Guard annual training requirements (64 FR 9455). Interested

parties were invited to participate in this rulemaking proceeding by submitting written comments objecting to the proposal to the FAA. No comments were received objecting to the proposal. Except for editorial changes, this amendment is the same as that proposed in the Notice.

The coordinates for this airspace Docket are based on North American Datum 83. Section 73.32 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8F dated October 27, 1998.

The Rule

This amendment to 14 CFR part 73 of the Federal Aviation Regulations establishes a temporary Restricted Area R–3203D, at Orchard, ID, adjacent to the existing Restricted Area R–3203A. R–3203D will assist the Idaho Army National Guard in supporting its annual training requirements. The restricted area will be effective June 5–26, 1999. Expansion in the number of gun batteries assigned to field artillery units, along with requirements that each assigned battery accomplish several moves per day to different firing points, has created the need to temporarily expand the available restricted airspace to provide for more effective training. All artillery firing will be directed into existing impact areas located approximately in the center of R–3203A. The temporary restricted area will provide protected airspace to contain the projectiles during flight between the surface firing point and entry into the existing restricted area. The temporary restricted area will be utilized for Idaho Army National Guard Field Artillery firing and will be released to the FAA for public use during periods it is not required for military training.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action is categorically excluded under FAA Order 1050.1D, "Policies and Procedures for Considering Environmental Impacts," and the National Environmental Policy Act of 1969.

List of Subjects in 14 CFR Part 73

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 73—[AMENDED]

1. The authority citation for 14 CFR part 73 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 73.32 [Amended]

2. Section 73.32 is amended as follows:

R–3203D Orchard Training Area, ID [New]

Boundaries. Beginning at lat. 43°14′00″ N., long. 116°16′30″ W.; at lat. 43°17′51″ N., long. 116°16′25″ W.; at lat. 43°19′02″ N., long. 116°14′45″ W.; at lat. 43°19′02″ N., long. 116°06′36″ W.; at lat. 43°15′58″ N., long. 116°01′12″ W.; at lat. 43°15′00″ N., long. 116°01′00″ W.; at lat. 43°17′00″ N., long. 116°05′00″ W.; at lat. 43°17′00″ N., long. 116°12′00″ W.; to the point of beginning.

Designated altitudes. Surface to and including 22,000 feet MSL.

Times of use. As scheduled by NOTAM 24 hours in advance for the period June 5–26, 1999.

Controlling agency. FAA Boise ATCT.

Using agency. Commanding General Idaho Army National Guard.

Issued in Washington, DC, on April 27, 1999.

Reginald C. Matthews,

Acting Program Director for Air Traffic Airspace Management.

[FR Doc. 99–11171 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF DEFENSE

DEPARTMENT OF TRANSPORTATION
Coast Guard

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AH76

Claims and Effective Dates for the Award of Educational Assistance

AGENCIES: Department of Defense, Department of Transportation (Coast Guard), and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends the educational assistance and educational benefit regulations of the Department of Veterans Affairs (VA). It establishes a standard for determining what constitutes a formal claim, an informal claim, and an abandoned claim that can be applied uniformly to the educational assistance programs VA administers. In addition, it establishes less restrictive effective dates for awards of educational assistance; establishes uniform time limits for acting to complete claims; and states VA's responsibilities when a claim is filed. This rule will result in a more uniform adjudication of claims for educational assistance under each of the education programs VA administers.

DATES: Effective Date: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education Adviser, Education Service (225C), Veterans Benefits Administration, (202) 273–7187.

SUPPLEMENTARY INFORMATION: In a document published in the **Federal Register** on April 29, 1998 (63 FR 23408), VA proposed amendments to several regulations. VA proposed to amend the regulations to establish a standard for determining what constitutes a formal claim, an informal claim, and an abandoned claim that can be applied uniformly to the educational assistance programs VA administers. In addition, it was proposed to establish less restrictive effective dates for awards of educational assistance; to establish uniform time limits for acting to complete claims; and to state VA's responsibilities when a claim is filed. Comments were sought under the Paperwork Reduction Act concerning the collection of information in the proposed § 21.1030.

Interested persons were given 60 days to submit comments. No comments were received. Accordingly, based on

the rationale set forth in the proposed rule and in this document, we are adopting the provisions of the proposed rule as a final rule. A few nonsubstantive changes have been made to the proposed rule for clarity.

The Department of Defense (DOD) is issuing this final rule jointly with VA insofar as it relates to VEAP and EATP. These programs are funded by DOD and administered by VA. DOD, the Department of Transportation (Coast Guard), and VA are jointly issuing this final rule insofar as it relates to the MGIB–SR. This program is funded by DOD and the Coast Guard, and is administered by VA. The remainder of this final rule is issued solely by VA.

Paperwork Reduction Act of 1995

Information collection requirements in this final rule (concerning 38 CFR 21.1030 have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2900–0596. The provisions of § 21.1030 restate a statutory requirement (38 U.S.C. 5101(a)) that provides that no benefits may be paid or furnished to an individual until VA receives from the individual a claim for the benefit sought in the form prescribed by the Secretary. The regulation adds language as to what information needs to be included in a claim.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The valid OMB control number assigned to the collection of information in this final rule is displayed at the end of the affected section of regulations.

The signers of this document hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The final rule will affect only individuals and will not directly affect any small entities. Therefore, pursuant to 5 U.S.C. 605(b), this final rule is exempt from the initial and final regulatory flexibility analyses requirements of §§ 602 and 604.

The Catalog of Federal Domestic Assistance numbers for the programs affected by this proposed rule are 64.117, 64.120, and 64.124. This proposed rule will also affect the Montgomery GI Bill—Selected Reserve which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: January 6, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Approved: April 27, 1999.

P.A. Tracey,

Vice Admiral, USN, Deputy Assistant Secretary (Military Personnel Policy), Department of Defense.

Approved: March 22, 1999.

F.L. Ames,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Human Resources.

For the reasons set out above, 38 CFR part 21 (subparts B, C, D, G, H, K, and L) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart B—Claims and Applications for Educational Assistance

1. The authority citation for part 21, subpart B continues to read as follows:

Authority: 38 U.S.C. 501(a), 38 U.S.C. chapter 51, unless otherwise noted.

2. Section 21.1029 is added, to read as follows:

§ 21.1029 Definitions.

These definitions apply to this subpart, and to subparts C, D, G, H, K, and L of this part.

(a) *Abandoned claim.* A claim is an *abandoned claim* if:

(1) In connection with a formal claim VA requests that the claimant furnish additional evidence, and the claimant—

(i) Does not furnish that evidence within one year of the date of the request; and

(ii) Does not show good cause why the evidence could not have been submitted within one year of the date of the request; or

(2) In connection with an informal claim, VA requests a formal claim, and—

(i) VA does not receive the formal claim within one year of the date of request; and

(ii) The claimant does not show good cause why he or she could not have filed the formal claim in sufficient time for VA to have received it within one year of the date of the request.

(Authority: 38 U.S.C. 5103(a))

(b) *Date of claim.* The *date of claim* is the date on which a valid claim or application for educational assistance is considered to have been filed with VA, for purposes of determining the commencing date of an award of that educational assistance.

(1) If an informal claim is filed and VA receives a formal claim within one year of the date VA requested it, or within such other period of time as provided by § 21.1032, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the informal claim.

(2) If a formal claim is filed other than as described in paragraph (b)(1) of this section, the date of claim, subject to the provisions of paragraph (b)(3) of this section, is the date VA received the formal claim.

(3) If a formal claim itself is abandoned and a new formal or informal claim is filed, the date of claim is as provided in paragraph (b)(1) or (b)(2) of this section, as appropriate.

(Authority: 38 U.S.C. 5103)

(c) *Formal claim.* A claim is a *formal claim* when the claimant (or his or her authorized representative) files the claim with VA, and—

(1) The claim is a claim for—

(i) Educational assistance;

(ii) An increase in educational assistance; or

(iii) An extension of the eligibility period for receiving educational assistance; and

(2) If there is a form (either paper or electronic) prescribed under this part, the claim is filed on that form.

(Authority: 38 U.S.C. 5101(a))

(d) *Informal claim.* (1) If a form (either paper or electronic) has been prescribed under this part to use in claiming the benefit sought, the term *informal claim* means—

(i) Any communication from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance; or

(ii) A claim from an individual or from an authorized representative on that individual's behalf for a benefit described in paragraph (c)(1)(i) of this section that is filed in a document other than in the prescribed form.

(2) If a form (either paper or electronic) has not been prescribed to use in claiming the benefit sought, the term *informal claim* means any communication, other than a formal claim, from an individual, or from an authorized representative or a Member of Congress on that individual's behalf that indicates a desire on the part of the individual to claim or to apply for VA-administered educational assistance.

(3) When VA requests evidence in connection with a claim, and the claimant submits that evidence to VA after having abandoned the claim, the claimant's submission of the evidence is an informal claim.

(4) The act of enrolling in an approved school is not an informal claim.

(5) VA will not consider a communication received from a service organization, an attorney, or agent to be an informal claim if a valid power of attorney, executed by the claimant, is not in effect at the time the communication is written.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a), 5102, 5901)

(e) *VA.* The term *VA* means the United States Department of Veterans Affairs.

(Authority: 38 U.S.C. 301)

3. Section 21.1030 is revised; and a parenthetical is added at the end of the section to read as follows:

§ 21.1030 Claims.

An individual must file a formal claim for educational assistance for pursuit of a program of education, indicating the proposed place of training, the school or training establishment, the objective of the program of education, and such other information as the Secretary may require. A servicemember also must consult with his or her service education officer before filing a formal claim for educational assistance.

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900–0596.)

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3034(a), 3241(a), 3471, 3513, 5101(a))

4. Section 21.1031 is revised to read as follows.

§ 21.1031 VA responsibilities when a claim is filed.

(a) *VA will furnish forms.* VA will furnish all necessary claim forms, instructions, and, if appropriate, a description of any supporting evidence required upon receipt of an informal claim.

(Authority: 38 U.S.C. 5102)

(b) *Request for additional evidence.* If a formal claim for educational assistance is incomplete, or if VA requires additional evidence or information to adjudicate the claim, VA will notify the claimant of the evidence and/or information necessary to complete or adjudicate the claim and of the time limit provisions of § 21.1032(a).

(Authority: 38 U.S.C. 5103)

5. Section 21.1032 is revised to read as follows:

§ 21.1032 Time limits.

The provisions of this section are applicable to informal claims and formal claims.

(a) *Failure to furnish form, information, or notice of time limit.* VA's failure to give a claimant or potential claimant any form or information concerning the right to file a claim or to furnish notice of the time limit for the filing of a claim will not extend the time periods allowed for these actions.

(Authority: 38 U.S.C. 5101, 5113)

(b) *Notice of time limit for filing evidence.* If a claimant's claim is incomplete, VA will notify the claimant of the evidence necessary to complete the claim. Unless payment of educational assistance is permitted by paragraph (e) of this section, if the evidence is not received within one year from the date of such notification, VA will not pay educational assistance by reason of that claim.

(Authority: 38 U.S.C. 5103)

(c) *Time limit for filing a claim for an extended period of eligibility under 38 U.S.C. chapter 30, 32, or 35.* VA must receive a claim for an extended period of eligibility provided by § 21.3047, § 21.5042, or § 21.7051 by the later of the following dates.

(1) One year from the date on which the spouse's, surviving spouse's, or veteran's original period of eligibility ended; or

(2) One year from the date on which the spouse's, surviving spouse's, or veteran's physical or mental disability no longer prevented him or her from beginning or resuming a chosen program of education.

(Authority: 38 U.S.C. 3031(d), 3232(a), 3512)

(d) *Time limit for filing for an extension of eligibility due to suspension of program (38 U.S.C. chapter 35).*

VA must receive a claim for an extended period of eligibility due to a suspension of an eligible child's program of education as provided in § 21.3043 by the later of the following dates.

(1) One year from the date on which the child's original period of eligibility ended; or

(2) One year from the date on which the condition that caused the suspension of the program of education ceased to exist.

(Authority: 38 U.S.C. 3512(c))

(e) *Extension for good cause.* (1) VA may extend for good cause a time limit within which a claimant or beneficiary is required to act to perfect a claim or challenge an adverse VA decision. VA may grant such an extension only when the following conditions are met;

(i) When a claimant or beneficiary requests an extension after expiration of a time limit, he or she must take the required action concurrently with or before the filing of that request; and

(ii) The claimant or beneficiary must show good cause as to why he or she could not take the required action during the original time period and could not have taken the required action sooner.

(2) Denials of time limit extensions are separately appealable issues.

(Authority: 38 U.S.C. 5101, 5113)

(f) *Computation of time limit.* (1) In computing the time limit for any action required of a claimant or beneficiary, including the filing of claims or evidence requested by VA, VA will exclude the first day of the specified period, and will include the last day. This rule is applicable in cases in which the time limit expires on a workday. When the time limit would expire on a Saturday, Sunday, or holiday, the VA will include the next succeeding day in the computation.

(2) The first day of the specified period referred to in paragraph (f)(1) of this section will be the date of the letter of notification to the claimant or beneficiary for purposes of computing time limits. As to appeals, see §§ 20.302 and 20.305 of this chapter.

(Authority: 38 U.S.C. 501(a))

Subpart C—Survivors' and Dependents' Educational Assistance Under 38 U.S.C. Chapter 35

6. The authority citation for subpart C continues to read as follows:

Authority: 38 U.S.C. 501(a), 512, 3500–3566, unless otherwise noted.

7. In § 21.3021, paragraph (m) is amended by removing "§ 21.4200", and adding, in its place, "§§ 21.1029 and 21.4200".

8. Section 21.3030 is revised to read as follows:

§ 21.3030 Claims.

The provisions of subpart B of this part apply with respect to submission of a claim for educational assistance under 38 U.S.C. chapter 35, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3513, 5101, 5102, 5103)

§§ 21.3031 and 21.3032 [Removed]

9. Sections 21.3031 and 21.3032 are removed.

Subpart D—Administration of Educational Assistance Programs

10. The authority citation for subpart D is revised to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606, 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

11. In § 21.4131, the introductory text; and paragraphs (a) and (d) are revised, to read as follows:

§ 21.4131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 32.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3672, 5103, 5110(b), 5113)

* * * * *

(d) *Entrance or reentrance including change of program or educational institution: individual eligible under 38 U.S.C. chapter 35.* When a person eligible to receive educational assistance under 38 U.S.C. chapter 35 enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the eligible person is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The beginning date of eligibility as determined by § 21.3041(a) or (b) or by § 21.3046(a) or (b), whichever is applicable;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The date the educational institution certifies under paragraph (b) or (c) of this section;

(iv) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for that program, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103)

Subpart G—Post-Vietnam Era Veterans' Educational Assistance Under 38 U.S.C. Chapter 32

12. The authority citation for subpart G continues to read as follows:

Authority: 38 U.S.C. 501(a), ch. 32, unless otherwise noted.

13. In § 21.5030, the heading for the section and paragraph (c) introductory text, are revised; paragraphs (c)(1), (c)(2), and (c)(3) are redesignated as paragraphs (c)(2), (c)(3), and (c)(4), respectively; a new paragraph (c)(1) is added; and a newly redesignated paragraph (c)(3) is revised, to read as follows:

§ 21.5030 Applications, claims, and time limits.

* * * * *

(c) The provisions of the following sections shall apply to claims for educational assistance under 38 U.S.C. chapter 32:

(1) Section 21.1029—Definitions.

* * * * *

(3) Section 21.1031—VA responsibilities when a claim is filed.

* * * * *

§ 21.5130 [Amended]

14. In § 21.5130, paragraph (a) is amended by removing "dates", and adding, in its place, "dates (except paragraph (d))".

Subpart H—Educational Assistance Test Program

15. The authority citation for subpart H continues to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

16. Section 21.5730 is revised to read as follows:

§ 21.5730 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under the educational program described in § 21.5701, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 2141, 2149; 38 U.S.C. 5101, 5102, 5103)

§ 21.5732 [Removed]

17. Section 21.5732 is removed.

Subpart K—All Volunteer Force Educational Assistance Program (Montgomery GI Bill—Active Duty)

18. The authority citation for Subpart K continues to read as follows:

Authority: 38 U.S.C. 501(a), chs. 30 and 36, unless otherwise noted.

19. In § 21.7020, the introductory text is revised to read as follows:

§ 21.7020 Definitions.

For the purposes of regulations from § 21.7000 through § 21.7499 and the payment of basic educational assistance and supplemental educational assistance under 38 U.S.C. chapter 30, the following definitions apply. (*See* also additional definitions in § 21.1029).

* * * * *

20. Section 21.7030 is revised to read as follows:

§ 21.7030 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 38 U.S.C. chapter 30, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 38 U.S.C. 3018B, 3034(a), 3471, 5101, 5102, 5103)

21. In § 21.7032, paragraphs (b), (c), (d), and (e) are removed; paragraph (f) is redesignated as paragraph (b); and the section heading and paragraph (a) are revised to read as follows:

§ 21.7032 Time limits for making elections.

(a) *Scope of this section.* The provisions of this section are applicable to certain elections to receive educational assistance under 38 U.S.C. ch. 30. For time limits governing formal and informal claims for educational assistance under 38 U.S.C. ch. 30, see § 21.1032.

(Authority: 38 U.S.C. 3018B)

* * * * *

§ 21.7051 [Amended]

22. In § 21.7051, paragraph (a)(1) is amended by removing "§ 21.7032(e) of this part" and adding, in its place, "§ 21.1032(c)".

23. In § 21.7131, paragraph (d) is removed and reserved; paragraph (e)(1)(iii) is amended by removing "subdivision (ii)(B) of this subparagraph" and adding, in its place, "paragraph (e)(1)(ii)(B) of this section"; paragraph (e)(2)(i) introductory text is removed; paragraphs (e)(2)(i)(A), (e)(2)(i)(B), and (e)(2)(i)(C) are redesignated as new (e)(2)(i), (e)(2)(ii), and (e)(2)(iii), respectively; the introductory text and paragraph (a) are revised to read as follows:

§ 21.7131 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible veteran or servicemember enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the veteran or servicemember is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the veteran or servicemember is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 38 U.S.C. 3014, 3023, 3034, 3672, 5103, 5110(b), 5113)

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

24. The authority citation for subpart L is revised to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

25. In § 21.7520, the introductory text is revised to read as follows:

§ 21.7520 Definitions.

For the purposes of regulations from § 21.7500 through § 21.7999, governing the administration and payment of educational assistance under 10 U.S.C. chapter 1606, the Selected Reserve Educational Assistance Program, the following definitions apply. (See also additional definitions in § 21.1029).

* * * * *

26. Section 21.7530 is revised to read as follows:

§ 21.7530 Applications, claims, and time limits.

The provisions of subpart B of this part apply with respect to claims for educational assistance under 10 U.S.C. chapter 1606, VA actions upon receiving a claim, and time limits connected with claims.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3472)

§ 21.7532 [Removed]

27. Section 21.7532 is removed.

28. In § 21.7631, paragraph (d) is removed; paragraphs (e), (f), (g), and (h) are redesignated as paragraphs (d), (e), (f), and (g), respectively; and the introductory text and paragraph (a) are revised to read as follows:

§ 21.7631 Commencing dates.

VA will determine the commencing date of an award or increased award of educational assistance under this section. When more than one paragraph in this section applies, VA will award educational assistance using the latest of the applicable commencing dates.

(a) *Entrance or reentrance including change of program or educational institution.* When an eligible reservist enters or reenters into training (including a reentrance following a change of program or educational institution), the commencing date of his or her award of educational assistance will be determined as follows:

(1) If the award is the first award of educational assistance for the program of education the reservist is pursuing, the commencing date of the award of educational assistance is the latest of:

(i) The date the educational institution certifies under paragraph (b) or (c) of this section;

(ii) One year before the date of claim as determined by § 21.1029(b);

(iii) The effective date of the approval of the course, or one year before the date VA receives the approval notice whichever is later; or

(2) If the award is the second or subsequent award of educational assistance for the program of education the reservist is pursuing, the effective date of the award of educational assistance is the later of—

(i) The date the educational institution certifies under paragraph (b) or (c) of this section; or

(ii) The effective date of the approval of the course, or one year before the date VA receives the approval notice, whichever is later.

(Authority: 10 U.S.C. 16136(b); 38 U.S.C. 3672, 5103)

* * * * *

[FR Doc. 99–11069 Filed 5–3–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 039–100a; FRL–6334–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from South Coast Air Quality Management District (SCAQMD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from paper, fabric, and film coating operations; graphic arts; coatings and ink manufacturing; plastic, rubber and glass coatings; motor vehicle and mobile equipment non-assembly line coating operations; and solvent cleaning operations. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on July 6, 1999 without further notice, unless EPA receives adverse comments by June 3, 1999. If EPA received such comment, then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION:

I. Applicability

This **Federal Register** action for the South Coast Air Quality Management District excludes the Los Angeles portion of the Southeast Desert AQMA, otherwise known as the Antelope Valley Region in Los Angeles County, which is now under the jurisdiction of the Antelope Valley Air Pollution Control District as of July 1, 1997. The rules being approved into the California State SIP include: SCAQMD Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink Manufacturing; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on July 23, 1996 (1128, 1130), September 14, 1992 (1141.1), August 1, 1997 (1145), and March 10, 1998 (1151, 1171).

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the South Coast Air Basin. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above district's portions of the California SIP was inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172 (b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The South Coast Air Basin is classified as extreme;[2] therefore, this area was subject to the RACT fix-up requirement and the May 15, 1991 deadline.

The State of California submitted many revised RACT rules for incorporation into its SIP on July 23, 1996, September 14, 1992, August 1, 1997, and March 10, 1998, including the rules being acted on in this document. This document addresses EPA's direct-final action for SCAQMD Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink Manufacturing; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations. SCAQMD amended Rules 1128 and 1130 on March 8, 1996, Rule 1141.1 on March 6, 1992, Rule 1145 on February 14, 1997 and Rules 1151 and 1171 on June 13, 1997. These submitted rules were found to be complete on October 30, 1996 (1128, 1130), November 20, 1992 (1141.1), September 30, 1997 (1145), and May 21, 1998 (1151, 1171) pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V[3] and is being finalized for approval into the SIP.

These Rules control emissions of VOCs from the following source categories: 1128—operations that apply coatings to paper, fabric or film

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[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The South Coast Air Basin retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

substrates, 1130—graphic arts operations, 1141.1—coatings and ink manufacturing establishments, 1145—plastic, rubber, and glass coating operations, 1151—automotive refinishing operations, and 1171—solvent cleaning operations during production, repair, maintenance or servicing of parts, products, tools, machinery, equipment, or general work areas. VOCs contribute to the production of ground level ozone and smog. This rule was originally adopted as part of SCAQMD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for this rule.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to rule 1128 is entitled, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume II: Surface Coating of Cans, Coils, Paper, Fabric, Automobiles, and Light-Duty Trucks, EPA–450/2–77–008, May 1977, and the CTG applicable to Rule 1130 is entitled, Control of Volatile Organic Emissions from Existing Stationary Sources—Volume VIII: Graphic Arts, Rotogravure and Flexography, EPA–450/2–78–033, December 1978, Rules 1141.1, 1145, 1151 and 1171 control emissions from source categories for which EPA has not published a CTG. Accordingly, these rules were evaluated for consistency with the general RACT requirements of the Clean Air Act (CAA section 110 and part D. Rule 1151 was also evaluated against subpart E of 40 CFR part 59, National Volatile Organic Compound Emission Standard for Automobile Refinish Coatings. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On December 20, 1993, EPA approved into the SIP a version of Rule 1128—Paper, Fabric, and Film Coating Operations that had been adopted by SCAQMD on February 7, 1992. SCAQMD submitted Rule 1128—Paper, Fabric, and Film Coating Operations includes the following significant changes from the current SIP:

- Added definition of aerosol coating product;
- Deleted listing the exempt compounds and added wording to refer to Rule 102—Definition of Terms;
- Changed the wording of the aerosol coatings exemption to increase clarity of the rule.

On October 31, 1995, EPA approved into the SIP a version of Rule 1130—Graphic Arts that had been adopted by SCAQMD on September 8, 1995. SCAQMD submitted Rule 1130—Graphic Arts includes the following significant changes from the current SIP:

- Added definition of aerosol coating product;
- Added an exemption for aerosol coating products.

On January 24, 1985, EPA approved into the SIP a version of Rule 1141.1—Coating and Ink Manufacturing that had been adopted by SCAQMD on November 4, 1983. SCAQMD submitted Rule 1141.1—Coatings and Ink Manufacturing includes the following significant changes from the current SIP:

- Changed rule format to agree with format of current SCAQMD rules;
- Added an exempt compound listing;
- Added definition of VOC;
- Updated record keeping requirements, and extended record retention time from one to two years.

On December 20, 1993, EPA approved into the SIP a version of Rule 1145 that had been adopted by SCAQMD on January 10, 1992. SCAQMD Rule 1145—Coating and Ink Manufacturing includes the following significant changes from the current SIP:

- A lower VOC limit for electric dissipating and shock free coatings;
- Removed language used to regulate solvent cleaning activities, and added reference to Rule 1171—Solvent Cleaning Operations.
- Changed the default transfer efficiency provision to a value of not less than 65% in place of the high-volume, low-pressure (HVLP) spray equipment standard;
- Exempted air-brush operations from transfer efficiency requirements;
- Updated compliance test methods, to reflect the most recent test methods.

On June 13, 1996, EPA approved into the SIP a version of Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations that had been adopted by SCAQMD on September 9, 1994. SCAQMD submitted Rule 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations includes the following significant changes from the current SIP:

- Updated definition of aerosol coatings;
- Deleted listing of exempt compounds and added reference to Rule 102—Definition of Terms;
- Added an exemption for aerosol coatings to be consistent with amendments to State of California Health and Safety Code Section 41712.

On July 14, 1995, EPA approved into the SIP a version of Rule 1171—Solvent Cleaning Operations that had been adopted by SCAQMD on May 12, 1995. SCAQMD submitted Rule 1171—Solvent Cleaning Operations includes the following significant changes from the current SIP:

- Deleted listing of exempt compounds, and added reference to Rule 102—Definition of Terms;
- Added VOC limits for solvents to clean electrical apparatus.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicles and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations are being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 6, 1999 without further notice unless the Agency receives relevant adverse comments by June 3, 1999.

If the EPA received such comments, then EPA will publish a timely withdrawal of the direct final rule and inform the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 6, 1999 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements

under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 21, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(189)(i)(A)(*7*), (c)(239)(i)(B), (c)(248)(i)(B)(*3*) and (c)(254)(i)(D)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(189) * * *

(i) * * *

(A) * * *

(*7*) Rule 1141.1, adopted on November 4, 1983 and amended on March 6, 1992.

* * * * *

(239) * * *

(i) * * *

(B) South Coast Air Quality Management District.

(*1*) Rule 1128, adopted on May 4, 1979 and amended on March 8, 1996, and Rule 1130, adopted on October 3, 1980 and amended on March 8, 1996.

* * * * *

(248) * * *

(i) * * *

(B) * * *

(*3*) Rule 1145, adopted on July 8, 1983 and amended on February 14, 1997.

* * * * *

(254) * * *

(i) * * *

(D) * * *

(*2*) Rule 1151, adopted on July 8, 1988 and amended on June 13, 1997, and Rule 1171, adopted on August 2, 1991 and amended on June 13, 1997.

* * * * *

[FR Doc. 99–11039 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ002; FRL–6333–8]

Approval of State Operating Permit, Rule Revision; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final approval.

SUMMARY: The Environmental Protection Agency (EPA) is taking direct final action on revisions to the New Jersey operating permit rule (N.J.A.C. 7:27–22.4 and 22.5) as submitted by the State of New Jersey to fulfill the requirements of Title V of the Clean Air Act. The revisions extend the deadlines for the last two waves of permit applications until February 4, 1999 and May 4, 1999, if these applications are submitted in electronic format.

DATES: This rule is effective on July 6, 1999 without further notice, unless EPA receives adverse comment by June 3, 1999. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments on this action should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

New Jersey Department of Environmental Protection, Air Quality Permitting Program, Bureau of Operating Permits, 401 E. State Street, Trenton, New Jersey 08625–0027.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, Air Programs Branch, U.S. Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, NY 10007–1866, (212) 637–4019.

SUPPLEMENTARY INFORMATION:

Background

Pursuant to title V of the Clean Air Act ("the Act") and its implementing regulations codified at 40 CFR part 70, EPA granted source category-limited interim approval to the New Jersey operating permit program. *See*, 61 FR 24715 (May 16, 1996). New Jersey's category-limited interim program became effective on June 17, 1996 and was scheduled to expire on June 17, 1998, two years after the approval. However, EPA has recently granted extensions to all interim programs, including that of NJ's, to June 1, 2000.

The Act states that:

"any person required to have a permit shall, not later than 12 months after the date on which the source becomes subject to a permit program approved or promulgated under this title, or such earlier date as the permitting authority may establish, submit to the permitting authority a compliance plan and an application for a permit signed by a responsible official, who shall certify the accuracy of the information submitted." *See*, 40 CFR section 70.5.

New Jersey's operating permit rule contains application submittal deadlines established for different source categories. Under the rule, applications are submitted to the New Jersey Department of Environmental Protection ("NJDEP") at different times in seven waves as determined by the

source's Standard Industrial Classification (SIC) Code. The first five waves of sources are subject to the interim program and the last two waves will be subject to the full program. Consistent with the Act and 40 CFR part 70, all sources subject to the interim program must submit their applications by June 17, 1997 (12 months after the program's effective date) and those subject to the full program must submit by June 17, 1999 (12 months after the anticipated full program approval date). Despite two extensions granted to New Jersey for the interim program, extending the effectiveness of the interim program to June 1, 2000, the application submittal deadline for the remaining two waves of applications has not changed. *See*, 63 FR 40053 (July 27, 1998). It remains June 17, 1999. It should be noted that New Jersey's original application submittal schedule had required all applications to be submitted by May 18, 1998, 13 months before the deadline prescribed by the Act.

State Submittal

To encourage electronic submittal of permit applications, the State of New Jersey amended its operating permit rule (N.J.A.C. 7:27–22) to extend the application submittal due dates for sources required to submit their applications during the last two waves of submittals from November 15, 1997 to February 4, 1999 and from May 15, 1998 to May 4, 1999, respectively if the applications were submitted in electronic format. Amendments to N.J.A.C. 7:27–22.4 and 22.5 were proposed on June 2, 1997 and January 20, 1998 and subsequently adopted on October 20, 1997 and May 4, 1998, respectively. On June 11, 1998, New Jersey submitted a copy of the adopted rules and requested that EPA update New Jersey's operating permit program to reflect the newly adopted amendments. The New Jersey submittal included such information as responses to comments and copies of the adoption notices showing that the rule adoptions were procedurally correct as required by 40 CFR § 70.4(b)(2).

Review of State Submittal

The extension sought by the NJDEP affects only the last two waves of applications. According to New Jersey's operating permit rule, the original application submittal (paper or electronic) due dates for the last two waves were November 15, 1997 and May 15, 1998, respectively. These deadlines still hold for paper submission. However, for those sources submitting electronically, the amendment allows additional time. The last two waves may submit electronic applications by February 4, 1999 and May 4, 1999, respectively. Based on New Jersey's interim program effective date of June 17, 1996, all applications subjected to the interim program and full program must be submitted by June 17, 1999. Since the amended electronic application submittal deadlines still fall within the June 17, 1999 due date as required under section 503(c) of the Act and part 70.5(a), EPA finds New Jersey's rule/program revision approvable.

Conclusion

EPA has evaluated New Jersey's amended operating permit rule and the request to incorporate the changes into the approved interim program. EPA has concluded that the amended operating permit rule as submitted by New Jersey bears no adverse effect on the implementation or enforcement of the source category-limited interim program which was originally approved. The New Jersey operating permit program, with the current amendment, continues to be in compliance with the requirements of the Act and the part 70 regulations as codified at 40 CFR part 70; therefore, EPA is approving the amended New Jersey Operating Permit Rule. Under this approval, New Jersey may extend the permit application submittal due dates for the sixth and seventh waves until February 4, 1999 and May 4, 1999, respectively.

The granting of final approval to the amended operating permit rule for the State of New Jersey only changes the application submittal due dates for certain affected sources. All other aspects of the New Jersey Operating Permit Program remain fully operational and enforceable. Any source that fails to comply with the amended application submittal schedule or any provisions of the approved program may be subject to N.J.A.C. 7:27–22.3(ll) as well as section 502(a) of the Act. The federal oversight and sanctions provisions of the final interim approval as promulgated on May 16, 1996 for the State of New Jersey remain in full force irrespective of the granting of final approval to the amended operating permit rule.

The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the State rule revision if adverse comments are filed. This rule will be effective on July 6, 1999 without further notice unless the Agency receives adverse comments by June 3, 1999. If EPA receives adverse comments, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will then address all public comments in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

Administrative Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

Executive Order 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the

environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final approval is not subject to E.O. 13045 because it approves a state program implementing a Federal regulation, and it is not economically significant under E.O. 12866.

Executive Order 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statue, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final approval will not have a significant impact on a substantial number of small entities because it does not create any new requirements but simply allows additional time for the submittal of electronic applications from major stationary sources. I certify that this action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Act

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated today does not include a federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This federal action approves pre-existing requirements under State or local law, and imposes no new federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* section 307(b)(2).)

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

Dated: April 19, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for Part 70 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Appendix A to Part 70 is amended by adding new paragraph (b) to the entry for New Jersey State in alphabetical order to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permit Programs

* * * * *

New Jersey

* * * * *

(b) The New Jersey State Department of Environmental Protection submitted an operating permits program revision request on June 11, 1998; interim program revision approval effective on July 6, 1999.

* * * * *

[FR Doc. 99–10853 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6333–2]

Missouri: Final Authorization of State Hazardous Waste Management Program Revision for Corrective Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Missouri has applied for final authorization of the revision to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). This revision package covers authorization for corrective action. The EPA has reviewed Missouri's application and determined that its hazardous waste program revision satisfied all of the requirements necessary to qualify for final authorization. Unless adverse written comments are received during the review and comment period, the EPA's decision to authorize Missouri's hazardous waste program revision will take effect. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, the EPA is publishing a separate document that will serve as the proposal to approve the revision for corrective action should relevant adverse comments be filed.

DATES: Final authorization for Missouri will become effective without further notice on July 6, 1999, if the EPA receives no adverse comment by June 3, 1999. Should the EPA receive such comments, the EPA will withdraw this rule before its effective date by publishing a timely withdrawal in the **Federal Register**.

ADDRESSES: Written comments should be sent to Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101. Copies of Missouri's program revision application are available for inspection and copying during normal business hours at the following address: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176 (573) 751–3176.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101 (913) 551–7039.

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of RCRA, 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program. As the Federal hazardous waste program changes, the states must revise their programs and apply for authorization of the revisions. Revisions to state hazardous waste programs may be necessary when Federal or state statutory or regulatory authority is modified or when certain other changes occur. Most commonly, states must revise their programs because of changes to the EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273, and 279.

B. Missouri

On November 20, 1985, the EPA published a **Federal Register** notice announcing its decision to grant final authorization for the RCRA base program to the state of Missouri which became effective December 12, 1985 (50 FR 47740). Missouri received authorization for revisions to its program as follows: February 27, 1989, effective April 28, 1989 (54 FR 8190); January 11, 1993, effective March 12, 1993 (58 FR 3497) and on May 30, 1997, effective July 29, 1997 (62 FR 29301). Additionally, the state adopted and applied for interim authorization for the corrective action portion of the HSWA Codification Rule (July 15, 1985, 50 FR 28702). For a full discussion of the HSWA Codification Rule, the reader is referred to the **Federal Register** cited above. The state was granted interim authorization for the corrective action on February 23, 1994, effective April 25, 1994 (50 FR 8544). Missouri has now applied for final authorization for the corrective action portion of the HSWA Codification Rule, for which it previously received interim authorization.

The EPA has reviewed Missouri's application for final authorization for corrective action, and has made an immediate final decision that Missouri's hazardous waste program revision satisfies all of the requirements necessary to qualify. Consequently, the EPA intends to grant final authorization for corrective action to Missouri. The public may submit written comments on the EPA's immediate final decision up until June 3, 1999. Copies of Missouri's application for the program revision are available for inspection and copying at the locations identified in the **ADDRESSES** section of this action.

Approval of Missouri's program revision shall become effective on July 6, 1999 unless an adverse comment pertaining to the state's revision discussed in this document is received by the end of the comment period. If an adverse comment is received the EPA will publish either: (1) A withdrawal of the immediate final decision, or (2) a document containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

The state will assume lead responsibility for issuing permits for those program areas authorized today. For those permits which will now change to state lead from the EPA, the EPA will transfer copies of any pertinent file information to the state. The EPA will suspend issuance of new permits under the provisions for which the state is being authorized on the effective date of this authorization. The EPA will be responsible for enforcing the terms and conditions of federally issued permits while they remain in force. When the state reissues federally issued permits as state permits, the EPA will rely on the state to enforce them.

C. Decision

I conclude that Missouri's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Missouri is granted final authorization to operate its hazardous waste programs as revised. Missouri now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the HSWA. Missouri also has primary enforcement responsibilities, although the EPA retains the right to conduct inspections under Section 3007 of RCRA and take enforcement actions under Sections 3008, 3013, and 7003 of RCRA.

D. Administrative Requirements

1. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

2. Executive Order 12875

Under E.O. 12875, the EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct

compliance costs incurred by those governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 12875 requires the EPA to provide to the OMB a description of the extent of the EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 required the EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of Section 1(a) of E.O. 12875 do not apply to this rule.

3. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that the EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

4. Executive Order 13084

Under E.O. 13084, Consultation and Coordination with Indian Tribal Governments, the EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs incurred by the tribal governments, or the EPA consults with those governments. If the EPA complies by consulting, E.O. 13084 requires the EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of the EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires the EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of Section 3(b) of E.O. 13084 do not apply to this rule.

5. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or Final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA has determined that this authorization will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate TSDFs are already subject to the regulatory requirements under the existing state laws that are now being authorized by the EPA. The EPA's authorization does not impose any significant additional burdens on these small entities. This is because the EPA's authorization would simply result in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Pursuant to the provision at 5 U.S.C. 605 (b), the EPA hereby certifies that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing state law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

6. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, the EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, the EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires the EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law, and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

7. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

8. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs the EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs the EPA to provide Congress, through

OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, the EPA did not consider the use of any voluntary consensus standards.

9. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 271

Environmental protection, administrative practice and procedure, confidential business information, hazardous materials transportation, hazardous waste, Indian lands, intergovernmental regulation, penalties, reporting and record keeping requirements, water pollution control, water supply.

Authority: This document is issued under the authority of Sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912 (a), 6926, 6974 (b).

Dated: April 13, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–11037 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514 and 530

[Docket No. 98–30]

Service Contracts Subject to the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Confirmation of interim final rule with changes.

SUMMARY: This rule confirms as final the Federal Maritime Commission's interim rule governing service contracts between shippers and ocean common carriers to implement changes made to the Shipping Act of 1984 ("Act") by the Ocean Shipping Reform Act of 1998 ("OSRA"). The interim final rule implemented section 8(c) of the Act. The interim final rule is adopted as a final rule with certain changes. The final rule: revises the Commission's definition of "motor vehicle" in accordance with its regulation governing Carrier Automated Tariff Systems (Docket No.98–29); adds a limited exception to the filing requirements in cases of the Commission's electronic filing systems' malfunction; revises the requirements for registration for filing and cross-referencing for clarity; revises the regulation on ET publication to clarify where those for multiple carrier parties must appear; and carries forward certain exemptions from the requirements of the regulation which the Commission had granted in former part 514 of this chapter, but which had been inadvertently omitted from the interim final rule. The final rule also corrects a paragraph numbering error made in the section dealing with publication.

DATES: Effective May 1, 1999.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION: On December 17, 1998, the Federal Maritime Commission ("Commission" or "FMC") issued a notice of proposed rulemaking ("NPR") to implement changes to the Shipping Act of 1984 ("Act") mandated by the Ocean Shipping Reform Act of 1998 ("OSRA"), Pub. L. 105–258, 112 Stat. 1902, enacted on October 14, 1998. 63 FR 71062–71076 (December 23, 1998). On March 1, 1999, the Commission issued an interim final rule ("IFR"), removing 46 CFR part 514 and adding 46 CFR part 530, which made significant changes to the proposed rule. 64 FR 11186–11215 (March 8, 1999). The Commission held the interim final rule open for comment until April 1, 1999.

The Commission received comments on the IFR from: Wallenius Lines ("Wallenius"); Effective Tariff Management ("ETM"); Department of the Army, Military Traffic Management Command ("MTMC"); the United States Postal Service ("USPS"); the Council of European and Japanese National Shipowners' Associations ("CENSA"); the American Association of Exporters and Importers ("AAEI"); P&O Nedlloyd ("P&O"); the International Longshore and Warehouse Union, AFL–CIO ("ILWU"); the Ocean Carrier Working Group Agreement ("OCWG"); the National Industrial Transportation League ("NITL"); Sea-Land Service, Inc. (individually, concurring in the U.S. Industry Interests comments) ("Sea-Land"); E.I. du Pont de Nemours and Company ("DuPont"); and joint comments from American President Lines, Ltd., Sea-Land Service, Inc., Crowley Maritime Corporation, Farrell Lines Inc., Lykes Lines, Ltd., LLC, the Transportation Institute, the American Maritime Congress, and the Maritime Institute for Research and Industrial Development ("U.S. Industry Interests").

A. General Comments

The comments generally agree with the Commission's re-assessment of the filing systems and the more innovative approach of the IFR.

B. Section 530.3(m)—Definitions—Motor Vehicle

The Commission received comments from Wallenius on the IFR's definition of "motor vehicle." We adopt the same analysis as set forth in Docket No. 98–29, *Carrier Automated Tariff Systems* (46 CFR part 520) and, accordingly, revise the definition of "motor vehicle."

C. Section 530.4—Confidentiality

Section 530.4 of the IFR maintains that all service contracts filed with the Commission will be confidential; however, such confidentiality from the public does not preclude the Commission from providing service contract information to another agency of the Federal government. In order to address certain commenters' concerns about public disclosure of service contract information that could result from sharing such information with other Federal agencies, the Commission will require an agency requesting the information to enter a Memorandum of Understanding ("MOU") with the Commission, stating that such information is necessary to its statutory functions and agreeing to protect the confidentiality of the information it receives.

MTMC and the U.S. Industry Interests are the only parties that filed comments on this section. MTMC states that it is the Army component of the United States Transportation Command. It is responsible for providing ocean and intermodal transportation services and

related support services to Department of Defense ("DOD") components during peace, war and national emergencies. MTMC explains that it solicits ocean and intermodal transportation in the U.S. and abroad. It procures transportation services by soliciting rates for fixed periods from operators of U.S.-flag vessels for DOD cargo movements between the continental U.S. and worldwide points, as well as between foreign points. Such DOD cargo is transported, MTMC states, in commercial carriers' regularly scheduled commercial routes, in the same vessels and on the same schedule as any other commercial cargo. MTMC further points out that its worldwide solicitations may result in the acceptance of more than one carrier's offer in order to fulfill DOD transportation requirements.

MTMC agrees with the Commission's assessment that the legislative history of OSRA indicates that confidentiality accorded to service contract filings may not be used to prevent other Federal agencies (particularly DOD) from performing their statutory duties. The Cargo Preference Act of 1904, 10 U.S.C. 2631, and the Competition in Contracting Act, 10 U.S.C. 2302, *et seq.*, MTMC argues, are two statutes whose requirements MTMC can fulfill only by having access to service contract information. The Cargo Preference Act, asserts MTMC, requires DOD to use U.S.-flag vessels for the transportation of Armed Forces' supplies unless "the freight charged by those vessels is excessive or otherwise unreasonable," and prohibits the operators of those vessels from charging rates that are "higher than the charges made for transporting like goods for private persons." MTMC at 5 (quoting 10 U.S.C. 2631(a)). Further, MTMC explains that the law requires that the government purchase supplies and services at "fair and reasonable" prices. *Id.* (citing 10 U.S.C. 2304, 2305).

MTMC asserts that it "relies upon access to tariff and service contract information to fulfil its statutory responsibilities with regard to the Cargo Preference Act of 1904 and other related government acquisition laws," and, thus, it is "vital that government agencies procuring ocean transportation services * * * have access to service contract information concerning commodities, volumes, routing, service commitments and rates." *Id.* MTMC argues that examination of publicly available tariff rates is less relevant than the examination of service contract rates in determining fair and reasonable rate levels in a trade lane, because the vast majority of international cargo moves under service contracts. MTMC also notes that the legislative history of OSRA includes several assurances that government agencies would have access to service contract information. MTMC at 6 (citing 144 Cong. Rec. S3320, and 144 Cong Rec. at S11302).

Finally, MTMC asserts its intention to formally request an MOU under which the Commission would release confidential service contract information which MTMC will hold in confidence and will use only for the purposes of enforcing the Cargo Preference Act and for fulfilling the requirements of the Competition in Contracting Act.

The U.S. Industry Interests initially incorporate into their comments by reference the arguments set forth in their comments filed on January 22, 1999, in response to the NPR. The U.S. Industry Interests then argue that making service contracts available to MTMC and other Federal agencies will ensure that such information is made available to government procurement officials responsible for the contracts with carriers. Such disclosure, the U.S. Industry Interests assert, would be inconsistent with the policies underlying OSRA, namely, that carriers "need the flexibility to keep service contract terms confidential from a shipper who might use such information to seek better terms for itself." U.S. Industry Interests at 3.

Assuming, however, that the legislative history does justify disclosure of confidential service contract information to other government officials in order to monitor compliance with the Cargo Preference Act, the U.S. Industry Interests claim that the monitoring function should be performed only by those officials who are independent of the procurement activity.

If the Commission decides to defer the resolution of the aforementioned issues, the U.S. Industry Interests urge the Commission to add the following sentence to § 530.4: "Before doing so, the Commission will enter into a Memorandum of Understanding (MOU) with such agency setting forth the terms and conditions for use of such information or contracts, and before executing any such MOU will publish it in proposed form for public comment." U.S. Industry Interests at 3–4. The U.S. Industry Interests argue that "[s]uch notice and comment is both appropriate and required given the potential substantive impacts of interagency disclosure of confidential service contract information, and also given the prohibitions of the Trade Secrets Act, 18 U.S.C. 1905." U.S. Industry Interests at 4 & n.4 (citing *Reynolds Metals Co.* v. *Rumsfeld*, 564 F.2d 663, 669 (4th Cir. 1977), and *Chem Serv., Inc.* v. *Environmental Monitoring Systems of EPA*, 12 F.3d 1256, 1267 (3d Cir. 1993)).

The U.S. Industry Interests argue in a footnote that, under the Trade Secrets Act, confidential information such as service contracts can only be disclosed if they are "authorized by law." U.S. Industry Interests at 4 n.5. At a minimum, the U.S. Industry Interests assert, OSRA only allows the Commission to disclose service contract information to other Federal agencies for the purposes of the Cargo Preference Act.[1] However, the U.S. Industry Interests aver that assuming, *arguendo*, that other disclosures would be "authorized by law," any MOU must be adopted in accordance with Administrative Procedure Act ("APA"), 5 U.S.C. 501, *et seq.*, notice and comment procedures. Id. (citing *Chrysler Corp.* v. *Brown*, 441 U.S. 281, 302 (1979) (finding that when a Federal agency is relying on a *federal regulation* as authorization to disclose confidential information to another Federal agency under the exception to the Trade Secrets Act that such disclosure be "authorized by law," such authorization must be based on a substantive agency regulation that has the force and effect of law).[2]

The Federal Reports Act, 44 U.S.C. 3501, *et seq.* (which is part of the Paperwork Reduction Act), governs the disclosure to other Federal agencies of information obtained from the public by agency collection, while the Trade Secrets Act, 18 U.S.C. 1905, governs the disclosure by Federal employees of confidential information generally.

One of the main purposes of the Federal Reports Act is to minimize the paperwork burden on the public by maximizing "the utility of information created, collected, maintained, used,

[1] However, the U.S. Industry Interests refer to their January 22, 1999 comments to reiterate that they believe the Commission does not have the authority to do this.

[2] The U.S. Industry Interests cite this case in support of their position that the MOU be adopted in accordance with notice and comment procedures; however, this case is inapposite because it speaks to what type of law is sufficient to satisfy the "authorized by law" exception to the Trade Secrets Act. The Court found that the law must be substantive, and therefore a procedural rulemaking promulgated by an agency that was not noticed for public comment would be insufficient. In the instant proceeding, as discussed *infra*, the Commission is relying on OSRA, the Cargo Preference Act, and the Competition in Contracting Act as its authorization for disclosing service contract information to other Federal agencies. Moreover, the case does not state that the MOU itself is innately substantive and must be noticed for public comment, as the U.S. Industry Interests suggest.

shared and disseminated by or for the Federal Government." 44 U.S.C. 3501(1), (2). In order to accomplish this purpose, the Federal Reports Act encourages the sharing of information between Federal agencies by providing that "an agency may make available to another agency, information obtained by a collection of information if the disclosure is not inconsistent with applicable law." 44 U.S.C. 3510(a). The House Report reiterates this intention: "The Act promotes sharing and disclosure of information for purposes of maximizing the utility of information to users, both governmental and non-governmental. Sharing of information among Government agencies also serves the goal of minimizing the burden imposed on the public by Government collection of information." H.R. Rep. No. 104–37, 104th Cong., 1st Sess. 31 (1995), reprinted in 1995 U.S.C.C.A.N. 164, 194.[3]

The only limitation Congress placed on inter-agency disclosure of information is when such disclosure is "inconsistent with applicable law." 44 U.S.C. 3510(a). Section 3510 was unchanged by the 1980 and 1986 amendments, "except for word changes for purposes of consistency and clarity," (H.R. Rep. No. 104–37 at 53, 1995 U.S.C.C.A.N. at 216); thus, the Commission can rely on the legislative history from the previous amendments in order to determine what Congress intended by "inconsistent with applicable law." The Senate Report states that

> for the sharing of data to be inconsistent with applicable law, the applicable law must prohibit the sharing of data between agencies or must totally prohibit the disclosure to any one outside the agency. A mere prohibition on disclosure to the public would not be inconsistent with sharing the data with another agency unless the sharing would inexorably lead to a violation of that prohibition.

S. Rep. No. 96–930, 96th Cong., 2d Sess. 50 (1980), *reprinted in* 1980 U.S.C.C.A.N. 6241, 6290.

Section 8(c)(1) of OSRA states that "service contracts shall be filed confidentially with the Commission." As was delineated in the NPR (63 FR at 71064–71065) and the IFR (64 FR at 11188), the Commission has found that Congress intended that such service contract information would be held confidential by the Commission from the public, not other Federal agencies.[4] The legislative history indicates that the drafters intended that the confidentiality provision not hamper other Federal agencies which have legitimate needs to access service contract information in order to carry out their statutory duties. The Commission is required to protect information filed confidentially from disclosure to the public, but it is not precluded from disclosing such information to other Federal agencies where clearly warranted and justified. Moreover, Congress did not attempt, through OSRA, to remove other Federal agencies' access to pricing information necessary for the administration of the Cargo Preference Act and the Competition in Contracting Act. All three statutes must be read together to give each validity. Therefore, the Commission declines to read OSRA as repudiating the responsibilities assigned other agencies by those statutes.

As OSRA intended service contract information to be kept confidential from the public and not from other Federal agencies, the disclosure of such information to other Federal agencies is not "inconsistent with applicable law." Furthermore, sharing such information with another Federal agency would not "inexorably lead to a violation" of the prohibition against disclosure to the public, because, as the Commission stated in the IFR, such information would only be disclosed to an agency which enters an MOU with the Commission assuring that such information is necessary to the fulfillment of its statutory functions and that it will protect the confidentiality of such information. 64 FR at 11188. Therefore, disclosure of service contract information to other Federal agencies will not jeopardize the statutory aim of non-disclosure of confidential service contract information to non-governmental entities.

The U.S. Industry Interests argue that disclosing confidential service contract information to other Federal agencies would violate the Trade Secrets Act. It is unclear, however, whether the Trade Secrets Act is applicable to the disclosure of confidential service contract information between Federal agencies. Two cases have addressed whether inter-agency disclosures of confidential information are governed by the Federal Reports Act or the Trade Secrets Act: *Shell Oil Co.* v. *Department of Energy*, 477 F. Supp. 413 (D. Del. 1979), *aff'd*, 631 F.2d 231 (3d Cir. 1980), cert. denied, 450 U.S. 1024 (1981), and *Emerson Electric Co.* v. *Schlesinger*, 609 F.2d 898 (8th Cir. 1979). In *Shell Oil*, the District Court of Delaware, affirmed by the Third Circuit, held that the Trade Secrets Act applies to inter-agency disclosures, 477 F.2d at 432, while the Eighth Circuit found in *Emerson Electric* that because the Federal Reports Act controls the exchange of information between Federal agencies, the Trade Secrets Act applies only to the *public* disclosure of trade secret material, 609 F.2d at 907. The Supreme Court has yet to specifically address this conflict among the circuits. Thus, while it is debatable whether the Trade Secrets Act applies, we will assume it does for the purposes of this discussion.

The Trade Secrets Act prohibits Federal employees from disclosing trade secret information unless "authorized by law." 19 U.S.C. 1905. The U.S. Industry Interests argue that such disclosure of confidential service contract information to other Federal agencies is not authorized by law because there is no language in OSRA specifically granting that authority and the legislative history relied on by the Commission followed, rather than preceded, the adoption of S. 414, the Senate bill which became OSRA. As was discussed, *supra*, this argument is unconvincing because section 8(c)(2) remained unchanged in the final version of OSRA, and the statements were made on the same day the Senate passed S. 414.

Furthermore, the Cargo Preference Act requires DOD to use U.S.-flag vessels to transport supplies unless "the freight charged by those vessels is excessive or unreasonable," and prohibits those vessel operators from charging rates that are "higher than the charges made for transporting *like goods for private persons*." 10 U.S.C. 2631(a) (emphasis added). Moreover, the Supreme Court has recognized that the Competition in Contracting Act requires that the government be charged "fair and reasonable" prices for the purchase of supplies and services. *Paul* v. *United States*, 371 U.S. 245 (1963); *see also* 10 U.S.C. 2304, 2305. These statutes appear premised on the assumption that certain pricing information will be made available to the relevant agencies.

[3] To the extent the legislation is a restatement of the 1980 [Paperwork Reduction] Act, as amended in 1986, the scope, underlying purposes, basic requirements, and legislative history of the law are unchanged. To the extent legislation modifies provisions in current law, the amendments are made strictly for the purposes described in this report, and in order to further the purposes of the original law." H.R. Rep. No. 104–37 at 2, 1995 U.S.C.C.A.N. at 165.

[4] In the IFR, the Commission addressed and rejected the U.S. Industry Interests' argument that the colloquy between Senators McCain and Hutchison is of limited value for the purpose of legislative history because it followed, rather than preceded, the adoption of the bill which became OSRA. 64 FR at 11188. The U.S. Industry Interests seek to incorporate that argument by reference in their comments made in response to the IFR. Because no new arguments were made in regard to that issue, it is unnecessary for the Commission to address that argument again.

The Cargo Preference Act entitles DOD to the same rates that other commercial shippers are charged for the transportation of like goods.[5] As the majority of international cargo will be moving under service contracts, we agree with MTMC's argument that the examination of publicly available tariff rates will be less indicative of what are fair and reasonable rate levels than the examination of service contract rates. As tariff and service contract rates could vary significantly, DOD would need to have access to such service contract rate information to ensure that it is being offered equivalent rates for like services and thus fulfill its statutory mandate. Moreover, Federal agencies may require access to such service contract rate information in order to comply with the requirement of the Competition in Contracting Act that they purchase fair and reasonable rates.

Therefore, OSRA and the accompanying legislative history, the Cargo Preference Act, and the Competition in Contracting Act all authorize the disclosure of confidential service contract information filed with the Commission to other Federal agencies. The U.S. Industry Interests, however, further argue that, assuming that the legislative history authorizes the disclosure of confidential service contract information to other Federal agencies, such disclosure would be limited to fulfilling the requirements only of the Cargo Preference Act. As discussed, *supra*, the legislative history only prohibits disclosure to the public and reflects that any Federal agency that requires access to confidential service contract information as necessary to its statutory functions may be entitled to it. Because the legislative history of OSRA indicates that Congress did not wish to limit the agencies with which the Commission should cooperate, but instead used the term "other federal agencies," the Commission interprets this to include agencies other than DOD, as well as laws other than the Cargo Preference Act of 1904. Therefore, these regulations do not attempt to define every situation in which the requested information is relevant to the purposes of the requesting agency.

The U.S. Industry Interests also assert that disclosing service contract information to other Federal agencies would necessarily guarantee that an agency's procurement official would use that information to seek better terms for the agency. Assuming that another Federal agency is entitled to such information in order to monitor compliance with the Cargo Preference Act, the U.S. Industry Interests argue that only an employee at the requesting agency who is independent of the procurement process should have access to the information for such monitoring. Thus, the U.S. Industry Interests' suggestion would compel the Commission to dictate by MOU how DOD conducts its procurement procedures in order to obtain service contract information. The Commission will not attempt to dictate internal DOD procedures or policy. Furthermore, this issue is beyond the scope of this proceeding.

Finally, the U.S. Industry Interests request that the Commission add language to § 530.4 to require it to enter an MOU with any agency to which it discloses confidential service contract information and, prior to execution of such MOU, to publish it for public comment. The U.S. Industry Interests argue that because of the "potential substantive impact" of such an MOU, it must be adopted in accordance with notice and comment procedures under the APA. We disagree. An MOU can be formulated in the course of a rulemaking proceeding, but it need only be subjected to notice and comment procedures if it makes a substantive impact on individual rights and obligations. 5 U.S.C. 551(4), 553; *see also Paralyzed Veterans of America* v. *West*, 138 F.3d 1434, 1436 (Fed. Cir. 1998); *Chem Serv., Inc. v. Environmental Monitoring Systems of EPA*, 12 F.3d 1256, 1267 (3d Cir. 1993); and *Reynolds Metal Com.* v. Rumsfeld, 564 F.2d 663, 669 (4th Cir. 1977). Thus, the MOU would have to either diminish or increase the rights or obligations of the parties to a service contract in order to be considered substantive. *See Reynolds Metal Com.*, 564 F.2d at 669.

The parties to a service contract must file the service contract confidentially with the Commission. Because DOD or other Federal agencies are authorized to collect the same information in order to comply with the Cargo Preference Act and the Competition in Contracting Act (as authorized by the Federal Acquisition Regulations, 48 CFR parts 9, 15), the service contract parties' right to confidentiality would not be diminished by disclosing this information pursuant to an MOU. A Federal agency that needs service contract information to fulfill its statutory functions would appear to be entitled to such information already. As such, even if an MOU were promulgated by a rulemaking, it would be procedural under section 553 of the APA, not subject to notice and comment. The Commission declines to add language to § 530.4 to require rulemaking or notice and comment procedures before it can execute an MOU with another Federal agency.

Moreover, the Commission is not inclined to add language to the rule itself requiring that it enter an MOU. Such language was not noticed in the rule for public comment, and therefore, is beyond the scope of this proceeding. As we have already stated in the supplementary information section of the IFR,

> the Commission shall require a requesting federal agency to enter into a Memorandum of Understanding that it will protect the confidentiality of any information it receives from the Commission and that such information is necessary to its statutory functions, and adopts as final the language in § 530.4 of the proposed regulations.

64 FR at 11188. The Commission therefore adopts as final the language of § 530.4 as it appeared in the IFR.

D. Section 530.5(a), (b)—Duty to File and Filing by Agents

NITL supports the Commission's regulations placing the duty to file upon the carrier party (§ 530.5(a)), but allowing the service contract to be filed by a "duly agreed upon agent as the parties to the service contract may designate, and subject to conditions as the parties may agree." § 530.5(b). NITL points out that this clarification is important due to the changes made by OSRA which authorize individual contracting by members of carrier agreements and which allow for confidentiality of contract terms. NITL asserts that the language of the rule properly provides for flexibility, and leaves the matter appropriately as one to be decided by the parties to the contract. Because the use of an agent for filing may increase risks to confidentiality, NITL points out, some shippers may legitimately prefer that an agent not be used, and insist on a provision against such use of agents in their service contracts.

NITL's commentary does not request any further clarification or change to the Commission's IFR. This section of the IFR is confirmed as final.

E. Section 530.6—Shipper Status Certifications

1. Extending Provisions to Groups of two or More Unrelated Shippers

Sections 530.6(a) and § 530.8(b)(9) of the Commission's IFR carry over an exception for shippers' associations to the requirement that all shippers list their names and addresses and that all shippers certify their status in their

[5] The U.S. Industry Interests point out that the Cargo Preference Act does not require that the government be given rates *lower* than commercial shippers. Neither MTMC nor the Commission has proffered this argument, and in fact we agree that the statute only requires that the government receive *equivalent* rates for like goods.

service contracts. DuPont recommends that the Commission extend these provisions for shippers' associations to include unrelated groups of shippers which choose to enter into a single service contract, and make conforming changes to § 530.9(e)(2) for this expansion. DuPont asserts that the exception for shippers' associations was created in response to "marketplace realities" and that it "helps protect the integrity of the shippers" association without unduly interfering with the ability of the FMC to enforce the law." DuPont at 2. Extending this provision to unrelated groups of shippers which enter into service contracts, DuPont argues, would result in "more equitable treatment" of shippers which join together to enter into service contracts, whether as members of associations or as unrelated groups.

This request was not raised in comments responding to the NPR, and the Commission declines now to expand its treatment of shippers' associations to unrelated groups of shippers. As of yet, the Commission has had little indication, besides DuPont's brief and rather general comments, of how unrelated groups of shippers will come together to enter into service contracts. Furthermore, there is difficulty in expanding the treatment of shippers' associations to unrelated shippers groups: while shippers' associations generally can provide a list of members who are legally obligated to fulfill the terms of a service contract, shippers who are unrelated may not be able to provide such a list, because one shipper cannot impose such obligations on other, unrelated shippers who have not signed the service contract. When the shipper status certification was first introduced, the Commission found that the requirement of section 10(b)(15) of the Act (certification) (renumbered as section 10(b)(12) by OSRA) required that "such certification should encompass not only the signatory shipper, but any affiliates or members of the shippers' associations entitled to ship under the service contract." 56 FR 1496. Therefore, DuPont's request is denied.

2. Shipper Status Certifications Generally

NITL reiterates the comments it made to the Commission in response to the NPR: namely that the shipper status certification is unnecessary and that its purpose is unclear. NITL argues that because parties are free to complain to the Commission if they believe they were treated in an illegal fashion, and because OSRA has narrowed the discrimination prohibitions, the Commission should conduct investigations on a case-by-case basis rather than take the IFR's monitoring approach, to justify the status certification requirement. NITL at 9.

The Commission has examined this comment previously and rejected it. When the Commission examined the predecessor of § 530.5 (originally § 581.11) in 1991, it found that this approach would give the Commission "the opportunity to closely monitor all service contracts to ensure that they are not improperly used by NVOCCs not in compliance with the Act." Docket 91–1, *Bonding of Non-Vessel-Operating Common Carriers*, 56 FR 51987, 51992. We reiterate that the shipper status certification requirement serves both to remind shippers in what capacity they may enter into service contracts, and to assist carriers to ensure they enter into a service contract only with compliant NVOCCs.

Sea-Land, OCWG, and NITL take exception to the following statement in the supplementary information section of the IFR which was part of the Commission's reasoning behind a requirement that a shipper status certification be filed with each service contract:

> OSRA prohibits discrimination and refusals to deal based on anything other than valid transportation factors (such as volumes) and the regulation as proposed intends to guard against such discrimination, prohibited by section 10(b)(10) of the Act.

64 FR at 11190. The comments maintain that this language misinterprets the scope of the prohibited acts under the OSRA. The three commenters complain first, that the Commission improperly confused refusals to deal and negotiate with discrimination, and second, that the statement incorrectly expands the Act's prohibitions on discrimination.

NITL asserts that the Commission's statement is an over-broad characterization of the discrimination prohibitions of the Act which have been substantially narrowed by OSRA with respect to service contracts. NITL urges the Commission to clarify the application of the discrimination prohibitions with regard to service contracts. Sea-Land also requests that the Commission clarify that service contracting discrimination prohibitions are limited to sections 10(b)(5), 10(b)(9), 10(c)(7) and 10(c)(8). Concurring with Sea-Land's comments, OCWG argues that differentiating service contract rates and terms between shippers for any reasons other than those prescribed in sections 10(c)(7) and (8) is entirely lawful in joint service contracts offered by ocean common carriers. OCWG at 3–4.

We concede that in our effort to be succinct, the statement objected to by the commenters was over-broad and unclear. OSRA does retain prohibitions against refusals to deal and negotiate as well as against discrimination in certain circumstances in section 10.[6] Sections 10(b)(5), 10(b)(9), 10(c)(7) and 10(c)(8) of the Act refer to discrimination; section 10(b)(10) of the Act prohibits unreasonable refusals to deal; and section 10(c)(1) prohibits concerted action resulting in unreasonable refusals to deal. Further clarification is unnecessary.

F. Section 530.7—Duty to Labor Organizations

ILWU comments that the incorporation of the word "ordinarily" into the regulation's definition of "reasonable period of time" to respond to a labor request, "invites a delayed response from the carriers, and inevitably raises a host of tangential issues that will have to be investigated and perhaps even litigated." ILWU urges the Commission to avoid this potential waste of resources by deleting "ordinarily" from the definition of "reasonable period of time."

We find no reason to revise the approach taken by the Commission in the IFR; only experience under this new statutory provision will reveal whether more stringent regulations are warranted. The Commission reiterates its expectation that carriers will comply

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[6] Section 10 of the Act reads, in pertinent part,

(b) Common carriers. No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—

* * * * *

(5) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any port;

* * * * *

(9) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any port.

* * * * *

(10) unreasonably refuse to deal or negotiate;

* * * * *

(c) Concerted action. No conference or group of two or more common carriers may—

* * * * *

(1) Boycott, or take any other concerted action resulting in an unreasonable refusal to deal.

* * * * *

(7) for service pursuant to a service contract, engage in any unjustly discriminatory practice in the matter of rates or charges with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries; or

(8) for service pursuant to a service contract, give any undue or unreasonable preference or advantage or impose any undue or unreasonable prejudice or disadvantage with respect to any locality, port, or persons due to those persons' status as shippers' associations or ocean transportation intermediaries.

with the spirit of the legislation and respond promptly to requests from labor organizations for information.

G. Section 530.8—Filing of Service Contracts

1. Transition Issues and Contingency Plans

OCWG, CENSA and NITL express concern about the Commission's filing systems' abilities to accommodate the rush of filings they predict to occur early in May. NITL supports the Commission's decision to accept before May 1, 1999, service contracts in the new system effective on or after May 1, 1999. This, NITL asserts, should avoid an anticipated rush of filings on May 1 and likewise avoid overburdening the internet-based system on May 1. CENSA comments that, because neither of the proposed electronic systems are currently operational, in the event the internet-based system is not available at least ten days prior to May 1, 1999 (which is April 21, 1999), filers should be permitted to file in the current paper format until the system is operational, and should be granted a grace period after the system is operational (implicitly also 10 days) before filers will be required to use the new system.

Similarly, OCWG urges the Commission to adopt a contingency plan for the filing of service contracts in the event that the internet-based system is not available for filing by April 20, 1999. OCWG asserts that thousands of service contracts will be filed for effect on May 1, and as such, the volume of filings both before and after May 1 will be enormous. OCWG suggests that the Commission allow for paper or diskette filing beginning April 20 and continuing until 30 days after the internet-based filing system becomes available. This, OCWG argues, would allow both the industry and the Commission to make a more gradual transition, and is similar to the approach the Commission took when it made the transition from paper tariffs to the Commission's Automated Tariff Filing Information ("ATFI") system. Finally, OCWG comments that it would not object if those service contracts filed in paper format during the transition period were required to be re-filed via the internet system at a later date, provided there was a reasonable period allowed for making such refilings. Such a contingency plan, OCWG suggests, would provide for a smooth transition to electronic filing while ensuring there is no commercial disruption due to the unavailability of the internet-based system.

The Commission's IFR introduced two service contract filing systems: option 1 ("internet-based") and option 2 ("dial-up"). Presently, the Commission is confident that both systems will be available on May 1. Indeed, the internet-based system will accept filings on April 26. In addition, as announced in press releases and on the Commission's website, the Commission's Office of Information Resources Management ("OIRM") conducted certification sessions for the dial-up system in which filers test their filing software on April 22 and 23.

The Commission has taken other steps to help filers be prepared to file as soon as the Commission's systems are operational. On April 8, 1999, OIRM sent letters to entities currently registered to do batch filing in the ATFI system, requesting an indication of their intent to register in the new systems. Another reminder of the registration requirement was also placed on the Commission's website by OIRM. Based on all of the above preparations, therefore, a transitional alternative filing plan is not deemed necessary.

As for the ongoing contingency plans suggested by the comments, the Commission is confident that the systems will be able to receive a large volume of filings in the early days of May. Both systems will be available to receive filings 24 hours each day and 7 days per week. Therefore, the times that filing will be unavailable to filers would appear to be rare. Of course, there may be minutes or hours in which either of the systems will be "down" and will be unavailable to receive filings, whether for scheduled maintenance or for unscheduled interruptions due to telephonic or other systemic problems. Contrary to the commenters' concerns, however, the Commission does not anticipate that these brief periods of unavailability will create interruptions of commercial transactions on the scale implied by the comments.

However, the Commission wishes to further allay concerns as to the capability of the systems to accept the amount of filings that may occur around May 1, or at some time in the future, by providing for a suspension of the timeliness requirement of the rules in the event that the filing systems malfunction. The Commission therefore has adopted a limited exception from the requirements of §§ 530.8(a) and 530.14(a) (that the service contract must be filed before any cargo may be carried under it) in situations in which the Commission's filing systems are unavailable for twenty-four (24) consecutive hours or more. This limited exception requires filing to be done at the latest by twenty-four (24) hours after the system returns to service. Also, this limited exception will only arise in situations where the Commission has verified that the filing system is unavailable to all filers, and not, for instance, when the filer's own computers or communications systems are non-functional. The Commission therefore adds paragraph (e) to § 530.8.

2. Appendix A—Registration

While the Commission received no formal comments on the matter, several informal requests for information indicate that there is some confusion over registration for filing under both internet-based and dial-up systems. First, all of a carrier's, conference's or agreement's service contracts must be filed in one and only one of the systems. Second, while a carrier, conference or agreement may only be registered to file in one of the systems, a publisher which files on behalf of many carrier parties, may be registered in both systems. However, the regulation requires that a publisher must file an entity's service contracts in only one of the systems. Therefore, to make this clear, we revise Appendix A paragraph I., Registration, Log-on ID and Password.

H. Section 530.8(c)(2)—Cross-Referencing

As it appears in the IFR, § 530.8(c) reads,

> (c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:
> (1) Be uncertain, vague or ambiguous; or
> (2) Make reference to terms not explicitly contained in the service contract filing itself, unless those terms are contained in a publication widely available to the public and well known within the industry.

CENSA is concerned that the revision of § 530.8(c)(2) may confuse filers and lead them to mistakenly conclude that a service contract may not refer to a tariff or a service contract register filing. CENSA points out that, as originally proposed by the Commission in the NPR, § 530.8(c)(2) specifically permitted cross-referencing to tariff publications. OCWG also comments that in revising § 530.8(c)(2), the Commission inadvertently omitted language which would have allowed cross-referencing to tariffs and service contract registers. Both CENSA and OCWG suggest that the Commission revise the provision to read as follows:

> . . . make reference to terms not explicitly contained in the service contracts filing itself, unless those terms are contained in: (i) a tariff publication in accordance with the requirements of 46 CFR part 520; or (ii) a service contract register filed with the Commission; or (iii) a publication widely available to the public and well known within the industry.

P&O supports the OCWG comments on this section. P&O requests that the Commission also clarify that service contracts may cross-reference their own or their conference tariff; their service contract register; or publications that are widely available to the public and well known within the industry (including, for example, whether published as a tariff relating to hazardous materials or privately published as a register for intermodal equipment). Further, P&O argues that cross-referencing will be an essential element in multi-trade service contracts, and the Commission must ensure that its regulations on cross-referencing do not preclude carriers from making such multi-trade contracts in a "commercially acceptable manner." P&O does not elaborate with particularity on how such multi-trade contracts might be affected.

In its NPR, which proposed only one filing system modeled on ATFI, the Commission specifically solicited comments from the industry on whether the provision of a "service contract register," in which service contract boilerplate may be filed, would be desirable. The comments were generally positive, and the Commission determined that the first proposed system ("dial-up") would have the capability of such register filings. There were few other details given in the IFR regarding register filings. 64 FR at 11197.

There is a dichotomy between the two filing systems due to their technological configurations and their distinct approaches to filing: the dial-up system requires an "organizational record" filing which has the ability to also accept "register" filings; the internet-based system has neither "organizational record" requirements nor provisions for "register" filings. With the major revisions made in the IFR, the technological question of whether such a "register" would be part of the internet-based system was not specifically discussed.

The guiding concept of the internet-based filing system was principally that the carrier party to the service contract would be able to file the complete, commercial agreement it had entered into with the shipper party. The matter of a register was not specifically considered for the internet-based system, because that system, in contrast to the dial-up system, would allow "free text" and not require the more rigidly formatted line items of the dial-up system. For the internet-based system, the principle was that the filer would simply transmit the contract as agreed to by the parties and executed by them, via the internet and into the Commission's database. In other words, whatever document the parties had signed would be identical to the document transmitted to the Commission. All the "boilerplate" of such contracts would be included in them, thereby eliminating any necessity for a "register" filing. Indeed, such "register" filings would appear to impose additional burdens of multiple filings for what could now easily be accomplished in a single filing.

Furthermore, the Commission is concerned that adopting the language suggested by the three aforementioned commenters may lead to situations in which shippers are party to service contracts referring to boilerplate which is filed in a service contract register which the shipper may have never read, and to which it would necessarily have no access from the Commission after filing. Therefore, the Commission has added a caveat to the allowance for cross-referencing material contained in a service contract register: the material filed in the service contract register and referred to in the service contract must be available to the other parties to the contract. Further, we wish to make it absolutely clear that changes to boilerplate which affect service contracts must be treated as amendments, and as such, subject to the mutual agreement of the parties. Such "registers" will only be available in the dial-up system.

Finally, because tariffs are published and widely available, cross-referencing to those publications in service contracts does not appear to pose any new issues. The Commission notes, therefore, that a tariff published pursuant to part 520 of the Commission's regulations will be considered "a publication widely available and well known within the industry" for the purposes of cross-referencing in service contracts.

The Commission therefore revises § 530.8(c) to clarify its approach to cross-referencing, particularly references to "service contract register" filings.

I. Section 530.10—Cancellation

AAEI comments that § 530.10 directly contradicts section 13(f) of the Act as revised by OSRA.[7] AAEI asserts that § 530.10 imposes the following choice on parties to service contracts: that they contemplate a shortfall (*i.e.* a failure to meet minimum cargo commitments) with a liquidated damages provision or they will be subject to § 530.10(d), which states that further or continued implementation of the service contract is prohibited; and that the cargo previously carried under it is to be re-rated at otherwise applicable tariff rates. AAEI doubts the legality of this provision, and asserts that it contradicts the "black and white letter of the law in section 112(c)(3)" of OSRA. AAEI further states that the failure of a contract to include a liquidated damages clause does not render the contract illusory. AAEI asks the Commission to consider whether it "makes sense" for example, to require the re-rating of 9,900 FEUs of cargo which has already been shipped when there has been a shortfall of only 100 FEUs in a service contract commitment for 10,000 FEUs. Finally, AAEI asserts that the proper penalty for fraudulent misrepresentation by a shipper is the imposition of monetary penalties, not the re-rating of previously carried cargo.

DuPont comments that the Commission's proposed "solution * * * is worse than the original problem it sought to cure." DuPont at 5. DuPont, relying on its "vast experience in the field of transportation contracting" asserts that "no matter how expert, complete and thorough negotiations are, the parties will inevitably experience barriers to fulfilling all of their obligations." DuPont at 5. Mandating re-rating, in situations in which the parties in good faith cannot meet their contractual obligations and elect to mutually terminate, is inappropriate in DuPont's estimation.

DuPont therefore urges the Commission to revise § 530.10(d)(2) to make re-rating permissible, but not mandatory, subject to Commission order, and proposes the provision read as follows:

> In the event of cancellation as defined in § 530.10(a)(3) * * * (ii) the cargo previously carried under the contract * * * may, pursuant to order by the FMC based upon its finding of a purposeful violation of applicable regulation, be re-rated according to the otherwise applicable tariff provisions.

This provision, DuPont asserts, would permit more lenient treatment of the "unsophisticated, small, or first time shipper (or carrier) for its lack of foresight or experience" and re-rating would only be imposed if the Commission found an intent to defraud or avoid compliance. DuPont at 6.

AAEI appears to have misread both the Commission's supplementary information and the text of the IFR itself. The supplementary information makes it clear that other provisions (*i.e.*

[7] Section 13(f) reads, in pertinent part,

> Neither the Commission nor any court shall order any person to pay the difference between the amount billed and agreed upon in writing with a common carrier or its agent and the amount set forth in any tariff or service contract by that common carrier for the transportation service provided.

not only liquidated damages provisions) can ensure that the service contract has a fall-back rate for shortfalls. 64 FR at 11204. The text of the regulation itself defines cancellation as

> an event which is unanticipated by the service contract, in liquidated damages *or otherwise*, and is due to the failure of the shipper party to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the carrier party. § 530.10(a)(3)(emphasis added).

The regulation, rather than being a penalty provision, is a method by which the "applicable rate" can be determined, and is invoked only when the parties have chosen not to make other provisions.

DuPont's recommendation that the re-rating provision be subject to Commission order, not automatic, and optional for the Commission to impose, may create uncertainty in the industry. DuPont's comment indicates its belief that this requirement is a penalty provision. Again, the requirement in § 530.10 for re-rating is only a last resort means of determining the applicable rate when the contract parties make no other provision and fail to amend the contract.

"Penalizing" Shippers for Operating Under Unfiled Service Contracts

NITL states that it is unfair to "penalize" shippers for violations of §§ 530.8(a) or 530.14(a) (which require that a service contract or amendment be properly filed with the Commission before cargo moves under it) when they have no control over the timeliness or method of such filing or ensuring that the filing is not defective. NITL asserts that shippers which tender cargo for carriage under a service contract which they believe to have been filed, should not be subject to such violations. NITL describes a scenario in which an innocent shipper may have been told by its carrier that the service contract has been filed, and then would be subject to penalties for violation of Commission regulations. NITL complains that it is not clear what the consequences for a shipper would be in such a case, and requests that the Commission clarify that it will not hold a shipper liable for penalties and will protect the shipper from re-rating in such a situation.

DuPont expresses concern about shipper parties not receiving independent, written confirmation of service contract and amendment filings, but facing re-rating or penalties, as well as legal defense costs for failure to file or improper filing. To eliminate this potential problem, therefore, DuPont urges the Commission to provide shipper parties with written (or electronic) notice when service contracts or amendments are filed or rejected within 5 working days of the filing or rejection. This approach, DuPont suggests, would eliminate the potential for a recreation of the motor carrier filed rate problem. In the alternative, DuPont proposes that shippers be held harmless and permitted to carriage pursuant to an otherwise valid contract which the carrier either failed to file or failed to notify the shipper if rejected by the Commission.

There are several reasons why the Commission declines to adopt DuPont's suggestion either to hold shippers harmless from such failures to file or to require that the Commission send confirmation of filing to the shipper as well as to the carrier. First, the filing requirement has been part of the Act and Commission regulation since 1984, and we are unaware of any shipper having been held to have violated section 10(a)(1) of the Act when it had a reasonable belief that the carrier had duly filed the service contract. Second, we note that shippers may require confirmation of filing from their carrier as part of the negotiation process, if they wish to do so. Third, the shipper may have some indication of whether or not a service contract has been duly filed by verifying that the ET for that service contract has been published by the carrier. Finally, with respect to NITL's scenario, the Commission's position can only be determined in the course of proceedings with parties in interest arguing the facts before an administrative law judge. We note only that while it is not the shipper party who has the obligation to file under Commission regulations, if it operates under an unfiled service contract, it may violate section 10(a)(1) of the Act. That section only applies to knowing and willful actions, however, rather than a question of absolute liability, and would therefore not apply to a shipper unknowingly victimized by a carrier's failure to file. Furthermore, there is nothing in the legislation which suggests that the Commission can immunize shippers from the assessment of civil penalties. However, under section 13(f), a shipper's culpability is part of any consideration in an assessment of civil penalties.

In response to DuPont's comments, and as the Commission has already discussed in the IFR, section 13(f) would appear to protect a shipper against a claim by a carrier for undercharges. 64 FR at 11204. The Commission has already stated its position in the IFR, namely that section 13(f) does not operate to nullify section 10 requirements; that the Act must be read so that every section is given meaning and harmonizes with the others;[8] that section 13(f) should not be interpreted so as to make service contracts illusory, or allow parties to take advantage of service contract rates without being bound to a contract;[9] and that the Commission's provisions for maximum flexibility (*e.g.*, amendments, contingencies, and liquidated damages) are adequate methods by which the parties may avoid the application of § 530.10 and protect their commercial interests. Therefore, the Commission makes no revision to this section and adopts it as final as it appeared in the IFR.

J. Section 530.12—Publication

P&O, ETM, OCWG and CENSA comment that the IFR is unclear as to whether the statements of essential terms of service contracts (hereinafter "ETs"), currently required to be filed in the ATFI system, will remain adequate for compliance with § 530.12 after May 1, 1999. ETM urges that the publication of ETs in ATFI be sufficient for publication under the new regulations, and further that such ETs not be required to be "re-published" in a new private system.

ETM argues that ETs of service contracts effective prior to May 1, 1999 were filed in ATFI for two reasons: to meet the filing requirements of the Act and to allow for public notice of the eligibility period for "me-too" shippers. As for the "me-too" aspect of the publication, P&O and ETM assert that because no further "me-too" eligibility is required after the end of the eligibility period, and because the ETs are available to interested parties (presumably in the then-historical ATFI system), to require the re-publishing of such ETs would provide no benefit to anyone and would impose a substantial

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[8] As stated in *Sutherland on Statutory Construction* at § 46.05 at 103:

> A statute is passed as a whole and not in parts or sections and is animated by one general purpose and intent. Consequently, each part or section should be construed in connection with every other part or section so as to produce a harmonious whole. Thus, it is not proper to confine interpretation to the one section to be construed.
>
> The Commission must "strive to implement the policy of the legislature and harmonize all provisions of the statute." *Id.* at 104.

[9] Section 10(b)(1) reads, in pertinent part: No common carrier * * * may allow any person to obtain transportation for property at less than the rates or charges established by the carrier in its * * * service contract by means of * * * any other unjust or unfair device or means;

(2) Provide service in the liner trade that—(A) is not in accordance with the rates, charges, classifications, rules, and practices contained in a * * * service contract entered into under section 8 of this Act * * *

burden on carriers. ETM appears to assert that service contracts filed effective prior to May 1, 1999 may have an eligibility period which runs beyond May 1, 1999, and that this may be a problem for similarly situated shippers accessing the privately maintained Carrier Automated Tariff Systems ("CATS") pursuant to Commission regulations at part 520 after May 1, rather than ATFI.

Further, ETM argues, requiring such re-publication would be duplicative and burdensome; the FMC staff would be inundated with reviewing re-published ETs as well as new ETs and determining which publication required a simultaneous filing and which did not. ETM also argues that the filing requirements of OSRA are met if service contracts effective prior to May 1, 1999 are electronically filed by use of ATFI, and, therefore, further filing or re-publication of either ETs or the service contracts themselves should not be required. ETM proposes that the Commission issue the following guidelines for the transition period:

1. Except for amended service contracts, all service contracts with an effective date prior to May 1, 1999 and with an eligibility period that expires no later than April 30, 1999, shall not require re-publication of essential terms or re-filing of the contract on or after May 1, 1999;

2. Amended service contracts with an effective date prior to May 1, 1999 and with an eligibility period that expires no later than April 30, 1999 shall not require re-publication of essential terms or re-filing of the contract on or after May 1, 1999;

3. Amended service contracts with an effective date prior to May 1, 1999 but with an eligibility period that expires no later than April 30, 1999 shall not be re-filed but the essential terms are to be re-published in the Carrier's Automated Tariff System and reference to the eligibility period should be stated in the duration clause;

4. All service contract amendments with an effective date of May 1 or later shall be filed in accordance with the provisions of 46 CFR part 530 and the essential terms shall be re-published in the Carrier's Automated Tariff System.

CENSA also asserts that requiring the re-publication of ETs of "carry over" service contracts will not benefit the carriers, their customers or the Commission. CENSA points out that many service contracts will continue. P&O, CENSA and OCWG urge the Commission to grant a blanket exemption from such republication; or in the alternative, give carriers and conferences a period of time over which to re-publish these ETs in their CATS.

P&O agrees with CENSA and ETM that ETs previously published in ATFI should not be required to be republished in CATS by May 1, 1999, because there is little regulatory purpose in such a requirement and because republication is time-consuming and expensive.[10] Furthermore, P&O argues, republication will create confusion because new service contract numbers will have to be assigned to such re-published ETs. P&O suggests the Commission grant a blanket exemption, or alternatively that it extend the time for republication to the date of amendment of the ETs or October 1, 1999, whichever comes first.

OCWG also comments that existing service contract ETs, which are published in the Commission's ATFI system, should not be required to be published again in a private tariff publication after May 1, 1999. OCWG asserts that it represents carriers which collectively will have thousands of service contracts which would be affected by such a requirement. Such republication, OCWG asserts, would be burdensome and will have no little or no benefit because there will be no right to "me-too" after May 1. Instead of requiring republication as of May 1, OCWG contends, the Commission should require ETs for contracts in effect prior to May 1 be republished the first time the contract is amended after May 1, or by October 1, whichever is later.

1. Eligibility for "Me-Tooing"

First, with regard to eligibility periods for "me-too" rights, it is clear that OSRA completely eliminates "me-tooing" of service contracts. OSRA is effective May 1, 1999, and therefore, no shipper can assert "me-too" rights after May 1, 1999, regardless of what the eligibility period of the service contract may have been under the Act prior to OSRA's effective date.

2. Accessability to and Maintenance of ATFI

Second, regarding accessability and content in the ATFI database, the Commission reiterates that it will maintain ATFI for historical information only, and access to ATFI will continue as it has been done in the past, by registration, log on and password. ATFI will become exclusively historical on April 30, 1999, as filers will cease to have the ability to file and amend ETs, but will continue to be able to retrieve them.

3. Republication

OSRA requires that "when a service contract is filed confidentially with the Commission, a concise statement of essential terms * * * shall be published and made available to the general public in tariff format." Section 8(c)(3). The Commission has determined that the simplest and least burdensome way for filers to comply with this requirement of the Act is to require publication of ETs as part of the privately published tariff systems. This publication requirement ensures that the shipping public has access to certain very general information on service contracts filed with the Commission. However, for service contracts currently in effect, ETs of such service contracts may not be as readily accessible to the extent that they are still in the ATFI system. Allowing currently effective service contracts' ETs to appear in two places (*i.e.* the ATFI historical database and the active CATS publication) may add a degree of complexity for those seeking access to the ETs, but any confusion would be minimal, especially as compared to the cost and burden on the filers if republication were required.

Therefore, the Commission will not require that ETs for service contracts previously filed in the ATFI system, but which continue in effect after May 1, be published in the CATS system. However, the Commission wishes to make it clear that pre-May 1 service contracts which are amended after May 1 will require republication of ETs as soon as possible after the filing of the amendment (comporting with the requirement of § 530.12(g)) regardless of whether or not the four essential terms are affected by the amendment.

K. Amendment Filing

Although the Commission received no formal comment on this matter, several informal inquiries have indicated that filers need further guidance as to how pre-May 1 service contracts are to be amended after May 1. The internet filing system will not require the re-filing of the original service contract. The dial-up system, however, will require that the filer re-file a restatement of the service contract. This is due to the fact that the dial-up system requires a data file with which amendments must be associated; amendments may not stand on their own. In the dial-up system, all reissued service contracts will be required to:

(1) Have a current effective date which is no earlier than the system assigned filing date (Appendix to Part 530, section II. H. 2);

(2) Employ an amendment code of "I" and an amendment number of "null" or "0" (§ 530.10(b)(2) and Appendix to Part 530, section II D.);

(3) Contain all twelve mandatory terms and the exact term titles

[10] P&O comments that it will have 350 such service contracts.

(Appendix to Part 530, section IV. (Format Requirements));

(4) Reflect the latest version of each mandatory term, optional term and any Register Rules for each pre-OSRA term and rule; and

(5) State at term 12 that the service contract was "reissued" and cross-reference the FMC File Number of the pre-OSRA filing of the ET filing(s) in ATFI.

L. Section 530.12 (c)—Multiple Carrier Party Contracts-Publication of ETs

CENSA characterizes § 530.12(c) as giving multiple carrier parties the option of publishing either in their individual tariffs or in a conference tariff, which CENSA asserts is "logical and reasonable." CENSA believes, however, that the rule's language is contradicted by the language of the supplementary information, which requires that "essential terms of an individual service contract entered into by multiple carrier parties to a conference must be filed in the conference tariff." CENSA urges the Commission to revise the supplementary information to confirm that carriers would have an option of where to publish the ETs of a multi-carrier contract. CENSA asserts that this flexibility would not hinder the Commission's ability to carry out its regulatory responsibilities.

OCWG urges the Commission to revise § 530.12(c) as follows:

> (c) *Location.* The statement of essential terms shall be published in an automated tariff publication in accordance with 520.12(c)(1) through (4) and in conformance with the format requirements set forth in part 520 of this chapter. The statement of essential terms may be published in the following locations:
>
> (1) *Conference service contracts.* In the conference tariff(s).
>
> (2) *Individual service contracts.* In the carrier's individual tariff publication or in the tariff publication of a conference of which the carrier is a member, at the carrier's option.
>
> (3) *Multi-party contracts.* For a multi-party individual service contract entered into pursuant to the authority of a conference agreement, in each of the participating carriers' individual tariff publications or in the tariff publication of the conference, at the carriers' option.
>
> (4) *All other service contracts.* In the individual tariffs of the participating carrier(s).

The foregoing language, OCWG asserts, would increase carrier flexibility by giving the members of a conference the choice of where to publish. It would also, OCWG asserts, make clear that individual carrier members of conferences may have their own tariff in which they may publish ETs even if they participate in a conference rate tariff. OCWG argues that this may be necessary to comply with the legal requirements of other jurisdictions, particularly those of the European Union. Giving carriers these options, OCWG argues, would not inhibit or discourage individual contracting, nor would it complicate the Commission's compliance monitoring. ETs belonging to carriers/conferences and individual/agreement service contracts but published in the same tariff, OCWG asserts, will be easily distinguished because the ET must contain the FMC agreement number for conference and non-conference agreement service contracts. OCWG also complains that allowing agents to file, but restricting who the carrier party may appoint to publish "makes little sense." OCWG at 8. They argue that because carriers are "very unlikely to permit anyone other than their employees or their tariff publisher to access their tariff publication," the approach of the IFR "effectively prohibits carriers from using an agreement secretariat to publish the ETs of their individual service contracts." OCWG at 8.

We agree with CENSA that there appear to be conflicting approaches to publishing between the text of the rule itself and the language of the supplementary information. The supplementary information included a discussion of the competing interests behind the publication requirement for multiple carrier service contracts: on the one hand avoiding confusion to the public and ensuring that ETs can be located by the public, and on the other, minimizing the burden on the publishing carriers. 64 FR at 11200–11201.

Despite OCWG's and CENSA's arguments regarding flexibility for publication of multi-party ETs, however, the Commission has revised the language of the regulation to make it clear that conference ETs must appear with the conference tariff; individual ETs must appear with the individual tariff; and non-conference agreement ETs must appear with each of the individual carriers' tariffs. Where non-conference agreement or conference ETs may appear is *not* optional. While allowing such options would give carriers "increased flexibility," we are not persuaded that doing so has the same implications as those for filing of confidential terms, and therefore it appears not to be particularly relevant whether or not it is "entirely consistent with the approach the Commission has taken with respect to the filing of service contracts." OCWG at 8.

OSRA clearly distinguishes filing from publication. The publication of ETs is required in order that the information is reasonably available to the public. If the Commission were to allow the option suggested by these comments, the public may only with significant difficulty ever be able to find non-conference agreement ETs or conference ETs. This would not appear consistent with the statutory requirement that the ETs be "made available to the public."

The Commission has already determined that having ETs published alongside the carrier party's CATS is the simplest and least duplicative approach to such publication. As the Commission stated in the IFR, the statement of essential terms of

> [i]ndividual carrier service contracts are to be published alongside that carrier's tariff matter * * * * Multi-party service contracts entered into under the authority of a conference must be published alongside the conference tariff, and not in the individual member's tariff * * * * For service contracts jointly entered into by multiple parties of a non-conference agreement, the publication of the statement of essential terms will be published as for individual service contracts [*i.e.* in each of the individual carrier's tariffs] but note must be made of the relevant FMC-designated Agreement number.

64 FR at 11200–11201.

For independent individual service contracts entered into by a conference member, therefore, ETs must be published with the individual carrier's tariff publication, and not with the conference's tariff. As the Commission previously found, "[a]llowing such would lead to public confusion." 64 FR at 11201. For multi-party service contracts, the IFR appears to allow non-conference agreements a choice as to where their ETs could be published (*i.e.* in a conference's tariff or in an individual tariff). The language of § 530.12(c)(2) is revised to clarify that for non-conference agreement service contracts, the ETs must be published in each of the individual participating carriers' tariffs, noting the FMC-assigned agreement number pursuant to which the service contract is entered.

CENSA alternatively asserts that the Commission should permit non-conference agreements to "create a tariff in which the ETs of the service contracts of its members may be published either by themselves in their own tariffs, or through an agreement secretariat created for that purpose." CENSA at 2. Such an approach, CENSA argues, would neither hinder individual contracting nor compromise the confidentiality of contract terms. Furthermore, CENSA comments, such an approach could enhance the Commission's ability to

determine the level of contracting taking place pursuant to a non-conference agreement, because the ETs would all be published in a single tariff.

Allowing non-conference agreements to publish tariffs may be convenient; however, sections 3(7) and 8(a) of the Act reserve the ability to publish a tariff solely for "carriers and conferences." Non-conference agreements are precluded from publishing tariffs by the statute. If the IFR's approach to the publication of ETs for non-conference agreements or for individual carrier members of conferences becomes overly burdensome or confusing to the public, and another approach is therefore warranted, the Commission may then revise the regulations to address such concerns. Before having had experience with the practices of the industry and the concerns of the public, however, it appears to be more prudent to leave this approach in place. Therefore, the Commission has revised the language of § 530.12(c)(2) to clarify with which tariff system multiple carrier service contracts must be filed and to correct a numbering error which appeared in the IFR.

Although the Commission received no formal comments on the provision, there has been informal inquiry about the meaning of the provision of § 530.12 which requires that ETs "be published as a separate part in the filer's automated tariff publication, conforming to the format requirements of part 520 of this chapter." As this language was merely intended to indicate that ETs be located in the carrier's automated tariff system, the Commission has deleted the phrase "conforming to the format requirements of part 520 of this chapter," and to change the term "publication" to "system." The balance of the paragraph adequately indicates that ETs must be published in the carrier's automated tariff system. Therefore, § 530.12(c) is revised to address both the issues concerning multiple carrier party service contract filing and format requirements.

M. Section 530.13—Exceptions and Exemptions

USPS urges the Commission to continue a specific exemption to the requirements of this part for the transportation of mail between the United States and foreign countries. USPS recommends that § 530.13(a) be revised to include an exemption to the requirements of the regulation for mail. USPS points out that mail had been granted an exemption in 1976 (Docket No. 75–41, June 22, 1976) to the tariff filing requirements and further argues that this exemption should be carried forward for service contract filing as well.[11] Nor, USPS asserts, did the order find that such an exemption would deprive the shipping public of a means for determining the rates for the carriage of mail, because, with respect to mail, there is no "shipping public" other than foreign governments which set the rates applicable to the transportation of their mail. Finally, USPS notes that the 1976 exemption order recognized that under 39 U.S.C. 5005(b)(3), USPS' contracts for the carriage of mail are available for inspection by the general public.

USPS cites 46 CFR 514.3(b)(2) of the Commission's former regulations to support its proposition that service contracts for the carriage of mail in the U.S.-foreign trade are exempt from *both* tariff and service contract filing requirements. Under current practice, furthermore, carriers under contract with the USPS do not file their service contracts with the Commission. USPS argues that there is nothing contained in OSRA which would require a change from current practice. For the foregoing reasons, therefore, USPS urges the Commission to carry forward the exemption for mail to the Commission's regulation on service contracts.[12]

USPS' comment was the only comment regarding section 16 exemptions the Commission received, with the exception of the Household Goods Forwarders Association of America's comments to the proposed rule. USPS did not comment on the NPR, and the Commission did not consider in the IFR whether exemptions which had appeared in the combined tariff and service contract part of the Commission's former regulations (part 514) would continue to have application.

The Commission's regulations on tariffs and service contracts were originally contained in separate parts of the CFR. Subsequently, however, when the ATFI filing system was adopted to accept ETs, the Commission combined its service contract and tariff regulations into one part. As USPS' comment has brought to the Commission's attention that it had inadvertently failed to consider in the IFR the extension of certain exemptions which had been contained in the combined tariffs/service contract rule, the Commission will carry forward the section 16 exemptions the Commission had previously granted and which have relevance for the service contract filing requirements of this part. The Commission has therefore revised § 530.13 to include the relevant Commission exemptions, and further to indicate that terms not particularly defined in this section will have the same meaning they have as defined by the Act itself or by 46 CFR part 520 (Carrier Automated Tariff Systems).

As the Commission previously noted in the IFR, which it now confirms as final, it has received approval from the Office of Management and Budget for this collection of information pursuant to the Paperwork Reduction Act of 1995, as amended. Also as noted in the IFR, in accordance with that Act, agencies are required to display a currently valid control number. The valid control number for this collection of information is 3072–0065. 64 FR 11206.

List of Subjects in 46 CFR Part 530

Freight, Maritime carriers, Reporting and recordkeeping requirements.

Accordingly, the interim final rule removing 46 CFR part 514 and adding 46 CFR part 530 which was published at 64 FR 11186–11215 on March 8, 1999, is adopted as a final rule with the following changes:

PART 530—SERVICE CONTRACTS

1. The authority citation for part 530 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C App. 1704, 1705, 1707, 1716.

2. Amend § 530.3 by revising paragraph (m) to read as follows:

§ 530.3 Definitions.

* * * * *

(m) *Motor vehicle* means a wheeled vehicle whose primary purpose is ordinarily the non-commercial transportation of passengers, including an automobile, pickup truck, minivan or sport utility vehicle.

* * * * *

3. Amend § 530.8 by revising paragraph (c) and adding paragraph (e) to read as follows:

§ 530.8 Service Contracts.

* * * * *

[11] In that order the Commission found that, while it may move in foreign commerce, mail is not a U.S. export or an item of trade between countries, and thus it is apparent that the exemption would not be detrimental to the commerce of the United States.

[12] USPS also argues that the current regulations, 46 CFR § 514.3(b)(2) indicate that the Commission recognizes that mail transportation is exempt from the Act itself, as well as from its implementing regulations. Further, USPS argues, the Postal Reorganization Act not only preempts the application of the Shipping Act to mail transportation, but further exempts mail transportation by the USPS from all other federal contract laws except those listed in 39 U.S.C. § 410(b). 39 U.S.C. § 5001 *et seq.* Finally, USPS contends, mail is not cargo, and for that reason the Commission's requirements do not apply to contracts for its movement.

(c) *Certainty of terms.* The terms described in paragraph (b) of this section may not:

(1) Be uncertain, vague or ambiguous;

(2) Make reference to terms not explicitly contained in the service contract itself unless:

(i) Those terms are contained in a publication widely available to the public and well known within the industry; or

(ii) Those terms are contained in a service contract register filing duly filed in the Commission's dial-up filing system and are available to all parties to the service contract. Service contract register filings are subject to the same requirements of this part as service contracts and amendments.

* * * * *

(e) *Exception in case of malfunction of Commission filing system.*

(1) In the event that the Commission's filing systems are not functioning and cannot receive service contract filings for twenty-four (24) continuous hours or more, affected parties will not be subject to the requirements of paragraph (a) of this section and § 530.14(a) that a service contract be filed before cargo is shipped under it.

(2) However, service contracts which go into effect before they are filed, pursuant to paragraph (e)(1) of this section, must be filed within twenty-four (24) hours of the Commission's filing systems' return to service.

(3) Failure to file a service contract that goes into effect before it is filed, pursuant to paragraph (e)(1) of this section, within twenty-four (24) hours of the Commission's filing systems' return to service will be considered a violation of Commission regulations.

4. Amend § 530.10 by revising paragraph (d)(1) to read as follows:

§ 530.10 Amendment, correction, and cancellation.

* * * * *

(d) *Cancellation.* (1) An account may be adjusted for events and damages covered by the service contract. This shall include adjustment necessitated by either liability for liquidated damages appearing in the service contract as filed with the Commission under § 530.8(b)(7), or the occurrence of an event described below in paragraph (d)(2) of this section.

* * * * *

5. Amend § 530.12 by redesignating the second paragraph (c) and paragraphs (d) through (g) as paragraph (d) and paragraphs (e) through (h), respectively, and by revising paragraph (c) and newly redesignated paragraphs (d) through (h) to read as follows:

§ 530.12 Publication.

* * * * *

(c) *Location.* (1) *Generally.* The statement of essential terms shall be published as a separate part of the individual carrier's automated tariff system.

(2) *Multi-party service contracts.* For service contracts in which more than one carrier participates or is eligible to participate, the statement of essential terms shall be published:

(i) If the service contract is entered into under the authority of a conference agreement, then in that conference's automated tariff system;

(ii) If the service contract is entered into under the authority of a non-conference agreement, then in each of the participating or eligible-to-participate carriers' individual automated tariff systems, clearly indicating the relevant FMC-assigned agreement number.

(d) *References.* The statement of essential terms shall contain a reference to the "SC Number" as described in § 530.8(d)(1).

(e) *Terms.* (1) The publication of the statement of essential terms shall accurately reflect the terms as filed confidentially with the Commission.

(2) If any of the published essential terms include information not required to be filed with the Commission but filed voluntarily, the statement of essential terms shall so note.

(f) *Agents.* Common carriers, conferences, or agreements may use agents to meet their publication requirements under this part.

(g) *Commission listing.* The Commission will publish on its website, www.fmc.gov, a listing of the locations of all service contract essential terms publications.

(h) *Updating statements of essential terms.* To ensure that the information contained in a published statement of essential terms is current and accurate, the statement of essential terms publication shall include a prominent notice indicating the date of its most recent publication or revision. When the published statement of essential terms is affected by filed amendments, corrections, or cancellations, the current terms shall be changed and published as soon as possible in the relevant statement of essential terms.

6. Revise § 530.13 to read as follows:

§ 530.13 Exceptions and exemptions.

(a) *Statutory exceptions.* Service contracts for the movement of the following, as defined in section 3 of the Act, § 530.3 or § 520.1 of this chapter, are excepted by section 8(c) of the Act from the requirements of that section, and are therefore not subject to the requirements of this part:

(1) Bulk cargo;

(2) Forest products;

(3) Recycled metal scrap;

(4) New assembled motor vehicles; and

(5) Waste paper or paper waste.

(b) *Commission exemptions.* Exemptions from the requirements of this part are governed by section 16 of the Act and Rule 67 of the Commission's Rules of Practice and Procedure, § 502.67 of this chapter. The following commodities and/or services are exempt from the requirements of this part:

(1) *Mail in foreign commerce.* Transportation of mail between the United States and foreign countries.

(2) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Transportation Management Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, shall be filed with the Commission as soon as it becomes available.

(c) *Inclusion of excepted or exempted matter.* (1) The Commission will not accept for filing service contracts which exclusively concern the commodities or services listed in paragraph (a) or (b) of this section.

(2) Service contracts filed with the Commission may include the commodities or services listed in paragraph (a) or (b) of this section only if:

(i) There is a tariff of general applicability for the transportation, which contains a specific commodity rate for the commodity or service in question; or

(ii) The service contract itself sets forth a rate or charge which will be applied if the contract is canceled, as defined in § 530.10(a)(3).

(d) *Waiver.* Upon filing a service contract pursuant to paragraph (c) of this section, the service contract shall be subject to the same requirements as those for service contracts generally.

7. Amend Appendix A to part 530 by revising the introductory text, paragraph A under the heading Registration, Log-On ID and Password, and by adding paragraph D under the same heading to read as follows:

Appendix A—Instructions for the Filing of Service Contracts

Service contracts shall be filed in accordance with one of the methods described in this Appendix, at the filer's

option. Carriers, conferences, and agreements may only be registered to file in one system at a particular time. Publishers may be registered in both systems, but must file each carrier, conference or agreement service contracts into only one system.

I. Registration, Log-On ID and Password

A. To register for filing, a carrier, conference, agreement or publisher must submit the Service Contract Registration Form (Form FMC–83) to BTCL. A separate Service Contract Registration Form is required for each individual that will file service contracts. However, each organization certified prior to May 1, 1999 to perform batch filing of Essential Terms Publications in the Commission's former Automated Tariff Filing Information ("ATFI") system, will be issued a new log-on ID and password for access to file service contracts. Filers who wish a third party (publisher) to file their service contracts must so indicate on Form FMC–83. Authority for organizational filing can be transferred by submitting an amended registration form requesting the assignment of a new log-on ID and password. The original log-on ID will be canceled when a replacement log-on ID is issued.

* * * * *

D. A carrier, conference, or agreement may be registered to file its service contracts in only one of the Commission's filing systems at any given time. A publisher which files on behalf of many carriers, conferences or agreements may be registered to file into both systems simultaneously, however, each of its clients' service contracts must be filed in only one system. For example, a publisher who files for carrier X and conference Y may file all of carrier X's service contracts into the option 1 (internet-based) filing system, and all of conference Y's service contracts into the option 2 (dial-up) filing system, but cannot file some of carrier X's service contracts in the option 1 filing system and some of carrier X's service contracts in the option 2 filing system.

* * * * *

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11058 Filed 4–29–99; 4:01 pm]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 535 and 572

[Docket No. 98–26]

Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984; Correction

AGENCY: Federal Maritime Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Maritime Commission published in the **Federal Register** of March 8, 1999, a final rule amending its regulations governing agreements among ocean common carriers and marine terminal operators to reflect changes made to the Shipping Act of 1984 by the Ocean Shipping Reform Act of 1998. Inadvertently, internal references to part 572 were not revised to reflect the redesignation of that part as part 535. In addition, amendment to a section heading was overlooked in the instructions.

DATES: Effective on May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Room 1046, Washington, DC 20573–0001, (202) 523–5725, E-mail: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission published in the **Federal Register** of March 8, 1999, a final rule amending its regulations governing agreements among ocean common carriers and marine terminal operators to reflect changes made to the Shipping Act of 1984 by the Ocean Shipping Reform Act of 1998. Inadvertently, internal references to part 572 were not revised to reflect the redesignation of that part as part 535. In addition, amendment to the section heading for § 535.301 was overlooked in the instructions.

In Docket No. 98–26, published on March 8, 1999, (64 FR 11236) make the following corrections:

26. In redesignated part 535 and the appendices to the part, revise all references to sections in part 572 to reflect redesignation as part 535.

1. On page 11242, in the first column, correct the section heading of § 535.301 to read: "§ 535.301 Exemption procedures."

2. On page 11244, in the third column after § 535.803, add amendatory instructions 25 and 26 to read as follows:

25. In Appendices A & B to redesignated part 535, revise the references in the first column to read as shown in the second column wherever they occur:

Remove	Add
572.104(y)	535.104(x).
572.104(bb)	535.104(aa).
572.104(cc)	535.104(bb).
572.104(dd)	535.104(cc).
572.104(hh)	535.104(gg).
572.104(kk)	535.104(jj).

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–10897 Filed 5–3–99; 8:45 am]

BILLING CODE 6730–01–M

Proposed Rules

Federal Register
Vol. 64, No. 85
Tuesday, May 4, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Chapter I

[Docket 98–085–1]

RIN 0579–AB09

Aquaculture: Farm-Raised Fin Fish

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering establishing programs and regulations for farm-raised fin fish. A national program could help protect the health of farm-raised fin fish, help producers of farm-raised fin fish meet international trade requirements, and help encourage international trade in U.S. aquaculture products. We are asking for comments on whether we should establish such programs and, if so, the type and extent of the programs. We are also asking for comments on whether to use negotiated rulemaking to develop regulations for any programs that we may establish.

DATES: Consideration will be given only to comments received on or before July 6, 1999.

ADDRESSES: Please send an original and three copies of your comment to Docket No. 98–085–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 98–085–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are requested to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Otis Miller, Jr., National Aquaculture Coordinator, National Animal Health Programs, VS, APHIS, 4700 River Road Unit 43, Riverdale, MD 20737–1231, (301) 734–6954.

SUPPLEMENTARY INFORMATION:

Background

The United States Department of Agriculture (USDA) has received 21 petitions asking us to promulgate animal health regulations and perhaps other regulatory programs to deal with farm-raised fin fish as livestock. These petitions are from State farm bureaus, industry associations, individual producers, State officials, and businesses that serve aquaculture industries.

One petition requested that we define domesticated farm-raised fish as livestock "so that USDA can provide farmers with needed services identical to those received by other American farm raised animals."

Most of the petitions we have received addressed only farm-raised fin fish. However, several addressed a broader range of aquatic species. One letter stated that we should recognize the entire industry—"clams, aquatic plants, alligators, tropical fish, and fish raised for human consumption"—as "general farming." One stated that we should define "farmed aquatic animals, such as fish and shrimp," as livestock. Another asked us to define "domesticated farm-raised fish and shellfish" as livestock. Other letters suggested that we consider domestically raised fish and shellfish as livestock, and stated that "[a]quatic farmers are a diverse group growing a number of species of fish, crustaceans, and mollusks."

The petitioners are concerned mainly with receiving the same services that domestic producers of livestock receive for animals moving in interstate and foreign commerce. Examples are diagnostic and certification services, protecting the industry by preventing importation of pests and diseases, and supporting commerce by simplifying interstate movement (now, each State sets its own requirements).

Based on the petitions, it is difficult for us to determine what segments of the aquaculture industry want services and exactly what sevices they want. It is also difficult to determine what the different petitioners want to accomplish by inviting Federal regulation.

The Animal and Plant Health Inspection Service (APHIS) is authorized to regulate to protect the health of livestock and poultry in the United States. We have many regulatory programs covering poultry, horses, swine, cattle, and other livestock. Our regulatory programs also cover animals that could transmit diseases or pests of livestock or poultry. Our programs for "traditional" livestock are intended to: (1) Prevent the importation of diseases and pests; (2) regulate interstate movement in a uniform manner; (3) provide diagnostic laboratory services; (4) regulate vaccines and biologic reagents used in animals; and (5) control and/or eradicate diseases and pests already found in the United States.

Based on the petitions we have received, we are considering whether to expand services to farm-raised fin fish. We already provide some services to aquaculture industries. Specifically, we provide laboratory diagnostic services, endorse export health certificates for aquatic animals and aquatic animal products, and license vaccines and biologic reagents for use in aquatic animals. We also control damage done by wild birds and other animals to farmed aquatic animals. Some of these services are paid for through user fees and cooperative agreements. If we were to offer additional services and programs, we would need funds to pay for them. We are interested in comments on how such services and programs should be funded.

What Programs and Regulations Should We Establish?

Before we decide whether to propose regulations covering farm-raised fin fish, we want the views and recommendations of all interested persons on the following specific issues:

1. We have received petitions to promulgate rules and regulations concerning domesticated farm-raised fin fish. However, as many of the petitions acknowledge, U.S. aquaculture industries include more than just domesticated fin fish. Letters referred not only to fish, but to clams, alligators, tropical fish (for aquariums), fish raised for human consumption, shrimp, mollusks, and crustaceans. Should we consider regulating only domesticated farm-raised fin fish, or should we consider regulating other aquatic animals as well? If we should consider a broader regulatory program, what species should we include, and why?

2. We already provide some services to aquaculture industries. We provide laboratory diagnostic services, endorse export health certificates for aquatic animals and aquatic animal products, and license vaccines and biologic reagents for use in aquatic animals. We also control damage done by wild birds and other animals to farmed aquatic animals. Should we expand the range of our services? If we expand our services to aquaculture industries, what new or additional services should we consider providing?

3. We currently regulate the importation of livestock and poultry and livestock and poultry products. These regulations are designed to prevent diseases and pests of livestock and poultry from being introduced into the United States. Should we consider adopting regulations to prevent the introduction of diseases and pests of aquatic animal species? If so, should the regulations be similar to those we have for livestock and poultry? If not, how should the regulations be different?

4. We work closely with industry and State representatives to administer many of our current disease control programs. For example, we work with industry and State representatives to control and eradicate brucellosis, tuberculosis, and other livestock diseases. If we develop any regulatory programs for aquatic animal species, what form should our cooperation take?

5. We currently regulate the interstate movement of livestock and poultry and livestock and poultry products. These regulations are designed to prevent diseases and pests of livestock and poultry from being spread within the United States. Currently, we administer several voluntary programs designed to help producers control and eliminate certain diseases in their livestock. The goal of these programs is to eliminate sources of infection, while helping producers improve their stock. For example, we have a program covering scrapie in sheep and goats called the Voluntary Scrapie Flock Certification Program. Should we consider adopting regulations to prevent the interstate spread of diseases and pests of any aquatic species? If we were to adopt regulations covering interstate movement of any aquatic animal species, should we include voluntary programs to help producers control and eliminate certain diseases? If so, what species and diseases should be covered? What should we include in such programs?

How Should We Conduct Rulemaking?

Developing a new regulatory program can be very complicated. It is important that we establish reasonable goals and adopt workable programs to achieve them. We will need to collect reliable information on the costs and benefits of any program. Public participation and input in the rulemaking process is vital to success.

In the rulemaking process, we can either draft proposed regulations ourselves or use negotiated rulemaking to develop the proposals. In negotiated rulemaking, an agency brings together the groups that are interested in or would be affected by proposed regulations. Working together, agency employees and representatives of interested and affected groups negotiate the text of a draft proposed rule.

Whether we draft a proposed rule ourselves, or use negotiated rulemaking, later steps in the rulemaking process would be the same. We would publish any proposed rule in the **Federal Register**, including an analysis of the costs and benefits, and invite the public to submit comments. After reviewing all the comments we receive, we would decide upon what further action to take.

Therefore, we are asking for comments from interested persons regarding the desirability of using a negotiated rulemaking process should we decide to proceed with rulemaking affecting farm-raised fin fish or other aquatic animals.

Authority: 5 U.S.C. 5542; 7 U.S.C. 147b; 21 U.S.C. 111–114a, 114b–114c, 114h, 115, 117–130, 134, 134(a)–134(h), 135a, 136, and 136a; 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 28 day of April 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–11130 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 32

[Docket No. PRM–32–5]

Metabolic Solutions, Inc.; Receipt of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Notice of receipt.

SUMMARY: The Nuclear Regulatory Commission (NRC) has received and requests public comment on a petition for rulemaking dated March 5, 1999, filed by Metabolic Solutions, Inc. (petitioner). The petition has been docketed by the Commission and has been assigned Docket No. PRM–32–5. The petitioner is requesting that the NRC regulations be amended to extend a regulatory distribution exemption to the petitioner's product, an "Erythromycin Breath Test." That test uses a three-microcurie dose of carbon-14 (C14)-erythromycin to measure the rate of drug metabolism in the human liver. Current NRC regulations permit distribution of radioactive drug capsules that contain one microcurie of C14-urea to persons exempt from licensing. Dose regulations also permit any person exempt from the requirements of a license to use the capsules for diagnostic tests in humans. The petitioner believes that exempting the C14-erythromycin from regulatory control would make the breath test more widely available and reduce the costs of clinical trials without increasing the radiation risk to the public.

DATES: Submit comments by July 20, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemakings and Adjudications Staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

For a copy of the petition, write: David L. Meyer, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

You may also provide comments via the NRC's interactive rulemaking website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905 (e-mail: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: David L. Meyer, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone: 301–415–7162 or Toll Free: 1–800–368–5642 or E-mail: *DLM1@NRC.GOV*.

SUPPLEMENTARY INFORMATION:

Background

On December 2, 1997 (62 FR 63634), the NRC published a final rule in the **Federal Register** that permitted the

distribution of radioactive drug capsules that contain one microcurie of carbon-14 (C14)-urea to persons exempt from licensing. The rule added 10 CFR 30.21 entitled, "Radioactive drug: Capsules containing carbon-14 urea for "in vivo" diagnostic use for humans," and 10 CFR 32.21 entitled, "Radioactive drug: Manufacture, preparation, or transfer for commercial distribution of capsules containing carbon-14 urea each for "in vivo" diagnostic use for humans to persons exempt from licensing; Requirements for a license." The rule became effective on January 2, 1998.

On March 12, 1999, the Nuclear Regulatory Commission received a petition for rulemaking submitted by the petitioner, Metabolic Solutions, Inc., a biomedical firm located in Nashua, New Hampshire. The petitioner requests that the NRC extend the regulatory distribution exemption for one microcurie of C14 urea to include an "Erythromycin Breath Test" being developed by the petitioner that contains a three-microcurie dose of C14-erythromycin. To do this, NRC would have to amend its regulations pertaining to the manufacture, distribution, and use of radioactive drugs in 10 CFR Parts 30 and 32.

The breath test is a tool used by researchers and physicians in the clinical study phases of drug research studies. The petitioner states that the erythromycin breath test measures the *in vivo* activity of a liver microsomal cytochrome P450 enzyme, CYP3A4, that metabolizes about 40 to 50% of all drugs in the body. This test is currently used in clinical research studies to help determine the safety of new drugs. Specifically, the test measures the effect that drugs have on the CYP3A4 enzyme system, potential interactions with other co-administered drugs on the enzyme system, and the range of safe drug tolerance within a population. The petitioner believes that dosimetry information for the exempted C14-urea will be very similar to the results for the C14-erythromycin.

According to the petitioner, exempting the C14-erythromycin from "regulatory control" would make the breath test more widely available and lower the costs of clinical trials. Also, the petitioner has concluded that the exemption would not present a radiation risk to the general public any higher than the risk associated with the distribution exemption for drug capsules that contain one microcurie of C14-urea. (Note: The Commission has not exempted the C14-urea radioactive drug from "regulatory control." NRC requires the manufacturer and distributor to have an NRC license that authorizes the manufacture or distribution of the product to "persons exempt" from licensing under 10 CFR 30.21 or an equivalent regulation of an Agreement State.) The NRC has determined that the petition meets the threshold sufficiency requirements for a petition for rulemaking under 10 CFR 2.802. The petition has been docketed as PRM–32–5. The NRC is soliciting public comment on the petition for rulemaking.

Discussion of the Petition

The petitioner believes that the NRC regulations codified at 10 CFR parts 30 and 32 extend a regulatory exemption for drug capsules that contain one microcurie of C–14 urea. According to the petitioner, this exemption should be extended to its erythromycin breath test (ERMBT). In support of this request, the petitioner contends that the dosimetry information for the exempted C14-urea capsules will be very similar to that for the ERMBT. The petitioner has provided supporting documentation for its position (Exhibit A) entitled, "Dosimetry of C14-Erythromycin." Additional supporting documentation (Exhibit B), includes: information related to the trademark, chemical ingredients, pharmacology, clinical safety, contraindications, adverse reactions, dosimetry, drug storage and stability, manufacturing procedures, analysis methodology and quality assurance procedures associated with the ERMBT.

The petitioner explains that ERMBT dosimetry data has not been collected in humans because it predates FDA regulations that govern disposition and metabolism data. In the study cited by the petitioner, dosimetry calculations were based on data collected from intravenous administration of C14-erythromycin in 10 male rats. The study found that in male rats the C14-erythromycin rapidly metabolized in the liver and that the resulting metabolite was excreted in bile. The petitioner indicates that the study also found that most radioactivity resulting from administration of the C14-erythromycin in male rats was either exhaled or excreted. The study also indicated a general distribution of radioactivity in various tissues of male rats after C14-erythromycin administration. The highest concentrations were present in the liver, spleen, pancreas, kidney, adrenal and submaxillary glands, lungs, and intestinal tract. Lower amounts of radioactivity were found in the skin, fat, and brain.

The rat intracellular distribution studies concluded, petitioner states, that erythromycin and its metabolites were capable of entering various cellular components of the liver. The studies also indicated that the C14-erythromycin dose emits beta radiation to exposed individuals. The Oak Ridge Institute for Science and Education, Radiation Dose Information Center Radiation calculated dose estimates for humans administered C14-erythromycin. These estimates are based on data gathered in rats and are described in Appendix 1 of Exhibit A attached to the petition for rulemaking. The petitioner indicates that data was extrapolated to humans using a weight-based extrapolation method where possible.

The petitioner believes that the information presented in Appendix 2 of Exhibit A indicates that the effective dose equivalent from the ERMBT dose (i.e. 2.1 millirem) is comparable to about one-fourth of a chest X-ray and is significantly lower than other nuclear medicine tests. Estimated human organ radiation exposures are presented in Appendix 3 of Exhibit A. The highest calculated organ doses to humans from a three microcurie dosage of C14-erythromycin are 2.8 millirem to the ovaries, 2.3 millirem to the gallbladder, 1.47 millirem to the small intestine, and 0.6 millirem to the urinary bladder wall.

In Exhibit B, the petitioner notes that the ERMBT dose has been administered to patients since 1988 at the University of Michigan Medical Center. Although a few individuals reported a metallic taste in their mouths immediately after ingestion, no adverse reactions have been experienced or reported.

Because the product is used as a research tool, users of the test must receive approval from Investigational Review Boards to administer the ERMBT dose in clinical research studies. The petitioner states that these studies have found that allergic reactions to erythromycin are very rare. The studies also found that gastrointestinal side effects due to the erythromycin, such as abdominal pain, cramping, and mild nausea are the most common adverse reactions and are erythromycin dose related. According to the studies, adverse effects are relatively infrequent in erythromycin doses that contain less than one gram of erythromycin. The petitioner notes that the ERMBT dose contains less than 0.05 milligrams and that no adverse effects have occurred with this dose amount.

According to the petitioner, the ERMBT is currently used only by researchers and physicians who can access a site that has obtained an NRC license to handle radio pharmaceuticals. The petitioner states that it is often inconvenient to use a C14 product. As stated by the petitioner, many clinical

drug studies occur in physicians' offices where there is either a total ban on radioactivity or the facilities do not possess a license to use radioactive substances. The petitioner contends that the market size for the ERMBT is much smaller than that of the exempted urea test. Estimates by the petitioner are that less than 10,000 patients would receive the ERMBT between two to five times in clinical studies each year (less than 100,000 tests). The petitioner states that the C14-urea test encompassed 600,000 people who could be tested two or three times including diagnosis and follow-up testing. Without a regulatory exemption, the petitioner believes that the market size would be too small to be economically feasible to pursue FDA approval for the use of the ERMBT.

The Petitioner's Conclusions

The petitioner concludes that dosimetry information of the C14-erythromycin will be very similar to that of the exempted C14-urea. Also, the petitioner concludes that exempting the C14-erythromycin from regulatory control will make the ERMBT more widely available and reduce clinical trial expenses. Lastly, the petitioner concludes that the exemption would not present a radiation risk to the general public any higher than the risk associated with the distribution exemption for drug capsules that contain one microcurie of C14-urea.

The petitioner requests that the NRC grant a regulatory distribution exemption for the ERMBT similar to the current exemption for C14-urea capsules. This would require amending the regulations pertaining to use of radioactive drugs in 10 CFR Parts 30 and 32.

Dated at Rockville, Maryland, this 28th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11110 Filed 5–3–99; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Health Services Industries

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration (SBA) is proposing to increase the size standards for eleven of the nineteen industries under Standard Industrial Classification (SIC) Major Group 80, Health Services. The current size standard is $5 million in average annual receipts for all health services industries. Depending on the industry, the proposed size standards are $7.5 million, $10 million, or $25 million. The proposed revisions are being made to better define the size of business in those industries that the SBA believes should be eligible for Federal small business assistance programs.

DATES: Submit comments on or before July 6, 1999.

ADDRESSES: Send comments to Gary M. Jackson, Assistant Administrator for Size Standards, 409 3rd Street, SW., Mail Code 6880, Washington DC 20416.

FOR FURTHER INFORMATION CONTACT: Robert N. Ray, Office of Size Standards, (202) 205–6618.

SUPPLEMENTARY INFORMATION: The SBA has historically applied a common size standard for all industries under SIC Major Group 80, Health Services. The current size standard of $5 million for all nineteen SIC codes in this major group was established on April 22, 1994 (58 FR 16513), at which time it was increased from $3.5 million. In response to requests from Federal agencies and small businesses, the SBA analyzed the size standards for the health services industries and, on the basis of that review, believes that size standards higher than $5 million should be established for eleven of the nineteen SIC codes in the health services industries. The table below lists the health services industries for which the SBA is proposing revised size standards:

SIC Code	Industry	Proposed size standard (millions of dollars)
8011	Offices and Clinics of Doctors of Medicine	$7.5
8051	Skilled Nursing Care Facilities	10.0
8052	Intermediate Care Facilities	7.5
8062	General Medical and Surgical Hospitals	25.0
8063	Psychiatric Hospitals	25.0
8069	Specialty Hospitals, Except Psychiatric	25.0
8071	Medical Laboratories	10.0
8082	Home Health Care Services	10.0
8092	Kidney Dialysis Centers	25.0
8093	Specialty Outpatient Facilities, N.E.C	7.5
8099	Health and Allied Services, N.E.C.	7.5

For the following eight health services industries, the SBA believes the current $5 million is appropriate:

SIC Code	Industry	Size standard (millions of dollars)
8021	Offices and Clinics of Dentists	$5.0
8031	Offices and Clinics of Doctors of Osteopathy	5.0
8041	Offices and Clinics of Chiropractors	5.0
8042	Offices and Clinics of Optometrists	5.0
8043	Offices and Clinics of Podiatrists	5.0
8049	Offices and Clinics of Health Practitioners, N.E.C.	5.0
8059	Nursing and Personal Care Facilities, N.E.C.	5.0
8072	Dental Laboratories	5.0

Below is a discussion of the SBA's size standards methodology and the analyses leading to the proposed size standards. As part of this discussion, the SBA will explain why it has decided to retain the $5 million size standard for eight of the health services industries. SBA also discusses its analysis to determine whether any firm under a proposed size standard would be considered dominant within an industry. This is followed by a discussion of an alternative size standard approach considered by SBA.

Size Standards Methodology

In considering the appropriateness of a size standard the SBA evaluates the structural characteristics of an industry and the participation of small businesses in SBA programs. For the analysis of the size standards for the health services industries, five evaluation factors describing the structural characteristics of an industry and small business participation in SBA programs were assessed. These evaluation factors were: (1) Average firm size, (2) distribution of firms by size, (3) start-up costs, (4) industry competition, and (5) the competition for Federal procurements. The SBA generally considers these five to be the most important evaluation factors in establishing or revising a size standard for an industry. It will consider and evaluate other information shown to be relevant to the decision on the size standard. Below is a brief description of the five evaluation factors.

1. Average firm size is total industry revenues (or number of employees) divided by the total number of firms operating in the industry. If an industry has an average firm size significantly higher than the average firm size of a group of comparative industries (in this case, industries with the anchor size standard of $5 million in revenues), this fact may support establishing a higher size standard than the one in effect for the group of related industries. Conversely, data showing an industry with a lower average firm size relative to the related group of industries tends to support a lower size standard.

2. The distribution of firms by size examines the proportion of industry sales, employment, or other economic activity accounted for by firms of different sizes in an industry. If the preponderance of an industry's output is by smaller firms, this may support a low size standard. The opposite is the case for an industry in which the distribution of firms indicates that output is concentrated among the largest firms in an industry.

3. Start-up costs affect a firm's initial size because entrants into an industry must have sufficient capital to start a viable business. To the extent that firms in an industry have greater start-up capital requirements than firms in other industries, the SBA is justified in considering a higher size standard. As a proxy measure for start-up costs, SBA examines the average level of assets for firms in an industry. An industry with a relatively high level of average assets per firm as compared with the average assets per firm of the group of comparative industries with $5 million size standards is likely to be a capital intensive industry in which start-up costs tend to be higher for firms entering the industry. For those types of industries, that circumstance may support the need for a relatively high size standard.

4. The SBA assesses industry competition by measuring the proportion or share of industry sales obtained by firms above a relatively large firm size. In this proposed rule, SBA analyzes the proportion of industry sales generated by the four largest firms in an industry—generally referred to as the "four-firm concentration ratio." If a significant proportion of economic activity within an industry is concentrated among a few relatively large producers, SBA tends to set a higher size standard to assist firms in a broader size range to compete with firms that are clearly dominant in the industry.

5. Competition for Federal procurements. The SBA also evaluates the impact of a size standard on its programs and other applications of size standards to determine whether small businesses defined under the existing size standard are receiving a reasonable level of assistance. This assessment mainly focuses on the proportion or share of Federal contract dollars awarded to small businesses. In general, the lower the share of Federal contract dollars awarded to small businesses in an industry which receives significant Federal procurement revenues, the greater is the justification for a size standard higher than the existing one. As another factor to evaluate the impact of a proposed size standard on SBA programs, the volume of guaranteed loans within an industry and the size of firms obtaining loans in its financial assistance plans is sometimes assessed to determine whether the current size standard may inappropriately restrict the level of financial assistance to firms in that industry. If small businesses receive ample assistance through these programs, a change to the size standard may not be appropriate. Since the SBA reviewed the health services size standards primarily because of the concerns about the application of the size standard to Federal procurement, the proposed rule reviews Federal contract awards to small businesses to assess the program impact of proposed size standards.

The SBA has established "anchor" size standards of 500 employees for the manufacturing and mining industries and $5 million for the nonmanufacturing industries. If the structural characteristics of an industry are significantly different from the average characteristics of industries with the anchor size standard, a size standard higher or lower than the anchor size standard may be supportable. For the industries under review in this proposed rule, the SBA compares the characteristics of the five evaluation factors for each industry to the average characteristics of the nonmanufacturing industries which have the anchor size standard of $5 million (hereafter referred to as the nonmanufacturing anchor group). If the characteristics of an industry are similar to the average characteristics of the nonmanufacturing anchor group, then the anchor size standard of $5 million is considered an appropriate size standard for that industry. If, however, the industry characteristics significantly differ from the average characteristics of the nonmanufacturing anchor group, then a size standard above or below $5 million may be appropriate.

Evaluation of Industry Size Standards

The SBA analyzed the size standards for the health services industries by comparing their industry characteristics to the average characteristics of the nonmanufacturing anchor group. A review of these factors leads to a recommended size standard for each industry. The five tables below show the characteristics for each industry and for the nonmanufacturing anchor group. SBA examined economic data on these industries from a special tabulation of the 1992 Economic Census prepared on contract by the U.S. Bureau of the Census, asset data from Dun and Bradstreet's 1998 Industry Norms and Key Business Ratios, and Federal contract award data for fiscal years 1996 and 1997 from the Federal Procurement Data Center.

Offices and Clinics of Health Practitioners (SIC Codes 8011–8049):

The SBA is retaining the $5 million size standard for six (SIC codes 8021, 8031, 8041, 8042, 8043, 8049) of the seven industries comprising offices and clinics of health practitioners. For the

seventh industry, Offices and Clinics of Doctors of Medicine (SIC code 8011), the SBA proposes a $7.5 million size standard. Table 1 shows the characteristics of these seven industries.

TABLE 1.—INDUSTRY CHARACTERISTICS OF OFFICES AND CLINICS OF HEALTH PRACTITIONERS AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Doctors of Medicine (8011)	0.83	67.7	75.3	81.3	0.3	5.2	9.4
Dentists (8021)	0.34	98.3	99.1	99.7	0.1	0.3	77.3
Doctors of Osteopathy (8031)	0.44	97.0	99.1	99.2	0.3	0.8	(*)
Chiropractors (8041)	0.22	99.6	99.9	99.9	0.1	0.4	(*)
Optometrists (8042)	0.32	95.5	97.6	99.9	0.1	1.2	(*)
Podiatrists (8043)	0.26	99.2	99.9	99.9	0.2	1.0	(*)
Health Practitioners, N.E.C. (8049)	0.30	90.3	94.8	96.5	0.1	1.2	75.6

NA = not available.
*Insignificant amount of Federal contracting.

Except for Offices and Clinics of Doctors of Medicine (SIC 8011), the characteristics of each of the industries of Offices and Clinics of Health Practitioners provide no basis for a higher size standard than $5 million. Specifically, the average firm size of these industries is significantly below the average firm size of the nonmanufacturing anchor group. The percent of industry sales by firms of $5 million and less, $10 million and less, and $25 million and less shows that small firms dominate these industries. The low four-firm concentration ratios also indicate that small businesses are highly competitive in these industries. For the two industries that have a significant amount of Federal contracting activity, Offices and Clinics of Dentists and Health Practitioners Not Elsewhere Classified (SIC codes 8021 and 8049), small clinics and offices received more than three-fourths of the dollar value of Federal contracts, which also indicates no need for a change to the current size standards. The Federal procurement competition factor was not evaluated for the other four industries since the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement.

A $7.5 million size standard is proposed for the industry of Offices and Clinics of Doctors of Medicine (SIC code 8011). Four of the five evaluation factors are similar to the average characteristics of the nonmanufacturing anchor group and do not support a change to the current size standard. However, the share of Federal contracts awarded to small Offices and Clinics of Doctors of Medicine, supports an increase to the current size standard. Small Offices and Clinics of Doctors of Medicine received only 9.4 percent of the dollar value of Federal contracts awarded during fiscal years 1996–97. A review of Federal contract awards for the services of medical doctors reveals a significant amount of contract awards to non-business entities and institutional providers such as Native American tribes, educational institutions, and hospitals. The large discrepancy between the participation of small businesses in the Federal market versus the share of total industry revenues obtained by small Offices and Clinics of Doctors of Medicine occurs because of the non-business and institutional providers competing for and obtaining Federal contracts for physician care. To strengthen the abilities of these small businesses to compete with these other types of providers, the SBA proposes a $7.5 million size standard. This should allow existing small businesses to grow to a more substantial size without losing their small business status. The SBA expects that a size standard moderately higher than the current size standard will help small firms in this industry to compete for Federal contracts without including businesses so large that they could harm the opportunities of much smaller-sized small businesses to compete successfully for Federal contracts.

Nursing and Personal Care Facilities (SIC Codes 8051, 8052, and 8059)

The three industries comprising nursing and personal care facilities display sufficiently different industry characteristics to warrant different size standards. Table 2 shows the industry characteristics. A discussion of the size standard for each industry follows.

TABLE 2.—INDUSTRY CHARACTERISTICS OF NURSING AND PERSONAL CARE FACILITIES AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Skilled Nursing Care Facilities (8051)	5.57	25.8	42.7	57.3	4.2	11.9	29.1
Intermediate Care Facilities (8052)	2.36	46.8	61.3	76.8	2.1	6.7	30.8

TABLE 2.—INDUSTRY CHARACTERISTICS OF NURSING AND PERSONAL CARE FACILITIES AND THE NONMANUFACTURING ANCHOR GROUP—Continued

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nursing and Personal Care Facilities, N.E.C. (8059)	1.04	52.8	70.6	82.8	0.7	5.9	25.8

NA = not available.

The characteristics of Skilled Nursing Facilities (SIC code 8051) support a size standard of $10 million. Four of the five evaluation factors—average firm size, average assets per firm, distribution of sales by firm size, and competition in Federal procurement—support a size standard higher than $5 million. Average firm size is over six times higher than the average firm size of the nonmanufacturing anchor group, indicating that a size standard among SBA's highest receipts-based size standards ($20 million to $25 million) may be appropriate for this industry. Similarly, average assets per firm are more than eight times higher than that of the nonmanufacturing anchor group, and supports the highest receipts-based size standard. The distribution of sales by firm size supports a size standard higher than $5 million, but much lower than $25 million. The level of small business participation in Federal contracting (29.1 percent) also supports a small increase to the size standard. The four-firm concentration ratio is the only factor that does not support a size standard above $5 million. Although two factors support a very high receipts-based size standard, that level would not be a reasonable size standard since businesses with sales of $25 million or less capture well over half of total industry sales. In consideration of these factors taken together, the SBA proposes a $10 million size standard for this industry.

The characteristics of the Intermediate Care Facilities industry (SIC code 8052) support a size standard of $7.5 million. The average size firm in this industry is over twice the nonmanufacturing anchor group average and supports a size standard about twice the $5 million anchor size standard. Average assets per firm is over four times the average for the nonmanufacturing group and supports a size standard among SBA's highest receipts-based size standards ($20 million to $25 million). The distribution of sales by firms in this industry supports a size standard at the anchor size standard of $5 million. The four firm concentration ratio supports a size standard no higher than $5 million. The difference between the level of small business participation in Federal contracting (30.8 percent) and the share of total industry revenues obtained by small businesses also indicates that a small increase to the size standard is appropriate to better take into consideration Federal contracting patterns. In consideration of each of these factors taken together, the SBA is proposing a $7.5 million size standard for this industry.

The SBA is retaining the $5 million size standard for the industry of Nursing and Personal Care Facilities, Not Elsewhere Classified (SIC code 8059). None of the industry factors reviewed support a size standard above the $5 million since they are similar to those of the nonmanufacturing anchor group. A small increase to the size standard could be supported based on the percentage of Federal contracting dollars obtained by small business (25.8 percent). However, without any of the four evaluation factors pertaining to industry-wide characteristics also supporting an increase to the size standard, the SBA is reluctant to increase a size standard above its current level based solely on the small business share of Federal contract dollars of an industry unless that share were significantly below the overall Federal small business share of 21 percent. Here, small businesses received about a quarter of Federal contract dollars in fiscal years 1996 and 1997.

Hospitals (SIC Codes 8062, 8063, and 8069)

The SBA proposes a $25 million size standard for each of the three hospital industries—General Medical and Surgical Hospitals (SIC code 8062), Psychiatric Hospitals (SIC code 8063) and Specialty Hospitals (SIC code 8069). The industry data in Table 3 show that these industries are comprised predominately of large businesses, in which the average firm size and average asset size per firms are in the multimillion dollar levels and small hospitals under the $5 million size standard account for one percent or less of industry revenues. Further, the low percentage of Federal contract dollars to small General and Surgical Hospitals (3.5 percent) supports a significant increase to the size standard for this industry. The four-firm concentration ratio is the only factor that does not support a size standard above $5 million; however, the unique structure of the hospital industries renders this factor inconsequential. Accordingly, the SBA considers its highest receipts-based size standard of $25 million appropriate for the three hospital industries.

TABLE 3.—INDUSTRY CHARACTERISTICS OF HOSPITALS AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5 Mil.	<$10 Mil.	<$25 Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
General Medical and Surgical Hospitals (8062)	83.99	0.4	1.3	4.8	89.0	5.8	3.5
Psychiatric Hospitals (8063)	27.61	1.0	4.4	20.9	21.0	16.5	(*)

TABLE 3.—INDUSTRY CHARACTERISTICS OF HOSPITALS AND THE NONMANUFACTURING ANCHOR GROUP—Continued

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5 Mil.	<$10 Mil.	<$25 Mil.			
Specialty Hospitals, Except Psychiatric (8069)	40.76	0.9	2.8	11.2	44.8	5.2	(*)

NA = not available.
* Insignificant amount of Federal contracting.

Medical and Dental Laboratories (SIC Codes 8071 and 8072)

The Medical Laboratory Industry (SIC code 8071) has significantly different characteristics from the Dental Laboratory Industry (SIC code 8072). These differing characteristics support different size standards for these two industries. Table 4 shows the characteristics of these two industries. The average size firm and average assets per firm of Medical Laboratories are two times or more than the nonmanufacturing anchor group averages, and therefore, supports a twice the anchor size standard of $5 million. The distribution of sales by firm size in this industry and the relatively low percent of the dollar value of Federal Government contract awards to small businesses support a size standard moderately above $5 million. The four-firm concentration ratio is the only factor that does not support a size standard above $5 million. In consideration of these factors, the SBA proposes a $10 million size standard for this industry. The $5 million size standard is being retained for Dental Laboratories. None of the four of the evaluation factors related to industry structure support a size standard above $5 million, since the characteristics are below those of the nonmanufacturing anchor group for each factor. The Federal procurement competition factor was not evaluated for this industry because the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement.

TABLE 4.—INDUSTRY CHARACTERISTICS OF MEDICAL AND DENTAL LABORATORIES AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5 Mil.	<$10 Mil.	<$25 Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Medical Laboratories (8071)	2.01	29.7	38.4	NA	1.0	26.5	18.3
Dental Laboratories (8072)	0.26	91.2	95.3	99.9	0.1	4.7	(*)

NA = not available.
* Insignificant amount of Federal contracting.

Miscellaneous Health & Allied Services, Not Elsewhere Classified (SIC Codes, 8082, 8092, 8093 and 8099)

The four miscellaneous health and allied services industries display differing characteristics. Table 5 shows the characteristics of these four industries. A discussion of the size standard for each industry follows.

TABLE 5.—INDUSTRY CHARACTERISTICS OF THE MISCELLANEOUS HEALTH & ALLIED SERVICES (NOT ELSEWHERE CLASSIFIED) INDUSTRIES AND THE NONMANUFACTURING ANCHOR GROUP

Category	Average firm size (mil. dol.)	Percent of industry sales by firms of			Average assets per firm (mil. dol.)	Four-firm concentration ratio	Percent of Gov't procurement dollars to small business
		<$5Mil.	<$10Mil.	<$25Mil.			
Nonmanufacturing Anchor Group	0.85	51.0	61.0	67.0	0.5	15.0	NA
Home Health Care Services (8082)	2.55	27.4	36.7	52.4	0.9	13.9	(*)
Kidney Dialysis Centers (8092)	5.59	23.5	30.1	3.75	4.3	46.6	(*)
Specialty Outpatient Facilities, N.E.C. (8093)	1.24	50.6	67.5	78.7	0.8	2.9	4.3
Health and Allied Services N.E.C. (8099)	1.28	37.7	48.8	67.1	0.7	9.1	7.6

NA=not available.
*Insignificant amount of Federal contracting.

Two factors support a size standard higher than $5 million for the Home Health Care Services industry. The average size firm in this industry is three times the nonmanufacturing anchor group average and supports a size standard about double the anchor size standard. Also, the distribution of sales by firm size in this industry and the average assets per firm support a size standard about twice the anchor size standard. Average assets per firm and the four firm concentration ratio do not support a size standard above $5 million. The Federal procurement competition factor was not evaluated for this industry since the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement. In consideration of these evaluation factors, the SBA is proposing a $10 million size standard for this industry.

The SBA proposes a size standard of $25 million for Kidney Dialysis Centers (SIC code 8092). All four industry structure factors support establishing a size standard at or near the SBA's highest receipts-based size standard ($25 million). Average firm size and average assets per firm are between six to eight times the average of the nonmanufacturing anchor group. The concentration ratio shows that almost half of industry sales are by the four largest firms in the industry; and the distribution of sales by firm size shows that smaller firms in the industry account for less than one-third of total industry sales. The Federal procurement competition factor was not evaluated for this industry since the amount of Federal contracts awarded in fiscal years 1996–97 is insufficient to draw any meaningful conclusions on effect of the size standard on small business participation in Federal procurement. Accordingly, the SBA is proposing a $25 million size standard for this industry.

SBA proposes a $7.5 million size standard for Specialty Outpatient Facilities (SIC 8093) and for Health and Allied Services, Not Elsewhere Classified (SIC code 8099). Four of the evaluation factors do not support a higher size standard than $5 million since their levels are similar to those of the nonmanufacturing anchor group averages. However, the Federal procurement competition factor strongly supports a higher size standard for these two industries. During fiscal years 1996–97, small businesses in the industries of Specialty Outpatient Facilities and Health and Allied Services, Not Elsewhere Classified, received only 4.3 percent and 7.6 percent, respectively, of total dollar value of Federal contract awards. A review of Federal contract awards in these two industries shows that a significant amount of Federal contracts were awarded to non-business entities and institutional providers (Native American tribes, educational institutions, and hospitals). The large discrepancy between the share of Federal contracts awarded to small businesses and the share of total industry revenues obtained by small businesses may be attributed primarily to non-business and institutional providers competing for and obtaining Federal contracts under these two SIC codes. As with the proposed size standard for Offices and Clinics of Doctors of Medicine, the SBA believes that a higher size standard will strengthen small businesses by allowing them to become more competitive and to grow to a more substantial size without losing small business status. The SBA expects that a size standard moderately higher than the current size standard will help small businesses to compete for Federal contracts without harming smaller-size small businesses which also compete for Federal contracts.

Dominant in Field of Operation

Section 3(a) of the Small Business Act defines a small concern as one that is: (1) Independently owned and operated, (2) not dominant in its field of operation, and (3) within detailed definitions or size standards established by the SBA Administrator. The SBA considers as part of its evaluation of a size standard whether a business concern at or below a recommended size standard would be considered dominant in its field of operation. This assessment generally considers the market share of firms at a proposed size standard or other factors that may show whether a firm can exercise a major controlling influence on a national basis in which significant numbers of business concerns are engaged.

The SBA has determined that no firm at or below the proposed size standards for each of the health services industries would be of a sufficient size to dominate its field of operation. The largest firm at the proposed size standard level generates less than 0.11 percent of total industry sales in every industry with a proposed size standard revision. This level of market share effectively precludes any ability for a firm to exert a controlling effect on an industry.

Alternative Size Standards

The SBA considered as an alternative size standard retaining a common size standard for all nineteen health services under Major Group 80. As the industry evaluations show, significant differences exist among the structures of the various health services industries. The SBA believes that these differences are significant, and warrant different size standards for these industries. These differences are especially apparent for the industries in the Hospitals and Miscellaneous Health and Allied Services (Not Elsewhere Classified) industry groups. Thus, a common size standard for all nineteen industries would not adequately identify all small businesses engaged in a variety of health services.

The SBA welcomes public comments on its proposed size standards for the health services industries. Comments on alternatives to the proposal, including the common size standard discussed above, should present the reasons that make them preferable to the proposed size standards.

The SBA is particularly interested in comments on the proposed $7.5 million size standards for the Offices and Clinics of Doctors of Medicine (SIC 8011), Specialty Outpatient Facilities (SIC 8093) and Health and Allied Services, Not Elsewhere Classified (SIC 8099). As discussed above, the SBA proposal to increase size standards for these industries is based on existing small business participation in Federal contracting. Comments are welcome on this single factor providing a sufficient basis for increasing these industries' size standards. A related question concerns whether the proposal to increase size standards in these industries will be effective. If the size standards are increased, would small businesses in these industries have more opportunities in the Federal procurement market or are there other factors, such as the types of health services the Federal Government purchases, that would continue to prevent small businesses from getting a larger proportion of Federal contracts? In addition, if the size standards are increased will the smallest firms be able to compete effectively for Federal contracts? Another related concern is that the proposed size standards for these industries would also be used for other program purposes (e.g., regulatory flexibility analyses as performed for regulatory actions, state and local procurement programs, and SBA financial assistance programs), not just for defining a small business for Federal procurement programs. For those industries where Federal procurement has influenced our selection of a size standard, is the proposed size standard still considered reasonable for other

program uses or would it be inappropriate for other applications? These are important issues in which SBA would appreciate comments.

SBA is also concerned whether different business relationships in the Health Services Industries, such as networks and alliances, have any implications for its small business size standards. In calculating the size of a firm, a firm must include the revenues of all its affiliates. Affiliation is defined in 13 CFR 121.103 and basically means that any firm that controls or has the power to control another is considered an affiliate. Is SBA's definition of affiliation still adequate under these new and varied arrangements? If not, how should SBA treat these arrangements to ensure a workable small business size standard?

Finally, SBA notes that small businesses in the Health Services Industries receive a substantial portion of their revenues from Medicare and Medicaid reimbursement payments. SBA has proposed size standards based on an analysis of industry data from all sources of revenues (which includes Medicare and Medicaid revenues as well as all other sources of revenues), and for some industries, on how small businesses have performed in the Federal market. However, as explained above, competition for Federal procurements was not evaluated for several industries because the amount of total Federal contract dollars awarded within an industry was "insufficient to draw any meaningful conclusions on the effect of the size standard on small business participation in Federal procurement." However, in these cases there may have been significant Medicare/Medicaid revenues. For three industries, the proposed size standard was based solely on the basis of competition for Federal procurements. Since Medicare and Medicaid expenditures comprise a large proportion of industry revenues, should SBA consider the distribution of these types of revenues to small businesses in evaluating size standards for the Health Services Industries? If so, in what ways should Medicare and Medicare revenues affect size standards and what data exist that SBA could use to evaluate different size standards? Also, are there any other aspects of the Medicare and Medicaid programs pertaining to small businesses that should influence SBA's assessment of the Health Services size standards? If so, how and what are the implications on these size standards?

Compliance With Executive Orders 12612, 12788, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–12), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

The SBA certifies that this rule, if adopted, would be a significant rule within the meaning of Executive Order 12866. Immediately below, the SBA sets forth the analysis required by E.O. 12866 and the Regulatory Flexibility Act for this proposed rule.

(1) Description of Entities to Which the Rule Applies

The SBA estimates that 4,700 additional firms would be considered small as a result of this rule, if adopted. These firms would be eligible to seek available SBA assistance provided that they meet other program requirements. Of the additional firms gaining eligibility, more than half would be Offices and Clinics of Doctors of Medicine, and Skilled Nursing Care Facilities. Firms becoming eligible for SBA assistance as a result of this rule cumulatively generate more than $50 billion in annual sales; total sales in all eleven industries receiving a size standards increase are $540 billion.

(2) Description of Potential Benefits of the Rule

The most significant benefits to businesses that would obtain small business status as a result of adoption of this rule are: (1) Eligibility for the Federal Government's procurement preference programs for small businesses, 8(a) firms, small disadvantaged businesses and small businesses located in Historically Underutilized Business Zones; and (2) eligibility for SBA's financial assistance programs. The SBA estimates that firms gaining small business status could potentially obtain Federal contracts worth $220 million per year under the small business set-aside program, the 8(a) program or unrestricted contracts. This represents approximately seven percent of the $3.2 billion the Federal Government awarded in these eleven health services industries during fiscal year 1997. The added competition for many of these procurements also would likely result in a lower price to the government for procurements set aside for small businesses, but the SBA is not able to quantify this benefit. Under the SBA's 7(a) Guaranteed Loan Program and Certified Development Company (504) Program, SBA estimates that $4 million in new loans could be made to these newly defined small businesses. During fiscal year 1997, SBA guaranteed $683 million in loans to these two financial programs for firms in the health services industries. Because of the size of the loan guarantees, most loans are made to small businesses well below the size standard. For example, more than 95 percent of the 1997 loans were made to firms with less than $3.5 million in revenues. Thus, increasing the size standard will likely result in only a small increase in small business guaranteed loans to businesses in these health services industries.

(3) Description of Potential Costs of the Rule

The changes in size standards as they affect Federal procurement is not expected to add any significant costs to the Government. As a matter of policy, procurements may be set aside for small business or under the 8(a) program only if awards are expected to be made at reasonable prices. Similarly, the rule should not result in any added costs associated with the 7(a) and 504 loan programs. The amount of lending authority SBA can make or guarantee is established by appropriation.

The competitive effects of size standard revisions differ from those normally associated with other regulations which typically burden smaller firms to a greater degree than larger firms in areas such as prices, costs, profits, growth, innovation, and mergers. The change to size standards is not anticipated to have any appreciable effect on any of these factors, although small businesses, 8(a) firms, or small disadvantaged businesses much smaller than the size standard for their industries may be less successful in competing for some Federal procurement opportunities due to the presence of larger, newly defined small businesses. On the other hand, with more and larger small businesses competing for small business set-aside and 8(a) procurements, contracting agencies are likely to increase the overall number of contracting opportunities available under these programs. The new size standards, if adopted, would not impose a regulatory burden because they do not regulate or control business behavior.

(4) Description of the Potential Net Benefits From the Rule

Based on the above discussion, the SBA believes that, because the potential costs of this rule are minimal, the potential net benefits would be approximately equal to the total potential benefits. Most of the impact of this rule will be on Federal procurement.

(5) Description of Reasons Why This Action Is Being Taken and Objectives of Rule

The SBA has provided in the supplementary information a statement of the reasons why these new size standards should be established and a statement of the reasons for and objectives of this rule.

For the purpose of the Paperwork Reduction Act, 44 U.S.C. Ch.35, the SBA certifies that this rule would not impose new reporting or record keeping requirements, other than those required of SBA. For purposes of Executive Order 12612, the SBA certifies that this rule does not have any federalism implications warranting the preparation of a Federalism Assessment. For purposes of Executive Order 12778, the SBA certifies that this rule is drafted, to the extent practicable, in accordance with the standards set forth in section 2 of this order.

List of Subjects in 13 CFR Part 121

Government procurement, Government property, Grant programs—business, Loan programs—business, Small business.

Accordingly, SBA proposed to amend 13 CFR part 121 as follows:

PART 121—SMALL BUSINESS SIZE REGULATIONS

1. The authority citation of part 121 continues to read as follows:

Authority: Pub. L. 105–135 sec. 601 et. seq., 111 Stat. 2592; 15 U.S.C. 632(a), 634(b)(6), 637(a) and 644(c); and Pub. L. 102–486, 106 Stat. 2776, 3133.

2. Amend (121.201, in the table "Size Standards by SIC Industry", under the heading DIVISION I—SERVICES, to add the following entries after "7822 Motion Picture and Video Tape Production" to read as follows:

8011	Offices and Clinics of Doctors of Medicine	$7.5
8051	Skilled Nursing Care Facilities	10.0
8052	Intermediate Care Facilities	7.5
8062	General Medical and Surgical Hospitals	25.0
8063	Psychiatric Hospitals	25.0
8069	Specialty Hospitals, Except Psychiatric	25.0
8071	Medical Laboratories	10.0
8082	Home Health Care Services	10.0
8092	Kidney Dialysis Centers	25.0
8093	Specialty Outpatient Facilities, N.E.C	7.5
8099	Health and Allied Services, N.E.C	7.5

Dated: April 28, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–11080 Filed 5–3–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–25]

Proposed Modification of the Legal Description of the Class D Airspace; Cincinnati, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the legal description of the Class D airspace at Cincinnati Municipal Airport Lunken Field, OH. The legal description for this airspace includes a reference to excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area. This Class C airspace designation is being revoked, and effective at 0901 UTC, July 15, 1999, a Class B airspace area for the Cincinnati/Northern Kentucky International Airport will be established (Airspace Docket No. 93–AWA–5, final rule published in the **Federal Register** on November 30, 1998, 63 FR 65972, effective date delayed on December 14, 1998, 63 FR 68675, and confirmation of effective date on April 12, 1999, 64 FR 17934). The reference to Class C airspace in the legal description for the Class D airspace at Cincinnati Municipal Airport Lunken Field will be invalid, and this action changes that reference to Class B airspace.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–25, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–25." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the legal description of the Class D airspace at Cincinnati, OH, by changing the reference to the Cincinnati/Northern Kentucky International Airport, KY, Class C airspace area to Class B. The area would be depicted on appropriate aeronautical charts. Class D airspace designations are published in paragraph 5000, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL OH D Cincinnati, OH [Revised]

Cincinnati Municipal Airport Lunken Field, OH
(Lat. 39° 06′ 12″N., long. 84° 25′ 07″W.)

That airspace extending upward from the surface to and including 3,000 feet MSL within a 4.1-mile radius of the Cincinnati Municipal Airport Lunken Field, excluding that airspace within the Cincinnati/Northern Kentucky International Airport, KY, Class B airspace area. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on April 21, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11175 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–27]

Proposed Establishment of Class E Airspace; Gwinn, MI; Proposed Revocation of Class E Airspace; Sawyer, MI, and K.I. Sawyer, MI

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Gwinn, MI, and revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Class E airspace for Sawyer Airport has been changed from Sawyer, MI, to Gwinn, MI, and the legal description for Class E airspace for K.I. Sawyer, MI, is not longer valid because K.I. Sawyer Air Force Base (AFB) has been closed and renamed Sawyer Airport. This action proposes to establish Class E airspace for Gwinn, MI, to correctly describe the Class E airspace required for Sawyer Airport, and to revoke the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–27, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–27." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the

proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to establish Class E airspace at Gwinn, MI, and by revoking the Class E airspace at Sawyer, MI, and K.I. Sawyer, MI. The legal description for the Sawyer Airport has changed from Sawyer, MI, to Gwinn, MI, and K.I. Sawyer AFB has been closed. Controlled airspace extending upward from the surface is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace areas designated as a surface area for an airport are published in paragraph 6002, and Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL MI E2 Sawyer, MI [Removed]

* * * * *

AGL MI E2 Gwinn, MI [New]

Gwinn, Sawyer Airport, MI
(Lat. 46°21'13" N., long. 87°23'45" W.)
Within a 4.6-mile radius of Sawyer Airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Sawyer, MI [Removed]

* * * * *

AGL MI E5 K.I. Sawyer, MI [Removed]

* * * * *

AGL MI E5 Gwinn, MI [New]

Gwinn, Sawyer Airport, MI
(Lat. 46°21'13" N., long. 87°23'45" W.)

That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Sawyer Airport, excluding that airspace within the Marquette, MI, Class E airspace area, and that airspace extending upward from 1,200 feet above the surface within a 34.8-mile radius of the Sawyer Airport.

* * * * *

Issued in Des Plaines, Illinois on April 21, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11176 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–7]

Proposed Amendment of Class E Airspace; Sanford, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend Class E airspace at Sanford, NC. The Sanford-Lee County Brick Field Airport has been relocated approximately 10 miles northeast and the name of the airport has been changed to Sanford-Lee County Regional Airport. An Instrument Landing System (ILS)/Distance Measuring Equipment (DME) Runway (RWY) 3 Standard Instrument Approach Procedure (SIAP) has been developed for Sanford-Lee County Regional Airport. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP and for Instrument Flight Rules (IFR) operations at Sanford-Lee County Regional Airport.

DATES: Comments must be received on or before June 3, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 99–ASO–7, Manager, Airspace Branch, ASO–4520, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, telephone (404) 305–5586.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–7." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of the comments received. All comments submitted will be available for examination in the Office of the Regional Counsel for Southern Region, Room 550, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRMs

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace Branch, ASO–520, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRMs should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend Class E airspace at Sanford, NC. The Sanford-Lee County Brick Field Airport has been relocated approximately 10 miles northeast and the name of the airport has been changed to Sanford-Lee County Regional Airport. An ILS/DME RWY 3 SIAP has been developed for Sanford-Lee County Regional Airport. Additional controlled airspace extending upward from 700 feet AGL is needed to accommodate the SIAP and for IFR operations at Sanford-Lee County Regional Airport. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

ASO NC E5 Sanford, NC [Revised]

Sanford-Lee County Regional Airport, NC
(Lat. 35°34′57″N, long. 79°06′05″W)

That airspace extending upward from 700 feet or more above the surface within a 6.6-mile radius of Sanford-Lee County Regional Airport.

* * * * *

Issued in College Park, Georgia, on April 20, 1999.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 99–11172 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–24]

Proosed Modification of Class E Airspace; Barnesville, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Barnesville, OH. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (Rwy) 27 has been developed for Barnesville-Bradford Airport. Controlled airspace extending upward from 700 to 1,200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to increase the radius of the existing controlled airspace for this airport.

DATES: Comments must be received on or before June 18, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–24, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300

East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–24." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which described the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Barnesville, OH, to accommodate aircraft executing the proposed GPS Rwy 27 SIAP at Barnesville-Bradford Airport by modifying the existing controlled airspace. Controlled airspace extending upward from 700 to 1,200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 40 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL OH E5 Barnesville, OH [Revised]

Barnesville-Bradford Airport OH
(Lat. 40°00'09" N., long. 81°11'31" W.)

That airspace extending upward from 700 feet above the surface within an 6.4 mile radius of Barnesville-Bradford Airport.

* * * * *

Issued in Des Plaines, Illinois on April 14, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11173 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–26]

Proposed Modification of Class E Airspace; Indianapolis, IN; and Proposed Revocation of Class E Airspace; Greenwood, IN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Indianapolis, IN, and revoke the Class E airspace at Greenwood, IN. The legal description for the Class E airspace for the Greenwood Municipal Airport has been published in duplicate, once as part of the Indianapolis, IN, Class E airspace, and once as Greenwood, IN, Class E airspace. Neither legal description for the Class E airspace for the Greenwood Municipal Airport, as published, is correct. Because the Class E airspace for Greenwood Municipal Airport is an integral part of the Indianapolis, IN, Class E airspace area, this action proposes to modify the Class E airspace for Indianapolis, IN, to correctly describe the Class E airspace required for Greenwood Municipal

Airport, and by revoking the duplicate, and therefore unneeded, Class E airspace at Greenwood, IN.

DATES: Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–26, 2300 East Devon Avenue, Des Plaines, Illinois 60018. The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify the Class E airspace at Indianapolis, IN, by correctly describing the Class E airspace for the Indianapolis, Greenwood Municipal Airport and by revoking the duplicate incorrect Class E airspace at Greenwood, IN. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing instrument approach procedures. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an establishment body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IN E5 Greenwood, IN [Removed]

* * * * *

AGL IN E5 Indianapolis, IN [Revised]

Indianapolis International Airport, IN
(Lat. 39° 43′ 02″N., long. 86° 17′ 40″W.)
Indianapolis, Greenwood Municipal Airport, IN
(Lat. 39° 37′ 42″N., long. 86° 05′ 16″W.)
Indianapolis, Eagle Creek Airpark, IN
(Lat. 39° 49′ 51″N., long. 86° 17′ 40″W.)
Indianapolis, Helicopter VOR/DME 287° Approach Point in Space
(Lat. 39° 42′ 12″N., long. 86° 06′ 28″W.)
Brickyard VORTAC
(Lat. 39° 48′ 53″N., long. 86° 22′ 03″W.)

That airspace extending upward from 700 feet above the surface within a 7.4-mile radius of the Indianapolis International Airport, within a 7.0-mile radius of the Greenwood Municipal Airport, within a 6.3-mile radius of Eagle Creek Airpark, and within 2.6 miles each side of the Brickyard VORTAC 257° radial, extending from the 6.3-mile radius of the Eagle Creek Airpark and the 7.4-mile radius of the Indianapolis International Airport to 7.0 miles west of the VORTAC, and within a 6.0-mile radius of the Point in Space serving the helicopter VOR/DME 287° approach.

* * * * *

Issued in Des Plaines, Illinois on April 21, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11174 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 98N–1170]

Medical Devices; Sunlamp Products Performance Standard; Request for Comments and Information; Extension of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is extending to July 9, 1999, the comment period for the advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of February 9, 1999 (64 FR 6288). That ANPRM announced FDA's intention to propose amendments to the performance standard for sunlamp products. The agency is taking this action in response to a request for extension of the comment period. This extension of the comment period is intended to allow interested persons additional time to submit comments on the ANPRM.

DATES: Written comments by July 9, 1999.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Individuals or organizations wishing to receive copies of draft amendments or related documents distributed for review during the development of these amendments may have their names placed on a mailing list by writing to the Office of Science and Technology (HFZ–114), Center for Devices and Radiological Health, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, FAX 301–594–6775, e-mail "HWC@CDRH.FDA.GOV".

FOR FURTHER INFORMATION CONTACT: W. Howard Cyr, Center for Devices and Radiological Health (HFZ–114), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–7179.

SUPPLEMENTARY INFORMATION:

I. Extension of Comment Period

In the **Federal Register** of February 9, 1999 (64 FR 6288), FDA published an ANPRM to propose amendments to the performance standard for sunlamp products. FDA is soliciting comments and information from interested persons concerning the adequacy of the warnings on sunlamp products, current recommended exposure schedule to minimize risk to customers who choose to produce and maintain a tan, current labeling for replacement lamps, and current health warnings which do not reflect recent advances in photobiological research.

FDA received a request from an association of tanning facilities owners to extend the comment period an additional 90 days to allow adequate time to respond. In response to the letter, FDA is extending the comment period for 60 additional days.

II. Comments

Interested persons may, on or before July 9, 1999, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 26, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–11121 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, 25, 31, and 40

[REG–100729–98]

RIN 1545–AW41

Electronic Funds Transfers of Federal Deposits; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the deposits of Federal taxes by electronic funds transfer.

DATES: The public hearing originally scheduled for Tuesday, May 11, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking, and notice of public hearing that appeared in the **Federal Register** on Tuesday, March 23, 1999 (64 FR 13940), announced that a public hearing was scheduled for Tuesday, May 11, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6302 of the Internal Revenue Code. The public comment period for these proposed regulations expires on Monday, May 24, 1999. The outlines of topics to be addressed at the hearing were due on Tuesday, April 20, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of April 28, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Tuesday, May 11, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–11068 Filed 5–3–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining and Reclamation and Enforcement

30 CFR Parts 701, 724, 773, 774, 778, 842, 843, and 846

RIN 1029–AB94

Application and Permit Information Requirements; Permit Eligibility; Definitions of Ownership and Control; the Applicant/Violator System; Alternative Enforcement Actions

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening and extension of comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) is reopening and extending the comment period for the proposed rule published on December 21, 1998 (63 FR 70580). The comment period originally closed

on February 19, 1999, and was then extended to April 15, 1999 (64 FR 15322; March 31, 1999). We are again reopening and extending the comment period for an additional 5 days.

DATES: We will accept written comments on the proposed rule until 5 p.m. Eastern time, on May 10, 1999.

ADDRESSES: You may mail or hand-deliver comments to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, Room 101, 1951 Constitution Avenue, NW, Washington, DC 20240. You may also submit comments to OSM via the Internet at: osmrules@osmre.gov.

FOR FURTHER INFORMATION CONTACT: Earl D. Bandy, Jr., Office of Surface Mining Reclamation and Enforcement, Applicant/Violator System Office, 2679 Regency Road, Lexington, Kentucky 40503. Telephone: (606) 233–2796 or (800) 643–9748. E-Mail: ebandy@osmre.gov.

SUPPLEMENTARY INFORMATION: In order to accept comments from members of the public received shortly after the close of the comment period, we are reopening and extending the public comment period for the proposed rule published on December 21, 1998 (63 FR 70580). We are extending the comment period an additional 5 days.

In the rule, we are proposing revised permit eligibility requirements for surface coal mining operations under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). In particular, we propose to revise how ownership and control of mining operations is determined under section 510(c) of SMCRA so that applicants who are responsible for unabated violations do not receive new permits. We have designed this proposal to be effective, fair, and consistent with a 1997 decision by the U.S. Court of Appeals for the DC Circuit addressing ownership and control issues.

Dated: April 28, 1999.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 99–11125 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900–AJ07

Medication Prescribing Authority

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the medical regulations of the Department of Veterans Affairs (VA) regarding patient rights concerning the prescribing of medications. The current regulations were intended to ensure that patients are free of unnecessary medications, that a patient's medical record contains entries reflecting prescribed medications, that drug regimens are reviewed in a timely manner, and that medications not be used as punishment. The adoption of this proposed rule would not lessen these requirements. However, the regulations noted that medication would be administered only on the written order of a physician. Further, the regulations provided for medication review only by a physician. Today, throughout the health care industry other health care professionals are recognized as qualified and credentialed to prescribe medications and conduct medication reviews. Under these circumstances, VA proposes to update the regulations by stating that other health care professionals also are able to prescribe medications as authorized by VA and to conduct the necessary medication reviews. Further, in order to utilize technological advances, VA proposes to amend the regulations to allow for VA health care professionals to issue prescriptions by electronic means in addition to ordering prescriptions by telephone.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue, NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900-AJ07." All written comments received will be available for public inspection at the above address, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Ronald J. Gebhart, M.D., Chief Consultant, Primary and Ambulatory Care (112), Veterans Health Administration, 202–273–8550. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that adoption of the proposed rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. This proposed rule concerns which VA health care professionals may prescribe medications. It would not have an affect on small entities and is not intended to affect the prescription of medications to veterans. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analysis requirements of §§ 603 and 604.

Executive Order 12866

This proposed rule has been reviewed by OMB under Executive Order 12866.

Catalog of Federal Domestic Assistance

There is no Catalog of Federal Domestic Assistance number for this proposed rule.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs-health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: January 5, 1999

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 17 is proposed to be amended as set forth below.

PART 17—MEDICAL

1. The authority citation for part 17 continues to read as follows:

Authority: 38 USC 501, 1721, unless otherwise noted.

2. In 17.33, paragraph (e) is revised to read as follows:

17.33 Patients' rights.

* * * * *

(e) *Medication.* Patients have a right to be free from unnecessary or excessive medication. Medication will be administered only on the order of a healthcare professional authorized by VA to prescribe medication. That individual may issue the order personally, or in the case of an emergency, by telephone or other electronic means. If made personally, the healthcare professional must issue the order in writing by placing an entry in the patient's medical record. If the order is issued by telephone or other electronic means, the person receiving the order must place an entry in the patient's medical record showing that the order was made, and it must be countersigned within 24 hours by a healthcare professional authorized by VA to prescribe medication. The

attending healthcare provider shall be responsible for all medication given or administered to a patient. The attending healthcare provider shall review the drug regimen of each patient under his or her care at least every thirty (30) days, and the administration of certain medications will be reviewed more frequently. Medication shall not be used as punishment, or for the convenience of the staff, or in quantitites which interfere with the patient's treatment program.

* * * * *

[FR Doc. 99–11070 Filed 5–3–99; 8:45 am]

BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 038–100b; FRL–6333–5]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from paper, fabric, and film coating operations; graphic arts, coatings and ink manufacturing; plastic, rubber, and glass coatings; motor vehicle and mobile equipment non-assembly line coating operations; and solvent cleaning operations.

The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by June 3, 1999.

ADDRESSES: Written comments on this action should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1185.

SUPPLEMENTARY INFORMATION: This document concerns South Coast Air Quality Management District Rules 1128—Paper, Fabric, and Film Coating Operations; 1130—Graphic Arts; 1141.1—Coatings and Ink Manufacturing; 1145—Plastic, Rubber, and Glass Coatings; 1151—Motor Vehicle and Mobile Equipment Non-Assembly Line Coating Operations; and 1171—Solvent Cleaning Operations, submitted to EPA on July 23, 1996 (1128, 1130), September 14, 1992 (1141.1), August 1, 1997 (1145), and March 10, 1998 (1151, 1171) by the California Air Resources Board. For further information, please see the information provided in the Direct Final action that is located in the Rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 22, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–11040 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[NJ002; FRL–6333–7]

Approval of State Operating Permit Rule Revision; New Jersey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: The United States Environmental Protection Agency (EPA) is proposing to approve revisions to the Operating Permit Rule submitted by the State of New Jersey to fulfill the requirements of Title V of the Clean Air Act, as amended on November 15, 1990. The revisions extend the deadlines for permit applications submitted in electronic format by affected sources. We are proposing to approve the revised Operating Permit Rule which allows electronic applications to be submitted by February 4, 1999 and May 4, 1999, respectively for the last two waves of affected sources. In the "Rules and Regulations" section of this **Federal Register**, EPA is publishing a separate document that will serve as the agency's decision to approve the State rule revision. EPA is approving New Jersey's revised Operating Permit Rule, codified at N.J.A.C. 7:27–22, as a direct final rule without prior proposal in the view that the subject revision is noncontroversial and therefore would receive no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If EPA receives no adverse comments, EPA will not take further action on this rule. If EPA receives adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received on or before June 3, 1999.

ADDRESSES: All comments should be addressed to: Raymond Werner, Acting Chief, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10007–1866.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th

Floor, New York, New York 10007–1866.
New Jersey Department of Environmental Protection, Air Quality Permitting Program, Bureau of Operating Permits, 401 E. State Street, Trenton, New Jersey 08625–0027.

FOR FURTHER INFORMATION CONTACT: Suilin Chan, Air Programs Branch, Environmental Protection Agency, Region 2 Office, 290 Broadway, 25th Floor, New York, New York 10278, (212) 637–4019.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the rules section of this **Federal Register**.

Dated: April 19, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–10854 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6333–3]

Missouri: Final Authorization of State Hazardous Waste Management Program Revision for Corrective Action

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant final authorization for corrective action to the hazardous waste program submitted by Missouri Department of Natural Resources. In the final rules section of this **Federal Register**, the EPA is authorizing the state's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. If no adverse written comments are received on this action, the immediate final rule will become effective and no further activity will occur in relation to this proposal. If the EPA receives adverse written comments, it will withdraw the immediate final rule before its effective date by publishing a timely withdrawal in the **Federal Register**. The EPA will then respond to public comments in a later final rule based on this proposal. The EPA may not provide further opportunity for comment. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 3, 1999.

ADDRESSES: Send written comments to Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101; (913) 551–7039. Copies of the Missouri program revision applications and the materials which the EPA used in evaluating the revisions are available for inspection and copying during normal business hours at the following address: Hazardous Waste Program, Missouri Department of Natural Resources, P.O. Box 176, Jefferson City, Missouri 65102–0176; (573) 751–3176.

FOR FURTHER INFORMATION CONTACT: Heather Hamilton, U.S. EPA Region VII, ARTD/RESP, 726 Minnesota Avenue, Kansas City, Kansas 66101; (913) 551–7039.

SUPPLEMENTARY INFORMATION: For additional information see the immediate final rule published in the Rules section of this **Federal Register**.

Dated: April 13, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–11038 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Part 215

[DFARS Case 99–D001]

Defense Federal Acquisition Regulation Supplement; Weighted Guidelines and Performance-Based Payments

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule with request for comments.

SUMMARY: The Director of Defense Procurement is proposing to amend the Defense Federal Acquisition Regulation Supplement (DFARS) to modify the weighted guidelines method of computing profit objectives by adding contracts with performance-based payments to the types of contracts that affect a contractor's cost risk.

DATES: Comments on the proposed rule should be submitted in writing to the address specified below on or before July 6, 1999, to be considered in the formation of the final rule.

ADDRESSES: Interested parties should submit written comments on the proposed rule to: Defense Acquisition Regulations Council, Attn: Ms. Sandra G. Haberlin, PDUSD(A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350. Please cite DFARS Case 99–D001.

E-mail comments submitted over the Internet should be addressed to: dfars@acq.osd.mil.

Please cite DFARS Case 99–D001 in all correspondence related to this issue. E-mail correspondence should cite DFARS Case 99–D001 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra G. Haberlin, (703) 602–0131. Please cite DFARS Case 99–D001.

SUPPLEMENTARY INFORMATION:

A. Background

DFARS 215.404–4, Profit, requires contracting officers to use the weighted guidelines method of developing a prenegotiation profit or fee objective on most negotiated contract actions that require cost analysis. This method focuses on three profit factors: performance risk, contract type risk, and facilities capital employed. Calculations using these profit factors result in values that become part of the part objective.

For contract type risk, the calculations include an assessment of the degree of cost risk accepted by the contractor under varying contract types as adjusted by the costs of contractor-provided financing. Currently, DFARS 214.404–71–3, Contract type risk and working capital adjustment, provides only two financing choices for fixed-price and fixed-price-incentive contracts: The contract either will provide progress payments or will offer no financing. The proposed rule adds contracts with performance-based payments as a third choice.

The rule proposes to amend DFARS 215.404–71–3 to—

1. Add firm-fixed-price and fixed-price incentive contracts with performance-based payments to the table of contract types at 215.404–71–3(c);

2. Add evaluation criteria at 215.404–71–3(d) that contracting officers should consider when determining the value for contract type risk associated with contracts using performance-based payments; and

3. Remove the reference to the flexible progress payments type of financing at 215.404–71–3(e)(3). DoD does not permit the use of flexible progress payments for contracts awarded as a result of solicitations issued on or after November 11, 1993. A final rule, published in the **Federal Register** on February 23, 1999 (64 FR 8731), removed references to flexible progress payments form DFARS Part 232. The change to 215.404–71–3(e)(3) in this proposed rule does not reflect a policy change but merely removes obsolete language.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold and, therefore, would not use the weighted guidelines method of profit computation. The weighted guidelines method normally is used to compute profit objectives on negotiated contract actions at or above $500,000. An initial regulatory flexibility analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected DFARS subpart also will be considered in accordance with 5 U.S.C. 610. Such comments should be submitted separately and should cite DFARS Case 99–D001 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 215

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 215 is proposed to be amended as follows:

PART 215—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Part 215 continues to read as follows:

Authority 41 U.S.C. 421 and 48 CFR Chapter 1.

2. Section 215.404–71–3 is amended by revising paragraphs (c), (d), and (e) to read as follows:

215.404–71–3 Contract type risk and working capital adjustment.

* * * * *

(c) *Values: Normal and designated ranges.*

Contract type	Notes	Normal value (percent)	Designated range (percent)
Firm-fixed-price, no financing	(1)	5	4 to 6.
Firm-fixed-price, with performance-based payments	(6)	4	2.5 to 5.5.
Firm-fixed-price, with progress payments	(2)	3	2 to 4.
Fixed-price incentive, no financing	(1)	3	2 to 4.
Fixed-price incentive, with performance-based payments	(6)	2	0.5 to 3.5.
Fixed-price with redetermination provision	(3)		
Fixed-price incentive, with progress payments	(2)	1	0 to 2.
Cost-plus-incentive-fee	(4)	1	0 to 2.
Cost-plus-fixed-fee	(4)	.5	0 to 1.
Time-and-materials (including overhaul contracts priced on time-and-materials basis)	(5)	.5	0 to 1.
Labor-hour	(5)	.5	0 to 1.
Firm-fixed-price, level-of-effort	(5)	.5	0 to 1.

(1) "No financing" means either that the contract does not provide progress payments or performance-based payments, or that the contract provides them only on a limited basis, such as financing of first articles. Do not compute a working capital adjustment.

(2) When progress payments are used, compute a working capital adjustment (Block 26).

(3) For the purposes of assigning profit values, treat a fixed-price contract with redetermination provisions as if it were a fixed-price incentive contract with below normal conditions.

(4) Cost-plus contracts shall not receive the working capital adjustment.

(5) These types of contracts are considered cost-plus-fixed-fee contracts for the purposes of assigning profit values. They shall not receive the working capital adjustment in Block 26. However, they may receive higher than normal values within the designated range to the extent that portions of cost are fixed.

(6) When performance-based payments are used, do not compute a working capital adjustment.

(d) *Evaluation criteria.*

(1) *General.* The contracting officer should consider elements that affect contract type risk such as—

(i) Length of contract;

(ii) Adequacy of cost data for projections;

(iii) Economic environment;

(iv) Nature and extent of subcontracted activity;

(v) Protection provided to the contractor under contract provisions (e.g., economic price adjustment clauses);

(vi) The ceilings and share lines contained in incentive provisions;

(vii) Risks associated with contracts for foreign military sales (FMS) that are not funded by U.S. appropriations; and

(viii) When performance-based payments are used—

(A) The frequency of payments;

(B) The total amount of payments compared to the maximum allowable amount specified at FAR 32.1004(b)(2); and

(C) The risk of the payment schedule to the contractor.

(2) *Mandatory.* The contracting officer shall assess the extent to which costs have been incurred prior to definitization of the contract action 9also see 217.7404–6(a)). The assessment shall include any reduced contractor risk on both the contract before definitization and the remaining portion of the contract. When costs have been incurred prior to definitization, generally regard the contract type risk to be in the low end of the designated range. If a substantial portion of the costs have been incurred prior to definitization, the contracting officer may assign a value as low as 0 percent, regardless of contract type.

(3) *Above normal conditions.* The contracting officer may assign a higher than normal value when there is substantial contractor type risk. Indicators of this—

(i) Efforts where there is minimal cost history;

(ii) Long-term contracts without provisions protecting the contractor, particularly when there is considerable economic uncertainty;

(iii) Incentive provisions (e.g., cost and performance incentives) that place a high degree of risk on the contractor;

(iv) FMS sales (other than those under DoD cooperative logistics support

arrangements or those made from U.S. Government inventories or stocks) where the contractor can demonstrate that there are substantial risks above those normally present in DoD contracts for similar items;

(v) Performance-based payments made less frequently than monthly;

(vi) Performance-based payments totaling less than the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vii) An aggressive performance-based payment schedule that increases risk.

(4) *Below normal conditions.* The contracting officer may assign a lower than normal value when the contract type risk is low. Indicators of this are—

(i) Very mature product line with extensive cost history;

(ii) Relatively short-term contracts;

(iii) Contractual provisions that substantially reduce the contractor's risk;

(iv) Incentive provisions that place a low degree of risk on the contractor;

(v) Performance-based payments provided on a monthly basis;

(vi) Performance-based payments totaling the maximum allowable amount(s) specified at FAR 32.1004(b)(2); or

(vii) A performance-based payment schedule that is routine with minimal risk.

(e) *Costs financed.*

(1) Costs financed equal total costs multiplied by the portion (percent) of costs financed by the contractor.

(2) Total costs equal Block 20 (i.e., all allowable costs, including general and administrative and independent research and development/bid and proposal, but excluding facilities capital cost of money), reduced as appropriate when—

(i) The contractor has little cash investment (e.g., subcontractor progress payments liquidated late in period of performance);

(ii) Some costs are covered by special financing provisions, such as advance payments; or

(iii) The contract is multiyear and there are special funding arrangements.

(3) The portion financed by the contractor is generally the portion not covered by progress payments, i.e., 100 percent minus the customary progress payment rate (see FAR 32.501). For example, if a contractor receives progress payments at 75 percent, the portion financed by the contractor is 25 percent. On contracts that provide progress payments to small businesses, use the customary progress payment rate for large businesses.

* * * * *

[FR Doc. 99–11184 Filed 5–3–99; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 229, 231, and 232

[FRA Docket No. PB–9; Notice No. 16]

RIN 2130–AB16

Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment

AGENCY: Federal Railroad Administration (FRA), DOT.

ACTION: Notice of public meeting.

SUMMARY: By notice of proposed rulemaking (NPRM) published on September 9, 1998 (63 FR 48294), FRA proposed revisions to the regulations governing the power braking systems and equipment used in freight and other non-passenger railroad train operations. This document announces a public meeting to discuss specific issues related to FRA's collection of data concerning inspections and defects and the use of defect ratios based upon that data, and the impact that information may have on the proposed rule.

DATES: *Public Meeting:* A public meeting will be held on the date and at the location listed below to provide interested parties the opportunity to discuss FRA's collection of inspection and defect data and the calculation of defect ratios relevant to this NPRM. The date of the public hearing is as follows:

Thursday, May 27, 1999 at 10:00 a.m. in Washington D.C.

ADDRESSES: (1) *Public Meeting:* The public meeting will be held at the following location: *Washington, D.C.:* Conference Area 1, Seventh Floor, 1120 Vermont Avenue, N.W., Washington, D.C.

(2) *Docket Clerk:* Written notification to FRA's Docket Clerk must identify the docket number, and the name, address, and phone number of the participant or attendee. Each notification must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION, CONTACT: John Leeds, Director, Office of Safety Analysis, RRS–20, 400 Seventh Street, S.W., Stop 25, Washington, D.C. 20950 (telephone 202–493–6211), or Thomas Herrmann, Trial Attorney, Office of the Chief Counsel, RCC–10, 400 Seventh Street, S.W., Stop 10, Washington, D.C. 20950 (telephone 202–493–6053).

SUPPLEMENTARY INFORMATION: At the public hearings and technical conference conducted in relation to the NPRM and in written comments submitted subsequent to the public hearings and technical conference, comments were received from some parties which raised concerns regarding FRA's collection of data related to FRA's inspection activity and the number of conditions not in compliance with Federal regulations found during that inspection activity. The comments and correspondence received allege that there are substantial problems with FRA's database, that there has been substantial overreporting of the number of units inspected, and that there has been a systematic deflation of defect ratios. As the allegations and concerns raised to date have been general in nature and because the comment period in this proceeding closed March 1, 1999, FRA believes it is prudent and necessary to conduct a public meeting, on the record, to allow interested parties to fully explain and discuss their concerns. Although many of the concerns appear to involve more than the estimation of power brake defect ratios, which is the focus of this rulemaking, FRA believes that this is the appropriate forum to develop the issues and concerns.

The purpose of the public meeting is to permit the exchange of information and concerns regarding FRA's database and the information developed from that database. One purpose of the meeting is to allow FRA to provide information regarding its internal review of the data and address some of the concerns raised to date, particularly as it relates to the estimation of power brake defect ratios discussed in the NPRM. A second purpose is to allow interested parties to fully develop and articulate the issues and concerns they have with the data gathered and presented by FRA so that these concerns can be fully addressed in any final rule that is developed. It should be noted that the meeting is not intended to allow participants to cross-examine FRA or other participants on either the content of the NPRM or positions taken with regard to the issues or data presented.

Public Participation Procedures

Any person wishing to attend the public meeting should notify the Docket Clerk by mail at the address provided in the **ADDRESSES** section at least five

working days prior to the date of the meeting and submit three copies of the issues he or she wishes to raise at the meeting. The notification should identify the party the person represents, and the particular subject(s) the person plans to raise. The notification should also provide the Docket Clerk with the participant's mailing address. FRA reserves the right to limit participation in the meeting of persons who fail to provide such notification.

Issued in Washington, D.C., on April 29, 1999.

George A. Gavalla,

Associate Administrator for Safety.

[FR Doc. 99–11189 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–06–U

Notices

Federal Register
Vol. 64, No. 85
Tuesday, May 4, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–011–2]

Availability of a Draft Environmental Assessment and Finding of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of reopening and extension of comment period.

SUMMARY: We are advising the public that we are reopening and extending the comment period for a draft environmental assessment and finding of no significant impact that have been prepared by the Animal and Plant Health Inspection Service. The draft environmental assessment and finding of no significant impact relate to the release into the environment of nonindigenous leaf beetles for use as biological control agents to suppress saltcedar, a major weed pest of water courses and riparian habitats. This reopening and extension will provide interested groups and individuals with additional time to prepare and submit comments.

DATES: We invite you to comment on Docket No. 99–011–1. We will consider all comments that we receive by June 4, 1999.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–011–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–011–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald D. Hennessey, Entomologist, Biotechnology and Biological Analysis, PPQ, APHIS, 4700 River Road Unit 139, Riverdale, MD 20737–1228; (301) 734–8537; or e-mail: ronald.d.hennessey@usda.gov. For copies of the draft environmental assessment and finding of no significant impact, write to Dr. Ronald D. Hennessey at the same address. Please refer to the title of the draft environmental assessment and finding of no significant impact when ordering copies.

SUPPLEMENTARY INFORMATION:

Background

On March 18, 1999, we published in the **Federal Register** (64 FR 13395–13396, Docket No. 99–011–1) a notice advising the public that a draft environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the release into the environment of nonindigenous leaf beetles for use as biological control agents to suppress saltcedar, a major weed pest of water courses and riparian habitats.

Comments on the notice were required to be received on or before April 19, 1999. We are now advising the public that we are reopening and extending the comment period on Docket No. 99–011–1 for an additional 45 days. This action will allow interested persons additional time to prepare and submit comments.

The draft environmental assessment and finding of no significant impact have been prepared in accordance with: (1) the National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Authority: 7 U.S.C. 150aa–150jj, 151–165, and 167.

Done in Washington, DC, this 28th day of April 1999.

Craig A. Reed,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–11129 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request—FNS–380, Worksheet for Food Stamp Program Quality Control Reviews

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: As required by the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collection of the FNS–380, Worksheet for Food Stamp Program Quality Control Reviews (formerly FCS–380, Integrated Quality Control Review Worksheet).

DATES: Written comments must be submitted on or before July 6, 1999.

ADDRESSES: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Retha Oliver, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of

Agriculture, 3101 Park Center Drive, Alexandria, VA 22302.

All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Retha Oliver, (703) 305–2474.

SUPPLEMENTARY INFORMATION:

Title: Worksheet for Food Stamp Program Quality Control Reviews.

OMB Number: 0584–0074.

Form Number: FNS–380 (Was FCS–380).

Expiration Date: November 30, 1999.

Type of Request: Extension of a currently approved collection.

Abstract: The Form FNS–380 is a worksheet used in the Food Stamp Program to determine eligibility and benefits for households selected for review in the quality control sample of active cases. We estimate the reporting burden for this collection of information averages 9.00 hours per response. This includes the time for analyzing the household case record; planning and carrying out the field investigation; and gathering, comparing, analyzing and evaluating the review data. We estimate the recordkeeping burden associated with this information collection is 0.0236 hours per record. We previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 0584–0074. OMB approved the burden through 11/30/99. Based on the most recent information available, we estimate 55,844 FNS–380 worksheets will be completed annually. This is a 5,996 reduction from the previous estimate of responses and a represents a corresponding 54,105 hour reduction in the reporting and recordkeeping burden. The reduction in responses is a result of allowing States to reduce their sample sizes. We are requesting a three-year approval from OMB for this information collection.

Affected Public: Individuals or households; State or local governments.

Estimated Number of Respondents: 53 State agencies.

Estimated Total Number of Responses Per Year: 55,844 responses.

Estimated Time per Response for Information Collection: 9.0236 hours.

Total Annual Burden: 503,914 hours.

Dated: April 21, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–11161 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Ohio

AGENCY: Natural Resources Conservation Service (NRCS) in Ohio, US Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Ohio for review and comment.

SUMMARY: It is the intention of NRCS in Ohio to issue revised conservation practice standards in Section IV of the FOTG. The proposed standard revisions are Critical Area Planting (Code 342), Cover and Green Manure Crop (Code 340), Conservation Cover (Code 327), Contour Farming (Code 330), and Contour Buffer Strips (Code 332). These practices may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received on or before June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to Paul DeArman, Assistant State Conservationist, Natural Resources Conservation Service (NRCS), 200 North High Street, Room 522, Columbus, Ohio 43215. Copies of these standards will be made available upon written request. You may submit electronic requests and comments to *paul.dearman@oh.nrcs.usda.gov*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after the enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding the disposition of those comments and a final determination of change will be made.

Dated: April 16, 1999.

Patrick K. Wolf,

State Conservationist, Columbus, Ohio.

[FR Doc. 99–11134 Filed 5–3–99; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Sunshine Act Meeting

Staff Briefing for the Board of Directors

TIME AND DATE: 2:00 p.m., Thursday, May 13, 1999.

PLACE: Room 5030, South Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE DISCUSSED:

1. Current telecommunications industry issues.
2. Status of PBO planning.
3. Status of procurement request for legal advisor to the privatization committee.
4. OIG audit report on FY 1998 financial statements.
5. Bank's annual report for FY 1998.
6. Administrative issues.

Board of Directors Meeting

TIME AND DATE: 9:00 a.m., Friday, May 14, 1999.

PLACE: The Williamsburg Room, Room 104–A, Jamie L. Whitten Building, Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the Board of Directors meeting:

1. Call to order.
2. Action on the February 10, 1999, Minutes.
3. Report on loans approved in the second quarter of FY 1999.
4. Summary of financial activity for the second quarter of FY 1999.
5. Privatization committee report.
6. Consideration of the Bank's annual report for FY 1998.
7. Establish date and location of November 1999 board meeting.
8. Adjournment.

CONTACT PERSON FOR MORE INFORMATION: Roberta D. Purcell, Assistant Governor, Rural Telephone Bank, (202) 720–9554.

Dated: April 28, 1999.

Wally Beyer,

Governor, Rural Telephone Bank.

[FR Doc. 99–11255 Filed 4–30–99; 12:12 pm]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of

Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 USC Chapter 35). This request is being submitted under the emergency clearance procedures.

Agency: Bureau of Export Administration.

Title: Chemical Weapons Convention, Amendment to the Export Administration Regulation (End-Use Certificates, Advance Notifications and Annual Reports).

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New Collection—EMERGENCY APPROVAL REQUESTED.

Burden: 178 hours.

Number of Respondents: 134 (multiple responses).

Avg. Hours Per Response: 30 minutes for notifications, annual reports and end-use certificates.

Needs and Uses: The United States is under obligation by this international treaty to impose certain trade controls. State Parties may only export Schedule 1 chemicals to other State Parties, must provide advance notification of exports of any quantity of a Schedule 1 chemical, and must submit annual reports of exports of such chemicals during the previous calendar year. The Convention also requires that prior to the export of a Schedule 2 or Schedule 3 chemicals to a non-States Party, the exporter must obtain an End-Use Certificate issued by the government of the importing country.

Affected Public: Businesses or other for-profit organizations, not-for-profit institutions.

Frequency: On occasion, annually.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Dave Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet__LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by Friday, May 7, 1999 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503. This collection is being submitted under the emergency Paperwork Reduction Act procedures.

Dated: April 27, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11095 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 990427107–9107–01]

Initiation of National Security; Investigation of Imports of Crude Oil and Petroleum Products

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of initiation of national security investigation and request for public comments.

SUMMARY: This notice is to advise the public that an investigation has been initiated under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of crude oil and petroleum products. Interested parties are invited to submit written comments, opinions, data, information, or advice relative to the investigation to the Bureau of Export Administration, U.S. Department of Commerce.

DATES: Comments must be received by June 3, 1999.

ADDRESSES: Written comments (three copies) should be sent to Bernard Kritzer, Manager, Special Projects, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, Room 2093, Washington, D.C., 20230.

FOR FURTHER INFORMATION CONTACT: Scott Hubinger, Senior Policy Analyst, Office of Chemical and Biological Controls and Treaty Compliance, Bureau of Export Administration, U.S. Department of Commerce, (202) 482–3825.

SUPPLEMENTARY INFORMATION:

Background

On April 28, 1999, the Department of Commerce initiated an investigation under section 232 of the Trade Expansion Act of 1962, as amended (19 U.S.C. 1862), to determine the effects on the national security of imports of crude oil and petroleum products. The findings and recommendations of the investigation are to be reported by the Secretary of Commerce to the President not later than January 29, 2000.

The imported crude oil and refined petroleum products to be investigated include:

—Crude oil, under 25 degrees API
—Crude oil, 25 degrees API or more
—Motor fuel, including motor gasoline, naphtha-type jet fuel, and kerosene jet fuel
—Motor fuel blending components
—Kerosene derived from petroleum, shale oil, or both, except motor fuel
—Naphthas derived from petroleum, shale oil, natural gas, or combinations thereof, except motor oil
—Fuel oils, under 25 degrees API
—Fuel oils, 25 degrees API or more
—Mineral oil of medicinal grade derived from petroleum, shale oil, or both
—Lubricating oils and greases, derived from petroleum, shale oil, or both, with or without additives
—Mixtures of hydrocarbons not specifically provided for, derived wholly from petroleum, shale oil, natural gas, or combinations thereof, which contain by weight not over 50% of any single hydrocarbon compound
—Paraffin and other petroleum waxes
—Petroleum coke
—Bitumen
—Asphaltum, bitumen, and limestone-rock asphalt
—Petroleum gases (natural gas liquids) and other hydrocarbons

This investigation is being undertaken in accordance with part 705 of the National Security Industrial Base Regulations (15 CFR parts 700 to 709) (the "regulations"). Interested parties are invited to submit written comments, opinions, data, information, or advice relevant to this investigation to the Office of Chemical and Biological Controls and Treaty Compliance, U.S. Department of Commerce, no later than June 3, 1999.

The Department is particularly interested in comments and information directed to the criteria listed in § 705.4 of the regulations as they affect national security, including the following:

(a) Quantity of the article in question or other circumstances related to the importation of the articles subject to the investigation;

(b) Domestic production and productive capacity needed for those articles to meet protected national defense requirements;

(c) Existing and anticipated availability of human resources, products, raw materials, production equipment, and facilities to produce these items;

(d) Growth requirements of domestic industries to meet national defense requirements and/or requirements to assure such growth;

(e) The impact of foreign competition on the economic welfare of the domestic industry; and

(f) The displacement of any domestic products causing substantial unemployment, decrease in the revenues of government, loss of investment or specialized skills and productive capacity, or other serious effects.

All materials should be submitted with three copies. Public information will be made available at the Department of Commerce for public inspection and copying. Material that is national security classified information or business confidential information will be exempted from public disclosure as provided for by § 705.6 of the regulations. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission. File a statement justifying nondisclosure and reference to the specific legal authority claimed, and provide a non-confidential submission which can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, room 6883, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in part 4 of title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*). Information about the inspection and copying of records at the facility may be obtained from Mr. Henry Gaston, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: April 28, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–11090 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Assistance Center Internet Website Form; Proposed Collection; Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c) (2) (A)).

DATES: Written comments must be submitted on or before July 6, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5033, 14th & Constitution Avenue, NW, Washington, DC 20230. Phone number: (202) 482–3272.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: Thomas Mottley, U.S. Department of Commerce, Export Assistance Center, 6 World Trade Center, Room 635, New York, NY, 10048; Phone number: (212) 466–5220, and fax number: (212) 264–1356.

SUPPLEMENTARY INFORMATION:

I. Abstract

The New York Export Assistant Center, which is a combined effort of the U.S. Department of Commerce, Export-Import Bank, and Small Business Administration provides a comprehensive array of export counseling and trade finance services to small and medium-sized U.S. exporting firms. In 1998, it launched an interactive website, *www.nyuseac.org* that is geared to the needs of New York and New Jersey metropolitan industry. One electronic form is proposed to be added to the website in order to improve the usefulness of the site. The form will ask U.S. exporting firm respondents to provide general background information and identify which service(s) they are interested in.

II. Method of Collection

The form is submitted via internet, telephone, fax, or email.

III. Data

OMB Number: 0625–xxxx (New).
Form Number: Not applicable.
Type of Review: Regular submission.
Affected Public: Business or other for-profit.
Estimated Number of Respondents: 120.
Estimated Time Per Response: 5 minutes.
Estimated Total Annual Burden Hours: 10 hours.
Estimated Total Annual Costs: The estimated annual cost for this collection is $600.00 ($350.00 for respondents and $250.00 for federal government).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: April 28, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11094 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–502]

Certain Welded Carbon Steel Pipes And Tubes From India: Notice of Final Results of the Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On February 8, 1999, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on certain welded carbon steel pipes and tubes from India. This review covers one manufacturer/exporter, Rajinder Pipes Ltd. The period of review is May 1, 1997, through April 30, 1998. We gave interested parties an opportunity to comment on the preliminary results of review but received no comments. Therefore, these final results of review have not changed from those presented in the preliminary results of review, in which we applied total adverse facts available.

EFFECTIVE DATE: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Tabash at (202) 482–5047 or Robin Gray at (202) 482–4023, Import

Administration, International Trade Administration, U.S. Department of Commerce, 14th and Constitution Avenue, N.W., Washington, D.C. 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (1998).

Background

On February 8, 1999, we published in the **Federal Register** (64 FR 6046) the preliminary results of the review of this order. We gave interested parties an opportunity to comment on our preliminary results. We received no comments. In the preliminary results, we determined the weighted-average dumping margin for the period May 1, 1997, through April 30, 1998, to be 87.39 percent, which is the highest calculated margin of any company in a prior segment of this proceeding. This rate was calculated for the 88/89 administrative review of this order. The Department has now completed the administrative review in accordance with section 751 of the Act.

Scope of Review

The products covered by this review include circular welded non-alloy steel pipes and tubes, of circular cross-section, with an outside diameter of 0.372 inches or more but not more than 406.4 millimeters (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications. Standard pipes and tubes are intended for the low-pressure conveyance of water, steam, natural gas, air and other liquids and gases in plumbing and heating systems, air-conditioner units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing and mechanical applications, such as for fence tubing, and for protection of electrical wiring, such as conduit shells.

The scope is not limited to standard pipe and fence tubing or those types of mechanical and structural pipe that are used in standard pipe applications. All carbon-steel pipes and tubes within the physical description outlined above are included in the scope of this order, except for line pipe, oil-country tubular goods, boiler tubing, cold-drawn or cold-rolled mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished rigid conduit.

Imports of the products covered by this review are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although, the HTSUS item numbers are provided for convenience and customs purposes, the Department's written description of the scope of this review remains dispositive.

Final Results of the Review

Because we received no comments from interested parties, we have determined that no changes to the preliminary results are warranted for purposes of these final results. The weighted-average dumping margin for the period May 1, 1997, through April 30, 1998, is as follows:

Company	Margin percent
Rajinder Pipes Ltd	87.39

The Department will issue appraisement instructions directly to the Customs Service. Furthermore, the following deposit requirements will be effective upon publication of these final results for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date as provided by section 751(a)(1) of the Act: (1) The cash-deposit rate for the reviewed company will be the rate listed above; (2) for previously reviewed or investigated companies not listed above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will continue to be 7.08 percent, the "All Others" rate made effective by the LTFV investigation. The deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 20, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11159 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron Metal Castings From India: Postponement of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (Department) is extending by no longer than 120 days the time limit of the preliminary results of the administrative review of the countervailing duty order on certain iron metal castings from India (C–533–063), covering the period January 1, 1997, through December 31, 1997, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of

1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: May 4, 1999.

FOR FURTHER INFORMATION CONTACT: Kristen Johnson or Michael Grossman, Antidumping Duty and Countervailing Duty Enforcement, Group II, Office Six, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4406 and (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 C.F.R. Part 351 (April 1998).

Background

On November 30, 1998, the Department initiated an administrative review of the countervailing duty order on certain iron metal castings from India, covering the period January 1, 1997, through December 31, 1997 (63 FR 65748). In our notice of initiation, we stated our intention to issue the final results of this review no later than October 31, 1999. The preliminary results of review are currently due no later than July 5, 1999. Due to the number of producers/exporters of the subject merchandise covered by this review, the Department has determined that it is not practicable to complete this review within the time limits mandated by the Act (19 U.S.C. 1675 (a)(3)(A)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame. *See* Memorandum from Bernard Carreau to Robert S. LaRussa, "Extension of Preliminary Results: Certain Iron Metal Castings from India (C–533–063)," dated April 27, 1999.

The deadline for issuing the preliminary results of this review is now no later than November 2, 1999, which is the full amount of time the Department can extend the preliminary results under section 751(a)(3)(A) of the Act.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: April 28, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 99–11160 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), DOC.

ACTION: Notice of Intent to Evaluate.

SUMMARY: The NOAA Office of Ocean and Coastal Resource Management (OCRM) announces its intent to evaluate the performance of the Wisconsin and Oregon Coastal Zone Management Program and the Delaware (DE) and Tijuana River (CA) National Estuarine Research Reserves.

These evaluations will be conducted pursuant to sections 312 and 315 of the Coastal Zone Management Act of 1972 (CZMA), as amended. The CZMA requires a continuing review of the performance of states with respect to coastal program and research reserve program implementation. Evaluation of Coastal Zone Management Programs and National Estuarine Research Reserves require findings concerning the extent to which a state has met the national objectives, adhered to its coastal program document or the Reserve's final management plan approved by the Secretary of Commerce, and adhered to the terms of financial assistance awards funded under the CZMA. The evaluations will include site visit, consideration of public comments, and consultations with interested Federal, State, and local agencies and members of the public. Public meetings are held as part of the site visits.

Notice is hereby given of the dates of the site visits for the listed evaluations, and the dates, local times, and locations of public meetings during the site visits.

The Delaware National Estuarine Research Reserve site visit will be from June 7–11, 1999. One public meeting will be held during the week. The public meeting will be held on Wednesday, June 9, 1999, at 7:00 p.m., at the Delaware National Estuarine Research Reserve, St. Jones Center for Estuarine Studies, 818 Kitts Hummock Road, Dover, DE 19901.

The Tijuana River National Estuarine Research Reserve in California site visit will be from July 19–23, 1999. One public meeting will be held during the week. This public meeting will be held on Wednesday, July 21, 1999, at 7:00 p.m., at the Reserve's Visitor's Center, 301 Caspian Way, Imperial Beach, CA.

The Wisconsin Coastal Zone Management Program evaluation site visit will be from June 14–18, 1999. One public meeting will be held during the week. The public meeting will be held on Wednesday, June 16, 1999, at 6:00 p.m., at the Northern Great Lakes Visitor's Center Auditorium, 29270 County Highway G, Ashland, Wisconsin, 54806.

The Oregon Ocean Coastal Management Program site visit will be from June 14–18, 1999. A public meeting will be held on Tuesday, June 15, 1999, from 7:00 p.m.–9:00 p.m. at the Cannon Beach City Hall, 163 Gower Street, Cannon Beach, Oregon.

The States will issue notice of the public meeting(s) in a local newspaper(s) at least 45 days prior to the public meeting(s), and will issue other timely notices as appropriate.

Copies of the State's most recent performance reports, as well as OCRM's notifications and supplemental request letters to the States are available upon request from OCRM. Written comments from interested parties regarding these Programs are encouraged and will be accepted until 15 days after the public meeting. Please direct written comments to Margo E. Jackson, Deputy Director, Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 10th Floor, Silver Spring, Maryland 20910. When the evaluation is completed, OCRM will place a notice in the **Federal Register** announcing the availability of the Final Evaluation Findings.

FOR FURTHER INFORMATION CONTACT: Margo E. Jackson, Deputy Director, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-

West Highway, Silver Spring, Maryland 20910, (301) 713–3155, etc. 114.

Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration.

Dated: April 28, 1999.

Captain Ted I. Lillestolen,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 99–11181 Filed 5–3–99; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Government-Owned Invention for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: U.S. Patent Number 5,858,802 entitled, "Patterning Antibodies On a Surface," is an invention assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy.

ADDRESSES: Requests for copies of the patent cited should be sent to the Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, Maryland 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Naval Surface Warfare Center Carderock Division, Code 0117, 9500 MacArthur Boulevard, West Bethesda, Maryland 20817–5700, telephone (301) 227–4299.

Dated: April 21, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–11147 Filed 5–3–99; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Naval Research Advisory Committee

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Naval Research Advisory Committee (NRAC) Panel on Unmanned Vehicles for Mine Countermeasures will meet to identify and state the requirement for unmanned vehicles that would operate in support of the Mine Warfare Mission; identify the unmanned vehicle alternatives which apply to the mine countermeasures mission, describe them, assess their pros and cons; review the current development programs and identify gaps and overlaps; and report findings and recommendations. All sessions of the meeting will be open to the public.

DATES: The meeting will be held on Monday, May 3, from 9:00 a.m. to 5:00 p.m.; and Tuesday, May 4, 1999, from 8:30 a.m. to 5:00 p.m.

ADDRESSES: The meeting will be held at the Jorge Scientific Corporation, 1225 Jefferson Davis Highway, 6th Floor, Suite 600, Crystal Gateway Two, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Diane Mason-Muir, Program Director, Naval Research Advisory Committee, 800 North Quincy Street, Arlington, VA 22217–5660, telephone (703) 696–6769.

Dated: April 23, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 99–11148 Filed 5–3–99; 8:45 am]

BILLING CODE 3810–FF–U

DEFENSE NUCLEAR FACILITIES SAFETY BOARD

Sunshine Meeting Notice

Pursuant to the provision of the "Government in the Sunshine Act" (5 U.S.C. § 552b), notice is hereby given of the Defense Nuclear Facilities Safety Board's(Board) meeting described below.

TIME AND DATE OF MEETING: :9:00 a.m., May 25, 1999.

PLACE: The Defense Nuclear Facilities Safety Board, Public Hearing Room, 625 Indiana Avenue, NW, Suite 300, Washington, DC 20004.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Defense Nuclear Facilities Safety Board will convene the tenth quarterly briefing regarding the status of progress of the activities associated with the Department of Energy's Implementation Plans for the Board's Recommendations 95–2, Integrated Safety Management ("ISM") and 98–1, Integrated Safety Management (Response to Issues Identified by the Office of Internal Oversight). Included in this discussion will be the status of actions on the Secretary of Energy's March 3, 1999, Safety-Accountability and Performance Initiative Memorandum. Specific topics will include, but not be limited to, the following.

- Recommendation 98–1 implementation progress, including EH–2 review of evaluation protocols, the Corrective Tracking System, modification of directives, disposition of legacy issues, and the Integrated Corrective Action Management team charter.
- Recommendation 95–2 overall progress, including the Manual of Functions and Responsibilities, implementation of Policy 450.5, Line Environment, Safety and Health Oversight, issues tracking systems, applications of lessons learned, and performance measurement as it relates to department of Energy Acquisition Regulations.
- The Secretary of Energy's Safety-Accountability and Performance Memorandum of March 3, 1999.

CONTACT PERSON FOR MORE INFORMATION: Richard A. Azzaro, General Counsel, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004, (800) 788–4016. This is a toll-free number.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Facilities Safety Board reserves its right to further schedule and otherwise regulate the course of this meeting, to recess, reconvene, postpone or adjourn the meeting, and otherwise exercise its authority under the Atomic Energy Act of 1954, as amended.

Dated: April 28, 1999.

John T. Conway,

Chairman.

[FR Doc. 99–11201 Filed 4–29–99; 4:11 pm]

BILLING CODE 3670–01–M

DEPARTMENT OF ENERGY

DOE Implementation Plan for Recommendation 98–2 of the Defense Nuclear Facilities Safety Board, Safety Management at the Pantex Plant

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 98–2, concerning the safety management at the Pantex plant, on October 7, 1998 (63 FR 53884). Under section 315(e) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(e), the Department of Energy must transmit an implementation plan on Recommendation 98–2 to the Defense Nuclear Facilities Safety Board after acceptance of the Recommendation by the Secretary. The Department's implementation plan was sent to the Safety Board on April 22, 1999, and is

available for review in the Department of Energy Public Reading Rooms.

ADDRESSES: Send comments, data, views, or arguments concerning the implementation plan to: Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. Gene Ives, Deputy Assistant Secretary for Military Application and Stockpile Management, Defense Programs, Department of Energy, 1000 Independence Avenue, SW, Washington DC, 20585.

Issued in Washington, DC, on April 28, 1999.

Mark B. Whitaker, Jr.

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

Washington, DC 20585

April 22, 1999.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, DC 20004

Dear Mr. Chairman: We are pleased to forward the Department of Energy implementation plan for addressing the issues raised in the Defense Nuclear Facilities Safety Board (DNFSB) Recommendation 98–2, "SAFETY MANAGEMENT AT THE PANTEX PLANT." The DNFSB Recommendation 98–2 is consistent with the Department's focus on the Pantex Plant safety management enhancements in the development of the Pantex Plant integrated safety management system as part of the Department's implementation plan for the DNFSB Recommendation 95–2, "SAFETY MANAGEMENT."

We understand that the objective of Recommendation 98–2 is to strengthen and simplify the Pantex Plant safety management and work practices. The primary objectives of this implementation plan are to ensure practical and timely implementation of safety improvements and to better allow for tailoring of Seamless Safety-21 principles. The activities delineated in the plan should simplify and standardize activity level safety management practices and processes for all work involving nuclear explosives at the Pantex Plant.

Mr. Gene Ives, Deputy Assistant Secretary for Military Application and Stockpile Management, is the responsible manager for this implementation plan. Mr. Ives can be contacted at 202–586–4879.

Yours sincerely,

Bill Richardson

[FR Doc. 99–11135 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Record of Decision for a Multi-Purpose Canister or Comparable System for Idaho National Engineering and Environmental Laboratory Spent Nuclear Fuel

AGENCY: Department of Energy.

ACTION: Record of Decision.

SUMMARY: This Record of Decision announces the Department of Energy's (DOE's) decision to use a multi-purpose canister or comparable system for spent nuclear fuel at the Idaho National Engineering and Environmental Laboratory (INEEL). Except for those fuels that may be processed (e.g., sodium bonded fuel) and a small fraction of spent nuclear fuel (10% or less) that may be suitable for shipment using existing transportation casks, a multi-purpose canister or comparable system will be used for the loading and storage of DOE-owned spent nuclear fuel at the INEEL, and transportation of this spent nuclear fuel for ultimate disposition outside the State of Idaho. This decision is based on analyses contained in two Environmental Impact Statements: the Department of Energy Programmatic Spent Nuclear Fuel Management and Idaho National Engineering Laboratory Environmental Restoration and Waste Management Programs Final Environmental Impact Statement (SNF & INEL EIS), dated April 1995 (DOE/EIS–0203–F); and the Final Environmental Impact Statement for a Container System for the Management of Naval Spent Nuclear Fuel (Container System EIS), dated November 1996 (DOE/EIS–0251), in which DOE participated as a cooperating agency and then adopted (61 FR 59435, October 9, 1996). DOE recently prepared a Supplement Analysis for a Container System for the Management of DOE Spent Nuclear Fuel Located at the INEEL (March 1999) under 10 CFR 1021.314(c), and determined that no further NEPA documentation is needed.

FOR FURTHER INFORMATION: For further information on DOE's use of a multi-purpose canister or comparable system for INEEL spent nuclear fuel, or to receive a copy of the Supplement Analysis and Determination, please contact Mr. Ron Ramsey, Mail Stop 1154, U.S. Department of Energy, Idaho Operations Office, 850 Energy Drive, 83401, or phone (208) 526–1545. The SNF & INEL and Container System EISs, the Supplement Analysis and supporting documentation are available for review on request at the Department of Energy Idaho Operations Office located at 850 Energy Drive, Idaho Falls, Idaho. Copies of the SNF & INEL and Container System EISs and the Supplement Analysis also are available for review at the Idaho Falls and Pocatello, Idaho, Public Libraries. The Supplement Analysis and Determination also are available on the INEEL Website at: http://www.inel.gov/environment/em/nepa.html.

For information on DOE's NEPA process, please contact Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or phone (202) 586–4600 or leave a message at 1–800–472–2756.

SUPPLEMENTARY INFORMATION: In litigation that began in 1991, the State of Idaho asserted that DOE had violated NEPA by not conducting a thorough analysis of environmental impacts associated with spent nuclear fuel storage and transportation. During the litigation, DOE completed the SNF & INEL EIS in April 1995. The litigation was settled when DOE, the U.S. Department of the Navy (Navy), and the State of Idaho executed a Settlement Agreement that was subsequently incorporated into a federal court order [*Consent Order in United States of America* v. *Batt, Civil No. 91–0054–S–ELJ (D.Id.)* dated October 17, 1995] (Idaho Settlement Agreement). Section F.4. of the Idaho Settlement Agreement requires, in part, that DOE and the Navy shall use multi-purpose canisters or comparable systems to prepare spent nuclear fuel for shipment and ultimate disposal outside the State of Idaho, and that the Record of Decision on the NEPA analysis shall be completed by April 30, 1999.

The Navy as lead agency and DOE as a cooperating agency prepared and issued the final Container System EIS in November 1996. The Navy issued a Record of Decision on the Container System EIS on January 8, 1997 (62 FR 1095), selecting a dual-purpose canister system for the management of post-examination naval spent nuclear fuel and special case low-level waste. On May 1, 1997, the Navy issued a second Record of Decision on the Container System EIS (62 FR 23770) that announced that naval spent nuclear fuel that is or will be stored at the Idaho Nuclear Technology Engineering Center (INTEC) (formerly the Idaho Chemical Processing Plant) will be loaded into dual-purpose canisters at the Naval Reactors Facility (NRF). Both INTEC and the NRF are located at INEEL. The second Record of Decision also announced that all dual-purpose

canisters loaded with naval spent nuclear fuel and special case waste will be stored at a site adjacent to the Expended Core Facility at NRF, regardless of whether the contained fuel had previously been stored at INTEC, or had been received at INEEL before or after the dry storage facility at NRF commenced operations. (The second Record of Decision makes no decision that naval special case waste will be shipped to a geologic repository, as will naval spent nuclear fuel.) The Navy's decision to implement the preferred alternative, i.e., to use a dual-purpose canister system for naval spent nuclear fuel, was issued to satisfy the Navy's commitment under Section F.4. of the Idaho Settlement Agreement. Although DOE was a cooperating agency in the preparation of the Container System EIS, subsequently adopted the EIS, and co-signed both Records of Decision issued by the Navy, DOE-owned spent nuclear fuel was not separately analyzed in the Container System EIS, and neither Record of Decision addressed DOE-owned spent nuclear fuel.

The Department's Idaho Operations Office (DOE–ID) prepared a Supplement Analysis for a Container System for the Management of DOE Spent Nuclear Fuel Located at the INEEL (March, 1999) to evaluate the adequacy of both the Container System and SNF & INEL EISs for the proposal to use a multi-purpose canister or comparable system for DOE-owned spent nuclear fuel. The purpose of a Supplement Analysis is to examine whether, in light of new information or changes in the proposed action, an existing EIS should be supplemented, a new EIS should be prepared, or no further NEPA documentation is required.

The Supplement Analysis demonstrated that the potential environmental impacts of using a multi-purpose canister, or comparable system, to load, store and transport DOE-owned spent nuclear fuel located on the INEEL are bounded by or are reasonably comparable to the impacts analyzed in the SNF & INEL and Container System EISs. Accordingly, on March 4,1999, DOE issued the "Department of Energy Determination and Record of Decision on National Environmental Policy Act (NEPA) Analysis," which concludes that the proposed multi-purpose canister or comparable system for DOE-owned spent nuclear fuel at the INEEL is adequately analyzed in the SNF & INEL and Container System EISs, and that, therefore, no further NEPA documentation is required.

Alternatives Considered

The Container System EIS considered six alternative dry storage container systems for the loading, storage, transport, and possible disposal of post-examination naval spent nuclear fuel and the management of special case waste (i.e., low-level radioactive waste that contains concentrations of certain short- and long-lived isotopes which requires disposal by more stringent measures than land burial). The alternatives included the use of either existing dry storage containers or dry storage containers that could be produced by manufacturers of such equipment.

Because of differences in configurations among naval spent nuclear fuel assemblies, all alternatives required containers to have internal baskets designed for specific naval spent nuclear fuel types. For the purposes of transportation analyses, the SNF & INEL EIS assumed the use of existing transportation casks licensed by the U.S. Nuclear Regulatory Commission for transportation of bare (i.e., non-canisterized) fuel assemblies. The SNF & INEL EIS analyzed truck and rail alternatives for transportation from the INEEL to a repository, but did not analyze the use of specific alternative types of containers, such as dual-purpose (i.e., storage and transportation) or multi-purpose (i.e., storage, transportation and disposal) canisters.

A brief description of the six alternatives analyzed in the Container System EIS follows:

(1) *No-Action Alternative*—Use of existing technology to handle, store, and subsequently transport naval spent nuclear fuel to a geologic repository or a centralized interim storage site using the Navy M–140 transportation cask.

(2) *Current Technology/ Supplemented by High Capacity Rail Alternative*—This alternative uses the same storage methods and M–140 transportation cask described in the no-action alternative, but with redesigned internal structures for the M–140 cask to accommodate a larger amount of naval spent nuclear fuel per cask, thus reducing the total number of shipments required.

(3) *Transportable Storage Cask Alternative*—This alternative uses an existing, commercially available transportable storage cask for storage at the INEEL as well as for transportation to a repository or centralized interim storage site.

(4) *Dual-Purpose Canister Alternative*—This alternative uses an existing, commercially available canister and overpack system for storage at the INEEL and shipment of naval spent nuclear fuel to a geologic repository or centralized interim storage site.

(5) *Multi-Purpose Canister Alternative*—This alternative uses about 300 large (125-ton) multi-purpose canisters for storage, transportation, and disposal of naval spent nuclear fuel, without repackaging or further handling of individual spent nuclear fuel assemblies.

(6) *Small Multi-Purpose Canister Alternative*—This alternative uses about 500 smaller (75-ton) multi-purpose canisters, rather than large multi-purpose canisters.

The Container System EIS evaluated each of the alternatives against a set of criteria to select a preferred alternative. The analysis found that the environmental and public health impacts would be small and would differ little among alternatives for: the manufacture of any of the dry storage container systems; the operations of handling, storage, transportation and unloading at a repository; and the construction of facilities. With respect to the environmental and public health impacts, all the alternatives are considered comparable and indistinguishable and equally environmentally preferable. In its Record of Decision, the Navy decided that dual-purpose canisters represented the best system for naval fuel when compared to the other alternatives in terms of cost, operational efficiency, industry trends, regulatory acceptance and environmental and public health impacts. The Container System EIS established that dual-purpose and multi-purpose canister systems are comparable, with the possible exception that a multi-purpose canister can also be used for disposal.

Decision

DOE has decided to use a multi-purpose canister or comparable system (e.g., dual-purpose canister system or other system as described and analyzed in the context of the Container System EIS) for the management of DOE-owned spent nuclear fuel at the INEEL, based on cost, operational efficiency, regulatory acceptance, and environmental and public health considerations. Except for those fuels that may be processed (e.g., sodium bonded fuel) and a small fraction of spent nuclear fuel (10% or less) that may be suitable for shipment using existing transportation casks, a multi-purpose canister system (or comparable system) will be used for the loading and storage of DOE-owned spent nuclear fuel at the INEEL, and for transportation

of this spent nuclear fuel for ultimate disposition outside the State of Idaho. This decision does not commit DOE to a single course of action or the use of a particular spent nuclear fuel container system if improvements in design are made in the future and are selected pursuant to future NEPA review and coordination with the State of Idaho.

Mitigation

DOE has not identified the need for mitigation measures beyond the strictly controlled conduct of operations associated with the management of DOE-owned spent nuclear fuel at INEEL that is integral to the selected alternative. DOE has directives and regulations for the conduct of spent nuclear fuel management operations. All government spent nuclear fuel shipments must comply with DOE and U.S. Department of Transportation regulations, and DOE has adopted stringent controls for minimizing occupational and public radiation exposure. The policy of these programs is to reduce radiation exposure to as low as reasonably achievable. Singly and collectively, these measures avoid, reduce, or eliminate any potentially adverse environmental impacts from spent nuclear fuel management activities, including those associated with containerization.

Approval

Issued in Washington, D.C. this 27th day of April 1999.

James M. Owendoff,

Acting Assistant Secretary for Environmental Management.

[FR Doc. 99–11063 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge Reservation

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Oak Ridge. Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 12, 1999: 6:00–9:30 p.m. Board Meeting.

ADDRESSES: Garden Plaza, 215 S. Illinois Avenue, Oak Ridge, TN 37830.

FOR FURTHER INFORMATION CONTACT: Marianne Heiskell, Federal Coordinator/Ex-Officio Officer, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (423) 576–0314.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Presentation—James D. Werner, U.S. Department of Energy, Headquarters—Programmatic Environmental Impact Statement (PEIS) Lawsuit Settlement Database
2. Special Report on the Canyons in Los Alamos County
3. Committee Reports
4. Other Board business will be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements to the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing Kevin Rohrer at the address listed above.

Issued at Washington, DC on April 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11136 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, May 13, 1999: 5:30 p.m.–10:00 p.m.

ADDRESSES: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (502) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration and waste management activities.

Tentative Agenda:

5:30 p.m.—Call to Order/Discussion
6:00 p.m.—Approve Meeting Minutes
6:05 p.m.—Public Comment/Questions
6:30 p.m.—Presentations
7:15 p.m.—Sub Committee Reports
8:15 p.m.—Administrative Issues
8:30 p.m.—Adjourn

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments as the first item of the meeting agenda. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and

copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling (502) 441–6804.

Issued at Washington, DC on April 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11137 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Monday, May 17, 1999: 6:30 P.M.—9:30 p.m.

ADDRESSES: College Hill Library, Front Range Community College, 3705 West 112th Avenue, Westminister, CO 80030–2140.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; Phone (303) 420–7855; FAX (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities. The Rocky Flats Citizen Advisory Board (RFCAB) is dedicated to providing informed recommendations and advice to the agencies (Department of Energy, Colorado Department of Public Health and Environment and the Environmental Protection Agency), government entities and other interested parties on policy and technical issues and decisions related to cleanup, waste management and associated activities. The Board is dedicated to public involvement, awareness and education on Rocky Flats issues.

Tentative Agenda

Continued discussion on low level mixed waste disposition issues:

- Transportation.
- Comparison of disposal sites.
- Information on the Deer Trail facility in eastern Colorado.
- Initiation of preparation of vision statement on Board's position(s) on disposition of low level and low level mixed waste.

Other Board business may be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Public Reading Room located at the office of the Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminister, CO 80021; phone (303) 420–7855. Hours of operation for the Public Reading Room are 9 a.m. to 4 p.m. Monday through Friday. Minutes will also be made available by writing or call Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on April 28, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11138 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science; Fusion Energy Sciences Advisory Committee; Correction

AGENCY: Department of Energy.

ACTION: Notice of Open Meeting Correction.

SUMMARY: On April 12, 1999, the Department of Energy published a notice of open meeting announcing a meeting of the Fusion Energy Sciences Advisory Committee (64 FR 17650). In that notice, the meeting was scheduled for May 19–21, 1999. Today's notice is announcing that the meeting will only take place on May 20–21, 1999. A revised tentative agenda follows:

Tentative Agenda

Thursday, May 20, 1999

8:30 a.m. Presentations of Princeton Plasma Research Laboratory (PPPL) Research Activities
10:30 a.m. Break
10:45 a.m. Presentations of PPPL Research Activities continue
12:15 p.m. Lunch
1:30 p.m. Presentations of Research Activities at Universities (R. Fonck)
3:15 p.m. Break
3:30 p.m. Inertial Confinement Fusion/ Inertial Fusion Energy Activities at the Naval Research Laboratory (S. Bodner)
4:15 p.m. Fusion Energy Sciences Advisory Committee Discussions
5:15 p.m. Public Comment
6:00 p.m. Adjourn

Friday, May 21, 1999

8:30 a.m. Status Report on Proof-of-Principle Experiments Review
10:00 a.m. Break
10:15 a.m. Status Report on Proof-of-Principle Experiments Review
11:15–12:30 Tour of PPPL Facilities

Issued in Washington, D.C. on April 27, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11065 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy; State Energy Advisory Board, Open Meeting

SUMMARY: This notice announces a meeting of the State Energy Advisory Board (STEAB). The Federal Advisory Committee Act (Pub. L. No. 92–463; 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: May 13, 1999 from 9:00 am to 5:00 pm and May 14, 1999 from 9:00 am to 12:00 pm.

PLACE: National Renewable Energy Laboratory (NREL), Golden, Colorado.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (Pub. L. No. 101–440).

Tentative Agenda: Briefings on, and discussions of:

- Deploying technology from DOE laboratories to the States;
- How STEAB's role to help facilitate the market of energy efficient and renewable energy technologies can be assisted by coordination with National Council of State Legislatures;
- Federal efforts to market energy efficiency and renewable energy technologies.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on April 27, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11064 Filed 5–3–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–322–000]

El Paso Natural Gas Company; Notice of Application

April 28, 1999.

Take notice that on April 16, 1999, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP99–322–000, pursuant to Section 7(c) of the Natural Gas Act (NGA) and Section 157.5, et seq., of the Federal Energy Regulatory Commission's (Commission) Regulations Under the NGA, for a certificate of public convenience and necessity authorizing the construction and operation of certain lateral pipeline and metering facilities, hereinafter referred to as the Willcox Lateral. El Paso states that construction of the Willcox Lateral will allow the transportation and delivery of natural gas to two points along the International Boundary between the United States and Mexico in Cochise County, Arizona, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that the Comision Federal de Electricidad (CFE) has an existing power plant near the City of Hermosillo, Sonora, Mexico and recently completed a Request For Proposal (RFP) for a second power plant near Hermosillo. Additionally, CFE is scheduled to close an RFP in May 1999 for a new power plant near the City of Agua Prieta, Sonora, Mexico, referred to as the El Fresnal Power Plant. These three power plants will require natural gas as fuel to generate electricity.

Thus, El Paso is proposing to construct the Willcox Lateral to serve this present and future power plant infrastructure in Northern Sonora, Mexico. El Paso claims that the Willcox Lateral will have a design capacity of 130,000 Mcf per day and will provide the necessary facilities to permit the transportation of natural gas to two points of interconnection at the International Boundary. Once delivered to these new delivery points, El Paso says that gas will be transported to the existing and proposed power plants in or near Hermosillo and Agua Prieta, Mexico, as well as other potential markets in Northern Mexico.

Specifically, the proposed Willcox Lateral facilities, all located in Cochise County, Arizona, will consist of a 20″ O.D. lateral line commencing at approximately milepost 407.1 on El Paso's California Line and First Loop Line on the suction side of the Willcox Compressor Station extending south approximately 55.7 miles which then bifurcates into two 16″ O.D. east and west branch lateral lines with metering facilities near the terminus of each branch lateral line. The west branch lateral line extends southwesterly for approximately 2.9 miles, terminating near Monument 90 on the International Boundary (the 20″ O.D. lateral line and the 16″ O.D. west branch lateral line constitute Line No. 2163). The east branch lateral line extends southeasterly for approximately 12.2 miles, terminating at a point southwest of Douglas, Arizona at the International Boundary between the United States and Mexico (Line No. 2164). The Willmex Delivery Point is to be located near the terminus of Line No. 2163 adjacent to the existing Monument 90 Meter Station, and the El Fresnal Delivery Point is to be located near the terminus of Line No. 2164.

El Paso indicates that it has estimated the cost of constructing the Willcox Lateral to be approximately $30,215,000. El Paso requests authorization no later than December 31, 1999 in order to meet an in-service date of September 1, 2000.

El Paso states that, in support of the Willcox Lateral, and to demonstrate market support for the Willcox Lateral, it has entered into three separate, but mutually exclusive, firm TSAs providing for the delivery of natural gas to the El Fresnal Power Plant and a fourth firm TSA providing for transportation service to the second Hermosillo Power Plant. El Paso states that it is currently negotiating contracts for the existing Hermosillo Power Plant.

Based on the cost of the proposed Willcox Lateral facilities, El Paso calculated a separate incremental rate attributable to the cost of service for the proposed Willcox Lateral. The incremental reservation rate for the Willcox Lateral is proposed to be $0.1467 per dth on a daily basis and is referred to as the "Willcox Lateral Facilities Charge." El Paso proposes the calculated incremental rate as the tariff rate applicable to firm transportation service on the Willcox Project.

Any person desiring to be heard or to make any protest with reference to said

document should, on or before, May 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person does not have to intervene, however, in order to have environmental comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11083 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP 99–323–000]

El Paso Natural Gas Company; Notice of Application

April 28, 1999.

Take notice that on April 16, 1999, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas, 79978, filed an application at Docket No. CP99–323–000, pursuant to Section 3 of the Natural Gas Act (NGA) and Subpart B of Part 153 of the Federal Energy Regulatory Commission's (Commission) Regulations, for an order authorizing the siting, construction, and operation of pipeline facilities and the place of exit for export of natural gas at two separate points along the International Boundary between the United States and Mexico in Cochise County, Arizona (International Boundary).

Additionally, El Paso requests, pursuant to Subpart C of Part 153 of the Commission's Regulations and in compliance with Executive Order No. 10485, as amended by Executive Order No. 12038, two Presidential Permits for the construction, operation, maintenance, and connection of pipeline facilities for the export of natural gas at the International Boundary, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso states that the Comision Federal de Electricidad (CFE), a decentralized Public Organism of the United Mexican States, has an existing power plant near the City of Hermosillo, Sonoro, Mexico and recently completed a Request For Proposal (RFP) for a second power plant near Hermosillo. Additionally, CFE is scheduled to close an RFP in May 1999 for a new power plant near the City of Agua Prieta, Sonoro, Mexico, referred to as the El Fresnal Power Plant. These three power plants will require natural gas as fuel to generate electricity.

For the exportation of natural gas at the International Boundary, El Paso proposes to construct approximately 60 feet of 16" O.D. pipeline, with appurtenance, at the terminus of the 16" O.D. lateral lines extending from the Willmex Delivery Point, located near the Monument 90 Meter Station and from the El Fresnal Delivery Point near Douglas, Arizona, both located in Cochise County, Arizona to the U.S./Mexico border. These facilities, which will constitute two separate border crossing facilities, are located on the downstream side of the Willmex and El Fresnal Delivery Points, which are being proposed for construction under Section 7(c) application being filed concurrently.[1] Existing pipeline facilities owned by Pemex on the Mexican side of the International Boundary will receive the natural gas from the Willmex Delivery point. Currently, no Mexican pipeline facilities exist downstream of the El Fresnal Delivery Point. However, the El Fresnal Power Plant RFP awarding process will determine responsibility for downstream pipeline construction, ownership, and operation.

El Paso states that, in support of the Willcox Lateral Project, and to demonstrate market support for the Willcox Lateral Project, it has entered into three separate, but mutually exclusive, firm TSAs providing for the delivery of natural gas to the El Fresnal Power Plant and a fourth firm TSA providing for transportation service to the second Hermosillo Power Plant. El Paso is currently negotiating contracts for the existing Hermosillo Power Plant.

Any person desiring to be heard or to make any protest with reference to said document should, on or before, May 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a protest or motion to intervene in accordance with the requirements of Rule 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing herein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to

[1] In Docket No. CP999–322–000, El Paso has filed an application proposing to construct the Willcox Lateral, which will consist of certain lateral pipeline and metering facilities. The lateral line will interconnect with the proposed border crossing facilities in order to facilitate service to this present and future power plant infrastructure in Northern Sonora, Mexico.

the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this document if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely field, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing still be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for El Paso to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11084 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–6–34–000]

Florida Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

April 28, 1999.

Take notice that on April 22, 1999, Florida Gas Transmission Company (FGT) tendered for filing to become part of its FERC Gas Tariff, Third Revised Volume No. 1 (Tariff), effective May 1, 1999, the following tariff sheets:

Thirty-Fourth Revised Sheet No. 8A
Twenty-Fifth Revised Sheet No. 8A.01
Twenty-Sixth Revised Sheet No. 8A.02
Thirtieth Revised Sheet No. 8B
Twenty-Third Revised Sheet No. 8B.01

FGT states that it filed to establish a Base Fuel Reimbursement Charge Percentage (Base FRCP) of 2.76% for the six-month Summer Period beginning April 1, 1999 in Docket Nos. TM99–4–34–000 and –001 filed on February 25, 1999 and March 5, 1999, respectively. On March 17, 1999, prior to the Commission's approval of the Base FRCP, FGT Submitted a flex adjustment of <0.26%> to be effective April 1, 1999 in Docket No. TM99–5–34–000. The Base FRCP of 2.76% was accepted by Commission letter order issued March 29, 1999, and the flex adjustment was subsequently accepted on April 9, 1999, resulting in an Effective Fuel Reimbursement Charge Percentage of 2.50% effective April 1, 1999. In the instant filing, FGT is revising its flex adjustment from <0.26%> to 0.24% to be effective May 1, 1999, which results in an Effective Fule Reimbursement Charge Percentage of 3.00% when combined with the Base FRCP of 2.76%.

FGT states that the tariff sheets listed above are being filed pursuant to Section 27A.2.b of he General Terms and Conditions of FGT's Tariff, which provides for flex adjustments to the Base FRCP. Pursuant to the terms of Section 27A.2.b, a flex adjustment shall become effective without prior FERC approval provided that such flex adjustment does not exceed 0.50% from the Base FRCP, is effective at the beginning of a month, is posted on FGT's EBB at least five working days prior to the nomination deadline, and is filed no more than sixty and at least seven days before the proposed effective date. The instant filing comports with these provisions and FGT has posted notice of the flex adjustment prior to the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11089 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–336–000]

Mid Louisiana Gas Company; Notice of Application

April 28, 1999.

Take notice that on April 23, 1999, Mid Louisiana Gas Company (Mid Louisiana), 1100 Louisiana, Suite 2950, Houston, Texas 77002, filed in Docket No. CP99–336–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by sale to Midcoast Gas Services, Inc., certain compression facilities described as one Chicago Pheumatic 6FE065 750 Hp unit which is located at Mid Louisiana's DeSiard compressor station in Ouachita Parish, Louisiana, all as more fully set forth in the application on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mid Louisiana Gas Company to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11085 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–344–000]

Reliant Energy Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 28, 1999.

Take notice that on April 26, 1999, Reliant Energy Gas Transmission Corporation Applicant), 1111 Louisiana, Houston, Texas 77002–5231, filed in Docket No. CP99–344–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for approval to construct and operate certain facilities located in Pope County, Arkansas, under Applicant's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7(c) of the Natural Gas Act (NGA), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Applicant specifically proposes to construct and operate a two-inch delivery tap and first-cut regulator to serve Arkla (Arkla), a division of Reliant Energy, Incorporated, on Applicant's Line B. Applicant states that the total volumes of natural gas to be delivered to the proposed tap are 85 Dth annually and 1 Dth on a peak day. Applicant asserts that the facilities proposed herein will be constructed at an estimated cost of $1,833 and that Arkla will reimburse Applicant the construction costs.

Any person or the Commission's Staff may, within 45 days of the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214), a motion to intervene and pursuant to Section 157.205 of the regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefor, the proposed activities shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11086 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CO99–320–000]

Sumas Energy 2, Inc.; Notice of Application for Section 3 Authorization and Request for a Presidential Permit

April 28, 1999.

Take notice that on April 15, 1999, Sumas Energy 2, Inc. (SE2), 335 Parkplace, Suite 110, Kirkland, Washington 98033, filed an application pursuant to Section 3 of the Natural Gas Act, Subpart B of Part 153 of the Commission's regulations, and Executive Order Nos. 10485 and 12038. SE2 seeks a Presidential Permit and Section 3 authority to construct, operate and maintain its own border crossing and pipeline facilities to import gas from Canada, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Specifically, SE2 intends to construct, own, and operate approximately 4.5 miles of 12-inch-diameter pipeline near the international boundary between the United States and Canada near Sumas, Washington. The proposed pipeline will transport gas to a planned 720 Megawatt nominal electrical generating station to be located in Sumas, Washington. The proposed pipeline and the jurisdictional border crossing, facilities will be connected with the pipeline facilities of Westcoast Energy, Inc. at the U.S./Canada border and will have a design capacity to import up to 140,000 Mcf per day. SE2 will neither offer nor provide service to the public. SE2's proposed pipeline will transport gas only to its facilities.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 19, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10. All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for SE2 to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–11082 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–013]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

April 28, 1999.

Take notice that on April 22, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing a Negotiated Rate Arrangement. Tennessee requests that the Commission approve the Negotiated Rate Arrangement effective May 1, 1999.

Tennessee states that the filed Negotiated Rate Arrangement reflects a negotiated rate between Tennessee and New Jersey Natural Gas Company (New Jersey) for transportation under Rate Schedule FT–A to be effective May 1, 1999 through January 31, 2003.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to

be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11087 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. SA99–15–000]

Vidor Pipeline Company; Notice of Petition For Adjustment

April 28, 1999.

Take notice that on March 5, 1999, Vidor Pipeline Company (VPC) filed pursuant to Section 502(c) of the Natural Gas Policy Act of 1978 (NGPA), a petition for adjustment under Section 285.123(b)(1)(ii) of the Commission's Regulations to permit VPC to use its tariff on file with the Railroad Commission of Texas (TRC), for services performed pursuant to NGPA Section 311.

In support of its petition, VPC states that it is an intrastate pipeline providing transportation service within the State of Texas, and is a gas utility subject to the jurisdiction of the TRC. VPC states that it will in the future perform transportation services pursuant to NGPA Section 311(a)(2) on behalf of interstate pipeline companies and/or local distribution companies served by interstate pipeline companies. VPC states its system will soon be connected to the interstate facilities of Transcontinental Gas Pipe Line Corporation.

VPC requests an adjustment from 18 CFR Part 284(C) to permit VPC to base its rates for Section 311(a) services on the rates contained in its tariff for Hess Energy Services Company, LLC filed with the TRC. VPC believes the interstate transportation service performed on behalf of Hess Energy Services Company, LLC can be viewed as "comparable" to the services contemplated under Section 311.

The regulations applicable to this proceeding are found in Subpart K of the Commission's Rules of Practice and Procedure. Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with Sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission within 15 days after publication of this notice in the Federal Register. The petition for adjustment is on file with the Commission and is available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11088 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of OASIS How Working Group Meeting

April 28, 1999.

Take notice that on May 24, 1999, from 8:00 AM to 5:00 PM, and on May 25, 1999, from 8:00 AM to 12:00 noon, the OASIS How Working Group (How Group) will conduct its monthly meeting at the Commission's offices at 888 First Street, N.E., Room 3M–2A, Washington, D.C. 20426. The How Group is a voluntary industry group with a diverse membership that has made recommendations to the Commission on the Open Access Same-time Information System (OASIS) and related matters. It is expected that the How Group will discuss OASIS-related issues at the meetings. The meetings will be open to interested participants and the public.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11081 Filed 5–3–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6335–6]

Peer Review Workshop on Guidance for Conducting Health Risk Assessment of Chemical Mixtures

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The EPA Risk Assessment Forum (Forum) is announcing a peer review workshop convened by Eastern Research Group, Inc., an EPA contractor, for scientific peer review of the EPA draft document Guidance for Conducting Health Risk Assessment of Chemical Mixtures. The workshop will be held in Cincinnati, Ohio, and will be open to members of the public as observers. The peer review, to be conducted by scientists from outside EPA, is being organized to review the procedures and related issues presented in the document Guidance for Conducting Health Risk Assessment of Chemical Mixtures. The Forum Technical Panel will consider the opinions of experts outside the Agency in finalizing the document.

DATES: The workshop will begin on Thursday, May 20, 1999 at 9:00 a.m. and end on Friday, May 21, 1999 at 4:00 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the U.S. Environmental Protection Agency (EPA) Briedenbach Research Center, 26 West Martin Luther King Drive, Cincinnati, Ohio 45268. Since seating capacity is limited, please contact Eastern Research Group, Inc., Tel.: (781) 674–7374, by May 14, 1999 to attend the workshop as an observer.

FOR FURTHER INFORMATION CONTACT: For technical inquires, contact Dr. Richard Hertzberg, U.S. EPA Region 4, 10th Floor WMD, 61 Forsyth Street, S.W., Atlanta, Georgia 30303–3104. Tel.: (404)562–8663. The document will be Internet-accessible from the Risk Assessment Forum publications page, at http://www.epa.gov/ncea/raf/rafpub.htm. Inquiries concerning the workshop should be directed to Eastern Research Group, Inc.

SUPPLEMENTARY INFORMATION: To address concerns over health risks from multichemical exposures, the U.S. EPA issued Guidelines for Health Risk from Exposure to Chemical Mixtures in 1986 (U.S. EPA, 1986). Those Guidelines described broad concepts related to mixtures exposure and toxicity and included few specific procedures. In 1989, the U.S. EPA published guidance for the Superfund program on hazardous waste that gave practical steps for conducting a mixtures risk assessment (U.S. EPA, 1989). Also in 1989, the U.S. EPA published the revised document on the use of Toxicity Equivalence Factors for characterizing health risks of the class of chemicals including the dibenzo-dioxins and dibenzofurans. In 1990, the U.S. EPA published a Technical Support Document to provide more detailed information on toxicity of whole mixtures and on toxicologic interactions (e.g., synergism) between chemicals in a binary (two-chemical) mixture (U.S. EPA, 1990). The concept of toxicologic similarity was also discussed.

This guidance document, Guidance for Conducting Health Risk Assessment of Chemical Mixtures, represents a supplement to the original Guidelines of 1986 and is intended to reflect the evolutionary scientific development in the area of chemical mixtures risk assessment. Consequently, many of the former discussions have been reiterated. New guidance has been provided that gives more specific details on the nature of the desired information and the procedures to use in analyzing the data. This supplement to the earlier guidances is organized according to the type of data available to the risk assessor, ranging from data rich to data poor situations. Procedures are described for assessment using data on the mixture of concern, data on a toxicologically related mixture, as well as data on the mixture component chemicals. The state of science varies dramatically for these three approaches. No single approach is recommended in this supplementary guidance. Instead, guidance is given for the use of several approaches depending on the nature and quality of the data. Although several of the procedures described in the guidance have not yet been applied in actual health risk assessments, their use and the generation of data to support their use is encouraged, along with research on new procedures to improve or replace those discussed. As new information relevant to health risk from exposure to chemical mixtures becomes available, additional guidance documents will be published. Following the external peer review, reviewers' comments will be addressed and the revised guidance will undergo Risk Assessment Forum final review.

Dated: April 26, 1999.

William H. Farland,

Director, National Center for Environmental Assessment.

[FR Doc. 99–11167 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6335–1]

Notice of Availability of Topical Scientific Reports for an Integrated Assessment of the Causes and Consequences of Hypoxia in the Gulf of Mexico

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability and request for public comment.

SUMMARY: The Environmental Protection Agency (EPA) in coordination with National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce, invite public comments on six topical scientific reports requested by the National Science and Technology Council's Committee on Environment and Natural Resources (CENR) for an assessment of the causes and consequences of hypoxia in the Gulf of Mexico as required by section 604(a) of Public Law 105–383. The six topic papers will be used by the CENR Gulf of Mexico Hypoxia Working Group to prepare an Integrated Assessment which will provide ecological and economic analysis of various options for reducing nutrient loads carried by the Mississippi River to the Gulf of Mexico. This Integrated Assessment will be delivered to the President, Congress and the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force.

DATES: Comments must be received by August 2, 1999. All comments received after the formal comment period will be reviewed by the Gulf of Mexico Hypoxia Working Group and delivered to the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force for their consideration along with the final Integrated Assessment.

ADDRESSES: Comments should be submitted to: Gulf of Mexico Hypoxia Working Group National Centers for Coastal Ocean Science, WS 13446 SSMC4, 1305 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Mr. John Field, National Ocean Service, National Centers for Coastal Ocean Science, WS 13446 SSMC4, 1305 East-West Highway, Silver Spring, MD 20910, telephone 301–713–3060 x135, Internet John.Field@noaa.gov; or Dr. Mary Belefski, U.S. EPA, Assessment and Watershed Protection Division (AWPD), 401 M Street, S.W. (4503F), Washington, D.C. 20460, telephone (202) 260–7061; Internet: belefski.mary@epa.gov.

SUPPLEMENTARY INFORMATION:

Purpose

The Environmental Protection Agency leads the Mississippi River/Gulf of Mexico Watershed Nutrient Task Force consisting of Federal, State, and Tribal members. The purpose of this group is to coordinate and support nutrient management and hypoxia related activities in the Mississippi River and Gulf of Mexico watersheds.

Status

These reports will provide the basis for the formulation of an Integrated Assessment of hypoxia in the northern Gulf of Mexico, as required in section 604(a) of Public Law 105–383. This law requires the assessment to consider the distribution, dynamics, and causes; ecological and economic consequences; sources and loads of nutrients transported by the Mississippi River to the Gulf of Mexico; effects of reducing nutrient loads; methods for reducing nutrient loads; and the social and economic costs and benefits of such methods. This assessment will be delivered to the President and Congress and will subsequently provide the basis for the Action Plan required by section 604(b) of Public Law 105–383.

Each of the reports has undergone extensive peer review by independent scientific experts. These reports, along with the public comment on them, will be considered in developing the Integrated Assessment and, subsequently, the Action Plan.

The six reports are entitled:

TOPIC 1—Characterization of hypoxia. This report describes the seasonal, interannual, and long-term variation of hypoxia in the northern Gulf of Mexico, and its relationship to nutrient loadings. It also documents the relative roles of natural and human-induced factors in determining the size and duration of the hypoxic zone.

TOPIC 2—Ecological and economic consequences of hypoxia. This report presents an evaluation of the ecological and economic consequences of nutrient loading, including impacts on Gulf of Mexico fisheries and the regional and national economy.

TOPIC 3—Flux and sources of nutrients in the Mississippi-Atchafalaya River Basin. This report identifies the sources of nutrients within the Mississippi/Atchafalaya system and within the Gulf of Mexico with two distinct components, first, the geographic location of the most significant nutrient additions, and second, the relative importance of specific human activities in contributing to these loads.

TOPIC 4—Effects of reducing nutrient loads to surface waters within the Mississippi River basin and Gulf of Mexico. This report estimates the effects of nutrient source reductions in the Mississippi-Atchafalaya Basin on water quality in these waters and on primary productivity and hypoxia in the Gulf of Mexico.

TOPIC 5—Reducing nutrient loads, especially nitrate-nitrogen, to surface water, groundwater, and the Gulf of

Mexico. This report identifies and evaluates methods to reduce nutrient loads to surface water, ground water, and the Gulf of Mexico.

TOPIC 6—Evaluation of economic costs and benefits of methods for reducing nutrient loads to the Gulf of Mexico. In addition to evaluating the social and economic costs and benefits of the methods identified in topic 5, this analysis includes an assessment of various incentive programs and any anticipated fiscal benefits generated for those attempting to reduce sources.

The reports may be reached via either the EPA or NOS websites: at <http://www.epa.gov/msbasin/>; <http://www.nos.noaa.gov/Products/pubs_online.html>; or contact those listed above for information on how to obtain the reports.

Dated: April 29, 1999

Robert Wayland,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 99–11165 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6335–2]

Notice of Proposed Purchaser Agreement Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; request for public comment.

SUMMARY: In accordance with the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986 ("CERCLA"), 42 U.S.C. 9601–9675, notice is hereby given that a proposed purchaser agreement ("Purchaser Agreement") associated with the McAdoo Associates Superfund Site, Blaine Street Location in the Borough of McAdoo, Schuylkill County, Pennsylvania was executed by the Environmental Protection Agency and the Department of Justice and is now subject to public comment, after which the United States may modify or withdraw its consent if comments received disclose facts or considerations which indicate that the Purchaser Agreement is inappropriate, improper, or inadequate. The Purchaser Agreement would resolve certain potential EPA claims under sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, against Albert P. Mertz, More Mobility Inc. and Mobility Distributing, Inc. ("Purchasers"). The settlement would require the Purchasers to, among other things, pay $500.00 within thirty (30) days of the effective date of the Purchaser Agreement to the EPA Hazardous Substances Superfund and provide access to EPA and the Commonwealth of Pennsylvania and all other persons performing response actions under EPA or Commonwealth of Pennsylvania oversight.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed Purchaser Agreement. The Agency's response to any comments received will be available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

DATES: Comments must be submitted on or before June 3, 1999.

AVAILABILITY: The proposed Purchaser Agreement and additional background information relating to the proposed Purchaser Agreement are available for public inspection at the U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103. A copy of the proposed Purchaser Agreement may be obtained from Suzanne Canning, U.S. Environmental Protection Agency, Regional Docket Clerk (3RC00), 1650 Arch Street, Philadelphia, PA 19103. Comments should reference the "McAdoo Associates Superfund Site, Blaine Street Location Proposed Purchaser Agreement" and "EPA Docket No. III–98–080–DC," and should be forwarded to Suzanne Canning at the above address.

FOR FURTHER INFORMATION CONTACT: Lydia Isales (3RC00), Sr. Assistant Regional Counsel, U.S. Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103, Phone: (215) 814–2648.

Dated: April 21, 1999.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 99–11166 Filed 5–3–99; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

Submission for OMB Review; Comment Request Entitled Center of Excellence for Information Technology (CEIT)

AGENCY: Office of Information Technology, GSA.

ACTION: Notice of request for approval of a new information collection entitled Center of Excellence for Information Technology (CEIT).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Office of Acquisition Policy has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Center of Excellence for Information Technology (CEIT).

DATES: Comment Due Date: June 3, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to Marjorie Ashby, General Services Administration (MVP), 1800 F Street NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Pat Smith, Office of Information Technology, (202) 501–0837.

SUPPLEMENTARY INFORMATION:

A. Purpose

The GSA is requesting the Office of Management and Budget to approve a new information collection concerning Center of Excellence for Information Technology (CEIT). The Center of Excellence for Information Technology (CEIT) will serve as a clearinghouse for best practices in information technology applications in both the public and private sectors. Current plans are to partner with leading Information Technology (IT) industry companies to establish a Center that provides innovate demonstrations of technology at work. Initial IT applications featured in the CEIT will focus on the use of web-enabled technologies to perform administrative functions and to deliver interagency transaction-based services through an Access America Seniors website.

B. Annual Reporting Burden

Respondents: 400; annual responses: 400; average hours per response: .15; burden hours: 60.

COPY OF PROPOSAL: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street NW, Washington, DC 20405, or by telephoning (202) 501–3822, or by faxing your request to (202) 501–3341.

Dated: April 27, 1999.

Ida M. Ustad,

Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 99–11109 Filed 5–3–99; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Privacy and Confidentiality.

Time and Date: 9:00 a.m.-5:00 p.m., May 19, 1999; 9:00 a.m.-5:00 p.m., May 20, 1990.

Place: Room 405A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, D.C. 20201.

Status: Open.

Purpose: At this meeting, the Subcommittee will hear panel presentations on selected confidentiality issues. On the first day, a panel discussion is planned on the flow of health information between employers and insurers and related issues of data access and confidentiality. A second panel of privacy advocates will discuss their views on these topics. On the second day, the Subcommittee will hear a panel discussion of pharmacy benefit management firms and their information practices.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meeting.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roster of committee members may be obtained from Gail Horlick, M.S.W., J.D., Lead Staff Person for the NCVHS Subcommittee on Privacy and Confidentiality, Office of Research and Demonstrations, Health Care Financing Administration, MS–C4–13–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, telephone (410)–786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: *http://aspe.os.dhhs.gov/ncvhs*, where an agenda for the meeting will be posted when available.

Dated: April 28, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–11123 Filed 5–3–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Findings of Scientific Misconduct

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Office of Research Integrity (ORI) has made a final finding of scientific misconduct in the following case:

Chang-Fen Huang, Ph.D., State University of New York at Stony Brook (SUNY–SB): Based on an investigation conducted by SUNY–SB dated December 18, 1997, ORI finds that Dr. Huang, former graduate student, Department of Biochemistry, SUNY–SB, engaged in scientific misconduct in the reporting and conducting of research supported by a grant from the National Institute of Neurological Disorders and Stroke (NINDS), National Institutes of Health (NIH).

Specifically, ORI finds that:

(1) Dr. Huang falsely mislabeled and relabeled six autoradiographs of Northern blots (ARG) that she had obtained from earlier unrelated experiments to make them appear to have come from several different and separate experiments.

(2) For one of the sets noted in (1) above, Dr. Huang falsified and misrepresented portions of the ARG in panel B of figure 1, in C.F. Huang et al. "Depolarization-transcription signals in skeletal muscle use calcium flux through L channels, but bypass the sarcoplasmic reticulum." Neuron 13:167–177, 1994. Figure 1B purported to show the effect of electrical activity on the expression of genes for subunits of the acetyl choline receptor, but actually used data derived from a separate and unrelated experiment showing the effect of phorbol esters on the expression of the myogenin gene that had been previously reported in an unrelated publication. The publication was retracted at Neuron 13(1):1294, 1998.

(3) For one of the sets noted in (1) above, Dr. Huang falsified and misrepresented Figure VII/7, an aggregate ARG, on page 159 of her dissertation, "Studies of the Signaling Pathway Coupling Membrane Depolarization and AchR Gene Inactivation in Chick Skeletal Muscle," December 1993. The figure reported the effect of a set of calcium-active agents on the sarcoplasmic reticulum that were different from those studied for the original ARG.

Dr. Huang has accepted the ORI finding and has entered into a Voluntary Exclusion Agreement with ORI in which she has voluntarily agreed, for the three (3) year period beginning April 20, 1999:

(1) To exclude herself from any contracting or subcontracting with any agency of the United States Government and from eligibility for, or involvement in, nonprocurement transactions (e.g., grants and cooperative agreements) of the United States Government as defined in 45 C.F.R. Part 76 (Debarment Regulations); and

(2) to exclude herself from serving in any advisory capacity to the Public Health Service (PHS), including but not limited to service on any PHS advisory committee, board, and/or peer review committee, or as a consultant.

FOR FURTHER INFORMATION CONTACT: Acting Director, Division of Research Investigations, Office of Research Integrity 5515 Security Lane, Suite 700, Rockville, MD 20852, (301) 443–5330.

Chris B. Pascal,

Acting Director, Office of Research Integrity.

[FR Doc. 99–11120 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Nomination of Topics for Evidence-based Practice Centers (EPCs)

The Agency for Health Care Policy and Research (AHCPR) invites a third round of nominations of topics for evidence reports and technology assessments relating to the prevention, diagnosis, treatment and management of common diseases and clinical conditions. AHCPR's first request for topic nominations was published in the **Federal Register** on December 23, 1996. AHCPR's second request was published in the **Federal Register** on November 28, 1997.

With this third round of nominations, AHCPR is expanding the range of topics that may be submitted. In addition to nominations of topics for assessments and evidence reports on specific heath care technologies and medical

procedures, including alternative or complementary therapies, AHCPR is, for the first time, inviting nominations of topics for assessments and evidence reports relating to organization and financing of health care. Section A of this announcement describes the nomination process and selection criteria for clinical topics. Section B of this announcement describes the nomination process and selection criteria for organizational and financial topics.

AHCPR serves as a science partner with private-sector and other public organizations in their efforts to improve the quality, effectiveness, and appropriateness of health care delivery in the United States, and to speed the translation of evidence-based research findings into improved health care. AHCPR awards task order contracts to its Evidence-based Practice Centers (EPCs) to undertake scientific analyses and evidence syntheses on high-priority topics. The EPCs produce science syntheses—evidence reports and technology assessments—that provide to public and private organizations the foundation for developing and implementing their own practice guidelines, performance measures, and other strategies to improve the quality of health care and make decisions related to the effectiveness or appropriateness of specific health care technologies.

As the body of scientific studies related to the organization and financing of health care grows, evidence reports and scientific syntheses of these studies can provide health system organizations with a scientific foundation for developing system-wide policies and practices. These reports might, for example, address and evaluate innovations in the delivery of care, the organization of health care systems, or provide payment mechanisms.

As a result of nominations received in response to AHCPR's December 1996 **Federal Register** notice, EPCs developed evidence reports or technology assessments on: (1) testosterone suppression treatment of prostatic cancer; (2) evaluation of cervical cytology; (3) diagnosis and treatment of dysphagia/swallowing problems in the elderly; (4) evaluation and treatment of new onset of atrial fibrillation in the elderly; (5) diagnosis of sleep apnea; (6) treatment of attention deficit and hyperactivity disorder; (7) diagnosis and treatment of acute sinusitis; (8) rehabilitation of persons with traumatic brain injury; (9) prevention and management of urinary tract infections in paralyzed persons; (10) pharmacotherapy for alcohol dependence; (11) management of stable angina; and, (12) treatment of depression with new drugs.

As a result of nominations received in response to the November 1997 **Federal Register** notice, the EPCs are developing evidence reports or technology assessments on: (1) use of erythropoietin in oncology and hematology; (2) management of chronic obstructive pulmonary disease; (3) criteria to determine disability for patients with chronic renal disease; (4) treatment of acne; (5) management of anesthesia during cataract surgery; (6) criteria for weaning from mechanical ventilation; (7) management of cancer pain; (8) evaluation of technologies for identifying acute cardiac ischemia in emergency departments; (9) management of hypertension during pregnancy; (10) management of acute otitis media; (11) management of pre-term labor; (12) prevention of venous thromboembolism after injury; (13) management of unstable angina; (14) criteria for referral of patients with epilepsy; and, (15) alternative and complementary medicine: use of garlic in prevention of cardiovascular disease and cancer; and use of silybum marianum in treatment of liver disease and cirrhosis.

Background

Under Title IX of the Public Health Service Act, AHCPR is charged with enhancing the quality, appropriateness, and effectiveness of health care services and access to such services. AHCPR accomplishes these goals through scientific research and through promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and promotion of improvements in the organization, financing, and delivery of health care services (42 U.S.C. 299–299c–6 and 1320b–12).

Evidence-based Practice Centers (EPCs)

The EPCs prepare evidence reports and technology assessments on topics for which there is significant demand for information by health care providers, insurers, purchasers, health-related societies, patient advocacy groups, and consumer organizations. Such topics may include the prevention, diagnosis and/or treatment of particular diseases or health conditions including, where appropriate, the use of alternative/complementary therapies, as well as the appropriate use of more commonly provided services, procedures, or technologies. Topics also may include issues related to the organization and financing of care. AHCPR widely disseminates the evidence reports and technology assessments produced by the EPCs, both electronically and in print.

The AHCPR will review topic nominations and supporting information and determine final topics, seeking additional information as appropriate. Nominators of selected topics are expected to serve as resources to EPCs as they develop evidence reports and technology assessments. Nominators may also serve as peer reviewers of draft evidence reports and assessments.

The processes that AHCPR employs to select topics nominated for analyses by the EPCs are described below. The topics selected will complement AHCPR's efforts to build a balanced portfolio of evidence reports. Section A addresses AHCPR's nomination process and selection criteria for clinical topics. Section B addresses AHCPR's nomination process and selection criteria for organization and financing topics.

Section A: Clinical Topics

Nomination Process for Clinical Topics

Nominations of clinical topics for AHCPR evidence reports and technology assessments should focus on specific aspects of prevention, diagnosis, treatment and/or management of a particular condition, or on an individual procedure, treatment, or technology. Potential topics should be carefully defined and circumscribed so that within 12 months databases can be searched, the evidence reviewed, supplemental analyses performed, draft reports and assessments circulated for external peer review, and final evidence reports or technology assessments produced. Topics selected will not duplicate current and widely available clinical practice guidelines or technology assessments, unless new evidence is available that suggests the need for revisions or updates.

For each topic, nominators should provide a rationale and supporting evidence on the importance and clinical relevance of the topic. Nominators also should indicate how the evidence report or technology assessment will be utilized by their professional practices or organizations. Nomination information should include:

- Defined condition, target population, and three to five specific questions to be answered.
- Incidence or prevalence, and indication of the disease burden (e.g., mortality, morbidity, functional impairment, diminution of quality of life) in the U.S. general population or in subpopulations (e.g., Medicare or

Medicaid populations, minorities, women or children). For prevalence, the number of cases in the U.S. and the number affected per 1,000 persons in the general U.S. population should be provided. For incidence, the number of new cases per 100,000 a year should be provided.

- Costs associated with the clinical condition, procedure, treatment, or technology, including the number of people needing care, high unit cost of care, high indirect costs, or average reimbursed amounts for diagnostic and therapeutic interventions (e.g., average U.S. costs and number of persons who receive care for diagnosis or treatment in a year, citing ICD9–CM and CPT codes if possible).
- Potential of the evidence report or technology assessment to decrease health care costs or to improve health status or clinical outcomes.
- Availability of scientific data and bibliographies of studies on the topic.
- Significant variations in practice patterns and/or results.
- Indication by nominator's organization and/or relevant professional organizations of intended use of the report or assessment (e.g., rapid use of the report or assessment to develop or update clinical practice guidelines, educational programs, and other quality improvement tools, or payment or coverage policies about a particular condition).

Selection Criteria for Clinical Topics

Selection criteria for AHCPR evidence report and technology assessment topics include: (1) High incidence or prevalence in the general population or in subpopulations, including racial and ethnic minorities, as well as pediatric and elderly populations; (2) significance for the needs of the Medicare, Medicaid and other Federal health programs; (3) high costs associated with a condition, procedure, treatment, or technology, whether due to the number of people needing care, high unit cost of care, or high indirect costs; (4) controversy or uncertainty about the effectiveness or relative effectiveness of available clinical strategies or technologies; (5) potential to inform and improve patient or provider decisionmaking; (6) potential to reduce clinically significant variations in the prevention, diagnosis, treatment, or clinical management of a disease or condition, or in the use of a procedure or technology, or in the health outcomes achieved; (7) availability of scientific data to support the study or analysis of the topic; (8) potential opportunities for rapid implementation; (9) complementarity to other evidence reports to support AHCPR's effort to build a balanced portfolio of evidence reports and technology assessments; and (10) indication that the nominating organization and/or relevant professional organizations would use the report or assessment on the topic nominated to develop or update a clinical practice guideline, other quality improvement tools, or coverage decision policies.

Section B: Organization and Financing Topics

Nomination Process for Organization and Financing Topics

Nominations of organization and financing topics for AHCPR research syntheses and evidence reports should focus on specific aspects of health care organization and finance, particularly with regard to their impact on health care outcomes and quality. Potential topics should be carefully defined and circumscribed so that within 12 months databases can be searched, the evidence reviewed, supplemental analyses performed, draft reports circulated for external peer review, and final evidence reports produced. Topics selected will not duplicate current and widely available research syntheses, unless new evidence is available that suggests the need for revisions or updates.

For each topic, nominators should provide a rationale and supporting evidence on the importance and relevance of the topic. Nominators also should indicate how the evidence report could be used by public and private decision-makers to improve clinical care delivery and health outcomes. Nomination information should include:

- Defined organizational/financial arrangement or structure impacting quality, outcomes, cost, access or use, along with three to five specific questions to be answered.
- If appropriate, description of how the organizational or financial arrangement or structure is particularly relevant to delivery of care for specific vulnerable populations (e.g., children, persons with chronic disease) or certain communities (e.g., rural areas).
- Costs potentially affected by the organizational or financial arrangement, to the extent they can be quantified.
- Potential of the evidence report to decrease health care costs or to improve health status or outcomes.
- Availability of scientific data and bibliographies of studies on the topic.
- References to significant variation in delivery and financing patterns and/or results, and related controversies.
- Indication of why there is controversy or the need to evaluate outcomes and impact of the organizational or financing intervention.
- Indication by nominator's organization of intended use of an evidence report on this topic.

Selection Criteria for Organization and Financing Topics

Topics for AHCPR evidence reports related to the organization and financing of care that will be of greatest interest are those that have one or more of the following characteristics: (1) Uncertainty about the impact of the subject organizational or financing strategy; (2) potential for the organizational or financing strategy or the proposed research synthesis to significantly affect aggregate health care costs, outcomes, or quality; (3) policy-relevant to Medicare, Medicaid, and/or other Federal and State health programs; (4) relevant to vulnerable populations, including racial and ethnic minorities, and particular communities, such as rural areas; (5) available scientific data to support the study or analysis of the topic; and, (6) potential for rapid incorporation into managerial or policy decisionmaking.

Examples of topics related to the organization and financing of care include: (1) Use of formularies by hospitals and MCO's; (2) impact of pre-hospital care for coronary disease; (3) impact of gatekeeper systems; (4) effect of stepdown units on quality and cost of care; (5) effect of risk-sharing payment schemes for physicians; (6) effect of co-payment and deductibles on care sought and received.

Materials Submission and Deadline

Nominations may be in the form of a letter. To be considered for the next group of evidence reports and technology assessments, topic nominations should be submitted by July 6, 1999 to: Douglas B. Kamerow, M.D., M.P.H., Director, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852.

AHCPR encourages topic nominations from professional societies and organizations comprised of members of minority populations, as well as nomination of topics that have significant impact on the health status of women, children, ethnic and racial populations.

In addition to publication of requests for topic nominations in the **Federal Register**, AHCPR also accepts nominations on an ongoing basis at the above address for EPC evidence reports and technology assessments.

All responses will be available for public inspection at the Center for Practice and Technology Assessment, telephone (301) 594–4015, weekdays between 8:30 a.m. and 5 p.m. AHCPR will not reply to individual responses, but will consider all nominations in selecting topics. Topics selected will be announced, from time to time, in the **Federal Register** and AHCPR press releases.

For Additional Information

Additional information about topic nominations can be obtained by contacting: Jacqueline Besteman, EPC Project Officer, Center for Practice and Technology Assessment, Agency for Health Care Policy and Research, 6010 Executive Boulevard, Suite 300, Rockville, Maryland 20852; telephone (301) 594–4017; E-mail address: jbestema@ahcpr.gov.

Dated: April 27, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–11127 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Announcement Number 99049]

National Sexual Violence Resource Center (NSVRC); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces that grant applications are being accepted to establish a National Sexual Violence Resource Center (NSVRC) for fiscal year (FY) 1999. This program addresses the priority area of Violent and Abusive Behavior.

The purposes of the program are to:

1. Strengthen the existing support system serving sexual assault survivors;
2. Provide leadership in the prevention of sexual violence;
3. Provide comprehensive information and resources, policy analysis and development; and
4. Provide technical assistance and professional consultation to sexual assault programs, national, State and local organizations, community volunteers, and the media designed to enhance community response to and prevention of sexual violence.

B. Eligible Applicants

Applications may be submitted by National sexual assault coalitions and State sexual assault coalitions. National sexual assault coalitions are membership organizations of state sexual assault coalitions which work to end sexual violence through public awareness, education, and public policy advocacy. State sexual assault coalitions are State level organizations that represent and are supported by the majority of the rape crisis centers and sexual assault programs in a given state. National and State coalitions both have a 501 (c) (3) designation and work with State and national systems (e.g. criminal justice, health, etc.) for sexual assault survivors.

Competition is limited to National and State sexual assault coalitions because:

1. The resource center will provide an infrastructure that supports the field of prevention of sexual violence that has been characterized by a lack of resources to adequately address the issue;
2. The resource center will provide immediate access to information and resources needed by people who work with women who are victims of violence;
3. The Senate appropriation committee encourages CDC to supplement state sexual assault coalitions' rape prevention and education efforts and to support state sexual assault coalitions focused on ending sexual violence; and
4. State sexual assault coalitions have a long history of providing victim services, educating students, training various groups including professionals and increasing public awareness of sexual violence.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $700,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about September 1, 1999 and will be made for a 12-month budget period within a project period of up to five (5) years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Applications with year 1 annual budgets that exceed $700,000 (total direct and indirect costs) will be determined as ineligible and returned to the applicant.

Use of Funds

a. Allowable Uses of Funds:

Funds may be used for planning, developing, implementing, and evaluating projects. Accordingly, funds can be used to support personnel, purchase furniture appropriate to the establishment of this center, and to purchase hardware and software required to implement the project. Applicants may enter into contractual agreements to purchase goods and services, or to support collaborative activities, but the applicant must retain proper stewardship over funds and responsibility for tasks associated with the project.

b. Prohibited Uses of Funds:

Funds for this project may not be used for construction, renovation, the lease of passenger vehicles, or supplanting current applicant expenditures.

D. Program Requirements

The applicant requirements:

1. Provide technical assistance and training to assist organizations, programs and communities to adapt available resources to meet local needs.
2. Establish and maintain (for public use) a central resource of materials that addresses a wide range of sexual violence issues.
3. Develop systems for providing an assortment of information relative to sexual violence prevention.
4. Establish and maintain a full working partnership with an academic institution, research institution, or a consultant with demonstrated scientific expertise in the area of sexual violence programs.
5. Establish and maintain a full working partnership with appropriate National/State Sexual Assault Coalitions.
6. Provide a full-time manager and other staff as appropriate.
7. Develop and implement a mechanism(s) for assessing the informational and data needs of the diverse populations working in the field of sexual violence prevention.
8. Provide a detailed evaluation plan that will document program process, effectiveness, impact, or outcomes.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 pages, excluding the abstract, budget justification, and attachments

(i.e., letters of support, data collections forms, resumes, etc.) All material must be typewritten, double-spaced, with type NO SMALLER THAN 12 CPI, on 8.5″ x 11″ paper, with at least 1″ margins, headings and footers, unbound, and printed on one side only. Do not include any pamphlets, spiral or bound materials.

Applicants must explain in detail how the proposal will accomplish the goals of this announcement within a project period not to exceed five years and must include the following sections:

1. Abstract

A one-page summary of the proposed National Sexual Violence Resource Center, outlining the goals and objectives, the working partners and collaborators, resources to be provided, the desired outcomes, and program evaluation plan.

2. Background and Need

a. The applicant should clearly describe the need for a National Sexual Violence Resource Center. This description should include the applicants' vision for this resource center, their understanding of, access to, and the exchange of information and resources, technical assistance and professional consultation to sexual assault programs, national, State, and local organizations, community volunteers, the media, geographically and culturally diverse communities, racial and ethnic communities, as well as those communities in which English is not the primary language to enhance community response to and prevention of sexual violence.

b. Include in this section the background and need for information regarding racial/ethnic, and cultural communities, people with disabilities, etc. who have experienced sexual violence.

3. Goals and Objectives

a. The goals and objectives should be specific, time-phased, measurable and achievable.

b. The goals and objectives should describe the program activities that are consistent with accomplishing the Center's goals and objectives, and specifically who among the core staff is responsible for doing what and when.

c. A detailed time line should be provided illustrating concurrent activities.

d. The applicant should clearly describe short term objectives (year 1)and long-term objectives (years 2 through 5) related to the establishment of the national sexual violence resource center.

4. Project Management and Staffing

a. The applicant should provide a description of the key staff, their qualifications and experience in the sexual violence field, and the role each person will play in designing, implementing, and assessing the NSVRC. The applicant must include a plan for continued contact with the field.

b. The applicant should clearly describe the proposed and or existing relationship of the working partnership with an academic, research institution, or consultant with documented scientific expertise.

c. The applicant should provide resumes or curriculum vitae of key staff, an organizational chart that shows the Center's proposed structure.

d. The applicant should demonstrate that the facilities and resources are sufficient to conduct the Center's activities.

5. Plan of Operation

a. The applicant should demonstrate the ability to identify, document and develop materials for specific program needs.

b. The applicant must demonstrate the ability to provide technical assistance, training, and consultation to improve program administration, service delivery, and to promote the utilization of resources and techniques for program implementation and evaluation.

c. The applicant must demonstrate the ability to develop, and disseminate proposed materials and identify additional areas of research needed to address issues relevant to sexual violence.

d. The applicant should clearly demonstrate a full working partnership with an academic institution, a research institution, or consultant capable of providing the organization with sexual violence prevention expertise.

e. The applicant must demonstrate the ability or experience to deliver highly individualized technical assistance which enables a user to solve a specific problem.

6. Evaluation Plan

a. The applicant should provide a detailed description of the proposed evaluation plan to document program progress and how the proposed plan will measure success in developing a national resource center. The evaluation plan should include progress in meeting program objectives.

b. The applicant should document staff availability, expertise, experience, and capacity to perform the evaluation.

c. The applicant should include a plan for reporting evaluation results and using evaluation information for programmatic decisions. Indicate willingness to participate in a process of continuous improvement which may require frequent reviews of progress and processes utilized, remediation of identified barriers, and adoption of modified methods and measures.

7. Collaboration

The applicant must show evidence of collaboration with National/State sexual assault coalitions. Include letters of support or memoranda of understanding that precisely state the nature of past and proposed collaboration and the specific contribution the collaborator intends to make to the Center should be fully described.

8. Proposed Budget

The applicant must provide a detailed proposed first-year budget and narrative justification. The budget should include cost for travel for 2 project staff to attend at least 2 meetings in Atlanta with CDC staff in the first year of the program. The budget request should be reasonable and consistent with the intended use of cooperative agreement funds.

F. Submission and Deadline

Submit one original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit.

On or before June 28, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

1. Deadline

Applications shall be considered as meeting the deadline if they are either:

a. Received at the above address on or before the deadline date; or

b. Sent on or before the deadline date, and received in time for orderly review and processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications

Applications which do not meet the criteria in F.1.a. or F.1.b. above, are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria (maximum 100 total Points):

1. Background and Need (10 Points)

The extent to which the applicant clearly describes the need for a National Sexual Violence Resource Center, demonstrates an understanding of, access to, and the exchange of information and resources, technical assistance and professional consultation to sexual assault programs, national, state, and local organizations, community volunteers, the media, racial ethnic and language minority communities to enhance community response to and prevention of sexual violence and its sequelae.

2. Goals and Objectives (15 Points)

a. The extent to which the applicant's goals are clearly documented and objectives are time-phased, specific, measurable, and achievable.

b. The extent to which the objectives demonstrate a results-oriented program with specific activities that are consistent with and appropriate to the stated outcome.

c. The quality and specificity of the applicant's proposed plan to establish and maintain a resource center for sexual violence.

d. The ability of the applicant to achieve the stated program objectives and for successfully operating the resource center.

e. The extent to which the applicant can meet the information needs identified by center staff, collaborators, and consumers.

f. The extent to which the proposed activities are realistic and meet the intended purposes of the funding, the description of the program components, the evidence of applicability to potential consumers, an explanation of the center's capacity for producing the desired outcomes.

g. The availability of the staff and facilities to carry out the described program plan.

3. Project Management and Staffing (20 Points)

a. The extent to which the project staff are clearly described, appropriately assigned, and have appropriate skills and experiences.

b. The extent to which the applicant has the capacity and facilities to maintain a national sexual violence resource center.

c. The extent to which the applicant provides details regarding the level of effort and allocation of time for each staff position.

4. Plan of Operation (20 Points)

a. The quality and specificity of the applicant's proposed plan to establish the center; the ability of the applicant to achieve stated program goals and objectives, and the extent to which the proposed activities are realistic and meet the intended purposes of the funding.

b. The extent to which the applicant documents a full working relationship with a academic, research institution, or consultant to provide scientific expertise around the synthesis of literature reviews, research findings and evaluation, and documented experience to draw conclusions from research findings.

c. The extent to which the academic institution or research institution staff, or consultant are clearly described, appropriately assigned, and have appropriate skills and experiences.

5. Evaluation Plan (20 Points)

a. The extent to which the applicant provides a detailed description of the methods to be used to evaluate program effectiveness, including what will be evaluated, data to be collected and analyzed, who will perform the evaluation and the time-frame.

b. The extent to which the applicant documents staff availability, expertise, and capacity to evaluate program activities and effectiveness.

6. Collaboration (15 Points)

a. The extent to which the applicant documents evidence of collaboration with organizations such as National/State sexual assault coalitions.

b. The extent to which the applicant documents experience in the management and delivery of resources through various mediums around sexual violence issues.

c. The applicants expertise and capacity to collaborate among a wide spectrum of individuals, representatives of local and State organizations, underserved racial and ethnic communities, and special populations.

7. Proposed Budget (Not scored)

The extent to which the budget is clearly explained, adequately justified, reasonable, sufficient for the proposed project activities, and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two (2) copies of

1. Progress reports (semi-annually).

2. Financial status report (FSR), no more than 90 days after the end of each budget period.

3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application package.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program announcement is authorized under Sections 301, 393 and 394 of the Public Health Service Act [42 U.S.C. sections 241, 280b–1a, and 280b–2], as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where to Obtain Additional Information

This and all other CDC Announcements may be found and downloaded from the CDC homepage. Internet address: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888-GRANTS4(1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of Interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Ricky Willis, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99049, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Mailstop E–13, Atlanta, GA 30341–4146, Telephone:(770) 488–2719, E-mail address: rqw0@cdc.gov.

For program technical assistance contact: Denise Johnson, Team Leader, or Joyce McCurdy, Acting Assistant Team Leader, Centers for Disease Control and Prevention, National Center

for Injury Prevention and Control, 4770 Buford Highway, NE, Mailstop K–60, Atlanta, GA 30341, Telephone:, (770) 488–4277 (Denise Johnson), (770) 488–4266 (Joyce McCurdy), E-mail addresses: dxj@cdc.gov (Denise Johnson), Jmm6@cdc.gov (Joyce McCurdy).

Dated: April 28, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC)

[FR Doc. 99–11098 Filed 5–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99117]

Prevention Research Using Genetic Information To Prevent Disease and Improve Health; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), Office of Genetics and Disease Prevention, in cooperation with the Office of Prevention Research, Office of the Director, announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Prevention Research Using Genetic Information to Prevent Disease and Improve Health.

This program addresses the "Healthy People 2000" priority areas of Maternal and Infant Health, Heart Disease and Stroke, Cancer, and Diabetes and Chronic Disabling Conditions.

The purpose of this program is to strengthen science for public health action, collaborate with healthcare partners for prevention, and promote healthy living at every stage of life and is consistent with the implementation of an agency-wide strategic plan for genetics and public health.

The program will provide funding for conducting population-based research to:

1. Assess how risk for disease and disability in well-defined populations is influenced by the interaction of human genetic variation with modifiable risk factors.

2. Ensure that genetic tests and services are incorporated in population-based interventions that promote health and prevent disease and disability.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $700,000 is available in FY 1999 to fund two awards. It is expected that the average award will be $350,000 to begin on or about September 30, 1999 for a 12-month budget period within a project period of up to 3 years. Funding estimates may vary and are subject to change.

The maximum funding level for any award for year one will not exceed $400,000 (including both direct and indirect costs). Applications that exceed the funding cap of $400,000 will be excluded from the competition and returned to the applicant. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Cooperative agreement funds will not be made available to support the provision of direct care, facility or capital outlay. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Programmatic Interests

Immediate programmatic interest is focused on research in two categories:

1. Epidemiologic research that assesses the interaction of modifiable risk factors (e.g., diet, chemical exposures, infections, lifestyle) with known genetic disease risk factors in well-defined populations, and demonstrates how this information can help target disease prevention efforts.

2. Prevention effectiveness research that demonstrates in well defined populations the effectiveness and safety of using genetic information to prevent disease, disability and death by identifying persons at risk and carrying out appropriate interventions.

For examples of research questions meeting these general criteria, see Addendum II (included in application kit).

Proposals for research in either category must address at least one of the five following disease groups, which represent some of the leading causes of mortality, morbidity, and disability in the United States, and which have identifiable genetic and environmental risk factors:

1. Cardiovascular disease.
2. Cancer.
3. Arthritis.
4. Diabetes.
5. Pediatric pulmonary disease (asthma, cystic fibrosis).

Proposals addressing genetic traits (e.g., hemochromatosis) that contribute to development of more than one of these diseases (e.g., cancer, diabetes, and arthritis) will also be considered.

Research studies proposed for either category must be community- or population-based, i.e, based on systematic samples of a population or on population-based registries. Proposals should seek to establish or strengthen collaborative efforts among public, private, and academic partners (e.g., state health departments, health maintenance organizations, and schools of public health) that can be sustained for subsequent research and program development. Proposals should also emphasize the potential applications of the research outcomes in guiding disease prevention program activities. An important component of such efforts is a commitment to training in the use of genetic information for public health and for developing community-based capacity for prevention program development.

E. Cooperative Activities

The recipient will be responsible for conducting the activities under 1., below, and CDC will be responsible for conducting activities under 2., below:

1. Recipient Activities

a. Develop a comprehensive protocol and plan for implementing either epidemiologic or prevention effectiveness research.

b. Establish procedures to maintain the rights and confidentiality of all study participants including the identification of applicable laws.

c. Disseminate results of research studies through paper and electronic publications and presentations.

d. Serve as a resource for professional and public information and education in use of genetic information for public health.

e. Develop collaboration among public, private, and academic partners

that can be sustained for subsequent research and program development (e.g., state health departments, health maintenance organizations, schools of public health)

f. Participate in meetings with CDC and other investigators and relevant public health officials.

2. CDC Activities

a. Provide up-to-date scientific information.

b. Provide liaison among grantees and collaborating CDC Centers.

c. Provide technical guidance in the development of study protocols, consent forms, and data collection forms.

d. Coordinate research activities among sites, when appropriate.

e. Convene meetings among collaborators to discuss preliminary findings and improve research outcomes.

F. Application Content

1. A description of all the project staff regardless of their funding source. The description should include title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of the salary to be paid by the cooperative agreement.

2. A table of contents showing the page location of relevant application contents.

3. A detailed budget for year one of the cooperative agreement.

4. Budget projections for subsequent years.

5. A biographical sketch for the Principal Investigator/Program Director and for all key personnel.

6. A description of the involvement of other entities that will relate to the proposed project, if applicable, including public, private, and academic partners. The description should include evidence of support and a clear statement of roles.

7. A description of the performance sites and capabilities.

8. A description of those activities conducted by the applicant related to, but not supported by the cooperative agreement.

9. A plan that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to the Purpose of the Announcement.

10. Specific, measurable, and time-framed objectives.

11. A detailed plan describing the methods by which the objectives will be achieved.

12. A comprehensive evaluation plan.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside review groups. To execute this option: on the original and five copies of the application (See Submission and Deadline), the applicant must use asterisks to indicate the individuals for whom salaries and fringe benefits are not shown; the subtotals must still be shown. In addition, the applicant must submit an additional copy of page four of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

G. Submission and Deadline

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions the Errata Instruction sheet for PHS 398). Forms are in the application Kit. On or before June 30, 1999, submit the application to:

Mattie Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #99117, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received at the above address on or before the deadline date; or

2. Sent on or before the deadline date and received in time for submission to review committee. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

H. Evaluation Criteria

Applications will be subjected to a preliminary evaluation (triage) by the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel: Prevention Research Using Genetic Information to Prevent Disease and Improve Health, Program Announcement #99117, to determine if the application is of sufficient technical and scientific merit to warrant further review. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

The primary review of all proposals will include:

1. The specific aims of the research project, i.e., the broad long-term objectives and the intended outcome of the specific research proposal in relation to the targeted areas described (see Programmatic Interests.)

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and the specific identification of the knowledge gaps in the use of genetic information in public health, which the proposal intends to address.

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research.

4. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

5. The extent to which the research findings will lead to identifying and targeting modifiable risk factors that interact with genetic factors in causing disease, or will demonstrate the prevention effectiveness of using genetic information to prevent disease.

6. The extent to which the evaluation plan will allow the measurement of progress toward the achievement of the stated objectives.

7. A principal investigator who has conducted, evaluated, and published genetics research in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

8. Qualifications and demonstrated experience on the applicant's project team in conducting relevant public health genetics studies and the appropriateness of personnel to accomplish the proposed activities.

9. Effective and well-defined working relationships within the performing organization and with other interested, public, private, and academic partners (as evidenced by letters detailing the nature and the extent of the involvement).

10. Adequacy of existing and proposed facilities and resources and the ability to carry out a research project on the use of genetics information in prevention research related to the specified disease groups (see Programmatic Interests).

11. Gender and Minority Issues—The extent of plans to adequately include both sexes and minorities and their subgroups (as appropriate with the

scientific goals of the project), and to ensure the recruitment and retention of human subjects.

12. Human Subjects—The quality of procedures for the protection of human subjects, and plans for documenting all procedures for compliance with applicable published regulations.

The secondary review will be conducted by a panel of Senior Federal Officials based on the ranked proposals to assure maximal impact and balance of proposed research. The factors to be considered will include:

1. The results of the primary review including the proposal's priority score as the primary factor in the selection process.
2. The match between the proposal and the program announcement and programmatic interests.
3. The relevance and balance of proposed research relative to CDC programs and priorities.
4. The significance of the proposed activities in relation to the priorities and objectives stated in "Health People 2000".
5. Geographic balance and budgetary considerations.

I. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of

1. Annual progress reports,
2. Financial status report, no more that 90 days after the end of the budget period, and
3. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist listed in Section K "Where to Obtain Additional Information'.

The following additional requirements are applicable to this program. For a complete description of each, see Addendum I in the application package.

AR–1—Human Subjects Requirements
AR–2—Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3—Public Health System Reporting Requirements
AR–10—Smoke-Free Workplace Requirements
AR–11—Healthy People 2000
AR–12—Lobbying Restrictions

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 [42U.S.C.241 and 247b] of the Public Health Service Act, as amended. The catalog of Federal Domestic Assistance number is 93.283.

K. Where To Obtain Additional Information

This and other CDC announcements may be downloaded through the CDC homepage on the Internet at http://www.cdc.gov. Please refer to Program Announcement Number 99117 when requesting information. To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Mattie Jackson, Grant Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone: (770) 488–2718, Internet address: mij3@cdc.gov

For program technical assistance contact: Marta Gwinn, M.D., M.P.H., Office of Genetics and Disease Prevention, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–28, Atlanta, Georgia 30341–3724, telephone (770) 488–3235, Internet address: mlg1@cdc.gov

Dated: April 28, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11097 Filed 5–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Radiation Studies and Research

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP): Grants for Radiation Studies and Research, in response to Program Announcement 99020.

Times and Dates: 8 a.m.—9 a.m., May 19, 1999 (Open); 9 a.m.—6 p.m., May 19, 1999 (Closed); 8 a.m.—5 p.m., May 20, 1999 (Closed).

Place: Centers for Disease Control and Prevention, Chamblee Campus, Building 101, (Room 1301B on May 19; Room 3002 on May 20), 4770 Buford Highway, NE, Atlanta, GA.

Status: Portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6), title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Pub. L. 92–463.

Matters to be Discussed: The meeting will include the review, discussion, and evaluation of applications received in response to Program Announcement 99020.

Contact Person For More Information: C.M. Wood, CDC, NCEH, Chamblee Campus, Building 101, 4770 Buford Highway, NE, Atlanta, GA., phone 770/488–7642.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 28, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention CDC.

[FR Doc. 99–11096 Filed 5–3–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Assessment of Preclinical Reproductive Toxicity Data; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to discuss an approach for the integrative assessment of preclinical reproductive toxicity findings and other information for pharmaceuticals. The purpose of the meeting is to provide information on the agency's approach, using several pharmaceutical data sets, and to invite members of the public to provide comments on the utility of the approach. The agency intends to consider feedback from the meeting in the development of guidance for integrative assessments of pharmaceutical reproductive risk.

DATES: The public meeting will be held on June 24, 1999, from 9 a.m. to 4 p.m.

Submit registration information by June 11, 1999.

ADDRESSES: The public meeting will be held in the Center for Drug Evaluation and Research Advisory Committee Conference Room, 5630 Fishers Lane, rm. 1066, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Adele S. Seifried, Center for Drug Evaluation and Research (HFD–024), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5482.

SUPPLEMENTARY INFORMATION:

Registration. Although there is no fee, preregistration by June 11, 1999, is required for all attendees at this meeting. Participation is limited to the first 75 registrants outside FDA and is also restricted within FDA due to limited meeting space. Persons interested in attending the meeting should register via e-mail to "wedge@cder.fda.gov" using the registration form on the Center for Drug Evaluation and Research home page "http://www.fda.gov/cder" or, if e-mail is not available, fax their registration information (including name, affiliation, address, telephone, fax number, and e-mail address) to 301–827–6801, ATTN: Kimberly L. Topper. Interested persons may also register by mailing the registration information to the contact person identified previously.

Building Location and Admittance. The building at 5630 Fishers Lane is the former Social Services Building located next to the Parklawn Building. Please use the lower entrance, which faces Parklawn Dr. Visitor badges for nonagency participants will be held at the guard station at the entrance to the building. Participants will need picture identification to pick up their badge.

Parking. There is no public parking at the building at 5630 Fishers Lane. A public parking lot (for a fee) is located on Fishers Lane across from the Parklawn building, and additional public parking (for a fee) is available at the Twinbrook Metro station located several blocks to the west.

Agenda. An agenda for the public meeting will be available 2 weeks before the meeting, via the Internet using the World Wide Web (WWW). Connect to the CDER home page at "http://www.fda.gov/cder" and go to the "What's Happening" section.

Dated: April 28, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11122 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0254]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, without change, or a previously approved collection for which approval has expired.

Title of Information Collection: National Medicare Education Program (NMEP) Community Survey of Medicare Beneficiaries.

Form No.: HCFA–R–0254 (OMB# 0938–0738).

Use: A survey of Medicare beneficiaries in six communities will be conducted to monitor the NMEP implementation. Beneficiaries in these same communities were interviewed in September 1998 and February 1999. This approach will gather information on changes in: awareness of Medicare+Choice expansions and options; knowledge about Medicare and the Medicare+Choice options; where beneficiaries go to find more information; and whether they are aware of the many information resources available to them; and satisfaction with their information/knowledge.

Frequency: Annually.

Affected Public: Individuals or Households.

Number of Respondents: 2,400.

Total Annual Responses: 2,400.

Total Annual Hours: 600.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Louis Blank, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11150 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–138]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to

minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Medicare Geographical Classification Review Board (MGCRB) Procedures and Criteria and Supporting Regulations in 42 CFR 412.256.

Form No.: HCFA–R–138.

Use: This regulation sets up an application process for prospective payment system hospitals who choose to appeal their geographic status to the Medicare Geographic Classification Review Board (MGCRB). This regulation also establishes procedural guidelines for the MGCRB.

Frequency: Annually.

Affected Public: Business or other for profit, and not for profit institutions.

Number of Respondents: 1,000.

Total Annual Responses: 1,000.

Total Annual Hours Requested: 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address:

HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11152 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–209 and HCFA–R–245]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services submitted two Outcome and Assessment Information Set (OASIS) information collections to the Office of Management and Budget (OMB) for emergency review and approval. On January 25, 1999, HCFA requested OMB review and approval of the OASIS collections within 16 working days from the date of publication of the OASIS regulations. However, these information collections are still pending OMB approval. Therefore, we are publishing this notice as a means of notifying the public that these information collections have not yet been approved by OMB and are not yet in effect. When the clearances referenced below are obtained, HCFA will publish a notice in the **Federal Register**, announcing the approval of these information collections.

OASIS Data Collection and Use (HCFA Collection Number: HCFA–R–245)

On January 25, 1999, we published a regulation (HCFA–3007–F, 64 FR 3764) requiring all home health agencies (HHAs) participating in the Medicare/Medicaid program to collect data using a standardized assessment instrument, Outcome and Assessment Information Set (OASIS), for all patients. This requirement was in accordance with section 1891 of the Social Security Act, and finalized a proposed rule published March 10, 1997 (62 FR 11004). The goal of such mandatory collection and use was so that HHAs could improve the quality of their own services to patients. Mandatory collection and use by HHAs was to begin on February 24, 1999.

In order for this mandate to be valid, we still need to obtain appropriate clearances under the Paperwork Reduction Act. The completion of this activity has been delayed, thus delaying the requirement that HHAs must collect and use the OASIS data set as part of their comprehensive assessment process. Upon successful completion, we will issue a notification on the HCFA Internet site (http://hcfa.gov) and publish a notice to this effect in the **Federal Register**.

In the meantime, we are not requiring HHAs to collect and use the OASIS instrument. HHAs that were not meeting the requirements on or after the February 24 effective date will not be held out of compliance. Of course, given that the instrument was designed to be useful to HHAs to assess and improve the care they furnish, they may wish to use the OASIS instrument for their own purposes.

Encoding and Transmission of OASIS Data (HCFA Collection Number: HCFA–R–209)

On January 25, 1999, we published an interim final regulation (HCFA–3006–IFC, 64 FR 3748) mandating that all HHAs participating in the Medicare/Medicaid program encode (that is, data enter) OASIS information in a standard format and transmit it to HCFA as a condition of participation. Encoding was to begin on March 26th and data transmission to the States on April 26th.

In order for this mandate to be valid, we still need to obtain appropriate clearances under the Paperwork Reduction Act, prepare and provide an individual Privacy Act notice for patients, and publish a Privacy Act notice of the existence and character of the OASIS system of records. The completion of these activities has been delayed, thus delaying the requirement that HHAs encode and transmit OASIS data. Upon their successful completion, we will issue a notification on the HCFA Internet site (http://hcfa.gov) and publish a notice to this effect in the **Federal Register**.

In the meantime, we are not requiring HHAs to encode and transmit OASIS data. HHAs that were not meeting the requirements on or after the above effective dates will not be held out of compliance.

Dated: April 28, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11059 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–180]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement, with change, of a previously approved collection for which approval has expired.

Title of Information Collection: Field Testing of the Uniform Needs Assessment Instrument (UNAI): Small-Scale Trial—Phase 2.

Form No.: HCFA–R–180 (OMB# 0938–0680).

Use: In testing, the Uniform Needs Assessment Instrument (UNAI) will be used to assess the needs of all patients being discharged from Medicare-certified hospitals who are identified, through use of a screener, as needing extensive hospital discharge planning and post-care. Dual assessments will be performed to assess inter-rater reliability. The UNAI is intended to help ensure appropriate post acute care and continuity of care between acute, post-acute and long-term care by transmitting key information to patients, families, and post acute care providers on the status and care needs of patients at the time of acute care discharge. The debriefing of discharge planners will examine the feasibility, burden, and utility of UNAI items and their view of the likely impact on the quality of discharge planning and continuity of care. The goal is to help HCFA determine whether such a system would improve quality of care for Medicare beneficiaries.

Frequency: On occasion.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Number of Respondents: 500.

Total Annual Responses: 720.

Total Annual Hours: 847.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address:

OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503

Dated: April 15, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11149 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–0276]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collections referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR, Part 1320. This is necessary to ensure compliance with the Balanced Budget Act of 1997 (Pub. L. 105–33). We cannot reasonably comply with the normal clearance procedures because Medicare & You 2000 (HCFA–R–0276), is mandated to send information to Medicare beneficiaries at least 15 days before a required November coordinated election period. Therefore, Medicare & You 2000 must be mailed no later than October 15 to ensure receipt. However, due to the volume (35,000,000) of this nationwide mailing, and for the books to be ready for mail by late September, they must be at the printers in June 1999. Waiting for the regular clearance process would not allow for the feedback cards to be printed in conjunction with Medicare & You 2000.

HCFA is requesting OMB review and approval of this collection within 15 working days, with a 180-day approval period. Written comments and recommendations will be accepted from the public if received by the individuals designated below within (14) working days. During this 180-day period, we will publish a separate **Federal Register** notice announcing the initiation of an extensive 60-day agency review and public comment period on these requirements. We will submit the requirements for OMB review and an extension of this emergency approval.

Type of Information Request: New collection.

Title of Information Collection: Medicare & You 2000 Feedback Postcard.

HCFA Form Number: Enclosure to HCFA–R–0276 (OMB approval #: 0938–NEW).

Use: The purpose of this collection is post-distribution testing. This feedback postcard will be printed with Medicare & You 2000. This is the primary vehicle for presenting Medicare information to

beneficiaries. Each household with up to 4 Medicare beneficiaries will receive one book. Households with over 4 beneficiaries will have one book sent to each beneficiary. (It is assumed these may be nursing homes/care facilities.) The beneficiaries have the option of completing the postcard, which will provide HCFA with valuable information that will assist in improving future versions of the publication.

Frequency: Annual.

Affected Public: Individuals or Households, Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Gov.

Number of Respondents: 35,000,000 cards to be mailed with Medicare & You 2000.

Total Annual Responses: Estimated 5% (1,750,000).

Total Annual Burden Hours: 145,834.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, E-mail your request, including your address, phone number, and HCFA form number(s) referenced above, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below, within (14) working days:

Health Care Financing Administration, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850. Fax Number: (410) 786–1415, Attn: Louis Blank HCFA–R–0276

and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Fax Number: (202) 395–6974 or (202) 395–5167, Attn: Allison Herron Eydt, HCFA Desk Officer.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11151 Filed 5–3–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies, and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (59 FR 29916, 29925). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

This Notice is now available on the internet at the following website: http://www.health.org/workpl.htm

FOR FURTHER INFORMATION CONTACT: Mrs. Giselle Hersh or Dr. Walter Vogl, Division of Workplace Programs, 5600 Fishers Lane, Rockwall 2 Building, Room 815, Rockville, Maryland 20857; Tel.: (301) 443–6014.

Special Note: Please use the above address for all surface mail and correspondence. For all overnight mail service use the following address: Division of Workplace Programs, 5515 Security Lane, Room 815, Rockville, Maryland 20852.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100–71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in a quarterly performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are not to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

ACL Laboratories, 8901 W. Lincoln Ave., West Allis, WI 53227, 414–328–7840 (formerly: Bayshore Clinical Laboratory)

Advanced Toxicology Network, 15201 East I–10 Freeway, Suite 125, Channelview, TX 77530, 713–457–3784/800–888–4063 (formerly: Drug Labs of Texas, Premier Analytical Laboratories)

Advanced Toxicology Network, 3560 Air Center Cove, Suite 101, Memphis, TN 38118, 901–794–5770/888–290–1150

Aegis Analytical Laboratories, Inc., 345 Hill Ave., Nashville, TN 37210, 615–255–2400

Alabama Reference Laboratories, Inc., 543 South Hull St., Montgomery, AL 36103, 800–541–4931/334–263–5745

Alliance Laboratory Services, 3200 Burnet Ave., Cincinnati, OH 45229, 513–585–9000 (formerly: Jewish Hospital of Cincinnati, Inc.)

American Medical Laboratories, Inc., 14225 Newbrook Dr., Chantilly, VA 20151, 703–802–6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Ave., Suite 250, Las Vegas, NV 89119–5412, 702–733–7866/800–433–2750

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801–583–2787/800–242–2787

Baptist Medical Center—Toxicology Laboratory, 9601 I–630, Exit 7, Little Rock, AR 72205–7299, 501–202–2783 (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Clinical Reference Lab, 8433 Quivira Rd., Lenexa, KS 66215–2802, 800–445–6917

Cox Health Systems, Department of Toxicology, 1423 North Jefferson Ave., Springfield, MO 65802, 800–876–3652/417–269–3093 (formerly: Cox Medical Centers),

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, P.O. Box 88–6819, Great Lakes, IL 60088–6819, 847–688–2045/847–688–4171

Diagnostic Services Inc., dba DSI, 12700 Westlinks Drive, Fort Myers, FL 33913, 941–561–8200/800–735–5416

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Dr., Valdosta, GA 31604, 912–244–4468

DrugProof, Division of Dynacare/Laboratory of Pathology, LLC, 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206–386–2672/800–898–0180 (formerly: Laboratory of Pathology of Seattle, Inc., DrugProof, Division of Laboratory of Pathology of Seattle, Inc.)

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Rd., Warminster, PA 18974, 215–674–9310

Dynacare Kasper Medical Laboratories,* 14940–123 Ave., Edmonton, Alberta, Canada T5V 1B4, 403–451–3702/800–661–9876

ElSohly Laboratories, Inc., 5 Industrial Park Dr., Oxford, MS 38655, 601–236–2609

Gamma-Dynacare Medical Laboratories,* A Division of the Gamma-Dynacare Laboratory Partnership, 245 Pall Mall St., London, ON, Canada N6A 1P4, 519–679–1630

General Medical Laboratories, 36 South Brooks St., Madison, WI 53715, 608–267–6267

Hartford Hospital Toxicology Laboratory, 80 Seymour St., Hartford, CT 06102–5037, 860–545–6023

Info-Meth, 112 Crescent Ave., Peoria, IL 61636, 309–671–5199/800–752–1835 (Formerly: Methodist Medical Center Toxicology Laboratory)

Integrated Regional Laboratories, 1400 Northwest 12th Ave., Miami, FL 33136, 305–325–5784 (Formerly: Cedars Medical Center, Department of Pathology)

LabCorp Occupational Testing Services, Inc., 1904 Alexander Drive, Research Triangle Park, NC 27709, 919–672–6900/800–833–3984 (Formerly: CompuChem Laboratories, Inc.; CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory; Roche CompuChem Laboratories, Inc., A Member of the Roche Group)

LabCorp Occupational Testing Services, Inc., 4022 Willow Lake Blvd., Memphis, TN 38118, 901–795–1515/800–223–6339 (Formerly: MedExpress/National Laboratory Center)

LabOne, Inc., 10101 Renner Blvd., Lenexa, KS 66219, 913–888–3927/800–728–4064 (formerly: Center for Laboratory Services, a Division of LabOne, Inc.)

Laboratory Corporation of America Holdings, 69 First Ave., Raritan, NJ 08869, 908–526–2400/800–437–4986 (Formerly: Roche Biomedical Laboratories, Inc.)

Laboratory Specialists, Inc., 1111 Newton St., Gretna, LA 70053, 504–361–8989/800–433–3823

Marshfield Laboratories, Forensic Toxicology Laboratory 1000 North Oak Ave., Marshfield, WI 54449, 715–389–3734/800–331–3734

MAXXAM Analytics Inc.,* 5540 McAdam Rd., Mississauga, ON, Canada L4Z 1P1, 905–890–2555 (formerly: NOVAMANN (Ontario) Inc.)

Medical College Hospitals Toxicology Laboratory, Department of Pathology, 3000 Arlington Ave., Toledo, OH 43614, 419–383–5213

MedTox Laboratories, Inc., 402 W. County Rd. D, St. Paul, MN 55112, 651–636–7466/800–832–3244

Methodist Hospital Toxicology Services of Clarian Health Partners, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Blvd., Indianapolis, IN 46202, 317–929–3587

MetroLab-Legacy Laboratory Services, 1225 NE 2nd Ave., Portland, OR 97232, 503–413–4512/800–950–5295

Minneapolis Veterans Affairs Medical Center, Forensic Toxicology Laboratory, 1 Veterans Drive, Minneapolis, Minnesota 55417, 612–725–2088

National Toxicology Laboratories, Inc., 1100 California Ave., Bakersfield, CA 93304, 805–322–4250

NWT Drug Testing, 1141 E. 3900 South, Salt Lake City, UT 84124, 801–268–2431/800–322–3361 (Formerly: NorthWest Toxicology, Inc.)

Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Ave., Eugene, OR 97440–0972, 541–341–8092

Pacific Toxicology Laboratories, 6160 Variel Ave., Woodland Hills, CA 91367, 818–598–3110 (Formerly: Centinela Hospital Airport Toxicology Laboratory

Pathology Associates Medical Laboratories, 11604 E. Indiana, Spokane, WA 99206, 509–926–2400/800–541–7891

PharmChem Laboratories, Inc., 1505–A O'Brien Dr., Menlo Park, CA 94025, 650–328–6200/800–446–5177

PharmChem Laboratories, Inc., Texas Division, 7610 Pebble Dr., Fort Worth, TX 76118, 817–595–0294 (formerly: Harris Medical Laboratory)

Physicians Reference Laboratory, 7800 West 110th St., Overland Park, KS 66210, 913–339–0372/800–821–3627

Poisonlab, Inc., 7272 Clairemont Mesa Blvd., San Diego, CA 92111, 619–279–2600/800–882–7272

Quest Diagnostics Incorporated, 4444 Giddings Road, Auburn Hills, MI 48326, 810–373–9120/800–444–0106 (formerly: HealthCare/Preferred Laboratories, HealthCare/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, National Center for Forensic Science, 1901 Sulphur Spring Rd., Baltimore, MD 21227, 410–536–1485 (formerly: Maryland Medical Laboratory, Inc., National Center for Forensic Science, CORNING National Center for Forensic Science)

Quest Diagnostics Incorporated, 4770 Regent Blvd., Irving, TX 75063, 972–916–3376/800–526–0947 (formerly: Damon Clinical Laboratories, Damon/MetPath, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, 875 Greentree Rd., 4 Parkway Ctr., Pittsburgh, PA 15220–3610, 412–920–7733/800–574–2474 (formerly: Med-Chek Laboratories, Inc., Med-Chek/Damon, MetPath Laboratories, CORNING Clinical Laboratories)

Quest Diagnostics of Missouri LLC, 2320 Schuetz Rd., St. Louis, MO 63146, 314–991–1311/800–288–7293 (formerly: Quest Diagnostics Incorporated, Metropolitan Reference Laboratories, Inc., CORNING Clinical Laboratories, South Central Division)

Quest Diagnostics Incorporated, 7470 Mission Valley Rd., San Diego, CA 92108–4406, 619–686–3200/800–446–4728 (formerly: Nichols Institute, Nichols Institute Substance Abuse Testing (NISAT), CORNING Nichols Institute, CORNING Clinical Laboratories)

Quest Diagnostics Incorporated, One Malcolm Ave., Teterboro, NJ 07608, 201–393–5590 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratory)

Quest Diagnostics Incorporated, 1355 Mittel Blvd., Wood Dale, IL 60191, 630–595–3888 (formerly: MetPath, Inc., CORNING MetPath Clinical Laboratories, CORNING Clinical Laboratories Inc.)

Scientific Testing Laboratories, Inc., 463 Southlake Blvd., Richmond, VA 23236, 804–378–9130

Scott & White Drug Testing Laboratory, 600 S. 31st St., Temple, TX 76504, 254–771–8379/800–749–3788

S.E.D. Medical Laboratories, 5601 Office Blvd., Albuquerque, NM 87109, 505–727–6300/800–999–5227

SmithKline Beecham Clinical Laboratories, 3175 Presidential Dr., Atlanta, GA 30340, 770–452–1590 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–637–7236 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 801 East Dixie Ave., Leesburg, FL 34748, 352–787–9006 (formerly: Doctors & Physicians Laboratory)

SmithKline Beecham Clinical Laboratories, 400 Egypt Rd., Norristown, PA 19403, 610–631–4600/800–877–7484 (formerly: SmithKline Bio-Science Laboratories)

SmithKline Beecham Clinical Laboratories, 506 E. State Pkwy., Schaumburg, IL 60173, 847–447–4379/800–447–4379 (formerly: International Toxicology Laboratories)

SmithKline Beecham Clinical Laboratories, 7600 Tyrone Ave., Van Nuys, CA 91405, 818–989–2520/800–877–2520

South Bend Medical Foundation, Inc., 530 N. Lafayette Blvd., South Bend, IN 46601, 219–234–4176

Southwest Laboratories, 2727 W. Baseline Rd., Tempe, AZ 85283, 602–438–8507

Sparrow Health System, Toxicology Testing Center, St. Lawrence Campus, 1210 W. Saginaw, Lansing, MI 48915, 517–377–0520 (formerly: St. Lawrence Hospital & Healthcare System)

St. Anthony Hospital Toxicology Laboratory 1000 N. Lee St., Oklahoma City, OK 73101, 405–272–7052

Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 2703 Clark Lane, Suite B, Lower Level, Columbia, MO 65202, 573–882–1273

Toxicology Testing Service, Inc., 5426 N.W. 79th Ave., Miami, FL 33166, 305–593–2260

UNILAB 18408 Oxnard St., Tarzana, CA 91356, 818–996–7300/800–492–0800

(formerly: MetWest-BPL Toxicology Laboratory)
Universal Toxicology Laboratories, LLC, 10210 W. Highway 80, Midland, Texas 79706, 915–561–8851/888–953–8851
UTMB Pathology-Toxicology Laboratory, University of Texas Medical Branch, Clinical Chemistry Division, 301 University Boulevard, Room 5.158, Old John Sealy, Galveston, Texas 77555–0551, 409–772–3197

* The Standards Council of Canada (SCC) voted to end its Laboratory Accreditation Program for Substance Abuse (LAPSA) effective May 12, 1998. Laboratories certified through that program were accredited to conduct forensic urine drug testing as required by U.S. Department of Transportation (DOT) regulations. As of that date, the certification of those accredited Canadian laboratories will continue under DOT authority. The responsibility for conducting quarterly performance testing plus periodic on-site inspections of those LAPSA-accredited laboratories was transferred to the U.S. DHHS, with the DHHS' National Laboratory Certification Program (NLCP) contractor continuing to have an active role in the performance testing and laboratory inspection processes. Other Canadian laboratories wishing to be considered for the NLCP may apply directly to the NLCP contractor just as U.S. laboratories do.

Upon finding a Canadian laboratory to be qualified, the DHHS will recommend that DOT certify the laboratory (**Federal Register**, 16 July 1996) as meeting the minimum standards of the "Mandatory Guidelines for Workplace Drug Testing" (59 **Federal Register**, 9 June 1994, Pages 29908–29931). After receiving the DOT certification, the laboratory will be included in the monthly list of DHHS certified laboratories and participate in the NLCP certification maintenance program.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 99–11190 Filed 5–3–99; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Supplemental Grant Award to Pace/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa

AGENCY: Center for Substance Abuse Prevention (CSAP), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS

ACTION: Availability of grant funds for Pace/Orchard Place-Child Guidance, Inc. to supplement the substance abuse prevention program for youth at risk for gang involvement and/or first involvement in juvenile with a family strengthening component.

SUMMARY: This notice is to inform the public of a planned $250,000 grant award to Pace/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa to support the Iowa Youth Substance Abuse Prevention Community-Based Initiative. This is not a formal request for applications; assistance will be provided only to Pace/Orchard Place-Child Guidance, Inc., in Des Moines, Iowa. The purpose of the award is to strengthen the families of youth in Des Moines, Iowa at risk for gang involvement and/or first involvement in juvenile court. This program is intended to enhance the substance abuse prevention program provided to these youth, under the prior announcement entitled Iowa Youth Substance Abuse Prevention Community-Based Initiative Guidance for Applicants (GFA) No. SP 97–006, for Davenport and Des Moines, Iowa. This new GFA solicits an application from PACE/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa, to support the existing program SAMHSA first funded in 1997, which expanded substance abuse prevention services among youth gang members in Des Moines and Davenport, Iowa, and encouraged the implementation of substance abuse prevention programs for youth who are vulnerable to gang involvement and the first stages of involvement in juvenile court. CSAP will make this award if the application is recommended for approval by the Initial Review Group and the CSAP National Advisory Council.

This will be a sole source supplement to PACE/Orchard Place-Child guidance, Inc. of Des Moines, Iowa due to the ease of expansion and enhancement of the existing successful program with a family strengthening component, and for the following reasons: (1) PACE/Orchard Place-Child Guidance, Inc. is the only private agency in Iowa with current experience working with substance abuse, delinquency prevention, and truancy reduction in the Des Moines public schools. PACE/Orchard Place-Child Guidance, Inc. is also the primary private provider of preventive services under contract with Polk County Juvenile Court; (2) Iowa is one of a few States with Federal and State coordination in this area. CSAP is currently funding Iowa to serve as a national model for coordinating Federal substance abuse prevention funds and activities with the Iowa Departments of Education, Human Rights, Human Services, Public Safety, the Iowa Governor's Alliance on Substance Abuse and three State universities; and (3) The location of PACE/Orchard Place-Child Guidance, Inc. in Des Moines, Iowa builds on the experiences of this city in addressing substance abuse among gang members. This serves as a relatively confined model, not possible in larger problem areas, of what benefits can accrue when multi-level State collaboration and Federal participation merge in addressing this subgroup.

Therefore PACE/Orchard Place-Child Guidance, Inc. presents unique opportunities to exploit this Federal and State-level coordination in relation to substance abuse prevention services directed at substance abuse among youthful gang members due to its previously established activities in Des Moines.

Consistent with the above discussion, eligibility to apply for funds under this initiative in Iowa is limited to PACE/Orchard Place-Child Guidance, Inc., in Des Moines, Iowa, the only organization currently experienced in working with the required entities thus ensuring no funds need be spent on time lost in bringing the recipient to the required performance level of expertise for this project.

Authority: The cooperative agreement will be made under the authority of section 501(d)(5) of the Public Health Service Act, as amended (42 U.S.C. 290aa). The Catalog of Federal Domestic Assistance number for this program is 93.144.

Contact: Soledad Sambrano, Ph.D., Division of Knowledge Development and Evaluation, Center for Substance Abuse Prevention, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–9110.

Dated: April 27, 1999.

Richard Kopanda

Executive Officer, SAMHSA

[FR Doc. 99–11188 Filed 5–3–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4417–N–01]

Publication of OIG Program Fraud Alert: Fraud and Abuse in Multifamily Mortgage Insurance Programs

AGENCY: Office of Inspector General (OIG), HUD.

ACTION: Notice.

SUMMARY: This notice sets forth an OIG Program Fraud Alert concerning fraud and abuse practices involving the misuse of funds intended to support the operation of multifamily rental housing projects with HUD insured mortgages.

Program Fraud Alerts address national trends in housing fraud. This notice specifically identifies and highlights violations of applicable statutes and HUD requirements involving the misuse or diversion of project assets or income by project owners or management agents, referred to throughout this notice as "equity skimming."

FOR FURTHER INFORMATION CONTACT: David J. Derecola, OIG/Office of Audit, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone number 202–708–3444, ext. 124. Hearing- or speech-impaired individuals may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8399.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Inspector General (OIG) issues Program Fraud Alerts based on information it obtains concerning particular fraudulent and abusive practices in HUD programs. Program Fraud Alerts provide the OIG with a means of notifying the public that we have become aware of certain abusive practices which we are pursuing criminally, civilly, or administratively, as appropriate. Program Fraud Alerts also serve as an effective tool to encourage compliance by program participants and provide them an opportunity to examine their own practices.

This is our first Program Fraud Alert to be published in the **Federal Register**. We intend to publish future Program Fraud Alerts in this same manner as a regular part of our dissemination of such information.

With regard to HUD's multifamily housing mortgage insurance programs, this Program Fraud Alert discusses: (1) The nature of HUD's multifamily mortgage insurance programs; (2) the vulnerabilities of multifamily projects to equity skimming; and (3) the use of OIG's anti-fraud initiative—Operation Safe Home—to combat equity skimming.

Program Fraud Alert: Equity Skimming in HUD Multifamily Housing Mortgage Insurance Programs

The OIG was established at the Department of Housing and Urban Development by Congress to identify and eliminate fraud, abuse, and waste in the Department's programs and to promote efficiency and economy in departmental operations. The OIG carries out this mission through independent and objective audits and investigations. To reduce fraud and abuse in HUD's housing programs, the OIG actively pursues the investigation of fraudulent schemes that illegally seek to obtain money or other benefits from these programs. A common practice for illegally taking money from projects is equity skimming. Equity skimming is costly both to the residents of rental housing projects and the taxpayers who subsidize the projects through HUD programs.

Multifamily Housing Mortgage Insurance Programs

The National Housing Act, as amended, authorizes HUD to provide insurance to private lenders who make financing available to owners of multifamily housing projects. In return, the owner agrees to operate the projects in a manner that provides affordable and well maintained housing for tenants and protects the financial interests of the Federal government. As a condition of providing insurance, owners must sign a Regulatory Agreement with HUD. Provisions in the Regulatory Agreement specify that expenditures must be reasonable and necessary to the project and further limit the circumstances and manner in which the owner may take cash or other assets out of the project.

HUD has about $45 billion of insurance in force on mortgage loans for about 15,000 multifamily rental properties. About 75 percent of the FHA-insured projects also receive some form of direct rental subsidy on behalf of tenants from HUD.

What Is Equity Skimming In HUD Multifamily Housing Programs?

Equity skimming is the willful misuse of any part of the rents, assets, proceeds, income or other funds derived from the project covered by the mortgage. The use of project assets or income for other than reasonable operating expenses and necessary repairs, or for the payment of unauthorized distributions to the owner, constitutes a violation of the Regulatory Agreement between the owner and HUD.

The misuse or diversion of project assets and income by owners of insured multifamily projects plays a significant part in the realization of losses to the FHA insurance funds. Further, equity skimming deprives projects of needed funds for repairs and maintenance. This in turn contributes to the financial and physical deterioration of projects and the resultant substandard living conditions for the families who depend upon the Federal government to provide housing. The communities where these projects are located also suffer because they become the breeding ground for crime, violence, and drugs.

What Are the Penalties for Misusing Project Funds?

The use of project funds in violation of the Regulatory Agreement is actionable civilly under the Double Damages Statute, 12 U.S.C. 1715z-4a. The Double Damages Statute permits the government to recover double the value of any assets or income of a project that the court determines to have been used in violation of a Regulatory Agreement, regulation or other form of regulatory control that has been imposed by the Secretary of HUD. The use of assets or income in violation of the regulatory agreement includes any use for which the documentation in the books and accounts does not establish that the use was made for reasonable operating expenses or necessary repair of the project. In addition, the government can recover any and all costs relating to its lawsuit for such damages, including reasonable attorney and auditing fees. The Double Damages Statute considers the use of project assets or income without adequate documentation as a prima facie case that the assets or income were used in violation of the Regulatory Agreement. Consequently, the Double Damages Statute can be used to recover costs that are not adequately documented by the owner. HUD does not have to prove criminal intent. Action can be taken against any person violating the statute which owns a project, as identified in the Regulatory Agreement, including but not limited to any stockholder holding 25 percent or more interest of a corporation that owns the project; any beneficial owner under any business or trust; any officer, director, or partner of an entity owning the project; and any heir, assignee, successor in interest, or agent of any owner.

The misuse of project funds can also be prosecuted as a criminal matter under 12 U.S.C. 1715z–19. Under the criminal statute, equity skimming is defined as willfully using or authorizing "the use of any part of the rents, assets, proceeds, income or other funds derived from the property for any purpose other than to meet actual or necessary expense * * * in a period during which the mortgage note is in default or the project is in a nonsurplus cash position, as defined by the regulatory agreement, * * *" Violation of this provision is a felony and can be punished by up to five years imprisonment and fines up to $500,000.

HUD's Anti-Crime Initiative

On February 4, 1994, Vice President Gore, former HUD Secretary Cisneros, Attorney General Reno, former Treasury

Secretary Bentsen, and former National Drug Control Policy Director Brown announced "OPERATION SAFE HOME" in a joint press conference at the White House. Three major types of crime affecting HUD programs were targeted by Operation Safe Home:

- Equity skimming in multifamily insured projects;
- Violent crime in public and assisted housing; and
- Fraud in the administration of public housing.

Implemented at HUD by the OIG, Operation Safe Home brings the coordinated resources and expertise of federal, State, and local law enforcement agencies to bear on crime in public and assisted housing. Operation Safe Home represents the OIG's commitment to focus resources on combating areas of high vulnerability and to hold such focus until the vulnerabilities are reduced to an acceptable level—the primary mission of HUD's OIG.

As part of Operation Safe Home, OIG has initiated an aggressive proactive effort to pursue civil litigation and criminal prosecution against owners of multifamily housing projects who misuse project operating funds—the equity skimming effort. A primary objective of the equity skimming effort is to create an enforcement program that provides an effective deterrent and recovery mechanism for the misuse of income and assets at projects having HUD insured mortgages.

OIG identifies and pursues, with the assistance of the U.S. Attorneys and HUD officials, the recovery of funds diverted from projects. Assistant U.S. Attorneys throughout the nation have played a significant role in the success realized by Operation Safe Home in cracking down on equity skimming in HUD's housing programs. Funds recovered in this manner can be directed at improving living conditions for the tenants and minimizing financial losses to HUD.

What Are the More Common Types of Equity Skimming?

If the project is in a non-surplus cash position or is in default, the following actions would most likely constitute equity skimming:

- Distributions or withdrawal of cash;
- Repayment of advances made to the project by the owner/agent;
- Lending funds to owners, partners, affiliates or the management agent;
- Payments of principal and/or interest on any secondary financing unless approved by HUD;
- Splitting of management fees with the project owner;
- Using project funds to purchase equipment or services not for use by the project;
- Paying more for services and supplies than could be procured on the open market;
- Payment of construction or rehabilitation costs from operations that should have been paid from mortgage proceeds;
- Payments to consultants, attorneys, accountants for partnership activities, which are not reasonable and necessary operating expenses of the project; and
- Payments on personal or other business loans.

Project owners and management agents need to be aware of these common ineligible expenditures or misuses of funds, and need to avoid using project funds in these ways. Owners must remember that a project with a HUD insured mortgage is not like other rental properties they may own. Owners agree to certain restrictions regarding the use of project income and assets before becoming involved with HUD insured mortgages. Given the strong civil and criminal penalties which can be imposed for such violations, it is in the best interest of all project owners and agents to ensure adherence to the terms of their Regulatory Agreements.

What To Do if You Suspect Fraud Involving HUD's Multifamily Housing Programs?

If you have information about the misuse of project funds as described above, contact any of the district offices of the Office of Inspector General in HUD listed below, or call the OIG Hotline toll free at 1–800–347–3735 or any local HUD program office.

Office of Inspector General District Offices

New England (CT, MA, ME, NH, RI, VT), District Inspector General for Audit, (617) 565–5259, Special Agent in Charge, (617) 565–5293, Thomas P. O'Neill, Jr., Federal Bldg., 10 Causeway Street, Boston, MA 02222–1092

New York/New Jersey (NJ, NY), District Inspector General for Audit, (212) 264–8000, Special Agent in Charge, (212) 264–8062, 26 Federal Plaza, Suite 3430, New York, NY 10278–0068

Mid Atlantic (DE, MD, PA, VA, WV), District Inspector General for Audit, (215) 656–3401, Special Agent in Charge, (215) 656–3410, The Wanamaker Bldg., 100 Penn Square East, Philadelphia, PA 19107–3390

Southeast/Caribbean AL, FL, GA, KY, MS, NC, PR, SC, TN), District Inspector General for Audit, (404) 331–3369, Special Agent in Charge, (404) 331–5159, Richard B. Russell Federal Bldg., 75 Spring Street, S.W., Atlanta, GA 30303–3388

Midwest (IL, IN, MI, MN, OH, WI), District Inspector General for Audit, (312) 353–7832, Special Agent in Charge, (312) 353–4196, Ralph H. Metcalf Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604–3507

Southwest (AR, LA, NM, OK, TX), District Inspector General for Audit, (817) 978–9309, Special Agent in Charge, (817) 978–9310, P.O. Box 2905, 1600 Trockmorton, Fort Worth, TX 76113–2905

Great Plains (IA, KS, MO, NE), District Inspector General for Audit, (913) 551–5871, Special Agent in Charge, (913) 551–5866, Gateway Tower II, 5th Floor, 400 State Avenue, Kansas City, KS 66101–2406

Rocky Mountains (CO, MT, ND, SD, UT, WY), District Inspector General for Audit, (303) 672–5452, Special Agent in Charge, (303) 672–5449, First Interstate Tower North, 633 Seventeenth Street, Denver, CO 08202–3607

Pacific/Hawaii (AZ, CA, HI, NV), District Inspector General for Audit, (415) 436–8101, Special Agent in Charge, (415) 436–8108, 450 Golden Gate Avenue, P. O. Box 36003, San Francisco, CA 94102–3348

Northwest/Alaska (AK, ID, OR, WA), District Inspector General for Audit, (206) 220–5360, Special Agent in Charge, (206) 220–5380, Seattle Federal Office Bldg., 909 1st Avenue, Suite 200, Seattle, WA 98101–1000

Capital Office (DC), District Inspector General for Audit, (202) 708–2650, Special Agent in Charge, (202) 708–0387, 451 7th Street, S.W., Room 8256, Washington, DC 20410–4500

Dated: March 29, 1999.

Susan Gaffney,

Inspector General.

[FR Doc. 99–11061 Filed 5–3–99; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Fort Niobrara National Wildlife Refuge and Draft Comprehensive Conservation Plan and Environmental Assessment for Valentine National Wildlife Refuge, Valentine, NE

AGENCY: Fish and Wildlife Service, interior.

ACTION: Notice of availability

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published the Fort Niobrara National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment and the Valentine National Wildlife Refuge Draft Comprehensive Conservation Plan and Environmental Assessment. These Plans describes how the FWS intends to manage both the Fort Niobrara and Valentine NWRs for the next 10–15 years.

ADDRESSES: A copy of either of the Plans may be obtained by writing to U.S. Fish and Wildlife Service, Fort Niobrara/Valentine NWR Complex, HC 14, Box 67, Valentine, NE 69201.

The Plans can also be obtained electronically through the U.S. Fish and Wildlife Service Region 6 Land Acquisition and Refuge Planning HomePage. The internet address to access the Plans is as follows: http://www.r6.fws.gov/larp. Follow the link to "CCP Status in Region 6," click on Nebraska on the Region 6 map, and look under the "Status" column for links to both the Fort Niobrara and Valentine Draft CCPs.

FOR FURTHER INFORMATION CONTACT: Bernardo Garza, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, CO 80225, 303/236–8145 extension 634; fax 303/236–4792.

SUPPLEMENTARY INFORMATION: Fort Niobrara and Valentine NWRs are located in north central Nebraska. These Plans and their supporting documents outline a vision for the management of each of these Refuges and specify how the largest contiguous block of federally owned Nebraska Sandhills grass-stabilized region can be managed to conserve indigenous wildlife and provide enjoyment to people. Opportunities for compatible wildlife-dependent recreation will continue to be provided.

The comment period for these documents will be 60 days from the date of this notice. All comments need to be addressed to: Bernardo Garza, Fish and Wildlife Biologist, Land Acquisition and Refuge Planning, U.S. Fish and Wildlife Service, P.O. Box 25486 DFC, Denver, Colorado 80225.

Dated: April 28, 1999.

Ralph O. Morgenweck,

Regional Director, Denver, Colorado.

[FR Doc. 99–11099 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF INTERIOR

Geological Survey

Notice of Proposed Cooperative Research and Development Agreement (CRADA) Negotiations Under the Technology Transfer Act of 1986

SUMMARY: The United States Geological Survey (USGS) is contemplating entering into a CRADA with AQUI–S New Zealand LTD to seek U.S. Food and Drug Administration approval of the fish anesthetic AQUI–S for use in public acquaculture, fisheries management, and for use on commercially produced Atlantic salmon.

Inquires: Information on the proposed CRADA is available to the public upon request at the address below. If any other parties are interested in similar activities with the USGS, please contact: William H. Gingerich, 2630 Fanta Reed Road, La Crosse, Wisconsin 54603; Telephone: 608–783–6451; Internet: "bill__ gringerich@usgs.gov".

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Susan Haseltine,

Associate Chief Biologist for Science, Biological Resources Division.

[FR Doc. 99–11153 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–47–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

San Carlos Irrigation Project—Power Division, Arizona Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Proposed Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to adjust the electric power rates for operating and maintaining the Power Division of San Carlos Irrigation Project (SCIP/PD).

DATES: Comments must be submitted on or before June 3, 1999.

ADDRESSES: Written comments on rate adjustments should be sent to: Assistant Secretary—Indian Affairs, Attn: Branch of Irrigation and Power, MS–4513–MIB, Code 210, 1849 C Street, NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Wayne Nordwall, Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, AZ 85001; Telephone 602–379–6956.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C. 385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

The SCIP/PD has taken the steps necessary to reduce the contract demand in the power supply contract between the Bureau of Indian Affairs, on behalf of SCIP/PD, and the Arizona Public Service Company. This action has resulted in a savings in purchased power costs as of June 1, 1998. This savings is proposed to be passed on in an adjustment to the Schedule No. 2—General Rate schedule.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this proposed rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This proposed rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. § 601(2).

Executive Order 12630

The Department has determined that this proposed rate adjustment does not have significant "taking" implications.

Executive Order 12612

The Department has determined that this proposed rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this proposed rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This proposed rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This proposed rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Rate Adjustment

The following illustrates the impact of the proposed rate adjustment:

Present Rate

Rate Schedule No.2—General Rate

(A) Application of Schedule. This schedule applies to single and three phase electric service for all purposes except residences and small, non-commercial users. Unless specifically permitted by the contract, use must be limited to the customer's premises and the power supplied must not be resold. If more than one meter is required by the customer's installation or for the customer's convenience, bills will be independently calculated for each meter.

(B) Monthly Rate.

(1) $13.00 minimum which includes the first 50 kilowatt-hours.

(2) 16.00 cents per kilowatt-hour for the next 350 kilowatt-hours

(3) 10.0 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 7.0 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) Additional kilowatt-hours at 5.63 cents per kilowatt-hour, less a credit of 0.7 cents per kilowatt-hour above 200 times the billing demand (50KW minimum).

(C) Minimum Bill. The minimum bill will be $2.63 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill will not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month, equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billing will be less than $13.00.

(D) Contract Demand. Each contract for 15 KW or over will state the number of kilowatts which the customer expects to require and desires to have reserved for his service. This quantity is called the contract demand.

(E) Actual Demand. The actual demand for any month will be the average amount of power used during the period of 15 consecutive minutes when such average is the greatest for the month as determined by suitable meters, or if meters are unavailable, the actual demand will be the connected load or such portion of the connected load as the Project Engineer may determine to be appropriate based on available information as to the customer's use of connected lights, appliances, and equipment, or from checking meters.

(F) Billing Demand. The billing demand for a month will be the contract demand or the actual demand for the month, whichever is greater.

(G) Purchased Power Adjustment. An adjustment will be added for each kilowatt-hour used equal to the estimated purchased power adjustment (rounded to the nearest $0.0001) paid by the Project to the Project's power suppliers.

Proposed Rate

Rate Schedule No. 2—General Rate

(A) Application of Schedule. Unchanged from present.

(B) Monthly Rate.

(1) $12.00 minimum which includes the first 50 kilowatt-hours.

(2) 15.00 cents per kilowatt-hour for the next 350 kilowatt-hours

(3) 9.0 cents per kilowatt-hour for the next 600 kilowatt-hours.

(4) 6.0 cents per kilowatt-hour for the next 9,000 kilowatt-hours.

(5) Additional kilowatt-hours at 4.60 cents per kilowatt-hour, less a credit of 0.7 cents per kilowatt-hour above 200 times the billing demand (50KW minimum).

(C) Minimum Bill. The minimum bill will be $2.14 per month per kilowatt of billing demand, except where the customer's requirements are of a distinctly recurring seasonal nature. Then the minimum monthly bill will not be more than an amount sufficient to make the total charges for the twelve (12) months ending with the current month equal to twelve times the highest monthly minimum computed for the same twelve-month period. However, no monthly billing will be less than $12.00.

(D) Contract Demand. Unchanged from present.

(E) Actual Demand. Unchanged from present.

(F) Billing Demand. Unchanged from present.

(G) Purchased Power Adjustment. Unchanged from present.

Dated: April 27, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11183 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Alaska; Alaska Native Claims Selection

[AK–962–1410–00–P and AA–8096–03]

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that a decision to issue conveyance under the provisions of Sec. 14(e) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(e), will be issued to Chugach Alaska Corporation for approximately 42,670 acres. The lands involved are in the vicinity of Bremner River, Alaska.

Copper River Meridian, Alaska

T. 9 S., R. 2 E.,
T. 12 S., R. 4 E.,
T. 10 S., R. 6 E.,
T. 8 S., R. 3 E.,
T. 10 S., R. 5 E.,
T. 10 S., R. 7 E.,
T. 10 S., R. 4 E.,
T. 12 S., R. 5 E.,

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, shall have until June 3, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Christine Sitbon,

Land Law Examiner, Branch of ANCSA Adjudication.

[FR Doc. 99–11103 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–030–1310–01]

Emergency Closure of the Bennett Ranch 3-d Seismic Project Area To Off-road Travel, Otero County, New Mexico

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Emergency Closure.

SUMMARY: Notice is hereby given that effective immediately, the Las Cruces Field Office is implementing emergency closure of the area that was recently the site of the Bennett Ranch 3-d Seismic Project. Off-road vehicle use is limited to designated roads and trails except for administrative purposes. This closure extends to both motorized and non-

motorized vehicles. This action is taken to aid in the recovery of vegetation from the impacts of a recently completed 3-d Seismic Project which left many tracks of mashed vegetation in the grassland. There is concern that future traffic could follow these tracks, damaging the grassland and creating undesired new roads. The authority for this emergency closure is 43 CFR 8364.1: Closure and Restriction Orders. The following public land is affected by the closure:

T. 25 S., R. 12 E.,
Secs. 33 through 36.
T. 25 S., R. 13 E.,
Sec. 31.
T. 26 S., R. 12 E.,
Secs. 1, 3, 4, 9 through 15, 21 through 28 and 33 through 35.
T. 26 S., R. 13 E.,
Secs. 6, 7, 18, 19, 30 and 31.

DATES: This closure is effective April 9, 1999 and shall remain in effect until rescinded or modified by the authorized officer. This closure will be rescinded once the vegetation has substantially recovered from the impacts of the seismic project.

ADDRESSES: Copies of this closure order and maps showing the location of the area are available from the Las Cruces Field Office, 1800 Marquess, Las Cruces, New Mexico, 88005 during normal business hours, Monday through Friday, 7:45 a.m. to 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen, Geologist, at the address above or call (505) 525–4351.

SUPPLEMENTARY INFORMATION: Violations of this closure are punishable by fines not to exceed $1,000 and/or imprisonment not to exceed 1 year.

The Bennett Ranch 3-d Seismic Project was conducted by Geco-Prakla between March 20 and April 8, 1999. The project included a limited amount of off-road travel by large vibrator buggies and support vehicles along designated lines of travel. This off-road travel was restricted to only that which was absolutely necessary to meet the objectives of normal 3-d seismic exploration for oil and gas. The off-road vehicles used on this project were all equipped with oversize low pressure tires to minimize impacts to soil and vegetation.

This off-road travel has left linear tracks of mashed vegetation which are expected to recover completely after seasonal summer rainfall. However, these tracks are attractive pathways for additional traffic in an area where few roads exist. To prevent the creation of new and undesired roads on these tracks and to prevent long-term damage to the vegetation, it is essential that no additional off-road traffic follow these tracks giving the vegetation an opportunity to recover. Geco-Prakla will post signs along all roads entering the closure to inform drivers of this restriction. The tracks will be monitored by the BLM to determine when recovery is sufficient to rescind this closure.

Dated: April 28, 1999.

Linda S. C. Rundell,

Field Manager, Las Cruces.

[FR Doc. 99–11102 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–VC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(CA–610–5101–01–B109) CACA–40467]

Cadiz Groundwater Storage and Dry-Year Supply Program Proposed Pipeline and California Desert Conservation Area Plan Amendment, San Bernardino County, CA

AGENCY: Bureau of Land Management, California Desert District, Needles Field Office.

ACTION: Notice of Public Meeting and extension of comment period.

SUMMARY: The Department of the Interior, Bureau of Land Management (BLM), in cooperation with The Metropolitan Water District of Southern California (MWD) will conduct a public meeting to discuss and solicit public input concerning a proposed Cadiz Water Storage and Dry-Year Supply Program (Project) and a plan amendment to the California Desert Conservation Area (CDCA) Plan. The public meeting will be held on May 10, 1999, beginning at 6:00 p.m. in the Needles City Council Chambers, 1111 Bailey Avenue, Needles, California. A Notice of Intent to prepare a joint Environmental Impact Statement/ Environmental Impact Report (EIS/EIR) for the proposed project on Federal and private lands in the Mojave Desert Region of San Bernardino County, California, was published March 1, 1999, in the **Federal Register** Vol. 64, No. 39, Page 10011. The deadline to provide comments concerning the scope of analysis of the draft EIS/EIR is extended from March 31, 1999, to May 24, 1999.

SUPPLEMENTARY INFORMATION: The project proponents are MWD and Cadiz, Inc. (CI). The Project would consist of: (1) A proposed right-of-way for the construction and operation of a six-foot diameter pipeline from MWD's Iron Mountain Pumping Plant on the Colorado River Aqueduct (CRA) to CI's property in the Cadiz/Fenner area, approximately 35 miles to the northeast; (2) pumping of CRA water supplies to the Cadiz/Fenner area including the possible need to modify a pump at the Iron Mountain Pumping Plant; (3) construction and operation of a series of spreading basins (approximately 200–300 acres) to recharge the groundwater aquifer via infiltration at the Cadiz/ Fenner area, and (4) construction and operation of a well field for extraction of groundwater in the Cadiz/Fenner area. Three alternative Project configurations are currently being considered, along with the No Project alternative. An open aqueduct along a portion of the alignment in lieu of an underground pipeline may also be considered. The BLM will be asked to issue right-of-way permits for the construction of portions of the water conveyance facility and other facilities which are proposed to occupy Federal lands. All three alternative Project configurations involve lands currently managed by BLM.

The proposed action will also include a proposed plan amendment to the California Desert Conservation Area Plan. The proposed project pipeline alignment alternatives are outside of established Planning Corridors and contingent corridors identified in the CDCA Plan. The CDCA Plan allows the designation of corridors which address certain types of utility facilities, including all pipelines with diameters greater than 12 inches and major aqueducts or canals for interbasin transfers of water. The CDCA Plan allows utility needs which do not conform to established corridors to be processed by means of a Plan Amendment in conjunction with necessary permit hearings required by other agencies.

The proposed project begins near the MWD Iron Mountain Pumping Plant in southeast San Bernardino County. The proposed 35-mile pipeline alignment would be north to the Cadiz area. The aquifer system which underlies a portion of the Project area, located in the Cadiz and Fenner valleys ("Cadiz/ Fenner area") has been identified as a potential site for underground storage of Colorado River water. This water would be delivered to the Cadiz/Fenner area west of the Ship Mountains from the CRA by way of an underground pipeline or aqueduct. The stored Colorado River water would be subsequently withdrawn when needed and returned to the CRA via the pipeline or aqueduct to meet MWD's water supply needs. In addition, indigenous groundwater in the area of the stored water would also be pumped and transferred utilizing the

same facilities. The Project would have a term of 50 years and would then be reclaimed. MWD supplies supplemental imported water from the State Water Project and the Colorado River to its member agencies in Riverside, San Diego, San Bernardino, Orange, Los Angeles and Ventura Counties.

DATES: Written comments are requested concerning the scope of the proposed project. Comments must be received on or before May 24, 1999. It is important that those interested in the management of the BLM properties within the Project area provide input at this time. A Notice of Availability will be published when the joint Draft EIS/EIR is available for public review.

ADDRESSES: Please submit comments in writing to James Williams, Supervisory Realty Specialist, Bureau of Land Management, California Desert District, 6221 Box Springs Boulevard, Riverside. California, 92507, (909) 697–5390.

FOR FURTHER INFORMATION CONTACT: James Williams at the above address.

Dated: April 27, 1999.

George Meckfessel,

Acting Field Manager.

[FR Doc. 99–11104 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–40–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(UT–942–1430–01; UTU 76746)

Public Land Order No. 7388; Partial Revocation of Executive Order Dated July 2, 1910; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes an Executive order insofar as it affects 80 acres of public land withdrawn for the Bureau of Land Management's Power Site Classification No. 34. The withdrawal is no longer needed, and the revocation is necessary to facilitate a pending statewide assembled land exchange This action will open the land to surface entry subject to valid existing rights. Except for 24.27 acres that are temporarily closed to mining due to the pending land exchange, the land has been and will remain open to mineral leasing, and to mining under the provisions of the Mining Claims Rights Restoration Act of 1955. The Federal Energy Regulatory Commission has concurred with this action.

EFFECTIVE DATE: June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mary von Koch, BLM Moab Field Office, 82 East Dogwood Avenue, Moab, Utah 84532, 435–259–2128.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated July 2, 1910, which established Power Site Classification No. 34, is hereby revoked insofar as it affects the following described land:

Salt Lake Meridian

T. 23 S., R. 24 E.,
Sec. 8, N½SW¼.

The area described contains 80 acres in Grand County.

2. At 10 a.m. on June 3, 1999, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m., June 3, 1999, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The land has been open to mining under the provisions of the Mining Claims Rights Restoration Act of 1955, 30 U.S.C. 621 (1994). However, since this act applies only to land withdrawn for power purposes, the provisions of the act are no longer applicable.

Dated: April 29, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–11185 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–034–99–1220–00]

Designation Order; Notice of Overnight Camping Closure Within the BLM Gunnison Forks Wildlife Area and Implementation of Motorized Vehicle Use Restrictions at the Gunnison Forks and on Newly Acquired Public Lands in Delta County, Colorado

AGENCY: Bureau of Land Management, Montrose District, Uncompahgre Field Office, Montrose Colorado.

ACTION: Notice; camping closure on public lands administered by the Bureau of Land Management in the Gunnison Forks Wildlife Management Area and the implementation of motorized vehicle use restrictions in the Gunnison Forks area and on the newly acquired public lands resulting from the Tri-State acquisition of February 1999.

SUMMARY: Notice is given that overnight camping is prohibited on all BLM Public Lands within the Gunnison Forks Wildlife Management Area located at the confluence of the Gunnison River and North Fork of the Gunnison River and all public lands north of the Gunnison River between the Towns of Austin and Lazear. In addition, no overnight parking is permitted on the gravel bar adjacent to the Gunnison River and North Fork River at the Forks. Vehicles which park on the site for day use may not block the access to the river. All motorized use in the Forks areas is restricted to designated routes as indicated by signs. Notice is also given that motorized vehicle use on all newly acquired public lands resulting from the Tri-State land acquisition (February, 1999) is hereby restricted to existing roads and trails; no off-road travel is allowed.

DATES: The camping closure and motorized vehicle restriction are effective immediately and will remain in effect until such time that the Uncompahgre Basin Resource Management Plan and/or the Gunnison Gorge Recreation Management Area Plan is amended or revised.

SUPPLEMENTARY INFORMATION: This closure is established to assist the Bureau of Land Management in reducing problems associated with vehicle and camping use in the Gunnison Forks Wildlife Management area and in those areas adjacent to the area. The camping closure is necessary to prevent excessive impacts to soil, vegetation and other resources caused by long-term camping and inappropriate vehicle use.

The restriction of motorized vehicle use to existing roads and trails in the newly acquired public lands is needed to prevent any resource impacts or damage which might be caused by off-road vehicle use. These lands contain significant scenic, recreational, watershed, geologic, wildlife, cultural, and other resources, including potential habitat for critical and/or threatened and endangered species which require protection from unrestricted motorized use.

The camping closure and vehicle restrictions on the newly acquired public lands are consistent with the Uncompahgre Basin Resource Management Plan (1998), the Gunnison Gorge Recreation Area Management Plan (1985), and the Gunnison Forks Habitat Management Plan (1981).

CFR Title 43, Chapter II, Part 8360, Subpart 8364.1 and Part 8340, Subpart

8341.2 provide BLM authority for the camping closure and off-road vehicle use restrictions.

8360.0–7 Penalties: Violations of any regulations in these subparts by a member of the public are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR FURTHER INFORMATION: A map of the newly acquired public lands referred to in this notice and additional information concerning this closure and motorized vehicle restrictions may be obtained from Karen Tucker, Recreation Planner, Uncompahgre Field Office, 2505 South Townsend Ave., Montrose Colorado 80401, (970) 240–5309.

Dated: April 28, 1999.

James Sazama,

Acting Uncompahgre Field Office Manager.

[FR Doc. 99–11101 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–034–99–1220–00]

Designation Order; Notice of the Implementation of User Fees in the Gunnison Gorge in Montrose and Delta Counties, CO

AGENCY: Bureau of Land Management, Uncompahgre Field Office, Montrose, Colorado.

ACTION: Notice: Implementation of day and overnight user fees on public lands administered by the Bureau of Land Management within the Gunnison Gorge Wilderness Study Area and Recreation Area.

SUMMARY: Notice is hereby given that day use and overnight user fees are being charged for all private and commercial users, 16 years of age and older, within the Gunnison Gorge river canyon from the downstream boundary of the Black Canyon of the Gunnison National Monument down to, but not including the Smith Fork confluence (10 miles downstream of the Chukar boater put-in). There is no charge for private walk-in fishing or camping in the river canyon below the Smith Fork. Visitors that use the jet boat, raft rental and/or guide services of the Gunnison River Pleasure Park in the four-mile section of the Gunnison River between the North Fork and Smith Fork confluences will also be charged user fees.

Fees for day use are set at $3.00 per person and overnight use fees are set at $5.00 per person per day (i.e., $10 for one night camping; $15 for two nights, and $20 for three nights camping). An annual Gunnison Gorge pass for day use only is available for $15 per person. Golden Age, Golden Eagle, or Golden Access Passes or other similar entrance passes cannot be applied to user fees.

DATES: The implementation of user fees is effective immediately for the areas described above.

SUPPLEMENTARY INFORMATION: Fees will be collected on site via a self-issuing 3-part permit form, at the Chukar, Duncan, Bobcat, and Ute Trailheads. Visitors are instructed to fill out use information on the form, deposit their fees in the fee tube located at the trailhead and carry a copy of the fee receipt with them while in the Gorge as proof of payment. An additional copy of the fee receipt is to be left on visitors' vehicles at the trailhead.

All visitors to the Gunnison Gorge are also required to sign the visitor registration sheets located at the trailheads or the Chukar put-in. Visitors who intend on camping within the river corridor must also sign-in for a designated campsite on the registration sheet, following the directions for boater or walk-in sites provided at the trailhead or in the user brochure.

Visitors under the age of 16 years are exempt from paying fees, but must be signed-in on the register. Commercial guides are exempt from paying user fees only when they are on official duty with their respective companies in the Gorge. Golden Eagle, Age, and Access Passports apply only to entrance fees at designated areas and cannot be used to cover user or impact fees such as those imposed in the Gorge. National passes or other similar recreation discount cards are also not accepted for payment of user fees. The Gunnison Gorge Annual Day Use Pass applies only to day use and cannot be applied towards overnight user fees. Noncompliance with fee regulations, registration requirements, and/or other user regulations of the Gunnison Gorge may result in fines up to $1,000 and/or imprisonment up to 12 months and possibly, additional civil action.

Additional Information: In 1996, to address increasing visitor use and impacts on the public lands and declining federal budgets for recreation, Congress directed the U.S. Department of the Interior to implement the Recreation Fee Demonstration Program for three of its agencies, the BLM, the National Park Service, and the U.S. Fish and Wildlife Service. The intent of the program is to help spread some of the costs for managing these lands among those who use them. The Gunnison Gorge is one of the original BLM fee demonstration pilot sites. The site was specifically chosen to test BLM's ability to collect fees and user acceptance of fees in a remote, high intensity use area. All of the fees collected in the Gorge are returned to the Uncompahgre Field Office for use in managing the area. In 1997–98, the BLM conducted public meetings and formed a Fee Work Group composed of private and commercial interests and members of the BLM's Southwest Resource Advisory Council (RAC). The Work Group developed the schedule of fees that would be charged in the Gunnison Gorge and set funding priorities for spending the fees.

Authorities: The Omnibus Consolidated Rescissions and Appropriation Act of 1996 (PL 104–134, Sec. 315) provides the authority for BLM to carry out the Recreational Fee Demonstration Program by charging and collecting fees in Pilot Fee Sites. Under this authority, the agency "may assess a fine of not more than $100 for any violations of the authority to collect fees for admission to the area or for the use of outdoor recreation sites, facilities, visitor centers, equipment, and services." Additional authorities for collecting user fees, implementing special regulations for visitor conduct, and imposing fines for noncompliance with regulations include the Federal Land Policy and Management Act of 1976, P.L.–94–579 (43 U.S.C. 1701 et seq.), the Land and Water Conservation Fund Act of 1965, P.L. 88–578 (16 U.S.C. 460 (1–6a) *et seq.*), and Title 43 CFR, Subpart 8372.

Dated: April 28, 1999

Karen S. Tucker,

Acting Uncompahgre Field Office Manager.

[FR Doc. 99–11100 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining Reclamation and Enforcement (OSM) is announcing its intention to renew authority for the collection of information under 30 CFR Part 774, Revision; renewal; and transfer, assignment, or sale of permit rights. The collection described below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 3, 1999, in order to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related form, contact John A. Trelease at (202) 208–2783, or electronically to jtreleas@osmre.gov.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implementation provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). OSM has submitted a request to OMB to renew approval of the collection of information in 30 CFR Part 774, Revision; renewal; and transfer, assignment, or sale of permit rights. OSM is requesting a 3-year term of approval for this information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1029–0088, and is identified in 30 CFR 774.10.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on these collections of information was published on January 13, 1999 (64 FR 2231). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

Title: 30 CFR Part 774—Revision; renewal; and transfer, assignment, or sale of permit rights.

OMB Control Number: 1029–0088.

Summary: These regulations and sections 506(d), 511(a)(1) and 511(b) of SMCRA provide that persons seeking permit revisions, permit renewals, or the transfer, sale, or assignment of permit rights for surface coal mining operations must submit relevant information to the regulatory authority to allow the regulatory authority to determine whether the applicant and application meet the requirements for approval.

Frequency of Collection: On occasion.

Description of Respondents: Coal mine operators and State regulatory authorities.

Total Annual Responses: 5,442.

Total Annual Burden Hours: 100,470.

Send comments on the need for the collection of information for the performance of the functions of the agency; the accuracy of the agency's burden estimates; ways to enhance the quality, utility and clarity of the information collection; and ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information, to the following address. Please refer to OMB control number 1029–0088 in all correspondence.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of Interior Desk Officer, 725 17th Street, NW, Washington, DC 20503. Also, please send a copy of your comments to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240, or electronically to jtreleas@osmre.gov.

Dated: April 27, 1999.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 99–11124 Filed 5–3–99; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF JUSTICE

Notice; Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, and section 122 of CERCLA, 42 U.S.C. 9622, notice is hereby given that on April 5, 1999, a proposed *De Minimis* partial Consent Decree in *United States* v. *American Jetway Corporation, et. al.*, Civil Action No. 98–73295, was lodged with the United States District Court for the Eastern District of Michigan, Southern Division. This consent decree represents a settlement of claims of the United States against American Renovating Company for reimbursement of response costs and injunctive relief in connection with the Metamora Landfill Superfund Site ("Site") pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9601 *et seq.*

Under this settlement with the United States, American Renovating Company will pay $20,078 in reimbursement of response costs incurred by the United States Environmental Protection Agency at the Site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *American Jetway Corporation, et. al.*, D.J. Ref. 90–11–3–289/1.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Eastern District of Michigan, Southern Division, 211 West Fort Street, Suite 2300, Detroit, MI 48226, at the Region 5 Office of the Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604–3590, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Bruce Gelber,

Deputy Chief Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11072 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Consent Decree Under The Resource Conservation and Recovery Act and Clean Water Act

Notice is hereby given that a consent decree in *United States and State of Texas* v. *Encycle/Texas, Inc. and ASARCO, Inc.*, Civil Action No. H–99–1136 (S.D. Tx.) was lodged with the United States District Court for the Southern District of Texas on April 15, 1999.

In this action the United States and State of Texas sought injunctive relief and civil penalties under Section 3008(a) of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6928(a), and the United States sought injunctive relief and civil penalties under Section 309 (b) and (d) of the Clean Water Act ("CWA"), 33 U.S.C. 1319 (b) and (d). The decree resolves civil penalty and injunctive relief claims of the United States and Texas against Encycle/Texas, Inc. ("Encycle") and ASARCO Inc. ("ASARCO") under RCRA for alleged violations of hazardous waste regulations associated with

materials management practices at Encycle's facility in Corpus Christi, Texas and ASARCO's facilities in: East Helena, Montana; El Paso; Texas; and Amarillo, Texas. The consent decree also resolves civil penalty and injunctive relief claims of the United States against ASARCO under the CWA for alleged unpermitted discharges and permit violations at ASARCO's Tennessee mines.

The decree requires Encycle and ASARCO Inc. to: revise Encycle/Texas, Inc.'s hazardous waste management procedures; perform appropriate RCRA corrective action at Encycle and ASARCO's El Paso facility: develop and use innovative metals recycling technology at Encycle; perform an auto and truck tire recycling project at El Paso; implement an enhanced corporate-wide environmental management and compliance auditing system at ASARCO's operating domestic facilities. The settlement also includes payment of civil penalties for alleged past violations totaling $5.5 million ($2 million to be paid to the State of Texas), and performance of the following supplemental environmental projects: a permanent 30 acre environmental conservation area for public use to be maintained by ASARCO in Corpus Christi; an air quality project to reduce particulate pollution in the El Paso area; and, a wetlands restoration project at ASARCO's Coy Mine in Tennessee.

The Department of Justice will accept written comments relating to the proposed consent decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044 and refer to *United States and State of Texas* v. *Encycle, Texas, Inc. and ASARCO Inc.* (S.D. Tx.), DJ Ref. #s: 90–7–1–910, 90–7–1–910/1, and 90–7–1–890.

Copies of the proposed consent decree may be examined at the Office of the United States Attorney, 910 Travis Street, Houston, Texas 77002; at the U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, (202) 624–8892. A copy of the consent decree may also be obtained in person or by mail at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. When requesting a copy of the decree by mail, please enclose a check in the amount of $72.25 for a copy including exhibits, or $31.50 for a copy excluding exhibits (twenty-five cents per page reproduction costs) payable to the "Consent Decree Library."

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 99–11074 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on March 18, 1999 a proposed consent decree in *United States* v. *National Wood Preservers, Inc., et al.*, Civil Action No. 96–CV–5269, was lodged with the United States District Court for the Eastern District of Pennsylvania.

In this action, the United States sought recovery of approximately $7 million in response costs incurred as well as costs to be incurred by the United States in response to the release or threatened release of hazardous substances at the Havertown PCP Superfund Site ("Site"), located in Havertown Township, Delaware County, Pennsylvania. The Consent Decree will resolve the claims against one of the defendants, the Estate of Clifford Rogers, by providing for the sale of the portion of the Site currently owned by the Estate, which is its only remaining asset, and pay to the United States 80% of the proceeds.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *National Wood Preservers, Inc., et al.*, DOJ reference #90–11–3–1680.

The proposed consent decree may be examined at the Office of the United States Attorney, Eastern District of Pennsylvania, 615 Chestnut Street, Suite 1250, Philadelphia, PA 19106; at U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029; and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $7.25 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11073 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States, State of Illinois, and State of Missouri v. Allied Waste Industries, Inc. and Browning-Ferris Industries, Inc.; Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a Complaint, Hold Separate Stipulation and Order, and a proposed Final Judgment were filed with the United States District Court for the District of Columbia in *United States, State of Illinois and State of Missouri* v. *Allied Waste Industries, Inc., and Browning-Ferris Industries, Inc.*, Civil No. 1:99CV 00894 on April 8, 1999. A Competitive Impact Statement was filed on April 21, 1999. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h).

The Complaint alleged that the proposed acquisition by Allied Waste Industries, Inc. ("Allied") of certain small container waste hauling assets from Browning-Ferris Industries, Inc. ("BFI") in the St. Louis market would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The St. Louis market was defined as the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison, and Monroe. The proposed Final Judgment, filed at the same time as the Complaint, required Allied, among other things (1) to divest 12 of BFI's small container waste hauling routes serving the St. Louis market and related assets; (2) to offer less restrictive contracts to small container commercial waste hauling customers, and (3) not to acquire any commercial waste hauling assets in the St. Louis market for five years.

A Competitive Impact Statement filed by the United States describes the Complaint, the proposed Final Judgment, the industry, and the remedies to be implemented by Allied. Copies of the Complaint, Hold Separate

Stipulation and Order, proposed Final Judgment, and the Competitive Impact Statement are available for inspection in Room 215 in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC, and at the office of the Clerk of the United States District Court for the District of Columbia, Washington, DC. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Public comment is invited within the statutory 60-day comment period. Such comments, and response thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to J. Robert Kramer II, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530 (telephone: 202–307–0924).

Constance K. Robinson,

Director of Operations and Merger Enforcement Antitrust Division.

HOLD SEPARATE STIPULATION AND ORDER

It is hereby stipulated and agreed by and between the undersigned parties, subject to approval and entry by the Court, that:

I

Definitions

As used in this Hold Separate Stipulation and Order;

A. "Allied" means Allied Waste Industries, Inc. a Delaware corporation with its headquarters in Scottsdale, Arizona, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "BFI" means Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Commercial waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste: organic waste; special waste, such as contaminated soil; sludge; or recycled, materials) from commercial and industrial customers. Commercial waste hauling means using front-end load and rear-end load trucks to service small containers in the St. Louis area. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

D. "Relevant Hauling Assets" means (1) BFI Illinois commercial waste hauling routes 906, 909, 916 and 940 (as described in Exhibit A attached to the proposed Final Judgment) and BFI Missouri commercial waste hauling routes 902, 904, 906, 907, 908, 921, 926 and 940 (as described in Exhibit B attached to the proposed Final Judgment) including Saturday service in connection with the customers serviced on those routes; (2) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property nd improvements to real property (i.e., buildings)] used in connection with those routes; and (3) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

E. "Small container" means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

F. "St. Louis market" means the City of St. Louis and St. Louis County, Missouri; and the Illinois counties of St. Clair, Madison and Monroe.

G. "Relevant State" means the state in which the Relevant Hauling assets are located.

II

Objectives

The Final Judgment filed in this case is meant to ensure Allied's prompt divestitures of the Relevant Hauling Assets for the purpose of establishing a viable competitor in the commercial waste hauling business in the St. Louis market, to remedy the effects that plaintiffs allege would otherwise result from Allied's acquisition of certain BFI assets. This Hold Separate Stipulation and Order ensures, prior to such divestitures, that the Relevant Hauling Assets are an independent, economically viable, and ongoing business concern; and that competition is maintained during the pendency of the ordered divestitures.

III

Jurisdiction and Venue

The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

IV

Compliance With and Entry of Final Judgment

A. The parties stipulate that a Final Judgment in the form attached hereto may be filed with and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. § 16), and without further notice to any party or other proceedings, provided that the United States has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on Allied and by filing that notice with the Court.

B. Allied shall abide by and comply with the provisions of the proposed Final Judgment, pending the Judgment's entry by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an order of the Court.

C. Allied shall not consummate the transaction sought to be enjoined by the Complaint herein before the Court has signed this Hold Separate Stipulation and Order.

D. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon in writing by the parties and submitted to the Court.

E. In the event (1) the United States has withdrawn its consent, as provided in Section IV(A) above, or (2) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court rule declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

F. Allied represents that the divestitures ordered in the proposed Final Judgment can and will be made, and that Allied will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

V

Hold Separate Provisions

Until the divestitures required by the Final Judgment have been accomplished:

A. Allied shall preserve, maintain, and operate the Relevant Hauling Assets, as independent competitive

businesses, with management, sales and operations of such assets held entirely separate, distinct and apart from those of Allied's other operations. Allied shall not coordinate the marketing of, or negotiation or sales by, any Relevant Hauling Asset with Allied's other operations. Within twenty (20) days after the filing of the Hold Separate Stipulation and Order, or thirty (30) days after the entry of this Order, whichever is later, Allied will inform plaintiffs of the steps Allied has taken to comply with this Hold Separate Stipulation and Order.

B. Allied shall take steps necessary to ensure that (1) the Relevant Hauling Assets will be maintained and operated as independent, ongoing, economically viable and active competitors in the waste hauling business in the St. Louis market; (2) management of the Relevant Hauling Assets will not be influenced by Allied; and (3) the books, records, competitively sensitive sales, marketing and pricing information, and decision-making concerning the Relevant Hauling Assets, will be kept separate and apart from Allied's other operations. Allied's influence over the Relevant Hauling Assets shall be limited to that necessary to carry out Allied's obligations under this Hold Separate Stipulation and Order and the Final Judgment.

C. Allied shall use all reasonable efforts to maintain and increase the sales and revenues of the Relevant Hauling Assets, and shall maintain at 1998 or at previously approved levels, whichever are higher, all promotional, advertising, sales, technical assistance, marketing and merchandising support for the Relevant Hauling Assets.

D. Allied shall provide sufficient working capital to maintain the Relevant Hauling Assets as economically viable, and competitive ongoing businesses.

E. Allied shall take all steps necessary to ensure that the Relevant Hauling Assets are fully maintained in operable condition at no lower than their current capacity or sales, and shall maintain and adhere to normal repair and maintenance schedules for the Relevant Hauling Assets.

F. Allied shall not, except as part of a divestiture approved by plaintiffs in accordance with the terms of the proposed Final Judgment, remove, sell, lease, assign, transfer, pledge or otherwise dispose of any of the Relevant Hauling Assets.

G. Allied shall maintain, in accordance with sound accounting principles, separate, accurate and complete financial ledgers, books and records and report on a periodic basis, such as the last business day of every month, consistent with past practices, the assets, liabilities, expenses, revenues and income of the Relevant Hauling Assets.

H. Except in the ordinary course of business or as is otherwise consistent with this Hold Separate Stipulation and Order, Allied shall not hire, transfer, terminate, or otherwise alter the salary agreements for the Allied or BFI employee who, on the date of Allied's signing of this Hold Separate Stipulation and Order, either: (1) works at a Relevant Hauling Asset, or (2) is a member of management referenced in Section V(I) of this Hold Separate Stipulation and Order.

I. Until such time as the Relevant Hauling Assets are divested pursuant to the terms of the final Judgment, the Relevant Hauling Assets shall be managed by Stephen Zykan. Mr. Zykan shall have complete managerial responsibility for the Relevant Hauling Assets of Allied and BFI, subject to the provisions of this Order and the Final Judgment. In the event that Mr. Zykan is unable to perform his duties, Allied shall appoint, subject to the approval of the United States, after consultation with the Relevant States, a replacement within ten (10) working days. Should Allied fail to appoint a replacement acceptable to the United States, after consultation with the Relevant States, within (10) working days, the United States shall appoint a replacement.

J. Allied shall take no action that would interfere with the ability of any trustee appointed pursuant to the Final Judgment to complete the divestitures pursuant to the Final Judgment to purchasers acceptable to the United States, after consultation with the Relevant State.

K. This Hold Separate Stipulation and Order shall remain in effect until consummation of the divestitures contemplated by the Final Judgment or until further order of the Court.

FOR PLAINTIFF UNITED STATES OF AMERICA:

Arthur A. Feiveson, Illinois Bar No. 3125793

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, #3000, Washington, DC 20530, (202) 307–0901.

FOR DEFENDANT: ALLIED WASTE INDUSTRIES, INC.

Tom D. Smith,

Jones, Day, Reavis & Pogue, 1450 G Street, NW, Washington, DC 20005.

FOR DEFENDANT BROWNING-FERRIS INDUSTRIES, INC.:

David M. Foster,

Fulbright & Jaworski L.L.P., 801 Pennsylvania Avenue, NW., Washington, DC 20004–2615.

FOR PLAINTIFF STATE OF ILLINOIS

James E. Ryan,

Attorney General.

By:

Christine H. Rosso,

Assistant Attorney General, Antitrust Bureau, Office of the Attorney General, State of Illinois, 100 W. Randolph, Chicago, Illinois 60601, (312) 814–5610.

FOR PLAINTIFF STATE OF MISSOURI

Jeremiah W. (Jay) Nixon,

Attorney General.

By:

J. Robert Sears,

Assistant Attorney General, Office of the Attorney General, State of Missouri, 1530 Rax Court, Jefferson City, Missouri 65109, (573) 751–3321.

Order

It is so ordered by the Court, this _____ day of _____.

_____

United States District Judge

FINAL JUDGMENT

Whereas, plaintiffs, the United States of America, the State of Illinois, and the State of Missouri, and defendants Allied Waste Industries, Inc., ("Allied"), and Browning-Ferris Industries, Inc. ("BFI"), by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein; and that this Final Judgment shall settle all claims made by plaintiffs in their Complaint filed on April 8, 1999;

And whereas, defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And whereas, the essence of this Final Judgment, is, in the event of the acquisition of certain BFI assets by Allied, the prompt and certain

divestiture of the identified assets to assure that competition is not substantially lessened;

And whereas, plaintiffs require Allied to make certain divestitures for the purpose of establishing a viable competitor in the commercial waste hauling business in the St. Louis area;

And whereas, Allied has represented to plaintiffs that the divestitures ordered herein can and will be made and that Allied will later raise no claims of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained below;

And whereas, the United States, the states of Illinois and Missouri currently believe that entry of this Final Judgment is in the public interest;

Now, therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *ordered, adjudged, and decreed* as follows:

I

Jurisdiction

This Court has jurisdiction over each of the parties hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against defendants, as hereinafter defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II

Definitions

As used in this Final Judgment:

A. "Allied" means defendant Allied Waste Industries, Inc., A Delaware corporation with its headquarters in Scottsdale, Arizona and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

B. "BFI" means defendant Browning-Ferris Industries, Inc., a Delaware corporation with its headquarters in Houston, Texas, and includes its successors and assigns, and its subsidiaries, divisions, groups, affiliates, directors, officers, managers, agents, and employees.

C. "Commercial waste hauling" means the collection and transportation to a disposal site of trash and garbage (but not medical waste; organic waste; special waste, such as contaminated soil; sludge; or recycled materials) from commercial and industrial customers. Commercial waste hauling means using frontend load and rearend load trucks to service small containers in the St. Louis market. Typical customers include office and apartment buildings and retail establishments (e.g., stores and restaurants).

D. "Small container" means a 1 to 10 cubic yard container typically made of steel and often known as a dumpster.

E. "Relevant Hauling Assets" means (1) BFI Illinois commercial waste hauling routes 906, 909, 916 and 940 (as described in Exhibit A) and BFI Missouri commercial waste hauling routes 902, 904, 906, 907, 908, 921, 926 and 940 (as described in Exhibit B) including Saturday service in connection with the customers serviced on those routes; (2) all tangible assets, including capital equipment, trucks and other vehicles, containers, interests, permits, and supplies [except real property and improvements to real property (i.e., buildings)] used in connection with those routes; and (3) all intangible assets, including hauling-related customer lists, contracts and accounts used in connection with those routes.

F. "St. Louis market" means the City of St. Louis and St. Louis County, Missouri; and the Illinois counties of St. Clair, Madison and Monroe.

G. "Relevant State" means the state in which the Relevant Hauling Assets are located.

III

Applicability

A. The provisions of this Final Judgment apply to defendants, their successors and assigns, subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Allied shall require, as a condition of the sale or other disposition of all or substantially all of its relevant hauling assets, that the acquiring party agree to be bound by the provisions of this Final Judgment.

IV

Divestitures

A. Allied is hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred and twenty (120) calendar days after the filing of the Hold Separate Stipulation and Order in this case, or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to sell the Relevant Hauling Assets as a viable, ongoing business to a purchaser acceptable to the United States in its sole discretion, after consultation with the Relevant State.

B. Allied shall use its best efforts to accomplish the divestitures as expeditiously and timely as possible. The United States, in its sole discretion, after consultation with the Relevant State, may extend the time period for any divestiture an additional period of time not to exceed sixty (60) calendar days.

C. In accomplishing the divestitures ordered by this Final Judgment, Allied promptly shall make known, by usual and customary means, the availability of the Relevant Hauling Assets. Allied shall inform any person making an inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Allied shall also offer to furnish to all prospective purchasers, subject to customary confidentiality assurance, all information regarding the Relevant Hauling Assets customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Allied shall make available such information to the plaintiffs at the same time that such information is made available to any other person.

D. Allied shall not interfere with any negotiations by any purchaser to employ any Allied (or former BFI employee) who works at, or whose principal responsibility concerns, any hauling business that is part of the Relevant Hauling Assets.

E. As customarily provided as part of a due diligence process, Allied shall permit prospective purchasers of the Relevant Hauling Assets to have access to personnel and to make such inspection of such assets; access to any and all environmental, zoning, and other permit documents and information; and access to any and all financial, operational, or other documents and information.

F. Allied shall warrant to any and all purchasers of the Relevant Hauling Assets that each asset will be operational on the date of sale.

G. Allied shall not take any action, direct or indirect, that will impede in any way the operation of the Relevant Hauling Assets.

H. Allied shall warrant to the purchaser of the Relevant Hauling Assets that there are no material defects in the environmental, zoning, or other permits pertaining to the operation of each asset, and that with respect to all Relevant Hauling assets, Allied will not undertake, directly or indirectly, following the divestiture of each asset, any challenges to the environmental,

zoning, or other permits pertaining to the operation of the asset.

I. Unless the United States, after consultation with the Relevant State, otherwise consents in writing, the divestitures pursuant to Section IV, whether by Allied or by trustee appointed pursuant to Section V of this Final Judgment, shall include all Relevant Hauling Assets, and be accomplished by selling or otherwise conveying each asset to a purchaser in such a way as to satisfy the United States, in its sole discretion, after consultation with the Relevant State, that the Relevant Hauling Assets can and will be used by the purchaser as part of a viable, ongoing business or businesses engaged in waste hauling. The divestiture, whether pursuant to Section IV or Section V of this Final Judgment, shall be made to a purchaser or purchasers for whom it is demonstrated to the United States's sole satisfaction, after consultation with the Relevant State, that the purchaser: (1) Has the capability and intent of competing effectively in the waste hauling business in the Relevant Area; (2) has or soon will have the managerial, operational, and financial capability to compete effectively in the commercial waste hauling business in the St. Louis market; and (3) is not hindered by the terms of any agreement between the purchaser and Allied which gives Allied the ability unreasonably to raise the purchaser's costs, lower the purchaser's efficiency, or otherwise interfere in the ability of the purchaser to compete effectively in the St. Louis market.

V

Appointment of Trustee

A. In the event that Allied has not sold the Relevant Hauling Assets within the time period specified in Section IV of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States, to effect the divestiture of each such asset not sold.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Relevant Hauling Assets. The trustee shall have the power and authority to accomplish any and all divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VIII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Allied any investment bankers, attorneys, or agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures at the earliest possible time to a purchaser or purchasers acceptable to the United States, upon consultation with the Relevant State, and shall have such other powers as this Court shall deem appropriate. Allied shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Allied must be conveyed in writing to the relevant plaintiffs and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VI of this Final Judgment.

C. The trustee shall serve at the cost and expense of Allied, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of each asset sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Allied and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestiture and the speed with which it is accomplished.

D. Allied shall use its best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary regulatory approvals. The trustee and any consultants, accountants, attorneys, and other persons retained by the trustee shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Allied shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Allied shall permit bona fide prospective acquirers of each Relevant Hauling Asset to have reasonable access to personnel and to make such inspection of physical facilities and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After its appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered under this Final Judgment, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the business to be divested, and shall describe in detail each contact with any such person during that period. The trustee shall maintain full records of all efforts made to sell the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished, and (3) the trustee's recommendations, provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the parties, who shall each have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI

Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestiture pursuant to Sections IV or V of this Final Judgment, Allied or the trustee, whichever is then responsible for effecting the divestiture, shall notify plaintiffs of the proposed divestiture. If the trustee is responsible, it shall similarly notify Allied. The notice shall set forth the details of the proposed transaction and list the name, address, and telephone number of each

person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the business to be divested that is the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by plaintiffs of such notice, the United States, in its sole discretion, after consultation with the Relevant State, may request from Allied, the proposed purchaser, or any other third party additional information concerning the proposed divestiture and the proposed purchaser. Allied and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after plaintiffs have been provided the additional information request from Allied, the proposed purchaser, and any third party, whichever is later, the United States, after consultation with the Relevant State, shall provide written notice to Allied and the trustee, if there is one, stating whether or not it objects to the proposed divestiture. If the United States provides written notice to Allied and the trustee that it does not object, then the divestiture may be consummated, subject only to Allied's limited right to object to the sale under Section V(B) of this Final Judgment. Upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Allied under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VII

Affidavits

A. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter and every thirty (30) calendar days thereafter until the divestiture has been completed whether pursuant to Section IV or Section V of this Final Judgment, Allied shall deliver to plaintiffs an affidavit as to the fact and manner of compliance with Sections IV and V of this Final Judgment. Each such affidavit shall include, inter alia, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, and interest in the businesses to be divested, and shall describe in detail each contact with any such persons during that period. Each such affidavit shall also include a description of the efforts that Allied has taken to solicit a buyer for any and all Relevant Hauling Assets and to provide requested information to prospective purchasers, including the limitations, if any, on such information. Assuming the information set forth in the affidavit is true and complete, any objection by the Untied States, after consultation with the Relevant State, to information provided by Allied, including limitations on information, shall be made within fourteen (14) days of receipt of such affidavit.

B. Within twenty (20) calendar days of the filing of the Hold Separate Stipulation and Order in this matter. Allied shall deliver to plaintiffs an affidavit which describes in detail all actions Allied has taken and all steps Allied had implemented on an on-going basis to preserve the Relevant Hauling Assets pursuant to Section VIII of this Final Judgment and the Hold Separate Stipulation and Order entered by the Court. The affidavit also shall describe, but not be limited to, Allied's efforts to maintain and operate each Relevant Hauling Asset as an active competitor, maintain the management, staffing, sales, marketing and pricing of each asset, and maintain each asset in operable condition at current capacity configurations. Allied shall deliver to plaintiffs an affidavit describing any changes to the efforts and actions outlined in Allied's earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Allied shall preserve all records of all efforts made to preserve the Relevant Hauling Assets and to effect the ordered divestitures.

VIII

Hold Separate Order

Until the divestitures required by the Final Judgment have been accomplished, Allied shall take all steps necessary to comply with the Hold Separate Stipulation and Order entered by this Court. Defendants shall take no action that would jeopardize the sale of the Relevant Hauling Assets.

IX

Financing

Allied is ordered and directed not to finance all or any part of any acquisition by any person made pursuant to Sections IV or V of this Final Judgment.

X

Contractual Revisions

A. In accordance with paragraph X B, below, Allied shall alter the contracts it uses with its smaller container solid waste commercial customers in the St. Louis market to the form contained in the attached Exhibit C, except for contracts for terms of less than two years.

B. Except for contracts for terms of less than two years, Allied shall offer contracts in the form attached as Exhibit C to all new small container solid waste commercial customers or customers that sign new contracts for small container solid waste commercial service effective on the date Allied acquires the FBI assets. Allied shall offer such contracts to all other small container solid waste commercial customers in the St. Louis market by December 1, 1999.

XI

Acquisitions

Allied is hereby ordered and directed that for a period of five (5) years after notice of the entry of this Final Judgment, Allied shall not acquire any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets located in the City of St. Louis, Missouri; St. Louis County, Missouri; and in the Illinois counties of St. Clair, Madison and Monroe.

XII

Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the United States Department of Justice, upon written request of the Attorney General or of the Assistant Attorney General in charge of the antitrust Division, or upon written request of duly authorized representatives of the Attorney General's Office of any Relevant State, and on reasonable notice to Allied made to its principal offices, shall be permitted:

(1) Access during office hours of Allied to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of Allied, who may have counsel present, relating to the matters contained in this Final judgment and the Hold Separate Stipulation and Order; and

(2) Subject to the reasonable convenience of Allied and without restraint or interference from it, to interview, either

informally-or on the record, its officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Attorney General or of the Assistant Attorney General in charge of the Antitrust Division, or upon the written request of the Attorney General's Office of any Relevant State, Allied shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment and the Hold Separate Stipulation and Order.

C. No information or documents obtained by the means provided in Sections VII or XII of this Final Judgment shall be divulged by a representative of the plaintiffs to any person other than a duly authorized representative of the Executive Branch of the United States, or the Attorney General's Office of any Relevant State, except in the course of legal proceedings to which the United States or any relevant State is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by Allied to plaintiffs, Allied represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and Allied marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by plaintiffs to Allied prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which Allied is not a party.

XIII

Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIV

Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XV

Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____

_____

United States District Judge

COMPETITIVE IMPACT STATEMENT

The United States, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement related to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I

Nature and Purpose of the Proceeding

The United States filed a civil antitrust Complaint under Section 15 of the Clayton Act, 15 U.S.C. 25, on April 8, 1999, alleging that the proposed acquisition of Browning-Ferris Industries, Inc.'s ("BFI") small container commercial waste hauling assets in the St. Louis market by Allied Waste Industries, Inc. ("Allied") would constitute a violation of Section 7 of the Clayton Act, 15 U.S.C. 18. The States of Illinois and Missouri, by and through their respective Attorneys General, are co-plaintiffs with the United States in this action.[1]

The Complaint alleges that the effect of the acquisition may be substantially to lessen competition in small containerized commercial waste hauling services in the St. Louis market, which includes the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison and Monroe.

Plaintiffs seek, among other relief, a permanent injunction preventing the defendants from, in any manner, combining their small container commercial waste hauling assets in the St. Louis market. By the terms of a Hold Separate Stipulation and Order, which was filed simultaneously with the proposed Final Judgment, defendant Allied must take certain steps to ensure that, until the required divestiture has been accomplished, the BFI assets as outlined in the proposed Final Judgment will be held separate and apart from defendant Allied's other assets and businesses. Allied must, until the required divestiture is accomplished, preserve and maintain the specified BFI assets as saleable and economically viable ongoing concerns.

The United States, its co-plaintiffs, and the defendants also have filed a Hold Separate Stipulation and Order by which the parties consented to the entry of a proposed Final Judgment designed to eliminate the anticompetitive effects of the acquisition. Under the proposed Final Judgment, as explained more fully below, Allied would be required within 120 days after the filing of the Hold Separate Stipulation and Order, or 5 days after notice of the entry of the Final Judgment by the Court, to divest, as viable business operations, a specified number of BFI's small container commercial waste hauling routes and assets serving the St. Louis market. If Allied did not do so within the time frame in the proposed Final Judgment, a trustee appointed by the Court would be empowered for an additional six months to sell those assets. If the trustee is unable to do so in that time, the Court could enter such orders as it shall deem appropriate to carry out the purpose of the trust, which may, if necessary, include extending the trust and the trustee's appointment by a period requested by the United States, after consultation with its co-plaintiffs.

Additionally, under the proposed Final Judgment, as explained more fully below, defendant Allied would be required to offer less restrictive contracts to its small container commercial waste hauling customers in the St. Louis market; and be prohibited from acquiring any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets in the St. Louis market for 5 years after notice of the entry of proposed Final Judgment.

The United States, its co-plaintiffs, and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II

Description of the Events Giving Rise to the Alleged Violation

Allied and BFI are two of the three largest companies engaged in the commercial waste hauling and disposal business, with operations throughout the United States. In 1998, Allied reported domestic revenues of nearly $1.6 billion while BFI reported domestic revenues of nearly $4.7 billion.

[1] The APPA obligates only the United States to file a Competitive Impact Statement.

Allied and BFI agreed to a sale to Allied of BFI's small container commercial waste hauling assets in St. Louis market, as part of an asset swap agreement dated February 11, 1999.

A. The Solid Waste Hauling Industry

Solid waste hauling involves the collection of paper, food, construction material and other solid waste from homes, businesses and industries, and the transporting of that waste to a landfill or other disposal site. These services may be provided by private haulers directly to residential, commercial and industrial customers, or indirectly through municipal contracts and franchises.

Service to commercial customers accounts for a large percentage of total hauling revenues. Commercial customers include restaurants, large apartment complexes, retail and wholesale stores, office buildings, and industrial parks. These customers typically generate a substantially larger volume of waste than that generated by residential customers. Waste generated by commercial customers is generally placed in metal containers of one to ten cubic yards provided by their hauling company. One to ten cubic yard containers are called "small containers." Small containers are collected primarily by frontend load vehicles that lift the containers over the front of the truck by means of a hydraulic hoist and empty them into the storage section of the vehicle, where the waste is compacted. Specially-rigged rearend load vehicles can also be used to service some commercial small container customers, but these trucks generally are not as efficient as frontend load vehicles and are limited in the sizes of containers they can safely handle. Frontend load vehicles can drive directly up to a container and hoist the container in a manner similar to a forklift hoisting a pallet: the containers do not need to be manually rolled into position by a truck crew as with a rearend load vehicle. Service to commercial customers that use small containers is called "small containerized hauling service."

Solid waste hauling firms also provide service to residential and industrial (or "roll-off") customers. Residential customers, typically households and small apartment complexes that generate small amounts of waste, use noncontainerized solid waste hauling service, normally placing their waste in plastic bags or trash cans at curbside. Rearend load vehicles are generally used to collect waste from residential customers and from those commercial customers that generate relatively small quantities of solid waste, similar in the amount and kind to those generated by residential customers. Generally, rearend loaders use a one or two person crew to manually load the waste into the rear of the vehicle.

Industrial or roll-off customers include factories and construction sites. These customers either generate non-compactible waste, such as concrete or building debris, or very large quantities of compactible waste. They deposit their waste into very large containers (usually 20 to 40 cubic yards) that are loaded onto a roll-off truck and transported individually to the disposal site where they are emptied before being returned to the customer's premises. Some customers, like shopping malls, use large, roll-off containers with compactors. This type of customer generally generates compactible trash, like cardboard, in very great quantities; it is more economical for this type of customer to use roll-off service with compactor than to use a number of small containers picked up multiple times a week.

B. Small Containerized Commercial Waste Hauling Service

There are no practical substitutes for small containerized commercial waste hauling service. Small containerized commercial waste hauling service customers will not generally switch to noncontainerized service because it is too impractical and costly for those customers to bag and carry their trash to the curb for hand pick-up. Small containerized commercial waste hauling service customers also value the cleanliness and relative freedom from scavengers afforded by that service. Similarly, roll-off service is much too costly and takes up too much space for most small containerized commercial waste hauling service customers. Only customers that generate the largest volumes of solid waste can economically consider roll-off service, and for customers that do generate large volumes of waste, roll-off service is usually the only viable option. Accordingly, small container commercial waste hauling service is a line of commerce and a relevant product market.

Solid waste hauling services are generally provided in very localized areas. Route density (a large number of customers that are close together) is necessary for small containerized commercial waste hauling firms to be profitable. In addition, it is not economically efficient for heavy trash hauling equipment to travel long distances from customers without collecting significant amounts of waste. Thus, it is not efficient for a hauler to serve major metropolitan areas from a distant base. Haulers, therefore, generally establish garages and related facilities within each major local area served. Local laws or regulations that restrict where waste can be disposed of may further localize markets. Flow control regulations designate the disposal facilities where trash picked up within a geographic area must be disposed. Other local regulations may also prohibit the depositing of trash from outside a particular jurisdiction in disposal facilities located within that jurisdiction. These laws and regulations dictate that haulers operate only in these local jurisdictions so that they may use the designated disposal facilities.

The Complaint alleges the St. Louis market as a relevant geographic market for small containerized commercial waste hauling services. This market includes the City of St. Louis and St. Louis County in Missouri, and the Illinois counties of St. Clair, Madison and Monroe.

Allied and BFI compete with each other in small containerized commercial waste hauling services in the relevant geographic market, which is highly concentrated and becomes substantially more concentrated as a result of the proposed acquisition. In the St. Louis market, Allied and BFI each have over a 25% share of the small containerized commercial waste hauling business. The acquisition would increase the Herfindahl-Hirschmann Index ("HHI"),[2] a measure of market concentration, by about 1400 to about 3900 in the St. Louis market.

A new entrant cannot constrain the prices of larger incumbents until it achieves minimum efficient scale and operating efficiencies comparable to the incumbent firms. In small containerized commercial waste hauling service, achieving comparable operating efficiencies required achieving route destiny comparable to existing firms, which typically takes a substantial

[2] The Herfindahl-Hirschmann Index ("HHI") is a measure of market concentration calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2600 (30 squared (900) plus 30 squared (900) plus 20 squared (400) plus 20 squared (400) = 2600). The HHI, which takes into account the relative size and distribution of the firms in a market, ranges from virtually zero to 10,000. The index approaches zero when a market is occupied by a large number of firms of relatively equal size. The index increases as the number of firms in the market decreases and as the disparity in size between the leading firms and the remaining firms increases.

period of time. A substantial barrier to entry is the use of long-term contracts coupled with selective pricing practices by incumbent firms to deter new entrants into small containerized commercial waste hauling service and to hinder them in winning enough customers to build efficient routes. Further, even if a new entrant endures and grows to a point near minimum efficient scale, the entrant will often be purchased by an incumbent firm and will be removed as a competitive threat.

Solid waste hauling is an industry highly susceptible to tacit or overt collusion among competing firms. Overt collusion has been documented in more than a dozen criminal and civil antitrust cases brought in the last decade and a half. Such collusion typically involves customer allocation and price fixing, and where it has occurred, has been shown to persist for many years.

The elimination of one of a small number of significant competitors, such as would occur as a result of the proposed transaction in the St. Louis market, significantly increases the likelihood that consumers in these markets are likely to face higher prices or poorer quality service.

Based on the foregoing and other facts, the Complaint alleges that the effect of the proposed acquisition may be substantially to lessen competition in the above-described geographic area in the small containerized commercial waste hauling service market in violation of Section 7 of the Clayton Act.

III

Explanation of the Proposed Final Judgment

The provisions of the proposed Final Judgment are designed to eliminate the anticompetitive effects of the acquisition in small containerized commercial waste hauling services in the St. Louis market by establishing a new, independent and economically viable competitor in that market. The proposed Final Judgment requires Allied, within 120 days after the filing of the Hold Separate Stipulation and Order, or 5 days after notice of the entry of the Final Judgment by the Court, to divest, as a viable ongoing business or businesses, a specified number of BFI's small container commercial waste hauling routes and assets serving the St. Louis market. The divestiture would include both the small containerized commercial waste hauling service assets and other assets as may be necessary to insure the viability of the small container business. If Allied cannot accomplish this divestiture within the above-described period, the proposed Final Judgment provides that, upon application by the United States as plaintiff, the Court will appoint a trustee to effect the divestiture.

The proposed Final Judgment provides that the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Illinois and Missouri) that the operations can and will be operated by the purchaser or purchasers as a viable, ongoing business or businesses that can compete effectively in the relevant market. Similarly, if the divestiture is accomplished by the trustee, the assets must be divested in such a way as to satisfy plaintiff United States (after consultation with the states of Illinois and Missouri) that the business or businesses can and will be operated as viable, independent competitors by the purchaser or purchasers. The defendants must take all reasonable steps necessary to accomplish the divestiture and shall cooperate with prospective purchasers and, if one is appointed, with the trustee.

If a trustee is appointed, the proposed Final Judgment provides that Allied will pay all costs and expenses of the trustee. The trustee's commission will be structured so as to provide an incentive for the trustee based on the price obtained and the speed with which divestiture is accomplished. After his or her appointment becomes effective, the trustee will file monthly reports with the parties and the Court, setting forth the trustee's efforts to accomplish divestiture. At the end of six months, if the divestiture has not been accomplished, the trustee and the parties will make recommendations to the Court which shall enter such orders as appropriate in order to carry out the purpose of the trust, including extending the trust or the term of the trustee's appointment.

The proposed Final Judgment also requires Allied to offer less restrictive contracts (attached to the proposed Final Judgment as Exhibit C) to small containerized commercial waste hauling customers in the St. Louis market. These contractual changes involve shortening from three years to two years the term of contracts Allied uses, limiting renewals to one year periods, and substantially reducing the amount of liquidated damages. The proposed Final Judgment requires that these revised contracts shall be offered to all new, small, containerized commercial waste hauling customers and to existing customers that sign new contracts for small containerized commercial waste hauling service, effective beginning the date Allied acquires the BFI assets. By December 1, 1999, Allied must offer the revised contract to all other small containerized commercial waste hauling service customers in the St. Louis market.

The United States concluded that a change in the types of contracts used with small containerized commercial waste hauling service customers in the St. Louis market, in conjunction with the required divestiture, will adequately address the competitive concerns posed by Allied's acquisition of the BFI assets. Several factors led to the decision, including the number of existing competitors in the market; the size of the population and number and density of commercial establishments requiring small containerized commercial waste hauling service; and the number of haulers that currently do not provide, but, absent the long-term contracts that now exist, could provide small containerized commercial waste hauling service in the market. Requiring Allied to offer less restrictive contracts within the St. Louis market eliminates a major barrier to entry and expansion. Haulers already serving the market will be able to more easily expand their current or build new routes and nearby haulers will be able to build routes, thus constraining any possible anticompetitive price increase by the post-acquisition firm.

The proposed Final Judgment also prohibits Allied from acquiring any commercial waste hauling company, any commercial waste hauling route, or any relevant hauling assets in the St. Louis market for 5 years after notice of the entry of the proposed Final Judgment. The United States concluded that this restriction would ensure continued competition in the market by preventing Allied from acquiring small containerized commercial waste hauling routes which would have had the effect of undercutting the relief required by the proposed Final Judgment by effecting the entry and expansion of other market participants and stifling competition in small containerized commercial waste hauling.

The relief sought in the St. Louis market alleged in the complaint has been tailored to insure that, given the specific conditions in this market, the relief will protect consumers of small containerized commercial waste hauling services from higher prices and poorer quality service that might otherwise result from the acquisition.

IV

Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act (15 U.S.C. 15) provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act (15 U.S.C. 16(a)), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against the defendants.

V

Procedures Available for Modification of the Proposed Final Judgment

The United States and defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least 60 days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**. The United States will evaluate and respond to the comments. All comments will be given due consideration by the Department of Justice, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: J. Robert Kramer II, Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, NW, Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VI

Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, litigation against defendants Allied and BFI. The United States could have brought suit and sought preliminary and permanent injunctions against Allied's acquisition of the BFI assets. The United States is satisfied, however, that the divestiture of the assets, the contract relief, and the prohibition on acquisitions, as outlined in the proposed Final Judgment, will promote small containerized commercial waste hauling service competition in the St. Louis market and lower entry barriers that would otherwise substantially lessen competition in this market. The United States is satisfied that the proposed relief will prevent the acquisition from having anticompetitive effects in the St. Louis market, will maintain the structure of the St. Louis market that existed prior to the acquisition, will preserve the existence of independent competitors in this area, and will allow for new entry and expansion by existing firms in this market.

VII

Standard of Review Under the APPA for the Proposed Supplemental Order

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed supplemental Order "is in the public interest." In making that determination, the Court *may* consider—

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e) (emphasis added). As the Court of Appeals for the District of Columbia Circuit recently held, the APPA permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F. 3d 1448, 1458–62 (D.C. Cir. 1995). The courts have recognized that the term " 'public interest' take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662, 669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F. 2d 558, 565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶66,651, at 63,046 (D.D.C. 1985). In conducting this inquiry, "the Court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [3] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid/America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a Court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F. 2d 456, 462 (9th Cir. 1988) *quoting United States* v. *Bechtel Corp.*, 648 F. 2d 660, 666 (9th Cir.), *cert denied*, 454 U.S. 1083 (1981). *See also Microsoft*, 56 F. 3d 1448 (D.C. Cir. 1995). Precedent requires that:

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[3] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. § 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. *See* H.R. 93–1463, 93rd Cong. 2d Sess. 8–9, reprinted in (1974) U.S. Code Cong. & Ad. News 6535, 6538.

the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.[4]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States v. *Armour & Co.*, 402 U.S. 673, 681 (1971).

The proposed Final Judgment therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a final judgment requires a standard more flexible and less strict than the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' (citations omitted)."[5]

VIII

Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the United States in formulating the proposed Final Judgment.

Dated: April 22, 1999.

Respectfully submitted,

Arthur A. Feiveson,

IL Bar #3125793.

David R. Bickel,

DC Bar #393409.

Thomas J. Horton

Denise Cheung,

U.S. Department of Justice, Antitrust Division, Litigation II Section, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

Certificate of Service

I hereby certify that a copy of the foregoing has been served upon Allied Waste Industries, Inc., Browning-Ferris Industries, Inc., the Office of the Attorney General of the State of Illinois, and the Office of the Attorney General of the State of Missouri, by placing a copy of this Competitive Impact Statement in the U.S. mail, directed to each of the above-named parties at the address given below, this 22d day of April, 1999.

Allied Waste Industries, Inc., c/o Tom D. Smith, Jones Day Reavis & Pogue, Metropolitan Square, 1450 G Street, NW, Washington, DC 20005–2088

Browning-Ferris Industries, Inc., c/o David M. Foster, Fulbright & Jaworski, 801 Pennsylvania Avenue, NW, Washington, DC 20004–2615

State of Illinois, Christine H. Rosso, Assistant Attorney General, Office of the Attorney General, Antitrust Bureau, 100 W. Randolph, Chicago, IL 60601

State of Missouri, J. Robert Sears, Assistant Atorney General, Office of the Attorney General, 1530 Rax Court, Jefferson City, Missouri 65109

Arthur A. Feiveson,

Attorney, U.S. Department of Justice, Antitrust Division, 1401 H Street, NW, Suite 3000, Washington, DC 20530, (202) 307–0924.

[FR Doc. 99–11076 Filed 5–3–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98CV03170]

Public Comments and Response on Proposed Final Judgment United States v. AT&T Corp. and Telecommunications, Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *AT&T Corp. and Telecommunications, Inc.* Civil Action No. 98CV03170, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 8000 of the U.S. Department of Justice, Antitrust Division, 1401 H Street, N.W., Washington, D.C. 20530, telephone: (202) 514–5621, and at the office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, N.W., Washington, D.C. 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Comment Relating to Proposed Final Judgment and Response of the United States to Comment

Judge Emmet G. Sullivan

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) ("APPA"), the United States of America hereby files the public comment it has received relating to the proposed Final Judgment in this civil antitrust proceeding, and herein responds to the public comment. The United States has concluded that the change to the proposed Final Judgment that was suggested in the comment would be in the public interest. Accordingly, the United States has secured the consent of the defendants to modify the proposed Final Judgment in this respect. The APPA requires publication of the public comment and the United States' response. When that publication has been completed, the United States will file a Certificate of Compliance with the APPA and a Motion for Entry of the Modified Judgment with the court.

I. Background

This action was commenced on December 30, 1998, when the United States filed a civil antitrust complaint under Section 15 of the Clayton Act, as amended, 15 U.S.C. § 25, alleging that the merger of Tele-Communications, Inc. ("TCI") with a wholly-owned subsidiary of AT&T Corp. ("AT&T") and the resultant acquisition by AT&T of a 23.5 percent equity interest in the mobile wireless telephone business of Sprint Corporation ("Sprint PCS") would substantially lessen competition in the provision of mobile wireless telephone services in many geographic areas throughout the country.

In June 1998, AT&T and TCI executed a Merger Agreement and Plan of Merger pursuant to which TCI would be merged into a wholly-owned subsidiary of AT&T. The proposed transaction would have resulted in the acquisition of a 23.5 percent interest in Sprint's mobile

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[4] *United States* v. *Bechtel*, 648 F. 2d at 666 (citations omitted) (emphasis added); *see United States* v. *BNS, Inc.*, 858 F. 2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *United States* v. *Gillette Co.*, 406 F. Supp. at 716. *See also United States* v. *American Cyanamid Co.*, 719 F. 2d at 565.

[5] *United States* v. *American Tel. and Tel Co.*, 552 F. Supp. 131, 150 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983) *quoting United States* v. *Gillette Co., supra*, 406 F. Supp. at 716; *United States* v. *Alcan Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

wireless business, one of the principal competitors to AT&T's mobile wireless telephone business in many geographic areas throughout the country. The United States concluded that AT&T's incentives to compete with Sprint PCS could be lessened significantly as a result of the ownership of this substantial interest in Sprint PCS. Accordingly, on December 30, 1998, the United States filed a Complaint seeking to enjoin the merger. Contemporaneously with its Complaint, the United States also submitted a proposed Final Judgment, a Competitive Impact Statement, and a Stipulation signed by the defendants consenting to entry of the proposed Final Judgment by the Court after completion of the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16).

Among other things, the proposed Final Judgment requires the defendants to transfer the Sprint PCS stock to a trustee, who is required to divest the stock. See Section V.A., proposed Final Judgment. The proposed Final Judgment also contains a number of provisions to effect a "hold separate" arrangement until this divestiture has been completed. See CIS at 12–15. One of these provisions, set forth in Section VI.D. of the proposed Final Judgment, required that the trustee be instructed not to vote the Sprint PCS shares held by the trust.

II. Response to Public Comments

The only comment received by the United States was filed by Sprint.[1] Sprint's comment is focused on section VI.D. of the proposed Final Judgment. Sprint points out that some of its potential corporate transactions require the approval of a majority (or some other specified percentage) of all shares entitled to vote. For these matters, shares that fail to vote are the equivalent of shares voting against a proposal. Given the substantial portion of Sprint PCS shares that will be held by the trust, Sprint contends that its ability to obtain shareholder approval on such matters could be impeded by the non-voting requirement in section VI.D. of the proposed Final Judgment, and that Sprint's effectiveness as a competitor could be diminished by this constraint on its strategic flexibility. Comments of Sprint Corporation at 2.

The United States agrees that section VI.D. of the proposed Final judgment could have such an effect, and that the modification suggested by Sprint would be appropriate in order to address the concerns raised by Sprint. The United States' objective in negotiating the non-voting requirement in Section VI.D. was to protect competition by ensuring that the Sprint PCS shares would not be voted in a way that might reduce competition. In light of the information and analysis set forth in Sprint's comments, however, the United States has concluded that the underlying objective would be better served if section VI.D. is modified, to read as follows: "The trustee shall be instructed to vote all of Liberty's Sprint Holdings that are entitled to vote for and/or against applicable matters in the same respective proportions as the other holders of the Sprint PCS Tracking Stock." This modification will fully neutralize the voting rights of the Liberty Sprint Holdings, yet avoids the unintended effects described by Sprint in its comment.

The defendants and the United States have entered into a Stipulation, attached hereto, agreeing to the entry of a Final Judgment which incorporates this modification to section VI.D., but which is otherwise unchanged from the proposed Final Judgment filed on December 30, 1998.

III. Standard of Review

As set forth in Section VII of the Competitive Impact Statement, the APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93d Cong. 2d Sess. 8–9 (1974), reprinted in U.S.C.C.A.N. 6535, 6538. As the United States Court of Appeals for the D.C. Circuit recently held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. See *United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

Under this standard, the Court's role is limited to determining whether the proposed decree is within the "zone of settlements" consistent with the public interest, not whether the settlement diverges from the Court's view of what would best serve the public interest. *United States* v. *Western Electric Co.*, 993 F.2d 1572, 1576 (quoting *United States* v. *Western Electric Co.*, 900 F.2d 283, 307 (D.C. Cir. 1990)); *United States* v. *Microsoft Corp.*, 56 F.3d at 1457–58, see also 56 F.3d at 1460 (D.C. Cir. 1995). As the United States Court of Appeals for the District of Columbia Circuit recognized in reversing the district court's refusal to enter an antitrust consent decree proposed by the United States: "Congress did not mean for a district judge to construct his own hypothetical case and then evaluate the decree against that case." *United States* v. *Microsoft Corp.*, 56 F.3d at 1458–60. To the contrary, "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," and so the district court "is only authorized to review the decree itself," not other matters that the government might have but did not pursue. *Id.*

Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should . . . carefully consider the explanations of the government . . . and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977). The Court may reject the agreement of the parties as to how the public interest is best served only if it has "exceptional confidence that adverse antitrust consequences will result. . . ." *United States* v. *Western Electric Co.*, 993 F.2d at 1577 (D.C. Cir.), *cert. denied*, 114 S. Ct. 487 (1993), *quoted with approval in United States* v. *Microsoft Corp.*, 56 F.3d at 1460.

IV. Conclusion

For the reasons stated herein, the proposed Final Judgment, with section VI.D. of the proposed Final Judgment modified as indicated above with the consent of the Defendants, is consistent with the public interest.

Dated: March 26, 1999.

[1] This comment is attached hereto as Exhibit A.

Respectfully submitted,

Peter A. Gray,

Attorney, Telecommunications Task Force, U.S. Department of Justice, Antitrust Division, 1401 H. Street, N.W., Suite 8000, Washington, D.C. 20530, (202) 514–5636.

King & Spalding

1730 Pennsylvania Avenue, N.W., Washington, D.C. 20006–4706, Telephone: 202/737–0500, Facsimile: 202/626–3737

March 11, 1999.

By Hand Delivery

Mr. Donald J. Russell,
Chief, Telecommunications Task Force, Antitrust Division, U.S. Department of Justice, 1401 H Street, N.W., Suite 8000, Washington, D.C. 20530

Re: U.S. v. AT&T Corp. and Tele-Communications, Inc., Civil Action No. 98 CV 03170 (EGS (D.D.C.)

Dear Mr. Russell: In accordance with the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)–(h), Sprint Corporation submits the enclosed comments on the proposed consent decree in the above-entitled action.

Sincerely,

Kevin R. Sullivan

Comments of Sprint Corporation

Sprint Corporation ("Sprint"), pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (the "Tunney Act"), submits these comments on the Final Judgment proposed by the United States Department of Justice (the "Department") concerning the planned acquisition by AT&T Corporation ("AT&T") of Tele-Communications, Inc. ("TCI").

Summary

TCI owns about 22% of the outstanding shares of Sprint PCS Stock (a tracking stock which generally tracks Sprint's wireless operations). The proposed Final Judgment requires TCI to transfer its holdings in Sprint PCS Stock to a trustee for the purpose of accomplishing a complete divestiture of such holdings by May 23, 2004, See Final Judgment §§ IV.A., V.A., 64 Fed. Reg. 2506, 2507–08 (January 14, 1999). While the PCS Stock is held in the trust, the trustee is instructed by § VI.D. of the proposed Final Judgment not to vote the stock 64 F.R. at 2509.

Sprint believes that the non-voting provision of the proposed Final Judgment could have the anticompetitive effect of limiting Sprint's financial and operating flexibility. Certain Sprint corporate matters require the approval of a majority (or some other percentage) of all shares entitled to vote. For these matters, not voting has the same effect as a negative vote. Due to the large amount of Sprint PCS Stock the trust will hold, if the trustee does not vote the shares, it could be difficult for Sprint to obtain necessary shareholder votes. Many of the matters that could be affected involve important strategic options including the authorization of additional stock which could be needed to fund new products or technologies, the combination of PCS Group with the rest of Sprint, and the "spin-off" of the PCS Group. If Sprint's strategic flexibility is constrained, it could become a less effective competitor in the constantly-evolving telecommunications industry.

In order to avoid these potential anticompetitive effects, the proposed Final Judgment needs to be modified to instruct the trustee to vote the Sprint PCS Stock pro rata in accordance with the votes of all other Sprint PCS shareholders. By ordering the trustee to vote its shares pro rata, the Final Judgment would neuter completely the voting power of the Sprint PCS Stock held by the trust without constraining Sprint.

I. The Non-Voting Provision in the Proposed Final Judgment Would Constrain Sprint's Operating and Financial Flexibility

A. Background

Sprint's PCS Stock is a "tracking stock" which generally tracks the performance of Sprint's wireless PCS operations. Sprint's other tracking stock, the FON Common Stock, tracks the performance of Sprint's other operations, including local and long distance telephone service. On most matters, the FON Stock has one vote per share and the PCS Stock has a fluctuating vote based on the market price of the PCS stock relative to the FON Stock.

TCI, through a subsidiary, owns approximately 98.5 million shares of low-vote Series 2 PCS Stock. TCI's shares are equal to approximately 22% of the total shares and share equivalents of the Sprint PCS Stock (not including the warrants and preferred stock owned by TCI). On most matters, the Series 2 PCS Stock owned by TCI has one-tenth of the vote per share of Series 1 PCS Stock.[1] However, on matters for which the PCS Stock votes as a class (as opposed to voting with the FON Stock), the Series 2 PCS Stock has the same voting power as the publicly-traded Series 1 PCS Stock.

B. The Proposed Final Judgment

Under the terms of the proposed Final Judgment, TCI must, prior to the closing of AT&T's acquisition of TCI, transfer the Sprint PCS Stock it currently owns to a trustee. Final Judgment § IV.A., 64 FR at 2507. Pursuant to § V.A., the trustee must divest by May 23, 2002, the portion of TCI's holdings sufficient to bring the holding to no more than 10% of the outstanding Sprint PCS Stock and must completely divest the Sprint PCS Stock by May 23, 2004. 64 FR at 2508. Section VI.D. of the Final Judgment states that "[t]he trustee shall be instructed not to vote [the Sprint PCS shares] for so long as they are held in trust." 64 FR at 2509.

C. The Potential Anticompetitive Effects

The trustee's inability to vote the shares in the trust will adversely affect Sprint's ability to obtain the necessary shareholder vote in any matter that requires a majority (or some other percentage) of all shares entitled to vote. On these matters, if the trustee does not vote, the large block of PCS stock held by the trust will effectively vote no.[2] Because many important corporate actions require a majority of all shares entitled to vote, Sprint's operating flexibility will be constrained significantly.

The difficulties caused if TCI's PCS shares don't vote are most significant where the Series 2 PCS Stock that the trust will hold has a full vote per share. Spring will be exposed to significant anticompetitive harm if it is unable to obtain shareholder approval for this category of actions.

For instance, in order for Sprint to increase the number of authorized shares of PCS Stock, Article Sixth, Section 3.1(ii) of its Charter requires that the PCS Stock vote as a class (with the Series 2 PCS Stock, that the trust will hold, having a full vote per share). For more PCS shares to be authorized, the approval of a majority of all shares entitled to vote is needed. Assuming, hypothetically, that at the time of a vote Sprint has 450 million shares of PCS Stock that vote and the trust holds approximately 22% of the PCS Stock or 98.5 million shares of Series 2 PCS Stock, Sprint would need approval of 225,000,001 shares. If out of the 351.5 million non-trust shares, only 275 million are voted on this issue due to shareholders failing to send in proxy cards and if the trustee does not vote its shares, Sprint would be required to

[1] Upon sale by TCI to an unrelated party, the Series 2 PCS Stock now owned by TCI will convert to Series 1 PCS Stock with full voting power.

[2] The trustee's inability to vote will not affect Sprint's ability to obtain shareholder approval in matters where a percentage of the shares that actually do vote at a given meeting is required.

obtain affirmative votes from 81.8% of the shares that are voted (225,000,001 out of 275,000,000 votes), a difficult percentage to obtain in any public vote. If less than 225 million shares were voted, then Sprint's proposal would fail, even if a full 100% of the shares voted in favor.

Any difficulty in authorizing more PCS Stock could have substantial anticompetitive effects:

• Sprint might need to have more shares of PCS Stock authorized in order to issue more shares to raise capital for the buildout of its PCS network, or to raise substantial capital for events that are not foreseeable today, such as improvements or changes to technology that are necessitated by competitive developments in the PCS business.

• Sprint might desire to complete certain pro-competitive acquisitions using PCS Stock as consideration, which could require the authorization of additional shares.

Without the ability to fund the buildout of its network and other activities that become necessary in the future, and without the ability to acquire strategic business partners that may become critical to the survival of Sprint PCS, Sprint could be placed in a position of substantial competitive disadvantage.

There are numerous other examples of important Sprint corporate actions that require a majority of all shares entitled to vote and entitle the Series 2 PCS Stock that the trust will hold to a full vote per share including:

• Amendment to the Charter that would alter or change the powers, preferences or special rights of the shares of the PCS Stock so as to affect them adversely;

• "Spin off" of the PCS Group within 2 years of November 23, 1998; and

• Acquisition by the FON Group or another Group of more than 33% of the assets of the PCS Group.

For each of these actions, the trustee's inability to vote could constrain Sprint anticompetitively by preventing Sprint from structuring itself most effectively.

If the trustee does not vote TCI's PCS shares, the financial and operating flexibility of Sprint will be constrained. To be competitive in telecommunications, a company needs the ability to change its capital structure in order to provide new technologies and compete in new markets. In the past year alone, each of AT&T, MCI, and Sprint has undergone substantial structural changes in an effort to be more competitive. Exactly what will be demanded in the next five years is unknown, but it is certain that technology will progress and companies will need to organize themselves properly to efficiently deliver these developing technologies to their customers.

II. To Avoid Anticompeititive Effects, the Final Judgment Must Order Pro Rata Voting by the Trustee

In order to avoid the anticompetitive effects discussed above, the Final Judgment must require the trustee to vote the Sprint PCS Stock held in the trust pro rata in accordance with the proportion of the votes of the other Sprint PCS shareholders. Under this proposal, the trustee would exercise no discretion in voting the stock, but the views of the other Sprint PCS shareholders would not be frustrated in those situations requiring a majority of all shares entitled to vote.

For all votes in which the PCS shares held by the trust are eligible to vote, the trustee should be instructed to vote the shares in the same proportion as the other shares of PCS Stock are voted. Specifically, the proportion voted in favor and the proportion voting against (or, where shareholders are not provided the opportunity to vote against, the proportion of votes not voted in favor) should be equal to these respective proportions in light of all votes cast by the other holders of Series 2 PCS Stock, the holders of Series 1 PCS Stock, the holders of Series 3 PCS Stock, and the PCS Stock votes that are attributed to the shares of Class A Common Stock held by France Télécom S.A. and Deutsche telekom AG.

Because the Sprint PCS Stock held by TCI has low voting power in most situations, the Department concluded that any concerns that AT&T would influence or control Sprint's competitive behavior are minimal. See Competitive Impact Statement § II.C n.8, 64 FR 2506, 2511. Nevertheless, according to the Competitive Impact Statement filed by the Department, the voting prohibition embodied in § VI.D. is meant to further address the concern that AT&T might "influence [] the competitive behavior of [Sprint] in ways that reduce competition." See Id. By ordering the trustee to vote the PCS Stock held by the trust pro rata, the Final Judgment will eliminate completely any influence or control AT&T or the trustee has over Sprint's competitive behavior and avoids the anticompetitive effect of constraining Sprint's strategic flexibility caused by the no vote approach.

Dated: March 11, 1999.

Respectfully submitted,

Sprint Corporation by its attorneys
Kevin R. Sullivan (D.C. Bar No. 411718),
Peter M. Todaro (D.C. Bar No. 455430),
King & Spalding, 1730 Pennsylvania Avenue, NW., Washington, DC 20006, (202) 737–0500.
Bruce N. Hawthorne,
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[FR Doc. 99–11075 Filed 5–3–99; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request, Submitted for Public Comment and Recommendations; Extension of the Unemployment Insurance (UI) Revenue Quality Control (RQC) Program

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed revision and extension of the UI RQC Program. Note that as part of an Unemployment Insurance Service (UIS) reorganization effort, the name was changed from RQC to the Tax Performance System (TPS). Discussions are still taking place as to the most appropriate name for the program and so, during the process of extending this program, the reference name shall remain as Revenue Quality Control on all papers, documents, handbooks, forms and software packages. A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted on or before July 6, 1999.

Written comments should:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Evaluate the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

ADDRESSES: Rett Hensley, Unemployment Insurance Service, Employment and Training Administration, Department of Labor, Room S4522, 200 Constitution Ave., NW, Washington, DC 20210; 202–219–5615 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all State Employment Security Agencies (SESAs) except the Virgin Islands have been required by regulation at 20 CFR 602 to operate a program to assess their Unemployment Insurance tax and benefit programs. RQC developed new measures for tax performance to replace those previously gathered under the Quality Appraisal (QA) system. RQC is designed to assess the major internal UI tax functions by utilizing several methodologies: Computed Measures which are indicators of timeliness and completeness based on data automatically generated via the existing ET 581 automated report; and Program Reviews which assess accuracy through a two-fold examination: (a) "Systems Review" examine tax systems for the existence of internal controls; (b) small samples of those systems' transactions are then examined to verify the effectiveness of controls.

II. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) of an extension to an existing collection of information previously approved and assigned OMB Control No. 1205–0332.

Agency: Employment and Training Administration, Department of Labor.

Title: Unemployment Insurance Revenue Quality Control Program.

OMB Number: 1205–0332.

Affected Public: State governments (State Employment Security Agencies).

Total Respondents: Fifty two state governments.

Frequency: Annually.

Total Response: Fifty two.

Average time per response: 1,750 hours.

Estimated Total Burden Hours: 91,000 hours for 52 States.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the extension of the information collection request; they will also become a matter of public record.

Dated: April 27, 1999.

Grace A. Kilbane,

Director, Unemployment Insurance Service.

[FR Doc. 99–11133 Filed 5–3–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Native American Employment and Training Council

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, and section 401(k)(1) of the Job Training Partnership Act, as amended [29 U.S.C. 1671(k)(1)], notice is hereby given of a meeting of the Native American Employment and Training Council.

TIME AND DATE: The meeting will begin at 1:00 p.m. CDT on Thursday, May 27, 1999, and continue until 5:00 p.m. CDT that day. The meeting will reconvene at 9:00 a.m. CDT on Friday, May 28, 1999, and adjourn at 4:00 p.m. CDT on that day. The period from 3:00 p.m. to 5:00 p.m. CDT on May 27 will be reserved for participation and presentation by members of the public.

PLACE: The Lincoln and Jefferson Rooms of the Ramkota Inn, I–29 and Exit 81, Sioux Falls, South Dakota 57107.

STATUS: The meeting will be open to the public.

MATTERS TO BE CONSIDERED: The agenda will focus on the following topics: (1) status of the Program Year 1998 Partnership Plan; (2) results of the evaluation of the section 401 program; (3) progress of the performance measures/standards workgroup; (4) status of technical assistance and training provision for Program Year 1998 and 1999; (5) status of FY 1999 Indian and Native American Welfare-to-Work program implementation; and (6) status of pending implementation of the Workforce Investment Act, including a report on the progress and future actions of the Regulations Work Group.

FOR FURTHER INFORMATION CONTACT: Mr. James C. DeLuca, Chief, Division of Indian and Native American Programs, Office of National Programs, Employment and Training Administration, U.S. Department of Labor, Room N–4641, 200 Constitution Avenue, NW, Washington, DC 20210. Telephone: (202) 219–8502 ext 119(VOICE) or (202) 326–2577(TDD) (these are not toll-free numbers).

Signed at Washington, DC, this 27th day of April, 1999.

Anna W. Goddard,

Director, Office of National Programs.

[FR Doc. 99–11132 Filed 5–3–99; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consolidation Coal Company

[Docket No. M–1999–016–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.804(a) (underground high-voltage cables) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petitioner proposes to use a high-voltage cable with an internal ground check conductor smaller than No. 10 (A.W.G.) as part of its longwall mining system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Lone Mountain Processing, Inc.

[Docket No. M–1999–017–C]

Lone Mountain Processing, Inc., P.O. Box 40, Pennington Gap, Virginia 24277 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Darby Fork No. 1 Mine (I.D. No. 15–02263) located in Harlan County, Kentucky. Due to deteriorating roof conditions in certain

areas of the return air course, the petitioner proposes to establish three monitoring locations to evaluate the air entering and leaving the No. 3 East Main and No. 3 North Main return air course used to return air that ventilates the 7, 8, 11, and 12 Right Panels (5 East Main) to the main surface mine fan. The petitioner proposes also to (i) have a certified person conduct weekly evaluations at each monitoring location to measure the quality of air entering and leaving the monitoring location to determine the methane and oxygen concentrations using an MSHA approved hand-held device, and to measure the quantity of air at each monitoring location using an appropriate calibrated anemometer; (ii) have the examiner record the results of the examinations in a book kept on the surface with the date, time, and his/her initials and made available to all interested parties; (iii) conduct an investigation of the affected area whenever there is any significant difference in the quantities of air flow at or between the two monitoring stations; (iv) keep all monitoring locations and all approaches to the locations maintained in safe condition at all time; (v) post a sign in the main travelway that would show the safe travel route to each monitoring location; and (vi) instruct all personnel that no travel into the affected area of the air course is permitted, and fence off or barricade with "Do Not Enter" warning signs, all other approaches to these locations. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Clinchfield Coal Company

[Docket No. M–1999–018–C]

Clinchfield Coal Company, P.O. Box 7, Dante, Virginia 24237 has filed a petition to modify the application of 30 CFR 75.1710–1(a) (canopies or cabs; self propelled diesel-powered and electric face equipment; installation requirements) to its Roaring Fork No. 2 Mine (I.D. No. 44–06308) located in Dickenson County, Virginia. The petitioner proposes to operate its Long Airdox Un-A-Haulers Models CH 810 and 828 electric face equipment without canopies in mining heights of less than 50 inches. The petitioner asserts that although the equipment at issue can be operated with canopies in a minimum height of 48 inches, operating equipment with canopies in lesser heights exposes miners to increased danger, such as dislodgment of roof supports by the canopies, resulting in the increased probability of roof falls that could injure the equipment operator and other miners in the area. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners.

4. K and B Coal, Inc.

[Docket No. M–1999–019–C]

K and B Coal, Inc., P.O. Box 2265, Pikeville, Kentucky 41502 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine No. 1 (I.D. No. 15–17984) located in Knott County, Kentucky. The petitioner proposes to use permanently installed spring-loaded locking devices on its mobile battery-powered machines instead of a padlock to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. Webster County Coal Corporation

[Docket No. M–1999–020–C]

Webster County Coal Corporation, St. Rt. 2668 120 E, Providence, Kentucky 42450 has filed a petition to modify the application of 30 CFR 75.701 (grounding metallic frames, casings, and other enclosures of electric equipment) to its Dotiki Mine (I.D. No. 15–02132) located in Webster County, Kentucky. The petitioner proposes to use a 200 KW/250 KVA, 480-volt diesel generator system for moving equipment in and out the Dotiki Mine. The petitioner has listed specific procedures, terms, and conditions in this petition to be followed when using this generator system. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Jim Walter Resources, Inc.

[Docket No. M–1999–021–C]

Jim Walter Resources, Inc., P.O. Box 133, Brookwood, Alabama 35444 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its No. 4 Mine (I.D. No. 01–01247) located in Tuscaloosa County, Alabama. The petitioner states that due to hazardous conditions in the return air course entries, traveling certain areas of the air course would be unsafe. The petitioner proposes to establish evaluation points inby and outby the affected area and have a certified person examine these evaluations points for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine. The petitioner asserts that application of the mandatory standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. ASARCO, Inc.

[Docket No. M–1999–002–M]

ASARCO, Inc., P.O. Box 8, Hayden, Arizona 85235 has filed a petition to modify the application of 30 CFR 56.14100(a) (safety defects; examination, correction and records) to its Ray Complex Mine (I.D. No. 02–00150) located in Pinal County, Arizona. The petitioner requests a modification of the standard to permit the continued use of the procedures already in place for pre-shift examination of their buses. The petitioner proposes to have a qualified and competent driver to pre-shift inspect the buses for the oncoming shift at 8:00 a.m. to 4:00 p.m., and have the operator drive the bus to the fuel island after the bus is thoroughly inspected, fuel the bus and drive it back to the pit office, and report any defects to the maintenance department for repair before the bus is placed into service. The petitioner states that (i) the buses are not used again until the bus drivers who deliver personnel for the 8:00 a.m. shift drive the bus into the pit at 7:50 a.m.; (ii) the bus drivers who have completed that shift (12:00 a.m. to 8:00 a.m.) drive the buses carrying the outgoing shift workers out of the pit; and (iii) by following the cycle for each shift, each bus receives a minimum of three pre-shift inspections every 24 hours, immediately prior to the start of the new shift. The petitioner asserts that application of the mandatory standard would result in diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015

Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 3, 1999. Copies of these petitions are available for inspection at that address.

Dated: April 26, 1999.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–11154 Filed 5–3–99; 8:45 am]

BILLING CODE 4510–43–U

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 99–3 CARP DD 95–98]

Ascertainment of Controversy for the Distribution of the 1995, 1996, 1997, and 1998 Digital Audio Recording Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Notice with request for comments.

SUMMARY: The Copyright Office of the Library of Congress directs all claimants to the royalty fees collected in 1995, 1996, 1997, and 1998 for the distribution of digital audio recording devices and media to submit comments as to whether a controversy exists as to the distribution of the royalty fees in the 1995, 1996, 1997, and 1998 Musical Works Funds.

DATES: Comments and notices of intent to participate are due by July 6, 1999.

ADDRESSES: If sent BY MAIL, an original and 5 copies of written comments should be addressed to Office of the General Counsel, Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, DC 20024. If DELIVERED BY HAND, an original and 5 copies should be brought to: Office of the General Counsel, Copyright Office, Room LM–403, James Madison Memorial Building, 101 Independence Avenue, SE, Washington, DC 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel ("CARP"). Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

I. Background

The Audio Home Recording Act of 1992 (the "Act"), Pub. L. 102–563, requires manufacturers and importers to pay royalties on digital audio recording devices and media that are distributed in the United States. 17 U.S.C. 1003. The royalties are deposited with the Copyright Office for further distribution to interested copyright parties who file claims with the Copyright Office each year during January and February. 17 U.S.C. 1005, 1007.

The Act provides that the royalties are divided between two funds: the Sound Recordings Fund and the Musical Works Fund. The Sound Recordings Fund receives 66 2/3% of the royalties and the Musical Works Fund receives the remaining 33 1/3%. These fees are allocated further to specific subfunds.

The Sound Recordings Fund consists of four subfunds: the Featured Recording Artists Subfund, the Copyright Owners Subfund, the Nonfeatured Musicians Subfund, and the Nonfeatured Vocalists Subfund. The two subfunds created for the benefit of nonfeatured artists receive a total of 4% of the funds allocated to the Sound Recordings Fund. Of the remaining royalty fees in the Sound Recordings Fund, 60% is allocated to the Copyright Owners Subfund and 40% is allocated to the Featured Recording Artists Subfund. Similarly, the royalty fees allocated to the Musical Works Fund are equally divided between two subfunds, the Publishers Subfund and the Writers Subfund. 17 U.S.C. 1006(b).

Distribution of these fees may occur in one of two ways. If the claimants within each subfund agree among themselves how to distribute the royalty fees, the Librarian of Congress distributes the royalties to the claimants in accordance with their negotiated agreement.[1] 17 U.S.C. 1007(b). Alternatively, if the parties cannot reach an agreement, the Librarian of Congress must convene a copyright arbitration royalty panel ("CARP") to determine the distribution of royalty payments.[2] 17 U.S.C. 1007(c). Before commencing a distribution proceeding, however, the Copyright Office must first ascertain whether a controversy exists concerning the distribution of the royalty fees among the copyright claimants to the funds available for distribution. 17 U.S.C. 803(d) and 1007(b).

II. Ascertainment of Controversy and Notices of Intent to Participate

Section 251.45(a) of the Copyright Office regulations, title 37 of the Code of Federal Regulations, requires that:

> [T]he Librarian of Congress shall, after the time period for filing claims, publish in the **Federal Register** a notice requesting each claimant on the claimant list to negotiate with each other a settlement of their differences, and to comment by a date certain as to the existence of controversies with respect to the royalty funds described in the notice. Such notice shall also establish a date certain by which parties wishing to participate in the proceeding must file with the Librarian a notice of intention to participate.

The purpose of the negotiation requirement is to make all of the claimants within each fund/subfund aware of each other and to encourage active participation and open discussion on how to resolve each party's claim. The Copyright Office has compiled a list of claimants who have filed timely a claim to either of the two subfunds comprising each of the 1995, 1996, 1997, and 1998 Musical Works Funds.[3] Claimants must use these lists in negotiating settlement agreements concerning the distribution of the royalty fees.

At the conclusion of the negotiation period, the claimants must submit to the Copyright Office comments identifying the existence of any settlement agreements and the existence of any remaining controversies. Participants must identify each subfund in the Musical Works Funds by year and indicate whether any controversy remains over the distribution of the royalty fees in that subfund or whether an agreement has been reached. In the case of an agreement, the notice must list the name of all claimants covered by the agreement. Participants must advise the Copyright Office of any controversy by the end of the comment period. The Office will not consider controversies which are brought to its attention after the close of the comment period.

Each claimant who intends to participate in the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds must also file a notice of intent to participate. The notice must identify each year and each subfund in which the copyright owner has an

[1] The claimants to the royalty fees in the Sound Recordings Funds have negotiated a universal settlement agreement among themselves for each year as to the proportionate share that each claimant receives from the subfunds. These agreements have made it unnecessary for the Librarian to convene a CARP and have allowed him to distribute all royalty fees allocated to the Sound Recordings Funds during 1993 to 1998.

[2] In 1996, the Librarian convened a CARP to determine the distribution of the 1992, 1993, and 1994 Musical Works Funds. *See* 62 FR 6558 (February 12, 1997). The Librarian's final order determining the distribution of these funds based upon the CARP's findings was appealed to and recently upheld by the United States Court of Appeals for the District of Columbia Circuit.

[3] Copies of the claimant lists are available for viewing and copying between the hours of 8:30 a.m. and 5:00 p.m. at the: Library of Congress, Copyright Office, Licensing Division, Room LM–458, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20557–6400.

interest. Failure to file a timely Notice of Intent may preclude a party from participating in the distribution proceeding. The notices are due July 6, 1999.

III. Consolidation of Proceedings

Section 801(d) of the Copyright Act, 17 U.S.C., as amended by the Technical Amendments to the Satellite Home Viewer Act of 1994, Pub. L. 105–80, states that "[t]he Librarian of Congress, upon the recommendation of the Register of Copyrights, . . . shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. . . . Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1)." Funds to pay the arbitrators come from the royalty funds under consideration in the distribution proceeding. Because there are insufficient funds available from the Musical Works Fund for any single year to cover the projected cost of an arbitration proceeding that would require oral testimony, the Copyright Office is consolidating the consideration of the distribution of the 1995, 1996, 1997, and 1998 Musical Works Funds into a single proceeding in order to have sufficient funds to meet its financial obligations to the arbitrators.

Dated: April 28, 1999.

Marybeth Peters,

Register of Copyrights.

[FR Doc. 99–11182 Filed 5–3–99; 8:45 am]

BILLING CODE 1410–33–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, extension, or reinstatement: Reinstatement.
2. The title of the information collection: NRC Form 536, "Operator Licensing Examination Data".
3. The form number if applicable: NRC Form 536.
4. How often the collection is required: Annually.
5. Who will be required or asked to report: All holders of operating licenses or construction permits for nuclear power reactors.
6. An estimate of the number of responses: 80.
7. The estimated number of annual respondents: 80.
8. An estimate of the total number of hours needed annually to complete the requirement or request: 80.
9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.
10. Abstract: NRC is requesting reinstatement of its clearance to annually request all commercial power reactor licensees and applicants for an operating license to voluntarily send to the NRC: (1) Their projected number of candidates for operator licensing initial examinations; (2) the estimated dates of the examinations; (3) if the examination will be facility developed or NRC developed, and (4) the estimated number of individuals that will participate in the Generic Fundamentals Examination (GFE) for that calendar year. Except for the GFE, this information is used to plan budgets and resources in regard to operator examination scheduling in order to meet the needs of the nuclear industry.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 3, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0131), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 27th day of April 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11114 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8681]

Notice of Consideration of a License Amendment for International Uranium (USA) Corporation's White Mesa Uranium Mill and an Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated March 2, 1999, an application from International Uranium (USA) Corporation ("IUSA") to amend Source Material License No. SUA–1358 to allow for the receipt and processing of uranium-bearing material removed from various sites in the St. Louis, Missouri area. These sites are being remediated by the U.S. Army Corps of Engineers in accordance with its responsibilities under the Formerly-Utilized Sites Remedial Action Program (FUSRAP). Under the proposed license amendment, IUSA would process material shipped from the St. Louis area in its White Mesa uranium mill in Blanding, Utah, to recover usable uranium. IUSA would dispose of the tailings, or byproducts of this process in the existing 11(e)2 mill tailings pile at the site. This FUSRAP material from the St. Louis sites is considered to be an "alternate feed" material, i.e., an input material for uranium extraction that is different from natural ores containing uranium. Prior to the issuance of the amendment, NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations.

FOR FURTHER INFORMATION CONTACT: James E. Kennedy, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301)–415–6668, e-mail jek1@nrc.gov.

SUPPLEMENTARY INFORMATION: IUSA's application to amend Source Material License SUA–1358 describes the proposed change and the reasons for the

request. It is available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC, 20555.

NRC provides notice that this is a proceeding on an application for a license amendment falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules of practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to Section 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with Section 2.1205(d). A request for a hearing must be filed within thirty (30) days of the date of publication of this **Federal Register** notice.

The request for a hearing must be filed with the Office of the Secretary either:

1. By delivery to Secretary, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays; or
2. By mail or telegram addressed to Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. Attention: Rulemakings and Adjudications Staff.

In addition to meeting other applicable requirements of Part 2 of the NRC's regulations, a request for a hearing filed by a person other than the applicant must describe in detail:

1. The interest of the requester in the proceeding;
2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(h);
3. The requester's areas of concern about the licensing activity that is the subject matter of the proceeding; and
4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(d).

In accordance with 10 CFR 2.1205(f), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, International Uranium (USA) Corporation, Independence Plaza, Suite 950, 1050 Seventeenth Street, Denver, CO 80265, Attention: Michelle Rehmann: and,
2. NRC staff, by delivery to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, between 7:45 am and 4:15 pm Federal workdays, or by mail, addressed to Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11112 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–17]

Portland General Electric Company; Notice of Issuance of Materials License SNM–2509; Trojan Independent Spent Fuel Storage Installation

The U.S. Nuclear Regulatory Commission (NRC or the Commission) has issued a Materials License under the provisions of title 10 of the Code of Federal Regulations, part 72 (10 CFR part 72), to Portland General Electric Company (PGE), authorizing receipt and storage of spent fuel into an independent spent fuel storage installation (ISFSI) located on site at its Trojan Nuclear Plant in Columbia County, Oregon.

The function of the ISFSI is to provide interim storage, in dry storage casks, for up to 344.5 metric tons of uranium contained in fuel assemblies, damaged fuel assemblies and fuel debris from the Trojan Nuclear Plant. The cask that is authorized for use is a Trojan site-specific model of the TranStor Storage Cask designed by BNFL Fuel Solutions Corporation. The license for an ISFSI under 10 CFR part 72 is issued for 20 years, but the licensee may seek to renew the license, if necessary, prior to its expiration.

The Commission's Office of Nuclear Material Safety and Safeguards (NMSS) has completed its environmental, safeguards, and safety reviews in support of issuance of this license.

Following receipt of the application filed March 26, 1996, a "Notice of Consideration of Issuance of Materials License for the Storage of Spent Fuel and Opportunity for Hearing" was published in the **Federal Register** on April 25, 1996 (61 FR 18448). The "Environmental Assessment (EA) Related to the Construction and Operation of the Trojan Independent Spent Fuel Storage Installation and Finding of No Significant Impact," was issued and noticed in the **Federal Register** (61 FR 64378, December 4, 1996) in accordance with 10 CFR part 51. The scope of the EA included the construction and operation of an ISFSI on the Trojan Nuclear Plant site including impacts derived from use of the TranStor cask.

The staff has completed its safety review of the Trojan ISFSI site application and safety analysis report. The NRC staff's "Safety Evaluation Report for the Trojan Independent Spent Fuel Storage Installation" was issued on March 31, 1999. Materials License SNM–2509, the staff's Environmental Assessment, Safety Evaluation Report, and other documents related to this action are available for public inspection and for copying for a fee at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555, and the Local Public Document Room at the Portland State University, Branford Price Millar Library, 934 SW Harrison, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 31st day of March 1999.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11115 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5 issued to Southern Nuclear Operating Company, Inc., (the licensee) for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

The proposed amendments would allow an increase of 168 fuel assemblies in the storage capacity of Unit 1's Spent Fuel Pool and an increase of 88 fuel assemblies in the storage capacity of Unit 2's Spent Fuel Pool.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The analyses performed by SNC in support of the rack addition effort demonstrate its acceptability from a variety of different perspectives. Regarding criticality, k_{eff} will remain less than or equal to the current Technical Specification requirement of 0.95 for all normal and abnormal operating conditions. This determination accounts for uncertainties at a 95%/95% probability/confidence level. A fuel assembly drop will not distort the racks in such a manner that it would impair their functionality. Accordingly, the radiological consequences of a fuel handling accident remain within previously established limits for demonstrating compliance with 10 CFR 100 and GDC 19 limits. Additionally, the structural integrity of the Spent Fuel Pool (SFP), the storage racks, and the stored spent fuel will be maintained during a postulated accident or seismic event.

SFP cooling capability will continue to be available to maintain bulk pool temperatures less than 150°F for normal, refueling, and full core discharge conditions. In the event a loss of normal spent fuel cooling should occur, there will be time to take appropriate action to arrange an alternate source to preclude pool boiling. If pool boiling is postulated to occur, the impact on the radiological consequences previously evaluated for this event is minimal and remains acceptable.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The new racks will not require their movement over any stored spent fuel during installation. Rack movements will be conducted using the single failure proof Hatch 1 reactor building crane. During the SFP expansion effort, all heavy load movements will be performed in accordance with SNC's commitments to NUREG–0612 to preclude any damage to fuel assemblies stored in the SFPs, and to preclude any damage to safe shutdown equipment. Crane operator training and load handling instructions in concert with defined safe load travel paths will be provided together with proper crane inspection, maintenance, and testing to ensure reliable heavy load handling operations.

As with the existing spent fuel storage racks, no special storage configurations will need to be imposed on the new racks, even with the closer spacing between fuel assemblies. Therefore, spent fuel will continue to be allowed to be placed in any storage cell location while maintaining a keff less than or equal to 0.95. Also, the spent fuel storage expansion does not involve any rod consolidation or double-tiering of the spent fuel racks.

No new or unproven technology is utilized in either the construction process or the analytical techniques necessary to justify SFP storage expansion at Plant Hatch. Additionally, the rack vendor construction process and analytical techniques are substantially the same as those used for other recently completed storage expansion projects which have been accepted by the NRC.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed small increase in storage capacity of the SFPs at Plant Hatch does not represent a significant challenge to the performance of existing plant systems and structures. As demonstrated in Enclosures 5 and 6, this license amendment request has been evaluated in accordance with the NRC acceptance criteria contained in "OT Position for Review and Acceptance of Spent Fuel Storage and Handling Applications' dated April 14, 1978, as amended on January 18, 1979, and shown to be acceptable for normal and abnormal conditions relative to the criticality, thermal-hydraulic, radiological, seismic, structural, material, and heavy load requirements contained therein.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 1, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of

the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Pott and Trowbridge, 2300 N Street, NW., Washington, DC, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides such notice that this is a proceeding on an application for a license amendment falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules and the designation, following argument of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendment dated April 6, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11113 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company; Comanche Peak Steam Electric Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption to Facility Operating License No. NPF–87 and NPF–89, issued to Texas Utilities Electric Company, (TU Electric, the licensee), for operation of the Comanche Peak Electric Station Steam Electric Station (CPSES), Units 1 and 2, located in Somervell County, Texas.

Environmental Assessment

Identification of the Proposed Action

The proposed action would reduce the power level margin assumed for the emergency core cooling system analysis required by title 10 of the Code of Federal Regulations, part 50, Appendix K, based on the proposed use of a new feedwater flow measurement system (the Leading Edge Flowmeter system manufactured by Caldon, Inc.) to allow more accurate measurement of thermal power.

The proposed action is in accordance with the licensee's application for exemption dated August 13, 1998, as supplemented by letter dated December 17, 1998.

The Need for the Proposed Action

The proposed action will improve accuracy of thermal power measurement and support the licensee's separate request to increase licensed power level (which will be reviewed separately by the Commission).

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the CPSES, dated October 1989.

Agencies and Persons Consulted

In accordance with its stated policy, on March 11, 1999, the staff consulted with the Texas State official, Mr. Authur Tate of the Texas Department of Health, Bureau of Radiation Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of no Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated August 13, 1998, as supplemented by letter dated December 17, 1998, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Robert A. Gramm,

Chief, Section 1 Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11116 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

NRC Coordination Meeting With Standards Development Organizations

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The NRC has committed through its Strategic Plan to utilize consensus standards to increase the involvement of licensees and others in the NRC's regulatory development process, consistent with the provisions of Public Law (P.L.) 104–113, the National Technology and Transfer Act of 1995, and Office of Management and Budget (OMS) Circular A–119, "Federal Participation in the Development and Use of Voluntary Consensus Standards and Conformity Assessment." As part of this commitment, periodic coordination meetings with key standards development organizations (SDOs) and other stakeholders will be held to foster better communication of SDOs' ongoing activities, and NRC needs regarding standards development and their use.

Date: May 26, 1999-Registration will be from 8:00 a.m. to 8:30 a.m. The meeting will begin at 8:30 a.m. and will last approximately four hours.

Location: U.S. Nuclear Regulatory Commission Headquarters, Two White Flint North Auditorium, 11545 Rockville Pike, Rockville, Maryland 20852–2738.

Contact: Wallace E. Norris, USNRC, Telephone (301) 415–6796; Fax: (301) 415–5074; Internet: wen@nrc.gov.

Attendance: This meeting is open to the general public. All individuals planning to attend, including SDO representatives, are requested to preregister with Mr. Norris by telephone or e-mail and provide their name, affiliation, phone number, and e-mail address.

Program: The purpose of the meeting is to foster better communication between SDOs and NRC regarding standards development and use. By holding periodic coordination meetings, the SDOs will be able to describe their on-going and planned activities, and the NRC will be able to discuss activities and issues related to specific standards that are being developed or revised to meet its regulatory needs. The meeting will be coordinated by the NRC Standards Executive. The NRC anticipates holding these meetings annually.

A number of issues were identified at the September 1, 1998, external stakeholders meeting with regard to NRC communication with SDOs; see SECY–99–029. These issues will be discussed which include the following:

(1) NRC should be more proactive in communicating with SDOs on technical and planning issues. Regular interaction with SDOs is critical to minimizing differences between the scope of standards and NRC's needs.

(2) Regulatory burden is a serious issue that requires active dialogue between SDOs and regulators.

(3) What is a good SDO, and how does a good SDO interact with the NRC?

(4) There should be a periodic meeting to discuss industry and regulatory needs.

(5) There should be more proactive action by the NRC staff in terms of direct communication with the SDOs on standards implementation problems, needs, priorities, justifications. The SDOs should provide a timely response and update status on their standards activity.

(6) To what extent should there be public involvement in the SDOs, and how would that best be accomplished?

Dated in Rockville, Maryland this 23rd day of April, 1999.

For the Nuclear Regulatory Commission.

John W. Craig,

NRC Standards Executive.

[FR Doc. 99–11118 Filed 5–3–99; 8:45 am]

BILLING CODE 7590–01–M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Sunshine Act Meeting; Notification of Items Added to Meeting Agenda

DATE OF MEETING: May 3, 1999.

STATUS: Closed.

PREVIOUS ANNOUNCEMENT: 64 FR 19208, April 19, 1999.

ADDITIONS: By telephone vote on April 26, 1999, a majority of the members contacted and voting, the Board of Governors of the United States Postal Service voted unanimously to add the following items to the agenda of its closed meeting:

1. Mailing Online.
2. Point of Service One (POS I).

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

Certified to be a true copy of the original document.

Stanley F. Mires,

Certifying Officer.

[FR Doc. 99–11305 Filed 4–30–99; 3:53 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. IC–23813, 811–7895]

Brantley Capital Corporation; Notice of Application

April 28, 1999.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Notice of application for an order to declare that the registration under the Act of applicant, a business development company ("BDC"), has ceased to be in effect as of October 30, 1996.

FILING DATE: The application was filed on April 26, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 24, 1999, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549–0609. Applicant, 20600 Chagrin Boulevard, Suite 1150, Cleveland, Ohio 44122.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations and Legal Analysis

1. Applicant, a Maryland corporation, elected BDC status by filing a Form N–54A under the Act ("Notification of Election") and a registration statement under the Securities Exchange Act of 1934 (the "Exchange Act") on August 23, 1996. A registration statement under the Securities Act of 1933 was filed on August 26, 1996. The registration statements were declared effective on November 26, 1996, and an initial public offering commenced on December 3, 1996.

2. On October 30, 1996, applicant inadvertently filed a Notification of Registration on Form N–8A which caused applicant to be registered as an investment company under section 8(a) of the Act. On April 16, 1998, applicant filed an amendment to its Notification of Election to confirm its status as a BDC and to reiterate its intention to be regulated as a BDC. On April 26, 1999, applicant filed an application pursuant to section 8(f) of the Act for an order declaring that applicant's registration under the Act has ceased to be in effect as of October 30, 1996.

3. Section 54(a) of the Act provides that any company that satisfies the definition of a BDC under sections 2(a)(48)(A) and (B) of the Act may elect to be subject to the provisions of sections 55 through 65 of the Act and be regulated as a BDC by filing with the SEC a notification of the election. Applicant states that it has consistently held itself out to the public as a BDC and not as a registered company and that it has complied with the requirements of the Act applicable to BDC's since it filed its Notification of Election. Applicant further states that its status as a registered investment company is purely technical in nature because the period of its registration (from the filing of Form N–8A to the present) has been entirely within the period of applicant's being subject to regulation as a BDC.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11141 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23811; 812–11558]

Kemper Floating Rate Fund, et al.; Notice of Application

April 27, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940

("Act") for an exemption from sections 18(c) and 18(i) of the Act, under sections 6(c) and 23(c)(3) of the Act for an exemption from rule 23c–3 under the Act, and pursuant to section 17(d) of the Act and rule 17d–1 under the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain registered closed-end investment companies to issue multiple classes of shares, and impose asset-based distribution fees and early withdrawal charged.

Applicants: Kemper Floating Rate Fund ("Fund"), Kemper Distributors, Inc. ("Distributor"), and Scudder Kemper Investments, Inc. ("Adviser").

Filing Dates: The application was filed on April 1, 1999. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m.on May 21, 1999, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, 222 South Riverside Plaza, Chicago, Illinois 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund is a closed-end management investment company registered under the Act and organized as a Massachusetts business trust. The Adviser is registered under the Investment Advisers Act of 1940 and will serve as investment adviser to the Fund. The Distributor, a broker-dealer registered under the Securities Exchange Act of 1934, will distribute the Fund's shares and provide certain administrative services to the Fund. Both the Adviser and the Distributor are indirect subsidiaries of Zurich Financial Services, Inc. Applicants request that the order also apply to any other registered closed-end investment company for which the Adviser or the Distributor or any entity controlling, controlled by, or under common control with the Adviser or the Distributor acts as investment adviser, principal underwriter, or administrator.[1]

2. The Fund's investment objective is to seek as high a level of current income as is consistent with the preservation of capital. The Fund will invest primarily in senior secured floating rate loans made by commercial banks, investment banks and finance companies to commercial and industrial borrowers ("Loans"). Under normal circumstances, at least 80% of the Fund's total assets will be invested in Loans. Up to 20% of the Fund's total assets may be held in cash, or invested in fixed-rate debt obligations, short-to-medium-term notes, high yield securities, asset-backed securities, and equity securities.

3. The Fund intends to continuously offer its shares to the public at net asset value. The Fund's shares will not be offered or traded in the secondary market and will not be listed on any exchange or quoted on any quotation medium. The Fund intends to operate as an "interval fund" pursuant to rule 23c–3 under the Act and make periodic repurchase offers to its shareholders.

4. The Fund seeks the flexibility to be structured as a multiple-class fund, although initially it will only offer one class of shares. The Fund will offer Class B Shares and may in the future offer Class C Shares with no front-end sales charge but subject to an early withdrawal charge ("EWC") that declines over time to 0%. Class B Shares will automatically convert to Class A Shares six years from the date of purchase. The Fund may in the future offer Class A Shares with a front-end sales charge but with no EWC. Class A, Class B, and Class C Shares will be subject to an annual service fee of up to .25% of average daily net assets. Class B Shares may be subject to an annual distribution fee of up to .60% of average daily net assets. Class C Shares also may be subject to an asset-based distribution fee. Applicants represent that the service and distribution fees will comply with the provisions of rule 2830(d) of the Conduct Rules of the National Association of Securities Dealers, Inc. ("NASD") as if the Fund were an open-end investment company. Applicants also represent that the Fund will disclose in its prospectus the fees, expenses and other characteristics of each class of shares offered for sale, as is required for open-end multi-class funds under Form N–1A.

5. All expenses incurred by the Fund will be allocated among the various classes of shares based on the net assets of the Fund attributable to each class, except that the net asset value and expenses of each class will reflect distribution fees, service fees (including transfer agency fees), and any other incremental expenses attributable to that class. Expenses of the Fund allocated to a particular class of shares will be borne on a pro rata basis by each outstanding share of that class. The Fund may create additional classes of shares in the future that may have different terms from Class A, Class B, and Class C Shares. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end fund.

6. The Fund may waive the EWC for certain categories of shareholders or transactions to be established from time to time. With respect to any waiver of, scheduled variation in, or elimination of the EWC, the Fund will comply with rule 22d–1 under the Act as if the Fund were an open-end investment company.

7. The Fund may offer its shareholders an exchange feature under which shareholders of the Fund may exchange their shares for shares of the same class of other funds in the Scudder Kemper group of investment companies. Any exchange option will comply with rule 11a–3 under the Act as if the Fund were an open-end investment company subject to that rule. In complying with rule 11a–3, the Fund will treat the EWC as if it were a contingent deferred sales charge ("CDSC").

Applicants' Legal Analysis

Multiple Classes of Shares

1. Section 18(c) of the Act provides, in relevant part, that a closed-end investment company may not issue or sell any senior security if, immediately thereafter, the company has outstanding more than one class of senior security. Applicants state that the creation of multiple classes of shares of the Fund may be prohibited by section 18(c).

[1] Any registered closed-end investment company relying on this relief in the future will do so in a manner consistent with the terms and conditions of the application. Applicants represent that each investment company presently intending to rely on the relief requested in this application is listed as an applicant.

2. Section 18(i) of the Act provides that each share of stock issued by a registered management company will be a voting stock and have equal voting rights with every other outstanding voting stock. Applicants state that multiple classes of shares of the Fund may violate section 18(i) of the Act because each class would be entitled to exclusive voting rights with respect to matters solely related to that class.

3. Section 6(c) of the Act provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from sections 18(c) and 18(i) of the Act to permit the Fund to issue multiple classes of shares.

4. Applicants submit that the proposed allocation of expenses and voting rights among multiple classes is equitable and will not discriminate against any group or class of shareholders. Applicants submit that the proposed arrangements would permit the Fund to facilitate the distribution of its securities and provide investors with a broader choice of shareholder services. Applicants asserts that their proposal does not raise the concerns underlying section 18 of the Act to any greater degree than open-end investment companies' multiple class structures that are permitted by rule 18f–3 under the Act. Applicants state that the Fund will comply with the provisions of rule 18f–3 as if it were an open-end fund.

Early Withdrawal Charges

5. Section 23(c) of the Act provides, in relevant part, that no registered closed-end fund will purchase any securities of which it is the issuer except: (a) on a securities exchange or other open market; (b) pursuant to tenders, after reasonable opportunity to submit tenders given to all holders of securities of the class to be purchased; or (c) under other circumstances as the SEC may permit by rules and regulations or orders for the protection of investors.

6. Rule 23c–3 under the Act permits a registered closed-end fund (an "interval fund") to make repurchase offers of between five and twenty-five percent of its outstanding shares at net asset value at periodic intervals pursuant to a fundamental policy of the fund. Rule 23c–3(b)(1) under the Act provides that an interval fund may deduct from repurchase proceeds only a repurchase fee, not to exceed two percent of the proceeds, that is reasonably intended to compensate the fund for expenses directly related to the repurchase.

7. Section 23(c)(3) provides that the SEC may issue an order that would permit a closed-end investment company to repurchase its shares in circumstances in which the repurchase is made in a manner or on a basis which does not unfairly discriminate against any holders of the class or classes of securities to be purchased. As noted above, section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposed fairly intended by the policy and provisions of the Act. Applicants request relief under section 6(c) and 23(c) from rule 23c–3 to permit them to impose EWCs on shares submitted for repurchase that have been held for less than a specified period.

8. Applicants believe that the requested relief meets the standards of sections 6(c) and 23(c)(3). Rule 6c–10 under the Act permits open-end funds to impose deferred sales charges, subject to certain conditions. Applicants state that EWCs are functionally similar to CDSCs imposed by open-end funds under rule 6c–10 under the Act. Applicants state that EWCs may be necessary for the Distributor to recover distribution costs and the EWCs may discourage investors from moving their money quickly in and out of the Fund, a practice that applicants submit imposes costs on all shareholders. Applicants will comply with rule 6c–10 under the Act as if that rule applied to closed-end funds. The Fund also will disclose EWCs in accordance with the requirements of Form N–1A concerning CDSCs. Applicants further state that the Fund will apply the EWC (and any waivers or scheduled variations of the EWC) uniformly to all shareholders in a given class and consistent with the requirements of rule 22d–1 under the Act.

Asset-based Distribution Fees

9. Section 17(d) of the Act and rule 17d–1 under the Act prohibit an affiliated person of a registered investment company, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or joint arrangement in which the investment company participates unless the SEC issues an order permitting the transaction. In reviewing applications submitted under section 17(d) and rule 17d–1, the SEC considers whether the participation of the investment company in a joint enterprise or joint arrangement is consistent with the provisions, policies, and purposes of the Act, and to the extent to which the participation is on a basis different from or less advantageous than that of other participants.

10. Rule 17d–3 under the Act provides an exemption from section 17(d) and rule 17d–1 to permit open-end funds to enter into distribution arrangements pursuant to rule 12b–1. Applicants also request an order under section 17(d) and rule 17d–1 to permit the Fund to impose asset-based distribution fees. Applicants have agreed to comply with rules 12b–1 and 17d–3 as if those rules applied to closed-end investment companies.

Applicants' Condition

Applicants agree that any order granting the requested relief will be subject to the following condition:

Applicants will comply with the provisions of rules 6c–10, 11a–3, 12b–1, 17d–3, 18f–3, and 22d–1 under the Act and NASD Conduct Rule 2830(d), as amended from time to time, as if those rules applied to closed-end investment companies.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11079 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41334; File No. SR–AMEX–99–03]

Self-Regulatory Organizations; American Stock Exchange LLC; Order Granting Approval to Proposed Rule Change Relating to Bond Indexed Term Notes

April 27, 1999.

I. Introduction

On January 12, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4

[1] 15 U.S.C. 78s(b)(1).

thereunder,[2] a proposal to approve for listing and trading under Section 107A of the Amex *Company Guide* seven bond index-linked term notes. The proposed rule change and Amendment No. 1 [3] to the proposal were published for comment in the **Federal Register** on March 11, 1999.[4] the Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

II. Description of the Proposal

The Amex proposes to list for trading under Section 107A of the *Company Guide* [5] seven term notes, each linked to a different bond index ("Bond Index Notes"). The issuers of these securities will be qualified under Section 107A(a),[6] and each issue will meet the size and distribution requirements of Section 107A(b).[7]

Holders of the Bond Index Notes generally will receive interest on the face value of their securities in an amount to be determined at the time of issuance of the securities and disclosed to investors. The frequency and rate of the interest payment will vary from issue to issue based upon prevailing interest rates and other factors, such as a discount factor and interest payments made on the underlying bonds and credit spreads.[8]

In addition, investors will receive at maturity an amount based on the value of the linked bond index at maturity of the securities, which may be more or less than the original principal amount thereof. The Bond Index Notes will be valued at settlement based upon the following formula: principal amount x (ending index value/beginning index value) less a discount factor, which may reflect interest rates, commissions and other such amounts as will be disclosed in the prospectus provided to investors.[9] Returns to investors in the Bond Index Notes are unleveraged with neither a cap nor a floor.

Bond index values for the purpose of determining the payment to holders at maturity will be determined by reference to prices for the linked index on a business day shortly prior to maturity. The Bond Index Notes will provide for maturity within a period of not less than one nor more than ten years from the date of issue, will not be callable or redeemable prior to maturity, and will be cash settled in U.S. currency.[10] Holders of the securities will have no claim to the bonds included in the indices.

Prior to the commencement of trading the Bond Index Notes, the Exchange will distribute a circular to its membership providing guidance about member firm compliance responsibilities, including suitability recommendations, and highlighting the special risks and characteristics of the proposed securities. In particular, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Bond Index Notes: (1) to determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The securities will be subject to the Exchange's margin rules.[11] The Bond Index Notes are subject to the equity trading rules of the Exchange except that, where the securities are traded in thousand dollar denominations as debt, they will be traded subject to the Exchange's debt trading rules.

The Exchange anticipates that the issuer will link distinct issues of such securities to the following seven bond indices sponsored and calculated by Merrill Lynch, Pierce, Fenner & Smith Incorporated ("MLPF&S"): the U.S. Domestic Master, Mortgage Master, U.S. Corporate/Government Master, U.S. Corporate Master, U.S. Treasury/Agency Master, U.S. Treasury Master and U.S. Agency Master Indices. Each index is intended to track a different sector of the fixed income securities market.

The Exchange represents that each of the bond indices are broad based [12] and are adjusted pursuant to objective, publicly disseminated rules.[13] For a bond to qualify for inclusion in an index, it must meet the pre-established and defined list of objective criteria. The bonds included in each of the seven indices also meet or exceed the Exchange's Bond and Debenture Listing Standards set forth in Section 104 of the Amex *Company Guide*.[14] Each index is rebalanced on the last calendar day of the month. Bonds meeting the index's inclusion criteria on the last calendar day of the month are included in the index for the following month. Issues that no longer meet the criteria during the course of the month remain in the index until the next month-end rebalancing, at which point they are dropped from the index. Bonds included in the indices are held constant throughout the month until the following monthly rebalancing. Bond

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[2] 17 CFR 240.19b–4.

[3] *See* Letter from Scott G. Van Hatten, Legal Counsel, Amex, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 16, 1999 ("Amendment No. 1"). Amendment No. 1 provided additional details regarding the securities, including the principal factors that will affect the rate of return on the securities and the formula for determining the value of the securities at settlement.

[4] Securities Exchange Act Release No. 41135 (March 3, 1999), 64 FR 12194 (File No. SR–AMEX–99–03).

[5] Under Section 107A of the *Company Guide*, the Exchange may approve for listing and trading securities which cannot be readily categorized under the listing criteria for common and preferred stocks, bonds, debentures, or warrants. *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8626 (March 8, 1990).

[6] Pursuant to Section 107A(a) of the *Company Guide*, the issuer generally must have assets of $100 million and stockholders' equity of $10 million.

[7] Pursuant to Section 107A(b) of the *Company Guide*, there must be a minimum public distribution of one million trading units with a minimum of 400 holders. When trading is expected to occur in larger than average trading units (*e.g.*, a $1,000 principal amount or more), however, no minimum number of holders will be required. The aggregate market value of issues listed under Section 107A must be at least $4 million.

[8] *See* Amendment No. 1. The discount factor may reflect prevailing interest rates, commissions and such other amounts as will be disclosed in the prospectus provided to investors.

[9] *See* Amendment No. 1.

[10] *Id.*

[11] *See* Amex Rule 462.

[12] The U.S. Domestic Master Index, established in 1975, is an indicator of the performance of the investment grade U.S. domestic bond market. The index has over 7,000 issues and a market value of over $5 trillion. The U.S. Treasury Master Index was established in 1977, and has approximately 160 issues with a market value of $2.2 trillion. The U.S. Agency Master Index, established in 1977, has 1,675 issues with a market value of approximately $450 billion. The U.S. Corporate Master Index was established in 1972, and has approximately 4,700 issues with a market value of $1.2 trillion. The U.S. Corporate/Government Master Index, established in 1972, has 6,574 issues with approximate market value of $3.8 trillion. The U.S. Treasury/Agency Index is a combination of the U.S. Treasury Master and U.S. Agency Master Indices, and contains approximately 1,800 issues with market value of 6.2 trillion. A further description of each of the seven indices is set forth in detail in the notice release. *See* supra, note 4.

[13] Information as to how the indices are calculated, including the inclusion rules, are published on Bloomberg and the Merrill Lynch public web site. Changes in any rules are generally published approximately 30 days in advance of any change.

[14] The Exchange's Bond and Debenture Listing Standards provide for the listing of individual bond or debenture issuances provided the issue has an aggregate market value or principal amount of at least $5 million and either: the issuer of the debt security has equity securities listed on the Exchange (or on the New York Stock Exchange); an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) directly or indirectly owns a majority interest in, or is under common control with, the issuer of the debt security; an issuer of equity securities listed on the Exchange (or on the New York Stock Exchange) has guaranteed the debt security; a nationally recognized statistical rating organization (an "NRSRO") has assigned a current rating to the debt security that is no lower than an S&P Corporation "B" rating or equivalent rating by another NRSRO; or if no NRSRO has assigned a rating to the issue, an NRSRO has currently assigned; (i) an investment grade rating to an immediately senior issue; or (ii) a rating that is no lower than an S&P Corporation "B" rating, or an equivalent rating by another NRSRO, to a pari passu or junior issue.

weightings for each of the indices are based on a bond's total outstanding capitalization (total face value currently outstanding times price plus accrued interest). Returns and weighted average characteristics are published daily.

Each of the above indices are calculated by the Merrill Lynch Research Portfolio Strategy Group based on the prices of the underlying bonds determined each business day. The vast majority of the prices of the underlying securities comprising the indices are determined by the Merrill Lynch Pricing Services Group. These prices are determined in accordance with all applicable statutory rules, self-regulatory organization rules and generally accepted accounting principles regarding valuation of security positions. When a security price is not available from the Pricing Services Group, the Portfolio Strategy Group will use a security price from a third party vendor that, in its best judgment, will provide the most accurate market price thereof. The resulting index values are then disseminated to, and published by, Bloomberg L.P. and Reuters at the end of each business day. MLPF&S, in its role as calculation agent for the Bond Index Notes, will use the index values as published on Bloomberg L.P. In conjunction with the issuance of the Bond Index Notes, the Exchange intends to publish the index value associated with the previous day's close.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to national securities exchange and, in particular, with the requirements of Section 6(b)(5) under the Act [15] that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, and to protect investors and the public interest.[16]

The Commission notes that the proposed Bond Index Notes have a certain level of risk because they are derivatively priced and the final rate of return to investors is unleveraged with neither a cap nor a floor. Accordingly, the Commission has specific concerns regarding this type of product. For the reasons discussed below, the Commission believes that Amex's proposal adequately addresses these concerns.

First, the Commission notes that the protections of Section 107A of the Amex *Company Guide* were designed to address the concerns attendant to the trading of hybrid securities like the proposed Bond Index Notes.[17] In particular, by imposing the hybrid listing standards, heightened suitability for recommendations, and compliance requirements, noted above, the Commission believes that the Exchange has adequately addressed the potential problems that could arise from the hybrid nature of the proposed Bond Index Notes. In addition, Amex will distribute a circular to its membership calling attention to the specific risks associated with the Bond Index Notes. Distribution of the circular should help ensure that only customers with an understanding of the risk attendant to the trading of the Bond Index Notes will trade these securities on their broker's recommendations.

Second, the Commission notes that the final rate of return on the Bond Index Notes depends, in part, upon the individual credit of the issuer. To some extent this credit risk is minimized by the Exchange's listing standards in Section 107A of the *Company Guide*, which provides that only issuers satisfying substantial asset and equity requirements may issue these types of hybrid securities. In addition, the Exchange's hybrid listing standards further require that the proposed indexed term notes have at least $4 million in market value. Further information, including specific financial data, regarding the issuer and the underlying indices will be publicly available to investors through the prospectus.

Finally, the Commission believes that the listing and trading of the proposed Bond Index Notes should not unduly impact the market for the securities underlying the indices or raise manipulative concerns. The Commission notes that all of the indices are well-established and broad-based. Both the history and performance of these indices, as well as the objective calculation rules for the indices, should be readily available through a variety of public sources. Due to the indices' issue size, market value, and representative nature of different sectors of the fixed income securities market, the Commission believes that the indices are not readily susceptible to manipulation.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–AMEX–99–03) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11145 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41335; File No. SR–CHX–99–01]

April 27, 1999.

Self-Regulatory Organizations; Chicago Stock Exchange, Incorporated; Order Approving a Proposed Rule Change Amending the Net Capital Requirements for Specialists

I. Introduction

On February 26, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder [2] a proposed rule change to increase the minimum net capital requirements for specialists. Notice of the proposed rule change appeared in the **Federal Register** on March 23, 1999.[3] The Commission received no comment letters concerning the proposed rule change. This order approves the proposed rule change.

II. Description of the Proposal

The Exchange proposes to amend CHX Rule 3 of Article XI and add interpretation and policy .01. The proposal would increase the net capital requirements for non-clearing specialists, self-clearing specialists, and members and member organizations, that clear the accounts of other CHX specialists and establish a phase-in period for the increase.

The proposal would require non-clearing specialists to maintain, at a minimum, the greater of (i) $100,000, or (ii) the amount set forth in Rule 15c3–1 under the Act,[4] which now is $100,000. The proposal also would

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[15] 15 U.S.C. 78f(b)(5).

[16] In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] *See* Securities Exchange Act Release No. 27753 (March 1, 1990), 55 FR 8623 (March 8, 1990).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41167 (March 12, 1999), 64 FR 14032.

[4] 17 CFR 240.15c3–1 ("Net Capital Rule").

require self-clearing specialists in less than 200 securities to maintain, at a minimum, the greater of (i) $250,000, or (ii) the amount set forth in the Net Capital Rule. The proposal would require self-clearing specialists in 200 or more securities to maintain, at a minimum, the greater of (i) $350,000, or (ii) the amount set forth in the Net Capital Rule. Finally, the proposal would require members that clear the accounts of other CHX specialists to maintain, at a minimum, the greater of (i) $500,000, or (ii) the amount set forth in the Net Capital Rule. Under the proposal, specialists would continue to be required to comply with the Exchange requirement that subordinated cash borrowings and secured demand notes equal or exceed 50% of their total subordinated borrowings to the extent that the borrowings are part of their equity total.

The Exchange proposes to implement the increased net capital requirements over three phase-in dates during a twelve-month period. The phase-in dates would be issued in a Notice to Members within 30 days following approval of this proposal by the Commission. The $100,000 requirement for non-clearing specialists would apply on the first phase-in date. The applicable net capital requirements for self-clearing specialists registered in less than 200 securities would be $150,000, $200,000, and $250,000 for the first, second, and third phase-in dates respectively. The applicable net capital requirements for self-clearing specialists registered in 200 or more securities would be $200,000, $275,000, and $350,000 for the first, second, and third phase-in dates respectively. The net capital requirements for members and member organizations that clear for other specialists would be $350,000, $450,000, and $500,000 for the first, second, and third phase-in dates respectively.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[5] The Commission believes that the proposal is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed, in general, to protect investors and the public interest.[6] Specifically, the Commission believes that raising the minimum level of liquidity that specialists and members that clear for specialists are required to maintain should serve to protect customers and other market participants from potential loses due to the financial failure of specialists, or members or member organizations that clear for specialists. Additionally, the Commission believes that by reducing the risk associated with the financial failure of specialists the proposal should help to ensure the integrity of the securities markets. The Commission also believes that the allocation of different net capital requirements, as set forth in the proposal, is appropriate due to the different levels of risk associated with the categories of net capital requirements.

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 6(b)(5).[7]

It is therefore ordered, pursuant to Section 19(b)(2)[8] of the Act, that the proposed rule change (SR–CHX–99–01), is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11142 Filed 5–3–99; 8:45 am]

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[5] The Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f(b)(5).

[7] *Id.*

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41338; File No. SR–MSRB–99–2]

Self Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Rule G–11 on Sales of New Issue Municipal Securities During the Underwriting Period

April 28, 1999.

I. Introduction and Description of the Proposal

On March 11, 1999, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule G–11, on sales of new issue municipal securities during the underwriting period. Notice of the proposed rule change appeared in the **Federal Register** on March 25, 1999.[3] No comments were received on the proposal. This order approves the proposed rule change.

The proposed rule change clarifies certain ambiguities in the Board's present syndicate practices rules. Rule G–11(g)(iii), as amended in November 1988,[4] requires a managing underwriter to disclose to syndicate members, in writing, all available designation information within 10 business days following the date of sale and all information with the sending of the designation checks pursuant to Rule G–12(k). Three general questions have been raised by dealers concerning this rule as currently worded.

First, dealers have asked whether the rule requires the managing underwriter to disclose to each syndicate member its own designation information or whether all members are to receive information about all the designations. The proposed rule change clarifies that all designation information must be disclosed to each syndicate member.

Second, dealers have asked whether the managing underwriter is required to disclose designations by total dollar amounts, bond amounts, or both total dollar amounts and bond amounts. The proposed rule change clarifies that the designation information must be expressed in total dollar amounts.

Third, dealers have asked whether the rule requires the managing underwriter to disclose to syndicate members designations made to anyone other than syndicate members, *e.g.,* selling group members. The proposed rule change clarifies that the manager must disclose to each syndicate member all designations, including both those paid to syndicate members and those paid to non-syndicate-members.

II. Discussion

The Commission believes the proposed rule change is consistent with the Act and the rules and regulations promulgated thereunder.[5] Specifically,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Rel. No. 41192 (March 19, 1999), 64 FR 14479.

[4] *See* Securities Exchange Act Release No. 40717 (November 27, 1998), 63 FR 67157 (December 4, 1998).

[5] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. The proposed rule change should make information dissemination more efficient because it clarifies ambiguities that may have impeded compliance with existing rules and because it requires disclosure to syndicate members to be made in a form most useful to them. Competition in the marketplace should also benefit because

the Commission believes that approval of the proposed rule change is consistent with Section 15B(b)(2)(C)[6] of the Act.

The Commission set forth its reasons for approving Rule G–11(g)(iii) in its current form, requiring increased disclosure of designation information, when it was amended in November 1998. It believes that the instant proposal, resolving questions that have arisen since that time, provides answers that are fully consonant with those reasons.

The new language that, in response to the first question outlined above, expressly stipulates that designation information must be disclosed to all syndicate members merely clarifies the intent of last year's amendment as understood by the Commission. Concerning the second question, the Commission agrees with the Board that designation information is most useful to syndicate members when stated in terms of dollar amounts, and that there is no need to further require that the information also be stated in terms of bond amounts. Finally, the Commission agrees with the Board that requiring managers to disclose designations paid to non-syndicate-members as well as syndicate members is consistent with the purpose of last year's amendment generally to increase the disclosure of designation information.

III. Conclusion

For the above reasons, the Commission believes that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15B(b)(2)(C).

It is therefore ordered, pursuant to Section 19(b)(2)[7] of the Act, that the proposed rule change (SR–MSRB–99–2) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11143 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

designation information, including information concerning non-syndicate members, will be available to all members of the syndicate. 15 U.S.C. 78c(f).

[6] Section 15B(b)(2)(C) requires the Commission to determine that the Board's rules are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest. 15 U.S.C. 78o–4(b)(2)(C).

[7] 15 U.S.C. 78s(b)(2).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41339; File No. SR–NASD–99–19]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Use of Non-SRO Arbitration Forums

April 28, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 14, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASD Regulation. The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b–4(f)(6)[3] under the Act. The Association proposes to make the rule change operative on May 17, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASD Regulation is proposing to amend the Code of Arbitration Procedure to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations. Below is the text of the proposed rule change. Proposed new language is in italic; proposed deletions are in brackets:

10000. CODE OF ARBITRATION PROCEDURE

10100. ADMINISTRATIVE PROVISIONS

IM–10100. Failure to Act Under Provisions of Code of Arbitration Procedure

It may be deemed conduct inconsistent with just and equitable principles of trade and a violation of Rule 2110 for a member or a person associated with a member to:

(a)–(c) No change.

(d) fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the National Association of Securities Dealers, Inc., the New York, American, Boston, Cincinnati, Chicago, or Philadelphia Stock Exchanges, the Pacific Exchange, Inc., the Chicago Board Options Exchange, the Municipal Securities Rulemaking Board, or pursuant to the rules applicable to the arbitration of [securities] disputes before the American Arbitration Association *or other dispute resolution forum selected by the parties* where timely motion has not been made to vacate or modify such award pursuant to applicable law; or

(e) No change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASD Regulation included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASD Regulation has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. *Purpose*

The proposed rule change is intended to facilitate use of dispute resolution programs offered by providers other than self-regulatory organizations, and to ensure that NASD Regulation may take disciplinary action for the failure of a member or associated person to comply with an award obtained pursuant to the rules and procedures of such dispute resolution programs.

[8] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

Background and Description of Proposed Amendment. In the NASD Code of Arbitration Procedure, IM–10100 provides that it shall be a violation of Rule 2110[4] for a member or a person associated with a member to fail to honor an award or comply with a written and executed settlement agreement obtained in connection with an arbitration at various self-regulatory organizations (SRO) or the American Arbitration Association (AAA), an organization that is not affiliated with the securities industry.

Prior to 1991, the interpretive material now numbered IM–10100 provided only that it was a violation of NASD rules for members and associated persons to fail to honor awards rendered pursuant to the NASD's Code of Arbitration Procedure. The interpretive material was amended in 1991 to include awards issued in arbitration forums sponsored by the other SROs and the AAA. The amendment was intended to encompass awards rendered pursuant to the Uniform Code of Arbitration utilized by all members of the Securities Industry Conference on Arbitration (SICA),[5] or pursuant to the rules applicable to the arbitration of securities disputes before the AAA, which some broker/dealers had begun to offer to their customers as an alternative forum.

In recent years, many alternative dispute resolutions forums have been created and achieved some popularity. Under the sponsorship of SICA, several member broker/dealers are now considering a voluntary pilot program in which they will arbitrate to completion, during a two-year period, a specified number for cases at one of several dispute resolution forums that are not sponsored by the SROs. Under this pilot program, the firms will designate to SICA one or more alternative forums that meet certain due process standards, and will agree to arbitrate all eligible cases at a designated non-SRO forum at their customers' election. Firms may not selectively choose which of their cases will be tried before a non-SRO forum. Cases eligible for the SICA program are customer-initiated cases in which the customer is represented by counsel.[6]

SICA developed the pilot program partly in response to a petition by an organization of attorneys who represent investors, the Public Investors Arbitration Bar Association (PIABA). PIABA had petitioned the SEC to require NASD Regulation to establish the AAA as an alternative forum for all customer arbitrations. Such a requirement would supersede any contrary forum selection clauses in arbitration agreements between members and their customers. The SEC referred the petition to SICA and NASD Regulation for consideration.

In the pilot program the participating non-SRO forums will send copies of all awards to the SRO where the claim either was filed or would have been filed absent the pilot program. Parties are required by the program's guidelines to pay all awards within 30 days of receipt unless a motion to vacate is filed.

While NASD Regulation believes that use of the SICA pilot program does not require a rule change, since it is entirely voluntary and a matter of contract between firms and their customers, NASD Regulation is concerned that there might be some difficulty in bringing disciplinary action for any noncompliance with an award issued by a forum that is not listed in IM–10100. Therefore, NASD Regulation proposes to amend IM–10100 to add language clarfying that failure to comply with awards issued by any dispute resolution forum could be grounds for disciplinary action.

In connection with the above change, NASD Regulation also recommends deletion of the word "securities" in paragraph (d) of IM–10100, which currently refers to awards obtained "pursuant to the rules applicable to the arbitration of securities disputes" at a non-SRO forum. This change is recommended for two reasons. First, most non-SRO dispute resolution forums do not have separate rules for securities arbitration. Second, the change will also accommodate another emerging trend in which firms are contracting with outside dispute resolution forums to resolve disputes between the firms and their employees. Such disputes would be arbitrated according to employment or commercial rules of the dispute resolution forum, rather than the securities rules. NASD Regulation believes that the use of a non-SRO forum should not allow members or associated persons to circumvent the NASD's rules requiring them to comply with arbitration awards. Therefore, more inclusive language is proposed.[7]

IM–10100, paragraph (d), currently provides that it shall be violation of Rule 2110 for a member or associated person to fail to honor an award, or comply with a written and executed settlement agreement, obtained in connection with an arbitration submitted for disposition pursuant to the procedures specified by the listed SROs or "pursuant to the rules applicable to the arbitration of securities disputes before the American Arbitration Association where timely motion has not been made to vacate or modify such award pursuant to applicable law." NASD Regulation proposes to delete the word "securities" from paragraph (d), and to add the phrase "or other dispute resolution forum selected by the parties" after "American Arbitration Association." This will have the effect of bringing under the coverage of the interpretive material an award or settlement agreement obtained pursuant to the arbitration rules of any dispute resolution forum to which the parties have agreed to submit their dispute. It also will no longer restrict the application of IM–10100 to disputes decided under the securities rules of the non-SRO dispute resolution forum, but will apply as well to the employment arbitration rules or general commercial rules of the dispute resolution forum, if applicable to the dispute.

2. *Statutory Basis*

NASD Regulation believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[8] of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD Regulation believes that the proposed rule change will protect investors and the public interest by ensuring that

[4] Rule 2110 provides as follows: "A member, in the conduct of his business, shall observe high standards of commercial honor and just and equitable principles of trade."

[5] SICA is a group composed of representatives of the self-regulatory organizations that provide arbitration forums, of public investors, and of the securities industry. Staff of the SEC participate as non-voting invitees.

[6] The pilot program will not be available for disputes involving employment-related or member to member cases, class actions, partnership investments, claims for transactions that occurred more than four years before the pilot program began, or claims in which a respondent firm or associated person has not agreed to participate in the pilot program.

[7] The inclusiveness of this new language does not expand the scope of matters covered by the Code of Arbitration Procedure, which, as specified in Rule 10101, was prescribed and adopted "for the arbitration of any dispute, claim, or controversy arising out of or in connection with the business of any member of the Association, or arising out of the employment or termination of employment of associated person(s) with any member, with the exception of disputes involving the insurance business of any member which is also an insurance company." Telephone conversation, April 21, 1999, between Jean I. Feeney, Assistant General Counsel, NASD Regulation, and Ira L. Brandriss, Staff Attorney, Division of Market Regulation, Commission.

[8] 15 U.S.C. 78–3(b)(6).

members and associated persons have a duty to comply with awards obtained in non-SRO forums.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [9] and Rule 19b–4(f)(6) thereunder [10] because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative until May 17, 1999, more than 30 days from April 14, 1999, the date on which it was filed, and NASD Regulation provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the pubic interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether it is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by May 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11144 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41337; File No. SR–NASD–99–14]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Adoption of Interpretive Materials Regarding Future Priced Securities

April 27, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 1999,[3] the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to adopt interpretive material relating to certain convertible securities. Below is the text of the proposed rule change. All text is being added.

* * * * *

IM–4300, Interpretive Material Regarding Future Priced Securities

Summary

Future Priced Securities are private financing instruments which were created as an alternative means of quickly raising capital for issuers. The security is generally structured in the form of a convertible security and is often issued via a private placement. Issuers will typically receive all capital proceeds at the closing. The conversion price of the Future Priced Security is generally linked to a percentage discount to the market price of the underlying common stock at the time of conversion and accordingly the conversion rate for Future Priced Securities floats with the market price of the common stock. As such, the lower the price of the issuer's common stock at the time of conversion, the more shares into which the Future Priced Security is convertible. The delay is setting the conversion price is appealing to issuers who believe that their stock will achieve greater value after the financing is received. However, the issuance of Future Priced Securities may be followed by a decline in the common stock price, creating additional dilution to the existing holders of the common stock. Such a price decline allows holders to convert the Future Priced Security into large amounts of the issuer's common stock. As these shares are issued upon conversion of the Future Priced Security, the common stock price may tend to decline further.

For example, an issuer may issue $10 million of convertible preferred stock (the Future Priced Security), which is convertible by the holder or holders into $10 million of common stock based on a conversion price of 80% of the closing price of the common stock on the date of conversion. If the closing price is $5 on the date of conversion, the Future Priced Security holders would receive 2,500,000 shares of common stock. If, on the other hand, the closing price is $1 on the date of conversion, the Future Priced Security holders would receive 12,500,000 shares of common stock.

Unless the issuer carefully considers the terms of the securities in connection with several NASD Rules, the issuance of Future Priced Securities could result in a failure to comply with Nasdaq listing standards and the concomitant delisting of the issuer's securities from the Nasdaq Stock Market. Nasdaq'a experience has been that issuers do not

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Association originally filed the proposed rule change on March 8, 1999. After consultation with Commission staff, the Association filed Amendment No. 1 to clarify certain provisions of the proposed rule language. Letter to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, from Robert E. Aber, Senior Vice President and General Counsel, NASD, dated April 14, 1999 ("Amendment No. 1").

always appreciate this potential consequence. NASD Rules that bear upon the continued listing qualification of an issuer and that must be considered when issuing Future Priced Securities include:

1. the shareholder approval rules
2. the voting rights rules.
3. the bid price requirement
4. the listing of additional shares rules
5. the change in control rules
6. Nasdaq's discretionary authority rules

It is important for issuers to clearly understand that failure to comply with any of these rules could result in the delisting of the issuer's securities.

This notice is intended to be of assistance to companies considering financings involving Future Priced Securities. By adhering to the above requirements, issuers can avoid unintended listing qualifications problems. Issuers having any questions about this notice should contact The Nasdaq Stock Market, Office of General Counsel at (202) 728–8294 or Listing Qualifications Department at (202) 496–2500. Nasdaq will provide an issuer with a written interpretation of the application of NASD Rules to a specific transaction, upon request of the issuer.

How the Rules Apply

Shareholder Approval

NASD Rule 4310(c)(25)(H)(i) relating to Nasdaq SmallCap issuers and Rule 4460(i)(1) relating to Nasdaq National Market issuers provide, in part:

Each issuer shall require shareholder approval * * * prior to the issuance of designated securities * * * in connection with a transaction other than a public offering involving * * * the sale or issuance by the issuer of common stock (or securities convertible into or exercisable for common stock) equal to 20 percent or more of the common stock or 20 percent or more of the voting power outstanding before the issuance for less than the greater of book or market value of the stock.[4]

When Nasdaq staff is unable to determine the number of shares to be issued in a transaction, it looks to the maximum potential issuance of shares to determine whether there will be an issuance of 20 percent or more of the common stock outstanding. In the case of Future priced Securities, the actual conversion price is dependent on the market price at the time of conversion and so the number of shares that will be issued is uncertain until the conversion occurs. Accordingly, staff will look to the maximum potential issuance of common shares at the time the Future Priced Security is issued. Typically, with a Future Priced Security, the maximum potential issuance will exceed 20 percent of the common stock outstanding because the Future Priced Security could, potentially, be converted into common stock based on a share price of one cent per share, or less. Further, for the purposes of this calculation, the lowest possible conversion price is below the book or market value of the stock at the time of issuance of the Future Priced Security. Therefore, shareholder approval must be obtained *prior* to the issuance of the Future Priced Security. Issuers should also be cautioned that obtaining shareholder ratification of the transaction after the issuance of a Future Priced Security does not satisfy the shareholder approval requirements.

Some Future Priced Securities may contain features to obviate the need for shareholder approval by: (1) placing a cap on the number of shares that can be issued upon conversion, such that the holders of the Future Priced Security cannot, without prior shareholder approval, convert the security into 20 percent or more of the common stock or voting power outstanding before the issuance of the Future Priced Security;[5] or (2) placing a floor on the conversion price, such that the conversion price will always be at least as high as the greater of book or market value of the common stock prior to the *issuance* of the Future Priced Securities. Even when a Future Priced Security contains these features, however, shareholder approval is still required under Rules 4310(c)(25)(H)(i)(b) and 4460(i)(1)(B) if the issuance will result in a change of control.

* * * * *

Voting Rights

NASD Rule 4310(c)(21) provides:

Voting rights of existing shareholders of publicly traded common stock registered under Section 12 of the Act cannot be disparately reduced or restricted through any corporate action or issuance.

Rule 4460(j) and IM–4310 also provide rules relating to voting rights of Nasdaq issuers.

Under the voting rights rules, an issuer cannot create a new class of security that votes at a higher rate than an existing class of securities or take any other action that has the effect of restricting or reducing the voting rights of an existing class of securities. The voting rights rules are typically implicated when the holders of the Future Priced Security are entitled to vote on an as-converted basis or when the holders of the Future Priced Security are entitled to representation on the Board of Directors. Staff will consider whether a voting rights violation exists by comparing the Future Priced Security holders' voting rights to their relative contribution to the company based on the company's overall book or market value at the time of the *issuance* of the Future Priced Security. The percentage of the overall vote attributable to the Future Priced Security holders and the Future Priced Security holders' representation on the board of directors must not exceed their relative contribution to the company based on the company's overall book or market value at the time of the issuance of the Future Priced Security. If the voting power or the board percentage exceeds that percentage interest, a violation exists because a new class of securities has been created that votes at a higher rate than an already existing class. Future Priced Securities that vote on an as-converted basis also raise voting rights concerns because of the possibility that, due to a decline in the price of the underlying common stock, the Future Priced Security holder will have voting rights disproportionate to its investment in the Company.

It is important to note that compliance with the shareholder approval rules prior to the issuance of a Future Priced Security does not affect whether the transaction is in violation of the voting rights rule. Furthermore, shareholders cannot otherwise agree to permit a voting rights violation by the issuer. Because a violation of the voting rights requirement can result in delisting of the issuer's securities from Nasdaq, careful attention must be given to this issue to prevent a violation of the rule.

* * * * *

The Bid Price Requirement

NASD Rules 4310(c)(4) and 4450(a)(5) provide that for an issue to be eligible for continued inclusion on the Nasdaq Stock Marekt, the minimum bid price per share shall be $1.

In addition, Rule 4450(b)(4), which applies only to issues qualifying for the Nasdaq National Market under maintenance standard 2, provides that for an issue to remain eligible for

[4] Nasdaq may make exceptions to this requirement when the delay in securing stockholder approval would seriously jeopardize the financial viability of the enterprise and reliance by the company on this exception is expressly approved by the Audit Committee or a comparable body of the Board of Directors.

[5] In order to obviate the need for shareholder approval through such an arrangement, those shares already issued in connection with the Future Priced Security must not be entitled to vote on the proposal to approve the issuance of additional shares upon conversion of the Future Priced Security.

continued inclusion in the Nasdaq National Market, the minimum bid price shall be $5.

The bid price requirement establishes a minimum bid price for issues trading on Nasdaq. An issue is subject to delisting from Nasdaq if its bid price falls below $1. In addition, certain issues are subject to delisting from the Nasdaq National Market if their bid price falls below $5.

The bid price rules must be thoroughly considered because the characteristics of Future Priced Securities often exert downward pressure on the bid price of the issuer's common stock. Specifically, dilution from the discounted conversion of the Future Priced Security may result in a significant decline in the price of the common stock. Furthermore, there appear to be instances where short selling has contributed to a substantial price decline, which, in turn, could lead to a failure to comply with the bid price requirement.[6]

* * * * *

Listing of Additional Shares

NASD Rule 4310(c)(17) provides:

The issuer shall be required to file on a form designated by Nasdaq notification of * * * the issuance of additional shares of any class of securities included in Nasdaq * * * no later than 15 calendar days prior to * * * the issuance of additional shares.

Issuers should be cognizant that under this rule notification is required at least 15 days *prior* to issuing any security (including a Future Priced Security) convertible into shares of a class of securities already listed on Nasdaq. Failure to provide such notice can result in an issuer's removal from Nasdaq.

* * * * *

Public Interest Concerns

NASD Rule 4300 provides:

The Nasdaq Stock Market is entrusted with the authority to preserve and strengthen the quality of and public confidence in its market. The Nasdaq Stock Market stands for integrity and ethical business practices in order to enhance investor confidence, thereby contributing to the financial health of the economy and supporting the capital formation process. Nasdaq issuers, from new public companies to companies of international stature, by being included in Nasdaq, are publicly recognized as sharing these important objectives of the Nasdaq Stock Market.

NASD Rule 4330(a) provides:

Nasdaq may * * * deny inclusion or apply additional or more stringent criteria for the initial or continued inclusion of particular securities or suspend or terminate the inclusion of an otherwise qualified security if * * * Nasdaq deems it necessary to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, or to protect investors and the public interest.

The returns on Future Priced Securities may become excessive compared with those of public investors in the issuer's common securities. In egregious situations, the use of a Future Priced Security may raise public interest concerns under Rules 4300 and 4330(a). In addition to the demonstrable business purpose of the transaction, other factors tha Nasdaq staff will consider in determining whether a transaction raises public interest concerns include: (1) the amount raised in the transaction relative to the issuer's existing capital structure; (2) the dilutive effect of the transaction on the existing holders of common stock; (3) the risk undertaken by the Future Priced Security investor; (4) the relationship between the Future Priced Security investor and the issuer; (5) whether the transaction was preceded by other similar transactions; and (6) whether the transaction is consistent with the just and equitable principles of trade.

Some Future Priced Securities may contain features that address the public interest concerns. These features tend to provide incentives to the investor to hold the security for a longer time period and limit the number of shares into which the Future Priced Security may be converted. Such features may limit the dilutive effect of the transaction and increase the risk undertaken by the Future Priced Security investor in relationship to the reward available.

* * * * *

Change of Control and Change in Financial Structure

NASD Rule 4330(f) provides:

Nasdaq shall require a Nasdaq SmallCap Market issuer to comply with all applicable requirements for initial inclusion under this Rule 4300 Series and shall require a Nasdaq National Market issuer to comply with all applicable requirements for initial inclusion under the Rule 4300 Series and Rule 4400 Series in the event that such issuer enters into a merger, consolidation, or other type of acquisition with a non-Nasdaq entity (including domestic and foreign corporations and limited partnerships), which results in a change of control and either a change in business or change in the financial structure of the Nasdaq SmallCap Market or Nasdaq National Market issuer.

This provision, which applies regardless of whether the issuer obtains shareholder approval for the transaction, requires issuers to qualify under the initial inclusion standards following a merger or consolidation that results in a change of control if there is also a change in either the business or the financial structure of the issuer.[7] It is important for issuers to realize that in certain instances, the conversion of a Future Priced Security may implicate this provision. For example, if there is no limit on the number of common shares issuable upon conversion, or if the limit is set high enough, the exercise of conversion rights under a Future Priced Security could result in a change of control in a deemed merger or consolidation with the holders of the Future Priced Securities. In addition, the issuance of the Future Priced Security and the large increase in the number of common shares outstanding after conversion of the Future Priced Security may be viewed as a change in financial structure. In such event, an issuer would be require to re-apply for initial inclusion and satisfy all initial inclusion requirements.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Nasdaq has seen an increase in the use of securities that convert into

[6] If used to manipulate the price of the stock, short selling by the holders of the Future Priced Security is prohibited by the antifraud provisions of the securities laws and by NASD Rules and may be prohibited by the terms of the placement.

[7] This provision is designed to address situations where a company attempts to obtain a "backdoor listing" on Nasdaq by merging with a Nasdaq issuer with minimal assets and/or operations.

common stock of the issuer based upon a below-market floating conversion rate ("Future Priced Securities"). In some cases, it appears that there may be a lack of understanding as to how these transactions may implicate Nasdaq rules. Accordingly, Nasdaq has prepared interpretive material that issuers can use when considering whether to issue these securities.

Nasdaq has studied the use of Future Priced Securities by Nasdaq issuers. While Future Priced Securities can provide a legitimate mechanism for issuers to raise capital, each issuance may raise concerns under several Nasdaq Rules, including those rules relating to shareholder approval, voting rights, bid price, listing of additional shares, and changes in control. In addition, the use of Future Priced Securities may be inconsistent with the protection of investors and the public interest. The interpretive material is designed to alert issuers to the potential effect Future Priced Securities may have on the issuer's qualification for continued inclusion on Nasdaq.

2. Statutory Basis

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,[8] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The interpretive material is designed to educate issuers as to how Nasdaq applies its various rules to Future Priced Securities in order to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Association did not solicit or receive written comments on the proposed rule change.

[8] 15 U.S.C. 78o–3(b)(6).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become effective upon filing pursuant to Section 19(b)(3)(A)(i) of the Act,[9] and Rule 19b–4(f)(1) [10] thereunder, in that it is designated by the Association as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[11]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the File No. SR–NASD–99–14 and should be submitted by May 26, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11146 Filed 5–3–99; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(1).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3173]

State of Georgia

As a result of the President's major disaster declaration on April 20, 1999, and an amendment thereto on April 26, I find that Candler and Dooly Counties in the State of Georgia constitute a disaster area due to damages caused by Severe Storms and Tornadoes that occurred on April 15, 1999. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 18, 1999 and for economic injury until the close of business on January 20, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the following contiguous counties in the State of Georgia may be filed until the specified daté at the above location: Bulloch, Crisp, Emanuel, Evans, Houston, Macon, Pulaski, Sumter, Tattnall, Toombs, and Wilcox.

The interest rates are:

	Percent
For Physical Damage:	
HOMEOWNERS WITH CREDIT AVAILABLE ELSEWHERE	6.875
HOMEOWNERS WITHOUT CREDIT AVAILABLE ELSEWHERE	3.437
BUSINESSES WITH CREDIT AVAILABLE ELSEWHERE	8.000
BUSINESSES AND NON-PROFIT ORGANIZATIONS WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000
OTHERS (INCLUDING NON-PROFIT ORGANIZATIONS) WITH CREDIT AVAILABLE ELSEWHERE	7.000
For Economic Injury:	
BUSINESSES AND SMALL AGRICULTURAL COOPERATIVES WITHOUT CREDIT AVAILABLE ELSEWHERE	4.000

The numbers assigned to this disaster are 317311 for physical damage and 9C6300 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 27, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–11140 Filed 5–3–99; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3174]

State of Missouri

As a result of the President's major disaster declaration on April 20, 1999, I find that Madison County, Missouri constitutes a disaster area due to damages caused by severe storms and flooding beginning on April 3, 1999 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on June 18, 1999, and for loans for economic injury until the close of business on January 20, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Fort Worth, TX 76155.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bollinger, Iron, Perry, St. Francois, and Wayne in the State of Missouri may be filed until the specified date at the above location.

The interest rates are:

	Percent
Physical Damage:	
Homeowners with credit available elsewhere	6.375
Homeowners without credit available elsewhere	3.188
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available eslewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available eslewhere	4.000

The numbers assigned to this disaster are 317411 for physical damage and 9C6400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 27, 1999.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 99–11139 Filed 5–3–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice #3010]

Overseas Presence Advisory Panel (OPAP) Meeting Notice; Closed Meeting

The Department of State announces a meeting of the Overseas Presence Advisory Panel on Thursday, May 20, 1999, from 9:00 a.m. to 1:00 p.m. in the Principals' Conference Room at the U.S. Department of State. The panel is charged with advising the Secretary of State with respect to the level and type of representation required overseas in light of new foreign policy priorities, a heightened security situation and extremely limited resources. Pursuant to Section 10(d) of the Federal Advisory Committee Act and 5 U.S.C. 522b(c)(1), it has been determined that the meeting will be closed to the public. The agenda calls for discussion of classified and sensitive information relating to the Panel's findings and recommendations at Embassies and Consulates overseas; this would include intelligence and operational policies, and security aspects of all the U.S. Government agencies the Department of State supports abroad.

For more information, contact Mr. William Duffy, Overseas Presence Advisory Panel, Department of State, Washington, D.C. 20520; phone: 202–647–6427.

Dated: April 26, 1999.

Ambassador William H. Itoh,

Executive Secretary, Overseas Presence Advisory Panel.

[FR Doc. 99–11186 Filed 5–3–99; 8:45 am]

BILLING CODE 4710–35–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Office of International Aviation; Notice of Request for Extension and Revision of a Currently Approved Information Collection

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended) the notice announces the Department of Transportation's (DOT) intentions to request an extension for and revision to a currently approved information collection.

DATES: Comments on this notice must be received by no later than July 6, 1999.

ADDRESSES: Four (4) copies of any comments should be sent to the Pricing and Multilateral Affairs Division (X–43), Office of International Aviation, Office of the Secretary, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590–0002.

FOR FURTHER INFORMATION CONTACT: Mr. Keith A. Shangraw or Mr. John H. Kiser, Office of the Secretary, Office of International Aviation, X–43, Department of Transportation, at the address above. Telephone: (202) 366–2435.

SUPPLEMENTARY INFORMATION:

Title: Tariffs.

OMB Control Number: 2106–0009.

Expiration Date: July 31, 1999.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Chapter 415 of Title 49 of the United States Code requires that every air carrier and foreign air carrier file with the Department of Transportation (DOT), publish and keep open (*i.e.* post) for public inspection, tariffs showing all "foreign" or international fares, rates, and related charges for air transportation between points served by it, and points served by it and any other air carrier or foreign air carrier when through fares, rates and related charges have been established; and showing, to the extent required by DOT regulations, all classifications, rules, regulations, practices, and services in connection with such air transportation. Once tariffs are filed and approved by DOT, they become a legally binding contract of carriage between carriers and users of foreign air transportation.

Part 221 of the Department's Economic Regulations (14 CFR part 221) sets forth specific technical and substantive requirements governing the filing of tariff material with the DOT Office of International Aviation's Pricing and Multilateral Affairs Division. A carrier initiates a tariff filing whenever it wants to amend an existing tariff for commercial or competitive reasons or when it desires to file a new one. Tariffs filed pursuant to Part 221 are used by carriers, computer reservations systems, travel agents, DOT, other government agencies and the general public to determine the prices, rules and related charges for international passenger air transportation. In addition, DOT needs U.S. and foreign air carrier passenger tariff information to monitor international air commerce, carry out carrier route selections and conduct international negotiations.

Respondents: The vast majority of the air carriers filing international tariffs are large operators with revenues in excess of several million dollars each year. Small air carriers operating aircraft with

60 seats or less and 18,000 pounds payload or less that offer on-demand air-taxi service are not required to file such tariffs.

Estimated Number of Respondents: 230.

Average Annual Burden per Respondent: 5,700 hours.

Estimated Total Annual Burden on Respondents: 1,300,000 hours.

This information collection is available for inspection at the Pricing and Multilateral Affairs Division (X–43), Office of International Aviation, DOT. Copies of 14 CFR Part 221 can be obtained from Mr. Keith A. Shangraw at the address and telephone number shown above.

Comments are Invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the Department's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, D.C. on April 28, 1999.

John H. Kiser,

Chief, Pricing and Multilateral Affairs Division, Office of International Aviation.

[FR Doc. 99–11106 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week of April 23, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. Sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5576.

Date Filed: April 20, 1999.

Parties: Members of the International Air Transport Association.

Subject: PTC3 0328 dated 20 April 1999, Mail Vote 995—Resolution 010c, TC3 Special Passenger Amending Resolution between Japan and China, Introduce Fares between Fukushima and Shanghai, Intended effective date: 1 June 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–11091 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–1999–5484]

Predisclosure Notice Under the Freedom of Information Act for the Release of Vessel Response Plan Information on the Internet

AGENCY: Coast Guard, DOT.

ACTION: Notice and request for comments.

SUMMARY: This notice is to inform the submitters of vessel response plans that certain portions of the information contained within their plans as submitted to the Coast Guard may be released to the general public via the Internet, and to give them the opportunity to comment on, or object to, the release of that information.

DATES: Comments and related material must reach the Docket Management Facility on or before July 6, 1999.

ADDRESSES: You may submit your comments and related material by only one of the following methods:

(1) By mail to the Docket Management Facility, (USCG–1999–5484), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, call Lieutenant Commander John Caplis, Plans and Preparedness Division, Office of Response, Coast Guard, telephone 202–267–6922, fax 202–267–4065, or at email address *jcaplis@comdt.uscg.mil.* For questions on viewing, or submitting material to, the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to submit comments and related material. If you do so, please include your name and address, identify the docket number for this notice (USCG–1999–5484), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please do not submit the same comment or material by more than one means. If you submit them by mail or hand, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they were received, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period.

We do not plan to hold a public meeting. You may request one by submitting a request to the Docket Management Facility at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that a meeting is necessary, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The owners and operators of tank vessels are required to submit vessel response plans to the Coast Guard for review and approval in accordance with the Oil Pollution Act of 1990 and 33 CFR part 155. An important aspect of the planning and approval process is the submission and review of the preparedness arrangements made by the owner/operator for each Captain of the Port (COTP) zone in which their tank vessel operates. These arrangements include provisions for a "qualified individual", a spill management team, and contracted response resources. Contracted response resources include arrangements for oil spill removal organizations (OSROs), salvage and firefighting companies, and emergency lightering companies.

As part of our review process, we maintain an electronic database that tracks both the status of these plans as well as many other important elements, such as the contracted response resources listed in the plan for each COTP zone where a vessel operates. We believe that it is important for Federal, State, and local governments, non-governmental organizations, response organizations, and other interested parties within the general public to have ready access to this pre-spill planning information. This information is critical for port state officials who are responsible for monitoring activities within their jurisdictions, as well as entities responsible for planning response activities in our coastal and riverine communities.

The Coast Guard has been working to make this information available to the public. In 1997, we developed an Internet website for disseminating important vessel response plan program information *(http://www.uscg.mil/vrp)*. A portion of the Internet website provides the general public with the status of each plan's approval with respect to each COTP zone. We intend to expand the information available to the general public on this website to include other important data, such as identity of the contracted response resources listed for each COTP zone included in a plan. We intend to make the following information from its electronic database available to the general public via the Internet: (1) Owner name, (2) Operator name, (3) Point of contact information for owner/operator, (4) Point of contact information for plan preparer, (5) Date of last plan update, (6) Plan approval status, (7) Plan approval date, (8) Plan expiration date, (9) Plan identification number, (10) Vessel name, (11) Vessel identification number, (12) Vessel flag, (13) Vessel type, (14) Hull configuration, (15) Vessel length, (16) Cargo types, (17) Primary or secondary carrier designation, (18) Worst case discharge amount, (19) Qualified individuals, (20) Oil Spill Removal Organizations, (21) Other contracted resources, (22) Alternate compliance agreements, (23) Navigational restrictions, and (24) Operating environments.

The information submitted in vessel response plans to the Coast Guard is covered by the Freedom of Information Act (FOIA), applicable regulations, and Executive Order 12600. Under FOIA, information must be disclosed unless it falls within one of the statute's listed exemptions. Exemption 4, which applies to information submitted to the Government by any private person, applies here. Exemption 4 shields from release confidential, commercial, or financial information if the release would cause substantial competitive harm to the submitter. Executive Order 12600 also applies and requires that before any executive agency releases information to which Exemption 4 would apply, it must give the submitter the opportunity to show that the material is confidential, commercial, or financial information and, if released, would cause substantial competitive harm to the submitter. If the submitter objects to the release of the information, then the agency weighs the submitter's arguments and makes a final determination on release of that information. The agency may release information if it does not accept the submitter's assertions of confidentiality or harm, but it must delay the release long enough to allow the submitter to obtain a court order preventing release.

Executive Order 12600 provides that if there is a large number of submitters, as here, the agency may satisfy its requirements by publishing a notice reasonably calculated to accomplish notification. We have determined that publication of this notice in the **Federal Register** and in other relevant Coast Guard publications is reasonably calculated to accomplish notification of submitters of response plans.

Under Executive Order 12600 and 49 CFR 7.17, we must have detailed justification to withhold material you believe should not be placed on the Internet. You should identify material from the twenty-four numbered items in this Notice under *Background and Purpose* that would be likely to cause substantial harm to your present or future competitive position if it were released to your competitors. You must provide to the Coast Guard, by a method listed in this Notice under **ADDRESSES**, detailed information on why release would be harmful. Describe specifically how the information could be used by competitors to your detriment. Some factors you may wish to describe to help us understand your position are (1) the general custom or usage of the information in your business, (2) the number and situation of the persons who have access to the information, and (3) the length of time the information will need to be kept confidential. All submitters of response plans who object to release of information from their plans should respond to this notice as detailed above. We will notify all submitters who respond to this notice of our decision to release or not release their information on the Internet. If a submitter of a response plan does not respond to this notice, we will assume there is no objection to the planned release of information from their plan. The response plan information which we decide to release will not be posted on the Internet until submitters who objected have been given a reasonable opportunity to seek judicial review of our decision.

Dated: April 25, 1999.

R.C. North,

Assistant Commandant for Marine Safety and Environmental Protection.

[FR Doc. 99–11179 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activity Under OMB Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The **Federal Register** Notice with a 60-day comment period soliciting comments on the following collection of information was published on December 7, 1998 (FR 63, page 67504).

DATES: Comments must be submitted on or before June 3, 1999. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

Federal Aviation Administration (FAA)

Title: Aircraft Registration.

Type of Request: Extension of a currently approved collection.

OMB Control Number: 2120–0042.

Form(s) AC 8050–1, AC 8050–2, AC 8050–4, AC 8050–81, AC 8050–98, AC 8050–117.

Affected Public: Any person wishing to register an aircraft.

Abstract: The information collected is used by the FAA to register an aircraft or hold an aircraft in trust. The information is required to register and prove ownership of an aircraft. The registration system provides identification of all civil aircraft in the United States.

Estimated Annual Burden Hours: 67,153 burden hours annually.

ADDRESSES: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW., Washington, DC 20503, Attention FAA Desk Officer.

Comments Are Invited On:

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's

estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on April 18, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–11177 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Over-the-Road Bus Accessibility Program Grants

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Program Guidance Revision.

The Federal Transit Administration provided program guidance and application procedures in a **Federal Register** Notice dated February 8, 1999, "Over-the-Road Bus Accessibility Program Grants" (64FR6165). The notice invited comments regarding the program and stated that program guidance might be revised based upon comments received. There were several comments regarding applying Federal requirements to the entire vehicle rather than to just the wheelchair lifts that are to be added to the vehicles to make them wheelchair accessible. The commenters suggested that the application of Federal requirements to the full vehicle would limit program participation, imposing a burden for a fairly small Federal share. In addition, applying Federal requirements to the entire vehicle would be particularly burdensome for the small over-the-road bus operators. As a result of FTA review of the industry comments describing the detrimental impact that applying federal requirements to the entire vehicle would have on industry participation in this program, and having reviewed the language of the law, FTA is revising its **Federal Register** Notice of February 8, 1999. Federal requirements shall apply only to the incremental cost of making a vehicle wheelchair accessible. Such incremental costs include the lift itself, the expense of installing the lift during manufacture of the vehicle, as well as other items needed to ensure that vehicle accessibility requirements are met, such as wheelchair securement devices.

Issued on: zApril 28, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–11092 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–57–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5580]

Notice of Receipt of Petition for Decision that Nonconforming 1990–1992 Acura Legend Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of receipt of petition for decision that nonconforming 1990–1992 Acura Legend passenger cars are eligible for importation.

SUMMARY: This notice announces receipt by the National Highway Traffic Safety Administration (NHTSA) of a petition for a decision that 1990–1992 Acura Legend passenger cars that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because (1) they are substantially similar to vehicles that were originally manufactured for importation into and sale in the United States and that were certified by their manufacturer as complying with the safety standards, and (2) they are capable of being readily altered to conform to the standards.

DATES: The closing date for comments on the petition is June 3, 1999.

ADDRESSES: Comments should refer to the docket number and notice number, and be submitted to: Docket Management, Room PL–401, 400 Seventh St., SW, Washington, DC 20590. (Docket hours are from 9 am to 5 pm).

FOR FURTHER INFORMATION CONTACT: George Entwistle, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under 49 U.S.C. 30141(a)(1)(A), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States unless NHTSA has decided that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under 49 U.S.C. 30115, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily altered to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility decisions may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR Part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA decides, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this decision in the **Federal Register**.

Champagne Imports of Lansdale, Pennsylvania ("Champagne") (Registered Importer 90–009) has petitioned NHTSA to decide whether 1990–1992 Acura Legend passenger cars are eligible for importation into the United States. The vehicles which Champagne believes are substantially similar are 1990–1992 Acura Legend passenger cars that were manufactured for importation into, and sale in, the United States and certified by their manufacturer, Honda Motor Co., as conforming to all applicable Federal motor vehicle safety standards.

The petitioner claims that it carefully compared non-U.S. certified 1990–1992 Acura Legends to their U.S. certified counterparts, and found the vehicles to be substantially similar with respect to compliance with most Federal motor vehicle safety standards.

Champagne submitted information with its petition intended to demonstrate that non-U.S. certified 1990–1992 Acura Legends, as originally manufactured, conform to many Federal motor vehicle safety standards in the same manner as their U.S. certified counterparts, or are capable of being readily altered to conform to those standards.

Specifically, the petitioner claims that non-U.S. certified 1990–1992 Acura Legends are identical to their U.S. certified counterparts with respect to compliance with Standard Nos. 102 *Transmission Shift Lever Sequence . . . .*, 103 *Defrosting and Defogging Systems*, 104 *Windshield Wiping and Washing Systems*, 105 *Hydraulic Brake Systems*, 106 *Brake Hoses*, 109 *New Pneumatic Tires*, 113 *Hood Latch Systems*, 116 *Brake Fluid*, 124 *Accelerator Control Systems*, 201

Occupant Protection in Interior Impact, 202 *Head Restraints*, 204 *Steering Control Rearward Displacement*, 205 *Glazing Materials*, 207 *Seating Systems*, 209 *Seat Belt Assemblies*, 210 *Seat Belt Assembly Anchorages*, 212 *Windshield Retention*, 216 *Roof Crush Resistance*, 219 *Windshield Zone Intrusion*, and 302 *Flammability of Interior Materials*.

Additionally, the petitioner states that non-U.S. certified 1990–1992 Acura Legends comply with the Bumper Standard found in 49 CFR Part 581. Petitioner further states that because non-U.S. Acura Legends are equipped with an anti-theft device, they comply with the Theft Prevention Standard found in 49 CFR Part 541.

Petitioner also contends that the vehicles are capable of being readily altered to meet the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays*: (a) Substitution of a lens marked "Brake" for a lens with a noncomplying symbol on the brake failure indicator lamp; (b) installation of a seat belt warning lamp that displays the appropriate symbol; (c) recalibration of the speedometer/odometer from kilometers to miles per hour.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment*: (a) Installation of U.S.-model headlamp assemblies that incorporate headlamps with DOT markings; (b) installation of U.S.-model front and rear sidemarker/reflector assemblies; (c) installation of U.S.-model taillamp assemblies; (d) installation of a center high mounted stop lamp if the vehicle is not already so equipped.

Standard No. 110 *Tire Selection and Rims*: installation of a tire information placard.

Standard No. 111 *Rearview Mirror*: replacement of the passenger side rearview mirror with a U.S.-model component.

Standard No. 114 *Theft Protection*: installation of a warning buzzer microswitch in the steering lock assembly and a warning buzzer.

Standard No. 118 *Power Window Systems*: rewiring of the power window system so that the window transport is inoperative when the ignition is switched off.

Standard No. 206 *Door Locks and Door Retention Components*: replacement of the rear door locks and rear door lock buttons with U.S. model components.

Standard No. 208 *Occupant Crash Protection*:

(a) Istallation of a U.S.-model seat belt in the driver's position, or a belt webbing-actuated microswitch inside the driver's seat belt retractor; (b) installation of an ignition switch-actuated seat belt warning lamp and buzzer; (c) replacement of the driver's side air bag and knee bolster with U.S.-model components. The petitioner states that the vehicles are equipped with combination lap and shoulder restraints that adjust by means of an automatic retractor and release by means of a single push button at both front designated seating positions, with combination lap and shoulder restraints that release by means of a single push button at both rear outboard designated seating positions, and with a lap belt at the rear center designated seating position.

Standard No. 214 *Side Impact Protection*: installation of reinforcing beams.

Standard No. 301 *Fuel System Integrity*: installation of a rollover valve in the fuel tank vent line between the fuel tank and the evaporative emissions collection canister.

The petitioner also states that a vehicle identification number plate must be affixed to the vehicle to meet the requirements of 49 CFR part 565.

Interested persons are invited to submit comments on the petition described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW, Washington, DC 20590. It is requested but not required that 10 copies be submitted.

All comments received before the close of business on the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Notice of final action on the petition will be published in the **Federal Register** pursuant to the authority indicated below.

Authority: 49 U.S.C. 30141(a)(1)(A) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: April 26, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–11105 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

International Standards on the Transport of Dangerous Goods; Public Meetings

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meetings.

SUMMARY: This notice is to advise interested persons that RSPA will conduct public meetings in preparation for and to report the results of the sixteenth session of the United Nation's Sub-Committee of Experts on the Transport of Dangerous Goods (UNSCOE) to be held July 5 through July 16, 1999 in Geneva, Switzerland.

DATES: June 24, 1999, 10:00 AM–1:00 PM; July 20, 1999, 10:00 AM–1:00 PM.

ADDRESSES: Both meetings will be held in room 6332–36, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Safety, or Bob Richard, Assistant International Standards Coordinator, Office of Hazardous Materials Safety, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: The primary purpose of the first meeting will be to prepare for the sixteenth session of the UNSCOE and to discuss U.S. positions on UNSCOE proposals. The primary purpose of the second meeting will be to provide a briefing on the outcome of the session and to prepare for the seventeenth session of the UNSCOE and to discuss U.S. positions on UNSCOEwhich is scheduled for December 6–17, 1999 in Geneva, Switzerland. Topics to be covered during the public meeting include: (1) Global harmonization of classification criteria, (2) Reformatting the UN Recommendations into a model rule, (3) Criteria for Environmentally Hazardous Substances, (4) Intermodal portable tank requirements, (5) Requirements applicable to small quantities of hazardous materials in transport (limited quantities), (6) Harmonized requirements for compressed gas cylinders, (7) Classification of individual substances, (8) Requirements for bulk and non-bulk packagings used to transport hazardous materials, (9) Requirements for Toxic by Inhalation (TIH) substances, (10) Hazard communication requirements including harmonized shipping papers, (11)

Segregation in freight containers and (12) Requirements for infectious substances.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the sixteenth session of the UNSCOE meeting may be obtained by downloading them from the United Nations Transport Division's web site at http://www.unece.org/trans/main/dgdb/dgsubc/dgscomm.html. Information concerning UN dangerous goods meetings including agendas can be downloaded at *http://www.unece.org/trans/danger/meetings.htm#ST/SG.* These sites may also be accessed through RSPA's Hazardous Materials Safety Homepage at http://hazmat.dot.gov/intstandards.htm.

Issued in Washington, DC, on April 28, 1999.

Robert A. McGuire,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 99–11107 Filed 5–3–99; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–561X and STB Docket No. AB–562X]

Rio Valley Railroad, Inc.—Abandonment Exemption—In Cameron County, TX and Rio Valley Switching Company—Discontinuance of Service Exemption—In Cameron County, TX

On April 14, 1999, Rio Valley Railroad, Inc. (RVRI), and Rio Valley Switching Company (RVSC) jointly filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemptions from the provisions of 49 U.S.C. 10903 for RVRI to abandon, and RVSC to discontinue service over, an 8.808-mile line of railroad, known as the Rio Hondo Line, extending between milepost 0.316 near San Benito and milepost 9.19 at Rio Hondo, in Cameron County, TX.[1] The line traverses U.S. Postal Service ZIP Code 78583 and includes the station of Rio Hondo.

The line does not contain federally granted rights-of-way. Any documentation in RVRI's and RVSC's possession will be made available promptly to those requesting it.

The interest of railroad employees will be protected by the conditions set forth in *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979).

By issuance of this notice, the Board is instituting exemption proceedings pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 2, 1999.

Any offer of financial assistance under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the exemptions. Each offer must be accompanied by a $1,000 filing fee. *See* 49 CFR 1002.2(f)(25).

All interested parties should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 24, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket Nos. AB–561X and AB–562X and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Thomas F. McFarland, Jr., McFarland & Herman, 20 North Wacker Drive, Suite 1330, Chicago, IL 60606–2902. Replies are due May 24, 1999.

Persons seeking further information concerning abandonment and discontinuance procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. [TDD for the hearing impaired is available at (202) 565–1695.]

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 27, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11003 Filed 5–3–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–462 (Sub–No. 2X)]

Southeastern International Corporation—Abandonment Exemption—in Wharton County, TX

On April 14, 1999, Southeastern International Corporation (SEI) filed with the Surface Transportation Board (Board) a petition under 49 U.S.C. 10502 for exemption from the provisions of 49 U.S.C. 10903 to abandon its entire 11.76-mile line of railroad extending from milepost 42.24 in Wharton to milepost 54.0 near Lane City, in Wharton County, TX. The line traverses U.S. Postal Service Zip Codes 77488 and 77453, and includes no stations.

The line does not contain federally granted rights-of-way. Any documentation in SEI's possession will be made available promptly to those requesting it.

In this proceeding, SEI is proposing to abandon a line that constitutes its entire rail system. When issuing abandonment authority for a railroad line that constitutes the carrier's entire system, the Board does not impose labor protection, except in specifically enumerated circumstances. *See Northampton and Bath R. Co.—Abandonment,* 354 I.C.C. 784, 785–86 (1978) (*Northampton*). Therefore, if the Board grants the petition for exemption, in the absence of a showing that one or more of the exceptions articulated in *Northampton* are present, no labor protective conditions would be imposed.

By issuance of this notice, the Board is instituting an exemption proceeding pursuant to 49 U.S.C. 10502(b). A final decision will be issued by August 2, 1999.

Any offer of financial assistance (OFA) under 49 CFR 1152.27(b)(2) will be due no later than 10 days after service of a decision granting the petition for exemption. Each OFA must be accompanied by the filing fee, which currently is set at $1,000. *See* 49 CFR 1002.2(f)(25).

All interested persons should be aware that, following abandonment of rail service and salvage of the line, the line may be suitable for other public use, including interim trail use. Any

[1] The beginning of the Rio Hondo Line, from milepost 0.066 to milepost 0.316, is not included in the proposed abandonment and discontinuance.

request for a public use condition under 49 CFR 1152.28 or for trail use/rail banking under 49 CFR 1152.29 will be due no later than May 24, 1999. Each trail use request must be accompanied by a $150 filing fee. *See* 49 CFR 1002.2(f)(27).

All filings in response to this notice must refer to STB Docket No. AB–462 (Sub-No. 2X) and must be sent to: (1) Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001; and (2) Karl Morell, 1455 F Street, NW, Suite 225, Washington, DC 20005. Replies to the SEI petition are due on or before May 24, 1999.

Persons seeking further information concerning abandonment procedures may contact the Board's Office of Public Services at (202) 565–1592 or refer to the full abandonment or discontinuance regulations at 49 CFR part 1152. Questions concerning environmental issues may be directed to the Board's Section of Environmental Analysis (SEA) at (202) 565–1545. (TDD for the hearing impaired is available at (202) 565–1695.)

An environmental assessment (EA) (or environmental impact statement (EIS), if necessary) prepared by SEA will be served upon all parties of record and upon any agencies or other persons who commented during its preparation. Other interested persons may contact SEA to obtain a copy of the EA (or EIS). EAs in these abandonment proceedings normally will be made available within 60 days of the filing of the petition. The deadline for submission of comments on the EA will generally be within 30 days of its service.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 22, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–10776 Filed 5–3–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Departmental Offices Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for renewed approval by the Office of Management and Budget. The Office of Program Services and the Office of Foreign Exchange Operations within the Department of the Treasury are soliciting comments concerning recordkeeping requirements associated with Reporting of International Capital and Foreign Currency Transactions and Positions—31 CFR Part 128.

DATES: Written comments should be received on or before July 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments on international capital transactions and positions to Dwight Wolkow, administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue NW, Washington DC 20220. Direct all written comments on foreign currency transactions and positions to Gregory Berger, Deputy Director, Office of Foreign Exchange Operations, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information on international capital transactions and positions or copies of the forms and instructions should be directed to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems at the above address, or by calling (202) 622–1276. Requests for additional information on foreign currency transactions and positions or copies of the forms and instructions should be directed to Gregory Berger, Office of Foreign Exchange Operations, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue NW, Washington DC 20220, or by calling (202) 622–2650.

SUPPLEMENTARY INFORMATION:

Title: 31 CFR Part 128, Reporting of International Capital and Foreign Currency Transactions and Positions.

OMB Number: 1505–0149.

Abstract: 31 CFR Part 128 establishes general guidelines for reporting on United States claims on and liabilities to foreigners; on transactions in securities with foreigners; and on the monetary reserves of the United States as provided for by the International Investment and Trade in Services Survey Act and the Bretton Woods Agreements Act. In addition, 31 CFR Part 128 establishes general guidelines for reporting on the nature and source of foreign currency transactions of large U.S. business enterprises and their foreign affiliates. This regulation includes a recordkeeping requirement, § 128.5, which is necessary to enable the Office of Program Services and the Office of Foreign Exchange Operations to verify reported information and to secure additional information concerning reported information as may be necessary. The recordkeepers are U.S. persons required to file reports covered by these regulations.

Current Actions: No changes to recordkeeping requirements are proposed at this time.

Type of Review: Extension.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 2,000.

Estimated Average Time per Respondent: 3 hours per respondent per filing.

Estimated Total Annual Burden Hours: 6,000 hours, based on one response per year.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether 31 CFR 128.5 is necessary for the proper performance of the functions of the Offices, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness and clarity of the information to be collected; ways to minimize the reporting and/or recordkeeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance, and purchases of services to provide information.

Timothy D. DuLaney,

Director, Office of Foreign Exchange Operations.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–11093 Filed 5–3–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Departmental Offices; Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork burdens, invites the general public and other Federal agencies to comment on an information collection that is due for reinstatement

approval by the Office of Management and Budget. The Office of Program Services within the Department of the Treasury is soliciting comments concerning the Survey of Foreign Portfolio Investment in the United States as of March 31, 2000.

DATES: Written comments should be received on or before June 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Dwight Wolkow, Administrator, International Portfolio Investment Data Systems, Department of the Treasury, Room 5205, 1500 Pennsylvania Avenue, NW, Washington DC 20220.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Dwright Wolkow, Administrator, International Portfolio Investment Data Systems at the above address, or by faxing (202) 622–7448, or by calling (202) 622–1276.

SUPPLEMENTARY INFORMATION:

Title: Survey of Foreign Portfolio Investment in the United States as of March 31, 2000.

OMB Number: 1505–0123.

Abstract: These forms are used to conduct periodic surveys of foreign portfolio ownership of U.S. long-term securities. These data are used by the U.S. Government in the formulation of international and financial policies and for the computation of the U.S. balance of payments and international investment position. Surveys of foreign portfolio investment in the United States are required to be conducted at least once every five years by the International Investment and Trade in Services Survey Act (22 U.S.C. 3101 *et seq.*). The last such survey was conducted as of December 31, 1994. The next survey will be held as of March 31, 2000, to avoid placing a reporting burden on respondents which coincides with Y2K-related efforts during the last half of 1999.

Current Actions: Exemption levels will be raised from $10 million to $20 million, and the number of data items will be reduced. Data will be collected primarily from custodians of securities, and from issuers of securities only when foreigners have registered their foreign holdings directly with the U.S. securities issuer and do not use a U.S.-based custodian to safekeep the securities.

Type of Review: Reinstatement with change.

Affected Public: Business/Financial Institutions.

Forms Survey of Foreign Portfolio Investment in the United States (1505–0123).

Estimated Number of Respondents: 1,200.

Estimated Average Time per Respondent: 50 hours, but this will vary widely from respondent to respondent. It is estimated that all respondents will require on average a minimum of 16 hours to understand the survey requirements and gather the information necessary to determine their filing status. For issuers of securities that have data to report and are not custodians, the estimate is 40 hours total. For custodians of securities, the estimate is a total of 160 hours on average, but this figure will vary widely for individual custodians.

Estimated Total Annual Burden Hours: 60,000 hours.

Frequency of Response: Approximately once every five years.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval. All comments will become a matter of public record. The public is invited to submit written comments concerning: whether the Survey is necessary for the proper performance of the functions of the Office, including whether the information collected has practical uses; the accuracy of the above burden estimates; ways to enhance the quality, usefulness and clarity of the information to be collected; ways to minimize the reporting and/or record keeping burdens on respondents, including the use of information technologies to automate the collection of the data; and estimates of capital or start-up costs of operation, maintenance and purchases of services to provide information.

Dwight Wolkow,

Administrator, International Portfolio Investment Data Systems.

[FR Doc. 99–11180 Filed 5–3–99; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; New System of Records—Center for Minority Veterans Management Information System—VA (95VAOOM)

AGENCY: Department of Veterans Affairs.

ACTION: Notice, new system of records.

SUMMARY: The Privacy Act of 1974 (5 U.S.C. 522a(e)(4)) requires that all agencies publish in the **Federal Register** a notice of the existence and character of their systems of records. Notice is hereby given that the Department of Veterans Affairs (VA) is adding a new system of records entitled "Center for Minority Veterans Management Information System—VA (95VAOOM)."

Under section 317 of Title 38, United States Code, VA is required to assess minority veterans' use of VA benefits, programs and services. This new system of records will primarily be used to maintain an automated database containing demographic data on veterans that the Center will use to analyze trends on how VA serves minority veterans, and the extent to which minority veterans are using benefits, programs and services offered by VA. The automated database is used to produce statistical reports that assist VA managers in their efforts to correct any disparities in the care and delivery of services to minority and women veterans.

The automated database is known as the Automated Demographic Data File System (ADDFS). The database includes data on veterans extracted from automated VA benefits data files located at the VA Automation Center, Austin, Texas. Data extracted includes names, social security numbers, claim numbers, race, ethnicity and gender of a randomly selected group of veterans. Similar data will also be extracted from the Department of Defense (DoD) military personnel systems of records in order to supplement VA databases. The ADDFS will be configured to interact with current VA automated records systems as well as the DoD military personnel automated records system to produce reports for statistical analyses. Statistical reports will not contain personal identifiers. Reports will be statistical data only, which present information in terms of percentages based on the race, ethnicity and gender of veterans served by VA.

This system of records will also include data pertaining to individual veterans, as well as correspondence, electronic mail and memoranda memorializing conversations with individuals concerning complaints about benefits and services provided to VA beneficiaries based on the race or ethnicity of the beneficiary. The records may also include documents reflecting the processing and investigation of these complaints, and documents extracted from the VA beneficiary's VA records.

The information in this system will be maintained in paper and electronic form. The ADDFS will be maintained only in electronic form. Other records in the system may be maintained in either electronic or paper form. Release of information from these records will be made only in accordance with the provisions of the Privacy Act of 1974 for

investigative, judicial and administrative uses. VA has determined that release of information for these purposes is a necessary and proper use of information in this system of records, and that specific routine uses for transfer of this information are appropriate.

DATES AND ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding the proposed system of records to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, Room 1154, 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received 30 days after publication in the **Federal Register** (June 3, 1999) will be considered. All written comments will be available for public inspection at the above address, in Room 1158, between 8:00 a.m. and 4:30 p.m. only, Monday through Friday (except Federal holidays). If no public comments are received during the 30-day review period allowed, or unless otherwise published in the **Federal Register** by VA, the new system of records, and the routine use statements included herein are effective June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Hawkins (OOM), Department of Veterans Affairs, 810 Vermont Avenue NW, Suite 700, Washington, DC 20420, telephone number (202) 273–6708.

SUPPLEMENTARY INFORMATION: A "Report of Intention to Publish a **Federal Register** Notice of a New System of Records" and an advance copy of the new system notice have been provided to the Chairmen of the House Committee on Government Reform and Oversight and the Senate Committee on Governmental Affairs, and the Director, Office of Management and Budget (OMB), as required by provisions of Title 5, U.S.C. 522(r) (Privacy Act), and guidelines issued by OMB (61 FR 6428) (1996).

Approved: April 14, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

95VA00M

SYSTEM NAME:

Center for Minority Veterans Management Information System—VA (95VA00M).

SYSTEM LOCATION:

Record are maintained at the Center for Minority Veterans' office in VA Headquarters, Washington, DC. VA's Automation Center, 1615 E. Woodward Street, Austin, Texas 78772, maintains the Automated Demographic Data File System (ADDFS).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system of records will cover the following individuals: (1) VA beneficiaries who contact the Center for Minority Veterans for assistance in addressing concerns about benefits and services provided to them based on the race or ethnicity of the beneficiary. (2) The ADDFS will be comprised of demographic data on randomly selected veterans who served in the military from 1975 to the present and whose VA benefits data are currently maintained in an existing VA or DoD automated database.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records will include correspondence, electronic mail and memoranda memorializing conversations with individuals. The records also may include documents reflecting the processing and investigation of these complaints, and documents extracted from the beneficiary's VA records in order to assist in responding to the veteran's inquiry. The ADDFS will include the names, social security numbers, claim numbers, race, ethnicity and gender of randomly selected veterans currently maintained in existing VA or DoD automated file systems.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

38, U.S.C. 317, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

1. Disclosure of specific information may be made to a congressional office, in response to an inquiry from that congressional office made at the request of the individual and concerning that individual's records in this system.

2. Disclosure may be made during reviews by the National Archive and Records Administration during records management inspections conducted under the authority of Title 44, U.S.C. 2904 and 2906.

3. At the initiative of VA, pertinent information may be disclosed to appropriate Federal, State or local agencies responsible for investigating, prosecuting, enforcing or implementing statutes, rules, regulations or orders, where VA becomes aware of an indication of a violation or potential violation of civil or criminal law or regulation.

4. Disclosure may be made to officials of the Merit Systems Protection Board, including the Office of the Special Counsel, the Federal Labor Relations Authority and its General Counsel or the Equal Employment Opportunity Commission, when requested in the performance of their authorized duties, and the request is not in connection with a law enforcement investigation.

5. The Department of Veterans Affairs (VA) may disclose records in this system of records in proceedings before a court or adjudicative body before which VA is authorized to appear when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the information contained in the records is compatible with the purpose for which the records were collected.

6. The Department of Veterans Affairs (VA) may disclose records in this system of records to the Department of Justice when VA, a VA official or employee, the United States, or an individual or entity for whom the United States is providing representation is a party to litigation or has an interest in such litigation, and VA determines that the use of such records is relevant and necessary to the litigation, provided, however, that in each case, the agency determines that disclosure of the information contained therein is compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The ADDFS is stored in a secure area located at VA's Automation Center, 1615 E. Woodward Street, Austin, Texas 78772. ADDFS data files are stored On magnetic disk and for archival purposes, on magnetic tape. Other records are stored in the Center for Minority Veterans in VA Headquarters, Washington, DC, or on file servers at VA Headquarters that are utilized by the Center.

RETRIEVABILITY:

Automated records may be retrieved by name, social security number, claim number, race, ethnicity and/or gender. Paper records are retrieved by name.

SAFEGUARDS:

Access to the automated system is via computer terminal; standard security procedures, including a unique identification code and password

combination, are used to limit access to authorized personnel only. Specifically, in order to obtain access to the automated records in this system of records, an individual must have access to VA's automated resources. Access to the ADDFS at VA's Automation Center is limited as follows: An individual may not self-register for this access. Formal documentation of the request for access, signed by the employee's supervisor and approved by the Director, Center for Minority Veterans, is required before an individual may obtain such access. Authorized customers are issued a customer identification code and a one-time password. Access to paper records maintained by the Center for Minority Veterans is limited to VA employees who need to have access to the records in order to perform their agency duties. Generally, file areas are locked after normal duty hours and the Federal Protective Service or other security personnel protect the offices from outside access.

RETENTION AND DISPOSAL:

Records will be maintained and disposed of in accordance with the records disposal authority approved by the Archivist of the United States, the National Archives and Records Administration, and published in Agency Records Control Schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Center for Minority Veterans, 810 Vermont Avenue, NW, Washington, DC 20420.

RECORDS ACCESS PROCEDURES:

An individual who seeks access or wishes to contest records maintained under his or her name or other personal identifier may write, call or visit the system manager.

CONTESTING RECORD PROCEDURES:

See record access procedures above.

RECORD SOURCE CATEGORIES:

For investigation purposes, information may be obtained from existing VA beneficiary records, employment records; VA beneficiaries, third parties (e.g., relatives or representatives acting on their behalf, such as veterans' service organizations); congressional correspondence and other Federal agencies. For ADDFS, record sources are VA benefits databases as set forth in "58VA21/22—Compensation & Pension, Education and Rehabilitation Records—VA, "38VA23—Beneficiary Identifier and Records Locator Subsystem—VA," and Department of Defense military personnel automated records systems.

[FR Doc. 99–11071 Filed 5–3–99; 8:45 am]
BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 64, No. 85
Tuesday, May 4, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Correction

In notice document 99–10355 beginning on page 20302 in the issue of Monday, April 26, 1999, make the following correction:

On page 20303, in the first column, under *Comments*, starting in the fourth line "[insert date 30 days after date of publication in the **Federal Register**]" should read "May 26, 1999".

[FR Doc. C9–10355 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; National Institute of Environmental Health Sciences; Center for the Evaluation of Risks to Human Reproduction Review of Phthalates; Comment Request

Correction

In notice document 99–9488 beginning on page 18921 in the issue of Friday, April 16, 1999, make the following correction:

On page 18922, in the first column, under **Review of Phthalates**, in the first paragraph, in the 16th line "di-n-butyl phthalate (84-75-3)" should read "di-n-hexyl phthalate (84-75-3)".

[FR Doc. C9–9488 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Correction

In notice document 99–9817, beginning on page 19391, in the issue of Tuesday, April 20, 1999, make the following correction:

On page 19391, in the third column, in the second paragraph, in the second line, "Rule 17a–3" should read "Rule 17a–13".

[FR Doc. C9–9817 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–99–09]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

Correction

In notice document 99–9881, beginning on page 19402, in the issue of Tuesday, April 20, 1999, make the following correction:

On page 19404, in the first column, in the 24th line from the end of the document, "*Grant, 3/31/99,*" should read "*Denial, 3/31/99,*".

[FR Doc. C9–9881 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–20]

Amendment to Class E Airspace; Macon, MO

Correction

In rule document 99–9786, beginning on page 19267, in the issue of Tuesday, April 20, 1999, the heading is corrected to read as set forth above.

[FR Doc. C9–9786 Filed 5–3–99; 8:45 am]

BILLING CODE 1505–01–D

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federal register

Tuesday
May 4, 1999

Part II

Environmental Protection Agency

40 CFR Part 9 et al.

Control of Air Pollution From New Motor Vehicles; Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9, 85, 86, 88 and 600

[FRL–6312–9]

RIN 2060–AH05

Control of Air Pollution From New Motor Vehicles; Compliance Programs for New Light-Duty Vehicles and Light-Duty Trucks

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (referred to hereafter as "EPA" or "the Agency") proposed a new compliance assurance program (referred to as "CAP 2000") on July 23, 1998. This action adopts revised emissions compliance procedures for new light-duty vehicles and light-duty trucks contained in the NPRM. CAP 2000 simplifies and streamlines the current procedures manufacturers must follow to obtain pre-production emission certification of new motor vehicles. The new certification program provides the same environmental benefits as the current procedures while significantly reducing the certification cost for manufacturers, and giving manufacturers more control of production timing. EPA is also adopting a requirement that manufacturers test in-use motor vehicles to monitor compliance with emission standards. Manufacturers will test samples of in-use vehicles when they are approximately one and four years old. These test data will be used to improve the process which predicts in-use compliance and will determine the need for further action by the Agency or the manufacturer to address any in-use emission compliance problems. CAP 2000 will be implemented beginning with model year (MY) 2001 vehicles. Manufacturers are allowed to voluntarily opt-in to the CAP 2000 procedures beginning with the 2000 model year. EPA estimates that overall, manufacturers will save about $55 million dollars a year as a result of today's final rule.

DATES: This rule is effective May 4, 1999. The information collection requirements contained in 40 CFR part 86, as listed in 40 CFR part 9, have been approved by OMB and are effective May 4, 1999. The incorporation of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 4, 1999.

ADDRESSES: Materials relevant to this final rule are contained in EPA Air & Radiation Docket number A–96–50, located at Room M–1500, Waterside Mall, 401 M Street, SW, Washington, DC 20460. The docket may be viewed at this location between 8:00 a.m. and 5:30 p.m., Monday through Friday. The telephone number is (202) 260–7548 and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Linda Hormes, Vehicle Programs and Compliance Division, US EPA, 2000 Traverwood, Ann Arbor, Michigan 48105, telephone (734) 214–4502, E-mail: hormes.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are those which manufacture and sell motor vehicles in the United States. Regulated categories and entities include:

Category	Examples of regulated entities
Industry	New motor vehicle manufacturers.

This table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities the EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your product is regulated by this action, you should carefully examine the applicability criteria in § 86.1801–01 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular product, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Obtaining Copies of the Regulatory Documents

The preamble and Technical Support Document are available electronically from the EPA Internet Web site. This service is free of charge, except for any cost you already incur for internet connectivity. The electronic version of this final rule is made available on the day of publication on the primary EPA Web site listed below. The EPA Office of Mobile Sources also publishes **Federal Register** notices and related documents on the secondary Web site listed below:

1. http://www.epa.gov/docs/fedrgstr/EPA–AIR/
2. http://www.epa.gov/OMSWWW/ (look in "What's New" or under the specific rulemaking topic)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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I. Introduction

Three programs are currently in place to ensure that automotive manufacturers design and build light-duty vehicles and light-duty trucks which comply with mandated emission standards for their useful lives (as prescribed in § 86.1805–01): certification, assembly line testing

(known as Selective Enforcement Audits or SEAs) and recall. These programs are described in more detail in section I.A. of the Notice of Proposed Rulemaking (63 FR 39655).

In addition to these emission control programs, EPA shares responsibilities with three other Federal agencies in the conduct of three fuel economy programs: the Corporate Average Fuel Economy (CAFE) program, the Fuel Economy Labeling program (and attendant issuance of the annual Gas Mileage Guide), and the Gas Guzzler Tax program. These programs were likewise discussed in some detail in the above-cited section of the Notice of Proposed Rulemaking (NPRM) for this rule.

The mutual desire of EPA and the automotive industry to streamline and improve upon these compliance programs fostered a productive regulatory development process culminating in the proposed regulation. One of the main elements of the proposal is a streamlined certification program structure which retains EPA's confidence in pre-production compliance determinations while reducing costs for manufacturers. To verify the compliance predictions made for certification, the final rule requires manufacturers to conduct testing of in-use vehicles and to report the results to EPA. The significant amounts of in-use data generated by this testing will enhance the Agency's recall program and can be used for studies of in-use vehicle emission control performance in general.[1] The in-use data will also obviate the need for most SEA testing.

Today's final rule incorporates comments received during the public comment period. Most of the comments received suggested minor wording or procedural changes. No fundamental changes to the basic structure of the CAP 2000 proposal have been made in the final rule. A discussion of certain comments received is contained in section II below. The Response to Comments document in the Docket contains a detailed discussion of other comments received and EPA's responses.

II. Content of the Final Rule

Unless otherwise indicated below, the discussion presented in the Preamble to the Notice of Proposed Rulemaking published at 63 FR 39653 is applicable to this final rule.

[1] Important in-use data are also available from other sources, including emission control repair statistics and I/M test results.

A. Certification Requirements

1. Durability Requirements

Durability Groups. EPA is adopting its proposal for manufacturers to divide their motor vehicles into groups called "durability groups" which include vehicles which are likely to exhibit similar exhaust emission deterioration over their useful lives, based on those characteristics of current-technology vehicles that most significantly affect the deterioration of emission control over time. Durability groups are based on engine type, fuel type, fuel system, catalyst construction, type of precious metals used in the catalyst, and relative engine/catalyst size and loading rates.

EPA estimates that based on the current vehicle product offering, the number of required durability demonstrations under CAP 2000 will be reduced by as much as 75 percent, a substantial savings for manufacturers. However, the Agency believes that the new durability grouping criteria, the requirement for testing the worst case durability vehicle, and the in-use verification program (also discussed below) would comprise a more accurate and effective emission control program than the current procedures and should result in significant environmental benefits.

To allow manufacturers flexibility in assigning durability groups, EPA is adopting provisions allowing manufacturers to use criteria other than relative engine/catalyst size and loading rates, provided that the criteria result in at least as many groups and do not group together dissimilar vehicles.

Durability Demonstrations. The Agency is adopting as proposed its durability demonstration regulations. Each manufacturer (except small volume manufacturers and test groups which have special provisions discussed below) will be required to design a durability process which predicts the in-use deterioration of the vehicles it produces. The durability process will be applied to a worst-case durability vehicle configuration as selected by the manufacturer. While the Agency expects manufacturers to act in good faith in designing adequate durability processes, the Agency requirement to obtain advance approval for these procedures should assure that well-designed programs are implemented.

In-use Feedback to Durability. Another important feature of today's rule is the requirement that manufacturers perform in-use testing on candidate in-use vehicles selected under the provisions of the in-use verification program described in section II. B. below. These in-use verification data will provide feedback information to manufacturers which will be used to improve their durability processes, if necessary.

EPA may also withdraw its approval to use a durability procedure for future certification if the Agency determines that the procedure does not accurately predict in-use emission levels.

Using aged emission control components to demonstrate compliance. EPA is adopting its proposal allowing manufacturers to demonstrate both durability and emission compliance by testing emission data vehicles installed with components aged to the equivalent of full useful life. The test data will represent the useful life emission levels for those vehicles, and can be compared directly to the emission standards without the use of deterioration factors. This certification compliance option will save manufacturers the cost of building and accumulating mileage on separate fleets of durability test vehicles. This process uses the same aging techniques as those used to calculate DFs in the normal durability program. Furthermore, the effect of using aged components directly on an emission data vehicle (EDV) is equivalent to applying a deterioration factor to an EDV which is calculated from those same aged components. EPA is also adopting its proposal to allow aged components to be used on more than one vehicle, under certain conditions.

The Agency is also adopting its proposal that the configuration with the highest expected level of in-use deterioration be selected as the durability data vehicle (DDV) configuration.

Evaporative/Refueling Durability Procedures

Evaporative family durability procedures were not proposed to be changed, but EPA requested and received comments about the criteria for designating evaporative/refueling families. Based on those comments, EPA is adopting some minor changes to the definition of evaporative/refueling family, described in more detail below.

2. Emission Compliance Requirements

Test Groups. EPA is adopting its proposal that manufacturers subdivide durability groups into units called "test groups," for the purpose of demonstrating compliance with emission standards. One certificate of conformity with the emission standards will be issued per test group. Vehicles within a test group will have the following common elements: applicable

emission standards, engine displacement, number of cylinders, and arrangement of cylinders (e.g., in-line or V-shaped). EPA is adopting a number of provisions which allow manufacturers to further divide test groups to meet their needs without advance Agency approval. The Agency will also consider requests to combine test groups.

Emission Testing. The Agency is adopting its proposal that manufacturers test one emission data vehicle (EDV) in each test group. The EDV configuration would be the configuration expected to generate the worst case exhaust emissions within the test group.

One EDV per durability group will be required to be tested to demonstrate compliance with cold temperature carbon monoxide requirements, selected by the manufacturer as the worst case EDV within each durability group.

Evaporative/refueling compliance. A separate certificate of conformity will be issued for each evaporate/refueling family within a test group.

Durability and Emission Data Carryover. "Carryover" is a concept that allows the use of data generated in a previous model year to be used in a subsequent model year in lieu of additional testing. The Agency is adopting its proposal to allow carryover of durability and emission data when the manufacturer determines, using good engineering judgment, that the new vehicle configuration is capable of equivalent or superior emission or durability performance.

EPA is adopting its proposal disallowing the carry over of in-use verification test data. This is discussed separately in section II. B. below.

Use of Development Vehicles for EDVs. Currently, the regulations require that a unique vehicle be built to represent the EDV. This requirement was established to assure representativeness of the test results of the EDV. EPA established requirements that the vehicle have appropriate maintenance and sufficient representative mileage accumulation to stabilize emissions. Manufacturers typically run a second fleet of similar vehicles called "development vehicles" which they use to develop the production calibrations. These vehicles may have representative mileage accumulation and appropriate maintenance histories. The Agency is adopting its proposal that manufacturers may optionally use vehicles originally built to be development vehicles as EDVs for official certification testing.

The Agency believes that development vehicles can be representative vehicles which would generate accurate emission levels. The portability of the calibration from one prototype vehicle to another would be assured by the restriction that a development vehicle which was used to develop the calibration used on the EDV may not be used as the EDV itself.

Accept Statements of Compliance for Certification Short Tests. The certification short test was developed to assure that vehicles complying with the FTP exhaust emission standards could be accurately tested at State Inspection and Maintenance (I/M) test facilities without the need for special test procedures. The purpose of the certification short test is also to assure that manufacturers design their vehicles to comply with Inspection/Maintenance (I/M) tests used throughout the country and to account for the variation in test fuels and waiting times that vehicle owners might encounter.

The Agency is adopting its proposal to accept a statement of compliance to satisfy the certification short test compliance requirements (see §§ 86.094–8 and 86.094–9). The certification short test has been fully implemented since the 1996 model year. EPA's review of the CST data submitted by manufacturers thus far has indicated that test results are significantly beneath the standards, with values typically near zero. There have been no instances of test vehicles failing the standards.

Evaporative/Refueling Emission Testing. The Agency is retaining the current evaporative/refueling testing requirements. One vehicle in each evaporative/refueling family (the worst case EDV with the worst case evaporative and fuel tank hardware installed) would be tested for compliance with the evaporative and refueling requirements subject to the phase-in requirements of the applicable model year.

3. Confirmatory Testing

Manufacturer-performed confirmatory testing. The Agency is adopting the proposed requirements for certification and fuel economy confirmatory testing. Manufacturers will confirm most of their tests at their own facilities, if any of the following criteria originally proposed are met: (1) the vehicle version has previously failed a standard; (2) the vehicle exhibits high certification levels; (3) the fuel economy value of the vehicle is higher than expected; (4) the fuel economy value is close to a Gas Guzzler Tax threshold value; or (5) the fuel economy value is at a level which creates a potential vehicle class fuel economy leader. EPA will provide guidance to manufacturers on these criteria. Test results from the original manufacturer's test must be submitted to the Agency before any manufacturer confirmatory testing is conducted. The Agency will then indicate to the manufacturer whether the Agency will be performing any random or other confirmatory testing. Vehicle configurations selected for confirmatory testing by the Agency will not be required to be tested under the manufacturer confirmatory test program. Manufacturer confirmatory tests will be considered "official" and will be used in certification compliance determinations and fuel economy calculations. Any confirmatory tests performed by EPA will be considered official.

The Agency is also adopting its proposal that manufacturers conduct retests whenever the manufacturer's original fuel economy test result and the manufacturer's confirmatory result fail to correlate satisfactorily. The criteria for satisfactory correlation is the three percent difference in fuel economy currently used in EPA's confirmatory test program. In lieu of conducting retests the manufacturer may accept the lowest fuel economy data for the purpose of calculating the fuel economy values. This retesting procedure assures that representative fuel economy data are generated during the manufacturer-funded confirmatory test program. The retest criteria are the same that the Agency has been employing on EPA retests. These have proven satisfactory at safeguarding the integrity of the fuel economy values at a reasonable cost in terms of additional tests conducted.

Conditional Certification pending Confirmatory Testing. EPA is adopting its proposal to allow conditional emission certification for a test group (contingent upon manufacturer request and subject to Agency approval) when the confirmatory test scheduled for testing at the EPA facility has not yet been completed. To be eligible, the manufacturer must attest, and EPA have reason to believe, that the vehicle awaiting confirmatory test will ultimately comply with the standards when tested.

The condition for certification is the same as that for the current "alternate procedure" running change provisions (see § 86.082–34). If the Administrator determines that the confirmatory test results in noncompliance with any standard, then the manufacturer will be so notified. Upon notification of this determination, the manufacturer must immediately suspend production of all vehicles covered by this certificate (or such fraction of the vehicles covered by the certificate that the Administrator determines to be affected) and the certificate of conformity will be

suspended (pending a hearing). As a further condition of the certificate, the manufacturer must agree to recall all vehicles which the Administrator determines to be in noncompliance with the applicable standards, and remedy such noncompliance at no expense to the owner.

4. Fuel Economy

Conditional Fuel Economy Values Pending Confirmatory Testing. In addition to conditional certification, EPA is adopting its proposal allowing the use of conditional fuel economy labels. Manufacturers are permitted to calculate and use fuel economy labels prior to the completion of scheduled EPA confirmatory testing, provided that certain conditions are met.

Once the confirmatory testing is completed, the manufacturer must recalculate, if necessary, all the affected fuel economy label values. The recalculated label values must be used for labeling on future production under either of the following circumstances:

(1) If the newly calculated label value is at least 0.5 mpg lower than the original value, the manufacturer must use the recalculated label value and annual fuel cost on the labels placed on all future vehicles produced 15 days, or more, after the completion of the confirmatory test.

(2) If the newly calculated label value is at least 0.1 mpg lower than the original value, the manufacturer must use the recalculated label value to determine Gas Guzzler Tax liability. The tax paid to the IRS must reflect the recalculated value for all vehicles produced. The gas guzzler tax statement required under the current provisions of 40 CFR 600.307–95(f) to be placed on the fuel economy label shall reflect the recalculated values on all future vehicles produced 15 days, or more, after the completion of the confirmatory test.

All confirmatory test results must be used in CAFE calculations.

EPA is adopting its proposal requiring manufacturers to submit a copy of the CAFE calculations directly to the National Highway Traffic and Safety Administration (NHTSA) concurrent with the submission to EPA.

5. Small Volume Provisions

EPA is adopting its proposal to increase the number of sales which define small volume manufacturers to U.S. sales of less than 15,000 per model year (including light-duty vehicles, light-duty trucks, heavy-duty vehicles and heavy-duty engines). Similarly, EPA is adopting its proposal to allow any manufacturer to use small volume certification procedures for any test groups, provided that the combined U.S. sales are below 15,000 units per model year.

Any certification options provided under CAP 2000 for large volume manufacturers would be available to small volume manufacturers (e.g., bench-aged components for durability, etc.).

6. Information Requirements

Application for certification. EPA is adopting its proposal that manufacturers submit applications for certification on the basis of durability groups. The application will be submitted in two parts:

Part 1 consists of general information about the manufacturer and the entire product line, durability group descriptions, evaporative/refueling family descriptions, OBD information and information specific to each test group. This is the information generally needed by EPA to make certification decisions.

Part 2 is information which is primarily needed by EPA for post-certification compliance purposes. It includes such information as part numbers of each emission related component for each engine code, certain calibration specifications, owners manuals, service manuals and technical service bulletins. This information is necessary for the Agency to perform its in-use compliance activities such as identifying mis-builds (non-certified vehicle configurations), evaluating manufacturer defect reports, and conducting in-use recall testing programs.

Timing of information submissions. Part 1 of the Application is to be submitted prior to certification and Part 2 is to be submitted by January first of the applicable model year (e.g. a model year 2001 Part 2 Application would be due by 1/1/2001). Any updates to the Part 1 will also be due by January first of the model year.

A final, end-of-model-year Application update (including any updates to Parts 1 and 2 reflecting any running changes occurring since January 1 is required to be submitted by January first of the following model year (for example, the final Application update for model year 2001 would be due by 1/1/2002).

Based on comments received, EPA is increasing the time allowed to submit the Part 2 application from 30 days to 60 days for those test groups certified close to the end of January 1 of the applicable model year.

B. In-Use Testing Requirements

1. Overview

EPA is adopting the in-use testing program generally as proposed. The program consists of two basic categories of manufacturer-funded in-use testing: (1) in-use verification testing of vehicles representing virtually all of the test groups produced by each manufacturer in each model year and, (2) in-use confirmatory testing consisting of more rigorous testing of test groups or subsets of these test groups (limited to transmission types) which, during the in-use verification testing, demonstrated potentially high emissions.

2. In-Use Verification Testing (IUVP)

This element of the program will provide the Agency and the industry with emission data feedback from vehicles driven under real-world conditions. The data generated from the IUVP will be used to assess and improve the effectiveness of the manufacturer's certification durability and emission demonstration processes. In addition, the IUVP data will be used to determine the need for further manufacturer funded in-use testing (In-Use Confirmatory Testing) which may be used by the Agency in determining whether an emissions recall is necessary.

The basic elements of the proposed IUVP are low mileage (10,000 mile minimum vehicle mileage, approximately one year of operation) and high mileage (50,000 mile minimum mileage and approximately four years of operation) emission testing of in-use vehicles. These mileage and age test points were selected to provide feedback to the Agency and the industry on the emission performance of vehicles at both an early point in their operating life (to allow early identification of any problems which occur in production or early in the life of the vehicle to minimize the emission impact of the defect or deficient design), and at a point well into the vehicle's statutorily-defined useful life (to identify and correct any problems which occur only after extended in-use operation) but not at such a high mileage that high emitting vehicles would not be identified until the end of their useful life. The total number of vehicles a particular manufacturer would be required to test for the IUVP under the requirements of this proposal would be dependent upon the number of test groups in the manufacturer's product line and the number of sales within those groups. The sample sizes required for the low and high mileage test programs and test group sales volumes

are intended to reflect the increased potential for emission contribution by high production test groups, the increased likelihood of problems occurring as vehicles reach higher mileage, and the desire of the Agency to minimize the resources required to conduct the program.

Additionally, EPA is adopting its proposal that a manufacturer may increase the required sample size specified for a specific IUVP test group sample with prior EPA approval prior to the initiation of the additional testing. The Agency believes that prior approval of an increase in sample size is needed to prevent the unrestrained addition of vehicles which could mask or dilute potential emission problems.

EPA was requested to change the proposed requirement that one high-mileage vehicle in the in-use verification fleet have at least 75,000 miles to be at least 75 percent of full useful life. This purpose of the request was to harmonize with the California ARB proposed regulations, and EPA has done so in the final rule.

EPA is adopting its proposed regulations for vehicle selection and procurement protocols. These procedures and protocols provide assurance that the in-use vehicles will have experienced typical real-world use and maintenance, and will screen out only those vehicles which are tampered, unsafe to test, or are in such a condition that restoration to a test-ready condition would be too costly. To preclude underestimating the emissions of the in-use fleet through possible climate-related bias (the Agency believes vehicles operated primarily in warm weather areas may be subject to less harsh durability conditions than those operated in cold weather), and on the basis of a comment received, EPA has modified its proposal requiring that a certain number of vehicles in each sample be procured from north of the 40 degree parallel line. Instead, those vehicles must be procured from locations with a heating degree day 30 year annual average equal to or greater than 4,000. The reasons for this change are discussed in section D.1. below.

As discussed above in section II.A., in the event that the IUVP data from a test group sample at either the low or high mileage test point exceed certain criteria, EPA is also requiring that manufacturers perform an analysis explaining why their durability processes are or are not still capable of accurately predicting in-use performance. EPA is also adopting as proposed its provisions for the in-use testing of small volume manufacturers/test groups and alternative fueled vehicles.

EPA is adopting its proposal that the FTP and the US06 portion of the supplemental FTP (SFTP) be performed on each in-use vehicle tested. Manufacturers will determine the composite in-use SFTP emission level by combining the in-use US06 and in-use FTP test levels with the test level from the pre-production certification air conditioning test (without deterioration factors applied). The A/C portion of the supplemental FTP is an extremely resource intensive test because of the test cell requirements (a special environmental chamber). In evaluating the utility of the data which would be obtained versus the high cost of conducting an in-use A/C test cycle as part of the in-use verification program, EPA decided not to require testing on the A/C cycle. Included in this evaluation was EPA's belief that for emissions deterioration purposes, the US06 portion of the test can be directionally predictive of the results of the A/C cycle. EPA may always conduct its own in-use testing to confirm compliance, and if future indications are that noncompliance with the A/C cycle may be an issue, can revisit this decision in a future regulation.

EPA is adopting its proposal requiring a single in-use evaporative test and on-board refueling loss test per evaporative/refueling family at both the low and high mileage test points. As of this final rule, ongoing evaporative test procedure streamlining efforts between EPA, California ARB and industry have not led to a unified procedure. Therefore, EPA is adopting its proposed in-use evaporative/refueling testing requirement using the test procedures described in subpart B of part 86.

Because EPA's emission standards currently apply at high altitude as well as low altitude, EPA is adopting its proposal that one vehicle per test group be tested under high altitude conditions for FTP. EPA is proposing to require this testing only at the high mileage test point in order to minimize the expense and facility constraints, if any, associated with this testing.

3. Manufacturer Funded In-Use Confirmatory Testing

Today's final rule also includes regulations which create a manufacturer funded in-use confirmatory testing program. These are unchanged from the proposed rule. This program requires manufacturers to conduct additional in-use testing of a test group when the IUVP data for the test group exceeds a specified trigger level. Additionally, EPA could target testing of a transmission-type subset of a test group if emissions shown by the entire test group sample meet the specified triggering criteria.

The criteria that will trigger confirmatory testing (a mean of 1.30 times the standard with a 50 percent or greater failure rate for the test group sample at either the low or high mileage test point) are based upon the emission standards to which the test group was originally certified.

The Agency intends to periodically review and, if necessary, revise these criteria, and intends to do so after it has gathered sufficient information to support any revisions.

C. Other Requirements and Topics

1. Fees

EPA is adopting its proposal to continue collecting a fee on a per-certificate basis. Because the test group will become the unit of certification, a fee will be collected for each test group to be certified. The new fee schedule will be the same as proposed:

Federal signed	$27,211
California only signed	8,956
Fed only unsigned	2,738
Cal only unsigned	2,738

EPA is adopting its proposal to retain the waiver provision in the current fee regulations when the fee exceeds 1% of the aggregate projected U.S. sales of vehicles covered by the certificate (§ 86.908–93).

2. Miscellaneous Corrections and Changes

EPA is adopting other requirements as proposed, including language prohibiting crankcase emissions from all light-duty vehicles, rather than from Otto-cycle and methanol-fueled diesel light-duty vehicles, the elimination of high altitude exemption provisions for those vehicles and trucks meeting specific design limitation criteria (see §§ 86.094–8(h) and (i)), and a revision making the Agency's defeat device policy applicable to all types of fuels rather than just to gasoline.

3. Incentives To Encourage Better In-Use Emission Performance

The Agency is adopting its proposed regulatory language that will allow the Agency to waive or modify certain other regulatory requirements to allow the structuring of an incentive program. In the NPRM, the Agency requested and received a number of suggestions regarding potential incentive rewards, and how an incentive program could be structured (discussed in more detail in the Response To Comments document in the docket). EPA will continue to work with interested parties in

developing an effective incentive program.

4. Cross References in Other EPA Regulations

EPA has amended regulatory language which refers to Subpart A of Part 86 so that it also references Subpart S. Regulations affected include Part 85, subparts B, G, H, L, P, Q and R of Part 86, Part 88, and Part 600. Also, each part or subpart which includes the terms "engine family" and/or "engine control system" has been amended to clarify that those terms can be construed to mean "test group" or "durability" group in the context of Subpart S regulations.

D. Changes From the Proposed Rule

EPA is adopting as final its proposed rule, with a few minor changes and corrections. The most significant changes are discussed below. A more detailed discussion about the comments received is in the Response to Comments document in the docket for this rule.

1. 40 Degree Latitude Requirement for In-Use Verification Vehicle Procurement

EPA proposed that at least a certain number of vehicles in each test group be procured from north of the 40 degree parallel line to preclude underestimating the emissions of the in-use fleet through possible climate-related bias. The 40 degree north latitude requirement contained in the proposed regulations was intended to address the Agency's belief that vehicles operated primarily in warm weather areas may be subject to less harsh durability conditions than those operated in cold. The 40 degree line extends across the United States from Cape Mendocino, CA to Trenton, NJ. Major metropolitan areas in this region account for about 24% of the U.S. population. Vehicles could be procured from any area above the 40 degree latitude line. While this criterion captures a significant portion of cool weather areas, it did exclude a few major metropolitan areas which EPA would consider to be cool and would not wish to exclude from participation in the in-use verification program. Since the proposal, EPA has determined that there is a more scientifically-based method to ensure the acquisition of cooler-climate in-use vehicles, which will allow for the inclusion of previously excluded areas, and conversely, will not exclude any significant geographic areas where in-use vehicle procurement would likely occur. This method involves using readily available climate data known as "annual average heating degree day" (HDD) data. This data is compiled by various agencies, including the National Climatic Data Center (NCDC) of the National Oceanic and Atmospheric Administration (NOAA) and the Energy Information Administration (EIA) of the Department of Energy (DOE), and is readily available from these Agencies, both electronically and in hard copy. The Department of Energy, defines a heating degree day as "the number of degrees per day that the daily average temperature (the mean of the maximum and minimum recorded temperatures) is below a base temperature, usually 65 degrees Fahrenheit, unless otherwise specified * * *".

Instead of procuring vehicles from above the 40 degree N latitude line, manufacturers will instead be required to procure vehicles from areas with at least 30 year annual average HDDs of 4,000. Four thousand was chosen as the criterion because limiting the criterion to areas with higher annual HDDs (for instance, 5,000) would exclude some major metropolitan areas that would have been covered with the 40 deg. latitude criterion and which EPA considers to be cooler climate areas, such as New York City, Newark, NJ, Seattle, WA, and Portland, OR., which the Agency did not intend to exclude. In fact, the 4,000 annual HDD criteria will now include formerly excluded major metropolitan areas as well, such as the Baltimore-Washington corridor. Overall, the area of the United States covered by the criteria is more extensive than the area defined by the 40 degree latitude line and will ensure that in-use test data is obtained from vehicles exposed to harsher weather. Additional major metropolitan are now included in Missouri, Illinois, West Virginia, Colorado, Utah, Kansas, Arizona, New Mexico, Oklahoma, and Kentucky. Major metropolitan areas in this region account for about 30 percent of the population. This change is also responsive to a comment received, discussed in more detail in the response to comments document. Accordingly, EPA is revising its regulations.

2. NLEV and CAP 2000

The California ARB has adopted a regulation parallel to CAP 2000. This will supercede the current ARB regulations which apply to NLEV-certified vehicles. Accordingly, EPA has modified the NLEV regulations in subpart R of part 86 to accommodate the incorporation of the California ARB CAP 2000 regulations into the NLEV certification process.

An incorrect cite was inadvertently given in section 86.1801–01 of the proposed regulatory language, which referred the reader to Subpart A for NLEV requirements. This has been corrected.

Regulatory language contained in § 86.096–30 pertaining to NLEV certification was inadvertently omitted in CAP 2000 and has been added back under § 86.1848–01.

3. High Altitude In-Use Testing

The preamble language for the NPRM incorrectly stated that EPA was not proposing to include the results of high-altitude in-use verification testing in the data to be used to determine if a test group met the 1.30 times the standard criteria (modified from the 1.3 in the proposed rule to preclude rounding errors) which triggers manufacturer in-use confirmatory testing. The proposed regulatory language did reflect the Agency's intention to include high altitude data in the calculation. The inclusion of high altitude data is appropriate given that the emission standards are "all altitude," which require compliance to the same numerical standard regardless of altitude.

4. Regulatory Language Section Numbering

Comments were favorable about the general layout and numbering scheme in the proposed rule. EPA is retaining this layout, but has renumbered (but not reordered) a portion of the final regulatory language to leave some blank "Reserved" sections. Doing so gives the Agency more flexibility in accommodating any future regulations and is in keeping with the Administration's "Plain Language" directive which suggests that Agencies leave reserved sections in new regulations for that purpose.

5. Evaporative and Refueling Durability Procedures

A commenter requested that EPA clarify its language on the service accumulation methods for both evaporative and refueling durability procedures.[2] Specifically, it was requested that EPA allow bench aging procedures as an alternative durability method. While EPA believes that the proposed language allows for such methods, language specifically permitting bench aging for evaporative and refueling durability procedures has been added to the final rule for clarity.

6. High Altitude Certification Testing for Evaporative and Refueling Compliance

The proposed regulations incorrectly included SFTP testing at high altitude

[2] Ref. comments.

as part of the evaporative/refueling test requirements. Because SFTP standards are not applicable at high altitude, the final rule has deleted the requirement for SFTP testing.

7. Stabilized Vehicle Requirements

The proposed regulatory language allowed manufacturers to consider vehicles with 2,000 miles accumulated on them as "stabilized" for emission testing purposes. A commenter requested the EPA clarify that this is a minimum mileage.[3] Because this was EPA's intention, EPA has modified the language accordingly.

8. Evaporative/Refueling Family Determination.

Both during the development of the NPRM and in comments received after the proposal, EPA was requested to revisit the regulatory criteria for determining evaporative/refueling families. EPA is adopting some of these suggestions in the final rule. In particular, it is adding the criterion of fuel tank composition, and deleting the criteria of fill limiter system, vapor/liquid separator, vapor hose diameter, canister location, and onboard diagnostic hardware and calibrations. EPA believes that the eliminated criteria are calibrational in nature and have less impact on the durability of the evaporative/refueling system. These changes are not expected to significantly increase or decrease the number of evaporative/refueling families, thus no change is being made to the cost analysis.

9. Evaporative/Refueling In-use Verification Testing

In the preamble to the NPRM, EPA inadvertently stated that the in-use verification testing for evaporative/refueling emissions would not begin until the 2004 model year. The proposed regulatory language, which is correct, requires evaporative/refueling in-use testing to be performed on 2001 model year vehicles for the high mileage testing (50,000 miles/fourth year of service, meaning that the first testing will not occur until the 2004/2005 calendar year time frame). Because EPA has delayed implementing all low mileage in-use testing until the 2004 model year, this will provide a number of years of lead time for manufacturers to acquire or arrange for the necessary evaporative/refueling testing facilities.

[3] Ref. comments.

E. Comments Relating to EPA's Legal Authorities and Factual Basis for CAP 2000

EPA received comments from two organizations[4] challenging whether EPA has met its statutory obligations and claiming EPA failed to provide a factual basis for the CAP 2000 proposal. The following discussion details the specific comments and EPA's responses.

1. Comment

Commenters suggested that EPA's proposal fails to establish methods and procedures for testing, "by regulation," as required by section 206(d) of the Clean Air Act. Commenters claim that to be consistent with section 206, EPA must either aggregate the manufacturer-specific test procedures in the certification regulations it proposes for public comment, or require that manufacturer-specific test procedures be developed by regulation on a case-by-case basis only after public notice and opportunity for comment.

EPA's Response

Section 206(a)(1) states that the Administrator shall test, or require to be tested in such a manner as deemed appropriate any new motor vehicle or motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with EPA emission standards. Section 206(d) requires that EPA issue regulations that establish methods and procedures for making tests under section 206.

The regulations proposed by EPA would require that manufacturers develop programs demonstrating the durability of their emissions control systems, as part of demonstrating compliance with applicable emission standards. The regulations establish the criteria for EPA approval of a durability program, and provide for required in-use testing to check on the accuracy of the durability demonstration. EPA's proposed regulations describe design requirements each manufacturer's durability program must satisfy for EPA approval. Manufacturers are required to show that their durability processes are designed to cover a significant majority of deterioration rates expected by vehicles in actual use. These durability demonstration programs are used in the certification process to establish the general rate of emission deterioration a similar group of vehicles are expected to experience over time. This rate of deterioration is applied, via deterioration factors or other means, to data generated from emission test vehicles within the durability group to demonstrate whether a vehicle will meet emission standards over its useful life. In essence, EPA's proposed regulations would establish a case-by-case, adjudicatory process and criteria for acceptance or rejection of a manufacturer's durability program. Commenters's claim that this is unlawful under section 206(d), and that EPA's regulations must themselves contain the specific details of each manufacturer's durability program (whether adopted in a single, aggregate rulemaking, or future case specific rulemakings). The issue raised by commenters is therefore whether EPA may reasonably exercise its authority under section 206(d) to establish an adjudicatory type procedure as proposed.

Whether section 206 authorizes or prohibits such agency action is a matter of statutory interpretation. The first question is whether Congress has directly spoken to this issue, such that Congressional intent is clear on this specific matter. If the intent of Congress is clear regarding a statutory provision, the Agency must follow that intent. If Congress' intent is not clear on this specific issue, then the question is whether EPA's interpretation of section 206(d) is a reasonable way to implement the authority delegated in that provision. *Chevron* v. *NRDC*, 467 U.S. 837, 842 to 844 (1984). Traditional tools of statutory construction are used to answer these questions. *Id.*

This issue can be seen as two distinct questions. The first is whether establishing methods and procedures by regulation requires that all the specific details related to testing must be contained in the regulations themselves, prohibiting establishment of an adjudicatory process to determine these specific details. The second question is whether a durability demonstration program is part of "making tests" subject to the requirements of section 206(d).

For the first question, the terms used by Congress, "establish methods and procedures," are not defined in the Clean Air Act. These terms are general in nature, and can be readily interpreted as covering a broad range of agency action. "Methods" and "procedures" would encompass both detailed prescriptions of how to conduct a test, as well as broad general provisions, such as a requirement that testing be conducted using good engineering practices. These terms are broad enough in nature to include a process for future determination of the specific details of a test program, based on submission of a proposed program for EPA review according to pre-set criteria. The term

[4] The Ethyl Corporation and Envirotest.

"establish" also appears general enough to include both the establishment of detailed specifics at one time, as well as establishment of a process to set detailed specifics at a future point. The text of section 206(d) does not appear to indicate a clear congressional intent to prohibit the adjudicatory approach proposed by EPA, but instead employs terms that are broad and general in nature, allowing a variety of potential ways to establish methods and procedures for testing. The legislative history is limited, and does not provide any indication of a contrary congressional intent. Clean Air Amendments of 1970, Conference Report No. 1783, 91st Congress, 2d S (1970).

In this case, Congress did not express a clear intent that EPA may not exercise its authority under section 206(d) by setting up an adjudicatory process in the regulations. Instead, Congress's grant of authority provides EPA with substantial discretion in how to "establish methods and procedures" for conducting tests under section 206(d). Since Congress has not specifically addressed the question at issue, EPA's interpretation of this grant of authority should be upheld if it is a reasonable way to implement Congress' intent. *Chevron* at 844.

The adjudicatory process set up by EPA's regulations is an efficient way to benefit from each manufacturer's expertise and knowledge of the durability of their vehicles. For example, manufacturers will be able to tailor their vehicle aging procedures to the specific details of the hardware used on their vehicles, and the way it is expected to deteriorate over time, as well as any unique driving and usage patterns of their customers, and thus account for the effect that these hardware and usage patterns have on emission deterioration and emission control system designs. As discussed in the NPRM (63 FR 39660, (July 23, 1998)), EPA believes that the resulting manufacturer durability programs should improve the effectiveness of EPA's vehicle compliance programs, by improving the ability of the new motor vehicle certification program to predict and account for in-use durability and deterioration of the emissions control system.

As described in the NPRM, EPA has been approving manufacturer alternative durability programs under RDP–I for several years. Two major types of durability processes have emerged from the RDP–I experience: whole vehicle mileage accumulation cycles and bench aging procedures. The whole vehicle aging concept involves driving vehicles on a track or dynamometer on an aggressive driving cycle of the manufacturer's design. The bench aging procedures involve the removal of critical emission components (such as the catalyst and oxygen sensor) and the accelerated aging of those components on an engine dynamometer bench. Through the approval process, EPA has been requiring that manufacturers compare the catalyst operating temperatures during the AMA [5] and during the proposed durability method as well as average speeds, acceleration rates and the like for whole vehicle methods. In evaluating the comparisons, EPA believes that the programs are more effective than the current program at predicting the deterioration that occurs in actual use. EPA believes that allowing manufacturer-specific durability programs to continue is appropriate.

As it has in the past under the RDP–I program, EPA will require that manufacturers provide data prior to certification showing that the aging procedures would predict the deterioration of the significant majority of in-use vehicles over the breadth of their product line which would ultimately be covered by this procedure for both whole vehicle and bench-aging durability methods. Manufacturers have varying sources of data available, such as emissions data, driver survey data, catalyst temperature history data and catalyst conversion efficiency data. Generally these data are compared to manufacturer in-use data to determine how broadly the deterioration factors reflect the overall vehicle fleet. EPA determines, based on these data whether to approve the durability process. EPA believes that the various whole vehicle and bench aging programs are more effective than the current program at predicting the deterioration that occurs in actual use.

EPA also believes an adjudicatory process is a more efficient method of reviewing and approving or rejecting such durability programs, avoiding the time and resources that would be necessary to promulgate by rulemaking each manufacturer-specific durability program. EPA believes that the adjudicatory process proposed and adopted in this rule is a reasonable way to establish manufacturer-specific durability programs that are expected to provide better information about in-use emissions deterioration, for use in making certification decisions.

[5] The driving schedule prescribed in Appendix IV of Part 86.

EPA's interpretation of the statute is consistent with prior EPA interpretations of section 206. For example, EPA has never interpreted section 206 as requiring promulgation of every aspect of each manufacturer durability program. In the past, the regulations have set up a durability process that required manufacturers to accumulate mileage on a pre-production vehicle over a prescribed driving cycle from 100,000 miles as a way to simulate deterioration over the useful life. The regulations described the driving course, the speed for each lap, stops, and similar details. The regulations do not describe when drivers must be changed, how much driving per twenty-four hours, leaving many other details for case-by-case decision making by EPA. Another example is 40 CFR 86.090–27, Special Test Procedures. Under this section, EPA interpreted section 206 to allow the Administrator, based on a written application from a manufacturer, to prescribe tests procedures, other than those prescribed in the CFR, for a vehicle not susceptible to satisfactory testing in 40 CFR part 86. This is an adjudicatory process where the EPA approves alternative testing in advance, without promulgated minimum requirements.[6] Another example is EPA's durability regulations for certification of light-duty trucks, which have permitted manufacturers to use their own methods, based on good engineering judgment, to determine DFs, subject to review and approval by EPA. (See § 86.094–24(c)(2)). EPA set up this adjudicatory process in the regulations, providing future case by case EPA approval of the results of a manufacturers' durability program.

In sum, EPA does not believe that Congress intended to prohibit reasonable regulations under section 206(d) that set up an adjudicatory process to review and approve manufacturer specific durability programs. EPA believes that the process set up in the regulations is a reasonable exercise of the general authority provided to EPA in section 206(d).

The second issue raised by the comment is whether a manufacturer's durability program is part of making a test such that it is subject to the requirements of section 206(d). However, EPA does not believe that it is necessary to decide this issue. If durability processes are subject to section 206(d), then as described above EPA believes it has the authority to allow an adjudicatory process to

[6] EPA's regulations have included this kind of provision for approval of alternative test procedure for many years.

determine the specific, detailed portions of a manufacturer's durability program. If the manufacturers' durability processes are not subject to the requirements of section 206(d), then EPA's regulations clearly do not violate that provision. In either case, EPA believes it has authority under section 206(a)(1) to require durability programs as part of the testing performed for purposes of certification. Section 206(a)(1) allows EPA to require testing "in such a manner as he [the Administrator] deem appropriate." This provides EPA the discretion to require manufacturer specific durability programs as part of the certification process.

2. Comment

Commenters stated that EPA's proposal is contrary to section 206(e), which obligates EPA to disclose certification information allowing purchasers to determine the "comparative performance" of vehicles. Congress contemplated a form of "environmental" competition among automobile manufacturers. Commenters claim that the competition has not developed, at least in part, due to EPA's decision to "maintain the secrecy of the certification test procedures." EPA Air Docket #A–96–50 item IV–B–10 at 6. Comparisons cannot be made without an accurate understanding of the test procedures employed to generate the certification emission data.

EPA Response

Section 206(e) provides that:

> The Administrator shall make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

Section 206(e) of the Clean Air Act requires EPA to make available to the public the *results* of tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under section 206(a). Congress' intent is clear by looking at the words of the statute. Congress did not require that EPA make available the specific details of test procedures employed to generate the emissions data, or the durability programs employed in the certification process. Congress stated that the results of the tests are to be made available to the public.

EPA makes available all emission test data which are used to make certification compliance determinations as required by section 206(e). Certification levels are posted annually at http:www.epa.gov/OMSWWW/gopher/Cert/Veh-cert/Cert-Tst/. The report contains certification levels (projected emission levels at the end of the useful life miles of a vehicle) and deterioration factors used to compute the certification levels. Vehicles are described by vehicle model, EPA engine family name, manufacturer family name, number of cylinders, method of fuel system, emission control system, engine code, etc. EPA believes the information is described in a nontechnical manner and provides purchasers with enough information to compare performance of vehicles in meeting emissions standards.

In any case, the regulation adopted today establishes an adjudicatory process to implement section 206 (a) and (d), and provide reasonable information to make certification decisions. The regulations adopted here were not proposed under and are not meant to implement section 206(e). The kind of information presented to the public under section 206(d) is not at issue in this rulemaking, as this regulation neither releases information to the public, nor limits what information may or may not be released in the future under section 206(e).

3. Comment

Commenters suggest that Congress clearly contemplated that EPA would require testing of new motor vehicles or new motor vehicle engines to ensure compliance by the vehicle or engine with applicable emission standards. New motor vehicles are equipped with new components, not with one or more artificially aged components. Because EPA's proposal would allow testing of what is in essence a "hybrid" vehicle which includes such components, EPA's proposal is facially inconsistent with the clear mandate of section 206.

EPA Response

Section 206(a)(1) states that the Administrator shall test, or require to be tested "in such manner as he deems appropriate," any new motor vehicle or new motor vehicle engine submitted for a certificate of conformity with emission standards. "New motor vehicle" is defined in section 216 as a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser." In section 216 "new motor vehicle engine" is defined similarly.

The authority to require testing "in such a manner as he deems appropriate" under section 206(a)(1) clearly provides EPA with the discretion to allow bench-aging of components as part of the procedures to prepare a vehicle for durability related emissions testing. As described before, it is a reasonable exercise of this broad authority provided in section 206(a)(1) for EPA to determine that bench aging of components may be approved as part of a manufacturer's durability program. EPA also has general authority under section 301(a)(1) to approve the use of such components on durability test vehicles. ("The Administrator is authorized to prescribe such regulations as are necessary to carry out his function under this chapter.")[7]

4. Comment

Commenters claim that before EPA can demonstrate that each bench-aging or alternative whole vehicle aging technique complies with the substantive requirements of section 206, the Agency must first provide a complete and thorough description of each bench-aging or alternative whole vehicle-aging technique proposed to be allowed. Without this information, it is simply not possible to comment upon the merit of the alternative testing techniques.

EPA Response

The comment is based in part on the view that each manufacturer-specific durability process must be adopted through rulemaking. As discussed previously, EPA believes that a regulation setting up an adjudicatory process for approval of manufacturer-specific durability programs is not prohibited by the Clean Air Act and therefore rulemaking for each durability program is not required.

Commenters have been provided an opportunity for meaningful comment in compliance with section 307(d) of the Clean Air Act. EPA believes the provisions of section 307(d) have been satisfied in this rulemaking and the public has been provided an opportunity to comment on the adjudicatory process and durability program requirements. EPA proposed the criteria for establishment of the specific durability program

[7] In addition, this is not inconsistent with the definition of "new motor vehicle" in section 216. That definition looks at when title is received by the ultimate purchaser, and does not place any restriction related to whole vehicle aged or bench aged parts. A test vehicle would meet the definition of a new vehicle whether it has bench aged or whole vehicle aged parts, as long as title has not transferred to the ultimate purchaser.

requirements that manufacturers must satisfy for EPA approval of their durability program. These criteria enable EPA to evaluate the expected in-use deterioration of these durability groups, the parameters of the durability demonstration, and the compliance determination. EPA described in the preamble the kinds of information generated and durability programs used under the current RDP–I regulations. In addition, EPA placed in the docket a draft technical support document outlining manufacturer data and other information about the current revised durability program (RDP–I). EPA Air Docket #A–96–50, item III–B–2. Topics included (1) a discussion of the correlation procedures used by the Agency to assure that accurate tests are run by manufacturers, (2) a discussion of the information collected from manufacturers which is not directly used in reaching the decision to grant a Certificate of Conformity, (3) a discussion of the effect of ambient weather patterns (warm versus cold climates) on in-use deterioration and recalls in support of the CAP2000 requirement that some vehicles tested be recruited from cold weather locales, and (4) a discussion of the rationale used in proposing a durability group concept for CAP2000 rather than the current engine family definition. The comment period was extended to provide the public with time to analyze the support document. EPA believes the information provided to the public has allowed opportunity for meaningful comments.

5. Comment

A commenter claims that EPA's statement in the NPRM that "most manufacturers have demonstrated that essentially no engine out deterioration is experienced in their current product" is one of the "basic premises underlying its proposal" for manufacturer-specific durability programs. EPA Air Docket #A–96–50 item IV–D–10 at 11, citing 63 FR 39658

EPA Response

The NPRM language has not been characterized in its proper context. EPA's assertion in the NPRM is that new "durability groups" for exhaust emissions combine vehicles which are likely to exhibit similar exhaust emission deterioration over their useful lives. In the past "engine families" were grouped by engine-based parameters because most emission reductions were expected to occur through modifications to the engine operating characteristics. As described in the NPRM, today's vehicles accomplish most emission control through catalytic conversion. In essence, engine-out deterioration is not experienced. Therefore, the past groupings (engine-based parameters that affect engine-out emissions) are less useful for evaluating the emissions durability of today's vehicle technology. EPA is requiring manufacturers to group vehicles based on catalyst parameters for more effective groupings.

Broadening the grouping criteria for durability demonstrations, by itself, may add some variability in emissions as compared to the current engine family definition; however, the Agency believes that the proposed broader durability groups coupled with worst case durability vehicle selections and in-use verification program would comprise a more accurate and effective emission control program than the current procedures and result in significant environmental benefits.

The accuracy of EPA's statement is discussed in the next response to comment.

6. Comment

The commenter expressed several concerns about engine-out deterioration from the data presented in the Technical Support Document (TSD). In particular they noted: (1) Using General Motors' data, 4 of 9 vehicles display deterioration in engine-out emission with respect to at least one of the emission constituents. (2) Using Chrysler's data, 28 of 34 vehicles display deterioration in engine-out emission with respect to at least one of the emission constituents. The commenter expressed further concern that most of the Chrysler data is on Tier 0 vehicles. (3) Based on Table 1 of the TSD, the commenter interprets that Toyota has presented data to the Agency that their engines show significant engine-out deterioration. Based on this data the commenter takes issue with the Agency's statements in the NPRM that "most manufacturers have demonstrated that essentially no engine out deterioration is experienced on their current product".

The commenter also expressed concerns about bench aging versus whole vehicle aging. In particular they noted: For Honda, Ford and Toyota (which they indicate have approved track and bench procedures) 8 of 8 vehicle programs have no failing data; however for GM (which used exclusively a bench aging cycle) 2 of 8 vehicle programs experienced one or more test failures. Based on this data, the commenter concludes that this data "suggests that bench aging may not be as predictive as testing techniques which rely, at least in part, on whole vehicle testing".

The commenter was concerned that all failing test data reported (6 of 131 tests) occurred for GM vehicles which used a bench procedure. The commenter noted that the data from Ford, Honda, and Toyota showed no emission failures. The commenter interpreted that Ford, Honda, and Toyota all used track procedures (in whole or part) and therefore track procedures were better than bench procedures.

Essentially the same comment as outlined above is provided by another commenter who references the concerns of Ethyl made in their comments to the NPRM.

EPA Response

The Agency presented the results of the in-use verification data collected under RDP–I in the TSD. The data showed that the certification standards were met for 125 of 131 tests run. The data from bench aging programs does not support the view that whole vehicle aging is better at representing in-use deterioration than bench aging of components. First, contrary to commenters statement, the Ford data was a bench procedure, not a track procedure.

The commenter focuses on the fact that several of the engine-out data points showed measurable deterioration, i.e., that not all of the data shows no engine-out deterioration. This variety in the data, however, is a normal expectation. When experimental data is collected, it is natural that the observed value will differ from the true value for the population due to test-to-test, lab-to-lab, and vehicle-to-vehicle variability. If the true population mean were zero (for example: the hypothesis that engine-out deterioration is zero), then due to this variability one would expect half the measurements to be positive (actual measured data indicates some positive deterioration), while the other half would be negative. The data present by Chrysler and GM show a better than expected distribution of measurements which support the hypothesis that the true mean of engine-out emissions deterioration is zero.

The commenter indicated that Toyota provided data indicating that their engines showed significant engine out emission deterioration based on their reading of Table 1 of the TSD. This observation is incorrect. In fact, the table reports that Toyota *did not supply* data indicating that their engines experienced essentially no engine-out deterioration. The table entry does not mean that Toyota supplied data

indicating that their engines experienced significant engine-out emission deterioration. In its discussions with the Agency, Toyota presented the opinion that Toyota engines did not have significant engine-out deterioration. The table indicates only that there was no submission of supporting data.

The commenter was concerned that most of the Chrysler data is on Tier 0 vehicles and was concerned that Tier 1 vehicles may perform differently. The data presented by Chrysler on Tier 1 vehicles showed that engine-out emissions increased over 100,000 miles by −2.6% for HC, 0.8% for CO, and −8.6% for NO_X. Although a smaller data set, Chrysler's Tier 1 data also show essentially no engine-out deterioration and for CO a much smaller rate of deterioration (0.8% versus 4.7%) with Tier 1 technology.

EPA disagrees with commenters claim that "significant deterioration in engine-out emissions can (and, in fact, does) occur over time." See comment at 12. The Chrysler data shows the that the average engine-out emission deterioration was −4.3% for HC, 4.7% for CO, and −11.9% for NO_X; 62 of 102 deterioration measurements were zero or negative. The GM engine-out data was provided on nine vehicles; 24 of 27 emission deterioration measurements showed little or no emissions increase.

Second, the data for Honda and Toyota was largely at the low mileage point; only one class was run at the second mileage point and none at the high mileage point. Because emission levels typically increase with mileage it is not unexpected that there were more failures detected on the GM program which included high mileage tests. In any case the degree of in-use failures is extremely small (4.5%) and does not rise to a level that raises concerns about the representativeness of any type of durability cycle. In fact the low levels of failures from GM and other in-use data substantiates the validity of the RDP–I programs to accurately represent in-use emission deterioration for a vast majority of the vehicles.

Under both the proposed and finalized rule manufacturers are required to make a demonstration that their durability process will "effectively predict emission compliance for candidate in-use vehicles." [8] The main concern of the Agency is that a manufacturer's durability program will, as a whole, effectively predict in-use emission levels for the significant majority of vehicles. It is important that the durability procedure predict deterioration of the entire vehicle emission control system, not any one individual element of design. To achieve this, the manufacturer may design a durability program which ages catalysts and oxygen sensors sufficiently to account for deterioration from *all* sources (including any expected deterioration from engine-out emissions). Consequently, a properly designed bench aging program could still be used to predict in-use emissions even when there would be a significant amount of engine-out deterioration.

The Agency is adopting several significant safeguards to assure that the durability process will effectively predict in-use compliance.

First, the Agency will review and approve each durability process. The Agency is requiring, under 40 CFR 86.1823–01 "analysis and/or data demonstrating the adequacy of the manufacturer's durability processes to effectively predict emission compliance for candidate in-use vehicles." During this review the Agency will evaluate the likelihood that the durability process will reflect in-use deterioration of a significant majority of candidate in-use vehicles which cover the breadth of the manufacturer's product line to be covered by the durability process.

Second, and most important, the Agency has required manufacturers to collect in-use verification data for each test group. There are several in-use test groups within a durability group: the Agency predicts there will be 2 to 4 test groups per durability group. The in-use data will identify potential problems which will allow more focused Agency recall investigations. It will also allow manufacturers to improve the predictive capability of their durability process.

Lastly, when the in-use verification data exceeds a threshold, the manufacturer must re-evaluate and/or improve their durability process. The Agency also may question the representativeness of a durability process which does not exceed these threshold values. Individual test group data may be pooled into a single durability group analysis to increase the statistical confidence of the conclusions of the analysis. It is expected that manufacturers will use the results of the in-use verification data to continually improve the predictive capability of their durability process.

III. Projected Impacts

A. Environmental Impacts

EPA anticipates that the new requirements should result in some unquantifiable environmental benefits because of improvements to durability demonstration requirements, and because of the potential to identify and improve upon vehicle emission performance based on the in-use verification test results.

B. Economic Impacts

The Agency estimates that manufacturers should realize a total annual savings of about $55 million as a direct result of today's proposal. These figures include savings gained from streamlined certification activities, such as fewer durability and emission data demonstrations and reduced reporting burden, and accounts for the new costs incurred by the proposed in-use verification testing requirements. A detailed discussion and table of costs/savings are contained in the Support Document to this proposed regulation and are filed in the Docket.

IV. Public Participation

The Agency held a Public Hearing for the proposed rule on August 10, 1998, where 4 people presented oral testimony. The public comment period for the proposed rule expired on September 8, but was extended through September 24 to provide additional time to submit written comments. A total of 21 comments were received. EPA's analysis and responses to those comments are contained in a separate Response to Comments document located in the Docket.

V. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

[8] Text from 40 CFR 86.1823–01(b)(1).

It has been determined that this rule is not a "significant regulatory action" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612 generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because it relates to requirements applicable only to manufacturers of motor vehicles, a group which does not contain a substantial number of small entities. See 1996 World Motor Vehicle Data, AAMA, pp. 282–285.

C. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, requires agencies to submit for OMB review and approval, federal requirements and activities that result in the collection of information from ten or more persons. Information collection requirements may include reporting, labeling, and recordkeeping requirements. Federal agencies may not impose penalties on persons who fail to comply with collections of information that do not display a currently valid OMB control number.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this final rule under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2060–0104. An Information Collection Request (ICR) document has been prepared by EPA (EPA ICR No. 1872.01 & 0783.38) and a copy may be obtained from Sandy Farmer by mail at OPPE Regulatory Information Division; U.S. Environmental Protection Agency (2137); 401 M St., SW, Washington DC 20460, by email at farmer.sandy@epa.gov, or by calling (202) 260–2740. A copy may also be downloaded off the internet at http://www.epa.gov/icr.

The information collection burden associated with this rule (testing, record keeping and reporting requirements for both certification and fuel economy activities) is estimated to total 446,783 hours annually for the manufacturers of light-duty vehicles and light-duty trucks. The hours spent annually on information collection activities by a given manufacturer depends upon manufacturer-specific variables, such as the number of test groups and durability groups, production changes, emissions defects, and so forth.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15. EPA is amending the table in 40 CFR Part 9 of currently approved ICR numbers issued by OMB for various regulations to list the information requirements contained in this rule.

D. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (signed into law on March 22, 1995) requires that EPA prepare a budgetary impact statement before promulgating a rule that includes a federal mandate that may result in expenditure by state, local and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 203 of the Unfunded Mandates Reform Act requires EPA to establish a plan for obtaining input from and informing, educating and advising any small governments that may be significantly or uniquely affected by the rule.

Under section 205 of the Unfunded Mandates Act, EPA must identify and consider a reasonable number of regulatory alternatives before promulgating a rule for which a budgetary impact statement must be prepared. EPA must select from those alternatives the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule, unless EPA explains why this alternative is not selected or the selection of this alternative is inconsistent with law.

Because this final rule is expected to result in the expenditure by state, local and tribal governments or private sector of less than $100 million in any one year, EPA has not prepared a budgetary impact statement or specifically addressed selection of the least costly, most cost-effective or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, EPA is not required to develop a plan with regard to small governments.

E. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

F. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Pub. L. 104–113, section 12 (d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (such as materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve consideration of any new technical standards. However, this final rule adopts without change certain technical standards which are voluntary consensus standards, including six Society of Automotive Engineers (SAE) procedures, one International Standards Organization (ISO) procedure, and one American Society for Testing and Materials (ASTM) procedure.

G. Protection of Children

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant," as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to Executive Order 13045 because it is not economically significant as defined in E.O. 12866, and because the Agency does not have reason to believe environmental health or safety risks addressed by this action present a disproportionate risk to children because no new emission standards are being promulgated.

H. Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

I. Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This rule will be implemented at the federal level and imposes compliance obligations only on private industry. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VI. Statutory Authority

Sections 203, 206, 207, 208 and 217 of the Clean Air Act provide EPA with the authority to revise the current emissions compliance procedures as described in this proposal. EPA's authority to make the major revisions found in CAP 2000 is based largely on sections 206 and 208(a) of the Act. Section 206 provides EPA with the authority to test, or require to be tested in such manner as the Agency deems appropriate, any new motor vehicle to determine whether the vehicle conforms with applicable emissions standards. EPA accordingly has the broad authority to streamline the current certification process to improve the efficiency of the process. Section 208(a) further requires manufacturers to establish and maintain records, to conduct tests, and to submit information that EPA may reasonably require to determine whether a manufacturer is in compliance with Title II of the Act and it implementing regulations, or to otherwise carry out the provisions of Title II. This includes information needed by EPA to make certification decisions, to determine whether vehicles built and sold are covered by the certificate, and to ensure that defeat devices are not used. Section 208(a) also provides EPA with the authority to require post-production testing of vehicles by manufacturers to provide a means of monitoring the emissions performance of vehicles driven under real-world conditions. Such testing serves as a check on the accuracy of the certification procedures and on the levels of in-use compliance with applicable emissions standards.

This rule does not require any manufacturer to change its certification practices prior to model year 2000. However, manufacturers have the option to implement the streamlined certification procedures adopted today as soon as the rule is effective. Such early use of these procedures could benefit a manufacturer, and would also provide the environmental benefits expected from this program. EPA therefore finds that there is good cause under 5 U.S.C. 553(d) to make this rule effective upon publication.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Parts 86 and 88

Environmental protection, Administrative practice and procedure, Confidential business information, Incorporation by reference, Labeling, Motor vehicle pollution, Reporting and recordkeeping requirements.

40 CFR Part 600

Environmental protection, Administrative practice and procedure, Fuel economy, Labeling, Reporting and recordkeeping requirements.

Dated: March 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1, the table is amended under the indicated heading by adding new entries in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
Control of Air Pollution From New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures	
* * * * *	
86.1843–01	2060–0104
86.1844–01	2060–0104
86.1847–01	2060–0104
* * * * *	

PART 85—[AMENDED]

3. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7543, 7547 and 7601(a).

4. Section 85.501 is revised to read as follows:

§ 85.501 General applicability.

(a) Sections 85.501 through 85.505 are applicable to aftermarket conversion systems for which an enforcement exemption is sought from the tampering prohibitions contained in section 203 of the Act.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

5. Section 85.1501 is amended by adding a new paragraph (c) to read as follows:

§ 85.1501 Applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

6. Section 85.1505 is amended by revising paragraphs (a)(3)(i)(B), (a)(3)(ii)(B) and (a)(3)(iii) to read as follows:

§ 85.1505 Final admission of certified vehicles.

(a) * * *

(3) * * *

(i) * * *

(B) Initiate a change in production (running change) under the provisions of 40 CFR 86.084–14(c)(13) or 86.1842–01, as applicable, that causes the vehicle to meet Federal emission requirements.

(ii) * * *

(B) Should the subject vehicle or engine fail the second FTP, then the certificate holder must initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) or 86.1842–01, as applicable, that causes the vehicle to meet Federal emission requirements.

(iii) If the certificate holder chooses to initiate a change in production (a running change) under the provisions of 40 CFR 86.084–14(c)(13) or 86.1842–01 as applicable, that causes the vehicle to meet Federal requirements, changes involving adjustments of adjustable vehicle parameters (e.g., adjusting the RPM, timing, air/fuel ratio) must be changes in the specified (i.e., nominal) values to be deemed acceptable by EPA.

* * * * *

7. Section 85.1510 is amended by revising paragraph (a)(3) to read as follows:

§ 85.1510 Maintenance instructions, warranties, emission labeling and fuel economy requirements.

* * * * *

(a) * * *

(3) Such instructions shall not contain requirements more restrictive than those set forth in 40 CFR part 86, subpart A or subpart S, as applicable (Maintenance Instructions), and shall be in sufficient detail and clarity that an automotive mechanic of average training and ability can maintain or repair the vehicle or engine.

* * * * *

8. Section 85.1512 is amended by revising paragraph (a)(1)(iii) to read as follows:

§ 85.1512 Admission of catalyst and O_2 sensor-equipped vehicles.

(a) * * *

(1) * * *

(iii) Is labeled in accordance with 40 CFR part 86, subpart A or subpart S, or, where applicable, § 85.1510(c); and

* * * * *

9. Section 85.1701 is amended by adding a new paragraph (c) to read as follows:

§ 85.1701 General applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

10. Section 85.1902 is amended by revising paragraph (b) to read as follows:

§ 85.1902 Definitions.

* * * * *

(b) The phrase emission-related defect shall mean a defect in design, materials, or workmanship in a device, system, or assembly described in the approved Application for Certification (required by 40 CFR 86.1843–01 and 86.1844–01, 40 CFR 86.098–22 and like provisions of subpart A of this part and 40 CFR part 86) which affects any parameter or specification enumerated in Appendix VIII of this part.

* * * * *

11. Section 85.2101 is revised to read as follows:

§ 85.2101 General applicability.

(a) Sections 85.2101 through 85.2111 are applicable to all 1981 and later model year light-duty vehicles and light-duty trucks.

(b) References in this subpart to engine families and emission control systems shall be deemed to apply to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

12. Section 85.2102 is amended by revising paragraph (a)(13)(ii) to read as follows:

§ 85.2102 Definitions.

(a) * * *

(13) * * *

(ii) In compliance with the requirements of 40 CFR 86.094–38 or 86.1808–01 (as appropriate for the applicable model year vehicle/engine classification); and

* * * * *

13. Section 85.2208 is amended by revising paragraph (a)(1) to read as follows:

§ 85.2208 Alternative standards and procedures.

(a)(1) As a part of the certification process, as set forth in 40 CFR part 86, subparts A and S, a manufacturer may request an alternative short test standard or short test procedure for any vehicle or engine for which the standards or procedures specified in this subpart are not appropriate. The requestor shall supply relevant test data and technical support to substantiate the claim and shall also recommend alternative test procedures and/or standards for the Administrator's consideration. Upon an acceptable showing that the general standards or procedures are not appropriate, the Administrator shall set alternative standards or procedures through rulemaking. The administrative provisions of the certification process (see 40 CFR part 86, subparts A and S), apply to such a request for alternative standards or procedures.

* * * * *

PART 86—[AMENDED]

14. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

15. Section 86.1 is amended by revising the entry for ASTM E29–93a in the table in paragraph (b)(1); the entries for SAE J1850, SAE J1877, SAE J1892, SAE J1962, SAE J1979, and SAE J2012 in the table in paragraph (b)(2); the entry for ANSI/AGA NGVI–1994 in the table in paragraph (b)(3); and the entry for ISO 9141–2 in the table in paragraph (b)(5) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(1) * * *

Document No. and name	40 CFR part 86 reference
* * * * *	
ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications.	86.098–15, 86.004–15, 86.1803–01, 86.1823–01, 86.1824–01, 86.1825–01, 86.1837–01

(2) * * *

Document No. and name	40 CFR part 86 reference
* * * * *	
SAE J1850 July 1995, Class B Data Communication Network Interface.	86.099–17, 86.1806–01
SAE J1877, July 1994 Recommended Practice for Bar-Coded Vehicle Identification Number Label.	86.095–35, 86.1806–01
SAE J1892 October 1993, Recommended Practice for Bar-Coded Vehicle Emission Configuration Label.	86.095–35, 86.1806–01
SAE J1962 January 1995, Diagnostic Connector.	86.099–17, 86.1806–01
SAE J1979 July 1996, E/E Diagnostic Test Modes.	86.099–17, 86.1806–01
SAE J2012 July 1996, Recommended Practice for Diagnostic Trouble Code Definitions.	86.099–17, 86.1806–01

* * * * *

(3) * * *

Document No. and name	40 CFR part 86 reference
ANSI/AGA NGV1–1994, Standard for Compressed Natural Gas Vehicle (NGV) Fueling Connection Devices.	86.001–9, 86.004–9, 86.098–8, 86.099–8, 86.099–9, 86.1810–01

* * * * *

(5) * * *

Document No. and name	40 CFR part 86 reference
ISO 9141–2 February 1994, Road vehicles—Diagnostic systems Part 2.	86.099–17, 86.1806–01

Subpart A—[Amended]

16. A new § 86.001–1 is added to subpart A to read as follows:

§ 86.001–1 General applicability.

(a) The provisions of this subpart generally apply to 2001 and later model year new Otto-cycle and diesel-cycle heavy-duty engines. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph. The provisions of this subpart continue to generally apply to 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty vehicles and 2000 and earlier model year new Otto-cycle and diesel-cycle light-duty trucks produced. Provisions generally applicable to all 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles and 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks are located in Subpart S of this part.

(b) Optional applicability. A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions located in Subpart S of this Part. Heavy-duty engine or vehicle provisions do not apply to such a vehicle.

(c) [Reserved]

(d) [Reserved]

(e) Small volume manufacturers. Special certification procedures are available for any manufacturer whose projected combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of §§ 85.1505 and 85.1509 of this chapter) are fewer than 10,000 units for the model year in which the manufacturer seeks certification. To certify its product line under these optional procedures, the small-volume manufacturer must first obtain the Administrator's approval. The manufacturer must meet the eligibility criteria specified in § 86.092–14(b) before the Administrator's approval will be granted. The small-volume manufacturer's certification procedures are described in § 86.092–14.

(f) Optional procedures for determining exhaust opacity. (1) The provisions of subpart I of this part apply to tests which are performed by the Administrator, and optionally, by the manufacturer.

(2) Measurement procedures, other than those described in subpart I of this part, may be used by the manufacturer provided the manufacturer satisfies the requirements of § 86.091–23(f).

(3) When a manufacturer chooses to use an alternative measurement procedure it has the responsibility to determine whether the results obtained by the procedure will correlate with the results which would be obtained from the measurement procedure in subpart I of this part. Consequently, the Administrator will not routinely approve or disapprove any alternative opacity measurement procedure or any associated correlation data which the manufacturer elects to use to satisfy the data requirements for subpart I of this part.

(4) If a confirmatory test(s) is performed and the results indicate there is a systematic problem suggesting that the data generated under an optional alternative measurement procedure do not adequately correlate with data obtained in accordance with the

procedures described in subpart I of this part, EPA may require that all certificates of conformity not already issued be based on data obtained from procedures described in subpart I of this part.

Subpart B—[Amended]

17. Section 86.101 of subpart B is amended by adding a new paragraph (d) to read as follows:

§ 86.101 General applicability.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

18. Section 86.106–96 is amended by revising paragraph (a)(1) to read as follows:

§ 86.106–96 Equipment required; overview.

(a) * * *

(1) *Evaporative emission tests, gasoline-fueled vehicles.* The evaporative emission test is closely related to and connected with the exhaust emission test. All vehicles tested for evaporative emissions must undergo testing according to the test sequences described in § 86.130–96; however, the Administrator may omit measurement of exhaust emissions to test for evaporative emissions. The Administrator may truncate a test after any valid emission measurement without affecting the validity of the test. Further, unless the evaporative emission test is waived by the Administrator under § 86.090–26 or § 86.1810, as applicable, all vehicles must undergo both tests. (Petroleum-fueled diesel vehicles are excluded from the evaporative emission standard.) Section 86.107 specifies the necessary equipment.

* * * * *

19. Section 86.113–94 is amended by revising paragraphs (a)(3), (b)(5), (c)(3), (d)(1), (d)(3), (e)(4), and (f)(3) to read as follows:

§ 86.113–94 Fuel specifications.

(a) * * *

(3) The specification range of the gasoline to be used under this paragraph (a) shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(b) * * *

(5) The specification range of the fuels to be used under paragraphs (b)(2), (b)(3) and (b)(4) of this section shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(c) * * *

(3) The specification range of the fuels to be used under paragraphs (c)(1) and (c)(2) of this section shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(d) * * *

(1) Mixtures of petroleum and methanol fuels used for exhaust and evaporative emission testing and service accumulation for flexible fuel vehicles shall consist of the appropriate petroleum fuels listed in either paragraph (a) or paragraph (b) of this section and a methanol fuel representative of the fuel expected to be found in use, as specified in paragraph (c) of this section, and shall be within the range of fuel mixtures for which the vehicle was designed, as reported in § 86.94–21(j) or § 86.1844–01 as applicable. The Administrator may use any fuel or fuel mixture within this range for testing.

* * * * *

(3) The specification range of the fuels to be used under this paragraph shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(e) * * *

(4) The specification range of the fuels to be used under paragraphs (e)(1), (e)(2) and (e)(3) of this section shall be reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

(f) * * *

(3) The specification range of the fuel to be used under paragraphs (f)(1) and (f)(2) of this section shall be measured in accordance with ASTM D2163–61 (Incorporated by reference; see § 86.1) and reported in accordance with § 86.094–21(b)(3) or § 86.1844–01 as applicable.

* * * * *

20. Section 86.127–00 is amended by revising the introductory text and paragraph (h) to read as follow:

§ 86.127–00 Test procedures; overview.

Applicability. The procedures described in this and subsequent sections are used to determine the conformity of vehicles with the standards set forth in subpart A or S of this part (as applicable) for light-duty vehicles and light-duty trucks. Except where noted, the procedures of paragraphs (a) through (b) of this section, § 86.127–96 (c) and (d), and the contents of §§ 86.135–94, 86.136–90, 86.137–96, 86.140–94, 86.142–90, and 86.144–94 are applicable for determining emission results for vehicle exhaust emission systems designed to comply with the FTP emission standards, or the FTP emission element required for determining compliance with composite SFTP standards. Paragraphs (f) and (g) of this section discuss the additional test elements of aggressive driving (US06) and air conditioning (SC03) that comprise the exhaust emission components of the SFTP. Section 86.127–96(e) discusses fuel spitback emissions and paragraphs (h) and (i) of this section are applicable to all vehicle emission test procedures. Section 86.127–00 includes text that specifies requirements that differ from § 86.127–96. Where a paragraph in § 86.127–96 is identical and applicable to § 86.127–00, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.127-96."

* * * * *

(h) Except in cases of component malfunction or failure, all emission control systems installed on or incorporated in a new motor vehicle shall be functioning during all procedures in this subpart. Maintenance to correct component malfunction or failure shall be authorized in accordance with § 86.098–25 or § 86.1834–01 as applicable.

* * * * *

21. Section 86.128–79 is amended by revising paragraph (g)(2) to read as follows:

§ 86.128–79 Transmissions.

* * * * *

(g) * * *

(2) A manufacturer may recommend to the ultimate purchaser shift procedures other than those used in testing by the EPA, Provided that: All shift procedures (including multiple shift speeds) which the manufacturer proposes to supply to the ultimate purchaser are provided to the Administrator as part of the manufacturer's application for certification, or as an amendment to such application, under § 86.079–32, § 86.079–33, § 86.082–34, or § 86.1844–01 as applicable.

* * * * *

22. Section 86.129–00 is amended by revising footnote 4 to the table in paragraph (a) and paragraph (d)(1)(iv) to read as follows:

§ 86.129–00 Road load power, test weight, inertia weight class determination, and fuel temperature profile.

* * * * *

(a) * * *

* * * * *

[4] For model year 1994 and later heavy light-duty trucks not subject to the Tier 0 standards of § 86.094–9, test weight basis shall be adjusted loaded vehicle weight, as

defined in § 86.094–2 or 86.1803–01 as applicable. For all other vehicles, test weight basis shall be loaded vehicle weight, as defined in § 86.082–2 or 86.1803–01 as applicable.

* * * * *

(d) * * *

(1) * * *

(iv) Small-volume manufacturers, as defined in § 86.094–14(b)(1) or § 86.1838–01 as applicable, may use an alternate method for generating fuel temperature profiles, subject to the approval of the Administrator.

* * * * *

23. Section 86.132–96 is amended by revising paragraph (e)(2)(ii) to read as follows:

§ 86.132–96 Vehicle preconditioning.

* * * * *

(e) * * *

(2) * * *

(ii) For abnormally treated vehicles, as defined in § 86.085–2 or § 86.1803–01 as applicable, two Highway Fuel Economy Driving Schedules, found in 40 CFR part 600, appendix I, run in immediate succession, with the road load power set at twice the value obtained from § 86.129–80.

* * * * *

Subpart G—[Amended]

24–25. Section 86.601–84 of subpart G is amended by adding paragraph (b) to read as follows:

§ 86.601–84 Applicability.

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of Subpart S of this part.

Subpart H—[Amended]

26. Section 86.701–94 is revised to read as follows:

§ 86.701–94 General applicability.

(a) The provisions of this subpart apply to: 1994 and later model year Otto-cycle and diesel light-duty vehicles; 1994 and later model year Otto-cycle and diesel light-duty trucks; and 1994 and later model year Otto-cycle and diesel heavy-duty engines. The provisions of subpart B of this part apply to this subpart.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart J—[Amended]

27. A new § 86.902–01 is added to subpart J to read as follows:

§ 86.902–01 Definitions.

(a) The definitions in § 86.902–93 continue to apply to this subpart.

(b) The definitions in subparts A and S of this part apply to this subpart.

28. A new § 86.907–01 is added to subpart J to read as follows:

§ 86.907–01 Fee amounts.

The fee for each certification request type is:

Certificate type	Model year 2001 and later
LDV/LDT:	
Fed Signed	$27,211
Cal-only Signed	8,956
Fed Unsigned	2,738
Cal-only Unsigned	2,738
HDE/HDV:	
Fed Signed	12,584
Cal-only Signed	2,145
Fed Unsigned	2,145
Cal-only Unsigned	2,145
All Evaporative-only	2,145
Motorcycles:	
Fed Signed	840
Cal-only Signed	840
Fed Unsigned	840
Cal-only Unsigned	840

29. A new § 86.908–01 is added to subpart J to read as follows:

§ 86.908–01 Waivers and refunds.

This section includes text that specifies requirements that differ from § 86.908–93. Where a paragraph in § 86.908–93–01 is identical and applicable to this section, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.908–93."

(a) [Reserved]. For guidance see § 86.908–93.

(b) *Request for refund.* The Administrator may refund a specified part of any fee imposed by § 86.907 if the applicant fails to obtain a signed certificate and requests a refund.

(1) That portion of the total fee to be refunded will be as follows:

[In percent]

	Federal	California-only
LDV/LDT	89.9	69.4
HDE/HDV	83.0	0
HD—Evaporative only	0	0
MC	0	0

(2) For a refund of a portion of a waiver payment due to a decrease in the projected retail sales price of the vehicles or engines to be covered by the certification request the applicant should submit documentation to EPA detailing the waiver fee adjustment.

(c) *Waiver and refund address.* A request for a waiver or refund of part of a fee shall be submitted in writing by the applicant to the Environmental Protection Agency, Vehicle Programs and Compliance Division, 2565 Plymouth Road, Ann Arbor, MI 48105.

Subpart K—[Amended]

30. Section 86.1001–84 is amended by adding paragraph (b) to read as follows:

§ 86.1001–84 Applicability.

* * * * *

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart L—[Amended]

31. Section 86.1101–87 is revised to read as follows:

§ 86.1101–87 Applicability.

(a) The provisions of this subpart are applicable for 1987 and later model year gasoline-fueled and diesel heavy-duty engines and heavy-duty vehicles. These vehicles include light-duty trucks rated in excess of 6,000 pounds gross vehicle weight.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks under the provisions of subpart S of this part.

Subpart O—[Amended]

32. Section 86.1401 is revised to read as follows:

§ 86.1401 Scope; applicability.

(a) This subpart contains CST procedures for gasoline-fueled Otto-cycle light-duty vehicles, and for gasoline-fueled Otto-cycle light-duty trucks, including those certified to operate using both gasoline and another fuel (for example, "flexible-fuel" or

"dual-fuel" light-duty vehicles and light-duty trucks). For the purposes of the Certification Short Test, flexible-fuel or dual-fuel vehicles will be treated as dedicated gasoline vehicles. This subpart applies to 1996 and later mode years.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart P—[Amended]

33. Section 86.1501 is revised to read as follows:

§ 86.1501–94 Scope; applicability.

(a) This subpart contains gaseous emission idle test procedures for light-duty trucks and heavy-duty engines for which idle CO standards apply. It applies to 1994 and later model years. The idle test procedures are optionally applicable to 1994 through 1996 model year natural gas-fueled and liquified petroleum gas-fueled light-duty trucks and heavy-duty engines.

(b) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty trucks under the provisions of subpart S of this part.

34. Section 86.1502–84 is revised to read as follows:

§ 86.1502–84 Definitions.

The definitions in § 86.084–2 or § 86.1803–01, as applicable, apply to this subpart.

35. Section 86.1503–84 is revised to read as follows:

§ 86.1503–84 Abbreviations.

The abbreviations in § 86.084–3 or in § 86.1804–01, as applicable, apply to this subpart.

Subpart Q—[Amended]

36. Section 86.1601 is amended by adding a new paragraph (d) to read as follows:

§ 86.1601 General applicability.

* * * * *

(d) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

Subpart R—[Amended]

37. Section 86.1701–99 is amended by adding a new paragraph (e) to read as follows:

§ 86.1701–99 General applicability.

* * * * *

(e) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of subpart S of this part.

38.–39. New §§ 86.1713–01, 86.1714–01, 86.1715–01, and 86.1716–01 are added and reserved to read as follow:

§ 86.1713–01 [Reserved]

§ 86.1714–01 [Reserved]

§ 86.1715–01 [Reserved]

§ 86.1716–01 [Reserved]

40. A new § 86.1717–01 is added to subpart R to read as follows:

§ 86.1717–01 Emission control diagnostic system for 1999 and later light-duty vehicles and light-duty trucks.

(a) The provisions of § 86.1806–01 and subsequent model year provisions do not apply to this subpart.

(b) The requirements in Chapter 6 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) (these requirements are incorporated by reference; see § 86.1) apply to this subpart.

(c) No vehicle shall be certified under the provisions of this subpart unless such vehicle complies with the requirements of section 202(m) (1), (2), (4), and (5) of the Clean Air Act (42 U.S.C. 7521(m) (1), (2), (4) and (5)).

41. A new § 86.1721–01 is added to subpart R to read as follows:

§ 86.1721–01 Application for certification.

The provisions of § 86.1844–01 and subsequent model year provisions apply to this subpart, with the following additions to the part 1 and part 2 applications:

(a) For TLEVs, LEVs, and ULEVs not certified exclusively on gasoline, projected U.S. sales data and fuel economy data 19 months prior to January 1 of the calendar year with the same numerical designation as the model year for which the vehicles are certified, and projected U.S. sales data for all vehicles, regardless of operating fuel or vehicle emission category, sufficient to enable the Administrator to select a test fleet representative of the vehicles (or engines) for which certification is requested at the time of certification.

(b) For ZEVs and hybrid electric vehicles, the certification part 1 application shall include the following:

(1) Identification and description of the vehicle(s) covered by the application.

(2) Identification of the vehicle weight category to which the vehicle is certifying: LDV, LDT 0–3750 lbs LVW, LDT 3751–5750 lbs LVW (state test weight range), and the curb weight and gross vehicle weight rating of the vehicle.

(3) Identification and description of the propulsion system for the vehicle.

(4) Identification and description of the climate control system used on the vehicle.

(5) Projected number of vehicles sold in the U.S., and projected U.S. sales.

(6) For electric and hybrid electric vehicles, identification of the energy usage in kilowatt-hours per mile from the point when electricity is introduced from the electrical outlet and the operating range in miles of the vehicle when tested in accordance with the All-Electric Range Test provisions in § 86.1770.

(7) If the vehicle is equipped with a fuel fired heater, a description of the control system logic of the fuel fired heater, including an evaluation of the conditions under which the fuel fired heater can be operated and an evaluation of the possible operational modes and conditions under which evaporative emissions can exist. Vehicles which utilize fuel fired heaters which can be operated at ambient temperatures above 40 deg. F or which cannot be demonstrated to have zero evaporative emissions under any and all possible operation modes and conditions shall not be certified as ZEVs.

(8) For ZEVs and HEVs which use fuel fired heaters, the manufacturer shall provide the exhaust emissions value per mile produced by the auxiliary fuel fired heater. This shall be accomplished by determining heater emissions in grams per minute when operating at a maximum heating capacity for a period of 20 minutes, and multiplying that number by 3.6 minutes per mile. At the time of certification, manufacturers shall submit their test plan which describes the procedure used to determine the mass emissions of the fuel fired heater.

(9) All information necessary for proper and safe operation of the vehicle, including information on the safe handling of the battery system, emergency procedures to follow in the event of battery leakage or other

malfunctions that may affect the safety of the vehicle operator or laboratory personnel, method for determining battery state-of-charge, battery charging capacity and recharging procedures, and any other relevant information as determined by the Administrator.

(c) For all vehicles subject to the provisions of § 86.1717, with its part 1 application for certification a description of the malfunction and diagnostic system to be installed on the vehicles. (The vehicles shall not be certified unless the Administrator finds that the malfunction and diagnostic system complies with the requirements of § 86.1717.).

(d) The comprehensive list of test results and the applicable certification levels required under § 86.1844–01(d)(7) shall include the following information:

(1) For all TLEVs, LEVs, and ULEVs certifying on a fuel other than conventional gasoline, manufacturers shall multiply the NMOG exhaust certification level for each emission-data vehicle by the appropriate reactivity adjustment factor listed in § 86.1777(d)(2)(i) or established by the Administrator pursuant to Appendix XVII of this part to demonstrate compliance with the applicable NMOG emission standard. For all TLEVs, LEVs, and ULEVs certifying on natural gas, manufacturers shall multiply the NMOG exhaust certification level for each emission-data vehicle by the appropriate reactivity adjustment factor listed in § 86.1777(d)(2)(i) or established by the Administrator pursuant to Appendix XVII of this part and add that value to the product of the methane exhaust certification level for each emission-data vehicle and the appropriate methane reactivity adjustment factor listed in § 86.1777(d)(2)(ii) or established by the Administrator pursuant to Appendix XVII of this part to demonstrate compliance with the applicable NMOG emission standard. Manufacturers requesting to certify to existing standards utilizing an adjustment factor unique to its vehicle/fuel system must follow the data requirements described in Appendix XVII of this part. A separate formaldehyde exhaust certification level shall also be provided for demonstrating compliance with emission standards for formaldehyde.

(2) [Reserved]

(e) Manufacturers shall submit the standard phase-in compliance information required in § 86.1844–01 (d)(13) and (e)(4) with respect to the applicable standards of the subpart.

(f) For each engine family certified to TLEV, LEV, or ULEV standards, manufacturers shall submit with the certification application, an engineering evaluation demonstrating that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 deg F. For diesel vehicles, the engineering evaluation shall also include particulate emissions.

42. New §§ 86.1722–01 and 86.1723–01 are added and reserved to read as follow:

§ 86.1722–01 [Reserved]

§ 86.1723–01 [Reserved]

43. A new § 86.1724–01 is added to subpart R to read as follows:

§ 86.1724–01 Emission data vehicle selection.

(a) [Reserved]

(b) The provisions of § 86.1828–01 and subsequent model year provisions apply to this subpart with the following additions:

(1) For TLEVs, LEVs, ULEVs, and ZEVs certifying according to the provisions of this subpart, a manufacturer may substitute emission data vehicles selected by the California Air Resources Board criteria instead of using the criteria specified in §§ 86.1828–01(a) through (d) and subsequent model year provisions.

(2) For vehicles certified to the SFTP exhaust emission standards, if air conditioning is projected to be available on any vehicles within the engine family, the selection of engine codes will be limited selections which have air conditioning available and would require that any vehicle selected under this section has air conditioning installed and operational.

44. A new § 86.1725–01 is added to read as follows:

§ 86.1725–01 Allowable maintenance.

This section includes text that specifies requirements that differ from § 86.1725–99. Where a paragraph in § 86.1725–99 is identical and applicable to this section, this may be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.1725–99." The provisions of § 86.1834–01 and subsequent model year provisions apply to this subpart, with the following additions:

(a) Hybrid electric vehicles that use Otto-cycle or diesel engines are subject to the applicable Otto-cycle or diesel engine maintenance requirements of § 86.1834–01(b) through (e) and subsequent model year provisions.

(b) through (c) [Reserved]. For guidance see § 86.1725–99.

(d) When air conditioning SFTP exhaust emission tests are required, the manufacturer must document that the vehicle's air conditioning system is operating properly and in a representative condition. Required air conditioning system maintenance is performed as unscheduled maintenance that does not require the Administrator's approval.

45. Section 86.1726–01 is added and reserved to read as follows:

§ 86.1726–01 [Reserved]

46. A new § 86.1728–01 is added to subpart R to read as follows:

§ 86.1728–01 Compliance with emission standards for the purpose of certification.

The provisions of § 86.1837–01 and subsequent model year provisions apply with respect to the applicable standards of this subpart.

47. A new § 86.1734–01 is added and reserved to read as follows:

§ 86.1734–01 [Reserved]

48. A new § 86.1735–01 is added to subpart R to read as follows:

§ 86.1735–01 Labeling.

The following requirements shall apply to TLEVs, LEVs, ULEVs, and ZEVs certified under the provisions of this subpart:

(a) The requirements in § 86.1807–01 and subsequent model year provisions do not apply to this section.

(b) The requirements in Chapter 7 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996) shall apply. These requirements are incorporated by reference (see § 86.1).

49. Section 86.1772–99 is amended by revising paragraph (b)(1) to read as follows:

§ 86.1772–99 Road load power, test weight, and inertia weight class determination.

* * * * *

(b) * * *

(1) For electric and hybrid electric vehicle lines where it is expected that more than 33 percent of a vehicle line will be equipped with air conditioning, per § 86.096–24(g)(2) or § 86.1832–01(a) as applicable, that derives power from the battery pack, the road load shall be increased by the incremental horsepower required to operate the air conditioning unit. The incremental increase shall be determined by recording the difference in energy required for a hybrid electric vehicle under all-electric power to complete the

running loss test fuel tank temperature profile test sequence without air conditioning and the same vehicle tested over the running loss test fuel tank temperature profile test sequence with the air conditioning set to the "NORMAL" air conditioning mode and adjusted to the minimum discharge air temperature and high fan speed over the time period needed to perform the test sequence, and converting this value into units of horsepower. Vehicles equipped with automatic temperature controlled air conditioning systems shall be operated in "AUTOMATIC" temperature and fan modes with the system set at 72 deg. F. The running loss test fuel tank temperature profile test sequence is found in § 86.129(d).

* * * * *

50. Section 86.1776–99 is amended by revising paragraph (b)(1) to read as follows:

§ 86.1776–99 Records required.

* * * * *

(b) * * *

(1) The manufacturer shall record in the durability-data vehicle logbook, the number of regenerations that occur during the 50,000 mile durability test of each diesel light-duty vehicle and light-duty truck equipped with a periodically regenerating trap oxidizer system. The manufacturer shall include, for each regeneration: the date and time of the start of regeneration, the duration of the regeneration, and the accumulated mileage at the start and the end of regeneration. The number of regenerations will be used in the calculation of the deterioration factor or other durability demonstration under § 86.1823–01 and subsequent model year provisions.

* * * * *

51. A new subpart S is added to part 86 to read as follows:

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles and Light-Duty Trucks

Sec.

86.1801–01 Applicability.
86.1802–01 Section numbering; construction.
86.1803–01 Definitions.
86.1804–01 Acronyms and abbreviations.
86.1805–01 Useful life.
86.1806–01 On-board diagnostics.
86.1807–01 Vehicle labeling.
86.1808–01 Maintenance instructions.
86.1809–01 Prohibition of defeat devices.
86.1810–01 General standards; increase in emissions; unsafe conditions; waivers
86.1811–01 Emission standards for light-duty vehicles.
86.1812–01 Emission standards for light-duty trucks 1.
86.1813–01 Emission standards for light-duty trucks 2.
86.1814–01 Emission standards for light-duty trucks 3.
86.1814–02 Emission standards for light-duty trucks 3.
86.1814–04 Emission standards for light-duty trucks 3.
86.1815–01 Emission standards for light-duty trucks 4.
86.1815–02 Emission standards for light-duty trucks 4.
86.1815–04 Emission standards for light-duty trucks 4.
86.1816 through 86.1819 [Reserved].
86.1820–01 Durability group determination.
86.1821–01 Evaporative/refueling family determination.
86.1822–01 Durability data vehicle selection.
86.1823–01 Durability demonstration procedures for exhaust emissions.
86.1824–01 Durability demonstration procedures for evaporative emissions.
86.1825–01 Durability demonstration procedures for refueling emissions.
86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.
86.1827–01 Test group determination.
86.1828–01 Emission data vehicle selection.
86.1829–01 Durability and emission testing. requirements; waivers.
86.1830–01 Acceptance of vehicles for emission testing.
86.1831–01 Mileage accumulation requirements for test vehicles.
86.1832–01 Optional equipment and air conditioning for test vehicles.
86.1833–01 Adjustable parameters.
86.1834–01 Allowable maintenance.
86.1835–01 Confirmatory certification testing.
86.1836–01 Manufacturer-supplied production vehicles for testing.
86.1837–01 Rounding of emission measurements.
86.1838–01 Small volume manufacturers certification procedures.
86.1839–01 Carryover of certification data.
86.1840–01 Special test procedures.
86.1841–01 Compliance with emission standards for the purpose of certification.
86.1842–01 Addition of a vehicle after certification; and changes to a vehicle covered by certification.
86.1843–01 General information requirements.
86.1844–01 Information requirements: Application for certification and submittal of information upon request.
86.1845–01 Manufacturer in-use verification testing requirements.
86.1845–04 Manufacturer in-use verification testing requirements.
86.1846–01 Manufacturer in-use confirmatory testing requirements.
86.1847–01 Manufacturer in-use verification and in-use confirmatory testing; submittal of information and maintenance of records.
86.1848–01 Certification.
86.1849–01 Right of entry.
86.1850–01 Denial, suspension or revocation of certificate of conformity.
86.1851–01 Application of good engineering judgment to manufacturers' decisions.
86.1852–01 Waivers for good in-use emission performance.
86.1853–01 Certification hearings.
Appendix I to Subpart S of Part 86—Vehicle Procurement Methodology
Appendix II to Subpart S of Part 86—As-received Testing Vehicle Rejection Criteria
Appendix III to Subpart S of Part 86—As-received Inspection

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-Use Light-Duty Vehicles and Light-Duty Trucks

§ 86.1801–01 Applicability.

(a) The provisions of this subpart apply to 2001 and later model year new Otto-cycle and diesel-cycle light-duty vehicles and 2001 and later model year new Otto-cycle and diesel-cycle light-duty trucks. These provisions also apply to 2001 model year and later new incomplete light-duty trucks. In cases where a provision applies only to a certain vehicle group based on its model year, vehicle class, motor fuel, engine type, or other distinguishing characteristics, the limited applicability is cited in the appropriate section or paragraph of this subpart.

(b) The provisions of this subpart apply to aftermarket conversions of all model year Otto-cycle and diesel-cycle light-duty vehicles and light-duty trucks as defined in 40 CFR 85.502.

(c) Optional applicability.

(1) A manufacturer may request to certify any heavy-duty vehicle of 14,000 pounds Gross Vehicle Weight Rating or less in accordance with the light-duty truck provisions. Heavy-duty engine or heavy-duty vehicle provisions of subpart A of this part do not apply to such a vehicle.

(2) A manufacturer may optionally use the provisions of this subpart in lieu of the provisions of subpart A of this part beginning with the 2000 model year. Manufacturers choosing this option must comply with all provisions of this subpart, except the standards in subpart A of this part apply for model year 2000. Manufacturers may elect this provision for either all or a portion of their product line.

(d) Small volume manufacturers. Special certification procedures are available for any manufacturer whose projected or actual combined U.S. sales of light-duty vehicles, light-duty trucks, heavy-duty vehicles, and heavy-duty engines in its product line (including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509) are fewer than 15,000 units for

the model year in which the manufacturer seeks certification. The small volume manufacturer's light-duty vehicle and light-duty truck certification procedures are described in § 86.1838–01.

(e) National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks. A manufacturer may elect to certify light-duty vehicles and light light-duty trucks to the provisions of the National Low Emission Vehicle Program contained in subpart R of this part. Subpart R of this part is applicable only to those covered manufacturers as defined under the provisions of subpart R of this part. All provisions of this subpart S are applicable to vehicles certified pursuant to subpart R of this part, except as specifically noted in subpart R of this part.

§ 86.1802–01 Section numbering; construction.

(a) Section numbering. The model year of initial applicability is indicated by the section number. The two digits following the hyphen designate the first model year for which a section is applicable. The section continues to apply to subsequent model years unless a later model year section is adopted. Example: Section 86.18xx–01 applies to the 2001 and subsequent model years. If a § 86.18xx–03 is promulgated it would apply beginning with the 2003 model year; § 86.18xx–01 would apply to model years 2001 through 2002.

(b) A section reference without a model year suffix refers to the section applicable for the appropriate model year.

§ 86.1803–01 Definitions.

The following definitions apply to this subpart:

505 Cycle means the test cycle that consists of the first 505 seconds (seconds 1 to 505) of the EPA Urban Dynamometer Driving Schedule, described in § 86.115–00 and listed in Appendix I, paragraph (a), of this part.

866 Cycle means the test cycle that consists of the last 866 seconds (seconds 506 to 1372) of the EPA Urban Dynamometer Driving Schedule, described in § 86.115–00 and listed in Appendix I, paragraph (a), of this part.

Abnormally treated vehicle means any diesel light-duty vehicle or diesel light-duty truck that is operated for less than five miles in a 30 day period immediately prior to conducting a particulate emissions test.

AC1 means a test procedure as described in § 86.162–00 which simulates testing with air conditioning operating in an environmental test cell by adding the air conditioning compressor load to the normal dynamometer forces.

AC2 means a test procedure as described in § 86.162–00 which simulates testing with air conditioning operating in an environmental test cell by adding a heat load to the passenger compartment.

Accuracy means the difference between a measurement and true value.

Act means Part A of Title II of the Clean Air Act as amended, 42 U.S.C., 7401, et seq.

Adjusted Loaded Vehicle Weight means the numerical average of vehicle curb weight and gross vehicle weight rating (GVWR).

Administrator means the Administrator of the Environmental Protection Agency or his/her authorized representative.

Alternative fuels means any fuel other than gasoline and diesel fuels, such as methanol, ethanol, and gaseous fuels.

Approach angle means the smallest angle in a plan side view of an automobile, formed by the level surface on which the automobile is standing and a line tangent to the front tire static loaded radius arc and touching the underside of the automobile forward of the front tire.

As-received condition means the condition of an in-use vehicle procured for emission testing required by this subpart upon which no adjustments, maintenance, or component replacement has occurred subsequent to the vehicle's last routine operation by the vehicle's owner, lessee, or operator prior to procurement.

Auxiliary Emission Control Device (AECD) means any element of design which senses temperature, vehicle speed, engine RPM, transmission gear, manifold vacuum, or any other parameter for the purpose of activating, modulating, delaying, or deactivating the operation of any part of the emission control system.

Axle clearance means the vertical distance from the level surface on which an automobile is standing to the lowest point on the axle differential of the automobile.

Basic engine means a unique combination of manufacturer, engine displacement, number of cylinders, fuel system (as distinguished by number of carburetor barrels or use of fuel injection), catalyst usage, and other engine and emission control system characteristics specified by the Administrator.

Basic vehicle frontal area means the area enclosed by the geometric projection of the basic vehicle along the longitudinal axis, which includes tires but excludes mirrors and air deflectors, onto a plane perpendicular to the longitudinal axis of the vehicle.

Bi-directional control means the capability of a diagnostic tool to send messages on the data bus that temporarily overrides the module's control over a sensor or actuator and gives control to the diagnostic tool operator. Bi-directional controls do not create permanent changes to engine or component calibrations.

Body style means a level of commonality in vehicle construction as defined by number of doors and roof treatment (e.g., sedan, convertible, fastback, hatchback).

Body type means a name denoting a group of vehicles that are either in the same car line or in different car lines provided the only reason the vehicles qualify to be considered in different car lines is that they are produced by a separate division of a single manufacturer.

Breakover angle means the supplement of the largest angle, in the plan side view of an automobile, that can be formed by two lines tangent to the front and rear static loaded radii arcs and intersecting at a point on the underside of the automobile.

Calibration means the set of specifications, including tolerances, unique to a particular design, version, or application of a component or components assembly capable of functionally describing its operation over its working range.

Calibration gas means a gas of known concentration which is used to establish the response curve of an analyzer.

Candidate in-use vehicle means an in-use vehicle which would be eligible to participate in the in-use verification program in accordance with § 86.1845–01.

Car line means a name denoting a group of vehicles within a make or car division which has a degree of commonality in construction (e.g., body, chassis). Car line does not consider any level of decor or opulence and is not generally distinguished by characteristics as roofline, number of doors, seats, or windows except for station wagons or light-duty trucks. Station wagons and light-duty trucks are considered to be different car lines than passenger cars.

Certification Short Test (CST) means the test, for gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks, performed in accordance with the procedures contained in 40 CFR part 86, subpart O.

Configuration means a subclassification within a test group which is based on engine code, inertia weight class, transmission type and gear

ratios, final drive ratio, and other parameters which may be designated by the Administrator.

Conveniently available service facility and spare parts for small-volume manufacturers means that the vehicle manufacturer has a qualified service facility at or near the authorized point of sale or delivery of its vehicles and maintains an inventory of all emission-related spare parts or has made arrangements for the part manufacturers to supply the parts by expedited shipment (e.g., utilizing overnight express delivery service, UPS, etc.).

Crankcase emissions means airborne substances emitted to the atmosphere from any portion of the engine crankcase ventilation or lubrication systems.

Critical emission-related components are those components which are designed primarily for emission control, or whose failure may result in a significant increase in emissions accompanied by no significant impairment (or perhaps even an improvement) in performance, driveability, and/or fuel economy as determined by the Administrator.

Critical emission-related maintenance means that maintenance to be performed on critical emission-related components.

Curb weight means the actual or the manufacturer's estimated weight of the vehicle in operational status with all standard equipment, and weight of fuel at nominal tank capacity, and the weight of optional equipment computed in accordance with § 86.1832–01; incomplete light-duty trucks shall have the curb weight specified by the manufacturer.

Curb-idle means, for manual transmission code light-duty vehicles and trucks, the engine speed with the transmission in neutral or with the clutch disengaged and with the air conditioning system, if present, turned off. For automatic transmission code light-duty vehicles and light-duty trucks, curb-idle means the engine speed with the automatic transmission in the park position (or neutral position if there is no park position), and with the air conditioning system, if present, turned off.

Data stream information means information (i.e., messages and parameters) originated within the vehicle by a module or intelligent sensors (i.e., a sensor that contains and is controlled by its own module) and transmitted between a network of modules and/or intelligent sensors connected in parallel with either one or two communication wires. The information is broadcast over the communication wires for use by other modules (e.g., chassis, transmission, etc.) to conduct normal vehicle operation or for use by diagnostic tools. Data stream information does not include engine calibration related information.

Dedicated vehicle means any motor vehicle engineered and designed to be operated using a single fuel. Flexible fuel vehicles and multi-fuel vehicles are not dedicated vehicles.

Defeat device means an auxiliary emission control device (AECD) that reduces the effectiveness of the emission control system under conditions which may reasonably be expected to be encountered in normal vehicle operation and use, unless:

(1) Such conditions are substantially included in the Federal emission test procedure;

(2) The need for the AECD is justified in terms of protecting the vehicle against damage or accident; or

(3) The AECD does not go beyond the requirements of engine starting.

Departure angle means the smallest angle, in a plan side view of a motor vehicle, formed by the level surface on which the motor vehicle is standing and a line tangent to the rear tire static loaded radius arc and touching the underside of the motor vehicle rearward of the rear tire.

Diesel means a type of engine with operating characteristics significantly similar to the theoretical Diesel combustion cycle. The non-use of a throttle during normal operation is indicative of a diesel engine.

Dispensed fuel temperature means the temperature (deg. F or deg. C may be used) of the fuel being dispensed into the tank of the test vehicle during a refueling test.

Diurnal breathing losses means diurnal emissions.

Diurnal emissions means evaporative emissions resulting from the daily cycling of ambient temperatures.

Drive train configuration means a unique combination of engine code, transmission configuration, and axle ratio.

Dual Fuel Vehicle means any motor vehicle engineered and designed to be operated on two different fuels, but not on a mixture of the fuels.

Durability Data Vehicle means a vehicle used to generate durability data as required in this subpart.

Durability group means the basic classification unit of a manufacturer's product line used for the purpose of selecting a vehicle configuration to demonstrate durability and predict deterioration in accordance with § 86.1822–01.

Durability useful life means the highest useful life mileage out of the set of all useful life mileages that apply to a given vehicle. The durability useful life determines the duration of service accumulation on a durability data vehicle. The determination of durability useful life shall reflect any light-duty truck alternative useful life periods approved by the Administrator under § 86.1805–01(c). The determination of durability useful life shall exclude any standard and related useful life mileage for which the manufacturer has obtained a waiver of emission data submission requirements under § 86.1829–01.

Element of design means any control system (i.e., computer software, electronic control system, emission control system, computer logic), and/or control system calibrations, and/or the results of systems interaction, and/ or hardware items on a motor vehicle or motor vehicle engine.

Emission control system is a unique group of emission control devices, auxiliary emission control devices, engine modifications and strategies, and other elements of design designated by the Administrator used to control exhaust emissions of a vehicle.

Emission-related component means any component which can affect emissions.

Emission-related maintenance means that maintenance which does substantially affect emissions or which is likely to affect the emissions deterioration of the vehicle during normal in-use operation, even if the maintenance is performed at some time other than that which is recommended.

Engine code means a unique combination within a test group of displacement, fuel injection (or carburetor) calibration, choke calibration, distributor calibration, auxiliary emission control devices, and other engine and emission control system components specified by the Administrator.

Engine warm-up cycle means sufficient vehicle operation such that the coolant temperature has risen by at least 40 deg. F from engine starting and reaches a minimum temperature of 160 deg. F.

Environmental test cell means a test cell capable of wind-speed, solar thermal load, ambient temperature, and humidity control or simulation which meets the requirements of § 86.161–00 for running emission tests with the air conditioning operating.

EPA Enforcement Officer means any officer or employee of the Environmental Protection Agency so

designated in writing by the Administrator (or by his/her designee).

Equivalent test weight means the weight, within an inertia weight class, which is used in the dynamometer testing of a vehicle and which is based on its loaded vehicle weight or adjusted loaded vehicle weight in accordance with the provisions of this Part.

Evaporative emissions means hydrocarbons emitted into the atmosphere from a motor vehicle, other than exhaust and crankcase emissions.

Evaporative/refueling control system means a unique combination within an evaporative/refueling family of canister adsorptive material, purge system configuration, purge strategy, and other parameters determined by the Administrator to affect evaporative and refueling emission control system durability or deterioration factors.

Evaporative/refueling emission code means a unique combination, in an evaporative/refueling family-evaporative emission control system combination, of purge system calibrations, fuel tank and carburetor bowl vent calibrations and other fuel system and evaporative emission control system components and calibrations specified by the Administrator.

Evaporative/refueling family means the basic classification unit of a manufacturers' product line used for the purpose of evaporative and refueling emissions test fleet selection and determined in accordance with § 86.1821–01.

Evaporative/refueling vehicle configuration means a unique combination of basic engine, engine code, body type, and evaporative emission code.

Exhaust emissions means substances emitted to the atmosphere from any opening downstream from the exhaust port of a motor vehicle engine.

Exhaust Gas Recirculation Valve means a device which directs a portion of the exhaust gas into the intake air stream for the purpose of controlling emissions.

Federal Test Procedure, or FTP means the test procedure as described in § 86.130–00(a) through (d) and (f) which is designed to measure urban driving tail pipe exhaust emissions and evaporative emissions over the Urban Dynamometer Driving Schedule as described in Appendix I to this part.

Fixed liquid level gauge means a type of liquid level gauge used on liquefied petroleum gas-fueled vehicles which uses a relatively small positive shutoff valve and is designed to indicate when the liquid level in the fuel tank being filled reaches the proper fill level. The venting of fuel vapor and/or liquid fuel to the atmosphere during the refueling event is generally associated with the use of the fixed liquid level gauge.

Flexible fuel vehicle means any motor vehicle engineered and designed to be operated on a petroleum fuel, a methanol fuel, or any mixture of the two. Methanol-fueled vehicles that are only marginally functional when using gasoline (e.g., the engine has a drop in rated horsepower of more than 80 percent) are not flexible fuel vehicles.

Fuel system means the combination of fuel tank(s), fuel pump, fuel lines, and carburetor or fuel injection components, and includes all fuel system vents and fuel evaporative emission control system components.

Gaseous fuel means natural gas or liquefied petroleum gas.

Gross vehicle weight means the manufacturer's gross weight rating for the individual vehicle.

Gross vehicle weight rating (GVWR) means the value specified by the manufacturer as the maximum design loaded weight of a single vehicle.

Hang-up refers to the process of hydrocarbon molecules being adsorbed, condensed, or by any other method removed from the sample flow prior to reaching the instrument detector. It also refers to any subsequent desorption of the molecules into the sample flow when they are assumed to be absent.

Heating degree day means the number of degrees per day the daily average temperature is below 65 degrees Fahrenheit. The daily average temperature is the mean of the maximum and minimum temperature for a 24-hour period. The annual heating degree day value is derived by summing the daily heating degree days over a calendar year period.

Heavy light-duty truck means any light-duty truck rated greater than 6000 lbs GVWR. The LDT3 and LDT4 classifications comprise the heavy light-duty truck category.

Heavy-duty engine means any engine which the engine manufacturer could reasonably expect to be used for motive power in a heavy-duty vehicle.

Heavy-duty vehicle means any motor vehicle rated at more than 8,500 pounds GVWR or that has a vehicle curb weight of more than 6,000 pounds or that has a basic vehicle frontal area in excess of 45 square feet.

High altitude means any elevation over 1,219 meters (4,000 feet).

High-altitude conditions means a test altitude of 1,620 meters (5,315 feet), plus or minus 100 meters (328 feet), or equivalent observed barometric test conditions of 83.3 kPa (24.2 inches Hg) plus or minus 1 kPa (0.30 Hg).

Hot-soak emissions and *Hot-soak losses* means evaporative emissions after termination of engine operation.

Incomplete truck means any truck which does not have the primary load carrying device or container attached.

Indirect information means any information that is not specifically contained in the service literature, but is contained in items such as tools or equipment provided to franchised dealers (or others).

Inertia weight class means the class, which is a group of equivalent test weights, into which a vehicle is grouped based on its test weight basis in accordance with the provisions of this Part 86.

Integrated refueling emission control system means a system where vapors resulting from refueling are stored in a common vapor storage unit(s) with other evaporative emissions of the vehicle and are purged through a common purge system.

Intermediary means any individual or entity, other than a manufacturer, which provides service or equipment to automotive technicians.

Intermediate temperature cold testing means testing done pursuant to the driving cycle and testing conditions contained in subpart C of this part, at temperatures between 25 deg.F (−4 deg. C) and 68 deg. F (20 deg. C).

In-use vehicle means a customer owned and operated vehicle which is not under the control of the manufacturer, dealerships or their agents. Leased vehicles will be considered in-use vehicles for the purpose of this subpart if the vehicles meet the criteria specified in § 86.1845–01.

In-use verification program (IUVP) means the testing program conducted by manufacturers which gathers in-use emission data in accordance with § 86.1848–01.

Light light-duty truck means any light-duty truck rated up through 6000 lbs GVWR. The LDT1 and LDT2 classifications compose the light light-duty truck category.

Light-duty truck means any motor vehicle rated at 8,500 pounds GVWR or less which has a curb weight of 6,000 pounds or less and which has a basic vehicle frontal area of 45 square feet or less, which is:

(1) Designed primarily for purposes of transportation of property or is a derivation of such a vehicle; or

(2) Designed primarily for transportation of persons and has a capacity of more than 12 persons; or

(3) Available with special features enabling off-street or off-highway operation and use.

Light-duty truck 1 (LDT1) means any light light-duty truck up through 3750 lbs loaded vehicle weight.

Light-duty truck 2 (LDT2) means any light light-duty truck greater than 3750 lbs loaded vehicle weight.

Light-duty truck 3 (LDT3) means any heavy light-duty truck up through 5750 lbs adjusted loaded vehicle weight.

Light-duty truck 4 (LDT4) means any heavy light-duty truck greater than 5750 lbs adjusted loaded vehicle weight.

Light-duty vehicle means a passenger car or passenger car derivative capable of seating 12 passengers or less.

Liquefied petroleum gas means a liquid hydrocarbon fuel that is stored under pressure and is composed primarily of species that are gases at atmospheric conditions (temperature = 25 deg. C and pressure = 1 atm), excluding natural gas.

Loaded vehicle weight means the vehicle's curb weight plus 300 pounds.

Low altitude means any elevation equal to or less than 1,219 meters (4,000 feet).

Low altitude conditions means a test altitude less than 549 meters (1,800 feet).

Malfunction means not operating according to specifications (e.g., those specifications listed in the certification application).

Methanol-fueled vehicle means any motor vehicle or motor vehicle engine that is engineered and designed to be operated using methanol fuel (i.e., a fuel that contains at least 50 percent methanol (CH_3OH) by volume) as fuel. Model means a specific combination of car line, body style, and drivetrain configuration.

Model type means a unique combination of car line, basic engine, and transmission class.

Model year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year: Provided that if the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

Multi-fuel means capable of operating on two or more different fuel types, either separately or simultaneously.

Natural gas means a fuel whose primary constituent is methane.

Nominal fuel tank capacity means the volume of the fuel tank(s), specified by the manufacturer to the nearest tenth of a U.S. gallon, which may be filled with fuel from the fuel tank filler inlet.

Non-emission-related maintenance means that maintenance which does not substantially affect emissions and which does not have a lasting effect on the emissions deterioration of the vehicle or engine during normal in-use operation once the maintenance is performed.

Non-integrated refueling emission control system means a system where fuel vapors from refueling are stored in a vapor storage unit assigned solely to the function of storing refueling vapors.

Non-Methane Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated non-methane hydrocarbons, methanol, formaldehyde, or other organic compounds that are separately measured, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

Non-oxygenated hydrocarbon means organic emissions measured by a flame ionization detector, excluding methanol.

N/V means the ratio of engine speed in revolutions per minute (rpm) to vehicle speed in miles per hour in the top transmission gear. At the manufacturer's option, either the 1:1 transmission gear ratio or the lowest numerical gear ratio available in the transmission will be used to determine N/V.

Option, in the context of a vehicle design feature, means any available equipment or feature not standard equipment on a model.

Original Equipment Manufacturer (OEM) means the manufacturer responsible for the design and production of a vehicle or component. This manufacturer will be fully knowledgeable of any production changes made to the design of the vehicle or component and shall be able to track the individual vehicles or component with regard to such production changes.

Otto-cycle means type of engine with operating characteristics significantly similar to the theoretical Otto combustion cycle. The use of a throttle during normal operation is indicative of an Otto-cycle engine.

Oxides of nitrogen means the sum of the nitric oxide and nitrogen dioxide contained in a gas sample as if the nitric oxide were in the form of nitrogen dioxide.

Petroleum fuel means liquid fuels normally derived from crude oil, excluding liquefied petroleum gas. Gasoline and diesel fuel are petroleum fuels.

Precision means the standard deviation of replicated measurements.

Proven emission control systems are emission control components or systems (and fuel metering systems) that have completed full durability testing evaluation over a vehicle's useful life in some other certified test group, or have completed bench or road testing demonstrated to be equal or more severe than certification mileage accumulation requirements. Alternatively, proven components or systems are those that are determined by EPA to be of comparable functional quality and manufactured using comparable materials and production techniques as components or systems which have been durability demonstrated in some other certified test group. In addition, the components or systems must be employed in an operating environment (e.g., temperature, exhaust flow, etc.,) similar to that experienced by the original or comparable components or systems in the original certified test group.

Recall program means the program administered by the Agency under the authority of CAA section 207, and regulations in 40 CFR part 85.

Reconfigured emission-data vehicle means an emission-data vehicle obtained by modifying a previously used emission-data vehicle to represent another emission-data vehicle.

Refueling emissions means evaporative emissions that emanate from a motor vehicle fuel tank(s) during a refueling operation.

Refueling emissions canister(s) means any vapor storage unit(s) that is exposed to the vapors generated during refueling.

Resting losses means evaporative emissions that may occur continuously, that are not diurnal emissions, hot soak emissions, refueling emissions, running losses, or spitback emissions.

Running change means a change to a vehicle or addition of a model which occurs after certification but during vehicle production.

Running losses means evaporative emissions that occur during vehicle operation.

SC03 means the test cycle, described in § 86.160–00 and listed in Appendix I, paragraph (h), of this part, which is designed to represent driving immediately following startup.

Scheduled maintenance means any adjustment, repair, removal, disassembly, cleaning, or replacement of vehicle components or systems which is performed on a periodic basis to prevent part failure or vehicle (if the engine were installed in a vehicle) malfunction, or anticipated as necessary from inspection to correct an overt indication of vehicle malfunction or failure for which periodic maintenance is not appropriate.

Similar emission control systems are engine, fuel metering and emission control system combinations which use the same fuel (e.g., gasoline, diesel, etc.), combustion cycle (e.g., two or four stroke), general type of fuel system (e.g., carburetor or fuel injection), catalyst system (e.g., none, oxidization, three-way plus oxidization, three-way only, etc.), fuel control system (e.g., feedback or non-feedback), secondary air system (e.g., equipped or not equipped) and exhaust gas recirculation (EGR) (e.g., equipped or not equipped).

Span gas means a gas of known concentration which is used routinely to set the output level of an analyzer.

Special features enabling off-street or off-highway operation and use means a vehicle that has:

(1) Four-wheel drive; and

(2) At least four of the following characteristics calculated when the automobile is at curb weight, on a level surface, with the front wheels parallel to the vehicle's longitudinal centerline, and the tires inflated to the manufacturer's recommended pressure; approach angle of not less than 28 degrees, breakover angle of not less than 14 degrees, departure angle of not less than 20 degrees, running clearance of not less than 8 inches, and front and rear axle clearances of not less than 7 inches each.

Spitback emissions means evaporative emissions resulting from the loss of liquid fuel that is emitted from a vehicle during a fueling operation.

Standard equipment means those features or equipment which are marketed on a vehicle over which the purchaser can exercise no choice.

Static loaded radius arc means a portion of a circle whose center is the center of a standard tire-rim combination of an automobile and whose radius is the distance from that center to the level surface on which the automobile is standing, measured with the automobile at curb weight, the wheel parallel to the vehicle's longitudinal centerline, and the tire inflated to the manufacturer's recommended pressure.

Supplemental FTP (SFTP) means the additional test procedures designed to measure emissions during aggressive and microtransient driving, as described in § 86.159–00 over the US06 cycle, and also the test procedure designed to measure urban driving emissions while the vehicle's air conditioning system is operating, as described in § 86.160–00 over the SC03 cycle.

Tank fuel volume means the volume of fuel in the fuel tank(s), which is determined by taking the manufacturer's nominal fuel tank(s) capacity and multiplying by 0.40. The result is rounded to the nearest tenth of a U.S. gallon in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference; see § 86.1)

Test group means the basic classification unit within a durability group used for the purpose of demonstrating compliance with exhaust emission standards in accordance with § 86.1841–01. The test group is also used as a classification unit for gathering in-use data for the In-Use Verification Program (IUVP) in accordance with § 86.1848–01.

Test weight basis means the basis on which equivalent test weight is determined in accordance with § 86.129–00 of subpart B of this part.

Throttle means a device used to control an engine's power output by limiting the amount of air entering the combustion chamber.

Total Hydrocarbon Equivalent means the sum of the carbon mass emissions of non-oxygenated hydrocarbons, methanol, formaldehyde or other organic compounds that are separately measured, expressed as gasoline-fueled vehicle hydrocarbons. In the case of exhaust emissions, the hydrogen-to-carbon ratio of the equivalent hydrocarbon is 1.85:1. In the case of diurnal and hot soak emissions, the hydrogen-to-carbon ratios of the equivalent hydrocarbons are 2.33:1 and 2.2:1, respectively.

Transmission class means the basic type of transmission, e.g., manual, automatic, semiautomatic.

Transmission configuration means a unique combination, within a transmission class, of the number of the forward gears and, if applicable, overdrive. The Administrator may further subdivide a transmission configuration (based on such criteria as gear ratios, torque convertor multiplication ratio, stall speed and shift calibration, etc.), if she/he determines that significant fuel economy or exhaust emission differences exist within that transmission configuration.

Unproven emission control systems are emission control components or systems (and fuel metering systems) that do not qualify as proven emission control systems.

Unscheduled maintenance means any adjustment, repair, removal disassembly, cleaning, or replacement of vehicle components or systems which is performed to correct a part failure or vehicle (if the engine were installed in a vehicle) malfunction which was not anticipated.

US06 means the test cycle, described in § 86.159–00 and listed in appendix I, paragraph (g), of this part, which is designed to evaluate emissions during aggressive and microtransient driving.

Useful life means the period of use or time during which an emission standard applies to light-duty vehicles and light-duty trucks, as described in § 86.1805–01.

Van means a light-duty truck having an integral enclosure, fully enclosing the driver compartment and load carrying device, and having no body sections protruding more than 30 inches ahead of the leading edge of the windshield.

Vehicle configuration means a unique combination of basic engine, engine code, inertia weight class, transmission configuration, and axle ratio.

Zero (0) miles means that point after initial engine starting (not to exceed 100 miles of vehicle operation, or three hours of engine operation) at which normal assembly line operations and adjustments are completed, and including emission testing, if performed.

§ 86.1804–01 Acronyms and abbreviations.

The following abbreviations apply to this subpart:

A/C—Air conditioning.
AECD—Auxiliary emission control device.
ALVW—Adjusted Loaded Vehicle Weight.
API—American Petroleum Institute.
ASTM—American Society for Testing and Materials.
C—Celsius.
cfm—Cubic feet per minute.
CFV—Critical flow venturi.
CFV–CVS—Critical flow venturi—constant volume sampler.
CH3OH—Methanol.
CID—Cubic inch displacement.
CI—Chemiluminescence.
CO—Carbon monoxide.
CO2—Carbon dioxide.
conc.—Concentration.
CST—Certification Short Test.
cu. in.—Cubic inch(es).
CVS—Constant volume sampler.
DDV—Durability Data Vehicle.
deg.—Degree(s).
DNPH—2,4-dinitrophenylhydrazine.
EDV—Emission Data Vehicle.
EP—End point.
ETW—Equivalent test weight.
F—Fahrenheit.
FID—Flame ionization detector.
ft.—Feet.
FTP—Federal Test Procedure.
g—gram(s).
gal.—U.S. gallon(s).
GC—Gas chromatograph.
GVW—Gross vehicle weight.
GVWR—Gross vehicle weight rating.
H2O—Water.
HC—Hydrocarbon(s).

HFID—Heated flame ionization detector.
Hg—Mercury.
hp—Horsepower.
HPLC—High-pressure liquid chromatography.
IBP—Initial boiling point.
in.—Inch(es).
IUVP—In-Use Verification Program.
K—Kelvin.
kg—Kilogram(s).
km—Kilometer(s).
kPa—Kilopascal(s).
lb.—Pound(s).
LDT1—Light-duty truck 1.
LDT2—Light-duty truck 2.
LDT3—Light-duty truck 3.
LDT4—Light-duty truck 4.
LPG—Liquefied Petroleum Gas.
m—Meter(s).
max.—Maximum.
mg—Milligram(s).
mi.—Mile(s).
min.—Minimum.
ml—Milliliter(s).
mm—Millimeter(s).
mph—Miles per hour.
mV—Millivolt
N2—Nitrogen.
NDIR—Nondispersive infrared.
NMHC—Nonmethane Hydrocarbons.
NMHCE—Non-Methane Hydrocarbon Equivalent.
NO—nitric oxide.
No.—Number.
O2—Oxygen.
OEM—Original equipment manufacturer.
NO2—Nitrogen dioxide.
NO_x—Oxides of nitrogen.
Pb—Lead.
pct.—Percent.
PDP–CVS—Positive displacement pump—constant volume sampler.
ppm—Parts per million by volume.
PM—Particulate Matter.
ppm C—Parts per million, carbon.
psi—Pounds per square inch.
R—Rankin.
rpm—Revolutions per minute.
RVP—Reid vapor pressure.
s—Second(s).
SAE—Society of Automotive Engineers.
SFTP—Supplemental Federal Test Procedure.
SI—International system of units.
TD—dispensed fuel temperature.
THC—Total Hydrocarbons.
THCE—Total Hydrocarbon Equivalent.
UDDS—Urban dynamometer driving schedule.
UV—Ultraviolet.
vs—Versus.
W—Watt(s).
WOT—Wide open throttle.
Wt.—Weight.

§ 86.1805–01 Useful life.

(a) Intermediate useful life is a period of use of 5 years or 50,000 miles, which ever occurs first.

(b) Full useful life is as follows:

(1) For light-duty vehicles and light light-duty trucks full useful life is a period of use of 10 years or 100,000 miles, which ever occurs first.

(2) For heavy light-duty trucks full useful life is a period of use of 11 years or 120,000 miles, which ever occurs first.

(c) Manufacturers may petition the Administrator to provide alternative useful life periods for light-duty trucks when they believe that the useful life periods are significantly unrepresentative for one or more test groups (either too long or too short). This petition must include the full rationale behind the request together with any supporting data and other evidence. Based on this or other information the Administrator may assign an alternative useful-life period. Any petition should be submitted in a timely manner, to allow adequate time for a thorough evaluation. Alternative useful life periods will be granted only for THC, THCE, and idle CO requirements.

§ 86.1806–01 On-board diagnostics.

(a) All light-duty vehicles and light-duty trucks shall be equipped with an on-board diagnostic (OBD) system capable of monitoring, for each vehicle's useful life, all emission-related powertrain systems or components. All systems and components required to be monitored by these regulations shall be evaluated periodically, but no less frequently than once per Urban Dynamometer Driving Schedule as defined in Appendix I, paragraph (a), of this part, or similar trip as approved by the Administrator.

(b) *Malfunction descriptions.* The OBD system shall detect and identify malfunctions in all monitored emission-related powertrain systems or components according to the following malfunction definitions as measured and calculated in accordance with test procedures set forth in subpart B of this part, excluding those test procedures described in § 86.158–00. Paragraph (b)(1) of this section does not apply to diesel cycle light-duty vehicles or diesel cycle light-duty trucks, except where the catalyst is needed for NMHC control. Paragraphs (b)(2), (b)(3), and (b)(4) of this section do not apply to diesel cycle light-duty vehicles or diesel cycle light-duty trucks.

(1) Catalyst deterioration or malfunction before it results in an increase in NMHC emissions 1.5 times the NMHC standard, as compared to the NMHC emission level measured using a representative 4000 mile catalyst system.

(2) Engine misfire resulting in exhaust emissions exceeding 1.5 times the applicable standard for NMHC, CO or NO_x; and any misfire capable of damaging the catalytic converter.

(3) Oxygen sensor deterioration or malfunction resulting in exhaust emissions exceeding 1.5 times the applicable standard for NMHC, CO or NO_x.

(4) Any vapor leak in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice; any absence of evaporative purge air flow from the complete evaporative emission control system. On vehicles with fuel tank capacity greater than 25 gallons, the Administrator may, following a request from the manufacturer, revise the size of the orifice to the smallest orifice feasible, based on test data, if the most reliable monitoring method available cannot reliably detect a system leak equal to a 0.040 inch diameter orifice.

(5) Any deterioration or malfunction occurring in a powertrain system or component directly intended to control emissions, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for NMHC, CO or NO_x. For vehicles equipped with a secondary air system, a functional check, as described in paragraph (b)(6) of this section, may satisfy the requirements of this paragraph provided the manufacturer can demonstrate that deterioration of the flow distribution system is unlikely. This demonstration is subject to Administrator approval and, if the demonstration and associated functional check are approved, the diagnostic system shall indicate a malfunction when some degree of secondary airflow is not detectable in the exhaust system during the check. For vehicles equipped with positive crankcase ventilation (PCV), monitoring of the PCV system is not necessary provided the manufacturer can demonstrate to the Administrator's satisfaction that the PCV system is unlikely to fail.

(6) Any other deterioration or malfunction occurring in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer and has a measurable impact on emissions; monitoring of components required by this paragraph shall be satisfied by employing electrical circuit continuity checks and rationality checks for computer input components (input values within manufacturer specified ranges), and functionality checks for computer

output components (proper functional response to computer commands) except that the Administrator may waive such a rationality or functionality check where the manufacturer has demonstrated infeasibility; malfunctions are defined as a failure of the system or component to meet the electrical circuit continuity checks or the rationality or functionality checks.

(7) Oxygen sensor or any other component deterioration or malfunction which renders that sensor or component incapable of performing its function as part of the OBD system shall be detected and identified on vehicles so equipped.

(c) *Malfunction indicator light.* The OBD system shall incorporate a malfunction indicator light (MIL) readily visible to the vehicle operator. When illuminated, it shall display "Check Engine," "Service Engine Soon," a universally recognizable engine symbol, or a similar phrase or symbol approved by the Administrator. A vehicle shall not be equipped with more than one general purpose malfunction indicator light for emission-related problems; separate specific purpose warning lights (e.g. brake system, fasten seat belt, oil pressure, etc.) are permitted. The use of red for the OBD-related malfunction indicator light is prohibited.

(d) *MIL illumination.* The MIL shall illuminate and remain illuminated when any of the conditions specified in paragraph (b) of this section are detected and verified, or whenever the engine control enters a default or secondary mode of operation considered abnormal for the given engine operating conditions. The MIL shall blink once per second under any period of operation during which engine misfire is occurring and catalyst damage is imminent. If such misfire is detected again during the following driving cycle (i.e., operation consisting of, at a minimum, engine start-up and engine shut-off) or the next driving cycle in which similar conditions are encountered, the MIL shall maintain a steady illumination when the misfire is not occurring and shall remain illuminated until the MIL extinguishing criteria of this section are satisfied. The MIL shall also illuminate when the vehicle's ignition is in the "key-on" position before engine starting or cranking and extinguish after engine starting if no malfunction has previously been detected. If a fuel system or engine misfire malfunction has previously been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which similar conditions are encountered (engine speed is within 375 rpm, engine load is within 20 percent, and the engine's warm-up status is the same as that under which the malfunction was first detected), and no new malfunctions have been detected. If any malfunction other than a fuel system or engine misfire malfunction has been detected, the MIL may be extinguished if the malfunction does not reoccur during three subsequent sequential trips during which the monitoring system responsible for illuminating the MIL functions without detecting the malfunction, and no new malfunctions have been detected. Upon Administrator approval, statistical MIL illumination protocols may be employed, provided they result in comparable timeliness in detecting a malfunction and evaluating system performance, i.e., three to six driving cycles would be considered acceptable.

(e) *Storing of computer codes.* The emission control diagnostic system shall record and store in computer memory diagnostic trouble codes and diagnostic readiness codes indicating the status of the emission control system. These codes shall be available through the standardized data link connector per SAE J1979 specifications as incorporated by reference in paragraph (h) of this section.

(1) A diagnostic trouble code shall be stored for any detected and verified malfunction causing MIL illumination. The stored diagnostic trouble code shall identify the malfunctioning system or component as uniquely as possible. At the manufacturer's discretion, a diagnostic trouble code may be stored for conditions not causing MIL illumination. Regardless, a separate code should be stored indicating the expected MIL illumination status (i.e., MIL commanded "ON," MIL commanded "OFF").

(2) For a single misfiring cylinder, the diagnostic trouble code(s) shall uniquely identify the cylinder, unless the manufacturer submits data and/or engineering evaluations which adequately demonstrate that the misfiring cylinder cannot be reliably identified under certain operating conditions. The diagnostic trouble code shall identify multiple misfiring cylinder conditions; under multiple misfire conditions, the misfiring cylinders need not be uniquely identified if a distinct multiple misfire diagnostic trouble code is stored.

(3) The diagnostic system may erase a diagnostic trouble code if the same code is not re-registered in at least 40 engine warm-up cycles, and the malfunction indicator light is not illuminated for that code.

(4) Separate status codes, or readiness codes, shall be stored in computer memory to identify correctly functioning emission control systems and those emission control systems which require further vehicle operation to complete proper diagnostic evaluation. A readiness code need not be stored for those monitors that can be considered continuously operating monitors (e.g., misfire monitor, fuel system monitor, etc.). Readiness codes should never be set to "not ready" status upon key-on or key-off; intentional setting of readiness codes to "not ready" status via service procedures must apply to all such codes, rather than applying to individual codes. Subject to Administrator approval, if monitoring is disabled for a multiple number of driving cycles (i.e., more than one) due to the continued presence of extreme operating conditions (e.g., ambient temperatures below 40°F, or altitudes above 8000 feet), readiness for the subject monitoring system may be set to "ready" status without monitoring having been completed. Administrator approval shall be based on the conditions for monitoring system disablement, and the number of driving cycles specified without completion of monitoring before readiness is indicated.

(f) *Available diagnostic data.* (1) Upon determination of the first malfunction of any component or system, "freeze frame" engine conditions present at the time shall be stored in computer memory. Should a subsequent fuel system or misfire malfunction occur, any previously stored freeze frame conditions shall be replaced by the fuel system or misfire conditions (whichever occurs first). Stored engine conditions shall include, but are not limited to: engine speed, open or closed loop operation, fuel system commands, coolant temperature, calculated load value, fuel pressure, vehicle speed, air flow rate, and intake manifold pressure if the information needed to determine these conditions is available to the computer. For freeze frame storage, the manufacturer shall include the most appropriate set of conditions to facilitate effective repairs. If the diagnostic trouble code causing the conditions to be stored is erased in accordance with paragraph (d) of this section, the stored engine conditions may also be erased.

(2) The following data in addition to the required freeze frame information shall be made available on demand through the serial port on the standardized data link connector, if the information is available to the on-board computer or can be determined using

information available to the on-board computer: Diagnostic trouble codes, engine coolant temperature, fuel control system status (closed loop, open loop, other), fuel trim, ignition timing advance, intake air temperature, manifold air pressure, air flow rate, engine RPM, throttle position sensor output value, secondary air status (upstream, downstream, or atmosphere), calculated load value, vehicle speed, and fuel pressure. The signals shall be provided in standard units based on SAE specifications incorporated by reference in paragraph (h) of this section. Actual signals shall be clearly identified separately from default value or limp home signals.

(3) For all emission control systems for which specific on-board evaluation tests are conducted (catalyst, oxygen sensor, etc.), the results of the most recent test performed by the vehicle, and the limits to which the system is compared shall be available through the standardized data link connector per SAE J1979 specifications as incorporated by reference in paragraph (h) of this section.

(4) Access to the data required to be made available under this section shall be unrestricted and shall not require any access codes or devices that are only available from the manufacturer.

(g) The emission control diagnostic system is not required to evaluate systems or components during malfunction conditions if such evaluation would result in a risk to safety or failure of systems or components. Additionally, the diagnostic system is not required to evaluate systems or components during operation of a power take-off unit such as a dump bed, snow plow blade, or aerial bucket, etc.

(h) *Incorporation by reference materials.* The emission control diagnostic system shall provide for standardized access and conform with the following Society of Automotive Engineers (SAE) standards and/or the following International Standards Organization (ISO) standards. The following documents are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be inspected at Docket No. A–90–35 at EPA's Air docket (LE–131), room 1500 M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(1) *SAE material.* Copies of these materials may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001.

(i) SAE J1850 "Class B Data Communication Network Interface," (July 1995) shall be used as the on-board to off-board communications protocol. All emission related messages sent to the scan tool over a J1850 data link shall use the Cyclic Redundancy Check and the three byte header, and shall not use inter-byte separation or checksums.

(ii) Basic diagnostic data (as specified in §§ 86.094–17(e) and (f)) shall be provided in the format and units in SAE J1979 July 1996 E/E Diagnostic Test Modes."

(iii) Diagnostic trouble codes shall be consistent with SAE J2012 July 1996 "Recommended Practices for Diagnostic Trouble Code Definitions."

(iv) The connection interface between the OBD system and test equipment and diagnostic tools shall meet the functional requirements of SAE J1962 January 1995 "Diagnostic Connector."

(2) *ISO materials.* Copies of these materials may be obtained from the International Organization for Standardization, Case Postale 56, CH–1211 Geneva 20, Switzerland.

(i) ISO 9141–2 February 1994 "Road vehicles—Diagnostic systems—Part 2: CARB requirements for interchange of digital information," may be used as an alternative to SAE J1850 as the on-board to off-board communications protocol.

(ii) [Reserved]

(i) *Deficiencies and alternate fueled vehicles.* Upon application by the manufacturer, the Administrator may accept an OBD system as compliant even though specific requirements are not fully met. Such compliances without meeting specific requirements, or deficiencies, will be granted only if compliance would be infeasible or unreasonable considering such factors as, but not limited to, technical feasibility of the given monitor, lead time and production cycles including phase-in or phase-out of engines or vehicle designs and programmed upgrades of computers, and if any unmet requirements are not carried over from the previous model year except where unreasonable hardware or software modifications would be necessary to correct the non-compliance, and the manufacturer has demonstrated an acceptable level of effort toward compliance as determined by the Administrator. Furthermore, EPA will not accept any deficiency requests that include the complete lack of a major diagnostic monitor ("major" diagnostic monitors being those for the catalyst, oxygen sensor, engine misfire, and evaporative leaks), with the possible exception of the special provisions for alternate fueled vehicles. For alternate fueled vehicles (e.g. natural gas, liquefied petroleum gas, methanol, ethanol), beginning with the model year for which alternate fuel emission standards are applicable and extending through the 2004 model year, manufacturers may request the Administrator to waive specific monitoring requirements of this section for which monitoring may not be reliable with respect to the use of the alternate fuel. At a minimum, alternate fuel vehicles shall be equipped with an OBD system meeting OBD requirements to the extent feasible as approved by the Administrator.

(j) Demonstration of compliance with California OBD II requirements (Title 13 California Code Sec. 1968.1), as modified pursuant to California Mail Out #97–24 (December 9, 1997), shall satisfy the requirements of this section, except that compliance with Title 13 California Code Secs. 1968.1(b)(4.2.2), pertaining to evaporative leak detection, and 1968.1(d), pertaining to tampering protection, are not required to satisfy the requirements of this section, and the deficiency fine provisions of 1968.1(m)(6.1) and (6.2) shall not apply.

(k) For engine families required to have an emission control diagnostic system (an OBD system), certification will not be granted if, for any test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the following circumstances, unless the manufacturer can demonstrate that any identified OBD problems discovered during the Administrator's evaluation will be corrected on production vehicles. Only paragraphs (k)(5) and (k)(6) of this section apply to diesel cycle vehicles and diesel cycle trucks where such vehicles and trucks are so equipped.

(1) A catalyst is replaced with a deteriorated or defective catalyst, or an electronic simulation of such, resulting in an increase of 1.5 times the NMHC standard above the NMHC emission level measured using a representative 4000 mile catalyst system.

(2) An engine misfire condition is induced resulting in exhaust emissions exceeding 1.5 times the applicable standards for NMHC, CO or NO_X.

(3) Any oxygen sensor is replaced with a deteriorated or defective oxygen sensor, or an electronic simulation of such, resulting in exhaust emissions exceeding 1.5 times the applicable standard for NMHC, CO or NO_X.

(4) A vapor leak is introduced in the evaporative and/or refueling system (excluding the tubing and connections between the purge valve and the intake

manifold) greater than or equal in magnitude to a leak caused by a 0.040 inch diameter orifice, or the evaporative purge air flow is blocked or otherwise eliminated from the complete evaporative emission control system.

(5) A malfunction condition is induced in any emission-related powertrain system or component, including but not necessarily limited to, the exhaust gas recirculation (EGR) system, if equipped, the secondary air system, if equipped, and the fuel control system, singularly resulting in exhaust emissions exceeding 1.5 times the applicable emission standard for NMHC, CO or NO_x.

(6) A malfunction condition is induced in an electronic emission-related powertrain system or component not otherwise described above that either provides input to or receives commands from the on-board computer resulting in a measurable impact on emissions.

§ 86.1807–01 Vehicle labeling.

(a) The manufacturer of any motor vehicle subject to the applicable emission standards of this subpart, shall, at the time of manufacture, affix a permanent legible label, of the type and in the manner described in this section, containing the information prescribed in this section, to all production models of such vehicles available for sale to the public and covered by a Certificate of Conformity under § 86.1848–01.

(1) A permanent, legible label shall be affixed in a readily visible position in the engine compartment.

(2) The label shall be affixed by the vehicle manufacturer who has been issued the Certificate of Conformity for such vehicle, in such manner that it cannot be removed without destroying or defacing the label. The label shall not be affixed to any equipment which is easily detached from such vehicle.

(3) The label shall contain the following information lettered in the English language in block letters and numerals, which shall be of a color that contrasts with the background of the label:

(i) The label heading: Vehicle Emission Control Information;

(ii) Full corporate name and trademark of manufacturer;

(iii) Engine displacement (in cubic inches or liters), test group identification and evaporative/refueling family identification;

(iv) Engine tune-up specifications and adjustments, as recommended by the manufacturer in accordance with the applicable emission standards, including but not limited to idle speed(s), ignition timing, the idle air-fuel mixture setting procedure and value (e.g., idle CO, idle air-fuel ratio, idle speed drop), high idle speed, initial injection timing and valve lash (as applicable), as well as other parameters deemed necessary by the manufacturer. These specifications should indicate the proper transmission position during tune-up and what accessories (e.g., air conditioner), if any, should be in operation;

(v) An unconditional statement of compliance with the appropriate model year U.S. EPA regulations which apply to light-duty vehicles or light-duty trucks;

(vi) The exhaust emission standards to which the test group is certified, and the corresponding exhaust emission standards which the test group must meet in-use. In lieu of this requirement, the standardized test group name designated by the Agency may be used;

(vii) The vacuum hose routing diagram is required if the vehicles are equipped with vacuum actuated emission and emission-related components. The manufacturer may, at its option, use a separate label for the vacuum hose diagram provided that the vacuum hose diagram is placed in a visible and accessible position as described in this section;

(viii) Vehicles granted final admission under 40 CFR 85.1505 must comply with the labeling requirements contained in 40 CFR 85.1510;

(ix) (A) For vehicles exempted from compliance with certain revised performance warranty procedures, as specified in § 86.1829–01(b)(4)(iii), a statement indicating the specific performance warranty test(s) of 40 CFR part 85, subpart W, not to be performed.

(B) For vehicles exempted from compliance with all revised performance warranty procedures, as specified in § 86.1829–01(b)(4)(iv), a statement indicating:

(1) That none of the performance warranty tests of 40 CFR part 85, subpart W, is to be performed; and

(2) The name of the Administrator-approved alternative test procedure to be performed;

(x) For vehicles designed to be capable of operating on fuels other than gasoline or diesel, the statement "This vehicle is certified to operate on [specify fuel(s)]".

(b) The provisions of this section shall not prevent a manufacturer from also reciting on the label that such vehicle (or engine) conforms to any applicable state emission standards for new motor vehicles (or new motor vehicle engines) or any other information that such manufacturer deems necessary for, or useful to, the proper operation and satisfactory maintenance of the vehicle (or engine).

(c)(1) The manufacturer of any light-duty vehicle or light-duty truck subject to the emission standards of this subpart shall, in addition and subsequent to setting forth those statements on the label required by the Department of Transportation (DOT) pursuant to 49 CFR 567.4, set forth on the DOT label or on an additional label located in proximity to the DOT label and affixed as described n 49 CFR 567.4(b), the following information in the English language, lettered in block letters and numerals not less than three thirty-seconds of an inch high, of a color that contrasts with the background of the label:

(i) The heading: "Vehicle Emission Control Information."

(ii)(A) For light-duty vehicles, the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-Fueled 20XX Model Year New Motor Vehicles."

(B) For light-duty trucks, the statement: "This Vehicle Conforms to U.S. EPA Regulations Applicable to XXX-Fueled 20XX Model Year New Light-Duty Trucks."

(iii) One of the following statements, as applicable, in letters and numerals not less than six-thirty-seconds of an inch high and of a color that contrasts with the background of the label:

(A) For all vehicles certified as noncatalyst-equipped: "NON-CATALYST";

(B) For all vehicles certified as catalyst-equipped which are included in a manufacturer's catalyst control program for which approval has been given by the Administrator: "CATALYST—APPROVED FOR IMPORT";

(C) For all vehicles certified as catalyst-equipped which are not included in a manufacturer's catalyst control program for which prior approval has been given by the Administrator: "CATALYST".

(2) In lieu of selecting either of the labeling options of paragraph (c)(1) of this section, the manufacturer may add the information required by paragraph (c)(1)(iii) of this section to the label required by paragraph (a) of this section. The required information will be set forth in the manner prescribed by paragraph (c)(1)(iii) of this section.

(d) Incomplete light-duty trucks shall have the following prominent statement printed on the label required by paragraph (a)(3)(v) of this section: "This vehicle conforms to U.S. EPA regulations applicable to 20xx Model year Light-Duty Trucks under the

special provisions of § 86.1801–01(c)(1) when it does not exceed XXX pounds in curb weight, XXX pounds in gross vehicle weight rating, and XXX square feet in frontal area."

(e) The manufacturer of any incomplete light-duty vehicle or light-duty truck shall notify the purchaser of such vehicle of any curb weight, frontal area, or gross vehicle weight rating limitations affecting the emission certificate applicable to that vehicle. This notification shall be transmitted in a manner consistent with National Highway Safety Administration safety notification requirements published in 49 CFR part 568.

(f) All light-duty vehicles and light-duty trucks shall comply with SAE Recommended Practices J1877 "Recommended Practice for Bar-Coded Vehicle Identification Number Label," (October 1993), and J1892 "Recommended Practice for Bar-Coded Vehicle Emission Configuration Label," (July 1994). SAE J1877 and J1892 are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096–0001. Copies may be inspected at Docket No. A–90–35 at EPA's Air Docket (LE–131), room 1500M, 1st Floor, Waterside Mall, 401 M Street, SW., Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) The Administrator may approve in advance other label formats provided the information contained on the label is substantively the same as that required in paragraph (c) of this section.

§ 86.1808–01 Maintenance instructions.

(a) The manufacturer shall furnish or cause to be furnished to the purchaser of each new motor vehicle subject to the standards prescribed in this subpart, as applicable, written instructions for the proper maintenance and use of the vehicle, by the purchaser consistent with the provisions of § 86.1834–01, which establishes what scheduled maintenance the Administrator approves as being reasonable and necessary.

(1) The maintenance instructions required by this section shall be in clear, and to the extent practicable, nontechnical language.

(2) The maintenance instructions required by this section shall contain a general description of the documentation which the manufacturer will require from the ultimate purchaser or any subsequent purchaser as evidence of compliance with the instructions.

(b) Instructions provided to purchasers under paragraph (a) of this section shall specify the performance of all scheduled maintenance performed by the manufacturer on certification durability vehicles and, in cases where the manufacturer performs less maintenance on certification durability data vehicles than the allowed limit, may specify the performance of any scheduled maintenance allowed under § 86.1834–01.

(c) Scheduled emission-related maintenance in addition to that performed under § 86.1834–01 may only be recommended to offset the effects of abnormal in-use operating conditions, except as provided in paragraph (d) of this section. The manufacturer shall be required to demonstrate, subject to the approval of the Administrator, that such maintenance is reasonable and technologically necessary to assure the proper functioning of the emission control system. Such additional recommended maintenance shall be clearly differentiated, in a form approved by the Administrator, from that approved under § 86.1834–01.

(d) Inspections of emission-related parts or systems with instructions to replace, repair, clean, or adjust the parts or systems if necessary, are not considered to be items of scheduled maintenance which insure the proper functioning of the emission control system. Such inspections, and any recommended maintenance beyond that approved by the Administrator as reasonable and necessary under paragraphs (a), (b), and (c) of this section, may be included in the written instructions furnished to vehicle owners under paragraph (a) of this section, provided that such instructions clearly state, in a form approved by the Administrator, that the owner need not perform such inspections or recommended maintenance in order to maintain the emission warranty or manufacturer recall liability.

(e) If the vehicle has been granted an alternative useful life period under the provisions of § 86.1805–01(c), the manufacturer may choose to include in such instructions an explanation of the distinction between the alternative useful life specified on the label, and the emissions defect and emissions performance warranty period. The explanation must clearly state that the useful life period specified on the label represents the average period of use up to retirement or rebuild for the test group represented by the engine used in the vehicle. An explanation of how the actual useful lives of engines used in various applications are expected to differ from the average useful life may be included. The explanation(s) shall be in clear, non-technical language that is understandable to the ultimate purchaser.

(f) Emission control diagnostic service information:

(1) Manufacturers shall furnish or cause to be furnished to any person engaged in the repairing or servicing of motor vehicles or motor vehicle engines, or the Administrator upon request, any and all information needed to make use of the on-board diagnostic system and such other information, including instructions for making emission-related diagnosis and repairs, including, but not limited to, service manuals, technical service bulletins, recall service information, data stream information, bi-directional control information, and training information, unless such information is protected by section 208(c) as a trade secret. No such information may be withheld under section 208(c) of the Act if that information is provided (directly or indirectly) by the manufacturer to franchised dealers or other persons engaged in the repair, diagnosing, or servicing of motor vehicles or motor vehicle engines.

(2) Emission-related information includes, but is not limited to:

(i) Information regarding any system, component or part of a vehicle that controls emissions and any system, components and/or parts associated with the powertrain system, including, but not limited to, the fuel system and ignition system;

(ii) Information for any system, component, or part that is likely to impact emissions, such as transmission systems; and

(iii) Any other information specified by the Administrator to be relevant for the diagnosis and repair of an emission failure found through the Inspection and Maintenance program, after such finding has been communicated to the affected manufacturer(s).

(3) All information required to be made available by this section shall be made available to persons referred to in this section at a fair and reasonable price, as determined by the Administrator. In reaching a decision, the Administrator shall consider all relevant factors, including, but not limited to, the cost to the manufacturer of preparing and/or providing the information, the type of information, the format in which it is provided, the price charged by other manufacturers for similar information, the differences that exist among manufacturers (e.g., the size

of the manufacturer), the quantity of material contained in a publication, the detail of the information, the cost of the information prior to August 9, 1995, volume discounts, and inflation.

(4) Any information which is not provided at a fair and reasonable price shall be considered unavailable. Manufacturers shall make the information required under this section available to persons specified in paragraph (f)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(5) Each manufacturer shall provide in a manner specified in paragraph (g)(9) of this section an index of the information required to be made available by this section for vehicles which have been offered for sale; this requirement does not apply to indirect information, including the information specified in paragraph (g)(10) of this section. This index shall:

(i) Be updated on the first and third Monday of each month;

(ii) Provide titles that either adequately describes the contents of the document to which it refers or provides a brief description of the information contained in that document; and

(iii) Provide the cost of information and where it can be obtained.

(6) Manufacturers shall make the information required under this section available to persons specified in paragraph (f)(1) of this section at the same time it is made available to dealerships, except as otherwise specified in this section.

(7) Each manufacturer shall maintain the index of information specified in paragraph (f)(5) of this section on FedWorld or other database designated by the Administrator. Manufacturers shall inform persons specified in paragraph (f)(1) of this section about the availability of the index in a manner prescribed by the Administrator.

(8) Each manufacturer shall be responsible for paying its pro rata share of any costs associated with establishing and maintaining the index of emission-related service and repair information provided for in paragraphs (f)(5) and (f)(7) of this section.

(9) Manufacturers or their designated distributors must mail requested information within one business day of receiving an order, and shall provide overnight delivery if the ordering party requests it and assumes the cost of delivery.

(10) All emission-related data stream information made available to manufacturers' franchised dealerships (or others in the service industry) shall be made available to the persons indicated in paragraph (f)(1) of this section either through provision of manufacturer equipment and tools or through provision of such information to equipment and tool manufacturers.

(11) A manufacturer shall only provide bi-directional control to its franchised dealerships if it provides equipment and tool manufacturers with information to make diagnostic equipment with the same bi-directional control capabilities available to the dealerships, or if it provides such capabilities directly to persons specified in paragraph (f)(1) of this section by offering for sale at a reasonable cost through manufacturer tools.

(12) Manufacturers shall make data stream information and bi-directional control information available as specified in paragraphs (f)(10) and (f)(11) of this section.

(13) Manufacturers shall make available to persons indicated in paragraph (f)(1) of this section in the manner described in paragraph (f)(16) of this section reprogramming capability for all emission-related reprogramming events (including driveability reprogramming events that may affect emissions) that are issued by manufacturers at the same time they are made available to dealerships.

(14) For all vehicles, reprogramming need not be provided for any recalibrations performed prior to vehicles entering the stream of commerce (i.e., sale to first purchaser).

(15) [Reserved]

(16) Manufacturers shall either offer for sale at a competitive market price a reprogramming tool that interfaces with a substantial majority of generic portable computers or make available to aftermarket tool and equipment companies information that would enable them to manufacture such a tool. Any method adopted by a manufacturer by which reprogramming is made available to persons specified in paragraph (f)(1) of this section shall not impose a significant burden on such providers beyond that experienced by dealerships.

(17) Manufacturers shall be responsible for ensuring that persons specified in paragraph (f)(1) of this section shall have access to reprogramming services at a reasonable cost and in a timely manner.

(18) Manufacturers shall provide persons specified in paragraph (f)(1) of this section with an efficient and cost-effective method for identifying whether the calibrations on vehicles are the latest to be issued.

(19) Manufacturers shall either make available to aftermarket tool and equipment companies no later than the date of model introduction any and all information, except calibrations and recalibrations, needed to develop and manufacture generic tools that can be used by persons specified in paragraph (f)(1) of this section to diagnose, service and repair emission-related parts, components and systems or manufacturers may sell their own diagnostic tools and equipment to persons specified in paragraph (f)(1) of this section if the price of such tools is reasonable.

(20) A manufacturer is subject to a penalty of up to $25,000 per day per violation for failure to make available the information required by this section.

§ 86.1809–01 Prohibition of defeat devices.

(a) No new light-duty vehicle or light-duty truck shall be equipped with a defeat device.

(b) The Administrator may test or require testing on any vehicle at a designated location, using driving cycles and conditions which may reasonably be expected to be encountered in normal operation and use, for the purposes of investigating a potential defeat device.

(c) For cold temperature CO emission control, the Administrator will use a guideline to determine the appropriateness of the CO emission control at ambient temperatures between 25 deg. F (−4 deg. C) and 68 deg. F (20 deg. C). The guideline for CO emission congruity across the intermediate temperature range is the linear interpolation between the CO standard applicable at 25 deg. F (−4 deg. C) and the CO standard applicable at 68 deg. F (20 deg. C). For vehicles that exceed this CO emissions guideline upon intermediate temperature cold testing:

(1) If the CO emission level is greater than the 20 deg. F (−7 deg. C) emission standard, the vehicle will automatically be considered to be equipped with a defeat device without further investigation.

(2) If the CO emission level does not exceed the 20 deg. F emission standard, the Administrator may investigate the vehicle design for the presence of a defeat device under paragraph (d) of this section.

(d) For vehicle designs designated by the Administrator to be investigated for possible defeat devices:

(1) The manufacturer must show to the satisfaction of the Administrator that the vehicle design does not incorporate strategies that unnecessarily reduce emission control effectiveness exhibited during the Federal or Supplemental Federal emissions test procedures (FTP or SFTP) when the vehicle is operated

under conditions which may reasonably be expected to be encountered in normal operation and use.

(2) Information requirements:

(i) Upon request by the Administrator, the manufacturer will provide an explanation containing detailed information regarding test programs, engineering evaluations, design specifications, calibrations, on-board computer algorithms, and design strategies incorporated for operation both during and outside of the Federal emission test procedure.

(ii) For purposes of investigations of possible cold temperature CO defeat devices under this paragraph (d), the manufacturer shall provide an explanation which must show, to the satisfaction of the Administrator, that CO emissions are reasonably controlled in reference to the linear guideline, across the intermediate temperature range.

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

This section applies to model year 2001 and later light-duty vehicles and light-duty trucks fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels. Multi-fueled vehicles (including dual-fueled and flexible-fueled vehicles) shall comply with all requirements established for each consumed fuel (or blend of fuels in the case of flexible fueled vehicles). The standards of this subpart apply to both certification and in-use vehicles unless otherwise indicated.

(a) Any device, system or element of design installed on or incorporated in a new motor vehicle to enable such vehicle to conform to the standards imposed by this subpart:

(1) Shall not in its operation or function cause the emission into the ambient air of any noxious or toxic substance that would not be emitted in the operation of such vehicle without such system, except as specifically permitted by regulation; and

(2) Shall not in its operation, function or malfunction result in any unsafe condition endangering the vehicle, its occupants, or persons or property in close proximity to the vehicle.

(b) In establishing the physically adjustable range of each adjustable parameter on a new motor vehicle, the manufacturer shall ensure that, taking into consideration the production tolerances, safe vehicle drive ability characteristics are available within that range, as required by section 202(a)(4) of the Clean Air Act.

(c) Every manufacturer of new motor vehicles subject to any of the standards imposed by this subpart shall, prior to taking any of the actions specified in section 203(a)(1) of the Act, test or cause to be tested motor vehicles (or motor vehicle engines) in accordance with good engineering judgment to ascertain that such test vehicles will meet the requirements of this section for the useful life of the vehicle.

(d) *Crankcase emissions prohibited.* No crankcase emissions shall be discharged into the ambient atmosphere from any 2001 and later model year light-duty vehicle or light-duty truck.

(e) *On-board diagnostics.* All light-duty vehicles and light-duty trucks must have an on-board diagnostic system as described in § 86.1806–01.

(f) *Altitude requirements.* Except for supplemental exhaust emission standards (which apply only at low altitude conditions), all emission standards apply at low altitude conditions and at high altitude conditions.

(g) The standards set forth in this part refer to test procedures set forth in subparts B, C, O and P of this part.

(h) For methanol-fueled and natural gas-fueled vehicles, hydrocarbon standards refer to hydrocarbon equivalents and nonmethane hydrocarbon standards refer to nonmethane hydrocarbon equivalents.

(i) *Supplemental FTP general provisions.* (1) Implementation schedules. A minimum of the percentage of a manufacturer's model year sales of light-duty vehicles or light light-duty trucks (considered independently) shown in Table S01–1 and heavy light-duty trucks shown in Table S01–2 shall not exceed the applicable SFTP standards found in paragraph (b) of §§ 86.1811–01, 1812–01, 1813–01, 1814–02, and 1815–02 when tested under the applicable procedures in subpart B of this part. Tables S01–1 and S01–2 follow:

TABLE S01–1.—SFTP IMPLEMENTATION SCHEDULE FOR LIGHT-DUTY VEHICLES AND LIGHT LIGHT-DUTY TRUCKS

Model year	Percentage
2000	40
2001	80
2002	100

TABLE S01–2.—SFTP IMPLEMENTATION SCHEDULE FOR HEAVY LIGHT-DUTY TRUCKS

Model year	Percentage
2002	40
2003	80
2004	100

(2) Optionally, a minimum of the percentage shown in Table S01–1 of a manufacturer's combined sales of the applicable model year's light-duty vehicles and light light-duty trucks shall not exceed the applicable SFTP standards. Under this option, the light-duty vehicles shall not exceed the applicable SFTP standards in § 86.1811–01(b), and the light light-duty trucks shall not exceed the applicable SFTP standards in § 86.1812–01(b) or § 86.1813–01(b) as applicable.

(3) Sales percentages for the purposes of determining compliance with the applicable SFTP emission standards shall be based on total actual U.S. sales of light-duty vehicles of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale. If the option of paragraph (i)(2) of this section is taken, such sales percentages shall be based on the total actual combined U.S. sales of light-duty vehicles and light light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(4) The SFTP standards do not apply to vehicles or trucks certified on alternative fuels, but the standards do apply to the gasoline and diesel fuel operation of flexible fuel vehicles and trucks and dual fuel vehicles and trucks.

(5) The SFTP standards do not apply to vehicles or trucks tested at high altitude.

(6) The air to fuel ratio shall not be richer at any time than the leanest air to fuel mixture required to obtain maximum torque (lean best torque), plus a tolerance of six percent. The Administrator may approve a manufacturer's request for additional enrichment if it can be shown that additional enrichment is needed to protect the engine or emissions control hardware.

(7) The requirement to use a single roll dynamometer (or a dynamometer which produces equivalent results), discussed in §§ 86.108–00, 86.118–00, and 86.129–00 of subpart B of this part, applies to all SFTP and FTP test elements as set forth in subpart B of this part for test groups which are designated as SFTP compliant under the implementation schedules in Tables

S01–1 and S01–2 in paragraph (i)(1) of this section.

(8) Small volume provisions. (i) Light-duty vehicles and light light-duty trucks manufactured by small volume manufacturers, as described in § 86.1801–01(d), are exempt from the requirements of this paragraph until model year 2002, when 100 percent compliance with the provisions of this paragraph (i) and the SFTP standards in § 86.1811–01(b) and § 86.1812–01(b) is required. This exemption does not apply to small volume test groups as defined in § 86.1838–01(b)(2).

(ii) Heavy light-duty trucks manufactured by small volume manufacturers, as defined in § 86.1801–01, are exempt from the requirements of this paragraph (i) until model year 2004 when 100 percent compliance with the provisions of this paragraph and the SFTP standards in §§ 86.1814–02(b) and 86.1815–02(b) is required. This exemption does not apply to small volume test groups as defined in § 86.1838–01(b)(2).

(9) [Reserved]

(10) The manufacturer must state at the time of Application for Certification, based on projected U.S. sales or projected production for U.S. sale, which test groups will be used to attain the required implementation schedule sales percentages for certification purposes.

(11) A manufacturer cannot use one set of test groups to meet its intermediate useful life standards and another to meet its full useful life standards. The same test groups which are used to meet the intermediate useful life standards will be required to meet the corresponding full useful life standards.

(12) Compliance with composite standards shall be demonstrated using the calculations set forth in § 86.164–00.

(j) *Evaporative emissions general provisions.* (1) The evaporative standards in §§ 86.1811–01(d), 86.1812–01(d), 86.1813–01(d), 86.1814–01(d) and 86.1815–01(d) apply equally to certification and in-use vehicles and trucks. The spitback standard also applies to newly assembled vehicles.

(2) For certification testing only, manufacturers may conduct testing to quantify a level of non-fuel background emissions for an individual test vehicle. Such a demonstration must include a description of the source(s) of emissions and an estimated decay rate. The demonstrated level of non-fuel background emissions may be subtracted from evaporative emission test results from certification vehicles if approved in advance by the Administrator.

(3) All fuel vapor generated in a gasoline- or methanol-fueled light-duty vehicle or light-duty truck during in-use operation shall be routed exclusively to the evaporative control system (e.g., either canister or engine purge.) The only exception to this requirement shall be for emergencies.

(k) *Refueling emissions general provisions.* (1) Implementation schedules. (i) Tables S01–3, S01–4, and S01–5 in this paragraph (k)(1)(i) give the minimum percentage of a manufacturer's sales of the applicable model year's gasoline- and methanol-fueled Otto-cycle and petroleum-fueled and methanol-fueled diesel-cycle light-duty vehicles and light-duty trucks which shall be tested under the applicable procedures in subpart B of this part, and shall not exceed the standards described in §§ 86.1811–01(e), 86.1812–01(e), 86.1813–01(e), 86.1814–01(e). Vehicles waived from the emission standards under the provisions of paragraphs (m) and (n) of this section shall not be counted in the calculation of the percentage of compliance. Tables S01–3, S01–4, and S01–5 follow:

TABLE S01–3—LIGHT-DUTY VEHICLES

Model year	Percentage
1998*	40
1999*	80
2000*	100

*Note: This subpart prescribes standards for 2001 and later MY vehicles. However, the implementation phase-in periods prior to this date are included for ease of reference.

TABLE S01–4—LIGHT LIGHT-DUTY TRUCKS

Model year	Percentage
2001	40
2002	80
2003	100

TABLE S01–5—HEAVY LIGHT-DUTY TRUCKS

Model year	Percentage
2004	40
2005	80
2006	100

(ii) Either manufacturer sales or actual production intended for sale in the United States may be used to determine combined volume, at the manufacturers option.

(2) Sales percentages for the purposes of determining compliance with the applicable refueling emission standards shall be based on total actual U.S. sales of light-duty vehicles or light-duty trucks of the applicable model year by a manufacturer to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(3) Refueling receptacle requirements. Refueling receptacles on natural gas-fueled vehicles shall comply with the receptacle provisions of the ANSI/AGA NGV1–1994 standard (as incorporated by reference in § 86.1(b)(3)). This requirement is subject to the phase-in schedules in Tables S01–3 and S01–4 of paragraph (k)(1)(i) of this section.

(l) Fuel dispensing spitback testing waiver. (1) Vehicles certified to the refueling emission standards set forth in §§ 86.1811–01(e), 86.1812–01(e) and 86.1813–01(e) are not required to demonstrate compliance with the fuel dispensing spitback standard contained in that section provided that:

(i) The manufacturer certifies that the vehicle inherently meets the fuel dispensing spitback standard as part of compliance with the refueling emission standard; and

(ii) This certification is provided in writing and applies to the full useful life of the vehicle.

(2) EPA retains the authority to require testing to enforce compliance and to prevent noncompliance with the fuel dispensing spitback standard.

(m) Inherently low refueling emission testing waiver. (1) Vehicles using fuels/fuel systems inherently low in refueling emissions are not required to conduct testing to demonstrate compliance with the refueling emission standards set forth in §§ 86.1811–01(e), 86.1812–01(e) and 86.1813–01(e) provided that:

(i) This provision is only available for petroleum diesel fuel. It is only available if the Reid Vapor Pressure of in-use diesel fuel is equal to or less than 1 psi (7 kPa) and for diesel vehicles whose fuel tank temperatures do not exceed 130 deg.F (54 deg. C); and

(ii) To certify using this provision the manufacturer must attest to the following evaluation: "Due to the low vapor pressure of diesel fuel and the vehicle tank temperatures, hydrocarbon vapor concentrations are low and the vehicle meets the 0.20 grams/gallon refueling emission standard without a control system."

(2) The certification required in paragraph (m)(1)(ii) of this section must be provided in writing and must apply for the full useful life of the vehicle.

(3) EPA reserves the authority to require testing to enforce compliance and to prevent noncompliance with the refueling emission standard.

(n) Fixed liquid level gauge waiver. Liquefied petroleum gas-fueled vehicles which contain fixed liquid level gauges or other gauges or valves which can be

opened to release fuel or fuel vapor during refueling, and which are being tested for refueling emissions, are not required to be tested with such gauges or valves open, as outlined in § 86.157–98(d)(2), provided the manufacturer can demonstrate, to the satisfaction of the Administrator, that such gauges or valves would not be opened during refueling in-use due to inaccessibility or other design features that would prevent or make it very unlikely that such gauges or valves could be opened.

§ 86.1811–01 Emission standards for light-duty vehicles.

This section applies to 2001 and later model year light-duty vehicles fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) Total hydrocarbons: 0.41 grams per mile, except natural gas, which has no standard.

(ii) Non-methane hydrocarbons: 0.25 grams per mile.

(iii) Carbon monoxide: 3.4 grams per mile.

(iv) Oxides of nitrogen: 0.4 grams per mile except diesel fuel which has a 1.0 gram per mile standard.

(v) Particulate matter: 0.08 grams per mile.

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.31 grams per mile.

(iii) Carbon monoxide: 4.2 grams per mile.

(iv) Oxides of nitrogen: 0.6 grams per mile except diesel fuel which has a 1.25 gram per mile standard.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emission standards.* (1) Supplemental exhaust emissions from gasoline-fueled and diesel-fueled light-duty vehicles shall not exceed the following standards at intermediate useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.65 grams per mile except diesel fuel which has a 1.48 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.0 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 9.0 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 3.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled and diesel-fueled light-duty vehicles shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.91 grams per mile except diesel-fueled which have a 2.07 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.7 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 11.1 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.2 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty vehicles shall not exceed the cold temperature CO standard of 10.0 grams carbon monoxide per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emission standards.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty vehicles shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons.

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol-fueled only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol-fueled only.* For the running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol-fueled only.* For the fuel dispensing spitback test: 1.0 gram hydrocarbon (carbon for methanol-fueled) per test.

(2) [Reserved]

(e) *Refueling emissions.* Refueling emissions from 2001 and later model year light-duty vehicles shall not exceed the following standards:

(1) For gasoline-fueled, diesel fueled, and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(2) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

§ 86.1812–01 Emission standards for light-duty trucks 1.

This section applies to 2001 and later model year light-duty truck 1's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.25 grams per mile.

(iii) Carbon monoxide: 3.4 grams per mile.

(iv) Oxides of nitrogen: 0.4 grams per mile except diesel fuel which have a 1.0 gram per mile standard.

(v) Particulate matter: 0.08 grams per mile.

(2) Exhaust emissions from 2001 and later model year light-duty truck 1's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile, except natural gas, which has no standard. For purposes of this section, the full useful life total hydrocarbon standard is for 11 years or 120,000 miles whichever occurs first.

(ii) Non-methane hydrocarbons: 0.31 grams per mile.

(iii) Carbon monoxide: 4.2 grams per mile.

(iv) Oxides of nitrogen: 0.6 grams per mile except diesel fuel which have a 1.25 gram per mile standard.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emission standards.* (1) Supplemental exhaust emissions from gasoline-fueled and

diesel-fueled light-duty truck 1's shall not exceed the following standards at intermediate useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.65 grams per mile except diesel fuel which have a 1.48 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.0 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 9.0 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 3.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled and diesel-fueled light-duty vehicles shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 0.91 grams per mile except diesel fuel which have a 2.07 gram per mile standard.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.7 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 11.1 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.2 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 1's with a loaded vehicle weight of 3,750 lbs or less shall not exceed the cold temperature CO standard of 10.0 grams carbon monoxide per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 1's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons.

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) [Reserved]

(e) Refueling emissions. Refueling emissions from light-duty truck 1's shall be phased in, in accordance with the schedule in table S01–4 of § 86.1810–01 not to exceed the following emission standards:

(1) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(2) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1813–01 Emission standards for light-duty trucks 2.

This section applies to 2001 and later model year light-duty truck 2's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emissions.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) [Reserved].

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel fueled vehicles which have no standard.

(v) Particulate matter: 0.08 grams per mile.

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile, except natural gas, which has no standard. For purposes of this section, the full useful life total hydrocarbon standard is for 11 years or 120,000 miles whichever occurs first.

(ii) Non-methane hydrocarbons: 0.40 grams per mile.

(iii) Carbon monoxide: 5.5 grams per mile.

(iv) Oxides of nitrogen: 0.97 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from gasoline-fueled light-duty truck 2's shall not exceed the following standards at intermediate useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 1.02 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 3.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 11.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 2's shall not exceed the following standards at full useful life:

(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 1.37 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(*1*) 4.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(*2*) 14.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 5.5 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 2's during cold temperature testing shall not exceed a cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 2's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons (Total Hydrocarbon Equivalent for methanol-fueled).

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) [Reserved]

(e) *Refueling emissions.* Refueling emissions from light-duty truck 2's shall be phased in, in accordance with the schedule in table S01–4 of § 86.1810–01 not to exceed the following emission standards:

(1) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(2) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from 2001 and later model year gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1814–01 Emission standards for light-duty trucks 3.

This section applies to 2001 and later model year light-duty truck 3's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards. (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:*

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel-fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions from 2001 and later model year light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fueled vehicles which has no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.46 grams per mile.

(iii) Carbon monoxide: 6.4 grams per mile.

(iv) Oxides of nitrogen: 0.98 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) [Reserved]

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 3's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from 2001 and later model year gasoline, methanol, natural gas-and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1814–02 Emission standards for light-duty trucks 3.

This section applies to 2002 and later model year light-duty truck 3's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards. (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:*

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel-fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions from 2001 and later model year light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fueled vehicles which have no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.46 grams per mile.

(iii) Carbon monoxide: 6.4 grams per mile.

(iv) Oxides of nitrogen: 0.98 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions for 2002 and later model year gasoline-fueled light-duty truck 3's shall not

exceed the following standards at intermediate useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.02 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 3.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 11.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.4 grams per mile.

(2) Supplemental exhaust emissions from 2002 and later model year gasoline-fueled light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.44 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 5.6 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 16.9 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 6.4 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 3's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from 2001 and later model year gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1814–04 Emission standards for light-duty trucks 3.

This section applies to 2004 and later model year light-duty truck 3's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.32 grams per mile.

(iii) Carbon monoxide: 4.4 grams per mile.

(iv) Oxides of nitrogen: 0.7 grams per mile except diesel-fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions from light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fueled vehicles which have no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.46 grams per mile.

(iii) Carbon monoxide: 6.4 grams per mile.

(iv) Oxides of nitrogen: 0.98 grams per mile.

(v) Particulate matter: 0.10 grams per mile.

(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the following standards at intermediate useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.02 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 3.9 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 11.6 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 4.4 grams per mile.

(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the following standards at full useful life:

(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.44 grams per mile.

(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:

(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:

(1) 5.6 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and

(2) 16.9 grams per mile on the US06 test; or

(B) *Composite Carbon Monoxide Standard:* 6.4 grams per mile.

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 3's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 3's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) Refueling emissions from light-duty truck 3's shall be phased in, in accordance with the schedule in table S01–5 of § 86.1810–01 not to exceed the following emission standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever first occurs.

§ 86.1815–01 Emission standards for light-duty trucks 4.

This section applies to 2001 and later model year light-duty truck 4's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.39 grams per mile.

(iii) Carbon monoxide: 5.0 grams per mile.

(iv) Oxides of nitrogen: 1.1 grams per mile except diesel fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fuel which has no total hydrocarbon standard.

(ii) Non-methane hydrocarbons: 0.56 grams per mile.

(iii) Carbon monoxide: 7.3 grams per mile.

(iv) Oxides of nitrogen: 1.53 grams per mile.

(v) Particulate matter: 0.12 grams per mile.

(b) [Reserved]

(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 4's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) [Reserved]

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

§ 86.1815–02 Emission standards for light-duty trucks 4.

This section applies to 2002 and later model year light-duty truck 4's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.

(a) *Exhaust emission standards.* (1) Exhaust emissions from light-duty truck 4's shall not exceed the following standards at intermediate useful life:

(i) [Reserved]

(ii) Non-methane hydrocarbons: 0.39 grams per mile.

(iii) Carbon monoxide: 5.0 grams per mile.

(iv) Oxides of nitrogen: 1.1 grams per mile except diesel fueled vehicles which have no standard.

(v) [Reserved]

(2) Exhaust emissions shall not exceed the following standards at full useful life:

(i) Total hydrocarbons: 0.80 grams per mile except natural gas fuel which has no total hydrocarbon standard.
(ii) Non-methane hydrocarbons: 0.56 grams per mile.
(iii) Carbon monoxide: 7.3 grams per mile.
(iv) Oxides of nitrogen: 1.53 grams per mile.
(v) Particulate matter: 0.12 grams per mile.
(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the following standards at intermediate useful life:
(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.49 grams per mile.
(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:
(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:
(1) 4.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and
(2) 13.2 grams per mile on the US06 test; or
(B) *Composite Carbon Monoxide Standard:* 5.0 grams per mile.
(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the following standards at full useful life:
(i) Nonmethane hydrocarbon and oxides of nitrogen composite: 2.09 grams per mile.
(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:
(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:
(1) 6.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and
(2) 19.3 grams per mile on the US06 test; or
(B) *Composite Carbon Monoxide Standard:* 7.3 grams per mile.
(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.
(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 4's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.
(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:
(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.
(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.
(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.
(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.
(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:
(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.
(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.
(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.
(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.
(e) [Reserved]
(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:
(1) Hydrocarbons: 100 ppm as hexane.
(2) Carbon monoxide: 0.5%.
(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

§ 86.1815–04 Emission standards for light-duty trucks 4.

This section applies to 2004 and later model year light-duty truck 4's fueled by gasoline, diesel, methanol, natural gas and liquefied petroleum gas fuels except as noted. Multi-fueled vehicles shall comply with all requirements established for each consumed fuel. For methanol fueled vehicles, references in this section to total hydrocarbons shall mean total hydrocarbon equivalents and references to non-methane hydrocarbons shall mean non-methane hydrocarbon equivalents.
(a) *Exhaust emission standards.* (1) Exhaust emissions light-duty truck 4's shall not exceed the following standards at intermediate useful life:
(i) [Reserved]
(ii) Non-methane hydrocarbons: 0.39 grams per mile.
(iii) Carbon monoxide: 5.0 grams per mile.
(iv) Oxides of nitrogen: 1.1 grams per mile except diesel fueled vehicles which have no standard.
(v) [Reserved]
(2) Exhaust emissions shall not exceed the following standards at full useful life:
(i) Total hydrocarbons: 0.80 grams per mile except natural gas fuel which has no total hydrocarbon standard.
(ii) Non-methane hydrocarbons: 0.56 grams per mile.
(iii) Carbon monoxide: 7.3 grams per mile.
(iv) Oxides of nitrogen: 1.53 grams per mile.
(v) Particulate matter: 0.12 grams per mile.
(b) *Supplemental exhaust emissions.* (1) Supplemental exhaust emissions from light-duty truck 4's shall not exceed the following standards at intermediate useful life:
(i) Non-methane hydrocarbon and oxides of nitrogen composite: 1.49 grams per mile.
(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:
(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:
(1) 4.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and
(2) 13.2 grams per mile on the US06 test; or
(B) *Composite Carbon Monoxide Standard:* 5.0 grams per mile.
(2) Supplemental exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the following standards at full useful life:
(i) Non-methane hydrocarbon and oxides of nitrogen composite: 2.09 grams per mile.
(ii) Carbon monoxide. Regulated vehicles shall meet at least one of the following two sets of standards:
(A) *Individual US06 and SC03 Air Conditioning compliance.* Comply with both the following standards:
(1) 6.4 grams per mile on the A/C test, not applicable to diesel fueled vehicles; and
(2) 19.3 grams per mile on the US06 test; or
(B) *Composite Carbon Monoxide Standard:* 7.3 grams per mile.
(c) *Cold temperature emission standards.* Exhaust emissions from gasoline-fueled light-duty truck 4's shall not exceed the cold temperature CO standard of 12.5 grams per mile for an intermediate useful life of 50,000 miles.

(d) *Evaporative emissions.* Evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, and methanol-fueled light-duty truck 4's shall not exceed the following standards. The standards apply equally to certification and in-use vehicles. The spitback standard also applies to newly assembled vehicles.

(1) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of 30 gallons or more shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 3.0 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(2) Hydrocarbons for gasoline and methanol light-duty trucks with a nominal fuel tank capacity of less than 30 gallons shall not exceed the following standards:

(i) For the full three-diurnal test sequence, diurnal plus hot soak measurements: 2.0 grams per test.

(ii) *Gasoline and methanol fuel only.* For the supplemental two-diurnal test sequence, diurnal plus hot soak measurements: 2.5 grams per test.

(iii) *Gasoline and methanol fuel only.* Running loss test: 0.05 grams per mile.

(iv) *Gasoline and methanol fuel only.* Fuel dispensing spitback test: 1.0 grams per test.

(e) *Refueling emissions.* (1) Refueling emissions from light-duty truck 4's shall be phased in, in accordance with the schedule in table S01–5 of § 1810–01 not to exceed the following emission standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled vehicles: 0.20 grams hydrocarbon per gallon (0.053 gram per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled vehicles: 0.15 grams hydrocarbon per gallon (0.04 gram per liter) of fuel dispensed.

(f) *Certification short test.* Certification short test emissions from gasoline-fueled Otto-cycle light-duty vehicles and light-duty trucks shall not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane.

(2) Carbon monoxide: 0.5%.

(g) *Idle exhaust emission standards, light-duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas- and liquefied petroleum gas-fueled light-duty trucks shall not exceed 0.50 percent of exhaust gas flow at curb idle for a useful life of 11 years or 120,000 miles, whichever occurs first.

§§ 86.1816 through 86.1819 [Reserved].

§ 86.1820–01 Durability group determination.

This section applies to the grouping of vehicles into durability groups. Manufacturers shall divide their product line into durability groups based on the following criteria:

(a) The vehicles covered by a certification application shall be divided into groups of vehicles which are expected to have similar emission deterioration and emission component durability characteristics throughout their useful life. Manufacturers shall use good engineering judgment in dividing their vehicles into durability groups. Such groups of vehicles are defined as durability groups.

(b) To be included in the same durability group, vehicles must be identical in all the respects listed in paragraphs (b) (1) through (7) of this section:

(1) Combustion cycle (e.g., two stroke, four stroke, Otto cycle, diesel cycle).

(2) Engine type (e.g., piston, rotary, turbine, air cooled versus water cooled).

(3) Fuel used (e.g., gasoline, diesel, methanol, ethanol, CNG, LPG, flexible fuels).

(4) Basic fuel metering system (e.g., throttle body injection, port injection (including central port injection), carburetor, CNG mixer unit).

(5) Catalyst construction (for example, beads or monolith).

(6) Precious metal composition of the catalyst by the type of principal active material(s) used (e.g., platinum based oxidation catalyst, palladium based oxidation catalyst, platinum and rhodium three-way catalyst, palladium and rhodium three way catalyst, platinum and palladium and rhodium three way catalyst).

(7) The manufacturer must choose one of the following two criteria:

(i) Grouping statistic:

(A) Vehicles are grouped based upon the value of the grouping statistic determined using the following equation:

GS = [(Cat Vol)/(Disp)] × Loading Rate

Where:

GS = Grouping Statistic used to evaluate the range of precious metal loading rates and relative sizing of the catalysts compared to the engine displacement that are allowable within a durability group. The grouping statistic shall be rounded to a tenth of a gram/liter, in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1).

Cat Vol = Total volume of the catalyst(s) in liters.

Disp = Displacement of the engine in liters.

Loading rate = The mass of total precious metal(s) in the catalyst (or the total mass of all precious metal(s) of all the catalysts if the vehicle is equipped with multiple catalysts) in grams divided by the total volume of the catalyst(s) in liters.

(B) Engine-emission control system combinations which have a grouping statistic which is either less than 25 percent of the largest grouping statistic value, or less than 0.2 g/liter (whichever allows the greater coverage of the durability group) shall be grouped into the same durability group.

(ii) The manufacturer may elect to use another procedure which results in at least as many durability groups as required using criteria in paragraph (b)(7)(i) of this section providing that only vehicles with similar emission deterioration or durability are combined into a single durability group.

(c) Where vehicles are of a type which cannot be divided into durability groups based on the criteria listed above (such as non-catalyst control system approaches), the Administrator will establish durability groups for those vehicles based upon the features most related to their exhaust emission deterioration characteristics.

(d) Manufacturers may further divide groups determined under paragraph (b) of this section provided the Administrator is notified of any such changes prior to or concurrently with the submission of the application for certification (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(e) Manufacturers may request the Administrator's approval to combine vehicles into a single durability group which would normally not be eligible to be in a single durability group. The petition should provide:

(1) Substantial evidence that all the vehicles in the larger grouping will have the same degree of emission deterioration;

(2) Evidence of equivalent component durability over the vehicle's useful life; and

(3) Evidence that the groups will result in sufficient In-Use Verification Program data, appropriate tracking in use, and clear liability for the Agency's recall program.

§ 86.1821–01 Evaporative/refueling family determination.

(a) The gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles and light-duty trucks described in a certification application will be divided into groupings which are expected to have similar evaporative and/or refueling emission characteristics (as applicable) throughout their useful life. Each group of vehicles with similar evaporative and/or refueling emission characteristics shall be defined as a separate evaporative/refueling family. Manufacturers shall use good engineering judgment to determine evaporative/refueling families.

(b) For gasoline-fueled or methanol-fueled light-duty vehicles and light-duty trucks to be classed in the same evaporative/refueling family, vehicles must be similar with respect to the items listed in paragraphs (b) (1) through (9) of this section.

(1) Type of vapor storage device (e.g., canister, air cleaner, crankcase).

(2) Basic canister design.

(i) Working capacity—grams adsorption within a 10 g. range.

(ii) System configuration—number of canisters and method of connection (i.e., series, parallel).

(iii) Canister geometry, construction and materials.

(3) Fuel system.

(4) Type of refueling emission control system—non-integrated or integrated with the evaporative control system. Further, if the system is non-integrated, whether or not any other evaporative emissions, e.g. diurnal or hot soak emissions, are captured in the same storage device as the refueling emissions.

(5) Fillpipe seal mechanism—mechanical, liquid trap, other.

(6) Vapor control system or method of controlling vapor flow through the vapor line to the canister (for example, type of valve, vapor control strategy).

(7) Purge control system (for example, type of valve, purge control strategy).

(8) Vapor hose material.

(9) Fuel tank material.

(c) Where vehicles are of a type which cannot be divided into evaporative/refueling families based on the criteria listed above (such as non-canister control system approaches), the Administrator will establish families for those vehicles based upon the features most related to their evaporative and/or refueling emission characteristics.

(d) Manufacturers may further divide families determined under paragraph (b) of this section provided the Administrator is notified of any such changes prior to or concurrently with the submission of the application for certification (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(e) Manufacturers may petition the Administrator to combine vehicles into a single evaporative/refueling family which would normally not be eligible to be in a single evaporative/refueling family. The petition should provide:

(1) Substantial evidence that all the vehicles in the larger grouping will have the same degree of evaporative emission deterioration;

(2) Evidence of equivalent component durability over the vehicle's useful life; and

(3) Evidence that the groups will result in sufficient In-Use Verification Program data, appropriate tracking in use, and clear liability for the Agency's recall program.

§ 86.1822–01 Durability data vehicle selection.

(a) Within each durability group, the vehicle configuration which is expected to generate the highest level of exhaust emission deterioration on candidate vehicles in use, considering all constituents, shall be selected as the durability data vehicle configuration. The manufacturer will use good engineering judgment in making this selection.

(b) The manufacturer may select, using good engineering judgment, an equivalent or worst-case configuration in lieu of testing the vehicle selected in paragraph (a) of this section. Carryover data satisfying the provisions of § 86.1839–01 may also be used in lieu of testing the configuration selected in paragraph (a) of this section.

§ 86.1823–01 Durability demonstration procedures for exhaust emissions.

This section applies to light-duty vehicles, light-duty trucks, and heavy-duty vehicles certified under the provisions of § 86.1801–01(c)(1). Eligible small volume manufacturers or small volume test groups may optionally meet the requirements of §§ 86.1838–01 and 86.1826–01 in lieu of the requirements of this section. For model years 2001, 2002, and 2003 all manufacturers may elect to meet the provisions of paragraph (c)(2) of this section in lieu of these requirements.

(a) The manufacturer shall propose a durability program consisting of the elements discussed in paragraphs (a)(1) through (a)(3) of this section for advance approval by the Administrator. The durability process shall be designed to effectively predict the expected deterioration of candidate in-use vehicles over their full and intermediate useful life and shall be consistent with good engineering judgment. The Administrator will approve the program if he/she determines that it is reasonably expected to meet these design requirements.

(1) *Service accumulation method.* (i) Each durability program shall include a service accumulation method designed to effectively predict the deterioration of emissions in actual use over the full and intermediate useful life of candidate in-use vehicles.

(ii) Manufacturers may propose service accumulation methods based upon whole-vehicle full-mileage accumulation, whole vehicle accelerated mileage accumulation (e.g., where 40,000 miles on a severe mileage accumulation cycle is equivalent to 100,000 miles of normal in-use driving), bench aging of individual components or systems, or other approaches approved by the Administrator.

(A) For whole vehicle mileage accumulation programs, all emission control components and systems (including both hardware and software) must be installed and operating for the entire mileage accumulation period.

(B) Bench procedures shall simulate the aging of components or systems over the applicable useful life and shall simulate driving patterns and vehicle operational environments found in actual use. For this purpose, manufacturers may remove the emission-related components (and other components), in whole or in part, from the durability vehicle itself and deteriorate them independently. Vehicle testing for the purpose of determining deterioration factors may include the testing of durability vehicles that incorporate such bench-aged components.

(2) *Vehicle/component selection method.* The manufacturer shall propose a vehicle/component selection method for advance approval by the Administrator. The procedure for selecting durability data vehicles and components shall meet the requirements of § 86.1822–01.

(3) *Use of deterioration program to determine compliance with the standard.* The manufacturer shall propose procedures for the determination of compliance with the standards for advance approval by the Administrator. The calculation of deterioration factors and/or the determination of vehicle compliance

shall be according to the procedures approved in advance by the Administrator. The Administrator will allow two methods for using the results of the deterioration program to determine compliance with the standards. Either a deterioration factor (DF) is calculated and applied to the emission data vehicle (EDV) emission results or aged components are installed on the EDV prior to emission testing. Other methods may be approved by the Administrator if they result in an effective prediction of intermediate and full useful life emission levels on candidate in-use vehicles.

(i) *Use of Deterioration factors.* (A) Deterioration factors are calculated using all FTP emission test data generated during the durability testing program except as noted:

(1) Multiple tests at a given mileage point are averaged together unless the same number of tests are conducted at each mileage point.

(2) Before and after maintenance test results are averaged together.

(3) Zero-mile test results are excluded from the calculation.

(4) When calculating intermediate and full useful life deterioration factors all data points should be included in the calculations, except that total hydrocarbon (THC) test points beyond the 50,000-mile (useful life) test point shall not be included in the calculations.

(5) A procedure may be employed to identify and remove from the DF calculation those test results determined to be statistical outliers providing that the outlier procedure is consistently applied to all vehicles and data points and is approved in advance by the Administrator.

(B) The deterioration factor shall be based on a linear regression, or an other regression technique approved in advance by the Administrator. The deterioration may be a multiplicative or additive factor. Separate factors will be calculated for each regulated emission constituent and for the full and intermediate useful life periods as applicable. Separate DF's are calculated for each durability group except as provided in paragraph (c) of this section.

(1) A multiplicative DF will be calculated by taking the ratio of the full or intermediate useful life mileage level, as appropriate (rounded to four decimal places), divided by the stabilized mileage (reference § 86.1831–01(c), e.g., 4000-mile) level (rounded to four decimal places) from the regression analysis; the result shall be rounded to three-decimal places of accuracy. The rounding required in this paragraph shall be conducted in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1). Calculated DF values of less than one shall be changed to one for the purposes of this paragraph.

(2) An additive DF will be calculated to be the difference between the full or intermediate useful life mileage level (as appropriate) minus the stabilized mileage (reference § 86.1831–01(c), e.g. 4000-mile) level from the regression analysis. The full useful life regressed emission value, the stabilized mileage regressed emission value, and the DF result shall be rounded to the same precision and using the same procedures as the raw emission results according to the provisions of § 86.1837–01. Calculated DF values of less than zero shall be changed to zero for the purposes of this paragraph.

(C) The DF calculated by these procedures will be used for determining compliance with FTP exhaust emission standards, SFTP exhaust emission standards, and cold CO emission standards. At the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using cold CO test data to determine compliance with cold CO emission standards. Also at the manufacturer's option and using procedures approved by the Administrator, a separate DF may be calculated exclusively using US06 and/or air conditioning (SC03) test data to determine compliance with the SFTP emission standards.

(ii) *Installation of aged components on emission data vehicles.* For full and intermediate useful life compliance determination, the manufacturer may elect to install aged components on an EDV rather than applying a deterioration factor. Different sets of components may be aged for full and intermediate useful life periods. The list of components to be installed, the techniques used to select physical parts to be aged, and the aging techniques employed to age the components must be approved in advance by the Administrator.

(b) In addition to the provisions of paragraph (a) of this section, manufacturers shall submit the following information when applying for the Administrator's approval of a durability program:

(1) Analysis and/or data demonstrating the adequacy of the manufacturer's durability processes to effectively predict emission compliance for candidate in-use vehicles. All regulated emission constituents and all test procedures shall be considered in this analysis. This data and discussion shall cover the breadth of the manufacturer's product line that will be covered by this durability procedure.

(2) Discussion of the manufacturer's in-use verification procedures including testing performed, vehicle procurement procedures used, and vehicles rejection criteria used. Any questionnaires used or inspections performed should also be documented in the manufacturer's submission. The in-use verification program shall meet the requirements of §§ 86.1845–01, 86.1846–01 and 86.1847–01.

(c) *Carryover and carryacross.* (1) Manufacturers may carry over or carry across mileage accumulation data, aged hardware, or deterioration factors according to the provisions of § 86.1839–01 using good engineering judgment.

(2) For the 2001, 2002, and 2003 model years, the manufacturer may carry over exhaust emission DF's previously generated under the Standard AMA Durability Program described in § 86.094–13(c), the Alternate Service Accumulation Durability Program described in § 86.094–13(e) or the Standard Self-Approval Durability Program for light-duty trucks described in § 86.094–13(f) in lieu of complying with the durability provisions of paragraph (a)(1) of this section.

(i) This provision is limited to the use of existing data used for a 2000 model year or earlier certification. All new exhaust durability data must be generated according to the provisions of paragraph (a)(1) of this section.

(ii) The manufacturer shall exercise good engineering judgment when determining the eligibility to use carryover exhaust emission DF's and the selection of the vehicle used as the source of carryover.

(iii) Starting with the 2004 model year, manufacturers must meet the provisions of paragraphs (a) and (b) of this section.

(d) *Data reporting requirements.* Data reporting requirements are contained in § 86.1844–01.

(e) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(f) *In-use verification.* The durability program must meet the requirements of § 86.1845–01.

(g) The manufacturer shall apply the approved durability process to a

durability group, including durability groups in future model years, if the durability process will effectively predict (or alternatively, overstate) the deterioration of emissions in actual use over the full and intermediate useful life of candidate in-use vehicles. The manufacturer shall use good engineering judgment in determining the applicability of the durability program to a durability group.

(1) The manufacturer may make modifications to an approved durability process using good engineering judgment for the purpose of ensuring that the modified process will effectively predict, (or alternatively, overstate) the deterioration of emissions in actual use over the full and intermediate useful life of candidate in-use vehicles.

(2) The manufacturer shall notify the Administrator of its determination to use an approved (or modified) durability program on particular test groups and durability groups prior to emission data vehicle testing for the affected test groups (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(3) Prior to certification, the Administrator may reject the manufacturer's determination in paragraph (g) of this section if it is not made using good engineering judgment or it fails to properly consider data collected under the provisions of §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability process has not been shown to effectively predict emission levels or compliance with the standards in use on candidate vehicles for particular test groups which the manufacturers plan to cover with the durability process.

(h) The Administrator may withdraw approval to use a durability process or require modifications to a durability process based on the data collected under §§ 86.1845–01, 86.1846–01, and 86.1847–01 or other information if the Administrator determines that the durability processes have not been shown to accurately predict emission levels or compliance with the standards in use on candidate vehicles (provided the inaccuracy could result in a lack of compliance with the standards for a test group covered by this durability process). Such withdrawals shall apply to future applications for certification and to the portion of the manufacturer's product line (or the entire product line) that the Administrator determines to be affected. Prior to such a withdrawal the Administrator shall give the manufacturer a preliminary notice at least 60 days prior to the final decision. During this period, the manufacturer may submit technical discussion, statistical analyses, additional data, or other information which is relevant to the decision. The Administrator will consider all information submitted by the deadline before reaching a final decision.

(i) Any manufacturer may request a hearing on the Administrator's withdrawal of approval in paragraph (h) of this section. The request shall be in writing and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objection. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, she/he shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

§ 86.1824–01 Durability demonstration procedures for evaporative emissions.

This section applies to gasoline-, methanol-, liquefied petroleum gas-, and natural gas-fueled light-duty vehicles and light-duty trucks. The manufacturer shall determine a durability process that will predict the expected evaporative emission deterioration of candidate in-use vehicles over their full useful life. The manufacturer shall use good engineering judgment in determining this process.

(a) Service accumulation method. (1) The manufacturer shall develop a service accumulation method designed to effectively predict the deterioration of candidate in-use vehicles' evaporative emissions in actual use over its full useful life. The manufacturer shall use good engineering judgement in developing this method.

(2) The manufacturers may develop a service accumulation methods based upon whole-vehicle full-mileage accumulation, whole vehicle accelerated mileage accumulation (e.g., where 40,000 miles on a severe mileage accumulation cycle is equivalent to 100,000 miles of normal in-use driving), bench aging of individual components or systems, or other approaches approved by the Administrator.

(i) For whole vehicle mileage accumulation programs, all emission control components and systems (including both hardware and software) must be installed and operating for the entire mileage accumulation period.

(ii) Bench procedures shall simulate the aging of components or systems over the applicable useful life and shall simulate driving patterns and vehicle operational environments found in actual use. For this purpose, manufacturers may remove the emission-related components (and other components), in whole or in part, from the durability vehicle itself and deteriorate them independently. Vehicle testing for the purpose of determining deterioration factors may include the testing of durability vehicles that incorporate such bench-aged components.

(b) Vehicle/component selection method. The manufacturer shall determine a vehicle and component selection procedure which results in representative test vehicles and reflects good engineering judgment.

(c) The manufacturer shall calculate a deterioration factor which is applied to the evaporative emission results of the emission data vehicles. The deterioration factor shall be based on a linear regression, or an other regression technique approved in advance by the Administrator. The DF will be calculated to be the difference between the full life mileage evaporative level minus the stabilized mileage (e.g., 4000-mile) evaporative level from the regression analysis. The DF and the full and stabilized mileage emission levels shall be rounded to two decimal places of accuracy in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1(b)(1). Calculated DF values of less than zero shall be changed to zero for the purposes of this paragraph.

(d) Emission component durability. The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(e) In-use verification. The durability program must meet the requirements of § 86.1845–01.

(f) Information obtained under §§ 86.1845–01, 86.1846–01, 86.1847–01 or from other sources shall be used by the manufacturer in developing new durability processes and/or updating existing durability processes using good engineering judgment.

§ 86.1825–01 Durability demonstration procedures for refueling emissions.

This section applies to light-duty vehicles, light-duty trucks, and heavy-duty vehicles which are certified under light-duty rules as allowed under the provisions of § 86.1801–01(c)(1) which are subject to refueling loss emission compliance. Refer to the provisions of

§§ 86.1811, 86.1812, 86.1813, 86.1814, and 86.1815 to determine applicability of the refueling standards to different classes of vehicles for various model years. Diesel fuel vehicles may qualify for an exemption to the requirements of this section under the provisions of § 86.1810. The manufacturer shall determine a durability process that will predict the expected refueling emission deterioration of candidate in-use vehicles over their full useful life. The manufacturer shall use good engineering judgment in determining this process.

(a) Service accumulation method. (1) The manufacturer shall develop a service accumulation method designed to effectively predict the deterioration of candidate in-use vehicles' refueling loss emissions in actual use over its full useful life. The manufacturer shall use good engineering judgement in developing this method.

(2) The manufacturers may develop a service accumulation methods based upon whole-vehicle full-mileage accumulation, whole vehicle accelerated mileage accumulation (e.g., where 40,000 miles on a severe mileage accumulation cycle is equivalent to 100,000 miles of normal in-use driving), bench aging of individual components or systems, or other approaches approved by the Administrator.

(i) For whole vehicle mileage accumulation programs, all emission control components and systems (including both hardware and software) must be installed and operating for the entire mileage accumulation period.

(ii) Bench procedures shall simulate the aging of components or systems over the applicable useful life and shall simulate driving patterns and vehicle operational environments found in actual use. For this purpose, manufacturers may remove the emission-related components (and other components), in whole or in part, from the durability vehicle itself and deteriorate them independently. Vehicle testing for the purpose of determining deterioration factors may include the testing of durability vehicles that incorporate such bench-aged components.

(b) Vehicle/component selection method. The manufacturer shall determine a vehicle and component selection procedure which results in representative test vehicles and reflects good engineering judgment.

(c) The manufacturer shall calculate a deterioration factor which is applied to the refueling emission results of the emission data vehicles. The deterioration factor shall be based on a linear regression, or an other regression technique approved in advance by the Administrator. The DF will be calculated to be the difference between the full life mileage refueling loss emission level minus the stabilized mileage (e.g., 4000-mile) refueling loss emission level from the regression analysis. The DF and the full and stabilized mileage emission levels shall be rounded to two decimal places of accuracy in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference, see § 86.1(b)(1). Calculated DF values of less than zero shall be changed to zero for the purposes of this paragraph.

(d) The durability process described in paragraph (a) of this section must be described in the application for certification under the provisions of § 86.1844–01.

(e) Emission component durability. The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the full useful life of the vehicles in actual use.

(f) In-use verification. The durability program must meet the requirements of § 86.1845–01.

(g) Information obtained under §§ 86.1845–01, 86.1846–01, 86.1847–01 or from other sources shall be used by the manufacturer in developing new durability processes and/or updating existing durability processes using good engineering judgment.

§ 86.1826–01 Assigned deterioration factors for small volume manufacturers and small volume test groups.

(a) *Applicability.* This program is an option available to small volume manufacturers certified under the small volume manufacturer provisions of § 86.1838–01(b)(1) and small volume test groups certified under the small volume test group provisions of § 86.1838–01(b)(2). Manufacturers may elect to use these procedures in lieu of the requirements of §§ 86.1823–01, 86.1824–01, and 86.1825–01 of this subpart.

(b) *Determination of deterioration factors.* No service accumulation method or vehicle/component selection method is required. Deterioration factors for all types of regulated emissions are determined using the provisions in this paragraph. A separate assigned deterioration factor is required for each durability group. Manufacturers shall use good engineering judgment in determining deterioration factors.

(1) Manufacturers with aggregated sales of less than 301 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) may use assigned deterioration factors that the Administrator determines and prescribes.

(i) The deterioration factors will be the Administrator's estimate, periodically updated and published in a guidance document or advisory circular, of the 70th percentile deterioration factors calculated using the industry-wide data base of previously completed durability data vehicles or engines used for certification.

(ii) If there is insufficient deterioration information to calculate an appropriate industry-wide deterioration factor (for example: a new engine technology coupled with a proven emission control system), the Administrator may, at his/her discretion, use alternative methods to develop a deterioration factor.

(2) Manufacturers with aggregated sales from and including 301 through 14,999 motor vehicles and motor vehicle engines per year (determined under the provisions of § 86.1838–01(b)) certifying light-duty vehicle or trucks on vehicles equipped with proven emission control systems shall conform to the following provisions:

(i) Manufacturers shall use assigned deterioration factors that the manufacturer determines based on its good engineering judgment.

(A) The manufacturer may not use deterioration factors less than either the average or 70th percentile of all of that manufacturer's deterioration factor data, whichever is less. These minimum deterioration factors shall be calculated according to procedures in paragraph (b)(2)(ii), of this section.

(B) If the manufacturer does not have at least two data points to calculate these manufacturer specific average deterioration factors, then the deterioration factors shall be no less than the EPA supplied industry-wide deterioration factors.

(C) If there is insufficient deterioration information to calculate an appropriate industry-wide deterioration factor (for example, a new engine technology coupled with a proven emission control system), the Administrator may, at his/her discretion, use alternative methods to develop a deterioration factor.

(ii) The manufacturer's minimum deterioration factors shall be calculated using the deterioration factors from all durability groups, within the same vehicle/engine-fuel usage category (e.g., gasoline-fueled light-duty vehicle, etc.) previously certified to the same emission standards.

(A) The manufacturer shall use only deterioration factors from durability groups whose test groups were previously certified by the manufacturer and the deterioration factors shall not be included in the calculation more than once.

(B) The deterioration factors for each pollutant shall be calculated separately.

(C) The manufacturer may, at its option, limit the deterioration factors used in the calculation of the manufacturer's minimum deterioration factors to those from all similar emission control systems to the system being certified if sufficient data (i.e., from at least two certified systems) exists.

(D) All data eligible to be grouped as similar emission control system data shall be used in calculating similar system deterioration factors.

(E) Any deterioration factors used in calculating similar system deterioration factors shall not be included in calculating the manufacturer's minimum deterioration factors used to certify any of the manufacturer's remaining vehicle systems.

(3) Manufacturers with aggregated sales from 301 through 14,999 motor vehicles and motor vehicle engines and certifying light-duty vehicle exhaust emissions from vehicles equipped with unproven emission control systems shall conform to the following provisions:

(i) The manufacturer shall use deterioration factors that the manufacturer determines from official certification durability data generated by vehicles from durability groups representing a minimum of 25 percent of the manufacturer's sales equipped with unproven emission control systems.

(ii) The sales projections are to be based on total sales projected for each test group.

(iii) The durability data vehicle mileage accumulation and emission tests are to be conducted in accordance with § 86.1831–01.

(iv) The manufacturer must develop either deterioration factors or aged components to use on EDV testing by generating durability data in accordance with § 86.1823–01, 86.1824–01, and/or 86.1825–01 on a minimum of 25 percent of the manufacturer's projected sales (based on durability groups) that is equipped with unproven emission control systems.

(v) The manufacturer must complete the 25 percent durability requirement before the remainder of the manufacturer's sales equipped with unproven emission control systems is certified using manufacturer-determined assigned deterioration factors.

(c) *Emission component durability.* The manufacturer shall use good engineering judgment to determine that all emission-related components are designed to operate properly for the useful life of the vehicles in actual use (or alternative intervals as permitted in § 86.1805–01).

§ 86.1827–01 Test group determination.

This section applies to the grouping of vehicles into test groups within a durability group. The vehicles covered by an application within a durability group shall be divided into test groups based on the following criteria. The manufacturer shall use good engineering judgment in grouping vehicles into test groups.

(a) To be included in the same test group, vehicles must be identical in all following respects:

(1) Durability group;

(2) Engine displacement (within a total band width of 15 percent of the largest displacement or 50 CID, whichever is larger);

(3) Number of cylinders or combustion chambers;

(4) Arrangement of cylinders or combustion chambers (e.g. in-line, v-shaped);

(5) Subject to the same emission standards. Light-duty trucks which are subject to the same emission standards as light-duty vehicles with the exception of the light-duty truck idle CO standard and/or total HC standard may be included in the same test group.

(b) Where vehicles are of a type which cannot be divided into test groups based on the criteria listed above (such as non-cylinder engines), the Administrator will establish test groups for those vehicles based upon the features most related to their exhaust emission characteristics.

(c) Manufacturers may further divide groups determined under paragraph (a) of this section providing the Administrator is notified in advance of any such changes in writing.

(d) Manufacturers may request the Administrator's approval to combine vehicles into a single test group which would normally not be eligible to be in a single test group. The petition should provide:

(1) Substantial evidence that all the vehicles in the larger grouping will have the similar levels of emissions;

(2) Evidence of equivalent component durability over the vehicle's useful life; and

(3) Evidence that the groups will result in sufficient in-use verification program data, appropriate tracking in use, and clear liability for the Agency's recall program.

§ 86.1828–01 Emission data vehicle selection.

(a) *FTP and SFTP testing.* Within each test group, the vehicle configuration shall be selected which is expected to be worst-case for exhaust emission compliance on candidate in-use vehicles, considering all exhaust emission constituents, all exhaust test procedures, and the potential impact of air conditioning on test results. The selected vehicle will include an air conditioning engine code unless the worst-case vehicle configuration selected is not available with air conditioning. This vehicle configuration will be used as the EDV calibration.

(b) *Evaporative/Refueling testing.* Vehicles of each evaporative/refueling family will be divided into evaporative/refueling emission control systems.

(1) The vehicle configuration expected to exhibit the highest evaporative and/or refueling emission on candidate in-use vehicles shall be selected for each evaporative/refueling family and evaporative refueling emission system combination from among the corresponding vehicles selected for FTP and SFTP testing under paragraph (a) of this section. Separate vehicles may be selected to be tested for evaporative and refueling testing.

(2) Each test group must be represented by both evaporative and refueling testing (provided that the refueling standards are applicable) before it may be certified. That required testing may have been conducted on a vehicle in another test group provided the tested vehicle is a member of the same evaporative/refueling family and evaporative/refueling emission system combination and it was selected for testing in accordance with the provisions of paragraph (b)(1) of this section.

(3) For evaporative/refueling emission testing, the vehicle(s) selected shall be equipped with the worst-case evaporative/refueling emission hardware available on that vehicle considering such items as canister size and material, fuel tank size and material, purge strategy and flow rates, refueling characteristics, and amount of vapor generation.

(c) *Cold CO testing.* For cold temperature CO exhaust emission compliance for each durability group, the vehicle expected to emit the highest CO emissions at 20 degrees F on candidate in-use vehicles shall be selected from the test vehicles selected in accordance with paragraph (a) of this section.

(d) *Certification Short Test testing.* For CST exhaust emission compliance for each durability group, the vehicle expected to emit the highest CST emissions on candidate in-use vehicles shall be selected from the vehicles selected in accordance with paragraph (a) of this section. The manufacturer may elect to submit a compliance statement in lieu of test data under the provisions of § 86.1829–01.

(e) The manufacturer may select, using good engineering judgement, an equivalent or worst-case configuration in lieu of testing the vehicle selected in paragraphs (a) through (d) of this section. Carryover data satisfying the provisions of § 86.1839–01 may also be used in lieu of testing the configuration selected in paragraphs (a) through (d) of this section.

(f) The manufacturer shall use good engineering judgment in making selections of vehicles under this section.

§ 86.1829–01 Durability and emission testing requirements; waivers.

(a) *Durability demonstration.* (1) One durability demonstration is required for each durability group.

(2) The configuration of the DDV is determined according to the provisions of § 86.1822–01.

(3) The DDV shall be tested and accumulate service mileage according to the provisions of §§ 86.1831–01, 86.1823–01, 86.1824–01 and 86.1825–01. Small volume manufacturers and small volume test groups may optionally meet the requirements of § 86.1838–01.

(b) *Emissions demonstration.* (1) *FTP and SFTP Exhaust Testing.* (i) *Testing at low altitude.* One EDV shall be tested in each test group for exhaust emissions using the FTP and SFTP test procedures of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01 of this subpart.

(ii) *Testing at high altitude.* For high-altitude exhaust emission compliance for each test group, the manufacturer shall follow one of the following two procedures:

(A) One EDV shall be tested in each test group for exhaust emissions using the FTP test procedures of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01; or

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(1)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of appropriate high-altitude emission testing, all light-duty vehicles and light-duty trucks comply with the emission standards at high altitude.

(iii) *Data submittal waivers.* (A) In lieu of testing a methanol-fueled diesel-cycle light truck for particulate emissions a manufacturer may provide a statement in its application for certification that such light trucks comply with the applicable standards. Such a statement shall be based on previous emission tests, development tests, or other appropriate information.

(B) In lieu of testing a gasoline-fueled or methanol-fueled Otto-cycle certification light-duty vehicle or light-duty trucks for particulate emissions a manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement shall be based on previous emission tests, development tests, or other appropriate information.

(C) A manufacturer may petition the Administrator for a waiver of the requirement to submit total hydrocarbon emission data. If the waiver is granted, then in lieu of testing a certification light-duty vehicle or light-duty truck for total hydrocarbon emissions the manufacturer may provide a statement in its application for certification that such vehicles comply with the applicable standards. Such a statement shall be based on previous emission tests, development tests, or other appropriate information.

(D) A manufacturer may petition the Administrator to waive the requirement to measure particulate emissions when conducting Selective Enforcement Audit testing of Otto-cycle vehicles.

(2) *Evaporative/Refueling testing.* Vehicles of each evaporative/refueling family will be divided into evaporative/refueling emission control systems. Applicability of the refueling test requirements of this paragraph shall be determined in accordance with the applicability of the refueling loss standards under the provisions of § 86.1810.

(i) *Testing at low altitude.* One EDV in each evaporative/refueling family and evaporative/refueling emission control system combination shall be tested in accordance with the evaporative/refueling test procedure requirement of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01. The EDV must also be tested for exhaust emission compliance using the FTP and SFTP procedures of subpart B of this part.

(ii) *Testing at high altitude.* For high-altitude evaporative and/or refueling emission compliance for each evaporative/refueling family, the manufacturer shall follow one of the following two procedures:

(A) One EDV in each evaporative/refueling family and evaporative/refueling emission control system combination shall be tested in accordance with the evaporative/refueling test procedure requirement of subpart B of this part. The configuration of the EDV will be determined under the provisions of § 86.1824–01. The EDV must also be tested for exhaust emissions using the FTP procedures of subpart B of this part while operated at high altitude; or

(B) In lieu of testing vehicles according to the provisions of paragraph (b)(2)(ii)(A) of this section, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such high-altitude emission testing as the manufacturer deems appropriate, all light-duty vehicles and light-duty trucks comply with the emission standards at high altitude.

(3) *Cold CO Testing.* One EDV in each durability group shall be tested for cold temperature CO exhaust emission compliance in accordance with the test procedures in subpart C of this part or with alternative procedures requested by the manufacturer and approved in advance by the Administrator. The selection of which EDV and test group within the durability group will be tested for cold CO compliance will be determined under the provisions of § 86.1828–01(c).

(4) *Certification Short Test testing.* (i) To determine CST emission compliance for each durability group, the manufacturer shall follow one of the following two procedures:

(A) One EDV in each durability group shall be tested in accordance with the CST procedures set forth in subpart O of this part. The configuration of the EDV will be determined under the provisions of § 86.1828–01(d). The EDV must also be tested for exhaust emissions using the FTP and SFTP procedures of subpart B of this part; or

(B) In lieu of testing vehicles according to the provisions of § 86.1829–01(b)(4)(i)(A), a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such CST testing as the manufacturer deems appropriate, all light-duty vehicles and light-duty trucks comply with the CST emission standards.

(ii) For light-duty vehicles and light-duty trucks, a manufacturer with a test group that cannot be appropriately tested on all Certification Short Test

emission test procedures described in § 86.1439 may request an exemption, as described in § 86.1427(d), from the inappropriate test(s) for purposes of demonstrating compliance with the Certification Short Test as described in subpart O of this part.

(iii) For light-duty vehicles and light-duty trucks, a manufacturer with a test group that can be appropriately tested on none of the Certification Short Test emission test procedures described in § 86.1439 may request an alternative procedure as described in § 86.1427(d).

(5) *Idle CO Testing.* To determine idle CO emission compliance for light-duty trucks, the manufacturer shall follow one of the following two procedures:

(i) For test groups containing light-duty trucks, each EDV shall be tested in accordance with the idle CO testing procedures of subpart B of this part; or

(ii) In lieu of testing light trucks for idle CO emissions, a manufacturer may provide a statement in its application for certification that, based on the manufacturer's engineering evaluation of such idle CO testing as the manufacturer deems appropriate, all light-duty trucks comply with the idle CO emission standards.

(c) *Running change testing.* Running change testing shall be conducted as required under the provisions of § 86.1842–01.

§ 86.1830–01 Acceptance of vehicles for emission testing.

(a) *General test vehicle requirements.* (1) All test vehicles shall be tested in the proper configurations as specified in §§ 86.1822–01, 86.1828–01, or 86.1842–01, as applicable for the type of test conducted.

(2) Components affecting emissions which are used to build test vehicles shall either be randomly selected production parts or parts verified to be in the middle 50 percent of the tolerance range. The manufacturer will determine which components affect emissions using good engineering judgment.

(3) Test vehicles must have air conditioning installed and operational if that configuration is available with air conditioning. Optional equipment must be installed or represented on test vehicles according to the provisions of § 86.1832–01.

(4) Test vehicles must receive proper scheduled maintenance as established by the manufacturer according to the provisions of § 86.1834–01(b) or (c). Unscheduled maintenance must be approved under the provisions of § 86.1834–01(d).

(5) Vehicle mileage shall be accumulated in accordance with § 86.1831–01.

(6) The road load forces and equivalent test weight used during testing will be determined according to the provisions of § 86.129–00.

(7) Test vehicles shall have the appropriate emission testing hardware installed (e.g., exhaust pipe testing flange, fuel tank drain, access ports to evaporative canisters, and fuel tank heat blanket) and shall have tires with appropriate tire wear.

(b) *Special provisions for durability data vehicles.* (1) For DDV's, the mileage at all test points shall be within 250 miles of the scheduled mileage point as required under § 86.1823–01(b). Manufacturers may exceed the 250 mile upper limit if there are logistical reasons for the deviation and the manufacturer determines that the deviation will not affect the representativeness of the durability demonstration.

(2) For DDV's, except as allowed under the bench testing provisions of § 86.1823–01, all emission-related hardware and software must be installed and operational during all mileage accumulation after the 5000-mile test point.

(3) DDV's may be reconfigured before the 5000-mile test point providing that the representativeness of the emission results will not be affected. Manufacturers shall use good engineering judgment in making such determinations.

(c) *Special provisions for emission data vehicles.* (1) All EDV's shall have at least the minimum number of miles accumulated to achieve stabilized emission results according to the provisions of § 86.1831–01(c)(4).

(2) Within a durability group, the manufacturer may alter any emission data vehicle (or other vehicles such as current or previous model year emission data vehicles, running change vehicles, fuel economy data vehicles, and development vehicles) in lieu of building a new test vehicle providing that the modification will not impact the representativeness of the vehicle's test results. Manufacturers shall use good engineering judgment in making such determinations. Development vehicles which were used to develop the calibration selected for emission data testing may not be used as the EDV for that configuration. Vehicles from outside the durability group may be altered with advance approval of the Administrator.

(3) Components used to reconfigure EDV's under the provisions of paragraph (c)(2) of this section shall be appropriately aged if necessary to achieve representative emission results. Manufacturers shall determine the need for component aging and the type and amount of aging required using good engineering judgment.

(4) Bench-aged hardware may be installed on an EDV for emission testing as a method of determining certification levels (projected emission levels at full or intermediate useful life) using bench aging procedures approved under the provisions of § 86.1823–01.

§ 86.1831–01 Mileage accumulation requirements for test vehicles.

(a) *Durability Data Vehicles.* (1) The manufacturer shall accumulate mileage on DDV's using the procedures which have been approved under the provisions of § 86.1823–01(a)(1).

(2) All tests required by this subpart on durability data vehicles shall be conducted within 250 miles of each of the nominal test point mileage. This +/–250 mile test point mileage tolerance may be modified with the advance approval of the Administrator if the basis for the written request is to prevent an interruption of durability mileage accumulation due to test scheduling conflicts for weekends, holidays, or other similar circumstances.

(b) *Emission data vehicles and running change vehicles.* (1) The standard method of service accumulation for emission data vehicles and running change vehicles shall be mileage accumulation using the Durability Driving Schedule as specified in Appendix IV to this part.

(2) The manufacturer may use an alternative mileage accumulation method providing the form and extent of the service accumulation represents normal driving patterns for that vehicle, the method is consistent with good engineering judgment, and the method is described in the application for certification.

(3) Except with the advance approval of the Administrator, all vehicles will accumulate mileage at a measured curb weight which is within 100 pounds of the estimated curb weight. If the loaded vehicle weight is within 100 pounds of being included in the next higher inertia weight class as specified in § 86.129, the manufacturer may elect to conduct the respective emission tests at higher loaded vehicle weight.

(c) The manufacturer shall determine the mileage at which the emission control system and engine combination is stabilized for emission-data testing. The manufacturer shall provide to the Administrator if requested, a record of the analysis used in making this determination. The manufacturer may

elect to accumulate 2,000 miles (3,219 kilometers) or more on each test vehicle without making a determination. The manufacturer must accumulate a minimum of 1,000 miles (1,608 kilometers) on each emission data vehicle.

(d) All test vehicle mileage must be accurately determined, recorded, and reported to the Administrator upon request.

§ 86.1832–01 Optional equipment and air conditioning for test vehicles.

For test vehicles selected under §§ 86.1822–01 and 86.1828–01:

(a)(1) Where it is expected that more than 33 percent of a car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option), the full estimated weight of that item must be included in the curb weight computation for each vehicle available with that item in that car line, within that test group.

(2) Where it is expected that 33 percent or less of the car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option), no weight for that item will be added in computing the curb weight for any vehicle in that car line, within that test group, unless that item is standard equipment on the vehicle.

(3) In the case of mutually exclusive options, only the weight of the heavier option will be added in computing the curb weight.

(4) Optional equipment weighing less than three pounds per item need not be considered.

(b)(1) Where it is expected that more than 33 percent of a car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, then such items must actually be installed (unless excluded under paragraph (b)(2) of this section) on all emission data and durability data vehicles of that car line, within that test group, on which the items are intended to be offered in production. Items that can reasonably be expected to influence emissions include, but are not limited to: air conditioning, power steering, and power brakes.

(2) If the manufacturer determines by test data or engineering evaluation that the actual installation of the optional equipment required by paragraph (b)(1) of this section does not affect the emissions or fuel economy values, the optional equipment need not be installed on the test vehicle.

(3) The weight of the options must be included in the design curb weight and must also be represented in the weight of the test vehicles.

(4) The engineering evaluation, including any test data, used to support the deletion of optional equipment from test vehicles, shall be maintained by the manufacturer and be made available to the Agency upon request by the Administrator within 15 business days.

(c) Except for air conditioning, where it is expected that 33 percent or less of a car line, within a test group, will be equipped with an item (whether that item is standard equipment or an option) that can reasonably be expected to influence emissions, that item may not be installed on any emission data vehicle or durability data vehicle of that car line within that test group, unless that item is standard equipment on that vehicle or specifically required by the Administrator.

(d) Air conditioning must be installed and operational on any emission data vehicle of any vehicle configuration that is projected to be available with air conditioning regardless of the rate of installation of air conditioning within the car line. Paragraphs (a) through (c) of this section will be used to determine whether the weight of the air conditioner will be included in the equivalent test weight calculations for emission testing.

§ 86.1833–01 Adjustable parameters.

(a) At the time that emission data vehicles are selected for the test fleet, a determination shall be made of those vehicle or engine parameters which will be subject to adjustment for certification, Selective Enforcement Audit and Production Compliance Audit testing, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter. The manufacturer shall use good engineering judgment in making such determinations and shall notify the Administrator of its determinations prior to emission data vehicle testing for the affected test groups (preferably at an annual preview meeting scheduled before the manufacturer begins certification activities for the model year).

(1) Determining parameters subject to adjustment.

(i) The following parameters may be subject to adjustment: the idle fuel-air mixture parameter on Otto-cycle vehicles; the choke valve action parameter(s) on carbureted, Otto-cycle vehicles (or engines); or any parameter on any vehicle (Otto-cycle or diesel) which is physically capable of being adjusted, may significantly affect emissions, and was not present on the manufacturer's vehicles (or engines) in the previous model year in the same form and function.

(ii) Any other parameters on any vehicle or engine which are physically capable of being adjusted and which may significantly affect emissions may be determined to be subject to adjustment. However, the Administrator may do so only if he/she has previously notified the manufacturer that he/she might do so and has found, at the time he/she gave this notice, that the intervening period would be adequate to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period. In no event will this notification be given later than September 1 of the calendar year two years prior to the model year.

(iii) In determining the parameters subject to adjustment, the following shall be taken into consideration: the likelihood that, for each of the parameters listed in paragraphs (e)(1) (i) and (ii) of this section, settings other than the manufacturer's recommended setting will occur on in-use vehicles (or engines). In determining likelihood, such factors may be considered as information contained in the preliminary application, surveillance information from similar in-use vehicles, the difficulty and cost of gaining access to an adjustment, damage to the vehicle if an attempt is made to gain such access and the need to replace parts following such attempt, and the effect of settings other than the manufacturer's recommended setting on vehicle performance characteristics including emission characteristics.

(2)(i) A parameter may be determined to be adequately inaccessible or sealed if:

(A) In the case of an idle mixture screw, the screw is recessed within the carburetor casting and sealed with lead, thermosetting plastic, or an inverted elliptical spacer or sheared off after adjustment at the factory, and the inaccessibility is such that the screw cannot be accessed and/or adjusted with simple tools in one-half hour or for $20 (1978 dollars) or less;

(B) In the case of a choke bimetal spring, the plate covering the bimetal spring is riveted or welded in place, or held in place with nonreversible screws;

(C) In the case of a parameter which may be adjusted by elongating or bending adjustable members (e.g., the choke vacuum break), the elongation of the adjustable member is limited by design or, in the case of a bendable member, the member is constructed of

a material which when bent would return to its original shape after the force is removed (plastic or spring steel materials);

(D) In the case of any parameter, the manufacturer demonstrates that adjusting the parameter to settings other than the manufacturer's recommended setting takes more than one-half hour or costs more than $20 (1978 dollars).

(ii) A physical limit or stop shall be determined to be an adequate restraint on adjustability if:

(A) In the case of a threaded adjustment, the threads are terminated, pinned, or crimped so as to prevent additional travel without breakage or need for repairs which take more than one-half hour or cost more than $20 (1978 dollars);

(B) The adjustment is ineffective at the end of the limits of travel regardless of additional forces or torques applied to the adjustment;

(C) The manufacturer demonstrates that travel or rotation limits cannot be exceeded with the use of simple and inexpensive tools (screwdriver, pliers, open-end or box wrenches, etc.) without incurring significant and costly damage to the vehicle or control system or without taking more than one-half hour or costing more than $20 (1978 dollars).

(iii) If manufacturer service manuals or bulletins describe routine procedures for gaining access to a parameter or for removing or exceeding a physical limit, stop, seal or other means used to inhibit adjustment, or if surveillance data indicate that gaining access, removing, or exceeding is likely, paragraphs (a)(2)(i) and (ii) of this section shall not apply for that parameter.

(iv) In determining the adequacy of a physical limit, stop, seal, or other means used to inhibit adjustment of a parameter not covered by paragraph (a)(2)(i) or (ii) of this section, the following shall be considered: the likelihood that it will be circumvented, removed, or exceeded on in-use vehicles. In determining likelihood, such factors may be considered as, but not limited to, information contained in the preliminary application; surveillance information from similar in-use vehicles; the difficulty and cost of circumventing, removing, or exceeding the limit, stop, seal, or other means; damage to the vehicle if an attempt is made to circumvent, remove, or exceed it and the need to replace parts following such attempt; and the effect of settings beyond the limit, stop, seal, or other means on vehicle performance characteristics other than emission characteristics.

(v) In the case of electronic components on circuit boards (such as onboard computers) the board is covered with a epoxy resin which inhibits the access to components on the board (commonly referred to as potting).

(3) Two physically adjustable ranges shall be determined for each parameter subject to adjustment:

(i)(A) In the case of a parameter determined to be adequately inaccessible or sealed, the following may be included within the physically adjustable range applicable to testing under this subpart: all settings within the production tolerance associated with the nominal setting for that parameter, as specified by the manufacturer in the application for certification or other information; or

(B) In the case of other parameters, all settings within physical limits or stops determined to be adequate restraints on adjustability shall be included within this range. The production tolerances on the location of these limits or stops may be included when determining the physically adjustable range.

(ii)(A) In the case of a parameter determined to be adequately inaccessible or sealed, only the actual settings to which the parameter is adjusted during production shall be included within the physically adjustable range applicable to testing under subparts G or K (Selective Enforcement Audit and Production Compliance Audit) of this part; or

(B) In the case of other parameters, all settings within physical limits or stops determined to be adequate restraints on adjustability, as they are actually located on the test vehicle, shall be included within the range.

(b) In lieu of making the determinations required in paragraph (a) of this section, the manufacturer may request a determination be made by the Administrator prior to emission testing. In that case, all the information discussed in paragraph (a) of this section shall be provided to the Administrator. The Administrator will respond within 90 days (excluding the elapsed time during which additional information requested by the Administrator is being gathered by the manufacturer) following the receipt of the request for determination.

(c) If the Administrator determines that the decisions made by the manufacturer under the provisions of paragraph (a) of this section were not made using good engineering judgment, the Administrator will overrule the manufacturers' decisions and conduct testing for Certification, Selective Enforcement Audit and/or Production Compliance Audit purposes by adjusting parameters according to his/her determination of those vehicle or engine parameters subject to adjustment, the adequacy of the limits, stops, seals, or other means used to inhibit adjustment, and the resulting physically adjustable ranges for each such parameter. Furthermore, the Administrator may reject testing performed by the manufacturer which failed to follow his/her determinations.

(d) Within 30 days following receipt of notification of the Administrator's determinations made under paragraph (b) or (c) of this section, the manufacturer may request a hearing on the Administrator's determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

§ 86.1834–01 Allowable maintenance.

(a) Maintenance performed on vehicles, engines, subsystems, or components used to determine exhaust, evaporative or refueling emission deterioration factors, as appropriate, is classified as either emission-related or non-emission-related and each of these can be classified as either scheduled or unscheduled. Further, some emission-related maintenance is also classified as critical emission-related maintenance.

(b) This section specifies emission-related scheduled maintenance for purposes of obtaining durability data and for inclusion in maintenance instructions furnished to purchasers of new motor vehicles and under § 86.1808–01.

(1) All emission-related scheduled maintenance for purposes of obtaining durability data must occur at the same mileage intervals (or equivalent intervals if engines, subsystems, or components are used) that will be specified in the manufacturer's maintenance instructions furnished to the ultimate purchaser of the motor vehicle or engine under § 86.1808–01. This maintenance schedule may be updated as necessary throughout the testing of the vehicle/engine, provided that no maintenance operation is deleted from the maintenance schedule after the operation has been performed on the test vehicle or engine.

(2) Any emission-related maintenance which is performed on vehicles, engines, subsystems, or components must be technologically necessary to

assure in-use compliance with the emission standards. Manufacturers shall determine the technological need for maintenance using good engineering judgment. The Administrator has determined that emission-related maintenance at shorter intervals than those outlined in paragraphs (b)(3) and (4) of this section is not technologically necessary to ensure in-use compliance. However, the Administrator may determine that maintenance even more restrictive (e.g., longer intervals) than that listed in paragraphs (b)(3) and (4) of this section is also not technologically necessary.

(3) Emission-related maintenance in addition to, or at shorter intervals than, that listed in paragraphs (b)(3)(i) through (iv) of this section will not be accepted as technologically necessary, except as provided in paragraph (b)(6) of this section.

(i) The cleaning or replacement of light-duty vehicle or light-duty truck spark plugs shall occur at 30,000 miles of use and at 30,000-mile intervals thereafter.

(ii) The adjustment, cleaning, repair, or replacement of the following items shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter:

(A) Positive crankcase ventilation valve.

(B) Emission-related hoses and tubes.

(C) Ignition wires.

(D) Idle mixture.

(iii) The adjustment, cleaning, repair, or replacement of the oxygen sensor shall occur at 80,000 miles (or 2,400 hours) of use and at 80,000-mile (or 2,400-hour) intervals thereafter.

(iv) The adjustment, cleaning, repair, or replacement of the following items shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter:

(A) Catalytic converter.

(B) Air injection system components.

(C) Fuel injectors.

(D) Electronic engine control unit and its associated sensors (except oxygen sensor) and actuators.

(E) Evaporative and/or refueling emission canister(s).

(F) Turbochargers.

(G) Carburetors.

(H) Superchargers.

(I) EGR System including all related filters and control valves.

(J) Mechanical fillpipe seals.

(4) For diesel-cycle light-duty vehicles and light-duty trucks, emission-related maintenance in addition to, or at shorter intervals than the following will not be accepted as technologically necessary, except as provided in paragraph (b)(6) of this section:

(i) The adjustment, cleaning, repair, or replacement of the positive crankcase ventilation valve shall occur at 50,000 miles of use and at 50,000-mile intervals thereafter.

(ii) The adjustment, cleaning, repair, or replacement shall occur at 100,000 miles of use and at 100,000-mile intervals thereafter of the following items:

(A) Fuel injectors.

(B) Turbocharger.

(C) Electronic engine control unit and its associated sensors and actuators.

(D) Particulate trap or trap-oxidizer system (including related components).

(E) Exhaust gas recirculation system including all related filters and control valves.

(F) Catalytic converter.

(G) Superchargers.

(5) Critical emission-related components.

(i) The following components are defined as critical emission-related components:

(A) Catalytic converter.

(B) Air injection system components.

(C) Electronic engine control unit and its associated sensors (including oxygen sensor if installed) and actuators.

(D) Exhaust gas recirculation system (including all related filters and control valves).

(E) Positive crankcase ventilation valve.

(F) Evaporative and refueling emission control system components (excluding canister air filter).

(G) Particulate trap or trap-oxidizer system.

(ii) All critical emission-related scheduled maintenance must have a reasonable likelihood of being performed in use. The manufacturer shall be required to show the reasonable likelihood of such maintenance being performed in use, and such showing shall be made prior to the performance of the maintenance on the durability data vehicle. Critical emission-related scheduled maintenance items which satisfy one of the conditions defined in paragraphs (b)(5)(ii) (A) through (F) of this section will be accepted as having a reasonable likelihood of the maintenance item being performed in use.

(A) Data are presented which establish for the Administrator a connection between emissions and vehicle performance such that as emissions increase due to lack of maintenance, vehicle performance will simultaneously deteriorate to a point unacceptable for typical driving.

(B) Survey data are submitted which adequately demonstrate to the Administrator that, at an 80 percent confidence level, 80 percent of such engines already have this critical maintenance item performed in use at the recommended interval(s).

(C) A clearly displayed visible signal system approved by the Administrator is installed to alert the vehicle driver that maintenance is due. A signal bearing the message "maintenance needed" or "check engine," or a similar message approved by the Administrator, shall be actuated at the appropriate mileage point or by component failure. This signal must be continuous while the engine is in operation and not be easily eliminated without performance of the required maintenance. Resetting the signal shall be a required step in the maintenance operation. The method for resetting the signal system shall be approved by the Administrator.

(D) A manufacturer may desire to demonstrate through a survey that a critical maintenance item is likely to be performed without a visible signal on a maintenance item for which there is no prior in-use experience without the signal. To that end, the manufacturer may in a given model year market up to 200 randomly selected vehicles per critical emission-related maintenance item without such visible signals, and monitor the performance of the critical maintenance item by the owners to show compliance with paragraph (b)(5)(ii)(B) of this section. This option is restricted to two consecutive model years and may not be repeated until any previous survey has been completed. If the critical maintenance involves more than one test group, the sample will be sales weighted to ensure that it is representative of all the groups in question.

(E) The manufacturer provides the maintenance free of charge, and clearly informs the customer that the maintenance is free in the instructions provided under § 86.1808–01.

(F) Any other method which the Administrator approves as establishing a reasonable likelihood that the critical maintenance will be performed in use.

(iii) Visible signal systems used under paragraph (b)(5)(ii)(C) of this section are considered an element of design of the emission control system. Therefore, disabling, resetting, or otherwise rendering such signals inoperative without also performing the indicated maintenance procedure is a prohibited act under section 203(a)(3) of the Clean Air Act (42 U.S.C. 7522(a)(3)).

(6) Changes to scheduled maintenance. (i) For maintenance practices that existed prior to the 1980 model year, only the maintenance items listed in paragraphs (b)(3) and (4) of this section are currently considered by EPA to be emission-related. The Administrator may, however, determine

additional scheduled maintenance items that existed prior to the 1980 model year to be emission-related by announcement in a **Federal Register** Notice. In no event may this notification occur later than September 1 of the calendar year two years prior to the affected model year.

(ii) In the case of any new scheduled maintenance, the manufacturer must submit a request for approval to the Administrator for any maintenance that it wishes to recommend to purchasers and perform during durability determination. New scheduled maintenance is that maintenance which did not exist prior to the 1980 model year, including that which is a direct result of the implementation of new technology not found in production prior to the 1980 model year. The manufacturer must also include its recommendations as to the category (i.e., emission-related or non-emission-related, critical or non-critical) of the subject maintenance and, for suggested emission-related maintenance, the maximum feasible maintenance interval. Such requests must include detailed evidence supporting the need for the maintenance requested, and supporting data or other substantiation for the recommended maintenance category and for the interval suggested for emission-related maintenance. Requests for new scheduled maintenance must be approved prior to the introduction of the new maintenance. The Administrator will then designate the maintenance as emission-related or non-emission-related. For maintenance items established as emission-related, the Administrator will further designate the maintenance as critical if the component which receives the maintenance is a critical component under paragraph (b)(5) of this section. For each maintenance item designated as emission-related, the Administrator will also establish a technologically necessary maintenance interval, based on industry data and any other information available to EPA. Designations of emission-related maintenance items, along with their identification as critical or non-critical, and establishment of technologically necessary maintenance intervals, will be announced in the **Federal Register**.

(iii) Any manufacturer may request a hearing on the Administrator's determinations in paragraph (b)(6) of this section. The request shall be in writing and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data in support of such objections. If, after review of the request and supporting data, the Administrator finds that the request raises a substantial factual issue, he shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

(c) Non-emission-related scheduled maintenance which is reasonable and technologically necessary (e.g., oil change, oil filter change, fuel filter change, air filter change, cooling system maintenance, adjustment of idle speed, governor, engine bolt torque, valve lash, injector lash, timing, adjustment of air pump drive belt tension, lubrication of the exhaust manifold heat control valve, lubrication of carburetor choke linkage, re-torquing carburetor mounting bolts, etc.) may be performed on durability data vehicles at the least frequent intervals recommended by the manufacturer to the ultimate purchaser, (e.g., not at the intervals recommended for severe service).

(d) Unscheduled maintenance on light-duty durability data vehicles.

(1) Unscheduled maintenance may be performed during the testing used to determine deterioration factors, except as provided in paragraphs (d)(2) and (3) of this section, only under the following provisions defined in paragraphs (d)(1)(i) through (iii) of this section:

(i) A fuel injector or spark plug may be changed if a persistent misfire is detected.

(ii) Readjustment of an Otto-cycle vehicle cold-start enrichment system may be performed if there is a problem of stalling.

(iii) Readjustment of the engine idle speed (curb idle and fast idle) may be performed in addition to that performed as scheduled maintenance under paragraph (c) of this section if the idle speed exceeds the manufacturer's recommended idle speed by 300 rpm or more, or if there is a problem of stalling.

(2) Any other unscheduled vehicle, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement during testing to determine deterioration factors shall be performed (using good engineering judgment) only in the following circumstances:

(i) The part failure or system malfunction, or the repair of such failure or malfunction, does not render the vehicle or engine unrepresentative of vehicles or engines in use and does not require direct access to the combustion chamber, except for spark plug, fuel injection component, or removable prechamber removal or replacement.

(ii) The need for maintenance or repairs is indicated by an overt indication of malfunction such as persistent misfiring, engine stalling, overheating, fluid leakage, loss of oil pressure, excessive fuel consumption, or excessive power loss. The Administrator shall be given the opportunity to verify the existence of an overt indication of part failure and/or vehicle/engine malfunction (e.g., misfiring, stalling, black smoke), or an activation of an audible and/or visible signal, prior to the performance of any maintenance to which such overt indication or signal is relevant under the provisions of this section.

(iii) The OBD system of a durability data vehicle representing an test group certifying fully to the Federal OBD requirements as specified in § 86.1806–01(a) through (h) has specifically detected the problem and has illuminated the malfunction indicator light.

(3) Emission measurement may not be used as a means of determining the need for unscheduled maintenance under paragraph (d)(2) of this section, except under the following conditions:

(i) The Administrator may approve unscheduled maintenance on durability data vehicles based upon a significant change in emission levels that indicates a vehicle or engine malfunction. In these cases the Administrator may first approve specific diagnostic procedures to identify the source of the problem. The Administrator may further approve of specific corrections to the problem after the problem has been identified. The Administrator may only approve the corrective action after it is determined that:

(A) The malfunction was caused by nonproduction build practices or by a previously undetected design problem;

(B) The malfunction will not occur in production vehicles or engines in use; and

(C) The deterioration factor generated by the durability data vehicle or engine will remain unaffected by the malfunction or by the corrective action (e.g., the malfunction was present for only a short period of time before detection, replacement parts are functionally representative of the proper mileage or hours, etc.).

(ii) Following any unscheduled maintenance approved under paragraph (d)(3)(i) of this section, the manufacturer shall perform an after-maintenance emission test. If the Administrator determines that the after-maintenance emission levels for any pollutant indicates that the deterioration factor is no longer representative of production, the Administrator may disqualify the durability data vehicle or engine.

(4) If a part failure or system malfunction occurrence and/or repair has rendered the vehicle/engine

unrepresentative of vehicles in use, the vehicle/engine shall not be used for determining deterioration factors.

(5) Repairs to vehicle components of a durability data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(e) Maintenance on emission data vehicles and engines. (1) Adjustment of engine idle speed on emission data vehicles may be performed once before the low-mileage/low-hour emission test point. Any other engine, emission control system, or fuel system adjustment, repair, removal, disassembly, cleaning, or replacement on emission data vehicles shall be performed only with the advance approval of the Administrator.

(2) Repairs to vehicle components of an emission data vehicle other than the engine, emission control system, or fuel system, shall be performed only as a result of part failure, vehicle system malfunction, or with the advance approval of the Administrator.

(f) Equipment, instruments, or tools may not be used to identify malfunctioning, maladjusted, or defective engine components unless the same or equivalent equipment, instruments, or tools will be available to dealerships and other service outlets and:

(1) Are used in conjunction with scheduled maintenance on such components; or

(2) Are used subsequent to the identification of a vehicle or engine malfunction, as provided in paragraph (d)(2) of this section for durability data vehicles or in paragraph (e)(1) of this section for emission data vehicles; or

(3) Unless specifically authorized by the Administrator.

(g) Complete emission tests (see §§ 86.106–96 through 86.145–82) are required, unless waived by the Administrator, before and after scheduled maintenance approved for durability data vehicles. The manufacturer may perform emission tests before unscheduled maintenance. Complete emission tests are required after unscheduled maintenance which may reasonably be expected to affect emissions. The Administrator may waive the requirement to test after unscheduled maintenance. These test data may be submitted weekly to the Administrator, but shall be air posted or delivered within 7 days after completion of the tests, along with a complete record of all pertinent maintenance, including a preliminary engineering report of any malfunction diagnosis and the corrective action taken. A complete engineering report shall be delivered to the Administrator concurrently with the manufacturer's application for certification.

(h) When air conditioning SFTP exhaust emission tests are required, the manufacturer must document that the vehicle's air conditioning system is operating properly and in a representative condition. Required air conditioning system maintenance is performed as unscheduled maintenance and does not require the Administrator's approval.

§ 86.1835–01 Confirmatory certification testing.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting emissions tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(i) The Administrator may adjust or cause to be adjusted any adjustable parameter of an emission-data vehicle which the Administrator has determined to be subject to adjustment for certification testing in accordance with § 86.1833–01(a)(1), to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.1833–01(a)(3), prior to the performance of any tests to determine whether such vehicle or engine conforms to applicable emission standards, including tests performed by the manufacturer under § 86.1829–01(b). However, if the idle speed parameter is one which the Administrator has determined to be subject to adjustment, the Administrator shall not adjust it to a setting which causes a higher engine idle speed than would have been possible within the physically adjustable range of the idle speed parameter on the engine before it accumulated any dynamometer service, all other parameters being identically adjusted for the purpose of the comparison. The Administrator, in making or specifying such adjustments, will consider the effect of the deviation from the manufacturer's recommended setting on emissions performance characteristics as well as the likelihood that similar settings will occur on in-use light-duty vehicles or light-duty trucks. In determining likelihood, the Administrator will consider factors such as, but not limited to, the effect of the adjustment on vehicle performance characteristics and surveillance information from similar in-use vehicles.

(ii) For those vehicles parameters which the Administrator has not determined to be subject to adjustment during testing in accordance with § 86.1833–01(a)(1), the vehicle presented to the Administrator for testing shall be calibrated within the production tolerances applicable to the manufacturer's specifications to be shown on the vehicle label (see § 86.1807–01) as specified in the application for certification. If the Administrator determines that a vehicle is not within such tolerances, the vehicle will be adjusted, at the facility designated by the Administrator, prior to the test and an engineering report shall be submitted to the Administrator describing the corrective action taken. Based on the engineering report, the Administrator will determine if the vehicle will be used as an emission data vehicle.

(2) If the Administrator determines that the test data developed on an emission data vehicle under paragraph (a)(1) of this section would cause that vehicle to fail under the provisions of § 86.1841–01, then the following procedure shall be observed:

(i) The manufacturer may request a retest. Before the retest, those vehicle or engine parameters which the Administrator has not determined to be subject to adjustment for certification testing in accordance with § 86.1833-01(a)(1) may be readjusted to manufacturer's specification, if these adjustments were made incorrectly prior to the first test. The Administrator may adjust or cause to be adjusted any parameter which the Administrator has determined to be subject to adjustment to any setting within the physically adjustable range of that parameter, as determined by the Administrator in accordance with § 86.1833–01(a)(3). Other maintenance or repairs may be performed in accordance with § 86.1834–01. All work on the vehicle shall be done at such location and under such conditions as the Administrator may prescribe.

(ii) The vehicle will be retested by the Administrator and the results of this test shall comprise the official data for the emission-data vehicle.

(3) If sufficient durability data are not available at the time of any emission test conducted under paragraph (a)(1) of this section to enable the Administrator to

determine whether an emission-data vehicle would fail, the manufacturer may request a retest in accordance with the provisions of paragraph (a)(2) of this section. If the manufacturer does not promptly make such request, he shall be deemed to have waived the right to a retest. A request for retest must be made before the manufacturer removes the vehicle from the test premises.

(4) Retesting for fuel economy reasons may be conducted under the provisions of 40 CFR 600.008–01.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrators determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the test as measured in accordance with the procedures in 40 CFR Part 600 is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy value as measured in accordance with the procedures in Part 600 of this title, is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator for that model year; or

(v) The fuel economy value as measured in accordance with the procedures in Part 600 of this title, is a potential fuel economy leader for a class of vehicles based on Administrator provided cut points for that model year.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) For use in the fuel economy program described in 40 CFR part 600, the manufacturer may, in lieu of conducting a retest, accept as official the lower of the original and confirmatory test fuel economy results.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). In lieu of conducting a second retest, the manufacturer may accept as official (for use in the fuel economy program) the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results.

(c) *Official test determination.* (1) Whenever the Administrator or the manufacturer conducts a confirmatory test segment on a test vehicle, the results of that test segment, unless subsequently invalidated by the Administrator, shall comprise the official data for that test segment for the vehicle at the prescribed test point and the manufacturer's original test data for that test segment for that prescribed test point shall not be used in determining compliance with emission standards.

(i) If the Administrator or the manufacturer conducts more than one passing, valid, confirmatory test, the results from the first passing, valid confirmatory test shall be considered official and used in determining compliance with emission standards.

(ii) Official test results for fuel economy purposes are determined in accordance with the provisions of 40 CFR 600.008–01.

(iii) The Administrator may stop a test after any evaporative test segment and use as official data any valid results obtained up to that point in the test, as described in subpart B of this part.

(2) Whenever the Administrator or the manufacturer does not conduct a confirmatory test on a test vehicle at a test point, the manufacturer's original test data will be accepted as the official data for that point.

(i) If the Administrator makes a determination based on testing under paragraph (a) of this section (or other appropriate correlation test data), that there is a lack of correlation between the manufacturer's test equipment or procedures and the test equipment or procedures used by the Administrator, no manufacturer's test data will be accepted for purposes of certification until the reasons for the lack of correlation are determined and the validity of the data is established by the manufacturer.

(ii) If the Administrator has reasonable basis to believe that any test data submitted by the manufacturer is not accurate or has been obtained in violation of any provisions of this subpart, the Administrator may refuse to accept that data as the official data pending retesting or submission of further information.

(iii) If the manufacturer conducts more than one test on an emission data vehicle in the same configuration (excluding confirmatory tests run under paragraph (b) of this section), the data from the last test in that series of tests on that vehicle, will constitute the official data.

(d) Upon request of the manufacturer, the Administrator may issue a conditional certificate of conformity for a test group which has not completed the Administrator testing required under paragraph (b) of this section. Such a certificate will be issued based upon the condition that the confirmatory testing be completed in an expedited manner and that the results of the testing be in compliance with all standards and procedures.

(1) If, based on this testing or any other information, the Administrator later determines that the vehicles included in this test group do not meet the applicable standards, the Administrator will notify the manufacturer that the certificate is suspended. The certificate may be suspended in whole or in part as determined by the Administrator. Upon such a notification, the manufacturer must immediately cease the introduction of the affected vehicles into commerce. The manufacturer may request a hearing to appeal the Administrators decision using the provisions of § 86.1853–01.

(2) Production of vehicles by a manufacturer under the terms of this paragraph (d) will be deemed to be a consent to recall all vehicles in the test group which the Administrator determines do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

§ 86.1836–01 Manufacturer-supplied production vehicles for testing.

Any manufacturer obtaining certification under this subpart shall supply to the Administrator, upon request, a reasonable number of production vehicles selected by the Administrator which are representative of the engines, emission control

systems, fuel systems, and transmission offered and typical of production models available for sale under the certificate. These vehicles shall be supplied for testing at such time and place and for such reasonable periods as the Administrator may require.

§ 86.1837–01 Rounding of emission measurements.

Unless otherwise specified, the results of all emission tests shall be rounded to the number of places to the right of the decimal point indicated by expressing the applicable emission standard of this subpart to one additional significant figure, in accordance with the Rounding-Off Method specified in ASTM E29–93a, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications (incorporated by reference; see § 86.1).

§ 86.1838–01 Small volume manufacturer certification procedures.

(a) The small-volume manufacturers certification procedures described in paragraphs (b) and (c) of this section are optional. Small-volume manufacturers may use these optional procedures to demonstrate compliance with the general standards and specific emission requirements contained in this subpart.

(b) *Eligibility requirements.* (1) *Small volume manufacturers.* (i) The optional small-volume manufacturers certification procedures apply to light-duty vehicles and light-duty trucks, produced by manufacturers with U.S. sales, including all vehicles and engines imported under the provisions of 40 CFR 85.1505 and 85.1509 (for the model year in which certification is sought) of fewer than 15,000 units (light-duty vehicles, light-duty trucks, heavy-duty vehicles and heavy-duty engines combined).

(ii) If the aggregated U.S. sales of the manufacturer, as determined in paragraph (b)(3) of this section are fewer than 15,000 units, the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) may certify under the provisions of paragraph (c) of this section.

(2) *Small Volume Test Groups.* (i) If the aggregated U.S. sales of the manufacturer, as determined in paragraph (b)(3) of this section are equal to or greater than 15,000 units, then the manufacturer (or each manufacturer in the case of manufacturers in an aggregated relationship) will be allowed to certify a number of units under the small volume test group certification procedures in accordance with the criteria identified in paragraphs (b)(2)(ii) through (iv) of this section.

(ii) If there are no additional manufacturers in an aggregated relationship meeting the provisions of paragraph (b)(3) of this section, then the manufacturer may certify whole test groups whose total aggregated sales (including heavy-duty engines) are less than 15,000 units using the small volume provisions of paragraph (c) of this section.

(iii) If there is an aggregated relationship with another manufacturer which satisfies the provisions of paragraph (b)(3) of this section, then the following provisions shall apply:

(A) If none of the manufacturers own 50 percent or more of another manufacturer in the aggregated relationship, then each manufacturer may certify whole test groups whose total aggregated sales (including heavy-duty engines) are less than 15,000 units using the small volume provisions of paragraph (c) of this section.

(B) If any of the manufacturers own 50 percent or more of another manufacturer in the aggregated relationship, then the limit of 14,999 units must be shared among the manufacturers in such a relationship. In total for all the manufacturers involved in such a relationship, aggregated sales (including heavy-duty engines) of up to 14,999 units may be certified using the small volume provisions of paragraph (c) of this section. Only whole test groups shall be eligible for small volume status under paragraph (c) of this section.

(iv) In the case of a joint venture arrangement (50/50 ownership) between two manufacturers, each manufacturer retains its eligibility for 14,999 units under the small-volume test group certification procedures, but the joint venture must draw its maximum 14,999 units from the units allocated to its parent manufacturers. Only whole test groups shall be eligible for small volume status under paragraph (c) of this section.

(3) *Sales Aggregation for Related Manufacturers.* The projected or actual sales from different firms shall be aggregated in the following situations:

(i) Vehicles and/or engines produced by two or more firms, one of which is 10 percent or greater part owned by another;

(ii) Vehicles and/or engines produced by any two or more firms if a third party has equity ownership of 10 percent or more in each of the firms;

(iii) Vehicles and/or engines produced by two or more firms having a common corporate officer(s) who is (are) responsible for the overall direction of the companies;

(iv) Vehicles and/or engines imported or distributed by all firms where the vehicles and/or engines are manufactured by the same entity and the importer or distributor is an authorized agent of the entity.

(c) Small-volume manufacturers and/or small volume test groups shall demonstrate compliance with the all applicable sections of this subpart except as provided in paragraphs (c)(1) and (2) of this section. Small volume manufacturers and/or test groups may optionally meet the following requirements:

(1) *Durability demonstration.* Use the provisions of § 86.1826–01 rather than the requirements of §§ 86.1823–01, 86.1824–01, and/or 86.1825–01.

(2) *In-Use Verification testing.* See § 86.1845–01 for applicability of in-use verification testing to small volume manufacturers and small volume test groups except as noted in this paragraph (c)(2).

(i) Small volume in-use verification test vehicles may be procured from customers or may be owned by, or under the control of the manufacturer, provided that the vehicle has accumulated mileage in typical operation on public streets and has received typical maintenance.

(ii) In lieu of procuring small volume in-use verification test vehicles that have a minimum odometer reading of 50,000 miles, a manufacturer may demonstrate to the satisfaction of the Agency that, based on owner survey data, the average mileage accumulated after 4 years for a given test group is less than 50,000 miles. The Agency may approve a lower minimum odometer reading based on such data.

(iii) The provision of § 86.1845–01(c)(2), which requires one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75% of useful life, does not apply.

(iv) Manufacturers intending to use the provisions of paragraphs (c)(2)(i) or (ii) of this section shall submit to the Agency, prior to the certification of the subject vehicles, a plan detailing how these provisions will be met.

§ 86.1839–01 Carryover of certification data.

(a) In lieu of testing an emission-data or durability vehicle selected under § 86.1822–01, § 86.1828–01, or § 86.1829–01, and submitting data therefrom, a manufacturer may submit exhaust emission data, evaporative emission data and/or refueling emission data, as applicable, on a similar vehicle for which certification has been obtained or for which all applicable data

required under § 86.1845–01 has previously been submitted. To be eligible for this provision, the manufacturer must use good engineering judgment and meet the following criteria:

(1) In the case of durability data, the manufacturer must determine that the previously generated durability data represent a worst case or equivalent rate of deterioration for all applicable emission constituents compared to the configuration selected for durability demonstration.

(i) Prior to certification, the Administrator may require the manufacturer to provide data showing that the distribution of catalyst temperatures of the selected durability configuration is effectively equivalent or lower than the distribution of catalyst temperatures of the vehicle configuration which is the source of the previously generated data.

(ii) For the 2001, 2002, and 2003 model years only, paragraph (a)(1) of this section does not apply to the use of exhaust emission deterioration factors meeting the requirements of § 86.1823–01(c)(2).

(2) In the case of emission data, the manufacturer must determine that the previously generated emissions data represent a worst case or equivalent level of emissions for all applicable emission constituents compared to the configuration selected for emission compliance demonstration.

(b) In lieu of using newly aged hardware on an EDV as allowed under the provisions of § 86.1823–01(a)(3)(ii), a manufacturer may use similar hardware aged for an EDV previously submitted, provided that the manufacturer determines that the previously aged hardware represents a worst case or equivalent rate of deterioration for all applicable emission constituents for durability demonstration.

§ 86.1840–01 Special test procedures.

(a) The Administrator may, on the basis of written application by a manufacturer, prescribe test procedures, other than those set forth in this part, for any light-duty vehicle or light-duty truck which the Administrator determines is not susceptible to satisfactory testing by the procedures set forth in this part.

(b) If the manufacturer does not submit a written application for use of special test procedures but the Administrator determines that a light-duty vehicle or light-duty truck is not susceptible to satisfactory testing by the procedures set forth in this part, the Administrator shall notify the manufacturer in writing and set forth the reasons for such rejection in accordance with the provisions of § 86.1848(a)(2).

§ 86.1841–01 Compliance with emission standards for the purpose of certification.

(a) Certification levels of a test vehicle will be calculated for each emission constituent applicable to the test group for both full and intermediate useful life as appropriate.

(1) If the durability demonstration procedure approved by the Administrator under the provisions of §§ 86.1823–01, 86.1824–01, or 86.1825–01 requires a DF to be calculated, the DF shall be applied to the official test results determined in § 86.1835–01(c) for each regulated emission constituent and for full and intermediate useful life, as appropriate, using the following procedures:

(i) For additive DF's, the DF will be added to the emission result. The sum will be rounded to the same level of precision as the standard for the constituent at full and/or intermediate useful life, as appropriate. This rounded sum is the certification level for that emission constituent and for that useful life mileage.

(ii) For multiplicative DFs, the DF will be multiplied by the emission result for each regulated constituent. The product will be rounded to the same level of precision as the standard for the constituent at full and intermediate useful life, as appropriate. This rounded product is the certification level for that emission constituent and for that useful life mileage.

(iii) For the SFTP composite standard of (NMHC+NO_X), the measured results of NMHC and NO_X must each be adjusted by their corresponding deterioration factors before the composite (NMHC+NO_X) certification level is calculated.

(2) If the durability demonstration procedure approved by the Administrator under the provisions of § 86.1823–01, § 86.1824–01, or § 86.1825–01, as applicable, requires testing of the EDV with aged emission components, the official results of that testing determined under the provisions of § 86.1835–01(c) shall be rounded to the same level of precision as the standard for each regulated constituent at full and intermediate useful life, as appropriate. This rounded emission value is the certification level for that emission constituent at that useful life mileage.

(3) If the durability demonstration procedure approved by the Administrator under the provisions of § 86.1823–01 requires neither a DF calculation nor EDV testing with aged hardware, the certification levels shall be calculated in accordance with the provisions approved under § 86.1823–01(a)(3).

(4) The rounding required in paragraph (a) of this section shall be conducted in accordance with the provisions of § 86.1837–01.

(b) To be considered in compliance with the standards for the purposes of certification, the certification levels for the test vehicle calculated in paragraph (a) of this section shall be less than or equal to the standards for all emission constituents to which the test group is subject, at both full and intermediate useful life as appropriate for that test group.

(c) Every test vehicle of a test group must comply with all applicable exhaust emission standards before that test group may be certified.

(d) Every test vehicle of an evaporative/refueling family must comply with all applicable evaporative and/or refueling emission standards before that family may be certified.

§ 86.1842–01 Addition of a vehicle after certification; and changes to a vehicle covered by certification.

(a) *Addition of a car line after certification.* (1) If a manufacturer proposes to add to its product line a new car line of the same test group as vehicles previously certified but which was not described in the application for certification when the test vehicle(s) representing other vehicles of that combination was certified, it shall notify the Administrator. This notification shall include a full description of the vehicle to be added.

(2) The manufacturer shall perform such tests on the test vehicle(s) representing the vehicle to be added which would have been required if the vehicle had been included in the original application for certification.

(3) If, after a review of the test reports and data submitted by the manufacturer, and data derived from any testing conducted under § 86.1835–01, the Administrator determines that the test vehicle(s) or test engine(s) meets all applicable standards, the appropriate certificate will be amended accordingly. If the Administrator determines that the test vehicle(s) does not meet applicable standards, she/he will proceed under § 86.1850–01.

(b) *Changes to the configuration of vehicles covered by a Certificate of Conformity.* (1) A manufacturer will notify the Administrator concurrently with (or in advance of) any change or addition in production vehicles which

creates a new vehicle configuration within the car lines covered in a certified test group, giving a full description of the change. Such a change is referred to as a running change. Upon notification, the manufacturer may begin production of the running change if the manufacturer determines that following the change all affected vehicles will still meet the applicable emission standards.

(i) Such notification shall include a full description of the addition or change and any supporting documentation the manufacturer may desire to include to support the manufacturer's determination in accordance with § 86.1844-01.

(ii) The manufacturer's determination that the addition or change does not cause noncompliance shall be based on an engineering evaluation of the addition or change and/or testing.

(2) The Administrator may require that additional emission testing be performed to support the manufacturer's determination submitted in paragraph (b)(1) of this section. If additional testing is required the Administrator shall proceed in accordance with paragraph (a)(3) of this section. Additional test data, if requested, must be provided within 30 days of the request or the manufacturer must rescind the addition or change immediately. The Administrator may grant additional time to complete testing. If based on this additional testing or any other information, the Administrator determines that the vehicles affected by the addition or change do not meet the applicable standards the Administrator will notify the manufacturer to rescind the addition or change immediately upon receipt of the notification.

(c) Election to produce vehicles under this section will be deemed to be a consent to recall all vehicles which the Administrator determines under paragraph (a) or (b) of this section do not meet applicable standards, and to cause such nonconformity to be remedied at no expense to the owner.

§ 86.1843–01 General information requirements.

(a) A manufacturer must submit a separate Application for Certification (Application) for each durability group in a format approved by the Administrator and in multiple copies as designated by the Administrator. Any information within the Application which is unique to a specific test group must be submitted for each test group.

(b) Any manufacturer that fails to comply with any information requirements of §§ 86.1843–01 and 86.1844–01 may be subject to the following provisions:

(1) The Application (Part 1 and Part 2) and any additional information as designated by the Administrator shall be submitted for all durability groups prior to certification for subsequent model years, until otherwise notified by the Administrator. The Application shall be updated concurrently with every running change.

(2) Provisions of § 86.1850–01 may be imposed.

(3) Civil penalties and remedial action as applicable under the Clean Air Act may be imposed.

(c) *Part 1 of the Application.* Part 1, which shall include the items listed in § 86.1844–01(d), must be submitted to the Administrator before a certificate of conformity will be issued.

(d) *Part 2 of the Application.* Part 2, which shall include the items listed in § 86.1844–01(e), must be submitted to the Administrator by January 1st of the applicable model year. If a test group is certified less than 60 days prior to January 1st of the applicable model year, Part 2 must be submitted to the Administrator within 90 days of the effective date on the applicable certificate of conformity.

(e) *Running change submissions.* Each running change notification, as required under § 86.1842–01, must include the information listed in § 86.1844–01(f) and shall be submitted to the Administrator concurrently with, or in advance of, the implementation of any change incorporated onto production vehicles.

(f) *Updates to the Application for Certification.* (1) The manufacturer must submit an update to the Part 1 Application by January 1st of the applicable model year to incorporate any running changes and/or corrections which occurred after certification. If a test group is certified less than 60 days prior to January 1st of the applicable model year, this update may be submitted to the Administrator within 90 days of the effective date on the applicable certificate of conformity.

(2) The manufacturer must submit a final update to Part 1 and Part 2 of the Application by January 1st of the subsequent model year to incorporate any applicable running changes or corrections which occurred between January 1st of the applicable model year and the end of the model year. A manufacturer may request the Administrator to grant an extension (of no more than 90 days) for submittal of the final update. The request must clearly indicate the circumstances necessitating the extension.

(3) The manufacturer may not use updates to its application to correct a misbuild situation with respect to vehicles already introduced into commerce.

(g) *Information to be submitted upon request.* Upon written request by the Administrator, a manufacturer shall submit any information as described in § 86.1844–01 within 15 business days. A manufacturer may request the Administrator to grant an extension. The request must clearly indicate the circumstances necessitating the extension.

(h) *In-use information requirements.* All information requirements of the in-use verification and confirmatory programs of §§ 86.1845–01 and 86.1846–01 must be met by the due dates listed in § 86.1847–01.

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

(a) All information listed in this section must be submitted to the Agency according to the requirements specified in § 86.1843–01.

(b) Nothing in this section limits the Administrator's discretion to require the manufacturer to submit additional records not specifically required by this section.

(c) Routine emission test records shall be retained by the manufacturer for a period of one (1) year after issuance of all certificates of conformity to which they relate. All records, other than routine emission test records, required to be produced by the manufacturer under this title shall be made available upon written request by the Administrator for a period of eight years after issuance of all certificates of conformity to which they relate.

(d) *Part 1 Application.* Part 1 must contain the following items:

(1) Correspondence and communication information, such as names, mailing addresses, phone and fax numbers, and e-mail addresses of all manufacturer representatives authorized to be in contact with EPA compliance staff. The address where official documents, such as certificates of conformity, are to be mailed must be clearly identified. At least one U.S. contact must be provided.

(2) A description of the durability group in accordance with the criteria listed in § 86.1820–01, or as otherwise used to group a product line.

(3) A description of applicable evaporative/refueling families in accordance with the criteria listed in § 86.1821–01, or as otherwise used to group a product line.

(4) A description of the test procedures used to establish durability and exhaust and evaporative/refueling emission deterioration factors as required to be determined and supplied in §§ 86.1823–01, 86.1824–01 and 86.1825–01 when applicable.

(5) A description of each test group in accordance with the criteria listed in § 86.1827–01 or as otherwise used to group a product line.

(6) Identification and description of all vehicles for which testing is required by §§ 86.1822–01 and 86.1828–01 to obtain a certificate of conformity.

(7) A comprehensive list of all test results, including official certification levels, and the applicable intermediate and full useful life emission standards to which the test group is to be certified as required in § 86.1829–01.

(8) A statement that all applicable vehicles will conform with the emission standards for which emission data is not being provided, as allowed under § 86.1829–01. The statement shall clearly identify the standards for which emission testing was not completed.

(9) Information which describes each emission control diagnostic system required by § 86.1806–01 including:

(i) A description of the functional operation characteristics of the diagnostic system;

(ii) The general method of detecting malfunctions for each emission-related powertrain component;

(iii) Any deficiencies, including resolution plans and schedules.

(10) A description of all flexible or dedicated alternate fuel vehicles including, but not limited to, the fuel and/or percentage of alternate fuel for all such vehicles.

(11) A list of all auxiliary emission control devices (AECD) installed on any applicable vehicles, including a justification for each AECD, the parameters they sense and control, a detailed justification of each AECD which results in a reduction in effectiveness of the emission control system, and rationale for why the AECD is not a defeat device as defined under § 86.1809–01.

(12) Identification and description of all vehicles covered by each certificate of conformity to be produced and sold within the U.S. The description must be sufficient to identify whether any given in-use vehicle is, or is not, covered by a given certificate of conformity, the test group and the evaporative/refueling family to which it belongs and the standards that are applicable to it, by matching readily observable vehicle characteristics and information given in the emission control information label (and other permanently attached labels) to indicators in the Part 1 Application. In addition, the description must be sufficient to determine for each vehicle covered by the certificate, all appropriate test parameters and any special test procedures necessary to conduct an official certification exhaust or evaporative emission test as was required by this subpart to demonstrate compliance with applicable emission standards. The description shall include, but is not limited to, information such as model name, vehicle classification (LDV or LDT), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. The Part 1 may include ranges for test parameters in lieu of actual values.

(13) Projected U.S. vehicle sales volumes for each test group and evaporative/refueling family combination organized in such a way to determine projected compliance with any applicable implementation schedules or minimum sales requirements as specified in § 86.1810 or as otherwise required by this chapter.

(14) A request for a certificate of conformity for each test group after all required testing has been completed. The request must be signed by an authorized manufacturer representative and include a statement that the test group complies with all applicable regulations contained within this chapter.

(e) *Part 2 Application.* Part 2 must contain the following items:

(1) A list of part numbers of all emission-related components and AECDs for each emission control system, including those found on actual components. The part numbers shall be organized by engine code or other similar classification scheme.

(2) Basic calibration information, organized by engine code (or other similar classification scheme), for the major components of the fuel system, EGR system, ignition system, oxygen sensor(s) and thermostat. Examples of major components and associated calibration information include, but are not limited to; fuel pump and fuel pump flow rate, fuel pressure regulator and regulated fuel pressure, EGR valve and EGR exhaust gas flow rate at specified vacuum levels, EGR vacuum regulator and regulated vacuum, EGR orifice and orifice diameter, basic engine timing, timing RPM, idle rpm, spark plug gap, oxygen sensor output (mV), and thermostat opening temperature.

(3) Identification and description of all vehicles covered by each certificate of conformity to be produced and sold within the U.S. The description must be sufficient to identify whether any given in-use vehicle is, or is not, covered by a given certificate of conformity, the test group and the evaporative/refueling family to which it belongs and the standards that are applicable to it, by matching readily observable vehicle characteristics and information given in the emission control information label (and other permanently attached labels) to indicators in the Part 1 Application. In addition, the description must be sufficient to determine for each vehicle covered by the certificate, all appropriate test parameters and any special test procedures necessary to conduct an official certification exhaust or evaporative emission test as was required by this subpart to demonstrate compliance with applicable emission standards. The description shall include, but is not limited to, information such as model name, vehicle classification (LDV or LDT), sales area, engine displacement, engine code, transmission type, tire size and parameters necessary to conduct exhaust emission tests such as equivalent test weight, curb and gross vehicle weight, test horsepower (with and without air conditioning adjustment), coast down time, shift schedules, cooling fan configuration, etc and evaporative tests such as canister working capacity, canister bed volume and fuel temperature profile. Actual values must be provided for all parameters.

(4) Final U.S. vehicle sales volumes for each test group and evaporative/refueling family combination organized in such a way to verify compliance with any applicable implementation schedules. Final sales are not required until the final update to the Part 2 Application at the end of the model year.

(i) The manufacturer may petition the Administrator to allow actual volume produced for U.S. sale to be used in lieu of actual U.S. sales. The petition must establish that production volume is functionally equivalent to sales volume.

(ii) The U.S. sales volume shall be based on the location of the point of sale to a dealer, distributor, fleet operator, broker, or any other entity which comprises the point of first sale.

(5) Copies of all service manuals, service bulletins and instructions regarding the use, repair, adjustment,

maintenance, or testing of such vehicles relevant to the control of crankcase, exhaust or evaporative emissions, as applicable, issued by the manufacturer (in written or electronic form) for use by other manufacturers, assembly plants, distributors, dealers, and ultimate purchasers. These shall be submitted to the Agency when they are made available to the public and must be updated as appropriate throughout the useful life of the corresponding vehicles.

(f) Running change submissions. A manufacturer shall submit to the Administrator a notification of all running changes as required in accordance with §§ 86.1842–01 and 86.1843–01 at the time each change is incorporated into production. Each running change notification shall include:

(1) A detailed description of the change;

(2) The reason for the change;

(3) The portion of the product line that is affected by the change, including information sufficient to identify whether any given in-use vehicle includes the change;

(4) The effect the change will have on emissions;

(5) Any test data that is determined to be necessary to demonstrate compliance with applicable emission standards; and

(6) A summary report for each test group which provides an overview of all running changes that have been incorporated since certification.

(g) The manufacturer shall provide the following information, or other information as deemed necessary by the Administrator, to the Agency upon written request by the Administrator. This includes any information, or explanations of such information specified in paragraphs (d), (e), and (f) of this section.

(1) A detailed description of the basis for all good engineering judgment decisions that were required to be made by the manufacturer. These include, but are not limited to, placement of vehicles into durability and test groups, the appropriateness of a durability process for future model years, worst-case vehicle selections for durability and emission data purposes, and carry-over or carry-across of emission test data.

(2) The basis used for all compliance statements submitted under this section. Each statement must be supported by the manufacturer using good engineering judgment and should include any emission test data, development test data, or other supporting information deemed necessary. This includes information necessary to demonstrate compliance with any emission standards for which a compliance statement was submitted in lieu of actual emission test data as allowed under § 86.1810.

(3) Detailed technical descriptions of emission-related components and AECDs, including schematic diagrams and hose and wire routings which describe the fundamental operating characteristics of each emission control system.

(4) Detailed calibration specifications for all emission-related components and AECDs.

(5) Any information necessary to demonstrate that no defeat devices are present on any vehicles covered by a certificate including, but not limited to, a description of the technology employed to control CO emissions at intermediate temperatures.

(6) The following information describing any adjustable parameters:

(i) A list of those parameters which are physically capable of being adjusted (including those adjustable parameters for which access is difficult) and that, if adjusted to settings other than the manufacturer's recommended setting, may affect emissions;

(ii) A specification of the manufacturer's intended physically adjustable range of each such parameter, and the production tolerances of the limits or stops used to establish the physically adjustable range;

(iii) A description of the limits or stops used to establish the manufacturer's intended physically adjustable range of each adjustable parameter, or any other means used to inhibit adjustment;

(iv) The nominal or recommended setting, and the associated production tolerances, for each such parameter;

(v) The specifications used during all emission testing required by this subpart.

(7) A history of each motor vehicle used for certification testing, including a general description of the buildup of the vehicle and engine. Each history shall begin when any of the selection or buildup activities occur and should include details of the use of the vehicle for development testing. Each history must include a description of the origin and selection process for fuel system components, fuel injection components and emission control system components and specify the steps taken to assure that the certification vehicle will be representative of production vehicles.

(8) A record of all emission tests performed on all durability and emission data vehicles required to be tested by this subpart including test results, the date and purpose of each test, and the number of miles accumulated on the vehicle.

(9) A record and description of any significant events (including extraordinary events such as vehicle accidents or dynamometer runaway) affecting any certification test vehicle, including all maintenance, servicing or tests performed to diagnose engine or emission control system performance. The date and time of each event and an explanation must be included.

(10) For vehicles with non-integrated refueling emission control systems, a description of the drivedown used to purge the refueling canister and a description of the procedures used to determine the number of equivalent UDDS cycles required to purge the refueling canisters, as determined from the fuel economy on the UDDS applicable to the test vehicle of that evaporative/refueling family and emission control system combination required to use a volume of fuel equal to 85% of fuel tank volume and from subpart B of this part.

(11) A description of all procedures, including any special procedures, used to comply with applicable test requirements of this subpart. Any special procedures used to establish durability data or emission deterioration factors required to be determined under §§ 86.1823–01, 86.1824–01 and 86.1825–01 and to conduct emission tests required to be performed on applicable emission data vehicles under § 86.1829–01 according to test procedures contained within this Title must also be included.

(12) A description of any unique procedures required to perform evaporative/refueling emission tests for all vehicles in each evaporative/refueling family and a description of the method used to develop those unique procedures, including canister working capacity, canister bed volume and fuel temperature profile for the running loss test.

(13) A description of the method to be used to decode vehicle identification numbers.

(h) *In-use information requirements.* Manufacturers must submit the information required in § 86.1847–01.

§ 86.1845–01 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer of light-duty vehicles and light-duty trucks shall test, or cause to have tested a specified number of light-duty vehicles and light-duty trucks. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the

term vehicle shall include light-duty vehicles and light-duty trucks.

(b) *Low mileage testing.* [Reserved].

(c) *High-mileage testing.* (1) Test Groups. Testing must be conducted for each test group.

(2) Vehicle mileage: All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75% of useful life. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

(3) Number of test vehicles. For each test group, the minimum number of vehicles that must be tested is specified in Table S01–06 and Table S01–07 of this paragraph (c)(3). After testing the minimum number of vehicles of a specific test group as specified in Table S01–06 and Table S01–07 of this paragraph (c)(3), a manufacturer may test additional vehicles upon request and approval by the Agency prior to the initiation of the additional testing. Any additional testing must be completed within the testing completion requirements shown in § 86.1845–01(c)(4). The request and Agency approval (if any) shall apply to test groups on a case by case basis and apply only to testing under this paragraph. In addition to the testing specified in Table S01–06 and Table S02–07 of this paragraph (c)(3), a manufacturer shall test one vehicle from each evaporative/refueling family for evaporative/refueling emissions. If a manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group as specified in Table S01–06 or Table S01–07 of this paragraph (c)(3), the manufacturer may request, subject to Administrator approval, a decreased sample size for that test group. The request shall include a description of the methods the manufacturer has used to procure the required number of vehicles. The approval of any such request, and the substitution of an alternative sample size requirement for the test group, will be based on a review of the procurement efforts made by the manufacturer to determine if all reasonable steps have been taken to procure the required test group size. Tables S01–06 and S01–07 follow:

TABLE S01–06.—SMALL VOLUME MANUFACTURERS

49 and 50 State total sales [1]	1–5000	5001–14,999
High Mileage	Voluntary	2

[1] Manufacturer's total annual sales.

TABLE S01–07.—LARGE VOLUME MANUFACTURERS

49 and 50 State annual sales [1]	1–5000 [2]	5001–14,999 [2]	1–50,000 [3]	50,001–250,000	>250,000
High Mileage	Voluntary	2	4	5	6

[1] Sales by test group.

[2] Total annual production of groups eligible for testing under small volume sampling plan is capped at a maximum of 14,999 vehicle 49 or 50 state annual sales, or a maximum of 4,500 vehicle California only sales per model year, per large volume manufacturer.

[3] Sampling plan applies to all of a manufacturer's remaining groups in this sales volume category when the maximum annual cap on total sales of small groups eligible for the small volume sampling plan is exceeded.

(4) Initiation and completion of testing. Testing of a test group (or evaporative refueling family) must commence within 4 years of the end of production of the test group (or evaporative/refueling family) and be completed within 5 years of the end of production of the test group (or evaporative/refueling family).

(5) Emission testing. (i) Each test vehicle shall be tested in accordance with the Federal Test Procedure and the US06 portion of the Supplemental Federal Test Procedure as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart. The US06 portion of the SFTP is not required to be performed on vehicles certified in accordance with the National LEV provisions of subpart R of this part. One test vehicle from each test group shall receive a Federal Test Procedure at high altitude. The test vehicle tested at high altitude is not required to be one of the same test vehicles tested at low altitude. The test vehicle tested at high altitude is counted when determining the compliance with the requirements shown in Table S01–06 and Table S01–07 in paragraph (c)(3) of this section or the expanded sample size as provided for in this paragraph (c).

(ii) One test vehicle of each evaporative/refueling family shall be tested in accordance with the evaporative emission and refueling emission test procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling emission standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (c)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S01–06 and Table S01–07 in paragraph (c)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

(6) Each test vehicle not rejected based on the criteria specified in Appendix II to this Subpart shall be tested in as-received condition.

(7) A manufacturer may conduct subsequent diagnostic maintenance and/or testing on any vehicle. Any such maintenance and/or testing shall be reported to the Agency as specified in § 86.1847–01.

(d) Test vehicle procurement. (1) Vehicles tested under this section shall be procured pursuant to the provisions of this paragraph (d). Vehicles shall be procured from the group of persons who own or lease vehicles registered in the procurement area.

(2) Vehicles shall be procured from persons which own or lease the vehicle, excluding commercial owners/lessees which are owned or controlled by the vehicle manufacturer, using the procedures described in Appendix I to this subpart. See § 86.1838(c)(2)(i) for small volume manufacturer requirements.

(3) Geographical limitations. (i) Test groups certified to 50-state standards: For low altitude testing no more than fifty percent of the test vehicles may be procured from California. The test

vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(ii) Test groups certified to 49 state standards: The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(iii) Vehicles procured for high altitude testing may be procured from any area located above 4000 feet.

(4) Vehicles may be rejected for procurement or testing under this section if they meet one or more of the rejection criteria in Appendix II of this subpart. Vehicles may also be rejected after testing under this section if they meet one or more of the rejection criteria in Appendix II of this subpart. Any vehicle rejected after testing must be replaced in order that the number of test vehicles in the sample comply with the sample size requirements of this section. Any post-test vehicle rejection and replacement procurement and testing must take place within the testing completion requirements of this section.

(e) *Testing facilities, procedures, quality assurance and quality control.* (1) Lab equipment and procedural requirements. The manufacturer shall utilize a test laboratory that is in accordance with the equipment and procedural requirements of subpart B to conduct the testing required by this section.

(2) The manufacturer shall notify the Agency of the name and location of the testing laboratory(s) to be used to conduct testing of vehicles of each model year conducted pursuant to this section. Such notification shall occur at least thirty working days prior to the initiation of testing of the vehicles of that model year.

(3) Correlation. The manufacturer shall document correlation traceable to the Environmental Protection Agency's National Vehicle and Fuel Emission Laboratory for its test laboratory utilized to conduct the testing required by this section.

§ 86.1845–04 Manufacturer in-use verification testing requirements.

(a) *General requirements.* A manufacturer of light-duty vehicles and light-duty trucks shall test, or cause to have tested a specified number of light-duty vehicles and light-duty trucks. Such testing shall be conducted in accordance with the provisions of this section. For purposes of this section, the term vehicle shall include light-duty vehicles and light-duty trucks.

(b) *Low-mileage testing.* (1) Test Groups. Testing must be conducted for each test group.

(2) Vehicle mileage. All test vehicles must have a minimum odometer mileage of 10,000 miles.

(3) Number of test vehicles. For each test group, the minimum number of vehicles that must be tested is specified in Table S04–06 and Table S04–07 of this paragraph (b)(3). After testing the minimum number of vehicles of a specific test group as specified in Table S04–06 or S04–07 of this paragraph (b)(3), a manufacturer may test additional vehicles upon request and approval by the Agency prior to the initiation of the additional testing. Any additional testing must be completed within the testing completion requirements shown in § 86.1845–04(b)(4). The request and Agency approval (if any) shall apply to test groups on a case by case basis and apply only to testing under this paragraph. Separate approval will be required to test additional vehicles under paragraph (c) of this section. In addition to the testing specified in Table S04–06 and Table S04–07 of this paragraph (b)(3), a manufacturer shall test one vehicle from each evaporative/refueling family for evaporative/refueling emissions. If a manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group, the manufacturer may request, subject to Administrator approval, a decreased sample size for that test group. The request shall include a description of the methods the manufacturer has used to procure the required number of vehicles. The approval of any such request, and the substitution of an alternative sample size requirement for the test group, will be based on a review of the procurement efforts made by the manufacturer to determine if all reasonable steps have been taken to procure the required test group size. Tables S04–06 and S04–07 follow:

TABLE S04–06.—SMALL VOLUME MANUFACTURERS

49 and 50 State total sales [1]	1–5000	5001–14,999
Low Mileage	Voluntary	0
High Mileage	Voluntary	2

[1] Manufacturer's total annual sales.

TABLE S04–07.—LARGE VOLUME MANUFACTURERS

49 and 50 State annual sales [1]	1–5000 [2]	5001–14,999 [2]	1–50,000 [3]	50,001–250,000	>250,000
Low Mileage	Voluntary	0	2	3	4
High Mileage	Voluntary	2	4	5	6

[1] Sales by test group.
[2] Total annual production of groups eligible for testing under small volume sampling plan is capped at a maximum of 14,999 vehicle 49 or 50 state annual sales, or a maximum of 4,500 vehicle California only sales per model year, per large volume manufacturer.
[3] Sampling plan applies to all of a manufacturer's remaining groups in this sales volume category when the maximum annual cap on total sales of small groups eligible for the small volume sampling plan is exceeded.

(4) Completion of testing. Testing of the vehicles in a test group and evaporative/refueling family must be completed within one year of the end of production of that test group (or evaporative/refueling family) for that model year.

(5) *Emission testing.* (i) Each test vehicle of a test group shall be tested in accordance with the Federal Test Procedure and the US06 portion of the Supplemental Federal Test Procedure as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart.

(ii) One test vehicle of each evaporative/refueling family shall be tested in accordance with the evaporative emission and refueling emission test procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling emission standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

(6) Each test vehicle not rejected based on the criteria specified in Appendix II to this Subpart shall be tested in as-received condition.

(7) A manufacturer may conduct subsequent diagnostic maintenance and/or testing of any vehicle. Any such maintenance and/or testing shall be reported to the Agency as specified in § 86.1847–01.

(c) *High-mileage testing.* (1) Test Groups. Testing must be conducted for each test group.

(2) Vehicle mileage: All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75% of useful life. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

(3) Number of test vehicles. For each test group, the minimum number of vehicles that must be tested is specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section. After testing the minimum number of vehicles of a specific test group as specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section, a manufacturer may test additional vehicles upon request and approval by the Agency prior to the initiation of the additional testing. Any additional testing must be completed within the testing completion requirements shown in § 86.1845–04(c)(4). The request and Agency approval (if any) shall apply to test groups on a case by case basis and apply only to testing under this paragraph (c). In addition to the testing specified in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section, a manufacturer shall test one vehicle from each evaporative/refueling family for evaporative/refueling emissions. If a manufacturer believes it is unable to procure the test vehicles necessary to test the required number of vehicles in a test group as specified in Table S04–06 or Table S04–07 in paragraph (b)(3) of this section, the manufacturer may request, subject to Administrator approval, a decreased sample size for that test group. The request shall include a description of the methods the manufacturer has used to procure the required number of vehicles. The approval of any such request, and the substitution of an alternative sample size requirement for the test group, will be based on a review of the procurement efforts made by the manufacturer to determine if all reasonable steps have been taken to procure the required test group size.

(4) Initiation and completion of testing. Testing of a test group (or evaporative refueling family) must commence within 4 years of the end of production of the test group (or evaporative/refueling family) and be completed within 5 years of the end of production of the test group (or evaporative/refueling family).

(5) Emission testing. (i) Each test vehicle shall be tested in accordance with the Federal Test Procedure and the US06 portion of the Supplemental Federal Test Procedure as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart. The US06 portion of the SFTP is not required to be performed on vehicles certified in accordance with the National LEV provisions of subpart R of this part. One test vehicle from each test group shall receive a Federal Test Procedure at high altitude. The test vehicle tested at high altitude is not required to be one of the same test vehicles tested at low altitude. The test vehicle tested at high altitude is counted when determining the compliance with the requirements shown in Table S04–06 and Table S04–07 in paragraph (b)(3) of this section or the expanded sample size as provided for in this paragraph (c).

(ii) One test vehicle of each evaporative/refueling family shall be tested in accordance with the evaporative emission and refueling emission test procedures described in subpart B of this part, when such test vehicle is tested for compliance with applicable evaporative emission and refueling emission standards under this subpart. The test vehicles tested to fulfill the evaporative/refueling testing requirement of this paragraph (b)(5)(ii) will be counted when determining compliance with the minimum number of vehicles as specified in Table S04–06 and table S04–07 in paragraph (b)(3) of this section for testing under paragraph (b)(5)(i) of this section only if the vehicle is also tested for exhaust emissions under the requirements of paragraph (b)(5)(i) of this section.

(6) Each test vehicle not rejected based on the criteria specified in Appendix II to this subpart shall be tested in as-received condition.

(7) A manufacturer may conduct subsequent diagnostic maintenance and/or testing on any vehicle. Any such maintenance and/or testing shall be reported to the Agency as specified in § 86.1847–01.

(d) Test vehicle procurement.

(1) Vehicles tested under this section shall be procured pursuant to the provisions of this paragraph (d). Vehicles shall be procured from the group of persons who own or lease vehicles registered in the procurement area.

(2) Vehicles shall be procured from persons which own or lease the vehicle, excluding commercial owners/lessees which are owned or controlled by the vehicle manufacturer, using the procedures described in Appendix I to this subpart. See § 86.1838(c)(2)(i) for small volume manufacturer requirements.

(3) Geographical limitations. (i) Test groups certified to 50-state standards: For low altitude testing no more than fifty percent of the test vehicles may be procured from California. The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(ii) Test groups certified to 49 state standards: The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(iii) Vehicles procured for high altitude testing may be procured from any area located above 4000 feet.

(4) Vehicles may be rejected for procurement or testing under this section if they meet one or more of the rejection criteria in Appendix II to this subpart. Vehicles may also be rejected after testing under this section if they meet one or more of the rejection criteria in Appendix II to this subpart. Any vehicle rejected after testing must be replaced in order that the number of test vehicles in the sample comply with the sample size requirements of this section. Any post-test vehicle rejection and replacement procurement and testing must take place within the testing completion requirements of this section.

(e) *Testing facilities, procedures, quality assurance and quality control.* (1) Lab equipment and procedural

requirements. The manufacturer shall utilize a test laboratory that is in accordance with the equipment and procedural requirements of subpart B of this part to conduct the testing required by this section.

(2) The manufacturer shall notify the Agency of the name and location of the testing laboratory(s) to be used to conduct testing of vehicles of each model year conducted pursuant to this section. Such notification shall occur at least thirty working days prior to the initiation of testing of the vehicles of that model year.

(3) Correlation. The manufacturer shall document correlation traceable to the Environmental Protection Agency's National Vehicle and Fuel Emission Laboratory for its test laboratory utilized to conduct the testing required by this section.

§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.

(a) General requirements. A manufacturer of light-duty vehicles and/or light-duty trucks shall test, or cause testing to be conducted, under this section when the emission levels shown by a test group sample from testing under § 86.1845–01 exceeds the criteria specified in paragraph (b) of this section. The testing required under this section applies separately to each test group and at each test point (low and high mileage) that meets the specified criteria. The testing requirements apply separately for each model year, starting with model year 2001.

(b) Criteria for additional testing. A manufacturer shall test a test group or a subset of a test group as described in paragraph (j) of this section when the results from testing conducted under § 86.1845–01 show mean emissions for that test group of any pollutant(s) to be equal to or greater than 1.30 times the applicable in-use standard and a failure rate, among the test group vehicles, for the corresponding pollutant(s) of fifty percent or greater.

(1) This requirement does not apply to Supplemental FTP testing conducted under § 86.1845(b)(5)(i) or evaporative/refueling testing conducted under § 86.1845–01. Testing conducted at high altitude under the requirements of § 86.1845–01 will be included in determining if a test group meets the criteria triggering testing required under this section.

(2) The vehicle tested under the requirements of § 86.1845–01(c)(2)(i) with a minimum odometer miles of 75% of useful life will not be included in determining if a test group meets the triggering criteria.

(3) The SFTP composite emission levels shall include the IUVP FTP emissions, the IUVP US06 emissions, and the values from the SC03 Air Conditioning EDV certification test (without DFs applied). The calculations shall be made using the equations prescribed in § 86.164–01. If more than one set of certification SC03 data exists (due to running change testing or other reasons), the manufacturer shall choose the SC03 result to use in the calculation from among those data sets using good engineering judgment.

(c) Vehicles tested under the provisions of this section must be within the useful life specified for the emission standards which were exceeded in the testing under § 86.1845–01. Testing should be within the useful life specified, subject to sections 207(c)(5) and (c)(6) of the Clean Air Act where applicable.

(d) Number of test vehicles. A manufacturer must test a minimum of ten vehicles of the test group or Agency-designated subset. A manufacturer may, at the manufacturer's discretion, test more than ten vehicles under this paragraph for a specific test group or Agency-designated subset. If a manufacturer chooses to test more than the required ten vehicles, all testing must be completed within the time designated in the testing completion requirements of § 86.1846–01(g). Any vehicles which are eliminated from the sample either prior to or subsequent to testing, or any vehicles for which test results are determined to be void, must be replaced in order that the final sample of vehicles for which test results acceptable to the Agency are available equals a minimum of ten vehicles. A manufacturer may cease testing with a sample of five vehicles if the results of the first five vehicles tested show mean emissions for each pollutant to be less than 75.0 percent of the applicable standard, with no vehicles exceeding the applicable standard for any pollutant.

(e) Emission testing. Each test vehicle of a test group or Agency-designated subset shall be tested in accordance with the Federal Test Procedure and/or the Supplemental Federal Test Procedure (whichever of these tests performed under § 86.1845–01 produces emission levels requiring testing under this section) as described in subpart B of this part, when such test vehicle is tested for compliance with applicable exhaust emission standards under this subpart.

(f) Geographical limitations. (1) Test groups or Agency-designated subsets certified to 50-state standards: For low altitude testing no more than 50 percent of the test vehicles may be procured from California. The test vehicles procured from the 49 state area must be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(2) Test groups or Agency-designated subsets certified to 49 state standards: For low-altitude testing all vehicles shall be procured from a location with a heating degree day 30 year annual average equal to or greater than 4000.

(3) Vehicles procured for high altitude testing may be procured from any area provided that the vehicle's primary area of operation was above 4000 feet.

(g) Testing required under this section must commence within three months of completion of the testing under § 86.1845–01 which triggered the confirmatory testing and must be completed within seven months of the completion of the testing which triggered the confirmatory testing. Any industry review of the results obtained under § 86.1845–01 and any additional vehicle procurement and/or testing which takes place under the provisions of § 86.1845–01 which the industry believes may affect the triggering of required confirmatory testing must take place within the three month period. The data and the manufacturers reasoning for reconsideration of the data must be provided to the Agency within the three month period.

(h) Limit on manufacturer conducted testing. For each manufacturer, the maximum number of test group(s)(or Agency-designated subset(s)) of each model year for which testing under this section shall be required is limited to 50 percent of the total number of test groups of each model year required to be tested by each manufacturer as prescribed in § 86.1845–01 rounded to the next highest whole number where appropriate. For each manufacturer with only one test group under § 86.1845–01, such manufacturer shall have a maximum potential testing requirement under this section of one test group (or Agency-designated subset) per model year.

(i) Prior to beginning in-use confirmatory testing the manufacturer must, after consultation with the Agency, submit a written plan describing the details of the vehicle procurement, maintenance, and testing procedures (not otherwise specified by regulation) it intends to use.

(j) EPA may designate a subset of the test group based on transmission type for testing under this section in lieu of testing the entire test group when the results for the entire test group from testing conducted under § 86.1845–01 show mean emissions and a failure rate

which meet these criteria for additional testing.

§ 86.1847–01 Manufacturer in-use verification and in-use confirmatory testing; submittal of information and maintenance of records.

(a) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1845–01 shall establish, maintain and retain the following records organized and indexed by test group and evaporative/refueling family:

(1) A record documenting correlation as prescribed by § 86.1845–01(e)(3).

(2) A description of all laboratory equipment calibrations and verifications as prescribed by subpart B of this part or otherwise as appropriate using good engineering judgment.

(3) Procurement documentation. A description of the procurement area, a record of the source(s) of any list(s) of vehicles used as a basis for procurement, and a complete record of the number of vehicles rejected after positive vehicle owner response and reason(s) for manufacturer rejection of each rejected vehicle. A complete record of the number of vehicle owners/lessees in which attempt to contact was made and the number of vehicle owners/lessees actually contacted, the number of owners/lessees not contacted and the reasons and number of each for failure to contact, and the number of owners contacted who declined to participate.

(4) All records required to be maintained under this paragraph shall be retained by the manufacturer for a period of eight (8) years after the end of production of the test group to which they relate.

(b) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1845–01 shall submit to the Administrator on a quarterly calendar year basis, with the information provided to the Administrator within 30 days of the end of the quarter of each calendar year, the following records organized by test group and evaporative/refueling family.

(1) A complete record of all emission tests performed, including tests results, the date of each test, and the phase mass values for fuel economy, carbon dioxide and each pollutant measured by the Federal Test Procedure and Supplemental Federal Test Procedure as prescribed by subpart B of this part.

(2) For each test vehicle within a test group, a record and description of procedures and test results pertaining to any inspection (including the information listed in Appendix III to this subpart), diagnostics, and maintenance performed on the test vehicle prior to testing in as-received condition.

(3) A record and description of any inspection, diagnostics, and maintenance performed and/or testing (including emission results) of any vehicle tested subsequent to its initial as-received test.

(c) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1845–01 shall submit to the Administrator a record of the name and location of the testing laboratory(s) to be used to conduct testing for each model year 30 working days prior to the initiation of testing of that model year.

(d) The manufacturer of any test vehicle subject to § 86.1845–01 shall report to the Agency the test results (identifying the vehicle test group and emission test results) of any test vehicle in which the test vehicle fails to meet any applicable emission standard. The manufacturer must make this report within 72 hours of the completion of the testing of the test vehicle.

(e) The manufacturer who conducts or causes to be conducted testing of any motor vehicle under § 86.1846–01 shall establish, maintain and retain the following organized and indexed records by test group or Agency-designated subset.

(1) A description of all laboratory equipment calibrations and verifications as prescribed by subpart B of this part or by good engineering judgment.

(2) Procurement documentation. A description of the procurement area, a record of the source(s) of any list(s) of vehicles used as a basis for procurement, a complete record of: the number of vehicle owners/lessees in which attempt to contact was made and the number of vehicle owners/lessees actually contacted; the number of owners/lessees not contacted and the reasons and number of each for failure to contact; the number of owners contacted who declined to participate; and a complete record of the number of vehicles rejected after positive vehicle owner response and reason(s) for manufacturer rejection of each rejected vehicle.

(3) All records required to be maintained under this paragraph shall be retained by the manufacturer for a period of eight (8) years after the end of production of the test group to which they relate.

(f) Within 30 working days of the completion of testing of a test group or Agency-designated subset performed under § 86.1846–01; the manufacturer shall submit to the Administrator the following records organized by test group or Agency-designated subset.

(1) A complete record of all emission tests performed, including tests results, the date of each test, and the phase mass values for fuel economy, carbon dioxide and each pollutant measured by the Federal Test Procedure and Supplemental Federal Test Procedure as prescribed by subpart B of this part.

(2) For each test vehicle within a test group, a record and description of procedures and test results pertaining to any inspections, diagnostics, and maintenance performed on the test vehicle prior to any emission testing.

(3) A record and description of any inspections, diagnostics, maintenance performed and/or testing (including emission results) of any test vehicle tested subsequent to its initial emission test.

§ 86.1848–01 Certification.

(a)(1) If, after a review of the manufacturer's submitted Part I application, information obtained from any inspection, such other information as the Administrator may require, and any other pertinent data or information, the Administrator determines that the application is complete and that all vehicles within a test group as described in the application meet the requirements of this Part and the Clean Air Act, the Administrator shall issue a certificate of conformity.

(2) If, after review of the manufacturer's application, request for certification, information obtained from any inspection, such other information as the Administrator may require, and any other pertinent data or information, the Administrator determines that the application is not complete or the vehicles within a test group as described in the application, do not meet applicable requirements or standards of the Act or of this part, the Administrator may deny the issuance of, suspend, or revoke a previously issued certificate of conformity. The Administrator will notify the manufacturer in writing, setting forth the basis for the determination. The manufacturer may request a hearing on the Administrator's determination.

(b) A certificate of conformity will be issued by the Administrator for a period not to exceed one model year and upon such terms as deemed necessary or appropriate to assure that any new motor vehicle covered by the certificate will meet the requirements of the Act and of this part.

(c) All certificates are conditional upon the following conditions being met:

(1) The manufacturer must supply all required information according to the

provisions of §§ 86.1843–01 and 86.1844–01.

(2) The manufacturer must comply with all certification and in-use emission standards contained in subparts S and H of this part both during and after model year production.

(3) The manufacturer must comply with all implementation schedules sales percentages as required in § 86.1810 or elsewhere in this part. Failure to meet a required implementation schedule sales percentage will be considered to be a failure to satisfy a condition upon which the certificate was issued and any vehicles or trucks sold in violation of the implementation schedule shall not be covered by the certificate.

(4) For incomplete light-duty trucks, a certificate covers only those new motor vehicles which, when completed by having the primary load-carrying device or container attached, conform to the maximum curb weight and frontal area limitations described in the application for certification as required in § 86.1844–01.

(5) The manufacturer must meet the in-use testing and reporting requirements contained in §§ 86.1845–01, 86.1846–01, and 86.1847–01, as applicable. Failure to meet the in-use testing or reporting requirements shall be considered a failure to satisfy a condition upon which the certificate was issued. A vehicle or truck will be considered to be covered by the certificate only if the manufacturer fulfills this condition upon which the certificate was issued.

(6) Vehicles are covered by a certificate of conformity only if they are in all material respects as described in the manufacturer's application for certification (Part I and Part II).

(d) One certificate will be issued for each test group and evaporative/refueling family combination. For diesel fueled vehicles, one certificate will be issued for each test group. A certificate of conformity is deemed to cover the vehicles named in such certificate and produced during the model year.

(e) A manufacturer of new light-duty vehicles and light-duty trucks must obtain a certificate of conformity covering such vehicles from the Administrator prior to selling, offering for sale, introducing into commerce, delivering for introduction into commerce, or importing into the United States the new vehicle. Vehicles produced prior to the effective date of a certificate of conformity may also be covered by the certificate, once it is effective, if the following conditions are met:

(1) The vehicles conform in all respects to the vehicles described in the application for the certificate of conformity.

(2) The vehicles are not sold, offered for sale, introduced into commerce, or delivered for introduction into commerce prior to the effective date of the certificate of conformity.

(3) EPA is notified prior to the beginning of production when such production will start, and EPA is provided a full opportunity to inspect and/or test the vehicles during and after their production. EPA must have the opportunity to conduct SEA production line testing as if the vehicles had been produced after the effective date of the certificate.

(f) Vehicles imported by an original equipment manufacturer after December 31 of the calendar year for which the model year is named are still covered by the certificate of conformity as long as the production of the vehicle was completed before December 31 of that year.

(g) For test groups required to have an emission control diagnostic system, certification will not be granted if, for any emission data vehicle or other test vehicle approved by the Administrator in consultation with the manufacturer, the malfunction indicator light does not illuminate under any of the circumstances described in § 86.1806–01(k)(1) through (6).

(h) Vehicles equipped with aftertreatment technologies such as catalysts, otherwise covered by a certificate, which are driven outside the United States, Canada, and Mexico will be presumed to have been operated on leaded gasoline resulting in deactivation of such components as catalysts and oxygen sensors. If these vehicles are imported or offered for importation without retrofit of the catalyst or other aftertreatment technology, they will be considered not to be within the coverage of the certificate unless included in a catalyst or other aftertreatment technology control program operated by a manufacturer or a United States Government agency and approved by the Administrator.

(i) For all light-duty vehicles and light light-duty trucks certified to NLEV standards under §§ 86.1710 through 86.1712, the following provisions apply:

(1) All certificates issued are conditional upon manufacturer compliance with all provisions of §§ 86.1710 through 86.1712 both during and after model year production.

(2) Failure to meet the requirements of § 86.1710(a) through (d) will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of the fleet average NMOG standard shall not be covered by the certificate.

(3) Failure to comply fully with the prohibition against a manufacturer selling credits that it has not generated or are not available, as specified in § 86.1710(e), will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of this prohibition shall not be covered by the certificate.

(4) Failure to comply fully with the prohibition against offering for sale Tier 1 vehicles and TLEVs in the Northeast Trading Region, as defined in § 86.1702, after model year 2000 if vehicles with the same test groups are not certified and offered for sale in California in the same model year, as specified in § 86.1711(a), will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the vehicles sold in violation of this prohibition shall not be covered by the certificate.

(5)(i) The Administrator will issue a National LEV certificate of conformity for 2000 model year vehicles or engines certified to comply with the California TLEV emission standards.

(ii) This certificate of conformity shall be granted after the Administrator has received and reviewed the California Executive Order a manufacturer has received for the same vehicles or engines.

(iii) Vehicles or engines receiving a certificate of conformity under the provisions in this paragraph can only be sold in the states included in the NTR, as defined in § 86.1702, and those states where the sale of California-certified vehicles is otherwise authorized.

(6) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied.

(7) For recall and warranty purposes, vehicles not covered by a certificate because of a violation of these conditions of the certificate will continue to be held to the standards stated in the certificate that would have otherwise applied to the vehicles.

§ 86.1849–01 Right of entry.

(a) Any manufacturer who has applied for certification of a new motor vehicle subject to testing under this subpart, or any manufacturer or entity who conducts or causes to be conducted in-use verification or in-use confirmatory testing under this subpart, shall admit or cause to be admitted any EPA Enforcement Officer or any EPA authorized representative during

operating hours on presentation of credentials to any of the following:

(1) Any facility where any such certification or in-use verification or in-use confirmatory testing or any procedures or activities connected with such testing are or were performed.

(2) Any facility where any new motor vehicle or test vehicle used for certification, in-use verification or in-use confirmatory testing which is being, was, or is to be tested is present.

(3) Any facility where any construction process or assembly process used in the modification or build up of such a vehicle into a certification vehicle is taking place or has taken place.

(4) Any facility where any record or other document relating to § 86.1849–01(a) (1), (2), and/or (3) is located.

(b) Upon admission to any facility referred to in paragraph (a) of this section, any EPA official or EPA authorized representative shall be allowed:

(1) To inspect and monitor any part or aspect of such procedures, activities, and testing facilities, including, but not limited to, monitoring vehicle preconditioning, emissions tests and mileage (or service) accumulation, bench aging, maintenance, and vehicle soak and storage procedures, and to verify correlation or calibration of test equipment.

(2) To inspect and make copies of any such records, designs, or other documents, including those records specified in §§ 86.1843–01, 86.1844–01, and 86.1847–01.

(c) In order to allow the Administrator to determine whether or not production motor vehicles conform to the conditions upon which a certificate of conformity has been issued, or conform in all material respects to the design specifications which applied to those vehicles described in the certification application for which a certificate of conformity has been issued to standards prescribed under section 202 of the Act, any manufacturer shall admit any EPA Enforcement Officer or EPA authorized representative on presentation of credentials to:

(1) Any facility where any document, design, or procedure relating to the translation of the design and construction of engines and emission-related components described in the compliance application or used for certification testing into production vehicles is located or carried on; and

(2) Any facility where any motor vehicles to be introduced into commerce are manufactured or assembled.

(d) Upon admission to any facility referred to in paragraph (c) of this section, any EPA Enforcement Officer or EPA authorized representative shall be allowed:

(1) To inspect and monitor any aspects of such manufacture or assembly and other procedures;

(2) To inspect and make copies of any such records, documents or designs; and

(3) To inspect and photograph any part or aspect of any such new motor vehicles and any component used in the assembly thereof that are reasonably related to the purpose of the entry.

(e) Any EPA official or EPA authorized representative shall be furnished by those in charge of a facility being inspected with such reasonable assistance as he may request to help him discharge any function set forth in this paragraph. Each applicant for or recipient of certification is required to cause those in charge of a facility operated for its benefit to furnish such reasonable assistance without charge to EPA whether or not the applicant controls the facility.

(f) The duty to admit or cause to be admitted any EPA Enforcement Officer or EPA authorized representative applies whether or not the applicant owns or controls the facility in question and applies both to domestic and to foreign manufacturers and facilities. EPA will not attempt to make any inspections which it has been informed that local law forbids. However, if local law makes it impossible to what is necessary to insure the accuracy of data generated at a facility, no informed judgment that a vehicle is certifiable or is covered by a certificate can properly be based on those data. It is the responsibility of the manufacturer to locate its testing and manufacturing facilities in jurisdictions where this situation will not arise.

(g) For purposes of this section:

(1) "Presentation of credentials" shall mean display of the document designating a person as an EPA Enforcement Officer or EPA authorized representative.

(2) Where vehicle, component, or engine storage areas or facilities are concerned, "operating hours" shall mean all times during which personnel other than custodial personnel are at work in the vicinity of the area or facility and have access to it.

(3) Where facilities or areas other than those covered by paragraph (g)(2) of this section are concerned, "operating hours" shall mean all times during which an assembly line is in operation or all times during which testing, maintenance, mileage (or service) accumulation, production or compilation of records, or any other procedure or activity related to certification testing, to translation of designs from the test stage to the production stage, or to vehicle (or engine) manufacture or assembly is being carried out in a facility.

(4) *Reasonable assistance* includes, but is not limited to, clerical, copying, interpretation and translation services, the making available upon request of personnel of the facility being inspected during their working hours to inform the EPA Enforcement Officer or EPA authorized representative of how the facility operates and to answer his questions, and the performance on request of emissions tests on any vehicle which is being, has been, or will be used for certification or in-use verification or confirmatory testing. Such tests shall be nondestructive, but may require appropriate mileage (or service) accumulation. A manufacturer may be compelled to cause the personal appearance of any employee at such a facility before an EPA Enforcement Officer or EPA authorized representative by written request for his appearance, signed by the Assistant Administrator for Air and Radiation or the Assistant Administrator for Enforcement and Compliance Assurance, served on the manufacturer. Any such employee who has been instructed by the manufacturer to appear will be entitled to be accompanied, represented, and advised by counsel.

§ 86.1850–01 Denial, suspension or revocation of certificate of conformity.

(a) If, after review of the manufacturer's application, request for certification, information obtained from any inspection, such other information as the Administrator may require, and any other pertinent data or information, the Administrator determines that one or more test vehicles do not meet applicable requirements or standards of the Act or of this Part, the Administrator will notify the manufacturer in writing, setting forth the basis for the determination. The manufacturer may request a hearing on the Administrator's determination.

(b) Notwithstanding the fact that the vehicles described in the application may comply with all other requirements of this subpart, the Administrator may deny issuance of, suspend, or revoke a previously issued certificate of conformity if the Administrator finds any one of the following infractions to be substantial:

(1) The manufacturer submits false or incomplete information.

(2) The manufacturer denies an EPA enforcement officer or EPA authorized

representative the opportunity to conduct authorized inspections as required under § 86.1849–01.

(3) The manufacturer renders inaccurate any test data which it submits, or fails to make a good engineering judgment in accordance with § 86.1851–01(c)(1).

(4) The manufacturer denies an EPA enforcement officer or EPA authorized representative reasonable assistance as required in § 86.1849–01.

(5) The manufacturer fails to provide the records required in § 86.1844–01 to the Administrator within the deadline set forth in the request for such information.

(6) The manufacturer fails to comply with all conditions under which the certificate of conformity was granted as specified in 86.1848–01.

(7) The manufacturer otherwise circumvents the intent of the Act or of this Part.

(c) The manufacturer shall bear the burden of establishing to the satisfaction of the Administrator that the conditions upon which the certificate was issued were satisfied, or that any failure to satisfy a condition is not substantial.

(d) If a manufacturer knowingly commits an infraction specified in paragraphs (b)(1) through (b)(7) of this section, knowingly commits any fraudulent act which results in the issuance of a certificate of conformity, or fails to comply with the conditions specified in § 86.1843–01, the Administrator may deem such certificate void *ab initio*.

(e) When the Administrator denies, suspends, revokes, or voids ab initio a certificate, EPA will provide the manufacturer a written determination. The manufacturer may request a hearing under § 86.1853–01 on the Administrator's decision.

(f) Any suspension or revocation of a certificate of conformity shall extend no further than to forbid the introduction into commerce of vehicles previously covered by the certificate which are still in the possession of the manufacturer, except in cases of such fraud or other misconduct that makes the certification void *ab initio*.

§ 86.1851–01 Application of good engineering judgment to manufacturers' decisions.

(a) The manufacturer shall exercise good engineering judgment in making all decisions called for under this subpart, including but not limited to selections, categorizations, determinations, and applications of the requirements of the subpart.

(b) Upon written request by the Administrator, the manufacturer shall provide within 15 working days (or such longer period as may be allowed by the Administrator) a written description of the engineering judgment in question.

(c) The Administrator may reject any such decision by a manufacturer if it is not based on good engineering judgment, or is otherwise inconsistent with the requirements of this subpart.

(d) If the Administrator rejects a decision by a manufacturer with respect to the exercise of good engineering judgment, the following provisions shall apply:

(1) If the Administrator determines that incorrect information was deliberately used in the decision process, that important information was deliberately overlooked, that the decision was not made in good faith, or that the decision was not made with a rational basis, the Administrator may suspend or void *ab initio* a certificate of conformity.

(2) If the Administrator determines that the manufacturer's decision does not meet the provisions of paragraph(d)(1) of this section, but that a different decision would reflect a better exercise of good engineering judgment, then the Administrator will notify the manufacturer of this concern and the basis thereof.

(i) The manufacturer shall have at least 30 days to respond to this notice. The Administrator may extend this response period upon request from the manufacturer if it is necessary to generate additional data for the manufacturer's response.

(ii) The Administrator shall make the final ruling after considering the information provided by the manufacturer during the response period. If the Administrator determines that the manufacturer's decision was not made using good engineering judgment, he/she may reject that decision and apply the new ruling to future corresponding decisions as soon as practicable.

(e) The Administrator shall notify the manufacturer in writing regarding any decision reached under paragraph (d)(1) or (2) of this section. The Administrator shall include in this notification the basis for reaching the determination.

(f) Within 30 working days following receipt of notification of the Administrator's determinations made under paragraph (d) of this section, the manufacturer may request a hearing on those determinations. The request shall be in writing, signed by an authorized representative of the manufacturer, and shall include a statement specifying the manufacturer's objections to the Administrator's determinations, and data or other analysis in support of such objections. If, after review of the request and supporting data or analysis, the Administrator finds that the request raises a substantial factual issue, he/she shall provide the manufacturer a hearing in accordance with § 86.1853–01 with respect to such issue.

§ 86.1852–01 Waivers for good in-use emission performance.

(a) The Administrator may waive requirements of this subpart relating to development of emission-related information or test data if the Administrator determines with confidence that the in-use emission test verification data required in § 86.1845–01 are below the applicable emission standards for an appropriate period of time, and that such performance is likely to continue in subsequent model years.

(b) Any waiver granted under paragraph (a) of this section will be granted only if the Administrator determines that the waived requirement is not needed to assure continued emission compliance and the Administrator will have sufficient testing and other information in order to make certification decisions.

(c) Any waiver granted under paragraph (a) of this section would be limited in duration to a period of one model year, unless extended by the Administrator as a result of continued demonstrations of good in-use emission performance.

(d) The Administrator reserves the right to deny or revoke a waiver which may have been granted if he/she determines that the manufacturer no longer qualifies for the waiver.

§ 86.1853–01 Certification hearings.

(a)(1) After granting a request for a hearing under this subpart, the Administrator shall designate a Presiding Officer for the hearing.

(2) The hearing shall be held as soon as practicable at a time and place fixed by the Administrator or by the Presiding Officer.

(3) In the case of any hearing requested pursuant to § 86.1850–01(e), the Administrator may in his discretion direct that all argument and presentation of evidence be concluded within such fixed period not less than 30 days as he may establish from the date that the first written offer of a hearing is made to the manufacturer. To expedite proceedings, the Administrator may direct that the decision of the Presiding Officer (who may, but need not be the Administrator) shall be the final EPA decision.

(b)(1) Upon appointment pursuant to paragraph (a) of this section, the Presiding Officer will establish a hearing file. The file shall consist of the notice issued by the Administrator together with any accompanying material, the request for a hearing and the supporting data submitted therewith, and all documents relating to the request for certification and all documents submitted therewith, and correspondence and other data material to the hearing.

(2) The hearing file will be available for inspection by the applicant at the office of the Presiding Officer.

(c) An applicant may appear in person, or may be represented by counsel or by any other duly authorized representative.

(d)(1) The Presiding Officer upon the request of any party, or in his discretion, may arrange for a prehearing conference at a time and place specified by him to consider the following:

(i) Simplification of the issues;

(ii) Stipulations, admissions of fact, and the introduction of documents;

(iii) Limitation of the number of expert witnesses;

(iv) Possibility of agreement disposing of all or any of the issues in dispute;

(v) Such other matters as may aid in the disposition of the hearing, including such additional tests as may be agreed upon by the parties.

(2) The results of the conference shall be reduced to writing by the Presiding Officer and made part of the record.

(e)(1) Hearings shall be conducted by the Presiding Officer in an informal but orderly and expeditious manner. The parties may offer oral or written evidence, subject to the exclusion by the Presiding Officer of irrelevant, immaterial and repetitious evidence.

(2) Witnesses will not be required to testify under oath. However, the Presiding Officer shall call to the attention of witnesses that their statements may be subject to the provisions of title 18 U.S.C. 1001 which imposes penalties for knowingly making false statements or representations, or using false documents in any matter within the jurisdiction of any department or agency of the United States.

(3) Any witness may be examined or cross-examined by the Presiding Officer, the parties, or their representatives.

(4) Hearings shall be reported verbatim. Copies of transcripts of proceedings may be purchased by the applicant from the reporter.

(5) All written statements, charts, tabulations, and similar data offered in evidence at the hearings shall, upon a showing satisfactory to the Presiding Officer of their authenticity, relevancy, and materiality, be received in evidence and shall constitute a part of the record.

(6) Oral argument may be permitted in the discretion of the Presiding Officer and shall be reported as part of the record unless otherwise ordered by the Presiding Officer.

(f)(1) The Presiding Officer shall make an initial decision which shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the record. The findings, conclusions, and written decision shall be provided to the parties and made a part of the record. The initial decision shall become the decision of the Administrator without further proceedings unless there is an appeal to the Administrator or motion for review by the Administrator within 20 days of the date the initial decision was filed.

(2) On appeal from or review of the initial decision the Administrator shall have all the powers which he would have in making the initial decision including the discretion to require or allow briefs, oral argument, the taking of additional evidence or the remanding to the Presiding Officer for additional proceedings. The decision by the Administrator shall include written findings and conclusions and the reasons or basis therefor on all the material issues of fact, law, or discretion presented on the appeal or considered in the review.

Appendix I to Subpart S of Part 86—Vehicle Procurement Methodology

I. *Test Sampling:* The master owner list will be obtained from manufacturer records or owner registration lists. The list shall include all vehicle configurations of the target reality check test group within the selected mailing area. The mailing area shall be within a radius of at least 20 miles from the test site.

II. *Selection Guidelines:* The manufacturer or their representative shall make a reasonable effort to contact potential participants. Solicitation letters will be sent to potential participants in the order of their appearance on a randomized master owner list. The manufacturer or their representative shall perform the following steps:

(a) The manufacturer or their representative shall mail solicitation letters in batches. The size of each batch is at least five times the required number of vehicles to be tested for the group that year. First class mail shall be used.

(b) If the response rate is less than 20% after two to four weeks, the manufacturer or their representative shall make one more attempt and send a new solicitation package to the potential participants who have not yet responded.

(c) A telephone questionnaire will be conducted on a random selection of returned, positive-response postcards.

(d) If the required number of vehicles is not obtained, additional solicitation letters shall be sent to the next batch of potential participants in the order of their appearance on a randomized master owner list until the required number of vehicles are procured.

(e) Alternative selection methods may be used with advanced approval from the Administrator.

III. *Vehicles Not Available:* Vehicles may not be available or will not be pursued for procurement for the following reasons:

(a) The potential participant response indicates "not willing to participate."

(b) The customer has moved out of the area.

(c) The solicitation letter is undeliverable.

(d) The customer did not respond after two attempts.

(e) The vehicle is not in the appropriate mileage or age category.

Appendix II to Subpart S of Part 86—As-received Testing Vehicle Rejection Criteria

1. The odometer is inoperative, has been replaced, or the indicated mileage is outside the target range.

2. The emission system of the vehicle has been obviously tampered or the vehicle has been operated on leaded fuel. A manufacturer may request a vehicle be rejected because of the addition of an aftermarket security system if the manufacturer establishes that the installation would make that vehicle's emissions unrepresentative.

3. The vehicle has been used for severe duty (trailer towing for passenger cars, snow plowing, racing)

4. The vehicle has a history of extensive collision damage or major engine repair (piston, crank, cylinder head, engine block).

5. The vehicle exhibits ominous noises or serious fluid leaks from the engine or transmission, a modified exhaust system, (headers, side pipes, aftermarket catalysts, etc) or an exhaust system with an audible leak.

6. Testing the vehicle could endanger the safety of the vehicle, test facility, or individuals conducting the testing.

7. The MIL light is flashing (severe misfire indication).

8. Other items with prior agency approval.

Appendix III to Subpart S of Part 86—As-Received Inspection

Items to be recorded at time of Initial Inspection of Vehicle—

1. Date of Inspection
3. Test Group
4. Evaporative/refueling Family
5. Vehicle model
6. Odometer Reading
7. Build Date
8. MIL light on/off status
9. Readiness code status
10. Stored OBD codes
11. Any conditions referenced in Appendix II to this subpart which result in vehicle being rejected from program.

PART 88—[AMENDED]

53. The authority citation for Part 88 continues to read as follows:

Authority: 42 U.S.C. 7410, 7418, 7581, 7582, 7583, 7584, 7586, 7588, 7589, 7601(a).

54. Section 88.301–93 of subpart C is amended by adding a new paragraph (c) to read as follows:

§ 88.301–93 General applicability.

* * * * *

(c) References in this subpart to engine families and emission control systems shall be deemed to refer to durability groups and test groups as applicable for manufacturers certifying new light-duty vehicles and light-duty trucks under the provisions of 40 CFR part 86, subpart S.

PART 600—[AMENDED]

55. The authority for Part 600 continues to read as follows:

Authority: 15 U.S.C. 2001, 2002, 2003, 2005, 2006, and 2013.

56. Section 600.002–85 is amended by revising paragraph (a)(15) to read as follows:

§ 600.002–85 Definitions.

(a) * * *

(15) *Certification Vehicle* means a vehicle which is selected under 40 CFR 86.084–24(b)(1) or 40 CFR 86.1824–01 as applicable, and is used to determine compliance under 40 CFR 86.084–30 or 40 CFR 86.1844–01 as applicable for issuance of an original certificate of conformity.

* * * * *

57. Section 600.005–81 is amended by revising the introductory text to read as follows:

§ 600.005–81 Maintenance of records and rights of entry.

The provisions of this section are applicable to all fuel economy data vehicles. Certification vehicles are required to meet the provisions of 40 CFR 86.000–7 or 40 CFR 86.1844–01, as applicable:

* * * * *

58. Section 600.006–89 is amended by revising paragraphs (c)(1) and (f) to read as follows:

§ 600.006–89 Data and information requirements for fuel economy vehicles.

* * * * *

(c) * * *

(1) For vehicles tested to meet the requirements of 40 CFR part 86 (other than those chosen in accordance with 40 CFR 86.1829–01(a) or 40 CFR 86.1844–01), the city and highway fuel economy results from all tests on that vehicle, and the test results adjusted in accordance with paragraph (g) of this section.

* * * * *

(f) If, in conducting tests required or authorized by this part, the manufacturer utilizes procedures, equipment, or facilities not described in the Application for Certification required in 40 CFR 86.087–21 or 40 CFR 86.1844–01 as applicable, the manufacturer shall submit to the Administrator a description of such procedures, equipment, and facilities.

* * * * *

59. Section 600.007–80 is amended by revising paragraphs (a) and (b)(3), (b)(4) and (e)(1) to read as follows:

§ 600.007–80 Vehicle acceptability.

(a) All certification vehicles and other vehicles tested to meet the requirements of 40 CFR part 86 (other than those chosen per 40 CFR 86.080–24(c) or 40 CFR 86.1829–01(a) as applicable, are considered to have met the requirements of this section.

(b) * * *

(3) The mileage on a fuel economy data vehicle must be, to the extent possible, accumulated according to 40 CFR 86.079–26(a)(2) or 40 CFR 86.1831–01 as applicable.

(4) Each fuel economy data vehicle must meet the same exhaust emission standards as certification vehicles of the respective engine-system combination during the test in which the city fuel economy test results are generated. The deterioration factors established for the respective engine-system combination per § 86.079–28 or § 86.1841–01 as applicable will be used.

* * * * *

(e) * * *

(1) The Administrator may, under the provisions of 40 CFR 86.079–37(a) or 40 CFR 86.1830–01 as applicable, request the manufacturer to submit production vehicles of the configuration(s) specified by the Administrator for testing to determine to what extent emission noncompliance of a production vehicle configuration or of a group of production vehicle configurations may actually exist.

* * * * *

60. A new § 600.008–01 is added to read as follows:

§ 600.008–01 Review of fuel economy data, testing by the Administrator.

(a) *Testing by the Administrator.* (1) The Administrator may require that any one or more of the test vehicles be submitted to the Agency, at such place or places as the Agency may designate, for the purposes of conducting fuel economy tests. The Administrator may specify that such testing be conducted at the manufacturer's facility, in which case instrumentation and equipment specified by the Administrator shall be made available by the manufacturer for test operations. Any testing conducted at a manufacturer's facility pursuant to this paragraph shall be scheduled by the manufacturer as promptly as possible.

(2) Retesting and official data determination. For any vehicles selected for confirmatory testing under the provisions of paragraph (a)(1) of this section, the Administrator will follow this procedure:

(i) The manufacturer's data (or harmonically averaged data if more than one test was conducted) will be compared with the results of the Administrator's test.

(ii) If, in the Administrator's judgment, the comparison in paragraph (a)(2)(i) of this section indicates a disparity in the data, the Administrator will repeat the city test or the highway test or both as applicable.

(A) The manufacturer's average test results and the results of the Administrator's first test will be compared with the results of the Administrator's second test as in paragraph (a)(2)(i) of this section.

(B) If, in the Administrator's judgment, both comparisons in paragraph (a)(2)(i)(A) of this section, indicate a disparity in the data, the Administrator will repeat the city fuel economy test or highway fuel economy test or both as applicable until:

(*1*) In the Administrator's judgment no disparity in the data is indicated by comparison of two tests by the Administrator or by comparison of the manufacturer's average test results and a test by the Administrator; or

(*2*) Four city tests or four highway tests or both, as applicable, are conducted by the Administrator in which a disparity in the data is indicated when compared as in paragraph (a)(2)(ii) of this section.

(iii) If there is, in the Administrator's judgment, no disparity indicated by comparison of manufacturer's average test results with a test by the Administrator, the test values generated by the Administrator will be used to represent the vehicle.

(iv) If there is, in the Administrator's judgment, no disparity indicated by comparison of two tests by the Administrator, the harmonic averages of the city and highway fuel economy results from those tests will be used to represent the vehicle.

(v) If the situation in paragraph (a)(2)(ii)(B)(*2*) of this section occurs, the Administrator will notify the

manufacturer, in writing, that the Administrator rejects that fuel economy data vehicle.

(b) *Manufacturer-conducted confirmatory testing.* (1) If the Administrators determines not to conduct a confirmatory test under the provisions of paragraph (a) of this section, manufacturers will conduct a confirmatory test at their facility after submitting the original test data to the Administrator whenever any of the following conditions exist:

(i) The vehicle configuration has previously failed an emission standard;

(ii) The test exhibits high emission levels determined by exceeding a percentage of the standards specified by the Administrator for that model year;

(iii) The fuel economy value of the test is higher than expected based on procedures approved by the Administrator;

(iv) The fuel economy value is close to a Gas Guzzler Tax threshold value based on tolerances established by the Administrator for that model year; or

(v) The fuel economy value is a potential fuel economy leader for a class of vehicles based on Administrator provided cut points for that model year.

(2) If the Administrator selects the vehicle for confirmatory testing based on the manufacturer's original test results, the testing shall be conducted as ordered by the Administrator. In this case, the manufacturer-conducted confirmatory testing specified under paragraph (b)(1) of this section would not be required.

(3) The manufacturer shall conduct a retest of the FTP or highway test if the difference between the fuel economy of the confirmatory test and the original manufacturer's test equals or exceeds three percent (or such lower percentage to be applied consistently to all manufacturer conducted confirmatory testing as requested by the manufacturer and approved by the Administrator).

(i) The manufacturer may, in lieu of conducting a retest, accept the lower of the original and confirmatory test fuel economy results for use in subpart C or F of this part.

(ii) The manufacturer shall conduct a second retest of the FTP or highway test if the fuel economy difference between the second confirmatory test and the original manufacturer test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator) and the fuel economy difference between the second confirmatory test and the first confirmatory test equals or exceeds three percent (or such lower percentage as requested by the manufacturer and approved by the Administrator). The manufacturer may, in lieu of conducting a second retest, accept the lowest of the original test, the first confirmatory test, and the second confirmatory test fuel economy results for use in subpart C or F of this part.

(c) *Review of fuel economy data.* (1) Fuel economy data must be judged reasonable and representative by the Administrator in order for the test results to be used for the purposes of subpart C or F of this part. In making this determination, the Administrator will, when possible, compare the results of a test vehicle to those of other similar test vehicles.

(2) If testing was conducted by the Administrator under the provisions of paragraph (a) of this section, the fuel economy data determined by the Administrator under paragraph (a) of this section, together with all other fuel economy data submitted for that vehicle under § 600.006(c) or (e) will be evaluated for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c) (1) of this section will be accepted for use in subpart C or F of this part.

(ii) City and highway test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(3) If confirmatory testing was not conducted by the Administrator but confirmatory testing was conducted by the manufacturer under the provisions of paragraph (b) of this section, the fuel economy data determined by the Administrator under paragraph (b) of this section, will be evaluated for reasonableness and representativeness per paragraph (c)(1) of this section.

(i) The fuel economy data which are determined to best meet the criteria of paragraph (c)(1) of this section will be accepted for use in subpart C or F of this part.

(ii) City and highway test data will be considered separately.

(iii) If more than one test was conducted, the Administrator may select an individual test result or the harmonic average of selected test results to satisfy the requirements of paragraph (c)(2)(i) of this section.

(4) If no confirmatory testing was conducted by either the Administrator or the manufacturer under the provisions of paragraph (a) and (b) of this section, respectively, then the data submitted under the provisions of § 600.006(c) or (e) shall be accepted for use in subpart C or F of this part.

(i) City and highway test data will be considered separately.

(ii) If more than one test was conducted, the harmonic average of the test results shall be accepted for use in subpart C or F of this part.

(d) If, based on a review of the fuel economy data generated by testing under paragraph (a) of this section, the Administrator determines that an unacceptable level of correlation exists between fuel economy data generated by a manufacturer and fuel economy data generated by the Administrator, he/she may reject all fuel economy data submitted by the manufacturer until the cause of the discrepancy is determined and the validity of the data is established by the manufacturer.

(e)(1) If, based on the results of an inspection conducted under § 600.005(b) or any other information, the Administrator has reason to believe that the manufacturer has not followed proper testing procedures or that the testing equipment is faulty or improperly calibrated, or if records do not exist that will enable him to make a finding of proper testing, the Administrator may notify the manufacturer in writing of his finding and require the manufacturer to:

(i) Submit the test vehicle(s) upon which the data are based or additional test vehicle(s) at a place he may designate for the purpose of fuel economy testing.

(ii) Conduct such additional fuel economy testing as may be required to demonstrate that prior fuel economy test data are reasonable and representative.

(2) Previous acceptance by the Administrator of any fuel economy test data submitted by the manufacturer shall not limit the Administrator's right to require additional testing under paragraph (h)(1) of this section.

(3) If, based on tests required under paragraph (e)(1) of this section, the Administrator determines that any fuel economy data submitted by the manufacturer and used to calculate the manufacturer's fuel economy average was unrepresentative, the Administrator may recalculate the manufacturer's fuel economy average based on fuel economy data that he/she deems representative.

(4) A manufacturer may request a hearing as provided in § 600.009 if the Administrator decides to recalculate the manufacturer's average pursuant to determinations made relative to this section.

61. Section 600.010–86 is amended by revising paragraphs (a) introductory text and (c)(1)(i) to read as follow:

§ 600.010–86 Vehicle test requirements and minimum data requirements.

(a) For each certification vehicle defined in this part, and for each vehicle tested according to the emission test procedures in 40 CFR part 86 for addition of a model after certification or approval of a running change (40 CFR 86.079–32, 86.079–33 and 86.082–34 or 40 CFR 86.1842–01 as applicable):

* * * * *

(c) * * *

(1) * * *

(i) Data required for emission certification under 40 CFR 86.084–24, 86.079–32, 86.079–33, and 86.082–34 or 40 CFR 86.1828–01 and 86.1842–01 as applicable,

* * * * *

62. Section 600.111–93 is amended by revising paragraph (g)(2) to read as follows:

§ 600.111–93 Test procedures.

* * * * *

(g) * * *

(2) False starts and stalls during the preconditioning cycle must be treated as in 40 CFR 86.136 (d) and (e). If the vehicle stalls during the measurement cycle of the highway fuel economy test, the test is voided, corrective action may be taken according to 40 CFR 86.079–25 or 40 CFR 86.1834–01 as applicable, and the vehicle may be rescheduled for test. The person taking the corrective action shall report the action so that the test records for the vehicle contain a record of the action.

* * * * *

63. Section 600.113–93 is amended by revising paragraph (d) to read as follows:

§ 600.113–93 Fuel economy calculations.

* * * * *

(d) Calculate the city fuel economy and highway fuel economy from the grams/mile values for total HC, CO, CO2 and, where applicable, CH3, OH, HCHO, NMHC and CH4 and, the test fuel's specific gravity, carbon weight fraction, net heating value, and additionally for natural gas, the test fuel's composition. The emission values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded in accordance with 40 CFR 86.084–26(a)(6)(iii) or 40 CFR 86.1837–01 as applicable. The CO2 values (obtained per paragraph (a) or (b) of this section, as applicable) used in each calculation of this section shall be rounded to the nearest gram/mile. The specific gravity and the carbon weight fraction (obtained per paragraph (c) of this section) shall be recorded using three places to the right of the decimal point. The net heating value (obtained per paragraph (c) of this section) shall be recorded to the nearest whole Btu/lb.

* * * * *

64. Section 600.207–93 is amended by revising paragraph (a)(3)(iii) to read as follows:

§ 600.207–93 Calculation of fuel economy values for a model type.

(a) * * *

(3) * * *

(iii) The requirements of this paragraph (a)(3) may be satisfied by providing an amended application for certification, as described in 40 CFR 86.084–21 or 40 CFR 86.1844–01 as applicable.

* * * * *

65. A new § 600.313–01 is added to read as follows:

§ 600.313–01 Timetable for data and information submittal and review.

(a) A manufacturer shall submit to the Administrator fuel economy label values and sufficient information to determine fuel economy label values within the following time constraints (except for manufacturers designated under § 600.312(a)(4) who shall submit the information no later than thirty calendar days prior to the date the model type [vehicle] is initially offered for sale.

(1) For initial general label values, no later than five working days before the date that the model type is initially offered for sale;

(2) For specific label values, no later than five working days before any vehicles are offered for sale;

(3) For model types having label values updated because of running changes (as required under § 600.314(b)), the submission must be made at least five working days before the date of implementation of the running change.

(b) A manufacturer may not proceed with any label calculation until the data from each vehicle used in such calculation satisfies the requirements of § 600.008, except as allowed under the provisions of § 600.314–01(e) and approved by the Administrator.

(c) If the Administrator has waived any testing in paragraph (b) of this section and subsequently finds that the decision to waive testing was based on an incorrect data submission or that a fuel economy offset exists (based on subsequent testing of that manufacturer's product line), the Administrator may require confirmation of the data generated by any such waived vehicle.

66. A new § 600.314–01 is added to read as follows:

§ 600.314–01 Updating label values, annual fuel cost, Gas Guzzler Tax, and range of fuel economies for comparable automobiles.

(a) The label values established in § 600.312 shall remain in effect for the model year unless updated in accordance with paragraph (b) of this section.

(b)(1) The manufacturer shall recalculate the model type fuel economy values for any model type containing base levels affected by running changes specified in § 600.507(a).

(2) For separate model types created in § 600.207(a)(2), the manufacturer shall recalculate the model type values for any additions or deletions of subconfigurations to the model type. Minimum data requirements specified in § 600.010(c)(1)(ii) shall be met prior to recalculation.

(3) Label value recalculations shall be performed to read as follows:

(i) The manufacturer shall use updated total model year projected sales for label value recalculations.

(ii) All model year data approved by the Administrator at the time of the recalculation for that model type shall be included in the recalculation.

(iii) Using the additional data under paragraph (b) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207 and 600.209 except that the values shall be rounded to the nearest 0.1 mpg.

(iv) The existing label values, calculated in accordance with §§ 600.207 and 600.209, shall be rounded to the nearest 0.1 mpg.

(4)(i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) to all new vehicles of that model type beginning on the day of implementation of the running change.

(ii) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is higher than the respective city or highway value in paragraph (b)(3)(iv) of this section by 1.0 mpg or more, then the manufacturer has the option to use the recalculated values for labeling the entire model type beginning on the day of implementation of the running change.

(c) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (b) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax as needed).

(d) The Administrator shall periodically update the range of fuel economies of comparable automobiles based upon all label data supplied to the Administrator.

(e) The manufacturer may request permission from the Administrator to calculate and use label values based on test data from vehicles which have not completed the Administrator ordered confirmatory testing required under the provisions of § 600.008–00(c). If the Administrator approves such a calculation the following procedures shall be used to determine if relabeling is required after the confirmatory testing is completed.

(1) The Administrator ordered confirmatory testing shall be completed as quickly as possible.

(2) Using the additional data under paragraph (e)(1) of this section, the manufacturer shall calculate new model type city and highway values in accordance with §§ 600.207 and 600.209 except that the values shall be rounded to the nearest 0.1 mpg.

(3) The existing label values, calculated in accordance with §§ 600.207 and 600.209, shall be rounded to the nearest 0.1 mpg.

(4) Relabeling. (i) If the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.5 mpg or more, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(ii) If both the recalculated city or highway fuel economy value in paragraph (b)(3)(iii) of this section is less than the respective city or highway value in paragraph (b)(3)(iv) of this section by 0.1 mpg or more and the recalculated gas guzzler tax rate determined under the provisions of § 600.513–91 is larger, the manufacturer shall affix labels with the recalculated model type values (rounded to whole mpg's) and gas guzzler tax statement and rates to all new vehicles of that model type beginning 15 days after the completion of the confirmatory test.

(5) For fuel economy labels updated using recalculated fuel economy values determined in accordance with paragraph (e)(4) of this section, the manufacturer shall concurrently update all other label information (e.g., the annual fuel cost, range of comparable vehicles and the applicability of the Gas Guzzler Tax if required by Department of Treasury regulations).

67. Section 600.507–86 is amended by revising paragraph (a) introductory text to read as follows:

§ 600.507–86 Running change data requirements.

(a) Except as specified in paragraph (d) of this section, the manufacturer shall submit additional running change fuel economy data as specified in paragraph (b) of this section for any running change approved or implemented under 40 CFR 86.079–32, 86.079–33, or 86.082–34 or 40 CFR 86.1842–01 as applicable, which:

* * * * *

68. A new § 600.512–01 is added to read as follows:

§ 600.512–01 Model year report.

(a) For each model year, the manufacturer shall submit to the Administrator a report, known as the model year report, containing all information necessary for the calculation of the manufacturer's average fuel economy. The results of the manufacturer calculations and summary information of model type fuel economy values which are contained in the average calculation shall be submitted to the Secretary of the Department of Transportation, National Highway and Traffic Safety Administration.

(b)(1) The model year report shall be in writing, signed by the authorized representative of the manufacturer and shall be submitted no later than 90 days after the end of the model year.

(2) The Administrator may waive the requirement that the model year report be submitted no later than 90 days after the end of the model year. Based upon a request by the manufacturer, if the Administrator determines that 90 days is insufficient time for the manufacturer to provide all additional data required as determined in § 600.507, the Administrator shall establish a date by which the model year report must be submitted.

(3) Separate reports shall be submitted for passenger automobiles and light trucks (as identified in § 600.510).

(c) The model year report must include the following information:

(1) All fuel economy data used in the labeling calculations and subsequently required by the Administrator in accordance with § 600.507;

(2) All fuel economy data for certification vehicles and for vehicles tested for running changes approved under 40 CFR 86.1842–01;

(3) Any additional fuel economy data submitted by the manufacturer under § 600.509;

(4) A fuel economy value for each model type of the manufacturer's product line calculated according to § 600.510(b)(2);

(5) The manufacturer's average fuel economy value calculated according to § 600.510(c);

(6) A listing of both domestically and nondomestically produced car lines as determined in § 600.511 and the cost information upon which the determination was made; and

(7) The authenticity and accuracy of production data must be attested to by the corporation, and shall bear the signature of an officer (a corporate executive of at least the rank of vice-president) designated by the corporation. Such attestation shall constitute a representation by the manufacturer that the manufacturer has established reasonable, prudent procedures to ascertain and provide production data that are accurate and authentic in all material respects and that these procedures have been followed by employees of the manufacturer involved in the reporting process. The signature of the designated officer shall constitute a representation by the required attestation.

[FR Doc. 99–9062 Filed 5–3–99; 8:45 am]
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federal register

Tuesday
May 4, 1999

Part III

Department of Commerce

Economic Development Administration

National Technical Assistance—Request for Proposals (RFP); Notice

DEPARTMENT OF COMMERCE

Economic Development Administration

[Docket No. 990323079–9079–01]

RIN 0610–ZA10

National Technical Assistance—Request for Proposals (RFP)

AGENCY: Economic Development Administration (EDA), Department of Commerce (DoC).

ACTION: Notice of Availability of Funds.

SUMMARY: EDA solicits proposals for National Technical Assistance projects, under 13 CFR Part 307, Subpart C (64 FR 5347) to undertake and report on securitization of economic development loans from revolving loan funds. EDA anticipates making three to five awards from a total of $1.0 million available, subject to available funding in fiscal year 1999.

DATES: Prospective applicants are advised that EDA will conduct a pre-proposal conference on May 18, 1999, at 2:00 p.m. in the Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW, Washington, DC 20230, Room 1412, at which time questions on this RFP can be answered. Potential applicants are encouraged to provide written questions (See Address section below) by May 11, 1999. Prospective applicants unable to attend this pre-proposal conference may participate by telephone conference. Teleconference information may be obtained by calling (202) 482–4085 between 8:30–5:00 EDT on May 17, 1999.

EDA will also conduct pre-proposal conferences during the EDA regional conferences in Boca Raton, FL (June 7–9, 1999), Dallas, TX (June 4, 1999), and Long Beach, CA (April 27–29, 1999). To find out the specific location and time of a regional pre-proposal conference, contact David F. Witschi (202) 482–2659 or John J. McNamee (202) 482–4085.

Initial proposals for funding under this program will be accepted through June 21, 1999. Initial proposals received after 5:00 p.m. EDT in Room 7019, on June 21, 1999, will not be considered for funding. By July 2, 1999, EDA will advise successful proponents to submit full applications (containing complete proposals as part of the application), OMB Control Number 0610–0094. Completed applications must be submitted to EDA by July 16, 1999. EDA will make awards under this RFP no later than September 30, 1999.

ADDRESSES: Send initial proposals to John J. McNamee, Director, Research and National Technical Assistance Division, Economic Development Administration, Room 7019, U.S. Department of Commerce, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: David F. Witschi, (202) 482–2659 or John J. McNamee (202) 482–4085.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Authority

The Public Works and Economic Development Act of 1965, as amended (Pub. L. 89–136, 42 U.S.C. 3121 *et seq.*), including the comprehensive amendments by the Economic Development Administration Reform Act of 1998 (Pub. L. 105–393) (PWEDA) authorizes EDA to make grants for, among other things, demonstrations of innovative activities or strategic economic development investments (42 U.S.C. 3147). Pub. L. 105–277 makes funds available for this program.

B. Catalog of Federal Domestic Assistance

11.303 Economic Development-Technical Assistance Program.

C. Program Description

For a description of this program see PWEDA and 13 CFR Chapter III, Part 307 (64 FR 5347).

II. Area of Special Emphasis

EDA invites proposals to design, undertake, and evaluate transactions demonstrating securitization of economic development loans in a variety of EDA-funded Revolving Loan Fund (RLF) portfolios. For the purposes of this project, EDA defines securitization transactions to include sales of loans, pledging the future income stream of a loan, and similar secondary market activities. This demonstration program is designed to generate successful transactions that can serve as models for use by federal, state, or nonprofit entities for future transactions. At this time, EDA does not endorse or indicate any preference for any particular securitization technique or method. EDA does recognize, however, in viewing this as a demonstration program, that the cost of completing a transaction may be higher and the return to participating RLFs lower than would eventually be expected once securitization of economic development loans becomes a more established practice.

A. Background

Current estimates suggest that there may be as many as several thousand RLFs involved in economic development lending with total assets of several billion dollars. These RLFs have been created over the past 20 years with funding from a variety of federal, state, and nonprofit sources. EDA alone has capitalized more than 400 RLFs, with nearly $700 million in assets (See 13 CFR Part 308 (64 CFR 5347) for a program description). EDA RLFs are located throughout the country and are managed by states, local units of government, Economic Development Districts and nonprofit organizations engaged in economic development. To date, only a handful of secondary market transactions involving RLF-sourced economic development loans have been undertaken. EDA is interested in expanding the secondary market for economic development loans as a cost-effective and fiscally sound means of leveraging the capital available to RLFs. Until greater experience is gained in making actual transactions, the costs of securitization will remain high and economic development loans will draw little interest from potential investors. This demonstration project will allow EDA and other entities involved in economic development lending to gain experience, expertise and knowledge required to develop securitization standards, guidelines and other requirements necessary to make securitization an effective and fiscally sound strategy for funding economic development. The demonstration program will also stimulate further interest in economic development loan programs by the secondary investment community.

B. Scope of Work

The successful applicant(s) will:

(1) Propose an actual securitization transaction that includes loans from an EDA-funded RLF. EDA will not consider proposals limited to feasibility studies or examination of hypothetical transactions. The proposal need not identify specific buyers and sellers, but it should describe how buyers and sellers will be determined.

(2) Make a sincere, good faith effort to complete the proposed transaction.

(3) Include a plan to ensure competitive pricing.

(4) Address the impact the securitization may have on RLF borrowers.

(5) Provide information generated by the transaction to assist EDA and others in their efforts to:

- Identify those characteristics of loans and loan funds that influence the success or failure of securitization efforts.

• Identify the different range of securitization approaches available, as well as their relative benefits, costs and possible markets.

• Develop RLF loan documentation standards as well as standards for critical RLF organizational procedures and practices.

• Identify and quantify the importance of specific factors that contribute to any discount of the loans securitized. These factors may include reduced profitability and increased risk of the loans due to: (a) Economic development lending policies; (b) actual performance characteristics of the RLF loans and borrowers; (c) the quality of documentation, underwriting standards and loan servicing practices of the RLF lender(s); and/or (d) the scarcity of actuarial information on economic development lending.

• Determine if securitization is influencing subsequent loan selection, evaluation, servicing, or other fund management practices. EDA anticipates this will include a program of voluntary follow-on monitoring after the project is completed.

• Address the effect of discounted transactions (especially if repeated) on the ability of the RLF to sustain itself.

While information gathered from each transaction may be different, this information is expected to help other RLFs interested in preparing portfolios for future securitization. The information gathered in the demonstration program is expected to be disseminated by EDA to the broader economic development lending community.

(6) Prepare a final report documenting lessons learned from the securitization that may help future securitization participants.

C. Additional Requirements

The successful applicant(s) must:

(1) Demonstrate that each participating RLF needs, and can utilize, further capitalization within a reasonable time frame.

(2) Propose securitization methods or techniques that are generally expected to be replicable.

(3) Not use federal funds for loan guarantees or other activities designed to influence market prices by artificially enhancing the credit-worthiness of loans to be sold.

(4) Describe how transaction proceeds will be used and disbursed. In the case of an EDA-funded RLF, any net proceeds of a securitization (after transactions costs are paid) must be applied toward new loans in accordance with the original lending plan of the RLF or a subsequent plan approved by EDA.

Successful applicant(s) will incorporate one or more of the following features in the proposed securitization(s). (Note: incorporation of all features is not required and, in fact, several of the following are mutually exclusive.) A proposed securitization may:

(1) Be limited to the loans of a single RLF, or be subregional, regional or national in scope.

(2) Involve loans from both urban and rural RLFs; Economic Development District operated RLFs; community based organization RLFs; and RLFs sponsored by other federal, state, and local government agencies. RLFs funded by non-EDA sources are responsible for securing appropriate and timely approvals of their funding agencies before a transaction is completed.

(3) Demonstrate innovative techniques for loan pooling from different RLF portfolios. This is intended to encourage willing and qualified RLFs to participate, regardless of portfolio size.

(4) Be transacted either by public offering or private placement.

(5) Use credit enhancement techniques provided they do not require an additional federal subsidy.

(6) Include rating of issues by recognized rating services.

D. Costs

Ordinarily, the applicant is expected to provide a 50% nonfederal share of project costs. However, the Assistant Secretary may waive the required 50% matching share of the total project costs, provided the applicant can demonstrate: (1) the project is not feasible without, and the project merits such a waiver, or (2) the project is addressing major causes of distress in the area serviced and requires the unique characteristics of the applicant, which will not participate if it must provide all or part of a 50 percent nonfederal share, or (3) the project is for the benefit of local, state, regional, or national economic development efforts, and will be of no or only incidental benefit to the recipient (See 13 CFR 307.9; 64 FR 5429).

For the purposes of this demonstration project, EDA funds may be used to pay for:

• Professional fees associated with the transaction, including, but not limited to, financial advisors, trustee and legal expenses and for the cost to perform due diligence. In the event a transaction is completed successfully, such costs are expected to be recovered from the transaction proceeds, and may be retained by the applicant and/or participating RLFs for uses approved by EDA. Such reuse of EDA funds should be described in the proposal (See item C (4) above).

• Organizational and administrative fees and expenses, including direct salaries of applicant staff involved with the securitization.

• Other costs normally eligible under EDA's Technical Assistance Program.

E. Timing

Each project will begin on the date specified in the grant award, which shall be on or before September 30, 1999. Each securitization transaction must be completed no later than nine months after the date of approval of the grant. A final report and evaluation must be submitted to EDA within 90 days of completion of the securitization transaction.

F. Briefings and Workshops

Each award includes a requirement that the applicant conduct a total of up to three briefings or training workshops for individuals and organizations interested in the results of this project. Potential applicants should be aware that the completion dates set forth below are for completed transactions and submission of the final written report. Briefings/workshops will take place no later than one year after submission of the final report. Locations and dates of the briefings/workshops are at EDA's discretion. Most likely, this will include one briefing in Washington, DC, with the other briefings/workshops held in conjunction with one or more of EDA's regional conferences.

III. How to Apply

A. Eligible Applicants

See EDA's interim final rule at 13 CFR 300.2 (64 FR 5347). Eligible applicants are as follows: areas meeting requirements under 13 CFR 301.2; Economic Development Districts; Indian tribes; consortiums of Indian Tribes; states, cities or other political subdivisions of a state; consortiums of political subdivisions of states; institutions of higher education, consortiums of institutions of higher education; public or private nonprofit organizations or associations acting in cooperation with officials of a political subdivision of a state, for-profit organizations, and private individuals.

A lead applicant may have one or more other eligible applicants as co-applicants. Where appropriate, applicants should identify in advance professional financial and/or legal consultants who will participate in the

project under contract. Such contracts are subject to procurement requirements as set forth in 15 CFR Part 14 (63 FR 47155) or 15 CFR Part 24, as applicable.

B. Proposal Submission Procedures

Initial proposals submitted by potential applicants should include: (1) a description of how the applicant(s) intend(s) to carry out the scope of work; (2) a proposed budget and accompanying narrative; (3) resumes/qualifications of key staff, and (4) a proposed time line. EDA will not accept proposals submitted by FAX. Proposals received after 5:00 p.m. EDT in Room 7019, on June 21, 1999, at the address provided above, will not be considered.

IV. Selection Process and Evaluation Criteria

Proposals will receive initial review by EDA to assure that they meet all requirements of this announcement and requirements under 13 CFR Chapter III (64 FR 5347), including eligibility and relevance to the specified project as described herein. All proposals must:

(1) Meet EDA's statutory and regulatory requirements;

(2) Propose an actual securitization; and

(3) Document a structure that ensures an arms-length transaction between the seller and the purchaser.

EDA will carry out its selection process using the following criteria:

(1) The quality of a proposal's response to the scope of work proposed; and

(2) The ability of the prospective applicant to successfully carry out the proposed activities. If an initial proposal is selected, EDA will invite the proponent(s) to submit a full proposal and supply the applicant(s) with an Application for Federal Assistance.

From the full proposals and applications, EDA will select the applicant(s) it deems most qualified and cost-effective. EDA anticipates that more full proposals and applications will be received than will eventually be funded.

V. Additional Information and Requirements

See 64 FR 9221, Part III for additional information and requirements (available on the internet at http://www.doc.gov/eda/html/notice.htm, under the heading "Economic Development Programs-Availability of Funds").

Dated: April 26, 1999.

Phillip A. Singerman,

Assistant Secretary for Economic Development.

[FR Doc. 99–10830 Filed 5–3–99; 8:45 am]

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federal register

Tuesday
May 4, 1999

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 45 and 52
Federal Acquisition Regulation; Government Property; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 45 and 52

[FAR Case 95–013]

Federal Acquisition Regulation; Government Property

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of public meeting.

SUMMARY: A public meeting is being held to discuss replacing the property management concepts contained in the proposed rule published at 62 FR 30186, June 2, 1997, with commercial practices and to discuss other changes stemming from public comments on that rule.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below from 9:30 a.m. to 5:00 p.m., local time, on May 18 and, if needed, May 19, 1999.

Discussion Materials: Drafts of the materials to be discussed at the public meeting will be available electronically (http://www.acq.osd.mil/dp/mpi/) on or about May 4, 1999. Please contact Ms. Angelena Moy (see contact information below) for additional information.

ADDRESSES: The location of the public meeting is VSE Corporation, 2550 Huntington Avenue, Alexandria, VA 22303.

FOR FURTHER INFORMATION CONTACT: Ms. Angelena Moy by e-mail (moyac@acq.osd.mil) or telephone (703) 695–1097/1098, or fax (703) 695–7596.

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to revise Federal Acquisition Regulation (FAR) Part 45 to simplify the management and disposition of Government property was published in the **Federal Register** at 62 FR 30186, June 2, 1997. A public meeting was conducted on February 17, 1998, to address comments received on that rule. As a result of the public comments and to consider additional commercial property management practices, four significant changes to, and a restructuring of, the June 2, 1997, proposed rule are being considered:

1. The requirement that contractors have or maintain specified Government property management processes is replaced by a general requirement to use sound business practices to control, protect, and maintain Government property.

2. Consistent with comparable commercial practice, contractors shall return property furnished for performance of a contract to the Government in the same condition, less reasonable wear and tear, as when the property was furnished to the contractor.

3. Generally, contractors are liable for loss, theft, or destruction of, or damage to, Government-furnished property.

4. Under cost-reimbursement or time-and-materials contracts, contractors will have title to certain low value special tooling and special test equipment.

The public meeting will provide a forum to discuss the publics views of these new commercial property management concepts.

List of Subjects in 48 CFR Parts 45 and 52

Government procurement.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–11060 Filed 5–3–99; 8:45 am]

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federal register

Tuesday
May 4, 1999

Part V

Department of Labor

Employment and Training Administration

Measures for Increasing Efficiency in the Permanent Labor Certification Program; Notice

DEPARTMENT OF LABOR

Employment and Training Administration

[General Administrative Letter No. 1–97, Change 1]

Measures for Increasing Efficiency in the Permanent Labor Certification Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration is publishing for public comment General Administrative Letter (GAL) No. 1–97, Change 1, Subject: *Measures for Increasing Efficiency in the Permanent Labor Certification Process,* which it issued as a result of the settlement agreement reached in *Lauretta V. Herman* (No. 98–56061, (9th Cir. March 5, 1999)). GAL 1–97 was originally issued on October 1, 1996. GAL 1–97, Change 1, published below differs from the October 1, 1996, issuance primarily in that the efficiency measure of having unduly restrictive job requirements adjudicated prior to allowing advertisements to be published has been removed.

DATES: Interested persons are invited to submit written comments on GAL 1–97, Change 1 on or before July 6, 1999.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW. Room N–4456, Washington, DC 20210, Attention: John R. Beverly, III, Director, U.S. Employment Service.

FOR FURTHER INFORMATION CONTACT: Mr. Denis Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration. 200 Constitution Avenue NW., Room N–4456, Washington, DC 20210. Telephone (202) 219–4369 (this is not a toll-free number).

(Authority: 8 U.S.C. 1182(a)(5)(A); 29 U.S.C. *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978.)

Signed at Washington, DC, this 24 day of April, 1999.

John R. Beverly III,

Director, Employment Service.

Directive: General Administrative Letter No. 1–97, Change 1.

To: All Regional Administrators

From: David Henson, Director, Office of Regional Management.

Subject: Measures for Increasing Efficiency in the Permanent Labor Certification Process.

1. *Purpose.* To modify previously provided procedural guidance for increasing efficiency in the permanent labor certification process under current regulations in order to handle increasing workloads with declining staff resources.

2. *References.* 20 CFR Part 656, *Technical Assistance guide (TAG) No. 656 Labor Certifications,* and General Administration Letter (GAL) No. 15–95.

3. *Background.* GAL 1–97 was originally issued in October 1996. The goal of GAL 1–97 was to increase efficiency in the permanent labor certification process. To accomplish this goal, the GAL promulgated several measures which were intended to allow speedier, more efficient processing of permanent cases within current regulations. In the more than two years of experience under GAL 1–97 the evidence indicates that, in general, the measures put forth in the GAL have been effective. In the past two years, in spite of declining staff, the States and Regional Offices have completed action on more cases than in past years when more staff were available. However, as a result of the settlement agreement in *Lauretta V. Herman,* March 5, 1999, the efficiency measure of having unduly restrictive job requirements adjudicated prior to allowing advertisements to be published is being removed. This change to GAL 1–97 is to remove that requirement and reemphasize the other measures stated in that GAL.

This GAL should be interpreted in a manner consistent with the labor certification provisions of the Immigration and Nationality Act, Department of Labor regulations promulgated thereunder, and Board of Alien Labor Certification Appeals (BALCA) case law. No Notice of Findings (NOF) shall be issued and no labor certification denied based solely upon this GAL, as this GAL is not intended to substantively change the Department's regulations or BALCA case law for the adjudication of applications for labor certification.

4. *Action Required.* Administrators are requested to:

A. Provide the attached policy and procedural guidance to appropriate staff.

B. Instruct alien labor certification staff to implement the measures for increasing efficiency and follow the procedures in processing permanent labor certification applications.

C. Apply these procedures to applications when processing begins on or after the effective date of this GAL.

5. *Inquiries.* Direct questions to the appropriate Regional Certifying Officer.

6. *Attachment.* Increasing Efficiency in the Permanent Labor Certification Process.

Expiration Date: June 30, 2001.

Increasing Efficiency in the Permanent Labor Certification Process

A. Introduction

In order to increase efficiency, the measures below shall be implemented under current regulations at 20 CFR 656 by Regions and State Employment Security Agencies (SESAs) on May 1, 1999. These measures are designed to significantly reduce U.S. worker referrals on jobs where their background and experience indicate they are not fully qualified for the job's stated requirements, to reduce SESA and Regional Office backlogs, and to allow Regions and SESAs to handle increasing workloads in a timely manner with fewer staff.

To promote consistency among Regions and SESAs, operating procedures have been provided for handling applications involving unduly restrictive job requirements, reduction in recruitment, and limited review processing. Depending on local situations, other efficiency measures may be implemented by the Regional Certifying Officer.

B. Measures to Increase Efficiency

1. Unduly Restrictive Job Requirements

As stated in the regulations and Technical Assistance Guide, the job opportunity's requirements shall be those normally required for the job in the United States, unless adequately documented as arising from business necessity. Normal requirements for the occupation in which the job opportunity is included may be found in the *Dictionary of Occupational Titles.*

2. Reduction in Recruitment Requests (RIRs)

Regions and SESAs will encourage reduction in recruitment requests on applications:

—For occupations for which there is little or no availability;

—Which have no restrictive requirements;

—Which meet prevailing wage; and

—For which the employer can show adequate recruitment through sources normal to the occupation and industry within the previous 6 months

RIR requests will be given expedited processing by SESAs and Regional Offices.

3. Notice of Findings (NOF) Extensions

After issuing a NOF, Certifying Officers will grant only one extension of time beyond the initial 35 days in which the employer can file a rebuttal. The extension may be granted up to 35 days. Further extensions will not be granted.

4. Harmless Error

Certifying Officers will have the discretion to excuse a harmless error on the part of the employer to fully comply with the regulations if the Certifying Officer determines that the labor market was sufficiently tested to warrant a finding that qualified U.S. workers are not available for the job opportunity and employment of the alien will not adversely affect wages and working conditions of U.S. workers similarly employed. A finding of harmless error will be made by the Certifying Officer on a case-by-case basis and shall not set a precedent for another case.

5. Limited Review Processing

Certifying Officers may work with their SESAs to set up a system to identify and flag applications that are ready for transmittal to the Region and apparently have no processing problems. Such applications may not have special job requirements, unusual job duties, applicant availability, or wage issues. Based on the recommendation of the SESA, such cases will generally be approved as they are received in the Region with minimal review. For quality control purposes, a small number of cases in various occupations will be randomly selected for a more extensive review.

6. Resumé Screening

SESA staff shall screen resumés of U.S. workers against the employer's job requirements regardless of whether or not they are considered by the SESA to be unduly restrictive. Only those resumés of fully qualified applicants, based on the employer's final stated requirements, shall be sent to the employer and to the Regional Office. Recruitment on the job order will cease when it is forwarded to the Regional Office. Late resumés may be sent to employers having similar job offers or returned to applicants. After the labor certification has been issued, resumés will be discarded. Regions shall retain resumés of qualified applicants when a NOF or Final Determination has been issued.

7. Standardized Recruitment

When the Certifying Officer requires the employer, through an NOF, to recruit again because of deficiencies in the first recruitment, the employer shall be instructed to place a 1-day Sunday advertisement in an appropriate newspaper of general circulation. The ad must run in conjunction with a 10-day job order placed with the SESA. This reduced level of recruitment may not be used by employers who have never recruited for the position, or when the Certifying Officer has determined that a trade or professional journal is the most appropriate advertising medium.

8. Advertisements

Because the SESA will not have sufficient time to review a draft ad once a job order has been placed, SESAs are only required to assist in drafting the text or reviewing a draft ad for accuracy if the ad is submitted with an initial or resubmitted application.

9. Applicant Questionnaires

Because of budgetary constraints at the SESAs and Regional Offices, SESAs should no longer send questionnaires to U.S. workers who were interviewed as the result of the labor certification process.

C. Operating Procedures

1. Unduly Restrictive Job Requirements

a. The SESA will review each permanent labor certification application to consider whether there may be any unduly restrictive requirements.

b. The SESA will notify the employer of any potential unduly restrictive requirements and request the employer to either remove those requirement(s) or provide a business necessity justification for the requirement(s) in question within 45 days of the date of the request. If complete information is not received within 45 days, the application will be returned to the employer. If it is refiled, it will be treated as a new application with the original date of receipt deleted and replaced with the refiling date.

c. The SESA will also request, as part of the business necessity documentation, that the employer provide documentation to show that the job existed and was previously filled at the same requirements before the alien was hired. The employer may submit documentation including but not limited to position descriptions, organizational charts and payroll records, etc. Jobs which did not exist before the alien was hired will be considered jobs that are not truly open to U.S. workers, unless the employer can clearly demonstrate that a major change in the business operation caused the position to be created after the alien was hired.

d. After the employer responds to the State's request for further information regarding the requirements for the job opportunity, the State will then proceed to complete the processing of the application, including the necessary advertisement(s) and SESArch of the SESA applicant files.

2. Reduction in Recruitment Requests (RIRs)

a. An employer may file a reduction in recruitment request for any occupation, except those listed on Schedule B, if the employer can show that an adequate test of the labor market has occurred at prevailing wages and working conditions through sources normal to the occupation and industry within the previous 6 months.

b. SESAs and Certifying Officers will encourage requests for reduction in recruitment in occupations with little or no availability and in circumstances as determined by individual Certifying Officers.

c. Upon receiving an employer's written request for a reduction in recruitment, the SESA shall review the application for completeness and determine the appropriate prevailing wage.

d. The SESA shall return the application to the employer for correction and/or additional information if there are deficiencies in the application, such as an inadequate wage offer or restrictive job requirements.

e. When there are deficiencies in the application that would have affected the recruitment, the SESA should advise the employer that it is unlikely that the Certifying Officer will approve an RIR and suggest that the employer recruit through the regular process. However, the SESA may not discourage the use of RIR nor refuse to transmit a written request for an RIR to the Certifying Officer.

f. When transmitting the RIR to the Certifying Officer, the SESA should include a recommendation, based on its knowledge of the labor market, for or against granting the request.

g. The RIR will be given expedited processing at the Region if it contains no deficiencies. Those with deficiencies identified by the SESA shall be processed in the order that they are received along with other applications.

h. Among the factors to be considered by the Certifying Officer in making determinations on RIRs pursuant to section 20 CFR 656.24 are the following:

- Adequacy of the recruitment conducted by the employer applicant, e.g., newspaper advertising, job fairs, internet.

- Documentation of normal recruitment practices in the industry and occupation furnished by the employer.
- Availability of U.S. workers for the occupation involved in the employer's application for which recruitment has been conducted through the SESA in the past, as shown by ES referrals to job orders.
- SESA recommendations/comments.
- Certifying Officer's knowledge of the local labor market.

If RIR is denied because the recruitment is not acceptable, the application shall be returned to the SESA for regular processing in the order in which it is received along with other applications.

i. If the RIR request contains deficiencies, such as inadequate wage offer or restrictive job requirements, the Certifying Officer shall issue an NOF denying the RIR and citing the deficiencies.

3. Limited Review Processing

a. At his or her discretion, the Certifying Officer, may establish a process for making expedited determinations on applications based on the recommendations of the SESA. Such SESA recommendations must be in accordance with guidelines established in advance by the Certifying Officer.

b. Limited review processing shall apply to applications which offer the prevailing wage, have no special requirements or job duties, do not exceed the Specific Vocational Preparation level assigned to the job, and have no applicant availability or a few applicants who clearly do not meet the job's requirements.

c. Applications may be designated for limited review processing only after completion of recruitment. The SESA will assemble an application package for regional processing as follows and affix a limited review code ("LR") to the file:

- One copy of the ETA 7147—State Agency Transmittal.
- One copy of the G–28—Notice of Appearance of Attorney.
- Two sets of the ETA 750, Parts A & B, Application for Alien Employment Certification and one backup copy of Part B.
- One copy of correspondence and other documentation.
- One copy of the SESA Job Order.
- One copy of the Internal Job Posting.
- One copy of all three Advertisements.
- One copy of the Recruitment Results.
- One copy of the Resumés.

d. For the most part, applications which meet the limited review criteria will be expedited for approval when they are received in the Regional Office. Some applications will be randomly selected for review for quality control and SESA training purposes.

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Tuesday
May 4, 1999

Part VI

Department of Education

National Institute on Disability and Rehabilitation Research; Final Funding Priorities for Fiscal Years 1999–2000 for Certain Centers and Projects; Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999; Notices

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Final Funding Priorities for Fiscal Years 1999–2000 for Certain Centers and Projects

AGENCY: Department of Education.

SUMMARY: The Secretary announces final funding priorities for four Rehabilitation Research and Training Centers (RRTCs) and two Disability and Rehabilitation Research Projects (DRRPs) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1999–2000. The Secretary takes this action to focus research attention on areas of national need. These priorities are intended to improve rehabilitation services and outcomes for individuals with disabilities.

EFFECTIVE DATE: These priorities take effect on June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna_Nangle@ed.gov

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: This notice contains final priorities under the Disability and Rehabilitation Research Projects and Centers Program for four RRTCs related to: rehabilitation for persons with long-term mental illness; rehabilitation for children with disabilities with special health care needs; policies affecting the provision of services to children with emotional disturbances and their families; and improving services and supports to children with emotional disturbances and their families. The notice also contains final priorities for two DRRPs related to: rehabilitation for women with disabilities; and analysis of service delivery and policies affecting emerging disability populations. The final priorities refer to NIDRR's proposed Long-Range Plan (LRP). The proposed LRP can be accessed on the World Wide Web at: http://www.ed.gov/legislation/FedRegister/announcements/1998–4/102698a.html

These final priorities support the National Education Goal that calls for every adult American to possess the skills necessary to compete in a global economy.

The authority for the Secretary to establish research priorities by reserving funds to support particular research activities is contained in sections 202(g) and 204 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 762(g) and 764).

Note: This notice of final priorities does not solicit applications. A notice inviting applications is published elsewhere in this issue of the **Federal Register**.

Analysis of Comments and Changes

On February 25, 1999 the Secretary published a notice of proposed priorities in the **Federal Register** (64 FR 9422). The Department of Education received 40 letters commenting on the notice of proposed priorities by the deadline date. An analysis of the comments and of the changes in the priorities since publication of the proposed priorities follows. Other substantive issues are discussed under the priority in which they pertain. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under statutory authority—are not addressed.

Rehabilitation Research and Training Centers

Priority 1: Rehabilitation for Persons With Long-Term Mental Illness

Comment: The RRTC should focus on the role of conflict resolution skills in the recovery of individuals with long-term mental illness.

Discussion: Under the first required activity, an applicant could propose to investigate the role of conflict resolution skills in the recovery of individuals with long-term mental illness. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to investigate the role of conflict resolution skills in the recovery of individuals with long-term mental illness.

Changes: None.

Comment: The RRTC should be required to identify and evaluate interventions that promote the functioning of single parent families in which the parent has a history of mental illness.

Discussion: The purpose of the priority is to address the employment status of persons with LTMI and investigate the effectiveness of functional recovery. Within that context, an applicant could propose to place a special emphasis on individuals with long-term mental illness who are single parents. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to place a special emphasis on individuals with long-term mental illness who are single parents.

Changes: None.

Priority 2: Rehabilitation for Children With Disabilities With Special Health Care Needs

Comment: Thirty-three commenters urged NIDRR to establish an RRTC on Pediatric Trauma and fund a National Pediatric Trauma Registry (NPTR).

Discussion: After consulting with other agencies carrying out related pediatric research and reviewing the research portfolios of current NIDRR grantees that carry out pediatric research, NIDRR will consider establishing an RRTC on Pediatric Trauma. After conducting a formal evaluation of the current NPTR, NIDRR will consider establishing a new NPTR.

Changes: None.

Comment: The RRTC should address the healthcare access problems of children with Chronic Fatigue Syndrome, fibromyalgia, Lyme disease, or autoimmune diseases.

Discussion: The priority includes a definition of children with disabilities with special health care needs as having a chronic physical, developmental, behavioral, or emotional condition that also requires health and related services of a type or amount beyond that required by children generally. The RRTC could address the healthcare access problems of children with Chronic Fatigue Syndrome, fibromyalgia, Lyme disease, or autoimmune diseases if their condition also requires health and related services of a type or amount beyond that required by children generally.

Changes: None.

Comment: One commenter questioned the appropriateness of the target population and asked for a clarification. The commenter asked if it was necessary to include children with serious emotional conditions in this RRTC in light of the two RRTCs related to children with serious emotional disturbances. In addition, the commenter asked for clarification regarding the age range of the target population, the importance of the onset of disability, and the inclusion of children who are institutionalized.

Discussion: The two RRTCs related to children with serious emotional disturbances will not address the healthcare issues that are addressed by this RRTC.

In terms of the target population, NIDRR prefers to give applicants the discretion to propose the characteristics of the target population who meet the definition in the priority of children disabilities with special health care needs. The peer review process will

evaluate the merits of the proposed target population.

All children, including those who are institutionalized, who meet the definition of children with disabilities with special health care needs, should be included in the target population.

Changes: None.

Comment: One commenter questioned the utility of requiring the RRTC to coordinate with the Rehabilitation Engineering Research Center (RERC) on Telerehabilitation.

Discussion: The RRTC is required to assess the effectiveness and appropriateness of using telerehabilitation to provide health care services to children in remote settings. The RERC on Telerehabilitation should be instrumental in successfully carrying out this research.

Changes: None.

Priority 3: Policies Affecting the Provision of Services to Children with Emotional Disturbances and Their Families

Comment: The shared Introduction that prefaces this priority and the priority on improving services and supports to children with emotional disturbances and their families should focus on strengths, family-centered and family-driven planning, implementation, and evaluation, as well as an injunction that all aspects of service delivery should be culturally competent.

Discussion: The introductions to these, and other priorities, include only that background information that is necessary in order for potential applicants to propose to fulfill the purpose of the priority. NIDRR believes that the principles articulated in the comment are valuable, but not essential.

Changes: None.

Comment: This RRTC and the RRTC on improving services and supports to children with emotional disturbances and their families should include individuals from a range of diverse backgrounds and engage family members in all of the work they perform.

Discussion: The description and general requirements of the RRTC include provisions that are consistent with the commenter's suggestions. They state that NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training, and that each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center. No further requirements are necessary.

Changes: None.

Comment: The first and third required activities should include family-run organizations.

Discussion: An applicant could propose to address the role of family-run organizations within the first and third required activities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to address the role of family-run organizations within the first and third required activities.

Changes: None.

Priority 4: Improving Services and Supports to Children With Emotional Disturbances and Their Families

Comment: The first required activity should acknowledge the importance of family participation at the case level, in service planning, implementation, and planning, as well as in policy making.

Discussion: An applicant could propose to stress the importance of family participation in carrying out the first required activity. The peer review process will evaluate merits of the proposal. NIDRR has no basis to require all applicants to stress the importance of family participation in carrying out the first required activity.

Changes: None.

Comment: Two commenters indicated that the fourth required activity should include issues related to collaboration in addition to issues on communication skills.

Discussion: An applicant could propose to approach communication skills broadly so as to include issues related to collaboration. The peer review process will evaluate merits of the proposal. NIDRR has no basis to require all applicants to approach communication skills broadly so as to include issues related to collaboration.

Changes: None.

Comment: The RRTC should be required to describe the evolution and development of family-run organizations and their impact on the design, development, delivery, and evaluation of services and supports of children, youth, and families.

Discussion: An applicant could propose to carry out the research that the commenter has suggested as part of their research under the first or second required activities. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to describe the evolution and development of family-run organizations and their impact on the design, development, delivery, and evaluation of services and supports of children, youth, and families.

Changes: None.

Comment: The priority refers to the Office of Policy and Planning in the Department of Health and Human Services. Is this reference correct?

Discussion: No. The correct reference should be the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services.

Changes: The priority has been revised to refer to the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services.

Priority 5: Improved Economic Outcomes for Women With Disabilities

Comment: The DRRP should include some international focus, evaluate a range of domestic economic development models, identify technological obstacles and solutions, and focus on girls and young women from a variety of ethnic backgrounds, economic strata, and disability groups.

Discussion: An applicant could propose to include all of the commenter's suggestions in the research to be carried out by the DRRP. The peer review process will evaluate the merits of the proposals. NIDRR has no basis to require all applicants to include some international focus, evaluate a range of domestic economic development models, identify technological obstacles and solutions, and focus on girls and young women from a variety of ethnic backgrounds, economic strata, and disability groups.

Changes: None.

Comment: The DRRP should identify jobs that can accommodate the special problems of persons with relapsing-remitting illnesses and cognitive problems, such as Chronic Fatigue Syndrome (CFS), multiple sclerosis, fibromyalgia, lupus, and rheumatoid arthritis.

Discussion: The DRRP is not required to identify jobs for any disability group. However, as part of the research carried out under the second and third required activity, an applicant could propose to carry out the research suggested by the commenter. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to identify jobs that can accommodate the special problems of persons with relapsing-remitting illnesses and cognitive problems, such as CFS, multiple sclerosis, fibromyalgia, lupus, and rheumatoid arthritis.

Changes: None.

Priority 6: Analysis of Service Delivery and Policies Affecting Emerging Disability Populations

Comment: How will the DRRP determine what disabilities qualify as "emerging," and specifically, does NIDRR consider CFS an emerging disability?

Discussion: As indicated in the Introduction, NIDRR's proposed LRP provides a description of characteristics of emerging disability populations. Applicants will use that description to propose those disabilities that will be addressed by the DRRP. An applicant could propose to include CFS as an emerging disability. The peer review process will evaluate the merits of the proposal. NIDRR has no basis to require all applicants to consider CFS an emerging disability.

Changes: None.

Rehabilitation Research and Training Centers

Authority for the RRTC program of NIDRR is contained in section 204(b)(2) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(b)(2)). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education and Indian tribes or tribal organizations for coordinated research and training activities. These entities must be of sufficient size, scope, and quality to effectively carry out the activities of the Center in an efficient manner consistent with appropriate State and Federal laws. They must demonstrate the ability to carry out the training activities either directly or through another entity that can provide that training.

The Secretary may make awards for up to 60 months through grants or cooperative agreements. The purpose of the awards is for planning and conducting research, training, demonstrations, and related activities leading to the development of methods, procedures, and devices that will benefit individuals with disabilities, especially those with the most severe disabilities.

Description of Rehabilitation Research and Training Centers

RRTCs are operated in collaboration with institutions of higher education or providers of rehabilitation services or other appropriate services. RRTCs serve as centers of national excellence and national or regional resources for providers and individuals with disabilities and the parents, family members, guardians, advocates or authorized representatives of the individuals.

RRTCs conduct coordinated, integrated, and advanced programs of research in rehabilitation targeted toward the production of new knowledge to improve rehabilitation methodology and service delivery systems, to alleviate or stabilize disabling conditions, and to promote maximum social and economic independence of individuals with disabilities.

RRTCs provide training, including graduate, pre-service, and in-service training, to assist individuals to more effectively provide rehabilitation services. They also provide training including graduate, pre-service, and in-service training, for rehabilitation research personnel and other rehabilitation personnel.

RRTCs serve as informational and technical assistance resources to providers, individuals with disabilities, and the parents, family members, guardians, advocates, or authorized representatives of these individuals through conferences, workshops, public education programs, in-service training programs and similar activities.

RRTCs disseminate materials in alternate formats to ensure that they are accessible to individuals with a range of disabling conditions.

NIDRR encourages all Centers to involve individuals with disabilities and individuals from minority backgrounds as recipients of research training, as well as clinical training.

The Department is particularly interested in ensuring that the expenditure of public funds is justified by the execution of intended activities and the advancement of knowledge and, thus, has built this accountability into the selection criteria. Not later than three years after the establishment of any RRTC, NIDRR will conduct one or more reviews of the activities and achievements of the Center. In accordance with the provisions of 34 CFR 75.253(a), continued funding depends at all times on satisfactory performance and accomplishment.

General Requirements

The following requirements apply to these RRTCs pursuant to these absolute priorities unless noted otherwise. An applicant's proposal to fulfill these proposed requirements will be assessed using applicable selection criteria in the peer review process.

Each RRTC must provide: (1) training on research methodology and applied research experience; and (2) training on knowledge gained from the Center's research activities to persons with disabilities and their families, service providers, and other appropriate parties.

Each RRTC must develop and disseminate informational materials based on knowledge gained from the Center's research activities, and disseminate the materials to persons with disabilities, their representatives, service providers, and other interested parties.

Each RRTC must involve individuals with disabilities and, if appropriate, their representatives, in planning and implementing its research, training, and dissemination activities, and in evaluating the Center.

The RRTC must conduct a state-of-the-science conference and publish a comprehensive report on the final outcomes of the conference. The report must be published in the fourth year of the grant.

The RRTC must coordinate with other entities carrying out related research or training activities.

Priorities

Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this priority.

Priority 1: Rehabilitation for Persons With Long-Term Mental Illness

Introduction

Chapter Two of NIDRR's proposed LRP addresses the employment status of persons with mental illness (63 FR 57197–57198) and Chapter Six (63 FR 57208) sets forth the background to research addressing their rehabilitation needs within the framework of community integration. The National Institute of Mental Health estimates that there are over 3 million adults ages 18–69 who have a serious mental illness (Manderscheid, R.W. & Sonnenschein, M.A. (Eds.), Mental Health, United States 1992 U.S. Department of Health and Human Services, Rockville, MD; DHHS Publication No. (SMA) 92–1942).

The psychiatric rehabilitation model includes recovery as an outcome for persons experiencing long-term mental illness (LTMI). The recovery paradigm is defined as the personal, unique process of changing one's attitudes, values, skills, and roles to maximize personal functioning (Psychiatric Rehabilitation Services, Inc., http://www.psychdismgmt.com/index.html). It refers to persons with LTMI regaining social function and developing new meaning and purpose in their lives through understanding and accepting their disability, taking personal responsibility, developing hope, and effectively utilizing support. There is a

need to determine the effectiveness of the recovery approach to rehabilitation for persons with LTMI.

Priority

The Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC on rehabilitation for persons with LTMI to address the employment status of persons with LTMI and investigate the effectiveness of functional recovery. The RRTC must:

(1) Investigate individual and environmental factors that facilitate or hinder recovery, and describe the recovery process;

(2) Investigate whether the recovery process differs for individuals based on diagnosis, ethnicity, and history of physical or psychological abuse;

(3) Investigate the relationships between recovery and job training, education, and employment; and

(4) Investigate the impact of various alternative health care practices and wellness activities such as exercise, diet, meditation, peer support, and personal assistance services on employment outcomes for persons with LTMI.

Priority 2: Rehabilitation for Children With Disabilities With Special Health Care Needs

Introduction

Chapter Four of NIDRR's proposed LRP addresses health care and health care systems for persons with disabilities (63 FR 57202–57203). For the purposes of this proposed priority, children with disabilities with special health care needs have a chronic physical, developmental, behavioral, or emotional condition and also require health and related services of a type or amount beyond that required by children generally.

As the trend toward enrolling Medicaid-eligible populations in capitated healthcare delivery programs (e.g., health maintenance organizations) continues, States have begun to address the challenges of providing coordinated, high quality health care to high cost populations. Children with disabilities with special health care are among those high cost populations because they tend to need multiple services, advanced technologies, and specialized services. Research is needed to determine whether cost control strategies are preventing children with disabilities with special health care needs from receiving access to the range of specialized and support services, and technologies that they need to treat their condition and prevent further disability.

Priority

The Secretary will establish an RRTC to improve rehabilitation outcomes for children with disabilities with special health care needs. The RRTC must:

(1) Investigate access to pediatric rehabilitation, including specialized and support services, and technologies, by children with disabilities with special health care needs;

(2) Analyze the impact of cost control strategies on the provision of health care to children with disabilities with special health care needs;

(3) Identify best practices in the transition from pediatric to adult medical care in capitated managed care settings;

(4) Assess the effectiveness and appropriateness of using telerehabilitation to provide health care services to children with disabilities with special health care needs in remote settings; and

(5) Identify training issues for service providers who diagnose and assess the assistive technology needs of children with disabilities who have special health care needs.

In carrying out these purposes, the RRTC must coordinate with the Maternal and Child Health Bureau and the Office of Policy and Planning in the Department of Health and Human Services, the Office of Special Education Programs, the Federal Interagency Coordinating Council, and the Rehabilitation Engineering Research Center on Telerehabilitation.

Two Priorities Addressing Children With Emotional Disturbances

Chapter Seven of NIDRR's proposed LRP (63 FR 57213) addresses public policy issues for people with disabilities including the integration of service systems. Children with emotional disturbances and their families are likely to receive services from a number of social service systems. Gaining a better of understanding of the policies that serve as the foundation for these services, and their interaction, may contribute to improvements in the quality of services.

Approximately 3.5 to 4 million youngsters (from ages 9–17) are estimated to have an emotional disturbance accompanied by substantial functional impairment (Center for Mental Health Services, Publication SMA96–308, Chapter 6, 1996).

Priority 3: Policies Affecting the Provision of Services to Children With Emotional Disturbances and Their Families

Introduction

Many children with emotional disturbances receive services over extended periods of time from multiple agencies including child welfare and protective services agencies, schools and local educational agencies, and elements of the juvenile justice system. Coordination of the delivery of services from multiple agencies is a difficult undertaking that may be facilitated by ensuring that the public policies authorizing the services are compatible and promote coordination and collaboration.

The costs, or part of the costs, of mental health services provided to children with emotional disturbances are routinely covered by insurance programs. Research is needed to understand the impact of changes in the field of health care financing on mental health services provided to children with emotional disturbances.

Priority

The Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC to improve policies affecting the provision of services to children with emotional disturbances and their families. The RRTC must:

(1) Develop an analytical framework for assessing: family characteristics and policies, structure of service systems, service delivery processes, interagency coordination and collaboration, and outcomes for children with emotional disturbances and their families;

(2) Using the methodology developed above, determine the effectiveness of specific policies, implementation strategies, service delivery procedures, and coordination practices in meeting the needs of children with emotional disturbances and their families;

(3) Identify the impact of specific characteristics of interagency collaboration and coordination on the provision of services to children with emotional disturbances and their families;

(4) Assess the impact of specific policies on access to services of children with emotional disturbances from diverse cultural, linguistic, ethnic and socioeconomic backgrounds; and

(5) Investigate the impact of changes in health care financing, particularly the State Children's Health Insurance Program, on mental health services

provided to children with emotional disturbances.

In carrying out these purposes, the RRTC must:

- Coordinate with the Center for Mental Health Services and the Office of Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Office of Special Education Programs, and the Federal Interagency Coordinating Council; and
- Establish practical statistical methodologies and measurement tools that specifically assess the policies affecting families of children with serious emotional disturbance.

Priority 4: Improving Services and Supports to Children With Emotional Disturbances and Their Families

Introduction

Families of children with emotional disturbances face multiple challenges and need appropriate services for their children as well as supportive services for the family. Early identification of an emotional disturbance is beneficial not only to the child, but also to the family who must learn to address the impact of their child's behavior on the family and to navigate various service systems. In order to address family needs and be successful advocates for their child, families must learn to communicate effectively with providers. At the same time, service providers must have the ability to understand families' needs and respond positively to those needs.

Priority

The Secretary, in collaboration with the Substance Abuse and Mental Health Services Administration and the Center for Mental Health Services, will establish an RRTC to improve services and supports for children with emotional disturbances and their families. The RRTC must:

(1) Develop and evaluate service delivery models for children with an emotional disturbance and their families, including family centered and culturally sensitive services;

(2) Define and evaluate the formal and informal components of family support and identify successful family support interventions;

(3) Identify and evaluate early intervention strategies; and

(4) Identify, develop, and evaluate communication skills to enable families and service providers to communicate effectively with each other.

In carrying out these purposes, the RRTC must coordinate with the Center for Mental Health Services and the Office of the Assistant Secretary for Planning and Evaluation in the Department of Health and Human Services, the Office of Special Education Programs, and the Federal Interagency Coordinating Council.

Disability and Rehabilitation Research Projects

Authority for Disability and Rehabilitation Research Projects (DRRPs) is contained in section 204(a) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 764(a)). DRRPs carry out one or more of the following types of activities, as specified in 34 CFR 350.13–350.19: research, development, demonstration, training, dissemination, utilization, and technical assistance. Disability and Rehabilitation Research Projects develop methods, procedures, and rehabilitation technology that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, DRRPs improve the effectiveness of services authorized under the Rehabilitation Act of 1973, as amended.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under this competition only applications that meet these priorities.

Priority 5: Improved Economic Outcomes for Women With Disabilities

Introduction

Chapter One of NIDRR's proposed LRP (63 FR 57192) addresses the need for research to explore new ways of measuring and assessing disability in context, taking into account the effects of physical, policy, and social environments, and the dynamic nature of disability over the life span and across environments. Among the objectives for persons with disabilities are satisfactory employment, economic self-sufficiency, and the opportunity to participate in mainstream community life.

There is evidence that the economic conditions of women with disability are comparatively poor. Disabled women have lower levels of educational attainment, lower employment rates regardless of education, and lower earnings. Also, they are more likely to be dependent on public income supports, to live in poverty, and to be single parents at some time during their lives, with responsibility for the care and support of children (*Introduction to Disability*, McColl, M. and Bickenbach, J., Eds., W.B. Saunders Co., 1998).

NIDRR expects this project to contribute to our understanding of strategies that women with disabilities can use to achieve greater economic independence. The project may focus on ways to maximize earnings from work, self-employment, and financial life planning. In the effort to maximize earnings, some women with disabilities at various educational levels are setting career goals, attaining appropriate training and education throughout the life span, and developing networks and support systems to improve their employment outcomes. Some disabled women, especially those with young children, are now considering the advantages and disadvantages of home-based employment.

Priority

The Secretary will establish a DRRP to evaluate the economic status of women with disabilities and identify strategies to improve employment outcomes and economic independence.

(1) Analyze, using existing data sources, the employment conditions and economic status of disabled women, including uses of public and private income supports;

(2) Analyze the skills and conditions that promote lifelong economics self-sufficiency for disabled women;

(3) Identify innovative strategies to improve employment outcomes, including earnings, career progression, and benefits packages, for women with disabilities; and

(4) Identify innovative strategies, including peer support strategies, to assist disabled women to develop plans to increase lifelong economic security.

Priority 6: Analysis of Service Delivery and Policies Affecting Emerging Disability Populations

Introduction

Chapter 2 of NIDRR's proposed LRP (63 FR 57196–57198) describes what has become known as the "emerging universe of disability." Demographic, social and environmental trends affect the prevalence and distribution of various types of disability as well as the demands of those disabilities on social policy and service systems. Studies of such emergent disabilities address factors that include: (1) changing etiologies for existing disabilities; (2) growth in segments of the population with higher prevalence rates for certain disabilities, including the aging of the population of individuals with disabilities; (3) the consequences of

changes in public policy and in health care services and technologies; and (4) the appearance of new disabilities.

Priority

The Secretary will establish a DRRP to improve the provision of services to persons with emerging disabilities. The DRRP must:

(1) Evaluate the implications of emerging disabilities for service systems and social policy; and

(2) Assess the particular needs, with attention to identifying unmet needs of the emerging universe for independent living services, assistive technology services, community-based supports, and other services such as vocational rehabilitation, special education, medical and psychosocial rehabilitation, income supports, and medical assistance.

In carrying out these purposes the DRRP must:

- Use a range of existing data sources to estimate and describe the emerging universe of disability and predict future trends;
- Assess the feasibility of using existing, or establishing new surveillance systems in order to improve the accuracy of predicting changes in the emerging universe;
- Identify etiologies, including environmental or social factors, associated with these emerging disabilities;
- Design a practical and prioritized agenda for a future research program to address gaps in service delivery, to develop interventions and to develop policy approaches to address the disability-related problems of various segments of the emerging universe; and
- Convene a conference to discuss the Center's findings and their implications, with an emphasis on dissemination of results of the conference to appropriate NIDRR grantees.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html*

Applicable Program Regulations: 34 CFR Part 350.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133A, Disability and Rehabilitation Research Projects, and 84.133B, Rehabilitation Research and Training Centers)

Dated: April 28, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–11155 Filed 5–3–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA Nos.: 84.133A and 84.133B]

Office of Special Education and Rehabilitative Services; National Institute on Disability and Rehabilitation Research Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), this notice contains information, application forms, and instructions needed to apply for a grant under these competitions.

This program supports the National Education Goal that calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

The estimated funding levels in this notice do not bind the Department of Education to make awards in any of these categories, or to any specific number of awards or funding levels, unless otherwise specified in statute.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, 86, and 350.

Program Title: Disability and Rehabilitation Research Project and Centers Program

CFDA Numbers: 84.133A and 84.133B

Purpose of Program: The purpose of the Disability and Rehabilitation Research Project and Centers Program is to plan and conduct research, demonstration projects, training, and related activities, including international activities, develop methods, procedures, and rehabilitation technology; that maximize the full inclusion and integration into society, employment, independent living, family support, and economic and social self-sufficiency of individuals with disabilities, especially individuals with the most severe disabilities. In addition, the purpose of the Disability and Rehabilitation Research Project and Centers Program is to improve the effectiveness of services authorized under the Act.

Eligible Applicants: Parties eligible to apply for grants under this program are States, public or private agencies, including for-profit agencies, public or private organizations, including for-profit organizations, institutions of higher education, and Indian tribes and tribal organizations.

Program Authority: 29 U.S.C. 762.

APPLICATION NOTICE FOR FISCAL YEAR 1999 DISABILITY AND REHABILITATION RESEARCH PROJECTS, CFDA NO. 84–133A

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84–133A–4, Improved Economic Outcomes for Women with Disabilities	June 18, 1999	1	$200,000	36
84–133A–6, Analysis of Service Delivery and Policies Affecting Emerging Disability Populations.	June 18, 1999	1	250,000	36

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Disability and Rehabilitation Research Projects

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for a project on improved economic outcomes for women with disabilities and a project on analysis of service delivery and policies affecting emerging disability populations under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (40 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (10 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (4 points); and

(E) The data analysis methods are appropriate (4 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (7 points).

(d) *Design of dissemination activities (5 points total).*

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(ii) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (2 points).

(iii) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(e) *Plan of operation* (6 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (6 points).

(f) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(g) *Adequacy and reasonableness of the budget* (4 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (2 points).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(h) *Plan of evaluation* (10 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (3 points); and

(B) Achieving the project's intended outcomes and expected impacts (2 points).

(ii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (3 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(i) *Project staff* (15 total points).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (2 points).

(3) In addition, the Secretary considers the following:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in

disciplines required to conduct all proposed activities (5 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (3 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (5 points).

(j) *Adequacy and accessibility of resources* (5 points total).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (3 points).

(ii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals with disabilities who may use the facilities, equipment, and other resources of the project (2 points).

APPLICATION NOTICE FOR FISCAL YEAR 1999 REHABILITATION RESEARCH AND TRAINING CENTER, CFDA NO.84–133B

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year)*	Project period (months)
84–133B–11, Rehab for Persons w/LTMI	June 18, 1999	1	$750,000	60
84–133B–12, Rehab for Children w/Special Needs	June 18, 1999	1	700,000	60
84–133B–7, Policies Affecting Children w/SED	June 18, 1999	1	725,000	60
84–133B–14, Improving Services to Children w/SED	June 18, 1999	1	725,000	60

*Note: The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

Rehabilitation Research and Training Center

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for RRTCs on: (1) Rehabilitation for persons with long-term mental illness; (2) rehabilitation for children with disabilities with special health care needs; (3) policies affecting the provision of services to children with emotional disturbances and their families; and (4) improving services and supports to children with emotional disturbances and their families under the Disability and Rehabilitation Research Project and Centers Program.

(a) *Importance of the problem* (9 points total).

(1) The Secretary considers the importance of the problem.

(2) In determining the importance of the problem, the Secretary considers the following factors:

(i) The extent to which the applicant clearly describes the need and target population (3 points).

(ii) The extent to which the proposed activities address a significant need of those who provide services to individuals with disabilities (3 points).

(iii) The extent to which the proposed project will have beneficial impact on the target population (3 points).

(b) *Responsiveness to an absolute or competitive priority* (4 points total).

(1) The Secretary considers the responsiveness of the application to the absolute or competitive priority published in the **Federal Register**.

(2) In determining the responsiveness of the application to the absolute or competitive priority, the Secretary considers the following factors:

(i) The extent to which the applicant addresses all requirements of the absolute or competitive priority (2 points).

(ii) The extent to which the applicant's proposed activities are likely to achieve the purposes of the absolute or competitive priority (2 points).

(c) *Design of research activities* (35 points total).

(1) The Secretary considers the extent to which the design of research activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the research activities constitute a coherent, sustained approach to research in the field, including a substantial addition to the state-of-the-art (5 points).

(ii) The extent to which the methodology of each proposed research activity is meritorious, including consideration of the extent to which—

(A) The proposed design includes a comprehensive and informed review of the current literature, demonstrating knowledge of the state-of-the-art (5 points);

(B) Each research hypothesis is theoretically sound and based on current knowledge (5 points);

(C) Each sample population is appropriate and of sufficient size (5 points);

(D) The data collection and measurement techniques are appropriate and likely to be effective (5 points); and

(E) The data analysis methods are appropriate (5 points).

(iii) The extent to which anticipated research results are likely to satisfy the original hypotheses and could be used for planning additional research, including generation of new hypotheses where applicable (5 points).

(d) *Design of training activities* (11 points total).

(1) The Secretary considers the extent to which the design of training activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the proposed training materials are likely to be effective, including consideration of their quality, clarity, and variety (2 points).

(ii) The extent to which the proposed training methods are of sufficient quality, intensity, and duration (2 points).

(iii) The extent to which the proposed training content—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If relevant, is based on new knowledge derived from research activities of the proposed project (1 point).

(iv) The extent to which the proposed training materials, methods, and content are appropriate to the trainees, including consideration of the skill level of the trainees and the subject matter of the materials (2 points).

(v) The extent to which the proposed training materials and methods are

accessible to individuals with disabilities (1 point).

(vi) The extent to which the applicant is able to carry out the training activities, either directly or through another entity (2 points).

(e) *Design of dissemination activities* (8 points total).

(1) The Secretary considers the extent to which the design of dissemination activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the content of the information to be disseminated—

(A) Covers all of the relevant aspects of the subject matter (1 point); and

(B) If appropriate, is based on new knowledge derived from research activities of the project (1 point).

(ii) The extent to which the materials to be disseminated are likely to be effective and usable, including consideration of their quality, clarity, variety, and format (2 points).

(iii) The extent to which the methods for dissemination are of sufficient quality, intensity, and duration (2 points).

(iv) The extent to which the materials and information to be disseminated and the methods for dissemination are appropriate to the target population, including consideration of the familiarity of the target population with the subject matter, format of the information, and subject matter (1 point).

(v) The extent to which the information to be disseminated will be accessible to individuals with disabilities (1 point).

(f) *Design of technical assistance activities* (4 points total).

(1) The Secretary considers the extent to which the design of technical assistance activities is likely to be effective in accomplishing the objectives of the project.

(2) In determining the extent to which the design is likely to be effective in accomplishing the objectives of the project, the Secretary considers the following factors:

(i) The extent to which the methods for providing technical assistance are of sufficient quality, intensity, and duration (1 point).

(ii) The extent to which the information to be provided through technical assistance covers all of the relevant aspects of the subject matter (1 point).

(iii) The extent to which the technical assistance is appropriate to the target population, including consideration of the knowledge level of the target population, needs of the target population, and format for providing information (1 point).

(iv) The extent to which the technical assistance is accessible to individuals with disabilities (1 point).

(g) *Plan of operation* (4 points total).

(1) The Secretary considers the quality of the plan of operation.

(2) In determining the quality of the plan of operation, the Secretary considers the following factors:

(i) The adequacy of the plan of operation to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, and timelines for accomplishing project tasks (2 points).

(ii) The adequacy of the plan of operation to provide for using resources, equipment, and personnel to achieve each objective (2 points).

(h) *Collaboration* (2 points total).

(1) The Secretary considers the quality of collaboration.

(2) In determining the quality of collaboration, the Secretary considers the following factors:

(i) The extent to which the applicant's proposed collaboration with one or more agencies, organizations, or institutions is likely to be effective in achieving the relevant proposed activities of the project (1 point).

(ii) The extent to which agencies, organizations, or institutions demonstrate a commitment to collaborate with the applicant (1 point).

(i) *Adequacy and reasonableness of the budget* (3 points total).

(1) The Secretary considers the adequacy and the reasonableness of the proposed budget.

(2) In determining the adequacy and the reasonableness of the proposed budget, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the proposed project activities (1 point).

(ii) The extent to which the budget for the project, including any subcontracts, is adequately justified to support the proposed project activities (2 points).

(j) *Plan of evaluation* (7 points total).

(1) The Secretary considers the quality of the plan of evaluation.

(2) In determining the quality of the plan of evaluation, the Secretary considers the following factors:

(i) The extent to which the plan of evaluation provides for periodic assessment of progress toward—

(A) Implementing the plan of operation (1 point); and

(B) Achieving the project's intended outcomes and expected impacts (1 point).

(ii) The extent to which the plan of evaluation will be used to improve the performance of the project through the feedback generated by its periodic assessments (1 point).

(iii) The extent to which the plan of evaluation provides for periodic assessment of a project's progress that is based on identified performance measures that—

(A) Are clearly related to the intended outcomes of the project and expected impacts on the target population (2 points); and

(B) Are objective, and quantifiable or qualitative, as appropriate (2 points).

(k) *Project staff* (9 points total).

(1) The Secretary considers the quality of the project staff.

(2) In determining the quality of the project staff, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability (1 point).

(3) In addition, the Secretary considers the following factors:

(i) The extent to which the key personnel and other key staff have appropriate training and experience in disciplines required to conduct all proposed activities (2 points).

(ii) The extent to which the commitment of staff time is adequate to accomplish all the proposed activities of the project (2 points).

(iii) The extent to which the key personnel are knowledgeable about the methodology and literature of pertinent subject areas (2 points).

(iv) The extent to which the project staff includes outstanding scientists in the field (2 points).

(l) *Adequacy and accessibility of resources* (4 points).

(1) The Secretary considers the adequacy and accessibility of the applicant's resources to implement the proposed project.

(2) In determining the adequacy and accessibility of resources, the Secretary considers the following factors:

(i) The extent to which the applicant is committed to provide adequate facilities, equipment, other resources, including administrative support, and laboratories, if appropriate (1 point).

(ii) The extent to which the applicant has appropriate access to clinical populations and organizations representing individuals with disabilities to support advanced clinical rehabilitation research (2 points).

(iii) The extent to which the facilities, equipment, and other resources are appropriately accessible to individuals

with disabilities who may use the facilities, equipment, and other resources of the project (1 point).

Instructions for Application Narrative

The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

The Secretary strongly recommends the following:

(1) a one-page abstract;

(2) an Application Narrative (i.e., Part III that addresses the selection criteria that will be used by reviewers in evaluating individual proposals) of no more than 125 pages for RRTC applications and 75 pages for Project applications, double-spaced (no more than 3 lines per vertical inch) 8½ × 11″ pages (on one side only) with one inch margins (top, bottom, and sides). The application narrative page limit recommendation does not apply to: Part I—the electronically scannable form; Part II—the budget section (including the narrative budget justification); and Part IV—the assurances and certifications; and

(3) a font no smaller than a 12-point font and an average character density no greater than 14 characters per inch.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. [Washington, DC time] on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA # [Applicant must insert number and letter]), Room # 3633, Regional Office Building #3, 7th and D Streets, SW, Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Forms and Instructions

The appendix to this application is divided into four parts. These parts are organized in the same manner that the submitted application should be organized. These parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Form—Non-Construction Programs (Standard Form 524A) and instructions.

Part III: Application Narrative.

Additional Materials

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification Regarding Lobbying, Debarment, Suspension, and Other Responsibility Matters: and Drug-Free Work-Place Requirements (ED Form 80–0013).

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and instructions. (NOTE: ED Form GCS–014 is intended for the use of primary participants and should not be transmitted to the Department.)

Certification of Eligibility for Federal Assistance in Certain Programs (ED Form 80–0016).

Disclosure of Lobbying Activities (Standard Form LLL (if applicable) and instructions; and Disclosure Lobbying Activities Continuation Sheet (Standard Form LLL–A).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Applications Contact: The Grants and Contracts Service Team (GCST), Department of Education, 400 Maryland Avenue SW, Switzer Building, 3317, Washington, DC 20202, or call (202) 205–8207. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–9860. The preferred method for requesting information is to FAX your request to (202) 205–8717.

Individuals with disabilities may obtain a copy of the application package in an alternate format by contacting the GCST. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

For Further Information Contact: Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW, room 3418, Switzer Building, Washington, DC 20202–2645. Telephone: (202) 205–5880. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–2742. Internet: Donna__Nangle@ed.gov.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: http://www.access.gpo.gov/nara/index.html.

Program Authority: 29 U.S.C. 760–762.

Dated: April 28, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Application Forms and Instructions

Applicants are advised to reproduce and complete the application forms in

this Section. Applicants are required to submit an original and two copies of each application as provided in this Section. However, applicants are encouraged to submit an original and seven copies of each application in order to facilitate the peer review process and minimize copying errors.

Frequent Questions

1. Can I Get an Extension of the Due Date?

No! On rare occasions the Department of Education may extend a closing date for all applicants. If that occurs, a notice of the revised due date is published in the **Federal Register**. However, there are no extensions or exceptions to the due date made for individual applicants.

2. What Should Be Included in the Application?

The application should include a project narrative, vitae of key personnel, and a budget, as well as the Assurances forms included in this package. Vitae of staff or consultants should include the individual's title and role in the proposed project, and other information that is specifically pertinent to this proposed project. The budgets for both the first year and all subsequent project years should be included.

If collaboration with another organization is involved in the proposed activity, the application should include assurances of participation by the other parties, including written agreements or assurances of cooperation. It is *not* useful to include general letters of support or endorsement in the application.

If the applicant proposes to use unique tests or other measurement instruments that are not widely known in the field, it would be helpful to include the instrument in the application.

Many applications contain voluminous appendices that are not helpful and in many cases cannot even be mailed to the reviewers. It is generally not helpful to include such things as brochures, general capability statements of collaborating organizations, maps, copies of publications, or descriptions of other projects completed by the applicant.

3. What Format Should Be Used for the Application?

NIDRR generally advises applicants that they may organize the application to follow the selection criteria that will be used. The specific review criteria vary according to the specific program, and are contained in this Consolidated Application Package.

4. May I Submit Applications to More Than One NIDRR Program Competition or More Than One Application to a Program?

Yes, you may submit applications to any program for which they are responsive to the program requirements. You may submit the same application to as many competitions as you believe appropriate. You may also submit more than one application in any given competition.

5. What is the Allowable Indirect Cost Rate?

The limits on indirect costs vary according to the program and the type of application.

An applicant for an RRTC is limited to an indirect rate of 15%.

An applicant for a Disability and Rehabilitation Research Project should limit indirect charges to the organization's approved indirect cost rate. If the organization does not have an approved indirect cost rate, the application should include an estimated actual rate.

6. Can Profitmaking Businesses Apply for Grants?

Yes. However, for-profit organizations will not be able to collect a fee or profit on the grant, and in some programs will be required to share in the costs of the project.

7. Can Individuals Apply for Grants?

No. Only organizations are eligible to apply for *grants* under NIDRR programs. However, individuals are the only entities eligible to apply for fellowships.

8. Can NIDRR Staff Advise Me Whether My Project Is of Interest to NIDRR or Likely To Be Funded?

No. NIDRR staff can advise you of the requirements of the program in which you propose to submit your application. However, staff cannot advise you of whether your subject area or proposed approach is likely to receive approval.

9. How Do I Assure That My Application Will Be Referred to the Most Appropriate Panel For Review?

Applicants should be sure that their applications are referred to the correct competition by clearly including the competition title and CFDA number, including alphabetical code, on the Standard Form 424, and including a project title that describes the project.

10. How Soon After Submitting My Application Can I Find Out If It Will Be Funded?

The time from closing date to grant award date varies from program to program. Generally speaking, NIDRR endeavors to have awards made within five to six months of the closing date.

Unsuccessful applicants generally will be notified within that time frame as well. For the purpose of estimating a project start date, the applicant should estimate approximately six months from the closing date, but no later than the following September 30.

11. Can I Call NIDRR To Find Out If My Application Is Being Funded?

No. When NIDRR is able to release information on the status of grant applications, it will notify applicants by letter. The results of the peer review cannot be released except through this formal notification.

12. If My Application Is Successful, Can I Assume I Will Get the Requested Budget Amount in Subsequent Years?

No. Funding in subsequent years is subject to availability of funds and project performance.

13. Will All Approved Applications Be Funded?

No. It often happens that the peer review panels approve for funding more applications than NIDRR can fund within available resources. Applicants who are approved but not funded are encouraged to consider submitting similar applications in future competitions.

BILLING CODE 4000–01–U

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address

Legal Name: _____

Address: _____

_____

_____ City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

_____

2. Applicant's D-U-N-S Number ☐☐☐☐☐☐☐☐☐

3. Catalog of Federal Domestic Assistance #: 8 4 ☐☐☐☐ → Title: _____

4. Project Director: _____

Address: _____

_____ City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No

(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State	H Independent School District
B County	I Public College or University
C Municipal	J Private, Non-Profit College or University
D Township	K Indian Tribe
E Interstate	L Individual
F Intermunicipal	M Private, Profit-Making Organization
G Special District	N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—Pre-Application	*—Application*
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?

☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____

☐ No *(If "No," check appropriate box below.)*

☐ Program is not covered by E.O. 12372.

☐ Program has not been selected by State for review.

10. Proposed Project Dates:

Start Date:	End Date:
___/___/_____	___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No

a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____

c. IRB approval date: _____ { ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____ - _____ Fax #: ( ) _____ - _____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 1/12/99

ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of item 11.**

    If **same or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH
(Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §§874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control No. 1880--0538

Expiration Date: 10/31/99

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED FORM NO. 524

Name of Institution/Organization	Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED FORM NO. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.

2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.

3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.

4. Provide other explanations or comments you deem necessary.

Public reporting burden for these collections of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to: the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1820-0027, Washington, D.C. 20503.

Disability and Rehabilitation Research Projects (CFDA No. 84.133A) 34 CFR Part 350 Subpart B.

Rehabilitation Research and Training Center (CFDA No. 84.133B) 34 CFR Part 350 Subpart C.

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about-

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will-

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such

conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted-

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

_____

_____

_____

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF ' ' THORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a-fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ _____

(Signature) (Date)

_____

(Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. **Type of Federal Action:** a. contract ___ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	2. **Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	3. **Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. **Name and Address of Reporting Entity:** ___ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**		5. **If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**
6. **Federal Department/Agency:**		7. **Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. **Federal Action Number,** *if known:*		9. **Award Amount,** *if known:* **$**
10. a. **Name and Address of Lobbying Registrant** *(if individual, last name, first name, MI):*		b. **Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. **Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.**		**Signature:** _____ **Print Name:**_____ **Title:**_____ **Telephone No.:** _____ **Date:** _____
Federal Use Only		**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 99–11156 Filed 5–3–99; 8:45 am]
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May 4, 1999

Part VII

Department of Commerce

Bureau of Export Administration

15 CFR Part 746
Exports to Serbia; Final Rule

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990422104–9104–01]

RIN 0694–AB91

Exports to Serbia

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule

SUMMARY: In his address to the nation on March 24, 1999, President Clinton announced that the Armed Forces of the United States had joined those of our NATO allies in air strikes against Serbian forces responsible for brutal attacks on ethnic Albanians in the province of Kosovo. This rule imposes a license requirement for exports and reexports to Serbia of all items subject to the Export Administration Regulations (EAR).

EFFECTIVE DATE: This rule is effective May 4, 1999.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy Controls, Bureau of Export Administration, Telephone: (202) 482–4196.

SUPPLEMENTARY INFORMATION:

Background

In response to the Serbian government's continued ethnic cleansing in its Kosovo province and its rejection of the proposed peace agreement accepted by the Kosovars, NATO (including the United States) has taken military action. This action is intended to deter the mass killing and dislocation of ethnic Albanians in Kosovo and to prevent a widening of the conflict.

In Resolution 1203 (adopted on October 24, 1998), the United Nations Security Council (UNSC) expressed alarm at what it described as the continuing grave humanitarian situation throughout Kosovo and the impending humanitarian catastrophe. Previously, in Resolution 1160 of March 3, 1998, the UNSC had imposed an embargo on the sale of arms and related materials to the Federal Republic of Yugoslavia.

On July 14, 1998, BXA implemented an embargo on arms and arms-related items in the Export Administration Regulations (EAR) that applied to Serbia and Montenegro. The arms embargo continues in effect. This rule imposes an additional license requirement on exports and reexports to Serbia of all items subject to the EAR. Applications will be reviewed on a case-by-case basis, with a presumption of denial for applications for other than humanitarian items. For humanitarian items, BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use. No License Exceptions are available for Serbia, except that items consigned to and for use by personnel and agencies of the U.S. Government may be shipped under License Exception GOV, and temporary exports or reexports by the accredited news media may be made under License Exception TMP. This rule does not affect Montenegro.

This action is taken consistent with the provisions of the Export Administration Act (EAA) and after consultation with the Secretary of State. BXA submitted a foreign policy report to the Congress indicating the imposition of new foreign policy controls on April 30, 1999.

Although the EAA expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), and August 13, 1998 (63 FR 44121, August 17, 1998).

Saving Clause

Shipments of items removed from License Exception or NLR authorizations as a result of this regulatory action that were en route aboard a carrier to a port of export, on dock for loading aboard an exporting carrier, on lighter, or laden aboard an exporting carrier on May 4, 1999, pursuant to actual orders for export to that destination in Serbia, may proceed to that destination under the previous License Exception or NLR authorization provisions so long as they have been exported from the United States before May 11, 1999. Any such items not actually exported before midnight May 11, 1999, require a license in accordance with this regulation.

Rulemaking Requirements

1. This final rule has been determined to be significant for purposes of E.O. 12866.

2. This rule involves a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P. Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Hillary Hess, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 746

Embargoes, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 746 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 746—[AMENDED]

1. The authority citation for part 746 is revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c, 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 3 CFR, 1994 Comp., p.

917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 17, 1998).

2. Section 746.9 is revised to read as follows:

§ 746.9 The Federal Republic of Yugoslavia (Serbia and Montenegro).

The Department of Commerce maintains a comprehensive embargo on exports and reexports to Serbia. Additionally, a United Nations mandated arms embargo applies to certain items destined to the Federal Republic of Yugoslavia (Serbia and Montenegro).

(a) *License requirements.* (1) *Serbia.* You will need a license to export or reexport all items subject to the EAR to Serbia, except as specified in paragraph (c) of this section. This requirement does not apply to Montenegro.

(2) *Federal Republic of Yugoslavia (Serbia and Montenegro).* Under Executive Order 12918 of May 26, 1994 (3 CFR, 1994 comp., p. 899) (which authorizes the Secretary of State and the Secretary of Commerce, under section 5 of the United Nations Participation Act and other authorities available to the respective Secretaries, to take all actions necessary to implement any arms embargo mandated by resolution of the United Nations Security Council), and in conformity with United Nations Security Council (UNSC) Resolution 1160 of March 31, 1998, an embargo applies to the sale or supply to the Federal Republic of Yugoslavia of arms and related materiel of all types and regardless of origin, such as weapons and ammunition, military vehicles and equipment, and spare parts for such items. You will therefore need a license for the sale, supply or export to the Federal Republic of Yugoslavia (Serbia and Montenegro) from the United States of embargoed items, as listed in paragraphs (a)(2)(i) and (ii) of this section. You will also need a license for the sale, supply, export or reexport to the Federal Republic of Yugoslavia (Serbia and Montenegro) of such items by any United States person in any foreign country or other location. (Reexport controls imposed under this paragraph (a)(2) apply only to reexports by U.S. persons. Reexport controls on U.S.-origin items to the Federal Republic of Yugoslavia (Serbia and Montenegro) set forth in other parts of the EAR remain in effect.) You will also need a license for the use of any U.S.-registered aircraft or vessel to supply or transport to the Federal Republic of Yugoslavia (Serbia and Montenegro) any such items. These requirements apply to embargoed items specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this section, regardless of origin.

(i) Crime Control and Detection Equipment as identified on the CCL under CC Columns No. 1, 2 or 3 in the Country Chart column of the "License Requirements" section of the applicable ECCN.

(ii) Items described by ECCNs ending in "018"; and 0A982, 0A984, 0A985, 0A986, 0A988, 0A989, 0B986, 0E984, 1A005, 1C998, 2A993, 6A002.a.1, a.2, a.3, b and c, 6A003.b.3 and b.4, 6E001, 6E002, and 9A991.a.

(3) *Date of embargo.* The licensing requirements in paragraph (a)(2) of this section were effective on July 14, 1998.

(b) *Licensing policy.* (1) *Serbia.* Applications for export or reexport of all items subject to the EAR to Serbia will be reviewed on a case-by-case basis, with a presumption of denial for other than humanitarian items. For humanitarian items, BXA will approve sales of agricultural commodities and products, medicine, and medical equipment for civilian end-use when appropriate safeguards can be developed to prevent diversion to military, paramilitary or political use.

(2) *Federal Republic of Yugoslavia (Serbia and Montenegro).* Applications for export or reexport of all items listed in paragraphs (a)(2)(i) and (ii) of this section are subject to a general policy of denial. Consistent with United Nations Security Council Resolution 1160, this embargo is effective notwithstanding the existence of any rights or obligations conferred or imposed by any international agreement or any contract entered into or any license or permit granted prior to July 14, 1998, except to the extent provided in regulations, orders, directives or licenses that may be issued in the future under Executive Order 12918 or under the EAR.

(c) *License Exceptions.* Items consigned to and for use by personnel and agencies of the U.S. Government may be exported or reexported to Serbia under License Exception GOV (see § 740.11(b)(2) of the EAR), and temporary exports or reexports by the news media may be made to Serbia under License Exception TMP (see § 740.9(a)(2)(viii) of the EAR). No other License Exceptions are available for Serbia.

(d) *Related controls.* The Department of State, Office of Defense Trade Controls, maintains related controls on arms and military equipment under the International Traffic in Arms Regulations (22 CFR parts 120–130). You should also contact the Department of the Treasury's Office of Foreign Assets Control concerning any restrictions which might apply to U.S. persons involving financial transactions with the Federal Republic of Yugoslavia (Serbia and Montenegro).

Dated: April 30, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–11304 Filed 4–30–99; 4:17 pm]

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Education Flexibility Partnership Act of 1999 (Apr. 29, 1999; 113 Stat. 41)

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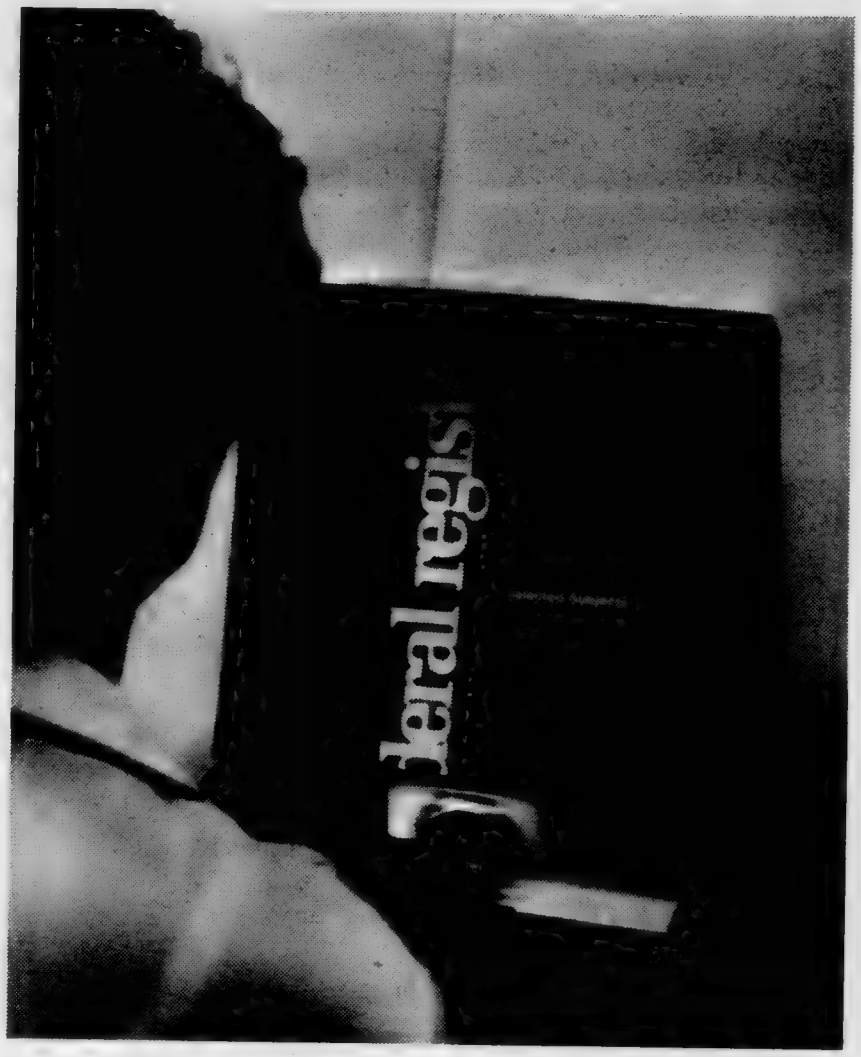
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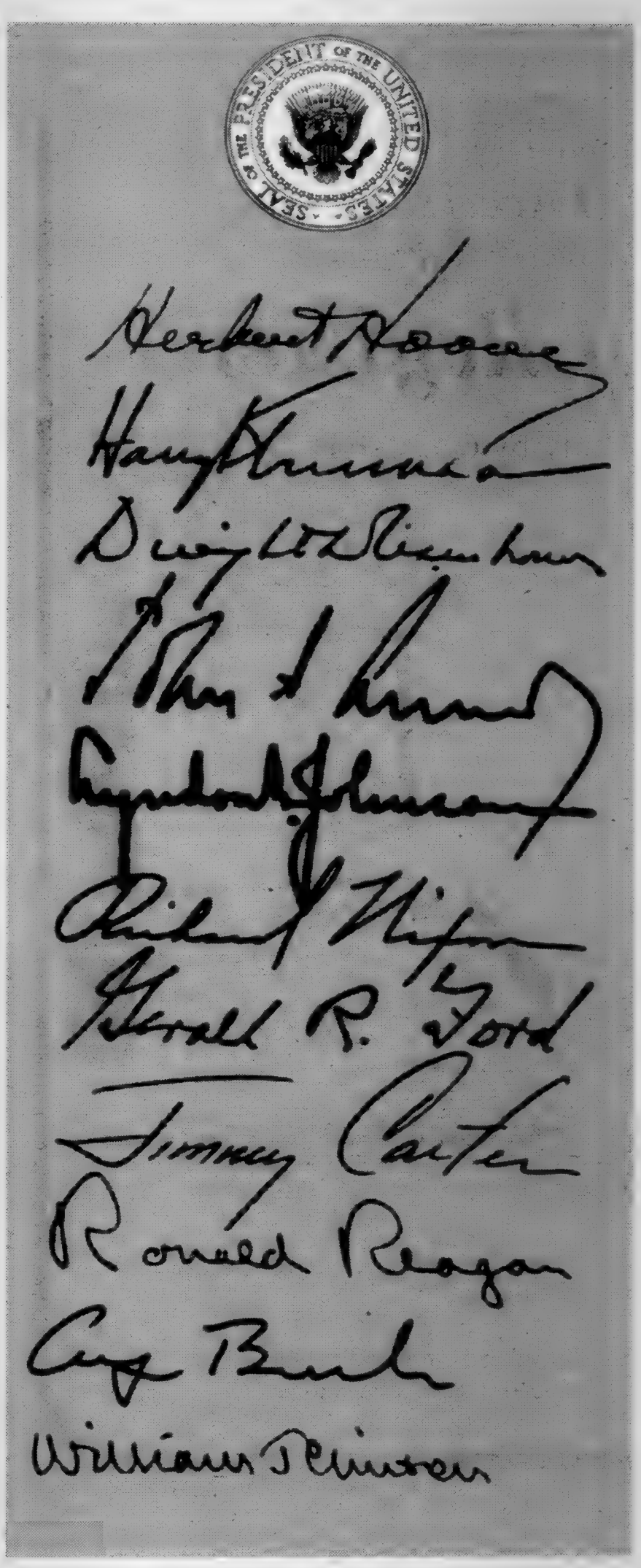
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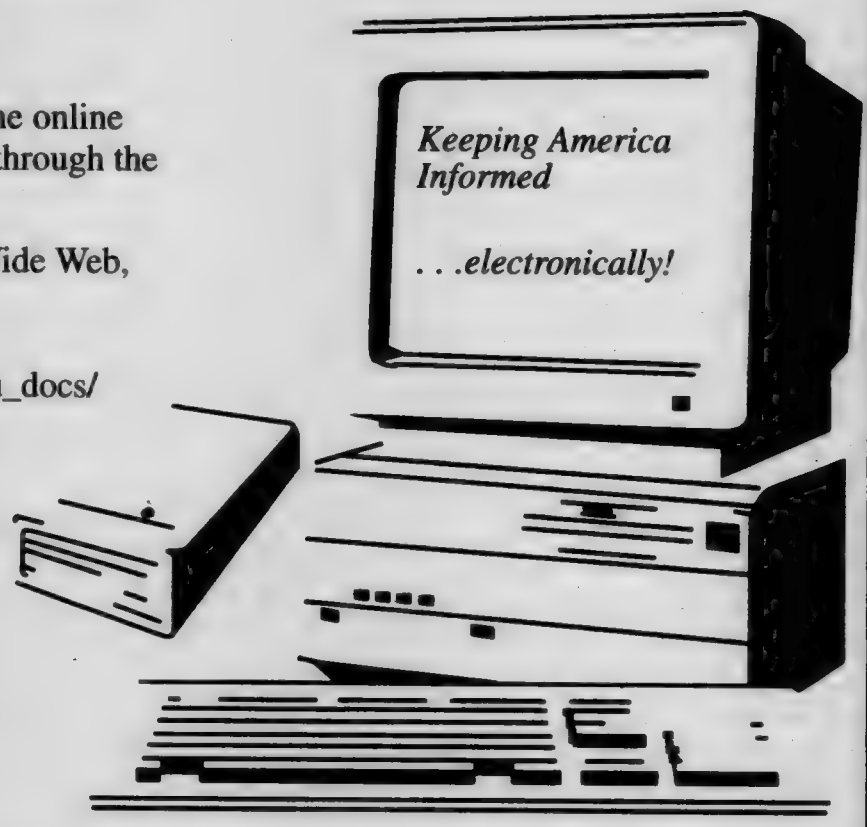
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Federal Register
Vol. 64, No. 86
Wednesday, May 5, 1999

Presidential Documents

Title 3—

The President

Executive Order 13121 of April 30, 1999

Blocking Property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro, and Prohibiting Trade Transactions Involving the Federal Republic of Yugoslavia (Serbia and Montenegro) in Response to the Situation in Kosovo

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the International Emergency Economic Powers Act (IEEPA) (50 U.S.C. 1701 *et seq.*), the National Emergencies Act (50 U.S.C. 1601 *et seq.*), and section 301 of title 3, United States Code,

I, WILLIAM J. CLINTON, President of the United States of America, in order to take additional steps with respect to the continuing human rights and humanitarian crisis in Kosovo and the national emergency described and declared in Executive Order 13088 of June 9, 1998, hereby order:

Section 1. *Amendment to Executive Order 13088.* (a) Section 1(a) of Executive Order 13088 of June 9, 1998, is revised to read as follows:

"**Section 1.** (a) Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)), and in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, all property and interests in property of the Governments of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Republic of Serbia, and the Republic of Montenegro that are in the United States, that hereafter come within the United States, or that are or hereafter come within the possession or control of United States persons, including their overseas branches, are hereby blocked."

(b) Section 2 of Executive Order 13088 is hereby revoked, and a new section 2 is added to read as follows:

"**Sec. 2.** Except to the extent provided in section 203(b) of IEEPA (50 U.S.C. 1702(b)) and in regulations, orders, directives, or licenses that may hereafter be issued pursuant to this order, and notwithstanding any contract entered into or any license or permit granted prior to the effective date of this order, the following are prohibited:

"(a) the exportation, reexportation, sale, or supply, directly or indirectly, from the United States, or by a United States person, wherever located, to the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro, of any goods (including petroleum and petroleum products), software, technology (including technical data), or services;

"(b) the importation into the United States, directly or indirectly, of any goods, software, technology (including technical data), or services from the Federal Republic of Yugoslavia (Serbia and Montenegro) or owned or controlled by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro; and

"(c) any transaction or dealing by a United States person, wherever located, in goods, software, technology (including technical data), or services, regardless of country of origin, for exportation, reexportation, sale, or supply to, or exportation from or by, the Federal Republic of Yugoslavia (Serbia and Montenegro) or the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro. This prohibition includes, without limitation, purchase, sale, transport, swap, or brokerage transactions in such items, and approving, financing, insuring, facilitating, or guaranteeing any such transactions."

(c) Section 4 of Executive Order 13088 is revised to read as follows:

"**Sec. 4.** Any transaction by a United States person that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in this order is prohibited. Any conspiracy formed to violate the prohibitions of this order is prohibited."

(d) Section 7 of Executive Order 13088 is revised to read as follows:

"**Sec. 7.** (a) The Secretary of the Treasury, in consultation with the Secretary of State, shall give special consideration to the circumstances of the Government of the Republic of Montenegro and persons located in and organized under the laws of the Republic of Montenegro in the implementation of this order.

"(b) The Secretary of the Treasury, in consultation with the Secretary of State, shall give special consideration to the humanitarian needs of refugees from Kosovo and other civilians within the Federal Republic of Yugoslavia (Serbia and Montenegro) in the implementation of this order.

"(c) The Secretary of the Treasury, in consultation with the Secretary of State, is hereby directed to authorize commercial sales of agricultural commodities and products, medicine, and medical equipment for civilian end use in the territory of the Federal Republic of Yugoslavia (Serbia and Montenegro) under appropriate safeguards to prevent diversion to military, paramilitary, or political use by the Government of the Federal Republic of Yugoslavia (Serbia and Montenegro), the Government of the Republic of Serbia, or the Government of the Republic of Montenegro."

Sec. 2. *Preservation of Authorities.* Nothing in this order is intended to affect the continued effectiveness of any rules, regulations, orders, licenses, or other forms of administrative action issued, taken, or continued in effect heretofore or hereafter under the authority of IEEPA, except as hereafter terminated, modified, or suspended by the issuing Federal agency.

Sec. 3. *No rights or privileges conferred.* Nothing contained in this order shall confer any substantive or procedural right or privilege on any person or organization, enforceable against the United States, its agencies or its officers.

Sec. 4. *(a) Effective date.* This order is effective at 12:01 a.m. eastern daylight time on May 1, 1999.

(b) *Transmittal; Publication.* This order shall be transmitted to the Congress and published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
April 30, 1999.

[FR Doc. 99–11410
Filed 5–4–99; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 64, No. 86
Wednesday, May 5, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 929

[Docket No. FV99–929–1 IFR]

Cranberries Grown in the States of Massachusetts, et al.; Temporary Suspension of a Provision on Producer Continuance Referenda Under the Cranberry Marketing Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule requests comments on the temporary suspension of an order provision requiring a producer continuance referendum to be conducted on the marketing order for cranberries during the month of May 1999. The industry currently is experiencing unsettled marketing conditions due to a surplus of product. A temporary delay in holding the continuance referendum will allow the Cranberry Marketing Committee (Committee) to finalize the development of a plan to improve the marketing situation, hold producer meetings throughout the production area to update them on the situation, and begin implementing the plan.

DATES: The suspension of the last sentence in § 929.69 paragraph (d) is effective May 6, 1999, through May 31, 1999. Comments must be received by May 20, 1999 to be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. Fax # (202) 720–5698 or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella or Kenneth G. Johnson, Marketing Order Administration Branch, F&V, AMS, USDA, room 2530–S, P.O. Box 96456, Washington, DC 20090–6456, telephone: (202) 720–2491; Fax: (202) 720–5698 or Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, Room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698. Small businesses may request information on compliance with this regulation or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; Telephone (202) 720–2491; Fax: (202) 720–5698; or E-mail: Jay.Guerber@usda.gov. You may also view the marketing agreements and orders small business compliance guide at the following website: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 929 [7 CFR Part 929], as amended, regulating the handling of cranberries grown in 10 states. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This action temporarily suspends a provision in § 929.69(d) of the order which specifies the month and year when a continuance referendum should be conducted to determine if producers favor continuance of the cranberry marketing order. This action was unanimously recommended by the Committee at its March 15, 1999, meeting.

Section 929.69(d) of the order provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of the order is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. The next continuance referendum is scheduled to be conducted in May 1999. The last continuance referendum was held in May 1995.

Section 929.69(b) of the order authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

At its March 15, 1999, meeting, the Committee recommended delaying the May 1999 referendum because the cranberry industry currently is experiencing significant marketing problems. Over the last few months, inventories of cranberry juice have been at record levels and producer prices have dropped significantly.

The Committee reported that, over the last five years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of numerous cranberry juice based beverages. However, such success has

attracted additional production. With increased production and a leveling of demand, carry-out stocks of cranberry juice and juice products are at record levels and are predicted to increase significantly over the next few years. The Committee reported that carryout stocks at the end of August were approximately 1.2 million (mill.) barrels (bbls) in 1997, 2.1 mill. bbls in 1998, and are projected to be 2.7 and 3.2 mill. bbls in 1999 and 2000, respectively. The Committee also reported that, in recent months, producer prices have responded to this surplus by dropping from $70–80/barrel to $38/barrel.

The Committee plans a series of producer meetings throughout the 10-State production area to inform producers about positive actions being undertaken by the Committee to help strengthen marketing conditions. Some of these actions include proposing amendments to the order, and filing an application with the Department's Foreign Agricultural Service for Market Access Program funds to help the industry further develop export markets for cranberries and cranberry products. The industry also is working with Congress on amendments to the Act to include reporting requirements for processors and importers, and adding cranberries to the list of commodities with the authority to establish marketing research projects, including paid advertising, to more effectively promote cranberries and cranberry products.

The Committee believes that a temporary delay in holding the continuance referendum will provide time for its actions to help stabilize the current marketing situation. The Committee further believes that holding a continuance referendum in May 1999, given the current unsettled marketing situation, would not provide a true indicator of support for and the value of the order.

Pursuant to § 929.69(b), this action suspends provisions in § 929.69(d) to postpone the May 1999 continuance referendum under the cranberry marketing order. The Department currently plans to conduct a producer continuance referendum in May 2000. However, a final decision on holding that referendum will not be made until the spring of 2000. The Committee traditionally meets each year during the months of February or March to assess the current marketing situation and prospects for the upcoming season. The Committee's assessment of marketing conditions at that time will be used in making the final decision. In accordance with § 929.69(d) of the order, a continuance referendum is required to be held in May 2003.

The Regulatory Flexibility Act and Effects on Small Businesses

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of cranberries who are subject to regulation under the order and approximately 1,100 producers of cranberries in the regulated area. Small agricultural service firms, which include handlers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of handlers and producers of cranberries may be classified as small entities.

This action temporarily suspends a provision in the order requiring a producer referendum to be held in May 1999 to determine whether producers favor continuance of the order.

Section 929.69(d) of the order provides that the Secretary shall conduct a referendum during the month of May 1975 to ascertain whether continuance of the order is favored by the producers, and that the Secretary shall conduct such a referendum during the month of May of every fourth year thereafter. The next continuance referendum is scheduled to be conducted in May 1999. The last continuance referendum was held in May 1995.

Section 929.69(b) of the order authorizes the Secretary to terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

At its March 15, 1999, meeting, the Committee recommended delaying the May 1999 referendum because the cranberry industry currently is experiencing significant marketing problems. Over the last few months, inventories of cranberry juice have been at record levels and producer prices have dropped significantly.

The Committee reported that, over the last five years, the industry has enjoyed increasing demand for cranberry products, primarily due to the success of numerous cranberry juice based beverages. However, such success has attracted additional production. With increased production and a leveling of demand, carry-out stocks of cranberry juice and juice products are at record levels and are predicted to increase significantly over the next few years. The Committee reported that carryout stocks at the end of August were approximately 1.2 million (mill.) barrels (bbls) in 1997, 2.1 mill. bbls in 1998, and are projected to be 2.7 and 3.2 mill. bbls in 1999 and 2000, respectively. The Committee also reported that, in recent months, producer prices have responded to this surplus by dropping from $70–80/barrel to $38/barrel.

The Committee plans a series of producer meetings throughout the 10-State production area to inform producers about positive actions being undertaken by the Committee to help strengthen marketing conditions. Some of these actions include proposing amendments to the order, and filing an application with the Department's Foreign Agricultural Service for Market Access Program funds to help the industry further develop export markets for cranberries and cranberry products. The industry also is working with Congress on amendments to the Act to include reporting requirements for processors and importers, and adding cranberries to the list of commodities with the authority to establish marketing research projects, including paid advertising, to more effectively promote cranberries and cranberry products.

The Committee believes that a temporary delay in holding the continuance referendum will provide time for its actions to help stabilize the current marketing situation. The Committee further believes that holding a continuance referendum in May 1999, given the current unsettled marketing situation, would not provide a true indicator of support for and the value of the order.

Pursuant to § 929.69(b), this action suspends provisions in § 929.69(d) to postpone the May 1999 continuance referendum under the cranberry marketing order. The Department currently plans to conduct a producer continuance referendum in May 2000. This should serve as an alternative to just suspending the May 1999 continuance referendum. However, a

final decision on holding that referendum will not be made until the spring of 2000. The Committee traditionally meets each year during the months of February or March to assess the current marketing situation and prospects for the upcoming season. The Committee's assessment of marketing conditions at that time will be used in making the final decision. In accordance with § 929.69(d) of the order, a continuance referendum is required to be held in May 2003.

This rule will not impose any additional recordkeeping requirements on either small or large cranberry handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sectors. In addition, the Department has not identified any relevant Federal rules which duplicate, overlap or conflict with this rule.

In compliance with Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and recordkeeping requirements imposed by Part 929 have been previously approved by OMB and assigned OMB Number 0581–0103.

Committee meetings are widely publicized throughout the cranberry industry and are open to all industry members and entities (including both small and large business entities) and other interested persons—who are encouraged to participate in the deliberations and voice their opinions on topics under discussion. Like all Committee meetings, the March 1999 meeting was a public meeting and all entities, both large and small, were able to express their views on these issues. The Committee itself is composed of eight members, of which seven members are growers and one represents the public.

After consideration of all available information, and pursuant to section 929.69(b), it is found that the second sentence in section 929.69(d), does not tend to effectuate the declared policy of the Act for the period specified herein and should be temporarily suspended.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 60 days after publication in the **Federal Register** because: (1) The suspension needs to be effective as soon as possible since the month of May is specified in the order as the period in which to conduct a continuance referendum; and (2) this rule provides a 15-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 929

Cranberries, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 929 is amended as follows:

PART 929—CRANBERRIES GROWN IN THE STATES OF MASSACHUSETTS, RHODE ISLAND, CONNECTICUT, NEW JERSEY, WISCONSIN, MICHIGAN, MINNESOTA, OREGON, WASHINGTON, AND LONG ISLAND IN THE STATE OF NEW YORK

1. The authority citation for 7 CFR Part 929 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 929.69, paragraph (d), the words, "The Secretary shall conduct such a referendum during the month of May of every fourth year thereafter." are suspended effective May 6, 1999, through May 31, 1999.

Dated: April 29, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11230 Filed 5–4–99; 8:45 pm]

BILLING CODE 3410–02–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 99–26]

RIN 3069–AA–82

Amendment of Affordable Housing Program Regulation

AGENCY: Federal Housing Finance Board.

ACTION: Interim final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulation governing the operation of the Affordable Housing Program (AHP or Program) to make certain technical revisions clarifying Program requirements and improving the operation of the AHP.

DATES: The interim final rule shall be effective on June 4, 1999. The Finance Board will accept written comments on this interim final rule on or before July 6, 1999.

ADDRESSES: Mail comments to Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, NW, Washingon DC 20006. Comments will be available for inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, (202) 408–2848, or Janet M. Fronckowiak, Associate Director, (202) 408–2575, Program Assistance Division, Office of Policy, Research and Analysis; or Sharon B. Like, Senior Attorney-Advisor, (202) 408–2930, Office of General Counsel, Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Section 10(j)(1) of the Federal Home Loan Bank Act (Bank Act) requires each Federal Home Loan Bank (Bank) to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. *See* 12 U.S.C. 1430(j)(1). The Finance Board is required to promulgate regulations governing the operation of the Program. *See id.*

On August 4, 1997, the Finance Board published a final AHP regulation adopting comprehensive revisions to the Program, *see* 12 CFR part 960, which, among other changes, authorized the 12 Banks, rather than the Finance Board, to approve applications for AHP subsidies beginning January 1, 1998. *See* 62 FR 41812 (Aug. 4, 1997). On May 20, 1998, the Finance Board published an interim final rule amending the regulation to make certain technical revisions clarifying Program requirements and improving the operation of the AHP. *See* 63 FR 27668 (May 20, 1998). The interim final rule was adopted as a final rule, with several changes, and will become effective June 1, 1999.

In the course of implementing the changes to the Program under the recent revisions to the AHP regulation, the Banks and Finance Board staff have identified a number of additional technical issues whose resolution would clarify Program requirements and improve the effectiveness of the Program. This interim final rule addresses those issues. Although the interim final rule will become effective 30 days after the date of publication in the **Federal Register**, the Finance Board requests comment on all aspects of the interim final rule during a 60-day comment period.

II. Analysis of the Interim Final Rule

A. Timing of Submission of Amendments to Bank AHP Implementation Plans to the Finance Board—§ 960.3(b)(4)

Section 960.3(b)(1) of the AHP regulation requires each Bank's board of directors to adopt a written AHP implementation plan setting forth the requirements specified in the regulation. *See* 12 CFR 960.3(b)(1). Each Bank is required to provide its Advisory Council an opportunity to review and make recommendations on the Bank's AHP implementation plan and any subsequent amendments to the plan prior to adoption of the plan or amendments. *See id.* § 960.3(b)(3). Section 960.3(b)(4) of the AHP regulation provides that:

> A Bank shall submit its initial AHP implementation plan, and any amendments, to the Finance Board and the Bank's Advisory Council at least 60 days prior to distributing requests for applications for AHP subsidies for the funding period in which the plan, or amendments, will be effective.

See id. § 960.3(b)(4). The Banks adopted their initial plans under the revised AHP regulation for the first AHP funding period in 1998, and have been submitting amendments to such plans to the Finance Board for subsequent AHP funding periods.

The 60-day requirement in the regulation was intended to give the Advisory Councils and the Finance Board sufficient time to review the implementation plans and amendments prior to distribution by the Banks of AHP application materials to the public. However, the Banks have indicated that the 60-day requirement is unworkable as a practical matter because, among other reasons, the Banks' Advisory Councils generally meet only quarterly. By the time the Advisory Councils have met and made their recommendations to the Banks' boards, and the Banks' boards have adopted the amendments, the Banks are approaching their target dates for sending out AHP application materials to the public. Requiring the Banks then to send their final plan amendments to the Finance Board and the Advisory Councils 60 days prior to the distribution of the AHP application materials to the public would delay distribution of the AHP application materials, which in turn would deprive potential applicants of adequate notice of the AHP application requirements before the applications would be due at the Bank. To avoid this result, the Finance Board in 1998 issued a number of waivers of the 60-day requirement so that the Banks could meet their target AHP application distribution dates.

While the 60-day period was useful for the initial plan review under the newly revised AHP regulation, Finance Board staff's experience has been that subsequent amendments to the plans have not required a 60-day review period. In any case, the administrative convenience afforded by a 60-day review period is outweighed by the needs of the users of the Program for timely distribution of AHP application materials. Therefore, the Finance Board has decided to amend the AHP regulation to correct this timing problem. Accordingly, the interim final rule amends § 960.3(b)(4) to require that the Banks submit any amendments of their AHP implementation plans to the Finance Board within 30 days after the date the Bank's board of directors approves the amendments. The interim final rule also deletes the requirement that the Banks' final plan amendments be sent to the Advisory Councils 60 days prior to the Banks' distribution of the AHP application materials, since the Advisory Councils already will have had an opportunity to review the proposed plan amendments pursuant to § 960.3(b)(3).

B. Timing of Appraisals for Member Real Estate Owned (REO) Properties and Properties Upon Which a Member Holds a Mortgage or Lien—§ 960.5(b)(2)(ii)(B)

Section 960.5(b)(2)(ii)(B) of the AHP regulation provides that:

> The purchase price of property or services, as reflected in the project's development budget, sold to the project by a member providing AHP subsidy to the project, or, in the case of property, upon which such member holds a mortgage or lien, may not exceed the market value of such property or services as of the date the purchase price for the property or services was agreed upon. In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate, *as reflected in an independent appraisal of the property performed within six months prior to the date the purchase price for the property was agreed upon.*

See id. § 960.5(b)(2)(ii)(B) (emphasis added).

Section 960.5(b)(2)(ii)(B) is intended to ensure that the AHP subsidy is passed on to the ultimate borrower (subsidy pass-through requirement), as required by the Bank Act, and thus that the project has a need for the AHP subsidy, by requiring that the purchase price of the property not exceed its current market value (*i.e.*, that the subsidy is not recouped by the member to discharge its mortgage or lien through an excessive purchase price paid for the property by the project). *See* 12 U.S.C. 1430(j)(9)(E); 12 CFR 960.5(b)(2)(ii)(B). The AHP regulation requires this determination to be made based on an appraisal of the market value of the property performed within six months prior to the date the purchase price of the property was agreed upon (*i.e.*, the sales contract). *See* 12 CFR 960.5(b)(2)(ii)(B). If the purchase price of the property exceeds the current market value, then the project sponsor is paying more than necessary for the property, the member is receiving more than necessary, and the project does not need the AHP subsidy.

In 1998, several Banks received applications for AHP funding involving member REO property or property upon which the member held a mortgage or lien, for which no independent appraisals of the property had been performed within six months prior to the date the purchase price for the property was agreed upon, as required by § 960.5(b)(2)(ii)(B). In some instances, the sponsors had agreed to a purchase price for the property or had purchased the property two to three years before the AHP application due date, with no anticipation that they later would be applying for AHP funds in connection with the property. Due to the fees of $5,000 or more typically charged for independent appraisals and the limited predevelopment funds available to pay for such appraisals, many non-profit sponsors with limited financial resources conduct in-house analyses or rely upon tax assessment values to determine the market value of properties. Sponsors are especially reluctant to obtain an independent appraisal when they may never exercise the option to purchase the property. In short, given the way many sponsors acquire property, the requirements of § 960.5(b)(2)(ii)(B) for obtaining an independent appraisal of the property within six months prior to the date the purchase price for the property was agreed upon are not practical or cost effective in the affordable housing industry.

A reasonable alternative is to require that the sponsor obtain an independent appraisal of the property within six months prior to the date the Bank disburses AHP subsidies to the project. This would avoid the timing problem discussed above but still require a current appraisal to ensure that the purchase price of the property does not exceed its current market value.

Accordingly, the interim final rule amends § 960.5(b)(2)(ii)(B) to require that the independent appraisal of the

property obtained by the sponsor be performed within six months prior to the date the Bank disburses AHP subsidy to the project. The interim final rule also amends this section to require that the independent appraisal be completed by a State certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), in order to ensure a more accurate evaluation of the property value.

C. Inclusion of the Creation of Permanent Owner-Occupied Housing Under the Housing for Homeless Households Scoring Criterion—§ 960.6(b)(4)(iv)(D)

Under § 960.6(b)(4)(iv)(D) of the AHP regulation, an application may receive scoring points if it involves the creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, or the creation of transitional housing for homeless households permitting a minimum of six months occupancy. *See id.* § 960.6(b)(4)(iv)(D). The regulation inadvertently omitted the creation of permanent owner-occupied housing, which was included in the proposed rule amending the AHP regulation. *See* 61 FR 57799, 57824 (Nov. 8, 1996). There have been a number of innovative and successful initiatives to move households directly from homeless shelters into permanent homeownership through self-help and other social services programs. Citing such programs, a Bank commenting on the May 20, 1998 interim final rule urged the Finance Board to endorse the inclusion of the creation of permanent owner-occupied housing under the housing for homeless households scoring criterion.

Accordingly, the interim final rule amends § 960.6(b)(4)(iv)(D) to include the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households under the housing for homeless households scoring criterion.

D. Specific Inclusion of the Creation of "Visitable" Housing Under the Special Needs Scoring Criterion—§ 960.6(b)(4)(iv)(F)(1)

Under § 960.6(b)(4)(iv)(F)(*1*) of the AHP regulation, a Bank may choose as one of its scoring criteria under the First District Priority scoring category the following:

Special Needs. The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, *such as* the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS.

See 12 CFR 960.6(b)(4)(iv)(F)(*1*) (emphasis added). The use of the words "such as" indicates that the specific list of special needs housing in the regulation is not exclusive, allowing a Bank the option to select other types of special needs housing not specifically mentioned but of the general types included in the list.

The creation of housing that is "visitable" by persons with physical disabilities who are not occupants of such housing may be considered a type of special needs housing that a Bank has the option of adopting under the special needs scoring criterion. Although amendment of the AHP regulation to allow a Bank to adopt such a "visitable" housing criterion is not necessary, the interim final rule amends § 960.6(b)(4)(iv)(F)(*1*) to specifically include "visitable" housing because the Finance Board believes it is important to increase awareness of this significant special needs housing as an option for the Banks to consider in adopting their scoring criteria under the First District Priority scoring category.

The interim final rule amends § 960.1 to include a definition of "visitable," based on the definition of "visitable" adopted by the Department of Housing and Urban Development, which is as follows:

In either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

III. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

IV. Paperwork Reduction Act

This interim final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

V. Notice and Public Participation

The Finance Board for good cause finds that the notice and public comment procedure required by the Administrative Procedure Act is impracticable, unnecessary or contrary to the public interest in this instance, because the changes made by this interim final rule are technical in nature and apply only to the Banks. *See* 5 U.S.C. 553(b)(3)(B).

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Finance Board hereby amends title 12, chapter IX, part 960, Code of Federal Regulations, as follows.

PART 960—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 960 continues to read as follows:

Authority: 12 U.S.C. 1430(j).

2. Section 960.1 is amended by adding in alphabetical order the following definition to read as follows:

§ 960.1 Definitions.

* * * * *

Visitable means, in either owner-occupied or rental housing, at least one entrance is at-grade (no steps) and approached by an accessible route such as a sidewalk, and the entrance door and all interior passage doors are at least 2 feet, 10 inches wide, offering 32 inches of clear passage space.

3. Section 960.3 is amended by revising paragraph (b)(4) to read as follows:

§ 960.3 Operation of Program and adoption of AHP implementation plan.

* * * * *

(b) * * *

(4) *Submission of plan amendments to the Finance Board.* A Bank shall submit any amendments of its AHP implementation plan to the Finance Board within 30 days after the date the Bank's board of directors approves such amendments.

* * * * *

4. Section 960.5 is amended by revising the second sentence of paragraph (b)(2)(ii)(B) to read as follows:

§ 960.5 Minimum eligibility standards for AHP projects.

* * * * *

(b) * * *

(2) * * *

(ii) * * *

(B) * * * In the case of real estate owned property sold to a project by a member providing AHP subsidy to a project, or property sold to the project upon which the member holds a mortgage or lien, the market value of such property is deemed to be the "as-is" or "as-rehabilitated" value of the property, whichever is appropriate, as reflected in an independent appraisal of the property performed by a State certified or licensed appraiser, as defined in 12 CFR 564.2(j) and (k), within six months prior to the date the

Bank disburses AHP subsidy to the project.

* * * * *

5. Section 960.6 is amended by revising paragraphs (b)(4)(iv)(D) and (b)(4)(iv)(F)(*1*) to read as follows:

§ 960.6 Procedure for approval of applications for funding.

* * * * *

(b) * * *

(4) * * *

(iv) * * *

(D) *Housing for homeless households.* The creation of rental housing, excluding overnight shelters, reserving at least 20 percent of the units for homeless households, the creation of transitional housing for homeless households permitting a minimum of six months occupancy, or the creation of permanent owner-occupied housing reserving at least 20 percent of the units for homeless households.

* * * * *

(F) * * *

(*1*) *Special needs.* The creation of housing in which at least 20 percent of the units are reserved for occupancy by households with special needs, such as the elderly, mentally or physically disabled persons, persons recovering from physical abuse or alcohol or drug abuse, or persons with AIDS; or the creation of housing that is "visitable" by persons with physical disabilities who are not occupants of such housing;

* * * * *

Dated: April 14, 1999.

By the Board of Directors of the Federal Housing Finance Board.

Bruce A. Morrison,

Chairman.

[FR Doc. 99–11250 Filed 5–4–99; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–81–AD; Amendment 39–11156; AD 99–10–02]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires inspecting to assure that the fuel filler cap has a 2.5 millimeter (mm) diameter hole drilled through it or that a vinyl piping is connected to the filler neck inside the cabin. If neither of these items exists, this AD requires replacing the fuel filler cap with a fuel filler cap that has a 2.5 mm diameter hole drilled through it. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to detect and correct the installation of improperly designed fuel venting system parts, which could result in an inadequate fuel supply to the engine with loss of engine power.

DATES: Effective June 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–81–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Avions Pierre Robin Model R2160 airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1999 (64 FR 10114). The NPRM proposed to require inspecting to assure that the fuel filler cap has a 2.5 millimeter (mm) diameter hole drilled through it or that a vinyl piping is connected to the filler neck inside the cabin. If neither of these items exists, the NPRM proposed to require replacing the fuel filler cap with a fuel filler cap that has the hole drilled through it, part number (P/N) 52.23.07.010 (or FAA-approved equivalent P/N).

Accomplishment of the proposed inspection as specified in the NPRM would be required in accordance with Avions Pierre Robin Service Bulletin No. 135, dated May 17, 1994. Accomplishment of the proposed replacement (if necessary) as specified in the NPRM would be required in accordance with the applicable maintenance manual.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per airplane to accomplish both the inspection and replacement (if necessary), and that the average labor rate is approximately $60 per work hour. Parts (if necessary) cost approximately $60 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $1,200, or $120 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3)

will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–10–02 Avions Pierre Robin: Amendment 39–11156; Docket No. 98–CE–81–AD.

Applicability: Model R2160 airplanes, all serial numbers up to and including serial number 249, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct the installation of improperly designed fuel venting system parts, which could result in an inadequate fuel supply to the engine with loss of engine power, accomplish the following:

(a) Within the next 50 hours time-in-service (TIS) after the effective date of this AD, inspect to assure that the fuel filler cap has a 2.5 millimeter (mm) diameter hole drilled through it or that a vinyl piping is connected to the filler neck inside the cabin. Accomplish this inspection in accordance with Avions Pierre Robin Service Bulletin No. 135, dated May 17, 1994.

(b) If neither of the conditions specified in paragraph (a) of this AD exists, prior to further flight, replace the fuel filler cap with a fuel filler cap that has a 2.5 mm diameter hole drilled through it, part number (P/N) 52.23.07.010 (or FAA-approved equivalent P/N). Accomplish this replacement in accordance with the applicable maintenance manual.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The inspection required by this AD shall be done in accordance with Avions Pierre Robin Service Bulletin No. 135, dated May 17, 1994. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel; Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 94–130(A), dated June 8, 1994.

(g) This amendment becomes effective on June 18, 1999.

Issued in Kansas City, Missouri, on April 27, 1999.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10969 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–79–AD; Amendment 39–11155; AD 99–10–01]

RIN 2120–AA64

Airworthiness Directives; Avions Pierre Robin Model R2160 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Avions Pierre Robin Model R2160 airplanes. This AD requires replacing the wing attachment bolts and associated hardware. This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France. The actions specified by this AD are intended to prevent a wing from separating from the airplane caused by damaged wing attachment bolts, which could result in loss of control of the airplane.

DATES: Effective June 18, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 18, 1999.

ADDRESSES: Service information that applies to this AD may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 98–CE–79–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Karl M. Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Avions Pierre Robin Model R2160 airplanes was published

in the **Federal Register** as a notice of proposed rulemaking (NPRM) on March 2, 1999 (64 FR 10116). The NPRM proposed to require replacing the wing attachment bolts and associated hardware.

Accomplishment of the proposed replacement as specified in the NPRM would be required in accordance with Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996.

The NPRM was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The manufacturer has informed the FAA that the effectivity of the AD should cover all Model R2160 airplanes up to serial number 299 instead of serial numbers 001 through 264; 266 through 269; and 272 through 288, as published in the NPRM. None of these additional Model R2160 airplanes are registered in the United States. However, the FAA has determined that the AD should still apply to these serial numbered airplanes to assure that the unsafe condition is addressed in the event that any of these airplanes are imported and placed on the U.S. Register. Because the referenced airplanes are not on the U.S. register, adding these serial numbered airplanes to the final rule will not increase the burden upon the public over that already proposed in the NPRM.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of certain airplanes not registered in the United States and minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between Service Bulletin, French AD, and This AD

Avions Robin Service Bulletin No. 145, rev. 2, dated January 11, 1999, and NOTE NAV 96–3, dated May 2, 1996, specify checking the torque value of the wing attachment bolts at each 100-hour maintenance visit, and French AD 96–051(A) R1, dated June 5, 1996, requires these checks for those airplanes registered for operation in France.

These checks are part of the maintenance schedule and are considered a general maintenance item. Because the FAA has no justification to mandate AD action for general maintenance, this AD only incorporates the replacement of the wing attachment bolts and associated hardware and does not include the torque value checks.

Cost Impact

The FAA estimates that 10 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 40 workhours per airplane to accomplish the replacements, and that the average labor rate is approximately $60 per work hour. Parts cost approximately $200 per airplane. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $26,000, or $2,600 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety,

Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–10–01 Avions Pierre Robin: Amendment 39–11155; Docket No. 98–CE–79–AD.

Applicability: Model R2160 airplanes, serial numbers 001 through 298, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent a wing from separating from the airplane caused by damaged wing attachment bolts, which could result in loss of control of the airplane, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, replace the wing attachment bolts and associated hardware, in accordance with Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996.

(b) As of the effective date of this AD, no person may install, on any affected airplane, wing attachment bolts and associated hardware that are not specified in Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996, unless the parts are an FAA-approved equivalent to that referenced in the service information.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be used if approved by the Manager, Small Airplane Directorate, FAA, 1201 Walnut, suite 900, Kansas City, Missouri 64106. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Small Airplane Directorate.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be

obtained from the Small Airplane Directorate.

(e) Questions or technical information related to the service information referenced in this AD should be directed to Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France; telephone: 33–3 80 44 20 50; facsimile: 33–3 80 35 60 80. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) The replacements required by this AD shall be done in accordance with Avions Pierre Robin NOTE NAV 96–3, dated May 2, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Avions Pierre Robin, 1, route de Troyes, 21121 Darois-France. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French AD 96–051(A) R1, dated June 5, 1996.

(g) This amendment becomes effective on June 18, 1999.

Issued in Kansas City, Missouri, on April 27, 1999.

David R. Showers,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–10968 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–93–AD; Amendment 39–11159; AD 99–10–05]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This action requires replacement of certain flexible joints and O-rings of the rear fuselage with improved flexible joints and new O-rings. This action also requires installation of new support assemblies to attach to the engine bleed line tubing in the area of the rear fuselage to improve the engine bleed line tubing alignment. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified in this AD are intended to prevent failure of certain flexible joints that attach to the engine bleed lines in the area of the rear fuselage. Failure of these flexible joints could cause damage to the fuel lines leading to the auxiliary power unit, which could result in an increased risk of fire to occur in the rear baggage compartment during flight.

DATES: Effective May 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 20, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 4, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–93–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that failure of certain flexible joints (Gamah joints) in the engine bleed lines has occurred. The cause of the failure has been attributed to the inadequate strength of these flexible joints. These joints could not withstand the hot bleed air pressure produced by both engines and the joints ruptured in an undisclosed area of the airplane and damaged certain airplane systems. This condition, if not detected and corrected, could result in an increased risk of fire to occur in the rear baggage compartment during flight.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–36–0007, Change 03, dated December 9, 1998, which describes procedures for replacement of certain flexible joints (Gamah joints) and O-rings of the rear fuselage with improved flexible joints and new O-rings. The service bulletin also describes procedures for installation of new support assemblies to attach to the engine bleed line tubing in the area of the rear fuselage to improve the engine bleed line tubing alignment. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 98–11–01, dated November 13, 1998, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent failure of certain flexible joints that attach to the engine bleed lines in the area of the rear fuselage. Failure of these flexible joints could cause damage to the fuel lines leading to the auxiliary power unit, which could result in an increased risk of fire to occur in the baggage compartment during flight. This AD requires accomplishment of the actions specified in the service bulletin described previously.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–93–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–10–05 Empresa Brasileira de Aeronautica S.A. (Embraer): Amendment 39–11159. Docket 99–NM–93–AD.

Applicability: Model EMB–145 series airplanes, serial numbers 145004 through 145075 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of certain flexible joints that attach to the engine bleed lines in the area of the rear fuselage, which could cause damage to the fuel lines leading to the auxiliary power unit, resulting in an increased risk of fire to occur in the rear baggage compartment during flight, accomplish the following:

(a) Within 400 flight hours after the effective date of this AD, replace certain flexible joints (Gamah joints) and O-rings of the rear fuselage with improved flexible joints and new O-rings, and install new support assemblies to attach to the engine bleed line tubing in the area of the rear fuselage to improve the engine bleed line tubing alignment, in accordance with EMBRAER Service Bulletin 145–36–0007, Change 03, dated December 9, 1998.

Note 2: Any replacement of certain flexible joints and new O-rings and installation of new support assemblies that have been accomplished prior to the effective date of this AD, in accordance with EMBRAER Service Bulletin 145–36–0007, dated September 1, 1998, Change 01, dated September 18, 1998, or Change 02, dated November 11, 1998, are considered acceptable for compliance with the applicable action specified in this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with EMBRAER Service Bulletin 145–36–0007, Change 03, dated December 9, 1998. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in Brazilian airworthiness directive 98–11–01, dated November 13, 1998.

(e) This amendment becomes effective on May 20, 1999.

Issued in Renton, Washington, on April 28, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11226 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–308–AD; Amendment 39–11158; AD 99–10–04]

RIN 2120–AA64

Airworthiness Directives; British Aerospace (Jetstream) Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace (Jetstream) Model 4101 airplanes, that requires modification of the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the pulley assemblies of the elevator and rudder control cables in the event of an elevator or rudder control cable jam, which could result in reduced controllability of the airplane.

DATES: Effective June 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace (Jetstream) Model 4101 airplanes was published in the **Federal Register** on February 18, 1999 (64 FR 8026). That action proposed to require modification of the pulley assemblies of the elevator and rudder control cables on the rear pressure bulkhead.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 60 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 work hours per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $216,000, or $3,600 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–10–04 British Aerospace Regional Aircraft [Formerly JetstreamAircraft Limited; British Aerospace (Commercial Aircraft) Limited]: Amendment 39–11158. Docket 98–NM–308–AD.

Applicability: All Jetstream Model 4101 airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the pulley assemblies of the elevator and rudder control cables in the event of an elevator or rudder control cable jam, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the pulley assemblies

of the elevator and rudder control cables on the rear pressure bulkhead, in accordance with Jetstream Service Bulletin J41–27–052, dated September 11, 1998.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The modification shall be done in accordance with Jetstream Service Bulletin J41–27–052, dated September 11, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AI(R) American Support, Inc., 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 006–09–98.

(e) This amendment becomes effective on June 9, 1999.

Issued in Renton, Washington, on April 28, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11224 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–307–AD; Amendment 39–11157; AD 99–10–03]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAC 1–11 200 and 400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes, that requires an inspection to detect cracking of the flap control lever and to identify the material from which the lever is made; replacement of the flap control lever with an improved part, if necessary; and repetitive inspections for airplanes having a lever made from certain material. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the flap control lever, which could result in restricted flap movement and consequent reduced controllability of the airplane.

DATES: Effective June 9, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 9, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAC 1–11 200 and 400 series airplanes was published in the **Federal Register** on February 18, 1999 (64 FR 8027). That action proposed to require an inspection to detect cracking of the flap control lever and to identify the material from which the lever is made; replacement of the flap control lever with an improved part, if necessary; and repetitive inspections for airplanes having a lever made from certain material.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 42 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,520, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–10–03 British Aerospace Airbus Limited (Formerly British Aerospace Commercial Aircraft Limited, British Aerospace Aircraft Group): Amendment 39–11157. Docket 98–NM–307–AD.

Applicability: All Model BAC 1–11 200 and 400 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the flap control lever, which could result in restricted flap movement and consequent reduced controllability of the airplane, accomplish the following:

(a) Within 12 months after the effective date of this AD, perform a one-time detailed visual inspection of the flap control lever to detect cracking, and to identify the type of aluminum alloy from which the flap control lever is made, in accordance with British Aerospace Alert Service Bulletin 27–A–PM6041, Issue 1, dated August 21, 1998.

(1) If no crack is detected and the lever is made of L97 or L99 aluminum alloy, no further action is required by this AD.

(2) If no crack is detected, and the lever is made of L53 aluminum alloy or the material of the flap control lever cannot be identified, repeat the inspection thereafter at intervals not to exceed 24 months; or prior to further flight, replace the flap control lever with a flap control lever made of L97 or L99 aluminum alloy, in accordance with the alert service bulletin. Following such replacement, no further action is required by this AD.

(3) If any crack is detected, prior to further flight, replace the flap control lever with a flap control lever made of L97 or L99 aluminum alloy, in accordance with the alert service bulletin. After the replacement, no further action is required by this AD.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The inspections and replacement shall be done in accordance with British Aerospace Alert Service Bulletin 27–A–PM6041, Issue 1, dated August 21, 1998. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace, Service Support, Airbus Limited, P.O. Box 77, Bristol BS99 7AR, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in British airworthiness directive 003–08–98.

(e) This amendment becomes effective on June 9, 1999.

Issued in Renton, Washington, on April 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11223 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–10]

Revision of Class E Airspace; Shreveport, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Shreveport, LA. The development of a Nondirectional Radio Beacon (NDB) or Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), at Shreveport Regional Airport, Shreveport, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Shreveport Regional Airport, Shreveport, LA.

DATES: Effective 0901 UTC, September 9, 1999.

Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–10, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Forth Worth, TX, between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Forth Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Shreveport, LA. The development of a NDB or GPS SIAP, at Shreveport Regional Airport, Shreveport, LA has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more about the surface for Instrument Flight Rules (IFR) operations to Shreveport Regional Airport, Shreveport, LA.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is

issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–10." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points,* dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Shreveport, LA [Revised]

Shreveport Regional Airport, Shreveport, LA
(Lat. 32°26′48″ N., long. 93°49′32″ W.)
Shreveport, Barksdale AFB, LA
(Lat. 32°30′07″ N., long. 93°39′46″ W.)
Shreveport Downtown Airport, LA
(Lat. 32°32′24″ N., long. 93°44′41″ W.)

That airspace extending upward from 700 feet above the surface within a 9.4-mile radius of Shreveport Regional Airport and within a 8-mile radius of Barksdale AFB and within a 8.1-mile radius of Shreveport Downtown Airport.

* * * * *

Issued in Fort Worth, TX, on April 19, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–11294 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–09]

Revision of Class E Airspace; Galveston, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace extending upward from the surface within a 4.1-mile radius of Scholes Field, Galveston, TX. Increased air traffic operations and instrument approaches have made this rule necessary. This action is intended to provide continuous controlled airspace for aircraft operating in the vicinity of Scholes Field, Galveston, TX.

DATES: Effective 0901 UTC, September 9, 1999.

Comments must be received on or before June 21, 1999.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 99–ASW–09, Fort Worth, TX 76193–0520.

The official docket may be examined in the Office of Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX,

between 9:00 AM and 3:00 PM, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace extending upward from the surface within a 4.1-mile radius of Scholes Field, Galveston, TX. Increased air traffic operations and instrument approaches have made this rule necessary. This action is intended to provide continuous controlled airspace for aircraft operating in the vicinity of Scholes Field, Galveston, TX.

Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or argument as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes that FAA-public contract concerned with the substance of this action will be filled in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ASW–09." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulatory adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various level of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipate impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, *Airspace Designations and Reporting Points*, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6002 Class E airspace areas extending upward from the surface of the earth.

* * * * *

ASW TX E2 Galveston, TX [Revised]

Galveston, Scholes Field, TX
(Lat. 29°15′55″ N., long. 94°51′38″ W.)

That airspace extending upward from the surface within a 4.1-mile radius of Scholes Field

* * * * *

Issued in Fort Worth, TX on April 19, 1999.

Albert L. Viselli,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 99–11295 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 17, 18 and 150

Revision of Federal Speculative Position Limits and Associated Rules

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission (Commission) has long established and enforced speculative position limits for futures contracts on various agricultural commodities. On April 7, 1993, the Commission promulgated interim final rules amending Federal speculative position limits. The interim amendments generally maintained the existing speculative position limit levels for the delivery months and increased limit levels for the deferred months at levels below the levels originally proposed. The Commission, as proposed on July 17, 1998, is raising the speculative position limit levels to the levels originally proposed.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Paul M. Architzel, Chief Counsel, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, D.C. 20581, (202) 418–5260, or electronically, [PArchitzel@cftc,gov].

SUPPLEMENTARY INFORMATION: In addition, the Commission is codifying various policies relating to the requirement that exchanges set speculative position limits as required by rule 1.61, 17 CFR 1.61. These relate to the levels which the Commission has approved for such rules and to various exemptions from the general requirement that exchanges set speculative position limits for all contract markets. Specifically, the Commission is codifying an exemption permitting exchanges to substitute position accountability rules for position limits for high volume and liquid markets.

The Commission is also amending the applicability of the limited exemption from nonspot month speculative position limits under Commission rule 150.3, 17 CFR 150.3, for entities that authorize independent account controllers to trade on their behalf. Specifically, the Commission is amending the definition of entities eligible for this relief under Commission rule 150.1(d), 17 CFR 150.1(d), to expand the categories of eligible entities and to extend it to the separately organized affiliates of an eligible entity.

Finally, the Commission is amending its rule on aggregation. In particular, the Commission is requiring that limited partners with greater than a 25% ownership interest in a commodity pool the operator of which is exempt from the requirement to register as a commodity pool operator under Commission rule 4.13 aggregate their positions with the pool's. However, the Commission is also amending rule 150.3 to make such a limited partner eligible for relief from speculative position limit levels during nonspot months. The Commission is also amending its rules to clarify that a commodity pool operator's principals and its affiliates are treated the same as the commodity pool operator itself for purposes of the Commission's aggregation rule unless they maintain and enforce procedures for keeping their trading separate and independent from the pool's.

I. Background

Speculative position limits have been a tool for regulation of futures markets for over sixty years. Since the Commodity Exchange Act of 1936, Congress consistently has expressed confidence in the use of speculative position limits as an effective means of preventing unreasonable or unwarranted price fluctuations.[1]

The Commission directly administers speculative position limits on futures contracts for most of the domestic agricultural commodities listed in section 2(a)(1) of the Commodity Exchange Act (Act), 7 U.S.C. 1 *et seq.* *See*, 17 CFR part 150. Prior to the Act's amendment in 1974 which expanded its scope to all "services, rights and interests" in which futures contracts are traded, only these listed commodities were regulated. Both prior to and after the 1974 amendments to the Act, futures markets which traded commodities not so listed applied speculative position limits by exchange rule, if at all. In 1981 the Commission promulgated rule 1.61, requiring exchanges to adopt rules setting speculative position limits for all contract markets not subject to Commission-set speculative position limits. Since then, all contract markets have been subject to speculative position limits set by the Commission or an exchange.[2] The Commission and the exchanges share responsibility for enforcement of speculative position limits.[3]

The Commission periodically has reviewed its policies and rules pertaining to each of the three elements of the regulatory framework for speculative position limits—the levels of the limits, the exemptions from them (in particular, for hedgers), and the policy on aggregating accounts.[4] Most recently, the Commission proposed to raise the levels of Commission-set speculative position limits, to codify a number of broad exemptions from the requirement of rule 1.61 that exchanges establish speculative position limits for

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[1] *See*, H.R. Rep. No. 421, 74th Cong., 1st Sess. 1 (1935). *See also*, H.R. Rep. No. 624, 99th Cong., 2d Sess. 44 (1986). Section 4a(1) of the Commodity Exchange Act (Act), 7 U.S.C. 6a(1), makes the explicit finding that:

(e)xcessive speculation in any commodity under contracts of sale of such commodity for future delivery made on or subject to the rules of contract markets causing sudden or unreasonable fluctuations or unwarranted changes in the price of such commodity, is an undue and unnecessary burden on interstate commerce in such commodity * * *.

and provides the Commission with authority to:

fix such limits on the amount of trading which may be done or positions which may be held by any person under contracts of sale of such commodity for future delivery on or subject to the rules of any contract market as the Commission finds are necessary to diminish, eliminate, or prevent such burden.

[2] Commission rule 1.61, 17 CFR 1.61, requires that, absent an exemption, exchanges adopt and enforce speculative position limits for all contract markets which are not subject to Commission-set limits. In addition, Commission rule 1.61 permits exchanges to adopt and enforce their own speculative position limits for those contracts which have Federal speculative position limits, as long as the exchange limits are not higher than the Commission's.

[3] Section 4a(e) provides that a violation of a speculative position limit established by a Commission-approved exchange rule is also a violation of the Act. Thus, the Commission can directly take enforcement actions against violations of exchange-set speculative position limits as well as those provided under Commission rules.

[4] Initially, for example, the Commission redefined "hedging" (42 FR 42748 (August 24, 1977)), raised speculative position limits in wheat (41 FR 35060 (August 19, 1976)), and issued its statement of policy on aggregation of accounts and adoption of related reporting rules (1979 Aggregation Policy), 44 FR 33839 (June 13, 1979).

Subsequently, the Commission modified and updated speculative position limits by issuing a clarification of its hedging definition with regard to the "temporary substitute" and "incidental" tests (52 FR 27195 (July 20, 1987)) and guidelines regarding the exemption of risk-management positions from exchange-set speculative position limits in financial futures contracts. 52 FR 34633 (September 14, 1987). Moreover, in 1988, the Commission promulgated Commission rule 150.3(a)(4), an exemption from speculative position limits for the position of multi-advisor commodity pools and other similar entities that use independent account controllers. The Commission subsequently amended Commission rule 150.3(a)(4), broadening its applicability to commodity trading advisors and simplifying and streamlining the application process. 56 FR 14308 (April 12, 1991).

In 1991, the Commission solicited public comment on, and subsequently approved, exchange requests for exemptions for futures and option contracts on certain financial instruments from the Commission rule 1.61 requirement that speculative position limits be specified for all contracts. 56 FR 51687 (October 15, 1991).

all contracts not subject to Commission-set limits, to broaden its speculative position limit exemption under rule 150.3 for independent account controllers and to codify its aggregation policy. 63 FR 38525 (July 17, 1998).

The comment period, after a thirty-day extension (63 FR 49883 (Sept. 18, 1998)), closed on October 19, 1998. The nine commenters included three futures exchanges, four industry associations, a professional association and an investment bank. All of the commenters favored expansion of the Commission's speculative position limits to the levels proposed. They expressed a range of opinions, however, about the other rule proposals. Those comments are discussed in greater detail below.

II. Commission Speculative Position Limit Levels

As the Commission noted in its notice of proposed rulemaking, it has updated Commission speculative position limits periodically. In 1992, the Commission last proposed major revisions to both the structure and levels of Commission-set speculative position limits. 57 FR 12766 (April 13, 1992). Departing from its previous practice, the Commission proposed to increase speculative position limit levels based upon the size of a contract market's open interest, in addition to the traditional standard of distribution of speculative traders in the market.[5] 63 FR at 38527. Specifically, the Commission proposed combined futures and option speculative position limits for both a single month and for all-months-combined at the level of 10% of open interest up to an open interest of 25,000 contracts, with a marginal increase of 2.5% thereafter. The Commisson also reiterated its view that spot-month speculative position limit levels are "based most appropriately on an analysis of current deliverable supplies and the history of various spot-month expirations." *Id.*

The Commission received 63 comments in response to the 1992 proposed rules.[6] Typically, commodity pool operators, commodity trading advisors and futures commission merchants strongly favored the amendments. Most agricultural producers and their representative organizations strongly opposed any increase to the speculative position limits. Others, however, recommended that the Commission proceed, but in a more cautious manner. In particular, they recommended that the Commission raise speculative position limits on a phased or test basis. These commenters advocate taking additional time to study the need for, and the possible effects of, further increasing speculative position limits; in their view, the trial implementation of expanded speculative limits would provide such an additional opportunity.

Based on its consideration of the comments received and its favorable administrative experience with the rule's prior amendment, the Commission in April 1993 adopted interim final rules on Commission-set speculative position limits. These interim amendments increased the position limit levels by half of the increase originally proposed, in two steps. 58 FR 18057 (April 7, 1993).

As recounted in the 1998 notice of proposed rulemaking, the administrative experience with the interim rules was positive. 63 FR 38528. Moreover, Commission staff undertook an in-depth study of the possible effects of increasing the speculative position limit levels in these markets and concluded that "overall the impact of the interim final rules on actual, observed large trader positions was modest, and that any changes in market performance were most likely attributable to factors other than to changes in the rules." *Id.*

On July 17, 1998, the Commission again proposed to raise speculative position limit levels for the deferred trading months to the levels originally proposed. The Commission took this action based on the growth in open interest and the size of large traders' positions in these markets. 63 FR 38528.

The commenters uniformly supported the Commission's proposal to raise the speculative position limit levels for the deferred trading months. Based upon the positive administrative experience with the limits at their current levels, the growth in the contract's open interest and distribution of large trader positions, a staff study and analysis finding no adverse effects from the previous increase to the speculative position limit levels, and the consensus of the commenters, the Commission is increasing the speculative position limit levels for the deferred months as initially proposed in 1992 and as recently reproposed.[7]

Despite agreeing that the limit levels should be increased, the Board of Trade of the City of Chicago (CBT) urged the Commission to modify its spread exemption to include spreads between single months across crop-years. The CBT stated that:

> By normalizing inter-crop spread limits with the limits presently permitted for intra-crop spreads, noncommercial traders would be in a position to provide greater market liquidity in deferred new crops and eliminate a possible cause for the reduced liquidity that occurs near the end of a crop year.

Although recognizing that the CBT has been granted "no-action" letters by Division of Economic Analysis regarding the prohibition on inter-crop year spreads when the relationship between crop years so warranted, the exchange stated that "the Commission has refrained from granting 'no actions' generally" and that, in any event, the no-action process is "cumbersome, unnecessary, causes confusion and uncertainty for market participants, * * * (and is) necessarily reactive and therefore ineffective because they are initiated only after the spreads have experienced significant price movement."

As the Commission noted in adopting the interim final rules in 1933,

> Historically, the reason for including the spread exemption in the structure of speculative position limits was the relatively low limit for individual-month limits, especially in comparison to the all-moneys limits. Generally, individual-months limits were set at the same level as the spot-month limits in these contracts. Accordingly, the spread exemption may have been an important means for traders to exceed the relatively low individual-month limit.

The Commission remains unconvinced that the exemption for inter-month spreads should be modified at this time to permit generally such spreads across crop-years in excess of the speculative position limits which are being greatly expanded herein. The Commission remains concerned that depending upon conditions in the underlying case market, the separate legs of inter-crop year spreads may act more like separate outright positions than a spread within the same crop-year. In light of the increases to the limits being adopted herein, the Commission believes that such a modification of the spread exemption should be * * * based upon a demonstrated need for such additional relief.

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[5] In proposing these increases to the limit levels, the Commission reasoned that, as the total open interest of a futures market increased, speculative position limit levels could be raised. The Commission therefore applied the open interest criterion by using a formula that specified appropriate increases to the limit level as a percentage of open interest.

[6] Those commenters included three futures exchanges; a futures industry association; four futures commission merchants; 26 commodity pool operators, commodity trading advisors or associations of such entities; 20 groups of firms representing agricultural interests; eight individual agricultural producers; and one exchange member. In addition, the proposed rules were a topic of discussion at the October 19, 1992, meeting of the Commission's Agricultural Advisory Committee.

[7] The Board of Trade of the City of Chicago commented that, in its view, granting "the exchanges sole responsibility to establish and monitor speculative limits subject to Commission oversight" would "result in limits which better reflect and are more responsive to the dynamics of the markets." The Commission believes that this suggestion may merit future consideration.

58 FR 17981.

The Commission believes that the reasons for its policy of permitting a spread exemption only for positions within the same crop year remain sound (*see, e.g.*, Division of Economic Analysis Statement of Guidance [1994–1996 Transfer Binder], Comm. Fut. L. Rep. (CCH) ¶26 691 (May 15, 1996)), and that none of the reasons advanced by the CBT's comment warrants a reversal of that policy. To the contrary, a number of markets during the intervening years exhibited the very risks that concerned the Commission. In these markets, the risk associated with the individual legs of inter-crop year spread positions did in fact act more like that associated with separate outright positions than that of a spread. Moreover, the Division of Economic Analysis remains flexible in its willingness to entertain requests for "no-action" letters relating to inter-crop year spread positions when the economic conditions during a particular crop year so warrant.[8]

Another futures exchange, the Minneapolis Grain Exchange (MGE), noted that it was "particularly pleased the CFTC determined to maintain a parity of limit levels for the major wheat contract at each domestic exchange which trades such." However, the exchange noted that the Commission did not propose an increase for the limit levels for its white wheat contract. Although the exchange was "not aware of any curtailment of white wheat futures trade activity because of the current speculative position limits," it nevertheless noted that activity in the contract might increase with improvements in the Asian economies and therefore "requests that the CFTC consider at least expanding the deferred white wheat limits proportionally as done with the Hard Red Spring Wheat futures contract." The exchange also noted that the durum wheat contract did not have Commission speculative position limits.

The Commission originally proposed the speculative position limit level for each wheat contract market based on the open interest and the distribution of large traders' positions specific to the contract market. 57 FR 12770. Subsequently, in 1993, the Commission's interim final rules provided for parity of levels, but only for each of the domestic futures exchanges' major wheat contacts. The Commission will consider future increases to the speculative position limit levels for the MGE white wheat contract and for all other contracts as open interest or large traders' positions increase. Of course, an exchange may petition the Commission for rulemaking any time that a contract meets the criteria supporting an increase in the levels.[9] *See*, 17 CFR 13.2.

III. Exchange Speculative Position Limit and Exemption Rules

As discussed above, Commission rule 1.61 requires that, absent an exemption, exchanges adopt and enforce rules setting speculative position limits for all contract markets not subject to Commission speculative position limit rules.[10] *See*, 17 CFR § 1.61. The Commission proposed to simplify and reorganize its rules by relocating the substance of rule 1.61's requirements to Part 150 of the Commission's rules, thereby incorporating within that Part all Commission rules relating to speculative position limits. Moreover, the Commission proposed explicitly to incorporate within the rule a number of administrative practices that have developed over time. These included the speculative position limit levels that the staff routinely has recommended be approved by the Commission for newly designated futures and option contracts.

In addition, the Commission proposed to clarify the magnitude of increases to the limit levels that it would approve for traded contracts. As the Commission explained in the notice of proposed rulemaking, the open-interest criterion and numeric formula used by the Commission in its 1991 proposed amendment of Commission-set speculative position limits provided the most definitive guidance by the Commission on acceptable levels for speculative position limits for tangible commodities and, along with several other commonly accepted measures, has been widely followed as a matter of administrative practice when reviewing proposed exchange speculative position limits under Commission rule 1.61.[11] Although rule 1.61 did not include specific criteria for determining acceptable limit levels for new contracts, promulgating the prior administrative practice as a rule will make the applicable standard more transparent and thereby make compliance easier to achieve. Moreover, as noted in the notice of proposed rulemaking, "promulgating these policies within a single section of the Commission's rules will increase significantly their accessibility and clarify their terms." 63 FR 38536.

Specifically, proposed rule 150.5(a) tracks the provisions of rule 1.61(a) and clarifies that exchange speculative position limits are not required for futures and option contracts on major foreign currencies. Proposed rule 150.5(b) makes explicit the speculative position limit levels which the Commission finds appropriate for new contract market designations. As noted in the notice of proposed rulemaking, the proposed limit levels for new contract designations, which are based upon the formula and associated minimum levels used by the Commission in its 1992 proposed rulemaking, have long been used as a matter of informal administrative practice. 63 FR 38530.

The New York Mercantile Exchange (NYMEX) commented generally that the Commission should "reexamine the appropriate roles of the Commission and the exchanges in pursuing their shared goal of market integrity" and suggested further that "futures exchanges are best positioned to establish speculative position limits for their markets and should be given sole responsibility to do so." NYMEX expressed concern that:

> Codification of informal practices in proposed new regulation § 150.5 would appear to remove the flexibility that was perceived to be available under the informal procedures. Therefore even if the Commission determines not to undertake an assessment at this time of the appropriate degree of self-regulatory organization responsibilities for speculative position limits, the CFTC, at a minimum, should

[8] Although the last no action letter issued concerning the prohibition on inter-crop year spreads was a number of years ago, the Division of Economic Analysis noted that "no-action" relief is appropriate when the spreads between old and new crop year are stable and in full-carry and there is a large crop carryover expected, and requests for future no-action treatment would be considered during crop years that meet these criteria.

[9] The Commission did not propose to establish a Commission-set speculative position limit for the durum contract because that contract was designated after the promulgation of rule 1.61, which requires that designated contract markets set and enforce speculative position limits for contracts not subject to the Commission-set limits. Since then, the Commission has preferred to rely upon the exchanges to set and enforce speculative position limits and has adopted new Commission speculative position limits only for soybean meal and soybean oil. As the Commission explained previously, because of an historical anomaly, only these two contracts among those in the soybean complex were not included under Commission-set limits. 52 FR 38914 (October 20, 1987).

[10] For contract markets that have Commission-set speculative position limits, section 4a(e) of the Act permits exchanges to adopt and enforce their own speculative position limits as long as the exchange limits are not higher than the Commission's.

[11] In addition, in reviewing applications for contract designation for tangible commodities, the staff has relied upon the Commission's formulation providing for a minimum level of 1,000 contracts for nonspot-month speculative position limits. Moreover, the Commission has routinely approved a level of 5,000 contracts for nonspot months in applications for designation of financial futures and energy contracts, and that level has become a rule of thumb as a matter of administrative practice.

consider revising proposed new Regulation § 150.5 to provide exchanges with sufficient flexibility to address the differing conditions in their respective markets.

Specifically, NYMEX, joined by the CBT, questioned reliance on the sole criterion that the speculative position limit not exceed one-quarter of the deliverable supply during the spot month. NYMEX reasoned that the Commission has recognized that the limits that may be appropriate for one commodity may not be appropriate for another.

Guideline No. 1, 17 CFR part 5, appendix A, requires that, in order to become and to remain a designated contract market, the futures contract's "terms and conditions, as a whole, will result in a deliverable supply which will not be conducive to price manipulation or distortion." 17 CFR part 5, appendix A(a)(2)(ii). Administrative practice has long interpreted this provision as requiring a deliverable supply that is at least four times the spot month speculative position limit. 62 FR 60831, 60838 (November 13, 1997). A spot month speculative position limit that exceeds this amount enhances the susceptibility of the contract to market manipulation, price distortion or congestion.[12]

NYMEX suggests that this standard may not be appropriate for nonagricultural tangible or intangible commodities. However, except for cash-settled contracts,[13] Commission staff have used this standard to review every application for contract market designation or proposals to increase existing exchange speculative position limits since 1981, when rule 1.61 was issued.[14] Experience has demonstrated that many commodities, particularly intangible commodities, have sufficiently large deliverable supplies to meet this standard without requiring a spot month level that is lower than the individual month level. For other commodities, however, especially commodities having strong seasonal characteristics, spot month speculative position limits are required to be set at a level lower than the individual month limit for all or some trading months.[15] Accordingly, codification of this standard only makes explicit the standard which, since 1981, has been applied to, and met by, every physical delivery futures contract at the time of initial designation and upon subsequent increases to the spot month speculative position limit.

CBT also suggests that the proposed rule define the methodology for estimating the deliverable supply and that, in proposing such a definition, "the Commission discuss how deliverable supply is measured; who determines deliverable supply; what constitutes deliverable supply; and when deliverable supply should be measured for the purpose of the rule." As noted by CBT, the Commission proposed such a definition as part of the proposed amendments to Guideline No. 1. 63 FR 38537 (July 17, 1998). Guideline No. 1 details the information that an application for contact market designation should include in order to demonstrate compliance with the applicable legal requirements, including the requirement of rule 1.61 that exchanges set speculative position limits. As the Commission discussed at length in that notice of proposed rulemaking, the Commission is proposing explicitly to require exchanges to estimate deliverable supplies for the specified delivery months of a proposed contract. *Id.* at 38539. Moreover, the Commission explained that the exchange should describe the methodology it uses to derive the estimate and should base its estimate "on statistical data when reasonably available covering an historical period that is representative of actual patterns of production and consumption of the commodity."[16] *Id.*

In addition to providing greater clarity regarding the speculative position limit levels required at initial designation, proposed rule 150.5(b) would make explicit the conditions for subsequent increases to the deferred trading month levels. The proposed rule includes both a numeric formula for determining the permissible limit level and a descriptive standard. The descriptive standard tracks the standard of Commission rule 1.61—that the level be set "based on position sizes customarily held by speculative traders on the contract market, the breadth and liquidity of the cash market and the opportunity for arbitrage between the futures market and the cash market." *Compare,* proposed rule 150.5(c)(2) and rule 1.61(a)(2). As noted above, the numeric formula is based upon the formula first used by the Commission in 1992 for proposing the speculative position limit levels now being considered.

The Commission proposed that adjustments to a contract market's speculative position limit could be made one year after its initial listing based on either the proposed formula or the descriptive standard. NYMEX suggests that the provision that adjustments be made only after one year

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[12] In 1997 the Commission conducted a section 5a(a)(10) proceeding requiring CBT to amend the delivery terms of its corn and soybean futures contracts. In commencing the action, the Commission found that deliverable stocks under the contract terms as then specified frequently had dropped to levels near or below the maximum number of contracts a single speculative trader may hold during the delivery periods of expiring trading months. 61 FR 67998, 68012 (December 26, 1996). The Commission found that, where a single speculator could control all of the deliverable stocks during a contract's delivery month, the contract fails to meet the Act's requirement that its contract's terms "will tend to prevent or diminish price manipulation, market congestion or the abnormal movement of such commodity in interstate commerce." *See,* section 5a(a)(10) of the Act.

[13] Current Guideline No. 1 requires that the contract terms for cash settled contracts not be "subject to the manipulation or distortion." 17 CFR part 5, appendix A(a)(2)(iii). Because some types of commodities which are cash settled may not have deliverable supplies per se, the Commission is modifying the spot month requirement to provide that the spot month level for cash-settled contracts must be set "no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price."

[14] CBT commented that the proposed spot month rule was arbitrary, having been "reversed engineered" as part of the corn and soybean section 5a(a)(10) proceeding. To the contrary, as discussed above, the proposed rule is based upon long-standing administrative practice and experience. The appropriate measures of adequacy of deliverable supply in a section 5a(a)(10) proceeding, which is initiated upon an affirmative finding that the contracts violate that section of the Act, were discussed in the Commission's orders in that proceeding and should not be confused with the standard of review for new contract applications. 62 FR at 60838.

CBT also commented that, "before codifying its 'rule-of-thumb' standard for determining speculative position limits for the respective delivery months, the Commission should include in a release for pubic comment a substantive description of the methodology it used to establish the basis for its proposed formula." As CBT recognized in its comment, however, the Commission's notice of proposed rulemaking on Guideline No. 1, a companion notice which was referred to in the notice of proposed rulemaking on speculative position limits, noted that the twenty-five percent criterion was based on the Commission's long-standing administrative practice and experience. 63 FR 38537, 38539 (July 17, 1998).

[15] The CBT objects that basing the spot month speculative position limits on an estimate of deliverable supplies which has been calculated separately for each trading month will result in "different spot month speculative limit levels for each of the months * * * (and) will be extremely confusing and cumbersome to the marketplace." However, the rule does not require that the spot month level vary from one trading month to the next, but only that it not exceed one-quarter of estimated deliverable supplies. An exchange can choose how it wishes to structure its limits, whether preferring to have the same limit apply to all months or to have different levels for particular trading months. It is not uncommon today for exchanges to apply lower spot month speculative position limits to selected trading months where there are strong seasonal variations in a contract's potential deliverable supplies.

[16] Although CBT complains that the Commission's definition is "far from conclusive" and "subjective," its comment suggests, not that the requirement is undefined, but rather that CBT disagreed with the Commission's exclusion of certain stocks and inventories of corn and soybeans from estimated deliverable supplies in the 1998 section 5a(a)(10) proceeding.

from a contract's listing "would severely limit an exchange's ability to respond to changing market conditions during the first year after listing." Although few futures contracts have achieved the levels of open interest to qualify for increasing speculative position limits levels under the rule sooner than a year after listing, the Commission agrees that the rule should not foreclose the possibility of a new contract's qualifying the adjustment. Accordingly, the Commission is modifying the final rule to permit an exchange to adjust nonspot month limits based upon the proposed rule's descriptive standard at any time after initial listing. The formula for adjustments to levels, for simplicity, will be based on data for the previous calendar year, as proposed.[17]

Several commenters suggested that the proposed position accountability rules actually narrowed the prior grants of exemptive relief. The Managed Funds Association (MFA) suggested that, by not proposing an exemptive category for commodities with virtually inexhaustible deliverable supplies, a category which would apply to foreign currency futures contracts, the Commission was foreclosing new contracts from potential eligibility for this relief.[18] It also noted that the exemptive relief for position accountability was not restricted on its face to contracts that has been trading for at least a year. In addition, CBT expressed concern that one of its contracts that qualifies for exemption due to a highly liquid cash market would not meet the requirements of the proposed rule. NYMEX suggested that, through Commission codification of the past exemptive categories, exchanges would lose the flexibility to "justify that an exception was warranted for a particular contract."

Application of the rule is prospective only. No currently exempt contract market will lose its exemption as long as it remains actively traded under its current designation.[19] Moreover, with one minor exception, position accountability rules have been approved only for contracts with significant trading histories.[20] In addition, proposed rule 150.5(f) would permit a contract market to "propose such other exemptions from its position limits consistent with the purposes of this section" for Commission consideration. This provision is found in existing rule 1.61 and is the authority for the current trader accountability rules that the Commission is proposing to codify in this rulemaking. The Commission is modifying the final rule to clarify that the right to petition the Commission for exemption extends to all of the section's provisions, including the requirements for exemption that are being codified. Accordingly, these rules do not foreclose the Commission from considering in appropriate circumstances petitions for individual exemptions from the required levels for setting exchange speculative position limits and from the requirement that exchanges adopt speculative position limits for all futures contracts.

IV. Issues Relating to Exemption From Nonspot Speculative Position Limits for Independently Controlled Accounts

In response to the growth of professionally managed futures trading accounts and pooled futures investments, the Commission in 1988 promulgated rule 150.3, 17 CFR 150.3, an exemption from speculative position limits for commodity pools or similar entities which use independent account controller.[21] 53 FR 41563 (October 24, 1988). In 1991 the Commission extended eligibility for this exemption to commodity trading advisors and greatly streamlined the application procedure, subsequently making it self-executing.[22] 57 FR 44492 (September 28, 1992).

Commission rule 150.3 generally has worked well. It has provided flexibility to the markets, accommodating the continuing trend toward professional management of speculative trading accounts, while at the same time protecting the markets from the undue accumulation of large speculative positions owned by a single person or entity in the spot month. Since its amendment in 1991, most questions concerning rule 150.3 have related to its application in the context of integrated financial services companies. However, presently only commodity pool operators and commodity trading advisors meet the rule's eligibility requirement.

In light of the successful operation of the exemption since it was issued, the Commission proposed to extend eligibility for the exemption to banks, trust companies, savings associations, insurance companies and their separately incorporated affiliates. These additional categories were suggested for inclusion by some commenters when the Commission last proposed to revise rule 150.3.[23]

Generally, commenters favored broadening the definition of eligible entities under rule 150.1(d). Several, but not all, commenters agreed that the trends toward greater professional management of futures trading and the

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[17] NYMEX's comment may misapprehend how the formula is applied. It should be noted that the maximum allowable speculative limit for nonspot individual months is not based on the data for any one particular individual month; instead, the applicable level is derived by computing the 12-month average level of month-end open interest for the most recent one-year period in any (usually the next to expire) contract month, considering futures and delta-adjusted options combined.

[18] Because the proposed rules make clear that neither a speculative position limit nor the position accountability rule is required for a designed contract market in "major foreign currency," the Commisson proposed to reduce to three the number of exemptive categories. No exchange contracts other than the existing futures contracts on such foreign currencies have met the existing first exemptive criterion since this relief was first permitted. "Major foreign currencies" are defined in the Commission's fast-track designation rule. 17 CFR 5.1(a)(2)(i). The Commission proposed that contract markets in other, less liquid foreign currencies be treated as a futures or option contract on any other financial instrument or product.

[19] The Commission specifically noted in the notice of proposed rulemaking, 63 FR 38530, n. 21, that although the policy provided that position accountability could be based on either a liquid futures market or a liquid cash market, the Commission was proposing to require that both the cash and futures markets be liquid and that a contract market would have to establish a trading history. The Commission continued, however, by noting that the rule would apply prospectively and that any contracts (or pending applications) that have position accountability rules in place in reliance on the liquidity of the cash market alone may continue to rely on the policy.

[20] As noted by the Commission in the notice of proposed rulemaking, the only instances where position accountability rules were permitted in the absence of a prior trading history was where the contracts were spread contracts on contracts for which position accountability rules had already been approved. The only other instances where exemptions from speculative position limits were approved at contract designation were for major foreign currency contracts, a category that the Commission proposed to exclude from the requirement altogether.

[21] Commodity pools, pension funds, and other similar entities are required to aggregate their positions as the owner of the trading accounts, even if those accounts are traded independently by multiple independent account controllers. Commission rule 150.3 exempted such entities that use independent account controllers from speculative position limits outside of the spot-month. The exemption permits the total positions of the trading entity or vehicle to exceed speculative limits during nonspot months, but requires that each independent account controller trading on the entity's behalf comply with the applicable limits. During the spot month, all positions of the entity are required to be aggregated and are subject to the spot-month speculative position limit level.

[22] Under the exemption as originally promulgated, those seeking exemptive treatment were required to file an application with the Commission and to document the independence of their account controllers.

[23] Commenters, in connection with the 1991 proposed amendments to the rule 150.3 exemption, suggested that, in addition to commodity trading advisors, the exemption be extended to others, including investment banks, other financial intermediaries, parent/affiliate firms, separately managed divisions of a single corporation, commercial banks, merchant banks, and insurance companies.

consolidation of financial services companies support expanding the category of entities eligible for the exemption. Although supporting expanding the categories for eligibility, the Futures Industry Association (FIA) suggested that the Commission modify the phrase "separately incorporated affiliates" to read "separately organized affiliates." The FIA explained that the modified language

> would clarify that the exemption applies to affiliates whether they are organized as corporations or not. For example, an affiliate may be organized as a partnership, business trust or limited liability business organization to achieve certain tax objectives. Under applicable law, any such entity would still have a separate identity, ownership and management structure and should be treated in the same manner as an affiliate which is organized as a corporation. Also, entities organized outside the United States may not technically be incorporated under local law but should be eligible as affiliates under the proposed revision as long as they are separately organized under applicable foreign law.

The MFA also favored expansion of the definition of eligible entities in § 150.1(d), but suggested that it be modified "to * * * refer to trusts, financial intermediaries, corporate divisions and other similarly organized entities or associations."

One commenter opposed expanding the categories of eligible entity, reasoning that:

> The expansion of rule 150.3 proposed in the release would include the separately incorporated affiliates of various specified financial services companies, including banks, insurance companies, and FCMs. We are deeply concerned that this proposal is intended to codify the view that rule 150.3 provides the exclusive basis under which relief from aggregation of positions is available for such entities rather than a nonexclusive exemption.

Rule 150.3, however, is an exemption from speculative position limit levels and does not itself restrict or expand the aggregation requirements. In this regard, several commenters expressed the view that, because futures commission merchants (FCMs) are exempt from aggregating certain types of accounts under proposed rule 150.4(d), they need not be included as eligible for exemption under Commission rule 150.3.

The Commission agrees with commenters that modifying the language of the final rule to apply to "separately organized affiliates" is appropriate in light of the wide variety of forms of business organization used by those active in the markets today and that removing FCMs from the list of entities eligible for rule 150.3 exemption may reduce unnecessary confusion.[24] Accordingly, the Commission is modifying proposed rule 150.1(d) as they suggest. However, the Commission is of the view that the rule 150.3 exemption should not be extended to the other recommended categories, such as corporate divisions and their separately organized affiliates. Such an extension may be overly broad and should not be undertaken without careful consideration. Nevertheless, the Commission remains receptive to considering further expansion of the categories of eligible institutions as market developments warrant.[25]

V. Aggregation of Accounts

The Commission also proposed a number of amendments to its rules relating to the aggregation of accounts. These proposed amendments were intended to respond to the continuing trend toward mergers and consolidation in the financial services sector, to clarify issues of rule interpretation that have arisen as a consequence of changing industry practice and to increase the accessibility of the applicable law by recodifying various related rules in one section of the Code of Federal Regulations and by codifying existing interpretations and policies.

Section 4a of the Act provides that, in determining whether a position exceeds the speculative position limits,

> the positions held and trading done by any persons directly or indirectly controlled by such person shall be included with the positions held and trading done by such person; and further, such limits upon positions and trading shall apply to positions held by, and trading done by, two or more persons acting pursuant to an expressed or implied agreement or understanding, the same as if the positions were held by, or the trading were done by, a single person.

As the Commission explained in the notice of rulemaking, it interprets the "held or control" criteria as applying separately to ownership of positions or to control of trading decisions.[26] Rule 150.4(a), which the Commission is adopting as proposed, restates the general aggregation requirement of section 4a of the Act. Following the general rule in § 150.4(a), proposed § 150.4(b) would detail the nature of a financial interest which would trigger application of the ownership criterion, proposed § 150.4(c) would impose conditions on exceptions from aggregation for limited partners, and proposed § 150.4(d) would codify the existing policy exempting FCMs from aggregating positions in customer discretionary accounts or guided account programs controlled by independent traders.

Compliance with the Commission's speculative position limit rules is often dependent upon the proper aggregation of positions. A central feature of the proposed rules is the codification of the aggregation standard itself. As the Commission stated in the notice of proposed rulemaking, the requirements relating to aggregation of positions, including the exceptions provided in the Commission's "Statement of Policy on Aggregation of Accounts," 44 FR 83839 (June 13, 1979) (1979 Aggregation Policy), currently are included implicitly in the Commission's large-trader reporting rules. 63 FR 38532. The Commission proposed to codify the aggregation rules and Commission policies in the same part of the Code of Federal Regulations as the speculative position limit rules for ease of reference and to increase their accessibility to the general public.[27]

The 1979 Aggregation Policy sets forth an exception from the general aggregation principle providing that an FCM need not aggregate the discretionary trading accounts or customer trading programs through which a trader affiliated with, but independent of, the FCM directs trading of customer-owned positions or

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[24] Moreover, broadening the definition of "eligible entities" to the separately organized affiliates of the entities listed in rule 150.1(d) in no way restricts the applicability of rule 150.4(d) (which applies to an FCM and its affiliates) because an FCM also happens to be an affiliate of a rule 150.1(d) "eligible entity."

[25] The Commission is also expanding the category of entities which are eligible for the exemption to the limited partners of pools, the operators of which are exempt from registration under rule 4.13 by virtue of having fewer than fifteen participants in the pools and less than $200,000 in capital contributions. As discussed in greater detail below, the Commission is of the view that the trading of certain of these limited partnerships should not be disaggregated from trading by the limited partner(s). However, the Commission believes that trading for the limited partners can be included appropriately within the exemption from speculative position limits for the nonspot month limits under Commission rule 150.3 if such trading meets the conditions of the rule.

[26] *See e.g.*, Commission rule 18.01 ("holds, has a financial interest in or controls"). As the Commission discussed in the notice of proposed rulemaking, the Commission's routine large trader reporting system is set up so that it does not double count positions which may be controlled by one and traded for the beneficial ownership of another. In such circumstances, although the routine reporting system will aggregate the positions reported by FCMs using only the control criterion, the staff may determine that certain accounts or positions should also be aggregated using the ownership criterion or may by special call receive reports directly from a trader.

[27] The Commission also proposed conforming amendments to rules 18.01 and 17.00(b), which specify the manner of identifying accounts for reporting purposes.

accounts.[28] In creating this exception, the Commission took an important step in recognizing the structural changes made by the futures industry to respond to the increased acceptance of professional management of trading accounts. Proposed rule 150.4(d) was intended merely to codify the substance of this policy.

Several commenters, including the MFA, FIA, the Committee on Futures Regulation of the Association of the Bar of the City of New York (NY Bar), and Goldman, Sachs & Co. (GS) expressed concern, however, that codification of the 1979 Aggregation Policy in the manner proposed might narrow its current application. The FIA suggested that:

> The 1979 Aggregation Policy, which is proposed to be adopted as Rule 150.4(d), should be extended to affiliates of the FCM and not limited to the FCM's independent traders * * *. (W)e note that the Commission has already accepted this position in terms of affiliates of FCMs pursuant to CFTC Interpretive Letter No. 92–15. CCH Commodity Futures Law Reporter, 1990–1992 Transfer Binder, para 25831 at page 39,285. Proposed Rule 150.4(d) should be revised to specifically include affiliates of the FCM so it remains consistent with the Commission's current interpretation of the Aggregation Policy.

By proposing to codify the substance of the 1979 Aggregation Policy, the Commission did not intend to narrow its interpretation or application. In this regard, Commission staff since 1991 has interpreted the policy as applying to an FCM's affiliates. Interpretative Letter 92–15, *supra*. Specifically, Commission staff opined that, where a diversified financial services holding company is the common parent of a commodity pool operator (CPO) or a commodity trading advisor (CTA) and an FCM and the entities' trading arrangements meet the 1979 Aggregation Policy's indicia of independence, the CPO/CTA "may calculate its trading positions for determining compliance with speculative position limits and reporting requirements separate from the proprietary positions held by, or on behalf of, the parent." *Id.* at p. 39286.

In reaching this conclusion, the letter reasoned that "the 1979 Aggregation Policy clearly would have been applicable, on its face, had [the parent] undertaken the same, or a similar, program through * * * its subsidiary which is a registered FCM, rather than through a separate affiliate * * *, the customer trading program directed by the (CPO/CTA) is kept independent * * * from the (parent's) other trading, including that of the other affiliates, nor does it appear * * * (that) assign(ing) these functions to separate affiliates is intended to circumvent speculative limits and reporting requirements." *Id.* at 39,285.

It is the Commission's intent in issuing rule 150.4(d) merely to codify the 1979 Aggregation Policy, including the continued efficacy of the 1991 interpretative letter, and not to modify the current state of the law on this issue. At the suggestion of various commenters, the Commission is making that intent clear by modifying the language of proposed rule 150.4(d) to include explicit reference to affiliates of an FCM.

The Commission also proposed to amend the limited partner exception of Commission rule 18.01.[29] Commission rule 18.01 defines account owners as those having a 10% or greater financial interest in the account, except for limited partners. Limited partners are exempt from being defined as owners on the assumption that limited partners, even if holding greater than a 10% ownership interest, are prohibited from exercising control over the partnership's trading activities. The Commission noted in the notice of proposed rulemaking, however, that it had become concerned by the trading by certain single-investor commodity pools. Accordingly, the Commission proposed that, when there were 10 or fewer limited partners or when a limited partner has an ownership interest of 25% or greater, the limited partner be required to aggregate the partnership's positions with his or her other positions. The Commission specifically noted that it did not intend this proposal to modify the general treatment of limited partners or shareholders[30] in typical commodity pools and requested that commenters address the typical organization for pools and whether the proposed levels would affect only unusual forms of ownership. 63 FR 38533.

A number of commenters advised the Commission that the proposed criteria would affect a number of typical forms of commodity pool organization. The FIA, MFA, NY Bar and GS all expressed the view that the Commission's proposed criteria "casts too wide a net," noting that single investor pools are used today by institutional investors for a variety of legitimate purposes. For example, the FIA commented that:

> FIA's members are aware that many single investor pools, such as ERISA funds, are formed for reasons having nothing to do with the investor's desire to control or have input in the pool's trading decisions.
>
> Many such pools are formed to address the unique regulatory concerns that a larger pool faces or for other reasons, such as to maintain limited liability or to implement unique investment goals or fee structures.

These commenters also noted that the 25% ownership criterion could be exceeded routinely in start up or seed money situations. As GS explained:

> Even though the purported focus of the proposal is on the operators of small pools who are exempt from CPO registration pursuant to rule 4.13, the numerical criteria would reach many funds privately offered by registered CPOs. For example, in seed money situations where an affiliate of the CPO wishes to demonstrate to potential clients that the affiliate is committing its own capital to a particular strategy, its percentage share could well exceed 25%. It is also common for the initial offering of a pool to close and for the pool to begin trading after one or two large investments have been made. Such situations would run afoul of both criteria.

As the Commission noted in the notice of proposed rulemaking, its primary concern in proposing this change to the general exemption for limited partners was to address certain patterns of pool formation and trading that it had observed in connection with commodity pools the operators of which are exempt from CPO registration under Commission rule 4.13. Such trading patterns were not evidenced where the CPO was registered with the Commission or where greater than a 25% ownership interest was the result of a seed money or start up investment. Accordingly, the commission is modifying the final rule to apply only to limited partners participating in a pool the operator of which is exempt from registration under rule 4.13. The Commission is retaining the numeric criteria, so the aggregation requirement will apply only to limited partners having a 25% or greater ownership interest in commodity pools operated by

[28] The 1979 Aggregation Policy also offered guidance on the criteria considered in determining whether the trader exercises independent control over the trading decisions of the customer discretionary accounts or trading programs. These included the customer account agreement, advertising, the agreements between the FCM and its employee or other trader, the degree of supervision, the confidentiality of the program's trading decisions, reliance of the FCM for market information, financial investment by the FCM in the program greater than 10% and common trading patterns. *Id.* at 33844.

[29] In counterpoint to this proposal, the Commission also proposed to include within the exemption from speculative position limits under Commission rule 150.3 the limited partners of small commodity pools the operators of which are exempt from CPO registration.

[30] The Commission also proposed to clarify that for this purpose other similar types of pool participant are treated the same as limited partners or shareholders. These include pool participants in other categories of limited liability business organizations, such as members of limited liability companies or beneficiaries of certain types of trusts. No commenters opposed this clarification and the final rules incorporate this change.

such an exempt commodity pool operator. Moreover, as explained above, the Commission also is amending rule 150.1(d) to include such limited partners as entities eligible for rule 150.3 relief under the exemption from speculative position limit levels for nonspot trading months. The Commission believes that as modified the rule will address its regulatory concern without unduly impacting legitimate market activity or otherwise burdening financial flexibility or innovation.

Commenters also objected to the Commission's proposed rule revising the limited partnership exemption to make explicit the Commission's understanding that the current rule treats the principals or affiliates of a commodity pool operator the same as the pool operator itself for aggregation purposes. Under current rules, a pool operator's having a greater than 10% financial interest in a pool requires the aggregation of the pool's positions with those of the pool operator. The Commission proposed a rule amendment to clarify that the principals or affiliates of a commodity pool operator which invest in the operator's pool as limited partners have a financial interest which requires them to aggregate their positions if their ownership interest in the pool is ten percent or greater.

The commenters suggested that the ability of affiliates or principals of a commodity pool operator to invest in its commodity pools is important to the formation of new pools. They maintained that such investment in the pools is often integral to their efforts to attract outside investors. They further maintained that the requirement that principals or affiliates aggregate the pool's position, even if only during the spot month, will include such investment. One commenter stated that:

> (i)t is more often the case that the affiliates of a commodity pool operator or commodity trading advisor will maintain a beneficial interest in the pool. Frequently, this structure is essential to initially form and capitalize the entity or to align the operator's interest with those of its investors, which is frequently not only beneficial to, but is demanded by, the entity's investors. In many cases, the commodity pool operator is insufficiently funded to maintain such an interest and, accordingly, affiliates meet the funding requirement.

The commenters further suggested that as a practical matter aggregating such partnership positions is exceedingly difficult. The commenters suggested that commodity pool operators or commodity trading advisors that are independent traders would not share information with limited partners on individual pool positions, viewing such information as proprietary. In their view, therefore, it would be difficult, if not impossible, for limited partners to obtain the information necessary to aggregate positions. GS noted that:

> Because limited partners or shareholders of a pool do not ordinarily receive position information on a real time basis, or otherwise, presumably it would be necessary for the pool's CPO to provide that information to them on a timely basis. However, CTAs view this information as confidential and proprietary, so that maintaining the confidentiality of this information is typically a heavily negotiated issue in management agreements entered into between pools and their CTAs. For this reason, CTAs frequently prefer to trade pooled accounts rather [than] individual managed accounts.

As many of the commenters recognized, the Commission intended by the proposed amendments to provide relief from the aggregation requirement for the pool operator's principals or affiliates under the rule 150.3 exemption from speculative position limits for nonspot trading months. The Commission has observed that commodity pools generally refrain from trading activity during a contract's spot months. The Commission therefore assumed that, coupled with relief under rule 150.3, the aggregation requirement would not impose an undue burden on the entities involved. The comments maintained, however, that the relative burden of compliance is greater than the Commission anticipated.

Accordingly, the Commission is modifying the requirement as proposed that principals or affiliates of a commodity pool operator with greater than a 10% limited partnership ownership interest aggregate their positions. The final rule provides that such limited partners or shareholders need not aggregate their positions with the pool's positions if the limited partner does not have direct supervisory authority over the pool's trading, the commodity pool operator maintains and enforces written procedures to preclude the limited partner from having knowledge of, or access to, information concerning the pool's positions or trading decisions and that the limited partner, if a principal of the pool operator, exercises only the minimum degree of supervision of the pool's trading consistent with a principal's duty of supervision. The final rule also provides that such entities must provide information to the Commission upon special call supporting their claim to relief from aggregation requirements under this provision.

VI. Other Matters

A. Paperwork Reduction Act

When publishing proposed rules, the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission solicited comments to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including the validity of the methodology and assumptions used; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The Commission previously submitted these rules in proposed form and its associated information collection requirements to the Office of Management and Budget (OMB). OMB approved the collection of information associated with these rules on March 10, 1999 and on July 26, 1996 and assigned OMB control numbers 3038–0013 and 3038–0009, respectively, to these rules. The burdens associated with these rules are as follows:

Collection No. (3038–0013)	
Average burden hours per response.	6
Number of respondents	12
Frequency of response	On occasion.

Collection No. 3038–0009	
Average burden hours per response.	4.74
Number of respondents	3709
Frequency of response	On occasion.

Persons wishing to comment on the information which would be required by these final rules should contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are

available from the CFTC Clearance Officer, 1155 21st St NW, Washington, DC 20581, (202) 418–5160.

Copies of the OMB-approved information collection package associated with this rulemaking may be obtained from Desk Officer, Commodity Futures Trading Commission, Office of Management and Budget, Room 10202, NEOB Washington, DC 20503, (202) 395–7340.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of those rules on small businesses. The Commission has previously determined that large traders are not small entities for purposes of the RFA.[31] The Commission believes that the rule amendments to raise Federal speculative position limits will only impact large traders. In addition, the Commission is of the opinion that the amendments to Commission rule 150.3, under which certain eligible entities will be exempted from speculative limits (except in the spot-month), will apply exclusively to large traders, as will rule 150.4 codifying its policies on aggregation. The Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the rules will lift speculative limit levels, extend exemptive relief from speculative limits (except in the spot-month) to certain eligible entities and codify the Commission policies on aggregation, including its rules on aggregating positions for speculative limit compliance. The rules permitting such transactions subject to the specified conditions, therefore, remove a burden for all entities, regardless of size.

List of Subjects

17 CFR Part 1

Brokers, Commodity futures, Consumer protection, Reporting and recordkeeping requirements, Segregation requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 18

Brokers, Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 150

Agricultural commodities, Bona fide hedge positions, Position limits, Spread exemptions.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and in particular sections 2(a)(1), 2(a)(2), 4a, 4c, 4f, 4g, 4i, 4n, 5, 5a, 6b, 6c, 8a, and 15, 7 U.S.C. 2, 6a, 6c, 6f, 6g, 6i, 6n, 7, 7a, 12a, 13a, 13a–1, and 19, the Commission amends parts 1, 17, 18, and 150 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24.

§ 1.61 [Removed and reserved]

2. Section 1.61 is removed and reserved.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

3. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6d, 6f, 6g, 6i, 7, and 12a.

4. Section 17.00 is amended by revising paragraph (b)(1), introductory text, by removing paragraphs (b) (2) and (c), by redesignating paragraphs (b) (1) (i) and (b) (1) (ii) as paragraphs (b) (1) and (b) (2), respectively, and by adding paragraph (b)(3) to read as follows:

§ 17.00 Information to be furnished by futures commission merchants, clearing members and foreign brokers.

* * * * *

(b) *Interest in or control of several accounts.* Except as otherwise instructed by the Commission or its designee and as specifically provided in § 150.4 of this chapter, if any person holds or has a financial interest in or controls more than one account, all such accounts shall be considered by the futures commission merchant, clearing member or foreign broker as a single account for the purpose of determining special account status and for reporting purposes. For purposes of this section, the following shall apply:

* * * * *

(3) *Account ownership.* Multiple accounts owned by a trader shall be considered a single account as provided under §§ 150.4(b), (c) and (d) of this chapter.

PART 18—REPORTS BY TRADERS

5. The authority citation for part 18 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 6a, 6c, 6f, 6g, 6i, 6k, 6m, 6n, 12a, and 19; 5 U.S.C. 552 and 552(b) unless otherwise noted.

6. Section 18.01 is revised to read as follows:

§ 18.01 Interest in or control of several accounts.

If any trader holds, has a financial interest in or controls positions in more than one account, whether carried with the same or with different futures commission merchants or foreign brokers, all such positions and accounts shall be considered as a single account for the purpose of determing whether such trader has a reportable position and, unless instructed otherwise in the special call to report under § 18.00 of this part, for the purpose of reporting.

PART 150—LIMITS ON POSITIONS

7. The authority citation for part 150 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c and 12a(5).

8. In § 150.1 the introductory text of paragraph (d), and paragraph (d)(2), (e)(2) and (e)(5) are revised to read as follows:

§ 150.1 Definitions.

* * * * *

(d) *Eligible entity* means—

A commodity pool operator, the operator of a trading vehicle which is excluded or who itself has qualified for exclusion from the definition of the term "pool" or commodity pool operator," respectively, under § 4.5 of this chapter; the limited partner or shareholder in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter; a commodity trading advisor; a bank or trust company; a savings association; an insurance company; or the separately organized affiliates of any of the above entities:

(1) * * *

(2) Which maintains:

(i) Only such minimum control over the independent account controller as is consistent with its fiduciary responsibilities and necessary to fulfill its duty to supervise diligently the trading done on its behalf; or

(ii) If a limited partner or shareholder of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter, only such limited control as is consistent with its status.

[31] 47 FR 18618 (April 30, 1982).

(e) *Independent account controller* means a person—

* * * * *

(2) Over whose trading the eligible entity maintains only such minimum control as is consistent with its fiduciary responsibilities to fulfill its duty to supervise diligently the trading done on its behalf or as is consistent with such other legal rights or obligations which may be incumbent upon the eligible entity to fulfill;

* * * * *

(5) Who is registered as a futures commission merchant, an introducing broker, a commodity trading advisor, an associated person or any such registrant, or is a general partner of a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter.

* * * * *

9. Section 150.2 is revised to read as follows:

§ 150.2 Position limits.

No person may hold or control positions, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon, in excess of the following:

SPECULATIVE POSITION LIMITS

[By contract]

Contract	Limits by number of contracts		
	Spot month	Single month	All months
Chicago Board of Trade			
Corn	600	5,500	9,000
Oats	600	1,000	1,500
Soybeans	600	3,500	5,500
Wheat	600	3,000	4,000
Soybean Oil	540	3,000	4,000
Soybean Meal	720	3,000	4,000
MidAmerica Commodity Exchange			
Corn	3,000	6,000	6,000
Oats	2,000	2,000	2,000
Soybeans	3,000	6,000	6,000
Wheat	3,000	6,000	6,000
Soybean Meal	800	800	800
Minneapolis Grain Exchange			
Hard Red Spring Wheat	600	3,000	4,000
White Wheat	600	1,200	1,200
New York Cotton Exchange			
Cotton No. 2	300	2,500	3,500
Kansas City Board of Trade			
Hard Winter Wheat	600	3,000	4,000

10. Section 150.4 is revised to read as follows:

§ 150.4 Aggregation of positions.

(a) *Positions to be aggregated.* The position limits set forth in § 510.2 of this part shall apply to all positions in accounts for which any person by power of attorney or otherwise directly or indirectly holds positions or controls trading or to positions held by two or more persons acting pursuant to an expressed or implied agreement or understanding the same as if the positions were held by, or the trading of the position were done by, a single individual.

(b) *Ownership of accounts.* For the purpose of applying the position limits set forth in § 510.2, except for the ownership interest of limited partners, shareholders, members of a limited liability company, beneficiaries of a trust or similar type of pool participant in a commodity pool subject to the provisos set forth in paragraph (c) of this section, any trader holding positions in more than one account, or holding accounts or positions in which the trader by power of attorney or otherwise directly or indirectly has a 10% or greater ownership or equity interest, must aggregate all such accounts or positions.

(c) *Ownership by limited partners, shareholders or other pool participants.* For the purpose of applying the position limits set forth in § 150.2:

(1) A commodity pool operator having ownership or equity interest of 10% or greater in an account or positions as a limited partner, shareholder or other similar type of pool participant must aggregate those accounts or positions with all other accounts or positions owned or controlled by the commodity pool operator;

(2) A trader that is a limited partner, shareholder or other similar type of pool participant with an ownership or equity interest of 10% or greater in a pooled account or positions who is also a principal or affiliate of the operator of the pooled account must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader, *provided, however,* that the trader need not aggregate such pooled positions or accounts if:

(i) The pool operator has, and enforces, written procedures to preclude the trader from having knowledge of, gaining access to, or receiving data about the trading or positions of the pool;

(ii) The trader does not have direct, day-to-day supervisory authority or control over the pool's trading decisions; and

(iii) The trader, if a principal of the commodity pool operator, maintains only such minimum control over the commodity pool operator as is consistent with its responsibilities as a principal and necessary to fulfill its duty to supervise the trading activities of the commodity pool;

(3) Each limited partner, shareholder, or other similar type of pool participant having an ownership or equity interest of 25% or greater in a commodity pool the operator of which is exempt from registration under § 4.13 of this chapter must aggregate the pooled account or positions with all other accounts or positions owned or controlled by that trader.

(d) *Trading control by futures commission merchants.* The position limits set forth in § 150.2 of this part shall be construed to apply to all positions held by a futures commission merchant or its separately organized affiliates in a discretionary account, or in an account which is part of, or participates in, or receives trading advice from a customer trading program of a futures commission merchant or any of the officers, partners, or employees of such futures commission merchant or its separately organized affiliates, unless:

(1) A trader other than the futures commission merchant or the afffilate directs trading in such an account;

(2) The futures commission merchant or the affiliate maintains only such minimum control over the trading in such an account as is necessary to fulfill its duty to supervise diligently trading in the account; and

(3) Each trading decision of the discretionary account or the customer trading program is determined independently of all trading decisions in other accounts which the futures commission merchant or the affiliate holds, has a financial interest of 10% or more in, or controls.

(e) *Call for information.* Upon call by the Commission, the Director of the Division of Economic Analysis or the Director's delegatee, any person claiming an exemption under paragraphs (c) or (d) of this section must provide to the Commission such information as specified in the call relating to the positions owned or controlled by that person, trading done pursuant to the claimed exemption, or the relevant business relationships supporting a claim of exemption.

11. New § 150.5 is added to read as follows:

§ 150.5 Exchange-set speculative position limits.

(a) *Exchange limits.* Each contract market as a condition of designation under part 5, appendix A, of this chapter shall be bylaw, rule, regulation, or resolution limit the maximum number of contracts a person may hold or control, separately or in combination, net long or net short, for the purchase or sale of a commodity for future delivery or, on a futures-equivalent basis, options thereon. This section shall not apply to a contract market for which position limits are set forth in § 150.2 of this part or for a futures or option contract market on a major foreign currency, for which there is no legal impediment to delivery and for which there exists a highly liquid cash market. Nothing in this section shall be construed to prohibit a contract market from fixing different and separate position limits for different types of futures contracts based on the same commodity, or from fixing different position limits for different futures or for different delivery months, or from exempting positions which are normally known in the trade as "spreads, straddles, or arbitrage," of from fixing limits which apply to such positions which are different from limits fixed for other positions.

(b) *Levels at designation.* At the time of its initial designation, a contract market must provide for speculative position limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price;

(2) Individual nonspot or all-months-combined levels must be no greater than 1,000 contracts for tangible commodities other than energy products;

(3) Individual nonspot or all-months-combined levels must be no greater than 5,000 contracts for energy products and nontangible commodities, including contracts on financial products.

(c) *Adjustments to levels.* Contract markets may adjust their speculative limit levels as follows:

(1) For physical delivery contracts, the spot month limit level must be no greater than one-quarter of the estimated spot month deliverable supply, calculated separately for each month to be listed, and for cash settled contracts, the spot month limit level must be no greater than necessary to minimize the potential for manipulation or distortion of the contract's or the underlying commodity's price; and

(2) Individual nonspot or all-months-combined levels must be no greater than 10% of the average combined futures and delta-adjusted option month-end open interest for the most recent calendar year up to 25,000 contracts with a marginal increase of 2.5% thereafter or be based on position sizes customarily held by speculative traders on the contract market, which shall not be extraordinarily large relative to total open positions in the contract, the breadth and liquidity of the cash market underlying each delivery month and the opportunity for arbitrage between the futures market and the cash market in the commodity underlying the futures contract.

(d) *Hedge exemption.* (1) No exchange bylaw, rule, regulation, or resolution adopted pursuant to this section shall apply to bona fide hedging positions as defined by a contract market in accordance with § 1.3(z)(1) of this chapter. *Provided, however,* that the contract market may limit bona fide hedging positions or any other positions which have been exempted pursuant to paragraph (e) of this section which it determines are not in accord with sound commercial practices or exceed an amount which may be established and liquidated in an orderly fashion.

(2) Traders must apply to the contract market for exemption from its speculative position limit rules. In considering whether to grant such an application for exemption, contract markets must take into account the factors contained in paragraph (d)(1) of this section.

(e) *Trader accountability exemption.* Twelve months after a contract market's initial listing for trading or at any time thereafter, contract markets may submit for Commission approval under section 5a(a)(12) of the Act and § 1.41(b) of this chapter a bylaw, rule, regulation, or resolution, substituting for the position limits required under paragraphs (a), (b) and (c) of this section an exchange rule requiring traders to be accountable for large positions as follows:

(1) For futures and option contracts on a financial instrument or product having an average open interest of 50,000 contracts and an average daily trading volume of 100,000 contracts and

a very highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange;

(2) For futures and option contracts on a financial instrument or product or on an intangible commodity having an average moth-end open interest of 50,000 and an average daily volume of 25,000 contracts and a highly liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange;

(3) For futures and option contracts on a tangible commodity, including but not limited to metals, energy products, or international soft agricultural products, having an average month-end open interest of 50,000 contracts and an average daily volume of 5,000 contracts and a liquid cash market, an exchange bylaw, regulation or resolution requiring traders to provide information about their position upon request by the exchange and to consent to halt increasing further a trader's positions if so ordered by the exchange, *provided, however,* such contract markets are not exempt from the requirement of paragraphs (b) or (c) that they adopt an exchange bylaw, regulation or resolution setting a spot month speculative position limit with a level no grater than one quarter of the estimated spot month deliverable supply;

(4) For purposes of this paragraph, trading volume and open interest shall be calculated by combining the month-end futures and its related option contract, on a delta-adjusted basis, for all months listed during the most recent calendar year.

(f) *Other exemptions.* Exchange speculative position limits adopted pursuant to this section shall not apply to any position acquired in good faith prior to the effective date of any bylaw, rule, regulation, or resolution which specifies such limit or to a person that is registered as a futures commission merchant or as a floor broker under authority of the Act except to the extent that transactions made by such person are made on behalf of or for the account or benefit of such person. In addition to the express exemptions specified in this section, a contract market may propose such other exemptions from the requirements of this section consistent with the purposes of this section and shall submit such rules Commission review under section 5a(1)(12) of the Act and § 1.41(b) of this chapter.

(g) *Aggregation.* In determining whether any person has exceeded the limits established under this section, all positions in accounts for which such person by power of attorney or otherwise directly or indirectly controls trading shall be included with the positions held by such person; such limits upon positions shall apply to positions held by two or more person acting pursuant to an express or implied agreement or understanding, the same as if the positions were held by a single person.

Issued by the Commission this 27th day of April, 1999, in Washington, DC.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–11066 Filed 5–4–99; 8:45 am]

BILLING CODE 6351–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

Standards of Performance for New Stationary Sources

CFR Correction

In Title 40 of the Code of Federal Regulations, part 60, revised as of July 1, 1998, § 60.41c is corrected by adding the following definitions:

§ 60.41c Definitions.

* * * * *

Coal means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society for Testing and Materials in ASTM D388–77, "Standard Specification for Classification of Coals by Rank" (incorporated by reference—see § 60.17); coal refuse; and petroleum coke. Synthetic fuels derived from coal for the purpose of creating useful heat, including but not limited to solvent-refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

Coal refuse means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent (by weight) and a heating value less than 13,900 kilojoules per kilogram (kJ/kg) (6,000 Btu per pound (Btu/lb) on a dry basis.

Cogeneration steam generating unit means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

Combined cycle system means a system in which a separate source (such as a stationary gas turbine, internal combustion engine, or kiln) provides exhaust gas to a steam generating unit.

* * * * *

[FR Doc. 99–55518 Filed 5–4–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 971029257–9101–02; I.D. 101097A]

RIN 0648–AG56

Designated Critical Habitat; Central California Coast and Southern Oregon/ Northern California Coasts Coho Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Final rule and correction.

SUMMARY: NMFS is designating critical habitat for two Evolutionarily Significant Units (ESUs) of coho salmon (*Oncorhynchus kisutch*) pursuant to the Endangered Species Act of 1973 (ESA). Critical habitat for the Central California Coast ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between Punta Gorda and the San Lorenzo River (inclusive) in California, including two streams entering San Francisco Bay: Arroyo Corte Madera Del Presidio and Corte Madera Creek. Critical habitat for the Southern Oregon/Northern California Coasts ESU encompasses accessible reaches of all rivers (including estuarine areas and tributaries) between the Mattole River in California and the Elk River in Oregon, inclusive.

The areas described in this final rule represent the current freshwater and estuarine range of the listed species. For both ESUs, critical habitat includes all waterways, substrate, and adjacent riparian zones below longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years). After considering public comments and reviewing additional scientific information, NMFS is modifying various aspects of the proposed designation, including a revised description of adjacent riparian zones and the exclusion of tribal lands from critical habitat. NMFS has identified several dams in the range of these ESUs that currently block access to habitats

historically occupied by coho salmon. However, NMFS has not designated these inaccessible areas as critical habitat because the downstream areas are believed to provide sufficient habitat for conserving the ESUs. The economic (and other) impacts resulting from this critical habitat designation are expected to be minimal.

DATES: This rule is effective June 4, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of June 4, 1999.

FOR FURTHER INFORMATION CONTACT: In Oregon, contact Garth Griffin (Portland) at (503) 231–2005, or Frank Bird (Roseburg) at (541) 957–3383. In California, contact Craig Wingert (Long Beach) at (562) 980–4021, Patrick Rutten (Santa Rosa) at (707) 575–6050, or Greg Bryant (Eureka) at (707) 441–3684.

SUPPLEMENTARY INFORMATION:

Background

On October 31, 1996, NMFS published its determination to list Central California Coast coho salmon (*Oncorhynchus kisutch*) as threatened under the ESA (61 FR 56138). In a technical correction to the final listing determination (62 FR 1296, January 9, 1997), NMFS defined the Central California Coast coho salmon ESU to include all coho salmon naturally reproduced in streams between Punta Gorda in Humboldt County, California, and the San Lorenzo River in Santa Cruz County, California (inclusive). Subsequently, on May 6, 1997, NMFS published its determination to list the Southern Oregon/Northern California Coasts coho salmon ESU as threatened under the ESA (62 FR 24588) and defined the ESU to include all coho salmon naturally reproduced in streams between Cape Blanco in Curry County, Oregon, and Punta Gorda in Humboldt County, California.

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. On July 25, 1995, NMFS published a **Federal Register** document (60 FR 38011) soliciting information and data regarding the biological status of West Coast coho salmon, available salmon conservation measures, and information on areas that may qualify as critical habitat. At the time of final listing for each of these two ESUs, critical habitat was not determinable, because there was not enough information to perform the required analyses. On November 25, 1997, NMFS published a proposed rule designating critical habitat for the listed species (62 FR 62741). In that proposed rule, NMFS solicited public comments and announced public hearings on the proposed action. This final rule takes into consideration the new information and comments received in response to the proposed rule.

Use of the term "essential habitat" within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat (EFH) pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq*).

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species" (see 16 U.S.C. 1532(5)(A)). The term "conservation," as defined in section 3(3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary" (see 16 U.S.C. 1532(3)).

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (see 50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation.

Benefits of Critical Habitat Designation

A designation of critical habitat provides Federal agencies with a clear indication as to when consultation under section 7 of the ESA is required, particularly in cases where the proposed action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when a migratory species is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 (i.e., activities outside critical habitat that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in an agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, tribal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas—including conservation regulations that restrict both private and Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed and, therefore, are not considered in the critical habitat designation process. Other Federal, tribal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also benefit critical habitat areas.

Summary of Comments

Three public hearings were held on the proposed action: one in Gold Beach, Oregon, on December 8, 1997, one in Eureka, California, on December 9, 1997, and one in Santa Rosa, California, on December 11, 1997. Forty-two individuals provided oral testimony at the public hearings. Approximately 5,100 written comments were submitted in response to the proposed rule. While some commenters were in favor of the proposed critical habitat designation, the vast majority of the oral and written comments opposed the proposed rule. New information and comments received in response to the proposed rule are summarized here.

Public Notification Process

Comment 1: Some commenters felt that the process for proposing critical habitat was not handled well (e.g., difficulties with public notice and time to respond) and that the proposal itself was too ill-defined to be fully evaluated.

Response: NMFS made every attempt to communicate the critical habitat proposal to the affected communities. Three public hearings were held in the range of each ESU in California and Oregon and various local newspapers were notified of the proposed action, comment deadlines, and public meetings. In response to numerous requests, NMFS twice extended the comment period (63 FR 4212, January 28, 1998 and 63 FR 23710, April 30, 1998) to allow an additional 5 months for the public to submit comments. Finally, NMFS responded to several requests for supplemental meetings with affected county and local groups to promote better understanding about the proposal and attempt to allay unwarranted fears resulting from misleading information being widely promulgated throughout northern California and southern Oregon. Such misinformation created an unnecessary rift between local citizens and fisheries managers. This is particularly troublesome because most involved generally have the same common goal: restoring threatened salmon to the point where they can once again be a prized and sustainable resource in the region. Any and all parties are encouraged to contact NMFS if they have questions or need additional information regarding this final rule (see **FOR FURTHER INFORMATION CONTACT**).

Economic Considerations

Comment 2: Numerous commenters believed that NMFS improperly minimized the proposal's economic impacts by separating the designation of critical habitat from the listing process (i.e., by considering only the incremental economic effects of designating critical habitat beyond the effects associated with listing the species). These commenters are concerned that by separating the costs associated with the various administrative actions (e.g., listing, critical habitat designation, section 7 consultations), NMFS underestimated the real economic consequences of protecting listed coho salmon. Some commenters countered that any economic costs would be offset once the coho fisheries were restored. Many commenters objected to NMFS' interpretation that the impact of critical habitat designation is subsumed by the costs associated with protections under section 7 of the ESA.

Response: NMFS disagrees with the assertion that it has improperly minimized the economic impacts by separating the designation of critical habitat from the listing process. Rather, the ESA is unambiguous in how it addresses economic impacts; it prohibits the consideration of economic impacts in the listing process, but requires analysis of economic impacts when designating critical habitat. Our reading of these separate requirements for each determination leads us to an incremental analysis in which only the economic impacts resulting from the designation of the critical habitat are considered.

Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects beyond those which already accrue from section 7 of the ESA, which is triggered by the species' listing. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat determined to be critical. The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

Most of the effect on non-Federal interests will result from the protective regulations of 4(d) of the ESA and the no-jeopardy requirement of section 7 of the ESA, both of which are a function of listing a species, not designating its critical habitat. Whether critical habitat is designated, non-Federal interests must conduct their actions in a manner consistent with the requirements of the ESA. When a species is listed, non-Federal interests must comply with the prohibitions on takings found in section 9 of the ESA and associated regulations. If the activity is funded, permitted, or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which also results from listing a species, not from designating its critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, pursuant to NMFS' ESA implementing regulations, any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species (See the definitions in 50 CFR 402.02). Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Notwithstanding its lack of economic impact, the designation of critical habitat remains important because it identifies habitat that is essential for the continued existence of a species and, therefore, indicates habitat that may require special management attention. This facilitates and enhances Federal agencies' ability to comply with section 7 of the ESA by ensuring that they are aware of it when their activities may affect listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2) of the ESA, critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

Comment 3: A number of commenters were under the impression that critical habitat is equivalent to a "set-aside" or an easement and that by its nature was tantamount to an illegal and unconstitutional "taking" of private property. Some commenters felt that designating critical habitat abrogated Executive Order 12630 and the June 30, 1988, Attorney General's "Guidelines for Evaluation and Risk Avoidance of Unanticipated Takings." Many of these commenters provided estimates and analyses describing specific costs they believed they would incur as a result of the proposed critical habitat designation. These commenters suggested that they should be monetarily reimbursed for any financial hardship resulting from a designation of critical habitat.

Response: A critical habitat designation does not imply that private land would be confiscated or taken without just compensation. A critical habitat designation affects private land only when a Federal action is involved. In the overwhelming majority of cases, private landowners are not precluded from using their land as a result of the critical habitat designation. In a separate rulemaking, NMFS has adopted a regulation that prohibits the take of listed coho, which includes take by actions that destroy habitat (62 FR 38479). This regulation may have some impact on land uses that can be shown to have harmed salmon (for example, placing barriers to salmon migration in a stream). But this regulation should not be confused with the designation of critical habitat. In the course of deciding to make this final designation, the

Department of Commerce has complied with Executive Order 12630, Government Actions and Interference with Constitutionally Protected Property Rights.

Compliance With National Environmental Policy Act (NEPA)

Comment 4: Some commenters believed that NMFS should prepare an environmental impact statement pursuant to NEPA on the critical habitat designation because designation is a major Federal action and will have a significant impact on the environment.

Response: Under section 4(b)(2) of the ESA, the Secretary is required to designate critical habitat on the basis of the best scientific data available after taking into account the "* * * relevant impacts of specifying any particular area as critical habitat". In past critical habitat designations, NMFS has performed analysis of the kind requested here: Environmental analysis under NEPA. In all such cases NMFS has determined that mere designation of critical habitat has no adverse environmental impacts. In the time since these analyses were performed, it has become NMFS' policy, as well as that of the U.S. Fish and Wildlife Service (FWS), that designating critical habitat has no impact that requires a NEPA analysis.

Scope and Extent of Critical Habitat

The majority of commenters raised issues regarding the geographic scope and extent of proposed critical habitat; in particular, the designation of adjacent riparian zones as critical habitat. Critical habitat is defined in section 3(5)(A) of the ESA as the specific areas within the geographic area occupied by the species on which are found those physical or biological features that are essential to the conservation of the species and that may require special management considerations or protection. Based on commenters' concerns and on new information received during the public comment period, NMFS has refined its designation of critical habitat for both the Southern Oregon/Northern California Coasts and Central California Coast coho salmon ESUs. The following sections, partitioned by habitat type, address these commenters' concerns and clarify NMFS' designation of critical habitat for these ESUs.

Freshwater and Estuarine Habitats

Comment 5: Numerous commenters felt that a far more complete scientific analysis was required before critical habitat could be designated and, as a result, requested that the agency withdraw the proposed rule. Several commenters questioned NMFS' delineation of critical habitat as including all areas currently accessible to the species, and requested more specificity as to which stream reaches are critical habitat. Some commenters sought designation of unoccupied streams as critical habitat, while others noted that some local creeks and streams never had coho salmon and requested designation of only those areas where species restoration is feasible. The Oregon Department of Fish and Wildlife (ODFW) requested that NMFS consider using specific "core areas" for coho salmon and sought clarification of NMFS' interpretation that coho salmon are rare in southern Oregon. One commenter noted that coho salmon have not been documented recently in Pilarcitos Creek (San Mateo County, California), and noted that Stone Dam has blocked upstream areas for over 100 years. This commenter believed that adverse hydrologic conditions and degraded habitat would preclude this basin from playing a critical role in the species' recovery. One commenter requested that NMFS specify that side channels and off-channel wetlands are included in critical habitat, and that beaver dams, alluvial deposits, and trees be identified as essential features of coho salmon habitat. Another commenter noted that NMFS misidentified Mill Valley Creek in San Francisco Bay; it is actually named "Arroyo Corte Madera Del Presidio" on U.S. Geological Survey (USGS) maps. The U.S. National Park Service (NPS) questioned whether Redwood Creek was identified as critical habitat for coho salmon.

Response: While the proposed rule described the lack of consistent and robust data sets with which to discern the species' distribution at a fine scale (62 FR 62741, November 25, 1997), NMFS believes that the best available distribution information is sufficient to characterize basin-level designations of critical habitat for the listed species. The California and Oregon mapping efforts (e.g., ODFW's core area assessment) cited in the proposed rule are nearing completion, but have yet to reach final adoption and must be viewed as good, but tentative, descriptions of areas occupied by or critical for coho salmon. NMFS believes that these mapping efforts hold great promise for focusing habitat protection and restoration efforts and will continue to use the State's expertise to discern coho distribution when specific actions warrant (e.g., during ESA section 7 consultations). However, the limited data across the range of both ESUs, as well as dissimilarities in data types within the Southern Oregon/Northern California Coasts ESU, continue to make it difficult to define this species' distribution at a finer scale than the USGS hydrologic units (i.e., basins) identified in the proposed rule. Similarly, this limitation precludes NMFS from restricting critical habitat to streams where restoration may or may not be feasible.

NMFS' preferred approach to identifying critical habitat is to designate all areas accessible to the species within the range of hydrologic units in the range of each ESU. While this may not provide the level of resolution to define the species' presence or absence in specific local creeks and streams, NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages, from small headwater streams to migration corridors and estuarine rearing areas; (2) takes into account the natural variability in habitat use that makes precise mapping problematic (e.g., some streams may have fish present only in years with plentiful rainfall); and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upland areas. While unoccupied streams are excluded from critical habitat, NMFS reiterates the proposed rule language that "it is important to note that habitat quality in this current range is intrinsically related to the quality of upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches."

In the proposed rule, NMFS noted that the ODFW considered coho salmon "rare" in coastal streams draining the Siskiyou Mountains, citing a recent "Biennial Report on the Status of Wild Fish in Oregon (ODFW, 1995). In fact, this report identifies 10 Oregon coho populations in the range of the Southern Oregon/Northern California Coasts ESU (Elk, Rogue, Pistol, Chetco, and Winchuck Rivers, and Hubbard, Brush, Mussel, Euchre, and Hunter Creeks). The report noted that coho populations are currently located in the Rogue and Winchuck River basins, but are "very rare in the other coastal basins." Subsequent discussions with ODFW biologists has yielded additional, site-specific information regarding coho salmon in several southern Oregon streams, notably the Pistol and Chetco

Rivers. These discussions have raised the issue as to whether viable populations still occur in these basins. Until this issue is resolved, NMFS will continue to consider reaches accessible to coho salmon in these and other basins as critical habitat for the species. If additional information becomes available, NMFS will revise the critical habitat designation for this ESU as appropriate.

Similarly, NMFS acknowledges that Pilarcitos Creek and other coastal drainages may have little suitable habitat for coho salmon or are rarely inhabited by the species (although information provided by the commenter indicates that Pilarcitos Creek does contain habitat for other salmonids and that the creek could be used by coho salmon straying from other coastal streams). As noted previously, the paucity of information regarding coho salmon distribution precludes NMFS from identifying specific drainages or river reaches occupied by the species. In addition, the current low abundance of the species makes it difficult to rule out any stream for recovery since the remnant populations may need whatever habitat is available in order to persist. In the case of Pilarcitos Creek it is unclear whether the basin has been monifored sufficiently that firm conclusions about the species' presence/absence can be made. Instead, NMFS believes that the most prudent approach to characterizing critical habitat is to include all areas accessible to listed coho salmon. The key issue raised by these and other commenters is whether activities in the Pilarcitos Creek watershed and other coastal drainages could have an adverse effect on the listed species. In streams where there is limited species distribution information, NMFS biologists would make their best professional judgement about the access, to and suitability of, available habitat and what, if any, impacts would occur on the listed fish as a result of a specific activity. Few if any effects would result from an activity where it is well-documented that the species makes little use of a stream reach and the existing habitat conditions are poor.

NMFS agrees with the statements by one commenter that beaver dams and their associated habitat changes (e.g., channel flooding, and flow and siltation changes) often create ideal conditions for coho salmon. Some of the beneficial habitat effects from beaver activity include improved rearing and overwintering habitat, increased water volumes during low flows, and backwater habitat refuge areas during floods (Swanston, 1991). NMFS will identify beaver removal as an activity potentially requiring special management consideration, and encourages landowners and agencies to promote beaver habitation as one means by which to support coho salmon recovery. NMFS also agrees with this commenter's assertion that side/off-channel habitats are important for coho salmon and has retained reference to these habitats in this final rule. However, NMFS has not specifically identified trees and alluvial deposits as essential features because these habitat components are already addressed in the proposed rule's list of essential features, specifically the categories of substrate, cover/shelter, and riparian vegetation (see Critical Habitat of California and Southern Oregon Coho Salmon).

Finally, NMFS concurs that the San Francisco Bay stream "Arroyo Corte Madera Del Presidio" was misidentified as Mill Valley Creek and has corrected the error in this final rule. Also, NMFS clarifies for NPS that the basin containing Redwood Creek (hydrologic unit #18010102) is identified as containing critical habitat for the Southern Oregon/Northern California Coasts coho salmon ESU.

Adjacent Riparian Zones

Comment 6: While several commenters supported NMFS' proposal to include the adjacent riparian zone as critical habitat, the vast majority were against this approach. Many commenters noted the lack of justification for including adjacent riparian zones of 300 ft (91.4 meters (m)) from each side of a stream in the critical habitat proposal. Moreover, they felt that proposing to designate these zones was arbitrary and excessive. Several commenters offered possible lesser solutions to defining adjacent riparian zones, including: only the actual inhabited stream reaches themselves, a 50-ft or 30-m width to the riparian boundary, a site-potential tree height, and the 10-year flood plain. One commenter correctly noted that NMFS' proposal referenced a "horizontal" rather than "slope" distance, which was inconsistent with the Northwest Forest Plan's (NFP's) riparian reserve definition.

Response: NMFS agrees that the proposed rule did not adequately describe the rationale for identifying adjacent riparian zones as part of critical habitat. NMFS believes it is important to include these areas in the designation of critical habitat for several reasons. The ESA defines critical habitat to include areas "on which are found those physical or biological features * * * essential to the conservation of the species and * * * which may require special management considerations or protection." These essential features for salmon include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (see 50 CFR 424.12(b)). Riparian areas form the basis of healthy watersheds and affect these primary constituent elements; therefore, they are essential to the conservation of the species and need to be included as critical habitat.

NMFS' past critical habitat designations for listed anadromous salmonids have included the adjacent riparian zone as part of the designation. In the final designations for Snake River spring/summer chinook, fall chinook, and sockeye salmon (58 FR 68543, December 28, 1993), NMFS included the adjacent riparian zone as part of critical habitat and defined it in the regulation as those areas within a horizontal distance of 300 ft (91.4 m) from the normal high water line. In the critical habitat designation for Sacramento River winter run chinook (58 FR 33212, June 16, 1993), NMFS included "adjacent riparian zones" as part of the critical habitat but did not define the extent of that zone in the regulation. The preamble to that rule stated that the adjacent riparian zone was limited to "those areas that provide cover and shade."

Streams and stream functioning are inextricably linked to adjacent riparian and upland (or upslope) areas. Streams regularly submerge portions of the riparian zone via floods and channel migration, and portions of the riparian zone may contain off-channel rearing habitats used by juvenile salmonids, especially during periods of high flow. The riparian zone also provides an array of important watershed functions that directly benefit salmonids. Vegetation in the zone shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to salmonids, as well as the forage species they depend on (Reiser and Bjornn, 1979; Meehan, 1991; Federal Emergency Management Agency (FEMA), 1993; and Spence *et al.*, 1996). Human activities in the adjacent riparian zone, or in upslope areas, can harm stream function and can harm salmonids, both directly and indirectly, by interfering with the watershed functions described here. For example, timber harvest, road-building, grazing, cultivation, and other activities can increase sediment, destabilize banks,

reduce organic litter and woody debris, increase water temperatures, simplify stream channels, and increase peak flows. These adverse modifications reduce the value of habitat for salmon and, in many instances, may result in injury to, or mortality of, fish. Because human activity may adversely affect these watershed functions and habitat features, NMFS concluded the adjacent riparian zone could require special management consideration, and, therefore, was appropriate for inclusion in critical habitat.

The Snake River salmon critical habitat designation relied on analyses and conclusions reached by the Forest Ecosystem Management Assessment Team (FEMAT) 1993, regarding interim riparian reserves for fish-bearing streams on Federal lands within the range of the northern spotted owl. The interim riparian reserve recommendations in the FEMAT report were based on a systematic review of the available literature, primarily for forested habitats, concerning riparian processes as a function of distance from stream channels. The interim riparian reserves identified in the FEMAT report for fish-bearing streams on Federal forest lands are intended to (1) provide protection to salmonids, as well as riparian-dependent and associated species, through the protection of riparian processes that influence stream function, and (2) provide a high level of fish habitat and riparian protection until site-specific watershed and project analyses can be completed. The FEMAT report identified several alternative ways that interim riparian reserves providing a high level of protection could be defined, including the 300-ft (91.4 m) slope distance, a distance equivalent to two site-potential tree heights, the outer edges of riparian vegetation, the 100-year flood plain, or the area between the edge of the active stream channel to the top of the inner gorge, whichever is greatest. The U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) ultimately adopted these riparian reserve criteria as part of an Aquatic Conservation Strategy aimed at conserving fish, amphibians, and other aquatic-and riparian-dependent species in the Record of Decision (ROD) for the Northwest Forest Plan (NFP) (FEMAT ROD, 1994).

While NMFS has used the findings of the FEMAT report to guide its analyses in ESA section 7 consultations with USFS and BLM regarding management of Federal lands, NMFS recognizes that the interim riparian reserves may be conservative with regard to the protection of adjacent riparian habitat for salmonids since they are designed to protect terrestrial species that are riparian dependent or associated as well as salmonids. Moreover, NMFS' analyses have focused more on the stream functions important to salmonids and on how proposed activities will affect the riparian area's contribution to properly functioning conditions for salmonid habitat.

Since the adoption of the NFP, NMFS has gained experience working with Federal and non-Federal landowners to determine the likely effects of proposed land management actions on stream functions. In freshwater and estuarine areas, these activities include, but are not limited to, agriculture; forestry; grazing; diking and bank stabilization; construction/urbanization; dam construction/operation; dredging and dredged spoil disposal; habitat restoration projects; irrigation withdrawal, storage, and management; mineral mining; road building and maintenance; sand and gravel mining; wastewater/pollutant discharge; wetland and floodplain alteration; and woody debris/structure removal from rivers and estuaries. NMFS has developed numerous tools to assist Federal agencies in analyzing the likely impacts of their activities on anadromous fish habitat. With these tools, Federal agencies are better able to judge the impacts of their actions on salmonid habitat, taking into account the location and nature of their actions. NMFS' primary tool guiding Federal agencies is a document titled "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (NMFS, 1996a). This document presents guidelines to facilitate and standardize determinations of "effect" under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented throughout northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmonid risk factors and conservation strategies throughout the West Coast.

Several recent literature reviews have addressed the effectiveness of various riparian zone widths for maintaining specific riparian functions (e.g., sediment control, large woody debris recruitment) and overall watershed processes. These reviews provide additional useful information about riparian processes as a function of distance from stream channels. For example, Castelle et al. (1994) conducted a literature review of riparian zone functions and concluded that riparian widths in the range of 30 m (98 ft) appear to be the minimum needed to maintain biological elements of streams. They also noted that site-specific conditions may warrant substantially larger or smaller riparian management zones. Similarly, Johnson and Reba (1992) summarized the technical literature and found that available information supported a minimum 30-m riparian management zone for salmonid protection.

A recent assessment funded by NMFS and several other Federal agencies reviewed the technical basis for various riparian functions as they pertain to salmonid conservation (Spence *et al.*, 1996). These authors suggest that a functional approach to riparian protection requires a consistent definition of riparian ecosystems based on "zones of influence" for specific riparian processes. They noted that in constrained reaches where the active channel remains relatively stable through time, riparian zones of influences may be defined based on site-potential tree heights and distance from the active channel. In contrast, they note that, in unconstrained reaches (e.g., streams in broad valley floors) with braided or shifting channels, the riparian zone of influence is more difficult to define, but recommend that it is more appropriate to define the riparian zone based on some measure of the extent of the flood plain.

Spence *et al.* (1996) reviewed the functions of riparian zones that are essential to the development and maintenance of aquatic habitats favorable to salmonids and the available literature concerning the riparian distances that would protect these functional processes. Many of the studies indicate that riparian management widths designed to protect one function in particular, recruitment of large woody debris, are likely to be adequate to protect other key riparian functions. The reviewed studies concluded that the vast majority of large woody debris is obtained within one site-potential tree height from the stream channel (Murphy and Koski, 1989; McDade *et al.*, 1990; Robison and Beschta, 1990; Van Sickle and Gregory, 1990; FEMAT, 1993; and Cederholm, 1994). Based on the available literature, Spence *et al.* (1996) concluded that fully protected riparian management zones of one site-potential tree would adequately maintain 90 to 100 percent of most key riparian functions of Pacific Northwest forests if the goal was to maintain instream processes over a time frame of years to decades.

Based on experience gained since the designation of critical habitat for Snake River salmon and after considering public comments and reviewing

additional scientific information regarding riparian habitats, NMFS is re-defining coho salmon critical habitat based on key riparian functions. Specifically, the adjacent riparian area is defined as the area adjacent to a stream that provides the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. Specific guidance on assessing the potential impacts of land use activities on riparian functions can be obtained by consulting with NMFS (see **ADDRESSES**), local foresters, conservation officers, fisheries biologists, or county extension agents.

The physical and biological features that create properly functioning salmonid habitat vary throughout the range of coho salmon and the extent of the adjacent riparian zone may change accordingly, depending on the landscape under consideration. While a site-potential tree height can serve as a reasonable benchmark in some cases, site-specific analyses provide the best means to characterize the adjacent riparian zone because such analyses are more likely to accurately capture the unique attributes of a particular landscape. Knowing what may be a limiting factor to the properly functioning condition of a stream channel on a land use or land type basis and how that may or may not affect the function of the riparian zone will significantly assist Federal agencies in assessing the potential for impacts to listed coho salmon. On Federal lands within the range of the northern spotted owl, Federal agencies should continue to rely on the Aquatic Conservation Strategy of the NFP to guide their consultations with NMFS. Where there is a Federal action on non-Federal lands, Federal agencies should consider the potential effects of the activities they fund, permit, or authorize on the riparian zone adjacent to a stream that may influence the following functions: shade, sediment delivery to the stream, nutrient or chemical regulation, streambank stability, and the input of large woody debris or organic matter. In areas where the existing riparian zone is seriously diminished (e.g., in many urban settings and agricultural settings where flood control structures are prevalent), Federal agencies should focus on maintaining any existing riparian functions and restoring others where appropriate; (e.g., by cooperating with local watershed groups and landowners). NMFS acknowledges in its description of riparian habitat function that different land use types (e.g., timber, urban, and agricultural) will have varying degrees of impact and that activities requiring a Federal permit will be evaluated on the basis of disturbance to the riparian zone. In many cases the evaluation of an activity may focus on a particular limiting factor for a watercourse (e.g., temperature, stream bank erosion, sediment transport) and whether that activity may or may not contribute to improving or degrading the riparian habitat.

Finally, NMFS emphasizes that a designation of critical habitat does not prohibit landowners from conducting actions that modify streams or the adjacent terrestrial habitat. Critical habitat designation serves to identify important areas and essential features within those areas, thus alerting both Federal and non-Federal entities to the importance of the area for listed salmonids. Federal agencies are required by the ESA to consult with NMFS to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat in a way that appreciably diminishes the value of critical habitat for both the survival and the recovery of the listed species. The designation of critical habitat will assist Federal agencies in evaluating how their actions on Federal or non-Federal lands may affect listed coho salmon and determining when they should consult with NMFS on the impacts of their actions. When a private landowner requires a Federal permit that may result in the modification of coho salmon habitat, Federal permitting agencies will be required to ensure that the permitted action, regardless of whether it occurs in the stream channel, adjacent riparian zone, or upland areas, does not appreciably diminish the value of critical habitat for both the survival and recovery of the listed species or jeopardize the species' continued existence. For other actions, landowners should consider the needs of the listed fish and NMFS will assist them in assessing the impacts of actions on listed fish.

Dams and Barriers

Comment 7: Several commenters requested that NMFS conduct a more detailed analysis of areas above existing dams before concluding that these areas do not constitute critical habitat. Some suggested that NMFS consider installing fish ladders and passage facilities to allow coho salmon access to areas historically occupied. Two commenters requested that NMFS add additional dams to the lists of impassable manmade structures; specifically, Phoenix Dam in the Corte Madera Creek basin, California; and Willow Lake, Fish Lake, Agate Lake, Emigrant Lake, and Selmac Lake Dams in Oregon's Rogue River basin. One commenter provided information indicating that Matthews Dam in the Mad River basin should be excluded from the list of barriers because coho salmon historically never occupied the areas upstream. One commenter noted that Peters Dam was completed in 1953, not 1940 as stated in the proposed rule.

Response: NMFS' ESA implementing regulations specify that unoccupied areas are not to be included in critical habitat unless the present range would be inadequate to ensure the conservation of the species (50 CFR 424.12(e)). As the proposed rule states, dams currently block approximately 9 to 11 percent of the historic range of each ESU. The six additional dams identified by two commenters do not add significantly to these blocked percentages, and the ODFW stated that the amount of blocked historic habitat above the five Oregon dams is "thought to be low and not essential to maintaining or restoring coho salmon in the Rogue River basin." While the blocked areas are proportionally significant in certain basins, NMFS believes these areas are not currently essential for the recovery of either ESU because an array of habitat types (i.e., low and high gradient reaches) are still accessible in downstream areas historically used by coho salmon.

NMFS has reviewed, and concurs with, the information submitted by commenters requesting that six additional structures be added to the list of dams/reservoirs representing the upstream extent of critical habitat. Also, for the reasons presented by the commenter, NMFS agrees that Matthews Dam should not be included in the list of dams within the range of the Southern Oregon/Northern California Coasts ESU. NMFS also concurs with the corrections regarding the completion date for Peters Dam and the naming of Seeger Dam (previously identified as Nicasio Dam).

NMFS' intent in identifying specific dams in each ESU was to clarify the upstream extent of known occupied reaches for each ESU and to contrast these barriers with smaller, ephemeral barriers (e.g., culverts, push-up dams, etc.) that the agency does not view as impassable structures. NMFS does not intend to "write off" potential habitats above these dams, but instead will fully consider the need to include these blocked habitats in the recovery planning process and in ESA section 7 consultations. If future analyses reveal that these areas are essential for the

species' conservation or could contribute to an expedited recovery of either ESU, NMFS will revise the critical habitat designation and promote efforts to gain access to blocked habitats.

Marine Habitats

Comment 8: Numerous commenters questioned why NMFS had not designated critical habitat in marine areas. Some recommended that NMFS revise its designation based on the recent EFH recommendations which include marine areas over portions of the continental shelf.

Response: NMFS is currently re-evaluating its previous determination to exclude ocean areas as critical habitat for these ESUs, in particular the issue of whether marine areas require special management consideration or protection. If warranted, NMFS will revise this designation to include specific marine areas as part of coho salmon critical habitat.

Factors for the Species' Decline

Comment 9: Many commenters challenged the merits of the original listings and felt that the true cause of the coho declines lay in various spheres aside from freshwater habitat. Among the various causes cited were: tribal fishing, commercial fishing, sport fishing, foreign fishing, marine mammals, other protected predators, non-native species, birds, hatchery practices, dams, ocean conditions, and recent droughts and floods. Others provided evidence that mismanagement and pollution of freshwater habitats have been principal factors in the species' decline. Still others felt that extinction is a natural process and that little can (or should) be done about it.

Response: NMFS believes that the threatened extinction of these coho populations is the result of human, rather than natural factors, and will continue to encourage all efforts to protect and restore imperiled salmon and their habitat. NMFS acknowledges that a multitude of factors have contributed to the decline of coho salmon and has described these factors in more detail in the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997), in technical status reviews for the species (Bryant 1994; Weitkamp et al., 1995; NMFS 1997), and in documents detailing factors for decline for related species (NMFS 1996b and 1998). Many of the causes cited by commenters are human-controlled and NMFS believes that these can and must be addressed in the near-term to improve the salmon's chances for surviving such uncontrollable natural events as droughts, floods, and poor ocean conditions.

ESA Definitions and Standards

Comment 10: Some commenters requested that NMFS clarify the meaning of "harm" under the ESA, and several commenters took exception to NMFS' assertion that adverse modification of critical habitat is equivalent to jeopardizing the listed species.

Response: On May 1, 1998, NMFS published a proposed rule to define the term "harm", which is contained in the definition of "take" in the ESA (63 FR 24148). Section 9 of the ESA makes it illegal to take an endangered species of fish or wildlife. The definition of "take" is to "harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct." (16 U.S.C. 1532(19)). FWS has promulgated a regulation further defining the term "harm" to eliminate confusion concerning its meaning (50 CFR 17.3). FWS' definition of "harm" with respect to habitat destruction has been upheld by the Supreme Court as a reasonable interpretation of the term and supported by the broad purpose of the ESA to conserve endangered and threatened species (See *Babbitt* v. *Sweet Home Chapter of Communities for a Greater Oregon,* 115 S. Ct. 2407, 2418 (1995)). With the listings of Pacific salmon and anadromous trout stocks, potentially affected parties have questioned whether NMFS also interprets "harm" to include habitat destruction. The May 1, 1998, proposed rule will, if adopted, establish NMFS' interpretation of "harm" consistent with that of FWS.

NMFS' proposed rule interprets the term "harm" in the context of habitat destruction as an act that actually kills or injures fish or wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures fish or wildlife by significantly impairing essential behavioral patterns, including breeding, spawning, rearing, migrating, feeding, and sheltering (Compare 50 CFR 17.3). The habitat modification or degradation contained in the definition of "harm" is limited to those actions that actually kill or injure listed fish or wildlife. NMFS believes that this proposed definition is reasonable for the conservation of the habitats of listed species and is in keeping with Congress' intent under the ESA. Public input has been solicited on this proposed definition and a final rule will be published after taking all comments into account.

With regard to comments on the "adverse modification" and "jeopardy standards", NMFS did not assert that adverse modification of critical habitat is equivalent to jeopardizing listed species. Section 7 of the ESA requires that Federal agencies refrain from contributing to the destruction or adverse modification of critical habitat. This requirement is in addition to the prohibition against jeopardizing the continued existence of a listed species, and it is the only mandatory legal consequence of a critical habitat designation. Implementing regulations define "jeopardize the continued existence of" and "destruction or adverse modification of" in similar terms. "Jeopardize the continued existence of" means to engage in an action "that reasonably would be expected * * * to reduce appreciably the likelihood of both the survival and recovery of a listed species." 50 CFR 402.02. "Destruction or adverse modification of" means an "alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species." 50 CFR 402.02. Using these definitions, Federal actions found to cause an adverse modification are nearly always found to also jeopardize the species concerned, and the existence of critical habitat designation does not materially affect the outcome of consultation. Biological opinions which conclude that a Federal agency action is likely to adversely modify critical habitat but is not likely to jeopardize the species for which it is designated are extremely rare historically; none have been issued in recent years. However, a situation in which an adverse modification did not result in jeopardy could arise. Such a situation might involve a Federal action in critical habitat outside of current range of the species, where the action would not reduce the current reproduction, distribution, or numbers of the species, but would appreciably reduce the value of critical habitat for survival and recovery.

Adequacy of Existing Conservation Plans and Efforts

Comment 11: Several commenters stated that existing management plans and conservation initiatives were sufficient to protect coho salmon and its habitat, and, therefore, the proposed critical habitat designation is not warranted. Some commenters admonished NMFS to engage in local salmon conservation programs and warned that designating critical habitat could dampen these efforts.

Response: The designation of critical habitat relies on evaluating which areas are occupied and essential for the species' conservation (see Definition of

Critical Habitat). Moreover, NMFS considered existing regulatory mechanisms and conservation plans applicable to Central California Coast and Southern Oregon/Northern California Coasts coho salmon and their habitats in the final listing determinations (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). In those **Federal Register** documents, a variety of Federal and state laws and programs were found to have affected the abundance and survival of anadromous fish populations in both ESUs. NMFS concluded that available regulatory mechanisms were inadequate and that regulated activities continued to represent a potential threat to the species' existence.

NMFS agrees with commenters that state and local watershed efforts are key to the coho salmon's recovery and long-term survival. Species listings and critical habitat designations under the ESA should in no way hamper efforts to help coho salmon and other imperiled species in the Pacific Northwest and California. NMFS encourages such efforts, as evidenced by our involvement with an array of programs in the range of both ESUs, including: helping to fund watershed coordinators through the Oregon Governor's Watershed Enhancement Board, working with numerous Resource Conservation Districts and watershed restoration efforts (including the Mattole River Restoration Council, and the Salmon, South Fork Trinity, Shasta, and Scott River Coordinated Resource Management Plans), participating in the development of California's recovery and strategic management plans for coastal salmonids, working with the California Governor's Biodiversity Councils and assisting with implementation of the Oregon Plan for Salmon and Watersheds (OPSW). NMFS recognizes the significant benefits that will accrue to salmon as a result of these efforts. In fact, NMFS has promulgated interim protection regulations (i.e., ESA 4(d) rule) that provide specific exceptions for the significant harvest, hatchery, habitat restoration, and monitoring efforts contained in the OPSW and other efforts currently underway in the range of the Southern Oregon/Northern California Coasts ESU (62 FR 38479). All parties interested in obtaining technical assistance in support of salmon conservation (or other information related to NMFS' ESA activities) are encouraged to contact NMFS field office personnel in Roseburg, Oregon, and in Eureka, Long Beach, and Santa Rosa, California (see **FOR FURTHER INFORMATION CONTACT**).

Tribal Lands

Comment 12: On June 3, 1998, the Hoopa Valley Tribe (HVT) specifically requested that NMFS not designate critical habitat on their reservation and that NMFS waive ESA section 7 consultation requirements when the tribe has a plan in place which protects fish habitat and meets the requirements of the Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997 (Secretarial Order).

Response: The unique and distinctive relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, that differentiates tribes from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to the treaties, statutes, judicial decisions, executive orders and other agreements that define the relationship between the United States and tribes, lands have been retained by Indian tribes or have been set aside for tribal use. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

As a means of recognizing the responsibilities and relationship between the United States and Indian tribes, the Secretaries of Commerce and Interior issued the Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997 (Secretarial Order). The Secretarial Order clarifies the responsibilities of NMFS and FWS when carrying out authorities under the ESA and requires that they consult with, and seek participation of, the affected Indian tribes to the maximum extent practicable. The Secretarial Order further provides that the Services * * * "shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species."

Pursuant to the requirements of the Secretarial Order and in response to written and verbal comments provided by the Hoopa Valley Tribe (HVT) and other tribes in California, as well as the Bureau of Indian Affairs (BIA), NMFS engaged several tribes in government-to-government consultation concerning the inclusion of tribal lands in the final critical habitat designation for coho salmon. Prior to initiating government-to-government consultation, NMFS reviewed available information from the BIA and concluded that the tribal lands most likely to be affected by a final critical habitat designation for coho salmon were the Yurok Reservation, Hoopa Valley Reservation, Karuk Reservation, and the Round Valley Reservation, all of which are located in the Southern Oregon/Northern California Coasts ESU. The major river basins containing these reservation lands and listed coho salmon populations are the Klamath, Trinity, and Eel River basins. Accordingly, NMFS' government-to-government consultation efforts concerning coho salmon critical habitat were focused on these tribes. In addition to these larger tribal reservations, there are a large number of smaller Indian rancherias located in both the Southern Oregon/Northern California Coasts and Central California Coast ESUs which could potentially be affected, depending on their specific locations.

As part of the government-to-government consultation process called for in the Secretarial Order, NMFS solicited written comments from the Yurok Tribe, Karuk Tribe of California, HVT, and the Round Valley Tribe regarding the inclusion of tribal lands in the final critical habitat designation, and also met with representatives from each tribe to discuss the issue and their concerns in greater detail. In the course of these discussions, each tribe expressed its opposition to the inclusion of tribal lands in the final critical habitat designation. The Yurok Tribe expressed its support for the recovery of coho salmon and other non-listed species, but felt that its current resource management plans and practices already promoted the conservation and recovery of these species. They were also concerned that designating tribal lands as critical habitat would place an additional burden upon the Tribe, but recognized that impacts to critical habitat would only be considered in the course of section 7 consultations. Similarly, HVT expressed its support for coho salmon recovery, but argued that its existing resource management plans and other efforts already contribute to the recovery of coho salmon and other species on the reservation, and more

than compensate for the small impact that tribal activities have on the listed species when compared with non-tribal activities in the Trinity River basin (e.g., Federal water project operations, timber harvest, etc). In its view, NMFS should give deference to tribal management efforts in accordance with the Secretarial Order and thereby recognize the contribution that tribal management makes for the recovery of listed coho salmon. In addition, the tribe asserted that including tribal lands in the critical habitat designation would infringe on its sovereignty and was inconsistent with the approach taken by FWS when it excluded HVT lands from the critical habitat designation for the marbled murrelet.

Based on a consideration of the Federal Government's trust responsibilities to Indian tribes, particularly as addressed in the Secretarial Order, and following government-to-government consultation with affected Indian tribes, NMFS has determined that tribal lands should be excluded from the final critical habitat designation for coho salmon. Although NMFS continues to believe that habitat on tribal lands which is currently accessible to coho salmon is important for the long-term survival and recovery of the species, we believe that ESA section 7 consultations through BIA and other Federal agencies, in combination with the continued development and implementation of tribal resource management programs that support coho salmon conservation represent an alternative to designating critical habitat that will result in a proportionate and essential contribution to coho salmon conservation that is also consistent with the goals of the Secretarial Order.

The tribal lands (reservations or rancherias) which are excluded from the final critical habitat designation for coho salmon are identified in Tables 5 (Central California Coast ESU) and 6 (Southern Oregon/Northern California Coasts ESU) by individual USGS hydrologic unit. Excluded tribal lands in the Central California Coast ESU include: the Cloverdale Rancheria, Coyote Valley Rancheria, Dry Creek Rancheria, Guidiville Rancheria, Hopland Rancheria, Lytton Rancheria, Manchester/Point Arena Rancheria, Pinoleville Rancheria, and Stewarts Point Rancheria. Excluded tribal lands in the Southern Oregon/Northern California Coast ESU include: the Big Lagoon Rancheria, Blue Lake Rancheria, Elk Valley Rancheria, Hoopa Valley Reservation, Karuk Reservation, Laytonville Rancheria, Quartz Valley Reservation, Resighini Rancheria, Round Valley Reservation, Sherwood Valley Rancheria, Smith River Rancheria, and Yurok Reservation.

Consistent with the provisions of the Secretarial Order, NMFS will respect the exercise of tribal sovereignty over the management of Indian lands and tribal trust resources, and give deference to tribal conservation and management plans for tribal trust resources to the extent that they address the conservation needs of coho salmon or other listed species. NMFS is currently engaged in a programmatic ESA section 7 consultation with BIA and a government-to-government consultation with HVT regarding its Forest Management Plan (FMP) and its associated standards and guidelines. Through these consultation processes, NMFS is working with HVT and BIA to determine the effects of FMP implementation on coho salmon and its habitat, including adjacent riparian and upslope habitat, as well as to ensure that FMP implementation on tribal lands supports the conservation of coho salmon.

Agencies Affected by Critical Habitat Designation

Comment 13: NPS requested that NMFS include them as an agency affected by the critical habitat designation due to the fact that they manage and fund salmonid restoration projects at Golden Gate National Recreation Area, Muir Woods National Monument, and Redwood National and State Parks. The U.S. Department of Interior requested that the Natural Resource Conservation Service (NRCS) and FEMA be identified as well, because both agencies can conduct or authorize activities that alter coho salmon critical habitat. In addition, they requested that NMFS identify an "emergency communications network" which would allow NMFS to provide these agencies with fisheries technical expertise during cleanups associated with floods and other emergencies.

Response: NMFS has reviewed, and concurs with, the information submitted by both commenters and will add the NPS, NRCS, and FEMA to the list of affected agencies.

NMFS agrees with the commenters requesting that guidelines be established so that emergency response agencies (e.g., FEMA) can avoid adversely modifying critical habitat during their mitigation actions after a natural disaster. To that end, NMFS is in contact with the NRCS and is giving input on their Programmatic Environmental Impact Statement on Emergency Watershed Protection actions. NMFS hopes that through such input it will be able to help establish a strong set of guidelines for protecting critical habitat when a natural disaster strikes and immediate action must be taken to protect human life and property. Further, it is NMFS' position that with such a set of guidelines in place, there will be no reason for NMFS to become involved in making on-the-ground decisions regarding disaster mitigation actions. The guidelines will protect critical habitat in advance and, in most cases, thereby take the place of the difficult and potentially time-consuming process of emergency consultation. Thus, the guidelines themselves will largely obviate the need for an emergency communications network.

Changes to the Proposed Rule

Based on comments and new information received on the proposed rule, NMFS is modifying the final critical habitat designation for these two ESUs as follows:

(1) Phoenix, Willow Lake, Fish Lake, Agate Lake, Emigrant Lake, and Selmac Lake Dams have been added to the list of dams/reservoirs representing the upstream extent of critical habitat for these ESUs.

(2) Matthews Dam is removed from the list of dams/reservoirs representing the upstream extent of critical habitat for the Southern Oregon/Northern California Coasts ESU.

(3) Nicasio Dam is corrected to "Seeger Dam."

(4) Mill Valley Creek is corrected to "Arroyo Corte Madera Del Presidio."

(5) Adjacent riparian zones have been re-defined and are now based on a functional (rather than quantitative) description.

(6) NPS, Environmental Protection Agency (EPA), NRCS, FEMA, and BIA have been included as agencies affected by the critical habitat designation.

(7) Beaver removal, diking, and streambank stabilization have been identified as activities that may require special management consideration.

(8) Tribal lands in northern California are excluded from the critical habitat designations.

Critical Habitat of California and Southern Oregon Coho Salmon

Biological information for listed coho salmon can be found in NMFS' species status reviews (Bryant, 1994; Weitkamp *et al.*, 1995; NMFS, 1997), species life history summaries (Shapavalov and Taft, 1954; Laufle *et al.*, 1986; Hassler, 1987; Anderson, 1995; Sandercock, 1991), and in **Federal Register** notices of proposed and final listing determinations (59 FR 21744, April 26, 1994; 60 FR 38011, July 25, 1995; 61 FR

56138, October 31, 1996; 62 FR 24588, May 6, 1997).

The current geographic range of coho salmon from the Oregon and California coasts includes vast areas of the North Pacific ocean, nearshore marine zone, and extensive estuarine and riverine areas. The marine distribution south of Punta Gorda, California, appears to encompass a relatively narrow, nearshore strip approximately 100 km wide (Taft, 1937; Shapovalov and Taft, 1954; Laufle *et al.*, 1986; NOAA, 1990; Weitkamp *et al.*, 1995). North of Punta Gorda, the distribution widens to encompass nearly all marine areas north of 41° latitude (Wright, 1968; Godfrey *et al.*, 1975; NOAA, 1990). Major rivers, estuaries, and bays known to support coho salmon within the Southern Oregon/Northern California Coasts ESU include the Rogue River, Smith River, Klamath River, Mad River, Humboldt Bay, Eel River, and Mattole River. Within the range of the Central California Coast ESU, major rivers, estuaries, and bays include the Ten Mile, Noyo, Big, Navarro, Garcia, Gualala, and Russian Rivers, and Tomales and San Francisco Bays (Emmett *et al.*, 1991; Nickelson *et al.*, 1992; Brown and Moyle, 1991; Bryant, 1994; California Department of Fish and Game (CDFG), 1994; Weitkamp *et al.*, 1995). Many smaller coastal rivers and streams in each ESU also provide essential estuarine habitat for coho salmon, but access is often constrained by seasonal fluctuations in hydrologic conditions.

Any attempt to describe the current distribution of coho salmon must take into account the fact that extant populations and densities are a small fraction of historical levels. All coho salmon stocks in the Central California Coast ESU are extremely depressed relative to past abundance and there are limited data to assess population numbers or trends. The main coho salmon stocks in this region are from the Ten Mile River, Big River, Nolo River, Navarro River, Garcia River, Gualala River, Russian River, Lagunitas Creek, Waddell Creek, and Scott Creek. Several of these stocks are heavily influenced by hatcheries and, apparently, have little natural production in mainstem reaches. Historically, coho salmon abundance within this region was estimated from 50,000 to 125,000 native coho salmon. Presently, coho salmon abundance within this region is estimated to be less than 5,000 naturally reproducing fish, and a vast majority of these are considered to be hatchery origin fish (Brown and Moyle, 1991; Bryant, 1994; CDFG, 1994).

All coho salmon stocks between Punta Gorda and Cape Blanco in the Southern Oregon/Northern California Coasts ESU are also depressed relative to past abundance, and there are limited data to assess population numbers or trends currently. The main coho salmon stocks in this region are from the Rogue, Klamath, and Trinity Rivers, and the latter two are heavily influenced by hatcheries and have little natural production in mainstem reaches. Other important stocks within this ESU include the Winchuck, Chetco, Smith, Mad, Elk, Eel, and the Mattole Rivers. Historically, coho salmon abundance within this region was estimated from 150,000 to 400,000 native fish. Presently, abundance is estimated to be less than 30,000 naturally reproducing coho salmon, and a vast majority of these (roughly 20,000) are considered to be hatchery origin fish (Brown and Moyle, 1991, Bryant, 1994; CDFG, 1994; Weitkamp *et al.*, 1995).

Within the range of both ESUs, the species' life cycle can be separated into five essential habitat types: (1) Juvenile summer and winter rearing areas ; (2) juvenile migration corridors; (3) areas for growth and development to adulthood; (4) adult migration corridors; and (5) spawning areas. Areas 1 and 5 are often located in small headwater streams and side channels, while areas 2 and 4 include these tributaries as well as mainstem reaches and estuarine zones. Growth and development to adulthood (area 3) occurs primarily in near-and off-shore marine waters, although final maturation takes place in freshwater tributaries when the adults return to spawn. Within these areas, essential features of coho salmon critical habitat include adequate; (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by each of these coho salmon ESUs and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by CDFG, 1965; California Advisory Committee on Salmon and Steelhead Trout, 1988; Brown and Moyle, 1991; Bjornn and Reiser, 1991; Nehlsen *et al.*, 1991; Higgins *et al.*, 1992; California State Lands Commission, 1993; Botkin *et al.*, 1995; NMFS, 1996b; and Spence *et al.*, 1996.

NMFS believes that the current range of the species encompasses all essential habitat features and is adequate to ensure the species' conservation. Therefore, designation of habitat areas outside the species' current range (i.e., historical habitats above the 17 dams identified in Tables 5 and 6) is not necessary. For reasons described earlier in this document, NMFS has revised its designation of freshwater and estuarine critical habitat to include riparian areas that provide the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. It is important to note that habitat quality in this range is intrinsically related to the quality of riparian and upland areas and of inaccessible headwater or intermittent streams which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho in downstream reaches. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions are believed to have a major influence on coho salmon survival (see review in Pearcy, 1992). Although NMFS has not included the ocean as critical habitat in this final rule, the agency will be re-evaluating this issue and may propose including specific marine zones for each ESU in a separate **Federal Register** document.

The regulatory descriptions of critical habitat for each ESU can be found at the end of this **Federal Register** document.

Need for Special Management Considerations or Protection

To ensure that the essential areas and features are maintained or restored, special management may be needed. Activities that may require special management considerations for freshwater and estuarine life stages of listed coho salmon include, but are not limited to (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) beaver removal; (7) irrigation water withdrawals and returns; (8) mining; (9) road construction; (10) dam operation and maintenance; (11) diking and streambank stabilization; and (12) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed; however, they indicate the potential types of activities that will require consultation in the future. No special management considerations have been identified for listed coho salmon while

they are residing in the ocean environment.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of listed coho salmon in freshwater and estuarine habitats. More in-depth discussions are contained in the response to comments under "Scope and Extent of Critical Habitat" and in **Federal Register** documents announcing the listing determinations for each ESU (61 FR 56138, October 31, 1996; 62 FR 24588, May 6, 1997). These activities include water and land management actions of Federal agencies (i.e., USFS, U.S. Bureau of Land Management (BLM), U.S. Army Corps of Engineers (COE), U.S. Bureau of Reclamation (BOR), the Federal Highway Administration (FHA), NRCS, NPS, BIA, and the Federal Energy Regulatory Commission (FERC)) and related or similar actions of other federally regulated projects and lands, including livestock grazing allocations by the USFS and BLM; hydropower sites licensed by the FERC; dams built or operated by COE or BOR; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, BLM, and NPS; and mining and road building activities authorized by the states of California and Oregon. Other actions of concern include dredge and fill, mining, diking, and bank stabilization activities authorized or conducted by COE, habitat modifications authorized by the FEMA, and approval of water quality standards and pesticide labeling and use restrictions administered by EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, BOR, COE, FHA, NRCS, NPS, BIA, FEMA, EPA, and FERC. This designation will provide these agencies, private entities, and the public with clear notification of critical habitat designated for listed coho salmon and the boundaries of the habitat and protection provided for that habitat by the ESA section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on listed coho salmon and their critical habitat and in determining if consultation with NMFS is needed.

Expected Economic Impacts of Designating Critical Habitat

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see response to comments under Economic Considerations). Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential to the conservation of the species. For these coho salmon ESUs NMFS has determined that the present geographic extent of their freshwater and estuarine range is likely sufficient to provide for conservation of the species, although the quality of that habitat needs improvement on many fronts. Because NMFS is not designating any areas beyond the current range of these coho ESUs as critical habitat, the designation will result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

Change in Designation of Critical Habitat and Need for Correction

In the proposed rule issued on November 25, 1997, (62 FR 62741), Central California Coast and Southern Oregon/Northern California Coasts coho salmon ESUs were added to part 226, subpart C as §§ 226.24 and 226.25 respectively. Since November 25, NMFS has issued a final rule (64 FR 140525, March 23, 1999) consolidating and reorganizing existing regulations regarding implementation of the ESA. In this final rule, critical habitat designations for the Central California Coast and Southern Oregon/Northern California Coasts ESUs have been added as § 226.210 paragraphs (a) and (b), respectively.

This document also corrects the date for the USGS citation for Hydrologic units as defined by the Department of the Interior (DOI), U.S. Geological Survey contained in § 226.23. The final rule consolidating and reorganizing existing regulations regarding implementation of the ESA (64 FR 14052, March 23, 1999) also redesignated § 226.23 as § 226.206.

References

The complete citations for the references used in this document can be obtained by contacting Garth Griffin, NMFS (see **FOR FURTHER INFORMATION CONTACT**).

Classification

NMFS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for critical habitat designations made pursuant to the ESA. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

This rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS is designating only the current range of these coho salmon ESUs as critical habitat. Given the affinity of this species to spawn in small streams, this current range encompasses a wide range of habitat, including small tributary reaches, as well as mainstem, off-channel and estuarine areas. Areas excluded from this designation include historically-occupied areas above 17 impassable dams and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities, beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to insure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 of the ESA are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the action on local businesses, organizations, and governments.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration with the proposed rule that, if adopted, this rule would not have a significant economic impact on a substantial number of small entities. NMFS received two comments, addressed above, concerning this certification. These comments did not result in any change regarding the certification. As a result, no final Regulatory Flexibility Act analysis was prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: April 28, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

§ 226.206 [Corrected]

2. In § 226.206(a), in the fourth sentence, remove "1986" and add in its place, "1987".

3. Section 226.210 is added to read as follows:

§ 226.210 Central California Coast Coho Salmon (Oncorhynchus kisutch), Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho within the range of the ESUs listed, except for reaches on Indian lands defined in Tables 5 and 6 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Tables 5 and 6 to this part for all of the coho ESUs listed in this section. Accessible reaches are those within the historical range of the ESUs that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of each ESU identified in Tables 5 and 6 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1987, and the following DOI, USGS, 1:500,000 scale hydrologic unit maps: State of Oregon, 1974 and State of California, 1978 which are incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Central California Coast Coho Salmon (Oncorhynchus kisutch).* Critical habitat is designated to include all river reaches accessible to listed coho salmon from Punta Gorda in northern California south to the San Lorenzo River in central California, including Arroyo Corte Madera Del Presidio and Corte Madera Creek, tributaries to San Francisco Bay. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 5 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 5 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) *Southern Oregon/Northern California Coasts Coho Salmon (Oncorhynchus kisutch).* Critical habitat is designated to include all river reaches accessible to listed coho salmon between Cape Blanco, Oregon, and Punta Gorda, California. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 6 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 6 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

3. Tables 5 and 6 are added to part 226 to read as follows: Table 5 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Central California Coast Coho Salmon, Tribal Lands within the Range of the ESU, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU[1 2]	Dams (reservoirs)
San Lorenzo-Soquel	18060001	Santa Cruz (CA), San Mateo (CA)	Newell Dam (Loch Lomond).
San Francisco Coastal South.	18050006	San Mateo (CA).	
San Pablo Bay	18050002	Marin (CA), Napa (CA)	Phoenix Dam (Phoenix Lake).
Tomales-Drake Bays	18050005	Marin (CA), Sonoma (CA)	Peters Dam (Kent Lake); Seeger Dam (Nicasio Reservoir).
Bodega Bay	18010111	Marin (CA), Sonoma (CA).	
Russian	18010110	Sonoma (CA), Mendocino (CA)—*Cloverdale Rancheria; Coyote Valley Rancheria; Dry Creek Rancheria; Guidiville Rancheria; Hopland Rancheria; Lytton Rancheria; Pinoleville Rancheria; Stewarts Point Rancheria.*	Warm Springs Dam (Lake Sonoma); Coyote Dam (Lake Mendocino).
Gualala-Salmon	18010109	Sonoma (CA), Mendocino (CA).	
Big-Navarro-Garcia	18010108	Mendocino (CA)— *Manchester/Point Arena Rancheria;*.	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

Table 6 to Part 226—Hydrologic Units and Counties Containing Critical Habitat for Southern Oregon/Northern California Coasts Coho Salmon, Tribal Lands within the Range of the ESU, and Dams/Reservoirs Representing the Upstream Extent of Critical Habitat.

Hydrologic unit name	Hydrologic unit No.	Counties and tribal lands contained in hydrologic unit and within the range of ESU[1 2]	Dams (reservoirs)
Mattole	18010107	Humboldt (CA), Mendocino (CA).	
South Fork Eel	18010106	Mendocino (CA), Humboldt (CA)—*Laytonville Rancheria; Sherwood Valley Rancheria.*	
Lower Eel	18010105	Mendocino (CA), Humboldt (CA), Trinity (CA).	
Middle Fork Eel	18010104	Mendocino (CA), Trinity (CA), Glenn (CA), Lake (CA)—*Round Valley Reservation.*	
Upper Eel	18010103	Mendocino (CA), Glenn (CA), Lake (CA)	Scott Dam (Lake Pillsbury).
Mad-Redwood	18010102	Humboldt (CA), Trinity (CA)—*Big Lagoon Rancheria; Blue Lake Rancheria.*	
Smith	18010101	Del Norte (CA), Curry (OR)—*Elk Valley Rancheria; Smith River Rancheria.*	
South Fork Trinity	18010212	Humboldt (CA), Trinity (CA).	
Trinity	18010211	Humboldt (CA), Trinity (CA)—*Hoopa Valley Reservation.*	Lewiston Dam (Lewiston Reservoir).
Salmon	18010210	Siskiyou (CA).	
Lower Klamath	18010209	Del Norte (CA), Humboldt (CA), Siskiyou (CA)—*Karuk Reservation; Resighini Rancheria; Yurok Reservation.*	
Scott	18010208	Siskiyou (CA)—*Quartz Valley Reservation.*	
Shasta	18010207	Siskiyou (CA)	Dwinnell Dam (Dwinnell Reservoir).
Upper Klamath	18010206	Siskiyou (CA), Jackson (OR)	Irongate Dam (Irongate Reservoir).
Chetco	17100312	Curry (OR), Del Norte (CA).	
Illinois	17100311	Curry (OR), Josephine (OR), Del Norte (CA)	Selmac Lake Dam (Lake Selmac).
Lower Rogue	17100310	Curry (OR), Josephine (OR), Jackson (OR).	
Applegate	17100309	Josephine (OR), Jackson (OR), Siskiyou (CA)	Applegate Dam (Applegate Reservoir).
Middle Rogue	17100308	Josephine (OR), Jackson (OR)	Emigrant Lake Dam (Emigrant Lake).
Upper Rogue	17100307	Jackson (OR), Klamath (OR), Douglas (OR)	Agate Lake Dam (Agate Lake); Fish Lake Dam (Fish Lake); Willow Lake Dam (Willow Lake); Lost Creek Dam (Lost Creek Reservoir).
Sixes	17100306	Curry (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

[FR Doc. 99–11187 Filed 5–4–99; 8:45 am]
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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 981231333–8333–01; I.D. 042299A]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to the restrictions to the Pacific Coast groundfish limited entry fisheries for Dover sole and trawl-caught sablefish in the April-May cumulative limit period, and for *Sebastes* complex species (including bocaccio, canary rockfish, and yellowtail rockfish) and for widow rockfish in the June-July, and August-September cumulative limit periods. NMFS announces changes to the restrictions on open access landings of groundfish by vessels fishing with exempted trawl gear. NMFS also announces the season start and end dates, and the tier limits for the 1999 limited entry, regular sablefish fishery. These restrictions are intended to extend the fisheries as long as possible during the year while keeping landings within the 1999 optimum yields (OYs) for these species and allocations.

DATES: Effective from 0001 hours local time (l.t.) May 1, 1999, for changes to limited entry Dover sole and trawl-caught sablefish limits, for changes to open access exempted trawl groundfish limits, and for the announcement of the limited entry, fixed gear regular sablefish fishery; effective from 0001 hours l.t. June 1, 1999, for changes to limited entry widow rockfish, *Sebastes* complex, yellowtail rockfish, canary rockfish, and bocaccio. For vessels operating in the B platoon, effective from 0001 hours l.t. May 16, 1999, for changes to limited entry Dover sole and trawl-caught sablefish limits; effective from 0001 hours l.t. June 16, 1999, for changes to limited entry widow rockfish, *Sebastes* complex, yellowtail rockfish, canary rockfish, and bocaccio. These changes are in effect, unless modified, superseded or rescinded, until the effective date of the 2000 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments will be accepted through May 20, 1999.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or William Hogarth, Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its April 5 through 9, 1999, meeting in Sacramento, CA.

Dover Sole and Trawl-Caught Sablefish Trip Limit Increases—Effective May 1, 1999

As described in the 1999 annual specifications and management measures (64 FR 1316, January 8, 1999), the Council introduced a new cumulative trip limit regime for 1999 that divides the fishing year into three different phases based on 3-month, 2-month, and 1-month periods, with specified limits for the different time periods for each species in each phase. The limits were set to keep landings within OYs for managed species, and to distribute varying percentages of the landings of each species between the different cumulative limit periods.

The first fishing phase in 1999 was a single 3-month cumulative limit period from January 1 through March 31, 1999. The Dover sole vessel cumulative trip limit for that period was 70,000 lb (31,752 kg), and the fleet was expected to take 35 percent of the 1999 Dover sole landed catch OY of 8,955 mt, or 3,134 mt, during that period. The best available information at the April Council meeting indicates that 2,570 mt of Dover sole had been landed through March 27, 1999. To give the fleet access to Dover sole not taken in the January 1 through March 31 cumulative limit period, the Council recommended increasing the Dover sole cumulative limit for the April 1 through May 31 cumulative limit period from 20,000 lb (9,072 kg) to 25,000 lb (11,340 kg). This change would be effective for only the April 1 through May 31 cumulative limit period; the June 1 through July 31, and the August 1 through September 30 cumulative trip limits for Dover sole will return to 20,000 lb (9,072 kg), unless altered by future inseason actions.

The trawl-caught sablefish cumulative trip limit for the January 1 through March 31 period was 13,000 lb (5,897 kg), and the fleet was expected to take 20 percent of the 1999 limited entry trawl-caught sablefish allocation of 3,475 mt, or 695 mt, during that period. The best available information at the April Council meeting indicates that 504 mt of sablefish had been landed by limited entry trawl vessels through March 27, 1999. To give the fleet access to sablefish not taken in the January 1 through March 31 cumulative limit period, the Council recommended increasing the trawl-caught sablefish cumulative limit for the April 1 through May 31 cumulative limit period from 10,000 lb (4,536 kg) to 12,000 lb (5,443 kg). This change would also be effective for only the April 1 through May 31 cumulative limit period; the June 1 through July 31 and August 1 through September 30 cumulative trip limits for trawl-caught sablefish will return to 10,000 lb (4,536 kg), unless altered by future inseason actions. These lower limits for Dover sole and sablefish are expected to be more appropriate for the summer months, when Dover sole and sablefish are more aggregated with thornyheads. Shortspine thornyheads are relatively low in abundance, so trip limits for other species in the Dover sole/thornyheads/trawl-caught sablefish complex are higher in the months when those species are less inter-mixed.

Changes to Open Access Groundfish Landings Restrictions for Vessels Fishing With Exempted Trawl Gear—Effective May 1, 1999

On April 7, 1999, NMFS published an inseason action for groundfish trip limit changes that were effective April 1 (64 FR 16862). Among other changes, that document implemented a March 1999 Council recommendation to restrict open access landings of groundfish by vessels engaged in fishing for pink shrimp with exempted trawl gear such that the amount of groundfish in any one landing could not exceed the amount of pink shrimp in that landing. At its April meeting, the Council recommended placing a similar restriction on vessels targeting other species (spot and ridgeback prawns, California halibut, and sea cucumber) with exempted trawl gear. These changes are intended to discourage fishers from targeting groundfish with exempted trawl gear. The Council recommended an exception to this restriction for spiny dogfish, such that the amount of spiny dogfish in a landing made by vessels using exempted trawl gear and targeting spot or ridgeback prawns, California halibut, or sea cucumber could exceed the amount of the target species in that landing. Spiny dogfish are abundant off the Pacific coast and fishers targeting spot or ridgeback prawns occasionally find that their prawn-targeting tows have inadvertently captured a net full of spiny dogfish. Spiny dogfish landings would continue to be constrained by the overall groundfish 300 lb (136 kg) per trip limit.

Widow Rockfish Trip Limit Decrease—Effective June 1, 1999

The widow rockfish vessel cumulative trip limit for the January 1 through March 31 period was 70,000 lb (31,753 kg), and the limited entry fleet was expected to take 35 percent of its 1999 widow rockfish allocation of 3,777 mt, or 1,322 mt, during that period. The best available information at the April Council meeting indicated that 1,362 mt of widow rockfish had been landed coastwide through March 27, 1999. Although this amount is close to the 1,322 mt target for that period, the Council's Groundfish Management Team commented that the pace of the fishery indicated that widow rockfish cumulative limits for the summer cumulative limit periods were set too high, and that the expected rates of landings could result in the fishery reaching the widow rockfish allocation before the end of the year. For these reasons, the Council recommended decreasing the widow rockfish cumulative limit for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods from 16,000 lb (7,257 kg) to 11,000 lb (4,990 kg).

Sebastes Complex and Component Species Trip Limit Changes—Effective June 1, 1999

The distribution of landings of different species in the 1999 cumulative trip limit regime was designed in part to correspond with the times when particular species are most available for harvest without bycatch. For Dover sole and trawl-caught sablefish, trip limits were higher in the winter months; but for *Sebastes* complex species, trip limits were higher in the summer months. Overall *Sebastes* complex landings, and landings of particular component species within the *Sebastes* complex north of Cape Mendocino, have been lower than expected for the January 1 through March 31 cumulative trip limit period, probably due to bad weather. To give the fleet access to fish not taken in the first fishing phase, yet continue *Sebastes* complex landing emphasis in the summer months, the Council recommended increasing several *Sebastes* limits north of Cape Mendocino for the June 1 through July 31 and for the August 1 through September 30 cumulative trip limit periods. Conversely, *Sebastes* complex landings south of Cape Mendocino have been proceeding much faster than had been expected, resulting in Council recommendations to decrease *Sebastes* limits south of Cape Mendocino for those same periods.

The overall *Sebastes* complex vessel cumulative trip limit north of Cape Mendocino for the January 1 through March 31 period was 24,000 lb (10,866 kg), within which no more than 15,000 lb (6,804 kg) could be yellowtail rockfish and no more than 9,000 lb (4,082 kg) could be canary rockfish. The fleet was expected to take 20 percent of the 1999 *Sebastes* complex Vancouver-Columbia areas limited entry target

harvest of 4,033 mt, or 807 mt, during the January 1 through March 31 cumulative limit period. The limited entry fleet was also expected to take 20 percent of its 1999 yellowtail rockfish Vancouver-Columbia areas target harvest of 2,080 mt, or 416 mt, during the January 1 through March 31 cumulative limit period, and the fleet was expected to take 20 percent of the 1999 canary rockfish Vancouver-Columbia areas limited entry allocation of 618 mt, or 124 mt, during that same period. The best available information at the April Council meeting indicates that 432 mt of *Sebastes* complex species had been landed from the Vancouver-Columbia areas through March 27, 1999, and that 269 mt of yellowtail rockfish and 33 mt of canary rockfish had been landed from the Vancouver-Columbia areas for that period. The Council recommended increasing cumulative limits for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods as follows: *Sebastes* complex north of Cape Mendocino from 25,000 lb (11,340 kg) to 30,000 lb (13,608 kg); yellowtail rockfish north of Cape Mendocino from 13,000 lb (5,897 kg) to 16,000 lb (7,257 kg); and canary rockfish north of Cape Mendocino from 9,000 lb (4,082 kg) to 14,000 lb (6,350 kg).

The overall *Sebastes* complex vessel cumulative trip limit south of Cape Mendocino for the January 1 through March 31 period was 13,000 lb (5,897 kg), within which no more than 750 lb (340 kg) per month could be bocaccio, and within which no more than 9,000 lb (4,082 kg) could be canary rockfish [The canary rockfish cumulative limit for the January 1 through March 31 period was a coastwide limit]. The fleet was expected to take 31 percent of the 1999 *Sebastes* complex Eureka-Monterey-Conception areas limited entry allocation of 941 mt, or 292 mt, during the January 1 through March 31 cumulative limit period. The best available information at the April Council meeting indicates that 665 mt of *Sebastes* complex species had been landed from the Eureka-Monterey-Conception areas through March 27, 1999.

At its November 1998 meeting, the Council anticipated that bocaccio would be considered overfished upon approval of Amendment 11 to the groundfish fishery management plan (FMP). The 1999 bocaccio Eureka-Monterey-Conception areas limited entry allocation is 101 mt and 1999 bocaccio cumulative limits were set low to discourage targeting. In March 1999, NMFS notified the Council that bocaccio is considered overfished, and that the Council must implement a bocaccio rebuilding plan for 2000. During its April 1999 meeting, the Council reviewed a petition from several environmental organizations asking for emergency inseason action to further reduce bocaccio catch and landings. Bocaccio landings in 1999 are already below 1998 landings for a comparative time period, and the best available information at the April 1999 Council meeting indicates that 17 mt of bocaccio had been landed from the Eureka-Monterey-Conception areas through March 27, 1999. The Council noted that it would be lowering the overall *Sebastes* complex limits south of Cape Mendocino for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods, expecting that bocaccio bycatch also would be reduced by this action. Additionally, the Council recommended reducing the current cumulative limit for bocaccio south of Cape Mendocino from 750 lb (340 kg) per month to 1,000 lb (454 kg) per 2-month period, with a 500 lb (227 kg) per trip limit.

To ensure that the fleet does not exceed the limited entry allocations for *Sebastes* complex species, and to provide protection for an overfished species, the Council recommended decreasing cumulative limits south of Cape Mendocino for the June 1 through July 31 and for the August 1 through September 30 cumulative limit periods as follows: *Sebastes* complex south of Cape Mendocino from 6,500 lb (2,948 kg) to 3,500 lb (1,588 kg); canary rockfish south of Cape Mendocino limited to not exceed the overall *Sebastes* complex limit, resulting in a canary rockfish cumulative limit decrease from 6,500 (2,948 kg) to 3,500 lb (1,588 kg) south of Cape Mendocino; and, bocaccio would be managed under a new cumulative limit of 1,000 lb (454 kg) per 2-month period with a 500 lb (227 kg) per trip limit. Limited Entry, Fixed Gear, Regular Sablefish Fishery.

At its April 1999 meeting, the Council considered season structure options for the 1999 limited entry, nontrawl (fixed gear) regular sablefish fishery. For 1999, the Council recommended that the regular season begin on August 16, 1999, at noon (l.t.) and last for 9 days, ending at noon on August 25, 1999. There will be no limited entry, daily trip limit fishery for sablefish taken with fixed gear during the regular season. During the regular season, each vessel with a limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. The Council recommended the following tier limits: Tier 1, 84,800 lb (40,823 kg); Tier 2, 38,300 lb (17,373 kg); Tier 3, 22,000 lb (9,979 kg). These tier limits are expected to keep the overall fleet landings from exceeding the 2138.6 mt of sablefish available to this fishery.

The pre-season and post-season closures described for this fishery at 50 CFR § 660.323(a)(2) will be in effect. The preseason closure will begin on August 14, 1999 at noon l.t., last for 48 hours, and end when the regular season begins on August 16, 1999, at noon l.t. During the preseason closure, sablefish taken with fixed gear in the limited entry or open access fisheries north of 36° N. lat. may not be retained or landed. Also during the preseason closure, all fixed gear used to take and retain groundfish must be out of the water. The post-season closure will begin when the regular season ends on August 25, 1999, at noon l.t., last for 30 hours, and end on August 26, 1999, at 1800 hours l.t. No sablefish taken with fixed gear north of 36° N. lat. may be retained during the post-season closure. Sablefish taken and retained during the regular season may be possessed and landed during the post-season closure, and gear may remain in the water during the post-season closure. However, during the post-season closure, fishers may not set or pull from the water fixed gear used to take and retain groundfish.

NMFS Action

For the reasons stated, NMFS concurs with the Council's recommendations and announces the following changes to the 1999 annual management measures (64 FR 1316, January 8, 1999, as amended). The annual management measures are modified as follows:

1. In section IV, under B. *Limited Entry Fishery,* table 2 under paragraph B.(1), paragraphs B.(2)(b) and (i) and table 3 under paragraph B.(2)(b)(i), paragraph B.(6)(c) and table 6 under B.(6)(c), and paragraph B.(6)(d)(i) are revised to read as follows:

B. Limited Entry Fishery

* * * * *

(1) * * *

TABLE 2.—WIDOW ROCKFISH

Fishing phase	Cumulative trip limit periods	Cumulative trip limit (in pounds)	Length of cumulative trip limit period (months)
I	Jan 1–Mar 31	70,000 31,752 kg	3
II	Apr 1–May 31	16,000 7,257 kg	2
	June 1–July 31	11,000	2
	Aug 1–Sept 30	11,000 4,990 kg	2
III	Oct 1–31	30,000	1
	Nov 1–30	30,000	1
	Dec 1–31	30,000 13,608 kg	1

(2) * * *

(b) *Trip limits for the Sebastes complex.* Harvest of all *Sebastes* complex species, including those species with their own cumulative limits (yellowtail rockfish, canary rockfish, bocaccio), count toward the overall applicable *Sebastes* cumulative limits for the areas north and south of Cape Mendocino.

(i) Crossover provisions for operating on both sides of Cape Mendocino during a cumulative trip limit period are found in Section IV, paragraph (A)(12), with special provisions for chilipepper rockfish, splitnose rockfish, and the *Sebastes* complex. The cumulative trip limits for the *Sebastes* complex and its component species are as follows, unless otherwise announced in the **Federal Register**:

TABLE 3.—SEBASTES COMPLEX AND ITS COMPONENT SPECIES

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)						Length of cumulative trip limit period (months)
		Sebastes complex (north and south of Cape Mendocino)		Yellowtail rockfish [1] (north of Cape Mendocino)	Canary rockfish [1] (coastwide)		Bocaccio [1] (south of Cape Mendocino)	
		North	South		North	South		
I	Jan 1–Mar 31	24,000 (10,886 kg)	13,000 (5,897 kg)	15,000 (6,804 kg)	9,000 (4,082 kg)	9,000 (4,082 kg)	750 per month. (340 kg)	3
II	Apr 1–May 31	25,000 (11,340 kg)	6,500 (2,948 kg)	13,000 (5,897 kg)	9,000 (4,082 kg)	6,500 (2,948 kg)	750 per month. (340 kg)	2
	June 1–July 31	30,000	3,500	16,000	14,000	3,500	[2] 1,000	2
	Aug 1–Sept 30	30,000 (13,608 kg)	3,500 (1,588 kg)	16,000 (7,257 kg)	14,000 (6,350 kg)	3,500 (1,588 kg)	[2] 1,000 (454 kg)	2
III	Oct 1–31	10,000	5,000	5,000	3,000	3,000	500	1
	Nov 1–30	10,000	5,000	5,000	3,000	3,000	500	1
	Nov 1–30	10,000 (4,536 kg)	5,000 (2,268 kg)	5,000 (2,268 kg)	3,000 (1,361 kg)	3,000 (1,361 kg)	500 (227 kg)	1

[1] Also counts toward the overall *Sebastes* complex limit.

[2] No more than 500 lb (227 kg) of bocaccio may be landed per trip, which counts towards the cumulative trip limits for bocaccio and the *Sebastes* complex south of Cape Mendocino.

* * * * *

(6) * * *

(c) *Limited entry trip and size limits for the DTS complex.* "DTS complex" means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish are also called blackcod. Thornyheads are also called idiots, channel rockfish, or hardheads, and include two species: Shortspine thornyheads (*S. alascanus*) and longspine thornyheads (*S. altivelis*). These provisions apply to Dover sole and thornyheads caught with any limited entry gear and to sablefish caught with limited entry trawl gear. The cumulative trip limits for the DTS complex are as follows, unless otherwise announced in the **Federal Register**:

TABLE 6.—DTS COMPLEX

[Coastwide]

Phase	Cumulative trip limit periods	Cumulative trip limits (in pounds)				Length of cumulative trip limit period (months)
		Dover sole cumulative trip limit	Longspine thornyhead cumulative trip limit	Shortspine thornyhead cumulative trip limit	Trawl-caught sablefish* cumulative trip limit	
I	Jan 1–Mar 31	70,000 (31,752 kg)	12,000 (5,443 kg)	3,000 (1,361 kg)	13,000 (5,897 kg)	3
II	Apr 1–May 31	25,000 (11,340 kg)	8,000	2,000	12,000 (5,443 kg)	2
	June 1–July 31	20,000	8,000	2,000	10,000	2 months
	Aug 1–Sept 30	20,000 (9,072 kg)	8,000 (3,629 kg)	2,000 (907 kg)	10,000 (4,536 kg)	2 months
III	Oct 1–31	22,000	4,000	1,000	6,000	1
	Nov 1–30	22,000	4,000	1,000	6,000	1 month
	Dec 1–31	22,000 (9,979 kg)	4,000 (1,814 kg)	1,000 (454 kg)	6,000 (2,722 kg)	1 month

*At any time of year unless otherwise announced, no more than 500 lb (227 kg) per trip may be trawl-caught sablefish smaller than 22 inches (56 cm) total length. (See paragraph IV.A.(6) regarding length measurement.) The increases to the Dover sole and trawl-caught sablefish trip limits for the April 1 through May 31 period are not effective until May 1, 1999.

(d) * * *

(i) *Regular season.* The regular season will begin at 12 noon l.t. on August 16, 1999, and end at noon on August 25, 1999. Pre-season and post-season closures described at 50 CFR § 660.323(a)(2) are in effect. The pre-season closure will begin at 12 noon l.t. on August 14, 1999, and end when the regular season begins, at 12 noon l.t. on August 16, 1999. The post-season closure will begin when the regular season ends at noon l.t. on August 25, 1999, and end at 1800 hours l.t. on August 26, 1999. During the regular season, each vessel with a limited entry permit with a sablefish endorsement that is registered for use with that vessel may land up to the cumulative trip limit for the tier to which the permit is assigned. For 1999, the following tier limits are in effect: Tier 1, 84,800 lb (40,823 kg); Tier 2, 38,300 lb (17,373 kg); Tier 3, 22,000 lb (9,979 kg).

* * * * *

2. In section IV, under C. *Trip Limits in the Open Access Fishery,* paragraph C. (6) is revised to read as follows:

C. Trip Limits in the Open Access Fishery

* * * * *

(6) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, and sea cucumbers*—(a) *Trip limits.* No more than 300 lb (136 kg) of groundfish may be taken per vessel per fishing trip. Limits and closures in paragraphs IV.C(1) through IV.C(5) also apply and are counted toward the 300 lb (136 kg) groundfish limit. In any landing by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (*Squalus acanthias*) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300 lb (136 kg) per trip overall groundfish limit. The daily trip limits for sablefish (paragraph IV.C.2) and thornyheads south of Pt. Conception (paragraph IV.C.1(a)) may not be multiplied by the number of days of the fishing trip. The groundfish "per trip" limit may not be multiplied by the number of days in the fishing trip, although this was allowed in 1998.

* * * * *

Classification

These actions are authorized by the regulations implementing the Pacific Coast Groundfish Fishery Management Plan. The determination to take these actions is based on the most recent data available. The aggregate data upon which the determinations are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours. Because of the need to implement these changes by May 1, consistent with the states of Washington, Oregon, and California, and because the public had an opportunity to comment on the action at the April 1999 Council meeting, NMFS has determined that good cause exists for this document to be published without affording a prior opportunity for public comment or a 30-day delayed effectiveness period. These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 28, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11158 Filed 4–29–99; 4:52 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990318076–9109–02; I.D. 030599A]

RIN 0648–AL72

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 27

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule and 1999 target total allowable catch (TAC) levels.

SUMMARY: NMFS issues final regulations to implement Framework Adjustment 27 to the Northeast Multispecies Fishery Management Plan (FMP). Framework Adjustment 27 is necessary to address overfishing of several stocks, in particular Gulf of Maine (GOM) cod, and to achieve the rebuilding goals of the FMP for the 1999 multispecies fishing year. This final rule implements management measures that establish GOM Rolling Closures of greater size

and duration than the current GOM Inshore Closure Areas, reconfigure and increase the duration of the Cashes Ledge Closure Area, reduce the GOM cod landing limit to 200 lb/day-at-sea (DAS) (90.7 kg/DAS), modify the haddock landing limit, increase the minimum square-mesh size to 6.5 inches (16.51 cm) for the Gulf of Maine/Georges Bank and Southern New England (SNE) Regulated Mesh Areas, and clarifies the method of calculating the weight of fish parts and fillets, for purposes of possession limits. Framework 27 also includes mechanisms that allow the Regional Administrator, Northeast Region, NMFS (Regional Administrator) to reduce the GOM cod landing limit to between 5 and 100 lb/DAS (2.3 and 45.3 kg/DAS) when 30 percent of the FMAX GOM cod target TAC (402 mt) is harvested, depending upon the risk of exceeding the target TAC, and allows the Regional Administrator to either increase or decrease the haddock trip limit based upon the percentage of TAC which is projected to be harvested.

DATES: Effective on May 1, 1999, except for amendments to §§ 648.14(a)(43) and (a)(116), 648.80(a)(2), (a)(5), (a)(12), (a)(13), (b)(2)(i), (d)(2), and (e)(2), 648.83 and 648.87, which are effective on June 10, 1999.

ADDRESSES: Copies of Framework Adjustment 27, its Environmental Assessment, Regulatory Impact Review (RIR), and Final Regulatory Flexibility Analysis (FRFA) are available upon request from Paul J. Howard, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906.

Comments regarding the collection-of-information requirements contained in this final rule should be sent to Jon Rittgers, Acting Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930–2298 and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Richard A. Pearson, Fishery Policy Analyst, 978–281–9279.

SUPPLEMENTARY INFORMATION: Framework Adjustment 27 to the Northeast Multispecies Fishery Management Plan was prepared by the New England Fishery Management Council (Council). A proposed rule, requesting public comment, was published on March 29, 1999 (64 FR 14846). The comment period ended on April 13, 1999. A complete discussion of the process used to develop the management measures in Framework Adjustment 27 appears in the preamble to the proposed rule and is not repeated here.

The closed areas, possession and landing restrictions, and associated definitions, DAS notification requirements, prohibitions, transiting provisions, exemptions, and permit restrictions contained in this rule are effective on May 1, 1999. The increased minimum square mesh size to 6.5 inches (16.51 cm), prohibition on roller and rockhopper gear in excess of 12 inches (30.48 cm) diameter in the GOM Inshore Restricted Roller Gear Area, elimination of the 6 inch (15.24 cm) square mesh requirement in the Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area, new method of calculating the weight of fish parts and fillets for purposes of possession limits, and exemptions not occurring during the month of May are effective on June 10, 1999.

1999 Target Total Allowable Catches

Based on projected 1999 stock sizes and Amendment 7's fishing mortality targets, the target TACs for the 1999 fishing year, as recommended by the Multispecies Monitoring Committee, are as follows:

Species/area	Target TACs (metric tons)	
	1999	1998
Georges Bank cod	5,354	4,700
Georges Bank haddock	5,600	4,797
Georges Bank yellowtail flounder	2,725	2,145
Southern New England yellowtail flounder	1,115	814
Gulf of Maine cod (F_{MAX})	1,340	1,783
Gulf of Maine cod (F0.1)	782	1,783
Aggregate for remaining regulated species	25,500	25,500

Summary of Approved Management Measures

This final rule implementing Framework Adjustment 27: (1) Replaces the current GOM Inshore Closure Areas with larger and longer GOM Rolling Closure Areas; (2) reconfigures the area and increases the duration of the Cashes Ledge Closure Area; (3) maintains the current year-round Western GOM Closure Area; (4) eliminates the 1-month NE Closure Area; (5) exempts scallop dredge gear from the GOM Rolling Closure Areas and Cashes Ledge Closure Area with no possession of regulated multispecies allowed; (6) reduces the daily GOM cod landing limit to 200 lb/DAS (90.7 kg/DAS); (7) authorizes the Regional Administrator to reduce the GOM cod landing limit to between 5 and 100 lb/DAS (2.3–45.3 kg/DAS), when 30 percent of the GOM cod F_{MAX} target TAC is caught; (8) changes the haddock landing limit to 2,000 lb/DAS (907.2 kg/DAS) with a 20,000-lb (9071.8-kg) trip limit, and authorizes the Regional Administrator to adjust the haddock limit up or down based upon the likelihood of reaching the target TAC; (9) increases the minimum square-mesh size from 6 inches (15.24 cm) to 6.5 inches (16.51 cm) in the GOM/GB and SNE Regulated Mesh Areas; (10) eliminates the mesh restrictions in the Stellwagen Bank and Jeffreys Ledge Juvenile Protection Area; (11) limits the size of roller and rockhopper gear to a maximum diameter of 12 inches (30.48 cm) in a defined GOM inshore area; and (12) clarifies the method of calculating the weight of fish parts and fillets for purposes of determining compliance with possession and landing limits. In addition, this framework codifies a method of on-reel net stowage for vessels transiting the GOM Closure Areas. These measures are described in the following sections.

Area Closures and Exemptions

The closures implemented by Framework 27 modify the current GOM Inshore Closure Areas (now referred to as the GOM Rolling Closure Areas) by increasing their geographic size, primarily eastward and by increasing their duration from 1 to 2 months. In addition, this framework action changes the configuration and increases the duration (from 1 month to 4 months) of the Cashes Ledge Closure Area, adds an additional 2-month closure encompassing portions of Massachusetts Bay from October 1 to November 30, and eliminates the 1-month multispecies Northeast Closure Area. This framework adjustment maintains the existing year-round Western GOM Closure comprising parts of Stellwagen Bank, Jeffreys Ledge, and Wildcat Knoll. Exemptions to the GOM Rolling Closure Areas and Cashes Ledge Closure Area remain the same, except that scallop dredge gear is considered exempted gear in the newly closed areas when fishing under a scallop DAS or participating in the Scallop Dredge Fishery Exemption Area, provided that a vessel does not retain any regulated multispecies during any part of a trip. The Council clarified that "newly closed areas" refer only to the Rolling Closure Areas specified in Framework 27, as well as the Cashes Ledge Closure Area. It does not refer to Closed Areas I and II, the Nantucket Lightship Closed Area and the Western GOM Area Closure. Vessels may transit

through any of the GOM Inshore Closure Areas, provided gear is stowed properly according to the regulations. This framework also codifies an additional method of on-reel net stowage for vessels transiting the GOM Rolling Closure Areas. For these areas, the requirement to remove the codend has been eliminated, provided that other requirements are met, including that the net is entirely covered, the towing wires are detached, and no containment rope or codend tripping device is attached to the codend.

GOM Cod Landing Limit

This action reduces the GOM cod landing limit at the start of the fishing year from 400 lb/DAS (181.4 kg) to 200 lb/DAS (90.7 kg/DAS), or any part of a DAS. For instance, a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 400 lb (181.4 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday). As is currently the case, however, vessels may allow their DAS clock to run in order to account for any cod overages, provided they report their hail weight to the Regional Administrator, as described in the multispecies regulations. When 30 percent of the GOM cod F_{MAX} TAC (886,000 lb (402 mt), in 1999) is projected by the Regional Administrator to be harvested, the Regional Administrator could reduce the trip landing limit to an amount in the range between 5 lb/DAS (2.3 kg/DAS) and 100 lb/DAS (45.3 kg/DAS), depending upon an evaluation of the risk of exceeding the target TAC.

Haddock Landing Limit

This action changes the haddock landing limit to 2,000 lb (907.2 kg) per DAS, or any part of a DAS, up to 20,000 lb (9,071.8 kg) per trip. When 75 percent of the target TAC for Georges Bank haddock for the 1999 fishing year is reached (9.3 million lb (4,218.5 mt)), the Regional Administrator is authorized to reduce the trip limit either to a 1,000 lb (453.6 kg) per trip possession limit restriction, or to a landing limit restriction of 1,000 lb/DAS (453.6 kg/DAS), with a 10,000 lb (4,536.0 kg) maximum per trip, based on a determination of the risk of exceeding the target TAC. Beginning October 1, 1999, if the Regional Administrator projects that less than 75 percent of the target TAC will be harvested by April 30, 2000, NMFS may publish a notification in the **Federal Register** that, on a specific date, the limit shall be increased to an amount that the Regional Administrator projects will be sufficient to allow landings of at least 9.3 million lb (4,218.5 mt) by April 30, 2000.

Gear Restrictions

This action imposes two gear restrictions. They become effective on June 10, 1999. The first is an increase in the minimum square-mesh size for otter trawl vessels in the GOM/GB and SNE Regulated Mesh Areas from 6-inch (15.24 cm) square to 6.5-inch (16.51 cm) square. The diamond mesh size of 6 inches (15.24 cm) is not changed. Concurrent with the increase in the minimum square mesh size, the requirement to use 6-inch (15.24 cm) square mesh only, in the Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area, is eliminated.

The second gear restriction limits the size of roller or rockhopper gear on trawl footropes to a maximum diameter of 12 inches (30.48 cm) within a newly established GOM/GB Inshore Restricted Roller Gear Area.

Calculation of the Weight of Fish Parts

Possession and landing limits for regulated multispecies are determined on the basis of the weight of whole, whole-gutted, or gilled fish. This action clarifies the method of calculating the weight of parts of fish and fillets by specifying that they will be multiplied by three, to equate to the weight of whole, whole-gutted, or gilled fish.

Other Measures

This final rule also clarifies that measures concerning areas closed to gillnet gear to prevent right whale takes specified at § 648.87(b) apply to limited access multispecies permit holders using gillnet gear in the entire area described at § 648.87(b)(1) and (b)(2), including state waters.

Comments and Responses

Twelve comments were received on Framework 27 and its proposed implementing regulations. Two of the comments were supportive of measures in Framework 27. Specific comments and responses on Framework 27 and the proposed implementing regulations are provided here.

Comment 1: Several commenters indicated that the 12 inch (30.48 cm) size limitation on roller and rockhopper gear within the GOM/GB Inshore Restricted Roller Gear Area should not be implemented because: (1) the public was not provided adequate opportunity to comment during the framework process because the description of these measures did not appear on Council meeting notices and the measure was not voted upon until after midnight on the meeting day; (2) there was not adequate documentation in the Council's Framework 27 documentation or the proposed rule explaining how these measures meet the conservation objectives for GOM cod; and (3) the assessment of the economic impact of these measures does not address the fact that the measure will prevent access to certain hard bottom areas in the inshore GOM area by otter trawl vessels and will allocate these areas entirely to other gear sectors. Similarly, mobile gear vessels with rockhopper and roller gear greater that 12 inches (30.48 cm) would always have to transit the inshore restricted area in compliance with burdensome gear stowage provisions. The commenters also stated that the discussion in Framework 27 on the 12-inch (30.48 cm) roller gear restriction and the analysis of the economic costs are not thorough enough.

Response: There were many opportunities to comment upon the 12 inch maximum size inshore roller gear limitation during the development of Framework 27. This measure, either in the form of an inshore/offshore category declaration or a gear restriction, has been an integral component of Draft Framework Option 1 (Gulf of Maine Fishermens Alliance (GOMFA) proposal) of Framework 27 since the inception of the document. The delineated area, and the option to include gear restrictions instead of an inshore/offshore declaration, are contained in the draft Framework 27 document which was available prior to the final framework meeting on January 28, 1999. The measure was indeed voted upon late in the evening. However, this is because the Council heard from many commenters during the meeting. Also, the public was given additional opportunity to comment upon the measure through the proposed rule.

The economic analysis conducted for Framework Adjustment 27 concluded that this action, in its entirety, would have a significant economic impact on a substantial number of small entities. It is not possible to precisely estimate how the roller gear restriction would impact vessels because gear configurations, usage, and fishing areas vary by vessel. Existing data are inadequate to determine gear usage at such a fine degree of resolution. Trawlers will still be allowed to fish in the inshore area with roller gear less than 12 inches diameter (30.48 cm), but it is not possible to accurately predict whether they will. Vessels could also change to other gear types in response to the

measure. The cost of purchasing a 116 foot footrope with rollers was estimated in the IRFA to range from $1,100 to $2,500. There were 127 vessels that fished, to varying degrees, in both inshore and offshore areas, and may be impacted by the measure. Those with rollers less than 12 inches (30.48 cm) would not be impacted. Thirty-six of the inshore/offshore vessels received 75 percent or more of their GOM revenue from offshore areas. Those 36 inshore/offshore vessels, without rollers less than 12 inches (30.48 cm), will have to decide whether their inshore activity warrants the cost of converting existing nets or buying a new net. For the remaining 91 inshore/offshore vessels that relied on inshore fishing for at least 25 percent of gross revenues, it is unclear how they might be impacted, because they may already be using conforming roller gear. They would be faced of refitting their gear or shifting to offshore areas. Reliable data concerning many important variables such as gear usage practices, alternative gear availability, behavioral response to the measure, the amount of ocean bottom which actually becomes inaccessible for trawlers not using the smaller roller gear, and the amount of foregone revenue from these areas is not available. Therefore, quantifying the measure with confidence is not possible. That is why the capital costs of compliance were estimated only for those measures for which reliable data is available.

NMFS notes that both the cost to industry and the benefits of this measure are unquantifiable, at this time. In light of this uncertainty, NMFS has approved the measure rather than substitute its judgement for that of the Council on the grounds that it may reduce the amount of larger vessels fishing inshore, which could result in conservation benefits. The Council considered, but rejected, a delineation of the inshore and offshore area, using these same coordinates, and requiring vessels to annually declare into one of the areas. The Council did not adopt the declaration program because of concerns about administration and enforcement.

Regarding stowage provisions for roller and rockhopper gear in excess of 12 inches diameter (30.48 cm), the Regional Administrator may authorize alternative gear stowage methods and has urged the industry to propose alternatives that are less burdensome.

Comment 2: Several commenters wrote that the measure to increase the minimum square mesh size from 6 inches (15.24 cm) to 6.5 inches (16.51 cm) will greatly reduce the financial viability and profitability of the industry in the Long Island, New York area, and advocated disapproval. The commenters proposed an alternative measure that would require vessels calling into the DAS program that fish west of the 71°30′ W. Long. line to be limited to 6 inch mesh (15.24 cm) and those fishing east of the 71°30′W. Long. line to be limited to 6.5 inch mesh (16.51 cm). The 72°30′W. Long. line would apply to vessels fishing outside the DAS program.

Response: Much of the opposition to this measure relates to the controversy about the appropriate minimum size for winter flounder. Amendment 9 to the FMP proposed a winter flounder size increase to 13 inches (33 cm) which NMFS disapproved, because the recent assessment indicated that this stock is not overfished. Many commenters felt that the increase to 6.5 inch (16.51 cm) square mesh is inappropriate to use for 12 inch (30.5 cm) winter flounder. However, there are other reasons to support this measure. Most importantly, it aligns the selectivity characteristics of square mesh with those of 6-inch (15.24 cm) diamond mesh in all flounder fisheries and contributes to reducing discards of all sub-legal size flatfish, including American plaice, yellowtail flounder, and summer flounder, which are also caught in the SNE region.

Comment 3: One commenter supported the measure to increase the minimum square mesh size from 6 inches (15.24 cm) to 6.5 inches (16.51 cm).

Response: The comment has been noted, and the measure is approved.

Comment 4: Several commenters requested NMFS to disapprove the measure which closes all of Block 124 for 2 months, because the closure would prevent trawling for whiting in two important seasonal areas where the Provincetown, Massachusetts fleet has been conducting an experimental fishery using a raised footrope trawl. The commenters wrote that the fishery does not capture large amounts of cod, and that approval of the measure will destroy the historically based whiting fishery in Provincetown, Massachusetts.

Response: The whiting fishery referred to is currently under review as both an experiment and as a potential exempted gear fishery. It would be inappropriate to revise the Framework 27 management measures to conform to the experiment/exemption request. NMFS will continue to work with the sponsors of the experimental fishery as it goes through the review process. NMFS notes that experimental results, to date, have shown that this fishery may capture cod during certain times and areas.

Comment 5: Several commenters stated that the wrong areas were proposed for closure, if the objective of Framework 27 is to protect GOM cod. Several of these areas have historically produced low cod landings. Also, significant cod spawning areas would remain open in May. For these specific reasons, the comments recommended that NMFS could eliminate the March Block 121 closure; the April Block 121, 122, 129, and 130 closures; the May Block 129, 130, and 131 closures; and the June Block 141, 142, and 143 closures because these closures have no potential benefit to rebuild GOM cod.

Response: In developing Framework 27, the Council considered three alternatives. During the final framework meeting, the three alternatives were combined to create a composite plan. The composite plan, including the closed areas and trip limits, was analyzed and found to meet the GOM cod F_{max} Amendment 7 objective, primarily because the lower value associated with a fishing mortality rate of $F_{0.1}$ had been used as a benchmark in developing the measures. Consequently, NMFS finds that an appropriate combination of area closures and trip limits has been chosen to conserve GOM cod while minimizing the displacement of fishing effort into other productive areas, thereby providing conservation for other overfished GOM regulated multispecies.

Comment 6: NMFS received many comments suggesting that the running clock measure allows a directed cod fishery to occur in areas of high cod concentration, because latent DAS are being activated to account for cod landings in excess of the daily cod trip limit. Consequently, this measure increases the likelihood that the target TAC will be exceeded in a very short time, and the trip limit will need to be reduced early in the fishing year. Several commenters believe that maintaining the running clock measure at current trip levels directly counters national standard 8 and 9 of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) because different fishing communities may suffer by losing even incidental catch levels of cod after the trip limit is reduced, while other communities gain the benefit of directed cod fishing at the start of the year.

Response: The running clock continues to be the subject of debate; however it is intended to prevent discards. The Council and NMFS have publicly stated their intent to discourage

a directed GOM cod fishery and only allow landings of GOM cod at incidental levels. The running clock attempts to balance these objectives by allowing for occasionally high levels of incidental catch but not creating an incentive to target GOM cod. The degree to which a 200 lb/DAS (90.7 kg/DAS) trip limit could create a directed GOM cod fishery will be examined in 1999, as fishery data becomes available. The Council has directed the Multispecies Oversight Committee to reevaluate the running clock measure in conjunction with Framework 31, and it would be premature for NMFS to take action while that work is under way. Moreover, the running clock is a pre-existing measure that was not proposed by this framework and, therefore, it is not appropriate for NMFS to remove the measure as part of this framework procedure.

When 30 percent of the GOM cod F_{max} TAC (886,000 lb (402 mt)) is projected to be harvested, the Regional Administrator is authorized to reduce the trip limit to an amount in the range of between 5 and 100 lb/DAS (2.3 and 45.3 kg/DAS), depending upon an evaluation of the risk of exceeding the target TAC. This "backstop" measure is intended to keep landings below the TAC, to the extent practicable, because of the critical condition of GOM cod. If fishing patterns in 1999 are similar to previous years, this "backstop" could be triggered early in the fishing year. However, times and areas of traditionally high levels of GOM cod landings will be closed so that the opportunity to land large amounts of GOM cod is diminished. Prior to implementation of the "backstop", all vessels in the fishery, regardless of their port, will be under the 200 lb/DAS ((90.7 kg/DAS) GOM cod trip limit.

Comment 7: The GOM cod trip limits and "backstop" measure would turn the TAC established in Amendment 7 into a specific, or "hard", quota which: (1) would reduce the harvest level below any reasonably attainable bycatch level, (2) would worsen the potential to turn catch into discards, and (3) would run afoul of the legal requirement to prevent discards. As an alternative, NMFS should set the "backstop" trip limit no lower than 100 lb (45.4 kg) per DAS.

Response: SAW 27 indicated that the GOM cod is on the verge of collapse and that directed fishing on this stock should cease. The "backstop" trip limit allows between 5 and 100 lb/DAS (2.3—45.3 kg/DAS) of GOM cod to be landed and, therefore, is neither a "hard" quota, nor contrary to Amendment 7. The purpose of the "backstop" is to prevent a TAC overage, so that more stringent measures are not necessary in future years. If it becomes necessary to reduce the trip limit, NMFS will consider the impact of the new limit on discards.

Comment 8: One commenter supported the measure allowing scallop fishing in the new GOM Rolling Closure Areas.

Response: The comment has been noted, and the measure is approved.

Comment 9: The provision which prohibits the possession of regulated multispecies for scallop dredge vessels fishing under a DAS in the new GOM closed areas should be changed, due to enforceability, because other scallop vessels using DAS and not fishing in the closed areas will be allowed to retain 300 lb (136.1 kg) of regulated multispecies. The trip limit for scallop dredge vessels fishing in the GOM closed areas should be set at zero for the small dredge exempted fishery, and 300 lb (136.1 kg) for scallop DAS vessels.

Response: Within the new GOM Rolling Closure Areas, scallop dredge gear is exempt. On any trip that a scallop dredge vessel fishes in a closed area, for any part of the trip, the vessel may not possess any regulated species. The Vessel Monitoring System is mandatory for scallop DAS vessels and will facilitate enforcement of this measure.

Comment 10: The haddock trip limit should not be reduced to 2,000 lb/DAS (907.2 kg/DAS) with a 20,000 lb (9,071.8 kg) cap. There is no biological basis to reduce the haddock trip limit. It will result in discards of haddock. The haddock trip limit should continue to be accumulated at a per-day rate.

Response: The haddock trip limit had been scheduled to revert to 1,000 lb/DAS (453.6 kg/DAS) (as of May 1, 1999), so the haddock limit is actually being increased by this rule. The Regional Administrator has the authority to increase the trip limit as of October 1, 1999, if 75 percent of the TAC is not projected to be reached. The haddock trip limit will continue to be accumulated on a per-DAS basis, with the upper limit of 20,000 lb (9,071.8 kg) intended to accommodate most trips.

Comment 11: One commenter was concerned that scallop dredge vessels may catch large amounts of regulated multispecies if they are allowed into the GOM newly closed areas.

Response: The Council did consider this when exempting scallop dredge vessels from the new GOM Rolling Closure Areas. However, it was decided that the benefits of exempting scallop dredge gear outweighed the costs of excluding scallop dredge gear from the new GOM Rolling Closure Areas.

Comment 12: Many of the commenters wrote that, in general, Framework 27 is not specifically designed to protect GOM cod; instead, it disproportionately impacts vessels prosecuting other groundfish fisheries.

Response: Framework Adjustment 27 does meet the Amendment 7 F_{max} GOM cod TAC, because $F_{0.1}$ has been used as a benchmark in developing the management measures. The closures that were selected by the Council have been analyzed and found to reduce landings of GOM cod by a larger percentage than either of the two other options that were considered for the framework. However, while GOM cod is a major concern, Framework 27 is intended to make the annual adjustment required by Amendment 7 to conserve and manage all of the species included in the multispecies complex. Thus, the measure is also intended to impact those fisheries, since many of the other regulated multispecies are overfished.

Changes From the Proposed Rule

In the proposed regulations, a coordinate for Small Mesh Area 2 (SM 13) at § 648.80(a)(8) was incorrectly published as 4°05.6′ 69°55.0′. It has been corrected to read 43°05.6′ 69°55.0′.

Classification

Magnuson-Stevens Act

The Regional Administrator, Northeast Region, NMFS determined that this annual framework adjustment to the Northeast Multispecies FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

Partial Waiver of 30 Day Delay in Effectiveness

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(d)(3), to waive the 30 day delay in effective date for certain provisions of this rule. The good cause is based upon the need to have these provisions in place by May 1, 1999, the start of the multispecies fishing year. The measures are essential for the conservation of GOM cod, which is on the verge of collapse. Given the extremely low biomass of GOM cod, it is essential to have the measures in Framework Adjustment 27 that relate to GOM cod effective at the beginning of the fishing year because the species aggregates for spawning during this period and is very susceptible to large catches per unit effort. Without these measures in place by May 1, 1999, the GOM cod trip limit will revert from 400

lb/DAS (181.4 kg/DAS) to 700 lb/DAS (317.5 kg/DAS) and areas of high cod abundance in Rolling Closure Area III will remain open. Because May has historically been a month of very high GOM cod landings, a failure to implement these measures immediately could result in potentially irreparable damage to GOM cod stocks and undermine the very purpose of this framework. Specific measures for which the waiver applies include: the cod trip limit and the backstop trip limit and the new GOM Rolling Closure Areas. In addition, the new haddock trip limit is being made effective without a 30-day delay under authority at 5 U.S.C. 553(d)(1), because it relieves a restriction. If the new haddock trip limit is not implemented on May 1, 1999, the trip limit will revert to 1,000 lb/DAS (453.6 kg/DAS) rather than 2,000 lb/DAS (907.2 kg/DAS). The fishing industry will be notified of these measures by way of a fax to interested parties including state agencies, industry groups, U.S. Coast Guard and NMFS port agents. A National Weather Service radio announcement may be broadcast, if necessary. All of the other measures in Framework 27 become effective on June 10, 1999.

Executive Order 12866

This final rule has been determined to be significant under Section (3)(f)(4) of Executive Order 12866.

Final Regulatory Flexibility Analysis

The proposed rule to implement Framework Adjustment 27 was published in the **Federal Register** on March 29, 1999. A copy of the Initial Regulatory Flexibility Analysis (IRFA) analysis is available from the Council (see **ADDRESSES**). The FRFA incorporates the IRFA and its findings, the responses to public comments that mentioned possible effects of Framework Adjustment 27 on small entities, and the following discussion which is based on the IRFA.

The following description summarizes the impact of the measures in the final rule (closed areas, trip limits, increased mesh size, restrictions on roller gear) on vessels, dealers, and processors, the alternatives that were considered and rejected, and measures that minimize the economic impact of this action.

Based upon calendar year 1997, 1729 vessels held limited access multispecies permits. Of these vessels, 1287 actually participated in the multispecies fishery and, thereby, constitute the universe of vessels. Of these vessels, 601 (47 percent) would be impacted by the measures because they fished within one or more of the GOM Rolling Closure Areas and/or would be affected by the trip limits. Using estimated proportional reductions in gross revenues from 1997 (i.e., excluding measures enacted in fishing year 1998 by Frameworks 25 and 26), 456 vessels out of a universe of 1287 vessels (35 percent) would be affected by a reduction in gross revenues of more than 5 percent as a result of Framework 27. When Framework 25 and 26 measures are included, 32 additional vessels would be impacted by a reduction in gross revenues of more than 5 percent.

The impact of the measures (closed areas and trip limits) on profitability and on the financial viability of vessels in the northeast multispecies fishery was also analyzed. Compared to the 1997 baseline, the cumulative profitability for the median vessel was estimated to decline 66 percent from $21,409 to $7,282. A total of 115 vessels were found to be operating below break even (i.e., zero profit) as a result of the combined measures implemented by Frameworks 25 and 26. Carrying those losses forward into Framework 27 and adding the accumulated debt under Frameworks 25, 26, and 27 results in a total of 155 vessels that were estimated to be below break-even profit. Therefore, 155 out of 1,287 vessels (12 percent), may not be able to maintain their economic viability and may be forced to cease their operations.

In terms of absolute numbers, Framework 27 would impact the most vessels in Massachusetts (317) followed by Maine (82), New Hampshire (35), New York (7), and Rhode Island (1). As a proportion of total vessels in a state, New Hampshire had the highest proportion (90 percent) of impacted vessels, followed by Massachusetts (79 percent) and Maine (74 percent).

The economic impacts of the increase in square-mesh size are expected to be small because, with the elimination of the Stellwagen Bank/Jeffreys Ledge Juvenile Protection Area, vessels will still be able to use existing 6-inch (15.24-cm) diamond mesh wherever they fish, and the cost of 6.5-inch (16.51-cm) square mesh is likely to be similar to that of 6-inch (15.24-cm) mesh when periodically replacing worn-out gear.

Depending upon current gear usage and fishing patterns, the requirement to use roller gear of a maximum 12-inch (30.48 cm) diameter in a defined GOM inshore area may result in vessels spending money on gear changes. The cost of the gear change is difficult to estimate because gear configurations, usage and fishing areas vary by vessel. Existing data is inadequate to determine gear usage at such a fine degree of resolution. However, if a vessel does have to purchase a new footrope with rollers, the onetime cost could range from $1,100 to $2,500.

Compared to the 1997 baseline, 186 dealers were estimated to be affected by the Framework 27 measures. Using estimated proportional reductions in gross revenues from a 1997 baseline (i.e., excluding Frameworks 25 and 26), 77 dealers out of these 186 dealers (41 percent) would be affected by a reduction in gross revenues of more than 5 percent as a result of Framework 27. When Framework 25 and 26 measures are included, 4 additional dealers are impacted by a reduction in gross revenues of more than 5 percent. However, dealers may have some flexibility by marketing alternative product lines or by obtaining product from alternative sources.

The impacts of the Framework 27 measures on processors are difficult to predict because the extent to which domestic and foreign imports can adequately offset local supply shortages is unknown. Nevertheless, processors in Maine, Massachusetts, and New Hampshire who rely on a stable supply of fresh groundfish to meet their demands will likely be disproportionately affected by Framework 27.

Using a no-displacement model (i.e., vessels stop fishing and do not fish in other open areas), the decline in total revenues of the action is estimated at $7.3 million. The impacts on net revenues (i.e., revenues minus costs), however, will be less than these levels since operating costs will also decline as effort is reduced by the closures under the no-displacement scenario. Assuming 50-percent displacement at 50-percent revenue per unit effort (i.e., 50 percent of vessels fish in other open areas and obtain 50 percent of the revenue they would have otherwise obtained in the closed area), the decline in total revenues of the action is estimated at $5.5 million.

The impacts of the various alternatives that were analyzed for Framework 27 were estimated in the IRFA to be more severe than those of the selected action, except for the GOMFA alternative which would have closed large areas, both inshore and offshore, for shorter periods of time. The GOMFA option was not selected because the Council indicated that the closures in the Preferred Alternative would better protect GOM cod. The selected action, a combination of the various alternatives, considered all of the alternatives and their impacts, and simultaneously attempted to reach the

Amendment 7 rebuilding goals while minimizing the negative impacts on the fishing industry, to the extent practicable given the severity of the necessary mortality reduction for GOM cod. Measures which minimize the negative impacts of Framework 27 include an exemption for scallop dredge gear in the new GOM Rolling Closure Areas, an increase in the haddock trip limit, and a relaxation of the gear stowage provisions for vessels transiting the GOM Rolling Closure Areas.

Paperwork Reduction Act (PRA)

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

This rule clarifies collection-of-information requirements subject to the PRA and which have been cleared by OMB, under OMB control number 0648–0202. The estimated response times are as follows:

1. Declaration of transit to another port under the exception to the cod landing limit requirement to remain in port (1 minute/response when made in conjunction with a cod hail line call, 3 minutes/response when made as a separate call).

2. Reporting of cod catch on board and to be off-loaded for vessels fishing north of the cod exemption line, specified at § 648.86(b)(1), while fishing under a NE multispecies DAS requires vessel notification (3 minutes/response).

3. The DAS call-in requirement for vessels under a DAS upon return to port (2 minutes/response).

This rule also clarifies collection-of-information requirements subject to the PRA and which have been cleared by OMB, under OMB control number 0648–0351. The estimated response time includes marking of pelagic gillnet (1 minute/net).

The estimated response time includes the time needed for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: April 29, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Gillnet gear capable of catching multispecies" is revised, and a definition for "Rockhopper and roller gear" is added in alphabetical order to read as follows:

§ 648.2 Definitions.

* * * * *

Gillnet gear capable of catching multispecies means all gillnet gear except pelagic gillnet gear specified at § 648.81(g)(2)(ii) and pelagic gillnet gear that is designed to fish for and is used to fish for or catch tunas, swordfish, and sharks.

* * * * *

Rockhopper and roller gear means trawl gear configured with disks, rollers, or other similar shaped devices that are attached to the bottom belly of the trawl, contact the sea bottom, and that are designed to raise the bottom panel of the trawl off the ocean bottom so as to enable the gear to be fished on hard bottom.

* * * * *

3. In § 648.10, paragraph (f)(3)(ii) is revised to read as follows:

§ 648.10 DAS notification requirements.

* * * * *

(f) * * *

(3) * * *

(ii) A vessel subject to the cod landing limit restriction specified in § 648.86(b)(1)(i) that exceeds or is expected to exceed the allowable limit of cod based on the duration of the trip must enter port no later than 14 DAS after starting a multispecies DAS trip and must report, upon entering port and before offloading, its hailed weight of cod under the separate call-in system specified in § 648.86(b)(1)(ii)(B). Such vessel must remain in port, unless for transiting purposes as allowed in § 648.86(b)(3), until sufficient time has elapsed to account for and justify the amount of cod on board in accordance with § 648.86(b)(1)(ii), and may not begin its next fishing trip until the vessel has called-out of the multispecies DAS program to end its trip.

4. In § 648.14, paragraphs (a)(43), (a)(52), (a)(90), (a)(101), (a)(104), (a)(112), (c)(10), (c)(24), and (c)(25) are revised and (a)(116) is added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(4), the Cultivator Shoals whiting fishery exemption area; (a)(8), Small Mesh Area 1/Small Mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any of these paragraphs in § 648.80 is a separate violation.

* * * * *

(52) Enter, be on a fishing vessel in, or fail to remove gear from the EEZ portion of the areas described in § 648.81 (g)(1) through (i)(1) during the time periods specified, except as provided in § 648.81(d), (g)(2), (h)(2) and (i)(2).

* * * * *

(90) Use, set, haul back, fish with, possess on board a vessel, unless stowed in accordance with § 648.81(e)(4), or fail to remove, sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), in the areas and for the times specified in § 648.87(a) and (b), except as provided in § 648.81(g)(2)(ii) and 648.87(a) and (b), or unless otherwise authorized in writing by the Regional Administrator.

* * * * *

(101) Enter, fail to remove gear from, or be in the areas described in § 648.81(g)(1) through (i)(1) during the time period specified, except as provided in § 648.81(d), (g)(2), (h)(2), and (i)(2).

* * * * *

(104) Fish for, harvest, possess, or land regulated species in or from the closed areas specified in § 648.81(a), (b), (c), (g), (h), and (i), unless otherwise specified in § 648.81(c)(2)(iii), (g)(2)(i), and (g)(2)(iii).

* * * * *

(112) Fish for, harvest, possess, or land in or from the EEZ, when fishing with trawl gear, any of the exempted species specified in § 648.80(a)(8)(i), unless such species were fished for or harvested by a vessel meeting the requirements specified in § 648.80(a)(3)(ii) or (a)(8)(ii).

* * * * *

(116) Fish for, harvest, possess, or land any species of fish in or from the GOM/GB Inshore Restricted Roller Gear Area described in § 648.80(a)(2)(iv) with trawl gear where the diameter of any part of the trawl footrope, including discs, rollers or rockhoppers, is greater than 12 inches (30.48 cm).

* * * * *

(c) * * *

(10) Enter, fail to remove sink gillnet gear or gillnet gear capable of catching multispecies from, or be in the areas, and for the times, described in § 648.87(a) and (b), except as provided in § 648.81(d) and (g)(2), and in § 648.87(a)(1)(ii).

* * * * *

(24) Enter port, while on a multispecies DAS trip, in possession of more than the allowable limit of cod specified in § 648.86(b)(1)(i) without reporting the cod hail weight, unless the vessel is fishing under the cod exemption specified in § 648.86(b)(2). Under no circumstances may such a trip exceed 14 days in length.

(25) Fail to remain in port for the appropriate time specified in § 648.86(b)(1)(ii)(A), except for transiting purposes, provided the vessel complies with § 648.86(b)(3).

* * * * *

5. In § 648.23, paragraph (b)(4) is redesignated as paragraph (b)(5) and a new paragraph (b)(4) is added to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(b) * * *

(4) *On-reel stowage for vessels transiting the GOM Rolling Closure Areas.* (i) The net is on a reel, and its entire surface is covered with canvas or other similar material that is securely bound;

(ii) The towing wires are detached from the doors; and

(iii) No containment rope, codend tripping device, or other mechanism to close off the codend is attached to the codend.

* * * * *

6. In § 648.80, paragraphs (a)(2)(i), (a)(6)(i), (a)(8), (a)(10) introductory text, (a)(10)(i)(C), (a)(12) introductory text, (a)(13) introductory text, (b)(2)(i), (d)(2), (e)(2), (h), and (i)(8) are revised; paragraph (d)(3) is amended by removing the word "and"; paragraph (d)(4) is amended by removing the period and adding "; and" in its place; paragraph (a)(5) is removed and reserved; paragraph (a)(2)(iv) is added and paragraph (a)(12)(ii) is added and reserved to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(2) * * *

(i) *Minimum mesh size.* Except as provided in paragraphs (a)(2) (i) and (iii) of this section, and unless otherwise restricted under paragraph (a)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, midwater trawl, or purse seine on a vessel or used by a vessel fishing under a DAS in the NE multispecies DAS program in the GOM/GB Regulated Mesh Area is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51 cm) square mesh throughout the entire net, or any combination thereof, provided the vessel complies with the requirements of paragraph (a)(2)(iv) of this section. This restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) × 3 ft (0.9 m), (9 sq ft (0.81 sq m)), or to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

* * * * *

(iv) *Rockhopper and roller gear restrictions.* For all trawl vessels fishing in the GOM/GB Inshore Restricted Roller Gear Area, the diameter of any part of the trawl footrope, including discs, rollers, or rockhoppers, must not exceed 12 inches (30.48 cm). Any gear on a vessel that does not meet the specifications in this paragraph (a)(2)(iv) must be stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b). The GOM/GB Inshore Restricted Roller Gear Area is defined by straight lines connecting the following points in the order stated:

INSHORE RESTRICTED ROLLER GEAR AREA

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM23	42°00′	69°50′
GM24	43°00′	69°50′
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM18	43°30′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] Maine shoreline.

* * * * *

(5) [Reserved]

(6) * * * (i) Vessels fishing in the Small Mesh Northern Shrimp Fishery or the Small Mesh Area 1/Small Mesh Area 2 fishery, as specified in paragraphs (a)(3) and (a)(8) of this section, may transit through the Small Mesh Northern Shrimp Fishery Exemption Area as specified in paragraph (a)(3) of this section with nets of mesh size smaller than the minimum mesh size specified in paragraph (a)(2) of this section, provided that the nets are stowed and not available for immediate use in accordance with one of the methods specified in § 648.23(b).

* * * * *

(8) *Small Mesh Area 1/Small Mesh Area 2.* (i) Unless otherwise prohibited in § 648.81, vessels subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraph (a)(3)(ii) or (a)(8)(ii) of this section, from July 15 through November 15 when fishing in Small Mesh Area 1 and from January 1 through June 30 when fishing in Small Mesh Area 2. A vessel may not fish for, possess on board, or land any species of fish other than: butterfish, dogfish, herring, mackerel, ocean pout, scup, squid, silver hake, and red hake, except for the following allowable incidental species (bycatch as the term is used elsewhere in this part), with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less. These areas are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

SMALL MESH AREA 1

Point	N. lat.	W. long.
SM1	43°03′	70°27′
SM2	42°57′	70°22′
SM3	42°47′	70°32′
SM4	42°45′	70°29′
SM5	42°43′	70°32′
SM6	42°44′	70°39′
SM7	42°49′	70°43′
SM8	42°50′	70°41′
SM9	42°53′	70°43′
SM10	42°55′	70°40′
SM11	42°59′	70°32′
SM1	43°03′	70°27′

SMALL MESH AREA 2

Point	N. lat.	W. long.
SM13	43°05.6′	69°55.0′

SMALL MESH AREA 2—Continued

Point	N. lat.	W. long.
SM14	43°10.1′	69°43.3′
SM15	42°49.5′	69°40.0′
SM16	42°41.5′	69°40.0′
SM17	42°36.6′	69°55.0′
SM13	43°05.6′	69°55.0′

(ii) *Raised footrope trawl.* Vessels fishing with trawl gear must configure it in such a way that, when towed, the gear is not in contact with the ocean bottom. Vessels are presumed to be fishing in such a manner if their trawl gear is designed as specified in paragraphs (a)(8)(ii) (A) through (D) of this section and is towed so that it does not come into contact with the ocean bottom:

(A) Eight inch (20.3 cm) diameter floats must be attached to the entire length of the headrope with a maximum spacing of 4 feet (12.2 cm) between floats;

(B) The ground gear must all be bare wire not larger than ½-inch (1.2 cm) for the top leg, not larger than ⅝-inch (1.6 cm) for the bottom leg, and not larger than ¾-inch (1.9 cm) for the ground cables. The top and bottom legs must be equal in length with no extensions. The total length of ground cables and legs must not be greater than 40 fathoms from the doors to wingends;

(C) The footrope must be at least 20 feet (6.1 m) longer than the length of the headrope; and

(D) The sweep must be rigged so it is behind and below the footrope, and the footrope is off the bottom. This is accomplished by having the sweep longer than the footrope and having long dropper chains attaching the sweep to the footrope at regular intervals. The forward end of the sweep and footrope must be connected to the bottom leg at the same point. This attachment, in conjunction with the headrope flotation, keeps the footrope off the bottom. The sweep and its rigging must be made entirely of 5/16 inch (0.8 cm) diameter bare chain. No wrapping or cookies are allowed on the chain. The total length of the sweep must be at least 7 feet (2.1 m) longer than the total length of the footrope, or 3.5 feet (1.1 m) longer on each side. Drop chains must connect the footrope to the sweep chain, and the length of each drop chain must be at least 42 inches (106.7 cm). One drop chain must be hung from the center of the footrope to the center of the sweep, and one drop chain must be hung from each corner (the quarter or the junction of the bottom wing to the belly at the footrope). The attachment points of each drop chain on the sweep and the footrope must be the same distance from the center drop chain attachments. Drop chains must be hung at 8-foot (2.4-m) intervals from the corners toward the wing ends. The distance of the drop chain that is nearest the wing end to the end of the footrope may differ from net to net. However, the sweep must be at least 3.5 feet (1.1 m) longer than the footrope between the drop chain closest to the wing ends and the end of the sweep that attaches to the wing end.

* * * * *

(10) *Scallop Dredge Fishery Exemption within the Gulf of Maine (GOM) Small Mesh Northern Shrimp Fishery Exemption Area.* Unless otherwise prohibited in § 648.81, vessels with a limited access scallop permit that have declared out of the DAS program as specified in § 648.10, or have used up their DAS allocations, and vessels issued a general scallop permit, may fish in the GOM Small Mesh Northern Shrimp Fishery Exemption Area when not under a NE multispecies DAS providing the vessel complies with the requirements specified in paragraph (a)(10)(i) of this section. The GOM Scallop Dredge Fishery Exemption Area is the same as the area defined in paragraph (a)(3) of this section and designated as the Small Mesh Northern Shrimp Fishery Exemption Area.

(i) * * *

(C) The exemption does not apply to the Western GOM Area Closure specified in § 648.81(i).

* * * * *

(12) *GOM/GB Monkfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(12)(i) of this section. The GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area is defined by straight lines connecting the following points in the order stated:

N. lat.	W. long.
41°35″	70°00′
42°49.5″	70°00′
42°49.5″	69°40′
43°12″	69°00′
(1)	69°00′

[1] Due north to Maine shoreline.

* * * * *

(ii) [Reserved]

(13) *GOM/GB Dogfish Gillnet Exemption.* Unless otherwise prohibited in § 648.81, a vessel may fish with gillnets in the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area when not under a NE multispecies DAS if the vessel complies with the requirements specified in paragraph (a)(13)(i) of this section. The area coordinates of the GOM/GB Dogfish and Monkfish Gillnet Fishery Exemption Area are specified in paragraph (a)(12) of this section.

* * * * *

(b) * * *

(2) * * * (i) *Minimum mesh size.* Except as provided in paragraphs (b)(2)(i) and (iii) of this section, and unless otherwise restricted under paragraph (b)(2)(ii) of this section, the minimum mesh size for any trawl net, sink gillnet, Scottish seine, purse seine or midwater trawl, not stowed and not available for immediate use in accordance with § 648.23(b), by a vessel fishing under a DAS in the multispecies DAS program in the SNE regulated mesh area, is 6-inch (15.24-cm) diamond mesh or 6.5-inch (16.51-cm) square mesh throughout the entire net, or any combination thereof. This minimum mesh size restriction does not apply to vessels that have not been issued a multispecies permit and that are fishing exclusively in state waters.

* * * * *

(d) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area, and in the area described in § 648.81(c)(1), the vessel has on board a letter of authorization issued by the Regional Administrator, and complies with all restrictions and conditions thereof;

* * * * *

(e) * * *

(2) When fishing under this exemption in the GOM/GB Regulated Mesh Area, the vessel has on board a letter of authorization issued by the Regional Administrator;

* * * * *

(h) *Scallop vessels.* (1) Except as provided in paragraph (h)(2) of this section, a scallop vessel that possesses a limited access scallop permit and either a multispecies combination vessel permit or a scallop multispecies possession limit permit, and that is fishing under a scallop DAS allocated under § 648.53, may possess and land up to 300 lb (136.1 kg) of regulated species per trip, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and provided the vessel has at least one standard tote on board.

(2) Combination vessels fishing under a NE multispecies DAS are subject to the gear restrictions specified in

§ 648.80 and may possess and land unlimited amounts of regulated species, unless otherwise restricted by § 648.86(b). Such vessels may simultaneously fish under a scallop DAS.

(i) * * *

(8) The vessel does not fish for, possess, or land any species of fish other than winter flounder and the exempted small mesh species specified under paragraphs (a)(3)(i), (a)(8)(i), (b)(3), and (c)(3) of this section when fishing in the areas specified under paragraphs (a)(3), (a)(8), (b)(1), and (c)(1) of this section, respectively. Vessels fishing under this exemption in New York and Connecticut state waters may also possess and retain skate as incidental take in this fishery.

* * * * *

7. In § 648.81, paragraphs (d), (g), (h) and (i)(2) are revised; paragraph (f) is removed and reserved; and paragraphs (n) and (o) are removed to read as follows:

§ 648.81 Closed areas.

* * * * *

(d) *Transiting.* Vessels may transit Closed Area I, the Nantucket Lightship Closed Area, the GOM Rolling Closure Areas, the Cashes Ledge Closure Area, and the Western GOM Closure Area, as defined in paragraphs (a)(1), (c)(1), (f)(1), (g)(1), (h)(1), and (i)(1), respectively, of this section, provided that their gear is stowed in accordance with the provisions of paragraph (e) of this section.

* * * * *

(f) [Reserved]

(g) *GOM Rolling Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, GOM Rolling Closure Areas I through V, as described in paragraphs (g)(1) (i) through (v) of this section, for the times specified in paragraphs (g)(1) (i) through (v) of this section, except as specified in paragraphs (d), and (g)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)).

(i) *Rolling Closure Area I.* From March 1 through March 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area I, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA I

(March 1–March 31)

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM6	42°30′	68°30′
GM9	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(ii) *Rolling Closure Area II.* From April 1 through April 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area II, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA II

[April 1–April 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM5	42°00′	68°30′
GM13	43°00′	68°30′
GM10	43°00′	(4)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.
[4] New Hampshire shoreline.

(iii) *Rolling Closure Area III.* From May 1 through May 31, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area III, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA III

[May 1–May 31]

Point	N. lat.	W. long.
GM9	42°30′	(1)
GM6	42°30′	68°30′
GM14	43°30′	68°30′
GM18	43°30′	(2)

[1] Massachusetts shoreline.
[2] Maine shoreline.

(iv) *Rolling Closure Area IV.* From June 1 through June 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area IV, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA IV

[June 1–June 30]

Point	N. lat.	W. long.
GM10	43°00′	(1)
GM11	43°00′	70°00′
GM17	43°30′	70°00′
GM19	43°30′	67°32.0′ or (2)
GM20	44°00′	67°21.0′ or (2)
GM21	44°00′	69°00′
GM22	(3)	69°00′

[1] New Hampshire shoreline.
[2] U.S.-Canada maritime boundary.
[3] Maine shoreline.

(v) *Rolling Closure Area V.* From October 1 through November 30, the restrictions specified in paragraph (g)(1) of this section apply to Rolling Closure Area V, which is the area bounded by straight lines connecting the following points in the order stated:

ROLLING CLOSURE AREA V

[October 1–November 30]

Point	N. lat.	W. long.
GM1	42°00′	(1)
GM2	42°00′	(2)
GM3	42°00′	(3)
GM4	42°00′	70°00′
GM8	42°30′	70°00′
GM9	42°30′	(1)

[1] Massachusetts shoreline.
[2] Cape Cod shoreline on Cape Cod Bay.
[3] Cape Cod shoreline on the Atlantic Ocean.

(2) Paragraph (g)(1) of this section does not apply to persons aboard fishing vessels or fishing vessels:

(i) That have not been issued a multispecies permit and that are fishing exclusively in state waters;

(ii) That are fishing with or using exempted gear as defined under this part, subject to the restrictions on midwater trawl gear in paragraph (a)(2)(iii) of this section, and excluding pelagic gillnet gear capable of catching multispecies, except for vessels fishing with a single pelagic gillnet, not longer

than 300 ft (91.44 m) and not greater than 6 ft (1.83 m) deep, with a maximum mesh size of 3 inches (7.62 cm), provided:

(A) The net is attached to the boat and fished in the upper two-thirds of the water column;

(B) The net is marked with the owner's name and vessel identification number;

(C) There is no retention of regulated species; and

(D) There is no other gear on board capable of catching NE multispecies;

(iii) That are classified as charter, party, or recreational; or

(iv) That are fishing with or using scallop dredge gear when fishing under a scallop DAS or when lawfully fishing in the Scallop Dredge Fishery Exemption Area as described in § 648.80(a)(10), provided the vessel does not retain any regulated multispecies during a trip, or on any part of a trip.

(h) *Cashes Ledge Closure Area.* (1) From July 1 through October 31, no fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the area known as the Cashes Ledge Closure Area, as defined by straight lines connecting the following points in the order stated, except as specified in paragraphs (d) and (h)(2) of this section:

CASHES LEDGE CLOSURE AREA

[July 1–October 31]

Point	N. lat.	W. long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(i) A chart depicting this area is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)).

(ii) [Reserved]

(2) Paragraph (h)(1) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) That meet the criteria in paragraph (g)(2)(ii), (iii), or (iv) of this section.

(ii) [Reserved]

(i) Western GOM Area Closure. * * *

(2) Paragraph (i)(1) of this section does not apply to persons on fishing vessels or fishing vessels that meet the criteria in paragraph (g)(2)(ii), (iii) or (iv) of this section.

* * * * *

8. In § 648.82, paragraph (b)(3)(i) is revised to read as follows:

§ 648.82 Effort-control program for limited access vessels.

* * * * *

(b) * * *

(3) * * * (i) *DAS allocation.* A vessel qualified and electing to fish under the small vessel category may retain up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip without being subject to DAS restrictions, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip. Such a vessel is not subject to a possession limit for other NE multispecies.

* * * * *

9. In § 648.83, paragraphs (a)(2) and (b)(1) are revised to read as follows:

§ 648.83 Minimum fish sizes.

(a) * * *

(2) The minimum fish size applies to whole fish or to any part of a fish while possessed on board a vessel, except as provided in paragraph (b) of this section, and to whole, whole gutted or gilled fish only, after landing. For purposes of determining compliance with the possession limits in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3. Fish fillets, or parts of fish, must have skin on while possessed on board a vessel and at the time of landing in order to meet minimum size requirements. "Skin on" means the entire portion of the skin normally attached to the portion of the fish or to fish parts possessed is still attached.

(b) * * * (1) Each person aboard a vessel issued a multispecies limited access permit and fishing under the DAS program may possess up to 25 lb (11.3 kg) of fillets that measure less than the minimum size if such fillets are from legal-sized fish and are not offered or intended for sale, trade, or barter. For purposes of determining compliance with the possession limits specified in § 648.86, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, will be multiplied by 3.

* * * * *

10. In § 648.86, the section heading, paragraphs (a)(1), (b)(1) heading, (b)(1)(i), (b)(1)(ii) introductory text, (b)(1)(ii)(A) and (c) are revised; paragraph (b)(3) is removed; paragraph (b)(4) is redesignated as paragraph (b)(3) and revised; and paragraph (d) is added to read as follows:

§ 648.86 Possession and landing restrictions.

* * * * *

(a) * * * (1) *NE multispecies DAS vessels.* (i) Except as provided in paragraphs (a)(1)(ii) and (a)(1)(iii) of this section, a vessel that fishes under a NE multispecies DAS may land up to 2,000 lb (907.2 kg) of haddock per DAS fished, or any part of a DAS fished, up to 20,000 lb (9071.8 kg) per trip, provided it has at least one standard tote on board. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) When the Regional Administrator projects that 75 percent of the target TAC will be harvested (9.3 million lb (4,218.5 mt) for the 1999 fishing year), NMFS may publish a notification in the **Federal Register** that, as of a specific date, the limit specified in paragraph (a)(1)(i) of this section is reduced to either a 1,000 lb (453.6 kg) per trip possession limit restriction, or to a landing limit restriction of 1,000 lb (453.6 kg) per DAS fished, 10,000 lb (4,536.0 kg) maximum, depending on the risk of exceeding the target TAC. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this landing limit must have at least one standard tote on board.

(iii) Paragraph (a)(1)(ii) of this section notwithstanding, beginning October 1, 1999, through April 30, 2000, if the Regional Administrator projects that less than 75 percent of the target TAC will be harvested (9.3 million lb (4,218.5 mt) for the 1999 fishing year) by April 30, 2000, NMFS may publish a notification in the **Federal Register** that, as of a specific date, the limit is increased to the amount that the Regional Administrator projects will be sufficient to allow harvesting of at least 9.3 million lb (4,218.5 mt) by April 30, 2000. Haddock on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection. Vessels subject to this landing limit must have at least one standard tote on board.

* * * * *

(b) * * * (1) *Landing limit.* (i) Except as provided in paragraphs (b)(1)(ii) and (b)(2) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(i), a vessel fishing under a NE multispecies DAS may land up to 200 lb (90.7 kg) of cod per DAS, or any part of a DAS, unless otherwise specified in this paragraph. Vessels calling-out of the multispecies DAS program under § 648.10(c)(3) that have utilized part of a DAS (less than 24 hours) may land up to an additional 200 lb (90.7 kg) of cod for that part of a DAS; however, such vessels may not end any subsequent trip with cod on board within the 24-hour period following the beginning of the part of the DAS utilized (e.g., a vessel that has called-in to the multispecies DAS program at 3 p.m. on a Monday and ends its trip the next day (Tuesday) at 4 p.m. (accruing a total of 25 hours) may legally land up to 400 lb (181.4 kg) of cod on such a trip, but the vessel may not end any subsequent trip with cod on board until after 3 p.m. on the following day (Wednesday)). When the Regional Administrator projects that 30 percent of the FMAX target TAC will be harvested (886,000 lb (402 mt) for the 1999 fishing year), NMFS will publish a notification in the **Federal Register** that, as of a specific date, the limit is reduced to a specified amount between 5 lb (2.3 kg) and 100 lb (45.3 kg) per DAS, depending on the risk of exceeding the target TAC. Cod on board a vessel subject to this landing limit must be separated from other species of fish and stored so as to be readily available for inspection.

(ii) A vessel subject to the cod landing limit restrictions described in paragraph (b)(1)(i) of this section, and subject to the cod landing limit call-in provision specified at § 648.10(f)(3)(ii), may come into port with and offload cod in excess of the landing limit as determined by the number of DAS elapsed since the vessel called into the DAS program, provided that:

(A) The vessel operator does not call-out of the DAS program as described under § 648.10(c)(3) and does not depart from a dock or mooring in port to engage in fishing, unless transiting as allowed in paragraph (b)(3) of this section, until sufficient time has elapsed to account for and justify the amount of cod harvested at the time of offloading regardless of whether all of the cod on board is offloaded (e.g., a vessel subject to the landing limit restriction, described in paragraph (b)(1)(i) of this section, that has called-in to the multispecies DAS program at 3 p.m. on Monday and that fishes and comes back into port at 4 p.m. on Wednesday of that same week with 800 lb (362.9 kg) of cod to offload some or all of its catch cannot call-out of the DAS program or leave port until 3:01 p.m. the next day, Thursday (i.e., 3 days plus one minute)); and

* * * * *

(3) *Transiting.* A vessel that has exceeded the cod landing limit as specified in paragraph (b)(1) of this section, and is, therefore, subject to the requirement to remain in port for the period of time described in paragraph (b)(1)(ii)(A) of this section may transit to another port during this time, provided that the vessel operator notifies the Regional Administrator (see Table 1 to § 600.502 of this chapter) either at the time the vessel reports its hailed weight of cod or at a later time prior to transiting and provides the following information: vessel name and permit number, destination port, time of departure, and estimated time of arrival. A vessel transiting under this provision must stow its gear in accordance with one of the methods specified in § 648.81(e) and may not have any fish on board the vessel.

(c) *Other possession restrictions.* Vessels are subject to all other applicable possession limit restrictions, as specified under §§ 648.82(b)(3), 648.83(b)(1), 648.88(a) and (c), and § 648.89(c).

(d) *Calculation of weight of fillets or parts of fish.* The possession limits described under this part are based on the weight of whole, whole-gutted, or gilled fish. For purposes of determining compliance with the possession limits specified in paragraph (a), (b), or (c) of this section, the weight of fillets and parts of fish, other than whole-gutted or gilled fish, as allowed under § 648.83(a) and (b) will be multiplied by 3.

11. In § 648.87, introductory text for paragraphs (a) and (b) is revised, and paragraph (a)(4) is added to read as follows:

§ 648.87 Gillnet requirements to reduce or prevent marine mammal takes.

(a) *Areas closed to gillnet gear capable of catching multispecies to reduce harbor porpoise takes.* All persons owning or operating vessels in the EEZ portion of the areas and times specified in paragraphs (a)(1), (2), (3) and (4) of this section must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnets or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (a)(1) through (a)(4) of this section.

* * * * *

(4) *NE Closure Area.* From August 15 through September 13, of each fishing year, the restrictions and requirements specified in this paragraph (a) apply to the NE Closure Area, which is the area bounded by straight lines connecting the following points in the order stated:

NORTHEAST CLOSURE AREA

Point	N. lat.	W. long.
NE1	(1)	68°55.0′
NE2	43°29.6′	68°55.0′
NE3	44°04.4′	67°48.7′
NE4	44°06.9′	67°52.8′
NE5	44°31.2′	67°02.7′
NE6	(1)	67°02.7′

1 Maine shoreline.

(i) Copies of a chart depicting this area are available from the Regional Administrator upon request.

(ii) [Reserved]

(b) *Areas closed to gillnet gear capable of catching multispecies to prevent right whale takes.* All persons owning or operating vessels must remove all of their sink gillnet gear and gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or gillnet gear capable of catching multispecies, with the exception of single pelagic gillnet gear (as described in § 648.81(g)(2)(ii)) in the EEZ portion of the areas and for the times specified in paragraphs (b)(1) and (2) of this section. Also, all persons owning or operating vessels issued a limited access multispecies permit must remove all of their sink gillnet gear and other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)), from the areas and for the times specified in paragraphs (b)(1) and (2) of this section, and, may not use, set, haul back, fish with, or possess on board, unless stowed in accordance with the requirements of § 648.81(e)(4), sink gillnet gear or other gillnet gear capable of catching multispecies, with the exception of single pelagic gillnets (as described in § 648.81(g)(2)(ii)) in the areas and for the times specified in paragraphs (b)(1) and (2) of this section.

* * * * *

12. In § 648.88, paragraphs (a)(1) and (c) are revised to read as follows:

§ 648.88 Open access permit restrictions.

(a) * * *

(1) The vessel may possess and land up to 300 lb (136.1 kg) of cod, haddock, and yellowtail flounder, combined, per trip, and unlimited amounts of the other NE multispecies, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not use or possess on board gear other than rod and reel or handlines while in possession of, fishing for, or landing NE multispecies, and provided it has at least one standard tote on board.

* * * * *

(c) *Scallop multispecies possession limit permit.* Unless otherwise prohibited in § 648.86(b), a vessel that has been issued a valid open access scallop multispecies possession limit permit may possess and land up to 300 lb (136.1 kg) of regulated species per trip when fishing under a scallop DAS allocated under § 648.53, provided that the amount of cod on board does not exceed the daily cod limit specified in § 648.86(a)(2) and (b), up to a maximum of 300 lb (136.1 kg) of cod for the entire trip, and that the vessel does not fish for, possess, or land haddock from January 1 through June 30 as specified under § 648.86(a)(2)(i), and provided the vessel has at least one standard tote on board.

* * * * *

[FR Doc. 99–11157 Filed 4–30–99; 2:27 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990430113–913–01; I.D. 042799A]

RIN 0648–AL64

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 1999 Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the ocean salmon fisheries off Washington, Oregon, and California for 1999 and 2000 salmon seasons opening earlier than May 1, 2000. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the exclusive economic zone (3–200 nm) off Washington, Oregon, and California. These management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian and non-treaty commercial and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and for inside fisheries.

DATES: Effective from 0001 hours Pacific Daylight Time (P.d.t.), May 1, 1999, until the effective date of the 2000 management measures, as published in the **Federal Register**. Comments must be received by May 17, 1999.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070; or William Hogarth, Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213. Copies of the EA and other documents cited in this document are available from Larry Six, Executive Director, Pacific Fishery Management Council, 2130 S.W. Fifth Ave., Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the exclusive economic zone off Washington, Oregon, and California are managed under a "framework" fishery management plan entitled the Pacific Coast Salmon Plan (FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the FMP, by notification in the **Federal Register**.

These management measures for the 1999 and pre-May 2000 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 5 to 9, 1999, meeting.

Schedule Used To Establish 1999 Management Measures

In accordance with the FMP, the Council's Salmon Technical Team (STT) and staff economist prepared several reports for the Council, its advisors, and the public. The first report, "Review of 1998 Ocean Salmon Fisheries," (Review) summarizes the 1998 ocean salmon fisheries and assesses how well the Council's management objectives were met in 1998. The second report, "Preseason Report I Stock Abundance Analysis for 1999 Ocean Salmon Fisheries" (PRE I), provides the 1999 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 1998 regulations or regulatory procedures

were applied to the 1999 stock abundances.

The Council met from March 8 to 12, 1999, in Portland, Oregon, to develop proposed management options for 1999. Three commercial and three recreational fishery management options were proposed for analysis and public comment. These options presented various combinations of management measures designed to protect numerous weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the STT and Council staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 1999 Ocean Salmon Fisheries" (PRE II), which analyzes the effects of the proposed 1999 management options. This report also was made available to the Council, its advisors, and the public.

Public hearings on the proposed options were held on March 29, 1999, in Westport, WA, and North Bend, OR; and on March 30, 1999, in Astoria, OR, Moss Landing, CA, and Eureka, CA.

The Council met on April 5 to 9, 1999, in Sacramento, CA, to adopt its final 1999 recommendations. Following the April Council meeting, the STT and Council staff economist prepared a fourth report, "Preseason Report III Analysis of Council-Adopted Management Measures for 1999 Ocean Salmon Fisheries" (PRE III), which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public.

Resource Status

Aside from salmon species listed and proposed for listing under the Endangered Species Act (ESA) discussed here, the primary resource concerns are for Klamath River fall chinook, and Washington coastal and Puget Sound natural coho. Management of all of these stocks is affected by interjurisdictional agreements among tribal, State, Federal, and/or Canadian managers.

Chinook Salmon Stocks

California Central Valley fall chinook stocks are abundant compared to other chinook stocks of the Pacific coast. The Central Valley Index of abundance of combined Central Valley chinook stocks is projected to be 847,700 for 1999, 12 percent below the 1998 pre-season estimate (PRE I). The spawning escapement of Sacramento River adult fall chinook was 237,500 adults in 1998 (PRE III), well above the escapement goal range of 122,000 to 180,000 adult spawners.

Winter chinook from the Sacramento River are listed under the ESA as an endangered species (59 FR 440, January 4, 1994). The 1998 spawning run size was estimated to be approximately 1800 adults, a 38 percent increase over the estimated 1995 adult escapement. Neither pre-season nor post-season estimates of ocean abundance are available for winter chinook; however, the run is expected to remain depressed in 1999.

Klamath River fall chinook ocean abundance is projected to be 105,400, age-3 and age-4, fish at the beginning of the fishing season. The abundance forecast is 17 percent below the 1998 pre-season abundance estimate and 45 percent below the average of post-season estimates for 1989–1998 (PRE I). The spawning escapement goal for the stock is 33 to 34 percent of the potential natural adults, but no fewer than 35,000 natural spawners (fish that spawn outside of hatcheries). The natural spawning escapement in 1998 was 41,900 adults (Review).

Oregon coastal chinook stocks include south-migrating and localized stocks primarily from southern Oregon streams and north-migrating chinook stocks which generally originate in central and northern Oregon streams. Abundance of south-migrating and localized stocks is expected to be similar to the levels observed in 1998 (PRE I). These stocks are important contributors to ocean fisheries off Oregon and northern California. The generalized expectation for north-migrating stocks is for an average abundance (PRE I). These stocks contribute primarily to ocean fisheries off British Columbia and Alaska. It is expected that the aggregate Oregon coastal chinook spawning escapement goal of 150,000 to 200,000 naturally spawning adults will be met in 1999 (PRE I).

Estimates of Columbia River chinook abundance vary by stock as follows:

(1) *Upper Columbia River spring and summer chinook*. Numbers of upriver spring chinook predicted to return to the river in 1999 are 24,600 fish, less than two-thirds of the 1998 return of 38,300 and only 22 percent of 1997 return of 114,000 adult fish (PRE I). The 1999 forecast indicates a return to recent year escapement levels and the continued depressed status of this stock. In recent years, the natural component of this stock generally has comprised less than one-third of the upriver spring chinook run, compared to approximately 70 percent of the run when the original escapement goal was developed. The 1997 return of 114,100 fish was at least two-thirds of hatchery origin. The natural stock component remains severely depressed, with Snake River spring/summer chinook listed as threatened under the ESA. The 1998 return of 21,500 adult summer chinook was 24 percent above the preseason expectation and the largest return since 1990 (PRE III). Expected ocean escapement of adult upriver summer chinook is 16,500 adult fish (PRE III). The 1999 stock status remains extremely depressed, with a forecast return of 16,500 fish being only 21 percent of the lower end of the spawning escapement goal range of 80,000 to 90,000 adults counted at Bonneville Dam. Upriver summer chinook migrate to the far north and are not a major contributor to ocean fisheries off Washington and Oregon. Snake River spring and summer chinook are listed as threatened under the ESA (57 FR 14653, April 22, 1992).

(2) *Willamette River spring chinook*. Willamette River spring chinook returns are projected to be 46,500 fish, close to the 1998 return of 45,000 fish (PRE I), and the sixth consecutive year that the adult return is less than 50,000 fish. Lower Columbia River spring chinook stocks are important contributors to Council area fishery catches north of Cape Falcon; Willamette River spring chinook stocks generally contribute to Canadian and Alaskan ocean fisheries.

(3) *Columbia River fall chinook*. Abundance estimates are made for five distinct fall chinook stock units, as follows:

(a) Upriver bright fall chinook ocean escapement is expected to be 147,500 adults, 4 percent above the 1998 observed return of 141,500 adults (PRE III). This stock has a northern ocean migratory pattern and constitutes less than 10 percent of Council area fisheries north of Cape Falcon.

(b) Lewis River wild chinook ocean escapement is forecast at 2,600 adults, 37 percent of the 1998 run size qf 7,000 adults (PRE III). One of the primary reasons for this decline and for Lewis River not being expected to meet the spawning escapement goal for wild chinook is because of short term impacts from previous flooding events; therefore, this decline should not be a long term trend.

(c) Lower river hatchery (Tules) fall chinook ocean escapement is forecast at 34,800 adults, 18 percent below the 1998 observed return of 42,600 adults (PRE III). This stock has declined sharply since the record high return in 1987. Lower Columbia River fall chinook stocks normally account for more than half the total catch in Council area fisheries north of Cape Falcon, with

lower river hatchery fall chinook being the single largest contributing stock. The March forecast return is only 9 percent above the current estimated ocean escapement of 32,000 adults needed to meet brood stock requirements.

(d) Spring Creek hatchery (Tules) fall chinook ocean escapement is projected to be 65,800 adults, over 300 percent greater than the 1998 observed return of 19,500 adults (PRE III). The Spring Creek hatchery fall chinook stock generally has been rebuilding slowly since the record low return in 1987, but this year's projection of 65,800 adults is the largest return since 1982.

(e) Mid-Columbia bright fall chinook ocean escapement is projected to be 38,000 adults, close to the 1998 return of 36,600 adults (PRE III).

(4) *Snake River wild fall chinook.* Snake River wild fall chinook are listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Information on the stock's ocean distribution and fishery impacts are not available. Attempts to evaluate fishery impacts on Snake River fall chinook have used the Lyons Ferry Hatchery stock to represent Snake River wild fall chinook. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska.

Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada border.

Coho Salmon Stocks

Central California coast coho and southern Oregon/northern California coast coho are listed as threatened species under the ESA (61 FR 56138, October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance levels for many years.

Oregon coastal natural, recently listed as threatened under the ESA (63 FR 42587, August 10, 1998), and Columbia River coho stocks are the primary components of the Oregon Production Index (OPI), an annual index of coho abundance from Leadbetter Point, WA, to the U.S.-Mexico border. The 1999 OPI is forecast to be 620,600 coho, 374 percent of the 1998 preseason forecast of 165,800 coho, and 266 percent of the 1998 observed level of 233,100 coho (PRE I). The 1999 estimate for OCN is 60,700 coho, 29 percent above the 1998 preseason forecast of 47,200 coho, and 209 percent of the 1998 observed level of 29,200 coho (PRE I). The 1998 spawning escapement of the OCN stock was 29,200 fish, the second smallest for the last 7 years.

Most Washington coastal natural coho stocks and Puget Sound combined natural coho stocks are expected to be more abundant in 1999 than forecast in 1998. The 1999 Willapa Bay hatchery total ocean stock abundance forecast is 40,500 adults, approximately 95 percent greater than 1998 (PRE I). The prediction is based upon an average terminal area return per release (1992–1997) adjusted by a mean jack return rate for the same brood years. Willapa Bay coho production is predominately hatchery origin, and until 1998, only hatchery abundance was predicted. This year, the estimate of natural coho is 8,300. The estimate of Grays Harbor natural stock ocean abundance for 1999 is 57,700 adults, an increase of 92 percent from the 1998 preseason expected abundance (PRE I). The estimate of hatchery stock ocean abundance is 30,400 adults, an increase of 19 percent from the preseason 1998 estimate (PRE I). The Quinault natural coho ocean run size is 7,300 fish, an increase of 17 percent from the 1998 projected level (PRE I). The Quinault hatchery coho ocean run size is forecast at 8,200 fish, an increase of 111 percent compared to the 1998 level (PRE I). The Queets natural coho ocean run size is 4,300 fish, a slight increase of from the 1998 projected level of 4,200 (PRE I). The Queets hatchery coho ocean run size is forecast at 10,800 fish, an increase of 134 percent compared to the 1998 level (PRE I). The Hoh River natural coho ocean run size is 3,200 fish, a decrease of 6 percent compared to the 1998 projected level (PRE I). The 1999 forecast abundance of Quillayute River natural and hatchery components are 1,200 and 3,500, respectively (PRE I). The 1999 forecast abundance of natural summer coho is 8 percent below the 1998 forecast, while the hatchery is 94 percent above it's 1998 forecast.

Pink Salmon Stocks

Major pink salmon runs return to the Fraser River and Puget Sound only in odd-numbered years. In 1997, abundance was 8.2 million Fraser River pink salmon, and 4.41 million Puget Sound pink salmon. The preseason forecasts for 1999 ocean abundance of Fraser River and Puget Sound pink salmon are not available at this time.

Management Measures for 1999

The Council recommended allowable ocean harvest levels and management measures for 1999 designed to apportion the burden of protecting the weak stocks previously discussed equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act and other applicable law, including the ESA and U.S. obligations to Indian tribes with Federally recognized fishing rights. Accordingly, NMFS hearby adopts them.

Since completion of the April 29, 1998, supplement to the March 8, 1996, biological opinion on the status of endangered and threatened salmon in the ocean salmon fisheries, NMFS has listed Oregon coastal coho as threatened under the ESA (63 FR 42587, August 10, 1998) and four populations of chinook (Puget Sound, Lower Columbia River, Upper Willamette River, and Upper Columbia River spring) as threatened (64 FR 14308, March 24, 1999). Three populations of chinook (Central Valley spring, Central Valley fall, and southern Oregon/northern California coastal) remain proposed for listing (64 FR 14329, March 24, 1999). In a March 1, 1999, letter to the Council, NMFS provided guidance on protective measures for listed species for the 1999 season.

Amendment 13 to the FMP, which has been approved by NMFS, provides separate exploitation rate targets for four OCN sub-stocks that depend on measures of prior escapement and ocean survival. NMFS ESA guidance required that the three northern sub-stocks be managed in accordance with Amendment 13, which permits an exploitation rate of 15 percent under the medium level of ocean survival. The southern sub-stock is part of the southern Oregon/northern California coastal coho. However, NMFS urged the Council to target a precautionary exploitation rate of 10 percent or less, expressing strong concern that actual OCN abundance may fall considerably short of the preseason forecast if the current trend of the previous two years in overestimated forecasts continue. This precautionary approach was also recommended by both the Council's Scientific and Statistical Committee and STT advisory bodies. NMFS ESA guidance required that Council fisheries be managed so that the total ocean exploitation rate on the southern Oregon/northern California coastal coho be constrained to 13 percent or less, the

lowest exploitation rate specified under the rebuilding provisions of Amendment 13. In addition, NMFS required that the retention of coho in recreational and commercial fisheries off California continue to be prohibited. In accordance with the NMFS guidance, the Council's recommendations result in a 8.79-percent exploitation rate for OCN coho (freshwater and marine), a 4.9-percent marine exploitation rate impact for Rogue/Klamath coho, and retention of coho off California is prohibited for the fifth consecutive year.

The Council recommended measures expected to produce an 8.79-percent OCN coho exploitation rate based on the current estimate of 8-percent hooking mortality in recreational fisheries, including selective fisheries. However, several recent studies indicate that the hooking mortality rate may be much higher. Therefore, the Council also analyzed the recommended measures assuming a 16 percent hooking mortality in selective fisheries which produced an estimated 10.11 percent OCN coho exploitation rate. The Council has appointed an ad hoc committee to initiate a review of hooking mortality issues and recommend any changes for the year 2000 season.

Sacramento River winter chinook is listed as an endangered species under the ESA. A March 8, 1996, biological opinion and a February 18, 1997, addendum require that NMFS reduce all harvest-related impacts to the Sacramento River winter chinook salmon population by a level that would achieve at least a 31-percent increase in the age-3 spawner-to-spawner replacement rate over a base period of 1989 through 1993. The increase in the spawner-to-spawner replacement rate projected for 1999 achieves the minimum 31 percent rate over the base period.

NMFS concluded that incidental fishery impacts that occur in the ocean salmon fishery proposed for the period from May 1, 1999, through April 30, 2000 (or until the effective date of the 1999 management measures), will not jeopardize the continued existence of populations of chinook proposed for listing. However, NMFS requested the Council to reserve final action on those seasons opening prior to May 1 off California for the Council's November 1999 meeting, by which time NMFS will provide the Council with any necessary guidance regarding anticipated consultation standards for newly listed populations.

From the U.S.-Canada border to Cape Falcon, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington, U.S.* v. *Oregon,* and *Hoh Indian Tribe* v. *Baldrige.*

North of Cape Falcon, Oregon, the 1999 management measures are more liberal than during 1998. They are the largest chinook and coho quotas since 1993, but are still restricted to protect depressed Washington coastal, Puget Sound, and Oregon Coastal Natural (OCN) coho stocks.

The Council adopted a new commercial troll fishery for all salmon that will open between Cape Flattery to Cape Alava, WA West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point, WA on July 10 through earliest of September 30 or attainment of the overall chinook quota. The new boundary in Washington was suggested by industry representatives to try to prevent impacts to the newly listed Puget Sound chinook ESU. This new boundary closes the area off the mouth of the Strait of Juan de Fuca at the time when the chinook from Puget Sound are thought to be migrating back to their spawning grounds.

The Columbia Control Zone was another area where the Council adopted new boundaries. The new boundaries cover the ocean area at the Columbia River mouth bounded by a line extending for 6 nm due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

South of Cape Falcon, OR, the retention of coho is prohibited for the fifth consecutive year, except for a recreational selective fishery off Oregon in July with a 15,000 fish quota of marked hatchery coho. Chinook fisheries are constrained primarily to meet the Klamath River fall chinook natural spawner escapement floor and ESA standards for Sacramento River winter chinook. These constraints also limit impacts on threatened Snake River fall chinook, Oregon Coastal coho, Southern Oregon/Northern California Coast coho, and Central California coho. Size limit, gear, and seasonal restrictions are intended to reduce harvest impacts on endangered Sacramento River winter chinook.

The selective fishery proposal off the Oregon coast is controversial because of potential impacts on Oregon coastal natural (OCN) coho, which include the Oregon Coastal and the northern end of the Southern Oregon/Northern California Coastal Coho ESUs listed as threatened under the ESA. The options for the selective fishery originally ranged from allowing a landed catch of 60,000 coho (option 1), to a 20,000 catch (option 2), to no selective fishery (option 3).

Several concerns arose. The forecasted return, although better than last year, is not sufficiently large to replace the parent brood. There is no evidence yet that OCN stocks are recovering from record low spawning escapement levels. There is substantial uncertainly surrounding estimates of hooking and handling mortality to natural (unmarked) coho in a selective fishery. Finally, there is the perception that by proposing new fisheries, Oregon's efforts to achieve voluntary improvements in freshwater habitat from land owners and businesses will be damaged. NMFS' view is that the uncertainties and potential risks described above called for an extremely precautionary approach to allowing selective fisheries on marked hatchery coho.

The ODFW proposed a 10,000 fish quota. However, based on a proposed exchange between the commercial troll and recreational fishery advisory panel representatives, the selective fisheries quota was raised from 10,000 to 15,000 fish, coupled with a reduction in the number of days of commercial trolling off Oregon that would result in no change in impacts on OCN coho from the original motion for a selective fishery with a 10,000 fish quota. Oregon will also intensively monitor this selective fishery to gain more information regarding impacts of the selective fishery and to help in the shaping of future selective fisheries. NMFS believes the modest selective fishery and planned monitoring program are sufficiently precautionary.

The Council recommended the continued use of an increase in the minimum size limit in the recreational fishery to 24 in (61.0 cm) south of Horse Mountain in conjunction with restricted seasons to reduce incidental ocean harvest of Sacramento River winter chinook. The Council recommended the continuation of gear restrictions for

recreational fisheries off California to minimize hooking mortality.

The Council recommended an August 1 through September 6 recreational fishery between Point Arena and the U.S.-Mexico Border in which the bag limit will be the first two fish caught (excluding coho) with no minimum size limit. Any coho salmon caught must be released.

The Council also recommended a commercial troll test fishery operating inside 6 nm from July 1 through July 14 between Fort Ross and Point Reyes under a 2,500 fish quota. The test fishery is designed to assess the relative contribution of Klamath River fall chinook to the catch of a near-shore commercial fishery in the test area.

Commercial Troll Fisheries

North of Cape Falcon

The size limit for chinook is 28 in (71.1 cm) (21.5 in (54.6 cm) head-off), 16 in (40.6 cm) (12 in (30.5 cm) head-off) for coho, and there is no size limit for pink salmon.

The commercial troll fishery for all salmon except coho will open between the U.S.-Canada border and Cape Falcon, OR, on May 1 and continue through the earlier of June 15 or attainment of the 24,000 chinook quota. The Columbia Control Zone is closed. Inseason actions may modify harvest guidelines in later fisheries to achieve or prevent exceeding the overall quota.

The commercial troll fishery for all salmon will open between Cape Flattery to Cape Alava, WA, West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point, WA, on July 10 and continue through the earliest of September 30 or attainment of the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota. The season follows a cycle of 4 days open/3 days closed. No more than 4 spreads are allowed per line. Gear is restricted to plugs 6 in (15.2 cm) or longer. Flashers without hooks may be used if installed below the second spread from the top and will not be counted as a spread. No more than one flasher is allowed per line. Each vessel may possess, land and deliver no more than 100 coho per open period (trip limits, gear restrictions and guidelines may be adjusted inseason). Vessels must land and deliver their fish within 24 hours of any closure of this fishery within the area or adjacent closed area.

South of Cape Falcon

Retention of coho salmon is prohibited in all areas south of Cape Falcon, OR. All seasons listed below are restricted to all salmon species except coho salmon. Off California, no more than six lines are allowed per vessel. Off Oregon, no more than four spreads are allowed per line. The size limit for chinook is 26 in (66.0 cm) (19.5 in (49.5 cm) head-off), except south of Point Arena after June when the size limit increases to 27 in (68.6 cm) (20.25 in (51.4 cm) head-off).

From Cape Falcon to Humbug Mountain, OR, the commercial fishery opened April 1 and will continue through July 17, then reopen August 1 through August 29, and then reopen September 1 through October 31.

From Humbug Mountain, OR, to the Oregon-California border, the commercial fishery will open May 1 and will continue through May 31.

From Sisters Rocks to Mack Arch, OR, the commercial fishery will open August 1 and continue through the earlier of August 31 or attainment of the 2,500 chinook quota. The open area is restricted to 0 to 4 nm (7.4 km) off shore. All salmon must be landed and delivered to Gold Beach, Port Orford, or Brookings, OR within 24 hours of each closure.

From House Rock, OR, to Humboldt South Jetty, CA, the commercial fishery will open September 1 and continue through the earlier of September 30 or attainment of the 7,000 chinook quota. Restrictions include a possession and landing limit of no more than 30 fish per day; all fish caught in this area must be landed within the area; and the Klamath Control Zone is closed. Within the 7,000 chinook quota is a 1,000 chinook harvest guideline for landings to the port of Brookings, OR. If this guideline is reached prior to the overall quota, the fishery will close north of the Oregon-California border. When the fishery is closed north of the Oregon-California border and open to the south, Oregon State regulations provide that: Vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR, prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the name of the vessel, number of fish on board, and estimated time of arrival.

From Horse Mountain to Point Arena, CA, the commercial fishery will open September 1 through September 30. The minimum size limit is 26 in (66.0 cm).

From Point Arena to Point Reyes, CA, the commercial fishery will open July 17 through September 30. The minimum size limit is 27 in (68.6 cm).

From Fort Ross to Point Reyes, CA, a test troll commercial fishery inside 6 nm will open July 1 through the earlier of July 14 or an overall 2,500 chinook quota, for all salmon except coho. The minimum size limit is 26 in (66.0 cm) for consistency with the 1998 test fishery. There is a landing limit of no more than 30 fish per day. All fish caught in this area must be landed in Bodega Bay, CA. Fish taken outside this test fishery may not be landed at Bodega Bay while this fishery is open. These restrictions are necessary to assure the data collected from the test fishery are valid.

From Point Reyes to Point San Pedro, CA, the commercial fishery will open July 1 through September 30. The minimum size limit is 27 in (68.6 cm).

From Point San Pedro, CA, to the U.S.-Mexico border, the commercial fishery will open May 1 through August 21 and September 1 through September 30. The minimum size limit is 26 in (66.0 cm) through June 30, and 27 in (68.6 cm) after June 30.

Recreational Fisheries

North of Cape Falcon

The size limit for chinook is 24 in (61.0 cm), 16 in (40.6 cm) for coho, and there is no size limit for pink salmon. All retained coho must have a healed adipose fin clip.

From the U.S.-Canada border to Cape Alava, WA the fishery will open on July 19 through the earlier of September 30 or attainment of the 10,200 coho subarea quota. All salmon may be retained except chinook (7 days per week). There is a 2-fish per day daily bag limit.

From Cape Alava to the Queets River, WA the fishery will open on July 19 through the earlier of September 30 or attainment of the 2,600 coho subarea quota. The fishery is open 7 days per week with a 2-fish daily bag limit. Inseason management may be used to sustain season length and keep harvest within a guideline of 400 chinook.

From the Queets River to Leadbetter Point, WA the fishery will open on July 19 through the earlier of September 30 or attainment of the 42,200 coho subarea quota. The fishery is open Sunday through Thursday only, for all salmon, with a two-fish daily bag limit, but no more than 1 chinook, and no more than six fish in a calender week (Sunday through Saturday). The fishery is closed 0 to 3 nm (4.8 km) offshore beginning August 22. Inseason management may be used to sustain season length and keep harvest within a guideline of 13,400 chinook.

From Leadbetter Point, WA, to Cape Falcon, OR, the fishery will open on July 19 through the earlier of September 30 or attainment of the 55,000 coho subarea quota. The fishery is open

Sunday through Thursday only, for all salmon, with a 2-fish daily bag limit, but no more than 1 chinook a day. No more than six fish may be retained in a calender week (Sunday through Saturday). Coho retention is prohibited between Tillamook Head and Cape Falcon beginning August 1 (i.e., all salmon except coho and a daily bag limit of 1 chinook). The fishery is closed in Recreational Columbia Control Zone (a newly defined area for 1999 defined previously and in Table 2). Inseason management may be used to sustain season length and keep harvest within a guideline of 7,600 chinook.

South of Cape Falcon

Retention of coho salmon is prohibited in all areas south of Cape Falcon, except for a recreational selective fishery off Oregon in July with a 15,000 fish quota of marked hatchery coho. The size limit for chinook is 20 in (50.8 cm) from Cape Falcon to Horse Mountain and 24 in (61.0 cm) from Horse Mountain south. The size limit for coho is 16 in (40.6 cm) in the selective fishery and all retained coho must have a healed adipose fin clip. There is no size limit for pink salmon off Washington and Oregon. The size limit for pink salmon off California is 20 in (50.8 cm). In the "first two fish bag limit" areas there are no size restrictions. All seasons listed below are restricted to all salmon species except coho salmon, except in the specified selective fishery. North of Point Conception, CA, persons fishing for salmon and persons fishing from a boat with salmon on board are restricted to no more than one rod per angler. From Horse Mountain to Point Conception, CA, the following restrictions apply:

If angling by any other means than trolling, then no more than two single point, single shank, barbless circle hooks shall be used. The distance between the two hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly to the shank at a 90 degree angle. Circle hooks are not required when artificial lures are used without bait. Trolling is defined as: Angling from a boat or floating device that is moving forward by means of a source of power (other than drifting by means of the prevailing water current or weather conditions) except when landing a fish.

From Cape Falcon to Humbug Mountain, OR the recreational fishery, which opened April 1, will continue October 31, except as provided below during the selective fishery for all salmon except coho. Anglers may retain 2 fish per day, but no more than 6 fish in 7 consecutive days. Legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 in (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may be used only with downriggers. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

Selective fishery. July 10 through the earlier of July 31 or a landed catch of 15,000 coho for all salmon. Anglers may retain 2 fish per day. All retained coho must have a healed adipose fin clip. There are no special gear restrictions except B.3. (single point, single shank, barbless hooks). The season will follow a cycle of 2 days open/2 days closed (i.e., open July 10–11; 14–15; 18–19; 22–23; 26–27; and 30–31). Depending on fishing effort and catch, inseason action may be used to adjust open days to effectively utilize the available quota. Note: On closed days during the selective fishery no angling for any species of salmon is allowed.

From Humbug Mountain, OR, to Horse Mountain, CA, the recreational fishery will open May 29 through July 4, then reopen July 29 through September 14. Both seasons include a one-fish daily bag limit, but no more than four fish mat be retained in seven consecutive days, and a 20 in (50.8 cm) minimum size limit; the Klamath Control Zone closed in August.

From Horse Mountain to Point Arena, CA, the recreational fishery which opened on February 13 will continue through July 4, then reopen July 25 through November 14 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit for both seasons.

From Point Arena to Pigeon Point, CA, the recreational fishery, which opened on March 27, will continue through October 31 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit, except from August 1 through September 6, the bag limit will be the first two fish other than coho and no size limit (no catch-and-release angling). Sacramento Control Zone will be closed from the season opening through March 31.

From Pigeon Point, CA, to the U.S.-Mexico border, the recreational fishery which opened on March 13 will continue through September 6 with a 2-fish daily bag limit and a 24 in (61.0 cm) minimum size limit, except from August 1 through September 6, the bag limit will be the first two fish other than coho and no size limit (no catch-and-release angling).

Treaty Indian Fisheries

Ocean salmon management measures proposed by the treaty Indian tribes are part of a comprehensive package of treaty Indian and non-treaty salmon fisheries in the ocean and inside waters agreed to by the various parties. Treaty troll seasons, minimum length restrictions, and gear restrictions were developed by the tribes and agreed to by the Council. Treaty Indian troll fisheries north of Cape Falcon are governed by quotas of 30,000 chinook (20,000 for the May-June chinook-directed fishery and 10,000 for the August-September all-salmon fishery) and 38,500 coho. The all-salmon-except-coho seasons open May 1 and extend through June 30 or until the overall harvest guideline of 20,000 chinook is reached, whichever is earlier. The all-salmon seasons open August 1 and extend through the earliest of September 15 or attainment of the chinook or coho quotas. If the chinook quota from the May-June fishery is not fully utilized, the excess fish may not be rolled into the later all-salmon season. The minimum length restrictions for all treaty ocean fisheries, excluding ceremonial and subsistence harvest, is 24 in (61.0 cm) for chinook and 16 in (40.6 cm) for coho.

2000 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2000 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended and NMFS concurs that the following seasons will open off California in 2000. The following recreational seasons have two-fish daily bag limits and a minimum size limit of 24 in (61.0 cm) for chinook salmon (see special gear restrictions B.5). From Pigeon Point, CA to the U.S.-Mexico border, a recreational fishery for all salmon except coho will open on March 18. However, at the November 1999 meeting, the Council will consider the proposed 2000 opening of the fishery south of Pigeon Point, CA and make its final recommendations for the opening of that fishery. From Point Arena to Pigeon Point, CA, a recreational fishery for all salmon except coho will open on April 1. From Horse Mountain to Point Arena, CA a recreational fishery for all salmon, except coho, will open on February 12. At the March 2000 meeting, the Council will consider in season

recommendations to (1) establish management measures for an all-salmon-except-coho fishery prior to May 1, in areas off Oregon, and (2) recommend the areas, season, quota, and special regulations for a test fishery off California in April south of Pillar Point.

The following tables and text are the management measures recommended by the Council and approved by NMFS for 1999 and, as specified, for 2000.

Table 1.—Commercial Management Measures for 1999 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Falcon, OR

May 1 through earlier of June 15 or 24,000 chinook guideline. All salmon except coho. Columbia Commercial Control Zone closed (C.7.) Harvest guidelines in later fisheries may be modified if necessary to meet the overall quota.

Cape Flattery (48°23'00" N. lat.) to Cape Alava (48°10'00" N. lat.) West of 125°05'00" W. long. and Cape Alava to Leadbetter Point, WA

July 10 through earliest of September 30 or the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota. All salmon. Cycle of 4 days open/3 days closed. No more than 4 spreads per line. Gear restricted to plugs 6 in (15.2 cm) or longer. Flashers without hooks may be used if installed below the second spread from the top and will not be counted as a spread. No more than one flasher per line. Each vessel may possess, land and deliver no more than 100 coho per open period (trip limits, gear restrictions and guidelines may be adjusted inseason). Vessels must land and deliver their fish within 24 hours of any closure of this fishery within the area or adjacent closed area.

South of Cape Falcon

Cape Falcon to Humbug Mountain, OR

April 1 through July 17, August 1 through August 29, and September 1 through October 31. All salmon except coho. See Oregon State regulations for a description of the closed area at the mouth of Tillamook Bay. See gear restriction (C.3.a.).

Humbug Mountain, OR to Oregon-California Border

May 1 through May 31. All salmon except coho. See gear restriction (C.3.a.).

Sisters Rocks to Mack Arch, OR

August 1 through earlier of August 31 or 2,500 chinook quota. All salmon except coho. Open 0–4 nm (7.4 km) offshore. All salmon must be landed and delivered to Gold Beach, Port Orford or Brookings, OR within 24 hours of any closure. See gear restriction (C.3.a.).

House Rock, OR to Humboldt South Jetty, CA

September 1 through earlier of September 30 or 7,000 chinook quota. All salmon except coho. Possession and landing limit of 30 fish per day. All fish caught in this area must be landed within the area. Klamath Control Zone closed (see C.7.). Within the 7,000 chinook quota is a harvest guideline limiting landings at the port of Brookings to no more than 1,000 chinook. If this guideline is reached prior to the overall quota, the fishery will close north of the Oregon-California border. When the fishery is closed north of the Oregon-California border and open to the south, Oregon State regulations provide for the following action: Vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival. See gear restriction (C.3.).

Horse Mountain to Point Arena, CA

September 1 through September 30. All salmon except coho. See gear restriction (C.3.b.).

Point Arena to Point Reyes, CA

July 17 through September 30. All salmon except coho. Minimum size limit 27 in. See gear restriction (C.3.b.).

Fort Ross (38°31'00" N. lat.) to Point Reyes, CA (test fishery inside 6 nm [11.1 km])

July 1 through earlier of July 14 or 2,500 chinook quota. All salmon except coho. Minimum size limit 26 in (to be consistent with 1998 test fishery). Open only inside 6 nm (11.1 km). Landing limit of 30 fish per day. All fish caught in this area must be landed in Bodega Bay. Fish taken outside this area may not be landed at Bodega Bay while this fishery is open. See gear restriction (C.3.b.).

Point Reyes to Point San Pedro, CA

July 1 through September 30. All salmon except coho. Minimum size limit 27 in. See gear restriction (C.3.b.).

Point San Pedro to U.S.-Mexico Border

May 1 through August 21 and September 1 through September 30. All salmon except coho. Minimum size limit 27 in after June 30. See gear restriction (C.3.b.).

B.—MINIMUM SIZE LIMITS

[Inches]

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	28.0	21.5	16.0	12.0	None.
Cape Falcon to Oregon-California Border*	*26.0	*19.5			None.
Oregon-California Border to Point Arena*	*26.0	*19.5			None.
South of Point Arena prior to July 1*	*26.0	*19.5			None.
South of Point Arena after June 30*	*27.0	*20.25			None.

*Chinook not less than 26 in (19.5 in head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.

Metric equivalents for chinook: 28.0 in=71.1 cm, 27.0 in=68.6 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 20.25 in=51.4 cm, 19.5 in=49.5 cm.

Metric equivalents for coho: 16.0 in=40.6 cm, 12.0 in=30.5 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

C.1. *Hooks:* Single point, single shank barbless hooks are required.

C.2. *Spread:* A single leader connected to an individual lure or bait.

C.3. *Line, Spread, and Gear Restrictions:*

a. Off Oregon south of Cape Falcon, no more than 4 spreads are allowed per line.

b. Off California, no more than 6 lines are allowed per vessel.

C.4. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Transit Through Closed Areas With Salmon on Board:* It is unlawful for a vessel to have troll gear in the water while transiting any area closed to salmon fishing while possessing salmon.

C.6. *Notification When Unsafe Conditions Prevent Compliance with Regulations:* If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgement of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival. This stipulation will be implemented by state regulations for California, Oregon and Washington, as required.

C.7. *Control Zone Definitions:*

a. Columbia Commercial Control Zone—The ocean area at the Columbia River mouth bounded by a line extending for 6 nm (11.1 km) due west from North Head along 46°18′00″ N. lat. to 124°13′18″ W. long., then southerly to 46°13′24″ N. lat. and 124°11′00″ W. long. (green, Columbia River Entrance Lighted Bell Buoy #1), then southerly to 46°11′06″ N. lat. and 124°11′00″ W. long. (red, Columbia River Approach Lighted Whistle Buoy), then northeast along red buoy line to the tip of the south jetty.

b. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm (11.1 km) north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nm [22.2 km] offshore), and on the south by 41°26′48″ N. lat. (approximately 6 nm [11.1 km] south of the Klamath River mouth).

C.8. *Incidental Halibut Harvest:* The operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206/634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after July 31 if quota remains and if announced on the NMFS hotline (phone 800–662–9825). ODFW and WDFW will monitor landings and if they are projected to exceed the 23,490 pound (10.7 mt) preseason allocation or the Area 2A non-Indian commercial halibut TAC, NMFS will take inseason action to close the incidental halibut fishery.

License holders may land no more than 1 halibut per each 5 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 in (81.3 cm).

C.9. *Inseason Management:* In addition to standard inseason actions or inseason modifications already noted under the season description, the following inseason guidance is provided to NMFS:

Transfers of 5,000 fish or less between subarea quotas north of Cape Falcon shall be done on a fish-for-fish basis.

Any difference between the total chinook landings in the May 1 through June 15 non-treaty troll fishery north of Cape Falcon and the 24,000 chinook guideline will be used to adjust the allowable chinook catch for the July 10 through September 30 non-treaty troll fishery north of Leadbetter Point.

At the March 2000 meeting, the Council will consider inseason recommendations to: (1) open commercial seasons for all salmon except coho prior to May 1 in areas off Oregon, and (2) recommend the areas, season, quota, and special regulations (based on the results of the 1999 fishery) for the experimental April fishery off California south of Pillar Point.

C.10. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.

C.11. For the purposes of California Department of Fish and Game Code, Section 8232.5, the definition of the KMZ for the ocean salmon season shall be that area from Humbug Mountain, Oregon to Horse Mountain, California.

D. QUOTAS

D.1. *North of Cape Falcon:* All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 50,000 chinook or 130,000 coho. Preseason species trade of 12,500 coho to the recreational fishery for 3,500 chinook to the commercial fishery. Therefore, the troll fishery will be limited by overall catch quotas of 28,500 chinook and 20,000 coho.

D.2. *U.S.-Canada Border to Cape Falcon:* The troll fishery will have a 24,000 chinook guideline.

D.3. *Cape Flattery to Cape Alava West of 125°05′00″ W. long. and Cape Alava to Leadbetter Point:* The troll fishery will be limited by the overall chinook quota (preseason 4,500 chinook guideline) or 20,000 coho quota.

D.4. *Sisters Rocks to Mack Arch:* The troll fishery will be limited by a catch quota of 2,500 chinook.

D.5. *House Rock, Oregon to Humboldt South Jetty, California:* The troll fishery will be limited by a catch quota of 7,000 chinook.

D.6. *Fort Ross to Point Reyes:* The troll fishery will be limited by an overall catch quota of 2,500 chinook.

Table 2.—Recreational Management Measures for 1999 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, C, and D which must be followed for lawful participation in the fishery.

A. SEASON DESCRIPTION

North of Cape Falcon

U.S.-Canada Border to Cape Alava, WA

July 19 through earlier of September 30 or 10,200 coho subarea quota. All salmon except chinook (7 days per week). 2 fish per day, all retained coho must have a healed adipose fin clip.

Cape Alava to Queets River, WA

July 19 through earlier of September 30 or 2,600 coho subarea quota. All salmon (7 days per week). 2 fish per day, all retained coho must have a healed adipose fin clip. Inseason management may be used to sustain season length and limit harvest within a guideline of 400 chinook.

Queets River to Leadbetter Point, WA

July 19 through earlier of September 30 or 42,200 coho subarea quota. All salmon. Open Sunday through Thursday, 2 fish per day, but only 1

chinook and all retained coho must have a healed adipose fin clip. No more than 6 fish per calendar week (Sunday through Saturday). Closed 0–3 nm (4.8 km) off shore beginning August 22. Inseason management may be used to sustain season length and limit harvest within a guideline of 13,400 chinook.

Leadbetter Point, WA to Cape Falcon, OR

July 19 through earlier of September 30 or 58,000 coho subarea quota. All salmon. Open Sunday through Thursday, 2 fish per day, but only 1 chinook and all retained coho must have a healed adipose fin clip. No more than 6 fish per calendar week (Sunday through Saturday). Coho retention is prohibited between Tillamook Head and Cape Falcon beginning August 1 (i.e., all salmon except coho and a daily bag limit of 1 chinook). Closed in Recreational Columbia Control Zone (newly defined for 1999, see C.5.). Inseason management may be used to sustain season length and limit harvest within a guideline of 7,600 chinook.

South of Cape Falcon

Cape Falcon to Humbug Mountain, OR

Except as provided below during the selective fishery, the season will be as follows: April 1 through October 31. All salmon except coho. 2 fish per day. No more than 6 fish in 7 consecutive days. Legal gear is limited to artificial lures and plugs of any size, or bait no less than 6 in (15.2 cm) long (excluding hooks and swivels). All gear must have no more than 2 single point, single shank barbless hooks. Divers are prohibited and flashers may be used only with downriggers. See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

Selective fishery: July 10 through earlier of July 31 or a landed catch of 15,000 coho. All salmon. 2 fish per day, all retained coho must have a healed adipose fin clip. No special gear restrictions except C.1. (single point, single shank, barbless hooks). The season will follow a cycle of 2 days open/2 days closed (i.e., open July 10–11; 14–15; 18–19; 22–23; 26–27; and 30–31). Depending on fishing effort and catch, inseason action may be used to adjust open days to effectively utilize the available quota. Note: On closed days during the selective fishery no angling for any species of salmon is allowed.

Humbug Mountain, OR to Horse Mountain, CA

May 29 through July 4 and July 29 through September 14. All salmon except coho. 1 fish per day. No more than 4 fish in 7 consecutive days. Klamath Control Zone (C.5.) closed during August. One rod per angler (C.2.).

Horse Mountain to Point Arena, CA

February 13 through July 4 and July 25 through November 14 (nearest Sunday to November 15). All salmon except coho. 2 fish per day. Special gear restriction C.3. (circle hooks when mooching) and 1 rod per angler (C.2.).

In 2000, the season will open February 12 (nearest Saturday to February 15) through April 30, for all salmon except coho. 2 fish per day, same gear and minimum size restrictions as in 1999.

Point Arena to Pigeon Point, CA

March 27 through October 31 (nearest Sunday to November 1). All salmon except coho. 2 fish per day. Minimum size limit 24 in except no size limit from August 1 through September 6 when the daily bag limit will be the first 2 fish and no catch-and-release angling is allowed. Sacramento Control Zone (C.5.) is closed from the opening of the season through March 31. Special gear restriction C.3. (circle hooks when mooching) and 1 rod per angler (C.2.).

In 2000, the season will open April 1 through April 30, for all salmon except coho. 2 fish per day. Minimum size limit 24 in and same gear restrictions as in 1999.

Pigeon Point to U.S.–Mexico Border

March 13 through September 6. All salmon except coho. 2 fish per day. Minimum size limit 24 in except no size limit from August 1 through September 6 when the daily bag limit will be the first 2 fish and no catch-and-release angling is allowed. North of Point Conception, special gear restriction C.3. (circle hooks when mooching) and one rod per angler (C.2.).

In 2000, the season is tentatively set to open March 18 (nearest Saturday to March 15) through April 30, for all salmon except coho. 2 fish per day. Minimum size limit 24 in and the same gear restrictions as in 1999. The Council will review the tentative opening at its November 1999 Council meeting and make final season recommendations at that time.

B. MINIMUM SIZE LIMITS

[Total length in inches]

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None.
Cape Falcon to Horse Mountain	20.0	16.0	None, except 20.0 off CA.
South of Horse Mountain*	24.0*	—	20.0.

*Except when a "first 2 fish bag limit" is specified under the specific area regulations.
Metric equivalents for chinook: 24.0 in=61.0 cm, 20.0 in=50.8 cm.
Metric equivalents for coho: 16.0 in=40.6 cm.
Metric equivalents for pink: 20.0 in=50.8 cm.

C. SPECIAL REQUIREMENTS, DEFINITIONS, RESTRICTIONS, OR EXCEPTIONS

C.1. *Hooks:* Single point, single shank barbless hooks are required for all fishing gear north of Point Conception, California. Oregon Department of Fish and Wildlife regulations in the state-water fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.

C.2. *Restriction on Number of Fishing Rods North of Point Conception, California:* All persons fishing for salmon, and all persons fishing from a boat with salmon on board, may use no more than one rod per angler.

C.3. *Special Gear Restrictions Between Horse Mountain and Point Conception, California:* Single point, single shank, barbless circle hooks must be used if angling by any means other than trolling and no more than 2 such hooks shall be used. When angling with 2 hooks, the distance between the hooks must not exceed 5 in (12.7 cm) when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). A circle hook is defined as a hook with a generally circular shape and a point which turns inwards, pointing directly

to the shank at a 90° angle. Circle hooks are not required when artificial lures are used *without* bait.

Trolling defined: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions, except when landing a fish.

C.4. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.5. *Control Zone Definitions:*

a. Columbia Recreational Control Zone (modified from previous years)—An area at the Columbia River mouth bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°14′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and on the south by a line running northeast/southwest between the red lighted Buoy #4 and the tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.) and then along the south jetty to the point of intersection with the Buoy #10 line.

b. Klamath Control Zone—The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nm [11.1 km] north of the Klamath River mouth), on the west by 124°23′00″ W. long. (approximately 12 nm [22.2 km] off shore), and on the south by 41°26′48″ N. lat. (approximately 6 nm [11.1 km] south of the Klamath River mouth).

c. Sacramento Control Zone—The ocean area bounded by a line commencing at Bolinas Point (Marin County, 37°54′17″ N. lat., 122°43′35″ W. long.) southerly to Duxbury Buoy (37°51′37″ N. lat., 122°41′43″ W. long.) to Channel Buoy 1 (37°46′10″ N. lat., 122°37′56″ W. long.) to Channel Buoy 2 (37°45′48″ N. lat., 122°37′44″ W. long.) to Point San Pedro (San Mateo County, 37°35′40″ N. lat., 122°31′10″ W. long.).

C.6. *Inseason Management:* Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing.

The procedure for inseason coho transfer among recreational subareas north of Cape Falcon will be:

After conferring with representatives of the affected ports and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon, NMFS may transfer coho inseason among recreational subareas to help meet the recreational season duration objectives (for each subarea). Any transfers between subarea quotas of 5,000 fish or less shall be done on a fish-for-fish basis.

At the November 1999 meeting, the Council will consider the proposed 2000 opening of the fishery south of Pigeon Point and make its final recommendations for the opening of that fishery.

At the March 2000 meeting, the Council will consider an inseason recommendation to open seasons for all salmon except coho prior to May 1 in areas off Oregon.

C.7. *Additional Seasons in State Territorial Waters:* Consistent with Council management objectives, the states of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

D. QUOTAS

D.1. *North of Cape Falcon:* All non-treaty troll and recreational ocean fisheries will be limited by overall quotas of either 50,000 chinook or 130,000 coho. Preseason species trade of 3,500 chinook to the commercial fishery for 12,500 coho to the recreational fishery. Therefore, the recreational fishery will be limited by overall catch quotas of 21,500 chinook and 110,000 coho.

D.2. *Cape Falcon to Humbug Mountain:* Limited by a landed subarea catch quota of 15,000 coho in the July selective fishery.

Table 3.—Treaty Indian Management Measures for 1999 Ocean Salmon Fisheries

Note: This table contains important restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A.—SEASON DESCRIPTIONS •

Tribe and area boundaries	Open seasons	Minimum size limit (inches)			
		Salmon species	Chinook	Coho	Special restrictions by area
MAKAH—That portion of the Fishery Management Area (FMA) north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long..	May 1 through earlier of June 30 or chinook quota..	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	per boat or no more than 4 hand-held lines per person.
QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long..	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines.
	August 1 through earliest of September 15 or chinook or coho quota..	All	24	16	per boat.

A.—SEASON DESCRIPTIONS—Continued

Tribe and area boundaries	Open seasons	Minimum size limit (inches)			
		Salmon species	Chinook	Coho	Special restrictions by area
HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines.
	August 1 through earliest of September 15 or chinook or coho quota..	All	24	16	Per boat.
QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24	.....	Barbless hooks. No more than 8 fixed lines per boat.
	August 1 through earliest of September 15 or chinook or coho quota.	All	24	16	Per boat.

*Metric equivalents: 24 in=61.0 cm, 16 in=40.6 cm.

B.—SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a federal court for that tribe's treaty fishery.
B.2. Applicable lengths, in inches, for dressed, head-off salmon, are 18 in (45.7 cm) for chinook and 12 in (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows: *Makah Tribe*—None. *Quileute, Hoh and Quinault tribes*—Not more than 2 chinook longer than 24 in (61.0 cm) in total length may be retained per day. Chinook less than 24 in total length may be retained.
B.3. The area within a 6-mile (9.7 km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 miles (3.2 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C.—QUOTAS

C.1. The overall treaty troll ocean quotas are 30,000 chinook and 38,500 coho. The overall chinook quota is divided into 20,000 chinook for the May–June chinook-directed fishery and 10,000 chinook for the August–September all-salmon season. If the chinook quota for the May–June fishery is not fully utilized, the excess fish may not be transferred into the later all-salmon season. The quotas include troll catches by the S'Klallam and Makah Tribes in Washington State Statistical Area 4B from May 1 through September 30.

Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. In addition, the 1999 management measures were published in the **Federal Register** on March 19, 1999 (64 FR 13519). The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during May and June troll seasons. It is also authorized after July 31 if halibut quota remains and if halibut retention is announced on the NMFS hotline (phone 800–622–9825). License holders may land no more than 1 halibut per each 5 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 in (81.3 cm). The Oregon Department of Fish and Wildlife and Washington Department of Fish and Wildlife will monitor landings and, if they are projected to exceed the 23,490-pound (10.7-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

Gear Definitions and Restrictions

In addition to the gear restrictions shown in Tables 1, 2, and 3, the following gear definitions and restrictions will apply.

Troll Fishing Gear

Troll fishing gear for the ocean salmon fisheries in the exclusive economic zone off Washington, Oregon, and California is defined as one or more lines that drag hooks behind a moving fishing vessel.

In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear

Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached.

In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a

hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington.

In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 pounds (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board, may use more than one rod and line.

Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Geographical Landmarks

Wherever the words "nautical miles off shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured.

Geographical landmarks referenced in this document are at the following locations:

Cape Flattery	48°23′00″ N. lat.
Cape Alava	48°10′00″ N. lat.
Queets River	47°31′42″ N. lat.
Leadbetter Point	46°38′10″ N. lat.
Cape Falcon	45°46′00″ N. lat.
Humbug Mountain	42°40′30″ N. lat.
Sisters Rocks	42°35′45″ N. lat.
Mack Arch	42°13′40″ N. lat.
House Rock	42°06′32″ N. lat.
Oregon-California Border	42°00′00″ N. lat.
Humboldt South Jetty	40°45′53″ N. lat.
Horse Mountain	40°05′00″ N. lat.
Point Arena	38°57′30″ N. lat.
Fort Ross	38°31′00″ N. lat.
Point Reyes	37°59′44″ N. lat.
Point San Pedro	37°35′40″ N. lat.
Pigeon Point	37°11′00″ N. lat.
Point Conception	34°27′00″ N. lat.

Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under E.O. 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment. The Council solicited public comment on these measures and has notified the public of the measures it recommended for implementation. In February 1999, the Council made available to the public several documents that compiled and analyzed biological and socioeconomic data for the previous year's fishery and salmon stock abundance estimates for the current year. Two Council meetings followed, one in March and one in April, at which the Council received public testimony. In between these meetings, the Council published proposed management measures and requested public comment on them. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter, which reached a large portion of the affected public. Providing for additional prior notice and opportunity for public comments on these measures through a rulemaking process would be impracticable and contrary to the public interest. Given the extremely low returns of many ocean salmon stocks listed or proposed for listing under the Endangered Species Act, the need to prevent overfishing, and the need to facilitate a level of escapement to meet the requirements of the resource and inside fisheries, it is essential to have these measures effective at the beginning of the fishing year. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

For the reasons discussed above, NMFS has determined that good cause exists to waive the requirements of 50 CFR 660.411 for prior notice and opportunity for public comments. Section 660.411 of title 50, Code of Federal Regulations, requires NMFS to publish an action implementing management measures for ocean salmon fisheries each year and, if time allows, invite public comment prior to the effective date. Section 660.411 further states that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after filing of the action with the Office of the Federal Register. NMFS will receive public comments on this action for 15 days from the date of filing this action with the Office of the Federal Register.

The AA also finds good cause under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this rule. The finding of good cause is based upon the public's interest in having these provisions in place by the start of the ocean salmon fishing year (May 1, 1999). As previously discussed, these measures are essential to conserve threatened and endangered ocean salmon stocks, to provide for harvest of more abundant stocks, and to provide for harvest of ocean salmon in international, state, and tribal fisheries. The finding of good cause to waive the 30-day delay in effectiveness is also based on the limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1.

To enhance notification of the fishing industry of these new measures, NMFS will announce the new measures over the telephone hotline used for inseason management actions and by U.S. Coast Guard Notice to Mariners Broadcast. NMFS also will advise the States of Washington, Oregon, and California, which announce the seasons for applicable state and Federal fisheries through their own public notification systems.

In a March 8, 1996, biological opinion and a February 18, 1997, addendum, NMFS considered the impacts to the then listed salmon species, including Snake River fall chinook, spring/summer chinook and sockeye salmon, and the Sacramento River winter chinook, resulting from fisheries conducted in conformance with the FMP. Two additional biological opinions were issued April 30, 1997 and April 29, 1998, which addressed impacts to the growing catalog of listed species for the respective annual regulatory year from May 1 to April 30. Since the issuance of the April 29, 1998, opinion, NMFS has listed 10 new populations of salmon as threatened or endangered under the ESA: Two steelhead, four chinook, one coho, two chum, and one sockeye. In addition NMFS has deferred final decision on three proposed evolutionarily significant units (ESUs), and a proposed expansion of one other chinook salmon ESU for listing. NMFS reinitiated consultation and issued two biological opinions which address the potential effects of ocean salmon fisheries to

newly listed species under the ESA; those opinions were signed on April 28, 1999, covering the three listed coho ESUs in the ocean salmon fisheries and Amendment 13 to the FMP, and on April 30, 1999, covering the ocean salmon fisheries for this season through April 30, 2000.

Prior to the start of the preseason planning process, NMFS sent a letter to the Council, dated March 1, 1999, summarizing its guidance on protective measures for listed species. The Council's recommended management measures comply with NMFS guidance, reasonable and prudent alternatives of jeopardy decisions, and the terms and conditions of the incidental take statements in all of the outstanding applicable biological opinions related to listed salmon species that may be affected by Council fisheries.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: April 30, 1999.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11278 Filed 4–30–99; 2:43 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 64, No. 86
Wednesday, May 5, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1412

RIN 0560–AF79

Production Flexibility Contracts for Wheat, Feed Grains, Rice, and Upland Cotton

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Commodity Credit Corporation (CCC) is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to invite comment from all interested parties on reductions of Production Flexibility Contract (PFC) payments that were affected by the planting of fruits or vegetables in violation of section 118 (b)(1) of the Federal Agriculture Improvement and Reform Act of 1996 (7 U.S.C. 7218 (b)(1).

DATES: Comments must be received on or before June 2, 1999 to be assured consideration.

ADDRESSES: Comments should be directed to Sharon Biastock, Farm Service Agency (FSA), STOP 0517, 1400 Independence Avenue, S.W., Washington DC 20250–0517.

FOR FURTHER INFORMATION CONTACT: Sharon Biastock, (202) 720–6336.

SUPPLEMENTARY INFORMATION:

Background

The Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) provided producers the opportunity to enter into Production Flexibility Contracts (PFC's). The 1996 Act prohibited the planting of fruits and vegetables on PFC acreage except as provided by specific exceptions. Two exceptions require the application of an acre-for-acre payment reduction for each acre of fruit or vegetables planted on PFC acreage. A violation of the PFC occurs when producers do not comply with the fruit and vegetable provisions and the exceptions unless it is determined that the violation is not serious enough to warrant termination of the PFC. The 1996 Act provides that if the Secretary determines that a violation does not warrant termination of the PFC, the Secretary may require the owner or producer subject to the contract to: (1) refund to the Secretary that part of the contract payments received by the owner or producer during the period of the violation, together with interest on the contract payments as determined by the Secretary; or (2) to accept a reduction in the amount of future contract payments that is proportionate to the severity of the violation, as determined by the Secretary.

Under current regulations, if the county FSA committee determines that a planting violation does not warrant termination of the PFC, a reduction may be made in the current or future contract payments, proportionate to the severity of the violation and equal to the sum of either or both: (1) The market value of the fruits and vegetables planted on contract acreage, and (2) the contract payment for each contract acre. The market value is determined by the State committee for the specific fruit or vegetable without any adjustment to reflect costs associated with planting, cultivating or harvesting the fruit or vegetable. If the number of acres on the farm planted to fruits or vegetables exceeds the total PFC acreage and more than one fruit or vegetable has been planted on the farm, the calculation is based on the fruit or vegetable determined to have the highest value. If the acreage of fruit or vegetable with the highest value is less than the acres in violation, the calculation for the remaining acres in violation is based on the fruit or vegetable with the next highest value. The payment reduction is applied to current PFC payments and any future PFC payments for the farm on which the violation occurred and any other farm in which the producers who share in PFC payments on the violating farm have an interest.

For example, if the county committee determines that 25 acres of fruit or vegetables were planted on PFC acreage in violation of the PFC, but the violation did not warrant termination of the PFC, a payment reduction for the planting violation would be assessed in addition to an acre for acre reduction for each of the 25 acres. If, on the farm in this example, the producer planted 100 acres of green peas, which the State committee determined had a value of $500 per acre, and 1 acre of celery, which the State committee determined had a value of $3,000 per acre, the payment reduction for the planting violation in this example would be $15,000 plus a PFC payment reduction for 25 acres. The $15,000 payment reduction for the planting violation represents the value of the 1 acre of celery and 24 acres of green peas, as determined by the State committee. This payment reduction would be applied to the current year PFC payments and any future PFC payments for the farm on which the planting violation occurred and any other farm in which the producers sharing in the PFC payments for the farm on which the planting violation occurred have an interest.

The payment reductions calculated in accordance with the current implementing regulations and procedure are viewed by some to be out of proportion to the severity of the fruit or vegetable planting violation. Accordingly, as indicated below, the public is invited to comment on PFC violations for planting fruits and vegetables.

Purpose

The purpose of this ANPRM is to seek comments on: (1) the appropriateness of the current method of calculating PFC payment reductions as a result of a fruit or vegetable planting violation as set forth in 7 CFR 1412.206; (2) alternative methods for calculating PFC payment reductions for fruit or vegetable planting violations, if the current method of calculation is considered inappropriate; (3) the retroactivity of any change in the method of calculating payment reductions; and (4) the effect any change in the method of calculating payment reductions should have on PFC's which have been terminated, or for which contract acreage was reduced, because of the current method of calculating payment reductions for fruit or vegetable planting violations.

Signed at Washington, DC, on April 28, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–11229 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2, 19, 20, 21, 30, 40, 51, 60, 61, and 63

RIN 3150–AG04

Disposal of High-Level Radioactive Wastes in a Proposed Geologic Repository at Yucca, Mountain, Nevada

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Extension of comment period.

SUMMARY: On February 22, 1999 (64 FR 8640), the NRC published for a 75-day public comment period a proposed rule establishing licensing criteria for disposal of spent nuclear fuel and high-level radioactive wastes in a proposed geologic repository at Yucca Mountain, Nevada. The comment period for the proposed rule was to have expired on May 10, 1999. The NRC received several requests for extension of the public comment period at public meetings held on the proposed rule in Las Vegas, and Beatty, Nevada, on March 23 and March 25, respectively. The requesters cited the complex, technical nature of the proposed rule, and their need to review other documents being developed as part of the nation's high-level radioactive waste management program, as principal reasons for the extension request.

The NRC has decided to extend the public comment period for an additional 51 days. The extended comment period will now expire on June 30, 1999.

DATES: The public comment period has been extended and now expires June 30, 1999. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments may be sent by mail to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff.

Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher (301) 415–5905; e-mail CAG@nrc.gov.

Certain documents related to this rulemaking, including comments received and the regulatory analysis, may be examined at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. These same documents also may be viewed and downloaded electronically via the interactive rulemaking website established by NRC for this rulemaking.

FOR FURTHER INFORMATION CONTACT: Timothy McCartin, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6681; e-mail tjm3@nrc.gov, or Clark Prichard, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6203; e-mail cwp@nrc.gov.

Dated at Rockville, Maryland, this 29th day of April, 1999.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11243 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–41–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes. This proposal would require a one-time inspection to determine whether latch pins on the lower lobe and main deck side cargo doors are installed backward, and corrective actions, if necessary. For certain airplanes, this proposal also would require eventual modification of the latch pin fittings on certain cargo doors. This proposal is prompted by reports that latch pins have been found installed backward on the cargo doors of several airplanes. The actions specified by the proposed AD are intended to prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight.

DATES: Comments must be received by June 21, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–41–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Julie Alger, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2779; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this

proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–41–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–41–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that latch pins have been found installed backward on the forward and aft lower lobe cargo doors of Boeing Model 747 series airplanes. One operator found one latch pin installed backward, and another operator found three of eight latch pins installed backward. In the reported cases, the backward pins have all been found on the lower lobe cargo doors, though similar pins are installed on the main deck side cargo door on airplanes equipped with such a door. Investigation has revealed that latch pins that are removed during maintenance activities can be installed backward such that the pins extend from the wrong end of the latch pin fitting. Backward installation of the latch pins results in improper latching of the pins and the mating latch cam on the cargo door. Such improper latching increases load on the adjacent latch pins and fittings, latch cams, and support structure, which could lead to damage to the structure of the cargo door and doorway cutout. This condition, if not corrected, could result in the cargo door opening during flight.

Explanation of Relevant Service Infomation

The FAA has reviewed and approved Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995. That alert service bulletin describes procedures for a one-time visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors and the main deck side cargo door are installed correctly, and corrective actions, if necessary. The corrective actions include reinstalling the pin correctly, and inspecting the affected cargo door and doorway cutout to detect damage. If any latch pins are found installed backward, the alert service bulletin specifies to contact Boeing for structural inspection procedures.

The FAA also has reviewed and approved Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996, which describes procedures for modification of the latch pin fittings on the forward and aft lower lobe cargo doors. The modification will prevent backward installation of the latch pins. Accomplishment of the actions specified in the alert service bulletin and the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the alert service bulletin and service bulletin described previously, except as discussed below.

Differences Between Alert Service Bulletin and This Proposed AD

Operators should note that, although Boeing Alert Service Bulletin 747–52A2258 specifies that the manufacturer may be contacted for instructions for structural inspections, this AD would require such inspections to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 990 airplanes of the affected design in the worldwide fleet. The FAA estimates that 235 airplanes of U.S. registry would be affected by the proposed AD.

It would take approximately 2 work hours per to accomplish the proposed inspection, at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $28,200, or 120 per airplane.

It would be approximately 3 work hours per airplane to accomplish the proposed modification, at the average labor rate $60 per work hour. Required parts would cost approximately $2,045 per airplane. Based on their figures, the cost impact of the proposed AD on U.S. operators is estimated to be $522,875, or $2,225 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–41–AD.

Applicability: Model 747 series airplanes, line positions 1 through 1079 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the

requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent improper latching of latch pins and the mating latch cam on the cargo door, which could result in damage to the structure of the cargo door and doorway cutout and consequent opening of the cargo door during flight, accomplish the following:

Inspection and Corrective Actions

(a) Within 30 days after the effective date of this AD, perform a one-time visual inspection to determine whether latch pins on the forward and aft lower lobe cargo doors and the main deck side cargo door are installed backward, in accordance with Boeing Alert Service Bulletin 747–52A2258, dated June 1, 1995; as revised by Notices of Status Change 747–52A2258 NSC 1, dated July 20, 1995; 747–52A2258 NSC 2, dated August 31, 1995; and 747–52A2258 NSC 03, dated December 14, 1995. If any latch pin is found installed incorrectly, prior to further flight, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD.

(1) Reinstall the affected latch pin correctly, in accordance with the alert service bulletin.

(2) Perform structural inspections to detect damage of the affected cargo door and doorway cutout, in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Modification

(b) For airplanes having line positions 1 through 1078 inclusive: Within 2 years after the effective date of this AD, modify the latch pin fittings of the forward and aft lower lobe cargo doors, in accordance with Boeing Service Bulletin 747–52–2260, Revision 1, dated March 21, 1996.

Note 2: Modification of the latch pin fittings accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 747–52–2260, dated December 14, 1995, is considered acceptable for compliance with paragraph (b) of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on April 28, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11225 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–182P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Zaleplon into Schedule IV

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is issued by the Deputy Administrator of the Drug Enforcement Administration (DEA) to place the substance zaleplon, including its salts, into Schedule IV of the Controlled Substances Act (CSA). This proposed action is based on a recommendation from the Assistant Secretary for Health and Surgeon General of the Department of Health and Human Services (DHHS) and on an evaluation of the relevant data by the DEA. If finalized, this action will impose the regulatory controls and criminal sanctions of Schedule IV on those who handle zaleplon and products containing zaleplon.

DATES: Comments, objections and requests for a hearing must be received on or before June 4, 1999.

ADDRESSES: Comments, objections and requests for a hearing should be submitted in quintuplicate to the Deputy Administrator, Drug Enforcement Administration, Washington, D.C. 20537; Attention: DEA Federal Register Representative/CCR.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, D.C. 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: Zaleplon is a central nervous system (CNS) depressant that is being considered for marketing approval by the Food and Drug Administration (FDA), under the trade name SONATA™. Zaleplon is a sedative-hypnotic in the pyrazolopyrimidine class, chemically distinct from the benzodiazepines, which competitively binds to the gamma-aminobutyric acid, type A ($GABA_A$, central benzodiazepine receptor. Its pharmacology, abuse and dependence liabilities are similar to those of the benzodiazepines that are currently listed in Schedule IV of the CSA. In clinical trials zaleplon was found to be approximately 100-times less potent but equivalent in its potential for abuse when compared to the prototypic benzodiazepine, triazolam; triazolam is in Schedule IV of the CSA. Zaleplon will be marketed as a prescription drug product for the short-term treatment of insomnia.

Zaleplon is N–[3–(3-cyanopyrazol [1,5-alpyrimidin-7-yl]-N-ethylacetamide, and has been identified by code names CL–284,846 and ZAL–846. There are no asymmetric centers in the molecule or any optical isomers. Zaleplon has a rapid onset and short duration of action, and forms no pharmacologically-active metabolite in man. Zaleplon reduces sleep latency but has a relatively insignificant effect on total sleep time. These pharmacokinetic characteristics of zaleplon should prevent any long-term carryover or hangover effects. However, zaleplon has shown a mild to moderate benzodiazepine-like withdrawal syndrome after acute and continuous dosing studies in baboons.

Zaleplon has demonstrated significant muscle relaxant, ataxic, anticonvulsant, and anxiolytic effects and cognitive impairments in preclinical screening assays. Zaleplon is reinforcing in animals as demonstrated by self-administration studies. It produces euphoria, alterations in mood, perception, memory and subjective effects in humans typical of other benzodiazepines with abuse potential in Schedule IV.

The complexity of the synthesis procedure for preparation of zaleplon precludes a likely synthesis of the drug substance outside a laboratory environment and by individuals lacking training in organic chemistry synthesis. Hallucinations, amnesia, depression and hostility were the most serious adverse events related to the use of zaleplon during the clinical trials. Zaleplon-related overdoes were also noted during the clinical trails. Zaleplon-related overdoes were also noted during the clinical development program. The FDA has concluded that zaleplon's abuse potential appears to be lower than that of Schedule II depressants and similar

to the Schedule IV benzodiazepines. On March 31, 1999, the Assistant Secretary for Health and Surgeon General, Department of Health and Human Services (DHHS), sent the Deputy Administrator of DEA a letter recommending that zaleplon, and its salts, be placed into Schedule IV of the CSA (21 U.S.C. 801 *et seq.*). Enclosed with the March 31, 1999, letter was a document prepared by the FDA entitled, "Basis for the Recommendation for Control of Zaleplon in Schedule IV of the Controlled Substances Act (CSA)." The document contained a review of the factors which the CSA requires the Secretary to consider [21 U.S.C. 811(b)].

The correspondence from the Assistant Secretary for Health and Surgeon General to the DEA dated March 31, 1999, confirmed that FDA had determined that the New Drug Application (NDA) for zaleplon was "approvable" and had issued an approvable letter to the NDA sponsor on January 6, 1999. According to the March 31, 1999, letter from DHHS, "upon full approval of the NDA, zaleplon will have a currently accepted medical use in treatment in the United States."

The factors considered by the Assistant Secretary of Health and Surgeon General and the DEA with respect to zaleplon were:

(1) Its actual or relative potential for abuse;

(2) Scientific evidence of its pharmacological effects;

(3) The state of current scientific knowledge regarding the drug;

(4) Its history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) What, if any, risk there is to the public health;

(7) Its psychic or physiological dependence liability; and

(8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

21 U.S.C. 811(c).

Relying on the recommendation of the Assistant Secretary for Health and Surgeon General, received in accordance with section 201(b) of the Act [21 U.S.C. 811(b)], and the independent review of the available data by the DEA, the Deputy Administrator of the DEA, pursuant to sections 201(a) and 201(b) of the Act [21 U.S.C. 811(a) and 811(b)], find that:

(1) Based on information now available, zaleplon has a low potential for abuse relative to the drugs or other substances in Schedule III;

(2) Zalepon will, upon approval of an NDA by the FDA, have a currently accepted medical use in treatment in the United States; and

(3) Abuse of zaleplon may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.

21 U.S.C. 812(b)(4).

Based on these findings, the Deputy Administrator of the DEA concludes that zaleplon, including its salts, warrants control in Schedule IV of the CSA, if and when the zaleplon NDA is approved by the FDA. It is noted that zaleplon does not have optical isomers to be controlled under this action.

Interested persons are invited to submit their comments, objections or requests for a hearing, in writing, with regard to this proposal. Requests for a hearing should state, with particularity, the issues concerning which the person desires to be heard. All correspondence regarding this matter should be submitted to the Deputy Administrator, Drug Enforcement Administration, Washington, DC, 20537. Attention: DEA Federal Register Representative/CCR. In the event that comments, objections, or requests for a hearing raise one or more issues which the Deputy Administrator finds warrants a hearing, the Deputy Administrator shall order a public hearing by notice in the **Federal Register**, summarizing the issues to be heard and setting the time for the hearing.

In accordance with the provisions of the CSA [21 U.S.C. 811(a)], this action is a formal rulemaking "on the record after opportunity for a hearing." Such proceedings are conducted pursuant to the provisions of 5 U.S.C. 556 and 557 and, as such, are exempt from review by the Office of Management and Budget pursuant to Executive Order (E.O.) 12866, section 3(d)(1). The Deputy Administrator, in accordance with the Regulatory Flexibility Act [5 U.S.C. 605(b)], has reviewed this proposed rule and by approving it certifies that it will not have a significant economic impact on a substantial number of small entities. Zaleplon products will be prescription drugs used for the short-term treatment of insomnia. Handlers of zaleplon also handle other controlled substances used to treat insomnia which are already subject to the regulatory requirements of the CSA.

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under provisions of the Unfunded Mandates Reform Act of 1995.

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices: or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States-based companies to compete with foreign-based companies in domestic and export markets.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with E.O. 12612, it is determined that this rule, if finalized, will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(a) of the CSA [21 U.S.C. 811(a)], and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), and redelegated to the Deputy Administrator pursuant to 28 CFR 0.104, the Deputy Administrator hereby proposes that 21 CFR part 1308 be amended as follows:

PART 1308—(AMENDED)

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. Section 1308.14 is proposed to be amended by redesignating the existing paragraph (c)(48) to (c)(49) and by adding a new paragraph (c)(48) to read as follows:

§ 1308.14 Schedule IV.

* * * * *

(c) * * *

(48) Zaleplon.....2781

* * * * *

Dated: April 26, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–11289 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208156–91]

RIN 1545–AQ30

Accounting for Long-Term Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations describing how income from a long-term contract must be accounted for under section 460 of the Internal Revenue Code, which was enacted by the Tax Reform Act of 1986. A taxpayer manufacturing or constructing property under a long-term contract will be affected by these proposed regulations. This document also provides notice of a public hearing on the proposed regulations.

DATES: Written comments and outlines of oral comments to be presented at the public hearing scheduled for September 14, 1999, at 10 a.m. must be received by August 3, 1999.

ADDRESSES: Send submissions to CC:DOM:CORP:R (REG–208156–91), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208156–91), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing will be held in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, John M. Aramburu or Leo F. Nolan II at (202) 622–4960; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Michael L. Slaughter of the Regulations Unit at (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by July 6, 1999. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this proposed regulation is in § 1.460–1(e)(4). The information collected in § 1.460–1(e)(4) is required to notify the Commissioner of the taxpayer's decision to sever or aggregate one or more contracts under the regulations. This collection of information is mandatory. The likely respondents are for-profit entities.

Estimated total reporting burden: 50,000 hours.

Estimated average burden per respondent: 1 hour.

Estimated number of respondents: 50,000.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 460, which was enacted by section 804 of the Tax Reform Act of 1986 (1986 Act), Public Law 99–514 (100 Stat. 2085, 2358–2361), generally requires a taxpayer to determine the taxable income from a long-term contract using the percentage-of-completion method. Section 460 was amended by section 10203 of the Omnibus Budget Reconciliation Act of 1987, Public Law 100–203 (101 Stat. 1330, 1330–394); by sections 1008(c) and 5041 of the Technical and Miscellaneous Revenue Act of 1988, Public Law 100–647 (102 Stat. 3342, 3438–3439 and 3673–3676); by sections 7621 and 7811(e) of the Omnibus Budget Reconciliation Act of 1989, Public Law 101–239 (103 Stat. 2106, 2375–2377 and 2408–2409); by section 11812 of the Omnibus Budget Reconciliation Act of 1990, Public Law 101–508 (104 Stat. 1388, 1388–534 to 1388–536); by sections 1702(h)(15) and 1704(t)(28) of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755, 1874, 1888); and by section 1211 of the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 788, 998–1000).

Section 460(h) directs the Secretary to prescribe regulations to the extent necessary or appropriate to carry out the purpose of section 460, including regulations to prevent a taxpayer from avoiding section 460 by using related parties, pass-through entities, intermediaries, options, and other similar arrangements.

Explanation of Provisions

1. Overview

Before the enactment of section 460, § 1.451–3 of the Income Tax Regulations permitted a taxpayer to determine the income from a long-term contract using either the completed-contract method (CCM) or the percentage-of-completion method, in addition to the cash receipts and disbursements method, if otherwise permissible, or an accrual method. Under the CCM, a taxpayer does not report income until a contract is complete, even though payments are received in years prior to completion. The percentage-of-completion method, on the other hand, requires a taxpayer to recognize income according to the percentage of the contract that is completed during each taxable year.

Section 460 generally requires the income from a long-term contract to be determined using the percentage-of-completion method based on a cost-to-

cost comparison (PCM). However, the income from certain exempt construction contracts still may be determined using the CCM, the exempt-contract percentage-of-completion method (EPCM), or any other permissible method. Contracts that are not long-term contracts must be accounted for using a permissible method of accounting other than a long-term contract method (i.e., a method other than the PCM, the CCM, or the EPCM). See section 446 and the regulations thereunder.

The IRS and Treasury Department provided guidance on section 460 in Notice 89–15 (1989–1 C.B. 634) and in Notice 87–61 (1987–2 C.B. 370). These proposed regulations generally incorporate the relevant provisions of § 1.451–3 and the notices under section 460. However, these proposed regulations also modify and amplify certain rules provided in § 1.451–3 and notices under section 460. Specifically, for example, these regulations provide an exception for de minimis construction activities, modify the contract completion rules, clarify the treatment of non-long-term contract activities, modify the severing and aggregating rules to emphasize pricing and to prevent severance by taxpayers of contracts accounted for using the PCM, clarify the consistency rule provided in Notice 89–15, provide an inventory exception to the related party rules, provide safe harbors for determining whether a manufactured item is unique, and modify the normal time to complete an item to conform to the production period in section 263A.

These proposed regulations will apply to any contract entered into on or after final regulations are published in the **Federal Register**.

2. Definition of Long-Term Contract

Under section 460(f), *long-term contract* generally means any contract for the manufacture, building, installation, or construction of property if the contract is not completed within the taxable year the taxpayer enters into the contract (contracting year). For this purpose, *manufacturing* concerns only personal property, and *building, installation*, and *construction* (construction) concern only real property.

Section 460 continues the policy established in § 1.451–3(b)(1) of excluding a manufacturing contract from the definition of long-term contract unless the contract involves the manufacture of (1) a unique item of a type that is not normally included in the finished goods inventory of the taxpayer or (2) an item normally requiring more than 12 calendar months to complete, regardless of the duration of the contract.

A contract is a contract for the manufacture or construction of property if such activities are necessary for the taxpayer's contractual obligations to be fulfilled and are not complete when the parties enter into the contract. However, a contract is not a construction contract if it requires the provision of land by the taxpayer and the estimated total allocable contract costs attributable to the taxpayer's construction activities are less than 10 percent of the total contract price. This de minimis construction rule may affect the result of facts similar to those in *Foothill Ranch Company Partnership* v. *Commissioner*, 110 T.C. No. 8 (1998), in which the Tax Court concluded that the sale of land could be accounted for using the PCM since construction of buildings and improvements was necessary to fulfill the taxpayer's obligations under the sales agreements and those obligations were not completed in the tax year of the sale.

3. Date Taxpayer Enters Into a Long-Term Contract

The proposed regulations provide that a taxpayer enters into a long-term contract in the taxable year that the contract binds both the taxpayer and the customer under applicable law. If a taxpayer delays entering into a contract to avoid section 460, however, the taxpayer will be treated as having entered into the contract on the date the taxpayer or a related party incurs any allocable contract costs, other than bidding or negotiating costs. If a taxpayer must sever an accepted change order or exercised option from a long-term contract, the taxpayer enters into another contract with the customer when the change order is accepted by the taxpayer or when the option is exercised by the customer, whichever is applicable.

4. Date Taxpayer Completes a Long-Term Contract

The proposed regulations provide that a long-term contract is completed in the earlier taxable year (completion year) that: (1) the customer uses the subject matter for any purpose (other than testing) and 5 percent or less of the total allocable contract costs attributable to the subject matter remain to be incurred by the taxpayer; or (2) the subject matter of the contract is finally completed and accepted. A taxpayer must determine whether a contract has been finally completed and accepted during the taxable year based upon an analysis of all relevant facts and circumstances. To the extent that the "use" rule requires a taxpayer to treat a contract as completed before final completion and acceptance have occurred, the proposed regulations explicitly adopt a rule different from that considered in *Ball, Ball and Brosamer, Inc.* v. *Commissioner*, 964 F.2d 890 (9th Cir. 1992), *aff'g* T.C. Memo. 1990–454. In *Ball*, the Ninth Circuit held that the contract for construction of a space shuttle complex was not completed in 1983, notwithstanding that the performance report indicated the contract was 100 percent complete and the customer was using the subject matter for its intended purpose, since the remaining work to be done in 1984 (such as installing runway extensions, airfield lighting, drainage and a laser tracking system) was an integral part of the contract and the contract specifically provided that use was not deemed acceptance.

The regulations also provide that if a contract accounted for using the CCM requires the construction of a primary subject matter and a secondary subject matter, the contract is completed when the primary subject matter is completed. A taxpayer must separate the gross receipts and costs related to the incomplete secondary item(s) from the long-term contract and account for them using a permissible method of accounting.

5. Non-Long-Term Contract Activities

The performance of any activity other than manufacturing or construction is a non-long-term contract activity. If the performance of a non-long-term contract activity, such as engineering and designing, is incident to or necessary for the manufacture or construction of the subject matter of one or more of the taxpayer's long-term contracts, the taxpayer must allocate the gross receipts and costs attributable to that activity to the long-term contract(s) benefitted. Otherwise, the proposed regulations require the taxpayer to account for such gross receipts and costs using a permissible method of accounting other than a long-term contract method of accounting. See Rev. Rul. 82–134 (1982–2 C.B. 88) (engineering and construction management services); Rev. Rul. 80–18 (1980–1 C.B. 103) (engineering and construction management services); and Rev. Rul. 70–67 (1970–1 C.B. 117) (architectural services).

6. Severing and Aggregating Contracts

Section 460(f)(3) provides that the Secretary may prescribe regulations to treat two or more contracts which are interdependent as one contract and to respect a contract which is properly

treated as an aggregation of separate contracts. The proposed regulations allow the Commissioner, and generally require a taxpayer, to sever and aggregate contracts when necessary to clearly reflect income.

The proposed rules provide three criteria for determining whether severance or aggregation is required. First, independent pricing of items is necessary for an agreement to be severed into two or more contracts. On the other hand, interdependent pricing of items in separate agreements is necessary for two or more agreements to be aggregated into one contract. Second, an agreement may not be severed into two or more contracts, unless it provides for separate delivery or separate acceptance of portions of the subject matter of the agreement. However, separate delivery or separate acceptance of portions of the subject matter of the agreement by itself does not necessarily require severance of the agreement. Third, an agreement may not be severed into two or more contracts if a reasonable businessperson would not have entered into separate agreements containing the terms allocable to each severed contract. Similarly, two or more agreements may not be aggregated into one contract, unless a reasonable businessperson would not have entered into one of the agreements for the terms agreed upon without also entering into the other agreement. The criteria adopted in the proposed regulations generally are consistent with the Tax Court's conclusions in *Sierracin Corporation* v. *Commissioner*, 90 T.C. 341 (1988), *acq.* 1990–2 C.B. 1, and *General Dynamics Corporation* v. *Commissioner*, T.C. Memo 1997–420.

Under the proposed regulations, a taxpayer may not apply the severance rule described in the preceding paragraph if the entire contract would be accounted for using the PCM. However, the Commissioner may sever a contract accounted for using the PCM as necessary to clearly reflect income. In addition, a taxpayer must sever a long-term contract (not accounted for using the PCM) that increases the number of units to be supplied to the customer, such as through the exercise of an option or the acceptance of a "change order," if the contract provides for separate delivery or separate acceptance of the additional units.

7. Classifying Long-Term Contracts

The proposed regulations provide that a taxpayer's method of classifying contracts is a method of accounting. Thus, a taxpayer must request the consent of the Commissioner to change its method of classifying contracts. However, if the classification of a particular type of contract is no longer appropriate for subsequent contracts of that type as a result of a change in underlying facts, such as when a manufactured item no longer is unique due to a reduction in the extent of design or no longer requires 12 months to produce, a change in the classification of such subsequent contracts is not a change in method of accounting. To the extent that the consistency rule in Notice 89–15 (Q&A–7) was interpreted to prevent taxpayers from changing the classification of a particular type of subsequent contracts when the underlying facts have changed, the proposed regulations clarify the consistency rule.

Under the proposed regulations, a taxpayer must classify a contract that requires the taxpayer to manufacture personal property and to construct real property separately as a manufacturing and a construction contract, unless 95 percent or more of the estimated total allocable contract costs are reasonably allocable to the manufacturing activities or to the construction activities (in which case the taxpayer may chose to classify as either a manufacturing or a construction contract, as appropriate).

8. Long-Term Contracts of Related Parties

The proposed regulations contain rules similar to those in Notice 89–15 (Q&A–8) for an activity of a taxpayer that is incident to or necessary for a related party's long-term contract subject to PCM. The taxpayer must account for the gross receipts and costs from such an activity using the PCM, even if this activity is not otherwise subject to section 460. The proposed regulations contain an inventory exception for subassemblies and components sold to a related party, however, when the taxpayer regularly carries these items in its finished goods inventories and 80 percent or more of the gross receipts from the sale of these items typically comes from unrelated parties.

To determine the percentage of the contract that has been completed by the end of the taxable year (completion factor), the taxpayer with the long-term contract must take into account the related party's activity that is incident to or necessary for its long-term contract at the time it incurs the liability to the related party, rather than when the related party incurs costs to perform the activity.

9. Unique Items

Section 460 applies if a taxpayer manufactures a unique item of a type that is not normally included in the finished goods inventory of the taxpayer and if the contract is not completed by the close of the contracting year. As in § 1.451–3(b)(1)(ii), the proposed regulations provide that *unique* means specifically designed for the needs of a customer. Thus, a contract may require the taxpayer to manufacture more than one unit of a unique item.

The proposed regulations contain three safe harbors concerning contracts to manufacture unique items. First, an item is not unique if the taxpayer normally completes the item within 90 days. Second, an item customized from a taxpayer's existing design is not unique if the total allocable contract costs attributable to customizing activities that are incident to or necessary for the production of the item does not exceed 5 percent of the estimated total costs allocable to the item. Thus, contracts to manufacture items that do not require either significant design or lengthy production periods ordinarily will not be subject to section 460. Third, a unique item ceases to be unique no later than when the taxpayer normally carries similar items in its finished goods inventory.

The proposed regulations adopt criteria different from those in *Sierracin, supra*, which was decided two years after the enactment of section 460, but concerned the taxpayer's use of the CCM for taxable years ending before the enactment of section 460. In *Sierracin*, the Tax Court developed a two-prong test for determining whether an item is unique. That test provided that an item is unique if (1) it is designed for the needs of a specific customer and (2) the taxpayer's contracts are subject to unpredictable manufacturing risks that make it difficult for the taxpayer to determine the ultimate profit or loss on an interim basis.

The regulations incorporate the *Sierracin* criterion regarding design, but exclude the criterion regarding unpredictable manufacturing risk because that criterion was developed primarily to justify the taxpayer's use of the CCM. See, e.g., GCM 7998 (IX–2 C.B. 206, 208); Rev. Rul. 70–67 (1970–1 C.B. 117); Staff of Joint Comm. on Taxation, 99th Cong., 1st Sess., Tax Reform Proposals: Accounting Issues (JCS–39–86) 46 (Comm. Print 1985). Manufacturing risk is not relevant under the PCM because the taxpayer is required to use reasonable estimates, adjusted annually, while the contract is being performed and because the taxpayer is required to use the look-back method to correct for estimation errors when the contract is completed. Thus, the rationale supporting the

consideration of manufacturing risk as a prerequisite to the use of the CCM, that the taxpayer is unable to determine its total contract costs, is not applicable to contracts subject to the PCM.

10. 12-Month Completion Period

The proposed regulations provide that a manufactured item normally requires more than 12 months to complete if its *production period,* as defined in § 1.263A–12, is reasonably expected to exceed 12 months, determined at the end of the contracting year. In general, the production period for an item or unit begins when the taxpayer's incurs at least 5 percent of the estimated total allocable contract costs, including planning and design expenditures, allocable to the item or unit, and the production period ends when the item or unit is ready for shipment to the taxpayer's customer. In the case of components that have to be assembled or reassembled into an item or unit at the customer's facility by the taxpayer's employees or agents, the production period ends when the components are assembled or reassembled into an operable item or unit.

For this purpose, the proposed regulations contain rules requiring a taxpayer to treat the activities of a related party as the activities of the taxpayer to prevent the taxpayer from avoiding section 460. However, if the inventory exception discussed in paragraph 8 above is satisfied, a taxpayer considers the activities of a related party as it incurs the liability to the related party rather than as the related party performs the activity.

11. Definition of Construction Contract

Section 460(e)(4) and the proposed regulations provide that a *construction contract* is any contract for the building, construction, reconstruction, or rehabilitation of, or the installation of any integral component to, or improvements of, real property. Thus, a contract to install an integral component to real property can be subject to section 460 even if the installation activity is not accompanied by any other construction activity.

12. Exempt Construction Contracts

Section 460(e)(1) exempts two types of construction contracts from the general scope of section 460. These exempt construction contracts are: (1) home construction contracts and (2) 2-year construction contracts of a small contractor. A small contractor is a taxpayer that satisfies the $10,000,000 gross receipts test discussed below. The 2-year construction requirement is satisfied if the taxpayer reasonably estimates, when entering into the contract, that the contract will be completed within 2 years from the contract commencement date.

13. Home Construction Contracts

Section 460(e)(6) provides that a construction contract is a home construction contract if the taxpayer (including a subcontractor working for a general contractor) reasonably expects to attribute 80 percent or more of the estimated total contract costs, determined at the close of the contracting year, to the construction of (1) a dwelling unit or a building containing four or fewer dwelling units and (2) improvements to real property directly related to the dwelling units and located on the site of the dwelling units. For this purpose, a *dwelling unit* means a house or an apartment used to provide living accommodations in a building or structure, but does not include a unit in a hotel, motel, or other establishment more than one-half of the units in which are used on a transient basis. In addition, a taxpayer must treat each townhouse or rowhouse as a separate building. The proposed regulations provide that a taxpayer includes in the cost of the dwelling units their allocable share of the cost of any common improvements (e.g., sewers, roads, clubhouses) that benefit the dwelling unit and that the taxpayer is contractually obligated, or required by law, to construct within the tract or tracts of land containing the dwelling units.

14. $10,000,000 Gross Receipts Test

Section 460(e)(1)(B)(ii) provides that the $10,000,000 gross receipts test is satisfied if the taxpayer's average annual gross receipts for the three taxable years preceding the contracting year do not exceed $10,000,000. For this purpose, section 460(e)(2) mandates the aggregation of gross receipts of all trades or businesses under common control with the taxpayer. Section 460(e)(2) also provides that the Secretary shall prescribe regulations providing attribution rules that take into account taxpayers who engage in construction contracts through partnerships, joint ventures, and corporations.

The proposed regulations require the aggregation of gross receipts under the common control rules in § 1.263A–3(b)(3), other than the rules applicable to single employers under section 414(m) and the regulations thereunder. In addition, the regulations require the attribution of construction-related gross receipts of persons that own, or are owned by, the taxpayer, but that are not subject to § 1.263A–3(b)(3). These rules are similar to those that applied to the $25,000,000 gross receipts test under prior law.

15. Accounting for Long-Term Contracts—In General

The proposed regulations prescribe permissible methods of accounting for long-term contracts subject to section 460(a). A taxpayer must use the PCM and may elect to use the 10-percent method. In addition, the regulations prescribe permissible methods of accounting for exempt construction contracts (exempt contract methods). Permissible exempt contract methods of accounting include the PCM, the EPCM, the CCM, or any other permissible method.

Section 460(e)(5) allows a taxpayer to determine the income from a residential construction contract using the percentage-of-completion/capitalized-cost method (PCCM). A taxpayer also may determine the income from a qualified ship contract using the PCCM. Under this method, a taxpayer must determine the income from the long-term contract using the PCM for the applicable percentage and using its exempt contract method for the remaining percentage of the contract.

The proposed regulations reserve on the accounting for mid-contract change in taxpayers. The IRS and Treasury Department request comments regarding the treatment of transfers of long-term contracts prior to completion.

16. Percentage-of-Completion Method

The proposed regulations provide that under the PCM, a taxpayer generally includes a portion of the total contract price in income for each taxable year that the taxpayer incurs contract costs allocable to the long-term contract. To determine the income from a long-term contract, the taxpayer first computes the *completion factor* for the contract, which is the percentage of the estimated total allocable contract costs that the taxpayer has incurred (based on the all events test of section 461, including economic performance, regardless of the taxpayer's method of accounting) through the end of the taxable year. Second, the taxpayer computes the amount of *cumulative gross receipts* from the contract by multiplying the completion factor by the *total contract price,* which is the amount that the taxpayer reasonably expects to receive under the contract. Third, the taxpayer computes the amount of *current-year gross receipts,* which is the difference between the cumulative gross receipts for the current taxable year and the cumulative gross receipts for the immediately preceding taxable year.

This difference may be a loss (a negative number) if a taxpayer has overstated its completion factor for the immediately preceding taxable year. Fourth, the taxpayer takes into account both the current-year gross receipts and the amount of allocable contract costs actually incurred during the taxable year. To the extent any portion of the total contract price has not been included in taxable income by the completion year, section 460(b)(1) and the proposed regulations require the taxpayer to include that portion in income for the taxable year following the completion year.

Under the proposed regulations, total contract price includes all bonuses, awards, and incentive payments if it is reasonably estimated that they will be received, even if the all events test has not yet been met. If, by the end of the completion year, a taxpayer cannot reasonably estimate whether a contingency will be satisfied, the bonus, award, or incentive payment is not includable in total contract price. If it is determined after the taxable year following the completion year that an amount included in total contract price will not be earned, the taxpayer should deduct that amount in the year of the determination.

The proposed regulations provide that allocable contract costs under the PCM are determined using either of the following prescribed cost allocation methods—a method based on the extended period contract allocation rules in § 1.451–3(d)(6) or the simplified cost-to-cost method.

17. 10-Percent Method

Section 460 generally permits a taxpayer to elect to delay the application of the PCM to each long-term contract until the taxable year the taxpayer has incurred at least 10 percent of the estimated total allocable contract costs. Once elected, the 10-percent method applies to all of the taxpayer's long-term contracts entered into during and after the election year. Under section 460(b)(5), however, a taxpayer may not elect the 10-percent method if the taxpayer determines allocable direct and indirect costs using the simplified cost-to-cost method.

18. Cost Allocation Rules

Section 460(c) provides cost allocation rules for long-term contracts subject to the PCM. Section 460(c)(1) provides generally that all costs which directly benefit, or are incurred by reason of, the long-term contract activities of the taxpayer must be allocated to the long-term contract in the same manner as costs are allocated to extended-period long-term contracts under section 451 and the regulations thereunder (§ 1.451–3(d)(6) through (9)). Section 460(c)(2), however, also requires a taxpayer to allocate costs identified under a cost-plus long-term contract or a federal long-term contract even if these costs would not be allocable under the cost allocation rules for extended-period long-term contracts. In addition, section 460(c)(3) requires a taxpayer to allocate interest expense to a long-term contract (whether or not the contract is subject to the PCM) as if the rules of section 263A(f) (concerning the allocation of interest costs to property produced by the taxpayer) apply. Finally, sections 460(c)(4) and (5) describe costs that generally are not allocable to long-term contracts.

Because many taxpayers subject to the cost allocation rules of section 460 also are subject to the cost allocation rules of section 263A for non-long-term contracts, and because the cost allocation rules of section 263A generally follow the cost allocation rules applicable to extended-period long-term contracts, the proposed regulations provide that a taxpayer generally must allocate costs to a contract subject to section 460(a) in the same manner as direct and indirect costs are capitalized to property produced by a taxpayer under section 263A. The regulations provide exceptions, however, that reflect the differences in the cost allocation rules of sections 263A and 460.

19. Simplified Cost-To-Cost Method

The proposed regulations permit a taxpayer to elect to allocate contract costs using the simplified cost-to-cost method.

Under the simplified cost-to-cost method, a taxpayer must determine a contract's completion factor based upon only direct material costs; direct labor costs; and depreciation, amortization, and cost recovery allowances on equipment and facilities directly used to manufacture or construct property under the contract. A taxpayer may allocate costs using the simplified cost-to-cost method only if the taxpayer determines the taxable income from all long-term contracts using the PCM.

20. Cost Allocation Rules for Exempt Construction Contracts

The proposed regulations, which supersede § 1.451–3(d) (concerning the CCM), provide cost allocation rules for exempt construction contracts accounted for using the CCM. These rules provide that a taxpayer may allocate direct and indirect contract costs in the same way as currently required under § 1.451–3(d)(5) for long-term contracts that are not extended-period long-term contracts. The regulations also permit a taxpayer to allocate indirect costs as provided in section 263A. A homebuilder, however, is required to capitalize the costs of its home construction contracts under section 263A and the regulations thereunder, unless the contract will be completed within 2 years of the contract commencement date and the taxpayer satisfies the $10,000,000 gross receipts test previously discussed.

21. Alternative Minimum Taxable Income

Section 56 generally requires a taxpayer (not exempt under section 55(e)) to determine the amount of alternative minimum taxable income (AMTI) from a long-term contract using the PCM. Though section 56(a)(3) excludes all home construction contracts from this requirement, the Internal Revenue Code does not exclude the exempt construction contracts of a small contractor, residential construction contracts, or qualified ship contracts. Section 56(a)(3) requires a small contractor to use the simplified cost-to-cost method to determine the completion factor of an exempt construction contract when computing AMTI.

Because the Code sometimes requires a taxpayer to compute AMTI and taxable income using different rules, a taxpayer generally must determine a contract's completion factor using the AMTI-modified, cost-to-cost PCM. The proposed regulations adopt the provisions of section IX of Notice 87–61, which permit a taxpayer to elect to determine a contract's completion factor for AMTI purposes using the accounting and cost allocation methods used to compute regular taxable income. A taxpayer is required, however, to comply with section 55 when computing AMTI.

22. Changes in Method of Accounting

For the first taxable year that includes the date these regulations are published as final regulations in the Federal Register, the proposed regulations generally grant a taxpayer consent to change its method of accounting to comply with the provisions of these regulations for contracts entered into on or after the date these regulations are published as final regulations in the **Federal Register**. Because this change is made on a cutoff basis, a section 481(a) adjustment is not required.

23. Request for Comments

The IRS and Treasury Department invite comments regarding the application and effectiveness of the de minimis construction rule. The IRS and Treasury Department also welcome comments concerning the application of the unique-item rule, including the usefulness and terms of the safe harbors and approaches for determining when an item will cease being unique. Comments are requested concerning the 12-month production period rule, especially with respect to the application of § 1.263A–12 and consideration of related party activities.

Proposed Effective Date

These regulations are proposed to be effective for contracts entered into on or after the date they are published in the **Federal Register** as final regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in EO 12866. Therefore, a regulatory assessment is not required.

It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business. It is hereby certified that the collection of information in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. The regulations require a taxpayer to attach a statement to its original Federal income tax return if the taxpayer severs or aggregates a long-term contract. The statement is needed so the Commissioner can determine whether the taxpayer properly severed or aggregated the contract. It is uncommon for a taxpayer that has a long-term contract to sever or aggregate that contract. In addition, if a contract is severed or aggregated and a statement is required, it is estimated that it will, on average, only take one hour to complete.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any electronic or written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 14, 1999, at 10 a.m. in the IRS Auditorium, 7th Floor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenue, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies by August 3, 1999. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information: The principal author of these proposed regulations is Leo F. Nolan II, Office of Assistant Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by removing the entry for § 1.460–4 and adding the following entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.460–1 also issued under 26 U.S.C. 460(h).

§ 1.460–2 also issued under 26 U.S.C. 460(h).

§ 1.460–3 also issued under 26 U.S.C. 460(h).

§ 1.460–4 also issued under 26 U.S.C. 460(h) and 1502.

§ 1.460–5 also issued under 26 U.S.C. 460(h). * * *

§ 1.446–1 [Amended]

Par. 2. Section 1.446–1 is amended as follows:

1. In the second sentence of paragraph (c)(1)(iii), the language "451" is removed and "460" is added in its place.

2. In the fourth sentence of paragraph (e)(2)(ii)(*a*), the language "§ 1.451–3" is removed and "§ 1.460–4" is added in its place.

§ 1.451–3 [Removed]

Par. 3. Section 1.451–3 is removed.

§ 1.451–5 [Amended]

Par. 4. Section 1.451–5 is amended, in the first sentence of paragraph (b)(3), by removing the language "§ 1.451–3" and adding "§ 1.460–4" in its place.

Par. 5. Section 1.460–0 is amended by:

1. Revising the introductory text.

2. Revising the entries for §§ 1.460–1 through 1.460–3, 1.460–4(a)-(i), and 1.460–5.

3. Revising the entry for § 1.460–6(c)(4)(iv).

4. Removing the entries for §§ 1.460–7 and 1.460–8.

The revisions read as follows:

§ 1.460–0 Outline of regulations under section 460.

This section lists the paragraphs contained in § 1.460–1 through § 1.460–6.

§ 1.460–1 Long-term contracts.

(a) Overview.
(1) In general.
(2) Exceptions to required use of PCM.
(i) Exempt construction contract.
(ii) Qualified ship or residential construction contract.
(b) Definitions.
(1) Long-term contract.
(2) Contract for the manufacture, building, installation, or construction of property.
(i) In general.
(ii) De minimis construction activities.
(3) Allocable contract costs.
(4) Related party.
(5) Contracting year.
(6) Completion year.
(7) Contract commencement date.
(8) Incurred.
(c) Entering into and completing long-term contracts.
(1) In general.
(2) Date contract entered into.
(i) In general.
(ii) Options and change orders.
(3) Date contract completed.
(i) In general.
(ii) Secondary items.
(iii) Subcontracts.
(iv) Final completion and acceptance.

(A) In general.
(B) Contingent compensation.
(C) Assembly or installation.
(D) Disputes.
(d) Allocation among activities.
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§ 1.460–6 Look-back method.

* * * * *
(c) * * *
(4) * * *
(iv) Additional interest due on look-back interest only after tax liability due.

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Par. 6. Sections 1.460–1 through 1.460–3 are revised to read as follows:

§ 1.460–1 Long-term contracts.

(a) *Overview*—(1) *In general.* This section provides rules for determining whether a contract for the manufacture, building, installation, or construction of property is a long-term contract under section 460 and what activities must be accounted for as a single long-term contract. Specific rules for long-term manufacturing and construction contracts are provided in §§ 1.460–2 and 3, respectively. A taxpayer generally must determine the income from a long-term contract using the percentage-of-completion method described in § 1.460–4(b) (PCM) and the cost allocation rules described in § 1.460–5(b) or (c). In addition, after a contract subject to the PCM is completed, a taxpayer generally must apply the look-back method described in § 1.460–6 to determine the amount of interest owed on any hypothetical underpayment of tax, or earned on any hypothetical overpayment of tax, attributable to accounting for the long-term contract under the PCM.

(2) *Exceptions to required use of PCM*—(i) *Exempt construction contract.* The requirement to use the PCM does not apply to any exempt construction contract described in § 1.460–3(b). Thus, a taxpayer may determine the income from an exempt construction contract using any accounting method permitted by § 1.460–4(c) and, for contracts accounted for using the completed-contract method (CCM), any cost allocation method permitted by § 1.460–5(d).

(ii) *Qualified ship or residential construction contract.* The requirement to use the PCM applies only to a portion of a *qualified ship contract* described in § 1.460–2(d) or *residential construction contract* described in § 1.460–3(c). A taxpayer generally may determine the income from a qualified ship contract or residential construction contract using

the percentage-of-completion/capitalized-cost method (PCCM) described in § 1.460–4(e), but must use a cost allocation method described in § 1.460–5(b) for the entire contract.

(b) *Definitions*—(1) *Long-term contract.* A *long-term contract* generally is any contract for the manufacture, building, installation, or construction of property if the contract is not completed within the contracting year, as defined in paragraph (b)(5) of this section. However, a contract for the manufacture of property is a long-term contract only if it also satisfies either the unique item or 12-month requirements described in § 1.460–2. A contract for the manufacture of personal property is a *manufacturing contract.* In contrast, a contract for the building, installation, or construction of real property is a *construction contract.*

(2) *Contract for the manufacture, building, installation, or construction of property*—(i) *In general.* A contract is a *contract for the manufacture, building, installation, or construction of property* if the manufacture, building, installation, or construction of the subject matter of the contract is necessary for the taxpayer's contractual obligations to be fulfilled and if the manufacture, building, installation, or construction has not been completed when the parties enter into the contract. Whether the customer has title to, or control over, the property (or bears the risk of loss from the property) is not relevant. Furthermore, how the parties characterize their agreement (e.g., as a contract for the sale of property) is not relevant.

(ii) *De minimis construction activities.* Notwithstanding paragraph (b)(2)(i) of this section, a contract is not a construction contract for purposes of section 460 if the contract includes the provision of land by the taxpayer and the estimated total allocable contract costs, as defined in paragraph (b)(3) of this section, attributable to the taxpayer's construction activities are less than 10 percent of the contract's total contract price, as defined in § 1.460–4(b)(4)(i). For this purpose, a contract's estimated total allocable contract costs include a proportionate share of the estimated cost of any common improvement that benefits the subject matter of the contract if the taxpayer is contractually obligated, or required by law, to construct the common improvement.

(3) *Allocable contract costs. Allocable contract costs* are costs that are allocable to a long-term contract under § 1.460–5.

(4) *Related party.* A *related party* is a person whose relationship to a taxpayer is described in section 707(b) or 267(b), determined without regard to section 267(f)(1)(A) and determined by substituting "at least 80 percent" for "more than 50 percent" with regard to the ownership of the stock of a corporation in sections 267(b)(2), (8), (10)(A), and (12).

(5) *Contracting year.* The *contracting year* is the taxable year in which a taxpayer enters into a contract as described in paragraph (c)(2) of this section.

(6) *Completion year.* The *completion year* is the taxable year in which a taxpayer completes a contract as described in paragraph (c)(3) of this section.

(7) *Contract commencement date.* The *contract commencement date* is the date that a taxpayer or related party first incurs any allocable contract costs, such as design and engineering costs, other than expenses attributable to bidding and negotiating activities. Generally, the contract commencement date is relevant in applying § 1.460–6(b)(3) (concerning the de minimis exception to the look-back method under section 460(b)(3)(B)); § 1.460–5(b)(2)(v)(B)(*1*)(*i*) (concerning the production period subject to interest allocation); § 1.460–2(d) (concerning qualified ship contracts); and § 1.460–3(b)(1)(ii) (concerning the construction period for exempt construction contracts).

(8) *Incurred. Incurred* has the meaning given in § 1.461–1(a)(2) (concerning the taxable year of deduction under the accrual method of accounting), regardless of a taxpayer's overall method of accounting. See § 1.461–4(d)(2)(ii) for economic performance rules concerning the PCM.

(c) *Entering into and completing long-term contracts*—(1) *In general.* To determine when a contract is entered into under paragraph (c)(2) of this section, and when a contract is completed under paragraph (c)(3) of this section, a taxpayer must consider all relevant activities performed by itself, by related parties, and by the customer, that are incident to or necessary for the long-term contract. In addition, to determine whether a contract is completed in the contracting year, the taxpayer may not consider when it expects to complete the contract.

(2) *Date contract entered into*—(i) *In general.* A taxpayer enters into a contract on the date that the contract binds both the taxpayer and the customer under applicable law, even if the contract is subject to unsatisfied conditions not within the taxpayer's control (such as obtaining financing). If a taxpayer delays entering into a contract for a principal purpose of avoiding section 460, however, the taxpayer will be treated as having entered into a contract not later than the contract commencement date.

(ii) *Options and change orders.* A taxpayer enters into a new contract on the date that the customer exercises an option or similar provision in a contract if that option or similar provision must be severed from the contract under paragraph (e) of this section. Similarly, a taxpayer enters into a new contract on the date that it accepts a change order or other similar agreement if the change order or other similar agreement must be severed from the contract under paragraph (e) of this section.

(3) *Date contract completed*—(i) *In general.* A taxpayer's contract is completed upon the earlier of—

(A) Use of the subject matter of the contract by the customer (other than for testing) and at least 95 percent of the total allocable contract costs attributable to the subject matter have been incurred by the taxpayer; or

(B) Final completion and acceptance of the subject matter of the contract.

(ii) *Secondary items.* The date a contract accounted for using the CCM is completed is determined without regard to whether one or more secondary items have been used or finally completed and accepted. If any secondary items are incomplete at the end of the taxable year in which the primary subject matter of a contract is completed, the taxpayer must separate the portion of the gross contract price and the allocable contract costs attributable to the incomplete secondary item(s) from the completed contract and account for them using a permissible method of accounting. A permissible method of accounting includes a long-term contract method of accounting only if a separate contract for the secondary item(s) would be a long-term contract, as defined in paragraph (b)(1) of this section.

(iii) *Subcontracts.* In the case of a subcontract, the subject matter of the subcontract is the relevant subject matter under paragraph (c)(3)(i) of this section.

(iv) *Final completion and acceptance*—(A) *In general.* Except as otherwise provided in this paragraph (c)(3)(iv), to determine whether final completion and acceptance of the subject matter of a contract have occurred, a taxpayer must consider all relevant facts and circumstances. Nevertheless, a taxpayer may not delay the completion of a contract for the principal purpose of deferring federal income tax.

(B) *Contingent compensation.* Final completion and acceptance is determined without regard to any contractual term that provides for

additional compensation that is contingent on the successful performance of the subject matter of the contract. A taxpayer must account for all contingent compensation that is not includible in total contract price under § 1.460–4(b)(4)(i), or in gross contract price under § 1.460–4(d)(3), using a permissible method of accounting. For application of the look-back method for contracts accounted for using the PCM, see § 1.460–6(c)(1)(ii) and (2)(vi).

(C) *Assembly or installation.* Final completion and acceptance is determined without regard to whether the taxpayer has an obligation to assist or supervise assembly or installation of the subject matter of the contract where the assembly or installation is not performed by the taxpayer or a related party. A taxpayer must account for the gross receipts and costs attributable to such an obligation using a permissible method of accounting, other than a long-term contract method.

(D) *Disputes.* Final completion and acceptance is determined without regard to whether a dispute exists at the time the taxpayer tenders the subject matter of the contract to the customer. For contracts accounted for using the CCM, see § 1.460–4(d)(4). For application of the look-back method for contracts accounted for using the PCM, see § 1.460–6(c)(1)(ii) and (2)(vi).

(d) *Allocation among activities*—(1) *In general.* Long-term contract methods of accounting (the PCM, the CCM, the PCCM, and the exempt-contract percentage-of-completion method (EPCM)) apply only to the gross receipts and costs attributable to long-term contract activities. Gross receipts and costs attributable to long-term contract activities means amounts included in total contract price or gross contract price, whichever is applicable, as determined under § 1.460–4, and costs allocable to the contract, as determined under § 1.460–5. Gross receipts and costs attributable to non-long-term contract activities (as defined in paragraph (d)(2) of this section) generally must be taken into account using permissible methods of accounting other than a long-term contract method. See section 446(c) and § 1.446–1(c). However, if the performance of a non-long-term contract activity is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of one or more of the taxpayer's long-term contracts, the gross receipts and costs attributable to that activity must be allocated to the long-term contract(s) benefitted as provided in §§ 1.460–4(b)(4)(i) and 1.460–5(f)(2), respectively. Similarly, if a single long-term contract requires a taxpayer to perform a non-long-term contract activity that is not incident to or necessary for the manufacture, building, installation, or construction of the subject matter of the long-term contract, the gross receipts and costs attributable to that non-long-term contract activity must be separated from the contract and accounted for using a permissible method of accounting other than a long-term contract method. But see paragraph (g) of this section for related party rules.

(2) *Non-long-term contract activity. Non-long-term contract activity* means the performance of an activity other than manufacturing, building, installation, or construction, such as the provision of architectural, design, engineering, and construction management services; the performance under a guarantee, warranty, and maintenance agreement; and the development of software.

(e) *Severing and aggregating contracts*—(1) *In general.* After application of the allocation rules of paragraph (d) of this section, the severing and aggregating rules of this paragraph (e) may be applied by the Commissioner or the taxpayer as necessary to clearly reflect income (such as, to prevent the unreasonable deferral of recognition of income or the premature recognition of loss). Under the severing and aggregating rules, one agreement may be treated as two or more contracts, and two or more agreements may be treated as one contract. Except as provided in paragraph (e)(3)(ii) of this section, a taxpayer must determine whether to sever an agreement or to aggregate two or more agreements based on all the facts and circumstances known at the end of the contracting year.

(2) *Facts and circumstances.* Whether an agreement should be severed, or two or more agreements should be aggregated, depends on the following factors:

(i) *Independent pricing.* Independent pricing of items in an agreement is necessary for the agreement to be severed into two or more contracts. In the case of an agreement for several similar items, if the price to be paid for the items is determined under different terms or formulas (for example, if some items are priced under a cost-plus incentive fee arrangement and later items are to be priced under a fixed-price arrangement), then the difference in the pricing terms or formulas indicates that the items are independently priced.

(ii) *Interdependent pricing.* Interdependent pricing of items in separate agreements is necessary for two or more agreements to be aggregated into one contract. A single price negotiation for similar items ordered under one or more agreements indicates that the items are interdependently priced.

(iii) *Separate delivery or acceptance.* An agreement may not be severed into two or more contracts unless it provides for separate delivery or separate acceptance of items that are the subject matter of the agreement. However, the separate delivery or separate acceptance of items by itself does not necessarily require an agreement to be severed.

(iv) *Reasonable businessperson.* Two or more agreements to perform manufacturing or construction activities may not be aggregated into one contract unless a reasonable businessperson would not have entered into one of the agreements for the terms agreed upon without also entering into the other agreement(s). Similarly, an agreement to perform manufacturing or construction activities may not be severed into two or more contracts if a reasonable businessperson would not have entered into separate agreements containing terms allocable to each severed contract. For example, a single agreement to manufacture a prototype of an item, which would result in a substantial loss, and ten additional units of the item, which would result in a substantial gain, may not be severed into one contract for the prototype and another contract for the ten additional units under this paragraph (e)(2)(iv) because a reasonable businessperson would not have entered into a separate contract to manufacture the prototype. For purposes of this paragraph (e)(2)(iv), a taxpayer's expectation that the parties would enter into another agreement, when agreeing to the terms contained in the first agreement, is irrelevant.

(3) *Exceptions*—(i) *No severance for PCM.* A taxpayer may not sever under this paragraph (e) a long-term contract that would be accounted for using the PCM.

(ii) *Options and change orders.* Except as provided in paragraph (e)(3)(i) of this section, a taxpayer must sever an agreement that increases the number of units to be supplied to the customer, such as through the exercise of an option or the acceptance of a change order, if the agreement provides for separate delivery or separate acceptance of the additional units.

(4) *Statement with return.* If a taxpayer severs an agreement or aggregates two or more agreements under this paragraph (e) during the taxable year, the taxpayer must attach a statement to its original Federal income tax return for that year. This statement

must contain the following information—

(i) The legend NOTIFICATION OF SEVERANCE OR AGGREGATION UNDER SEC. 1.460–1(e);

(ii) The taxpayer's name;

(iii) The taxpayer's employer identification number or social security number;

(iv) The identity of each agreement being severed or aggregated;

(v) The method of accounting used for each contract; and

(vi) A description of the reason(s) for severance or aggregation.

(f) *Classifying contracts*—(1) *In general.* A taxpayer must determine the classification of a contract (e.g., as a long-term manufacturing contract, long-term construction contract, non-long-term contract) based on all the facts and circumstances known no later than the end of the contracting year.

(2) *Hybrid contracts.* A long-term contract that requires a taxpayer to perform both manufacturing and construction activities (hybrid contract) generally must be classified as two contracts, a manufacturing contract and a construction contract. However, a hybrid contract may be classified as a manufacturing (or construction) contract if at least 95 percent of the estimated total allocable contract costs are reasonably allocable to the manufacturing (or construction) activities.

(3) *Method of accounting.* A taxpayer's method of classifying contracts is a method of accounting under section 446 and, thus, may not be changed without the Commissioner's consent. If a taxpayer's method of classifying contracts is unreasonable, that classification method is an impermissible accounting method.

(4) *Use of estimates*—(i) *Estimating length of contract.* A taxpayer must use a reasonable estimate of the time required to complete a contract when necessary to classify the contract (e.g., to determine whether the five-year completion rule for qualified ship contracts under § 1.460–2(d), or the two-year completion rule for exempt construction contracts under § 1.460–3(b), is satisfied; but, not to determine whether a contract is completed within the contracting year under paragraph (b)(1) of this section). To be considered reasonable, an estimate of the time required to complete the contract must include anticipated time for delay, rework, change orders, technology or design problems, or other problems that reasonably can be anticipated considering the nature of the contract and prior experience. A contract term that specifies an expected completion or delivery date may be considered evidence that the taxpayer reasonably expects to complete or deliver the subject matter of the contract on or about the date specified, especially if the contract provides bona fide penalties for failing to meet the specified date. If a taxpayer classifies a contract based on a reasonable estimate of completion time, the contract will not be reclassified based on the actual (or another reasonable estimate of) completion time. A taxpayer's estimate of completion time will not be considered unreasonable if a contract is not completed within the estimated time primarily because of unforeseeable factors not within the taxpayer's control, such as third-party litigation, extreme weather conditions, strikes, or delays in securing permits or licenses.

(ii) *Estimating allocable contract costs.* A taxpayer must use a reasonable estimate of total allocable contract costs when necessary to classify the contract (e.g., to determine whether a contract is a home construction contract under § 1.460–(3)(b)(2)). If a taxpayer classifies a contract based on a reasonable estimate of total allocable contract costs, the contract will not be reclassified based on the actual (or another reasonable estimate of) total allocable contract costs.

(g) *Special rules for activities benefitting long-term contracts of a related party*—(1) *Related party use of PCM*—(i) *In general.* Except as provided in paragraph (g)(1)(ii) of this section, if a related party and its customer enter into a long-term contract subject to the PCM, and a taxpayer performs any activity that is incident to or necessary for the related party's long-term contract, the taxpayer must account for the gross receipts and costs attributable to such activity using the PCM, even if this activity is not otherwise subject to section 460(a). This type of activity may include, for example, the performance of engineering and design services, and the production of components and subassemblies that are reasonably expected to be used in the production of the subject matter of the related party's contract.

(ii) *Inventory exception.* A taxpayer is not required to use the PCM under this paragraph (g) to account for components and subassemblies if the taxpayer regularly carries these items in its finished goods inventories and 80 percent or more of the gross receipts from the sale of these items typically comes from unrelated parties.

(2) *Total contract price.* If a taxpayer is required to use the PCM under paragraph (g)(1)(i) of this section, the total contract price (as defined in § 1.460–4(b)(4)(i)) is the fair market value of the taxpayer's activity that is incident to or necessary for the performance of the related party's long-term contract. The related party also must use the fair market value of the taxpayer's activity as the cost it incurs for the activity. The fair market value of the taxpayer's activity may or may not be the same as the amount the related party pays the taxpayer for that activity.

(3) *Completion factor.* To compute a contract's completion factor (as described in § 1.460–4(b)(5)), the related party must take into account the fair market value of the taxpayer's activity that is incident to or necessary for the performance of the related party's long-term contract when the related party incurs the liability to the taxpayer for the activity, rather than when the taxpayer incurs the costs to perform the activity.

(h) *Effective date*—(1) *In general.* Except as otherwise provided, this section and §§ 1.460–2 through 1.460–5 are applicable for contracts entered into on or after the date these regulations are published as final regulations in the **Federal Register.**

(2) *Change in method of accounting.* Any change in a taxpayer's method of accounting necessary to comply with this section and §§ 1.460–2 through 1.460–5 is a change in method of accounting to which the provisions of section 446 and the regulations thereunder apply. For the first taxable year that includes the date these regulations are published as final regulations in the **Federal Register**, a taxpayer is granted the consent of the Commissioner to change its method of accounting to comply with the provisions of this section and §§ 1.460–2 through 1.460–5 for long-term contracts entered into on or after the date these regulations are published as final regulations in the **Federal Register**. A taxpayer that wants to change its method of accounting under this paragraph (h)(2) must follow the automatic consent procedures in Rev. Proc. 98–60 (1998–51 I.R.B. 16) (see § 601.601(d)(2) of this chapter, except that the scope limitations in section 4.02 of Rev. Proc. 98–60 do not apply. Because a change under this paragraph (h)(2) is made on a cutoff basis, a section 481(a) adjustment is not required. Moreover, the taxpayer does not receive audit protection under section 7 of Rev. Proc. 98–60 in connection with a change under this paragraph (h)(2). A taxpayer that wants to change its exempt-contract method of accounting is not granted the consent of the Commissioner under this paragraph (h)(2) and must file a Form 3115, Application for Change in

Accounting Method, to obtain consent. See Rev. Proc. 97–27 (1997–1 C.B. 680) (see § 601.601(d)(2) of this chapter).

(i) [Reserved]

(j) *Examples.* The following examples illustrate the rules of this section:

Example 1. Contract for manufacture of property. B notifies C, an aircraft manufacturer, that it wants to purchase an aircraft of a particular type. At the time C receives the order, C has on hand several partially completed aircraft of this type; however, C does not have any completed aircraft of this type on hand. C and B agree that B will purchase one of these aircraft after it has been completed. C retains title to and risk of loss with respect to the aircraft until the sale takes place. The agreement between C and B is a contract for the manufacture of property under paragraph (b)(2)(i) of this section, even if labeled as a contract for the sale of property, because the manufacture of the aircraft is necessary for C's obligations under the agreement to be fulfilled and the manufacturing was not complete when B and C entered into the agreement.

Example 2. De minimis construction activity. C, a master developer that uses a calendar taxable year, owns 5,000 acres of undeveloped land worth $50,000,000. To obtain permission from the local county government to improve this land, a service road must be constructed on this land to benefit all 5,000 acres. In 2001, C enters into a contract to sell a 1,000-acre parcel of undeveloped land to B, a residential developer, for its fair market value, $10,000,000. In this contract, C agrees to construct a service road running through the land that C is selling to B and through the 4,000 adjacent acres of undeveloped land that C has sold to several other residential developers for its fair market value, $40,000,000. C reasonably estimates that it will incur a liability of $50,000 to construct this service road, which will be owned and maintained by the county. C must reasonably allocate the cost of the service road among the benefitted parcels. The portion of the estimated total allocable contract costs that C allocates to the 1,000 acre parcel being sold to B (based upon its fair market value) is $10,000 ($50,000 × ($10,000,000/$50,000,000)). Construction of the service road is finished in 2002. Because the estimated total allocable contract costs attributable to C's construction activities, $10,000, are less than 10 percent of the contract's total contract price, $10,000,000, C's contract with B is not a construction contract under paragraph (b)(2)(ii) of this section. Thus, C's contract with B is not a long-term contract under paragraph (b)(2)(i) of this section, notwithstanding that construction of the service road is not completed in 2001.

Example 3. Completion—customer use. In 2002, C, a calendar year taxpayer, enters into a contract to construct a building for B. In November of 2003, the building is completed in every respect necessary for its intended use, and B occupies the building. In early December of 2003, B notifies C of some minor deficiencies that need to be corrected, and C agrees to correct them in January 2004. C reasonably estimates that the cost of correcting these deficiencies will be less than five percent of the total allocable contract costs. C's contract is complete under paragraph (c)(3)(i)(A) of this section in 2003 because in that year, B used the building and C had incurred at least 95 percent of the total allocable contract costs attributable to the building. C must use a permissible method of accounting for any deficiency-related costs incurred after 2003.

Example 4. Completion—customer use. In 1999, C, whose taxable year ends December 31, agrees to construct a shopping center, which includes an adjoining parking lot, for B. By October 2000, C has finished constructing the retail portion of the shopping center. By December 2000, C has graded the entire parking lot, but has paved only one-fourth of it because inclement weather conditions prevented C from laying asphalt on the remaining three-fourths. In December 2000, B opens the retail portion of the shopping center and the paved portion of the parking lot to the general public. C reasonably estimates that the cost of paving the remaining three-fourths of the parking lot when whether permits will exceed 5 percent of C's total allocable contract costs. Even though B is using the subject matter of the contract, C's contract is not completed in December 2000 under paragraph (c)(3)(i)(A) of this section because C has not incurred at least 95 percent of the total allocable contract costs attributable to the subject matter.

Example 5. Non-long-term contract activity. On January 1, 1999, C, whose taxable year ends December 31, enters into a single long-term contract to design and manufacture a satellite and to develop computer software enabling B to operate the satellite. At the end of 1999, C has not finished manufacturing the satellite. Designing the satellite and developing the computer software are non-long-term contract activities that are incident to and necessary for the taxpayer's manufacturing of the subject matter of a long-term contract because the satellite could not be manufactured without the design and would not operate without the software. Thus, under paragraph (d)(1) of this section, C must allocate these non-long-term contract activities to the long-term contract and account for the gross receipts and costs attributable to designing the satellite and developing computer software using the PCM.

Example 6. Non-long-term contract activity. C agrees to manufacture equipment for B under a long-term contract. In a separate contract, C agrees to design the equipment being manufactured for B under the long-term contract. Under paragraph (d)(1) of this section, C must allocate the gross receipts and costs related to the design to the long-term contract because designing the equipment is a non-long-term contract activity that is incident to and necessary for the manufacture of the subject matter of the long-term contract.

Example 7. Severance. On January 1, 1999, C, a construction contractor, and B, a real estate investor, enter into an agreement requiring C to build two office buildings in different areas of a large city. The agreement provides that the two office buildings will be completed by C and accepted by B in 1999 and 2000, respectively, and that C will be paid $1,000,000 and $1,500,000 for the two office buildings, respectively. The agreement will provide C with a reasonable profit from the construction of each building. Unless C is required to use the PCM to account for the contract, the taxpayer is required to sever this contract under paragraph (e)(2) of this section because the buildings are independently priced, the agreement provides for separate delivery and acceptance of the buildings, and, as each building will generate a reasonable profit, a reasonable businessperson would have entered into separate agreements for the terms agreed upon for each building.

Example 8. Severance. C, a large construction contractor with a calendar taxable year, accounts for its construction contracts using the PCM and has elected to use the 10-percent method described in § 1.460–4(b)(6). In September 1999, C enters into an agreement to construct 4 buildings in 4 different cities. The buildings are independently priced and the contract provides a reasonable profit for each of the buildings. In addition, the agreement requires C to deliver one building per year in 2000, 2001, 2002, and 2003. As of December 31, 1999, C has incurred 25 percent of the estimated total allocable contract costs attributable to one of the buildings, but only 5 percent of the estimated total allocable contract costs attributable to all 4 buildings included in the agreement. Under paragraph (e)(3)(i) of this section, C may not sever this contract because it is accounted for using the PCM. Using the 10-percent method, C does not take into account any portion of the total contract price or any incurred allocable contract costs attributable to this agreement in 1999. Upon examination of C's 1999 tax return, the Commissioner determines that C entered into one agreement for 4 buildings rather than 4 separate agreements each for one building solely to take advantage of the deferral obtained under the 10-percent method. Consequently, in order to clearly reflect the taxpayer's income, the Commissioner may require C to sever the agreement into 4 separate contracts under paragraph (e)(2) of this section because the buildings are independently priced, the agreement provides for separate delivery and acceptance of the buildings, and a reasonable businessperson would have entered into separate agreements for these buildings.

Example 9. Aggregation. In 1999, C, a shipbuilder, enters into two agreements with the Department of the Navy as the result of a single negotiation. Each agreement obligates C to manufacture a submarine. Because the submarines are of the same class, their specifications are similar. Because C has never manufactured submarines of this class, however, C anticipates that it will incur substantially higher costs to manufacture the first submarine, to be delivered in 2005, than to manufacture the second submarine, to be delivered in 2008. If the agreements are treated as separate contracts, the first contract probably will produce a substantial loss, while the second contract probably will produce substantial profit. Based upon these facts, aggregation is required under paragraph

(e)(2) of this section because the submarines are interdependently priced and a reasonable businessperson would not have entered the first agreement without also entering into the second.

Example 10. Aggregation. In 1999, C, a manufacturer of aircraft and related equipment, agrees to manufacture 10 military aircraft for foreign government B and to deliver the aircraft by the end of 2001. When entering into the agreement, C anticipates that it might receive production orders from B over the next 20 years for as many as 300 more of these aircraft. The negotiated contract price reflects C's and B's consideration of the expected total cost of manufacturing the 10 aircraft, the risks and opportunities associated with the agreement, and the additional factors the parties considered relevant. The negotiated price provides a profit on the sale of the 10 aircraft even if C does not expect to receive any additional production orders from B. It is unlikely, however, that C actually would have wanted to manufacture the 10 aircraft but for the expectation that it would receive additional production orders from B. In 2001, B accepts delivery of the 10 aircraft. At that time, B orders an additional 20 aircraft of the same type for delivery in 2005. When negotiating the price for the additional 20 aircraft, C and B consider the fact that the expected unit cost for this production run of 20 aircraft will be lower than the unit cost of the 10 aircraft completed and accepted in 2001, but substantially higher than the expected unit cost of future production runs. Based upon these facts, aggregation is not permitted under paragraph (e)(2) of this section. Because the parties negotiated the prices of both agreements considering only the expected production costs and risks for each agreement standing alone, the terms and conditions agreed upon for the first agreement are independent of the terms and conditions agreed upon for the second agreement. The fact that the agreement to manufacture 10 aircraft provides a profit for C indicates that a reasonable businessperson would have entered into that agreement without entering into the agreement to manufacture the additional 20 aircraft.

Example 11. Classification and completion. In 1999, C agrees to manufacture and install an industrial machine for B. The agreement requires C to deliver the machine in August 2001 and to install and test the machine in B's factory. At least 95 percent of the estimated total allocable contract costs are reasonably allocable to C's manufacturing activities. In addition, the agreement requires B to accept the machine when the tests prove that the machine's performance will satisfy the environmental standards set by the Environmental Protection Agency (EPA), even if B has not obtained the required operating permit. Because of technical difficulties, C cannot deliver the machine until December 2001, when B conditionally accepts delivery. C classifies the agreement as a manufacturing contract under paragraph (f) of this section because 95 percent of the total allocable contract costs are attributable to C's manufacturing activities. C, whose taxable year ends December 31, installs the machine in December 2001 and then tests it through February 2002. B accepts the machine in February 2002, but does not obtain the operating permit from the EPA until January 2003. Under paragraph (c)(3)(i)(B) of this section, C's contract is finally completed and accepted in February 2002, even though B does not obtain the operating permit until January 2003, because C completed all its obligations under the contract and B accepted the machine in 2002.

§ 1.460–2 Long-term manufacturing contracts.

(a) *In general.* Section 460 generally requires a taxpayer to determine the income from a long-term manufacturing contract using the percentage-of-completion method described in § 1.460–4(b) (PCM). A contract not completed in the contracting year is a long-term manufacturing contract if it involves the manufacture of personal property that is—

(1) A unique item of a type that is not normally carried in the finished goods inventory of the taxpayer; or

(2) An item that normally requires more than 12 calendar months to complete (regardless of the duration of the contract or the time to complete a deliverable quantity of the item).

(b) *Unique*—(1) *In general. Unique* means designed for the needs of a specific customer. A contract may require the taxpayer to manufacture more than one unit of a unique item. To determine whether an item is designed for the needs of a specific customer, a taxpayer must consider the extent to which research, development, design, engineering, retooling, and similar activities are required to produce the item. In addition, a taxpayer must consider whether the same item could be sold to other customers (with or without minor modifications).

(2) *Safe harbors.* Notwithstanding paragraph (b)(1) of this section, an item is not unique if it satisfies one or more of the following safe harbors—

(i) *Short production period.* An item is not unique if it normally requires 90 days or less to complete the item;

(ii) *Customized item.* An item is not unique if the total allocable contract costs attributable to customizing (such as research, development, design, engineering, retooling, and similar activities) that are incident to or necessary for the production of the item does not exceed 5 percent of the estimated total allocable contract costs allocable to the item; or

(iii) *Inventoried item.* A unique item ceases to be unique no later than when the taxpayer normally carries similar items in its finished goods inventory.

(c) *Normal time to complete*—(1) *In general.* The amount of time normally required to complete an item is the item's reasonably expected *production period*, as described in § 1.263A–12, determined at the end of the contracting year. Thus, the expected production period for an item generally would begin when a taxpayer incurs at least five percent of the costs allocable to the item and end when the item is ready to be held for sale and all reasonably expected production activities are complete. In the case of components that are assembled or reassembled into an item or unit at the customer's facility by the taxpayer's employees or agents, the production period ends when the components are assembled or reassembled into an operable item or unit. To the extent that several distinct activities related to the production of the item are expected to occur simultaneously, the period during which these distinct activities occur is not counted more than once.

(2) *Production by related parties.* To determine the time normally required to complete an item, a taxpayer must consider all relevant production activities performed by itself and by related parties, as defined in § 1.460–1(b)(4). For example, if a taxpayer's item requires a component or subassembly manufactured by a related party, the taxpayer must consider the time the related party takes to complete the component or subassembly and, for purposes of determining the beginning of an item's production period, the costs incurred by the related party that are allocable to the component or subassembly. However, if both requirements of the inventory exception under § 1.460–1(g)(1)(ii) are satisfied, a taxpayer does not consider the activities performed or the costs incurred by a related party when determining the normal time to complete an item.

(d) *Qualified ship contracts.* A taxpayer may determine the income from a long-term manufacturing contract that is a qualified ship contract using either the PCM or the percentage-of-completion/capitalized-cost method (PCCM) of accounting described in § 1.460–4(e). A *qualified ship contract* is any contract entered into after February 28, 1986, to manufacture in the United States not more than 5 seagoing vessels if the vessels will not be manufactured directly or indirectly for the United States Government and if the taxpayer reasonably expects to complete the contract within 5 years of the contract commencement date. Under § 1.460–1(e)(3)(i), a contract to produce more than 5 vessels for which the PCM would be required cannot be severed in order to be classified as a qualified ship contract.

(e) *Examples.* The following examples illustrate the rules of this section:

Example 1. Unique item and classification. In December 1999, C enters into a contract with B to design and manufacture a new type of industrial equipment. C reasonably expects the normal production period for this type of equipment to be 8 months. Because the new type of industrial equipment requires a substantial amount of research, design and engineering to produce, C determines that the equipment is a unique item and its contract with B is a long-term contract. After delivering the equipment to B in September 2000, C contracts with B to produce five additional units of industrial equipment using the same basic design as the previous unit of industrial equipment but changing certain specifications. These additional units, which also are expected to take 8 months to produce, will be delivered to B in 2001. C determines that the research, design, engineering, retooling and similar customizing costs necessary to produce the five additional units of equipment does not exceed 5% of the estimated total allocable contract costs. Consequently, the additional units of equipment satisfy the safe harbor in paragraph (b)(2)(ii) of this section and are not unique items. Although C's contract with B to produce the five additional units is not completed within the contracting year, the contract is not a long-term contract since the additional units of equipment are not unique items and do not normally require more than 12 months to produce. C must classify its second contract with B as a non-long term contract, notwithstanding that it classified the previous contract with B for a similar item as a long-term contract, because the determination of whether a contract is a long-term contract is made on a contract by contract basis. Such a change in classification is not a change in method of accounting because the change in classification results from a change in underlying facts.

Example 2. 12-month rule—related party. C manufactures cranes that it regularly carries in finished goods inventory. C purchases one of the crane's components from R, a related party under § 1.460–1(b)(4). R does not carry this crane component in finished goods inventory; therefore, C does not satisfy the inventory exception and must consider the activities of R as R incurs costs and performs the activities rather than as C incurs a liability to R. The normal time period between the time that both C and R incur 5% of the costs allocable to the crane and the time that R completes the component is 5 months. C normally requires an additional 8 months to complete production of the crane after receiving the integral component from R. C's crane is an item of a type that normally requires more than 12 months to complete under paragraph (c) of this section because the production period from the time that both C and R incur 5% of the costs allocable to the crane until the time that production of the crane is complete is normally 13 months.

Example 3. 12-month rule—duration of contract. The facts are the same as in *Example 2*, except that C enters into a sales contract with B on December 31, 1999 (the last day of C's taxable year), and delivers a completed crane to B on February 1, 2000. C's contract with B is a long-term contract under paragraph (a)(2) of this section because the contract is not completed in the contracting year, 1999, and the crane is an item that normally requires more than 12 calendar months to complete (regardless of the duration of the contract).

Example 4. 12-month rule—normal time to complete. The facts are the same as in *Example 3*, except that C (and R) actually complete B's crane in only 10 calendar months. The contract is a long-term contract because the normal time to complete a crane, not the actual time to complete a crane, is the relevant criterion for determining whether an item is subject to paragraph (a)(2) of this section.

§ 1.460–3 Long-term construction contracts.

(a) *In general.* Section 460 generally requires a taxpayer to determine the income from a long-term construction contract using the percentage-of-completion method described in § 1.460–4(b) (PCM). A contract not completed in the contracting year is a long-term construction contract if it involves the building, construction, reconstruction, or rehabilitation of real property; the installation of an integral component to real property; or the improvement of real property (collectively referred to as construction). *Real property* means land, buildings, and *inherently permanent structures*, as defined in § 1.263A–8(c)(3), such as roadways, dams, and bridges. Real property does not include vessels, offshore drilling platforms, or unsevered natural products of land. An *integral component to real property* includes property not produced at the site of the real property but intended to be permanently affixed to the real property, such as elevators and central heating and cooling systems. Thus, for example, a contract to install an elevator in a building is a construction contract because a building is real property, but a contract to install an elevator in a ship is not a construction contract because a ship is not real property.

(b) *Exempt construction contracts*—(1) *In general.* The general requirement to use the PCM and the cost allocation rules described in § 1.460–5(b) or (c) does not apply to any long-term construction contract described in this paragraph (b) (exempt construction contract). *Exempt construction contract* means any—

(i) Home construction contract; and

(ii) Other construction contract that a taxpayer estimates (when entering into the contract) will be completed within 2 years of the contract commencement date, provided the taxpayer satisfies the $10,000,000 gross receipts test described in paragraph (b)(3) of this section.

(2) *Home construction contract*—(i) *In general.* A long-term construction contract is a *home construction contract* if a taxpayer (including a subcontractor working for a general contractor) reasonably expects to attribute 80 percent or more of the estimated total allocable contract costs (including the cost of land, materials, and services), determined as of the close of the contracting year, to the construction of—

(A) Dwelling units, as defined in section 168(e)(2)(A)(ii)(I), contained in buildings containing 4 or fewer dwelling units (including buildings with 4 or fewer dwelling units that also have commercial units); and

(B) Improvements to real property directly related to, and located at the site of, the dwelling units.

(ii) *Townhouses and rowhouses.* Each townhouse or rowhouse is a separate building.

(iii) *Common improvements.* A taxpayer includes in the cost of the dwelling units their allocable share of the cost that the taxpayer reasonably expects to incur for any common improvements (e.g., sewers, roads, clubhouses) that benefit the dwelling units and that the taxpayer is contractually obligated, or required by law, to construct within the tract or tracts of land that contain the dwelling units.

(iv) *Mixed use costs.* If a contract involves the construction of both commercial units and dwelling units within the same building, a taxpayer must allocate the costs among the commercial units and dwelling units using a reasonable method or combination of reasonable methods, such as specific identification, square footage, or fair market value.

(3) *$10,000,000 gross receipts test*—(i) *In general.* The $10,000,000 gross receipts test is satisfied if a taxpayer's (or predecessor's) average annual gross receipts for the 3 taxable years preceding the contracting year do not exceed $10,000,000, as determined using the principles of the gross receipts test for small resellers under § 1.263A–3(b), except as otherwise provided in paragraphs (b)(3)(ii) and (iii) of this section.

(ii) *Single employer.* To apply the gross receipts test, a taxpayer is not required to aggregate the gross receipts of persons treated as a single employer solely under section 414(m) and any regulations prescribed under section 414.

(iii) *Attribution of gross receipts.* A taxpayer must aggregate a proportionate share of the construction-related gross receipts of any person that has a five

percent or greater interest in the taxpayer. In addition, a taxpayer must aggregate a proportionate share of the construction-related gross receipts of any person in which the taxpayer has a five percent or greater interest. For this purpose, a taxpayer must determine ownership interests as of the first day of the taxpayer's contracting year and must include indirect interests in any corporation, partnership, estate, trust, or sole proprietorship according to principles similar to the constructive ownership rules under sections 1563(e), (f)(2), and (f)(3)(A). However, a taxpayer is not required to aggregate under this paragraph (b)(3)(iii) any construction-related gross receipts required to be aggregated under paragraph (b)(3)(i) of this section.

(c) *Residential construction contracts.* A taxpayer may determine the income from a long-term construction contract that is a residential construction contract using either the PCM or the percentage-of-completion/capitalized-cost method (PCCM) of accounting described in § 1.460–4(e). A *residential construction contract* is a home construction contract, as defined in paragraph (b)(2) of this section, except that the building or buildings being constructed contain more than 4 dwelling units.

Par. 7. Section 1.460–4 is amended by adding paragraphs (a) through (i) to read as follows:

§ 1.460–4 Methods of accounting for long-term contracts.

(a) *Overview.* This section prescribes permissible methods of accounting for long-term contracts. Paragraph (b) of this section describes the percentage-of-completion method under section 460(b) (PCM) that a taxpayer generally must use to determine the income from a long-term contract. Paragraph (c) of this section lists permissible methods of accounting for exempt construction contracts described in § 1.460–3(b)(1) and describes the exempt-contract percentage-of-completion method (EPCM). Paragraph (d) of this section describes the completed-contract method (CCM), which is one of the permissible methods of accounting for exempt construction contracts. Paragraph (e) describes the percentage-of-completion/capitalized-cost method (PCCM), which is a permissible method of accounting for qualified ship contracts described in § 1.460–2(d) and residential construction contracts described in § 1.460–3(c). Paragraph (f) of this section provides rules for determining the alternative minimum taxable income (AMTI) from long-term contracts that are not exempted under section 56. Paragraph (g) of this section provides rules concerning consistency in methods of accounting for long-term contracts. Paragraph (h) of this section provides examples illustrating the principles of this section. Finally, paragraph (j) of this section provides rules for taxpayers that file consolidated tax returns.

(b) *Percentage-of-completion method*—(1) *In general.* Under the PCM, a taxpayer generally must include in income the portion of the *total contract price,* as defined in paragraph (b)(4)(i) of this section, that corresponds to the percentage of the entire contract that the taxpayer has completed during the taxable year. The percentage of completion must be determined by comparing allocable contract costs incurred with estimated total allocable contract costs. Thus, the taxpayer includes a portion of the total contract price in gross income as the taxpayer incurs allocable contract costs.

(2) *Computations.* To determine the income from a long-term contract, a taxpayer—

(i) Computes the *completion factor* for the contract, which is the ratio of the cumulative allocable contract costs that the taxpayer has incurred through the end of the taxable year to the estimated total allocable contract costs that the taxpayer reasonably expects to incur under the contract;

(ii) Computes the amount of *cumulative gross receipts* from the contract by multiplying the completion factor by the total contract price;

(iii) Computes the amount of *current-year gross receipts,* which is the difference between the amount of cumulative gross receipts for the current taxable year and the amount of cumulative gross receipts for the immediately preceding taxable year (the difference can be a positive or negative number); and

(iv) Takes both the current-year gross receipts and the allocable contract costs incurred during the current year into account in computing taxable income.

(3) *Post-completion-year income.* If a taxpayer has not included the total contract price in gross income by the completion year, as defined in § 1.460–1(b)(6), the taxpayer must include the remaining portion of the total contract price in gross income for the taxable year following the completion year. For the treatment of post-completion costs, see paragraph (b)(5)(v) of this section. See § 1.460–6(c)(1)(ii) for application of the look-back method as a result of adjustments to total contract price.

(4) *Total contract price*—(i) *In general*—(A) *Definition. Total contract price* means the amount that a taxpayer reasonably expects to receive under a long-term contract, including holdbacks, retainages, and cost reimbursements. See § 1.460–6(c)(1)(ii) and (2)(vi) for application of the look-back method as a result of changes in total contract price.

(B) *Contingent compensation.* Any amounts related to contingent rights or obligations, such as bonuses, awards, incentive payments, and amounts in dispute, are included in total contract price as soon as it is reasonably estimated that they will be received, even if the all events test has not yet been met. For example, if a bonus is payable to a taxpayer for meeting an early completion date, the bonus is includable in total contract price at the time (and to the extent) that the taxpayer can predict the achievement of the corresponding objective with reasonable certainty. Similarly, a portion of the contract price that is in dispute is included in total contract price at the time and to the extent that the taxpayer can reasonably expect the dispute will be resolved in the taxpayer's favor (without regard to when the taxpayer receives payment for the amount in dispute or when the dispute is finally resolved.) If a taxpayer has not included an amount of contingent compensation in total contract price under this paragraph (b)(4)(i) by the taxable year following the completion year, the taxpayer must account for that amount of contingent compensation using a permissible method of accounting. If it is determined after the taxable year following the completion year that an amount included in total contract price will not be earned, the taxpayer should deduct that amount in the year of the determination.

(C) *Non-long-term contract activities.* Total contract price includes an allocable share of the gross receipts attributable to a non-long-term contract activity, as defined in § 1.460–1(d)(2), if the activity is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of the long-term contract. Total contract price also includes amounts reimbursed for independent research and development costs, or bidding and proposal costs, under a federal or cost-plus long-term contract (as defined in section 460(d)), regardless of whether the research and development, or bidding and proposal, activities are incident to or necessary for the performance of that long-term contract.

(ii) *Estimating total contract price.* A taxpayer must estimate the total contract price based upon all the facts and circumstances known as of the last day

of the taxable year. For this purpose, an event that occurs after the end of the taxable year must be taken into account if its occurrence was reasonably foreseeable and its income was subject to reasonable estimation as of the last day of that taxable year.

(5) *Completion factor*—(i) *Allocable contract costs.* A taxpayer must use a cost allocation method permitted under either § 1.460–5(b) or (c) to determine the amount of cumulative allocable contract costs and estimated total allocable contract costs that are used to determine a contract's completion factor. Allocable contract costs include a reimbursable cost that is allocable to the contract.

(ii) *Cumulative allocable contract costs incurred.* To determine a contract's completion factor for a taxable year, a taxpayer must take into account the cumulative allocable contract costs that have been incurred, as defined in § 1.460–1(b)(8), through the end of the taxable year.

(iii) *Estimating total allocable contract costs.* A taxpayer must estimate total allocable contract costs for each long-term contract based upon all the facts and circumstances known as of the last day of the taxable year. For this purpose, an event that occurs after the end of the taxable year must be taken into account if its occurrence was reasonably foreseeable and its cost was subject to reasonable estimation as of the last day of that taxable year. To be considered reasonable, an estimate of total allocable contract costs must include costs attributable to delay, rework, change orders, technology or design problems, or other problems that reasonably can be anticipated considering the nature of the contract and prior experience. However, estimated total allocable contract costs do not include any contingency allowance for costs that, as of the end of the taxable year, are not reasonably expected to be incurred in the performance of the contract. For example, estimated total allocable contract costs do not include any costs attributable to factors not reasonably foreseeable at the end of the taxable year, such as third-party litigation, extreme weather conditions, strikes, and delays in securing required permits and licenses. In addition, the estimated costs of performing other agreements that are not aggregated with the contract under § 1.460–1(e) that the taxpayer expects to incur with the same customer (e.g., follow-on contracts) are not included in estimated total allocable contract costs for the initial contract.

(iv) *Pre-contracting-year costs.* If a taxpayer reasonably expects to enter into a long-term contract in a future taxable year, the taxpayer must capitalize all costs incurred prior to entering into the contract that will be allocable to that contract (e.g., bidding and proposal costs). A taxpayer is not required to compute a completion factor, or to include in gross income any amount, related to allocable contract costs for any taxable year ending before the contracting year or, if applicable, the 10-percent year defined in paragraph (b)(6)(i) of this section. In that year, the taxpayer is required to compute a completion factor that includes all allocable contract costs that have been incurred as of the end of that taxable year (whether previously capitalized or deducted) and to take into account in computing taxable income the related gross receipts and the previously capitalized allocable contract costs.

(v) *Post-completion-year costs.* If a taxpayer incurs an allocable contract cost after the completion year, the taxpayer must account for that cost using a permissible method of accounting. See § 1.460–6(c)(1)(ii)2) for application of the look-back method as a result of adjustments to allocable contract costs.

(6) *10-percent method*—(i) *In general.* Instead of determining the income from a long-term contract beginning with the contracting year, a taxpayer may elect to use the 10-percent method under section 460(b)(5). Under the 10-percent method, a taxpayer does not include in gross income any amount related to allocable contract costs until the taxable year in which the taxpayer has incurred at least 10 percent of the estimated total allocable contract costs (10-percent year). A taxpayer must treat costs incurred before the 10-percent year as pre-contracting-year costs described in paragraph (b)(5)(iv) of this section.

(ii) *Election.* A taxpayer makes an election under this paragraph (b)(6) by using the 10-percent method for all long-term contracts entered into during the taxable year of the election on its original federal income tax return for the election year. This election is a method of accounting and, thus, applies to all long-term contracts entered into during and after the taxable year of the election. An electing taxpayer must use the 10-percent method to apply the look-back method under § 1.460–6 and to determine alternative minimum taxable income under paragraph (f) of this section. This election is not available if a taxpayer uses the simplified cost-to-cost method described in § 1.460–5(c) to compute the completion factor of a long-term contract.

(c) *Exempt contract methods*—(1) *In general.* An *exempt contract method* means the method of accounting that a taxpayer must use to account for all its long-term contracts (and any portion of a long-term contract) that are exempt from the requirements of section 460(a). Thus, an exempt contract method applies to exempt construction contracts, as defined in § 1.460–3(b); the non-PCM portion of a qualified ship contract, as defined in § 1.460–2(d); and the non-PCM portion of a residential construction contract, as defined in § 1.460–3(c). Permissible exempt contract methods include the PCM, the EPCM described in paragraph (c)(2) of this section, the CCM described in paragraph (d) of this section, or any other permissible method. See section 446.

(2) *Exempt-contract percentage-of-completion method*—(i) *In general.* Similar to the PCM described in paragraph (b) of this section, a taxpayer using the EPCM generally must include in income the portion of the total contract price, as described in paragraph (b)(4) of this section, that corresponds to the percentage of the entire contract that the taxpayer has completed during the taxable year. However, under the EPCM, the percentage of completion may be determined as of the end of the taxable year by using any method of cost comparison (such as comparing direct labor costs incurred to date to estimated total direct labor costs) or by comparing the work performed on the contract with the estimated total work to be performed, rather than by using the cost-to-cost comparison required by paragraphs (b)(2)(i) and (5) of this section, provided such method is used consistently and clearly reflects income. In addition, paragraph (b)(3) of this section (regarding post-completion-year income), paragraph (b)(6) of this section (regarding the 10-percent method) and § 1.460–6 (regarding the look-back method) do not apply to the EPCM.

(ii) *Determination of work performed.* For purposes of the EPCM, the criteria used to compare the work performed on a contract as of the end of the taxable year with the estimated total work to be performed must clearly reflect the earning of income with respect to the contract. For example, in the case of a roadbuilder, a standard of completion solely based on miles of roadway completed in a case where the terrain is substantially different may not clearly reflect the earning of income with respect to the contract.

(d) *Completed-contract method*—(1) *In general.* Except as otherwise provided in paragraph (d)(4) of this section, a taxpayer using the CCM to

account for a long-term contract must take into account in the contract's completion year, as defined in § 1.460–1(b)(6), the gross contract price and all allocable contract costs incurred by the completion year. A taxpayer may not treat the cost of any materials and supplies that were allocated to a contract, but actually remain on hand when the contract is completed, as an allocable contract cost.

(2) *Post-completion-year income and costs.* If a taxpayer has not included an item of contingent compensation (i.e. amounts for which the all events test has not been satisfied) in gross contract price under paragraph (d)(3) of this section by the completion year, the taxpayer must account for this item of contingent compensation using a permissible method of accounting. If a taxpayer incurs an allocable contract cost after the completion year, the taxpayer must account for that cost using a permissible method of accounting.

(3) *Gross contract price.* Gross contract price includes all amounts (including holdbacks, retainages, and reimbursements) that a taxpayer is entitled by law or contract to receive, whether or not the amounts are due or have been paid. In addition, gross contract price includes all bonuses, awards, and incentive payments, such as a bonus for meeting an early completion date, to the extent the all events test is satisfied. If a taxpayer performs a non-long-term contract activity, as defined in § 1.460–1(d)(2), that is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of one or more of the taxpayer's long-term contracts, the taxpayer must include an allocable share of the gross receipts attributable to that activity in the gross contract price of the contract(s) benefited by that activity. Gross contract price also includes amounts reimbursed for independent research and development costs, or bidding and proposal costs, under a federal or cost-plus long-term contract (as defined in section 460(d)), regardless of whether the research and development, or bidding and proposal, activities are incident to or necessary for the performance of that long-term contract.

(4) *Contracts with disputed claims—*(i) *In general.* The special rules in this paragraph (d)(4) apply to a long-term contract accounted for using the CCM with a dispute caused by a customer requesting a reduction of the gross contract price or the performance of additional work under the contract or by a taxpayer requesting an increase in gross contract price, or both, on or after the date a taxpayer has tendered the subject matter of the contract to the customer.

(ii) *Taxpayer assured of profit or loss.* If the disputed amount relates to a customer's claim for either a reduction in price or additional work and the taxpayer is assured of either a profit or a loss on a long-term contract regardless of the outcome of the dispute, the gross contract price, reduced (but not below zero) by the amount reasonably in dispute, must be taken into account in the completion year. If the disputed amount relates to a taxpayer's claim for an increase in price and the taxpayer is assured of either a profit or a loss on a long-term contract regardless of the outcome of the dispute, the gross contract price must be taken into account in the completion year. If the taxpayer is assured a profit on the contract, all allocable contract costs incurred by the end of the completion year are taken into account in that year. If the taxpayer is assured a loss on the contract, all allocable contract costs incurred by the end of the completion year, reduced by the amount reasonably in dispute, are taken into account in the completion year.

(iii) *Taxpayer unable to determine profit or loss.* If the amount reasonably in dispute affects so much of the gross contract price or allocable contract costs that a taxpayer cannot determine whether a profit or loss ultimately will be realized from a long-term contract, the taxpayer may not take any of the gross contract price or allocable contract costs into account in the completion year.

(iv) *Dispute resolved.* Any part of the gross contract price and any allocable contract costs that have not been taken into account because of the principles described in paragraph (d)(4) (i), (ii) or (iii) of this section must be taken into account in the taxable year in which the dispute is resolved. If a taxpayer performs additional work under the contract because of the dispute, the term *taxable year in which the dispute is resolved* means the taxable year the additional work is completed, rather than the taxable year in which the outcome of the dispute is determined by agreement, decision, or otherwise.

(e) *Percentage-of-completion/capitalized-cost method.* Under the PCCM, a taxpayer must determine the income from a long-term contract using the PCM for the applicable percentage of the contract and its exempt contract method, as defined in paragraph (c) of this section, for the remaining percentage of the contract. For residential construction contracts described in § 1.460–3(c), the applicable percentage is 70 percent, and the remaining percentage is 30 percent. For qualified ship contracts described in § 1.460–2(d), the applicable percentage is 40 percent, and the remaining percentage is 60 percent.

(f) *Alternative minimum taxable income—*(1) *In general.* Under section 56(a)(3), a taxpayer (not exempt from the AMT under section 55(e)) must use the PCM to determine its AMTI from any long-term contract entered into on or after March 1, 1986, that is not a home construction contract, as defined in § 1.460–3(b)(2). For AMTI purposes, the PCM must include any election under paragraph (b)(6) of this section (concerning the 10-percent method) or under § 1.460–5(c) (concerning the simplified cost-to-cost method) that the taxpayer has made for regular tax purposes. For exempt construction contracts described in § 1.460–3(b)(1)(ii), a taxpayer must use the simplified cost-to-cost method to determine the completion factor for AMTI purposes. Except as provided in paragraph (f)(2) of this section, a taxpayer must use AMTI costs and AMTI methods, such as the depreciation method described in section 56(a)(1), to determine the completion factor of a long-term contract (except a home construction contract) for AMTI purposes.

(2) *Election to use regular completion factors.* Under this paragraph (f)(2), a taxpayer may elect for AMTI purposes to determine the completion factors of all of its long-term contracts using the methods of accounting and allocable contract costs used for regular federal income tax purposes. A taxpayer makes this election by using regular methods and regular costs to compute the completion factors of all long-term contracts entered into during the taxable year of the election for AMTI purposes on its original federal income tax return for the election year. This election is a method of accounting and, thus, applies to all long-term contracts entered into during and after the taxable year of the election. Although a taxpayer may elect to compute the completion factor of its long-term contracts using regular methods and regular costs, an election under this paragraph (f)(2) does not eliminate a taxpayer's obligation to comply with the requirements of section 55 when computing AMTI. For example, although a taxpayer may elect to use the depreciation methods used for regular tax purposes to compute the completion factor of its long-term contracts for AMTI purposes, the taxpayer must use the depreciation methods permitted by section 56 to compute AMTI.

(g) *Method of accounting.* A taxpayer that uses the PCM, EPCM, CCM, PCCM, or elects the 10-percent method or special AMTI method (or changes to another method of accounting with the Commissioner's consent) must apply the method(s) consistently for all similarly classified long-term contracts, until the taxpayer obtains the Commissioner's consent under section 446(e) to change to another method of accounting.

(h) *Examples.* The following examples illustrate the rules of this section:

Example 1. PCM—estimating total contract price. On January 1, 1999, C, who uses a calendar taxable year, enters into a contract to design and manufacture a satellite (a unique item). The contract provides that C will be paid $10,000,000 for delivering the completed satellite by December 1, 2000. The contract also provides that C will receive a $3,000,000 bonus for delivering the satellite by July 1, 2000, and an additional $4,000,000 bonus if the satellite successfully performs its mission for five years. C is unable to reasonably predict if the satellite will successfully perform its mission for five years. If on December 31, 1999, C should reasonably expect to deliver the satellite by July 1, 2000, the estimated total contract price is $13,000,000 ($10,000,000 unit price + $3,000,000 production-related bonus). Otherwise, the estimated total contract price is $10,000,000. In either event, the $4,000,000 bonus is not includable in the estimated total contract price as of December 31, 1999, because C is unable to reasonably predict that the satellite will successfully perform its mission for five years.

Example 2. PCM—computing income. (i) C, who uses a calendar taxable year, determines the income from long-term contracts using the PCM. During 1999, C agrees to manufacture for the customer, B, a unique item for a total contract price of $1,000,000. Under C's contract, B is entitled to retain 10 percent of the total contract price until it accepts the item. By the end of 1999, C has incurred $200,000 of allocable contract costs and estimates that the total allocable contract costs will be $800,000. By the end of 2000, C has incurred $600,000 of allocable contract costs and estimates that the total allocable contract costs will be $900,000. In 2001, after completing the contract, C determines that the actual cost to manufacture the item was $750,000.

(ii) For each of the taxable years, C's income from the contract is computed as follows:

	Taxable year		
	1999	2000	2001
(A) Cumulative incurred costs	$200,000	$600,000	$750,000
(B) Estimated total costs	$800,000	$900,000	$750,000
(C) Completion factor (in percent): (A)÷(B)	25.00	66.67	100.00
(D) Total contract price	$1,000,000	$1,000,000	$1,000,000
(E) Cumulative gross receipts: (C)×(D)	$250,000	$666,667	$1,000,000
(F) Cumulative gross receipts: (prior year)	(0)	($250,000)	($666,667)
(G) Current-year gross receipts	$250,000	$416,667	$333,333
(H) Cumulative incurred costs	$200,000	$600,000	$750,000
(I) Cumulative incurred costs: (prior year)	(0)	($200,000)	($600,000)
(J) Current-year costs	$200,000	$400,000	$150,000
(K) Gross income (G) – (J)	$50,000	$16,667	$183,333

Example 3. PCM—computing income with cost sharing. (i) C, who uses a calendar taxable year, determines the income from long-term contracts using the PCM. During 1999, C enters into a contract to manufacture a unique item. The contract specifies a target price of $1,000,000, a target cost of $600,000, and a target profit of $400,000. C and B will share the savings of any cost under run (actual total incurred cost is less than target cost) and the additional cost of any cost overrun (actual total incurred cost is greater than target cost) as follows: 30 percent to C and 70 percent to B. By the end of 1999, C has incurred $200,000 of allocable contract costs and estimates that the total allocable contract costs will be $600,000. By the end of 2000, C has incurred $300,000 of allocable contract costs and estimates that the total allocable contract costs will be $400,000. In 2001, after completing the contract, C determines that the actual cost to manufacture the item was $700,000.

(ii) For each of the taxable years, C's income from the contract is computed as follows (Note that the sharing of any cost under run or cost overrun is reflected as an adjustment to C's target price under paragraph (b)(4)(i) of this section):

	Taxable year		
	1999	2000	2001
(A) Cumulative incurred costs	$200,000	$300,000	$700,000
(B) Estimated total costs	$600,000	$400,000	$700,000
(C) Completion factor (in percent): (A) ÷ (B)	33.33	75.00	100.00
(D) Target price	$1,000,000	$1,000,000	$1,000,000
(E) Estimated total costs	$600,000	$400,000	$700,000
(F) Target costs	$600,000	$600,000	$600,000
(G) Cost (under run)/overrun: (E) – (F)	0	($200,000)	$100,000
(H) Adjustment rate (in percent)	70	70	70
(I) Target price adjustment	0	($140,000)	$70,000

	Taxable year		
	1999	2000	2001
(J) Total contract price: (D) + (I)	$1,000,000	$860,000	$1,070,000
(K) Cumulative gross receipts: (C) × (J)	$333,333	$645,000	$1,070,000
(L) Cumulative gross receipts: (prior year)	(0)	($333,333)	($645,000)
(M) Current-year gross receipts	$333,333	$311,667	$425,000
(N) Cumulative incurred costs	$200,000	$300,000	$700,000
(O) Cumulative incurred costs: (prior year)	(0)	($200,000)	($300,000)
(P) Current-year costs	$200,000	$100,000	$400,000
(Q) Gross income: (M) − (P)	$133,333	$211,667	$25,000

Example 4. PCM—10 percent method. (i) In November 1999, C, who determines income using the PCM and who uses a calendar taxable year, agrees to manufacture a unique item for $1,000,000. C reasonably estimates that the total allocable contract costs will be $600,000. By December 31, 1999, C has received $50,000 in progress payments and incurred $40,000 of costs. C elects to use the 10 percent method effective for 1999 and all subsequent taxable years. During 2000, C receives $500,000 in progress payments and incurs $260,000 of costs. In 2001, C incurs an additional $300,000 of costs, C finishes manufacturing the item, and receives the final $450,000 payment.

(ii) For each of the taxable years, C's income from the contract is computed as follows:

	Taxable year		
	1999	2000	2001
(A) Cumulative incurred costs	$40,000	$300,000	$600,000
(B) Estimated total costs	$600,000	$600,000	$600,000
(C) Completion factor (in percent) (A) ÷ (B)	6.67	50.00	100.00
(D) Total contract price	$1,000,000	$1,000,000	$1,000,000
(E) Cumulative gross receipts: (C) × (D)*	0	$500,000	$1,000,000
(F) Cumulative gross receipts: (prior year)	(0)	(0)	($500,000)
(G) Current-year gross receipts	0	$500,000	$500,000
(H) Cumulative incurred costs	0	$300,000	$600,000
(I) Cumulative incurred costs: (prior year)	(0)	(0)	($300,000)
(J) Current-year costs	0	$300,000	$300,000
(K) Gross income: (G) − (J)	0	$200,000	$200,000

*Unless (C) < 10 percent.

Example 5. CCM contracts with disputes from customer claims. In 2001, C, who uses the CCM to account for exempt construction contracts and uses a calendar taxable year, enters into a contract to construct a bridge for B. The terms of the contract provide for a $1,000,000 gross contract price. C finishes the bridge in 2002 at a cost of $950,000. When B examines the bridge, B insists that C either repaint several girders or reduce the contract price. The amount reasonably in dispute is $10,000. In 2003, C and B resolve their dispute, C repaints the girders at a cost of $6,000, and C and B agree that the contract price is not to be reduced. Because C is assured a profit of $40,000 ($1,000,000 − $10,000 − $950,000) in 2002 even if the dispute is resolved in B's favor, C must take this $40,000 into account in 2002. In 2003, C will earn an additional $4,000 profit ($1,000,000 − $956,000 − $40,000) from the contract with B. Thus, C must take into account an additional $10,000 of gross contract price and $6,000 of additional contract costs in 2003.

Example 6. CCM contracts with disputes from taxpayer claims. In 2003, C, who uses the CCM to account for exempt construction contracts and uses a calendar taxable year, enters into a contract to construct a building for B. The terms of the contract provide for a $1,000,000 gross contract price. C finishes the building in 2004 at a cost of $1,005,000. B examines the building in 2004 and agrees that it meets the contract's specifications; however, at the end of 2004, C and B are unable to agree on the merits of C's claim for an additional $10,000 for items that C alleges are changes in contract specifications and B alleges are within the scope of the contract's original specifications. In 2005, B agrees to pay C an additional $2,000 to satisfy C's claims under the contract. Because the amount in dispute affects so much of the gross contract price that C cannot determine in 2004 whether a profit or loss will ultimately be realized, C may not take any of the gross contract price or allocable contract costs into account in 2004. C must take into account $1,002,000 of gross contract price and $1,005,000 of allocable contract costs in 2005.

Example 7. CCM—contracts with disputes from taxpayer and customer claims. C, who uses the CCM to account for exempt construction contracts and uses a calendar taxable year, constructs a factory for B pursuant to a long-term contract. Under the terms of the contract, B agrees to pay C a total of $1,000,000 for construction of the factory. C finishes construction of the factory in 1999 at a cost of $1,020,000. When B takes possession of the factory and begins operations in December 1999, B is dissatisfied with the location and workmanship of certain heating ducts. As of the end of 1999, C contends that the heating ducts as constructed are in accordance with contract specifications. The amount of the gross contract price reasonably in dispute with respect to the heating ducts is $6,000. As of this time, C is claiming $14,000 in addition to the original contract price for certain changes in contract specifications which C alleges have increased his costs. B denies that such changes have increased C's

costs. In 2000 the disputes between C and B are resolved by performance of additional work by C at a cost of $1,000 and by an agreement that the contract price would be revised downward to $996,000. Under these circumstances, C must include in his gross income for 1999, $994,000 (the gross contract price less the amount reasonably in dispute because of B's claim, or $1,000,000 − $6,000). In 1999, C must also take into account $1,000,000 of allocable contract costs (costs incurred less the amounts in dispute attributable to both B and C's claims, or $1,020,000 − $6,000 − $14,000). In 2000, C must take into account an additional $2,000 of gross contract price ($996,000 − $994,000) and $21,000 of allocable contract costs ($1,021,000 − $1,000,000).

(i) *Mid-contract change in taxpayer.* [Reserved]

* * * * *

Par. 8. Section 1.460–5 is revised to read as follows:

§ 1.460–5 Cost allocation rules.

(a) *Overview.* This section prescribes methods of allocating costs to long-term contracts accounted for using the percentage-of-completion method described in § 1.460–4(b) (PCM), the completed-contract method described in § 1.460–4(d) (CCM), or the percentage-of-completion/capitalized-cost method described in § 1.460–4(e) (PCCM). Exempt construction contracts described in § 1.460–3(b) accounted for using a method other than the PCM, CCM, or PCCM are not subject to the cost allocation rules of this section (other than the requirement to allocate production period interest under paragraph (b)(2)(v) of this section). Paragraph (b) of this section describes the regular cost allocation methods for contracts subject to the PCM. Paragraph (c) of this section describes an elective simplified cost allocation method for contracts subject to the PCM. Paragraph (d) of this section describes the cost allocation methods for exempt construction contracts reported using the CCM. Paragraph (e) of this section describes the cost allocation rules for contracts subject to the PCCM. Paragraph (f) of this section describes additional rules applicable to the cost allocation methods described in this section. Paragraph (g) of this section provides rules concerning consistency in method of allocating costs to long-term contracts.

(b) *Cost allocation method for contracts subject to PCM*—(1) *In general.* A taxpayer must allocate costs to each long-term contract subject to the PCM in the same manner that direct and indirect costs are capitalized to property produced by a taxpayer under § 1.263A–1(e) through (h), except as otherwise provided in paragraph (b)(2) of this section. Thus, a taxpayer must allocate to each long-term contract subject to the PCM all direct costs and certain indirect costs properly allocable to the long-term contract (i.e., all costs that directly benefit or are incurred by reason of the performance of the long-term contract). However, see paragraph (c) of this section concerning an election to allocate contract costs using the simplified cost-to-cost method. As in section 263A, the use of the practical capacity concept is not permitted. See § 1.263A–2(a)(4).

(2) *Special rules*—(i) *Direct material costs.* The costs of direct materials must be allocated to a long-term contract as of the earlier of when a direct material is purchased specifically for that contract or when *dedicated,* as defined in § 1.263A—11(b)(2). For this purpose, a direct material is purchased specifically for a long-term contract if, when incurring the liability for the direct material, a taxpayer reasonably expects to incorporate the direct material in the subject matter of the contract. A taxpayer maintaining inventories under § 1.471–1 must determine allocable contract costs attributable to direct materials using its method of accounting for such inventories (e.g., FIFO, LIFO, specific identification).

(ii) *Components and subassemblies.* The costs of a component or subassembly (component) produced by the taxpayer must be allocated to a long-term contract as the taxpayer incurs costs to produce the component if the taxpayer reasonably expects to incorporate the component into the subject matter of the contract. Similarly, the cost of a purchased component (including a component purchased from a related party) must be allocated to a long-term contract as the taxpayer incurs the cost to purchase the component if the taxpayer reasonably expects to incorporate the component into the subject matter of the contract. In all other cases, the cost of a component must be allocated to a long-term contract when the component is dedicated, as defined in § 1.263A–11(b)(2). A taxpayer maintaining inventories under § 1.471–1 must determine allocable contract costs attributable to components using its method of accounting for such inventories (e.g., FIFO, LIFO, specific identification).

(iii) Simplified production methods. A taxpayer may not determine allocable contract costs using the simplified production methods described in § 1.263A–2(b) and (c).

(iv) *Costs identified under cost-plus long-term contracts and federal long-term contracts.* To the extent not otherwise allocated to the contract under this paragraph (b), a taxpayer must allocate any identified costs to a cost-plus long-term contract or federal long-term contract (as defined in section 460(d)). *Identified cost* means any cost, including a charge representing the time-value of money, identified by the taxpayer or related person as being attributable to the taxpayer's cost-plus long-term contract or federal long-term contract under the terms of the contract itself or under federal, state, or local law or regulation.

(v) *Interest*—(A) *In general.* If property produced under a long-term contract is *designated property,* as defined in § 1.263A–8(b) (without regard to the exclusion for long-term contracts under § 1.263A–8(d)(2)(v)), a taxpayer must allocate interest incurred during the production period to the long-term contract in the same manner as interest is allocated to property produced by a taxpayer under section 263A(f). See §§ 1.263A–8 to 1.263A–12 generally.

(B) *Production period.* Notwithstanding § 1.263A–12(c) and (d), for purposes of this paragraph (b)(2)(v), the production period of a long-term contract—

(*1*) Begins on the later of—

(*i*) The contract commencement date, as defined in § 1.460–1(b)(7); or

(*ii*) For a taxpayer using the accrual method of accounting for long-term contracts, the date by which 5 percent or more of the total estimated costs, including design and planning costs, under the contract have been incurred; and

(*2*) Ends on the date that the contract is completed, as defined in § 1.460–1(c)(3).

(C) *Application of section 263A(f).* For purposes of this paragraph (b)(2)(v), section 263A(f)(1)(B)(iii) (regarding an estimated production period exceeding 1 year and a cost exceeding $1,000,000) must be applied on a contract-by-contract basis; except that, in the case of a taxpayer using an accrual method of accounting, that section must be applied on a property-by-property basis.

(vi) *Research and experimental expenses.* Notwithstanding § 1.263A–1(e)(3)(ii)(P) and (iii)(B), a taxpayer must allocate research and experimental expenses, other than independent research and experimental expenses (as defined in section 460(c)(5)), to its long-term contracts.

(vii) *Service costs*—(A) *Simplified service cost method*—(*1*) *In general.* To use the simplified service cost method under § 1.263A–1(h), a taxpayer must allocate the otherwise capitalizable

mixed service costs among its long-term contracts using a reasonable method. For example, otherwise capitalizable mixed service costs may be allocated to each long-term contract based on labor hours or contract costs allocable to the contract. To be considered reasonable, an allocation method must be applied consistently and must not disproportionately allocate service costs to contracts expected to be completed in the near future.

(*2*) Example. The following example illustrates the rule of this paragraph (b)(2)(vii)(A):

Example. Simplified service cost method. During 1999, C, which uses a calendar taxable year, produces electronic equipment for inventory and enters into long-term contracts to manufacture specialized electronic equipment. C's method of allocating mixed service costs to the property it produces is the labor-based, simplified service cost method described in § 1.263A–1(h)(4). For 1999, C's total mixed service costs are $100,000, C's section 263A labor costs are $500,000, C's section 460 labor costs (i.e. labor costs allocable to C's long-term contracts) are $250,000, and C's total labor costs are $1,000,000. To determine the amount of mixed service costs capitalizable under section 263A for 1999, C multiplies the "total mixed service costs" incurred during 1999 by its 1999 "section 263A allocation ratio" (section 263A labor costs/total labor costs). Thus, C's capitalizable mixed service costs for 1999 are $50,000 ($100,000 x $500,000/$1,000,000). Thereafter, C allocates its capitalizable mixed service costs to property produced remaining in ending inventory using its 263A allocation method (e.g., burden rate, simplified production). Similarly, to determine the amount of mixed service costs that are allocable to C's long-term contracts for 1999, C multiplies the "total mixed service costs" incurred during 1999 by its 1999 "section 460 allocation ratio" (section 460 labor/total labor costs). Thus, C's allocable mixed service contract costs for 1999 are $25,000 ($100,000 x $250,000/ 1,000,000). Thereafter, C allocates its allocable mixed service contract costs to each of its long-term contracts proportionately based on the 1999 section 460 labor costs allocable to each long-term contract.

(B) *Jobsite costs.* If an administrative, service, or support function is performed solely at the jobsite for a specific long-term contract, the taxpayer may allocate all the direct and indirect costs of that administrative, service, or support function to that long-term contract. Similarly, if an administrative, service, or support function is performed at the jobsite solely for the taxpayer's long-term contract activities, the taxpayer may allocate all the direct and indirect costs of that administrative, service, or support function among all the long-term contracts performed at that jobsite. For this purpose, *jobsite* means a production plant or a construction site.

(C) *Limitation on other reasonable cost allocation methods.* A taxpayer may use any other reasonable method of allocating service costs, as provided in § 1.263A–1(f)(4), if, for the taxpayer's long-term contracts considered as a whole, the—

(*1*) Total amount of service costs allocated to the contracts does not differ significantly from the total amount of service costs that would have been allocated to the contracts under § 1.263A–1(f)(2) or (3);

(*2*) Service costs are not allocated disproportionately to contracts expected to be completed in the near future because of the taxpayer's cost allocation method; and

(*3*) Taxpayer's cost allocation method is applied consistently.

(c) *Simplified cost-to-cost method*—(1) *In general.* Instead of using the cost allocation method prescribed in paragraph (b) of this section, a taxpayer may elect to use the simplified cost-to-cost method, which is authorized under section 460(b)(3)(A). Under the simplified cost-to-cost method, a taxpayer determines a contract's completion factor based upon only direct material costs; direct labor costs; and depreciation, amortization, and cost recovery allowances on equipment and facilities directly used to manufacture or construct the subject matter of the contract. An electing taxpayer must use the simplified cost-to-cost method to apply the look-back method under § 1.460–6 and to determine alternative minimum taxable income under § 1.460–4(f).

(2) *Election.* A taxpayer makes an election under this paragraph (c) by using the simplified cost-to-cost method for all long-term contracts entered into during the taxable year of the election on its original federal income tax return for the election year. This election is a method of accounting and, thus, applies to all long-term contracts entered into during and after the taxable year of the election. This election is not available if a taxpayer does not use the PCM to account for all long-term contracts or if a taxpayer elects to use the 10-percent method described in § 1.460–4(b)(6).

(d) *Cost allocation rules for exempt construction contracts reported using the CCM*—(1) *In general.* For exempt construction contracts reported using the CCM, other than contracts described in paragraph (d)(3) of this section, a taxpayer must annually allocate the cost of any activity that is incident to or necessary for the taxpayer's performance under a long-term contract. A taxpayer must allocate to each such exempt construction contract all direct costs as defined in § 1.263A–1(e)(2)(i) and all indirect costs either as provided in § 1.263A–1(e)(3) or as provided in paragraph (d)(2) of this section.

(2) *Indirect costs*—(i) *Indirect costs allocable to exempt construction contracts.* A taxpayer allocating costs under this paragraph (d)(2) must allocate the following costs to an exempt construction contract, other than a contract described in paragraph (d)(3) of this section, to the extent incurred in the performance of that contract—

(A) Repair of equipment or facilities;

(B) Maintenance of equipment or facilities;

(C) Utilities, such as heat, light, and power, allocable to equipment or facilities;

(D) Rent of equipment or facilities;

(E) Indirect labor and contract supervisory wages, including basic compensation, overtime pay, vacation and holiday pay, sick leave pay (other than payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983), shift differential, payroll taxes, and contributions to a supplemental unemployment benefits plan;

(F) Indirect materials and supplies;

(G) Noncapitalized tools and equipment;

(H) Quality control and inspection;

(I) Taxes otherwise allowable as a deduction under section 164, other than state, local, and foreign income taxes, to the extent attributable to labor, materials, supplies, equipment, or facilities;

(J) Depreciation, amortization, and cost-recovery allowances reported for the taxable year for financial purposes on equipment and facilities to the extent allowable as deductions under chapter 1 of the Internal Revenue Code (Code);

(K) Cost depletion;

(L) Administrative costs other than the cost of selling or any return on capital;

(M) Compensation paid to officers other than for incidental or occasional services;

(N) Insurance, such as liability insurance on machinery and equipment; and

(O) Interest, as required under paragraph (b)(2)(v) of this section.

(ii) *Indirect costs not allocable to exempt construction contracts.* A taxpayer allocating costs under this paragraph (d)(2) is not required to allocate the following costs to an exempt construction contract reported using the CCM—

(A) Marketing and selling expenses, including bidding expenses;

(B) Advertising expenses;
(C) Other distribution expenses;
(D) General and administrative expenses attributable to the performance of services that benefit the taxpayer's activities as a whole (e.g., payroll expenses, legal and accounting expenses);
(E) Research and experimental expenses (described in section 174 and the regulations thereunder);
(F) Losses under section 165 and the regulations thereunder;
(G) Percentage of depletion in excess of cost depletion;
(H) Depreciation, amortization, and cost recovery allowances on equipment and facilities that have been placed in service but are temporarily idle (for this purpose, an asset is not considered to be temporarily idle on non-working days, and an asset used in construction is considered to be idle when it is neither en route to nor located at a job-site), and depreciation, amortization and cost recovery allowances under chapter 1 of the Code in excess of depreciation, amortization, and cost recovery allowances reported by the taxpayer in the taxpayer's financial reports;
(I) Income taxes attributable to income received from long-term contracts;
(J) Contributions paid to or under a stock bonus, pension, profit-sharing, or annuity plan or other plan deferring the receipt of compensation whether or not the plan qualifies under section 401(a), and other employee benefit expenses paid or accrued on behalf of labor, to the extent the contributions or expenses are otherwise allowable as deductions under chapter 1 of the Code. Other employee benefit expenses include (but are not limited to): worker's compensation; amounts deductible or for whose payment reduction in earnings and profits is allowed under section 404A and the regulations thereunder; payments pursuant to a wage continuation plan under section 105(d) as it existed prior to its repeal in 1983; amounts includible in the gross income of employees under a method or arrangement of employer contributions or compensation which has the effect of a stock bonus, pension, profit-sharing, or annuity plan, or other plan deferring the receipt of compensation or providing deferred benefits; premiums on life and health insurance; and miscellaneous benefits provided for employees such as safety, medical treatment, recreational and eating facilities, membership dues, etc.;
(K) Cost attributable to strikes, rework labor, scrap and spoilage; and
(L) Compensation paid to officers attributable to the performance of services that benefit the taxpayer's activities as a whole.

(3) *Large homebuilders.* A taxpayer must capitalize the costs of home construction contracts under section 263A and the regulations thereunder, unless the contract will be completed within two years of the contract commencement date and the taxpayer satisfies the $10,000,000 gross receipts test described in § 1.460–3(b)(3).

(e) *Cost allocation rules for contracts subject to the PCCM.* A taxpayer must use the cost allocation rules described in paragraph (b) of this section to determine the costs allocable to the entire qualified ship contract or residential construction contract accounted for using the PCCM and may not use the simplified cost-to-cost method described in paragraph (c) of this section.

(f) *Special rules applicable to costs allocated under this section*—(1) *Nondeductible costs.* A taxpayer may not allocate any otherwise allocable contract cost to a long-term contract if any section of the Code disallows a deduction for that type of payment or expenditure (e.g., an illegal bribe described in section 162(c)).

(2) *Costs incurred for non-long-term contract activities.* If a taxpayer performs a non-long-term contract activity, as defined in § 1.460–1(d)(2), that is incident to or necessary for the manufacture, building, installation, or construction of the subject matter of one or more of the taxpayer's long-term contracts, the taxpayer must allocate the costs attributable to that activity to such contract(s).

(g) *Method of accounting.* A taxpayer that adopts or elects a cost allocation method of accounting (or changes to another cost allocation method of accounting with the Commissioner's consent) must apply that method consistently for all similarly classified contracts, until the taxpayer obtains the Commissioner's consent under section 446(e) to change to another cost allocation method.

Par. 9. Section 1.460–6 is amended as follows:

1. A sentence is added to the end of paragraph (a)(2).
2. In the third sentence of paragraph (b)(1), the language "by substituting '80 percent' for '50 percent' with" is removed and "by substituting 'at least 80 percent' for 'more than 50 percent' with" is added in its place.
3. The first sentence of paragraph (c)(1)(ii)(A) is revised.
4. The last two sentences of paragraph (c)(1)(ii)(B) are removed.
5. In the last sentence of paragraph (c)(1)(ii)(C)(*2*), the language "§ 5h.6" is removed and "§ 301.9100–8 of this chapter" is added in its place.
6. In the fourth sentence of paragraph (c)(2)(v)(A), the language "similarly" is removed.
7. The first, second, fifth, and sixth sentences of paragraph (c)(2)(v)(A) are removed.
8. In the first sentence of paragraph (c)(2)(vi)(B), the language "§ 1.451–3(b)(2)(ii), (iii), (iv), and § 1.451–3(d)(2), (3), and (4)" is removed and "§ 1.460–4(b)(4)(i)" is added in its place.
9. In the second sentence of paragraph (c)(2)(vi)(B), the language "the percentage of completion method and" is removed.
10. In the third sentence of paragraph (c)(2)(vi)(B), the language ", for purposes of both the percentage of completion method and the look-back method" is removed.
11. In the fourth sentence of paragraph (c)(2)(vi)(B), the language "Similarly, a" is removed and "A" is added in its place.
12. In the first sentence of paragraph (c)(2)(vi)(C), the language "§ 1.451–3(e)" is removed and "§ 1.460–1(e)" is added in its place.
13. The heading of paragraph (c)(4)(iv) is revised and the last two sentences are revised.
14. In the first sentence of paragraph (d)(4)(ii)(C), the language " within the meaning of section 1504(a)" is removed and ", as defined in § 1.1502–1(h)" is added in its place.
15. In the fourth sentence of paragraph (e)(2), the language " within the meaning of section 1504(a)" is removed and ", as defined in § 1.1502–1(h)" is added in its place.

The revisions and addition read as follows:

§ 1.460–6 Look-back method.

(a) * * *

(2) * * * Paragraph (j) of this section provides guidance concerning the election not to apply the look-back method in de minimis cases.

* * * * *

(c) * * *

(1) * * *

(ii) * * *

(A) *In general.* Except as otherwise provided in section 460(b)(6) or § 1.460–6(e), a taxpayer must apply the look-back method to a long-term contract in the completion year and in any post-completion year for which the taxpayer must adjust total contract price or total allocable contract costs, or both, under the PCM. * * *

* * * * *

(4) * * *

(iv) *Additional interest due on look-back interest only after tax liability due.*

* * * Unless a taxpayer is entitled to a tax refund that fully offsets the amount of look-back interest due the government, the look-back interest owed by the taxpayer compounds under section 6622 from the initial due date of the return (without regard to extensions) through the date the return, not the Form 8697, is filed. Similarly, if a taxpayer is entitled to receive look-back interest, the look-back interest compounds under section 6622 from the initial due date of the return (without regard to extensions) through the date the return, not the Form 8697, is filed.

* * * * *

§§ 1.460–7 and 1.460–8 [Removed]

Par. 10. Sections 1.460–7 and 1.460–8 are removed.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 99–10948 Filed 4–30–99; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 105–3–0123; FRL–6336–4]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP). The revision concerns Rule 232, which regulates oxides of nitrogen (NO_X) emissions from Biomass Boilers.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before June 4, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

El Dorado County Environmental Management Department, Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901 Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the California SIP is El Dorado County Air Pollution Control District (EDCAPCD) Rule 232, Biomass Boilers. Rule 232 was submitted by the State of California to EPA on October 20, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. EDCAPCD is classified as severe;[1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for El Dorado County Air Pollution Control District (EDCAPCD) Rule 232, Biomass Boilers. EDCAPCD adopted Rule 232 on October 18, 1994. The State of California submitted this Rule 232 to EPA on October 20, 1994. The rule was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V[2].

NO_X emissions contribute to the production of ground level ozone and smog. EDCAPCD Rule 232 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of EDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA

[1] EDCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents[3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB) developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology - for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters (July 1991). EPA has found this guidance document to be consistent with the CAA's RACT requirements and has used it in evaluating EDCAPCD Rule 232.

There is currently no version of El Dorado County Air Pollution Control District (EDCAPCD) Rule 232, Biomass Boilers, in the SIP. The submitted rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits.

Rule 232 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing SIP rule, the incorporation of Rule 232 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated EDCAPCD Rule 232 for consistency with the CAA, EPA regulations, and EPA policy and has found that, although EDCAPCD Rule 232 will strengthen the SIP, this rule contains the following deficiency which must be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA.

- Section 232.4 (A) regarding the compliance schedule of the Rule, must be modified to include a compliance schedule for facilities requiring emissions control equipment to achieve emissions limits, as defined in the Clean Air Act. The compliance schedule for facilities requiring emissions control equipment should specify a final compliance schedule to be achieved no later than two years after the determination is made that emissions control equipment is required.

A detailed discussion of this rule deficiency can be found in the Technical Support Document for Rule 232, dated December 2, 1998, which is available from the U.S. EPA, Region IX office. Because of this deficiency, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval. In order to strengthen the SIP, EPA is proposing a limited approval of EDCAPCD's submitted Rule 232 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains a deficiency which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the El Dorado County Air Pollution Control District and is currently in effect in the El Dorado County Air Pollution Control District. EPA's final limited disapproval action will not prevent the El Dorado County Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 21, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–11275 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 083–4–0122a; FRL –6336–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; El Dorado County Air Pollution Control District (EDCAPCD)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and limited disapproval of a revision to the California State Implementation Plan (SIP). The El Dorado County Air Pollution Control District (EDCAPCD), Rule 229 concerns control of emissions of oxides of nitrogen (NO_X) from industrial, institutional, and commercial boilers, steam generators, and process heaters.

The intended effect of proposing limited approval and limited disapproval of this rule is to regulate emissions of Oxides of Nitrogen in accordance with the requirements of the Clean Air Act, as amended in 1990

(CAA or the Act). EPA's final action on this proposed rule will incorporate this rule into the federally approved SIP. EPA has evaluated the rule and is proposing a simultaneous limited approval and limited disapproval under provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions, while strengthening the SIP, do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before June 4, 1999.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102) 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 'L' Street, Sacramento, CA 95812

El Dorado County Environmental Management Department, Air Pollution Control District, 2850 Fairlane Court, Placerville, CA 95667

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and limited disapproval into the California SIP is EDCAPCD's Rule 229, Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. Rule 229 was submitted by the State of California to EPA on October 20, 1994.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182 (f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements and is incorporated into this document by reference.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. EDCAPCD is classified as severe; [1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rules covering NO_X sources and submitted as SIP revisions are expected to require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for El Dorado County Air Pollution Control District (EDCAPCD) Rule 229, Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters. EDCAPCD adopted Rule 229 on September 27, 1994. The State of California submitted this Rule 229 to EPA on October 20, 1994. The rule was found to be complete on October 21, 1994, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51, Appendix V [2].

NO_X emissions contribute to the production of ground level ozone and smog. EDCAPCD Rule 229 specifies exhaust emission standards for NO_X, carbon monoxide (CO), and VOCs, and was originally adopted as part of EDCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for this rule.

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents [3]. Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions.

For the purposes of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to

[1] EDCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[3] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

The California Air Resources Board (CARB), developed a guidance document entitled Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters (July 1991). EPA has found the guidance consistent with the CAA and used the CARB guidance document in evaluating Rule 229 for consistency with the CAA's RACT requirements.

There is currently no version of El Dorado County Air Pollution Control District (EDCAPCD) Rule 229, Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters, in the SIP. The submitted rule includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X), volatile organic compounds (VOCs) and carbon monoxide (CO).
- Administrative and monitoring requirements including compliance schedule, reporting requirements, monitoring and record keeping, and test methods.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, record keeping, and compliance testing in addition to RACT guidance regarding emission limits. Rule 229 strengthens the SIP through the addition of enforceable measures such as record keeping, test methods, definitions, and more stringent compliance testing. Because there is no existing SIP rule, the incorporation of Rule 229 into the SIP would decrease the NO_X emissions allowed by the SIP.

EPA has evaluated EDCAPCD Rule 229 for consistency with the CAA, EPA regulations, and EPA policy and has found that, although EDCAPCD Rule 229 will strengthen the SIP, this rule contains the following deficiencies which must be corrected pursuant to the section 182(a)(2)(A) requirement of Part D of the CAA.

- Section 229.3 (D): Alternate Emission Control Plan (AECP): Provisions must be consistent with the EPA Emissions Trading Policy Statement (ETPS) published on December 4, 1986 (51 FR 43814), the Economic Incentive Program Rules (EIP) promulgated April 7, 1994 (59 FR 16690), and EPA policies regarding equivalency provisions, AECPs, cross-line averaging, and other bubbles as described in the document entitled, "Issues Relating to VOC Regulation Cutpoints, deficiencies, and deviations: Clarification to Appendix D of November 24, 1987 **Federal Register**." The EIP and EPA policies required AECP provisions to meet, among other things, a 10 percent (%) or greater reduction in emissions beyond the established baseline.
- The nomenclature regarding "emissions factors" is unclear: The words "daily NO_X emission factor" should be defined relative to the NO_X emissions level as stated in Section 229.3 (A).
- Section 229.3 (D) (1) (c): The "overall average emission factor" should be defined and the method of calculating described in the rule.
- Section 229.3 (D) (4) (b) (2): The "Permitted emissions factors" should be defined.
- Section 229.3 (D) (4) (b): Provisions 3), 4), and 5) should be defined and the method of determining emissions/ emission factors should be included in the rule.
- Section 229.3 (D) (5) (c) and (d): "The daily overall average pounds of NO_X/MMBTU" should be defined.
- Section 229.3 (D) and Section 229.3 (D) (6):
- Reduction of the daily NO_X emissions in the AECP should be to less than 90 percent of the NO_X emissions that would result if each unit in operation were individually in compliance with Section 229.3 (A).
- Section 229.3 (D) (6): Language should be modified to: "* * * the emission factor calculated in Section 229.3 D.5.d. exceeds 90 % of the emission factor calculated in section 229.3 D.5.c., the excess emissions shall be considered a violation of the rule."
- Section 229.3 (D) and Section 229.5 (B) (2): Executive Officer's discretion language should be expanded to include "as approved by the Air Pollution Control Officer utilizing methods approved by the California Air Resources Board and the U.S. EPA."
- Provisions should include notification language for exceedances.

Regarding other sections of the Rule:

- Section 229.3 (A): Annual Heat Inputs: To be consistent with the CARB Determination the language should be modified to: "greater than or equal to 90,000 therms for any of the three previous calender years,".
- Section 229.3 (C): Equipment requirements: Flow rate meters should be specified as "non-resettable, totalizing meters" for both mass flow and volumetric flow meters.
- Section 229.4 (A): Compliance schedule: A date for facilities to achieve full compliance should be specified.

A more detailed discussion of these rule deficiencies can be found in the Technical Support Document for Rule 229, dated January 29, 1999, which is available from the U.S. EPA, Region IX office.

Because of these deficiencies, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3), in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval.

In order to strengthen the SIP, EPA is proposing a limited approval of EDCAPCD's submitted Rule 229 under sections 110(k)(3) and 301(a) of the CAA. At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final limited disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c).

It should be noted that the rule covered by this document has been adopted by the El Dorado County Air Pollution Control District and is currently in effect in the El Dorado County Air Pollution Control District. EPA's final limited disapproval action will not prevent the El Dorado County Air Pollution Control District or EPA from enforcing this rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks [62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and record keeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 16, 1999.

Laura Yoshii,

Deputy Regional Administrator, Region IX,

[FR Doc. 99–11274 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[CA–010–0001–ec, FRL–6336–2]

Classification of the San Francisco Bay Area Ozone Nonattainment Area for Congestion Mitigation and Air Quality (CMAQ) Improvement Program Purposes; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; extension of the comment period.

SUMMARY: EPA is extending the comment period for a proposed rule published March 18, 1999 (64 FR 13383). On March 18, 1999, EPA proposed to classify the San Francisco Bay Area pursuant to section 172(a) of the Clean Air Act as moderate for CMAQ purposes only, and the classification is intended only in relation to the area's treatment under CMAQ.

At the request of the Santa Barbara County Association of Governments, EPA is extending the comment period for 30 days.

DATES: Comments must be received in writing on or before May 19, 1999.

ADDRESSES: Comments should be submitted to: Celia Bloomfield, Planning Office (AIR–2), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Celia Bloomfield, U.S. EPA Region IX, at (415) 744–1249.

Dated: April 27, 1999.

David P. Howekamp,

Acting, Regional Administrator, Region IX.

[FR Doc. 99–11272 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 360 and 387

[FHWA Docket No. FHWA–97–2923; MC–97–11]

RIN 2125–AE06

Qualifications of Motor Carriers to Self-Insure Their Operations and Fees to Support the Approval and Compliance Process

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM); request for comments.

SUMMARY: This document proposes to identify circumstances in which the public is subjected to an unacceptable level of risk of uncompensated losses generated from bodily injury and property damage (BI&PD) claims arising from the actions of for-hire motor carriers conducting self-insured operations in interstate or foreign commerce. More specifically, the FHWA seeks public comment on a proposal to reevaluate the security and collateral requirements of any self-insured carrier that fails to generate from operations, after payment of all expenses except annual self-insurance claims expenses, twice the level of cash needed to pay the self-insurance claims. The FHWA also proposes to assess an additional application fee to cover carrier requests for modifications and alterations to self-insurance authorizations which require a reevaluation of the carrier's financial condition. The FHWA can now do the basic first-time self-insurance application for $3,000. This amount is $1,200 less than the $4,200 fee the FHWA currently charges. Thus, the agency is also proposing to reduce the fee for processing the initial application to $3,000 for an economic cost savings. The proposed actions will not apply to carriers authorized to self-insure cargo-only claims. The requirements for cargo-only self-insurance are not substantial because the required cargo coverage is relatively small. Consequently, the expenses for reviewing cargo-only applications are not significant. Further, the risk of an unacceptable level of uncompensated self-insurance cargo claims is low.

Finally, this NPRM would also propose implementing additional procedures necessary for motor carriers to establish billing accounts to pay all insurance-related fees required by the Federal Highway Administration. A schedule of filing fees and general instructions regarding payment are provided.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Your signed, written comments must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. John F. Grimm, (202) 366–4039, or Mr. Stanley M. Braverman, (202) 358–7035, Office of Motor Carriers, FHWA, 400 Virginia Avenue, SW., Suite 600, Washington, DC 20024; or Mr. Michael J. Falk, Office of the Chief Counsel, HCC–20, (202) 366–1384, FHWA, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): http://dms.dot.gov. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at: http://www.access.gpo.gov/nara.

I. Background

On September 23, 1997, the FHWA published an advance notice of proposed rulemaking (ANPRM) to examine the sufficiency of existing self-insurance requirements, the need for assessing additional fees for processing and monitoring functions, and the propriety of seeking congressional authorization to terminate the self-insurance program altogether (62 FR 49654, FHWA Docket No. MC–97–11). On September 29, 1997, the FHWA corrected the assigned FHWA docket number and address for submission of comments (62 FR 50892, FHWA Docket No. FHWA–97–2923; MC–97–11).

The ANPRM was published primarily to obtain comments from motor carriers, insurance companies, and other interested parties to determine whether the existing self-insurance requirements and conditions were sufficiently stringent to ensure that the public is protected against uncompensated losses. The FHWA requested public comment on the sufficiency of the back-up collateral required for the authorizations both in form and amount, the reporting requirements, and on proposed fees to cover application modification and monitoring functions. The former

Interstate Commerce Commission (ICC) always charged application fees; however, charges for monitoring carrier compliance with agency requirements were not assessed. A series of questions raising issues concerning the merits of retaining the self-insurance program were also proposed.

The Transportation Equity Act for the 21st Century (Pub. Law 105–178, 112 Stat. 107) (June 9, 1998) makes no changes in the authorization to provide a self-insurance program and does not impact on the recommendations contained herein.

II. Responses to Public Comments

Twenty-seven (27) comments were received from motor carriers and their associations, insurance associations, a single insurance company, and a law firm. No comments were received from parties with bankruptcy claims pending against carriers that were previously authorized to self-insure.

A. The Propriety of Retaining the Self-Insurance Program

The carriers, their associations, and the sole commenting insurance company argue that self-insurance should be retained. Apart from illustrating the carrier benefits derived from the program, several commenters contend that as long as the Federal requirement for mandatory insurance remains in place, the self-insurance option should remain available to qualified applicants. The National Association of Independent Insurers and the commenting law firm urge repeal of the self-insurance program, and the Advocates for Highway and Auto Safety call into question the entire mandatory insurance requirement for motor carriers. The issue concerning mandatory insurance is clearly beyond the scope of this proceeding and, accordingly, the FHWA makes no comment on the proposal offered by the Advocates for Highway and Auto Safety. Nevertheless, the mandatory insurance requirement is a relevant consideration in attempting to determine the propriety of retaining the self-insurance authorization. The FHWA is persuaded by the equity of the carriers' contention that the continued existence of the mandatory requirement justifies the self-insurance option for qualified applicants.

B. Proposed Changes in Security Requirements and Fee Proposals

For the most part, the carriers and carrier associations dispute that any problems with the self-insurance program exist and object to the alteration of security and reporting requirements, and the imposition of additional fees. In support of this proposition, commenters argue that the ICC Termination Act of 1995 (ICCTA) (Pub. L. No. 104–88, 109 Stat. 803) prohibits the imposition of additional requirements on carriers already granted authorization to self-insure. Several carriers also contend that the monitoring fees are discriminatory since the FHWA does not assess a fee for insurance filings. Some carriers indicated that reasonable charges reflecting the actual expenses incurred in dealing with special modifications should be recovered.

The provision of the ICCTA which applies to the issue raised by the complaining carriers, 49 U.S.C. 13906(d), provides: "Motor carriers which have been granted authority to self-insure as of the effective date of this section shall retain that authority unless, for good cause shown and after notice and an opportunity for a hearing, the Secretary [of Transportation] finds that the authority must be revoked." This section merely provides that challenges to a self-insurance grant must be made on a case-by-case basis. Further, each self-insurance authorization contains a condition which provides that the FHWA retains the authority to terminate the authorization when it appears that the carrier's financial arrangements fail to provide satisfactory protection to the public. Another condition authorizes the FHWA to require the carrier to submit any additional information the FHWA deems necessary. Clearly, the FHWA retains the authority to impose additional requirements where circumstances justify such action.

The FHWA does not agree with the contention that the imposition of monitoring fees on carriers holding self-insurance authorizations is prohibited. The carriers seek to equate the monitoring fees with a new qualification that would be imposed on all self-insured carriers. The imposition of a fee has nothing to do with a carrier's qualifications to self-insure. Certainly, the carriers could not seriously contend that the monitoring fee presents a barrier to self-insured operations, given the required showing of financial fitness.

Several commenters have questioned the ability of the FHWA to conduct the necessary oversight. The FHWA has hired an investment banking firm (the firm) to conduct the yearly monitoring and application analysis in an effort to upgrade the quality of the financial reviews. Decisions regarding authorizations and continued compliance will still be made by the FHWA staff based on the information provided by the contractor. The decision to employ a contractor was designed to accomplish two purposes: (1) to upgrade the quality of the financial analysis and oversight; and (2) to provide the resources to ensure that the necessary tasks were accomplished in a timely manner.3

The firm's charges for the quarterly and annual compliance review amount to $2,600 per carrier. The charges can be broken down as follows:

Fees To Monitor Existing Self-Insured Carrier

Annual monitoring fee-existing carrier	Hours	Hourly rate	Total
Clerical	2.5	$34.40	$86.00
Financial and claims analysis	10.0	91.40	914.00
Report preparation	12.0	91.40	1,096.80
Principal consultant	1.0	177.39	177.39
Director	1.0	249.47	249.47
Total	26.5		2,523.66

The contractor conducts a complete carrier review regardless of the number of carriers conducting operations under a parent. Each carrier retains its own authorization and must comply with various conditions. Currently, the self-insurance monitoring costs are subsidized by the fees generated from new carrier applicants. Despite carrier claims to the contrary, the FHWA assesses a fee to cover the cost of each insurance filing made on behalf of carriers operating with commercial insurance to ensure accuracy. The FHWA finds nothing in the ICCTA that would bar the imposition of reasonable fees to recover costs associated with monitoring the self-insurance conditions. Failure to recover the annual monitoring costs would continue the unfair cross subsidization of the self-insurance program by carriers that do not enjoy its benefits. The proposed monitoring fee would be due on the filing date of the carrier's annual report [90 days after the end of the reporting year].

The recent financial failures of three self-insured carriers have caused the FHWA to reevaluate its ability to properly monitor the financial condition of carriers and insure that continued operations will generate sufficient funds to pay self-insurance claims. Since proration and disbursement of trust funds is still pending in two cases, the FHWA deems comment on the impact

of the proceedings to be inappropriate at this time, especially since none of the affected parties have filed comments in this proceeding. The FHWA considers any self-insured carrier's financial failure to be a breach of the integrity of the program, as well as imposing an unanticipated and unjustifiable risk on the public. In this regard, the FHWA considers carrier comments that all business activities generate risks to be unpersuasive. Since the FHWA is charged with administering the self-insurance program, it must insure that the public is adequately protected from uncompensated losses generated by carriers authorized by the FHWA to continue to conduct self-insured operations.

C. The Proposal To Extend the Automatic Revocation Provision to 45 Days for Carriers That Lose Their Satisfactory Safety Rating

No commenters objected to extending the 30-day automatic expiration provision for carriers with less than satisfactory safety ratings to 45 days. Two carriers suggested that the FHWA regional staff be authorized to waive the automatic expiration provision if no connection is found between the safety rating and self-insured operations. The FHWA believes that the 45 day period will provide the field staff with sufficient opportunity to upgrade a carrier's rating if necessary corrective action has been undertaken. Accordingly, further discretion to waive the expiration provision would not be necessary.

III. The FHWA Proposals

The FHWA does not propose in this proceeding any additional requirements which self-insured carriers must meet regardless of their current financial condition. Instead, the FHWA seeks public comment on a "minimum financial fitness standard" that should be satisfied by all carriers authorized to self-insure their motor carrier operations. Failure to meet this measure of financial fitness would establish that the carrier does not have in place sufficient financial arrangements to protect the public against uncompensated losses as required in each self-insurance authorization. The standard would require each carrier to generate from operations, after payment of all expenses except annual self-insurance claims expenses, sufficient cash flow to pay twice the amount of the self-insured claims. Carriers that failed to meet this standard would be required to provide adequate collateral to cover their outstanding claims liability. Unfunded letters of credit would no longer be accepted. At the very least, the FHWA would require the execution of a letter of credit with a "hard draw" (mandatory drawdown) provision which would automatically fund a standby trust if self-insured operations ceased, or if bankruptcy proceedings were initiated. The time provided for the funding of such collateral would be determined on a case-by-case basis.

In addition, such carriers would be required to submit an independent annual certified claims reports. The FHWA plans to issue an order at a later date that would require carriers authorized to self-insure to file the independent annual certified claims report. That order would also contain the filing date and any related conditions that must be met. The FHWA believes that failure to retain sufficient cash to comfortably cover current claims payments is sufficient justification for concluding that the carrier's financial arrangements fail to provide satisfactory protection to the public as required by each self-insurance authorization. This is especially true since virtually none of the carriers authorized to self-insure maintain sufficient collateral to cover existing reserves for outstanding self-insurance claims. While the FHWA has the authority to reconsider any self-insurance authorization on a case-by-case basis, public comment on the proposed financial fitness standard is nevertheless solicited.

With respect to fees for modification of self-insurance authorizations, the FHWA proposes to assess a fee of $2,500 based upon the following contractor's cost analysis:

Fees To Modify Existing Carrier's Authorization

Changes/modifications-existing carrier	Hours	Hourly rate	Total
Clerical	2	$34.40	$68.80
Financial and claims analysis	10	91.40	914.00
Report preparation	10	91.40	914.00
Principal consultant	2	177.39	354.78
Director	1	249.47	249.47
Total	25		2,501.05

In addition, the FHWA proposes to reduce the application fee for BI&PD self-insurance to $3,000 based upon the following cost analysis:

FEES FOR NEW SELF-INSURED CARRIER APPLICATION

New carrier application	Hours	Hourly rate	Total
Clerical	1.5	$34.40	$51.60
Financial and claims analysis	15	91.40	1,371.00
Report preparation	10	91.40	914.00
Principal consultant	2	177.39	354.78
Director	1	249.47	249.47
Total	29		2,940.85

All proposed fees are based on recovery of contractor costs. The FHWA does not propose to recover its own labor costs because the amount will likely vary depending on the amount of time needed for review and decisionmaking.

Section 387.309 of title 49, CFR, provides that "any self-insurance authority granted by the Commission [now the FHWA] will automatically expire 30 days after a carrier receives a less than satisfactory rating from DOT." No objections to FHWA's proposal to extend the period to 45 days were lodged by the commenters. Accordingly, the FHWA reiterates this proposal.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date shown above will be considered and will be available for examination in the FHWA Docket at the above address. Comments received after the comment closing date will be filed in the FHWA Docket identified above and will be considered to the extent practicable, but the FHWA may issue a final rule any time after the close of the comment closing period. In addition to late comments, the FHWA will also continue to file in the docket relevant information that becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has initially determined that this document contains a significant regulatory action under Executive Order 12866 and under the Department of Transportation's policies and procedures because this NPRM may raise novel legal or policy issues arising out of legal mandates. The NPRM is also significant because it has substantial public interest. The public has no reasonable means of challenging a self-

insured authorization and is not likely to know which motor carriers are self-insured. As discussed above, this NPRM would adopt a financial fitness standard for carriers authorized to self insure their operations and would enable the FHWA to take timely remedial action to prevent carrier defaults on self-insurance claims. In addition, this rule would institute additional nominal fees to recoup expenses associated with the contractor's participation in the self-insurance program.

Executive Order 12866 requires that regulatory agencies assess both the costs and benefits of intended regulations, and propose regulations on the basis that the benefits justify the costs. The proposed regulation is designed to provide notice and guidance to a group of approximately 55 motor carriers authorized to self-insure their operations, 9 of which have authorizations which cover cargo-only liability. This proposed rule merely codifies the authority the FHWA already possesses to administer the self-insurance program. The recommended "yearly" monitoring fee of $2,600 is simply designed to recoup costs associated with the analysis performed by a contractor. The FHWA estimates the annual cost for the contractor to monitor existing self-insured carriers at $143,000 (55 carriers × $2,600). While we do not expect all 55 carriers that self-insure to request modifications or alterations to their existing authorizations, the FHWA estimates the costs for such analyses at $137,500 if all carriers were to do so. Thus, for purposes of Executive Order 12866, this rulemaking does not impose an economic burden greater than $100 million on motor carriers that self-insure.

It is also important to note that carriers authorized to self-insure obtain a substantial economic benefit by not having to maintain commercial insurance coverage in the federally mandated amounts. The vast majority of these carriers self-insure at the $1,000,000 level which corresponds to the required level of coverage. These carriers, as well as the public, benefit from the existence of a comprehensive monitoring program designed to insure that all carriers authorized to self-insure comply with the terms of their authorizations. Only carriers maintaining an outstanding financial condition should be authorized to self-insure their operations. The gross revenues generated by carriers holding the BI&PD authorizations range from $8,396,000 to $1,207,601,000, or an average of $174,345,468. These carriers are exposed to an average claims balance of $3,412,882. The proposed yearly monitoring fee, therefore, would have little impact on these carriers given their financial strength. Thirteen entities include from two to seven self-insured carriers and each carrier would be required to pay the yearly monitoring fee. Nevertheless, the payment of multiple fees by these carrier groups would have little or no impact on their financial conditions. To argue otherwise would call into question their qualifications to self-insure. Requests for modifications of self-insurance authorizations are infrequent and the proposed fees should add little or no burden to the carriers since the requested modification would likely create a new financial benefit. For example, the benefits created by a reduction in the back-up collateral amount, the increase of the authorization amount, and the addition of additional carriers to the authorization, would all provide financial benefits far in excess of the one-time modification fee. Lastly, the reduced application fee from $4,200 to $3,000 would provide a modest benefit and cost savings to all future applicants. Overall, the FHWA has designed the thrust of its recommended proposals to provide the general public with greater protection from the likelihood of sustaining uncompensated losses resulting from an accident involving a self-insured carrier.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this rule on small entities. The proposed regulatory changes would have little or no effect on small entities since they do not participate in the bodily injury and property damage self-insurance program. The small entities that self-insure their operations only seek cargo coverage and would not be affected by any of the proposals, because the financial requirements for obtaining a cargo-only authorization are far less stringent than for BI&PD applicants. Further, the FHWA is unaware of any default by a cargo-only self-insurer. Accordingly, the FHWA certifies that this action would not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

The FHWA has initially determined that this proposed rule does not impose any unfunded mandates on State, local, or tribal governments in the aggregate, or by the private sector, of $100 million or more in any one year, as required by the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532).

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

This proposal amends an existing collection of information requirement for purposes of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520. The proposed rule would add additional requirements to the Office of Management and Budget's (OMB) approved budget for OMB Control Number FHWA 2125–0570, in the form of a certified claims report. The Form BMC–40, Application to Self-Insure under 49 U.S.C. 13906, is the application form used by carriers to apply for self-insurance authority. The proposed rule would not add additional requirements to the application.

The proposed independent certified annual claims report would amount to a limited additional collection of information requirement because it would only be imposed in remedial situations involving no more than four or five carriers at any one time. Further, it will only be imposed when circumstances warrant. The estimate of four or five carriers is based upon a maximum eight percent of carriers evidencing financial difficulties. The FHWA further estimates that 50 percent of these carriers authorized to self-insure would eventually leave the self-insurance program altogether. Carriers in the remedial program that failed to improve their financial condition would eventually lose the self-insurance authorization. Consequently, even if new carriers entered the remedial program, the total number of participants would remain fairly constant. The FHWA estimates that 40 hours would be required to complete the certified claims report. Thus, 40 hours multiplied by the anticipated 5 carriers would result in total burden hours of no more than 200.

Organizations and individuals desiring to submit comments on the information collection requirements concerning the additional certified claims report must direct them to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001.

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) and has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 360

Administrative practice and procedure, Fees, Insurance, Motor carriers.

49 CFR Part 387

Commercial motor vehicles, Freight forwarders, Hazardous materials transportation, Insurance, Motor carriers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

Issued on: April 27, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, Chapter III, part 360 and §387.309, as set forth below:

PART 360—[AMENDED]

1. Revise the authority citation for part 360 to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A) and 553; 31 U.S.C. 9701; 49 U.S.C. 13908(c) and 14504(c)(2); and 49 CFR 1.48.

2. Amend §360.3(f) by revising item number (50) under part II, Insurance, to read as follows:

§ 360.3 Filing fees.

* * * * *

(f) *Schedule of filing fees.*

* * * * *

Type of Proceeding:	Fee
* * * * *	
Part II: Insurance:	
* * * * *	
(50)	
(i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BI&PD)	3,000
(ii) An application for original qualification as self-insurer for cargo insurance	420
(iii) Modification of self-insurance authorization	2,500
(iv) Self-insurance compliance monitoring fee	2,600

* * * * *

3. Add §360.7 to read as follows:

§ 360.7 Insurance service fee account.

(a)(1) *Manner of payment.* The service fee for insurance, surety or self-insurer accepted certificate of insurance, surety bond or other instrument submitted in lieu of a broker surety bond must be charged to an insurance service account established by the Federal Highway Administration in accordance with paragraph (a)(2) of this section.

(2) *Billing account procedure.* A written request must be submitted to the Office of Motor Carrier Information Analysis, Licensing and Insurance Division, to establish an insurance service fee account.

(i) Each account will have a specific billing date within each month and a billing cycle. The billing date is the date that the bill is prepared and printed. The billing cycle is the period between the billing date in one month and the billing date in the next month. A bill for each account which has activity or an unpaid balance during the billing cycle will be sent on the billing date each month. Payment will be due 20 days from the billing date. Payments received before the next billing date are applied to the account. Interest will accrue in accordance with 4 CFR 102.13.

(ii) The Debt Collection Act of 1982, including disclosure to the consumer reporting agencies and the use of collection agencies, as set forth in 4 CFR 102.5–102.6 will be utilized to encourage payment where appropriate.

(iii) An account holder who files a petition in bankruptcy or who is the subject of a bankruptcy proceeding must provide the following information to the Office of Motor Carrier Information Analysis, Licensing and Insurance Division:

(A) The filing date of the bankruptcy petition;

(B) The court in which the bankruptcy petition was filed;

(C) The type of bankruptcy proceeding;

(D) The name, address, and telephone number of its representative in the bankruptcy proceeding; and

(E) The name, address, and telephone number of the bankruptcy trustee, if one has been appointed.

(3) *Payment of fees by check, money order, or credit card.* Fees will by payable to the Federal Highway Administration by a check payable in United States currency drawn upon funds deposited in a United States or foreign bank or other financial institution, money order payable in United States currency, or credit card (VISA or MASTERCARD).

(b) *Deferred payment of filing fee.* Any filing that is not accompanied by the appropriate filing fee is deficient except for filings that satisfy the deferred payment procedures in paragraph (a) of this section.

(c) *Fees not refundable.* Fees will be assessed for every filing in the type of proceeding listed in the schedule of fees contained in part II of the table in § 360.3(b). Fees are generally not refundable.

PART 387—[AMENDED]

4. The authority citation for part 387 continues to read as follows:

Authority: 49 U.S.C. 13101, 13301, 13906, 14701, 31138, and 49 U. S.C. 31139; and 49 CFR 1.48.

5. Amend paragraphs (a) and (b) of §387.309 by revising the word "Commission" to read "Federal Highway Administration'; amend paragraph (a)(3) by revising the words "30 days" to read "45 days'; and add paragraph (c) to read as follows:

§ 387.309 Qualification as a self-insurer and other securities or agreements.

* * * * *

(c) *Continued financial fitness.* Carriers authorized to self-insure their bodily injury and property damage liability that fail to generate from operations at least twice the cash flow of the amount of self-insured claims paid in the most recent 12 month period as reported to the FHWA, will be required to increase the collateral required by the self-insurance authorization to a level equaling the outstanding self-insured claims liability in order to provide the necessary financial arrangements to protect the public from exposure to uncompensated losses. Unfunded letters of credit will not be accepted from carriers in this financial condition. The time provided for the increased collateral funding will be established on a case-by-case basis. These carriers will be required to submit annual certified reports confirming the

accuracy of the outstanding self-insurance claims liability.

[FR Doc. 99–11212 Filed 5–4–99; 8:45 pm]
BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 390 and 396

[FHWA Docket No. FHWA–98–3656]

RIN 2125–AE40

General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA is extending the comment period for its February 17, 1999, advance notice of proposed rulemaking (ANPRM) in which the agency announced that it was considering revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. The rulemaking was initiated in response to a petition filed by the American Trucking Associations, Inc. (ATA) and the ATA Intermodal Conference (the petitioners). In the petition, the petitioners contend that motor carriers have no opportunity to maintain this equipment and parties who do have the opportunity often fail to do so. The petitioners now request that the FHWA extend the comment period to allow them additional time to collect and analyze certain data needed to respond to the specific questions asked in the ANPRM. In response to the petitioners' request for an extended comment period, the National Association of Waterfront Employers (NAWE) and the National Maritime Safety Association (NMSA) also requested an extension of time to file their comments, but 30 days beyond anytime the FHWA may grant to the petitioners. The FHWA has determined that granting an extension is appropriate given the types of questions asked in the ANPRM and the need for informed responses from potential commenters. The FHWA also has determined that granting the NAWE and the NMSA a further 30-day extension beyond that afforded to petitioners is not appropriate.

DATES: Comments must be received on or before August 30, 1999.

ADDRESSES: Signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, D.C. 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Richard H. Singer, Office of Motor Carrier Research and Standards, HMCS–10, (202) 366–4009; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590. [TDD number for the hearing impaired: 1–800–699–7828] Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at *http://www.nara.gov/fedreg* and the Government Printing Office's database at *http://www.access.gpo.gov/nara*.

Background

The American Trucking Associations, Inc. and the ATA Intermodal Conference filed a petition for rulemaking on March 17, 1997, to amend 49 CFR parts 390 and 396 of the FMCSRs. The petitioners asked the FHWA to require parties that tender intermodal equipment to motor carriers to ensure the "roadworthiness" of that equipment. The petitioners argue that poor maintenance of intermodal equipment is a serious safety problem and request the FHWA to make the owner or operator of such equipment responsible for the roadworthiness of the vehicles it tenders to motor carriers.

On February 17, 1999, the FHWA published an ANPRM (64 FR 7849) seeking information on the extent of the problem identified by the petitioners, and public comments on the solution proposed by the petitioners, i.e., to mandate joint responsibility between the equipment provider and the motor carrier for maintaining this type of intermodal equipment. The closing date for comments was April 19, 1999.

On April 2, 1999, the FHWA received a request from the petitioners to extend the comment period. The petitioners indicated that they have been trying to develop current and accurate information to respond to the specific questions the FHWA asked in the ANPRM. The petitioners have submitted a request for roadside inspection data from the FHWA's Office of Data Analysis and Information Systems. The petitioners will analyze inspection data for 100 motor carriers that operate exclusively in the intermodal segment of the trucking industry. The petitioners believe that because of the nature of these motor carrier operations, and the diversity of their geographic locations, the information could be useful in responding to certain questions in the ANPRM. A copy of the petitioners' request for an extension of the comment period is included in Docket No. FHWA–98–3656.

On April 13, 1999, the FHWA received a request on behalf of the NAWE and the NMSA for an extension of time for "opponents" of the rulemaking requested by ATA to file comments. The NAWE and the NMSA believe that the Carriers Container Council, Inc. and the United States Maritime Alliance, Ltd. will also submit a similar request, but it has not yet been received by the FHWA. Furthermore, the NAWE and the NMSA would like "an extension to 30 days beyond any enlarged date which the Agency may grant to the Petitioners." They believe "only under this procedure will opponents of Petitioners" proposed rule be able to examine Petitioners' evidence in any meaningful manner, and be in a position to respond." The NAWE and the NMSA further state "We recognize that the Agency bears the ultimate burden of persuasion should the Agency decide to further pursue a rulemaking. However, under the circumstances, we submit that only an adversarial type proceeding strictly adhering to APA [Administrative Procedures Act] requirements will produce a reliable and factual record." A copy of the NAWE and NMSA request for an extension of the comment period is also included in Docket No. FHWA–98–3656.

FHWA Decision

The FHWA has determined that the comment period should be extended for approximately 120 days, given the difficulty that interested parties are, or may be experiencing, in gathering and analyzing roadside inspection and maintenance data necessary to provide meaningful responses to the questions asked in the ANPRM. The FHWA is mindful of the need for all interested parties to have enough time to prepare relevant and useful comments. Therefore, the FHWA is extending the comment period on Docket No. FHWA–98–3656 to August 30, 1999.

All comments received before the close of business on August 30, 1999, will be considered and will be available for examination in the docket at the above address. Comments received after the closing date will be filed in the docket and will be considered to the extent practicable. In addition to late comments, the FHWA will continue to file relevant information in the docket as it becomes available after August 30, 1999, and interested parties should continue to examine the docket for new materials.

The FHWA will not grant the NAWE and the NMSA an extension of time to file comments that is not afforded to other commenters. This is an ANPRM in which the FHWA notified the public that they were considering an area for rulemaking and requested written comments by April 19, 1999, on the appropriate scope of the rulemaking and on specific topics. The agency believes that the ANPRM rulemaking can be extremely helpful in narrowing the issues during the public comment period on the proposed rule. We have determined that granting an extension of the comment period to petitioners is appropriate, but we cannot extend the comment period for one group beyond a period that is not afforded to others. Informal rulemakings under the APA are not adversarial proceedings, though parties often disagree on the need for, or content of, rules. If the agency decides to publish a notice of proposed rulemaking in the future, interested parties (including the NAWE and the NMSA) will be given an opportunity to respond to comments submitted by the ATA and others in the ANPRM, and they can submit written data, views, or arguments on the proposal. Accordingly, the FHWA will not grant the NAWE and the NMSA's 30-day extension request to file comments beyond the date granted to petitioners.

List of Subjects

49 CFR Part 390

Highway safety, Highways and roads, Motor carriers, Motor vehicle identification and marking, Reporting and recordkeeping requirements.

49 CFR Part 396

Highway safety, Highways and roads, Motor carriers, Motor vehicle maintenance, Motor vehicle safety, Reporting and recordkeeping requirements.

Authority: 49 U.S.C. 504, 31133, 31136, and 31502; and 49 CFR 1.48.

Issued on: April 27, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–11213 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register
Vol. 64, No. 86
Wednesday, May 5, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Brownlee Timber Sale and Other Activities Within the Sheep Gulch Roadless Area, Payette National Forest, Washington County, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service is proposing these activities for the Brownlee Subwatershed: harvest and regeneration of timber, changing the timing of grazing and combining the West Pine/Brownlee and Limestone Allotments, and prescribed fire to reduce fuels and enhance plant growth and mountain quail habitat.

The agency gives notice of the environment analysis and decision-making process so that interested and affected people know how they may anticipate and contribute to the final decision. The agency invites written comments and suggestions on the scope of the analysis and the issues to address.

DATES: Comments must be received by June 18, 1999.

ADDRESSES: Send written comments to David Alexander, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Dautis Pearson, NEPA Coordinator, phone (208) 253–0134; or John Baglien, District Ranger, phone (208) 549–4201.

SUPPLEMENTARY INFORMATION: The USDA Forest Service is proposing projects within the 45,011 acre Brownlee Subwatershed. About 4–6 MMBF of timber from 600–800 acres will be harvested by thinning and regeneration methods, using tractor, skyline, and helicopter logging systems. About 300–400 acres will be regenerated. No road construction is planned for the timber sale, which lies partially within the Sheep Gulch Roadless Area, Washington County, Idaho.

This proposal follows direction in the Payette National Forest Land and Resource Management Plan.

Proposals for the range allotments include changes in timing of grazing and combining the West Pine/Brownlee and Limestone Allotments. The number of days for grazing and the number of AUMs would remain the same for these allotments.

Fire management activities would focus on reduction of fuels following timber harvest and reintroduction of fire into the ecosystem. Piling with burning and underburning of logged areas would reduce existing and created fuels, preparing some of these areas for planting. Fire would be reintroduced into vegetation communities that burn frequently (every 10 to 50 years) under natural disturbance regimes. Prescribed fire activities would occur on a total of about 4,000 acres of open ponderosa pine stands, aspen communities, and grass/shrublands to enhance plant growth and diversity.

Preliminary issues identified are roadless area quality, forest health in stringer habitat, and the economic and resource effects of longer return intervals into the subwatershed.

Initial scoping began in October, 1997. The Forest Service is conducting preliminary analysis and will be seeking additional information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested or affected by the proposed projects. Additional input will help identify key issues and develop alternatives in preparation of the draft EIS.

The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental process.
4. Exploration of additional alternatives based on the issues identified during scoping.
5. Identification of potential environmental effects of the proposed action and alternatives.

The Forest Service expects to file the draft EIS with the Environmental Protection Agency and have it available for public review by July 1, 1999. The comment period on the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of DEISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's positions and contentions. *Vermont Yankee Power Corp.* v. *NRDC 435* U.S. 519, 553 (1978). Also, courts may waive or dismiss environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel,* 803 F.2d 1016 1022 (9th Cir. 1986), and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

Dated: April 28, 1999.

Carol Feider,

Operations Branch Chief.

[FR Doc. 99–11239 Filed 5–4–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Economic Research Service

Notice of Intent To Seek Approval to Collect Information

AGENCY: Economic Research Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13) and Office of Management and Budget (OMB) regulations at 5 CFR 1320 (60 FR 44978, August 29, 1995), this notice announces the Economic Research Service's (ERS) intention to request approval for a new information collection, the New EBT (Electronic Benefit Transfer) User Survey, to analyze the demographic characteristics and experiences of new entrants to USDA's Food Stamp Program (FSP). These data will be used in the Evaluation of the Impact of EBT Customer Service Waivers on Recipients to determine the nature and frequency of any problems which may be caused when USDA grants to States waivers to regulations governing customer service in EBT systems for the FSP.

DATES: Written comments on this notice must be received by July 9, 1999, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Requests for additional information should be directed to William Levedahl, Food Assistance, Poverty, and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW, Washington, DC 20036–5801, 202–694–5431.

SUPPLEMENTARY INFORMATION:

Title: Evaluation of the Impact of EBT Customer Waivers on Recipients: New EBT User Survey.

Type of Request: Approval to collect information on new Food Stamp Program (FSP) entrants in EBT states.

Abstract: The Economic Research Service (ERS) of the U.S. Department of Agriculture is responsible for conducting studies and evaluations of the Nation's food assistance programs that are administered by the Food and Nutrition Service (FNS), U.S. Department of Agriculture. The Food Stamp Program (FSP) is the largest domestic food-assistance program in the United States. Traditionally, food stamp recipients have received their monthly benefits as paper coupons to be redeemed for food at authorized retail food stores. The Personal Responsibility and Work Opportunity Act of 1996 requires that, by October 1, 2002, all States deliver food stamp benefits using an electronic benefits transfer (EBT) system. Approximately 37 States now have some type of operational EBT system.

An EBT system provides an alternative to paper food stamp coupons for issuing and redeeming FSP benefits. EBT is a point-of-sale (POS) terminal network system that uses plastic magnetic encoded cards much like bank debit cards. Recipients are trained in the use of the card and utilize a personal identification number (PIN) for each transaction. To access their food stamp benefits, recipients run their EBT cards through an electronic reader at the checkout counter and enter their PIN on a keypad. The amount of the purchase is deducted from the recipient's account.

EBT systems routinely provide client services through customer service centers supported by EBT vendors. The centers maintain toll-free telephone hotlines for clients to call for various reasons, e.g., to determine account balances, to report lost or stolen cards, or to activate EBT cards they receive through the mail. Clients having problems with the system in general are instructed to call the service centers for assistance.

The regulations governing the implementation and operation of EBT systems include several customer service standards (7 CFR 274.12). As EBT has developed and expanded, FNS has allowed States to try alternative service policies via waivers. The principal waivers employed by States include: training recipients by mail rather than through in-person training with hands-on practice with EBT equipment; assignment of the initial PIN by the EBT vendor rather than PIN selection by the recipient; and permitting up to five days for card replacement rather than two days. Twenty-four States have been granted one or more of the above three EBT customer service waivers.

To promote and support the efficient and cost-effective operation of EBT systems, ERS is conducting a study with the following objectives: (1) to characterize client service problems associated with EBT customer service waivers and identify how clients respond to these problems; and (2) to estimate the occurrence of client service problems associated with EBT customer service waivers. Special attention will be paid to the nature and frequency of problems encountered by vulnerable recipients, especially the elderly and the disabled, as defined by FSP regulations.

ERS, working with Abt Associates Inc., who will collect information about the nature and frequency of client service problems from three main sources in each of five States, including three States that have implemented all three customer service waivers and two States that have not implemented any of the three waivers. The first information source is vendor- or system-generated monthly reports which summarize activity levels within the system, including the number of EBT card replacements and calls to customer service hotlines. The second source is EBT system transaction logs, which record all system activity including benefit postings to recipient accounts, purchases, attempted purchases rejected due to incorrect PIN entry, and EBT card PIN locks (when multiple entries of an incorrect PIN temporarily disable the card). The third source, for which OMB clearance will be needed, is the New EBT User Survey, a telephone survey of food stamp recipients in each of the five participating States. The survey will be administered to a random sample of recipients who are new to the FSP and EBT system use because new clients are likely to be most affected by waivers to hands-on training and PIN-selection regulations. The survey sample will be stratified by State and by whether the head of the FSP assistance unit is considered vulnerable (i.e., elderly or disabled). The participating States with waivers are Alabama, Florida and Minnesota; the participating non-waiver States are Louisiana and Pennsylvania. These States were purposively selected and recruited to participate because their approaches to customer service and experiences with EBT implementation were expected by FNS to be especially informative. This selection method is appropriate because of the need for State cooperation and because the study is intended to explore the possibility that the waivers have significant impacts on recipients, not to provide definitive, nationally-representative impact estimates.

The survey will collect information about: client demographics; respondent use of an authorized representative or others to shop with the EBT card, and why; how each respondent received his or her EBT card, including time and other resources spent obtaining the card; how the respondent learned to use his or her EBT card; whether the respondent encountered any problems remembering the PIN or using the card to shop; whether the respondent ever requested a replacement EBT card and, if so, the process and time involved in obtaining the new card; and the respondent's general satisfaction with the EBT system and customer service. Responses of food stamp recipients from the three waiver States will be compared to responses of food stamp recipients from the two non-waiver States to determine whether there are any systematic differences in the problems encountered and EBT experiences of recipients in waiver and

non-waiver states. Similarly, responses of vulnerable respondents will be compared to those of non-vulnerable respondents to see the extent to which the elderly and/or disabled may have greater problems with use of EBT, and whether the introduction of customer service waivers imposes any special hardships on the elderly and disabled.

This information is needed to assist FNS as it makes decisions in the future regarding the granting of customer service waivers. No existing data source can provide all of the information needed to complete the evaluation. Computer-assisted telephone interviewing (CATI) will be used to minimize respondent burden and interviewer error in the New EBT User Survey. Existing FSP databases from the five States will be used to construct the survey sample frame and to obtain demographic data on recipients affected by the waivers. The survey questionnaire will be kept as simple and respondent-friendly as possible. Responses are voluntary and confidential. Survey data will be combined with other data for statistical purposes and reported only in aggregate or statistical form.

Estimate of Burden: Public reporting burden for this data collection is estimated to average 20 minutes per response, including time for listening to instructions and responding to questionnaire items. There is no need for respondents to gather data to respond to the questionnaire items.

Respondents: Persons in five selected EBT States who apply for food stamp benefits for the first time in November 1999, and who use their EBT card for shopping.

Estimated Number of Respondents: 1,400.

Estimated Total Annual Burden on Respondents: 467 hours.

Copies of the information to be collected can be obtained from William Levedahl, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW, Washington, DC 20036–5801, 202–694–5431.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to William Levedahl, Food Assistance, Poverty and Well-Being Branch, Food and Rural Economics Division, Economic Research Service, U.S. Department of Agriculture, 1800 M St., NW, Washington, DC 20036–5801, 202–694–5431. All responses to this notice will be considered and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: April 21, 1999.

Betsey Kuhn,

Director, Food and Rural Economic Division.

[FR Doc. 99–11231 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–18–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Eligibility Criteria for Preferred Lenders

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Eligibility Criteria.

SUMMARY: This notice revises the volume requirements necessary for lenders to be eligible for the Farm Service Agency's Preferred Lender Program (PLP).

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Galen VanVleet, Senior Loan Officer, Farm Service Agency, Farm Loan Programs Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington, DC 20250–0522, telephone (202)720–1638; email GalenVanVleet@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Programs Affected

10.406 Farm Operating Loans

10.407 Farm Ownership Loans

Background

The PLP provides qualifying lenders additional authorities and streamlined procedures under the Agency's guaranteed farm loan program. To qualify for PLP status, lenders must meet the eligibility criteria of 7 CFR 762.106(b) and (c). Paragraph (c)(3) of this section requires lenders to have closed a minimum number of Agency guaranteed farm loans. With this notice, the Agency is setting the minimum number of loans a lender must have closed in the past 5 years to qualify for PLP status at 20. This is a reduction from the current 30 loans in the past 3 years established by the Notice of Eligibility Criteria published in the **Federal Register** on February 12, 1999 (64 FR 7404).

Signed at Washington, DC, on April 28, 1999.

Keith Kelly,

Administrator,

Farm Service Agency.

[FR Doc. 99–11228 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the range district. The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

DATES: The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency will give notice for the full environmental analysis once it nears completion so that interested and affected people may participate and contribute to a final decision.

Comments concerning the scope of the analysis should be received in writing by June 15, 1999.

A Draft Enviromental Impact Statement should be available for public comment in July, 1999. After considering the comments received on the proposed action, the analysis document will be modified to include any changes that result. Once updated, the Final Environmental Impact Statement should be available to the public in September 1999.

ADDRESSES: Comments concerning the proposal and scope of the analysis should be received in writing by June 15, 1999. Send written comments and suggestions concerning the management of this area to Rick Newmon or Mark Cadwallader, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico, 88317.

Responsible Offical

The District Ranger will decide whether or not to authorize domestic livestock grazing on the Sacramento Allotment which will include adding appropriate forest plan standards and guidelines to Part 3 of the Term Grazing Permit. If grazing is authorized, the District Ranger will decide on the permitted number of animals and season of use, range facilities to be constructed, allowable utilization standards, required monitoring and mitigation measures (best management practices, BMPs). In addition, the District Ranger will establish a forage allocation for livestock and wildlife for the Sacramento Allotment. This allocation will prescribe a percentage of the total available forage that wil be reserved for wildlife species.

FOR ADDITIONAL INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Rick Newmon or Mark Cadwallader at (505–682–2551).

SUPPLEMENTARY INFORMATION: The Forest Service is planning to authorize livestock grazing activities on the Sacramento Grazing Allotment.

Background

The current Sacramento Allotment is the result of the combination of 10 historical allotments. In the late 1970's, the High Nogal Ranch Inc. acquired the grazing permits on the allotments mentioned above. The control of livestock management on these small allotments by one business interest offered an opportunity to combine them into one large allotment. Combining the allotments provided an opportunity to improve resource management as well as administrative and economic efficiency. The allotments were combined and the current Sacramento Grazing Allotment was formed. And environmental analysis and an allotment management plan (AMP) were approved in 1979 for the newly consolidated allotment. The AMP prescribed an intensive rotation grazing system be implemented along with a very extensive range improvement development program. Full livestock numbers were run on the allotment, under direction of the new AMP, for about two years. In 1983, the permittee filed for bankruptcy. The bankruptcy left the implementation of the AMP only partially completed. Between 1983 and 1989, the allotment saw periods of very light use to total non-use by livestock.

In 1989, the current permittees acquired the grazing permit for the Sacramento Allotment. The new permittees acquired only the grazing permit and did not acquire the private lands which were an integral part of the livestock operation when the original combination took place. In addition, the long period of non-use on the allotment resulted in deterioration of many of the existing range improvements. With many of the range improvements no longer functional and changes in private land base available to the current permittees, the existing AMP had become essentially unmanageable.

After acquisition of the grazing permit, the current permittees gradually began to stock the allotment to full permitted numbers. When full numbers were run on the permit in 1991, forage utilization began to exceed acceptable levels. Excessive forage utilization has been a concern since 1991.

Existing Condition

The Sacramento Allotment contains over 36 miles of perennial streams. Riparian inventory data indicates that less than 10% of the riparian zones associated with these perennial waters are in satisfactory condition, based on the Region 3 standards and guidelines for riparian areas. The Sacramento Allotment contains about half of all the riparian resources on the Sacramento Ranger District. The livestock management decisions made on this allotment will be an important factor in determining the potential for riparian improvement on the entire district.

The Sacramento Allotment is home to several threatened and endangered plant and animal species. They include the Sacramento Mountain thistle, Sacramento prickly poppy, Mexican spotted owl, peregrine falcon, and the bald eagle. The current forage utilization levels are not conducive to moving range condition rating towards good to excellent range condition as specified in various specie recovery plans.

Forgage competition between elk and livestock has developed into a resource concern. The excessive forage use currently occurring on the allotment is the combined result of forage use by the current elk population and currently permitted livestock numbers.

Objectives

Implement a maximum forage use level or minimum stubble height requirement that will lead to long-term improvement in rangeland ecosystems and riparian habitats.

Bring permitted livestock numbers in line with estimated carrying capacity.

Develop a grazing management strategy which identifies the structural and range improvements required to implement that strategy.

Establish an allocation of available forage between livestock and wildlife.

Permit livestock grazing as a tool to meet vegetative management objectives as set forth in the Lincoln National Forest's Land and Resource Management Plan (pp. 34–36 and pp. 86–101).

Continue to permit commercial livestock use on the Sacramento Allotment to a level that contributes to the local custom and culture and the local economy while sustaining healthy ecosystems.

Desired Future Condition

Forest plan standards and guidelines for riparian areas are being met.

Threatened, endangered, and sensitive species habitat is improving and recovery objectives are being met.

Areas of unsatisfactory Range condition are on an upward trend toward satisfactory or better range condition.

The allocation of forage between livestock and wildlife species has been implemented. This allocation is continually monitored and actions are taken to maintain a viable elk population that is in balance maintain with the available forage produced on the allotment.

Recreational uses and esthetic values have been enhanced through the improved management of rangeland ecosystems.

Authorization is needed on this allotment because:

—Where consistent with other multiple use goals and objectives there is Congressional intent to allow grazing on suitable lands. (Multiple Use Sustained Yield Act of 1960, Wilderness Act of 1964, Forest and Rangeland Renewable Resources Planning Act of 1974, Federal Land Policy and Management Act of 1976, National Forest Management Act of 1976).

—The Sacramento Allotment contain lands identified as suitable for domestic livestock grazing in the Lincoln National Forest Plan and continued domestic livestock grazing is consistent with the goals, objectives, standards, and guidelines of the forest plan.

—It is Forest Service policy to make forage available to qualified livestock operators from lands suitable for grazing

consistent with land management plans (FSM 2203.1).

—It is Forest Service policy to continue contributions to the economic and social well being of people by providing opportunities for economic diversity and by promoting stability for communities that depend on range resources for their livelihood (FSM 2202.1).

—By regulation, forage producing lands will be managed for livestock grazing where consistent with land management plans (36 CFR 222.2(c)).

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NYDC, 435 U.S. 519.553 (1973).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: April 23, 1999.

Jose M. Martinez,

Forest Supervisor.

[FR Doc. 99–11198 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

April 29, 1999.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Economic Research Service

Title: Emergency Food Assistance System Study.

OMB Control Number: 0536–NEW.

Summary of Collection: Many emergency food providers are reporting increased demand for their services as a result of changes in the nation's welfare and food assistance safety net under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and decreasing ability to meet the additional demands. USDA is coordinating public and private efforts intended to increase the amount of surplus food channeled through Emergency Food Assistance System (EFAS) providers by 33 percent by the year 2000. On November 23, 1996 President Clinton signed an executive memorandum directing all Federal agencies to join the USDA effort to recover excess food and established a Federal interagency task force on gleaning and food recovery. USDA, through the Food and Nutrition Service, administers several food assistance programs that help low-income households obtain adequate and nutritious diets. The largest USDA food assistance program, the Food Stamp Program, is designed to provide food assistance through normal channels of trade. The EFAS interacts closely with USDA food assistance programs by serving as a distribution outlet for Emergency Food Assistance Program (TEFAP) commodities and by providing temporary or supplemental food assistance to many of the same needy population served by USDA programs. A study of the Emergency Food Assistance System is going to be conducted. The study will be conducted in two phases. Currently, there is no sample frame from which to identify food banks, food pantries, and emergency kitchens for the study. Information collected during the first phase of the study will be used to compile frames of providers to be sampled and contacted for data collection. Economic Research Service (ERS) will collect information using questionnaires and telephone interviews to compile frames of providers to be sampled and contacted for second phased-data collection.

Need And Use Of The Information: ERS will collect information on providers' operating characteristics, service areas, resource base, quantity and type of food flowing into the system, number of people served, and providers' capacity to manage current and future changes in food demand and resources. Once the information is compiled, the frames of food banks, food pantries, and emergency kitchens will be used by the sampling statisticians for the study to select providers for the interviews. The contact information will be used by the data collection staff to facilitate advance

mailings and support the actual study data collection.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 5,479.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,374.

Economic Research Service

Title: Report on State Use of Funds to Increase Work Slots for Food Stamp Recipients.

OMB Control Number: 0536-NEW.

Summary of Collection: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) dramatically changed the system that had provided welfare cash assistance and food stamp benefits to low-income households since the early 1970s. One of the consequences of the change in the law has been the strengthening of work requirements, both for the Temporary Assistance to Needy Families (TANF) Program and the Food Stamp Program. The largest change made by PRWORA in the Food Stamp Program was the imposition of a time limit on receipt of food stamp benefits for Able Bodies Adults Without Dependents (ABAWD) who are between the ages of 18 and 50. In order to take advantage of the expanded funding and comply with the new Food Stamp Employment and Training (E&T) Program requirements most States have initiated new approaches to serving ABAWDS in their Food Stamp E&T programs. This study will provide detailed and comparable information on State changes to their programs. In addition, despite the availability of additional funds, many States may still face considerable challenges in meeting the program requirements and making the modifications to their programs necessary to best serve food stamp clients, particularly ABAWDs. The Economic Research Service (ERS) will use a telephone survey and mail out questionnaire to collect information from States on the specific successes and challenges they have faced in utilizing the expanded Balanced Budget Act (BBA) Food Stamp E&T funds.

Need and Use of the Information: ERS will collect information on how the States' expenditures, activities, program design, and E&T participants have changed in response to the availability of new funds for Food Stamp E&T and the Federal emphasis on serving the unemployed ABAWD population. The information gathered in the study will have four primary uses. First, the study will provide and analyze a database of consistent and comparable information across States both before and after the enactment of the BBA. Second, FNS will be utilizing the data from the telephone interviews in the study for another study on the impact of the time limits on ABAWDs. Third, the database created for the study may also be used by ERS as a baseline for any future research regarding the Food Stamp E&T Program, including research that may focus on the impact of various E&T approaches for Food Stamp Program participants. One final and important use of the study is that after release to Congress, the research report will be shared by USDA with all State food stamp directors so that they may learn from the varying approaches taken in implementing E&T activities or food stamp participants.

Description of Respondents: Federal Government; State, Local or Tribal Government.

Number of Respondents: 51.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 472

Food and Nutrition Service

Title: Food Stamp mail issuance Report

OMB Control Number: 0584–0015.

Summary of Collection: Sections 7 (a) and (b) of the Food Stamp Act of 1977 require that coupons be issued only to households which have been duly certified as eligible to participate in the Food Stamp Program (FSP), and that coupons shall be used by eligible housheds households only to purchase food in retail food stores which have been approved for participation in the FSP at prices prevailing in such stores. Section 7(d) of the Act authorizes the Secretary to develop procedures for determining and monitoring the level of coupon inventories held by issuance agents to ensure that these inventories are at proper levels. The Food and Nutrition Service (FNS), on behalf of the Secretary, requires each coupon issuer to submit quarterly a written report of the issuer's operations during the periods. The FNS will collect information using FNS Form–259, Food Stamp Mail Issuance Report.

Need and use of the Information: FNS will collect information to establish the issuance and accountability systems which ensures that only certified eligible households receive benefits; that coupons are accepted, stored, and protected after delivery to receiving points within the state; that program benefits are timely distributed in the correct amount; and that coupon issuance and reconciliation activities are properly conducted and accurately reported to FNS. The State agency is responsible, regardless of any agreements to the contrary, for ensuring that assigned duties are carried out in accordance with FSP regulations. In addition, the State agency is strictly liable to FNS for all losses of coupons, even if those issuance, security, or accountability duties are the responsibility of another party.

Description of Respondents: Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,026.

Frequency of Responses: Reporting: Quarterly.

Total Burden Hours: 342.

Agricultural Marketing Service

Title: Recordkeeping requirements for Certified Application of Federally Restricted Use Pesticides (7 CFR Part 110).

OMB Control Number: 0581–0164.

Summary of Collection: The Food, Agriculture, Conservation, and Trade (FACT) Act of 1990 (Subtitle H, Sec. 1491) mandates the Secretary of Agriculture, in consultation with the Administrator of the Environmental Protection Agency (EPA), "shall require certified applicators of (federally) restricted use pesticides to maintain records comparable to records maintained by commercial applicators in each State." In addition, the Secretary of Agriculture and the Administrator of EPA are required under Section 1491(f) of the FACT Act to survey the records and develop and maintain a data base so the Secretary and the Administrator of EPA can prepare and publish annual pesticide use reports, copies of which must be transmitted to Congress. Agricultural Marketing Service (AMS) is charged with administering the Federal Pesticide Recordkeeping Program. AMS requires certified private applicators of federally restrict house pesticides to maintain records of all restricted use pesticide applications for a period of two years. AMS will collect information using form STD–8 Pesticide for Recordkeeping Inspection.

Need and Use of the Information: AMS will collect information on the brand or product name and the EPA registration number of the federally restricted use pesticide that was applied; the total amount of the federally restricted use pesticide applied; the location, the size of the area treated, and the crop, commodity, stored product or site to which a restricted use pesticide was applied; the month, day, and year on which the restricted use pesticide application occurred; and the name and certification number of the certified applicator who applied or who supervised the application of the

restricted use pesticide. In order to properly administer the pesticide recordkeeping program, AMS needs to monitor and determine to what extent private applicators are complying with the program's requirements and identify the reasons for non or partial compliance. AMS has the responsibility to assure records are being kept to provide information to be utilized by licensed health care professionals for possible medical treatment. In addition, the statute requires USDA to submit annual reports to Congress pertaining to the use of restricted use pesticides in agricultural production.

Description of Respondents: Farm; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,018,651.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 1,782,614.

Forest Service

Title: Stewardship Incentive Program.

OMB Control Number: 0596–0120.

Summary of Collection: The Forest Service (FS) in cooperation with the Farm Service Agency, State forestry agencies, and other agencies and organizations, provides eligible landowners cost-share incentives and technical assistance through the Stewardship Incentive Program. This assistance helps owners of non-industrial private forest land to provide sound, multidisciplinary stewardship to their lands. The program encourages landowners to consider the best, long-term use of the Nation's land and water resources. The Stewardship Incentive Program is authorized in the Cooperative Forestry Assistance Act of 1978 (Pub. L. 95–313, 92 Stat. 365 as amended; 16 U.S.C. 2101 (note), 2101–2114, 16 U.S.C. 1606 (note), 16 U.S.C. 1606). FSA, on behalf of FS, will collect information using forms SIP–36, Assignment of Payment, SIP–211, Power of Attorney, SIP211–1, Power of Attorney for Husband and Wife, and SIP–502, Payment Limitation Review.

Need and Use of the Information: FSA, in conjunction with the FS, will collect information to identify (1) the Stewardship Incentive Program assignment of payment; (2) IRS income reporting requirements for participants; and (3) the participants' delegated Power of Attorney. State forestry agencies and FSA work cooperatively with the FS to administer the Stewardship Incentive Program.

Description of Respondents: Individuals or households; farms; business or other for-profit; not-for-profit institutions.

Number of Respondents: 32,500.

Frequency of Responses: Reporting: On occasion; annually.

Total Burden Hours: 74,250.

Food and Nutrition Service

Title: Consumer Research for Dietary Guidelines 2000.

OMB Control Number: 0584–NEW.

Summary of Collection: Under Subtitle D of the National Agriculture Research, Extension, and Teaching Policy Act of 1977 (7 U.S.C. 3171–3175), the Secretary of Agriculture is required to develop and implement a national food and human nutrition research and extension program, including the development of techniques to assist consumers in selecting food that supplies a nutritionally adequate diet. Pursuant to 7 CFR 2.19(a)(3), the Secretary of Agriculture has delegated authority to the Center for Nutrition Policy and Promotion (CNPP) for, among other things, developing materials to aid the public in selecting food for good nutrition; co-ordinating nutrition education promotion and professional education projects with the Department; and consulting with the Federal and State agencies, the Congress, universities, and other public and private organizations and the general public regarding food consumption and dietary adequacy. CNPP is interested in conducting a consumer research study with focus groups of adults to gauge the use and effectiveness of the Dietary Guidelines for Americans and to test the communication effectiveness and usefulness of prototype Dietary Guidelines-based nutrition promotion materials. CNPP will collect information using a study of focus groups and prototype testing sessions.

Need and Use of the Information: CNPP will collect information to expand the knowledge base concerning how to translate the Dietary Guidelines for Americans 2000 recommendations and message and delivery of the information through nutrition promotion products and materials to improve the diets of all Americans age 2 and older. Also, to better understand consumers' wants and needs, and to discover potential motivations for dietary change. The information will be used by the CNPP to develop a communications plan outline that addresses how best to utilize products developed to effectively reach the target audience.

Description of Respondents: Individuals or households.

Number of Respondents: 225.

Frequency of Responses: Reporting: On occasion; other (one time).

Total Burden Hours: 900.

Animal and Plant Health Inspection Service

Title: Application for Inspection and Certification of Animal Byproducts.

OMB Control Number: 0579–0008.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) on behalf of the Secretary of Agriculture has been delegated the authority (7 U.S.C. 1622, 1624) to establish and implement a system for verifying that the importation and commercial distribution of certain animal byproducts have been processed according to the conditions and requirements of the importing country. The laws and regulations that govern the importation and commercial distribution of certain animal byproducts in some foreign countries may require the U.S. exporter to furnish certificates that have been issued or endorsed by APHIS Veterinary Services. These certificates attest to the class and quality of these products, and also attest to the procedures used to process these products for exportation to the receiving country. APHIS will collect information using VS Form 16–24, "Application for Inspection & Certification of Animal Byproducts."

Need And Use of The Information: APHIS collects information from applicants requesting that APHIS monitor the processing of the product. After monitoring the processing technique, APHIS certifies that the product was processed according to the conditions and requirements of the importing country. A copy of the form then accompanies the shipment. Without this certification, the importing country would not accept the product, and the applicant would be unable to conduct business with that country.

Description of Respondents: Business or other for-profit.

Number of Respondents: 20.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 10.

Rural Housing Service

Title: 7 CFR Part 3565, "Guaranteed Rural Rental Housing Program" and Supporting Handbook.

OMB Control Number: 0575–0174.

Summary of Collection: On March 28, 1996, President Clinton signed the "Housing Opportunity Program Extension Act of 1996." One of the provisions of the Act was the authorization of the section 538 Guaranteed Rural Rental Housing Program (GRRHP), adding the program to the Housing Act of 1949. The purpose of the GRRHP is to increase the supply of affordable rural rental housing

through the use of loan guarantees that encourage partnerships between the Rural Housing Service (RHS), private lenders and public agencies. RUS will approve qualified lenders to participate and will monitor lender performance to ensure program requirements are met. RHS will collect information from lenders on the eligibility cost, benefits, feasibility, and financial performance of the proposed project.

Need And Use of The Information: RHS will collect information from lenders to manage, plan, evaluate, and account for Government resources. The GRRHP regulation and handbook will provide lenders and Agency staff with guidance on the origination and servicing of GRRHP loans and the approval of qualified lenders. The information is collected by RHS so that it may evaluate the lender's request and make the determination that the interests of the government are protected.

Description of Respondents: Business or other for-profit; not-for-profit institutions.

Number of Respondents: 50.

Frequency of Responses: Reporting Quarterly; monthly; annually.

Total Burden Hours: 2,466.

Nancy B. Sternberg,

Departmental Clearance Officer.

[FR Doc. 99–11232 Filed 5–4–99; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

International Trade Administration

March 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of sunset reviews and revocations of antidumping duty orders: Solid urea from Azerbaijan (A–832–801), solid urea from Georgia (A–833–801), solid urea from Kazakstan (A–834–801), Solid Urea from Kyrgyzstan (A–835–801), solid urea from Moldova (A–841–801), and industrial phosphoric acid from Israel (A–508–604).

SUMMARY: On March 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty orders on solid urea from Azerbaijan, solid urea from Georgia, solid urea from Kazakstan, solid urea from Kyrgyzstan, solid urea from Moldova, and industrial phosphoric acid from Israel. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, N.W., Washington, D.C. 20230; telephone: (202) 482–1560.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on solid urea from the Union of Soviet Socialist Republics (USSR) on July 14, 1987 (52 FR 26367). On June 29, 1992, following the dissolution of the USSR, the Department transferred the order to the Commonwealth of Independent States (CIS) and the Baltic States, including Azerbaijan, Georgia, Kazakstan, Kyrgyzstan, and Moldova (57 FR 28828, June 29, 1992). The substance of the order remained the same. The Department also issued an antidumping duty order on industrial phosphoric acid from Israel (52 FR 31057, August 19, 1987). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 9970, March 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these orders.

No domestic interested parties in the sunset reviews on these orders responded to the notice of initiation by the March 16, 1999, deadline (*see* section 351.218(d)(1)(i) of the *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination To Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(*3*) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, March 16, 1999, we are revoking these antidumping duty orders.

Effective Date of Revocation

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping duty deposit requirements. The Department will complete any pending administrative reviews on these orders and will conduct administrative reviews of all entries prior to the effective date of revocation in response to appropriately filed requests for review.

Dated: April 27, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11287 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–802]

Antidumping Investigation on Uranium from the Republic of Kazakhstan: Notice of Extension of Time for Briefs and Hearing

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Extension of time for submission of briefs and for hearing date.

EFFECTIVE DATE: April 29, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle or Juanita H. Chen, Enforcement Group III, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230, telephone: (202) 482–0159 or (202) 482–0409, respectively.

Extension of Time

Pursuant to 19 CFR 353.36, the Department has determined that it is necessary to conduct verification of certain information in Kazakhstan during the period May 3, 1999 through May 9, 1999. As a result of this verification, the Department is granting an extension of time for the briefs. Case briefs are now due May 17, 1999, and rebuttal briefs are now due May 21,

1999. As a result of the extension of time for submission of briefs, the hearing date has also been extended and is now set for May 25, 1999.

Dated: April 29, 1999.

Roland L. MacDonald,

Acting Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–11288 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–DS–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Indonesia

April 29, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryforward used in 1998 and the 5% adjustment for traditional folklore products made from handloomed fabrics.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 69055, published on December 15, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

April 29, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 8, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man–made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 6, 1999, you are directed to adjust the limits for the categories listed below, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
200	862,798 kilograms.
225	7,024,970 square meters.
314–O [2]	60,723,731 square meters.
315–O [3]	27,591,733 square meters.
317–O [4]/326–O [5]/617	27,280,247 square meters of which not more than 4,167,829 square meters shall be in Category 326–O.
334/335	249,229 dozen.
336/636	659,560 dozen.
338/339	1,211,054 dozen.
340/640	1,491,444 dozen.
341	953,482 dozen.
342/642	414,377 dozen.
345	433,706 dozen.
347/348	1,727,412 dozen.
350/650	191,444 dozen.
351/651	538,690 dozen.
359–C/659–C [6]	1,446,191 kilograms.
369–S [7]	915,514 kilograms.
447	16,950 dozen.
625/626/627/628/629–O [8].	28,387,397 square meters.
634/635	331,502 dozen.
638/639	1,551,104 dozen.
641	2,527,207 dozen.
645/646	785,322 dozen.
647/648	3,423,833 dozen.
Group II	
201, 218, 220, 222–224, 226, 227, 237, 239pt. [9], 332, 333, 352, 359–O [10], 362, 363, 369–O [11], 400, 410, 414, 431, 434, 435, 436, 438, 440, 442, 444, 459pt. [12], 464, 469pt. [13], 603, 604–O [14], 606, 607, 621, 622, 624, 633, 649, 652, 659–O [15], 666, 669–O [16], 670–O [17], 831, 833–836, 838, 840, 842–846, 850–852, 858 and 859pt. [18], as a group.	98,095,555 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

[2] Category 314–O: all HTS numbers except 5209.51.6015.

[3] Category 315–O: all HTS numbers except 5208.52.4055.

[4] Category 317–O: all HTS numbers except 5208.59.2085.

[5] Category 326–O: all HTS numbers except 5208.59.2015, 5209.59.0015 and 5211.59.0015.

[6] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[7] Category 369–S: only HTS number 6307.10.2005.

[8] Category 625/626/627/628; Category 629–O: all HTS numbers except 5408.34.9085 and 5516.24.0085.

[9] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[10] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6112.39.0010, 6112.49.0010, 6211.11.8010, 6211.11.8020, 6211.12.8010, 6211.12.8020 (Category 359–S); and 6406.99.1550 (Category 359pt.).

[11] Category 369–O: all HTS numbers except 6307.10.2005 (Category 369–S); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700 (Category 369pt.).

[12] Category 459pt.: all HTS numbers except 6405.20.6030, 6405.20.6060, 6405.20.6090, 6406.99.1505 and 6406.99.1560.

[13] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[14] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[15] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S); 6406.99.1510 and 6406.99.1540 (Category 659pt.).

[16] Category 669–O: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000, 6406.10.9040 (Category 669pt.).

[17] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

[18] Category 859pt.: only HTS numbers 6115.19.8040, 6117.10.6020, 6212.10.5030, 6212.10.9040, 6212.20.0030, 6212.30.0030, 6212.90.0090, 6214.10.2000 and 6214.90.0090.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.99–11253 Filed 5–4–99; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act Meeting

TIME AND DATE: Wednesday, May 12, 1999, 10:00 a.m.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTER TO BE CONSIDERED:

Mid-Year Review

The staff will brief the Commission on issues related to fiscal year 1999 mid-year review.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sadye E. Dunn, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207. (301) 504–0800.

Dated: May 3, 1999.

Sadye E. Dunn,

Secretary.

[FR Doc. 99–11432 Filed 5–3–99; 3:46 pm]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 6, 1999.

ADDRESSES: Written comments and requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat_*Sherrill@ed.gov, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: April 29, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Under Secretary

Type of Review: New.

Title: Compact for Reading Evaluation.

Frequency: Semi-annually.

Affected Public: Individuals or households; State, local or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 26,624.

Burden Hours: 30,123.

Abstract: The Compact for Reading is a written agreement between families, teachers, and principals describing how each partner will work to improve the reading skills of students in kindergarten through third grade. At each grade level, a set of 100 home learning activities is offered to improve reading skills. These activities focus on family members as home learning partners. Research shows that even though the requirement for Title I compacts is several years old, many Title I schools still do not have compacts in place, or do not use them to full advantage. The Compact for Reading evaluation will attempt to show whether implementing this type of compact will enhance student learning and therefore should be considered for adoption by other Title I schools.

Office of Vocational and Adult Education

Type of Review: Reinstatement.

Title: Carl D. Perkins Vocational and Applied Technology Education Act (P.L. 101–392)—Financial Status Report—SF 260.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't, SEAs and LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 53.
Burden Hours: 2,200.

Abstract: The Financial Status Report (SF–269) is collected by the Division of Vocational-Technical Education from State agencies to determine compliance with statutory and regulatory spending requirements of formula grants awarded under the Carl D. Perkins Vocational and Applied Technology Education Act of 1990.

[FR Doc. 99–11234 Filed 5–4–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 5, 1999.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection request should be addressed to Patrick J. Sherrill, Department of Education, 600 Independence Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner, (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected, and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 3, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Campus Week of Dialogue Participation Feedback Form.

Abstract: To receive feedback from participants in "Campus Week of Dialogue" events.

Additional Information: Starting in June 1997, President Clinton has personally encouraged colleges and universities to set aside time to have a dialogue with their campus members on the serious issues and suggestions for better race relations.

Frequency: On occasion.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 1000.

Burden Hours: 25,099.

[FR Doc. 99–11365 Filed 5–4–99; 8:45 am]
BILLING CODE 4000–1–M

DEPARTMENT OF EDUCATION

[CFDA No: 84.031]

Reopening the Process for Designation as an Eligible Institution for Fiscal Year 1999 for the Following Programs: Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Hispanic-Serving Institutions

SUMMARY: On February 8, 1999, the Department of Education published in the **Federal Register** (64 FR 6178) a closing date notice for applications from institutions that wish to be designated as eligible institutions under the following programs: Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions, and Hispanic-Serving Institutions (HSI). The first three programs are authorized under Title III of the Higher Education Act of 1965, as amended (HEA). The HSI program is authorized under Title V of the HEA. The purpose of this notice is to provide additional time for institutions that wish to compete for new grants under these programs to obtain designation as eligible institutions.

The closing date for eligibility applications is now May 17, 1999 for institutions that wish to apply for new grant awards under these programs. The Department has announced a closing date of May 24, 1999 for applications for new grant awards under the Strengthening Institutions, American Indian Tribally Controlled Colleges and Universities, Alaska Native and Native Hawaiian Serving Institutions Programs, and plans to announce a closing date of June 25, 1999 for the HSI Program. Because of time constraints, the Department does not guarantee that it will be able to notify an applicant for designation as an eligible institution of its status before the May 24, 1999 and June 25, 1999 grant award closing dates.

However, the closing date of May 28, 1999 has not changed for applicant

institutions that only wish to receive a wavier of certain non-Federal share requirements under the Federal Work Study or Federal Supplemental Education Opportunity Grant programs authorized under Title IV of the HEA and the Undergraduate International Studies and Foreign Language Program authorized under Title VI of the HEA.

Deadline for Transmittal of Applications: May 17, 1999.

Applications Available: February 10, 1999.

For Applications or Information Contact: Ellen M. Sealey, Margaret A. Wheeler, or Anne. S. Young, Institutional Development and Undergraduate Education Service, U.S. Department of Education, 400 Maryland Avenue, SW (Suite CY–80, Portals Building), Washington, DC 20202–5335. Telephones: (202) 708–8816, 708–8839 or 708–8866. Individuals who use a telecommunications device for the deaf (TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the office listed in the preceding paragraph.

Individuals with disabilities may obtain a copy of the application in an alternate format, also, by contacting that office. However, the Department is not able to reproduce in an alternate format the standard forms included in the application package.

Electronic Access To This Document

Anyone may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news/html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have any questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free, at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 1057, 1059c and 1065a.

Dated: April 29, 1999.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 99–11237 Filed 5–04–99; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Environmental Management (EM) Site-Specific Advisory Board (SSAB)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB). Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Thursday, May 20, 1999—7:00 p.m.–9:00 p.m.
Friday, May 21, 1999—1:00 p.m.–6:00 p.m.
Saturday, May 22, 1999—8:00 a.m.–5:30 p.m.
Sunday, May 23, 1999—8:00 a.m.–1:00 p.m.

ADDRESSES: Vernon Manor Hotel, 400 Oak Street, Cincinnati, OH 45219, (513) 281–3300.

FOR FURTHER INFORMATION CONTACT: Fred Butterfield, DOE/EM–22, U.S. Department of Energy, Headquarters, Washington, DC. 20585, (202) 586–8809.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management, and related activities.

Purpose of the Meeting: The Fernald Citizens Advisory Board is hosting the EM SSAB Transportation Seminar in support of the following objectives: (1) to improve stakeholder understanding of complex-wide transportation-related issues and decision-making processes; (2) to foster dialogue among the local EM SSABs about national transportation issues, and create opportunities for continuing that dialogue; and (3) to identify joint or common EM SSAB areas of agreement and unresolved transportation-related issues, and draft joint "statements of concern" regarding these issues.

Tentative Agenda

Thursday, May 20, 1999:
7:00–9:00 p.m. Reception
Friday, May 21, 1999:
1:00–1:15 p.m. Welcome (Jim Bierer and Tom Wagner) Orientation (objectives, agenda, rules of engagement)
1:15–1:30 p.m. (Facilitation Team)
1:30–2:30 p.m. Site Introductions and Site Info
2:30–3:00 p.m. Introduction of Core Topics (Facilitation Team)
3:00–3:15 p.m. Break
3:15–5:30 p.m. Presentation on Core Topics
5:30–6:00 p.m. Site Specific Preparation for Discussion of Core Topics (optional)
Saturday, May 22, 1999:
8:00–9:30 a.m. Plenary: Discuss broad areas of shared concern in each core topic
9:30–9:45 a.m. Break and Convene Core Topic Breakouts
9:45 a.m.–12:00 p.m. Core Topic Breakouts
12:00–1:30 p.m. Lunch
1:30–2:30 p.m. Site Specific Breakout
2:30–3:45 p.m. Core Topic Breakout
3:45–4:00 p.m. Break and Reconvene Plenary
4:00–5:30 p.m. Plenary: Discuss first two core topics
Sunday, May 23, 1999:
8:00–9:30 a.m. Plenary: Discuss last two core topics
9:30–9:45 a.m. Break and Convene Core Topic Breakouts
9:45–10:30 a.m. Core Topic Breakouts
10:30–10:45 a.m. Break and Reconvene Plenary
10:45–12:00 p.m. Plenary: Discuss and agree on revised statements of concern
12:00–12:45 p.m. Plenary: Discuss next steps while final statements are prepared for signature
12:45–1:00 p.m. Plenary: Sign statements and adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Board chair either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact the Board chair at the address or telephone number listed below. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer, Gary Stegner, Public Affairs Officer, Ohio Field Office, U.S. Department of Energy, is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC, 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Jim Bierer, Chair, Fernald Citizens' Advisory Board, C/O Phoenix Environmental Corporation, P.O. Box 544, Ross, Ohio, 45061, or by calling the Advisory Board at (513) 648–6478.

Issued at Washington, DC on April 29, 1999.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11297 Filed 5–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site Specific Advisory Board, Savannah River Site

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site Specific Advisory Board (EM SSAB), Savannah River Site. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES:

Monday, May 24, 1999: 5:00 p.m.–9:00 p.m.

Tuesday, May 25, 1999: 8:30 a.m.–4:00 p.m.

ADDRESSES: All meetings will be held at: Savannah DeSoto Hilton, 15 East Liberty Street, Savannah, GA 31412.

FOR FURTHER INFORMATION CONTACT: Gerri Flemming, Office of Environmental Quality, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, SC 29802 (803) 725–5374.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE in the areas of environmental restoration, waste management and related activities.

Tentative Agenda

Monday, May 24, 1999:
6:30 p.m.—Public Comment Session
7:00 p.m.—Subcommittee meetings
9 p.m.—Adjourn
Tuesday, May 25, 1999:
8:30 a.m.
Approval of Minutes, Agency Updates (approximately 15 minutes), Public Comment Session (5-minute rule) (approximately 10 minutes), Facilitator Update (approximately 15 minutes), Risk Management & Future Use Subcommittee (approximately 1 hour), Transportation Seminar Report (approximately 15 minutes), Environmental Restoration & Waste Management (ER&WM) Subcommittee Report (approximately 1 hour)
12:00 p.m. Lunch Break
ER&WM Subcommittee Report continued (approximately 1¼ hours), Nuclear Materials Management Subcommittee Report (approximately 1 hour), Outreach Subcommittee Report (approximately 10 minutes), Public Comments (approximately 10 minutes)
4:00 p.m. Adjourn

If needed, time will be allotted after public comments for items added to the agenda, and administrative details. A final agenda will be available at the meeting, Monday, May 24, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gerri Flemming's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday–Friday except Federal holidays. Minutes will also be available by writing to Gerri Flemming, Department of Energy Savannah River Operations Office, P.O. Box A, Aiken, S.C. 29802, or by calling (803) 725–5374.

Issued at Washington, DC on April 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11298 Filed 5–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Los Alamos

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Los Alamos. Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 26, 1999, 6:00–9:00 p.m.

ADDRESSES: Los Alamos Inn, 2201 Trinity Drive, Los Alamos, NM.

FOR FURTHER INFORMATION CONTACT: Ann DuBois, Northern New Mexico Citizens' Advisory Board, 528 35th Street, Los Alamos, NM 87544; Phone: 505–665–5048; FAX 505–665–4872.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

1. Public Comment 6:30–7:00 p.m.
2. Special Report on the Canyons in Los Alamos County.
3. Committee Reports.
4. Other Board business will be conducted as necessary.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ann DuBois at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the beginning of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 528 35th Street, Los Alamos, NM 87544. Hours of operation for the Public Reading Room are 9:00 am and 4:00 pm on Monday through Friday. Minutes will also be made available by writing or calling Ann DuBois at the Board's office address or telephone number listed above.

Issued at Washington, DC on April 29, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11299 Filed 5–4–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–538–000]

Midwestern Gas Transmission; Notice of Site Visit

April 29, 1999.

On May 6, 1999, the staff of the Office of Pipeline Regulation (OPR) will be conducting an inspection of Midwestern Gas Transmission Company's (Midwestern) Grain Processing Corporation Sales Tap Project. This recently constructed 2.84-mile-long pipeline is in Knox and Daviess Counties, Indiana. Representatives of Midwestern will accompany the OPR staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11216 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–294–000]

Panhandle Eastern Pipe Line Company; Supplemental Notice of Request Under Blanket Authorization

April 29, 1999.

Take notice that on April 27, 1999, Panhandle Eastern Pipe Line Company (Panhandle) P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP99–294–000 a supplement to its request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212), noticed on April 14, 1999. Panhandle has now filed for abandonment authorization under Section 157.216 to abandon the facilities to be replaced as part of the upgrade of the Mount Auburn M&R Station in Christian County, Illinois. Panhandle makes no further changes to its original request. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11217 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–334–000]

Tennessee Gas Pipeline Company; Notice of Application

April 29, 1999.

Take notice that on April 22, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511, filed an application pursuant to Section 7(b) of the Natural Gas Act to abandon by sale to Tennessee's affiliate, El Paso Field Services Company (Field Services), facilities and appurtenances located in South Texas. In certain pipeline and measuring addition, Tennessee requests that the Commission find that the facilities, upon their transfer to Field Services, will constitute non-jurisdictional gathering facilities exempt from the Commission's jurisdiction pursuant to NGA Section 1(b), all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http:/// www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Specifically, Tennessee proposes to abandon by sale to Field Services its Chesterville Lateral, West Magnolia City Lateral, Bay City Lateral, Hungerford Lateral System and Village Mills Lateral and all laterals/feeder lines, meters and appurtenant facilities associated with these lines. Tennessee states that to the extent Filed Services is unable to negotiate contracts with existing shippers for gathering service on these facilities, Field Services will agree to provide gathering service pursuant to a default contract which will ensure that existing shippers receive gathering service under terms and conditions consistent with the terms and conditions under which they currently receive transportation service, for a two-year default term. Moreover, during the two-year default contract term, the total revenue requirement of existing shippers on these lines will remain unchanged from current levels. Tennessee states that these actions will assure continuity of service to existing shippers on the Chesterville Lateral, West Magnolia City Lateral, Bay City Lateral, Hungerford Lateral System and Village Mills Lateral.

Any person desiring to be heard or to make a protest with reference to said application should, on or before May 20, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure a hearing will be held without further notice before the Commission is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11218 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Pacific Gas and Electric Company; Notice of Technical Workshop on Water Balance Modeling

[Project No. 77–110]

April 29, 1999.

In February, 1999, the Federal Energy Regulatory Commission (Commission) issued a Draft Environmental Impact Statement (DEIS) in support of the Commission's decision on a proposed

amendment to the license for the Potter Valley Project (PVP; FERC No. 77–110). The proposed amendment involves changes in the minimum flow requirements at the project, consisting of increased releases to the Eel River, which would result in overall decreased diversions to the Russian River. The PVP is licensed to Pacific Gas and Electric Company (PG&E) and is located in Lake and Mendocino counties, California.

Analysis of the impacts of the proposed alternative, as well as two additional action alternatives and the no-action alternatives relied heavily on a hydrological water balance model developed to provide a consistent analytical framework for predicting the impacts of the four alternatives. Comments received to date on the DEIS indicate disagreement among the parties on how the model should be parametrized to best represent the different alternatives.

The purpose of this notice is to advise all parties of a technical workshop that will focus on improving the assessment modeling approaches for impact assessment and attempting to reach consensus on areas of disagreement. This technical workshop will be held at the Flamingo Hotel and Conference Center, 2777 Fourth Street, Santa Rosa, California, on June 2–3, 1999, from 9 am to 4 pm. A block of rooms is being held at a special rate for workshop attendees until May 24, 1999. For reservations, call (800) 848–8300. While the workshop will be focused on obtaining technical information from the parties whose alternatives are considered in the DEIS, all interested parties are welcome to attend.

More specifically, the objectives of the workshop include: (1) reaching consensus on appropriate data inputs, outputs, and representation of alternatives for the water balance models and habitat evaluation models: (2) defining any new alternatives that may now be appropriate for consideration in this proceeding, including how these should be represented quantitatively in the water balance modeling; and (3) obtaining additional information applicable to the EIS assessment.

As a result of previous technical meetings and the DEIS, the parties to this proceeding already have access to the models and data needed for water balance assessment. Commission staff requests that the parties that have flow proposals in this proceeding (i.e., PG&E, Sonoma County Water Agency, and the Round Valley Indian Tribes), and their representatives, prepare for this workshop so that they can participate with substantial information on data inputs and modeling approaches. Furthermore, any parties that have additional information relevant to this proceeding, such as water temperature monitoring reports or data, are advised that they should bring such information to this workshop and make it available to Commission staff, so that it can be incorporated into the assessment.

The workshop will be conducted in an interactive format, whereby the water balance models can be run and re-run in an iterative manner to evaluate assessment results during the workshop. Our intent is to make the modeling results as accessible as possible so that future applications of the modeling are acceptable to as many parties as possible.

For additional information on this workshop, please contact the FERC Project Manager, Dr. John M. Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11219 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. 2687–014 California]

Pacific Gas and Electric Company; Notice of Availability of Final Environmental Assessment

April 29, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Pit 1 Project, located in the towns of Fall River Mills and McArthur, California.

On May 27, 1998, the Commission staff issued a draft environmental assessment (DEA) for the project, and requested that comments be filed with the Commission within 45 days. Comments were filed by eleven entities and are addressed in the final environmental assessment (FEA) for the project.

The FEA contains the staff's analysis of the potential environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA and FEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. They may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11249 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. Type of Application: Preliminary Permit.

b. Project No.: P–11695–000.

c. Date filed: March 5, 1999.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Nolin Lake Dam Project.

f. Location: At the Corps of Engineer's Nolin Lake Dam, on the Nolin River, near the Town of Brownsville, Grayson County, Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would utilize the

Corps of Engineer's Nolin Lake dam and consist of the following: (1) a 42-inch-diameter, 50-foot-long steel penstock, constructed in the existing outlet works; (2) a powerhouse containing a generating unit with a total capacity of 1.0 MW and an estimated average annual generation of 6.0 Gwh; and (3) a 200-foot-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11220 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. Type of Application: Preliminary Permit.

b. Project No.: P–11696–000.

c. Date filed: March 5, 1999.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Kentucky L&D #14 Project.

f. Location: At the Corps of Engineer's Kentucky L&D #14, on the Kentucky River, near the Town of Heidelberg, Lee County Kentucky.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. Applicant Contact: Mr. Ronald Felterberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would utilize the Corps of Engineer's Kentucky L&D #14 dam and consist of the following: (1) two 72-inch-diameter, 50-foot-long penstocks, constructed in the existing outlet works; (2) a powerhouse

containing two generating units with a combined total capacity of 2.0 MW and an estimated average annual generation of 12.3 Gwh; and (3) a 400-foot-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32 (a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32 (a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 or .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc 99–11221 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. Type of Application: Preliminary Permit.

b. Project No.: P–11697–000.

c. Date filed: March 8, 1999.

d. Applicant: Universal Electric Power Corp.

e. Name of Project: Green River Lake Dam Project.

f. Location: At the Corps of Engineers Green River Lake Dam, on the Green River, near the Town of Campbellsville, Taylor County, Kentucky.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. FERC Contact: Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2946.

j. Deadline for filing motions to intervene and protest: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426

The Commission's Rules and Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. Description of Project: The proposed project would utilize the Corps of Engineers Green River Lake Dam and consist of the following: (1) two 48-inch-diameter, 50-foot-long steel penstocks, constructed in the existing outlet works; (2) a powerhouse containing two generating units with a total capacity of 5.5 MW and an estimated average annual generation of 34.0 Gwh; and (3) a 4-mile-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the

Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for perliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date of the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32 (a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32 (a), (b), and (c).

Notice of intent—a notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(a) name in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the time "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11222 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Renotice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 29, 1999.

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11694–000.

c. *Date filed:* March 5, 1999.

d. *Applicant:* Universal Electric Power Corp.

e. *Name of Project:* Kentucky L&D #4 Project.

f. *Location:* At the Corps of Engineer's Kentucky L&D #4, on the Kentucky River, near the Town of Frankfort, Franklin County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Mr. Ronald Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301 (330) 535–7115.

i. *FERC Contact:* Any questions on this notice should be addressed to Michael Spencer, E-mail address at Spencer.Michael@FERC.fed.us, or telephone (202) 219–2846.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules and Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the Corps of Engineer's Kentucky L&D #4 dam and consist of the following: (1) two 72-inch-diameter, 50-foot-long penstocks, constructed in the existing outlet works; (2) a powerhouse containing two generating units with a combined total capacity of 2.5 MW and an estimated average annual generation of 15.0 Gwh; and (3) a 300-foot-long transmission line.

l. Locations of the application: A copy of the application is available for inspection and reproduction at the

Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 219–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11248 Filed 5–4–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6336–1]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Ambient Air Quality Surveillance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Ambient Air Quality Surveillance, OMB Number 2060–0084, EPA ICR 0940.16, expiration date June 30, 1999. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 4, 1999.

FOR FURTHER INFORMATION: Contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0940.16.

SUPPLEMENTARY INFORMATION:

Title: Ambient Air Quality Surveillance, [OMB Number (2060–0084), EPA ICR # 0940.16] expiring June 30, 1999. This is a request for extension of a currently approved collection.

Abstract: The general authority for the collection of ambient air quality data is contained in sections 110 and 319 of the Clean Air Act (42 U.S.C. 1857). Section 110 makes it clear that State generated air quality data are central to the air quality management process through a system of State implementation plans (SIP). Section 319 was added via the 1977 Amendments to the Act and spells out the key elements of an acceptable monitoring and reporting scheme. To a large extent, the requirements of section 319 had already been anticipated in the detailed strategy document prepared by EPA's Standing Air Monitoring Work Group (SAMWG). The regulatory provisions to implement these recommendations were developed through close consultation with the State and local agency representatives serving on SAMWG and through reviews by ad-hoc panels from the State and Territorial Air Pollution Program Administrators and the Association of

Local Air Pollution Control Officials. These modifications to the previous regulations were issued as final rules on May, 10, 1979 (44 FR 27558) and are contained in 40 CFR part 58.

Major amendments which affect the hourly burdens were made in 1983 for lead, 1987 for PM–10, 1993 for enhanced monitoring for ozone, and 1997 for $PM_{2.5}$. The specific required activities for the burden include establishing and operating ambient air monitors and samplers, conducting sample analyses for all pollutants for which a national ambient air quality standard (NAAQS) has been established, preparing, editing, and quality assuring the data, and submitting the ambient air quality data and quality assurance data to EPA.

Some of the major uses of the data are for judging attainment of the NAAQS, evaluating progress in achieving/maintaining the NAAQS or State/local standards, developing or revising SIP's, evaluating control strategies, developing or revising national control policies, providing data for model development and validation, supporting enforcement actions, documenting episodes and initiating episode controls, documenting population exposure, and providing information to the public and other interested parties.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on the collection of information was published on August 3, 1998 (63 FR 41251); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 4,624 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements, train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State and local air pollution control agencies.

Estimated Number of Respondents: 130.

Frequency of Response: Quarterly, Semi-Annually, Annually.

Estimated Total Annual Hour Burden: 2,404,606 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $73,643,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0940.16 and OMB Control No. 2060–0084 in any correspondence. Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: April 29, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–11273 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34131B; FRL–6079–9]

Azinphos-Methyl, Revised Pesticide Risk Assessment; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a public meeting to present the revised risk assessment for one organophosphate pesticide, azinphos-methyl, to interested stakeholders. This public meeting, called a "Technical Briefing," will provide an opportunity for stakeholders to learn about the data, information, and methodologies that the Agency used in revising its risk assessment for azinphos-methyl. In addition, representatives of the U.S. Department of Agriculture (USDA) will also provide ideas on possible risk management for azinphos-methyl.

DATES: The technical briefing will be held on Wednesday, May 19, 1999, from 9 a.m. to 12 noon.

ADDRESSES: The technical briefing will be held at the Environmental Protection Agency, Rm. 1126, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Barry O'Keefe, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–8035; e-mail address: okeefe.barry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply To Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphates, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the "FOR FURTHER INFORMATION CONTACT" section.

B. How Can I Get Additional Information or Copies of This Document or Other Documents Discussed in This Notice?

1. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the " **Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/. In addition, a brief summary of the azinphos-methyl revised risk assessment is now available at http://www.epa.gov/pesticides/op/status.htm/, as well as in paper as part of the public version of the official record as described in Unit I.B.2. of this document.

2. *In person or by telephone.* If you have any questions or need additional information about this document, you may contact the person identified in the

"FOR FURTHER INFORMATION CONTACT" section.

In addition, the Agency has established an official record for the organophosphate azinphos-methyl under docket control number OPP–34131B. The official record consists of the documents specifically referenced in this document. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as Confidential Business Information (CBI). The public version of the official record is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The Public Information and Records Integrity Branch telephone number is (703) 305–5805.

II. Background

This document announces the Agency's intention to hold a technical briefing for the organophosphate pesticide, azinphos-methyl. The Agency is presenting the revised risk assessments for azinphos-methyl to interested stakeholders. This technical briefing is designed to provide stakeholders with an opportunity to become even more informed about an organophosphate's risk assessment. EPA will describe in detail the revised risk assessment: Including the major points (e.g., contributors to risk estimates); how public comment on the preliminary risk assessment affected the revised risk assessment; and the pesticide use information/data that was used in developing the revised risk assessment. Stakeholders will have an opportunity to ask clarifying questions. In addition, representatives of the USDA will provide ideas on possible risk management.

The technical briefing is part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998 as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate risk assessment and risk management decisions. EPA and USDA began implementing this pilot process in August 1998 in response to Vice President Gore's directive to increase transparency and opportunities for stakeholder consultation.

On the day of the technical briefing, in addition to making copies available at the meeting site, the Agency will also release for public viewing the azinphos-methyl revised risk assessments and related documents to the Public Information and Records Integrity Branch and the OPP Internet web site that are described in Unit I.B.1. of this document. In addition, the Agency will issue a **Federal Register** notice to provide an opportunity for a 60-day public participation period during which the public may submit risk management and mitigation ideas, and recommendations and proposals for transition.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: April 30, 1999.

Lois Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 99–11303 Filed 4–30–99; 4:28 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00598; FRL–6079–2]

FIFRA Scientific Advisory Panel; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: There will be a 3–day meeting of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and Food Quality Protection Act (FQPA) Scientific Advisory Panel (SAP) to review a set of scientific issues being considered by the Agency in connection with policy for the use of the FQPA 10x Safety Factor, statistical methods for the use of composite data in acute dietary exposure assessment, and the use of watershed-derived percent crop areas as a refinement tool in FQPA drinking water exposure assessments for tolerance reassessment. The meeting is open to the public. Seating at the meeting will be on a first-come basis.

DATES: The meeting will be held on Tuesday, May 25; Wednesday, May 26; and Thursday, May 27, 1999, from 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting will be held at: Sheraton Crystal City Hotel, 1800 Jefferson Davis Highway, Arlington, VA. The telephone number for the hotel is: (703) 486–1111.

By mail, submit written comments (one original and 40 copies) to: The Public Information and Records Integrity Branch (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person or by delivery service, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202.

Comments and data also may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. No Confidential Business Information (CBI) should be submitted through e-mail. Additional information on electronic submissions can be found under Unit V. of this document.

FOR FURTHER INFORMATION CONTACT: By mail: Larry C. Dorsey or Paul I. Lewis, Designated Federal Officials, FIFRA Scientific Advisory Panel (7101C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 117T, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5369; e-mail: Dorsey.Larry@epa.gov or Lewis.Paul@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Purpose of the Meeting

The Office of Pesticide Programs (OPP) will present its policy for the use of the FQPA 10x Safety Factor. Topics to be discussed are the OPP FQPA 10x Safety Factor policy paper, including presentations on toxicological and exposure considerations, and the OPP FQPA Standard Operating Procedures. In addition, EPA's Office of Pollution Prevention and Toxics, in implementing the testing provision of the Toxic Substances Control Act, will discuss a proposed toxicology test battery that will be used for the testing of industrial/commercial chemicals to which there is a high likelihood of exposure to children. This toxicology test battery represents a subset of the core toxicology data set recommended in the OPP FQPA 10x Safety Factor policy paper. OPPT is seeking scientific input/advice specifically on the appropriateness of using this subset for this TSCA-related testing purpose.

The Agency also will present statistical methodology for the use of composite data in acute dietary exposure assessment. The Agency has identified a reliable, statistical methodology for applying existing information from the U.S. Department of Agriculture's (USDA) Pesticide Data Program (PDP) report to acute dietary risk assessments. This methodology consists of extrapolating pesticide residue data from composite samples of fruits and vegetables to single serving sizes of fruits and vegetables. Estimates of probable residues present on single serving sizes of fruits and vegetables will be applied to a probabilistic approach such as, the Monte-Carlo method, in order to estimate dietary (food) risks.

The final session will focus on estimating pesticide concentrations in drinking water. Passage of FQPA has led to the development of tools, policies, and methods for estimating pesticide concentrations in drinking water. As presented at the July 29, 1998 SAP meeting, the Agency proposed to replace the existing small edge of a field pond with a reservoir and factor in the extent of crop coverage into its screening-level drinking water exposure assessments. The proposed SAP session is designed to provide a progress report on the development of "Watershed-Derived Percent Crop Areas" (previously termed "crop area factors") as presented at the July 1998 SAP meeting as well as to seek scientific advice on implementation of the Watershed-Derived Percent Crop Areas in the FQPA drinking water exposure assessment using the proposed index reservoir modeling scenario.

Individuals requiring special accommodations at this meeting, including wheelchair access, should contact Paul Lewis at the address listed under "FOR FURTHER INFORMATION CONTACT" at least 5 business days prior to the meeting so that appropriate arrangements can be made.

II. Availability of Review Materials

A meeting agenda is currently available, and copies of EPA primary background documents for the meeting will be available no later than May 3, 1999. The meeting agenda and EPA primary background documents will be available on the EPA web site -- http://www.epa.gov/pesticides/SAP/ or may be obtained by contacting the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Office location: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA; telephone: (703) 305–5805.

III. Written Comments and Oral Presentations at the Meeting

Members of the public wishing to submit comments should contact either Larry Dorsey or Paul Lewis at the address or the telephone number given under "FOR FURTHER INFORMATION CONTACT" to confirm that the meeting date and the agenda have not been modified or changed. Interested persons are permitted to file written statements before the meeting. To the extent that time permits and upon advanced written request to either Larry Dorsey or Paul Lewis, interested persons may be permitted by the Chair of the Scientific Advisory Panel to present oral statements at the meeting. The request should identify the name of the individual making the presentation, the organization (if any) the individual will represent, and any requirements for audio visual equipment (e.g., overhead projector, 35 mm projector, chalkboard, etc). There is no limit on the length of written comments for consideration by the Panel, but oral statements before the Panel are limited to approximately 5 minutes. The Agency also urges the public to submit written comments in lieu of oral presentations. Persons wishing to make oral and/or written statements should notify either Larry Dorsey or Paul Lewis and submit 40 copies of the summary information. The Agency encourages that written statements be submitted before the meeting to provide Panel Members the time necessary to consider and review the comments.

IV. Panel Report

Copies of the Panel's report of their recommendations will be available approximately 30 working days after the meeting and may be obtained by contacting the Public Information and Records Integrity Branch, at the address or telephone number listed in "ADDRESSES" at the beginning of this document.

V. Public Docket and Submission of Electronic Comments

A public record has been established for this notice under docket control number "OPP–00598" (including comments and data submitted electronically). A public version of this record, including printed versions of electronic comments, which does not include information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch at the address listed in ADDRESSES at the beginning of this document.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data also will be accepted on disks in WordPerfect in 5.1/6/7/8.0 file format or ASCII file format. All comments and data in electronic form must be identified by the docket control number "OPP–00598." Electronic comments may be filed online at many Federal Depository Libraries.

The official record for this notice, as well as the public version, as described above will be kept in paper form. Accordingly, EPA will transfer all comments received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the address in "ADDRESSES" at the beginning of this document.

Information submitted as a comment in response to this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information marked CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. An edited copy of the comment that does not contain the CBI material must be submitted for inclusion in the public docket. Information not marked confidential will be included in the public docket. All comments and materials received will be made part of the public record and will be considered by the Panel.

List of Subjects

Environmental protection.

Dated: April 26, 1999.

Susan B. Hazen,

Acting Director, Office of Pesticide Programs.

[FR Doc. 99–11277 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00270; FRL–6081–1]

High Production Volume (HPV) Chemical Initiative; Periodic Update Meetings

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: Over the next 6 months, EPA plans to hold several meetings on the High Production Volume (HPV) Chemical Initiative. The purpose of these meetings is to provide an opportunity for periodic updates on the Initiative's HPV Chemical Challenge program, as well as to provide a forum where interested parties can contribute information, discuss and give individual perspectives on various topics related to the HPV Chemical Challenge program. The HPV Chemical Challenge program, which was established in partnership with industry and environmental groups, is a voluntary program that is intended to make basic toxicity data on widely used industrial chemicals available to the public over the next 6 years. Prior to each meeting, EPA intends to develop an agenda for the meeting in consultation with the stakeholders. The meeting agenda will be made publicly available as early as possible prior to each of the meetings as described in Unit II. of this notice. Each meeting will be open to the public, but participation in discussions may be limited to those who pre-register with the Agency as described in Unit III. of this notice.

DATES: The first meeting will be held on May 20, 1999, from 1 p.m. to 3:30 p.m. Requests to participate in this meeting, submitted according to the instructions in Unit III. of this notice, must be received by EPA 5 working days before each meeting. As discussed in Unit VI. of this notice, subsequent meetings will be held in July, September, and November, with dates and/or times still to be determined.

ADDRESSES: The first meeting, May 20, 1999, will be held at: API, 1220 L St. NW., 9th floor, Washington, DC 20005. Metro stop: McPherson Square.

FOR FURTHER INFORMATION CONTACT: For general information: Christine Augustyniak, Associate Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone numbers: 202–554–1404 and TDD: 202–554–0551; e-mail address: *TSCA-Hotline@epa.gov.*

For technical information: David Sarokin, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics (7408), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, telephone number: 202–260–6396; fax number: 202–260–2219; e-mail address: sarokin.david@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This notice applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this notice. If you have any questions regarding the applicability of this notice to a particular entity, consult the technical person listed in the "FOR FURTHER INFORMATION CONTACT" section.

II. How Can I Get Additional Information or Copies of Documents Discussed in this Notice?

1. *Electronically.* You may obtain electronic copies of this document and various other documents related to the Agency's HPV Chemical Initiative and the HPV Chemical Challenge program from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register - Environmental Documents." You can also go directly to the "Federal Register" listings at http://www.epa.gov/homepage/fedrgstr/. To access information about the HPV Chemical Initiative, go to http://www.epa.gov/chemrtk.

2. *In person.* If you have any questions or need additional information about this action, you may contact the technical person identified in the "FOR FURTHER INFORMATION CONTACT" section.

In addition, the Agency has established an official record for the HPV Chemical Challenge program under administrative record number AR–201. The official record consists of the documents specifically referenced in this document, any public comments received during an applicable comment period, and other information related to the HPV Chemical Initiative, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, Rm. NE–B607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

III. How Can I Request to Participate in this Meeting?

You may submit a request to participate in this meeting through the mail, in person, or electronically. Do not submit any information in your request that you consider to be CBI. Your request must be received by EPA no later than 5 working days before the meeting in which you would like to participate. EPA will make every attempt to accommodate requests received by this date, taking into account the time constraints of the agenda for the meeting, and on a first come basis. To ensure proper receipt by EPA, it is imperative that you identify administrative record number AR–201 in the subject line on the first page of your request.

1. *By mail.* You may submit a written requests to: Irina Vaysman (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. 517 East Tower, 401 M St., SW., Washington, DC 20460.

2. *In person or by courier.* You may deliver a written request to: Irina Vaysman, Rm. 517 East Tower, Waterside Mall, 401 M St., SW., Washington, DC. Submissions can be delivered between 9 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

3. *Electronically.* You may submit a request electronically by E-mail to: http://www.epa.gov/chemrtk. Do not submit any information electronically that you consider to be CBI. You must avoid the use of any special characters and any form of encryption in your E-mail. All E-mail must be identified by the administrative record number AR–201.

IV. What is the HPV Chemical Challenge Program?

The HPV Challenge Program, a key element of the Chemical Right-to-Know initiative was announced last year on the eve of Earth Day, by Vice President Gore and EPA Administrator Carol Browner. As part of this initiative, EPA, in partnership with industry and environmental groups, created a voluntary chemical testing program which will make basic toxicity data on about 2,800 widely used industrial chemicals (chemicals produced in excess of one million pounds annually) available to the public over the next 6 years. Testing will ensue only when existing data are not adequate. The testing will be carried out in a manner consistent with the internationally-recognized testing protocol (as developed by the Organization for Economic Cooperation and

Development (OECD) Screening Information Data Sets (SIDS) program) to ensure that testing can be contributed to the international effort and, conversely, that international SIDS testing and assessments can be used to fulfill the Challenge Program's requirements.

V. What Will be Discussed at the Public Meetings?

The purpose of these meetings is to provide an opportunity for periodic updates on the HPV Chemical Challenge program, as well as to provide a forum where interested parties can contribute information, discuss and give individual perspectives on various topics related to the HPV Chemical Challenge program. Each meeting will be open to the public, but participation in discussions may be limited to those who pre-register with the Agency as described in Unit III. of this notice.

An agenda for each meeting, which EPA will develop in consultation with the stakeholders, will be made publicly available as early as possible prior to the meeting. The agenda for each meeting will be distributed to the participants who registered for that meeting and will be posted on the EPA website at http://www.epa.gov/chemrtk.

VI. Where Will Subsequent Public Meetings be Held?

EPA intends to hold additional meetings in July, September, and November, the dates, times, and locations for which still need to be determined. When scheduled, EPA will announce and provide relevant information about the meeting on the EPA website at http://www.epa.gov/chemrtk. The dates, times, and locations for these subsequent meetings will not be published in the **Federal Register**. Interested parties should consult the EPA Internet site indicated above for up-to-date information about these subsequent meetings.

List of Subjects

Environmental protection.

Dated: April 30, 1999.

Joseph A. Carra,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–11276 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–870; FRL–6072–7]

Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by the docket control number PF–870, must be received on or before June 4, 1999.

ADDRESSES: By mail submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticides Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically to: opp-docket@epamail.epa.gov. Follow the instructions under "SUPPLEMENTARY INFORMATION." No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). CBI should not be submitted through e-mail. Information marked as CBI will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 119 at the address given above, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number	Address
Dani Daniel	Rm. 211, CM #2, 703–305–5409, e-mail:daniel.dani@epamail.epa.gov.	1921 Jefferson Davis Hwy, Arlington, VA
Cynthia Giles-Parker (PM 22).	Rm. 249, CM #2, 703–305–7740, e-mail: giles-parker.cynthia@epamail.epa.gov.	Do.

SUPPLEMENTARY INFORMATION: EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

The official record for this notice of filing, as well as the public version, has been established for this notice of filing under docket control number [PF–870] (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is located at the address in "ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at:

opp-docket@epamail.epa.gov

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in Wordperfect 5.1 file format or ASCII file format. All comments and data in electronic form must be identified by the docket number (insert docket number) and appropriate petition number. Electronic comments on notice may be filed online at many Federal Depository Libraries.

List of Subjects

Environmental protection, Agricultural commodities, Food additives, Feed additives, Pesticides and

pests, Reporting and recordkeeping requirements.

Dated: April 23, 1999.

Peter Caulkins, Acting

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Novartis Crop Protection, Inc.

PP 9F5045

EPA has received a pesticide petition (9F5045) from Novartis Crop Protection, Inc., P.O.Box 18300, Greensboro, NC 27419-8300 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of difenoconazole ((2S,4R)/(2R,4S)/(2R,4R)/(2S,4S) 1-(2-(4-(4-chlorophenoxy)-2-chlorophenyl)-4-methyl-1,3-dioxolan-2-yl)methyl-1H-1,2,4-triazole) in or on the raw agricultural commodity (RAC) rapeseed at 0.01 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residues in plants is understood for the purpose of the proposed tolerance. The metabolism of ^{14}C-difenoconazole has been studied using both phenyl and triazole labels in wheat, tomatoes, potatoes, grapes, and spring rape The metabolic pathway was the same in these four separate and distinct crops.

2. *Analytical method*—i. *Food.* Novartis Crop Protection, Inc. has submitted a practical analytical method (AG-575B, master record identification (MRID) No. 428065-04) for detecting and measuring levels of difenoconazole in or on food with a limit of quantitation (LOQ) that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA has validated this method and copies have been provided to FDA for insertion into pesticide analytical manual (PAM) II. The method is available to anyone who is interested, and may be obtained from the Field Operations Division, Office of Pesticide Programs.

ii. *Livestock.* Novartis Crop Protection, Inc. has submitted a practical analytical method (AG-544A, MRID-43292401) for detecting and measuring levels of difenoconazole in or on cattle tissues and milk and poultry tissues and eggs, with a LOQ that allows monitoring of food with residues at or above the levels set in the proposed tolerances. EPA has validated this method and copies have been provided to FDA for insertion into PAM II. The method is available to anyone who is interested, and may be obtained from the Field Operations Division, Office of Pesticide Programs.

3. *Magnitude of residues*—i. *Food.* Six field trials were analyzed in concordance with the OPPTS guidelines based on expected reduced residues and environmental benefits of seed applications. The six trials, held in areas representing approximately 84% of commercial United States canola production (Agricultural Statistics, 1991), were conducted in Georgia (2%), Minnesota (16%), North Dakota (53%), South Dakota (2%), Idaho (6%), and Washington (5%). No residues were detected in rape seed at either a 1x or 3x treatment rate.

ii. *Livestock.* No tolerances are necessary for grain commodities. Tolerances in meat, milk, poultry or eggs were established for enforcement purposes.

B. Toxicological Profile

The following mammalian toxicity studies were conducted and submitted in support of the establishment of tolerances for difenoconazole.

1. *Acute toxicity.* Difenoconazole has a low order of acute toxicity. The oral rat LD_{50} is 1,453 milligram/kilogram (mg/kg). The rabbit acute dermal LD_{50} is > 2,010 mg/kg and the rat inhalation LC_{50} is > 3.285 milligrams per liter (mg/L). Difenoconazole is not a skin sensitizer in guinea pig and shows slight eye and dermal irritation in the rabbit.

2. *Genotoxicity.* There was no evidence of the induction of point mutations in an Ames test, no evidence of mutagenic effects in a mouse lymphoma test or in a nucleus anomaly test with Chinese hamsters, and no evidence of induction of DNA damage in a rat hepatocyte DNA repair test or in a human fibroblast DNA repair test.

3. *Reproductive and developmental toxicity.* An oral teratology study in rats had a maternal no-observed adverse effect level (NOAEL) of 16 mg/kg/day based on excess salivation and decreased body weight gain and food consumption. The developmental NOAEL of 85 mg/kg/day was based on effects seen secondary to maternal toxicity including slightly reduced fetal body weight and minor changes in skeletal ossification. An oral teratology study in rabbits had a maternal NOAEL of 25 mg/kg/day based on decreased body weight gain, death, and abortion. The developmental NOAEL of 25 mg/kg/day was based on effects seen secondary to maternal toxicity including a slight increase in post-implantation loss and resorptions, and decreased fetal weight. A 2-generation reproduction study in rats had a parental and reproductive NOAEL of 25 part per million (ppm) based on significantly reduced female body weight gain, and reductions in male pup weights at 21-days.

4. *Subchronic toxicity.* A 13-week rat feeding study identified liver as a target organ and had a NOAEL of 20 ppm. A 13-week mouse feeding study also identified liver as a target organ and had a NOAEL of 20 ppm. A 26-week dog feeding study further identified liver, and also the eyes, as target organs and had a NOAEL of 100 ppm. A 21-day dermal study in rabbits had a NOAEL of 10 mg/kg/day based on decreased body weight gain at 100 and 1,000 mg/kg/day.

5. *Chronic toxicity.* A 24-month feeding study in rats had a NOAEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. An 18-month mouse feeding study had an overall NOAEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. A 12-month feeding study in dogs had a NOAEL of 100 ppm based on decreased food consumption and increased alkaline phosphatase levels at 500 ppm.

6. *Carcinogenicity.* A 24-month feeding study in rats had a NOAEL of 20 ppm based on liver toxicity at 500 and 2,500 ppm. There was no evidence of an oncogenic response. An 18-month mouse feeding study had an overall NOAEL of 30 ppm based on decreased body weight gain and liver toxicity at 300 ppm. There was an increase in liver tumors only at dose levels that exceeded the maximum tolerated dose (MTD). The oncogenic NOAEL was 300 ppm.

7. *Animal metabolism.* The metabolism of difenoconazole is well understood. Studies with ^{14}C-difenoconazole in the rat, goat, and hen demonstrate that the majority of the

administered dose (76 to > 98%) is eliminated via the excreta as parent and metabolites. Very low concentrations of radioactivity, accounting for < 1 to 4% of the applied dose, remain in tissues. The liver and kidney typically show the highest radioactivity, but in the rat, the highest concentration in any tissue was found in the fat. Concentrations in goat milk reached a plateau on day 6 of the study at 0.043 ppm for the triazole label and 0.007 ppm for the phenyl label when goats were fed approximately 5 ppm for 10 days. Similarly, very little radioactivity was deposited in eggs; radioactivity reached a plateau of 0.248 to 0.299 ppm in yolks after 7 to 8-days, and 0.007 to 0.153 ppm in whites after 5 days, in hens fed at a rate equivalent to 5 ppm in the diet for 14 consecutive days. CGA-205375, an alcohol resulting from the deketalization of the dioxolane ring of difenoconazole, is a major metabolite found in animal tissues, excreta, milk, and eggs. The presence of CGA-71019, containing only the triazole ring, and CGA-189138, containing only the phenyl ring, indicates that bridge cleavage can occur in animals as well as plants. The metabolite patterns in the excreta of hens, goats, and rats were similar.

8. *Metabolite toxicology.* The residue of concern for tolerance setting purposes is the parent compound. Metabolites of difenoconazole are considered to be of equal or lesser toxicity than the parent.

9. *Endocrine disruption.* Developmental toxicity studies in rats and rabbits and a 2-generation reproduction study in rats gave no specific indication that difenoconazole may have effects on the endocrine system with regard to development or reproduction. Furthermore, histologic investigations were conducted on endocrine organs (thyroid, adrenal, and pituitary, as well as endocrine sex organs) from long-term studies in dogs, rats, and mice. There was no indication that the endocrine system was targeted by difenoconazole, even when animals were treated with maximally tolerated doses over the majority of their lifetime. Difenoconazole has not been found in RAC at the LOQ. Based on the available toxicity information and the lack of detected residues, it is concluded that difenoconazole has no potential for interfering with the endocrine system, and there is no risk of endocrine disruption in humans.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* When the potential dietary exposure to difenoconazole from established and pending tolerances (assuming 100% treated) is calculated, the theoretical maximum residue concentration (TMRC) of 0.000583 mg/kg/day utilizes 5.83% of the reference dose (RfD) for the overall U. S. population. For the most exposed population subgroups, non-nursing infants, the TMRC is 0.001656 mg/kg/day, utilizing 16.56% of the RfD, followed by children (1-6 years old), who are exposed to 14.58% of the RfD. In this analysis, canola does not contribute to exposure.

ii. *Drinking water.* Other potential sources of exposure of the general population to residues of pesticides are in drinking water and from non-occupational activities. Difenoconazole is currently used as a seed treatment and residues are, therefore, incorporated into the soil. The likelihood of contamination of surface water from run-off is essentially negligible. In addition, parent and aged leaching, soil adsorption/desorption, and radiolabeled pipe studies indicated that difenoconazole has a low potential to leach in the soil and it would not be expected to reach aquatic environments. For these reasons, and because of the low use rate, exposures to residues in ground and surface water are not anticipated to contribute significantly to the aggregate exposure profile for difenoconazole.

2. *Non-dietary exposure.* Non-occupational exposure to difenoconazole has not been estimated since the current registration is limited to seed treatment. Therefore, the potential for non-occupational exposure to the general population is insignificant.

D. Cumulative Effects

Novartis has considered the potential for cumulative effects of difenoconazole and other substances of common mechanism of toxicity. Novartis has concluded that consideration of a common mechanism of toxicity in aggregate exposure assessment is not appropriate at this time. Novartis has no reliable information to indicate that the toxic effects (generalized liver toxicity) seen at high doses of difenoconazole would be cumulative with those of any other compound. Thus, Novartis is considering only the potential risk of difenoconazole from dietary exposure in its aggregate and cumulative exposure assessment.

E. Safety Determination

1. *U.S. population.* Using very conservative exposure assumptions (tolerance levels for 100% of the United States market) described and based on the completeness of the toxicity data base for difenoconazole, Novartis calculates that aggregate exposure to difenoconazole utilizes < 6% of the RfD for the U.S. population based on chronic toxicity endpoints (NOAEL = 1 mg/kg/day). If more realistic assumptions were used to estimate anticipated residues and appropriate market share, this percentage would be considerably lower, and would be significantly lower than 100%, even for the most highly exposed population subgroup. EPA generally has no concern for exposures below 100% of the RfD. Therefore, Novartis concludes that there is a reasonable certainty that no harm will result from daily aggregate exposure to residues of difenoconazole over a lifetime of exposure.

2. *Infants and children.* Developmental toxicity and 2-generation toxicity studies were evaluated to determine if there is a special concern for the safety of infants and children from exposure to residues of difenoconazole. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters, including number of live births, birth weights, and post-natal development, at dose levels that did not cause significant maternal toxicity. In addition, there were no effects in young post-weaning animals that were not seen in adult animals in the 2-generation reproduction study. Therefore, Novartis concludes that it is inappropriate to assume that infants and children are more sensitive than the general population to effects from exposure to residues of difenoconazole, and also concludes that the use of an additional safety factor to protect infants and children is unnecessary.

F. International Tolerances

There are pending Codex maximum residue levels (MRLs) for this compound in Mexico for oats, wheat, and barley. There are also MRLs for this compound in Australia for carrots at 0.02 ppm, and bananas at 0.05 ppm.

2. Novartis Crop Protection, Inc.

PP 9F5046

EPA has received a pesticide petition (9F5046) from Novartis Crop Protection, Inc., PO Box 18300, Greensboro, North Carolina 27419 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of Thiamethoxam in or on the raw agricultural commodity (RAC) rape seed at 0.02 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA

has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The primary metabolic pathways of thiamethoxam in plants (corn, rice, pears, and cucumbers) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound and CGA-322704 were major metabolites in all crops. The metabolism of thiamethoxam in plants and animals is understood for the purposes of the proposed tolerances. Parent thiamethoxam and the metabolite, CGA-322704, are the residues of concern for tolerance setting purposes.

2. *Analytical method.* Novartis Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on RAC. The method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 parts per million (ppm) for all other substrates.

3. *Magnitude of residues.* A residue program was performed for thiamethoxam on a full geography of canola, using a maximum application rate of 400 g.a.i./100 kilogram (kg) seed (0.024 lbs. a.i./acre, at the typical seeding rate). Two field trials also included seed treated at 3 times the normal rate for thiamethoxam. No residues were detected above the method LOD for thiamethoxam. The proposed tolerance on canola is 0.02 ppm for thiamethoxam.

B. Toxicological Profile

1. *Acute toxicity.* Thiamethoxam has low acute toxicity. The oral LD_{50} in rats is 1,563 millogram kilogram (mg/kg) for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 3.72 milligrams per liter (mg/L) air. Thiamethoxam is not a skin sensitizer in guinea pigs and does not produce dermal or eye irritation in rabbits. End-use formulations of thiamethoxam have similar low acute toxicity profiles.

2. *Genotoxicty.* Thiamethoxam did not induce point mutations in bacteria (Ames assay in *Salmonella* typhimurium and *Escherichia coli*) or in cultured mammalian cells (Chinese hamster V79) and was not genotoxic in an *in vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cells in an *in vivo* mouse micronucleus test. These studies show that thiamethoxam is not genotoxic.

3. *Reproductive and developmental toxicity.* In rat and rabbit teratology studies with thiamethoxam there was no evidence of teratogenicity. In rabbits, thiamethoxam caused decreased body weights (bwt), decreased food consumption and premature death of two females administered 150 mg/kg/day during gestation. This maternal toxicity was accompanied by reduced fetal bwts and an increase in the incidence of minor skeletal anomalies or variations. Reduced maternal bwts and food consumption were also noted in females administered 50 mg/kg/day thiamethoxam during gestation. There was no indication of developmental toxicity at 50 mg/kg/day. The no-observable adverse effect level (NOAEL) in rabbits for maternal toxicity was 15 mg/kg/day. The NOAEL for developmental toxicity was 50 mg/kg/day. In rats, thiamethoxam caused decreased bwts, decreased food consumption and hypoactivity at 200 and 750 mg/kg/day. Reduced fetal bwts and an increase in the incidence of minor skeletal anomalies and variations were observed only at 750 mg/kg/day. There was no indication of developmental toxicity at 200 mg/kg/day. The NOAEL in rats for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day. In a 2-generation reproduction study in rats, parental bwts and food consumption were decreased at 2,500 ppm highest dose tested (HDT). Hyaline changes in the kidneys of adult males were observed at 2,500 and 1,000 ppm. Reproductive parameters were not affected by treatment with thiamethoxam. Effects on offspring were secondary to parental toxicity and consisted of slightly reduced offspring bwts at 1,000 ppm and 2,500 ppm. The NOAEL for systemic toxicity in parental animals and for offspring toxicity was 30 ppm (equivalent to 1.3 - 6.4 mg/kg/day).

4. *Subchronic toxicity* Thiamethoxam was evaluated in 13-week subchronic oral toxicity studies in rats, dogs and mice. Liver, kidneys and spleen were identified as target organs. The NOAEL was 25 ppm (1.74 mg/kg/day) in male rats based on the finding of a hyaline change in the kidney at 250 ppm (17.6 mg/kg/day). This kidney effect represents an accumulation of alpha-2-microglobulin, which is unique to the male rat and not relevant for human risk assessment. The NOAEL was 1,250 ppm (92.5 mg/kg/day) for female rats. The NOAEL in dogs was 250 ppm (8.23 mg/kg/day). The NOAEL in mice was 10 ppm (1.41 mg/kg/day) for males and 100 ppm (19.2 mg/kg/day) for females. No dermal irritation was observed in a 28-day repeated dose dermal toxicity study with thiamethoxam in rats given 1,000 mg/kg/day. The dermal NOAEL for systemic toxicity in rats was 250 mg/kg/day for males and 60 mg/kg/day for females.

5. *Neurotoxicity.* Thiamethoxam did not cause neurotoxicity in an acute neurotoxicity study in rats or in a subchronic 13-week neurotoxicity study in rats. The NOAEL for systemic toxicity in the acute neurotoxicity study was 100 mg/kg. The NOAEL for systemic toxicity in the subchronic neurotoxicity study was 95.4 mg/kg/day for males and 216.4 mg/kg/day for females.

6. *Chronic toxicity.* The carcinogenic potential of thiamethoxam has been evaluated in rats and mice. The proposed carcinogenic classification for thiamethoxam is as a Group C carcinogen. This classification is based on a liver tumor response in male and female mice at dose levels exceeding the maximum tolerance dose (MTD) and/or causing organ toxicity and induction of liver metabolizing enzymes. A NOAEL for liver tumors in mice was established at 20 ppm (2.63 mg/kg/day). No evidence of carcinogenicity was observed in rats. In the absence of a mutagenic activity, it is concluded that the mechanism of action leading to liver tumors in mice is not via genotoxic effects. Therefore, mouse liver tumors associated with thiamethoxam treatment have a threshold level.

7. *Animal metabolism.* Metabolism of thiamethoxam has been well characterized in animals. Metabolism in rats proceeds primarily via hydrolysis of the oxadiazine ring, followed by N-demethylation. Several minor pathways of metabolism of thiamethoxam were identified in animals. In rats, the majority of the radioactive dose was absorbed and then excreted in the urine. Parent compound was the major residue in urine. In hens and goats, the metabolite profile was the same as in rats, with certain extensions of the pathway.

8. *Metabolite toxicology.* The metabolism profile for thiamethoxam supports the use of an analytical enforcement method that accounts for parent thiamethoxam and CGA-322704. Other metabolites are considered of

equal or lesser toxicity than parent compound.

9. *Endocrine disruption.* Thiamethoxam does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that thiamethoxam has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by thiamethoxam.

C. Aggregate Exposure

1. *Dietary exposure—Food and drinking water.* Chronic and acute dietary exposure to thiamethoxam was based on the occurrence of no detectable residues of thiamethoxam or its major metabolite resulting from the use of Helix on canola. There is no adverse exposure to thiamethoxam in the diet when chronic and acute assessments are made using tolerance level residues for canola oil (analytical method limit of quantitation (LOQ)), and 100% market share. The inclusion of the maximum concentration of thiamethoxam in water, taken from the highest estimated residue observed from the generic expected environmental concentration (GENEEC) and screening concentration In GROund (SCI-GROW) models, led to a maximum chronic exposure of 0.000019 mg/kg bwt/day in the most sensitive population subgroup, non-nursing infants (< 1-year old). This is only 0.1% of the proposed reference dose (RfD) of 0.013 mg/kg bwt/day. The inclusion of the water concentration estimate in the acute exposure assessment led to a margin of exposure (MOE) (NOAEL/exposure) of 264,491 at the 99.9th percentile of the most sensitive population subgroup, all infants (< 1-year old). The results of these analyses show that there is reasonable certainty that no harm will result from the exposure to dietary residues of thiamethoxam (including drinking water) from the use of Helix on canola.

2. *Non-dietary exposure.* There are no other uses currently registered for thiamethoxam that would lead to exposure from non-dietary sources. The proposed uses involve application of thiamethoxam to canola seed as part of the Helix product in an agricultural environment. A discussion of exposure from non-dietary sources will be made when future uses of thiamethoxam are proposed.

D. Cumulative Effects

The potential for cumulative effects of thiamethoxam and other substances that have a common mechanism of toxicity has also been considered. Thiamethoxam belongs to a new pesticide chemical class known as the neonicotinoids. There is no reliable information to indicate that toxic effects produced by thiamethoxam would be cumulative with those of any other chemical including another pesticide. Therefore, Novartis believes it is appropriate to consider only the potential risks of thiamethoxam in an aggregate risk assessment.

E. Safety Determination

1. *U.S. population.* Using the exposure assumptions and the proposed RfD described above, the aggregate exposure (including drinking water) to thiamethoxam from the application of helix to canola will utilize < 0.1% of the RfD for the U.S. population. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from aggregate exposure to thiamethoxam residues from the use of helix on canola.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of thiamethoxam, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered.

In teratology studies, delayed fetal development was apparent only at maternally toxic doses of thiamethoxam in rats and rabbits. In rabbits, 150 mg/kg/day was clearly toxic to does, causing death, weight loss, reduced food consumption and perineal or vaginal discharge. Developmental toxicity occurred secondary to maternal toxicity and consisted of reduced fetal bwts and an increase in minor skeletal anomalies or variations. Maternal toxicity was also noted at 50 mg/kg/day, consisting of reduced bwts and food consumption and total resorptions in one female. There was no indication of developmental toxicity at 50 mg/kg/day. The NOAEL for maternal toxicity was 15 mg/kg/day and for developmental toxicity was 50 mg/kg/day in rabbits. In rats, 200 and 750 mg/kg/day caused maternal toxicity, but developmental toxicity secondary to maternal toxicity was observed only at 750 mg/kg/day. The NOAEL for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day.

In a rat multigeneration study, parental toxic effects were noted at 2,500 ppm (250 mg/kg/day). and 1,000 ppm (100 mg/kg/day). Offspring bwts were reduced in males and females at 2,500 ppm (250 mg/kg/day) and in females (F1 only) at 1,000 ppm (100 mg/kg/day). The NOAEL for systemic toxicity in adult males was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 4.3 mg/kg/day) and in adult females was 1,000 ppm (approximately 100 mg/kg/day, range = 59.3 - 219.6 mg/kg/day). The NOAEL for toxicity to offspring was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 4.3 mg/kg/day). These studies show no evidence that developing offspring are more sensitive to than adults to the effects of thiamethoxam.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological requirements, the database for thiamethoxam relative to pre- and post-natal effects for children is complete. Further, for thiamethoxam, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that an RfD of 0.013 mg/kg/day is appropriate for assessing aggregate risk to infants and children of thiamethoxam.

Assuming tolerance level residues and 100% of crops treated, only 0.1% of the thiamethoxam chronic RfD is utilized in the population subgroup all infant (< 1-year old) when helix is used as a seed treatment on canola. Therefore, based on the completeness and reliability of the toxicity database, Novartis concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to thiamethoxam residues.

F. International Tolerances

There are no Codex maximum residue level (MRLs) established for residues of thiamethoxam on canola.

3. Norvartis Crop Protection, Inc.

PP 9F5051

EPA has received a pesticide petition (PP 9F5051) from Novartis Crop Protection, Inc. Greensboro, North Carolina, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing

a tolerance for residues of Thiamethoxam in or on the raw agricultural commodity (RAC) fruiting vegetables at 0.25 parts per million (ppm), tomato paste at 0.80 ppm, head and stem brassica vegetables at 1.0 ppm, leafy brassica greens at 2.0 ppm, cucurbit vegetables at 0.2 ppm, leafy vegetables, tuberous and corm vegetables at 0.02 pm, barley hay at 0.05 ppm, barley straw at 0.03 ppm, cottonseed at 0.05 ppm, cotton gin by-products at 1.0 ppm, pome fruit at 0.2 ppm, wheat forage at 0.5 ppm, wheat grain, wheat straw, wheat hay, barley grain, sorghum grain, sorghum forage and sorghum fodder at 0.02 ppm and milk at 0.02 ppm. EPA has data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The primary metabolic pathways of thiamethoxam in plants (corn, rice, pears, and cucumbers) were similar to those described for animals, with certain extensions of the pathway in plants. Parent compound and CGA-322704 were major metabolites in all crops. The metabolism of thiamethoxam in plants and animals is understood for the purposes of the proposed tolerances. Parent thiamethoxam and the metabolite, CGA-322704, are the residues of concern for tolerance setting purposes.

2. *Analytical method.* Novartis Crop Protection Inc. has submitted practical analytical methodology for detecting and measuring levels of thiamethoxam in or on RAC. The method is based on crop specific cleanup procedures and determination by liquid chromatography with either ultraviolet (UV) or mass spectrometry (MS) detection. The limit of detection (LOD) for each analyte of this method is 1.25 nanogram (ng) injected for samples analyzed by UV and 0.25 ng injected for samples analyzed by MS, and the limit of quantitation (LOQ) is 0.005 ppm for milk and juices and 0.01 ppm for all other substrates.

3. *Magnitude of residues.* A residue program was performed for thiamethoxam on a full geography of cucumbers, cantaloupes and squash as representative cucurbit crops, tomatoes and peppers as representative fruiting vegetable crops, head lettuce, leaf lettuce, celery and spinach as representative leafy vegetable crops, broccoli and cabbage as representative head and stem brassica vegetable crops, mustard greens as a representative leafy brassica green vegetable crop, potatoes as a representative crop of tuberous and corm vegetables, and apples and pears as representative pome fruit crops. A seed treatment residue program was performed for thiamethoxam on sorghum, wheat, barley and cotton where seed was treated using specific seed treatment formulations. Cotton was also treated via foliar application. Field residue trials were performed for thiamethoxam on tobacco using both an in-furrow transplant drench and a post-foliar spray. Novartis also completed a three-level dairy study and calculated the rate of transfer of residues of thiamethoxam from residues in the animal feed to beef and dairy commodities.

B. Toxicological Profile

1. *Acute toxicity.* Thiamethoxam has low acute toxicity. The oral LD_{50} in rats is 1,563 milligram kilogram (mg/kg) for males and females, combined. The rat dermal LD_{50} is > 2,000 mg/kg and the rat inhalation LC_{50} is > 3.72 milligrams per liter (mg/L) air. Thiamethoxam is not a skin sensitizer in guinea pigs and does not produce dermal or eye irritation in rabbits. End-use formulations of thiamethoxam have similar low acute toxicity profiles.

2. *Genotoxicty.* Thiamethoxam did not induce point mutations in bacteria (Ames assay in *Salmonella typhimurium* and *Escherichia coli*) or in cultured mammalian cells (Chinese hamster V79) and was not genotoxic in an *in vitro* unscheduled DNA synthesis assay in rat hepatocytes. Chromosome aberrations were not observed in an *in vitro* test using Chinese hamster ovary cells and there were no clastogenic or aneugenic effects on mouse bone marrow cells in an *in vivo* mouse micronucleus test. These studies show that thiamethoxam is not genotoxic.

3. *Reproductive and developmental toxicity.* In rat and rabbit teratology studies with thiamethoxam there was no evidence of teratogenicity. In rabbits, thiamethoxam caused decreased body weights (bwts), decreased food consumption and premature death of two females administered 150 mg/kg/day during gestation. This maternal toxicity was accompanied by reduced fetal bwts and an increase in the incidence of minor skeletal anomalies or variations. Reduced maternal body weights (bwts) and food consumption were also noted in females administered 50 mg/kg/day thiamethoxam during gestation. There was no indication of developmental toxicity at 50 mg/kg/day. The no-observable adverse effect level (NOAEL) in rabbits for maternal toxicity was 15 mg/kg/day. The NOAEL for developmental toxicity was 50 mg/kg/day. In rats, thiamethoxam caused decreased bwts, decreased food consumption and hypoactivity at 200 and 750 mg/kg/day. Reduced fetal bwts and an increase in the incidence of minor skeletal anomalies and variations were observed only at 750 mg/kg/day. There was no indication of developmental toxicity at 200 mg/kg/day. The NOAEL in rats for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day. In a 2-generation reproduction study in rats, parental bwts and food consumption were decreased at 2,500 ppm highest dose tested (HDT). Hyaline changes in the kidneys of adult males were observed at 2,500 and 1,000 ppm. Reproductive parameters were not affected by treatment with thiamethoxam. Effects on offspring were secondary to parental toxicity and consisted of slightly reduced offspring bwts at 1,000 ppm and 2,500 ppm. The NOAEL for systemic toxicity in parental animals and for offspring toxicity was 30 ppm (equivalent to 1.3 - 6.4 mg/kg/day).

4. *Subchronic toxicity.* Thiamethoxam was evaluated in 13-week subchronic oral toxicity studies in rats, dogs and mice. Liver, kidneys and spleen were identified as target organs. The NOAEL was 25 ppm (1.74 mg/kg/day) in male rats based on the finding of a hyaline change in the kidney at 250 ppm (17.6 mg/kg/day). This kidney effect represents an accumulation of alpha-2-microglobulin, which is unique to the male rat and not relevant for human risk assessment. The NOAEL was 1,250 ppm (92.5 mg/kg/day) for female rats. The NOAEL in dogs was 250 ppm (8.23 mg/kg/day). The NOAEL in mice was 10 ppm (1.41 mg/kg/day) for males and 100 ppm (19.2 mg/kg/day) for females. No dermal irritation was observed in a 28-day repeated dose dermal toxicity study with thiamethoxam in rats given 1,000 mg/kg/day. The dermal NOAEL for systemic toxicity in rats was 250 mg/kg/day for males and 60 mg/kg/day for females.

5. *Neurotoxicity.* Thiamethoxam did not cause neurotoxicity in an acute neurotoxicity study in rats or in a subchronic 13-week neurotoxicity study in rats. The NOAEL for systemic toxicity in the acute neurotoxicity study was 100 mg/kg. The NOAEL for systemic toxicity in the subchronic neurotoxicity study was 95.4 mg/kg/day for males and 216.4 mg/kg/day for females.

6. *Chronic toxicity.* Chronic toxicity studies with thiamethoxam have been conducted in rats and dogs. In the dog,

minor changes in blood chemistry parameters, including increased plasma creatinine and plasma urea levels, and decreased alanine aminotransferase activities, occurred at the lowest-observable adverse effect level (LOAEL) of 750 ppm (21.0 mg/kg/day). The NOAEL in the dog was 150 ppm (4.05 mg/kg/day). The NOAEL established in the rat chronic toxicity study was 30 ppm (1.29 mg/kg/day) for males, based on kidney changes, (hyaline change, chronic tubular lesions, basophilic proliferation and lymphocytic infiltration) at the LOAEL of 500 ppm (21.0 mg/kg/day). These kidney changes are attributed to an accumulation of alpha-2-microglobulin, which is specific to the male rat, and not relevant to humans. In the female rat, the NOAEL was 1,000 ppm (50.3 mg/kg/day) based on decreased bwts and hemosiderosis of the spleen at the LOAEL of 3,000 ppm (155 mg/kg/day).

7. *Carcinogenicity.* The carcinogenic potential of thiamethoxam has been evaluated in rats and mice. The proposed carcinogenic classification for thiamethoxam is as a Group C carcinogen. This classification is based on a liver tumor response in male and female mice at dose levels exceeding the maximum tolerance dose (MTD) and/or causing organ toxicity and induction of liver metabolizing enzymes. A NOAEL for liver tumors in mice was established at 20 ppm (2.63 mg/kg/day). No evidence of carcinogenicity was observed in rats. In the absence of a mutagenic activity, it is concluded that the mechanism of action leading to liver tumors in mice is not via genotoxic effects. Therefore, mouse liver tumors associated with thiamethoxam treatment have a threshold level.

8. *Animal metabolism.* Metabolism of thiamethoxam has been well characterized in animals. Metabolism in rats proceeds primarily via hydrolysis of the oxadiazine ring, followed by N-demethylation. Several minor pathways of metabolism of thiamethoxam were identified in animals. In rats, the majority of the radioactive dose was absorbed and then excreted in the urine. Parent compound was the major residue in urine. In hens and goats, the metabolite profile was the same as in rats, with certain extensions of the pathway.

9. *Metabolite toxicology.* The metabolism profile for thiamethoxam supports the use of an analytical enforcement method that accounts for parent thiamethoxam and CGA-322704. Other metabolites are considered of equal or lesser toxicity than parent compound.

10. *Endocrine disruption.* Thiamethoxam does not belong to a class of chemicals known or suspected of having adverse effects on the endocrine system. There is no evidence that thiamethoxam has any effect on endocrine function in developmental or reproduction studies. Furthermore, histological investigation of endocrine organs in chronic dog, rat and mouse studies did not indicate that the endocrine system is targeted by thiamethoxam.

C. Aggregate Exposure

1. *Dietary exposure.* Chronic dietary exposure was estimated using a Tier I approach by inputting tolerance level residues into the dietary exposure evaluation model (DEEM™) software. The Tier I assessment was partially refined by adjusting for projected percent crop-treated information, and was made using the department of agriculture (USDA) National Food consumption Survey, Continuing Survey of Food Intakes by Individuals (CSFII) 1994-96. The maximum total exposure to the U. S. population (48 States, all seasons) was calculated to be 4.1% of the reference dose of 0.013 mg/kg bwt/day. The maximum exposure to the most sensitive population sub-group, children (1-6 years) was 9.5% of the reference dose (RfD). The inclusion of the maximum concentration of thiamethoxam in water, taken from the highest estimated concentration observed from the generic expected environmental concentration (GENEEC) and screening concentration In GROund water (SCI GROW) models, led to a maximum chronic dietary exposure of 4.5% in the United States population and 10.0% in children (1-6 years old).

Acute dietary exposure was calculated using a Tier III, probabilistic assessment. A distribution of residue data points was included for the typically non-blended commodities of vegetables (tuberous, fruiting, cucurbit, brassica and leafy), pome fruits, meat and milk, while the average field trial value was used for the typically blended commodities of grains (wheat, sorghum, and barley), seed oil (cotton and canola), apple juice and tomato paste and puree. The acute assessment used adjustment for percent of crop treated, and was made using the DEEM software with the Monte Carlo analysis and the CSFII 1994-96 food consumption survey. The margin of exposure (MOE) (NOAEL/exposure) for the United States population (all seasons) at the 99.9th percentile of the exposure distribution was 4,995 using the NOAEL value of 15 mg/kg bwt/day. At the 99.9th percentile, the MOE for the most sensitive population sub-group (non-nursing infants < 1-year old) was 1,012. Inclusion of the drinking water value to the acute assessment led to an MOE of 4,904 at the 99.9th percentile of the United States population, and 1,008 for the population sub-group non-nursing infants < 1-year old. The results of these analyses show that there is reasonable certainty that no harm will result from exposure to dietary residues (including drinking water) of thiamethoxam.

2. *Non-dietary exposure.* Novartis also requests registrations for the use of thiamethoxam on dogs, turf and ornamentals. Novartis has identified potential non-dietary exposures to toddlers for these uses. These exposures include the following scenarios:

i. Incidental non-dietary ingestion of residues on lawns from hand-to-mouth transfer.

ii. Ingestion of thiamethoxam treated grass.

iii. Incidental ingestion of pesticide residues on pets from hand-to-mouth transfer.

According to current EPA policy, these exposures are considered to be short-term oral exposures. EPA does not expect incidental ingestion of pesticide residues on pets from hand-to-mouth transfer to occur during the same period as the exposures from the turf uses. Thus, Novartis considered these exposures in separate estimates of risk. According to current EPA policy, if an oral endpoint is needed for short-term risk assessment (for incorporation of food, water, or oral hand-to-mouth type exposures into an aggregate risk assessment), the acute oral endpoint (acute RfD = 15 mg/kg bwt/day) will be used to incorporate the oral component into aggregate risk. Short-term aggregate exposure is defined by EPA to be average food and water exposure (chronic exposure) plus residential exposure. The short-term risk estimates for the population subgroup children, 1 to 6-years old, is summarized below. This population subgroup was chosen because it has the highest chronic food exposure and because toddlers have the highest exposure from the residential uses. From the results below, Novartis concludes there is no concern associated with the aggregate exposure to thiamethoxam.

3. *Short-term aggregate exposure and risk including turf for children 1 to 6-years old*—i. Dietary exposure estimate including water is 0.001296 mg/kg bwt/day.

ii. Residential exposure from turf is calculated to be 0.00497 mg/kg bwt/day.

iii. Total exposure equals 0.0063 mg/kg bwt/day.

iv. Percent Acute RfD consumed is 0.04%

4. *Short-term aggregate exposure and risk including pet use for children 1 to 6-years old*—i. Dietary exposure estimate including water is 0.001296 mg/kg bwt/day.

ii. Predicted hand to mouth transfer is 0.0341 mg/kg bwt/day.

iii. Total exposure equals 0.035 mg/kg bwt/day.

iv. Percent Acute RfD consumed is 0.23%.

D. Cumulative Effects

The potential for cumulative effects of thiamethoxam and other substances that have a common mechanism of toxicity has also been considered. Thiamethoxam belongs to a new pesticide chemical class known as the neonicotinoids. There is no reliable information to indicate that toxic effects produced by thiamethoxam would be cumulative with those of any other chemical including another pesticide. Therefore, Novartis believes it is appropriate to consider only the potential risks of thiamethoxam in an aggregate risk assessment.

E. Safety Determination

1. *U. S. population.* Using the chronic exposure assumptions and the proposed RfD described above, the aggregate exposure (including drinking water) to thiamethoxam to the U. S. population (48 States, all seasons) was calculated to be 4.5% of the RfD of 0.013 mg/kg bwt/day. Therefore, Novartis concludes that there is reasonable certainty that no harm will result from aggregate chronic exposure to thiamethoxam residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of thiamethoxam, data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat have been considered.

In teratology studies, delayed fetal development was apparent only at maternally toxic doses of thiamethoxam in rats and rabbits. In rabbits, 150 mg/kg/day was clearly toxic to does, causing death, weight loss, reduced food consumption and perineal or vaginal discharge. Developmental toxicity occurred secondary to maternal toxicity and consisted of reduced fetal bwts and an increase in minor skeletal anomalies or variations. Maternal toxicity was also noted at 50 mg/kg/day, consisting of reduced bwts and food consumption and total resorptions in one female. There was no indication of developmental toxicity at 50 mg/kg/day. The NOAEL for maternal toxicity was 15 mg/kg/day and for developmental toxicity was 50 mg/kg/day in rabbits. In rats, 200 and 750 mg/kg/day caused maternal toxicity, but developmental toxicity secondary to maternal toxicity was observed only at 750 mg/kg/day. The NOAEL for maternal toxicity was 30 mg/kg/day and for developmental toxicity was 200 mg/kg/day.

In a rat multigeneration study, parental toxic effects were noted at 2,500 ppm (250 mg/kg/day) and 1,000 ppm (100 mg/kg/day). Offspring bwts were reduced in males and females at 2,500 ppm (250 mg/kg/day) and in females (F1 only) at 1,000 ppm (100 mg/kg/day). The NOAEL for systemic toxicity in adult males was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 4.3 mg/kg/day) and in adult females was 1,000 ppm (approximately 100 mg/kg/day, range = 59.3 - 219.6 mg/kg/day). The NOAEL for toxicity to offspring was 30 ppm (approximately 3 mg/kg/day, range = 1.3 - 6.4 mg/kg/day). These studies show no evidence that developing offspring are more sensitive to than adults to the effects of thiamethoxam.

FFDCA section 408 provides that EPA may apply an additional safety factor for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the database. Based on the current toxicological requirements, the database for thiamethoxam relative to pre- and post-natal effects for children is complete. Further, for thiamethoxam, the developmental studies showed no increased sensitivity in fetuses as compared to maternal animals following in utero exposures in rats and rabbits, and no increased sensitivity in pups as compared to the adults in the multi-generation reproductive toxicity study. Therefore, it is concluded that an additional uncertainty factor is not warranted to protect the health of infants and children and that an RfD of 0.013 mg/kg/day is appropriate for assessing aggregate risk to infants and children of thiamethoxam.

Assuming tolerance level residues and adjusting for the percent of crops treated, only 7.0% of the thiamethoxam chronic RfD is utilized in the population subgroup all infant (> 1-year old). Therefore, based on the completeness and reliability of the toxicity database, Novartis concludes that there is reasonable certainty that no harm will result to infants and children from aggregate exposure to thiamethoxam residues.

F. International Tolerances

There are no Codex maximum residue levels (MRLs) established for residues of thiamethoxam on fruiting vegetables, tomato paste, head and stem brassica vegetables, leafy brassica greens, cucurbit vegetables, leafy vegetables, tuberous and corm vegetables, barley grain, barley hay, barley straw, cottonseed, cotton gin by-products, pome fruit, wheat grain, wheat forage, wheat straw, wheat hay, sorghum grain, sorghum forage, sorghum fodder, or milk. (Dani Daniel)

[FR Doc. 99–11169 Filed 5–4–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–181069; FRL 6078–7]

Emamectin Benzoate, Receipt of Application for Emergency Exemptions; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Oklahoma Department of Agriculture (hereafter referred to as the "Applicant") to use the insecticide emamectin benzoate (CAS 137512–74–4) to treat up to 150,000 acres of cotton to control the beet armyworm. Emamectin benzoate is an unregistered material, and its proposed use is thus use of a "new" chemical. Therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before May 20, 1999.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–181069," should be submitted by mail to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Comments and data may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epamail.epa.gov. Follow the instructions under SUPPLEMENTARY INFORMATION. No Confidential Business Information (CBI) should be submitted through e-mail.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as CBI.

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. The docket is available for public inspection at the Virginia address given above, 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location, telephone number and e-mail address: Rm. 271, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, (703–308–9356); e-mail: beard.andrea@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of emamectin benzoate on cotton to control beet armyworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

According to the Applicant, the beet armyworm (BAW) has been a sporadic pest of cotton the past four years, and has caused major economic losses throughout the cotton growing areas. BAW populations were present in especially large numbers over the last growing season. Key outbreak factors are mild winters; late planting; delayed crop maturity; heavy early season organophosphate and pyrethroid use; prolonged hot, dry weather; presence of the BAW early in the season; and weather conditions that support migration of the adult moths. Much of the acreage in question is in the boll weevil eradication program, which requires insecticides that are harsh on natural enemies of the BAW to be used early in the season. The applicant states that this, in combination with lingering drought conditions and a mild winter are expected to result in high BAW populations for the upcoming season. Available insecticides are either ineffective, do not fit into the boll weevil eradication program, or are not expected to be available in sufficient quantities to treat all affected acreage.

Under the proposed exemption, emamectin benzoate may be applied at a rate of 0.0075 – 0.01 lb., active ingredient (a.i.,) (6 – 8 oz. product) per acre, with up to 3 applications during the growing season, using ground or aerial equipment. If all acres are treated at the maximum rate, this could potentially result in a total use of 4,500 lb., a.i., or 28,125 gal. of product.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt in the **Federal Register** for an application for a specific exemption proposing the use of a new (unregistered) chemical. Such notice provides for opportunity for public comment on the application.

The official record for this notice, as well as the public version, has been established under docket number (OPP–181069) including comments and data submitted electronically as described below. A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The official record is the paper record maintained at the address in " ADDRESSES" at the beginning of this document.

Electronic comments can be sent directly to EPA at: opp-docket@epamail.epa.gov.

Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All comments and data in electronic form must be identified by the docket number (OPP–181069). Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Oklahoma Department of Agriculture.

List of Subjects

Environmental protection, pesticides and pests, emergency exemptions.

Dated: April 23, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 99–11170 Filed 5–4–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–50858; FRL–6078–2]

Issuance of an Experimental Use Permit

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted an experimental use permit (EUP) to the following applicant. The permit is in accordance with, and subject to, the provisions of 40 CFR part 172, which defines EPA procedures with respect to the use of pesticides for experimental use purposes.

FOR FURTHER INFORMATION CONTACT: By mail: Mike Mendelsohn, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: 1921 Jefferson Davis Highway, Rm. 910W16, CM #2, Arlington, VA, 703–308–8715, e-mail: mendelsohn.mike@epa.gov.

SUPPLEMENTARY INFORMATION: EPA has issued the following EUP:

68467–EUP–2. Issuance. Mycogen Plant Sciences, Mycogen Corporation, 5501 Oberlin Drive, San Diego, CA 92121. This experimental use permit allows the use of 4 grams of the insecticidal *Bacillus thuringiensis* Cry1F protein in seeds shipped containing the plant-pesticide (*Bacillus thuringiensis* Cry1F protein and the genetic material necessary for its production (plasmid insert PHI8999) in corn plants) on 134 acres of corn to evaluate the control of various insect pests including European corn borer. The program is authorized only in the States of Hawaii, Illinois, Indiana, Iowa, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Puerto Rico, South Dakota, Tennessee, Texas, and Wisconsin. The experimental use permit is effective from April 15, 1999 to March 31, 2000. This permit is issued with the limitation that all treated crops will be destroyed or used for research purposes only.

Persons wishing to review this EUP are referred to the designated contact person. Inquires concerning this permit should be directed to the person cited above. It is suggested that interested persons call before visiting the EPA office, so that the appropriate file may be made available for inspection purposes from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Experimental use permits.

Dated: April 22, 1999.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 99–11168 Filed 5–4–99; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections being Reviewed by the Federal Communications Commission

April 27, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 6, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0716.

Title: Proposed Section 73.1630 Blanketing Interference.

Form Number: N/A.

Type of Review: Extension of currently approved collection.

Respondents: Individual or households; Business of other for-profit entities; Not-for-profit institutions.

Number of Respondents: 21,000.

Estimated Time per Response: 1 to 2 hours.

Frequency of response: On occasion reporting requirements.

Total Annual Burden: 41,000 hours

Total Annual Cost: None.

Needs and Uses: This rulemaking proceeding proposed to provide detailed clarification of the AM, FM, and TV licensee's responsibilities in resolving/eliminating blanketing interference caused by their individual stations. Under the current rules (section 73.88 (AM), section 73.318 (FM), section 73.685(d) (TV)), the licensee is financially responsible for resolving complaints of interference within one year of program test authority when certain conditions are met. After the first year, a licensee is only required to provide technical assistance in determining the cause of the interference. In this NPRM, we proposed to consolidate all blanketing interference rules under a new section 73.1630, Blanketing Interference. This new rule was designed to facilitate the resolution of broadcast interference problems and set forth all responsibilities of the licensee/permittee of a broadcast station.

For one year after the broadcast station commences program tests, the licensee is financially responsible for resolving blanketing interference complaints. After the first year, the licensee is obligated to provide technical assistance to resolve complaints of blanketing interference. The information provided to complainants will be used to facilitate the resolution of complaints of blanketing interference.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11209 Filed 5–4–99; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Submitted to OMB for Review and Approval

April 26, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 4, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0411.

Title: Procedures for Formal Complaints Filed Against Common Carriers.

Form Number: FCC 485.

Type of Review: Revision of a currently approved collection.

Respondents: Businesses or other for-profit entities; individuals or

households; not-for-profit institutions; Federal Government; and State, Local or Tribal Governments.

Number of Respondents: 11,203.

Estimated Time Per Response: 0.5 to 20 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 16,677 hours.

Total Annual Costs: $69,200.

Needs and Uses: Information filed pursuant to 47 CFR 1.720 *et seq.* is provided either with or in response to a formal complaint to determine whether or not there has been a violation of the Communications Act of 1934, as amended, or the Commission's Rules or Orders. Effected respondents are complainants and potential defendant common carriers.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11210 Filed 5–4–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.
Time: 2:00 p.m.
Date: May 19, 1999.
Place: 4th Floor, Conference Room, Federal Retirement Thrift Investment Board, 1250 H Street, NW, Washington, DC.
Status: Open.
Matters to be considered:

1. Approve minutes of the April 29, 1998, meeting.
2. Report of the Executive Director on Thrift Savings Plan status.
3. November 15, 1998–January 31, 1999, Thrift Savings Plan Open Season.
4. Legislation.
5. Nomination of Council Chairman and election of Vice-Chairman.
6. New Business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact Elizabeth S. Woodruff, Committee Management Officer, on (202) 942–1660.

Dated: April 29, 1999.

John J. O'Meara,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 99–11191 Filed 5–4–99; 8:45 am]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Public Buildings Service Notice of Intent To Prepare an Environmental Impact Statement (EIS)

The General Services Administration (GSA) hereby gives notice it intends to prepare an Environmental Impact Statement pursuant to the requirements of the National Environmental Policy Act (NEPA) of 1969, and the President's Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), as implemented by GSA's Order PBS P 1095.4B on the following project:

United States Mission to the United Nations, 799 United Nations Plaza, New York, NY

The proposed action will involve the construction of a replacement facility for the United States Mission to the United Nations (USUN). The Mission is located at 799 United Nations Plaza, the southwest corner of First Avenue and 45th Street directly across from the United Nations Headquarters Complex. The existing building housing the Mission has proven to be physically and operationally inadequate to accommodate USUN personnel and functions. The building footprint only covers slightly more than half of the total site area, which is 11,990 square feet. The small floorplates of the existing facility severely restrict the potential for providing efficient layouts and required space adjustments. As part of the proposed action, it is proposed that this building will be demolished and replaced with a new more efficient facility constructed on the site.

The Draft EIS will evaluate the proposed action, the no-action alternative, and any other reasonable alternatives identified through the scoping process. Scoping will be accomplished through direct mail correspondence with interested persons, parties, and organizations and through a Public Scoping Meeting.

The Public Scoping Meeting will be held on May 12, 1999. The meeting will be held in conjunction with the Community Board 6 full Board Meeting at the New York University Medical Center, 550 First Avenue (31st/32nd Street), Classroom A, at 7:30 p.m.

As part of the Public Scoping process, GSA solicits your written comments on the scope of alternatives and potential impacts at the following address: Peter A. Sneed, Senior Program Analyst, Portfolio Management Division, General Services Administration, 26 Federal Plaza, Room 1609, New York, NY 10278. Written comments should be received no later than June 11, 1999. Requests for further information may also be forwarded to this address.

Dated: April 28, 1999.

Thomas J. Ryan,

Regional Administrator.

[FR Doc. 99–11233 Filed 5–4–99; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS become entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 13⅜% for the quarter ended March 31, 1999. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 28, 1999.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 99–11196 Filed 5–4–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Public Health and Science; Statement of Organizations, Functions, and Delegations of Authority

Part A; Office of the Secretary (OS), Chapter AC, Office of Public Health and Science (OPHS), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (60 FR 56605–06, November 9, 1995), as previously amended at 60 FR 471–3, January 4, 1995, and 58 FR 107, January 4, 1993, is amended to reflect

the realignment of the functions within the Office on Women's Health (OWH), OPHS, to provide a critically needed management substructure to assist the Director in the planning, coordination, and operation of the OWH.

The changes are as follows:

Under Chapter AC, Office of Public Health and Science, Section AC.20 Functions, delete paragraph B, "Office on Women's Health (ACB)," and replace with the following:

1. Office on Women's Health (ACB)—The Office on Women's Health is headed by the Deputy Assistant Secretary for Health (Women's Health), who reports to the Assistant Secretary for Health, is Director of the Office on Women's Health, and serves as the principal advisor on scientific, ethical, and policy issues relating to women's health. The issues cut across all HHS components which provide research, service, prevention, promotion, treatment, training, education and dissemination of information relating to women's health.

2. The Immediate Office of the Director (ACB1), headed by the Deputy Assistant Secretary for Health (Women's Health) coordinates the programmatic aspects of HHS components in regard to issues relating to women's health; serves as the locus within HHS to identify changing needs, to recommend new studies, and to assess new challenges to the health of women; serves as a focal point within HHS to coordinate the continuing implementation of health objectives for the future; assures liaison with relevant HHS agencies and offices; and facilities the expansion of services and access to health care for a women.

Plans and directs financial management activities, including budget formulation and execution; provides liaison on personnel management activities with the OPHS, and the Program Support Center, Division of Human Resources (PSC); provides administrative services in support of OWH; and serves as the focal point for the support of information resources management, telecommunications equipment and systems for the OWH. The Immediate Office will also provide scientific analyses for all initiatives.

3. The Division of Policy and Program Development (ACB2), headed by the Division Director, advises the OWH Director on the development of strategic and operational plans and provides staff support to and liaison with program staff in coordinating, integrating, and articulating these plans; advises the OWH Director on policy issues; develops the OWH's plan for evaluating the focus and impact of ongoing programs and the development of new programs and policies; provides analytical reports of program trends and future forecasts; and is responsible for implementing the Congressional, international health, and national (regional) components for the OWH mission.

4. The Division of Program Management (ACB3), headed by the Division Director, provides technical consultation and assistance to the Centers of Excellence in Women's Health, which are responsible for providing state-of-the-art comprehensive and integrated health care services, multidisciplinary research, and public health and health care professional education targeted toward the special needs of women; and coordinates OWH requirements relating to contracts and reimbursable agreements for major office activities. The contract development, review and award process is supported and coordinated with the Program Support Center, DHHS.

5. The Division of Communications (ACB4), headed by the Division Director, provides oversight and direction to the management of the National Women's Health Information Center toll-free telephone number and web site; plans, organizes, administers, and when appropriate, implements the OWH's communication programs consistent with policy direction established by the Office of the Assistant Secretary for Public Affairs; systematically captures, assesses, and disseminates information on scientific and policy developments relating to women's health research results and current or emerging trends and issues; manages the OWH information, education and awareness activities both within the Department and externally; coordinates, assigns, develops, researches, and prepares briefing materials on women's health for DASH and other HHS offices; manages public information activities and media and press relations; plans and coordinates efforts to promote the OWH's programs and policies in the voluntary and corporate sectors; and manages exhibits, and develops visual and other graphic materials for the OWH.

Dated: April 26, 1999.

John J. Callahan,

Assistant Secretary for Management and Budget.

[FR Doc. 99–11197 Filed 5–4–99; 8:45 am]

BILLING CODE 4110–60–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Advisory Council; Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1999.

Name: Advisory Commission on Childhood Vaccines (ACCV).

Date and Time: June 9, 1999; 9:00 a.m.–5:00 p.m.

Place: Parklawn Building, Conference Rooms G & H, 5600 Fishers Lane, Rockville, MD 20857.

The meeting is open to the public.

Agenda: Items will include, but not be limited to: an update on Vaccines in Clinical Trials, an update on Pre-1988 Claims, a discussion on coverage of new vaccines, and reports from the Department of Justice, the National Vaccine Program Office, and routine program reports.

Public comment will be permitted before lunch and at the end of the Commission meeting on June 9, 1999. Oral presentations will be limited to 5 minutes per public speaker. Persons interested in providing an oral presentation should submit a written request, along with a copy of their presentation to: Ms. Shelia Tibbs, Committee Management Assistant, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, MD 20857, Telephone (301) 443–6593. Requests should contain the name, address, telephone number, and any business or professional affiliation of the person desiring to make an oral presentation. Groups having similar interests are requested to combine their comments and present them through a single representative. The allocation of time may be adjusted to accommodate the level of expressed interest. The Division of Vaccine Injury Compensation will notify each presenter by mail or telephone of their assigned presentation time.

Persons who do not file an advance request for a presentation, but desire to make an oral statement, may sign-up in Conference Rooms G and H on June 9, 1999. These persons will be allocated time as time permits.

Anyone requiring information regarding the Commission should contact Ms. Tibbs, Division of Vaccine Injury Compensation, Bureau of Health Professions, Health Resources and Services Administration, Room 8A–46, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6593.

For further information, call Ms. Eve Morrow at (301) 594–4144.

Agenda items are subject to change as priorities dictate.

Dated: April 28, 1999.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11251 Filed 5–4–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing; "Receptor-Mediated Delivery of Third-Party Proteins and Peptides to the Cytosol of Mammalian Cells"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by or controlled by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and copies of U.S. patents and patent applications referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: Invention Title: "Recombinant Chimeric Proteins Deliverable Across Cellular Membranes into Cytosol of Target Cells".

Inventors; Drs. Ira H. Pastan (NCI), Trevor Prior (NCI), Waldemar Y. Debinski (NCI), Clay Siegall (NCI).

DHHS Ref. No. E–020–91/0 [= USP SN: 5,328,984 (= 07/663,455)—Filed March 4, 1991].

The following patent applications and patents are also available, to the extent necessary to practice the technology disclosed in the U.S.P. SN: 5,328,984, for licensing from the National Institutes of Health's Office of Technology Transfer:

1. 08/683,621, entitled: "Hybrid Molecules Having Translocation Region and Cell-Binding Region", inventor: John R. Murphy, Filed: July 17, 1996. [E–998–98/7]

2. 5,668,255 [= 08/102,387], entitled: "Hybrid Molecules Having Translocation Region and Cell-Binding Region", inventor: John R. Murphy, Filed: August 4, 1993. [E–998–98/6]

3. 07/722,484, entitled: "Hybrid Molecules Having Translocation Region and Cell-Binding Region", inventor: John R. Murphy, Filed: June 26, 1991. [E–998–98/5]

4. 07/538,276, entitled: "Hybrid Molecules Having Translocation Region and Cell-Binding Region", inventor: John R. Murphy, Filed: June 14, 1990. [E–998–98/4]

5. 07/456,095, entitled: "Hybrid Molecules Having Translocation Region and Cell-Binding Region", inventor: John R. Murphy, Filed: December 22, 1998. [E–998–98/3]

6. 06/742,554, entitled: "Hybrid Protein and Fused Gene Encoding Same", inventor: John R. Murphy, Filed June 7, 1985. [E–998–98/2]

7. 06/726,808, entitled: "Hybrid Protein and Fused Gene Encoding Same", inventor: John R. Murphy, Filed: April 25, 1985. [E–998–98/1]

8. 06/618,199, entitled: "Hybrid Protein and Fused Gene Encoding Same", inventor: John R. Murphy, Filed: June 7, 1984. [E–998–98/0].

Background

Protein toxins have several distinctive properties that allow them to facilitate the delivery of third-party proteins to the cell cytosol. First, they are modular in nature and possess separate domains that function independently to perform distinct functions. By domain swapping, toxins can be converted into delivery agents. Toxins enter cells by receptor-mediated endocytosis, avoid degradation, and translocate to the cell cytosol where they are cytotoxic. By disabling the toxin's cytotoxicity domain, it is possible to replicate this delivery pathway without causing damage to the cell. Further, by altering toxin-expressing vectors to include cDNAs encoding non-toxin related proteins and peptides, it is possible to mediate delivery of third-party proteins from the cell exterior to the cytosol. Thus, functionally active proteins can be joined to the toxin translocation module and the resulting chimeric protein developed into a delivery vehicle. Further the toxins' binding domain can be replaced with receptor-binding ligands of choice. By combining domains of different origins, various therapeutic proteins can be generated. Toxin-mediated delivery to the cytosol can be used for: enzyme replacement (to complement a genetic defect), peptide delivery for the generation of cytotoxic lymphocytes, delivery of anti-viral peptides, agonist of antagonist peptides of signaling pathways, etc.

Invention

This invention provides a method of making a hybrid foreign protein that can be delivered into the cytosol of the target cells across the cellular membranes. Further, the present invention provides a suitable vector containing a nucleotide sequence that encodes a hybrid protein.

The advantages of the invention are achieved by (1) providing a recombinant molecule possessing at least a recognition element, a translocation function, and one or more recombinant sites for inserting foreign proteins or polypeptides, and (2) making a recombinant chimeric protein translocatable across cellular membranes into the cytosol of target cells, said chimeric protein having at least one segment which is a functionally active foreign protein desired to be introduced *de novo* into cytosol of target cells, a recognition element that directs the hybrid protein to the target cells, and an additional segment having at least a translocation function which internalizes the protein and delivers the foreign protein into the cytosol of the target cells. In the case of *Pseudomonas* Exotoxin ("PE"), the recombinant sites could be located in either or both of domains Ib or III, but not in domain II. These chimeric proteins can be used for cytotoxic, diagnostic, or therapeutic purposes, such as for compensating the deficiency or defect of an enzyme or a protein which may be causative of a disease or an abnormality. The above mentioned invention is available, including any available foreign intellectual property rights, for licensing on an exclusive or non-exclusive basis.

Dated: April 28, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–11204 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the Fogarty International Center Advisory Board.

The meetings will be open to the public as indicated below, with attendance limited to space available.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 17–18, 1999.

Open: May 18, 1999, 8:30 AM to 12:00 PM.

Agenda: Report by the FIC Director, status of long-range planning efforts, and presentations.

Place: Lawton Chiles International House, 16 Center Drive (Building 16), Bethesda, MD 20892.

Closed: May 18, 1999, 1:00 PM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: Lawton Chiles International House, 16 Center Drive (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Forgarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

Name of Committee: Fogarty International Center Advisory Board Research Awards Subcommittee.

Date: May 17, 1999.

Time: 1:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: Building 31, Room B2C07, National Institutes of Health, 31 Center Drive, Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Forgarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892, 301–496–2075.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards Program, National Institutes of Health, HHS)

Dated: April 28, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11207 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Board on Medical Rehabilitation Research.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Advisory Board on Medical Rehabilitation Research.

Date: May 3–4, 1999.

Time: May 3, 1999, 7:30 AM to 5:00 PM.

Agenda: Reports on the Program activities of the Center; (2) a discussion of general priority areas of research for the Center; and (3) a report on fiscal issues concerning the NCMRR and NICHD.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD.

Contact Person: Mary Ellen Cheung, Chief, Biological Sci. and Career Dev. Prog., National Ctr. for Medical Rehabilitation Research, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Rm. 2A03, Bethesda, MD 20892, (301) 402–2242.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: April 28, 1999.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11206 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ritz-Carlton Hotel, 1250 S. Hayes Street, Arlington, VA 22202.

Contact Person: H. Mac Stiles, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4108, MSC 7816, Bethesda, MD 20892, 301–435–1785

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 10:00 AM to 1:00 PM.

Agenda: To review and evaluation grant applications.

Place: Georgetown Holiday Inn, Washington, DC 20007.

Contact Person: Gerald W. Becker, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5114, MSC 7854, Bethesda, MD 20892, 301–435–1170

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 10:00 AM to 11:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William C. Branche, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4182,

MSC 7808, Bethesda, MD 20892, 301–435–1148.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 2:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Everett E. Sinnett, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4120, MSC 7818, Bethesda, MD 20892, 301–435–1016__ev sinnett@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 10, 1999.

Time: 2:00 AM to 3:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Litwack, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, 301–435–1719.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: April 28, 1999.

Anna Snouffer,

Acting Committee Management Officer, NIH.

[FR Doc. 99–11205 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Statement of Organization, Functions, and Delegations of Authority

Part N, National Institutes of Health, of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975, as amended most recently at 64 FR 8583, February 22, 1999, and redesignated from Part HN as Part N at 60 FR 56605, November 9, 1995), is amended as set forth below to reorganize the Office of Disease Prevention (ODP) as follows: (1) Abolish the Division of Disease prevention, ODP, and transfer its functions to the ODP and (2) revise the functional statement of the ODP.

Section N-B, Organization and Functions, under the heading *Office of the Director (NA, formerly HNA), Office of Disease Prevention (NA2, formerly HNA2)* is amended as follows:

(1) The title and functional statement of the *Division of Disease Prevention (NA22, formerly HNA22)* are abolished in their entirety.

(2) The functional statement for the *Office of Disease Prevention (NA2, formerly HNA2)* is replaced with the following:

Office of Disease Prevention (NA2, formerly HNA2). Coordinates the activities of disease prevention, rare diseases, dietary supplements, and medical applications of research, and advises the NIH Director and senor staff on the following: (a) research related to disease prevention, and promotion of disease prevention research; (b) research related to dietary supplements and their role in disease prevention; (c) research and activities related to rare diseases; and (d) medical applications of research including drugs, procedures, devices and other technology developed from basic biomedical research at NIH. The Office also: (1) Advises the Associate Director for Disease Prevention and provides guidance to the research institutes on research related to disease prevention; (2) coordinates and facilitates the systematic identification of research activities pertinent to all aspects of disease prevention, including: (a) identification of risk factors for disease; (b) risk assessment, identification, and development of biologic, environmental, and behavioral interventions to prevent disease occurrence or progression of presymptomatic disease; and (c) the conduct of field trials and demonstrations to assess interventions and encourage their adoption, if warranted; (3) identifies, coordinates, and encourages fundamental research aimed at elucidating the chain of causation of acute and chronic diseases; (4) coordinates and facilitates clinically relevant NIH-sponsored research bearing on disease prevention, including interventions to prevent the progression of detectable but asymptomatic disease; (5) promotes the coordinating linkage for research institutes on biobehavioral modification toward prevention of disease; (6) coordinates with the Office of Medical Applications of Research to promote the effective transfer of identified safe and efficacious preventive interventions to the health care community and the public; (7) works with the research institutes to initiate and develop FRAs, PAs, and FFPs to enhance disease prevention program development; and sponsors singly or in combination with other organizations, workshops and conferences on disease prevention; (8) provides a link between the disease prevention and health promotion activities of the research institutes of the NIH, the Surgeon General and Assistant Secretary for Health, and the Secretary, DHHS; (9) monitors the effectiveness and progress of disease prevention and health promotion activites of the NIH; and (10) reports expenditures and personnel involved in prevention activities at NIH.

Delegations of Authority Statement: All delegations and redelegations of authority to offices and employees of NIH which were in effect immediately prior to the effective date of this reorganization and are consistent with this reorganization shall continue in effect, pending further redelegation.

Dated: April 22, 1999.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 99–11208 Filed 5–4–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4444–N–04]

Withdrawal of Request for Comment on Notice of Proposed Information Collection Regarding Lead-Based Paint Hazards Reduction

AGENCY: Office of the Secretary, HUD.

ACTION: Notice.

SUMMARY: This notice withdraws the notice requesting public comments on information collection requirements for the Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance. The notice requesting public comments was published in error.

FOR FURTHER INFORMATION CONTACT: Steve Weitz, Department of Housing and Urban Development, 451 7th Street, SW, Room P–3206, Washington, DC 20410, telephone (202) 755–1785, ext. 106. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On April 16, 1999 (64 FR 18923), HUD published a notice of proposed information collection, requesting public comments for a period of 60 days on the proposed information collection requirements for

the Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Housing and Housing Receiving Federal Assistance ("Requirements"). This notice was published in error and therefore is withdrawn. The 60-day public comment request on the information collection requirements will be published when the final rule for the Requirements are published. Publication concurrently with the final rule will allow the public to better comment on the estimated burden. HUD expects that the requirements of the final rule that are subject to the Paperwork Reduction Act will have a delayed effective date that will provide sufficient time for public comment. HUD also expects that this final rule will be published within the next few weeks.

Dated: April 29, 1999.

Camille E. Acevedo,

Assistant General for Regulations.

[FR Doc. 99–11252 Filed 5–4–99; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability of Draft Comprehensive Conservation Plan and Draft Environmental Impact Statement.

SUMMARY: This notice advises the public that a Draft Comprehensive Conservation Plan (CCP) and a Draft Environmental Impact Statement (DEIS) for Little Pend Oreille National Wildlife Refuge is available for public review. The Refuge is located in Stevens County, Washington. The U.S. Fish and Wildlife Service (Service) Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations for the following purposes: (1) To advise the public and other agencies of the availability of the document; (2) to solicit public comment on the Draft CCP and DEIS; and (3) to announce public open house meetings.

DATES: Submit comments on or before June 30, 1999. See **SUPPLEMENTARY INFORMATION** for meeting dates and locations.

ADDRESSES: Address comments and requests for more information to: Refuge Manager, Little Pend Oreille National Wildlife Refuge, 1310 Bear Creek Road, Colville, Washington 99114. E-mail comments may be sent to: FWS1Public_Comments_LPO@fws.gov.

FOR FURTHER INFORMATION CONTACT: Lisa Langelier, Refuge Manager (509) 684–8384

SUPPLEMENTARY INFORMATION: The proposed action is to develop a Comprehensive Conservation Plan for the Little Pend Oreille National Wildlife Refuge that best achieves the unit's purpose, vision and goals; contributes to the System mission; addresses the significant issues and relevant mandates, and is consistent with principles of sound fish and wildlife management.

Major issues addressed in the draft CCP/EIS include grazing; management of degraded aquatic and riparian habitats; overstocked forest habitats; military training; and various recreational public uses. The plan includes the following topics: (a) An assessment of existing biological, physical, and cultural resources, and their condition; (b) a summary of significant issues identified through scoping; (c) identification of five alternatives which incorporate varying objectives and strategies for habitat management, management of public access and uses, and management of other programs including military training, grazing, and cultural resources; (d) an analysis of the environmental consequences that would be predicted under adoption of any of the identified alternatives; (e) compatibility determinations for public uses, as required by Service law and policy; (f) an appendix summarizing the projects that would be undertaken under the preferred alternative.

A range of alternatives are considered in the draft CCP/EIS:

(A) *The no Action Alternative*—Make no changes to the prevailing practices and uses at the refuge.

(B) *Restore Wildlife Habitat While Managing Existing Public Uses*—This alternative incorporates an active forest and riparian restoration program. It also accomodates most existing public uses, but adopts some restrictions on some uses to ensure less impact to the environment.

(C) *Restore Wildlife Habitat While Emphasizing Priority Uses*—This alternative adopts a greater emphasis on priority uses identified under the Wildlife Refuge System Improvement Act of 1997 (Pub. L. 105–57) and eliminates non-priority uses. This alternative also incorporates a strong forest and riparian restoration program.

(D) *Manage the Refuge as an Ecological Reserve and Reduce Human Disturbances*—This alternative minimizes human access and use of the refuge while conducting a habitat restoration program. This alternative includes a greater emphasis on hydrologic restoration than other alternatives.

(E) *Combination of Alternatives B and C—Agency Preferred Alternative*—This alternative places management emphasis on restoration of forest and riparian habitat components. A wide range of recreational activities would be supported including hunting, fishing, wildlife observation, photography, and interpretation. Snowmobiling would be eliminated. Other recreational uses, such as camping and horseback riding would continue, but would be managed to reduce impacts to the environment. Camping would be restricted in environmentally sensitive areas such as riparian zones and during some seasons. The annual livestock grazing program would be discontinued, however some periodic grazing may occur to meet wildlife objectives. The Air Force survival training program would be phased out over 5 years.

With the publication of this notice, the public is encouraged to attend public open houses and/or submit written comments on draft CCP/EIS.

Two public open houses will be held as follows:

May 12, 1999, 5pm–8pm, Community Colleges of Spokane, Colville Center, 985 South Elm, Theater, Colville, Washington. (Presentation at 7:00 pm)

May 13, 1999, 5pm–8pm, Inland NW Wildlife Council Building, 6116 North Market St., Spokane, Washington. (Presentation at 7:00 pm)

The Service started the process of developing a management plan for Little Pend Oreille National Wildlife Refuge (Little Pend Oreille NWR) in 1995. Open houses and public meetings were held in 1995, 1996, 1997, and 1998. Previous notices have been published in the **Federal Register** (61 FR 65591, Dec. 13, 1996 and 63 FR 39884, July 24, 1998).

Persons and organizations involved in the scoping process have included: the U.S. Forest Service; U.S. Natural Resource Conservation Service; Washington Department of Fish and Wildlife; U.S. Air Force; Washington Department of Natural Resources; interested local tribes, members of conservation organizations; timber industry representatives; grazing permittees; recreational interest groups; inholders and neighboring landowners;

and other interested citizens. Comments and concerns received have been used to identify issues, prepare alternatives and identify a preferred alternative (Alternative E) for the draft CCP/EIS.

All comments received from individuals on Environmental Assessments and Environmental Impact Statements become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations [40CFR 1506.6(f)], and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, the National Wildlife Refuge System Improvement Act of 1997, and Service policies and procedures for compliance with those regulations.

We estimate that the Final CCP/Environmental Impact Statement will be available in November, 1999.

Dated: April 28, 1999.

Tom Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–11240 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BW–110–1830–00 24 1A]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

The proposed collection of information listed below has been sent to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* On June 16, 1998, BLM published a notice in the **Federal Register** (63 FR 32893) requesting comment on this proposed collection. The comment period ended on August 17, 1998. BLM received no comments from the public in response to that notice. Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the BLM clearance officer at the telephone number listed below. OMB is required to respond to this request within 60 days but may respond after 30 days. For maximum consideration of your comments, please submit your comments and suggestions on the information requirements in this collection within 30 days directly to the Office of Management and Budget, Interior Desk Officer (1004–NEW), Office of Information and Regulatory Affairs, Washington, D.C. 20503, telephone (202) 395–7340. Please provide a copy of your comments to the Bureau Clearance Officer (W0–630), 1849 C St., N.W., Mail Stop 401 LS, Washington, D.C. 20240.

Nature of Comments

We specifically request your comments on the following:

(1) Whether the collection of information is necessary for the proper functioning of the Bureau of Land Management, including whether the information will have practical utility;

(2) The accuracy of BLM's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used;

(3) The quality, utility and clarity of the information to be collected; and

(4) How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

Title: Taxpayer Identification/Social Security Number Form.

OMB Control Number: 1004 _____.

Abstract: The BLM proposes to require the social security or taxpayer identification numbers of all entities doing business with it. This information is required by the Debt Collection Improvement Act of 1996, 31 U.S.C. 7701, which gives the Department of the Treasury new powers to collect delinquent payments from individuals and entities that are more than 180 days late in paying the monies owed to the federal government. BLM will initially collect the information on a form and later on the automated Collection and Billing System.

Bureau Form Number: 1372–6.

Frequency: Once.

Description of Respondents: Respondents are those entities who do business with BLM: lessees, licensees, permittees, and contract holders. Individuals who pay recreation fees will not be affected.

Annual responses: 120,000 the first year and 5,000 thereafter.

Annual burden hours: 20,000 the first year and 83 thereafter.

Collection clearance officer: Carole Smith, (202) 452–0367.

Dated: April 26, 1999.

Carole, J. Smith,

Bureau of Land Management, Information Clearance Officer.

[FR Doc. 99–11199 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–01; TXNM 96122]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 97–451, a petition for reinstatement of Oil and Gas Lease TXNM 96122, for lands in Montgomery County, Texas, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 1998, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre and 16⅔ percent, respectively. The lessee has paid the required $500.00 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The lessee has met all the requirements for reinstatement of the lease as set out in Section 31(d) and (e) of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 1998, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT:

Angela Trujillo, BLM, New Mexico State Office, (505) 438–7592.

Dated: April 27, 1999.

Angela Trujillo,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 99–11262 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–950–1420–00–P]

Filing of Plats of Survey; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

The plats of the following described lands were officially filed in the Wyoming State Office, Bureau of Land Management, Cheyenne, Wyoming, effective 10:00 a.m., April 21, 1999.

The plat representing the dependent resurvey of the Eighth Guide Meridian West, through Township 40 North, between Ranges 64 and 65 West, the Tenth Standard Parellel North, through Range 64 West, the South and East Boundaries and the subdivisional lines, T. 40 N., R. 64 W., Sixth Principal Meridian, Wyoming, Group No. 597, was accepted March 1, 1999.

The plat representing the dependent resurvey of the Eighth Guide Meridian West, through Township 62 North, between Ranges 64 and 65 West, the South and East Boundaries and the subdivisional lines, T. 42 N., R. 64 W., Sixth Principal Meridian, Wyoming, Group No. 608, was accepted March 1, 1999.

The plat representing the dependent resurvey of a portion of the Thirteenth Standard Parallel North, through Range 93 West, and a portion of the West Boundary, and the subdivision of section 6 and the metes and bounds surveys of parcels 9A and 9B, section 6, T. 52 N., R. 93 W., Sixth Principal Meridian, Wyoming, Group No. 639, was accepted March 1, 1999.

The plat representing the dependent resurvey of a portion of the Fourteenth Guide Meridian West, through Township 27 North, between Ranges 112 and 113 West, the South, East and North Boundaries and the subdivisional lines, T. 27 N., R. 112 W., Sixth Principal Meridian, Wyoming, Group No. 606, was accepted March 1, 1999.

The plat representing the dependent resurvey of the subdivisional lines, T. 47 N., R. 75 W., Sixth Principal Meridian, Wyoming, Group No. 620, was accepted March 23, 1999.

The plat representing the dependent resurvey of the Sixth Standard Parellel North, through Range 110 West, the East and North Boundaries and the subdivisional lines, T. 25 N., R. 110 W., Sixth Principal Meridian, Wyoming, Group No. 621, was accepted March 23, 1999.

The supplemental plat showing Lot 1, Tract 70, in Townships 52 and 53 North, Range 101 West, is based on the plats approved January 5, 1907, and June 13, 1914. Lot 1 is based on an aliquot part subdivision (SE¼SE¼) of original section 34, Township 53 North, Range 101 West, now designated as Tract 70, Tps. 52 and 53 N., R. 101 W., Sixth Principal Meridian, Wyoming, was accepted April 20, 1999.

All inquiries concerning the survey of the above described lands should be sent to the Chief, Cadastral Survey, Wyoming State Office, Bureau of Land Management, P. O. Box 1828, 5353 Yellowstone Road, Cheyenne, Wyoming 82003.

Dated: April 26, 1999.

John P. Lee,

Chief Cadastral Survey Group.

[FR Doc. 99–11263 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Environmental Assessment for Big Cypress National Preserve, FL

AGENCY: Big Cypress National Preserve, Florida, National Park Service.

ACTION: Notice of Availability of Environmental assessment.

SUMMARY: In accordance with the National Environmental Policy Act, CFR § 1501.3 of Title 40, the Big Cypress National Preserve, a unit of the National Park System, has completed a "Draft Environmental Assessment" regarding the continued operation of commercial airboat tours over lands and waters in the vicinity of Everglades City, Florida. These commercial airboat tours have been provided for a fee to the public over lands that were previously in private ownership. On December 18, 1996, as a result of a land exchange, the Preserve assumed management responsibility for the lands upon which these tours take place. The Preserve proposes to allow the tours to continue under limits and controls. The draft environmental assessment has been prepared to document the environmental consequences of continuing the activity.

Persons wishing to receive a copy of the Assessment may do so by contacting the Preserve at the following location: Superintendent, Big Cypress National Preserve, HCR 61, Box 110, Ochopee, FL 43141, Telephone (941) 695–2000, extension 310.

DATES: Written comments on the Draft Environmental Assessment will be accepted by the Superintendent for a period of 30 days from the date of this notice and will become part of the official record.

FOR FURTHER INFORMATION CONTACT: The Superintendent at the above address.

Dated: April 28, 1999.

W. Thomas Brown,

Acting Regional Director Southeast Region.

[FR Doc. 99–11203, Filed 5–4–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Telecommunications Facilities; Construction and Operation; Grand Teton National Park, WY

AGENCY: Teton Grand National Park, DOI.

ACTION: Public Notice.

SUMMARY: Public notice is hereby given that Grand Teton National Park proposes to consider the initial application made by Union Telephone Company to install a wireless communication facility on Steamboat Mountain, within the boundaries of J.D. Rockefeller Parkway.

EFFECTIVE DATE: Comments will be accepted on or before June 4, 1999.

ADDRESSES: Interested parties should contact National Park Service, Superintendent's Office, Grand Teton National Park, Drawer 170, Moose, WY 83012. To obtain a copy of the initial application, telephone (307) 739–3428. The cost for each copy of the initial application made is $50. Checks should be payable to the National Park Service and sent to the above address.

SUPPLEMENTARY INFORMATION: The initial application made by Union Telephone Company requests that a cellular site be constructed at N. latitude 44–3–5, W. longitude 110–41–50, in J.D. Rockefeller Parkway. The Superintendent will consider and evaluate all comments received as a result of this public notice before authorizing Union to proceed beyond the initial application phase of the project review and permitting process.

Dated: April 28, 1999.

Jack Neckels,

Superintendent, Grand Teton National Park.

[FR Doc. 99–11202 Filed 5–4–99; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–208 (Review)]

Barbed Wire and Barbless Wire Strand From Argentina

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines,[2] pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty order on barbed wire & barbless wire strand from Argentina would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted this review on December 2, 1998 (63 FR 66563) and determined on March 5, 1999 that it would conduct an expedited review (64 FR 12351, March 12, 1999). The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 3, 1999. The views of the Commission are contained in USITC Publication 3187 (May 1999), entitled Barbed Wire & Barbless Wire Strand from Argentina: Investigation No. 731–TA–208 (Review).

Issued: April 29, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11279 Filed 5–4–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed Partial Consent Decree ("Decree") in *United States* v. *Alabama Electric Cooperative, et al.*, Civil Action No. 982474–GTV, was lodged on April 15, 1999, with the United States District Court for the District of Kansas.

The complaint filed in the above-referenced matter alleges that Settling Defendants Consolidated Edison Company of New York, Inc.; El Paso Electric Company; High Voltage Maintenance Corporation; Jersey Central Power & Light Company d/b/a GPU Energy; MidAmerican Energy Company on behalf of itself and as successor to Iowa Power and Light Company, Midwest Power Systems, Inc. and Sherrard Power System, Inc.; SCA Chemical Services, Inc.; Sierra Pacific Power Company; and UtiliCorp United, Inc. as successor to Missouri Public Service and Westplains Energy (d/b/a Centel Western Power and Southern Colorado Power), are jointly and severally liable for the United States' response costs at the Osage Metals Superfund Site ("Site") in Kansas City, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Site was the location of a metals salvage and reclamation facility between 1948 and 1993. EPA sampling at the Site in 1994 showed high levels of lead and polychlorinated biphenyls, which are hazardous substances within the meaning of CERCLA, and the United States incurred response costs responding to the release or threat of release of these substances at the Site. The Site is now cleaned to industrial levels and is the location of a working warehouse. The United States anticipates no future response actions at the Site.

Under the proposed Decree, Settling Defendants shall pay the United States $211,000.00 plus interest toward the United States' approximately $1.12 million in unreimbursed past costs at the Site. The Settling Defendants also covenant not to sue any *de micromis* parties, or any *de minimis* parties that have settled or do settle with the United States. In exchange, the United States gives Settling Defendants a covenant not to sue and contribution protection for past response costs and future enforcement costs at the Site. Thirteen federal agencies, who were not named as defendants in this action, are also resolving their potential liability in the proposed Decree. Under the proposed Decree, the settling federal agencies shall pay the United States $633,864. The settling federal agencies also covenant not to sue any *de micromis* parties, or any *de minimis* parties that have settled or do settle with the United States. In exchange, the United States provides the settling federal agencies the releases of liability.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20430, and should refer to *United States* v. *Alabama Electric Cooperative, et al*, DOJ Ref. #90–11–3–1617B.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7255; and at the Consent decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Library. In reque Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy of the Decree, *with all attachments*, please refer to the referenced case and enclose a check in the amount of $15.25 (25 cents per page reproduction costs), payable to the Consent Decree sting a copy of the Decree without the attachments, please enclose a check in the amount of $9.50.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11265 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed Partial Consent Decree ("Decree") in *United States* v. *Alabama Electric Cooperative, et al*, Civil Action No. 982474–GTV, was lodged on April 15, 1999, with the United States District Court for the District of Kansas.

The complaint filed in the above-referenced matter alleges that Settling Defendant Transformer Service, Inc. ("TSI") and the 123 other named defendants are jointly and severally liable for the United States' response costs at the Osage Metals Superfund Site ("Site") in Kansas City, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Bragg, Commissioner Crawford, and Commissioner Askey dissenting.

The Site was the location of a metals salvage and reclamation facility between 1948 and 1993. EPA sampling at the Site in 1994 showed high levels of lead and polychlorinated biphenyls, which are hazardous substances within the meaning of CERCLA, and the United States incurred response costs responding to the release or threat of release of these hazardous substances at the Site. The Site is now cleaned to industrial levels and is the location of a working warehouse. The United States anticipates no future response actions at the Site.

Under the proposed Decree, Settling Defendant TSI shall pay the United States $4,493.00 plus interest toward the United States' approximately $1.12 million in unreimbursed past costs at the Site. TSI also covenants not to sue any *de micromis* parties, or any *de minimis* parties that have settled or do settle with the United States. In exchange, the United States gives TSI a covenant not to sue and contribution protection for past response costs and certain future enforcement costs at the Site. The United States' covenants are contingent upon TSI's certification that it has provided the United States with a full and accurate statement of its assets and liabilities. If TSI has hidden assets that it could have used to pay response costs. the United States' covenant not to sue is void.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to the *United States* v. *Alabama Electric Cooperative, et al*, DOJ Ref.#90–11–3–1617B.

The proposed consent decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7255; and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 20005. In requesting a copy of the Decree, with all attachments, please refer to the referenced case and enclose a check in the amount of $13.50 (25 cents per page reproduction costs), payable to the Consent Decree Library. In requesting a copy of the Decree without the attachments, please enclose a check in the amount of $8.00.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11266 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Clean Water Act and the Rivers and Harbors Act

Under 28 CFR 50.7, notice is hereby given that on April 23, 1999, three proposed Consent Decrees in *United States* v. *The Sanitary District of Hammond, et al.*, Civil Action No. 2:93 CV 225 JM, were lodged with the United States District Court for the Northern District of Indiana.

The United States and the State of Indiana asserted claims in this case under the Clean Water Act, 33 U.S.C. 1251 *et seq.*, and the Rivers and Harbors Act of 1899, 33 U.S.C. 403 and 407, against the Sanitary District of Hammond ("HSD"), the City of Hammond, Indiana (the "City"), the Town of Munster, Indiana (the "Town"), and several other defendants that send wastewater to HSD's wastewater treatment plant. The case was resolved as to the defendants other than HSD, the City, and the Town by Consent Decrees entered by the Court in 1995. The settlements lodged today, if entered, will fully resolve this action against all of the remaining defendants.

The proposed HSD Consent Decree includes injunctive relief to redress HSD's effluent limit violations, unpermitted discharges, combined sewer overflow violations, noncompliance with closure requirements regarding sludge lagoons at the HSD treatment plant, and inflow problems that interfere with HSD's treatment processes. In addition, HSD will play $2.1 million toward a fund established under the prior settlements for remediation of contaminated sediments in the Grand Calumet River and $225,000 in civil penalties to be split equally by the United States and the State of Indiana.

The proposed Consent Decrees with the City and the Town require them to take action on any further resolutions adopted by HSD modifying user fees or pretreatment requirements within set time periods, redressing delays that have hampered HSD's ability to implement improvements in its operations. In addition, the City and Town will implement, in conjunction with HSD, a program to eliminate inflow to HSD's collection system from residential down spouts, remedying a major source of inflow to the system. Finally, the City and Town settlements require these defendants to submit to the U.S. Environmental Protection Agency and the Indiana Department of Environmental Management a report specifically identifying those portions of the HSD sewerage collection system that each owns or operates.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Sanitary District of Hammond, et al.*, D.J. Ref. 90–5–1–1–3308A.

The Consent Decrees may be examined at the Office of the United States Attorney, Northern District of Indiana, 1001 Main Street, Suite A, Dyer, Indiana 46311, at U.S. EPA Region 5, 77 West Jackson Blvd., Chicago, Illinois 60604, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. Copies of the Decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting copies, please enclose a check in the amount of $22.00 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11268 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation, and Liability Act

Notice is hereby given that on April 21, 1999 a proposed Consent Decree (The "decree") in *United States* v. *Montana Power Company*, Civil Action No. CV 99–28–BUDWM, was lodged with the United States District Court for the District of Montana.

In this action the United States sought to recover EPA's past costs incurred in connection with a removal action in the Butte Priority Soils Operable Unit ("BPSOU") which is part of the larger Silver Bow Creek/Butte Area NPL Site in Montana. Montana Power Company

(MPC) owns 30 acres of land which are located in the BPSOU. The proposed decree is a cash-out of MPC's liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a), and settles potential claims under CERCLA § 106, 42 U.S.C. 9606 and Section 7003 of RCRA, 42 U.S.C. 6973. Under the terms of the proposed decree, MPC will pay the sum of $100,000 to the EPA Hazardous Substances Superfund.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the consent decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Montana Power Company,* D.J. Ref. 90–11–3–1734. Commuters may request an opportunity for a public meeting in the affected area, in accordance with Section 7003 of RCRA, 42 U.S.C. 6973(d).

The Consent Decree may be examined at the Office of the United States Attorney, District of Montana, 2929 Third Avenue North, #400, Billings, MT 59103, at U.S. EPA Region VIII, 999 18th Street, Suite 700, Denver, CO 80202, and at the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $26.75 payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11264 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Water Act 33 U.S.C. 1301, et seq.

Notice is hereby given that on April 23, 1999 a proposed Consent Decree ("Decree") in *United States* v. *Sinclair Oil Corporation,* Civil Action No. 98 CV 166B, was lodged with the United States District Court for the District of Wyoming. The United States filed this action pursuant to Sections 301 and 311 of the Clean Water Act, as amended by the Oil Pollution Act, 33 U.S.C. 1301 and 1321, as amended by the oil pollution Act, 33 U.S.C. 1301 and 1321, seeking injunctive relief and civil penalties for the Defendant's discharge of oil from a rupture in its underground pipeline into a navigable water of the United States in violation of the Clean Water Act and the Oil Pollution Act.

The proposed Consent Decree requires the Defendant to either: (i) Repair and replace all sections of its pipeline manufactured by the same company that manufactured the ruptured pipe; or (ii) perform an ultrasonic "smart" pig of these portions of the pipeline, and repair or replace those portions as indicated by the results of the smart pig. In addition, Sinclair will pay a civil penalty of $29,000, including interest, to the Oil Spill Liability Trust Fund. Finally, Sinclair will perform a Supplemental Environmental Project involving the replacement of 1000 feet of pipe from one of Sinclair's underground pipelines which passes under Casper Creek—a navigable water within a few miles of the spill site.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, D.C. 20530, and should refer to, *United States* v. *Sinclair Oil Corporation,* Civil Action No. 98 CV 166B, and D.J. Ref. #90–5–1–1–4424.

The Decree may be examined at the United States Department of Justice, Environment and Natural Resources Division, Denver Field Office, 999 -18th Street, North Tower Suite 945, Denver, Colorado,80202 and the U.S. EPA Region VIII, 999 18th Street, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington D.C. 20005, (202) 624–0892. A copy of the Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, D.C. 2005. In requesting a copy, please enclose a check in the amount of $10 for the Decree (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resource Division.

[FR Doc. 99–11267 Filed 5–4–99; 8:45 am]

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DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 1:98CV02836]

Public Comments and Response on Proposed Final Judgment, United States v. Pearson plc, Pearson Inc. and Viacom International Inc.

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)-(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Pearson, plc, Pearson Inc. and Viacom International Inc.,* Civil Action No. 1:98CV02836, filed in the United States District Court for the District of Columbia, together with the United States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Washington, DC 20530, telephone: (202) 514–2481, and at the Office of the Clerk of the United States District Court for the District of Columbia, United States Courthouse, Third Street and Constitution Avenue, NW, Washington, DC 20001. Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Civil Action No. 1:98CV02836
Judge: James Robertson
Filed: April 22, 1999

PLAINTIFF'S RESPONSE TO PUBLIC COMMENTS

Pursuant to the requirements of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h) (1997) ("Tunney Act") the United States hereby responds to the four public comments received regarding the proposed Final judgment in this case.

I. Background

On November 23, 1998, the United States filed the Complaint in this matter alleging that the acquisition by Pearson plc and its wholly owned subsidiary, Pearson Inc. (collectively "Pearson") of certain publishing businesses of Viacom International Inc. ("Viacom") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that Pearson and Viacom, two of the nation's largest publishers of textbooks and other educational materials, compete head-to-head in the development, marketing and sale of comprehensive elementary school science programs and in the development, marketing and sale of textbooks used in thirty-two college

courses. The Complaint also alleges that the defendants are two of only a few firms that compete in these markets and that they account for a significant share of all sales. Pearson's acquisition of Viacom's publishing businesses was therefore likely to reduce competition and to result in higher prices for these comprehensive science programs and for college textbooks and other educational materials in these courses.

Simultaneous with the filing of the Complaint, the United States filed a Final Judgment and Stipulation signed by all the parties allowing for entry of the Final Judgment following compliance with the Tunney Act. A Competitive Impact Statement ("CIS") was also filed with the Court and published in the **Federal Register**, along with the proposed Final Judgment, on December 21, 1998 (see 63 FR 70,422).

The proposed Final Judgment permits Pearson to acquire the publishing businesses from Viacom, which it did on November 27, 1998, but requires Pearson to divest itself of one of its two elementary school science textbook programs and fifty-five college textbooks serving thirty-two college course markets. On December 23, 1998, Pearson sold Viacom's elementary science program to Houghton Mifflin Company.

The sixty-day period for public comments expired on February 19, 1999. The United States has received four comments, copies of which are attached, from the following individuals: (1) Professor Gary Musser; (2) Professor Frederic Martini; (3) Mr. Clayton Jones; and (4) Professors Vogeli, Ginsburg and Greene. The United States has carefully considered the views expressed in these comments, but nothing in these comments has altered the United States' conclusion that the proposed Final Judgment is in the public interest. Once those comments and this Response are published in the **Federal Register**, the United States will have fully complied with the Tunney Act and will then file a motion for entry of the proposed Final Judgment.

II. Response to Public Comments

Two of the comments received by the United States were from college textbook authors who raised concerns about the divestitures required by the decree. Dr. Gary L. Musser, the co-author of a Prentice Hall textbook to be divested, wrote that he is concerned that the divestiture will have a disruptive and harmful effect on the sales of that book as well as on another of his textbooks that is not to be divested. Both books are in the process of revision and Dr. Musser believes that they benefit from being marketed together. He believes that current plans for revisions, plans to supplement his to-be-divested book with a CD/Web package, and the schedules for republication will be jeopardized if his book is sold to another publisher at this time. He urges the United States and the Court to consider revising the decree so as not to require divestiture of his book.

Dr. Frederic Martini, the author of five textbooks published by Prentice Hall, none of which is required to be divested under the Proposed Judgment, also raised concerns about the proposed divestitures. Dr. Martini believes that the acquisition is likely to have anticompetitive effects in numerous publishing markets, and believes that the divestitures will not go far enough to preserve competition and innovation and will negatively impact authors and the marketing, sale, and development of their textbooks. Specifically, Dr. Martini contends that competition among publishers—and, in particular between Pearson and Viacom—has resulted in product innovation and the development of "hi-tech" electronic educational materials that supplement college textbooks. He is concerned that the acquisition will lessen this product innovation and development because the competition between the Pearson and Viacom titles will be lost; he is also concerned that the acquisition will raise barriers to entry by small publishers and reduce opportunities for new textbook authors and new texts.[1]

Dr. Martini recommends revising the decree so that Pearson may retain all of the Viacom titles but must hold them separate from the rest of their operations., He would specifically prohibit the "merging of lists and the coalescing of related divisions, such as acquisitions, editorial, marketing, sales, and technology support for the imprint titles." He hopes that that would allow the two companies to "maintain their distinctive character" and continue to develop competitive technologies. He concedes, however, that this might limit Pearson's ability to maximize economies of scale.

The United States believes that the divestiture of all the designated titles is essential to preserve competition in the markets alleged in the Complaint. The goal of the Final Judgment is to replace the competition eliminated as a result of the acquisition with one or more new viable competitors that will be capable of being in the market over the long term. To accomplish that, the proposed Final Judgment contains numerous requirements to ensure that the acquirer or acquirers of these programs and textbook titles continue as viable and effective competitors. These include provisions requiring that the acquirer have the opportunity to employ certain personnel, and provisions requiring divestiture of all tangible and intangible assets that make up each of the products. The United States must also be satisfied that the acquiring parties have the ability and intention to publish and market the divested products as viable, ongoing businesses.

Although the United States recognizes that divestiture of these college textbooks may have some short-term effect on their development and marketing, the proposed decree includes provisions designed to minimize any disruption. First, the proposed Judgment requires prompt divestitures (within the later of five months after filing of the Judgment with the Court or ten days after the expiration of the 60-day comment period) to minimize the period of uncertainty and discontinuity of ownership of the divested titles. In addition,until divestiture is completed, the proposed Judgment requires the defendants to take steps to preserve the viability and competitiveness of those title; these include requirements to maintain funding, development, promotional advertising, marketing, editorial and merchandising support, and to maintain and increase sales. Moreover, the United States believes that, absent divestiture of the titles to a new publisher, the authors of these textbooks would face a far greater risk in the longer term that their texts and ancillary materials will not be developed, promoted and revised as effectively as they otherwise would have been because their new owner now also markets a good number of their most important competitors.

Dr. Martini's proposal that Pearson be allowed to retain all of the Viacom titles but more or less permanently be required to operate various divisions separately and be prevented from merging titles and imprints will not best preserve competition in the affected college textbook markets. Divisions owned, managed by and answerable to a single owner will not maximize competition with each other. A hold-separate agreement will not alter Pearson's financial incentive and ability to allocate funding and other resources

[1] Dr. Martini states that, for anatomy and physiology—one of the college textbook courses for which divestiture of texts is required—Pearson will account for fifty to sixty percent of all textbook sales after acquisition. Based on our investigation, which included review of sales data collected by an industry reporting service, we believe that, after the proposed divestiture Pearson makes, its share of this market will be no more than it was prior to its acquisition of Viacom's titles—somewhat less than fifty percent.

among the various textbooks (or textbook divisions) that it will own in a way to maximize company profits. It also likely would not alter Pearson's incentive and ability to raise prices on titles, or reduce provision of supplemental products and services, in those markets where it accounted for a large share of sales. Such a permanent hold-separate order would also be difficult to administer and likely impossible to enforce. The Court would be hard-pressed to determine whether Pearson was promoting certain titles as fully and effectively as it would absent ownership of the other competing titles. Finally, as Dr. Martini concedes, such an arrangement might limit Pearson's opportunities to maximize economies of scale and thus raise its costs, which could result in higher prices to consumers. For these reasons, courts have long and consistently recognized that maintenance of completely independent, separately owned competing entities is the effective remedy for mergers or acquisitions that violate the antitrust laws.

In another comment received by the United States, Clayton E. Jones, Chief Executive Officer of Jones and Bartlett, an educational publisher, raised concerns that the decree will not achieve its intended results because another large competitor is likely to purchase the divested products. He states that it is necessary to "take [the] decree one step further and allow some of the smaller players in the industry an opportunity to purchase these products" so that the decree will achieve its objective of enhancing competition in the industry.

The proposed Final Judgment is designed to ensure that the purchaser or purchasers of the divested products will be viable and effective competitors and does not exclude—or give preference to—any kind of publisher from consideration as a purchaser. A small publisher is certainly eligible to purchase the divested products so long as the United States is satisfied that it has the ability and intention to publish and market the divested products as viable, ongoing businesses. Moreover, the United States will not approve a proposed divestiture to a publisher that is already a substantial competitor of the program or title that it seeks to acquire. Thus, Mr. Jones need not be concerned that there will be a divestiture to a large competitor that will not preserve competition in the affected markets.

Finally, the United States received a comment from three college professors, Drs. Bruce R. Vogeli, Herbert Ginsburg of Columbia University and Carole Greenes of Boston University, who stated that, although they concurred with the proposed divestitures relating to elementary school science programs, the United States should have also concluded that the acquisition lessened competition in elementary school mathematics programs and sought a divestiture of one of these programs as well. They place particular emphasis on the value that they believe competition has had in the development of innovative mathematics textbooks and point to increased concentration among publishers in this area. They urge the Court to "require the plaintiff to revisit the proposed final settlement to show cause why relief similar to that provided for elementary school science not be required for elementary school mathematics as well."

The United States conducted a thorough investigation of the likely impact of Pearson's proposed acquisition of the Viacom publishing businesses on numerous possible markets, including the market for the development, marketing and sale of elementary school mathematics textbooks. The investigation included the review of thousands of documents, and information from numerous industry sources, including teachers, school administrators, authors, professors and publishers. Based on that investigation, the United States concluded that the acquisition would lessen competition in violation of Section 7 of the Clayton Act with respect to elementary school science programs, and the thirty-two college textbook markets alleged in the Complaint.

In essence, the authors of this comment ask the Court to require the United States to amend its Complaint to allege an additional violation of Section 7 of the Clayton Act and to seek additional relief, or, at least, to inquire into the government's investigation and require it to explain and justify its analysis and conclusions. Such judicial review of the government's determination of which conduct to challenge or which violations to allege in the Complaint is not contemplated by the Tunney Act. The government's decision not to challenge particular conduct based on the facts and law before it at a particular time, like any other decision not to prosecute, "involves a complicated balancing of a number of factors which are peculiarly within [the government's] expertise." *Heckler* v. *Chaney*, 470 U.S. 821, 831 (1985). As the United States Court of Appeals for the District of Columbia recently held, it is not the role of the Court in a Tunney Act proceeding to go beyond the Complaint "to evaluate claims that the government did not make and to inquire as to why they were not made." *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1459 (D.C. Cir. 1995). Last year, the United States Court of Appeals for the District of Columbia stated that courts, in making their public interest determination:

> must examine the decree in light of the violations charged in the complaint and should withhold approval only if any of the terms appear ambiguous, if the enforcement mechanism is inadequate, if third parties will be positively injured, or if the decree otherwise makes "a mockery of judicial power."

Massachusetts Sch. of Law at Andover, Inc. v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997), quoting *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1462 (D.C. Cir. 1995).

III. Conclusion

After careful consideration of these public comments, the United States has concluded that entry of the proposed Final Judgment will provide an effective and appropriate remedy for the antitrust violations alleged in the Complaint, and is therefore in the public interest. When those comments and this response are published in the **Federal Register**, the United States will move the Court to enter the proposed Final Judgment.

Dated: April 22, 1999.

Respectfully submitted,

John W. Poole (DC Bar #56944)
Joyce L. Bartoo (DC Bar #359264)
David C. Kully (DC Bar #448763)
Ahmed E. Taha,
Attorneys for the United States, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW., Suite 300, Washington, DC 20530, (202) 616–5943.

Attachment 1

To: Ms. M. J. Moltenbrey,
Chief Civil Taskforce, Anti-Trust Division, United States Department of Justice
Re: Forced sale of my book from Prentice-Hall

I am a co-author of two books currently published by Prentice-Hall—Mathematics for Elementary Teachers and Mathematics in Life, Society, and the World. A couple of months ago, I was notified by Prentice-Hall that the first book had to be sold to allow the purchase of Simon-Schuster by Pearson. I asked if I had any rights and was told that this was a ruling of the Department of Justice—that was it! I just found out that I do, in fact, have a chance to comment—perhaps to object and obtain a reversal in the ruling.

I understanding that there are anti-trust considerations in this case. However, there are also human and artistic considerations that you can consider. Let me share these with you.

1. We are currently in the revision process for both of my books. Prentice-Hall is

committed to publishing BOTH books and the books are scheduled for July/August publication dates so our adopters can have the most up-to-date books for their students this fall. Forcing the sale of either of these books will jeopardize this schedule. Forcing the sale of these books as a package may work to our disadvantage since there is no guarantee that both books will be published by another publisher.

2. Although my books have separate markets, there is overlap in the material and instructors who use one of my books are likely to want to use the other. When marketing, Prentice-Hall is motivated to make this connection. If my books are split, I and my co-authors will suffer because this connection will be less obvious.

3. Prentice-Hall is planning to add a CD/Web package to my Mathematics for Elementary Teachers book. This will be a creative addition to the marketplace. However, there is no guarantee another publisher will pick up these extras. In this case, instructors and their students are the ones who will be disadvantaged.

4. Prentice-Hall and Addison-Wesley both have other competing books for elementary teachers that they can sell without causing a disruption as described in items 1 through 3 above.

By allowing my two books to stay with Prentice-Hall, authors, instructors, and students benefit. I hope that you, the Department of Justice, and the court can review the uniqueness of this situation and will work to provide some justice for individuals in this case.

Sincerely,

Gary L. Musser

Attachment 2

February 6, 1999.

To: M.J. Moltenbrey,
Chief, Civil Task Force, 325 Seventh Street, Suite 300, Washington, D.C. 20530.
Cc: John Poole
Joel J. Klein
Sen. Daniel Akaka
Rep. Patsy Mink

I am a textbook author whose texts are published by Prentice Hall. My first book contract was signed in 1981, and I have been writing either part time or full-time since then. I am a member of the Authors Guild, the National Writers Union, and the Text and Academic Authors Association. As college faculty, I am also a member of the National Association of Biology Teachers, the Society for College Science Teachers, the American Physiological Society, and the Human Anatomy and Physiology Society. I am therefore well acquainted with both the process of textbook authoring and publishing and the dynamics of our educational system from a faculty member's perspective. I am writing to express my concerns about the Final Judgement issued by the Department of Justice permitting the merger of Pearson Inc. and the educational publishing units of Viacom. During the evaluation period I provided information to Mr. Poole and his associates at the DoJ, and I feel that the Judgement does not adequately address several of the problematic aspects of this merger.

The Final Judgement as stipulated will not in fact preserve competition and innovation in the market. Innovation in the textbook today is occurring most rapidly in the hi-tech electronic areas. Examples include companion web-sites, course management software, distance learning systems, computer-based testing programs, interactive tutorials and simulations, and presentational systems and software. With very few exceptions, all of these products are *given away* free when the corresponding textbook is adopted. The development, upgrading, and maintenance of these products, which is very expensive, thus represents a continual drain on corporate profits. These expenditures can only be justified on the grounds that they will increase the market share of the associated textbook. In a market with many competitors, the associated costs are high enough that each publisher tends to have specialties. Thus with 6 competing publishers, each with viable texts, each would have a full range of supplements, but each would spend extra money on developing one particularly innovative product or approach different from (or better than) what was offered by the competition. These innovations would of course be focal points for sales and marketing presentations. Meanwhile, each company would be continually looking for cost-effectives ways to match or better the strengths of the competition.

When competitors A and B merge, the new company pools resources within their disciplines. Let me give you a specific example from the discipline where I publish (anatomy and physiology). Prentice Hall had what was generally recognized as the best web-site technology and the most innovative lecture presentation software available with their texts. Addison-Wesley/Longman had great physiology simulations available with their A&P texts. PH was actively working on physiology simulations that would be competitive (and out-do) the AWL offerings, while AWL was trying to improve their web-sites and their presentational software. But now under Pearson the web-site, presentational software, and simulation programs will be shared. This has three noteworthy effects on competitiveness:

1. Prentice Hall can abandon its efforts to develop unique simulations, and AWL can stop worrying about building a better web-site or developing new presentational software.

2. The combined companies are able to offer a great web-site, good presentational software, and great simulations with any of their texts. It therefore becomes even more difficult for other publishers to compete in this market. The stakes have now been raised—a publisher must face the combined threat of both the web-site, presentational software, and simulations, whereas before it need only compete with individual offerings. The costs are so high that small publishers are priced out of the market, and over time many large publishers have been forced to cut lists to devote money and personnel to supporting an ever-smaller number of texts. The Department of Justice could of course say that this sort of thing is a benefit to consumers, since an instructor can order a good text and get a great web-site, good presentational software, and terrific simulations. But that is precisely the argument that Microsoft is using to oppose the DoJ's antitrust suit. If the DoJ feels that it is wrong to give that kind of market power to a software company, why permit it in the textbook market?

3. The authors of the individual texts published by either company lose their distinctiveness and their marketing momentum. This drastically reduces competition between PH and AWL titles. It doesn't matter to Pearson whether a particular sale is credited to PH or AWL, as long as the sale stays "in the family." But it matters a great deal to the individual authors involved. I find it infuriating that projects that I have worked on for years—including the related software and web-sites—should be turned over to my competition. My texts were often the "test cases" for developing these products. Once the bugs were ironed out, the product was used as a template that could benefit other PH texts. All of the time and effort that I expended in evaluating and enhancing these products is essentially lost when they are handed to AWL. Furthermore, I worked with the programmers for over a year developing a CD–ROM interactive version of my text. Now that shell will also be handed over to my competition. In essence, my ability to continue to be innovative and to increase the market share of my texts has been severely compromised. Further, my interest in "pushing the envelope" of technology is greatly diminished since whatever I do will be immediately gifted to a major competitor.

Even after the divestiture (see comments below) PH and AWL will control 50–60% of the A&P market; my text accounts for about 25%. Prior to the merger I was competing aggressively for 75% of the market, and gaining market share rapidly against AWL. Now Pearson will compete for 40–50% of the market, with minimal (or managed) competition between my text and AWL titles. This is certainly not a demonstration of "increased competitiveness."

Concerning the divestiture of titles. I do not believe that eliminating the books specified will materially affect the scoper or competitive force of the combined companies. The DoJ has identified 55 titles with annual gross revenues of roughly $35 million from a combined list of approximately 3500 titles and annual gross revenues of $2.4 billion. The titles *per se* are much less important than the leverage that the combined corporation can bring to bear, and this applies even to markets that they do not dominate at present. However, the divestiture will have a serious negative impact on the authors involved. The books will be in turmoil for the next edition cycle at least—handing a textbook to another publisher is not like giving another retailer a toaster. The books are transferred without many of the factors that made them successful. Obvious examples of important factors are the editorial teams, marketing specialists, and sales representatives familiar with the product, but less obvious and equally important factors include the programming teams that developed the

supplements packages, web-sites. CD–ROMs, and so forth. Without exception the titles transferred to another publisher will lose market share; this is not due to any fault of Pearson's, it is just a fact of life. A publisher entering these new markets will have no track record with the faculty, and relationship sales are important in this industry. Further, their sales reps will be uncertain as to key features and competitive issues. Of course, by default most of the market share lost by these titles will be captured by Pearson, and this circumvents the stated goal of the divestiture.

As faculty members, textbook authors are the only people with direct experience in all areas affected by this merger—textbook writing production, marketing, and sales, as well as market dynamics, faculty concerns, and the educational system in general. It is therefore disconcerting that the issues raised by the Authors Guild, the Text and Academic Authors Association, and the National Writers Union—all of whom strongly opposed this merger—have been largely ignored. The combination of these companies will further reduce the opportunities for new authors, new texts, and new publishers. Small publishers are already unable to compete in markets where the cost of entry is so very high. Ten years ago an aspiring author in the biological sciences could approach 8 major publishers with a manuscript idea. Now that author could approach 2 or 3 (depending on the topic), and the odds are that each already has one or more titles in that market. Along with the decrease in opportunity comes a reduction in leverage and bargaining power. It has become increasingly difficult to negotiate favorable contract terms—after all, where else are you going to go?

For all of the above reasons I would like to see the Department of Justice review and revise its Judgement regarding this merger. It is probably logistically impossible to reverse the decision, as the companies are well into their integration phase. However, I would suggest that you consider adding provisions that would permit the amalgamation of "backroom" operations, such as inventory, accounting, purchasing, etc., but require the continued maintenance of separate imprints and competition in the market. This would involve specifically prohibiting the merging of lists and the coalescing of related divisions, such as acquisitions, editorial, marketing, sales, and technology support for the imprint titles.

This would not be particularly popular with Pearson, as it would limit their ability to maximize economies of scale, but it would be in keeping with Pearson's assurances to the FTC prior to merger approval, which indicated that the companies would remain separate and competing. It is worth noting that the consolidation process is already well underway. Technology transfers have begun as noted above, and reorganization of the sales staff and extensive merging of book lists have been scheduled for the first half of 1999.

If the DoJ's goals are the maintenance of competition and innovation, PH and AWL texts must compete with one another as well as with texts published by other companies. The two companies must therefore maintain their distinctive character, and they should continue to develop competitive technologies for web-sites, presentations, and simulations. If that were stipulated, I am not at all convinced that a divestiture list is needed, and the authors involved could be spared a lot of personal and financial distress.

If you have any questions, please feel free to contact me. With best wishes, I remain.

Sincerely,

Frederic Martini,

martini@maui.net

Attachment 3

December 28, 1998.

Ms. M.J. Moltenbrey,

Chief, Civil Task Force, U.S. Department of Justice, 325 Seventh Street, suite 300, Washington, DC 20530.

Via Fax #202–514–7300

Re: Pearson's purchase of Viacom Publishing Businesses

Dear Ms. Moltenbrey: I am writing to voice strong opposition to the proposed settlement decree dated 11/23/98.

As one of the few remaining small players in the educational publishing world, we applaud the intent of the decree, but we have serious concerns that the decree will not achieve the intended results. It is likely that the divested products will ultimately land in the hands of one of the other giants in our industry and thus the impact of your decree will be negligible.

Your press release quotes Joel I. Klein, Assistant Attorney General of the Department of Justice Antitrust Division, "Education is an important national priority, and competition is essential to ensure that our students have the best available educational materials." If you truly believe this statement, then you must take your decree one step further and allow some of the smaller players in the industry an opportunity to purchase these products. Simply allowing Pearson to sell these textbooks for an estimated $40 million to one of their next largest competitors is a serious waste of everyone's time and will not fulfill your stated objective of enhancing competition in the industry.

I would welcome an opportunity to discuss this matter with you in greater detail. Thank you for your consideration.

Sincerely,

Clayton E. Jones,

Chief Executive Officer.

Attachment 4

January 19, 1999.

Mary Jean Moltenbrey,

Chief, Civil Task Force, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 300, Washington, DC 20530.

Dear Ms. Moltenbrey, Pursuant to the matter now before the United States District Court for the District of Columbia No. 1: 98–CV–02836 (Antitrust), we are writing to comment upon the proposed "Final Judgment" as indicated in Section V, *PROCEDURES AVAILABLE FOR MODIFICATION OF THE PROPOSED FINAL JUDGMENT* of the *COMPETITIVE IMPACT STATEMENT* filed in the District Court by the plaintiff's attorney, John W. Poole (Senior Trial Attorney, U.S. Department of Justice). While we concur with the consent decree's resolution of the deleterious effects upon the elementary school science textbook market of the proposed acquisition of certain Viacom International, Inc. publishing businesses by Pearson, Inc., the decree does not address similar and potentially more damaging effects upon elementary school mathematics in the United States.

As the court document states "absent a showing of corrupt failure of government to discharge its duty" the court can at most determine" "whether the settlement is within the reaches of the public interest". It is our contention that, insofar as the mathematical education of American children is in the public interest, the absence of a competitive impact statement regarding the elementary school mathematics textbook market renders the proposed settlement *not* "within the reaches of public interest". The importance of this oversight is especially critical due to the fact that the national mathematics market is three times as large as that of science.

A competitive impact statement for the elementary school mathematics textbook market would be remarkably symmetric to that provided to the Court for elementary school science (Section B–1–a, b). The following is an example of what the Justice Department should have stipulated:

Basal Elementary School Mathematics Program Market

A. Description of the Market

Most elementary schools throughout the United States teach mathematics through comprehensive mathematics programs known as "basal elementary school mathematics programs", which provide organization and structure as well as guidance and support in how to teach the subject. Student textbooks and teacher's editions of the textbooks are the core of most basal programs, but most also include other important educational materials and services called "ancillary" materials consisting of student workbooks and notebooks, audio-visual aids such as charts and videotapes, and materials for mathematics exercises and activities. Basal elementary mathematics programs also often include services such as teacher training sessions.

School districts or individual schools desiring to purchase basal elementary school mathematics programs would not turn to any alternative product in sufficient numbers to defeat a small but significant increase in the price of these programs or a reduction in the value of ancillary materials and services provided with them. For example, schools would not substitute any of the few nontraditional, alternative mathematics programs in sufficient numbers to defeat a small but significant price increase in basal elementary school mathematics programs.

B. Harm to Competition as a Consequence of the Merger

Pearson and Viacom are *two* of only *five* large publishers of basis elementary mathematics programs. They consistently have led the market, capturing a combined

share of over fifty percent of new sales over the last six years. Pearson's program is a close copy of Viacom's program but, at present, has a significantly smaller market share. Pearson and Viacom also compete to maintain and improve programs that were intended to be offered to sale throughout the United States beginning in 1999.

Pearson and Viacom's aggressive competition has led to lower prices, more and better ancillary materials and services, and improvement of product quality. The proposed acquisition would eliminate this competition and would further concentrate an already highly concentrated market.

Successful entry into the basal elementary school mathematics program market is difficult, time consuming, and costly. A publisher would need to assemble editorial, sales and training staffs to develop, test, market and provide ongoing support for the new program and would need to overcome schools' reluctance to purchase an elementary school mathematics program from firms lacking an established reputation as a experienced and reliable mathematics publisher. This complaint alleges that the transaction would likely have the following effects:

a. actual and future competition between Pearson and Viacom in the elementary school mathematics textbook market would be eliminated;

b. competition generally in the market for basal elementary school mathematics programs would be substantially lessened since it is likely that Pearson would not continue the development of new products already in progress at Silver Burdett Ginn;

c. prices for basal elementary school mathematics programs would likely increase or the ancillary materials and services would likely decline; and

d. competition in the development and improvement of basal elementary school programs would likely be substantially lessened as a result of the consolidation of Addison Wesley, Scott Foresman and Silver Burdett Ginn—all acquired or to be acquired by Pearson.

Item (d) above addresses the "development and improvement of basic elementary school mathematics programs" and is of special significance. Prior to Pearson's acquisition and merger of Scott Foresman and Addison Wesley Longmans, both of these distinguished publishing houses competed actively and independently with Silver Burdett Ginn and three other large firms in developing innovative mathematics textbooks for American elementary schools. As a result of Pearson's merger of Scott Foresman and Addison Wesley Longmans, six major innovators were reduced immediately to five. If the Pearson acquisition of Viacom Inc's Silver Burdett Ginn division is permitted to proceed without restriction, the original six innovators will have been reduced to four in less than four years—a 33% market contraction! Together the three independent houses that will have been merged under the Pearson, Inc. label have held elementary school children and teachers—to permit Pearson, Inc. to eliminate the most viable competition in the elementary school textbook market through acquisition and suppression?

We respectfully urge that the District Court require the plaintiff to revisit the proposed final settlement to show cause why relief similar to that provided for elementary school science not be required for elementary school mathematics as well.

Respectfully submitted:

Bruce R. Vogeli,

Clifford Brewster Upton Professor, Program in Mathematics.

Herbert Ginsburg,

Jacob Schiff Professor, Program in Psychology.

Carole Greenes,

Professor of Mathematics and Associate Dean, Boston University.

Certificate of Service

This certifies that on April 22, 1999, I caused copies of the foregoing Response to Public Comments to be served as indicated upon the parties to this action and courtesy copies to be served as indicated upon each commenter:

By hand:

Robert S. Schlossberg, Esquire, Morgan, Lewis & Bockius, 1800 M Street, NW, Washington, DC 20036–5689, Counsel for Pearson plc and Pearson, Inc.

By first class certified mail:

Wayne D. Collins, Equire, Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022, Counsel for Viacom International Inc.

Mr. Clayton E. Jones, Jones and Bartlett, 40 Tall Pine Drive, Sudbury, MA 01776

Professor Gary L. Musser, 2236 Airlands Street, Las Vegas, NV 89134

Professors Vogeli Ginsburg and Greenes, c/o Professor Bruce R. Vogeli, Teachers College, Columbia University, Box 210, West 120th Street, New York, NY 10027–6696

Professor Federic Martini, 5071 Hana Highway, Haiku, HI 96708

John W. Poole.

[FR Doc. 99–11269 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

FEDERAL TRADE COMMISSION

Notice of Agreement entered into by the Government of the United States of America and the Government of Australia on Mutual Antitrust Enforcement Assistance

AGENCIES: Department of Justice and Federal Trade Commission.

ACTION: Notice.

SUMMARY: Pursuant to section 7(c) of the International Antitrust Enforcement Assistance Act (IAEAA), 15 U.S.C. 6206(c), the Attorney General, with the concurrence of the Federal Trade Commission, hereby publishes the text of an Agreement entered into on April 27, 1999, by the Government of the United States of America and the Government of Australia on Mutual Antitrust Enforcement Assistance. The Agreement is the first mutual antitrust enforcement assistance agreement entered into pursuant to the IAEAA, and will enter into force in accordance with the terms of Article XIII of the Agreement.

FOR FURTHER INFORMATION: Persons wishing to learn more about the Agreement should contact Mr. Charles S. Stark, Chief, Foreign Commerce Section, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, NW, Washington, DC 20530, 202–514–2464, or Mr. Randolph Tritell, Assistant Director, International Antitrust, Bureau of Competition, Federal Trade Commission, Washington, DC 20580, 202–326–3051.

Dated: April 28, 1999.

Charles S. Stark,

Chief, Foreign Commerce Section, Antitrust Division, Department of Justice.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF AUSTRALIA ON MUTUAL ANTITRUST ENFORCEMENT ASSISTANCE

The Government of the United States of America and the Government of Australia (individually a "Party" or collectively the "Parties"), desiring to improve the effectiveness of the enforcement of the antitrust laws of both countries through cooperation and mutual legal assistance on a reciprocal basis, hereby agree as follows:

Article I—Definitions

Antitrust Authority—refers, in the case of the United States, to the United States Department of Justice or the United States Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission.

Antitrust Evidence—refers to information, testimony, statements, documents or copies thereof, or other things that are obtained, in anticipation of, or during the course of, an investigation or proceeding under the Parties' respective antitrust laws, or pursuant to the Parties' Mutual Assistance Legislation.

Antitrust Laws—refers, in the case of the United States, to the laws

enumerated in subsection (a) of the first section of the Clayton Act, 15 U.S.C. 12(a), and to Section 5 of the Federal Trade Commission Act, 15 U.S.C. 45, to the extent that such Section 5 applies to unfair methods of competition. In the case of Australia, the term refers to Part IV of the Trade Practices Act 1974; other provisions of that Act except Part X in so far as they relate to Part IV; Regulations made under that Act in so far as they relate to Part IV, except Regulations to the extent that they relate to Part X; and the Competition Code of the Australian States and Territories.

Central Authority—refers, in the case of the United States, to the Attorney General (or a person designated by the Attorney General), in consultation with the U.S. Federal Trade Commission. In the case of Australia, the term refers to the Australian Competition and Consumer Commission, in consultation with the Attorney General's Department.

Executing Authority—refers, in the case of the United States, to the Antitrust Authority designated to execute a particular request on behalf of a Party. In the case of Australia, the term includes the Australian Competition and Consumer Commission and the Attorney General's Department.

Mutual Assistance Legislation—refers, in the case of the United States, to the International Antitrust Enforcement Assistance Act of 1994, 15 U.S.C. 6201–6212, Public Law 103–438, 108 Stat. 4597. In the case of Australia, the term refers to the Mutual Assistance in Business Regulation Act 1992 and the Mutual Assistance in Criminal Matters Act 1987, and Regulations made pursuant to those Acts.

Person or Persons—refers to any natural person or legal entity, including corporations, unincorporated associations, partnerships, or bodies corporate existing under or authorized by the laws of either the United States, its States, or its Territories, the laws of Australia, its States, or its Territories, or the laws of other sovereign states.

Request—refers to a request for assistance under this Agreement.

Requested Party—refers to the Party from which assistance is sought under this Agreement, or which has provided such assistance.

Requesting Party—refers to the Party seeking or receiving assistance under this Agreement.

Article II—Object and Scope of Assistance

A. The Parties intend to assist one another and to cooperate on a reciprocal basis in providing or obtaining antitrust evidence that may assist in determining whether a person has violated, or is about to violate, their respective antitrust laws, or in facilitating the administration or enforcement of such antitrust laws.

B. Each Party's Antitrust Authorities shall, to the extent compatible with that Party's laws, enforcement policies, and other important interests, inform the other Party's Antitrust Authorities about activities that appear to be anticompetitive and that may be relevant to, or may warrant, enforcement activity by the other Party's Antitrust Authorities.

C. Each Party's Antitrust Authorities shall, to the extent compatible with that Party's laws, enforcement policies, and other important interests, inform the other Party's Antitrust Authorities about investigative or enforcement activities taken pursuant to assistance provided under this Agreement that may affect the important interests of the other Party.

D. Nothing in this Agreement shall require the Parties or their respective Antitrust Authorities to take any action inconsistent with their respective Mutual Assistance Legislation.

E. Assistance contemplated by this Agreement includes but is not limited to:

1. Disclosing, providing, exchanging, or discussing antitrust evidence in the possession of an Antitrust Authority;

2. Obtaining antitrust evidence at the request of an Antitrust Authority of the other Party, including

(a) Taking the testimony or statements of persons or otherwise obtaining information from persons,

(b) Obtaining documents, records, or other forms of documentary evidence,

(c) Locating or identifying persons or things, and

(d) Executing searches and seizures, and disclosing, providing, exchanging, or discussing such evidence; and

3. Providing copies of publicly available records, including documents or information in any form, in the possession of government departments and agencies of the national government of the Requested Party.

F. Assistance may be provided whether or not the conduct underlying a request would constitute a violation of the antitrust laws of the Requested Party.

G. Nothing in this Agreement shall prevent a Party from seeking assistance from or providing assistance to the other pursuant to other agreements, treaties, arrangements, or practices, including the Agreement Between the Government of Australia and the Government of the United States of America Relating to Cooperation on Antitrust Matters of June 29, 1982, either in place of or in conjunction with assistance provided pursuant to this Agreement.

H. Except as provided by paragraphs C and D of Article VII, this Agreement shall be used solely for the purpose of mutual antitrust enforcement assistance between the Parties. The provisions of this Agreement shall not give rise to a right on the part of any private person to obtain, suppress, or exclude any evidence, or to impede the execution of a request made pursuant to this Agreement.

I. Nothing in this Agreement compels a person to provide antitrust evidence in violation of any legally applicable right or privilege.

J. Nothing in this Agreement affects the right of an Antitrust Authority of one Party to seek antitrust evidence on a voluntary basis from a person located in the territory of the other Party, nor does anything in this Agreement preclude any such person from voluntarily providing antitrust evidence to an Antitrust Authority.

Article III—Requests for Assistance

A. Requests for assistance under this Agreement shall be made by an Antitrust Authority of the Requesting Party. Such requests shall be made in writing and directed to the Central Authority of the Requested Party. With respect to the United States, the Attorney General, acting as the Central Authority, will upon receipt forward a copy of each request to the Federal Trade Commission.

B. Requests shall include, without limitation:

1. A general description of the subject matter and nature of the investigation or proceeding to which the request relates, including identification of the persons subject to the investigation or proceeding and citations to the specific antitrust laws involved giving rise to the investigation or proceeding; such description shall include information sufficient to explain how the subject matter of the request concerns a possible violation of the antitrust laws in question;

2. The purpose for which the antitrust evidence, information, or other assistance is sought and its relevance to the investigation or proceeding to which the request relates. A request by the United States shall state either that the request is not made for the purpose of any criminal proceedings or that the request is made for a purpose that includes possible criminal proceedings. In the former case, the request shall contain a written assurance that antitrust evidence obtained pursuant to the request shall not be used for the purposes of criminal proceedings,

unless such use is subsequently authorized pursuant to Article VII. In the latter case, the request shall indicate the relevant provisions of law under which criminal proceedings may be brought;

3. A description of the antitrust evidence, information, or other assistance sought, including, where applicable and to the extent necessary and possible:

(a) The identity and location of any person from whom evidence is sought, and a description of that person's relationship to the investigation or proceeding which is the subject of the request;

(b) A list of questions to be asked of a witness;

(c) A description of documentary evidence requested; and

(d) with respect to searches and seizures, a precise description of the place or person to be searched and of the antitrust evidence to be seized, and information justifying such search and seizure under the laws of the Requested Party;

4. Where applicable, a description of procedural or evidentiary requirements bearing on the manner in which the Requesting Party desires the request to be executed, which may include requirements relating to:

(a) The manner in which any testimony or statement is to be taken or recorded, including the participation of counsel;

(b) The administration of oaths;

(c) Any legal privileges that may be invoked under the law of the Requesting Party that the Requesting Party wishes the Executing Authority to respect in executing the request, together with an explanation of the desired method of taking the testimony or provision of evidence to which such privileges may apply; and

(d) The authentication of public records;

5. The desired time period for a response to the request;

6. Requirements, if any, for confidential treatment of the request or its contents; and

7. A statement disclosing whether the Requesting Party holds any proprietary interest that could benefit or otherwise be affected by assistance provided in response to the request; and

8. Any other information that may facilitate review or execution of a request.

C. Requests shall be accompanied by written assurances of the relevant Antitrust Authority that there have been no significant modifications to the confidentiality laws and procedures described in Annex A hereto.

D. An Antitrust Authority may modify or supplement a request prior to its execution if the Requested Party agrees.

Article IV—Limitations on Assistance

A. The Requested Party may deny assistance in whole or in part if that Party's Central Authority or Executing Authority, as appropriate, determine that:

1. A request is not made in accordance with the provisions of this Agreement;

2. Execution of a request would exceed the Executing Authority's reasonably available resources;

3. Execution of a request would not be authorized by the domestic law of the Requested Party;

4. Execution of a request would be contrary to the public interest of the Requested Party.

B. Before denying a request, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall consult with the Central Authority of the Requesting Party and the Antitrust Authority that made the request to determine whether assistance may be given in whole or in part, subject to specified terms and conditions.

C. If a request is denied in whole or in part, the Central Authority or the Executing Authority of the Requested Party, as appropriate, shall promptly inform the Central Authority of the Requesting Party and the Antitrust Authority that made the request and provide an explanation of the basis for denial.

Article V—Execution of Requests

A. After receiving a request, the Central Authority shall promptly provide the Requesting Party an initial response that includes, when applicable, an identification of the Executing Authority (Authorities) for the Request.

B. The Central Authority of the United States, the Attorney General of Australia, or, once designated, the Executing Authority of either Party may request additional information concerning the request or may determine that the request will be executed only subject to specified terms and conditions. Without limitation, such terms and conditions may relate to (1) the manner or timing of the execution of the request, or (2) the use or disclosure of any antitrust evidence provided. If the Requesting Party accepts assistance subject to such terms and conditions, it shall comply with them.

C. A request shall be executed in accordance with the laws of the Requested Party. The method of execution specified in the request shall be followed, unless it is prohibited by the law of the Requested Party or unless the Executing Authority otherwise concludes, after consultation with the Authority that made the request, that a different method of execution is appropriate.

D. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, facilitate the participation in the execution of a request of such officials of the Requesting Party as are specified in the request.

Article VI—Confidentiality

A. Except as otherwise provided by this paragraph and Article VII, each Party shall, to the fullest extent possible consistent with that Party's laws, maintain the confidentiality of any request and of any information communicated to it in confidence by the other Party under this Agreement. In particular:

1. The Requesting Party may ask that assistance be provided in a manner that maintains the confidentiality of a request and/or its contents. If a request cannot be executed in that manner, the Requested Party shall so inform the Requesting Party, which shall then determine the extent to which it wishes the request to be executed; and

2. Antitrust evidence obtained pursuant to this Agreement shall be kept confidential by both the Requesting Party and the Requested Party, except as provided in paragraph E of this Article and Article VII.

Each Party shall oppose, to the fullest extent possible consistent with that Party's laws, any application by a third party for disclosure of such confidential information.

B. By entering into this Agreement, each Party confirms that:

1. The confidentiality of antitrust evidence obtained under this Agreement is ensured by its national laws and procedures pertaining to the confidential treatment of such evidence, and that such laws and procedures as are set forth in Annex A to this Agreement are sufficient to provide protection that is adequate to maintain securely the confidentiality of antitrust evidence provided under this Agreement; and

2. The Antitrust Authorities designated herein are themselves subject to the confidentiality restrictions imposed by such laws and procedures.

C. Unauthorized or illegal disclosure or use of information communicated in confidence to a Party pursuant to this

Agreement shall be reported immediately to the Central Authority and the Executing Authority of the Party that provided the information; the Central Authorities of both Parties, together with the Executing Authority that provided the information, shall promptly consult on steps to minimize any harm resulting from the disclosure and to ensure that unauthorized or illegal disclosure or use of confidential information does not recur. The Executing Authority that provided the information shall give notice of such unauthorized or illegal disclosure or use to the person, if any, that provided such information to the Executing Authority.

D. Unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement is a ground for termination of the Agreement by the affected Party, in accordance with the procedures set out in Article XIII.C.

E. Nothing in this Agreement shall prevent disclosure, in an action or proceeding brought by an Antitrust Authority of the Requesting Party for a violation of the antitrust laws of the Requesting Party, of antitrust evidence provided hereunder to a defendant or respondent in that action or proceeding, if such disclosure is required by the law of the Requesting Party. The Requesting Party shall notify the Central Authority of the Requested Party and the Executing Authority that provided the information at least ten days in advance of any such proposed disclosure, or, if such notice cannot be given because of a court order, then as promptly as possible.

Article VII—Limitations on Use

A. Except as provided in paragraphs C and D of this Article, antitrust evidence obtained pursuant to this Agreement shall be used or disclosed by the Requesting Party solely for the purpose of administering or enforcing the antitrust laws of the Requesting Party.

B. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party to administer or enforce its antitrust laws only (1) in the investigation or proceeding specified in the request in question and (2) for the purpose stated in the request, unless the Executing Authority that provided such antitrust evidence has given its prior written consent to a different use or disclosure; when the Requested Party is Australia, such consent shall not be given until the Executing Authority has obtained any necessary approval from the Attorney General.

C. Antitrust evidence obtained pursuant to this Agreement may be used or disclosed by a Requesting Party with respect to the administration or enforcement of laws other than its antitrust laws only if (1) such use or disclosure is essential to a significant law enforcement objective and (2) the Executing Authority that provided such antitrust evidence has given its prior written consent to the proposed use or disclosure. In the case of the United States, the Executing Authority shall provide such consent only after it has made the determinations required for such consent by its mutual assistance legislation.

D. Antitrust evidence obtained pursuant to this Agreement that has been made public consistently with the terms of this Article may thereafter be used by the Requesting Party for any purpose consistent with the Parties' mutual assistance legislation.

Article VIII—Changes in Applicable Law

A. The Parties shall provide to each other prompt written notice of actions within their respective States having the effect of significantly modifying their antitrust laws or the confidentiality laws and procedures set out in Annex A to this Agreement.

B. In the event of a significant modification to a Party's antitrust laws or confidentiality laws and procedures set out in Annex A to this Agreement, the Parties shall promptly consult to determine whether this Agreement or Annex A to this Agreement should be amended.

Article IX—Taking of Testimony and Production of Documents

A. A person requested to testify and produce documents, records, or other articles pursuant to this Agreement may be compelled to appear and testify and produce such documents, records, and other articles, in accordance with the requirements of the laws of the Requested Party. Every person whose attendance is required for the purpose of giving testimony pursuant to this Agreement is entitled to such fees and allowances as may be provided for by the law of the Requested Party.

B. Upon request by the Requesting Party, the Executing Authority shall furnish information in advance about the date and place of the taking of testimony or the production of evidence pursuant to this Agreement.

C. The Executing Authority shall, to the extent permitted by the laws and other important interests of the Requested Party, permit the presence during the execution of the request of persons specified in the request, and shall, to the extent permitted by the laws and other important interests of the Requested Party, allow such persons to question the person giving the testimony or providing the evidence.

D. The Executing Authority shall, to the extent permitted by the laws of the Requested Party, comply with any instructions of the Requesting Party with respect to any claims of legal privilege, immunity, or incapacity under the laws of the Requesting Party.

E. The Executing Authority shall, to the extent permitted by the laws of the Requested Party, permit a person whose testimony is to be taken pursuant to this Article to have counsel present during the testimony.

F. A Requesting Party may ask the Requested Party to facilitate the appearance in the Requesting Party's territory of a person located in the territory of the Requested Party, for the purpose of being interviewed or giving testimony. The Requesting Party shall indicate the extent to which the person's expenses will be paid. Upon receiving such a request, the Executing Authority shall invite the person to appear before the appropriate authority in the territory of the Requesting Party. The Executing Authority shall promptly inform the Requesting Party of the person's response.

G. Antitrust evidence consisting of testimony or documentary evidence provided by the Requested Party pursuant to this Agreement shall be authenticated in accordance with the requirements of the law of the Requesting Party, in so far as such requirements would not violate the laws of the Requested Party.

Article X—Search and Seizure

A. Where a request is to be executed by means of the search and seizure of antitrust evidence, the request shall include such information as is necessary to justify such action under the laws of the Requested Party. The Central Authorities shall confer, as needed, on alternative, equally effective procedures for compelling or obtaining the antitrust evidence that is the subject of a request.

B. Upon request, every official of a Requested Party who has custody of antitrust evidence seized pursuant to this Agreement shall certify the continuity of custody, the identity of the antitrust evidence, and the integrity of its condition; the Requested Party shall furnish such certifications in the form specified by the Requesting Party.

Article XI—Return of Antitrust Evidence

At the conclusion of the investigation or proceeding specified in a request, the Central Authority or the Antitrust Authority of the Requesting Party shall return to the Central Authority or the Antitrust Authority of the Requested Party from which it obtained antitrust evidence all such evidence obtained pursuant to the execution of a request under this Agreement, along with all copies thereof, in the possession or control of the Central Authority or Antitrust Authority of the Requesting Party; provided, however, that antitrust evidence that has become evidence in the course of judicial or administrative proceedings or that has properly entered the public domain is not subject to this requirement.

Article XII—Costs

Unless otherwise agreed, the Requested Party shall pay all costs of executing a request, except for the fees of expert witnesses, the costs of translation, interpretation, and transcription, and the allowances and expenses related to travel to the territory of the Requested Party, pursuant to Articles IX and X, by officials of the Requesting Party.

Article XIII—Entry into Force and Termination

A. This Agreement shall enter into force upon notification by each Party to the other through diplomatic channels that it has completed its necessary internal procedures.

B. Assistance under this Agreement shall be available in investigations or proceedings under the Parties' antitrust laws concerning conduct or transactions occurring before as well as after this Agreement enters into force.

C. As stated in Article VI.D of this Agreement, a Party may unilaterally elect to terminate this Agreement upon the unauthorized or illegal disclosure or use of confidential antitrust evidence provided hereunder; provided, however, that neither Party shall make such an election until after it has consulted with the other Party, pursuant to Article VI.C, regarding steps to minimize any harm resulting from the unauthorized or illegal disclosure or use of information communicated in confidence under this Agreement, and steps to ensure that such disclosure or use does not recur. Termination shall take effect immediately upon notice or at such future date as may be determined by the terminating Party.

D. On termination of this Agreement, the Parties agree, subject to Article VI.E and Article VII, to maintain the confidentiality of any request and information communicated to them in confidence by the other Party under this Agreement prior to its termination; and to return, in accordance with the terms of Article XI, any antitrust evidence obtained from the other Party under this Agreement; provided, however, that any such request or information that has become public in the course of public judicial or administrative proceedings is not subject to this requirement.

E. In addition to the procedure set forth in paragraph C of this Article, either Party may terminate this Agreement by means of written notice through diplomatic channels. Termination shall take effect 30 days after the date of receipt of such notification.

In witness whereof, the undersigned, being duly authorized by their respective Governments, have signed this Agreement.

Done at Washington, this 27th day of April, 1999, in duplicate, in the English language.

For the Government of the the United States of America:

Janet Reno /S/

Robert Pitofsky /s/

For the Government of Australia:

Peter Costello /s/

Annex A—This Annex cites and briefly describes the confidentiality laws and procedures that would protect the confidentiality of antitrust evidence that may be provided under this Agreement. Also included are laws and procedures that provide sanctions for breaches of the confidentiality provisions described herein.

I. United States of America

A. Confidentiality Laws and Procedures

15 U.S.C. 6201–6212, International Antitrust Enforcement Assistance Act

This statute authorizes the Department of Justice (DOJ) and the Federal Trade Commission (FTC or, as used in this Part I, Commission) to enter into bilateral agreements with other countries permitting mutual assistance in the enforcement of the antitrust laws. Specifically, it permits DOJ and FTC to exchange certain otherwise confidential investigative information with foreign antitrust authorities, where this will be in the public interest of the United States and where it satisfies the important confidentiality and other safeguards outlined in the statute.

Section 6207(b) of the statute prohibits DOJ and FTC from disclosing, in violation of an antitrust mutual assistance agreement, any antitrust evidence received under such agreement, except to the extent such disclosure is required by law to be made to a defendant or respondent in an action brought by DOJ or FTC. Such antitrust evidence is exempt from other provisions of law that might otherwise be construed to require disclosure, including the Freedom of Information Act, 5 U.S.C. 552, described below.

This statute does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information. See discussion in Part B, *infra*.

15 U.S.C. 1311–1314, Antitrust Civil Process Act *(applies only to DOJ)*

This statute authorizes the DOJ Antitrust Division to issue compulsory process for documents or testimony in furtherance of civil investigations. Section 1313(c) of this statute provides that, other than for use in oral depositions in furtherance of such investigations, no documents or transcripts produced pursuant to such compulsory process shall be made publicly available without the consent of the party that produced the materials. Such materials may, however, be used when necessary before any court, grand jury or federal administrative or regulatory agency in any case or proceeding, including an investigation or proceeding conducted by the FTC. Such materials may also be disclosed to Congress or to any authorized committee or subcommittee thereof.

Section 1313(e) also provides for the return, at the completion of an investigation, of original materials produced pursuant to this statute during the course of the investigation. Any requests for the return of such materials must be in writing. The Division is permitted, however, in certain circumstances, to keep copies of materials produced.

Section 1314(g) exempts documents and testimony submitted in response to compulsory process authorized by this statute from disclosure under FOIA.

This statute does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information. *See* discussion in part B, *infra*.

15 U.S.C. 41–68, the Federal Trade Commission Act *(applies only to FTC)*

The confidentiality provisions of the Federal Trade Commission Act are as follows:

Section 6(f) [15 U.S.C. 46(f)] states that the Commission shall not have any authority to make public any trade secret or any commercial or financial information which is obtained from any person and which is privileged or confidential, except that the Commission may disclose such information to officers and employees of appropriate Federal law enforcement agencies or to any officer or employee of any State law enforcement agency upon the prior certification of an officer of any such Federal or State law enforcement agency that such information will be maintained in confidence and will be used only for official law enforcement purposes.

Section 21(b) [15 U.S.C. 57b–2(b)] provides that any document, tangible thing, or transcript of oral testimony received by the Commission pursuant to compulsory process in an investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, may not be made available for examination by any individual other than a duly authorized officer or employee of the Commission (including contractors and consultants) without the consent of the person who produced the document, thing, or transcript. Such materials may be used in Commission proceedings and in judicial proceedings in which the Commission is a party. Such materials may also be made available to other Federal and State law enforcement agencies upon the certification of an officer of such an agency that such information will be maintained in confidence and will be used only for official law enforcement purposes. This section does not prevent disclosure to Congress, but the Commission is required to notify immediately the owner or provider of any such information of a request from Congress for information designated as confidential by the owner or provider.

Section 21(c) [15 U.S.C. 57b–2(c)] provides that all information reported to or otherwise obtained by the Commission which is not subject to the requirements of Section 21(b) shall be considered confidential when so marked by the person supplying the information. If the FTC determines that information may be disclosed because it is not protected by Section 6(f), it must notify the submitter of the information that the Commission intends to disclose the information (*i.e.*, place it on the public record, pursuant to Commission Rule 4.9) not less than 10 days after receipt of the notification. Upon receipt of such notification, the submitter may bring an action in United States District Court seeking to restrain disclosure, including an application for a stay of disclosure. The Commission shall not disclose the information until the court has ruled on the application for a stay.

Section 21(d) [15 U.S.C. 57b–2(d)] provides that the provisions of 21(c) shall not be construed to prohibit disclosures: (A) To Congress (with notice to the owner or provider of the information); (B) of the results of investigations or studies (without identifying information or disclosing trade secrets or any commercial or financial information obtained from any person which is privileged or confidential); (C) of relevant and material information in FTC adjudicative proceedings or judicial proceedings in which the FTC is a party, according to the FTC's rules for adjudicative proceedings or by court rules or orders; (D) to Federal agencies of disaggregated information for economic, statistical, or policymaking purposes only.

Section 21(f) [15 U.S.C. 57b–2(f)] provides that any document, tangible thing, written report or answers to questions, or transcript of oral testimony received by the Commission in any investigation, a purpose of which is to determine whether any person may have violated any provision of the laws administered by the Commission, and which is provided pursuant to any compulsory process or which is provided voluntarily in place of such compulsory process, shall be exempt from disclosure under FOIA.

Section 10 of the FTC Act [15 U.S.C. 50] provides for criminal penalties for the unauthorized disclosure of information obtained by the Commission; *see* the discussion in part B, *infra*.

16 C.F.R. 3.1, *et seq.*, FTC Rules of Practice for Adjudicative Proceedings *(applies only to FTC)*

Adjudicative proceedings are formal proceedings conducted under the statutes administered by the Commission which are required by statute to be determined on the record after an opportunity for an agency hearing. An adjudicative proceeding is commenced when an affirmative vote is taken by the Commission to issue a complaint. The rules provide for the respondent to answer the complaint within a specified time, for discovery, and for a hearing held before an Administrative Law Judge (ALJ) for the purpose of receiving evidence relevant and material to the Commission's complaint and the respondent's answer. The hearings are open to the public, except to the extent that an *in camera* order is entered by the ALJ or the Commission. *See* Rule 3.41(a).

Rule 3.45 [16 C.F.R. 3.45] provides for in camera treatment of documents and testimony which keeps such documents and testimony confidential and not part of the public record of the hearing. Rule 3.45(b) provides that the ALJ may order documents, testimony, or portions thereof offered into evidence, whether admitted or rejected, to be placed in camera upon a finding that their public disclosure will likely result in a clearly defined, serious injury to the person, partnership or corporation requesting their in camera treatment; only respondents, their counsel, authorized Commission personnel, and court personnel concerned with judicial review shall have access thereto. The order shall provide the date on which in camera treatment will expire.

16 C.F.R. 4.10(g), *et seq.*, FTC Rules of Practice for Adjudicative Proceedings (applies only to FTC)

Rule 4.10(g) provides that the following categories of materials obtained by the FTC may be disclosed in FTC administrative or court proceedings subject to FTC or court protective or in camera orders as appropriate: (1) Material obtained through compulsory process or voluntarily in lieu thereof, and protected by sections 21(b) and (f) of the FTC Act; (2) material designated by the submitter as confidential, and protected by section 21(c) of the FTC Act; or, (3) material that is confidential commercial or financial information protected by section 6(f) of the FTC Act. Prior to disclosure of such material in a proceeding, the submitter will be afforded an opportunity to seek a protective or in camera order. All other material obtained by the FTC may be disclosed in FTC administrative or court proceedings at the FTC's discretion except where prohibited by law.

Rule 26(c) of the Federal Rules of Civil Procedure

This rule provides that a court may grant, in civil litigation in federal court, a protective order concerning discovery, including, inter alia, that certain matters not be inquired into, or that the scope of discovery be limited to certain matters; and that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a certain way.

A court may impose sanctions for violations of protective orders entered pursuant to this rule.

Rule 6 of the Federal Rules of Criminal Procedure

This rule governs the conduct of grand jury proceedings. Subsection (e) of this rule prohibits, without the permission of a court, public disclosure of matters occurring before the grand jury by any person having knowledge of such proceedings, except witnesses, who are free to disclose their testimony.

Knowing violations of this rule are punishable as a contempt of court.

5 U.S.C. 552, Freedom of Information Act

FOIA is a statute that provides that any person has a right of access to federal agency records, except to the extent that FOIA authorizes the agencies to withhold certain records from disclosure. Of the categories of records which may be withheld under FOIA, those of primary relevance to the antitrust enforcement agencies are:

Trade secrets and commercial or financial information, obtained from a person, that is privileged or confidential (subsection 552(b)(4));

Records or information compiled for law enforcement purposes to the extent that disclosure thereof could reasonably be expected, inter alia, to interfere with enforcement proceedings or to disclose the identity of a confidential source (subsection 552(b)(7)(A) and (D));

Intra-agency and inter-agency memoranda or letters that would be routinely privileged in civil discovery, e.g., attorney work-product or attorney-client information (subsection 552(b)(5));

National defense or foreign policy information that is properly classified (subsection 552(b)(1));

Information that may be withheld on the basis of other specific statutory authority (subsection 552(b)(3)).

FOIA does not authorize withholding information from Congress.

28 C.F.R. 16.7, Procedure for Processing Requests for Disclosure of Information Subject to the Business Information Exemption to FOIA (applies only to DOJ)

This regulation specifies the procedures DOJ must follow before it can disclose, in response to a request under FOIA, any materials that may qualify for exemption from disclosure as confidential business information. The section requires that before any such disclosure can be made, DOJ provide notice to submitters of information that either: (i) has been designated as confidential business information by the submitter; or (ii) DOJ has reason to believe may constitute confidential business information. This notice is intended to enable the submitter to object to the planned disclosure and, if the submitter chooses, seek a protective order. DOJ is not required to provide notice to any submitter whose information DOJ has determined not to disclose.

This regulation does not provide specific enforcement mechanisms for the confidentiality provision, or penalties for its breach. Other laws and regulations, however, prohibit the improper use of non-public information. See discussion in part B, infra.

5 U.S.C. 552a, Privacy Act

The Privacy Act permits federal agencies to maintain "systems of records," i.e., records that are retrievable by the name, social security number or other personal identifier of an individual U.S. citizen (or permanent resident alien), subject to requirements that the agencies disclose the existence of such records systems and that individuals have access to records concerning themselves. The Privacy Act, however, sets forth several exceptions to this general restriction, including one that permits, under specified circumstances, agencies to exempt investigatory material compiled for law enforcement purposes from such "systems of records" and, thereby, to deny access to such material.

B. Laws and Procedures Providing Sanctions for Breaches of the Confidentiality Laws and Procedures

18 U.S.C. 1905, Trade Secrets Act

This statute provides criminal penalties for unauthorized disclosure of trade secrets or confidential business information by any government employee or agent of DOJ within the meaning of the Antitrust Civil Process Act, who comes into possession or gains knowledge of such information during the course of his or her employment or official duties. Said penalties include a fine of not more than $1,000, one year's imprisonment or both, and removal from employment.

18 U.S.C. 641, Theft of Government Property, Records

This statute provides criminal penalties for the theft, embezzlement, knowing conversion, or unauthorized conveyance of any record, voucher, money, or "thing of value" (which, according to judicial interpretation, includes information) possessed by the United States Government. Said penalties include a fine or imprisonment of not more than 10 years, or both.

18 U.S.C. 1831 *et seq.*, Economic Espionage Act

This statute provides criminal penalties for theft of trade secrets, as that act is defined in the statute. It also provides criminal penalties for economic espionage, which the statute, in essence, defines as the theft of trade secrets to benefit a foreign power. The penalty for individuals convicted of theft of trade secrets under the statute includes a fine of not more than $500,000, or imprisonment of not more than ten years, or both, and for an organization includes a fine of not more than $5 million. The penalty for individuals convicted of economic espionage under the statute includes a fine of not more than $500,000, or imprisonment of not more than 15 years, or both, and for organizations includes a fine of not more than $10 million. Penalties also include forfeiture of property used in or derived from trade secret theft or economic espionage.

The statute specifically does not prohibit any otherwise lawful activity conducted by a governmental entity of the United States, a state, or a political subdivision of a state, nor shall it be construed to affect the otherwise lawful disclosure of information by any government employee under FOIA. The statute also preserves the confidentiality of trade secrets in court proceedings brought thereunder.

5 C.F.R. 2635.703, Office of Government Ethics—Standards of Ethical Conduct for Employees of the Executive Branch

This section prohibits the improper use of non-public information by an Executive Branch employee to further his or her own private interest or that of another person. Non-public information is information that the employee gains by reason of federal employment and that he or she knows or reasonably should know has not been made available to the general public. Section 2635.106 provides that any violation may be cause for appropriate corrective or disciplinary action pursuant to Government wide regulations or agency procedures, which action may be in addition to any action or penalty prescribed by law. These sections have been incorporated by reference in the FTC's Rules. *See* 16 C.F.R. 5.1 *et seq.*

15 U.S.C. 50 (Federal Trade Commission Act) and 16 C.F.R. 4.10(c) (*applies only to FTC*)

This section of the FTC Act (and the above-referenced Rule) provides that any officer or employee of the

Commission who shall make public any information obtained by the Commission without its authority, unless directed by a court, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a fine not exceeding $5,000, or by imprisonment not exceeding one year, or by fine and imprisonment, in the discretion of the court.

II. Australia

A. Confidentiality Laws and Procedures

The Trade Practices Act 1974

Section 89 outlines the procedure for seeking an authorisation from the Australian Competition and Consumer Commission (as used in this Part II, Commission) in relation to certain anti-competitive conduct, and in doing so it outlines the circumstances in which confidentiality may be claimed in relation to information so placed before the Commission and thus excluded from the public register of applications for authorisation. If the information contains particulars of a secret formula or process, cash consideration offered for shares or assets, or the current costs of manufacturing, producing or marketing goods or services, then it will be excluded from the public register. Further, if the information relates to anything else the Commission in its discretion considers to be confidential, it may exclude the information from the public register.

Where the Commission refuses a request to exclude such information from the public register on the basis of its confidential nature, the person who submitted the information may withdraw it, in which case that submission will not form part of the application for authorisation.

Section 95 requires that the Commission keep a public register of notifications, particularly in relation to conduct which amounts to exclusive dealing. (Once notification is lodged, the corporation is permitted to engage in such conduct until otherwise notified by the Commission.) The section outlines the circumstances in which confidentiality may be claimed in relation to information so placed before the Commission and thus excluded from the public register of notification. If the information contains particulars of a secret formula or process, cash consideration offered for shares or assets, or the current costs of manufacturing, producing or marketing goods or services, then it will be excluded from the public register. Further, if the information relates to anything else the Commission in its discretion considers to be confidential, it may exclude the information from the public register.

Where the Commission refuses a request to exclude such information from the public register on the basis of its confidential nature, the person who submitted the information may withdraw it, in which case that submission will not form part of the notification.

The procedures for requesting that a document be excluded from the public register on the basis of its confidential nature under sections 89(5) and 95(2) can be found in regulation 24(1) of the *Trade Practices Regulations*.

Section 106 of the *Trade Practices Act 1974* grants the Australian Competition Tribunal, where it is satisfied that it is desirable to do so by reason of the confidential nature of any evidence or matter or for any other reason, the power to prohibit or restrict the publication of evidence given before it, whether in public or private, or of matters contained in documents filed or lodged with the Registrar, received in evidence by the Tribunal or placed in the records of the Tribunal.

Section 155AA of the Act provides that Commission officials must not disclose any protected Part IV information to any person except as part of the official's functions as a Commission official or when he/she is required by law to disclose the information. "Protected Part IV information" is defined as information relating to a matter under Part IV and which has been obtained by the Commission under section 155. Section 155 enables the Commission to require a person to answer questions, provide information or produce documents, if the Commission, the Chairperson or Deputy Chairperson has reason to believe that a person is capable of furnishing information relating to a matter that may constitute a contravention of the *Trade Practices Act*.

Section 157 of the Act, amongst other things, provides that: (a) where a corporation makes an application for authorization; or (b) where the Commission has instituted proceedings or made an application for an order against a corporation or other person, the Commission shall provide, at the request of the corporation or other person, a copy of every document furnished to or obtained by the Commission in connexion with the matter that tends to establish the case of the corporation or other person, other than documents obtained from the corporation or other person or prepared by an officer or professional adviser of the Commission. However, subsections (2) and (3) provide that, when the Commission declines to comply with such a request, a Court that is asked to order the Commission to comply may refuse to do so "if the Court considers it inappropriate to make the order by reason that the disclosure of the contents of the document or part of the document would prejudice any person or for any other reason."

The Freedom of Information Act of 1982

The Freedom of Information Act 1982 gives members of the public rights of access to official documents of Commonwealth Government Ministers and agencies, limited only by exceptions and exemptions necessary for the protection of the essential public interests and the private and business affairs of persons in respect of whom information is collected and held by agencies. Of the categories of documents that are exempt from disclosure under FOI, those of relevance to antitrust authorities are:

Section 33(1) operates to exempt documents, the disclosure of which would or could be reasonably expected to cause damage to the security, defence or international relations of the Commonwealth or would divulge any information or matter communicated in confidence by or on behalf of a foreign government, an authority of a foreign government or an international organisation.

Section 36 operates to exempt documents where disclosure would disclose opinion, advice or recommendation, or consultation or deliberation relating to the deliberative processes involved in the functions of the Commission, and such disclosure would be contrary to the public interest.

Section 37 exempts documents if disclosure would, or could reasonably be expected to, prejudice the conduct of an investigation, or the enforcement or proper administration of the law. Documents are also exempt if their disclosure under this Act would, or could reasonably be expected to, endanger the life or physical safety of any person.

Section 40(1)(d) exempts documents where disclosure would, or could reasonably be expected to, have a substantial adverse effect on the proper and efficient conduct of the operations of the Commission.

Section 43(1)(a) exempts documents containing trade secrets.

Section 43(1)(b) exempts documents containing information having a commercial value that would, or could reasonably be expected to, be destroyed

or diminished if the information were disclosed.

Section 43(1)(c)(i) exempts documents where disclosure could be reasonably expected to unreasonably adversely affect a company in respect of its business affairs.

Section 43(1)(c)(ii) exempts documents where there is a reasonable expectation that disclosure would prejudice future supply of information to the Commission.

Section 45 exempts documents the disclosure of which would constitute a breach of confidence. This exemption relates to information communicated to the Commission in a relationship of confidence as indicated on its face or in circumstances imparting an obligation of confidentiality.

The Federal Court Act and the Federal Court Rules

Pursuant to Section 23 of the Federal Court Act and Order 15 of the Federal Court Rules, courts may, in proceedings before them, issue orders that information may not be disclosed or may be disclosed only in a certain way. In addition, Order 15 of the Federal Court Rules empowers persons seeking to avoid the production of documents subject to discovery, to rely on the claim that they are privileged from production, *e.g.* the documents are subject to legal professional privilege, or to Crown privilege. (Order 15(17) preserves the right of parties to rely on any rule of law which authorises or requires the withholding of any document on the grounds that its disclosure would be harmful to the public interest.)

The Privacy Act 1988

The Privacy Act 1988 establishes a scheme to govern the collection, storage, security, access, use and disclosure of personal information by Commonwealth agencies through a set of rules called Information Privacy Principles. This scheme is subject to prescribed exceptions which limit an agency's use or disclosure of personal information (Information Privacy Principles 10 and 11).

The Administrative Appeals Tribunal Act 1975

Section 36 of the Administrative Appeals Tribunal Act 1975 provides that, in proceedings before it, the Attorney General may certify that disclosure of a document would be contrary to the public interest, and the Tribunal must do everything to ensure that the information in the document is not disclosed other than to a member of the Tribunal.

The Administrative Decisions (Judicial Review) Act 1977

Under section 13 of the Administrative Decisions (Judicial Review) Act 1977 an application may be made to the Commission for a statement in respect of a decision setting forth, *inter alia*, the reasons for the decision, the findings on material questions of fact, and a reference to the evidence on which the findings were based. Section 13A sets out information not required to be disclosed in response to such an application, including, information as to a person's business affairs which is supplied in confidence, or if published, would reveal a trade secret.

Under section 14, the Attorney General can certify that the disclosure of information would be contrary to the public interest.

The Public Service Regulations

Regulation 35 of the Public Service Regulations prohibits an officer from disclosing information obtained in the course of official duties unless authorised to do so.

The Evidence Act 1995

Section 130 of the Evidence Act 1995 provides that a court (whether or not on the application of a person) may direct that a document relating to matters of state not be adduced as evidence on the grounds of public interest in preserving secrecy or confidentiality. Information will be taken to relate to matters of state if adducing it as evidence would, *inter alia*, prejudice the prevention, investigation or prosecution of an offence; prejudice the prevention or investigation of, or the conduct of proceedings for recovery of civil penalties brought with respect to, other contraventions of the law; or disclose the identity or existence of a confidential source of information relating to the enforcement or administration of the law.

Section 131 provides (subject to certain exceptions) that evidence is not to be adduced of communications made or documents prepared in the context of attempts to negotiate the settlement of a dispute.

The Mutual Assistance in Criminal Matters Act 1987

Section 43B of the Mutual Assistance in Criminal Matters Act 1987 outlines restrictions on use of information sent to Australia in response to a request made by the Attorney General under the Act in relation to a criminal matter. It provides that such material is not used or disclosed intentionally for any purpose other than that for which it was requested unless the Attorney General has approved otherwise.

The restriction on unauthorised use of the material is extended to inadmissibility in evidence in any proceedings other than those for which it was obtained without the Attorney General's approval. In addition, any information, document, article or thing which has itself been obtained directly or indirectly from a person as a result of unapproved use of the material received from the other country is also inadmissible in evidence in any proceedings other than those for which it was requested (or used for the purposes of any other investigation) without the Attorney General's approval.

Section 43B(4) provides a penalty of two years imprisonment for contravention of subsection (1).

Section 43C provides a penalty of two years imprisonment for intentional disclosure of the contents of a request for assistance, of the fact that a request has been made or of the fact that assistance has been granted or refused where the person has such knowledge as a result of his or her employment, unless such disclosure is necessary in the performance of his or her duties or the Attorney General has authorised such disclosure.

B. Laws and Procedures Providing Sanctions for Breaches of the Confidentiality Laws and Procedures

The Crimes Act 1914

Section 70 of the Crimes Act 1914 provides a penalty of two years imprisonment for unauthorised disclosure by a Commonwealth officer of information which the officer has a duty not to disclose.

The Privacy Act 1988

Under section 93 of the Privacy Act 1988, a confider may recover damages from a confidant in respect of a breach of confidence with respect to personal information.

The Freedom of Information Act 1982

Section 59 of the Freedom of Information Act 1982 provides that where an agency makes a decision that documents relating to the business, commercial or financial affairs of a company are not exempt documents under section 43, the company may apply to the Administrative Appeals Tribunal for a review of that decision.

Section 57 of the Freedom of Information Act 1982 provides that a person may complain to the Ombudsman concerning any action taken by an agency in the exercise of its

powers and the performance of its functions under the Act. The Ombudsman cannot overturn the decision of an agency, although recommendations can be made to that agency or the responsible minister.

[FR Doc. 99–11235 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–11–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Request OMB Emergency Approval; Sworn Statement of Refugee Applying for Admission to the United States.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted an emergency information collection request (ICR) utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with section 1320.13(a)(1)(ii) and (a)(2)(iii) of the Paperwork Reduction Act of 1995. The INS has determined that it cannot reasonably comply with the normal clearance procedures under this part because normal clearance procedures are reasonably likely to prevent or disrupt the collection of information. INS is requesting emergency review from OMB of this information collection to ensure compliance with the Vice President's statement that the United States begin processing refugees from Kosovar. Emergency review and approval of this ICR ensures that the Kosovar refugees are processed as expeditiously as possible. Therefore, OMB approval has been requested by April 29, 1999. If granted, the emergency approval is only valid for 180 days. ALL comments and/or questions pertaining to this pending request for emergency approval MUST be directed to OMB, Office of Information and Regulatory Affairs, Attention: Mr. Stuart Shapiro, 202–395–7316, Department of Justice Desk Officer, Washington, DC 20503. Comments regarding the emergency submission of this information collection may also be submitted via facsimile to Mr. Shapiro at 202–395–6974.

During the first 60 days of this same period, a regular review of this information collection is also being undertaken. During the regular review period, the INS requests written comments and suggestions from the public and affected agencies concerning this information collection. Comments are encouraged and will be accepted until July 6, 1999. During the 60-day regular review, ALL comments and suggestions, or questions regarding additional information, to include obtaining a copy of the information collection instrument with instructions, should be directed to Mr. Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) Type of Information Collection: New collection.

(2) Title of the Form/Collection: Sworn Statement of Refugee Applying for Admission to the United States.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form G–646, Office of International Affairs, Immigration and Naturalization Service.

(4) Affected public who will be asked or required to respond, as well as a brief abstract: Primary: Individuals or households. This form provides the grounds for admissibility to the United States as they apply to refugees. The information collected allows INS to make admissibility determinations for refugees.

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond: 75,000 responses at 30 minutes (.50 hours) per response.

(6) An estimate of the total public burden (in hours) associated with the collection: 37,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: April 29, 1999.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–11211 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1225]

RIN 1121–ZB58

National Institute of Justice Announcement of the Availability of the Solicitation for Safe School Technologies

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Safe School Technologies."

DATES: Due date for receipt of proposals is close of business, Monday, June 7, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

This solicitation seeks proposals to develop new or improved technologies and/or implement appropriate technologies in an innovative manner

into the nation's schools. Proposals should focus on the research, development, testing, evaluation, adoption, and implementation phases of new technology; or you may propose innovative modifications to existing technology.

Important themes to be addressed in proposals are: How important is the new technology to school safety? How much will the technology cost to purchase and maintain? Are there hidden costs? What are the net savings on labor? How much training is required to use or maintain the technology? And, how will courts view the technology in terms of liability and interference with personal freedoms? Proposals should address these general themes, however, it is not necessary to explicitly answer each question.

Multiple awards totaling $950,000 will be made available under this solicitation. This solicitation is not intended to fund the purchase and installation of existing commercial systems.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Safe School Technologies" (refer to document no. SL000338). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–11241 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ)–1226]

RIN 1121–ZB59

Announcement of the Availability of the National Institute of Justice Solicitation for Video Sensing and Processing Technologies

AGENCY: Office of Justice Programs, National Institute of Justice, Justice.

ACTION: Notice of Solicitation.

SUMMARY: Announcement of the availability of the National Institute of Justice "Solicitation for Video Sensing and Processing Technologies."

DATES: Due date for receipt of proposals is close of business, Friday, May 28, 1999.

ADDRESSES: National Institute of Justice, 810 Seventh Street, NW, Washington, DC 20531.

FOR FURTHER INFORMATION CONTACT: For a copy of the solicitation, please call NCJRS 1–800–851–3420. For general information about application procedures for solicitations, please call the U.S. Department of Justice Response Center 1–800–421–6770.

SUPPLEMENTARY INFORMATION:

Authority

This action is authorized under the Omnibus Crime Control and Safe Streets Act of 1968, sections 201–03, as amended, 42 U.S.C. 3721–23 (1994).

Background

In this solicitation the National Institute of Justice seeks proposals that offer innovative and novel technology approaches that increase video sensing and processing effectiveness. Proposals must describe proposed efforts to advance video sensing and processing beyond the state-of-the-art and document your understanding of the current state-of-the-art. Possible areas of focus include officer protection and crime prevention, communication and information technology, and forensic and investigative sciences. These topics are not all inclusive.

NIJ anticipates supporting several grants under this solicitation. There is $175,000 available for funding this solicitation in FY 1999, with additional funding possible from the Safe Schools Initiative. It is anticipated that $800,000 will be available in FY 2000.

Interested organizations should call the National Criminal Justice Reference Service (NCJRS) at 1–800–851–3420 to obtain a copy of "Solicitation for Video Sensing and Processing Technologies" (refer to document no. SL000348). For World Wide Web access, connect either to either NIJ at http://www.ojp.usdoj.gov/nij/funding.htm, or the NCJRS Justice Information Center at http://www.ncjrs.org/fedgrant.htm#nij.

Jeremy Travis,

Director, National Institute of Justice.

[FR Doc. 99–11242 Filed 5–4–99; 8:45 am]

BILLING CODE 4410–18–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–063)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Thursday, May 13, 1999, 12:00 p.m.–1:30 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 7B13, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the readiness of the Shuttle (STS–96) Mission (ISS assembly flight 2A.1). It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: April 28, 1999.

Mathew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–11261 Filed 5–4–99; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL GAMBLING IMPACT STUDY COMMISSION

Meeting

AGENCY: National Gambling Impact Study Commission.

ACTION: Notice of public meeting.

SUMMARY: At its thirteenth regular meeting the National Gambling Impact Study Commission, established under Public Law 104–169, dated August 3, 1996, will hear possible presentations from one or more subcommittees; continue its ongoing review of Commission research on economic and social gambling impacts; and deliberate on possible findings and recommendations for the Final Report.

DATES: Monday, May 17, 8:30 a.m. to 5:30 p.m. and Tuesday, May 18, 8:30 a.m. to 5:30 p.m.

ADDRESSES: The meeting site will be: Federal North Holiday Inn on the Hill, 415 New Jersey Avenue, NW, Washington, DC 20001.

Written comments can be sent to the Commission at 800 North Capitol Street, NW, Suite 450, Washington, DC 20002.

STATUS: The meeting will be open to the public both days. However, the Commission may enter into executive session during their lunch period from 12:00 p.m.–1:30 p.m. on either or both days May 17, 1999 and May 18, 1999.

FOR FURTHER INFORMATION CONTACT: Craig Stevens at (202) 523–8217 or write to 800 North Capitol St., NW, Suite 450, Washington, DC 20002.

SUPPLEMENTARY INFORMATION: For a complete agenda, please contact the Commission. This information will also be faxed to all individuals on the Commission's fax list and posted on the Commission's web site, *www.ngisc.gov.*

Craig Stevens,

Communications and Logistic Coordinator.

[FR Doc. 99–11192 Filed 5–4–99; 8:45 am]

BILLING CODE 6802–ET–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice for public comment; the first was published in the **Federal Register** at 64 FR 531, and no comments were received. NSF is forwarding the proposed renewal submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility ad clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, N.W. Room 10235, Washington, D.C. 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–306–1125 x2017.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Title: National Science Foundation Grant Proposal Guide.

OMB Control Number: 3145–0058.

Summary of Collection: The mission of the National Science Foundation is to serve as a catalyst for progress through investment in science, mathematics and engineering. The agency is guided by its longstanding commitment to the highest standards of excellence in the support of discovery and learning. NSF pledges to provide the leadership and stewardship necessary to sustain and strengthen the Nation's science, mathematics, and engineering capabilities and to promote the use of those capabilities in service to society. NSF's continuing mission is set out in the preamble to the National Science Foundation Act of 1950 (Pub. L. 810507):

> "To promote the progress of science; to advance the national health, prosperity, and welfare; to secure the national defense; and for other purposes."

The information collected is used to help the Foundation fulfill this responsibility by initiating and supporting merit-selected research and education projects in all the scientific and engineering disciplines. NSF receives more than 30,000 proposals annually for new or renewal support for research in math/science/engineering education projects and makes approximately 10,000 new awards. The Foundation exercises its authority primarily by making merit-based grants and cooperative agreements and providing other forms of assistance to individual researchers and groups, in partnership with over 2800 colleges, universities and other institutions—public and private, state, local and federal—throughout the U.S. The awards are based mainly on evaluations of proposal merit submitted to the Foundation (see OMB Clearance No. 3145–0060).

The Foundation has a continuing commitment to monitor the operations of its review and award processes to identify and address excessive reporting burdens. The Foundation also is committed to monitor and identify any real or apparent inequities based on gender, race, ethnicity, or handicap of the proposed principal investigator(s)/project director(s) or co-principal investigator(s)/co-project director(s). The collection of this information is a part of the regular submission of proposal to the Foundation. This information also is protected by the Privacy Act.

Description of Respondents: Nonprofit institutions; state, local or tribal governments; and business or other for-profit.

Number of Respondents: 30,000.

Frequency of Responses: Annually.

Total Burden Hours: The Foundation estimates that an average of 120 hours is expended for each proposal submitted. If an estimated 30,000 proposals are expected during the course of one year, these figures compute to an estimated 3,600,000 public burden hours annually.

Dated: April 30, 1999.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 99–11280 Filed 5–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).

Date and Time: May 11, 1999, 8:00am–5:30pm.

Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: George A. Hazelrigg, Program Director, Design and Integration Engineering Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Agenda: To review and evaluate Major Research Instrumentation (MRI) proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: April 29, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11194 Filed 5–4–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).

Date and Time: May 12, 1999, 1:00 p.m.–5:00 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Dragana Brzakovic, POWRE Program, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1981.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.

Agenda: To review and evaluate CISE proposals submitted in response to the program announcement (NSF 98–160).

Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c)(4) and (6) of the Government in the Sunshine Act.

Dated: April 29, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11195 Filed 5–4–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Co., the Connecticut Light and Power Co., the Western Massachusetts Electric Co.; Notice of Partial Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company (the licensee) to withdraw a portion of its July 17, 1998, application for proposed amendment to Facility Operating License No. DPR–65 for the Millstone Nuclear Power Station, Unit 2, located in Waterford, CT.

The withdrawn portion of the proposed amendment would have revised the Millstone Unit 2 Technical Specifications Surveillance Requirement 4.8.1.1.2.C by deleting the words "during shutdown" from the first sentence, which reads "At least once per 18 months during shutdown."

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on August 12, 1998 (63 FR 43207). However, by letter dated November 10, 1998, the licensee withdrew this portion of the proposed change as discussed above.

For further details with respect to this action, see the application for amendment dated July 17, 1998, as supplemented by letter dated February 11, 1999, and the licensee's letter dated November 10, 1998, which withdrew a portion of the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, CT 06360, and the Waterford Public Library, 49 Rope Ferry Road, Waterford, CT 06385.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

Ronald B. Eaton,

Senior Project Manager, Section 2 Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11245 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–344]

Portland General Electric Co.; Trojan Nuclear Plant Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. NPF–1 issued to the Portland General Electric Company (PGE or licensee) for the Trojan Nuclear Plant (TNP or the plant). The plant is located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the Permanently Defueled Technical Specifications by (1) revising Subsection 4.1.1, "Site and Exclusion Area Boundaries," and (2) replacing existing Figure 4.1–1 with a new Figure 4.1–1 and adding a new page to Figure 4.1–1 to reflect the access controlled (ISFSI) area.

The proposed action is in accordance with the licensee's application for amendment (LCA 242) dated February 12, 1997.

The Need for the Proposed Action

The issuance of an amendment will allow the licensee to delete the ISFSI area from the Permanently Defueled Technical Specifications. This will cause the ISFSI to be regulated under 10 CFR Part 72, which is more appropriate to its use as a dry fuel storage area.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the issuance of the amendment will not have any significant effect on accident risk and the possibility of environmental impact. The Commission has previously issued an Environmental Assessment and Finding of No Significant Impact for the Independent Spent Fuel Storage Installation at Trojan Nuclear Plant (61 FR 64378). On March 31, 1999, the Commission issued a 10 CFR Part 72 license to PGE to permit spent fuel from the plant to be placed in dry storage at an ISFSI at the facility.

The licensee does not propose any disposal of fuel by this action nor any other activities that have not already been approved by the NRC. Therefore, the proposed action does not increase the probability or consequences of any

accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on April 20, 1999, the staff consulted with the Oregon State Official, Mr. Adam Bless, of the Oregon Department of Energy, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated February 12, 1997, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11244 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of May 3, 10, 17, and 24, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of May 3

Tuesday, May 4

9:00 a.m.

* Meeting on NRC Response to Stakeholder's Concerns (Public Meeting)

*** Please Note:** The room location for the Meeting on NRC Response to Shakeholders' Concerns, scheduled for Tuesday, May 4, is in the NRC auditorium, Bldg 2, NRC Headquarters, Rockville, Md.

2:00 p.m.

Meeting on Planning, Budgeting and Performance Management Process (PBPM) and Institutionalizing Change (Public Meeting) (Contact: Jim Blaha, 301–415–1703)

Wednesday, May 5

10:00 a.m.

Briefing on Safeguards Performance Assessment (Public Meeting)

1:30 p.m.

Discussion of Intragovernmental Issues (Closed—ex. 9b)

2:30 p.m.

Briefing on Status of Maintenance Rule (Public Meeting)

Thursday, May 6

9:30 a.m.

Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact Glenn Tracy, 301–415–1725)

11:30 a.m.

Affirmation Session (Public Meeting) (if needed)

Week of May 10—Tentative

There are no meetings scheduled for week of May 10.

Week of May 17—Tentative

There are no meetings scheduled for the week of May 17.

Week of May 24—Tentative

Thursday, May 27

11:30 a.m.

Affirmation Session (Public Meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292.

CONTACT PERSON FOR MORE INFORMATION: Bill Hill (301) 415–1661.

ADDITIONAL INFORMATION: By a vote of 5–0 on April 26, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Affirmation of Shieldalloy Metallurgical Corp. (Cambridge, Ohio Facility), Docket No. 40–8948–MLA, Memorandum and Order (Denying Petition to Intervene), LBP–99–12 (Feb. 23, 1999); International Uranium (USA) Corporation Petition for Review of LBP–99–5; Aharon Ben-Haim, Ph.D., Docket No. IA–97–068, LBP–99–4, Initial Decision (Affirming Enforcement Order with Modifications) (Feb. 8, 1999); Proposed License to Export High Enriched Uranium (HEU) for Production of Medical Isotopes at the Canadian Maple Reactors; North Atlantic Energy Service Corp. (Seabrook Station, Unit 1), Docket No. 59–443, Draft Commission Memorandum and Order Terminating the Proceeding; and, Boston Edison Company and Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station), Docket No. 50–293, Draft Commission Memorandum and Order Terminating the Proceeding" (Public Meeting) be held on April 26, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: http://www.nrc.gov/SECY/smi/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operation Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@narc.gov or *dkw@nrc.gov*.

Dated: April 30, 1999.
William M. Hill, Jr.,
SECY Tracking Officer, Office of the Secretary.
[FR Doc. 99–11364 Filed 5–3–99; 12:48 pm]
BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 10, 1999, through April 23, 1999. The last biweekly notice was published on April 21, 1999 (64 FR 19554).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administration Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 4, 1999, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the

amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: April 12, 1999.

Description of amendment request: The proposed one-time technical specification (TS) change, effective through September 30, 1999, provides a Required Action and Completion Time for the Ultimate Heat Sink (UHS) in the event that service water temperature exceeds the current 95°F surveillance limit. It involves an allowance to continue operation for a period of 8 hours with the UHS at a temperature greater than the temperature limits provided in TS Limiting Condition of Operation 3.7.8, "Ultimate Heat Sink (UHS)" and provides an upper UHS temperature limit beyond which plant shutdown is required.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Carolina Power & Light (CP&L) Company has evaluated the proposed Technical Specification change and has concluded that it does not involve a significant hazards consideration. The conclusion is in accordance with the criteria set forth in 10 CFR 50.92. The bases for the conclusion that the proposed change does not involve a significant hazards consideration are discussed below.

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. The proposed change allows plant operation for a short period of time when the service water temperature exceeds 95°F, requires an hourly surveillance when service water temperature exceeds 95°F, provides an upper UHS temperature limit beyond which a plant shutdown is required, and specifies an expiration date beyond which the current requirements are restored. If the service water temperature is restored within the allowed time, a plant shutdown is not required. This minimizes plant transients, which reduces the probability of a reactor trip and the resulting challenges to mitigating systems. A service water temperature of up to 99°F does not increase the failure rate of systems, structures or components because the systems, structures, and components are designed for higher temperatures than at which they operate.

The Service Water (SW) System temperature is not assumed to be an initiating condition of any accident evaluated in the safety analysis report. Therefore, the allowance of a limited time for service water temperature to be in excess of 95°F does not involve an increase in the probability of an accident previously evaluated in the safety analysis report (SAR). The SW System supports operability of safety related systems used to mitigate the consequences of an accident. The service water temperature is not expected to increase significantly beyond 95°F due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. The capability of components to perform their safety related function is not affected up to a service water temperature of 99°F with the exception of the Containment Air Recirculation Fan Coolers. The heat removal capacity of the Containment Air Recirculation Fan Coolers is not expected to be significantly reduced by a small increase in service water temperature. If heat removal is not significantly reduced, containment pressure and leakage will not be significantly increased, and the doses from containment leakage will not be significantly increased. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated in the SAR.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change does not involve any physical alteration of plant systems, structures or components. A service water temperature of up to 99°F does not introduce new failure mechanisms of systems, structures or components not already considered in the SAR because the systems, structures, and components are designed for higher temperatures than at which they operate. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. Does this change involve a significant reduction in a margin of safety?

The proposed change will allow a small increase in service water temperature above the design basis limit for the SW System and delay by 8 hours the requirement to shutdown the plant when the service water system design limit is exceeded. There are design margins associated with systems, structures and components that are cooled by the service water system that are affected. The capability of components to perform their safety related function is not affected up to a service water temperature [of] 99°F with the exception of the Containment Air Recirculation Fan Coolers. The Containment Air Recirculation Fan Coolers remove heat from containment to mitigate containment pressure and temperature following a MSLB [main steamline break] inside containment or a Large Break LOCA [loss-of-coolant accident] inside containment. An increase in service water temperature in excess of the design limit due to hot weather conditions is expected to be small due to the limited time allowed by the proposed change in conjunction with the generally slow rate of temperature increase experienced from thermal changes in Lake Robinson. Therefore, the effect on the Containment Air

Recirculation Fan Coolers' heat removal capacity and the resulting containment pressure and temperature is expected to be small. Therefore, there is no significant reduction in margin of safety associated with this change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Attorney for licensee: William D. Johnson, Vice President and Corporate Secretary, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602.

NRC Section Chief: Sheri R. Peterson.

Commonwealth Edison Company, Docket No. 50–254, Quad Cities Nuclear Power Station, Units 1, Rock Island County, Illinois

Date of amendment request: March 30, 1999.

Description of amendment request: The amendment would revise the Quad Cities Nuclear Power Station, Unit 1 Technical Specifications (TS) by changing the Surveillance Requirements (SR) 4.6.E.2 to allow a one-time extension of the 18-month requirement to pressure set test or replace one half of the Main Steam Safety Valves (MSSVs) to an interval of 24 months.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes request a one-time change to the surveillance requirement for the MSSVs and Target Rock S/RV [Safety Relief Valve]. The surveillance interval between MSSVs and Target Rock S/RV testing is not a precursor assumed in any previously analyzed accident. Therefore, the probability of a previously evaluated accident has not been increased.

The proposed extension is consistent with the ASME Code requirement to test 20% of the sample population every 24 months with all of the valves in the sample group being tested every 60 months. The proposed changes are also consistent with NUREG 1433, Revision 1, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. Operating experience and excellent materiel condition of the MSSVs and Target Rock S/RV support the expectation that they will continue to perform their intended function. Therefore, the consequences of a previously evaluated accident have not been increased.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No new equipment is required, nor will the MSSVs and Target Rock S/RV be operated in a different manner during the period of the extended surveillance interval. The proposed changes are consistent with NUREG 1433, Revision 1, requirements for safety valve surveillance intervals as well as the ASME Code requirements for testing safety valves. Operating experience and superior materiel condition of the MSSVs and Target Rock S/RV support the expectation that they will continue to perform their intended function. Therefore, the possibility of a new or different accident has not been increased.

Does the change involve a significant reduction in a margin of safety?

The proposed amendment represents an extension to the current TS SRs that would otherwise be provided generically by the ASME Code. The proposed changes are also consistent with NUREG–1433, Revision 1, and do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The proposed changes have been evaluated and found to be acceptable for use at Quad Cities Nuclear Power Station based on system safety analysis requirements and operational performance. The MSSVs and Target Rock S/RV provisions continue to be adequately maintained during plant operation. The proposed changes to the MSSVs and Target Rock S/RV surveillance interval do not significantly reduce existing plant safety margins since excellent materiel condition and acceptable surveillance test results support the expectation that no significant degradation will occur over the extended interval.

The proposed changes are based on NRC accepted provisions at other operating plants that are applicable at Quad Cities Nuclear Power Station and maintain necessary levels of system or component reliability.

The proposed amendment for Quad Cities Nuclear Power Station will not reduce the availability of systems required to mitigate accident conditions.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: March 30, 1999.

Description of amendment request: This amendment request proposes to change the Technical Specifications (TSs) to allow an alternate methodology for quantifying Reactor Coolant System (RCS) leakage when the normal RCS leakage detection system is inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The current Technical Specifications require a periodic measurement of RCS leakage. The normal method for quantifying RCS leakage is to use the DWFDS [Drywell Floor Drain Sump] and DWEDS [Drywell Equipment Drain Sump] flow totalizers. The proposed TS change would allow an alternate method for quantifying RCS leakage when a flow totalizer is not available. The proposed change has no impact on the frequency for monitoring RCS leakage and would only be used for a maximum of 30 days while the normal leakage monitoring system is being restored to an operable condition. The alternate methodology for quantifying leakage has a measurement sensitivity that is consistent with the normal method. The proposed change does not impact any system structure or component used to mitigate the consequences of an accident and there will be no change in the types or significant increase in the amounts of any effluents released offsite.

Therefore this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change involves no physical modifications to any system, structure or component used to mitigate the consequences of an accident. The operation of the DWEDS and DWFDS are not being altered in any way that could affect their ability to function during an accident condition.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The current TS's require a periodic measurement of RCS leakage. The normal method for quantifying RCS leakage is to use

the DWFDS and DWEDS flow totalizers. The proposed technical specifications change would allow an alternate method for quantifying RCS leakage when a flow totalizer is inoperable. The proposed change has no impact on the frequency for monitoring RCS leakage and would only be used for a maximum of 30-days while the normal leakage monitoring system is being restored to an operable condition. The proposed alternate methodology for quantifying leakage has a measurement sensitivity that is consistent with the normal method.

Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units and, Rock Island County, Illinois

Date of amendment request: March 30, 1999.

Description of amendment request: This amendment request proposes to revise license conditions in each of the respective Operating Licenses to delete those license conditions that no longer apply, make an editorial change in the Unit 1 license, and provide clarifying information regarding the license condition concerning equalizer valve restrictions.

Basis for proposed no significant hazards consideration determination: As required by 10 FR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The initial conditions and methodologies used in the accident analyses remain unchanged. The proposed changes do not change or alter the design assumptions for the systems or components used to mitigate the consequences of an accident. Therefore, accident analyses results are not impacted.

The proposed changes delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative. No physical or operational changes to the facility will result from the proposed changes.

Therefore, this proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not affect the design or operation of any system, structure, or component in the plant. The safety functions of the related structures, systems, or components are not changed in any manner, nor is the reliability of any structures , systems, or component reduced. The changes do not affect the manner by which the facility is operated and do not change any facility design feature, structure, system, or component. No new or different type of equipment will be installed.

The proposed changes delete various license conditions that have been completed, make editorial changes, and provide clarifying information. The changes are administrative. No physical or operational changes to the facility will result from the proposed changes.

Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in the margin of safety for the following reasons:

The proposed changes are administrative in nature and have no impact on the margin of safety of any Technical Specification. There is no impact on safety limits or limiting safety system settings. The changes do not affect any plant safety parameters or setpoints. The proposed changes delete various license conditions that have been completed, make editorial changes, and provide clarifying information. No physical or operational changes to the facility will result from the proposed changes.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: March 25, 1999.

Description of amendment request: The amendments would revise the Technical Specifications (TS) to redefine the "trip setpoint" in a number of locations as the "nominal trip setpoint." The current definition results in upper-or lower-bound numerical values not to be exceeded for setpoints. This proposed new definition would permit the setpoints to be set within a tolerance range around the number specified in various tables. The TS locations affected are: Table 3.3.1–1, "Reactor Trip System Instrumentation;" Table 3.3.2–1, "Engineered Safety Feature Actuation Instrumentation;" Surveillance Requirement 3.3.5.2; Table 3.3.6–1, "Containment Purge and Exhaust Isolation Instrumentation;" and Limiting Condition of Operation (LCO) 3.4.12. Sections of the associated TS Bases document would also be revised to reflect the TS changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are consistent with the current licensing basis for Catawba Nuclear Station, the setpoint methodology used to develop the Trip Setpoints, the Catawba Safety Analyses, and current station calibration procedures and practices. The Reactor Trip System and Engineered Safety Features Actuation System are not accident initiating systems; they are accident mitigating systems. Therefore, these proposed changes will have no impact on any accident probabilities. Accident consequences will not be affected, as no changes are being made to the plant which will involve a reduction in reliability of these systems. Consequently, any previous evaluations associated with accidents will not be affected by these changes.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are consistent with the current licensing basis for Catawba Nuclear Station, the setpoint methodology used to develop the Trip Setpoints, the Catawba Safety Analyses, and current station calibration procedures and practices. No changes are being made to actual plant hardware which will result in any new accident causal mechanisms. Also, no changes are being made to the way in which the plant is being operated. Therefore, no

new accident causal mechanisms will be generated. Consequently, plant accident analyses will not be affected by these changes.

3. Does this change involve a significant reduction in a margin of safety?

No. The proposed changes are consistent with the current licensing basis for Catawba Nuclear Station, the setpoint methodology used to develop the Trip Setpoints, the Catawba Safety Analyses, and current station calibration procedures and practices. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be degraded by the proposed changes. Consequently, plant safety analyses will not be affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: April 9, 1999.

Description of amendment request: The proposed amendment would modify the Technical Specifications (TSs) to add Limiting Condition for Operation (LCO) 3.0.6 and its associated bases. This change would allow equipment that has been removed from service or declared inoperable in compliance with the TS Action statement to be returned to service under administrative controls solely to perform testing required to demonstrate its operability or the operability of other equipment. The proposed change is consistent with TS 3.0.5 as discussed in NUREG–1432, Revision 1, "Standard Technical Specifications for Combustion Engineering Plants." TS 3.0.2 would also be modified to reflect that TS 3.0.6 is an exception to TS 3.0.2.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would allow an orderly return to service of inoperable equipment. This change does not alter the functional characteristics of any plant component and does not allow any new modes of operation of any component. The accident mitigation features of the plant are not affected by the proposed amendment request. Therefore, this proposed amendment would not result in a significant change in the types or significant increase in the amounts of any effluents that may be released off site. No modifications to the plant have been proposed due to this amendment request. The proposed change would permit equipment removed from service to comply with required actions to be returned to service under administrative controls to verify the operability of the equipment being returned to service or of other related equipment. Although returning inoperable equipment to service for testing may temporarily compromise single failure criteria, administrative controls will ensure the time involved will be limited to only that required to demonstrate component or system operability. This LCO provides an acceptable method of restoring equipment to service for the sole purpose of demonstrating its operability or the operability of other related equipment. Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

No modifications were made to the plant due to this amendment request. The proposed change does not alter the functional characteristics of any plant component and does not allow any new modes of operation for any component. This proposed amendment would facilitate the testing of equipment in its design configuration to demonstrate operability. The use of TS 3.0.6 would be limited to the time absolutely necessary to perform the test. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The addition of TS 3.0.6 is considered necessary to establish an allowance that is not formally recognized in the current TSs. Without this allowance, situations can arise in which certain components could not be restored to operable status without requiring a plant shutdown. It is not the intent that the TSs preclude the return to service of a component to confirm its operability. This allowance is deemed to represent a more stable, safe operation than requiring a plant shutdown to complete the restoration and confirmatory testing. The time period during which the equipment is returned to service in conflict with the requirements of the TS Action statement is limited to the time absolutely necessary to perform the indicated surveillance requirement. TS 3.0.6 does not provide time to perform any other preventive or corrective maintenance. The period of time during which the equipment is returned to service will be limited by administrative controls and is considered very small. Therefore, the probability of an accident during that time period is also very small and is considered to be insignificant. Thus, it can be concluded that the proposed change does not affect the current margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, AR 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of amendment request: March 9, 1999.

Description of amendment request: The proposed change would modify the Technical Specifications to increase the inservice inspection interval, and reduce the scope of volumetric and surface examinations for the reactor coolant pump flywheels.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis of the issue of no significant hazards consideration, which is presented below:

The Nuclear Regulatory Commission has provided standards in 10 CFR 50.92(c) for

determining whether a significant hazard exists due to a proposed amendment to an Operating License for a facility. A proposed amendment involves no significant hazards consideration if operation of the facility in accordance with the proposed changes would: (1) Not involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Not create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Not involve a significant reduction in a margin of safety. The Davis-Besse Nuclear Power Station has reviewed the proposed changes and determined that a significant hazards consideration does not exist because operation of the Davis-Besse Nuclear Power Station, (DBNPS) Unit No. 1, in accordance with these changes would:

1a. Not involve a significant increase in the probability of an accident previously evaluated because no accident initiators, conditions, or assumptions are affected by the proposed changes to Technical Specification Surveillance Requirement 4.4.10.1.a in the frequency and scope of volumetric and surface examinations for the Reactor Coolant Pump (RCP) motor flywheels.

1b. Not involve a significant increase in the consequences of an accident previously evaluated because changes in the frequency and scope of volumetric and surface examinations for the RCP motor flywheels will not affect any previously evaluated accidents. Accidents associated with failure of the flywheel were not evaluated in the DBNPS Updated Safety Analysis Report (USAR). The design, fabrication, and testing of flywheels in accordance with the guidance found in NRC Regulatory Guide 1.14, "Reactor Coolant Pump Flywheel Integrity," Revision 1, August 1975, minimizes the potential for flywheel failure. The proposed changes have been demonstrated to maintain conservative testing requirements for the flywheels.

2. Not create the possibility of a new or different kind of accident from any previously evaluated because changes in the frequency and scope of volumetric and surface examinations for the RCP motor flywheels will not affect the reliability of RCP motor flywheels. No new failure mode is introduced since the proposed changes do not involve a modification or change in operation of any plant systems, structures, or components.

3. Not involve a significant reduction in the margin of safety. As shown in Westinghouse Topical Report WCAP–14535A, "Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination," November 1996, RCP motor flywheels have been inspected for twenty years without any service induced flaws being identified. Additionally, the analyses demonstrated that the flywheels are manufactured from high quality steel, have a high fracture toughness, and have a very high flaw tolerance. The topical report indicates that the flywheels could be operated for forty years without inspection, and there would be no significant increase in the probability of failure of the flywheels. However, inspections are proposed to continue at a frequency of once every ten years as a conservative measure. Thus, the margin of safety is not reduced significantly by the proposed change in inspection frequency.

Based on the above, the Davis-Besse Nuclear Power Station has determined that the License Amendment Request does not involve a significant hazards consideration. As this License Amendment Request concerns a proposed change to the Technical Specifications that must be reviewed by the Nuclear Regulatory Commission, this License Amendment Request does not constitute an unreviewed safety question.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Toledo, William Carlson Library, Government Documents Collection, 2801 West Bancroft Avenue, Toledo, OH 43606.

Attorney for licensee: Jay E. Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Anthony J. Mendiola.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 31, 1999.

Description of amendment request: The proposed change would modify Cooper Nuclear Station's technical specification administrative controls for unit staff qualifications for the shift supervisor, senior operator, licensed operator, shift technical advisor, and radiological manager.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change provides enhancement to the current requirements and clarifies the qualifications and training requirements for the shift supervisor, senior operator, licensed operator, shift technical advisor, and Radiological Manager. This provides additional assurance that these personnel are properly trained and qualified for their positions; therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will not create the possibility of a new or different kind of accident than evaluated in the Updated Safety Analysis Report (USAR). The proposed change provides enhancement to the current requirements and clarifies the qualifications and training requirements for the shift supervisor, senior operator, licensed operator, shift technical advisor, and Radiological Manager. The revised administrative controls for unit staff qualifications are an enhancement to the current requirements; therefore, the proposed change does not create the possibility of a new or different kind of accident.

The proposed change will not create a significant reduction in the margin of safety. The proposed change provides enhancement to the current requirements and clarifies the qualifications and training requirements for the shift supervisor, senior operator, licensed operator, shift technical advisor, and Radiological Manager. This provides additional assurance that these personnel are properly trained and qualified for their positions; therefore, the proposed change will not create a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Auburn Memorial Library, 1810 Courthouse Avenue, Auburn, NE 68305.

Attorney for licensee: Mr. John R. McPhail, Nebraska Public Power District, Post Office Box 499, Columbus, NE 68602–0499.

NRC Section Chief: Robert A. Gramm.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of amendment request: March 31, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Table 3.6.1.2–1, "Allowable Leak Rates through Valves in Potential Bypass Leakage Paths," by adding two relief valves, with associated leak rate criteria, to be installed on the drywell equipment drain line and drywell floor drain line during the refueling outage in the spring of 2000. Specifically:

(i) For the drywell equipment drain line, the reference to the inboard isolation valve (2DER*MOV119) would be replaced with a reference to the isolation valve and its associated relief valve (2DER*MOV119 and 2DER*RV344);

(ii) For the drywell floor drain line, the reference to the inboard isolation valve (2DFR*MOV121) would be

replaced with a reference to the isolation valve and its associated relief valve (2DFR*MOV121 and 2DFR*RV228); and

(iii) A footnote for both above changes would be added to state, "For valves 2DER*MOV 119 and 2DER*RV344, and likewise for valves 2DFR*MOV121 and 2DFR*RV228, this limit shall be the combined allowable leak rate and not the per valve allowable leak rate."

The two relief valves would be installed to protect the drain line penetrations against overpressure, consistent with Generic Letter 96–06, "Assurance of Equipment Operability and Containment Integrity During Design-Basis Accident Conditions." The allowable leak rates currently specified in TS Table 3.6.1.2–1 for the drywell equipment and drywell floor drain line penetrations will not be increased as a result of the hardware modifications or proposed TS amendment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The operation of Nine Mile Point Unit 2 [NMP2], in accordance with the proposed amendment, will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment will add one relief valve on the drywell equipment drain line (penetration 2DER*Z40) and one relief valve on the drywell floor drain line (penetration 2DFR*Z39). These valves will be installed on piping between the inboard containment isolation valve and the primary containment wall. These drain lines represent potential bypass leakage paths from the primary containment to the environment and are subject to maximum allowable isolation valve leak rates, as specified in Table 3.6.1.2–1 of the Technical Specifications (TS). The purpose of adding relief valves is to protect the piping between the inboard and outboard isolation valves against thermally induced overpressure under postulated accident conditions when both isolation valves close, and the fluid trapped between them may heat up and expand. The new relief valves and piping will not cause any existing plant design, operating, or testing limits to be exceeded. The relief valve installations will meet standards and specifications currently applicable to the penetrations being modified. The relief valve configuration, set pressure, and testing meet applicable NRC guidance. No different precursors or new accident initiators are introduced as the result of the proposed modification. Therefore, this proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The existing requirements relating to allowable bypass leakage for the two penetrations affected by this modification, will not be changed. No new bypass leakage paths to the environment will be created and no new failure modes will be introduced. Should the relief valves open and fail to close, the effectiveness of the containment and other fission product barriers will not be compromised. As a result, accident dose rates will remain unchanged and within the limits of 10 CFR 50, Appendix A, General Design Criterion 19, and 10 CFR 100. None of the accident assumptions described in Section 6.2, titled "Containment Systems" and Chapter 15, titled "Accident Analysis," of the NMP2 Updated Safety Analysis Report (USAR) is adversely affected by the proposed modifications. Therefore, this proposed amendment does not involve a significant increase in the consequences of an accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The isolation valves associated with penetrations 2DER*Z40 (drywell equipment drain line) and 2DFR*Z39 (drywell floor drain line) perform an accident mitigation function by isolating the containment during and after certain postulated accidents. The addition of relief valves between the inboard and outboard isolation valves will enhance the capability of the existing isolation valves to perform their function without the risk of failure due to piping overpressurization. Consistent with the guidance in Generic Letter 96–06, the consequences of a stuck-open relief valve malfunction have been evaluated and are acceptable. Should the relief valve fail to close after opening, the existing outboard isolation valve will perform its function to isolate the containment. Therefore, operation of NMP2 in accordance with this proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The operation of Nine Mile Point Unit 2, in accordance with the proposed amendment, will not involve a significant reduction in a margin of safety.

The proposed installation of the relief valves will not adversely affect primary containment integrity, the maximum allowable leak rates for the affected penetrations, any other fission product barriers, or any plant safety/operational limits. The relief valves will assure that the associated isolation valves do not fail as the result of piping overpressure during and after postulated accidents, which will preserve the radiological margin of safety. Therefore, operation of NMP2 in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mark J. Wetterhahn, Esquire, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: S. Singh Bajwa

Northeast Nuclear Energy Company (NNECO), et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: March 2, 1999.

Description of amendment request: The proposed amendment would require two service water (SW) pumps and their associated strainers to be operable to declare a service water system (SWS) loop operable. The proposed amendment would also (1) modify the existing action statement to take into account one or more service water pump(s) or strainers being inoperable and (2) make changes to the appropriate Bases section.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

NNECO has reviewed the proposed revision in accordance with 10 CFR50.92 and has concluded that the revision does not involve any Significant Hazards Considerations (SHC). The basis for this conclusion is that the three criteria of 10CFR50.92(c) are not satisfied. The proposed Technical Specification revision does not involve an SHC because the revision would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS [Technical Specification] change adds an additional AOT [allowed outage time] for one of four of the service water pumps/strainers in the SWS. The capabilities of the SWS were evaluated in order to ensure that a significant increase in the probability or consequences of the following previously evaluated accidents, LOP [loss of power], LOCA [loss-of-coolant accident] with concurrent LOP and secondary side piping break inside containment, are precluded by SWS mitigative functions. As the above DBA's [design basis accidents] are not caused by the failure of the SWS to operate, the SWS can not affect the probability of these accidents to occur.

Since both pumps/strainers in each loop are covered by the ACTION statement in the TS when inoperable (due to failure or maintenance), and the proposed ACTION statement for two inoperable service water pumps in a single loop is consistent with the

current ACTION statement, there is no impact on the capability to maintain core decay heat removal following a DBA. Further, the revised TS will improve availability of the SWS. The LCO [limiting condition for operation] and ACTION statements help ensure that the SWS, including pumps/strainers, are kept in a condition which allows it to perform all its design functions including providing core decay heat removal and the SFP [spent fuel pool] cooling. As such, there is no affect on the consequences of previously evaluated accidents.

Thus, it is concluded that the proposed revision does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The SWS is used to remove heat from the reactor plant auxiliary systems and other systems. Only one of four pumps is required to be operating during normal plant conditions. In addition, only one 100% capacity pump is required to provide the necessary flow to mitigate the consequences of a DBA. This change continues to require two pumps/strainers per loop to be operable and imposes strict controls on the AOT for the SWS pumps/strainers via the imposition of the LCO controls on the SWS. This assures that four service water pumps/strainers will always be available or the plant will be in an ACTION STATEMENT. The SWS is used to mitigate the consequences of an accident and will not cause an accident.

Thus, this proposed revision does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction [in] a margin of safety.

This change will have no impact on the performance of any safety related system covered by the TS. This change explicitly defines the number of pumps/strainers required for the SWS to be considered OPERABLE and the ACTION required which specifies the AOT for inoperable components. The required flow rate for accident mitigation continues to be available to all ECCS [emergency core cooling system] components and their support systems. As such, this change does not increase the peak clad temperature for a DBA–LOCA.

The proposed Technical Specification change adds an additional AOT for one of four of the service water pumps/strainers in the SWS. Two service water pumps/strainers are required to perform the design function of the SWS; one pump to mitigate the DBA and the other to reduce the potential of the SFP boiling which could occur if a service water pump is unavailable for SFP cooling after a design basis LOCA.

The existing TS Bases states that "The OPERABILITY of the Service Water System ensures that sufficient cooling capacity is available for continued operation of safety-related equipment during normal and accident conditions. The redundant cooling capacity of this system, assuming a single failure, is consistent with the assumptions used in the safety analyses."

Since this change continues to control the availability of the SW pumps by placing the system in an ACTION statement with one loop out of service, then the change will continue to comply with the existing BASES requirements. Thus it is concluded that the proposed revision does not involve a significant reduction in the margin of safety.

In conclusion, based on the information provided, it is determined that the proposed revision does not involve a SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, ATTN: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: December 24, 1998.

Description of amendment request: **Revises the setpoints and limits of allowable values for loss of power (LOP) instrumentation for 4kV emergency busses.**

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The LOP instrumentation provides safety-related electrical equipment protection. No new equipment is added to the plant as a result of the proposed changes. Separation of the 4kV emergency buses from the grid is the only potential transient that previously existed based on operation of these relays. Based on the revised Voltage Regulation Study, which incorporates the effects of system improvements and additional conservatisms, there is no significant increase in the probability of this separation. The relay time delay settings are such that the relays will detect and respond to an actual sustained degradation of voltage, but will not actuate in response to normal operational voltage fluctuations. No accident initiators will be impacted by the proposed setpoint changes. All safety systems will be able to perform their safety functions. Accident mitigation is achieved by these relays by ensuring adequate voltage is maintained throughout the Class 1E electrical distribution system.

The existing allowable values and the proposed allowable values for Functions 2, 3, 4, and 5 have been analyzed and both values are acceptable for operation. During implementation of modification 96–01511 (changing of the relay setpoints), the 4kV buses could be in one of the three configurations: (a) Both sources have relays set at the existing setpoints, (b) one set of source relays with the existing old setpoints and the other set with the proposed revised setpoints, or (c) both sources have relays set at the proposed revised setpoints. Each of these configurations is acceptable because the existing and proposed values satisfy the design limits established within the setpoint calculation and the Voltage Regulation Study.

For Function[s] 4 and 5, the present TS has separate entries in Table 3.3.8.1–1, for the internal and external time delay. This proposed change will combine these internal and external time delays for simplicity. The aggregate time delay is the important parameter and it is the only time delay that is analyzed. The internal time delay minimizes the relay contact wear and reduces the number of external time delay relay actuations due to transient voltage dips. The internal time delay provides no other output functions. Therefore, there will be no impact on the Class 1E power distribution system to perform its intended design function.

Therefore, the proposed changes described above, or operation while modification 96–01511 is being implemented, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed LOP instrumentation setpoint changes will not result in any new accidents or operational transients. Separation of the 4kV emergency buses from the grid is the only potential transient that previously existed based on operation of these relays. Based on the revised Voltage Regulation Study, which incorporates the effects of system improvements and additional conservatisms, there is no significant increase in the probability of this separation, and the proposed setpoint changes would not create the possibility of a new or different kind of accident from any previously evaluated. The relay time delay settings are such that the relays will detect and respond to an actual sustained degradation of voltage, but will not actuate in response to normal operational voltage fluctuations. The proposed setpoint changes for these relays and the proposed combining

of the internal and external time delays will not become initiators of different types of accidents or transients. Additionally, since the existing and proposed allowable values for the LOP instrumentation functions are within the band established by the Voltage Regulation Study, both values are acceptable for operation during the implementation of modification 96–01511. Therefore, the possibility of a new or different kind of accident than previously evaluated is not created.

3. The proposed changes do not involve a significant reduction in a margin of safety.

All LOP instrumentation functions will continue to be carried out. The proposed setpoint and allowable value changes have been evaluated within the Voltage Regulation Study and the Plant Electrical Load Study. The relay setpoints have been established using IISCP setpoint methodology. The setpoint determination accounts for relay accuracy, potential transformer accuracy, measurement and test equipment accuracy, and margin above the design limit established within the Voltage Regulation Study. The proposed setpoint changes for these relays and the proposed combining of the internal and external time delays will not involve a significant reduction in a margin of safety. Additionally, since the existing and proposed allowable values for the LOP instrumentation functions are within the band established by the Voltage Regulation Study, both values are acceptable for operation during the implementation of modification 96–01511. Therefore, having both values during the implementation of modification 96–01511 does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Project Director: Elinor G. Adensam

PECO Energy Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 12, 1999.

Description of amendment request: Administrative changes to correct typographic errors in Technical Specifications (TS) introduced in previous amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes correct typographical errors and are administrative only and do not impact the operation of the facility. In each case, the action of the intended TS requirements were satisfactorily completed when the change was implemented. These corrections are administrative only and have no effect on any previously evaluated accident scenario. The changes will not alter the operation of equipment assumed to be available for the mitigation of accidents or transients, nor will they alter the operation of equipment important to safety previously evaluated.

Therefore, the changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes correct typographical errors and are administrative only and will not involve any physical changes to the plant SSCs [systems, structures, or components]. In each case, the action of the intended TS requirements were satisfactorily completed when the change was implemented. These corrections are administrative only and have no effect on any previously evaluated accident scenario. The proposed changes do not allow operation in any mode that is not already evaluated. The changes will not alter the operation of equipment important to safety previously evaluated.

Therefore, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed changes correct typographical errors and are administrative only and will not affect the manner in which the facility is operated, or change equipment or features which affect the operational characteristics of the facility. The proposed changes have no impact on any safety analysis assumptions or margins of safety.

Therefore, these proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Attorney for Licensee: J.W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia .

Date of amendment request: January 21, 1999.

Description of amendment request: The proposed amendments would change Technical Specification Tables 3.3.6.1–1 and 3.3.6.2–1 by increasing the Allowable Values for the high radiation trip for the exhaust monitors for the reactor building and the refueling. The January 21, 1999, amendment request supercedes the July 22, 1998, amendment request which was noticed in the **Federal Register** on August 26, 1998 (63 FR 45529).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1). Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The Unit 1 and Unit 2 reactor building and refueling floor ventilation exhaust radiation monitors perform no function in preventing, or decreasing the probability of, a previously evaluated accident. The monitors are designed to monitor ventilation exhaust for indications of a release of radioactive material resulting from a design basis accident and initiate appropriate protective actions. Because the proposed changes affect only the ventilation exhaust radiation monitors, the probability of an accident previously evaluated remains the same.

The function of the reactor building and the refueling floor ventilation exhaust radiation monitors, in combination with other accident mitigation systems, is to limit fission product release during and following postulated design basis accidents. The proposed new Allowable Values for the high radiation trip will continue to ensure the offsite doses resulting from a design basis accident do not exceed the NRC-approved

licensing basis. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes increase the radiation level at which the ventilation exhaust monitors actuate; however, the manner in which their actuation logic functions and the systems that isolate or actuate as a result are unaffected by the proposed changes. Furthermore, the ventilation exhaust monitors will continue to perform their design function of limiting offsite doses to NRC-approved licensing limits at the higher Allowable Values. Therefore, the proposed changes cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The Bases for Unit 1 and Unit 2 Technical Specifications Tables 3.3.6.1–1 and 3.3.6.2–1 state that the Allowable Values for the reactor building and refueling floor ventilation exhaust radiation monitors "are chosen to ensure radioactive releases do not exceed offsite dose limits." The proposed Allowable Values ensure the radiation monitors actuate at a radiation level sufficient to ensure offsite doses are within the NRC-approved licensing basis. The proposed Allowable Values comply with the margin of safety defined in the Technical Specifications Bases for the ventilation exhaust radiation monitors; therefore, the proposed changes do not reduce a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: March 30, 1999.

Description of amendment request: The licensee has proposed to relocate Technical Specification 3/4.3.3.4, "Meteorological Instrumentation," and its associated Bases to the Technical Requirements Manual (TRM). Because the TRM is incorporated within the South Texas Project updated final safety analysis report (UFSAR) for the units, changes to the requirements on the meteorological instrumentation that would be relocated to the TRM would be controlled in accordance with 10 CFR 50.59.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The affected system and components [i.e., meteorological monitoring instrumentation] are not assumed as initiators of analyzed events, and are not assumed to mitigate accident or transient events. The requirements and surveillances for [this affected system] and components will be relocated from the Technical Specifications to the Technical Requirements Manual, which is incorporated in the South Texas Project UFSAR and will be maintained pursuant to 10 CFR 50.59. In addition, the Meteorological Monitoring System components are addressed in existing surveillance procedures which are also controlled by 10 CFR 50.59 and subject to the change control provisions imposed by plant administrative procedures, which endorse applicable regulations and standards. The associated changes to the Technical Specification Index are administrative. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or make changes in the methods governing normal plant operation. This change will not impose different requirements, and adequate control of information will be maintained. Furthermore, this change will not alter assumptions stated in the safety analysis or licensing basis. The associated changes to the Technical Specification Index are administrative. Therefore, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

This change will not reduce a margin of safety because the change has no impact on any safety analysis assumptions. In addition, the relocated requirements and surveillances for the affected structures, systems, and components remain the same as the existing Technical Specifications. Because any future changes to these requirements or the surveillance procedures will be evaluated per the requirements of 10 CFR 50.59; there is no [significant] reduction in a margin of safety. The associated changes to the Technical Specification Index are administrative and have no potential effect on the margin of safety. Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges, Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant (SQN), Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: March 2, 1999 (TS 98–05).

Brief description of amendments: The proposed amendments would change the SQN Operating Licenses DPR–77 (Unit 1) and DPR–79 (Unit 2) by eliminating a requirement to have an Independent Safety Engineering Group (ISEG), conditions imposed by NUREG–0737. Because of evolution through numerous reorganizations and reassignments, these license conditions are no longer necessary and the Tennessee Valley Authority (TVA, the licensee) proposes deleting them.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The possibility of occurrence or the consequences for an accident or malfunction of equipment is not increased. The ISEG function is one of "oversight" only.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

A possibility for an accident or malfunction of a different type than any evaluated previously in SQN's Final Safety Analysis Report is not created by the proposed elimination of the ISEG; nor is the possibility for an accident or malfunction of a different type. The ISEG function is one of "oversight" only.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The proposed amendment will not involve a significant reduction in the margin of safety. The ISEG function is one of "oversight" only.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Sheri R. Peterson.

TU Electric Company, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: February 12, 1999 (TXX–99022).

Brief description of amendments: The proposed changes would modify the steam generator tube inspection requirements and acceptance criteria to implement the 1.0-volt repair criteria for steam generator tubes affected by outer diameter stress corrosion cracking (ODSCC) according to Nuclear Regulatory Commission (NRC) Generic Letter 95–05 ("Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking") at Comanche Peak Unit 1. Also proposed is the use of a voltage-dependent probability of detection; the methodology was originally submitted to the NRC by the Nuclear Energy Institute in 1996.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of Comanche Peak Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Tube burst criteria are inherently satisfied during normal operating conditions due to the proximity of the tube support plate [TSP]. Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% through-wall electric discharge machining notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Since tube to tube support plate proximity precludes tube burst during normal operating conditions, use of the criteria must retain tube integrity characteristics which maintain a margin of safety of 1.43 times the bounding faulted condition (Steam Line Break) pressure differential. As previously stated, the RG [Regulatory Guide] 1.121 criterion requiring maintenance of a safety factor of 1.43 times the Steam Line Break pressure differential on tube burst is satisfied by ¾" diameter tubing with bobbin coil indications with signal amplitudes less than 4.7 volts, regardless of the indicated depth measurement. At the FDB [flow distribution baffle], a safety factor of 3 against the normal operating condition at power is applied. Here a voltage of 3.34 volts satisfies the burst capability recommendation.

The upper voltage repair limit (V_{URL}) will be determined prior to each outage using the most recently approved NRC database to determine the tube structural limit (V_{SL}). The structural limit is reduced by allowances for nondestructive examination (NDE) uncertainty (V_{NDE}) and growth (V_{Gr}) to establish V_{URL}. As an example, the NDE uncertainty component of 20% and a voltage growth allowance of 30% per full power year can be utilized to establish a V_{URL} of 3.13 volts for TSP indications, 2.22 volts for the FDB indications. The 20% NDE uncertainty represents a squareroot-sum-of-the-squares (SRSS) combination of probe wear uncertainty and analyst variability.

The flaw growth allowance should be an average growth rate or 30% per effective full power year, whichever is larger. The 30% growth allowance used to determine V_{URL} is conservative for the current conditions at Comanche Peak Unit 1. The average growth of the bobbin indication voltages observed at the last inspection is determined to be 0.14 volts, or 24.6% voltage growth. This value is a conservative representation of the growth trends at Comanche Peak Unit 1 as not all steam generators were inspected at end of cycle 3 and end of cycle 4, and the largest reported voltage growths represent more than one cycle of actual plant operation. The most current NRC approved database, contained in EPRI [Electric Power Research Institute] NP–7480–L, Addendum 1, was used to establish the V_{URL} values for the FDB and TSP intersections. Once approved by the NRC, the industry protocol for updating the database will be followed by TU Electric, ensuring that the most current database is utilized for all future applications of the criteria.

Also, assuming the criteria was applied at the last inspection at Comanche Peak Unit 1, using conservative growth projections as described in Reference 2 [of the February 12, 1999, application], the conditional burst probability at end of cycle 6 is determined to be 1.7×10^{-4}, which is well within the GL 95–05 reporting limit of 1×10^{-2}.

Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main Steam Line Break outside of containment but upstream of the MSIV [main steam isolation valve] represents the most limiting radiological condition relative to the plugging criteria. In support of implementation of the revised plugging limit, it will be determined whether the distribution of cracking indications at the tube support plate intersections during future cycles are projected to be such that primary to secondary leakage would result in site boundary doses within 10CFR100 guidelines and control room doses within the GDC [General Design Criterion]-19 limit. A separate calculation has determined this allowable Steam Line Break leakage limit to be 27.79 gpm in the faulted loop assuming a RCS [reactor coolant system] dose equivalent I–131 concentration of 1.0 microCi/gm. The establishment of the 27.79 gpm leak rate value is controlled by the 0 to 2 hour offsite dose at the site boundary for the accident initiated iodine spike case, not the control room dose. For this case, the site boundary thyroid dose approaches, but is bounded by, the 30 Rem limit recommended in NUREG–0800 ["Standard Review Plan"].

The methods for calculating the radiological dose consequences are also revised for this application. Rather than basing the calculated thyroid dose consequences on conversion factors from TID–14844, ["Calculation of Distance Factors for Power and Test Reactor Sites"] factors obtained from ICRP–30 [International Commission on Radiation Protection Publication 30] are used. The use of ICRP–30 dose conversion factors in this application has been previously accepted by the NRC. Although the use of ICRP–30, relative to the TID–14844, results in lower calculated thyroid doses for this application, the NRC has previously determined that the ICRP–30 factors retain adequate conservatism.

In summary, due to the methodology used to determine the maximum allowable, accident-initiated leak rate (prescribed in Section 2.b.4 of Generic Letter 95–05), the calculated radiological consequences at the EAB [exclusion area boundary] and LPZ [low population zone] are larger than previously reported for the postulated steamline break event. However, the calculated radiological consequences remain in compliance with NUREG–0800 and GDC–19. Therefore, it is concluded that the proposed changes do not result in a significant increase in the radiological consequences of an accident previously analyzed.

The removal from the FSAR [final safety analysis report] of the steamline break radiological dose consequences calculation typically identified as a "5% failed fuel" scenario does not affect the probability or consequences of any accident previously considered. For CPSES [Comanche Peak Steam Electric Station], no accident-induced fuel failures are predicted; therefore, consistent with NUREG–0800, this scenario is not required to be analyzed or presented in the FSAR.

In summary, because the implementation of the 1.0 volt voltage-based plugging criteria at Comanche Peak Unit 1 does not adversely affect steam generator tube integrity and implementation will be shown to result in acceptable radiological dose consequences, the proposed Technical Specification change does not result in any increase in the probability or consequences of an accident previously evaluated within the Comanche Peak FSAR.

(2) The proposed license amendment does not create the possibility of a new or different

kind of accident from any accident previously evaluated.

Implementation of the proposed steam generator tube 1.0 volt plugging limit does not introduce any significant changes to the plant design basis. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging limit has been applied (during all plant conditions).

The bobbin probe voltage-based tube plugging criteria of 1.0 volt is supplemented by: enhanced eddy current inspection guidelines to provide consistency in voltage normalization, a 100% eddy current inspection sample size at the tube support plate elevations, and RPC [rotating pancake coil] inspection requirements for the larger indications left in service to characterize the principal degradation as ODSCC. TU Electric will implement a maximum normal operating condition primary to secondary leakage rate limit of 150 gpd (0.1 gpm—at room temperature) per steam generator to help preclude the potential for excessive leakage during all plant conditions. The 150 gpd leakage limit is more restrictive than the standard operating leakage limit (of 500 gpd) and is intended to provide additional margin to accommodate a stress corrosion crack which might grow at a greater than expected rate or unexpectedly extend outside the thickness of the tube support plate. Leakage trending capability consistent with EPRI Report TR–04788, "PWR Primary-to-Secondary Leak Guidelines", has been implemented at Comanche Peak Unit 1.

As steam generator tube integrity upon implementation of the 1.0 volt plugging limit continues to be maintained through in-service inspection and primary to secondary leakage monitoring, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

(3) The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage-based bobbin probe tube support plate elevation plugging criteria at Comanche Peak Unit 1 maintains steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. Regulatory Guide 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the proposed criteria, even under the worst case conditions, the occurrence of ODSCC at the tube support plate elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The end of cycle distribution of crack indications at the tube support plate elevations is confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, TX 76019

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia.

Date of amendment request: February 16, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Sections 3.6, 3.9, and 3.16 and the associated Bases for those sections for Units 1 and 2. The proposed changes would consolidate the auxiliary feedwater (AFW) cross-connect requirements by relocating the electrical power requirements from Section 3.16 to Section 3.6. The proposal also would clarify the TS with regard to permitting simultaneous entry into certain conditions of operation on Units 1 and 2.

Basis for proposed no significant hazards consideration determination: **As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:**

Criterion 1—Operation of Surry Units 1 and 2 in accordance with the proposed TS change does not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The proposed TS change is administrative in nature, and station operations are not being affected. The accidents considered relative to this proposed TS change are Rupture of Main Steam Pipe, Loss of All AC Power, and Loss of Feedwater. The probability of occurrence of these accidents has been previously evaluated to support Surry TS Amendment 143/140. The NRC reviewed the PSA [probabilistic safety analysis] basis during issuance of TS Amendment 143/140 and found it acceptable. The probability of occurrence of these accidents has been recently reviewed relative to this proposed TS change. It has been concluded that the proposed TS change is consistent with the existing analyses and evaluations and, therefore, will not increase the probability of occurrence of the identified accidents.

The consequences of the accidents identified above were also previously evaluated to support Surry TS Amendment 143/140. The PSA considerations included the AFW cross-connect capability, diesel generator dependencies, various LCO [limiting condition for operation] time periods, and a HELB [high energy line break] in the vicinity of the AFW Pumps. The previous evaluation was recently reviewed relative to this proposed TS change. This review determined that the proposed TS change is consistent with the design and licensing bases supporting the existing Technical Specifications. The proposed TS change is also consistent with the existing analyses and evaluations, the consequences of which bound any potential consequences of the proposed TS change. Therefore, the proposed TS change will not increase the consequences of the identified accidents.

Criterion 2—The proposed TS change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident than any previously evaluated is not created since the considerations in the PSA and evaluations performed to support TS Amendment 143/140 are not changed by the proposed administrative TS change. The proposed TS change is consistent with the design and licensing bases supporting the existing Technical Specifications. Furthermore, station operations and plant equipment are not being affected and, therefore, the proposed TS change does not create any new failure modes or accident precursors.

Criterion 3—The proposed TS change does not involve a significant reduction in a margin of safety.

The proposed administrative change to Surry Technical Specifications clarifies the requirements (limiting conditions for operation (LCO) and action statements) relating to the Auxiliary Feedwater (AFW) cross-connect by relocating the emergency power source requirements of TSs 3.16.A.8 and 3.16.B.4 to TS 3.6. The proposed TS change does not alter the current TS requirements or bases, as well as maintains the Surry licensing and design basis. The proposed change does not affect either station operations or plant equipment, hence the availability of equipment for the mitigation of accidents is not decreased. Furthermore, the assumptions governing the accident analyses remain unchanged, and the consequences of the existing analyses and evaluations remain bounding. This is an administrative change and as such does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of amendment request: February 16, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) Section 4.2 for Units 1 and 2 to relax the surveillance requirements for reactor coolant pump (RCP) flywheels. The flywheels provide extended reactor coolant flow coastdown capability if electric power for the RCPs is lost. Currently, the flywheels are subjected to an inspection program that meets the requirements of NRC Regulatory Guide 1.14, Revision 1, dated August 1975. The inspections include an ultrasonic examination (UT) of areas of high stress concentration at the bore and keyway every three years, and complete UT every 10 years. The proposed change would require only a 10-year UT, based upon an analysis presented in a Westinghouse topical report (WCAP–14535A) which has been reviewed and accepted by NRC staff.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. The reduction of the inspection requirements for the reactor coolant pump flywheels, as generically approved by the NRC and technically supported by WCAP–14535A, does not significantly increase the probability of an accident previously evaluated in the safety analysis report. The results of WCAP–14535A have been reviewed and evaluated with the technical basis accepted for referencing in license applications by the NRC in their letter entitled "Acceptance for referencing of Topical Report WCAP–14535, Topical Report on Reactor Coolant Pump Flywheel Inspection Elimination," dated September 12, 1996.

The proposed Technical Specification change reduces the surveillance requirements (inspection) on the RCP flywheel. There is no change in the method of plant operation or system design. The WCAP–14535A report establishes that the proposed change has a negligible affect on the probability that the flywheel will fail given that the flywheels received preservice and inservice examinations as required previously. Therefore, the proposed change does not increase the probability of occurrence or consequences of any previously analyzed accident.

b. The proposed change to reduce the inspection requirements for the RCP flywheels as generically approved by the NRC and supported by WCAP–14535A does not create the possibility of a new or different kind of accident from any accident previously evaluated in the safety analysis report.

The proposed surveillance requirements (inspection) only reduce the inspection requirements/frequency for the reactor coolant pump flywheels, and there is no change in the method of plant operation or system design.

c. The proposed change reducing the inspection of the RCP flywheels as generically approved by the NRC and supported by WCAP–14535A, does not impact the accident analysis assumptions or the basis of any Technical Specification. As previously stated, the analysis performed in the WCAP–14535A report established that the affect on flywheel failure probability was negligible given that the initial preservice and inservice inspections under the current requirements were performed. Therefore, the proposed change in surveillance (inspection) frequency does not involve a significant reduction in the margin of safety.

The analysis provided herein demonstrates that the proposed amendment to the Surry Technical Specifications does not involve a significant increase in the probability or consequences of a previously evaluated accident, does not create the possibility of a new or different kind of accident, and does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Attorney for licensee: Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: April 12, 1999 (TSCR 212).

Description of amendment request: The purpose of the proposed amendments is to update references in the Technical Specifications. The update is necessary to reflect relocation of referenced information in the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment corrects references within the Technical Specification requirements such that they refer to the correct information in the updated Final Safety Analysis Report (FSAR). The references changed due to relocation of the information within the FSAR. The Technical Specification requirements and intent are not changed. Therefore, these changes are administrative only and do not change the design or operation of the Point Beach Nuclear Plant [PBNP]. Operation of PBNP in accordance with the proposed amendments cannot increase the probability or consequences of an accident previously evaluated.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments will not create the possibility of a new or different kind of accident previously evaluated.

The proposed changes are administrative only and therefore do not materially change any requirements for the design or operation of PBNP. Therefore, operation in accordance with the proposed changes cannot create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not create a significant reduction in a margin of safety.

The proposed changes are administrative only; correcting references within the Technical Specification requirements. No requirement on the operation or design of the facility is being changed. Therefore, there is no reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: George F. Dick, Jr., Acting.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50–317 and 50–318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: November 19, 1998.

Brief description of amendments: The amendments revised Technical Specification 3.7.6 "Service Water (SRW) System" to allow operation of Calvert Cliffs Unit Nos. 1 and 2 with one SRW plate and frame heat exchanger in a subsystem secured and removing one containment air cooler from service to enable the affected SRW subsystem to remain operable.

Date of issuance: April 14, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 230 and 206.

Facility Operating License Nos. DPR–53 and DPR–69: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 16, 1998 (63 FR 69333). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated April 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Carolina Power & Light Company, et al., Docket Nos. 50–325 and 50–324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendment request: November 1, 1996, as supplemented May 22, 1998, September 14, 1998, January 4, 1999, and March 19, 1999.

Brief description of amendment: The amendment modified the Technical Specifications for the Brunswick Steam Electric Plant, Units 1 and 2, to extend the Allowed Outage Time for 4.16kV AC balance of plant buses and the AC electrical power distribution system load group buses.

Date of issuance: April 15, 1999.

Effective date: April 15, 1999.

Amendment Nos.: 205 and 235.

Facility Operating License Nos. DPR–71 and DPR–62: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6977). The supplemental submittals of May 22, 1998, September 14, 1998, January 4, 1999, and March 19, 1999, contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Carolina Power & Light Company, Docket No. 50–261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of application for amendment: October 14, 1998.

Brief description of amendment: The amendment modifies the acceptance criterion for Surveillance Requirement 3.4.14.2 from the setpoint value of 465 psig to the analytical limit for the residual heat removal system of 474 psig reactor coolant system pressure.

Date of issuance: April 20, 1999.

Effective date: April 20, 1999.

Amendment No. 182.

Facility Operating License No. DPR–23. Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 4, 1998 (63 FR 59587).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Hartsville Memorial Library, 147 West College Avenue, Hartsville, South Carolina 29550.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: September 3, 1997, as supplemented March 13, 1998, and March 18, 1999.

Brief description of amendment: The amendment revises the technical specifications to delete snubber operability requirements, action requirements for inoperable snubbers, and snubber testing requirements. The snubber testing requirements have been relocated to the Palisades Operating Requirements Manual.

Date of issuance: April 13, 1999.

Effective date: April 13, 1999, and shall be implemented within 60 days.

Amendment No.: 185.

Facility Operating License No. DPR–20. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 8, 1998 (63 FR 17222). The March 18, 1999, submittal requested a 60-day allowance for implementation of the amendment. This change was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Van Wylen Library, Hope College, Holland, Michigan 49423–3698.

Detroit Edison Company, Docket No. 50–16, Enrico Fermi Atomic Power Plant, Unit 1, Monroe County, Michigan

Date of amendment request: July 17, 1998 (Reference NRC–98–0044).

Brief description of amendment: This amendment revises the Enrico Fermi

Atomic Power Plant, Unit 1, License to allow possession of a nominal amount of special nuclear material.

Date of issuance: April 15, 1999.

Effective date: On the date of issuance of this amendment and must be fully implemented no later than 60-calendar days from the date of issuance.

Amendment No.: 16.

Facility Operating License No. DPR–9: Amendment revised the License by adding new Part 2.B.4 to the License.

Date of initial notice in Federal Register: October 21, 1998 (63 FR 56240). The NRC's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: March 15, 1999, and supplemented by letter dated March 17, 1999.

Brief description of amendments: The amendments delete from the joint Technical Specifications Section 3.3.7, "Control Room Area Ventilation System (CRAVS) Actuation Instrumentation," and Section 3.3.8, "Auxiliary Building Filtered Ventilation Exhaust System (ABFVES) Actuation Instrumentation." These surveillance requirements are not applicable to Catawba because the sections do not reflect the design of the Catawba units.

Date of issuance: April 8, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—177; Unit 2—169.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in FEDERAL REGISTER: March 24, 1999 (64 FR 14274). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: February 18, 1999.

Brief description of amendments: The amendments revise the Technical Specifications Surveillance Requirement (SR) 3.6.16.1 regarding surveillance of reactor building access openings, SR 3.6.16.3 regarding surveillance of reactor building structural integrity, and Administrative Controls 5.5.2 regarding the Containment Leakage Rate Testing Program. The revised requirements would provide scheduling flexibility without decreasing quality and safety margin.

Date of issuance: April 9, 1999.

Effective date: As of the date of issuance, to be implemented within 30 days from the date of issuance.

Amendment Nos.: 178—Unit 1; 170—Unit 2.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11961). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina.

Duquesne Light Company, et al., Docket No. 50–334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 11, 1998, as supplemented February 26, 1999.

Brief description of amendment: The amendment modified License Condition 2.C(9) to allow, on a one-time only, extension of the steam generator inspection interval in Technical Specification Surveillance 4.4.5.3.b. This will allow the steam generator inspection interval to coincide with the thirteenth refueling outage or the end of 500 effective full power days, whichever occurs sooner.

Date of issuance: April 16, 1999.

Effective date: As of date of issuance, to be implemented within 60 days.

Amendment No: 221.

Facility Operating License No. DPR–66. Amendment revised the License.

Date of initial notice in Federal Register: December 2, 1998 (63 FR 66593). The February 26, 1999, letter provided additional information but did not change the initial proposed no significant hazards consideration determination or expand the amendment request beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: B.F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, PA 15001.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: June 28, 1996, as supplemented by letters dated February 23 and March 15, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to permit the containment equipment hatch to be open during handling of irradiated fuel in containment and core alterations provided that the capability for closure is maintained.

Date of issuance: April 16, 1999.

Effective date: As of the date of issuance, and shall be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 195; Unit 2—Amendment No. 203.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1996 (61 FR 42280). The February 23 and March 15, 1999, letters provided clarifying information that did not change the scope of the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: April 30, 1998.

Brief description of amendment: The amendment revises the single largest post-accident load capable of being supplied by the diesel generators and relocates this value to the Bases for Technical Specification (TS)

Surveillance 4.8.1.1.2.c.3. TS Surveillance 4.8.1.1.2.c.3 has been revised to refer to "the single largest post-accident load" rather than a specific numerical value for diesel generator load reject testing. This change is consistent with the guidance provided in NUREG–1432 , "Improved Standard Technical Specifications for Combustion Engineering Plants."

Date of issuance: April 21, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 204.

Facility Operating License No. NPF–6: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 21, 1998 (63 FR 56241). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 13, 1997.

Brief description of amendment: The amendment changes the Appendix A Technical Specifications (TSs) by revising TS 6.8.4.a, Primary Coolant Sources Outside Containment, to add portions of the containment vacuum relief and primary sampling systems to the list of systems included in the Primary Coolant Sources Outside Containment Program.

Date of issuance: April 21, 1999.

Effective date: The license amendment is effective as of its date of issuance, and shall be implemented within 60 days.

Amendment No.: 150.

Facility Operating License No. NPF–38: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 25, 1998 (63 FR 9601). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 21, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 1, 1997, as supplemented April 23 and November 17, 1998 and February 19, 1999.

Brief description of amendment: The changes specify criteria for evaluating the growth of pit-like intergranular attack steam generator tube degradation identified in tubes in the "B" once-through steam generator (OTSG). Florida Power Corporation also requested to amend the Improved Technical Specifications to clarify the date by which the OTSG inservice inspection results are required to be submitted to the NRC.

Date of issuance: April 8, 1999.

Effective date: April 8, 1999.

Amendment No.: 172.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 22, 1997 (62 FR 54873). The supplemental letters dated April 23 and November 17, 1998, and February 19, 1999 did not change the original no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: September 9, 1997, as supplemented November 7 and 25, 1997, and January 20 and October 30, 1998.

Brief description of amendment: The amendment proposed to revise the Final Safety Analysis Report (FSAR) analysis of the Makeup System letdown line failure accident. The revised analysis models the event as being terminated by manual operator action to isolate the line whereas the original analysis models an automatic isolation of the break.

Date of issuance: April 13, 1999.

Effective date: April 13, 1999.

Amendment No.: 173.

Facility Operating License No. DPR–72: Amendment approves changes to the Final Safety Analysis Report.

Date of initial notice in Federal Register: September 24, 1997 (62 FR 50005). The supplemental letters dated November 7 and 25, 1997, January 20, 1998, and October 30, 1998, did not change the original proposed no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida

Date of application for amendment: October 30, 1998, as supplemented April 7, 1999.

Brief description of amendment: Changes the Crystal River Unit 3 Technical Specifications to delete a note regarding the number of required channels for the Degrees of Subcooling function, and to subdivide the Core Exit Temperature (Backup) function into two new functions in Table 3.3.17–1, Post-Accident Monitoring Instrumentation.

Date of issuance: April 20, 1999.

Effective date: April 20, 1999.

Amendment No.: 174.

Facility Operating License No. DPR–72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 13, 1999 (64 FR 2246). The April 7, 1999, supplement did not affect the original no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 34428.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: May 27, 1998, as supplemented October 9, 1998.

Brief description of amendment: Deletes the requirement for operability of the safety injection tanks in Mode 4 of reactor operation.

Date of Issuance: April 8, 1999.

Effective Date: Amendment is effective within 30 days of receipt.

Amendment No.: 100.

Facility Operating License No. NPF–16: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 29, 1998 (63 FR 40556). The October 9, 1998 supplemental letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954–9003.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: November 25, 1998, as supplemented February 12, 1999.

Brief description of amendment: The amendment approves the proposed surveillance Technical Specifications related to the once through steam generator inservice inspections to be completed during the 13R refueling outage in fall 1999. Related TS Bases changes are also included.

Date of issuance: April 13, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 209.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 16, 1998 (63 FR 69342).

The February 12, 1999, submittal modified the request, but did not affect the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 13, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

GPU Nuclear, Inc., et al., Docket No. 50–289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: October 15, 1998, as supplemented February 3, and February 12, 1999.

Brief description of amendment: The amendment authorizes a revision to the TMI–1 updated final safety analysis report (UFSAR) for use of revised atmospheric dispersion factors (X/Q) (obtained by utilizing recent meteorological data) in determining Chapter 14 postulated accident analysis radiological dose consequences at Technical Specification Section 5.1.1 defined exclusion area boundary (EAB) and low population zone (LPZ).

Date of issuance: April 15, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 210.

Facility Operating License No. DPR–50. Amendment authorizes changes to the UFSAR.

Date of initial notice in Federal Register: November 18, 1999 (63 FR 64117).

The February 3, and February 12, 1999, letters were within the scope of the original application and did not change the staff's no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Law/Government Publications Section, State Library of Pennsylvania, (Regional Depository) Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, PA 17105.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: December 28, 1998, as supplemented March 1 and 29, 1999.

Brief description of amendment: The amendment revises Technical Specification (TS) 2.2.1, "Limiting Safety System Settings-Reactor Trip Setpoints," to reflect revised loss of normal feedwater flow analyses.

Date of issuance: April 8, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 232.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 10, 1999 (64 FR 6701). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: January 18, 1999.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.6.1.2, "Containment Systems—Containment Leakage," and also revises the related TS bases and Final Safety Analysis Report sections. The revisions relate to changes in the secondary containment bypass leakage.

Date of issuance: April 14, 1999.

Effective date: As of the date of issuance to be implemented within 60 days from the date of issuance.

Amendment No.: 234.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 10, 1999 (64 FR 6703). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northeast Nuclear Energy Company, et al., Docket No. 50–423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: February 10, 1999.

Brief description of amendment: The amendment incorporates alternative inspection requirements into Technical Specification Surveillance Requirement 3/4.4.10, "Structural Integrity," for the reactor coolant pump flywheel.

Date of issuance: April 16, 1999.

Effective date: As of the date of issuance to be implemented within 30 days from the date of issuance.

Amendment No.: 169.

Facility Operating License No. NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11964).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Three Rivers Community-Technical College, 574 New London Turnpike, Norwich, Connecticut, and the Waterford Library, Attn: Vince Juliano, 49 Rope Ferry Road, Waterford, Connecticut.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: February 5, 1999, as supplemented March 1, 1999.

Brief description of amendments: The amendments revise certain requirements for repair of defective steam generator tubs specified in Technical Specification 4.12, "Steam Generator Tube Surveillance," based on the latest revision to a previously approved methodology.

Date of issuance: April 15, 1999.

Effective date: April 15, 1999, with full implementation within 30 days.

Amendment Nos.: 144 Unit 1—135 Unit 2.

Facility Operating License Nos. DPR–42 and DPR–60. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11964). The March 1, 1999, supplement provided corrected Technical Specification pages. This information was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No.1, Washington County, Nebraska

Date of amendment request: March 18, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) 5.2.f and TS 5.11.2 to change the title of "Shift Supervisor" to "Shift Manager."

Date of issuance: April 15, 1999.

Effective date: April 15, 1999.

Amendment No.: 190.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register**: April 8, 1998 (63 FR 17227).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 15, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 16, 1996.

Brief description of amendment: The amendment revises requirements for Plant Operating Review Committee review of fire protection program and procedure changes.

Date of issuance: April 12, 1999.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 252.

Facility Operating License No. DPR–59: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 3, 1996 (61 FR 34895).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: December 16, 1998, as supplemented March 22, 1999.

Brief description of amendment: This amendment revised Technical Specification (TS) Surveillance Requirements 4.8.1.1.2 and 4.8.1.1.3, Table 4.8.1.1.2–1, and the associated Bases. These changes removed the emergency diesel generator accelerated testing and special reporting requirements from the TSs in accordance with the guidance provided in Generic Letter 94–01.

Date of issuance: April 14, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 119.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 13, 1999 (64 FR 2251).

The supplemental letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 14, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: June 12, 1998, as supplemented July 23, 1998 and September 8, 1998.

Brief description of amendment: The amendment revises Technical Specification (TS) Limiting Condition for Operation Sections 3.7.1.1, 3.7.1.2, and 3.7.1.3. Specifically, the changes revise the Ultimate Heat Sink limits for river water temperature, in order to increase operational flexibility. In addition, the Station Service Water System (SSWS) and Safety Auxiliaries Cooling System (SACS) TS Action Statements have been revised to provide additional restrictions on continued plant operation. These revisions provide more explicit TS direction for plant operation under limiting SSWS/SACS configurations.

Date of issuance: April 19, 1999.

Effective date: As of the date of issuance, to be implemented within 60 days.

Amendment No.: 120.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: July 1, 1999 (63 FR 35995) The July 23, 1998, and September 8, 1998, supplements provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, NJ 08070.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50–395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: September 18, 1998, as supplemented by letter dated February 5, 1999.

Brief description of amendment: The amendment revises Virgil C. Summer Nuclear Station Technical Specifications to permit use of the BEACON system. BEACON is a core power distribution monitoring and support system based on a three-dimensional nodal code.

Date of issuance: April 9, 1999.

Effective date: April 9, 1999.

Amendment No.: 142.

Facility Operating License No. NPF–12: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: November 18, 1998 (63 FR 64121).

The February 5, 1999, submittal contained clarifying information only, and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 9, 1999.

No significant hazards consideration comments received: No

Local Public Document Room location: Fairfield County Library, 300 Washington Street, Winnsboro, SC 29180.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of application for amendments: January 24, 1997.

Brief description of amendments: The amendments revised Surveillance Requirement (SR) 3.8.1.9 to Technical Specification 3.8.1, "AC Sources—Operating," to more accurately reflect test conditions and plant design requirements.

Date of issuance: April 9, 1999.

Effective date: April 9, 1999, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 2–151; Unit 3–143.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 11, 1998 (63 FR 6997).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 9, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 20, 1999.

Brief description of amendments: The amendments revise the descriptive details of Technical Specification 4.7.1.2.1.a, regarding performance testing of the Auxiliary Feedwater (AFW) pumps, to more closely adhere to NUREG–1431, "Improved Standard Technical Specifications for Westinghouse Plants." This involves relocating the surveillance-required numerical values for the AFW pump performance test discharge pressure and flow rate to the South Texas Project Updated Final Safety Analysis Report.

Date of issuance: April 16, 1999.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—Amendment No. 105; Unit 2—Amendment No. 92.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1999 (64 FR 9201).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: January 26, 1999.

Brief description of amendments: The amendments revise part of the inservice inspection requirements for the reactor coolant pump flywheel from an in-place ultrasonic volumetric examination of the areas of higher stress concentration at the bore and keyway at approximately 3-year intervals and a surface examination of all exposed surfaces and complete ultrasonic volumetric examination at approximately 10-year intervals to ultrasonic examination over the volume from the inner bore of the flywheel to the circle of one-half the outer radius once every 10 years.

Date of issuance: April 16, 1999.

Effective date: April 16, 1999, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 106; Unit 2—Amendment No. 93.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11968).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 16, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 30, 1998.

Brief description of amendments: Revises Units 1 and 2 Technical Specification (TS) Section 3/4.4.5, "Steam Generator" Surveillance Requirements. The future installation of the new Delta 94 steam generators at the South Texas Project, Units 1 and 2 necessitates changes to the steam generator tube sample selection and inspection requirements; inservice inspection frequencies; acceptance criteria; and inspection reporting requirements.

Date of issuance: April 19, 1999.

Effective date: April 19, 1999, to be implemented following the replacement of Unit 1 Model E steam generators with Model delta94 steam generators and prior to Unit 1 operation with the delta94 steam generators installed.

Amendment Nos.: Unit 1—Amendment No. 107; Unit 2—Amendment No. 94.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: November 4, 1998 (63 FR 59595).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, TX 77488.

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: August 6, 1997, as supplemented by letters dated September 4 and 18, 1997, December 9, 1997, and February 4, 1999.

Brief description of amendments: The amendments revise Technical Specification (TS) Table 2.2–1 and TS 3/4.2.5 to allow the reactor coolant system total flow rate to be determined using cold leg elbow tap differential pressure measurements.

Date of issuance: April 19, 1999.

Effective date: As of its date of issuance to be implemented within 7 days of issuance.

Amendment Nos.: Unit 1—Amendment No. 108; Unit 2—Amendment No. 95.

Facility Operating License Nos. NPF–76 and NPF–80: The amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 14, 1997 (62 FR 43556).

The September 4 and 18, 1997, December 9, 1997, and February 4, 1999, letters provided clarifying information that did not change the original application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Tennessee Valley Authority, Docket No. 50–328, Sequoyah Nuclear Plant, Unit 1, Hamilton County, Tennessee

Date of application for amendments: August 27, 1998, supplemented by letter dated March 19, 1999 (TS 98–04).

Brief description of amendments: The amendments change the Technical Specifications (TS) for Sequoyah Nuclear Plant, Unit 2 reactor by adding a sentence at the end of TS Section 5.3 authorizing installation of a limited number of lead test assemblies containing downblended uranium in accordance with Topical Report BAW–2328.

Date of issuance: April 12, 1999.

Effective date: April 12, 1999.

Amendment Nos.: 234.

Facility Operating License No. DPR–79: The amendment revises the TS.

Date of initial notice in Federal Register: March 10, 1999 (64 FR 11969). The supplemental letter of March 19, 1999 did not change the initial proposed no significant hazards condition determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 12, 1999.

No significant hazards consideration comments received: None.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 29, 1998, as supplemented by letter dated February 19, 1999.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.7.1.7 operability requirements to require four atmospheric steam dump (ASD) lines to be operable. Other changes were made to TS 3.7.1.7 to address action statements and surveillance requirements for the four ASD lines.

Date of issuance: April 20, 1999.

Effective date: April 20, 1999, to be implemented within 30 days from the date of issuance.

Amendment No.: 131.

Facility Operating License No. NPF–30: The amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 9, 1998 (63 FR 48271).

The February 19, 1999, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 20, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: Elmer Ellis Library, University of Missouri, Columbia, Missouri 65201.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: May 28, 1998, as supplemented December 11, 1998.

Brief description of amendments: These amendments revise Technical Specifications (TS) to provide a specific numerical setting for reactor trip, reactor coolant pump trip, and auxiliary feedwater initiation on a loss of power to the 4 kilovolt (kV) buses. Changes to the bases for the affected TS sections are also being made.

Date of issuance: April 23, 1999.

Effective date: April 23, 1999.

Amendment Nos.: Unit 1–189; Unit 2–194.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1998 (63 FR 38208).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 1999.

No significant hazards consideration comments received: No.

Local Public Document Room location: The Lester Public Library, 1001 Adams Street, Two Rivers, Wisconsin 54241.

Dated at Rockville, Maryland, this 28th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11119 Filed 5–4–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

DCI Telecommunication, Inc., File No. 500–1; Order of Suspension of Trading

May 3, 1999.

It appears to the Securities and Exchange Commission ("Commission") that there is a lack of current and accurate information concerning the securities of DCI Telecommunications, Inc. ("DCI") because of questions regarding the accuracy and adequacy of DCI's financial statements, specifically, DCI's apparent inflation of revenues by accounting for one of more business combinations as a pooling of interests.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of DCI.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in DCI securities is suspended for the period from 9:30 a.m. EST, May 3, 1999 through 11:59 p.m. EST, on May 14, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11335 Filed 5–3–99; 11:26 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3176]

State of North Carolina

Duplin and Jones Counties and the contiguous counties of Carteret, Craven, Lenoir, Onslow, Pender, Sampson, and Wayne in the State of North Carolina constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on April 14, 1999. Applications for loans for physical damages as a result of this disaster may be filed until the close of business on June 25, 1999 and for economic injury until the close of business on January 26, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.875
Homeowners without credit available elsewhere	3.437
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	7.000
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The numbers assigned to this disaster are 317612 for physical damage and 9C6600 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: April 26, 1999.

Aida Alvarez,

Administrator.

[FR Doc. 99–11236 Filed 5–4–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice No. 3033]

Shipping Coordinating Committee, Maritime Safety Committee; Notice of Meeting

The Shipping Coordinating Committee will conduct an open meeting at 10:00 A.M. on Thursday, May 13, 1999, in Room 2415, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW, Washington, DC. The purpose of this meeting will be to finalize preparations for the 71st Session of the Maritime Safety Committee, and associated bodies of the International Maritime Organization (IMO), which is scheduled for May 19–28, 1999, at IMO Headquarters in London. At this meeting, papers received and the draft U.S. positions will be discussed.

Among other things, the items of particular interest are:

a. Adoption of amendments to the Safety of Life at Sea (SOLAS) Convention;

b. Bulk carrier safety;

c. Role of the human element;

d. Formal safety assessment;

e. Unsafe practices associated with the trafficking or transport of migrants by sea; and

f. Reports of seven subcommittees—Fire protection; Training and watchkeeping; Stability, load lines and fishing vessel safety; Dangerous goods, solid cargoes and containers; Ship design and equipment; Flag State implementation; and Bulk liquids and gases.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing to Mr. Joseph J. Angelo, Commandant (G–MS), U.S. Coast Guard, 2100 2nd Street, SW, Room 1218, Washington, DC 20593–0001 or by calling (202) 267–2970.

Dated: April 28, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–11281 Filed 5–4–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF STATE

[Public Notice No. 3034]

Shipping Coordinating Committee, International Maritime Organization (IMO) Legal Committee; Notice of Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 a.m., on Monday, May 17, 1999, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, D.C. The purpose of this meeting is to report on the results of the Seventy Ninth Session of the International Maritime Organization Legal Committee (LEG 79), held April 19–23, 1999 in London.

This SHC meeting will address the following topics: the draft IMO Guidelines on Shipowners' Responsibilities in Respect of Maritime Claims; the draft Protocol to the Athens Convention relating to passenger claims; a draft convention regarding bunker fuel spills; and a draft convention regarding wreck removal.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views in advance of the meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant William G. Rospars, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street, S.W., Washington, D.C. 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: April 29, 1999.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 99–11282 Filed 5–4–99; 8:45 am]

BILLING CODE 4710–07–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Communications/Surveillance Operational Implementation Team (C/SOIT) Hosted Forum on the Operational Implementation of Satellite Communications, Surface Movement Surveillance Systems, and Data Link Technologies for Aviation Applications in the National Airspace System (NAS)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA C/SOIT will be hosting a public forum to discuss the FAA's data link and surface movement surveillance systems. This meeting will be held in response to aviation industry requests to the FAA Administrator. Formal presentations will be provided followed by a question and answer session. In subsequent days, working group sessions will be held to discuss such topics as Controller-Pilot Data Link Communications, High Frequency Data Link, Human Factors, Flight Information

Services and Satellite Communications. Those who plan to attend are invited to submit proposed discussion topics. Requests to make presentations to the assembled forum should be made to the **FOR FURTHER INFORMATION CONTACT** listed.

DATES: June 1–4, 9 a.m.–5 p.m.

ADDRESSES: Alexandria, VA.

FOR FURTHER INFORMATION CONTACT: Registration and submission of suggested discussion topics may be made to Ms. Dottie Wilkins, telephone (202) 484–2535, fax (202) 484–1510 or email at *dottie.ctr.wilkins@faa.gov*.

SUPPLEMENTARY INFORMATION: Open to the aviation industry with attendance limited to space available. Participants are requested to register their intent to attend this meeting by May 10, 1999. Names, affiliations, addresses, telephone and facsimile numbers should be sent to the **FOR FURTHER INFORMATION CONTACT**.

Issued in Washington, D.C. on April 30, 1999.

Donald W. Streeter,

C/SOIT Co-Chairman.

[FR Doc. 99–11296 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

The Federal Aviation Administration (FAA) Satellite Operational Implementation Team (SOIT) hosted forum on the capabilities of the Global Position System (GPS)/Wide Area Augmentation System (WAAS) and Local Area Augmentation System (LAAS)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

Name: FAA SOIT Forum on GPS/WAAS/LAAS Capabilities.

Time and date: 9 a.m.—5 p.m., May 17–18, 1999.

Place: The Holiday Inn Fair Oaks Hotel, 11787 Lee Jackson Memorial Highway, Fairfax, Virginia 22033.

Status: Open to the aviation industry with attendance limited to space available.

Purpose: The FAA SOIT will be hosting a public forum to discuss the FAA's GPS approvals and WAAS/LAAS operational implementation plans. This meeting will be held in conjunction with a regularly scheduled meeting of the FAA SOIT and in response to aviation industry requests to the FAA Administrator. Formal presentations by the FAA will be followed by a question and answer session. Those planning to attend are invited to submit proposed discussion topics.

Registration: Participants are requested to register their intent to attend this meeting by May 3, 1999. Names, affiliations, telephone and facsimile numbers should be sent to the point of contact listed below.

Point of contact: Registgration and submission of suggested discussion topics may be made to Mr. Steven Albers, phone (202) 267–7301, fax (202) 267–5086, or email at steven.CTR.albers@faa.gov.

Issued in Washington, D.C., on March 22, 1999.

Hank Cabler,

SOIT Co-Chairman.

[FR Doc. 99–11293 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–04–C–00–DSM To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before June 4, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. William F. Flannery, Aviation Director, at the following address: City of Des Moines, 5800 Fleur Drive, Suite 201, Des Moines, IA 50321.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Des Moines, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Des Moines International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulation (14 CFR Part 158).

On April 8, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Des Moines, Iowa, was not substantially complete within the requirements of section 158.25 of Part 158. The City of Des Moines submitted supplemental information on April 16, 1999, to complete the application. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than August 18, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: June, 2005.

Proposed charge expiration date: February, 2006.

Total estimated PFC revenue: $1,850,000.

Brief description of proposed project: Storm water detention facility.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT**.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Des Moines International Airport.

Issued in Kansas City, Missouri on April 20, 1999.

George A. Hendon,

Manager, Airports Division Central Region.

[FR Doc. 99–11292 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Lafourche Parish, Louisiana

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Lafourche Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: William C. Farr, Program Operations

Manager, Federal Highway Administration, P.O. Box 3929 (Room 255), Baton Rouge, Louisiana, 70821, Telephone: (225) 389–0465, Facsimile: (225) 389–0758.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Louisiana Department of Transportation and Development (LDOTD), will prepare an Environmental Impact Statement (EIS) on a proposal to construct a new highway facility on current or new alignment. The proposed project, known locally as the LA 1 Improvements from Golden Meadow to Port Fourchon, is generally located in the present LA 1 corridor from Golden Meadow, Louisiana to Port Fourchon, Louisiana. The roadway includes several alternates based on the number of navigable bridges needed for various alignments. The approximate length of the project is 29 kilometers (18 miles).

The proposed improvements would improve the capacity, reliability, and safety of the existing LA 1 and increase regional access to Port Fourchon for persons, businesses and industry in the region. It is a part of the National Highway System and would improve access to the vitally important deep-water port of Port Fourchon on the coast of Louisiana.

The northern terminus of the proposed project will be the southern end of route LA 3235 and the southern terminus will be Port Fourchon.

Alternatives to be considered are:

(1) The "Do-nothing" Alternative, where the current and existing LA 1 is repaired and maintained in its present location, capacity, and character.

(2) The "Build" Alternative, considering several different alignments, roadway type and control of access.

An agency scoping meeting will be held at a time and place to be determined at a later date. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past. At least one public informational meeting will be held in the project area that will be affected. In addition, a Public Hearing will be held. Public notice will be given of the time and place of the public informational meeting(s) and the Public Hearing. The draft EIS will be available for public and agency review and comment prior to the Public Hearing.

To ensure that the full range of issues related to this proposed action are addressed, and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on April 28, 1999.

William A. Sussmann,

Division Administrator, FHWA, Baton Rouge, Louisiana.

[FR Doc 99–11227 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5200; Notice 2]

Capacity of Texas, Inc.; Grant of Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 105

For the reasons expressed in this notice, we are granting the application by Capacity of Texas, Inc., of Longview, Texas ("Capacity"), for a temporary exemption from the anti-lock requirements of Motor Vehicle Safety Standard No. 105 *Hydraulic and Electric Brake Systems* that became effective March 1, 1999. Capacity applied for an exemption on the basis that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 CFR 555.6(a).

We published a notice of receipt of the application on March 10, 1999, and afforded an opportunity for comment (64 FR 11979). We received one comment on the application, from the National Truck Equipment Association (NTEA), which supported it.

The discussion that follows recapitulates Capacity's arguments and is based on information contained in the company's application.

Why Capacity Needs a Temporary Exemption

S5.5 of Standard No. 105 requires any motor vehicle with a gross vehicle weight rating (GVWR) greater than 10,000 pounds, except for a vehicle that has a speed attainable in 2 miles of not more than 33 mph, to be equipped with an antilock brake system if it is manufactured on and after March 1, 1999. Capacity manufactures bus chassis that it provides to World Trans, Inc., of Hutchinson, Kansas, for completion. However, with respect to the buses that will be covered by the exemption, if granted, Capacity has informed us that, pursuant to the option granted the manufacturer of an incomplete vehicle by 49 CFR 568.7(a), it is assuming the responsibilities of the final-stage manufacturer (World Trans). As such, Capacity will certify that the completed buses comply with all applicable Federal motor vehicle safety standards, and provide notification and remedy if required.

Why Compliance Would Cause Capacity Substantial Economic Hardship

Capacity produces a limited quantity (100 or less yearly) bus chassis for World Trans, and, as discussed more fully below, has been unable to find a vendor who is willing to provide antilock controllers. Therefore, if Capacity is not granted an exemption, it will have to withdraw the chassis from production, and World Trans's bus production will be diminished. This will cause both Capacity and World Trans to lose income in each of the three years for which an exemption has been requested. Capacity's projected net income for its fiscal year ending October 31, 1998, was $2,631,018. Its projected net income for the year ending October 31, 1999, is $2,286,617 if an exemption is granted, and $1,945,087 if it is not. Thus, net income would be reduced by $341,530 in the absence of an exemption covering production from March 1–October 31, 1999.

How Capacity Has Tried To Comply With the Standard in Good Faith

Capacity contacted four different brake component suppliers. Its search for an anti-lock controller began with Lucas/Varity (formerly Kelsey-Hayes) because of its longtime association with Ford Motor Company and the fact that the bus chassis uses a common Dana drive axle with many Ford light duty trucks. But the company was told that no development could be approached until Capacity could guarantee a purchase order in the range of 10,000 controllers.

Capacity next approached Eaton-Bosch, and found that it is currently producing hydraulic anti-lock brake systems for vehicles up to 12,000 lbs GVWR. Although the company is developing a system for vehicles up to 20,000 lbs GVWR, the system won't be finalized until 2001.

The third vendor that Capacity approached was ITT Automotive-Teves,

which expects to have a system ready for installation on vehicles up to 20,000 lbs GVWR by the fourth quarter of 1999. The company told Capacity that it will take a minimum of one winter test season to assure that the controller can be adapted to a vehicle. Thus, Capacity does not foresee that it can use this system and comply before the Fall of 2000.

Finally, Capacity consulted Rockwell/Meritor-Wabco System. This company has a controller that "can be fine tuned on a vehicle to meet different dynamic characteristics." However, "even if this system proves out, it appears that a year's testing will be required to adapt it to our bus chassis."

Why Exempting Capacity Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

Capacity argued that an exemption would be in the public interest and consistent with traffic safety objectives because

> many of these vehicles end up serving small cities and rural transit districts. These customers have limited budgets so the availability of an economical low floor bus allows them to prove fee service in areas where large buses are too costly to operate. The low floor feature of this vehicle allows the finished bus to readily serve the handicapped community.

In addition, "these buses operate in shuttle and light transit operations where high speed stops aren't commonly experienced." Capacity believes that rushing an anti-lock system into production might present a risk to safety.

Our Findings and Decision

At the moment, Capacity's net income is larger than many low-volume manufacturers who apply for temporary exemptions. However, in the absence of an exemption, Capacity will not be able to generate revenues by providing "100 or less yearly" bus chassis for its customer, World Trans until such time as it is able to produce a conforming bus. This raises the possibility that World Trans would look elsewhere for bus chassis and that Capacity would permanently lose World Trans as a customer. In the absence of an exemption, it is logical to assume that Capacity would attempt to reduce its expenses by a reduction in its work force. As discussed earlier, the brake component suppliers contacted by Capacity have been unable to help the company comply by March 1, 1999, the effective date of the anti-lock requirement. Lucas/Varity does not appear interested in producing an anti-lock controller in small quantities. Eaton-Bosch does not anticipate having a suitable controller until 2001. ITT Automotive Teves does not appear able to provide a reliable controller before late in 2000. Rockwell/Meritor-Wabco System may have a suitable controller, but if so, "a year's testing will be required to adapt it to [the Capacity] bus chassis." It appears that two of the three suppliers may have a usable anti-lock controller that could be installed were a two-year exemption provided.

A two-year exemption would also be consistent with our views that exemptions must be sparingly given to buses because they are motor vehicles which may carry hundreds of passengers daily. Some of Capacity's buses, it appears, will operate in environments where high speed stops are not commonly experienced. Although we do not know how many passengers these buses are designed to carry, they appear to be smaller than big-city transit buses even though their GVWR is greater than 10,000 pounds.

It is in the public interest to facilitate the availability of relatively inexpensive buses whose size and price are appropriate for the small city and rural district transit markets in which they are sold and operated. In its comment in support of the application, NTEA stated that denial of the exemption request would also hurt the communities that need "these specialized vehicles." NTEA also commented that "the features of this bus also allow it to serve the handicapped community."

For these reasons, we find that compliance with S5.5 of Motor Vehicle Safety Standard No. 105 would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard. We further find that a temporary exemption would be consistent with the public interest and the objectives of motor vehicle safety.

Accordingly, Capacity of Texas, Inc., is hereby granted NHTSA Temporary Exemption No. 99–5 from S5.5 of 49 CFR 571.105 Standard No. 105 Hydraulic and Electric Brake Systems, expiring April 1, 2001.

Authority: 49 U.S.C. 30113; delegation of authority at 49 CFR 1.50.

Issued on: April 30, 1999.

Ricardo Martinez,

Administrator.

[FR Doc. 99–11302 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 99–5210 Notice 1]

Ford Motor Co.; Receipt of Application for Determination of Inconsequential Non-Compliance

Ford Motor Company ("Ford"), of Dearborn, Michigan has applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301 "Motor Vehicle Safety" for a noncompliance with 49 CFR 571.205, Federal Motor Vehicle Safety Standard (FMVSS) No. 205, "Glazing Materials," on the basis that the noncompliance is inconsequential to motor vehicle safety. Ford has filed a report of noncompliance pursuant to 49 CFR part 573 "Defects and Noncompliance Reports."

This notice of receipt of an application is published under 49 U.S.C. 30118 and 30120 and does not represent any agency decision or other exercise of judgement concerning the merits of the application.

Description of the Noncompliance

Certain Ford Contour, Mercury Mystique, Ford Econoline, Ford Ranger and Mazda B series (manufactured by Ford) vehicles were equipped with windshields which were not marked with the symbol "AS1" per the requirements of S6 of Federal Motor Vehicle Safety Standard (FMVSS) 205, which incorporates the requirements of section 6 of ANSI Z26.1 (American National Standard Institute, Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways—1977). The noncompliant windshields meet all performance requirements of FMVSS 205 and ANSI Z26.1.

Number of Vehicles

Three hundred eighty-two thousand nine hundred (382,900) vehicles manufactured between June 11, 1997 and September 25, 1998, are believed to contain the noncompliance. Approximately 8,400 of these were Mazda B Series vehicles.

Supporting Information as Submitted by Ford

The windshields, while produced without the AS1 mark, contain all other markings required by FMVSS 205 and ANSI Z26.1 including the manufacturer's trademark, DOT number, and model number. The model number identifies the glazing material as laminated safety glass, AS1. In addition,

the trademark includes the word "Laminated" and also includes an aftermarket National Auto Glass Specification number that identifies the vehicles for which the windshield is designed. With the windshield markings provided, a customer is highly unlikely to encounter any problems obtaining the appropriate replacement windshield should that need arise.

This marking failure first occurred on the Contour/Mystique and was precipitated by a production change to remove the windshield shade band. In the setup for the production of clear windshields, the AS1 mark was inadvertently omitted when trademark information was provided to a supplier. The same band was subsequently deleted on the other noncompliant vehicles, resulting in those windshields also being produced without the mark.

The stated purposes of FMVSS 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collections. Because the windshields fully meet all of the applicable performance requirements, the absence of the AS1 mark has no effect upon the ability of the windshield glazing to satisfy these stated purposes and thus perform in the manner intended by FMVSS 205. Neither Ford nor Mazda is aware of any complaints of crashes or injuries related to this condition.

Though not a safety concern, to preclude any potential customer difficulty during vehicle inspections in states where glazing markings are checked during the state inspection process, Ford and Mazda, beginning in January 1999, are providing letters to the approximately 87,500 affected owners in those states (i.e., California, Maine, Maryland, Missouri, New Jersey, New York, Oklahoma, Utah, Vermont, and West Virginia). These letters will identify the condition, certify that the windshields fully meet all other marking requirements and all performance requirements of FMVSS 205, and indicate that state authorities responsible for vehicle inspections have been notified of this condition. These letters also indicate that Ford and Mazda will apply the AS1 marking on any noncompliant windshield in these states if the owner requests the marking be applied. In addition, Ford and Mazda will advise dealers in these states, through the year 2001, to mark the windshields that do not have the AS1 mark when the vehicle is brought in for a regular service, regardless of whether the marking has been requested by the owner. Based on Ford's past experience with such programs, the company believes that this will result in the majority of the windshields in these states being marked. Also, coincident with the owner letters, a letter will be sent to the appropriate authority in the above identified states providing any explanation of the condition, certification that the windshields fully meet all other marking requirements and all performance requirements of FMVSS 205, and a listing of vehicle VIN numbers of all affected vehicles registered in that state.

Interested persons are invited to submit written data, views and arguments on the petition of Ford, described above. Comments should refer to the Docket Number and be submitted to: Docket Management, National Highway Traffic Safety Administration, Room PL 401, 400 Seventh Street, SW., Washington, DC 20590. It is requested that two copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent practicable. When the application is granted or denied, the Notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: June 4, 1999.

(49 U.S.C. 30118, 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on: April 29, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–11258 Filed 5–04–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5607; Notice 1]

Qvale Automotive Group SrL; Application for Temporary Exemption From Federal Motor Vehicle Safety Standard No. 208

We are asking your views on the application by Qvale Automotive Group, SrL of Modena, Italy ("Qvale"), for an exemption until March 31, 2001, from the automatic restraint requirements of Motor Vehicle Safety Standard No. 208 Occupant Protection Systems. Qvale has applied on the basis that "compliance would cause substantial economic hardship to a manufacturer that has tried in good faith to comply with the standard." 49 CFR 555.6(a).

We are publishing this notice of receipt of the application in accordance with our regulations on temporary exemptions. This action does not represent any judgment by us about the merits of the application. The discussion that follows is based on information contained in Qvale's application.

Why Qvale Needs a Temporary Exemption

Qvale is an Italian corporation, formed in January 1998. It is controlled by an American corporation owned by the Qvale family of San Francisco, California, which was also formed in January 1998. The American corporation does business as DeTomaso Automobiles, Ltd.

DeTomaso Modena SpA, a small manufacturer of automobiles which produces less than 100 motor vehicles a year, developed a convertible passenger car, the Bigua, but was financially unable to produce it. Qvale has obtained the worldwide rights to manufacture and sell the Bigua under the name DeTomaso Mangusta. As of March 1999, Qvale had invested more than $7,000,000 in the Mangusta project, and anticipates an additional investment of $3,000,000 by the time production begins in September 1999.

When the project began in early 1998, Qvale expected that a Ford Mustang air bag system could be easily integrated into the Mangusta, because DeTomaso Modena had anticipated that the U.S. would be the primary market for the car. However, it has developed that significant re-engineering will be required to incorporate an automatic restraint system that complies with S4.1.5.3 of Standard No. 208. Qvale believes that it will be able to manufacture a conforming car beginning in May 2000, but says that it needs an exemption so that it may sell the Mangusta in the United States, beginning in November 1999, to generate funds under its business plan. It has asked to be exempted through March 31, 2001, to allow for unforeseen problems during development. The applicant intends to retrofit exempted vehicles with air bag systems when they become available. It anticipates sales of 200–250 Mangustas under the exemption.

Why Compliance Would Cause Qvale Substantial Economic Hardship

Neither Qvale nor its American parent has had any income or sales since their

inception in January 1998. Qvale had a net loss of $685,000 for 1998, with a negative cash flow of $511,000. If an exemption is not granted and U.S. sales do not begin until May-June 2000, the company anticipates total net losses of approximately $4,800,000 in 1999 with a total negative cash flow of over $3,000,000. Even with an exemption that would permit U.S. sales to begin in November 1999, Qvale expects a net loss for 1999 of $4,124,025 and a negative cash flow of $2,502,025. In fact, even with an exemption, Qvale anticipates net losses through at least 2001 though the cash flow would become positive in 2000 and increase slightly in 2001.

Qvale's U.S. parent has already hired a sales and distribution staff, and would suffer losses of $1,800,000 if it cannot begin sales of the Mangusta in November 1999.

How Qvale Has Tried To Comply With the Standard in Good Faith

Qvale's production plan involves the use of the 4.6L Ford Cobra V–8 engine as well as a significant number of Ford parts including the air bag system. Ford's parts division, Visteon, is the prime subcontractor responsible for the interior and air bags. Isis Automotive, an engineering company in the United Kingdom, has been chosen as the safety engineering project manager.

It was anticipated that the Ford air bag system could be integrated into the Mangusta but the final and chassis engineering that had continued during the Fall of 1998 indicated otherwise. Visteon found it necessary to redesign the dashboard, including the passenger side air bag door in order to make the Mangusta commercially viable, but is not able to furnish the redesigned interior parts until the Summer of 1999. Without these parts, an air bag system cannot be properly tested. In addition, the construction of 10 pre-production prototypes necessary for safety testing has been delayed until July 1999 because of problems with the prototype manufacturer (an outside supplier) and ongoing design changes. Finally additional time is needed to organize the supplier and engineering personnel and resources necessary for the air bag system development work (e.g., laboratory testing and sensor calibration).

Because of these factors, Qvale's plans to incorporate an air bag system have been delayed from September 1999 to May or June 2000.

Why Exempting Qvale Would Be Consistent With the Public Interest and Objectives of Motor Vehicle Safety

Qvale believes that the small number of vehicles that will be produced under an exemption will have no discernable effect upon safety. It intends to equip all of its U.S. vehicles with manual three point belts, and will meet the injury criteria specified in S4.1.5.3 when tested with belted dummies. The company will affix a label to the instrument panel informing occupants of the exemption and the need to fasten their safety belts. Qvale plans to re-engineer its air bag system so that it may be installed as a retrofit in exempted vehicles. Mangustas will comply with all other applicable Federal motor vehicle safety standards.

In Qvale's opinion, an exemption would permit the availability in the U.S. of the Mangusta's "high technology, light weight TRM composite body." The success of the project will have a beneficial effect upon Visteon, a division of Ford Motor Company, as well as employment elsewhere in the U.S. of sales and service personnel.

How To Comment on Qvale's Application

If you would like to comment on Qvale's application, send two copies of your comments, in writing, to: Docket Management, National Highway Traffic Safety Administration, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590, in care of the docket and notice number shown at the top of this document.

We shall consider all comments received before the close of business on the comment closing date stated below. To the extent possible, we shall also consider comments filed after the closing date. You may examine the docket in Room PL–401, both before and after that date, between 10 a.m. and 5 p.m.

When we have reached a decision, we shall publish it in the **Federal Register**.

Comment closing date: May 25, 1999.

Authority: 49 U.S.C. 30113; delegations of authority at 49 CFR 1.50 and 501.4.

Issued on: April 30, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–11301 Filed 5–4–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33725 (Sub–No. 1)]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33725 to permit the trackage rights to expire on the Split Date (as described in this decision) or June 30, 1999, whichever occurs first, in accordance with the agreement of the parties.[1]

As noted by CSXT, this trackage rights arrangement is intended to be only temporary. The Conrail trackage that is the subject of the trackage rights is to be allocated to Conrail's subsidiary, New York Central Lines LLC, and operated by CSXT, after what is referred to as the "Split Date," or the date of the division of Conrail's assets, as authorized by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc., and Consolidated Rail Corporation,* STB Finance Docket No. 33388 (STB served July 23, 1998). CSXT states that it expects the Split Date to occur on June 1, 1999. The parties intend for the trackage rights to terminate on the Split Date, but if the Split Date does not occur before June 30, 1999, the parties' agreement provides for termination of the trackage rights on June 30, 1999.

Under a separate agreement, CSXT is leasing approximately 18,850 feet of track in Conrail's Hillery Yard for storage of railroad cars.

[1] On March 12, 1999, CSX Transportation, Inc. (CSXT) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Consolidated Rail Corporation (Conrail) to grant temporary overhead trackage rights to CSXT, to operate its trains, locomotives, cars and equipment with CSXT's own crews, over: (1) Conrail's Olin Running Track between the Conrail/CSXT connection at milepost 0.5± and milepost 0.0±; and (2) Conrail's Pekin Running Track between milepost 0.0± and the limits of trackage being leased by CSXT at the connection to Conrail's Hillery Yard at milepost 1.85± in Danville, IL, a distance of approximately 1.9 miles, including necessary head and tail room. *See CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation,* STB Finance Docket No 33725 (STB served Apr. 1, 1999). The trackage rights operations under the exemption became effective on March 19, 1999, and are subject to standard labor protective conditions.

DATES: This exemption will be effective on June 1, 1999. Petitions to reopen must be filed by May 25, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33725 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. (Assistance for the hearing impaired is available through TDD services (202) 565–1695.)

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: April 28, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11254 Filed 5–04–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

[No. 981–0158]

Notice Inviting Applications to the Presidential Awards for Excellence in Microenterprise Development

AGENCY: Community Development Financial Institutions Fund, Department of Treasury

ACTION: Notice inviting applications.

SUMMARY: The Presidential Awards for Excellence in Microenterprise Development ("Presidential Awards") is a non-monetary awards program created as one of the commitments made by the United States at the United Nations Fourth World Conference on Women held in Beijing, China in September 1995. As the key community development finance initiative of the Administration, the Community Development Financial Institutions Fund ("Fund") of the U.S. Department of Treasury was selected to administer the Presidential Awards Program. The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 *et. seq.*) created the Fund to promote economic revitalization and community development through investment in community development financial institutions. This Notice provides guidance on the Presidential Awards program requirements, selection criteria and how to obtain an application packet.

DATES: Applications may be submitted at any time after Wednesday, May 5, 1999. The deadline for receipt of an application is 5:00 p.m. EST, August 3, 1999. Applications received in the office of the Fund after that date and time will be returned to the sender. Applications sent electronically or by facsimile will not be accepted.

ADDRESSES: Applications shall be sent to: Community Development Financial Institutions Fund, U.S. Department of Treasury, 601 Thirteenth Street, N.W., Suite 200 South, Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: Awards Manager, Community Development Financial Institutions Fund, U.S. Department of Treasury, 601 Thirteenth Street, N.W., Suite 200 South, Washington DC 20005, (202) 622–8662. (This is not a toll free number.) If you have any questions about this Notice or the application packet, you may call or write to the Fund at the above telephone number or address, or you may send questions via facsimile to (202) 622–7754. To request an application packet, please send by facsimile a written request which includes the name of the requester, the organization, mailing address, telephone number and facsimile number. Requests for an application packet should be sent by facsimile to (202) 622–7754.

SUPPLEMENTARY INFORMATION:

I. Background

The Presidential Awards for Excellence in Microenterprise Development ("Presidential Awards") are an annual non-monetary awards program created to recognize the important and growing role of microenterprises within the economy of the United States. In the past decade, the number of microenterprises and microentrepreneurs has grown significantly, as well as the number of community development organizations that have worked to facilitate the growth and development of this microenterprise industry. A microenterprise is a sole proprietorship, partnership, family business or an incorporated entity that has no more than five employees, does not generally have access to the commercial banking sector, and can utilize a loan of $25,000 or less. The Presidential Awards reflect a national commitment to advance the role that microenterprise development plays in enhancing entrepreneurial opportunities for all Americans, particularly women, low-income people, and others that have had difficulty gaining access to the financial services industry and the economic mainstream. By recognizing outstanding microenterprise development and support organizations, the Presidential Awards' mission is to advance an understanding of "best practices" in the field of microenterprise development and bring wider public attention to the important successes of microenterprise development in the United States. Awards are available in different categories designed to reflect the diverse activities, purposes and challenges faced by the microenterprise industry. Each award category utilizes a rigorous set of evaluation criteria designed to recognize programs and organizations which define the cutting edge of the microenterprise industry.

II. Definitions

(a) *Low-Income* means having an income that is at or below 80 percent of the area median family income.

(b) *Microenterprise Development Organization* (MDO) means a "practitioner" organization that works directly with Microentrepreneurs and meets three tests, primary purpose, domestic program, and program activities.

(i) *Primary Purpose.* The organization must have a primary purpose of promoting microenterprise development. An applicant will be considered to have such a primary purpose if it:

(A) Has been in operation for at least two complete calendar or fiscal years;

(B) Made at least one Micro Loan to a Microenterprise within the past 12 months; and

(C) Has principally targeted its efforts to activities that support Microentrepreneurs. Such activity targeting may be evaluated by the number of Microentrepreneurs served, number of Micro Loans made, the total dollar amount of Micro Loans made, or other criteria deemed appropriate by the Fund. The primary purpose requirement will be applied to the applicant as a whole or an affiliate, division or a discrete program of a larger organization, as deemed appropriate by the Fund.

(ii) *Domestic Program.* The organization must exclusively serve or have a program that exclusively serves individuals who are residents of the United States, including the District of Columbia, or any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(iii) *Program Activities.* The organization must currently provide the following services to Microentrepreneurs:

(A) Access to Micro Loans, directly or through a formal partnership, as evidenced by a written agreement or letter of understanding, with another organization; and

(B) Access to training, counseling or technical assistance, directly or through a formal partnership, as evidenced by a written agreement or letter of understanding, with another organization. Such training, counseling or technical assistance must provide assistance to Microentrepreneurs for the purpose of enhancing business planning, marketing, management, financial management, or other aspects of developing a successful business.

(c) *Microenterprise Support Organization* (MSO) means an entity that does not work directly with Microentrepreneurs as its principal activity, but supports the efforts of MDOs through financial or technical assistance, research or other activities. An MSO must:

(i) Have been in operation for at least two complete calendar or fiscal years; and

(ii) Either provide financial or technical assistance directly to MDOs; or

(iii) Make contributions indirectly to the microenterprise field through research or other activities that enhance the knowledge, capacity, or visibility of the field;

(iv) Not provide services directly to Microentrepreneurs as its principal line of business; and

(v) Serve MDOs (or others engaged in microenterprise development) that exclusively serve or have a program that exclusively serves individuals who are residents of the United States, including the District of Columbia, or any territory of the United States, the Commonwealth of Puerto Rico, Guam, American Samoa, the Trust Territories of the Pacific Islands, the Virgin Islands, and the Commonwealth of the Northern Mariana Islands.

(d) *Micro Loan* means a loan made for business purposes to a Microentrepreneur in a principal amount which does not exceed $25,000. A loan for business purposes does not include a loan made for the purpose of the acquisition, construction, or rehabilitation of real estate.

(e) *Microenterprise* means a sole proprietorship, partnership, family business, or an incorporated entity that has five or fewer employees including the owner(s), does not generally have access to the commercial banking sector, and can utilize a loan of $25,000 or less.

(f) *Microentrepreneur* means the owner of a Microenterprise or an individual seeking to establish a Microenterprise.

(g) *Poverty* means the state or condition of being poor as defined by the U.S. Bureau of the Census.

III. Award Categories

Five categories of Presidential Awards for Excellence in Microenterprise Development are available. The award categories are intended to embrace the diverse activities and purposes of microenterprise development and the key opportunities and challenges faced by the microenterprise field. The Presidential Awards seek to advance the field of microenterprise development in the United States by recognizing excellent programs and sharing the lessons learned by these organizations with the microenterprise field, policy makers, funders, and other key partners. Up to two awards may be made in each award category. Applicants may apply under only one primary award category each year. The primary award categories are as follows: Access to Capital, Developing Entrepreneurial Skills, Poverty Alleviation, and Public or Private Support for Microenterprise Development. To apply for an award under one of the primary award categories, an applicant must complete the appropriate award category application contained in the application packet. Applicants under any one of the primary award categories may also elect to be considered for an award under the Program Innovation award category. The Program Innovation award category is considered a "floating" award that may be given to no more than two applicants in any one or more primary award categories. However, an applicant may only receive an award in one award category in a given year. Specifically, an applicant may not receive an award:

(a) In more than one primary award category; or

(b) In both a primary award category and the Program Innovation award category in the same year.

To be considered for a Program Innovation award, each applicant should complete the Program Innovation portion of the primary award category application in which it is seeking an award. The following are descriptions of the primary award categories and the Program Innovation award category:

(a) The *Excellence in Providing Access to Capital* award category recognizes MDOs that have achieved outstanding success in increasing the availability of credit to Microentrepreneurs through the provision of Micro Loans or Micro Loan guarantees.

(b) The *Excellence in Developing Entrepreneurial Skills* award category recognizes MDOs that have demonstrated effectiveness in building entrepreneurial skills through the provision of training, technical assistance or other skill development activities that help develop successful Microentrepreneurs.

(c) The *Excellence in Poverty Alleviation* award category recognizes MDOs that have developed effective and innovative strategies or methods of alleviating poverty and/or improving the well-being of Low-Income individuals through the development of Microentrepreneurs. Applicants in this category need not work exclusively with Low-Income clients. However, this category is intended to recognize programs that target a significant portion of their efforts to serve Low-Income clients.

(d) The *Excellence in Public or Private Support for Microenterprise Development* award category recognizes outstanding MSOs that have provided significant or innovative support to MDOs or to the development of the microenterprise field.

(e) The *Excellence in Program Innovation* award category recognizes MDOs and MSOs that reflect the next level of development for the Microenterprise field and/or a new strategy for addressing a challenge, problem or issue of significant concern to the field.

IV. Eligibility

The eligibility requirements of the Presidential Awards are established by each award category. MDOs are eligible for an award under the following categories: Access to Capital, Developing Entrepreneurial Skills, Poverty Alleviation, and Program Innovation. MSOs are eligible for an award under the following categories: Public or Private Support for Microenterprise Development and Program Innovation. If an applicant has previously received an award in a specific award category, such applicant is ineligible to apply for an award in the

same category for a period of three years following the receipt of an award (for example, a 1998 award winner in a category cannot apply for an award in that same category until the year 2002). Departments, agencies or instrumentalities of the United States are not eligible to apply for a Presidential Award.

V. Selection Process and Criteria

Winners of the Presidential Awards will be selected through a competitive application and review process. The Fund will select applicants to receive Presidential Awards, but will be assisted by a team of experts in the microenterprise field from both inside and outside the Federal Government. Each award category has a set of selection criteria that will be used to evaluate the extent of an applicant's achievement of excellence. Successful applicants must demonstrate both qualitatively and quantitatively their effectiveness and/or excellence under the selection criteria.

The Presidential Awards application packet includes application forms and questions that are tailored to each primary award category. The following are the selection criteria for each award category:

(a) The *Excellence in Providing Access to Capital* award selection criteria are: scope and scale, impact, program design effectiveness, quality, sustainability, financial health and organizational structure, adaptability, and leadership.

(b) The *Excellence in Developing Entrepreneurial Skills* award selection criteria are: scope, scale, impact, program design effectiveness, financial health and organizational structure, adaptability, and leadership.

(c) The *Excellence in Poverty Alleviation* award selection criteria are: scope and scale, impact, program design effectiveness, extent of targeting, financial health and organizational structure, adaptability, and leadership.

(d) The *Excellence in Public or Private Support for Microenterprise Development* award selection criteria are: scope and scale, impact, program design effectiveness, commitment, financial health and organizational structure, adaptability, and leadership.

(e) The *Excellence in Program Innovation* category specific criteria are: creativity and relevance to the industry.

Authority: Pub. L. 103–325, 108 Stat. 2166, 2189 (12 U.S.C. 4703); chapter X, Pub. L. 104–19, 109 Stat. 237 (12 U.S.C. 4703 note).

Dated: April 30, 1999

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 99–11300 Filed 5–4–99; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 1028

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1028, Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

DATES: Written comments should be received on or before July 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code.

OMB Number: 1545–0058.

Form Number: 1028.

Abstract: Farmers' cooperatives must file Form 1028 to apply for exemption from Federal income tax as being organizations described in Internal Revenue Code section 521. The information on Form 1028 provides the basis for determining whether the applicants are exempt.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 50 hours, 54 minutes.

Estimated Total Annual Burden Hours: 2,545.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11290 Filed 5–4–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request For Form 5309

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and

other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5309, Application for Determination of Employee Stock Ownership Plan.

DATES: Written comments should be received on or before July 6, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Determination of Employee Stock Ownership Plan.

OMB Number: 1545–0284.

Form Number: 5309.

Abstract: Internal Revenue Code section 404(a) allows employers an income tax deduction for contributions to their qualified deferred compensation plans. Form 5309 is used to request an IRS determination letter about whether the plan is qualified under Code section 409 or 4975(e)(7).

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 462.

Estimated Time Per Respondent: 10 hours, 6 minutes.

Estimated Total Annual Burden Hours: 4,666.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 28, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11291 Filed 5–4–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Approved Motor Fuel Distribution Terminals

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of issuance of Terminal Control Numbers for approved motor fuel terminals.

SUMMARY: Internal Revenue Service (IRS) developed and is publishing in this issue of the **Federal Register**, Terminal Control Numbers (TCN) to clearly communicate to the motor fuel industry and other interested parties such as state excise taxing authorities, the motor fuel terminal facilities that meet the definitions of Internal Revenue Code Section 4081 and the regulations thereunder. The IRS intends to use the terminal numbers to coordinate dyed fuel compliance activities and in the future, excise fuel information reporting systems. IRS encourages states to adopt and use the numbers for motor fuel information reporting where appropriate. This list is published under the authority of Internal Revenue Code Section 6103(k)(7).

What Is a Terminal Control Number (TCN)?

A terminal control number is a number that identifies an approved terminal in the bulk transfer/terminal system. A taxable fuel registrant (Letter of Registration for Tax Free Transactions with a suffix code -S-) will be issued a TCN for each physical location. Only one TCN will be assigned per terminal location per terminal operator.

What Is an Approved Terminal?

Approved motor fuel terminals, as defined by Internal Revenue Code Section 4081 and the regulations thereunder, receive taxable fuel via a pipeline, ship, or barge, deliver taxable fuel across a rack or other non-bulk delivery system and are operated by a terminal operator who is properly registered in good standing with the IRS. Only those taxpayers who are registered with the IRS on Registration for Tax-Free Transactions—Form 637 (637 Registration) with a suffix code of "S" may operate an approved terminal. Each TCN identifies a unique physical location in the bulk transport/delivery system and is therefore independent of the registered operator.

When Does a Terminal Operator Need to Notify IRS of Changes?

A terminal operator must notify the IRS for any of the following changes:

—terminal ownership or operator changes; or

—a new terminal is opened; or

—a terminal ceases operation.

How Should Notification Be Made?

Notify the IRS District Office where the Form 637 is issued of the change and by FAX the IRS TCN Coordinator at:

Internal Revenue Service OP:E:Ex Unit 35
Attn: TCN Coordinator (606) 292-5093 FAX

Changes to the terminal status or other information will be published by the Excise Program Office in the IRS Headquarters Office. Notification is required in order to retain approved status of the terminal and 637 Registration. Failure to notify of changes may lead to suspension or revocation of the approved status of the terminal or 637 Registration of the terminal operator. Changes or suspensions of approved status will be published as needed.

If you have any questions regarding the approved terminals or the listing, you may contact: Terminal Control Number Coordinator—Barbara Ruggles at (606) 292–2758 or Mary Burwell at (202) 622–4379 (not toll-free numbers).

Dated: April 27, 1999.

Thomas R. Hull,

National Director, Specialty Taxes.

TCN	Terminal Name	Address	City	State	Zip
T-92-AK-4500	Chevron Anchorage	459 W Bluff Rd	Anchorage	AK	99501
T-92-AK-4501	MAPCO Alaska Anchorage	1076 Ocean Dock Road	Anchorage	AK	99501
T-92-AK-4502	Equilon Enterprises LLC	1601 Tidewater	Anchorage	AK	99501
T-92-AK-4503	MAPCO Alaska North Pole	1150 H & H Lane	North Pole	AK	99705
T-92-AK-4504	Tesora-Anchorage	1522 Anchorage Port Rd	Anchorage	AK	99501
T-92-AK-4505	Tesoro Alaska Petroleum Co	Mile 22.5 Kenai Spur Road	Kenai	AK	99611
T-63-AL-2300	Amoco Oil Birmingham	1600 Mims Ave. Southwest	Birmingham	AL	35211
T-63-AL-2301	Chevron Birmingham	2400 28th St Southwest	Birmingham	AL	35211
T-63-AL-2302	CITGO Birmingham	2200 25th St Southwest	Birmingham	AL	35211
T-63-AL-2303	Crown Central Birmingham	2500 Nabors Road	Birmingham	AL	35211
T-63-AL-2304	Southeast Terminal Montgomery	Hwy 31 North	Montgomery	AL	36108
T-63-AL-2305	B P Oil Co Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2306	MAPLLC Birmingham	2704 28th St Southwest	Birmingham	AL	35211
T-63-AL-2307	Phillips 66 Birmingham	2635 Balsam Avenue	Birmingham	AL	35211
T-63-AL-2308	Motiva Enterprises LLC	2601 Wilson Road	Birmingham	AL	35221-1352
T-63-AL-2309	Southern Facilities Birmingham	2400 Nabors Road	Birmingham	AL	35211
T-63-AL-2310	Motiva Enterprises LLC	2529 28th Street SW	Birmingham	AL	35211
T-63-AL-2312	Louis Dreyfus Birmingham	1600 Mims Ave SW	Birmingham	AL	35211
T-63-AL-2314	Amoco Oil Mobile	Hwy. 90 and 98	Mobile	AL	36601
T-63-AL-2315	Coastal Fuels Mobile	PO Box 1423	Mobile	AL	36633
T-63-AL-2316	Coastal Mobile Chickasaw	200 Viaduct Rd	Chickasaw	AL	36611
T-63-AL-2322	Amoco Oil Montgomery	3560 Well Rd	Montgomery	AL	36108
T-63-AL-2323	Chevron USA Montgomery	200 Hunter Loop Road	Montgomery	AL	31608
T-63-AL-2324	B P Oil Mongtomery	Access Highway 31 North	Montgomery	AL	36108
T-63-AL-2325	MAPLLC Montgomery	320 Hunter Loop Rural Rt 6	Montgomery	AL	36125-0395
T-63-AL-2326	S T Services Montgomery	520 Hunter Loop Road	Montgomery	AL	36108-1827
T-63-AL-2327	Southern Facilities Montgomery	420 Hunter Loop Road	Montgomery	AL	36108
T-63-AL-2329	Hunt Refining Co	1855 Fairlawn RD	Tuscaloosa	AL	35401
T-63-AL-2330	S T Services Moundville	2nd Ave	Moundville	AL	35474
T-63-AL-2333	Murphy Oil USA - Oxford	2625 Highway 78 East	Anniston	AL	36201
T-63-AL-2334	Shell Chemical Co. - Saraland	400 Industrial Parkway	Saraland	AL	36571
T-63-AL-2335	Murphy Sheffield	136 Blackwell Road	Sheffield	AL	35660
T-63-AL-2336	BP OIL MOBILE	101 Bay Bridge Rd	Mobile	AL	36610
T-72-AL-2337	Dixie Pipeline Opelika	5565 Hwy 51 S	Opelika	AL	36801
T-72-AL-2338	EOTT Energy Corp - Mobile	Magazine Point	Mobile	AL	36610
T-72-AL-2339	Midstream Fuel Service-Mobile	Hwy 90/98 Blakeley Island	Mobile	AL	36618
T-72-AL-2340	Radcliff Economy Marine-Mobile	5 South Water St Extension	Mobile	AL	36652
T-72-AL-2341	SouthEast Terminals	Highway 31 North	Montgomery	AL	36108
T-72-AL-2343	Allied Energy Corporation	2700 Ishkooda Wenonah Rd.	Birmingham	AL	35211
T-72-AL-2344	Goodway Refining, LLC	315 Belleville Av.	Brewton	AL	36427
T-71-AR-2451	Lion Oil El Dorado	1000 McHenry	El Dorado	AR	71730
T-71-AR-2452	TEPPCO El Dorado	4021 Calion Hwy.	El Dorado	AR	71730
T-71-AR-2453	Williams Pipe Line Fort Smith	8101 Hwy 71	Fort Smith	AR	72903
T-71-AR-2454	TEPPCO Helena	826 Old Highway	Helena	AR	72342
T-71-AR-2456	Transmontaigne N. Little Rock	2725 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2457	Exxon USA North Little Rock	2724 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2458	La Gloria Oil N Little Rock	2626 Central Airport Road	North Little Rock	AR	72117
T-71-AR-2459	Transmontaigne Little Rock	3222 Central Airport Rd	North Little Rock	AR	72117
T-71-AR-2460	Cross Oil Refining& Mktg. Inc.	484 E. 6th Street	Smackover	AR	71762
T-71-AR-2463	Truman Arnold West Memphis	South of 8th Street	West Memphis	AR	72303
T-71-AR-2464	Arkansas Terminaling & Trading	2207 Central Airport Rd.	North Little Rock	AR	72117
T-71-AR-2467	Razorback Terminaling	2801 West Hwy 102 Rt 2	Rogers	AR	72756
T-86-AZ-4300	Caljet Phoenix	125 N 53rd Ave	Phoenix	AZ	85043
T-86-AZ-4301	Chevron USA Phoenix	5110 West Madison	Phoenix	AZ	85043
T-86-AZ-4303	Pro Petroleum Phoenix	408 S 43rd Avenue	Phoenix	AZ	85043
T-86-AZ-4304	SFPP LP Phoenix	49 North 53rd Ave Van Buren	Phoenix	AZ	85043
T-86-AZ-4305	Mobil Oil Phoenix	24 South 51st Ave	Phoenix	AZ	85043
T-86-AZ-4306	Equilon Enterprises LLC	5525 West Van Buren	Phoenix	AZ	85043
T-86-AZ-4307	Tosco Corporation	10 South 51st Avenue	Phoenix	AZ	85043
T-86-AZ-4308	Chevron Products - Tucson	3865 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4309	S T Services Tucson	3605 South Dodge	Tucson	AZ	85713-5421
T-86-AZ-4310	SFPP LP Tucson	3841 East Refinery Way	Tucson	AZ	85713
T-86-AZ-4312	Equilon Enterprises LLC	3735 South Dodge Boulevard	Tucson	AZ	85713
T-86-AZ-4313	ARCO Phoenix	5333 W Van Buren St	Phoenix	AZ	85043
T-33-CA-4750	Mobil Oil Atwood	1477 Jefferson	Anaheim	CA	92806
T-33-CA-4751	GATX Tank Storage	2000 East Sepulveda Blvd	Carson	CA	90810-1995
T-33-CA-4752	Tosco Corporation Wilmington	1660 W Anaheim St	Wilmington	CA	90744
T-33-CA-4753	ARCO Colton	2395 S Riverside Avenue	Bloomington	CA	92316-2931
T-33-CA-4754	Mobil Oil Colton	2305 S Riverside Avenue	Bloomington	CA	92316
T-33-CA-4755	Calnev Pipe Line Colton	2051 West Slover Avenue	Colton	CA	92324
T-33-CA-4756	Chevron USA Colton	2297 South Riverside Avenue	Bloomington	CA	92316
T-33-CA-4757	SFPP LP Colton	2359 South Riverside Avenue	Bloomington	CA	92316

TCN	Terminal Name	Address	City	State	Zip
T-33-CA-4758 ...	Equilon Enterprises LLC	2307 Riverside Ave.	Colton	CA	92316
T-33-CA-4759 ...	Equilon Enterprises LLC	2237 So. Riverside Avenue	Bloomington	CA	92316
T-33-CA-4760 ...	Tosco Refining Colton	271 E Slover Avenue	Rialto	CA	92376
T-33-CA-4761 ...	Calnev Pipe Line Daggett	34277 Daggett-Yermo Road	Daggett	CA	92327
T-33-CA-4762 ...	S T Services Imperial	349 Aten Road	Imperial	CA	92251-9786
T-33-CA-4763 ...	SFPP LP Imperial	345 W Aten Road	Imperial	CA	92251
T-33-CA-4764 ...	ARCO Long Beach	5905 Paramount Ave	Long Beach	CA	90805
T-33-CA-4766 ...	Toscos Corporation Bloomington	2301 S Riverside	Bloomington	CA	92316
T-33-CA-4767 ...	Petro-Diamond Terminal Company	1920 Lugger Way	Long Beach	CA	90813-2634
T-33-CA-4768 ...	Equilon Enterprises LLC	1926 E. Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4769 ...	ARCO Carson	2149 E Sepulreda Blvd	Carson	CA	90749
T-33-CA-4770 ...	Equilon Enterprises LLC	2101 E. Pacific Coast Hwy	Wilmington	CA	90744
T-33-CA-4771 ...	Chevron USA Huntington Beach	17881 Gothard St	Huntington Beach	CA	92647
T-33-CA-4772 ...	SFPP LP Orange	1350 North Main Street	Orange	CA	92667
T-33-CA-4773 ...	Chevron USA San Diego	2351 East Harbor Drive	San Diego	CA	92113
T-33-CA-4774 ...	Pacific Southwest San Diego	4370 LaJolla Village Drive	San Diego	CA	92113
T-33-CA-4776 ...	SFPP LP San Diego	9950 San Diego Mission Road	San Diego	CA	92108
T-33-CA-4777 ...	Equilon Enterprises LLC	9950 San Diego Mission Blvd.	San Diego	CA	92108
T-33-CA-4778 ...	Equilon Enterprises LLC	9966 San Diego Mission Rd.	San Diego	CA	92108
T-33-CA-4779 ...	Chemoil Long Beach	2365 E Sepulveda Blvd	Long Beach	CA	90810
T-33-CA-4782 ...	ARCO San Diego	2295 E Harbor Drive	San Diego	CA	92113
T-33-CA-4783 ...	Mobil Oil San Diego	9950 San Diego Mission Rd	San Diego	CA	92108
T-33-CA-4784 ...	ARCO Signal Hill	2350 Hathaway Drive	Signal Hill	CA	90806
T-33-CA-4785 ...	Equilon Enterprises LLC	2457 Redondo Ave.	Signal Hill	CA	90806
T-33-CA-4786 ...	Mobil Oil Torrance	3700 West 190th Street	Torrance	CA	90509
T-33-CA-4789 ...	Ultramar Inc Wilmington	2402 E Anaheim St	Wilmington	CA	90744
T-33-CA-4790 ...	UNOCAL San Diego	2750 Murphy Canyon Rd	San Diego	CA	92123
T-68-CA-4600 ...	SFPP LP Chico	2570 Hegan Lane	Chico	CA	95927
T-68-CA-4601 ...	Equilon Enterprises LLC	2590 Hegan Lane	Chico	CA	95928
T-68-CA-4603 ...	Exxon USA Benicia	3410 East Second Street	Benicia	CA	94510
T-68-CA-4604 ...	Chevron USA Banta	22888 S Kasson Rd	Tracy	CA	95376
T-68-CA-4605 ...	Shore Terminals LLC	90 San Pablo Ave	Crockett	CA	94525
T-68-CA-4606 ...	Chevron USA Eureka	3400 Christie Street	Eureka	CA	95501
T-68-CA-4607 ...	Chevron USA Avon	611 Solano Way	Martinez	CA	94553
T-68-CA-4609 ...	ARCO Stockton Terminal	2700 West Washington St	Stockton	CA	95203
T-68-CA-4610 ...	Equilon Enterprises LLC	1801 Marina Vista	Martinez	CA	94553
T-68-CA-4611 ...	Tosco Refining Martinez	Solano Way & Waterfront RD	Martinez	CA	94553
T-68-CA-4612 ...	ARCO Sacramento	1701 S River Rd	West Sacramento	CA	95691
T-68-CA-4613 ...	SFPP LP Rancho Cordova	2901 Bradshaw Rd	Rancho Cordova	CA	95741
T-68-CA-4614 ...	ARCO Richmond	1306 Canal Blvd	Richmond	CA	94807
T-68-CA-4616 ...	Chevron Richmond	155 Castro St	Richmond	CA	94802
T-68-CA-4617 ...	Tosco Corporation Richmond	1300 Canal Blvd	Richmond	CA	94804
T-68-CA-4619 ...	IMTT Richmond-CA	100 Cutting Blvd.	Richmond	CA	94804
T-68-CA-4621 ...	Chevron USA Sacramento	2420 Front Street	Sacramento	CA	95818
T-68-CA-4622 ...	Equilon Enterprises LLC	1509 South River Road	West Sacramento	CA	95691
T-68-CA-4624 ...	Tosco Refining Sacramento	76 Broadway	Sacramento	CA	95818
T-68-CA-4625 ...	Tosco Refining Stockton	3505 Navy Drive	Stockton	CA	95203
T-68-CA-4626 ...	S T Services Stockton	2941 Navy Drive	Stockton	CA	95206-1149
T-68-CA-4628 ...	Equilon Enterprises LLC	3515 Navy Dirve	Stockton	CA	95203
T-68-CA-4629 ...	Tesoro Refining Mktg Stockton	3003 Navy Drive	Stockton	CA	95205
T-77-CA-4650 ...	Chevron Products Co.	1020 Berryessa Road	San Jose	CA	95133
T-77-CA-4651 ...	Kinder Morgan Energy Partners LP	4149 South Maple Avenue	Fresno	CA	93725
T-77-CA-4652 ...	Kinder Morgan Energy Partners LP	2150 Kruse Avenue	San Jose	CA	95131
T-77-CA-4653 ...	Equilon Enterprises LLC	2165 O'Toole Ave.	San Jose	CA	95131
T-77-CA-4654 ...	Equilon Enterprises LLC	3284 North Ventura Ave.	Ventura	CA	93001
T-77-CA-4655 ...	Kern Oil & Refining Co.	7724 East Panama Lane	Bakersfield	CA	93307
T-77-CA-4657 ...	Equilon Enterprises LLC	2436 Fruitvale Avenue	Bakersfield	CA	93302
T-77-CA-4658 ...	Tesoro Marine Services, Inc.	141 West Hueneme Road	Pt. Hueneme	CA	93041
T-77-CA-4661 ...	Golden Bear Oil Specialties	1134 Manor	Oildale	CA	93308
T-77-CA-4664 ...	San Joaquin Refining Co., Inc.	3542 Shell St.	Bakersfield	CA	93308
T-94-CA-4700 ...	SFPP LP Brisbane	950 Tunnel Av.	Brisbane	CA	94005
T-94-CA-4703 ...	Equilon Enterprises LLC	135 North Access Road	So San Francisco	CA	94080
T-94-CA-4705 ...	Time Oil Company - Richmond	488 Wright Ave.	Richmond	CA	94802
T-95-CA-4800 ...	Chevron USA El Segundo	302 West El Segundo Blvd	El Segundo	CA	90245
T-95-CA-4802 ...	Golden West Santa Fe Springs	13415 Carmenita Road	Santa Fe Springs	CA	90670
T-95-CA-4803 ...	Toscos S. Broadway Los Angeles	13500 South Broadway	Los Angeles	CA	90061
T-95-CA-4804 ...	Equilon Enterprises LLC	8100 Haskell Ave.	Van Nuys	CA	91406
T-95-CA-4805 ...	Mobil Oil Vernon	2709 East 37th Street	Vernon	CA	90058
T-95-CA-4806 ...	Toscos Center Street LA	501 N Center St	Los Angeles	CA	90012
T-95-CA-4807 ...	ARCO Vinvale Terminal	8601 S Garfield Ave	South Gate	CA	90280
T-95-CA-4808 ...	Paramount Petroleum	14700 Downey Avenue	Paramount	CA	90723
T-95-CA-4809 ...	Equilon Enterprises LLC	2015 Long Beach Ave	Los Angeles	CA	90058

TCN	Terminal Name	Address	City	State	Zip
T-95-CA-4810 ...	Chevron USA Van Nuys	15359 Oxnard Street	Van Nuys	CA	91411
T-95-CA-4811 ...	Chevron USA Montebella	601 South Vail Avenue	Montebella	CA	90640
T-84-CO-4100 ...	Chase Pipeline Aurora	15000 E. Smith Rd.	Aurora	CO	80011
T-84-CO-4101 ...	Colorado Refining Denver	5800 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4102 ...	Conoco Denver	5575 Brighton Boulevard	Commerce City	CO	80022
T-84-CO-4103 ...	Diamond Shamrock Denver	3601 East 56th Street	Commerce City	CO	80022
T-84-CO-4104 ...	Phillips 66 Commerce City	3960 East 56th Avenue	Commerce City	CO	80022
T-84-CO-4105 ...	Kaneb PipeLine Dupont	8160 Krameria	DuPont	CO	80024
T-84-CO-4106 ...	Kaneb PipeLine Fountain	1004 S. Sante Fe	Fountain	CO	80817
T-84-CO-4107 ...	Landmark Petroleum Fruita	1493 Hwy 6 & 50	Fruita	CO	81521
T-84-CO-4108 ...	Diamond Colorado Springs	7810 Drennan	Colorado Springs	CO	80925
T-84-CO-4109 ...	Sinclair Pipeline Henderson	8581 East 96th Ave	Henderson	CO	80640
T-06-CT-1250 ...	Hoffman Fuel Co. of Bridgeport	156 East Washington Ave	Bridgeport	CT	06604
T-06-CT-1251 ...	Sprague Energy Stamford	10 Water St	Stamford	CT	06902
T-06-CT-1252 ...	CITGO Rocky Hill	109 Dividend Road	Rocky Hill	CT	06067
T-06-CT-1253 ...	Motiva Enterprises LLC	211 Riverside Drive	East Hartford	CT	06108
T-06-CT-1254 ...	Northeast Petroleum New Haven	481 East Shore Parkway	New Haven	CT	06512
T-06-CT-1255 ...	Amerada Hess - Groton	443 Eastern Point Road	Groton	CT	06340
T-06-CT-1256 ...	Motiva Enterprises LLC	250 Eagles Nest Rd.	Bridgeport	CT	06607
T-06-CT-1257 ...	Amerada Hess - New Haven	100 River Street	New Haven	CT	06513
T-06-CT-1258 ...	New Haven Terminal Inc	100 Waterfront St	New Haven	CT	06512
T-06-CT-1259 ...	Amerada Hess - Wethersfield	50 Burbank Road	Wethersfield	CT	06109-9998
T-06-CT-1261 ...	Getty Terminal New Haven	85 Forbes Avenue	New Haven	CT	06512
T-06-CT-1262 ...	Gulf Oil LP - New Haven	500 Waterfront Street	New Haven	CT	06512
T-06-CT-1263 ...	Mobil Oil New Haven	134 Forbes Avenue	New Haven	CT	06512
T-06-CT-1264 ...	Gateway Terminal New Haven	400 Waterfront St	New Haven	CT	06512
T-06-CT-1265 ...	Wyatt Energy, Inc.	85 East Street	New Haven	CT	06536
T-06-CT-1268 ...	Hoffman Fuel Co. of Stamford	100 Southfield Avenue	Stamford	CT	06902
T-06-CT-1270 ...	Northeast Petroleum - Wethersfield	80 Burbank Road	Wethersfield	CT	06109
T-06-CT-1272 ...	Devine Bros. Inc. - Norwalk	38 Commerce St	Norwalk	CT	06850
T-06-CT-1274 ...	Wyatt Energy Incorporated	280 Waterfront St	New Haven	CT	06512
T-06-CT-1277 ...	Sprague Energy	247 Riverside Dr.	East Hartford	CT	06902
T-06-CT-1279 ...	Inland Fuel Terminal	154 Admiral St.	Bridgeport	CT	06605
T-06-CT-1280 ...	B & B Petroleum Inc.	32 Brownstone Ave	Portland	CT	06480
T-06-CT-1281 ...	Hall & Muska, Inc.	152 Broad Brook Rd	Broad Brook	CT	06016
T-06-CT-1282 ...	Anthony Troisno & Sons, Inc.	777 Enfield St.	Enfield	CT	06082
T-06-CT-1284 ...	Port Oil	248 Brownstone Ave.	Portland	CT	06480
T-06-CT-1285 ...	Heating Oil Partners LP	410 Bank St.	New London	CT	06320
T-06-CT-1286 ...	NORAA Enterprises, Inc.	1351 Main Street	East Hartford	CT	06109
T-52-MD-1553 ...	S T Services - Washington	401 Farragut Street NE	Washington	DC	20111-6319
T-52-MD-1564 ...	S T Services Washington (M St)	1333 M St SE	Washington	DC	20003-3706
T-51-DE-1600 ...	Motiva Enterprises LLC	River Rd and J Street	Delaware City	DE	19706
T-51-DE-1601 ...	Blades Terminal-Peninsula Oil	Blades Causeway	Blades	DE	19973
T-51-DE-1603 ...	Wilco Inc, Peninsula Oil Co	Blades Causeway	Seaford	DE	19973
T-52-MD-1572 ...	The Sico Company	1050 Christiana Ave.	Wilmington	DE	19801
T-59-FL-2100	Murphy Oil USA Tampa	1306 Ingram Ave	Tampa	FL	33605
T-59-FL-2101	Louis Dreyfus Tampa	1523 Port Avenue	Tampa	FL	33605-6745
T-59-FL-2102	Amerada Hess - Jacksonville	2617 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2103	Amoco Oil Jacksonville	2054 Heckscher Drive	Jacksonville	FL	32226
T-59-FL-2104	Chevron Products Company	3117 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2105	Coastal Fuels Jacksonville	3425 Talleyrand Avenue	Jacksonville	FL	32206
T-59-FL-2106	B P Oil Jacksonville	12101 Heckscher Dr	Jacksonville	FL	32218-6038
T-59-FL-2107	Amerada Hess - Tampa	504 N 19th Street	Tampa	FL	33605
T-59-FL-2108	Koch Refining Jacksonville	1974 Talleyrand Avenue	Jacksonville	FL	32239-0905
T-59-FL-2109	Petroleum Fuel Jacksonville	1961 E Adams St	Jacksonville	FL	32202
T-59-FL-2112	S T Services Jacksonville	6531 Evergreen Avenue	Jacksonville	FL	32208-4911
T-59-FL-2113	Kerr-McGee Jacksonville	2470 Talleyrand Blvd	Jacksonville	FL	32206
T-59-FL-2114	CITGO - Niceville	904 Bayshore Drive	Niceville	FL	32578
T-59-FL-2115	Murphy Oil Freeport	424 Madison St	Freeport	FL	32439
T-59-FL-2116	Chevron USA Product Co	525 West Beach Drive	Panama City	FL	32402
T-59-FL-2117	CITGO Panama City	122 S Center Ave	Panama City	FL	32401
T-59-FL-2118	Coastal Fuels Pensacola	640 S Barracks St	Pensacola	FL	32501
T-59-FL-2119	Radcliff/Economy-Pensacola	3100 Barrancas Avenue	Pensacola	FL	32507
T-59-FL-2120	Louis Dreyfus Pensacola	511 South Clubb St	Pensacola	FL	32501
T-59-FL-2122	Coastal Fuels Point Manatee	804 N Dock St	Palmetto	FL	34220
T-59-FL-2123	GATX Terminals Port Tampa	2101 GATX Drive	Tampa	FL	33605-6863
T-59-FL-2124	Motiva Enterprises LLC	6500 Commerce St	Port Tampa	FL	33616
T-59-FL-2125	Murphy Oil St Marks	585 Port Leon Drive	St Marks	FL	32355
T-59-FL-2127	TOC Terminals St Marks	815 Port Leon Drive	St Marks	FL	32355
T-59-FL-2129	GATX Terminal Taft (CFPL)	9919 Orange Avenue	Orlando	FL	32824-8466
T-59-FL-2130	Amoco Oil Tampa	848 McCloskey Boulevard	Tampa	FL	33605-6716
T-59-FL-2131	Chevron USA Tampa	5500 Commerce Street	Tampa	FL	33616

TCN	Terminal Name	Address	City	State	Zip
T-59-FL-2133	CITGO Tampa	801 McCloskey Blvd	Tampa	FL	33605
T-59-FL-2136	MAPLLC Oil Tampa	425 South 20th Street	Tampa	FL	33605-6025
T-59-FL-2138	Coastal Fuels Cape Canaveral	10 Tanker Turn Rd.	Cape Canaveral	FL	32920
T-65-FL-2150	Coastal Fuels Port Everglades	2401 Eisenhower Blvd	Fort Lauderdale	FL	33316
T-65-FL-2151	S T Services Homestead	13195 S W 288th Street	Homestead	FL	33033-2012
T-65-FL-2152	Amoco Oil Port Everglades	1180 Spangler Road	Port Everglades	FL	33316
T-65-FL-2153	Chevron USA Port Everglades	1400 SE 24th St	Fort Lauderdale	FL	33335
T-65-FL-2154	Motiva Enterprises LLC	1500 SE 26 St	Fort Lauderdale	FL	33316
T-65-FL-2156	Amerada Hess - Port Everglades	1501 SE 20th St.	Fort Lauderdale	FL	33316
T-65-FL-2157	CITGO Port Everglades	800 SE 28th Street	Fort Lauderdale	FL	33316
T-65-FL-2160	MAPLLC Oil Port Everglades	1601 SE 20th St	Fort Lauderdale	FL	33316
T-65-FL-2161	Mobil Oil Port Everglades	1150 Spangler Blvd	Fort Lauderdale	FL	33316
T-65-FL-2163	Motiva Enterprises LLC	909 S.E. 24 St.	Fort Lauderdale	FL	33316
T-65-FL-2164	Motiva Enterprises LLC	1200 SE 28th St	Port Everglades	FL	33316
T-65-FL-2165	Louis Dreyfus Port Everglades	2701 SE 14th Ave	Fort Lauderdale	FL	33316
T-58-GA-2500 ...	Phillips Pipeline Albany	1603 W Oakridge Dr	Albany	GA	31707
T-58-GA-2501 ...	Williams Energy Ventures-Alban	1722 W Oakridge Dr	Albany	GA	31707
T-58-GA-2502 ...	Louis Dreyfus Albany	1162 Gillionville Rd	Albany	GA	31707
T-58-GA-2504 ...	S T Services Augusta	209 Sand Bar Ferry Road	Augusta	GA	30901-1849
T-58-GA-2505 ...	Louis Dreyfus Americus	Plains Road Highway 280 West	Americus	GA	31709
T-58-GA-2506 ...	Chevron USA Athens	3460 Jefferson Road	Athens	GA	30607
T-58-GA-2508 ...	Louis Dreyfus Athens	3450 Jefferson Road	Athens	GA	30607
T-58-GA-2510 ...	Motiva Enterprises LLC	4127 Winter Chapel Rd.	Doraville	GA	30360
T-58-GA-2511 ...	Louis Dreyfus Atlanta	3132 Parrott Avenue Northwest	Atlanta	GA	30318
T-58-GA-2514 ...	Motiva Enterprises LLC	803 East Shotwell St.	Bainbridge	GA	31717
T-58-GA-2515 ...	Louis Dreyfus Bainbridge	1909 East Shotwell Street	Bainbridge	GA	31717
T-58-GA-2516 ...	Stratus Petroleum Blakely	Hwy 62 W & Chattahoochee Rd	Blakely	GA	31723
T-58-GA-2517 ...	S T Services Bremen	870 Alabama Avenue	Bremen	GA	30110-2306
T-58-GA-2518 ...	S T Services Brunswick	211 Newcastle Street NW	Atlanta	GA	31520-8571
T-58-GA-2519 ...	Fina Oil & Chemical Atlanta	2970 Parrott Avenue	Atlanta	GA	30318
T-58-GA-2520 ...	Chevron USA Columbus	5131 Miller Road	Columbus	GA	31908
T-58-GA-2521 ...	Crown Central Columbus	4840 Miller Rd	Columbus	GA	31904
T-58-GA-2522 ...	ITAPCO Inc Columbus	5225 Miller Road	Columbus	GA	31904
T-58-GA-2523 ...	MAPLLC Oil Columbus	5030 Miller Road	Columbus	GA	31909-5561
T-58-GA-2524 ...	S T Services Columbus	800 Lumpkin Boulevard	Columbus	GA	31901-3130
T-58-GA-2525 ...	Amerada Hess - Doraville	2836 Woodwin Road	Doraville	GA	30362
T-58-GA-2526 ...	Amoco Doraville Peachtree	6430 New Peachtree Road	Doraville	GA	30340
T-58-GA-2527 ...	Motiva Enterprises LLC	4201 Winters Chappel Rd.	Doraville	GA	30340
T-58-GA-2528 ...	Chevron USA Doraville	4026 Winters Chapel Road	Doraville	GA	30362
T-58-GA-2529 ...	CITGO Doraville	3877 Flowers Drive	Doraville	GA	30362
T-58-GA-2531 ...	Motiva Enterprises LLC	4143 Winters Chapel Rd	Doraville	GA	30360
T-58-GA-2532 ...	MAPLLC Oil Doraville	6293 New Peachtree Road	Doraville	GA	30341-1211
T-58-GA-2533 ...	William Energy Ventures, Inc.	4149 Winters Chapel Road	Doraville	GA	30360
T-58-GA-2534 ...	Amoco Doraville Chapel	4064 Winters Chapel Rd	Doraville	GA	30340
T-58-GA-2535 ...	Southern Facilities Doraville	2797 Woodwin Road	Doraville	GA	30360
T-58-GA-2537 ...	Louis Dreyfus Griffin	643B East McIntosh Road	Griffin	GA	30223
T-58-GA-2538 ...	Chevron USA Macon	2476 Allen Road	Macon	GA	31206
T-58-GA-2541 ...	MAPLLC Oil Macon	2445 Allen Road	Macon	GA	31206-6301
T-58-GA-2542 ...	S T Services Macon	6225 Hawkinsville Road	Macon	GA	31216-5849
T-58-GA-2543 ...	Southern Facilities Macon	2505 Allen Road	Macon	GA	31206
T-58-GA-2544 ...	Louis Dreyfus Macon	5041 Forsyth Rd.	Macon	GA	31210
T-58-GA-2545 ...	MAPLLC Oil Powder Springs	3895 Anderson Farm Road NW	Powder Springs	GA	30073
T-58-GA-2547 ...	Louis Dreyfus Southeast	2671 Calhoun Road	Rome	GA	30161
T-58-GA-2548 ...	S T Services Savannah	2 Walstrom Road	Savannah	GA	31404-1033
T-58-GA-2550 ...	Colonial Terminal, Inc.	101 North Lathrop Ave	Savannah	GA	31415
T-58-GA-2551 ...	Paktank Corp Savannah Term	Georgia Ports Garden City	Savannah	GA	31418
T-99-HI-4551	Equilon Enterprises LLC	91-119 Hanua Street	Oahu	HI	96706
T-99-HI-4552	Chevron USA Hilo	666 Kalanianaole Avenue	Hilo	HI	96720
T-99-HI-4553	Chevron USA Honolulu	933 North Nimitz Highway	Honolulu	HI	96817
T-99-HI-4554	Chevron USA Kahului	100A Hobron Avenue	Kahului	HI	96732
T-99-HI-4555	Chevron USA Port Allen	A & B Road, Port Allen	Eleele	HI	96705
T-99-HI-4556	Tosco Refining Co.	411 Pacific St	Honolulu	HI	96814
T-99-HI-4557	Equilon Enterprises LLC	789 N. Nimitz Hwy.	Honolulu	HI	96817
T-99-HI-4558	Equilon Enterprises LLC	661 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4560	Equilon Enterprises LLC	999 Kalanianaole Ave.	Hilo	HI	96720
T-99-HI-4561	Tesoro Hawaii Corporation	701 Kalanianaole Street	Hilo	HI	96720
T-99-HI-4562	Equilon Enterprises LLC	3145 Waapa Rd.	Lihue	HI	96766
T-99-HI-4563	Tesoro Hawaii Corporation	140 H Hobron Ave	Kahului	HI	96732
T-99-HI-4566	Equilon Enterprises LLC	60 Habron Ave.	Kahului	HI	96732
T-99-HI-4567	Tosco Kawaihae	No. 1 Kawaihae Road	Kamuela	HI	96743
T-99-HI-4568	Tesoro Hawaii Corporation	2 Sand Island Access Rd.	Honolulu	HI	96819
T-42-IA-3450	Amoco Oil Bettendorf	75 South 31st Street	Bettendorf	IA	52722

TCN	Terminal Name	Address	City	State	Zip
T-42-IA-3451	Koch Refining Bettendorf	4100 Elm St	Bettendorf	IA	52722
T-42-IA-3452	Phillips Pipeline Company	2925 Depot Street	Bettendorf	IA	52722
T-42-IA-3453	Williams Pipe Line Sioux South	3701 South Lewis Blvd	Sioux City	IA	51106
T-42-IA-3454	Amoco Oil Council Bluffs	829 East South Bridge Rd	Council Bluffs	IA	51501
T-42-IA-3455	National Coop Council Bluffs	825 East South Omaha Bridge Rd	Council Bluffs	IA	51502
T-42-IA-3456	Amoco Oil Des Moines	1501 Northwest 86th Street	Des Moines	IA	50325
T-42-IA-3457	Williams Pipe Line Des Moines	2503 Southeast 43rd Street	Des Moines	IA	50317
T-42-IA-3458	Amoco Oil Dubuque	15437 Olde Highway Rd.	Dubuque	IA	52001
T-42-IA-3460	Williams Pipe Line Dubuque	8038 St Joe's Prairie Rd	Dubuque	IA	52003
T-42-IA-3461	Williams Pipe Line Fort Dodge	6 miles from Ft Dodge	Duncombe	IA	50532
T-42-IA-3462	Sinclair Pipeline Fort Madison	2010 35th St.	Fort Madison	IA	52627
T-42-IA-3463	Williams Pipe Line Iowa City	912 First Avenue	Coralville	IA	52241
T-42-IA-3464	Kaneb Pipe Line Le Mars	US Hwy 75/7 Miles N of LeMars	Le Mars	IA	51031
T-42-IA-3465	Williams Pipe Line Mason City	2810 East Main	Clear Lake	IA	50428
T-42-IA-3466	Kaneb Pipe Line Milford	1 mile W of Milford & Hwy 71	Milford	IA	51351
T-42-IA-3467	Williams Pipe Line Milford	RT #1	Milford	IA	51351
T-42-IA-3468	Amoco Oil North Liberty	2092 Hwy. 965 NE	North Liberty	IA	52317
T-42-IA-3469	Amoco Oil Ottumwa	Three miles west on US 34	Ottumwa	IA	52501
T-42-IA-3470	Heartland Pleasant Hill	4500 Vandalia	Pleasant Hill	IA	50317
T-42-IA-3471	CITGO - Bettendorf	312 South Bellingham Street	Bettendorf	IA	52722
T-42-IA-3472	Kaneb Pipeline Rock Rapids	State Hwy 9	Rock Rapids	IA	51246
T-42-IA-3473	Williams Pipe Line Sioux City	4300 41st Street	Sioux City	IA	51108
T-42-IA-3474	Williams Pipe Line Waterloo	5360 Eldora Rd	Waterloo	IA	50701
T-82-ID-4150	Boise Idaho Terminal	321 North Curtis Road	Boise	ID	83707
T-82-ID-4151	Northwest Terminaling Boise	201 N. Phillips Rd.	Boise	ID	83704
T-82-ID-4152	Flying J - Boise	70 North Philipi Road	Boise	ID	83706
T-82-ID-4155	Amoco Oil Burley	421 East Highway 81	Burley	ID	83318
T-82-ID-4157	Burley Products Terminal	425 East Hwy 81 PO Box 233	Burley	ID	83318
T-82-ID-4159	Chevron Pipeline Pocatello	1189 Tank Farm Rd.	Pocatello	ID	83201
T-36-IL-3300	Clark Refining and Marketing Inc.	131st & Homan Avenue	Blue Island	IL	60406
T-36-IL-3301	Amoco Oil Des Plaines	2201 South Elmhurst Rd	Des Plaines	IL	60018
T-36-IL-3302	Amoco Oil Forest View	4811 South Harlem Avenue	Forest View	IL	60402
T-36-IL-3303	Amoco Oil Company - Rochelle	100 East Standard Oil Road	Rochelle	IL	61068
T-36-IL-3304	CITGO Mt Prospect	2316 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3305	GATX Terminals Argo	8500 West 68th Street	Argo	IL	60501-0409
T-36-IL-3306	Clark Refining & Marketing Co. Rockford.	1511 South Meridian Rd	Rockford	IL	61102
T-36-IL-3307	Marathon Mt Prospect	3231 Busse Road	Arlington Heights	IL	60005-4610
T-36-IL-3308	MAPLLC Oil Rockford	7312 Cunningham Road	Rockford	IL	61102
T-36-IL-3309	MAPLLC Willow Springs	7600 LaGrange Road	Willow Springs	IL	60480-1551
T-36-IL-3310	S T Services - Blue Island	3210 West 131st Street	Blue Island	IL	60406-2364
T-36-IL-3311	Mobil Oil Des Plaines	2312 Terminal Drive	Des Plaines	IL	60005
T-36-IL-3312	Petroleum Fuel Forest View	4801 South Harlem	Forest View	IL	60402
T-36-IL-3313	Phillips Pipeline Company - Kankakee	275 North 2760 West Road	Kankakee	IL	60901
T-36-IL-3314	S T Services - Peru	2830 West Market Street	Peru	IL	61354-3456
T-36-IL-3315	Equilon Enterprises LLC	8600 West 71st. Street	Bedford Park	IL	60501
T-36-IL-3316	Equilon Enterprises LLC	1605 E. Algonquin Road	Des Plaines	IL	60005
T-36-IL-3317	CITGO Petroleum Corp. - Lemont	135th & New Avenue	Lemont	IL	60439
T-36-IL-3318	CITGO - Des Plaines	2304 Terminal Drive	Des Plaines	IL	60056
T-36-IL-3319	Williams Pipe Line - Amboy	1222 U S Route 30	Amboy	IL	61310
T-36-IL-3320	Williams Pipeline Franklin	10601 Franklin Avenue	Franklin Park	IL	60131
T-36-IL-3322	Shell Des Plaines Terminal	1000 Terminal Drive	Arlington Heights	IL	60005
T-36-IL-3373	Clark Refining & Marketing Co. - Blue Is.	Kedzie Ave. & 131st	Blue Island	IL	60406
T-36-IL-3375	Mobil Oil Corporation - Lockport	1290 High Road	Lockport	IL	60441
T-37-IL-3351	Amoco Oil Wood River	335 South Old St Louis Rd	Wood River	IL	62095
T-37-IL-3352	Clark Refining and Marketing - Peoria	7022 South Cilco Lane	Bartonville	IL	61607
T-37-IL-3353	Conoco Wood River	Route 3	Hartford	IL	62048
T-37-IL-3354	Hartford Wood River	900 North Delmar	Hartford	IL	62048
T-37-IL-3355	Hicks Oils & Hicks Gas Inc	1118 Wesley Road	Creve Coeur	IL	61610-3870
T-37-IL-3356	Clark Refining - Hartford	South Side Hawthorne	Hartford	IL	62048
T-37-IL-3358	MAPLLC Champaign	511 S. Staley Road	Champaign	IL	61821
T-37-IL-3360	MAPLLC Robinson	Rural Route One	Robinson	IL	62454
T-37-IL-3361	La Gloria Oil Norris City	Rural Route 2	Norris City	IL	62869
T-37-IL-3362	Petroleum Fuel Granite City	2801 Rock Road	Granite City	IL	62040
T-37-IL-3364	Meioco Terminal	Rt 49 South	Ashkum	IL	60911
T-37-IL-3365	Phillips 66 Decatur	266 E Shafer	Forsyth	IL	62535
T-37-IL-3366	Phillips Petroleum E St Louis	3300 Mississippi Ave	Cahokia	IL	62206
T-37-IL-3367	S T Services - Chillicothe	20206 North State Rd, Rt 29	Chillicothe	IL	61523-9718
T-37-IL-3368	Equilon Enterprises LLC	Route 45 N. R.R. 3	Effingham	IL	62401
T-37-IL-3369	Equilon Enterprises LLC	600 E. Lincoln Memorial Pky	Harristown	IL	62537
T-37-IL-3371	Williams Pipe Line Heyworth	Rural Route Two	Heyworth	IL	61745

TCN	Terminal Name	Address	City	State	Zip
T-37-IL-3372	Williams Pipe Line Menard Cty	Rural Route Three	Petersburg	IL	62675
T-43-IL-3729	Center Terminal Co - Hartford	1402 S Delmare	Hartford	IL	62048-0065
T-35-IN-3201	Amoco Oil Brookston	11555 South IN 43	Brookston	IN	47923-0236
T-35-IN-3202	Clark Rfg-Hammond	1020 141st St	Hammond	IN	46320
T-35-IN-3203	Amoco Oil Granger	12694 Adams Rd	Granger	IN	46530
T-35-IN-3204	Amoco Oil Indianpolis	2500 N Tibbs Avenue	Indianapolis	IN	46222
T-35-IN-3205	Amoco Oil Whiting	2530 Indianapolis Blvd.	Whiting	IN	46394
T-35-IN-3206	MAPLLC Clarksvile	214 Center Street	Clarksville	IN	47124
T-35-IN-3207	MAPLLC Evansville	2500 Broadway	Evansville	IN	47712
T-35-IN-3208	MAPLLC Huntington	4648 N. Meridian Road	Huntington	IN	46750
T-35-IN-3209	CITGO East Chicago	2500 East Chicago Ave	East Chicago	IN	46312
T-35-IN-3210	CITGO Huntington	4393 N Meridian Rd US 24	Huntington	IN	46750
T-35-IN-3211	Gladieux T & M Huntington	4757 US 24 E	Huntington	IN	46750
T-35-IN-3212	Kentuckiana Terminal	20 Jackson St	New Albany	IN	47150
T-35-IN-3213	Transmontaigne Terminaling Inc	2630 Broadway	Evansville	IN	47712
T-35-IN-3214	CountryMark - Mount Vernon	1200 Refinery Road	Mount Vernon	IN	47620
T-35-IN-3215	Crown Central Petro - Clermont	9323 West 30th	Clermont	IN	46234
T-35-IN-3216	Crown Central Petro - Seymour	9780 N US Hwy 31	Seymour	IN	47274
T-35-IN-3217	Clark Rfg Clermont	10470 E County Rd, 300 North	Clermont	IN	46234
T-35-IN-3218	MAPLLC Hammond	4206 Columbia Avenue	Hammond	IN	46327
T-35-IN-3219	MAPLLC Indianapolis	4955 Robison Rd	Indianapolis	IN	46268-1040
T-35-IN-3220	MAPLLC Mount Vernon	Old State Rd #69 South	Mount Vernon	IN	47620
T-35-IN-3221	MAPLLC Muncie	2100 East State Road 28	Muncie	IN	47303-4773
T-35-IN-3222	MAPLLC Speedway	1304 Olin Ave	Indianapolis	IN	46222-3294
T-35-IN-3224	Mobil Oil Hammond	1527 141th Street	Hammond	IN	46327
T-35-IN-3225	Phillips 66 East Chicago	400 East Columbus Dr	East Chicago	IN	46312
T-35-IN-3226	Phillips 66 Clermont	3230 N Raceway Road	Indiapolis	IN	46234
T-35-IN-3227	S T Services Clermont	3350 N Raceway Rd	Indianapolis	IN	46234-1163
T-35-IN-3228	Equilon Enterprises LLC	2400 Michigan St.	Hammond	IN	46320
T-35-IN-3229	Equilon Enterprises LLC	2000 E. State Rd. 28	Muncie	IN	47302
T-35-IN-3230	Equilon Enterprises LLC	5405 W. 9th St.	Zionsville	IN	46268
T-35-IN-3231	Sun Huntington	4691 N Meridian St	Huntington	IN	46750
T-35-IN-3232	TEPPCO Princeton	Highway 64 West	Oakland City	IN	47660
T-35-IN-3233	Center Terminal Co-Indianapoli	10833 East County Rd 300 North	Indianapolis	IN	46234
T-35-IN-3234	Lassus Bros Huntington	4413 North Meridian Rd	Huntington	IN	46750
T-35-IN-3235	CountryMark Jolietville	17710 Mule Barn	Westfield	IN	46074
T-35-IN-3236	CountryMark - Peru	Highway 24 West	Peru	IN	46970
T-35-IN-3237	CountryMark Switz City	State Road 54 East	Switz City	IN	47465
T-35-IN-3238	Transmontaigne Terminaling Inc.	10700 E County Rd 300N	Indianapolis (CL)	IN	46234
T-35-IN-3242	Safety-Kleen Oil Recovery Co.	601 Riley Road	East Chicago	IN	46312-1638
T-35-IN-3243	Conrail Inc.-Avon Diesel Term	491 S. County Road 800 E.	Plainfield	IN	46168
T-35-IN-3244	Indiana Harbor Belt Railroad	2721 - 161st St.	Hammond	IN	46323
T-35-IN-3245	Conrail Inc.- Elkhart Terminal	2600 W. Lusher Rd	Elkhart	IN	46516
T-35-IN-3246	Transmontaigne - South Bend	20630 W. Ireland Rd.	South Bend	IN	46614
T-43-KS-3672	Phillips Pipeline Co. - Kansas City	2029 Fairfax Trafficway	Kansas City	KS	66115
T-48-KS-3651	Farmland Ind Coffeyville	North & Linden Streets	Coffeyville	KS	67337
T-48-KS-3652	Kaneb Pipe Line Concordia	Route 1	Delphos	KS	67436
T-48-KS-3654	Equilon Enterprises LLC	South Haverhill Road	El Dorado	KS	67042
T-48-KS-3655	Chase Pipeline Great Bend	Hwys 56 & 156 4 mi east of GB	Great Bend	KS	67530
T-48-KS-3656	Kaneb Pipe Line Hutchison	3300 East Avenue G	Hutchison	KS	67501
T-48-KS-3658	Sinclair Pipeline Kansas City	3401 Fairbanks Avenue	Kansas City	KS	66106
T-48-KS-3659	Williams Pipeline Kansas City	401 East Donovan Road	Kansas City	KS	66115
T-48-KS-3660	National Coop McPherson	2000 South Main Street	McPherson	KS	67460
T-48-KS-3661	Williams Pipe Line Olathe	13745 W 135th St	Olathe	KS	66062
T-48-KS-3662	Farmland Phillipsburg	Hwy 183 N	Phillipsburg	KS	67661
T-48-KS-3663	S T Services Salina	2137 W Old Hwy 40	Salina	KS	67401-9798
T-48-KS-3664	Chase Pipeline Scott City	Junction Highways 83 & 4	Scott City	KS	67871
T-48-KS-3665	Williams Pipe Line Topeka	US Hwy 75 RFD 1	Wakarusa	KS	66546
T-48-KS-3666	Amoco Oil Valley Center	7452 N Meridian	Valley Center	KS	67147-0376
T-48-KS-3667	Williams Pipe Line Wathena	Rt. 2 Box 112	Wathena	KS	66090
T-48-KS-3669	Williams Pipe Line-Wichita	1100 East 21st Street	Wichita	KS	67214
T-48-KS-3670	Conoco Wichita	8001 Oak Knoll Road	Wichita	KS	67207
T-48-KS-3671	Phillips Pipeline Wichita	2400 East 37th Street North	Wichita	KS	67219
T-61-KY-3261	B P Oil Bromley	409 River Road	Bromley	KY	41016
T-61-KY-3262	MAPLLC Catlettsburg	Old St Rt 23	Catlettsburg	KY	41129
T-61-KY-3263	MAPLLC Covington	230 East 33rd Street	Covington	KY	41015
T-61-KY-3264	Transmontaigne - Greater Cincinnati	700 River Road	Covington	KY	41017
T-61-KY-3265	Henderson Terminaling	2321 Old Geneva Road	Henderson	KY	42420
T-61-KY-3266	MAPLLC Lexington	1770 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3267	Chevron USA Lexington	1750 Old Frankfort Pike	Lexington	KY	40504
T-61-KY-3268	MAPLLC Louisville	4510 Algonquin Parkway	Louisville	KY	40211
T-61-KY-3269	B P Oil Louisville	1500 SW Parkway & Gibson Lane	Louisville	KY	40211

TCN	Terminal Name	Address	City	State	Zip
T-61-KY-3270 ...	Chevron USA Louisville	4401 Bells Lane	Louisville	KY	40211
T-61-KY-3271 ...	TransMontaigne - Louisville	4510 Bells Lane	Louisville	KY	40211
T-61-KY-3272 ...	MAPLLC Oil Louisville	3920 Kramers Lane	Louisville	KY	40216-4651
T-61-KY-3273 ...	Sun Louisville	7800 Cane Run Road	Louisville	KY	40258
T-61-KY-3274 ...	CITGO - Louisville	4724 Camp Ground Road	Louisville	KY	40216
T-61-KY-3276 ...	MAPLLC Paducah	Highway 62 & MAPLLC Rd.	Paducah	KY	42003
T-61-KY-3278 ...	TransMontaigne Terminal - Paducah	233 Elizabeth St	Paducah	KY	42001
T-61-KY-3279 ...	Transmontaigne-Henderson.	2633 Sunset Lane	Henderson	KY	42420
T-61-KY-3280 ...	Southern States Coorperative	150 Coast Guard Lane	Owensboro	KY	42302-0000
T-61-KY-3281 ...	Somerset Refinery - Somerset	600 Monticello Street	Somerset	KY	42502-0000
T-61-KY-3283 ...	Transmontaigne - Owensboro	900 Pleasant Valley Road	Owensboro	KY	42302-0000
T-61-KY-3284 ...	Transmontaigne - Riverway	1350 South 3rd Street	Paducah	KY	42003
T-62-KY-2244 ...	Transmontainge - Paducah	2000 So. 4th St.	Paducah	KY	42003
T-72-LA-2350	B P Oil Alliance		Alliance	LA	
T-72-LA-2351	Chevron USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2353	Exxon Co USA Arcadia	Highway 80 East	Arcadia	LA	71001
T-72-LA-2357	Chevron USA Baton Rouge	1315 Mengel Road	East Baton Rouge	LA	70807
T-72-LA-2358	Exxon USA Baton Rouge	3329 Scenic Highway	Baton Rouge	LA	70805
T-72-LA-2359	Petroleum Fuel Baton Rouge	995 Earnest Wilson Road	Port Allen	LA	70767
T-72-LA-2360	Mobil Oil Chalmette	1700 Paris Rd Gate 50	Chalmette	LA	70043
T-72-LA-2361	Motiva Enterprises LLC	Louisiana Street	Covent	LA	70723
T-72-LA-2363	MAPLLC Oil Garyville	Highway 61	Garyville	LA	70051
T-72-LA-2365	Motiva Enterprises LLC	143 Firehouse Dr.	Kenner	LA	70062
T-72-LA-2366	Valero Refining Co. - Louisiana	Highway 105 South	Krotz Springs	LA	70750
T-72-LA-2367	Calcasieu Lake Charles	West End of Tank Farm Road	Lake Charles	LA	70606
T-72-LA-2368	CITGO Lake Charles	Cities Serv Hwy & LA Hwy 108	Lake Charles	LA	70601
T-72-LA-2371	Murphy Oil USA Meraux	2501 East St Bernard Hwy	Meraux	LA	70075
T-72-LA-2372	Mobil Oil Morgan City	1000 Young's Road	Morgan City	LA	70380
T-72-LA-2373	Texaco - Marrero	Barataria & River Road	Marrero	LA	70072
T-72-LA-2374	GATX Terminals Norco	1601 River Road	Norco	LA	70079
T-72-LA-2375	Chevron USA Opelousas	Highway 182 South	Opelousas	LA	70571
T-72-LA-2376	Placid Refining Co Port Allen	1940 Louisiana Hwy One North	Port Allen	LA	70767
T-72-LA-2378	Pennzoil Product Co Shreveport	3333 Midway PO Box 3099	Shreveport	LA	71133-3099
T-72-LA-2381	Conoco Westlake	1980 Old Spanish Trail	Westlake	LA	70669
T-72-LA-2382	Paktank Corp Westwego	106 Bridge City Avenue	Bridge City	LA	70094
T-72-LA-2383	Phibro Marine Fuels	7168 Shrimpers Row	Dulac	LA	70353
T-72-LA-2384	Phibro Marine Fuel Gretna	1125 Fourth St	Gretna	LA	70058
T-72-LA-2386	Goldline Refinery	11499 Plant Road	Jennings	LA	70546
T-72-LA-2388	Calvmet Lubricants-Cotton Vall	U. S. Hwy 371 South	Cotton Valley	LA	71018
T-72-LA-2389	Calvmet Lubricants-Princeton	10234 Hwy 157	Princeton	LA	71067-9172
T-72-LA-2390	ST Services Westwego	660 La Bauve Drive	Westwego	LA	70094-3632
T-72-LA-2391	Petro-United Term Sunshine	1725 Highway 75	Sunshine	LA	70780
T-72-LA-2392	Petron, Inc.	R.T. 2, Box 238A	Jonesville	LA	71343
T-72-LA-2393	Sunshine Oil and Storage, Inc.	486 Highway 165	Monroe	LA	71202
T-04-MA-1151 ...	L E Belcher Springfield	615 St James Ave	Springfield	MA	01109
T-04-MA-1152 ...	Chelsea Terminal L/P	11 Broadway	Chelsea	MA	02150
T-04-MA-1153 ...	Gulf Oil Ltd Partnership Chelsea	123 Eastern Ave.	Chelsea	MA	02150
T-04-MA-1154 ...	Mobil Oil East Boston	467 Chelsea Street	E. Boston	MA	02128
T-04-MA-1155 ...	CITGO East Braintree	385 Quincy Ave	Braintree	MA	02184
T-04-MA-1156 ...	Exxon USA Everett	52 Beachum Street	Everett	MA	02149
T-04-MA-1160 ...	Irving Oil Terminals, Inc.	41 Lee Burbank Highway	Revere	MA	02151
T-04-MA-1161 ...	Global Petroleum Corp.	222 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1162 ...	Global Petroleum Revere	140 Lee Burbank Hwy	Revere	MA	02151
T-04-MA-1163 ...	Cargill, Inc.	25 Derby Street	Salem	MA	01970
T-04-MA-1164 ...	Cargill, Inc.	3 Coast Guard Road	Sandwich	MA	02563
T-04-MA-1165 ...	Coastal Oil NE South Boston	900 E First Street	South Boston	MA	02128
T-04-MA-1166 ...	Global Petroleum	Rocus St.	Springfield	MA	01101
T-04-MA-1168 ...	Mobil Oil Springfield	145 Albany Street	Springfield	MA	01105
T-04-MA-1172 ...	Global Petroleum Corp	30 Pine St.	Bedford	MA	02740
T-04-MA-1173 ...	Harbor Fuel Oil Corp	15 Sparks Ave	Nantucket	MA	02554
T-04-MA-1174 ...	Pride Convenience Inc.	246 Cottage St.	Springfield	MA	01101
T-04-MA-1175 ...	R M Packer Co. Inc	Beach Rd.	Vineyard Haven	MA	02568
T-04-MA-1176 ...	Sprague Energy Corp	728 Southern Artery	Quincy	MA	02169
T-04-MA-1177 ...	Springfield Terminals Inc	86 Robbins Road	Springfield	MA	01101
T-04-MA-1179 ...	Wyatt Energy Inc	1053 Page Blvd	Springfield	MA	01104-1697
T-04-MA-1180 ...	Sprague Energy - Quincy	740 Washington St.	Quincy	MA	02170
T-04-MA-1181 ...	Ultramar Energy, Inc.	60 Hannon St.	Springfield	MA	01101-2710
T-52-MD-1550 ...	Amerada Hess - Baltimore	6200 Pennington Avenue	Baltimore	MD	21226
T-52-MD-1551 ...	Amoco Oil Baltimore	801 East Ordance Rd	Curtis Bay	MD	21226
T-52-MD-1552 ...	TOSCO/Bayway - Baltimore	2155 Northbridge Ave	Baltimore	MD	21226
T-52-MD-1554 ...	Petroleum Fuel & Terminal N	5101 Erdman Avenue	Baltimore	MD	21205
T-52-MD-1558 ...	Shell Oil Co. West	3445 Fairfield Road	Baltimore	MD	21226

TCN	Terminal Name	Address	City	State	Zip
T-52-MD-1559 ...	Petroleum Fuel and Terminal S	1622 South Clinton Street	Baltimore	MD	21224
T-52-MD-1560 ...	S T Services Baltimore	1800 Frankfurst Avenue	Baltimore	MD	21226-1024
T-52-MD-1561 ...	Motiva Enterprises LLC	2400 Petrolia Ave.	Baltimore	MD	21226
T-52-MD-1562 ...	Motiva Enterprises LLC	2201 Southport Ave.	Baltimore	MD	21226
T-52-MD-1563 ...	Stratus Petroleum Baltimore	3100 Vera Street	Baltimore	MD	21226
T-52-MD-1565 ...	S T Services - Piney Point	17877 Piney Point Road	Piney Point	MD	20674
T-52-MD-1567 ...	Cato Oil Salisbury	1030 Marine Road	Salisbury	MD	21801-1030
T-52-MD-1568 ...	Maritank Maryland Inc.	1134 Marine Road	Salisbury	MD	21801
T-52-MD-1570 ...	S T Services Andrews AFB	c/o 89th Supply Squadron/LGSS	Andrews AFB	MD	20331-5010
T-52-MD-1571 ...	Delmarva Oil Co.	Fitzwater St. Extended	Salisbury	MD	21803
T-01-ME-1000 ...	Mobil Oil Bangor	730 Lower Main Street	Bangor	ME	04401
T-01-ME-1001 ...	Koch Fuels South Portland	5 Central Avenue	South Portland	ME	04106
T-01-ME-1002 ...	Coldbrook Energy, Inc.	809 Main Road No	Hampden	ME	04444
T-01-ME-1003 ...	Sprague Energy So. Portland	59 Main Street	South Portland	ME	04106
T-01-ME-1004 ...	Mobil Oil Portland	170 Lincoln Street	South Portland	ME	04106
T-01-ME-1006 ...	Irving Oil Searsport	Station Ave	Searsport	ME	04974
T-01-ME-1008 ...	Gulf Oil South Portland	175 Front St	South Portland	ME	04106
T-01-ME-1009 ...	Cargill Inc.	One Clarks Road	South Portland	ME	04106
T-01-ME-1010 ...	Motiva Enterprises LLC	102 Mechanic Street	South Portland	ME	04106-2828
T-01-ME-1011 ...	Webber Oil Bangor	700 Main St	Bangor	ME	04401
T-01-ME-1012 ...	Webber Tanks Buckport	Drawer CC River Road	Bucksport	ME	04416
T-01-ME-1013 ...	Webber Tanks Brewer	225 South Main	Brewer	ME	04412
T-38-MI-3001	Amoco Oil Cheyboygan	311 Coast Guard Drive	Cheyboygan	MI	49721
T-38-MI-3004	Amoco Oil Napoleon	6777 Brooklyn Road	Napoleon	MI	49261
T-38-MI-3005	Amoco Oil River Rouge	205 Marion Street	River Rouge	MI	48218
T-38-MI-3006	Amoco Oil Taylor	8625 South Inkster Rd.	Taylor	MI	48180-2114
T-38-MI-3007	B P Oil Taylor	24801 Ecorse Rd	Taylor	MI	48180
T-38-MI-3008	CITGO Ferrysburg	524 Third Street	Ferrysburg	MI	49409
T-38-MI-3009	CITGO Jackson	2001 Morrill Rd	Jackson	MI	49201
T-38-MI-3010	CITGO Niles	2233 South Third	Niles	MI	49120
T-38-MI-3011	MAPLLC Niles	2140 South Third St.	Niles	MI	49120
T-38-MI-3012	Cousins Petroleum Taylor	7965 Holland	Taylor	MI	48180
T-38-MI-3013	Equilon Enterprises LLC	17806 North Shore Dr.	Ferrysburg	MI	49409
T-38-MI-3015	MAPLLC Detroit	12700 Toronto St.	Detroit	MI	48217
T-38-MI-3016	MAPLLC Flint	6065 North Dort Highway	Mt. Morris	MI	48458
T-38-MI-3017	MAPLLC Jackson	2090 Morrill Rd	Jackson	MI	49201-8238
T-38-MI-3019	MAPLLC Oil Niles	2216 South Third Street	Niles	MI	49120-4010
T-38-MI-3020	MAPLLC N. Muskegon	3005 Holton Rd	North Muskegon	MI	49445-2513
T-38-MI-3022	Mobil Oil Flint	G5340 North Dort Highway	Flint	MI	48505
T-38-MI-3023	Mobil Oil Niles	2150 South Third Street	Niles	MI	49120
T-38-MI-3024	Mobil Oil Woodhaven	20755 West Road	Woodhaven	MI	48183
T-38-MI-3025	Equilon Enterprises LLC	700 Deacon	Detroit	MI	48217
T-38-MI-3027	Equilon Enterprises LLC	2103 Morrill Rd.	Jackson	MI	49201
T-38-MI-3028	Equilon Enterprises LLC	325.5 Fulkerson Rd.	Niles	MI	49120
T-38-MI-3029	Sun Company Inc - Owosso	4004 West Main Rd	Owosso	MI	48867
T-38-MI-3030	Sun River Rouge	500 South Dix Avenue	Detroit	MI	48217
T-38-MI-3031	Total Petroleum Alma	1925 East Superior St	Alma	MI	48802
T-38-MI-3032	Total Petroleum Bay City	1806 Marquette	Bay City	MI	48706
T-38-MI-3033	Total Petroleum Lansing	6300 West Grand River	Lansing	MI	48906
T-38-MI-3034	Total Petroleum Romulus	28001 Citrin Drive	Romulus	MI	48174
T-38-MI-3035	Total Petroleum Traverse City	13544 W Bayshore Dr	Traverse City	MI	49684
T-38-MI-3036	CITGO - Bay City	5011 Wilder Road	Bay City	MI	48706
T-38-MI-3037	Leemon Oil Co., Inc.	29120 Wick Road	Romulus	MI	48174
T-38-MI-3039	Delta Fuels Of Michigan	40600 Grand River	Novi	MI	48374
T-38-MI-3041	Quality Oil Company	630 Ottawa Avenue	Holland	MI	49423
T-38-MI-3042	MAPLLC Detroit	22970 Ecorse Road	Taylor	MI	48180
T-38-MI-3043	Clark Oil Compant - Marshall	12451 Old US 27	Marshall	MI	49068
T-38-MI-3044	Clark Refinery & Marketing - Taylor	8000 S Beech Daly Rd	Taylor	MI	48180
T-41-MN-3400 ...	Amoco Oil Moorhead	1101 Southeast Main	Moorhead	MN	56560
T-41-MN-3401 ...	Amoco Oil Sauk Centre	1 Mile W on County Rd 72	Sauk Centre	MN	56378
T-41-MN-3402 ...	Amoco Oil Spring Valley	2 Miles East of U S 16	Spring Valley	MN	55975
T-41-MN-3403 ...	Amoco Oil Twin Cities	2288 West County Road C	Roseville	MN	55113
T-41-MN-3404 ...	MAPLLC Refinery St. Paul	100 West Third Street	St. Paul Park	MN	55071
T-41-MN-3405 ...	Conoco Wrenshall	10 Broadway Street	Wrenshall	MN	55797
T-41-MN-3406 ...	Erickson Petroleum Newport	50 21st St	Newport	MN	55055
T-41-MN-3407 ...	Koch Pine Bend	Junction Highways 52 & 55	St Paul	MN	55164-0596
T-41-MN-3410 ...	Murphy Oil-Esko	5746 Old Hwy 61	Esko	MN	55733
T-41-MN-3412 ...	Williams Pipe Line Alexandria	709 3rd Ave W	Alexandria	MN	56308
T-41-MN-3413 ...	Williams Pipe Line Mankato	Rural Route Nine	Mankato	MN	56001
T-41-MN-3414 ...	Williams Pipe Line Marshall	Route Four	Marshall	MN	56258
T-41-MN-3415 ...	Williams Pipe Line Roseville	2451 W County Rd C	Roseville	MN	55113
T-41-MN-3416 ...	Williams Pipe Line Rochester	1331 Hwy 42 SE	Eyota	MN	55934

TCN	Terminal Name	Address	City	State	Zip
T-43-MO-3700 ..	Conoco Belle	Highway 28 South	Belle	MO	65013
T-43-MO-3701 ..	JD Streett St Louis	3800 S 1st St	St Louis	MO	63118
T-43-MO-3702 ..	Texon LP	19905 St. Hwy. 114	Dexter	MO	63841
T-43-MO-3703 ..	Ayers Oil Company - Canton	Fourth & Grant	Canton	MO	63435
T-43-MO-3704 ..	Transmontaigne Terminaling Inc.	1400 S Giboney	Cape Girardeau	MO	63701-0704
T-43-MO-3705 ..	TEPPCO Cape Girardeau	Rural Route 2, Hwy N	Scott City	MO	63780
T-43-MO-3706 ..	Sinclair Pipeline Carrollton	S Main & 24 Business Route	Carrollton	MO	64633
T-43-MO-3707 ..	Williams Pipeline Carthage	18195 County Rd. 138	Jasper	MO	64755
T-43-MO-3708 ..	Williams Pipeline Columbia	5531 South Hwy 63	Columbia	MO	65201
T-43-MO-3709 ..	Phillips 66 Jefferson City	2116 Idlewood	Jefferson City	MO	65109
T-43-MO-3710 ..	Conoco Kansas City	6699 NW Riverpark Drive	Parkville	MO	64152
T-43-MO-3712 ..	Sinclair Pipeline Mexico	Highway 54 East	Mexico	MO	65265
T-43-MO-3713 ..	Conoco Mount Vernon	Rt. 2 Box 115	Mount Vernon	MO	65712
T-43-MO-3715 ..	Sinclair Pipeline New Madrid	211 Water Street	New Madrid	MO	63869
T-43-MO-3716 ..	Williams Pipeline Palmyra	6 mi North on Highway 61	Palmyra	MO	63461
T-43-MO-3718 ..	Williams Pipeline Springfield	3132 S. State Hwy MM	Brookline	MO	65619
T-43-MO-3719 ..	J D Street River Plant	1 River Road	St Louis	MO	63125
T-43-MO-3720 ..	Amoco Oil Sugar Creek	1000 North Sterling	Sugar Creek	MO	64054-0507
T-43-MO-3721 ..	Williams Pipeline St Charles	4695 South Service Road	St Peter	MO	63376
T-43-MO-3725 ..	Equilon Enterprises LLC	239 E. Prairie St.	St. Louis	MO	63147
T-43-MO-3726 ..	Clark Rfg St Louis	4070 South First Street	St Louis	MO	63118
T-43-MO-3727 ..	Transmontaign Terminaling Inc.	15376 Hwy 96	Mount Vernon	MO	65712
T-43-MO-3728 ..	Sinclair Oil Corp - Carrollton	RR4, Box 48	Carrollton	MO	64633-0000
T-64-MS-2400 ...	Munro Petroleum Biloxi	540 Bayview Avenue	Biloxi	MS	39533
T-64-MS-2401 ...	Chevron USA Collins	Old Highway 49 South	Collins	MS	39428
T-64-MS-2402 ...	Exxon USA Collins	31 Kola Road	Collins	MS	39428
T-64-MS-2403 ...	B P Oil Collins	First Avenue South	Collins	MS	39428
T-64-MS-2404 ...	Motiva Enterprises LLC	49 So. & Kola Rd.	Collins	MS	39428
T-64-MS-2405 ...	Louis Dreyfus Collins	First Avenue South	Collins	MS	39428
T-64-MS-2406 ...	Greenville Republic Terminal	310 Walthall Street	Greenville	MS	38701
T-64-MS-2408 ...	Transmontainge Terminaling - Greenville.	208 Short Clay Street	Greenville	MS	38701
T-64-MS-2409 ...	Southland Oil Lumberton	5 Mi North of Lumberton Hwy 11	Lumberton	MS	39455
T-64-MS-2410 ...	Amoco Oil Meridan	181 65th Avenue	Meridian	MS	39307
T-64-MS-2412 ...	CITGO Meridian	180 65th Avenue	Meridian	MS	39305
T-64-MS-2413 ...	B P Oil Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2414 ...	Motiva Enterprises LLC	6540 N. Frontage Rd.	Meridian	MS	39301
T-64-MS-2415 ...	Louis Dreyfus Meridian	1401 65th Ave S	Meridian	MS	39307
T-64-MS-2416 ...	Chevron USA Pascagola	Industrial Road State Hwy 611	Pascagoula	MS	39568-1300
T-64-MS-2417 ...	Amerada Hess - Purvis	US Hwy. 11	Purvis	MS	39475
T-64-MS-2418 ...	Southland Oil Sandersville	2 mi N on Hwy 11 PO Drawer A	Sandersville	MS	39477
T-64-MS-2419 ...	CITGO Vicksburg	1585 Haining Rd	Vicksburg	MS	39180
T-72-MS-2421 ...	Delta Terminal - Greenville	2181 Harbor Front	Greenville	MS	38701
T-72-MS-2422 ...	Meiko Terminal	20096 Norm Connell Drive	Aberdeen	MS	39730
T-81-MT-4000 ...	Conoco Billings	23rd & Fourth Ave South	Billings	MT	59107
T-81-MT-4001 ...	Conoco Bozeman	316 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4002 ...	Conoco Great Falls	1401 52nd N	Great Falls	MT	59405
T-81-MT-4003 ...	Conoco Helena	3180 Highway 12 East	Helena	MT	59601
T-81-MT-4004 ...	Conoco Missoula	3330 Raser Drive	Missoula	MT	59802
T-81-MT-4005 ...	CENEX Laurel	P O Box 909	Laurel	MT	59044
T-81-MT-4006 ...	CENEX Glendive	P O Box 240	Glendive	MT	59330
T-81-MT-4007 ...	Exxon USA Billings	Lockwood Frontage Rd	Billings	MT	59101
T-81-MT-4008 ...	Exxon USA Bozeman	220 West Griffin Drive	Bozeman	MT	59715
T-81-MT-4009 ...	Exxon USA Helena	3120 Highway 12 Eaast	Helena	MT	59601
T-81-MT-4010 ...	Exxon USA Missoula	3350 Raser Drive	Missoula	MT	59801
T-81-MT-4011 ...	Montana Refining Great Falls	1900 10th Street	Great Falls	MT	59403
T-56-NC-2000 ...	Exxon USA Charlotte	6801 Freedom Dr	Charlotte	NC	28208-0082
T-56-NC-2001 ...	CITGO Charlotte	7600 Mount Holly Road	Charlotte	NC	28214
T-56-NC-2002 ...	MAPLLC Oil Charlotte	8035 Mt. Holly Rd	Paw Creek	NC	28130
T-56-NC-2003 ...	Crown Central Charlotte	7720 Mount Holly Road	Paw Creek	NC	28130-0078
T-56-NC-2004 ...	Phillips Pipeline Co	502 Tom Sadler Road	Paw Creek	NC	28130-0066
T-56-NC-2005 ...	Motiva Enterprises LLC	6851 Freedom Dr.	Charlotte	NC	28214
T-56-NC-2006 ...	Southern Facilities - Paw Creek	7145 Mount Holly Road	Paw Creek	NC	28130-0094
T-56-NC-2007 ...	Motiva Enterprises LLC	410 Tom Sadler Rd.	Paw Creek	NC	28130-0088
T-56-NC-2008 ...	Southeast Terminal - Charlotte	7401 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2009 ...	Motiva Enterprises LLC	992 Shaw Mill Road	Fayetteville	NC	28303
T-56-NC-2010 ...	Amerada Hess - Greensboro	6907B West Market Street	Greensboro	NC	27409
T-56-NC-2011 ...	Amoco Oil Greensboro	7109 West Market Street	Greensboro	NC	27409
T-56-NC-2012 ...	MAPLLC Greensboro	6311 Burnt Poplar Road	Greensboro	NC	27409
T-56-NC-2014 ...	Exxon USA Greensboro	6907 West Market Street	Greensboro	NC	27409
T-56-NC-2015 ...	Triad Terminal	6376 Burnt Poplar Rd	Greensboro	NC	27409
T-56-NC-2018 ...	Triad Terminal Selma	2200 Oil Terminal Rd	Selma	NC	27576

TCN	Terminal Name	Address	City	State	Zip
T-56-NC-2019 ...	Apex Oil Co - Greensboro	6900 West Market St	Greensboro	NC	27409
T-56-NC-2020 ...	Williams Energy Ventures-Green	115 Chimney Rock Road	Greensboro	NC	27409-9661
T-56-NC-2021 ...	Motiva Enterprises LLC	101 S. Chimney Rock Rd.	Greensboro	NC	27419
T-56-NC-2022 ...	Louis Dreyfus Greensboro	6801 West Market Street	Greensboro	NC	27409
T-56-NC-2023 ...	Amerada Hess - Paw Creek	7615 Old Mount Holly Road	Paw Creek	NC	28214
T-56-NC-2024 ...	Amoco Oil Paw Creek	7924 Mt. Holly Rd	Paw Creek	NC	28130-0071
T-56-NC-2025 ...	Crown Central Selma	2999 W Oak St	Selma	NC	27576
T-56-NC-2026 ...	Valero Marketing & Supply - Paw Creek.	7325 Old Mount Holly Road	Paw Creek	NC	28130-0866
T-56-NC-2027 ...	Motiva Enterprises LLC	2232 Ten-Ten. Road	Apex	NC	27502
T-56-NC-2028 ...	Amerada Hess - Selma	West State Road 1929	Selma	NC	27576
T-56-NC-2029 ...	B P Oil Selma	Buffalo Road	Selma	NC	27576
T-56-NC-2030 ...	CITGO Selma	State Hwy 1003 and Oak St Ext	Selma	NC	27576
T-56-NC-2031 ...	Exxon USA Selma	2555 West Oak Street	Selma	NC	27576
T-56-NC-2033 ...	Valero Marketing & Supply Co. - Selma.	4383 Buffaloe Road	Selma	NC	27576
T-56-NC-2034 ...	Phillips Petro Selma	4086 Buffalo Road	Selma	NC	27576
T-56-NC-2036 ...	Williams Energy Ventures-Selma	4414 Buffalow Road	Selma	NC	27576
T-56-NC-2037 ...	Amerada Hess - Wilmington	1312 S Front St.	Wilmington	NC	28401
T-56-NC-2039 ...	CTI of North Carolina Inc	1002 S Front Street	Wilmington	NC	28402
T-56-NC-2041 ...	Koch Refining N Wilmington	3325 River Road	Wilmington	NC	28412
T-56-NC-2042 ...	Koch Refining S Wilmington	3334 River Rd	Wilmington	NC	28412
T-56-NC-2043 ...	Apex Oil Co. - Wilmington	3314 River Road	Wilmington	NC	28403
T-45-ND-3500 ...	Williams Pipeline Grand Forks	3930 Gateway Drive	Grand Forks	ND	58203
T-45-ND-3501 ...	Williams Pipe Line Fargo	902 Main Avenue East	West Fargo	ND	58078
T-45-ND-3502 ...	Amoco Oil Jamestown	10 Mi West on I-94 Stand Spur	Jamestown	ND	58401
T-45-ND-3503 ...	Kaneb Pipe Line Jamestown	3790 Hwy 281 SE	Jamestown	ND	58401
T-45-ND-3504 ...	CENEX Minot	700 Second Street SW	Minot	ND	58701
T-45-ND-3505 ...	Amoco Oil Mandan		Mandan	ND	58554-5000
T-47-NE-3600 ...	Kaneb Pipe Line Columbus	Highway 30	Columbus	NE	68601
T-47-NE-3601 ...	Kaneb Pipe Line Geneva	U S Highway 81	Geneva	NE	68361
T-47-NE-3602 ...	Williams Pipe Line Doniphan	12275 South US Hwy 281	Doniphan	NE	68832
T-47-NE-3603 ...	Conoco Lincoln Products	Route 1	Roca	NE	68430
T-47-NE-3605 ...	Williams Pipe Line Lincoln	2000 Saltillo Road	Roca	NE	68430
T-47-NE-3606 ...	Kaneb Pipe Line Norfolk	Highway 81	Norfolk	NE	68701
T-47-NE-3607 ...	Kaneb Pipe Line North Platt	Rural Route Four	North Platte	NE	69101
T-47-NE-3608 ...	Williams Pipe Line Omaha	Seventh & Yates Street	Omaha	NE	68103
T-47-NE-3609 ...	Conoco Pipeline Sidney	Rural Route 1	Sidney	NE	69162
T-47-NE-3610 ...	Kaneb Pipe Line Osceola	Rural Route 1	Osceola	NE	68651
T-02-NH-1050 ...	Sprague Energy Newington	River Rd.	Newington	NH	03801
T-02-NH-1054 ...	Sprague Energy Portsmouth	Gosseling Rd.	Portsmouth	NH	03801
T-02-NH-1056 ...	Irving Oil Corp. Mainway	50 Preble Way	Portsmouth	NH	03801
T-04-NH-1057 ...	Sprague Energy Newington	Avery Lane	Newington	NH	03801
T-22-NJ-1500	Amerada Hess - Bayonne	Lower Hook Road	Bayonne	NJ	07002
T-22-NJ-1501	Coastal Oil Bayonne	Foot of East Fifth Street	Bayonne	NJ	07002
T-22-NJ-1502	Amerada Hess - Newark Delanny	1111 Delanny St.	Newark	NJ	07105
T-22-NJ-1505	Amerada Hess - Bogota	238 West Fort Lee Road	Bogota	NJ	07503
T-22-NJ-1506	Amoco Oil Carteret Terminal	760 Roosevelt Avenue	Carteret	NJ	07008
T-22-NJ-1508	Amerada Hess - Edgewater	615 River Road	Edgewater	NJ	07020
T-22-NJ-1511	Koch Fuels Gloucester City	Across Delaware River from PA	Gloucester City	NJ	08030
T-22-NJ-1512	Tosco Tremley PT	Foot of Southwood Ave	Linden	NJ	07036
T-22-NJ-1513	CITGO Linden	4801 South Wood Avenue	Linden	NJ	07036
T-22-NJ-1514	Bayway Refining Co	1100 US Highway One	Linden	NJ	07036
T-22-NJ-1515	Gulf Oil Linden	2600 Marshes Dock Road	Linden	NJ	07036
T-22-NJ-1516	Mobil Oil Linden	South Wood Avenue	Linden	NJ	07036
T-22-NJ-1518	Amerada Hess - Newark Doremus	148-182 Doremus Ave.	Newark	NJ	07105
T-22-NJ-1519	B P Oil Newark	Building 350 Coastel St	Port Newark	NJ	07114
T-22-NJ-1520	Getty Terminal Newark	86 Doremus Rd	Newark	NJ	07105
T-22-NJ-1521	Motiva Enterprises LLC	909 Delaney Street	Newark	NJ	07105
T-22-NJ-1522	Stratus Petroleum Newark	678 Doremus Ave	Newark	NJ	07105
T-22-NJ-1523	Sun Newark	436 Doremus Avenue	Newark	NJ	07105
T-22-NJ-1524	B P Oil Paulsboro	303 Mantua Avenue	Paulsboro	NJ	08066
T-22-NJ-1525	GATX Terminals Paulsboro	3rd St & Billingsport Road	Paulsboro	NJ	08066
T-22-NJ-1526	Valero Refining Company - New Jersey.	800 Billingsport	Paulsboro	NJ	08066
T-22-NJ-1528	Amerada Hess - Pennsauken	One Derousse Avenue	Pennsauken	NJ	08110
T-22-NJ-1530	Amerada Hess - Perth Amboy	State Street	Perth Amboy	NJ	08861
T-22-NJ-1531	Chevron USA Perth Amboy	1200 State St	Perth Amboy	NJ	08861
T-22-NJ-1533	CITGO Petty's Island	Route 36 & Deleware River	Pennsauken	NJ	08110
T-22-NJ-1534	Sun Piscataway	1028 Stelton Road	Piscataway	NJ	08854
T-22-NJ-1535	Amerada Hess - Port Reading	Cliff Road	Port Reading	NJ	07064
T-22-NJ-1536	Amerada Hess - Secaucus	35 Meadowlands Parkway	Secaucus	NJ	07094

TCN	Terminal Name	Address	City	State	Zip
T-22-NJ-1537	Shell Oil - Sewaren	115 State Street	Sewaren	NJ	07077-0188
T-22-NJ-1538	Shell Oil Sewaren	111 State Street	Sewaren	NJ	07077-1440
T-22-NJ-1540	Gulf Oil Thorofare	358 Kings Highway	Thorofare	NJ	08086
T-22-NJ-1542	Mobil Oil Trenton	2785 Lamberton Road	Trenton	NJ	08611
T-22-NJ-1544	Coastal Eagle Point Westville	U S Route 130	South Westville	NJ	08093
T-22-NJ-1545	Amerada Hess - Woodbridge	Smith Street & Convery Blvd.	Perth Amboy	NJ	08861
T-22-NJ-1547	Duck Island Terminal Inc.	1463 Lamberton Road	Trenton	NJ	08677
T-22-NJ-1548	SLF, Inc. T/a Consumers Oil	1473 Lamberton Road	Trenton	NJ	08611
T-85-NM-4251 ...	Chevron USA Albuquerque	3200 Broadway SE within city	Albuquerque	NM	87105
T-85-NM-4252 ...	Conoco Albuquerque	4036 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4253 ...	Diamond Albuquerque	State Road 303 SW	Albuquerque	NM	87105
T-85-NM-4254 ...	Phillips 66 Albuquerque	6356 State Road 47 S W	Albuquerque	NM	87105
T-85-NM-4255 ...	Equilon Enterprises LLC	3209 Broadway Southeast	Albuquerque	NM	87105
T-85-NM-4256 ...	Navajo Refining Artesia	US Highway 82, Drawer 159	Artesia	NM	88210
T-85-NM-4257 ...	Giant Refining - Bloomfield	# 50 County Road 4990	Bloomfield	NM	87413
T-85-NM-4258 ...	Giant Refining - Ciniza	I-40 Exit 39	Jamestown	NM	87347
T-85-NM-4259 ...	S T Services Alamogordo	6026 Hwy 54 South	Alamogordo	NM	88310-0109
T-86-NM-4261 ...	USA Petroleum Southwest Terminal ..	U.S. 10 & NM St. Rd. 29	Road Forks	NM	88045
T-88-NV-4350 ...	Calnev Pipe Line Las Vegas	5049 N Sloan	Las Vegas	NV	89115
T-88-NV-4353 ...	Kinder Morgan - Sparks	301 Nugget Avenue	Sparks	NV	89431
T-88-NV-4354 ...	Time Oil Sparks	525 Nugget Avenue	Sparks	NV	89431
T-88-NV-4358 ...	Berry-Hinckley Terminal, Inc.	275 Nugget Ave	Sparks	NV	89431
T-88-NV-4359 ...	Rebel Oil Las Vegas	5054 N Sloane Lane	Las Vegas	NV	89115
T-88-NV-4360 ...	Berry Hinckley Terminal-Sparks	147 South Stanford Way	Sparks	NV	89431
T-11-NY-1301 ...	Amoco Oil Brooklyn	125 Apollo St.	Brooklyn	NY	11222
T-11-NY-1302 ...	Metro Terminals Brooklyn	498 Kingsland Avenue	Brooklyn	NY	11222
T-11-NY-1303 ...	Tosco Pipeline Plainview	150 Fairchild Avenue	Plainview	NY	11803
T-11-NY-1304 ...	Motiva Enterprises LLC	25 Paidge Ave.	Brooklyn	NY	11222
T-11-NY-1305 ...	Mobil Oil Inwood	464 Doughty Blvd	Inwood	NY	11696
T-11-NY-1306 ...	Coastal Oil Flushing	31-70 College Point Blvd	Flushing	NY	11354
T-11-NY-1307 ...	Castle Astoria	500 Mamaroneck Avenue	Harrison	NY	10528
T-11-NY-1308 ...	Amerada Hess - Brooklyn	722 Court Street	Brooklyn	NY	11231
T-11-NY-1309 ...	Mobil Oil Glenwood Landing	Shore & Glenwood Rd	Glenwood Landing	NY	11547
T-11-NY-1310 ...	Tosco Pipeline Holtsville	586 Union Ave	Holtsville	NY	11742
T-11-NY-1311 ...	Getty Terminal-Long Island	30-23 Greenpoint Ave.	Long Island City	NY	11101
T-11-NY-1312 ...	Motiva Enterprises LLC	74 East Avenue	Lawrence	NY	11559
T-11-NY-1313 ...	Bayside Fuel Oil Depot Corp.	One North 12th Street	Brooklyn	NY	11211
T-11-NY-1315 ...	RAD Operating Oceanside	7 Hampton Road	Oceanside	NY	11572
T-11-NY-1316 ...	Bayside Fuel Oil Depot Corp	510 Sackett Street	Brooklyn	NY	11214
T-11-NY-1317 ...	Lewis Oil Port Washington	65 Shore Road	Port Washington	NY	11050
T-11-NY-1318 ...	Tosco - Riverhead	212 Sound Shore Road	Riverhead	NY	11901
T-11-NY-1319 ...	Tosco Pipeline East Setauket	19 Bell Meade Road	East Setauket	NY	11733
T-11-NY-1323 ...	Ditmas Oil Associates Inc	364 Maspeth Avenue	Brooklyn	NY	11211
T-11-NY-1324 ...	Carbo Industries Inc	1 Bay Blvd	Lawerence	NY	11559
T-11-NY-1325 ...	Bayside Fuel Oil Corp.	1100 Grand Street	Brooklyn	NY	11211
T-11-NY-1326 ...	Bayside Fuel Oil Depot	1776 Shore Parkway	Brooklyn	NY	11214
T-11-NY-1329 ...	Bay Terminals of Rockaway, Inc.	75-02 Astel Blvd.	Rockaway	NY	11692
T-11-NY-1330 ...	Lefferts Oil Terminal	Bldg. 140 JFK Inter'l Airport	Jamaica	NY	11430
T-11-NY-1331 ...	A. R. Fuels, Inc.	2125 Mill Ave.	Brooklyn	NY	11234
T-11-NY-1332 ...	Bayside Fuel Oil Corporation	537 Smith Street	Brooklyn	NY	11231
T-11-NY-1460 ...	Mobil Oil Cold Spring Harbor	95 Shore Road	Cold Spring	NY	11724
T-13-NY-1352 ...	Castle Port Morris Terminals	290 Locust Avenue	Bronx	NY	10454-2023
T-13-NY-1353 ...	Stuyvesant Fuel Service-Bronx	1040 East 149th Street	Bronx	NY	10455
T-13-NY-1354 ...	Getty Terminal Bronx	4301 Boston Post Road	Bronx	NY	10466
T-13-NY-1355 ...	Mobil Oil Port Mobil	4101 Arthur Kill Rd	Staten Island	NY	10309
T-13-NY-1356 ...	Amoco Oil Mount Vernon	40 Canal St.	Mount Vernon	NY	10550
T-13-NY-1357 ...	Fred M Schildwachter & Sons	1400 Ferris Place	Bronx	NY	10461
T-13-NY-1358 ...	Meenan Peekskill	Roa Hook rd	Peekskill	NY	10566
T-13-NY-1359 ...	Panco Equipment Corp	Main St Box 659	Stoney Point	NY	10980
T-13-NY-1360 ...	Westmore Fuel Co Inc	2 Purdy Ave	Port Chester	NY	10573
T-13-NY-1361 ...	West Vernon Petroleum Corp	701 S Columbus Ave	Mount Vernon	NY	10550
T-13-NY-1362 ...	GATX Staten Island	500 Western Ave	Staten Island	NY	10302
T-13-NY-1363 ...	A Tarricone Yonkers	91 Alexander St.	Yonkers	NY	10701
T-13-NY-1364 ...	Commander Oil Corporation	240 East Shore Road	Great Neck	NY	11022
T-13-NY-1365 ...	Castle North Terminals, Inc.	11 River Street	Sleepy Hollow	NY	10591
T-14-NY-1400 ...	Agway Petroleum Albany	184 Port Rd	Albany	NY	12202
T-14-NY-1401 ...	Cibro Petroleum Prod Albany	Port of Albany	Albany	NY	12202
T-14-NY-1402 ...	Citgo Petroleum Corp Glenmont	495 River Road	Glenmont	NY	12077
T-14-NY-1403 ...	Mobil Oil Albany	50 Church Street	Albany	NY	12202
T-14-NY-1404 ...	Petroleum Fuel Albany	54 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1405 ...	Sears Petroleum & Transport Co	Route 144 552 River Road	Glenmont	NY	12077
T-14-NY-1406 ...	Stratus Petroleum Green Isle	1 Osgood Ave.	Green Island	NY	12183

TCN	Terminal Name	Address	City	State	Zip
T-14-NY-1409 ...	Agway Petroleum Corp. Milton	Sands Ave.	Milton	NY	12547
T-14-NY-1411 ...	Coastal Oil Newburgh	Hudson River	Newburgh	NY	12551
T-14-NY-1413 ...	Mobil Oil Newburgh	20 River Road	Newburgh	NY	12551
T-14-NY-1414 ...	Sun Refining New Windsor	49 River Road	New Windsor	NY	12553
T-14-NY-1415 ...	Amerada Hess - Rensselaer	River Road E Greenbush	Rensselaer	NY	12144
T-14-NY-1416 ...	Bray Terminals Rensselaer	50 Riverside Drive	Rensselaer	NY	12144
T-14-NY-1417 ...	Sprague Energy Rensselaer	Riverside Avenue, PO Box 215	Rensselaer	NY	12144
T-14-NY-1418 ...	Getty Terminal Rensselaer	49 Riverside Avenue	Rensselaer	NY	12144-0151
T-14-NY-1420 ...	Sun Rensselaer	58 Riverside Avenue	Rensselaer	NY	12144
T-14-NY-1421 ...	Amerada Hess - Roseton	590 River Road	Newburgh	NY	12550
T-14-NY-1422 ...	Effron Fuel Oil Co	154 Garden St	Poughkeepsie	NY	12601
T-16-NY-1450 ...	Stratus Petro Baldwinsville	7431 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1451 ...	Mobil Oil Binghamton	3301 Old Vestal Rd	Vestal	NY	13850
T-16-NY-1452 ...	Amerada Hess - Rochester - Cairn	22 Cairn St.	Rochester	NY	14611
T-16-NY-1453 ...	Coastal Oil New York, Inc.	3121 Shippers Road	Vestal	NY	13851
T-16-NY-1454 ...	CITGO Vestal	3212 Old Vestal Road	Vestal	NY	13850
T-16-NY-1455 ...	Sun Binghamton	4324 Watson Boulevard	Johnson City	NY	13790
T-16-NY-1456 ...	Agway Petroleum Corp. Brewerton	Rt. 37 River Road	Brewerton	NY	13029
T-16-NY-1457 ...	United Refining Tonawanda	4545 River Road	Tonawanda	NY	14150
T-16-NY-1458 ...	Mobil Oil Buffalo	625 Elk St.	Buffalo	NY	14210
T-16-NY-1459 ...	Noco Energy Corp	700 Grand Island Blvd	Tonawanda	NY	14151-0086
T-16-NY-1461 ...	IPT, LLC, INC.	End of Riverside Extension	Rennselaer	NY	12144
T-16-NY-1462 ...	Agway Petroleum Corp. Geneva	West River Road	Geneva	NY	14456
T-16-NY-1463 ...	Agway Petroleum Corp. Marcy	9586 River Road	Marcy	NY	13403
T-16-NY-1464 ...	Amerada Hess - Marcy	9570 River Rd.	Marcy	NY	13403
T-16-NY-1465 ...	Bray Terminals Marcy	9660 River Rd	Marcy	NY	13403
T-16-NY-1468 ...	Agway Petroleum Rochester	754 Brooks Ave.	Rochester	NY	14619
T-16-NY-1469 ...	Amerada Hess - Rochester Lyell	1975 Lyell Avenue	Rochester	NY	14606
T-16-NY-1470 ...	Griffith Oil-Rochester	335 McKee Rd	Rochester	NY	14611
T-16-NY-1471 ...	Griffith Oil Co., Inc. Big Flats	3351 Rt. 352	Big Flats	NY	14814
T-16-NY-1472 ...	Mobil Oil Rochester	675 Brooks Avenue	Rochester	NY	14619
T-16-NY-1473 ...	Sun Rochester	1840 Lyell Avenue	Rochester	NY	14606
T-16-NY-1474 ...	United Refining Rochester	1075 Chili Avenue	Rochester	NY	14624
T-16-NY-1476 ...	Amerada Hess - Warners	6700 Herman Rd.	Warners	NY	13164
T-16-NY-1480 ...	Mobil Oil Syracuse	502 Solar Street	Syracuse	NY	13261
T-16-NY-1482 ...	Sun Syracuse	540 Solar Street	Syracuse	NY	13204
T-16-NY-1484 ...	Sun Tonawanda	3733 River Road	Tonawanda	NY	14150
T-16-NY-1486 ...	Mobil Oil Utica	37 Wurz Avenue	Utica	NY	13502
T-16-NY-1487 ...	Sears Oil Marcy Terminal	9788 River Road	Marcy	NY	13403
T-16-NY-1488 ...	Agway Petroleum Corp. Vestal	3113 Shippers Rd.	Vestal	NY	13851
T-16-NY-1489 ...	Amerada Hess Corp. Vestal	440 Prentice Road	Vestal	NY	13850
T-16-NY-1492 ...	Alaskan Oil Co. - Baldwinsville	7437 Hillside Road	Baldwinsville	NY	13027
T-16-NY-1493 ...	Mohawk Valley Oil Co. Marcy	9678 River Road	Marcy	NY	13403
T-16-NY-1494 ...	Alaskan Oil- Rochester	1935 Lyell Avenue	Rochester	NY	14606
T-16-NY-1495 ...	Kingston Oil Supply-Port Ewen	North Broadway	Port Ewen	NY	12166
T-16-NY-1496 ...	Kingston Oil Supply- Catskill	End Lower Main St.	Catskill	NY	12414
T-16-NY-1497 ...	Walter Davenport & Son	625 Sawkill Rd.	Kingston	NY	12401
T-16-NY-1498 ...	Riverstar - Highland	42 River Rd.	Highland	NY	12528
T-16-NY-1499 ...	Warex Terminals Corp-Newburgh	1 South Water Street	Newburgh	NY	12550
T-31-OH-3100 ...	MAPLLC Cincinnati	4015 River Road	Cincinnati	OH	45204
T-31-OH-3101 ...	MAPLLC Columbus	3855 Fisher Road	Columbus	OH	43228
T-31-OH-3102 ...	MAPLLC Heath	840 Heath Road	Heath	OH	43056
T-31-OH-3103 ...	MAPLLC Marietta	Old Rt 7 & Moores Junction	Marietta	OH	45750
T-31-OH-3104 ...	B P Oil Cincinnati	930 Tennessee Avenue	Cincinnati	OH	45229
T-31-OH-3105 ...	B P Oil Columbus	303 North Wilson Road	Columbus	OH	43204
T-31-OH-3106 ...	B P Oil Dayton	621 Brandt Pike	Dayton	OH	45404
T-31-OH-3107 ...	Clark Rfg Columbus	4033 Fisher Road	Columbus	OH	43228
T-31-OH-3108 ...	B P Oil Sciotoville	106 Harding Ave	Portsmouth	OH	45662
T-31-OH-3110 ...	Transmontaigne Terminaling Marietta	RT 7 & Milerun Road	Marietta	OH	45750
T-31-OH-3111 ...	Midwest Terminal Columbus	3866 Fisher Rd	Columbus	OH	43228
T-31-OH-3112 ...	MAPLLC Columbus	4125 Fisher Rd	Columbus	OH	43228-1021
T-31-OH-3113 ...	MAPLLC Lebanon	999 West State Rt.122	Lebanon	OH	45036
T-31-OH-3114 ...	Equilon Enterprises LLC	3651 Fisher Rd.	Columbus	OH	43228
T-31-OH-3115 ...	Equilon Enterprises LLC	801 Brandt Pike	Dayton	OH	45404
T-31-OH-3116 ...	Sun Columbus	3499 West Broad Street	Columbus	OH	43204
T-31-OH-3117 ...	Sun Dayton	1708 Farr Drive	Dayton	OH	45404
T-31-OH-3118 ...	TEPPCO Lebanon	2700 Hart Road	Lebanon	OH	45036
T-31-OH-3119 ...	TEPPCO	3590 Yankee Rd.	Middletown	OH	45043
T-31-OH-3120 ...	CITGO - Dublin	6433 Cosgray Road	Dublin	OH	43016
T-31-OH-3121 ...	CITGO - Dayton	1800 Farr Drive	Dayton	OH	45404
T-31-OH-3122 ...	Boswell Oil Company	5 W 4th St Floor 2500	Cincinnati	OH	45202
T-34-OH-3140 ...	MAPLLC Refinery Canton	2408 Gamfrinus Rd SW	Canton	OH	44706

TCN	Terminal Name	Address	City	State	Zip
T-34-OH-3142 ...	Aurora Terminal & Trans	1519 S Chillicothe Rd	Aurora	OH	44202
T-34-OH-3143 ...	B P Oil Canton	807 Hartford Southeast	Canton	OH	44707
T-34-OH-3144 ...	B P Oil Cleveland	4850 E 49th Street	Cuyahoga Hts	OH	44125
T-34-OH-3145 ...	B P Oil Lorain	12545 S Avon Belden Rd	Grafton	OH	44044
T-34-OH-3146 ...	B P Oil Lima	817 West Vine Street	Lima	OH	45804
T-34-OH-3147 ...	B P Oil Tiffin	197 Wall Street	Tiffin	OH	44883
T-34-OH-3148 ...	B P Oil Toledo	2450 Hill Avenue	Toledo	OH	43607
T-34-OH-3149 ...	Delta Fuels Toledo	1820 South Front	Toledo	OH	43605
T-34-OH-3150 ...	Fleet Supplies	250 Mahoning Ave	Cleveland	OH	44101-5831
T-34-OH-3151 ...	MAPLLC Brecksville	10439 Brecksville Road	Brecksville	OH	44141-3395
T-34-OH-3152 ...	MAPLLC Lima	2990 South Dixie Highway	Lima	OH	45804-3721
T-34-OH-3153 ...	MAPLLC Oregon	4131 Seaman Road	Oregon	OH	43616-2448
T-34-OH-3154 ...	MAPLLC Steubenville	28371 Kingsdale Road	Steubenville	OH	43952-4318
T-34-OH-3155 ...	MAPLLC Youngstown	1140 Bears Den Road	Youngstown	OH	44511
T-34-OH-3156 ...	Equilon Enterprises LLC	246 N. Cleveland Ave.	Mogadore	OH	44260
T-34-OH-3157 ...	Equilon Enterprises LLC	2201 W. Third Street	Cleveland	OH	44113-2589
T-34-OH-3158 ...	Equilon Enterprises LLC	1500 W. Buckeye Rd.	Lima	OH	45804
T-34-OH-3159 ...	Sun Akron	999 Home Avenue	Akron	OH	44310
T-34-OH-3160 ...	Sun Cleveland	3200 Independence Road	Cleveland	OH	44105
T-34-OH-3161 ...	Sun Toledo	1601 Woodville Road	Toledo	OH	43605
T-34-OH-3162 ...	Sun Company Youngstown	6331 Southern Boulevard	Youngstown	OH	44512
T-34-OH-3164 ...	CITGO - Tallmadge	1595 Southeast Avenue	Tallmadge	OH	44278
T-34-OH-3165 ...	CITGO - Oregon	1840 Otter Creek Road	Oregon	OH	43616-7676
T-34-OH-3166 ...	MAPLLC Bellevue	Rural Route 4	Bellevue	OH	44811
T-34-OH-3167 ...	B P Oil Niles	1001 Youngstown Warren Rd	Niles	OH	41446-4620
T-34-OH-3168 ...	Amoco Oil Aurora	1521 Chillicothe Rd	Aurora	OH	44202
T-34-OH-3169 ...	Clark Rfg Toledo	2844 Summit St	Toledo	OH	43611
T-34-OH-3170 ...	Clark Rfg-Brecksville	10346 Brecksville Rd	Brecksville	OH	44141
T-34-OH-3173 ...	TransMontaigne Terminaling	15982 U.S Rte 127 EW	Bryan	OH	43506
T-34-OH-3174 ...	Transmontaigne Terminaling - E Liverpool.	425 River Rd.	East Liverpool	OH	43920-0000
T-73-OK-2600 ...	Total Petroleum Ardmore	Hwy 142 Bypass	Ardmore	OK	73401
T-73-OK-2606 ...	Williams Pipeline Enid	1401 North 30th Street	Enid	OK	73701
T-73-OK-2608 ...	Conoco Jenks	Route Two	Jenks	OK	74037
T-73-OK-2609 ...	Phillips 66 Laverne	U S 283	Laverne	OK	73848
T-73-OK-2610 ...	Koch Hydrocarbin	US 81	Medford	OK	73759
T-73-OK-2612 ...	Conoco Oklahoma City	4700 NE Tenth	Oklahoma City	OK	73111
T-73-OK-2613 ...	Williams Pipeline Co Okla City	251 N Sunny Lane	Del City	OK	73117
T-73-OK-2614 ...	Equilon Enterprises LLC	951 N. Vickie	Oklahoma City	OK	73117
T-73-OK-2616 ...	Williams Pipeline Oklahoma Cty	1250 S High St	Oklahoma City	OK	73129
T-73-OK-2617 ...	Conoco Ponca City	South Highway 60	Ponca City	OK	74601
T-73-OK-2618 ...	Sinclair Pipeline Shawnee	39101 MacArthur Road	Shawnee	OK	74802
T-73-OK-2620 ...	Sinclair Pipeline Tulsa	1307 W 35th St	Tulsa	OK	74107
T-73-OK-2621 ...	Sun Tulsa	1700 South Union	Tulsa	OK	74102
T-73-OK-2622 ...	Williams Pipeline Tulsa	2120 S 33rd Ave	Tulsa	OK	74107
T-73-OK-2623 ...	Diamond Shamrock Turpin	Hwy 64 & Junction Rt 2	Turpin	OK	73950
T-73-OK-2624 ...	Gary Williams Energy Corp	906 South Powell	Wynnewood	OK	73098
T-93-OR-4452 ...	Tidewater Terminal Umatilla	535 Port Avenue	Umatilla	OR	97882
T-93-OR-4453 ...	Toscos Coos Bay	2640 North Bayshore	Coos Bay	OR	97420
T-93-OR-4454 ...	SFPP LP Eugene	1765 Prairie Road	Eugene	OR	97402
T-93-OR-4455 ...	ARCO Portland Terminal	9930 NW St Helens Rd	Portland	OR	97231
T-93-OR-4456 ...	Chevron USA Portland	5531 Northwest Doane Street	Portland	OR	97210
T-93-OR-4457 ...	GATX Terminals Portland	11400 NW St Helen's Road	Portland	OR	97283
T-93-OR-4458 ...	McCall Oil Portland	5480 NW Front Ave	Portland	OR	97210
T-93-OR-4459 ...	Mobil Portland	9420 Northwest St Helen's Rd	Portland	OR	97231
T-93-OR-4460 ...	GATX Portland	5880 NW St Helen's Road	Portland	OR	97210
T-93-OR-4461 ...	Equilon Enterprises LLC	3800 NW St. Helen's Road	Portland	OR	97210
T-93-OR-4462 ...	Time Oil Portland St Helens	9100 NW St Helen's Road	Portland	OR	97231
T-93-OR-4463 ...	Time Oil Portland Burgard	12005 North Burgard Street	Portland	OR	97203
T-93-OR-4464 ...	Toscos Portland	5528 Northwest Doane	Portland	OR	97210
T-23-PA-1700 ...	Agway Petroleum Corp. - Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1701 ...	Mobil Oil Allentown	1134 North Quebec Street	Allentown	PA	18103
T-23-PA-1702 ...	Farm & Home Oil Co. - Macungie	Buckeye Road	Macungie	PA	18062
T-23-PA-1703 ...	Gulf Oil - Dupont	674 Suscon Rd	Pittston Township	PA	18641
T-23-PA-1704 ...	Carlos R Leffler Inc Macungie	5088 Shippers Lane	Macungie	PA	18062
T-23-PA-1705 ...	Petron Oil Corporation	One Ward Street	Chester	PA	19013
T-23-PA-1706 ...	Petroleum Products - Avoca	801 Suscon Rd.	Avoca	PA	18641
T-23-PA-1707 ...	Petroleum Products Du Pont	Suscon Road	Avoca	PA	18641
T-23-PA-1708 ...	Carlos R Leffler Inc S Spring	Mountain Home Road	Sinking Spring	PA	19608
T-23-PA-1709 ...	Montour Oil Service	112 Broad St	Montoursville	PA	17754
T-23-PA-1710 ...	Sun Exton	601 East Lincoln Hwy	Exton	PA	19341
T-23-PA-1711 ...	Sun - Fullerton	2480 Main St	Whitehall	PA	18052

TCN	Terminal Name	Address	City	State	Zip
T-23-PA-1713 ...	Mobil Oil Harrisburg	5140 Paxton Street	Harrisburg	PA	17111
T-23-PA-1714 ...	Petroleum Products Harrisburg	3300 Industrial Road	Harrisburg	PA	17110
T-23-PA-1715 ...	Petroleum Products Harrisburg	RD #5 Texaco Drive	Mechanicsburg	PA	17055
T-23-PA-1716 ...	Petroleum Products Highspire	900 Eisenhower Blvd	Middletown	PA	17057
T-23-PA-1717 ...	Coastal Oil New York Inc	Sylvan Dell Rd	South Williamsport	PA	17701
T-23-PA-1718 ...	Mobil Oil Malvern	8 South Malin Rd	Malvern	PA	19406
T-23-PA-1720 ...	Sun Kingston	60 S Wyoming Avenue	Edwardsville	PA	18704-3102
T-23-PA-1721 ...	Mobil Oil Lancaster	1360 Manheim Pike	Lancaster	PA	17604
T-23-PA-1722 ...	Sun Malvern	Lincoln Hwy & Malin Road	Malvern	PA	19355
T-23-PA-1724 ...	Petroleum Products-Mechanicsbu	Sinclair Rd	Mechanicsburg	PA	17055
T-23-PA-1725 ...	Gulf Oil Mechanicsburg	5125 Simpson Ferry Rd	Mechanicsburg	PA	17055
T-23-PA-1726 ...	Sun Mechanicsburg	5145 Simpson Ferry Road	Mechanicsburg	PA	17055-3626
T-23-PA-1727 ...	Sun Montello	Fritztown Road	Sinking Spring	PA	19608
T-23-PA-1728 ...	Petroleum Prod Northumberland	Rt 11 North RD 1	Northumberland	PA	17857
T-23-PA-1729 ...	Sun Northumberland	Rt 11 North Rd 1	Northumberland	PA	17857
T-23-PA-1730 ...	Amerada Hess - Philadelphia	1630 South 51st Street	Philadelphia	PA	19143
T-23-PA-1731 ...	Amoco Oil Philadelphia	63rd & Passyunk Avenue	Philadelphia	PA	19153
T-23-PA-1732 ...	Bayway Refining Co. - Phila	G Street & Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1733 ...	Pipeline Petroleum-MaCungie	Shippers Lane	Macungie	PA	18062
T-23-PA-1734 ...	Exxon USA Philadelphia	6850 Essington Avenue	Philadelphia	PA	19153
T-23-PA-1735 ...	Artex Inc	Rt 54 & Lakeview Rd	Barnesville	PA	18214
T-23-PA-1736 ...	Sun Philadelphia	2700 W Passyunk Avenue	Philadelphia	PA	19145
T-23-PA-1737 ...	Maritank Phila Inc	67th & Schuylkill River	Philadalphia	PA	19153
T-23-PA-1738 ...	Pickelner Fuel Company Inc	210 Locust St	Williamsport	PA	17701
T-23-PA-1739 ...	Travel Ports of America Inc	Rt 11 & Cemetary Rd	Beach Haven	PA	18601
T-23-PA-1740 ...	Montour Oil Service-Harrisburg	80 South 40th St.	Harrisburg	PA	17111
T-23-PA-1741 ...	Montour Oil Service-Montoursville	Rt I-180/Warrensville	Montoursville	PA	17754
T-23-PA-1742 ...	Petroleum Products-Sinking Spr	Mountain Home Rd	Sinking Spring	PA	19608
T-23-PA-1743 ...	Carlos R Leffler Inc	Sylvan Dell Road	South Williamsport	PA	17701
T-23-PA-1744 ...	Sun Tamaqua	Tuscarora State Park Rd	Tamaqua	PA	18252
T-23-PA-1745 ...	C R Leffler Tuckerton	4030 Pottsville Pike	Reading	PA	19605
T-23-PA-1746 ...	Sun Twin Oaks	4041 Market Street	Aston	PA	19014
T-23-PA-1747 ...	Sun Company Inc (R&M)	9th Green St	Marcus Hook	PA	19061
T-23-PA-1748 ...	Gulf Oil Whitehall	2451 Main Street	Whitehall	PA	18052
T-23-PA-1749 ...	Gulf Oil Williamsport	Sylvan Dell Rd	Williamsport	PA	17703
T-23-PA-1751 ...	Sun Willow Grove	3290 Sunset Lane	Hatboro	PA	19040
T-23-PA-1752 ...	Berks Fuel Storage Inc-Reading	130 Whitman Road	Reading	PA	19605
T-23-PA-1753 ...	Meenan Oil Co Tullytown	113 Main Street	Tullytown	PA	19007
T-23-PA-1754 ...	C R Leffler New Kingston	236 Locust Pt Road	New Kingston	PA	17702
T-23-PA-1755 ...	Major Oil-Philadelphia	501 E. Hunting Park Ave.	Philadelphia	PA	19124
T-23-PA-1756 ...	F C Haab Co Inc	Schuylkill River & Morris Rd	Philadelphia	PA	19145
T-23-PA-1757 ...	Sun Company Inc (R&M)	Hewes Ave & Philadelphia Pike	Marcus Hook	PA	19061
T-23-PA-1758 ...	Getty Oil - Highspire	911 Eisenhower Blvd.	Highspire	PA	17034
T-23-PA-1759 ...	Louis Dreyfus Energy-Phila	58th St. & Schuylkill River	Philadelphia	PA	19142
T-23-PA-1763 ...	Two River Terminal-Duncannon	27 Chevron Drive	Duncannon	PA	17020
T-23-PA-1764 ...	American Refining Bradford	77 North Kendall Ave.	Bradford	PA	16701
T-25-PA-1760 ...	Buckeye Tank Term Coraopolis	520 Narrows Run Road	Coraopolis	PA	15108
T-25-PA-1761 ...	Sun Delmont	Route 66 North	Delmont	PA	15626
T-25-PA-1762 ...	Boswell Oil Co Dravosburg	702 Washington Avenue	Dravosburg	PA	15034
T-25-PA-1765 ...	Petroleum Products-E. Freedom	Old Rte US 220	East Freedom	PA	16637
T-25-PA-1767 ...	Petroleum Products Eldorado	Burns Avenue	Altoona	PA	16602
T-25-PA-1768 ...	MAPLLC Floreffe	204 Glass House Road	Floreffe	PA	15025
T-25-PA-1769 ...	B P Oil Greensburg	Rural Delivery 6	Greensburg	PA	15601
T-25-PA-1771 ...	American Refining Indianola	State Route 910	Indianola	PA	15051
T-25-PA-1773 ...	MAPLLC Petroleum-Midland	Rt. 68	Midland	PA	15059
T-25-PA-1776 ...	Exxon USA Pittsburgh	2760 Neville Road	Pittsburgh	PA	15225
T-25-PA-1777 ...	Gulf Oil Pittsburgh	400 Grand Ave	Pittsburgh	PA	15225
T-25-PA-1778 ...	Gulf Oil Pittsburgh/Delmont	Route 22	Delmont	PA	15626
T-25-PA-1779 ...	Pennzoil Products Pittsburgh	54th Street and AVRR	Pittsburgh	PA	15201
T-25-PA-1780 ...	Motiva Enterprises LLC	Nine Thorn Street	Coraopolis	PA	15108
T-25-PA-1781 ...	Sun Pittsburgh	5733 Butler Street	Pittsburgh	PA	15201
T-25-PA-1782 ...	Pennzoil Products Rouseville	Two Main Street	Rouseville	PA	16344
T-25-PA-1783 ...	United Refining Warren	15 Bradley St	Warren	PA	16365
T-25-PA-1785 ...	Gulf Oil Altoona	6033 Sixth Avenue	Altoona	PA	16602
T-25-PA-1788 ...	Sun Altoona	Route 764 Sugar Run Road	Altoona	PA	16601
T-25-PA-1789 ...	Sun Vanport	Route 68 & Division Lane	Vanport	PA	15009
T-25-PA-1790 ...	Guttman Oil Belle Vernon	200 Speers Road	Belle Vernon	PA	15012
T-25-PA-1791 ...	Sun Blawnox	Freeport Road & Boyd Avenue	Pittsburgh	PA	15238
T-25-PA-1792 ...	B P Oil Coraopolis	Access State Route 51	Coraopolis	PA	15108
T-05-RI-1200	Getty Terminal Providence	Dexter Rd & Massasoit Ave	East Providence	RI	02914
T-05-RI-1201	Sprague Energy Providence	144 Allens Avenue	Providence	RI	02903
T-05-RI-1202	Bishop Terminal Services LLC	130 Terminal Rd	Providence	RI	02905

TCN	Terminal Name	Address	City	State	Zip
T-05-RI-1203	Capital Terminal Company	100 Dexter Road	East Providence	RI	02914
T-05-RI-1204	Northeast Petroleum	170 Allens Avenue	Providence	RI	02903
T-05-RI-1205	Motiva Enterprises LLC	520 Allens Avenue	Providence	RI	02905
T-05-RI-1206	Bishop Terminal Services LLC	35 Terminal Road	Providence	RI	02905
T-05-RI-1207	Mobil Oil East Providence	1001 Wampanoag Trail	East Providence	RI	02915
T-06-RI-1208	Inland Fuel Terminal Inc.	25 State Ave.	Tiverton	RI	02878
T-57-SC-2050	Amerada Hess - Belton	Highway 20 North	Belton	SC	29627-0250
T-57-SC-2051	Louis Dreyfus - Belton	Hwy 20 North	Belton	SC	29627-0647
T-57-SC-2052	Louis Dreyfus - Spartanburg	680 Delmar Road	Spartansburg	SC	29302
T-57-SC-2053	MAPLLC Oil Belton	14315 State Rt. 20	Belton	SC	29627-0488
T-57-SC-2054	Allied Terminals - Charleston	1500 Greenleaf St.	Charleston	SC	29405-9308
T-57-SC-2059	Amoco Oil Inc. North - Augusta	Sweet Water Road	North Augusta	SC	29841-6397
T-57-SC-2060	Charter Term Co - North Augusta	221 Laurel Lake Drive	North Augusta	SC	29841
T-57-SC-2061	B P Oil - North Augusta	Access Highway 36	North Augusta	SC	29841-6427
T-57-SC-2062	Phillips Pipeline - N Augusta	Highway 36 & Sweetwater	North Augusta	SC	29841-6669
T-57-SC-2063	Williams Energy Ventures - Augus	222 Sweetwater Road	North Augusta	SC	29841
T-57-SC-2064	Amerada Hess - N Charleston	5150 Virginia Ave.	North Charleston	SC	29406-5227
T-57-SC-2066	MAPLLC North Charleston	5165 Virginia Ave	Charleston	SC	29406-3616
T-57-SC-2067	Amerada Hess - Spartanburg	Old Union Road	Spartansburg	SC	29304-5021
T-57-SC-2068	Amoco Oil Spartanburg	Old Union Rd Route 4	Spartansburg	SC	29304-3059
T-57-SC-2071	Crown Central Spartansburg	400 Delmar Rd	Spartansburg	SC	29304
T-57-SC-2074	Phillips Pipeline Spartanburg	200 Nebo Street	Spartansburg	SC	29302
T-57-SC-2075	Motiva Enterprises LLC	300 Delmar Road	Spartanburg	SC	29302
T-57-SC-2076	Southern Facility - Spartanburg	2430 Pine Street Ext	Spartansburg	SC	29302
T-57-SC-2077	CITGO Petroleum - Spartanburg	2590 Southport Road	Spartansburg	SC	29302
T-46-SD-3550	Kaneb Pipe Line Aberdeen	Hwy 281	Aberdeen	SD	57401
T-46-SD-3551	Kaneb Pipe Line Mitchell	Hwy 38	Mitchell	SD	57301
T-46-SD-3552	Kaneb PipeLine Rapid City	3225 Eglin Street	Rapid City	SD	57701
T-46-SD-3553	Amoco Oil Sioux Falls	3751 S Grange	Sioux Falls	SD	57105
T-46-SD-3554	Williams Pipeline Sioux Falls	5300 west 12th Street	Sioux Falls	SD	57107
T-46-SD-3555	Williams Pipeline Watertown	1000 17th Street S E	Watertown	SD	57201
T-46-SD-3556	Kaneb Pipe Line Wolsey	US Hwy 14 & 281	Wolsey	SD	57384
T-46-SD-3557	Kaneb Pipe Line Yankton	Star Rte 50	Yanton	SD	57078
T-46-SD-3558	Williams Pipe Line Canton	RR #1 Box 12 A	Canton	SD	57013
T-62-TN-2200	Amoco Oil Chattanooga	4235 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2201	Chevron USA Chattanooga	4716 Bonny Oaks Drive	Chattanooga	TN	37416
T-62-TN-2202	CITGO Chattanooga	4233 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2203	Truman Arnold Memphis	1237 Riverside	Memphis	TN	38106
T-62-TN-2204	Lion Oil Nashville	90 Van Buren St	Nashville	TN	37208
T-62-TN-2205	MAPLLC Chattanooga	817 Pineville Road	Chattanooga	TN	37405
T-62-TN-2206	Louis Dreyfus Chattanooga	5800 St Elmo Avenue	Chattanooga	TN	37409
T-62-TN-2207	Benton Oil Service, Inc.	4211 Cromwell Rd.	Chattanooga	TN	37421
T-62-TN-2208	Southern Facility Chattanooga	4326 Jersey Pike	Chattanooga	TN	37416
T-62-TN-2209	Amoco - Chattanooga	710 Manufacturers Road	Chattanooga	TN	37405
T-62-TN-2211	Amoco Oil Knoxville	5101 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2213	CITGO Knoxville	2409 Knott Road	Knoxville	TN	37921
T-62-TN-2214	Cummins Terminals Knoxville	4715 Middlebrook Pike	Knoxville	TN	37921-5532
T-62-TN-2215	Exxon USA Knoxville	5009 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2216	B P Oil Knoxville	1908 Third Creek Road	Knoxville	TN	37921
T-62-TN-2217	MAPLLC Oil Knoxville	2601 Knott Road	Knoxville	TN	37950-0094
T-62-TN-2218	Motiva Enterprises LLC	5001 Middlebrook Pike NW	Knoxville	TN	37921
T-62-TN-2219	Southern Facility Knoxville	4801 Middlebrook Pike	Knoxville	TN	37921
T-62-TN-2221	Louis Dreyfus Knoxville	1720 Island Home Avenue	Knoxville	TN	37920
T-62-TN-2225	Exxon USA Memphis	454 Wisconsin Avenue	Memphis	TN	38106
T-62-TN-2226	Lion Oil Memphis	1023 Riverside	Memphis	TN	38106
T-62-TN-2227	MAPCO Petroleum Memphis		Memphis	TN	38109
T-62-TN-2228	Petroleum Fuel Memphis	1232 Riverside	Memphis	TN	38106
T-62-TN-2231	Amoco Oil Nashville	1441 51st Avenue North	Nashville	TN	37209
T-62-TN-2232	MAPLLC Nashville	Five Main Street	Nashville	TN	37213
T-62-TN-2233	CITGO Nashville	720 South Second Street	Nashville	TN	37213
T-62-TN-2234	Cumberland Terminals Nashville	7260 Centennial Boulevard	Nashville	TN	37209
T-62-TN-2236	Exxon USA Nashville	1741 Ed Temple Blvd	Nashville	TN	37208
T-62-TN-2237	B P Oil Nashville	1409 51st Ave	Nashville	TN	37209
T-62-TN-2238	MAPLLC Nashville	2920 Old Hydes Ferry Road	Nashville	TN	37218-3129
T-62-TN-2240	Williams Energy Ventures-Nashv	1609 63rd Avenue North	Nashville	TN	37209
T-62-TN-2241	Motiva Enterprises LLC	1717 61st & Centennial Bvld.	Nashville	TN	37209
T-62-TN-2242	Kerr-McGee Nashville	180 Anthes Avenue	Nashville	TN	37210
T-62-TN-2243	Cummins Terminal-Knoxville	5100 Middlebrook Pike	Knoxville	TN	37921-5532
T-74-TX-2658	Mobil Oil Hearne	Highway 6 South	Hearne	TX	76705
T-74-TX-2702	Motiva Enterprises LLC	Highway 6 South	Hearne	TX	77859
T-74-TX-2703	CITGO Victoria	1708 North Ben Jordan Blvd	Victoria	TX	77901
T-74-TX-2705	Motiva Enterprises LLC	420 South Lacy drive	Waco	TX	76705

TCN	Terminal Name	Address	City	State	Zip
T-74-TX-2706	Koch Refining Austin	9011 Johnny Morris Rd	Austin	TX	78724
T-74-TX-2707	Koch Refining Waco	2017 Kendall Lane	Waco	TX	76705-3366
T-74-TX-2709	CITGO Brownsville	11001 South Port Road	Brownsville	TX	78520
T-74-TX-2710	Equilon Enterprises LLC	6767 Gateway West	El Paso	TX	79926
T-74-TX-2711	CITGO Oil Corpus Christi	2505 N Port Ave	Corpus Christi	TX	78401
T-74-TX-2713	CITGO Bryan	1714 Finfeather Road	Bryan	TX	77801
T-74-TX-2715	Diamond Laredo	13380 S Unitec	Laredo	TX	78044
T-74-TX-2716	CITGO Corpus Christi	1308 Oak Park Street	Corpus Christi	TX	78407
T-74-TX-2718	Coastal Oil Corpus Christi	1300 Cantwell	Corpus Christi	TX	78407
T-74-TX-2719	Diamond Corpus Christi	2700 Texaco Road	Corpus Christi	TX	78403
T-74-TX-2720	SW Refining Corpus Christi	1700 Nueces Bay Boulevard	Corpus Christi	TX	78469
T-74-TX-2721	Koch Refining Corpus Christi	Suntide Road	Corpus Christi	TX	78403
T-74-TX-2724	Chevron USA El Paso	6501 Trowbridge	El Paso	TX	79905
T-74-TX-2726	Navajo Refining El Paso	1000 Eastside Road	El Paso	TX	79915
T-74-TX-2728	Coastal Oil Falfurrias	Three Mi North on US Hwy 281	Falfurrias	TX	78355
T-74-TX-2729	Diamond Harlingen	4.5 miles east on highway 106	Harlingen	TX	78550
T-74-TX-2731	Coastal Oil Placedo	2 Mi S of Placedo Hwy 87	Placedo	TX	77977
T-74-TX-2733	Fina Oil Port Arthur Hwy 366	Highway 366 and 32nd Street	Port Arthur	TX	77640
T-74-TX-2737	CITGO - San Antonio	4851 Emil Road	San Antonio	TX	78219
T-74-TX-2738	Coastal Oil San Antonio	4719 Corner Parkway #2	San Antonio	TX	78219
T-74-TX-2739	Diamond San Antonio	10619 Highway 281 South	San Antonio	TX	78221
T-74-TX-2740	Exxon USA San Antonio	3214 North Pan Am Expressway	San Antonio	TX	78219
T-74-TX-2742	Koch Refining San Antonio	498 and Pop Gun	San Antonio	TX	78219
T-74-TX-2745	Motiva Enterprises LLC	510 Petroleum Drive	San Antonio	TX	78219
T-74-TX-2747	Diamond Three Rivers	301 Leroy Street	Three Rivers	TX	78071
T-74-TX-2748	Conoco Tye	I-20 West Exit 278	Tye	TX	79563
T-74-TX-2749	CITGO Waco	1600 South Loop Dr	Waco	TX	76705
T-74-TX-2750	Ultramar - Diamond Shamrock	4200 J.C. Vera Montes	El Paso	TX	79936
T-75-TX-2650	Diamond Abernathy	Highway 54	Abernathy	TX	79311
T-75-TX-2651	Fina Oil Abilene	Highway 277 North	Abilene	TX	79604
T-75-TX-2652	Pride Abilene	Hwy 277 N Industrial District	Abilene	TX	79604
T-75-TX-2653	Diamond Amarillo	4200 West Cliffside	Amarillo	TX	79124
T-75-TX-2654	Phillips 66 Amarillo	4300 Cliffside Dr	Amarillo	TX	79142
T-75-TX-2655	Phillips 66 Arlington	12401 Calloway Cemetery Road	Euless	TX	76040
T-75-TX-2656	Fina Oil Big Spring	East IS-20 & Refinery Rd	Big Springs	TX	79721
T-75-TX-2659	Truman Arnold Caddo Mills		Caddo Mills	TX	75505
T-75-TX-2660	Exxon USA Dallas	1201 East Airport Freeway	Irving	TX	75062
T-75-TX-2661	Mobil Oil Dallas	4200 Singleton Boulevard	Dallas	TX	75212-3433
T-75-TX-2662	Motiva Enterprises LLC	3900 Singleton Blvd.	Dallas	TX	75212
T-75-TX-2664	Koch Refining Euless	Highway 157 and Trinity Blvd	Euless	TX	76040
T-75-TX-2665	Pride Aledo	I 20 in Willow Park	Aledo	TX	76008
T-75-TX-2666	Chevron USA Fort Worth	2525 Brennan Street	Fort Worth	TX	76106
T-75-TX-2667	CITGO Fort Worth	301 Terminal Road	Fort Worth	TX	76106
T-75-TX-2668	Mobil Oil Fort Worth	3600 North Sylvania	Fort Worth	TX	76111
T-75-TX-2669	Motiva Enterprises LLC	3200 N. Sylvania	Fort Worth	TX	76111
T-75-TX-2671	Conoco Southlake	3100 Highway 26 West	Grapevine	TX	76051
T-75-TX-2672	Fina Oil Southlake	3000 Highway 26 West	Grapevine	TX	76051
T-75-TX-2674	Phillips 66 Lubbock	Clovis Road and Flint Avenue	Lubbock	TX	79408
T-75-TX-2676	Conoco Mount Pleasant	1503 West Ferguson	Mount Pleasant	TX	75455
T-75-TX-2678	Mobil - Center	Hwy 87 South	Center	TX	75935
T-75-TX-2679	Chevron USA Midland	1100 North County Rd 1160	Midland	TX	79702
T-75-TX-2680	Diamond Southlake	1700 Hwy 26	Grapevine	TX	76051
T-75-TX-2681	La Gloria Oil Tyler	425 McMurry Drive	Tyler	TX	75702
T-75-TX-2682	Diamond Sunray	9 Mi NE of Dumas TX on FM 119	Sunray	TX	79086
T-75-TX-2683	Fina Oil Wichita Falls	Old Charlie & Sinclair Blvd	Wichita Falls	TX	76307
T-75-TX-2684	Conoco Wichita Falls	1214 North Eastside	Wichita Falls	TX	76304
T-75-TX-2685	Shell Odessa Refining-Odessa	2700 S Grandview	Odessa	TX	79760
T-75-TX-2686	Pride San Angelo	4008 U S Hwy 67N	San Angelo	TX	76905
T-75-TX-2687	Motiva Enterprises LLC	Farm Road 9	Waskom	TX	75692
T-75-TX-2688	Mobil Oil Waskom	9 South	Waskom	TX	75692
T-75-TX-2690	DFLP Terminal	12625 Calloway Cemetary Rd	Euless	TX	76040
T-76-TX-2780	Petro-United Terminals Bayport	11666 Port Road	Seabrook	TX	77586
T-76-TX-2782	Motiva Enterprises LLC	1320 West Shaw St.	Pasadena	TX	77501
T-76-TX-2783	Clark Refining and Marketing	9406 West Port Arthur Rd	Beaumont	TX	77705
T-76-TX-2784	Chevron USA Product Co. Big Sandy	Highway 155 and Sabine River	Big Sandy	TX	75755
T-76-TX-2785	Motiva Enterprises LLC	401 West 19th Street	Port Arthur	TX	77640
T-76-TX-2787	UNOCAL Beaumont	Hwy 366	Nederland	TX	77627
T-76-TX-2788	GATX Galena Park	906 Clinton Drive	Galena Park	TX	77547
T-76-TX-2789	Chevron USA Galena Park	12523 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2791	Specified Fuels and Chemicals LLC	1201 S Sheldon Rd	Channelview	TX	77530-0429
T-76-TX-2792	Amerada Hess - Galena Park	12901 American Petroleum Rd	Galena Park	TX	77547
T-76-TX-2794	CITGO Houston	12325 North Fwy at Greens Rd	Houston	TX	77060

TCN	Terminal Name	Address	City	State	Zip
T-76-TX-2795	Coastal Oil Houston	11650 Almeda Road Loop 610	Houston	TX	77045
T-76-TX-2798	Mobil Oil Beaumont	Route 4	Beaumont	TX	77705
T-76-TX-2799	Jetera Fuels Houston	17617 Aldine-Westfield Road	Houston	TX	77073
T-76-TX-2800	Lyondell-CITGO Refining	12000 Lawndale	Houston	TX	77002
T-76-TX-2801	Fina Oil Port Arthur 32nd	Hwy 366 & 32nd St	Port Arthur	TX	77642
T-76-TX-2803	Motiva Enterprises LLC	2661 Stevens Street	Houston	TX	77226
T-76-TX-2806	Valero Refining Co. - Texas (Houston)	9701 Manchester	Houston	TX	77262
T-76-TX-2808	Exxon USA North Houston	8700 North Freeway	Houston	TX	77037
T-76-TX-2809	GATX Pasadena	530 North Witter	Pasadena	TX	77506
T-76-TX-2811	Phillips Pipeline Pasadena	100 Jefferson Street	Pasadena	TX	77501
T-76-TX-2812	Exxon USA South Houston	10501 East Almeda	Houston	TX	77051
T-76-TX-2813	Phillips 66 Sweeny	Hwys 35 & 36 at West Columbia	Sweeny	TX	77480
T-76-TX-2814	S T Services Texas City	201 Dock Road	Texas City	TX	77590
T-76-TX-2815	Intercontinental Terminals Co.	1943 Battleground Rd.	Deer Park	TX	77536-0698
T-87-UT-4200 ...	Flying J North Salt Lake	333 West Center St	North Salt Lake	UT	84054-0180
T-87-UT-4202 ...	Amoco Oil Salt Lake City	474 West 900 N	Salt Lake City	UT	84103
T-87-UT-4203 ...	Chevron USA Salt Lake City	2351 North Tenth West	Salt Lake City	UT	84110
T-87-UT-4204 ...	Salt Lake Terminal Company	245 East 1100 North	North Salt Lake City	UT	84054
T-87-UT-4205 ...	Crysen Refining Woods Cross	2355 South 1100 West	Woods Cross	UT	84087-0298
T-87-UT-4206 ...	Phillips 66 Woods Cross	393 South 800 West	Woods Cross	UT	84087-1435
T-54-VA-1650 ...	Amerada Hess - Chesapeake	4030 Buell Street	Chesapeake	VA	23324
T-54-VA-1651 ...	Amoco Oil Chesapeake	428 Barnes Road	Chesapeake	VA	23324
T-54-VA-1652 ...	CITGO Chesapeake	110 Freeman Street	Chesapeake	VA	23324
T-54-VA-1653 ...	Conoco - Chesapeake	502 Hill Street	Chesapeake	VA	23324
T-54-VA-1654 ...	Exxon USA Chesapeake	4115 Buell Street	Chesapeake	VA	23324
T-54-VA-1655 ...	Bagwell Oil Onancock	33 Market	Onancock	VA	23417
T-54-VA-1656 ...	Louis Dreyfus Chesapeake	7600 Halifax Lane	Chesapeake	VA	23324
T-54-VA-1657 ...	Primary Corp Deepwater	3302 Deepwater Terminal Rd	Richmond	VA	23234
T-54-VA-1658 ...	S T Services Dumfries	18000 Cockpit Point Road	Dumfries	VA	22026
T-54-VA-1659 ...	Amoco Oil Fairfax	9601 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1660 ...	Global Petro	3790 Pickett Road	Fairfax	VA	22031
T-54-VA-1661 ...	CITGO Fairfax	9600 Colonial Avenue	Fairfax	VA	22031
T-54-VA-1662 ...	Motiva Enterprises LLC	3800 Pickett Road	Fairfax	VA	22030
T-54-VA-1663 ...	Mobil Oil Manassas	10315 Ballsford Road	Manassas	VA	23109
T-54-VA-1664 ...	Amerada Hess - Montvale	Route 460	Montvale	VA	24122
T-54-VA-1665 ...	Amoco Petroleum - Montvale	1070 Oil Terminal Rd	Montvale	VA	24122
T-54-VA-1666 ...	Chevron Products Co - Montvale	1147 Oil Terminal Rd	Montvale	VA	24122
T-54-VA-1668 ...	Southern Facilities-Montvale	U S Highway 460, PO Box 113	Montvale	VA	24122
T-54-VA-1669 ...	Koch Fuels Newport News	801 Terminal Ave	Newport News	VA	23607
T-54-VA-1670 ...	Crown Central Newington	8211 Terminal Road	Newington	VA	22122
T-54-VA-1671 ...	Exxon USA Newington	8200 Terminal Road	Newington	VA	22122
T-54-VA-1672 ...	Primary Corp Bickerstaff	413 Bickerstaff Rd	Richmond	VA	23231-0000
T-54-VA-1673 ...	Crown Central Norfolk	801 Butt Street	Chesapeake	VA	23324
T-54-VA-1674 ...	Mobil Oil Norfolk	Halifax Lane	Chesapeake	VA	23324
T-54-VA-1677 ...	Amoco Oil Richmond	1636 Commerce Road	Richmond	VA	23224
T-54-VA-1678 ...	Chevron USA Richmond	700 Goodes Street	Richmond	VA	23224
T-54-VA-1679 ...	CITGO Richmond	Third & Maury Street	Richmond	VA	23224
T-54-VA-1680 ...	Crown Central Richmond	4405 E Main	Richmond	VA	23231
T-54-VA-1681 ...	Exxon USA Richmond	2000 Trenton Avenue	Richmond	VA	23234
T-54-VA-1682 ...	First Energy Corporation	Second & Maury Streets	Richmond	VA	23224
T-54-VA-1683 ...	Southern Facilities - Richmond	4110 Deepwater Terminal Road	Richmond	VA	23234
T-54-VA-1684 ...	Williams Energy Ventures-Richm	204 East First Avenue	Richmond	VA	23224
T-54-VA-1685 ...	Motiva Enterprises LLC	5801 Petersburg Pike	Richmond	VA	23234
T-54-VA-1687 ...	Louis Dreyfus Richmond	1314 Commerce Road	Richmond	VA	23224-7510
T-54-VA-1688 ...	Exxon USA Roanoke	835 Hollins Road Northeast	Roanoke	VA	24012
T-54-VA-1689 ...	MAPLLC Oil Roanoke	5287 Terminal Road	Roanoke	VA	24014-4033
T-54-VA-1690 ...	Motiva Enterprises LLC	5280 Terminal Road SW	Roanoke	VA	24014
T-54-VA-1691 ...	Motiva Enterprises LLC	U.S. Highway 460	Montvale	VA	24122
T-54-VA-1692 ...	Shell Oil Springfield	8206 Terminal Road	Lorton	VA	22079
T-54-VA-1693 ...	S T Services Virginia Beach	North Landing Road	Virginia Beach	VA	23456
T-54-VA-1694 ...	Amoco Oil Yorktown	Route 73 East Entrance	Yorktown	VA	23690
T-54-VA-1696 ...	IMTT- Richmond, VA	5501 Old Osborne Turnpike	Richmond	VA	23231
T-91-WA-4400 ..	Equilon Enterprises LLC	Marches Point Five Miles	Anacortes	WA	98221
T-91-WA-4401 ..	Conoco Moses Lake	3 miles north of Moses Lake	Moses Lake	WA	98837
T-91-WA-4402 ..	Northwest Terminaling Pasco	3000 Sacajawea Park Road	Pasco	WA	99301
T-91-WA-4404 ..	Tosco Northwest Renton	2423 Lind Avenue Southwest	Renton	WA	98055
T-91-WA-4406 ..	GATX Seattle	1733 Alaskan Way South	Seattle	WA	98134
T-91-WA-4408 ..	Equilon Enterprises LLC	2555 13th Ave. S W	Seattle	WA	98134
T-91-WA-4409 ..	Time Oil Seattle	2737 West Commodore Way	Seattle	WA	98199-1233
T-91-WA-4410 ..	Conoco Spokane	6317 East Sharp Avenue	Spokane	WA	99206
T-91-WA-4411 ..	Exxon USA Spokane	6311 East Sharp Avenue	Spokane	WA	99211
T-91-WA-4412 ..	Tosco Northwest Spokane	3225 East Lincoln Road	Spokane	WA	99207

TCN	Terminal Name	Address	City	State	Zip
T-91-WA-4413 ..	Tosco Northwest Tacoma	520 E D Street	Tacoma	WA	98421
T-91-WA-4414 ..	Sound Refining Tacoma	2628 Marine View Drive	Tacoma	WA	98421
T-91-WA-4415 ..	Superior Oil Tacoma	250 East D Street	Tacoma	WA	98401
T-91-WA-4416 ..	Equilon Enterprises LLC	7370 Linderson Way SW	Tumwater	WA	98501
T-91-WA-4417 ..	CENEX Vancouver	5420 Fruit Valley Road	Vancouver	WA	98660
T-91-WA-4418 ..	ARCO Cherry Point Terminal	4519 Grandview	Blaine	WA	98231
T-91-WA-4419 ..	Tesoro Alaska Petro Vancouver	2211 West 26th Street Ext	Vancouver	WA	98660
T-91-WA-4420 ..	Tidewater Snake River	Tank Farm Road	Pasco	WA	99301
T-91-WA-4421 ..	US Oil & Refining Co.	3001 Marshall Ave	Tacoma	WA	98421
T-91-WA-4422 ..	Toscos Tacoma	516 East D Street	Tacoma	WA	98421
T-91-WA-4423 ..	Tidewater Terminal Wilma	2950 Wilma Drive	North Clarkston	WA	99403
T-91-WA-4424 ..	Pacific Northern Oil Corp	Pier 91 Bldg 19	Seattle	WA	98119
T-91-WA-4425 ..	ARCO Seattle Terminal	1652 SW Lander St	Seattle	WA	95124
T-91-WA-4427 ..	Tosco Northwest Co. - Ferndale	3901 Unic Rd.	Ferndale	WA	98248
T-39-WI-3061	Amoco Oil Green Bay	1124 North Broadway	Green Bay	WI	54303
T-39-WI-3062	Amoco Oil Milwaukee	9101 North 107th Street	Milwaukee	WI	53224
T-39-WI-3063	Amoco Oil Superior	2904 Winter Street	Superior	WI	54880
T-39-WI-3064	CENEX Chippewa Falls	2331 N Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3065	CENEX McFarland	4103 Triangle St	McFarland	WI	53558
T-39-WI-3066	CITGO Green Bay	1391 Bylsby Avenue	Green Bay	WI	54303
T-39-WI-3067	CITGO McFarland	4606 Terminal Drive	McFarland	WI	53558
T-39-WI-3068	CITGO Milwaukee	9235 North 107th Street	Milwaukee	WI	53224
T-39-WI-3069	Terminal Oil Group Ltd	3910 Terminal Road	Madison	WI	53704
T-39-WI-3070	Halron Oil Company Inc	2020 N Quincy St	Green Bay	WI	54306
T-39-WI-3071	Koch Junction City	Junction US 10 & 34N	Junction City	WI	54443
T-39-WI-3072	Koch McFarland	4505 Terminal Drive	McFarland	WI	53558
T-39-WI-3073	Koch Milwaukee	9343 North 107th Street	Milwaukee	WI	53224
T-39-WI-3074	Koch Waupun	Route Two	Waupun	WI	53963
T-39-WI-3075	Green Bay Terminal	1031 Hurlbut Street	Green Bay	WI	54303
T-39-WI-3076	MAPLLC Milwaukee	9125 North 107th St	Milwaukee	WI	53224-1508
T-39-WI-3077	Mobil Oil Green Bay	410 Prairie Ave	Green Bay	WI	54303
T-39-WI-3078	Clark Rfg Green Bay	1445 Bylsby Ave	Green Bay	WI	54303
T-39-WI-3079	Mobil Oil Madison	4516 Sigglekow Road	McFarland	WI	53558
T-39-WI-3080	Murphy Oil Superior	2407 Stinson Ave	Superior	WI	54880
T-39-WI-3081	S T Services Milwaukee	1626 South Harbor Drive	Milwaukee	WI	53207-1020
T-39-WI-3082	Transmontaigne - Chippewa Fall	2553 North Prairie View Rd	Chippewa Falls	WI	54729
T-39-WI-3083	Center Terminal Co - Madison	4009 Triangle St Hwy 51 S	McFarland	WI	53558
T-39-WI-3084	US Oil Milwaukee	9135 North 107th Street	Milwaukee	WI	53224
T-39-WI-3086	U.S. Oil Milwaukee-North	9521 North 107th Street	Milwaukee	WI	53224
T-39-WI-3087	Williams Pipe Line Mosinee	2007 Old Highway 51	Mosinee	WI	54455
T-39-WI-3088	US Oil Madison	4402 Terminal Dr	Madison	WI	53558
T-39-WI-3089	U S Oil Green Bay West	1075 Hurlbut Ct	Green Bay	WI	54303
T-39-WI-3090	Clark Rfg Milwaukee	9451 North 107th Street	Milwaukee	WI	53224
T-39-WI-3091	U S Oil Green Bay East	1910 N Quincy St	Green Bay	WI	54302
T-54-WV-1697 ..	MAPLLC Petro TriState-Kenova	237 23rd Street	Kenova	WV	25530-0000
T-55-WV-3181 ..	Exxon USA Charleston	Standard St & MacCorkle Ave	Charleston	WV	25314
T-55-WV-3182 ..	Pennzoil Products Charleston	1015 Barlow Dr	Charleston	WV	25333
T-55-WV-3183 ..	Ergon West Virginia Inc.	Rt 2 South	Newell	WV	26050
T-55-WV-3184 ..	Go-Mart St Albans	Oliver & Terminal Rd	St Albans	WV	25177
T-55-WV-3185 ..	St Marys Refining	201 Barkwill St	St Mary's	WV	26170
T-55-WV-3186 ..	Guttman Oil Star City	437 Industrial Ave	Star City	WV	26505
T-55-WV-3188 ..	Baker Oil Co	US 60 Hughes Creek Rd	Hugheston	WV	25110
T-83-WY-4050 ..	Conoco Sheridan	3404 Highway 87	Sheridan	WY	82801
T-83-WY-4051 ..	Conoco Rock Springs	90 Foot Hill Blvd	Rock Springs	WY	82902
T-83-WY-4052 ..	Little America Refining Casper	5100 E Hwy 20-26	Evansville	WY	82636
T-83-WY-4053 ..	Kaneb Pipe Line Co - Cheyenne	1112 Parsley Blvd	Cheyenne	WY	82007
T-83-WY-4054 ..	Sinclair Oil	East Lincoln Highway	Sinclair	WY	82334-0000
T-83-WY-4055 ..	Frontier Refining Cheyenne	2700 East Fifth Street	Cheyenne	WY	82007
T-83-WY-4056 ..	Wyoming Refining Newcastle	740 W Main	Newcastle	WY	82701
T-84-WY-4057 ..	Hawk Point Terminal	9397 Highway 59 South	Gillette	WY	82717

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Part II

Department of the Treasury

Fiscal Service

31 CFR Part 205

Rules and Procedures for Funds Transfers; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA38

Rules and Procedures for Funds Transfers

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: This final rule amends regulations on rules and procedures for funds transfers which implement the Cash Management Improvement Act of 1990 (CMIA), as amended. CMIA governs the transfer of funds between the Federal Government and States under Federal assistance programs, and requires Federal agencies and States to minimize the amount of time between the transfer of Federal funds to a State and the payout of those funds by a State for program purposes. Under the regulations, the application of CMIA is limited to major Federal assistance programs. The purpose of this final rule is to revise the dollar thresholds used to define major Federal assistance program for purposes of the regulations in order to add flexibility and, thereby, make it easier for States to comply with the requirements of the regulations. This final rule does not make any substantive changes.

EFFECTIVE DATE: May 5, 1999.

ADDRESSES: Cynthia L. Johnson, Director, Cash Management Policy and Planning Division, Financial Management Service, 401 14th Street, SW, Room 420, Washington, DC 20227. A copy of the final rule is being made available for downloading from the Financial Management Service's web site at the following address: http://www.fms.treas.gov/

FOR FURTHER INFORMATION CONTACT: Stephen K. Kenneally (Financial Program Specialist, Cash Management Policy and Planning Division) at (202) 874–6799; Cynthia L. Johnson (Director, Cash Management Policy and Planning Division) at (202) 874–6590; or Randall Lewis (Attorney-Advisor) at (202) 874–6680.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is authorized by the Cash Management Improvement Act of 1990 ("CMIA"), Public Law 101–453, as amended. *See* 31 U.S.C. 3335, 6501, and 6503. The purpose of the CMIA is to ensure greater efficiency, effectiveness, and equity in the exchange of funds between the Federal Government and the States for Federal assistance programs.

For major Federal assistance programs, States and the Financial Management Service (the "Service") negotiate Treasury-State Agreements which include the procedures used to determine the timing and amount of funds transfers. In the absence of an agreement, the Service is authorized to issue default procedures. In accordance with the CMIA, these funds transfer procedures are developed with the objective of minimizing the time between the transfer of cash from the Treasury and the payout of cash for program purposes by a State. Non-major Federal assistance programs generally are not addressed in Treasury-State Agreements, but are subject to requirements in Subpart B of Part 205 which limit funds transfers to the minimum amounts needed at the time of the request.

Under the current regulation, the distinction between major and non-major Federal programs is based on dollar thresholds contained in the Single Audit Act of 1984, Public Law 98–502. The Single Audit Act of 1984 used these thresholds to determine which Federal programs were subject to the substantive provisions of the Single Audit Act. In 1992, the Service adopted the Single Audit Act's thresholds as a means of meeting the CMIA's goals of efficient, effective, and equitable transfers of funds between the Federal Government and the States, while limiting the burden of implementing the CMIA. Use of these thresholds also eased implementation of the CMIA by incorporating a framework that was familiar to Federal agencies, States and auditors. *See* 57 FR 10102.

The Single Audit Act Amendments of 1996, Public Law 104–156, revised the thresholds and added risk-based criteria to the determination of major programs. 31 U.S.C. 7501 *et seq.* As a consequence, the thresholds published in Appendix A to Subpart A of Part 205 no longer are consistent with the thresholds used by States and their auditors for purposes of conducting Single Audits. Revising Appendix A to Subpart A of Part 205 by incorporating the new Single Audit Act thresholds allows States the option to keep their CMIA and Single Audit Act thresholds consistent.

However, in implementing the CMIA, the Service's primary concern is cash management. CMIA requires Federal agencies and States to minimize the amount of time between transfers of Federal funds to a State and the payout of those funds by States for program purposes. The risk-based criteria included in the Single Audit Act's new definition of major program address other risk management issues which are not related to cash management, and their inclusion in the CMIA definition of major Federal assistance program would not ensure that a majority of funds transferred are covered in Treasury-State agreements. For that reason, the Service is not incorporating the risk-based criteria into Part 205.

Regulatory Analysis

This rule is not a significant regulatory action as defined in E.O. 12866. Therefore, a regulatory assessment is not required. Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Special Analyses

The Service is promulgating this final rule without opportunity for prior public comment, because the Service has determined notice and public procedure is unnecessary and contrary to the public interest. 5 U.S.C. 553(b)(3)(B).

This final rule makes only one change to Part 205; it revises the thresholds used in the definition of major Federal assistance programs for the purposes of CMIA. When FMS first published a Notice of Proposed Rulemaking ("NPRM") implementing CMIA, it proposed the inclusion of provisions which, after a phase-in period, limited the mandatory application of CMIA to programs defined as major Federal assistance programs under the Single Audit Act of 1984. (57 FR 10102). The specific thresholds, which are based on the total amount of Federally funded State expenditures in a given year, were included in Appendix A to Subpart A of Part 205. After notice and an opportunity for comment, the Service retained the proposed definition of major Federal assistance program in the final rule published on September 24, 1992 (57 FR 44272).

As stated in the NPRM, the Single Audit Act thresholds were incorporated into Part 205 because they provide a consistent standard between the application of CMIA and the Single Audit Act. Use of the threshold also allows the Service to limit the administrative burden and costs of compliance, while still covering the majority of Federal program funds transferred to the States. This final rule does not change the substantive policy determinations underlying Part 205, it only makes technical changes to the thresholds included in the definition of major Federal assistance program which

add flexibility to the requirements of Part 205. Because the new thresholds are incorporated in a manner which allows for the application of either the existing thresholds or the new thresholds, there is no detrimental impact on States. For most States, the final rule reduces administrative burden and costs of compliance.

The Service has determined that good cause exists to make this final rule effective immediately upon publication, without the 30 day period between publication and the effective date contemplated by 5 U.S.C. 553(d). Because this final rule does not make any substantive changes to Part 205, but, instead, adds flexibility which may reduce the administrative burden and costs of compliance, making this final rule effective immediately is for the convenience of the States governed by Part 205.

List of Subjects in 31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set out in the preamble, the Service amends 31 CFR part 205 as follows:

PART 205—RULES AND PROCEDURES FOR FUNDS TRANSFERS

1. The authority citation for part 205 continues to read as follows:

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3335, 6501, 6503.

2. Appendix A to subpart A of part 205 is revised to read as follows:

Appendix A to Subpart A of Part 205—Definition of Major Federal Assistance Program

Beginning with State fiscal year 2000, "Major Federal Assistance Program" for State governments is defined by the following criteria:

Total expenditure of Federal financial assistance for all programs	Major Federal assistance program means any program that exceeds
Between $300,000 and $100 million inclusive	$300,000 or 3 percent of such total expenditures.
Over $100 million but less than or equal to $1 billion	$3 million or 0.30 percent of such total expenditures.
Over $1 billion but less than or equal to $2 billion	$4 million or 0.30 percent of such total expenditures.
Over $2 billion but less than or equal to $3 billion	$7 million or 0.30 percent of such total expenditures.
Over $3 billion but less than or equal to $4 billion	$10 million or 0.30 percent of such total expenditures.
Over $4 billion but less than or equal to $5 billion	$13 million or 0.30 percent of such total expenditures.
Over $5 billion but less than or equal to $6 billion	$16 million or 0.30 percent of such total expenditures.
Over $6 billion but less than or equal to $7 billion	$19 million or 0.30 percent of such total expenditures.
Over $7 billion but less than or equal to $10 billion	$20 million or 0.30 percent of such total expenditures.
Over $10 billion	$30 million or 0.15 percent of such total expenditures.

Dated: April 29, 1999.

Richard L. Gregg,

Commissioner.

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Part III

Department of Education

Expanded Approval of "Ability-to-Benefit" Tests and Passing Scores; Notice

DEPARTMENT OF EDUCATION

Expanded Approval of "Ability-to-Benefit" Tests and Passing Scores

AGENCY: Department of Education.

ACTION: Notice of the expanded approval of "ability-to-benefit" tests and passing scores for students with disabilities.

SUMMARY: The Secretary adopts, for students with disabilities, the list of "ability-to-benefit" tests and passing scores on those tests approved under section 484(d) of the Higher Education Act of 1965, as amended (HEA), and 34 CFR Part 668, Subpart J.

FOR FURTHER INFORMATION CONTACT: Lorraine Kennedy, U.S. Department of Education, 400 Maryland Avenue, S.W., Regional Office Building 3, Room 3045, Washington, D.C. 20202–5451. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: On October 25, 1996, the Secretary published a notice in the **Federal Register** (61 FR 55542–55543) that provided a list of eight "ability-to-benefit" tests that the Secretary approved under section 484(d) of the HEA and the regulations that the Secretary promulgated to implement that section, 34 CFR Part 668, Subpart J. The notice also included approved passing scores for the approved tests.

In a notice published in the **Federal Register** of October 27, 1998, 63 FR 57539–57541, the Department added the American College Testing Service (ACT) test to the list of approved ability-to-benefit tests. The notice further provided that the nine listed tests were not yet approved for students with disabilities. As a result, for these students, an institution could continue to use ability-to-benefit tests that were approved as of June 30, 1996. However, if a student with disabilities, nevertheless, took and passed one of those nine tests, the Secretary would consider that the student had demonstrated the requisite ability-to-benefit for purposes of section 484(d) of the HEA.

The Secretary is now expanding the approval of those nine tests for use with students with disabilities provided that those tests are given in a manner that is consistent with the applicable requirements of Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act. This would include offering and administering the test in a time, place and manner that is accessible, including the provision of appropriate modifications and auxiliary aids and services. Examples of appropriate modifications and auxiliary aids and services include a change in the length of time of examination for individuals with learning disabilities and Brailled or large print examinations and answer sheets or qualified readers for individuals with visual impairments. In addition, because the regulations at 34 CFR Part 668, Subpart J, contain a special provision for the assessment of students with disabilities for whom no tests are reasonably available, if none of the nine approved tests can be given in a manner that is accessible to a person with disabilities, an institution must utilize the procedures under 34 CFR 668.149 which allow for testing under this alternative provision.

As stated in § 668.149, such a test is a modified test or testing procedure or instrument that has been scientifically developed specifically for the purpose of evaluating the ability to benefit from postsecondary training or education of students with a disability. It measures both basic verbal and quantitative skills at the secondary school level and reflects the student's skills and general learned abilities rather than the student's impairment.

As a result of the Secretary's expanded approval of the use of these tests for students with disabilities, as of the date of this notice, an institution may use one of the approved nine tests for these students provided that the test is administered in a manner that accommodates the students' disabilities. In addition, for sixty days after the date of this notice, an institution may also use any ability-to-benefit test that was approved as of June 30, 1996. However, after that sixtieth day, an institution must no longer use one of the latter type tests.

Note. Please note that the exception provided in the October 27, 1998 **Federal Register** notice remains in effect for students whose native language is not English and who are not fluent in English. That is, the tests that the Secretary has approved in this notice and the October 27, 1998 notice are not approved for those students, and institutions may continue to use ESL ability-to-benefit tests that were approved as of June 30, 1996 for those students. Nevertheless, if a student takes and passes one of the tests approved in this notice or the October 27, 1998 notice, the Secretary will consider that the student demonstrated the requisite ability-to-benefit for purposes of section 484(d) of the HEA.

List of Approved "Ability-to-Benefit" Tests and Passing Scores

1. *American College Testing (ACT): (English and Math) Passing Scores:* The approved passing scores on this test are as follows: English (14) and Math (15).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. James Maxey, Telephone: (319) 337–1100, Fax: (319) 337–1790.

2. *ASSET Program: Basic Skills Tests (Reading, Writing, and Numerical)—Forms B2 and C2.*

Passing Scores: The approved passing scores on this test are as follows: Reading (34), Writing (34), and Numerical (33).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

3. *Career Programs Assessment (CPAT) Basic Skills Subtests Language Usage, Reading and Numerical)—Forms A, B, and C.*

Passing Scores: The approved passing scores on this test are as follows: Language Usage (43), Reading (44), and Numerical (42).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

4. *COMPASS Subtests: Prealgebra/ Numerical Skills Placement, Reading Placement, and Writing Placement.*

Passing Scores: The approved passing scores on this test are as follows: Prealgebra/Numerical (21), Reading (60), and Writing (31).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: American College Testing (ACT), Placement Assessment Programs, 2201 North Dodge Street, P.O. Box 168, Iowa City, Iowa 52243, Contact: Dr. John D. Roth, Telephone: (319) 337–1030, Fax: (319) 337–1790.

5. *Computerized Placement Tests (CPTs)/Accuplacer (Reading*

Comprehension, Sentence Skills, and Arithmetic).

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (52), Sentence Skills (60), and Arithmetic (36).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Loretta M. Church, Telephone: (212) 713–8000, Fax: (212) 713–8063.

6. *Descriptive Tests: Descriptive Tests of Language Skills (DTLS) (Reading Comprehension, Sentence Structure and Conventions of Written English)—Forms M–K–3KDT and M–K–3LDT; and Descriptive Tests of Mathematical Skills (DTMS) (Arithmetic)—Forms M–K–3KDT and M–K–3LDT.*

Passing Scores: The approved passing scores on this test are as follows: Reading Comprehension (108), Sentence Structure (9), Conventions of Written English (309), and Arithmetic (506).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: The College Board, 45 Columbus Avenue, New York, New York 10023–6992, Contact: Ms. Loretta M. Church, Telephone: (212) 713–8000, Fax: (212) 713–8063.

7. *Test of Adult Basic Education (TABE): (Reading Total, Total Mathematics, Total Language)—Forms 5 and 6, Level A, Complete Battery and Survey Versions.*

Passing Scores: The approved passing scores on this test are as follows: Reading Total (768), Total Mathematics (783), Total Language (714).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill 20 Ryan Ranch Road, Monterey, California 93940–5703; Contact: Ms. Tina Gwaltney, Telephone: (831) 393–7749, Fax: (831) 393–7142.

8. *Test of Adult Basic Education (TABE): (Reading, Total Mathematics, Language)—Forms 7 and 8, Level A, Complete Battery and Survey Versions.*

Passing Scores: The approved passing scores on this test are as follows: Reading (559), Total Mathematics (562), Language (545).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: CTB/McGraw-Hill 20 Ryan Ranch Road, Monterey, California 93940–5703; Contact: Ms. Tina Gwaltney, Telephone: (831) 393–7749, Fax: (831) 393–7142.

9. *Wonderlic Basic Skills Test (WBST)—Verbal Forms VS–1 & VS–2, Quantitative Forms QS–1 & QS–2.*

Passing scores: The approved passing scores on this test are as follows: Verbal (200) and Quantitative (210).

Publisher: The test publisher and the address, contact person, telephone, and fax number of the test publisher are: Wonderlic Personnel Test, Inc., 1509 N. Milwaukee Ave., Libertyville, IL 60048–1380; Contact: Mr. Victor S. Artese, Telephone: (800) 323–374, Fax: (847) 680–9492.

Duration of Approval

The Secretary approves each of these tests for five years from the date of the Secretary's written notice to the test publisher, unless the Secretary withdraws this approval or the publisher requests that approval of a test be withdrawn. In either case, the Secretary will publish a notice in the **Federal Register** indicating this change. Users are referred to the test publisher's technical manual for computing these scores.

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Note. The official version of this document is the document published in the **Federal Register**.

Dated: April 29, 1999.

Greg Woods,

Chief Operating Officer, Office of Student Financial Assistance.

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May 5, 1999

Part IV

Federal Trade Commission

16 CFR Part 453

Request for Comments Concerning Trade Regulation Rule on Funeral Industry Practices; Proposed Rule

FEDERAL TRADE COMMISSION

16 CFR Part 453

Request for Comments Concerning Trade Regulation Rule on Funeral Industry Practices

AGENCY: Federal Trade Commission.

ACTION: Request for public comments.

SUMMARY: The Federal Trade Commission (the "Commission") is requesting public comments on its Trade Regulation Rule on Funeral Industry Practices ("the Funeral Rule" or "the Rule"). The Commission requests comments about the overall costs and benefits of the Rule and its overall regulatory and economic impact as a part of its systematic review of all current Commission regulations and guides. Also requested are comments on whether the Rule should be modified to broaden its scope to include non-traditional providers of funeral goods or services; revise or clarify the prohibition on casket handling fees; or prohibit non-declinable funeral fees. All interested persons are hereby given notice of the opportunity to submit written data, views and arguments concerning the Rule.

DATES: Written comments will be accepted until July 12, 1999.

ADDRESSES: Written comments should be identified as "16 CFR Part 453" and submitted to: Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Ave., NW, Washington, DC 20580. The Commission requests that commenters submit the original plus five copies, if feasible. To enable prompt review and public access, all written comments should also be submitted, if possible, in electronic form. To submit in electronic form, provide the comment on either a 5¼" or a 3½" computer disk. The disk should be labeled with the commenter's name and the name and version of the word processing program used to create the document. (Programs based on DOS or Windows are preferred. Files from other operating systems should be submitted in ASCII text format). Alternatively, the Commission will also accept comments submitted to the following E-Mail address: "*FUNERAL@ftc.gov*." Individual members of the public who will be filing comments need not submit multiple copies and need not submit their comments in electronic form.

All comments will be placed on the public record and will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, during normal business days from 8:30 a.m. to 5 p.m., at the Public Reference Room, Room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW Washington, DC 20580. In addition, comments will be posted on the Internet at the FTC's web site: "*www.ftc.gov*".

Notification of interest in the Public Workshop-Conference should be submitted in writing to Mercedes Kelley, Division of Marketing Practices, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Myra Howard, (202) 326–2047, or Mercedes Kelley, (202) 326–3665, Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The current request for comments on the Funeral Rule is part of the Commission's regulatory review program which has been implemented to review Rules and guides periodically. The regulatory review program seeks information about the costs and benefits of the Commission's Rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying Rules and guides that warrant modification or rescission.

A. Background

The Commission adopted the Trade Regulation Rule entitled Funeral Industry Practices (the "Funeral Rule") on September 24, 1982. It became fully effective on April 30, 1984.[1] The essential purposes of the Funeral Rule were to ensure that consumers receive information necessary to make informed purchasing decisions, and to lower existing barriers to price competition in the market for funeral goods and services.[2] Subsequently, the Funeral Rule was amended as a result of a regulatory review and amendment proceeding that began on December 9, 1987.[3] The Commission published the amended Funeral Rule on January 11, 1994.[4] The amendments to the Rule took effect July 19, 1994.

The Rule, as it stands today, specifies that it is an unfair or deceptive act or practice for a funeral provider to: (1) Fail to furnish consumers with accurate price information disclosing the costs of each funeral good or service used in connection with the disposition of dead bodies; (2) require consumers to purchase a casket for direct cremations; (3) condition the provision of any funeral good or service upon the purchase of any other funeral good or service; or (4) embalm the deceased for a fee without authorization. The Rule also specifies that it is a deceptive act or practice for funeral providers to misrepresent the legal or local cemetery requirements for: (1) Embalming; (2) caskets in direct cremations; (3) outer burial containers; or (4) any other funeral good or service, and to misrepresent that cash advance purchases are the same as the cost to the funeral provider when such is not the case. The Rule sets forth preventive requirements in the form of price and information disclosures to ensure funeral providers avoid engaging in the unfair or deceptive acts or practices described above.

B. Issues for Comment

This review is part of a regularly scheduled review which generally seeks information about the costs and benefits of the Commission's rules and guides and their regulatory and economic impact. The information obtained will assist the Commission in identifying aspects of the Funeral Rule that warrant modification or rescission. Accordingly, the Commission is generally soliciting comments on, among other things, the economic impact of and the continuing need for the Funeral Rule; possible conflict between the Rule and state, local, or other federal laws; and the effect on the Rule of any technological, economic or other industry changes.

There are a number of other material issues on which the Commission is also seeking comment. The Commission recognizes that change is occurring in the funeral industry at a rapid pace and that several issues have arisen since the Rule was amended in 1994 which may warrant additional modification or rescission of the Funeral Rule.

First, the Funeral and Memorial Societies of America ("FAMSA"), has requested that the Commission consider making a number of amendments and additions to the Rule. Among these are: (1) The elimination of any non-declinable fee; (2) the addition of four items to the required itemization on the General Price List—namely, the price for private viewing without embalming, the price for body donation to a medical school, the price for the cremation process itself,[5] and the price for rental

[1] The Rule had two effective dates. The portions of the Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537. The remainder of the Rule (the portions imposing affirmative obligations on funeral providers) became effective on April 30, 1984.

[2] 47 FR 42260.

[3] 52 FR 46706.

[4] 59 FR 1592.

[5] Despite the fact that § 453.1(g) of the Rule defines "direct cremation" as "a disposition of

caskets; (3) a requirement that the cost of the cremation process be included in the charge for an immediate or "direct" cremation; (4) a requirement that any mark-up on cash advance items be disclosed with the actual amount to be charged; and (5) that the scope of the Rule be expanded to bring cemeteries, monument dealers, and casket sellers within coverage of the Rule.[6]

Second, members of Congress, industry representatives, and members of the general public have expressed concerns about the changing nature of the industry and the competition between traditional providers of funeral services and the non-traditional providers.

1. The Definition of "Funeral Provider"

The Funeral Rule applies only to "funeral providers."[7] The Rule defines a funeral provider as "any person, partnership or corporation that sells or offers to sell funeral goods *and* funeral services to the public."[8] Accordingly, persons that sell or offer to sell *only* funeral goods or *only* funeral services are not considered "funeral providers." In other words, the non-traditional members of the funeral industry, such as cemeteries and casket retailers, do not meet the definition of "funeral provider" and are thus not subject to the Rule's provisions. The Commission considered expanding the definition of funeral provider in the mandatory review that culminated in the 1994 amended Rule. At that time, the non-traditional sellers had only just begun to enter the market for funeral goods and services. Accordingly, the Commission determined not to expand coverage to other segments of the funeral industry at that time. Since then the Commission has stayed abreast of the increased entry of non-traditional entities into the sale of both funeral goods and services. As competition has been increasing in the sale of caskets and other funeral goods and services, the Commission believes that it is time to reconsider whether it would be in the public interest to expand the coverage of the Funeral Rule to include non-traditional providers of funeral goods and services. Therefore, the Commission solicits comments on whether it is now desirable to revise the Rule's definition of "funeral provider."

2. Casket Handling Fees Clarification

Section 453.4(b)(2)(i)(A) of the Rule mandates a specifically-worded disclosure informing the consumer that "(y)ou may choose only the items you desire." The general purpose of this provision is to make it possible for consumers to freely select funeral goods and services. In other words, consumers should pay for only those goods and services they select. Funeral providers are required to "unbundle" their offerings and allow for selection of individual funeral goods and services.

When the Rule was amended in 1994, § 453(b)(2)(i)(A) was augmented by the addition of § 453.4(b)(1)(ii), which specifies that it is an unfair or deceptive practice for funeral providers to:

> Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

Therefore, funeral providers are prohibited from charging any fee that is not for the services of the funeral director, or the items selected by the consumer. Placing such a limitation on permissible fees was specifically intended, in part, to prohibit a funeral provider from charging consumers a fee for using a casket purchased from some source other than that funeral provider. The Commission, in amending the Rule, determined that "substantial 'casket handling fees' are imposed on consumers by a significant proportion of providers wherever third-party casket sellers exist, and, as a result, frustrate the Rule's 'unbundling' requirements and result in the reduction of potential competition."[9] The Commission found that some providers implemented casket handling fees "because of their competitive reluctance to shift overhead costs and profit from the casket mark-up to professional services fees," while other providers used handling fees as a "direct response to third'party competition."[10] The Commission determined that "the Rule should require providers to recoup costs and profits lost to third-party casket sales in ways that do not violate the intent of the Rule's 'unbundling' provision."[11]

Since the amendment of the Rule, the Commission is aware that some funeral providers may employ certain practices that may undermine the benefit to consumers and to competition intended by the Rule's unbundling provisions. Although the Rule limits permissible fees, it does not regulate the prices that funeral providers may charge, nor does it prohibit the offering of funeral packages.[12] Neither the Commission nor staff hitherto has interpreted the Rule to prohibit the offering of such packages at a discount—that is, offering combinations of funeral goods and services which, if purchased together, are offered at a lower price in aggregate than if the consumer was to purchase each good and service individually. Even though the Third Circuit has noted that the Commission, in drafting its casket handling fee prohibition, drew a distinction between a direct "fee" and a "discount,"[13] as a practical matter, the distinction between a "fee" as it is used by the Rule, and a "discount", as offered by funeral providers, may be blurred. For example, the prices of itemized goods and services (appearing on the General Price List) may in some instances be inflated to the point of fictitiousness. Thus, virtually all consumers would choose to purchase "discount packages," resulting in a situation where the discount package represents the *de facto* prices for the goods and services. Such a scenario may restrict consumer choice in a manner that frustrates the intended purpose of the Rule. Further, some members of the funeral industry have alleged that because such "discount packages" are often conditioned on the purchase of a casket, these packages are artificially constructed by certain funeral providers in order to eliminate competition in casket sales.

As a result of the differing views that have emerged in the funeral industry with respect to the reach of the casket handling fee prohibition and its effect on certain types of discount packaging, the Commission is concerned about the effectiveness of the casket handling fee prohibition. Even at the time of the 1994

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human remains by cremation (*i.e.*, 'a heating process which incinerates human remains,' § 453.1(e)), without formal viewing, visitation, or ceremony with the body present," FAMSA suggests that some funeral providers may charge a fee for the actual cremation of a body that may not be reflected on the General Price List item price for a "direct cremation" under § 453.2(b)(4)(ii)(C).

[6] September 24, 1997 FAMSA letter.

[7] 16 CFR 453.1(i).

[8] *Id.* (Emphasis added). Funeral goods are, "the goods which are sold or offered for sale directly to the public for use in connection with funeral services." Funeral services are, "any services which may be used to: (1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies." 16 CFR 453.(1)(h)&(j).

[9] 59 FR at 1604.

[10] *Id.*

[11] *Id.*

[12] "You [the funeral provider] may still offer funeral packages, as long as they are offered in addition to, not in place of, itemized prices." *Complying with the Funeral Rule, a Business Guide Produced by the Federal Trade Commission ("Compliance Guide")* at p. 24.

[13] *Pennsylvania Funeral Dirs. Ass'n., Inc.* v. *FTC*, 41 F.3d 81, 90 (3rd Cir. 1994) (noting that "the FTC distinguishes direct handling fees from offering discounts to people who buy caskets from the funeral home").

Funeral Rule amendment, the Commission staff report reflected a level of uncertainty regarding funeral packages as they relate to the casket handling fee prohibition when it stated:

> Of course, enforcement issues might arise if, as a result of those package prices, consumers' choices were being restricted or additional fees above the itemized cost of caskets or services were being assessed.[14]

Accordingly, the Commission specifically seeks comments on the casket handling fee prohibition, its effectiveness, and the impact it has had on consumers and funeral providers.

3. Non-declinable Fees Currently Allowed Under § 453.2(b)(4)(iii)(C)(1) or (C)(2)

As noted above, the only fee that funeral providers can require consumers to pay under the Funeral Rule is the fee for "basic services." The "basic services fee" is defined as the charge for the services of the funeral director and staff.[15] The effect of this definition is to permit funeral directors to charge one, and only one, non-declinable fee to cover the basic services of the funeral director and staff. The Commission solicits comments on the efficacy of this provision in ensuring consumers the greatest amount of choice with respect to goods and services. The Commission also seeks comment on the effect of this provision upon funeral providers, and upon competition among them.

Revision of the "General Price List"

4. Revision of the "General Price List"

The Commission also seeks comments on revisions, additions or deletions that should be made to the required disclosures for the "General Price List" (as described in § 453.2(b)(4)), including those advanced by FAMSA, as described above.

C. Request for Comment

The Commission is interested in receiving data, surveys and other empirical evidence to support comments submitted in response to this Notice. Without limiting the scope of issues it is seeking comment on, the Commission is particularly interested in receiving comments and supporting data on the following questions:

(1) Is there a continuing need for the Funeral Rule?

(a) What benefits, if any, has the Rule provided to purchasers of funeral goods and services?

(b) Has the Rule imposed costs on purchasers?

(2) What changes, if any, should be made to the Rule to increase the benefits of the Rule to purchasers?

(a) How would these changes affect the costs the Rule imposes on the funeral providers subject to its requirements?

(3) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on funeral providers subject to its requirements?

(a) Has the Rule provided benefits to such funeral providers?

(4) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on funeral providers subject to its requirements?

(a) How would these changes affect the benefits provided by the Rule?

(5) Does the Rule overlap or conflict with other federal, state, or local laws or regulations?

(6) Since the Rule was issued, what effects, if any, have changes in relevant technology or economic conditions had on the Rule?

(7) What significant burdens or costs, if any, including costs of compliance, has the Rule imposed on small funeral providers subject to its requirements?

(a) How do these burdens or costs differ from those imposed on larger funeral providers subject to the Rule's requirements?

(8) To what extent are the burdens or costs that the Rule imposes on small funeral providers similar to those that small funeral providers would incur under standard and prudent business practices?

(9) What changes, if any, should be made to the Rule to reduce the burdens or costs imposed on small funeral providers?

(a) How would these changes affect the benefits of the Rule?

(b) Would such changes adversely affect the competitive position of larger funeral providers?

(10) How, if at all, has the Rule affected the relative number of consumers who contact more than one funeral home before deciding which one to use?

(11) How, if at all, has the Rule benefitted consumers by:

(a) Alerting consumers to the importance of price information and ensuring that they obtain such information at the critical point of choosing a provider?

(b) Providing information about different purchase options?

(c) Protecting consumers from injurious misrepresentations?

(d) Requiring authorization prior to embalming?

(e) Prohibiting providers from conditioning the purchase of a wanted item on the purchase of an unwanted item?

(12) How have prices changed (in total and for specific funeral goods and services) since the Rule was amended in 1994? To what extent, if at all, are these changes attributable to the Rule?

(13) Have the relative prevalence of: (a) Ground burials; (b) cremations; (c) above-ground entombment; or (d) other dispositions, increased or decreased since the Rule was amended in 1994? To what extent, if at all, has the Rule influenced these changes?

(14) How, if at all, since the Rule was amended in 1994, have the following factors changed?

(a) The number, size, and type of providers of funeral goods and services in the industry?

(b) The ability of new providers, both traditional and non-traditional, to enter the industry?

(c) What types of non-traditional entrants have appeared in the industry, and how are they different from traditional providers?

(d) Mergers and other types of consolidation in the funeral industry?

(e) Profits of funeral industry members?

(15) How, if at all, has the Rule affected the cremation industry? Should the Rule be amended to include within its scope unfair and deceptive practices by crematories, if any?

(16) To what extent are providers of funeral goods and services complying with the Rule overall, and with each of its component requirements?

(17) What difficulties, if any, are providers of funeral goods and services experiencing in complying with the Rule?

(18) How has the National Funeral Directors Association's Funeral Rule Offenders Program ("FROP") affected compliance with the Rule, if at all?

(19) Do consumers who receive itemized price information at the inception of the arrangements conference tend to spend less on funerals than those who receive such information later?

(20) Do consumers who make pre-need arrangements spend less on funerals than those who do not? If so, why? Does receiving price information at the inception of a pre-need arrangements conference contribute to decreased spending? Does it encourage or facilitate comparison shopping?

(21) Should the requirement that itemized price lists be given to

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[14] Final Staff Report, at 39 n. 76.

[15] 16 CFR 453.1(p). The *Compliance Guide*, at 15, explains, "this basic services fee should include services that are common to virtually all forms of disposition or arrangements (offered), such as conducting the arrangements and coordinating the arrangements with the cemetery, crematory, or other third parties. The basic services fee should *not* include charges related to other items that must be separately listed on the General Price List and that the customer may decline to purchase."

consumers at the beginning of discussions about funeral arrangements be modified? If so, how? What would be the relative costs and benefits of such a modified provision?

(22) Should the Commission expand the definition of "funeral provider" in order to bring non-traditional members of the funeral industry within the scope of the Funeral Rule's coverage? Are consumers being harmed by the current limitation on the scope of the Rule's coverage?

(a) What definition should be used to delineate those entities and individuals subject to the Funeral Rule?

(b) What are the costs and benefits of broader definitions?

(23) Should non-traditional providers of funeral goods and services be subject to only certain provisions of the Funeral Rule?

(a) If so, to which provisions should they be subject?

(24) Does the prohibition on more than one non-declinable fee reduce barriers to competition and increase consumer choice?

(a) Has this prohibition been effective to ensure that consumers can choose and pay for only the individual goods and services that they desire?

(b) Has this prohibition been effective to protect consumers' right to decline unwanted goods and services?

(c) What are the benefits conferred upon consumers or competition by this prohibition?

(d) What costs or other burdens has this provision imposed upon providers of funeral goods and services?

(25) What new fees, prices, goods or services have emerged in the sale of funeral goods and services, since the Rule was amended in 1994?

(26) Have the 1994 amendments been effective in prohibiting casket handling fees? If so, what benefits or costs have resulted from these amendments?

(27) How widespread is it for funeral providers to offer substantial discounts on funeral packages that include a casket from the funeral home?

(a) To what extent does such discounting tend to restrict consumers' choices?

(28) Should the requirement for a General Price List be modified? If so, how?

(a) Are there any new fees, prices, goods or services which should be added to the General Price List requirements?

1. Should the Rule require that the price of private viewing without embalming be included on the General Price List?

2. Should the Rule require that the price of donating a body to a medical school be included on the General Price List?

3. Are the Rule's requirements (§ 453.2(b)(4)(ii)(C)) to disclose on the General Price List the price for direct cremation effective to prevent deception regarding the amount a consumer will pay to have a funeral provider dispose of a body by cremation? Should the Rule also include an express requirement that the disclosed price of "direct cremation" include the actual price to have a body cremated?

4. Should the Rule require that the price of renting a casket in connection with a cremation be included on the General Price List?

(b) Are there any fees, prices or services which should be deleted from the General Price List?

(c) Are there any other revisions that should be made to the current provisions in the General Price List?

(d) For any change made in response to this question, what, if any, would be the costs and benefits to consumers and to funeral providers?

(29) The Rule applies to both pre-need and at-need funeral arrangements. Should pre-need and at-need consumers be treated differently? If so, why?

(c) Can a funeral provider readily distinguish between a pre-need and an at-need customer or will this complicate compliance with the Rule?

(30) Are there widespread unfair or deceptive practices occurring with respect to the pre-arrangement of and pre-payment for funerals by consumers? What are these practices? How could these practices be remedied? Are these remedies within the Commission's authority and jurisdiction? Would the benefits to consumers likely to result from such remedies outweigh the likely costs to funeral providers or other industry members?

D. Invitation to Comment

In reviewing the Funeral Rule, Commission staff will consider all comments submitted by July 12, 1999. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552) and Commission regulations, on normal business days between the hours of 8:30 a.m. and 5 p.m. at the Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC 20580. In addition, comments will be placed on the Internet at the FTC's web site: *<http://www.ftc.gov>*.

E. Public Workshop Conference

Commission staff will conduct a Public Workshop Conference to discuss written comments received in response to this Request for Comments. The purpose of this conference is to afford Commission staff and interested parties a further opportunity to openly discuss and explore issues raised during the Rule Review, and, in particular, to examine publicly any areas of significant controversy or divergent opinions that are raised in the written comments. Commission staff will consider the views and suggestions made during the conference, in conjunction with the written comments, in formulating its final recommendation to the Commission concerning the review of the Funeral Rule.

Commission staff will select a limited number of parties, from among those who submit written comments and express an interest in participating in the workshop conference, to represent the significant interests affected by the Rule Review. These parties will participate in an open discussion of the issues. It is contemplated that the selected parties might ask and answer questions based on their respective comments. In addition, the conference will be open to the general public. Members of the general public who attend the conference may have an opportunity to make a brief oral statement presenting their views on issues raised in the Rule Review. Oral statements of views by members of the general public will be limited to a few minutes in length. The time allotted for these statements will be determined on the basis of the time allotted for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

Written submissions of views, or any other written or visual materials, will not be accepted during the conference. The discussion will be transcribed and the transcription placed on the public record.

The conference will be held in the fall. A forthcoming announcement will provide the exact date(s) and location. Parties interested in participating must notify the Commission staff by July 12, 1999.

List of Subjects in 16 CFR Part 453

Funerals, Trade practices.

By direction of the Commission.

Donald S. Clark,

Secretary.

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Part V

Federal Emergency Management Agency

44 CFR Parts 59 and 61

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities; Proposed Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59 and 61

RIN 3067–AC79

National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish an inspection procedure under the National Flood Insurance Program (NFIP) to help verify that structures in a community comply with the community's floodplain management ordinance and to ensure that property owners pay flood insurance premiums commensurate with their flood risk. The proposed inspection procedure would require owners of insured buildings to obtain an inspection from community floodplain management officials as a condition of renewing the Standard Flood Insurance Policy (SFIP) on the building. FEMA proposes to undertake the inspection procedure on a pilot project basis only in two communities, Monroe County, Florida and the incorporated Village of Islamorada located in Monroe County. We would make any decision to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine the procedure's effectiveness.

DATES: Please send comments on or before July 6, 1999.

ADDRESSES: Please send your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., room 840, Washington, DC 20472, (facsimile) 202–646–4536, or (email) *rules@fema.gov*.

FOR FURTHER INFORMATION CONTACT: Don Beaton, Federal Emergency Management Agency, Federal Insurance Administration, 202–646–3442, (facsimile) 202–646–4327 or Lois Forster, Federal Emergency Management Agency, Mitigation Directorate, 202–646–2720, (facsimile) 202–646–2577.

SUPPLEMENTARY INFORMATION:

Background

Congress created the National Flood Insurance Program (NFIP) in 1968 to provide Federally supported flood insurance coverage, which generally had not been available from private insurance companies. The program is based on an agreement between the Federal Government and each floodprone community that chooses to participate in the program. FEMA makes flood insurance coverage available to property owners provided that a community adopts and enforces floodplain management regulations that meet or exceed the minimum requirements of the NFIP set forth in part 60 of the NFIP Floodplain Management Regulations (44 CFR part 60).

Goal to reduce flood losses. A major goal of the NFIP is to reduce flood losses by implementing floodplain management regulations that protect new and substantially improved construction in floodprone areas from flood damages. Without community oversight of building activities and development in the floodplain, the best efforts of some to reduce flood losses could be undermined or destroyed by the careless building of others. Community enforcement of a floodplain management ordinance is critical in protecting a building from future flood damages, in reducing taxpayer funded disaster assistance, and also in keeping flood insurance rates affordable.

We base the NFIP flood insurance rates for new construction on the degree of the flood risk reflected by the flood risk zone on the Flood Insurance Rate Map (FIRM) that we produce for the community. Flood insurance rates also take into account a number of other factors including the elevation of the lowest floor above or below the Base Flood Elevation (the elevation of the 100-year flood frequency), type of building, number of floors, and the existence of a basement or an enclosure.

Inspection procedure. We intend to undertake the inspection procedure on a pilot project basis in Monroe County and the Village of Islamorada, Florida. The Village was formerly part of unincorporated Monroe County, and incorporated as a separate community in January 1998. We would require that areas in Monroe County that incorporate and become a separate community on or after January 1, 1999 to participate in the inspection procedure as a condition of joining the NFIP. The purpose of the proposed inspection procedure is to provide an additional means for the pilot communities to identify whether post-FIRM structures, i.e., those structures built after the effective date of the FIRM, are in compliance with the community's floodplain management ordinance. The proposed inspection procedure would also enable FEMA to verify that structures insured under the NFIP are properly rated. Post-FIRM construction is charged an actuarial rate that must fully reflect the risk of flooding. Because Post-FIRM construction is actuarially rated, buildings constructed in compliance with community floodplain management regulations pay flood insurance premiums based on rates that are in most cases significantly lower than rates charged for buildings built in violation of these requirements.

We would make a decision whether to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after the pilot inspection procedure is complete within the selected communities and we complete an evaluation to determine the procedure's effectiveness.

Selection of Communities To Participate in the Pilot Inspection Procedure

We selected Monroe County and the Village of Islamorada, Florida for the proposed pilot inspection procedure due to unique circumstances in these communities and their willingness to participate in this procedure. The proposed inspection procedure would apply only to NFIP post-FIRM insured buildings in the Special Flood Hazard Areas (SFHAs) of Monroe County and the Village of Islamorada that are possible violations of the communities' floodplain management ordinance. Areas designated as SFHAs on the FIRMs are based on a flood that would have a one-percent chance of being equaled or exceeded in any given year (the 100-year flood). One-percent annual chance floods are shown on the FIRMs as A Zones or V Zones.

Susceptibility of the area to flooding. Monroe County, Florida is the southernmost county in the State of Florida and the continental United States and includes the islands of the Florida Keys. The Village of Islamorada is located in Monroe County, Florida and is a separate NFIP participating community. The entire portion of the County that is located on the mainland Florida peninsula, along with the islands located in Biscayne Bay and the northern part of Florida Bay, are a part of the Everglades National Park. Most of the development in Monroe County is located in the Florida Keys. Almost the entire County, including the Village of Islamorada, could be inundated by the base flood or 100-year flood (a flood having a one percent chance of being equaled or exceeded in any given year). We have identified velocity zones (V Zones), SFHAs associated with wave action, along the coastline of Monroe

County and the Village of Islamorada and designated the remaining portion of the SFHAs A Zones. Only portions of Key Largo, Cotton Key, and Upper Matecumbe Key have areas with ground elevations high enough to be outside of the SFHA.

FEMA findings in Monroe County. In August 1995, we conducted a Community Assistance Visit (CAV) in Monroe County, Florida. At that time, the Village of Islamorada was not incorporated and was still part of Monroe County. The purpose of a CAV is to assess an NFIP community's floodplain management program and to provide whatever assistance the community needs to administer its floodplain management ordinance effectively when program deficiencies or violations are identified. One of the more serious problems that we identified through the 1995 CAV was the widespread use of the enclosed area below the lowest floor of elevated buildings for uses other than parking, access, or storage. CAVs that we conducted in 1982 and 1987 also identified the use of enclosed areas below elevated buildings as living space as a problem.

NFIP floodplain management regulations. Under the NFIP Floodplain Management Regulations at 44 CFR 60.3, all new construction and substantial improvements of structures in A Zones on the community's FIRM that have fully enclosed areas below the lowest floor of an elevated building can only be used for parking, access, or storage. The enclosed area must be designed to include openings to equalize hydrostatic flood pressure on exterior walls by allowing for the automatic entry and exit of floodwaters [44 CFR 60.3(c)(5)]. In V Zones, new construction and substantial improvements must have the space below the lowest floor either free of obstruction or constructed with open wood lattice-work, insect screening, or non-supporting breakaway walls, intended to collapse under wind and water loads without causing collapse, displacement, or other structural damage to the elevated portion of the building or supporting foundation system. The area below the lowest floor of an elevated building in V Zones can only be used for parking, access, or storage.

In addition, owners must build the area below the lowest floor of an elevated building using flood resistant materials and must use construction methods and practices that minimize flood damages. Owners must also build with electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities that are designed or located so as to prevent water from entering or accumulating within the components during conditions of flooding.

Flood damages potential. Allowing uses other than parking, access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential to the area below the lowest floor of the elevated building. Improperly constructed enclosure walls and utilities can tear away and damage the upper portions of the elevated building exposing the building to greater damage. Improperly constructed enclosures can also result in flood forces being transferred to the elevated portion of the building with the potential for catastrophic damage. If a flood disaster occurs, the impact will go beyond the building itself. If the ground level enclosure is finished with living spaces, there is an increased risk to lives. Residents who live in these ground level enclosures may not be fully aware of the flood risk. Along with significant flood damages to the building and the potential for loss of life, the community, the State, and the Federal Government will face costly outlays for flood fighting and rescue operations, response, and recovery as well as taxpayer funded disaster assistance.

Limited flood insurance coverage. Because the area below the lowest floor of an elevated building has a greater exposure to flood waters, there is limited coverage in this area for elevated post-FIRM buildings, as provided for in the Standard Flood Insurance Policy (SFIP) under Article 6—Property Not Covered. This provision of the SFIP, effective since October 1, 1983, limits coverage for enclosures, including personal property contained therein. However, we provide coverage for enclosures below the elevated floors of elevated buildings for essential building elements, namely, sump pumps, well water tanks and pumps, oil tanks, furnaces, hot water heaters, clothes washers and dryers, freezers, air conditioners, heat pumps, electrical junction and circuit breaker boxes, elevators, natural gas tanks, pumps or tanks related to solar energy, cisterns, and stairways and staircases attached to the building. Also, foundation elements that support the building are insurable under the NFIP. We do not cover such items as finished enclosure walls, floors, ceilings, and personal property such as rugs, carpets, and furniture.

In 1983, we limited the coverage for enclosed areas below elevated buildings and in basement areas due to the financial losses we experienced when we provided full coverage in these areas. In order to provide insurance coverage for the items that we exclude under the SFIP, we would have to charge significantly higher insurance rates, which would make flood insurance on the building and its contents unaffordable for many property owners.

In spite of the limited coverage afforded for these enclosed areas, they affect the rating of the policy. As previously mentioned in "Flood damages potential", flood forces can be transferred to the elevated portion of the building causing severe damages. This damage potential is recognized in the rates by adding rate loadings based on the size of the enclosure and whether the enclosure contains covered machinery or equipment. The proposed inspection procedure will ensure that the policyholders with buildings that have enclosures are paying premiums commensurate with their flood risk.

Floodplain management criteria. The limitation of flood insurance coverage for the enclosed area of an elevated building is consistent with the NFIP floodplain management criteria. These criteria limit the use of the enclosed space to parking, access, and storage, require use of flood resistant materials, require openings in foundation walls in A Zones, require the area below the lowest floor of an elevated building in V Zones to be free of obstruction, and require that mechanical, electrical, and utility equipment be designed or located to prevent flood waters from entering or accumulating within the components. Buildings built in compliance with NFIP floodplain management criteria will have minimal damage potential to the building and its contents.

Factors affecting compliance determinations. There are several factors that have limited Monroe County's ability to determine whether a building with an enclosure complies with the County's floodplain management ordinance. It is often difficult from the street to determine whether the enclosed area below an elevated building contains uses other than parking, access, or storage. Although the County can seek consent and approval of the owner to inspect their property, the community has had limited success in identifying violations using this method. The volume of possible violations is also a contributing factor in the community's ability to address this problem. Monroe County estimates that there are several thousand buildings with illegal enclosures below the lowest floor of an elevated building. Furthermore, a provision in Florida law exempts "owner-occupied family

residences" from the administrative warrant inspection procedure provided under State law for identifying building-safety issues. Under Florida State law, entry by local officials into owner-occupied single family homes without consent of the owner requires a search warrant, which is extremely difficult to obtain. Consequently, the community has had little success in identifying possible violations so that it could then require actions to remedy the violations to the maximum extent possible.

Monroe County agreement to participate. Given these circumstances, Monroe County indicated its interest in participating in the inspection procedure. In January 1997, a Monroe County Citizen's Task Force, which was appointed by the Monroe County Board of County Commissioners to address the issue of illegal enclosures below the lowest floor of an elevated building, recommended establishment of a procedure to require an inspection and a compliance report before the renewal of a flood insurance policy. On June 11, 1998, the Board of County Commissioners of Monroe County, Florida, passed a resolution that requested FEMA to establish an inspection procedure for the County as a means of verifying that insured buildings in the SFHA under the NFIP comply with the County's floodplain management ordinance.

Village of Islamorada's agreement to participate. The Village of Islamorada incorporated as a separate community within Monroe County in January 1998 and became a participating NFIP community on October 1, 1998. The Village of Islamorada encompasses four of the Florida Keys that would have been included as part of the inspection procedure in Monroe County. Because of possible illegal enclosures in the Village of Islamorada, the community indicated its interest in participating in the pilot inspection procedure in a letter dated September 24, 1998, in its application to join the NFIP.

Continuing community responsibilities. Nothing that would be established through this proposed pilot inspection procedure would modify Monroe County or the Village of Islamorada's responsibility under the NFIP to enforce their floodplain management ordinance. That responsibility includes new construction and substantial improvements within the SFHAs pertaining to non-insured buildings or to insured buildings in which an inspection was not obtained by the policyholder. We intend that the proposed inspection procedure assist Monroe County and the Village of Islamorada materially in identifying and correcting violations. We do not intend that this procedure be a substitute or alternative for these communities to enforce provisions within their own laws or ordinances. When Monroe County and the Village of Islamorada identify violations, they would continue to have the responsibility to remedy the violations to the maximum extent possible for all buildings in the SFHA.

Awareness program for interested people. We envision that we, Monroe County, and the Village of Islamorada will coordinate efforts to conduct an awareness program with property owners, mortgage lenders, real estate agents, insurance agents, appraisers, and local officials on this inspection procedure.

We would make any decision to implement the inspection procedure in other NFIP participating communities outside of Monroe County, Florida only after completing the pilot inspection procedure within the selected communities and after an evaluation to determine how effective the procedure is in achieving NFIP building compliance. The evaluation would examine the level of effort required for the communities, insurance companies, and us to implement the procedure, how many non-compliant structures are brought into compliance, and whether the procedure enabled us to determine whether structures insured under the NFIP are properly rated.

Description of the Pilot Inspection Procedure

The proposed rule would establish a pilot inspection procedure that would be built around the flood insurance policy renewal process and would apply only to NFIP insured buildings in SFHAs in Monroe County and the Village of Islamorada. The proposed inspection procedure would require owners of insured buildings to obtain an inspection from local officials and submit an inspection report as a condition of renewing flood insurance on the building.

Proposed Endorsement. Flood insurance policies with renewal effective dates on and after the implementation date of the pilot inspection procedure would contain the endorsement established in proposed Appendices (A)(4), (A)(5), and (A)(6) of 44 CFR part 61. The endorsement would provide that an inspection by the community may be required before a subsequent renewal of the flood insurance policy. Policies issued as new policies after the effective date for implementing the pilot inspection procedure would also contain the endorsement established in proposed Appendices (A)(4), (A)(5), and (A)(6). The proposed endorsement would amend all flood insurance policies (pre-FIRM and post-FIRM) on buildings in Monroe County and the Village of Islamorada, Florida. The proposed changes to the SFIP would revise the Voidance, Reduction or Reformation of the Coverage provision and the Policy Renewal provision. A notice describing the purpose of the inspection procedure would accompany the new endorsement to the SFIP regarding the inspection procedure.

Procedure established under new section. Under a new section, 44 CFR 59.30, the proposed rule would establish criteria for implementing a pilot inspection procedure in the selected community. Monroe County and the Village of Islamorada previously indicated their interest to participate in the inspection procedure. Based upon the communities' willingness to participate in the pilot inspection procedure, the Associate Director for Mitigation and the Federal Insurance Administrator would establish a starting date and termination date based on the recommendation of the FEMA Regional Director in consultation with Monroe County and the Village of Islamorada.

Information we would provide. We would provide Monroe County and the Village of Islamorada a list of pre-FIRM and post-FIRM policies in SFHAs to use in implementing the inspection procedure before the effective date for implementing the pilot inspection procedure. We would also provide a list of any policies issued as new policies after the effective date for implementing the pilot inspection procedure to the appropriate community.

Community reviews. The communities would agree to undertake a review of the pre-FIRM polices and provide a list of insured buildings in SFHAs to FEMA that were incorrectly identified as a pre-FIRM building because they were built or substantially improved on or after the effective date of the initial FIRM. We would provide the list of buildings that may be incorrectly rated as pre-FIRM to the insurers for possible rerating under the post-FIRM rating rules. The communities would also agree to undertake a review of all insured post-FIRM buildings in SFHAs, including those incorrectly identified as pre-FIRM, to determine whether the building is a possible violation of the community's floodplain management ordinance and provide this list to us. We would expect the community to identify possible violations of insured post-FIRM buildings in SFHAs from a visual street

inspection of the building, from tax records and other documents on file in the community pertaining to the property, and through other community procedures.

We would also expect the communities to review the list of pre-FIRM and post-FIRM flood insurance policy information before the effective date established for implementing the inspection procedure.

Coordination of timeframe for inspections. We would coordinate with each community to determine the appropriate timeframe to implement the inspection procedure to give each community adequate time to complete the inspections and undertake enforcement actions. Our determination would be based on the number of pre-FIRM and post-FIRM policies in each community's SFHAs and the number of potential inspections and enforcement actions the community may need to undertake.

Public notice. Before the effective date for implementing the pilot inspection procedure, Monroe County and the Village of Islamorada would have to provide adequate public notice. This notice would take the form of an announcement in a prominent local newspaper and other community notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator would publish a notice in the **Federal Register** that an inspection procedure is to be undertaken on a pilot project basis. This notice would provide the reason and the starting date and the termination date for implementing the inspection procedure.

Notice to policyholders. For those buildings identified by Monroe County and the Village of Islamorada as possible violations, the insurer would send a notice to policyholders approximately 6 months before the policy expiration date. This notice would state that the policyholder must obtain an inspection from the community and submit the results of the inspection as part of the renewal of the flood insurance policy by the end of the renewal grace period (30 days after date of the policy expiration). The insurer would send a reminder notice to the policyholder with the Renewal Notice about 45 to 60 days before the policy expires.

Property inspection. The policyholder would be responsible for contacting the community to arrange for an inspection. The community would inspect the building to determine whether it complies with the community's floodplain management ordinance and document its findings in an inspection report. The community would provide two copies of the inspection report to the property owner. The community would use its copy of the inspection report to begin enforcement actions on a building identified as violating the community's floodplain management ordinance.

Renewal of flood insurance after inspection. If the policyholder obtained a timely inspection and sent the community's inspection report and the renewal premium payment to the insurer by the end of the renewal grace period, the insurer would renew the flood insurance policy whether or not the building has been identified as a violation by the community. The insurer would review the flood insurance policy for rerating. If the building was not properly rated to reflect the building's risk of flooding, the policy would be rerated to reflect that risk.

Community enforcement. If the community's inspection did not find a violation, the community would take no other action. However, if the community inspected the building and identified a violation under its floodplain management ordinance, the community would have to undertake an enforcement action to remedy the violation to the maximum extent possible. For each violation identified, the community would have to demonstrate to us that it is undertaking all possible actions to remedy the violation. If, after one year, the community demonstrated that it has taken all enforcement actions within its authority to remedy the violation to the maximum extent possible, including a notice to the property owner to remedy the violation and appropriate legal action, and the property owner had not corrected the violation, the community would submit a declaration of a violation and request a denial of flood insurance under 44 CFR 73, Implementation of Section 1316 of the National Flood Insurance Act of 1968.

Failure to obtain a community inspection. If the policyholder did not obtain an inspection and submit an inspection report with the renewal payment by end of the renewal grace period (30 days after date of expiration), the flood insurance policy would not be renewed. We would establish a procedure for the insurer to send appropriate notices to the insured, to the agent, and to the mortgagee that the flood insurance policy expired and cannot be re-issued without the community inspection report. All flood insurance policies that were not renewed under the inspection procedure would be identified on a list of ineligible properties for the sale of flood insurance that would be sent to insurers that write and service NFIP flood insurance policies. Flood insurance policies sold on buildings ineligible in accordance with the proposed inspection procedure would be void in accordance with the proposed SFIP endorsement. If a property owner subsequently obtained an inspection from the community and an inspection report was submitted with the premium payment at the time the property owner applies for a flood insurance policy, a new policy would be issued on the building.

National Environmental Policy Act

We are currently reviewing this proposed rule under the requirements of 44 CFR 10, Environmental Considerations, and under the mandates of the National Environmental Policy Act. We will make a determination whether we need an environmental assessment or environmental impact statement before we publish the final rule.

Executive Order 12898, Environmental Justice

We are also reviewing this proposed rule under E.O. 12898, Environmental Justice, and will make appropriate determinations before publishing the final rule.

Executive Order 12866, Regulatory Planning and Review

We are submitting this proposed rule to the Office of Management Budget for review under sec. 2(f) of E.O. 12866 of September 30, 1993, 58 FR 51735. We will make a determination whether this is a significant regulatory action before we publish the final rule.

Paperwork Reduction Act

We have submitted the information collection requirements in this proposed rule to the Office of Management and Budget (OMB) for approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* We prepared an Information Collection Request (ICR) and you may obtain a copy from Muriel Anderson by mail at FEMA, 500 C Street, SW., room 316, Washington, DC 20472, by email at *muriel.anderson@fema.gov*, or by calling (202) 646–2625. Highlights of the ICR follow.

Purpose of the proposed rule. The proposed rule would establish an inspection procedure in Monroe County and the Village of Islamorada that would be built around the flood insurance policy renewal process. The purpose of the inspection procedure and need for the community inspection report is:

• To help the communities of Monroe County and the Village of Islamorada, Florida, verify and document that post-FIRM structures in their communities comply with the community's floodplain management ordinance; and

• To ensure that property owners pay flood insurance premiums commensurate with their flood risk due to their increased exposure to flood damages.

The requirement that a community inspect a building as a condition of renewing the flood insurance policy on the building would *only* apply to NFIP insured buildings in Special Flood Hazard Areas that the communities identify as possible violations. The Special Flood Hazard Areas (SFHA) is an area that is based on a flood that would have a 1-percent chance of being equaled or exceeded in any given year, often referred to as the 100-year flood.

Estimated number of inspections. We expect a total of 2,000 to 4,000 respondents (policyholders) to obtain an inspection from their respective communities. This is the total estimated number of insured buildings that are possible violations of the community's floodplain management ordinance in both Monroe County and the Village of Islamorada. We estimate that Monroe County will inspect 500–700 insured buildings per year and the Village of Islamorada will inspect 200–400 insured buildings per year.

Previous OMB approval. The flood insurance renewal notice and flood insurance application have previously been approved by OMB (OMB 3067–0022).

NUMBERS AND TYPES OF RESPONSES, FREQUENCY, AND BURDEN HOURS

Number of respondents/type of response	Frequency of response	Burden hours	Total burden hours
4,000 policyholders to receive & read a notice that an inspection is required in order for the flood insurance policy to be renewed. These 4,000 policyholders will also receive a reminder notice about 45–60 days before the policy expires.	1	15 minutes (total for both notices).	1,000
4,000 policyholders contact respective community to arrange for an inspection of the property. Local official inspects the property with the policyholder or his/her designee. (Note: in any given year we expect several hundred policyholders to receive the notice and contact their community.) Compliant buildings should take less time to inspection compared to an insured building that is non-compliant.	1	1–2.5 hours**	10,000
4,000 policyholders submit a copy of the inspection report with the renewal premium payment	1	8 minutes	533
800 estimated no.of respondents that did not obtain an inspection. These respondents will be sent a notice at time of policy expiration that their flood insurance policy expired. (FEMA estimates that less than 20% of the 4,000 respondents will not obtain an inspection and as a result their flood insurance policy will not be renewed.)	1	8 minutes	107

*Total number of Burden Hours to implement the inspection procedure over a multi-year period: 11,640 hours.
Annual (one-time) total burden hours for each policyholder is approximately: 3 hours.
Total annual burden for approximately 500–700 inspections per year in Monroe County: 2,100 hours.
Total annual burden for approximately 200–400 inspections per year in the Village of Islamorada: 1,200 hours.

*We estimate that 2,000–4,000 buildings will need to be inspected over a several-year period. On an annual basis, we estimate that the communities will inspect 700–1,100 buildings each year.

**We estimate that the amount of time to contact the community to arrange for the inspection and for the *policy*holder or his/her designee to be available to let the community official into the building to conduct the inspection will range from 1 hour to 2.5 hours.

Community fees for permits and inspections. Communities generally charge a fee for permits and inspections as part of their administration of their zoning ordinance, building code, and floodplain management ordinance. We estimate that the cost per policyholder will range between $35 to $50.00 for each inspection, and that there may be expenses of about $15 per policyholder for telephone calls and arranging for someone to be available when the local officials inspect the building, for an estimated average cost of $65.00 per policyholder.

Total annual cost burden to respondents. For approximately 700 to 1,100 inspections per year, the total annual cost burden to respondents is estimated to range between $45,500 and $71,500. This information collection places no greater burden on small business or other small entities than that required of any other policyholder in Monroe County and the Village of Islamorada.

Community inspection report critical to effective implementation. The community inspection report is critical to the effective implementation of the proposed inspection procedure. Without the inspection procedure, the Village of Islamorada and Monroe County would continue to have limited ability to inspect properties for illegal enclosures that violate their floodplain management ordinance. Allowing uses other than parking of vehicles, building access, or storage in the enclosed area below the Base Flood Elevation significantly increases the flood damage potential to the building, and there is an increased risk to lives.

Premium rates commensurate with flood risk. The increase in flood damage potential to the building must be recognized in the rates by adding rate loadings based on the size of the enclosure. Collection of information from the policyholder in this inspection procedure will help ensure that policyholders are paying premiums commensurate with their flood risk.

Consultation with the communities; use of existing inspection documents. We consulted with Monroe County and Village of Islamorada officials on the type of existing building inspection reports they currently use to implement their floodplain management ordinance and we determined that the current community inspection documents could be used for purposes of implementing the inspection procedure and for purposes of determining whether the building needs to be rerated.

Starting and ending dates; coordination. After we publish the final rule on the inspections, we will work closely with local officials from Monroe County and the Village of Islamorada to establish a start and end dates for the inspections. We will also coordinate and provide assistance to local officials from both communities in preparation of and during implementation of the inspection procedure. We anticipate

that the County and Village will apply the inspection procedure over a several-year period.

Confidentiality. Confidentiality is provided under the Privacy Act. The information collection will not be disclosed outside the Federal Emergency Management Agency except to the servicing office, acting as the government's fiscal agent, to the policyholders insurer, any mortgagee named on the policy, and to other routine users.

Request for your comments. We ask for your comments on our need for this information, the accuracy of our burden estimates, and any methods you can suggest for minimizing the burden on respondents, including automated collection techniques. Please send comments on the Information Collection Request to the Information Collection Officer, FEMA, 500 C Street, SW., room 316, Washington, DC 20472, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725—17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for FEMA." Please include the ICR number in your correspondence. Since OMB must make a decision about the ICR between 30 and 60 days after May 5, 1999, OMB should receive your comments by June 4, 1999 to assure that your comments will have full effect. We will respond in the final rule to any OMB or public comments on the information collection requirements contained in this proposed rule.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of subsections 2(a) and 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 59 and Part 61

Flood insurance, reporting, and recordkeeping requirements.

Accordingly, we propose to amend 44 CFR Parts 59 and 61 as follows:

PART 59—GENERAL PROVISIONS

The authority citation for Part 59 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Part 59 is amended by adding a new subpart C consisting of § 59.30 to read as follows:

Subpart C—Pilot Inspection Program

§ 59.30 A Pilot Inspection Procedure

(a) *Purpose.* This section sets forth the criteria for implementing a pilot inspection procedure in Monroe County and the Village of Islamorada, Florida. These criteria will also be used to implement the pilot inspection procedure in any area within Monroe County, Florida that incorporates on or after January 1, 1999 and is eligible for the sale of flood insurance. The purpose of this inspection procedure is to provide the communities participating in the pilot inspection procedure with an additional means to identify whether structures built in Special Flood Hazard Areas (SFHAs) after the date of the effective Flood Insurance Rate Map (FIRM) comply with the community's floodplain management regulations. The pilot inspection procedure will also assist us, FEMA, in verifying that structures insured under the National Flood Insurance Program's Standard Flood Insurance Policy are properly rated.

(b) *Procedures and requirements for implementation.* Each community must establish procedures and requirements for implementing the pilot inspection procedure consistent with the criteria established in this section.

(c) *Inspection Procedure.*

(1) The Associate Director for Mitigation and the Federal Insurance Administrator will establish the starting date and the termination date for implementing the pilot inspection procedure upon the recommendation of the Regional Director, who will consult with each community.

(2) Before the starting date of the inspection procedure, each community must publish a notice in a prominent local newspaper and publish other notices as appropriate. The Associate Director for Mitigation and the Federal Insurance Administrator will publish a notice in the **Federal Register** that the community will undertake an inspection procedure. Published notices will include the purpose for implementing the inspection procedure and the effective period of time that the inspection procedure will cover.

(3) The communities participating in the pilot inspection procedure must review a list of all pre-FIRM and post-FIRM flood insurance policies in SFHA to confirm that the start of construction or substantial improvement of insured pre-FIRM buildings occurred on or before December 31, 1974, and identify possible violations of insured post-FIRM buildings. The community will provide to FEMA a list of insured buildings incorrectly rated as pre-FIRM and a list of insured post-FIRM buildings that the community identifies as possible violations.

(4) In the communities that undertake the pilot inspection procedure, all new and renewed flood insurance policies that become effective on and after the date that we and the community establish for the start of the inspection procedure will contain an endorsement to the Standard Flood Insurance Policy that an inspection may be necessary before a subsequent policy renewal [see Part 61 Appendices A(4), (5), and (6)].

(5) For a building identified as a possible violation under paragraph (3) of this subsection, the insurer will send a notice to the policyholder that an inspection is necessary in order to renew the policy and that the policyholder must submit a community inspection report as part of the policy renewal process, which includes the payment of the premium. The insurer will send this notice about 6 months before the Standard Flood Insurance Policy expires.

(6) If a policyholder receives a notice under paragraph (C)(5) of this section that an inspection is necessary in order to renew the Standard Flood Insurance Policy the following applies:

(i) If the policyholder obtains an inspection from the community and the policyholder sends the community inspection report to the insurer as part of the renewal process, which includes the payment of the premium, the insurer will renew the policy and will verify the flood insurance rate, or

(ii) If the policyholder does not obtain and submit a community inspection report the insurer will not renew the policy.

(7) For insured post-FIRM buildings that the community inspects and determines to violate the community's floodplain management regulations, the community must demonstrate to FEMA that the community is undertaking measures to remedy the violation to the maximum extent possible. Nothing in this section modifies the community's responsibility under the NFIP to enforce adequately floodplain management regulations that meet the minimum requirements in § 60.3 for all new construction and substantial improvements within the community's SFHAs. The community's responsibility also includes the insured buildings where the policyholder did not obtain an inspection report, and non-insured buildings that this procedure does not cover.

(d) *Restoration of flood insurance coverage.* Insurers will not provide new flood insurance on any building if a property owner does not obtain a community inspection report or if the property owner obtains a community inspection report but does not submit the report with the renewal premium payment. Flood insurance policies sold on a building ineligible in accordance with paragraph (c)(6)(ii) are void under the Standard Flood Insurance Policy inspection endorsements [44 CFR Part 61, Appendices (A)(4), (A)(5), and (A)(6)]. When the property owner applies for a flood insurance policy and submits a completed community inspection report by the community with an application and renewal premium payment, the insurer will issue a flood insurance policy.

3. We amend Part 61 by adding Appendix A(4) to Part 61 as follows:

Appendix A (4) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Dwelling Form

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 9 of the Standard Flood Insurance Policy, Dwelling Form, *only* in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article that is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount that represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this *policy*, which will be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," that causes us to issue a *policy* to you based on a premium amount that is less than the premium amount that would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. Other Insurance. If a loss covered by this *policy* is also covered by other insurance whether collectible or not, except insurance in the name of the *Condominium Association* issued pursuant to the Act, we will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss.

If there is other insurance in the name of the *Condominium Association* covering the same property covered by this *policy*, this insurance will be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This *policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this *policy* can constitute a waiver of any of our rights. Except in the case of 1. a contents only *policy*, and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You: You may cancel this policy* at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described *building* or *unit* to someone else. In this case, we will refund to you, once we receive your written request for *cancellation* (signed by you), the excess of premiums paid by you that apply to the unused portion of the *policy*'s term, pro rata but with retention of the *expense constant* and the *Federal policy fee.*

2. You cancel a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and we have received a written concurrence in the *cancellation* from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the *expense constant* and the *Federal policy fee.*

3. You cancel because we have determined that your property is not, in fact, in a *special hazard area*; and you were required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to the *Act*; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This *policy* will be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss for which you may receive compensation under the *policy*;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which your property is located ceases, in which case the *policy* will be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and will not be renewed.

If the voided *policy* included 3 *policy* years in a contract term of 3 years, you will be entitled to a pro rata refund of any premium applicable to the remainder of the *policy's* term;

d. If you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* will be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to you in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, will be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

f. You have not submitted a community inspection report, cited in "G. *Policy Renewal*" below that was required in a notice sent to you in conjunction with the community inspection procedure established under *National Flood Insurance Program* Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an application, renewal, endorsement, or other form and paragraph F.1.d. does not apply, then the *policy* will be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us before a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we will give a notice of additional premium due, and if you remit and we receive the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the *policy*, we will give a notice of premium due, and if you *remit* and we *receive* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, we will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this *policy* begins on its inception date and ends on its *expiration date*, as shown on the declarations page that is attached to the *policy*. We are under no obligation to:

1. Send you any renewal notice or other notice that your *policy* term is coming to an end and the receipt of any such notice by you will not be deemed to be a waiver of this provision on our part.

2. Assure that *policy* changes reflected in endorsements submitted by you during the *policy* term and accepted by us are included in any renewal notice or new *policy* that we send to you. *Policy* changes includes the addition of any increases in the amounts of coverage.

This *policy* will not be renewed and the coverage provided by it will not continue into any successive *policy* term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by us at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to *Article 9*, paragraph F. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the *National Flood Insurance Program* before the *expiration date*, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this *policy* will end as of the *expiration date* of the last *policy* term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received at the office of the *National Flood Insurance Program* and, in that event, we will not be obligated to provide you with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, you may be requested during the *policy* term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent *application* for or renewal of insurance.

Your community has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in National *Flood* Insurance Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for *policy* renewal. As a property owner in such a community, you may be required to submit such an inspection report by a community official certifying whether your insured property is in compliance with the community's floodplain management ordinance. You will be notified in writing of this requirement approximately 6 months before your renewal date and again at the time your renewal bill is sent.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us before the expiration of the *policy* being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent *application* or other appropriate form (received by the *National Flood Insurance Program* before the mailing of the renewal notice by us), does, in all respects for purposes of the *National Flood Insurance Program*, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, if we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that we determine could preclude the likelihood of its being actually and timely received by you before the due date for the renewal premium, the following procedures will be followed:

If you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which we determine was attributable to the above circumstance, we will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the *policy* will remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we will not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a *flood* loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the *policy* signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, "owner") and the interest, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount you claim is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with our adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

7. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss that includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amounts of loss claimed, and any written plans and specifications for repair of the damaged property that you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any policies of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the *condominium* documents including the Declarations of the *condominium*, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other *condominium* documents if you are a *unit* owner in a *condominium building*; and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace*: We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options*: We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this policy will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable*: Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment*: You may not abandon damaged or undamaged insured property to us. However, we may permit you to keep damaged, insured property ("salvage") after a loss and we will reduce the amount of the loss proceeds payable to you under the *policy* by the value of the salvage.

N. *Appraisal*: If at any time after a loss, we are unable to agree with you as to the *actual cash value* or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers will first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located. The appraisers will then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, will submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us will determine the amount of *actual cash value* and loss or, should this *policy*'s replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both of us equally.

O. *Loss Clause*: If we pay you for damage to property sustained in a *flood* loss, you are still eligible, during the term of the *policy*, to collect for a subsequent loss due to another *flood*. Of course, all loss arising out of a single, continuous *flood* of long duration will be adjusted as one *flood* loss.

P. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and declarations page attached to this *policy* or of whom we have actual notice before the payment of loss proceeds under this *policy*).

Loss, if any, under this *policy*, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this *policy*; provided, that in case the mortgagor or owner will neglect to pay any premium due under this *policy*, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify us of any change of ownership or occupancy or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* will be null and void.

If we cancel this *policy*, it will continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and will then cease, and we will have the right, on like notice, to cancel this agreement.

Whenever we will pay the mortgagee or trustee any sum for loss under this *policy* and will claim that, as to the mortgagor or owner, no liability therefor existed, we will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations*: If you fail to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit*: You may not sue us to recover money under this *policy* unless you have complied with all the requirements of the *policy*. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation*: Whenever we make a payment for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything that would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you

must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this *policy*;

2. Not to seek renewal of this *policy*; and

3. Not to apply for any *flood* insurance under the Act for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

U. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the Act. When we find that duplicate policies are in effect, we will by written notice give you the option of choosing which *policy* is to remain in effect under the following procedures:

1. If you choose to keep in effect the *policy* with the earlier effective date, we will by the same written notice give you an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If you choose to keep in effect the *policy* with the later effective date, we will by the same written notice give you the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or your insurable interests, whichever is less.

We will make a refund to you, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect. For purposes of this paragraph U., the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing *policy* limits, the usual procedures for increasing *policy* limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* you choose to keep in effect.

3. We amend Part 61 by adding Appendix A(5) to Part 61 as follows:

Appendix A(5) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy
Endorsement to General Property Form

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 8 of the Standard Flood Insurance Policy, General Property Form, *only* in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 8—General Conditions and Provisions

A. *Pair and Set Clause*: If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud*: This *policy* will be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance *made available* under the Act, in the name of a *unit* owner that provides coverage for the same loss covered by this *policy*, this *policy's* coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage: 1. Voidance: This policy* will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the National Flood Insurance Program of the community in which the property is located ceases, in which case the *policy* will be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and will not be renewed.

If the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* will be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an application for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in ≥ 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *Policy* is void from its inception date.

f. The insured has not submitted a community inspection report, cited in "F. *policy Renewal*" below and required in any notice that may have been sent to the Insured previously in conjunction with the community inspection procedure established under *National Flood Insurance Program* Regulations (44 CFR 59.30).

2. *Reduction of Coverage Limits or Reformation:* If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested

by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* will be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide flood insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer will give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* begins on its inception date and ends on its *expiration date*, as shown on the *declarations page* that is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *Policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* will not be renewed and the coverage provided by it will not continue into any successive *policy* term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the *expiration date*, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this *policy* will terminate as of the *expiration date*, of the last *policy* term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in *National Flood Insurance Program* Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for *policy* renewal. The Insured may be required to submit such an inspection report completed by a community official to certify whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, *if* the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal will occur and the *policy* will remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days before the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs*: The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy by Insured*: The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. Except with respect to a *condominium building* or a *building* that has a *condominium* form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer *receives* the Insured's written request for *cancellation* (signed by the Insured) the excess of premiums paid by the Insured that apply to the unused portion of the *policy*'s term, pro rata but with retention of the *expense constant* and the *Federal policy fee.*

2. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer

required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2., will be pro rata but with retention of the *expense constant* and the *Federal policy fee.*

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area*; and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause*: Payment of any loss under this *policy* will not reduce the amount of insurance applicable to any other loss during the *policy* term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice before the payment of loss proceeds under this *policy.*)

Loss, if any, under this *policy*, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy*, provided, That in case the mortgagor or owner will neglect to pay any premium due under this *policy*, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* will be null and void.

If this *policy* is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this *policy* and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations*: If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only)*: Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss*: Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this policy to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss*: Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss*: If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values*, amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be *made available* to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents*: The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. Options to Repair or Replace: The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable

time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options*: The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable*: Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment*: The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* In case the Insured and the Insurer will fail to agree as to the *actual cash value* or the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately *actual cash value* and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of actual cash value and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this policy for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this *policy* will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

U. *Subrogation:* If of any payment under this *policy*, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy;* and

2. *Not seek* renewal of this *policy;* and

3. *Not apply for any flood* insurance under the Act for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

5. We amend Part 61 by adding Appendix A(6) as follows:

Appendix A(6) to Part 61

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy Endorsement to Residential Condominium Building Association Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B. The provisions of this endorsement replace the provisions of Article 10 of the Standard Flood Insurance Policy, Residential Condominium Building Association Policy, *only* in applicable policies in Monroe County and the Village of Islamorada, Florida].

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article that is part of a pair or set, the measure of loss will be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss will not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* will be void, nor can this *policy* be renewed or any new flood insurance coverage be issued to the Insured if any person insured under Article 1, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount that is less than the premium amount that would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance *made available* under the Act, in the name of a *unit* owner that provides coverage for the same loss covered by this *policy*, this *policy*'s coverage will be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent

of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* will be void and of no legal force and effect if any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* will be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and will not be renewed.

If the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured will be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. If any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* will be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, will be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

f. The Insured has not submitted a community inspection report, cited in "F. *Policy Renewal*" below that was required in a notice sent to the Insured previously in conjunction with the community inspection procedure established under *National Flood Insurance Program* Regulations (44 CFR 59.30).

2. Reduction of Coverage Limits or Reformation: If the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* will be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer before a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer will give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer will give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* will be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer will give a notice of additional premium due and the right of reformation will continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal*: The term of this *policy* begins on its inception date and ends on its *expiration date*, as shown on the *declarations page* that is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured will not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *Policy* term are included in any renewal notice or new *policy* sent to the Insured. *policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* will not be renewed and the coverage provided by it will not continue into any successive *policy* term unless the renewal premium payment, and when applicable, the community inspection report referred to below, is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment, and when applicable, the community inspection report referred to below, is mailed by certified mail to the Insurer before the *expiration date*, it will be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during the 30-day period even if the loss occurs before the renewal premium payment, and when applicable, the community inspection report referred to below, is received within the required 30 days. In all other cases, this *policy* will terminate as of the *expiration date*, of the last *policy* term for which the premium payment, and when applicable, the community inspection report referred to below, was timely received and, in that event, the Insurer will not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

The community in which the insured property is located has been approved by the Federal Emergency Management Agency to participate in a special inspection procedure set forth in *National Flood Insurance Program* Regulations (44 CFR 59.30) that requires the submission of a community inspection report completed by local officials as one condition for *policy* renewal. The Insured may be required to submit such an inspection report completed by a community official certifying whether the insured property is in compliance with the community's floodplain management ordinance. The Insured will be notified in writing of this requirement approximately 6 months before the renewal date and again at the time the renewal bill is sent.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer before the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer before the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, if the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner that the insurer determines could preclude the likelihood of its being actually and timely received by the Insured before the due date for the renewal

premium, the following procedures will be followed:

If the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice before the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer will mail a second bill providing a revised due date, which will be 30 days after the date on which the bill is mailed.

If we do not receive the renewal payment requested by reason of the second bill by the revised due date, no renewal will occur and the *policy* will remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance*: Unless otherwise provided in writing added hereto, the Insurer will not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause*: If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the Act, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance will inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit will only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs*: The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured*: The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1., will be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area*; and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause*: Payment of any loss under this *policy* will not reduce the amount of insurance applicable to any other loss during the *policy* term that arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence will be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause*: (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice prior to the payment of loss proceeds under this *policy*.)

Loss, if any, under this *policy*, will be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, will not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy*, *provided*, that it in case the mortgagor or owner will neglect to pay any premium due under this *policy*, the mortgagee or trustee will, on demand, pay the same.

Provided, also, that the mortgagee or trustee will notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard that will come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it will be noted thereon and the mortgagee or trustee will, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* will be null and void.

If this *policy* is cancelled by the Insurer, it will continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and will then cease.

Whenever the Insurer will pay the mortgagee or trustee any sum for loss under this *policy* and will claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer will, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment will be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and will thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation will impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations*: If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, will render proof of loss in the form herein specified within 60 days thereafter and will be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause (Applicable to contents items only)*: Loss, if any, will be adjusted with the Insured and will be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss*: Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured

complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss that includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amount of loss claims, and any written plans and specifications for repair of the damaged property that can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* will not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* If at any time after a loss, the Insurer is unable to agree with the Insured as to the *actual cash value*—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each will select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers will first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire will be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers will then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, will submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer will determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser will be paid by the party selecting him or her and the expenses of appraisal and umpire will be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim will be sustainable in any court of law or equity unless all the requirements of this *policy* will have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property will have been situated.

U. *Subrogation:* If of any payment under this *policy*, the Insurer will be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured will do nothing after loss to prejudice such rights; however, this insurance will not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy;* and

2. *Not seek* renewal of this *policy;* and

3. *Not apply for any flood* insurance under the Act for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the Act. When the Insurer finds that duplicate policies are in effect, the Insurer will by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer will by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer will by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* of those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event will the resulting coverage limits exceed the statutorily permissible limits of coverage under the Act or the Insured's insurable interest, whichever is less.

The Insurer will make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions

of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Dated: April 8, 1999.

James L. Witt,

Director.

[FR Doc. 99–10396 Filed 5–4–99; 8:45 am]

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federal register

Wednesday
May 5, 1999

Part VI

The President

Proclamation 7189—Asian/Pacific American Heritage Month, 1999

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Presidential Documents

Title 3—

The President

Proclamation 7189 of April 30, 1999

Asian/Pacific American Heritage Month, 1999

By the President of the United States of America

A Proclamation

Seeking America's bright promise of freedom and fairness, millions of men and women of Asian and Pacific descent have immigrated to our Nation through the past 2 centuries to participate in our great experiment in democracy. Although they left behind their native lands and many of their loved ones, they carried in their hearts a rich and ancient history and a proud heritage.

Throughout the decades, the principles and cherished traditions of Asian and Pacific Americans have infused our way of life, and their diligence and determination have helped build and sustain our Nation. Asian immigrants and indigenous U.S. Pacific Islanders have made contributions to every facet of American life. Yet all too often, Asian immigrants and Pacific Islanders had to endure discrimination as our society struggled with its growing diversity. Overcoming prejudice and other hardships, these determined men and women have strengthened our society, our economy, and our national character in the process.

Asian and Pacific Americans today continue to make substantial contributions to our country and our culture, and this year's theme, "Celebrating Our Legacy," calls on us to recognize our common human spirit. Scientists and researchers like David Ho untangle the mysteries of human biology; astronauts like Kalpana Chawla explore the heavens; human rights activists like Dith Pran inspire us with their courage and conviction; athletes like Michele Kwan dazzle us with their grace and endurance; and inspiring leaders like Daniel Inouye and Bill Lann Lee fight for justice and equality for all our people. These sons and daughters of Vietnam, India, China, Korea, Japan, Cambodia, Fiji, the Philippines, Thailand, and many other nations, as well as the islands of Guam, American Samoa, and Hawaii, have enriched every aspect of our society with their talents, intellect, and determination.

While our Nation has made enormous strides on the path to full equality and inclusion, our work is far from finished. My Administration has strived to empower the Asian and Pacific American community by working to strengthen our economy, enforce our civil rights laws, invest in health and education, and promote racial reconciliation. Thanks in part to our economic initiatives, the median household income for Asian and Pacific Americans has significantly increased since 1993, while the poverty rate has declined by more than 8 percent. We have launched a new initiative to end racial and ethnic health disparities, and we established the first-ever Office of Minority Health Research and Alternative Medicine at the National Institutes of Health. Working to renew our commitment to excellence in education, my Administration also has secured a 35 percent increase in funding for bilingual and immigrant education.

To honor the accomplishments of Asian and Pacific Americans and to recognize their many contributions to our Nation, the Congress, by Public Law 102–450, has designated the month of May as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1999 as Asian/Pacific American Heritage Month. I call upon the people of the United States to observe this occasion with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–11475
Filed 5–4–99; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7190 of April 30, 1999

Older Americans Month, 1999

By the President of the United States of America

A Proclamation

As we look forward to the 21st century, we honor the millions of older Americans whose contributions have strengthened and sustained our Nation throughout the 20th century. These special citizens have led us through times of conflict, depression, peace, and prosperity and have witnessed firsthand the milestones that have defined this era as the "American Century." This month, as we salute their achievements, let us also renew our commitment to preserve for older Americans a quality of life that will help them look ahead to the future with peace of mind.

In recent decades, extraordinary advances in science, technology, and medicine, as well as our increased awareness of the importance of good nutrition and physical fitness, have enabled Americans to live longer, healthier lives. Over the course of the past 100 years, the average American's life-span has lengthened by nearly three decades, with the percentage of older Americans in our population more than tripling. By the year 2030, one in five Americans will be aged 65 or older.

As we enter the new millennium with a strong economy and the first budget surpluses since the 1960s, we have a historic opportunity to embrace the challenges and possibilities of a society where men and women will lead longer, more active, more productive lives. My Administration is working to make the most of this opportunity by proposing to set aside more than 75 percent of any budget surplus over the next 15 years to protect Social Security and Medicare; and we will also work to increase our investment in the scientific and medical research and development programs that will continue to lengthen and improve the lives of Americans in the years to come. We must continue to support older Americans—as well as their caregivers and those who provide critical home and community-based services—through a strong, reauthorized Older Americans Act; and we must work to ensure that long-term care needs are met now and in the future.

The theme of this year's celebration, "Honor the Past, Imagine the Future: Towards a Society for all Ages," reminds us of the profound debt of gratitude we owe to the generations of older Americans whose hard work, courage, faith, sacrifice, and patriotism helped to make this Nation great. Through turmoil and triumph, these Americans not only have defended our fundamental values of liberty, justice, and equality, but they also have handed down to younger generations the enduring traditions of community, family, and love of country that bind our society together.

Long life is a gift we must cherish and a wonderful opportunity and responsibility for which we must prepare. I urge all Americans to take time during this month to reaffirm our commitment, as individuals and as a Nation, to meet the challenges of an aging society. Working together, we can improve the lives of our older citizens, their families, and their caregivers and strive to ensure that all Americans enjoy healthy, financially secure, and productive lives.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1999 as Older Americans Month. I urge Government officials, business people, community leaders, educators, volunteers, and all the other people of the United States to celebrate the contributions older Americans have made throughout their lives to the progress of our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–11476
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Presidential Documents

Proclamation 7191 of April 30, 1999

Law Day, U.S.A., 1999

By the President of the United States of America

A Proclamation

America's founders recognized that the rule of law is the greatest guarantor of freedom and justice, the crucial barricade protecting civilization from chaos, democracy from tyranny. Among the chief grievances they enumerated in the Declaration of Independence were that "the present King of Great Britain . . . has refused his Assent to Laws, the most wholesome and necessary for the public Good. . . . He has made Judges dependent on his Will alone, for the Tenure of their Offices, and the Amount and Payment of their Salaries."

The Constitution and Bill of Rights reflect our founders' reverence for and faith in the rule of law, and they stand as an enduring charter of freedom and equality that continues to protect our fundamental rights today. But only the passage of additional laws over time has fulfilled the promise of justice enshrined in that charter. Amendments abolishing slavery and guaranteeing due process and equal protection to everyone came only after the Civil War—nearly 80 years after the ratification of the Constitution. It took almost another century, and the courageous and persistent efforts of lawyers such as Thurgood Marshall, to establish that the equal protection clause prohibits governments from enforcing segregation in schools and other public arenas. Women did not gain the right to vote until the ratification of the 19th Amendment in 1920.

During the past 4 decades, our Nation has continued to pursue the ideals of justice and equality. President Kennedy and President Johnson fought to enact what would become the Civil Rights Act of 1964 and the Voting Rights Act of 1965, laws that safeguard the rights of citizens to vote, to work, to use public accommodations, and to attend school free from illegal discrimination. In 1967, President Johnson signed the Age Discrimination in Employment Act to protect older Americans against discriminatory treatment in their jobs.

In 1990, President Bush signed into law the Americans with Disabilities Act, landmark legislation that recognizes the right of people with disabilities to have equal opportunity for employment and equal access to public services. Building on the Americans with Disabilities Act, I announced a new initiative in January of this year to remove significant barriers that prevent people with disabilities from joining the work force. We will invest more than two billion dollars over the next 5 years to provide tax credits to offset critical and expensive transportation costs, increased funding for assistive technology research, and greater access to health care for people with disabilities.

In May of 1998, I was proud to sign Executive Order 13087, which amends Federal equal employment opportunity policy to prohibit discrimination based on sexual orientation in the Federal civilian work force. My Administration is working with congressional leaders to pass the Employment Non-Discrimination Act (ENDA), which would prohibit most private employers from firing good workers solely because they are gay or lesbian. And we must secure equal pay legislation to ensure that women and minority employees receive fair compensation for their work.

America's trust in the rule of law and our continuing quest for equality under the law have defined our history for more than 200 years. Now, as we look forward to a new century, we must renew our commitment to the spirit of our Constitution and the strong foundation of civil rights laws that guarantee both our freedom and our security. We must reaffirm our goal of building an America where all people have an equal opportunity to reach their full potential and where no American is denied his or her rights because of race, national origin, gender, sexual orientation, religious beliefs, or disability. By doing so, we will fulfill our founders' vision of a Nation where all citizens share equally in the blessings and protections of the law.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, in accordance with Public Law 87–20 of April 7, 1961, do hereby proclaim May 1, 1999, as Law Day. I urge the people of the United States to consider anew how our laws protect our freedoms and contribute to our national well-being. I call upon members of the legal profession, civic associations, educators, librarians, public officials, and the media to promote the observance of this day with appropriate programs and activities. I also call upon public officials to display the flag of the United States on all government buildings throughout the day.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–11477
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Presidential Documents

Proclamation 7192 of April 30, 1999

Loyalty Day, 1999

By the President of the United States of America

A Proclamation

Born in the twilight of the 18th century, our great Nation has grown and flourished, surviving a civil war, the Great Depression, two World Wars, and the Cold War to emerge at the dawn of the 21st century as the world's best hope for freedom. The success of that journey of challenge and change was no accident. In 1787, when our founders came together to sign the Constitution and "secure the Blessings of Liberty," honor individual rights, and guarantee equality, they laid the foundations of a country that would inspire the lasting loyalty and love of its citizens.

The courage and sacrifice of generations of Americans who have served in our Armed Forces have sustained the vision of our Nation's founders. From the fields near Lexington and Concord to the skies over Belgrade, nearly 50 million citizens have placed themselves in harm's way to defend our freedom, promote our values, and advance our interests around the world. Many of them have died in the process, willing to make the ultimate sacrifice out of loyalty and devotion to our beloved country.

Millions of other generous men and women have proved their loyalty here at home. They have enriched the lives of their fellow Americans by volunteering in civic, religious, and school organizations. Throughout the decades, they have worked to expand America's promise of justice and equality to all our people, promoting civil rights, economic and educational opportunity, and political empowerment. In every era, they have worked to address this country's challenges and renew our legacy of citizen service. In doing so, they have strengthened our Nation from within and provided a symbol of hope around the world for those who seek refuge in a land where individual rights are revered and where their children can grow up in peace and freedom.

Recognizing the importance of loyalty to the continued strength of our country and success of our democracy, the Congress, by Public Law 85–529, has designated May 1 of each year as "Loyalty Day." On this day, let us reflect with pride on our great country and remember with gratitude the contributions of the many loyal and courageous Americans who have given so much of themselves both at home and around the world to preserve our freedom.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 1, 1999, as Loyalty Day. I urge all Americans to recognize the heritage of American freedom, to honor the memory of those who have served and sacrificed in defense of that freedom, and to express our loyalty to our Nation through appropriate patriotic programs, ceremonies, and activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

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Last List April 29, 1999

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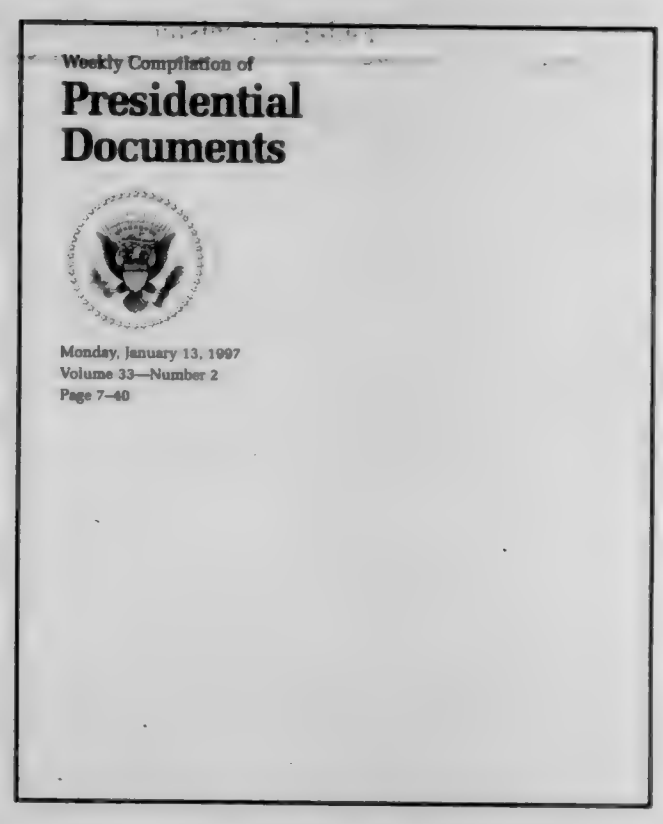
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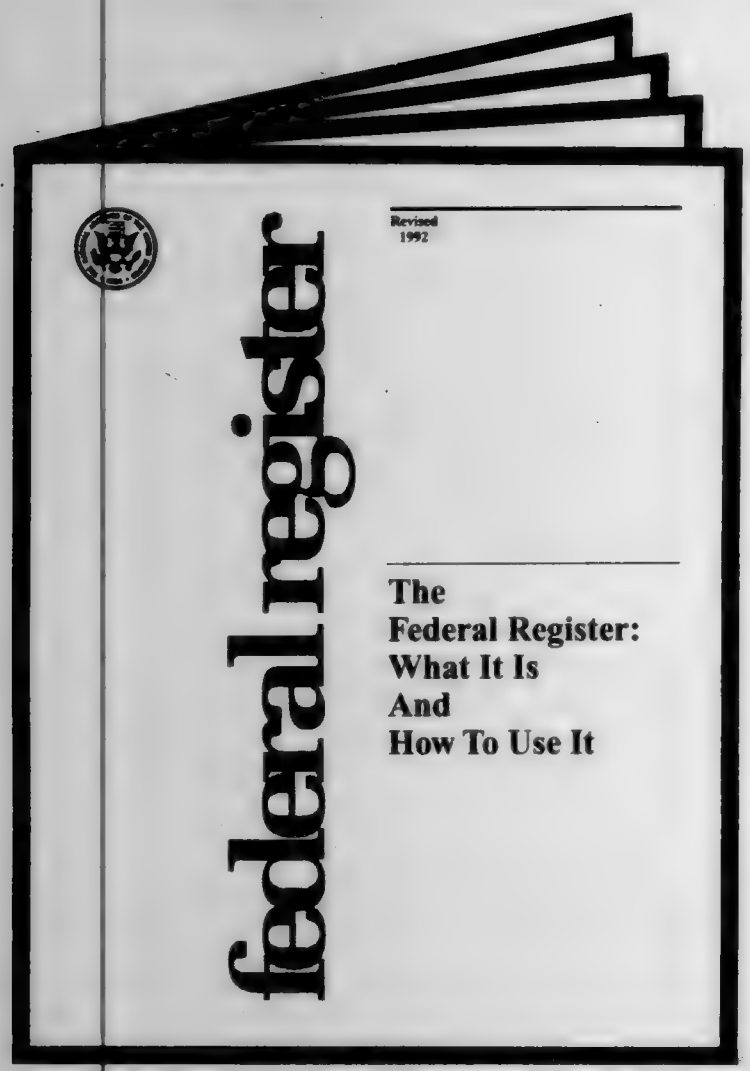
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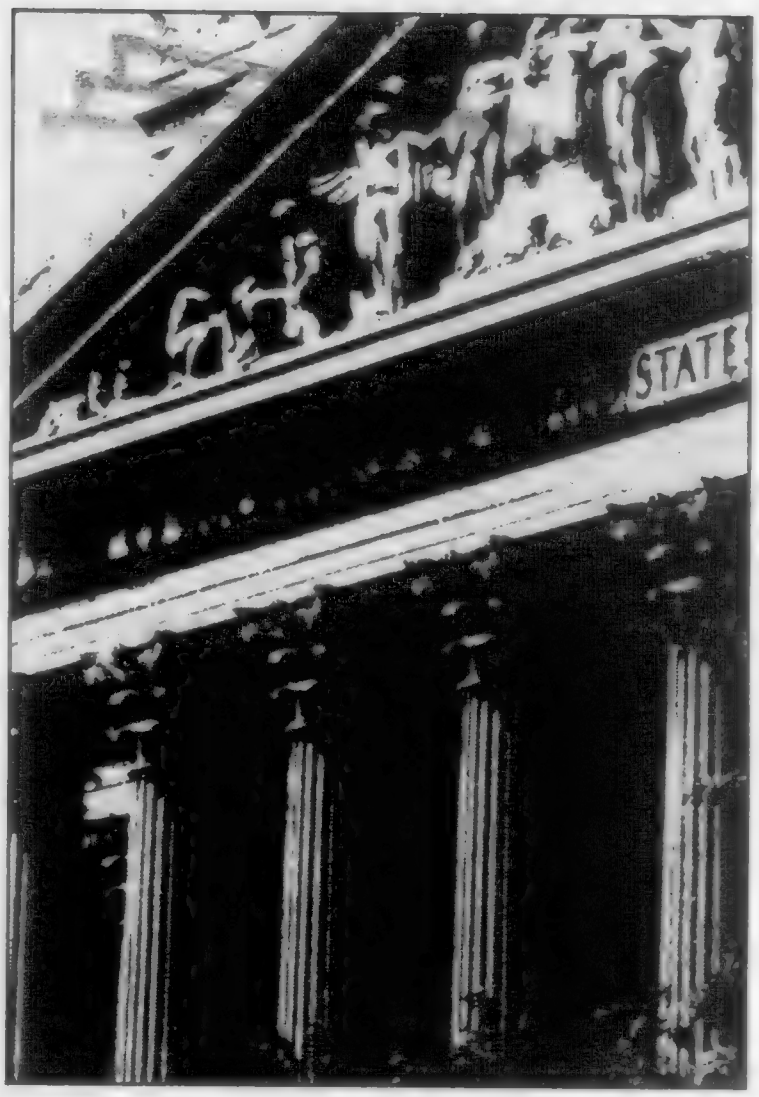
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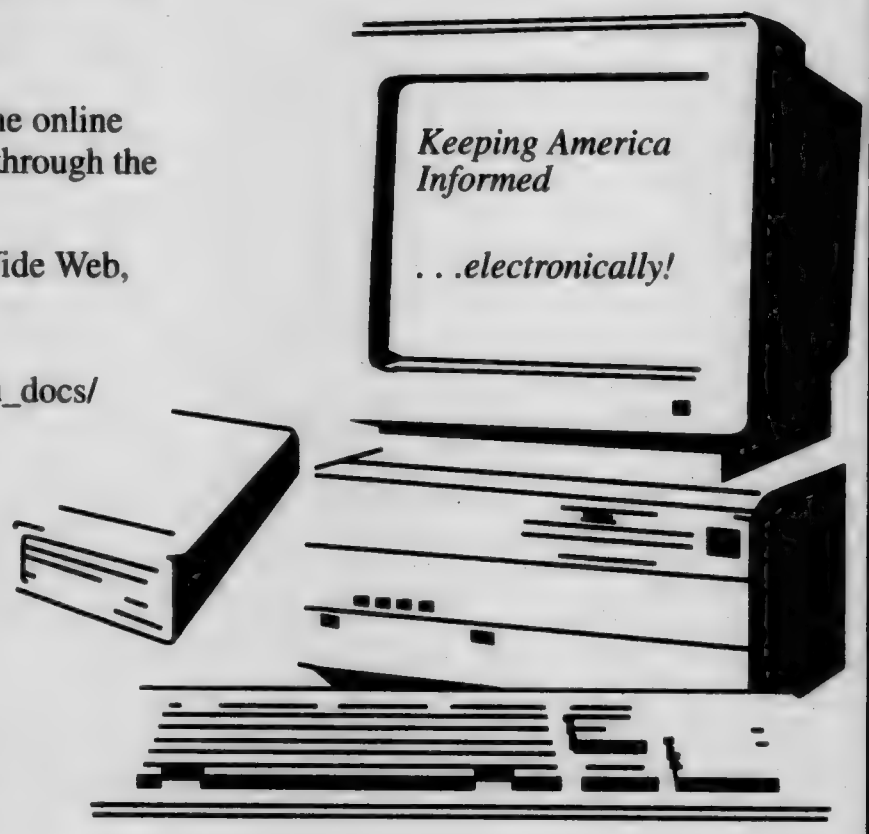
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Rules and Regulations

Federal Register
Vol. 64, No. 87
Thursday, May 6, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29558; Amdt. No. 1929]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPS) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated

impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC on 30 April 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instruction Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.3 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER DIAPs, identified as follows:

* * * *effective upon publication*

FDC date	State	City	Airport	FDC No.	SIAP
04/14/99	AL	Evergreen	Middleton Field	FDC 9/2496	VOR/DME or GPS RWY 9 Amdt 2...
04/14/99	PA	Monongahela	Monongahela/Rostraver	FDC 9/2482	GPS RWY 25 Orig...
04/15/99	ME	Greenville	Greenville Muni	FDC 9/2513	NDB or GPS RWY 14 Amdt 4A...
04/15/99	ME	Greenville	Greenville Seaplane Base	FDC 9/2517	NDB or GPS–A Amdt 4B...
04/16/99	KY	Flemingsburg	Fleming-Mason	FDC 9/2556	LOC RWY 25 Orig...
04/16/99	KY	Glasgow	Glasgow Muni	FDC 9/2569	SDF RWY 7 Amdt 9...
04/16/99	KY	Louisville	Louisville Intl-Standiford Field	FDC 9/2536	ILS RWY 35R (CAT I, II, III), Amdt 2...
04/16/99	MA	Nantucket	Nantucket Memorial	FDC 9/2545	NDB RWY 24 Amdt 11...
04/16/99	MA	Nantucket	Nantucket Memorial	FDC 9/2546	ILS RWY 24 Amdt 15A...
04/16/99	MA	Nantucket	Nantucket Memorial	FDC 9/2547	VOR or GPS RWY 24 Amdt 13...
04/16/99	MA	Nantucket	Nantucket Memorial	FDC 9/2548	GPS RWY 33 Orig...
04/19/99	ND	Grand Forks	Grand Forks Intl	FDC 9/2605	LOC BC RWY 17R, Amdt 12A...
04/19/99	ND	Grand Forks	Grand Forks Intl	FDC 9/2606	VOR or GPS RWY 17R, Amdt 5...
04/19/99	ND	Grand Forks	Grand Forks Intl	FDC 9/2608	ILS RWY 35L, Amdt 11...
04/19/99	ND	Grand Forks	Grand Forks Intl	FDC 9/2610	GPS RWY 26, Orig...
04/19/99	NJ	Teterboro	Teterboro	FDC 9/2599	GPS RWY 24 Orig...
04/21/99	MA	Boston	General Edward Lawrence Logan Intl	FDC 9/2666	ILS RWY 15R Orig-A...
04/21/99	MA	Marshfield	Marshfield	FDC 9/2667	NDB RWY 6 Amdt 4...
04/21/99	ND	Grand Forks	Grand Forks Intl	FDC 9/2619	VOR or SPS RWY 35L, Amdt 6...
04/21/99	NM	Socorro	Socorro Muni	FDC 9/2655	GPS RWY 33, Orig...
04/21/99	NM	Socorro	Socorro Muni	FDC 9/2656	NDB–B, Orig...
04/21/99	NM	Socorro	Socorro Muni	FDC 9/2657	VOR/DME or GPS–A, Orig...
04/22/99	MA	Marshfield	Marshfield	FDC 9/2698	GPS RWY 6 Orig...
04/22/99	MO	Bowling Green	Bowling Green Muni	FDC 9/2687	VOR/DME or GPS–A, Amdt 1A...
04/22/99	VA	Portsmouth	Hampton Roads	FDC 9/2700	NDB or GPS RWY 2, Amdt 6A...
04/27/99	GA	Statesboro	Statesboro Muni	FDC 9/2776	LOC RWY 32, Amdt 4A...
04/27/99	PA	Allentown	LeHigh Valley Intl	FDC 9/2804	ILS RWY 6 Amdt 21...
04/27/99	PA	Harrisburg	Capital City	FDC 9/2805	ILS RWY 8 Amdt 10B...
04/27/99	PA	Harrisburg	Harrisburg Intl	FDC 9/2806	ILS RWY 13 Orig...
04/27/99	UT	Cedar City	Cedar City Regional	FDC 9/2800	VOR RWY 20, Amdt 5...

[FR Doc. 99–11391 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29557; Amdt. No. 1928]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under

instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availablity of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Area Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical material. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identified the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 years.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (air).

Issued in Washington, DC, on April 30, 1999.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISLMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective May 20, 1999*

De Kalb, IL, De Kalb Taylor Muni, LOC/DME RWY 2, Orig
De Kalb, IL, De Kalb Taylor Muni, NDB RWY 27, Amdt 1
De Kalb, IL, De Kalb Taylor Muni, GPS RWY 9, Amdt 1
De Kalb, IL, De Kalb Taylor Muni, VOR/DME OR GPS RWY 27, Amdt 5
Indianapolis, IN, Indianapolis Intl, ILS RWY 5L, Amdt 1
Indianapolis, IN, Indianapolis Intl, ILS RWY 23R, Amdt 1
Rockland, ME, Knox County Regional, NDB RWY 3, Orig
Rockland, ME, Knox County Regional, NDB RWY 31, Orig
Minneapolis, MN, Minneapolis-St. Paul Intl/ Wold Chamberlain, ILS RWY 22, Amdt 7
Minneapolis, MN, Minneapolis-St. Paul Intl/ Wold Chamberlain, ILS RWY 30R, Amdt 9
Minneapolis, MN, Minneapolis-St. Paul Intl/ Wold Chamberlain, (Simultaneous Close Parallel) ILS PRM RWY 30R, Amdt 4
Owatonna, MN, Owatonna Muni, ILS RWY 30, Orig

Sand Island, Midway Atoll, MQ, Henderson Field, NDB RWY 6, Orig
Sand Island, Midway Atoll, MQ, Henderson Field, NDB RWY 24, Orig

** * * Effective June 17, 1999*

Leesburg, FL, Leesburg Regional, GPS RWY 13, Orig
Bainbridge, GA, Decatur County Industrial Air Park, GPS RWY 9, Orig
Carrollton, GA, West Georgia Regional O V Gray Field, NDB, OR GPS RWY 34, Amdt 2
Marietta, GA, Cobb County-McCollum Field, GPS RWY 9, Orig
Crookston, MN, Crookston Muni Kirkwood Fld, VOR RWY 31, Amdt 5
Crookston, MN, Crookston Muni Kirkwood Fld, NDB OR GPS RWY 13, Amdt 7
Crookston, MN, Crookston Muni Kirkwood Fld, GPS RWY 31, Amdt 1

** * * Effective July 15, 1999*

Gambell, AK, Gambell, NDB RWY 16, Amdt 1
Gambell, AK, Gambell, NDB/DME RWY 34, Amdt 2
Gambell, AK, Gambell, GPS RWY 16, Orig
Gambell, AK, Gambell, GPS RWY 34, Orig
Haleyville, AL, Posey Field, GPS RWY 36, Orig
Fort Myers, FL, Page Field, GPS RWY 5, Orig
Fort Myers, FL, Page Field, GPS RWY 13, Orig
Fort Myers, FL, Page Field, GPS RWY 23, Orig
Fort Myers, FL, Page Field, GPS RWY 31, Orig
Miami, FL, Opa Locka, GPS RWY 9L, Orig
Miami, FL, Opa Locka, GPS RWY 27R, Orig
Atlanta, GA, Fulton County Airport-Brown Field, GPS RWY 26, Orig
Toccoa, GA, Toccoa RG Letourneau Field, GPS RWY 2, Orig
Toccoa, GA, Toccoa RG Letourneau Field, VOR OR GPS RWY 20, Amdt 12
Washington, IA, Washington Muni, GPS RWY 18, Orig
Washington, IA, Washington Muni, GPS RWY 36, Orig
West Union, IA, George L. Scott Muni, GPS RWY 17, Orig
West Union, IA, George L. Scott Muni, GPS RWY 35, Orig
Lexington, KY, Blue Grass, GPS RWY 4, Orig
Lexington, KY, Blue Grass, GPS RWY 22, Orig
Somerset, KY, Somerset-Pulaski County-J.T. Wilson Field, GPS RWY 22, Amdt 1
Columbus-West Point-Starkville, MS, Golden Triangle Regional, GPS RWY 18, Orig
Columbus-West Point-Starkville, MS, Golden Triangle Regional, GPS RWY 36, Orig
Oxford, MS, University-Oxford, GPS RWY 9, Orig
Oxford, MS, University-Oxford, GPS RWY 27, Orig
Yazoo City, MS, Yazoo County, GPS RWY 17, Orig
Yazoo City, MS, Yazoo County, GPS RWY 35, Orig
Columbia, MO, Columbia Regional, ILS RWY 2, Amdt 13
Stockton, MO, Stockton Muni, VOR/DME OR GPS–A, Amdt 2
Stockton, MO, Stockton Muni, GPS RWY 1, Orig
Stockton, MO, Stockton Muni, GPS RWY 19, Orig
Santa Fe, NM, Santa Fe Muni, GPS RWY 2, Orig
Santa Fe, NM, Santa Fe Muni, GPS RWY 33, Orig
Elizabethtown, NC, Elizabethtown, GPS RWY 15, Orig
Elizabethtown, NC, Elizabethtown, VOR/DME RWY 15, Amdt 1
Elizabethtown, NC, Elizabethtown, GPS RWY 33, Orig
Elizabethtown, NC, Elizabethtown, NDB RWY 33, Amdt 1
Wadesboro, NC, Anson County, GPS RWY 17, Orig
Wadesboro, NC, Anson County, GPS RWY 35, Orig
Bismarck, ND, Bismarck Muni, RADAR–1, Amdt 3
Ada, OK, Ada Muni, GPS RWY 17, Orig
Altus, OK, Altus Muni, GPS RWY 17, Amdt 1
Altus, OK, Altus Muni, VOR/DME RNAV RWY 17, Amdt 2
Chickasha, OK, Chickasha Muni, GPS RWY 35, Orig
Jacksboro, TN, Campbell County, GPS RWY 23, Orig
Lawrenceburg, TN, Lawrenceburg-Lawrence-County, GPS RWY 17, Orig
Rogersville, TN, Hawkins County, GPS RWY 7, Orig
Savannah, TN, Savannah-Hardin County, GPS RWY 1, Orig
Savannah, TN, Savannah-Hardin County, GPS RWY 19, Orig
Austin, TX, Robert Mueller Muni, ILS RWY 13R, Amdt 10A, CANCELLED
Austin, TX, Robert Mueller Muni, ILS RWY 31L, Amdt 33A, CANCELLED
Austin, TX, Robert Mueller Muni, GPS RWY 13R, Orig-A, CANCELLED
Austin, TX, Robert Mueller Muni, GPS RWY 31L, Orig-A, CANCELLED
Crockett, TX, Houston County, GPS RWY 2, Orig
Crockett, TX, Houston County, GPS RWY 20, Orig
Houston, TX, William P. Hobby, GPS RWY 4, Orig
Houston, TX, William P. Hobby, GPS RWY 12R, Orig
Houston, TX, William P. Hobby, GPS RWY 17, Orig
Houston, TX, William P. Hobby, GPS RWY 22, Orig
Houston, TX, William P. Hobby, GPS RWY 30L, Orig
Houston, TX, William P. Hobby, GPS RWY 35, Orig

[FR Doc. 99–11390 Filed 5–5–99; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD 01–99–034]

RIN 2115–AA97

Safety Zone: Ellis Island Medals of Honor Fireworks, New York Harbor, Upper Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Ellis Island Medals of Honor Fireworks program located north of Federal Anchorage 20B, New York Harbor, Upper Bay. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Federal Anchorages 20A and 20B.

DATES: This rule is effective from 8:30 p.m. until 10 p.m., on Saturday, May 8, 1999. There is no rain date for this event.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation. Good cause exists for not publishing an NPRM and for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date the Application for Approval of Marine Event was receive, there was insufficient time to draft and publish an NPRM and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to public interest since immediate action is needed to close a portion of the waterway and protect the maritime public from the hazards associated with this fireworks display. This is also an annual event published in 33 CFR 100.114. However, this year's display is

being moved from east of Liberty Island to east of Ellis Island.

Background and Purpose

On March 3, 1999, Fireworks by Grucci submitted an application to hold a fireworks program on the water of Upper New York Bay between Federal Anchorages 20A and 20B. The fireworks program is being sponsored by The Forum. This regulation establishes a safety zone in all waters of Upper New York Bay within a 360 yard radius of the fireworks barge located in approximate position 40°41′15″ N. 074°02′09″ W. (NAD 1993), approximately 365 yards east of Ellis Island. The safety zone is in effect from 8:30 p.m. until 10 p.m. on Saturday, May 8, 1999. There is no rain date for this event. The safety zone prevents vessels from transiting a portion of Federal Anchorages 20A and 20B and is needed to protect boaters from the hazards associated with fireworks launched form a barge in the area. Recreational and commercial vessel traffic will be able to anchor in the unaffected northern and southern portions of Federal Anchorages 20A and 20B. Federal Anchorages 20C, 20D and 20E, to the south, are also available for vessel use. Marine traffic will still be able to transit through Anchorage Channel, Upper Bay, during the event as the safety zone only extends 150 yards into the 900-yard wide channel. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This finding is based on the limited marine traffic in the area, the minimal time that vessels will be restricted from the zone, that vessels may safely anchor to the north and south of the zone, that vessels may still transit through Anchorage Channel during the event, and extensive advance notifications which will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons discussed in the Regulatory Evaluation above, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain *Federal mandates*. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This Final Rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this final rule and concluded that under Figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this Final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This Rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This Rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This Rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This Rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–034 to read as follows:

§ 165.T01–034 Safety Zone; Ellis Island Medals of Honor Fireworks, New York Harbor, Upper Bay.

(a) *Location*. The following area is a safety zone: All waters of New York Harbor, Upper Bay within a 360 yard radius of the fireworks barge in approximate position 40°41′15″ N., 074°02′09″ W. (NAD 1983), approximately 365 yards East of Ellis Island.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on Saturday, May 8, 1999. There is no rain date for this event.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on scene patrol personnel. U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 23, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11343 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 61 and 63

[FRL–6316–7]

Clean Air Act Final Approval in Part and Final Disapproval in Part, Section 112(l), Program Submittal; State of Alaska; Amendment and Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final approval in part and disapproval in part; amendment and clarification.

SUMMARY: This action identifies which 40 CFR Parts 61 and 63 General Provisions authorities are delegated to the Alaska Department of Environmental Conservation (ADEC), and serves as a clarification to the Clean Air Act Final Approval in Part and Final Disapproval in Part, Section 112(l), Program Submittal; State of Alaska, published on December 5, 1996 (*see* 61 FR 64463). This action amends 40 CFR 61.04 and 63.99 by revising and adding tables outlining ADEC's current delegation status.

DATES: The amendments are effective on May 6, 1999.

ADDRESSES: Copies of the requests for delegation and other supporting documentation are available for public inspection at the following location: U.S. Environmental Protection Agency, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101.

FOR FURTHER INFORMATION CONTACT: Andrea Wullenweber, US EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA, 98101, (206) 553–8760.

SUPPLEMENTARY INFORMATION:

I Administrative Requirements

Under Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore, not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), entitled "Protection of Children from Environmental Health Risks and Safety Risks," because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 6, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements [*see* section 307(b)(2)].

II Clarification

What Action Is EPA Taking Today?

This action clarifies which 40 CFR Parts 61 and 63 General Provisions authorities are delegated to the Alaska Department of Environmental Conservation (ADEC), and serves as a clarification to the Clean Air Act Final Approval in Part and Final Disapproval in Part, Section 112(l), Program Submittal; State of Alaska, published on December 5, 1996 (*see* 61 FR 64463).

Why Is EPA Taking This Action?

On December 5, 1996 (*see* 61 FR 64463), EPA granted ADEC final approval in part and final disapproval in part of Clean Air Act, Section 112(l), authority to implement and enforce specific 40 CFR Parts 61 and 63 federal NESHAP regulations which have been adopted into state law. Since that December 5, 1996, **Federal Register** action, EPA has issued guidance identifying which 40 CFR Part 63, Subpart A, General Provisions, authorities may and may not be delegated to state and local agencies. This guidance was issued in a memorandum from John Seitz, Director, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies." In light of this guidance, Chuck Clarke, Regional Administrator, EPA, Region X, issued a letter of clarification to Michele Brown, Commissioner, ADEC, dated March 11, 1999, identifying specifically which 40 CFR Parts 61 and 63 General Provisions authorities are and are not delegated to ADEC. This clarification notice summarizes that letter.

Which Part 63 General Provisions Authorities Are Delegated to ADEC?

EPA, Region 10, has determined that ADEC has sufficient expertise to implement all of the 40 CFR Part 63 General Provisions authorities which

may be delegated to state and local agencies, as listed in the July 10, 1998, memorandum from John Seitz (referenced above). The table below lists these General Provisions authorities which are delegated to ADEC. In delegating 40 CFR 63.9 and 63.10, Approval of Adjustments to Time Periods for Submitting Reports, ADEC has the authority to approve adjustments to the timing that reports are due, but does not have the authority to alter the contents of the reports. For Title V sources, semiannual and annual reports are required by Part 70, and this does not change that requirement.

In delegating these authorities, EPA grants ADEC the authority to make decisions which are not likely to be nationally significant nor alter the stringency of the underlying standard. The intent is that ADEC will make decisions on a source-by-source basis, *not* on a source category-wide basis. Additionally, ADEC may assume that for any authorities not listed in this preamble, in the Part 63 Delegation Status table, or in the subparts as not delegable, ADEC has been delegated that particular authority.

40 CFR PART 63, SUBPART A, GENERAL PROVISIONS AUTHORITIES WHICH ADEC IS DELEGATED

Section	Authorities
63.1	Applicability Determinations.
63.6(e)	Operation and Maintenance Requirements—Responsibility for Determining Compliance.
63.6(f)	Compliance with Non-Opacity Standards—Responsibility for Determining Compliance.
63.6(h) [except 63.6(h)(9)]	Compliance with Opacity and Visible Emissions Standards—Responsibility for Determining Compliance.
63.7(c)(2)(i) and (d)	Approval of Site-Specific Test Plans.
63.7(e)(2)(i)	Approval of Minor Alternatives to Test Methods.
63.7(e)(2)(ii) and (f)	Approval of Intermediate Alternatives to Test Methods.
63.7(e)(2)(iii)	Approval of Shorter Sampling Times and Volumes When Necessitated by Process Variables or Other Factors.
63.7(e)(2)(iv) and (h)(2), (3)	Waiver of Performance Testing.
63.8(c)(1) and (e)(1)	Approval of Site-Specific Performance Evaluation (monitoring) Test Plans.
63.8(f)	Approval of Minor Alternatives to Monitoring.
63.8(f)	Approval of Intermediate Alternatives to Monitoring.
63.9 and 63.10 [except 63.10(f)]	Approval of Adjustments to Time Periods for Submitting Reports.

Note: For definitions of minor and intermediate alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

Which Part 63 General Provisions Authorities Are Automatically Granted to ADEC as Part of Its Part 70 Operating Permits Program?

The 40 CFR Part 63 General Provisions authorities that are automatically granted to ADEC as part of its Part 70 operating permits program approval (regardless of whether the operating permits program approval is interim or final) are: 40 CFR 63.5(e) and (f), Approval and Disapproval of Construction and Reconstruction, and 63.6(i)(1), Extension of Compliance with Emission Standards. Sections 112(i)(1) and (3) state that the "Administrator (or a State with a permit program approved under Title V)" may conduct preconstruction review and may grant compliance extensions. EPA interprets that this authority does not require delegation through subpart E and, instead, is automatically granted to States as part of their Part 70 operating permits program approval. Additionally, for 40 CFR 63.6(i)(1), ADEC does not need to have been delegated a particular standard or have issued a Part 70 operating permit to a particular source to grant that source a compliance extension.

Which Part 63 General Provisions Authorities Are Not Delegated to ADEC?

As a general rule, in delegating the authorities of 40 CFR Part 63, Subpart A, to state or local agencies, EPA retains certain decision-making authorities which could result in a change to the stringency of an underlying standard, which are likely to be nationally significant, or which may require a rulemaking and subsequent **Federal Register** notice. ADEC is not delegated those 40 CFR Parts 63 authorities listed in the footnotes of the Part 63 Delegation Status table at the end of this rule. Additionally, ADEC is not delegated any authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.

Section 63.6(g), Use of an Alternative Non-opacity Emission Standard, also cannot be delegated to a state or local agency because approval of such an alternative requires a Federal rulemaking. Sections 63.12 through 63.15 contain the following information, which is not necessary to delegate to state or local agencies: State Authority and Delegations (63.12), Addresses of State Air Pollution Control Agencies and EPA Regional Offices (63.13), Incorporations By Reference (63.14), and Availability of Information and Confidentiality (63.15).

Which Part 61 General Provisions Authorities Are Not Delegated to ADEC?

As a general rule, in delegating the authorities of 40 CFR Parts 61, Subpart A, to state or local agencies, EPA retains certain decision-making authorities which could result in a change to the stringency of an underlying standard, which are likely to be nationally significant, or which may require a rulemaking and subsequent **Federal Register** notice. In the footnotes of the Part 61 Delegation Status table at the end of this rule, EPA has identified which authorities are not delegated to ADEC. This list has been compiled jointly by EPA's Office of Environmental Compliance and Assistance (OECA) and EPA, Region 10, based on the July 10, 1998, memorandum from John Seitz (as referenced above), EPA policy memos from pre-1990, and a guidance document under development by OECA entitled, "How to Review and Issue Clean Air Act Applicability Determinations and Alternative Monitoring."

Sections 61.04(b) and 61.16 contain the following information, respectively,

which is not necessary to delegate to state or local agencies: Address and Availability of Information. Also, ADEC is not delegated any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; as well as any authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.

Which Part 61 General Provisions Authorities Are Delegated to ADEC?

ADEC may assume that for any authorities not listed in this preamble, in the Part 61 Delegation Status table, or in the subparts as not delegable, ADEC has been delegated that particular authority. Additionally, in delegating these authorities, EPA grants ADEC the authority to make decisions which are not likely to be nationally significant nor alter the stringency of the underlying standard. The intent is that ADEC will make decisions on a source-by-source basis, not on a category-wide basis.

What Are ADEC's Reporting Requirements to EPA?

As a condition of receiving delegation of the General Provisions authorities, ADEC must submit to EPA the following information:

- ADEC must input all source information into the Aerometric Information Retrieval System (AIRS) for both point and area sources by September 30 of each year;
- ADEC must report to EPA, Region X, all MACTRAX information upon request, which is typically semiannually. (MACTRAX provides summary data for each implemented NESHAP that EPA uses to evaluate the Air Toxics Program);
- ADEC must also provide any additional compliance related information to EPA, Region X, as agreed upon in the Compliance Assurance Agreement;
- ADEC must submit to EPA, Region X, copies of determinations issued pursuant to the delegated General Provisions authorities (which are listed in Table 1);
- ADEC must also forward to EPA, Region X, copies of any notifications received pursuant to 63.6(h)(7)(ii) pertaining to the use of a continuous opacity monitoring system; and

ADEC must submit to EPA's Emission Measurement Center of the Emissions Monitoring and Analysis Division copies of any approved intermediate changes to test methods or monitoring. (For definitions of major, intermediate and minor alternative test methods or monitoring methods, see the July 10, 1998, memorandum from John Seitz, referenced above). These intermediate test methods or monitoring changes should be sent via mail or facsimile to: Chief, Source Categorization Group A, U.S. EPA (MD–19), Research Triangle Park, NC 27711, Facsimile telephone number: (919) 541–1039.

What Is the Effective Date of This Clarification?

This clarification of ADEC's delegation of authority was effective on the date of the letter from Chuck Clarke, EPA, to Michele Brown, ADEC, which was March 11, 1999. Please note that this clarification does not change any source-specific determinations that have already been made under the 40 CFR Parts 61 and 63 General Provisions; instead, this should be used as guidance for all future decisions regarding the General Provisions authorities.

What Is the Impact of This Clarification on the Regulated Community?

This clarification notice informs the regulated community where to send requests for determinations that will be made pursuant to the General Provisions authorities in Parts 61 and 63. For those General Provisions authorities that are delegated, requests should be submitted to ADEC; and for those General Provisions authorities that are not delegated, requests should be submitted to EPA.

What Is The Impact of This Clarification on Indian Country in Alaska?

This clarification notice (as well as the original December 5, 1996, delegation) does not extend to "Indian country" located in Alaska, as defined in 18 USC Section 1151. Because the extent of Indian country is currently unknown and is subject to litigation, the exact boundaries of Indian country have not been established in Alaska. At present, the lands acknowledged to be Indian country are the Annette Island Reserve, the trust lands identified as Indian country by the United States in Klawock, Kake, and Angoon, and the Native allotments still in restricted status. With this clarification, EPA does not intend to affect the rights of federally-recognized Indian tribes in Alaska, nor does it intend to limit the existing rights of the State of Alaska. Because the approved ADEC program does not extend to sources and activities in Indian country, EPA will continue to implement NESHAPs in Indian country.

III Amendment

What Action Is EPA Taking Today?

EPA is amending 40 CFR 61.04(b)(C) to correct ADEC's address, and is amending 40 CFR 61.04(c)(10) to add ADEC's delegation status for Part 61 standards to the existing table for Region X. EPA is also amending 40 CFR 63.99(a)(2) to add a table listing ADEC's delegation status for Part 63 standards. These Delegation Status tables are listed at the end of this rule.

Why Is EPA Taking This Action?

EPA is amending these tables to add ADEC's delegation status to help the reader more easily distinguish which subparts of Parts 61 and 63 are delegated. This information helps the reader determine which agency (EPA or ADEC) is the primary implementing and enforcing agency for a particular subpart. These tables list the subparts that were delegated to ADEC in a **Federal Register** action published on December 5, 1996 (*see* 61 FR 64463), and also list the Parts 61 and 63 General Provisions authorities which are not delegated to ADEC, based on this clarification notice.

List of Subjects

40 CFR Part 61

Environmental protection, Air pollution control, Arsenic, Asbestos, Benzene, Beryllium, Hazardous substances, Mercury, Reporting and recordkeeping requirements, Vinyl Chloride.

40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Reporting and recordkeeping requirements.

Dated: March 18, 1999.

Jane S. Moore,

Acting Regional Administrator, Region X.

Title 40, chapter I, parts 61 and 63 of the Code of Federal Regulations is amended as follows:

PART 61—[AMENDED]

1. The authority citation for part 61 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7413, 7414, 7416, 7601 and 7602.

Subpart A—General Provisions

2. Section 61.04 is amended in paragraph (b) by revising paragraph (b)(C); and by revising the existing table in paragraph (c)(10) and the note to paragraph (c)(10) to read as follows:

§ 61.04 Address.

* * * * *

(b) * * *

(C) State of Alaska, Department of Environmental Conservation (ADEC), 410 Willoughby Avenue, Suite 105, Juneau, AK 99801–1795.

Note: For a table listing ADEC's delegation status, see paragraph (c)(10) of this section.

* * * * *

(c) * * *

(10) * * *

DELEGATION STATUS FOR PART 61 STANDARDS—REGION X

Subpart	ADEC[1]	IDEQ[2]	ODEQ[3]	LRAPA[4]	Ecology[5]	BCAA[6]	NWAPA[7]	OAPCA[8]	PSAPCA[9]	SCAPCA[10]	SWAPCA[11]	YRCAA[12]
A General Provisions[13]	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
B Radon from Underground Uranium Mines												
C Beryllium	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
D Beryllium Rocket Motor Firing	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
E Mercury	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
F Vinyl Chloride	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
H Emissions of Radionuclides other than Radon from Dept of Energy facilities												
I Radionuclides from Federal Facilities other than Nuclear Regulatory Commission Licensees and not covered by Subpart H												
J Equipment Leaks of Benzene	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
K Radionuclides from Elemental Phosphorus Plants												
L Benzene from Coke Recovery	.....	.....	.....	.....	.....	.....	X	.....	X	.....	.....	
M Asbestos	X[1]	.....	.....	.....	.....	.....	X	.....	X	.....	X	
N Arsenic from Glass Plants	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
O Arsenic from Primary Copper Smelters	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
P Arsenic from Arsenic Production Facilities	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
Q Radon from Dept of Energy facilities												
R Radon from Phosphogypsum Stacks												
T Radon from Disposal of Uranium Mill Tailings												
V Equipment Leaks	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
W Radon from Operating Mill Tailings												
Y Benzene from Benzene Storage Vessels	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	
BB Benzene from Benzene Transfer Operations	.....	.....	.....	.....	.....	.....	X	.....	X	.....	X	
FF Benzene Waste Operations	X	.....	.....	.....	.....	.....	X	.....	X	.....	X	

[1] Alaska Department of Environmental Conservation (1/18/97) NOTE: Alaska received delegation for sections 61.145 and 61.154 of Subpart M (Asbestos), along with other sections and appendices which are referenced in 61.145, as 61.145 applies to sources required to obtain an operating permit under Alaska's regulations. EPA retains the authority to implement and enforce Subpart M for area source asbestos demolition and renovation activities.

[2] Idaho Division of Environmental Quality.

[3] Oregon Department of Environmental Quality.

[4] Lane Regional Air Pollution Authority.

[5] Washington Department of Ecology.

[6] Benton Clean Air Authority.

[7] Northwest Air Pollution Authority (5/14/98).

[8] Olympic Air Pollution Control Authority.

[9] Puget Sound Air Pollution Control Agency (7/1/97).

[10] Spokane County Air Pollution Control Authority.

[11] Southwest Air Pollution Control Authority (8/1/96).

[12] Yakima Regional Clean Air Authority.

[13] Authorities which are not delegated include: 40 CFR 61.04(b); 61.12(d)(1); 61.13(h)(1)(ii) for approval of major alternatives to test methods; 61.14(g)(1)(ii) for approval of major alternatives to monitoring; 61.16; 61.53(c)(4); any sections in the subparts pertaining to approval of alternative standards (i.e., alternative means of emission limitations), or approval of major alternatives to test methods or monitoring; and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated.

Note to paragraph (c)(10): Dates in parenthesis indicate the effective date of the federal rules that have been adopted by and delegated to the state or local air pollution control agency. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

Subpart E—Approval of State Programs and Delegation of Federal Authorities

2. Section 63.99 is amended by adding paragraph (a)(2) to read as follows:

§ 63.99 Delegated Federal authorities.

(a) * * *

(2) Alaska.

(i) The following table lists the specific part 63 standards that have been delegated unchanged to the Alaska Department of Environmental Conservation. The (X) symbol is used to indicate each subpart that has been delegated.

DELEGATION STATUS FOR PART 63 STANDARDS—ALASKA

	Subpart		Alaska Department of Environmental Conservation (1/18/97)
A		General Provisions [1]	X
D		Early Reductions	X
F		HON-SOCMI.	
G		HON-Process Vents.	
H		HON-Equipment Leaks.	
I		HON-Negotiated Leaks.	
L		Coke Oven Batteries.	
M		Perc Dry Cleaning	X
N		Chromium Electroplating	X [2]
O		Ethylene Oxide Sterilizers.	
Q		Industrial Process Cooling Towers	X
R		Gasoline Distribution	X
S		Pulp and Paper.	
T		Halogenated Solvent Cleaning	X
U		Polymers and Resins I.	
W		Polymers and Resins II-Epoxy.	
X		Secondary Lead Smelting.	
Y		Marine Tank Vessel Loading	X
CC		Petroleum Refineries	X
DD		Off-Site Waste and Recovery	X
EE		Magnetic Tape Manufacturing.	
GG		Aerospace Manufacturing & Rework.	
II		Shipbuilding and Ship Repair	X
JJ		Wood Furniture Manufacturing Operations	X
KK		Printing and Publishing Industry	X
LL		Primary Aluminum.	
OO		Tanks—Level 1.	
PP		Containers.	
QQ		Surface Impoundments.	
RR		Individual Drain Systems.	
VV		Oil-Water Separators and Organic-Water Separators.	
EEE		Hazardous Waste Combustors.	
JJJ		Polymers and Resins IV.	

[1] Authorities which are not delegated include: 40 CFR 63.6(g); 63.6(h)(9); 63.7(e)(2)(ii) and (f) for approval of major alternatives to test methods; 63.8(f) for approval of major alternatives to monitoring; 63.10(f); and all authorities identified in the subparts (i.e., under "Delegation of Authority") that cannot be delegated. For definitions of minor, intermediate, and major alternatives to test methods and monitoring, see memorandum from John Seitz, Office of Air Quality Planning and Standards, dated July, 10, 1998, entitled, "Delegation of 40 CFR Part 63 General Provisions Authorities to State and Local Air Pollution Control Agencies."

[2] Alaska received delegation for Subpart N (Chromium Electroplating) as it applies to sources required to obtain an operating permit under Alaska's regulations. EPA retains the authority for implementing and enforcing Subpart N for area source chromium electroplating and anodizing operations which have been exempted from Part 70 permitting in 40 CFR 63.340(e)(1).

(ii) [Reserved]

Note to paragraph (a)(2): The date in parenthesis indicates the effective date of the federal rules that have been adopted by and delegated to the Alaska Department of Environmental Conservation. Therefore, any amendments made to these delegated rules after this effective date are not delegated to the agency.

* * * * *

[FR Doc. 99–11270 Filed 5–5–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300846; FRL–6074–9]

RIN 2070–AB78

Myclobutanil; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide myclobutanil and its metabolite in or on strawberries at 0.5 parts per million (ppm) for an additional 1-year period. This tolerance will expire and is revoked on March 31, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on strawberries. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective May 6, 1999. Objections and requests for hearings must be received by EPA, on or before July 6, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP-300846], must be submitted to: Hearing Clerk

(1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP-300846], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300846]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Stephen Schaible, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm., 271, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9362; e-mail: schaible.stephen@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of April, 11, 1997 (62 FR 17730) (FRL–5597–9), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of myclobutanil and its metabolite in or on strawberries at 0.5 ppm, with an expiration date of March 31, 1998. EPA extended the expiration date of this tolerance to March 31, 1999, in a **Federal Register** notice published March 4, 1998 (FRL 5772–8). EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of myclobutanil on strawberries for this year growing season due to continued incidence of powdery mildew in Florida and California and the claimed ineffectiveness of registered alternatives at controlling the disease. After having reviewed the submission, EPA concurs that an emergency condition could exist. EPA has authorized under FIFRA section 18 the use of myclobutanil on strawberries for control of powdery mildew in strawberries.

EPA assessed the potential risks presented by residues of myclobutanil in or on strawberries. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of April 11, 1997 (62 FR 17730) (FRL–5597–9). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 1–year period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on March 31, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on strawberries after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 6, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305-5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a

reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300846] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 23, 1999.

Peter Caulkins,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

§180.443 [Amended]

2. In §180.443, by amending the table in paragraph (b), by revising the date for Strawberries from "3/31/99" to read "3/31/00".

[FR Doc. 99–11385 Filed 5–5–99; 8:45 am]

BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 64, No. 87
Thursday, May 6, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 20

RIN 1076–AD95

Financial Assistance and Social Services Programs

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Proposed rule.

SUMMARY: The Bureau of Indian Affairs (Bureau) is proposing to revise the existing Financial Assistance and Social Services Program regulations to incorporate rules for Burial Assistance, Child Assistance, Disaster Assistance, Emergency Assistance, General Assistance, Services to Children, Elderly and Families, and Tribal Welfare Reform. All other sections are revised and renumbered to conform to existing programmatic and budgetary statutes and conditions. Also, these regulations have been rewritten in Plain English as required by E.O. 12866. In keeping with the intent of Plain English, we added more subparts for easier use in reference.

DATES: Comments must be received by July 6, 1999.

ADDRESSES: Mail comments to Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW, MS–4660–MIB, Washington, DC 20240 or hand deliver them to room 4660 at the above address. Comments will be available for inspection at this address from 9:00 a.m. to 4:00 p.m., Monday through Friday beginning approximately May 26, 1999.

FOR FURTHER INFORMATION CONTACT: Larry Blair, Chief, Division of Social Services, Bureau of Indian Affairs at telephone (202) 208–2479.

SUPPLEMENTARY INFORMATION: We last revised the financial assistance and social services regulations in 25 CFR Part 20 in 1985. Since that time, a number of important changes have occurred that are not reflected in the existing regulations. These actions present an opportunity to review the current priorities and policies contained in the regulations and propose changes that conform to existing conditions. We've considered the following factors in proposing changes in the current regulations:

- The primary purpose of the amendments is to provide clear, concise regulations that will improve program implementation;
- Congress has enacted a cap on the level of financial assistance funding;
- Existing financial assistance and social services regulations do not provide for the development of tribal welfare reform/redesign plans in accordance with tribal desires and existing law;
- Given fluctuations in financial assistance caseloads and emergencies, it has been difficult to plan and refine the existing service delivery framework;
- The Department of Health and Human Services (HHS) has made a policy decision to allow Temporary Assistance for Needy Families (TANF) payments to be included as one of the grants under Pub. L. 102–477;
- Pub. L. 104–193 Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) reduced funding level authorizations and requires General Assistance (GA) payments to be equal to the level of state TANF payments; and
- The Indian Child Protection and Family Violence Prevention Act and the Adoption and Safe Families Act have established new standards in child welfare, and the regulations need revision to incorporate and consolidate additional child protection and permanency planning requirements.

The continued focus and use of the financial assistance and social services program needs to be on the reservation and other areas where the Indian Community resides and where other government entities do not provide reasonably comparable and available services. The Bureau continues to support the policy that Indian people living away from their reservation are eligible and should receive financial assistance and social services from local state, county, and city resources on the same basis as non-Indians. For the purposes of simplifying the locations where we will provide the financial assistance and social services program, we use the term "service area" in these regulations and tell you how to get a service area if one does not yet exist.

Regulatory Planning and Review (E.O. 12866)

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. Tribes have been operating this financial assistance program for thirty years and the amount of funding is dependent upon the local economy in terms of unemployment and extent of need for funds. Approximately 400 tribes receive some form of financial assistance yearly and the amount of funds varies according to caseload increases and decreases.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.

(4) This rule does not raise novel legal or policy issues.

Regulatory Flexibility Act

The Department certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The rule affects a number of Indian Communities throughout the nation but the impact is not adverse because the financial assistance programs have been in operation for many years and this regulation does not increase cases and expenditures over prior year totals because it is dependent upon the extent of need.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more. The financial assistance funds are

divided up between 400 Indian communities based upon need.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions. This rule provides guidance for a welfare benefit program and will not affect payment levels of eligible clients nor cause increases or decreases in existing caseloads or total expenditures.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This program is a welfare benefit program and does not affect local enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (1 U.S.C. 1531, *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612 this rule does not have significant Federalism effects. A Federalism assessment is not required.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation requires an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is required. An OMB Form 83–I has been reviewed by the Department and sent to OMB for approval.

The Paperwork Reduction Act submission is BIA Financial Assistance and Social Services Program, form number OMB 1076–0017. The Bureau has reviewed the information needed and reduced the amount of information being collected. The information collection takes 15 minutes for 200,000 respondents for a burden of 50,000 hours. The information collection will be used to make decisions within the framework of the financial assistance program, such as determining eligibility, ensuring uniformity of services, and maintaining current records for audit purposes. The information collection is required to obtain or retain a benefit. Information covered by the Privacy Act will be kept confidential as required by regulation. Please note that an agency may not collect or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Paperwork Reduction Act submission began as a separate issue in order to allow the tribes to continue working with the family assistance programs while the rule was being revised. The notice of reinstatement for this information collection was published in the **Federal Register** for a 60 day notice period, and recently for a 30 day period (63 FR 30771 of December 21, 1998 and 63 FR 70414 of March 31, 1999 respectively). The **Federal Register** Notices specifically requested comments concerning:

1. Whether the collection of information is necessary for the proper performance of the functions of the Bureau including whether the information will have practical utility;

2. The accuracy of the Bureau's estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected; and,

4. How to minimize the burden of the information collection on those who are to respond, including the use of appropriate automated electronic, mechanical or other forms of information technology.

OMB received the request for clearance of this information collection March 31, 1999. You may send any comments about the collection to the Desk Officer for the Department of the Interior, Office of Information and Regulatory Affairs—Office of Management and Budget, 725 17th Street NW, Washington, DC 20503. OMB has up to 60 days to decide if the information collection will be approved; however, your comments will receive maximum consideration if they are received within the first 30 days.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this proposed rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, **§ 20.300 What are the basic eligibility criteria?**) (5) Is the description of the proposed rule in the "supplementary information" section of this preamble helpful in understanding the proposed rule? What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this proposed rule easier to understand to: Office Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov

List of Subjects in 25 CFR Part 20

Administrative practice and procedures, Child welfare, Indians-Social welfare, Public assistance programs.

For the reasons set out in the preamble, Part 20 of Title 25, Subchapter D, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below:

SUBCHAPTER D—HUMAN SERVICES

PART 20—FINANCIAL ASSISTANCE AND SOCIAL SERVICES PROGRAMS

Subpart A—Definitions, Purpose and Policy

Sec.

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20.101 What is the purpose of this part?
20.102 What is the Bureau's policy in providing financial assistance and social services under this part?
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Authority: 25 U.S.C. 13; Pub. L. 102–477, 106 Stat. 2302; Pub. L. 104–193, 110 Stat. 2105; Pub. L. 105–83, 111 Stat. 1543.

Subpart A—Definitions, Purpose and Policy

§ 20.100 What definitions clarify the meaning of the provisions of this part?

Appeal means a written request for correction of an action or decision of a specific program decision by a Bureau official (§ 20.700) or a tribal official (§ 20.705).

Applicant means an Indian individual or person by or on whose behalf an application for financial assistance and/or social services has been made under this part.

Application means the written process through which a request is made for financial assistance or social services.

Area Director means the Bureau official in charge of an Area Office.

Assistant Secretary means the Assistant Secretary—Indian Affairs.

Authorized representative means a parent or other caretaker relative, conservator, legal guardian, foster parent, attorney, paralegal acting under the supervision of an attorney, friend or other spokesperson duly authorized and acting on behalf or representing the applicant or recipient.

Bureau means the Bureau of Indian Affairs of the United States Department of the Interior.

Bureau Standard of Assistance means payment standards established by the Assistant Secretary—Indian Affairs for burial, disaster, emergency, and adoption and guardianship subsidy. In accordance with Pub. L. 104–193, the Bureau standard of assistance for general assistance is the state rate for TANF in the state where the applicant lives. Child Assistance and foster care rates are in accordance with Title IV of the Social Security Act (49 Stat. 620) and Pub. L. 104–193.

Burial assistance means a financial assistance payment made on behalf of an indigent eligible Indian person who meets the eligibility criteria to provide minimum burial expenses according to Bureau payment standards established by the Assistant Secretary—Indian Affairs.

Case means all individuals in the household.

Case management means the activity of a social services worker in assessing client and family problem(s), case planning, coordinating and linking services for clients, monitoring service provisions and client progress, advocacy, tracking and evaluating services provided, such as evaluation of child's treatment being concurrent with parent's treatment, and provision of aftercare service. Activities may also include resource development and providing other direct services such as accountability of funds, data collection, reporting requirements, and documenting activities in the case file.

Case plan means a signed written plan with time limited goals which is developed and signed by the service recipient and social services worker. The case plan will include documentation of referral and ineligibility for other services. The plan must incorporate the steps needed to assist individuals and families to resolve social, economic, psychological, interpersonal, and/or other problems, to achieve self-sufficiency and independence. All plans for children in foster care must include a time specific goal of the return of the child to the home or initiation of a guardianship/adoption.

Child means an Indian person under the age of 18 or such other age of majority as may be established for purposes of parental support by tribal or state law (if any) applicable to the person at his or her residence, except that no person who has been emancipated by marriage will be deemed a child.

Child assistance means financial assistance provided on behalf of an Indian child, or an Indian under age 18, who is not eligible for any other state or Federal assistance as documented in the case file and who requires placement in a foster home or specialized non-medical care facility, in accordance with standards of payments established by the state in which they reside pursuant to the foster care program under Title IV of the Social Security Act (49 Stat. 620), or has special needs as specified in § 20.100 (pp).

Designated representative means an official of the Bureau who is designated by a Superintendent to hold a hearing as prescribed in §§ 20.700 through 20.705 and who has had no prior involvement in the proposed decision under § 20.602 and whose hearing decision under §§ 20.700 through 20.705 will have the same force and effect as if rendered by the Superintendent.

Disaster means a situation where a Tribal Community is adversely effected by a natural disaster or other forces which pose a threat to life, safety, or health as specified in §§ 20.327 and 20.328.

Emergency means a situation where an individual or family's home and personal possessions are either destroyed or damaged through forces beyond their control as specified in § 20.329.

Employable means an eligible Indian person who is physically and mentally able to obtain employment, and who is not exempt from seeking employment in accordance with the criteria specified in § 20.315.

Essential needs means shelter, food, clothing and utilities, as included in the standard of assistance in the state where the eligible applicant lives.

Extended family means persons related by blood, marriage or as defined by Indian custom.

Family assessment means a social services evaluation of a family's abilities and resources to provide the necessary care and supervision for the child(ren), and individuals within the family's current living situation and is included in the case file.

Foster care services means those social services provided when an Indian child lives away from the family home.

General Assistance means a secondary or residual source of financial assistance payments to eligible Indian individuals for essential needs as provided and pursuant to §§ 20.300 through 20.319.

Head of household means the persons in the household with whom the household members live and who makes application for benefits.

Homemaker services means those non-medical services purchased or contracted for individuals who are not eligible for any other programs such as Medicaid/Medicare as documented in the case file. These individuals must be under the supervision of a social services agency which is administered by a person trained in such skills as child care and home management to prevent out-of-home placement.

Household means persons living together who may or may not be related to the "head of household."

Indian means any person who is a member of any of those tribes listed in the **Federal Register** pursuant to 25 CFR part 83, as recognized by and receiving services from the Bureau of Indian Affairs.

Indian court means Indian tribal court or court of Indian offenses.

Indian tribe means an Indian or Alaskan Native tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian tribe pursuant to Pub. L. 103–454, 108 Stat. 4791.

Individual Self-sufficiency Plan (ISP) means a plan designed to meet the goal of employment through specific action steps and is incorporated within the case plan. The plan is jointly developed and signed by the general assistance recipient and social services worker.

Need means the deficit after consideration of income and other resources necessary to meet the cost of essential need items and special need items as defined by the Bureau standard of assistance for the state in which the applicant or recipient resides.

Non-medical care means financial assistance for room and board services for individuals in non-medical care facilities. These individuals must not be eligible for SSI or any other Federal or state programs and this information must be documented in the case file.

Permanency plan means the documentation in a case plan which provides for permanent living alternatives for the child(ren) in foster care who are not eligible for any other Federal or state program. Permanency plans are developed in accordance with tribal, cultural, and tribal/state legal standards when the parent or guardian is unable to resolve the issues that require out of home placement of the child(ren).

Protective services means those services necessary to protect an individual who is the victim of an alleged and/or substantiated abuse or neglect incident. In coordination with law enforcement and tribal courts, this may include placement of the individual out of the home to assure the safety of the individual while the allegations are being investigated. Social workers will not remove individuals

from their homes without a court order except in life or death situations. Protective services can also include provision of social services in the home, the coordination and referral to other programs/services and the involvement of Child Protection and/or Multi-Disciplinary Teams.

Public assistance means those programs of financial assistance provided by state, tribal, county, local and Federal organizations including programs under Title IV of the Social Security Act (49 Stat. 620), as amended, and (Pub. L. 104–193).

Recipient is an individual or person who has been determined as eligible through documentation in the case file and is receiving financial assistance or social services under this part.

Recurring income means any cash or in kind payment, earned or unearned, received on a monthly, quarterly, semiannual, or annual basis.

Resources means income and other liquid assets available to an Indian person or household to meet current living costs, unless otherwise specifically excluded by Federal statute. Liquid assets are those properties in the form of cash or other financial instruments which can be converted to cash, such as savings or checking accounts, promissory notes, mortgages and similar properties, and retirements and annuities.

Secretary means the Secretary of the Interior.

Service area means:

(1) Reservations; and/or

(2) Areas adjacent or adjoining reservations; and/or

(3) Allotments outside the reservations; and/or

(4) Areas defined as reservations or service areas by statute; and/or

(5) Other defined areas designated by the Assistant Secretary—Indian Affairs pursuant to this part.

Services to children, elderly and families means social services, including protective services, not including money payments, provided through the social work skills of casework, group work or community development to assist in solving social problems involving children, elderly and families.

Special needs means a financial assistance payment made to or on behalf of individuals who have extenuating, non-medical circumstances which warrant a one-time annual financial assistance payment when other resources are not available and the circumstances are documented in the case files.

Subsidized guardianship means a payment of a monthly subsidy, not to exceed two years, for the child(ren) in long-term, court approved guardianship placements. The children must not be eligible for any other Federal or state program and this must be documented in the case file.

Substitute care means the provision of foster care or any in-home, out of home, or relative placement of the child(ren) by someone other than a parent.

Superintendent means the Bureau official in charge of an Agency Office.

Supplemental Security Income (SSI) means those programs of assistance provided under Title XVI of the Social Security Act (49 Stat. 620), as amended.

Temporary Assistance for Needy Families (TANF) means one of the programs of financial assistance provided under the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, (PRWORA).

Tribal governing body means the federally recognized governing body of an Indian tribe.

Tribal redesign plan means a tribally designed method for changing general assistance eligibility and/or payment levels in accordance with appropriation language so as to reduce dependence on general assistance as specified in §§ 20.203 through 20.211.

Tribal Work Experience Program (TWEP) means a program operated by tribal contract/grant or self-governance annual funding agreement, which provides eligible participants with work experience and training that promotes and preserves work habits and develops work skills aimed toward self-sufficiency. The Bureau payment standard is established by the Assistant Secretary—Indian Affairs.

Unemployable means a person who meets the criteria specified in § 20.315.

§ 20.101 What is the purpose of this part?

The regulations in this part govern the provision of Child Assistance, General Assistance, and Services to Children, Elderly and Families to eligible Indians.

§ 20.102 What is the Bureau's policy in providing financial assistance and social services under this part?

(a) The Bureau can provide assistance under this part to eligible Indians when financial assistance or social services are either not available or not provided by State, tribal, county, local and other Federal agencies.

(b) Bureau social services programs will not be used to supplement or supplant other programs.

(c) Bureau financial assistance and social services are subject to annual Congressional appropriations.

§ 20.103 Have the information collection requirements in this part been approved by the Office of Management and Budget?

The information collection requirements contained in §§ 20.300, 20.400, and 20.500 have been submitted for clearance to the Office of Management and Budget under 44 U.S.C. 35d *et seq.* The notice of reinstatement for this information collection was published in the **Federal Register** on March 31, 1999.

Subpart B—Welfare Reform

§ 20.200 What contact will the Bureau maintain with State, tribal, county, local, and other Federal agency programs?

We will coordinate all financial assistance and social services programs with State, tribal, county, local and other Federal agency programs to ensure that the financial assistance and social services program avoids duplication of assistance.

§ 20.201 How does the Bureau designate a service area and what information is required?

(a) The geographic boundaries of reservations for those tribes having reservations defines their service area.

(b) The Assistant Secretary—Indian Affairs can designate service areas for financial assistance or social services to:

(1) Tribes having no reservations;

(2) Tribes having no areas adjacent or adjoining reservations;

(3) Tribes having no allotments outside the reservations;

(4) Tribes having no areas defined as reservations or service areas by statute; or

(5) Tribes having no other defined areas designated by the Assistant Secretary—Indian Affairs.

(c) If you are a tribe requesting service area designation you must submit a resolution that certifies that:

(1) Tribal members and their Indian family members residing within the service area are socially, culturally, and economically affiliated with your tribe and service area.

(2) The proposed service area will not include counties or parts thereof that have reasonably available comparable services.

(d) You must provide documentation showing that:

(1) The area is administratively feasible (that is, it can allow us to provide an adequate level of services to the Indian people residing in the area);

(2) The area is near the Indian Community;

(3) No duplication of services exists; and

(4) All eligible Indians will be served.

(e) You must send documentation to the Area Director who will certify its

accuracy and make recommendations to the Assistant Secretary—Indian Affairs. The Assistant Secretary—Indian Affairs can make a determination to approve and publish notice of the designation of service area and the Indians to be served in the **Federal Register**.

§ 20.202 What does financial assistance include?

The following types of assistance are included in financial assistance:

(a) Burial Assistance for indigent burials;

(b) Child Assistance for children in foster home care, children in need of adoption or guardianship, children in need of residential care, and children with special needs;

(c) Disaster Assistance in cases where the Federal Emergency Management Agency (FEMA) or the Red Cross do not provide assistance.

(d) Emergency Assistance for essential needs to prevent hardship caused by burnout, flooding of homes, or other life threatening situations that may cause loss or damage of personal possessions; and

(e) General Assistance for basic essential needs.

§ 20.203 What is a tribal redesign plan?

(a) A tribal redesign plan allows a tribe to:

(1) Change eligibility for general assistance in the service area; or

(2) Change the amount of general assistance payments for individuals within the service area.

(b) If you develop a tribal redesign plan it must:

(1) Treat all persons in the same situation equally; and

(2) Not result in additional expenses for the Bureau.

§ 20.204 Can a tribe incorporate assistance from other sources into a tribal redesign plan?

Yes. A tribe may incorporate an HHS-approved TANF tribal welfare plan and associated funding into a Pub. L. 102–477 grant, a Pub. L. 103–413 self-governance annual funding agreement, or a tribal redesign plan.

§ 20.205 Must all tribes submit a tribal redesign plan?

No. You must submit a tribal redesign plan under § 20.206 only if you want to change the way that the General Assistance program operates in your service area.

§ 20.206 Can tribes change eligibility criteria or levels of payments for General Assistance?

Yes. If you have a redesign plan you can administer General Assistance programs under a Pub. L. 93–638 self-determination contract, a Pub. L. 102–477 grant, or a Pub. L. 103–413 self-governance annual funding agreement by changing eligibility criteria or levels of payment for General Assistance. A Bureau servicing office can administer a tribal redesign plan as requested by a tribal resolution.

§ 20.207 Must a tribe get approval for a tribal redesign plan?

(a) If you have a Pub. L. 93–638 contract or receive direct services from us, you must obtain approval from the Area Director or a Bureau servicing office before developing a redesign plan. You must submit your redesign plan for approval at least three months before the effective date in accordance with Pub. L. 93–638 as amended and part 900.

(b) If you operate with a self-governance annual funding agreement or Pub. L. 102–477 grant you must ask the appropriate Area Director to make a recommendation for approval of the redesign. The Assistant Secretary—Indian Affairs will consider the Area Director's recommendation for approval before making a final decision.

§ 20.208 Can a tribe use savings from a tribal redesign plan to meet other priorities of the tribe?

Yes. You may use savings from a redesign to meet other priorities.

§ 20.209 What if the tribal redesign plan leads to increased costs?

The tribe must meet any increase in costs to the General Assistance program that result solely from tribally increased payment levels due to a redesign plan.

§ 20.210 Can a tribe operating under a tribal redesign plan go back to operating under this part?

Yes. A tribe operating under a tribal redesign plan can choose to return to operation of the program as provided in §§ 20.300 through 20.323.

§ 20.211 Can eligibility criteria or payments for Burial Assistance, Child Assistance, and Disaster Assistance change?

No. Neither the Bureau nor a tribe may change eligibility criteria or levels of payment for Burial Assistance, Child Assistance, Disaster Assistance, and Emergency Assistance awarded in Pub. L. 93–638 contracts, Pub. L. 102–477 grants, Pub. L. 103–413 self-governance annual funding agreements.

Subpart C—Direct Assistance

§ 20.300 What are the basic eligibility criteria?

To meet basic eligibility criteria for assistance or services under this part the applicant must:

(a) Be a member of an Indian tribe or be a one-fourth degree or more blood quantum descendant of a member of any Indian tribe; and

(b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance; and

(c) Reside in the service area as defined in § 20.100; and

(d) Meet the additional eligibility criteria for each of the specific programs of financial assistance or social services in §§ 20.301 through 20.516.

§ 20.301 What is the goal of General Assistance?

The goal of the General Assistance program is to increase self-sufficiency. Each General Assistance recipient must work with the social services worker to develop and sign an Individual Self-Sufficiency Plan (ISP). The plan must outline the specific steps the individual will take to increase independence by meeting the goal of employment.

§ 20.302 Are Indian applicants required to seek assistance through TANF?

Yes. All Indian applicants with dependent children are required to apply for TANF and follow TANF regulations.

§ 20.303 When is an applicant eligible for General Assistance?

To be eligible for General Assistance an applicant must:

(a) Meet the criteria contained in § 20.300;

(b) Not have sufficient resources to meet the essential need items defined by the Bureau standard of assistance; and

(c) Apply concurrently for financial assistance from other State, tribal, county, local, or other Federal agency programs for which he/she is eligible;

(d) Not receive TANF, Supplemental Security Income (SSI), or benefits from other state or Federal entitlement programs; and

(e) Develop with a social services worker and sign an employment strategy to meet the goal of employment through specific action steps including job readiness and job search activities.

§ 20.304 When will the Bureau review eligibility for General Assistance?

The Bureau will review eligibility for General Assistance:

(a) Whenever there is an indication of a change in status which can affect a recipient's eligibility or amount of

assistance. Recipients are required to immediately inform the social services office of any such changes;

(b) Not less than every 3 months for individuals who are not exempt from seeking or accepting employment in accordance with § 20.315 or the ISP; and

(c) Not less than every 6 months for all recipients.

§ 20.305 What does redetermination involve?

(a) Redetermination assesses the need for continued financial assistance as outlined in § 20.304. It includes:

(1) A home visit;

(2) An estimate of income, living circumstances, household composition for the month(s) for which financial assistance is to be provided; and

(3) Appropriate revisions to the case plan.

(b) The social services worker will make a decision as to whether the recipient will continue to receive general assistance based on paragraph (a) of this section.

§ 20.306 What is the payment standard for General Assistance?

(a) Under Pub. L. 104–193, the Bureau must use the same TANF payment standard (and any associated rateable reduction) that exists in the State or service area where the applicant or recipient resides. This payment standard is the amount from which the Bureau subtracts net income and resources to determine General Assistance eligibility and payment levels;

(b) If the State does not have a standard for an adult, we will use either the difference between the standard for a child and the standard for a household of two, or one-half of the standard for a household of two, whichever is greater; and

(c) If the State does not have a TANF program, we will use the AFDC payment standard which was in effect on September 30, 1995, in the State where the applicant or recipient resides.

§ 20.307 What resources does the Bureau consider when determining need?

When the Bureau determines General Assistance eligibility and payment levels, we consider income and other resources as specified in §§ 20.308 and 20.309.

(a) All earned or unearned income must be calculated as income in the month it is received and as a resource thereafter, except that certain income obtained from the sale of real or personal property may be exempt as provided in § 20.309.

(b) Resources are considered to be available when they are liquidated and when the applicant or recipient has a legal interest in the liquidated sum, as defined in § 20.100.

§ 20.308 What does earned income include?

Earned income is cash or any in-kind payment earned in the form of wages, salary, commissions, or profit, from activities by an employee or self-employed individual. Earned income include:

(a) Any one-time payment to an individual for activities which were sustained over a period of time (for example, the sale of farm crops, livestock, artwork, crafts and beading); and

(b) With regard to self-employment, total profit from a business enterprise (i.e., gross receipts less expenses incurred in producing the goods or services). Business expenses do not include depreciation, personal business and entertainment expenses, personal transportation, capital equipment purchases, or principal payments on loans for capital assets or durable goods.

§ 20.309 What does unearned income include?

Unearned income includes, but is not limited to:

(a) Income from interest; oil and gas and other mineral royalties; gaming income per capita distributions; rental property; cash contributions, such as child support and alimony; gaming winnings; retirement;

(b) Annuities, veteran's disability, unemployment benefits, and Federal and State tax refunds;

(c) Per capita payments not excluded by Federal statute;

(d) Income from sale of trust land and real or personal property that is set aside for reinvestment in trust land or a primary residence, but has not been reinvested in trust land or a primary residence at the end of one year from the date the income was received;

(e) In-kind contributions providing shelter at no cost to the individual or household, this must equal the amount for shelter included in the State standard, or 25 percent of the State standard, whichever is less; and

(f) Financial assistance provided by a State, tribal, county, local, or other Federal agency.

§ 20.310 What recurring income must be prorated?

The following recurring income is prorated:

(a) Recurring income received by individuals over a 12-month period for less than a full year's employment (for example, income earned by teachers who are not employed for a full year);

(b) Income received by individuals employed on a contractual basis over the term of a contract; and

(c) Intermittent income received quarterly, semiannually, or yearly over the period covered by the income.

§ 20.311 What deducted amounts will be disregarded from the gross amount of earned income?

(a) The social services worker will disregard the following amounts from the earned income:

(1) Other Federal, State, and local taxes;

(2) Social Security (FICA);

(3) Health insurance;

(4) Work related expenses, including reasonable transportation costs;

(5) Child care costs, except where the other parent in the home is not working or is not disabled; and

(6) The cost of special clothing, tools, and equipment directly related to the individual's employment.

(b) For self-employed individuals, the social services worker will deduct the costs of conducting business and all of the amounts in paragraph (a) of this section.

§ 20.312 What amounts will be disregarded from income or other resources?

The social services worker will disregard the following amounts from income, or other resources:

(a) The first $2,000 of liquid resources annually available to the household;

(b) Any home produce from a garden, livestock, and poultry used by the applicant or recipient and his/her household for their consumption; and

(c) Resources specifically excluded by Federal statute.

§ 20.313 How will the Bureau compute financial assistance payments?

(a) The social services worker will compute financial assistance payments by:

(1) Calculating the difference between the Bureau standard of assistance and all resources calculated under §§ 20.307 through 20.310;

(2) Applying the rateable reduction or maximum payment level used by the State where the applicant lives;

(3) Deducting an amount for shelter (see paragraph (b) of this section for details on how to calculate a shelter amount); and

(4) Rounding the result down to the next lowest dollar.

(b) The social services worker must calculate a shelter amount for purposes of paragraph (a)(3) of this section. To calculate the shelter amount:

(1) The shelter amount must not exceed the amount for shelter in the State TANF standard;

(2) If the State TANF does not specify an amount for shelter, the social services worker must calculate the amount as 25 percent of the total State TANF payment; and

(3) If there is more than one household in a dwelling, the social services worker must prorate the actual shelter cost among the households receiving General Assistance; this amount cannot exceed the amount in the standard for individuals in similar circumstances. The head of each household is responsible for his/her portion of the documented shelter cost.

(c) The social services worker must not provide General Assistance payments for any period before the date of the application for assistance.

§ 20.314 What is the policy on employment?

(a) An applicant or recipient must:

(1) Actively seek employment, including the use of available State, tribal, county, local or Bureau-funded employment services;

(2) Make satisfactory progress in an ISP; and

(3) Accept local and seasonable employment when it is available.

(b) A head of household who does not comply with this section will not be eligible for General Assistance for a period of at least 60 days but not more than 90 days. This action must be documented in the case file.

§ 20.315 When is the employment policy not applicable?

The employment policy in § 20.314 does not apply to the persons shown in the following table.

The employment policy in § 20.314 does not apply to * * *	if * * *	and * * *
(a) Anyone younger than 16.		
(b) A full-time student under the age of 19	he/she is attending an elementary or secondary school or a vocational or technical school equivalent to a secondary school.	he/she is making satisfactory progress.
(c) A person enrolled at least half-time in a program of study under Section 5404 of Pub. L. 100–297.	he/she is making satisfactory progress	he/she was an active General Assistance recipient for a minimum of 3 months before determination/redetermination of eligibility.
(d) A person suffering from a temporary medical injury or illness.	it is documented in the case plan that the illness or injury is serious enough to temporarily prevent employment.	
(e) An incapacitated person who has not yet received Supplemental Security Income (SSI) assistance.	a physician, psychologist, or social services worker certifies that a physical or mental impairment (either by itself, or in conjunction with age) prevents the individual from being employed.	the assessment is documented in the case plan.
(f) A caretaker who is responsible for a person in the home who has a physical or mental impairment.	a physician or certified psychologist verifies the condition.	the case plan documents that: the condition requires the caretaker to be home on a virtually continuous basis; and there is no other appropriate household member available.
(g) A parent or other individual who does not have access to child care.	he/she personally provides full-time care to a child under the age of six.	
(h) A person for whom employment is not accessible.	there is a minimum commuting time of one hour each way.	

§ 20.316 What must a person covered by the employment policy do?

(a) If you are covered by the employment policy in § 20.314, you must seek employment and provide evidence of your monthly efforts to obtain employment in accordance with your ISP.

(b) If you do not seek and accept available local and seasonal employment, or you quit a job without good cause, you cannot receive General Assistance for a period of at least 60 days but not more than 90 days after you refuse or quit a job.

§ 20.317 How will the ineligibility period be implemented?

(a) If you refuse or quit a job, your ineligibility period will continue until you seek and accept appropriate available local and seasonal employment and fulfill your obligations already agreed to in the ISP.

(b) The Bureau will reduce your suspension period by 30 days when you show that you have sought local and seasonal employment in accordance with the ISP; and

(c) Your eligibility suspension will affect only you. The Bureau will not apply it to other eligible members of the household.

§ 20.318 What case management responsibilities does the social services worker have?

In working with each recipient, you, the social services worker must:

(a) Assess the general employability of the recipient;

(b) Assist the recipient in the development of the ISP;

(c) Sign the ISP;

(d) Help the recipient identify the service(s) needed to meet the goals identified in their ISP;

(e) Monitor and supervise recipient participation in work related training and other employment assistance programs; and

(f) Document activities in the case file.

§ 20.319 What responsibilities does the general assistance recipient have?

In working with the social services worker, you the recipient must:

(a) Participate with the social services worker in developing an ISP and sign the ISP;

(b) Perform successfully in the work related activities, community service, training and/or other employment assistance programs developed in the ISP;

(c) Participate successfully in treatment and counseling services identified in the ISP;

(d) Participate in evaluations of job readiness and or any other testing required for employment purposes; and

(e) Demonstrate that you are actively seeking employment by providing the social services worker with evidence of job search activities as required in the ISP.

§ 20.320 What is TWEP?

TWEP is a program that provides work experience and job skills to enhance potential job placement for the general assistance recipient. TWEP programs can be incorporated within Pub. L. 93–638 self-determination contracts, Pub. L. 102–477 grants, and Pub. L. 103–413 self-governance annual funding agreements at the request of the tribe.

§ 20.321 Does TWEP allow an incentive payment?

Yes. Incentive payments to participants are separate and will not be considered as wages or work related expenses, but as grant assistance payments under §§ 20.320 through 20.323. Incentive payments will not exceed the Bureau maximum payment standard established by the Assistant Secretary—Indian Affairs. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.322 Who is eligible to receive a TWEP incentive payment?

(a) Consistent with the ISP, in situations where the participation is mandatory and the recognized head of the family unit is certified as unemployable, an alternate member of the assistance group, such as the spouse or another adult, will be designated as available for the TWEP incentive payment.

(b) Where there are multiple family units in one household, one member of each family unit will be eligible to receive the TWEP incentive payment.

§ 20.323 Will the local TWEP be required to have written program procedures?

Yes. The local TWEP must have specific written program procedures that cover hours of work, acceptable reasons for granting leave from work, evaluation criteria and monitoring plans and ISP's for participants. Work readiness progress must be documented in each ISP.

§ 20.324 When can the Bureau provide Burial Assistance?

In the absence of other resources, the Bureau can provide Burial Assistance for eligible indigent Indians meeting the requirements prescribed in § 20.300.

§ 20.325 What is the process for making application for Burial Assistance for eligible Indians?

(a) The application is made on behalf of the deceased who is considered the applicant. Determination of eligibility is based on the income and resources available to him/her in accordance with § 20.100(mm). This includes but is not limited to SSI, veterans death benefits, social security, and Individual Indian Money (IIM) accounts. Determination of need will be accomplished on a case by case basis using the Bureau payment standard.

(b) Requests and applications for Burial Assistance must be submitted within 30 days following death.

(c) Applications are subject to eligibility determinations in accordance with criteria specified at § 20.300.

(d) The approved payment standard will not exceed the Bureau maximum burial payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.326 When are the related transportation expenses covered by Burial Assistance?

Transportation costs directly associated with burials are normally a part of the established burial rate. In those instances where an additional transportation charge is added to the burial rate because of extenuating circumstances, the social services worker can pay the added charge. However, the social services worker will ensure that these charges are reasonable, equitable, and apply to burials for eligible indigent individuals who are socially, culturally, and economically affiliated with their tribes and who have not resided out of the service area for a period of time exceeding six consecutive months and this must be documented in the case plan.

§ 20.327 When can the Bureau provide Disaster Assistance?

Disaster assistance is immediate and or short term relief from a disaster and can be provided to a tribal community when services are not provided by FEMA or Red Cross in accordance to § 20.328.

§ 20.328 How can a tribe apply for Disaster Assistance?

(a) The tribe affected by the disaster is considered the applicant and must submit the following to the Area Director through the local Superintendent:

(1) A tribal resolution requesting disaster assistance; and

(2) A copy of county, state, or Presidential declaration of disaster; and

(3) The projected extent of need in the service area not covered by other Federal funding sources.

(b) The Area Director must forward the above tribal documents and his/her recommendation to the Assistant Secretary—Indian Affairs for final decision on whether disaster assistance will be provided and to what extent.

§ 20.329 When can the Bureau provide Emergency Assistance payments?

Emergency Assistance payments can be provided to individuals or families who suffer from a burn out, flood, or other destruction of their home and loss or damage to personal possessions and will be limited to essential needs and other non-medical necessities.

§ 20.330 What is the payment standard for Emergency Assistance?

The approved payment standard will not exceed the Bureau's maximum Emergency Assistance payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

Subpart D—Services to Children, Elderly, and Families

§ 20.400 For whom should Services to Children, Elderly, and Families be provided?

Services to Children, Elderly, and Families will be provided for Indians meeting the requirements prescribed in § 20.300 who request such services or on whose behalf such services are requested.

§ 20.401 What services are included under Services to Children, Elderly and Families?

Services to Children, Elderly, and Families can include, but are not limited to, the following:

(a) Assistance in solving problems related to family functioning, interpersonal relationships, economic opportunity, money management, and referral to the appropriate resource for problems related to illness, physical or mental handicaps, drug abuse, alcoholism, and violation of law.

(b) Protective services are provided when children or adults are deprived temporarily or permanently of needed supervision by responsible adults, or are neglected, exploited, or need services when they are mentally or physically handicapped or otherwise disabled. Protective services for children and associated case management data have been developed for protective services, and will continue to be consolidated for nationwide reporting as per Pub. L. 101–630 and Pub. L. 99–570. Such services can include, but are not limited to, the following:

(1) Response to requests from members of the community on behalf of children or adults alleged to need protective services. Coordination with

Law Enforcement and/or courts must be completed prior to removal of individuals except in life or death situations.

(2) Family and child services, including referrals for homemaker and day care services for children; and

(3) Services to Indian courts, which can include, but are not limited to, the following:

(i) Investigation of and reports concerning allegations of child abuse and neglect, abandonment, and conditions such as mentally or physically handicapped or otherwise disabled individual which can require referrals;

(ii) Provision of social information related to the disposition of a case, including recommendation of alternative resources for treatment; and

(iii) Provision of placement services by the court order prior to and after adjudication.

(4) Community services which are services involving other groups, agencies, and facilities in the community can include, but are not limited to:

(i) Responses to community needs for evaluating social conditions affecting the well-being of its citizens;

(ii) Treatment of the identified conditions that are within the competence of social services; and

(iii) Maintenance of liaison with other community agencies for the purpose of identifying available services for assistance in solving the social problems of individuals, families, and children and facilitating the use of available community services by Indian persons who need them.

(5) Documentation of all activities and services in case files.

Subpart E—Child Assistance

§ 20.500 What are the eligibility criteria for Child Assistance?

An Indian child meeting the requirements established in § 20.300 can be considered eligible for child assistance or services under this part, *provided*, that:

(a) The child's legally responsible parent, custodian/guardian, or Indian court having jurisdiction requests such assistance, in writing, and indicates they are unable to provide necessary care and guidance for the child, or to provide for the child's special needs in his/her own home. A documented family assessment is required to determine whether parent(s)/custodian/guardian(s) are able to care for their child(ren);

(b) Relative caregivers must apply for and be denied TANF payments or other financial assistance. The child is not receiving and is not eligible to receive TANF or other assistance and is not included in such payments involving other caregivers. An otherwise eligible child can receive Child Assistance upon application for and pending initial receipt of TANF or other financial assistance;

(c) The child resides in an area where comparable Child Assistance and services are not available or are not being provided to all residents on the same basis from a state, tribal, county, local, and Federal agencies; and

(d) All income accruing to children, except income exempted by Federal statute and income earned by the child, will be considered as a resource which must be used to meet the cost of out of home care authorized and arranged by the social services providers.

(e) All Bureau and Tribal Agencies must work on developing partnerships with state and local governments to increase accessibility to funding sources and develop IV–E agreements/contracts.

§ 20.501 What are the rates of payment for foster care?

The state foster care rate in the state in which the Indian child resides is the foster care payment level, as provided by Title IV of the Social Security Act (49 Stat. 620).

§ 20.502 Can Child Assistance funds be used for placement of Indian children in treatment centers?

Child Assistance funds must be used as a last resort for placements of Indian children in specialized non-medical care facilities licensed by tribe or state. These services may be purchased or contracted under the supervision of the social services programs for children for whom the resources are not available from the state, tribal, county, local, and Federal agencies. The payment will only consist of room and board. Other services that may be needed, including mental health, education, and physical therapy must be assumed by the respective agency responsible for the provision of the service. Prior to placement a written agreement must be signed between the various funding sources to identify the services that will be paid by each source and will require approval of the Area Director.

§ 20.503 Can Child Assistance funds be used for Indian adoption subsidies or subsidized guardianships?

Yes, Child Assistance funds can be authorized to provide either adoption or guardianship subsidies for a period not to exceed two years for each child involved. The funds must be used to assist in the adoption or guardianship of a child currently in foster care. All other available resources must be considered and documented in the case file. Prior to authorizing a subsidy, approval of the Area Director is required.

§ 20.504 What eligibility requirements must be met for an Indian adoption subsidy or subsidized guardianship?

The eligibility requirements that must be met for an Indian adoption subsidy or subsidized guardianship are as follows:

(a) The child(ren) must be under the age of 18 (with regards to special circumstances as defined by tribal standards);

(b) The child(ren) must have been in foster care prior to the adoption or guardianship placement with payment, care, supervision, and responsibilities placed with the social services program;

(c) The adoption placement or guardianship meets the special needs of the child(ren) as indicated in the home study;

(d) The social services worker has provided permanency planning services;

(e) Adoption or guardianship has been clearly shown to be in the best interest of the child(ren);

(f) All other resources for adoption or long-term guardianship placement have been explored; and

(g) The child(ren)'s adoption or guardianship placement could not be completed without Bureau/tribal financial assistance.

§ 20.505 What is the payment standard for adoption and guardianship?

The approved payment standard will not exceed the Bureau's maximum adoption and guardianship payment standard which will be established by the Assistant Secretary—Indian Affairs 60 days after this rule is published in final. The payment standard will be reviewed periodically to determine if revision is necessary.

§ 20.506 Can homemaker services be provided with Child Assistance?

When other resources such as Medicaid are not available, homemaker services can be purchased or contracted and provided under the supervision of the social services program, e.g., for a severely handicapped child whose care places undue stress on the family and for whom resources are unavailable from the state, tribal, county, local, and other Federal agencies. Homemaking services can be purchased on a short-term basis not to exceed three months. While housekeeping services are one portion of this service, homemaker services must focus on training household members in such skills as

child care and home management. Homemaker services provide for:

(a) Child(ren) who, otherwise, would need foster care placement or who would benefit from supportive (protective) supervision;

(b) Severely handicapped or special needs child(ren) whose care places undue stress on the family; or

(c) Child(ren) whose care would benefit from specialized training and supportive services provided to family members.

§ 20.507 What services are provided jointly with the Child Assistance Program?

(a) Social services provided for children in their own home aimed at strengthening the family's ability to provide for and nurture their child(ren). These supportive services can include, social work-case management, counseling for parents and children, group work, day care, and homemaker services, when necessary;

(b) Protection of Indian children from abuse and neglect in coordination with law enforcement and courts;

(c) Foster care or care other than in the parental home. When temporary placement out of the home is necessary, a written case plan must be established within 30 days of placement and reviewed within 60 days of placement or as outlined in tribally established standards. The case plan must contain a written agreement signed among the various funding sources to identify the services that will be paid by each source in those instances where the child requires services outside the authority of the Child Assistance program.

§ 20.508 What information is required in the foster care case file?

At a minimum the following information is required:

(a) Tribal enrollment verification in accordance with § 20.100;

(b) A written case plan must be established within 30 days of placement, which includes the need for and expected length of placement;

(c) Information on the child(ren)'s health status and school records, including medications and immunization records;

(d) Parental consents for emergency medical care, school, and transportation;

(e) A signed plan for payment, including financial responsibility of parents and use of other appropriate resources;

(f) A copy of the certification/license of the foster home;

(g) A current photo of the child(ren);

(h) A copy of the social security card, birth certificate, Medicaid card and current court order;

(i) A placement beyond 30 days will require action by a court of competent jurisdiction, or in accordance with tribal codes and standards authorized by a court of competent jurisdiction. All placements require documentation of the need for protection of the child(ren) involved;

(j) Involuntary placements must be in accordance with Tribal Codes and authorized by a court of competent jurisdiction. A family assessment must be completed by a social services worker within 30 days of placement;

(k) All placements require at a minimum one home visit per month by the social services worker with the child(ren), documented in the file; and

(l) A list of all prior placements, including the names of the foster parents and dates of placements.

§ 20.509 What are the requirements for foster care?

The social services worker will select substitute care, which meets the physical, behavioral, and emotional needs of the child(ren) who require such care, which is intended to be short-term in nature. The following requirements must be met and documented in a case plan:

(a) All foster homes must be certified/licensed by the tribe or other recognized authority, as appropriate. Foster care placements must be made through a court of competent jurisdiction to ensure Federal background checks are completed as required by Pub. L. 101–630, and training (optional for relative placements) will be provided to the foster family;

(b) Relative placements must have on file an approved current home study;

(c) The social services worker must discuss with foster parents or caretakers, the child(ren)'s special needs, including disabilities, and provide counseling or referral to available resources;

(d) Any child(ren) requiring medical, substance abuse, and/or behavioral (mental) health services will be referred to appropriate health-services agencies for assessment and provision of services;

(e) Provision must be made for all necessary costs of care, which includes clothing, incidentals, and personal allowance, in accordance with established state standards of payments;

(f) A foster family agreement will be developed establishing roles and responsibilities of the biological parents, foster parents, placing agency, the terms of payment of care and the need for adherence to the established case plan. The agreement will be signed and dated by the parties involved;

(g) Any reports of suspected child abuse/neglect in a foster home must be reported immediately to law enforcement and protective services in accordance with tribal standards and reporting requirements pursuant to Pub. L. 101–630. If necessary, protective services will be provided in collaboration with other service providers;

(h) The social services worker will complete a yearly assessment of each tribal or state certified/licensed foster home as to how the home has fulfilled its function relative to the needs of the child(ren) placed in the home;

(i) An off-reservation family home or institution under contract must meet the licensing standards of the state in which it is located or tribally established certifying/licensing standards; and

(j) The social services agency must make efforts to secure child support for child(ren) in foster care, through a court of competent jurisdiction.

§ 20.510 How is the court involved in foster care placements?

The court retains custody of child(ren) in placement and the care and supervision must be given to the appropriate social services agency. Even though the court can issue any court order consistent with tribal law, the courts do not have the authority to require expenditure of Federal funds to pay for specifically prescribed or restrictive services or out-of-home placements of children. Case plans must be reviewed with the appropriate court at least every six months and a permanency hearing held within twelve months after a child enters foster care or according to established tribal standards. These standards can be established in the tribal code and can be in accordance with available funding source requirements.

§ 20.511 Should permanency plans be developed?

Permanency planning must be considered for child(ren) whose parents have not made reasonable efforts to meet case plan goals or have not had any contact with the child(ren) in foster care or substitute placement and must be developed six months after initial placement of the child. Every effort will be made to preserve the family and/or reunify the children with the family and relatives when developing permanency plans.

§ 20.512 Can the Bureau/tribal contractors make Indian adoptive placements?

The Bureau is not an authorized adoption agency, and staff must not arrange adoptive placements. However, long term permanency planning can

involve the Bureau social services workers cooperating with Tribal Courts to provide adoption subsidy. Tribal contractors will provide adoption services, as authorized by the tribal courts in accordance with tribal codes/law.

§ 20.513 Should Interstate Compacts be used for the placement of children?

Interstate compact agreements must be used whenever possible for foster care, adoption and guardianship to assure the availability of the funding resources and services from the originating placement source.

§ 20.514 What assistance can the courts request from social services on behalf of children?

The courts can request the following:
(a) Investigations of law enforcement reports of child abuse and neglect;
(b) Assessment of the need for out of home placement of the child(ren); and
(c) Provision of court-related services following adjudication, such as monitoring, foster care, or pre/post placement services.

§ 20.515 What is required for case management?

Social Services staff are required to document regular contact with children and families in accordance with specific program requirements. The social services agency is responsible for implementation of quality case management; this requires the supervisor's review of case plans every 90 days.

§ 20.516 How are child abuse and neglect cases to be handled?

Reported child abuse and neglect cases must be handled in accordance with the Indian Child Protection and Family Violence Prevention Act of 1990, Pub. L. 101–630, 25 CFR Part 63, Federal and/or state laws where applicable, and tribal codes which protect Indian children and victims of domestic violence. Child Protection Teams must be developed in accordance to Pub. L. 99–570. Those cases referred by the state will be handled according to the Indian Child Welfare Act, Pub. L. 95–608, and 25 CFR Part 23.

Subpart F—Administrative Procedures

§ 20.600 How is an application for financial assistance or social services made?

(a) Written or oral applications by or on behalf of any individual or group will be accepted for financial assistance or social services. Referrals will be accepted from relatives, interested individuals, social services agencies, law enforcement agencies, courts and others.

(b) All applications must be in written form to the Superintendent or his/her designated representative.

§ 20.601 From whom is eligibility information collected?

(a) Each applicant is the primary source of information used to determine eligibility and need. If it is necessary to secure information such as medical records, from other sources, the applicant must authorize the release of information.

(b) Recipients must accurately report any changes in circumstances which may affect their eligibility or the amount of financial assistance they receive. Recipients must report changes in circumstance within 30 days.

§ 20.602 How is an application approved or denied?

(a) Each application must be approved if the applicant meets the eligibility criteria in §§ 20.301 through 20.516 for the type of assistance requested. Financial assistance will be made back to the date of application.

(b) An application must be denied if the applicant does not meet the eligibility criteria set forth in §§ 20.301 through 20.516.

(c) Action to approve or deny an application must be made within 30 days of the date of the application. If action cannot be taken within 30 days, the applicant must be notified in writing of the reasons why the decision cannot be made. The local social services worker must issue written notice of the approval or denial of each application within 45 days of the date of the application.

§ 20.603 How is an applicant or recipient notified that benefits or services are denied?

(a) Written notice of the denial of benefits or services must be mailed or hand delivered to the applicant or recipient. Any action that increases, decreases, suspends, or terminates financial assistance requires written notice to the applicant or recipient 20 days in advance of the effective date. The notice must clearly and completely advise the applicant or recipient of the legal right to contest any adverse decision under §§ 20.600 through 20.605. The notice must:

(1) State the action taken, the effective date, and the reason(s) for the decision;

(2) Inform the applicant or recipient of the right to request a hearing if dissatisfied with the decision;

(3) Advise the applicant or recipient of the right to be represented by an authorized representative at no expense to the Bureau;

(4) Include the address of the local Superintendent or his/her designated representative to whom the request for a hearing must be submitted; and

(5) Advise the applicant or recipient that failure to request a hearing within 20 days of the date of the notice will cause the decision to become final and subject to appeal under Part 2 of 25 CFR.

(b) Upon receipt of the timely appeal, the financial assistance will remain unchanged and will continue to be provided, pending the issuance of a written decision by the Superintendent or his/her designated representative.

§ 20.604 How is an incorrect payment adjusted or recovered?

(a) When an incorrect payment of financial assistance has been made to an individual or family, a proper adjustment or recovery is required.

(b) The proper adjustment or recovery is based upon individual need as appropriate to the circumstances that resulted in an incorrect payment.

(c) Prior to adjustment or recovery, the recipient will be notified of the proposal to correct the payment and given an informal opportunity to resolve the matter.

(d) If an informal resolution cannot be attained, the recipient must be given a written notice of decision.

(e) If a hearing is requested, the hearing will be conducted in accordance with the procedures under §§ 20.700 through 20.705.

§ 20.605 What happens when applicants or recipients knowingly and willfully provide false, fictitious, or fraudulent information?

Applicants or recipients who knowingly and willfully provide false fictitious, or fraudulent information are subject to prosecution under 18 U.S.C. 1001, which carries a fine of not more than $10,000 or imprisonment for not more than five years, or both. The social services worker will prepare a written report detailing the action considered to be fraud and submit the report to the Superintendent or his/her designated representative for appropriate investigative action.

Subpart G—Hearings and Appeals

§ 20.700 Can an applicant or recipient appeal the decision of a Bureau official?

Yes. Any applicant or recipient who is dissatisfied with a Bureau decision concerning eligibility or receipt of financial assistance under this part can request a hearing before the Superintendent or his/her designated representative. The request for a hearing must be made within 20 days of the date of the written notice of the decision as

stated in § 20.603. The Superintendent or his/her designated representative can extend the 20 day period if good cause is shown and documented in the record.

§ 20.701 Does an applicant or recipient receive financial assistance while an appeal is pending?

Yes. Financial assistance will be continued or reinstated to insure there is no break in financial assistance until such time as the Superintendent or his/her designated representative renders a decision. The Superintendent or his/her designated representative can adjust payments or recover overpayments to conform with his/her decision.

§ 20.702 When is an appeal hearing scheduled?

The Superintendent or his/her designated representative must set a date for the hearing within 10 days of the date of request for a hearing and give written notice to the applicant or recipient.

§ 20.703 What must the written notice of hearing include?

The written notice of hearing must include:

(a) The date, time and location of the hearing;

(b) A statement of the facts and issues giving rise to the appeal;

(c) The applicant's or recipient's right to be heard in person, or to be represented by an authorized representative at no expense to the Bureau;

(d) The applicant or recipient's right to present both oral and written evidence during the hearing;

(e) The applicant's or recipient's right to confront and cross-examine witnesses at the hearing;

(f) The applicant's or recipient's right of one continuance of not more than 10 days with respect to the date of hearing; and

(g) The applicant's or recipient's right to examine and copy, at a reasonable time before the hearing, his/her case record as it relates to the proposed action being contested.

§ 20.704 Who conducts the hearing or appeal of a Bureau decision or action and what is the process?

(a) The Superintendent or his/her designated representative conducts the hearing in an informal but orderly manner, records the hearing, and provides the applicant or recipient with a transcript of the hearing upon request.

(b) The Superintendent or his/her designated representative must render a written decision within 10 days of the completion of the hearing. The written decision must include:

(1) A written statement covering the evidence relied upon and reasons for the decision, and

(2) The applicant's or recipient's right to appeal the Superintendent or his/her designated representative's decision pursuant to Part 2 of 25 CFR and request Bureau assistance in preparation of the appeal.

§ 20.705 Can an applicant or recipient appeal a tribal decision?

Yes. The applicant or recipient must pursue the appeal process applicable to the Pub. L. 93–638 contract, Pub. L. 102–477 grant, or Pub. L. 103–413 self-governance annual funding agreement. If no appeal process exists, then the applicant or recipient must pursue the appeal through the appropriate tribal forum.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 874]

RIN 1512–AA07

Applegate Valley Viticultural Area (99R–112P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing to establish a viticultural area within the State of Oregon to be known as "Applegate Valley." The proposed viticultural area is within Jackson and Josephine Counties and entirely within the existing Rogue Valley viticultural area as described in 27 CFR 9.132. Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc., submitted the petition. Mr. Smith believes that "Applegate Valley" is a widely known name for the petitioned area, that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

DATES: Send your comments on or before July 6, 1999.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221 (Attn: Notice No. 874). Copies of the petition, the proposed regulations, the appropriate maps, and any written comments received will be available for public inspection during normal business hours at the ATF Reading Room, Office of Public Affairs and Disclosure, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC., 20226.

FOR FURTHER INFORMATION CONTACT: Jackie White, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington DC., 20226, (202) 927–8145.

SUPPLEMENTARY INFORMATION:

1. Background on Viticultural Areas

What is ATF's Authority To Establish a Viticultural Area?

ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) on August 23, 1978. This decision revised the regulations in 27 CFR Part 4, Labeling and Advertising of Wine, to allow the establishment of definitive viticultural areas. The regulations allow the name of an approved viticultural area to be used as an appellation of origin on wine labels and in wine advertisements. On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added 27 CFR Part 9, American Viticultural Areas, for the listing of approved American viticultural areas, the names of which may be used as appellations of origin.

What is the Definition of an American Viticultural Area?

An American viticultural area is a delimited grape-growing region distinguishable by geographic features. The viticultural features such as soil, climate, elevation, topography, etc., distinguish it from surrounding areas.

What Is Required To Establish a Viticultural Area?

Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

- Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;
- Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;
- Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

• A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

• A copy (or copies) of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

2. Applegate Valley Petition

ATF has received a petition proposing to establish a viticultural area within the State of Oregon to be known as "Applegate Valley." The proposed viticultural area is within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area described in 27 CFR 9.132. The petition was submitted by Mr. Barnard E. Smith, President, The Academy of Wine of Oregon Inc. Mr. Smith believes that "Applegate Valley" is a widely known name for the petitioned area. Mr. Smith states that the area is well defined, and that the area is distinguished from other areas by its soil and climate.

According to the petitioner, the Applegate Valley has been a grape-growing region since 1870 when A. H. Carson began planting 30 acres of grapes along North Applegate Road. There are now six bonded wineries in the valley as well as 23 vineyards. The petitioner states that over 235 acres have been planted to grapes.

What Name Evidence Has Been Provided?

According to the petitioner, the Applegate River was named for one or more of the Applegate brothers who explored the area in 1846. The U.S.G.S. map used to show the boundaries of the area (Medford, Oregon; California scale 1:250,000) uses the name Applegate River and shows the town of Applegate within the proposed "Applegate Valley" viticultural area. The petitioner has provided the following other references as name evidence.

• "The Wine Appellations of Oregon" map published by the Oregon Wine Marketing Coalition shows the Applegate Valley and mentions it in its notes.

• The Oxford Companion to Wine (first edition) mentions the Applegate Valley on page 693.

• The Oregon Winegrape Growers' Guide devotes several paragraphs to a discussion of the Applegate Valley as one of Oregon's grape growing areas.

• Treasury decision ATF–310 (The Rogue Valley Viticultural Area) describes "the Applegate Valley (within the Rogue Valley viticultural area) as one of the warmest grape growing areas in western Oregon."

What Boundary Evidence Has Been Provided?

Applegate Valley is surrounded by the Siskiyou Mountains. To the east and south is the Rogue River National Forest. To the west is the Siskiyou National Forest. According to the petitioner, these proposed boundaries have been identified by the U.S. Forest Service in minute detail but do not show on published maps. The petitioner states that these boundaries can be closely approximated by straight-line segments drawn between prominent physical features of the terrain, mostly mountaintops. Boundaries of national forests were used where appropriate.

What Evidence Relating to Geographical Features Has Been Provided?

• Topography: The proposed boundaries are within Jackson and Josephine

Counties in the State of Oregon. The proposed area is entirely within the existing Rogue Valley viticultural area. The Rogue Valley viticultural area has three distinct sub regions: Illinois Valley, Applegate Valley, and Bear Creek Valley. The Illinois Valley lies to the west of the proposed boundaries and Bear Creek Valley lies directly to the east of the proposed boundaries.

The Applegate Valley is approximately 50 miles long running from its origins near the California border generally northwest to where it joins the Rogue River just west of Grants Pass. According to the petitioner, the surrounding Siskiyou Mountains are believed to have been created in the Jurassic period by up-thrusts of the ocean floor as a plate forced its way under the continental shelf. The proposed boundaries are found on the U.S.G.S. map titled "Medford, Oregon; California" NK 10–5 scale 1:250,000 (1955, revised 1976).

• Soil: The petitioner states that soil types are generally granite in origin as opposed to the volcanic origin of the Cascade Mountains to the east. Most of the Applegate Valley vineyards are planted on stream terraces or alluvial fans providing deep well-drained soils. According to the petitioner, the leaching of the more basic soil components found in the Illinois Valley have left the soil slightly more acidic than the soils in the proposed boundaries. The petitioner further states that the soils outside the proposed boundaries to the east near Bear Creek Valley tend to be less acidic than the soils in the proposed boundaries. The soils in the Applegate Valley have a pH between 6.1 and 6.5 which are more ideal. The petitioner claims that while soil origin is an important factor in determining differences between the proposed "Applegate" and the larger Rogue Valley viticultural areas, its role is secondary to climate.

• Climate: The grape-growing region around Cave Junction located in the Illinois Valley is about 70 miles closer to the Pacific Ocean than the grape-growing region around Medford located in Bear Creek Valley. The Siskiyou Mountains separate the valleys which further accentuate climate differences among the valleys. The precipitation in the Illinois Valley at Cave Junction is 58.9 inches per year. The precipitation decreases to 31.1 inches, at Grants Pass, in the northeast and to 25.2 inches at Applegate. In the Bear Creek Valley at Medford, the precipitation decreases further to 18.3 inches per year.

According to the petitioner, the average temperature in the Illinois Valley during the growing season (April to October) is 2.5 degrees lower than in the eastern valleys. The petitioner states that, cumulatively this means that the degree-days rise from 4971 degree-days in Cave Junction to 5602 degree-days in Grants Pass. This temperature data is from a soil survey for Jackson and Josephine Counties and does not compare with Winkler's values since it is based on temperature of 40 degrees Fahrenheit instead of 50 degrees Fahrenheit.

According to the Oregon Winegrape Grower's Guide, "As one moves from west to east, or from the Illinois River Valley including Selma to the Applegate Valley and into the Rogue Valley, good grape growing sites generally become warmer due to the lessening of the marine air influence." The Oregon Winegrape Grower's Guide goes on to point out that earlier ripening varieties such as Pinot noir, Early Muscat, and Gewurztraminer, do well in the Illinois Valley. In contrast, the Applegate Valley with its Region II temperature range can ripen Cabernet Sauvignon, Merlot, and Chardonnay two to three weeks earlier than is possible in the Illinois Valley.

3. Public Participation

Who May Comment on This Notice?

ATF requests comments from all interested persons. In addition, ATF specifically requests comments on the clarity of this proposed rule and how it may be made easier to understand. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so.

However, assurance of consideration can only be given to comments received on or before the closing date.

Will ATF Keep My Comments Confidential?

ATF cannot recognize any material in comments as confidential. All comments and materials may be disclosed to the public. If you consider your material to be confidential or inappropriate for disclosure to the public, you should not include it in the comments. We may also disclose the name of any person who submits a comment.

How do I Send Facsimile Comments?

You may submit comments of not more than three pages by facsimile transmission to (202) 927–8525. Facsimile comments must:

- Be legible.
- Reference this notice number.
- Be 8½" x 11" in size.
- Contain a legible written signature.
- Be not more than three pages.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

How Do I Send Electronic Mail (E-mail) Comments?

You may submit comments by e-mail by sending the comments to nprm.notice874@atfhq.atf.treas.gov. You must follow these instructions. E-mail comments must:

- Contain your name, mailing address, and e-mail address.
- Reference this notice number.
- Be legible when printed on not more than three pages 8½" x 11" in size.

We will not acknowledge receipt of e-mail. We will treat e-mail as originals.

How do I Send Comments to the ATF Internet Web Site?

You may also submit comments using the comment form provided with the online copy of the proposed rule on the ATF Internet web site at *http://www.atf.treas.gov./core/regulations/rules.htm.*

Can I Request a Public Hearing?

If you desire the opportunity to comment orally at a public hearing on this proposed regulation, you must submit your request in writing to the Director within the 60-day comment period. The Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

4. Regulatory Analyses and Notices

Does the Paperwork Reduction Act Apply to This Proposed Rule?

The provisions of the Paperwork Reduction Act of 1995 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this notice because no requirement to collect information is proposed.

How Does the Regulatory Flexibility Act Apply to This Proposed Rule?

These proposed regulations will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. ATF believes that the establishment of viticultural areas merely allows wineries to more accurately describe the origin of their wines to consumers, and helps consumers identify the wines they purchase. Thus, any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from that area.

No new requirements are proposed. Accordingly, a regulatory flexibility analysis is not required.

Is This a Significant Regulatory Action as Defined by Executive Order 12866?

It has been determined that this proposed regulation is not a significant regulatory action as defined by Executive Order 12866. Therefore, a regulatory assessment is not required.

5. Drafting Information

The principal author of this document is Jackie White, Coordinator, Bureau of Alcohol, Tobacco, and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, Part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205

Subpart C—Approved American Viticultural Areas

Par. 2. Subpart C is amended by adding § 9.165 to read as follows:

* * * * *

§ 9.165 Applegate Valley.

(a) *Name.* The name of the viticultural area described in this section is "Applegate Valley."

(b) *Approved Maps.* The appropriate map for determining the boundaries of the Applegate Valley viticultural area is one U.S.G.S. map titled "Medford, Oregon; California" NK 10–5 scale 1:250,000 (1955, revised 1976).

(c) *Boundaries.* The Applegate Valley viticultural area is located within the State of Oregon within Jackson and Josephine Counties, and entirely within the existing Rogue Valley viticultural area. The boundaries are as follows:

(1) Beginning at the confluence of the Applegate River with the Rogue River approximately 5 miles west of Grants Pass, the boundary proceeds due west to the boundary of the Siskiyou National Forest north of Dutcher Creek;

(2) Then southerly and westerly along the boundary of the Siskiyou National Forest to Highway 199;

(3) Then easterly to the peak of Roundtop Mountain (4663 feet);

(4) Then easterly and southerly to the peak of Mungers Butte;

(5) Then southerly and westerly to Holcomb Peak;

(6) Then in a generally southeasterly direction along the eastern boundary of the Siskiyou National Forest until it joins the northern boundary of the Rogue River National Forest;

(7) Then easterly along the northern boundary of the Rogue River National forest to a point due south of the peak of Bald Mountain;

(8) Then due north to the peak of Bald Mountain (5635 feet);

(9) Then northerly and westerly to the lookout tower on Anderson Butte;

(10) Then northerly and westerly to the peak of an unnamed mountain with an elevation of 3181 feet;

(11) Then northerly and westerly to the peak of Timber Mountain;

(12) Then westerly and southerly to the middle peak of Billy Mountain;

(13) Then northerly and westerly through a series of five unnamed peaks with elevations of approximately 3600, 4000, 3800, 3400, and 3800 feet, respectively;

(14) Then northerly and easterly to Grants Pass Peak;

(15) Then westerly to Jerome Prairie;

(16) Then northwesterly to the confluence of the Applegate River and the Rogue River and the point of the beginning.

Signed: April 29, 1999.
John W. Magaw,
Director.
[FR Doc. 99–11366 Filed 5–5–99; 8:45 am]
BILLING CODE 4810–31–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD–99–5609]

RIN 2133–AB38

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater To Obtain Commercial Fisheries Documents

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Maritime Administration (MARAD, we, our, or us) is soliciting public comments on the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 (AFA), P.L. 105–277, for vessels of 100 registered feet or greater. The AFA seeks to raise the U.S. ownership and control standards for U.S.-flag fishing vessels operating in U.S. waters, to eliminate exemptions for vessels that can not meet current citizenship standards, and to help phase out of operation many of the largest fishing vessels. These statutory changes are intended to give U.S. interests a priority in the harvest of U.S. fishery resources. We are required to promulgate final regulations by April 1, 2000, regarding the citizenship requirements for ownership and control of vessels of 100 registered feet or more that have or are seeking a fishery endorsement to their documentation. The regulations will become effective on October 1, 2001.

Section 203 of the AFA specifically requires that the regulations: prohibit impermissible transfers of ownership or control; identify transactions that will require prior MARAD approval; and identify transactions that will not require prior MARAD approval. To the extent practicable, the regulations are required to minimize disruptions to the commercial fishing industry, to the traditional financing arrangements of such industry, and to the formation of fishery cooperatives.

We are seeking public comments related to our implementation of the AFA. Your comment is welcome on the questions included in this ANPRM following the section "What information are we requesting?" or on any aspect of our implementation of the AFA.

DATES: You should submit your written comments early enough to ensure that we receive them no later than July 1, 1999. In addition, public meetings at which oral and written comments may be presented have been scheduled for the dates and locations listed in **SUPPLEMENTARY INFORMATION.**

ADDRESSES: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, DC 20590–0001 or by e-mail to John T. Marquez, Jr. at "John.Marquez@marad.dot.gov". All comments will become part of this docket and will be available for inspection and copying at the above address between 10 am and 5 pm, E.T., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: John T. Marquez, Jr. of the Office of Chief Counsel. You may contact him by phone at (202) 366–5320, by fax at (202) 366–7485, by e-mail at "John.Marquez@marad.dot.gov", or you may send mail to John T. Marquez, Jr., Maritime Administration, Office of Chief Counsel, Room 7228, MAR–222, 400 Seventh St., S.W., Washington, D.C. 20590–0001.

SUPPLEMENTARY INFORMATION:

Public Hearing Dates and Locations

1. May 18, 1999, 9:00 a.m. to 5:00 p.m.—South Auditorium, Jackson Federal Building, 915 Second Avenue, Seattle, WA;
2. May 20, 1999, 9:00 a.m. to 5:00 p.m.—Assembly Room, Z.J. Loussac Library, 3600 Denall St., Anchorage, AK;
3. June 9, 1999, 7:00 p.m. to 10:00 p.m.—Holiday Inn—Logan Airport, 225 McClellan Highway, Boston, MA;
4. June 17, 1999, 9:00 a.m. to 1:00 p.m.—Suite 1830, Crescent City Room, World Trade Center, 2 Canal Street, New Orleans, LA; and
5. June 23, 1999, 9:00 a.m. to 1:00 p.m.—Room 6200, Nassif Building, 400 7th Street S.W., Washington, D.C.

Comments

How Will We Issue Rules To Implement The AFA?

We will be using informal rulemaking procedures under the Administrative Procedure Act (5 U.S.C. 553) to promulgate regulations implementing the AFA. The process of promulgating these regulations will include the issuance of the following documents:

(1) An advance notice of proposed rulemaking (ANPRM).
(2) A notice of proposed rulemaking (NPRM).
(3) A final rule.

What is an ANPRM?

An ANPRM tells the public that we are considering an area for rulemaking and requests written comments on the appropriate scope of the rulemaking or on specific topics. This ANPRM does not include the text of a potential regulation.

What is a NPRM?

A NPRM proposes our specific regulatory changes for public comment and contains supporting information. It generally includes proposed regulatory text.

What is a Final Rule?

A final rule sets out new regulatory requirements and their effective date. A final rule will also identify issues raised by commenters in response to the notice of proposed rulemaking and give the agency's response.

Who May File Comments?

Anyone may file written comments about proposals made in any rulemaking document that requests public comments, including any State government agency, any political subdivision of a State, and any interested person invited by us to participate in the rulemaking process.

How do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

We encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments. Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESSES**. If possible, one copy should be in an unbound format to facilitate copying and electronic filing.

How can I be Sure that My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket

Management will return the postcard by mail. If you send comments by e-mail, you will receive a message by e-mail confirming receipt of your comments. Your e-mail address should be noted with your comments.

What Takes Place at a Public Meeting?

We have scheduled public meetings in five cities during the sixty day comment period to this ANPRM. Meeting locations and times are provided above under **DATES**. A public meeting is a nonadversarial, fact-finding proceeding conducted by a MARAD representative. Generally, public meetings are announced in the **Federal Register**. Interested persons are invited to attend and to present their views to the agency on specific issues. There are no formal pleadings and no adverse parties, and any regulation issued afterward is not necessarily based exclusively on the record of the meeting. A record of oral comments will be made at the public meeting; however, commenters are also requested to provide their comments to us in writing at the meeting. A copy of all written and oral comments made at the public meeting will be filed in the docket. Sections 556 and 557 of the Administrative Procedure Act (5 U.S.C. 556 and 557) do not apply to public meetings under this part.

How can I Participate at a Public Meeting?

If you would like to speak at one of the public meetings, you should notify John T. Marquez, Jr. at least five (5) working days before the scheduled meeting. You may notify him by phone at (202) 366–5320, by fax at (202) 366–7485 or by e-mail at "John.Marquez@marad.dot.gov". Your notification should include your name, address, phone number, fax number, e-mail address and the party that you represent. If you plan to attend the public meeting in Washington, DC, you must notify us in advance in order to be admitted to the building. Only one oral presentation per company or group should be presented.

Is Information that I Submit to MARAD Made Available to the Public?

When you submit information to us as part of this ANPRM, during any rulemaking proceeding, or for any other reason, we may make that information publicly available unless you ask that we keep the information confidential. If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, Maritime Administration, at the address given above under **FOR FURTHER INFORMATION CONTACT**. You should mark "CONFIDENTIAL" on each page of the original document that you would like to keep confidential.

In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESSES**. When you send comments containing information claimed to be confidential business information, you should also include a cover letter setting forth with specificity the basis for any such claim (for example, it is exempt from mandatory public disclosure under the Freedom of Information Act, 5 U.S.C. 552; it is information collected by officials of the United States in the course of their employment duties that is exempt from disclosure pursuant to 18 U.S.C. 1905).

We will decide whether or not to treat your information as confidential. You will be notified in writing of our decision to grant or deny confidentiality before the information is publicly disclosed and will be given an opportunity to respond.

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments that Docket Management receives after that date.

How can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESSES**. The hours of the Docket Room are indicated above in the same location. Comments may also be viewed on the Internet. To read the comments on the Internet, take the following steps: Go to the Docket Management System (DMS) Web page of the Department of Transportation (http://dms.dot.gov/). On that page, click on "search." On the next page (http://dms.dot.gov/search/), type in the four-digit docket number shown at the beginning of this document. Example: If the docket number were "MARAD–1999–1234," you would type "1234." After typing the docket number, click on "search." On the next page, which contains docket summary information for the docket you selected, click on the desired comments. You may download the comments.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Accordingly, we recommend that you periodically check the Docket for new material.

Background

What are the New Requirements for a Fishery Endorsement Under the American Fisheries Act (AFA)?

Documentation of vessels under federal law is a type of national registration which, among other things, serves to establish a vessel's eligibility to engage in a specified trade such as the fisheries of the United States. This is done through an endorsement on the vessel's Certificate of Documentation. In order to obtain a fishery endorsement for a documented vessel, the owner of a vessel must comply with the requirements set out in sections 12102 and 12108 of Title 46, United States Code.

The AFA was passed as part of the Omnibus and Emergency Appropriations Act for FY 1999, PL 105–277, on October 6, 1998. The AFA imposes a 75% U.S. citizen ownership and control requirement for owners of vessels of 100 registered feet or more who are engaging in the U.S. fisheries or wish to enter such trade. We are required to scrutinize transfers of ownership and control of such vessels, such as leases, charters, mortgages, financings, and other arrangements that might convey impermissible control over the management, sales, financing or other operation of a vessel or vessel owning entity. This review will include the examination of debt instruments which might convey impermissible control to a non-U.S. citizen and determinations as to whether trustees who hold mortgages on vessels for the benefit of non-U.S. citizens are qualified under the criteria set forth in the AFA. We are seeking public comment in these areas along with suggestions as to whether the defined term for "control" and "controlled" set forth in Section 2(c) of the Shipping Act of 1916 (1916 Act), 46 App. U.S.C. 802(c), should be expanded to include other indications of control. All comments will be considered in the preparation of a rulemaking to implement the requirements of the AFA applicable to MARAD.

For vessels measuring 100 registered feet or greater, the owner is required by subsection 203(c) of the AFA to file an annual statement of citizenship with us setting forth all elements of ownership and control necessary to demonstrate

compliance with the requirements of 46 U.S.C. 12102(c). In implementing this section, we are directed to promulgate regulations that follow, to the extent practicable, the requirements of 46 CFR Part 355, as in effect on September 25, 1997, including the prescribed form of citizenship affidavit. The regulations at 46 CFR Part 355 set forth MARAD's requirements for determining citizenship under section 2 of the 1916 Act and can be summarized as follows:

- The entity must be organized and existing under the laws of the United States.
- The names and date and place of birth of corporate officers and directors must be disclosed, along with an affirmative statement that such officers and directors are citizens of the United States by virtue of birth in the United States, naturalization, or as otherwise authorized by law. The president or other chief executive officer, chairman of the board, and all officers authorized to act in the absence or disability of such persons must be U.S. citizens, and no more of its directors than a minority of the number necessary to constitute a quorum can be non-U.S. citizens.

For other types of entities, such as limited liability companies, associations, etc., citizenship requirements are imposed on persons who have similar functions as officers and directors of a corporation.

- There are two methods of establishing that 75% of the stock of a corporation is owned by U.S. citizens. They are:

(1) Direct Proof. For corporations with thirty (30) or fewer stockholders, the name of each stockholder and the number and percentage of shares of stock held by that individual must be given, along with a statement that he/she is a citizen of the United States by virtue of birth in the United States, naturalization, or as otherwise authorized by law. If the stockholder is not a citizen of the United States, then the country of which he/she is a citizen must be provided.

(2) "Fair Inference." If the stock of the corporation is publicly traded, U.S. citizenship can be established by using the addresses of the stockholders; i.e. relying on corporate books and records at least 95% of the stock must be held by persons having registered U.S. addresses in order to "infer" that at least 75 percent (75%) of the stock is owned by U.S. citizens. This method of proof of U.S. citizenship for corporations, whose stock is publicly traded, dates back to 1936 and is based on a court case, *Collier Advertising Service, Inc.* v. *Hudson River Day Line*, 14 F. Supp. 335 (S.D.N.Y. 1936). In addition, the citizenship of all stockholders owning of record or beneficially five percent (5%) or more of the stock must be established.

Old Standard

Prior to the passage of the AFA, owners of vessels engaged in the fisheries of the United States were required to meet the vessel documentation requirements set forth at 46 U.S.C. 2102. These vessel documentation requirements and fishery endorsement requirements are set forth below:

- an individual was required to be a citizen of the United States;
- an association, trust, joint venture, or other entity was required to have members all of which were citizens of the United States;
- a partnership was required to have general partners that were citizens of the United States and the controlling interest in the partnership was required to be owned by citizens of the United States; and
- a corporation was required (1) to be established under the laws of the United States; (2) to have a president or other chief executive officer and chairman of its board of directors who were citizens of the United States; and (3) to have no more noncitizen directors than a minority of the number necessary to constitute a quorum. In addition, if a corporation, seeking a fishery endorsement, was owned by other corporations, in whole or in part, the controlling interest in these corporations in the aggregate had to owned by citizens of the United States.

New Ownership and Control Requirements

Subsection 202(a) of the AFA amended the vessel documentation statute by increasing the U.S. citizen ownership and control requirement from a majority (at least 51 percent) to at least 75 percent ownership and control for all vessels, including fish tender vessels and floating processors, seeking a fishery endorsement or renewal of such endorsement. The effective date of this new U.S. citizen ownership requirement is October 1, 2001.

Subsection 202(a) also provides that, when considering whether a vessel owner qualifies for a fishery endorsement, the U.S. citizenship requirements of section 2(c) of the 1916 Act apply to entities other than corporations, such as limited liability companies, partnerships, joint ventures, and other types of entities. The statutory language of section 2(c) of the 1916 Act, which we are to apply when determining the citizenship status of entities either seeking a fishery endorsement or renewing such endorsement is as follows:

> Seventy-five per centum of the interest in a corporation shall not be deemed to be owned by citizens of the United States (a) if the title to 75 per centum of its stock is not vested in such citizens free from any trust or fiduciary obligation in favor of any person not a citizen of the United States; or (b) if 75 per centum of the voting power in such corporation is not vested in citizens of the United States; or (c) if, through any contract or understanding, it is so arranged that more than 25 per centum of the voting power in such corporation may be exercised, directly or indirectly, in behalf of any person who is not a citizen of the United States; or (d) if by any other means whatsoever control of any interest in the corporation in excess of 25 per centum is conferred upon or permitted to be exercised by any person who is not a citizen of the United States.

The citizenship requirements of section 2(c) apply at each tier of ownership; therefore, any person or entity whose interest is being relied upon to establish the required 75 percent U.S. citizen ownership and control, including any parent corporation, partnership or other entity, must also comply with the U.S. citizenship requirements of section 2(c). In addition, the AFA requires that the 75 percent citizenship requirement be applied in the aggregate. A literal interpretation of the requirement to apply the 75 percent citizenship requirement both at each tier and "in the aggregate" would mean that a non-section 2 citizen could not have an ownership or control interest of more than 25 percent in a vessel or vessel owning entity by any means. For example, a non-section 2 citizen may own up to 25 percent of the interest in the primary corporation that owns a vessel with a fishery endorsement. However, that same non-section 2 participant would not be allowed to have any interest in a parent corporation or any other entities at any tier that may have an ownership interest in the 75 percent of the primary corporation owned by section 2 citizens.

The AFA also sets forth certain standards that will be applied by us in determining "control" or "controlled" for purposes of section 12102(c) of title 46, United States Code, and the language of section 2(c) of the 1916 Act. Specifically, the AFA states that the terms "control" or "controlled" shall include:

- the right to direct the business of the entity which owns the vessel;
- the right to limit the actions of or replace the chief executive officer, a majority of the board of directors, any

general partner, or any person serving in a management capacity of the entity which owns the vessel; or

• the right to direct the transfer, operation or manning of a vessel with a fishery endorsement.

However, the terms "control" or "controlled" shall not include the right to simply participate in the above activities or the use by a mortgagee of loan covenants approved by the Secretary. Determining "control" often involves the review and analysis of a specific set of facts in a given transaction and goes beyond the mere form of a transaction. For example, a non-section 2 citizen's equity investment in an entity in excess of its ownership interest might be deemed "control"; a non-section 2 citizen's leading role in setting up a U.S. company for purposes of engaging in the U.S. fisheries might be an indication of control; interlocking corporate officers/directors and shareholders between a U.S. citizen entity and a non-section 2 citizen entity might be deemed impermissible control; or passing the overall economic benefit from the transaction to non-U.S. citizens might be deemed impermissible control. In this ANPRM, we are seeking comments on the elements of "control" that should be considered in determining U.S. citizenship for purposes of qualifying for a fishery endorsement.

Leasing and Chartering

A very significant new standard imposed under 202(a)(3) of the AFA is that vessels with a fishery endorsement cannot be leased or chartered to an individual who is not a citizen of the United States or to an entity that is not eligible to own a vessel with a fishery endorsement. If such vessels are chartered or leased to non-section 2 citizens, the fishery endorsement is immediately invalid upon use as a fishing vessel.

Mortgages and Financing

The AFA sets forth the eligibility requirements for lenders who wish to obtain a preferred mortgage as security for their loan. A lender will be eligible for a preferred mortgage if: (a) The lender is in compliance with the U.S. citizenship requirements needed for a fishery endorsement; (b) the lender is a state or federally chartered financial institution that complies with the "controlling interest" requirements of section 2(b) of the 1916 Act, including, among other things, 51% U.S. citizen ownership and control; or (c) the lender uses a section 2 citizen trustee to hold the mortgage.

The use of a section 2 citizen trustee to hold the mortgage is one of long-standing in the maritime industry and resulted from a court case, *Chemical Bank New York Trust Company* v. *Steamship Westhampton*, 358 F.2nd 574 (4th Cir. 1965). The court held that the mortgage on the ship WESTHAMPTON, although given to a section 2 citizen trustee, was not entitled to preferred status because the bond which was secured by the mortgage was an interest in a vessel under section 37 of the 1916 Act, and the issuance of the bond to a non-section 2 citizen holder had not been approved by MARAD. We have authority under sections 9 and 37 of the 1916 Act to approve of certain transfers of interest in section 2 citizen-owned vessels to non-section 2 citizens. Within months of the court's decision in Westhampton, the Congress enacted legislation whereby the issuance, assignment or transfer to non-section 2 citizens of notes, bonds, or other evidence of indebtedness, secured by a mortgage on a U.S. vessel, was acceptable so long as the trustee holding the mortgage had our approval. The so-called "Westhampton trustee" statute was repealed by the Congress in 1996. However, the "Westhampton trustee" concept has been incorporated in the AFA and will permit foreign financing in the U.S. fishing industry.

The purpose of the trustee holding the mortgage is to prohibit the non-section 2 citizen lender from exercising prohibited types of control over the vessel or its owner. Non-section 2 citizen lenders may have certain rights conveyed to them in loan documents through negative financial loan covenants. However, use of such covenants may require our approval and such approval will be dependent upon whether elements of "control" over the vessel owner or the vessel are being transferred to the non-section 2 citizen lender. Pursuant to this ANPRM, we are interested in soliciting comments from the public on what restrictions should be imposed on foreign lenders. For example, should we give blanket approval for a trustee to operate a vessel temporarily without our consent for reasons related to safety, repairs, drydocking or other circumstances?

Specific Vessels

Subsection 202(a)(5) of the Act further amends 46 U.S.C. 12102(c), by adding a new paragraph (5) that exempts the following vessels from the 75 percent standard, provided the owners of the vessels continue to comply with the fishery endorsement law in effect on October 1, 1998: (1) vessels engaged in fisheries under the authority of the Western Pacific Fishery Management Council; and (2) purse seine vessels engaged in tuna fishing in the Pacific Ocean outside the exclusive economic zone or pursuant to the South Pacific Regional Fisheries Treaty. Fishery endorsements issued by the Secretary for these vessels would be valid only in those specific fisheries and the vessels would not be eligible to receive a fishery endorsement to participate in other fisheries unless the owner complied with the 75 percent standard.

A new paragraph at 46 U.S.C. 12102(c)(6) prevents new large fishing vessels from entering U.S. fisheries, including former U.S.-flag fishing vessels that have reflagged in recent years to fish in waters outside the U.S. exclusive economic zone. Specifically, it prohibits the issuance of fishery endorsements to vessels greater than 165 feet in registered length, or of more than 750 gross registered tons, or that have an engine or engines capable of producing a total of more than 3,000 shaft horsepower. Two exceptions are permitted:

(1) (i) the vessel had a valid fishery endorsement on September 25, 1997;

(ii) the vessel is not placed under foreign registry after October 6, 1998, the date of the enactment of the AFA; and

(iii) in the event the vessel's fishery endorsement is allowed to lapse or is invalidated after October 6, 1998, an application for a new fishery endorsement is submitted to the Secretary of Transportation (Secretary) within 15 business days; or

(2) the owner of the vessel demonstrates to the Secretary that a regional fishery management council has recommended and the Secretary of Commerce has approved specific measures after the date of the enactment of the AFA to allow the vessel to be used in fisheries under that council's authority. The regional councils have the authority and are encouraged to submit for approval to the Secretary of Commerce measures to prohibit vessels that receive a fishery endorsement under section 12102(c)(6) from receiving any permit that would allow the vessel to participate in fisheries under their authority, so that a vessel cannot receive a fishery endorsement through measures recommended by one council, then enter the fisheries under the authority of another council.

Subsection 203(g) of the AFA provides limited exemptions from the new U.S.-control and ownership requirements in 46 U.S.C. 12102(c) for the owners of five vessels (the EXCELLENCE, GOLDEN ALASKA, OCEAN PHOENIX, NORTHERN

TRAVELER, and NORTHERN VOYAGER) under certain conditions. The exemption applies only to the present owners, and the subsection not only requires all subsequent owners to comply with the 75 percent standard, but requires even the present owners to comply if more than 50 percent of the interest owned and controlled in that owner changes after October 1, 2001. The exemption also automatically terminates with respect to the NORTHERN TRAVELER or NORTHERN VOYAGER if the vessel is used in a fishery other than one under the jurisdiction of the New England or Mid-Atlantic fishery management councils, and automatically terminates with respect to the EXCELLENCE, GOLDEN ALASKA, or OCEAN PHOENIX if the vessel is used to harvest fish.

Penalties

Subsection 203(e) of the AFA provides that the Secretary shall revoke the fishery endorsement of any vessel subject to 46 U.S.C. 12102(c), as amended by subtitle I of the AFA, whose owner does not meet the 75% ownership requirement or otherwise fails to comply with 46 U.S.C. 12102(c).

Subsection 203(f) of the AFA expands the penalties under 46 U.S.C. 12122 (a) and (b), and makes the owner of a documented vessel for which a fishery endorsement has been issued liable to the United States Government for a civil penalty of up to $100,000 for each day in which such vessel has engaged in fishing within the exclusive economic zone of the United States, if the owner or the representative or agent of the owner knowingly made a false statement or representation with respect to the eligibility of the vessel under 46 U.S.C. 12102(c) in applying for, or applying to renew, such fishery endorsement. This subsection increases the penalties for fishery endorsement violations and is intended to discourage willful noncompliance with the new requirements.

Fishery Cooperatives

Generally, subsection 210(e)(1) of the AFA prohibits any individual or entity from harvesting more than 17.5% of the pollock in the Bering Sea and Aleutian Islands (BSAI) directed pollock fishery to ensure competition. Subsection 210(e)(2) directs the North Pacific Council to establish an excessive share cap for the processing of pollock in the BSAI directed pollock fishery. At the request of the North Pacific Council or the Secretary of Commerce, an individual who is believed to have exceeded the harvesting or processing caps in either 210(e) (1) or (2), may be required pursuant to subsection 210(e)(3) to submit such information to the Administrator of MARAD as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either such percentage. The Administrator shall make a finding as soon as practicable upon such request and shall submit such finding to the North Pacific Council and the Secretary of Commerce.

International Agreements

Subsection 213(g) of the AFA specifies that in the event the new U.S. ownership and control requirements or preferred mortgage requirements of subtitle I of the Act are deemed to be inconsistent with an existing international agreement relating to foreign investment with respect to a specific owner or mortgagee on October 1, 2001 of a vessel with a fishery endorsement, that the provision shall not apply to that specific owner or mortgagee with respect to that particular vessel to the extent of the inconsistency. Subsection (g) does not exempt any subsequent owner or mortgagee of the vessel, and is therefore not an exemption that "runs with the vessel." In addition, the exemption in subsection (g) ceases to apply even to the owner on October 1, 2001 of the vessel if any ownership interest in that owner is transferred to or acquired by a foreign individual or entity after October 1, 2001.

What Information are We Requesting?

We are requesting comments, suggestions and information relating to the changes in the statutory requirements to obtain a fishery endorsement for a documented vessel of 100 feet or greater in registered length and the regulations necessary to implement those requirements. Comments are requested specifically on the questions presented below and on any other aspect that the commenter believes would be helpful to us in drafting regulations to implement the AFA. Unless specifically stated otherwise, when used in the following questions the term "vessel" refers to vessels of 100 registered feet or more that have or are seeking a fishery endorsement.

Questions

I. Financing and Mortgages

We will be reviewing financing transactions involving non-section 2 lending institutions to determine whether covenants in these loan documents convey, either directly or indirectly, control over the vessel or vessel owner. We recognize that certain loan covenants are not indicative of control by a non-citizen lender over a section 2 citizen vessel owner as previously discussed. However, we are seeking input regarding the typical covenants found in loan documents involving fishing vessels that may be unique from those found in other commercial vessel financing arrangements.

1. What are examples of conventional covenants found in typical loan documents involving the financing of fishing vessels?

2. Are there mortgage covenants used in traditional fishing vessel financing arrangements concerning the use, operation, or control of the vessel, whether actual or contingent, that could be considered to give the lender or mortgagee control over the vessel, such as the ability to remove or replace the master of the vessel?

3. Are there standard mortgage covenants that we should approve of in advance for use, such as the ability to restrict the vessel owner from incurring additional debt without the lender's approval, the ability to restrict the vessel owner from selling assets without the lender's approval, etc?

4. Are there mortgage covenants that should require our approval on a case-by-case basis prior to use?

5. Should loan agreements and other agreements between section 2 citizen owners of fishing vessels and foreign lenders be permitted to take effect prior to our approval?

6. Foreign lenders may obtain preferred mortgages on fishing vessels greater than l00 registered feet provided they use a trustee arrangement (commonly referred to as the "Westhampton Trustee"). We have long-standing experience in connection with the Westhampton Trustee and, prior to its elimination by Congress along with other requirements relating to mortgagees, we had regulations found at 46 CFR part 221 (1997) governing the use of Westhampton Trustees. The AFA revives the use of the Westhampton Trustee for fishing vessels. Should we adopt similar requirements under the AFA to those contained in our earlier regulations for trustees/mortgagees? Are there other requirements that should be added?

7. To what extent are vessels financed by fish processors or through entities other than traditional lending institutions? Do such financing arrangements contain covenants that differ from covenants used by traditional lending institutions?

8. Should we preclude an entity that has a contract for the purchase of all or

a significant portion of a vessel's catch from financing the purchase, reconstruction, or any other transaction relating to the vessel?

II. Management and Control

The AFA directs us to scrutinize leases, charters, and similar arrangements for purposes of determining whether impermissible control "over the management, sales, financing, or other operations of an entity" is being conveyed to non-section 2 citizens. In addition, we are specifically required under the AFA to review contracts involving the purchase over extended periods of time of all, or substantially all, of the living marine resources harvested by a fishing vessel.

1. Are vessel management companies frequently used in the U.S. fisheries? If so, what is their role; i.e., duties and responsibilities.

2. What is the role and responsibility of a sales manager in the fishing industry? Should a vessel be eligible for a fishery endorsement if the sales manager is not a 75 percent owned and controlled U.S. citizen?

3. What types of long-term contracts for sale of all or a large portion of the catch from a vessel are used in the fishing industry? Do such contracts have covenants that give the purchaser of the vessel's catch control over the operation of the vessel or the vessel's owner?

4. Should a section 2 citizen vessel owner be precluded from entering into an exclusive sales contract, providing for the sale of all or a significant portion of its catch, with a non-section 2 citizen entity? If allowed, should the terms of these contracts be restricted in any way?

5. We have consistently construed the ability by a non-section 2 citizen to discipline, remove or replace the master of a vessel as an indication of control over the vessel, and the granting of such right to a non-section 2 citizen as prohibited. Are there unique circumstances unknown to MARAD which should be considered prior to adopting a similar requirement for U.S. documented vessels with a fishery endorsement?

6. Should every contract or business arrangement that the vessel owner enters into with a non-section 2 citizen require our prior approval? If not, what contracts or other business arrangements should? Should it matter whether the business arrangement affects the operation of the vessel, or is it enough if it affects the overall operation of the fishing business?

7. Should section 2 citizen owners of such fishing vessels be required to submit the contracts or business arrangements for advance approval prior to entering into the transaction? If not, should there be a time imposed for submission for approval after entering into such transactions; i.e. within thirty (30) days or some lesser period?

8. The AFA requires that 75 percent of the interest in an entity that owns a vessel with a fishery endorsement be owned and controlled by section 2 citizens at each tier and in the aggregate. If the phrase "in the aggregate" is determined to preclude a non-section 2 citizen from having a combined interest from its total participation at every tier of more than 25%, what impact will that have on vessel owners, mortgagees, lenders, managers, etc . . .?

III. Fishery Cooperatives

We are seeking information that will help us to evaluate how fishery cooperatives should be considered in the context of determining the U.S. citizenship of vessel owners, especially the role of non-section 2 citizen participants in fishery cooperatives. Responses to the following questions will assist in developing our regulations.

1. Who can become a member of a fishery cooperative? How are fishery cooperatives managed? Does a member receive a "membership interest" in the fishery cooperative and does each member have one vote or are there circumstances whereby a member might have more than one vote on matters requiring a vote by the members?

2. What role do shoreside processors play in fishery cooperatives?

3. Should a non-section 2 citizen be prohibited from becoming a member of a fishery cooperative?

4. If a fishery cooperative enters into any agreement with non-section 2(c) citizens, should that agreement be subject to our approval prior to entering into the agreement or within thirty (30) days of entering into the agreement?

5. What types of regulatory requirements related to the ownership and control of a vessel or vessel owning entity would impede or facilitate the ability of parties to enter into fishery cooperatives?

IV. General and Procedural

In addition to the questions set forth above, there are a number of areas in which input from the fishing industry would be beneficial in developing our regulations. They are as follows:

1. What regulatory requirements, within the framework of the AFA, should we adopt to protect the limited fishery resources and ensure that qualified U.S. citizens primarily benefit?

2. Subsection 210(e)(2) of the AFA directs the North Pacific Council to establish an excessive share cap for the processing of pollock in the directed pollock fishery. At the request of the North Pacific Council or the Secretary of Commerce, an individual who is believed to have exceeded the harvesting or processing caps in either 210(e) (1) or (2), may be required pursuant to subsection 210(e)(3) to submit such information to the Administrator of MARAD as the Administrator deems appropriate to allow the Administrator to determine whether such individual or entity has exceeded either percentage. Should we establish set procedures to address charges that a party has exceeded the excessive share cap or should findings be made on an ad hoc basis?

3. What procedure should we have for findings under the requirements of the AFA that the vessel owner does not qualify as a citizen for purposes of obtaining a fishery endorsement?

4. Are there any known conflicts or possible violation of international treaty agreements created by the imposition of the section 2(c) citizenship requirements on owners of U.S. documented vessels with a fishery endorsement, trustees, and mortgagees?

5. Are there any unique issues within the fishing industry or particular fisheries relating to the ownership, operation, management, control, financing, or mortgaging of fishing vessels of which we should be aware in promulgating rules to implement the AFA?

6. What costs related to the implementation of the new citizenship and control requirements for vessels of 100 feet or greater mandated by the AFA are likely to be incurred by vessel owners, operators and managers, lending institutions, mortgagees, and other participants in the fishing industry?

Other Issues

This request for comments concerning the desirability of rulemaking is not limited to the foregoing. We are also seeking comments and/or suggestions concerning other issues that should be addressed in regulations implementing the requirements of the AFA for which MARAD is responsible.

Plain Language

This ANPRM is one of our first rulemaking documents to be published under the new plain language requirements. We welcome any comments and suggestions on the use and effectiveness of plain language techniques in this document or other suggestions to improve our use of plain language in future rulemakings.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review)

Any rule that is promulgated may be considered an economically significant regulatory action under section 3(f) of E.O. 12866; therefore, this rule has been reviewed by OMB. The rule also is considered significant under DOT Policies and Procedures. We cannot estimate at this time whether this rulemaking will be economically significant because we have not published a specific proposal. A preliminary regulatory evaluation will be prepared that reflects the comments to this ANPRM.

Federalism

We have analyzed this ANPRM in accordance with the principles and criteria contained in Executive Order 12612 and have determined that any rule that might be subsequently promulgated would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

Prior to commencing further rulemaking, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires us to consider whether our proposals will have a significant impact on a number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Any regulations developed pursuant to this advance notice of proposed rulemaking may reasonably be expected to affect the following small entities: small businesses and individual U.S. citizens currently owning documented fishing industry vessels; individuals and small businesses seeking to sell or mortgage documented fishing industry vessels; small businesses seeking to document fishing industry vessels in the future; and lending institutions engaging in fishing industry vessel financing.

At the present time, we cannot state that any further rulemaking in this area will not have a significant economic impact on a substantial number of small entities. If you believe that this rulemaking will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining in what way and to what degree this proposal will economically affect your business. If you think that your business qualifies as a small entity, and that further rulemaking will have a significant economic impact on your business, please submit a comment explaining why you think your business qualifies as a small entity and how this rulemaking may economically affect your business. In addition, we welcome comments from anyone in the general public who believes that these regulations may impact small business entities.

Environmental Impact Statement

Any rule that is subsequently promulgated is not expected to significantly affect the environment; therefore, an Environmental Impact Statement is not likely to be required under the National Environmental Policy Act of 1969. When regulations are proposed, an appropriate determination will be available in the docket for inspection or copying where indicated under **ADDRESSES**.

Paperwork Reduction Act

We cannot yet estimate the paperwork burden which may result from any further rulemaking on this issue, but it is expected that comments received on this advance notice of proposed rulemaking will assist the agency in estimating the potential paperwork burden, as required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). If you have comments on the potential information collection burden, please submit a comment (see **ADDRESSES**) explaining your concerns. If new recordkeeping requirements result from future proposed rulemaking, we will submit those recordkeeping requirements to the Office of Management and Budget for review.

Unfunded Mandates Reform Act

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objectives of the rule.

International Trade Impact Assessment

The final rule that will result from this rulemaking is not expected to contain standards-related activities that create unnecessary obstacles to the foreign commerce of the United States. If you believe that this rulemaking will have international trade impacts, we welcome your comments.

By order of the Maritime Administrator.

Dated: April 30, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–11259 Filed 5–5–99; 8:45 am]

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Notices

Federal Register
Vol. 64, No. 87
Thursday, May 6, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Sloan-Kennally Timber Sale, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service published a notice of intent to prepare an environmental impact statement (EIS) for the proposed Sloan-Kennally Timber Sale in the **Federal Register** March 19, 1991, (Vol. 56, No. 53, p. 11541–11542). The Forest Service then published a revised notice of intent in the **Federal Register** September 23, 1994, (Vol. 59, No. 184, p. 48878) changing the dates for release of the draft EIS (DEIS) and final EIS (FEIS). The revised notice is hereby revised to show another change in the project schedule. In addition, the Payette National Forest is offering another scoping opportunity for comments on the scope of analysis and issues to address in this revised DEIS.

DATES: Comments must be received by June 7, 1999.

ADDRESSES: Submit written scoping comments to: Dan Anderson, Sloan-Kennally Timber Sale Team Leader, New Meadows Ranger District, Payette National Forest, P.O. Box J, New Meadows, Idaho 83654, Fax (208) 347–0309.

FOR FURTHER INFORMATION CONTACT: Questions about the project should be directed to Dan Anderson, phone (208) 347–0300.

SUPPLEMENTARY INFORMATION: Payette National Forest issued a DEIS on the Sloan-Kennally Project in August 1994, but because large fires burned on the Payette later that year and the priorities of the Forest shifted to subsequent timber salvage efforts, the FEIS was never issued. Due to the elapsed time, the incorporation of the Inland Native Fish Strategy (INFISH) into the Forest Plan, the issuance of an interim roadless policy for the agency, and the listing of bull trout under the Endangered Species Act, the Forest expects to issue a revised DEIS in June 1999, and a FEIS in October 1999.

The agency gives notice of the full environmental analysis and decision making process that is continuing on the proposal so that interested and affected people know how they may participate and contribute to the final decision. The Forest conducted public scoping and addressed comments in the DEIS. The Forest now invites additional comments on the scope of the analysis and the issues to address in the revised DEIS.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and during review of the revised DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

Issues that were considered and analyzed in the DEIS were water quality, soil productivity, wildlife habitat, roadless character and wilderness potential, biodiversity, economics and socio-economics, fish habitat, recreation, and visual quality. It is important to bring any new issues to the attention of the Forest now so that they may be considered in the revised DEIS.

The Responsible Official is David F. Alexander, Forest Supervisor, Payette National Forest.

Dated: April 30, 1999.

Miera Crawford,

External Relations Branch Chief.

[FR Doc. 99–11336 Filed 5–5–99; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed Little Weiser Landscape Vegetation Management Project, Payette National Forest, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare an environmental impact statement (EIS) for the proposed Little Weiser Landscape Vegetation Management Project, Council Ranger District, Payette National Forest, Idaho. The proposed action would harvest timber on 3,000 to 3,800 acres, construct about 8 miles of new road, reconstruct approximately 30 miles of system and non-system roads, obliterate 4.2 miles of roads, close approximately 40 miles of existing non-system roads, treat fuels, and plant conifer seedlings on 2,300 to 2,600 acres after harvest. The Forest Service will develop a range of alternatives, including a no action alternative, to address issues.

The agency invites public comments on the scope of the analysis and issues to be addressed in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision making process that is beginning on the proposal so that interested and affected people can know how they may participate and contribute to the final decision.

DATES: Comments must be received by June 18, 1999.

ADDRESSES: Submit written comments and suggestions to: Dautis Pearson, Team Leader, Council Ranger District, Payette National Forest, P.O. Box 567, Council, Idaho 83612. Fax (208) 253–0109.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Dautis Pearson, phone (208) 253–4215.

SUPPLEMENTARY INFORMATION: The Payette National Forest prepared an environmental assessment (EA) on this Little Weiser proposal in March 1997. The Forest Supervisor signed a Decision Notice approving the project on December 23, 1997. In 1998, a lawsuit challenged this project, among others. In response to a settlement agreement resolving the litigation, the Forest Supervisor in February 1999, agreed to withdraw the decision and prepare an environmental impact statement that would update the analysis in the EA. The Forest Supervisor will then issue a new decision.

The Payette National Forest Plan (1988) provides Forest-wide direction

for management of the land and resources of the Payette National Forest, including this project area. The project would be consistent with the Plan as amended by the Inland Native Fish Strategy (INFISH) of 1995.

Public participation will be important at several points during the analysis, particularly during scoping of issues and review of the DEIS. The first opportunity in the process is scoping. This notice begins the 30-day scoping period.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in detail.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and responsibilities.

The Forest Service has consulted with the U.S. Fish and Wildlife Service, Department of Interior, on potential impacts to threatened and endangered species.

Preliminary issues include effects on soils, water, fish, timber, vegetation, wildlife, fire management, heritage resources, recreation, visual quality, and socio-economics.

The next major opportunity for public input is with the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative. The Forest expects to file the DEIS with the Environmental Protection Agency (EPA) for public review in July 1999. EPA will then publish a notice of availability of the DEIS in the **Federal Register**. The Forest Service invites public comments at that time.

The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of any DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, courts may waive or dismiss environmental objections that could be raised at the DEIS stage but that are not raised until after completion of the final environmental impact statement (FEIS). *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when the agency can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the DEIS. Comments may also address the adequacy of the DEIS or the merits of the alternatives it analyzes. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The Forest Service will respond to comments received in the FEIS (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences disclosed in the FEIS, and applicable laws, regulations, and policies in making the final decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 215.

David F. Alexander, Forest Supervisor of the Payette National Forest, is the responsible official for this EIS.

Dated: April 30, 1999.

Miera Crawford,

External Relations Branch Chief.

[FR Doc. 99–11337 Filed 5–5–99; 8:45 am]

BILLING CODE 3410–11–M

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 11, 1999; 9:00 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., S.W., Washington, D.C. 20547.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: May 3, 1999.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 99–11474 Filed 5–3–99; 5:08 pm]

BILLING CODE 8230–01–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the New Mexico Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 4:00 p.m. on May 26, 1999, at the Double Tree Hotel, 201 Marquette, N.W., Albuquerque, New Mexico 87102. The purpose of the meeting is to review current civil rights developments in the State and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, 1999.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 99–11369 Filed 5–5–99; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Action Affecting Export Privileges; William F. McNeil and American Protection Corporation; Order Denying Permission to Related Persons To Apply for or Use Export Licenses

William F. McNeil, #5 Woodland Road, Pittsfield, Massachusetts 01201, and American Protection Corporation, #5 Woodland Road, Pittsfield, Massachusetts 01201, and with a mailing address at P.O. Box 4227, Pittsfield, Massachusetts 01202–4227

On November 3, 1997, the Director, Office of Exporter Services Bureau of Export Administration, U.S. Department of Commerce, issued an Order denying William F. McNeil's (McNeil) export privileges until August 8, 2001 (62 FR 61269, November 17, 1997). The Order was based on McNeil August 8, 1996 conviction for violating the International Emergency Economic Powers Act (currently codified at 50 U.S.C.A. 1701–1706 (1991 & Supp. 1998)) (IEEPA), and was issued pursuant to Section 11(h) of the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C.A. app. 2401–2490 (1991 & Supp. 1998)) (the Act),[1] and Sections 766.25 and 750.8(a) of the Export Administration Regulations (15 CFR parts 730–774) (1998)) (the Regulations). Section 11(h)(2) of the Act provides that any person related, through affiliation, ownership, control, or position of responsibility, to a person who has been denied export privileges as a result of a conviction for violating IEEPA, may, at the discretion of the Secretary of Commerce,[2] be denied export privileges as well.

On March 31, 1998, American Protection Corporation was notified, pursuant to Section 766.23 of the Regulations, that the Bureau of Export Administration, U.S. Department of Commerce, has reason to believe that it is related to William McNeil through ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that the order issued against McNeil should, in order to prevent evasion, also be made applicable to American Protection Corporation.

American Protection Corporation responded to BXA's notice on April 6, 1998 by letter signed by McNeil. McNeil stated in the letter that he is the sole owner and only permanent employee of American Protection Corporation. McNeil also stated that American Protection Corporation has not exported any goods since the denial order against him was issued on November 3, 1997, and that it will not export any goods until the denial order is lifted. This unsupported statement by McNeil is not sufficient, however, to ensure that American Protection Corporation will not be used to evade the order denying McNeil's export privileges. McNeil still is sole owner of American Protection Corporation, and absent a related person order, he could easily use American Protection Corporation to export to his benefit, thereby evading the terms of the order against him.

Therefore, I hereby find that American Protection Corporation is related to William F. McNeil, a person denied all U.S. export privileges until August 8, 2001, through ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business, and that, in order to prevent evasion, the denial order against McNeil issued on November 3, 1997, should also be made applicable to American Protection Corporation.

Accordingly, the Order of November 3, 1997, denying McNeil permission to apply for or use any export license, including any License Exception, is hereby amended to read as follows:

It is ordered:

I. Until August 8, 2001, William F. McNeil, #5 Woodland Road, Pittsfield, Massachusetts 01201, and American Protection Corporation, #5 Woodland Road, Pittsfield, Massachusetts 01201, and with a mailing address at P.O. Box 4227, Pittsfield, Massachusetts 01202–4227, may not, directly or indirectly, participate in any way, in any transaction involving any commodity, software or technology (hereinafter collectively referred to as "item") exported or to be exported from the United States, that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United Stats that is subject to the Regulations, or in any other activity subject to the Regulations; or

C. Benefiting in any way from any transaction involving any item exported to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations.

II. No person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied persons any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied persons of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to transaction whereby the denied persons acquire or attempt to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied persons of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the denied persons in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed or controlled by the denied persons, or service any item, of whatever origin, that is owned, possessed or controlled by the denied persons if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

III. After notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to McNeil or to American Protection Corporation by affiliation, ownership, control or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. This Order does not prohibit any export, reexport, or other transaction

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[1] The Act expired on August 20, 1994. Executive Order 12924 (3 CFR, 1994 Comp. 917 (1995)), extended by Presidential Notices of August 15, 1995 (3 CFR, 1995 Comp. 501 (1996)), August 14, 1996 (3 CFR, 1996 Comp. 298 (1997)), August 13, 1997 (3 CFR, 1997 Comp. 306 (1998)) and August 13, 1998 (63 FR 44121, August 17, 1998), continued the Export Administration Regulations in effect under IEEPA.

[2] Pursuant to appropriate delegations of authority, the Director, Office of Exporter Services, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by Section 11(h) of the Act.

subject to the Regulations where the only items involved that are subject to the Regulations are the foreign-produced direct product of U.S.-origin technology.

V. This Order is effective immediately and shall remain in effect until August 8, 2001.

VI. A copy of this Order shall be delivered to McNeil and to American Protection Corporation. This Order shall be published in the **Federal Register**.

Dated: April 27, 1999.

Eileen M. Albanese,

Director, Office of Exporter Services.

[FR Doc. 99–11416 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DT–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Notice of Partially Closed Meeting

The Regulations and Procedures Technical Advisory Committee (RPTAC) will meet May 25, 1999, 9:00 a.m., Room 3884, in the Herbert C. Hoover Building, 14th Street between Constitution and Pennsylvania Avenues, N.W., Washington, D.C. The Committee advises the Office of the Assistant Secretary for Export Administration on implementation of the Export Administration Regulations (EAR) and provides for continuing review to update the EAR as needed.

Agenda

Open Session

1. Opening remarks by the Chairperson.
2. Presentation of papers or comments by the public.
3. Update on pending regulatory revisions.
4. Update on policies under review.
5. Report on proposal to amend the Export Administration Regulations concerning the issue of "exporter of Record."
6. Discussion on encryption regulations.
7. Discussion on regulations regarding high Performance Computers.
8. Update on implementation of Wassenaar Arrangement.
9. Discussion on compliance and enforcement issues.

Closed Session

10. Discussion of matters properly classified under Executive Order 12958, dealing with the U.S. export control program and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not required. To the extent that time permits, members of the public may present oral statements to the Committee. The public may submit written statements at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials prior to the meeting to the following address: Ms. Lee Ann Carpenter, BXA MS: 3876, 15th St. and Pennsylvania Ave., N.W., U.S. Department of Commerce, Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 12, 1999, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and 10(a)(3) of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, D.C. For more information, call Lee Ann Carpenter at (202) 482–2583.

Dated: April 30, 1999.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 99–11306 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–828); (C–351–829]

Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final determinations of the antidumping and countervailing duty investigations of hot-rolled flat-rolled carbon-quality steel from Brazil.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Ludwig, Office of AD/CVD Enforcement, Group III, or Chris Cassell, Office of AD/CVD Enforcement Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3833 or (202) 482–4847, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended, are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determinations and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Tariff Act, on February 2, 1999, Companhia Siderurgica Nacional (CSN), Usinas Siderurgicas de Minas Gerais, S.A., (USIMINAS), and Companhia Siderurgica Paulista (COSIPA) requested that, in the event of affirmative preliminary determination, the Department extend the final determination in this case for the full sixty days permitted by statute. On February 4, 1999, CSN, USIMINAS, and COSIPA also requested an extension of the provisional measures (i.e., suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR § 351.210(e)(2)). On February 12, 1999, the affirmative preliminary determination was signed. Therefore, on February 26, 1999, in accordance with 19 CFR § 351.210(e)(2)(ii), we postponed this final determination until no later than 105 days after the publication of the preliminary determinations in the **Federal Register** (see, Postponement of Final Determination of Antidumping and Countervailing Duty Investigations of Hot-Rolled Flat-Rolled Carbon-Quality Steel from Brazil 64 FR 9474. This notice serves to postpone this final determination for an additional 30 days (i.e., until no later than 135 days after the date of publication of the preliminary determination) as originally requested by the respondents.

Suspension of liquidation will be extended accordingly.

In addition, because the countervailing duty investigation of hot-rolled flat-rolled carbon-quality steel products from Brazil has been aligned with the concurrent antidumping duty investigation under section 705(a)(1) of the Act, the time limit for completion of the final determination in the countervailing duty investigation will be the same date, July 6, 1999, as the final determination of the concurrent antidumping duty investigation.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: April 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11285 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–846]

Brake Rotors From the People's Republic of China: Preliminary Results of New Shipper Review and Preliminary Results and Partial Rescission of First Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On May 29, 1998, the Department of Commerce ("the Department") published a notice of initiation of an administrative review of the antidumping duty order on brake rotors from the People's Republic of China ("PRC") covering the period October 10, 1996, through March 31, 1998. The Department is preliminarily rescinding this review in part with respect to respondents who had no shipments of the subject merchandise during the period of review ("POR").

For those respondents that submitted full responses to the antidumping questionnaire and are entitled to a separate rate, we have preliminarily determined that U.S. sales have not been made below normal value. For the PRC non-market economy ("NME") entity (*i.e.*, PRC government-controlled companies, including PRC companies that did not respond to the antidumping questionnaire), we are basing the preliminary results on "facts available."

If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess no antidumping duties on entries from the seven PRC exporters that cooperated in this review (including the one new shipper reviewed), for which the importer-specific assessment rates are zero or *de minimis* (*i.e.*, less than 0.50 percent), and to assess duties on entries from the other uncooperative reviewed exporters at the PRC-wide rate.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Barbara Wojcik-Betancourt, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–1766 or (202) 482–0629, respectively.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Background

On April 14, 1998, the petitioner [1] requested an administrative review pursuant to section 751(a)(1) of the Act and section 351.213(b) of the Department's regulations for three exporter/producer combinations [2] that received zero rates in the less-than-fair-value ("LTFV") investigation and thus were excluded from the antidumping duty order only with respect to subject merchandise sold through the specified exporter/producer combinations, and the following respondents in the LTFV investigation: (1) Hebei Metals and Minerals Import & Export Corporation ("Hebei"); (2) Jilin Provincial Machinery and Equipment Import & Export Corporation ("Jilin"); (3) Shandong Jiuyang Enterprise Corporation ("Jiuyang"); (4) Longjing Walking Tractor Foreign Trade Import & Export Corporation ("Longjing"); (5) Qingdao Metals, Minerals & Machinery Import and Export Corporation ("Qingdao"); (6) Shanxi Machinery and Equipment Import Export Corporation ("Shanxi"); (7) Southwest Technical Import & Export Corporation ("Southwest"); (8) Xianghe Zichen Casting Co., Ltd. ("Xianghe"); (9) Yantai Import & Export Corporation ("Yantai"); and (10) Yenhere Corporation ("Yenhere"). The petitioner also requested an adminsistrative review of all other PRC producers and exporters of the subject merchandise.

On April 29, 1998, the excluded exporters for which the petitioner requested a review contended that the Department did not have the basis for conducting an administrative review of them because they were excluded from the antidumping duty order on brake rotors.

On April 30, 1998, the Department received a timely request from Yantai Chen Fu Machinery Co., Ltd. ("Chen Fu"), in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper review of this antidumping duty order.

In its April 30, 1998, request for review, Chen Fu certified that id did not export the subject merchandise to the United States during the period covered by the original LTFV investigation (the "POI"), and that is it not affiliated with any company which exported subject merchandise to the United States during the POI. Chen Fu also certified that its export activities are not controlled by the central government of the PRC. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Chen Fu submitted documentation establishing the date on which the merchandise was first entered for consumption in the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we initiated a new shipper review covering Chen Fu (*Brake Rotors from the People's Republic of China: Initiation of New Shipper Antidumping Duty Administrative Review* (63 FR 28355, May 22, 1998)).

Also, on April 30, 1998, seven PRC exporters [3] requested an administrative review pursuant to section 751(a)(1) of the Act and section 351.213(b) of the Department's regulations, all but one of

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[1] The petitioner is the Coalition for the Preservation of American Brake Drum and Rotor Aftermarket Manufacturers.

[2] The excluded exporters/producer combinations are (1) China National Automobile Industry Import & Export Corporation ("CAIEC") or Shandong Laizhou CAPCO Industry ("Laizhou CAPCO")/ Laizhou CAPCO; (2) Shenyang Honbase Machinery Co., Ltd. ("Shenyang Honbase") or Laizhou Luyuan Automobile fittings Co., Ltd. ("Laizhou Luyuan")/ Shenyang Honbase or laizhou Luyuan; and (3) China National Machinery and Equipment Import & Export (Xinjiang) Co., Ltd. ("Xinjinag")/Zibo Botai Manufacturing Co., Ltd. (Zibo").

[3] The seven PRC exporters are (1) Beijing Xinchangyuan Automobile Fittings Co., Ltd. ("Xinchangyuan"); (2) Jilin; (3) Longjing; (4) Jiuyang; (5) Xianghe; (6) Yantai; and (7) Yenhere.

which (Xinchangyuan) were included in the petitioner's request.

On May 11, 1998, Chen Fu agreed to waive time limits applicable to the new shipper review and conduct the new shipper review concurrently with the administrative review. On May 13, 1998, Xinchangyuan withdrew its request for an administrative review.

On May 22, 1998, the Department initiated an administrative review covering the exporters which received zero rates in the LTFV investigation (only with respect to their U.S. sales of brake rotors produced by companies other than those included in the excluded exporter/producer combinations) and the other producers and exporters for which the petitioner requested a review (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocations in Part* (63 FR 29370, 29371, May 29, 1998)).

During June 1998, we issued our questionnaire to the following entities: (1) all companies listed in our initiation notices; (2) the Ministry of Foreign Trade and Economic Cooperation ("MOFTEC") for review of the PRC-wide rate; and (3) the Chinese Chamber of Commerce of Importers and Exporters of Machinery and Electronic Products ("the China Chamber").

On July 24, 1998, the respondents and the petitioners submitted publicly available information ("PAI") for use in valuing the factors of production. On July 31, 1998, the parties submitted rebuttal comments on PAI. On August 10, 1998, certain respondents (namely, Chen Fu, Jilin, Longjing, Jiuyang Xianghe, Yantai and Yenhere) submitted their responses to sections A, C and D of the antidumping questionnaire. In September 1998, we issued supplemental questionnaires to the respondents. In October 1998, we received supplemental questionnaire responses from the respondents.

On November 10, 1998, the Department published in the **Federal Register** a notice of postponement of the preliminary results no later than April 30, 1999 (63 FR 63026).

On February 12, 1999, Jilin submitted corrections to its section C response in anticipation of verification. On March 2, 1999, the Department issued a decision memorandum which outlined the Department's reasons for conducting a review of the exporters rates of zero in the LTFV investigation with respect to shipments of merchandise produced by manufacturers other than those in the respective excluded exporter/producer combination. On March 11, 1999, the Department issued another decision memorandum ("March 11, 1999, Memorandum") which stated that the Department preliminarily found no evidence that POR shipments of merchandise subject to order were made by the exporters that are excluded with respect to certain exporter/producer combinations.

Scope of Review

The products covered by this review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, ranging in diameter from 8 to 16 inches (20.32 to 40.64 centimeters) and in weight from 8 to 45 pounds (3.63 to 20.41 kilograms). The size parameters (weight and dimension) of the brake rotors limit their use to the following types of motor vehicles: automobiles, all-terrain vehicles, vans and recreational vehicles under "one ton and a half," and light trucks designated as "one ton and a half."

Finished brake rotors are those that are ready for sale and installation without any further operations. Semi-finished rotors are those on which the surface is not entirely smooth, and have undergone some drilling. Unfinished rotors are those which have undergone some grinding or turning.

These brake rotors are for motor vehicles, and do not contain in the casting a logo or any original equipment manufacturer ("OEM") which produces vehicles sold in the United States (*e.g,* General Motors, Ford, Chrysler, Honda, Toyota, Volvo). Brake rotors covered in this review are not certified be OEM producers of vehicles sold in the United States. The scope also includes composite brake rotors that are made of gray cast iron, which contain a steel plate, but otherwise meet the above criteria. Excluded from the scope of the review are brake rotors made of gray cast iron, whether finished, semifinished, or unfinished, with a diameter less than 8 inches or greater than 16 inches (less than 20.32 centimeters or greater than 40.64 centimeters) and a weight less than 8 pounds or greater than 45 pounds (less than 3.63 kilograms or greater than 20.41 kilograms).

Brake rotors are classifiable under subheading 8708.39.5010 of the HTSUS. Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Period of Review

The POR covers the period October 10, 1996, through March 31, 1998.

Rescission

Pursuant to 19 CFR 351.213(d)(3), we have preliminarily determined that, during the POR, the exporters which received zero rates in the LTFV investigation did not make shipments of subject merchandise to the United States during the POR. Specifically, we preliminarily determined that during the POR, (1) neither CAIEC nor Laizhou CAPCO exported brake rotors to the United States that were manufactured by producers other than Laizhou CAPCO; (2) neither Shenyang Honbase nor Laizhou Luyuan exported brake rotors to the United States that were manufactured by producers other than Shenyang Honbase or Laizhou Luyuan; and (3) Xinjiang did not export brake rotors to the United States that were manufactured by producers other than Zibo (*see* memoranda dated March 2 and 11, 1999, from the team to Louis Apple, Office Director). In order to make this determination, we first examined POR subject merchandise shipment data furnished by the U.S. Customs Service. We then requested the U.S. Customs Service to examine the documentation filed at the U.S. port for each entry made by the exporters at issue to determine the manufacturer of the merchandise. Based on the results of our query (*see* March 11, 1999, Memorandum), we are preliminarily rescinding this review with respect to CAIEC, Laizhou CAPCO, Shenyang Honbase, Laizhou Luyuan and Xinjiang. However, we intend to verify the U.S. shipments of brake rotors made by these companies before issuing a final decision with respect to these companies.

Furthermore, we are rescinding this review with respect to Southwest, which reported that it made no shipments of subject merchandise during this POR, based on the results of our examination of shipment data furnished by the U.S. Customs Service. Because the shipment data we examined did not show U.S. entries of brake rotors during the POR from Southwest or its affiliated PRC producer, we pursued no further this inquiry with the U.S. Customs Service. We are also rescinding this review with respect to Xinchangyuan because it withdrew its request for review and no other interested party requested a review of this company.

Separate Rates

In proceedings involving NME countries, the Department begins with a rebuttable presumption that all companies within the country are subject to government control and thus should be assessed a single antidumping duty deposit rate. Of the seven respondents that submitted questionnaire responses, one of the PRC

companies, Chen Fu, is wholly-owned by private individuals. Another respondent, Xianghe, is a joint venture between Chinese and U.S. companies. Another respondent, Yenhere, is a limited liability corporation in the PRC. The four other respondents are either wholly owned by "all the people" (Jilin, Longjing, Yantai) or collectively owned (Jiuyang). Thus, for all seven of these respondents, a separate rates analysis is necessary to determine whether the exporters are independent from government control (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China* ("*Bicycles*") 61 FR 56570 (April 30, 1996)).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China* (56 FR 20588, May 6, 1991) and amplified in the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China* (59 FR 22585, May 2, 1994) ("*Silicon Carbide*"). Under the separate rates criteria, the Department assigns separate rates in NME cases only if the respondent can demonstrate the absence of both *de jure* and *de facto* government control over export activities.

1. De Jure Control

Each respondent has placed on the administrative record documents to demonstrate absence of de jure control, including the "Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People" adopted on April 13, 1988 ("the Industrial Enterprises Law"); "The Enterprise Legal Person Registration Administrative Regulations," promulgated on June 13, 1988; the 1990 "Regulation Governing Rural Collectively-Owned Enterprises of PRC;" the 1992 "Regulations for Transformation of Operational Mechanisms of State-Owned Industrial Enterprises" ("Business Operation Provisions"); and the 1994 "Foreign Trade Law of the People's Republic of China."

As in prior cases, we have analyzed these laws and have found them to establish sufficiently an absence of *de jure* control of companies "owned by the whole people," privately owned enterprises, joint ventures, stock companies including limited liability companies, and collectively owned enterprises. *See, e.g., Final Determination of Sales at Less than Fair Value: Furfuryl Alcohol from the People's Republic of China* ("*Furfuryl Alcohol*") 60 FR 22544 (May 8, 1995), and *Preliminary Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China* ("*Drawer Slides*") 60 FR 29571 (June 5, 1995). We have no new information in this proceeding which would cause us to reconsider this determination with regard to the seven respondents mentioned above.

2. De Facto Control

As stated in previous cases, there is some evidence that certain enactments of the PRC central government have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. *See Silicon Carbide* and *Furfuryl Alcohol*. Therefore, the Department has determined that an analysis of *de facto* control is critical in determining whether the respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

The Department typically considers four factors in evaluating whether each respondent is subject to *de facto* governmental control of its export functions: (1) Whether the export prices ("EPs") are set by or subject to the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses (*see Silicon Carbide* and *Furfuryl Alcohol*).

Each of these seven respondents asserted the following: (1) it establishes its own EPs; (2) it negotiates contracts, without guidance from any governmental entities or organizations; (3) it makes its own personnel decisions; and (4) it retains the proceeds of its export sales, uses profits according to its business needs, and has the authority to sell its assets and to obtain loans. Additionally, the respondents' questionnaire responses indicate that company-specific pricing during the POR does not suggest coordination among exporters. This information supports a preliminary finding that there is *de facto* absence of governmental control of the export functions of these respondents. *See Pure Magnesium from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Administrative Review*, 62 FR 55215 (October 23, 1997). Consequently, we have preliminarily determined that each of these respondents has met the criteria for the application of separate rates.

Hebei, Qingdao and Shanxi, named respondents in this review, did not respond to the questionnaire issued in this review. Hebei, Qingdao and Shanxi also did not submit information which demonstrated a *de jure* and *de facto* absence of government control with respect to each company's export functions. Therefore, we have preliminarily determined that these companies are not entitled to separate rates in this review and will be considered to be part of the non-responding PRC NME entity.

Facts Available

Section 776(a)(1) of the Act mandates that the Department use the facts available if necessary information is not available on the record of an antidumping proceeding. In addition, section 776(a)(2) of the Act mandates that the Department use the facts available where an interested party or any other person: (A) withholds information requested by the Department; (B) fails to provide requested information by the requested date or in the form and manner requested; (C) significantly impedes an antidumping proceeding; or (D) provides information that cannot be verified.

As indicated above, Hebei, Qingdao and Shanxi failed to demonstrate that they are entitled to separate rates and therefore are presumed to be part of the PRC entity. In response to our antidumping questionnaire, MOFTEC, on behalf of the PRC NME entity, referred the Department to the China Chamber (*see* letter from MOFTEC to the Department, dated June 26, 1998). The China Chamber provided no response to our antidumping questionnaire, which it also received directly from the Department (*see* the Department's cover letter and questionnaire to the China Chamber, dated June 30, 1998). Thus, the PRC NME entity provided no questionnaire response. Therefore, in this case, the PRC NME entity, including Hebei, Qingdao and Shanxi, failed to respond to the Department's questionnaire. Therefore, by failing to respond to the Department's questionnaire in this case, the PRC NME entity, including Hebei, Qingdao and Shanxi, failed to cooperate to the best of its ability. Where the Department must base the entire dumping margin for a respondent in an administrative review on the facts

available because that respondent failed to cooperate to the best of its ability, section 776(b) also authorizes the Department to use as adverse facts available information derived from the petition, the final determination, a previous administrative review, or other information placed on the record.

As adverse facts available, imports of subject merchandise from the PRC NME entity (including Hebei, Qingdao and Shanxi and other producers/exporters who have not qualified for a separate rate) will be subject to a PRC-wide rate of 43.32 percent, which is based on the highest petition rate and which is the highest rate on the record of this proceeding. Because information from the petition constitutes secondary information, section 776(c) provides that the Department shall, to the extent practicable, corroborate that secondary information from independent sources reasonably at its disposal. The Statement of Administrative Action ("SAA") (H. Doc. 316, 103d Cong., 2nd Sess. 870) provides that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value.

During our analysis of the petition in the LTFV investigation, we reviewed all of the data submitted and the assumptions that petitioners had made when calculating estimated dumping margins. As a result of our analysis, we recalculated the petition rate during the LTFV investigation to correct the petitioner's methodology with respect to certain factor values. *See Final Determinations of Sales at Less Than Fair Value: Brake Drums and Brake Rotors from the People's Republic of China*, 62 FR 9160, 9162 (February 28, 1997) ("*Brake Rotors*"). Thus, because we reviewed the petitioner's assumptions and calculations from which the petition rates were derived, and made appropriate corrections, we had determined in the LTFV investigation that the petition rates, as corrected, had probative value. We have no new information that would warrant reconsidering that decision.

Fair Value Comparisons

To determine whether sales of the subject merchandise by each respondent to the United States were made at LTFV, we compared the EP to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, below.

Export Price

We used EP methodology in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to unaffiliated customers in the United States prior to importation and constructed export price methodology was not otherwise indicated.

1. Chen Fu, Jilin, Jiuyang, Longjing, Xianghe, Yenhere

We calculated EP based on packed, FOB foreign port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, in accordance with section 772(c) of the Act. Because foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in an NME currency, we based those charges on surrogate rates from India (*see* "Surrogate Country" section below). To value foreign inland freight, we used the average 1994 truck freight rate contained in the Indian periodical *The Times of India*. We have used this same rate in numerous NME cases in which India has been selected as the primary surrogate (*see, e.g., Brake Rotors*, 62 FR at 9163). To value foreign brokerage and handling expenses, we relied on public information reported in the antidumping investigation of stainless steel wire rod from India (*see Brake Rotors from the People's Republic of China: Final Results of New Shipper Antidumping Duty New Shipper Administrative Review* (64 FR 9972, 9974, March 1, 1999) (*Brake Rotors New Shipper Review*)).

2. Yantai

We calculated EP based on packed, CIF, CNF or FOB U.S. port prices to the first unaffiliated purchaser in the United States. Where appropriate, we made deductions from the starting price (gross unit price) for foreign inland freight and foreign brokerage and handling in the PRC, marine insurance and international freight, in accordance with section 772(c) of the Act. As all foreign inland freight and foreign brokerage and handling fees were provided by NME service providers or paid for in a NME currency, we valued these services using the Indian surrogate values discussed above. For marine insurance, we used public information reported in the antidumping investigation of sulfur dyes, including sulfur vat dyes, from India. For ocean freight, we used Yantai's reported expense because Yantai used market-economy freight carriers (*see, e.g., Brake Rotors New Shipper Review*, 64 FR at 9974).

Normal Value

A. Non-Market Economy Status

In every case conducted by the Department involving the PRC, the PRC has been treated as a NME country. None of the parties to this proceeding has contested such treatment. Accordingly, we calculated NV in accordance with section 773(c) of the Act, which applies to NME countries.

B. Surrogate Country

Section 773(c)(4) of the Act requires the Department to value the NME producer's factors of production, to the extent possible, in one or more market economy countries that (1) are at a level of economic development comparable to that of the NME country, and (2) are significant producers of comparable merchandise. We determined that India is a country comparable to the PRC in terms of overall economic development (*see* Memorandum from the Office of Policy to Louis Apple, dated June 23, 1998, which was included in the Department's June 24, 1998, letter sent to each interested party in this proceeding). In addition, based on PAI placed on the record, we have determined that India is a significant producer of the subject merchandise. Accordingly, we considered India the primary surrogate country for purposes of valuing the factors of production as the basis for NV because it meets the Department's criteria for surrogate country selection. Where we could not find surrogate values from India, we valued those factors using values from Indonesia.

C. Factors of Production

In accordance with section 773(c) of the Act, we calculated NV based on the factors of production reported by the companies in the PRC which produced the subject merchandise for the exporters which sold the subject merchandise to the United States during the POR. To calculate NV, the reported unit factor quantities were multiplied by publicly available Indian or Indonesian values.

The selection of the surrogate values applied in this determination was based on the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted input prices to make them delivered prices. For those values not contemporaneous with the POR and quoted in a foreign currency, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics. For a complete analysis of surrogate values, see the Preliminary Results Valuation

Memorandum from the Team to the File, dated April 30, 1999 ("Preliminary Results Valuation Memorandum").

To value pig iron, we used domestic price data in India from the April 1996–March 1997 financial report of Lamina Foundries ("Lamina") and from the 1996 financial report of Nagpur Alloy Castings Ltd. ("Nagpur"). We removed excise and sales taxes from the average pig iron value because the financial reports indicated that these taxes were included in the values. For steel scrap, ferrosilicon, ferromanganese, lubrication oil and limestone, we used average values based on import statistics spanning from April 1996–July 1997 from *Monthly Statistics of the Foreign Trade of India ("Monthly Statistics")*. For iron scrap, we used domestic price data from Lamina's 1996–97 financial report and 1996–97 import price data from *Monthly Statistics*.

Certain types of rotors use steel sheet, lug bolts and ball bearing cups. For steel sheet, we used October 1997 prices from the Indian publication *Statistics for Iron and Steel Industry*. For lug bolts, we could not obtain a product-specific price from India (*see Notice of Final Determination of Sales at Less Than Fair Value: Bicycles from the People's Republic of China* (61 FR 19026, April 30, 1996) (Comment 17)). Therefore, we used import data covering 1997 from the Indonesian government publication *Foreign Trade Statistical Bulletin*. To value ball bearing cups, we used April 1997–July 1997 import price data from *Monthly Statistics*.

For coking coal, we used an average of prices applicable during the fourth quarter of 1996 from the International Energy Agency's *Energy Price and Taxes*, and a 1996–1997 price from the publication *Federation of Indian Chambers of Commerce*. To value firewood, we used a 1990 domestic value from the USAID publication *Marketing Opportunities for Social Forestry in Uttar Pradesh*. To value electricity, we used a price applicable during the fourth quarter of 1996 from the International Energy Agency's *Energy Price and Taxes*.

We valued labor based on a regression-based wage rate, in accordance with 19 CFR 351.408(c)(3).

To value selling, general and administrative ("SG&A") expenses, factory overhead and profit, we calculated simple averages based on financial data from five Indian producers. We used only those producers' financial reports which were contemporaneous with the POR and for which PAI demonstrated that those companies are producers of the subject merchandise (*i.e.*, Jayaswals Neco Limited ("Jayaswals"), Kalyani Brakes Limited ("Kalyani"), Krishna Engineering Works ("Krishna"), Nagpur, and Rico Auto Industries Limited ("Rico")). We did not use the financial reports of Lamina or Brakes India Limited in calculating the surrogate percentages because we have no PAI which demonstrates that these two companies are producers of the subject merchandise. Where appropriate, we removed from the surrogate overhead and SG&A calculations the excise duty amount listed in the financial reports (*see Brake Rotors*, 62 FR at 9164). We made certain adjustments to the percentages calculated as a result of reclassifying expenses contained in the financial reports.

In utilizing the financial data of the Indian companies, we treated the line item labeled "stores and spares consumed" as part of factory overhead because stores and spares are not direct materials consumed in the production process. Based on PAI, we considered the molding materials (*i.e.*, sand, bentonite, coal powder, steel pellets, lead powder, waste oil) to be indirect materials included in the stores and spares consumed category of the financial statements. We based our factory overhead calculation on the cost of goods manufactured rather than on the cost of goods sold. We also included interest and/or financial expenses in the SG&A calculation. In addition, we only reduced interest and financial expenses by amounts for interest income if the Indian financial report noted that the income was short-term in nature. Where a company did not distinguish interest income as a line item within total "other income," we used the ratio of interest income to total other income as reported for the Indian metals industry in the *Reserve Bank of India Bulletin* to calculate the interest expense amount. For example, if an Indian company's financial statement indicated that the company had miscellaneous receipts or other income under the general category "other income," we applied a ratio (based on data contained in *Reserve Bank of India Bulletin*) to that miscellaneous receipts or other income figure in the financial statement to determine the amount associated with short-term interest income. To avoid double-counting, we treated the line item "packing, freight and delivery charges" as expenses to be valued separately. Specifically to determine the packing expense, we used the respondents' reported packing factors. We used the respondents' reported distances to determine the foreign inland freight expense. For a further discussion of other adjustments made, *see* the Preliminary Results Valuation Memorandum.

All inputs were shipped by truck. Therefore, to value PRC inland freight, we used the April 1994 truck rate from the *Times of India*.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Sigma Corp. v. United States*, 117 F. 3d 1401 (1997), we revised our methodology for calculating source-to-factory surrogate freight for those material inputs that are valued based on CIF import values in the surrogate country. Therefore, we have added to CIF surrogate values from India a surrogate freight cost using the shorter of the reported distances from either the closest PRC port of importation to the factory, or from the domestic supplier to the factory on an import-specific basis.

To value adhesive tape, corrugated cartons, nails, polyethylene material for bags, steel strap and steel strip, we used April 1996–July 1997 import values from *Monthly Statistics*. To value pallet wood, we selected an April 1995–March 1996 import value from *Monthly Statistics* rather than other 1996–97 values on the record because the more contemporaneous values appeared aberrational relative to the overall value of the subject merchandise (*see* Preliminary Results Valuation Memorandum for further discussion).

Currency Conversion

We made currency conversions pursuant to section 773A(a) of the Act and section 351.415 of the Department's regulations based on the rates certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act and 19 CFR 351.307, we intend to verify certain information relied upon in making our final results. In this review, on May 5, 1998, the petitioner requested the Department to conduct verification of the information and statements submitted by the exporter/producer combinations excluded from this order. We intend to verify several respondents, including the exporter/producer combinations excluded from the order, in accordance with 19 CFR 351.307.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the seven respondents, who submitted full responses to the antidumping questionnaire, during the period October 10, 1996, through March 31, 1998:

Manufacturer/producer/exporter	Margin percent
Yantai Chen Fu Machinery Co., Ltd	0.00
Jilin Provincial Machinery & Equipment Import & Export Corporation	0.00
Longjing Walking Tractor Works Foreign Trade Import & Export Corporation	0.00
Shandong Jiuyang Enterprise Corporation	0.00
Xianghe Zichen Casting Co., Ltd.	0.00
Yantai Import & Export Corporation	0.00
Yenhere Corporation	0.00
PRC-Wide Rate	43.32

Parties to the proceeding may request disclosure within five days of the date of publication of this notice. Any interested party may request a hearing within 45 days of publication. Any hearing, if requested, will be held on July 22, 1999.

Issues raised in the hearing will be limited to those raised in the respective case briefs and rebuttal briefs. Case briefs from interested parties may be submitted not later than July 13, 1999. Rebuttal briefs, limited to issues raised in the case briefs, will be due July 20, 1999. Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument. Parties are also encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations and cases cited.

The Department will issue the final results of this administrative and new shipper review, including the results of its analysis of issues raised in any such written briefs or at the hearing, if held, not later than 120 days after the date of publication of this notice.

Interested parties who wish to request a hearing or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, Room B–099, within 45 days of the date of publication of this notice. Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. *See* 19 CFR 351.310(c).

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we will calculate importer-specific ad valorem duty assessment rates based on the ratio of the total amount of the dumping margins calculated for the examined sales to the total entered value of those same sales. In order to estimate the entered value, we will subtract international movement expenses from the gross sales value. In accordance with 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties all entries of subject merchandise during the POR for which the importer-specific assessment rate is zero or *de minimis* (*i.e.*, less than 0.50 percent). For entries subject to the PRC-wide rate, the Customs Service shall assess ad valorem duties at the rate established in the final results. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review.

Cash Deposit Requirements

Upon completion of this new shipper review, for entries from Chen Fu, we will require cash deposits at the rate established in the final results pursuant to section 751(a)(2)(B)(iii) of the Act and section 351.214(e) of the Department's regulations and as further described below.

The following deposit requirements will be effective upon publication of the final results of these administrative and new shipper antidumping duty administrative reviews for all shipments of brake rotors from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for each reviewed company will be the rate established in the final results; (2) the cash deposit rate for PRC exporters who received a separate rate in the LTFV investigation but who did not export subject merchandise during the POR or for whom there was no request for review (*i.e.*, Southwest and Xinchangyuan) will continue to be the rate assigned in that investigation; (3) the cash deposit rate for the PRC NME entity (*i.e.*, all other PRC exporters, including Hebei, Qingdao and Shanxi) will be 43.32 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification to Importers

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative and new shipper administrative reviews and notice are in accordance with section 751(a)(1) and (2)(B) of the Act (19 U.S.C. 1675(a)(1) and (2)(B)) and 19 CFR 351.213 and 351.214.

Dated: April 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11422 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–809]

Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Rescission of Antidumping Duty Administrative Review.

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of Antidumping Duty Administrative Review.

SUMMARY: In response to timely withdrawals of request for review by the petitioners and respondents, Korea Iron and Steel Co., Ltd., SeAH Steel Corporation and Shinho Steel Co., Ltd., the Department of Commerce is rescinding the 1997/1998 antidumping duty administrative review of circular welded non-alloy steel pipe from the Republic of Korea.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Alysia Wilson or Cynthia Thirumalai, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone (202) 482–0108 and 482–4087 respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, all references to the Department of

Commerce's ("the Department's") regulations are to 19 CFR part 351 (April 1998).

Scope of Review

The merchandise subject to this review is circular welded non-alloy steel pipe and tube, of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, beveled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipes and tubes and are intended for the low-pressure conveyance of water, steam, natural gas, air, and other liquids and gases in plumbing and heating systems, air-conditioning units, automatic sprinkler systems, and other related uses. Standard pipe may also be used for light load-bearing applications, such as for fence tubing, and as structural pipe tubing used for framing and as support members for reconstruction or load-bearing purposes in the construction, shipbuilding, trucking, farm equipment, and other related industries. Unfinished conduit pipe is also included in this order.

All carbon-steel pipes and tubes within the physical description outlined above are included within the scope of this review except line pipe, oil-country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. In accordance with the *Final Negative Determination of Scope Inquiry on Certain Circular Welded Non-Alloy Steel Pipe and Tube from Brazil, the Republic of Korea, Mexico, and Venezuela* (61 FR 11608, March 21, 1996), pipe certified to the API 5L line-pipe specification and pipe certified to both the API 5L line-pipe specifications and the less-stringent ASTM A–53 standard-pipe specifications, which falls within the physical parameters as outlined above, and entered as line pipe of a kind used for oil and gas pipelines are outside of the scope of the antidumping duty review.

Imports of these products are currently classifiable under the following Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 7306.30.10.00, 7306.30.50.25, 7306.30.50.32, 7306.30.50.40, 7306.30.50.55, 7306.30.50.85, and 7306.30.50.90. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Recession of 1997/98Antidumping Duty Administrative Review

On December 23, 1998, we published our *Notice of Initiation of Antidumping and Countervailing Administrative Reviews* (63 FR 71091–01). Subsequently, we received timely withdrawals of request for review from the petitioners and respondents, Korea Iron and Steel Co., Ltd., SeAH Steel Corporation and Shinho Steel Co., Ltd. Because all requests for review have been withdrawn, we are rescinding this review in its entirety in accordance with section 351.213(d)(1) of our regulations.

This notice is published in accordance with section 777(i)(1) of the Act.

Dated: April 29, 1999.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11423 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-848]

Freshwater Crawfish Tail Meat From the People's Republic of China: Initiation of New Shipper Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Administrative Review.

SUMMARY: The Department of Commerce (the Department) has received a request from Yancheng Haiteng Aquatic Products & Foods Co., Ltd. (Yancheng Haiteng) to conduct a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat from the People's Republic of China (PRC), which has a September anniversary date. In accordance with the Department's regulations, we are initiating this administrative review.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Sarah Ellerman, Laurel LaCivita or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone: (202) 482–4106, (202) 482–4236 or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR Part 351 (April, 1998).

Background

On March 30, 1999, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act and section 351.214(c) of the Department's regulations, for a new shipper administrative review of the antidumping duty order on freshwater crawfish tail meat, issued on September 15, 1997.

Initiation of Review

In its request of March 30, 1999, Yancheng Haiteng, as required by 19 CFR 351.214(b)(i) and (iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (March 1, 1996 through August 31, 1996), and that since the investigation was initiated on October 23, 1996, it has not been affiliated with any company which exported subject merchandise to the United States during the POI. Yancheng Haiteng further certified that its export activities are not controlled by the central government of the PRC, satisfying the requirements of 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR351.214(b)(2)(iv), Yancheng Haiteng submitted documentation establishing the date on which the subject merchandise was first entered for consumption into the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) and 19 CFR 351.214(d), we are initiating a new shipper review of the antidumping duty order on freshwater crawfish tail meat from the PRC. In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after the date of initiation.

The standard period of review (POR) in a new shipper proceeding initiated in the month immediately following the semiannual anniversary month is the six-month period immediately preceding the semi-annual anniversary month. Therefore, the POR for this new

shipper review of Yancheng Haiteng is September 1, 1998 through February 28, 1999.

Concurrent with publication of this notice, and in accordance with 19 CFR 351.214(e), we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the company listed above, until the completion of the review.

Interested parties must submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: April 30, 1999.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11421 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–809]

Postponement of Final Determination of Antidumping Duty Investigation of Hot-Rolled Flat-Rolled Carbon-Quality Steel From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final determination of antidumping duty investigation.

SUMMARY: The Department of Commerce (the Department) is extending the time limit of the final determination of the antidumping duty investigation of hot-rolled flat-rolled carbon-quality steel (Hot-Rolled Steel) from the Russian Federation (Russia).

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Lyn Baranowski or Rick Johnson at (202) 482–3208 or 482–3818, respectively, Office of AD/CVD Enforcement, Group III, Office 9, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930 (the Act), as amended are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, all citations to the Department's regulations are to the regulations at 19 CFR Part 351 (1998).

Postponement of Final Determination and Extension of Provisional Measures

On February 25, 1999, the affirmative preliminary determination was published in this proceeding (*see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 9312). Pursuant to section 735(a)(2) of the Act, on March 4, 1999, respondent JSC Severstal (Severstal) requested that the Department extend the final determination in this case (19 U.S.C. 1673(a)(2)). Severstal also requested an extension of the provisional measures (i.e., suspension of liquidation) period from four to six months in accordance with the Department's regulations (19 CFR 351.210(e)(2)). Therefore, in accordance with 19 CFR 351.210(e)(2)(ii), because (1) our preliminary determination is affirmative, (2) respondent requesting the postponement represents a significant proportion of exports of the subject merchandise from Russia, and (3) no compelling reasons for denial exist, we are postponing this final determination for 31 days until June 10, 1999 (*see* Memorandum from Joseph Spetrini to Richard Moreland dated April 28, 1999). Suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: April 28, 1999.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Nithya Nagarajan, John Totaro, LaVonne Jackson, or Keir Whitson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4243, (202) 482–1374, (202) 482–0961, and (202) 482–1394, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 C.F.R. part 351 (1998).

Final Determination

We determine that hot-rolled, flat-rolled, carbon-quality steel products ("hot-rolled steel") from Japan is being sold in the United States at less than fair value ("LTFV"), as provided in Section 735 of the Act. The estimated margins are shown in the "Continuation of Suspension of Liquidation" section of this notice.

Case History

Since the *Preliminary Determination (see Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 8291 (Feb. 19, 1999)) ("*Preliminary Determination*"), the following events have occurred:

During February and March 1999, respondents Nippon Steel Corporation ("NSC"), NKK Corporation ("NKK") and Kawasaki Steel Corporation ("KSC") submitted responses to the sales and cost supplemental questionnaires issued by the Department. On February 12, 1999, February 25, 1999, and March 3, 1999, petitioners submitted comments regarding the issue of date of sale and the Department's Japan sales and cost verifications. On February 19, 1999, NKK filed an allegation of clerical error and requested the Department to issue an amended preliminary determination. On March 1, 1999, NSC submitted pre-verification changes and new factual information presumably discovered while preparing for the sales verification in Japan. On March 4, 1999, KSC submitted corrections presumably discovered while preparing for sales verification. Similarly, on March 4, 1999, NKK submitted pre-verification changes and new factual information

presumably discovered while preparing for sales verification.

During February and March 1999, we conducted sales and cost verifications of NSC's, NKK's and KSC's responses to the antidumping questionnaire. On March 26, 1999, we issued our sales and cost verification reports for all three responding companies. Petitioners and respondents submitted case briefs on April 12, 1999, and rebuttal briefs on April 19, 1999. On April 21, 1999, the Department held a public hearing. In addition, on April 12, 1999, General Motors Corporation ("GM") requested a scope exclusion for hot-rolled carbon steel that both meets the standards of SAE J2329 Grade 2 and is of a gauge thinner than 2 mm with a 2.5 percent maximum tolerance. On April 22, 1999, the petitioners requested that certain ASTM A570–50 grade steel be excluded from the investigation. For a more detailed discussion of scope issue, please *see Scope Amendments Memorandum*, dated April 28, 1999.

Scope of Investigation

For purposes of this investigation, the products covered are certain hot-rolled flat-rolled carbon-quality steel products of a rectangular shape, of a width of 0.5 inch or greater, neither clad, plated, nor coated with metal and whether or not painted, varnished, or coated with plastics or other non-metallic substances, in coils (whether or not in successively superimposed layers) regardless of thickness, and in straight lengths, of a thickness less than 4.75 mm and of a width measuring at least 10 times the thickness. Universal mill plate (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 mm but not exceeding 1250 mm and of a thickness of not less than 4 mm, not in coils and without patterns in relief) of a thickness not less than 4.0 mm is not included within the scope of these investigations.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free ("IF")) steels, high strength low alloy ("HSLA") steels, and the substrate for motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. The substrate for motor lamination steels contains micro-alloying levels of elements such as silicon and aluminum.

Steel products to be included in the scope of this investigation, regardless of HTSUS definitions, are products in which: (1) iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight; and (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated:

1.80 percent of manganese, or
1.50 percent of silicon, or
1.00 percent of copper, or
0.50 percent of aluminum, or
1.25 percent of chromium, or
0.30 percent of cobalt, or
0.40 percent of lead, or
1.25 percent of nickel, or
0.30 percent of tungsten, or
0.012 percent of boron, or
0.10 percent of molybdenum, or
0.10 percent of niobium, or
0.41 percent of titanium, or
0.15 percent of vanadium, or
0.15 percent of zirconium.

All products that meet the physical and chemical description provided above are within the scope of this investigation unless otherwise excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- Alloy hot-rolled steel products in which at least one of the chemical elements exceeds those listed above (including e.g., ASTM specifications A543, A387, A514, A517, and A506).
- SAE/AISI grades of series 2300 and higher.
- Ball bearing steels, as defined in the HTSUS.
- Tool steels, as defined in the HTSUS.
- Silico-manganese (as defined in the HTSUS) or silicon electrical steel with a silicon level exceeding 1.50 percent.
- ASTM specifications A710 and A736.
- USS Abrasion-resistant steels (USS AR 400, USS AR 500).
- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni
0.10–0.14%	0.90% Max ..	0.025% Max	0.005% Max	0.30–0.50%	0.50–0.70%	0.20–0.40%	0.20% Max.

Width = 44.80 inches maximum; Thickness = 0.063 – 0.198 inches;
Yield Strength = 50,000 ksi minimum; Tensile Strength = 70,000 – 88,000 psi.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Mo
0.10–0.16%	0.70–0.90%	0.025% Max	0.006% Max	0.30–0.50%	0.50–0.70%	0.25% Max ..	0.20% Max ..	0.21% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	V(wt.)	Cb
010.10–0.14%	11.30–1.80%.	10.025% Max.	1.005% Max.	10.30–0.50%.	10.50–0.70%.	10.20–0.40%.	10.20% Max.	010.10 Max.	0.08% Max

Width = 44.80 inches maximum; Thickness = 0.350 inches maximum;
Yield Strength = 80,000 ksi minimum; Tensile Strength = 105,000 psi Aim.

- Hot-rolled steel coil which meets the following chemical, physical and mechanical specifications:

C	Mn	P	S	Si	Cr	Cu	Ni	Nb	Ca	Al
0.15% Max.	1.40% Max	0.025% Max.	0.010% Max.	0.50% Max	1.00% Max	0.50% Max	0.20% Max	0.005% Min.	Treated	0.01–0.07%

Width = 39.37 inches; Thickness = 0.181 inches maximum; Yield Strength = 70,000 psi minimum for thicknesses ≤ 0.148 inches and 65,000 psi minimum for thicknesses >0.148 inches; Tensile Strength = 80,000 psi minimum.

• Hot-rolled dual phase steel, phase-hardened, primarily with a ferritic-martensitic microstructure, contains 0.9 percent up to and including 1.5 percent silicon by weight, further characterized by either (i) tensile strength between 540 N/mm^2 and 640 N/mm^2 and an elongation percentage ≥26 percent for thicknesses of 2 mm and above, or (ii) a tensile strength between 590 N/mm^2 and 690 N/mm^2 and an elongation percentage ≥25 percent for thicknesses of 2mm and above.

• Hot-rolled bearing quality steel, SAE grade 1050, in coils, with an inclusion rating of 1.0 maximum per ASTM E 45, Method A, with excellent surface quality and chemistry restrictions as follows: 0.012 percent maximum phosphorus, 0.015 percent maximum sulfur, and 0.20 percent maximum residuals including 0.15 percent maximum chromium.

• Grade ASTM A570–50 hot-rolled steel sheet in coils or cut lengths, width of 74 inches (nominal, within ASTM tolerances), thickness of 11 gauge (0.119 inch nominal), mill edge and skin passed, with a minimum copper content of 0.20%.

The merchandise subject to these investigations is classified in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheadings: 7208.10.15.00, 7208.10.30.00, 7208.10.60.00, 7208.25.30.00, 7208.25.60.00, 7208.26.00.30, 7208.26.00.60, 7208.27.00.30, 7208.27.00.60, 7208.36.00.30, 7208.36.00.60, 7208.37.00.30, 7208.37.00.60, 7208.38.00.15, 7208.38.00.30, 7208.38.00.90, 7208.39.00.15, 7208.39.00.30, 7208.39.00.90, 7208.40.60.30, 7208.40.60.60, 7208.53.00.00, 7208.54.00.00, 7208.90.00.00, 7210.70.30.00, 7210.90.90.00, 7211.14.00.30, 7211.14.00.90, 7211.19.15.00, 7211.19.20.00, 7211.19.30.00, 7211.19.45.00, 7211.19.60.00, 7211.19.75.30, 7211.19.75.60, 7211.19.75.90, 7212.40.10.00, 7212.40.50.00, 7212.50.00.00. Certain hot-rolled flat-rolled carbon-quality steel covered by this investigation, including: vacuum degassed, fully stabilized; high strength low alloy; and the substrate for motor lamination steel may also enter under the following tariff numbers: 7225.11.00.00, 7225.19.00.00, 7225.30.30.50, 7225.30.70.00, 7225.40.70.00, 7225.99.00.90, 7226.11.10.00, 7226.11.90.30, 7226.11.90.60, 7226.19.10.00, 7226.19.90.00, 7226.91.50.00, 7226.91.70.00, 7226.91.80.00, and 7226.99.00.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Period of Investigation

The period of investigation ("POI") is July 1, 1997 through June 30, 1998.

Product Comparisons

In accordance with section 771(16) of the Act, all products produced by the respondents covered by the description in the *Scope of Investigation* section, above, and sold in Japan during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on eleven characteristics to match U.S. sales of subject merchandise to comparison market sales of the foreign like product: paint, quality, carbon content, strength, thickness, width, coiled or non-coiled, temper rolling, pickling, edge trim, and patterns. These characteristics have been weighted by the Department where appropriate. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics listed in the antidumping questionnaire and reporting instructions.

Changes From the Department's Preliminary Determination

The Department, upon review of the preliminary margin calculation program, found that there were errors associated with the calculation of the difference in merchandise adjustment (DIFMER) in NKK's model match program. The program that we used, failed to calculate the DIFMER adjustment associated with the matching home market CONNUM. Instead, the DIFMER calculation selected in the concordance program was chosen from the last comparison, resulting in the application of an incorrect DIFMER adjustment. For a complete discussion, please see the Department's *Final Determination Analysis Memo*, dated April 28, 1999.

Second, the Department disallowed KSC's home market technical service expenses because these expenses could not be verified. However, we continue to adjust for U.S. technical service expenses. *See KSC Home Market Verification Report*, dated March 26, 1999; *see also KSC Final Analysis Memo*, dated April 28, 1999.

Third, the Department corrected the model match and margin programs for all three companies in calculating packing costs for use in the cost test and constructed value. In the *Preliminary Determination*, the Department inadvertently used a sale specific packing cost for use in the calculation of general and administrative ("G&A") expenses and interest expenses in both the cost test and constructed value analysis. For the final determination, the Department has revised this section of the program to calculate a weighted-average packing cost per CONNUM for use in these calculations. For a more complete analysis, please see the *Final Determination Analysis Memo*, dated April 28, 1999, for all three responding companies.

Interested Party Comments

Home Market and U.S. Sales

Comment 1: Date of Sale.

NKK

NKK states that the Department should reaffirm its preliminary finding that the invoice date/shipment date is the most appropriate date of sale for NKK. NKK argues that the material terms of sale were not finalized until after shipment for the majority of its U.S. and home market sales as supported by documentation provided during verification. In addition, NKK argues that the Department's regulations and other determinations dictate the use of date of invoice as the date of sale.

NKK argues that its demonstrated sales process clearly indicates that the invoice date/shipment date best reflects the date on which the final material terms of sale were finalized during the period of investigation, and that material terms of sale, i.e. price and quantity, often changed after the order confirmation date. NKK argues that the

Department verified that a significant portion of home market and U.S. sales had significant changes to price and/or quantity during the POI, and therefore the invoice/shipment date is the most appropriate date of sale for NKK's sales of subject merchandise.

Secondly, NKK argues that the Department's regulations indicate a preference for the use of date of invoice as the date of sale where changes from the original order occur on a frequent basis. NKK states that the Department established a presumption that material terms would be considered established on the invoice date after adopting § 351.401(i) of its regulations. NKK also argues that the presumption in favor of invoice date is supported by the language in the preamble to the regulations and that an alternative date of sale will be used only when there is evidence satisfying the Department that the different date better reflects the date on which the exporter or producer establishes the material terms of sale. NKK argues that the regulations therefore place the burden of proof on the party claiming that another date is more appropriate, and that this burden of proof has not been satisfied by record evidence. Rather, the record supports the finding that the material terms of sale are set on the date of shipment/invoice; thus, that date is the most appropriate date of sale.

Petitioners argue that the Department may use a date of sale other than invoice date if it determines that an alternative date more accurately reflects the date on which the material terms of sale are established. Petitioners argue that the documents and information obtained at NKK's verification support the conclusion that the essential terms of sale are set on the order confirmation date and therefore the order confirmation is the appropriate date of sale for this investigation.

Petitioners contend that NKK manufactures product to order and that the principal terms of sale are set at the point the customer places the order. Further, they argue that although the Department examined numerous transactions at verification, the data show that only a minuscule portion of sales had changes to material terms (*i.e.*, price terms). Petitioners argue that, for the majority of sales, price terms did not change between order confirmation date and invoice/shipment date, and that, in instances where changes did occur, they were accounted for after the invoice was issued. Petitioners contend that changes to price terms which occur after invoicing are not an appropriate adjustment for consideration in the Department's date of sale analysis. Petitioners further argue that, in the majority of sales reviewed at verification, the quantities shipped were within shipping tolerances and should therefore not be considered in the date of sale analysis. Because sales where the quantity shipped was outside the applicable delivery tolerances occurred only in a small number of verified transactions, the order confirmation date is the appropriate date of sale. Petitioners further argue that, in *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Antidumping Duty Administrative Review* ("*Certain Corrosion-Resistant Carbon Steel From Japan*"), 64 FR 12951, 12956–12957 (Mar.16, 1999), the Department used the order confirmation date as the date of sale under similar factual circumstances. Finally, petitioners argue that the Department should use facts available due to the fact that NKK did not report a separate database of sales based on order confirmation date. According to petitioners, the Department requested NKK to provide this information in both its original questionnaire as well as its supplemental questionnaire, and NKK refused to provide the requested information. Therefore, since the record evidence indicates that order confirmation date is the most appropriate date of sale, the Department should assign the highest dumping margin, or the highest rate in the petition as facts available.

NKK rebuts petitioners' arguments that order confirmation date is the date of sale. NKK argues that petitioners are incorrect in arguing that only a few transactions were reviewed at verification for the Department's date of sale analysis. NKK argues that the Department reviewed a large sample of sales and found that over fifty percent of these transactions had changes to material terms. *See NKK Sales Verification Report*, dated March 26, 1999, at 14. NKK argues that, contrary to petitioners' assertion, the frequency of changes for both price and quantity terms is sufficiently large to justify using invoice date as the date of sale. Secondly, NKK argues that petitioners' contention that post-shipment price changes are irrelevant to the date of sale analysis is incorrect. Citing *Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from German: Final Results of Antidumping Duty Administrative Review*, 63 FR 13217 (March 18, 1998), NKK argues that the Department stated that it will use shipment date as a proxy date for sales invoice after shipment, not that all post-shipment price changes are to be ignored in the date of sale analysis. Third, NKK argues that the evidence on the record demonstrates that the final price invoiced was not determined until after shipment occurred and this differs from the price stated on the order confirmation. Fourth, NKK contends that each of the cases cited by petitioners in their argument can be distinguished from the facts in the present case. NKK argues that, in each of these cases, the Department used the order confirmation date because there were no changes to the terms of sale after the order date, whereas in the instant case, NKK has proven and the Department has verified that material terms are not final at order confirmation and that material terms changed frequently. These facts, according to NKK, support the conclusion that shipment/invoice date is the appropriate date of sale. Finally, NKK argues that it is inappropriate to apply adverse facts available to NKK. NKK contends that the Department gave NKK the choice as to whether to provide a single sales database using invoice date as the date of sale or to provide both invoice date and order confirmation date databases. NKK contends that it chose to provide a single database and has subsequently proven, through record evidence, that invoice date is the appropriate date of sale. Thus, there is no basis to use facts available.

Petitioners rebut NKK's argument that invoice date is the date on which material terms of sale are set and should be the date of sale. Petitioners reiterate their argument that only a small percentage of home market and U.S. sales had changes to material terms after the order confirmation date. Petitioners continue to argue that changes made after shipment are not an appropriate basis for the Department's date of sale analysis. Petitioners contend that the Department's verification demonstrates that only a few sales had changes to material terms, and state that this confirms that order confirmation date is the appropriate date of sale. Petitioners further contend that, because NKK failed to provide sales databases using order confirmation date as the date of sale, the Department should apply adverse facts available. According to petitioners, NKK did not report all sales where the order was confirmed within the POI, therefore the necessary sales are not on the record. Because NKK failed to report these sales, there is justification for the Department to reject NKK's response and apply facts available.

NSC

NSC argues that the Department should follow its preliminary determination and continue using the date of shipment as the date of sale. NSC argues that the Department verified that the essential terms of sale changed between the initial order and shipment date for a significant portion of home market and U.S. sales. NSC used the date of shipment as a proxy for the date of invoice because the shipment date falls within a short time of the invoice date.

NSC argues that the Department's regulations mandate the use of date of invoice as the date of sale, and that there is a rebuttable presumption that the appropriate date of sale is the invoice date. NSC argues that the presumption can only be overcome by compelling evidence on the record. NSC states that the essential terms of sale for its sales of subject merchandise are not finally established until, and sometimes after, shipment, and that this supports the presumption in favor of invoice date. NSC argues that there is a high standard to be met to overcome this presumption, and that record evidence on the frequency of changes and the potential for change to the essential terms after the initial order support the finding that invoice date is the appropriate date of sale.

NSC argues that the Department verified that material terms of sale changed after the initial order was placed in a significant portion of the sales examined. In addition, respondent argues that the Department verified that, in the Japanese hot-rolled steel industry, terms of sale are not established until the material is shipped to the purchaser. Based on these reasons, NSC argues that the date of shipment/invoice is the most appropriate date of sale as supported by the preference stated in the Department's regulations and record evidence and we should continue using the date of shipment as the date of sale for the final determination.

Petitioners argue that the Department may use a date of sale other than invoice date if it determines that an alternative date more accurately reflects the date on which the material terms of sale are established. Petitioners argue that the documents and information obtained at NSC's verification support the conclusion that the essential terms of sale are set on the order confirmation date and therefore the order confirmation is the appropriate date of sale for this investigation. In sum, petitioners argue that there was not a significant portion of sales for which material terms of sale changed, and that as a result the most appropriate date of sale is the date of order confirmation.

Petitioners argue that NSC only produces merchandise after the customer places the order and that the critical step in determining the material terms of sale is the issuance of the order confirmation. Petitioners further argue that the evidence examined at verification supports the conclusion that only modifications that occur between order confirmation and shipment are relevant to the date of sale analysis, and that modifications which occur after shipment are not relevant to the date of sale because the Department does not examine any date after the date of shipment as a possible date of sale. Petitioners contend that the data examined at verification indicate that only a small portion of home market and U.S. sales have changes to either price or quantity between order confirmation and shipment. Further, they contend that the analysis presented by NSC at verification was incorrect. Petitioners argue that their examination of the record shows that the sales traces examined indicated changes after the date of shipment and are therefore inappropriate to use as a basis for examining the most appropriate date of sale. In sum, the petitioners argue that NSC's claimed date of sale is not supported by record evidence and the Department should use the order confirmation date as the date of sale, as it did in *Certain Corrosion-Resistant Carbon Steel Products from Japan* 64 FR at 12956–57.

Petitioners argue that, should the Department choose to use date of invoice as the date of sale, it should employ a transaction-specific date of sale analysis, isolate those individual transactions for which material terms did not change, and use the order confirmation date as the date of sale for such transactions. In cases where terms of sale did change, the Department could use the date of shipment/invoice as the date of sale.

Petitioners rebut NSC's argument that date of shipment/invoice is the appropriate date of sale. Petitioners argue that the information on the record does not support the conclusion that a significant number of NSC's home market and U.S. sales had changes to material terms after shipment occurred. In fact, petitioners contend that only a small minority of reviewed transactions had changes to material terms sufficient to justify the determination that shipment/invoice date is the appropriate date of sale. In addition, petitioners state that NSC's argument that there are compelling facts on the record to warrant the use of shipment/invoice date as the date of sale creates a new standard unsupported by statutory or case precedent. Further, they claim that the argument that there is a potential for change should also be disregarded as it is based on a misunderstanding of the Department's regulations. Rather, they contend that it would be unreasonable to use invoice date as the date of sale merely because there is a hypothetical potential for post-order modifications. Petitioners conclude that, based on the facts and evidence on the record, the Department should use the order confirmation date or the date of the revised order confirmation as the date of sale.

NSC rebuts petitioners' arguments that order confirmation date is the most appropriate date of sale by reiterating its initial arguments on this topic. In addition, NSC contends that petitioners' analysis of the information on the record is wrong both in fact and in law. NSC argues that petitioners have misread how NSC reports its price adjustments after shipment and how NSC's documents reflect order modifications. NSC rebuts each of petitioners' points using proprietary information which is incapable of adequate public summary. NSC argues that petitioners' claims that order modification is the correct date because changes in the orders prior to shipment are reflected in the order modification and that changes after shipment cannot be considered are wrong. According to NSC, the Department may consider potential for changes both pre- and post-shipment in conducting its date of sale analysis. In fact, NSC argues, the Department's questionnaire instructs them to report the unit price recorded on the invoice for sales shipped and invoiced in whole or in part, which is what NSC reported to the Department.

NSC argues that the Department's regulations create a presumption in favor of date of invoice as the date of sale, a presumption which the petitioners have not overcome through record evidence. NSC argues once again that the significance of potential for change has been supported by Department precedent. Thus, the Department has concluded that simply because the essential terms of sale did not change after the initial contract date, this does not demonstrate that essential terms of sale were not subject to change after this date. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews ("Carbon Steel Flat Products from Korea")*, 64 FR 12927, 12935 (March 16, 1999). NSC concludes, that because the terms of NSC's sales of

subject merchandise remain subject to change throughout the sales process, petitioners cannot overcome the presumption in favor of invoice date. Finally, NSC argues that the Department verified that 36 percent of its sales during the POI were in fact modified after the order confirmation was issued. The mere fact that hot-rolled steel products are made-to-order is not conclusive evidence that the parties engage in formal negotiating and contracting procedures that would result in terms of sale which are finally and irrevocably established at the beginning of the sales process. NSC argues that hot-rolled steel is a commodity product that is not sold through a formal negotiation and contracting process. Therefore, petitioners' argument that hot-rolled product is made to order is irrelevant to the date of sale analysis. NSC argues that, based upon the evidence placed on the record, the most appropriate date of sale is the shipment/invoice date.

KSC

Respondent argues that the Department's regulation establishes a presumption that invoice date should be used as the date of sale. Respondent also argues that the Department has consistently applied this rule. Specifically, respondent cites *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils from South Africa*, 64 FR 15459, 15465 (March, 31, 1999) as evidence that the Department reaffirmed its practice of using the invoice date as the proper date of sale when material terms of sale can change between order and invoice date, even if the changes are not frequent, and the reporting company uses invoice date in its internal records.

Furthermore, KSC asserts that the Department has stated that its preference for invoice date is based on two policy rationales. First, the date on which the terms of sales are normally established is the invoice date. Second, the Department intends that the reporting and verification of information be simplified, resulting in predictable outcomes as well as the efficient use of resources. Additionally, respondent asserts that the Department will use invoice date as the date of sale unless the material terms of sale, as evidence by the record, are established on a different date.

Respondent argues that material changes to the terms of sale, affecting price or quantity, may and do occur between KSC's order confirmation and invoice. As a result, the terms of sale become fixed and finalized on the shipment/invoice date. In certain instances within the home market, price changes may occur even after invoicing. Respondent believes that the frequency of material changes between order confirmation and invoice, as seen during verification, proves that the invoice date should be used as KSC's date of sale because the terms of sale are final only at invoicing (even though the price may change afterward in the home market).

Respondent also argues that invoice date is the date of sale for KSC because, in accordance with the Department's regulations which provide that the date of sales is to be based upon data maintained by the respondent in the ordinary course of business, the books and records of KSC, Kawasho Corporation ("Kawasho") and Kawasho International USA, Inc. ("Kawasho International") are based on invoice data. Additionally, using the invoice date as the date of sale results in an efficient use of resources by simplifying reporting and the verification of information. Finally, respondent states that by using the invoice date, the Department allows for predictability in its proceedings.

Petitioners did not comment on KSC's date of sale argument.

Department's Position: We agree with all three respondents (NSC, NKK and KSC) that invoice/shipment date is the correct date of sale for all home market and U.S. sales of subject merchandise for each of the responding companies.

Under our current practice, as codified in the Department's Final Regulations at § 351.401(i), in identifying the date of sale of the subject merchandise, the Department will normally use the date of invoice, as recorded in the producer's records kept in the ordinary course of business. *See Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Administrative Review*, 63 FR 55578, 55587 (1998) ("*Pipes and Tubes from Thailand*"). However, in some instances, it may not be appropriate to rely on the date of invoice as the date of sale, because the evidence may indicate that the material terms of sale were established on some date other than invoice date. *See Preamble to the Department's Final Regulations* at 19 CFR Part 351 ("Preamble"), 62 FR 27296 (1997). Thus, despite the general presumption that the invoice date constitutes the date of sale, the Department may determine that this is not an appropriate date of sale where the evidence of the respondent's selling practice points to a different date on which the material terms of sale were set.

In this investigation, in response to the original questionnaire, NSC and NKK reported invoice/shipment date as the date of sale in both the U.S. and home markets. KSC reported order confirmation date as the date of sale based on the belief that that is what the Department wanted. However, KSC also provided sales databases using invoice/shipment date as the date of sale, and continued to argue that this would be a more appropriate date of sale. To ascertain whether NSC, NKK and KSC accurately reported the date of sale, the Department included in its January 4, 1999 supplemental questionnaire a request for additional information regarding changes in terms of sale subsequent to order date. In its January 25, 1999 response, NSC, NKK and KSC indicated that there were numerous instances in which terms such as price and quantity changed subsequent to the confirmation of the original orders in the U.S. and home markets. NSC, NKK and KSC cited specific figures for each type of change. For purposes of our Preliminary Determination, we accepted the date of invoice as the date of sale subject to verification. *See Preliminary Determination*, 64 FR at 8294.

At verification, we carefully examined NSC's, NKK's and KSC's selling practices. We found that each company records sales in its financial records by date of invoice/shipment. For the home market, we reviewed several sales observations for which the price and quantity changed subsequent to the original order (*see Home Market Verification Reports*, dated March 26, 1999 for the respective companies). For the U.S. market, we reviewed several instances in which terms of sale changed subsequent to the original order. Based on respondents' representations, and as a result of our examination of each company's selling records kept in the ordinary course of business, we are satisfied that the date of invoice/shipment should be used as the date of sale because it best reflects the date on which material terms of sale were established for NSC's, NKK's and KSC's U.S. and home market sales.

We disagree with the petitioners' claim that, since the terms do not change after the order confirmation date, the order date (or the final change order date) is the most appropriate date of sale for NSC's, NKK's and KSC's U.S. and home market sales. The fact that terms often changed subsequent to the original order, and even after an initial order confirmation, suggests that these terms remained subject to change (whether or not they did change with respect to individual transactions) until as late as the invoice date. For sales that

we reviewed, we found this to be true for material terms of sale such as price and quantity, including quantity changes outside of established tolerances. The Department's decision in *Certain Corrosion-Resistant Carbon Steel Flat Products from Japan*, 64 FR 12951, 12958 (Mar. 16, 1999) should, therefore, not be followed in this case. In that case, the Department found that the material terms of sale were established on the date of the final order confirmation and that there were no material changes thereafter. As stated in the **Federal Register** notice, the Department in that case found that there were no changes between the final revised order confirmation and the shipment/invoice date. In addition, in the Corrosion-Resistant Steel case, there was no discussion on the possibility or frequency of changes between the original order confirmation, any revised order confirmations, the invoice, and changes subsequent to the invoice. The facts of the instant case are distinguishable. In the instant case, pursuant to our findings at verification, the Department determines that there are changes between the original order confirmation date (*i.e*, the date of sale proposed by petitioner), the invoice date (*i.e.*, the date of sale proposed by respondents), and in certain instances changes which occur after the invoice date for a significant number of individual transactions. Each of these facts distinguishes the factual record in the current case from the Department's decision in the Corrosion-Resistant Steel case. Therefore, pursuant to our findings at verification, we have determined that invoice date is the appropriate date of sale for NSC's, NKK's and KSC's sales, as it most accurately represents the date on which the material terms of sale are established.

In addition, the Department has also examined the time lags between order date and invoice date to determine whether it was appropriate to use order date as the date of sale dates. *See Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Final Results of Antidumping Duty Administrative Review* ("*Steel Pipe from Korea*"), 63 FR 32833, 32835 (June 16, 1998). However, it is important to note that, in *Steel Pipe from Korea*, the Department found that "{t}he material terms of sale in the United States are set on the contract date and any subsequent changes are usually immaterial in nature or, if material, rarely occur." *Id.*, 63 FR at 32836. In contrast, NSC, NKK and KSC each reported that there were numerous instances of changes in terms of sale between the initial order date, and the shipment/invoice date. Therefore, invoice date is the most appropriate date of sale, notwithstanding some time lag between order confirmation and invoice. As noted above, we observed a significant number of such instances at verification where changes did occur between order confirmation and invoice.

We also disagree with petitioners' assertion that NSC's, NKK's and KSC's reported sales information was inaccurate and incomplete. During the course of sales verifications, the Department requested specific documentation from each of the responding companies in support of its claim that the date of invoice should be used as the date of sale. NSC, NKK and KSC complied with the verifiers' request for sales trace documentation, and the Department utilized the purchase order, order confirmation and invoice information provided by each company as part of the basis for its decision on this issue. At verification, the Department also clarified which quantity changes were and were not within tolerance, and used this information in conducting its date of sale analysis.

Finally, we have not accepted petitioners' suggestion that the Department should use a transaction-specific date of sale methodology. While this may be appropriate for products involving only a handful of sales within the period of investigation or review, such an approach would impose a very substantial undue burden on both respondents and the Department in terms of reporting and verification. As explained in the *Preamble* to the Department's regulations, the use of a single date of sale for each respondent makes more efficient use of the Department's resources and enhances the predictability of outcomes. *See* 62 FR at 27348.

Comment 2: Preliminary Determination of Critical Circumstances.

NKK

NKK argues that the Department's preliminary finding of critical circumstances is not supported by the facts on the record. First, NKK states, there is no history of dumping with respect to this product; thus, the Department must find "knowledge of dumping" in order to find critical circumstances. In this respect, NKK states, the Department normally relies on company-specific margins of over 25 percent to impute knowledge of dumping. NKK claims that its final margin, if adjusted for the alleged clerical error, will not exceed 25 percent and will therefore not meet the first statutory criterion for finding critical circumstances. NKK argues that although the Department relied on margins alleged in the petition in its preliminary critical circumstances finding, there is no basis for not using company-specific margins in the final critical circumstances determination.

Second, NKK argues that its shipments were not massive during the three months immediately preceding and the three months immediately following the filing of the petition. NKK argues that the Department's longstanding practice is to compare the volume of shipments during the three months preceding the filing of the petition with the volume of shipments in a comparable period following the filing of the petition. The Department deviated from this practice in its preliminary determination as to critical circumstances, comparing instead the December 1997–April 1998 period to the May 1998–September 1998 time period. NKK argues that there is no basis for the use of this time period to support a finding of critical circumstances, and that the evidence on the record does not support a finding that there were massive imports of NKK merchandise during the appropriate comparison period. In addition, NKK argues that the Department's conclusions with respect to importer knowledge of dumping based on press reports and rumors about the possibility of antidumping cases were contradicted by price increases during the same time period. Respondent argues that the Department's reliance on vague news articles and press reports placed on the record prior to the preliminary determination as to critical circumstances was misplaced because these sources did not clearly indicate that it was likely that the domestic industry would file antidumping cases against hot-rolled steel from Japan. NKK concludes that, due to the serious economic consequences a finding of critical circumstances could involve for itself and its customers, the Department should utilize company-specific import data for its final critical circumstances determination. If it does so, NKK claims, it must make a negative finding, because the "massive shipments" criterion has not been satisfied.

Petitioners rebut NKK's argument that the Department's preliminary determination of critical circumstances is not supported by the information on the record. Petitioners contend that NKK's argument for use of company-specific shipment data is contrary to the Department's regulations. According to petitioners, the Department must

examine imports into the United States as opposed to shipments, which may or may not correlate to imports during the relevant period. Secondly, petitioners argue that, if the Department were to use shipment data, this information would still not be an accurate basis for analysis as this would be company-specific data, whereas the analysis should focus on total imports from Japan. Because NKK has not cited any authority for its statement that the Department should make a company-specific critical circumstances finding, the Department should affirm its preliminary finding by using total imports from Japan as the basis for its critical circumstances determination. Finally, petitioners argue that NKK and other respondents knew that an antidumping investigation was likely, based upon the articles in the press placed on the record. Thus, petitioners argue, the Department should continue to disregard respondents' argument to the contrary and base its decision on record evidence.

NSC

NSC argues that the statute requires that the Department, if it is finding critical circumstances, must first either find a history of dumping, or impute knowledge of dumping and of material injury by reason of dumped sales. NSC argues that the Department's preliminary finding of critical circumstances was based on inflated margins and was contrary to law. NSC argues that the Department's final determination as to critical circumstances must be supported by evidence on the record.

First, NSC argues that the Department's reliance on allegations from the petition and the use of these allegations to make a preliminary finding of critical circumstances were unacceptable precedent. NSC states that mere allegations in the petition do not provide sufficient support for the Department to impute knowledge based on the magnitude of dumping margins and injury. NSC argues that the statute requires that the Department conduct a factual investigation and determine that there is a reasonable basis to believe or suspect that products are being dumped before making a finding of critical circumstances. In conducting this analysis, respondent argues, the Department has never before relied merely on petition allegations to form a reasonable belief concerning critical circumstances. Because the Department's preliminary determination was based on alleged and unsupported information from the petition, it cannot withstand scrutiny. Therefore, NSC argues, the Department should not find critical circumstances in the final determination.

Second, NSC argues that the Department's preliminary determination of sales at less than fair value was based on adverse inferences with no basis in either fact or law. Specifically, NSC argues that the use of facts available for NSC's home market freight cost and U.S. theoretical weight sales was not supported by record evidence. NSC argues that the Department cannot rely on margins based on improper adverse inferences in imputing knowledge for purposes of its final determination as to critical circumstances.

In rebuttal, petitioners argue that the Department's *Policy Bulletin* dated October 7, 1998 governs the decision reached by the Department. Petitioners note that NSC is incorrect in its assertion that the Department has unlawfully taken a substantive action adverse to it based solely on the information contained in the petition. They note that, under Article 5.3 of the *World Trade Organization's ("WTO") Agreement on Antidumping* the Department must examine the adequacy of the evidence presented in the petition and whether these allegations are supported by evidence. Second, petitioners argue that the Department should not rely on NSC's statutory construction argument, because as NSC interprets the argument, the Department would have to issue questionnaires, evaluate responses and calculate company-specific margins prior to issuing a preliminary critical circumstances determination. Petitioners contend that there is no legal basis for this argument, because the requirements for a preliminary critical circumstances finding are not the same as those for a preliminary dumping determination. The fact remains, petitioners state, that the primary factor reviewed for a critical circumstances finding is whether there has been a massive increase in imports. Petitioners argue that the existence of massive imports was known at the time the petition was filed. They further argue that, based on this information, the statute leaves it to the Department's discretion to decide what procedures it will follow in determining whether there is reason to believe or suspect that dumping is occurring.

KSC

KSC asserts that the Department's preliminary critical circumstances determination contravened the statute. First, KSC argues that the Department does not have the authority to use a time frame other than the one based upon the date of filing of the petition to determine whether or not there were massive imports. Further, the articles relied upon by the Department to support the use of an earlier-than-usual time frame do not support a conclusion that KSC had reason to believe a case was being filed or likely to be filed. Second, KSC claims that it did not have massive imports during the "proper time frame." Third, KSC claims that the Department violated its normal practice when it relied upon country-specific, rather than company-specific shipment data. Fourth, KSC argues that the Department's preliminary critical circumstances finding should have been negative because the ITC preliminarily determined that there was no present material injury with respect to this product. KSC's arguments with respect to each of these points is discussed in greater detail below.

KSC first argues that neither the statute nor the regulations grant the Department authority to examine a shipment period unrelated to either the filing of the petition or the preliminary determination in measuring "massive shipments" for purposes of the critical circumstances determination. According to the Department's regulations, the determination of whether or not there has been a massive increase in imports is normally made based on the period beginning on the date the proceeding begins and ending at least three months later. *See* 19 CFR § 351.216(h) and (i). KSC argues that the Department overstepped its authority by using a time frame disconnected from the date of filing of the petition. KSC further asserts that the use of any comparison time other than period immediately following the filing of the petition is unlawful because it contravenes the purpose of the statutory provision, which (according to the legislative history) is to deter the increase of exports "during the period between initiation of an investigation and a preliminary determination" (H. Rep. No. 96–317 at 63 (1979). Thus, KSC argues, the proper comparison is between shipments during the October–December 1998 period and shipments during the July–September 1998 period. KSC also argues that the articles relied upon by the Department to impute knowledge of dumping involve mere speculation, do not specifically refer to hot-rolled steel, and are not grounded in fact. KSC concludes that without a specific allegation with respect to a proceeding against hot rolled steel from Japan, the Department cannot attribute knowledge of a proceeding to KSC in order to provide a basis for use of a

different time frame for its massive imports analysis.

Second, KSC argues that, based on company-specific data of record, it did not have massive imports during the normal time frame provided for in the regulations. Rather, its imports decreased, in both quantity and value terms, during the post-petition October—December 1998 period, as compared to the pre-petition July–September 1998 period. Therefore, KSC argues, the Department should reverse its preliminary finding of critical circumstances.

Third, KSC argues that the Department unlawfully used country-specific data rather than company-specific data in its preliminary finding. KSC argues that the Department failed to request company-specific import data until after the preliminary critical circumstances determination, and the Department's failure to obtain this information unfairly punished KSC by applying an adverse inference even though they were cooperating. KSC argues that the Department must use the company-specific shipment data submitted by KSC for its final determination.

Finally, KSC argues that the Department's preliminary critical circumstances finding was unlawful because, given the ITC's preliminary determination that there was no present material injury, the Department could not reasonably impute knowledge of material injury, which is necessary for a finding of critical circumstances under post-URAA law when there is no history of dumping. KSC argues that a preliminary critical circumstances determination cannot be made by the Department unless the ITC determines that there was actual material injury. *See Preliminary Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 31967, 31971 (June 11, 1997). KSC states that the Department cannot ignore the ITC injury finding. Thus, KSC argues that the Department should make a negative critical circumstances finding in the final determination.

Petitioners rebut each of KSC's four arguments regarding the Department's preliminary determination of critical circumstances. First, with respect to the Department's choice of a time frame for measuring shipments, petitioners argue that, despite KSC's reference to various legal authorities, the *Statement of Administrative Action* ("*SAA*"), congressional reports, and Department documents, KSC does not explain why the Department's regulation is at issue, or why the Department's actions in this case are not consistent with the authorities cited. Petitioners assert that the Department's action in this case did, in fact, serve to deter an increase in imports during the period following initiation.

Petitioners rebut criticism of the Department's reliance on published articles for selecting an early time frame by pointing out that, although KSC disputed the significance of certain articles considered by the Department in its determination, the articles discussed by KSC in its brief were, with one exception, published after April 1998. Petitioners thus conclude that it is apparent that the Department did not rely on these articles. Petitioners make two points in this respect.

First, petitioners contend, one report included in an exhibit to the petition is sufficient by itself to prove requisite knowledge by KSC. Petitioners cite the report dated April 1998 by CRU Steel Monitor. *See Exhibit 3* of *Petition for the Imposition of Antidumping Duties: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, (September 30, 1998). Petitioners assert that this report, respected within the industry worldwide, discusses concerns actually expressed by Japanese producers.

Second, petitioners argue that, although it is true that the other materials included as part of the petition did not refer specifically to hot-rolled imports from Japan, it is equally true that certain of these reports did refer specifically to the likelihood of antidumping cases being filed against hot-rolled steel imports. Petitioners add that although these reports mentioned Russia, the fact that, during this period, Japan was the second largest hot-rolled import supplier to the U.S. market makes it far-fetched to imagine that Japanese producers, like KSC, would infer that cases would be brought against Russia, the largest importer, but not Japan. Petitioners also contend that KSC is aware that U.S. flat-rolled producers have filed a large number of trade cases over the past two decades and those cases have always been brought against multiple countries.

Petitioners contend that KSC's argument that the Department's use of country-wide (rather than company-specific) import data for purposes of its analysis is an unjustified departure from the Department's normal practice is a moot point because, as KSC concedes, the company-specific data submitted to the Department shows a massive increase in imports by KSC during the period examined.

Finally, petitioners provide two reasons why, in their view, KSC's assertion that the Department was precluded from finding critical circumstances because the ITC did not preliminarily find present material injury in it preliminary injury determination is incorrect. First, petitioners argue that neither the statute nor its legislative history indicates that the Department must find that there is no material injury for purposes of such determination simply because the ITC did not find present material injury. Second, the ITC may find present material injury in its final determination even when it did not make such a finding in its preliminary investigation. Petitioners point out that the ITC, in its opinion, did not actually say that it did not find a reasonable indication of present material injury. Instead, the ITC avoided that issue entirely by moving directly to the threat of injury. Petitioners assert that this opinion is unusual, and that the Department might reasonably wonder whether this is because the ITC was carefully refusing to rule out a finding of present material injury in a final investigation.

Sumitomo Metal Industries

Sumitomo argues that the Department should not find critical circumstances with respect to it in the final determination. Sumitomo argues that the Department chose not to investigate Sumitomo because of the administrative burden to the Department, yet nevertheless applied its preliminary affirmative critical circumstances finding to imports by Sumitomo. Sumitomo argues that, as a cooperative non-selected respondent, it is entitled to a negative critical circumstances finding in the final determination. *See Preliminary Determinations of Critical Circumstances: Brake Drums and Brake Rotors from The People's Republic of China*, 61 FR 55269, 55270 (October 25, 1996). Sumitomo argues that it is the Department's practice not to issue final affirmative critical circumstances with regard to cooperative non-selected companies. For these reasons, Sumitomo argues the Department should find negative critical circumstances for non-mandatory cooperative respondents.

Department's Position: For the reasons discussed below, we continue to find critical circumstances for respondent KSC and "all other" respondents. However, in the final determination, we do not find critical circumstances with respect to NSC or NKK.

Section 735(a)(3) of the Act provides that if critical circumstances are alleged, the Department will determine whether: (A)(i) there is a history of dumping and

material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

As discussed in the preliminary critical circumstances finding, we are not aware of any antidumping order in any country on hot-rolled steel from Japan, for purposes of this final determination. Therefore, in this final determination we examined whether there was importer knowledge. In determining whether an importer knew or should have known that the exporter was selling hot-rolled steel at less than fair value and thereby causing material injury, the Department normally considers margins of 25 percent or more and a preliminary ITC determination of material injury sufficient to impute knowledge of dumping and the resultant material injury. The Department's final margins for KSC exceeded 25 percent. Therefore, we determine that importers knew or should have known that KSC was dumping the subject merchandise. As to the knowledge of injury from such dumped imports, in the present case, the ITC preliminarily found threat of material injury to the domestic industry due to imports of hot-rolled steel from Japan. Therefore, we also considered other sources of information, including numerous press reports from early to mid-1998 regarding rising imports, falling domestic prices resulting from rising imports and domestic buyers shifting to foreign suppliers. For a full discussion of the evidence on the record *see Final Critical Circumstances Memo,* dated Apr. 28, 1999. Based on this information, we find that importers knew or should have known that there would be material injury from the dumped merchandise.

Because we have found that the first statutory criterion is met with regard to KSC, we must consider the second statutory criterion: whether imports of the merchandise have been massive over a relatively short period. According to 19 CFR § 351.206(h), we consider the following to determine whether imports have been massive over a relatively short period of time: (1) volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by the imports.

When examining volume and value data, the Department typically compares the export volume for equal periods immediately preceding and following the filing of the petition. Under 19 CFR § 351.206(h), unless the imports in the comparison period have increased by at least 15 percent over the imports during the base period, we normally will not consider the imports to have been "massive." In addition, pursuant to 19 CFR § 351.206(i), the Department may use an alternative period if we find that importers, exporters, or producers had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely. In the instant case, to determine whether or not imports of subject merchandise have been massive over a relatively short period for the final determination, we examined each selected respondents' export volumes from May–September 1998, as compared to December 1997–April 1998 and found that imports of hot-rolled steel from Japan increased by more than 100 percent. In this case, petitioners argue that importers, exporters, or producers of Japanese hot-rolled steel had reason to believe that an antidumping proceeding was likely. We find that press reports, particularly in March and April 1998, are sufficient to establish that by the end of April 1998, importers, exporters, or producers knew or should have known that a proceeding was likely concerning hot-rolled products from Japan. *See Critical Circumstances Memo,* dated Apr. 28, 1999. Accordingly, we examined the increase in import volumes from May—September 1998 as compared to December 1997—April 1998 and found that imports of hot rolled steel from Japan increased by more than 100 percent. Based on our analysis, we find that there was a massive increase in imports with respect to KSC.

With regard to "all others" (*i.e.,* companies that were not analyzed in this investigation, *e.g.,* Sumitomo), we have reconsidered our Preliminary Determination finding of critical circumstances. For the final determination we conducted the following analysis, based on the experience of the investigated companies, to determine whether a finding of critical circumstances is appropriate with respect to uninvestigated exporters. *See Notice of Final Determination of Sales at Less than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey,* 62 FR 9737, 9741 (March 4, 1997) (*Rebars from Turkey*). In *Rebars from Turkey,* the Department found critical circumstances for the "all others" category because it found critical circumstances for three of the four companies investigated. However, we are concerned that literally applying that approach may produce anomalous results in certain cases. For example, if the "all others" rate is below the critical circumstances threshold, we do not believe it would be appropriate to find critical circumstances for the all others category even if we found critical circumstances for a majority of the investigated companies. Therefore, we believe it is appropriate to address both critical circumstances criteria in reaching a determination concerning the "all others" category. Thus, we have applied that experience to both criteria. First, in determining whether knowledge of dumping existed, we looked to the "all-others" rate, which is based on the weighted-average of the individual rates for the investigated companies. In the instant case, the "all others" rate exceeds 25 percent. Thus, we find importers knew or should have known that there was dumping by the all other companies. Similarly, as with respondent KSC, we find that importers knew or should have known that injury from the dumping by all other companies existed based on the ITC's threat finding and the extensive press coverage, from early to mid-1998, of widespread lost sales and falling domestic prices as a result of dumped imports. Second, we have evaluated whether there are "massive imports" for the "all others" companies in terms of both the imports of the investigated companies and country-specific import data. An evaluation of the company-specific shipment data provided by respondents indicates that all three mandatory respondents had massive imports and that, on average, imports increased by over 50 percent during the comparison period. In addition, where, as in the instant case, the U.S. customs data also permit the Department to analyze overall imports of the product at issue, we will consider whether those data are consistent with a finding of massive imports overall. Again, in the instant case, aggregate imports of hot-rolled steel during the comparison period increased by more than 100 percent. Thus, we find that imports from uninvestigated exporters were massive during the relevant period. Therefore, based on these factors, the Department determines that there are critical circumstances with regard to all other imports of hot-rolled steel from Japan. For a complete discussion of the data examined, see the Department's *Final Critical Circumstances Memo,* dated April 28, 1999.

Comment 3: NKK's Home Market Levels of Trade.

In its case brief submitted to the Department, NKK argues that in the preliminary determination, the Department incorrectly concluded that NKK sells at one level of trade in the home market. NKK asserts that, prior to the Department's preliminary determination, NKK had provided supporting qualitative evidence to confirm that in the home market sales by NKK to unaffiliated trading companies and end-users and sales made by affiliated trading companies take place at two distinct levels of trade.

NKK asserts that section 773(a)(1)(B) of the Act requires the Department to compare prices, as is practicable, at the same level of trade. Furthermore, NKK asserts that the Department's own regulations describe that sales are made at different levels of trade when sales are made at different marketing stages. *See* 19 C.F.R. § 351.412(c)(2). NKK argues that two levels of trade can be, but are not always, based on substantial differences in selling activities. NKK further argues that the Department must determine in its analysis if levels of trade are meaningful. *See Preamble,* 62 FR at 27371.

NKK reminds the Department that in its initial section A questionnaire response it presented three distinct channels of trade in the home market and argued that the first two channels to end users and sales to unaffiliated trading companies, should be consolidated into one level of trade. The other level of trade, sales to affiliated trading companies, is distinct from sales to unaffiliated end-users and trading companies. NKK contends that the Department, in its level of trade analysis memorandum for the preliminary determination, ignored the selling category in which NKK sells merchandise to unaffiliated trading companies. NKK asserts that these sales account for 90 percent of total sales to unaffiliated customers during the period of investigation. NKK believes that this is a significant error.

NKK argues that there is a significant difference between the selling activities of NKK and the selling activities of its affiliated resellers. NKK asserts that while it performs a high degree of selling activities in sales to end-users, this type of sale is a small part of this level of trade. NKK argues that, in general, its selling activities for total sales are smaller than the selling activities of its affiliated resellers. *See Level of Trade Exhibit,* attached to *Verification Report,* dated March 26, 1999. NKK argues that when its end-user sales are compared to its affiliated trading companies' end-user sales, NKK engages in significantly less selling activity related to the development of new users, the assessment of user demand, the financing of steel purchases by end-users, the provision of inventory management and warehousing, and the management of delivery. NKK's affiliated trading companies, on the other hand, engages to a high degree in the aforementioned selling activities.

NKK argues that there is a substantial and meaningful difference between selling activities performed by NKK and those performed by affiliated resellers/trading companies. NKK points out that the Department's own regulations establish that a substantially different selling function results with additional layers of selling activities. *See Preamble,* 62 FR at 27371. NKK asserts that its affiliated trading companies also incur comparatively greater risk as a result of more active and diverse selling activities. NKK, on the other hand, chooses to limit its own risk by selling 93 percent of its merchandise through affiliated trading companies and makes sales directly to end-users only in the case of well-established customers. Finally, NKK argues that its indirect selling expense ratio was significantly less than that of one of its trading companies during the POI. This, according to NKK, is consistent with the preamble to the Department's regulations, and definitively supports the notion that NKK and its affiliated trading companies sell at two distinct levels of trade in the home market. *See Id.*

Petitioners assert that, having found itself unable to quantify pricing differences for the sake of claiming a LOT adjustment, NKK is now claiming that the home market is actually two LOTs, and that U.S. sales should be only matched to the closer level. Petitioners further assert that NKK's argument that the Department's chart, used for comparison of selling activities, is inaccurate should be accorded no weight, since pursuant to § 351.412(c)(2) of the Department's regulations, the "substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stage of marketing." Finally, petitioners rebut NKK's claims that (1) its affiliate's high degree of performance of selling functions yields a higher level of exposure for them and NKK can thus diffuse risk and that (2) there is a difference in indirect expenses ratios between itself and its trading company by asserting that, whether or not it is true, NKK's first claim is unquantifiable, and the second claim is problematic because the higher level of indirect selling expenses may be typical for a reseller. Therefore, petitioners assert that, as in the *Preliminary Determination,* the Department should continue to deny NKK any LOT adjustment.

Petitioners argue that although NKK claims that it never provided inventory warehousing and management for its sales to unaffiliated trading companies, and rarely provided such services to end-users, the record shows that NKK provided high level delivery management services on sales to unaffiliated trading companies and also contradicts NKK's claim as to inventory warehousing. Therefore, for the 4 "mill" functions and 2 of the 5 "trading company" functions, (*i.e.,* for 6 out of the 9 categories of selling functions that NKK performs) NKK's selling functions on sales to unaffiliated customers and sales by its trading company to end-users are substantially the same. In light of these facts, petitioners argue that the Department should continue to find one level of trade in the home market.

Department's Position: We do not agree that NKK's home market sales are made at two distinct levels of trade. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit.

To determine the LOT of a company's sales (whether in the home market or in the U.S. market), we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa* ("*Certain Cut-to-Length Carbon Steel Plate from South Africa*"), 62 FR 61731 (November 19, 1997).

NKK sells subject merchandise in the home market through two channels of distribution: one channel involves sales by NKK to unaffiliated customers (including both end-users and trading companies); the second channel involves sales by NKK's affiliate to unaffiliated customers. For the preliminary determination, the Department found that NKK's sales to these three types of home market customers involved essentially the same level of selling functions. After a careful analysis of the information on the

record, we continue to find that there was not a substantial difference in the selling functions performed by NKK in making sales to its unaffiliated customers and those associated with sales by NKK's affiliated company to its unaffiliated customers. Therefore, we continue to find that there is one level of trade in the home market.

As discussed in the Department's preliminary *Level of Trade Memo*, dated February 12, 1999, the Department reviewed the selling functions performed with respect for each of the customer categories. As indicated by NKK in its January 19, 1999, supplemental section A response, NKK collapsed sales directly to unaffiliated companies (end-users and others) into one level of trade. In conducting its analysis the Department reviewed the information placed on the record and did not ignore the level of selling activity for sales to unaffiliated trading companies, as evidenced by the inclusion of this category in the *Level of Trade Memo*.

Second, NKK argues that there are substantial differences in the selling activities performed by NKK and the selling activities of its affiliated resellers. In the instant case, in conducting its level of trade analysis, the Department compared the selling functions performed for sales in the home market to the first unaffiliated customer. As evidenced by the discussion in the Department's *Level of Trade Memo* (referenced above), the information on the record indicates that the selling functions and activities performed by NKK on sales to unaffiliated customers as compared to the selling functions and activities performed by both NKK and its affiliate on sales to unaffiliated customers do not vary on a qualitative basis. NKK's argument that there are differences between these selling functions is not supported by the evidence on the record. Once again, in the Department's *Level of Trade Memo* we discussed the level of service provided for each channel of distribution and we found no distinction in the levels of service provided. NKK further argues that there are substantial differences in the amount of selling functions associated with the two groups of sales. However, the Department finds that, while the record indicates some differences in the amount of certain functions performed, these differences are not so substantial as to warrant finding different LOTs on this basis alone. Therefore, because the customer types are the same, the types of selling functions are the same, and there are not substantial differences in the level of functions performed, we continue to find that there is one LOT in the home market.

Comment 4: KSC's CEP Offset.

Petitioners argue that the Department should not grant KSC a CEP offset to the normal value of its home market sales in the final determination since KSC has failed to factually establish its entitlement to a CEP offset. Furthermore, petitioners argue that KSC's statements on the record actually refute its claim for a CEP offset. Petitioners claim that KSC has not established sufficiently that its home market and CEP sales through its affiliates, Kawasho Corporation and Kawasho International, are at different level of trades. For instance, petitioners claim that KSC originally stated in its section A response that it had two levels of trade in the home market and the same two levels of trade in the United States market. Petitioners state that KSC only claimed that its home market and U.S. sales to unaffiliated trading companies were at a less advanced stage in the marketing process than its sales to its affiliates. Petitioners also claim that KSC did not respond to Department inquiries that KSC "explain why [it] considers the home market level of trade more advanced than the U.S. level of trade to warrant a CEP offset if necessary."

Petitioners also argue that the fact that all sales to both markets were manufactured to order and were to the same categories of customers indicates that there are no differences in levels of trade between home market and the United States. Finally, petitioners claim that KSC's descriptions of its selling activities and services have been inconsistent and thus unreliable. As a result, petitioners argue that KSC has not met the required burden of proof to factually demonstrate that its home market sales and CEP sales were made at different levels of trade. Thus, the Department should not grant KSC a CEP offset for the final determination.

Respondent contends that the Department's decision to grant KSC a CEP offset is in accordance with law and is supported by substantial evidence on the record. As legal authority, respondent relies upon section 772(a)(7)(B) of the Tariff Act (19 U.S.C. § 1677b(a)(7)(B)) and the SAA at 831. Respondent argues that, contrary to petitioners' assertions, the facts on the record support KSC's claim for a CEP offset. Respondent asserts that petitioners misread KSC's response to the Department's section A questionnaire and that petitioners are incorrect in stating that KSC asserted that there were two levels of trade in the U.S. which correspond exactly to the two levels of trade in the home market. According to the respondent, KSC's section A response explains that there are at least three marketing stages for its CEP sales. In addition, KSC has consistently explained, in its section A, Supplemental section A, and section B responses, that its CEP sales were at a different level of trade than its home market sales through Kawasho. In fact, the respondent states that KSC's home market sales through Kawasho are at a more advanced level of trade than its CEP sales because these home market sales are at a more advanced stage of distribution and farther removed from the factory. Respondent asserts that, throughout the immediate investigation, KSC has supplied the Department with information, in its Supplemental responses and during verification, showing that it has to perform more and different selling activities and services for its home market sales than for its CEP sales. Furthermore, respondent argues that the difference in the number of employees for the different markets confirms that more is required to sell in the home market than to the CEP level of trade. Respondent concludes by stating that since there is no comparable level of trade in the home market, KSC is unable to calculate a trade adjustment for its CEP sales and instead requests the Department to grant a CEP offset pursuant to section 772(a)(7)(B) of the Tariff Act (19 U.S.C. § 1677b(a)(7)(B)) and 19 CFR § 351.412(f).

Department's Position: We disagree with petitioners that KSC's CEP offset should be denied. In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A and profit. For CEP sales, the Department makes its analysis at the level of the constructed export sale from the exporter to the affiliated importer.

Because of the statutory mandate to take level of trade differences into consideration, the Department is required to conduct a LOT analysis in every case, regardless of whether or not a respondent has requested a LOT adjustment or a CEP offset for a given group of sales. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the

difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR at 61731.

In the *Preliminary Determination*, the Department made a CEP offset adjustment to the normal value of KSC's sales that were compared to CEP sales in the United States, because the Department preliminarily found that all of KSC's home market sales were made at levels of trade different from and more advanced than the level of trade of KSC's CEP sales in the United States, and there is no basis for determining whether the differences in the LOTs between the NV and the CEP sales affects price comparability. *See Level of Trade Memo*, dated February 12, 1999. In particular, the Department found that KSC performed fewer and different selling functions in connection with CEP sales to Kawasho International and Kawasho Corporation than in connection with home market sales to its unaffiliated customers. For example, the Department found that KSC provided a high level of warehousing, processing, freight arrangement, and payment collection services in the home market, but did not provide the same level of services on its CEP sales to the United States. Further, the Department found that it was not possible to quantify a LOT adjustment based on the available data. The fact that KSC originally identified a different LOT pattern is not determinative. As explained above, the Department conducts its own LOT analysis, rather than merely accepting the assertions of the parties. Similarly, just as sales to a different customer category is insufficient, by itself, to establish a different level of trade, all sales to the same customer category are not necessarily sales made at the same level of trade. *See Preamble* to the Department's regulations, 62 FR at 27371. Finally, the Department is satisfied that it has sufficient reliable information to reach a decision as to the levels of trade at which KSC and its affiliates sell subject merchandise. Furthermore, the Department verified the data used in making this analysis. *See Verification Report*, dated March 26, 1999. Thus, after further examination of the record, the Department will continue to make a CEP offset because the facts on the record indicate that KSC's CEP level of trade is different from and less advanced than KSC's home market levels of trade and that the data of record do not permit it to, instead, make a LOT adjustment based on the effect of the LOT difference on price comparability.

Comment 5: Overruns.

NKK asserts that the Department should consider its sales of overruns in its calculation of home market price because such sales meet the Department's criteria for sales in the ordinary course of trade. NKK argues that (1) its invoice coding system identifies sales as overruns; (2) its overruns are sold for the same uses as ordinary production, and unlike non-prime merchandise, the specific product characteristics are maintained and used to determine whether overruns meet a customer's needs, and there is no physical difference between overruns and ordinary production; and (3) the number of customers purchasing overruns and the volume of overruns purchased are similar to ordinary sales according to the Department's overrun methodology.

Petitioners, in rebuttal, argue that the Department properly excluded the overruns in its preliminary determination margin calculation. Furthermore, petitioners argue that application of the Department's own standards for determining whether overrun sales are in the ordinary course of trade supports the Department's decision to exclude overruns from its margin calculation. *See, e.g., Circular Welded Non-Alloy Steel Pipe from the Republic of Korea; Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 64559, 64561 (December 8, 1997) referencing, *Laclede Steel Co.* v. *United States*, 18 CIT 965, (1995); *Carbon Steel Flat Products from Korea*, 64 FR at 12941–42. Petitioners argue that, by the Department's standards, NKK's overrun sales are outside the ordinary course of trade based on the ratio of overrun sales to home market sales, the number of overrun customers in relation to the total number of customers, the average price of overrun sales compared to commercial production sales, the relative profitability of overrun sales, and the quantity of overrun sales compared to the total quantity of commercial sales. Petitioners claim that no one factor among these standards is dispositive, and, finally, that the Department has excluded and should continue to exclude overruns in its margin calculation.

Department's Position: We agree with petitioners that overruns should continue to be excluded from the Department's final analysis. After an examination of the record, the Department has determined that NKK's overrun sales are sold at a lower price, sold in smaller quantities overall and sold to fewer customers than product that is not overruns. Second, based on the results of verification, where the Department examined overrun sales, we determined that these sales are made only after they cannot be applied to other sales and after a significant time lag follows production as compared to other sales in the normal course of business. The Department concedes that NKK's overruns are sold as prime merchandise; however, this sole factor does not enable these sales to be considered in the ordinary course of trade. Third, the Department found that there were sufficient matches to non-overrun prime merchandise sold in the ordinary course of trade, which is the Department's preference in determining matches between U.S. sales and home market sales. Based on these factors, the Department continues to exclude overrun sales from its analysis.

Comment 6: Department's Arm's Length Test.

NKK argues that the Department should use a different arm's length test than the "99.5 percent" test that it normally uses and used in the preliminary determination. The Department's current policy is to treat home market sales prices to an affiliated customer as having been made at "arm's length" (and therefore useable in the normal value calculation) if prices to that affiliated purchaser are, on average, at least 99.5 percent of the prices charged to unaffiliated purchasers. *See Preamble*, 62 FR at 27355. NKK states that the Department has not codified its "99.5 percent" arm's length test methodology, and therefore suggests what it believes to be a more accurate arm's-length test. NKK claims that both generally and on the fact of this case, the Department's current test produces distorted results. NKK argues that there is no factual basis on which to conclude that sales to one of its affiliated trading companies were not made at arm's length prices.

NKK describes two variations of the test used in past dumping investigations and argues that both variations are methodologically flawed. Specifically, NKK argues that the current arm's length test methodology is flawed because the application of a single fixed

ratio ("99.5 percent") to CONNUM-specific or weighted-average related/unrelated customer price ratios distorts commercial reality by not taking into account actual pricing practices. NKK references several types of situations in which it argues the current test produces anomalous results.

NKK also proposes a new approach involving several changes to its current test. First, NKK asserts that the Department should abandon its methodology of creating an "overall customer percent-ratio aggregation" and, instead, base its arm's length test on CONNUM-specific sales data. In short, NKK argues that the arm's length test should be applied on a CONNUM-specific basis, rather than a customer-specific basis. Second, NKK argues that, instead of using an "inflexible and mechanical" 99.5% of the mean for a benchmark to determine arm's length sales, the Department should instead adopt a test based on standard deviations. Such a test, according to NKK, would address the variability and magnitude of pricing data. Specifically, when the mean price for the CONNUM sold to the related customer is within one standard deviation of the mean price to the unrelated customer, the Department should consider that sales of that CONNUM to that customer are at arm's length.

NKK argues that its proposed test would not be difficult to apply, and includes proposed SAS programming. Finally, NKK asserts that if the Department adopts an arm's length analysis methodology that applies a standard-deviation test on a CONNUM-specific basis, the record will show that NKK's sales to affiliated trading companies were, in fact, at arm's length.

Petitioners, in rebuttal, argue that there is no reason for the Department to abandon its current arm's length test. Specifically, petitioners argue that the Department has considerable discretion in determining when to exclude related party sales in the calculation of normal value. *See, e.g., Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994). Furthermore, petitioners argue that the courts will uphold the Department's arm's length test unless respondents can prove that the test is unreasonable and distorts price comparability. *See SSAB Svenskt Stal AB* v. *Bethlehem Steel Corporation*, 976 F. Supp. 1027, 1030–1031 (CIT 1997); *Micron Technology Inc.* v. *United Tests*, 893 F. Supp. 21, 38 (CIT 1995). Petitioners argue that the burden of persuasion, with respect to the theory that the Department's arm's length test distorts price comparability, falls on the respondent. *See NEC Home Electronics Ltd.* v. *United States*, 54 F. 3d 736, 744 (Fed. Cir. 1995).

Petitioners specifically reject NKK's proposed arm's length test. Petitioners argue that NKK's proposed alternative test is based entirely on the idea of using standard deviations to account for pricing variability. Petitioners, citing statistical authorities, assert that the application of a mean/standard deviation analysis only works when there is a symmetrical, bell-shaped frequency distribution, and claim that NKK's data sets do not fit this model. Petitioners reject the accuracy of the sample scenarios that NKK advances in its case brief. For example, petitioners argue that one of NKK's case brief scenarios misrepresents the facts of a standard deviation-based analysis to the extent that NKK does not establish the standard deviation for unrelated prices. Petitioners assert that NKK's proposed arm's length test is over-inclusive, and statistically inaccurate; therefore, they argue, it should be dismissed by the Department.

Department's Position: The Department has not adopted NKK's proposed arm's length test for purposes of this investigation. As NKK has acknowledged, determining whether home market sales made to affiliated parties are made at arm's length is a complex process which the Department considered in some detail during the most recent round of regulatory revisions. At that time, the Department decided that it would not codify the current test, but would continue to apply it unless and until it developed a new method, in which case the new methodology would be described and announced in a policy bulletin. *See Preamble*, 62 FR at 27355. The Department's "99.5 percent" arm's length test methodology is well established and the CIT has repeatedly sustained the methodology. *See Micron Technology Inc.* v. *U.S.*, 893 F Supp. 21 (CIT 1995) and *Torrington Co.* v. *United States*, 960 F. Supp. 339 (CIT 1997).

An agency's interpretation of the statute it administers must be accorded substantial weight. Thus, the Department's well-established practice can be sustained as long as it is "sufficiently reasonable." *See American Lamb Co.* v. *United States*, 785 F.2d 994, 1001 (Fed. Cir. 1986). In *Usinor Sacilor* v. *United States*, 872 F. Supp. at 1004, the Court of International Trade stated that it would uphold the Department's "99.5 percent" test unless it was shown to be unreasonable. While NKK has proposed an alternative methodology based on a statistical approach, it has not demonstrated that the current methodology is unreasonable. The CIT has already rejected the idea that the "99.5 percent" test is unreasonable because it does not take into account price variance. *See Usinor Sacilor* v. *United States*, 872 F. Supp. at 1004.

With respect to NKK's concern of applying the arm's-length test on a customer basis, we note that the question underlying the arm's-length test is whether affiliation between the seller and the customer has (in general) affected pricing. Because affiliation is the result of relationships between firms, the focus of the arm's-length test is the customer, not a particular product. For this reason, the Department makes one up-or-down call on pricing to an affiliated customer: either there is arm's-length pricing or there is not. However, under NKK's proposed connum-by-connum approach, affiliation could be found to matter for some connums, but not for others, even though the customer in both cases is the same. To support it's proposal, in exhibit B to it's submission dated April 12, 1999, NKK claims that the sales to an affiliated customer, NKK Trading of certain CONNUMs were considered not to be at arm's length prices although the prices for over 50% of those sales exceeded the mean price to the unaffiliated customers for these connums. However, the relatively small share of total sales to NKK Trading for which these connums account is perfectly consistent with the Department's finding that NKK's affiliation with NKK Trading has in general affected price.

Additionally, NKK presents several theoretical situations under the Department's current approach, where NKK claims that sales could be excluded for reasons unrelated to affiliation. In particular, NKK argues that a statistical approach would reduce the likelihood of testing error when pricing to affiliated and unaffiliated customers is the same (i.e., the error of finding that affiliation has affected prices when, in fact, it has not). However, NKK does not address the concern that, by lowering the threshold for accepting affiliated party sales under their statistical approach from the Department's current standard, NKK's test would increase the likelihood of testing error when pricing to affiliated and unaffiliated customers is not the same (i.e., the error of finding that affiliation has not affected price when, in fact, it has). Given this concern with NKK's proposed approach, the Department continues to believe that the "99.5 percent" test imposes a reasonable requirement on affiliated-party prices:

on average, they essentially must be as high as prices to unaffiliated parties.

Comment 7: NSC's Affiliated Freight Costs.

NSC argues that the Department should allow all of NSC's home market inland freight expenses for the final determination because the Department verified that NSC procures inland freight services at arm's length prices, and that NSC had properly reported these expenses.

NSC argues that, under the antidumping law, the Department shall reduce the normal value price by the costs incurred to bring the subject merchandise from the original place of shipment to the place of delivery to the purchaser in order to achieve an undistorted fair value comparison. *See* section 772(c)(2)(A); SAA at 4040. NSC argues that the Department has allowed respondents to deduct the full expense of inland freight services provided by affiliates unless the Department cannot establish that the services were not purchased in an arm's length transaction. *See Notice of Final Determinations of Sales at Less than Fair Value: Certain Hot-Rolled, Cold-Rolled, and Corrosion Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from France,* 58 FR 37125, 37132 (1993); *Certain Cold Rolled Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Review,* 63 FR 781, 788 (January 7, 1998); *Steel Pipe from Korea,* 63 FR at 32,839; *see also Gray Portland Cement and Clinker from Mexico: Final Results,* 63 FR 12764, 12780 (1998).

NSC states that it "confirmed" prior to verification that these services from affiliates were purchased at arm's length prices by providing freight charts and explaining that it paid the same rates to affiliates and unaffiliates. NSC argues that the Department verified that NSC paid arm's length prices to affiliated and non-affiliated freight suppliers, and that NSC reported its inland freight charges accurately. *See Verification Report* at 14–15, dated March 26, 1999. NSC concludes that, therefore, the Department must make a deduction for NSC's home market inland freight expenses when calculating normal value for the final determination.

Department's Position: We agree with NSC. The Department has allowed a deduction for home market freight expenses because NSC reported its freight expenses in accordance with Departmental methodology and the expenses were verifiable. While NSC's responses to the Department's questionnaires did not demonstrate that NSC had procured inland freight services from affiliates at arm's length prices, at verification, we examined contracts and payment documentation which demonstrated that NSC's reported inland freight charges were accurate and non-distortive. *See Verification Report* at 15, dated March 26, 1999. Therefore, in the final determination, we have utilized NSC's reported home market freight expenses in the calculation of normal value.

Comment 8: NKK's Home Market Freight Costs.

Petitioners assert that, according to NKK, the company does not track actual delivery charges on an individual shipment basis; thus, it calculated its reported movement costs in the home market based on the way in which a particular product was most likely transported. Petitioners note that NKK, late in the process, disclosed that the reported delivery terms, for 19 percent of its transactions, were incorrect. In addition, NKK also revealed that a computer programming error resulted in the wrong method of transportation being reported for a full 13 percent of its home market sales. Petitioners argue that, in light of the numerous errors in NKK's reporting of movement expenses, NKK has failed to demonstrate that (1) its method for allocating its home market movement expenses does not cause inaccuracies or distortion and (2) it is entitled to an adjustment for movement expenses in the home market. Therefore, petitioners assert that, at minimum, the Department should deny NKK's reported adjustments for movement expenses for certain specific sales.

NKK asserts that it reported, in its original and supplemental questionnaire responses, that it does not retain transaction specific movement expenses. Instead, using its monthly summaries, NKK determined an average per-ton movement expense for each category of transportation, as well as by each method of transportation.

In addition, NKK argues, that pursuant to the Department's practice, a week before verification NKK submitted new revised databases. The Department accepted and verified the accuracy of the method for allocating these rates to specific transactions, and tested the reported movement expenses in 45 sample sales transactions. No discrepancies were found. Furthermore, NKK asserts that, contrary to what petitioners alleged in both in their pre-verification comments and briefs, the Department verified that the sales terms code did match the claim of a movement expense. Therefore, NKK's asserts that its methodology was reliable and accurate. NKK has successfully demonstrated its entitlement to an adjustment for movement expenses in the home market, and evidence on the record proves that petitioners' claims have no basis.

Department's Position: We agree with NKK and have allowed a deduction for freight expenses for home market sales of subject merchandise because the reported expenses are in accordance with Departmental methodology, are consistent with the company's accounting practices, and were substantiated at verification. *See Verification Report,* dated March 26, 1999. NKK has reported home market freight in accordance with its accounting system and provided the data on a product, transportation-type and destination-specific basis. Based on its findings at verification, the Department determined that respondent's reported freight costs for home market sales of hot-rolled steel are not distortive, and provide a reasonable estimate of actual transaction-specific freight expenses. Therefore, we are granting NKK a home market freight adjustment for sales of subject merchandise.

Comment 9: NSC's U.S. Sales.

Petitioners contend that certain of NSC's U.S. sales, those made through an affiliated U.S. reseller and reported as export price ("EP") sales, are constructed export price ("CEP") sales and that adverse facts available should be applied to these sales. Petitioners state that NSC was not forthright with its explanation of the U.S. reseller's functions in the sales process, as the Department found that the reseller performed many more functions than were originally outlined in the questionnaire responses. More specifically, petitioners believe that the findings at verification demonstrate the involvement of the reseller in the negotiation of the substantive terms of sales, such as prices. Furthermore, petitioners assert that NSC's claim that the reseller was merely a processor of information and a communication link is untenable. In addition, petitioners argue that because NSC failed to report "significant facts" regarding the reseller's role in the sales process the Department should use facts available. Petitioners contend that NSC withheld information from the Department, failed to provide information in a timely manner and impeded the proceeding. Lastly, petitioners have requested that the Department use the highest calculated margin for NSC's U.S. sales as facts available.

NSC argues that verification confirmed the facts underlying the Department's preliminary decision that

NSC's U.S. sales were properly characterized as EP sales. NSC states that the sales meet criteria for EP sales established in *Mitsubishi Heavy Indus., Inc.* v. *United States*, 15 F.Supp. 2d 807, 812 (CIT 1998) (citing *PQ Corp.* v. *United States*, 652 F.Supp. 724, 731 (CIT 1987), and affirmed in *AK Steel Corp.* v. *United States*, No. 97–05–00865, 1998 WL 846764, at *6 (CIT 1998).

NSC argues that if a transaction meets these criteria, the Department will treat the sales as EP because the routine selling functions of the manufacturer have been relocated geographically from the selling country to the United States. *See Koenig & Bauer-Albert AG* v. *United States*, 15 F. Supp. 2d 834, 352 (CIT 1998). NSC adds that, in such circumstances, the EP sales are in effect made directly to the unrelated buyer because the U.S. affiliate has no independent function. The remainder of NSC's argument cannot be recreated in a public summary.

Petitioners rebut NSC's contention that the Department should not use adverse inferences with regard to NSC's sales made through its affiliated U.S. reseller. The petitioners cite to the Department's *Verification Report* which shows that the U.S. reseller negotiated terms of sale with customers. Petitioners further argue that NSC's arguments ignore the U.S. reseller's role as verified by the Department. Additionally, petitioners state that due to the reseller's role in the "negotiations and base price proposals" the sales should be deemed CEP. Furthermore, petitioners contend that because NSC did not describe the full range of the reseller's role and the Department consequently does not have all of the information necessary with which to calculate a margin for CEP sales, the Department should find adverse inferences and use the highest calculated margin for these sales.

Petitioners argue that the Department finds that CEP treatment is justified where a U.S. affiliate plays a significant role in soliciting business and maintaining customer contacts, or participates in the negotiation of sales price to the extent that it is more than a processor of sales-related documentation or a communications link. *See Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 63 FR 13170, 13172 (March 18, 1998). Petitioners argue that, contrary to NSC's assertions, the facts in this case justify classifying certain of NSC's sales as CEP.

Petitioners also note that where the U.S. affiliate acts as the first and only point of contact for the U.S. unaffiliated customer, or that it played the primary role in generating the sale by bringing the customer to the foreign producer, the Department has found that the affiliate's role in the sales process is significant. *See Stainless Steel Plate in Coils from the Republic of Korea*, 64 FR 15444, 15453 (March, 31, 1999); *see also Notice of Final Determination of Sales at Less Than Fair Value: Extruded Rubber Thread from Malaysia: Final Results of Antidumping Duty Administrative Review*, 64 FR 12967, 12971 (March 16, 1999); *Carbon Steel Flat Products from Korea*, 64 FR at 12927. Petitioner also argues that the Department has found that where the U.S. affiliate participates in negotiations, its role is elevated beyond a processor of documentation or a communications link. Petitioner argues this is true even where the U.S. affiliate negotiates along with the foreign producer (*Small Diameter Circular Seamless Carbon and Alloy Steel Standard Line and Pressure Pipe from Germany: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 47446, 47448 (September 15, 1997), reserved the right to approve all orders, *id.* or limited the affiliate's ability to negotiate prices within certain ranges, *Cut-to-Length Carbon Steel Plate from Belgium: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR 48213, 48214–15 (1997); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 62 FR 18390, 18391–92 (1997)). Petitioners argue that where the U.S. affiliate's role is not incidental or ancillary, CEP treatment is appropriate. *See Industrial Nitrocellulose from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 64 FR 6609, 6611 (February 10, 1999). Petitioners cite the U.S. verification report in support of their argument that CEP is appropriate for certain of NSC's U.S. sales, and argue that application of facts available is justified as well, based NSC's failure to provide complete information on these circumstances.

In its rebuttal, NSC argues that the Department should continue to treat NSC's sales through its affiliated U.S. reseller as EP sales. NSC contends that the affiliated U.S. reseller acted as a communication link between the affiliated Japanese reseller and the U.S. customer. NSC states that the U.S. reseller acted "only as a processor of sales-related documentation and a communication link with the unrelated U.S. buyer." *See Mitsubishi Heavy Indus., Ltd.* v. *United States*, 15 F. Supp. 2d 807, 812 (CIT 1998). Furthermore, NSC argues that the U.S. reseller was in constant communication with the Japanese reseller and that messages during the sales negotiations document that the U.S. reseller had no authority to make decisions without the consent of the Japanese reseller. NSC contends that the U.S. reseller acted as a communication link, which is a role that U.S. affiliates may play in EP sales. *See AK Steel Corporation* v. *United States*, 34 F. Supp. 2d 756 (CIT 1998); *see also NSC U.S. Verification Memorandum*, dated March 26, 1999, at Exhibit 4. In sum, NSC argues that at no point did the affiliated U.S. reseller make any decisions with regard to the terms of sale without first consulting the Japanese reseller. Finally, NSC contends that if the U.S. reseller had authority to negotiate terms of sale the documented correspondence between the U.S. and Japanese resellers would not have occurred. Thus, the U.S. reseller was simply a conduit for communication.

Department's Position: We disagree with petitioners that NSC's U.S. sales should be treated as CEP sales. The statute defines export price as the price at which the subject merchandise is first sold (or offered for sale) to an unaffiliated purchaser before the date of import by the exporter outside the United States. In contrast, CEP is the price at which the subject merchandise is first sold (or offered for sale), before or after the date of import, in the United States by or for the account of the exporter or by a seller affiliated with the exporter to an unaffiliated purchaser. Thus, sales made prior to import can be either EP or CEP, with the former being sold by the exporter or producer outside the United States and the latter being sold by someone in the United States who is selling for the account of the exporter or is affiliated with the exporter. In cases in which both the exporter and a U.S. affiliate or a party in the United States acting on the exporter's behalf are involved in the sales transaction, a case-by-case determination must be made, based on the facts associated with the transactions at issue, to determine whether such sales are properly characterized as EP or CEP sales. Normally, when a party in the United States is involved in the sale to the first unaffiliated customer, the sales are properly treated as CEP sales. However, the Department has a long history of recognizing so-called "indirect EP sales," which are sales made by an exporter, with the party in the United States performing only certain ancillary

functions that support the sales process. To determine whether sales are properly classified as EP in such cases the Department examines three criteria: whether (1) the merchandise is not inventoried by the importer, (2) the sale is made through a customary commercial channel for sales of this merchandise, and (3) the affiliated importer acts only as a processor of sales-related documents and as a communications link with the exporter. *See, e.g., Du Pont*, 841 F. Supp. at 1248–50; *AK Steel*, 1998 WL 846764 at *6. Only when all three criteria are met does the Department treat the sales as EP sales. As the Court explained in *AK Steel*, this test is simply a means to determine whether a sale at issue is in essence between the exporter and the unaffiliated buyer, in which case the EP rules apply, or whether the role of the affiliate has sufficient substance that the CEP rules apply. *Id.*

In this case, NSC's small U.S. office merely assisted NSC and its affiliated Japanese trading company in making the sales in question. With respect to the first prong of the indirect EP test, the merchandise at issue was shipped directly from the manufacturer to the unaffiliated U.S. customer without being introduced into the physical inventory of NSC's U.S. affiliate. With respect to the second prong, this pattern of direct shipment is a customary commercial channel for sales of such merchandise in the industry, and there is no indication that the sales between the parties involved represented any departure from the customary commercial patterns. As for the third prong, information obtained by the Department at verification confirmed NSC's claims that its U.S. affiliate's role was that of a processor of sales-related documents and as a communications link with the exporter.

The gravamen of petitioner's claim that these sales should be classified as CEP sales appears to be the fact that the affiliate is involved in the negotiation process. However, the sales-related documents we examined at verification indicated that the affiliate's role in the sales negotiation process is properly characterized as ancillary to the role of NSC and an affiliated trading company in Japan. *See U.S. Sales Verification Report*, dated March 26, 1999. The primary function of the U.S. affiliate in negotiation was conveying offers and counter-offers between the customer on the one hand, and NSC and the Japanese trading company on the other—in other words, serving as a "communications link" between the parties involved in making the decisions with respect to these sales. Contrary to petitioners' assertions, the U.S. affiliate cannot be said to have participated in any real sense in the negotiation of the sales at issue.

Verification also confirmed the accuracy of information NSC provided on the record with respect to its performance of other support functions related to these U.S. sales, including conveying an initial offer to bid, issuing certain sales documentation, and assisting in arranging the transport of the merchandise from Japan to the customer. The affiliate also pays U.S. import duties and certain transportation expenses (wharfage, brokerage, barge/demurrage, stevedoring, and trucking expenses) on these sales, receives payment from the customer and receives a commission on the sale. *See NSC U.S. Verification Report* at 2–4, dated March 26, 1999. These are all functions that have previously been found to be compatible with a finding that the sales involved are EP sales. In addition, the Court of International Trade has held that the fact that a U.S. subsidiary receives a commission for providing such services is not incompatible with a finding that the sales are EP sales. *See Outokumpu Copper Rolled Products AB* v. *United States* ("*Outokumpu*"), 829 F. Supp. 1371, 1378–80 (CIT 1993). Thus, the facts of record, taken as a whole and considered in context, demonstrate that these sales are essentially sales between NSC's affiliated Japanese trading company and the unaffiliated U.S. customer, with certain routine sales support functions carried out by the U.S. affiliate. Therefore, we find that the facts on the record demonstrate that the sales at issue meet the well-established criteria for indirect EP sales.

In addition, we note that these sales constitute such a minute portion of NSC's U.S. sales that, even if the Department had accepted petitioners' argument both that they should be considered CEP sales and that the Department should apply an adverse margin to these sales, the impact on NSC's margin, if any, would have been negligible.

Comment 10: NSC's U.S. Sales Prices.

Petitioners contend that the Department should use the gross unit U.S. price in dollars which appears on the invoice, and not a converted net price in yen as the basis for its U.S. price calculations. NSC reported the gross unit price for its U.S. sales in dollars, and this value appears on the invoice, even though NSC's customers ultimately pay for the merchandise in yen based on a nine day forward exchange rate. NSC reported the price paid in yen minus a trading company discount as NETPRTCU. Petitioners claim that the Department converted the net yen value to dollars on the date of shipment, and state that this approach is improper. Petitioners rely upon *Ferrosilicon from Brazil: Amended Final Results of Antidumping Duty Administrative Review* ("*Ferrosilicon from Brazil*"), 62 FR 54085, 54086 (1997), where the Department amended its final results in order to use the U.S. dollar-denominated gross unit price, and on *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Japan*, 63 FR 40434, 40446–7 (1998), where the Department also used a gross unit price in dollars.

Department's Position: The Department disagrees that we should use the gross unit U.S. price in dollars which appears on the invoice and not the converted price in yen. The yen value on the invoice is the value which is invoiced and paid by NSC's customers. For every U.S. sale, and other export sales, NSC records the dollar value, the yen value, and the exchange rate used to convert the dollar to yen, and then tracks the yen invoice value through to their accounts receivable. Petitioners' argument is that the Department should avoid unnecessary conversion where possible. The Department verified that the yen value on the invoice is converted using the yen to dollar exchange rate on the ninth day after shipment. This conversion is pursuant to the terms of sale agreed upon by the parties at the time of the order confirmation. Therefore, for purposes of NSC's normal accounting records, the yen value posted in the normal course of business is the converted dollar value effective on the date of shipment, using the methodology discussed above. In reporting U.S. sales to the Department, NSC directly reported the yen value from the invoice as recorded in the normal course of business. As a result, the Department used the yen value from the invoice as the starting point in its calculation of U.S. price.

Petitioners' reliance on the two administrative cases cited is misplaced. The *Ferrosilicon from Brazil* case, unlike this case, involved a forward exchange rate agreement. Thus, section 773A(a) of the Act required that foreign currencies be converted into U.S. dollars based on the exchange rate specified in the forward exchange rate agreement. Instead, the Department, due to the erroneous impression that it did not have dollar-denominated prices on record, "mistakenly converted the U.S. sales prices reported in Brazilian currency to U.S. dollars on the date of sale." 62 FR at 54086. Because the

Brazilian currency gross unit amount which appeared on the commercial invoice corresponded to the dollar-denominated price as of the date of conversion pursuant to the forward exchange agreement, converting that Brazilian currency value to U.S. dollars was an exchange rate error. Because the dollar value reported to the Department already corresponded to the dollar equivalent of the amount to be paid in Brazilian currency on the proper day for making that currency exchange, the Department used the submitted dollar value.

The Japanese wire rod case involved a situation similar to *Ferrosilicon from Brazil*. In that case, the Department stated that the invoice listed a gross unit price only in dollars, the conversion factor associated with the forward exchange agreement, the amount corresponding to a commission (or "discount") paid to the Japanese trading company to which Nippon (*i.e.*, NSC in the instant case) sold, and a net price in yen that results after that "discount" was deducted. 63 FR at 40447. As instructed in the questionnaire, Nippon had reported the gross unit price on the invoice (which was in dollars), and the Department had used this price as the starting price in its preliminary calculations. *Id.* Petitioners urged that, because payment was made in yen, rather than in dollars, the Department should disregard Nippon's data and use facts available. *Id.* In the final determination, the Department continued to use the reported dollar gross price because Nippon, as requested, had provided the price on the invoice. *Id.* In addition, the Department had verified that Nippon received the yen-denominated amount corresponding to that dollar amount, converted at the forward exchange rate reflected on the invoice, minus the trading company's "discount." *Id.* In other words, once the discount was taken into consideration (as it would necessarily be regardless of which currency was used), the dollar amount exactly corresponded to the net yen amount petitioners complained had not been used in the first place.

Based on the facts of the instant case, the Department has used the yen value reported on the invoice as the starting point for the calculation of U.S. price.

Comment 11: NSC's Arm's Length Analysis.

Petitioners argue that the Department should apply the arm's length test to resales made by NSC's affiliated customer to other NSC affiliates. On January 4, 1999, the Department requested that NSC add a field to its sales database indicating the relation of the end-user to NSC for sales made through one of NSC's affiliated resellers. Citing lack of time, NSC responded by providing the Department with a list of the affiliated reseller's customers who were also affiliated with NSC, instead of updating the database. Therefore, petitioners request that the Department apply the arm's length test to the subsequent sales by NSC's affiliated reseller, where applicable.

Department's Position: The Department disagrees with petitioners. The Department's regulations state that, if an exporter or producer sold the foreign like product to an affiliated party, it may calculate normal value based on such sales if it determines that the price is comparable to the price at which the exporter or producer sold the foreign like product to a person who is not affiliated with the seller. *See* 19 C.F.R. § 351.403(c). It is the Department's normal practice to run the arm's length test on home market sales made by the producer to an affiliated company to determine whether the prices for such sales are comparable to prices charged to unrelated parties. In the instant case, the Department conducted its normal arm's length analysis and found that NSC's sales to the affiliated reseller at issue failed the arm's length test. Therefore, our preference is to use the downstream sales if available. Based upon the information placed on the record, we find no basis for departing from the Department's normal practice in this regard.

As the Department has stated in the *Preamble* to its regulations, "[t]he purpose of an arm's length test is to eliminate prices that are distorted." *See* 62 FR at 27356. Once a non-distorted price has been identified in a given series of transactions for use as normal value, "the Department does not believe it is necessary or appropriate to require the reporting of downstream sales in all instances." *See Id.* The approach proposed by petitioners, which would require routine reporting of all downstream data for home market sales to affiliates, so that the arm's length test could be conducted at multiple levels, would be both burdensome and unnecessary. Thus, for the final determination, when a sale by NSC to an affiliated party passed the arm's length test, we did not conduct further tests to determine whether the sales by that affiliate were also made at arm's length.

Comment 12: NSC's Home Market Downstream Sales.

NSC argues that the Department should continue to find that NSC need not report any further downstream sales. As it did in the *Preliminary Determination*, NSC contends that the process of acquiring the necessary information for the still unreported downstream sales would be overly burdensome due to the manual effort involved, and the affiliated reseller's limited retention of paper documents. Furthermore, NSC has continued to work to report the downstream sales. At verification, NSC demonstrated that the task of reporting the outstanding downstream sales would be overly burdensome, and, in some cases, impossible. In addition, NSC cites to the Department's regulations at 19 C.F.R. § 351.403(d), which state that in some cases the Department will not require the reporting of all downstream sales if the outstanding sales "account for less than five percent of the total value (or quantity) of the exporter's or producer's sales of the foreign like product * * *" As NSC's unreported downstream sales meet this Departmental requirement, NSC requests that the Department not change its *Preliminary Determination* regarding this issue. Petitioners did not comment on NSC's argument in their rebuttal briefs.

Department's Position: We agree with NSC that certain downstream sales should continue to be disregarded in the final determination. Pursuant to § 351.403 of the Department's regulations, the Department does not normally require the reporting of downstream sales if total sales of the foreign like product by a firm to all affiliated customers account for five percent or less of the firm's total sales of the foreign like product. In general, the Department does not believe it necessary or appropriate to require the reporting of downstream sales in all instances. Questions concerning the reporting of downstream sales are complicated, and the resolution of such questions depends on a number of considerations, including the nature of the merchandise sold to and by the affiliate, the volume of sales to the affiliate, the levels of trade involved, and whether sales to affiliates were made at arm's length. In addition, the Department normally will not require the respondent to report the affiliate's downstream sales unless the sales to the affiliate fail the arm's length test. The Department believes that imposing the burden of reporting small numbers of downstream sales often is not warranted, and that the accuracy of determinations generally is not compromised by the absence of such sales.

In the instant case, NSC requested that it be excused from reporting a small percentage of home market downstream

sales due to overwhelming burdens in obtaining the information and the fact that these downstream sales will not constitute appropriate matches for their U.S. sales of subject merchandise. Furthermore, the Department examined these sales at verification and confirmed that these sales will not constitute appropriate matches for U.S. sales. *See NSC Home Market Verification Report*, dated March 26, 1999. After examining the data placed on the record, the Department has determined that there are sufficient matches of sales in the home market and that the downstream sales in question account for less than three percent of each firm's total home market sales of subject merchandise. For purposes of this final determination, the Department is disregarding this small percentage of downstream sales.

Comment 13: Request for Written Opinion/ Ex Parte Communications.

NSC argues that, pursuant to section 782(g) of the Tariff Act (19 U.S.C. § 1677m(g)), and in accordance with the SAA at 814, the Department must inform all parties of the essential facts under consideration before making a final determination, and give all parties sufficient time to defend their interests. *See Bethlehem Steel Corp.* v. *United States*, 27 F. Supp. 2d 201, 207–08 (CIT 1998); Michael Y. Chung, *U.S. Antidumping Laws: A Look at the New Legislation*, 20 N.C.J. Int'l L. & Com. Reg. 495, 525 (1995). NSC states that the Court of International Trade has held that the Department cannot rely on information on which the parties have not been given an opportunity to comment. *See Wieland-Werke AG* v. *United States*, 4 F. Supp. 2d 1207 (CIT 1998). NSC argues that this requirement is necessary to provide due process and a fair judgement. NSC charges that the Department has not provided NSC with all information relevant to this investigation, and thus appears to be about to make a final determination which does not afford NSC the right to defend itself or respond to that information. In particular, NSC notes that the Department has not placed on the record the factual or legal bases for its decision not to verify NSC's theoretical-actual weight conversion factor. NSC states that the Department has not responded to its letters on this issue and has not placed on the record an ex-parte memorandum with respect to the meeting between NSC's representatives and Deputy Assistant Secretary Spetrini at which this issue was discussed.

NSC argues that the Department's failure to explain its basis for not verifying the conversion factor violates section 782(g) of the Tariff Act (19 U.S.C. § 1677m(g)) and Article 6.9 of the *Antidumping Agreement* (referring to informing parties of the essential facts under consideration, so that they may defend their interests), as well as § 351.307(c) of the Department's regulations and Article 6.7 of the *Antidumping Agreement* (which relate to reporting on the results of verification). NSC argues that the Department has refused to provide this information, that this refusal was illegal, and that it has prejudiced NSC's ability to defend its interests and affected its due process rights. In this respect, NSC relies upon the SAA at 814, and *Clifford* v. *United States*, 136 F.3d 144, 149 (D.C. Cir. 1998). NSC states that the Department's actions raise the specter of government officials secretly prejudging this matter, and not allowing NSC to respond or defend its interests. *See NEC Corp.* v. *United States*, 151 F.3d 1361, 1374 (Fed. Cir. 1998). NSC concludes that, for these reasons, the Department's decision on theoretical weight cannot stand.

NSC also cites the statutory requirement that the agency document ex-parte communications on the official record. *See* section 777(a)(3) of the Tariff Act (19 U.S.C. § 1677f(a)(3)); *see also Gilmore Steel Corp.* v. *United States*, 585 F. Supp. 670, 679 (CIT 1984). The Department is required to include notice of these communications in the official record of the case for judicial review. NSC states that, in addition, in order to allow interested parties to comment on information submitted by other parties during such meetings, *see* 19 C.F.R. § 351.301(c)(1), information communicated during ex-parte meetings must be placed on the record.

NSC states that the Department has "chosen secrecy over transparency" by not placing on the official record memoranda memorializing any ex-parte meetings between petitioner or other interested parties and members of the Administration concerning issues presented during this proceeding, and cites press reports alleging the occurrence of several meetings relating to this case. NSC adds that the Department also did not respond to NSC's letters requesting that ex-parte memoranda be placed on the record. NSC argues that the Department is thus in violation of section 777(a)(3) of the Tariff Act (19 U.S.C. § 1677f(a)(3)) and 19 C.F.R. § 351.104. NSC claims that, coupled with the violations of Article 6.9 and 19 U.S.C. § 1677m(g) described above, the Department's actions in this respect threaten the fairness and integrity of the entire proceeding.

Petitioners did not comment on NSC's request in their rebuttal briefs.

Department's Position: We disagree with NSC's assertion that the Department has not provided NSC with all information relied upon in the investigation, in particular information relating to the Department's decision regarding NSC's sales made on a theoretical weight basis. At the time that the Department made the decision not to verify the theoretical-to-actual weight conversion factor, the Department explained to NSC's counsel the basis for the Department's actions. In addition, the Department issued a letter dated April 12, 1999, explaining the reason for rejecting the submitted conversion factors. The factual and legal bases for the Department's decision regarding these sales are also discussed in Comment 29, "Use of Facts Available for NSC's Theoretical Weight Sales."

The Department, pursuant to section 777f(a)(3) of the Act has placed all ex parte communications on the official record of the case and they are available to interested parties in room B–099 of the main Department of Commerce building. The only ex parte communications relating to NSC's sales made on a theoretical weight basis were communications with representatives of NSC. Therefore, NSC was not prejudiced by any delay in recording those communications for the record. In addition, as reflected in the memos summarizing ex parte communications, all ex parte communications with petitioners' counsel involved no new information and all information discussed was on the record.

The Department disagrees with NSC that it was not informed of the essential facts and did not have sufficient time to defend its interests. NSC, like other parties in this proceeding, has availed itself of the myriad opportunities to participate actively in the antidumping investigation by submitting information and argument and by commenting on information and argument placed upon the record. NSC has done so in meetings with the Department, in written briefs, and during the hearing conducted in this proceeding. In particular, NSC devoted over 40 pages of its case brief to arguing the actual/theoretical weight issue and argued the issue again at the hearing. Thus, NSC, like all other parties, has been given ample time to analyze and comment upon the essential facts under consideration, and to preserve its rights to appeal the decisions of the Department.

Cost of Production

NSC

Comment 14: NSC's Costs for Particular CONNUMs.

Petitioners argue that the Department should use adverse facts available for any U.S. sales that are matched to control numbers ("CONNUMs") for which NSC failed to report product-specific cost. Petitioners state that the Department requested NSC to provide product-specific cost for all CONNUMs, including those that, in NSC's view, were not likely to be matched to U.S. sales. By refusing to provide the information, the petitioners assert, NSC has significantly impeded the investigation by failing to cooperate to the best of its ability. Petitioners maintain that the statute mandates use of facts available in several circumstances, including when a respondent withholds requested information or "fails to provide such information by the deadlines for submission of the information." Section 776(a)(2)(A) and 776(b) of the Act authorize the Department to use an adverse inference where the respondent has "not acted to the best of its ability to comply with a request for information." As further support for their position, petitioners cite *Certain Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997), in which the Department determined that an adverse inference was warranted because the company being reviewed failed to act to the best of its ability and did not comply with the Department's request.

In addition, petitioners contend that adverse facts available should be applied to 19 CONNUMs for which the Department found certain problems at verification. For these CONNUMs, costs were reported on a product-specific basis and on a CAPS code basis, but were then weight-averaged across a "mix of products." According to petitioners, the evidence shows the respondent did not act to the best of its ability in reporting these costs, and an adverse inference should be used in applying facts available to ensure that the respondent will not be rewarded for its failure to supply the necessary information. Thus, for the final determination, whenever a U.S. sale is matched to a home market CONNUM for which product-specific costs were not reported, the Department should apply the highest calculated margin as facts available.

NSC argues that petitioners' suggestion that the Department should use adverse facts available for the products for which costs were reported on a broad product group average (*i.e.*, CAPS code specific basis) is unwarranted. NSC contends that it has cooperated as far as possible given the accelerated timeframe and fully explained its inability to report all costs on a product-specific basis. Moreover, NSC asserts that under section 782(e) of the Tariff Act (19 U.S.C. § 1677m(e)), the Department is required to consider respondents' information, even if it is not submitted by the deadlines or in the form requested. NSC claims, however, that the information submitted was timely, complete and verified, and thus the Department has no basis for the use of facts available or adverse facts available.

Further, NSC asserts that if facts available is warranted, an adverse inference should not be applied because the information on the record does not establish that NSC failed to act to the best of its ability throughout the investigation. In support of its position NSC cities 62 FR 27340, where the Department explained that it will consider whether "practical difficulties" contributed to a respondent's inability to supply requested information. Accordingly, the Department has no grounds to apply facts available with adverse inferences.

In addition, NSC argues that if the Department decides an adverse inference is proper, applying the highest calculated margin is aberrant and not consistent with the law or the Department's past practice. According to NSC, the Department's well-established policy limits it to the highest non-aberrant margin. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Italy*, 63 FR 40422, 40428 (1998). Further, NSC contends that a margin is not always the most appropriate means of substituting missing information. Thus, NSC asserts, should the Department choose to apply an adverse inference in selecting facts available, it should consider using information on the record related to the missing data, as opposed to using a punitively high margin.

Department's Position: We agree with petitioners that adverse facts available should be applied to any U.S. sales which are matched to CONNUMs for which the product-specific costs have not been provided. As noted in the comments from the petitioners, section 776(a) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to section 782 (d) and (e), facts otherwise available in reaching the applicable determination. In this investigation, on more than one occasion, the Department requested that NSC provide product-specific cost data for all U.S. and home market sales of subject merchandise. However, NSC failed to provide this information for certain CONNUMs. As noted in the cost verification report, the Department found nineteen CONNUMs where the mix of products within the CONNUM included both product-specific costs and costs reported on a broader product group cost, which means that the reported costs for these CONNUMs are not product-specific. Since NSC failed to provide the necessary information in the form and manner requested, and in some instances the submitted information was found to be inaccurate, we conclude that pursuant to section 776(a) of the Act, use of facts otherwise available is appropriate.

Moreover, section 776(b) of the Act, provides that an adverse inference may be used when an interested party has failed to cooperate by not acting to the best of its ability to comply with requests for information. As discussed above, even though we asked twice, NSC failed to comply with our requests for product-specific information. The information necessary to compute CONNUM specific costs for the products in question was available in NSC's books and records (as evidenced by the existence of similar data used to report product-specific costs for the products sold to the United States). NSC, however, simply elected not to report CONNUM-specific costs for these products because they believed these products would not be used as matches in the antidumping margin. Thus, for the final determination, we applied the highest calculated margin to any U.S. sales which is matched to home market CONNUMs for which the product-specific cost data was not reported.

Comment 15: NSC's Corrections to U.S. CONNUM Database Presented at Verification.

At verification, NSC submitted, as a minor correction, data showing that certain CONNUMs had been reported incorrectly due to an improper conversion from millimeters to inches. This resulted in the creation of a small number of new U.S. CONNUMs. According to petitioners, the Department should use adverse facts available for these CONNUMs in

calculating the margin for the final determination, because NSC failed to supply cost information for the new CONNUMs.

NSC rebuts petitioners argument and states that the costs for the new CONNUMs are reported in *Verification* exhibit B.1 and 15, and also included in the revised cost file NSC submitted at the Department's request on April 14, 1999. NSC asserts that it did not fail to report product costs for the minor corrections submitted at verification. NSC contends that full costs for all U.S. CONNUMs, including all of the new CONNUMs related to the minor corrections were included in the cost verification exhibits and in a cost file subsequently requested by the Department.

Department's Position: We disagree with petitioners. At verification, NSC provided a worksheet which showed the product-specific cost for the new CONNUMs created due to the minor correction. In addition, on April 14, 1999, the Department requested and received a revised COP and CV tape which reflects the minor corrections presented at verification.

Comment 16: NSC's Electricity Purchases.

The petitioners argue that the Department should not use transfer prices to value transactions between NSC and its affiliated suppliers of electricity. Instead, petitioners assert that, in dealing with transactions between affiliated suppliers under section 773(f)(2) and (3) of the Act, it is the Department's practice to value major inputs, like electricity, at the higher of the transfer price, market price or actual cost of production. Further, petitioners contend that there is nothing on the record to warrant changing the Department's an established practice. According to petitioners, NSC's claim that the price differential between the affiliated and unaffiliated suppliers is due to the different levels of distribution is baseless. Petitioners assert that the record shows there is no "wholesale market" for electricity in Japan.

In addition, petitioners dispute NSC's claims that the financial performances of the affiliated and unaffiliated suppliers are relevant as to whether the market price exceeds transfer price. Further, petitioners contend that financial analyses are not a function of prices charged to an affiliated company. Therefore, NSC is overlooking the purpose of the arm's length test— to guarantee a price that reflects the market value. Thus, for the final determination, the petitioners contend that the Department should adjust the transfer price to reflect the higher market price.

NSC contends that the Department should not adjust the price it paid to its affiliated electric power cooperatives ("co-ops"). According to NSC, a simple comparison between the rates paid to their affiliated suppliers and those paid to their unaffiliated suppliers (*i.e.*, regional electric companies) is meaningless. NSC argues that the electricity supplied by the affiliated and unaffiliated suppliers involves different segments of the electricity market. Specifically, the co-ops are wholesalers, whereas the regional companies are retailers. In addition, respondent asserts that it demonstrated at verification, through financial analysis, that the co-ops are not selling electricity at unreasonably low rates for wholesalers of electric power as compared to the unaffiliated regional electric companies. NSC further points out that if co-ops were to adjust their prices to equal the retail market price, the result would be an unrealistically high rate of return on assets. Thus, NSC claims it would be inappropriate for the Department to make any adjustment to its reported electricity costs.

Department's Position: While we disagree with petitioners that NSC's electricity purchases from its affiliated suppliers represent a major input in this case, we agree that the reported cost of electricity purchased from its affiliates should be adjusted to a market price (*i.e.*, arm's length price) in accordance with section 773(f)(2) of the Act.

We disagree with NSC's argument that section 773(f)(2) of the Act requires the Department to take into account whether NSC's affiliated and unaffiliated suppliers of electricity are at different levels of distribution, and if they are, to refuse to compare the prices charged by each the two groups of suppliers. Even if these suppliers do operate at different levels of distribution, the customer (*i.e.*, NSC) in all instances, is at the same level. Section 773(f)(2) of the Act focuses on whether the arms-length comparison reflects comparable merchandise and whether the transaction occurred in the market under consideration. It does not focus on the nature or circumstances of the supplier. In this instance, both NSC's affiliated and unaffiliated electricity suppliers provided the identical input to NSC. Purchases of electricity from its affiliated and unaffiliated suppliers occurred in Japan, the market under consideration.

We also disagree with NSC that a comparative return on asset analysis is indicative of whether transactions between affiliates occurred at market prices. The structure and efficiency of an entity is unique to that entity's operations. We agree that those characteristics do impact the profitability of an entity; however, we disagree that it is indicative of whether the selling practices in a particular market are necessarily at arm's-length prices. Accordingly, for the final determination, we adjusted NSC's electricity purchases from affiliates to reflect the prices charged by its unaffiliated suppliers.

Comment 17: NSC's Exchange Gains and Losses.

The petitioners argue that NSC failed to provide requested information as to the types of transactions that gave rise to reported foreign exchange gains and losses. The petitioners claim that NSC is able to segregate its foreign exchange gains and losses and contend that NSC's chart of accounts provides evidence that the means to do so were readily available. The petitioners note that this information was necessary because the Department treats exchange gains and losses differently depending on their source.

The petitioners state that, since NSC failed to comply with the Department's request to the best of its ability, the Department should draw an adverse inference and conclude that the entire amount of the transaction exchange gain is related to accounts receivable and thus should be disallowed. In addition, the petitioners argue that the Department should draw the adverse inference that the entire amount of exchange losses is related to accounts payable and should therefore be included in the cost of manufacturing.

NSC contends that in reporting foreign exchange gains and losses, it acted to the best of its ability and petitioners claim that an adverse inference should be applied is without merit. Although NSC notes that its chart of accounts divides exchange gains and losses into certain categories, in practice those accounts are not used. NSC asserts that it does not maintain transaction-specific data on foreign exchange gains and losses. Accordingly, NSC argues that reclassifying the information to meet the Department's request would be overwhelming. Thus, NSC asserts that it acted to the best of its ability and there is nothing on the record to suggest that it could have reported the requested information. Further, NSC argues that the Department should continue to exclude the portion of the exchange losses unrelated to the cost of production of hot-rolled steel.

Department's Position: While we disagree with the petitioners that we found evidence indicating that NSC had the means to segregate its foreign exchange gains and losses, we agree that

the foreign exchange gains should be excluded and certain foreign exchange losses included in the calculation of the G&A expense ratio. It is the Department's normal practice to distinguish between foreign exchange gains and losses from sales transactions and exchange gains and losses from other types of transactions. *See, e.g., Final Determination of Sales at Less Than Fair Value: Steel Wire Rod From Trinidad & Tobago*, 63 FR 9177, 9181 (February 24, 1998). The Department normally does not include exchange gains and losses generated from accounts receivable. Since NSC failed to provide any documentation showing that the foreign exchange gains should be included as an offset to the G&A expenses, we do not consider it appropriate to allow the gains as an offset to reported costs. In addition, with the exception of the exchange losses associated with or incurred by to divisions unrelated to steelmaking, NSC failed to provide any substantiation that the foreign exchange losses should be excluded. We therefore adjusted NSC's G&A expense ratio to exclude the foreign exchange gains and include certain foreign exchange losses.

Comment 18: NSC's G&A Expenses.

The petitioners argue that the Department should recalculate NSC's G&A expense ratio to include all appropriate expenses, including certain expenses the nature of which constitutes business proprietary information. The petitioners contend that the expenses at issue, which are discussed in more detail in the proprietary version of their case brief, relate to the company as a whole, and that NSC should not be permitted to exclude the portions of those expenses that relate to non-steel divisions.

In addition, the petitioners argue that there is no reason to believe that the poor performance of the Japanese economy affected any NSC division differently than any other division and that NSC failed to support this claim. The petitioners therefore believe that economic conditions are irrelevant to the issue at hand and provide no basis for excluding certain expenses from the G&A calculation.

NSC argues that its calculation of general and administrative expenses properly allocates company-wide costs to the production of hot-rolled steel. Specifically, NSC states that non-operating and special profits and losses are properly allocated to the production of hot-rolled steel using steel division cost of sales in the denominator, and that all exclusions from the calculation relate to gains and losses of non-steel divisions. NSC asserts that its non-operating and special profits and losses differ from general and administrative expenses as they arise from specific events and are not related to the operations of the company as a whole. NSC contends that the Department has excluded such special gains and losses from the cost calculation in the past and cites *Stainless Steel Wire Rod from Italy*, 63 FR at 40430 in support of its argument.

NSC argues that certain expenses at issue that were excluded from the G&A calculation are accurately classified as special losses and that the exclusion of these expenses should be retained. NSC contends that these expenses are related to ongoing restructuring and are determined by economic conditions at each separate division of the company. Accordingly, NSC argues that such expenses are not related to the company as a whole, but instead are specifically tied to each division, and there is no reason to allocate a portion of the proprietary expense associated with or pertaining to a separate division to the G&A expenses of the steel division. Further, NSC asserts that it demonstrated at verification that its allocation methodology actually excluded fewer costs than were incurred by non-steel divisions.

Department's Position: We agree with petitioners that the total amount of the proprietary expenses should be included in the G&A expense calculation. We find no reason to conclude that NSC's normal accounting treatment of not including this proprietary item as a cost of manufacturing, in accordance with its home country Generally Accepted Accounting Principles ("GAAP"), is unreasonable or distortive. In fact, there is virtually no difference in the amount of these proprietary expenses allocated to subject merchandise whether they are treated as G&A or as a cost of manufacturing. We consider these expenses to relate to the general operations of the company as a whole and as such consider it appropriate to allocate them on a company-wide basis as a percentage of unconsolidated cost sales.

Comment 19: NSC's Blast Furnace Costs.

The petitioners argue that, for the final determination, the Department should eliminate an offset for a reversal of a reserve for the repair of blast furnaces. According to petitioners, the Department's practice is to disallow the reversal of a charge taken in a prior year because it would distort the current year's costs. Petitioners note that, for instance, in *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13837 (March 26, 1996), the Department disallowed a reduction in current year production costs by the reversal of prior year operating expense accruals and write downs of equipment and inventory. Petitioners further claim that, although a reversal of a prior period charge is in accordance with Generally Accepted Accounting Principles ("GAAP"), the adjustment is considered improper for the antidumping analysis because it bears no relation to the cost of production during the current year.

Department's Position: We agree with the petitioners that an offset to G&A expenses for a reversal of a reserve for repairs of the blast furnace should be disallowed. It has been the Department's practice to disallow reductions to current year production costs by the reversal of prior year operating expense accruals. The subsequent year's reversal of these estimated costs does not represent revenue or reduced operating costs in the year of the reversal. Rather, they represent a correction of an estimate which was made in a prior year. While reversals of accruals are in accordance with GAAP, the Department relies on GAAP provided that it does not result in distorted per unit costs. In this investigation, we find it inappropriate to reduce the actual production costs incurred in the current year by excess reserves recognized in prior years.

Comment 20: NSC's Reconciliation Adjustment.

NSC argues that the Department incorrectly excluded NSC's reconciliation adjustment from its reported COP and CV data in the preliminary determination. NSC argues that its reconciliation adjustment corrects for differences between total reported costs and total actual costs incurred, and that failure to include the adjustment would result in a reported cost of manufacture that does not reconcile with NSC's accounting records. NSC thus concludes that the Department should include the reported reconciliation adjustment in its final determination.

Petitioners argue that the Department properly excluded the reconciliation adjustment in its *Preliminary Determination* because the quantities used to derive the adjustment were not on the same basis. Petitioner contends that while the overall differences may be very small for product groups, the particular quantity differences for specific products within groups are significant. The petitioners therefore refute NSC's claim that the difference is insignificant and contend that inclusion

of the reconciliation adjustment would distort product costs at the individual CONNUM level. In addition, the petitioner states that the reconciliation pertains only to quantity differences and is not related to per unit cost. The petitioner thus concludes that since the reconciliation adjustment does not represent an element of cost, no corresponding adjustment to the cost of manufacturing should be made.

Department's Position: We agree with the respondent that the reconciliation adjustment should be included in the COP and CV data files for the final determination. At verification, we determined that the reconciliation adjustment is based on differences between costs in NSC's normal books and records and product-specific cost reported to the Department. NSC maintains costs in the normal course of business at a more aggregate level than required by the Department; therefore, NSC used a reporting methodology which differed in some respects from its normal cost accounting system. As a result of deriving the reported costs, there were small differences between the reported product-specific cost and NSC's cost of manufacturing subject merchandise. Since the reconciliation adjustment reconciles the reported cost to the cost of manufacturing as recorded in its financial accounting system, for the final determination we have included the adjustment.

NKK

Comment 21: NKK's Overall Cost Methodology.

Petitioners argue that NKK's reporting methodology should be rejected because it is fundamentally flawed and results in costs that are significantly understated. Petitioners assert that NKK's methodology distorts costs because it relies on a base group that is not reflective of the actual production levels of subject merchandise at the individual manufacturing facilities and, therefore, does not properly reflect plant efficiencies; it relies on a single variance for all product groups, rather than more detailed variances; and, it relies on the cost extras from only one facility. (*See* Comments below for a detailed discussion of each of these three allegations.) Petitioners argue that the effect of these flaws is not quantifiable and the necessary information to correct these deficiencies is not on the record.

Moreover, petitioners argue that NKK withheld information requested by the Department that would have enabled the Department to correct these deficiencies and, therefore, has not acted to the best of its ability. First, petitioners assert that NKK did not provide variances by budget group when requested to do so by the Department. Second, petitioners argue that NKK did not provide cost extras for the second facility, even though there are significant differences in cost between plants. Third, petitioners argue that the selected base product is not, as claimed by NKK, representative of the overall production of the subject merchandise.

Therefore, petitioners assert that the Department must resort to total adverse facts available. If, however, the Department does not resort to total adverse facts available, then it argues that the Department should draw an adverse inference in selecting an alternative remedy to address the significant distortions.

NKK asserts that the Department verified that in the aggregate it reported all its costs and the issue is not whether NKK provided weighted average costs but the reasonableness of NKK's particular weighting methodology. NKK argues that petitioners' concerns regarding the reported variance are unwarranted because NKK developed the most specific variance it could for the hot-rolled steel operations. NKK argues that its use of Fukuyama's cost extras was reasonable because it developed the most reasonable product specific costs it could and had no choice but to work with the information which it maintains in the normal course of business. NKK also argues that the Department tested the reasonableness of NKK's reported values for cost extras during verification and noted no problems. NKK contends that there is no basis for using adverse facts available as petitioners request because it has been fully cooperative in all phases of this investigation. NKK contends that an alternative methodology can be based on verified information on the record and should not be based on adverse facts available.

Department Position: We disagree with petitioners that we should reject NKK's reported costs and use, instead, adverse facts available. While we agree that NKK's methodology improperly weights costs, because the selected base product does not adequately represent the range of subject merchandise produced at each plant, we find that this problem is correctable. (*See* Comment below.) We disagree with petitioners that NKK's reported variance or its cost extra methodology distort the reported costs. (*See* Comments below.) We note that the variance used by NKK was for the specific base product group and took into account the specific cost centers those products passed through during production. We also note that the absence on the record of cost extras specific to the second facility does not impugn NKK's methodology, since NKK adjusted the cost extras associated with the other facility by the difference between the weighted average base product groups of both facilities and the pinpoint product.

Moreover, we do not agree with petitioners that NKK did not act to the best of their ability in reporting costs. First, record evidence allows the Department to reasonably adjust for the improper weighting of costs (*i.e.*, to account for the cost differences between plants). Second, as noted above, NKK did not use one plant-wide variance, but calculated a variance for the specific base product group and took into account the specific cost centers those products passed through during production. Third, although NKK did not provide the requested information concerning each individual base group's variance, the Department was able to verify NKK's assertion as to the level of difficulty in preparing such variances. We also note that the selected base product group accounted for a significant portion of the U.S. and home market products, and that the information is not necessary in order to correct the flaws identified in NKK's response. Finally, the Department did not request that NKK provide cost extras for the second facility, nor did it determine that the presence of such data would have significantly altered the results, since the first facility's cost extras were adjusted by the difference in the pinpoint product and the weighted average base costs of both facilities. Therefore, we have relied on NKK's reported costs except for certain adjustments to account for the improper weight averaging of the cost of the two manufacturing facilities to account for plant efficiency.

Comment 22: NKK's Weighted-Average Costs.

Petitioners argue that NKK's response methodology for weighting the cost of the two manufacturing facilities which produced the subject merchandise significantly understates the cost of manufacturing ("COM"). Petitioners maintain that the Department's questionnaire states that the respondent must report COP and CV based on the weighted average cost incurred at all facilities and that NKK's methodology does not properly account for the actual production levels at the two facilities.

Petitioners also note that the Department's questionnaire specifically stated that, if NKK did not believe it could respond to the Department's request in the form requested, it was to notify the Department in writing before

it submitted the response. Accordingly, petitioners contend that at no time did NKK submit a letter asking permission to use a single selected product as the starting point instead of providing all of its product groups. Moreover, petitioners argue that NKK has acknowledged that it could have reported a certain number of additional product groups and account for the majority of U.S. sales during the POI but did not do so. Petitioners argue that NKK's failure to report accurate costs for these additional product groups means that the cost of corresponding home market sales that are matched to U.S. sales are inaccurate.

According to petitioners, the production of the "pinpoint" product (used by NKK to differentiate the cost of the base product group's cost to product specific cost) is not representative of the production of all of the base product groups at each production facility.

In support of their position, petitioners note that in *Carbon Steel Flat Products from Korea*, 64 FR at 12945, the Department rejected respondent's cost submission upon finding that the reported costs were understated. Petitioners argue that the Department concluded that the respondent could have reported information on a CONNUM-specific basis, but failed to do so. The Department rejected the submitted cost in that case and applied adverse facts available. Petitioners assert that NKK had the ability to report costs in a manner that reflected the actual product mix of the two works but that it disregarded the Department's instructions and used a distortive weighting methodology. Thus, petitioners contend that NKK's response should be rejected.

Petitioners contend that NKK's proposed adjustment does not result in reported costs that reflect the actual cost of certain product groups other than NKK's selected product group. Instead, petitioners argue that NKK's adjustment simply applies the base cost of the selected product group to the production quantities of the other product groups. Thus, petitioners contend that applying the correct production mix to the wrong cost does not remedy flaws in NKK's reporting.

NKK argues that its allocation methodology is reasonable. NKK asserts that its initial response showed that the relative weighting of costs between the Fukuyama and Keihin works was based on a subset of the total production quantity. In addition NKK argues that it clarified the reasons for choosing the particular product as the starting point for development of the actual costs in a supplemental response. NKK argues that the particular product chosen as the starting point corresponds most closely with the "pinpoint" product used in calculating the cost extras and that it represents the overwhelming majority of the U.S. sales. Further, NKK asserts that it was not practical to develop a different weighting for each of the subject merchandise product groups. NKK claims that due to time constraints it would have been impossible to extract each of the variances that related to the production flow of each of the different product groups and, therefore, once it had gone through the exercise for the selected group it was necessary and accurate enough to use this group for the weighting.

According to NKK, the correction to the weighting between the Fukuyama and Keihin works the Department contemplates in the cost verification report would be less accurate and less reasonable than NKK's methodology. NKK asserts that its methodology does not understate costs, and that this is clear because the total cost reconciled within a small difference. Thus, NKK argues that increasing the reported costs would constitute a serious distortion.

NKK contends that while its methodology is less precise for a portion of the subject merchandise, its method is more appropriate for the particular product group which represents the majority of the home market data that match to U.S. sales. Further, NKK claims that the remaining portion of the database is small and its methodology actually overstates the cost for some product categories. In addition, NKK argues that there were certain product groups which were only produced at Fukuyama and that the methodology NKK used actually overstates cost for these product groups. Thus, NKK states that using the overall aggregate weighting methodology mentioned in the Department's *Cost Verification Report* would result in an even greater distortion of costs.

NKK argues that, if the Department rejects NKK's methodology, the Department should adjust the weighting factors of the four key product groups. Using information on the record to allocate the production of these groups, NKK argues, the Department should increase the cost for two of the product groups and reduce the cost for the other two product groups. According to NKK, a single adjustment is too crude and adjustments for all product groups would be unduly burdensome and impractical.

NKK argues that petitioners mischaracterize the Department's decision in *Carbon Steel Flat Products from Korea*. NKK points out that the Department in fact rejected petitioners' call for total adverse facts available in that case and simply adjusted the reported costs with respect to the methodological issue as to weighting. NKK contends that the situation in this case is identical. In this case, NKK argues, the Department can accept its approach as reasonable, adjust the costs for product groups other than the selected product group on a product by product basis, or adjust the reported costs for the overall relative weighting.

Department's Position: While we agree with petitioners that NKK's submission methodology inappropriately weighted production at each of its two facilities, by using a single product group's production mix to weight all product groups, we disagree that the entire response should be rejected. While we do not have on the record CONNUM-specific production quantities for each facility, we do have information to allow the Department to re-weight NKK's production costs on a product-group specific basis to more properly reflect the actual production quantities at the facilities. A product group weighted average, between the two plants, is a reasonable approximation of our preferred method, as opposed to using a mix for a single product group for all subject merchandise.

NKK's reporting methodology first computed an average base cost for what it identified as a representative product for use as the starting point for the reported costs. The average base cost was computed using its budgeted cost system which is maintained in the normal course of business. NKK increased or decreased the average base cost depending on the relationship of each specific product to the base product using its standard management costing system. The selected product groups budgeted costs for the three periods covering the POI for each plant (six in total) were used to compute the POI weighted average cost of manufacturing for the base product. The six different budgeted costs were weight averaged based on actual production quantities of the selected product group at each plant during each budgeted cost calculation period during the POI. As a result, all CONNUMs for submission purposes reflect the production mix between the two plants for this selected product rather than the production mix of each of the subject merchandise product groups. We disagree with NKK that this methodology is the most reasonable given the information on the record because we found significant

differences in the product mix between the plants.

We disagree with petitioners that NKK's proposed adjustment applies a corrected production mix to the wrong cost. The weighting issue between the two plants does not impair the base cost plus extra methodology used to report product-specific costs. The relative cost differences between the pinpoint product and each of the other products NKK reported are not impacted by this issue.

Also, the *Carbon Steel Flat Products from Korea* case cited by petitioners does not support the use of adverse facts available in this case. In that case, the Department found that the respondent did not act to the best of its ability because the respondent repeatedly did not supply the requested information and during verification we found that the information existed.

Comment 23: NKK's Reported Cost Variances.

Petitioners contend that NKK's use of a single variance for all product groups is distortive and must be rejected. Petitioners assert that consistent with the Department's long standing practice of requiring variances at the most specific level, the Department directed NKK to report variances for each product group. Petitioners argue that the overall steel division variance is not a reliable substitute for the product group-specific variances requested by the Department, noting the difference in variances for each of the manufacturing facilities. Petitioners estimated the variances for a product group other than the NKK-selected product group and assert that neither the overall steel division variance nor the selected product group variance can substitute for the individual product group variances.

Petitioners argue that in *Antifriction Bearing (Other than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews,* ("*Antifriction Bearings*") 60 FR 10900, 10928 (1995), the Department rejected respondent's use of plant-wide variances instead of more specific variances because it resulted in unreasonable cost shifting between products. Petitioners contend that, in this case, NKK's proposal to use the variance for the entire steel division, which incorporates more than one plant, is distortive. Petitioners contend that NKK's use of either the selected product group or the steel division variance leads to unreasonable cost shifting. Petitioners allege that NKK had the ability to report product group-specific variances but refused to do so.

NKK argues that the Department reviewed the variance calculation in detail at verification and noted no particular problems in the cost verification report with respect to the variance calculation or methodology. NKK contends that the Department reconciled the reported costs to the overall cost in the accounting records and that if there were any serious distortions one would have expected to find discrepancies in the reconciliation exercise.

NKK asserts that it could not have reported product-group-specific variances as petitioners contend. NKK claims that the variances it tracks in the ordinary course of business have no detail that would allow it to calculate separate variances, for example, for high carbon hot-rolled steel and for regular carbon hot-rolled steel. NKK contends that there is no need to do so and that it does not do so in the ordinary course of trade.

NKK asserts that it developed the most specific variance that it could for the hot rolled steel operations. NKK contends that it extracted those variances associated with the production stages leading up to finished hot-rolled steel. NKK claims that its comparison of this variance to the overall steel division variance simply shows that the disparity in variances among different steel products is relatively small and that this should be no surprise since the largest portion of the variance for both hot-rolled and downstream products usually occurs at the upstream production stages. NKK asserts that petitioners' argument about variances for different subject product groups ignores the facts on the record. NKK notes that petitioners' argument concludes that there are substantial differences between NKK's selected product group and the petitioners' example product group, when in fact the only difference is pickling. NKK claims that it is not plausible that the variances at the pickling stage alone could double the size of the overall variance.

Department's Position: We disagree with petitioners that NKK's application of variances is distortive and have continued to rely on NKK's submitted variances for the final determination. The Department's practice calls for respondents to report the most specific level of variances kept in their normal books and records. NKK, however, does not normally accumulate and allocate variances at the product group level. For the response, NKK determined variances by cost center for the production stages (*e.g.*, hot strip mill) at each of the manufacturing facilities through which the vast majority of the subject merchandise passes. NKK allocated the other variances it normally records across all products. In this case, NKK's variance methodology appears to reasonably reflect the variances applicable to the subject merchandise. Unlike the variances in *Antifriction Bearings*, NKK's reported variances are on a more specific level than the division-wide basis questioned in *Antifriction Bearings*. In addition, in *Antifriction Bearings*, the Department noted that the company did in fact maintain variances at a more detailed level than division-wide. Accordingly, we do not consider it appropriate to adjust NKK's reported variance amounts.

Comment 24: NKK's Reported Cost Extras.

Petitioners argue that NKK's use of Fukuyama's cost extras to develop the reported costs was not reasonable because they do not represent costs at the other facility.

NKK argues that it developed the most reasonable product specific costs that it could and had no choice but to work with information in its normal accounting system and those materials which it has in the ordinary course of business. NKK contends that the Department spent a great deal of time at the verification exploring the cost extras and testing the reasonableness of the only cost extras that NKK has in the ordinary course of business.

For a full discussion of this issue see the Department's April 28, 1999 Memorandum to Neal Halper, Acting Director, Office of Accounting, *Cost of production ("COP") and constructed value ("CV") Calculation Memorandum for Final Determination,* ("Final NKK Cost Calculation Memorandum").

Department's Position: We agree with NKK that the use of Fukuyama cost extras by NKK is appropriate. NKK used the information it kept in the ordinary course of business to calculate product specific costs required by the Department. We did not request that NKK provide cost extras for the second facility, nor did we determine that the presence of such data would have significantly altered the results, since the first facility's cost extras accounted for the relative difference in costs due to technical specification differences between the pinpoint product and all other products. This relative difference was applied to a base cost that already incorporated cost differences between the two facilities. We also note that the cost extras were adjusted to reflect the costs at both facilities. For a full

discussion of this issue, see the Department's April 28, 1999 *Final NKK Cost Calculation Memorandum*. We have not made any adjustments to NKK's cost extras.

Comment 25: NKK's G&A Expenses.

NKK argues that the Department should not calculate G&A expenses on a company-wide basis, but should use NKK's steel division G&A. NKK argues that the Department's questionnaire does not require a company-wide G&A rate. NKK asserts that it normally assigns G&A expense to the relevant division that incurred the expense. NKK contends that expenses incurred in other divisions, which have nothing to do with the steel production, should not be attributed to the steel division and that head office expenses which relate to the overall operations are normally allocated to each division. NKK argues that the questionnaire allows for some flexibility in responses, depending on how a company incurs and records G&A expenses, and does not mandate a fixed approach to G&A expense reporting.

NKK contends that using its division-specific G&A expense kept in the normal course of business is consistent with the Department's prior practice. Citing the *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa* ("*Furfuryl Alcohol From South Africa*"), 60 FR 22550, 22556 (May 8, 1995), NKK alleges that the Department focused on respondent's approach in the normal course of business. In that case, NKK asserts, the Department noted that the respondent was able to demonstrate that some G&A expenses were directly related to non-subject merchandise and that the Department excluded these unrelated G&A expenses from the G&A ratio. NKK contends that its G&A methodology is based on the same premise that only relevant expenses should be included in the G&A.

NKK also cites the *Notice of Final Determination of Sales at Less Than Fair Value: Fresh Atlantic Salmon from Chile*, 63 FR 31411, 31433 (June 9, 1998) ("*Fresh Atlantic Salmon from Chile*"), to support the argument that the Department followed the respondent's normal business practices. In that case, the respondent argued that the Department should use the reported G&A expense, which included expenses associated with an affiliated company. NKK notes that the Department rejected this approach and used only those expenses related to the responding salmon company, as recorded in the respondent's normal books and records. NKK argues that its approach is consistent with this decision, and states that the fact that business units are organized as divisions rather than "legally separate" affiliated companies should not matter. NKK contends that it makes no sense to ignore existing distinctions in G&A expenses between steel production and other business activities and that the narrowest category recorded in the respondent's accounting records should be used.

Petitioners argue that it is the Department's long-standing practice to calculate G&A expenses using a company's audited, unconsolidated financial statements. As support for their position, petitioners cited the *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Round Wire from Canada* ("*Stainless Steel Round Wire from Canada*"), 64 FR 17324, 17333 (April 9, 1999) and several other cases in which the Department followed this long-standing practice.

Petitioners contend that the *Fresh Atlantic Salmon from Chile* case cited by NKK is not consistent with NKK's argument that G&A expenses of other divisions should be excluded from respondents' G&A. Petitioners argue that the Department's determination in that case was to exclude expenses incurred by an affiliate and use the respondent's audited, unconsolidated financial statements.

Department's Position: We disagree with NKK that G&A expenses should be based on NKK's Steel Division G&A rather than on company-wide G&A. G&A expenses by their nature are indirect expenses incurred by the company as a whole. If they directly related to one process or product, they would more appropriately be considered manufacturing costs. NKK provided no specific reasons as to why its normal method of allocation of G&A to different divisions is more reasonable than the Department's normal method. It is the Department's consistent practice to calculate G&A expenses based on the producing company as a whole and not on a divisional or product-specific basis. *See Stainless Steel Round Wire from Canada; Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Sweden*, 63 FR 40449, 40459 (July 29, 1998) and *Fresh Atlantic Salmon from Chile*, 63 FR at 31433. This approach recognizes the general nature of these expenses and the fact that they relate to the company as a whole and is consistent with GAAP treatment of such period costs. The Department's methodology also avoids any distortions that may result if, for business reasons, greater amounts of company-wide general expenses are allocated disproportionally between divisions. We consistently apply this methodology, unless the respondent provides case-specific facts that clearly support a departure from our normal practice of allocating company-wide G&A expenses over company-wide cost of sales. This approach is both reasonable and predictable. To allow a respondent to choose between the Department's normal method and an alternative method simply because one method results in a lower rate, would be a results oriented approach.

The Department's calculation of G&A expenses in the *Furfuryl Alcohol from South Africa* case was specific to the facts of that case. As noted above, we believe that the facts of this case warrant continuing to follow the Department's long-standing practice of calculating G&A expenses on a company-wide basis.

In the *Fresh Atlantic Salmon from Chile* case cited by NKK, we followed our normal practice of calculating the G&A expense rate based on the respondent's unconsolidated operations. The determination in that case was to exclude an affiliated company's G&A not to exclude G&A expenses of a different division as being unrelated to producing the subject merchandise. Moreover, we disagree with NKK's assertion that there is no distinction between a division and a stand alone affiliated company. Divisions may exist in name only or may have some autonomy, but they are controlled by the greater company. Affiliated companies are separate legal entities and as such require complete administration structures. In this case, NKK's divisions are not separate entities but merely separate business units within a single corporation. Thus, we have calculated G&A expenses based on NKK's unconsolidated company-wide G&A for the final determination.

Comment 26: NKK's Blast Furnace Costs.

NKK argues that the Department improperly included the loss from a blast furnace accident in G&A. NKK asserts that, consistent with prior Department practice, the Department should exclude the blast furnace losses as an extraordinary expense. NKK contends that this accident meets the standard for extraordinary treatment affirmed by the Court of International Trade in *Floral Trade Council of Davis, California* v. *United States*, ("*Floral Trade Council*") 16 CIT 1014, 1016–17 (CIT 1992), because an accident such as this is "unusual in nature and infrequent in occurrence."

NKK argues that the blast furnace accident was "unusual in nature" because record evidence demonstrates that NKK has never had a blast furnace

accident in its history. NKK claims that, in past cases where the Department has excluded extraordinary expenses from the cost of production, an unforeseen and abnormal event occurred which was beyond management's control. NKK cited the following cases for the Department's practice with regard to the frequency with which the event occurred: *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod from Taiwan*, 63 FR 40462 (July 29, 1998), *Notice of Final Determination of Sales at Less Than Fair Value: Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Japan*, 61 FR 38139, 38153 (July 23, 1996) and *Final Determination of Sales at Less Than Fair Value: Fresh Cut Roses from Ecuador*, 60 FR 7019, 7038 (February 6, 1995). NKK argues that the blast furnace accident was unforeseen and beyond its control; otherwise it would have performed the necessary repairs to prevent the accident from occurring.

NKK argues that the blast furnace accident was also "infrequent in occurrence." NKK contends that the Court explained in *Floral Trade Council* that "an event is "infrequent in occurrence" if it is not reasonably expected to recur in the foreseeable future." NKK asserts that these are the facts in this case because NKK has never before had a blast furnace accident.

NKK also claimed that it properly treated the blast furnace accident as a non-operating expense in its audited financial statements. NKK argues that the Department's standard practice is to use costs as they are reported in the respondent's financial statements. NKK argues that it reported the losses resulting from the blast furnace accident as non-operating expenses in the financial statements that were completed and audited before the initiation of this antidumping investigation. NKK contends that its treatment of the blast furnace accident as a non-operating expense was in accordance with standard Japanese GAAP.

Petitioners argue that the Department correctly included certain losses related to the blast furnace accident in NKK's G&A. Petitioners assert that these losses do not qualify as extraordinary expenses. Petitioners contend that a breakdown in the blast furnace is not unusual in nature because it is not highly abnormal, unrelated nor incidentally related, to the manufacture of steel. Petitioners argue that only in rare situations will an event occur that meets both the "infrequent in occurrence" and "unusual in nature" criteria. Petitioners cited *Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India*, 63 FR 72246 (December 31, 1998) and *Notice of Final Determination of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, ("*SRAMS from Taiwan*"), 63 FR 8909 (February 23, 1998) to demonstrate the type of events the Department determined were not unusual in nature. Petitioners contend that while blast furnace accidents may be infrequent, they are by no means "unusual" in occurrences in the steel industry. Therefore, petitioners argue that the Department should include the losses related to the blast furnace accident in NKK's G&A expenses.

Department's Position: We disagree with NKK that the loss from the blast furnace accident should be treated as an extraordinary expense. As noted in Floral Trade Council, an extraordinary event is both "unusual in nature and infrequent in occurrence." NKK argues that the blast furnace accident was unusual in nature and infrequent in occurrence because this was the first blast furnace accident in NKK history. We disagree with NKK's assertion that this accident is unusual in nature. Like other steel producers, NKK performs regular maintenance and repairs of its blast furnaces in hopes of preventing accidents and loss of operation. While NKK may not have experienced a blast furnace accident in the past, industrial accidents are neither unusual nor unforeseen for steel producers. Furthermore, as NKK itself notes, it classified the loss due to the blast furnace accident in its audited financial statements as a non-operating expense and not an extraordinary loss. As in the Department's determination in the *SRAMS from Taiwan*, we have included the loss incurred as a result of the blast furnace accident in the G&A expenses for the final determination.

KSC

Comment 27: KSC's Affiliated Input Costs.

Petitioners argue that the Department should adjust KSC's reported materials costs for iron ore and coal purchased from affiliated parties at below-market prices. Petitioners note that KSC purchased iron ore and coal from affiliated and non-affiliated parties during the period of investigation ("POI") and that, on average, the price paid to affiliated parties for these inputs was lower than the price paid to non-affiliated parties. Petitioners argue that section 773(f) (2) and (3) of the Act require such purchases to be valued at the higher of market prices, transfer price or the affiliated supplier's cost of production. Petitioners note that documentation provided by KSC demonstrates that its affiliated supplier's transfer price was lower than the market price paid to unaffiliated trading companies for the same materials. Petitioners also note that none of the schedules submitted by KSC makes references to any price differentiation by grade or time of purchase. Petitioners assert that it is the respondent's burden to show whether any adjustments to the transfer price or market price are necessary before a comparison may be made and cites to Department precedent in *Certain Corrosion-Resistant Carbon Steel Flat Products and Certain Cut-to-Length Carbon Steel Plate from Canada: Final Results of Antidumping Duty Administrative Reviews and Determination To Revoke in Part*, 64 FR 2173, 2181–82 (January 13, 1999) ("*Steel from Canada*"). Since KSC has failed to meet this burden, petitioners argue, the Department must increase the affiliated supplier's transfer price to reflect the market value of iron ore and coal.

KSC argues that the Department should reject petitioners' request to adjust KSC's purchase price of iron ore and coal inputs through an affiliated party. KSC claims that the Department's verification report and the petitioners' analysis do not reflect the fact that there are price differences between various grades and types of iron ore and coal, and that its purchases were made at different times over the course of the POI. If these grade and timing differences are considered, KSC argues, then the price paid to the affiliated suppliers is virtually the same as that paid to the non-affiliated suppliers. KSC claims that since it does not purchase all types of iron ore and coal in consistent proportions from both affiliated and non-affiliated parties, the overall POI-average price does not provide for a valid comparison. KSC asserts that a cost verification exhibit offers a breakdown of input prices by commodity code, which demonstrates that prices paid to affiliated suppliers and unaffiliated suppliers are virtually the same when compared by grade. KSC notes that in many instances the price charged by the affiliated supplier is higher than the price charged by an unaffiliated supplier, while in other cases it is lower. KSC also claims that the Department's sample comparisons of identical grades on nearly the same date show nearly identical prices being

charged by affiliated and unaffiliated suppliers. KSC argues that this comparison confirms that the overall average prices of all grades over the entire year was not a valid indicator of arm's length pricing between KSC and its affiliated supplier.

Department Position: We agree with petitioners. KSC submitted a schedule which demonstrates that, on average, its POI purchases of iron ore and coal from affiliated parties were made at lower prices than its purchases from non-affiliated parties. KSC did not submit sufficient information to support its contention that timing differences and grade differences have an impact on the comparison of iron ore and coal prices and, therefore, we were not able to perform a more detailed analysis. At verification we reviewed a list of iron ore and coal prices by commodity code and noted, as KSC acknowledges, that the prices from affiliated suppliers were often lower than prices charged by unaffiliated suppliers. Since there is sufficient evidence on the record that purchases from affiliated parties were made at below-market prices, we believe that a comparison of the POI average prices is appropriate and does not distort our analysis. Therefore, in accordance with section 773(f)(2) of the Act, we have adjusted the cost of materials to reflect the market values of iron ore and coal, based on the prices charged by unaffiliated suppliers.

Comment 28: KSC's G&A Expenses.

In reporting G&A expenses, KSC argues that it properly excluded its expenses for special retirement expenses and losses on the sale of fixed assets used for production of non-subject merchandise. KSC notes that the special retirement expenses are one-time severance payments to transferred employees. KSC states that these expenses are incurred in more than one year to the extent that downsizing of operations is not completed in a single year, but the expense is a one-time event for the particular employees transferred during a particular year. KSC claims that since these expenses are not related to the current production of the company and are considered an extraordinary expense under Japanese GAAP, they should be excluded from G&A expenses. With regard to the losses on sale of fixed assets, KSC cites to *Fresh Atlantic Salmon From Chile*, 63 FR at 31436, in which the Department noted that losses on the sale of fixed assets are not included in G&A expenses when the assets in question are tied to the production of non-subject merchandise. KSC also cites the following cases as examples of Department practice on this issue: *Brass Sheet and Strip from Canada; Final Results of Antidumping Duty Administrative Review*, 61 FR 46618, 46619–20 (September 4, 1996); *Certain Hot-Rolled Lead and Bismuth Carbon Steel Flat Products From the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 60 FR 44009, 44012 (August 24, 1995) ("Lead and Bismuth"), *Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol From South Africa*, 60 FR 22550, 22556 (1995) ("Furfuryl Alcohol"), *Final Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod from Canada*, 59 FR 18791, 18795 (April 20, 1994) ("Steel Wire Rod"). KSC asserts that these cases provide examples of instances where the Department has recognized that expenses relating exclusively to the production of non-subject merchandise should not be included in the G&A expenses of subject merchandise. In the instant case, KSC claims that the Department should exclude the losses referred to above because they relate to assets which were used solely for the production of non-subject merchandise.

Petitioners argue that the Department normally calculates G&A expenses based on the respondent's unconsolidated operations, which include the operations of each of the respondent's divisions. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada*, 64 FR 17324, 17333 (April 9, 1999). Petitioners also assert that KSC has not established on the record that the losses on the sale of fixed assets relate solely or exclusively to the production of non-subject merchandise. With regard to the expenses on special retirement payments, petitioners argue that expenses relating to the termination, transfer or early retirement of employees in a downsizing event are neither unusual nor infrequent for the steel industry, and therefore cannot be classified as extraordinary expenses. Petitioners add that the fact that KSC incurred special retirement expenses in 1996, 1997 and 1998 is further evidence that these expenses are not extraordinary under U.S. GAAP, and therefore should be included in the calculation of KSC's G&A expense rate.

Department's Position: We agree with petitioners and, as in the preliminary determination, we have included the special retirement and losses on sales of fixed assets in our calculation of KSC's G&A expense rate. The expenses for special retirement are severance costs that are recorded as part of KSC's ongoing downsizing operations. The Department's normal practice is to include severance costs in a company's G&A expenses. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 8299, 8305–8306 (February 19, 1999) and *Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Certain Pasta From Turkey*, 63 FR 68429, 68434 (December 11, 1998). We noted at verification that these downsizing activities have resulted in recurring expenses for KSC. The fact that the process may extend over multiple years does not preclude the use of current period expenses. KSC has recognized in its audited financial statements the expense related to the current fiscal year, and it is this period cost which we have included in KSC's G&A expenses. Also, even though the classification of these amounts as extraordinary expenses under Japanese GAAP. The Department does allow for the exclusion of extraordinary expenses under certain circumstances, but these severance amounts do not fall into this category. The Department normally will exclude costs considered extraordinary, provided that they are both unusual in nature and infrequent in occurrence. These expenses for special retirement cannot be considered infrequent in occurrence since they have been a recurring cost for KSC and, therefore, should be included in G&A expenses along with other period costs. *See Silicomanganese From Brazil: Preliminary Results of Antidumping Administrative Review*, 62 FR 1320, 1322 (January 9, 1997).

With regard to the losses on sale of fixed assets, we verified that the assets in question relate to the production of non-subject merchandise. However, it is our practice to calculate G&A expenses using the operations of the company as a whole. *See, e.g., Brass Sheet and Strip* at 46619, *Circular Welded Non-Alloy Steel Pipe and Tube From Mexico: Final Results of Antidumping Duty Administrative Review*, 63 FR 33041, 33050 (June 17, 1998). As we stated in the original questionnaire issued to KSC, "G&A expenses are those period expenses which relate indirectly to the general production operations of the company rather than directly to the production process for the subject merchandise* * *" Therefore, any income or expense incurred through KSC's disposition of fixed assets should be included in the G&A expense rate, regardless of whether they are used purely for the production of subject merchandise or non-subject

merchandise. This policy was established in *Final Determination of Sales at Less Than Fair Value: New Minivans from Japan*, 57 FR 21937, 21943 (May 26, 1992) ("Minivans"). In that case, the Department stated, "we generally consider disposal of fixed assets to be a normal part of a company's operations and have included, therefore, any gains or losses generated by these transactions in the cost of production calculation." (emphasis added) This is consistent with our treatment of miscellaneous expenses in *U.S. Steel Group et al* v. *United States*, 998 F. Supp. 1151, 1153–54 (CIT 1998). We note also that KSC incurred losses on sale of fixed assets related to the production of subject merchandise and these losses were included in G&A expenses and allocated over the cost of all products that KSC produced.

In the *Fresh Atlantic Salmon from Chile* case cited by KSC, the issue was whether or not to treat temporary shutdown costs as period costs, or G&A expenses, that would normally be allocated over the cost of all products. The Department determined that the facilities in question were only idle for a brief period of time and therefore the costs associated with the temporary shutdown should not be treated as G&A expenses. Rather, the costs of operating the facility were charged directly to the cost of manufacturing for the non-subject products produced in the facility. The Department did not, as KSC implies, specifically exclude the shutdown costs from the G&A expense calculation because the facility did not produce subject merchandise. KSC's reliance on to *Brass Sheet and Strip* and *Steel Wire Rod* is similarly misplaced. The issue in these cases was whether to include in a respondent's G&A expenses certain costs that were incurred by a parent company or a subsidiary. The cites are not on point since the instant case involves equipment that was owned by KSC itself and, as noted above, the Department calculates G&A expenses based on the operations of the respondent, as a whole. Expense incurred by a parent company, or any other affiliated company, are only included in the G&A expense calculation to the extent of the support provided by the parent or affiliated company. KSC's reliance to *Lead and Bismuth* is also misplaced, since the respondent in that case closed an entire facility that only produced non-subject merchandise and then excluded these closure costs from the G&A expense rate calculation. In the instant case, KSC simply disposed of assets and, as noted above in *Minivans*, the Department's policy is to include in G&A all gains or losses generated by such disposals. The respondent in *Furfuryl Alcohol* calculated separate G&A expense rates by division and a company-wide G&A expense rate for G&A expenses that related to the operations of the company as a whole. Here, KSC submitted a single G&A expense rate for the entire company and only included its losses on sale of fixed assets related to subject merchandise. It would not be appropriate or reasonable to allocate these losses over the cost of producing all products, while specifically excluding losses on sale of fixed assets used for non-subject production. Since the sale of fixed assets is a general activity of the company, and not specifically related to production, we have allocated all losses on the sale of fixed assets over the cost of producing all products.

Facts Available

Comment 29: Use of Facts Available for NSC's Theoretical Weight U.S. Sales.

NSC characterizes as an inadvertent mistake the fact that, in its response to the initial questionnaire, NSC stated that a theoretical weight to actual weight conversion factor could not be supplied because coils sold on a theoretical basis are never weighed. Respondent states that it believed this statement to be true at the time of filing. NSC argues that it corrected this error within the Department's time limits for submitting new information. In the alternative, NSC argues that the conversion data it presented constitutes a minor correction. Thus, the Department should have accepted the information under the minor corrections rule. NSC states that the Department never rejected the filings containing the corrections as untimely, and therefore abused its discretion by refusing to verify this information and by applying adverse facts available to the affected sales. NSC also argues that to reject the information now would severely prejudice NSC's rights, that this information meets the criteria set forth in section 782(e) of the Tariff Act and, thus, that the Department must consider this information in calculating a margin for NSC. Finally, NSC argues that the Department incorrectly applied an adverse inference in the preliminary determination regarding the theoretical-actual conversion factor, because it did not first find that NSC had not acted to the best of its ability to provide this information to the Department. To the contrary, NSC argues its responses to the Department's requests for information establish a pattern of cooperation and accuracy.

NSC further states that it was placed under extreme time pressures in attempting to comply with the Department's accelerated schedule in this investigation, and that this contributed to NSC's failure to identify the mistake regarding the weight conversion factor.

NSC states that it realized in preparing for verification that all hot-rolled coils are weighed during the production process, and that these actual weight data are recorded at the production facilities. NSC adds that the production databases do not overlap with the sales databases at NSC's headquarters. NSC stated it obtained the actual weight information, calculated a conversion factor and submitted this information to the Department on February 22, 1999, prior to both the cost and sales verifications. NSC also states that it filed additional information on this subject on March 1, 1999.

NSC disagrees with the Department's statement in the *Preliminary Determination* (February 19, 1999) that NSC had "refused" to provide a conversion factor. NSC argues that this statement baselessly implies that NSC intentionally withheld information, whereas, it claims, the record shows that NSC cooperated fully but committed an inadvertent error in its initial questionnaire response.

NSC states that the Department took no action to remove the conversion factor from the record, and included in the verification agenda an instruction that NSC explain how its production and sales systems capture actual weight. NSC alleges that at verification, "Department representatives repeatedly assured NSC that the theoretical weight conversion factor would be verified. Those assurances notwithstanding, NSC claims, the Department abruptly informed it approximately two hours before the end of verification that "Washington" had directed that the conversion factor not be verified. The Department also refused to allow NSC's representatives to even explain the background of its initial mistake. The reasons for those decisions have never been disclosed on the record and the verification report was silent on theoretical weight." *NSC Brief* at 16. NSC concludes that the Department's failure to verify this issue was unwarranted and unexplained.

NSC further argues that (1) its correction was submitted more than seven days prior to verification, (2) the conversion factor is not a substantial revision to NSC's response, but is similar to the type of corrections

allowed by the Department on the first day of or during verification and (3) the Department had adequate time to analyze the conversion factor prior to verification.

NSC cites § 351.301(b)(1) of the Department's regulations, which states that in an investigation, the time limit for submitting factual information is no later than seven days before the commencement of verification. NSC argues that it is the Department's practice to allow respondents to amend questionnaire responses to correct limited errors within this period, and to verify the accuracy of this information at verification, and use the corrected data. *See, e.g., Porcelain-on-Steel Cooking Ware from the People's Republic of China; Final Results of Administrative Review*, 62 FR 32757, 32,759 (June 17, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Certain Partial-Extension Steel Drawer Slides from the People's Republic of China*, 60 FR 54472 (October 24, 1995); *Notice of Determination of Sales at Not Less than Fair Value: Stainless Steel Bar from Italy*, 59 FR 66921, 66926 (December 28, 1994). *See also Final Determination of Sales at less than Fair Value: Certain Corrosion-Resistant Carbon Steel Flat Products from Australia*, 58 FR 37079, 37081 (July 9, 1993). NSC acknowledges that the Department has rejected timely submissions which are substantial revisions of previously submitted data or attempts to respond to a questionnaire for the first time. *See, e.g., Koenig & Bauer-Albert AG* v. *United States*, 15 F. Supp. 2d 834, 847 n.6 (CIT 1998); *Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Steel From the People's Republic of China*, 62 FR 61964, 61987 (November 20, 1997). NSC argues, however, that because submitting its conversion factor is not comparable to submitting a substantial quantity of new information, and because it answered the questionnaire (albeit incorrectly as to this point) within the questionnaire deadline, it properly corrected its response by submitting the correction within the terms of the seven-day rule.

NSC argues that the Department accepts minor corrections even when the correcting submissions are untimely filed. *See Bowe-Passat* v. *United States*, 17 CIT 335, 337–8 (1993). NSC asserts that it is the Department's practice to allow respondents to make minor revisions to or to supplement questionnaire responses after the preliminary determination, both prior to and during verification. *See, e.g., Final Determination of Sales at Less than Fair Value: Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from the Federal Republic of Germany*, 54 FR 18992, 19034 (May 3, 1989); *Notice of Final Determination of Sales at Less than Fair Value: Certain Pasta from Italy*, 61 FR 30326, 30352 (June 15, 1996); *Notice of Final Determination of Sales at Less than Fair Value: Certain Cut-to Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787, 61789 (November 19, 1997); *Notice of Final Determination of Sales at Less than Fair Value: Certain Freshwater Crawfish Tail Meat from The People's Republic of China*, 62 FR 41347, 41356 (August 1, 1997); *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1008 (CIT 1994). NSC argues that the Department has allowed this type of revision where the correction is limited and the corrected information is submitted early enough to allow adequate time for the Department to analyze the revision. NSC argues that its correction, which affects only a limited number of its U.S. sales, qualifies as a minor correction.

NSC states that the timing of its correcting submissions allowed the Department and petitioner adequate time to review its changes. *See Brother Indus. Ltd.* v. *United States*, 771 F. Supp. 374, 383–84 (CIT 1991); *Final Determination of Sales at Less than Fair Value; Steel Wire Rope from Korea*, 58 FR 11029, 11031 (February 23, 1993); *Antidumping: Circular Welded Carbon Steel Pipes and Tubes from Thailand; Final Determination of Sales at Less than Fair Value*, 51 FR 3384, 3386 (January 27, 1986).

NSC states, furthermore, that its conversion factor is so simple that there was no analysis that the Department or petitioners could have performed on it, and therefore the petitioner suffered no disadvantage or prejudice from NSC's submission of the conversion factor prior to verification. NSC adds that it would not have been difficult for the Department to incorporate the factor into the margin calculation. NSC also argues that use of its conversion factor, rather than use of facts available, contributes to the accuracy of the record on which the margin is calculated—a goal of the antidumping statute. *See Rhone-Poulenc, Inc.* v. *United States*, 899 F.2d 1185, 1191 (Fed. Cir. 1990).

NSC argues that, if the Department believed that the submissions containing its conversion factor were untimely, the Department was required under § 351.301(c) and 351.302.(d) of its regulations to reject and return the submissions to NSC with written notice stating the reason for the return. *See Koenig & Bauer-Albert AG* v. *United States*, 15 F. Supp. 2d at 847 n.6 (CIT 1998); *Kerr-McGee Chem. Corp.* v. *United States*, 955 F. Supp. 1466, 1469–70 (CIT 1997); *Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1007 (CIT 1994); *Gray Portland Cement and Clinker from Mexico; Final Results of Antidumping Duty Administrative Review*, 64 FR 13148, 13153 (March 17, 1999); *Final Determination of Sales at Less than Fair Value: Certain Cut-to-Length Steel Plate from the People's Republic of China*, 62 FR 61964, 61985 (November 20, 1997). Because these submissions were on the record at the time of verification, NSC states that the Department could not refuse to verify the conversion factor. NSC also states that the Department would prejudice the rights of parties by removing information from the record without following the procedures established in the regulations, since the record serves as the basis for the parties' arguments before the Department or in a subsequent appeal. *See Kerr-McGee Chem. Corp.* v. *United States*, 955 F. Supp. 1466, 1472 (CIT 1997).

NSC also notes that the Department has broad discretion in choosing to accept untimely filed information onto the record, and thus the parties must rely on the Department's notice of rejection to determine the status of each submission. *See Bowe-Passat* v. *United States*, 17 CIT at 338 (1993). Thus, NSC argues that to reject the information now would deprive it of the opportunity to respond to the Department's rationale for rejecting the submission, and to demonstrate that the conversion factor could have been easily derived, which will prejudice NSC by leading to the continued use of facts available.

NSC argues that if, notwithstanding the above arguments, the Department wishes to resort to use of the facts available as to this issue, pursuant to section 776(a)(2)(B) of the Act (19 U.S.C. § 1677e(a)(2)(B)), because NSC did not submit its conversion factor within the questionnaire deadlines, the Department must also consider the provisions of 782(e) of the Tariff Act (19 U.S.C. § 1677m(e)). *See* 19 U.S.C. § 1677(e)(a)(2)(B); *Borden, Inc.* v. *United States* ("*Borden*"), 4 F. Supp. 2d 1221, 1244–45 (CIT 1998). NSC argues that the conversion factor submission meets the criteria set forth in § 1677m(e) (*i.e.*, it is complete, capable of being verified, capable of being used without undue difficulty, provided by NSC acting to the best of its ability, and submitted within the deadline established for its submission) and thus is appropriate for use in the final determination.

NSC argues that its submission was timely because "in the context of § 1677m(e)(1), the 'deadline' cannot be

interpreted as the due date for the initial or supplemental questionnaires because such an interpretation would nullify the express reference to § 1677m(e) in § 1677e(a)(2)(B)." *NSC Brief* at 31. NSC argues that untimely information can still be considered for a final determination, provided that it meets the requirements set out in § 1677m(e). NSC states that the reference to a "deadline" in § 1677m(e) should be interpreted as compliance with the seven-day rule or the minor error rule, and thus NSC's conversion factor should be used in the final determination.

The Department, according to NSC, may rely on information it does not examine at verification. *See Floral Trade Council* v. *United States*, 822 F. Supp. 766, 722 (CIT 1993); *Micron Tech., Inc.* v. *United States*, 117 F.3d 1386, 1396 (Fed. Cir. 1997); *Certain Cut-to-Length Carbon Steel Plate from Germany: Final Results of Antidumping Duty Administrative Review*, 61 FR 13834, 13840 (1996). Moreover, NSC argues, there is no reason to doubt the accuracy of its conversion factors given the accuracy of other NSC information demonstrated at verification.

NSC argues that, in the *Preliminary Determination*, the Department did not make the requisite finding under section 776(b) of the Tariff Act (19 U.S.C. § 1677e(b)) and 19 C.F.R. § 351.308.(a) that NSC had failed to cooperate to the best of its ability; instead, it found only that NSC had not provided the conversion factor requested. Therefore, NSC argues, the Department was not justified in using an adverse inference in selecting facts available to apply to the affected sales. *See Ferro Union, Inc.* v. *United States*, Ct. No. 97–11–01973, Slip Op. 99–27, 1999 CIT LEXIS 24, at *54 (March 23, 1999); *D&L Supply Co.* v. *United States*, Ct. No. 92–06–00424, Slip Op. 98–81, 1998 CIT LEXIS 79, at *4 (June 22, 1998). *See also Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea: Final Results of Antidumping Duty Administrative Reviews*, 64 FR 12927, 12947 (Mar. 16, 1999). NSC states that this two-part process the Department must undertake before using an adverse inference differs from the Department's former BIA standard under prior law. *See Antidumping Duties; Countervailing Duties: Proposed Rule*, 61 FR 7308, 7327 (1996).

NSC argues that the Department may only apply an adverse inference if the Department determines that a party's failure to provide information is "deliberate." *See Preamble to Proposed Rule*, 61 FR at 7328; *Borden Inc.* v. *United States*, 4 F. Supp. 2d at 25 (CIT 1998); *Ferro Union Inc.* v. *United States*, 1999 CIT LEXIS 24, at *7. NSC states that the Department refused to verify the circumstances surrounding NSC's failure to provide the actual weight data, although NSC sought to have it do so. NSC contends that the Department cannot prevent inclusion on the record of information relating to whether its initial failure to provide these data was deliberate, and then conclude that it was unwilling to provide the data. *See Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1007 (CIT 1994).

NSC also states that the record as a whole evidences its extraordinary level of cooperation. NSC states that the Department cannot hold NSC to the "standard of perfection" that it appears to have applied in the preliminary determination (*see NTN Bearings Corp.* v. *United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995)), and that the selection of adverse facts available was improper given the minor adjustment in data involved (see Usinor Sacilor v. *United States*, 872 F. Supp. 1000,1007 (CIT 1994)). NSC argues that the Department should not treat a respondent that simply errs the same way it treats a respondent that refuses to reply to part or all of a questionnaire.

NSC argues that the rate assigned to it in the *Preliminary Determination* was punitive, and that antidumping law prohibits imposing punitive duties, calling instead for remedial measures. *See NTN Bearings Corp.* v. *United States*, 74 F.3d 1204, 1208 (Fed. Cir. 1995). For this reason, NSC contends, in choosing the "facts available," the Department must, at a minimum, select margins that are "nonaberrant," and not abnormal. *See National Steel Corp.* v. *United States* ("*National Steel I*"), 870 F. Supp. 1130, 1134–37 (CIT 1994). NSC argues that it is a Department policy upheld by the court that a margin used as facts available must correspond to a substantial commercial quantity of a respondent's sales that fall within the mainstream of that respondent's sales. *See National Steel Corp* v. *United States* ("National Steel III"), 929 F. Supp. 1577, 1579–80 (CIT 1996). NSC argues that the margin the Department used in the *Preliminary Determination* for the sales affected by this issue was the highest possible, and that therefore it is "aberrant." Finally, NSC argues that the extent of increase in the total margin as a result of this issue constitutes an impermissible penalty.

Petitioners argue that NSC's case brief and letters submitted after the *Preliminary Determination* regarding the theoretical-actual weight conversion factor amount to admissions that NSC did not act to the best of its ability in responding to the Department's questionnaires and did not provide information in a timely manner. Petitioners point out that NSC stated that in preparing its responses, it failed to check the records at the manufacturing facilities, despite two Department requests for information maintained there. Petitioners argue that NSC's failure to cooperate to the best of its ability warrants using adverse inferences.

Petitioners stated that NSC's arguments that its post-*Preliminary Determination* submissions regarding the conversions factor were timely under the seven-day rule ignore 19 CFR § 351.301(c)(2), which authorizes the Department to set time limits for questionnaire responses, and 19 CFR § 351.302(d), which authorizes the Department to return untimely filed questionnaire responses. Petitioners note that the Department cited § 351.302(d) in its supplemental questionnaire issued on January 4, 1999. Petitioners contend that, under 19 CFR § 351.301(c)(2), the seven-day rule does not apply in these circumstances.

Petitioners state that, because NSC indicated that it would not and could not provide this data, and because the Department did not request it again, the time for submitting new information other than specific corrections had passed. For these reasons, petitioners argue that the Department was authorized to use facts available. *See Cut-to-Length Steel from the People's Republic of China*, 62 FR 61964, 61987 (November 20, 1997) ("*Steel from China*").

Petitioners state that the cases cited by NSC at pages 17 and 18 of its case brief are off point, because the respondents in those cases sought to correct minor errors prior to verification. Petitioners argue that, in the instant case, NSC is seeking to present new information which contradicts earlier statements that the information did not exist. Petitioners argue that *Steel from China*, also cited in NSC's brief, is on point, in that the Department rejected information a respondent had previously failed to provide in a questionnaire response.

Petitioners also argues that even under the seven-day rule, the conversion submission was untimely filed. Petitioners then argue that NSC's three post-*Preliminary Determination* submissions reveal that NSC did not make a reasonable inquiry to obtain the weight conversion information in response to the Department's questionnaires. For this reason, petitioners argue that NSC's case brief argument regarding the Department's

failure to verify the information it submitted after the preliminary determination is out of place and without merit. Finally, petitioners argue that NSC incorrectly characterized its submission of the conversion information as a minor correction. Petitioners state that NSC's submission attempted to supply new information it had previously characterized as unattainable and nonexistent. This type of information, petitioners argue, is not eligible for untimely admission. Petitioners argue that the Department acted correctly and should continue to use adverse inferences in the final results.

Petitioners argue that all NSC information relating to the weight conversion factor was submitted after the questionnaire deadlines and was therefore untimely filed. Petitioners argue that under section 776(a)(2) of the Tariff Act (19 U.S.C. § 1677e(a)(2)), the Department was justified in rejecting this information and applying facts available. Petitioners add that the statute mandates the use of facts available in these circumstances, and that to refrain from using facts available would run contrary to the intent of the law, which is to encourage compliance with the Department's questionnaires. *See SAA* at 868.

Petitioners also argue that NSC's claim that the Department improperly rejected its weight conversion factor is without merit. Petitioners state that, contrary to NSC's position, the seven-day rule does not apply to the correlation submissions, since it does not serve to extend the established deadlines for responses to the Department's questionnaires. *See* 19 C.F.R. § 351.301(b) and (c). The information NSC attempted to submit, petitioners argue, was the subject of a specific request in a Department questionnaire and was not provided by the deadline set in that questionnaire.

Petitioners also rebut NSC's argument that its weight conversion information was properly submitted as a minor correction. Petitioners state that NSC's submission does not meet the standard for minor corrections established in *Titanium Sponge from the Russian Federation*, 61 FR 58525, 58531 (November 15, 1996). According to petitioners, the information NSC submitted was not a correction to anything, but was instead information supplied for the first time after being repeatedly withheld.

Petitioners state that NSC improperly relied on section 782(e) of the Act (19 U.S.C. § 1677m(e)) (the Department "shall not decline to consider information that is submitted by an interested party") because NSC did not submit its weight conversion information within the deadlines established in the Department's questionnaires, and failed to act to the best of its ability to comply with the Department's requirements for supplying this information. *See Borden*, 4 F. Supp. 2d at 1245. Petitioners note that NSC stated in its original questionnaire response that, despite the Department's request, the factor was unnecessary, and stated in its supplemental questionnaire response that it could not calculate a factor, when in fact the required information was within its records. Petitioners also point to NSC's statement that the conversion factor was "hardly the most pressing issue for NSC's staff" when preparing its response. *See NSC Brief* at 13. Petitioners conclude that the requirements of section 782(e) are not met because, if NSC had acted to the best of its ability, the information would have been timely filed and NSC would not have presented inaccurate explanations for its failure to provide this information.

Petitioners reject as irrelevant NSC's claims that its weight conversion information should be accepted because its failure to provide the data when they were originally requested was inadvertent. Petitioners state that the statute does not require the Department to determine whether a reporting failure is in good faith, and that the Department cannot excuse inaccurate responses on the grounds of "honest mistake." Petitioners argue that this would undermine the Department's ability to gather information. Petitioners state that the Department's rejection of NSC's responses regarding the conversion factor as untimely was warranted under the statute and the Department's practice.

Petitioners argue that the Department properly applied adverse facts available because NSC failed to provide information under its possession and control to the Department in a timely manner. These circumstances, petitioners contend, show that NSC did not act to the best of its ability in preparing this aspect of its questionnaire response. *See Borden*, 4 F. Supp. 2d at 1246; *Ferro Union* 1999 CIT LEXIS 24, at * 55. Petitioner notes that, contrary to NSC's inference in its case brief, affirmative evidence of bad faith is not required before the Department can make an adverse inference. *See Preamble*, 62 FR at 27340.

Further, petitioners reject NSC's argument that the Department should be precluded from making an adverse inference because much of NSC's other information was timely submitted and verified. Petitioners state that use of partial facts available is appropriate in these circumstances. Petitioners state that NSC has pointed to no justification for its claim that the adverse facts available margin applied to NSC's U.S. theoretical weight sales was aberrant, and that this may constitute the best information available. *See National Steel I*, 870 F. Supp. at 1136; *accord National Steel Corporation* v. *United States* ("*National Steel II*"), 913 F. Supp. at 596–597; *see also Stainless Steel Sheet and Strip in Coils from Mexico*, 64 FR 124, 128 (January 4, 1999). The facts available margin, petitioners claim, was based on NSC mainstream sales made under customary selling practices.

Finally, petitioners state that NSC was incorrect when it argued that its only act of non-cooperation was to make a mistake in its answer. Petitioners argue that NSC repeatedly withheld information within its control, and issued statements as to why this information was not provided which were shown to be untrue.

Department's Position: We agree with petitioners that the Department should continue to apply adverse facts available with respect to NSC's U.S. sales which are based on theoretical weight. Section 776(a)(2) of the Act provides that if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination. Section 776(b) of the Act further provides that adverse inferences may be used where an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See also, SAA* at 870.

NSC reported most of its U.S. and home market sales on an actual weight basis, with the exception of a small percentage of U.S. and home market sales. The Department requested conversion factors for these transactions in its original and supplemental questionnaires. Section 351.301(b)(1) of the Department's regulations provides generally that, in an investigation, factual information can be submitted up to seven days prior to verification. However, section 351.301(c)(2) states that "[n]otwithstanding paragraph (b)",

when requesting information pursuant to a questionnaire, the Department will specify the deadlines by which time the information is to be provided by the parties. Thus, NSC is incorrect in asserting that the requested conversion data is timely because it was submitted within the general deadline in section 351.301(b)(1). Any information submitted after the deadline specified in the questionnaire is untimely, regardless of whether the general deadline in section 351.301(b)(1) has passed.

In the instant case, NSC failed to submit the requested information by December 21, 1998 (the deadline for the original section B and C questionnaire responses), nor did it provide this information by January 25, 1999 (the deadline for submission of information requested in the section B and C supplemental questionnaire). Despite repeated requests for this information, NSC did not provide the requested data until March 1, 1999 (nearly 3 months after the initial questionnaire deadline).

NSC also argues that the conversion data falls within the Department's practice of accepting "minor corrections" to questionnaire responses after the response deadline has passed, provided the Department has the information in time to verify it. However, a minor correction is normally a correction to information that was timely submitted. In this case, NSC did not timely submit the conversion data that it subsequently sought to correct. NSC's only response was that the data did not exist. While NSC characterizes that statement as a correctable minor error, we disagree. The evidence indicates that the requested information was routinely maintained by NSC in the normal course of business, but that obtaining it was simply not a priority. Regardless of who specifically knew about this information, the sales department or the production department, the data existed and could have easily been obtained. The fact that NSC was able to provide this information shortly after the preliminary determination also supports the conclusion that it could have done so within the time requested. Moreover, it is impossible for the Department to determine whether NSC's claims of inadvertent error are valid or merely self-serving. Thus, they are insufficient to rebut the evidence establishing that the requested information was readily available.

Furthermore, timely, accurate conversion information is necessary to the margin calculation and can have a significant impact. In recognition of steel industry practices, the Department routinely requests respondents in proceedings involving steel to provide either the actual and theoretical weights of the transactions in both markets, or in the alternative, to provide conversion factors to ensure apples to apples comparisons on the same weight basis. *See Preliminary Determination of Sales at Less Than Fair Value: Circular Welded Non-Alloy Steel Pipe from Brazil*, 57 FR 17883, 17884 (April 28, 1992). The need for timely filed, verifiable actual weights or conversion factors is particularly acute with flat rolled steel products in coils, including those at issue. Assuming that the coils meet the specifications of the ordered product, the actual width and the actual thickness of the coils will vary within the allowed tolerances, but the lengths of the coils are not specified in the available sales-related documentation. Therefore, the total actual weight of the coils sold in transactions denominated in theoretical weight can vary by a significant, but unknown amount, as the actual dimensions of the coils cannot be determined. Accordingly, the resulting unit values that would be used in the Department's price-to-price comparisons could also vary by a significant, but unknown amount. The Court of International Trade has addressed the issue, upholding the Department's decision to apply best information available when a theoretical-to-actual conversion factor could not be verified. *See Persico Pizzamiglio, S.A.* v. *United States*, 18 CIT 299, 305 (CIT 1994).

Because NSC's conversion data was untimely and did not constitute a minor correction, the Department informed NSC at verification that it would not accept the theoretical to actual weight conversion factors and returned the data on April 12, 1999. Section 351.302(d) of the Department's regulations provides that the Department will not retain in the record information that is untimely or unsolicited. 19 C.F.R. § 351.302(d)(2). The fact that the Department did not reject this information prior to verification did not prejudice NSC. Many decisions are made between the preliminary and final determinations, including, in some instances, the rejection of submissions. While the Department must explain the basis for those decisions in its final determination, it is under no obligation to do so before then. As evidenced by NSC's case brief and the hearing transcript, the company was well aware of the issue and has had ample opportunity to defend its interests. See also Department's response to Comment 13, "Ex Parte Communications", above.

Section 776 of the Act states that, if a party fails to provide information by the established deadline, the Department shall, subject to section 782(d), use the facts otherwise available. See also 19 C.F.R. 351.301(c)(2)(ii) ("failure to submit requested information in the requested manner by the date specified may result in use of facts available under section 776 of the Act and section 351.308."). Section 782(d) of the Act provides that, subject to 782(e), the Department may disregard a deficient response. NSC argues that the Department should have used the conversion factor data because it meets the criteria of section 782(e), *i.e.*, it is complete, capable of being verified, capable of being used without undue difficulty, provided by NSC acting to the best of its ability, and submitted within the deadline established for its submission. We find this argument unpersuasive. The provision of the statute relied upon by NSC sets forth the circumstances under which the Department will consider information provided by a respondent, even though it may be deficient in some respects. For example, if the freight information in a timely questionnaire response is missing or cannot be used, the Department will not reject the entire response; it will consider the remaining information, provided that it is verified. There is simply no support for NSC's argument that this provision is essentially an exception to rejecting information that is submitted after the established deadline. To the contrary, the first criterion in this provision is that "the information is submitted by the deadline established for its submission." As noted above, NSC's conversion data was not submitted by the deadline established in the questionnaire. Therefore, it does not meet the criteria of section 782(e) and the use of facts available for theoretical weight sales is warranted.

Because NSC failed to timely provide requested information, in accordance with section 776 of the Act, the Department has made its determination with respect to the theoretical weight sales on the basis of the facts available. Further, the Department finds that NSC, by not submitting a theoretical weight conversion factor it could have provided when originally requested until well after the time for response had passed, failed to cooperate by not acting to the best of its ability. NSC's claims that it could provide a conversion factor in March of 1999, but was unable to derive such a factor when the questionnaire responses were due, does not withstand scrutiny. Although NSC argues that it lacked the data necessary to calculate a conversion factor, as required by section

782(c)(1) of the Act, it should have proposed to the Department the sort of conversion factor it ultimately did calculate, explaining why a more accurate one might not be practicable. Instead, NSC merely dismissed the Department's repeated requests. As noted above, the data requested was routinely maintained by NSC in the normal course of business. It was readily available and would not have been burdensome to produce in a timely manner. Moreover, NSC had other information to use in providing a conversion factor. Nevertheless, NSC did not provide the information until well after the established deadline. As noted above, NSC's claims of inadvertent error are insufficient to overcome these basic facts. The fact that NSC ultimately did provide such a factor is proof that it could have done so much earlier. Thus, because NSC failed to timely provide the requested conversion data, it has "failed to cooperate by not acting to the best of its ability to comply with an information request." Therefore, in accordance with section 776(b) of the Act, the Department is authorized, to use an adverse inference in choosing the facts otherwise available.

We have considered, but rejected, the suggestion made by NSC that the Department use a theoretical-to-actual conversion factor from another source as facts available. Because of the potential differences in theoretical-to-actual variances among producers and for different flat rolled products, particularly those sold in coils, we cannot determine that an alternative theoretical-to-actual conversion factor would be appropriate in this situation. Therefore, we have used a facts available margin for these sales.

In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of NSC's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected margins from individual sales of CONNUMs that involved substantial commercial quantities and fell within the mainstream of NSC's transactions. Thus, as adverse facts available, we have calculated an average of the highest calculated sale-specific margins for each of the CONNUMs involved in the theoretical weight sales; that is, we used margins from sales of the same CONNUMs with actual weight sales for which we had all necessary information to calculate a margin. Finally, we found nothing on the record to indicate that the transactions that we selected were not conducted in a normal manner.

Comment 30: Use of Facts Available for NKK's Theoretical Weight Sales.

NKK argues that the Department should reverse its decision to reject the submitted prices for all of its home market sales sold on a theoretical weight basis and to apply adverse facts available to these sales. NKK claims that (1) its failure to provide conversion factors for these sales prior to the preliminary determination was based on a legitimate misunderstanding of what the Department desired, (2) upon learning what the Department desired, NKK promptly submitted the requested conversion factors and (3) the Department fully verified the calculation of the conversion factors.

NKK first explains that its failure to provide the conversion factor requested by the Department was based on a legitimate misunderstanding of what the Department required. NKK asserts that, in its original questionnaire, the Department asked NKK to specify, for each and every transaction, whether the quantity sold was based on actual weight or some other basis, and if more than one weight was reported, to provide the conversion factor to arrive at a uniform quantity measure. NKK responded by stating that providing such conversion factor was either impracticable or impossible, because it did not weigh the coils sold on a theoretical basis, and therefore did not have the actual weights for these sales. NKK states that when, in its supplemental questionnaire, the Department requested that NKK provide the conversion factor that it "used" to arrive at a uniform quantity measure, NKK assumed that the Department had misunderstood NKK's initial response, so it repeated its rationale for not providing a conversion factor. After NKK complained that it was wrongly penalized in the *Preliminary Determination*, the Department pointed to KSC's ability to respond to the same question. NKK states that KSC had provided not a conversion factor, but a more accurate estimate of the actual weight, and states that if the Department had clarified earlier that this was what it wanted, it could have complied earlier.

Finally, NKK asserts that after it had a clearer understanding of what the Department required, it was able to prepare a conversion factor (on a basis involving proprietary information) which could be used to calculate a more accurate estimate of the weight for the theoretical weight sales. NKK provided this factor one week before verification and argues that, pursuant to § 351.301(b)(1) of the Department's regulations, this was within the established time limits. In addition, NKK argues that the Department was able to verify fully all submitted information. Therefore, NKK argues, the Department cannot rely on section 776 of the Act to apply facts available, since none of the criteria in that provision apply in this case.

Petitioners, on the other hand, argue that, in the *Final Determination*, the Department should reject the theoretical-to-actual weight conversion factor provided by NKK in its February 22, 1999 filing, and should apply adverse facts available to NKK's theoretical weight transactions. Petitioners assert that the Department asked NKK to provide a theoretical-to-actual weight conversion factor in the Department's initial and supplemental section B questionnaires. Thus, petitioners argue, the Department made two clear requests for a theoretical-to-actual weight conversion factor, which it needed in order to calculate CONNUM-specific DIFMERs and costs. According to petitioners, NKK twice refused to provide the conversion and, by choosing to provide the conversion factor only after the Department had applied adverse facts available to NKK's theoretical weight transactions, demonstrated a clear intent to not comply with the Department's request. This refusal to comply, in the opinion of petitioners, warrants the application of adverse facts available pursuant to section 776 of the Tariff Act (19 U.S.C. § 1677e).

Petitioners argue that the Department should not allow NKK to selectively choose what information the company will provide the Department. They characterize NKK's refusal to provide a theoretical-to-actual weight conversion until adverse facts available had been applied in the preliminary determination as "cherry picking" and assert that in antidumping investigations the Department, not the respondent, should decide what information is required to ensure the integrity of the process. *See Ansaldo Componenti, S.p.A.* v. *United States,* 628 F. Supp. 198, 205 (CIT 1986); *see also Olympic Adhesives, Inc.* v. *United States,* 899 F. 2d 1565, 1572 (Fed. Cir. 1990).

In its rebuttal brief, NKK reiterates that it did not "refuse" to comply; instead it misunderstood the Department's request for a theoretical weight conversion factor. NKK stresses

that it maintained that it could not calculate the actual differences between the theoretical and actual weight of its coils because, unlike the merchandise of another respondent, NKK's theoretical weight sales were not, in fact, weighed. *See Olympic Adhesives*, 899 F. 2d at 1573 (Fed. Cir. 1990) (it is not a refusal to provide requested information when a respondent answers that such information is not available). NKK rebuts petitioners' assertion that NKK did not comply with the Department's request for a theoretical weight conversion factor and, furthermore, rebuts petitioners claim that NKK did not cooperate to the best of its ability.

NKK argues that once it understood the Department's request, it provided the appropriate theoretical weight conversion factor. NKK argues that because actual weight was not available for its theoretical weight sales and because it communicated this fact to the Department, it did not provide the requested data as it believed that this data was not available. *See Olympic Adhesives*, 899 F. 2d at 1573. NKK further argues that the conversion factor does not calculate the actual weight. NKK admits that it filed its conversion factor after the original and supplemental questionnaire deadlines but asserts that, ultimately, the conversion factor was filed with the Department seven days prior to verification. NKK asserts that the Department's own regulations establish this as the latest date on which factual information is due. *See* 19 C.F.R. § 351.301(b)(1).

NKK in its rebuttal brief, argues that the Department routinely accepts untimely information when circumstances of a particular case warrant the need to accept untimely filings. *See Bowe-Passat* v. *United States*, 17 CIT at 337–38. NKK further argues that if certain conditions are met, the Department cannot legally decline to consider certain information, even if the information does not meet all of the Department's requirements. NKK argues that its case meets the necessary legal criteria and, thus, its theoretical weight conversion factor should be considered by the Department. *See* section 782(e) of the Act. Specifically, NKK argues in its rebuttal brief that "first, the conversion factor was submitted before the latest deadline for submission of factual information; second, the conversion factor can be and was verified; third, NKK fully explained how the conversion factor was arrived upon and is therefore a reliable basis on which to reach an applicable determination; fourth, NKK provided the factor as soon as it understood the Department's specific request; and fifth, the application of NKK's conversion factor is easily accomplished in the Department's programming." In summary, NKK argues that there is no reasonable basis on which the Department can reject its theoretical weight conversion factor.

Petitioners rebut NKK's argument that NKK acted to the best of its ability. Petitioners argue that NKK failed to respond to the Department's specific requests for an actual to theoretical weight conversion factor. Petitioners argue that the Department should therefore draw an adverse inference in selecting adverse facts available for NKK's theoretical weight transactions. *See* section 776(b) of the Act (19 U.S.C. § 1677e(b)). Petitioners assert that the Department, in its final determination, should continue to apply adverse facts available to NKK's theoretical weight sales because NKK should not be allowed to benefit through its failure to comply with the Department's requests. *See* SAA at 868, 896 (1994).

Department's Position: We agree with petitioners that the Department should continue to apply adverse facts available for NKK's home market theoretical weight sales. Section 776(a)(2) of the Act provides that, if an interested party: (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested; (C) significantly impedes a proceeding under the antidumping statute; or (D) provides such information but the information cannot be verified, as provided in section 782(i), the Department shall, subject to subsection 782(d), use facts otherwise available in reaching the applicable determination. Further, section 776(b) of the Act provides that adverse inferences may be used where an interested party has failed to cooperate by not acting to the best of its ability to comply with the Department's requests for information. *See* also SAA at 870.

NKK reported all its U.S. and home market sales on an actual weight basis, with the exception of less than one percent of home market sales. Although the Department requested conversion factors for these transactions, NKK refused to provide conversion factors for these sales within the deadline established in the questionnaire. Rather, it submitted these factors on February 22, 1999, almost 2 months after the deadline for the original questionnaire response and one month after the deadline for the supplemental questionnaire response. Because the Department requested these conversion factors in questionnaires with earlier deadlines, and these data were not submitted in accordance with those deadlines, the conversion factors submitted on February 22, 1999, constituted untimely submitted information within the meaning of 19 C.F.R. § 351.301(c)(2)(ii). Because these data were required to be provided in NKK's questionnaire responses, the more general provision upon which NKK relies in stating that the factors were timely provided (*i.e.*, 19 C.F.R. § 351.301(b)(1)) does not apply. Because NKK's conversion factor data were not timely submitted, the Department rejected these factors in a letter dated April 12, 1999. The Department, therefore, has not considered these data or retained them in the official record of the proceeding. *See* 19 C.F.R. § 351.302(d)(1). The Department does not agree with NKK's assertion that these data were verified. Rather, at verification the Department specifically informed NKK and its counsel that the Department would not accept the conversion factor and would specifically instruct NKK to submit this information on the record if the Department determined that it was timely. However, any arguments as to the accuracy of these data are moot because the data in question are no longer part of the record before the Department.

Because NKK failed to timely provide requested information, in accordance with section 776 of the Act, the Department has made its determination with respect to the theoretical weight sales on the basis of the facts available. Further, the Department finds that NKK, by not submitting a theoretical weight conversion factor it could have provided when originally requested until well after the time for response had passed, failed to cooperate by not acting to the best of its ability. NKK's claims that it could calculate a conversion factor in February of 1999, but was unable to derive such a factor when the questionnaire responses were due, does not withstand scrutiny. Although NKK argues that it did not understand what the Department wanted when it originally requested a "conversion factor", although this was not stated at the time, and that it lacked the data necessary to calculate one, as required by section 782(c)(1) of the Act, it should have proposed to the Department the sort of conversion factor it ultimately did calculate, explaining why a more accurate one might not be practicable. Instead, NKK merely dismissed the Department's repeated requests. The fact that NKK ultimately did provide such a factor is the proof that they could have

done so much earlier. Thus, because NKK failed to timely provide the requested conversion data, it has "failed to cooperate by not acting to the best of its ability to comply with an information request." Therefore, in accordance with section 776(b) of the Act, the Department is authorized, to use an adverse inference in choosing the facts otherwise available.

The only NKK sales affected by this failure to provide data were home market sales. Therefore, as adverse facts available we assigned the highest calculated adjusted price (NV) for any CONNUM to the relevant transactions.

Comment 31: Use of Facts Available for KSC's U.S. Sales Through CSI.

KSC asserts that the Department erred both by including in its margin calculation sales made through its U.S. affiliate California Steel Industries ("CSI") and in using adverse facts available in connection with those sales. Sumitomo Metal Industries, Ltd. ("SMI"), a non-selected respondent whose margin will be affected by KSC's margin, also urges that the Department should not use adverse facts available for KSC's sales to CSI, arguing that the fact that CSI is a petitioner shows that KSC cannot "control" CSI, and is not, therefore, responsible for CSI's refusal to provide data requested by the Department.

With respect to the first point, KSC argues that the Department should have based the margins for its CSI sales on sales made to unaffiliated companies, in accordance with § 772(e) of the Act (the "Special Rule for Merchandise With Value Added After Importation"). With respect to the second point, KSC argues that, if The Department does calculate a margin based on the CSI sales, it should not treat CSI's refusal to provide the requested data as a lack of cooperation on the part of KSC. Therefore, KSC argues, The Department should not apply adverse facts available to the KSC's CSI sales.

Decision Not To Apply the "Special Rule"

Respondent contends that the Department's application of adverse facts available in its *Preliminary Determination* was unlawful because the subject merchandise from KSC which is further processed by CSI qualifies for the simplified reporting provision or "special rule for merchandise with value added after importation" contained in the statute at 19 U.S.C. § 1677a(e)(1). The purpose of this provision, according to the *SAA*, is to give the Department a "simpler and more effective method for determining export price" in situations where the value added after importation to the United States is likely to exceed substantially the value of the subject merchandise." *See SAA* at 825. As explained in the SAA, this level is reached when "value added in the United States is estimated to be substantially more than half the price of the merchandise as sold in the United States." *See Id.*

Respondent states that 19 C.F.R. § 351.402(c)(2) provides that the Department will "normally determine that the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise if the [Department] estimates the value added to be at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States." Respondent states that the use of terms such as "normally" and "estimates" indicates that the 65 percent test is not a bright line rule. Respondent cites *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Component Thereof, From Japan,* 63 FR 37344 (1998), as evidence that the Department has applied the special rule without requiring the value added to be more than 65 percent. CSI added substantial value to the subject merchandise it obtained from KSC, contends the respondent, because the value added by CSI represents more than half of the price charged to the first unaffiliated customer buying galvanized steel and is "on the cusp" of being over half the price charged for cold-rolled steel and pipe. Respondent concludes that the significant value added by CSI, combined with the provision's purpose of simplifying the Department's determination, should permit the application of the special rule. Therefore, KSC urges, the Department should use the weighted average margin of other sales of identical subject merchandise sold by KSC for the volume of hot-rolled steel sold to CSI in making its determination.

Use of Adverse Facts Available for the CSI Sales

Respondent's overall conclusion that the Department's application of adverse facts available as to the CSI sales is unsupported by law or fact is based on five broad arguments.

First, respondent states that the Department cannot draw an adverse inference unless it has found that a party did not act to the best of its ability in responding to the Department's information requests. Respondent argues that, in determining whether a party acted to the best of its ability, the Department considers, among other things, the accuracy and completeness of the information submitted, and whether the party has hindered the calculation of accurate dumping margins. As a result of the *Uruguay Round Agreements Act* ("URAA"), respondent asserts, the Department cannot apply an adverse inference without first making factual findings on the record to support any conclusion that a party failed to act to the best of its ability. *See Preamble,* 62 FR at 27340. Furthermore, the Court of International Trade decisions in *Borden, Inc.* v. *United States,* 4 F. Supp. 2d 1221 (1998) ("Borden") and *Ferro Union, Inc.* v. *United States* ("*Ferro Union*"), Ct. No. 97–11–01973, Slip Op. 99–27 (March 23, 1999), 1999 CIT LEXIS 24, at *54 , hold that the Department must base any finding that a respondent failed to cooperate on record evidence, not on the mere absence of information on the record. Therefore, respondent concludes that the Department must either correct its preliminary decision to apply an adverse inference to these sales or provide a factual basis for its conclusion that KSC did not act to the best of its ability.

KSC's second argument is that the administrative record for this case establishes beyond question that KSC acted to the best of its ability. *See Preamble,* 62 FR at 27341 (the Department will make determinations regarding a respondent's acting to the best of its ability on a fact-and case-specific basis); *see also, NEC Home Electronics, Ltd.* v. *United States,* 54 F. 3d 736, 742 (Fed. Cir. 1995); *Atlantic Sugar, Ltd.* v. *United States,* 744 F. 2d 1556, 1559 (Fed. Cir. 1984) (The Department's determinations must be based on a complete and objective evaluation of the actual evidence on record). Respondent contends that all the evidence in the instant case demonstrates that KSC acted to the best of its ability, with no implication that KSC was uncooperative or that KSC impeded the investigation. Specifically, KSC claims that the record shows that it: (1) made repeated written and oral requests urging CSI to cooperate in providing the data The Department had requested, (2) offered to provide CSI with assistance in furnishing this data to The Department, (3) offered CSI the option of reporting proprietary information it did not want to reveal to KSC directly to the Department, and (4) submitted a voluminous amount of information during the course of the investigation and answered all

questions posed by the Department at verification, including those relating to the CSI issue. Thus, KSC concludes that the absence of data on the CSI sales should be attributed to the non-cooperation of CSI, but not of KSC.

KSC's third point is that its extensive cooperation prohibits use of the most adverse facts available, even if the Department should find that it did not meet the "best of its ability" standard, because KSC "substantially cooperated" in this investigation. *See Roller Chain, Other Than Bicycle from Japan: Final Results and Partial Recission of Antidumping Duty Administrative Review*, 63 FR 63,674 (1998); *Certain Cut-to-Length Carbon Steel Plate from Sweden*, 62 FR 46,947, 46,948 (1997); *Final Results of Review of Antidumping Duty Administrative Review of Certain Pasta from Italy*, 61 FR 30326, 30329 (1996) (the Department's normal practice is to refrain from applying the most adverse inference possible in calculating a margin when a party has been cooperative).

Respondent also refers to the previous distinction between cooperative and uncooperative parties under the Department's pre-URAA two-tiered Best Information Available ("BIA") methodology. Under this methodology, the most adverse BIA was reserved only for parties that refused to provide requested information, not those parties that were cooperative and made every effort to obtain and provide information requested by the Department. Respondent contends that, even under the pre-URAA law, the Department would have been prohibited from applying an adverse inference against KSC in the instant case. Respondent states that the Department's failure to follow its own practice as to KSC in this case "constitutes abusive agency action" and that it is incomprehensible and unjustifiable for the Department to ignore KSC's immense efforts to comply with the Department's requests for information.

KSC's fourth argument is that the Department's application of an adverse inference based on the "erroneous presumption" that, because they are affiliated KSC has sufficient "control" over CSI to compel that company to provide the requested data disregards the contrary evidence on record. Thereby, KSC argues, The Department violates both the antidumping statute and the Constitution. Respondent asserts that the Department's decision to apply adverse facts available was based on the erroneous assumption that KSC has operational or legal control over CSI and, as a result, could have obtained the requested information from CSI. Respondent does not dispute that KSC and CSI are affiliated parties, as defined by the statute, and agrees that normally it is reasonable to presume that closely affiliated parties have access to each other's documents and employees. What is illegal, KSC contends, is that the Department has refused to take into consideration the record evidence rebutting such a presumption in this case. KSC also claims that the Department's application of the affiliation definition in this manner raises federal due process concerns.

Respondent points out that 19 U.S.C. § 1677(33) provides that one party is deemed to "control" another party when the first party is "legally or operationally in a position to exercise restraint or direction over the other person." Respondent argues that, although it is reasonable to presume that if parties are related under the statute they are in the best position to obtain information from each other, the judicial precedents supporting this proposition do not also support the Department's application of a non-rebuttable presumption that this is the case. Thus, KSC argues, the Department may not ignore evidence on the record that demonstrates that the parties do *not* have access to each other's documents or employees. *See Koyo Seiko Co.* v. *United States*, 92 F. 3d 1162 (Fed. Cir. 1996); *Helmerich & Payne, Inc.* v. *United States* ("*Helmerich*"), 24 F. Supp. 2d 304 (CIT 1998); *Usinor Sacilor* v. *United States* ("*Usinor*"), 907 F. Supp. 426, 428–29 (CIT 1995); *Koyo Seiko Co.* v. *United States*, 905 F. Supp. 1112 (CIT 1995); *Holmes Prods. Corp* v. *United States*, 795 F. Supp. 1205, 1206–07 (CIT 1992).

Respondent argues that, in *Helmerich*, although the Court upheld the Department's decision to apply the facts available in that pre-URAA case in which the respondent twice failed to complete the questionnaire, it made a point of noting that it would have reached a different decision under the post-URAA law. In *Usinor*, respondent asserts, the Court had held that the Department should not have applied severely adverse BIA when missing data were beyond the control of the respondent; on remand, the Department agreed that the respondent could not realistically have collected the required data from its related subsidiaries. Respondent notes that, in the *Preamble* to its "facts available" regulation (19 C.F.R. § 351.308), the Department acknowledged that it agreed with the substance of an argument that where a respondent has made a good-faith effort to obtain information from an affiliate, failure of the affiliate to provide the information should not give rise to an adverse inference. *See* 62 FR at 2341. Thus, the Department stated that it would continue to determine the application of adverse inferences on a fact- and case-specific basis.

KSC asserts that the federal courts have been vigilant in rejecting claims that related corporate entities necessarily have access to each other's data. KSC argues that, in this respect, the federal courts have looked to other factors such as whether the requested documents were available during the regular course of business and whether the two parties operated as a single business unit. *See Cooper Industries, Inc.* v. *British Aerospace*, Inc., 102 F.R.D. 918, 919–20 (S.D.N.Y. 1984); *Camden Iron & Metal, Inc.*, v. *Marubeni Am. Corp.*, 138 F.R.D 438, 442 (D.N.J. 1991); *see also Glaxo, Inc.* v. *Boehringer Ingelhaim* Corp., 40 U.S.P.Q. 2d (BNA) 1848, 1850, 1851 n.4 (D.Conn. 1996) (the mere fact that documents are in the possession of a joint venturer does not automatically establish "control" over them). Respondent claims that the evidence on record demonstrates that KSC did not have the ability to obtain the requested information from CSI and that the Department learned during verification that, because of the structure and past practice of the joint venture, it was impossible for KSC to impose its will upon CSI. The fact that CSI is a petitioner (as well as a respondent) in this case is, according to KSC, the best evidence that KSC does not have operational control over CSI.

Respondent argues that any action by a federal agency that is taken in total disregard of the administrative record raises due process concerns. *See NEC Corp.* v. *United States*, 151 F. 3d 1361, 1370 (Fed. Cir. 1998) *cert. denied*, 119 S. Ct. 1029 (1999) (if application of an excessive dumping margin as a result of an adverse inference deprives importers of significant property interests, a cognizable due process claim under the Fifth Amendment of the Constitution will exist); *see also Techsnabexport, Ltd.* v. *United States*, 795 F. Supp. 428, 435–36 (CIT 1992) and cases cited therein.

Respondent asserts that the Supreme Court has established a three-part test to determine what procedures are required to comport with due process. This test balances the competing rights and interests at issue. *See Mathews* v. *Eldridge*, 424 U.S. 319, 334 (1976). If a statute is found to involve an "irrebuttable presumption," the focus of this balance shifts to whether "the presumption is not necessarily or universally true in fact," and whether "the government has available a

'reasonable alternative means of making the crucial determination.'" *See Rogers* v. *United States*, 575 F. Supp. 4, 9–10 (D. Mont. 1982); *Vlandis* v. *Kline*, 412 U.S. 441, 452 (1973) *Universal Restoration, Inc.* v. *United States*, 798 F. 2d 1400, 1406 (Fed. Cir. 1986). Respondent contends that the Department's application of adverse facts available against KSC in the instant case based on the refusal of an "adverse affiliate" to provide information requested by the Department amounts to a denial of due process rights by improperly raising an irrebuttable presumption. Respondent argues that the facts on the record show that it is not "universally true" that a respondent can control the actions of its affiliate, particularly when the affiliate is a petitioner in the case. *See Steven M.* v. *Gilhool*, 700 F. Supp. 261, 264–65 (E.D.P. 1988) (irrebuttable presumption can only survive if it is universally true). In this case, respondent argues, the Department has a reasonable alternative to an irrebuttable presumption available. The facts on record enable it to determine whether KSC actually does "control" CSI, rather than presuming such control exists.

KSC's fifth and final point is that the Department's decision to use the most adverse facts available contradicts important policy considerations underlying the antidumping law. One purpose of the adverse inference provision is to ensure that parties do not obtain a more favorable result by not cooperating in an agency proceeding. In this case, however, if the Department applies the adverse inference, CSI, the uncooperative petitioner, will benefit from refusing to provide information as a result of increased antidumping duties assessed on competing imports, whereas KSC, which has been a cooperative respondent, will be penalized by a significantly increased margin. Respondent contends that it is arguable that KSC would have been in a better position if it had refused to cooperate altogether, given that the highest margin alleged in the petition was lower than the margin calculated by the Department for KSC in its preliminary determination.

Finally, respondent claims that CSI, by controlling what information the Department has available for calculating a margin, has "usurped the investigatory role" assigned to the Department by defining the scope of the record. *See Allied-Signal Co. Aerospace* v. *United States*, 996 F.2d 1185, 1191 (Fed. Cir. 1993). Respondent concludes that the Department cannot allow any party, including a petitioner, to benefit from an attempt to control the results of the administrative process through its own unresponsiveness.

In their rebuttal, petitioners allege that the Department's application of adverse facts available for KSC's sales through its affiliate CSI is warranted by the facts and the law, and should not be modified in the Department's final determination. Petitioners' rebuttal argument is based on two points. First, they argue, the Department's decision to apply adverse facts available is appropriate under § 776 of the Act. Petitioners argue that KSC failed to act to the best of its ability by not responding to Section E of the Department's questionnaire regarding CSI's further manufactured sales. KSC's claim that, based on the record, the Department can find only CSI to be uncooperative, and its claim that the Department's decision to apply adverse facts available is unlawful because it is based on the presumption that KSC has operational or legal control over CSI, lack merit. According to the petitioners, the factual basis underlying the Department's decision to apply adverse facts available is supported in the record and provides adequate justification for the decision. Petitioners state that the Department has determined that it will consider an affiliated party's non-compliance with the Department's requests "as an omission imputable to the respondent" which merits the application of adverse facts available. *See Silicomanganese From Brazil*, 62 FR 37869, 37873 (1997) ("*Silicomanganese From Brazil* ") and *Roller Chain, Other Than Bicycle, From Japan*, 61 FR 64328, 64329 (1996). Due to KSC's significant ownership interest, CSI is undisputedly affiliated with KSC. As a result, petitioners argue, KSC had the burden of obtaining the requested information and providing it to the Department without regard to any alleged lack of cooperation from CSI. Therefore, the omission of CSI's further manufactured sales information is imputed to KSC and subjects KSC to the application of adverse facts available.

Petitioners cite *Silicomanganese From Brazil* and *Koyo Seiko Co., Ltd.* v. *United States*, 92 F. 3d 1166 (Fed. Cir. 1996) as evidence that the respondent, in order to be excused from submitting requested information in the possession of the affiliate, bears the burden of demonstrating that it does not have control over and cannot compel an affiliated party to submit such information. Petitioners also cite *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished From the People's Republic of China*, 63 FR 63842, 63857 (1998) and *Silicomanganese From Brazil* as evidence that the Department will apply adverse facts available when a respondent fails to meet its burden of demonstrating that it cannot obtain requested information in the possession of another party. According to petitioners, KSC failed to meet its burden to establish in that it acted in the best of its ability to obtain the requested information from CSI and that it could not have exerted control over CSI to obtain the information. Petitioners conclude that, despite CSI's Shareholders' Agreement, which shows that KSC had the right and the powers to exert such control, KSC did not attempt to exercise any of these rights and powers.

Petitioners support this conclusion by arguing that KSC failed to have its representatives on CSI's Board of Directors call a board meeting to address the lack of cooperation received by KSC from CSI, that the lack of cooperation was not discussed during a regular quarterly CSI board meeting, that during verification KSC officials acknowledged that this issue was not discussed among the joint venture partners, and more significantly, nothing on the record shows that KSC made any efforts to enforce its right under the Shareholders' Agreement. Petitioners argue that KSC should have exerted control over CSI and states that the fact that CSI is a petitioner in the immediate investigation does not establish that KSC lacked control over CSI. Petitioners also argue that KSC has not substantiated on the record its claims that CSI's officers refused to cooperate in responding to the Department's requests. The three letters from CSI's CEO placed on the record by KSC, according to petitioners, do not constitute refusals by CSI to provide the requested information. Petitioners cite letters dated October 29, 1998, November 6, 1998 and December 14, 1998 as evidence for this conclusion. Petitioners point out that KSC's counsel claimed for the first time during verification that, in response to CSI's concern regarding the disclosure of highly sensitive information as evidenced in these letters, KSC's counsel offered to compile a response maintaining the confidentiality of the CSI's information, but that the offer was rejected by CSI. Petitioners argue that there is no evidence of such an offer by KSC counsel in the letters provided for the record or in KSC's responses to the Department's supplemental questionnaires. Because KSC failed to substantiate and establish that it acted to the best of its ability in regard to CSI's further manufactured sales, petitioner

conclude that the Department's decision to apply adverse facts available is justified and the Department should continue to use adverse facts available in its final determination.

Petitioners' second point is that the Department's choice of facts available represents a valid exercise of its discretion and is consistent with the statutory purpose of applying adverse fact available. Petitioners disagree that KSC's cooperation in other aspects of the investigation prohibits the use of adverse facts available and that this remedy contravenes the purpose underlying the use of adverse inferences. Petitioners cite § 776(b) of the Act which discusses the information the Department may rely on in selecting adverse facts available and the discretion afforded to the Department in the application of adverse facts available. Petitioners contend that the Department's analysis in employing adverse facts available for KSC's sales through CSI in the its *Preliminary Determination* was in complete accordance with the Department's practice. *See Stainless Steel Wire Rod From Italy*, 63 FR 40422, 40428 (1998). Petitioners also cite *National Steel I*, 870 F. Supp. at 1136 and *Certain Welded Carbon Steel Pipes and Tubes from Thailand*, 62 FR 53808, 53820–53821 (1997) as evidence that, even assuming that KSC was substantially cooperative, the Department had broad discretion to select a level of adverse facts available that appropriately addressed KSC's failure to respond to the Department's Section E questionnaire for its sales through CSI. In response to KSC's claims that the remedy violates the purpose of the underlying use of adverse inferences, petitioner argue that this remedy of applying adverse facts available will serve to induce respondents to use all reasonably available means to exercise control over their affiliates in order to ensure that complete and accurate reporting of data is made to the Department for the calculation of accurate dumping margins. In conclusion, petitioner state that the Department, in its final determination, should adhere to its decision to apply adverse facts available.

Substantial Value Added

Petitioners contend that KSC's argument that it should not have been required to report further manufacturing information because CSI added substantial value to KSC's subject merchandise is devoid of merit. *See* § 772(e) of the Act (19 U.S.C. § 1677a(e)); *SAA* at 825; and 19 C.F.R. § 351.402(c)(2). Petitioners contend that, based on average purchase prices and reselling prices set forth by KSC in its November 10, 1998 letter to the Department, CSI's sales of further manufactured merchandise, which include cold-rolled steel, corrosion-resistant steel and pipe, do not meet the 65 percent threshold outlined in the Department's regulations. Petitioners argue that KSC's claim that the 65 percent test should not be seen as a "bright-line rule" must be rejected because the Department has stated that the 65 percent rule is, in fact, a "bright-line test." *See Preamble*, 62 FR at 27352. Even if KSC could satisfy the Department's test, petitioners argue that the special rule would not excuse KSC's failure to report CSI's further manufacturing information requested by the Department because the special rule is intended to relieve administrative burden, not excuse the reporting of required data. Petitioners contend that, in this case, the Department's calculations would not have been burdensome given that CSI's further manufacturing consisted predominantly of one or two additional processes. Petitioners conclude that, even if the 65 percent threshold had been met, it is likely that the Department would have used the actual further manufacturing data rather than one of the alternatives permitted by the statute. Accordingly, state petitioners, there is no justification for KSC's failure to respond to the Department's Section E questionnaire and as a result, the Department's application of adverse facts available remains appropriate.

Department's Position: We disagree with KSC with respect to the use of the "special rule" and with KSC and Sumitomo with respect to the Department's decision to use adverse facts available for the CSI sales.

Decision Not To Apply the "Special Rule"

As KSC has implicitly acknowledged, the extent to which CSI adds value to KSC merchandise through further processing does not meet the Department's normal 65 percent standard even for the further manufactured products with the highest level of value added. Furthermore, for products further manufactured into cold-rolled steel and pipe, the value added is less than half of the price charged to CSI's unaffiliated customer and a small amount of KSC's subject merchandise is resold by CSI "as is," with no value added at all.

Although the 65 percent benchmark is not an inflexible rule, it does provide useful guidance as to when it is no longer appropriate to consider certain sales in determining a producer's margin. The degree of value added by CSI simply does not reach this threshold, especially in view of the fact that the CSI sales represent a very significant portion of KSC's total U.S. sales. It would not be appropriate to abandon the Department's normal practice in this case for a much vaguer standard whereby the Department would obtain proxy values for sales through any affiliate whose value added could be considered "substantial." Thus, the Department properly has not applied the "special rule" of section 772(e) of the Act to the CSI sales.

Use of Adverse Facts Available for the CSI Sales

It is undisputed that KSC's sales of subject merchandise through its affiliate CSI are constructed export price ("CEP") sales. Therefore, the statute requires that the U.S. price of these sales for margin calculation purposes be calculated by using CSI's price to the first unaffiliated U.S. customer and adjusted, pursuant to section 772(c) and (d) of the Act, to account for certain expenses incurred by CSI and KSC. These adjustments include, but are not limited to, the costs associated with further manufacturing performed by CSI prior to its sale to the unaffiliated customer. In essence, for purposes of the CEP calculation, the statute treats the exporter and the U.S. affiliate collectively, rather than independently, regardless of whether the exporter controls the affiliate. Accordingly, KSC's argument that it does not "control" CSI is misplaced and irrelevant.

Because the statute requires that the Department base its margin calculations for the CSI sales on record information concerning the CSI sales themselves, the Department required that KSC and CSI, collectively, provide the necessary price and cost data for KSC's U.S. sales through CSI. It is also undisputed that KSC and CSI failed to provide this necessary information. Because the information possessed by a U.S. affiliate such as CSI is essential to the dumping determination, the antidumping law is thwarted if the affiliate refuses to provide the necessary information.

Section 776(a) of the Act requires that the Department use facts otherwise available when necessary information is not on the record, or an interested party withholds requested information, fails to provide such information in a timely manner, significantly impedes a proceeding, or provides information that cannot be verified. As the necessary information with respect to these sales is not on the record, the Department

must use the facts otherwise available in calculating the margins for the CSI sales.

Section 776(b) of the Act authorizes the Department to use an adverse inference in determining the facts otherwise available whenever an interested party has failed to cooperate with the Department by not acting to the best of its ability to comply with requests for information. KSC and CSI have neither provided the data on CSI's sales, as requested by the Department, nor demonstrated to the Department's satisfaction that this is not possible. Therefore, the Department finds that KSC and CSI have failed to cooperate by not acting to the best of their ability to comply with the Department's requests for information with respect to the CSI sales. Therefore, we have used an adverse inference in selecting the facts available with respect to the CSI sales.

Allowing a producer and its U.S. affiliate to decline to provide U.S. cost and sales data on a large portion of their U.S. sales would create considerable opportunities for such parties to mask future sales at less than fair value through the U.S. affiliate. The fact that the affiliate is a petitioner does not allay such concerns. Thus, this fact does not constitute an exception to the principle that the Department may make an adverse inference with respect to sales for which data is not provided unless the foreign exporter and its U.S. affiliate have acted to the best of their ability to provide such data.

While it is clear that KSC and CSI collectively have not acted to the best of their ability, we also disagree with KSC's claim that it alone acted to the best of its ability. At verification, the Department investigated this claim. *See KSC Verification Report at* 20–23. After careful consideration of all of the evidence on record, the Department finds that KSC did not act to the best of its ability with respect to the requested CSI data.

CSI is a joint venture between KSC and a large Brazilian mining operation, Companhia Valle do Rio Doce ("CVRD"). Through their respective U.S. affiliates, KSC and CVRD each own 50 percent of CSI. KSC's claim that it acted to the best of its ability with respect to this issue rests on its assertion that it was powerless to compel CSI to provide the Department with this data, given that CSI, as a petitioner in this case, refused to cooperate. Some of the most important evidence contradicting KSC on this issue, including information pertaining to the board and the Shareholders' Agreement, constitutes business proprietary information, and are discussed only in our proprietary *Analysis Memorandum*, which is hereby incorporated by reference. Generally, however, the record shows that, although KSC could have been much more active in obtaining the cooperation of CSI in this investigation, it limited its efforts to merely requesting the required data and otherwise took a "hands-off" approach with respect to CSI's alleged decision not to provide this data. For example, KSC officials stated that KSC did not instruct its members of the CSI board to address the issue, did not invoke the Shareholder's Agreement, and did not discuss this issue with its joint venture partner. This does not reach the "best efforts" threshold embodied in § 776(b). Furthermore, the fact that KSC has provided a great deal of information and has substantially cooperated with respect to other issues does not relieve it of the requirement to act to the best of its ability to provide the requested CSI information. With respect to the CSI sales, KSC has provided only minimal volume and value information and has not acted to the best of its ability to obtain further information. Thus, as to the missing CSI data, it cannot be said that KSC was fully cooperative and made every effort to obtain and provide the information requested by the Department. Therefore, even though full cooperation by KSC alone would not constrain the Department from using adverse facts available specifically with respect to the CSI sales, we do not agree with KSC's argument that it has "substantially cooperated" during this investigation.

As indicated above, the Department has based its decision to use adverse facts available on its finding that KSC and CSI collectively did not act to the best of their ability with respect to the CSI data, not, as KSC claims, on any "presumption" that solely because the two companies are "affiliated" within the meaning of the statute, KSC necessarily has sufficient control to compel CSI to provide this data. As KSC has noted, the Department makes such decisions on a case-specific basis, using the totality of the record evidence. *See Preamble*, 62 FR at 27341. That is what the Department has done in this case. The Department provided KSC with extensive opportunities, prior to and at verification, to explain and document its efforts to obtain the necessary data, and has considered all of this data in making its determination. While the Department has considered that the record supports KSC's claim that it did make some effort to obtain the data and that CSI's management rebuffed these efforts, the record also shows that KSC essentially acquiesced in CSI's decision not to provide this data. Given KSC's relationship with this 50/50 joint venture, as detailed in the *Home Market Sales Verification Report*, dated March 26, 1999, this did not constitute making its best efforts to obtain the data. Because the Department did not rely upon any "irrebuttable presumption" of control arising out of the statutory definition of affiliation in reaching this determination, KSC's arguments based on this theory, including its due process argument, have no merit with respect to this case.

Finally, KSC's claim that use of an adverse inference in this case will contradict the Department's policy of not rewarding uncooperative parties is likewise incorrect. As KSC notes, one purpose of an adverse inference is to ensure that parties do not obtain a more favorable result by not cooperating. However, KSC misconstrues this to mean that the Department can or should somehow take into account the effect of a dumping margin on other business interests of an interested party. We disagree. In applying an adverse inference, the Department can only reasonably ensure that the dumping margin determined for the subject merchandise is not less than the actual margin we would have found had the parties cooperated. We cannot reasonably predict or weigh the multitude of effects this might or might not have on the parties involved. In this case, we can only ensure that KSC and CSI do not obtain a more favorable dumping margin on subject merchandise. As an affiliated importer and/or seller of KSC's subject merchandise, CSI will be affected by any margin assigned to KSC's exports of this merchandise. Neither KSC nor CSI will be rewarded with more favorable dumping margins. Any benefit accruing to CSI from its non-cooperation will flow not from its role as an affiliate-respondent, but from its role as a U.S. producer of non-subject merchandise. Furthermore, KSC, as a 50 percent shareholder in CSI, will share in any such benefit. In addition, we note that it is not the use of the adverse inference which allows KSC's U.S. affiliate to restrict the scope of data on the record—it is CSI's decision to withhold that data and KSC's decision to acquiesce in this posture. Neither KSC nor CSI should be relieved of the obligation to report data on sales through CSI in this or future proceedings. Thus, while KSC's business relationships may involve certain internal conflicts of interest, the use of an adverse inference in determining the dumping margins on CSI sales does not contradict the Department's policies.

For the final determination, the Department has used as adverse facts available the second highest calculated margin for an individual CONNUM. Although no party commented on the rate chosen as facts available in the preliminary determination, we have reexamined our choice for this final determination. In the preliminary determination, we used as the facts available margin the highest margin by CONNUM. However, upon reexamining that decision, we find that the margin chosen was not sufficiently within the mainstream of KSC's sales in that the rate was derived from sales of a product that accounted for a very small portion of KSC's total sales as well as the highest rate by CONNUM. In selecting the facts available margin for the final determination, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the adverse facts available rule to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of KSC's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected a margin for a CONNUM that involved substantial commercial quantities and thus fell within the mainstream of KSC's transactions based on quantity. Finally, we found nothing on the record to indicate that the sales that we selected were not transacted in a normal manner.

Changes to the Department's SAS Computer Programming

Comment 32: NKK's Clerical Error Allegation.

NKK requests that the Department correct a ministerial error in the Department's preliminary calculation of NKK's dumping margin. NKK states that, in accordance with the Department's instructions, it reported all values in its U.S. and home market databases in the currency in which these values were incurred. NKK therefore reported all selling expenses in Japanese yen. NKK states that the Department, in its margin calculation program, intended to convert reported home market and U.S. price and expense amounts to U.S. dollars before determining NKK's sales-specific and weighted-average dumping margin. However, NKK concludes, the Department failed to convert U.S. direct and indirect expenses from Japanese yen to U.S. dollars when calculating the actual dumping margin.

Specifically, NKK asserts that the Department, in calculating foreign unit price in U.S. dollars (FUPDOL), did not apply the appropriate exchange rate. NKK states that when the Department calculates FUPDOL in an exporter price calculation, U.S. direct and indirect expenses are not deducted from U.S. price in the calculation of net U.S. price (NETPRIU). Thus, U.S. direct and indirect expenses, through a commission offset adjustment, are added to normal value when calculating FUPDOL. However, in calculating NKK's preliminary dumping margin, the Department did not convert U.S. direct and indirect expenses prior to the FUPDOL calculation and, as a result, yen expenses were mistakenly added to a dollar unit value in calculating FUPDOL. NKK provided suggested computer programming language for use in correcting this error. Petitioners have not commented on this issue in their rebuttal brief.

Department's Position: The Department agrees that this was an error, and has corrected the yen to dollar exchange rate conversion error in its final determination. Pursuant to § 351.224 of the Department's regulations, the effective date of this correction will be 30 days after the filing of the alleged clerical error.

Comment 33: Changes to NKK's Preliminary Margin Calculation.

Petitioners assert that the Department should correct three ministerial errors in the arm's length and model match programs used in calculating NKK's dumping margin. First, petitioners state that the Department should add the variable OVERRUNH to the KEEP statement for home market sales at line 786 of the model match program. Second, petitioners argue that The Department should revise line 98 (pertaining to the arm's length test) in the manner indicated in its case brief. Finally, petitioners argue that the Department should revise line 863 of the model match program in the manner indicated in its case brief. Petitioners provided suggested computer programming language to implement these corrections. NKK did not rebut petitioners' allegation in their rebuttal brief.

Department's Position: The Department agrees with petitioners and has made the appropriate changes to the arm's length program, model match program and margin calculation program.

Comment 34: Changes to NSC's Preliminary Margin Calculation Program.

NSC argues that the Department erred by including the sales to which it had assigned a facts available margin in its calculations of the margins for NSC's "mainstream" sales. NSC contends that these sales should have been excluded from the calculation once the facts available margins were assigned. Petitioners argue that the Department should reject NSC's argument and follow its established practice of determining the overall weighted average percent margin across all CONNUMS by using the value (U.S. price by CONNUM quantity by CONNUM), not just the quantity. Petitioners argue that unless this value is used in the calculation, the impact of facts available will be diminished.

Secondly, NSC argues that because the Department matches prime products to prime products, and because there were no U.S. sales of non-prime merchandise, sales of non-prime merchandise were effectively eliminated from the preliminary results margin calculation program. However, NSC states, the Department erred by combining home market sales of prime and non-prime merchandise in the same CONNUM to calculate the percentage of sales above and below the cost of production. NSC argues that this creates a distorting error in the determination of whether sales of a particular CONNUM were made below cost. Thus, NSC argues, the preliminary margin determination is contrary to the Department's policy of conducting separate cost tests on prime and non-prime products. *See Notice of Final Determination of Sales at Less than Fair Value: Stainless Steel Plate in Coils ("SSPC") from the Republic of Korea*, 64 FR 15444, 15455 (March 31, 1999); *Notice of Final Results of Antidumping Duty Administrative Review: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands*, 61 FR 48465, 48466 (September 13, 1996). Petitioners have not commented on this argument.

Department's Position: The Department agrees that prime and non-prime merchandise should not be combined to determine whether sales fell above or below cost. As noted by NSC, it is the Department's longstanding policy to conduct separate cost tests for prime and non-prime materials. Therefore, for the final determination, the Department has excluded non-prime merchandise from its analysis.

However, the Department agrees with petitioners reasoning as to why some sales should be used in the calculation of the overall margin and continues to use the same analysis it did in the preliminary determination.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(B) of the Act, we are directing the Customs Service to continue to

suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after November 21, 1998 (90 days prior to the date of publication of the *Preliminary Determination* in the **Federal Register**) for KSC and those companies which fall under the "all-others" rate. In addition, we will continue to suspend liquidation of all entries of subject merchandise from Japan that were entered, or withdrawn from warehouse, for consumption on or after February 19, 1999 (the date of publication of the Department's preliminary determination) for NSC and NKK. We shall refund cash deposits and release bonds for NSC and NKK for the period between November 21, 1998 and February 19, 1999 (i.e., the critical circumstances period). The Customs Service shall continue to require a cash deposit or posting of a bond equal to the estimated amount by which the normal value exceeds the U.S. price as shown below. These suspension of liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Company	Margins (percent)
Nippon Steel Corporation	19.65
NKK Corporation	17.86
Kawasaki Steel Corporation	67.14
All Others	29.30

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. Because our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: April 28, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

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BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Oil Country Tubular Goods from Mexico; Antidumping Duty Administrative Review; Extension of Time Limit

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary determination in antidumping duty administrative review of oil country tubular goods from Mexico.

SUMMARY: The Department of Commerce (the Department) is extending the time limit for the preliminary results of the administrative review of the antidumping duty order on oil country tubular goods from Mexico. This review covers the period August 1, 1997 through July 31, 1998.

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: John Drury or Linda Ludwig, Office of AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–0195 or 482–3833, respectively.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended, the Department is extending the time limit for completion of the preliminary results until August 31, 1999, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act of 1994 (19 U.S.C. § 1675 (a)(3)(A)). *See* memorandum to Robert S. LaRussa from Joseph A. Spetrini regarding the extension of the case deadline, xxxxxx, 1999.

Dated: April 26, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

[FR Doc. 99–11424 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–201–810]

Certain Cut-to-Length Carbon Steel Plate From Mexico: Postponement of Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limits for preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce (Department) is extending by no longer than 120 days the time limit of the preliminary results of the administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico, covering the period January 1, 1997, through December 31, 1997, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: May 6, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Eric Greynolds, Office of CVD/AD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0984 and 482–6071, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations as codified at 19 CFR Part 351 (April 1998).

Background

On September 29, 1998, the Department initiated an administrative review of the countervailing duty order on certain cut-to-length carbon steel plate from Mexico, covering the period January 1, 1997, through December 31, 1997 (63 FR 51893). In our notice of initiation, we stated our intention to issue the final results of this review no later than August 31, 1999. The preliminary results of review are

currently due no later than May 3, 1999. Due to the complexity of the issues and the fact that certain subsidy allegations are being examined for the first time, the Department has determined that it is not practicable to complete this review within the time limits mandated by the Act (19 U.S.C. 1675 (a)(3)(A)).

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) allows the Department to extend this time period to a maximum of 365 days and 180 days, respectively.

We determine that it is not practicable to complete the preliminary results of this review within the original time frame. *See* Memorandum from Bernard Carreau to Robert S. LaRussa, "Extension of Preliminary Results: Certain Cut-to-Length Carbon Steel Plate from Mexico," dated April 13, 1999.

The deadline for issuing the preliminary results of this review is now no later than August 31, 1999, which is the full amount of time the Department can extend the preliminary results under section 751(a)(3)(A) of the Act. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

Dated: April 13, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 99–11284 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043099B]

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This request is being submitted under the emergency processing procedures of the Paperwork Reduction Act.

Agency: National Oceanic and Atmospheric Administration.

Title: Beluga Whale Harvest Report.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New Collection—Emergency Collection Request.

Burden: 5 hours.

Number of Respondents: 10.

Avg. Hours Per Response: 30 minutes.

Needs and Uses: The National Marine Fisheries Service will require Alaskan Natives who harvest beluga whales in Cook Inlet to report certain information and to submit the labeled jawbones on the whales taken. The information will be used to evaluate the health and stability of this stock and to construct a management regime that will provide for a sustainable subsistence harvest by Alaskan Natives.

Affected Public: Individuals.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent by Monday, May 10, 1999, to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: April 29, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11397 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042199A]

Marine Mammals; File No. 782–1355–02

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit amendment.

SUMMARY: Notice is hereby given that the National Marine Mammal Laboratory, 7600 Sand Point Way, NE., Seattle, WA 98115 has been issued an amendment to scientific research Permit No. 782–1355.

ADDRESSES: The amendment and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 22, 1999, notice was published in the **Federal Register** (64 FR 13780) that an amendment of Permit No. 782–1355, issued July 15, 1997 (62 FR 39826), had been requested by the above-named organization. The requested amendment has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*),and the provisions of § 216.39 of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 782–1355 authorizes the National Marine Mammal Laboratory to take Pacific Harbor seals (*Phoca vitulina*) in the following manner: harass during census flights; capture, restrain, measure (weight length, girth), sample (flipper punch, vibrissa, blood, blubber/muscle biopsy, ultra sound, enema), radio tag, flipper tag, and release 500 animals; and incidentally harass up to 2500 during the conduct of these activities, and during collection of scat samples from haulouts.

The Holder is now authorized to capture, restrain, mark measure, flipper tag, instrument, and sedate (when necessary), ringed seals (*Phoca hispida*); and harass ringed seals, bearded seals (*Erignathus barbatus*), ribbon seals (*Phoca fasciata*), and spotted seals (*Phoca largha*) during aerial stock assessments.

Dated: April 29, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11396 Filed 5–5–99; 8:45 am]

BILLING CODE 3510–22–F

COMMODITY FUTURES TRADING COMMISSION

Agricultural Advisory Committee; Eighth Renewal

The Commodity Futures Trading Commission has determined to renew again for a period of two years its advisory committee designated as the "Commodity Futures Trading Commission Agricultural Advisory Committee." The Commission certifies that the renewal of the advisory committee is in the public interest in connection with duties imposed on the Commission by the Commodity Exchange Act, 7 U.S.C. 1, *et seq.*, as amended.

The objectives and scope of activities of the Agricultural Advisory Committee are to conduct public meetings and submit reports and recommendations on issues affecting agricultural producers, processors, lenders and others interested in or affected by agricultural commodities markets, and to facilitate communications between the Commission and the diverse agricultural and agriculture-related organizations represented on the Committee.

Commissioner David D. Spears serves as Chairman and Designated Federal Official of the Agricultural Advisory Committee. The Committee's membership represents a cross-section of interested and affected groups including representatives of producers, processors, lenders and other interested agricultural groups.

Interested persons may obtain information or make comments by writing to the Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581.

Issued in Washington, DC on April 29, 1999, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 99–11323 Filed 5–5–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Mercantile Exchange Petition for Exemption From the Statutory Dual Trading Prohibition in Affected Contract Markets

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of petition for exemption from the prohibition on duel trading in an affected contract market.

SUMMARY: The Chicago Mercantile Exchange ("CME" or "Exchange") has submitted to the Commodity Futures Trading Commission ("Commission") a petition for exemption from the statutory prohibition against dual trading in two contract markets. The petition requests an exemption for two newly affected contract markets that trade electronically on CME's Globex$_2$ system. Copies of the entire file, including any future submissions, will be available to the public upon request, except to the extent the Exchange has requested confidential treatment.

ADDRESSES: Copies of the file are available from the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581. Reference should be made to the CME Globex$_2$ dual trading exemption petition file.

FOR FURTHER INFORMATION CONTACT: Adam E. Wernow, Attorney-Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581; telephone: (202) 418–5042; electronic mail: awernow@cftc.gov.

SUPPLEMENTARY INFORMATION: Pursuant to Sections 4j(a)(1) and (3) of the Commodity Exchange Act ("Act") and Commission Regulation 155.5 thereunder, a board of trade may submit a petition to the Commission to exempt any of its affected contract markets (markets with an average daily trading volume equal to or in excess of 8,000 contracts for four consecutive quarters) from the prohibition against dual trading. Regulation 155.5(d)(6) authorizes the Director of the Division of Trading and Markets to publish notice of each exemption petition deemed complete under Regulation 155.5(d) and to make the petition available to the public as required by Section 4j(a)(5) of the Act.

CME submitted a petition for a dual trading exemption dated November 17, 1998, and received by the Commission on November 20, 1998, for all of its contracts that electronically trade on the Exchange's Globex$_2$ system. Presently, only CME's E-Mini S&P 500 and Eurodollar futures contracts qualify as affected contract markets for purposes of the dual trading prohibition. Consequently, the Commission only will consider these markets for an exemption.

Copies of the file containing this petition and supporting materials, as well as any future submissions, except to the extent the Exchange has requested confidential treatment in accordance with 17 CFR 145.9, are available for inspection at the Commission's Office of the Secretariat, Three Lafayette Centre, 1155 21st Street, NW, Washington, DC 20581, and may be obtained by mail at that address or by telephone at (202) 418–5100.

Petition materials subject to CME's request for confidential treatment may be available upon request pursuant to the Freedom of Information Act ("FOIA") (5 U.S.C. § 552) and the Commission's regulations thereunder (17 CFR Part 145), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to FOIA, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the above address in accordance with 17 CFR 145.7 and 145.8.

Application of the prohibition in the contract markets covered by the petition has been suspended in accordance with Commission Regulation 155.5(d)(5) and will remain suspended until the petition is acted upon.

Issued in Washington, DC, on April 29, 1999.

Alan L. Seifert,

Deputy Director, Division of Trading and Markets.

[FR Doc. 99–11367 Filed 5–5–99; 8:45 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Application of the KCBT for Designation as a Contract Market in Western Natural Gas Index Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Kansas City Board of Trade (KCBT or Exchange) has applied for designation as a contract market in western natural gas index futures contracts. The proposal was submitted under the Commission's 45-day Fast Track procedures. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purpose of the Commodity Exchange Act.

DATES: Comments must be received on or before May 21, 1999.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the KCBT western natural gas index futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Joseph Storer of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581, telephone (202) 418–5282. Facsimile number: (202) 418–5527. Electronic mail: jstorer@cftc.gov

SUPPLEMENTARY INFORMATION: The proposed designation application was submitted pursuant to the Commission's Fast Track procedures for streamlining the review of futures contract rule amendments and new contract approvals (62 FR 10434). Under those procedures, the proposal, absent any contrary action by the Commission, may be deemed approved at the close of business on June 7, 1999, 45 days after receipt of the proposal. In view of the limited review period under the Fast Track procedures, the Commission has determined to publish for public comment notice of the availability of the terms and conditions for 15 days, rather than 30 days as provided for proposals submitted under the regular review procedures.

Copies of the proposed contract terms will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the internet on the CFTC website at www.cftc.gov under "What's New & Pending".

Other materials submitted by the KCBT in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposal, or with respect to other materials submitted by the KCBT, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 21st Street NW, Washington, DC 20581 by the specified date.

Issued in Washington, DC, on April 28, 1999.

John R. Mielke,

Acting Director.

[FR Doc. 99–11322 Filed 5–5–99; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), DoD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by July 6, 1999.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the United States Total Army Personnel Command, ATTN: TAPC–OPD–C (Annette Bush), 200 Stovall Street, Alexandria, Virginia 22332–0413. Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

Title, Associated Form, and OMB Number: Application and Contract for Establishment of a Junior Reserve Officers' Training Corps Unit, DA Form 3126, OMB Number 0702–0021.

Needs and Uses: The DA Form 3126 will be initiated by the school desiring to host a unit and countersigned by a representative of the Secretary of the Army. The contract (DA Form 3126) is necessary to establish a mutual agreement between the secondary institution and the U.S. Government while keeping within the parameters of the law. The data provided on the application is used to determine which school will be selected.

Affected Public: State, Local or Tribal Government.

Annual Burden Hours: 70.

Number of Respondents: 70.

Responses Per Respondent: 1.

Average Burden Per Response: 1 hour.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION: Educational institutions desiring to host a Junior ROTC unit may apply by using a DA Form 3126. The DA Form 3126 documents the agreement and becomes a contract signed by both the institution and the U.S. Government. The DA Form 3126 provides information on the school's facilities and states specific conditions if a JROTC unit is placed at the institution. The data provided on the application is used to determine which school will be selected.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 99–11411 Filed 5–5–99; 8:45 am]

BILLING CODE 3710–08–P

DEPARMENT OF DEFENSE

Corps of Engineers

Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Dade County Beach Erosion Control and Hurricane Protection Project, for a Test Beach Fill Using a Domestic Upland Sand Source Based on a Generic Sand Specification

AGENCY: Army Corps of Engineers, Department of Defense.

ACTION: Notice of intent.

SUMMARY: The Jacksonville District, U.S. Army Corps of Engineers intends to prepare a Draft Environmental Impact Statement for the Dade County Beach Erosion Control and Hurricane Protection Project, for a Test Beach Fill using a domestic upland sand source.

The source of sand will be determined from prospective contractor proposals based on a generic sand specification developed by the Jacksonville District. The study is a cooperative effort between the U.S. Army Corps of Engineers and the Dade County Department of Environmental Resources Management (DERM), the non-Federal sponsor for the project.

FOR FURTHER INFORMATION CONTACT: Kenneth Dugger, 904–232–1686, Environmental Branch, Planning Division, PO Box 4970, Jacksonville, Florida 32232–0019.

SUPPLEMENTARY INFORMATION: The Beach Erosion Control and Hurricane Protection (BEC & HP) Project for Dade County, Florida was authorized by the Flood Control Act of 1968. The authorized project provides for the nourishment of 9.3 miles of shoreline between Government Cut and Bakers Haulover Inlet and for the nourishment of 1.2 miles of shoreline at Haulover Beach Park. The Supplemental Appropriations Act of 1985 and the Water Resources Development Act 1986 (Pub. L. 99–662) provided authority for extending the northern limit of the authorized project to include the construction of protective beach along the 2.5 mile reach of shoreline north of Haulover Beach Park (Sunny Isles) and for periodic nourishment of the of the overall project for 50 years.

Offshore borrow sources of beach quality sediment along the Dade County shoreline have been almost completely depleted, and alternative sources of material will be required in the near future to provide continued renourishment of the project. Although sediment from offshore borrow sites has traditionally been used for project renourishment, the use of sand from other sources may provide an effective alternative for future renourishment requirements.

The purpose of the test fill, in addition to providing nourishment to an eroded portion of the Federal project along northern Miami Beach, is to evaluate the economic, engineering and environmental performance of an upland sand source on the beach erosion control project.

The proposed test fill site would be located along northern Miami Beach, and would extend along approximately 1.5 miles of shoreline which has been an erosional area since the project was constructed. The proposed site is located far from adjacent inlets, and no significant structures exist in this vicinity to disrupt the "natural" coastal processes. The total volume of the test fill is expected to be approximately 600,000 cubic yards. The currently proposed location for the test fill is between 83rd and 63rd Streets in Miami Beach (DEP monuments R–36 to R–47). The exact source of sand for the test beach would be determined during the procurement process. Sand sources proposed by contractors would have to meet a set of generic sand specifications and pass a screening process for sand characteristics and potential environmental impacts.

In order to evaluate the performance of the test fill, a monitoring program will be established. The monitoring program would consist of physical surveys, sediment sampling and analysis, and aerial photography. In addition, environmental monitoring of the test fill would be performed. The environmental studies would focus mainly on the impacts of the material on sea turtle nesting and benthic infaunal communities.

Alternatives: At this time, the only known alternative to performing the test beach fill is not performing the test or the no-action alternative.

Issues: The EIS will consider impacts on coral reefs and other hardbottom communities, endangered and threatened species, shore protection, water quality, aesthetics and recreation, fish and wildlife resources, cultural resources, energy conservation, socio-economic resources, and other impacts identified through scoping, public involvement, and interagency coordination.

Scoping: A copy of this notice will be sent to interested parties to initiate scoping. All parties are invited to participate in the scoping process by identifying any additional concerns on issues, studies needed, alternatives, procedures, and other matters related to the scoping process. At this time, there are no plans for a public scoping meeting.

Public Involvement: We invite the participation of affected Federal, state and local agencies, affected Indian tribes, and other interested private organizations and parties.

Coordination: The proposed action is being coordinated with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service under Section 7 of the Endangered Species Act, with the FWS under the Fish and Wildlife Coordination Act, and with the State Historic Preservation Officer. In addition, we have coordinated with the Florida Department of Environmental Protection, the dredging industry, academic experts, and other interests on this matter.

Other Environmental Review and Consultation: The proposed action would involve evaluation for compliance with guidelines pursuant to section 404(b) of the Clean Water Act; application (to the State of Florida) for Water Quality Certification pursuant to section 401 of the Clean Water Act; certification of state lands, easements, and rights of way; and determination of Coastal Zone Management Act consistency.

Agency Role: As the non-Federal sponsor and leading local expert; DERM will provide extensive information and assistance on the resources to be impacted, mitigation measures, and alternatives.

DEIS Preparation: It is estimated that the DEIS will be available to the public on or about July 16, 1999. We plan to post the DEIS on the environmental documents page of the Jacksonville District's web site (http//www.saj.usace.army.mil/pd/env-doc.htm).

Dated: April 22, 1999.

James C. Duck,

Chief, Planning Division.

[FR Doc. 99–11409 Filed 5–5–99; 8:45 am]

BILLING CODE 3710–AJ–M

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting (FICC)

AGENCY: Federal Interagency Coordinating Council, Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of a forthcoming meeting of the Federal Interagency Coordinating Council, and invites people to participate. Notice of this meeting is required under section 644(c) of the Reauthorization Individuals with Disabilities Education Act (IDEA) and is intended to notify the general public of their opportunity to attend this meeting. The meeting will be accessible to individuals with disabilities.

DATE AND TIME: Thursday, June 10, 1999, from 1:00 p.m. to 4:30 p.m.

ADDRESS: Holiday Inn, 550 C Street, S.W., Washington, D.C. 20202, near the Federal Center Southwest and L'Enfant metro stops.

FOR FURTHER INFORMATION CONTACT: Libby Doggett or Kim Lawrence, U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–9754.

SUPPLEMENTARY INFORMATION: The Federal Interagency Coordinating Council (FICC) is established under section 644(c) of the Reauthorization Individuals with Disabilities Education Act (20 U.S.C. 1484a). The Council is established to: (1) Minimize duplication across Federal, State and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by the Assistant Secretary for Special Education and Rehabilitative Services.

The FICC will attend to ongoing work including reports from a technical assistance survey and a Department of Defense Task Force. A list of Minimum Health Benefits for Children with Disabilities, which has been distributed to agencies and other organizations for comment, will be considered. A presentation by Marie Bristol on autism will also be held. New Family Representatives will be introduced.

To request a packet of materials or accommodations such as interpreters for persons who are hearing impaired, materials in Braille, large print, or cassette please call Kim Lawrence at (202) 205–5507 (voice) or (202) 205–9754 (TDD) my May 21, 1999.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW, Room 3080, Switzer Building, Washington, DC 20202–2644, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal Holidays.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Service.

[FR Doc. 99–11417 Filed 5–05–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

[Docket No. EA–121–A]

Application To Export Electric Energy; Electric Clearinghouse, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Electric Clearinghouse, Inc. (ECI) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 7, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736),

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202-586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On February 24, 1997, the Office of Fossil energy (FE) of the Department of Energy (DOE) authorized ECI to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization expired on February 24, 1999. On April 8, 1999, ECI filed an application with FE for renewal of this export authority and requested that the Order be issued for a 5-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–121. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–121 proceeding.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on ECI's request to export to Mexico should be clearly marked with Docket EA–121–A. Additional copies are to be filed directly with Daniel A. King, Esq., Electric Clearinghouse, Inc., 805 15th Street, N.W., Suite 510–A, Washington, D.C. 20005–2207 and Kathryn L. Patton, Esq., Electric Clearinghouse, Inc., 1000 Louisiana, Suite 5800, Houston, TX 77002–5050.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, D.C., on April 30, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–11404 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation Policy; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation Between the Government of the United States of America and the Government of Canada Concerning the Civil Uses of Atomic Energy and the Agreement for Cooperation Between the Government of the United States of America and the Government of the Republic of Korea Concerning Civil Uses of Atomic Energy. This notice is

being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160).

The subsequent arrangement RTD/KO(CA)–8 concerns the retransfer of one low enriched uranium fuel bundle (one type contains 36-Element, another type contains 18-Element) consisting of 100,000 grams of uranium, of which 19,750 grams of the isotope U–235 is enriched to less than 20 percent, from Canada to Republic of Korea for use as additional fueling for the HANARO research reactor. This material is U.S. origin and thus requires U.S. approval for retransfer to a third country.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Dated: April 30, 1999.

For the Department of Energy.

Edward T. Fei,

Deputy Director, International Policy and Analysis Division, Office of Arms Control and Nonproliferation.

[FR Doc. 99–11405 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment, Regarding Bonneville Power Administration's Subscription, Power Sales to Customers and Customers' Sales of Firm Resources

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of draft policy proposal.

SUMMARY: BPA is publishing a draft policy proposal for addressing certain issues under sections 5(b) and 9(c) of the Northwest Electric Power Planning and Conservation Act, (the Northwest Power Act), Pub. L. 96–501, and section 3(d) of the Act of August 31, 1964 (the Northwest Preference Act), Pub. L. 88–552, regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts.

BPA is initiating development of a policy that will provide policy guidance on implementation of the Power Subscription Strategy under applicable statutes and describe how certain factual determinations needed for BPA subscription power sales contracts will be made.

DATES: Public meeting dates: May 27, 1999, and June 2, 1999. Close of comment date: June 11, 1999.

ADDRESSES: If you are interested in commenting on the policy proposal regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts, you have several options.

1. You can send written comments to Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212, or you can fax comments to (503) 230–4019. If you wish to send your comments electronically, email comments to: *comment@bpa.gov*. Comments must be received by close of business Friday, June 11, 1999.

2. You also can attend one or both of the two public comment meetings. One meeting will be held on Thursday, May 27, 1999, in Spokane, Washington, at Cavanaugh's Inn at the Park, 303 W. North River Drive. Another meeting will be held in Portland, Oregon, on Wednesday, June 2, 1999, at the Sheraton Portland Airport Hotel, at 8235 NE Airport Way. Both meetings will begin at 10:00 a.m. Comments also will be collected on BPA's Standards for Service proposal. If any additional meetings are scheduled, the information will be posted on the web site listed below.

http://www.bpa.gov/Power/subscription

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519. Information can also be obtained from your BPA Account Executive or from:

Ms. Ruth Bennett, Acting Vice President, Power Marketing, 905 NE 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640

Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7409

Mr. John Elizalde, Acting Manager, Western Power Business Area, 700 NE Multnomah, Suite 400, Portland, OR 97232, telephone (503) 230–7597

SUPPLEMENTARY INFORMATION: On December 21, 1998, BPA published its Power Subscription Strategy and Record of Decision for selling Federal power under new contracts with its public utility, investor-owned utility and direct service industrial customers. The Power Subscription Strategy stated overall policies for determining the amount of power that would be offered to Pacific Northwest public utilities and investor-owned utilities under section 5(b)(1) of the Northwest Power Act.

This **Federal Register** Notice presents BPA's draft proposal for implementing the Power Subscription Strategy under its post-2001 power sales contracts. The proposal recommends contract mechanisms for determining the amount of electric power BPA will offer to public and investor-owned utilities. It also proposes contract mechanisms for determining the amount of electric power BPA will offer investor-owned utilities, based on a firm power requirement load, in settlement of their rights to service under the residential exchange program created under section 5(c) of the Northwest Power Act. Based on section 3(d) of the Northwest Preference Act and 9(c) of the Northwest Power Act, the proposal recommends principles for determining the effect a customer's sale of its non-Federal firm resources may have on the amount of Federal power that BPA will offer to the customer under its BPA power sales contract.

The Northwest Power Act provisions are:

5(b)(1) Whenever requested, the Administrator shall offer to sell to each requesting public body and cooperative entitled to preference and priority under the Bonneville Project Act of 1937 [16 U.S.C. 832 *et seq.*] and to each requesting investor-owned utility electric power to meet the firm power load of such public body, cooperative or investor-owned utility in the region to the extent that such firm power load exceeds—

(A). the capability of such entity's firm peaking and energy resources used in the year prior to December 5, 1980, to serve its firm load in the region, and

(B). Such other resources as such entity determines, pursuant to contracts under this chapter, will be used to serve its firm load in the region.

5(b)(1) In determining the resources which are used to serve a firm load, for purposes of subparagraphs (A) and (B), any resources used to serve a firm load under such subparagraphs shall be treated as continuing to be so used, unless such use is discontinued with the consent of the Administrator, or unless such use is discontinued because of obsolescence, retirement, loss of resource, or loss of contract rights. 16 U.S.C. 839c(b)(1)

9(c) Any contract of the Administrator for the sale or exchange of electric power for use outside the Pacific Northwest shall be subject to limitations and conditions corresponding to those provided in sections 2 and 3 of the Act of August 23, 1964 (16 U.S.C 837a and 837b) for any contract for the sale, delivery, or exchange of hydroelectric energy or peaking capacity generated within the Pacific Northwest for use outside the Pacific Northwest. In applying such sections for the purposes of this subsection, the term "surplus energy" shall mean electric energy for which there is no market in the Pacific Northwest at any rate established for the

disposition of such energy, and the term "surplus peaking capacity" shall mean electric peaking capacity for which there is no demand in the Pacific Northwest at the rate established for the disposition of such capacity. The authority granted, and duties imposed upon, the Secretary by sections 5 and 7 of such Act (16 U.S.C. 837d and 837f) [16 U.S.C. 837d and 837f] shall also apply to the Administrator in connection with resources acquired by the Administrator pursuant to this chapter. *The Administrator shall, in making any determination, under any contract executed pursuant to section 839c of this title, of the electric power requirements of any Pacific Northwest customer, which is a non-Federal entity having its own generation, exclude, in addition to hydroelectric generated energy excluded from such requirements pursuant to section 3(d) of such Act (16 U.S.C. 837b(d)), any amount of energy included in the resources of such customer for service to firm loads in the region if (1) such amount was disposed of by such customer outside the region, and (2) as a result of such disposition, the firm. energy requirements of such customer other customers of the Administrator are increased. Such amount of energy shall not be excluded, if the Administrator determines that through reasonable measures such amount of energy could not be conserved or otherwise retained for service to regional loads. The Administrator may sell as replacement for any amount of energy so excluded only energy that would otherwise be surplus.* 16 U.S.C. 389f(c) (emphasis supplied).

The Northwest Preference Act provision is:

3(d) The Secretary, in making any determination of the energy requirements of any Pacific Northwest customer which is a non-Federal utility having hydroelectric generating facilities, shall exclude any amounts of hydroelectric energy generated in the Pacific Northwest and disposed of outside the Pacific Northwest by the utility which, through reasonable measures, could have been conserved or otherwise kept available for the utility's own needs in the Pacific Northwest. The Secretary may sell the utility as a replacement therefor only what would otherwise be surplus energy. 16 U.S.C. 837b(d).

Net Requirements

The term "net requirement" means the amount of Federal power that a public utility, cooperative or investor-owned utility is entitled to purchase from BPA to serve its regional consumers' loads. The definition is based on section 5(b)(1) of the Northwest Power Act of 1980 under which BPA offers to sell firm power in excess of a customer's own firm resources. In calculating net requirements obligation to any customer, Congress directed BPA to consider exports of the customer's non-Federal resources outside the Pacific Northwest. These considerations are based on section 9(c) of the Northwest Power Act as well as section 3(d) of the Northwest Preference Act.

The method of calculating net requirements is an important issue because it determines the amount of Federal power an eligible customer can receive for its firm consumer loads in the region. Section 5(b)(1) of the Northwest Power Act says that a BPA customer is entitled to purchase an amount of cost-based Federal power needed to meet its net requirement. A customer's net requirement is equal to the difference between its regional consumer firm loads and the amount of its non-Federal generation and firm power purchase contracts that the customer uses to serve those loads.

BPA first implemented the net requirements mandate of the Northwest Power Act through mechanisms in its 1981 contracts including the Firm Resource Exhibit (FRE), the Assured Capability Exhibit and other contract provisions. A FRE is a list of firm resources to be used by the customer in serving its regional load. A firm resource is one that can contribute a specific amount of electricity for operational and power planning purposes to serve a customer's loads. All of the current power sales contracts negotiated in 1981 will terminate by October 1, 2001 and must be replaced. The wholesale electricity market has undergone major changes since 1981. As a result, this is only the second time, since the Northwest Power Act became law that BPA has addressed the issue of how net requirements should be determined for its utility customers.

The Context: Net Requirements in a Changing Market

In 1992 Congress passed the National Energy Policy Act deregulating the wholesale power side of the electric industry. BPA sells Federal power at wholesale under contracts with eligible customers. Deregulation has changed the playing field of the wholesale electricity marketplace causing BPA and other utilities to change the way they do business. These changes have forced BPA to re-assess how it implements sections 5(b) and 9(c) of the Northwest Power Act and 3(d) of the Northwest Preference Act. The following provides a general overview of the context of these changes and how they may affect BPA's determinations of a customer's net requirements.

The Market as a Firm Resource

In 1981 relatively few BPA customers owned generating resources that were used to serve a portion of their load. The operation of most of these resources was managed by the region through the Pacific Northwest Coordination Agreement as if all of the region's Federal and non-Federal generating resources were operated by a single utility. The region's utilities knew who owned what resources and what loads they served. Increasingly, BPA's utility customers are relying less on generation and more on market power purchases to serve their firm consumer loads. Others have developed new generation resources which they have chosen not to apply to their consumer load and do not specify in their Firm Resource Exhibit in their current BPA power sales contract. Most investor-owned utilities have not taken their consumer load service from BPA and have not made power purchases under the 1981 contracts. In 1996, BPA offered a number of contract amendments to its public utility customers allowing them to reduce their purchases from BPA and serve a portion of their load from the wholesale marketplace. These examples mean that BPA, working with customers and other regional constituents, needs to re-assess how a customer's use of the marketplace should be factored into BPA's calculation of net requirements.

Separation of Utilities' Transmission and Power Sales Business Lines

The purpose of passage of the Energy Policy Act of 1992 was deregulation of the wholesale electricity market. Federal Energy Regulatory Commission orders 888 and 889 accelerated this process. Among the requirements of FERC order 889 is that utilities functionally separate their transmission and power marketing business lines so that a utility's power marketing business has access to no more information about its transmission system than any other participant in the market. The intent of functional separation is to encourage full competition in the wholesale electricity market by providing all marketers equal access to the means of delivery. BPA has chosen to voluntarily comply with the FERC orders. One of the ways BPA identified a customer's export of its non-Federal resources when determining a customer's power requirements under its 1981 contracts was by examining transmission schedules of non-Federal utilities to other utilities outside the Northwest. Under FERC order 889, BPA's Power Business Line no longer has access to this information.

Retail Load Loss for BPA Customers

Changes are occurring in the retail electricity industry as well as in the wholesale market. In most states each utility has a service area in which it is the exclusive supplier of electric service

to retail consumers. BPA sells its power to these utilities on a wholesale basis and they resell the electricity to their retail consumers. Under retail electric market deregulation, a utility may continue to operate its distribution system but other marketers may compete to supply electricity to residential, commercial and industrial consumers. The substitution of electric power suppliers raises a risk of retail load loss for some BPA customers. As more states deregulate their retail electricity markets, the effect of retail load loss on a customer's net requirements in the region becomes increasingly important. One concern is how the loss of industrial and commercial load by a BPA customer will change BPA's obligation to provide net requirement load service. The Northwest Power Act does not distinguish between the various types of consumer loads when calculating BPA's net requirements. Loss of load service by the utility to another provider may affect the total amount of power a customer could continue to buy from BPA.

Effects of Sales of Generating Resources and Other Assets on Net Requirements

As a result of deregulation, some utilities have sold or are likely to sell generating resources on the market which have historically been dedicated and used to serve Northwest retail consumer load. The buyers of these resources will likely sell their output for the highest price they can receive, either inside or outside of the region.

By law, BPA is required to make factual determinations regarding the sale of certain resources and its effect on BPA's service obligations to all customers and BPA's cost-based rates. Section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act require that BPA reduce the amount of power a utility receives under its BPA contracts based on findings regarding its exports out of the region. Complying with this legal mandate in a competitive market is much more complex now than when the wholesale market was regulated and there were comparatively few customers with non-Federal generating resources.

Other utilities have decided to sell portions of their electricity supply and distribution businesses in certain parts of the region. In certain instances, new public power entities are forming and proposing to take over the business formerly provided by investor-owned utilities. Section 5(b)(1) directs BPA to sell power to meet the firm power loads of a utility customer in the Pacific Northwest. BPA must address how changes will be made to the amounts of power BPA sells a customer when that customer no longer serves a particular regional load or serves new loads.

Proposed Principles

BPA is offering the following draft proposal as an approach to determining firm power net requirements obligations. It is intended to answer the following general questions:

1. In negotiating a new post-2001 power sales subscription contract, how should BPA determine a customer's net requirement based on the customer's use of firm resources and its consumer loads?
2. How will changes in a customer's net requirement be made during the term of its subscription contract?
3. How will BPA determine, as required by section 9(c) of the Northwest Power Act and section 3(d) of the Regional Preference Act, the effect of a customer's export of its resources on BPA's net requirements obligation to supply power to the customer?
4. How should BPA implement its policy on the factual determinations for treatment of customer's firm resources under its statutes?

I. Initial Determination of Net Requirements

In the remainder of this notice, proposed principles are in regular type with explanatory material in italic.

This section describes how BPA will contractually limit and define its obligation to provide power to a customer under the Power Subscription Strategy. It is based on language in the Northwest Power Act that requires BPA to offer power to serve a customer's regional consumer load. Some products meet a utility's full load minute by minute, while other products provide power services based on the difference between a customer's own resources used for load and their BPA purchases. Two products offer service on a planned or forecasted load, a fixed block product and a SLICE product. For these products, the amount of Federal power offered must be based on reasonable and verifiable estimate of the customer's regional consumer load. BPA's Power Products Catalog of the Power Subscription Strategy proposed a principle in which the fixed block products and the SLICE products are based on the customer's existing regional consumer load without consideration of changes for load growth. These products use an annual estimate of consumer loads, which is done once, at the start of the contract. They assume the customer and not BPA will serve any load growth. Thus, there would be no increase in the amount of the purchase over the term of the agreement. Under these products, the customer agrees to provide non-Federal resources to serve its load growth.

(A) BPA's initial offer will be based on the utility's actual loads or a reasonable and verifiable estimate of the utility's retail load in the region identified in its projected business plan at the time of the offer.

This principle is based on section 5(b)(1) of the Northwest Power Act. BPA is to offer power to serve a customer's firm consumer load in the region. In a deregulated market, the longer the term of the contract, the greater the likelihood that changes will occur in a customer's regional consumer load. This principle seeks to address this concern by limiting the application of the forecast used to initially determine a customer's net requirements to one year. Principle II.A. below requires a mechanism for a BPA annual review of a customer's net requirements load.

(B) Except as provided in I.D. below, BPA will require that the utility continue to apply all current generation and long-term power purchase contracts to serve that customer's regional consumer load under a subscription contract. These resources are included in the Firm Resource Exhibit of a BPA customer's current 1981 or 1996 power sales contracts for the 1998–1999 operating year. BPA also will require all current long-term surplus power purchase contracts or excess Federal Power purchase contracts that extend beyond 2001 to be applied to serve a customer's regional consumer load under a subscription contract.

(C) BPA will consider any purchase contract that terminates after September 30, 2001, to be a long-term power purchase contract that extends beyond 2001.

(D) BPA will offer the customer power products and services at the Priority Firm (PF) rate and without a PF surcharge for consumer loads that are no longer served by generation resources and long term power purchase contracts due to resource retirement, obsolescence, or other loss of resource, or loss of contract right. Purchases of Federal surplus power and Excess Federal power that extend beyond 2001 are treated as long term power purchase contracts. Post-2001 PF power sales for resource replacement shall commence on the dates such resources are lost, provided that BPA has been notified in writing of the resource loss in time to permit the agency to include the additional load in the BPA rate process and that the generating resource or

contract meets the standards described in II.E below.

Principles I. B., C. and D. are based on sections 5(b)(1)(A) and 5(b)(1)(B) of the Northwest Power Act. The Subscription Strategy stated that a customer must continue to serve its loads currently served by a customer's generating resources or long-term power purchase contracts that continue beyond 2001. Principle I.B. clarifies that the resources a customer is required to apply to load is limited to those resources included in the customer's current Firm Resource Exhibit for the 1998–1999 operating year. These principles state that all power purchase contracts with termination dates beyond 2001 are included in the customer's firm resources. Under the subscription contract, the customer must use these resources to serve its regional consumer loads. These long-term power purchase contracts that continue beyond 2001 include presubscription contracts and other long-term contracts to purchase Federal power from BPA. The principles also acknowledge that there are a number of these power purchase contracts which customers know will expire prior to the end of the BPA rate period.

The proposed principle allows the customer to purchase net requirements load service from BPA at the PF rate and without the PF surcharge as long as BPA is informed of the expiration dates of the contracts and the cost of such service has been identified and included in BPA's rate case. The customer must consult with BPA and obtain BPA's agreement in writing to receive requirements load service from BPA for a generating resource the customer believes should be permanently discontinued due to obsolescence or retirement. Resources or contracts that are lost after BPA submits its final rate case to the Federal Energy Regulatory Commission will incur a PF surcharge to cover any additional power costs BPA faces to serve the additional load.

BPA considered whether the customer's use of the market as a resource should also be considered. Many customers who use the market as a resource would likely face a loss of contract right for their short-term contract purchases. Additionally, some customers have been serving their consumer load in the region with generation resources not included in their Firm Resource Exhibits of their current power sales contract. Instead of the market, they are using their own non-Federal generation to serve their load. The proposed principles address a customer's use of those resources in serving its regional load based on section 9(c) of the Northwest Power Act. 16 U.S.C. 839(f)c.

(E) In determining a customer's net requirements load, BPA will follow the Declaration Parameters included in the Power Products Catalog under Actual Partial Service in establishing the capabilities of the customer's firm resources under the Subscription contract.

Principle I.E. follows the approach established in BPA's Power Products Catalog for Actual Partial Products for determining the capabilities of the customer's resources to be applied to its loads. BPA considered whether there might be a simpler method for determining customer resource capability. However, there are enough unique customer perspectives on estimating resource capability that this approach appears to best meet the needs of resource determination in a deregulated market.

(F) BPA will determine what, if any, amount of thermal and/or hydroelectric peaking capacity and electric energy a customer has exported from the region that could be conserved or otherwise retained for service to regional loads. The customer's net requirements must be reduced to the extent that BPA determines the exported energy increased BPA's obligation to any customer to provide power to meet regional loads.

Principle I.F. is based on section 9(c) of the Northwest Power Act. This principle states that BPA will implement section 9(c) by determining whether a customer has exported power from a thermal resource, whether BPA's net load requirements have increased as a result and whether the power could be conserved or otherwise retained for service to any regional loads by reasonable means. The proposed principle states that BPA will implement section 3(d) of the Regional Preference Act by determining whether a customer has exported power from a hydroelectric resource and whether the hydro resource could be conserved or kept available. In its 1994 9(c) policy, BPA adopted a policy stating that a customer's hydroelectric resources could always be applied to load in the region. This principle also continues BPA's past determinations for specific resources that resulted in reductions in net requirements of customers.

II. Changes in Net Requirements During Term of the Contract

This section addresses reductions in BPA's net firm load requirements obligation due to changes on or sale of a customer's system which will change the amount of regional firm consumer load served by that customer or that reduce its net requirements. The principles are based on sections 5(b)(1) and 9(c) of the Northwest Power Act and 3(d) of the Regional Preference Act. The following principles propose a contract mechanism for making additional sales of power to utilities and the circumstances under which BPA would apply the PF Surcharge, Targeted Adjustment Surcharge to such purchases by public agency customers, or the NR rate for purchases by investor-owned utilities (IOUs). The actual rates that apply to any increased amounts of power sold for net requirements loads will be established in the BPA rate case.

These principles focus on the transition from the 1981 contract model to the Power Subscription Strategy model. Under the 1981 contract, BPA obligated itself to serve the entire regional load of a utility based upon notice periods and availability of power for acquisitions. A BPA goal under the Power Subscription Strategy is only to acquire new resources to serve a customer's net requirements load increase beyond its initial subscription amount based on a bilateral agreement in which the requesting customer takes all the financial risk. (Note: The initial subscription amount includes load growth for a customer purchasing that right.) BPA will still have to meet all of its total regional load obligations to all customers. Accounting for reductions in loads is part of meeting BPA's total regional firm load obligations.

(A) BPA will require, at least annually, that a customer report specified events causing a reduction in its consumer load. For fixed block and SLICE purchasers, if the reductions cause a customer's net requirements to fall below the amount of power being purchased from BPA, the agency will implement the mitigation measure for retail load loss specified in the customer's contract. For investor-owned utilities, BPA will provide the remarketing product option.

Principle II.A. is based on section 5(b)(1) of the Northwest Power Act which limits BPA's net requirement obligation to a utility's firm consumer load in the region. This principle addresses the issue of the loss of retail consumer load by a utility and the use of the remarketing product mitigation measure specified in section IV.H.2. of the Subscription Strategy. This remarketing provision provides a financial benefit to residential loads for IOUs that no longer can purchase requirements power due to the utility's retail load losses. BPA considered other alternatives such as a conditioned consent to the removal of customer

resources dedicated to serving regional load under their subscription contract. Under such an alternative, BPA would allow a customer to reduce the amount of resources serving its load equal to the reduction in requirements service caused by the retail load loss. BPA is interested in comments on this alternative and other alternatives to address this issue.

(B) BPA will reduce a customer's net requirements by the amount of any exports of hydroelectric or thermal resources if BPA determines such resources could have been conserved or otherwise retained to meet regional firm power requirements of any BPA customer. On an annual basis, BPA will determine whether a customer's export of thermal or hydroelectric resources could have been conserved or otherwise retained to serve any regional loads.

Principle II.B. is based on existing BPA policy for export sales of hydroelectric resources and thermal resources applied to regional load. See 1994 Non-Federal Participation Capacity Ownership, and Section 9(c) Policy. Reductions in BPA power requirements obligations due to a customer's export of power from its resources can come at any time. For example, a customer could end a contractual sale to another customer, where such other customer had dedicated the power purchase to serve its firm loads. By giving six months' notice, the customer losing the power purchase could request additional service from BPA at the PF Surcharge rate. If the customer owning the resource has sold power from its resource on the market after it was withdrawn, then it would face a section 9(c) determination and would potentially be subject to a reduction in its net requirements. In this example, the withdrawal of the power could cause BPA's obligation to the second customer to increase. BPA's policy on hydroelectric resources under section 3(d) of the Regional Preference Act is hydroelectric resources can always be operated or applied against regional load by reasonable means. BPA's policy on thermal resources applied by a customer to its regional consumer load is that such resources can be conserved or retained for service to regional load. BPA is proposing changes in its policy on export of thermal resources under this Federal Register Notice.

(C) Within the following limits, BPA will reduce a customer's take-or-pay obligation by an amount equal to the customer's dedication for a specified contract period of new renewable resources developed by that customer. Alternatively, a customer may develop new non-hydro renewable resources and export these outside the region without reducing its net requirement. This right to reduce BPA purchases shall apply only to the first 200 average megawatts of all new renewable resources developed by all BPA customers within the region. The new renewable resources must meet the standards for BPA's conservation and renewable resources discount, and be dedicated to serving the customer's load.

Principle II.C. is based on the regional interest to encourage the development of renewable resources and follows statutory language in section 5 (b)(1)(B) of the Northwest Power Act that allows the Administrator to consent to resources changes under a requirements contract. This principle would allow customers to dedicate a new renewable resource to serve their retail consumer load. BPA has consistently interpreted section 5(b)(1) as allowing the Administrator to specify by contract the customer's dedication of additional resources to serve its load. BPA's Subscription Strategy requires customers to take the risks on their non-Federal resource placement commensurate with BPA's risks in covering future costs of Federal resources.

BPA requires customers to specify the amount of firm resources they dedicate to serve their retail consumer loads for the term of their contract. BPA is willing to sign a Subscription contract for terms ranging from 1 to 20 years. This renewable resource principle provides an exception to the policy that a customer's firm resources must be known and dedicated at the start of the BPA contract and for the entire term of a contract. The exception provides for the Administrator's consent to the addition of new renewable resources during the term of the contract and allowing removal of such renewable resources at a point prior to the end of the contract. BPA has placed two conditions on this exception: (1) qualified renewable resource dedications are limited to the first 200 average megawatts of renewable resources that customers request to dedicate during any year; and (2) only resources that would qualify for BPA's conservation and renewable resources discount are eligible.

(D) BPA will provide net firm requirements service under the PF Surcharge rate or the New Resource Firm Power (NR) rate for a customer's regional loads not included in the rate case and which are served by the customer's dedicated generation resources and its long term power purchase contracts that extend beyond 2001, if such dedicated resources are lost for specified reasons described in principle II.E. during the rate period.

(E) Generation resources and long term power purchase contracts extending beyond 2001 are considered lost if they are permanently discontinued during the rate period due to retirement, obsolescence, loss of the resource, or loss of a contract right. Loss of a resource must result from factors beyond the reasonable control of the customer and which the best efforts of the customer are unable to remedy. BPA will consider such resources lost due to permanent discontinuance because of obsolescence or retirement only if the customer has consulted with BPA and BPA has agreed in writing to such discontinuance.

Principles II. D. and E. continue BPA's existing contract standards regarding a customer's loss of firm resources. These principles have worked for 20 years and allow BPA to consider all the facts in determining when BPA must replace a customer's lost resource with Federal resources.

BPA will provide replacement firm power service for the regional consumer load served by the resource as net requirements power only if the customer has lost a resource or lost a contract for the reasons specified above. For example, expiration of a customer's non-Federal power purchase contract is considered a loss of a contract beyond the reasonable control of a customer, and which the best efforts of the customer are unable to remedy. If a customer requests additional power purchases from BPA for its regional firm load served by its resources for any other reasons, BPA would make such purchases of replacement power from the market under separate contracts and its section 7(f) surplus power rates.

(F) BPA will assume the market will provide resources to the customer to serve any increased consumer loads. BPA load service for new annexed loads resulting from open access or actual annexations or mergers will be provided under the Targeted Adjustment Charge or the NR rate. Additional service for lost generation resources and lost long term power purchase contracts extending beyond 2001 will be provided at the PF Surcharge or NR Rate, upon the customer's request for service and notification to BPA that such an event has occurred. Service to replace the above qualified renewable resources at the end of their dedicated contract period will be provided at the PF rate. BPA will provide firm power service for annexed loads, lost resources, and replacements of qualified renewable resources six months following

determination that such event has occurred or as mutually agreed.

Principle II.F. states that BPA will provide firm power requirements service to annexed loads or for lost resources for all customers. However, the rate arranged for such service may include an adjustment for costs BPA incurs to provide the additional service. BPA considered making changes to its net requirements service only at its annual review of load or customer resource changes when determining any reductions in the customer's net requirements purchase. However, BPA decided that a rolling notice period for annexation or loss of resource would better serve the sporadic nature of these events. BPA has assumed that six months would be the minimum time needed to determine the facts surrounding the annexed load or loss of resource and allow BPA to prepare to provide service. It would also give BPA time to purchase any additional resources necessary to serve the load. Principle II.F. would give BPA the discretion to provide service on shorter notice if it is able to do so.

III. How BPA Will Determine if a Customer Has Exported a Resource From the Region Requiring a Reduction in the Customer's Net Requirements

Section 9(c) of the Northwest Power Act requires BPA to make several factual determinations when customers sell or dispose of power from their resources on the market for export outside the region. Section 3(d) of the Northwest Preference Act requires BPA to reduce its sale of requirements power to any customer that sells or disposes of hydroelectric power outside the region which cannot be conserved or kept available for use. These determinations are particularly difficult in a deregulated market where sales are often made to marketers at the generator busbar, and where schedules of transmission are not available to BPA's Power Business Line. Adding to the difficulty is the fact that merchant activity by all customers is confidential so that commercial information is not readily available for factual determinations.

(A) Subject to certain showings, the output of any customer's thermal generating resource existing on the date the subscription strategy was published and that has been used to serve regional firm load at some time during its life will be treated as exported from the region in a manner that increases the firm energy requirements of the Administrator. The customer's net requirement will be reduced unless the customer can demonstrate one or more of the following:

1. The resource fits within the definition of a "market resource" as described in section III. D. 2. of Appendix B of BPA's NFP Section 9(c) Policy;
2. The resource is under a current post-2001 contract committed to serving a BPA customer's regional load; or
3. The resource is subject to a prior BPA written section 9(c) determination that the resource could not be conserved or otherwise retained to serve regional load.
4. The Administrator determines a thermal resource could not be conserved or otherwise retained to serve regional load by reasonable means under principle III.B.

(B) The policy BPA proposes for determining when a thermal resource could not be conserved or otherwise retained to serve regional load is met when:

(i) There were no purchasers after the resource was offered for sale in the region to BPA and all of its regional customers for a period of at least one year through a public process at cost plus a reasonable rate of return. In the case of a resource offered for a fixed term, the output of such thermal resource shall not be deducted from the owner's or purchaser's maximum firm requirements for the term of the offer or the term of the export, whichever is less.

(ii) The resource is permanently auctioned through a public process and was not purchased by a regional purchaser. In the case of a resource permanently auctioned, the output of such thermal resource shall not be deducted from the owner's net requirements.

(iii) The Administrator determines that the market price for power makes it unreasonable to retain that resource to serve regional load.

Principle III.A. addresses the difficulty in a deregulated wholesale market of determining whether power from a customer's resource has been exported in a manner that increases the Administrator's firm energy requirements. The proposed principle states a rebuttable presumption that all power from a customer resource which has been used to serve regional loads and which is sold on the market shall be treated as power exported by the seller. Such a sale shall be deemed to increase the Administrator's firm power requirements under the customer's or another customer's BPA power sales contracts. Power sold from the resource will not be treated as an export if the customer can demonstrate the resource was: Not used for load and developed solely for sale in the market, or that the power from the resource is being used by a Direct Service Industry (DSI) or another BPA utility customer to serve retail load in the region;, or that a prior BPA determination under Section 9(c) allowed the resources to be exported.

If a customer demonstrates that the resource has been sold to a DSI or another utility in the region, the purchasing utility must demonstrate that power from the resource is dedicated by contract with BPA and is being used to serve its retail load in the region.

To implement this principle, the customer must provide that commercial information it wishes to share with BPA on its power sales, so BPA can make the required factual determinations. BPA considered whether it should continue the practice stated in the 1994 Non-Federal Participation Section 9(c) Policy of examining a customer's transmission schedules to points outside the Pacific Northwest. This alternative was rejected due to limitations on the flow of information from transmission functions to power sales functions arising from functional separation under FERC orders 888 and 889.

Principle III.B.4 addresses a customer's sale of resources, which are determined to increase the Administrator's power requirements obligations to serve load in the region. Such a sale must meet one of three tests in order for BPA to determine that the resource could not be conserved or otherwise retained to serve regional load. Unless at least one test is met, the amount of power, capacity and energy sold and deemed exported would be treated as a resource that could be used or retained to serve firm load in the region and whose sale will result in BPA's obligations increasing. Thus, BPA would reduce its section 5 electric power requirements contract obligations to that customer by the amount of the power sold from the resource.

The first test provides that a customer may offer power from a resource for sale in the region to BPA and its eligible customers for a period of at least one-year at cost and a reasonable rate of return. If BPA or a BPA customer in the region does not offer to purchase the resource, then the Administrator would determine that the output of the resource could not be conserved or otherwise retained to serve regional load for a period equal to the duration of the offer of the resource or the term of the export whichever is less.

The second test provides an alternate mechanism in which a customer may auction the resource to the highest bidder as long as BPA and all BPA

regional customers are reasonably notified of the auction and have a reasonable opportunity to bid on the sale. If the resource is auctioned and the customer can demonstrate that BPA and its regional customers had a reasonable opportunity to participate, the Administrator would determine that the resource could not be conserved or otherwise retained to serve regional load.

BPA considered a possible alternative to the second test that would limit the use of auctions based on an economic standard of paying the stranded costs of a utility. Under that test, BPA would reduce its net requirements obligation to the utility if the proceeds of the auction and export of a resource resulted in net positive benefits above the cost and reasonable rate of return for the resource, and if such benefits were not paid to the consumers of a utility. The purpose of such a limitation is to preserve the benefits of low cost resources for regional loads.

The third test allows the Administrator to determine that a resource could not be conserved or retained to serve regional load based on current market conditions and prices in the region for a specified period. If the Administrator makes that determination, then a customer would be allowed to sell a resource during the period without a reduction in BPA's obligation to provide power under its Subscription contract.

(C) All new thermal generating resources developed by BPA customer utilities after the December 21, 1998, publication date of the Federal Power Subscription Strategy will be treated as meeting the "market resource test," unless power from the resource is dedicated by a BPA customer under its BPA contracts to serve consumer load. In such event, the thermal generating resource will be treated in the same manner as existing non-Federal resources dedicated by customers to regional load under Subscription contracts.

Principle III.C. proposes to change the definition of "market resources" under the Section 9(c) Policy to create a presumption that new resources are developed for sale in the deregulated market and not for service to a customer's retail load. The exception would be where a customer specifically chooses to dedicate part or all of the output of the resource to serve its own load or regional load of another customer as stated below. Otherwise, all such resources sold on the market would not increase the Administrator's power requirements obligation to any customer under its BPA section 5 contracts.

(D) Any customer's sale on the market or export of the output of thermal resources that is included in any other BPA customer's Firm Resource Exhibit for the 1998–1999 Operating Year (under a 1981 contract or a resource exhibit under a 1996 contract) shall be considered to meet the section 9(c) tests of increasing the Administrator's electric power load requirements under the Subscription contracts. The output of such resources shall be deducted from the selling customer's net requirements unless BPA determines the resource could not be conserved for service to load in the region under III.B. above.

(E) Any customer's sale on the market or export of the output of thermal resources that are currently being used to serve that customer's or another customer's regional load but are not included in either customer's Firm Resource Exhibit for the 1998–1999 Operating Year (under a 1981 contract or a resource exhibit under a 1996 contract) shall be considered to meet the section 9(c) test of increasing the Administrator's electric power load requirements under the Subscription contracts. The power output of such resources shall be deducted from the customer's net requirements unless BPA determines the resource could not be conserved for service to load in the region under III.B. above.

Proposed principles III.D. and III.E. divide all customer firm resources currently used to serve load into two classes: (1) those resources that are currently in any BPA customer's Firm Resource Exhibits; and (2) those resources that are not included in Firm Resource Exhibits. BPA has proposed that it will require only resources currently specified in any of its customer's Firm Resource Exhibits to be dedicated by the customer to serve its regional load under its BPA contracts. Customer's resources that are currently used to serve regional load but which are not included in Firm Resource Exhibits, if sold on the market, will result in increases in BPA's firm power requirements obligations under section 5 contracts. The customer selling the output of the resource will be required to demonstrate that the resource has either been sold to a regional utility to serve that utility's consumer load in the region, or demonstrate how the resource could not have been conserved or otherwise retained to serve any BPA customer's regional loads.

Principle III.D. also recognizes that BPA would face an increase in its power requirements obligations if the owner of a resource terminated a contract purchase used by another utility to serve its regional retail load. The owner of the resource would be required to demonstrate that the resource has either been sold to another regional utility to serve its consumer load in the region or could not have been conserved or otherwise retained to serve any BPA customer's regional loads.

(F) Any regional hydroelectric resources exported by a customer shall reduce the customer's BPA power requirements under its BPA contracts, unless the resource is contractually committed to serving another customer's regional load or such resource was previously determined to be serving that customer's load and the customer replaces the resource by a market purchase or new generation.

Principle III.F. requires the reduction of a customer's BPA power requirements obligation under its BPA contracts, if the customer exports any hydroelectric power from the region. If a customer demonstrates that the resource has been sold to a DSI or another BPA customer utility in the region, then the purchaser must demonstrate that its purchase is dedicated to and is being used to serve retail load in the region. If in calculating the customer's net requirements, BPA determines the resource was already dedicated to serving the customer's firm load, BPA will treat the hydro resource as remaining dedicated and will not further reduce its net requirements obligation to the customer, nor will BPA replace the resource.

Responsible Official: Mr. Steve Oliver, Manager, Bulk Power Marketing, is the official responsible for the development of the draft policy proposal for addressing issues under sections 5(b) and 9(c) of the Northwest Power Act regarding the amount of Federal power a customer may purchase under BPA subscription power sales contracts.

Issued in Portland, Oregon, on April 26, 1999.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 99–11407 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Opportunity for Public Comment Regarding Bonneville Power Administration's Subscription Power Sales and Standards for Service

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of draft policy proposal.

SUMMARY: This notices announces a draft policy proposal to modify BPA's standards for service to permit the purchase of Federal power.

One of the BPA's current eligibility standards for potential public agency utility customers and privately owned companies selling to the general public requires the utility or company to own its own distribution facilities. BPA is proposing that it modify this standard to permit in the future that a customer either (1) own a distribution system, or (2) have an ownership-type lease arrangement for a distribution system. The reason for this proposal is driven by the Federal Power Subscription Strategy, ongoing changes to the electric power industry and increased interest by some regional parties in becoming eligible to buy Federal power at the PF rate.

This Notice on Eligibility and Standards of Service for Purchasing Federal Power will afford a 30-day public review and comment period on the proposal to permit ownership-type lease arrangements to be used by potential customers to meet one of the qualifications to purchase Federal power from BPA. BPA's proposal and background information on BPA's current eligibility requirements and standards for service regarding potential public agency and other customers follows below. BPA is also putting forward other concepts for consideration and invites comments on these as well.

DATES: Public meeting dates: May 27, 1999, and June 2, 1999. Close of comment date: June 11, 1999

ADDRESSES: If you are interested in commenting on the Eligibility and Standards for Service Policy Proposal, you have several options.

1. You can send written comments to Bonneville Power Administration, P.O. Box 12999, Portland, OR 97212, or you can fax comments to (503) 230–4019. If you wish to send your comments electronically, email comments to: comment@bpa.gov. Comments must be received by close of business Friday, June 11, 1999.

2. You also can attend one or both of the two public comment meetings. One meeting will be held on Thursday, May 27, 1999, in Spokane, Washington, at Cavanaugh's Inn at the Park, 303 W. North River Drive. Another meeting will be held in Portland, Oregon, on Wednesday, June 2, 1999, at the Sheraton Portland Airport Hotel, at 8235 N.E. Airport Way. Both meetings will begin at 10:00 a.m. Comments also will be collected on the Determining Net Requirements 5(b) and 9(c) Policy Proposal. If any additional meetings are scheduled, the information will be posted on the web site listed below.

http://www.bpa.gov/Power/subscription

FOR FURTHER INFORMATION CONTACT: Mr. Michael Hansen, Public Involvement and Information Specialist, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon 97208–3621, telephone (503) 230–4328 or 1–800–622–4519. Information can also be obtained from your BPA Account Executive or from:

Ms. Ruth Bennett, Acting Vice President, Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–7640

Mr. Rick Itami, Manager, Eastern Power Business Area, 707 W. Main Street, Suite 500, Spokane, WA 99201, telephone (509) 358–7409

Mr. John Elizalde, Acting Manager, Western Power Business Area, 700 N.E. Multnomah, Suite 400, Portland, OR 97232, telephone (503) 230–7597

Mr. Steve Oliver, Manager, Bulk Power Marketing, 905 N.E. 11th, P.O. Box 3621, Portland, OR 97208, telephone (503) 230–3295

SUPPLEMENTARY INFORMATION: In its Federal Power Subscription Strategy, dated December 21, 1998, the Bonneville Power Administration stated that new public agencies that form and qualify for service within the period of the subscription contract window would be offered power at the priority firm (PF) rate for the post 2001 rate period for their entire general requirements load obligation, except for any new large single loads. The strategy further states that new preference tribal utilities that form and qualify for service will be treated the same as other new public agency utilities with respect to the availability of power at the PF rate.

Public Body and Cooperative Customer Eligibility Under Bonneville Project Act

To be eligible to purchase power from BPA on a preference and priority basis, an applicant must meet two fundamental statutory requirements found in the Act of August 20, 1937, (the Bonneville Project Act) Pub. L. 75–329. First, the applicant must meet the statutory definition of one or the other of the terms "public body" or "cooperative." Section 3 of the Bonneville Project Act defines the term "public body" or "public bodies" to mean "States, public power districts, counties, and municipalities, including agencies or subdivisions of any thereof." Section 3 also defines the term "cooperative" or "cooperatives" to mean "any form of nonprofit-making organization or organization of citizens supplying, or which may be created to supply, members with any kind of goods, commodities, or services, as nearly as possible at cost."

BPA has indicated that a Federally recognized tribe that forms a cooperative utility pursuant to its tribal constitution and laws would be eligible for preference status. Further, a tribe with the legal right could serve non-tribal members within its reservation boundaries, but would otherwise need to comply with state law for service outside the tribe's jurisdiction.

For potential public customers who will resell Federal power to retail consumers, the second requirement is that a public body or cooperative applicant be in the public business of selling and distributing the Federal power to be purchased from BPA.[1] If not presently in business, section 4(c) of the Bonneville Project Act directs BPA to afford the prospective customer a reasonable time, as determined by the Administrator, to allow it to get into the public business of selling and distributing power. BPA may not deny the request of a preference applicant that has not yet obtained necessary financing to get itself into the business of selling and distributing electric energy until after the reasonable time has passed.

Finally, section 4(d) declares several policies regarding the preferential status of public bodies and cooperatives. They reinforce the directives found in section 4(c).[2] First, preference to public bodies

[1] Section 5(a) of the Bonneville Project Act authorizes the Administrator to sell Federal power at wholesale to public bodies for direct consumption of the Federal power. In order to receive Federal power for its own use a potential public body end use customer needs to meet BPA's standards for service specific to direct consumption. BPA is not proposing any changes in its current standards for this class of potential customers.

[2] Section 4(c) provides in pertinent part: "An application by any public body or cooperative for an allocation of electric energy shall not be denied, or another application competing or in conflict therewith be granted * * * on the ground that any proposed bond or other security issue of any such public body or cooperative, the sale of which is necessary to enable such prospective purchaser to enter into the public business of selling and distributing the electric energy proposed to be purchased, * * *"

Section 4(d) provides in pertinent part: "It is declared to be the policy of the Congress, as expressed in this chapter, to preserve the said preferential status of the public bodies and cooperatives herein referred to, and to give to the people of the States within economic transmission distance of the Bonneville project reasonable opportunity and time to hold any election or elections or take any action necessary to create such public bodies and cooperatives as the laws of such states authorize and permit, and to afford such public bodies or cooperatives reasonable time and

Continued

and cooperatives is to be preserved. Second, people are to be given reasonable opportunity and time to hold any elections or to take any other necessary action to create a public body or cooperative. Third, once created the public body or cooperative is to be afforded a reasonable time and opportunity to authorize and issue bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and to become in all other respects qualified purchasers and distributors of Federal power. To date, BPA has interpreted section 4(c) and 4(d), particularly the language "to construct or acquire necessary and desirable distribution facilities," to require that the applicant own its distribution system.

Regarding nonpreference applicants for Federal power which will be resold to the general public, BPA has required that such entities be properly formed under state law, including compliance with any approvals, filing or regulatory orders to which such businesses are subject under the laws of the states. BPA has required that such private utilities also own their own distribution system for making retail resale of Federal power. This requirement is based on section 5(a) of the Bonneville Project Act which distinguishes between a privately owned public utility buying Federal power for resale to the general public from other sales to private persons. [3] It is not based on sections 3 and 4 discussed above.

Standards for Service

The Northwest Electric Power Planning and Conservation Act on 1980, Pub. L. 96–501, section 5(b)(4) directs the Administrator to require all potential customers requesting a contract for firm power under section 5(b) of the Act to comply with the Administrator's standards for service in effect on December 5, 1980, or as subsequently revised. [4] BPA has traditionally made its determination regarding eligibility for preference and meeting BPA standards for service on a case-by-case basis and communicated its standards and assessment of a party's qualifications in correspondence to parties seeking to purchase Federal power under section 5(b). The following describes the standards for service, including the eligibility requirements under sections 4(c) and (d) of the Bonneville Project Act, applicable to potential public agency customers.

As a practical and legal matter, BPA's determination of a customer's eligibility to purchase preference power is included in an overall review to determine if the customer is in compliance with the Administrator's standards for service. To comply with the existing standards for service an applicant must:

1. Be legally formed in accordance with local, state and Federal laws;
2. Own a distribution system and be ready, willing and able to take power from BPA within a reasonable period of time;
3. Have a general utility responsibility within the service area;
4. Have the financial ability to pay BPA for the Federal power it purchases;
5. Have adequate utility operations and structure; and
6. Be able to purchase power in wholesale, commercial amounts.

Following is a more detailed explanation of the existing criteria.

Legal Formation

BPA will request an applicant to demonstrate that all required steps under applicable law have been taken to authorize its formation as a public body or cooperative. It also ensures that the applicant is in the public business of buying and distributing, at retail, power to be purchased from BPA, or is in the process of going into such a business. The applicant must provide copies of filings of certificates and approvals from designated officials, such as by-laws and articles of incorporation, regulatory approvals as required, and information on whether public elections were required and held. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Distribution Function

This criterion assures that BPA sells power consistent with the legal requirement that it be sold to public bodies and cooperatives engaged in the public business of buying and distributing power through distribution facilities owned by the customer. The performance of the distribution function by the party applying for preference status has been viewed as an assurance that the purposes of selling Federal power on a preference basis are realized. The same considerations are applicable to BPA sales to privately owned utilities selling Federal power to the general public. That is, they have a distribution system and are able to provide the power to retail consumers. Parties that do not own, operate and maintain, or control the costs of the distribution may face the issue of how to demonstrate that they are able to provide the benefits of cost based Federal power to retail consumers. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

BPA must give the applicant a reasonable opportunity to achieve ownership including time needed to finance the acquisition or construction of the necessary distribution. In general, State law grants public bodies the power of eminent domain allowing them to acquire the distribution facilities of another utility through condemnation. In general, cooperatives have been able to construct or purchase their own systems through low-cost financing obtained from loans made by the Federal Rural Electric Administration (predecessor to the Rural Utility Service).

General Utility Obligation To Serve

This criterion assures that Federal power will be sold by the applicant in a non-discriminatory manner for the benefit of the general public and particularly of domestic and rural consumers. BPA has always required that a customer serving retail consumer load have a "utility responsibility" to serve. This means that any retail consumers may request and obtain service from the potential customer, limited only by service area or franchise allocation restrictions. An applicant must have obtained authorization to serve certain loads or areas prior to receiving power from BPA for service to such loads or areas. Any legal action that challenges such service must be resolved by final order before BPA begins service. This standard is

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opportunity to take any action necessary to authorize the issuance of bonds or to arrange other financing necessary to construct or acquire necessary and desirable electric distribution facilities, and in all other respects legally to become qualified purchasers and distributors of electric energy available under this chapter."

[3] Section 5a of the Bonneville Project Act provides in pertinent part: "Subject to the provisions of this chapter and to such rate schedules as the Secretary of Energy may approve, as provided in this chapter, the administrator shall negotiate and enter into contracts for the sale at wholesale of electric energy, either for resale or direct consumption, to public bodies and cooperatives and to private agencies and persons and for the disposition of electric energy to Federal agencies. Contracts for the sale of electric energy to any private person or agency other than a privately owned public utility engaged in selling electric energy to the general public, shall contain a provision forbidding such private purchaser to resell any of such electric energy so purchased to any private utility or agency engaged in the sale of electric energy to the general public, and requiring the immediate canceling of such contract of sale in the event of violation of such provision."

[4] Section 5(b)(4) of the Northwest Power Act provides, "Sales under this subsection shall be made only if the public body, cooperative, Federal agency or investor-owned utility complies with the Administrator's standards of service in effect on December 5, 1980 or as subsequently revised."

applicable to potential new preference customers and to new private utilities selling to the general public.

Financial Health and Ability To Pay

This criterion assures BPA that the applicant is able to pay for the power it receives. BPA examines the applicant's authority to collect money for the services it renders to its retail consumers—the ability to bill—and the applicant's authority to sue and be sued. BPA reviews the applicant's organizational structure to see if there is a financial officer and staff that performs a billing and collection function. BPA will also examine, particularly in the case of a municipal or tribal applicant, whether the applicant has the authority to segregate utility funds from a general fund, if one exists. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Operations and Structure

This criterion is used to provide BPA reasonable assurance that the applicant has the ability to fulfill responsibilities and duties under a power sales contract. BPA examines the applicant's ability to perform utility functions such as metering, billing, or operation and maintenance on utility facilities, or contract for such functions and control the costs of such functions. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Commercial Quantities

Because BPA is directed to sell power at "wholesale," BPA has generally required that customers purchase power in wholesale, commercial amounts of one megawatt or more. This standard is applicable to potential new preference customers and to new private utilities selling to the general public.

Connection to BPA Transmission System

The BPA standards for service have also addressed matters related to the configurations and operations of electrical facilities. Requirements for interconnection to the BPA transmission system are governed by the Open Access Transmission Tariff. The Transmission Business Line is currently revising its Interconnection Standards. These aspects of standards for service are not addressed in this Notice.

BPA Proposal To Change Its Standards for Service

The advent of retail electricity deregulation in the wholesale market and in some western states at retail, as well as the interest of some tribes and other parties in forming and operating an electric utility, has prompted BPA to assess whether or not a change in its existing standards for service may be warranted. Some parties have questioned whether BPA should continue to require that preference customers who serve retail consumers own and operate a distribution system. A similar issue arises as to BPA's sales of Federal power to new private entities, as to the legal distinction between a utility selling to the general public and other sales.

In response, BPA is inviting comments from interested parties on this proposal to allow ownership-type lease arrangements which, in addition to direct ownership of a distribution system, qualify a potential public agency customer to be able to purchase PF power. All other eligibility criteria would continue to apply. BPA proposes that a potential new customer who would sell power to retail consumers may use an ownership-type lease arrangement in order to provide for distribution to retail consumers. A customer could lease a distribution system for delivery of Federal power to retail consumers. In this concept, in order to qualify as an ownership-type lease, the agreement would (1) be a long term arrangement for the life of the facilities or for a duration equal to the term of the BPA power supply obligation, and (2) give to the preference customer the right to operate, maintain and have repairs performed on the system, as well as have complete decision authority over costs of the distribution system. In addition, the customer would perform, or be responsible for, all other utility functions such as meter reading, billing, retail rate setting, and other services and functions provided by a serving utility. The proposal is to have the potential customer and the distribution owner enter into an arms length commercial transaction. The potential customer should have the ability under such transactions to have a third party provide for the system maintenance functions in an open competitive process.

This proposal to use an ownership-type lease arrangement is consistent with Department of Energy policy which allows the use of a lease by a potential public agency customer to obtain a distribution system. See DOE General Counsel, "Request of City of Needles for Reinstatement of Sales of Federal Power for Benefit of Its Citizens" (Nov. 21, 1978). This policy was affirmed in *Salt Lake City et al.* v. *Western Area Power Administration, et al.* 926 F.2d 974 (10th Cir. 1991).

For Discussion: Concepts Regarding Standards for Service

In addition to the ownership-type lease arrangement, some parties have suggested other concepts which may meet the standards for service requirement. The concepts presented below are for discussion purposes. BPA is not making a proposal regarding these concepts.

Contractual Capacity Rights

A customer could obtain long-term contracts for use of capacity on distribution facilities or for access to distribution according to state law which assure delivery of Federal power to retail consumers. The distribution owner would operate and maintain the distribution system. The preference customer would contract for use of distribution and would perform, or be responsible for, meter reading, billing, retail rate setting and all other services normally provided by a serving utility.

The Utility's Obligation To Serve

Retail access legislation may raise issues regarding the standard for service requirement that a customer have a general utility responsibility or obligation to serve. An obligation to serve standard is linked with the distribution function. Decisions made regarding distribution should guide the issues on a customer's obligation to serve standard. Following are variations on the obligation to serve depending on how the utility accomplishes the distribution function:

- If a utility contracts for long-term capacity rights on the distribution system or has access to a distribution system according to state law, the distribution owner would operate, maintain, and have complete decision authority over costs. In this case the leasing utility should have the obligation to serve, if it has the distribution capacity or can obtain the necessary capacity to serve the load. If the leasing utility does not have and can not obtain the necessary capacity, then the distribution owner would potentially have the obligation to serve.
- Another concept would be to rely on governing law, including retail access law, to determine who will have the obligation to serve in specific circumstances.

Responsible Official: Mr. Fred Rettenmund, Customer Account Executive, Power Business Line, is the official responsible for the development of the draft policy proposal for modifying BPA's standards for service

to permit the purchase of Federal power.

Issued in Portland, Oregon, on April 26, 1999.

Judith A. Johansen,

Administrator and Chief Executive Officer.

[FR Doc. 99–11408 Filed 5–5–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–361–000]

Texas Gas Transmission Corporation; Notice of Request Under Blanket Authorization

April 30, 1999.

Take notice that on April 28, 1999, Texas Gas Transmission corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP99–361–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a transportation meter, located in St. Mary Parish, Louisiana, under Texas Gas' blanket certificate issued in docket No. CP82–407–000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Texas Gas proposes to abandon a 2-inch skid-mounted meter run known as the Smith Production-Charenton Meter and is located at Mile 2.9866 on Texas Gas' Jeanerette-Southwest 6-inch Line, located in St. Mary Parish, Louisiana. Texas Gas states the cost of removal is estimated to be $850.

Texas Gas declares that this meter was constructed to transport gas for various shippers. Texas Gas asserts that the last flow of gas through this meter was in March 1992, and the producer plugged and abandoned its well in August 1992.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–11349 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–358–000]

Transcontinental Gas Pipe Line Corporation; Notice of Request Under Blanket Authorization

April 30, 1999.

Take notice that on April 27, 1999, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP99–358–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to install and operate a sales delivery point for Resource Acquisitions Corporation (RAC), under Transco's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rms.htm (call 202–208–2222 for assistance).

Transco states that it is proposing to install, own and operate a new sales delivery point to RAC on the existing 4-inch East White Lake Lateral in Vermillion Parish, Louisiana. The gas will be delivered through a new meter to be installed, owned and operated by Transco. It is stated that at such location, there is an existing Transco meter which measures gas delivered by RAC to Transco. Transco states that it will also install, own and operate electronic flow measurement equipment.

Transco further states that the new delivery point will enable RAC to receive up to 500 Mcf of gas per day from Transco on an interruptible basis. Such gas will be used by RAC for gas lift purposes. It is stated that transportation service will be rendered to RAC through the new delivery point pursuant to Transco's Rate Schedule IT and Part 284(G) of the Commission's regulations. Transco states that the addition of this delivery point will have no significant impact on Transco's peak day or annual deliveries and is not prohibited by Transco's FERC Gas Tariff.

Transco has estimated the total costs of Transco's proposed facilities to be approximately $31,300.00. RAC will reimburse Transco for all costs associated with such facilities.

Transco also states that the installation and operation of Transco's facilities will be performed in compliance with the environmental requirements set forth in Section 157.206(d) of the Commission's regulations, and that Transco will obtain all required environmental clearances prior to the commencement of installation.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–11348 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–366–000]

Williston Basin Interstate Pipeline Company, Notice of Application

April 30, 1999.

Take notice that on April 28, 1999, Williston Basin Interstate Pipeline Company (Williston Basin), Post Office Box 1560, Bismarck, North Dakota 58506–5601, filed in Docket No. CP99–366–000, an application pursuant to Section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon a farm tap, which includes the plugging of the tap and the removal of the meter and regulator, in Fallon

County, Montana, all as more fully set forth in the application on file with the Federal Energy Regulatory Commission (Commission) and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any person desiring to be heard or to make any protest with reference to said application should on or before May 21, 1999, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the Protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williston Basin Interstate Pipeline Company to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–11350 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP97–315–000 et al; CP97–319–000; CP98–200–000; CP98–540–000]

Independence Pipeline Company; ANR Pipeline Company; National Fuel Gas Supply Corporation; Transcontinental Gas Pipe Line Corporation; Notice of Additional Public Meetings in New Jersey on the Draft Environmental Impact Statement for the Proposed Independence Pipeline and Market Link Expansion Projects

April 30, 1999.

At the request of Congressmen William Pascrell and Rodney Frelinghuysen of New Jersey, the staff of the Federal Energy Regulatory Commission (FERC or Commission) will hold two additional meetings to receive oral comments on the Draft Environmental Impact Statement (DEIS) of the Independence Pipeline and Market Link Expansion Projects, as referenced in the above dockets.

The time and locations of the meetings are listed below:

Nutley, New Jersey: May 24, 1999, 8:00 p.m.

Franklin Middle School, 325 Franklin Avenue, Nutley, New Jersey 07011, (973) 661–8871

Chatham, New Jersey: May 25, 1999, 7:00 p.m.

Chatham Middle School, 480 Main Street, Chatham, New Jersey 07928, (973) 635–7200

Interested groups and individuals are encouraged to attend and present oral comments on the DEIS. Transcripts of the meetings will be prepared.

Additional information about the proposed projects is available from Paul McKee in the Commission's Office of External Affairs, at (202) 208–1088; or may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). Access to texts of formal documents issued by the Commission with regards to these dockets, such as orders and notices, is also available on the FERC website using the "CIPS" link. For assistance with access to CIPS, the CIPS Help line can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 99–11347 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* P–11684–000.

c. *Date Filed:* February 19, 1999.

d. *Applicant:* Simplicity Hydro.

e. *Name of Project:* Taylorsville Lake Project.

f. *Location:* At the existing U.S. Army Corps of Engineers' Taylorsville Dam on the Salt River, near the Town of Taylorsville, Spencer County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. David Brown Kinloch, Soft Energy Associates, 414 S. Wenzel Street, Louisville, Kentucky 40204, (502) 589–0975.

i. *FERC Contact:* Ed Lee (202) 219–2808 or E-mail address at Ed.Lee@FERC.fed.us.

j. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed project would utilize the existing U.S. Army Corps of Engineers' Taylorsville Dam and Reservoir, and would consist of the following facilities: (1) three new submersible generating units to be located in the existing intake tower for an installed capacity of 1.135 megawatts; (2) a new 12.5-kilovolt transmission line; and (3) appurtenant facilities. The proposed average annual generation is estimated to be 6

gigawatthours. The cost of the studies under the permit will not exceed $5,000. All project generation would be sold to a local utility.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference ad Files Maintenance Branch, located at 888 First Street, N.E., Room 2–A, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Simplicity Hydro, David Brown Kinlock, 414 S. Wenzel Street, Louisville, Kentucky 40204, (502) 589–0975. A copy of the application may also be viewed or printed by accessing the Commission's website on the Internet at http://www.ferc.fed.us/online/rims.htm or call (202) 208–2222 for assistance.

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32 (a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32 (a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filing must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–11351 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11722–000.

c. *Date Filed:* April 14, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Salamonie Lake Dam Hydroelectric Project.

f. *Location:* On the Salamonie River near the town of Wabash, in Wabash County, Indiana. The project would utilize the U.S. Army Corps of Engineers Salamonie Lake Dam and reservoir.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)–824(r).

h. *Applicant Contact:* Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. *Deadline for filing comments, motions to intervene, and protests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Salamonie Lake Dam and would consist of the following proposed facilities: (1)

Two 50-foot-long, 84-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing two turbine generating units with a total installed capacity of 2.0 MW; (3) a 5-mile-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 12,500 MWh and that the cost of the studies under the permit would be $800,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impact. Based on the results of these studies, the applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–11352 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions to Intervene, and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit

b. Project No.: 11723–000

c. Date Filed: April 14, 1999

d. Applicant: Universal Electric Power Corporation

e. Name of Project: Cagles Mill Lake Dam Hydroelectric Project

f. Location: On the Mill Creek near the town of Bowling Green, in Putnam County, Indiana. The project would utilize the U.S. Army Corps of Engineers Cagels Mill Lake Dam and reservoir.

g. Field Pursuant to: Federal Power Act, 16 USC §§ 791(a)–825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedures require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Cagles Mill Lake Dam and would consist of the following proposed

facilities: (1) a 50-foot-long, 62-in-diameter penstock; (2) a powerhouse on the downstream side of the dam housing a single turbine generating unit with an installed capacity of 938 kW; (3) a 600-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 5,800 MWh and that the cost of the studies under the permit would be $500,000.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development application desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments field, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTESTS", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–11353 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. Type of Application: Preliminary Permit.

b. Project No.: 11725–000.

c. Date Filed: April 14, 1999.

d. Applicant: Universal Electric Power Corporation.

e. Name of Project: Aberdeen Lock and Dam Hydroelectric Project.

f. Location: On the Tombigbee River near the town of Aberdeen, in Monroe County, Mississippi. The project would utilize the U.S. Army Corps of Engineers Aberdeen Lock and Dam and reservoir.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. §§ 791(a)—825(r).

h. Applicant Contact: Ronald S. Feltenberger, Universal Electric Power Corporation, 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. FERC Contact: Tom Dean, thomas.dean@ferc.fed.us, 202–219–2778.

j. Deadline for filing comments, motions to intervene, and protests: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of the document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The project would be located at the existing U.S. Army Corps of Engineers Aberdeen Lock and Dam and would consist of the following proposed

facilities: (1) two 80-foot-long, 72-inch-diameter penstocks; (2) a powerhouse on the downstream side of the dam housing two turbine generating units with a total installed capacity of 2.7 MW; (3) a 700-foot-long, 14.7 kV transmission line; and (4) other appurtenances.

Applicant estimates that the average annual generation would be 17,000 MWh and that the cost of the studies under the permit would be $1,000,000.

1. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.32(a) and (b)(1).

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application (see 18 CFR 4.36). Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.32(a), (b), and (c).

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Representative Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION" "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary and an additional copy must be sent to Director, Division of Project Review, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–11354 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission and Soliciting Additional Study Requests

April 30, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Minor License.

b. *Project No.:* P–11727–000.

c. *Date Filed.:* April 6, 1999.

d. *Applicant:* City of Granite Falls, Minnesota.

e. *Name of Project:* Minnesota Falls Hydro Project.

f. *Location:* On the Minnesota River in Chippewa and Yellow Medicine Counties, near Granite Falls, Minnesota.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* William P. Levin, City Manager, City of Granite Falls, 885 Prentice Street, Granite Falls, MN 56241–1598, (320) 564–3011.

i. *FERC Contact:* Ed Lee (202) 219–2809 or E-mail address at Ed. Lee@FERC.fed.us

j. *Deadline for filing additional study requests:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Description of Project:* The proposed run-of-river Minnesota Falls Project consists of: (1) an 18-foot-high and 500-foot-long embankment and

gravity dam; (2) a 150-acre reservoir at normal pool elevation of 883.9 feet msl; (3) a conduit intake structure; (4) a powerhouse housing two 580-kW generating units for an installed capacity of 1,160 kW; (5) a proposed substation; and (6) appurtenant facilities. The applicant estimates that the total average annual generation would be 3,300 MWh. All generated power is utilized within the applicant's electric utility system.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. With this notice, we are initiating consultation with the MINNESOTA STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

o. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

David P. Boergers,

Secretary.

[FR Doc. 99–11355 Filed 5–5–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6336–7]

Notice of Availability of Funds for Source Water Protection

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) is soliciting proposals to fund projects that support local ground water and source water protection efforts for small, rural or economically disadvantaged communities in priority watersheds.

DATES: All project proposals must be received by the respective EPA Regional or Headquarters office no later than June 7, 1999.

ADDRESSES: Project proposals should be sent to the appropriate address listed below based on the location of the project:

FOR FURTHER INFORMATION CONTACT: EPA Headquarters or Regional contacts listed in the **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Background

In keeping with the objectives of the Safe Drinking Water Act, EPA is soliciting partners through a competitive solicitation to assist Agency efforts to protect the drinking water sources (both ground water and surface water sources) of small, rural or economically disadvantaged communities in priority watersheds. Priority watersheds are those river basins and water bodies identified by the States in their Unified Watershed Assessments, developed under the Clean Water Action Plan.

Proposals under this solicitation may support source water assessment and protection activities at the community level as well as activities related to stormwater, non-point source or wet weather related management activities, that: assist in the integration of ground water concerns into watershed assessment and restoration plans; support the implementation of local wellhead protection programs; and /or, provide technical support to communities considering new ground or surface water protection or contaminant source management plans or ordinances targeted at high risk watersheds. All project proposals must address one or more of these activities to support ground water and source water protection efforts of small communities, economically disadvantaged communities, and/or rural areas in priority watersheds. These projects must also serve as useful prototypes with results that can be transferred to other community-based drinking water protection efforts. Priority consideration will be given to proposals that directly involve and demonstrate community level implementation actions or activities that clearly lead to such results.

Available Funding

Regional Support

A total of $1,625,000 is available from EPA to fund one or more projects in each EPA Region according to the Region-by-Region allocation formula shown below. Individual project proposals may be budgeted at no less than $10,000, and no more than any specific Region's allocation. Each Region will determine how many projects to fund and at what level to fund them. Those interested in applying for funding should submit their proposal to the appropriate Regional contacts as listed below. Collaborative submissions are also encouraged. Project submissions must be made in accordance with the criteria contained in this notice.

Nation-wide Support

An additional $375,000 is available from EPA Headquarters for projects that are targeted to similar objectives but focus on activities that are either national, multi-State or multi-Region in scope. These proposals are to be submitted to the EPA Headquarters contact listed below. National projects should be budgeted at no less than $50,000 and no more than $100,000.

Funding Eligibility

State, local and Tribal governments, not-for-profit community water systems that meet the definition of a public water supply (40 CFR 142.2), and not-for-profit organizations that have demonstrated a field-based capacity to provide technical assistance on drinking water and source water protection issues to small, rural or economically disadvantaged communities are eligible to compete for these funds. While preference may be given to projects located in priority watersheds, projects outside of those watershed areas will be eligible for funding consideration, especially if they have a creative approach to implementing the objectives previously outlined.

Evaluation Criteria

In keeping with the aforementioned objectives of this solicitation, the following other criteria will be used in the evaluation of all proposals submitted by offerors in response to this proposal.

- Well written and organized presentation. *5 points*
- Project objectives, deliverables/ milestones, and measures of success are viable and clearly stated. *15 points*
- Project clearly identifies the need for the activity and the expected environmental and public health benefits that are readily transferable to other communities. *30 points*
- Project uses the collaboration of relevant partners (multi-organization/ community focused) to achieve the project goals. *25 points*
- Project builds the capacity of local communities and organizations to protect public health through drinking water protection by identifying needed institutional arrangements and management responsibilities to carry out project objectives. *25 points*

Total: 100 points

Project Proposal Due Date

All project proposals must be received by the respective EPA Regional or Headquarters office no later than 30 days from May 6, 1999. Project proposals should be sent to the appropriate address listed below based on the location of the project:

EPA office	Contact and address	States	Allocation
Region 1	Mary Jo Feuerbach, U.S. EPA, Region I, Suite 1100, One Congress Street (CMA), Boston, MA 02203–0001, 617–918–1578.	CT, ME, MA, NH, RI, VT	$117,813
Region 2	Benita Best-Wong, U.S. EPA, Region 2, 290 Broadway, New York, NY 10007–1866, 212–637–3852.	NJ, NY, PR, VI	134,063
Region 3	Dale Long, U.S. EPA, Region 3, 1650 Arch Street, Philadelphia, PA 19103, 215–814–5779.	DE, DC, MD, PA, VA, WV	146,251
Region 4	Stallings Howell, U.S. EPA, Region 4, 61 Forsyth Street, SW, Atlanta GA 30303, 404–562–9329.	AL, FL, GA, KY, MS, NC, SC, TN	243,749
Region 5	Thomas Poy, U.S. EPA, Region 5, 77 W. Jackson Boulevard, Chicago, IL 60604–3507, 312–886–5991.	IL, IN, MI, MN, OH, WI	211,250
Region 6	Ken Williams, U.S. EPA, Region 6, 1445 Ross Avenue, Dallas, TX 75202–2733, 214–665–7129.	AR, LA, NM, OK, TX	215,310
Region 7	Stephanie Lindberg, U.S. EPA, Region 7, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7423.	IA, KS, MO, NE	146,250
Region 8	Marcella Hutchinson, U.S. EPA, Region 8, 999 18th Street, Suite 500, Denver, CO 80202–2466, 303–312–6753.	CO, MT, ND, SD, UT, WY	121,875
Region 9	Judy Bloom, U.S. EPA, Region 9, 75 Hawthorne Street San Francisco, CA 94105, 415–744–1829.	AZ, CA, HI, NV	150,313
Region 10	Jeff Kenknight, U.S. EPA, Region 10, 1200 Sixth Avenue, Seattle, WA 98101, 206–553–0226.	AK, ID, OR, WA	138,126
Headquarters	Evyonne Harris, U.S. EPA (4606), 401 M Street, SW, Washington, DC 20460, 202–260–1399.	National, Multi-State or Multi-Region.	375,000

Description of Project Proposals

Proposals should be succinct and to the point. Proposals should not exceed 3–5 pages in total length. The 3–5 pages should include background, a description of proposed project and the environmental need to be addressed, financial information on the costs of the project, a schedule of activities and milestones, supporting documentation, and (any available) letters of support.

Proposals should clearly address the substantive evaluation criteria, in particular, the expected health and environmental benefits and the transferability of the project effort. Other materials, multimedia or otherwise, will not be accepted or evaluated during the competition. Applicants whose proposals are selected for funding will be required to submit the "Application for Federal Assistance" (SF 424). The paperwork burden for this form is approved under EPA's Information Collection request #938.06, OMB Control Number 2030–0020. Do not submit the SF 424 with this proposal application. Projects that receive funding will have specific conditions on reporting progress.

Project Narrative

Proposed project text should include a general overview summarizing planned project activities in accordance with the specifications for project descriptions. The project narrative should briefly describe how the project proposal addresses and supports one or more of the following program objectives:

- Source water assessment and protection activities at the local level, especially in rural areas;
- Integration of ground water concerns into watershed assessment and restoration plans;
- Implementation of wellhead protection programs locally; and/or
- Providing the assistance of field technicians supporting communities considering new ground water/source water ordinances targeted at high-risk watersheds.

In addition, the narrative should briefly describe how the project proposal addresses the following factors:

- Ability of project to support the overall advancement of ground water and source water protection efforts;
- Innovation and transferability of project outcomes to multiple state, Tribal, or local source water protection initiatives; and,
- Past experience, if any, that demonstrates an ability to manage complex projects.

Project Activities

A description of planned project activities including a definition of the project's time span, lists of deliverables and milestones.

Budget Narrative

Each proposal must include a budget summary that identifies cost associated with each activity. Cost estimates should include the following object class categories:

- ✔ Personnel
- ✔ Fringe
- ✔ Travel
- ✔ Supplies
- ✔ Indirect Charges

Schedule of Activities

This schedule for the review and award portion of this process is provided only as an example. Each Region may establish timelines that vary beyond the initial submission date, 30 days from the date of this document.

- Day 30: proposals due after publication of **Federal Register** notice.
- Day 60: complete 30 day review of proposals by either EPA Headquarters or Region.
- Day 70: applicant notified of Agency determination on project.
- Day 85: selected applicants prepare and submit SF 424.
- Day 90: applications forwarded to the respective grants offices.
- Day 120: grants processing completed/Congressional notifications.
- Day 125: awards package mailed to grantee.

Dated: April 30, 1999.

Elizabeth Fellows,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–11387 Filed 5–5–99; 8:45 am]

BILLING CODE: 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE AND TIME: Tuesday, May 11, 1999 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting will be closed to the Public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g. Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C. Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, May 13, 1999 at 10;00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting Will be Open to the Public.

ITEMS TO DISCUSSED: Correction and Approval of Minutes. Advisory Opinion 1999–10: Nationwide Political Participation Committee by counsel, Andrew B. Clubok. Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–11491 Filed 5–4–99; 11:21 am]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMSSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984.

Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, N.W., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 202–009831–019.

Title: New Zealand/United States Container Lines Association.

Parties: P&O Nedlloyd Limited, Columbus Line, Australia-New Zealand Direct Line.

Synopsis: The proposed modification would revise the agreement's independent action and service contract provisions consistent with the requirements of the Ocean Shipping Reform Act of 1998. The parties have requested expedited review.

Agreement No.: 202–011526–002.

Title: Mitsui O.S.K. Lines Ltd/Hoegh-Ugland Auto Liners A/S Space Charter Agreement.

Parties: Hoegh-Ugland Auto Liners A/S Mitsui O.S.K. Lines, Ltd.

Synopsis: The proposed Amendment modifies Article 4 of the Agreement to include trade to the Dominican Republic. The parties request expedited review.

Agreement No.: 203–011547–006.

Title: Israel Discussion Agreement.

Parties: China Ocean Shipping (Group) Company, Farrell Lines Incorporated, Zim Israel Navigation Co., Ltd., Israel Trade Conference.

Synopsis: The proposed Amendment revises Article 5 of the Agreement to authorize joint contracting; discussion of terms, information and other data concerning individual service contracts, as well as the discussion and implementation of voluntary guidelines relating to individual service contracts. The Article is further amended to authorize ad hoc space chartering authority among the parties. In addition, technical and conforming changes are made to Articles 7 and 9 of the Agreement.

Agreement No.: 202–011572–004.

Title: Colombia Independent Carrier Agreement.

Parties: Frontier Liner Services, King Ocean de Colombia, Seaboard Marine, LTd.

Synopsis: The proposed Amendment: (1) revises Articles 5.3, 13, 14, and 18 of the Agreement to bring the Agreement into conformity with the Ocean Shipping Reform Act and Commission's regulations, (2) clarifies the space charter authority under Article 5.5, and (3) specifies the voting procedure by which Members of the Agreement may open and close rates. The members request expedited review.

Agreement No.: 218–011661.

Title: Crowley/MLL Transshipment Agreement.

Parties: Crowley American Transport, Inc. ("Crowley"), Mexican Lines Limited ("MLL"), Transportacion Maritima Grancolombiana S.A. ("MLL").

Synopsis: Under the proposed Agreement Crowley will provide transshipment services to MLL for MLL cargo in the trade between United States Gulf and Pacific Coast ports and ports in Colombia, Ecuador, Peru, and Chile via transshipment ports in Venezuela, Colombia, and Panama.

Agreement No.: 217–011662.

Title: CMA/Great Western Space Charter Agreement.

Parties: Compagnie Maritime d'Affretement, S.A. ("CMA"), Great Western Steamship Co. ("Great Western").

Synopsis: The proposed Agreement would permit CMA to charter space to Great Western in the trade between United States West Coast ports, and inland points via such ports, and ports and points in the Far East. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: May 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11401 Filed 5–5–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573. International Commodity Express Co. d/b/a I.C.E., 2090 Commerce Drive, Medford, OR 97504, Officer: Henry Dewey Wilson, III, President (Qualifying Individual).

Dated: May 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11399 Filed 4–5–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission

applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573. S.A.T. Sea & Air Transport Inc., 1200 South 192nd Street, Suite 200, Seattle, WA 98148, Officers: Peter J. Beckett, President, George M. Goodwin, Secretary/Treasurer.

Dated: May 3, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11400 Filed 5–5–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Lepago Enterprises, Inc., Tampa, Florida, and Constantino Gonzalez, Rosa Gonzales, Anthony F. Gonzalez, and Silvia Martinez, all of Tampa, Florida, as shareholders; to acquire voting shares of Manufacturers Bancshares, Inc., Tampa, Florida (in organization), and thereby indirectly acquire voting shares of Manufacturers Bank of Florida, Tampa, Florida.

2. Llaneza Enterprises, Inc., Tampa, Florida, and Frank A. Llaneza and Diana Llaneza, all of Tampa, Florida, as shareholders; to acquire voting shares of Manufacturers Bancshares, Inc., Tampa, Florida (in organization), and thereby indirectly acquire voting shares of Manufacturers Bank of Florida, Tampa, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Edward J. Snyder, Cedar Vale, Kansas and Caroline S. Blakeslee, Boise, Idaho, as Co-Trustees of the M.F. Jarvis Trust, to acquire voting shares of Cornerstone Alliance, Ltd., Winfield, Kansas; and thereby indirectly acquire voting shares of First National Bank of Winfield, Winfield, Kansas, and Cornerstone Credit Company, Winfield, Kansas.

Board of Governors of the Federal Reserve System, April 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11313 Filed 5–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Manufacturers Bancshares, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Manufacturers Bank of Florida.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Delta Bancshares of Louisiana, Inc., Oak Grove, Louisiana; to become a bank holding company by acquiring 100 percent of the voting shares of West Carroll Community Bank, Oak Grove, Louisiana (in organization).

In connection with this application, Applicant also has applied to merge with Delta Bancshares, Inc., Eudora, Arkansas, and thereby indirectly acquire The Eudora Bank, Eudora, Arkansas.

2. Central Bancompany, Inc., Jefferson City, Missouri; to acquire 100 percent of the voting shares of Mid-Continent Bancshares, Inc., and thereby indirectly acquire Bank of Jacomo, Blue Springs, Missouri.

3. First Premier Financial Corporation, St. Louis, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Premier Bancshares, Inc., Jefferson City, Missouri, and thereby indirectly acquire Premier Bank, Jefferson City, Missouri.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Bank Capital Corporation, Strasburg, Colorado; to acquire 100 percent of the voting shares of Citizens Holding Corporation, Keensburg, Colorado, and thereby indirectly acquire Citizens State Bank, Keensburg, Colorado.

Board of Governors of the Federal Reserve System,

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11314 Filed 5–5–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or

assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 20, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Philippine National Bank Metro Manila, The Philippines, and Century Holding Corporation, Beverly Hills, California; to acquire PNB Remittance Centers, Inc., Los Angeles, California, and thereby engage in money remittance activities, as previously approved by Board order; See *Philippine Commercial International Bank, 77 Fed. Res. Bull. 270, (1991); Bergen Bank A/S. 76 Fed. Res. Bull. 457 (1990); and Norwest Corporation, 81 Fed. Res. Bull. 974 (1995).*

Board of Governors of the Federal Reserve System, April 30, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11315 Filed 5–5–99; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

President's Commission on the Celebration of Women in American History

AGENCY: General Services Administration.

ACTION: Meeting notice.

SUMMARY: Notice is hereby given that the President's Commission on the Celebration of Women in American History will hold an open meeting from 12 p.m. to 5 p.m. on Thursday, May 20, 1999, at the Kennedy Space Center (KSC), Florida, Visitor Complex, Center for Space Education, Pad-A. The telephone number for the KSC Visitors Center if 407–452–2121. Inquiries may be emailed to *www.ksc.nasa.gov*..

PURPOSE: To discuss the report to the President, the recommendation related to the "How to Guide", and to solicit input from the community on implementation plans for this and other recommendations for celebrating women in American history.

Under 41 CFR 101–6.1015(b)(2) less than 15 days notice of the meeting is provided due to delays in organizing schedules.

FOR FURTHER INFORMATION CONTACT: Martha Davis (202) 501–0705, Assistant to the Associate Administrator for Communications, General Services Administration. Also, inquiries may be sent to *martha.davis@gsa.gov*.

Dated: April 30, 1999.

Beth Newburger,

Associate Administrator for Communications.

[FR Doc. 99–11420 Filed 5–5–99; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[INFO–99–16]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Projects

1. Diffusion of Needle-stick Prevention Strategies—NEW—National Institute for Occupational Safety and Health (NIOSH)—Occupational exposure to bloodborne pathogens (including the hepatitis B and C viruses and the human immunodeficiency virus) poses a risk to workers in the health care industry and related occupations. The primary route of exposure to bloodborne pathogens is accidental percutaneous injury by a needle or similar sharp object.

In 1991 the Occupational Safety and Health Administration (OSHA) enacted the final Bloodborne Pathogen Standard. Although the OSHA standard has increased compliance and awareness of needle-stick injury prevention strategies, needle-stick injuries are still occurring.

Studies have demonstrated that the use of safer needle-stick prevention devices can reduce the incidence of needle-stick injuries and resulting costs. Little is known however, about how many hospitals have adopted devices such as, safer blood collection needles (SBCN) designed to prevent percutaneous injuries, and the variables that can influence their adoption by hospitals.

This study will conduct a random sample national survey of 960 infection control practitioners to evaluate how widespread the adoption of SBCN and other needle-stick prevention devices is in hospitals; and some of the internal and external environmental variables that can influence their adoption. The survey data may be used to indicate a hospital's readiness to adopt SBCN, to assess the extent of the diffusion of SBCN, and to cluster hospitals according to their stage of adoption for SBCN.

The goal of this study is to (1) inform future NIOSH communication/dissemination strategies to promote safer blood collection and related medical devices in hospitals, (2) inform policy makers about variables that can influence the adoption of safer blood collection devices, and (3) provide data that reveals national trends for the adoption of safer needles-tick prevention devices in hospitals. There cost to the respondents is $0.00.

Respondent	Number of Respondents	Number of responses/respondent	Avg. Burden/response (in hrs.)	Total burden (in hrs.)
Infection control nurses	960	1	.1166	112

2. PHS Supplements to the Application for Federal Assistance SF 424 (0920–0428)—Extension—The Centers for Disease Control and Prevention (CDC) is requesting a three-year extension of the currently approved OMB forms that are Supplements to the Request for Federal Assistance Application (SF–424). The Checklist, Program Narrative, the Public Health System Impact Statement (third party notification) (PHSIS), a new Substance Abuse and Mental Health Services Administration (SAMHSA) form and a new CDC form are a part of the standard application for state and local governments and for private non-profit and for-profit organizations when applying for financial assistance from PHS grant programs. The Checklist assists applicants to ensure that they have included all required information necessary to process the application. The Checklist data helps to reduce the time required to process and review grant applications, expediting the issuance of grant awards. The PHSIS Third Party Notification Form is used to inform State and local health agencies of community-based proposals submitted by non-governmental applicants for Federal funding. SAMHSA's new form will be used in lieu of the PHSIS in specific instances. CDC's new forms will be used in lieu of the 5161–1 form for state and local governments requesting federal funding that is limited to state and local governments only.

The current OMB approval for the supplements was previously submitted and approved as an emergency clearance and we are asking for a full three clearance to continue data collection The total annual cost to the respondents is estimated to be $1,184,452.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Program Narrative and Checklist	6,231	1	4	24,924
CDC Form 0.0126 (E)	990	1	4	3,960
Public Health Impact Statement (PHSIS)	2,845	2.5	.1666	1,185
SSA (SAMHSA)	1,125	1	.1666	187
Total	.....	.....	.....	30,256

3. Safety for Workers' Eyes: Testing the Effectiveness of Theoretically-Based Eye Injury Prevention Messages—NEW—National Institute for Occupational Safety and Health (NIOSH) -Despite evidence that at least 90% of workplace eye injuries are preventable, safety eye wear use among workers is disappointingly low. According to the National Institute for Occupational Safety and Health (NIOSH) and results from the 1988 National Health Interview Survey Occupation Health Supplement, more than 600,000 occupational eye injuries occur annually. Sixteen percent of eye injuries occur among construction with carpenters being at particular risk given the nature of their work.

Research has been conducted on the nature and extent of eye injuries among workers, but few studies have explored the behavioral aspects of the use of safety eye wear. To date, no one has used behavioral theory to examine the use of safety eye wear among union carpenters or develop a program that would increase safety eye wear use.

The goals of this investigation are to: (1) Estimate the number of carpenters who are currently wearing protective eye wear by direct observation and pre-intervention survey in the study sample; (2) develop an eye wear safety promotion campaign geared toward carpenters, their first-line supervisors, and contractors based on results from focus groups and using the theory of planned behavior; (3) increase the use of protective eye wear among carpenters by administering the eye safety messages to carpenters, their first-line supervisors, and contractors; and (4) determine the effectiveness of the messages by comparing the use of safety eye wear among carpenters before and after the campaign by direct observation, post-intervention survey, and focus groups.

The pre- and post-intervention survey instruments will assess carpenters' use of eye wear before and after the health communication message. In addition, based on the theory of planned behavior, the questionnaire will address workers behavioral intentions, attitudes, subjective norms, and perceived behavioral control.

Using a quasi-experimental design, the data collected in this study will assess the effectiveness of theory-based messages to increase the use of safety eye wear when compared to a control group. This information will provide public health investigators as well as carpenter safety officers with a theory-driven effective eye injury prevention program and the tools to implement it. The total cost to respondents is $2,257.00.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Carpenters	150	2	.33	99

4. Hepatitis C Virus Lookback Evaluation -NEW- National Center for Infectious Disease (NCID)—The Food and Drug Administration (FDA) has recently issued guidelines for notification of persons who received

blood or blood components from donors who subsequently tested positive for antibody to hepatitis C virus (anti-HCV) using a licensed multiantigen assay.[1] Blood collection establishments will identify potentially HCV-contaminated blood products and inform transfusion services of these units. The transfusion services will then attempt to notify the recipients of these products and encourage these recipients to be tested for HCV infection. CDC, in collaboration with the Agency for Health Care Policy and Research (AHCPR) and the FDA, has been charged with the responsibility of evaluating this nationwide notification process. The objective of this study is to evaluate the effectiveness of the targeted lookback for identifying persons infected with HCV, obtaining appropriate medical follow-up, and promoting healthy lifestyles and behaviors. The evaluation has three specific aims:

1. Determine the effectiveness of targeted lookback for identifying prior transfusion recipients with HCV infection, including the proportion of recipients identified who are ultimately tested, the proportion of those tested who are HCV positive, the reasons persons do not receive notification, and the reasons persons do not avail themselves of testing.

2. Determine the effectiveness of targeted lookback for encouraging and obtaining appropriate medical follow-up and promoting healthy lifestyles and behaviors among persons found positive for HCV infection, including proportion of HCV-positive persons who seek medical evaluation and outcome of that evaluation (severity of liver disease, anti-viral therapy, quality of counseling), and reactions/impact of notification on HCV-negative persons.

3. Determine the cost-effectiveness of targeted lookback, including resources (cost, personnel, etc.) utilized by blood collection groups and transfusion services for implementation and costs of medical evaluation and management.

The evaluation will comprise the following components:

1. A nationwide survey of blood collection establishments.

2. A nationwide survey of transfusion services.

3. A follow-up study of transfusion recipients presumed to have been notified of their potential HCV exposure. This detailed study will involve contacting and interviewing transfusion recipients from a sample of transfusion services in defined geographic areas.

4. A follow-up study of notified transfusion recipients who obtain HCV testing offered by blood collection centers.

The total cost to respondents is estimated to be $346,063.

Respondents	Number of respondents	Number of responses/respondents	Avg. burden/response (in hours)	Total burden (in hours)
Blood collection establishments	140	1	5	700
Transfusion services	5,000	1	5	25,000
Transfusion recipients (first telephone contact)	5,000	1	0.2	1,000
Transfusion recipients (second telephone contact)	2,000	1	0.5	1,000
Transfusion recipients (follow-up interview and study)	200	3	0.5	300
Transfusion recipients (first interview of recipients tested at ARC/ABC	500	1	0.2	100
Transfusion recipients (follow-up interview and study of recipients tested at ARC/ABC)	100	3	0.5	150
Total				28,250

Dated: April 30, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11339 Filed 5–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99119]

Centers for Excellence in Health Statistics; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), through the Office of Prevention Research and the National Center for Health Statistics (NCHS) invites applications to establish Centers for Excellence in Health Statistics (CEHS). The goal of these cooperative agreements is to support research to enhance the capability of the statistical sciences to meet the rapidly changing needs of health surveillance, public health research, and in particular prevention research. This program addresses the "Healthy People 2000" priority area(s) of Surveillance and Data.

The purposes of this program are to:

1. Build Infrastructure (Administrative Core): Provide an organizational setting to promote research on methods for health statistics, drawing upon multiple disciplines and involving collaboration with multiple partners. Serve as a model for outreach, input, and collaboration that helps assure that research can be applied to solving priority problems nationally or in the local community.

2. Research Component: Support methodological and analytic research projects aimed at advancing the state of the art of collection, analysis, and interpretation of health statistics to inform prevention research and evaluation. Integrate the fields of statistics, health services research, survey research, public health, epidemiology, behavioral and social sciences, computer science and technology among others. Through such multi-disciplinary research, explore new approaches to enhance the capability of the statistical system to meet the rapidly changing needs of health surveillance, public health research, and prevention research.

3. Recruitment and Outreach (Promote Training): Enhance opportunities for research training, career development, and mentoring.

[1] Food and Drug Administration. Guidance For Industry. Current Good Manufacturing Practice for Blood and Blood Components: (1) Quarantine and Disposition of Units from Prior Collections from Donors with Repeatedly Reactive Screening Tests for Antibody to Hepatitis C Virus (Anti-HCV); (2) Supplemental Testing, and the Notification of Consignees and Blood Recipients of Donor Test Results for Anti-HCV. Rockville, MD: Center for Biologics Evaluation and Research, FDA; September 1998.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan or any other form.

C. Availability of Funds

Approximately $750,000 is available in FY 1999 to fund approximately two awards. It is expected that the average award will be $375,000 in total costs, ranging from $250,000 to $500,000. It is anticipated that the awards will begin on or about September 30, 1999 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by progress reports and the availability of funds.

D. Use of Funds

Applicants should include sufficient travel funds within their budgets to travel to NCHS, Hyattsville, Maryland facility for an annual meeting of all awarded research center principal investigators.

E. Programmatic Interests

There is programmatic interest in developing CEHS that would conduct a wide range of research, analytic and implementation activities pertaining to health statistics and information systems for health promotion and disease prevention research and application. Examples of relevant research topics include but are not limited to those listed below:

1. Survey methodology: New sampling approaches, new designs for hard to reach populations, new approaches for linking and integrating health surveys, improved capabilities for conducting longitudinal and cross sectional studies, improved methods for addressing language and cognitive issues in conducting surveys.

2. Health Promotion and Disease Prevention: Development of standards in terms, definitions and methods; development of health status indicators for within population group comparison; examination of protective or wellness factors and health seeking behaviors particular to population groups.

3. Data linkages: Improved use of existing administrative data sets (e.g., Medicare, Medicaid, Veterans Administration, National Death Index, hospital discharges, and employer health files), expanded use of data sources from outside the public health arena, approaches to tracking patient health episodes across different providers, and methods for linking or matching different data sources to move toward broader population coverage.

4. Data analysis: Analytic approaches to interpreting poverty and socioeconomic status and their effect on population subgroups, analytic approaches to assessing the impact of managed care on health as well as impact of other changes in health care systems, and enhancement of epidemiological studies of disease and illness including the impact of behavior and environmental exposures, improved strategies for combining qualitative data to enhance insight into statistical research, examination of demographic aspects of health, morbidity, disability, and mortality—including issues related to the influence of early life on later life, algorithms for measuring health outcomes and quality of care, and validation of aggregated variables.

5. Information technology: Expanded research and development of automation technologies, including the development of new electronic methods for data collection, improved analytic tools, and new approaches to electronic data dissemination.

6. Special populations: Improved data on populations particularly vulnerable to changes in the health care system and those with unique health problems (racial/ethnic minorities, poor, disabled, elderly, highly mobile populations) of particular interest is the reliability of race and ethnic information on vital and medical records (self-report versus proxy) with a focus on mortality statistics and misreporting.

7. Medical informatics: Approaches to defining, accessing and using computerized patient records, the development of uniform data elements and definitions, developing methods for greater linkage between medical informatics and population-based health information, developing standardized instruments for recording utilization (especially preventive services) for illness episodes that can be used by primary care service providers in a variety of settings.

8. Measurement: Improved techniques for describing and measuring health status, functional status, health outcomes, and the impact of care and the environment, behavior, family, and community on health status.

9. Non-sampling error: Examination of biases associated with the sampling frame, mode of survey, non-response, and measurement bias.

10. Confidentiality and data sharing: Development of innovative methods and techniques to ensure the confidentiality of information provided by respondents, while at the same time maximizing the sharing of micro-data for analysis, e.g., employing random transformations and imputed synthetic variables and evaluating the resulting analytic losses; development and evaluation of alternative approaches to obtain informed consent.

F. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Build Infrastructure (Administrative Core)

(1) Establish an appropriate organizational setting and institutional infrastructure (administrative core) that is supportive of a set of research projects. This setting must facilitate collaboration between multiple disciplines and involve multiple partners.

(2) Establish relationship(s) with organizations relevant to the success of the Center's research agenda, demonstrated by letters of agreement. Cooperation with private-sector programs is encouraged.

(3) Establish relationship(s) with organizations or individuals that can help assure that research can be applied to solving priority problems nationally or (if appropriate) in the local community.

b. Research Component

(1) Develop and organize a prevention/promotion research theme (or set of themes) and a research agenda. For example, themes and research agendas can address Programmatic Interests research topics outlined in that section of the announcement, or can be focused on problems unique to the community in which the CEHS would be located.

(2) Design and conduct one or more research projects within the research agenda developed by the particular CEHS that involves specialists or experts in sophisticated methodology

and individuals or organizations from the community, if appropriate, to identify priorities and link research activities to important public health, prevention and health statistics research issues.

(3) Develop a plan to disseminate research findings as widely as is practicable.

c. Recruitment and Outreach (Promote Training): Establish program for enhancing opportunities, career development and training including mentoring of junior researchers, and programs for training mid-career or transitional professionals who have not previously worked in the specialties of health statistics and prevention research.

2. CDC/NCHS Activities:

a. Provide technical assistance on projects as necessary.

b. If needed, assist in the development of controlled access environment which allows micro-data applications.

c. If needed, assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research.

d. The CDC Institutional Review Board (IRB) will review and approve the protocol initially and on at least an annual basis until the research project is completed.

G. Application Content

In developing the application, applicants should follow the information in the Program Requirements, the Other Requirements, and Evaluation Criteria sections.

H. Submission and Deadline

1. Letter of Intent (LOI)

The letter of intent should be submitted to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement by June 2, 1999. The letter of intent should not exceed two pages and include the following information.

a. Name, address, telephone and fax numbers, and E-mail address of the proposed Principal Investigator and the identities of other key personnel and participation institutions.

b. A descriptive title of the proposed research.

Although the letter of intent is required, it is not binding, and does not enter into the review of a subsequent application, the information that it contains allows NCHS staff to estimate the potential review workload and avoid conflicts of interest in the review process.

2. Application

Submit the original and five copies of PHS–398 (OMB Number 2420925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are in the application kit.

On or before deadline date of July 6, 1999, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

I. Evaluation Criteria

Applications may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review (triage); the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Each competitive application will be evaluated individually against the following criteria by a Special Emphasis Panel (SEP) appointed by CDC. The SEP will score each proposal based on scientific and technical merit. Factors to be considered by the SEP include:

1. Build Infrastructure (Administrative Core)

a. Organizational Infrastructure: Does the applicant demonstrate a multi-disciplinary approach to achieve the mission? Will the approach lead to the development of a body of knowledge that can yield results beyond that accomplished with individual projects alone? Will the CEHS attract established investigators and develop genuine collaboration among investigators with diverse backgrounds and areas of expertise.

b. Environment: Does the scientific, technical and administrative environment of the center contribute to excellence and the probability of success? Does the center take advantage of unique features of the scientific and public health environments or employ useful collaborative arrangements? Is there evidence of a high level of institutional commitment and support? Does the Center Director (Principal Investigator) have specific authority and responsibility to carry out the project? Is the Center Director located organizationally at a level to garner the support needed for the center (i.e., report to an appropriate institutional official, e.g., dean of a school, vice president of a university, or commissioner of health)? Is the time and effort indicated for the Center Director adequate (minimum of 25 percent effort devoted solely to this project with an anticipated range of 25 to 50 percent)?

c. Community Collaboration: Ability to build coalitions and partnerships with critical organizations and individuals (such as distinguished scientists as well as potential researchers in training, universities, colleges, research institutions, state and local governments, hospitals and academic health centers, managed care organizations, and other public and private nonprofit organizations) and to facilitate collaboration and coordination to assure the accomplishment of CEHS goals.

d. Organization: The quality and appropriateness of the organizational structure, the quality and experience of the administrative staff, the plans for quality control through in-house consultation and outside review (e.g., Scientific Advisory Board), and the quality of the plans for the allocating and monitoring of resources.

e. Budget: Reasonableness of proposed budget and time frame for the project in relation to the work proposed.

2. Research Component

a. Research Theme: Is the concept of a center fulfilled, i.e., is there an organizing prevention/promotion research theme (or set of themes) and a research agenda that defines the mission of the particular CEHS?

b. Public Health Significance: Does the center address an important public health problem? If the aims of the application are achieved, how will the field or health statistics and prevention research benefit? What will be the effect of the center and its affiliated studies on fundamental advances in the development, testing, and dissemination of health statistics and prevention

research and on informing public health policy?

c. Leadership: Are the center director and other senior investigators at the forefront of their respective fields? Do they have the experience and authority to organize, administer and direct the center?

d. Research projects: Are the specific research projects of exceptional scientific merit?

e. Innovation: Does the Center propose to develop novel concepts, approaches, measures or methods in basic research that will inform and guide health promotion and disease prevention? Are the aims original and innovative? Do the projects extend existing approaches or develop new methodologies or technologies?

f. Study Populations: The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Human Subjects: When applicable, the adequacy of the proposed means for protecting human subjects.

h. Budget: Reasonableness of proposed budget.

3. Recruitment and Outreach (Promote Training)

a. Does the applicant include a research development component for new, mid-career or transitional professionals through research training and career development mechanisms?

b. To what extent are special efforts made to recruit minority professionals and students to the CEHS?

A second-level review will be conducted by a panel of senior Federal officials. The following will be considered in making funding decisions: (1) Results of the initial review, (2) program balance, and (3) availability of funds.

J. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Annual progress reports due 30 days after the end of the budget period;
2. Financial status report, no more than 90 days after the end of the budget period, and;
3. Final financial report and performance report, no more than 90 days of the project.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. (See Addendum I)

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

K. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 306 of the Public Health Service Act, 42 U.S.C. section 242k as amended. The Catalog of Federal Domestic Assistance number is 93.283.

L. Where to Obtain Additional Information

The application kit and program announcement can be downloaded from the CDC home page on the Internet: http://www.cdc.gov. (Click on funding).

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name, address, and phone number and will need to refer to Announcement 99119. You will receive a complete program description, information on application procedures, and application forms. CDC will not send application kits by facsimile or express mail. Please refer to Program Announcement 99119 when you request information.

If you have questions after reviewing the contents of all documents business management and technical assistance may be obtained from: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99119, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341, telephone (770) 488–2721, Email address: vxw1@cdc.gov.

For programmatic technical assistance, contact: Jennifer Madans, Ph.D. and/or Audrey Burwell, MS, National Center for Health Statistics, 6525 Belcrest Road, Room 1140, Hyattsville, MD 20782, Phone: 301–436–7016, Phone: 301–436–7062, Email: JHM4@cdc.gov, Email: AZB2@cdc.gov.

For additional programmatic information, see also the NCHS home page on the Internet: http://www.cdc.gov/nchswww.

Dated: April 30, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11338 Filed 5–5–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

President's Committee on Mental Retardation; Notice of Meeting

AGENCY HOLDING THE MEETING: President's Committee on Mental Retardation.

TIME AND DATE: May 23, 1999—9:30 a.m.–5 p.m.

PLACE: Hilton New Orleans Riverside Hotel, New Orleans, Louisiana.

STATUS: Full Committee Meetings are open to the public. An interpreter for the deaf will be available upon advance request. All meeting sites are barrier free.

TO BE CONSIDERED: The Committee plans to discuss critical issues concerning Federal Policy, Federal Research and Demonstration, State Policy Collaboration, Minority and Cultural Diversity and Mission and Public Awareness, relating to individuals with mental retardation.

The PCMR acts in an advisory capacity to the President and the Secretary of the U.S. Department of Health and Human Services on a broad range of topics relating to programs, services, and supports for persons with mental retardation. The Committee, by Executive Order, is responsible for evaluating the adequacy of current practices in programs and supports for persons with mental retardation, and for reviewing legislative proposals that impact the quality of life that is experienced by citizens with mental retardation and their families.

CONTACT PERSON FOR MORE INFORMATION: Jane L. Browning, Room 701 Aerospace Building, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, (202) 619–0634.

Dated: April 30, 1999.
Jane L. Browning,
Executive Director, PCMR.
[FR Doc. 11403 Filed 5–5–99; 8:45 am]
BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1010]

Agency Information Collection Activities: Proposed Collection; Comment Request; Investigational New Drug Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish a notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements governing applications for FDA's approval to market a new drug.

DATES: Submit written comments on the collection of information by July 6, 1998.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Karen Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Investigational New Drug (IND) Regulations—21 CFR Part 312 (OMB Control Number 0910–0014—Extension)

FDA is requesting OMB approval for the reporting and recordkeeping requirements contained in FDA's regulation "Investigational New Drug Application" (part 312 (21 CFR part 312)). This regulation implements provisions of section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) to issue regulations under which the clinical investigation of the safety and effectiveness of unapproved new drugs and biological products can be conducted.

FDA is charged with implementing statutory requirements that drug products marketed in the United States be shown to be safe and effective, properly manufactured, and properly labeled for their intended uses. Section 505(a) of the act provides that a new drug may not be introduced or delivered for introduction into interstate commerce in the United States unless FDA has previously approved a new drug application (NDA). FDA approves an NDA only if the sponsor of the application first demonstrates that the drug is safe and effective for the conditions prescribed, recommended, or suggested in the product's labeling. Proof must consist, in part, of adequate and well-controlled studies, including studies in humans, that are conducted by qualified experts. The IND regulations establish reporting requirements that include an initial application as well as amendments to that application, reports on significant revisions of clinical investigation plans, and information on a drug's safety or effectiveness. In addition, the sponsor is required to give FDA an annual summary of the previous year's clinical experience. Submissions are reviewed by medical officers and other agency scientific reviewers assigned responsibility for overseeing the specific study. The IND regulations also contain recordkeeping requirements that pertain to the responsibilities of sponsors and investigators. The detail and complexity of these requirements are dictated by the scientific procedures and human subject safeguards that must be followed in the clinical tests of investigational new drugs.

The IND information collection requirements provide the means by which FDA can: (1) Monitor the safety of ongoing clinical investigations; (2) determine whether the clinical testing of a drug should be authorized; (3) ensure production of reliable data on the metabolism and pharmacological action of the drug in humans; (4) obtain timely information on adverse reactions to the drug; (5) obtain information on side effects associated with increasing doses; (6) obtain information on the drug's effectiveness; (7) ensure the design of well-controlled, scientifically valid studies; and (8) obtain other information pertinent to determining whether clinical testing should be continued and information related to the protection of human subjects. Without the information provided by industry in response to the IND regulations, FDA cannot authorize or monitor the clinical investigations which must be conducted prior to authorizing the sale and general use of new drugs. These reports enable FDA to monitor a study's progress, to assure subject safety, to assure that a study will be conducted ethically, and to increase the likelihood that the sponsor will conduct studies that will be useful in determining whether the drug should be marketed and available for use in medical practice.

The following two forms are required under part 312: Form FDA–1571 entitled "Investigational New Drug Application."A person who intends to conduct a clinical investigation submits this form to FDA. It includes: (1) A cover sheet containing background information on the sponsor and investigator; (2) a table of contents; (3) an introductory statement and general investigational plan; (4) an investigator's brochure describing the drug substance;

(5) a protocol for each planned study; (6) chemistry, manufacturing, and control information for each investigation; (7) pharmacology and toxicology information for each investigation; and (8) previous human experience with the investigational drug.

Form FDA–1572 entitled "Investigator Statement." Before permitting an investigator to begin participation in an investigation, the sponsor must obtain and record this form. It includes background information on the investigator and the investigation, and a general outline of the planned investigation and the study protocol.

FDA is requesting OMB approval for the following reporting and recordkeeping requirements in part 312:

TABLE 1.—REPORTING REQUIREMENTS

21 CFR Section	Explanations
312.7(d)	Applications for permission to sell an investigational new drug.
312.10(a)	Applications for waiver of requirements under part 312. Only emergency requests are estimated under this section; other requests are included under §§ 312.23 and 312.31.
312.20(c)	Applications for investigations involving an exception from informed consent under § 50.24 (21 CFR 50.24). Estimates for this requirement are included under § 312.23.
312.23	IND (content and format).
312.23(a)(1)	Cover sheet FDA–1571.
312.23(a)(2)	Table of contents.
312.23(a)(3)	Investigational plan for each planned study.
312.23(a)(5)	Investigator's brochure.
312.23(a)(6)	Protocols—Phase 1, 2, and 3.
312.23(a)(7)	Chemistry, manufacturing, and control information.
312.23(a)(7)(iv)(*a*), (*b*), (*c*)	A description of the drug substance, a list of all components, and any placebo used.
312.23(a)(7)(iv)(*d*)	Labeling—copies of labels and labeling to be provided each investigator.
312.23(a)(7)(iv)(*e*)	Environmental impact analysis regarding drug manufacturing and use.
312.23(a)(8)	Pharmacological and toxicology information.
312.23(a)(9)	Previous human experience with the investigational drug.
312.23(a)(10)	Additional information.
312.23(a)(11)	Relevant information.
312.23(f)	Identification of exception from informed consent.
312.30	Protocol amendments.
312.30(a)	New protocol.
312.30(b)	Change in protocol.
312.30(c)	New investigator.
312.30(d)	Content and format.
312.30(e)	Frequency.
312.31	Information amendments.
312.31(b)	Content and format.
	Chemistry, toxicology, or technical information.
312.32	Safety reports.
312.32(c)(1)	Written reports to FDA and to investigators.
312.32(c)(2)	Telephone reports to FDA for fatal or life-threatening experience.
312.32(c)(3)	Format or frequency.
312.32(d)	Followup submissions.
312.33	Annual reports.
312.33(a)	Individual study information.
312.33(b)	Summary information.
312.33(b)(1)	Adverse experiences.
312.33(b)(2)	Safety report summary.
312.33(b)(3)	List of fatalities and causes of death.
312.33(b)(4)	List of discontinuing subjects.
312.33(b)(5)	Drug action.
312.33(b)(6)	Preclinical studies and findings.
312.33(b)(7)	Significant changes.
312.33(c)	Next year general investigational plan.
312.33(d)	Brochure revision.
312.33(e)	Phase I protocol modifications.
312.33(f)	Foreign marketing developments.
312.35	Treatment use of investigational new drugs.
312.35(a)	Treatment protocol submitted by IND sponsor.
312.35(b)	Treatment IND submitted by licensed practitioner.
312.36	Requests for emergency use of an investigational new drug.
312.38(b) and (c)	Notification of withdrawal of an IND.
312.44(c) and (d)	Opportunity for sponsor response to FDA when IND is terminated.
312.45(a) and (b)	Sponsor request for or response to inactive status determination of an IND.
312.47(b)	"End-of-Phase 2" meetings and "Pre-NDA" meetings.

TABLE 1.—REPORTING REQUIREMENTS—Continued

21 CFR Section	Explanations
312.53(c)	Investigator information. Investigator report (Form FDA–1572) and narrative; Investigator's background information; Phase 1 outline of planned investigation; and Phase 2 outline of study protocol; financial disclosure information.
312.54(a) and (b)	Sponsor submissions concerning investigations involving an exception from informed consent under § 50.24.
312.55(b)	Sponsor reports to investigators on new observations, especially adverse reactions and safe use. Only "new observations" are estimated under this section; investigator brochures are included under § 312.23.
312.56(b), (c), and (d)	Sponsor monitoring of all clinical investigations, investigators, and drug safety; notification to FDA.
312.58(a)	Sponsor's submission of records to FDA on request.
312.64	Investigator reports to the sponsor.
312.64(a)	Progress reports.
312.64(b)	Safety reports.
312.64(c)	Final reports.
312.64(d)	Financial disclosure reports.
312.66	Investigator reports to Institutional Review Board. Estimates for this requirement are included under § 312.53.
312.70	Investigator disqualification; opportunity to respond to FDA. Estimates for this requirement are not included in the estimates for part 312.
312.83	Sponsor submission of treatment protocol. Estimates for this requirement are included under §§ 312.34 and 312.35.
312.85	Sponsors conducting phase 4 studies. Estimates for these postmarketing studies are not included in the estimates for part 312.
312.110(b)	Request to export an investigational drug.
312.120(b) and (c)(2)	Sponsor's submission to FDA for use of foreign clinical study to support an IND.
312.120(c)(3)	Sponsor's report to FDA on findings of independent review committee on foreign clinical study.
312.130(d)	Request for disclosable information for investigations involving an exception from informed consent under § 50.24.

TABLE 2.—RECORDKEEPING REQUIREMENTS

21 CFR Section	Explanations
312.52(a)	Transfer of obligations to a contract research organization.
312.57(a) and (b)	Sponsor recordkeeping.
312.59	Sponsor recordkeeping of disposition of unused supply of drugs. Estimates for this requirement are included under § 312.57.
312.62(a)	Investigator recordkeeping of disposition of drugs.
312.62(b)	Investigator recordkeeping of case histories of individuals.
312.160(a)	Records maintenance—shipment of drugs for investigational use in laboratory research animals or in vitro tests.
312.160(c)	Shipper records of alternative disposition of unused drugs.

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	7	1	7	24	168
312.10(a)	0	0	0	0	0
312.23(a) and (f)	1,601	1.25	1,996	1,600	3,193,600
312.30(a) through (e)	918	14.85	13,629	284	3,870,636
312.31(b)	760	8.87	6,738	100	673,800
312.32(c) and (d)	459	14.33	6,576	32	210,432
312.33(a) through (f)	1,841	2.35	4,318	350	1,511,300
312.35(a) and (b)	1	1	1	300	300
312.36	643	1.2	720	16	11,520
312.38(b)	621	1.24	773	28	21,644
312.38(c)	621	1.24	773	160	123,680
312.44(c) and (d)	710	1.10	780	16	12,480
312.45(a) and (b)	294	1.32	389	12	4,668
312.47(b)	252	1	252	160	40,320
312.53(c)	4,500	1	4,500	80	360,000
312.54(a) and (b)	4	1	4	48	192

TABLE 3.—ESTIMATED ANNUAL REPORTING BURDEN FOR HUMAN DRUGS[1]—Continued

21 CFR Section	No. of Respondents	No. of Responses Per Respondent	Total Annual Responses	Hours per Response	Total Hours
312.55(b)	4,500	1	4,500	48	216,000
312.56(b), (c), and (d)	5	1	5	80	400
312.58(a)	337	1	337	8	2,696
312.64(a) through (d)	8,200	1	8,200	24	196,800
312.110(b)	150	2	303	75	22,725
312.120(b) and (c)(2)	100	2	200	168	33,600
312(c)(3)	100	2	200	40	8,000
312.130(d)	4	1	4	8	32
Total Reporting Burden					10,514,993

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 4.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR HUMAN DRUGS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a)	360	1	360	2	720
312.57(a) and (b)	4,000	2.05	8,200	100	400,000
312.62(a)	8,200	1	8,200	40	328,000
312.62(b)	8,200	12.2	100,000	40	328,000
312.160(a)	3,400	7.35	25,000	30 min	1,700
312.160(c)	3,400	2.35	8,000	30 min	1,700
Total Recordkeeping Burden					1,060,120
Human Drugs Total Burden Hours					11,575,113

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 5.—ESTIMATED ANNUAL REPORTING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Respondents	No. of Responses Per Response	Total Annual Responses	Hours per Response	Total Hours
312.7(d)	9	1.3	12	24	288
312.10(a)	1	1	1	40	40
312.23(a) and (f) and 312.120(b), (c)(2), and (c)(3)	278	1.8	492	1,600	787,200
312.30(a) and (e)	975	6.5	6,411	284	1,820,724
312.31(b)	975	9.2	9,005	100	900,500
312.32(c) and (d) and 312.56(c)	602	6.7	4,034	32	129,088
312.33(a) and (f) and 312.56(c)	1,253	1.6	1,989	350	696,150
312.35(a) and (b)	1	1	1	300	300
312.36	22	5.5	122	16	1,952
312.38(b)	128	1.7	212	28	5,936
312.38(c)	128	1.7	212	160	33,920
312.44(c) and (d)	55	1.9	107	16	1,712
312.45(a) and (b)	74	1.4	105	12	1,260
312.47(b)	150	1.8	274	160	43,840
312.53(c)	672	6.6	4,421	80	353,680
312.54(a) and (b)	4	1	4	48	192
312.55(b)	374	6.1	2,288	48	109,824
312.56(b) and (d)	12	1.6	20	80	1,600
312.58(a)	10	1	10	8	80
312.64(a) and (d)	5,014	1	5,014	24	120,336
312.110(b)	10	1.3	13	75	975
312.130(d)	1	1	1	0.5	0.5
Total Reporting Burden					5,009,597.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.52(a)	27	2.5	67	5	135
312.57(a) and (b)	1,253	2	2,506	100	125,300
312.62(a)	5,014	1	5,014	40	200,560
312.62(b)	8,200	12.2	100,000	40	328,000

TABLE 6.—ESTIMATED ANNUAL RECORDKEEPING BURDEN FOR BIOLOGICS[1]—Continued

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
312.160(a)	3,400	7.35	25,000	30 min	1,700
312.160(c)	320	1	320	0.5	160
Total Biologic Recordkeeping Hours					655,855
Total Biologics Burden Hours					5,665,452.5
Total Human Drugs Burden Hours					11,575,113
Total Combined Burdens					17,240,565.5

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11310 Filed 05–05–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98N–0811]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Guidance for Industry: Designation, Development, and Application Review for Products in Fast-Track Drug Development Programs

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 7, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Guidance for Industry: Designation, Development, and Application Review for Products in Fast-Track Drug Development Programs

Section 112(a) of the Food and Drug Administration Modernization Act of 1997 (FDAMA) (Pub. L. 105–115) amends the Federal Food, Drug, and Cosmetic Act (the act) by adding section 506 (21 U.S.C. 356) and authorizes FDA to take appropriate action to facilitate the development and expedite the review of new drugs, including biological products, intended to treat a serious or life-threatening condition and that demonstrate a potential to meet an unmet medical need. The issuance of the guidance will be under section 112(b) of FDAMA, which requires the agency to issue guidance regarding fast-track policies and procedures within 1 year of the date of enactment of FDAMA, November 21, 1997. The guidance will discuss collections of information that are expressly specified under section 506 of the act, other sections of the Public Health Service Act (the PHS Act), or implementing regulations. For example, under section 506 of the act, an applicant who seeks fast-track designation must submit a request to FDA. Some of the support for such a request may be required under regulations, such as parts 312, 314, and 601 (21 CFR parts 312, 314, and 601), which specify the types and format of information and data that should be submitted to FDA for evaluation of the safety and effectiveness of investigational new drug applications (IND's) (part 312), new drug applications (part 314), or biological license applications (part 601). The guidance will describe three general areas involving collection of information: Designation requests, premeeting packages, and requests to submit portions of an application. Of these, designation requests, and premeeting packages in support of obtaining a fast-track program benefit will provide for additional collections of information not provided elsewhere in statute or regulation. Information in support of fast-track designation or fast-track program benefits that has previously been submitted to the agency, in some cases, may be incorporated by referring to them rather than by resubmission. In some instances, a summary of data and information may be submitted in support of fast-track designation or fast-track program benefits. Therefore, FDA anticipates that the PRA reporting burden under the guidance will be minimal.

Under section 506(a)(1) of the act, an applicant who seeks fast-track designation is required to submit a request to the agency. In order to receive a fast-track designation, the requester must establish that the product meets the statutory standard for designation, i.e., that: (1) The product is intended for a serious or life-threatening condition; and (2) the product has the potential to address an unmet medical need. In most cases, the agency expects that information to support a designation request will have been gathered under existing provisions of the act, the PHS Act, or the implementing regulation. Such information, if already submitted to the agency, may be summarized in a fast-track designation request.

The guidance will also recommend that a designation request include, where applicable, additional information not specified elsewhere by statute or regulation. For example, additional information may be needed to show that a product has the potential to meet an unmet medical need where approved therapy exists for the serious or life-threatening condition to be treated. Such information may include: Clinical data, published reports, summaries of data and reports, and a list of references. The amount of information and discussion in a designation request need not be voluminous, but it should be sufficient to permit a reviewer to assess whether the criteria for fast-track designation have been met. After the agency makes a fast-track designation, a sponsor or applicant may submit a premeeting

package, which may include additional information to support a request to participate in certain fast-track programs. As with the request for fast-track designation, the agency expects that most sponsors or applicants will have gathered such information to meet existing requirements under the act, the PHS Act, or implementing regulations, such as descriptions of clinical safety and efficacy trials not conducted under an IND (i.e., foreign studies), and information to support a request for accelerated approval. If information has been previously submitted to FDA under an OMB approved collection of information, the discussion of such information in a fast-track premeeting package may be summarized. Consequently, FDA anticipates that the additional collection of information attributed solely to the guidance will be minimal.

Section 506(c) of the act requires a collection of information before an applicant may be permitted to submit to FDA portions of an application for review. Under this provision of the fast-track statute, a sponsor must submit clinical data sufficient for the agency to determine, after preliminary evaluation, that a fast-track product may be effective. Section 506(c) of the act also requires that an applicant provide a schedule for the submission of information necessary to make the application complete before FDA can commence its review. The guidance will not provide for any new collection of information regarding the submission of portions of an application that is not required under section 506(c) of the act or any other provision of the act. All forms that will be referred to in the guidance have valid OMB control numbers. These forms include: FDA Form 1571 (OMB Control No. 0910–0104, expires December 31, 1999); FDA Form 356h (OMB Control No. 0910–0338, expires April 30, 2000); and FDA Form 3397 (OMB Control No. 0910–0297, expires April 30, 2001). Respondents to this information collection are sponsors and applicants that seek fast-track designation under section 506 of the act. The agency estimates that the aggregate annual number of respondents submitting requests for fast-track designation to the Center for Biologics Evaluation and Research (CBER) and the Center for Drug Evaluation and Research (CDER) will be approximately 60. To obtain this estimate, FDA extrapolated from the number of requests for fast-track designation actually received by CBER and CDER in a 6-month period since November 21, 1997, the date of enactment of FDAMA. Within this time period, CBER received 9 requests, and CDER received 20 requests. FDA estimates that the number of hours needed to prepare a request for fast-track designation may generally range between 40 and 80 hours per request, depending on the complexity of each request, with an average of 60 hours per request, as indicated in Table 1 of this document. Not all requests for fast-track designation may meet the statutory standard. The agency estimates that approximately 90 percent of all annual requests, approximately 54 respondents, for fast-track designation would be granted. Of those respondents who receive fast-track designation for a product, FDA expects that all will submit a premeeting package and that a premeeting package would generally need more preparation time than needed for a designation request because the issues may be more complex and the data may need to be more developed. FDA estimates that the preparation hours may generally range between 80 and 120 hours, with an average of 100 hours per package, as indicated in Table 1 of this document. The hour burden estimates contained in Table 1 of this document are for information collections requests in the guidance only and do not include burden estimates for statutory requirements specifically mandated by the act, the PHS Act, or implementing regulations. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Designation Request	60	1	60	60	3,600
Premeeting Packages	54	1	54	100	5,400
Totals	114		114		9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: April 29, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11311 Filed 5–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99F–1170]

Ciba Specialty Chemicals Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Ciba Specialty Chemicals Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,6-bis-[(octylthio)]methyl] phenol as a stabilizer for repeat use rubber articles.

FOR FURTHER INFORMATION CONTACT: Mark A. Hepp, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3098.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 9B4660) has been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposes to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010)to provide for the safe use of 2-methyl-4,6-bis-[(octylthio)]methyl] phenol as a stabilizer for repeat use rubber articles.

The agency has determined under 21 CFR 25.32(i) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Dated: April 26, 1999.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11309 Filed 05–05–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–1041]

Salad Dressing Deviating From Identity Standard; Temporary Permit for Market Testing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a temporary permit has been issued to Kraft Foods, Inc., to market test a product designated as "salad dressing" that deviates from the U.S. standard of identity for salad dressing. The purpose of the temporary permit is to allow the applicant to measure consumer acceptance of the product, identify mass production problems, and assess commercial feasibility, in support of a petition to amend the standard of identity for salad dressing.

DATES: This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 4, 1999.

FOR FURTHER INFORMATION CONTACT: Loretta A. Carey, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 130.17 concerning temporary permits to facilitate market testing of foods deviating from the requirements of the standards of identity issued under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341), FDA is giving notice that a temporary permit has been issued to Kraft Foods, Inc., Three Lakes Dr., Northfield, IL 60093–2753.

The permit covers limited interstate marketing tests of products identified as "salad dressing" that deviate from the U.S. standard of identity for salad dressing (21 CFR 169.150) by adding potassium sorbate, phosphoric acid, and lactic acid, which are not permitted under the current standard, and by reducing the amount of egg below the amount required by the current standard and adding polysorbate 60 and propylene glycol alginate, which are not permitted under the currrent standard, as safe and suitable emulsifiers other than egg. In all other respects, the test product will conform to the standard for salad dressing. The test product meets all the requirements of the standard with the exception of the reduced amount of egg level in the product and the addition of potassium sorbate, phosphoric acid, lactic acid, polysorbate 60, and propylene glycol alginate. Because test preferences vary by area, along with social and environmental differences, the purpose of this permit is to test the product throughout the United States.

Under this temporary permit, the salad dressing will be test marketed as "salad dressing."

This permit provides for the temporary marketing of approximately 390 million pounds of product during the entire 15-month period. The test product will be manufactured by Kraft Foods, Inc., at 2340 Forest Lane, Garland, TX 75040; 1701 West Bradley Ave., Champaign, IL 61821; and 7352 Industrial Blvd., Allentown, PA 18106. The product will be distributed throughout the United States.

The information panel of the labels will bear nutrition labeling in accordance with 21 CFR 101.9. Each of the ingredients used in the food must be declared on the labels as required by the applicable sections of 21 CFR part 101. This permit is effective for 15 months, beginning on the date the food is introduced or caused to be introduced into interstate commerce, but not later than August 4, 1999.

Dated: April 27, 1999.

Kenneth J. Falci,

Acting Director, Office of Food Labeling, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11346 Filed 5–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0024]

Immunotoxicity Testing Guidance; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the guidance entitled "Immunotoxicity Testing Guidance." This guidance is intended to provide FDA reviewers and manufacturers with a coherent strategy for assessing whether testing for potential adverse effects involving medical devices or constituent materials and the immune system is needed. The guidance is also intended to aid in developing a systematic approach to such testing.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the guidance entitled "Immunotoxicity Testing Guidance" to the Division of Small Manufacturers Assistance (HFZ–220), Center for Devices and Radiological Health (CDRH), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. See the **SUPPLEMENTARY INFORMATION** section for information on electronic access to the guidance.

Submit written comments on the "Immunotoxicity Testing Guidance" to the contact person listed below.

FOR FURTHER INFORMATION CONTACT: John J. Langone, Center for Devices and Radiological Health (HFZ–113), Food and Drug Administration, 12709 Twinbrook Pkwy., Rockville, MD 20852, 301–443–2911.

SUPPLEMENTARY INFORMATION:

I. Background

In May 1995, FDA adopted the General Program Memorandum G95–1, an FDA-modified version of International Standard ISO–10993, entitled "Biological Evaluation of Medical Devices—Part 1: Evaluation and Testing." It was pointed out that in addition to the general guidance for toxicity testing contained in that document, additional guidance might be needed for evaluation of specific organ or system toxicity. As a result, the Office of Device Evaluation, CDRH, developed the "Immunotoxicity Testing Guidance" to deal specifically with testing for adverse effects of medical devices or constituent materials on the immune system. The guidance is intended to ensure a consistent and scientifically sound approach to the overall evaluation of product safety.

In addition to explanatory text, the guidance contains: (1) A flowchart to determine if immunotoxicity testing is recommended, and (2) three tables that lead sequentially from potential immunological effects, to potential responses commonly associated with

those effects, to examples of testing that might be considered as part of the overall safety evaluation of finished devices or constituent materials.

FDA published a notice of availability of the original draft guidance in the **Federal Register** of March 18, 1997 (62 FR 12832). Comments were received from 28 respondents, including medical device manufacturers, industry trade groups, and individuals. These comments were reviewed by the CDRH Immunotoxicology Working Group. Based on these comments, the draft guidance was revised to include additional didactic and technical information. The revised draft guidance was reviewed by a group of regulatory reviewers as well as senior CDRH management to obtain the final version of "Immunotoxicity Testing Guidance."

II. Significance of Guidance

This guidance represents the agency's current thinking on immunotoxicity testing of medical devices and constituents. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the applicable statute, regulations, or both.

The agency has adopted good guidance practices (GGP's), which set forth the agency's policies and procedures for the development, issuance, and use of guidance documents (62 FR 8961, February 27, 1997). This guidance is issued as a Level 1 guidance consistent with GGP's.

III. Electronic Access

In order to receive "Immunotoxicity Testing Guidance" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. At the first voice prompt press 1 to access DSMA Facts, at second voice prompt press 2, and then enter the document number (635) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the guidance may also do so using the World Wide Web (WWW). CDRH maintains an entry on the WWW for easy access to information including text, graphics, and files that may be downloaded to a personal computer with access to the WWW. Updated on a regular basis, the CDRH home page includes "Immunotoxicity Testing Guidance," device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, mammography matters, and other device-oriented information. The CDRH home page may be accessed at "http://www.fda.gov/cdrh". The "Immunotoxicity Testing Guidance" document will be available at "http://www.fda.gov/cdrh/ost/ostggp/immunotox.html".

IV. Comments

Interested persons may, at any time, submit written comments regarding this guidance to the contact person listed previously. Such comments will be considered when determining whether to amend the current guidance.

Dated: April 28, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–11345 Filed 5–5–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee C—Basic & Preclinical.

Date: June 11, 1999.

Time: 1:30 PM to 4:30 PM.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Blvd. 6th Floor, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Florence E. Farber, Ph.D., Executive Secretary, Office of Advisory Activities, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, EPN 609, Rockville, MD 20892, 301/496–2378.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11430 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee H—Clinical Groups.

Date: June 7–8, 1999.

Time: 8:00 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Deborah R. Jaffe, PHD, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–7221.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower, 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11431 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Research Resources Council, May 20, 1999, 8:30 a.m. to May 21, 1999, 11 a.m., National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892 which was published in the **Federal Register** on March 24, 1999, 99–7202.

An additional open session of the meeting will be held on May 21, 1999, beginning at 9:30 a.m. and lasting until the meeting is adjourned. The meeting is partially closed to the public.

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11325 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.

Date: June 17, 1999.

Time: 8:00 am to 4:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Silver Spring, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Jeffrey H. Hurst, PhD, Scientific Review Administrator, Review Branch, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, Room 7208, Bethesda, MD 20892, 301/435–0303.

Name of Committee: Clinical Trials Review Committee.

Date: June 20–22, 1999.

Time: June 20, 1999, 6:30 pm to 10:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Time: June 21, 1999, 8:00 am to 6:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person:

Time: June 22, 1999, 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A. Hunter, PhD, NHLBI/DEA/Review Branch, Rockledge Building II, Room 7192, MSC 7924, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11326 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council for Human Genome Research.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance such as sign language interpretation or other reasonable accommodations should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council for Human Genome Research.

Date: May 17–18, 1999.

Open: May 17, 1999, 8:30 a.m. to 1:00 p.m.

Agenda: The meeting will be open to the public on Monday, May 17, 8:30 a.m. to approximately 1:00 p.m. to discuss administrative details or other issues relating to committee activities.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Closed: May 17, 1999, 1:00 p.m. to adjournment on May 18, 1999.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.

Contact Person: Elke Jordan, PHD, Deputy Director, National Human Genome Research Institute, National Institutes of Health, PHS, DHHS, 31 Center Drive, Building 31, Room 4B09, Bethesda, MD 20892, 301 496–0844.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11426 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: May 18, 1999.

Time: 11:30 a.m. to 12:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11327 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Training Grant and Career Development Review Committee.

Date: June 18, 1999.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: One Washington Circle Hotel, One Washington Circle, N.W., Washington, DC 20037.

Contact Person: Lillian M. Pubols, PhD, Chief, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223, lp28e@nih.gov.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders B.

Date: June 21–22, 1999.

Time: 7:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Paul A. Sheehy, PhD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

Name of Committee: National Institute of Neurological Disorders and Stroke Initial Review Group, Neurological Sciences and Disorders A.

Date: June 24–25, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, Chevy Chase, MD 20815.

Contact Person: Katherine M. Woodbury, Phd, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, National Institutes of Health, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institute of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11328 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Conference Grants (R13).

Date: May 10, 1999.

Time: 1:00 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS-East Campus, 79 T W Alexander Dr., Bldg. 4401, Rm EC–122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: J. Patrick Mastin, PhD, 79 Alexander Drive, Research Triangle Park, NC 27709, (919) 541–1446.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11329 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: May 13–14, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Robert H. Stretch, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–4728.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: April 29, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11330 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Adult Therapeutic Clinical Trials Program for AIDS.

Date: June 6–9, 1999.

Time: June 6, 1999, 7:00 PM to recess.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Time: June 7, 1999, 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Paula S. Strickland, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C02, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–402–0643.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11427 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Diseases.

Date: May 21, 1999.

Time: 1:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, Kaleidoscope Room, 2101 Wisconsin Avenue, Washington, DC 20007.

Contact Person: Anna Ramsey-Ewing, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301/435–8536.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11428 Filed 5–5–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–C (M1)P.

Date: May 11–13, 1999.

Time: May 11, 1999, 7:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Remont Hotel, 2101 5th Avenue, North Birmingham, AL 35203.

Contact Person: Dan E. Matsumoto, PHD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37B, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–8894.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; ZDK1 GRB–6 M2.

Date: May 12–14, 1999.

Time: May 12, 1999, 8:00 PM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The Envoy Club, 377 East 33rd Street, New York, NY 10015.

Contact Person: Neal A. Musto, PHD, Scientific Review Administrator.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, ZDK1 GRB D (M3)S.

Date: May 13, 1999.

Time: 11:00 AM to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Bldg., 45 Center Drive, Room 6AS–37, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Ann A. Hagan, PHD, Chief, Review Branch, National Institute of Diabetes, Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Rm. 6AS37, Bldg. 45, Bethesda, MD 20892, (301) 594–8886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: April 30, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–11429 Filed 5–5–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Program Support Center

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Program Support Center (PSC), will periodically publish summaries of proposed information collection projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the PSC Reports Clearance Officer on (301) 443–2045.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

1. Proposed Project: Application to the Board of Correction of Public Health Service (PHS) Commissioned Corps Records (PSC–54) (Formerly PHS–6190)—0937–0095—Revision.

An application is submitted by commissioned officers of the PHS Commissioned Corps, former officers, their spouses or heirs who appeal to the Board for Correction to request remsoval of an alleged error or injustice in an officer's record. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or injustice. An appeal cannot be considered without the information furnished on this form. The form has been revised to reflect: (1) Organizational changes which have occurred since its last revision in May 1985; (2) a streamlined form to permit a more logical entry of data; and (3) a need for additional information to process appeals and release records. Respondents: Individuals of households and Federal employees. Total Number of Respondents: ten per calendar year. Number of Responses per Respondent: one response request. Average Burden per Response: four hours.

Estimated Annual Burden: 40 hours.

Send comments to Douglas F. Mortl, PSC Reports Clearance Officer, Room 17A08, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: April 29, 1999.

Lynnda M. Regan,

Director, Program Support Center.

[FR Doc. 99–11308 Filed 5–5–99; 8:45 am]

BILLING CODE 4168–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4445–N–11]

Notice of Proposed Information Collection: Comment Request; Request for Termination of Multifamily Mortgage Insurance

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments due date: July 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Room 9116, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Peter Giaquinto, Office of Multifamily Housing Programs, telephone number (202) 708–4162, this is not a toll-free number) for copies of the proposed forms and other available documents.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Request for Termination of Multifamily Mortgage Insurance.

OMB Control Number, if applicable: 2502–0416.

Description of the Need for the Information and Proposed Use: Form HUD–9807 is used to notify HUD that a mortgage has been paid in full or that a mortgagor and mortgagee mutually agree to terminate the contract of mortgage insurance with HUD.

Agency Form Numbers, if applicable: HUD–9807.

Status of the proposed information collection: Reinstatement without change or a previously approved collection.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and

hours of response: The estimated number of respondents is 500, frequency of responses is 1, and the hours of response is .125 hour per response.

Authority. The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 30, 1999.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 99–11419 Filed 5–5–99; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket Nos. FR–4412–C–02; FR–4413–C–02; FR–4414–C–02; and FR–4415–C–03]

Technical Corrections to Notices of Funding Availability for Fiscal Year 1999 for: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans; Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments; Family Unification Program; and Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program)

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice; technical corrections.

SUMMARY: This notice makes two technical corrections to each of the following four Fiscal Year 1999 Notices of Funding Availability (NOFAs):

—Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans

—Rental Assistance for Non-elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments

—Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program)

—the Family Unification Program

FOR FURTHER INFORMATION CONTACT: George C. Hendrickson, Housing Program Specialist, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Room 4216, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–1872, ext. 4064. (This is not a toll-free number.) Persons with hearing or speech impairments may access this number via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339. (This is a toll-free number.)

SUPPLEMENTARY INFORMATION: On March 8, 1999, HUD published NOFAs for the following programs:

—Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (64 FR 11294)

—Rental Assistance for Non-elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments (64 FR 11310)

—Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program) (64 FR 11302)

On March 5, 1999, HUD published a NOFA for the Family Unification Program. (64 FR 10904)

This correction notice, published in today's **Federal Register**, makes the following two corrections to paragraph V.(B)(2)(b) in all four NOFAs:

1. The lease-up rate for a PHA's Section 8 rental certificate and voucher program should be calculated on a combined basis and not on the basis of "each" program.

2. The parenthetical phrase "(excluding the impact of the three-month statutory delay requirement effective in FY 1997 and 1998 for the reissuance of rental vouchers and certificates)" should be removed.

Accordingly, the four NOFAs are corrected as follows:

1. FR Doc. 99–5576, Notice of Funding Availability for: Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans (FR–4412–N–01), published in the **Federal Register** on March 8, 1999 (64 FR 11294), is corrected as follows:

On page 11298, in the first column, paragraph (b) at the top is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its rental voucher or rental certificate programs; or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

* * * * *

2. FR Doc. 99–5578, Notice of Funding Availability for: Rental Assistance for Non-elderly Persons with Disabilities Related to Certain Types of Section 8 Project-Based Developments and Sections 202, 221(d)(3), and 236 Developments (FR–4413–N–01), published in the **Federal Register** on March 8, 1999 (64 FR 11310), is corrected as follows:

On page 11314, in the first column, paragraph (b) at the bottom is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its rental voucher or rental certificate programs; or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

* * * * *

3. FR Doc. 99–5577, Notice of Funding Availability for: Mainstream Housing Opportunities for Persons with Disabilities (Mainstream Program) (FR–4415–N–01), published in the **Federal Register** on March 8, 1999 (64 FR 11302), is corrected as follows:

On page 11307, in the middle column, paragraph (b) at the top is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or Independent Public Accountant (IPA) findings for its rental voucher or rental certificate programs; or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I.(D) of this NOFA and the PHA makes application with a designated contract administrator.

* * * * *

4. FR Doc. 99–5535, Notice of Funding Availability for: Family

Unification Program (FR–4414–N–01), published in the **Federal Register** on March 5, 1999 (64 FR 10904), is corrected as follows:

On page 10909, in the middle column, paragraph (b) at the middle is corrected to read as follows:

* * * * *

(b) The PHA has serious unaddressed, outstanding Inspector General audit findings, HUD management review findings, or independent public accountant (IPA) findings for its rental voucher or rental certificate programs, or the PHA has failed to achieve a lease-up rate of 90 percent of units in its HUD-approved budget for the PHA fiscal year prior to application for funding in its rental voucher and certificate programs combined. The only exception to this category is if the PHA has been identified under the policy established in Section I(D)(2) of this NOFA and the PHA makes application with another agency or contractor that will administer the family unification assistance on behalf of the PHA.

* * * * *

Dated: April 30, 1999.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–11418 Filed 5–5–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian education. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are:

1. Revision of the application for construction replacement of the education facilities, instructions and ranking criteria.

2. Open Item.

3. Need for additional Family and Child Education Programs.

4. Grants to Tribally Controlled Community Colleges and Navajo Community College.

DATES: May 17, 18, 19, 20, 21, 26, 25, 27, and 28, 1999, for all locations listed. Several dates and locations were scheduled to coincide with meetings of various Indian education organizations. All meetings will begin at 9:00 a.m. and continue until 3:00 p.m. (local time) or until all meeting participants have an opportunity to make comments.

MEETING SCHEDULE

Date	Location	Local contacts	Phone Numbers
May 26, 1999	Bismarck, ND	Cherie Farlee	(605) 964–8722
May 28, 1999	Folsom, CA	Fayetta Babby	(916) 979–2560
May 19, 1999	Gallup, NM	Beverly Crawford	(520) 674–5131
May 17, 1999	New Orleans, LA	LaVonna Weller	(703) 235–3233
May 25, 1999	Oklahoma City, OK	Joy Martin	(405) 605–6051
May 18, 1999	Billings, MT	LaVonne French	(406) 247–7953
May 20, 1999	Cloquet, MN	Terry Portra	(612) 373–1000
May 27, 1999	Phoenix, AZ	Ray Interpreter	(520) 338–5441
May 20, 1999	Fairbanks, AK	Robert Pringle	(907) 271–4120
May 19, 1999	Grand Ronde, OR	John Reimer	(503) 872–2743
May 21, 1999	Anchorage, AK	Robert Pringle	(907) 271–4120
May 26, 1999	Jemez Pueblo, NM	Ben Atencio	(505) 346–2431
May 19, 1999	Bethel, AK	Robert Pringle	(907) 271–4120

ADDRESSES: Written comments should be mailed, to be received, on or before July 30, 1999, to the Bureau of Indian Affairs, Office of Indian Education Programs, MS–3512–MIB, OIE–32, 1849 C Street, NW, Washington, D.C. 20240, Attn: Larry Holman: OR, may be hand delivered to Room 3512 at the same address. Comments may also be faxed to (202) 273–0030 or E-mail to OIEPCONS@IOS.DOI.GOV.

FOR FURTHER INFORMATION CONTACT: Dr. James Martin or Goodwin K. Cobb III at the above address or call (202) 208–3550.

SUPPLEMENTARY INFORMATION:

The meetings are a follow-up to similar meetings conducted by the OIEP/BIA since 1990. The purpose of the consultation, as required by 25 U.S.C. 2010(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA regarding Indian education programs. A consultation booklet for the May meetings is being distributed to Federally recognized Indian Tribes, Bureau Area and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons and at each meeting.

Dated: April 28, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11312 Filed 05–05–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–066–99–1990–00; CACA–20139 and CACA–22901]

Proposed Sand and Gravel Mining Operation, Los Angeles County, CA

AGENCY: Bureau of Land Management, Department of the Interior, Palm Springs-South Coast Field Office, Desert District, CA.

ACTION: Notice of availability, draft environmental impact statement.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA) of 1969 and 40 CFR 1503.1(a), notice is hereby given that the Bureau of Land Management (BLM) has prepared a Draft Environmental Impact Statement (EIS) for the Transit Mixed Concrete (TMC) Company Sand and Gravel Mining Project proposed for

construction and operation off of Soledad Canyon Road and State Highway 14, Los Angeles County, California. The project site is within an unincorporated area of the County, north of Soledad Canyon Road, south of Antelope Valley Freeway, and west of Agua Dulce Canyon.

Interested citizens are invited to review the Draft EIS and submit comments. Copies of the Draft EIS may be obtained by telephoning or writing to the contact person listed below. Public reading copies of the Draft EIS are available at the following County of Los Angeles public libraries: Canyon Country Library, 18536 Soledad Canyon Road, Santa Clarita, CA 91351; Newhall Library, 22704 W. Ninth Street, Santa Clarita, CA 91321; Valencia Library, 23743 W. Valencia Boulevard, Santa Clarita, CA 91355.

DATES: Comments must be submitted in writing no later than July 6, 1999.

ADDRESSES: Written comments shall be mailed to the following address: Mr. James G. Kenna, Field Manager, Bureau of Land Management, Palm Springs—South Coast Field Office, 690 W. Garnet Avenue, PO Box 1260, North Palm Springs, California, 92258. Comments may also be submitted by electronic mail (e-mail) to the following address: Palm Springs FO CA–EMAIL. The response to comments will be provided in the Final EIS.

PUBLIC MEETING: On June 2, 1999, the BLM will hold a public meeting for the purpose of receiving oral comments on the scope and content of the Draft EIS. There will be two sessions, from 4 to 5 p.m. and from 7 to 9 p.m. The public is invited to attend either session or both. The location of the meeting is at the Sulphur Springs Elementary School, 16628 W. Lost Canyon Road, Canyon Country, CA 91351.

SUPPLEMENTARY INFORMATION: TMC plans to mine a total of 83 million tons of materials and produce and sell approximately 56 million tons of Portland cement concrete sand and gravel over a 20-year period. The project plan includes the transport of processed material off-site in trucks as either aggregate product or ready-mixed concrete. All proposed mining and processing operations are located north of Soledad Canyon Road and outside the floodplain of the Santa Clara River and its tributaries. Mining will begin on the south side of a northeast-southwest trending ridge on-site, and progress through four successive excavation cuts. Fill areas for excess natural fines will be established on the south and north sides of the ridge. Reclamation and revegetation will be concurrent with mining operations and measures have been incorporated into project design to minimize erosion, provide watershed control, and protect water quality in the Santa Clara River. A full range of alternatives to the proposed action are considered in the Draft EIS.

The project site is on "split-estate" lands where the surface is privately owned and the minerals are federally-owned and administered by the BLM. Thus, the project is also subject to approval of a Surface Mining Permit through preparation of an Environmental Impact Report (EIR) in compliance with the California Environmental Quality Act (CEQA). The County of Los Angeles is the lead agency responsible for preparation of the EIR which has been prepared concurrently with the EIS.

FOR ADDITIONAL INFORMATION CONTACT: Ms. Elena Misquez, BLM, Palm Springs—South Coast Field Office, PO Box 1260, North Palm Springs, CA 92258, telephone 760–251–4804.

Dated: April 30, 1999.

James G. Kenna,

Field Manager.

[FR Doc. 99–11342 Filed 5–5–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–99–940–1610–00]

Extension of Scoping Period for the Statewide Environmental Impact Statement (EIS) and Multiple Plan Amendments To Consider Establishment of New Wilderness Study Areas (WSAs) on Selected Public Lands in Utah

AGENCY: Bureau of Land Management, Interior.

NOTICE: Notice of extension of scoping period for the statewide environmental Impact Statement (EIS) and multiple plan amendments to consider establishment of new wilderness study areas (WSAs) on selected public lands in Utah.

SUMMARY: On March 18, 1999 (64 FR 13439), the Bureau of Land Management (BLM) published notice in the **Federal Register** of a proposed multiple plan amendment process for up to 136 wilderness inventory areas on approximately 2.6 million acres of Federal land throughout Utah. Several public inquiries have been received requesting extension of the public scoping period for this proposal.

FOR FURTHER INFORMATION CONTACT: Thomas F. Slater, Resource Manager (Phone: 801–539–4063 or E-mail: tslater@ut.blm.gov) or Holly Roberts, Planning Coordinator (Phone 801–539–4272 or E-mail h1robert@ut.blm.gov), BLM, Utah State Office (Attention: Wilderness Project), PO Box 45155, Salt Lake City, Utah 84145.

DATES: The formal scoping period for the subject amendments is now extended to June 21, 1999. Submission of written information by regular mail or by electronic mail via Internet access at: HTTP://WWW.UT.BLM.GOV/WILDERNESS will now be accepted until June 21, 1999.

SUPPLEMENTARY INFORMATION: Issue identification is considered integral to the Environmental Impact Statement (EIS) and planning processes. Given the extent of this statewide proposal, and at public request, the BLM authorizes an extention of the public scoping period. Comments on the preliminary issues, alternatives and planning criteria will now be accepted until June 21, 1999.

Scoping comments should still specifically address areas in the inventory that the BLM determined have wilderness characteristics, including:

(a) Any additional information concerning wilderness characteristics in the wilderness inventory units,

(b) Information regarding the manageability of potential WSAs. Such information may address things such as valid existing rights which could be exercised (developed) within the next ten to fifteen years and thereby preclude effective management under the IMP,

(c) Specific information on other resource uses within each wildness inventory unit which should be considered. Such uses could involve grazing practices, rights of way, corridor development and use, recreation development or mechanical uses, off highway vehicle use, development for mineral extraction, or oil and gas exploration and production, etc.

Dated: April 29, 1999.

Linda S. Colville,

Acting State Director.

[FR Doc. 99–11341 Filed 5–5–99; 8:45 am]

BILLING CODE 4310–DQ–P

INTERNATIONAL TRADE COMMISSION

Submission for OMB Review; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Agency proposal for the collection of information submitted to the Office of Management and Budget (OMB) for review; comment request.

SUMMARY: In accordance with the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35), the Commission has submitted a proposal for the collection of information to OMB for approval. The proposed information collection is a survey to be sent to participants in Commission injury investigations (primarily countervailing duty, antidumping, and safeguard investigations) to obtain feedback on the procedures used by the Commission in the conduct of such investigations. Any comments submitted to OMB on the proposed information collection should be specific, indicating which parts of the survey are objectionable, describing the problem in detail, and including specific revisions or language changes.

DATES: To be assured of consideration, comments should be submitted to OMB on or before June 7, 1999.

ADDRESSES: Comments about the proposal should be directed to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Attention: David Rossker, Desk Officer for U.S. International Trade Commission. Copies of any comments should be provided to Robert Rogowsky (U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436).

FOR FURTHER INFORMATION CONTACT: Copies of the proposed survey and Supporting Statement submitted to OMB are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Lynn Featherstone, Office of Investigations, U.S. International Trade Commission, telephone 202–205–3160. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server.

SUPPLEMENTARY INFORMATION: In its Strategic Plan (also available on the agency's World Wide Web site), the Commission set itself the goal of obtaining feedback on investigative procedures from users of the agency's import injury investigation process. The proposed 1-page survey seeks to gather that feedback to allow the Commission to ensure that its procedures are fair and equitably implemented.

The survey asks if the Commission's rules and other written guidance make clear to participants what the Commission expects of them procedurally in an investigation; if there are area(s) where additional guidance would be of benefit to their participation in investigations; if Commission personnel responded to procedural inquiries in a helpful way; if their access to information collected by/submitted to the Commission was satisfactory; if their opportunity to present information for consideration by the Commission was satisfactory; and if they have any other comments or recommended improvements. It will be sent to firms that have participated in an antidumping, countervailing duty, or safeguard investigation during the period October 1, 1998–September 30, 1999. Responses are voluntary. While the survey will be made available on the Commission's Web site, responses must be in paper form.

The Commission estimates that the survey will impose an average burden of less than 1 response hour each on 50 respondents. No recordkeeping burden is known to result from the proposed collection of information.

By order of the Commission.

Issued: April 30, 1999.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11412 Filed 5–5–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,449A]

ARCO, dba ARCO Exploration and Production Technology (AEPT) Plano, TX; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of April 5, 1999, the petitioners requested administration reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,449A. The denial notice was signed on February 24, 1999 and will soon be published in the **Federal Register**.

The petitioners allege that the workers at ARCO Exploration and Production Technology (AEPT) are engaged in domestic exploration of oil and gas and provided information for consideration which was not provided during the original investigation.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11376 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,663 and TA–W–35,663H]

Baker Hughes Inteq Headquartered in Houston, TX, Operating in the State of West Virginia; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 25, 1999, applicable to all workers of Baker Hughes Inteq headquartered in Houston, Texas. The notice will be published soon in the **Federal Register.**

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Baker Hughes Inteq operating at various locations in the State of West Virginia. The workers are engaged in employment related to exploration and drilling of crude oil wells for unaffiliated customers.

The intent of the Department's certification is to include all workers of Baker Hughes Inteq adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Baker Hughes Inteq operating at various locations in the State of West Virginia.

The amended notice applicable to TA–W–35,663 is hereby issued as follows:

All workers of Baker Hughes Inteq, Headquartered in Houston, Texas (TA–W–35,663) and operating at various locations in the State of West Virginia (TA–W–35,663H) who became totally or partially separated from employment on or after February 2,

1998 through March 25, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11377 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,711AA, TA–W–35,711AS and TA–W–35, 711AT]

Baroid Drilling Fluids Headquartered in Houston, TX and Operating in the Following States; Mississippi, Alabama; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 22, 1999, applicable to all workers of Baroid Drilling Fluids headquartered in Houston, Texas. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings show that worker separations have occurred at Baroid Drilling Fluids operating at various locations in Mississippi and Alabama. The workers are engaged in various activities related to the drilling for crude oil and natural gas.

The intent of the Department's certification is to include all workers of Baroid Drilling Fluids adversely affected by increased imports. Accordingly, the Department is amending the certification to cover workers of Baroid Drilling Fluids operating at various locations in Mississippi and Alabama.

The amended notice applicable to TA–W–35,711AA is hereby issued as follows:

"All workers of Baroid Drilling Fluids, headquartered in Houston, Texas (TA–W–35,711AA), operating at various locations in Mississippi (TA–W–35,711AS) and Alabama (TA–W–35,711AT) who became totally or partially separated from employment on or after February 17, 1998 through March 22, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC this 23rd day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11374 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,309 and TA–W–35,309Q]

BP/AMOCO (Formerly Amoco Corporation) Amoco Exploration and Production Amoco Shares Services A/K/A Amoco Production Company, Inc. Headquartered in Houston, Texas Operating in the State of Tennessee; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 1999, applicable to workers of Amoco Exploration and Production and Amoco Shared Services, Headquartered in Houston, Texas and operating at various locations in Texas and other States. The certification was subsequently amended to reflect a company name change and to include workers whose wages were reported under a separate Unemployment Insurance tax account. The amended notice was published in the **Federal Register** on April 6, 1999 (64 FR 16755).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. New information provided by the State show that worker separations have occurred in Tennessee for Amoco workers engaged in activities related to exploration and production of crude oil and natural gas.

The intent of the Department's certification is to include all workers of the subject firm who are adversely affected by increased imports. Accordingly, the Department is amending the certification to include the subject firm workers in Tennessee.

The amended notice applicable to TA–W–35,309 is hereby issued as follows:

"All workers and BP/Amoco (Formerly Amoco Corporation), Amoco Exploration and Production, Amoco Shares Services, also known as Amoco Production Company, Inc., headquartered in Houston, Texas (TA–W–35,309) and operating in the State of Tennessee (TA–W–35,309Q), who became totally or partially separated from employment on or after October 1, 1998 through February 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 12th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11380 Filed 5–5–99; 8:45]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,600]

EXOLON–ESK Company Tonawanda, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 12, 1999, applicable to workers of EXOLON–ESK Company located in Tonawanda, New York. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of silicon carbide and aluminum oxide. Findings show that the Department incorrectly set the worker certification impact date at December 28, 1998. The impact date should be December 28, 1997, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,600 is hereby issued as follow:

All workers of EXOLON—ESK Company, Tonawanda, New York who became totally or partially separated from employment on or after December 28, 1997 through April 12, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 20 day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11375 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,123]

Guilford Fibers, Incorporated Gainesville, GA; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 19, 1999 the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance, applicable to petition number TA–W–35,123. The denial notice was signed on January 29, 1999 and will soon be published in the **Federal Register**.

The company provided additional information regarding its decision to close the Gainesville facility which warrants review and supports reconsideration of the case.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, D.C. this 23rd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11373 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,000]

Guilford Mills, Inc. Herkimer, NY; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on April 12, 1999 in response to a worker petition filed on behalf of workers at Guilford Mills, Inc., Herkimer, New York (TA–W–36,000).

The petitioning group of workers are covered under an existing Trade Adjustment Assistance certification (TA–W–35,564). Consequently, further investigation in this case would service no purpose, and the investigation has been terminated.

Signed at Washington, D.C., this 22nd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11382 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,486; TA–W–35,486A; TA–W–35,486B; and TA–W–35,486C]

Key Energy Services, Inc.—Rocky Mountain Division, A/K/A Frontier Well Service, A/K/A Teton Well Service, A/K/A Dunbar Well Service, A/K/A Updike Brothers Well Service, A/K/A Flint Engineering and Construction and A/K/A J.W. Gibson Well Service; Williston, ND and Operating at Various Locations in: North Dakota, Montana and Wyoming; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on February 17, 1999, applicable to workers of Key Energy Services, Inc., Rocky Mountain Division, Williston, North Dakota, and operating at various locations in North Dakota and Montana. The notice will soon be published in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information provided by the company reveal that worker separations have occurred at Key Energy Services, Inc., Rocky Mountain Division, at locations in the State of Wyoming. Other findings on review show that Key Energy Services Inc., Rocky Mountain Division has acquired several companies in the recent past, Frontier Well Service, Teton Well Service, Dunbar Well Service, Updike Brothers Well Service, Flint Engineering and Construction, and J.W. Gibson Well Service. The workers provide oilfield services for unaffiliated customers.

The intent of the Department's certification is to cover all workers of Key Energy Services, Inc., Rocky Mountain Division, who were adversely affected by increased imports. Accordingly, the Department is amending the certification to expand coverage to all workers of the subject firm in Wyoming and to workers of those firms acquired by Key Energy Services, Inc., Rocky Mountain Division. Additionally, workers of J.W. Gibson Well Service in Williston, North Dakota were certified eligible to apply for TAA on August 11, 1998, petition number TA–W–34,818. Since that certification does not expire until August 11, 2000, the earliest impact date that can be established to cover any workers of Key Energy Services, Inc., Rocky Mountain Division, formerly employed by J.W. Gibson Well Service in Williston, North Dakota, is Asugust 12, 2000.

The amended notice applicable to TA–W–35,486 is hereby issued as follows:

All workers of Key Energy Services, Inc., Rocky Mountain Division, also known as Frontier Well Service, also known as Teton Well Service, also known as Dunbar Well Service, also known as Updike Brothers Well Service, also known as Flint Engineering and Construction, Williston, North Dakota (TA–W–35,486), and operating at various locations in North Dakota (TA–W–35,486A), Montana (TA–W–35,486B) and Wyoming (TA–W–35,486C), who became totally or partially separated from employment on or after December 23, 1997 through February 17, 2001; and all workers of Key Energy Services, Inc., Rocky Mountain Division, also known as J.W. Gibson Well Service, Williston, North Dakota, who became totally or partially separated from employment on or after August 12, 2000 through February 17, 2001, are eligible to apply for worker adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 15th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11378 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,615]

Shape Global Sanford, Maine; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on April 14, 1999, applicable to workers of Shape Global, Sanford, Maine. The notice will soon be published in the **Federal Register**.

At the request of the State agency, the Department reviewed the certification

for workers of the subject firm. The workers produce audio cassettes. New findings show that there was previous certification, TA–W–31,954, issued on April 23, 1998 for workers of the subject firm. That certification expired April 23, 1998. To avoid an overlap in worker group coverage, the certification for TVA–W–35,615 is being amended to change the impact date to April 24, 1999.

The amended notice applicable to TA–W–35,615 is hereby issued as follows:

"All workers of Shape Global, Sanford, Maine, who became totally or partially separated from employment on or after April 24, 1998 through April 14, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 23rd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11372 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,240]

Siemens Energy & Automation Industrial Products Division—Nema Motors, Little Rock, Arkansas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on December 4, 1998, applicable to workers of Siemens Energy & Automation Industrial Products Division—NEMA Motors located in Little Rock, Arkansas. The notice was published in the **Federal Register** on December 23, 1998 (63 FR 71165).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers were engaged in the production of electric induction three phase motors. Findings show that the Department incorrectly set the worker certification impact date at November 10, 1998. The impact date should be November 10, 1997, one year prior to the date of the petition. Accordingly, the Department is amending the certification to reflect this matter.

The amended notice applicable to TA–W–35,240 is hereby issued as follows:

"All workers of Siemens Energy and Automation, Industrial Products Division—NEMA Motors, Little Rock, Arkansas who became totally or partially separated from employment on or after November 10, 1997 through December 4, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 23rd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11371 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,465; TA–W–35,465G and TA–W–35,465H]

Union Pacific Fuels, Incorporated, a Subsidiary of Union Pacific Resources Company, and Union Pacific Resources Company a Division of Union Pacific Resources Group Incorporated Headquartered in Fort Worth, TX and Operating in the Following States; Kansas and New Mexico; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 21, 1999, applicable to workers of Union Pacific Fuels, Incorporated, a subsidiary of Union Pacific Resources Company, and Union Pacific Resources Company, a division of Union Pacific Resources Group Incorporated headquartered in Fort Worth, Texas. The notice was published in the **Federal Register** on February 25, 1999 (64 FR 9354).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that workers have been separated from employment at the subject firm's Kansas and Wyoming locations. The workers are engaged in employment related to the production of crude oil, natural gas and natural gas liquids.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports. Accordingly, the Department is amending the certification to include workers of the subject firm at the Kansas and New Mexico locations.

The amended notice applicable to TA–W–35,465 is hereby issued as follows:

All workers of Union Pacific Fuels, Incorporated, a subsidiary of Union Pacific Resources Company, and Union Pacific Resources Company, a division of Union Pacific Resources Group, Incorporated, headquartered in Forth Worth, Texas (TA–W–35,465), and operating in Kansas (TA–W–35,465G) and New Mexico (TA–W–35,465H), who became totally or partially separated from employment on or after December 14, 1997 through January 21, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 19th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11379 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitions or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 17, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to

the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 17, 1999.

The petitions filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 5th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 04/05/99]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
35,962	Wilson Supply (Wrks)	Houston, TX	03/17/99	Distribute Oilfield Tools and Equipment.
35,963	OshKosh B'Gosh, Inc (Comp)	Celina, TN	03/24/99	Wash and Press Garments.
35,964	Avery Dennison (Comp)	Rancho Cucamong, CA.	03/24/99	Rools and Sheets of Paper and Film.
35,965	Uniroyal Chemical Co (USWA)	Painesville, OH	03/22/99	Nitrile Rubber.
35,966	Smith Food and Vending (Wrks)	Joplin, MO	03/18/99	Provides Food Service.
35,967	Siemens Information (Wrks)	Cherry Hill, NJ	03/18/99	Telephone Systems.
35,968	Mark Steel Jewelry (Wrks)	Spring City, NJ	03/05/99	Costume Jewelry.
35,969	Buster Brown Apparel (Comp)	Norton, VA	03/16/99	Children's Apparel.
35,970	Glenoit Corp (UNITE)	Jacksboro, TN	03/18/99	Fleece Fabric.
35,971	Barry Callebaut USA, (Wrks)	Pennsauken, NJ	03/19/99	Cocoa Powders.
35,972	M. Wile and Co (Comp)	Whiteville, NC	03/19/99	Mens' Suits and Sportcoats.
35,973	EST (Wrks)	Pittsfield, ME	03/26/99	Smoke Alarms.
35,974	Lou Levy and Sons Fashion (Comp)	New York, NY	03/16/99	Ladies' Coats.
35,975	Goodyear Tire and Rubber (USWA)	Logan, OH	03/26/99	Instrument Panels for Automobiles.
35,976	Revere Ware (Comp)	Clinton, IL	03/19/99	Stainless Steel Cookware.
35,977	A and M Manufacturing (Wrks)	Cosby, MO	03/22/99	Machined Metal Pins.
35,978	Acordis Cellulosic Fibers (Comp)	Axis, AL	03/19/99	Tencel Fiber.
35,979	Vishay Sprague (Wrks)	Concord, NH	03/17/99	Tantalum Capacitors.
35,980	International Paper (Comp)	Corinth, NY	03/16/99	Paper.
35,981	Corning, Inc. (Wrks)	Greenville, OH	03/01/99	Cookware.
35,982	Logistix (Wrks)	Freemong, CA	03/08/99	Electronic Printing.
35,983	Good Lad Corp (Wrks)	Philadelphia, PA	03/19/99	Children's and Infants Apparel.
35,984	Royal Mandarin (Wrks)	Beaver Falls, PA	03/24/99	Commercial China.
35,985	Emerson Electric Co (Comp)	Independence, KS	03/20/99	Fractional Horsepower Electric Motors.
35,986	BASF (Wrks)	Detroit, MI	03/25/99	Paint, Resins & Colorants.
35,987	Calgon Carbon Corp (Wrks)	Catlettsburg, KY	03/23/99	Coal Based Activated Carbon.
35,988	Mitsubishi International (Wrks)	Durham, NC	02/26/99	Warehouse—Memory Chips.
35,989	LeTourneau, Inc (Comp)	Longview, TX	03/23/99	Steel Plate, Front End Loaders.
35,990	Magestic Shapes (Wrks)	Bronx, NY	03/11/99	Shoulder Pads.
35,991	Miller Brothers Ind., Inc (Comp)	Corsicana, TX	03/23/99	Constructed Caps.
35,992	Bayer Corporation (Wrks)	Baytown, TX	03/03/99	Baypren Polychloroprene.
35,993	Duet Textiles, Inc (Comp)	New York, NY	03/12/99	Greige Goods.
35,994	National Roll Company (USWA)	Avonmore, PA	03/26/99	Mills Rolls for Flat Rolled Steel.
35,995	Mid Oregon Industries (Comp)	Bend, OR	03/25/99	Wood Working Machinery.
35,996	Quicksilver Contracting (Comp)	Bend , OR	03/25/99	Wood Chips.
35,997	Beau Mode (Comp)	New York, NY	03/24/99	Ladies' Apparel.
35,998	GWW, Inc (Wrks)	Elkhorn, Wi	03/05/99	Carring Cases.

[FR Doc. 99–11370 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3094]

Oro Nevada Exploration, Incorporated Reno, NV; Notice of Termination of Investigation

Pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance, hereinafter called (NAFTA–TAA), and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 U.S.C. 2273), and investigation was initiated on April 12, 1999, in response to a worker petition which was filed on behalf of workers at Oro Nevada Exploration, Incorporated of Reno, Nevada.

The petitioner did not file a valid petition; only two workers signed to petition, and one of the petitioners was laid off more than a year before the petition was submitted. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 22nd day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11381 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 99–16; Exemption Application No. D–10693, et al.]

Grant of Individual Exemptions; Standard Bank Employees Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Standard Bank Employees Profit Sharing Plan (the Plan) Located in Hickory Hills, Illinois

[Prohibited Transaction Exemption 99–16; Exemption Application No. D–10693]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply, as of October 1, 1998, to the purchases by the Plan of certain residential mortgage notes (the Notes) from Standard Bank and Trust Company (the Employer), a party in interest with respect to the Plan; provided that the following conditions are satisfied:

(1) An independent qualified fiduciary will decide which Notes will be purchased for the Plan;

(2) Only first mortgage Notes will be purchased by the Plan;

(3) The Notes which will be purchased by the Plan will have: (a) A borrower payment history with the Employer of at least three months; (b) A maximum 15 year maturity; and (c) the loan to value ratio of the collateral will be at least 150% of the principal amount of the Note;

(4) If the mortgage loan is an original acquisition mortgage loan, the Note will not exceed two-thirds of the lower of the purchase price or of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(5) If the mortgage loan is a refinancing of the original acquisition mortgage loan, the Note will not exceed two-thirds of the appraised value of the collateral mortgaged by the borrower to the Employer to secure the Note;

(6) No more than twenty-five percent (25%) of the value of the Plan's total assets will be invested in the Notes;

(7) No more than ten percent (10%) of the value of the Plan's total assets will be invested in any one Note or Notes to any one borrower;

(8) The fees received by the independent fiduciary for serving in that capacity with respect to the Plan for the transactions described herein, combined with any other fees derived from the Employer or related parties, will not exceed one percent (1%) of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein; and

(9) The conditions of Prohibited Transaction Exemption (PTE) 93–71 (58 FR 51109, September 30, 1993) have been met. PTE 93–71, which expired September 30, 1998, provided prospective relief for the purchases by the Plan of certain Notes from the Employer.[1]

Part II. Repurchases of Residential Mortgage Notes

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the repurchases of the Notes (the Repurchases) by the Employer: (a) In the event of default; (b) if the limitations set forth in Part I (6) and/or (7) are exceeded; and (c) at other times as determined by the independent fiduciary,[2] provided that the Repurchases will be at a price which is equal to the greater of the outstanding principal balance of the Note plus accrued interest through the date of repurchase, or the current fair market value of the Note as determined by the independent fiduciary.

EFFECTIVE DATE: This exemption is effective as of October 1, 1998.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption (the Notice) published on February 16, 1999 at 64 FR 7672.

Written Comments

The Department received one written comment with respect to the Notice and no requests for a public hearing. The comment was filed by the Employer and states that paragraph 1 of the Summary of Facts and Representations contained in the Notice incorrectly states that Deloitte & Touche are the accountants for the Plan. The Plan accountants are Desmond & Ahern, Ltd. Certified Public Accountants.

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[1] The applicant represents that, as mandated by PTE 93–71, the Employer has filed Form 5330 (Return of Initial Excise Taxes for Pension and Profit Sharing Plans) and paid the applicable excise taxes for certain past purchases by the Plan of the Notes from the Employer which occurred prior to the effective date of PTE 93–71.

[2] The Department notes that if a violation of any of the terms and conditions of Part I occurs, the exemptive relief provided by Part I for purchases of the Notes by the Plan will no longer be available. However, the Department further notes that the loss of exemption under Part I will not affect the use of Part II to dispose of the Notes previously acquired by the Plan pursuant to the exemption.

The Department concurs with this correction.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

Plumbers and Pipefitters National Pension Fund (the Pension Plan) and Pipefitters Local No. 211 Joint Educational Trust (the Welfare Plan) (Collectively, the Plans) Located in Alexandria, VA and Houston, TX, respectfully

[Prohibited Transaction Exemption No. 99–17 Application Nos. D–10700 and L–10709]

Exemption

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the sale (the Sale) of certain real property (the Property) by the Pension Plan to the Welfare Plan, a party in interest with respect to the Pension Plan; provided the following conditions are satisfied:

(A) The terms and conditions of the transaction are no less favorable to the Pension Plan and the Welfare Plan than those which either the Pension Plan or the Welfare Plan would receive in an arm's-length transaction with an unrelated party;

(B) The Sale is a one-time transaction for cash;

(C) The Pension Plan and the Welfare Plan incur no expenses, fees, or commissions from the Sale other than their own respective appraisal, recording, and legal expenses;

(D) The Welfare Plan pays as consideration for the Property no more than the fair market value of the Property as determined by a qualified, independent appraiser on the date of the Sale;

(E) The Pension Plan sells the Property for a price that is not less than the fair market value of the Property as determined by qualified, independent appraiser on the date of the Sale; and

(F) The fiduciaries for the Pension Plan and the Welfare Plan, respectfully, will enforce the terms of the exemption.

Written Comments: The Department received five written comments which were found to be not relevant to the transaction; and therefore, the Department has determined to grant the exemption as proposed.

Correspondence received from the applicant's representative during the comment period stated that the Welfare Plan is interested in purchasing the Property in part for future expansion. Initially, upon purchase, the Welfare Plan will use the Property for parking. Thereafter, it is anticipated that the fiduciaries of the Welfare Plan will contract for a study regarding the feasibility of constructing new classroom facilities.

In this regard, the Department notes that the Act's standards of fiduciary conduct will apply to the purchase and ultimate development of the Property. Section 404(a)(1) of the Act requires that a fiduciary discharge his or her duties with respect to a plan solely in the interest of the participants and beneficiaries and with the care, skill, prudence and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of a enterprise of a like character and with like aims. Accordingly, the fiduciaries of the Welfare Plan must act "prudently" with respect to the decision to purchase the Property, as well as to the ultimate development of the Property (including where relevant, the determination as to whether to develop the Property, the types of improvements that are appropriate and the Plan's ability to finance any such improvements). The granting of this exemption should not be viewed as an endorsement by the Department of the Plan's subsequent use of such Property. Finally, we note that, if the decision by the fiduciaries to purchase and develop the Property is not prudent, the fiduciaries would be liable for any loss resulting from such breach even though the purchase of the Property was the subject of an administrative exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on January 27, 1999, at 64 FR 4142.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

State Bankshares Inc. 401(k) Profit Sharing Plan (the Plan) Located in Fargo, North Dakota

[Prohibited Transaction Exemption 99–18; Exemption Application No. D–10703]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plan of certain limited partnership interests (the Interests) to Northern Capital Trust Company (Northern), the Plan's trustee and a party in interest with respect to the Plan, for $93,552.93 in cash, provided the following conditions are satisfied: (a) The sale is a one-time transaction for cash; (b) no commissions are charged in connection with the transaction; (c) the Plan receives not less than the fair market value of the Interests at the time of the transaction; and (d) the fair market value of the Interests is determined by a qualified entity independent of the Plan and of Northern.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 8, 1999 at 64 FR 11062.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

vonRoll isola Savings Plan (the Plan) Located in Schenectady, New York

[Prohibited Transaction Exemption 99–19; Exemption Application No. D–10729]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to: (1) The making by State Street Bank and Trust Company (the Bank) of interest-free advances of cash (the Advances) to the Plan during the period from July 8, 1997 through June 22, 1998, in the aggregate amount of $824,812.60; and (2) the repayment of the Advances by the Plan, without interest, on June 22, 1998, provided the following conditions were satisfied:

(a) No interest or expense was incurred by the Plan in connection with the Advances;

(b) The proceeds of the Advances were used only to facilitate the payment of benefits (including participant loans and in-service withdrawals) to Plan participants, and to facilitate the making of investment transfers elected by Plan participants;

(c) The Advances were unsecured;

(d) The Plan participants who remained invested in the Plan's stable value fund, which consisted primarily of a Group Flexible Annuity Contract (the GIC) from the Travelers Insurance Company (Travelers), continued to receive the full contract rate on the full amount of the GIC;

(e) The Plan's sponsor was notified of the Advances;

(f) The repayment of the Advances was made at the direction of the Plan's sponsor and was restricted to amounts received from the proceeds of the installment payments made by Travelers under the GIC, and no other plan assets were used for that purpose;

(g) The Bank will maintain or cause to be maintained for a period of six years from the date of the granting of the exemption proposed herein the records necessary to enable the persons described in paragraph (h) to determine whether the conditions of this exemption have been met, except that:

(1) A prohibited transaction will not be considered to have occurred, if due to circumstances beyond the control of the Bank, the records are lost or destroyed prior to the end of the six year period; and

(2) No party in interest, other than the Bank, shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975(a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (h); and

(h)(1) Except as provided in paragraph (h)(2) and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph (g) are unconditionally available at their customary location for examination during normal business hours by:

(A) Any duly authorized employee or representative of the Department or the Internal Revenue Service;

(B) Any fiduciary of the Plan, or any duly authorized employee or representative of such fiduciary; and

(C) Any participant or beneficiary of the Plan or duly authorized representative of such participant or beneficiary;

(2) None of the persons described in paragraph (h)(1)(B) and (h)(1)(C) shall be authorized to examine trade secrets of the Bank or commercial or financial information which is privileged or confidential.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on March 4, 1999 at 64 FR 10503.

EFFECTIVE DATES: This exemption is effective from July 8, 1997 through June 22, 1998.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 28th day of April, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–11004 Filed 5–5–99; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Services—Washington, DC.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 21, 1999. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Michael L. Miller, Director, Modern Records Programs (NWM), National

Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001, telephone (301) 713–7110.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Commerce, Bureau of the Census (N1–29–99–2, 16 items, 11 temporary items). Files maintained by the director, deputy director, and principal associate directors relating to routine administrative subjects such as travel requests, itineraries, vouchers, training forms, personnel matters, printing, and procurement. Also included are reading or chronological files consisting of duplicate copies of official correspondence and electronic copies of documents created using word processing and electronic mail. Proposed for permanent retention are recordkeeping copies of biographical sketches, photographs, appointment schedules and calendars, program subject files, official speeches and other presentations, and committee, meeting, and conference files.

2. Department of Energy, Federal Energy Regulatory Commission, (N1–138–99–6, 8 items, 8 temporary items). Commuter transportation records relating to applications for use of parking facilities, parking violations, and tracking and monitoring permit applications. Included are electronic copies of documents created using electronic mail and word processing.

3. Department of Energy, Agency-wide (N1–434–98–17, 7 items, 5 temporary items). Media relations records such as speeches by lower level employees and contractors, press clippings, and non-mission related press releases. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of speeches of high officials, and press releases and other records documenting program activities are proposed for permanent retention.

4. Department of Justice, Civil Rights Division (N1–60–98–5, 3 items, 2 temporary items). Case files relating to the Church Arson Prevention Act of 1996 that consist of only a single section (binder) of documents. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files that consist of more than one section are proposed for permanent retention.

5. Department of Justice, Civil Rights Division (N1–60–98–6, 3 items, 2 temporary items). Case files relating to the Freedom of Access to Clinic Entrances Act of 1994 that consist of a single section (binder) of documents. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files that consist of more than one section are proposed for permanent retention.

6. Department of Justice, Civil Rights Division (N1–60–98–7, 3 items, 2 temporary items). Case files relating to police misconduct that consist of only a single section (binder) of documents. Included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files that consist of more than one section are proposed for permanent retention.

7. Department of Justice, Office of Community Oriented Policing Services (N1–60–99–3, 2 items, 2 temporary items). Records of successful grant applications consisting of applications and related correspondence. Included are electronic copies of documents created using electronic mail and word processing.

8. Department of Justice, United States Marshals Service (N1–527–99–1, 11 items, 11 temporary items). Remands, orders to deliver, receipts, prisoner death investigations, jail inspections, and tracking records in paper and electronic form relating to Federal prisoners in the custody of the U.S. Marshals Service for transporting for court appearances, transferring to a penal institution, and similiar actions. Included are electronic copies of documents created using electronic mail and word processing.

9. Department of State, Bureau of Finance and Management Policy (N1–59–99–11, 8 items, 5 temporary items). Records relating to periodic accountability reports and financial policy and management. Included are electronic copies of reports and other documents created using electronic mail and word processing. Recordkeeping copies of the reports are proposed for permanent retention.

10. Department of State, Foreign Service Posts (N1–84–99–1, 2 items, 2 temporary items). Files relating to the social and representational activities of Ambassadors and Chiefs of Mission, including electronic copies of documents created using electronic mail and word processing.

11. Department of the Treasury, United States Secret Service (N1–87–99–1, 1 item, 1 temporary item). Audio recordings of radio traffic between the Command Post and agents during Presidential and Vice Presidential trips. This schedule covers recordings made during trips when nothing out of the ordinary occurs. Tapes made during trips in which an assassination attempt takes place were previously approved for permanent retention.

12. Federal Communications Commission, Financial Analysis and Compliance Division (N1–173–99–2, 2 items, 2 temporary items). Case files of cable television operator rate filings, consisting of cable subscriber complaints regarding cable television rates, along with cable operator rate justifications submitted to the FCC for

review and analysis. Electronic copies of documents created using electronic mail and word processing are also included.

13. National Aeronautics and Space Administration, Agency-wide (N1–255–99–1, 2 items, 2 temporary items). Employee training plans and other records documenting on-the-job or other general training (but not specialized technical training). Electronic copies of documents created using electronic mail and word processing are included.

14. Tennessee Valley Authority, Communications Program (N1-142–97–19, 3 items, 2 temporary items). Correspondence, approval forms, and other administrative records generated in processing funding requests for community activities. Procedural manuals, publications, program reports, and related program subject files are proposed for permanent retention.

15. Tennessee Valley Authority, Agency-wide (N1–142–99–3, 2 items, 2 temporary items). Electronic copies of documents, created using electronic mail and word processing, pertaining to record series included in TVA Schedule 1, Records Common to Most Offices, of the TVA Comprehensive Records Schedule. Records relate to a wide variety of housekeeping functions such as announcing position vacancies, business credit card support, and employee authorizations.

16. Export-Import Bank (N1–275–98–1, 2 items, 2 temporary items). Draft loan agreements reflecting technical changes including electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of files relating to policy issues and minutes of meetings as well as final loan agreements were previously approved for permanent retention.

17. Federal Home Loan Banks, Office of Finance (N1–485–99-1, 13 items, 13 temporary items). Records relating to dealers whom the office serves, market indications, term funding issues, bonds arranged, settlement confirmations, daily securities transactions, audits, and meeting agendas. Also included are sound recordings of investment transactions.

Dated: April 30, 1999.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 99–11368 Filed 05–04–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL TRANSPORTATION SAFETY BOARD

Agenda; Sunshine Act Meeting

TIME AND DATE: 9:30 a.m., Tuesday, May 11, 1999.

PLACE: NTSB Board Room, 5th Floor, 490 L'Enfant Plaza, S.W., Washington, D.C. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5299E—"Most Wanted" Safety Recommendations Program Status Report and Suggested Modifications.

7155—Safety Report on the Status of Operator Fatigue.

NEWS MEDIA CONTACT: Telephone: (202) 314–6100.

FOR FURTHER INFORMATION CONTACT: Rhonda Underwood, (202) 314–6065.

Dated: May 3, 1999.

Rhonda Underwood,

Federal Register Liaison Officer.

[FR Doc. 99–11473 Filed 5–3–99; 5:05 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Boston Edison Company; (Pilgrim Nuclear Power Station, Unit No. 1); Order Approving Transfer of Licenses and Conforming Amendments

I

Boston Edison Company (Boston Edison) is owner of the Pilgrim Nuclear Power Station (Pilgrim), and is authorized to possess, use, and operate the facility as reflected in Operating License No. DPR–35. Boston Edison also is the holder of Materials License No. 20–07626–04, which authorizes Boston Edison to possess, use, and transport certain materials in the form of contamination on reactor components. The Atomic Energy Commission issued Operating License No. DPR–35 on September 15, 1972, pursuant to Part 50 of Title 10 of the Code of Federal Regulations (10 CFR Part 50). Materials License No. 20–07626–04 was issued on March 21, 1997, pursuant to 10 CFR Parts 30, 40, and 70. The facility is located in Plymouth County, on the southeast coast of the State of Massachusetts.

II

Under cover of a letter dated December 21, 1998, Boston Edison and Entergy Nuclear Generation Company (Entergy Nuclear) jointly submitted an application requesting approval of the proposed transfer of Operating License No. DPR–35 and Materials License No. 20–07626–04 from Boston Edison to Entergy Nuclear. The application also requested approval of conforming amendments to reflect the transfer. The application was supplemented by submittals dated January 28, February 18, April 2, April 15, and April 16, 1999. The initial application and the supplements are hereinafter collectively referred to as "the application" unless otherwise indicated.

Boston Edison is a wholly-owned subsidiary of BEC Energy, a Massachusetts business trust. Entergy Nuclear, a Delaware corporation, is an indirect wholly owned subsidiary of Entergy Corporation. According to the application, Boston Edison has agreed to sell its ownership interest in Pilgrim to Entergy Nuclear, subject to obtaining all necessary regulatory approvals. After the completion of the proposed sale and transfer, Entergy Nuclear would be the sole owner and operator of Pilgrim. The conforming amendments, which would be issued pursuant to 10 CFR 30.38, 40.44, 50.90, and 70.34, would remove references to Boston Edison from the Operating License and Materials License, and replace them with references to Entergy Nuclear, as well as make miscellaneous changes to the Operating License, administrative in nature, to reflect the transfer.

Notice of the initial application and an opportunity for a hearing was published in the **Federal Register** on January 26, 1999 (64 FR 3984) and supplemented on February 5, 1999 (64 FR 5841). Pursuant to such notice, the Attorney General of the Commonwealth of Massachusetts and Local Unions 369 and 387 filed hearing requests. By letter dated April 7, 1999, Local Unions 369 and 387 formally withdrew their request. Similarly, on April 16, 1999, the Attorney General of the Commonwealth of Massachusetts withdrew his request. The Commission, in light of the withdrawals, terminated the pending proceeding on April 26, 1999, *Boston Edison Co.* (Pilgrim Nuclear Power Station), CLI–99–17, 49 NRC __, slip op. (April 26, 1999). Certain municipalities which purchase power from Pilgrim filed written comments, and Citizens Urging Responsible Energy filed written comments and requested a public hearing. The written comments have been considered by the staff in connection with the issuance of this Order.

Under 10 CFR 50.80, no license for a production or utilization facility, or any right thereunder, shall be transferred, directly or indirectly, through transfer of

control of the license, unless the Commission shall give its consent in writing. Under 10 CFR 30.34, 40.41, and 70.32, no byproduct, source, or special nuclear material license shall be transferred in violation of the provisions of the Atomic Energy Act of 1954, as amended, which require, *inter alia*, Commission consent. Upon review of the information in the application by Boston Edison and Entergy Nuclear, and other information before the Commission, and relying upon the representations and agreements contained in the application, the NRC staff has determined that Entergy Nuclear is qualified to hold the licenses, and that the transfer of the licenses to Entergy Nuclear is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission. The NRC staff has further found that the application for the proposed license amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended, and the Commission's rules and regulations set forth in 10 CFR Chapter I; the facility will operate in conformity with the application, the provisions of the Act and the rules and regulations of the Commission; there is reasonable assurance that the activities authorized by the proposed license amendments can be conducted without endangering the health and safety of the public and that such activities will be conducted in compliance with the Commission's regulations; the issuance of the proposed license amendments will not be inimical to the common defense and security or to the health and safety of the public; and the issuance of the proposed amendments will be in accordance with 10 CFR Part 51 of the Commission's regulations and all applicable requirements have been satisfied. The foregoing findings are supported by a Safety Evaluation dated April 29, 1999.

III

Accordingly, pursuant to Sections 161b, 161i, and 184 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2201(b), 2201(i), and 2234, and 10 CFR 30.34, 40.41, 50.80, and 70.32, *It is hereby ordered* that the Commission consents to the transfer of the licenses as described herein to Entergy Nuclear, subject to the following conditions:

(1) For purposes of ensuring public health and safety, Entergy Nuclear shall provide decommissioning funding assurance of no less than $396 million, after payment of any taxes, in the decommissioning trust fund for Pilgrim upon the transfer of the Pilgrim licenses to Entergy Nuclear.

(2) Entergy Nuclear shall maintain the decommissioning trust funds in accordance with the application, this Order, and the related Safety Evaluation dated April 29, 1999, supporting this Order.

(3) Entergy Nuclear shall provide a Provisional Trust fund in the amount of $70 million, after payment of any taxes, in the Provisional Trust for Pilgrim upon the transfer of the Pilgrim licenses to Entergy Nuclear. The Provisional Trust shall be established and maintained in conformance with the representations made in the application.

(4) The Decommissioning Trust agreement(s) shall be in a form which is acceptable to the NRC and shall provide, in addition to any other clauses, that:

(a) Investments in the securities or other obligations of Entergy Nuclear, Entergy Corporation, their affiliates, subsidiaries or associates, or their successors or assigns shall be prohibited. In addition, except for investments tied to market indexes or other non-nuclear sector mutual funds, investments in any entity owning one or more nuclear power plants is prohibited.

(b) The Director, Office of Nuclear Reactor Regulation, shall be given 30 days prior written notice of any material amendment to the trust agreement(s).

(5) Entergy Nuclear shall have access to a contingency fund of not less than fifty million dollars ($50m) for payment, if needed, of Pilgrim operating and maintenance expenses, the cost to transition to decommissioning status in the event of a decision to permanently shut down the unit, and decommissioning costs. Entergy Nuclear will take all necessary steps to ensure that access to these funds will remain available until the full amount has been exhausted for the purposes described above. Entergy Nuclear shall inform the Director, Office of Nuclear Reactor Regulation, in writing, at such time that it utilizes any of these contingency funds. This provision does not affect the NRC's authority to assure that adequate funds will remain available in the plant's separate decommissioning trust fund(s), which Entergy Nuclear shall maintain in accordance with NRC regulations. Once the plant has been placed in a safe-shutdown condition following a decision to decommission, Entergy Nuclear will use any remainder of the $50m contingency fund that has not been used to safely operate and maintain the plant to support the safe and prompt decommissioning of the plant, to the extent such funds are needed for safe and prompt decommissioning.

(6) Entergy Nuclear shall, prior to completion of the sale and transfer of Pilgrim to it, provide the Director, Office of Nuclear Reactor Regulation, satisfactory documentary evidence that Entergy Nuclear has obtained the appropriate amount of insurance required of licensees under 10 CFR Part 140 of the Commission's regulations.

(7) After receipt of all required regulatory approvals of the transfer of Pilgrim, Boston Edison and Entergy Nuclear shall inform the Director, Office of Nuclear Reactor Regulation, in writing of the date of the closing of the sale and transfer of Pilgrim no later than one business day prior to the date of closing. Should the transfer of the licenses not be completed by December 31, 1999, this Order shall become null and void, provided, however, on written application and for good cause shown, such date may in writing be extended.

It is further ordered that, consistent with 10 CFR 2.1315(b), license amendments that makes changes, as indicated in Enclosure 1 to this Order, to conform the licenses to reflect their transfer are approved. Such amendments shall be issued and made effective at the time the proposed license transfers are completed.

This Order is effective upon issuance.

For further details with respect to this Order, see the initial application dated December 21, 1998, and application supplements dated January 28, February 18, April 2, April 15, and April 16, 1999, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Plymouth Public Library, 132 South Street, Plymouth, Massachusetts 02360.

Dated at Rockville, Maryland, this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11402 Filed 5–5–99; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23817; 812–11530]

Bankers Trust Company, et al.; Notice of Application

April 29, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 6(c) of the Investment Company Act of 1940 ("Act") for an exemption from section 15(a) of the Act.

SUMMARY OF THE APPLICATION: The requested order would permit the implementation, without prior shareholder approval, of new investment advisory and subadvisory agreements ("New Advisory Agreements") in connection with the merger of Bankers Trust Corporation ("BT Corp") and Deutsche Bank AG ("Deutsche Bank"). The order would cover a period of up to 150 days following the later of the date the merger is consummated or the date the requested order is issued (but in no event later than November 30, 1999) ("Interim Period").

APPLICANTS: Bankers Trust Company "BT"), Investment Company Capital Corp. ("ICCC"), and Alex. Brown Investment Management ("ABIM") (collectively, "BT Advisers"); Brown Investment Advisory & Trust Company ("Brown Trust"); LaSalle Investment Management (Securities), L.P. ("LaSalle"); and The Glenmede Trust Company ("Glenmede") (collectively with the BT Advisers, Brown Trust and LaSalle, "Advisers").

FILING DATES: The application was filed on March 5, 1999 and amended on April 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, c/o Willkie Farr & Gallagher, Attn: Burton M. Leibert, Esq. or Jon S. Rand, Esq., 787 Seventh Avenue, New York, NY 10019–6099.

FOR FURTHER INFORMATION CONTACT: Rachel H. Graham, Senior Counsel, at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. BT, a New York banking corporation, serves as investment adviser or subadviser to various open-end management investment companies registered under the Act ("BT Advised Funds") pursuant to separate investment advisory or subadvisory agreements ("Existing BT Agreements").[1] ICCC, a Maryland corporation and wholly-owned subsidiary of BT Alex. Brown Incorporated, serves as investment adviser to various open-end management investment companies registered under the Act ("ICCC Funds" and, together with the BT Advised Funds, "Funds") pursuant to separate investment advisory agreements ("Existing ICCC Agreements").[2]

2. ABIM, a Maryland limited partnership, serves as investment subadviser to three ICCC Funds. Brown Trust, a Maryland trust company, serves as investment subadviser to two ICCC Funds. LaSalle, a Maryland limited partnership, and Glenmede, a Pennsylvania limited purpose trust company, each serve as investment subadviser to one ICCC Fund. Each of ABIM, Brown Trust, LaSalle, and Glenmede serves in this capacity pursuant to separate investment subadvisory agreements with ICCC (collectively, "Existing Subadvisory Agreements," and together with the Existing BT Agreements and the Existing ICCC Agreements, "Existing Advisory Agreements").

3. BT and ICCC are wholly-owned subsidiaries of BT Corp, a registered bank holding company that also indirectly controls ABIM. BT Corp is not affiliated with Brown Trust, LaSalle, or Glenmede (each a "Non-BT Subadviser").

4. BT, Brown Trust, and Glenmede are exempt from registration as investment advisers under the Investment Advisers Act of 1940 ("Advisers Act") pursuant to section 202(a)(11)(A) of the Advisers Act. ICCC, ABIM, and LaSalle are registered as investment advisers under the Advisers Act.

5. On November 30, 1998, BT Corp and Deutsche Bank entered into an agreement pursuant to which Circle Acquisition Corporation, a wholly-owned subsidiary of Deutsche Bank, will merge with and into BT Corp, with BT Corp continuing as the surviving entity (the "Merger"). Applicants expect consummation of the Merger on or about May 31, 1999.

6. Applicants state that the Merger may result in the assignment, and thus termination, of the Existing Advisory Agreements under the terms of those agreements and the Act. Applicants request an exemption to permit (i) the implementation of the New Advisory Agreements without prior shareholder approval, and (ii) the Advisers to receive all advisory fees earned under the New Advisory Agreements during the Interim Period, subject to approval of the New Advisory Agreements by the Funds' shareholders. The requested exemption would cover the Interim Period of not more than 150 days beginning on the later of the date the

[1] BT serves as investment adviser for the following BT Advised Funds: BT Insurance Funds Trust, Cash Management Portfolio, Treasury Money Portfolio, Tax Free Money Portfolio, New York Tax Free Money Portfolio, International Equity Portfolio, Equity 500 Index Portfolio, Asset Management Portfolio, Capital Appreciation Portfolio, Intermediate Tax Free Portfolio, BT Investment Portfolios, Quantitative Equity Fund (a series of BT Investment Funds), Institutional Daily Assets Funds and Institutional Treasury Assets Fund (each a series of BT Institutional Funds), and BT Investment Equity Appreciation Fund (a series of BT Pyramid Mutual Funds). BT serves as investment subadviser for the following BT Advised Funds: AARP U.S. Stock Index Fund, a series of AARP Growth Trust; three series of American General Series Portfolio Company (Mid Cap Index Fund, Stock Index Fund, and Small Cap Index Fund); four series of American General Series Portfolio Company 2 (Small Cap "Value" Index Fund, Stock Index Fund, Midcap Index Fund, and Small Cap Index Fund); Small Cap Value Index Fund, a series of American General Series Portfolio Company 3; AST Bankers Trust Enhanced 500 Portfolio, a series of American Skandia Trust; three series of EQ Advisors Trust (BT Equity 500 Index Portfolio, BT Small Company Index Portfolio, and BT International Equity Index Portfolio); Spartan Market Index Fund, a series of Fidelity Commonwealth Trust; four series of Fidelity Concord Street Trust (Spartan Extended Market Index Fund, Spartan Total Market Index Fund, Spartan International Market Index Fund, and Spartan U.S. Equity Index Fund); Index 500 Portfolio, a series of Fidelity Variable Insurance Products Fund II; two series of Pacific Select Fund (Equity Index Portfolio and Small-Cap Index Portfolio); two series of SBL Fund (Series H and Series I); two series of Security Index Fund (International Series and Enhanced Index Series); International Equity Portfolio, a series of Style Select Series Inc.; and eight series of Seasons Series Trust (Large-Cap Growth Portfolio, Large-Cap Composite Portfolio, Large-Cap Value Portfolio, Mid-Cap Growth Portfolio, Mid-Cap Value Portfolio, Small Cap Portfolio, International Equity Portfolio, and Diversified Fixed Income Portfolio).

[2] The ICCC Funds are: Tax-Free Series, Prime Series, and Treasury Series (each a series of BT Alex. Brown Cash Reserve Fund, Inc.); Flag Investors Communications Fund, Inc.; Flag Investors Emerging Growth Fund, Inc.; Flag Investors Short-Intermediate Income Fund, Inc.; Flag Investors Value Builder Fund, Inc.; Flag Investors Real Estate Securities Fund, Inc.; Flag Investors Equity Partners Fund, Inc.; and Flag Investors International Fund, Inc.

merger is consummated ("Closing Date") or the date the requested order is issued and continuing until the New Advisory Agreements are approved or disapproved by the Funds' shareholders, but in no event later than November 30, 1999.[3] Applicants state that the New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the dates of commencement and termination.

7. Applicants state that, on March 11, 1999, six days after applicants filed this application with the Commission, the U.S. Attorney for the Southern District of New York filed a three-count felony information ("Information") in the United States District Court for the Southern District of New York. The Information charges BT with making false entries on its books and records as a result of the conduct of certain employees in BT's processing services businesses in 1994–1996.[4] On March 11, 1999, BT pleaded guilty to the charges in the Information pursuant to a written cooperation and plea agreement ("Cooperation and Plea Agreement").[5]

8. On March 12, 1999, BT filed an application pursuant to section 9(c) of the Act for a temporary order exempting it and entities of which it is or becomes an affiliated person ("Covered Entities") from the provisions of section 9(a) of the Act. [6] On March 12, 1999, BT and the Covered Entities received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Cooperation and Plea Agreement ("Temporary Order") (Investment Company Act Release No. 23737). The Temporary Order stated that it would expire when the Commission took final action on an application for a permanent order or, if earlier, May 11, 1999. On march 25, 1999, the BT Advisers filed an application under section 9(c) for (i) a permanent order exempting the Covered Entities from section 9(a) with respect to the Cooperation and Plea Agreement and (ii) an extension of the Temporary Order if the requested permanent order is not granted before the Temporary Order expires.

9. Applicants currently intend that the board of directors ("Board") of each Fund will meet prior to the Closing Date to consider approval of the New Advisory Agreements and submission of the New Advisory Agreements to the shareholders for their approval, in accordance with section 15(c) of the Act.[7] Applicants state that each Board will evaluate whether the terms of the relevant New Advisory Agreement(s) are in the best interests of the Fund and its shareholders. Applicants state that a majority of the Boards already have convened and approved the New Advisory Agreements applicable to their Funds. Applicants represent that any Board that met prior to March 11, 1999 subsequently was apprised of the Cooperation and Plea Agreement and BT's requests for relief under section 9(c). Applicants also represent that all other Boards have been or will be apprised of the Cooperation and Plea Agreement and BT's requests for relief under section 9(c) before voting on the New Advisory Agreements applicable to their Funds. Applicants further represent that each Board has been or will be provided with all information reasonably necessary to evaluate whether retaining the relevant BT Adviser is in the best interests of the Fund and its shareholders.

10. Advisory fees earned by the Advisers under the New Advisory Agreements during the Interim Period will be maintained in interest-bearing escrow accounts with one or more financial institutions unaffiliated with the Advisers (each an "Escrow Agent").[8] The applicable Escrow Agent will release the amounts held in the escrow accounts (including any interest earned): (i) to the applicable Adviser upon approval of each New Advisory Agreement by the relevant Fund's shareholders; or (ii) to the Fund, if the Interim Period has ended and the Fund's shareholders have not approved the New Advisory Agreement.[9] Before any such release is made, the Board of the applicable Fund will be notified.

11. Proxy materials for the shareholders meeting of each Fund are expected to be mailed beginning in or about May, 1999. The proxy materials will include disclosure regarding the Corporation and Plea Agreement, the Temporary Order, and the BT Advisers' request for a permanent order of exemption from section 9(a). Applicants represent that if the Commission decides not to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order prior to the time that the proxy materials are mailed, solicitation of shareholder votes with respect to the New Advisory Agreements will be limited only to approval of the release of amounts payable to the BT Advisers that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted. Applicants further represent that if the Commission decides not to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order while the proxies are outstanding, the BT Advisers will mail supplemental proxy materials with respect to the BT Advisers' New Advisory Agreements soliciting shareholder approval only for the release of amounts payable to the BT Advisers that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted. In either instance, the ICCC Funds subadvised by the Non-BT Subadvisers will be permitted to solicit shareholder approval of the release of all escrowed fees payable to the Non-BT Subadvisers under the New Advisory Agreements.

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[3] Applicants state that if the Closing Date precedes the issuance of the requested order, they will serve after the Closing Date and prior to the issuance of the order in a manner consistent with their fiduciary duty to provide investment advisory and subadvisory services to the Funds even though approval of the New Advisory Agreements has not yet been secured from the Funds' shareholders. Applicants submit that, in such an event, they will be entitled to receive, from the Closing Date until the issuance of the order, no more than their actual out-of-pocket costs for providing investment advisory and subadvisory services to the Funds.

[4] The conduct involved the transfer to reserve accounts and to income of aged credit items that should have been paid to customers, other third parties, or state abandoned property authorities.

[5] As part of the Cooperation and Plea Agreement, BT agreed to pay a $60 million fine and to place that amount in escrow pending sentencing. As a result of the matters underlying the Cooperation and Plea Agreement, BT also has agreed to pay a $3.5 million fine to the State of New York.

[6] Section 9(a), in relevant part, prohibits a person and any company of which the person is an affiliated person from serving or acting as an investment adviser, principal underwriter, or depositor for any registered investment company if the person has been convicted of any felony arising out of the person's conduct as, among other things, an underwriter, broker, dealer, investment adviser, or transfer agent. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

[7] Applicants acknowledge that, to the extent that a Fund's Board cannot meet prior to the Closing Date, the applicable Adviser(s) may not rely upon the exemptive relief requested in this application.

[8] In certain cases, the fees payable to BT under the New Advisory Agreements include a portion of revenues earned from securities lending activities performed on behalf of certain BT Advised Funds. The portion of such revenues owned to the applicable BT Advised Funds, as opposed to BT, will not be placed into escrow.

[9] As described in representation 11 in this notice, if the Commission declines to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order, the BT Advisers may only receive the fees payable to them that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to serve as an investment adviser to a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of the investment company. Section 15(a) further requires the written contract to provide for its automatic termination in the event of its assignment. Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor. Applicants state that the Merger may result in an assignment of the Existing Advisory Agreements and that such agreements will terminate according to their terms.

2. Rule 15a–4 under the Act provides, in relevant part, that if an investment advisory contract with a registered investment company is terminated due to its assignment, an investment adviser may act as such for the company for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (i) The new contract is approved by that company's board of directors, including a majority of the non-interested directors; (ii) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (iii) neither the adviser nor any controlling person of the adviser "directly or indirectly receive[s] money or other benefit" in connection with the assignment. Applicants state that they may not rely on rule 15a–4 because BT Corp will receive benefits in connection with the Merger.

3. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction from any provision of the Act or any rule thereunder if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with both the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants state that the requested relief meets this standard.

4. Applicants state that the terms and timing of the Merger were determined in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants assert that there is insufficient time to obtain shareholder approval of the New Advisory Agreements before the Merger is consummated. Applicants further assert that the requested relief would prevent any disruption in the delivery of investment advisory services to the Funds during the period after the Merger.

5. Applicants represent that, under the New Advisory Agreements during the Interim Period, the Funds will receive the same scope and quality of investment advisory services, provided in the same manner, as they receive under the Existing Advisory Agreements. Applicants state that, in the event of any material change in investment management personnel providing services to the Funds, the applicable Adviser will apprise and consult with the relevant Fund's Board to ensure that the Broad, including a majority of the non-interested directors, is satisfied that the services provided by the Adviser will not be diminished in scope and quality. Applicants note that the fees payable to the Advisers under the New Advisory Agreements during the Interim Period will be at the same rate as the fees paid under the Existing Advisory Agreements.

Applicants' Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the date of commencement and termination.

2. The portion of the advisory fees earned by the Advisers during the Interim Period will be maintained in interest-bearing escrow accounts, and amounts in the accounts chargeable to the Funds (including interest earned on such amounts) will be paid to the applicable Adviser only upon approval of each New Advisory Agreement by the relevant Fund's shareholders or, in the absence of such approval, to the Fund.[10]

3. Each fund will schedule a meeting of its shareholders to vote on approval of the New Advisory Agreements, which will be held within 150 days following the commencement of the Interim Period (but in no event later that November 30, 1999).

4. The BT Advisers, or entities controlling them, will pay the costs of preparing and filing the application and the costs relating to the solicitation and approval of Fund Shareholders of the New Advisory Agreements necessitated by the Merger.

5. BT Corp, Deutsche Bank, and applicants will take all appropriate actions to ensure that the scope and quality of investment advisory and other services to be provided to the Funds by the advisers during the Interim Period will be least equivalent, in the judgment of the Boards, including a majority of the non-interested directors, to the scope and quality of services currently provided under the Existing Advisory Agreements. In the event of any material change in investment management personnel providing advisory services pursuant to the New Advisory Agreements, the applicable Adviser will apprise and consult with the relevant Fund's Board to ensure that the Board, including a majority of the non-interested directors, is satisfied that the services provided by the Adviser during the Interim Period will not be diminished in scope or quality.

6. The application and any exemption issued will be without prejudice to, and will not limit the Commission's rights in any manner with respect to, any Commission investigations or enforcement actions pursuant to the federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements, including without limitation, the consideration of a request for a permanent exemption pursuant to sections 9(c) of the Act, or the revocation, removal, or extension of the Temporary Order.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11363 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

[10] As described in representation 11 in this notice, if the Commission declines to extend the Temporary Order or denies the BT Advisers' request for a permanent section 9(c) order, the BT Advisers may only receive the fees payable to them that were escrowed up to the date on which the Temporary Order or an extension of the Temporary Order expires if the permanent order has not been granted.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41343; File No. SR–NASD–99–16]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. and Amendment No. 1 Thereto Relating to Agency Quotations and Access Fees

April 28, 1999.

On April 15, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its

wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq.[1] On April 22, 1999, the NASD amended the filing.[2] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq is proposing to: (1) amend certain NASD quotation rules to remove any arguable prohibitions that could prevent market makers from charging a fee when their agency quote is accessed; and (2) require market makers and electronic communications networks ("ECNs") to round their quotations to the next minimum quotation increment when the market maker or ECN charges another market participant a fee in excess of one-half of one cent to access its quote. Proposed new language is italicized; proposed deletions are in brackets.

* * * * *

3320. Offers at Stated Prices

No member shall make an offer to buy from or sell to any person any security at a stated price unless such member is prepared to purchase or sell, as the case may be, at such price and under such conditions as are stated at the time of such offer to buy or sell. *It shall be consistent with this rule for a Nasdaq market maker to charge a fee to a market participant that accesses the market maker's Agency Quote (as defined in NASD Rule 4613(b)) so long as the market maker meets all NASD requirements for displaying the Agency Quote.*

IM–3320. Firmness of Quotations

Members and persons associated with members in the over-the-counter market make trading decisions and set prices for customers upon the basis of telephone and wire quotations as well as quotations in the National Quotation Bureau sheets. In some instances a dealer's quotations, purportedly firm, are, in fact, so qualified upon further inquiry as to constitute "backing away" by the quoting dealer. Further, dealers who place quotations in the sheets have been found to be unwilling to make firm bids or offers upon inquiry in such a way as to pose a question as to the validity of the quotations originally inserted. Such "backing away" from quotations disrupts the normal operation of the over-the-counter market.

Members, of course, change interdealer quotations constantly in the course of trading, but under normal circumstances where the member is making a "firm trading market" in any security, it is expected at least to buy or sell a normal unit of trading in the quoted stock at its then prevailing quotations unless clearly designated as not firm or firm for less than a normal unit of trading when supplied by the member. It should be realized, however, that at times contemporaneous transactions or substantial changes in inventory might well require dealers to quote a "subject market" temporarily.

In order to insure the integrity of quotations, every member has an obligation to correctly identify the nature of its quotations when they are supplied to others. In addition, each member furnishing quotations must insure that it is adequately staffed to respond to inquiries during the normal business hours of such member.

It shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member fails to fulfill its obligations as outlined above. *It shall not be a violation of this rule or be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a Nasdaq market maker charges a fee for accessing its Agency Quote so long as the market maker meets all NASD requirements for displaying the Agency Quote.*

Rule 4613. Character of Quotations

(a)–(b) No Change.[3]

(c) Firm Quotations.

A market maker that receives an offer to buy or sell from another member of the Association shall execute a transaction for at least a normal unit of trading at its displayed quotations as disseminated in The Nasdaq Stock Market at the time of receipt of any such offer. If a market maker displays a quotation for a size greater than a normal unit of trading, it shall, upon receipt of an offer to buy or sell from another member of the Association, execute a transaction at least at the size displayed. *It shall be consistent with this rule for a Nasdaq market maker to charge a fee to a market participant that accesses through a Nasdaq-provided facility or telephone the market maker's Agency Quote (as defined in NASD Rule 4613(b)), so long as the market maker meets all NASD requirements for displaying the Agency Quote; provided however, a market maker may not charge a UTP Specialist a fee for accessing its quote when the UTP Specialist accesses the Agency Quote by telephone from the floor of the UTP exchange. For purposes of this rule a "UTP Specialist" shall mean a broker/dealer registered as a specialist in Nasdaq securities pursuant to the rules of an exchange that is a signatory to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq/NMS/UTP Plan").*

(d)–(e) No Change.[4]

4615. Quotation Rounding and Other Requirements for Agency Quotations and ECNs

(a) An electronic communications network ("ECN") included in Nasdaq pursuant to Rule 4623 or a Nasdaq market maker that displays an Agency

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[1] This proposal was filed pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4, 17 CFR 240.19b–4, thereunder.

[2] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Office of the General Counsel, Nasdaq, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 22, 1999 ("Amendment No. 1"). In Amendment No. 1, the NASD made various technical and clarifying amendments which are reflected in the notice. Also in Amendment No. 1, the text of proposed NASD Rule 4615 and the accompanying explanatory text in the filing is amended to clarify that if the access fee that an ECN or market maker charges is greater than one minimum quotation increment, the market maker or ECN must round its bid down (or offer up) to the next minimum increment that *is equal to or* greater than the access fee. Finally, the NASD also explained that the instant proposed rule change is contingent upon the Commission's approval of its pending Agency Quote proposal (Exchange Act Release No. 41128 (March 2, 1999), 64 FR 41128 (March 11, 1999) (File No. SR–NASD–99–09)).

[3] In pending File No. SR–NASD–99–11, Nasdaq proposed amendments to NASD Rule 4613(a) which would functionally integrate Nasdaq's SOES and SelectNet system. *See* Exchange Act Release No. 41296 (April 15, 1999), 64 FR 19844 (April 22, 1999).

[4] Nasdaq recently filed a proposed rule change, SR–NASD–99–09, to permit the separate display of customer orders by market makers in Nasdaq through a market maker agency identification symbol ("Agency Quote"). Under that proposal, the Agency Quote rule would be designated as NASD Rule 4613(b). The current NASD Rule 4613(b), regarding Firm Quotations, would be redesignated as NASD Rule 4613(c), and current NASD rule 4613(c) would be redesignated as NASD Rule 4613(d). That proposal would also eliminate current NASD Rule 4613(d), regarding Reasonably Competitive Quotations, as the requirements of this subparagraph were eliminated as of October 13, 1997 by Exchange Act Release No. 39120 (Sept. 23, 1997), 62 FR 51170 (Sept. 30, 1997). *See* note 2, *above*. This filing reflects the proposed redesignations.

Quote (as defined in NASD Rule 4613) must round its bid down and/or its offer up by the next minimum quotation increment permitted by Nasdaq's system (or if the access fee, as described below, is larger than one minimum quotation increment, the market maker or ECN must round its bid(offer) down(up) to the next minimum increment that is equal to or greater than the access fee) if:

(1) the ECN charges non-subscribers that access its quote a fee in excess of one-half of one cent per share; or

(2) the Nasdaq market maker charges any participant that accesses the market maker's Agency Quote (as defined in NASD Rule 4613) a fee in excess of one-half of one cent per share.

(b) Prior to commencing to charge for a fee for accessing its Agency Quote, a Nasdaq market maker shall inform Nasdaq Market Operations in writing of the maximum fee it intends to charge any market participant that accesses its Agency Quote (Initial Notification Requirement). Additionally, the market maker shall immediately inform Nasdaq Market Operations in writing of any change in the maximum fee it charges any market participant (Continuous Notification Requirement). The Initial Notification and Continuous Notification requirements shall also apply to ECNs included in Nasdaq.

(c) It shall be deemed conduct inconsistent with high standards of commercial honor and just and equitable principles of trade if a member fails to fulfill its obligations as outlined above.

4623. Electronic Communications Networks

(a) No change.

(b) An ECN that seeks to utilize the Nasdaq-provided means to comply with the ECN display alternative shall:

(1)–(3) No Change.

(4) agree to provide for Nasdaq's dissemination in the quotation data made available to quotation vendors the prices and sizes of Nasdaq market maker orders (and other entities, if the ECN so chooses) at the highest buy price and the lowest sell price for each Nasdaq security entered in and widely disseminated by the ECN; and prior to entering such prices and sizes, register with Nasdaq Market Operations as an ECN; [and]

(5) provide an automated execution or, if the price is no longer available, an automated rejection of any order routed to the ECN through the Nasdaq-provided display alternative[.]; *and*

(6) comply with applicable requirements of NASD Rule 4615.

(c) No Change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

Nasdaq is proposing to amend NASD Rule 3320 regarding Offers at Stated Prices and NASD Rule 4613(c) regarding Firm Quotations, which arguably could be read to prohibit market makers from charging market participants fees when quotes are accessed. Nasdaq also is proposing to require market makers and ECNs to round their quotations to the next minimum quotation increment when: (1) the ECN charges non-subscribers a fee in excess of one-half of one cent to access its quote; and (2) the market maker charges another market participant a fee in excess of one-half of one cent to access its Agency Quote (as defined in NASD rule 4613).[5]

1. Background

Recently, Nasdaq filed with the Commission a proposal to allow market makers in Nasdaq National Market Securities ("NNM") to display a second quotation separate from their proprietary quotation for the purpose of displaying customer interest ("Agency Quote Proposal").[6] As noted in the Agency Quote Proposal filing,[7] Nasdaq's intended purpose of the Agency Quote was to give market makers an alternative method to display agency interests to the market and to return "control" over their quotes that market makers argue they lost with the implementation of the SEC's Order Handling Rules ("OHR").[8] Additionally, the Agency Quote Proposal attempts to resolve the regulatory and administrative difficulties that market makers experience as a result of being required to display customer orders and other agency interests as well as market makers' proprietary interests in a single quote.

Also, as noted in the Agency Quote Proposal, many ECNs currently charge fees to market participants (and ECN subscribers) that execute against a customer order that is displayed in the ECN. Although market makers currently may not charge a similar fee when their public quotes are accessed, market makers have expressed a desire to do so, in particular since they often are acting as agent by displaying a customer's interest in their quote. Nasdaq believes that it is inequitable that ECNs are permitted to charge a fee when their quote is accessed, but market makers are prohibited from charging a fee in similar situations when they act as agent.

Nasdaq notes that concerns have been raised about this perceived inequity. Specifically, Nasdaq suggests that the present environment encourages market makers to send their customer limit orders to ECNs to comply with the OHR. Thus, market makers often must give up some of their business and incur ECN fees to process their customer's limit orders. Market makers argue that it is unfair that an ECN may charge a fee when its quote is accessed but they (market makers) are prohibited from charging a fee when they are representing an agency interest in their quote. Thus, there are strong incentives for market makers to register as ECNs to avoid some of the regulatory and other requirements imposed on market makers, as well as risk to capital that market makers assume. Additionally, market makers argue that they, like ECNs, should be able to charge an access fee when they are acting purely as agent. Similar to ECNs, the access fee charged would compensate market makers for costs incurred in representing orders in Nasdaq on an agency basis.

In adopting the OHR, the Commission required that ECNs provide broker-dealers access to market maker orders reflected in the ECN's public quote that was equivalent to broker-dealer access to the market maker's own quotes. Currently, the Firm Quote Rules and NASD rules generally require market makers to trade at their displayed

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[5] *See id.*

[6] *Id.*

[7] *Id.* As noted in the Agency Quote Proposal, market makers assert that they have "lost control" of their quotes because they must change their proprietary quote to reflect certain limit orders and must "advertise competing interests in their quotes." The original text in this footnote has been changed pursuant to a telephone conversation between John Malitzis, Assistant General Counsel, Office of the General Counsel, Nasdaq, and Marc McKayle, Attorney, Division, Commission (April 22, 1999).

[8] The OHR, comprised of amendments to Rule 11Ac1–1 ("Firm Quote Rule") and the adoption of Rule 11 Ac1–4 ("Display Rule"), were adopted by the Commission on August 28, 1996. *See* Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996) ("OHR Adopting Release").

quotes, without any additional fees. Nonetheless, the OHR Adopting Release stated that an ECN could charge "for access to its system, similar to the communications and systems charges imposed by various markets, if not structured to discourage access by non-subscriber broker-dealers." [9] Subsequently, Commission staff no-action letters affirmed that individual ECNs could be used by market makers in compliance with the OHR. In these letters the ECNs represented, as a condition of receiving the no-action relief, that they would charge non-subscriber orders fees no greater than the lesser of the fees charged a substantial number of active broker-dealer subscribers, and one and one-half cents per share.

Regulation ATS extended the OHRs' equivalent access standard for alternative trading systems publishing public quotations.[10] In Regulation ATS, the Commission acknowledged that a self-regulatory organization ("SRO") has the authority to adopt rules limiting alternative trading systems fees, or requiring display of fees in the quote, to make alternative trading system quotes that are disseminated to the public comparable with other quotes in the SRO's market.[11]

The fees charged by ECNs to non-subscriber broker-dealers accessing ECN quotes have provoked much controversy. Market makers have argued that ECNs publishing quotes in Nasdaq should not be allowed to charge fees to trade with those quotes, on, in fairness, market makers should be allowed to charge ECNs and others that trade with the market maker's quotes. Broker-dealers say that while best execution principles compel them to trade with better-priced displayed ECN quotes to benefit their customers, these customers are generally unwilling to pay the fee charged by the ECN in that trade.

The ECNs say that their business model depends on charging both sides of a transaction an agency commission. They argue that they should still be able to charge these fees even when the OHR and Regulation ATS require them to display prices in the public quote.

The Nasdaq rule proposal would address these issues by allowing market makers, like ECNs, to charge fees to access their agency quotes. The proposal would, however, require both market makers and ECNs to round this quote to the next inferior increment if the fee exceeded half-a-cent per share.[12]

2. Agency Fee Proposal

In light of the foregoing, Nasdaq is proposing to permit market makers to charge a fee when their Agency Quote is accessed, similar to that ECNs currently charge non-subscribers. Under this proposal, a market maker would be permitted to charge a fee but would be required to round its bid down or its offer up by the applicable minimum quotation increment in Nasdaq if the maximum fee the market maker charges any market participant exceeded one-half of the one cent. If the access fee the market maker charges is greater than a single minimum increment, then the market maker would have to round its Agency Quote to the next minimum increment that is equal to or greater than the access fee.[13] In effect, the market maker's fee would be included in the market maker's Agency Quote if the charge exceeded one-half of one cent. A virtually identical rounding requirement would apply to ECNs.[14] Nasdaq believes that when a quote-access fee exceeds a half-a-cent per share, the net execution price materially differs from the quoted price, and thus the fee should be rounded to account for such differential.

For example, a bid of 20 for a market participant that charges a fee of .006 cents per share would be rounded down to $19^{15}/_{16}$, while an offer of 20 with the same charge would be rounded up to $20^{1}/_{16}$. As a second example, if a market participant charged a fee of twelve and a half cents per share (*i.e.*, ⅛th point) on a $20 buy limit order, the market participant would have to display that buy limit order at $19^{7}/_{8}$ (or ⅛th down).

There would be no cap on the fee market participants could charge, nor is Nasdaq mandating that market participants charge the same rate to all market participants that access the market participant's quote (*i.e.*, market makers and ECNs may vary access fees for different market participants).[15] Nasdaq notes, however, that it believes the Nasdaq UTP Plan would prohibit a market maker from charging a UTP Specialist an access fee when the UTP Specialist accesses the market maker's Agency Quote by telephone.[16] The proposal, accordingly, prohibits market makers from charging when a UTP Specialist accesses a market maker's quote by phone. The UTP Plan does not, however, explicitly prohibit market makers from charging UTP Specialists a fee when a market maker's quote is accessed by a means other than the telephone, such as a Nasdaq order delivery system.

The proposal would require all market makers and ECNs to inform the NASD of the maximum (or highest) fee the market maker or ECN intends to charge any single market participant, as well as any changes in previously established fees. The NASD intends to publish and widely distribute this fee information through a common facility, such as the Nasdaqtrader.com Web Site. Nasdaq is sensitive to the concerns that allowing market makers to charge the proposed fee could result in the imposition of administrative burdens and other costs on small firms, as firms would be required to calculate the fees they owe and are owed. To alleviate these concerns, Nasdaq intends to develop through a common facility (*e.g.*, the Nasdaqtrader.com Web Site) reports and data that firms may use to calculate the fees. In addition, to implement the Agency Quote proposal, Nasdaq is proposing amendments to current NASD rules (*e.g.*, NASD Rule 3320 regarding Offers at Stated Price and NASD Rule 4613 regarding Firm Quotations), which arguably could be read to prohibit market makers from charging market participants fees when their quotes are accessed.

Nasdaq believes that where a quote is subject to the rounding requirement, a market participant should make a number of disclosures to its customer to fulfill its best execution obligations. First, the market participant should disclose and explain that while rounding will result in price improvement by the amount rounded, the rounding may delay the execution of the order because the order will be reflected at a lower price, in the case of buy orders (or higher price, in the case of sell orders). Additionally, a market maker must disclose (if applicable) that when the quote is rounded down (up) the market maker will collect the access

[9] *Id.* at n. 272.

[10] *See* Exchange Act Release No. 40760 (Dec. 8, 1998), 63 FR 70844 (December 22, 1998) ("Regulation ATS Adopting Release").

[11] *Id.*

[12] As explained in more detail below, the Commission is seeking comment not only on the NASD rule filing as currently proposed, but also on the broader questions raised by ECN and ATS fees for accessing quotes and possible ways of reconciling these fees with the existing Nasdaq market.

[13] Nasdaq notes that the half-a-cent level is equivalent to the average fee that most ECNs charge their professional customers.

[14] ECNs currently are not subject to a requirement that they round their quotes to reflect a fee.

[15] The proposed rule would not prevent market participants from rebating fees to a customer or customers.

[16] *See* Section IX ("Market Access"), Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq/NMS/UTP Plan ").

fee from the customer, since the accessing market participant has already paid the fee with the implicit inclusion of the fee in the quote. (An example of this situation is illustrated below.)

The following is an example of how the proposal would work. Three market makers and an ECN (MNA, MMB, MMC and ECN1) are at the inside (*i.e.*, best) price of each displaying in their quotes (Agency Quotes for the market makers), customer orders to buy 1,000 shares at $30. MMA charges no access fee, MMB charges a fee of .002 cents per share, MMC charges a fee of .007 cents per share, and ECN1 charges a fee of .015 cents per share. The following would be displayed in the Nasdaq montage:

MMID	Bid price	Shares
MMA@	$30	1,000
MMB@	30	1,000
MMC@	29 15/16	1,000
ECN1#	29 15/16	1,000

If two 1,000-share market orders to sell were entered into Nasdaq's Small Order Execution System ("SOES") (or its successor system),[17] both orders would be executed automatically and reported to the tape at 1,000 shares at $30; to collect the access fee, MMB would directly bill the market participant who accessed its quote.

Next, assume that the best market moves to MMC's price, and a market order is delivered through SOES to MMC's bid, which represents a customer buy limit order for $30 that is rounded down to $29 15/16. In this case, the Nasdaq system would automatically execute and lock in the trade at $29 15/16 (not $30), and report that price to the tape. The incoming market order would be executed at $29 15/16, and the market maker would be required to give the customer buy limit order a fill of $29 15/16. As noted above, MMC must disclose to its customer that, based on the access fee it charges other market participants, it is required to round the customer's limit order price down, and that while rounding will result in price improvement of 1/16th, the rounding may also delay the execution of the order. Additionally, MMC must disclose that because the incoming market order is implicitly paying a fee by selling to MMC's customer for 1/16th less, MMC will collect the .007 cents per share from its customer (*i.e.*, MMC deducts the .007 cents per share from the .0625 cents per share in price improvement that the customer received).[18]

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This proposal is contingent upon SEC approval of the Agency Quote Proposal, and would become effective concurrently with Nasdaq's implementation of the Agency Quote Proposal.[19] Nasdaq believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6)[20] and Section 11A of the Act.[21] Section 15A(b)(6)[22] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Moreover, under Section 15A(b)(6) of the Act,[23] the rules of a registered national securities association must not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. In Section 11A(a)(1)(C) of the Act,[24] Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investor's orders in the best market; and (5) an opportunity for investor's orders to be executed without the participation of a dealer.

Nasdaq believes that by requiring market participants to round their quotes and in effect display the fee in their quotation when the fee exceeds a certain level, the proposal will avoid the dissemination of potentially misleading quotation information. Nasdaq believes that when quote-access fee exceed a half-a-cent per share, the net execution price materially differs from the quoted price. To the extent that this results in a market participant having to pass on the quoted price to the customer, it may act to deter that market participant from acting as a market maker. On the other hand, if the market maker passes a fee on to its customer, this may result in dissatisfaction because the customer perceives that he or she did not obtain the best price in the market. In contrast, under Nasdaq's instant proposal, the firm will receive the quoted price, thus eliminating this concern. Finally, the proposal would address perceived inequities that currently exist between market makers and ECN's, as the proposal would allow market makers to charge a fee when they act as agent, similar to that which ECNs currently charge to non-subscribers.

Nasdaq notes that in the past the SEC staff has taken the position that it is inconsistent with the Firm Quote Rule, Rule 11Ac1–1 under the Act,[25] for market makers to charge a fee when their quotations are accessed.[26] Nasdaq believes that the SEC staff's position was, in part, premised on the fact that market makers would be charging when the market maker was acting as "principal" and in essence charging a mark-up customers it ordinarily would not levy such a charge on. Under the current proposal, market makers would be assessing a fee on customers (and

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[17] *See* note 3, *above*.

[18] Since the market maker has already implicitly assessed a fee on the incoming market order by rounding the limit order price down 1/16th, Nasdaq believes that MMC should not charge the incoming market order an additional access fee; rather, Nasdaq believes that MMC should collect its .007 cents per share fee from its customer.

[19] *See* Amendment No. 1, note 3, *above*.

[20] 15 U.S.C. 78*o*–3(b)(6).

[21] 15 U.S.C. 78k–1.

[22] 15 U.S.C. 78*o*–3(b)(6).

[23] *Id.*

[24] 15 U.S.C. 78k–1(a)(1)(C).

[25] *See* 17 CFR 240.11Ac1–1.

[26] Specifically, the SEC staff has stated in response to a request for "non-action relief" that the Exchange Act Firm Quote Rule does not permit a market maker posting a quote impose a fee on market participants that customarily trade with the market maker at its quote without a mark-up. *See* letter from Robert L.D. Colby, Deputy Director, Division, Commission, to M. Joseph Messina, Vice President, M.H. Meyerson & Co., Inc., dated June 12, 1998. In reaching this conclusion, the SEC staff noted that the Firm Quote Rule provides that each responsible broker or dealer shall be obligated to execute any order to buy or sell a subject security presented to it by another broker or dealer or any other person, such as a retail customer, with whom such responsible broker or dealer deals, at a price at least as favorable to such buyers or sellers as the responsible broker's or dealer's published bid or published offer (exclusive of commission or commission equivalent or differential customarily charged by such responsible broker or dealer in connection with execution of any such order) in an amount up to its published quotation size. *Id.* The SEC staff has interpreted the above parenthetical as addressing mark-ups that are customarily charged to retail customers by brokers. *Id.* Thus, according to the SEC staff, the Firm Quote Rule does not permit a market posting quotations in the public quote to impose a fee, such as a liquidity or access fee, on market participants that customarily trade with a market maker at its quote without a mark-up. *Id.*

The SEC staff also stated that it interpreted NASD Rule 4613(b) ("NASD Firm Quote Rule") as requiring market makers to include in their posted quote an access fee they may charge. *Id.* Nasdaq expresses no opinion as to whether it concurs with the SEC staff's prior interpretation of NASD Rule 4613, but notes that this filing would permit market makers to publish quotes without including the fee in its bid or offer, unless such fee exceeds a half-a-cent, in which case the fee would implicitly be included in the market maker's quote.

others) that is in essence a commission solely when they are acting in an agency capacity. Similar to ECNs. While a market maker may not be able to charge a fee when it is acting in a principal's capacity for the reasons previously cited by the SEC staff, Nasdaq believes that it would be consistent with the Exchange Act Firm Quote Rule to permit market makers to charge a fee when they are acting as agent. Accordingly, Nasdaq believes that this rule proposal is consistent with Section 11A of the Act.[27]

(B) Self-Regulatory Organization's Statement to Burden on Competition

Nasdaq does not believes that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. The Commission asks for comments in particular on the following questions:

1. Should market makers be permitted to charge a fee to trade with limit orders in their agency quote lines? In addition to charging for agency orders displayed in their agency quote lines, should market makers be permitted to charge a fee for proprietary orders displayed in their agency quote lines?

2. Should any fee charged by market makers for orders executed against their agency quote lines be included in the quoted price? Should ECN fees be included in an ECN's quote? If ECN fees are required to be included in the quote, how should the fact that an ECN may have a range of fees it charges its broker-dealer subscribers be addressed?

3. Should there be a maximum permissible fee charged by market makers and ECNs, and if so, what should that fee be? Should market makers and ECNs be prohibited from charging a fee that is greater than one trading increment? Would disparate fees create confusion in the marketplace?

4. Will competition ensure that fees are not used as a barrier to access?

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR–NASD–99–16 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11361 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

[27] 15 U.S.C. 78k–1.

[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41346; File No. SR–NYSE–99–02]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change Permanently Approving the Pilot Program for the Listing Eligibility Criteria for Closed-End Management Investment Companies Registered Under The Investment Company Act of 1940

April 29, 1999.

I. Introduction

On January 26, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 under the Act,[2] a proposed rule change creating a pilot program ("pilot") relating to the listing eligibility criteria for closed-end investment companies registered under the Investment Company Act of 1940 ("Funds").

Notice of the proposal was published in the **Federal Register** on February 3, 1999.[3] The Commission received one comment letter on the proposal. On April 21, 1999, the NYSE submitted Amendment No. 1 to the proposed rule change.[4] This notice and order approves the proposed rule change as amended and seeks comment from interested persons on Amendment No. 1.

II. Description of the Proposal

The Exchange generally lists Funds either in connection with an initial public offering or shortly thereafter, when the fund does not have a three-year operating history and is thus considered newly formed. On January 26, 1999, the Exchange proposed to codify its policy regarding the listing of these newly organized Funds.[5] The same day, the Commission granted partial accelerated approval to the proposal as a three-month pilot, effective until April 29, 1999.

Under the pilot, if a Fund has at least $60 million in net assets, as evidenced by a firm underwriting commitment, the Exchange will generally authorize the listing of the Fund. This requirement is the minimum net asset requirement for listing. Additionally, the Exchange retains the discretion to deny listing to a Fund if it determines that, based upon a comprehensive financial analysis, it is unlikely that the particular Fund will be able to maintain its financial status. Any Fund with less than $60 million in net assets will not be considered for listing.

Lastly, Funds are subject to continued financial listing standards. The Exchange generates a monthly exception report to identify companies below the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40979 (January 26, 1999), 64 FR 5332 (February 3, 1999).

[4] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, April 21, 1999 ("Amendment No. 1"). In Amendment No. 1, the NYSE added a requirement that an applicant Fund, which is a spin-off or carve-out, show that the new entity will satisfy the net assets test by submitting to the Exchange a letter from its parent company's investment banker or other financial advisor.

[5] The Exchange sought both accelerated approval to implement a three-month pilot program to amend its *Listed Company Manual* with respect to Funds and permanent approval of the rule change implemented in the pilot.

Exchange's continued listing standards. If a Fund is so identified by the Exchange's Financial Compliance Department, it will be subject to the same compliance and monitoring procedures imposed upon any other NYSE-listed company so identified.

The Exchange is proposing an exception to the "Firm underwriting commitment" required in the pilot.[6] The Exchange contends that spin-offs and carve-outs are not the subjects of an underwriting and, therefore, are unable to submit the requisite undertaking letter. Accordingly, an applicant Fund, which is a spin-off or carve-out, must show that the new entity will satisfy the net assets test by submitting to the Exchange a letter from its parent company's investment banker or other financial advisor.

III. Summary of Comments

The Commission received one comment letter from the Investment Company Institute ("ICI"),[7] which opposed the proposal.[8] The Exchange responded to this letter.[9]

In its letter the ICI questioned a number of aspects of the proposal, including: the reason for proposing solely a net asset based eligibility listing standard; the rationale for the proposed $60 million threshold; the application of the requirement (*i.e.*, whether funds currently listed are grandfathered from the requirements); and, the existence of any other listing standards and requirements.

In its response, the Exchange argued that the proposed rule change is merely a codification of an existing practice, which has evolved over time as a way to assess the financial viability of a newly organized Fund that does not have a three-year operating history against which the Exchange's general listing standards can be applied[10] The Exchange also explained that ICI's concern that the net asset standard is the only standard applicable to Funds is unfounded because Funds are also subject to the Exchange's distribution and corporate governance standards. Finally, the Exchange stated that grandfather provisions are not necessary because the $60 million threshold is the minimum requirement imposed. The Exchange also noted that it is developing specific standards to judge a Fund for continued listing status.

IV. Discussion

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[11] Specifically, the Commission believes the proposal is consistent with the Section 6(b)(5)[12] requirements that the rules of an exchange be designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and, in general, to protest investors and the public.

The Commission recognizes that in many cases the applicant Fund is not a traditional operating entity and therefore it is not possible to apply the earnings standards specified in the Exchange's *Listed Company Manual* at the time of listing. Thus, the Commission believes that the Exchange's proposed listing standard serves as an acceptable means for screening out those Funds that the Exchange believes are unsuitable for listing because of insufficient assets. The Commission recognizes that the net assets test in intended as a minimum standard and that the Exchange may, with respect to a given Fund, determine that, notwithstanding sufficient net assets, the Fund may otherwise be unsuited for listing.

The Commission carefully considered the concerns expressed by the ICI in its letter opposing the proposal. Ultimately, the Commission concluded that the net asset standard codified by the Exchange in the proposal is a clear, nondiscriminatory standard that should promote transparency with respect to the Exchange listing standards for Funds and is not inconsistent with the Act. The Commission believes that the proposed standard should promote certainty and reduce costs in the listing process which should benefit investors and other market participants.

The Commission finds good cause for approving proposed Amendment No. 1 prior to the thirtieth day after the date of publication of notice of filing in the **Federal Register**. The amendment addresses those Funds that would not be the subject of an underwriting (*i.e.*, spin-offs and carve-outs), and as such, would be unable to submit the requisite undertaking letter. The proposed amendment would permit these Funds to show the NYSE that they meet the asset test through another acceptable means (*i.e.*, through a representation by the parent company's investment banker or other financial advisor). Because the Commission believes the amendment is an appropriate accommodation for spin-offs and carve-outs, which could not comply with the original proposal, the Commission finds good cause for accelerating approval of Amendment No. 1.

V. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1, including whether the proposed amendment is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. § 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–99–02 and should be submitted by May 27, 1999.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–NYSE–99–02), including Amendment No. 1, relating to the listing eligibility criteria for closed-end management investment companies registered under the Investment Company Act of 1940, is approved.

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[6] *See* Amendment No. 1, *supra* note 4.

[7] The ICI is a national investment company industry association. Its membership includes 7,408 open-end investment companies ("mutual fund"), 499 closed-end investment companies and eight sponsors of unit investment trusts. The ICI notes that mutual fund members have assets of about $5.468 trillion, accounting for approximately 95% of total industry assets, and have over 62 million individual shareholders.

[8] *See* letter from Ari Burstein, Assistant Counsel, ICI, to Jonathan G. Katz, Secretary, SEC, March 1, 1999.

[9] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Jonathan G. Katz, Secretary, SEC, April 16, 1999.

[10] The NYSE noted that the proposal omitted a projected earnings requirement that the Exchange determined provided minimal incremental value.

[11] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11360 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41344; File No. SR–NYSE–99–04]

Self-Regulatory Organization; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amending Rule 347 To Expressly Allow Employees To Bring Employment Related Claims Before the EEOC, NLRB, or State or Local Anti-Discrimination Agencies

April 28, 1999.

I. Introduction

On February 5, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19B–4 thereunder,[2] a proposed rule change amending Exchange Rule 347 to expressly allow employees to bring employment related claims before the Equal Employment Opportunity Commission ("EEOC"), National labor Relations Board ("NLRB"), or state or local anti-discrimination agencies.

The proposed rule change was published for comment in the **Federal Register** on March 18, 1999.[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

The proposed rule change codifies the Exchange's interpretation of Exchange Rule 347 regarding the arbitration of employment disputes. Generally, Exchange Rule 347 requires that any controversy between a registered representative and the member or member organization that employs him arising out of employment or the termination of employment be settled by arbitration. This requirement does not extend to statutory employment discrimination claims.[4] The proposed amendment to Exchange Rule 347 would clarify that the Exchange's Rule should not be interpreted to preclude employees from brining employment-related claims against members and member organizations before the EEOC, NLRB, or state or local antidiscrimination agencies.[5]

The proposed amendment would address an issue recently raised by a Teamsters Union Local with the NLRB. The Teamsters Union Local alleged that the Exchange's prior arbitration policy interfered with rights guaranteed by the National Labor Relations Act by prohibiting employees from filing and pursing charges with the NLRB. While the Exchange has never interpreted its arbitration rules to preclude employees of members or member organizations from pursuing such charges, the Exchange determined it would resolve the issue by amending Exchange Rule 347 to codify the existing Exchange interpretation.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange,[6] and in particular, with the requirements of Section 6(b)(5).[7] Specifically, the Commission finds that clarifying the rights of employees to bring employment-related claims before the EEOC, NLRB, or any state or local anti-discrimination agencies serves to promote just and equitable principles of trade, and, in general, to protect the public interest. The proposed rule change ensures that employees, members and member organizations have a fair and impartial forum for the resolution of their disputes.

By changing its rule, the Exchange codifies its current interpretation of Exchange Rule 347 to provide that Exchange Rules are not intended to, and should not be construed to prohibit employees from bringing employment-related claims against members or member organizations before the EEOC, NLRB, or any state or local anti-discrimination agencies. This interpretation is consistent with the Exchange's recent amendment to Rule 347, which excluded claims of employment discrimination from arbitration unless the parties have agreed to arbitrate the claim after it has arisen.[8]

Under the Act, self-regulatory organizations ("SROs") like the Exchange are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to Section 19(b)(2) of the Act,[9] the Commission is required to approve an SRO rule change like the Exchange's if it determines that the proposal is consistent with applicable statutory standards.[10] These standards include Section 6(b)(5) of the Act,[11] which provides that the Exchange's rules must be designed to, among other things, "promote just and equitable principles of trade" and "protect investors and the public interest."

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–NYSE–99–04) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11362 Filed 5–5–99; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region 1 Advisory Council; Public Meeting

The U.S. Small Business Administration Region 1 Advisory Council, located in the geographical area of Augusta, will hold a public meeting at 10:00 a.m. on Wednesday, May 26th, 1999 at the Augusta Civic Center, Civic Center Drive, Augusta, Maine, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mary McAleney, District Director, U.S.

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[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41151 (March 10, 1999) 64 FR 13460.

[4] *See* Exchange Rules 347 and 600. Under the Exchange's Rules, discrimination claims are eligible for Exchange arbitration only where the parties have agreed to arbitrate the claim after it has arisen.

[5] The Commission notes that the amendment should not affect the obligation, under NYSE rules, of Exchange members of their employees to arbitrate claims brought by customers against them.

[6] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78F(b)(5).

[8] *See* Securities Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999).

[9] 15 U.S.C. 78s(b)(2).

[10] The Commission oversees the arbitration programs of the SROs, including the Exchange's, through inspections of the SRO facilities and the review of SRO arbitration rules. Inspections are conducted to identify areas where procedures should be strengthened, and to encourage remedial steps either through changes in administration or through the development of rule changes.

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

Small Business Administration, 40 Western Avenue, Augusta, Maine 04330, 207–622–8378.

Shirl Thomas,

Director, External Affairs.

[FR Doc. 99–11307 Filed 5–5–99; 8:45 am]

BILLING CODE 8025–01–P

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Pub. L. 104–13; Proposed Collection; Comment Request

April 29, 1999.

AGENCY: Tennessee Valley Authority.

ACTION: Proposed collection; comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR 1320.8(d)(1). Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the Agency Clearance Officer no later than July 6, 1999.

SUPPLEMENTARY INFORMATION: *Type of request:* Regular submission, proposal to extend without revision a currently approved collection of information (OMB control number 3316–0016).

Title of Information Collection: Farmer Questionnaire-vicinity of Nuclear Power Plants.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, and farms.

Small Business or Organizations Affected: No.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 300.

Estimated Total Annual Burden Hours: 150.

Estimated Average Burden Hours Per Response: .5.

Need For and Use of Information: This survey is used to locate, for monitoring purposes, rural residents, home gardens, and milk animals within a five mile radius of a nuclear power plant. The monitoring program is a mandatory requirement of the Nuclear Regulatory Commission set out in the technical specifications when the plants were licensed.

William S. Moore,

Senior Manager, Administrative Services.

[FR Doc. 99–11414 Filed 5–5–99; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Identification of countries that deny adequate protection for intellectual property rights or market access for persons who rely on intellectual property protection.

SUMMARY: The United States Trade Representative (USTR) is directed by section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242), to identify those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries. These identifications must be made within 30 days of the date on which the annual report is submitted to Congressional committees under section 181(b) of the Trade Act. They are presented below.

DATES: These identifications took place on April 30, 1999.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Claude Burcky, Director for Intellectual Property, (202) 395–6864, Andrew Bowen, Deputy Director for Intellectual Property, (202) 395–6864, or Geralyn S. Ritter, Assistant General Counsel (202) 395–6800.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires the USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve adequate and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 1999, the USTR identified 53 trading partners as failing to provide adequate and effective intellectual property protection and fair and equitable market access to persons who rely on such protection. In addition, China and Paraguay will be subject to continued monitoring under section 306 of the Trade Act.

Sixteen trading partners were placed on the administratively-created "priority watch list," including Argentina, the Dominican Republic, Egypt, the European Union, Greece, Guatemala, India, Indonesia, Israel, Italy, Kuwait, Macao, Peru, Russia, Turkey and Ukraine. Of these countries, at least Israel and Kuwait will be subject to an interim review in 1999. Thirty-seven countries were placed on the special 301 "watch list," including Australia, Belarus, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Ecuador, Hungary, Ireland, Jamaica, Japan, Jordan, Korea, Lebanon, Mexico, New Zealand, Oman, Pakistan, the Philippines, Poland, Qatar, Romania, Saudi Arabia, Singapore, South Africa, Spain, Sweden, Taiwan, Thailand, U.A.E. (United Arab Emirates), Uruguay, Venezuela, and Vietnam. Of these, at least Colombia, the Czech Republic, Korea, Poland and South Africa will be subject to interim reviews during the coming year. The USTR also announced that Malaysia and Hong Kong would be subject to out-of-cycle reviews in September 1999. Finally, the USTR announced the initiation of WTO dispute settlement cases against

Argentina, Canada the European Union for violations of the Agreement of Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Claude Burcky,

Director of Intellectual Property.

[FR Doc. 99–11425 Filed 5–5–99; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Report on Trade Expansion Priorities Pursuant to Executive Order 13116 ("Super 301")

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice if hereby given that the United States Trade Representative (USTR) has submitted the report on United States trade expansion priorities published herein to the Committee on Finance of the United States Senate and Committee on Ways and Means of the United States House of Representatives pursuant to the provisions (commonly referred to as "Super 301") set forth in Executive Order No. 13116 of March 31, 1999.

DATES: The report was submitted on April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Demetrios Marantis, Assistant General Counsel, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, DC 20508, 202–395–3581.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows.

Identification of Trade Expansion Priorities Pursuant to Executive Order 13116

Last month, the United States Trade Representative (USTR) released the President's 1999 Trade Policy Agenda and the 1999 National Trade Estimate Report on Foreign Trade Barriers (NTE Report). This report builds on the prior two reports and is submitted pursuant to Executive Order 13116 of March 31, 1999. The "Super 301" provisions of the Executive Order direct the USTR to review U.S. trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent.

I. Trade Expansion Priorities and Priority Foreign Country Practices

In preparing this report, USTR has reviewed the 1999 Trade Policy Agenda to identify U.S. trade expansion priorities and the 1999 NTE Report and public comments submitted to USTR to assess foreign country practices that we seek to eliminate. Based on this review, USTR has determined that the U.S. trade expansion priorities include the launching of a new, multilateral round of global trade negotiations; ensuring that WTO Members fully implement existing commitments; ongoing strategic enforcement of U.S. rights under bilateral, regional, and multilateral trade agreements and under U.S. trade laws; and integrating China and other economies into the world trading system. The USTR is not identifying any "priority foreign country practices" within the meaning of the Executive Order at this time, but does find that a number of practices warrant the initiation of WTO dispute settlement proceedings or other actions in the context of our bilateral trade relationships.

A. The Third Ministerial Conference and the New Round

Ambassador Charlene Barshefsky, the United States Trade Representative, will chair the WTO's Third Ministerial Conference in Seattle, Washington, November 30—December 3, 1999. The event, which will be the largest trade meeting ever held in the United States, will set the agenda for the WTO for the next decade and launch a new round of global trade negotiations. The Administration has engaged in an extensive consultative process to develop this agenda, involving the broadest range of citizens concerned about trade. Broadly speaking, the agenda will: set a negotiating agenda and work program; provide for institutional reform, including transparency, and ensure that the WTO will continue to be a forum for on-going trade liberalization and reform, by delivering results at Seattle.

At the meeting, Trade Ministers from around the world will focus on the important issues facing the trading system and the new economy of the 21st century. As a starting point, the United States joins other nations in emphasizing the important issue of implementation of existing agreements—from agriculture to textiles. As we approach January 1, 2000, the majority of transition periods in the Agreements on Trade-Related Aspects of Intellectual Property Rights (TRIPS), Trade-Related Investment Measures (TRIMS), and Customs Valuation will expire for most developing countries. Ensuring compliance with these Agreements will be an important feature of our work as we shape the WTO's forward agenda.

Beyond implementation, the negotiations, to begin in early 2000, will be comprised of a new round of liberalization commitments in services trade, a new phase in agriculture policy reform and market-opening undertakings, and other negotiations on topics to be agreed at the meeting, possibly a new round of industrial tariff and non-tariff negotiations. Certain Members have also identified foreign direct investment and competition policy as possible topics for negotiation. The important relationship of trade and the environment, as identified in President Clinton's May 1998 address before the WTO, is an area that will require further work in the WTO, as will forging the consensus on addressing trade and labor.

Launching the round will also require attention to institutional improvements within the WTO to facilitate trade, to improve the participation of less developed economies in the world economy, and to coordinate effectively with other international bodies such as the IMF and World Bank. The United States seeks to strengthen public confidence in the WTO as an institution by improving its transparency and openness, particularly in WTO dispute settlement proceedings, including the review of the system that is to be completed before the Seattle meeting. Civil society must be able to contribute to the work of the WTO, to ensure both that the WTO hears many points of view including those from business, labor, environmental, consumer and other groups, and that its work will rest on the broadest possible consensus.

Finally, the U.S. vision for the new round requires that we set an agenda that accommodates rapid technological developments and addresses the broadest range of concerns. The Ministerial, and the time prior to the meeting itself, provide the United States the opportunity to showcase the relevance of the WTO to the information revolution, the development of electronic commerce, and other rapidly changing, high-technology fields. We seek to reach agreements expanding the product coverage in the landmark Information Technology Agreement (ITA) and expand on the 1998 Ministerial Declaration on Electronic Commerce which calls on WTO Members to refrain from imposing customs duties on electronic transmissions. We also intend to strengthen the system to contribute to the Administration's wider policy of eradicating the potential for bribery and corruption and promoting economic efficiency, by completing an agreement on transparency in government

procurement at the Seattle meeting. Expanding market access opportunities, including through early agreements to liberalize tariffs in sectors first identified in APEC (i.e., chemicals, energy and environment-related goods, medical and scientific equipment, forest products, fish, gems and jewelry, and toys), remains a priority.

B. Implementation of Existing WTO Commitments

Full implementation of existing WTO agreements is critical to ensuring that the United States achieves the full benefit of what it bargained for in the Uruguay Round of multilateral trade negotiations, as well as to maintaining public confidence in an open trading system and building public support for the new round of negotiations. There are five critical aspects of WTO implementation: compliance with WTO commitments that entered into effect in January 1995; compliance with WTO commitments that are subject to transition periods or phase-in provisions, many of which will enter into effect by January 1, 2000; acceptance of the protocols on basic telecommunications services and financial services and implementation of the corresponding commitments; compliance with accession protocols; and compliance with the rulings resulting from WTO dispute settlement proceedings in a timely and complete manner.

The primary means of enforcing WTO commitments that have entered into effect is the WTO dispute settlement mechanism, which is discussed in further detail below. In the coming months, one of USTR's top priorities will be to focus on Members' preparations for the phase-in by January 1, 2000 of commitments in three critical areas:

- Intellectual Property Protection—WTO developing country members are required to implement most of their commitments under the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) by the end of this year. We are monitoring this closely and are prepared to both assist countries in developing laws and enforcement mechanisms at their request and invoke dispute settlement procedures in the event members fail to meet their obligations.
- Customs Valuation—More than 50 countries are required to fully implement the obligations of the Agreement on Customs Valuation—a critical obligation in realizing market access. Full and effective implementation of this Agreement will head off disputes in the future. The United States is also concerned about implementation of existing customs valuation obligations, which is discussed in further detail below.
- Trade Related Investment Measures (TRIMs)—December 31, 1999, is the deadline established in the TRIMs Agreement for developing countries to eliminate measures which they notified as inconsistent with the TRIMs Agreement. Throughout the remainder of 1999, the United States will be monitoring steps taken by those countries due to come into compliance by this deadline, and will be prepared to bring dispute settlement cases for measures which have not been removed by the agreed deadline.

In addition, USTR will work bilaterally and within the Council for Trade in Services to ensure the full implementation of Members' commitments under the Fourth Protocol to the General Agreement on Trade in Services (GATS), i.e., the Basic Telecom Agreement, which entered into force on February 5, 1998, and the Fifth Protocol to the GATS, i.e., the Financial Services Agreement, which entered into force on March 1, 1999. The United States will continue to insist that all countries that failed to meet the deadline for acceptance of these two agreements bring their commitments into force as soon as possible. For the Basic Telecom Agreement, those countries are: Brazil, Dominica, Guatemala, Papua New Guinea, and the Philippines. For the Financial Services Agreement, those countries are: Australia, Bolivia, Brazil, Bulgaria, Costa Rica, Dominican Republic, El Salvador, Luxembourg, Ghana, Honduras, Jamaica, Kenya, Nigeria, Nicaragua, the Philippines, Poland, Slovenia, and Uruguay.

USTR will continue to use WTO committees and bilateral mechanisms to address implementation issues. For example, the United States will work through the WTO Committee on Agriculture to seek compliance with the various obligations under the Agriculture Agreement, including those on tariff-rate quotas, domestic support and export subsidies. Likewise, the United States will be vigilant in its enforcement of textile quotas and implementation of textile market access requirements overseas. Preventing circumvention is a high priority as well. Last year, we reached an important new agreement with Hong Kong on measures to improve information-sharing and strengthen cooperation to prevent circumvention, and we are working with Macau, China and others on similar initiatives.

In addition, we will continue to work with other WTO Members under the aegis of the Committee on Antidumping Practices and its Ad Hoc Group on Implementation to secure better adherence to WTO rules and procedures governing the conduct of antidumping investigations and administrative reviews. The increased use of these remedies by a growing number of WTO Members with different legal systems and levels of experience poses special challenges to U.S. exporters. The United States expects strict compliance with the WTO Antidumping Agreement's substantive obligations, as well as its rules which guarantee transparency and due process, so that these remedies can remain a fair yet effective complement to ongoing trade liberalization.

C. Strategic Enforcement of WTO Rights and U.S. Trade Laws

One of this Administration's top trade expansion priorities is vigorous monitoring and enforcement of trade agreements, which includes the active use of the WTO dispute settlement process and strategic application of U.S. trade laws.

1. WTO Dispute Settlement Process

Since the WTO's creation in 1995, the United States has filed more complaints—44 to date—than any other WTO Member and has participated as a third party in a number of other cases. Our overall record of success is very strong. We have prevailed in 22 of the 24 U.S. complaints acted upon so far, either by successful settlement or panel victory. These favorable rulings and settlements have involved an array of sectors within the fields of manufacturing, agriculture, services, and intellectual property.

a. WTO Disputes

As a result of this year's review of its trade expansion priorities, and its monitoring of compliance with U.S. trade agreements, the Administration will take the following actions to enforce U.S. rights under those agreements:

EU—Avionics. The United States will request WTO consultations with the European Union (EU) on French government subsidies for avionics equipment under the WTO Agreement on Subsidies and Countervailing Measures. In an effort to displace U.S.-sourced flight management systems, the French government, with European Commission approval, has agreed to grant 140 million French francs (approximately 40 percent of the projected costs) between 1997–1999 for a project involving Sextant Avionique of France and Smiths Industries of the United Kingdom to jointly develop a

new flight management system adapted to Airbus aircraft. The aid takes the form of a "reimbursable advance payment" to be repaid on a percentage of sales of the new system; however no repayment is required if the program is unsuccessful.

India—Auto TRIMs. The United States will request WTO consultations with India on its new auto policy. Last year, India implemented new measures governing investments in the automotive industry. All new and existing firms wishing to operate auto manufacturing investments in India are required to sign a standardized agreement with the Government of India that contains local content and foreign exchange balancing requirements. The Indian program would inhibit the free flow of trade and investment and is inconsistent with India's obligations under the WTO Agreement on Trade-Related Investment Measures (TRIMs). According to the American Automobile Manufacturers Association (AAMA) the approximate size of the vehicle market in India in 1998 was 604,000 units. A large portion of vehicles sold in India are produced locally. Auto parts sales into India are also reduced by these measures.

Korea—Barriers to the Import and Distribution of Foreign Beef. In response to a 1989 GATT panel ruling, Korea agreed to phase out its import restrictions on beef. However, Korea simply replaced its ban with a temporary quota and comprehensive restrictions on the ability to import and distribute beef, including a requirement that imported beef be sold in separate retail establishments. These and other barriers prevented U.S. exporters from fully utilizing the 1997 and 1998 minimum market access commitments Korea had made for beef. In 1998, the underfill of Korea's beef import quota was approximately 60 percent.

The U.S. Government has worked to establish a market-driven beef import system in Korea by seeking the elimination of Korean Government measures that impede the entry and distribution of foreign beef. In September and November 1998, the U.S. and Korean Governments held two rounds of talks, and convened again in January 1999, in an attempt to conclude an agreement providing for liberalized beef trade. In the absence of an agreement, the United States requested WTO dispute settlement consultations on February 1, 1999. On April 28, the United States requested the establishment of a WTO dispute settlement panel on Korea's beef import and distribution system after WTO consultations held on March 11 and 12 failed to resolve the U.S. concerns.

Customs Practices: The benefits of market access commitments are undermined when countries engage in certain customs practices, such as the use of minimum reference prices to determine the customs value of an imported good. The WTO Customs Valuation Agreement (CVA) stipulates that the transaction price is the primary basis for customs valuation determinations, and the U.S. Government is working to ensure that countries comply fully with their obligations under the CVA. We are actively pursuing the issue of reference prices in the WTO Committee on Customs Valuation and are closely examining reports of non-compliance with CVA commitments, particularly in those countries with current obligations, such as Brazil, India and Mexico. We are soliciting additional information on these practices and, as appropriate, will subsequently pursue dispute settlement consultations with the relevant countries that do not satisfactorily address these concerns.

b. Dispute Settlement Rules

USTR's review of trade expansion priorities has shown that, while the WTO dispute settlement system generally works well, improvements in the rules governing compliance with panel and Appellate Body reports are necessary. The EU's failure to implement a WTO-consistent banana regime following WTO dispute settlement proceedings, and its impending failure to eliminate its import ban on meat produced with hormones, illustrate how a Member that fails to implement WTO dispute settlement rulings can continue causing harm to U.S. exporters for an extended period of time. The United States is seeking improvements in the rules governing implementation of panel and Appellate Body reports in the context of this year's review of the WTO Dispute Settlement Understanding (DSU), and there is ongoing review regarding other possibilities for improvement.

In the interim, we will continue to exercise our rights to suspend concessions with respect to the trade of a Member that fails to implement WTO recommendations. On April 19, the United States suspended concessions in the amount of $191.4 million against the EU because of its failure to implement a WTO-consistent banana regime. USTR is now preparing to take similar action against EU imports if the EU does not implement WTO findings against its meat import ban by May 13, 1999, which is the deadline for implementation in that dispute.

2. U.S. Trade Laws

The U.S. trade laws are a vitally important means of ensuring respect for U.S. rights and interests in trade. We will continue to challenge aggressively market access barriers abroad using Section 301, Special 301, Section 1377, Super 301 and Title VII [1] to open foreign markets and ensure fair treatment for our goods and services, protect U.S. intellectual property rights, and ensure compliance with telecommunications agreements. These provisions work in tandem with dispute settlement procedures, and also assist us in completing and enforcing agreements with trading partners that are not WTO Members or in areas not covered by WTO rules. In addition, this Administration is fully committed to using U.S. antidumping, countervailing duty, and safeguards laws and will insist that America's trading partners play by the rules.

Section 301: On April 29, USTR initiated an investigation under Section 301 of the Trade Act of 1974, as amended, regarding Canadian regulations affecting tourism in the U.S.-Canada border region. Measures maintained by the Province of Ontario generally prohibit U.S. fishermen from keeping the fish they catch on lakes lying across the Minnesota-Ontario border if the U.S. fisherman does not spend the night in an Ontario commercial establishment or otherwise contribute to the Ontario tourist industry. Canadian federal measures impose work permit requirements on U.S. fishing guides who conduct tours on those lakes. These measures discriminate in favor of Canadian tourist establishments.

Special 301: Through the Special 301 process, USTR systematically monitors levels of intellectual property protection around the world. Each year, USTR identifies those foreign countries that deny adequate and effective protection of intellectual property rights or fair and equitable market access for U.S. persons that rely on intellectual property protection. As a result of the 1999 Special 301 review, USTR placed 17 trading partners on the "Priority Watch List" and 37 trading partners on the "Watch List", and announced the initiation of WTO dispute settlement

[1] These provisions can be found in: Sections 301–310 of the Trade Act of 1974 ("Section 301"); Section 182 of the Trade Act of 1974 ("Special 301"); and Section 1377 of the Omnibus Trade and Competitiveness Act of 1988 ("Section 1377"). The procedures set forth in Section 310 of the Trade Act of 1974 ("Super 301") and Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII") were re-instituted by Executive Order 13116 of March 31, 1999.

proceedings involving Argentina, Canada and the European Union. See USTR Announces Results of Special 301 Review, released April 30, 1999, for further information concerning the protection of U.S. intellectual property rights.

Section 1377: This year's review, which was completed on March 30, 1999, focused on compliance with the WTO Basic Telecommunications Agreement by WTO Members, particularly the EU, Mexico, Japan and Germany. The review indicated that the WTO agreement has increased market access for U.S. telecommunications companies in foreign markets, but that ongoing enforcement of the agreement is needed to ensure continued growth in world-wide competition for telecommunications services. See USTR Press Release 99–29, March 30, 1999 for further information on this year's 1377 review.

Title VII: The Title VII report gives USTR the means to identify foreign countries that have failed to comply with their obligations under the WTO Agreement on Government Procurement ("GPA"), Chapter 10 of NAFTA, or other agreements relating to government procurement; or otherwise discriminated against U.S. products and services when making government purchases. In addition, USTR is directed to consider a number of other factors in making its determination of whether to identify a country in the Title VII report. The Title VII report, released simultaneously with this report and the Special 301 report, builds upon the information found in the President's 1999 Trade Policy Agenda and the 1999 NTE Report on Foreign Trade Barriers so as to be more flexible and effective in achieving its goal of eliminating unfair procurement practices. In the past, Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. For details on this year's report, see Title VII report, released on April 30, 1999.

Steel: It is critically important that we promote free and fair trade abroad and that we effectively enforce our trade laws in order to give Americans the confidence needed to keep our markets open. In response to the substantial increase in U.S. steel imports beginning in April 1998, the Administration responded with a comprehensive and effective set of actions which were outlined in the President's Steel Report to the Congress of January 7, 1999. Thanks to these measures, steel imports began to drop after November 1998. The Administration is committed to aggressively enforcing U.S. trade law to address the adverse impact that unfairly traded steel imports have on U.S. steel companies and U.S. jobs. In the report, the Administration stated its willingness, if needed, to self-initiate trade cases with respect to steel imports from Japan—the single largest source of the import surge—if imports did not return to appropriate pre-crisis levels. With respect to the antidumping cases filed by U.S. industry and workers concerning imports of carbon flat-rolled products, the Commerce Department expedited these investigations and, with respect to imports from Japan and Russia, invoked the critical circumstances provision with a view to retroactive application of the antidumping margins. Additionally, the Administration invoked, for the first time, the market disruption article of the 1992 U.S.-Russia Trade Agreement to negotiate a restraint agreement on imports into the United States from Russia of all steel products not already subject to restraints or dumping orders.

The Administration also expanded discussions on steel issues with Korea, the third largest source of the 1998 steel import surge, with the objective of substantial progress toward eliminating Korean government involvement in the steel sector. U.S. industry has long-standing concerns with the Korean government's support for Korean steel producers, for example, through directed lending, which has resulted in uneconomic steel capacity expansions in Korea. For example, the U.S. and Korean governments conducted an exchange of letters in August 1998 and April 1999 regarding steel.

These actions, grounded in U.S. trade law and fully consistent with U.S. international obligations, resulted in a sharp reduction of unfairly traded steel imports beginning in December 1998. Active import monitoring is underway with a view to prompt application of U.S. trade laws should injurious import growth resume.

D. Integrating Other Economies Into the WTO System

The WTO is engaged in accession negotiations with 30 separate economies, including China, Chinese Taipei, Russia, Ukraine, and Vietnam. Their accession to the WTO will make the trading system nearly universal. It will remove a source of distortion and frustration in trade for the United States and will give the newly-acceding members a greater stake in stability and prosperity beyond their borders—thus strengthening peace in the next century. To support both domestic reform and the rules of the trading system, these countries must be brought into the WTO on commercially meaningful terms. The result must be enforceable commitments to open markets in goods, services and agricultural products; transparent, non-discriminatory regulatory systems; and effective national treatment at the border and in the domestic economy.

In the months to come, we will negotiate intensely with all acceding economies, including China—the largest prospective WTO Member. We have made important progress with China in the past two years, particularly during the visit of Premier Zhu Rongji in April 1999, and intensive negotiations are continuing.

E. Bilateral/Regional Trade Expansion Priorities and Trade Practices of Concern

1. Africa

President Clinton's Partnership for Economic Growth and Opportunity in Africa, announced and adopted in 1997, established a vigorous U.S. trade policy approach toward sub-Saharan Africa. The key objectives of the Partnership Initiative include: Support for economic reforms underway in the region; enhanced U.S.-sub-Saharan African trade and investment ties; support for Africa's full integration into the multilateral trading system; and support for sustainable economic development. The Partnership Initiative also aims to strengthen U.S. economic engagement with countries of sub-Saharan Africa.

USTR is also committed to facilitating greater African integration into the global economy by helping African nations and their regional organizations develop greater capacity to expand trade and investment protection. At the recently concluded U.S.-Africa Ministerial in Washington D.C., the USTR underscored the resolve of the United States and Africa to build capacity to promote broader participation by African countries in the multilateral trading system. Specifically, the United States agreed to continue technical assistance workshops in Africa on the WTO. The United States and African participants also agreed on the need for multilateral institutions to more effectively coordinate and cooperate with the WTO on trade and investment issues affecting African countries and to support African Economic Community (AEC) permanent observer status in the WTO, pending the decision of the WTO on modalities for observership. African and U.S. representatives will establish a mechanism for regular consultations on WTO and related matters, in Geneva and Washington, as preparation for the WTO Ministerial advances.

USTR recently hosted roundtables with African Trade Ministers on mechanisms to strengthen U.S.-Africa cooperation in the WTO and in the GSP Program and U.S. market access requirements. In 1997, USTR enhanced the Generalized System of Preferences Program (GSP) by adding over 1,700 new tariff lines for least developed countries, 29 of which are in Africa. True to President Clinton's vision, USTR's unprecedented engagement with African countries has resulted in trade agreements, incentives for reform and regional integration, and initiatives to enhance Africa's participation in the global trading system.

2. Asia—Pacific

The Clinton Administration has developed a wide-ranging program of bilateral, regional and multilateral initiatives to reduce barriers to U.S. exports of goods, services, and investment in the Asia-Pacific region. The major trade policy priorities for this important economic region are:

- To harness the momentum for reform generated by the financial crisis to promote economic recovery and the type of trade policy changes that the United States has consistently advocated: Enhanced market access, transparency, economic deregulation and investment decisions based upon market disciplines. Such trade policies complement firmly the goals of financial market stabilization, as evidenced by the strong emphasis on structural reform in the International Financial Institution (IFI)'s programs. The United States is actively pursuing these objectives both through bilateral and multilateral channels, in particular, the Asia Pacific Economic Cooperation (APEC) forum;
- To realize the commitment of APEC members to long-term trade and investment liberalization through improved assessment and implementation of individual and collective APEC action plans and special initiatives such as EVSL (Early Voluntary Sectoral Liberalization); and
- To secure full implementation of WTO obligations by APEC members. This aspect of USTR's work will assume heightened importance over the coming year given the obligation of developing countries to fully implement the WTO agreements on TRIPS, TRIMs, and Customs Valuation as of January 1, 2000. This requirement should greatly strengthen our efforts to address inadequate protection of intellectual property rights, trade-distorting investment requirements, and inefficient and corrupt customs practices which have been pervasive problems throughout the region.

Priority issues for three of our largest trading partners in the region—China, Japan, and Korea—are outlined in the relevant sections below.

3. Canada

Agriculture: Even though Canada is our largest trading partner and our second largest agricultural market, Canada continues to have restrictive policies limiting market access to key U.S. agricultural products. In 1998, the United States exported over $7 billion while importing $7.7 billion of agricultural products. In December 1998, we took an important step toward reducing these restrictions by concluding an initial bilateral market access package opening opportunities for American grain farmers, cattle ranchers and other agricultural producers. We are closely monitoring implementation of the December agreement and have already witnessed improved access for cattle and rail shipments of wheat. For example, over 51,000 head of cattle moved into Canada in the first three months of 1999, compared to only 1,000 head of cattle in all of 1998. In addition, over 225,000 tons of wheat and barley were transshipped through Canada on the rail system. Nevertheless, Canada still maintains a number of policies that restrict access of U.S. agricultural products, including grain. We pressed the government of Canada in March 1999 concerning unequal access to Canadian grain handling facilities and the Canadian Wheat Board, excessive monitoring by the Canadian Grains Commission on wheat imports, and unequal access to rail cars and rail rates. We are continuing frequent discussions with Canada on these and other related issues to provide U.S. producers improved market access for agricultural products. We hope these issues will be resolved in the near term.

Magazines: USTR continues to seek a negotiated settlement with Canada on its continued discriminatory practices against U.S. magazines. In 1997, the United States successfully challenged Canada's protectionist magazine regime in the World Trade Organization. By the WTO deadline, October 1998, Canada terminated its longstanding ban on split-run imports, eliminated the 1995 special excise tax on split-runs, and modified its discriminatory postal rates and postal subsidies for magazines. However, Canada introduced Bill C–55, which simply accomplishes the same result as the import ban and excise tax—keeping U.S. and other foreign-produced split run magazines from competing in the Canadian market. If negotiators are unsuccessful in resolving this dispute and Bill C–55 is enacted, the United States will take action of an equivalent commercial effect to protect its interests.

4. China

China remains a major focus of our bilateral trade initiatives. We are actively monitoring China's implementation of our trade agreements on intellectual property rights, textiles, and market access. Obtaining strengthened protection and enforcement of trademarks, copyrights and other intellectual property rights (IPRs), enhanced market access and national treatment for products that depend on intellectual property, such as pharmaceuticals and motion pictures, are key objectives. In addition, we are addressing issues relating to market access and investment in the telecommunications and direct marketing sectors. We will follow up on recent progress on resolving sanitary and phytosanitary (SPS) issues with China to ensure that China's government fully implements our market opening agreements, which will allow U.S. exports of meat, citrus fruit, and Pacific Northwest wheat.

While we are working bilaterally to open up particular sectors of China's market, we are also working in the multilateral context to achieve broad-ranging reform of China's trade regime through negotiations on China's accession to the WTO. Recently, we have made significant progress on the market access aspects of these negotiations, including on agriculture, services, and industrial goods. Reaching agreement on these issues as well as on application of WTO rules to China will mark an important step forward in China's overall accession process.

5. Europe

With the U.S.–EU trade and investment relationship being the largest and most complex in the world, the United States is very committed to strengthening trade relations with the EU. USTR will address problems in our trade relations both bilaterally and through the new multilateral negotiating round President Clinton has proposed. The United States hopes to make progress through the Transatlantic Economic Partnership (TEP) initiative begun last year. The TEP Action Plan calls for bilateral U.S.–EU consultations and/or negotiations in several specific issue areas: technical trade barriers, agriculture (including biotechnology and food safety), intellectual property, government procurement, services, electronic commerce, environment, labor and advancing shared values such

as transparency, environmental protection, and participation for civil society. The initiative also encompasses enhanced U.S.–EU cooperation on multilateral trade issues. USTR also is working to ensure the protection of U.S. interests as the EU expands to include Central and Eastern European nations.

Nevertheless, the United States has a number of serious concerns regarding certain EU activities related to trade. Our decision to request WTO consultations with the EU on its action affecting U.S. flight management systems (the "avionics case") underscores U.S. determination to challenge the EU's use of those measures which advance, in a manner inconsistent with trade rules, EU commercial interests at the expense of those of its trading partners. The United States also has serious concern with the continued lack of a transparent and timely EU approval process for foodstuffs containing genetically modified organisms (GMOs). The United States hopes to work in coming weeks and months with the European Commission and EU Member States to address this problem, but will take action if the uncertainty and arbitrariness reflected in recent EU actions in this area continue to undermine U.S. exports.

The United States also remains extremely concerned about the EU's failure to implement WTO dispute settlement rulings regarding its discriminatory bananas and beef hormones regimes. EU inaction undermines the credibility of the WTO dispute settlement mechanism and sends a disturbing message about the EU's willingness to abide by the commitments it has undertaken. In light of the five rulings in the past six years against the EU's banana import policy, most recently on April 6, the United States expects the EU to implement a WTO-consistent banana program as soon as possible. The United States also expects the EU to lift its WTO-inconsistent ban on meat produced with growth hormones by the May 13 deadline granted to the EU to comply with the WTO panel findings against its hormones policy. The United States has engaged in discussions with the European Commission regarding implementation of the EU's WTO obligations in both instances.

6. Japan

The United States attaches utmost importance to opening Japan's markets to U.S. goods and services. To this end, the Clinton Administration has consistently emphasized the need for major structural reform and deregulation to open Japan's economy to competition; monitoring and enforcing existing trade agreements covering key sectors; the negotiation of new trade agreements; and addressing concerns through regional and multilateral fora. The Administration remains determined to press Japan to take the necessary steps to dismantle the numerous trade and regulatory barriers that have sheltered the Japanese economy from foreign competition for far too long.

Insurance: The United States and Japan concluded bilateral insurance agreements in 1994 and 1996 designed to open to competition the world's second largest insurance market, with annual premium revenues of $329 billion in JFY 1997. In December 1997, Japan agreed to bind certain key commitments from these agreements under the WTO Financial Services Agreement.

The bilateral agreements have had some positive impact. For example, in September 1997 the Ministry of Finance granted the first ever license for direct marketing of risk-differentiated automobile insurance to a U.S. firm. Nevertheless, the Administration is seriously concerned that Japan has not fully implemented all of the specific deregulation actions called for under our bilateral insurance agreements, including reform of its rating organizations and timely approval of product applications. In addition, the United States is extremely concerned with the diminution of the "third sector" safeguards caused by increased activity on the part of Japanese insurance firms and subsidiaries in this market segment critical to U.S. insurers. Since all of the primary sector deregulation criteria had not yet been fulfilled, USTR announced on July 1, 1998, that the United States does not support the initiation of the two-and-one-half year clock regarding termination of the third sector safeguards. The Administration is prepared to utilize all of the tools at our disposal to ensure the full benefits to U.S. industry from our bilateral Insurance Agreement.

The U.S. underscored its concerns regarding both primary and third sector issues at consultations with Japan under the bilateral agreements held on April 16 in Washington. These consultations also included a constructive regulator-to-regulator exchange between representatives of the National Association of Insurance Commissioners and select state insurance commissioners, and Japan's Financial Supervisory Agency. It is essential that both governments expeditiously resolve outstanding issues. The U.S. has proposed that the next insurance talks take place in Tokyo this summer.

Autos and Auto Parts: The United States and Japan concluded an agreement in 1995 to eliminate market access barriers and significantly expand sales opportunities in the automotive sector. Although initial results in many areas were satisfactory, recent progress toward achieving the Agreement's key objectives has been disappointing. Sales in Japan of autos produced by the Big Three in North America declined 34.5 percent in 1998, after declining 20 percent in 1997. Exports of U.S.-made auto parts to Japan fell 7.5 percent in 1998, the first drop since 1991, and the continued fall off in new orders of U.S. auto parts by Japanese manufacturers suggest that this decline is likely to continue. These trends are the result of a variety of factors, including Japan's recession, which has inhibited consumer spending and business investment and weakened the yen, and continuing market access and regulatory issues.

To address these concerns, the U.S. Government presented Japan at the annual review of the Automotive Agreement in October 1998 with 11 proposals, including measures to strengthen and improve access to dealerships, the main distribution channel to Japan's automotive market. The U.S. Government also urged Japan to eliminate unnecessary regulations in the auto parts aftermarket that limit the ability of independent garages to compete for high-profit vehicle inspection and repair business. While Japan has agreed to implement some of these proposals, the U.S. Government will continue to urge Japan at all levels to take concrete steps to achieve additional progress under the Agreement. In addition, the United States will continue to monitor developments regarding Japan's new fuel economy regulations to ensure that this rulemaking process is fully transparent and that foreign vehicle manufacturers receive treatment no less favorable than that offered to domestic manufacturers, recognizing the important environmental concerns that underlie these regulations.

Flat Glass: The 1995 U.S.-Japan Flat Glass Agreement has helped American firms to a limited extent, but the basic problem remains the same: U.S. glass manufacturers still have a minuscule share of the Japanese flat glass market, despite the fact that Japanese companies and distributors readily acknowledge the competitiveness of U.S. glass. While Japan committed in the agreement to take measures to facilitate access by foreign companies to the Japanese glass

distribution system, major Japanese distributors still do not carry foreign glass in meaningful quantities. The three dominant Japanese producers continue to exert tight control of the domestic glass distribution system in many ways, including majority ownership of glass distributors, equity and financing ties, employee exchanges, and purchasing quotas. Indeed, there is evidence that their control is increasing, as they use Japan's tight credit market to impose closer financial ties on the most important glass distributors.

Japan recently agreed with the United States to examine these issues in surveys of the sector by the Japan Fair Trade Commission (JFTC) and the Ministry of International Trade and Industry. The former will be particularly important in this regard, and it is therefore imperative that the JFTC scrutinize the core problems in a thorough and credible way. Japan has also agreed to U.S. proposals to hold government-industry consultations on access to and the state of Japan's flat glass market this Spring and to allow U.S. Government representatives to attend the Japanese Government's periodic meetings with flat glass distributors to remind them of the objectives and provisions of the agreement. This progress notwithstanding, the principal impediments to genuine market access in the flat glass sector remain. The United States will continue to urge Japan to take actions to remove these barriers.

7. Korea

Korea is one of the United States' major trading partners but has been described as one of the toughest markets in the world for doing business. In response to its financial crisis, the Kim Dae Jung administration has implemented structural reforms aimed at putting the Korean economy on a more open, market-oriented basis. Resistance to key trade reforms remains, however, and many issues have arisen on Korea's compliance with its international obligations.

The Administration is focused on eliminating Korean barriers to entry and distribution of U.S. products using U.S. trade law, WTO dispute settlement procedures, negotiation and enforcement of bilateral trade agreements, and close coordination with other countries. In addition, the Administration will, through an interagency process, closely monitor Korea's implementation of its trade-related stabilization commitments.

Over the past year, the Administration has made solid progress toward opening the Korean market to U.S. goods. In October 1998, we successfully concluded a Memorandum of Understanding (MOU) with the Government of the Republic of Korea to improve market access for foreign motor vehicles. Under this MOU, Korea agreed to (1) bind in the WTO its 80 percent applied tariff rate at 8 percent; (2) lower some of its motor-vehicle-related taxes and to eliminate others; (3) adopt a self-certification system by 2002; (4) streamline its standards and certification procedures; (5) establish a new financing mechanism to make it easier to purchase motor vehicles in Korea; and (6) continue to actively and expeditiously address instances of anti-import activity and to promote actively a better understanding of free trade and open competition. This MOU was negotiated after Korea's motor vehicle trade barriers were named as a "priority foreign country practice" in the 1997 Super 301 report and USTR initiated a section 301 investigation of such barriers. On October 20, 1998, with the conclusion of the MOU, the USTR decided to terminate this investigation and to monitor Korea's implementation of the measures in the MOU to eliminate those barriers. The first formal review of Korea's implementation of the 1998 MOU was held on April 29 and 30, 1999. The Administration will continue to work closely with the Korean Government to ensure that the provisions in the 1998 MOU are fully and faithfully implemented in a manner that substantially increases market access for foreign motor vehicles in Korea and establishes conditions so that the Korean motor vehicle sector operates according to market principles.

In addition, the Deputy U.S. Trade Representative concluded an exchange of letters in August 1998 on the operation and sale of Hanbo Steel, and the U.S. Government initiated comprehensive discussions with Korea on broader steel issues of concern to U.S. industry. In April 1999, the Deputy U.S. Trade Representative concluded another letter exchange with the Korean Government to address issues of concern and interest to U.S. industry relating to POSCO, Hanbo, and competition in the Korean steel sector generally.

In July 1998, a WTO dispute settlement panel ruled in favor of the United States and the European Communities (EC) by finding Korea's taxes on alcoholic beverages to be discriminatory. In January 1999, the WTO Appellate Body upheld this panel decision, and the panel and Appellate Body reports were adopted on February 17, 1999. The United States and the EC have requested arbitration to determine the length of the period within which Korea will come into compliance with the reports.

Pharmaceuticals: One of the top trade expansion priorities on the U.S.-Korea trade agenda is Korea's treatment of foreign, research-based pharmaceuticals. Korea does not now provide imported drugs with national treatment with respect to listing and pricing on the Korean national health insurance reimbursement schedule, and the current reimbursement system discourages hospitals and other large end-users from buying imported drugs. Dispensers of imported products also must comply with additional administrative procedures for reimbursement. U.S. pharmaceutical producers face other market access barriers in Korea including non-science-based requirements for clinical testing. In addition, the United States has raised concerns about Korea's regime for protecting test data against unfair commercial use. Finally, lack of coordination between Korean health authorities and Korean IPR authorities allows manufacturers of patent infringing products to gain approval for the launch of their products into the Korean market to the commercial detriment of the holders of the patents.

In response to high-level bilateral consultations and a letter from the Deputy U.S. Trade Representative, the Korean Government has indicated that it is taking steps to address some of the U.S. Government's and industry's concerns about treatment of foreign pharmaceuticals. The Administration will continue its active efforts to further advance progress on our pharmaceuticals trade issues until U.S. concerns are fully and satisfactorily addressed. Specifically, the U.S. Government will engage the Korean Government on U.S.-Korea pharmaceuticals-related trade issues and a Bilateral Investment Treaty (BIT), in an out-of-cycle Special 301 review on TRIPS consistency, and in other fora.

8. Mexico

Since 1994, trade with Mexico has largely been governed by the North American Free Trade Agreement (NAFTA). Mexico is also a WTO Member. As a result, U.S. trade and investment relations with Mexico are subject to a set of comprehensive disciplines setting high standards of openness and providing for effective resolution of disputes covered by these agreements. By any measure, NAFTA has contributed to the increased trade between the United States and Mexico. During NAFTA's first five years, U.S.

merchandise exports to Mexico increased by 90 percent, with imports from Mexico increasing by 137 percent. As is to be expected from such a large trading relationship, the United States does continue to have concerns about Mexico's trade practices in some areas. The most important of these concern Mexico's enforcement of its intellectual property laws, telecommunications policy, and market access for high fructose corn syrup.

Mexico has committed to implement and enforce advanced levels of intellectual property protection and has just enacted new legislation to this effect. However, as noted in USTR's Special 301 Report issued today, piracy and counterfeiting remain major problems, with current enforcement action inadequate to deter piracy. Mexico has been added to the Special 301 Watch List.

Regarding telecommunications, the United States is concerned that ongoing regulatory processes are non-transparent and potentially ineffective. USTR's Section 1377 Report, released on March 30, expressed doubts about Mexico's implementation of its commitments under the WTO agreement with respect to international services and interconnection rates. The Mexican government has said it will review its international service and interconnection/universal service regulations in 1999. USTR will conduct an out-of-cycle examination by July 30 regarding the progress of Mexico's ongoing regulatory process, and expects that Mexico will respond favorably to the requests from all the new entrants to permit International Simple Resale (ISR) immediately. At that time USTR will take appropriate action including, if warranted, the initiation of WTO dispute settlement proceedings, to assure that new competitors in the market are treated fairly.

The United States continues to raise its concerns regarding the Mexican Government's application of antidumping measures on U.S. exports of high fructose corn syrup (HFCS). A dispute settlement panel was established by the World Trade Organization in November 1998 and hearings were held in April 1999. A decision is expected late this year. U.S. exporters are also challenging Mexico's measure under the Chapter 19 provisions of the NAFTA and last year filed a Section 301 petition with USTR, alleging that the policies and practices of the Government of Mexico are unreasonable and deny fair and equitable market opportunities for U.S. exporters. USTR accepted the petition for review on May 15, 1998.

9. Middle East

Building upon our Free Trade Agreement with Israel, the United States has inaugurated a program that aims to bolster the peace process, while advancing American interests. Starting with a framework of bilateral trade and investment consultations in the region and a newly inaugurated industrial zones program, the United Sates will help the Middle Eastern countries work toward a shared goal of increased intra-regional trade. Most recently, the USTR expanded the first Jordan-Israel Qualifying Industrial Zone, designated another, and completed a Trade and Investment Framework Agreement with Jordan.

10. Western Hemisphere

The Miami and Santiago Summits of the Americas called on us to complete work on a Free Trade Area of the Americas no later than the year 2005. This year, also in accordance with Summit directions, the United States intends to achieve concrete progress toward the FTAA in the work of our nine Negotiating Groups (market access, agriculture, services, investment, government procurement, intellectual property, anti-dumping and countervailing duties, competition policy, and dispute settlement) and through business facilitation measures. In addition, the FTAA has initiated a private sector-public sector experts group on electronic commerce to advise the ministers on how electronic commerce can benefit the countries of this hemisphere, especially in the context of the FTAA negotiations. The ministers also have established a government committee on the participation of civil society, which has solicited the views of the different sectors of society concerning the FTAA and will analyze them for the consideration by the ministers at the next FTAA ministerial in Toronto in November 1999.

At the same time, the Clinton Administration will seek approval from Congress for an expanded and improved Caribbean Basin Initiative with duty-free treatment for products currently excluded from the program. The Administration seeks to use the program to promote the adoption by beneficiary countries of sound trade and investment policy reforms that will prepare them for the obligations and responsibilities of the FTAA.

Demetrios J. Marantis,

Assistant General Counsel, Section 301 Committee.

[FR Doc. 99–11413 Filed 5–5–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Seminar

AGENCY: Amtrak Reform Council.

ACTION: Notice seminar.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a seminar on Amtrak. The seminar will deal with how and why Amtrak was established, Amtrak's current status and future plans. For comparative purposes, the program will also include international performance statistics and examples of how other countries operate and finance their intercity passenger trains. Amtrak and the U.S. Department of Transportation's Bureau of Transportation Statistics will open the seminar with a statistical profile of passenger travel in the U.S. In addition, the Council has invited speakers from the U.S. railroad industry, rail labor organizations, the World Bank, the consulting industry, and the European Bank for Reconstruction and Development.

DATES: The seminar is scheduled from 8:30 a.m. to 5:30 p.m. on Tuesday, May 18, 1999.

ADDRESSES: The seminar will be held at the Crystal Gateway Marriott in Crystal City, 1999 Jefferson Davis Highway, Alexandria, VA (703–413–5500). The seminar is open to the public on a first-come, first-serve basis. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM–ARC, 400 Seventh Street, S.W., Washington, D.C. 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under

the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a five year term.

Issued in Washington, D.C. April 29, 1999.

Thomas A. Till,

Executive Director.

[FR Doc. 99–11331 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Request Renewal From the Office of Management and Budget (OMB) of Current Public Collections of Information

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the FAA invites public comment on 7 currently approved public information collections which will be submitted to OMB for renewal.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Comments on any of these collections may be mailed or delivered to the FAA at the following address: Ms. Judith Street, Room 612, Federal Aviation Administration, Standards and Information Division, APF–100, 800 Independence Ave., SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Ms. Judith Street at the above address or on (202) 267–9895.

SUPPLEMENTARY INFORMATION: The FAA solicits comments on any of the current collections of information in order to evaluate the necessity of the collection, the accuracy of the agency's estimate of the burden, the quality, utility, and clarity of the information to be collected, and possible ways to minimize the burden of the collection.

Following are short synopses of the 7 currently approved public information collection activities, which will be submitted to OMB for review and renewal:

1. 2120–0008, Certification and Operations: Air Carriers and Operations of Large Aircraft—FAR 121. The respondents are an estimated 140 air carriers and commercial operators certificated under FAR 121. The estimated total annual burden is 850,000 hours annually. Abstract: Each operation which seeks to obtain, or is in possession of an air carrier operating certificate must comply with the requirements of FAR Part 121 in order to maintain data which is used to determine if the air carrier is operating in accordance with minimum safety standards.

2. 2120–505, Indirect Air Carrier Security, 14 CFR Part 109. The respondents are an estimated 2500 indirect air carriers with security programs. The estimated total annual burden is 650 hours. Abstract: part 109 sets forth procedures to be used by indirect air carriers in carrying out their responsibilities involving the protection of persons and property against acts of criminal violence, aircraft piracy, and terrorist activities in the forwarding of package cargo by passenger aircraft.

3. 2120–0536, Security Programs for Foreign Air Carriers. The respondents are an estimated 170 foreign air carriers/governments. The estimated total annual burden is 28,000 hours. Abstract: Each foreign air carrier landing or taking off in the United States is to submit a security program for the Administrator's acceptance to ensure adequate security measures are being implemented by those foreign air carriers.

4. 2120–0587, Aviator Safety Studies. The respondents are an estimated 4000 certified pilots. The burden is an estimated total of 8000 hours. Abstract: In order to conduct effective research on the contribution of pilots to aircraft accidents, data are required on the normative distribution of various pilot attributes and their association with accident involvement.

5. 2120–0597, Application for Employment with the Federal Aviation Administration. The respondents are an estimated 75,000 people who may apply for employment with the Federal Aviation Administration. The estimated burden hours is 75,000 hours annually. Abstract: Under the provisions of Pub. L. 104–50, the FAA has been given the authority to develop and implement its own personnel system. This application will be used in our efforts to automate and centralize the application, evaluation and referral of applicants for employment.

6. 2120–0600, Training and Qualification Requirements for Check Airmen and Flight Instructors. The respondents are an estimated 3000 experienced pilots who would otherwise qualify as flight instructors or check airmen, but who are not medically eligible to hold the requisite medical certificate to perform flight instructor or check airmen functions in a simulator. The estimated annual burden is 15 hours. Abstract: This rule established separate requirements for check airmen who check only in flight simulators and flight instructors who instruct only in flight simulators. This information will be used by the FAA to determine and assure check airmen and instructors maintain the high qualification standards required to perform their safety functions.

7. 2120–0601, Financial Responsibility for Licensed Launch Activities. Respondents are an estimated 7 licensees authorized to conduct licensed launch activities. The estimated annual burden is 1800 hours. Abstract: The required information will be used to determine if licensees have complied with financial responsibility requirements, including maximum probable loss determination, as set forth in regulations and in license orders issued by the Office of the Associate Administrator for Commercial Space Transportation.

Issued in Washington, DC, on May 3, 1999.

Steve Hopkins,

Manager, Standards and Information Division, APF–100.

[FR Doc. 99–11395 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–01–C–00–ACY) To Impose Only and Impose and Use a Passenger Facility Charge (PFC) at Atlantic City International Airport, Atlantic City, NJ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose only and impose and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Thomas Rafter, Airport Director, Atlantic City International Airport at the following address: South Jersey Transportation Authority, Civil Terminal, #106, Atlantic City International Airport, Pleasantville, N.J. 08232.

Air carriers and may submit copies of written comments previously provided to Atlantic City International Airport under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Dan Vornea, Project Manager, New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, N.Y. 11530, (516) 227–3812. The application may be reviewed in person at this same location

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose only and to impose and use a PFC at Atlantic City International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Parts 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 22, 1999, the FAA determined that the application to impose only and to impose and use a PFC submitted by the South New Jersey Transportation Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 28, 1999.

The following is a brief overview of the application.

Application number: 99–01–C–00–ACY
Level of the proposed PFC: $3.00
Proposed charge effective date: October 1, 1999
Proposed charge expiration date: March 18, 2004
Total estimated PFC revenue: $7,224,348
Brief description of proposed projects:
—Master Plan Update/EA/Part 150 Noise Study
—Secure Area Systems
—Terminal Expansion—Phases I–VI
—Improvements Airport Access Road Phases I&II
—ARFF Vehicle
—Aircraft Fueling Access Road
—Master Plan—Environmental Impact Statement
—Purchase Snow Removal Equipment
—Aircraft De-Icing Facilities-Design
—Improvements to Airport Security Systems
—Rehabilitate Runway 13–31—Phases I&II
—Terminal Exit Road
—Baggage Conveyor
—ASR–9 Relocation
—Terminal Apron Expansion
—Taxiway H Relocation
—Snow Removal Equipment Building

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: American Air Services, Inc., Buxmont Aviation Service, Inc., Corporate Jets, Inc., Extraordinaire, Inc., Gibson Aviation Inc. (Maryland), Miller Aviation, Inc. (New York), PHH Corporation, Paughannock Aviation Corporation, Sun Air Corporation, Marc Fruchter Aviation Inc. and Modesto Executive Air Charter, Inc., filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the New York Airports District Office located at: 600 Old Country Road, Suite 446, Garden City, N.Y. 11530.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the South New Jersey Transportation Authority, Atlantic City International Airport.

Issued in Garden City, New York on April 22, 1999.

Dan Vornea,

Project Manager, NYADO, Eastern Region.

[FR Doc. 99–11392 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–03–C–00–BOI To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Boise Air Terminal Airport, Submitted by the City of Boise, Idaho

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at Boise Air Terminal Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW Suite 250; Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to John Anderson, A.A.E., Director, at the following address: 3201 Airport Way, Boise, Idaho, 83705.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to Boise Air Terminal Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (425) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, suite 250; Renton, WA 98055–4056. The application maybe reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comments on the applicable 99–03–C–00–BOI to impose and use PFC revenue at Boise Air Terminal Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On April 29, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Boise, Boise Air Terminal Airport, Boise, Idaho, was substantially complete within the requirement of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 5, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00
Proposed charge effective date: October 1, 2000
Proposed charge expiration date: August 1, 2016
Total requested for use approval: $77,135,059
Brief description of proposed project:
Terminal Area Renovation and Expansion.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: "Part 135 Air Taxi/Commercial operators who conduct operations in air commerce carrying persons for compensation or hire, except Air Taxi/Commercial operators public or private charters with a seating of 10 or more."

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration,

Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW, Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Boise Air Terminal Airport.

Issued in Renton, Washington on April 29, 1999.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 99–11394 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on an Application to Impose a Passenger Facility Charge (PFC) at John F. Kennedy International Airport (JFK), LaGuardia Airport (LGA), and Newark International Airport (EWR), and To Use the Revenue From the PFC at JFK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Amendment to the notice requesting comments and announcing the FAA's intent to rule on a PFC application.

SUMMARY: This amendment is in response to a written request from Mr. Robert E. Cohn, Counsel for the Air Transport Association of America (ATA) to the FAA, dated April 15, 1999, requesting additional time to provide comments on the FAA's notice of intent to rule on a PFC application requesting authority to impose a PFC at JFK, LGA, and EWR and use that PFC revenue at JFK for a light rail system.

Specifically, this amendment revises the date that comments must be received by the FAA regarding the FAA's intent to rule on a PFC application. In addition, this amendment announces that meeting notes listed in the Certified Index to Record and requested in the ATA's April 15 letter to the FAA will be made a part of the **SUPLEMENTARY INFORMATION** available for public review in addition to the material previously made available.

In 64 FR 18065 (Tuesday, April 13, 1999), FR Doc. 99–9133, page 18065, on the third column under **DATES**, replace sentence "Comments must be received on or before May 13, 1999" with "Comments must be received on or before June 14, 1999".

All supplementary information is available for review at the following locations:

New York Airports District Office, 600 Old Country Road, Suite 446, Garden City, NY 11530.

or

FAA Headquarters, Passenger Facility Charge Branch Office, 800 Independence Avenue, SW, Room 619, Washington, DC 20591, (call (202) 267–3845 to arrange for access).

or

Mr. Anthony G. Cracchiolo, Director, Priority Capital Projects, Port Authority of New York and New Jersey, One World Trade Center, 63 South, New York, NY 10048.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Felix, Planning and Development Branch (AEA–610), Fitzgerald Federal Building, JFK International Airport, Jamaica, NY 11430, (718) 553–3335. In addition to the above locations, the supplemental information may be reviewed in person at this same location.

Issued in Washington, DC, on May 3, 1999.

Catherine M. Lang,

Deputy Director, Office of Airport Planning and Programming.

[FR Doc. 99–11393 Filed 5–5–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 99–43]

Cancellations of Customs Brokers' Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

I, the Commissioner of Customs, pursuant to section 641(f), Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and § 111.51(a) of the Customs Regulations (19 CFR 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

	Individual	License No.
San Francisco	C.G. Staff Companies	12817
San Francisco	Armen Cargo Services Inc	10909
New York	Mitrans Corporation	12707
Philadelphia	Sterling International Inc	12814

Dated: April 28, 1999.

Raymond W. Kelly,

Commissioner.

[FR Doc. 99–11415 Filed 5–5–99; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of meeting with current and prospective tax software developers.

SUMMARY: This announcement serves as notice that the Internal Revenue Service will hold a meeting of current and prospective tax software developers to share ideas and to hold dialogue on business electronic filing issues. Updates on the IRS initiatives, Electronic Payment Options and Business Electronic Filing Services (Forms 1065, Forms 1041, Forms 1099, Excise Financial Information Retrieval System (ExFIRS), Forms 941 Family, Electronic Federal Tax Payment System (EFTPS) and IRP) will be addressed at the conference. The meeting will be held at the New Carrollton Federal Building, 5000 Ellin Road, Lanham, MD 20706, Room B1–303 (Training Center). NOTE: During the IRS E–File Software Developers conference held on March 22–23, 1999, we announced there would be a Business Software Developers conference in June 1999. Due to space limitations, we have rescheduled the conference to July 7–8, 1999. To accommodate the projected participation, we are requesting that participation be limited to one representative.

SUPPLEMENTARY INFORMATION: To register for this meeting, please call Venus Burton at 202–283–0867 (not a toll-free number). A registration packet will be mailed or emailed which must be returned by June 14, 1999. You may also access The Digital Daily (IRS website) at http://www.irs.ustreas.gov, under "What's Hot", to obtain registration

information. If you have any questions or issues which you would like to have addressed during the meeting, you may submit them beforehand by e-mailing to *Wanda.Wallace@m1.irs.gov* or *Beatrice.Howell@m1.irs.gov*.

DATES: The conference will be held on Wednesday, July 7, 1999 from 8:30a.m.–4:30p.m. and Thursday, July 8, 1999 from 8:30a.m.–1p.m.

ADDRESSES: Questions or concerns should be directed to Wanda Wallace or Beatrice Howell at IRS, Electronic Tax Administration, OP:ETA:O:P, Room C4261/C4263, 5000 Ellin Road, Lanham, MD 20706.

FOR FURTHER INFORMATION CONTACT: Questions or concerns will also be taken over the telephone. Call Wanda Wallace at 202–283–0264 or Beatrice Howell at 202–283–0551.

Dated: April 21, 1999.

Approved:

Carol J. Stender-Larkin,

Acting National Director, Electronic Program Operations Office, Electronic Tax Administration.

Registration Form

IRS Business Software Developers Conference, July, 7 & 8, 1999

Name/Title _____

_____

Company Name _____

_____

Address _____

_____

_____

Phone Number _____

Fax Number _____

E-mail Address _____

If driving the following information is needed to authorize parking:

Vehicle Identification Information:

Type of Vehicle: _____

Color: _____

Tags: _____

Rental Car: __Yes __No

"Do you have any questions/topics which you would like to have addressed at the conference?"

_____

_____

Please return your completed registration form(s) no later than June 14, 1999 to: Internal Revenue Service, 5000 Ellin Road, Lanham, MD 20706, ATTN: Venus Burton C4–240, Phone Number: 202–283–0867, e-mail: *Venus.Burton@m1.irs.gov*

Travel Information: The New Carrollton Federal Building (NCFB) is located midway between the Ronald Reagan National Airport (located in Alexandria, VA) and the Baltimore-Washington International (BWI) Airport. The BWI Airport is the closest and most convenient to the NCFB. It is approximately a 20–25 minute car/taxi ride with limited traffic. Rental cars are available at the airport. Also, a Super Shuttle service is available from BWI to local hotels. The fare is $19 for the first person and $5 for each additional person with the same destination. If you want to take the Super Shuttle, go to the service desk located between baggage claim areas 3 and 4 and let the representative know your destination. Super Shuttle service is available 24 hours a day. The service is provided on a demand basis which may involve a wait of up to 30 minutes. The Super Shuttle will also pick you up from your hotel or the New Carrollton Federal Building and take you to BWI. Reservations are needed for this service and may be obtained by calling 800–258–3826.

Ronald Reagan National Airport is approximately a 30–40 minute car/taxi ride to NCFB during non-peak hours of traffic. Morning and afternoon arrivals and departures take approximately one hour. Rental cars are available at the airport. Additionally, the Metro (subway) System may be used from the airport to the New Carrollton location. This process would require the changing of trains during the ride and would take approximately 45 minutes.

AMTRAK: The train stops at the New Carrollton station. Taxi's are available at the train station to take you to your hotel.

Directions via: The NCFB is easily accessible by major highways and Highways mass transit.

From Capital Beltway (I–495): Take Exit 19B (Rt. 50 West—Washington). Take Exit 5 (after the Metro Station Exit). Turn right onto Route 410. Turn right at the first light (Ellin Road). Turn left at the first traffic light onto Harkins Road.

or

Take Exit 20B onto Route 450 West. Get in left lane. Turn left at 85th Avenue (it will become Ellin Road). Turn right into Harkins Road.

From DC: Follow New York Avenue to Route 50 East, Exit 5. At Exit 5, move left once the ramp splits and turn left onto Route 410. Go to the second traffic light and turn right onto Ellin Road. Follow Ellin Road and turn left at the first traffic light onto Harkins Road.

Parking is available in the NCFB tiered parking garage if information is provided in advance. Visitors should enter at Gate C.

Mass Transit

METRO: The NCFB is adjacent to the New Carrollton Metro (Orange Line) stop. After exiting at the turnstile, bear right and then turn left (the entrance to the AMTRAK station is just in front of you and a sign points left to the New Carrollton, Route 450, side of the station). At street level, bear left and take the pedestrian walkway leading directly from the Metro Station to the front door of NCFB. Call (202) 637–7000 for schedules and additional information.

MARC: The NCFB is adjacent to the New Carrollton MARC Train Station. Service is between Baltimore and Washington. Call 1–800–325–RAIL for schedules and additional information.

Hotel Accommodations in New Carrollton area:

The following is a list of local hotels in close proximity to the New Carrollton Federal Building. For Federal employees, the per diem rate for New Carrollton is the same as the District of Columbia—$124 for lodging and $46 for M & IE.

Courtyard by Marriott New Carrollton, 8330 Corporate Drive, Landover, MD 20785, 800–321–2211 or 301–577–3373, Complimentary shuttle service is provided to Internal Revenue Service, New Carrollton Federal Building

Ramada Conference and Exhibition Center, 8500 Annapolis Road, New Carrollton, MD 20784, (800)–436–0614 or 301–459–6700, Complimentary shuttle service is provided to Internal Revenue Service, New Carrollton Federal Building

Club Hotel, Doubletree, Largo, 301–773–0700

Best Western Hotel, Capital Beltway, 301–459–1000

Days Inn, Lanham, 301–459–6600

Annapolis Residence Inn by Marriott, Annapolis, 410–573–0300

Travel from: Anyone who chooses to stay in hotels in the downtown Hotels; D.C. area should allow approximately 30–40 minutes to travel via Metro to the New Carrollton station each day.

Restaurant Availability: The New Carrollton area does not offer many choices in eating establishments. However, within a 5–20 mile radius there are many very good restaurants. Annapolis, MD is only a 25 minute drive. Additionally, the METRO is available to Washington, DC or Virginia. A list of local eateries in the New Carrollton area is available at the receptionist's desk in the NCFB Training Center.

NCFB TRAINING CENTER INFO: The conference will be held in room B1–303. Messages may be taken for you during conference hours. The message center telephone number is 202–283–6380. You can retrieve your messages from the message board in the telephone center (Room B1–105). Emergency messages will be delivered directly to the classroom. Calls should be limited to five minutes. There are also pay telephones available for your use at the cafeteria entrance.

Security Instructions: Visitors must show proper identification and be processed through the x-ray machine and metal detector before access will be allowed. Visitors should identify themselves to the guard as being on an access list for the IRS Business Software Developers Conference. Visitors will receive a temporary visitors pass which must be worn at all times when the building. A new badge will be issued each day of the conference.

Attire: Casual business attire.

[FR Doc. 99–10933 Filed 5–05–99; 8:45 am]

BILLING CODE 4830–01–U

Corrections

Federal Register
Vol. 64, No. 87
Thursday, May 6, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Vaccine Against Gram Negative Bacteria

Correction

In notice document 99–10858, appearing on page 23284, in the issue of Friday, April 30, 1999, make the following correction:

On page 23284, in the second column, in the **AGENCY:** section, in the second line, "Material" should read "Materiel".

[FR Doc. C9–10858 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Draft Environmental Impact Statement for Proposed Open-Water Placement of Dredged Material at Site 104 Queen Anne's County, Maryland

Correction

In notice document 99–10859, appearing on page 23285, in the issue of Friday, April 30, 1999, make the following correction:

On page 23285, in the second column, in the **SUPPLEMENTARY INFORMATION:** section, in the first paragraph, in the 11th line, "part" should read "port".

[FR Doc. C9–10859 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF EDUCATION

[DFCA Nos.: 84.133A and 84.133B]

National Institute on Disability and Rehabilitation Research; Notice Inviting Applications for New Awards Under the Disability and Rehabilitation Research Project and Centers Program for Fiscal Year (FY) 1999

Correction

In notice document 99–9618, beginning on page 18995, in the issue of Friday, April 16, 1999, make the following correction:

On page 18997, the table is corrected to read as set forth below:

APPLICATION NOTICE FOR FISCAL YEAR 1999 REHABILITATION RESEARCH AND TRAINING CENTER, CFDA NO. 84.133B–9

Funding priority	Deadline for transmittal of applications	Estimated number of awards	Maximum award amount (per year) *	Project period (months)
84.133B–9—Health and Wellness for Persons with Long-term Disabilities	June 3, 1999	1	$700,000	60

* **Note:** The Secretary will reject without consideration or evaluation any application that proposes a project funding level that exceeds the stated maximum award amount per year (See 34 CFR 75.104(b)).

[FR Doc. C9–9618 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 29547]

207-Minute Extended Range Operations With Two–Engine Aircraft (ETOPS) Operation Approval Criteria

Correction

In notice document 99–10556, beginning on page 22667, in the issue of Tuesday, April 27, 1999, in the first column, in the **ADDRESSES:** section, in the 11th line"[20547]" should read "[29547]".

[FR Doc. C9–10556 Filed 5–5–99; 8:45 am]

BILLING CODE 1505–01–D

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Thursday
May 6, 1999

Part II

Department of the Treasury

31 CFR Part 1

Departmental Offices; Disclosure of Records: Freedom of Information Act; Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Disclosure of Records: Freedom of Information Act

AGENCY: Department of the Treasury.

ACTION: Proposed rule.

SUMMARY: The Department of the Treasury is revising and updating its regulations on the disclosure of records under the Freedom of Information Act (FOIA). These regulations incorporate requirements of the Electronic Freedom of Information Act Amendments of 1996 (Pub. L. 104–231) with respect to records maintained in electronic formats, the timing of agency responses to FOIA requests, and other procedural matters.

DATES: Comments must be received no later than July 6, 1999.

ADDRESSES: Comments may be submitted to: Alana Johnson, Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Ave., NW., Washington, DC 20220.

FOR FURTHER INFORMATION CONTACT: Alana Johnson, Departmental Disclosure Officer, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Telephone: (202) 622–0930.

SUPPLEMENTARY INFORMATION: This part includes provisions for processing requests for records maintained in electronic format, and for making certain records and information available by computer telecommunications (Internet). It also includes provisions pertaining to requests for expedited processing; unusual circumstances; and multitrack processing. Numerous editorial changes have been made to provide clarity, eliminate redundancy, and reflect organizational and procedural changes to the FOIA request process at the Department of the Treasury.

The former United States Savings Bond Division is now part of the Bureau of the Public Debt. Therefore, Appendix K of Subpart A has been deleted.

The Department has determined that this document is not a significant regulatory action for purposes of E.O. 12866. Because this document incorporates new statutory requirements and clarifies the current regulations, it is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities. For this reason, an initial regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 601–612, is not required.

The Paperwork Reduction Act does not apply because the rule does not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

Dated April 27, 1999.

Nancy Killefer,

Assistant Secretary of the Treasury (Management) and Chief Financial Officer.

List of Subjects in 31 CFR Part 1

Freedom of information.

For the reasons set forth above, Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—DISCLOSURE OF RECORDS

1. The authority citation for Part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended.

2. Part 1, Subpart A, is revised to read as follows:

Subpart A—Freedom of Information Act

Sec.

1.1 General.
1.2 Information made available.
1.3 Publication in the **Federal Register**.
1.4 Public inspection and copying.
1.5 Specific requests for other records.
1.6 Business information.
1.7 Fees for services.

Appendices To Subpart A

Appendix A—Departmental Offices
Appendix B—Internal Revenue Service
Appendix C—United States Customs Service
Appendix D—United States Secret Service
Appendix E—Bureau of Alcohol, Tobacco and Firearms
Appendix F—Bureau of Engraving and Printing
Appendix G—Financial Management Service
Appendix H—United States Mint
Appendix I—Bureau of the Public Debt
Appendix J—Office of the Comptroller of the Currency
Appendix K—Federal Law Enforcement Training Center
Appendix L—Office of Thrift Supervision

Subpart A—Freedom of Information Act

§ 1.1 General.

(a) *Purpose and scope.* This subpart contains the regulations of the Department of the Treasury implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended by the Electronic Freedom of Information Act Amendments of 1996. The regulations set forth procedures for requesting access to records maintained by the Department of the Treasury. These regulations apply to all bureaus of the Department of the Treasury. Any reference in this subpart to the Department or its officials, employees, or records shall be deemed to refer also to the bureaus or their officials, employees, or records. Persons interested in the records of a particular bureau should also consult the appendix to this subpart that pertains to that bureau. The head of each bureau is hereby authorized to substitute the officials designated and change the addresses specified in the appendix to this subpart applicable to the bureau. The bureaus of the Department of the Treasury for the purposes of this subpart are:

(1) The Departmental Offices, which include the offices of:

(i) The Secretary of the Treasury, including immediate staff;

(ii) The Deputy Secretary of the Treasury, including immediate staff;

(iii) The Chief of Staff, including immediate staff;

(iv) The Executive Secretary and all offices reporting to such official, including immediate staff;

(v) The Under Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(vi) The Under Secretary of the Treasury for Domestic Finance and all offices reporting to such official, including immediate staff;

(vii) The Under Secretary for Enforcement and all offices reporting to such official, including immediate staff;

(viii) The Assistant Secretary of the Treasury for Financial Institutions and all offices reporting to such official, including immediate staff;

(ix) The Assistant Secretary of the Treasury for Economic Policy and all offices reporting to such official, including immediate staff;

(x) The Fiscal Assistant Secretary and all offices reporting to such official, including immediate staff;

(xi) The General Counsel and all offices reporting to such official, including immediate staff; except legal counsel to the components listed in paragraphs (a)(1)(xvii) and (a)(2) through (12) of this section;

(xii) The Inspector General and all offices reporting to such official, including immediate staff;

(xiii) The Assistant Secretary of the Treasury for International Affairs and all offices reporting to such official, including immediate staff;

(xiv) The Assistant Secretary of the Treasury for Legislative Affairs and Public Liaison and all offices reporting to such official, including immediate staff;

(xv) The Assistant Secretary of the Treasury for Management and Chief Financial Officer and all offices

reporting to such official, including immediate staff;

(xvi) The Assistant Secretary of the Treasury for Public Affairs and all offices reporting to such official, including immediate staff;

(xvii) The Assistant Secretary of the Treasury for Tax Policy and all offices reporting to such official, including immediate staff;

(xviii) The Treasurer of the United States, including immediate staff;

(xix) The Treasury Inspector General for Tax Administration and all offices reporting to such official, including immediate staff.

(2) The Bureau of Alcohol, Tobacco and Firearms.

(3) The Office of the Comptroller of the Currency.

(4) The United States Customs Service.

(5) The Bureau of Engraving and Printing.

(6) The Federal Law Enforcement Training Center.

(7) The Financial Management Service.

(8) The Internal Revenue Service.

(9) The United States Mint.

(10) The Bureau of the Public Debt.

(11) The United States Secret Service.

(12) The Office of Thrift Supervision.

For purposes of this subpart, the office of the legal counsel for the components listed in paragraphs (a)(2) through (12) of this section are to be considered a part of their respective bureaus. Any office which is now in existence or may hereafter be established, which is not specifically listed or known to be a component of any of those listed above, shall be deemed a part of the Departmental Offices for the purpose of making requests for records under these regulations.

(b) *Definitions.* As used in this subpart, the following terms shall have the following meanings:

(1) *Agency* has the meaning given in 5 U.S.C. 551(1) and 5 U.S.C. 552(f).

(2) *Appeal* means a request for a review of an agency's determination with regard to a fee waiver, category of requester, expedited processing, or denial in whole or in part of a request for access to a record or records.

(3) *Bureau* means an entity of the Department of the Treasury that is authorized to act independently in disclosure matters.

(4) *Business information* means trade secrets or other commercial or financial information.

(5) *Business submitter* means any entity which provides business information to the Department of the Treasury or its bureaus and which has a proprietary interest in the information.

(6) *Computer software* means tools by which records are created, stored, and retrieved. Normally, computer software, including source code, object code, and listings of source and object codes, regardless of medium, are not agency records. However, when data are embedded within the software and cannot be extracted without the software, the software may have to be treated as an agency record. Proprietary (or copyrighted) software is not an agency record.

(7) *Confidential commercial information* means records provided to the government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(8) *Duplication* refers to the process of making a copy of a record in order to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others.

(9) *Electronic records* means those records and information which are created, stored, and retrievable by electronic means. This ordinarily does not include computer software, which is a tool by which to create, store, or retrieve electronic records.

(10) *Request* means any request for records made pursuant to 5 U.S.C. 552(a)(3).

(11) *Requester* means any person who makes a request for access to records.

(12) *Responsible official* means a disclosure officer or the head of the organizational unit having immediate custody of the records requested, or an official designated by the head of the organizational unit.

(13) *Review,* for fee purposes, refers to the process of examining records located in response to a commercial use request to determine whether any portion of any record located is permitted to be withheld. It also includes processing any records for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release.

(14) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within records. Searches may be done manually or by automated means.

§ 1.2 Information made available.

(a) *General.* The FOIA (5 U.S.C. 552) provides for access to information and records developed or maintained by Federal agencies. The provisions of section 552 are intended to assure the right of the public to information. Generally, this section divides agency information into three major categories and provides methods by which each category of information is to be made available to the public. The three major categories of information are as follows:

(1) Information required to be published in the **Federal Register** (see § 1.3);

(2) Information required to be made available for public inspection and copying or, in the alternative, to be published and offered for sale (see § 1.4); and

(3) Information required to be made available to any member of the public upon specific request (see § 1.5).

(b) Subject only to the exemptions and exclusions set forth in 5 U.S.C. 552(b) and (c), any person shall be afforded access to information or records in the possession of any bureau of the Department of the Treasury, subject to the regulations in this subpart and any regulations of a bureau implementing or supplementing them.

(c) *Exemptions.* (1) The disclosure requirements of 5 U.S.C. 552(a) do not apply to certain matters which are exempt under 5 U.S.C. 552(b); nor do the disclosure requirements apply to certain matters which are excluded under 5 U.S.C. 552(c).

(2) Even though an exemption described in 5 U.S.C. 552(b) may be applicable to the information or records requested, a Treasury bureau may, if not precluded by law, elect under the circumstances of that request not to apply the exemption. The fact that the exemption is not applied by a bureau in response to a particular request shall have no precedential significance in processing other requests, but is merely an indication that, in the processing of the particular request, the bureau finds no necessity for applying the exemption.

§ 1.3 Publication in the Federal Register.

(a) *Requirement.* Subject to the application of the exemptions and exclusions in 5 U.S.C. 552(b) and (c) and subject to the limitations provided in 5 U.S.C. 552(a)(1), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(1), separately state, publish and maintain current in the **Federal Register** for the guidance of the public the following information with respect to that bureau:

(1) Descriptions of its central and field organization and the established places at which, the persons from whom, and the methods whereby, the public may obtain information, make submittals or requests, or obtain decisions;

(2) Statements of the general course and method by which its functions are channeled and determined, including the nature and requirements of all formal and informal procedures available;

(3) Rules of procedure, descriptions of forms available or the places at which forms may be obtained, and instructions as to the scope and contents of all papers, reports, or examinations;

(4) Substantive rules of general applicability adopted as authorized by law, and statements of general policy or interpretations of general applicability formulated and adopted by the bureau; and

(5) Each amendment, revision, or repeal of matters referred to in paragraphs (a)(1) through (4) of this section.

(b) *The United States Government Manual.* The functions of each bureau are summarized in the description of the Department and its bureaus in the United States Government Manual, which is issued annually by the Office of the **Federal Register**.

§ 1.4 Public inspection and copying.

(a) *In general.* Subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each Treasury bureau shall, in conformance with 5 U.S.C. 552(a)(2), make available for public inspection and copying, or, in the alternative, promptly publish and offer for sale the following information with respect to the bureau:

(1) Final opinions, including concurring and dissenting opinions, and orders, made in the adjudication of cases;

(2) Those statements of policy and interpretations which have been adopted by the bureau but are not published in the **Federal Register**;

(3) Its administrative staff manuals and instructions to staff that affect a member of the public;

(4) Copies of all records, regardless of form or format, which have been released to any person under 5 U.S.C. 552(a)(3), and which the bureau determines have become or are likely to become the subject of subsequent requests for substantially the same records because they are clearly of interest to the public at large. The determination that records have become or may become the subject of subsequent requests shall be made by the Responsible Official (as defined at § 1.1(b)(12)).

(5) A general index of the records referred to in paragraph (a)(4) of this section.

(b) *Information made available by computer telecommunications.* For records required to be made available for public inspection and copying pursuant to 5 U.S.C. 552(a)(2) (paragraphs (a)(1) through (4) of this section) which are created on or after November 1, 1996, no later than one year after such records are created each bureau shall make such records available on the Internet.

(c) *Deletion of identifying details.* To prevent a clearly unwarranted invasion of personal privacy, or pursuant to an exemption in 5 U.S.C. 552(b), a Treasury bureau may delete information contained in any matter described in paragraphs (a)(1) through (4) of this section before making such matters available for inspection or publishing it. The justification for the deletion shall be explained fully in writing, and the extent of such deletion shall be indicated on the portion of the record which is made available or published, unless including that indication would harm an interest protected by the exemption in 5 U.S.C. 552(b) under which the deletion is made. If technically feasible, the extent of the deletion shall be indicated at the place in the record where the deletion was made.

(d) *Public reading rooms.* Each bureau of the Department of the Treasury shall make available for public inspection and copying, in a reading room or otherwise, the material described in paragraphs (a)(1) through (5) of this section. Fees for duplication shall be charged in accordance with § 1.7. See the appendices to this subpart for the location of established bureau reading rooms.

(e) *Indexes.* (1) Each bureau of the Department of the Treasury shall maintain and make available for public inspection and copying current indexes identifying any material described in paragraphs (a)(1) through (3) of this section. In addition, each bureau shall promptly publish, quarterly or more frequently, and distribute (by sale or otherwise) copies of each index or supplement unless the head of each bureau (or a delegate) determines by order published in the **Federal Register** that the publication would be unnecessary and impractical, in which case the bureau shall nonetheless provide copies of the index on request at a cost not to exceed the direct cost of duplication.

(2) Each bureau shall make the index referred to in paragraph (a)(5) of this section available on the Internet by December 31, 1999.

§ 1.5 Specific requests for other records.

(a) *In general.* (1) Except for records made available under 5 U.S.C. 552(a)(1) and (a)(2), but subject to the application of the exemptions and exclusions described in 5 U.S.C. 552(b) and (c), each bureau of the Department of the Treasury shall promptly make the requested records available to any person in conformance with 5 U.S.C. 552(a)(3). The request must conform in every respect with the rules and procedures of this subpart and the applicable bureau's appendix to this subpart. Any request or appeal from the initial denial of a request that does not comply with the requirements in this subpart will not be considered subject to the time constraints of paragraphs (h), (i), and (j) of this section, unless and until the request is amended to comply. Bureaus shall promptly advise the requester in what respect the request or appeal is deficient so that it may be amended and resubmitted for consideration in accordance with this subpart. If a requester does not respond within 30 days to a communication from a bureau to amend the request in order for it to be in conformance with this subpart, the request file will be considered closed. When the request conforms with the requirements of this subpart, bureaus shall make every reasonable effort to comply with the request within the time constraints. If the description of the record requested is of a type that is not maintained by the bureau, the requester shall be so advised and the request shall be returned to the requester.

(2) This subpart applies only to existing records in the possession or control of the bureau at the time of the request. Records considered to be responsive to the request are those in existence on or before the date of receipt of the request by the appropriate bureau official. Requests for the continuing production of records created after the date of the appropriate bureau official's receipt of the request shall not be honored. Bureaus shall provide the responsive record or records in the form or format requested if the record or records are readily reproducible by the bureau in that form or format. Bureaus shall make reasonable efforts to maintain their records in forms or formats that are reproducible for the purpose of disclosure. For purposes of this section, "readily reproducible" means, with respect to electronic format, a record or records that can be downloaded or transferred intact to a floppy disk, computer disk (CD), tape, or other electronic medium using equipment currently in use by the office

or offices processing the request. Even though some records may initially be readily reproducible, the need to segregate exempt from nonexempt records may cause the releasable material to not be readily reproducible.

(3) Requests for information classified pursuant to Executive Order 12958, "Classified National Security Information," require the responsible bureau to review the information to determine whether it continues to warrant classification. Information which no longer warrants classification under the Executive Order's criteria shall be declassified and made available to the requester, unless the information is otherwise exempt from disclosure.

(b) *Form of request.* In order to be subject to the provisions of this section, the following must be satisfied.

(1) The request for records shall be made in writing, signed by the person making the request, and state that it is made pursuant to the Freedom of Information Act, 5 U.S.C. 552, or this subpart.

(2) The request shall indicate whether the requester is a commercial user, an educational institution, non-commercial scientific institution, representative of the news media, or "other" requester, subject to the fee provisions described in § 1.7. In order for the Department to determine the proper category for fee purposes as defined in this section, a request for records shall also state how the records released will be used. This information shall not be used to determine the releasibility of any record or records. A determination of the proper category of requester shall be based upon a review of the requester's submission and the bureau's own records. Where a bureau has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, bureaus should seek additional clarification before assigning the request to a specific category. The categories of requesters are defined as follows:

(i) *Commercial.* A commercial use request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. The bureaus may determine from the use specified in the request that the requester is a commercial user.

(ii) *Educational institution.* This refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. This category does not include requesters wanting records for use in meeting individual academic research or study requirements.

(iii) *Non-commercial scientific institution.* This refers to an institution that is not operated on a "commercial" basis as that term is defined in paragraph (b)(2)(i) of this section, and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(iv) *Representative of the news media.* This refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but bureaus may also look to the past publication record of a requester in making this determination.

(v) *"Other" requester.* This refers to a requester who does not fall within any of the previously described categories.

(3) The request must be properly addressed to the bureau that maintains the record. The functions of each bureau are summarized in *The United States Government Manual* which is issued annually and is available from the Superintendent of Documents. Both the envelope and the request itself should be clearly marked "Freedom of Information Act Request." See the appendices to this subpart for the office or officer to which requests shall be addressed for each bureau. A requester in need of guidance in defining a request or determining the proper bureau to which a request should be sent may contact Disclosure Services at 202/622–0930, or by writing to Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Requesters may access the "FOIA Home Page" at the Department of the Treasury World Wide Web site at: http://www.ustreas.gov.

(4) The request must reasonably describe the records in accordance with paragraph (d) of this section.

(5) The request must set forth the address where the person making the request wants to be notified about whether or not the request will be granted.

(6) The request must state whether the requester wishes to inspect the records or desires to have a copy made and furnished without first inspecting them.

(7) The request must state the firm agreement of the requester to pay the fees for search, duplication, and review as may ultimately be determined in accordance with § 1.7. The agreement may state the upper limit (but not less than $25) that the requester is willing to pay for processing the request. A request that fees be waived or reduced may accompany the agreement to pay fees and shall be considered to the extent that such request is made in accordance with § 1.7(d) and provides supporting information to be measured against the fee waiver standard set forth in § 1.7(d)(1). The requester shall be notified in writing of the decision to grant or deny the fee waiver. A requester shall be asked to provide an agreement to pay fees when the request for a fee waiver or reduction is denied and the initial request for records does not include such agreement. If a requester has an outstanding balance of search, review, or duplication fees due for FOIA request processing, the requirements of this paragraph are not met until the requester has remitted the outstanding balance due.

(c) *Requests for records not in control of bureau; referrals; consultations.* (1) When a requested record is in the possession or under the control of a bureau of the Department other than the office to which the request is addressed, the request for the record shall be transferred to the appropriate bureau and the requester notified. This referral shall not be considered a denial of access within the meaning of these regulations. The bureau of the Department to which this referral is made shall treat this request as a new request addressed to it and the time limits for response set forth by paragraph (h)(1) of this section shall begin when the referral is received by the designated office or officer of the bureau.

(2) When a requested record has been created by an agency or Treasury bureau other than the Treasury bureau

possessing the record, the bureau having custody of the record shall refer the record to the originating agency or Treasury bureau for a direct response to the requester. The requester shall be informed of the referral unless otherwise instructed by the originating agency. This is not a denial of a FOIA request; thus no appeal rights accrue to the requester.

(3) When a FOIA request is received for a record created by a Treasury bureau that includes information originated by another bureau of the Department of the Treasury or another agency, the record shall be referred to the originating agency or bureau for review and recommendation on disclosure. The agency or bureau shall respond to the referring office. The Treasury bureau shall not release any such records without prior consultation with the originating bureau or agency.

(4) In certain instances and at the discretion of the Departmental Offices, requests having impact on two or more bureaus of the Department may be coordinated by the Departmental Offices.

(d) *Reasonable description of records.* The request for records must describe the records in reasonably sufficient detail to enable employees who are familiar with the subject area of the request to locate the records without placing an unreasonable burden upon the Department. Whenever possible, a request should include specific information about each record sought, such as the date, title or name, author, recipients, and subject matter of the record. If the Department determines that the request does not reasonably describe the records sought, the requester shall be given an opportunity to provide additional information. Such opportunity may, when necessary, involve a discussion with knowledgeable Department of the Treasury personnel. The reasonable description requirement shall not be used by officers or employees of the Department of the Treasury to improperly withhold records from the public.

(e) *Requests for expedited processing.* (1) When a request for records includes a request for expedited processing, both the envelope and the request itself must be clearly marked, "Expedited Processing Requested."

(2) Records will be processed as soon as practicable when a requester asks for expedited processing in writing and is granted such expedited treatment by the Department. The requester must demonstrate a compelling need for expedited processing of the requested records. A compelling need is defined as follows:

(i) Failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The requester shall fully explain the circumstances warranting such an expected threat so that the Department may make a reasoned determination that a delay in obtaining the requested records could pose such a threat; or

(ii) With respect to a request made by a person primarily engaged in disseminating information, urgency to inform the public concerning actual or alleged Federal Government activity. A person "primarily engaged in disseminating information" does not include individuals who are engaged only incidentally in the dissemination of information. The standard of "urgency to inform" requires that the records requested pertain to a matter of current exigency to the American public and that delaying a response to a request for records would compromise a significant recognized interest to and throughout the American general public. The requester must adequately explain the matter or activity and why the records sought are necessary to be provided on an expedited basis.

(3) A demonstration of a compelling need by a person making a request for expedited processing shall be made by a statement certified by the requester to be true and correct to the best of his or her knowledge and belief. The statement must be in the form prescribed by 28 U.S.C. 1746, "I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief. Executed on [date]."

(4) Upon receipt by the appropriate bureau official, a request for expedited processing shall be considered and a determination as to whether to grant or deny the request for expedited processing shall be made, and the requester notified, within 10 calendar days of the date of the request. However, in no event shall the bureau have fewer than five days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the request for such processing. The determination to grant or deny a request for expedited processing may be made solely on the information contained in the initial letter requesting expedited treatment.

(5) Appeals of initial determinations to deny expedited processing must be made within 10 calendar days of the date of the initial letter of determination denying expedited processing. Both the envelope and the appeal itself shall be clearly marked, "Appeal for Expedited Processing."

(6) An appeal determination regarding expedited processing shall be made, and the requester notified, within 10 days (excluding Saturdays, Sundays, and legal public holidays) from the date of receipt of the appeal.

(f) *Date of receipt of request.* A request for records shall be considered to have been received on the date on which a complete request containing the information required by paragraph (b) of this section has been received. A determination that a request is deficient in any respect is not a denial of access, and such determinations are not subject to administrative appeal. Requests shall be stamped with the date of receipt by the office prescribed in the appropriate appendix. As soon as the date of receipt has been established, the requester shall be so informed and shall also be advised when to expect a response. The acknowledgement of receipt requirement shall not apply if a disclosure determination will be issued prior to the end of the 20-day time limit.

(g) *Search for record requested.* Department of the Treasury employees shall search to identify and locate requested records, including records stored at Federal Records Centers. Searches for records maintained in electronic form or format may require the application of codes, queries, or other minor forms of programming to retrieve the requested records. Wherever reasonable, searches shall be done by electronic means. However, searches of electronic records are not required when such searches would significantly interfere with the operation of a Treasury automated information system or would require unreasonable effort to conduct. The Department of the Treasury is not required under 5 U.S.C. 552 to tabulate or compile information for the purpose of creating a record or records that do not exist.

(h) *Initial determination.* (1) *In general.* The officers designated in the appendices to this part shall make initial determinations either to grant or to deny in whole or in part requests for records. Such officers shall respond in the approximate order of receipt of the requests, to the extent consistent with sound administrative practice. These determinations shall be made and the requester notified within 20 days (excepting Saturdays, Sundays, and legal public holidays) after the date of receipt of the request, as determined in accordance with paragraph (f) of this section, unless the designated officer invokes an extension pursuant to paragraph (j)(1) of this section or the

requester otherwise agrees to an extension of the 20-day time limitation.

(2) *Granting of request.* If the request is granted in full or in part, and if the requester wants a copy of the records, a copy of the records shall be mailed to the requester, together with a statement of the applicable fees, either at the time of the determination or shortly thereafter.

(3) *Inspection of records.* In the case of a request for inspection, the requester shall be notified in writing of the determination, when and where the requested records may be inspected, and of the fees incurred in complying with the request. The records shall then promptly be made available for inspection at the time and place stated, in a manner that will not interfere with Department of the Treasury operations and will not exclude other persons from making inspections. The requester shall not be permitted to remove the records from the room where inspection is made. If, after making inspection, the requester desires copies of all or a portion of the requested records, copies shall be furnished upon payment of the established fees prescribed by § 1.7. Fees may be charged for search and review time as stated in § 1.7.

(4) *Denial of request.* If it is determined that the request for records should be denied in whole or in part, the requester shall be notified by mail. The letter of notification shall:

(i) State the exemptions relied on in not granting the request;

(ii) If technically feasible, indicate the amount of information deleted at the place in the record where such deletion is made (unless providing such indication would harm an interest protected by the exemption relied upon to deny such material);

(iii) Set forth the name and title or position of the responsible official;

(iv) Advise the requester of the right to administrative appeal in accordance with paragraph (i) of this section; and

(v) Specify the official or office to which such appeal shall be submitted.

(5) *No records found.* If it is determined, after a thorough search for records by the responsible official or his delegate, that no records have been found to exist, the responsible official will so notify the requester in writing. The letter of notification will advise the requester of the right to administratively appeal the Department's determination that no records exist (i.e., to challenge the adequacy of the Department's search for responsive records) in accordance with paragraph (i) of this section. The response shall specify the official or office to which the appeal shall be submitted for review.

(i) *Administrative appeal.* (1)(i) A requester may appeal a Department of the Treasury initial determination when:

(A) Access to records has been denied in whole or in part;

(B) There has been an adverse determination of the requester's category as provided in § 1.7(d)(4);

(C) A request for fee waiver or reduction has been denied;

(D) It has been determined that no responsive records exist; or

(E) A request for expedited processing has been denied.

(ii) An appeal, other than an appeal for expedited processing, must be submitted within 35 days of the date of the initial determination or the date of the letter transmitting the last records released, whichever is later, except in the case of a denial for expedited processing. An appeal of a denial for expedited processing must be made within 10 days of the date of the initial determination to deny expedited processing (see § 1.5(e)(5)). All appeals must be submitted to the official specified in the appropriate appendix to this subpart whose title and address should also have been included in the initial determination. An appeal that is improperly addressed shall be considered not to have been received by the Department until the office specified in the appropriate appendix receives the appeal.

(2) The appeal shall—

(i) Be made in writing and signed by the requester or his or her representative;

(ii) Be addressed to and mailed or hand delivered within 35 days (or within 10 days when expedited processing has been denied) of the date of the initial determination, or the date of the letter transmitting the last records released, whichever is later, to the office or officer specified in the appropriate appendix to this subpart and also in the initial determination. (See the appendices to this subpart for the address to which appeals made by mail should be addressed);

(iii) Set forth the address where the requester desires to be notified of the determination on appeal;

(iv) Specify the date of the initial request and date of the letter of initial determination, and, where possible, enclose a copy of the initial request and the initial determination being appealed.

(3)(i) Appeals shall be stamped with the date of their receipt by the office to which addressed, and shall be processed in the approximate order of their receipt. The receipt of the appeal shall be acknowledged by the office or officer specified in the appropriate appendix to this subpart and the requester advised of the date the appeal was received and the expected date of response. The decision to affirm the initial determination (in whole or in part) or to grant the request for records shall be made and notification of the determination mailed within 20 days (exclusive of Saturdays, Sundays, and legal public holidays) after the date of receipt of the appeal, unless extended pursuant to paragraph (j)(1) of this section. If it is decided that the initial determination is to be upheld (in whole or in part) the requester shall be—

(A) Notified in writing of the denial;

(B) Notified of the reasons for the denial, including the FOIA exemptions relied upon;

(C) Notified of the name and title or position of the official responsible for the determination on appeal; and

(D) Provided with a statement that judicial review of the denial is available in the United States District Court for the judicial district in which the requester resides or has a principal place of business, the judicial district in which the requested records are located, or the District of Columbia in accordance with 5 U.S.C. 552(a)(4)(B).

(ii) If the initial determination is reversed on appeal, the requester shall be so notified and the request shall be processed promptly in accordance with the decision on appeal.

(4) If a determination cannot be made within the 20-day period (or within a period of extension pursuant to paragraph (j)(1) of this section), the requester may be invited to agree to a voluntary extension of the 20-day appeal period. This voluntary extension shall not constitute a waiver of the right of the requester ultimately to commence an action in a United States district court.

(j) *Time extensions; unusual circumstances.* (1) In unusual circumstances, the time limitations specified in paragraphs (h) and (i) of this section may be extended by written notice from the official charged with the duty of making the determination to the person making the request or appeal setting forth the reasons for this extension and the date on which the determination is expected to be sent. As used in this paragraph, "unusual circumstances" means, but only to the extent reasonably necessary to the proper processing of the particular requests:

(i) The need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are demanded in a single request; or

(iii) The need for consultation, which shall be conducted with all practicable speed, with another agency having a substantial interest in the determination of the request, or among two or more bureaus or components of bureaus of the Department of the Treasury having substantial subject matter interest therein.

(2) Any extension or extensions of time shall not cumulatively total more than 10 days (exclusive of Saturdays, Sundays, and legal public holidays). However, if additional time is needed to process the request, the bureau shall notify the requester and provide the requester an opportunity to limit the scope of the request or arrange for an alternative time frame for processing the request or a modified request. The requester shall retain the right to define the desired scope of the request, as long as it meets the requirements contained in this subpart.

(3) Bureaus may establish multitrack processing of requests based on the amount of work or time, or both, involved in processing requests.

(4) If more than one request is received from the same requester, or from a group of requesters acting in concert, and the Department believes that such requests constitute a single request which would otherwise satisfy the unusual circumstances specified in paragraph (j)(1) of this section, and the requests involve clearly related matters, the Department may aggregate these requests for processing purposes.

(k) *Failure to comply.* If a bureau of the Department of the Treasury fails to comply with the time limits specified in paragraph (h) or (i), or the time extensions of paragraph (j) of this section, any person making a request for records in accordance with § 1.5 shall be considered to have exhausted administrative remedies with respect to the request. Accordingly, the person making the request may initiate suit as set forth in paragraph (l) of this section.

(l) *Judicial review.* If an adverse determination is made upon appeal pursuant to paragraph (i) of this section, or if no determination is made within the time limits specified in paragraphs (h) and (i) of this section, together with any extension pursuant to paragraph (j)(1) of this section or within the time otherwise agreed to by the requester, the requester may commence an action in a United States district court in the district in which he resides, in which his principal place of business is located, in which the records are situated, or in the District of Columbia, pursuant to 5 U.S.C. 552(a)(4).

(m) *Preservation of records.* Under no circumstances shall records be destroyed while they are the subject of a pending request, appeal, or lawsuit under the FOIA.

(n) *Processing requests that are not properly addressed.* A request that is not properly addressed as specified in the appropriate appendix to this subpart shall be forwarded to the appropriate bureau or bureaus for processing. If the recipient of the request does not know the appropriate bureau to forward it to, the request shall be forwarded to the Departmental Disclosure Officer (Disclosure Services, DO), who will determine the appropriate bureau. A request not addressed to the appropriate bureau will be considered to have been received for purposes of paragraph (f) of this section when the request has been received by the appropriate bureau office as designated in the appropriate appendix to this subpart. An improperly addressed request, when received by the appropriate bureau office, shall be acknowledged by that bureau.

§ 1.6 Business information.

(a) *In general.* Business information provided to the Department of the Treasury by a business submitter shall not be disclosed pursuant to a Freedom of Information Act request except in accordance with this section.

(b) *Notice to business submitters.* A bureau shall provide a business submitter with prompt written notice of receipt of a request encompassing its business information whenever required in accordance with paragraph (c) of this section, and except as is provided in paragraph (g) of this section. Such written notice shall either describe the exact nature of the business information requested or provide copies of the records or portions of records containing the business information.

(c) *When notice is required.* The bureau shall provide a business submitter with notice of receipt of a request whenever:

(1) The business submitter has in good faith designated the information as commercially or financially sensitive information, or

(2) The bureau has reason to believe that disclosure of the information could reasonably be expected to cause substantial competitive harm.

(3) Notice of a request for business information falling within paragraph (c)(1) or (2) of this section shall be required for a period of not more than ten years after the date of submission unless the business submitter requests, and provides acceptable justification for, a specific notice period of greater duration.

(4) The submitter's claim of confidentiality should be supported by a statement by an authorized representative of the company providing specific justification that the information in question is in fact confidential commercial or financial information and has not been disclosed to the public.

(d) *Opportunity to object to disclosure.* (1) Through the notice described in paragraph (b) of this section, a bureau shall afford a business submitter ten days from the date of the notice (exclusive of Saturdays, Sundays, and legal public holidays) to provide the bureau with a detailed statement of any objection to disclosure. Such statement shall specify all grounds for withholding any of the information under any exemption of the Freedom of Information Act and, in the case of Exemption 4, shall demonstrate why the information is considered to be a trade secret or commercial or financial information that is privileged or confidential. Information provided by a business submitter pursuant to this paragraph may itself be subject to disclosure under the FOIA.

(2) When notice is given to a submitter under this section, the requester shall be advised that such notice has been given to the submitter. The requester shall be further advised that a delay in responding to the request may be considered a denial of access to records and that the requester may proceed with an administrative appeal or seek judicial review, if appropriate. However, the requester will be invited to agree to a voluntary extension of time so that the bureau may review the business submitter's objection to disclose.

(e) *Notice of intent to disclose.* A bureau shall consider carefully a business submitter's objections and specific grounds for nondisclosure prior to determining whether to disclose business information. Whenever a bureau decides to disclose business information over the objection of a business submitter, the bureau shall forward to the business submitter a written notice which shall include:

(1) A statement of the reasons for which the business submitter's disclosure objections were not sustained;

(2) A description of the business information to be disclosed; and

(3) A specified disclosure date which is not less than ten days (exclusive of Saturdays, Sundays, and legal public holidays) after the notice of the final

decision to release the requested information has been mailed to the submitter. Except as otherwise prohibited by law, a copy of the disclosure notice shall be forwarded to the requester at the same time.

(f) *Notice of FOIA lawsuit.* Whenever a requester brings suit seeking to compel disclosure of business information covered by paragraph (c) of this section, the bureau shall promptly notify the business submitter.

(g) *Exception to notice requirement.* The notice requirements of this section shall not apply if:

(1) The bureau determines that the information shall not be disclosed;

(2) The information lawfully has been published or otherwise made available to the public; or

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552).

§ 1.7 Fees for services.

(a) *In general.* This fee schedule is applicable uniformly throughout the Department of the Treasury and pertains to requests processed under the Freedom of Information Act. Specific levels of fees are prescribed for each of the following categories of requesters. Requesters are asked to identify the applicable fee category they belong to in their initial request in accordance with § 1.5(b).

(1) *Commercial use requesters.* These requesters are assessed charges which recover the full direct costs of searching for, reviewing, and duplicating the records sought. Commercial use requesters are not entitled to two hours of free search time or 100 free pages of duplication of documents. Moreover, when a request is received for disclosure that is primarily in the commercial interest of the requester, the Department is not required to consider a request for a waiver or reduction of fees based upon the assertion that disclosure would be in the public interest. The Department may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records, or no records are located.

(2) *Educational and non-commercial scientific institution requesters.* Records shall be provided to requesters in these categories for the cost of duplication alone, excluding charges for the first 100 pages. To be eligible, requesters must show that the request is made under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. These categories do not include requesters who want records for use in meeting individual academic research or study requirements.

(3) *Requesters who are representatives of the news media.* Records shall be provided to requesters in this category for the cost of duplication alone, excluding charges for the first 100 pages.

(4) *All other requesters.* Requesters who do not fit any of the categories described above shall be charged fees that will recover the full direct cost of searching for and duplicating records that are responsive to the request, except that the first 100 pages of duplication and the first two hours of search time shall be furnished without charge. The Department may recover the cost of searching for records even if there is ultimately no disclosure of records, or no records are located. Requests from persons for records about themselves filed in the Department's systems of records shall continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for duplication, after the first 100 pages are furnished free of charge.

(b) *Fee waiver determination.* Where the initial request includes a request for reduction or waiver of fees, the responsible official shall determine whether to grant the request for reduction or waiver before processing the request and notify the requester of this decision. If the decision does not waive all fees, the responsible official shall advise the requester of the fact that fees shall be assessed and, if applicable, payment must be made in advance pursuant to § 1.7(e)(2).

(c) *When fees are not charged.* (1) No fee shall be charged for monitoring a requester's inspection of records.

(2) Fees shall be charged in accordance with the schedule contained in paragraph (g) of this section for services rendered in responding to requests for records, unless any one of the following applies:

(i) Services were performed without charge;

(ii) The cost of collecting a fee would be equal to or greater than the fee itself; or,

(iii) The fees were waived or reduced in accordance with paragraph (d) of this section.

(d) *Waiver or reduction of fees.* (1) Fees may be waived or reduced on a case-by-case basis in accordance with this paragraph by the official who determines the availability of the records, provided such waiver or reduction has been requested in writing. Fees shall be waived or reduced by this official when it is determined, based upon the submission of the requester, that a waiver or reduction of the fees is in the public interest because furnishing the information is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Fee waiver/reduction requests shall be evaluated against the fee waiver policy guidance issued by the Department of Justice on April 2, 1987.

(2) Normally no charge shall be made for providing records to state or foreign governments, international governmental organizations, or local government agencies or offices.

(3) Appeals from denials of requests for waiver or reduction of fees shall be decided in accordance with the criteria set forth in paragraph (d)(1) of this section by the official authorized to decide appeals from denials of access to records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the denial of the initial request for waiver or reduction and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(4) Appeals from an adverse determination of the requester's category as described in § 1.5(b)(2) and provided in § 1.5(i)(1) shall be decided by the official authorized to decide appeals from denials of access to records and shall be based upon a review of the requester's submission and the bureau's own records. Appeals shall be addressed in writing to the office or officer specified in the appropriate appendix to this subpart within 35 days of the date of the bureau's determination of the requester's category and shall be decided within 20 days (excluding Saturdays, Sundays, and legal public holidays).

(e) *Advance notice of fees.* (1) When the fees for processing the request are estimated to exceed the limit set by the requester, and that amount is less than $250, the requester shall be notified of the estimated costs. The requester must provide an agreement to pay the estimated costs; however, the requester shall also be given an opportunity to reformulate the request in an attempt to reduce fees.

(2) If the requester has failed to state a limit and the costs are estimated to exceed $250.00, the requester shall be notified of the estimated costs and must pre-pay such amount prior to the processing of the request, or provide satisfactory assurance of full payment if the requester has a history of prompt

payment of FOIA fees. The requester shall also be given an opportunity to reformulate the request in such a way as to constitute a request for responsive records at a reduced fee.

(3) When the Department or a bureau of the Department acts under paragraph (e) (1) or (2) of this section, the administrative time limits of 20 days (excluding Saturdays, Sundays, and legal public holidays) from receipt of initial requests or appeals, plus extensions of these time limits, shall begin only after fees have been paid, a written agreement to pay fees has been provided, or a request has been reformulated.

(f) *Form of payment.* (1) Payment may be made by check or money order payable to the Treasury of the United States or the relevant bureau of the Department of the Treasury.

(2) The Department of the Treasury reserves the right to request prepayment after a request is processed and before documents are released.

(3) When costs are estimated or determined to exceed $250, the Department shall either obtain satisfactory assurance of full payment of the estimated cost where the requester has a history of prompt payment of FOIA fees or require a requester to make an advance payment of the entire estimated or determined fee before continuing to process the request.

(4) If a requester has previously failed to pay a fee within 30 days of the date of the billing, the requester shall be required to pay the full amount owed plus any applicable interest, and to make an advance payment of the full amount of the estimated fee before the Department begins to process a new request or the pending request. Whenever interest is charged, the Department shall begin assessing interest on the 31st day following the day on which billing was sent. Interest shall be at the rate prescribed in 31 U.S.C. 3717. In addition, the Department shall take all steps authorized by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996, including administrative offset pursuant to 31 CFR part 5, disclosure to consumer reporting agencies and use of collection agencies, to effect payment.

(g) *Amounts to be charged for specific services.* The fees for services performed by a bureau of the Department of the Treasury shall be imposed and collected as set forth in this paragraph.

(1) *Duplicating records.* All requesters, except commercial requesters, shall receive the first 100 pages duplicated without charge. Absent a determination to waive fees, a bureau shall charge requesters as follows:

(i) $.20 per page, up to 8½ x 14", made by photocopy or similar process.

(ii) Photographs, films, and other materials—actual cost of duplication.

(iii) Other types of duplication services not mentioned above—actual cost.

(iv) Material provided to a private contractor for copying shall be charged to the requester at the actual cost charged by the private contractor.

(2) *Search services.* Bureaus shall charge for search services consistent with the following:

(i) *Searches for other than electronic records.* The Department shall charge for search time at the salary rate(s) (basic pay plus 16 percent) of the employee(s) making the search. However, where a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. This charge shall include transportation of personnel and records necessary to the search at actual cost. Fees may be charged for search time as prescribed in § 1.7, even if the search does not yield any responsive records, or if records are denied.

(ii) *Searches for electronic records.* The Department shall charge for actual direct cost of the search, including computer search time, runs, and the operator's salary. The fee for computer output shall be actual direct costs. For requesters in the "all other" category, when the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search (i.e., the operator), the charge for the computer search will begin.

(3) *Review of records.* The Department shall charge commercial use requesters for review of records at the salary rate(s) (i.e., basic pay plus 16 percent) of the employee(s) making the review. However, when a single class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), an average rate for the range of grades typically involved may be established. Fees may be charged for review time as prescribed in § 1.7, even if records ultimately are not disclosed.

(4) *Inspection of records.* Fees for all services provided shall be charged whether or not copies are made available to the requester for inspection.

(5) *Other services.* Other services and materials requested which are not covered by this part nor required by the FOIA are chargeable at the actual cost to the Department. This includes, but is not limited to:

(i) Certifying that records are true copies;

(ii) Sending records by special methods such as express mail, etc.

(h) *Aggregating requests.* When the Department or a bureau of the Department reasonably believes that a requester or group of requesters is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency shall aggregate any such requests and charge accordingly.

Appendices to Subpart A

Appendix A—Departmental Offices

1. *In general.* This appendix applies to the Departmental Offices as defined in 31 CFR 1.1(a)(1).

2. *Public reading room.* The public reading room for the Departmental Offices is the Treasury Library. The Library is located in the Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. For building security purposes, visitors are required to make an appointment by calling 202–622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Departmental Offices will be made by the head of the organizational unit having immediate custody of the records requested or the delegate of such official. Requests for records should be addressed to: Freedom of Information Request, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

4. *Administrative appeal of initial determination to deny records.*

i. Appellate determinations under 31 CFR 1.5(i) with respect to records of the Departmental Offices will be made by the Secretary, Deputy Secretary, Under Secretary, General Counsel, Inspector General, Treasurer of the United States, or Assistant Secretary having jurisdiction over the organizational unit which has immediate custody of the records requested, or the delegate of such officer.

ii. Appellate determinations with respect to requests for expedited processing shall be made by the Deputy Assistant Secretary (Administration).

iii. Appeals should be addressed to: Freedom of Information Appeal, DO, Assistant Director, Disclosure Services, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220.

5. *Delivery of process.* Service of process will be received by the General Counsel of the Department of the Treasury or the delegate of such officer and shall be delivered to the following location:

General Counsel, Department of the Treasury, Room 3000, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Appendix B—Internal Revenue Service

1. *In general.* This appendix applies to the Internal Revenue Service. See also 26 CFR 601.702.

2. *Public reading room.* The public reading rooms for the Internal Revenue Service are maintained at the following location:

National Office

Mailing Address

Freedom of Information Reading Room, P.O. Box 795, Ben Franklin Station, Washington, DC 20044

Walk-in Address

Room 1621, 1111 Constitution Avenue, NW., Washington, D.C.

Northeast Region

Mailing Address

Freedom of Information Reading Room, P.O. Box 5138, E:QMS:D, New York, NY 10163

Walk-in Address

11th Floor, 110 W. 44th Street, New York, NY

Midstates Region

Mailing Address

Freedom of Information Reading Room, Mail Code 7000 DAL, 1100 Commerce Street, Dallas, TX 75242

Walk-in Address

10th Floor, Rm. 10B37, 1100 Commerce Street, Dallas, TX

Southeast Region

Mailing Address

401 W. Peachtree Street, NW, Stop 601D, Room 868, Atlanta, GA 30365

Walk-in Address

Same as mailing address

Western Region

Mailing Address

1301 Clay Street, Stop 800–S, Oakland, CA 94612

Walk-in Address

8th Floor, 1301 Clay Street, Oakland, CA

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Internal Revenue Service, grant expedited processing, grant a fee waiver, or determine requester category will be made by those officials specified in 26 CFR 601.702.

4. Administrative appeal of initial determination to deny records. Appellate determinations under 31 CFR 1.5(i) with respect to records of the Internal Revenue Service will be made by the Commissioner of Internal Revenue or the delegate of such officer. Appeals made by mail should be addressed to: Freedom of Information Appeal, Commissioner of Internal Revenue Service, c/o Ben Franklin Station, P. O. Box 929, Washington, D.C. 20044.

Appeals may be delivered personally to the Assistant Chief Counsel (Disclosure Litigation) CC:EL:D, Office of the Chief Counsel, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, D.C.

5. *Delivery of process.* Service of process shall be effected consistent with Rule 4 of the Federal Rule of Civil Procedure, and directed to the Commissioner of Internal Revenue at the following address: Commissioner, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, D.C. 20224. Attention: CC:EL:D.

Appendix C—United States Customs Service

1. *In general.* This appendix applies to the United States Customs Service.

2. *Public reading room.* The public reading room for the United States Customs Service is maintained at the following location: United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229.

3. *Requests for records.*

a. *Headquarters*—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the appropriate Division Director at Customs Service Headquarters having custody of or functional jurisdiction over the subject matter of the requested records. If the request relates to records maintained in an office which is not within a division, the initial determination shall be made by the individual designated for that purpose by the Assistant Commissioner having responsibility for that office. Requests may be mailed or delivered in person to: Freedom of Information Act, Chief, Disclosure Law Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

b. *Field Offices*—Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records maintained by the Office of Investigations will be made by the Special Agent in Charge in whose office the records are maintained. Initial determinations of records maintained in Customs Ports of Entry as to whether or not to grant requests for records will be made by the Port Director of the Customs Service Port having jurisdiction over the Port of Entry in which the records are maintained. Requests may be mailed or faxed to or delivered personally to the respective Special Agents in Charge or Port Directors of the Customs Service Ports at the following locations:

Offices of Special Agents in Charge (SACS)

Atlanta—SAC

1691 Phoenix Blvd., Suite 250, Atlanta, Georgia 30349, Phone (770) 994–2230, FAX (770) 994–2262

Baltimore—SAC

40 South Gay Street, 3rd Floor, Baltimore, Maryland 21202, Phone (410) 962–2620, FAX (410) 962–3469

Boston—SAC ,

10 Causeway Street, Room 722, Boston, MA 02222–1054, Phone (617) 565–7400, FAX (617) 565–7422

Buffalo—SAC

111 West Huron Street, 416, Burralo, New York 14202, Phone (716) 551–4375, FAX (716) 551–4379

Chicago—SAC

610 South Canal Street, Room 1001, Chicago, Illinois 60607, Phone (312) 353–8450, FAX (312) 353–8455

Denver—SAC

115 Inverness Drive, East, Suite 300, Englewood, CO 80112–5131, Phone (303) 784–6480, FAX (303) 784–6490

Detroit—SAC

McNamara Federal Building, 477 Michigan Avenue, Room 350, Detroit, Michigan 48226–2568, Phone (313) 226–3166, FAX (313) 226–6282

El Paso—SAC

9400 Viscount Blvd., Suite 200, El Paso, Texas 79925, Phone (915) 540–5700, FAX (915) 540–5754

Houston—SAC

4141 N. Sam Houston Pkwy, E., Houston, Texas 77032, Phone (281) 985–0500, FAX (281) 985–0505

Los Angeles—SAC

300 South Ferry St., Room 2037, Terminal Island, CA 90731, Phone (310) 514–6231, FAX (310) 514–6280

Miami—SAC

8075 NW 53rd Street, Scranton Building, Miami, Florida 33166, Phone (305) 597–6030, FAX (305) 597–6227

New Orleans—SAC

423 Canal Street, Room 207, New Orleans, LA 70130, Phone (504) 670–2416, FAX (504) 589–2059

New York—SAC

6 World Trade Center, New York, New York 10048–0945, Phone (212) 466–2900, FAX (212) 466–2903

San Antonio—SAC

10127 Morocco, Suite 180, San Antonio, Texas 78216, Phone (210) 229–4561, FAX (210) 229–4582

San Diego—SAC

185 West "F" Street, Suite 600, San Diego, CA 92101, Phone (619) 557–6850, FAX (619) 557–5109

San Francisco—SAC

1700 Montgomery Street, Suite 445, San Francisco, CA 94111, Phone (415) 705–40701, FAX (415) 705–4065

San Juan—SAC

#1, La Puntilla Street, Room 110, San Juan, PR 00901, Phone (787) 729–6975, FAX (787) 729–6646

Seattle—SAC

1000–2nd Avenue, Suite 2300, Seattle, Washington, 98104, Phone (206) 553–7531, FAX (206) 553–0826

Tampa—SAC

2203 North Lois Avenue, Suite 600, Tampa, Florida 33607, Phone (813) 348–1881, FAX (813) 348–1871

Tucson—SAC

555 East River Road, Tucson, Arizona 85704, Phone (520) 670–6026, FAX (520) 670–6233

Customs Service Ports

Anchorage: 605 West Fourth Avenue Anchorage, AK 99501. Phone: (907) 271–2675; FAX: (907) 271–2684.

Minneapolis: 110 South Street Minneapolis, MN 55401. Phone: (612) 348–1690; FAX : (612) 348–1630.

Baltimore: 200 St. Paul Place Baltimore, MD 21202. Phone: (410) 962–2666; FAX: (410) 962–9335.

Mobile: 150 North Royal Street Mobile, AL 36602. Phone: (205) 441–5106; FAX: (205) 441–6061.

Blaine: 9901 Pacific Highway Blaine, WA 98230. Phone: (360) 332–5771; FAX: (360) 332–4701.

New Orleans: 423 Canal Street New Orleans, LA 70130. Phone: (504) 589–6353; FAX: (504) 589–7305.

Boston: 10 Causeway Street Boston, MA 02222–1059. Phone: (617) 565–6147; FAX: (617) 565–6137.

New York: 6 World Trade Center New York, NY 10048. Phone: (212) 466–4444; FAX: (212) 455–2097.

Buffalo: 111 West Huron Street Buffalo, NY 14202–2378. Phone: (716) 551–4373; FAX: (716) 551–5011.

New York—JFK Area: Building #77 Jamaica, NY 11430. Phone: (718) 553–1542; FAX: (718) 553–0077.

Champlain: 35 West Service Road Rts. 1 & 9 South Champlain, NY 12919. Phone: (518) 298–8347; FAX: (518) 298–8314.

New York—NY/Newark Area: Hemisphere Center, Newark, NJ 07114. Phone: (201) 645–3760; FAX: (201) 645–6634.

Charleston: 200 East Bay Street Charleston, SC 29401. Phone: (803) 727–4296; FAX : (803) 727–4043.

Nogales: 9 North Grand Avenue Nogales, AZ 85621. Phone: (520) 287–1410; FAX: (520) 287–1421.

Charlotte: 1801–K Cross Beam Drive Charlotte, NC 28217. Phone: (704) 329–6101; FAX: (704) 329–6103.

Norfolk: 200 Granby Street Norfolk, VA 23510. Phone: (804) 441–3400; FAX: (804) 441–6630.

Charlotte/Amalie: Main Post OFC—Sugar Estate St. Thomas, VI 00801. Phone: (809) 774–2511; FAX: (809) 776–3489.

Pembina: P.O. Box 610 Pembina, ND 58271. Phone (701) 825–6201; FAX: (701) 825–6473.

Chicago: 610 South Canal Street Chicago, IL 60607. Phone: (312) 353–6100; FAX: (312) 353–2337.

Philadelphia: 2nd & Chestnut Streets Philadelphia, PA 19106. Phone: (215) 597–4605; FAX: (215) 597–2103.

Cleveland: 56 Erieview Plaza Cleveland, OH 44114. Phone: (216) 891–3804; FAX: (216) 891–3836.

Portland, Oregon: 511 NW Broadway Portland, OR 97209. Phone: (503) 326–2865; FAX: (503) 326–3511.

Dallas/Fort Worth: P.O. Box 61905 Dallas/Fort Worth Airport, TX 75261. Phone: (972) 574–2170; FAX: (972) 574-4818.

Providence: 49 Pavilion Avenue Providence, RI 02905. Phone: (401) 941–6326; FAX: (401) 941–6628.

Denver: 4735 Oakland Street Denver, CO 80239. Phone: (303) 361–0715; FAX: (303) 361–0722.

San Diego: 610 West Ash Street San Diego, CA 92188. Phone: (619) 557–6758; FAX: (619) 557–5314.

Detroit: 477 Michigan Avenue Detroit, MI 48226. Phone: (313) 226–3178; FAX: (313) 226–3179.

San Francisco: 555 Battery Avenue San Francisco, CA 94111. Phone: (415) 744–7700; FAX: (415) 744–7710.

Duluth: 515 West 1st Street Duluth, MN 55802–1390. Phone: (218) 720–5201; FAX: (218) 720–5216.

San Juan: #1 La Puntilla San Juan, PR 00901. Phone: (809) 729–6965; FAX: (809) 729–6978.

El Paso: 9400 Viscount Boulevard El Paso, TX 79925. Phone: (915) 540–5800; FAX: (915) 540–3011.

Savannah: 1 East Bay Street Savannah, GA 31401. Phone: (912) 652–4256; FAX: (912) 652–4435.

Great Falls: 300 2nd Avenue South Great Falls, MT 59403. Phone: (406) 453–7631; FAX: (406) 453–7069.

Seattle: 1000 2nd Avenue Seattle, WA 98104–1049. Phone: (206) 553–0770; FAX: (206) 553–2970.

Honolulu: 335 Merchant Street Honolulu, HI 96813. Phone: (808) 522–8060; FAX: (808) 522–8060.

St. Albans: P.O. Box 1490 St. Albans, VT 05478. Phone: (802) 524–7352; FAX: (802) 527–1338.

Houston/Galveston: 1717 East Loop Houston, TX 77029 . Phone: (713) 985–6712; FAX: (713) 985–6705.

St. Louis: 4477 Woodson Road St. Louis, MO 63134–3716. Phone: (314) 428–2662; FAX: (314) 428–2889.

Laredo/Colombia: P.O. Box 3130 Laredo, TX 78044. Phone: (210) 726–2267; FAX: (210) 726–2948.

Tacoma: 2202 Port of Tacoma Road, Tacoma, WA 98421. Phone: (206) 593–6336; FAX: (206) 593–6351.

Los Angeles: 300 South Ferry Street Terminal Island, CA 90731. Phone: (310) 514–6001; FAX: (310) 514–6769.

Tampa: 4430 East Adamo Drive Tampa, FL 33605. Phone: (813) 228–2381; FAX: (813) 225–7309.

Miami Airport: 6601 West 25th Street Miami, FL 33102–5280. Phone: (305) 869–2800; FAX: (305) 869–2822.

Washington DC: P.O. Box 17423 Washington, DC 20041. Phone: (703) 318–5900; FAX: (703) 318–6706.

Milwaukee: P.O. Box 37260 Milwaukee, WI 53237–0260. Phone: (414) 571–2860; FAX: (414) 762–0253.

c. All such requests should be conspicuously labeled on the face of the envelope, "Freedom of Information Act Request" or "FOIA Request".

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Assistant Commissioner of Customs (Office of Regulations and Rulings), and all such appeals should be mailed, faxed (202/482–6943) or personally delivered to the United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229. If possible, a copy of the initial letter of determination should be attached to the appeal.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, D.C. 20229.

Appendix D—United States Secret Service

1. *In general.* This appendix applies to the United States Secret Service.

2. *Public reading room.* The United States Secret Service will provide a room on an ad hoc basis when necessary. Contact the Disclosure Officer, Room 720, 1800 G Street, NW, Washington, DC 20223 to make appointments.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Secret Service will be made by the Freedom of Information and Privacy Acts Officer, United States Secret Service. Requests may be mailed or delivered in person to: Freedom of Information Act Request, FOIA and Privacy Acts Officer, U.S. Secret Service, Room 720, 1800 G Street, NW, Washington, D.C. 20223.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Secret Service will be made by the Deputy Director, United States Secret Service. Appeals should be addressed to: Freedom of Information Appeal, Deputy Director, U.S. Secret Service, Room 800, 1800 G Street, NW, Washington, D.C. 20223.

5. *Delivery of process.* Service of process will be received by the United States Secret Service Chief Counsel at the following address: Chief Counsel, U.S. Secret Service, Room 842, 1800 G Street, NW,Washington, D.C. 20223.

Appendix E—Bureau of Alcohol, Tobacco and Firearms

1. *In general.* This appendix applies to the Bureau of Alcohol, Tobacco and Firearms.

2. *Public reading room.* The Bureau of Alcohol, Tobacco and Firearms will make materials available for review on an ad hoc basis when necessary. Contact the Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Alcohol, Tobacco, and Firearms will be made by the Chief, Disclosure Division, Office of Assistant Director (Liaison and Public Information) or the delegate of such officer. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Chief, Disclosure Division, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Alcohol,

Tobacco and Firearms will be made by the Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms or the delegate of such officer.

Appeals may be mailed or delivered in person to: Freedom of Information Appeal, Assistant Director, Liaison and Public Information, Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226.

5. *Delivery of process.* Service of process will be received by the Director of the Bureau of Alcohol, Tobacco, and Firearms at the following location: Bureau of Alcohol, Tobacco, and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, Attention: Chief Counsel.

Appendix F—Bureau of Engraving and Printing

1. *In general.* This appendix applies to the Bureau of Engraving and Printing.

2. *Public reading room.* Contact the Disclosure Officer, 14th and C Streets, SW., Washington, DC 20228, to make an appointment.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Bureau of Engraving and Printing will be made by the Assistant to the Director. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, (Assistant to the Director), Room 112–M, Bureau of Engraving and Printing, Washington, D.C. 20228.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of Engraving and Printing will be made by the Director of the Bureau of Engraving and Printing or the delegate of the Director. Appeals may be mailed or delivered in person to: Freedom of Information Appeal, Director, Bureau of Engraving and Printing, 14th and C Streets, S.W., Room 119–M, Washington, D.C. 20228.

5. *Delivery of process.* Service of process will be received by the Chief Counsel or the delegate of such officer at the following location: Chief Counsel, Bureau of Engraving and Printing, 14th and C Streets, SW, Room 104–24 M, Washington, D.C. 20228.

Appendix G—Financial Management Service

1. *In general.* This appendix applies to the Financial Management Service.

2. *Public reading room.* The public reading room for the Financial Management Service is maintained at the following location: Library, Main Treasury Building, 1500 Pennsylvania Avenue NW, Washington, D.C. 20220. For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer, Financial Management Service. Requests may be mailed or delivered in person to: Freedom of Information Request, Disclosure Officer, Financial Management Service, 401 14th Street, SW., Washington, D.C. 20227.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) will be made by the Commissioner, Financial Management Service. Appeals may be mailed to: Freedom of Information Appeal (FOIA), Commissioner, Financial Management Service, 401 14th Street, SW., Washington, D.C. 20227.

Appeals may be delivered personally to the Office of the Commissioner, Financial Management Service, 401 14th Street, SW., Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Commissioner, Financial Management Service, and shall be delivered to: Commissioner, Financial Management Service, Department of the Treasury, 401 14th Street, SW., Washington, D.C. 20227.

Appendix H—United States Mint

1. *In general.* This appendix applies to the United States Mint.

2. *Public reading room.* The U.S. Mint will provide a room on an ad hoc basis when necessary. Contact the Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th floor, 633 3rd Street, N.W., Washington, D.C. 20220.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the United States Mint will be made by the Freedom of Information/Privacy Act Officer, United States Mint. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Freedom of Information/Privacy Act Officer, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW, Washington, D.C. 20220.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the United States Mint will be made by the Director of the Mint. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW, Washington, D.C. 20220.

5. *Delivery of process.* Service of process will be received by the Director of the Mint and shall be delivered to: Chief Counsel, United States Mint, Judiciary Square Building, 7th Floor, 633 3rd Street, NW, Washington, D.C. 20220.

Appendix I—Bureau of the Public Debt

1. *In general.* This appendix applies to the Bureau of the Public Debt.

2. *Public reading room.* The public reading room for the Bureau of the Public Debt is maintained at the following location: Library, Main Treasury Building, 1500 Pennsylvania Avenue, NW, Washington, D.C. 20220. For building security purposes, visitors are required to make an appointment by calling 202/622–0990.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Disclosure Officer of the Bureau of the Public Debt. Requests may be sent to: Freedom of Information Act Request, Disclosure Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street, N.W., Room 553, Washington, D.C. 20239–0001.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of the Public Debt will be made by the Commissioner of the Public Debt. Appeals may be sent to: Freedom of Information Appeal, Commissioner of the Public Debt, Department of the Treasury, 999 E Street, NW., Room 553, Washington, D.C. 20239–0001.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, or the delegate of such officer, and shall be delivered to the following location: Chief Counsel's Office, Bureau of the Public Debt, Room 503, 999 E Street, NW., Washington, D.C. 20239–0001, or Bureau of the Public Debt, Hintgen Building, Room 119, Parkersburg, WV 26106–1328.

Appendix J—Office of the Comptroller of the Currency

1. *In general.* This appendix applies to the Office of the Comptroller of the Currency.

2. *Public reading room.* The Office of the Comptroller of the Currency will make materials available through its Public Information Room at 250 E Street, SW., Washington, D.C. 20219.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of the Comptroller of the Currency will be made by the Disclosure Officer or the official so designated. Requests may be mailed or delivered in person to: Freedom of Information Act Request, Disclosure Officer, Communications Division, 3rd Floor, Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of the Comptroller of the Currency will be made by the Chief Counsel or delegates of such person. Appeals made by mail should be addressed to: Communications Division, Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219.

Appeals may be delivered personally to the Communications Division, Comptroller of the Currency, 250 E Street, SW, Washington, D.C.

5. *Delivery of process.* Service of process will be received by the Director, Litigation Division, Comptroller of the Currency, and shall be delivered to such officer at the following location: Litigation Division, Comptroller of the Currency, 250 E Street, SW., Washington, D.C. 20219.

Appendix K—Federal Law Enforcement Training Center

1. *In general.* This apppendix applies to the Federal Law Enforcement Training Center.

2. *Public reading room.* The public reading room for the Federal Law Enforcement Training Center is maintained at the following location: Library, Building 262, Federal Law Enforcement Training Center, Glynco, GA 31524.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records will be made by the Chief, Management Analysis Division, Federal Law Enforcement Training Center. Requests made by mail should be addressed to: Freedom of Information Act Request, Freedom of Information Act Officer, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Requests may be delivered personally to the Management Analysis Division, Federal Law Enforcement Training Center, Building 94, Glynco, GA.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the consolidated Federal Law Enforcement Training Center will be made by the Director, Federal Law Enforcement Training Center. Appeals may be mailed to: Freedom of Information Appeal, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

5. *Delivery of process.* Service of process will be received by the Legal Counsel of the Federal Law Enforcement Training Center, or his delegate, and shall be delivered to such officer at the following location: Legal Counsel, Federal Law Enforcement Training Center, Department of the Treasury, Building 94, Glynco, GA 31524.

Appendix L—Office of Thrift Supervision

1. *In general.* This appendix applies to the Office of Thrift Supervision (OTS). OTS regulatory handbooks and other publications are available for sale. Information may be obtained by calling the OTS Order Department at 301/645–6264. OTS regulatory handbooks and other publications may be purchased by forwarding a request, along with a check to: OTS Order Department, P.O. Box 753, Waldorf, MD 20604 or by calling 301/645–6264 to pay by VISA or MASTERCARD.

2. *Public reading room.* The public reading room for the Office of Thrift Supervision is maintained at the following location: 1700 G Street, NW., Washington, DC 20552.

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) as to whether to grant requests for records of the Office of Thrift Supervision will be made by the Director, OTS Dissemination Branch. Requests for records should be addressed to: Freedom of Information Request, Manager, Dissemination Branch, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Requests for records may be delivered in person to: Public Reference Room, Office of Thrift Supervision 1700 G Street, NW., Washington, DC.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Office of Thrift Supervision will be made by the Director, Records Management & Information Policy, Office of Thrift Supervision, or their designee. Appeals made by mail should be addressed to: Freedom of Information Appeal, Director, Records Management & Information Policy Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

Appeals may be delivered in person to: Public Reference Room, Office of Thrift Supervision 1700 G Street, NW., Washington, DC.

5. *Delivery of process.* Service of process will be received by the Corporate Secretary of the Office of Thrift Supervision or their designee and shall be delivered to the following location: Corporate Secretary, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

[FR Doc. 99–11126 Filed 5–5–99; 8:45 am]

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federal register

Thursday
May 6, 1999

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 551
Smoking/No Smoking Areas; Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 551

[BOP–1084–P]

RIN 1120–AA79

Smoking/No Smoking Areas

AGENCY: Bureau of Prisons, Justice.

ACTION: Supplemental notice of proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing a supplemental notice of proposed rule pertaining to smoking/no smoking areas in Bureau of Prisons facilities. The supplemental notice retains the requirement to have a designated area for smoking as part of an authorized religious activity. The supplemental notice makes clear that the Warden may designate only outdoor smoking areas for general use and that these areas must be clearly identified. The supplemental notice also requires the concurrence of the Regional Director if the Warden chooses not to designate smoking areas for general use. Once this occurs, the Regional Director's concurrence is also required if the Warden later chooses to designate smoking areas for general use at the institution. The notice is intended to promote a clean air environment and to protect the health and safety of staff and inmates.

DATES: Comments due by July 6, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing a supplemental notice of its proposed rule on smoking (28 CFR part 551, subpart N). The proposed rule previously published on this subject on November 25, 1998 (63 FR 65502) eliminated indoor smoking in all institutions except when smoking is part of an authorized religious activity. The Bureau received comment from nine respondents. As part of the Bureau's response to comment, this supplemental notice of proposed rule making allows the Warden, with the Regional Director's concurrence, to choose not to designate any smoking areas for general use. Once this occurs, the Regional Director's concurrence is required if the Warden later chooses to designate smoking areas for general use at the institution.

The commenters, all current inmates except one, believe that prohibiting smoking within Bureau facilities will have little impact on reducing smoking and improving the air quality. Specifically, four commenters stressed that the current restrictions on smoking are rarely enforced. One commenter alleging that most staff are smokers believes the proposed regulations are not clear whether staff must also adhere to the ban on indoor smoking. This commenter included statements from four individuals concurring with the above-noted conclusions. In response, the Bureau notes that staff are responsible for ensuring that Bureau rules are followed. Maintaining a smoke-free environment necessarily means that staff will be bound by the restrictions. The Bureau is committed to investigate reported violations of the smoking policy whether by staff or inmates. As a further instance of the seriousness of the Bureau's commitment, the Bureau published a proposed amendment to its discipline policy which elevated violations of the smoking policy from a low category prohibited act to a moderate category prohibited act on February 25, 1999 (64 FR 9432).

As a practical alternative, three commenters support non-smoking units instead of a total prohibition against indoor smoking. The Bureau has an obligation to its employees and to the inmates in its custody to provide the safest and healthiest environment possible. That is why the Bureau is proposing that the Warden be permitted, with the Regional Director's concurrence, to choose not to designate smoking areas for general use, or in the alternative, restricting smoking to only visibly designated outdoor locations with the exception that an indoor smoking area may be designated to be used exclusively for authorized religious activities. Dividing the living units between smoking and non smoking will not eliminate the health risks associated with passive inhalation of second-hand smoke. Two commenters suggest that all tobacco products be banned and no tobacco products be sold in federal prisons. The supplemental notice will assist the Bureau in evaluating the merit of these comments. The commissary at smoke-free institutions will not offer tobacco products for purchase.

One commenter suggests installing smoke detectors in all cells. The Bureau is in compliance with fire safety codes on smoke detectors in its housing units. The Bureau does not believe additional smoke detectors are necessary because a total ban on indoor smoking simplifies enforcement.

One commenter expressed concern that tobacco use not be restricted for religious purposes. The supplemental notice includes a revision to clarify that smoking as part of an authorized religious activity is to be allowed.

One commenter addressed the lack of health services support to those wishing to quit smoking. He feels health services should offer nicotine patches and nicorette gum. The Bureau understands that quitting smoking, under the best of circumstances, is a difficult task. That is why the Bureau will offer smoking cessations programs and nicotine patches will be available at inmate expense. These programs are available through normal health care programs offered to inmates.

Four commenters are against eliminating the Warden's authority to designate indoor smoking areas that provide smokers protection from adverse weather. They also expressed concern that the proposed rule does not provide for erection of a protective environment from adverse weather. The Bureau's primary goal is to protect inmates and staff from the hazards of tobacco smoke. The proposed regulations do not preclude the Warden from making some provision to accommodate outdoor smokers in adverse weather conditions.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. Comments received after the expiration of the comment period will be considered to the extent practicable. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national

government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 551

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 551 in subchapter C of 28 CFR, chapter V is proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 551—MISCELLANEOUS

1. The authority citation for 28 CFR part 551 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 1512, 3621, 3622, 3624, 4001, 4005, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; Pub. L. 99–500 (sec. 209); 28 CFR 0.95–0.99; Attorney General's May 1, 1995 Guidelines for Victim and Witness Assistance.

2. Subpart N is revised to read as follows:

Subpart N—Smoking/No Smoking Areas

Sec.
551.160 Purpose and scope.
551.161 Definitions.
551.162 Designated smoking areas.

Subpart N—Smoking/No Smoking Areas

§ 551.160 Purpose and scope.

To promote a clean air environment and to protect the health and safety of staff and inmates, the Bureau of Prisons prohibits smoking in its institutions unless the Warden authorizes smoking in a designated smoking area.

§ 551.161 Definitions.

For purpose of this subpart, *smoking* is defined as carrying or inhaling a lighted cigar, cigarette, pipe, or other lighted tobacco products.

§ 551.162 Designated smoking areas.

(a) The Warden must designate a smoking area for use in instances where smoking is to be part of an authorized religious activity.

(b)(1) The Warden may designate only outdoor smoking areas for general use (that is, for smoking which is not part of an authorized religious activity). These smoking areas must be clearly identified.

(2) The Warden, with the Regional Director's concurrence, may choose not to designate smoking areas for general use. Once this occurs, the Regional Director's concurrence is required if the Warden later chooses to designate smoking areas for general use at the institution.

[FR Doc. 99–11332 Filed 5–5–99; 8:45 am]

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Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 16, 48, and 52
Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott); Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 16, 48, and 52

[FAR Case 98–017]

RIN 9000–AI35

Federal Acquisition Regulation; Review of Award Fee Determinations (Burnside-Ott)

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR). The amendment implements rulings of the United States Court of Appeals and the United States Court of Federal Claims. The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts unless a more specific statute provides for other remedies arising from a contract dispute.

DATES: Comments should be submitted on or before July 6, 1999 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration FAR Secretariat (MVR), Attn: Laurie Duarte 1800 F Street, NW, Room 4035, Washington, DC 20405. E-mail comments submitted over Internet should be addressed to: farcase.98–017@gsa.gov. Please cite FAR case 98–017 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph DeStefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 98–017.

SUPPLEMENTARY INFORMATION:

A. Background

This proposed rule amends the FAR to implement the rulings of the United States Court of Appeals in *Burnside-Ott Aviation Training Center* v. *Dalton, Secretary of the Navy*, 107 F.3d 854 (Fed. Cir. 1997) and of the United States Court of Federal Claims in *Rig Masters, Inc.* v. *The United States*, 1998 WL 835097 (Fed. Cl.). The rulings are that the Contract Disputes Act applies to all disputes arising under Government contracts unless a more specific statute provides for remedies arising from a contract dispute. FAR 16.405–2(a) is amended by deleting the statement that award-fee determinations are not subject to the disputes clause of the contract and inserting a statement that the determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government. FAR 16.406 is amended to conform with the newly revised 16.405–2(a). FAR part 48 is amended to remove references to the Contract Disputes Act and state that certain unilateral decisions are made solely at the discretion of the Government. The clauses at 52.248–1 and 52.248–3 are amended to conform with the newly revised part 48. The clauses at 52.219–10, 52.219–26 and 52.226–1 are amended to remove exemptions to the Contract Disputes Act.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* because the rule implements court rulings relating to a statute that has been in effect since 1979. The proposed rule retains the government's unilateral decision authority in these matters. Therefore, we do not believe that the proposed rule will have an impact on small entities. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subparts also will be considered in accordance with 5 U.S.C. 601, *et seq.* (FAR Case 98–017), in correspondence

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 16, 48, and 52

Government procurement.

Dated: April 30, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, it is proposed that 48 CFR parts 16, 48, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 16, 48, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 16—TYPES OF CONTRACTS

2. Section 16.405–2 is amended by revising the last sentence of paragraph (a) to read as follows:

16.405–2 Cost-plus-award-fee contracts.

(a) * * * This determination and the methodology for determining the award fee are unilateral decisions made solely at the discretion of the Government.

* * * * *

3. Section 16.406 is amended by revising paragraph (e)(3) to read as follows:

16.406 Contract clauses.

* * * * *

(e) * * *

(3) Expressly provides that the award amount and the award-fee determination methodology are unilateral decisions made solely at the discretion of the Government.

PART 48—VALUE ENGINEERING

4. Section 48.103 is amended by revising the introductory text of paragraph (c) to read as follows:

48.103 Processing value engineering change proposals.

* * * * *

(c) The following Government decisions are unilateral decisions made solely at the discretion of the Government:

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTACT CLAUSES

5. Section 52.219–10 is amended by revising the date of the clause and the last sentence of paragraph (b) to read as follows:

52.219–10 Incentive Subcontracting Program.

* * * * *

Incentive Subcontracting Program (Date)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

6. Section 52.219–26 is amended by revising the date of the clause and the

last sentence of paragraph (b) to read as follows:

52.219–26 Small Disadvantaged Business Participation Program—Incentive Subcontracting.

* * * * *

Small Disadvantaged Business Participation Program—Incentive Subcontracting (Date)

* * * * *

(b) * * * Determinations under this paragraph are unilateral decisions made solely at the discretion of the Government.

* * * * *

7. Section 52.226–1 is amended by revising the date of the clause and removing the last sentence in paragraph (d).

52.226–1 Utilization of Indian Organizations and Indian-Owned Economic Enterprises.

* * * * *

Utilization of Indian Organizations and Indian-Owned Economic Enterprises (Date)

* * * * *

8. Section 52.248–1 is amended by revising the date of the clause; by revising the last sentences in paragraphs (e)(3) and (j), by revising the date of Alternate II and inserting a sentence at the end of paragraph (a) to read as follows:

52.248–1 Value Engineering.

* * * * *

Value Engineering (Date)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(j) * * * The Contracting Officer shall be the sole determiner of the amount of collateral savings.

* * * * *

Alternate II (Date) * * *

(a) * * * The decision on which rate applies is a unilateral decision made solely at the discretion of the Government.

* * * * *

9. Section 52.248–3 is amended by revising the date of the clause and the last sentences in paragraphs (e)(3) and (g) to read as follows:

52.248–3 Value Engineering—Construction.

* * * * *

Value Engineering—Construction (Date)

* * * * *

(e) * * *

(3) * * * The decision to accept or reject all or part of any VECP is a unilateral decision made solely at the discretion of the Contracting Officer.

* * * * *

(g) * * * The Contracting Officer shall be the sole determiner of the amount of collateral savings.

* * * * *

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Part V

Department of Agriculture

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944
Processing Requests for Farm Labor Housing (LH) Loans and Grants; Final Rule
Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-farm Housing; Notice

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

7 CFR Parts 1940 and 1944

RIN 0575–AC19

Processing Requests for Farm Labor Housing (LH) Loans and Grants

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The Rural Housing Service (RHS), formerly Rural Housing and Community Development Service (RHCDS), a successor Agency to the Farmers Home Administration (FmHA), amends its regulations for the Farm Labor Housing (LH) program. This action is taken to implement an annual competitive funding cycle for off-farm proposals that will be announced elsewhere in this **Federal Register**. The intended outcome is to improve the effectiveness and efficiency of the application process and enable the Agency to process applications in a more efficient and timely manner. This rule also implements the provision of Public Law 105–276, enacted October 21, 1998, that permits as an eligible LH borrower entity a limited partnership with a nonprofit general partner.

EFFECTIVE DATE: June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Linda Armour, Senior Loan Specialist, Multi-Family Housing Processing Division, Rural Housing Service, U.S. Department of Agriculture, Room 5349—South Building, Stop 0781, 1400 Independence Avenue, SW, Washington, DC 20250–0781, telephone (202) 720–1604 (voice) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Classification

This rule has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget.

Paperwork Reduction Act

The information collection requirements contained in this regulation have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control number 0575-0045, in accordance with the Paperwork Reduction Act of 1995. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The valid OMB control number assigned to the collection of information in these final regulations is displayed at the end of the affected section of the regulation. This rule does not impose any additional burden on the public.

The new competitive application process should increase the number of applications each year, and only those applicants selected for further processing for funding within the fiscal year will need to submit a full application. The net effect is no new information collection requirements from those approved by OMB.

Civil Justice Reform

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. In accordance with this rule: (1) All state and local laws and regulations that are in conflict with this rule will be preempted; (2) except as specifically provided, no retroactive effect will be given to this rule; and (3) administrative proceedings in accordance with 7 CFR part 11 must be exhausted before bringing suit in court challenging action taken under this rule.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, RHS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. When such a statement is needed for a rule, section 205 of the UMRA generally requires RHS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

National Performance Review

This regulatory action is being taken in part as a result of the National Performance Review program to eliminate unnecessary regulations and improve those that remain in force.

Programs Affected

The affected program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants.

Intergovernmental Consultation

For the reasons set forth in the Final Rule related Notice to 7 CFR part 3015, subpart V, this program is subject to Executive Order 12372 which requires intergovernmental consultation with State and local officials. RHS has conducted intergovernmental consultation in the manner delineated in RD Instruction 1940–J.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of RHS that this action does not constitute a major Federal action significantly affecting the quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612). The undersigned has determined and certified by signature of this document that this rule will not have a significant economic impact on a substantial number of small entities since this rulemaking action does not involve a new or expanded program nor does it require any more action on the part of a small business than required of a large entity.

Background

The farm labor housing program has two authorities in Title V of the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. As provided by the authorizing statute, section 514 loans are subsidized to borrowers to a one percent interest rate. The program also has tenant subsidies (rental assistance, or RA) available through section 521 (42 U.S.C. 1490a). Both "on-farm" and "off-farm" housing are financed by the LH program. Occupancy in both is restricted to United States citizens or aliens legally admitted for permanent residence.

On-farm housing is financed with section 514 loans to a farmer or farm entity. Housing built is typically a single family dwelling unit, and occupancy is restricted to farmworkers or a farmworker family with at least one member of the household employed by the farm. No tenant subsidies are available.

Off-farm housing proposals, which may be financed with both section 514 loans and section 516 grants, are typically designed like conventional apartment complexes; however, occupancy is restricted to farmworker households. Rental assistance is typically available to occupants to assure unit affordability.

On October 29, 1998, the Agency published a proposed rule in the **Federal Register** (63 FR 57932) to change to an annual competitive funding cycle from the current system of accepting and processing off-farm labor housing proposals on a first-come, first-served basis. These regulation changes do not affect on-farm housing loan requests, which will continue to be accepted and processed on a first-come, first-served basis.

Discussion of Comments

Fifteen commentors responded during the comment period, three of whom submitted duplicate letters. An additional comment was received after the comment period had closed, expressing support of another commentor's letter, making a total of sixteen responses. Commentors included State agencies, farm labor housing technical assistance providers, nonprofit groups, developers, and RHS field staff. The Agency wishes to thank all respondents for their thorough and constructive comments and suggestions. We have carefully considered all comments in developing this final rule.

The comments we received are summarized and discussed below by topic.

Annual Competitive Funding Cycle

The majority of commentors agreed with the Agency's proposal to adopt an annual competitive funding cycle, with only two commentors opposing this alternative to the current first-come, first-served application process. The Agency is implementing the annual competitive funding cycle as proposed.

Two commentors, while agreeing with the annual competitive process, felt that the proposed 60-to 90-day application period was too short, and offered suggestions for ways to give applicants more time to complete and submit their loan requests. The first commentor suggested that the Agency issue the notice of funding earlier in the year, based on preliminary appropriations estimates, before funds actually become available. The notice would specify that funds were subject to the amount of the final appropriations. The second commentor suggested that the Agency accept applications and issue letters of commitment in FY 1999 for FY 2000 funds; FY 1999 funds could then be used to fund applications on hand for which the Agency has already issued an AD–622, "Notice of Preapplication Review Action", inviting a formal application. A third commentor on this issue offered an opposing opinion, stating that the Agency should not announce the availability of funds prior to the appropriation of funds because funding levels can vary from year to year.

The Agency feels that the funding announcement can be made as soon as there is reasonable assurance of funding levels. The funding notice will be published in the **Federal Register** as quickly as possible thereafter to allow the maximum application period.

Several commentors stated that a minimum of 90 days should be allowed for the application cycle to allow smaller or inexperienced applicants time to complete their applications. We agree that a 90-day Notice of Funds Availability (NOFA) is preferable and will make every effort to accommodate this recommendation by publishing NOFA as soon as funding levels are known. The Agency will also attempt to ensure, through outreach efforts, that potential applicants are aware of the program's annual funding cycle so that preliminary groundwork can be done prior to the Agency's funding announcement.

Three-Stage Application Process

The Agency proposed adopting a three-stage application process with a preliminary proposal stage. The majority of commentors were opposed to this and recommended retaining the current two-stage process. They noted that the preliminary stage was nearly as extensive as the Agency's current first stage (preapplication) requirements and unnecessarily complicated the process. Two commentors also noted that, if the applicant is applying for other funds to leverage with RHS funds, the information required in the Agency's current preapplication stage is generally required by the other lenders. Based on these comments, the Agency has decided to retain the current two-stage application process.

Description of Proposed Financing

Three respondents commented on the provisions of § 1944.170(a)(2)(ii), "Description of proposed financing." One questioned whether the requirement that leveraged funds not exceed the cost of 100 percent LH loan financing was realistic. Based on our experience with the section 515 Rural Rental Housing program, we have found this to be a realistic requirement, with many applicants obtaining grants, deferred loans, or 1 percent loans. We have modified this provision, however, to indicate that this condition applies only if RHS Rental Assistance is being provided. Regarding the provisions for donated land, one commentor felt that the requirement that site costs cannot exceed the cost of purchasing and developing an alternative site was too inflexible, citing instances where no other site is available or the site is mandated by local conditions. The Agency agrees there may be exceptional cases; however, these will be handled on a case-by-case exception basis. A third commentor objected to the requirement that the funding dates of leveraged funds permit funding within the current funding cycle, noting that this was not appropriate for on-going operating subsidies. The same commentor also noted that, for many leveraged sources, the funds may be committed but not actually received in the funding cycle. The Agency feels there is merit to these criticisms and has modified the language for this requirement accordingly.

Environmental Review

Two commentors recommended that the Agency require Form RD 1940–20, "Request for Environmental Information," at the initial application stage and consider requiring a Phase I Environmental Review at this stage. The Agency agrees that the environmental process should begin with the initial loan request. Form RD 1940–20 is required with the preapplication submission, and Agency staff will be required to conduct a site visit to establish preliminary site eligibility and to identify potential environmental concerns. In coordination with the environmental site review, Agency staff will be required to conduct a civil rights impact analysis in accordance with RD Instruction 2006-P.

Appraisal Requirements

One commentor noted that § 1944.169(a)(1) requires appraisals to be performed by RHS employees and questioned whether this precluded contract appraisals. We agree that the

Agency may wish to use contract appraisers in some instances and have changed the wording in this section to remove the reference to RHS employees.

Loan Selection Criteria

The Agency proposed awarding points in nine different loan selection categories: (1) the presence and extent of leveraged assistance; (2) units to be built in communities with a high need for farmworker housing; (3) proposals in support of an Agency initiative announced in Notice of Funds Availability (NOFA); (4) proposals with support services; (5) proposals with a minimum ten percent private agriculture producer leveraged funds; (6) projects whose occupants will derive the highest percentage of income from on-farm agriculture work; (7) proposals in market areas not previously served by LH projects; (8) seasonal, temporary, or migrant housing; and (9) for FY 1999 and FY 2000, proposals that were issued an AD–622, "Notice of Preapplication Review Action," inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998 (the date the proposed rule was published in the **Federal Register**). The comments on each category are discussed below:

The presence and extent of leveraged assistance, and proposals with a minimum ten percent private agriculture producer leveraged funds. The majority of commentors felt that the two criteria dealing with leveraged assistance should be combined into one, both to simplify the process and to preclude giving too much weight to leveraged assistance. In addition, commentors felt that the Agency should establish point ranges for percentages of leveraging, rather than the proposed method of comparing applications to each other. The Agency agrees with both of these suggestions and has adopted them in this rule.

High-need areas for farmworker housing. Seven commentors objected to the proposed loan score factor for projects that would be located in high need areas for farmworker housing as identified in the state Consolidated Plan or state needs assessment. It was noted that many states do not identify farmworker housing needs at all, or do not give these needs any special priority. Several commentors noted that the Agency should rely on the market analysis to determine need and demand. Because of the strong opposition by commentors, and in the absence of uniformly available data or state plans, the Agency is not adopting this factor.

Agency initiative. Five comments were received on the proposal to award zero to twenty points for an optional Agency initiative announced in NOFA. One commentor suggested that the Agency announce any initiative well in advance of NOFA and keep the same initiative for more than one year. Three commentors noted that, since applicants would not be able to plan ahead for the initiative, twenty points gave it too much weight. Another commentor objected to the range of scores, feeling that the proposal would either comply with the initiative or not. The Agency appreciates these comments and concerns and will take them into consideration in developing any Agency initiatives. In addition, we have modified the point score for this factor so that ten points will be awarded to proposals that support the Agency initiative and zero points for those that do not.

Supportive services. Commentors expressed a variety of opinions on the proposal to award five points for one supportive service and ten points for two or more. One commentor supported this factor as proposed, while two others felt the Agency needed to better define supportive services and should differentiate between simple and more complex services. One suggested using a range of points for each service based on the financial investment or value. One commentor noted that a services package should be required of all multi-family housing and updated every few years. Another commented that services should not be required on-site if they are available in close proximity to the housing and the service providers have committed that the services are available, accessible, and affordable to farmworkers and their families. Still another commentor suggested a change in regulations to make the provision of services an eligible operating expense. Although the suggestions varied, all commentors agreed that a supportive services package is critical to the successful operation of multi-family housing. Based on this and the lack of consensus on a fair way to distinguish between services in awarding points, the Agency has decided not to use this as a loan scoring factor but, instead, will require a supportive services plan as part of the application. Services may be provided on-site or through cooperative agreements with service providers in the community. At the initial application stage, letters of intent from service providers will be acceptable documentation.

Highest percentage of income from on-farm agricultural work. Five respondents commented on this factor. All five objected to its inclusion in the loan selection criteria, pointing out the difficulty in projecting future occupancy and the lack of reliable data. One of the commentors further noted that this factor is more appropriate as a preliminary eligibility assessment. The Agency feels these are valid criticisms and, therefore, has not adopted this factor in the final rule.

Market areas not previously served by LH projects. We received two comments on this loan scoring factor. Both recommended that the Agency modify this category to reflect the degree of need for farmworker housing in the market area based on the number of farmworker households and available housing units. We considered this suggestion but decided against adopting it because of the difficulty in obtaining accurate data on farmworker housing needs. We agree, however, that housing should go to areas of greatest need based on the market analysis, which may or may not have existing LH units. Therefore, we have not adopted this factor in the final rule.

Seasonal, temporary, or migrant housing. The proposed rule provided that five points would be awarded for proposals with up to 50 percent of its units serving seasonal, temporary, or migrant farmworkers, and ten points for 51 percent or more. Three commentors felt that more weight should be given to this factor, with one noting that this factor should be on a par with leveraged assistance to help accomplish a balanced program. Two of these commentors suggested a point range of zero to twenty points, based on the percentage of units serving seasonal, temporary, or migrant farmworkers. As mentioned above (under the heading "The presence and extent of leveraged assistance and proposals with a minimum 10 percent private agriculture producer leveraged funds"), the two proposed leveraging factors have been combined into one, reducing the maximum points for leveraging from forty to twenty. Few applications will receive the maximum twenty points, so we do not believe leveraging will arbitrarily outweigh other factors. With limited program funds, we have attempted to balance the need for leveraging with other Agency objectives. Therefore, we have retained the points for seasonal, temporary, or migrant housing as proposed.

Loan requests that have been issued an AD–622. The proposed rule provided that, for Fiscal Years 1999 and 2000, ten points would be awarded to applications or loan requests that had been issued an AD–622, "Notice of Preapplication Review Action," inviting a formal application, or had been authorized by the National Office prior

to October 29, 1998 (the date the proposed rule was published). Five respondents commented on this issue. Two agreed with this provision, with one stressing support for the two-year limitation. One commentor disagreed with this provision, stating that each proposal should compete on its own merits. Another commentor felt that proposals with an AD–622 should not have to compete with other proposals, since they were developed under the previous regulations. The fifth commentor suggested funding only those proposals with AD–622s in fiscal year 1999 and implementing the new process in fiscal year 2000.

Commentors were divided on this issue and, after considering the comments and arguments on both sides, the Agency has decided to implement this measure as proposed, i.e., to give preference to loan requests that were issued an AD–622 or authorized by the National Office by awarding points for two funding cycles. However, to address the concerns of commentors who felt AD–622s should be given more consideration, we have increased the number of points from ten to fifteen.

Other Suggested Loan Selection Criteria

Several commentors suggested other loan selection criteria for the Agency's consideration. Two commentors suggested project readiness and development team experience; others suggested cost effectiveness and construction quality. The Agency considered these and similar criteria in drafting the proposed rule; however, we found it impossible to develop standards for factors that require subjective judgments, such as an assessment of quality or experience. In addition, we were concerned that the readiness to proceed factor could result in delays or obstacles by communities that oppose the development of farm labor housing. Therefore, we have not adopted these suggestions.

Point-score Ties

The proposed rule provided that, in case of point-score ties for requests from the same State, the proposal with the most supportive services would be given priority, with further same-State ties determined by lottery. One commentor objected to these tie breakers, proposing instead that, with limited funds and the emphasis on leveraging, primary priority be given to requests that are the most cost effective and have the most leveraged assistance, with secondary priority to requests with the greatest market need for LH units. The same commentor felt the regulation should also address point-score ties between requests from different States. With regard to the "most supportive services", we are not adopting this loan scoring factor in the final rule, so it is no longer appropriate as a tie breaker (see discussion above under "Loan Selection Criteria"). With regard to the suggested tie breakers, we believe it would be difficult to obtain reliable and objective data to establish "most cost effective" and "greatest market need". We agree, however, that there is merit to using the actual percentage of leveraged assistance as a tie-breaker. In addition, the Agency believes there is merit to giving a preference to applications to develop units in states that have no existing RHS-financed off-farm LH units. Therefore, the actual percentage of leveraged assistance will be used as a tie-breaker for point-score ties within the State; in the case of point-score ties in the National ranking, preference will be given to applications in States that have no existing RHS-financed off-farm LH units. In the event of further point-score ties at the National level, preference will be given to States that have not been selected in the current cycle.

Geographic Diversity

The proposed rule provided that the Agency could select a lower scoring loan request over one with a higher score in order to achieve geographic diversity. Five commentors strongly objected to this provision, stating that it undermined the objectivity of the point system. We agree that the selection process should be fair and objective and, therefore, we have not adopted this provision in the final rule.

Statutory Amendments

Public Law 105–276, enacted October 21, 1998, included two amendments to the Farm Labor Housing (LH) program. The first extends eligibility for low-income housing tax credit financing to the LH program by adding as eligible borrowers for section 514 loans "any nonprofit limited partnership in which the general partner is a nonprofit entity". This wording is interpreted by the Agency to mean "any limited partnership in which the general partner is a nonprofit entity." We have included this provision in the final rule and will interpret "nonprofit limited partnership" to mean "any limited partnership in which the general partner is a nonprofit entity." This will be consistent with the wording found in section 515(w) (42 U.S.C. 1485(w)). The second LH legislative amendment provides that rental assistance payments may be used for project operating costs in housing for migrant farmworkers financed under section 514 or section 516. This provision is not included in this rule because of the need to make changes to the Agency's project management regulations and automated systems but will be included in the Agency's reinvented regulation, which is scheduled to be published as a proposed rule in fall of 1999.

Implementation Proposal

Under the annual competitive system that is being implemented with this rule, the amount of available funds and application deadlines will be announced each funding cycle in the **Federal Register** through a NOFA. Loan requests received by the application deadline will be reviewed and selected based on objective criteria in accordance with the revised regulations. Loan requests not selected for funding will be returned to the applicant.

Applications on hand are subject to the new competitive process. In fiscal years 1999 and 2000, points will be awarded to applications on hand that were issued an AD–622 inviting a formal application or that had been reviewed and authorized by the National Office as of October 29, 1998 (the publication date of the proposed rule). A new proposal that ranks higher under the selection criteria than an existing application will take priority over the existing one.

Agency staff were directed by the proposed rule to return proposals on hand that had not been issued an AD–622 or reviewed and authorized by the National Office as of October 29, 1998 (the publication date of the proposed rule). Loan requests thus returned may, of course, be submitted for consideration during the application period announced in NOFA.

List of Subjects

7 CFR Part 1940

Administrative practice and procedure, Agriculture, Grant programs—housing and community development, Loan programs—agriculture, Reporting and recordkeeping requirements, Rural areas.

7 CFR Part 1944

Grant programs—housing and community development, Loan programs—housing and community development, Migrant labor, Nonprofit organizations, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended to read as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; and 42 U.S.C. 1480.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Revise section 1940.579 to read as follows:

§ 1940.579 Multiple Family Housing appropriations not allocated by State.

Funds are not allocated to States. The following program funds are kept in a National Office reserve and are available as determined administratively:

(a) Section 514 Farm Labor Housing Loans.

(b) Section 516 Farm Labor Housing Grants.

PART 1944—HOUSING

3. The authority citation for part 1944 continues to read as follows:

Authority: 5 U.S.C. 301; 42 U.S.C. 1480.

Subpart D—Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

4. Amend section 1944.153 in the definition of "Domestic farm laborer" by revising the words "FmHA or its successor agency under Public Law 103–354" to read "Rural Housing Service"; in the definition of "Farm owner" by revising the words "subpart A of part 1944 of this chapter" to read "this section"; in the definition of "Self-employed" by revising the words "FmHA or its successor agency under Public Law 103–354" to read "Rural Housing Service" and the words "District or State Director" to read "Loan Official or State Director"; and by adding in alphabetical order definitions to read as follows:

§ 1944.153 Definitions.

Agency. The Rural Housing Service, an agency of the U.S. Department of Agriculture which administers section 514 loans and section 516 grants.

* * * * *

Farm. A tract or tracts of land, improvements, and other appurtenances considered to be farm property which is used or will be used in the production of crops or livestock, including the production of fish under controlled conditions, for sale in sufficient quantities so that the property is recognized as a farm rather than a rural residence. It may also include a residence which, although physically separate from the farm acreage, is ordinarily treated as part of the farm in the local community.

* * * * *

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

LH. Farm Labor Housing.

* * * * *

MFH. Multi-Family Housing.

* * * * *

NOFA. Notice of Funds Availability.

* * * * *

Off-Farm Labor Housing. Housing for farm laborers regardless of the farm where they work.

On-Farm Labor Housing. Housing for farm laborers specific to the farm where they work.

* * * * *

RHS. Rural Housing Service.

* * * * *

5. Amend section 1944.157 to revise paragraphs (a)(1) and (a)(3) to read as follows:

§ 1944.157 Eligibility requirements.

(a) * * *

(1) Be a farmowner, family farm partnership, family farm corporation, or an association of farmers whose farming operations demonstrate a need for farm labor housing, or an organization, as these terms are defined in § 1944.153, which will own the housing and operate it on a nonprofit basis; or a nonprofit limited partnership in which the general partner is a nonprofit entity.

* * * * *

(3) Provide from its own resources the borrower contribution required by § 1944.160 and have sufficient initial operating capital to pay costs such as property and liability insurance premiums, fidelity bond premiums if required, utility hookup deposits, maintenance equipment, movable furnishings and equipment, printing lease forms, and other initial expenses. LH loans made to nonprofit organizations and to State or local public agencies or political subdivisions thereof may include up to 2 percent of the development cost for initial operating expenses.

* * * * *

6. Add section 1944.160 to read as follows:

§ 1944.160 Off-farm loan limits.

(a) For all applicants, including its members, who will be receiving any benefits from Low-Income Housing Tax Credits (LIHTC), the amount of the RHS loan will be limited to no more than 95 percent of the total development cost or 95 percent of the security value, whichever is less.

(b) For all applicants, including its members, not receiving any benefits from LIHTC, who are nonprofit entities or State or local public agencies, the amount of the RHS loan will be limited to the total development cost or the security value, whichever is less, plus the 2 percent initial operating capital.

(c) For all other applicants, including its members, not receiving any benefits from LIHTC, the amount of the RHS loan will be limited to no more than 97 percent of the development cost or the security value, whichever is less.

7. Amend section 1944.164 in the introductory text of paragraph (d) in the first sentence to revise the words "District Director" to read "Loan Official" and the words "FmHA or its successor agency under Public Law 103–354" to read "RHS"; in paragraph (d)(1)(i) by revising the words "FmHA or its successor agency under Public Law 103–354" to read "RHS"; and to revise paragraph (b) to read as follows:

§ 1944.164 Limitations and conditions.

* * * * *

(b) *Maximum amount of grant.* The amount of any grant may not exceed the lesser of:

(1) Ninety percent of the total development cost; or

(2) That portion of the total cash development cost which exceeds the sum of any amount the applicant can provide from its own resources plus the amount of a loan which the applicant will be able to repay, with interest, from income from rentals which low-income farmworker families can be reasonably expected to be able to pay. The availability of rental assistance and HUD section 8 subsidies will be considered in determining the rentals that farmworkers will pay.

* * * * *

8. Amend section 1944.169 to revise paragraph (a)(1) to read as follows:

§ 1944.169 Technical, legal, and other services.

(a) * * *

(1) An appraisal is required when real estate is taken as security. The appraisal must be made in accordance with the Uniform Standards of Professional Appraisal Practices (available in any Rural Development office).

* * * * *

9. Amend section 1944.170 to redesignate paragraph (c) as paragraph (f); in newly redesignated paragraph (f)(5)(i) to revise the reference "§ 1944.164(b)(2)" to read "§ 1944.164(b)", in newly redesignated paragraph (f)(5)(ii)(B) to revise the words "an LH loan" to read "a LH loan"; in newly redesignated paragraph

(f)(5)(ii)(C) to revise the reference "paragraph (c)(5)(ii)(A)" to read "paragraph (f)(5)(ii)(A)"; to remove newly redesignated paragraph (f)(7); to revise the section heading, the introductory text, and paragraphs (a) and (b); and to add new paragraphs (c) through (e) to read as follows:

§ 1944.170 Preapplication requirements and processing.

A two-stage application process is used. In stage one, applicants submit a preapplication, which is used to determine preliminary eligibility and feasibility. Preapplications selected for further processing will be invited to submit an application. The preapplication consists of SF–424.2, "Application for Federal Assistance (For Construction)" and the information listed in exhibit A–1 or A–2 of this subpart, as applicable. Preapplications for off-farm new construction loans and grants will be accepted and processed in accordance with this section when NOFA is announced in the **Federal Register**. Applicants are advised to read the notice carefully for any restrictions on loan or grant amounts. Preapplications for repair and rehabilitation of existing off-farm LH units and new units of on-farm housing may be submitted any time during the year and will be processed on a first-come, first-served basis in accordance with subpart L of part 1940 of this chapter.

(a) *Preapplications for new units in off-farm facilities.* (1) The Agency will publish NOFA annually in the **Federal Register** with deadlines for submitting preapplications. The notice will include the amount of funds available, any limit on the amount of individual loan and grant requests, any limit on the amount of funds that any one State may receive, and the loan scoring criteria.

(2) The preapplication must be submitted in accordance with NOFA and consists of SF–424.2, "Application for Federal Assistance (For Construction)", and the information required by exhibit A–1 of this subpart. The preapplication will be used by the Agency to determine preliminary eligibility and to score and rank proposals.

(b) *Preliminary eligibility assessment of preapplications received in response to NOFA.* The Agency will make a preliminary eligibility assessment using the following criteria:

(1) The preapplication was received by the submission deadline specified in NOFA;

(2) The preapplication is complete as specified in NOFA;

(3) The applicant is an eligible entity and is not currently debarred, suspended, or delinquent on any Federal debt; and

(4) The proposal is for authorized purposes.

(c) *Scoring and ranking off-farm preapplications.* The Agency will score and rank off-farm preapplications for new units that meet the criteria of paragraph (b) of this section.

(1) The following criteria will be used to score project proposals:

(i) The presence and extent of leveraged assistance, including donated land, for the units that will serve program-eligible tenants, calculated as a percentage of the RHS total development cost (TDC). RHS TDC excludes non-RHS eligible costs such as a developer's fee. Leveraged assistance includes, but is not limited to, funds for hard construction costs, Section 8 or other non-RHS tenant subsidies, and state or federal funds. A minimum of ten percent leveraged assistance is required to earn points. (0 to 20 points)

(A) To count as leveraged funds for purpose of the selection criteria:

(*1*) A commitment of funds must be received within a timeframe that permits processing of the loan request within the current funding cycle (the latest commitment date for leveraged funds will be announced in NOFA); and

(*2*) If RHS RA is being provided, the interest cost to the project using leveraged loan funds may not exceed the cost of 100 percent LH loan financing.

(B) For donated land to be scored as leveraged assistance, all of the following conditions must be met.

(*1*) Based on a preliminary review, the land is suitable and meets Agency requirements. Final site acceptance is subject to a completed environmental review.

(*2*) Site development costs do not exceed what they would be to purchase and develop an alternative site.

(*3*) The overall cost of the project is reduced by the donation of the land.

(C) Points for leveraged assistance will be awarded in accordance with the following table. Percentages will be rounded to the nearest whole number, rounding up at .50 and above and down at .49 and below. For example, 25.50 becomes 26; 25.49 becomes 25. If the total percentage of leveraged assistance is less than ten percent, and it includes donated land, two points will be awarded for the donated land.

Percentage	Points
75 or more	20
60–74	18
50–59	16
40–49	12
30–39	10
20–29	8
10–19	5
0–9	0
Donated land in proposals with less than ten percent total leveraged assistance	2

(ii) The loan request is in support of an Agency initiative announced in NOFA. (10 points)

(iii) Seasonal, temporary, or migrant housing. (5 points for up to and including 50 percent of the units; 10 points for 51 percent or more)

(iv) For Fiscal Year 1999 and Fiscal Year 2000 funding cycles, outstanding applications or requests that were issued an AD–622, "Notice of Preapplication Review Action," inviting a formal application, or had been reviewed and authorized by the National Office prior to October 29, 1998. (15 points)

(2) The Agency will rank preapplications by point score. For point-score ties within the State, rank order will be determined by giving first preference to the application with the greatest actual percentage of leveraged assistance. In case of further same-State ties, rank order will be determined by lottery.

(d) *Selection of preapplications for further processing.* (1) States will make a preliminary eligibility and feasibility assessment, score and rank the preapplications, and provide this information to the National Office with their review comments.

(2) The National Office will rank the preapplications nationwide. In case of point-score ties in the National ranking, first preference will be given to a preapplication to develop units in a state that does not have existing RHS-financed off-farm LH units; second preference to a preapplication from a State that has not yet been selected in the current funding cycle. In the event there are multiple preapplications in either category, one preapplication from each State (the highest State-ranked) will compete by computer-based random lottery. If necessary, the process will be completed until all same-pointed preapplications are selected or funds are exhausted.

(3) The Agency will not select a preapplication for a new LH loan in an area with competing or problem projects when:

(i) The Agency has selected another LH proposal in the same market area for further processing;

(ii) A previously authorized or approved Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers has not been completed or reached its projected occupancy level; or

(iii) An existing Agency, HUD, or similar assisted MFH project in the same market area serving farmworkers is experiencing high vacancy levels, unless such vacancy is planned as part of the occupancy cycle of a seasonally-operated migrant farmworker facility.

(4) If any selected preapplications cannot meet the processing deadlines established by the Agency to enable processing and fund obligation within the current funding cycle, or if requested leveraged funds are not committed within the timeframe established in NOFA, the Agency will select the next ranked preapplication for processing.

(e) *Notification to applicants.* States will notify all applicants of the results of the selection process.

(1) Applicants selected for further processing will be notified and processed in accordance with this section and § 1944.171.

(2) Project proposals not selected for further processing, including incomplete proposals or those that failed to meet NOFA requirements, or those that could not be reached because of insufficient funds, will be returned to the applicant with the reason they were not selected.

* * * * *

10. Exhibit A to subpart D is amended by revising the first paragraph to read as follows:

Exhibit A to Subpart D—Labor Housing Loan and Grant Application Handbook

Introduction

The section 514 Labor Housing loan and section 516 Labor Housing grant programs are administered by the Rural Development's Rural Housing Service (RHS), herein referred to as the Agency. Interested parties are advised to contact any Rural Development office processing Labor Housing (LH) loans and grants to obtain information on program and application requirements prior to developing an application. Notice of Funds Availability (NOFA) for off-farm facilities will be announced annually in the Federal Register, along with application requirements and the deadline for applying. Requests received during the application period will be selected competitively, based on the objective selection criteria in the regulation and announced in the NOFA. Applications for on-farm facilities are accepted any time during the year and are funded on a first-come, first-served basis, based on the availability of funds.

* * * * *

11. Exhibit A–1 to subpart D is amended by revising paragraphs I.A.1 and I.A.3, the introductory text of paragraph I.B., paragraph I.B.3, the text of paragraph I.B.6 preceding the note, paragraph I.C., and paragraph I.E. to read as follows:

Exhibit A–1 to Subpart D—Information To Be Submitted by Organizations and Associations of Farmers for Labor Housing Loan or Grant

I. Information to be submitted with SF 424.2 (for preapplication submission).

A. * * *

1. Financial Statement—A current, dated, and signed financial statement showing assets and liabilities with information on the repayment schedule and status of all debts. If the applicant is an association of farmers, a current financial statement will also be required from each member who holds an interest in the association in excess of 10 percent. If the applicant is a limited partnership, financial statements are required from each general partner who holds an interest in the organization, and from each limited partner who will have 10 percent or more ownership. The financial statement must reflect sufficient financial capacity to meet the initial operating capital requirements. Loan or grant funds may be used to provide the required initial operating capital for nonprofit entities and State or local public agencies. If the applicant is a limited partnership, the financial statement must also demonstrate sufficient capacity to meet the applicant's equity contribution.

* * * * *

3. If a Labor Housing (LH) grant is requested, the applicant should provide a statement on their projected use of Rental Assistance (RA) and their need for a LH grant. This statement should include preliminary estimates of the rents required with and without a grant and the relative need for a grant if RA is provided to supplement market rents for eligible farmworkers. [LH grants and RA are not available to associations of farmers; LH grants are not available to limited partnerships.]

* * * * *

B. * * *

A preliminary survey should be conducted to identify the supply and demand for LH in the market area. The market area must be clearly identified and may include only the area from which tenants can reasonably be drawn for the proposed project. The applicant must provide documentation to justify need within the intended market area. The market survey should address or include the following items:

* * * * *

3. General information concerning the type of labor intensive crops grown in the area and prospects for continued demand for farm laborers (i.e., prospects for mechanization, etc.). Information may be available from the local U.S. Department of Agriculture (USDA) Cooperative, State, Research, Education and Extension Service office or from the Farm Service Agency.

* * * * *

6. A description of the units proposed, including number, type, size, rental rates, amenities such as carpets and drapes, related facilities such as a laundry room or community room and other facilities providing supportive services in connection with the housing and the needs of the prospective tenants such as a health clinic or day care facility; estimated development timeline; estimated total development cost and applicant contribution. If the application includes leveraged funds, include documentation of the dollar amount, source, and commitment status.

* * * * *

C. Environmental Information

The applicant will complete Form RD 1940–20, "Request for Environmental Information," along with a description of anticipated environmental issues or concerns.

* * * * *

E. Additional Information

1. Evidence of site control such as an option or sales contract; a map and description of the proposed site, including the availability of water, sewer, and utilities, and proximity to community facilities and services such as shopping, schools, transportation, doctors, dentists, and hospitals.

2. Preliminary plans and specifications, including plot plans, building layouts, and type of construction and materials.

3. A supportive services plan describing services that will be provided on-site or made available to tenants through cooperative agreements with service providers in the community, such as a health clinic or day care facility. Off-site services must be accessible and affordable to farmworkers and their families. Letters of intent from service providers are acceptable documentation at the preapplication stage.

* * * * *

Dated: April 29, 1999.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 99–11256 Filed 5–5–99; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) for Section 514 Farm Labor Housing Loans and Section 516 Farm Labor Housing Grants for Off-farm Housing

AGENCY: Rural Housing Service (RHS), USDA.

ACTION: Notice.

SUMMARY: This NOFA announces the timeframe to submit applications for section 514 Farm Labor Housing loan funds and section 516 Farm Labor Housing grant funds for new construction of off-farm units for farmworker households. Applications may also include requests for section 521 rental assistance (RA). This document describes the method used to distribute funds, the application process, and submission requirements.

DATES: The closing deadline for receipt of all applications in response to this NOFA is 5:00 p.m., local time for each Rural Development State office on July 15, 1999. The application closing deadline is firm as to date and hour. RHS will not consider any application that is received after the closing deadline. Applicants intending to mail applications must provide sufficient time to permit delivery on or before the closing deadline date and time. Acceptance by a post office or private mailer does not constitute delivery. Facsimile (FAX), COD, and postage due applications will not be accepted.

ADDRESSES: Applicants wishing to apply for assistance must contact the Rural Development State office serving the place in which they desire to submit an application for off-farm labor housing to receive further information and copies of the application package. Rural Development will date and time stamp incoming applications to evidence timely receipt, and, upon request, will provide the applicant with a written acknowledgment of receipt. A listing of Rural Development State offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 745–2176, TDD (907) 745–6494, Ron Abbott

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8755, TDD (602) 280–8701, Steve Langstaff

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3250, TDD (501) 301–3279, Cathy Jones

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5800, Robert P. Anderson

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 122), TDD (303) 236–1590, "Sam" Mitchell

Connecticut—Served by Massachusetts State Office

Delaware/Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, TDD (302) 697–4303, W. Arthur Greenwood

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3465, TDD (352) 338–3499, Joseph P. Fritz

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2164, TDD (706) 546–2034, Wayne Rogers

Guam—Served by Hawaii State Office

Hawaii, Guam, and Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–3000, TDD (808) 933–6902, Abraham Kubo

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5627, TDD (208) 378–5644, Roni Atkins

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 256), TDD (217) 398–5396, Barry L. Ramsey

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3117, TDD (317) 290–3343, John Young

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4493, TDD (515) 284–4858, Bruce McGuire

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, (785) 271–2721, TDD (785) 271–2767, Gary Shumaker

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7325, TDD (606) 224–7422, Paul Higgins

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7962, TDD (318) 473–7655, Yvonne R. Emerson

Maine State Office, 444 Stillwater Ave., Suite 2, PO Box 405, Bangor, ME 04402–0405, (207) 990–9115, TDD (207) 942–7331, Dale D. Holmes

Maryland—Served by Delaware State Office

Massachusetts, Connecticut, and Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4333, Donald Colburn

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 337–6635 (ext. 1609), TDD (517) 337–6795, Philip Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7823, TDD (651) 602–3799, Mary Ann Erickson

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0990, TDD (573) 876–9480, Gary Frisch

Montana State Office, Unit 1, Suite B, 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 586–0819, MaryLou Falconer

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5567, TDD (402) 437–5093, Byron Fischer

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (702) 887–1222, TDD (702) 885–0633 (ext. 13), William L. Brewer

New Hampshire—Served by Vermont State Office

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3630, George Hyatt, Jr.

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 761–4944, TDD (505) 761–4938, Carmen N. Lopez

New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6419, TDD (315) 477–6447, George N. Von Pless

North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2062, TDD (919) 873–2003, Eileen Nowlin

North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 250–4771, TDD (701) 250–4794, Kathy Lake

Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 469–5165, TDD (614) 469–5757, Gerald Arnott

Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1070, TDD (405) 742–1007, Patsy Graumann

Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3350, TDD (503) 414–3387, Jillene Davis

Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2187, TDD (717) 237–2187, Gary Rothrock

Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095, Ext. 254, TDD 1–800–274–1572, Lourdes Colon

Rhode Island—Served by Massachusetts State Office

South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 765–5690, TDD (803) 765–5697, Larry D. Floyd

South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber

Tennessee State Office, Suite 300, 3322 West End Avenue, Nashville, TN 37203–1084, (615) 783–1375, G. Benson Lasater

Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9760, TDD (254) 742–9712, Eugene G. Pavlat

Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4323, TDD (801) 524–3309, Robert L. Miliarta

Vermont and New Hampshire State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6020, TDD (802) 223–6365, Russell Higgins

Virgin Islands—Served by Florida State Office

Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1582, TDD (804) 287–1753, Carlton Jarratt

Washington State Office, 1835 Black Lake Blvd. SW., Suite B, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis

Western Pacific Territories—Served by Hawaii State Office

West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 291–4793, TDD (304) 284–5941, Sue Snodgrass

Wisconsin State Office, 4949 Kirschiling Court, Stevens Point, WI 54481, (715) 345–7620, TDD (715) 345–7614, Sherry Engel

Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6315, TDD (307) 261–6333, Charles E. Huff

FOR FURTHER INFORMATION CONTACT: For general information, applicants may contact Linda Armour, Mary Fox, or Tracee Lilly, Senior Loan Officers, Multi-Family Housing Processing Division, Rural Housing Service, United States Department of Agriculture, Stop 0781, 1400 Independence Avenue, SW, Washington, DC, 20250, telephone (202) 720–1604 (voice) (this is not a toll free number) or (800) 877–8339 (TDD-Federal Information Relay Service).

SUPPLEMENTARY INFORMATION:

Programs Affected

The Farm Labor Housing Program is listed in the Catalog of Federal Domestic Assistance under Number 10.405, Farm Labor Housing Loans and Grants. Rental Assistance is listed in the Catalog under Number 10.427, Rural Rental Assistance Payments.

NOFA Application and Processing Deadlines

The NOFA application period closes July 15, 1999. Because of the relatively short timeframe for processing selected loan requests to permit obligation of funds by September 30, 1999, we have established the following processing deadlines:

July 15, 1999: NOFA application period closes.

July 16–20, 1999: State Offices review applications for completeness; score and rank; and provide list of all applications received to National Office.

July 21–30, 1999: State Offices complete preliminary eligibility and feasibility review and perform site visit; begin environmental review.

August 2, 1999: Based on the preliminary eligibility and feasibility review, State Offices provide final list of scored and ranked preapplications to the National Office with review comments.

August 2–6, 1999: National Office ranks preapplications nation-wide. As soon as possible thereafter, National Office notifies States of requests selected for further processing.

August, 1999: Upon National Office notification, States immediately notify selected applicants to submit a formal application within 30 days. Applicants should submit organizational documents immediately to allow time for review by Office of General Counsel (OGC).

August-September, 1999: States complete the environmental review and appraisal. Satisfactory completion of the environmental review must occur prior to issuance of the letter of conditions.

September 15, 1999: Deadline for receipt of formal application. Deadline for commitment of leveraged funds.

September 24, 1999: Deadline for issuing letter of conditions and acceptance by borrower.

September 27, 1999: Deadline for loan or grant approval and obligation of funds.

Discussion of Notice

I. Authority and Distribution Methodology

A. Authority

The farm labor housing program is under the Housing Act of 1949: section 514 (42 U.S.C. 1484) for loans and section 516 (42 U.S.C. 1486) for grants. Tenant subsidies (rental assistance, or RA) are available through section 521 (42 U.S.C. 1490a). Sections 514 and 516 provide RHS the authority to make loans and grants for financing off-farm housing to broad-based nonprofit organizations, nonprofit organizations of farmworkers, federally recognized Indian tribes, agencies or political subdivisions of State or local government, and public agencies (such as local housing authorities). In addition, RHS is authorized under section 514 to make loans to finance off-farm housing to limited partnerships in which the general partner is a nonprofit entity.

B. Distribution Methodology

The amounts available for fiscal year (FY) 1999 for off-farm new construction are:

Section 514 loans	$ 15,500,000
Section 516 grants	$ 9,737,493

Section 514 new construction loan funds and section 516 new construction grant funds will be distributed to States based on a national competition, as follows:

1. States will accept, review, score, and rank requests in accordance with 7 CFR part 1944, subpart D. The scoring criteria includes an optional Agency initiative, which will not be used this fiscal year.

2. The National office will rank all requests nationwide and distribute funds to States in rank order, within funding and RA limits. If insufficient funds or RA remain for the next ranked proposal, the Agency will select the next ranked proposal that falls within the remaining levels.

II. Funding Limits

A. Individual requests may not exceed $2.5 million (total loan and grant).

B. No State may receive more than 30 percent of the total available funds.

C. New construction RA will be held in the National Office for use with section 514 loans and section 516 grants.

III. Application Process

The Rural Housing Service has published elsewhere in this **Federal Register** a final rule entitled "Processing Requests for Farm Labor Housing (LH) Loans and Grants". Loan requests filed in response to this NOFA are subject to the regulatory provisions with respect to this final rule. All applications for sections 514 and 516 new construction funds must be filed with the appropriate Rural Development State office and must meet the requirements of 7 CFR part 1944, subpart D, and section IV of this NOFA. Incomplete applications will not be reviewed and will be returned to the applicant. No application will be accepted after 5:00 p.m., local time, on the application deadline previously mentioned unless that date and time is extended by another Notice published in the **Federal Register**.

IV. Application Submission Requirements

A. Each application shall include all of the information, materials, forms and exhibits required by 7 CFR part 1944, subpart D, as well as comply with the provisions of this NOFA. Applicants are encouraged, but not required, to include a checklist and to have their applications indexed and tabbed to facilitate the review process. The Rural Development State office will base its determination of completeness of the application and the eligibility of each

applicant on the information provided in the application.

B. Applicants are advised to contact the Rural Development State office serving the place in which they desire to submit an application for application information.

Dated: April 29, 1999.

Eileen M. Fitzgerald,

Acting Administrator, Rural Housing Service.

[FR Doc. 99–11257 Filed 5–5–99; 8:45 am]

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Part VI

Securities and Exchange Commission

17 CFR Part 270

Custody of Investment Company Assets Outside the United States; Extension of Compliance Date; Proposed and Final Rules

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–23814, IS–1193; File No. S7–23–95]

RIN 3235–AE98

Custody of Investment Company Assets Outside the United States; Extension of Compliance Date

AGENCY: Securities and Exchange Commission.

ACTION: Final rule; extension of compliance date.

SUMMARY: The Commission is extending the compliance date for certain amendments to the rule under the Investment Company Act that governs the custody of investment company assets outside the United States. In a companion release, the Commission is proposing amendments to that rule, and is proposing a new rule under the Act. The proposed amendments and new rule would establish new standards governing the maintenance of an investment company's assets with a foreign securities depository.

DATES: The *effective* date of the rule amendments published on May 16, 1997 (62 FR 26923) remains June 16, 1997. Effective May 1, 1999, the *compliance* date for those rule amendments, except for the amended definition of an "eligible foreign custodian," is extended from May 1, 1999 until May 1, 2000, or until a date to be announced by the Commission when it takes further action on the amendments proposed in the companion release. The compliance date for the amended definition of an "eligible foreign custodian" was June 16, 1998.

FOR FURTHER INFORMATION CONTACT: Thomas M.J. Kerwin, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission is extending the compliance date for certain amendments to rule 17f–5 (17 CFR 270.17f–5) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act").[1] In a companion release, the Commission is proposing amendments to rule 17f–5, a new rule 17f–7, and conforming amendments to rule 7d–1 (17 CFR 270.7d–1) and rule 17f–4 (17 CFR 270.17f–4) under the Investment Company Act. *See* Investment Company Act Release No. 23815 (Apr. 29, 1999).

Dated: April 29, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11356 Filed 5–5–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. IC–23815, IS–1194; File No. S7–15–99]

RIN 3235–AH55

Custody of Investment Company Assets Outside the United States

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing rule amendments and a new rule under the Investment Company Act to address the custody of investment company assets outside the United States. The amendments and new rule would establish new standards governing the maintenance of an investment company's assets with a foreign securities depository. The proposals are designed to provide a workable framework under which an investment company can protect its assets while maintaining them with a foreign securities depository.

DATES: Comments must be received on or before July 15, 1999.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–15–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Thomas M.J. Kerwin, Senior Counsel, or C. Hunter Jones, Assistant Director, Office of Regulatory Policy, at (202) 942–0690, in the Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") today is proposing for public comment amendments to rule 17f–5 (17 CFR 270.17f–5),[1] a new rule 17f–7, and conforming amendments to rule 7d–1 (17 CFR 270.7d–1) and rule 17f–4 (17 CFR 270.17f–4) under the Investment Company Act of 1940 (15 U.S.C. 80a) (the "Investment Company Act"). In a companion release, the Commission also is extending the *compliance* date for previous amendments to rule 17f–5 (except for the amended definition of an "eligible foreign custodian") that were published on May 16, 1997 (62 FR 26923). The compliance date is extended from May 1, 1999 until May 1, 2000, or until a date to be announced by the Commission when it takes further action on the amendments proposed in this Release. *See* Investment Company Act Release No. 23814 (Apr. 29, 1999).

I. Executive Summary

Rule 17f–5 under the Investment Company Act governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States. We amended the rule in 1997 to modernize its conditions, but later suspended the compliance date for some of the amendments after learning that they presented problems for the use of foreign securities depositories. Depositories are systems for the central handling of securities in which transactions in securities are processed through adjustment of electronic account records rather than delivery of certificates.

The Commission is proposing amendments to rule 17f–5 and a new rule 17f–7, which together would permit funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories. The amendments would eliminate for foreign depository arrangements the requirements that certain findings be made by the fund board, its investment adviser, or global custodian, and that certain specified terms appear in depository rules for participants. Instead, the proposed rule would establish basic standards for foreign depositories eligible to be used by funds, and generally require that a fund's contract with its global custodian obligate the custodian to provide the fund or its adviser with an initial risk analysis of the depository, continuously monitor risks associated with use of the depository, and notify the fund or its adviser of material changes in these risks. The global custodian also generally would have to agree to exercise reasonable care with respect to these and other duties.

Unlike rule 17f–5, proposed rule 17f–7 would not contain any provisions regarding the delegation of authority under the rule. Decisions to maintain assets with the depository should be made by the adviser, subject to the oversight of the fund board, based upon information provided by the global custodian. The adviser and board, in making these decisions, would be subject to the standards of care that are generally applicable to fund advisers and directors.

I. Introduction

Rule 17f–5 was initially adopted in 1984,[2] and extensively revised in 1997 ("1997 Amendments") to reflect significant developments in foreign investment by U.S. funds and the Commission's greater experience with foreign custodial arrangements.[3] The 1997 Amendments expanded the types of foreign banks and securities depositories that may serve as custodians of fund assets by eliminating capital requirements and other restrictions that in some cases had precluded funds from using otherwise suitable custodians.[4] Instead, the 1997 Amendments require that the selection of a foreign custodian be based on whether the fund's assets will be subject to reasonable care if maintained with that custodian, after consideration of all factors relevant to the safekeeping of fund assets.[5]

The 1997 Amendments also eliminated from rule 17f–5 the consideration of "prevailing country risks," *i.e.*, risks associated with investing in a particular country rather than placing assets with a particular custodian, as well as the consideration of other investment risks.[6] We made these changes after concluding that prevailing country risks were akin to investment risks, and that both should be considered by a fund's board or investment adviser when deciding whether the fund should invest in a

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[1] Unless otherwise noted, all references to "rule 17f–5" or any paragraph of the rule will be to 17 CFR 270.17f–5.

[2] Section 17(f) of the Investment Company Act, which governs fund custody arrangements, does not address the use of a foreign custodian. The Commission adopted rule 17f–5 pursuant to its exemptive authority under section 6(c) of the Act. *See* Exemption for Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 14132 (Sept. 7, 1984) (49 FR 36080 (Sept. 14, 1984)) (the "1984 Release").

[3] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 22658 (May 12, 1997) (62 FR 26923 (May 16, 1997)) (the "1997 Release").

[4] 1997 Release, *supra* note 3, at text accompanying nn.71–73 and nn.77–79.

[5] *See* rule 17f–5(c)(1). These provisions replaced earlier standards under which the fund board had determined whether maintaining assets with a custodian would be "consistent with the best interests" of the fund. *See* 1997 Release, *supra* note 3, at n.6 and accompanying text.

[6] 1997 Release, *supra* note 3, at text accompanying nn.13–16 and at n.29.

particular country. Finally, the amendments permitted directors to play a more traditional oversight role by allowing them to delegate their duties under the rule to a "foreign custody manager," which could include the fund's investment adviser, officers, or a bank.[7]

The 1997 Amendments altered the conditions under which funds could maintain their assets with foreign securities depositories as well as other types of foreign custodians. Throughout the rulemaking, the Commission made it clear that we considered foreign depositories to be custodians for purposes of the rule.[8] In response to comments on the proposals, the 1997 Amendments looked to depository rules for participants rather than custodial contracts to satisfy certain conditions of the rule.[9] Having addressed what we believed to be commenters' concerns regarding depositories, we established a one-year transition period to allow funds and bank custodians to enter into new custodial agreements, which would include the use of foreign depositories.[10]

By early 1998, it became apparent that the rule would not operate as anticipated. Bank custodians refused to accept delegated responsibility to make findings under the rule regarding funds' use of most foreign securities depositories.[11] Representatives of funds requested that we delay the compliance date for the 1997 Amendments to permit them to prepare a proposal to further amend the rule.[12] They asserted that many funds had been unable to establish foreign custody arrangements under the amendments because of significant unforeseen problems with the evaluation and use of most depositories. In particular, they stated that global bank custodians were unable to commit to making "subjective" determinations of whether foreign securities depositories would exercise reasonable care with fund assets.[13]

On May 21, 1998, we suspended the compliance date for most of the 1997 Amendments to allow time for representatives of funds and custodians to submit suggested amendments to rule 17f–5.[14] In June 1998, representatives of funds and representatives of bank custodians submitted a joint proposal to further amend the rule ("ICI/Bank Proposal").[15] The ICI/Bank Proposal would deem fund assets maintained with a depository to be subject to reasonable care if eight objective criteria were met.[16] Depository rules would not have to contain provisions that rule 17f–5 generally requires to be included in custody contracts, including provisions for indemnification or insurance.[17]

The Commission has reviewed the ICI/Bank Proposal and related submissions, and is persuaded that the 1997 Amendments do not work well when applied to foreign securities depositories. Some contract provisions generally required by the amended rule to protect fund assets may not be feasible when applied to depository rules.[18] We are not persuaded, however, that the ICI/Bank Proposal provides a solution. We are concerned that a rule that relied only on limited objective criteria may not adequately identify the potential risks of depository arrangements in a changing global marketplace. We are particularly reluctant to implement a proposal that might unduly narrow the evaluation of potential risks, and reduce incentives to provide relevant information to funds.[19]

The Commission proposes to take a different approach in a proposed new rule with respect to foreign securities depositories. In doing so, we recognize that the establishment of depositories in countries around the world is generally a favorable development for funds and their shareholders. The use of depositories simplifies the clearance and settlement of securities transactions, and may eliminate some risks of loss, theft, and destruction of securities held in certificate form.[20] Depositories in many countries, however, are relatively new institutions, and their financial strength and operational capabilities vary. Only a limited group of intermediaries, including global custodians and local banks that participate directly in depositories, may have any contractual relationship with a depository or the ties needed to monitor risks associated with the use of the depository.

Our new approach can best be explained by reference to the regulatory discussion that preceded the 1997 Amendments. Those amendments distinguished between the "custody risks" of maintaining assets overseas, which must be addressed by a fund's foreign custody manager, and "prevailing country risks," which no longer had to be considered under the rule because we believed they were more appropriately considered by a

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[7] *See* rule 17f–5(b); 1997 Release, *supra* note 3, at text accompanying n.21.

[8] Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 21259 at n.71 and accompanying text (July 27, 1995) (60 FR 39592 (Aug. 2, 1995)); 1997 Release, *supra* note 3, at n.29 and accompanying text.

[9] 1997 Release, *supra* note 3, at nn.65–66 and accompanying text. In response to comments, we also did not adopt proposed amendments that would have treated the selection of some types of depositories differently from the selection of other types of foreign custodians. *Id.* at n.29.

[10] *Id.* at text following n.86.

[11] *See* Letter to Douglas J. Scheidt, Chief Counsel, Division of Investment Management, from Dorothy M. Donohue, Associate Counsel, Investment Company Institute (Nov. 24, 1997) (placed in File No. S7–15–99).

[12] *See* Letter to Barry P. Barbash, Director, Division of Investment Management, from Dorothy M. Donohue, Associate Counsel, Investment Company Institute (Mar. 24, 1998) (placed in File No. S7–15–99) (the "March 1998 Letter").

[13] *Id.* In general, representatives of funds and bank custodians have asserted that depositories provide a necessary service for which no feasible alternative may exist, that depository standards vary from one country to another, that information about quasi-sovereign depositories may be more difficult to obtain than information about other foreign custodians, and that inflexible depository rules may not accommodate the contract terms or equivalent protections required by the 1997 Amendments. *See id.*; Letter to Barry P. Barbash, Director, Division of Investment Management, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie (June 30, 1998) (placed in File No. S7–15–99) (the "June 1998 Letter").

[14] *See* Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23201 (May 21, 1998) (63 FR 29345 (May 29, 1998)). The compliance date for the amended definition of "eligible foreign custodian" remained June 16, 1998.

[15] *See* June 1998 Letter, *supra* note 13.

[16] The criteria would require that no foreign regulators have issued public statements indicating that the depository has not complied with financial strength or internal controls requirements (unless the problem has been cured); that the depository maintain certain safeguards such as segregating depository assets from participant assets, identifying assets in depository records, providing account reports to participants, and undergoing periodic review by auditors or regulators; and that the fund's custodian agree to comply with the depository's requirements. June 1998 Letter, *supra* note 13.

Representatives of funds and bank custodians submitted a revised proposal on February 26, 1999. *See* Letter to Paul F. Roye, Director, Division of Investment Management, from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie (Feb. 26, 1999) (placed in File No. S7–15–99) (the "Revised ICI/Bank Proposal"). Under the Revised ICI/Bank Proposal, the foreign custody manager would consider information known to it if the information established certain compliance problems, even if foreign regulators had not yet acted. In addition, the foreign custody manager would have to monitor depository arrangements for any material changes.

[17] *See* rule 17f–5(c)(2)(i) and (ii) (requiring specified terms, or other provisions that provide equivalent protection, to appear in custody contract).

[18] *See* June 1998 Letter, *supra* note 13 (accompanying appendix suggests that contractual provisions for indemnification or insurance, no liens, free transferability of assets, and auditor access might be unworkable for depository custody). It is unclear whether other provisions might provide equivalent protection. *See* rule 17f–5(c)(2)(ii).

[19] We are also concerned that the terms of such a rule could be used to delimit responsibility under custodial contracts.

[20] *See* Uniform Commercial Code, Revised Article 8, Prefatory Note at I.C.; Randall D. Guynn, Modernizing Securities Ownership, Transfer and Pledging Laws 21 (Capital Markets Forum, International Bar Association 1996).

fund's adviser or board of directors as part of the decision to invest in the country.[21] A securities depository keeps asset ownership records that might be tampered with or destroyed, and the use of a depository thus exposes a fund to custody risks.[22] Yet a securities depository also may be an instrumentality of a foreign government or market and may operate under an exclusive license, making its use practically (and perhaps legally) necessary for a fund that wishes to invest in a particular foreign market. As a result, a custody decision not to use a foreign depository because of custody risks may effectively compel an investment decision not to invest in the country.

While global custodians "are in the best position to obtain information concerning depositories and to evaluate whether that information suggests that a change in custody conditions has occurred at the depository,"[23] the decision to maintain assets with the depository remains closely linked to the decision to invest or continue to invest in the country. Investment decisions are more appropriately the province of the fund's investment adviser or board of directors. Nevertheless, the adviser and the board are in a position to make these decisions only if fully informed of the custody risks by the fund's global custodian. Based on these conclusions, we are amending rule 17f–5 and proposing a new rule designed to create a partnership between a fund adviser and a global custodian in which each performs responsibilities appropriate to its expertise for the purpose of protecting fund assets placed with the foreign depository.

II. Discussion

A. Foreign Bank Custodians: Rule 17f–5

Under our proposal, a fund's use of a foreign bank custodian would continue to be governed by rule 17f–5, as amended in 1997.

We propose to further amend this rule to exclude foreign securities depositories from its coverage,[24] and to make other minor clarifying changes.[25] Compliance with the 1997 Amendments to rule 17f–5 (except for the amended definition of Eligible Foreign Custodian) will continue to be suspended until we complete consideration of new rule 17f–7.[26] We request comment on whether any further amendments to rule 17f–5 are necessary.

When a depository custody arrangement involves a foreign bank subcustodian that participates in the depository, rule 17f–5 would continue to apply to the global custodian's use of the foreign bank subcustodian, while proposed rule 17f–7 would apply to the foreign bank subcustodian's use of the depository itself.[27] Is the interaction between rule 17f–5 and proposed rule 17f–7 in regulating these respective custody arrangements sufficiently clear? If not, what further clarification is needed?

B. Foreign Securities Depositories: Proposed Rule 17f–7

Proposed rule 17f–7 would govern custody arrangements with foreign securities depositories. Funds usually deal with these depositories through a "Primary Custodian" (also often referred to as a "global custodian"), which the rule would define as a U.S. Bank or Qualified Foreign Bank (under rule 17f–5) that contracts directly with the fund to provide custodial services for foreign assets.[28] As discussed below, the rule would assign particular duties to the Primary Custodian.

1. Eligible Securities Depository

Under the proposed rule, funds or their custodians could maintain their assets with a securities depository only if it is an "Eligible Securities Depository." An Eligible Securities Depository must function as a system for the central handling of securities, and must be regulated by a foreign financial regulatory authority.[29] The Commission also is proposing four additional minimum requirements, which were suggested to us by representatives of funds and bank custodians. To be an Eligible Securities Depository under rule 17f–7, a depository must, among other requirements:

- Hold assets on behalf of the fund under conditions no less favorable than those that apply to other participants;
- Maintain records identifying the assets of each participant and keep its own assets separated from those of the participants;
- Provide periodic reports to participants; and
- Be reviewed periodically by regulatory authorities or independent accountants.[30]

Comment is requested on the proposed criteria. Inclusion of these minimum requirements may have the effect of precluding funds from investing in some developing markets in which depositories might fail to meet the criteria. The existence of the rule provisions also may encourage depositories in these markets to meet these requirements. Comment is requested as to their effect on investment in developing markets. Comment also is requested on whether these minimum standards, together with the other protections described below, are sufficient to protect fund assets. With respect to the periodic review requirement, should the rule require review by regulators or auditors to focus on the depository's custodial activities, or to include verifications of assets held? The ICI/Bank Proposal included three other minimum requirements that are not included in proposed rule 17f-7.[31] Should the rule include them? Are

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[21] 1997 Release, *supra* note 3, at text accompanying nn.13–16 and at n.29.

[22] Thus, securities depositories were included in the "selection process" of rule 17–5, as amended in 1997. *See* Letter to Dorothy M. Donohue, Associate Counsel, Investment Company Institute and Daniel L. Goelzer, Baker & McKenzie, from Robert E. Plaze, Associate Director, Division of Investment Management (Feb. 19, 1998) (placed in File No. S7–15–99).

[23] *See* Revised ICI/Bank Proposal, *supra* note 16, Attachment 3 at 3.

[24] A proposed note to rule 17f–5 would clarify that custody arrangements involving securities depositories would be governed by rule 17f–7 and by relevant provisions of rule 17f–5, which would remain applicable to foreign bank subcustodians participating in these arrangements. Rule 17f–7 would include a similar note.

[25] The amendments would use the term "foreign assets" in place of "fund assets" for convenience, and to clarify that assets maintained with a foreign custodian may not be the exclusive property of the fund. *See* Uniform Commercial Code, Revised Article 8, section 8–503(b) and comment 1 (entitlement holder's property interest in securities held by its securities intermediary is a pro rata interest shared with other customers of the intermediary).

The amendments also would refer to "maintaining assets with" an eligible foreign custodian rather than "selecting" a custodian, and would use the term "eligible foreign custodian" throughout the rule. In addition, the amendments would note that the fund's foreign custody manager, as well as the fund itself, may place and maintain fund assets with an eligible foreign custodian. *See* proposed rule 17f–5.

[26] *See* "Supplementary Information" section *supra*; Custody of Investment Company Assets Outside the United States; Extension of Compliance Date, Investment Company Act Release No. 23814 (Apr. 29, 1999); Custody of Investment Company Assets Outside the United States, Investment Company Act Release No. 23670 (Jan. 28, 1999) (64 FR 5156 (Feb. 3, 1999)); *see also supra* note 14.

[27] *See supra* note 24.

[28] Proposed rule 17f–7(b)(2).

[29] Proposed rule 17f–7(b)(1)(i) and (ii). The definition of an Eligible Securities Depository would combine elements of two related definitions in current rule 17f–5. *See* current rule 17f–5(a)(1)(ii) and (iii) (definitions of certain Eligible Foreign Custodians that are securities depositories or clearing agencies) and (a)(6) (definition of Securities Depository).

[30] Proposed rule 17f–7(b)(1)(iii) to (vi). The proposed requirements address five of the requirements suggested in the ICI/Bank Proposal. *See supra* note 16.

[31] The ICI/Bank Proposal also required that (i) no foreign regulators have issued public statements

Continued

there other minimum requirements that funds or their custodians typically insist on before placing assets with a depository? Instead of the proposed approach, should the definition state generally that a depository should meet minimum reasonable commercial standards, and then specify some but not all applicable requirements?

In some foreign securities markets, transfer agents or similar entities may perform custodial functions analogous to those of a depository. For example, an Australian central electronic subregistry may effectively function as a central transfer agent that performs custody functions in a manner similar to a depository.[32] In Russia and other countries such as the Ukraine, registrars for each issuer may perform analogous custody functions.[33] The proposed amendments would define an Eligible Securities Depository to include a transfer agent that, among other things, transfers and holds uncertificated securities on the books of an issuer for market participants.[34] The transfer agent would have to be regulated by a foreign financial regulatory authority, and meet other minimum standards for securities depositories as discussed above.

The Commission requests comment on the proposed expansion of the definition of an Eligible Securities Depository. Is it appropriate to treat transfer agents as Eligible Securities Depositories in these circumstances? Should other requirements be added if a transfer agent is to be treated as a depository? To avoid confusion about whether a transfer agent performs all of the functions of a depository, should the rule define a broader type of entity, such as an "eligible securities holding facility," and permit funds to maintain foreign assets with either a depository or a transfer agent that qualifies as this type of facility? In the alternative, should the rule omit any provision for the use of foreign transfer agents, and require funds and custodians to seek approval for their use on a case-by-case basis?

2. Risk-Limiting Conditions

Proposed rule 17f–7 would provide two alternative approaches to managing the custody risks that funds may face when they maintain assets with an Eligible Securities Depository.

a. Indemnification or Insurance

Under the first alternative, a fund could obtain indemnification or insurance that adequately protects it against *all custody risks* of using the depository.[35] A fund would be "adequately protected" under this provision by an agreement with or policy issued by a reliable party to compensate the fund for any custody losses arising from use of the depository.[36] A fund could rely on this alternative with respect to all of its assets maintained in foreign securities depositories or with respect to assets held by a particular depository.[37]

This alternative would recognize that a fund that is indemnified or insured against all custodial losses of a depository arrangement is not exposed to the risks of using the depository (which are transferred to the indemnifying or insuring party), and therefore the risk analysis, monitoring, and notification requirements discussed below may not be necessary. The Commission requests comment on this approach. Should the rule define the types of custody risks that should be covered? Should the rule specify how the fund would determine that indemnification or insurance is adequate to protect the fund against all losses attributable to custody risks? Are there any reasons why indemnification or insurance could not cover all custody risks? Should the rule permit a determination that more limited coverage may be adequate in some circumstances?

b. Risk Analysis, Monitoring, and Notification

Under the second alternative, the fund's contract with its Primary Custodian must require the custodian to provide the fund or its investment adviser an initial risk analysis of the custody risks of using a depository before the fund places its assets with the depository.[38] The contract also must require the Primary Custodian to continuously monitor these custody risks and promptly notify the fund or its investment adviser of any material change.[39] These provisions are designed to allocate responsibilities for overseeing the safety of fund assets to the parties best suited to the tasks involved.

In earlier commentary on rule 17f–5, representatives of funds argued that because of global custodians' expertise and their contractual relationships with depositories or their participants, custodians were in a better position to make findings regarding the use of depositories.[40] Global custodians disagreed, arguing that the decision to use a depository, because it is often a prerequisite for participation in a particular foreign market, is an

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indicating that the depository has not complied with financial strength requirements or (ii) internal controls requirements, unless the problem has been cured, and (iii) that the custodian for the fund has agreed to comply with the depository's requirements.

[32] Thomas Murray Ltd, Central Securities Depositories Guide 1997 at 49. The Australian "CHESS" system supplements issuers' own share registers. It records market transactions as transfers of legal ownership on the issuer's records. Although local law may not treat CHESS as a custodian, CHESS may effectively perform custodial functions by holding definitive evidence of the ownership of securities that do not exist in certificate form *Cf.* ASX Settlement and Transfer Corporation Pty Ltd, SEC No-Action Letter (Apr. 19, 1994) (suggesting that CHESS system may not perform custodial functions); rule 17f–4(a) under the Investment Company Act (17 CFR 270.17f–4(a)) (defining a securities depository as a system for the central handling of securities where all securities of any particular class or series of any issuer deposited within the system are treated as fungible and may be transferred or pledged by bookkeeping entry without physical delivery of the securities).

[33] *See* Thomas Murray Ltd. Worldwide Securities Market Report (19)97, at 247 (1996). In Russia, equity securities are generally uncertificated, and entries on the registrar's books are generally recognized as the only binding evidence of the ownership of securities. The registrar may effectively act as a custodian by holding definitive evidence of the ownership of securities that are uncertificated. *See* Templeton Russia Fund, Inc., SEC No-Action Letter (Apr. 18, 1995) (Suggesting that registrars may be limited participants in the custodial process).

[34] Proposed rule 17f–7(b)(1); *cf.* American Pension Investors Trust, SEC No-Action Letter (Feb. 1, 1991) (custodian for fund of funds could maintain fund's investment in uncertificated shares of underlying funds with the domestic transfer agents of those funds acting as deemed depositories); FundVest, SEC No-Action Letter (Nov. 21, 1984) (similar position).

[35] Proposed rule 17f–7(a)(1). Potential custody risks of using a depository might include, for example, faults in recordkeeping systems or securities handling procedures or systems for distributing losses among participants. *See infra* text accompanying notes 44 to 48 (list of factors that may be relevant to custody risks).

[36] Current rule 17f–5 requires a contract with a foreign custodian to provide for indemnification or insurance (or equivalent protections) that adequately protect the fund against the loss of assets held under the contract. Rule 17f–5(c)(2)(i)(A) and (ii): *see also* 1997 Release, *supra* note 3, at text accompanying n.27 (foreign custody manager itself may have obligation to indemnify the fund in some circumstances). The rule provision has been interpreted to bind the primary custodian globally unless each subcustodian satisfies it individually, and to extend to all foreseeable risks of loss. Investment Company Institute, SEC No-Action Letter, at nn. 1–2 and accompanying text (Nov. 4, 1987). In contrast, the first alternative, discussed in the text above, would require coverage of all custody losses.

[37] Protection available from the depository itself, such as a depository guarantee fund, normally would not protect a beneficial owner such as the fund, and may provide only for sharing or partial reimbursement of losses. A government guarantee of a depository may suffice if the guarantee is complete and extends to beneficial owners as well as depository participants.

[38] Proposed rule 17f–7(a)(2)(i)(A). *Cf.* United Kingdom Securities and Futures Authority, Board Notice 433, New Safekeeping Rules, Custody Rule 4–107(1), Assessment of Custodian (July 21, 1997) ("U.K. Custody Rule 4–107(1)") (before a custodial firm or an arranger of custodial services holds a safe custody investment with an eligible custodian, it must undertake an appropriate risk assessment of the custodian).

[39] Proposed rule 17f–7(a)(2)(i)(B). *Cf.* U.K. Custody Rule 4–107(1), *supra* note 38 (after firm makes an appropriate risk assessment of the eligible custodian, it must undertake a continuing risk assessment).

[40] *E.g.*, Letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Craig S. Tyle, Vice President & Senior Counsel, Investment Company Institute at 1, 3–4 (July 26, 1996) (place in File No. S7–15–99).

investment decision more properly made by the fund or its investment adviser.[41] Each of these views has merit and contributes to our proposed rule.

Proposed rule 17f–7 would assign to the fund's Primary Custodian the responsibility to analyze and monitor the risks of using the depository, under an approach that reflects provisions that many custodial agreements may already contain.[42] The Primary Custodian also would be required to agree to exercise reasonable care and diligence in performing these and other responsibilities, as discussed below, but would not be required to make specific findings under the rule. Its obligations under the required contractual provisions would be generally fulfilled by providing the adviser with an initial analysis and an ongoing assessment of the custody risks associated with the use of the depository. A local subcustodian or other agent could prepare the risk analysis on behalf of the Primary Custodian.[43]

The risk analysis requirements of the proposed rule are written broadly to provide custodians with flexibility to tailor the risk analysis in proportion to the risks involved in the use of each particular depository. We would expect, for example, the Primary Custodian to provide a more detailed analysis of a less established depository than of a depository with an extensive operating history. To facilitate the flexible application of the rule's requirements to different depository arrangements, the proposed rule does not specify particular types of risk that the custodian should analyze, monitor, and report.

As a general matter, we would expect that a custodian's analysis could include a discussion of the depository's expertise and market reputation, quality of services, financial strength,[44] insurance arrangements, extent and quality of regulation or other independent examination,[45] standing in published ratings,[46] internal controls and other procedures for safeguarding investments,[47] and related legal protections. Comment is requested on whether the rule should specifically require the analysis to cover these or other areas.[48]

Proposed rule 17f–7 would not assign a particular role to the investment adviser or fund board, although it assumes that the investment adviser would generally determine whether to place fund assets with a depository under the general oversight of the fund board. The rule is designed to assure that sufficient material information about depositories is provided to the adviser in a timely manner. Decisions regarding whether to place fund assets with a depository would be made by the adviser or board based on standards of care that are generally applicable to fund advisers and directors.[49] These standards generally require the exercise of care, but do not strictly limit the risks that may be acceptable in depository arrangements in appropriate circumstances.[50]

Fund boards do not typically have the expertise to make day-to-day decisions regarding foreign depository arrangements.[51] Therefore, we assume (but the rule does not require) that a fund board would delegate this responsibility to the fund's adviser, subject to the board's general oversight. Fund boards play an important role, however, in deciding whether to invest in or exit the markets of a particular country.[52] When custodial risks are a material factor in a decision to enter or exit a market, we would expect the adviser to inform the board of the risks based on analysis provided by the Primary Custodian.[53] The rule does not require, nor would we expect, fund boards to continue to be provided with the lengthy and detailed briefing books they often receive today.

The Commission requests comment on the proposed provisions relating to risk analysis, monitoring, and notification requirements. Should the rule permit a fund to use a primary custodian that is also a securities depository[54] If it does, should the rule require the primary custodian/depository to prepare the initial analysis of the custody risks of its own custody arrangements (including arrangements with its subcustodians) and to monitor the risks[55] Should the rule require another person to prepare the analysis and monitor the risks? For example, should the rule require the fund's investment adviser to retain an independent custody consultant to analyze and monitor the risks of any depository arrangement in which the fund's primary custodian is itself the depository?

c. Exercise of Care

Proposed rule 17f–7 also would require under the second alternative that the fund's contract with its Primary Custodian provide that the Primary Custodian, and each bank subcustodian

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[41] *E.g.*, Letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, from Daniel L. Goelzer, Baker & McKenzie at 3–5 (June 7, 1996) (place in File No. S7–15–99).

[42] *See e.g.*, Amendment No. 2 to Custody Agreements between Templeton Funds and The Chase Manhattan Bank (July 23, 1998), filed with Templeton Funds Inc. Form N–1A, Post-Effective Amendment No. 31 (Oct. 29, 1998) (custodian would monitor compulsory depositories and advise fund of any material negative change in the performance of, or arrangements with, any compulsory depository that would adversely affect the custody of assets); *see also* Revised ICI/Bank Proposal, *supra* note 16 (suggesting that foreign custody manager monitor whether any material change has occurred in fund custody arrangements with depository).

[43] Proposed rule 17f–7(a)(2)(i).

[44] Representatives of funds and bank custodians suggest that capital may not be a reliable gauge of financial strength because depository capital levels vary widely. *See* June 1998 Letter, *supra* note 13 (accompanying appendix). Other measures of depository financial strength that may be more significant include the level of depository settlement guarantee funds, collateral requirements, lines of credit, or insurance, as compared with participants' daily settlement obligations. *See* Gary Stephenson, *Emerging Market Depositories: What to Look For*, at 6 (speech delivered in Bermuda on May 4, 1998) (place in File Not. S7–15–99).

[45] This factor relates to requirements in the definition of an Eligible Securities Depository.

[46] These ratings may include evaluations or survey information published by sources such as *Global Custodian* or Thomas Murray Ltd, or more formal ratings of depositories that may be available.

[47] This factor related to requirements in the definition of an Eligible Securities Depository.

[48] *See generally* U.K. Custody Rule 4–107(1), *supra* note 38 (cites seven analogous factors to be considered in undertaking continuing risk assessments).

[49] *See, e.g.*, Transamerica Mortgage Advisors, Inc. v. Lewis, 444 U.S. 11 (1979) (section 206 of the Investment Advisers Act (15 U.S.C. 80b–6) imposes fiduciary duties on investment advisers); *Burks* v. *Lasker*, 441 U.S. 471 (1979) (Investment Company Act entrusts independent directors with responsibility to furnish an independent check on management); American Law Institute, Principles of Corporate Governance: Analysis and Recommendations § 4.01 (1994) (discussing duties of directors and officers under state law, including duties of care and inquiry).

[50] *See id.* The primary custodian's analysis and continuous monitoring of risks may help to provide an "early warning system" concerning a depository custody arrangement that presents more risks than other arrangements.

[51] *See* SEC, Division of Investment Management, Protecting Investors: A Half Century of Investment Company Regulation 270 n. 78 (1992).

[52] *See* 1997 Release, *supra* note 3, at n. 20 and accompanying text.

[53] The Commission would expect that the primary custodian also would continue to provide other information relating to country risk and other investment risks. *See id.* at nn. 18–20 and accompanying text.

[54] Some foreign depositories may permit funds to use their services directly as clients or participants. *See* Simon Thomas and Simon Murray, Global Securities Services: The Institutional Investors' Guide 55, 90 (1995) (Euroclear has altered its rules to permit fund mangers to participate); *see generally* rule 17f–4(c) under the Investment Company Act (17 CFR 270.17f–4(c)) (permitting a fund to participate directly in a domestic depository, subject to certain conditions); Midwest Securities Trust Company, SEC No-Action Letter (Mar. 14, 1990) (fund that participates directly in a depository may maintain a cash account to facilitate settlement of transactions or to secure obligations to a reserve fund to cover participant defaults).

[55] A foreign depository may itself maintain securities with other depositories. *See* Richard Dale, *Clearing and Settlement Risks in Global Securities Markets: The Case of Euroclear*, Journal of Business Law 434, 445 (Sept. 1998).

in its network involved in a depository arrangement, will agree to exercise reasonable care, prudence, and diligence in performing its duties under the rule and in all other conduct relating to the custodial arrangements, or to adhere to a higher standard of care.[56] The proposed standard of care is the same required of foreign custody managers under rule 17f–5,[57] and similar to standards for U.S. custodians under commercial law.[58]

C. Request for Comment on Other Issues

The Commission requests comment on possible additional changes to rule 17f–5 and proposed rule 17f–7. For example, should the Commission consider adapting the proposed requirements for the use of a depository to apply to the use of a bank subcustodian as well, and eliminate the separate requirements for the use of a bank subcustodian? Because the fund's Primary Custodian would likely act as its foreign custody manager in most cases,[59] should the Commission simply eliminate provisions that require the appointment of a foreign custody manager, and allocate related responsibilities directly to the Primary Custodian? Alternatively, should the Commission not adopt the proposed amendments to rule 17f–5 and proposed rule 17f–7, and instead revise the compliance date for the 1997 Amendments to allow funds to contract with global custodians that accept the responsibilities described in current rule 17f–5? Is there any need to address matters outside the scope of the proposed amendments, such as the handling of cash, or the use of affiliated custodians or subcustodians?

The Commission requests comment on the new rule and rule amendments proposed in this Release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release. The Commission also requests comment whether the proposals, if adopted, would promote efficiency, competition, and capital formation. Comments will be considered by the Commission as it satisfies its responsibilities under section 2(c) of the Investment Company Act.[60] For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[61] the Commission also requests information regarding the potential impact of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. The proposed amendments to rule 17f–5 and proposed new rule 17f–7 respond to concerns expressed by global custodians and fund managers that rule 17f–5, as amended in 1997, is not workable. The proposals also address fund managers' concerns that, as a result of global custodians' unwillingness to assume delegated responsibilities under rule 17f–5, obligations to evaluate depositories' custodial capabilities may fall to fund boards, which lack the relevant knowledge and expertise to make these evaluations.

Proposed rule 17f–7 should benefit funds and their investors by establishing a workable framework designed to require global custodians, which are in the best position to monitor and evaluate risks of foreign depositories, to assume these responsibilities. The rule also should benefit funds and their shareholders by freeing fund boards of the responsibility to make findings concerning foreign depositories that often remained with them after the 1997 Amendments because of global custodians' refusals to accept delegated responsibility. As a result, fund boards should have more time to address other issues that are important to investors.

The proposed rule and rule amendments may impose costs. Although the proposed rule sets minimum requirements for depositories, its lack of a maximum standard for custody risks could cause losses to investors if a depository fails, despite diligent performance by global custodians and advisers of their responsibilities. Because the rule does not limit maximum custody risks in depository arrangements, additional prospectus disclosure may be required where it may be necessary for investors to evaluate the risks and rewards of investing in the fund.[62] The Commission requests comment on the costs and benefits of current rule 17f–5, including its requirement that a foreign custody manager determine that assets maintained with a depository will be subject to reasonable care, as compared with the costs and benefits of proposed rule 17f–7's provisions that do not set limits on potential depository custody risks.

Global custodians should not incur materially greater costs under proposed rule 17f–7, which generally would require them to perform duties they typically perform already under custodial contracts. The rule may have the effect of requiring global custodians to exercise a greater degree of vigilance in monitoring depositories (or to refrain in the future from reducing their diligence) and in this respect may impose costs. Such costs are necessary, however, for the protection of funds consistent with the purposes of sections 6(c) and 17(f) of the Investment Company Act. We expect that global custodians will pass on any additional costs to mutual funds, but that the costs are unlikely to materially affect overall fund expense ratios.

Fund managers may bear the cost of evaluating the information provided by global custodians and making decisions regarding the continued use of a depository (and in this respect, continued investment in the country). We believe that in the context of foreign depository arrangements, this allocation of costs is appropriate in light of (i) the unwillingness of global custodians to assume responsibilities that may overlap with investment decisions and (ii) the extent to which the decision to use a foreign depository may affect an investment strategy that contemplates investment in a particular foreign market. Advisers to funds could pass on this responsibility to directors, but this result would not be mandated by the proposals, and fund directors would be free to reject this responsibility.

The Commission requests comment on the potential costs and benefits associated with the proposed amendments and proposed rule, and on any suggested alternatives to the proposals.[63] Specific comment is

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[56] Proposed rule 17f–7(a)(2)(ii).

[57] Rule 17f–5(b)(3); *see* proposed rule 17f–5(b)(3) (same requirement); Revised ICI/Bank Proposal, *supra* note 16, Attachment 3 at 5 ("(c)onsistent with that (reasonable care) standard, an FCM (foreign custody manager) could not, in our view, place assets with a depository that it knew to be unsafe").

[58] *See* Uniform Commercial Code, Revised Article 8, sections 8–504 and 8–509 (securities intermediary must perform its duties under Code, including duties to follow procedures in maintaining financial assets and to exercise care in selecting subcustodians, with "due care in accordance with reasonable commercial standards," unless modified by regulatory requirements or contractual provisions that meet "good faith" standard).

[59] *See* Revised ICI/Bank Proposal, *supra* note 16, Attachment 3 at 3 ("global custodian banks * * * are most likely to be asked to assume delegated Foreign Custody Manager responsibilities in most cases").

[60] Section 2(c) of the Investment Company Act (15 U.S.C. 80a–2(c)) requires the Commission, when it engages in rulemaking and is required to consider whether an action is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[61] Pub. L. No. 104–121, Title II, Stat. 857 (1996).

[62] *See* Form N–1A, Item 4(c) (requirement to disclose principal risks of investing in fund).

[63] As noted in Section IV, the Commission's staff estimates a slight reduction in the paperwork

requested on the potential costs or benefits of these proposals for funds and their boards of directors, investment advisers, primary custodians, foreign subcustodians, and depositories. Data is requested concerning these costs and benefits and how they could be quantified and expressed in dollar terms.

IV. Paperwork Reduction Act

Portions of the proposed amendments to rule 17f–5 and proposed new rule 17f–7 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and the Commission is submitting these proposals to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d). The titles of the collections of information are "Custody of Investment Company Assets Outside the United States" and "Custody of Investment Company Assets with a Foreign Securities Depository." An agency may not sponsor, conduct, or require responses to an information collection unless it displays a currently valid OMB control number.

A. Proposed Amendments to Rule 17f–5

The proposed amendments to rule 17f–5 would not substantively change the rule's collection of information requirements, which would continue to apply when a fund (*i.e.*, a registered management investment company) maintains its assets with a foreign bank custodian. The amendments would remove custody arrangements with foreign securities depositories from the rule, however, so that the rule's requirements would no longer apply to these custody arrangements. In general, therefore, the proposed amendments would reduce the information collection burdens of rule 17f–5.

The requirements of amended rule 17f–5 that may call for the collection of information would be substantially the same as under the current rule. The fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The Commission's staff estimates that during the first year after the proposed amendments go into effect, approximately 3,690 fund portfolios[64] would be required to make an average of one response per portfolio under amended rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers.[65] The total annual burden associated with these requirements of the rule during the first year would be approximately 7,380 hours (3,690 portfolios × 2 hours per portfolio). The staff further estimates that during the first year after the proposed amendments go into effect, approximately 15 global custodians[66] would be required to make an average of 80 responses per custodian concerning the use of foreign custodians other than depositories, requiring approximately 10 hours per response, plus one additional response per custodian that requires approximately 96 hours per response.[67] The total annual burden associated with these requirements of the rule during the first year would be approximately 13,440 hours (15 global custodians × 896 hours per global custodian). Therefore, the total burden of all collection of information requirements of rule 17f–5 during the first year after its amendment is estimated to be approximately 20,820 hours (7,380 + 13,440).[68]

The staff estimates that the proposed amendments' removal of custody arrangements involving securities depositories from rule 17f–5 would eliminate as much as 28,600 additional burden hours currently imposed by the rule's collection of information requirements. This estimate assumes that without the amendments, approximately 650 investment advisers[69] would have to make an average of 3 responses per adviser annually, requiring a total of approximately 44 hours for each adviser, to address depository arrangements.[70]

B. Proposed New Rule 17f–7

Proposed new rule 17f–7 would contain some collection of information requirements. Under the proposed rule, an eligible depository would have to meet minimum standards for a depository.

The fund or its investment adviser would generally determine whether the depository complies with those requirements based on information provided by the fund's primary custodian. The depository custody arrangement also would have to meet certain risk limiting requirements. The fund could obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally would determine whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian would be required to state

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burden. The Commission particularly invites comment on the reasonableness to the staff's burden estimates.

[64] This information is based on data reported by funds on Form N–SAR (17 CFR 274.101).

[65] The staff estimates that these 3,690 portfolios are divided among approximately 1,327 registered funds within approximately 650 fund complexes that may share the same investment adviser, board of directors, U.S. bank custodian, or all of these entities. Each board of directors and its delegates for a fund complex could therefore meet rule 17f–5's requirements by simultaneously approving similar arrangements for some 6 portfolios in the same complex. The estimated hour amounts are based on discussions with representatives of funds about the burden of analogous requirements in another custody rule.

[66] This estimate is based on staff review of custody contracts and other research.

[67] These estimates assume that each of 15 custodians services an average of 250 client portfolios within 40 fund complexes, that a single response by each custodian can simultaneously address approximately 6 client portfolios in a fund complex, and that each custodian makes approximately 80 responses annually requiring 10 hours per response to establish bank custody arrangements for approximately 40 fund complexes and report to their fund boards, and one response annually requiring 96 hours per response to establish a system to monitor custody arrangements for these clients.

[68] The number of responses may decline substantially after the first year because some responses made during that year would suffice for some time thereafter.

[69] *See supra* note 65.

[70] These estimates assume that one adviser manages 6 portfolios, and that each adviser would make 3 responses annually requiring a total of 44 hours to approve depository custody arrangements for each fund complex, report to fund boards, and establish a system to monitor depository arrangements for the fund complex. The 44 hours would include 10 hours spent to establish custody arrangements with depositories and make "reasonable care" determinations, 24 hours spent to monitor depository arrangements, and 10 hours spent to report to fund boards.

that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also would be required to agree to exercise reasonable care.

The staff estimates that during the first year after proposed rule 17f–7 goes into effect, approximately 650 investment advisers would make an average of 3 responses per adviser under the proposed rule, requiring a total of approximately 25 hours for each adviser, to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications.[71] The total annual burden associated with these requirements of the rule during the first year would be approximately 16,250 hours (650 advisers × 25 hours per adviser). The staff further estimates that during the first year after the proposed rule goes into effect, approximately 15 global custodians would make an average of 80 responses per custodian under the rule that would require approximately 10 hours per response.[72] The total annual burden associated with these requirements of the new rule would be approximately 12,000 hours (15 custodians × 800 hours). Therefore, the total annual burden associated with all collection of information requirements of the proposed new rule during the first year after its adoption is estimated to be 28,250 hours (16,250 + 12,000).

As reflected in the following summary of the burden hour requirements of the collection of information requirements in current rule 17f–5, rule 17f–5 as proposed to be amended, and proposed rule 17f–7, the staff estimates that the net effect of the proposed amendments and new rule may be to reduce the total annual paperwork burden by 350 hours:

Rule	Paperwork burden hours
Current rule 17f–5	49,420
Rule 17f–5 as proposed to be amended	20,820
Proposed rule 17f–7	28,250
Net reduction	−350

The Commission requests comment on the reasonableness of these estimates. Commenters who disagree are requested to provide their own estimates with supporting rationales.

Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments in order to: (i) evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (ii) evaluate the accuracy of the staff's estimate of the burden of the proposed collections of information; (iii) enhance the quality, utility and clarity of the information to be collected; and (iv) minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed amendments and proposed rule should direct them to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503; and (ii) Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549–0609, with reference to File No. S7–15–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication; therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with respect to these collections of information should be in writing, refer to File No. S7–15–99, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed amendments to rule 17f–5 and proposed new rule 17f–7, and conforming amendments to rules 7d–1 and 17f–4. The following summarizes the IRFA.

A. Reasons for the Proposed Action

Rule 17f–5 governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States. The Commission amended the rule in 1997 to modernize its conditions. In 1998, representatives of funds and bank custodians informed the Commission that some conditions of the rule presented problems regarding the use of foreign securities depositories.

B. Objectives

The Commission is proposing amendments to rule 17f–5 and a new rule 17f–7, which together would permit funds to maintain their assets in foreign securities depositories based on conditions that reflect the operations and role of these depositories. The proposed amendments to rule 17f–5 would remove custody arrangements with foreign securities depositories from the rule, eliminating the applicability to depository arrangements of requirements that certain findings be made by the fund board, its investment adviser, or global custodian, and that certain specified terms or equivalent protections appear in the rules of the depository.

Proposed new rule 17f–7 would establish new provisions for the use of depositories. The proposed rule would require every foreign securities depository that holds fund assets to meet specified minimum standards for depositories. The proposed rule also would require a custody arrangement with a depository to meet either of two alternative sets of risk-limiting conditions. Under one alternative, the fund could obtain adequate indemnification or insurance against the custody risks of depository arrangements. Under the other alternative, the fund's contract with its primary custodian would have to state that the custodian will provide the fund or its adviser an initial analysis of the custody risks of the depository arrangement, continuously monitor those risks, and notify the fund or its adviser of material changes in the risks. The primary custodian and other custodians involved in the depository

[71] These estimates assume that one adviser manages 6 portfolios, and that each adviser would make 3 responses annually requiring a total of 25 hours for each adviser to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications for the adviser's fund complex. The 25 hours would include 3 hours spent to verify depository compliance with minimum requirements, 2 hours spent to address any indemnification or insurance arrangements, and 20 hours spent to review risk analyses or notification for the fund complex.

[72] These estimates assume that each of 15 custodians services an average of 250 client portfolios within 40 fund complexes, that a single response by each custodian can simultaneously address approximately 6 client portfolios in a fund complex, and that each custodian makes approximately 80 annual responses requiring 10 hours per response to prepare risk anslyses of depository arrangements and monitor risks for approximately 40 fund complexes, and to provide notices of material changes in risks to these clients.

arrangement also would have to agree to exercise reasonable care in performing these duties and in other conduct relating to custody arrangements. The conforming amendments to rules 7d–1 and 17f–4 would clarify current references to rule 17f–5 by adding a reference to rule 17f–7 as well.

C. Legal Basis

The Commission is proposing the amendments to rule 17f–5 and new rule 17f–7 and conforming amendments to rules 7d–1 and 17f–4 pursuant to the authority set forth in sections 6(c), 7(d), 17(f), and 38(a) of the Investment Company Act (15 U.S.C. 80a–6(c), –7(d), –17(f), and –37(a)).

D. Small Entities Subject to the Rules

The proposed amendments and new rule will affect, among other persons, the approximately 15 global custodians that act as foreign custody managers for funds under rule 17f–5 and as primary custodians under proposed rule 17f–7. None of these global custodians would likely qualify as a small entity, because each custodian is a major bank with a global branch network or global ties to other banks. The proposed amendments and new rule also will affect the funds that invest in foreign markets and their investment advisers. Few if any of the affected funds and advisers would be small entities.[73]

On balance, the impact of the proposed amendments and new rule on global custodians, funds, and advisers is not expected to be great, because the burdens of the new rule's requirements would be offset in part by the elimination of burdens under existing rule 17f–5. For this reason, and because few if any of the affected entities would qualify as small entities, the proposed amendments are unlikely to have a significant impact on a substantial number of small entities.

E. Reporting, Recordkeeping, and Other Compliance Requirements

The proposed amendments to rule 17f–5 would retain existing reporting, recordkeeping, and other compliance requirements of the rule without substantive changes, insofar as they apply to custody arrangements with a foreign bank custodian. The amendments would remove a custody arrangement with a foreign depository from the rule, eliminating the necessity for it to comply with these requirements.

Proposed new rule 17f–7 would establish new requirements for arrangements with depositories. As described above, the new rule would require each foreign securities depository that holds fund assets to meet certain specified minimum requirements. Depository arrangements also would have to meet other risk-limiting conditions. A fund could obtain adequate indemnification or insurance against the custody risks of depository arrangements. In the alternative, the fund's contract with its primary custodian would have to state that the custodian will provide an analysis of depository custody risks, continuously monitor the risks, and promptly notify the fund of any material changes in risks. The primary custodian and other custodians also would have to agree to exercise reasonable care in all conduct relating to custody arrangements.

F. Significant Alternatives

The Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objective, while minimizing any significant economic impact on small entities. As discussed above, none of the global custodians affected by the proposed amendments to rule 17f–5 or proposed rule 17f–7, and few if any of the affected funds and advisers, are likely to be considered small entities for purposes of the Regulatory Flexibility Act. As further discussed above, the impact of the amendments is likely to be limited, because burdens under the proposed new rule would be offset in part by reduced burdens under current rule 17f–5. Therefore, the potential impact of the amendments and the proposed new rule on small entities would not be significant.

For these reasons, alternatives to the proposed amendments and proposed new rule are unlikely to minimize any impact that the proposed amendments may have on small entities. Alternatives in this category would include: (1) Establishing different compliance or reporting standards that take into account the resources available to small entities; (2) clarifying, consolidating or simplifying the compliance requirements for small entities; (3) using performance rather than design standards; and (4) exempting small entities from coverage of all or part of the rule.

The Commission encourages the submission of comments on matters discussed in the IRFA. Comment specifically is requested on the number of small entities that would be affected by the proposals and the impact of the proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the IRFA may be obtained by contacting Thomas M.J Kerwin, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549–0506.

VI. Statutory Authority

The Commission is proposing amendments to rule 17f–5 and new rule 17f–7 and conforming amendments to rules 7d–1 and 17f–4 pursuant to authority set forth in sections 6(c), 7(d), 17(f), and 38(a) of the Investment Company Act (15 U.S.C. 80a–6(c), –7(d), –17(f) and –37(a)).

List of Subjects in 17 CFR Part 270

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The general authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

2. Section 270.7d–1 is amended by revising the introductory text of paragraph (b)(8)(v) to read as follows:

§ 270.7d–1 Specification of conditions and arrangements for Canadian management investment companies requesting order permitting registration.

* * * * *

(b) * * *

(8) * * *

(v) Except as provided in § 270.17f–5 and § 270.17f–7, applicant will appoint, by contract, a bank, as defined in section 2(a)(5) of the Act (15 U.S.C. 80a–2(a)(5)) and having the qualification described in section 26(a)(1) of the Act (15 U.S.C. 80a–26(a)(1)), to act as trustee of, and maintain in its sole custody in the United States, all of applicant's securities and cash, other than cash

[73] A fund is consisered a small entity if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less. 17 CFR 270.0–10. An adviser is considered a small entity if it has assets under management of less than $25 million, has total assets of less than $5 million, and is not in a control relationship with other advisers or persons that are not small entities. 17 CFR 275.0–7. Most funds that invest in foreign securities are part of a fund complex that holds net assets of more than $50 million, and are advised by advisers with assets under management of $25 million or more.

necessary to meet applicant's current administrative expenses. The contract will provide, *inter alia*, that the custodian will:

* * * * *

3. Section 270.17f–4 is amended by revising the introductory text of paragraph (b) to read as follows:

§ 270.17f–4 Deposits of securities in securities depositories.

* * * * *

(b) A registered management investment company (investment company) or any qualified custodian may deposit all or any part of the securities owned by the investment company in a foreign Eligible Securities Depository as defined in § 270.17f–7 in accordance with the provisions of § 270.17f–7 and applicable provisions of § 270.17f–5, or in:

* * * * *

4. Section 270.17f–5 is revised to read as follows:

§ 270.17f–5 Custody of investment company assets outside the United States.

(a) *Definitions.* For purposes of this section:

(1) *Eligible Foreign Custodian* means an entity that is incorporated or organized under the laws of a country other than the United States and that is a Qualified Foreign Bank or a majority-owned direct or indirect subsidiary of a U.S. Bank or bank-holding company.

(2) *Foreign Assets* means any investments (including foreign currencies) for which the primary market is outside the United States, and any cash and cash equivalents that are reasonably necessary to effect the Fund's transactions in those investments.

(3) *Foreign Custody Manager* means a Fund's or a Registered Canadian Fund's board of directors or any person serving as the board's delegate under paragraphs (b) or (d) of this section.

(4) *Fund* means a management investment company registered under the Act (15 U.S.C. 80a) and incorporated or organized under the laws of the United States or of a state.

(5) *Qualified Foreign Bank* means a banking institution or trust company, incorporated or organized under the laws of a country other than the United States, that is regulated as such by the country's government or an agency of the country's government.

(6) *Registered Canadian Fund* means a management investment company incorporated or organized under the laws of Canada and registered under the Act pursuant to the conditions of § 270.7d–1.

(7) *U.S. Bank* means an entity that is:

(i) A banking institution organized under the laws of the United States;

(ii) A member bank of the Federal Reserve System;

(iii) Any other banking institution or trust company organized under the laws of any state or of the United States, whether incorporated or not, doing business under the laws of any state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to national banks under the authority of the Comptroller of the Currency, and which is supervised and examined by state or federal authority having supervision over banks, and which is not operated for the purpose of evading the provisions of this section, or

(iv) A receiver, conservator, or other liquidating agent of any institution or firm included in paragraphs (a)(7)(i), (ii), or (iii) of this section.

(b) *Delegation.* A Fund's board of directors may delegate to the Fund's investment adviser or officers or to a U.S. Bank or to a Qualified Foreign Bank the responsibilities set forth in paragraphs (c)(1), (c)(2), or (c)(3) of this section, *provided that:*

(1) The board determines that it is reasonable to rely on the delegate to perform the delegated responsibilities;

(2) The board requires the delegate to provide written reports notifying the board of the placement of Foreign Assets with a particular custodian and of any material change in the Fund's foreign custody arrangements, with the reports to be provided to the board at such times as the board deems reasonable and appropriate based on the circumstances of the Fund's arrangements; and

(3) The delegate agrees to exercise reasonable care, prudence and diligence such as a person having responsibility for the safekeeping of the Fund's Foreign Assets would exercise, or to adhere to a higher standard of care, in performing the delegated responsibilities.

(c) *Maintaining Assets with an Eligible Foreign Custodian.* A Fund or its Foreign Custody Manager may place and maintain the Fund's Foreign Assets in the care of an Eligible Foreign Custodian, *provided that:*

(1) *General Standard.* The Foreign Custody Manager determines that the Foreign Assets will be subject to reasonable care, based on the standards applicable to custodians in the relevant market, if maintained with the Eligible Foreign Custodian, after considering all factors relevant to the safekeeping of the Foreign Assets, including, without limitation:

(i) The Eligible Foreign Custodian's practices, procedures, and internal controls, including, but not limited to, the physical protections available for certificated securities (if applicable), the method of keeping custodial records, and the security and data protection practices;

(ii) Whether the Eligible Foreign Custodian has the requisite financial strength to provide reasonable care for Foreign Assets;

(iii) The Eligible Foreign Custodian's general reputation and standing; and

(iv) Whether the Fund will have jurisdiction over and be able to enforce judgments against the Eligible Foreign Custodian, such as by virtue of the existence of offices in the United States or consent to service of process in the United States.

(2) *Contract.* The arrangement with the Eligible Foreign Custodian is governed by a written contract that the Foreign Custody Manager has determined will provide reasonable care for Foreign Assets based on the standards specified in paragraph (c)(1) of this section.

(i) The contract must provide:

(A) For indemnification or insurance arrangements (or any combination) that will adequately protect the Fund against the risk of loss of Foreign Assets held in accordance with the contract;

(B) That the Foreign Assets will not be subject to any right, charge, security interest, lien or claim of any kind in favor of the Eligible Foreign Custodian or its creditors, except a claim of payment for their safe custody or administration or, in the case of cash deposits, liens or rights in favor of creditors of the custodian arising under bankruptcy, insolvency, or similar laws;

(C) That beneficial ownership of the Foreign Assets will be freely transferable without the payment of money or value other than for safe custody or administration;

(D) That adequate records will be maintained identifying the Foreign Assets as belonging to the Fund or as being held by a third party for the benefit of the Fund;

(E) That the Fund's independent public accountants will be given access to those records or confirmation of the contents of those records; and

(F) That the Fund will receive periodic reports with respect to the safekeeping of the Foreign Assets, including, but not limited to, notification of any transfer to or from the Fund's account or a third party account containing assets held for the benefit of the Fund.

(ii) The contract may contain, in lieu of any or all of the provisions specified

in paragraph (c)(2)(i) of this section, other provisions that the Foreign Custody Manager determines will provide, in their entirety, the same or a greater level of care and protection for the Foreign Assets as the specified provisions, in their entirety.

(3)(i) *Monitoring the Foreign Custody Arrangements.* The Foreign Custody Manager has established a system to monitor the appropriateness of maintaining the Foreign Assets with a particular custodian under paragraph (c)(1) of this section, and to monitor performance of the contract under paragraph (c)(2) of this section.

(ii) If an arrangement with an Eligible Foreign Custodian no longer meets the requirements of this section, the Fund must withdraw the Foreign Assets from the Eligible Foreign Custodian as soon as reasonably practicable.

(d) *Registered Canadian Funds.* Any Registered Canadian Fund may place and maintain its Foreign Assets outside the United States in accordance with the requirements of this section, *provided that:*

(1) The Foreign Assets are placed in the care of an overseas branch of a U.S. Bank that has aggregate capital, surplus, and undivided profits of a specified amount, which must not be less than $500,000; and

(2) The Foreign Custody Manager is the Fund's board of directors, its investment adviser or officers, or a U.S. Bank.

Note to § 270.17f–5: A custody arrangement that involves an Eligible Securities Depository (as defined in § 270.17f–7) would be governed by the provisions of § 270.17f–7 as well as by provisions of § 270.17f–5 that apply to any Eligible Foreign Custodian involved in the depository custody arrangement.

5. Section 270.17f–7 is added to read as follows:

§ 270.17f–7 Custody of investment company assets with a foreign securities depository.

(a) *Custody arrangement with an Eligible Securities Depository.* A Fund, including a Registered Canadian Fund, may place and maintain its Foreign Assets with an Eligible Securities Depository, *provided that:*

(1) *Indemnification or insurance.* The Fund has obtained indemnification or insurance arrangements (or any combination) that will adequately protect the Fund against all losses attributable to the custody risks associated with maintaining assets with the Eligible Securities Depository; or (2)

(2) *Alternative safeguards.* The custody arrangement provides other reasonable safeguards against the custody risks associated with maintaining assets with the Eligible Securities Depository, including:

(i) *Risk analysis and monitoring.* The Fund's contract with its Primary Custodian states that the Primary Custodian (or its agent) will:

(A) Provide the Fund or its investment adviser with an analysis of the custody risks associated with maintaining assets with the Eligible Securities Depository, before the Fund places its assets with the depository; and

(B) Continuously monitor the custody risks associated with maintaining assets with the Eligible Securities Depository and promptly notify the Fund or its investment adviser regarding any material change in these risks.

(ii) *Exercise of care.* The Fund's contract with its Primary Custodian states that the Primary Custodian and each other custodian that acts on behalf of the Fund in maintaining assets with the Eligible Securities Depository will agree to exercise reasonable care, prudence, and diligence in performing the requirements of paragraph (a)(2)(i) of this section and in all other conduct relating to custody arrangements, or to adhere to a higher standard of care.

(3) *Withdrawal of assets from Eligible Securities Depository.* If a custody arrangement with an Eligible Securities Depository no longer meets the requirements of this section, the Fund's Foreign Assets must be withdrawn from the depository as soon as reasonably practicable.

(b) *Definitions.* The terms *Foreign Assets, Fund, Qualified Foreign Bank, Registered Canadian Fund,* and *U.S. Bank* have the same meanings as in § 270.17f–5. In addition:

(1) *Eligible Securities Depository* means a system for the central handling of securities as defined in § 270.17f–4, or a transfer agent that transfers and holds uncertificated securities on the books of an issuer for market participants, that:

(i) Acts as a transnational system for the central handling of securities or equivalent book-entries, or acts as a system for the central handling of securities or equivalent book-entries in the country where it is incorporated or organized;

(ii) Is regulated by a foreign financial regulatory authority as defined under section 2(a)(50) of the Act (15 U.S.C. 80a–2(a)(50));

(iii) Holds assets for the custodian that participates in the system on behalf of the Fund under conditions no less favorable than the conditions that apply to other participants;

(iv) Maintains records that identify the assets of each participant and segregate the system's own assets from the assets of participants;

(v) Provides periodic reports to its participants with respect to its safekeeping of assets, including notices of transfers to or from any participant's account; and (vi) Is subject to periodic review by regulatory authorities or independent accountants.

(2) *Primary Custodian* means a U.S. Bank or Qualified Foreign Bank that contracts directly with a Fund to provide custodial services related to maintaining the Fund's assets outside the United States.

Note to § 270.17f–7: A custody arrangement that involves an Eligible Securities Depository would also be governed by provisions of § 270.17f–5 that apply to any Eligible Foreign Custodian (as defined in § 270.17f–5) involved in the depository custody arrangement.

Dated: April 29, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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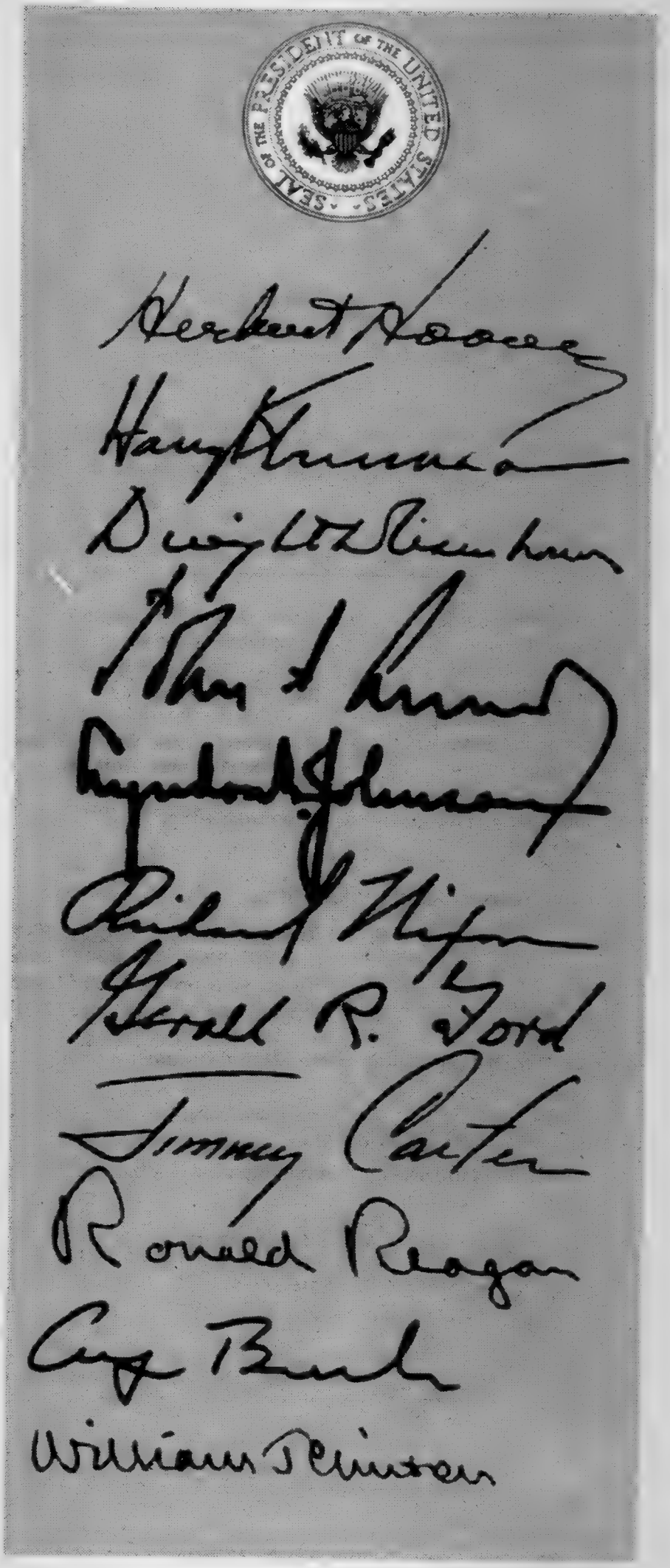
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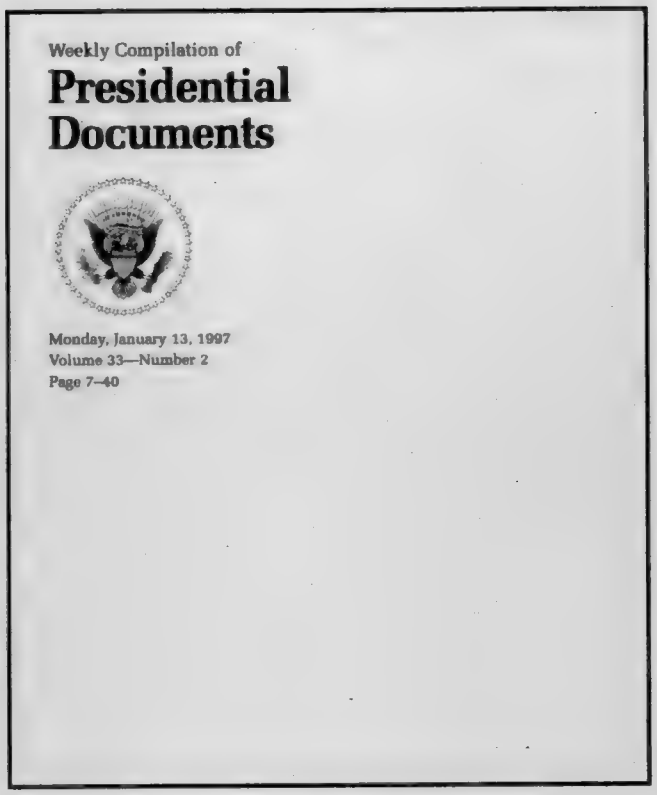
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The President

Presidential Determination No. 99–22 of April 29, 1999

Determination Pursuant to Section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as Amended

Memorandum for the Secretary of State

Pursuant to section 2(c)(1) of the Migration and Refugee Assistance Act of 1962, as amended, 22 U.S.C. 2601(c)(1), I hereby determine that it is important to the national interest that up to $20 million be made available from the U.S. Emergency Refugee and Migration Assistance Fund to meet urgent and unexpected needs relating to the program under which the United States will provide refuge in the United States to refugees fleeing the Kosovo crisis.

These funds may be used to meet the urgent and unexpected needs of refugees, displaced persons, victims of conflict, and other persons at risk due to the Kosovo crisis. These funds may be used, as appropriate, to provide contributions to international and nongovernmental organizations.

You are authorized and directed to inform the appropriate committees of the Congress of this determination and the use of funds under this authority, and to arrange for the publication of this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, April 29, 1999.

[FR Doc. 99–11722
Filed 5–6–99; 8:45 am]
Billing code 4710–10–M

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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF PERSONNEL MANAGEMENT

5 CFR PART 330

RIN 3206–AI56

Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing interim regulations that provide certain displaced employees of the former Panama Canal Zone with interagency priority consideration for vacant competitive service positions in the continental United States. These regulations are applicable to eligible displaced employees of the former Panama Canal Zone who are now being separated.

DATES: These interim regulations are effective May 7, 1999. Written comments will be considered if received no later than July 6, 1999.

ADDRESSES: Send written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6F08, 1900 E Street, NW, Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Thomas A. Glennon or Jacqueline R. Yeatman, 202–606–0960, FAX 202–606–2329.

SUPPLEMENTARY INFORMATION:

Background

The Panama Canal Treaty of 1977, as implemented through Public Law 96–70 (93 Stat. 452, The Panama Canal Act of 1979, approved September 27, 1979, and generally effective October 1, 1979), provides for the final transfer of Panama Canal operations and full control of the former Canal Zone geographic area from the Government of the United States to the Republic of Panama on December 31, 1999. This action will result in the involuntary separation, or geographic relocation, of most United States citizens presently working as Federal employees in the Canal Area.

Section 1212(a) of the Panama Canal Act, as codified in 22 U.S.C. 3652, authorized the President to establish the *Panama Canal Employment System* in accordance with applicable Treaty requirements and other provisions of law. Most Federal employees in the Canal Area hold excepted service positions under the Panama Canal Employment System. However, § 1212(a) requires full interchange between these excepted service Panama Canal Employment System positions and positions in the competitive service.

Section 1232 of the Panama Canal Act, as codified in 22 U.S.C. 3672, provides certain employees of the former Canal Zone with priority consideration for continuing vacant Federal positions.

Specifically, § 1232(a) of the Act authorizes special selection priority for any citizen of the United States who, on March 31, 1979, was an employee of the Panama Canal Company or the Canal Zone Government, who is involuntarily separated. This priority is not available to otherwise eligible employees who are placed in another appropriate Federal position that is located in the Republic of Panama.

Similarly, § 1232(b) of the Act authorizes special selection priority for any citizen of the United States who, on March 31, 1979, was employed in the Canal Zone under the Panama Canal Employment System as an employee of an executive branch agency (including the Smithsonian Institution), and whose position was eliminated as the result of the Panama Canal Treaty of 1977 and related agreements. This priority is not available to otherwise eligible employees who are appointed to another appropriate Federal position that is located in the Republic of Panama.

Section 1232(c) of the Act mandates that OPM establish and administer a Government-wide special selection priority program for all eligible displaced employees of the former Canal Zone.

New Interagency Career Transition Assistance Program for Displaced Panama Canal Zone Employees

Eligible displaced employees of the former Panama Canal Zone are eligible for interagency special selection priority consideration in this new program on a similar basis as that provided to many displaced Federal employees under the *Interagency Career Transition Assistance Plan,* which is authorized by 5 CFR 330, subpart G. However, eligible displaced employees of the former Canal Zone receive special selection priority when applying for vacant positions throughout the continental United States, while the Interagency Career Transition Assistance Plan provides priority consideration to other displaced Federal employees only in the local commuting area where the displaced employee last worked.

Waiver of Notice of Proposed Rulemaking and Delay in Effective Date

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed rulemaking because it would be contrary to the public interest to delay access to benefits provided by law. Also, pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the effective date and make this amendment effective in less than 30 days in order to provide eligible displaced employees of the former Canal Zone with special selection priority at the earliest practicable date.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only certain Federal employees.

Executive Order 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Part 330

Armed Forces reserves, Government employees.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is amending part 330 of title 5, Code of Federal Regulations, as follows:

PART 330—RECRUITMENT, SELECTION, AND PLACEMENT (GENERAL)

1. The authority citation for part 330 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–58 Comp., p. 218; § 330.102 also issued under 5 U.S.C 3327; subpart B also issued under 5 U.S.C. 3315 and 8151; § 330.401 also issued under 5 U.S.C. 3310; subpart I also issued under sec. 4432 of Pub. L. 102–484, 106 Stat. 2315; subpart K also issued under sec. 11203 of Pub. L. 105–33, 111 Stat. 738; subpart L also issued under sec. 1232 of Pub. L. 96–70, 93 Stat. 452.

2. Subpart L of part 330 is added to read as follows:

Subpart L—Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees

Sec.
330.1201 Purpose.
330.1202 Definitions.
330.1203 Eligibility
330.1204 Selection.

Subpart L—Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees

§ 330.1201 Purpose.

This subpart implements Section 1232 of Public Law 96–70 (the Panama Canal Act of 1979) and provides eligible displaced employees of the former Panama Canal Zone with interagency special selection priority consideration for continuing Federal vacant positions in the continental United States.

§ 330.1202 Definitions.

For purposes of this subpart:

(a) *Agency* means an Executive Department, a Government corporation, and an independent establishment as cited in 5 U.S.C. 105. For the purposes of this program, the term "agency" includes all components of an organization, including its Office of Inspector General.

(b) *Canal Zone* is the definition set forth in 22 U.S.C. 3602(b)(1), and means the areas and installations in the Republic of Panama made available to the United States pursuant to the Panama Canal Treaty of 1977 and related agreements;

(c) *Eligible displaced employee of the former Panama Canal Zone* means a citizen of the United States who:

(1) Holds or held a position in the Panama Canal Employment System that is in retention tenure group 1 or 2, as defined in § 351.501(a) of this chapter;

(2)(i) Was an employee of the Panama Canal Company or the Canal Zone Government on March 31, 1979, and has been continuously employed in the former Panama Canal Zone under the Panama Canal Employment System; or

(ii) Has been continuously employed since March 31, 1979, in the former Panama Canal Zone under the Panama Canal Employment System as an employee of an executive agency, or as an employee of the Smithsonian Institution;

(3) Holds or held a position that is eliminated as the result of the implementation of the Panama Canal Treaty of 1977 and related agreements;

(4) Is not appointed to another appropriate Federal position located in the Republic of Panama; and

(5) Has received a specific notice of separation by reduction in force, and meets the additional eligibility criteria covered in § 330.1203.

(d) *Special selection priority* means that an eligible displaced employee of the former Panama Canal Zone who applies for a competitive service vacancy, and who the hiring agency in the continental United States determines is well-qualified, has the same special selection priority as a current or former displaced Federal employee who is eligible under 5 CFR 330, subpart G (the Interagency Career Transition Assistance Plan), or under 5 CFR 330, subpart K (Federal Employment Priority Consideration for Displaced Employees of the District of Columbia Department of Corrections). Eligible displaced employees of the former Panama Canal Zone have special selection priority under this subpart to positions throughout the continental United States.

(e) *Vacancy* means a competitive service position to be filled for a total of 121 days or more, including all extensions, which the agency is filling, regardless of whether the agency issues a specific vacancy announcement.

(f) *Well-qualified* employee means an eligible displaced former employee of the Panama Canal Zone who possesses the knowledge, skills, and abilities which clearly exceed the minimum qualification requirements for the position. A well-qualified employee will not necessarily meet the agency's definition of *highly or best qualified*, when evaluated against other candidates who apply for a particular vacancy, but must satisfy the following criteria, as determined and consistently applied by the agency:

(1) Meets the basic qualification standards and eligibility requirements for the position, including any medical qualifications, suitability, and minimum educational and experience requirements;

(2) Satisfies one of the following qualifications requirements:

(i) Meets all selective factors where applicable. Meets appropriate quality rating factor levels as determined by the agency. Selective and quality ranking factors cannot be so restrictive that they run counter to the goal of placing displaced employees. In the absence of selective and quality ranking factors, selecting officials will document the job-related reason(s) the eligible employee is or is not considered to be well-qualified; or

(ii) Is rated by the agency to be above minimally qualified in accordance with the agency's specific rating and ranking process. Generally, this means that the individual may or may not meet the agency's test for highly qualified, but would in fact, exceed the minimum qualifications for the position;

(3) Is physically qualified, with reasonable accommodation where appropriate, to perform the essential duties of the position;

(4) Meets any special qualifying condition(s) that OPM has approved for the position; and

(5) Is able to satisfactorily perform the duties of the position upon entry.

§ 330.1203 Eligibility.

(a) In order to be eligible for special selection priority, an eligible displaced employee of the former Panama Canal Zone must:

(1) Have received a specific notice of separation by reduction in force;

(2) Have not been appointed to another appropriate position in the Government of the United States in Panama;

(3) Apply for a vacancy within the time frames established by the hiring agency; and

(4) Be found by the hiring agency as well-qualified for that specific vacancy.

(b) Eligibility for special selection priority as an eligible displaced employee of the former Panama Canal Zone begins on the date that the employee receives a specific notice of separation by reduction in force.

(c) Eligibility for special selection priority as an eligible displaced employee of the former Panama Canal Zone expires on the earliest of:

(1) One year after the effective date of the reduction in force;

(2) The date that the employee receives a career, career-conditional, or excepted appointment without time limit in any agency at any grade level; or

(3) The date that the employee is separated involuntarily for cause prior to the effective date of the reduction in force action.

§ 330.1204. Selection.

If two or more individuals apply for a vacancy and the hiring agency determines the individuals to be well-qualified, the agency has the discretion to select any of these employees eligible for priority under subpart G of this part (the Interagency Career Transition Assistance Plan), under subpart K of this part (Federal Employment Priority Consideration for Displaced Employees of the District of Columbia Department of Corrections), or under subpart L of this part (Interagency Career Transition Assistance for Displaced Former Panama Canal Zone Employees).

[FR Doc. 99–11513 Filed 5–6–99; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–53–AD; Amendment 39–11161; AD 99–10–08]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires a detailed visual inspection to detect corrosion inside the forward trunnion joint of the main landing gear (MLG); follow-on actions; and repair, if necessary. This amendment also provides for optional terminating action for the repetitive inspections. This amendment is prompted by reports of corrosion at the forward trunnion thrust face, tabs, and the internal threads of the forward trunnion of the MLG due to moisture in the forward trunnion joint. The actions specified by this AD are intended to prevent corrosion of the forward trunnion joint, which could lead to a stress corrosion fracture of the forward trunnion and possible consequent collapse of the MLG.

DATES: Effective June 11, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 11, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James G. Rehrl, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington; telephone (425) 227–2783; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on August 5, 1998 (63 FR 41739). That action proposed to require a detailed visual inspection to detect corrosion inside the forward trunnion joint of the main landing gear (MLG); follow-on actions; and repair, if necessary. That action also proposed to provide for optional terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposal.

Request to Clarify Certain Requirements

One commenter, the manufacturer, requests that paragraph (b) of the proposal be revised to clarify that the addition of corrosion-inhibiting compound to the trunnion joint is also needed to terminate the proposed inspections.

The FAA concurs. Although the appropriate service information for this AD provides procedures to apply corrosion-inhibiting compound to the trunnion joint whenever the chrome plate is applied to the trunnion, this was not explicitly stated in the wording of the AD. Therefore, the FAA has revised paragraphs (a)(1), (a)(2), and (b) of the final rule (where discussion of terminating actions occurs) to clarify that the terminating action will consist of applying chrome plate to the trunnion tabs and applying corrosion-inhibiting compound to the trunnion joint.

Request to Withdraw the NPRM or Require the Latest Modification

One commenter requests that the FAA withdraw the proposal, or at least revise the requirements to mandate the latest modification as the terminating action. The commenter states that the terminating action specified in the proposed rule will not prevent corrosion. The commenter states that its own inspections of other trunnions on which the terminating modification has been accomplished indicate that the terminating modification is inadequate to prevent corrosion. The commenter further notes that the proposed modification (which consists of applying chrome plate) does not address the areas of the joint that have proved to be the most susceptible to corrosion, e.g., the threads on the internal diameter of the trunnion and the aft surface of the joint. The commenter concludes that, in light of the fact that Boeing has recently abandoned its design philosophy for this joint, the proposed terminating modification is "dated." Specifically, the commenter notes that the latest Boeing design entails removing the threads of the joint altogether. Further, the commenter states that mandating the proposal would impose costly and disruptive maintenance requirements if the proposal requires incorporating an ineffective modification when better solutions exist.

The FAA does not concur with the commenter's request to withdraw the proposal or to revise the terminating action specified in the AD. The FAA considers that, in this case, there are three factors that make stress corrosion cracking of the forward trunnion a safety concern. First, the material (i.e., 4340M high strength steel) is known to be highly susceptible to stress corrosion cracking; second, the material is in an environment that allows corrosion to form (as has been demonstrated numerous times); and third, the material is at times exposed to sustained tensile stresses. Since an unsafe condition has been identified, the FAA considers it appropriate and necessary to issue the final rule. Although the commenter's position is that the terminating modification is inadequate in preventing corrosion, the FAA has received no reports of corroded trunnions being identified after the terminating modification has been accomplished. The FAA has determined that since the release of Boeing Alert Service Bulletin 767–32A0127, dated January 29, 1996 (the appropriate service information for this final rule), an insufficient amount of time has passed that would allow corrosion to re-

initiate on a MLG forward trunnion that has been removed from an airplane, then disassembled, inspected, cleaned, chrome-plated, and re-installed with corrosion inhibiting compound. Therefore, no change is necessary to this final rule in that regard.

The FAA acknowledges that the internal diameter of the trunnion and the aft surface of the joint are susceptible to corrosion, and that the modification specified in this final rule does not specifically address applying chrome plating to those areas. However, the FAA has determined that the required inspections for corrosion and the modification specified by this final rule are adequate to detect or prevent corrosion of the forward trunnion joint. If information becomes available that indicates that the terminating action may be inadequate, the FAA may initiate further rulemaking.

The commenter also asserts that the proposal would impose costly and disruptive maintenance requirements if it requires incorporating an ineffective modification when better solutions already exist. As explained previously, the FAA has received no information indicating that the modification is ineffective. Additionally, the FAA is aware that Boeing has developed a new design for the forward trunnion joint, which entails, among other things, the removal of the internal threads. The FAA also notes that the service information relating to the new design is not available for FAA review and approval at the current time. However, under the provisions of paragraph (c) of the final rule, the FAA will consider requests for approval of an alternative method of compliance if sufficient data are submitted to substantiate that such a design change would provide an acceptable level of safety.

Request to Withdraw the Proposal or Add Further Requirements

This same commenter requests that if the proposal is not withdrawn, it should simply require operators to remove and report any corrosion at overhaul (not to exceed 10 years), with aggressive lubrication intervals of 250 flight cycles or less. The FAA infers that the commenter is basing its request on a statement (of the commenter's) that contends that the stress levels in the forward trunnion area are below the stress corrosion cracking threshold for crack formation. Therefore, the commenter concludes that no risk exists for stress corrosion cracking to start.

The FAA does not concur with the commenter's request to withdraw the NPRM. For reasons specified in the discussion of the previous comment, the FAA finds that this rule is appropriate and necessary. Further, the FAA does not concur with the request to require removal of corrosion during overhaul. The FAA finds that the concept of stress corrosion threshold is not applicable to this situation because the affected structure is already corroded. The use of a stress corrosion threshold is only applicable during the material selection phase of a new design; it is not useful for predicting the behavior of corroded structure. Therefore, the FAA has determined that no change to the final rule is necessary.

Request to Revise the Compliance Time

One commenter states that the 18-month initial compliance time is too aggressive and will cause unnecessary costs and scheduling problems.

The FAA infers that the commenter would like the compliance time to be extended to correlate with the airplane's next scheduled overhaul. The FAA does not concur that the compliance time should be revised. In developing an appropriate compliance time, the FAA considered the safety implications, and normal maintenance schedules for timely accomplishment of the inspection and follow-on actions. In consideration of these items, as well as the reports of corrosion at the forward trunnion thrust face, tabs, and internal threads of the forward trunnion of the MLG, the FAA finds that a period of 18 months represents an appropriate compliance threshold wherein the inspection and follow-on actions can be accomplished during scheduled maintenance for the majority of affected operators and an acceptable level of safety can be maintained. However, under the provisions of paragraph (c) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such adjustments would provide an acceptable level of safety.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 455 Boeing Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 151 airplanes of U.S. registry will be affected by this AD.

It will take approximately 8 work hours per airplane to accomplish the visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the required inspection on U.S. operators is estimated to be $72,480, or $480 per airplane, per inspection cycle.

The cost impact figures above do not account for the time to gain access to the forward trunnion joint or to return a main landing gear to service. In this case, however, the access and close-up work hours may account for the predominant portion of the total cost impact of this AD. It is estimated that it will take approximately 65 work hours to gain access to both forward trunnion joints, and 89 work hours to return the airplane to service. If these costs are included, the cost impact for the required inspections will be approximately $1,467,720, or $9,720 per airplane, per inspection cycle.

Repair of the forward trunnions (two per airplane), if accomplished (which may include both corrosion blend-out repairs as well as the application of chrome plate to certain portions of the forward trunnion), will take approximately 72 work hours to accomplish, at an average labor rate of $60 per work hour. The cost of the repair kits will be approximately $16,000 per airplane. Based on these figures, the cost impact of the repair on U.S. operators is estimated to be $3,068,320, or $20,320 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99-10-08 Boeing: Amendment 39-11161. Docket 97-NM-53-AD.

Applicability: Model 767 series airplanes, manufacturer's line positions 001 through 455 inclusive, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent corrosion of the forward trunnion joint of the main landing gear (MLG), which could lead to a stress corrosion fracture of the forward trunnion and possible consequent collapse of the MLG, accomplish the following:

(a) Within 6 years since the outer cylinder of the MLG was new, last overhauled, or installed (replaced) after the last corrosion repair in accordance with Boeing Alert Service Bulletin 767-32A0127, dated January 29, 1996; or within 18 months after the effective date of this AD; whichever occurs later: Perform a detailed visual inspection to detect corrosion inside the forward trunnion joint and the internal threads of the MLG; in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 767-32A0127, dated January 29, 1996.

(1) If no corrosion of the forward trunnion joint is found, prior to further flight, accomplish either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Apply chrome plating to the forward trunnion thrust and tab faces and apply corrosion-inhibiting compound to the trunnion joint in accordance with the alert service bulletin. Accomplishment of this application of chrome plating constitutes terminating action for the requirements of this AD.

(ii) Apply corrosion-inhibiting compound to the forward trunnion joint in accordance with the Accomplishment Instructions of the alert service bulletin. Repeat the detailed visual inspection thereafter at intervals not to exceed six years or until chrome plating is applied to the forward trunnion thrust and tab faces and corrosion-inhibiting compound is applied to the trunnion joint, in accordance with the alert service bulletin.

(2) If any corrosion of the forward trunnion joint is found, prior to further flight, accomplish either paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) Repair the forward trunnion, apply chrome plating to the forward trunnion thrust and tab faces, and apply corrosion-inhibiting compound; in accordance with the alert service bulletin. Accomplishment of this application of chrome plating and corrosion-inhibiting compound constitutes terminating action for the requirements of this AD.

(ii) Repair the forward trunnion and apply corrosion-inhibiting compound to the forward trunnion joint in accordance with the alert service bulletin. Repeat the detailed visual inspection thereafter at intervals not to exceed six years or until chrome plating is applied to the forward trunnion thrust and tab faces in accordance with the alert service bulletin.

(b) Replacement, repair, or overhaul of the outer cylinder of the MLG that includes the application of chrome plating to the forward trunnion thrust and tab faces and application of corrosion-inhibiting compound, in accordance with Boeing Alert Service Bulletin 767-32A0127, dated January 29, 1996, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with Boeing Alert Service Bulletin 767-32A0127, dated January 29, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 11, 1999.

Issued in Renton, Washington, on April 30, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99-11468 Filed 5-6-99; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-CE-17-AD; Amendment 39-11160; AD 99-10-06]

RIN 2120-AA64

Airworthiness Directives; Raytheon Aircraft Corporation Model Beech 2000 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Corporation (Raytheon) Model Beech 2000 airplanes. This AD requires immediately incorporating temporary revisions to the Limitations Section of the Airplane Flight Manual (AFM) that include requirements of not allowing flap operation during takeoff, accomplishing the preflight visual checks (referred to as visual inspections in the AFM temporary revisions) of the aft cove panel of the wing for delamination prior to each flight, and incorporating a repair scheme if delamination is found. This AD also requires repetitively inspecting the trailing edge of the wing by looking for

delamination (debonding) (also referred to as cracks in the service information) through the thickness of the trailing edge of the wing cove skin panels, and modifying the center flap track rib attachment when delamination (debonding) is found. This AD is the result of a report of the wing cove skin panel separating from the wing while in flight on one of the affected airplanes. The actions specified by this AD are intended to detect and correct delamination of the wing cove skin in the area of the support rib, which could result in the delamination propagating to the trailing edge of the wing with the wing cove skin panel possibly separating from the wing.

DATES: Effective June 3, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 3, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 9, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Service information that applies to this AD may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–17–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Steve E. Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

The FAA has received a report that the wing cove skin panel separated from the wing while in flight on a Raytheon Model Beech 2000 airplane. Examination of this incident revealed delamination of the aft cove wing skin panel in the area of the support ribs, which then propagated to the wing aft cove panel until it separated.

Raytheon has reported to the FAA other wing skin delaminations in this area on the affected airplanes.

Relevant Service Information

Raytheon has issued the following:

—Safety Communique No. 158, dated March 1999, which includes procedures for inspecting the trailing edge of the wing by looking for delamination (debonding) through the thickness of the trailing edge of the wing cove skin panels;

—Raytheon Temporary Changes to the FAA Approved Airplane Flight Manual (AFM), part number (P/N) 122–590013–37BTC3, Rev. 1, dated March 12, 1999, which include requirements of not allowing flap operation during takeoff, and accomplishing preflight visual checks (referred to as visual inspections in the AFM temporary revisions) of the aft cove panel of the wing for delamination prior to each flight and incorporating a repair scheme if delamination is found;

—Field Repair drawing FR–SS–00010, Reinforcement of Aft cove panel of Flap Cove Assy P/N 122–100079–1/2, which includes procedures for modifying the aft cove panel of the flap cove assembly when delamination (debonding) is found; and

—Kit 122–4019, Rev. B, dated March 12, 1999, which includes the procedures and parts necessary for modifying the attachment of the support rib at the center flap track when delamination (debonding) (referred to as cracks in the Safety Communique) is found.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, the FAA has determined that AD action should be taken to detect and correct delamination of the wing cove skin in the area of the support rib, which could result in the delamination propagating to the trailing edge of the wing with the wing cove skin panel possibly separating from the wing.

Explanation of the Provisions of the AD

Since an unsafe condition has been identified that is likely to exist or develop in other Raytheon Model Beech 2000 airplanes of the same type design, the FAA is taking AD action. This AD requires immediately incorporating temporary revisions to the Limitations Section of the Airplane Flight Manual (AFM) that disallow flap operation during takeoff, and specify inspecting the aft cove panel of the wing for delamination prior to each flight and incorporating a repair scheme if delamination is found. This AD also requires repetitively inspecting the trailing edge of the wing by looking for delamination (debonding) (referred to as cracks in the service information) through the thickness of the trailing edge of the wing cove skin panels, and modifying the center flap track rib attachment when delamination (debonding) is found.

Accomplishment of the actions specified in this AD is required in accordance with the service information previously referenced.

Determination of the Effective Date of the AD

Since a situation exists (the wing cove skin panel possibly separating from the wing) that requires the immediate adoption of this regulation, it is found that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting immediate flight safety and, thus, was not preceded by notice and opportunity to comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to

Docket No. 99–CE–17–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

99–10–06 Raytheon Aircraft Company: Amendment 39–11160; Docket No. 99–CE–17–AD.

Applicability: Model Beech 2000 airplanes, serial numbers NC–4 through NC–53, certificated in any category, that do not have Raytheon Kit 122–4019, Rev. B, dated March 12, 1999, incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To detect and correct delamination of the wing cove skin in the area of the support rib, which could result in the delamination propagating to the trailing edge of the wing with the wing cove skin panel possibly separating from the wing, accomplish the following:

(a) Prior to further flight, incorporate Raytheon Temporary Changes to the FAA Approved Airplane Flight Manual (AFM), part number (P/N) 122–590013–37BTC3, Rev. 1, dated March 12, 1999, into the Limitations Section of the AFM. The requirements of the AFM temporary revisions include not allowing flap operation during takeoff and accomplishing preflight visual checks (referred to as visual inspections in the AFM temporary revisions) of the aft cove panel of the wing for delamination (debonding) prior to each flight and incorporating a repair scheme if delamination (debonding) is found.

Note 2: The visual checks referenced in the AFM temporary revisions may be performed by the pilot.

(b) Visually inspect the trailing edge of the wing by looking for delaminations (debonding) (also referred to as cracks in the service information) through the thickness of the trailing edge of the wing cove skin panel, in accordance with Raytheon Safety Communique No. 158, dated March 1999, at the compliance times specified in paragraphs (b)(1) and (b)(2) of this AD.

(1) *Initial Inspection:* Within the next 10 hours time-in-service (TIS) after the effective date of this AD or prior to further flight after any delamination (debonding) is found during any preflight visual check specified in the AFM temporary revisions required by paragraph (a) of this AD, whichever occurs first; and

(2) *Repetitive Inspections:* Thereafter (after each inspection) at intervals not to exceed 50 hours TIS or prior to further flight after any delamination (debonding) is found during any preflight check specified in the AFM temporary revisions required in paragraph (a) of this AD, whichever occurs first.

(c) If any delamination (debonding) is found during any of the preflight checks or inspections of the aft cove panel of the wing required by paragraphs (a) and (b) of this AD, prior to further flight, accomplish the following:

(1) *Delamination (Debonding) Found During the Preflight Visual Checks Specified in the AFM Revisions Required by Paragraph (a) of This AD:* In addition to the inspection required by paragraph (b) of this AD, incorporate one of the following:

(i) Raytheon Field Repair drawing FR-SS–00010, Reinforcement of Aft cove panel of Flap Cove Assy P/N 122–100079–1/2, as referenced in Raytheon Safety Communique No. 158, dated March 1999; or

(ii) Raytheon Kit 122–4019, Rev. B, dated March 12, 1999. This kit includes the procedures and parts necessary for modifying the attachment of the support rib at the center flap track.

(2) *Delamination (Debonding) Found During Any Inspection Required by Paragraph (b) of This AD:* Incorporate Raytheon Kit 122–4019, Rev. B, dated March 12, 1999. This kit includes the procedures and parts necessary for modifying the rib attachment center flap track.

(d) Incorporating Raytheon Kit 122–4019, Rev. B, dated March 12, 1999, as specified in paragraphs (c)(1)(ii) and (c)(2) of this AD constitutes terminating action for the AFM and repetitive inspection requirements of paragraphs (a) and (b) of this AD, respectively. This kit may be incorporated at any time, but must be incorporated if any delamination is found during any inspection required by paragraph (b) of this AD.

(e) Incorporating the AFM temporary revisions as required by paragraph (a) of this AD may be performed by the owner/operator holding at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with this AD in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspections and modifications required by paragraphs (b) and (c) of this AD can be accomplished. The AFM temporary revisions required by paragraph (a) of this AD must be incorporated prior to this flight.

(g) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(h) The inspections required by this AD shall be done in accordance with Raytheon Safety Communique No. 158, dated March 1999. The modification required by this AD shall be done in accordance with Raytheon Field Repair drawing FR–SS–00010, Revision A, dated February 24, 1999, as referenced in Raytheon Safety Communique No. 158, dated March 1999; or Raytheon Field Service Kit 122–4019, Revision B, dated March 12, 1999.

(1) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085.

(2) Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) This amendment becomes effective on June 3, 1999.

Issued in Kansas City, Missouri, on April 29, 1999.

James E. Jackson,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11320 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–7]

Amendment to Class E Airspace; Stockton, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revised Class E airspace at Stockton, MO.

DATES: The direct final rule published at 64 FR 10939 is effective on 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, Missouri 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 8, 1999 (64 FR 10939). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on July 15, 1999. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on April 21, 1999.

Jack L. Skelton,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–11543 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–22]

Amendment to Class E Airspace; Harlan, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the Class E airspace area at Harlan Municipal Airport, Harlan, IA. The FAA has developed Global Positioning System (GPS) Runway (RWY) 15 and GPS RWY 33 Standard Instrument Approach Procedures (SIAPs) to serve Harlan Municipal Airport, IA. Additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate these SIAPs and for Instrument Flight Rules (IFR) operations at this airport. The enlarged area will contain the new GPS RWY 15 and GPS RWY 33 SIAPs in controlled airspace.

The intended effect of this rule is to provide controlled Class E airspace for aircraft executing GPS RWY 15 and GPS RWY 33 SIAPs, and to segregate aircraft using instrument approach procedures in instrument conditions from aircraft operating in visual conditions.

DATES: This direct final rule is effective on 0901 UTC, September 9, 1999.

Comments for inclusion in the Rules Docket must be received on or before June 28, 1999.

ADDRESSES: Send comments regarding the rule in triplicate to: Manager, Airspace Branch, Air Traffic Division, ACE–520, Federal Aviation Administration, Docket Number 99–ACE–22, 601 East 12th Street, Kansas City, MO 64106.

The official docket may be examined in the Office of the Regional Counsel for the Central Region at the same address between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

An informal docket may also be examined during normal business hours in the Air Traffic Division at the same address listed above.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, Federal Aviation Administration, 601 East 12th Street, Kansas City, MO 64106; telephone: (816) 426–3408.

SUPPLEMENTARY INFORMATION: The FAA has developed GPS RWY 15 and GPS RWY 33 SIAPs to serve the Harlan Municipal Airport, Harlan, IA. The amendment to Class E airspace at Harlan, IA, will provide additional controlled airspace at and above 700 feet AGL in order to contain the new SIAPs within controlled airspace, and thereby facilitate separation of aircraft operating under Instrument Flight Rules.

The amendment at Harlan Municipal Airport, IA, will provide additional controlled airspace for aircraft operating under IFR. The area will be depicted on appropriate aeronautical charts. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and, therefore, is issuing it as a direct final rule. Previous actions of this nature have not been controversial and have not resulted in adverse comments or objections. The amendment will enhance safety for all flight operations by designating an area where VFR pilots may anticipate the presence of IFR aircraft at lower altitudes, especially during inclement weather conditions. A greater degree of safety is achieved by depicting the area on aeronautical charts. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulations will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document

withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy-related aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–ACE–22." The postcard will be stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATIONS OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ACE IA E5 Harlan, IA [Revised]

Harlan Municipal Airport, IA
(Lat. 41°35′04″ N., Long. 95°20′23″ W.)
Harlan NDB
(Lat. 41°34′45″ N., Long. 95°20′26″ W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Harlan Municipal Airport and within 2.6 miles each side of the 135° bearing from the Harlan NDB extending from the 6.4-mile radius to 7.4 miles southeast of the airport.

* * * * *

Issued in Kansas City, MO, on April 26, 1999.

Donovan D. Schardt,

Acting Manager, Air Traffic Division, Central Region.

[FR Doc. 99–11542 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–13–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 60 and 63

[AD–FRL–6338–3]

RIN 2060–AH47

National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins and Group IV Polymers and Resins and Standards of Performance for Volatile Organic Compound (VOC) Emissions From the Polymer Manufacturing Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of amendment in direct final rule.

SUMMARY: Due to an adverse comment, the EPA is withdrawing an amendment from the March 9, 1999 direct final rule for the National Emission Standards for Hazardous Air Pollutants (NESHAP): Group I Polymers and Resins and Group IV Polymers and Resins and Standards of Performance for Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry (64 FR 11536). This amendment deals with the oxygen correction factor requirements when complying with the 20 parts per million by volume (ppmv) control device outlet concentration compliance option for continuous front-end process vents. The withdrawal of the amendment from the direct final rule will only affect sources subject to the Group I Polymers and Resins NESHAP.

DATES: Amendment 6 in the direct final rule, which amends § 63.485, published on March 9, 1999 (64 FR 11542), is withdrawn as of May 7, 1999. The remaining amendments will be effective May 10, 1999 as stated in the March 9 rule.

ADDRESSES: Docket No. A–92–44 containing supporting information used in the development of this notice is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding holidays. The docket is located in the EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Robert E. Rosensteel at (919) 541–5608, Emission Standards Division (MD–13), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, electronic mail address "rosensteel.bob@epa.gov".

SUPPLEMENTARY INFORMATION: On March 9, 1999, the EPA published a direct final rule (64 FR 11536) and a parallel proposal (64 FR 11555) to amend portions of the Group I and Group IV Polymers and Resins NESHAP. Also on March 9, 1999, the EPA published a notice (64 FR 11560) proposing amendments to the Group I and Group IV Polymers and Resins NESHAP (40 CFR part 63, subparts U and JJJ, respectively) to make changes to the 1996 promulgated rules, in response to technical issues raised through a 1996 petition for review.

The EPA stated in the direct final rule (64 FR 11536, March 9, 1999) that if relevant, adverse comments were received by April 8, 1999, the EPA would publish a notice to withdraw the affected portions of the direct final rule before its effective date of May 10, 1999. The EPA received an adverse comment on Amendment 6 in the direct final rule and, therefore, is withdrawing Amendment 6. This withdrawal of Amendment 6 only affects sources subject to the Group I Polymers and Resins NESHAP (40 CFR part 63, subpart U). Amendment 6 would have changed the requirements in § 63.485(a) to reference a new paragraph (§ 63.485(v)), which would have adjusted the control device outlet concentration of 20 ppmv using a 3 percent oxygen correction factor.

The adverse comment stated that § 63.485(a) in the direct final rule makes reference to paragraphs in separate proposed amendments (64 FR 11560, March 9, 1999), which respond to a 1996 petition for review, rather than to paragraphs in the 1996 promulgated NESHAP (40 CFR part 63, subpart U). The commenter said that Amendment 6 in the direct final rule caused confusion in interpreting the intent of the regulation. The EPA will address this comment on the withdrawn amendment in the subsequent final action on the proposed amendments. The 25 amendments for which we did not receive adverse comments will become effective on May 10, 1999, as provided in the March 9, 1999 direct final rule (64 FR 11536).

Dated: April 29, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–11561 Filed 5–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7713]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATES: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street, SW., Room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 et seq., unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 et seq. Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column.

The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as

amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region V				
Michigan: Ionia, township of, Ionia County	260832	Jan. 22, 1991, Emerg; May 2, 1999, Reg; May 2, 1999, Susp.	May 2, 1999	May 2, 1999.
Region VI				
Oklahoma:				
Pryor Creek, city of, Mayes County	400117	Apr. 21, 1975, Emerg; July 16, 1987, Reg; May 4, 1999, Susp.	May 4, 1999	May 4, 1999.
Mayes County, unincorporated areas	400458	Apr. 8, 1987, Emerg; Dec. 1, 1989, Reg; May 4, 1999, Susp.	.....do	Do.
Region IX				
California: Los Angeles, city of, Los Angeles County.	060137	June 19, 1970, Emerg; Dec. 2, 1980, Reg; May 4, 1999, Susp.	.....do	Do.
Region II				
New York:				
Camillus, village of, Onondaga County ..	360571	July 17, 1974, Emerg; Aug. 3, 1981, Reg; May 18, 1999, Susp.	May 18, 1999	May 18, 1999.
Camillus, town of, Onondaga County	360570	July 23, 1975, Emerg; June 15, 1981, Reg; May 18, 1999, Susp.	.....do	Do.
Region III				
Pennsylvania:				
Bedminster, township of, Bucks County	421049	Feb. 5, 1976, Emerg; Dec. 1, 1983, Reg; May 18, 1999, Susp.	.....do	Do.
Bensalem, township of, Bucks County ...	420181	Dec. 15, 1972, Emerg; July 17, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Bridgeton, township of, Bucks County ...	420182	Dec. 10, 1971, Emerg; Sept. 30, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Bristol, township of, Bucks County	420984	Nov. 10, 1972, Emerg; Sept. 29, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Buckingham, township of, Bucks County	420985	Jan. 15, 1974, Emerg; Mar. 15, 1979, Reg; May 18, 1999, Susp.	.....do	Do.
Chalfont, borough of, Bucks County	420184	Feb. 25, 1972, Emerg; Dec. 28, 1976, Reg; May 18, 1999, Susp.	.....do	Do.
Doylestown, township of, Bucks County	420185	Dec. 22, 1972, Emerg; Sept. 29, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Durham, township of, Bucks County	420186	Sept. 8, 1972, Emerg; Aug. 15, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
East Rockhill, township of, Bucks County.	420187	Jan. 26, 1973, Emerg; Aug. 1, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Falls, township of, Bucks County	420188	July 21, 1972, Emerg; Sept. 30, 1980, Reg; May 18, 1999, Susp.	.....do	Do.
Haycock, township of, Bucks County	421127	July 28, 1975, Emerg; Sept. 3, 1980, Reg; May 18, 1999, Susp.	.....do	Do.
Hilltown, township of, Bucks County	420189	Oct. 6, 1972, Emerg; Jan. 30, 1981, Reg; May 18, 1999, Susp.	.....do	Do.

State/location	Community No.	Effective date of eligibility	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Hulmeville, borough of, Bucks County ...	420190	Aug. 16, 1973, Emerg; Sept. 30, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Langhorne, borough of, Bucks County ...	421074	Jan. 24, 1975, Emerg; July 2, 1980, Reg; May 18, 1999, Susp.	.....do	Do.
Lower Makefield, township of, Bucks County.	420191	Dec. 1, 1972, Emerg; Sept. 30, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Lower Southampton, township of, Bucks County.	420192	Sept. 15, 1972, Emerg; Mar. 15, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Milford, township of, Bucks County	422337	June 17, 1975, Emerg; June 1, 1982, Reg; May 18, 1999, Susp.	.....do	Do.
Morrisville, borough of, Bucks County	420194	Sept. 1, 1972, Emerg; Sept. 30, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
New Britain, borough of, Bucks County	420986	Dec. 6, 1973, Emerg; April 2, 1979, Reg; May 18, 1999, Susp.	.....do	Do.
New Hope, borough of, Bucks County ...	420195	Jan. 19, 1973, Emerg; Dec. 15, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Newtown, borough of, Bucks County	420196	Feb. 5, 1975, Emerg; Dec. 18, 1979, Reg; May 18, 1999, Susp.	.....do	Do.
Newtown, township of, Bucks County	421084	Mar. 16, 1999, Emerg; Dec. 18, 1979, Reg; May 18, 1999, Susp.	.....do	Do.
Nockamixon, township of, Bucks County	420197	Feb. 2, 1973, Emerg; Nov. 2, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Northampton, township of, Bucks County.	420988	Sept. 26, 1973, Emerg; Feb. 15, 1980, Reg; May 18, 1999, Susp.	.....do	Do.
Perkasie, borough of, Bucks County	420198	Sept. 8, 1972, Emerg; Mar. 1, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Plumstead, township of, Bucks County ..	420199	Feb. 25, 1973, Emerg; Sept. 29, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Quakertown, borough of, Bucks County	420200	Feb. 2, 1973, Emerg; July 5, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Richland, township of, Bucks County	421095	May 15, 1974, Emerg; June 15, 1981, Reg; May 18, 1999, Susp.	.....do	Do.
Riegelsville, borough of, Bucks County ..	420201	Aug. 25, 1972, Emerg; Apr. 17, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Sellersville, borough of, Bucks County ...	420203	July 9, 1973, Emerg; Feb. 15, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Silverdale, borough of, Bucks County	422338	Feb. 17, 1977, Emerg; Jan. 5, 1984, Reg; May 18, 1999, Susp.	.....do	Do.
Solebury, township of, Bucks County	420202	Oct. 29, 1971, Emerg; Apr. 15, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Springfield, township of, Bucks County ..	420204	June 14, 1973, Emerg; Jan. 3, 1979, Reg; May 18, 1999, Susp.	.....do	Do.
Tinicum, township of, Bucks County	420205	Nov. 12, 1971, Emerg; Feb. 1, 1979, Reg; May 18, 1999, Susp.	.....do	Do.
Tullytown, borough of, Bucks County	420206	Aug. 15, 1974, Emerg; Feb. 1, 1980, Reg; May 18, 1999, Susp.	.....do	Do.
Upper Makefield, township of, Bucks County.	420207	Dec. 3, 1971, Emerg; Oct. 17, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Upper Southampton, township of, Bucks County.	420989	Oct. 4, 1973, Emerg; Apr. 3, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Warminster, township of, Bucks County	420990	Oct. 4, 1973, Emerg; Mar. 1, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Warrington, township of, Bucks County	420208	Aug. 18, 1972, Emerg; Sept. 29, 1978, Reg; May 18, 1999. Susp.	.....do	Do.
Warwick, township of, Bucks County	420209	Feb. 18, 1972, Emerg; Sept. 29, 1978. Reg; May 18, 1999, Susp.	.....do	Do.
West Rockhill, township of, Bucks County.	421123	June 1, 1979, Emerg; July 5, 1984, Reg; May 18, 1999, Susp.	.....do	Do.
Wrightstown, township of, Bucks County	421045	Feb. 5, 1974, Emerg; Aug. 15, 1978, Reg; May 18, 1999, Susp.	.....do	Do.
Yardley, borough of, Bucks County	420210	Dec. 10, 1971, Emerg; Aug. 1, 1977, Reg; May 18, 1999, Susp.	.....do	Do.
Region VI				
Arkansas: Clarksville, city of, Johnson County.	050112	June 26, 1975, Emerg; Sept. 30, 1982, Reg; May 18, 1999, Susp.	.....do	Do.
Texas: Chambers County, unincorporated areas.	480119	July 10, 1975, Emerg; June 15, 1983, Reg; May 18, 1999, Susp.	.....do	Do.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: April 28, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11529 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: Modified base (1% annual chance) flood elevations are finalized for the communities listed below. These modified elevations will be used to calculate flood insurance premium rates for new buildings and their contents.

EFFECTIVE DATES: The effective dates for these modified base flood elevations are indicated on the following table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect for each listed community prior to this date.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency makes the final determinations listed below of modified base flood elevations for each community listed. These modified elevations have been published in newspapers of local circulation and ninety (90) days have elapsed since that publication. The Associate Director has resolved any appeals resulting from this notification.

The modified base flood elevations are not listed for each community in this notice. However, this rule includes the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection.

The modifications are made pursuant to section 206 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

These modified elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community no.
Virginia: Prince William (FEMA Docket No. 7281).	City of Manassas	January 22, 1999, January 29, 1999, *Manassas Journal Messenger.*	The Honorable Marvin L. Gillum, Mayor of the City of Manassas, P.O. Box 560, Manassas, Virginia 20108.	April 29, 1999	510112

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 22, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11526 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 65

[Docket No. FEMA–7285]

Changes in Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Interim rule.

SUMMARY: This interim rule lists communities where modification of the base (1% annual chance) flood elevations is appropriate because of new scientific or technical data. New flood insurance premium rates will be calculated from the modified base flood elevations for new buildings and their contents.

DATES: These modified base flood elevations are currently in effect on the dates listed in the table and revise the Flood Insurance Rate Map(s) (FIRMs) in effect prior to this determination for each listed community.

From the date of the second publication of these changes in a newspaper of local circulation, any person has ninety (90) days in which to request through the community that the Associate Director reconsider the changes. The modified elevations may be changed during the 90-day period.

ADDRESSES: The modified base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The modified base flood elevations are not listed for each community in this interim rule. However, the address of the Chief Executive Officer of the community where the modified base flood elevation determinations are available for inspection is provided.

Any request for reconsideration must be based upon knowledge of changed conditions, or upon new scientific or technical data.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.*, and with 44 CFR part 65.

For rating purposes, the currently effective community number is shown and must be used for all new policies and renewals.

The modified base flood elevations are the basis for the floodplain management measures that the community is required to either adopt or to show evidence of being already in effect in order to qualify or to remain qualified for participation in the National Flood Insurance Program.

These modified elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities.

The changes in base flood elevations are in accordance with 44 CFR 65.4.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are required to maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This interim rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 65

Flood insurance, Floodplains, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 65 is amended to read as follows:

PART 65—[AMENDED]

1. The authority citation for part 65 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 65.4 [Amended]

2. The tables published under the authority of § 65.4 are amended as follows:

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Florida: Pinellas ...	City of St. Petersburg.	February 18, 1999, February 25, 1999, *St. Petersburg Times.*	The Honorable David J. Fischer, Mayor of the City of St. Petersburg, P.O. Box 2842, One 4th Street, North, St. Petersburg, Florida 33731–2842.	Feb. 11, 1999	125148 C
Georgia: Richmond.	Unincorporated Areas.	February 10, 1999, February 17, 1999, *The Augusta Chronicle.*	The Honorable Bob Young, Mayor of Richmond County, City-County Municipal Building, 530 Greene Street, Room 806, Augusta, Georgia 30911.	May 18, 1999	130158

State and county	Location	Dates and name of newspaper where notice was published	Chief executive officer of community	Effective date of modification	Community No.
Illinois: DuPage	Unincorporated Areas.	February 16, 1999, February 23, 1999, *Daily Herald.*	Mr. Robert Schillerstrom, Chairman of the DuPage County Board, DuPage Center, 421 North County Farm Road, Wheaton, Illinois 60187.	May 24, 1999	170197 D
Minnesota: Olmsted	City of Rochester	February 19, 1999, February 26, 1999, *Post-Bulletin.*	The Honorable Chuck Canfield, Mayor of the City of Rochester, City Hall, Room 281, 201 4th Street, SE, Rochester, Minnesota 55904.	Feb. 11, 1999	275246 E
Olmsted	Unincorporated Areas.	February 19, 1999, February 26, 1999, *Post-Bulletin.*	Mr. Richard Devlin, Olmsted County Administrator, 151 4th Street, SE, Rochester, Minnesota 55904.	Feb. 11, 1999	270626 E
North Carolina: Guilford.	City of Greensboro	January 20, 1999, January 27, 1999, *News and Record.*	The Honorable Carolyn S. Allen, Mayor of the City of Greensboro, One Governmental Plaza, P.O. Box 3136, Greensboro, North Carolina 27402.	Apr. 27, 1999	375351 C
Tennessee: Shelby.	City of Germantown.	February 12, 1999, February 19, 1999, *The Commercial Appeal.*	The Honorable Sharon Goldsworthy, Mayor of the City of Germantown, 1930 South Germantown Road, Germantown, Tennessee 38183–0809.	Feb. 2, 1999	470353
Virginia: Albemarle	Unincorporated Areas.	February 9, 1999, February 16, 1999, *The Daily Progress.*	Mr. Robert W. Tucker, Jr., Albemarle County Administrator, 401 McIntire Road, Charlottesville, Virginia 22901.	Feb. 3, 1999	510006 B

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 21, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11527 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: Base (1% annual chance) flood elevations and modified base flood elevations are made final for the communities listed below. The base flood elevations and modified base flood elevations are the basis for the floodplain management measures that each community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATES: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base flood elevations and modified base flood elevations for each community. This date may be obtained by contacting the office where the maps are available for inspection as indicated on the table below.

ADDRESSES: The final base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the table below.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) makes final determinations listed below of base flood elevations and modified base flood elevations for each community listed. The proposed base flood elevations and proposed modified base flood elevations were published in newspapers of local circulation and an opportunity for the community or individuals to appeal the proposed determinations to or through the community was provided for a period of ninety (90) days. The proposed base flood elevations and proposed modified base flood elevations were also published in the **Federal Register**.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67.

The Agency has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base flood elevations and modified base flood elevations are made final in the communities listed below. Elevations at selected locations in each community are shown.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this rule is exempt from the requirements of the Regulatory Flexibility Act because final or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. No regulatory flexibility analysis has been prepared.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.11 [Amended]

2. The tables published under the authority of § 67.11 are amended as follows:

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
CONNECTICUT	
Ridgefield (Town), Fairfield County (FEMA Docket No. 7267)	
Mint Brook:	
Approximately 0.25 mile downstream of George Washington Highway	*470
Approximately 240 feet upstream of North Ridgebury Road	*560
Norwalk River:	
Approximately 365 feet downstream of Portland Avenue	*344
Approximately 840 feet upstream of footbridge (at revised cross section L)	*368
Unnamed Tributary to Saugatuck River:	
Approximately 0.73 mile downstream of Rock Dam	*530
At Windwing Lake Dam	*603
South Branch Unnamed Tributary to Saugatuck River:	
At confluence with Unnamed Tributary to Saugatuck River	*537
At upstream side of Fox Hill Lake Dam	*557
Lake Windwing:	
For its entire shoreline within the community	*603
Fox Hill Lake:	
For its entire shoreline within the community	*557
Split Flow:	
At confluence with Unnamed Tributary to Saugatuck River	*587
At Lake Windwing	*603
Cooper Pond Brook:	
At confluence with the Norwalk River	*349
Approximately 115 feet downstream of Shopping Center Access Road	*349
Maps available for inspection at Ridgefield Town Hall, 66 Prospect Street, Ridgefield, Connecticut.	
Vernon (Town), Tolland County (FEMA Docket No. 7267)	
Tankerhoosen River:	
At confluence with Hockanum River	*181
Approximately 2,025 feet upstream of Tunnel Road	*290
Lower Hockanum River:	
Approximately 700 feet downstream of Wells Road	*176
Approximately 2,250 feet upstream of Windsorville Road	*216
Upper Hockanum River:	
Approximtely 640 feet downstream of Union Street	*238
Approximately 650 feet upstream of River Street Bridge	*258
Maps available for inspection at the Vernon Town Hall, 14 Park Place, Vernon, Connecticut.	
GEORGIA	
Bibb County (Unincorporated Areas) (FEMA Docket No. 7275)	
Tobesofkee Creek Tributary No. 1:	
Approximately 2,600 feet upstream of confluence with Tobesofkee Creek	*305
Approximately 180 feet upstream of Eisenhower Parkway (U.S. 80)	*353
Maps available for inspection at the Bibb County Engineering Office, 780 Third Street, Macon, Georgia.	
Coweta County (Unincorporated Areas) (FEMA Docket No. 7275)	
White Oak Creek:	
Downstream side of State Highway 54	*770
Approximately 1,300 feet upstream of Interstate 85	*882
Paradise Lakes Branch:	
At confluence with White Oak Creek	*788
Approximately 1,050 feet downstream of McGahee Road	*788
Chandlers Creek:	
At confluence with White Oak Creek	*789
Approximately 0.49 mile upstream of confluence with White Oak Creek	*789
Turkey Creek:	
At confluence with White Oak Creek	*791
Approximately 70 feet downstream of Southern Railroad	*791
Sullivans Lake Branch:	
At confluence with White Oak Creek	*797
Approximately 400 feet upstream of confluence with White Oak Creek	*797
Maps available for inspection at the Coweta County Planning and Zoning Office, 22 East Broad Street, Newnan, Georgia.	
Gilmer County (Unincorporated Areas) (FEMA Docket No. 7275)	
Briar Creek:	
At confluence with the Ellijay River	*1,348
Approximately 1.18 miles upstream of Briar Creek Road	*1,389
Ellijay River:	
Approximately 1,450 feet upstream of confluence of Ross Creek	*1,314
Approximately 3.23 miles upstream of confluence of Boardtown Creek	*1,479
Maps available for inspection at the Gilmer County Planning Commission, #1 Westside Square, Ellijay, Georgia.	
Macon (City), Bibb County (FEMA Docket No. 7275)	
Tobesofkee Creek Tributary No. 1:	
Approximately 625 feet downstream of Interstate 80	*346
Approximately 600 feet downstream of Interstate 80	*346
Maps available for inspection at the Macon City Hall, 700 Poplar Street, Macon, Georgia.	
ILLINOIS	
Romeoville (Village), Will County (FEMA Docket No. 7271)	
Lily Cache Slough:	
At the upstream side of the Interstate Route 55 culvert	*611
Approximately 1,400 feet upstream of Weber Road	*617

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Maps available for inspection at the Romeoville Village Hall Annex, 17 Montrose Drive, Romeoville, Illinois.	
Will County (Unincorporated Areas) (FEMA Docket No. 7271)	
Lily Cache Slough:	
At the upstream side of the Interstate Route 55 culvert	*611
Approximately 1,400 feet upstream of Weber Road	*617
Maps available for inspection at the Will County Land Use Department, 501 Ella Avenue, Joliet, Illinois.	
MAINE	
Rangeley (Town), Franklin County (FEMA Docket No. 7279)	
Cupsuptic Lake:	
Entire length of shoreline within community	*1,469
Dodge Pond:	
Entire length of shoreline within community	*1,529
Dodge Pond Stream:	
Approximately 1,185 feet downstream of State Routes 4 and 16	*1,520
Upstream side of Dodge Pond Dam	*1,529
Haley Brook:	
Approximately 473 feet downstream of Maine Street	*1,520
Upstream side of Haley Pond Dam	*1,528
Haley Pond:	
Entire length of shoreline within community	*1,528
Kennebago River:	
Approximately 1,625 feet downstream of State Route 16	*1,469
Approximately 75 feet upstream of State Route 16	*1,479
Mooselookmeguntic Lake:	
Entire length of shoreline within community	*1,469
Quimby Brook:	
Approximately 825 feet downstream of State Routes 4 and 16	*1,520
Approximately 275 feet upstream of Quimby Pond Road	*1,682
Quimby Pond:	
Entire length of shoreline within community	*1,682
Rangeley Lake:	
Entire length of shoreline within community	*1,520
Round Pond:	
Entire length of shoreline within community	*1,550
Round Pond Outlet:	
Approximately 430 feet downstream of Dodge Pond Road	*1,529
Approximately 10 feet upstream of Round Pond Dam	*1,550
Rangley River:	
Approximately 4,345 feet downstream of Rangeley Dam	*1,469
Approximately 35 feet upstream of State Route 4	*1,520
Maps available for inspection at the Rangeley Town Office, 3 School Street, Rangeley, Maine.	
MASSACHUSETTS	
Bourne (Town), Barnstable County (FEMA Docket No. 7255)	
Buzzards Bay:	
At the intersection of Captain's Row and Mooring Road on Mashnee Island	*23
Approximately 600 feet south of the intersection of Scraggy Neck Road and Hospital Cove Road	*15
Cape Cod Bay:	
Approximately 800 feet north of the intersection of Norris Road and Hillside Avenue	*16
At the intersection of Pilgrim Road and Phillips Road	*11
Maps available for inspection at the Bourne Town Hall, 24 Perry Avenue, Buzzards Bay, Massachusetts.	
Boxborough (Town), Middlesex County (FEMA Docket No. 7275)	
Beaver Brook:	
Approximately 530 feet downstream of corporate limits	*227
Approximately 750 feet upstream of corporate limits	*227
Elizabeth Brook:	
Approximately 330 feet downstream of Boxborough/Harvard corporate limits	*244
Approximately 1,700 feet upstream of Massachusetts Avenue	*272
Maps available for inspection at the Boxborough Town Hall, 29 Middle Road, Boxborough, Massachusetts	
Bridgewater (Town), Plymouth County (FEMA Docket No. 7271)	
Town River:	
At the confluence with the Taunton River	*30
Approximately 1,185 feet upstream of High Street	*48
Taunton River:	
Approximately 300 feet downstream of Mill Street	*30
At the confluence of the Town and Matfield Rivers	*30
Tributary A to Sawmill Brook:	
At the confluence with Sawmill Brook	*23
Approximately 100 feet upstream of Colonial Drive	*35
Sawmill Brook:	
Approximately 40 feet downstream of SR 18 & 28 (Bedford Street)	*23
Approximately 4,800 feet upstream of SR 18 & 28 (Bedford Street)	*29
Matfield River:	
At the confluence with the Taunton River	*30
Approximately 300 feet upstream of Bridge Street	*34
South Brook:	
At the confluence with Town River	*31
Approximately 30 feet downstream of Water Street	*39
Maps available for inspection at the Town of Bridgewater Department of Inspectional Services, Academy Building, 66 Central Square, Bridgewater, Massachusetts.	
MISSISSIPPI	
Holmes County (Unincorporated Areas) (FEMA Docket No. 7275)	
Black Creek (Before Levee Overtopping):	
Approximately 1.77 miles downstream of Yazoo Street	*189
At downstream side of State Route 12	*210
Black Creek (After Levee Overtopping):	
Approximately 1,700 feet downstream of State Route 12	*206
Approximately 200 feet downstream of State Route 12	*209
Maps available for inspection at the Holmes County Courthouse, Court Square, Lexington, Mississippi.	
NEW HAMPSHIRE	
Concord (City), Merrimack County (FEMA Docket No. 7263)	
Merrimack River:	
Approximately 850 feet downstream of Garvins Falls Dam	*204
At upstream corporate limits	*252
Soucook River:	
At confluence with Merrimack River	*204
Approximately 1,850 feet upstream of confluence with Merrimack River	*204
Maps available for inspection at the Concord City Hall Lobby, Engineering Office and Code Enforcement Office, 41 Green Street, Concord, New Hampshire.	
NEW JERSEY	
Absecon (City), Atlantic County (FEMA Docket No. 7267)	
Absecon Bay:	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
At the intersection of Mill Road and Mays Landing Road	*9
Approximately 500 feet east of the intersection of Delilah Road and Absecon Boulevard	*12
Atlantic City Reservoir:	
Approximately 200 feet north of the intersection of Mays Landing Road and Mill Road	*14
Maps available for inspection at the City of Absecon Municipal Complex, 500 Mill Road, Absecon, New Jersey 08201.	
New York	
Buffalo (City), Erie County (FEMA Docket No. 7267)	
Buffalo River:	
Approximately 150 feet downstream of downstream bridge of Norfolk and Western Railway	*581
Approximately 650 feet upstream of South Ogden Street	*591
Maps available for inspection at the Buffalo City Hall, Planning Division, Room 901, Buffalo, New York.	
Chaumont (Village), Jefferson County (FEMA Docket No. 7275)	
Chaumont River and Chaumont Bay:	
Entire shoreline within community	*250
Sawmill Bay:	
Entire shoreline within community	*250
Maps available for inspection at the Village of Chaumont Municipal Building, 27994 Old Town Springs Road, Chaumont, New York.	
Ilion (Village), Herkimer County (FEMA Docket No. 7271)	
Mohawk River:	
At downstream corporate limits	*394
Approximately 1,700 feet upstream of Central Avenue	*394
Maps available for inspection at the Village of Ilion Fire Station, Otsego Street, Ilion, New York.	
LaGrange (Town), Dutchess County (FEMA Docket No. 7267)	
Wappinger Creek:	
Approximately 4,500 feet downstream of New Hackensack Road	*122
Approximately 13,700 feet upstream of Daria Drive	*192
Maps available for inspection at the LaGrange Town Hall, Zoning Office, Stringham Road, LaGrangeville, New York.	
Mohawk (Village), Herkimer County (FEMA Docket No. 7279)	
Mohawk River:	
Approximately 480 feet downstream of Mohawk Dam	*392
Approximately 1,500 feet upstream of confluence of Fulmer Creek	*394
Fulmer Creek:	
At confluence with Mohawk River	*394
Approximately 1,700 feet upstream of confluence with Mohawk River	*394
Maps available for inspection at the Village of Mohawk Hall, Village Clerk's Office, 28 Columbia Street, Mohawk, New York.	
Oswego (City), Oswego County (FEMA Docket No. 7275)	
Gardenier Creek:	
Approximately 75 feet downstream of Gardenier Hill Road	*315
Approximately 570 feet upstream of Fifth Street	*324
Wine Creek:	
Approximately 30 feet downstream of Penn Central Railroad	*262
Approximately 400 feet upstream of East Seneca Street	*280
Maps available for inspection at the Oswego City Hall, Office of Planning and Zoning, 13 West Oneida Street, Oswego, New York.	
Poughkeepsie (Town), Dutchess County (FEMA Docket No. 7267)	
Wappinger Creek:	
Approximately 320 feet downstream of New Hamburg Road	*9
Approximately 1.4 miles upstream of the confluence of Branch 6 Wappinger Creek	*192
Branch 4 Wappinger Creek:	
At confluence with Wappinger Creek	*120
Approximately 900 feet upstream of confluence with Wappinger Creek	*122
Maps available for inspection at the Poughkeepsie Town Hall, Department of Planning, 1 Overocker Road, Poughkeepsie, New York.	
Wappinger (Town), Dutchess County (FEMA Docket No. 7275)	
Wappinger Creek:	
Approximately 317 feet downstream of New Hamburg Road	*9
At corporate limits	*123
Maps available for inspection at the Wappinger Town Hall, 20 Middlebush Road, Wappingers Falls, New York.	
Wappingers Falls (Village), Dutchess County (FEMA Docket No. 7275)	
Wappinger Creek:	
Approximately 50 feet downstream from downstream corporate limits	*10
At corporate limits	*91
Maps available for inspection at the Wappingers Falls Zoning Office, 7 Spring Street, Wappingers Falls, New York.	
NORTH CAROLINA	
Trent Woods (Town), Craven County (FEMA Docket No. 7271)	
Trent River Tributary:	
At Country Club Road	*9
Approximately 100 feet upstream of Canterbury Road	*16
Jimmies Creek:	
Approximately 1,100 feet upstream of the confluence with Wilson Creek	*10
At Trent Road	*19
Maps available for inspection at the Trent Woods Town Hall, 912 Country Club Drive, Trent Woods, North Carolina.	
Wilkes County (Unincorporated Areas) (FEMA Docket No. 7271)	
Reddies River:	
Approximately 530 feet downstream of U.S. Highway 421–A	*965
At confluence with Hoopers Branch	*997
Maps available for inspection at the Wilkes County Planning Office, 110 North Street, Wilkesboro, North Carolina.	
OHIO	
Ashville (Village), Pickaway County (FEMA Docket No. 7247)	
Walnut Creek:	
Just upstream of Cromley Road	*687
Approximately 700 feet downstream of Lockbourne Eastern Road	*694
Maps available for inspection at the Village of Ashville Municipal Building, 91 West Main Street, Ashville, Ohio.	

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Circleville (City), Pickaway County (FEMA Docket No. 7247)	
Hargus Creek:	
At Island Road	*670
Approximately 50 feet upstream of Stoutsville Pike	*700
Hominy Creek:	
Approximately 350 feet upstream of confluence with Hargus Creek	*686
Approximately 0.68 mile downstream of Bolender-Pontius Road	*704
McHenry Ditch:	
At confluence with Hargus Creek	*676
Approximately 750 feet upstream of Nicholas Drive	*702
Scioto River:	
Area between U.S. Route 23 and CSX Transportation	*666
Maps available for inspection at the City of Circleville Public Service Office, 127 South Court Street, Circleville, Ohio.	
Pickaway County (Unincorporated Areas) (FEMA Docket No. 7247)	
Hargus Creek:	
At CSX Transportation	*670
Approximately 700 feet upstream of Bolender-Pontius Road	*753
Hominy Creek:	
Approximately 0.78 mile downstream of Bolender-Pontius Road	*703
Approximately 600 feet upstream of CONRAIL	*752
Scioto River:	
At the downstream county boundary	*651
Approximately 1,600 feet upstream of confluence of Big Walnut Creek	*694
Mud Run:	
At upstream side of State Route 316 (Ashville Road)	*680
Approximately 1.4 miles upstream of State Route 752	*695
Scioto Overflow to Mud Run:	
At confluence with Mud Run	*683
At downstream side of Weigand Road	*687
Big Run:	
At county boundary	*809
Big Walnut Creek:	
Approximately 1.1 miles upstream of confluence with Scioto River	*694
Maps available for inspection at the Pickaway County Commissioners Office, 207 South Court Street, Circleville, Ohio.	
South Bloomfield (Village), Pickaway County (FEMA Docket No. 7247)	
Mud Run:	
At a point approximately 2,000 feet downstream of Ashville Road (State Route 316)	*679
At State Route 752	*680
Scioto River:	
At a point approximately 0.5 mile downstream of State Route 316	*682
At a point approximately 1,400 feet downstream of State Route 316	*682
Maps available for inspection at the Village of South Bloomfield Municipal Building, 5023 South Union Street, South Bloomfield, Ohio.	
PENNSYLVANIA	
Chanceford (Township), York County (FEMA Docket No. 7275)	
Susquehanna River:	
At upstream corporate limits	*244
Approximately 2.6 miles upstream from Safe Harbor Dam	*230
Maps available for inspection at the Chanceford Township Office, Muddy Creek Forks Road, Brogue, Pennsylvania.	
Columbia (Borough), Lancaster County (FEMA Docket No. 7275)	
Susquehanna River:	
At downstream corporate limits	*244
At upstream corporate limits	*247
Strickler Run:	
At confluence of Susquehanna River	*245
Approximately 100 feet upstream of CONRAIL culvert	*245
North Branch Strickler Run:	
Approximately 350 feet upstream from confluence with Strickler Run	*280
Approximately 1,100 feet upstream of confluence with Strickler Run	*290
Maps available for inspection at the Columbia Borough Hall, 308 Locust Street, Columbia, Pennsylvania.	
Hellam (Township), York County (FEMA Docket No. 7275)	
Susquehanna River:	
At the downstream corporate limits	*245
Approximately 800 feet upstream of U.S. Route 30	*247
Maps available for inspection at the Hellam Township Office, 44 Walnut Springs Road, York, Pennsylvania.	
Lower Windsor (Township), York County (FEMA Docket No. 7275)	
Susquehanna River:	
At downstream corporate limits	*244
At upstream corporate limits	*245
Canadochly Creek:	
At the confluence with the Susquehanna River	*244
Approximately 1,950 feet upstream of Route 624	*244
Maps available for inspection at the Lower Windsor Township Municipal Building, 111 Walnut Valley Court, Wrightsville, Pennsylvania.	
Manor (Township), Lancaster County (FEMA Docket No. 7275)	
Susquehanna River:	
Approximately 2.5 miles upstream of Safe Harbor Dam	*230
Approximately 9.8 miles upstream of Safe Harbor Dam	*245
Maps available for inspection at the Manor Township Municipal Building, 950 West Fairway Drive, Lancaster, Pennsylvania.	
Tunkhannock (Township), Wyoming County (FEMA Docket No. 7275)	
Tunkhannock Creek:	
Approximately 900 feet downstream of new U.S. Route 6 and State Route 92	*611
Approximately 1.93 miles upstream of old U.S. Route 6	*642
Maps available for inspection at the Tunkhannock Township Building, 438 SR 92 S, Tunkhannock, Pennsylvania.	
Upper Merion (Township), Montgomery County (FEMA Docket No. 7247)	
Abrams Run:	
At confluence with Crow Creek	*141
Unnamed Creek A:	
Approximately 420 feet upstream of Falcon Road	*234
At confluence with Matsunk Creek	*76
Approximately 80 feet upstream of Flint Hill Road	*114
Crow Creek:	
At upstream side of CONRAIL	*81
Approximately 80 feet upstream of Croton Road	*287
Frog Run:	
At Flint Hill Road	*92
Approximately 440 feet upstream of South Henderson Road	*188
Gulph Mills Creek:	
Approximately 130 feet downstream of I–76	*127
Approximately 330 feet upstream of Gypsy Road	*270
Abrams Creek:	
At upstream side of CONRAIL	*80

Source of flooding and location	#Depth in feet above ground. *Elevation in feet (NGVD)
Approximately 60 feet upstream of Brownlee Road	*116
Matsunk Creek:	
Approximately 120 feet upstream of confluence with Schuylkill River	*69
Approximately 140 feet upstream of School Line Drive	*211
Gulph Mills Tributary A:	
At confluence with Gulph Mills Creek	*154
Approximately 80 feet upstream of Arden Road	*155
Gulph Mills Tributary B:	
At confluence with Gulph Mills Creek	*161
Approximately 65 feet upstream of Lantern Lane	*173
Maps available for inspection at the Upper Merion Public Works Department, 175 West Valley Forge Road, King of Prussia, Pennsylvania.	
Wrightsville (Borough), York County (FEMA Docket No. 7275)	
Susquehanna River:	
At downstream corporate limits	*245
At upstream corporate limits	*247
Kreutz Creek:	
At confluence with Susquehanna River	*246
Approximately 180 feet downstream of State Route 624	*246
Maps available for inspection at the Wrightsville Borough Office, 129 South 2nd Street, Wrightsville, Pennsylvania.	
SOUTH CAROLINA	
Horry County (Unincorporated Areas) (FEMA Docket No. 7259)	
Eden Saltworks Creek:	
At the end of Route 236, approximately 0.4 mile from its intersection with Little River Neck Road	*14
Approximately 400 feet east of the most southeast end of Route 236	*13
Waccamaw River:	
Approximately 5.8 miles downstream of Sea Gull Trail	*15
Approximately 3.5 miles upstream of the confluence of Mill Swamp	*19
Socastee Creek:	
Approximately 100 feet upstream of the mouth of the Intracoastal Waterway	*7
At the CSX Transportation crossing	*24
Cross Swamp:	
Confluence with Socastee Creek	*24
Approximately 650 feet downstream of U.S. Route 501	*24
Maps available for inspection at the Horry County Code Enforcement Office, 801 Main Street, Suite 121, Conway, South Carolina.	
Sumter County (Unincorporated Areas) (FEMA Docket No. 7275)	
Long Branch:	
At U.S. Route 76/378	*174
To a point approximately 2,890 feet upstream of U.S. Route 76/378	*181
Maps available for inspection at the Planning and Zoning Department, 33 North Main Street, Sumter, South Carolina.	
VIRGINIA	
Luray (Town), Page County (FEMA Docket No. 7251)	
Dry Run:	
Approximately 100 feet downstream of U.S. Route 211 Bypass	*792
Approximately 0.3 mile upstream of U.S. Route 211 Business Route	*873
Maps available for inspection at the Luray Town Hall, 45 East Main Street, Luray, Virginia 22835.	
WISCONSIN	
Blue River (Village), Grant County (FEMA Docket No. 7267)	
Wisconsin River:	
Approximately 1 mile downstream of East Street	*667
Approximately 0.2 mile upstream of East Street	*669
Maps available for inspection at the Community Building, 201 Clinton Street, Blue River, Wisconsin.	
Muscoda (Village), Grant and Iowa Counties (FEMA Docket No. 7271)	
Wisconsin River:	
Downstream corporate limits	*678
Upstream corporate limits	*680
Maps available for inspection at the Muscoda Village Hall, 206 North Wisconsin Avenue, Muscoda, Wisconsin.	

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance.")

Dated: April 21, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11525 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 97–233; RM–9162]

Radio Broadcasting Services; East Brewton, AL and Navarre, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants a Petition for Reconsideration of the *Report and Order* in this proceeding, 63 FR 64877 (November 24, 1998), and grants the request of 550–AM, the permittee of Station WGCX(FM), East Brewton, Alabama, to substitute Channel 239C3 for Channel 239A at East Brewton, reallot Channel 239C3 to Navarre, Florida, and modify the license of Station WGCX accordingly. The new allotment to Navarre is preferred over the existing allotment at East Brewton because it will provide a first local transmission service to a more populous community. This document terminates the proceeding.

EFFECTIVE DATE: June 14, 1999.

FOR FURTHER INFORMATION CONTACT: R. Barthen Gorman, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Memorandum Opinion and Order*, MM Docket No. 97–233, adopted April 30, 1999, and released April 30, 1999. The full text of this Commission decision will be available for inspection and copying during normal business hours in the FCC's Reference Information Center at Portals II, CY–A257, 445 12th Street, SW Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

2. Section 73.202(b), the Table of FM Allotments under Alabama, is amended by removing East Brewton, Channel 239A.

3. Section 73.202(b), the Table of Allotments under Florida, is amended by adding Navarre, Channel 239C3.

Federal Communications Commission.
Charles W. Logan,
Chief, Policy and Rules Division, Mass Media Bureau.
[FR Doc. 99–11500 Filed 5–6–99; 8:45 am]
BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 74

[MM Docket No. 97–234, GC Docket No. 92–52, and GEN Docket No. 90–264; FCC 99–74]

Implementation of Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses

AGENCY: Federal Communications Commission.
ACTION: Final rule; petitions for reconsideration.

SUMMARY: In this document, the Federal Communications Commission resolves numerous petitions for reconsideration filed against the Commission's earlier report and order in this proceeding that implemented provisions of the Balanced Budget Act of 1997 expanding the Commission's competitive bidding authority to include the commercial broadcast services. The document generally upholds the Commission's earlier determinations, but does amend the rules and procedures previously adopted with respect to the application of the general auction anti-collusion rule to broadcast service auctions and the eligibility standards for the new entrant bidding credit.

EFFECTIVE DATE: July 6, 1999.

FOR FURTHER INFORMATION CONTACT: Jerianne Timmerman, Video Services Division, Mass Media Bureau at (202)418–1600; Lisa Scanlan, Audio Services Division, Mass Media Bureau at (202)418–2700; Lee Martin, Office of General Counsel at (202)418–1720.

SUPPLEMENTARY INFORMATION:

Summary

1. In this *Memorandum Opinion and Order* adopted April 15, 1999, and released April 20, 1999, the Federal Communications Commission resolves petitions for reconsideration of the rules and procedures adopted in the *First Report and Order*, 63 FR 48615 (September 11, 1998), to implement provisions of the Balanced Budget Act of 1997 expanding the Commission's competitive bidding authority to include the commercial broadcast services and the Instructional Television Fixed Service (ITFS). The *Memorandum Opinion and Order* denies most issues presented in the petitions for reconsideration, but grants certain aspects of the petitions, most notably amending the applicability of the general anti-collusion rule to broadcast service auctions and refining the standards for applicants to qualify for the new entrant bidding credit.

Issues Pertaining to Pending Competing Applications

2. The *Memorandum Opinion and Order* upholds the Commission's determinations made in the *First Report and Order* with respect to pending competing full service commercial broadcast applications. Specifically, the *Memorandum Opinion and Order* denies reconsideration petitions: (1) challenging the Commission's decision to use auctions to decide among pending competing broadcast applications; (2) requesting the reimbursement of all expenses incurred by pending applicants who filed with the expectation that the Commission would use a comparative hearing to select among competing broadcast applications; (3) questioning the determination to defer until after the auction the resolution of basic qualifications issues raised against pending applicants; (4) challenging the determination that new Section 309(l) of the Communications Act permits the opening of a new filing window with respect to singleton analog television applications (with freeze waiver requests) filed by September 20, 1996; and (5) requesting some provision for a specific situation in which a competing applicant with interim operating authority has been allowed to operate a contested FM station for profit.

Filing and Other Procedural Issues

3. The *Memorandum Opinion and Order* upholds the Commission's determinations made in the *First Report and Order* regarding the following filing and procedural issues: (1) the utilization of a uniform window filing system for all auctionable broadcast services, including the FM translator and AM services; (2) allowing applicants the option of submitting a set of preferred site coordinates on their short-form applications (FCC Form 175) to participate in an FM auction; and (3) continuing to use for the filing of short-form applications in broadcast auctions the Wide Area Network utilized in previous Commission auctions for the filing of short-forms. In response to one petition, the *Memorandum Opinion and Order* extends from 10 to 15 days the filing period for petitions to deny against the long-form applications filed by winning bidders for construction permits in the secondary broadcast services. The *Memorandum Opinion and Order* also clarifies the applicability of Section 1.2112(a) of the general Part 1 auction rules to broadcast transfer and assignment applications, so as to reduce the repetitive submission of similar ownership information.

Competitive Bidding Issues

4. With regard to competitive bidding issues, the *Memorandum Opinion and Order* rejects the assertion that the imposition of reserve prices or minimum opening bids is not in the public interest in the broadcast context, and declines to adopt a proposal to resolve any remaining competing June 1, 1998 low power television displacement applications by means of various suggested priorities. The *Memorandum Opinion and Order* also rejects the contention that the Commission should adopt a post-auction procedure where, upon petition by a winning bidder, the Commission would consider evidence that the winning bidder was the sole qualified applicant for a broadcast authorization, and, in cases in which such a demonstration was made that the unsuccessful competing bidders for that authorization were unqualified, the winning bidder should be relieved of its obligation to remit the payment of its winning bid.

5. A number of petitioners called for an exception to the general auction anti-collusion rule to allow, after the filing of short-form applications in broadcast auctions, an opportunity for negotiated settlements and/or for technical and engineering solutions to remove mutual exclusivities before proceeding to auction. Although the *Memorandum Opinion and Order* rejects the contention that the Commission is statutorily required to allow such a settlement opportunity prior to broadcast service auctions, it concludes that allowing the resolution of mutual exclusivities by engineering solutions or other means following the submission of short-form applications would serve the public interest in the secondary broadcast services, and in ITFS as well.

6. Several petitioners objected to various aspects of the new entrant bidding credit, which provides a tiered credit for broadcast auction winning bidders with no, or very few, other media interests. In response to these petitions, and to promote the clear and consistent application of the eligibility standards for the bidding credit, the *Memorandum Opinion and Order:* (1) amends the eligibility standards for the bidding credit to be consistent with the

Commission's general broadcast attribution standards; (2) amends the eligibility standards for the credit so that a winning bidder's attributable interests in existing secondary broadcast stations are not counted among the bidder's other mass media interests in determining eligibility; and (3) refines the standards for determining whether a winning bidder's proposed broadcast station and the bidder's existing station(s) serve the "same area," thereby rendering the bidder ineligible for a bidding credit. In addition, the *Memorandum Opinion and Order* declines to increase the size of the tiered new entrant bidding credit, and clarifies that the credit applies only to broadcast service auctions (and not to ITFS auctions). Finally, the *Memorandum Opinion and Order* states that the Commission will consider in a further order in this proceeding an additional refinement to the new entrant eligibility standards; specifically, this further order will consider whether to attribute debt and/or equity above a certain level, based on the Commission's review of the record in the pending broadcast attribution proceeding.

7. The complete text of this *Memorandum Opinion and Order*, including any statements, is available for inspection and copying during normal business hours in the Federal Communications Commission Reference Center (Room CY–A257), 445 12th Street, S.W., Washington, D.C., and it may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20036 (202) 857–3800.

Supplemental Final Regulatory Flexibility Analysis

Summary

8. As required by the Regulatory Flexibility Act (RFA), 5 U.S.C. 603, a Final Regulatory Flexibility Analysis (FRFA) was incorporated in the *First Report and Order* in this proceeding. The Commission's Supplemental Final Regulatory Flexibility Analysis (Supplemental FRFA) in this *Memorandum Opinion and Order* reflects revised or additional information to that contained in the FRFA. This Supplemental FRFA is thus limited to matters raised in response to the *First Report and Order* that are granted on reconsideration in the *Memorandum Opinion and Order*. This Supplemental FRFA conforms to the RFA, as amended by the Contract with America Advancement Act of 1996.

Need For and Objectives of Action

9. The actions taken in this *Memorandum Opinion and Order* are in response to petitions for reconsideration or clarification of the rules and policies adopted in the *First Report and Order* to implement provisions of the Balanced Budget Act of 1997 expanding the Commission's competitive bidding authority to include the broadcast services and the Instructional Television Fixed Service (ITFS). The petitions are denied, with certain limited exceptions.

Significant Issues Raised by Public in Response to Final Regulatory Flexibility Analysis

10. No petitions or comments were received in response to the FRFA. Small business-related issues were, however, raised indirectly by some petitioners, who asked for reconsideration on certain issues affecting low power television and television and FM translator applicants (most of whom are small businesses).

Description and Estimate of the Number of Small Entities Involved

11. *Definition of a "Small Business".* Under the RFA, small entities may include small organizations, small businesses, and small governmental jurisdictions. 5 U.S.C. 601(6). The RFA, 5 U.S.C. 601(3), generally defines the term "small business" as having the same meaning as the term "small business concern" under the Small Business Act, 15 U.S.C. 632. A small business is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies "unless an agency after consultation with the Office of Advocacy of the SBA and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the **Federal Register**."

12. In the FRFA, we utilized the definition of "small business" promulgated by the SBA, even though, as discussed in detail in the FRFA, we tentatively believed that the SBA's definition of "small business" overstated the number of radio and television broadcast stations that were small businesses and was not particularly suitable for our purposes. No petitions or comments were received concerning the Commission's use of the SBA's small business definition for the purposes of the FRFA, and we will therefore continue to employ such definition for this Supplemental FRFA.

13. *Issues in Applying the Definition of a "Small Business".* As discussed below, we could not precisely apply the foregoing definition of "small business" in developing our estimates of the number of small entities affected by the revised application and selection procedures adopted in the *First Report and Order* for the broadcast services and for ITFS. Our estimates reflect our best judgments based on the data available to us.

14. An element of the definition of "small business" is that the entity not be dominant in its field of operation. We are unable at this time to define or quantify the criteria that would establish whether a specific radio or television station is dominant in its field of operation. Accordingly, the following estimates of the number of broadcasting stations that constitute small businesses do not exclude any radio or television station from the definition of small business on this basis and are therefore overinclusive to that extent. An additional element of the definition of "small business" is that the entity must be independently owned and operated. As discussed further below, we could not fully apply this criterion, and our estimates of small businesses to which the amended application and selection procedures may apply may be overinclusive to this extent.

15. With respect to applying the revenue cap, the SBA has defined "annual receipts" specifically in 13 CFR 121.104, and its calculations include an averaging process. We do not currently require submission of financial data from licensees that we could use in applying the SBA's definition of a small business. Thus, for purposes of estimating the number of small entities to which the rules apply, we are limited to considering the revenue data that are publicly available, and the revenue data on which we rely may not correspond completely with the SBA definition of annual receipts.

16. Under SBA criteria for determining annual receipts, if a concern has acquired an affiliate or been acquired as an affiliate during the applicable averaging period for determining annual receipts, the annual receipts in determining size status include the receipts of both firms. 13 CFR 121.104(d)(1). The SBA defines affiliation in 13 CFR 121.103. In this context, the SBA's definition of affiliate is analogous to our attribution rules. Generally, under the SBA's definition, concerns are affiliates of each other when one concern controls or has the

power to control the other, or a third party or parties controls or has the power to control both. 13 CFR 121.103(a)(1). The SBA considers factors such as ownership, management, previous relationships with or ties to another concern, and contractual relationships, in determining whether affiliation exists. 13 CFR 121.103(a)(2). Instead of making an independent determination of whether television stations were affiliates based on SBA's definitions, we relied on the databases available to us to provide us with that information.

17. *Estimates Based on Census Data.* The rules and policies adopted in the *First Report and Order* will apply to the various broadcast and secondary broadcast services and to ITFS. The SBA defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number.

18. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly steady as indicated by the approximately 1,590 operating television broadcasting stations in the nation as of January 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, of the 1,590 television stations approximately 77%, or 1,224, of those stations are considered small businesses. As of January 1999, 2136 low power television stations and 4921 television translator stations were also licensed, and we believe the vast majority of these stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

19. The SBA defines a radio broadcasting station that has no more than $5 million in annual receipts as a small business. A radio broadcasting station is an establishment primarily engaged in broadcasting aural programs by radio to the public. Included in this industry are commercial, religious, educational and other radio stations. Radio broadcasting stations that primarily are engaged in radio broadcasting and that produce radio program materials are similarly included. However, radio stations that are separate establishments and are primarily engaged in producing radio program material are classified under another SIC number. The 1992 census indicates that 96% (5,861 of 6,127) of radio station establishments produced less than $5 million in revenue in 1992. Official Commission records indicate that 11,334 individual radio stations were operating in 1992. As of January 1999, official Commission records indicate that 12,496 radio stations were operating. We conclude that a similarly high percentage (96%) of current radio broadcasting licensees are small entities. As of January 1999, there were also 3171 FM translator/booster stations licensed, and we believe the vast majority of these stations are small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-radio affiliated companies.

20. In addition, there are presently 2032 ITFS licensees. All but 100 of these licenses are held by educational institutions. Educational institutions may be included in the definition of a small entity. ITFS is a non-pay, non-commercial educational microwave service that, depending on SBA categorization, has, as small entities, entities generating either $10.5 million or less, or $11.0 million or less, in annual receipts. However, we do not collect, nor are we aware of other collections of, annual revenue data for ITFS licensees. Thus, we conclude that up to 1932 of these licensees are small entities.

21. *Pending and Future Applicants Affected by Rulemaking.* The auction selection procedures set forth in the *First Report and Order* will affect pending and future competing applicants for the various commercial broadcast services and for ITFS. We estimate that there are currently pending before the Commission the following mutually exclusive applications: (1) approximately 620 mutually exclusive applications for full power commercial radio stations, and 165 competing applications for full power commercial analog television stations; (2) approximately 275 mutually exclusive applications for low power television stations and television translator stations, and 20 competing applications for FM translator stations; and (3) approximately 200 or more mutually exclusive applications for ITFS stations. The Commission has no data on file as to whether entities with pending permit applications, which are subject to the new competitive bidding selection procedures adopted for the broadcast services, meet the SBA's definition of a small business concern. However, we conclude that, given the smaller size of the markets at issue in the pending applications, most of the entities with pending applications for a permit to construct a new primary or secondary broadcast station are small entities, as defined by the SBA rules. It is not possible, at this time, to estimate the number of markets for which mutually exclusive applications will be received, nor the number of entities that in the future may seek a construction permit for a new broadcast station. Given the fact that fewer new stations (particularly fewer analog television stations) will be licensed in the future and that these stations generally will be located in smaller, more rural areas, we conclude that most of the entities applying for these stations will be small entities, as defined by the SBA rules.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

22. The *First Report and Order* adopted a number of rules that included reporting, recordkeeping and compliance requirements. These requirements were described in detail in the FRFA, and generally remain unchanged by the rule amendments adopted in this *Memorandum Opinion and Order.* The rules adopted in this *Memorandum Opinion and Order* do amend the applicability of the general auction anti-collusion rule (*see* 47 CFR 1.2105(c)) so that mutually exclusive applicants in the secondary broadcast services may discuss settlement or other means of resolving their mutual exclusivities following the short-form application filing deadline. The *Memorandum Opinion and Order* also amends our rules to clarify that certain ownership disclosure requirements set forth in Section 1.2112(a) of the general Part 1 auction rules will not apply to applicants seeking consent to assign or transfer control of broadcast construction permits or licenses.

Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

23. The FRFA described in considerable detail the steps taken in the *First Report and Order* to minimize significant economic impact on small entities and the alternatives considered. The rule amendments adopted in this *Memorandum Opinion and Order*

should also serve to minimize the adverse impact of our broadcast auction rules on small entities. First, the *Memorandum Opinion and Order* amends the applicability of the general auction anti-collusion rule so that competing low power television, television and FM translator, and ITFS applicants will have an opportunity to settle or otherwise resolve their mutual exclusivities following the short-form application filing deadline (and thereby avoid the need to go to auction). Second, the *Memorandum Opinion and Order* refines in various ways the eligibility standards for the new entrant bidding credit, which provides a tiered credit for broadcast auction winning bidders with no, or very few, other mass media interests. Third, the *Memorandum Opinion and Order* also lengthens from 10 to 15 days the period for the filing of petitions to deny against the long-form applications filed by winning bidders in the secondary broadcast services and in ITFS. Finally, the *Memorandum Opinion and Order* reduces the burden on all broadcast applicants (including small businesses) seeking consent to assign or transfer control of broadcast construction permits or licenses by clarifying that the ownership disclosure requirements set forth in Section 1.2112(a) of the general auction rules are not applicable to such transactions.

Report to Congress

24. The Commission will send a copy of the *Memorandum Opinion and Order*, including this Supplemental FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. See 5 U.S.C. 801(a)(1)(A). In addition, the Commission will send a copy of the *Memorandum Opinion and Order*, including the Supplemental FRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

Authority for issuance of this *Memorandum Opinion and Order* is contained in Sections 4(i) and (j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l) and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 301, 303(f), 303(g), 303(h), 303(j), 303(r), 307(c), 308(b), 309(j), 309(l) and 403.

List of Subjects in 47 CFR Parts 73 and 74

Radio broadcasting, Reporting and recordkeeping requirements, Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

Parts 73 and 74 of Chapter 1 of Title 47 of the Code of Federal Regulations are amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

2. Section 73.5002 is amended by revising paragraphs (c) and (d) to read as follows:

§ 73.5002 Bidding application and certification procedures; prohibition of collusion.

* * * * *

(c) Applicants in all broadcast service or ITFS auctions will be subject to the provisions of § 1.2105(b) of this chapter regarding the modification and dismissal of their short-form applications. Notwithstanding the general applicability of § 1.2105(b) of this chapter to broadcast and ITFS auctions, the following applicants will be permitted to resolve their mutual exclusivities by making amendments to their engineering submissions following the filing of their short-form applications:

(1) applicants for all broadcast services and ITFS who file major modification applications that are mutually exclusive with each other;

(2) applicants for all broadcast services and ITFS who file major modification and new station applications that are mutually exclusive with each other; or

(3) applicants for the secondary broadcast services and ITFS who file applications for new stations that are mutually exclusive with each other.

(d) The prohibition of collusion set forth in § 1.2105(c) of this chpater, which becomes effective upon the filing of short-form applications, shall apply to all broadcast service or ITFS auctions. Notwithstanding the general applicability of § 1.2105(c) of this chapter to broadcast and ITFS auctions, the following applicants will be permitted to resolve their mutual exclusivities by means of engineering solutions or settlements during a limited period after the filing of short-form applications, as further specified by Commission public notices:

(1) applicants for all broadcast services and ITFS who file major modification applications that are mutually exclusive with each other;

(2) applicants for all broadcast services and ITFS who file major modification and new station applications that are mutually exclusive with each other; or

(3) applicants for the secondary broadcast services and ITFS who file applications for new stations that are mutually exclusive with each other.

3. Section 73.5006 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.5006 Filing of petitions to deny against long-form applications.

* * * * *

(b) Within ten (10) days following the issuance of a public notice announcing that a long-form application for an AM, FM or television construction permit has been accepted for filing, petitions to deny that application may be filed. Within fifteen (15) days following the issuance of a public notice announcing that a long-form application for a low power television, television translator or FM translator construction permit or ITFS license has been accepted for filing, petitions to deny that application may be filed. Any such petitions must contain allegations of fact supported by affidavit of a person or persons with personal knowledge thereof.

(c) An applicant may file an opposition to any petition to deny, and the petitioner a reply to such opposition. Allegations of fact or denials thereof must be supported by affidavit of a person or persons with personal knowledge thereof. In the AM, FM and television broadcast services, the time for filing such oppositions shall be five (5) days from the filing date for petitions to deny, and the time for filing replies shall be five (5) days from the filing date for oppositions. In the low power television, television translator and FM translator broadcast services and in ITFS, the time for filing such oppositions shall be fifteen (15) days from the filing date for petitions to deny, and the time for filing replies shall be ten (10) days from the filing date for oppositions.

* * * * *

4. Section 73.5007 is revised to read as follows:

§ 73.5007 Designated entity provisions.

(a) *New entrant bidding credit.* A winning bidder that qualifies as a "new entrant" may use a bidding credit to lower the cost of its winning bid on any broadcast construction permit. Any winning bidder claiming new entrant status must have *de facto*, as well as *de jure*, control of the entity utilizing the bidding credit. A thirty-five (35) percent bidding credit will be given to a

winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have no attributable interest in any other media of mass communications, as defined in § 73.5008. A twenty-five (25) percent bidding credit will be given to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have an attributable interest in no more than three mass media facilities. No bidding credit will be given if any of the commonly owned mass media facilities serve the same area as the proposed broadcast or secondary broadcast station, or if the winning bidder, and/or any individual or entity with an attributable interest in the winning bidder, have attributable interests in more than three mass media facilities. Attributable interests held by a winning bidder in existing low power television, television translator or FM translator facilities will not be counted among the bidder's other mass media interests in determining eligibility for a bidding credit.

(b) The new entrant bidding credit is not available to a winning bidder if it, and/or any individual or entity with an attributable interest in the winning bidder, have an attributable interest in any existing media of mass communications in the same area as the proposed broadcast or secondary broadcast facility.

(1) Any existing media of mass communications will be considered in the "same area" as a proposed broadcast or secondary broadcast facility if the relevant defined service areas of the existing mass media facilities partially overlap, or are partially overlapped by, the proposed broadcast or secondary broadcast facility's relevant contour.

(2) For purposes of determining whether any existing media of mass communications is in the "same area" as a proposed broadcast or secondary broadcast facility, the relevant defined service areas of the existing mass media facilities shall be as follows:

(i) AM broadcast station—principal community contour (see § 73.3555(a)(4)(i));

(ii) FM broadcast station—principal community contour (see § 73.3555(a)(4)(i));

(iii) Television broadcast station—television duopoly contour (see § 73.3555(b));

(iv) Cable television system—the franchised community of a cable system;

(v) Daily newspaper—community of publication; and

(vi) Multipoint Distribution Service station—protected service area (see §§ 21.902(d) or 21.933 of this chapter).

(3) For purposes of determining whether a proposed broadcast or secondary broadcast facility is in the "same area" as an existing mass media facility, the relevant contours of the proposed broadcast or secondary broadcast facility shall be as follows:

(i) AM broadcast station—principal community contour (see § 73.3555(a)(4)(i));

(ii) FM broadcast station—principal community contour (see § 73.3555(a)(4)(i));

(iii) FM translator station—predicted, protected contour (see § 74.1204(a) of this chapter);

(iv) Television broadcast station—television duopoly contour (see § 73.3555(b)); and

(v) Low power television or television translator station—predicted, protected contour (see § 74.707(a) of this chapter).

(c) *Unjust enrichment.* If a licensee or permittee that utilizes a new entrant bidding credit under this subsection seeks to assign or transfer control of its license or construction permit to an entity not meeting the eligibility criteria for the bidding credit, the licensee or permittee must reimburse the U.S. Government for the amount of the bidding credit, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was originally granted, as a condition of Commission approval of the assignment or transfer. If a licensee or permittee that utilizes a new entrant bidding credit seeks to assign or transfer control of a license or construction permit to an entity that is eligible for a lower bidding credit, the difference between the bidding credit obtained by the assigning party and the bidding credit for which the acquiring party would qualify, plus interest based on the rate for ten-year U.S. Treasury obligations applicable on the date the construction permit was originally granted, must be paid to the U.S. Government as a condition of Commission approval of the assignment or transfer. The amount of the reimbursement payments will be reduced over time. An assignment or transfer in the first two years after issuance of the construction permit to the winning bidder will result in a forfeiture of one hundred (100) percent of the value of the bidding credit; during year three, of seventy-five (75) percent of the value of the bidding credit; in year four, of fifty (50) percent; in year five, twenty-five (25) percent; and thereafter, no payment. If a licensee or permittee who utilized a new entrant bidding credit in obtaining a broadcast license or construction permit acquires within this five-year reimbursement period an additional broadcast facility or facilities, such that the licensee or permittee would not have been eligible for the new entrant credit, the licensee or permittee will generally not be required to reimburse the U.S. Government for the amount of the bidding credit.

5. Section 73.5008 is amended by revising paragraphs (b) and (c) to read as follows:

§ 73.5008 Definitions applicable for designated entity provisions.

* * * * *

(b) A *medium of mass communications* means a daily newspaper; a cable television system; or a license or construction permit for a television broadcast station, an AM or FM broadcast station, a direct broadcast satellite transponder, or a Multipoint Distribution Service station.

(c) An *attributable interest* in a winning bidder or in a medium of mass communications shall be determined in accordance with § 73.3555 and Note 2.

6. Section 73.5009 is revised to read as follows:

§ 73.5009 Assignment or transfer of control.

The reporting requirement contained in § 1.2111(a) of this chapter shall apply to an applicant seeking approval for a transfer of control or assignment of a broadcast construction permit or license within three years of receiving such permit or license by means of competitive bidding.

PART 74—EXPERIMENTAL RADIO, AUXILIARY, SPECIAL BROADCAST AND OTHER PROGRAM DISTRIBUTIONAL SERVICES

7. The authority citation for part 74 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 307, and 554.

8. Section 74.912 is revised to read as follows:

§ 74.912 Petitions to deny.

(a) Petitions to deny against the long-form applications filed by winning bidders in ITFS auctions must be filed in accordance with § 73.5006 of this chapter. Petitions to deny against applications for transfers of control of ITFS licensees, or for assignments of ITFS station licenses, must be filed not later than 30 days after issuance of a public notice of the acceptance for filing of the transfer or assignment application. In the case of applications for renewal of license, petitions to deny may be filed after the issuance of a public notice of acceptance for filing of the applications and up until the first day of the last full calendar month of the expiring license term. Any party in interest may file a petition to deny any notification regarding a low power ITFS

signal booster station, within the 60 day period provided for in § 74.985(e).

(b) The applicant or notifier may file an opposition to any petition to deny, and the petitioner a reply to such opposition in which allegations of fact or denials thereof shall be supported by affidavit of a person or persons with personal knowledge thereof. Except with regard to petitions to deny against the long-form applications of ITFS auction winners, the times for filing such oppositions and replies shall be those provided in § 1.45 of this chapter.

[FR Doc. 99–11503 Filed 5–6–99; 8:45 am]
BILLING CODE 6712–01–U

DEPARTMENT OF DEFENSE

48 CFR Part 213

[DFARS Case 98–D031]

Defense Federal Acquisition Regulation Supplement; Applicability of Buy American Clauses to Simplified Acquisitions

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to clarify the use of contract clauses that implement the Buy American Act. The rule applies to acquisitions that use the Federal Acquisition Regulation (FAR) clause containing a list of clauses that most commonly apply to simplified acquisitions.

EFFECTIVE DATE: May 7, 1999.

EFFECTIVE DATES: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D031.

SUPPLEMENTARY INFORMATION:

A. Background

This final rule revises DFARS 213.302–5 to clarify that, when using the clause at FAR 52.213–4, Terms and Conditions-Simplified Acquisitions (Other Than Commercial Items), the contracting officer must delete the reference to the clause at FAR 52.225–3, Buy American Act-Supplies. In accordance with DFARS 225.109(d), the clause at FAR 52.225–3 does not apply to DoD. This rule instead requires the contracting officer to use the appropriate Buy American Act clause prescribed by the DFARS.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Public Law 98–577 and publication for public comment is not required. However, comments from small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments should cite DFARS Case 98–D031.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not impose any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 213

Government procurement.

Michele P. Peterson,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR Part 213 is amended as follows:

1. The authority citation for 48 CFR Part 213 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 213—SIMPLIFIED ACQUISITION PROCEDURES

2. Section 213.302–5 is revised to read as follows:

§ 213.302–5 Clauses.

(a) Use the clause at 252.243–7001, Pricing of Contract Modifications, in all bilateral purchase orders.

(d) When using the clause at FAR 52.213–4, delete the reference to the clause at FAR 52.225–3, Buy American Act-Supplies. Instead, if the Buy American Act applies to the acquisition, use the clause at—

(i) 252.225–7001, Buy American Act and Balance of Payments Program, as prescribed at 225.109(d); or

(ii) 252.225–7036, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program, as prescribed at 225.408(a)(vi).

[FR Doc. 99–11549 Filed 5–6–99; 8:45 am]
BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 98–D310]

Defense Federal Acquisition Regulation Supplement; Para-Aramid Fibers and Yarns

AGENCY: Department of Defense (DoD).
ACTION: Final rule.

SUMMARY: The Director of Defense Procurement has issued a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to permit the procurement of articles containing para-aramid fibers and yarns manufactured in the Netherlands. This rule finalizes the interim rule that was published in the **Federal Register** on January 15, 1999, to implement Section 807 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 98–D310.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for comments was published in the **Federal Register** at 64 FR 2599 on January 15, 1999. The rule implemented Section 807 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105–261). Section 807 provides that the Secretary of Defense may waive the foreign source restrictions for para-aramid fibers and yarns under certain conditions. The Secretary of Defense delegated this waiver authority to the Under Secretary of Defense (Acquisition and Technology). On February 12, 1999, the Under Secretary of Defense (Acquisition and Technology) issued a determination authorizing the procurement of articles containing para-aramid fibers and yarns manufactured in the Netherlands. Synthetic fabric containing the para-aramid fibers and yarns still must be manufactured in the United States.

Three sources submitted comments in response to the interim rule. All comments were considered in the development of the final rule.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et. seq.*, because the only known U.S. manufacturer of para-aramid fibers and yarns is DuPont, which is a large business concern.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final With Changes

Accordingly, the interim rule amending 48 CFR Parts 225 and 252, which was published at 64 FR 2599 on January 15, 1999, is adopted as a final rule with the following changes:

1. The authority citation for 48 CFR Parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and 48 CFR Chapter 1.

PART 225—FOREIGN ACQUISITION

2. Section 225.7002–2 is amended by revising paragraph (j) and removing paragraph (k). The revised text reads as follows:

§ 225.7002–2 Exceptions.

* * * * *

(j) Purchases of fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but not the purchase of the synthetic or coated synthetic fabric itself), if—

(1) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(i) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(ii) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(iii) Upholstered seats (whether for household, office, or other use); and

(iv) Parachutes (Federal Supply Class 1670); or

(2) The fibers and yarns are para-aramid fibers and yarns manufactured in—

(i) The Netherlands; or

(ii) Another qualifying country (see 225.872) if the Under Secretary of Defense (Acquisition and Technology) makes a determination in accordance with section 807 of Pub. L. 105–261 that—

(A) Procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the United States or its possessions would result in sole source contracts or subcontracts for the supply of such para-aramid fibers and yarns;

(B) Such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of the Competition in Contracting Act (10 U.S.C. 2304); and

(C) The qualifying country permits U.S. firms that manufacture para-aramid fibers and yarns to compete with foreign films for the sale of para-aramid fibers and yarns in that country.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

3. Section 252.225–7012 is amended by revising the clause date and paragraphs (b)(3) and (b)(4), and by removing paragraph (b)(5). The revised text reads as follows:

252.225–7012 Preference for Certain Domestic Commodities.

* * * * *

Preference for Certain Domestic Commodities (May 1999)

* * * * *

(b) * * *

(3) To chemical warfare protective clothing produced in the countries listed in subsection 225.872–1 of the Defense FAR Supplement; or

(4) To fibers and yarns that are for use in synthetic fabric or coated synthetic fabric (but does apply to the synthetic or coated synthetic fabric itself), if—

(i) The fabric is to be used as a component of an end item that is not a textile product. Examples of textile products, made in whole or in part of fabric, include—

(a) Draperies, floor coverings, furnishings, and bedding (Federal Supply Group 72, Household and Commercial Furnishings and Appliances);

(B) Items made in whole or in part of fabric in Federal Supply Group 83, Textile/leather/furs/apparel/findings/tents/flags, or Federal Supply Group 84, Clothing, Individual Equipment and Insignia;

(C) Upholstered seats (whether for household, office, or other use); and

(D) Parachutes (Federal Supply Class 1670); or

(ii) The fibers and yarns are para-aramid fibers and yarns manufactured in the Netherlands.

(End of clause)

[FR Doc. 99–11550 Filed 5–6–99; 8:45 am]

BILLING CODE 6000–04–M

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

[DFARS Case 96–D016]

Defense Federal Acquisition Regulation Supplement; Antiterrorism Training

AGENCY: Department of Defense (DoD).

ACTION: Final rule.

SUMMARY: The Director of Defense Procurement is adopting as final, without change, the interim rule published in the **Federal Register** on June 11, 1998, that amended the Defense Federal Acquisition Regulation Supplement (DFARS) to add guidance pertaining to DoD antiterrorism/force protection policy. The rule requires DoD contractors and their subcontractors to take appropriate security precautions when performing or traveling outside the United States.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Rider, Defense Acquisition Regulations Council, PDUSD (A&T) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telephone (703) 602–0131; telefax (703) 602–0350. Please cite DFARS Case 96–D016.

SUPPLEMENTARY INFORMATION:

A. Background

An interim rule with request for comments was published in the **Federal Register** at 63 FR 31963 on June 11, 1998. The rule added a new DFARS subpart and a new contract clause pertaining to antiterrorism/force protection policy for DoD contracts that require performance or travel outside the United States. No comments were received in response to the interim rule. The interim rule is converted to a final rule without change.

This rule was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993.

B. Regulatory Flexibility Act

DoD certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory

Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule applies only to contracts that require performance or travel outside the United States, and any costs related to compliance with the rule should be included in the contract price.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

Interim Rule Adopted as Final Without Change.

PART 225—FOREIGN ACQUISITION, AND PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

Accordingly, the interim rule amending 48 CFR Parts 225 and 252, which was published at 63 FR 31936 on June 11, 1998, is adopted as a final rule without change.

[FR Doc. 99–11548 Filed 5–6–99; 8:45 am]

BILLING CODE 5000–04–M

Proposed Rules

Federal Register
Vol. 64, No. 88
Friday, May 7, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100, and 110

RIN 3150–AG07

Electronic Availability of NRC Public Records and Ending of NRC Local Public Document Room Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing amendments to its regulations that would reflect a change in the way its records are made available to the public. The amendments are intended to reflect the NRC's decision to implement a new document management system that would permit the electronic storage, retrieval, and on-line ordering of publicly available NRC official records through the NRC Web site.

DATES: Submit comments by June 21, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Submit comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Rulemaking and Adjudications staff.

Deliver comments to 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm on Federal workdays.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (http://www.nrc.gov). This site provides the capability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415–5905 (email: CAG@nrc.gov).

FOR FURTHER INFORMATION CONTACT: Russell A. Powell, Chief, Information Services Branch, Information Management Division, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, telephone (301) 415–6527, email: RAP1@nrc.gov.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission is proposing to amend its regulations to reflect the use of a new electronic record keeping system for NRC records. The NRC is establishing the Agencywide Documents Access and Management System (ADAMS) to provide for the electronic submission, storage, and retrieval of NRC official records. When ADAMS becomes operational, any NRC official records that are normally publicly available under the Commission's regulations will be available electronically through ADAMS. The regulations governing which records are publicly available will be unaffected by this proposed rule. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, http://www.nrc.gov, (the Electronic Reading Room).

When ADAMS becomes operational, NRC intends to discontinue furnishing paper and microfiche copies of its publicly available records to the NRC Public Document Room (PDR), located in Washington, D.C., and the Local Public Document Rooms (LPDRs), located near nuclear power plants and other nuclear facilities. Under ADAMS, NRC would initially begin making available electronically through the Electronic Reading Room on the NRC Internet Web site, imaged copies of its newly received and created publicly available official records that are in paper form. However, ultimately, NRC's newly created official records will all be stored in ADAMS only in electronic form, and NRC will maintain only its pre-ADAMS records as paper copies. Because of budget constraints and the improved access to newly received and created records via the NRC Web site under ADAMS, the Commission decided to discontinue funding of the LPDR program beyond Fiscal Year 1999.

Although the Commission has already made a decision to eliminate the LPDRs because of the future electronic availability of these records, the Commission is soliciting comment through this proposed rule to clarify any questions regarding the time and process for the electronic availability of records and to identify any potential unique situations where the electronic availability of records may not provide adequate records availability.

The NRC currently maintains 86 LPDRs in the vicinity of nuclear reactor and materials licensees: 72 support power reactors; 2 support gaseous diffusion plants; 3 support high-level waste repositories; and the remaining 9 support fuel-cycle, low-level waste, and other facilities. A survey of the facilities where LPDRs are currently located revealed that all but six now provide, or will provide Internet access to its patrons by the end of 1999. Additionally, although NRC plans to discontinue the LPDR program, it plans to offer each of the current LPDR libraries the opportunity to keep their current LPDR document collections so the pre-ADAMS LPDR collections can continue to be available in the local communities. The decision to accept this offer to transfer ownership of these collections and the length of time they will be maintained will be at the sole discretion of each library.

ADAMS will provide the following added benefits that should preclude or minimize any public concerns regarding the impact from discontinuing the LPDR program:

1. ADAMS Internet access will provide access to new records in full text and image.

2. ADAMS will provide an improved electronic search capability. Under the existing system, only the bibliographic indexes and abstracts for most records are available from the online BRS and NUDOCS.

3. Some new records will be available to the public within days instead of the two weeks or longer it now takes for LPDRs to receive microfiche or paper copies of new accessions.

4. Internet public access to the NRC Web site will provide direct access to a much broader range of the public than just to those who, because of their close proximity, have access to the PDR and LPDRs.

The NRC PDR would still keep pre-ADAMS paper and microfiche records on site and available to the public for viewing and copying. The PDR would also have computer terminals available for the public to access new documents on the NRC Web site. The public would still be able to obtain paper copies of

new electronic records by printing them from the NRC Internet Web site, by ordering them for a fee from the PDR directly from the NRC Web site, or by using current ordering methods. The current methods are: in-person at the PDR, mail, e-mail, fax or by calling the PDR Reference Services on the toll-free 800 telephone number. Bibliographic descriptions of documents currently identified in the PDR's Bibliographic Retrieval System (BRS) and in NUDOCS will be posted on the NRC Web site. This would also allow the public to order copies of pre-ADAMS paper and microfiche records. The public would also have access to the NRC Web site from any computer with Internet access, and would be able to download the records to the computer they are using for printing or other supported functions.

Because records would be released electronically to the public rather than in paper or microfiche, this rule would amend the regulations in 10 CFR parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100, and 110 to reflect the manner in which these records would be made publicly available.

To reflect the anticipated discontinuance of NRC support of libraries serving as LPDRs, references to NRC LPDRs would be deleted in 10 CFR 2.1231 (a)(1)(ii), and (b); 9.35 (b) and (e); 50.30(a)(5); part 50, appendix Q, section 4; 51.120; part 52, appendix O, section 5; part 52, appendix Q, section 4, and 76.37(a).

In addition, several other minor conforming changes would be made. The definition of the PDR in 10 CFR 2.4, 60.2, and 110.2 is now in a new paragraph and would be revised to reflect that records newly created or received since the implementation of ADAMS that are publicly available are now available in the PDR in electronic form for inspection and copying, and that copies can be ordered from the PDR. A new paragraph would define the NRC Web site as the Internet location where NRC records are made available for public inspection and copying and that the public can also order copies of documents from the PDR through the NRC Web site.

Section 9.2(a) would be revised to delete the reference to the availability of records on 48x microfiche through the National Technical Information Service (NTIS). When NRC begins making its records available from the NRC Web site, microfiche copies will no longer be produced. The address for the NTIS and a statement that certain listed documents can be ordered from the NTIS would be added to § 9.21(a). Section 9.21(d) would be deleted because the publication Title List of Documents Made Publicly Available, NUREG–0540, will no longer be published. Section 9.21(e) would be revised to show that only the published versions of final opinions and orders, referred to in § 9.2(c)(1), are available from the NTIS in the publication, Nuclear Regulatory Issuances (NUREG–0750). The reference to interpretations in § 9.21(c)(2) would be deleted because they are not available from NTIS.

Section 9.23(a)(2) would be deleted because it repeats information included in the revised § 9.21(a). Section 51.123 (a) and (b) would be revised to reflect the correct address where requests for draft environmental impact statements and draft findings of no significant hazard can be submitted.

Changes would be made in several sections to reflect the correct name of the NRC PDR. In addition, several misspelling corrections would be made.

Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language. The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments should be sent to the address listed above.

Environmental Impact—Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c) (1) and (2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this proposed rule.

Paperwork Reduction Act Statement

This proposed rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). Existing requirements were approved by the Office of Management and Budget, approval numbers 3150–0043, 3150–0011, 3150–0021, 3150–0151, 3150–0127, 3150–0143, 3150–0132, 3150–0055, 3150–0093, and 3150–0036.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Regulatory Analysis

This proposed rule implements a new NRC procedure for making records available for public inspection and copying. The rule would not have any adverse economic impact on any class of licensee or the NRC. To the contrary, the proposed rule with its new provisions allowing Internet access from homes, offices, schools, and public libraries to NRC publicly released records would provide some new and additional benefits to those seeking access to NRC records. A survey of the facilities where LPDRs are currently located revealed that all but six now provide, or will provide Internet access to its patrons by the end of 1999. Additionally, although NRC plans to discontinue the LPDR program, it plans to offer each of the current LPDR libraries the opportunity to keep their current LPDR document collections so the pre-ADAMS LPDR collections can continue to be available in the local communities. This constitutes the regulatory analysis for this rule.

Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, will not have a significant economic impact upon a substantial number of small entities. The proposed rule would implement a new procedure for making records available to the public. The NRC believes that the proposed changes would not have an adverse economic impact on any class of licensee, including small entities, or the general public. On the contrary, the NRC believes that the proposed rule would provide wider opportunities and make it easier for interested persons to obtain or review publicly available NRC records.

Any small entity subject to this regulation that determines, because of its size, it is likely to bear a disproportionate adverse economic impact should notify the Commission of this in a comment that indicates—

(a) The licensee's size and how the proposed regulation would result in a significant economic burden upon the licensee as compared to the economic burden on a larger licensee;

(b) How the proposed regulations could be modified to take into account the licensee's differing needs or capabilities;

(c) The benefits that would accrue, or the detriments that would be avoided, if

the proposed regulations were modified as suggested by the licensee; and

(d) How the proposed regulation, as modified, would more closely equalize the impact of NRC regulations or create more equal access to the benefits of Federal programs as opposed to providing special advantages to any individual or group.

Backfit Analysis

The NRC has determined that the backfit rule does not apply to this proposed rule; and therefore, a backfit analysis is not required for this proposed rule because these amendments do not involve any provisions that would impose backfits as defined in 10 CFR Chapter I.

List of Subjects

10 CFR Part 1

Organization and functions (Government Agencies).

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified Information, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalties, Sex discrimination, Source material, Special nuclear material, Waste treatment and disposal.

10 CFR Part 7

Advisory committees, Sunshine Act.

10 CFR Part 9

Criminal Penalties, Freedom of Information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

10 CFR Part 50

Antitrust, Classified information, Criminal penalties, Fire protection, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

10 CFR Part 51

Administrative practice and procedure, Environmental impact statement, Nuclear materials, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and records.

10 CFR Part 52

Administrative practice and procedure, Antitrust, Backfitting, Combined license, Early site review, Emergency planning, Fees, Inspection, Limited Work Authorization, Nuclear power plants and reactors, Probabilistic risk assessment, Prototype, Reactor siting criteria, Redress of site, Reporting and recordkeeping requirements, Standard design, Standard design certification.

10 CFR Part 60

Criminal penalties, High-level waste, Nuclear power plants and reactors, Nuclear materials, Reporting and recordkeeping requirements, Waste treatment and disposal.

10 CFR Part 62

Administrative practice and procedure, Denial of access, Emergency access to low-level waste disposal, Low-level radioactive waste, Low-level radioactive treatment and disposal, Low-level waste policy amendments act of 1985, Nuclear materials, Reporting and recordkeeping requirements.

10 CFR Part 72

Intergovernmental relations, Manpower training programs, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 75

Criminal penalties, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

10 CFR Part 76

Certification, Criminal penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Special nuclear material, Uranium enrichment by gaseous diffusion.

10 CFR Part 100

Nuclear power plants and reactors, Reactor siting criteria.

10 CFR Part 110

ministrative practice and procedure, Classified Information, Criminal penalties, Export, Import, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Scientific equipment.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR parts 1, 2, 7, 9, 50, 51, 52, 60, 62, 72, 75, 76, 100 and 110.

PART 1—STATEMENT OF ORGANIZATION AND GENERAL INFORMATION:

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 23, 161, 68 Stat. 925, 948, as amended (42 U.S.C. 2033, 2201); sec. 29, Pub. L. 85–256, 71 Stat. 579, Pub. L. 95–209, 91 Stat. 1483 (42 U.S.C. 2039); sec. 191, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); secs. 201, 203, 204, 205, 209, 88 Stat. 1242, 1244, 1245, 1246, 1248, as amended (42 U.S.C. 5841, 5843, 5844, 5845, 5849); 5 U.S.C. 552, 553; Reorganization Plan No. 1 of 1980, 45 FR 40561, June 16, 1980.

2. In § 1.3, paragraph (a) is revised to read as follows:

§ 1.3 Sources of additional information.

(a) A statement of the NRC's organization, policies, procedures, assignments of responsibility, and delegations of authority is in the Nuclear Regulatory Commission Management Directives System and other NRC issuances, including local directives issued by Regional Offices. Letters and memoranda containing directives, delegations of authority and the like are also issued from time to time and may not yet be incorporated into the Management Directives System, parts of which are revised as necessary. Copies of the Management Directives System and other delegations of authority are available for public inspection and copying for a fee at the NRC Public Document Room, 2120 L Street, NW., Washington, DC, and at each of NRC's Regional Offices. Information may also be obtained from the Office of Public Affairs or from Public Affairs Officers at the Regional Offices. In addition, NRC Functional Organization Charts, NUREG–0325, contains detailed descriptions of the functional responsibilities of NRC's offices. It is revised annually and is available for public inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, or for purchase from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, D.C. 20013–7082; and from the National Technical Information Service, Springfield, VA 22161.

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PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS AND ISSUANCE OF ORDERS

3. The authority citation for part 2 continues to read as follows:

Authority: Secs. 161, 181, 68 Stat. 948, 953, as amended (42 U.S.C. 2201, 2231); sec

191, as amended, Pub. L. 87–615, 76 Stat. 409 (42 U.S.C. 2241); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); 5 U.S.C. 552.

Section 2.101 also issued under secs. 53, 62, 63, 81, 103, 104, 105, 68 Stat. 930, 932, 933, 935, 936, 937, 938, as amended (42 U.S.C. 2073, 2092, 2093, 2111, 2133, 2134, 2135); sec. 114(f), Pub. L. 97–425, 96 Stat. 2213, as amended (42 U.S.C. 10143(f)). sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332); sec. 301, 88 Stat. 1248 (42 U.S.C. 5871). Sections 2.102, 2.103, 2.104, 2.105, 2.721 also issued under secs. 102, 103 104, 105, 183i, 189, 68 Stat. 936, 937, 938, 954, 955, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2233, 2239). Section 2.105 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Sections 2.200–2.206 also issued under secs. 161 b, i, o, 182, 186, 234, 68 Stat. 948–951, 955, 83 Stat. 444, as amended (42 U.S.C. 2201(b), (i), (o), 2236, 2282); sec. 206, 88 Stat. 1246 (42 U.S.C. 5846). Sections 2.205(j) also issued under Pub. L. 101–410, 104 Stat. 90, as amended by section 3100(s), Pub. L. 104–134, 110 Stat. 1321–373 (28 U.S.C. 2461 note). Sections 2.600–2.606 also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853, as amended (42 U.S.C. 4332). Sections 2.700a, 2.719 also issued under 5 U.S.C. 554. Sections 2.754, 2.760, 2.770, 2.780 also issued under 5 U.S.C. 557. Section 2.764 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155,10161). Section 2.790 also issued under sec. 103, 68 Stat. 936, as amended (42 U.S.C. 2133) and 5 U.S.C. 552. Sections 2.800 and 2.808 also issued under 5 U.S.C. 553. Section 2.809 also issued under 5 U.S.C. 553 and sec. 29, Pub. L. 85–256, 71 Stat. 579, as amended (42 U.S.C. 2039). Subpart K also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Subpart L also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Subpart M also issued under sec. 184 (42 U.S.C. 2234) and sec. 189, 68 Stat. 955 (42 U.S.C. 2239). Appendix A also issued under sec. 6, Pub. L. 91–560, 84 Stat. 1473 (42 U.S.C. 2135).

4. Section 2.4 is amended by adding the definition of *NRC Public Document Room* and *NRC Web site* to read as follows:

§ 2.4 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, D.C. where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where NRC makes computer terminals available to access the Electronic Reading Room component of ADAMS on the NRC Web site, http://www.nrc.gov, and where copies can be made or ordered as set forth in § 9.35of this chapter. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (PDR@nrc.gov), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, DC 20555–0001).

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NRC Web site, http://www.nrc.gov, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

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5. In § 2.101, paragraph (a)(2) is revised to read as follows:

§ 2.101 Filing of application.

(a) * * *

(2) Each application for a license for a facility or for receipt of waste radioactive material from other persons for the purpose of commercial disposal by the waste disposal licensee will be assigned a docket number. However, to allow a determination as to whether an application for a construction permit or operating license for a production or utilization facility is complete and acceptable for docketing, it will be initially treated as a tendered application. A copy of the tendered application will be available for public inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. Generally, the determination on acceptability for docketing will be made within a period of thirty (30) days. However, in selected construction permit applications, the Commission may decide to determine acceptability on the basis of the technical adequacy of the application as well as its completeness. In these cases, the Commission, pursuant to § 2.104(a), will direct that the notice of hearing be issued as soon as practicable after the application has been tendered, and the determination of acceptability will be made generally within a period of sixty (60) days. For docketing and other requirements for applications pursuant to part 61 of this chapter, see paragraph (g) of this section.

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6. In § 2.110, paragraph (c) is revised to read as follows:

§ 2.110 Filing and administrative action on submittals for design review or early site review of site-suitability issues.

* * * * *

(c) Upon completion of review by the NRC staff and the ACRS of a submittal of the type described in paragraph (a)(1) of this section, the Director of the Office of Nuclear Reactor Regulation shall publish in the **Federal Register** a determination as to whether or not the design is acceptable, subject to conditions as may be appropriate, and shall make available at the NRC Web site, *http://www.nrc.gov*, a report that analyzes the design.

7. In § 2.206, paragraph (a) is revised to read as follows:

§ 2.206 Requests for action under this subpart.

(a) Any person may file a request to institute a proceeding pursuant to § 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. Requests must be addressed to the Executive Director for Operations and must be filed either by delivery to the NRC Public Document Room at 2120 L Street, NW, Washington, DC., or by mail or telegram addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC. 20555–0001. The request must specify the action requested and set forth the facts that constitute the basis for the request. The Executive Director for Operations will refer the request to the Director of the NRC office with responsibility for the subject matter of the request for appropriate action in accordance with paragraph (b) of this section.

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8. In § 2.701, paragraph (a)(1) is revised to read as follows:

§ 2.701 Filing of documents.

* * * * *

(a) * * *

(1) By delivery to the NRC Public Document Room at 2120 L Street, NW., Washington, DC, or

* * * * *

9. In § 2.740, paragraph (b) (1) is revised to read as follows:

§ 2.740 General provisions governing discovery.

* * * * *

(b) * * *

(1) *In general.* Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the proceeding, whether it relates to the claim or defense of any other party,

including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. When any book, document or other tangible thing sought is reasonably available from another source, such as at the NRC Web site, *http://www.nrc.gov*, and/or the NRC Public Document Room, sufficient response to an interrogatory involving such materials would be the location, the title and a page reference to the relevant book, document or tangible thing. In a proceeding on an application for a construction permit or an operating license for a production or utilization facility, discovery begins only after the prehearing conference provided for in § 2.751a and relates only to those matters in controversy which have been identified by the Commission or the presiding officer in the prehearing order entered at the conclusion of that prehearing conference. In such a proceeding, no discovery may take place after the beginning of the prehearing conference held pursuant to § 2.752 except upon leave of the presiding officer upon good cause shown. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

* * * * *

10. In § 2.750, paragraph (a) is revised to read as follows:

§ 2.750 Official reporter; transcript.

(a) A hearing will be reported under the supervision of the presiding officer, stenographically or by other means, by an official reporter who may be designated by the Commission or may be a regular employee of the Commission. The transcript prepared by the reporter is the sole official transcript of the proceeding. Except as limited pursuant to section 181 of the Act or order of the Commission, the transcript will be available for inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. Copies of transcripts are available to parties and to the public from the official reporter on payment of the specified charges.

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11. In § 2.790, the introductory text of paragraph (a) and paragraph (c) are revised to read as follows:

§ 2.790 Public inspections, exemptions, requests for withholding.

(a) Subject to the provisions of paragraphs (b), (d), and (e) of this section, final NRC records and documents, including but not limited to correspondence to and from the NRC regarding the issuance, denial, amendment, transfer, renewal, modification, suspension, revocation, or violation of a license, permit, or order, or regarding a rulemaking proceeding subject to this part shall not, in the absence of a compelling reason for nondisclosure after a balancing of the interests of the person or agency urging nondisclosure and the public interest in disclosure, be exempt from disclosure and will be made available for inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, except for matters that are:

* * * * *

(c) If a request for withholding pursuant to paragraph (b) of this section is denied, the Commission will notify an applicant for withholding of the denial with a statement of reasons. The notice of denial will specify a time, not less than thirty (30) days after the date of the notice, when the document will be available at the NRC Web site, *http://www.nrc.gov*. If, within the time specified in the notice, the applicant requests withdrawal of the document, the document will not be available at the NRC Web site, *http://www.nrc.gov*, and will be returned to the applicant: Provided, that information submitted in a rule making proceeding which subsequently forms the basis for the final rule will not be withheld from public disclosure by the Commission and will not be returned to the applicant after denial of any application for withholding submitted in connection with that information. If a request for withholding pursuant to paragraph (b) of this section is granted, the Commission will notify the applicant of its determination to withhold the information from public disclosure.

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12. In § 2.802, paragraphs (e) and (g) are revised to read as follows:

§ 2.802 Petition for rulemaking.

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(e) If it is determined that the petition includes the information required by paragraph (c) of this section and is complete, the Director, Division of Administrative Services, Office of Administration, or designee, will assign a docket number to the petition, will cause the petition to be formally docketed, and will make a copy of the docketed petition available at the NRC Web site, *http://www.nrc.gov*. Public comment may be requested by publication of a notice of the docketing of the petition in the **Federal Register**, or, in appropriate cases, may be invited for the first time upon publication in the **Federal Register** of a proposed rule developed in response to the petition. Publication will be limited by the requirements of section 181 of the Atomic Energy Act of 1954, as amended, and may be limited by order of the Commission.

* * * * *

(g) The Director, Division of Administrative Services, Office of Administration, will prepare on a semiannual basis a summary of petitions for rulemaking before the Commission, including the status of each petition. A copy of the report will be available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

13. In § 2.804, paragraph (b)(2) is revised to read as follows:

§ 2.804 Notice of proposed rulemaking.

* * * * *

(b) * * *

(2) The manner and time within which interested members of the public may comment, and a statement that copies of comments may be examined will be made available at the NRC Web site, *http://www.nrc.gov*;

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14. In § 2.809, paragraph (a) is revised to read as follows:

§ 2.809 Participation by the Advisory Committee on Reactor Safeguards.

(a) In its advisory capacity to the Commission, the ACRS may recommend that the Commission initiate rulemaking in a particular area. The Commission will respond to such rulemaking recommendation in writing within 90 days, noting its intent to implement, study, or defer action on the recommendation. In the event the Commission decides not to accept or decides to defer action on the recommendation, it will give its reasons for doing so. Both the ACRS recommendation and the Commission's response will be made available at the NRC Web site, *http://www.nrc.gov*, following transmittal of the Commission's response to the ACRS.

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15. In § 2.1007, paragraph (a)(3) is removed and reserved and paragraph (a)(2) is revised to read as follows:

§ 2.1007 Access.

(a) * * *

(2) A system to provide electronic access to the Licensing Support

Network shall be provided at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room beginning in the pre-license application phase.

(3) [Reserved].

* * * * *

16. In § 2.1231, paragraphs (a)(1)(ii), (a)(2), and (b) are revised to read as follows:

§ 2.1231 Hearing file; prohibition on discovery.

(a) * * *

(1) * * *

(ii) Making the file available at the NRC Web site, *http://www.nrc.gov*.

(2) The hearing file also must be made available for public inspection and copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) The hearing file will consist of the application and any amendment thereto, any NRC environmental impact statement or assessment relating to the application, and any NRC report and any correspondence between the applicant and the NRC that is relevant to the application. Hearing file documents already available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room when the hearing request is granted may be incorporated into the hearing file at those locations by a reference indicating where at those locations the documents can be found. The presiding officer shall rule upon any issue regarding the appropriate materials for the hearing file.

* * * * *

17. In § 2.1301, paragraphs (a) and (c) are revised to read as follows:

§ 2.1301 Public notice of receipt of a license transfer application.

(a) The Commission will notice the receipt of each application for direct or indirect transfer of a specific NRC license by placing a copy of the application at the NRC Web site, *http://www.nrc.gov*.

* * * * *

(c) Periodic lists of applications received may be obtained upon request addressed to the NRC Public Document Room, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

18. In § 2.1303, the section heading and the introductory paragraph are revised to read as follows:

§ 2.1303 Availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each application for a license transfer requiring Commission approval will be placed at the NRC Web site, *http://www.nrc.gov*, when available:

* * * * *

19. In § 2.1306, paragraph (c)(2) is revised to read as follows:

§ 2.1306 Hearing request or intervention petition.

* * * * *

(c) * * *

(2) 45 days after notice of receipt is placed at the NRC Web site, *http://www.nrc.gov*, for all other applications; or

* * * * *

20. In § 2.1330, paragraph (b) is revised to read as follows:

§ 2.1330 Reporter and transcript for an oral hearing.

* * * * *

(b) Except for any portions that must be protected from disclosure in accordance with law and policy as reflected in 10 CFR 2.790, transcripts will be placed at the NRC Web site, *http://www.nrc.gov*, and copies may be purchased from the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

* * * * *

PART 7—ADVISORY COMMITTEES

21. The authority citation for part 7 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); Pub. L. 92–463, 86 Stat. 770 (5 U.S.C. App.).

22. In § 7.10, paragraph (b)(6) is revised to read as follows:

§ 7.10 The NRC Advisory Committee Management Officer.

* * * * *

(b) * * *

(6) Ensure that, subject to the Freedom of Information Act and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of the records, reports, transcript minutes, appendices, working papers, drafts, studies, agenda, or other documents that were made available to or prepared for or by each NRC advisory committee are available for public inspection and copying at the NRC Web site *http://www.nrc.gov*, and/or at the NRC Public Document Room, until the advisory committee ceases to exist.

* * * * *

23. In § 7.11, paragraph (d)(5) is revised to read as follows:

§ 7.11 The Designated Federal Officer.

* * * * *

(d) * * *

(5) Make copies of committee documents required to be maintained for public inspection and copying pursuant to § 7.14(b) available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

24. Section 7.14 is revised to read as follows:

§ 7.14 Public information on advisory committees.

(a) The Nuclear Regulatory Commission shall maintain systematic information on the nature, functions, and operations of each NRC advisory committee. A complete set of the charters of NRC advisory committees and copies of the annual reports required by § 7.17(a) will be maintained for public inspection at either the NRC Web site, *http://www.nrc.gov;* and/or at the NRC Public Document Room.

(b) Subject to the provisions of the Freedom of Information Act (5 U.S.C. 552) and NRC's Freedom of Information Act regulations at 10 CFR part 9, subpart A, copies of NRC advisory committees' records, reports, transcripts, minutes, appendices, working papers, drafts, studies, agenda, and other documents shall be maintained for public inspection and copying at the NRC Web site, *http://www.nrc.gov;* and/or at the NRC Public Document Room.

25. In § 7.17, paragraphs (a) and (b) are revised to read as follows:

§ 7.17 Reports required for advisory committees.

(a) The Commission shall furnish a report on the activities of NRC advisory committees annually to the Administrator and the GSA Secretariat on a fiscal year basis. The report must contain information regarding NRC advisory committees required by section 6(c) of the Act for the President's annual report to the Congress and be consistent with instructions provided by the GSA Secretariat. A copy of the report is made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

(b) Any NRC advisory committee holding closed meetings shall issue a report, at least annually, setting forth a summary of its activities consistent with the policy of the Government in the Sunshine Act (5 U.S.C. 552b), as implemented by 10 CFR 9.104. A copy of the report is made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

PART 9—PUBLIC RECORDS

26. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued under 5 U.S.C. 552; 31 U.S.C. 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

27. Section 9.21 is revised to read as follows:

§ 9.21 Publicly available records.

(a) Single copies of NRC publications in the NUREG series, NRC Regulatory Guides, and Standard Review Plans can be ordered from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia, 22161.

(b) For the convenience of persons who may wish to inspect without charge, or purchase copies of a record or a limited category of records for a fee, publicly available records of the NRC's activities described in paragraph (c) of this section are also made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room located at 2120 L Street, NW, Washington, DC, open between 7:45 am and 4:15 pm on Monday through Friday, except Federal holidays.

(c) The following records of NRC activities are available for public inspection and copying:

(1) Final opinions including concurring and dissenting opinions as well as orders of the NRC issued as a result of adjudication of cases;

(2) Statements of policy and interpretations that have been adopted by the NRC and have not been published in the **Federal Register**;

(3) Nuclear Regulatory Commission rules and regulations;

(4) Nuclear Regulatory Commission Manuals and instructions to NRC personnel that affect any member of the public;

(5) Copies of records that have been released to a person under the Freedom of Information Act that, because of the nature of their subject matter, the NRC determines have become or are likely to become the subject of subsequent requests for substantially the same records.

(6) A general index of the records released under the FOIA.

(d) The published versions of the records made publicly available under paragraph (c)(1) of this section are available under the title, *Nuclear Regulatory Issuances*, NUREG–0750, for purchase through the National Technical Information Service.

28. In § 9.23, paragraph (a)(2) is removed and reserved and paragraphs (a)(1), (c), (d)(2), and (e) are revised to read as follows:

§ 9.23 Requests for records.

(a)(1) A person may request access to records routinely made available by the NRC under § 9.21 in person or by telephone, e-mail, fax, or U.S. mail from the NRC Public Document Room, 2120 L Street, NW, Washington, DC 20555–0001.

(i) Each record requested must be described in sufficient detail to enable the NRC Public Document Room staff to locate the record.

(ii) In order to obtain copies of records expeditiously, a person may open an account at the NRC Public Document Room with the private contracting firm that is responsible for duplicating NRC records.

(2) [Reserved]

* * * * *

(c) If a requested agency record that has been reasonably described is located at a place other than at the NRC Web site, *http://www.nrc.gov*, the NRC Public Document Room, or the NRC headquarters, the NRC may, at its discretion, make the record available for inspection and copying at either of the locations.

(d) * * *

(2) If the requested record has been placed on the NRC Internet Web site, under § 9.21, the NRC may inform the requester that the record is available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, and that the record may be obtained in accordance with the procedures set forth in paragraph (a) of this section.

(e) The Freedom of Information Act and Privacy Act Officer will promptly forward a Freedom of Information Act request made under paragraph (b) of this section for an agency record to the head of the office(s) primarily concerned with the records requested, as appropriate. The responsible office will conduct a search for the agency records responsive to the request and compile those agency records to be reviewed for initial disclosure determination and/or identify those that have already been made publicly available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

29. In § 9.35, paragraph (e) is removed, paragraphs (a)(2), (a)(5) and (b), introductory text, are revised to read as follows:

§ 9.35 Duplication fees.

(a) * * *

(2) Self-service duplicating machines are available at the NRC Public Document Room for the use of the public. Paper to paper copy is $0.08 per page. Microfiche to paper is $0.10 per page on the reader printers.

* * * * *

(5) Any change in the costs specified in this section will become effective immediately pending completion of the final rulemaking that amends this section to reflect the new charges. The Commission will post the charges that will be in effect for the interim period at the NRC Public Document Room. The Commission will publish a final rule in the **Federal Register** that includes the new charges within 15 working days from the beginning of the interim period.

(b) The NRC will assess the following charges for copies of records to be duplicated by the NRC at locations other than the NRC Public Document Room located in Washington, DC.:

* * * * *

30. In § 9.45 paragraph (b) is revised to read as follows:

§ 9.45 Annual reports to the Attorney General of the United States.

* * * * *

(b) The NRC will make a copy of the most recent report available to the public at the NRC Web site, *http://www.nrc.gov*.

31. In § 9.105, paragraph (b) is revised to read as follows:

§ 9.105 Commission procedures.

* * * * *

(b) Within one day of any vote taken pursuant to paragraph (a) of this section, § 9.106(a), or § 9.108(c), the Secretary shall make publicly available at the NRC Web site, *http://www.nrc.gov*, a written copy of such vote reflecting the vote of each member on the question. If a portion of a meeting is to be closed to the public, the Secretary shall, within one day of the vote taken pursuant to paragraph (a) of this section or § 9.106(a), make publicly available at the NRC Web site, *http://www.nrc.gov*, a full written explanation of its action closing the portion together with a list of all persons expected to attend the meeting and their affiliation.

32. In § 9.107, paragraph (d)(1) is revised to read as follows:

§ 9.107 Public announcement of Commission meetings.

* * * * *

(d) * * *:

(1) Publicly posting a copy of the document at the NRC Web site, *http://www.nrc.gov,;* and, to the extent appropriate under the circumstances;

* * * * *

33. In § 9.108, paragraph (b) is revised to read as follows:

§ 9.108 Certification, transcripts, recordings and minutes.

* * * * *

(b) The Commission shall make promptly available to the public at the NRC Web site, *http://www.nrc.gov*, the transcript, electronic recording, or minutes (as required by paragraph (a) of this section) of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Commission determines pursuant to paragraph (c) of this section to contain information which may be withheld under § 9.104 or § 9.105(c). Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person upon payment of the actual cost of duplication or transcription as provided in § 9.14. The Secretary shall maintain a complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of a meeting, closed to the public, for a period of at least two years after such meeting, or until one year after the conclusion of any Commission proceeding with respect to which the meeting or portion was held, whichever occurs later.

* * * * *

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

34. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended 1244, 1246, (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat. 955 as amended (42 U.S.C. 2131, 2235), sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138). Sections 50.23, 50.35, 50.55 and 50.56 also issued under sec. 185, 68 Stat. 955 (42 U.S.C. 2235). Section 50.33am 50.55a and Appendix Q also issued under sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec. 204, 88 Stat. 1245 (42 U.S.C. 5844). Section 50.37 also issued under E.O. 12829, 3 CFR 1993 Comp., p. 570, E.O. 12958, as amended, 3 CFR 1995 Comp., p. 333, E.O. 12968, 3 CFR 1995 Comp., p. 391). Sections 50.58, 50.91, and 50.92 also issued under Pub. L. 97–415, 96 Stat. 2073 (42 U.S.C. 2239). Section 50.78 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152). Sections 50.80–50.81 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec. 187, 68 Stat. 955 (42 U.S.C. 2237).

35. In § 50.30, paragraph (a)(5) is revised to read as follows:

§ 50.30 Filing of application for licenses; Oath or affirmation.

(a) * * *

(5) At the time of filing an application, the Commission will make available at the NRC Web site, *http://www.nrc.gov*, a copy of the application, subsequent amendments, and other records pertinent to the facility for public inspection and copying.

* * * * *

36. In § 50.44, paragraph (c)(3)(iv)(C) is revised to read as follows:

§ 50.44 Standards for combustible gas control systems in light-water-cooled power reactors.

* * * * *

(c) * * *

(3) * * *

(iv) * * *

(C) Subsubarticle NE—3220, Division 1, and Subsubarticle CC—3720, Division 2, of Section III of the ASME Boiler and Pressure Vessel Code, referenced in paragraphs (c)(3)(iv)(B)(*1*) and (c)(3)(iv)(B)(*2*) of this section, have been approved for incorporation by reference by the Director of the Office of the Federal Register. A notice of any changes made to the material incorporated by reference will be published in the **Federal Register**. Copies of the ASME Boiler and Pressure Vessel Code may be purchased from the American Society of Mechanical Engineers, United Engineering Center, 345 East 47th Street, New York, N.Y. 10017. It is also available for inspection at the NRC Technical Reference Library, Two White Flint North, Room 2B9, 11545 Rockville Pike, Rockville, MD.

* * * * *

37. In § 50.66, the introductory text of paragraph (a), paragraph (a)(2), the introductory text of paragraph (f)(2), and paragraph (f)(3) are revised to read as follows:

§ 50.66 Requirements for thermal annealing of the reactor pressure vessel.

(a) For those light water nuclear power reactors where neutron radiation has reduced the fracture toughness of the reactor vessel materials, a thermal annealing may be applied to the reactor vessel to recover the fracture toughness of the material. The use of a thermal annealing treatment is subject to the requirements in this section. A report describing the licensee's plan for conducting the thermal annealing must be submitted in accordance with § 50.4 at least three years prior to the date at which the limiting fracture toughness criteria in § 50.61 or appendix G to part 50 would be exceeded. Within three years of the submittal of the Thermal Annealing Report and at least thirty days prior to the start of the thermal annealing, the NRC will review the Thermal Annealing Report and make available the results of its evaluation at the NRC Web site, *http://www.nrc.gov*. The licensee may begin the thermal anneal after:

* * * * *

(2) The NRC makes available the results of its evaluation of the Thermal Annealing Report at the NRC Web site, *http://www.nrc.gov;* and

* * * * *

(f) * * *

(2) Within 15 days after the NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i) through (iii) of this section, the NRC staff shall make available at the NRC Web site, *http://www.nrc.gov*, a summary of its inspection of the licensee's thermal annealing, and the Commission shall hold a public meeting:

* * * * *

(3) Within 45 days of NRC's receipt of the licensee submissions required by paragraphs (c)(1), (c)(2) and (c)(3)(i) through (iii) of this section, the NRC staff shall complete full documentation of its inspection of the licensee's annealing process and make available. this documentation at the NRC Web site, *http://www.nrc.gov*.

38. In appendix O to part 50, paragraph 5 is revised to read as follows:

Appendix O to Part 50—Standardization of Design; Staff Review of Standard Designs

* * * * *

5. Upon completion of their review of a submittal under this appendix, the NRC regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC

Web site, *http://www.nrc.gov*, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

* * * * *

39. In Appendix Q to Part 50, paragraph 4 is revised to read as follows:

Appendix Q to Part 50—Pre-application Early Review of Site Suitability Issues.

* * * * *

4. Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal under this appendix, the NRC staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make the report available at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

* * * * *

PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

40. The authority citation for part 51 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended, sec. 1701, 106 Stat. 2951, 2952, 2953, (42 U.S.C. 2201, 2297f); secs. 201, as amended, 202, 88 Stat. 1242, as amended 1244 (42 U.S.C. 5841, 5842). Subpart A also issued under National Environmental Policy Act of 1969, secs. 102, 104, 105, 83 Stat. 853–954, as amended (42 U.S.C. 4332, 4334, 4335); and Pub. L.95–604, Title II, 92 Stat. 3033–3041; and sec. 193, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243). Sections 51.20, 51.30, 51.60, 51.80, and 51.97 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, and sec. 148, Pub. L. 100–203, 101 Stat. 1330–223 (42 U.S.C. 10155, 10161, 10168). Section 51.22 also issued under sec. 274, 73 Stat. 688, as amended by 92 Stat. 3036–3038 (42 U.S.C. 2021) and under Nuclear Waste Policy Act of 1982, sec. 121, 96 Stat. 2228 (42 U.S.C. 10141). Sections 51.43, 51.67, and 51.109 also issued under Nuclear Waste Policy Act of 1982, sec. 114(f) 96 Stat. 2216, as amended (42 U.S.C. 10134(f)).

41. In § 51.62, paragraph (a) is revised to read as follows:

§ 51.62 Environmental report—Land disposal of radioactive waste licensed under 10 CFR part 61.

(a) Each applicant for issuance of a license for land disposal of radioactive waste pursuant to part 61 of this chapter shall submit with its application to the Director of Nuclear Material Safety and Safeguards the number of copies, as specified in § 51.66 of a separate document, entitled "Applicant's Environmental Report—License for Land Disposal of Radioactive Waste." The environmental report and any supplement to the environmental report may incorporate by reference information contained in the application or in any previous application, statement or report filed with the Commission provided that such references are clear and specific and that copies of the information so incorporated are available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

42. Section 51.120 is revised to read as follows:

§ 51.120 Availability of environmental documents for public inspection.

Copies of environmental reports, draft and final environmental impact statements, environmental assessments, and findings of no significant impact, together with any related comments and environmental documents, will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

43. In § 51.123, paragraph (a) and (b) are revised to read as follows:

§ 51.123 Charges for environmental documents; distribution to governmental agencies.

(a) *Distribution to public.* Upon written request to the Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the extent available, single copies of draft environmental impact statements and draft findings of no significant impact will be made available to interested persons without charge. Single copies of final environmental impact statements and final findings of no significant impact will also be provided without charge to the persons listed in § 51.93(a) and § 51.119(c), respectively. When more than one copy of an environmental impact statement or a finding of no significant impact is requested or when available NRC copies have been exhausted, the requestor will be advised that the NRC will provide copies at the charges specified in § 9.35 of this chapter.

(b) *Distribution to governmental agencies.* Upon written request to the Reproduction and Distribution Services Section, Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the extent available, copies of draft and final environmental impact statements and draft final findings of no significant impact will be made available in the number requested to Federal, State and local agencies, Indian tribes, and State, regional and metropolitan clearinghouses. When available NRC copies have been exhausted, the requester will be advised that the NRC will provide copies at the charges specified in § 9.35 of this chapter.

* * * * *

PART 52—EARLY SITE PERMITS; STANDARDS DESIGN CERTIFICATIONS; AND COMBINED LICENSES FOR NUCLEAR POWER PLANTS

44. The authority citation for part 52 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 183, 186, 68 Stat. 936, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2133, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

45. In Appendix A to part 52, Section VI, paragraph E.1.b. is revised to read as follows:

Appendix A to Part 52—Design Certification Rule for the U.S. Advanced Boiling Reactor

* * * * *

VI. Issue Resolution.

* * * * *

E. * * *

1. * * *

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient;

* * * * *

46. In Appendix B to part 52, Section VI, paragraph E.1.b. is revised to read as follows:

Appendix B to Part 52—Design Certification Rule for the System 80+ Design

* * * * *

E. * * *

1. * * *

b. The reason why the information currently available to the public at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, is insufficient.

47. In Appendix O to Part 52, paragraph 5 is revised to read as follows:

Appendix O to part 52—Standardization of Design: Staff Review of Standard Designs

* * * * *

5. Upon completion of their review of a submittal under this appendix, the NRC regulatory staff shall publish in the **Federal Register** a determination as to whether or not the preliminary or final design is acceptable, subject to such conditions as may be appropriate, and make available at the NRC Web site, *http://www.nrc.gov*, an analysis of the design in the form of a report. An approved design shall be utilized by and relied upon by the regulatory staff and the ACRS in their review of any individual facility license application which incorporates by reference a design approved in accordance with this paragraph unless there exists significant new information which substantially affects the earlier determination or other good cause.

* * * * *

48. In Appendix Q to part 52, paragraph 4 is revised to read as follows:

Appendix Q to Part 52—Pre-Application Early Site Review of Site Suitability Issues

* * * * *

4. Upon completion of review by the NRC staff and, if appropriate by the ACRS, of a submittal under this appendix, the NRC staff shall prepare a Staff Site Report which shall identify the location of the site, state the site suitability issues reviewed, explain the nature and scope of the review, state the conclusions of the staff regarding the issues reviewed and state the reasons for those conclusions. Upon issuance of an NRC Staff Site Report, the NRC staff shall publish a notice of the availability of the report in the **Federal Register** and shall make available a copy of the report at the NRC Web site, *http://www.nrc.gov*. The NRC staff shall also send a copy of the report to the Governor or other appropriate official of the State in which the site is located, and to the chief executive of the municipality in which the site is located or, if the site is not located in a municipality, to the chief executive of the county.

* * * * *

PART 60—DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN GEOLOGIC REPOSITORIES

49. The authority citation for Part 60 continues to read as follows:

Authority: Secs. 51, 53, 62, 63, 65, 81, 161, 182, 183, 68 Stat. 929, 930, 932, 933, 935, 948, 953, 954, as amended (42 U.S.C. 2071, 2073, 2092, 2093, 2095, 2111, 2201, 2232, 2233); secs. 202, 206, 88 Stat. 1244, 1246 (42 U.S.C. 5842, 5846); secs. 10 and 14, Pub. L. 95–601, 92 Stat. 2951 (42 U.S.C. 2021a and 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 114, 121, Pub. L. 97–425, 96 Stat. 2213g, 2228, as amended (42 U.S.C. 10134, 10141), and Pub. L. 102–486, sec. 2902, 106 Stat. 3123 (42 U.S.C. 5851).

50. In § 60.2, the definition of *NRC Public Document Room* is revised and the definition of *NRC Web site* is added to read as follows:

§ 60.2 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room component of ADAMS on the NRC Web site, *http://www.nrc.gov*, where copies can be made or ordered as set forth in § 9.35. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, DC 20555–0001).

NRC Web site, http://www.nrc.gov is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

51. In § 60.18, paragraph (f) is revised to read as follows:

§ 60.18 Review of site characterization activities.

* * * * *

(f) The Director shall publish in the **Federal Register** a notice of availability of the site characterization analysis and a request for public comment within a reasonable period, as specified (not less than 90 days). The notice along with copies of the site characterization analysis shall be available at the NRC Web site, *http://www.nrc.gov*, and copies of any comments received will also be made available there.

* * * * *

52. In § 60.61, paragraph (d) is revised to read as follows:

§ 60.61 Provision of information.

* * * * *

(d) Copies of all communications by the Director under this section are available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, and copies are furnished to DOE.

53. In § 60.63, paragraphs (b)and (f) are revised to read as follows:

§ 60.63 Participation in license reviews.

* * * * *

(b) In addition, whenever an area has been approved by the President for site characterization, a State or an affected Indian Tribe may submit to the Director a proposal to facilitate its participation in the review of a site characterization plan and/or license application. The proposal may be submitted at any time and must contain a description and schedule of how the State or affected Indian Tribe wishes to participate in the review, or what services or activities the State or affected Indian Tribe wishes NRC to carry out, and how the services or activities proposed to be carried out by NRC would contribute to such participation. The proposal may include educational or information services (seminars, public meetings) or other actions on the part of NRC, such as employment or exchange of State personnel under the Intergovernmental Personnel Act.

* * * * *

(f) Proposals submitted under this section, and responses thereto, shall be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

PART 62—CRITERIA AND PROCEDURES FOR EMERGENCY ACCESS TO NON-FEDERAL AND REGIONAL LOW-LEVEL WASTE DISPOSAL FACILITIES

54. The authority citation for part 62 continues to read as follows:

Authority: Secs. 81, 161, as amended, 68 Stat. 935, 948, 949, 950, 951, as amended (42 U.S.C. 2111, 2201); secs. 201, 209, as amended, 88 Stat. 1242, 1248, as amended (42 U.S.C. 5841, 5849); secs. 3, 4, 5, 6, 99 Stat. 1843, 1844, 1845, 1846, 1847, 1848, 1849, 1850, 1851, 1852, 1853, 1854, 1855, 1856, 1857, (42 U.S.C. 2021c, 2021d, 2021e, 2021f).

55. In § 62.11, paragraph (b) is revised to read as follows:

§ 62.11 Filing and distribution of a determination request.

* * * * *

(b) Upon receipt of a request for a determination, the Secretary of the Commission shall publish a notice acknowledging receipt of the request in

the **Federal Register**. The notice must require that public comment on the request be submitted within 10 days of the publication date of the notice. A copy of the request will be made available for inspection or copying at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. The Secretary of the Commission shall also transmit a copy of the request to the U.S. Department of Energy, to the Governors of the States of the Compact region where the waste is generated, to the Governors of the States with operating non-Federal low-level radioactive waste disposal facilities, to the Compact Commissions with operating regional low-level radioactive waste disposal facilities, and to the Governors of the States in the Compact Commissions with operating disposal facilities.

* * * * *

56. In § 62.22, paragraph (c) is revised to read as follows:

§ 62.22 Notice of issuance of a determination.

* * * * *

(c) The Secretary of the Commission shall make a copy of the final determination available for inspection at the NRC Web site, *http://www.nrc.gov*.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

57. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846), Pub. L. 95–601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102–486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Secs. 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1220–236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 97–100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2224, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

58. In § 72.200, paragraph (c) is revised to read as follows:

§ 72.200 Provision of MRS information.

* * * * *

(c) Copies of all communications by the Director or the Director's designee under this section must be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room, and must be furnished to DOE.

PART 75—SAFEGUARDS ON NUCLEAR MATERIAL—IMPLEMENTATION OF US/IAEA AGREEMENT

59. The authority citation for part 75 continues to read as follows:

Authority: Secs. 53, 63, 103, 104, 122, 161, 68 Stat. 930, 932, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2093, 2133, 2134, 2152, 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Section 75.4 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161).

60. In § 75.2, paragraph (b) is revised to read as follows:

§ 75.2 Scope.

* * * * *

(b) The United States eligible list is a list of installations eligible for IAEA safeguards under the US/IAEA Safeguards Agreement which the Secretary of State or his designee files with the Commission. A copy of this list is available for inspection at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room. In accordance with the provisions of the Agreement, the following activities are excluded from the United States eligible list:

(1) Activities having direct national security significance.

(2) Activities involving mining and ore processing.

* * * * *

PART 76—CERTIFICATION OF GASEOUS DIFFUSION PLANTS

61. The authority citation for part 76 continues to read as follows:

Authority: Secs. 161, 68 Stat. 948, as amended, secs. 1312, 1701, as amended, 106 Stat. 2932, 2951, 2952, 2953, 110 Stat. 1321–349 (42 U.S.C. 2201, 2297b-11, 2297f); secs. 201, as amended, 204, 206, 88 Stat. 1244, 1245, 1246 (42 U.S.C. 5841, 5842, 5845, 5846). Sec 234(a), 83 Stat. 444, as amended by Pub. L. 104–134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(a)).

Sec. 76.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Sec. 76.22 is also issued under sec. 193(f), as amended, 104 Stat. 2835, as amended by Pub. L. 104-134, 110 Stat. 1321, 1321–349 (42 U.S.C. 2243(f)). Sec. 76.35(j) also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152).

62. In § 76.37, paragraph (a) is revised to read as follows:

§ 76.37 Federal Register notice.

* * * * *

(a) A notice of the filing of an application specifying that copies of the application, except for Restricted Data, Unclassified Controlled Nuclear Information, Classified National Security Information, Safeguards Information, Proprietary Data, or other withholdable information will be made available for the public inspection at the NRC Web site, *http://www.nrc.gov;*

* * * * *

PART 100—REACTOR SITE CRITERIA

63. The authority citation for part 100 continues to read as follows:

Authority: Secs. 103, 104, 161, 182, 68 Stat. 936, 937, 948, 953, as amended (42 U.S.C. 2133, 2134, 2201, 2232); secs. 201, as amended, 202, 88 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

64. In § 100.11 the undesignated paragraph after the note is removed and a new paragraph (c) is added to read as follows:

§ 100.11 Determination of exclusion, low population zone, and population center distance.

* * * * *

(c) Copies of Technical Information Document 14844 may be obtained at the NRC Web site, *http://www.nrc.gov*, at the NRC Public Document Room, 2120 L Street, NW., Washington, DC, or by writing the Director of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

PART 110—EXPORT AND IMPORT OF NUCLEAR EQUIPMENT AND MATERIAL

65. The authority citation for part 110 continues to read as follows:

Authority: Secs. 51, 53, 54, 57, 63, 64, 65, 81, 82, 103, 104, 109, 111, 126, 127, 128, 129, 161, 181, 182, 183, 187, 189, 68 Stat. 929, 930, 931, 932, 933, 936, 937, 948, 953, 954, 955, 956, as amended (42 U.S.C. 2071, 2073, 2074, 2077, 2092–2095, 2111, 2112, 2133, 2134, 2139, 2139a, 2141, 2154–2158, 2201,

2231–2233, 2237, 2239); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841), sec. 5, Pub. L. 101–575, 104 Stat. 2835 (42 U.S.C. 2243).

Sections 110.1(b)(2) and 110.1(b)(3) also issued under Pub. L. 96–92, 93 Stat. 710 (22 U.S.C. 2403). Section 110.11 also issued under sec. 122, 68 Stat. 939 (42 U.S.C. 2152) and secs. 54c and 57d., 88 Stat. 473, 475 (42 U.S.C. 2074). Section 110.27 also issued under sec. 309(a), Pub. L. 99–440. Section 110.50(b)(3) also issued under sec. 123. 92 Stat. 142 (42 U.S.C. 2153). Section 110.51 also issued under sec. 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Section 110.52 also issued under sec. 186, 68 Stat. 955 (42 U.S.C. 2236). Sections 110.80–110.113 also issued under (5 U.S.C. 552, 554). Sections 110.130–110.135 also issued under (5 U.S.C. 553). Sections 110.2 and 110.42(a)(9) also issued under sec. 903, Pub. L. 102–496 (42 U.S.C. 2151 et seq.).

66. In § 110.2 the definition of *Public Document Room* is removed and new definitions of *NRC Public Document Room* and *NRC Web site* are added to read as follows:

§ 110.2 Definitions.

* * * * *

NRC Public Document Room means the facility at 2120 L Street, NW., Washington, DC where certain public records of the NRC that were made available for public inspection in paper or microfiche prior to the implementation of the NRC Agencywide Documents Access and Management System, commonly referred to as ADAMS, will remain available for public inspection. It is also the place where computer terminals are available to access the Electronic Reading Room component of ADAMS on the NRC Web site, *http://www.nrc.gov*, where copies can be made or ordered as set forth in § 9.35. The facility is staffed with reference librarians to assist the public in identifying and locating documents and in using the NRC Web site and ADAMS. The NRC Public Document Room is open from 7:45 am to 4:15 pm, Monday through Friday, except on Federal holidays. Reference service and access to documents may also be requested by telephone (202–634–3273 or 800–397–4209) between 8:30 am and 4:15 pm, or by e-mail (*PDR@nrc.gov*), fax (202–634–3343), or letter (NRC Public Document Room, LL–6, Washington, DC 20555–0001).

* * * * *

NRC Web site, http://www.nrc.gov, is the Internet uniform resource locator name for the Internet address of the Web site where NRC will ordinarily make available its public records for inspection.

* * * * *

67. In § 110.70, paragraph (d) is removed and paragraph (a) is revised to read as follows:

§ 110.70 Public notice of receipt of application.

(a) The Commission will notice the receipt of each license application for an export or import for which a specific license is required by making a copy available at the NRC Web site, *http://www.nrc.gov*.

* * * * *

68. Section 110.71 is revised to read as follows:

§ 110.71 Notice of withdrawal of an application.

The Commission will notice the withdrawal of an application by making a copy available at the NRC Web site, *http://www.nrc.gov*.

69. In § 110.72, the section heading and introductory text are revised to read as follows:

§ 110.72 Public availability of documents.

Unless exempt from disclosure under part 9 of this chapter, the following documents pertaining to each license and license application for an import or export requiring a specific license under this part will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room:

* * * * *

70. In § 110.112, paragraph (b) is revised to read as follows:

§ 110.112 Reporter and transcript for an oral hearing.

* * * * *

(b) Except for any classified portions, transcripts will be made available at the NRC Web site, *http://www.nrc.gov*, and/or at the NRC Public Document Room.

* * * * *

71. In § 110.113, paragraph (c) is revised to read as follows:

§ 110.113 Commission action.

* * * * *

(c) If the Commission considers information not in the hearing record in reaching its licensing decision, the hearing participants will be informed and, if not classified or otherwise privileged, the information will be made available at the NRC Web site, *http://www.nrc.gov*, and furnished to the participants.

* * * * *

Dated at Rockville, Md. this 13 day of April, 1999.

For the Nuclear Regulatory Commission.

A. J. Galante,

Chief Information Officer.

[FR Doc. 99–11246 Filed 05–06–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–151–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, that would have required repetitive inspections for excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars; and corrective actions, if necessary. That proposal also would have required repetitive replacement of the control cables and cable guides with new or serviceable components. That proposal was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. This new action revises the proposed rule by expanding the applicability of the proposed rule to include additional airplanes. In addition, this new action provides for optional terminating action for the repetitive inspections. The actions specified by this new proposed AD are intended to detect and correct excessive wear on the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, which could result in broken aileron control cables and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 1, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–NM–151–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 97–NM–151–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain Saab Model SAAB 2000 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on February 9, 1998 (63 FR 6499). That NPRM would have required repetitive inspections for excessive wear of the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, and corrective actions, if necessary. That NPRM also would have required repetitive replacement of the control cables and cable guides with new or serviceable components. That NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. Such excessive wear, if not corrected, could result in broken aileron control cables and consequent reduced controllability of the airplane.

Actions Since Issuance of the NPRM

Since the NPRM was issued, the manufacturer has issued Saab Service Bulletin 2000–27–033, Revision 01, dated March 27, 1998. Revision 01 introduces no new actions but revises the effectivity to include additional airplanes and specifies that the modification specified by Service Bulletin 2000–27–037, described below, eliminates the need for the repetitive inspections specified by Service Bulletin 2000–27–033, Revision 01.

Also, the manufacturer has issued Saab Service Bulletin 2000–27–037, dated March 11, 1998, which describes procedures for modification of the aileron control system. The modification involves replacement of the aileron control cables with new, improved (carbon steel) cables, and replacement of the semi-glides (cable guides) with new improved cable guides.

The Luftfartsverket (LFV), which is the civil aviation authority for Sweden, has classified Service Bulletin 2000–27–033, Revision 01, as mandatory. Further, the LFV has approved Service Bulletin 2000–27–037 as optional terminating action for the repetitive inspections specified by Service Bulletin 2000–27–033, Revision 01. In addition, the LFV has issued Swedish airworthiness directive SAD No. 1–111R1, dated March 30, 1998, in order to ensure the continued airworthiness of these airplanes in Sweden.

Explanation of New Requirements of the Supplemental NPRM

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this supplemental NPRM would require accomplishment of the actions specified in Saab Service Bulletin 2000–27–033 described previously. The proposed AD also would provide for optional terminating action for the repetitive inspections and repetitive replacements.

Operators should note that, in consonance with the findings of the Luftfartsverket (LFV), which is the civil aviation authority for Sweden, the FAA has determined that the repetitive actions proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect discrepancies before they represent a hazard to the airplane.

Conclusion

Since these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 3 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $180, or $60 per airplane, per inspection cycle.

It would take approximately 8 work hours per airplane to accomplish the proposed replacement, at an average labor rate of $60 per work hour. Required parts would be supplied by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be $1,440, or $480 per airplane, per replacement cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to perform the optional terminating modification, it would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification proposed by this AD

on U.S. operators is estimated to be $1,440, or $480 per airplane.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab Aircraft AB: Docket 97–NM–151–AD.

Applicability: Model SAAB 2000 series airplanes, serial numbers 004 through 064 inclusive; except those airplanes on which Saab Aircraft AB Modification 6093 (reference Saab Service Bulletin 2000–27–037, dated March 11, 1998) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct excessive wear on the aileron control cables, cable guides, and cable pulleys located at the rear wing spars, which could result in broken aileron control cables and consequent reduced controllability of the airplane, accomplish the following:

Repetitive Inspections

(a) Inspect to detect discrepancies of the left-and right-hand aileron control cables, cable guides, and cable pulleys at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable, in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997, or Revision 01, dated March 27, 1998. Repeat the inspection thereafter at intervals not to exceed 500 flight hours. If any discrepancy is found during any inspection required by this AD, prior to further flight, perform corrective action in accordance with the service bulletin.

(1) For airplanes on which Saab Modification 5784 has been installed: Inspect at the later of the times specified in paragraphs (a)(1)(i) and (a)(1)(ii) of this AD.

(i) Prior to the accumulation of 1,800 total flight hours; or within 1,800 flight hours after accomplishment of the modification or replacement of any control cable; whichever occurs latest. Or

(ii) Within 200 flight hours after the effective date of this AD.

(2) For airplanes on which Saab Modification 5784 has not been installed: Inspect at the later of the times specified in paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Prior to the accumulation of 3,200 total flight hours, or within 3,200 flight hours after replacement of any control cable, whichever occurs later. Or

(ii) Within 200 flight hours after the effective date of this AD.

Note 2: Although the inspection schedules of this AD apply to both left-and right-hand wing cable systems, replacement of the cable, guide, or pulley on one wing only, prior to scheduled replacement, would result in subsequent staggered inspections for the components of the left-and right-hand cable systems.

Repetitive Replacements

(b) Replace the aileron control cables, cable guides, and cable pulleys with new or serviceable parts, as applicable; at the time specified in paragraph (b)(1) or (b)(2) of this AD, as applicable; in accordance with Saab Service Bulletin 2000–27–033, dated April 29, 1997, or Revision 01, dated March 27, 1998.

(1) For airplanes on which Saab Modification 5784 has been installed: Replace at the later of the times specified in paragraphs (b)(1)(i) and (b)(1)(ii) of this AD. Thereafter, repeat the inspection required by paragraph (a) of this AD at the time specified in paragraph (a)(1); and replace the control cables and cable guides thereafter prior to the accumulation of 3,200 flight hours after replacement of any control cable.

(i) Prior to the accumulation of 3,200 total flight hours; or within 3,200 flight hours after installation of the modification, or after replacement of any control cable; whichever occurs latest. Or

(ii) Within 200 flight hours after the effective date of this AD.

(2) For airplanes on which Modification 5784 has not been installed: Replace at the later of the times specified in paragraphs (b)(2)(i) and (b)(2)(ii) of this AD. Thereafter, repeat the inspections required by paragraph (a) of this AD at the time specified in paragraph (a)(2); and replace the control cables and cable guides thereafter prior to the accumulation of 6,200 flight hours following replacement of any control cable.

(i) Prior to the accumulation of 6,200 total flight hours, or within 6,200 flight hours after replacement of any control cable, whichever occurs later. Or

(ii) Within 200 flight hours after the effective date of this AD.

Optional Terminating Action

(c) Accomplishment of the modification of the aileron control system in accordance with Saab Service Bulletin 2000–27–037, dated March 11, 1998, constitutes terminating action for the requirements of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directive SAD No. 1–111R1, dated March 30, 1998.

Issued in Renton, Washington, on April 30, 1999.

D. L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11469 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–98–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain EMBRAER Model EMB–145 series airplanes. This proposal would require a one-time ultrasonic inspection of the maneuvering actuator piston rod of the main landing gear (MLG) to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG and consequent reduced controllability of the airplane.

DATES: Comments must be received by June 7, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Curtis A. Jackson, Aerospace Engineer, Airframe and Propulsion Branch, ACE–117A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6083; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–98–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–98–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Departmento de Aviacao Civil (DAC), which is the airworthiness authority for Brazil, recently notified the FAA that an unsafe condition may exist on certain EMBRAER Model EMB–145 series airplanes. The DAC advises that that it has received a report indicating that, due to a deviation in a manufacturing process, certain maneuvering actuator piston rods for the main landing gear (MLG) may have been delivered with reduced wall thickness. This condition, if not corrected, would result in failure of the maneuvering actuator piston rod of the MLG, which would impede retraction of the MLG and consequent reduced controllability of the airplane.

Explanation of Relevant Service Information

EMBRAER has issued Service Bulletin 145–32–0031, Change No. 01, dated December 8, 1998, and Change No. 02, dated February 12, 1999, which describe procedures for a one-time ultrasonic inspection of the maneuvering actuator piston rods of the MLG to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod.

The DAC classified this service bulletin as mandatory and issued Brazilian airworthiness directive 98–09–01 R1, dated March 15, 1999, in order to assure the continued airworthiness of these airplanes in Brazil.

FAA's Conclusions

This airplane model is manufactured in Brazil and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time ultrasonic inspection of the maneuvering actuator piston rod of the MLG to ensure adequate wall thickness of the piston rods; and replacement of any discrepant piston rod with a new piston rod. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 33 EMBRAER Model EMB–145 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 99–NM–98–AD.

Applicability: Model EMB–145 series airplanes, equipped with main landing gear maneuvering actuators, part and serial numbers as listed in EMBRAER Service Bulletin 145–32–0031, Change No. 01, dated December 8, 1998, and Change No. 02, dated February 12, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the maneuvering actuator piston rod of the main landing gear (MLG), which would impede retraction of the MLG and consequent reduced controllability of the airplane; accomplish the following:

Ultrasonic Inspection and Replacement

(a) Within the next 100 landings after the effective date of this AD, perform an ultrasonic inspection of the maneuvering actuator piston rods of the MLG to ensure adequate wall thickness of the piston rods, in accordance with EMBRAER Service Bulletin 145–32–0031, Change No. 01, dated December 8, 1998, or Change No. 02, dated February 12, 1999.

(1) If the thickness of any measurement point in any piston rod is greater than 2.0 mm (.079 inch), no further action is required by this AD.

(2) If the thickness of any measurement point in any piston rod is from 1.5 mm (.059 inch) to 2.0 mm (.079 inch): Within 500 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

(3) If the thickness of any measurement point in any piston rod is less than 1.5 mm (.059 inch): Within 50 landings after the effective date of this AD, replace the piston rod with a new rod having the correct part number as specified in the service bulletin.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Brazilian airworthiness directive 98–09–01 R1, dated March 15, 1999.

Issued in Renton, Washington, on April 30, 1999.

D. L. Riggin,

Acting Manager,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11470 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–13–V

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Chapter IX

[Docket No. FR–4423–N–03]

Negotiated Rulemaking Committee on Capital Fund Allocation; Meetings

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Negotiated Rulemaking Committee Meetings.

SUMMARY: This notice announces the second and third meetings of the Negotiated Rulemaking Committee on Capital Fund Allocation. These meetings are sponsored by HUD for the purpose of discussing and negotiating a proposed rule that would change the current method of determining the payment of capital funds to public housing agencies (PHAs).

DATES: The second committee meeting will be held on May 11 and May 12, 1999. On May 11, 1999, the meeting will begin at approximately 9:30 am and run until completion; on May 12, 1999, the meeting will begin at approximately

9:00 am and run until approximately 5:00 pm.

The third committee meeting will be held on May 25 and May 26, 1999. On May 25, 1999, the meeting will begin at approximately 9:30 am and run until completion; on May 26, 1999 the meeting will begin at approximately 9:00 am and run until approximately 5:00 pm.

ADDRESSES: The second committee meeting will take place at the Westin Fairfax Hotel, 2100 Massachusetts Avenue, Washington, DC 20008; telephone (202) 293–2100.

The third committee meeting will take place at the Channel Inn Hotel, 650 Water Street, SW, Washington, DC 20024; telephone 1–800–368–5668 or (202) 554–2400.

FOR FURTHER INFORMATION CONTACT: William Flood, Director, Office of Capital Improvements, Public and Indian Housing, Room 4134, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500; telephone (202) 708–1640 ext. 4185 (this telephone number is not toll-free). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On April 26, 1999 (64 FR 20234), HUD published a **Federal Register** notice announcing the establishment of the Negotiated Rulemaking Advisory Committee on Capital Fund Allocation. The April 26, 1999 notice also announced the committee members, and the dates, location, and agenda for the first committee meeting. The purpose of the committee is to discuss and negotiate a proposed rule that would change the current method of determining the allocation of capital funds to public housing agencies (PHAs).

The second and third meetings of the negotiated rulemaking committee will take place as described in the **DATES** and **ADDRESSES** section of this notice.

The agenda planned for the committee meetings includes: (1) defining the goals for the Capital Fund formula; (2) discussing the various methods for translating these goals into a formula-based allocation system; and (3) the scheduling of future meetings.

In accordance with the General Services Administration (GSA) regulations implementing the Federal Advisory Committee Act, HUD normally publishes a **Federal Register** meeting notice at least 15 calendar days before the date of an advisory committee meeting). The GSA regulations, however, also provide that an agency may give less than 15 days notice if the reasons for doing so are included in the **Federal Register** meeting notice. (See 41 CFR 10–6.1015(b).) Due to the difficulty in obtaining suitable hotel and conference room accommodations in the Washington, DC area during April, 1999, it has not been possible for HUD to announce the date and location of the second committee meeting before today. Given the October 1, 1999 statutory deadline for implementation of the Capital Fund formula, HUD believes it is imperative that the negotiations for development of the formula not be delayed. Failure to publish the Capital Fund final rule on a timely basis will delay the provision of capital subsidies to PHAs. Accordingly, rather than defer the negotiations, HUD has decided to proceed with the second committee meeting on May 11 and May 12, 1999.

The meetings will be open to the public without advance registration. Public attendance may be limited to the space available. Members of the public may make statements during the meeting, to the extent time permits, and file written statements with the committee for its consideration. Written statements should be submitted to the address listed in the **FOR FURTHER INFORMATION** section of this notice. Summaries of committee meetings will be available for public inspection and copying at the address in the same section.

Dated: May 5, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–11718 Filed 5–6–99; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF JUSTICE

Federal Prison Industries, Inc.

28 CFR Part 302

[BOP 1061–P]

RIN 1120–AA84

Federal Prison Industries, Inc. (FPI) Standards and Procedures That Facilitate FPI's Ability To Accomplish Its Mission

AGENCY: Federal Prison Industries, Inc., Justice.

ACTION: Proposed rule; clarification.

SUMMARY: Federal Prison Industries, Inc. (FPI) proposed codification of its "Standards and Procedures that Facilitate FPI's ability to Accomplish its Mission" was published on January 7, 1999 (64 FR 1082). The comment period in this rulemaking expires on May 10, 1999 (64 FR 11821). FPI will give careful consideration to the comments received in this proceeding. Final action in this rulemaking will not occur before September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Marianne S. Cantwell, Corporate Counsel, Federal Prison Industries, Inc., phone (202) 305–3501.

Marianne S. Cantwell,

Acting Chief Operating Officer, Federal Prison Industries, Inc.

[FR Doc. 99–11518 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–05–P

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

29 CFR Part 2700

Procedural Rules

AGENCY: Federal Mine Safety and Health Review Commission.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Federal Mine Safety and Health Review Commission (the "Commission") is an independent adjudicatory agency that provides trial and appellate review of cases arising under the Federal Mine Safety and Health Act of 1977, 30 U.S.C. 801 *et seq.* (1994) (the "Mine Act"). On May 7, 1998, the Commission published a proposed rule, proposing revisions to several of its rules of procedure. *See* 63 FR 25183–87 (May 7, 1998). The Commission is supplementing that proposed rule with additional proposed procedural rule revisions which were not included in the May 7 publication.

DATES: Written comments must be submitted on or before May 28, 1999.

ADDRESSES: Comments may be mailed to Norman Gleichman, General Counsel, Federal Mine Safety and Health Review Commission, 1730 K Street, NW, 6th Floor, Washington, DC 20006. Persons submitting comments shall provide an original and three copies of their comments.

FOR FURTHER INFORMATION CONTACT: Norman M. Gleichman, General Counsel, Office of the General Counsel, 1730 K Street, NW, 6th Floor, Washington, DC 20006, telephone 202–653–5610 (202–566–2673 for TDD Relay). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

The Commission initially adopted its rules of procedure in June 1979. *See* 44 FR 38227 (June 29, 1979). In March 1993, the Commission published significant revisions to its procedural rules, reflecting more than 10 years' experience with the rules and evolving Commission case law. *See* 58 FR 12158 (March 3, 1998). In May 1998, the Commission published proposed revisions to several of the rules in an attempt to address problems that were unforeseen in 1993. *See* 63 FR 25183 (May 7, 1998). Those proposed rules included revisions relating to motion practice before the Commission, expansions of the requirements for certain pleadings, and revisions and clarifications for filing pleadings in temporary reinstatement proceedings. *See* 63 FR 25183–87. The Commission permitted written comments on those proposed rules to be submitted on or before August 5, 1998. The only written comments received by the Commission were submitted by the Department of Labor's Office of the Solicitor on behalf of the Mine Safety and Health Administration ("MSHA"). In addition to commenting on the published proposed revisions, MSHA suggested additional revisions which were not included in the May 7 publication. The Commission believes that some of those additional revisions are appropriate. In addition, recent developments in proceedings before the Commission have brought to light other rules requiring revision and clarification. The Commission is providing this opportunity for comment on these proposals from members of the mining community and the public.

In these supplemental proposed rules, the Commission has clarified requirements concerning when service on an attorney or other authorized representative is required. *See* proposed §§ 2700.3(c) and 2700.7(d). For example, under proposed § 2700.7(d), the Commission proposes that service on an attorney or other authorized representative is required only after that attorney or representative has formally entered an appearance on behalf of a party pursuant to proposed § 2700.3(c). Proposed § 2700.3(c) clarifies the manner of and time for making such an entry of appearance.

In addition, the Commission proposes expanding the requirements for the format of pleadings. *See* proposed § 2700.5(f). The proposed revisions, which include additional requirements concerning spacing and typeface size, are designed to insure adherence to page limits imposed by the rules.

Finally, the Commission proposes to increase the page limit for response briefs. *See* proposed § 2700.75(c). The proposed revision subjects response briefs to the same 35-page limit currently imposed on opening briefs.

Although these rules are procedural in nature and do not require notice and comment publication under the Administrative Procedure Act (*see* 5 U.S.C. 553(b)(3)(A)), the Commission is inviting and will consider public comment on these proposed revisions. A section-by-section explanation of the proposed changes is set forth below.

II. Section-by-Section Analysis

General Provisions

Section 2700.3 Who May Practice

Currently, § 2700.3(c) provides that an entry of appearance by a representative of a party is made by, among other things, signing the first document filed on behalf of the party. *See* 29 CFR 2700.3(c). The rule is somewhat ambiguous regarding the agency where the document must be filed, and whether the document refers only to pleadings.

The Commission proposes revising § 2700.3(c) to clarify that the first document filed on behalf of the party in making an entry of appearance shall be the first document filed with the Commission or Commission judge. This revision is intended to delineate when an entry of appearance occurs. The proposed revision also clarifies that the documents that may serve as an entry of appearance shall be only those filed with the Commission or Commission judge in a proceeding under the Mine Act or the Commission's procedural rules, and not documents filed with MSHA. All documents filed with the Commission or its judges are processed in its three central offices in Denver, Colorado; Falls Church, Virginia; and Washington, DC. In contrast, MSHA processes documents in numerous regional offices, some of which, because of their specific and distinct functions, forward documents they receive to other MSHA offices. The Commission anticipates that an entry of appearance will be less likely to be misdirected if it is sent to the Commission or its judges.

The proposed revisions to § 2700.3(c) are intended to be consistent with the definition of "party" set forth in § 2700.4(a). Section 2700.4(a) currently provides in part that "[a] person, including the Secretary or an operator, who is named as a party or who is permitted to intervene, is a party." 29 CFR 2700.4(a). Proposed § 2700.3(c) refers to actions that may be taken by a representative of a "party" in order to enter an appearance. Thus, reading current § 2700.4(a) with proposed § 2700.3(c), an entry of appearance by an attorney or other authorized representative cannot be made before the represented operator or individual achieves party status as defined in § 2700.4(a). In some circumstances, however, an entry of appearance may be made at the same time that an operator or individual achieves party status. For instance, upon the filing of a notice of contest of a citation or order with the Commission by an authorized representative on behalf of an operator, the operator is named as a party, thereby achieving party status under current § 2700.4(a), and the attorney filing the contest enters an appearance under proposed § 2700.3(c) by filing the document with the Commission.

Section 2700.5 General Requirements for Pleadings and Other Documents; Status or Informational Requests

In its comments to the Commission, MSHA requests that § 2700.75(e) be revised to specify that all briefs be double-spaced using a typeface designated by the Commission, to avoid any evasion of the requirements for page limits. Currently, the Commission's procedural rules contain no formatting requirements, with the exception of § 2700.5(f), which requires that pleadings and documents be 8½ by 11 inches in size. *See* 29 CFR 2700.5(f).

The Commission agrees that its current procedural rules should be revised to set forth standard requirements for pleading format in order to enhance compliance with page limitations. Because it believes that such requirements should apply to all pleadings filed with the Commission and its judges, the Commission has included such requirements in proposed § 2700.5(f), which applies to all pleadings, rather than in § 2700.75, which applies only to briefs before the Commission.

In the proposed revisions, the Commission has set forth requirements for margins, font size and spacing and included a general prohibition against excessive footnotes. In addition, the Commission has proposed a revision permitting the Commission to reject a brief based on the failure to comply with the requirements of the subsection or on the use of compacted or otherwise compressed printing features. To avoid affecting basic appeal rights, the Commission has limited the provision by allowing only the rejection of briefs,

rather than petitions for discretionary review.

Section 2700.7 Service

Based on recent proceedings before the Commission, the Commission believes that its current procedural rules should be revised to clarify when service on an attorney or other authorized representative is required, particularly in circumstances in which a person or operator has retained counsel prior to issuance of the initial document in a proceeding. *See Roger Richardson*, 20 FMSHRC 1259 (Nov. 1998) (involving proceeding under 30 U.S.C. 820(c), in which proposed penalty assessment was mailed to individual's former residence rather than to counsel who was retained prior to issuance of proposed penalty assessment). Accordingly, the Commission has proposed an amendment to § 2700.7(d) which clarifies that service on an attorney or other authorized representative is required after that representative has formally entered an appearance pursuant to proposed revisions to § 2700.3(c).

Currently, § 2700.7(d) provides that whenever a party is represented by an attorney or other authorized representative, subsequent service shall be made upon the attorney or other authorized representative. *See* 29 CFR 2700.7(d). The current rule is somewhat ambiguous regarding whether service is required after a representative has entered an appearance on behalf of the party, or whether service is required after a party has retained that representative.

The Commission proposes to revise § 2700.7(d) to provide that service is required on an attorney or other authorized representative only after that attorney or representative has formally entered an appearance on behalf of the party in the manner prescribed in proposed § 2700.3(c). Thus, even if an operator or individual retains counsel prior to the initiation of a proceeding under the Mine Act, the counsel need not be served until after he or she makes a formal entry of appearance pursuant to proposed § 2700.3(c).

Review by the Commission

Section 2700.75 Briefs

In the comments filed with the Commission, MSHA requests that § 2700.75 be revised to increase the page limit for response briefs from 25 pages to 35 pages. The Commission agrees that such a revision is appropriate. Section 2700.75(c) currently provides that opening briefs shall not exceed 35 pages, response briefs shall not exceed 25 pages, and reply briefs shall not exceed 15 pages. *See* 29 CFR 2700.75(c). The Commission believes that revising the page limit for response briefs to correspond with the page limit for opening briefs is appropriate given the similar substantive requirements for opening and response briefs. In addition, it agrees that such a revision is particularly appropriate in view of the opportunity for a petitioner to file an additional 15 pages in the form of a reply brief.

III. Matters of Regulatory Procedure

The Commission has determined that these rules are not subject to Office of Management and Budget review under Executive Order 12866.

The Commission has determined under the Regulatory Flexibility Act (5 U.S.C. 601–612) that these rules, if adopted, would not have a significant economic impact on a substantial number of small entities. Therefore, a Regulatory Flexibility Statement and Analysis has not been prepared.

The Commission has determined that the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) does not apply because these rules do not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 29 CFR Part 2700

Administrative practice and procedure.

For the reasons set out in the preamble, it is proposed to amend 29 CFR Part 2700 as follows:

PART 2700—PROCEDURAL RULES

1. The authority citation for Part 2700 continues to read as follows:

Authority: 30 U.S.C. 815, 820 and 823.

2. Section 2700.3 is amended by revising paragraph (c) to read as follows:

§ 2700.3 Who may practice

* * * * *

(c) *Entry of appearance.* A representative of a party shall enter an appearance in a proceeding under the Act or these procedural rules by signing the first document filed on behalf of the party with the Commission or Judge; filing a written entry of appearance with the Commission or Judge; or, if the Commission or Judge permits, by orally entering an appearance in open hearing.

* * * * *

3. Section 2700.5 as proposed to be revised in 63 FR at 25186 is further amended by revising paragraph (f) to read as follows:

§ 2700.5 General requirements for pleadings and other documents; status or informational requests.

* * * * *

(f) *Form of pleadings.* All printed material shall appear in at least 12 point type on paper 8½ by 11 inches in size, with margins of at least one inch on all four sides. Text and footnotes shall appear in the same size type. Text shall be double spaced. Headings and footnotes may be single spaced. Quotations of 50 words or more may be single spaced and indented left and right. Excessive footnotes are prohibited. The failure to comply with the requirements of this subsection or the use of compacted or otherwise compressed printing features will be grounds for rejection of a brief.

* * * * *

4. Section 2700.7 as proposed to be revised in 63 FR at 25186 is further amended by revising paragraph (d) to read as follows:

§ 2700.7 Service.

* * * * *

(d) *Service upon representative.* Whenever a party is represented by an attorney or other authorized representative who has entered an appearance on behalf of such party pursuant to § 2700.3(c), service thereafter shall be made upon the attorney or other authorized representative.

* * * * *

5. Section 2700.75 as proposed to be revised at 63 FR at 25187 is further amended by revising paragraph (c) to read as follows:

§ 2700.75 Briefs.

* * * * *

(c) *Length of brief.* Except by permission of the Commission and for good cause shown, opening and response briefs shall not exceed 35 pages, and reply briefs shall not exceed 15 pages. A brief of an amicus curiae shall not exceed 25 pages. A brief of an intervenor shall not exceed the page limitation applicable to the party whose position it supports in affirming or reversing the Judge, or if a different position is taken, such brief shall not exceed 25 pages. Tables of contents or

authorities shall not be counted against the length of a brief.

* * * * *

Mary Lu Jordan,

Chairman, Federal Mine Safety and Health Review Commission.

[FR Doc. 99–11459 Filed 5–6–99; 8:45 am]

BILLING CODE 6735–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 210–0118 EC; FRL–6336–6]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision-South Coast Air Quality Management District; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published March 18, 1999 (64 FR 13372). On March 18, 1999, EPA proposed a limited approval and limited disapproval of revisions to the California State Implementation Plan controlling oxides of nitrogen emissions in the South Coast Air Quality Management District. This rule concerned South Coast Air Quality Management District Rule 1110.2.

At the request of the South Coast Air Quality Management District and other parties, EPA is reopening the comment period.

DATES: The comment period closes May 19, 1999.

ADDRESSES: Comments should be submitted to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Ed Addison at (415) 744-1160.

Dated: April 21, 1999.

Lauri Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 99–11388 Filed 5–6–99; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 405

[HCFA–1002–N]

Medicare Program; Meetings of the Negotiated Rulemaking Committee on Ambulance Fee Schedule

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meetings.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces the dates and locations for the third and fourth meetings of the Negotiated Rulemaking Committee on the Ambulance Fee Schedule. These meetings are open to the public.

The purpose of this committee is to develop a proposed rule that establishes a fee schedule for the payment of ambulance services under the Medicare program through negotiated rulemaking, as mandated by section 4531(b) of the Balanced Budget Act (BBA) of 1997.

DATES: The third meeting is scheduled for May 24, 1999 from 9:00 a.m. until 5 p.m. and May 25, 1999 from 8:30 a.m. until 4 p.m. E.S.T. The fourth meeting is scheduled for June 28, 1999 from 9:00 a.m. until 5 p.m. and June 29, 1999 from 8:30 a.m. until 4 p.m. E.S.T.

ADDRESSES: The 2-day May meeting will be held at Doyle's Hotel, 1500 New Hampshire Avenue, N.W., Washington, D.C. 20036; (202) 483–6000. The 2-day June meeting will be held at BWI Airport Marriott, 1743 West Nursery Road, Baltimore, MD. 21240; (410) 849–8300.

FOR FURTHER INFORMATION CONTACT: Inquiries regarding these meetings should be addressed to Bob Niemann (410) 786–4569 or Margot Blige (410) 786–4642 for general issues related to ambulance services or to Lynn Sylvester (202) 606–9140 or Elayne Tempel (207) 780–3408, facilitators.

SUPPLEMENTARY INFORMATION: Section 4531(b)(2) of the Balanced Budget Act (BBA), Public Law 105–33, added a new section 1834(l) to the Social Security Act (the Act). Section 1834(l) of the Act mandates implementation, by January 1, 2000, of a national fee schedule for payment of ambulance services furnished under Medicare Part B. The fee schedule is to be established through negotiated rulemaking. Section 4531(b)(2) also provides that in establishing such fee schedule, the Secretary will—

- Establish mechanisms to control increases in expenditures for ambulance services under Part B of the program;
- Establish definitions for ambulance services that link payments to the type of services furnished;
- Consider appropriate regional and operational differences;
- Consider adjustments to payment rates to account for inflation and other relevant factors; and
- Phase in the fee schedule in an efficient and fair manner.

The Negotiated Rulemaking Committee on the Ambulance Fee Schedule has been established to provide advice and make recommendations to the Secretary with respect to the text and content of a proposed rule that establishes a fee schedule for the payment of ambulance services under Part B of the Medicare program.

The Committee held its second meeting on April 12, 13, and 14, 1999. At this meeting the Committee heard presentations from HCFA staff. The first presenter, a representative from HCFA's Actuarial and Health Cost Analysis Group, described the methodology used in determining how the payment cap under the fee schedule was calculated. The second presenter, a member of the HCFA negotiated rulemaking team, presented historical Medicare hospital and supplier ambulance billing data. The non-government members Committee finalized the private agreement with Project Hope to obtain ambulance cost data and reached consensus on the statements of the issues to be negotiated. Each Committee member presented the member's constituency's interests. Work began on the criteria for evaluating options for the fee schedule.

During the May meeting the Committee will work toward achieving consensus on the interests and on the criteria to be considered in evaluating options for the fee schedule. Discussions will then begin on the options.

The announced future meetings are open to the public without advanced registration. Interested parties can file statements with the Committee. *Mail written statements to the following address: Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C. 20427, Attention: Lynn Sylvester.* Location of future meetings will be published in the **Federal Register** at a later date.

Public attendance at the meetings may be limited to space available. A summary of all proceedings will be

available for public inspection in room 443–G of the Department's offices at 200 Independence Avenue, SW., Washington, D.C. on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: (202) 690–7890) or can be accessed through the HCFA Internet site at http://www.hcfa.gov/medicare/ambmain.htm. Additional information related to the Committee will also be available on the web site.

Authority: Section 1834(l)(1) of the Social Security Act (42 U.S.C. 1395m).

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: May 4, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

[FR Doc. 99–11560 Filed 5–6–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA–7283]

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are requested on the proposed base (1% annual chance) flood elevations and proposed base flood elevation modifications for the communities listed below. The base flood elevations are the basis for the floodplain management measures that the community is required either to adopt or to show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

DATES: The comment period is ninety (90) days following the second publication of this proposed rule in a newspaper of local circulation in each community.

ADDRESSES: The proposed base flood elevations for each community are available for inspection at the office of the Chief Executive Officer of each community. The respective addresses are listed in the following table.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (email) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA or Agency) proposes to make determinations of base flood elevations and modified base flood elevations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed base flood and modified base flood elevations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, state or regional entities. These proposed elevations are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

National Environmental Policy Act

This proposed rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director, Mitigation Directorate, certifies that this proposed rule is exempt from the requirements of the Regulatory Flexibility Act because proposed or modified base flood elevations are required by the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and are required to establish and maintain community eligibility in the National Flood Insurance Program. As a result, a regulatory flexibility analysis has not been prepared.

Regulatory Classification

This proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Executive Order 12612, Federalism

This proposed rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This proposed rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Part 67

Administrative practice and procedure, Flood insurance, Reporting and recordkeeping requirements.

Accordingly, 44 CFR part 67 is proposed to be amended as follows:

PART 67—[AMENDED]

1. The authority citation for part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 67.4 [Amended]

2. The tables published under the authority of § 67.4 are proposed to be amended as follows:

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. °Elevation in feet (NGVD)	
				Existing	Modified
Florida	Callaway (City), Bay County.	East Bay	Approximately 0.7 mile east of the intersection of South Berthe Avenue and Wallace Road.	°6	°11
			Approximately 1,000 feet southeast of intersection of South Berthe Avenue and Wallace Road.	°4	°7

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Callaway Bayou	Approximately 0.7 mile east of the intersection of South Berthe Avenue and Wallace Road.	*6	*11
			Approximately 500 feet southeast of intersection of Winonast and Beulah Avenue.	*4	*7
		Callaway Creek	At State Route 22	*4	*7
			Approximately 0.6 mile upstream of State Route 22.	*4	*7
		Pitts Bayou	West side of U.S. Route 98 (Tyndall Parkway) at Pitts Bayou Crossing.	*4	*8
Maps available for inspection at the Department of Public Works, 324 South Berthe Avenue, Callaway, Florida.					
Send comments to The Honorable Ray Boevink, Mayor of the City of Callaway, 6601 East Highway 22, Callaway, Florida 32404.					
Florida	Cinco Bayou (Town), Okaloosa County.	Choctawhatchee Bay (along Cinco Bayou).	Approximately 200 feet north of Kidd Street and Lucile Street intersection.	*6	*8
			Approximately 300 feet north of intersection of Opp Boulevard and Yacht Club Drive Northeast.	*6	*11
Maps available for inspection at the Town Hall, 10 Yacht Club Drive, Fort Walton Beach, Florida 32548–4436.					
Send comments to Mr. Charles W. Turner, Town Manager, 10 Yacht Club Drive, Fort Walton Beach, Florida 32548–4436.					
Florida	Destin (City), Okaloosa County.	Choctawhatchee Bay	Approximately 350 feet north of Harbor Lane and Indian Trail Drive intersection.	*4	*7
			Approximately 900 feet west of the intersection of Calhoun Avenue and Zerbe Street.	*4	*10
		Gulf of Mexico	At intersection of Lagoon Drive and Moreno Point Road.	None	*9
			Approximately 800 feet south of Miracle Strip Parkway and Airport Road.	*12	*16
Maps available for inspection at the Destin City Hall, Community Development Department, 4200 Two Trees Road, Destin, Florida.					
Send comments to The Honorable Ken Beaird, Mayor of the City of Destin, 4200 Two Trees Road, Destin, Florida 32541.					
Florida	Escambia County (Unincorporated Areas).	Gulf of Mexico	Approximately 1.93 miles east of Pensacola Beach—Santa Rosa Island Authority/Escambia County eastern boundary along Gulf of Mexico.	*13	*16
			Approximately 200 feet north of intersecton of Sandy Key Road and State Route 292.	#1	*10
		Santa Rosa Sound	Approximately 500 feet east of Pensacola Beach—Santa Rosa Island Authority/ Escambia County eastern boundary near Big Sabine Point.	*6	*12
			Approximately 3,000 feet south of the tip of Big Sabine Point.	#1	*11
		Pensacola Bay	At the intersection of Burlington Northern Railroad and Redoust Narva Road.	*6	*7
			Approximately 1,000 feet west of the intersection of State Road 399/Ft. Pickens Road and Via De Luna.	*6	*12
		Big Lagoon	Approximately 3,600 feet south of western tip of Sherman Cove.	*13	*12
			Approximately 350 feet south of intersection of Gulf Beach Highway and Constance Street.	None	*8
			Approximately 1,400 feet south of eastern tip of Sherman Cove.	#1	*10
		Jones Creek	Approximately 500 feet east of the point where North Navy Boulevard crosses Jones Creek.	*6	*7

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Escambia County Office of Development Services, 1190 West Leonard Street, Pensacola, Florida 32501–1129. Send comments to Mr. Barry Evans, Escambia County Administrator, P.O. Box 1591, Pensacola, Florida 32597–1591.					
Florida	Fort Walton Beach (City), Okaloosa County.	Santa Rosa Sound	At intersection of 1st Street Southwest and 4th Avenue Southwest.	None	*8
			Approximately 1,000 feet south of intersection of Hood Avenue Southeast and Brooks Street Southeast.	*7	*11
		Choctawhatchee Bay	Intersection of Arizona Drive Northeast and Texas Street Northeast.	None	*8
			Approximately 600 feet northeast of intersection of Bay Drive Northeast and Hollywood Boulevard Northeast.	*10	*12
		Choctawhatchee Bay (along Cinco Bayou).	Approximately 400 feet northeast of intersection of Martin Place Northwest and Vaughn Street Northwest.	*6	*8
			Approximately 300 feet southeast of intersection of Bradley Drive and Beach View Drive.	*5	*12
		Choctawhatchee Bay (along Garnier Bayou).	Approximately 250 feet northeast of intersection of Sherwood Road and Mooney Road.	*5	*8
			Approximately 300 feet east of intersection of Marshall Drive and Beach View Drive.	*7	*12
Maps available for inspection at 107 Miracle Strip Parkway, Fort Walton Beach, Florida. Send comments to Mr. Reid Silverboard, City Manager, 107 Miracle Strip Parkway, Fort Walton Beach, Florida 32549.					
Florida	Gulf Breeze (City), Santa Rosa County.	Santa Rosa Sound	At the intersection of Deerpoint Circle and Deerpoint Drive.	*8	*12
			Approximately 0.4 mile west on Gulf Breeze Parkway from the intersection of Bayshore Road and Gulf Breeze Parkway.	None	*8
		Pensacola Bay	Approximately 1,600 feet northwest of the intersection of Fairpoint Drive and Shoreline Drive.	*6	*10
			Approximately 700 feet east of the intersection of Cadiz Street and Cordoba Street.	*5	*6
Maps available for inspection at the Gulf Breeze City Hall, 1070 Shoreline Drive, Gulf Breeze, Florida. Send comments to Mr. Edwin A. Eddy, Gulf Breeze City Manager, P.O. Box 640, Gulf Breeze, Florida 32562–0640.					
Florida	Lynn Haven (City), Bay County.	North Bay	At the intersection of West 19th Street and Maryland Avenue.	None	*7
			Shoreline at Little Oyster Bar Point	*7	*11
			At intersection of New Jersey Avenue and 11th Street.	*6	*7
Maps available for inspection at the Lynn Haven City Hall, 825 Ohio Avenue, Lynn Haven, Florida. Send comments to The Honorable Walter J. Kelley, Mayor of the City of Lynn Haven, 825 Ohio Avenue, Lynn Haven, Florida 32444.					
Florida	Mary Esther (City), Okaloosa County.	Santa Rosa Sound	Intersection of Doolittle Boulevard and Miracle Strip Parkway.	None	*8
			Approximately 950 feet south of intersection of Shady Lane and Miracle Strip Parkway.	*8	*11
Maps available for inspection at 195 Christobal Road North, Mary Esther, Florida. Send comments to Mr. John Lulue, Mary Esther City Manager, 195 Christobal Road North, Mary Esther, Florida 32569.					
Florida	Mexico Beach (City), Bay County.	Gulf of Mexico	At the intersection of 38th Street and 36th Street.	None	*8
			Approximately 175 feet south of the intersection of 16th Street and U.S. Highway 98.	*9	*16

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Mexico Beach City Hall, 118 North 14th Street, Mexico Beach, Florida. Send comments to The Honorable Garry Gaddis, Mayor of the City of Mexico Beach, P.O. Box 13425, Mexico Beach, Florida 32410.					
Florida	Niceville (City), Okaloosa County.	Choctawhatchee Bay	At intersection of Bayshore Drive and Weeden Island Drive.	None	*7
			Approximately 600 feet southeast of intersection of Bayshore Drive and 7th Street.	*7	*10
		Swift Creek	Approximately 100 feet downstream of State Route 20.	*5	*7
			Approximately 2,400 feet upstream of State Route 20.	*6	*7
		Turkey Creek	Approximately 100 feet downstream of State Route 85.	*5	*7
			Approximately 1,700 feet upstream of State Road 85.	*6	*7
		Choctawhatchee Bay (along Boggy Bayou).	Approximately 750 feet west of intersection of Meigs Street and Bayshore Drive.	*7	*9
			Approximately 100 feet north of intersection of 31st Street and Bayshore Drive.	None	*7
		Choctawhatchee Bay (along Rocky Bayou).	Approximately 400 feet southeast of intersection of 11th Street and Baha Vista Drive.	*5	*10
			At intersection of 11th Street and Baha Vista Drive.	None	*7
Maps available for inspection at 208 North Partin Drive, Niceville, Florida. Send comments to Mr. Lannie L. Corbin, City Manager, 208 North Partin Drive, Niceville, Florida 32578.					
Florida	Okaloosa County (Unincorporated Areas).	Gulf of Mexico	Intersection of Santa Rosa Boulevard and Siebert Drive.	None	*9
			Approximately 500 feet south of intersection of Abalone Court and Caviar Drive.	*12	*16
		Santa Rosa Sound	Approximately 800 feet east of intersection of Woodland Avenue and Miracle Strip Parkway.	*7	*8
			Approximately 1,000 feet south of intersection of Miracle Strip Parkway and Green Drive.	*9	*12
			At intersection of Venus Court and Santa Rosa Boulevard.	None	*9
		Choctawhatchee Bay	At intersection of 13th Street South and Tamarack Avenue.	None	*7
			Approximately 400 feet south of Wenona Way and Cherokee Road intersection.	*6	*12
		Choctawhatchee Bay (along Cinco Bayou).	Approximately 400 feet south of intersection of Valeria Street and Russell Boulevard.	*6	*8
			Approximately 500 feet southeast of intersection of Bradley Drive and Beach View Drive.	*5	*12
		Choctawhatchee Bay (along Garnier Bayou).	At intersection of Eglin Parkway and Beach View Drive.	None	*9
			Approximately 600 feet southeast of intersection of 2nd Avenue and Beach View Drive.	*7	*12
		Choctawhatchee Bay (along Boggy Bayou).	Approximately 150 feet south of intersection of Bayshore Drive and Palm Boulevard.	None	*7
			Approximately 1,250 feet west of intersection of Bayshore Drive and Palm Boulevard.	*7	*10
		Choctawhatchee Bay (along Rocky Bayou).	Approximately 150 feet east of intersection of Capri Cove Road and Lido Cove Road.	None	*7
			Approximately 500 feet west of intersection of Marina Cove Road and Yacht Club Drive.	*7	*10
		Lightwood Knot Creek	Mouth at Garnier Bayou	*5	*8

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Garnier Creek	2,900 feet upstream of State Road 189 ...	*7	*8
			Mouth at Garner Bayou	*5	*8
			2,250 feet upstream of State Route 189 ..	*7	*8

Maps available for inspection at 1804 Lewis Turner Boulevard, Suite 200, Fort Walton Beach, Florida.

Send comments to Mr. Chris Holley, County Manager, 1804 Lewis Turner Boulevard, Fort Walton Beach, Florida 32547.

Florida	Panama City (City), Bay County.	Watson Bayou	Intersection of Bonita Avenue and East 7th Court.	*4	*8
			Approximately 1,000 feet southeast of the intersection of Cove Terrace and South Cove Lane.	*4	*10
		St. Andrew Bay	Approximately 400 feet north of the intersection of Allen Avenue and Linda Avenue.	*4	*8
			Approximately 1,400 feet south of the intersection of Brown Avenue and West 18th Street.	*6	*12
		North Bay	400 feet north of intersection of Foxworth Drive and Frankfort Avenue.	*4	*7
			Approximately 1,200 feet west of the intersection of Frankford Avenue and Calhoun Avenue.	*7	*11

Maps available for inspection at the City Hall, City of Panama City, 9 Harrison Avenue, Panama City, Florida.

Send comments to The Honorable Girard Clemons, Jr., P.O. Box 1880, 9 Harrison Avenue, Panama City, Florida 32402–1880.

Florida	Panama City Beach (City), Bay County.	Gulf of Mexico	Approximately 400 feet west of the intersection of Crane Street and Miracle Strip Parkway.	*8	*16
			Approximately 200 feet west of the intersection of Habanero Avenue and Lullwater Drive East.	*5	*8

Maps available for inspection at the Panama City Beach City Hall, 110 South Arnold Road, Panama City Beach, Florida.

Send comments to Mr. Richard Jackson, Panama City Beach Manager, 110 South Arnold Road, Panama City Beach, Florida 32413.

Florida	Parker (City), Bay County.	East Bay	Approximately 2,500 feet southeast of the intersection of Fleming Street and Interstate 98.	*6	*10
			Approximately 300 feet east of the intersection of Bay Avenue and Oak Shore Drive.	*4	*8
		St. Andrew Bay	Approximately 800 feet west of intersection of Sunset Drive and Cedar Avenue.	*5	*11
			At the intersection of East Street and Fourth Street.	*4	*8

Maps available for inspection at the Parker City Hall, 1001 West Parker, Parker, Florida.

Send comments to The Honorable Brenda Hendricks, Mayor of the City of Parker, 1001 West Parker, P.O. Box 10619, Parker, Florida 32404.

Florida	Pensacola (City), Escambia County.	Pensacola Bay	West of Pensacola Bay Bridge	*9	*11
			At the intersection of Intendencia Street and North 9th Avenue.	*9	*7

Maps available for inspection at the City of Pensacola Inspections Department, 180 Governmental Center, 5th Floor, Pensacola, Florida.

Send comments to Mr. Thomas J. Bonfield, Pensacola City Manager, P.O. Box 12910, Pensacola, Florida 32521.

Florida	Pensacola Beach-Santa Rosa Island Authority (Escambia County).	Gulf of Mexico	Pensacola Beach-Santa Rosa Island Authority Escambia County east boundary at Gulf of Mexico.	*13	*16
			At the intersection of Ariola Drive and Avenida 11.	#1	*11
		Santa Rosa Sound	Approximately 600 feet north of intersection of Via De Luna and Avenida 11.	*6	*12
			At the intersection of Via De Luna and Avenida 11.	#1	*9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Santa Rosa Island Authority, 35 Via Deluna, Pensacola Beach, Florida. Send comments to Mr. Monty Blews, Santa Rosa Island Authority General Manager, P.O. Box 1208, Pensacola Beach, Florida 32562.					
Florida	Santa Rosa County (Unincorporated Areas).	Gulf of Mexico	Approximately 1.6 miles south of the intersection of U.S. Route 98 (Gulf Breeze Parkway) and Calle of Palencia.	*8	*16
			Approximately 1.5 miles south of the intersection of U.S. Route 98 (Gulf Breeze Parkway) and Belle Meade Circle.	None	*11
		Santa Rosa Sound	Approximately 500 feet south of the intersection of Avenger Drive and North Shores Drive.	*9	*12
			Approximately 3,400 feet south of the intersection of U.S. Route 98 (Gulf Breeze Parkway) and Mohawk Trail.	None	*8
Maps available for inspection at the Santa Rosa County Administration Building, 6495 Caroline Street, Milton, Florida. Send comments to Mr. Hunter Walker, Santa Rosa County Administrator, 6495 Caroline Street, Suite D, Milton, Florida 32570–4592.					
Florida	Shalimar (Town), Okaloosa County.	Choctawhatchee Bay	At northeast corner of intersection of Eglin Parkway and Gardner Drive.	None	*8
			Approximately 1,300 feet southwest of Old Ferry Road and Gardner Drive.	*7	*12
		Choctawhatchee Bay (along Garnier Bayou).	At intersection of Plew Avenue and Shalimar Drive.	None	*8
			Approximately 150 feet west of intersection of Shalimar Drive and Plew Avenue.	*7	*11
Maps available for inspection at #2 Cherokee Road, Shalimar, Florida. Send comments to The Honorable Harry Montague, Mayor of the City of Shalimar, #2 Cherokee Road, Shalimar, Florida 32579.					
Florida	Valparaiso (City), Okaloosa County.	Choctowhatchee Bay	Approximately 200 feet south of intersection of Florida Avenue and Grand View Avenue.	None	*7
			Approximately 1,000 feet east of intersection of Jasmine Avenue and Louisiana Avenue.	*7	*10
		Choctawhatchee Bay (along Boggy Bayou).	Approximately 250 feet east of intersection of Westview Avenue and Edge Avenue.	None	*7
			Approximately 250 feet southwest of intersection of Southview Avenue and Bayshore Drive.	*7	*9
Maps available for inspection at the City Hall, 466 Valparaiso Parkway, Valparaiso, Florida. Send comments to The Honorable John B. Arnold, Jr., Mayor of the City of Valparaiso, P.O. Box 296, Valparaiso, Florida 32580–0296.					
Florida	Walton County (Unincorporated Areas).	Gulf of Mexico	Shoreline approximately 550 feet south of intersection of Seacrest Drive and County Route 30-A.	*12	*16
			Entire shoreline of Morrison Lake	None	*8
			Approximately 800 feet northeast of intersection of Lakeshore Drive and Earl Road.	*5	*10
		Choctawhatchee Bay	Approximately 300 feet north of intersection of Bayshore Drive and Geronomo Street.	*2	*7
			Approximately 1,800 feet south of Marsh Drive and State Route 20.	*7	*10
			Approximately 700 feet south of State Route 20 bridge over Linton Spring Branch.	*7	*10
		Lake Powell	Approximately 800 feet north of intersection of Orange Street and Pinewood Lane.	*5	*8
			Approximately 200 feet east of intersection of Pinewood Lane and Lakeshore Drive.	*5	*9

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		Alaqua Creek	Approximately 2,300 feet southeast of intersection of State Route 20 and Whitfield Road.	*7	*9

Maps available for inspection at the Walton County Courthouse Annex, 47 North 6th Street, DeFuniak Springs, Florida.

Send comments to Mr. Joel Paul, Jr., Chairman of the Walton County Board of Commissioners, P.O. Drawer 689, DeFuniak Springs, Florida 32435.

Georgia	Dallas (City), Paulding County.	Griffin Creek	Approximately 40 feet downstream of Sara Babb Road.	*899	*899
			Upstream side Atlanta Highway (Business State Route 6).	None	*986
		Weaver Creek	Approximately 2,300 feet downstream of West Memorial Drive (State Route 120).	None	*942
			Approximately 0.7 mile upstream of Seaboard Drive.	None	*991

Maps available for inspection at the Dallas City Hall, 120 Main Street, Dallas, Georgia.

Send comments to Mr. Ken Elsberry, City of Dallas Floodplain Coordinator, 120 Main Street, Dallas, Georgia 30132.

Georgia	Gainesville (City), Hall County.	Walnut Creek	Approximately 1,785 feet upstream of private drive.	None	*950
			Approximately 0.72 mile upstream of private drive.	None	*963

Maps available for inspection at the Hall County Joint Administration Building, Engineering Office, 300 Green Street, Room 309, Gainesville, Georgia.

Send comments to The Honorable Bob Hamrick, Mayor of the City of Gainesville, 300 Green Street, Gainesville, Georgia 30501.

Georgia	Hall County (Unincorporated Areas).	Balus Creek	Approximately 2,000 feet downstream of McEver Road.	None	*1,082
			Approximately 875 feet upstream of Landrum Education Drive.	None	*1,174
		Balus Creek Tributary 1	Approximately 50 feet upstream of confluence with Balus Creek.	*1,098	*1,100
			Approximately 575 feet upstream of Old Oakwood Road.	None	*1,132
		Caney Fork Creek	At confluence with Walnut Creek	*837	*847
			Approximately 1,650 feet upstream of Sloan Mill Road.	None	*1,062
		Deaton Creek	At confluence with Mulberry Creek	None	*823
			Approximately 2.0 miles upstream of Oliver Road.	None	*921
		Lollis Creek	At confluence with Sherwood Creek	None	*853
			Approximately 175 feet upstream of Upper Looper Lake Dam.	None	*929
		Mitchell Creek	At confluence with Lollis Creek	None	*874
			Just downstream of Swansey Road	None	*1,001
		Mulberry Creek	Approximately 1.13 miles downstream of State Route 211.	None	*800
			Just downstream of Martin Road	None	*981
		Mulberry Creek Tributary	At confluence with Mulberry Creek	None	*885
			Approximately 0.7 mile upstream of Elizabeth Lane.	None	*974
		Sherwood Creek	At confluence with Mulberry Creek	None	*838
			At county boundary	None	*920
		Walnut Creek	At county boundary	None	*829
			Approximately 1.2 miles upstream of Lee Land Road.	None	*963
		East Fork Little River	Approximately 0.66 mile downstream of Brookton Lula Road and approximately 0.28 mile east of the intersection of Cleveland Highway and Wild Smith Road.	None	*1,241

Maps available for inspection at the Hall County Joint Administration Building, Engineering Office, 300 Green Street, Room 309, Gainesville, Georgia.

Send comments to Mr. Al Gainey, Jr., Chairman of the Hall County Board of Commissioners, P.O. Box 1435, Gainesville, Georgia 30503.

Georgia	Hiram (City), Paulding County.	Lick Log Creek	Approximately 1.1 miles downstream of Dallas Nebo Road.	*959	*957

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 0.53 mile downstream of Dallas Nebo Road.	*963	*961
		Davis Mill Creek	Approximately 950 feet upstream of Nebo Road.	*943	*941
			Approximately 1 mile upstream of Lake Swan Outfall.	None	*990
		Mill Creek	Approximately 0.78 mile upstream of Pool Road.	*918	*920
			Approximately 0.79 mile upstream of State Route 92.	*939	*937

Maps available for inspection at the Hiram City Hall, 186 Oak Street, Hiram, Georgia.
Send comments to The Honorable Dewey Pendley, Mayor of the City of Hiram, 186 Oak Street, Hiram, Georgia 30141.

Georgia	Oakwood (City), Hall County.	Balus Creek	Approximately 150 feet downstream of McEver Road.	*1,081	*1,087
			Approximately 1,425 feet upstream of Landrum Education Drive.	None	*1,176
		Balus Creek Tributary No. 1.	At confluence with Balus Creek	*1,098	*1,100
			Approximately 75 feet upstream of Old Oakwood Road.	None	*1,130

Maps available for inspection at the Oakwood City Hall, 4009 Railroad, Oakwood, Georgia.
Send comments to The Honorable Lamar Scroggs, Mayor of the City of Oakwood, P.O. Box 99, Oakwood, Georgia 30566.

Georgia	Paulding County (Unincorporated Areas).	Davis Mill Creek	At confluence with Mill Creek (formerly Lick Log Creek).	*916	*920
			Approximately 1.3 miles upstream of Lake Swan Outfall.	None	*1,003
		Griffin Creek	At confluence with Lawrence Creek	*856	*857
			Approximately 710 feet upstream of Atlanta Highway (State Business Route 6).	None	*988
		Lawrence Creek	Approximately 60 feet upstream of Old Cartersville Road.	*851	*852
			Approximately 1,300 feet upstream of Dallas Acworth Highway (State Route 92).	*897	*895
		Lick Log Creek	At confluence with Davis Mill Creek	*943	*941
			Approximately 200 feet downstream of Dallas Nebo Road.	*968	*967
		McClendon Creek	At conflence with Mud Creek	None	*1,132
			Approximately 1.54 miles upstream of McGarity Road.	None	*1,153
		Mill Creek	At confluence with Sweetwater Creek	*906	*907
			Approximately 1.0 mile upstream of Davis Mill Road.	None	*1,027
		Tallapoosa River and Mud Creek.	Approximately 200 feet downstream of Goodman Road.	None	*1,123
			Approximately 1.0 mile upstream of Honey Suckle Lane.	None	*1,159
		Possum Creek	Confluence with Picketts Mill Creek	None	*827
			Approximately 825 feet upstream of Due West Road.	None	*980
		Powder Springs Creek	Upstream side Lost Mountain Road (formerly County Line Road).	*948	*947
			Approximately 0.51 mile upstream of Mark Drive.	None	*1,136
		Pumpkinvine Creek	Approximately 1,700 feet downstream of Dabbs Bridge Road.	None	*742
			Approximately 2.7 miles upstream of confluence of Little Pumpkinvine Creek.	None	*933
		Rakestraw Creek	Approximately 50 feet downstream of county boundary.	*928	*929
			Approximately 20 feet upstream of Macland Road.	None	*1,156
		Weaver Creek	Approximately 1,500 feet upstream of confluence with Pumpkinvine Creek.	None	*870

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 125 feet upstream of State Route 120 (West Memorial Drive).	None	*954
		West Fork	Confluence with Pumpkinvine Creek	*775	*777
			Approximately 0.52 mile upstream of confluence with Pumpkinvine Creek.	*775	*777
		Lawrence Creek	Approximately 60 feet upstream of Old Cartersville Road.	*851	*852
			At confluence of Griffin Creek	*856	*857
		Dewberry Creek (formerly Lawrence Creek).	At confluence of Griffin Creek	*856	*857
			Approximately 1,300 feet upstream of Dallas Acworth Highway (State Route 92).	*897	*895
		Little Pumpkinvine Creek 1 (formerly Picketts Mill Creek).	At confluence with Pumpkinvine Creek	*760	*759
			At confluence of Possum Creek	None	*827
		Picketts Mill Creek	At confluence of Possum Creek	None	*827
			Approximately 720 feet upstream of Holland Road.	None	*969

Maps available for inspection at the Paulding County Engineering Department, 25 Courthouse Square, Dallas, Georgia.

Send comments to Mr. Bill Carruth, Chairman of the Paulding County Board of Commissioners, 120 East Memorial Drive, Dallas, Georgia 30132.

Illinois	Bloomington (City), McLean County.	Goose Creek	At confluence with Sugar Creek	*738	*740
			Approximately 970 feet downstream of U.S. Route 51.	*796	*797
		High School Branch	At confluence with Sugar Creek	*773	*770
			Approximately 1,960 feet upstream of Towanda Avenue.	*811	*810
		Little Kickapoo Creek	At upstream side of Ireland Grove Road	*821	*818
			Approximately 2,700 feet upstream of Lincoln Street.	*825	*823
		Brookridge Branch	Approximately 450 feet upstream of confluence with Little Kickapoo Creek.	*821	*819
			Approximately 1,900 feet upstream of Hershey Road.	*825	*827
		Skunk Creek	Approximately 650 feet upstream of confluence with Sugar Creek.	*745	*744
			Approximately 1,120 feet upstream of Market Street.	*747	*746
		East Tributary Skunk Creek.	Approximately 550 feet upstream of White Oak Road.	*762	*763
			Approximately 1,050 feet upstream of White Oak Road.	*762	*763
		Sugar Creek	At downstream side of Interstate Routes 55 and 74.	*736	*738
			At downstream side of Airport Road	*808	*810

Maps available for inspection at the City of Bloomington Engineering and Water Department, 326 Vista Drive, Bloomington, Illinois.

Send comments to The Honorable Judy Markowitz, Mayor of the City of Bloomington, 326 Vista Drive, Bloomington, Illinois 61701.

Illinois	Normal (Town), McLean County.	North Branch Sugar Creek	At confluence with Sugar Creek	*765	*762
			Approximately 100 feet upstream of Fort Jesse Road.	None	*790
		Skunk Creek	Approximately 200 feet upstream of College Avenue.	*776	*780
			At downstream side of Gregory Street	*785	*786
		East Tributary Skunk Creek.	At Norfolk and Western Railroad	None	*757
			Approximately 20 feet upstream of Hovey Avenue.	*766	*763
		Sugar Creek	Approximately 225 feet upstream of confluence of West Branch Sugar Creek.	*755	*754
			Approximately 50 feet downstream of Veterans Parkway.	*789	*790
		West Branch Sugar Creek	Approximately 120 feet upstream of confluence with Sugar Creek.	*755	*754
			At upstream side of Gulf Course weir	*812	*811

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
		West Branch Sugar Creek Tributary.	At confluence with West Branch	*801	*800
			Approximately 840 feet upstream of confluence with West Branch.	None	*805
		Linden Street Drain	At upstream side of Sycamore Street	None	*792
			Approximately 625 feet upstream of Shelbourne Drive.	None	*810

Maps available for inspection at the Normal Town Hall, 100 East Phoenix Avenue, Normal, Illinois.
Send comments to The Honorable Kent M. Karraker, Mayor of the Town of Normal, 100 East Phoenix Avenue, Normal, Illinois 61761.

Kentucky	Inez (City), Martin County.	Rockcastle Creek	At the downstream corporate limits	None	*631
			Approximately 340 feet upstream of State Route 40.	None	*633

Maps available for inspection at the Inez City Hall, Main Street, Inez, Kentucky.
Send comments to The Honorable Rick Penix, Mayor of the City of Inez, P.O. Box 540, Inez, Kentucky 41224.

Kentucky	Martin County (Unincorporated Areas).	Rockhouse Fork	Approximately 170 feet upstream of the confluence with Rockcastle Creek.	None	*610
			Immediately downstream of State Route 40.	*655	*654
		Rockcastle Creek	Approximately 5,500 feet downstream of State Route 40.	None	*630
			At the upstream corporate limits	None	*631

Maps available for inspection at the Disaster Emergency Services Director's Office, Route 40, Courthouse Square, Inez, Kentucky.
Send comments to The Honorable Kelley E. Callahan, County Judge—Executive, Martin County Courthouse, P.O. Box 309, Inez, Kentucky 41224.

Michigan	Howell (City), Livingston County.	Thompson Lake	Entire shoreline within community	None	*907
		Bogue Creek	Approximately 530 feet downstream of Sluice Gate.	None	*892
			Approximately 590 feet upstream of Sluice Gate.	None	*907

Maps available for inspection at the City Hall, 611 East Grand River, Howell, Michigan.
Send comments to The Honorable Paul Rogers, Mayor of the City of Livingston, City Hall, 611 East Grand River, Howell, Michigan 48843.

Michigan	Nashville (Village), Barry County.	Thornapple River	Approximately 2,800 feet downstream of the confluence of Quaker Brook Creek.	None	*813
			Approximately 4,050 feet upstream of Main Street.	None	*817

Maps available for inspection at the Nashville Village Office, 206 North Main Street, Nashville, Michigan.
Send comments to Mr. Dennis Mapes, Nashville Village President, 206 North Main Street, Nashville, Michigan 49073.

Minnesota	Hammond (City), Wabasha County.	Zumbro River	Approximately 0.37 mile downstream of Main Street bridge.	*806	*805
			Approximately 400 feet upstream of Main Street bridge.	*810	*808
		West Zumbro River Tributary.	At confluence with Zumbro River	*809	*807
			Approximately 1,175 feet upstream of Bridge Street.	None	*808
		South Zumbro River Tributary.	Approximately 300 feet upstream of confluence with West Zumbro River Tributary.	*809	*807
			Approximately 100 feet upstream of confluence with West Zumbro River Tributary.	*809	*807

Maps available for inspection at the City Hall, East Main Street, Hammond, Minnesota.
Send comments to The Honorable Curtis Christenson, RR #2, Box 539, Hammond, Minnesota 55991.

Minnesota	Mazeppa (City), Wabasha County.	North Fork Zumbro River	Approximately 1,650 feet upstream of Maple Street dam.	*931	*932
			Approximately 1.70 miles downstream of Maple Street dam.	*893	*894

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Mazeppa City Hall, 1st and Maple Street, Mazeppa, Minnesota. Send comments to The Honorable Nancy Whetstone, Mayor of the City of Mazeppa, P.O. Box 316, Mazeppa, Minnesota 55956.					
Minnesota	Millville (City), Wabasha County.	Zumbro River	Approximately 0.5 mile downstream side of CSHA–2 bridge.	None	*779
			Approximately 1,445 feet upstream side of CSAH–2 bridge.	None	*784
Maps available for inspection at the City Hall, 311 Bridge Street, Millville, Minnesota. Send comments to The Honorable Eugene Hein, Box 213, Millville, Minnesota 55957.					
Minnesota	Minneiska (City), Wabasha County.	Mississippi River	At downstream corporate limits	None	*668
			At upstream corporate limits	None	*669
Maps available for inspection at the City of Minneiska, 325 Taylor Hill Road, Minneiska, Minnesota. Send comments to The Honorable Lee Burrows, Mayor of the City of Minneiska, Route 1, Box 57, Minneiska, Minnesota 55910.					
Minnesota	Wabasha (City), Wabasha County.	Mississippi River	Approximately 1.54 miles upstream of State Route 60 bridge.	None	*680
			Approximately 3.41 miles downstream of State Route 60 bridge.	None	*677
Maps available for inspection at the City Hall, 900 Hiawatha Drive, Wabasha, Minnesota. Send comments to The Honorable John Meisch, 900 Hiawatha Drive, P.O. Box 268, Wabasha, Minnesota 55981.					
Minnesota	Wabasha County (Unincorporated Areas).	Zumbro River	Approximately 1.34 miles downstream of CSAH–2 bridge.	None	*776
			Downstream side of Zumbro Lake Dam	*876	*875
		North Fork Zumbro River	At confluence with Zumbro River	None	*860
			Approximately 0.55 mile upstream of Maple Street Dam.	None	*932
		Mississippi River	Downstream county limits	None	*668
			Upstream county boundary	*681	*682
		Zumbro Lake	Upstream side of Zumbro Lake Dam	None	*922
			Upstream county boundary	None	*922
		Buckman Coulee	Approximately 850 feet upstream of upstream crossing of U.S. Route 63.	None	*844
			Approximately 450 feet downstream of State Route 60 crossing.	None	*846
		Gilbert Creek	Approximately 2.1 miles upstream of Soo Line Railroad crossing.	*713	*714
			Approximately 1.3 miles downstream of confluence of Sugarloaf Creek.	*714	*715
		Miller Creek	Approximately 100 feet upstream of U.S. 61.	*681	*682
			Approximately 600 feet downstream of U.S. 61.	*681	*682
		South Zumbro River Tributary.	At confluence with West Zumbro River Tributary.	None	*808
			Approximately 300 feet upstream of confluence with West Zumbro River Tributary.	None	*808
Maps available for inspection at the Wabasha County Courthouse, 625 Jefferson Avenue, Wabasha, Minnesota. Send comments to Mr. Ron Stock, County Administrator, 625 Jefferson Avenue, Wabasha, Minnesota 55981.					
Minnesota	Zumbro Falls (City), Wabasha County.	Zumbro River	Approximately 1,250 feet upstream side of Main Street bridge.	*844	*842
			Approximately 2,000 feet downstream of Main Street bridge.	*842	*839
		Buckman Coulee	At downstream cross of U.S. Route 63	*842	*839
			Approximately 50 feet downstream side of U.S. Highway 63.	*842	*841

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Zumbro Falls City Hall, Main Street, Zumbro Falls, Minnesota. Send comments to The Honorable Alan Van DeWalker, City Hall, P.O. Box 123, Zumbro Falls, Minnesota 55991.					
Mississippi	Lauderdale County (Unincorporated Areas).	Newell Branch	Approximately 150 feet downstream of U.S. Route 45.	*343	*344
			At downstream side of U.S. Route 45	*343	*344
		Harbour Creek	Approximately 350 feet downstream of U.S. Route 45.	*341	*342
			At U.S. Route 45	*341	*346
Maps available for inspection at the Lauderdale County Tax Assessor's Office, 500 Constitution Avenue, Meridian, Mississippi. Send comments to Mr. Jimmy Smith, President of the Lauderdale County Board of Supervisors, 410 Constitution Avenue, 11th Floor, Meridian, Mississippi 39301.					
Mississippi	Meridian (City), Lauderdale County.	Gallagher Creek	At Norfolk Southern Railway	*309	*308
			Approximately 50 feet upstream of State Route 493.	None	*425
		Harbour Creek	At U.S. Route 45	None	*446
			Approximately 690 feet downstream of Illinois Central Railroad.	None	*339
			Approximately 1,025 feet upstream of Windover Circle.	None	*412
		Magnolia Creek	Approximately 50 feet downstream of C Street.	*322	*321
			Approximately 100 feet upstream of 36th Street.	None	*380
		Newell Branch	At upstream side of U.S. Route 45	None	*345
			Approximately 1,150 feet upstream of 61st Street.	None	*412
		Robbins Branch	Approximately 150 feet downstream of U.S. Route 45.	*331	*330
			Approximately 2,800 feet upstream of 52nd Court.	None	*428
Maps available for inspection at the Meridian City Hall, 601 24th Avenue, Meridian, Mississippi. Send comments to The Honorable John Robert Smith, Mayor of the City of Meridian, P.O. Box 1430, Meridian, Mississippi 39302.					
New Hampshire	Charlestown (Town), Sullivan County.	Connecticut River	At a point approximately 1.35 miles downstream from confluence of Jabes Meadow Brook.	*296	*301
			At a point at the approximate location of the confluence of Little Sugar River.	*306	*302
			Approximately 1,300 feet upstream of the confluence of Ox Brook.	*310	*311
		Little Sugar River	At the confluence with Connecticut River	*306	*307
			Approximately 1,500 feet upstream of the confluence with Connecticut River.	*306	*307
		Beaver Brook	At the confluence with Connecticut River	*304	*307
			Approximately 1,450 feet upstream of the confluence with Connecticut River.	*304	*307
Maps available for inspection at the Charlestown Town Hall, Selectmen's Office, 26 Railroad Street, Charlestown, New Hampshire. Send comments to Mr. Robert Frizzell, Chairman of the Town of Charlestown Board of Selectmen, P.O. Box 385, Charlestown, New Hampshire 03603.					
New Hampshire	Lincoln (Town), Grafton County.	East Branch Pemigewasset River.	Approximately 0.66 mile downstream of Richard Cooper Memorial Bridge.	None	*758
			Approximately 1.4 miles upstream of Loon Mountain Bridge.	None	*1,067
Maps available for inspection at the Lincoln Town Hall, Main Street, Lincoln, New Hampshire. Send comments to Mr. William Conn, Chairman of the Town of Lincoln Board of Selectmen, P.O. Box 39, Lincoln, New Hampshire 03251.					
New Hampshire	Walpole (Town), Cheshire County.	Connecticut River	At a point approximately 200 feet upstream of Bellows Falls Dam.	*295	*302
			At a point approximately 1.8 miles upstream of Bellows Falls Dam.	*297	*296

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the Walpole Town Hall, Selectman's Office, Elm Street, Walpole, New Hampshire. Send comments to Mr. Charles Miller, Chairman of the Town of Walpole Board of Selectmen, P.O. Box 729, Walpole, New Hampshire 03608.					
Pennsylvania	West Hempfield (Township),. Lancaster County ..	Susquehanna River	At downstream corporate limits	*239	*244
			Approximately 0.68 mile upstream of U.S. Route 30.	*252	*253
		Chickies Creek	Approximately 320 feet upstream of Marietta Pike.	None	*273
			At confluence with Susquehanna River	None	*260
		Tributary No. 1 to Shawnee Run.	At downstream corporate limits	None	*307
			Approximately 1,000 feet upstream of Malleable Road.	None	*339
		Shawnee Run	At corporate limits	None	*358
			Approximately 620 feet upstream of corporate limits.	None	*363
Maps available for inspection at the West Hempfield Township Municipal Building, 3401 Marietta Avenue, Lancaster, Pennsylvania. Send comments to Mr. Charles E. Douts, Jr., Manager, Secretary/Treasurer of the Township of West Hempfield, 3401 Marietta Avenue, Lancaster, Pennsylvania 17601.					
Rhode Island	North Providence (Town), Providence County.	Centerdale Brook	Upstream side of Woonasquatucket Avenue.	None	*120
			Approximately 100 feet upstream of South Locust Avenue.	None	*140
		Cranberry Brook	At confluence with WoonasquatucketRiver.	None	*81
			Downstream side of Humbert Street	None	*110
		West River	At downstream corporate limits	*80	*78
			Approximately 700 feet downstream of Douglas Pike.	*87	*86
		Upper Canada Pond Brook.	Downstream at corporate limits	*60	*58
			Approximately 1,080 feet upstream of corporate limits.	*59	*60
		Centerdale Brook (Culvert-Zone AO).	From Woonasquatucket Avenue to approximately 720 feet downstream of Woonasquatucket Avenue.	None	#1
Maps available for inspection at the Building Inspector's Office, 2000 Smith Street, North Providence, Rhode Island. Send comments to The Honorable Ralph A. Mollis, Mayor of the Town of North Providence, 2000 Smith Street, North Providence, Rhode Island 02911.					
Tennessee	Franklin (City), Williamson County.	Watson Branch	Approximately 2,300 feet upstream of confluence with Harpeth River.	None	*644
			Approximately 250 feet downstream of Murfreesboro Pike.	None	*698
		South Prong Creek	Approximately 75 feet upstream of confluence with Spencer Creek.	None	*663
			Approximately 1,100 feet upstream of Liberty Pike.	None	*729
		Unnamed Tributary to South Prong Creek.	At confluence with South Prong Creek	None	*682
			Approximately 715 feet upstream of confluence with South Prong Creek.	None	*689
Maps available for inspection at the Franklin City Hall, Codes Department, 109 Third Avenue, South, Franklin, Tennessee. Send comments to The Honorable Jerry Sharber, Mayor of the City of Franklin, P.O. Box 305, Franklin, Tennessee 37064.					
Tennessee	Williamson County (Unincorporated Areas).	Brush Creek	At county boundary	None	*548
			Approximately 1.57 miles upstream of Old Brush Creek Road.	None	*676
		Harrison Branch Creek	Confluence with Brush Creek	None	*556
			Approximately 125 feet downstream of unnamed road.	None	*668
		Hunting Camp Creek	Confluence with South Harpeth River	None	*605

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			Approximately 1,750 feet downstream of Fernvale Road.	None	*680
		Leipers Fork	Just upstream of Bailey Road	None	*670
			At Bear Creek Road	None	*726
		East Fork Creek	At county boundary	None	*587
			Approximately 900 feet upstream of most upstream crossing of Stillhouse Hollow Road.	None	*692
		Beech Creek	Confluence with Little Harpeth River	None	*600
			Approximately 1,750 feet upstream of Murry Lane.	None	*666
		Trace Creek	Approximately 200 feet downstream of county boundary.	None	*569
			Approximately 100 feet downstream of Natchez Bend Road.	None	*642
		Mill Creek	Approximately 0.2 mile downstream of Concord Road.	None	*555
			Approximately 260 feet upstream of Rocky Fork Road.	None	*612
		Owl Creek	Approximately 900 feet downstream of downstream county boundary.	None	*554
			At downstream side of Split Log Road	None	*677
		Unnamed Tributary of Mill Creek.	Approximately 100 feet upstream of confluence with Mill Creek.	*599	*600
			Approximately 1,150 feet upstream of confluence with Mill Creek.	None	*603
		Watson Branch	Approximately 1,500 feet upstream of confluence with Harpeth River.	None	*644
			At downstream side of Murfreesboro Pike	None	*699

Maps available for inspection at the Williamson County Complex, Planning Department, 1320 West Main Street, Suite 125, Franklin, Tennessee.

Send comments to Mr. Clint Collicott, Williamson County Executive, 1320 West Main Street, Suite 125, Franklin, Tennessee 37064.

Vermont	Bellows Falls (Village), Windham County.	Connecticut River	At a point approximately 0.77 mile upstream from Bellows Falls Dam.	*296	*299
		Connecticut River	At a point approximately 500 feet upstream of Bellows Falls Dam.	*295	*296

Maps available for inspection at the Town of Rockingham, Town Clerk's Office, Village Square, Rockingham, Vermont.

Send comments to Ms. Roberta Smith, Bellows Falls Village Manager, P.O. Box 370, Bellows Falls, Vermont 05101.

Vermont	Rockingham (Town), Windham County.	Connecticut River	Approximately 0.77 mile upstream of NEPCO dam.	*296	*298
			Approximately 1.34 miles upstream of confluence of Commissarry Brook.	*301	*306
		Williams River	At the confluence with Connecticut River	*297	*303
			Approximately 1,350 feet upstream of U.S. Route 5 bridge.	*302	*303

Maps available for inspection at the Town of Rockingham, Town Clerk's Office, Village Square, Rockingham, Vermont.

Send comments to Ms. Roberta Smith, Rockingham Town Manager, P.O. Box 370, Bellows Falls, Vermont 05101.

Vermont	Springfield (Town), Windsor County.	Connecticut River	At a point approximately 2.2 miles downstream from Cheshire Bridge (State Route 11).	*301	*306
			At a point approximately 4.2 miles upstream from Cheshire Bridge (State Route 11).	*307	*308
		Black River	At the confluence with Connecticut River	*302	*306
			Approximately 550 feet downstream of Old State Route 11 bridge.	*305	*306

Maps available for inspection at the Springfield Town Hall, Zoning Administrator's Office, 96 Main Street, Springfield, Vermont.

Send comments to Mr. Robert Forguites, Springfield Town Manager, 96 Main Street, Springfield, Vermont 05156.

Vermont	Thetford (Town), Orange County.	Abbott Brook	At confluence with West Branch Ompompanoosuc River.	None	*692
			Approximately 280 feet upstream of State Route 132.	None	*705
		Ompompanoosuc River	At downstream corporate limits	None	*412

State	City/town/county	Source of flooding	Location	#Depth in feet above ground. *Elevation in feet (NGVD)	
				Existing	Modified
			At upstream corporate limits	None	*684
		West Branch Ompompanoosuc River.	Approximately 100 feet upstream of Gove Hill Road.	None	*576
			At confluence with Abbott Brook	None	*692
		Lake Fairlee	At Lake Fairlee Dam	None	*681
			Approximately 700 feet upstream of corporate limits.	None	*681
Maps available for inspection at the Thetford Town Office, Route 113, Thetford Center, Vermont.					
Send comments to Ms. Pat Blake, Chairperson of the Town of Thetford Board of Selectmen, P.O. Box 126, Thetford Center, Vermont 05075–0125.					
Virginia	Halifax (Town), Halifax County.	Banister Lake	Approximately 120 feet downstream of downstream corporate limit.	None	*365
			At the upstream corporate limit	None	*365
Maps available for inspection at the Halifax Town Hall, 70 Main Street, Halifax, Virginia.					
Send comments to Mr. Robert T. Greene, Halifax Town Manager, P.O. Box 627, Halifax, Virginia 24558.					
Wisconsin	Grant County (Unincorporated Areas).	Wisconsin River	Approximately 1.4 miles upstream of Burlington Northern Railroad.	*629	*628
			At upstream county boundary	*682	*680
Maps available for inspection at the Grant County Zoning Office, 125 South Monroe, Lancaster, Wisconsin.					
Send comments to Mr. Gene Bartels, Chairman of the Grant County Board of Supervisors, 130 West Maple, Grant County Courthouse, Lancaster, Wisconsin 53813.					
Wisconsin	Ozaukee County (Unincorporated Areas).	Lake Michigan	Approximately 2,200 feet east of the intersection of Sandy Beach Road and Sunny Ridge Road.	*590	*587
			Approximately 1,900 feet east of the intersection of Silver Beach Road and Sauk Trail Road.	*590	*588
Maps available for inspection at the Ozaukee County Department of Environmental Health, 121 West Main Street, Room 223, Port Washington, Wisconsin.					
Send comments to Mr. Leroy Bley, Ozaukee County Board Commission, 121 West Main Street, Port Washington, Wisconsin 53074.					
Wisconsin	Wisconsin Dells (City), Sauk and Columbia Counties.	Hulbert Creek	Approximately 30 feet upstream of U.S. Highway 12.	None	*826
			Approximately 2,340 feet upstream of Trout Road.	None	*829
Maps available for inspection at the Wisconsin Dells City Hall, 300 La Crosse Street, Wisconsin Dells, Wisconsin.					
Send comments to The Honorable Craig Casey, Mayor of the City of Wisconsin Dells, 300 La Crosse Street, Wisconsin Dells, Wisconsin 53965.					

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 21, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11524 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–141; RM–9339]

Radio Broadcasting Services; Monticello, AR; Bastrop, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Midway Broadcasting Company, licensee of Station KHBM–FM, Monticello, Arkansas, seeking the substitution of Channel 229C2 for Channel 229C3 at Monticello, and modification of its license accordingly. To accommodate the Monticello modification, petitioner requests the substitution of Channel 230A for Channel 232A at Bastrop, Louisiana, and modification of the license for Station KTRY–FM. The retention of vacant Channel 230C3 at Bastrop at a revised site is also proposed as a modification alternative to the allotment of Channel 230A at that community. An *Order to Show Cause* is issued to the licensee of Station KTRY–FM at Bastrop. Coordinates used for Channel 229C2 at Monticello, Arkansas, are 33–43–44 and 91–34–02; coordinates for Channel 230A at Bastrop, Louisiana, are 32–49–10 and 91–54–29; revised

coordinates for vacant Channel 230C3 at Bastrop are 32–43–25 and 91–56–56.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–141, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11497 Filed 5–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–139; RM–9402; RM–9412]

Radio Broadcasting Services; Princeville, Kapaa and Kalaheo, HI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two separately filed interrelated petitions for rule making concerning the community of Princeville, Hawaii, that have been combined into a single docket for consideration. The first proposal, filed on behalf of Vetter Communications Co., Inc., permittee of Station KAWT(FM), Channel 255C1, Princeville, requests the reallotment of Channel 255C1 to Kapaa, Hawaii, as that community's first local aural transmission service and modification of its authorization accordingly (RM–9402). The second proposal, filed on behalf of The B&GRS Partnership, permittee of Station KAYI(FM), Channel 260C1, Princeville, seeks the reallotment of Channel 260C1 to Kalaheo, Hawaii, as that community's first local aural transmission service and the concomitant modification of its authorization (RM–9412). The proposals, filed pursuant to the provisions of § 1.420(i) of the Commission's Rules, would leave Princeville without local aural transmission service if each is granted. Therefore, in the event it is determined that one of the allotments must remain at Princeville, the two requests will be comparatively considered in accordance with the *Modification of FM and TV Authorizations to Specify a New Community of License, Memorandum Opinion and Order*, 5 FCC Rcd 7094 (1990). Coordinates used for Channel 255C1 at Kapaa are 22–04–42 NL and 159–19–19 WL. Coordinates used for Channel 260C1 at Kalaheo are 21–59–54 NL and 159–25–35 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners' counsel, as follows: Harry C. Martin and Andrew S. Kersting, Esqs., Fletcher, Heald & Hildreth, P.L.C., 1300 North 17th Street, 11th Floor, Arlington, VA 22209 (Vetter Communications Co., Inc.); and Gary S. Smithwick, Esq., Smithwick & Belendiuk, P.C., 1990 M Street, NW., Suite 510, Washington, DC 20036 (The B&GRS Partnership).

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–139, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY A–257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11498 Filed 5–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–131, RM–9333]

Radio Broadcasting Services; Llano, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Elgin FM Limited Partnership ("Elgin"), proposing the allotment of Channels 293A and 275A at Llano, Texas, as that

community's second and third channels. Elgin also requests amendment of its application for Channel 242A at Llano to specify operation on Channel 293A and amendment of BK Radio's application for Channel 242A at Llano to specify operation on Channel 275A without loss of cut-off protection. The coordinates for Channel 293A are 30–42–27 and 98–46–25. The coordinates for Channel 275A are 30–42–24 and 98–46–23. Mexican concurrence will be requested for these allotments.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the Elgin's counsel, as follows: Ann C. Farhat, Bechtel & Cole, Chartered, 1901 L Street, NW, Suite 250, Washington, DC 20036 and BK Radio's counsel: Lee J. Peltzman, Shainis & Peltzman, Chartered, 1901 L Street, NW, Suite 290, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–131, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11499 Filed 5–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–140, RM–9374]

Radio Broadcasting Services; Kennett, MO and Keiser, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Legend Broadcasting, Inc., requesting the reallotment of Channel 255C from Kennett, Missouri, to Keiser, Arkansas, and modification of the license for Station KTMO to specify Keiser, Arkansas, as the community of license. The coordinates for Channel 255C at Keiser are 36–07–53 and 90–11–34. In accordance with Section 1.420(i) of the Commission's Rules, we shall not accept competing expressions of interest in the use of Channel 255C at Keiser.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Aaron P. Shainis, Shainis & Peltzman, 1901 L Street, N.W., Suite 290, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–140, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11501 Filed 5–6–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–132, RM–9525]

Radio Broadcasting Services; Midland, MD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by West Wind Broadcasting proposing the allotment of Channel 258A at Midland, Maryland, as the community's first local service. The channel can be allotted to Midland with a site restriction 9.1 kilometers (5.7 miles) north of the community at coordinates 39–40–19 NL and 78–57–25 WL. Canadian concurrence will be requested for the allotment of Channel 258A at Midland.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, West Wind Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–132, adopted April 21, 1999, and

released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11502 Filed 5–6–99; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 64, No. 88
Friday, May 7, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Commodity Supplemental Food Program: Elderly Income Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the adjusted income guidelines to be used by State agencies in determining the eligibility of elderly persons applying to participate in the Commodity Supplemental Food Program (CSFP). These guidelines are to be used in conjunction with the CSFP regulations under 7 CFR Part 247.

EFFECTIVE DATE: July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Lillie F. Ragan, Assistant Branch Chief, Household Programs Branch, U. S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594, or telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Paperwork Reduction Act

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.565 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112).

Description

On December 23, 1985, the President signed the Food Security Act of 1985 (Pub. L. 99–198). This legislation amended sections 5(f) and (g) of the Agriculture and Consumer Protection Act of 1973 (7 U.S.C. 612c note) to require that the Secretary permit agencies administering the CSFP to serve elderly persons if such service can be provided without reducing service levels for women, infants, and children. The law also mandates establishment of income eligibility requirements for elderly participation. Prior to enactment of Pub. L. 99–198, elderly participation was restricted by law to three designated pilot projects which served the elderly in accordance with agreements with the Department.

In order to implement the CSFP mandates of Pub. L. 99–198, the Department published an interim rule on September 17, 1986 at 51 FR 32895 and a final rule on February 18, 1988, at 53 FR 4831. These regulations defined "elderly persons" as those who are 60 years or older (7 CFR 247.2). The final rule further stipulates that elderly persons certified on or after September 17, 1986 must have "household income at or below 130 percent of the Federal Poverty Income Guidelines published annually by the Department of Health and Human Services." (7 CFR 247.7(a)(3)).

The Federal Poverty Income Guidelines are revised annually to reflect changes in the Consumer Price Index. The revision for 1999 was published by the Department of Health and Human Services in the **Federal Register** on March 18, 1999 at 64 FR 13428. To establish income limits of 130 percent, the guidelines were multiplied by 1.30 and the results rounded up to the next whole dollar.

At this time, the Department is publishing the income limits of 130 percent of the poverty income guidelines. The table in this notice contains the income limits by household size to be used for elderly certification in the CSFP for the period July 1, 1999–June 30, 2000.

EFFECTIVE JULY 1, 1999–JUNE 30, 2000—FNS INCOME ELIGIBILITY GUIDELINES FOR THE ELDERLY IN CSFP

[130 percent of poverty income guidelines]

Family size	Annual	Month	Week
1	10,712	893	206
2	14,378	1,199	277
3	18,044	1,504	347
4	21,710	1,810	418
5	25,376	2,115	488
6	29,042	2,421	559
7	32,708	2,726	629
8	36,374	3,032	700
For each additional family member add	+3,666	+306	+71

Authority: Pub. L. 93–86 (7 U.S.C. 612c note)

Dated: April 19, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–11493 Filed 5–6–99; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 4 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), U.S. Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in practice standards #340, Cover and Green Manure Crop; and #342, Critical Area Planting, to account for improved technology. This practice can be used in systems that treat highly erodible land.

DATES: Comments will be received on or before June 7, 1999.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, Suite 693, Des Moines, Iowa 50309; at 515/284–4260; fax 515/284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: April 28, 1999.

Leroy Brown,

State Conservationist.

[FR Doc. 99–11462 Filed 5–6–99; 8:45 am]

BILLING CODE 3410–16–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 7, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will result in authorizing small entities to furnish the services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Administrative Services

Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas
NPA: Fairweather Associates, Inc., Dallas, Texas

Cleaning Services, Crane Division, Naval Surface Warfare Center, Crane, Indiana
NPA: Orange County Rehabilitative and Developmental Services, Paoli, Indiana

Commissary Shelf Stocking, Custodial and Warehousing, McChord Air Force Base, Washington,
NPA: Custom Industries, Bellevue, Washington

Eyewear Prescription Service, Phoenix Indian Medical Center, Phoenix, Arizona
NPA: Arizona Industries for the Blind,Phoenix, Arizona

Janitorial/Custodial, Statue of Liberty National Monument and Ellis Island, New Jersey/New York
NPA: Fedcap Rehabilitation Services, Inc., New York, New York

Support Activities for Forestry (Timber Stand Improvement), Crane Division, Naval Surface Warfare Center, Crane, Indiana
NPA: Orange County Rehabilitative & Developmental Services, Paoli, Indiana,

Trash Pick-up, Crane Division, Naval Surface Warfare Center, Crane, Indiana
NPA: Orange County Rehabilitative & Developmental Services, Paoli, Indiana

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Enamel
8010–00–159–4519
8010–00–159–4520
8010–00–159–4521
8010–00–159–4522
8010–00–067–5436
8010–00–067–5437
8010–00–079–2750
8010–00–079–2752
8010–01–203–7803
8010–01–203–7804
8010–00–079–3750
8010–00–079–3752
8010–00–079–3754
8010–00–079–3756
8010–00–079–3762
8010–00–079–3764

Enamel, Primer Coating
8010–00–159–4518
8010–00–584–2426

Beverly L. Milkman,

Executive Director

[FR Doc. 99–11521 Filed 5–6–99; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletion

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletion from the procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity previously furnished by such agencies.

EFFECTIVE DATE: June 7, 1999.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: On August 14, 1998 and March 22 and 26, 1999, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 43660 and 64 FR 13767 and 14687) of proposed additions to and deletion from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Impulse Merchandising Program (IMP), Party Items
M.R. 1500–2000
Cooking Utensils
M.R. 1550
Health and Beauty Aids
M.R. 1600
Cleaning Aids
M.R. 1650
Pet Items
M.R. 1700
Baby Items
M.R. 1750
Children Items
M.R. 1800
Household Items
M.R. 1850
Paint, Latex
8010–00–045–3478
8010–00–055–5100
8010–00–055–5183
8010–00–418–4667
8010–00–418–4668
8010–00–418–4669
8010–00–419–8541
8010–00–463–7063
8010–00–598–5730
8010–00–598–5733
8010–00–823–7962
8010–00–823–7964

Services

Commissary Shelf Stocking, Custodial and Warehousing, Fairchild Air Force Base, Washington
Janitorial/Custodial,
USARC #2, 1107 Payne Avenue, Erie, Pennsylvania

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity.

3. The action may result in authorizing small entities to furnish the commodity to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity listed below is no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity is hereby deleted from the Procurement List:

Pin, Tent, Metal
8340–00–985–7461

Beverly L. Milkman,

Executive Director.

[FR Doc. 99–11522 Filed 5–6–99; 8:45 am]

BILLING CODE 6353–01–P

COMMISSION ON CIVIL RIGHTS

Sunshine Act Meeting

DATE AND TIME: Friday, May 14, 1999, 9:30 a.m.

PLACE; U.S. Commission Civil Rights, 624 Ninth Street, N.W., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of March 5, and April 16, 1999 Meetings
III. Announcements
IV. Executive Session to Discuss Personnel Matters
V. Staff Director's Report
VI. "Equal Educational Opportunity and Nondiscrimination for Minority Students: Federal Enforcement of Title VI in Ability Grouping Practices" Report
VII. State Advisory Committee Reports
- "Civil Rights Issues Facing the Blind and Visually Impaired in Illinois" (Illinois)
- "Police Protection of the African American Community in Chicago: An Update" (Illinois)
- "Alaskan Natives and Other Minorities in the Special Education Program of Four Alaskan Districts" (Alaska)

VIII. State Advisory Committee Appointments for Arizona, Kansas and Minnesota
IX. Future Agenda Items
11:00 a.m. Briefing on Affirmative Action

CONTACT PERSON FOR FURTHER INFORMATION: David Aronson, Press and Communications (202) 376–8312.

Stephanie Y. Moore,

General Counsel.

[FR Doc. 99–11579 Filed 5–4–99; 4:48 pm]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Census 2000 Test Program.

Form Number(s): There are 77 forms making up the test program. Although they are too numerous to list here, the forms will be provided upon request.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 8,013 hours.

Number of Respondents: 200,300.

Avg Hours Per Response: AQE2000, SPAN, and RMIE Short-forms=10 minutes; AQE2000 and SPAN long-forms=38 minutes; SPAN Survey of

Privacy Attitudes=15 minutes; AREX2000 introductory letter=1.5 minutes; AREX2000 Coverage Improvement Survey (CIS)=12.5 minutes; AREX2000 CIS Follow-up=7 minutes.

Needs and Uses: The Census Bureau plans to test several methodologies, techniques, and strategies for improving the way we conduct the decennial census in a "census environment." It is important to examine innovative ideas in the environment for which they are intended to accurately measure effectiveness and feasibility. The Census Bureau plans four separate tests in 2000. They are referred to as the Alternative Questionnaire Experiment (AQE2000), the Administrative Records Census in 2000 Experiment (AREX2000), the Social Security Number, Privacy Attitudes, and Notification (SPAN) Experiment, and the Response Mode and Incentive Experiment (RMIE). Objectives of the AQE2000 are to continue efforts to develop a user-friendly mailout questionnaire that can be accurately completed by respondents and to continue examination of methods to increase mail response. The principle objective of the AREX2000 is to simulate an administrative records census for selected test areas and to compare the results and costs to Census 2000. The purpose of the SPAN Experiment is to obtain behavior and attitudinal data on several topics related to the use of administrative records and to determine how a request for social security number (SSN) on a census form affects response. The goals of the RMIE are (a) to see if the use of prepaid calling cards as an incentive to respond to the census will increase response and (b) to measure what extent respondents choose to use these response options.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Responses are mandatory with the following exceptions: The SPAN Survey of Privacy Attitudes is voluntary. Additionally, SPAN respondents receiving an experimental short-form including a request for SSN will be informed that providing SSN is strictly voluntary.

Legal Authority: Title 13 USC, Sections 141 and 193.

OMB Desk Officer: Nancy Kirkendall, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5033, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Nancy Kirkendall, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: May 4, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11578 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

February 1999 Sunset Reviews: Final Results and Revocations

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Sunset Reviews and Revocation of Antidumping and Countervailing Duty Orders: Standard Carnations from Kenya (A–779–602) and Standard Chrysanthemums from the Netherlands (C–421–601).

SUMMARY: On February 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the antidumping duty order on standard carnations from Kenya and the countervailing duty order on standard chrysanthemums from the Netherlands. Because no domestic party responded to the sunset review notice of initiation by the applicable deadline, the Department is revoking these orders.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3207 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Background

The Department issued an antidumping duty order on standard carnations from Kenya (52 FR 13490, April 23, 1987) and a countervailing duty order on standard chrysanthemums from the Netherlands (52 FR 7646, March 12, 1987). Pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department initiated sunset reviews of these orders by publishing notice of the initiation in the **Federal Register** (64 FR 4840, February 1, 1999). In addition, as a courtesy to interested parties, the Department sent letters, via certified and registered mail, to each party listed on the Department's most current service list for these proceedings to inform them of the automatic initiation of a sunset review on these orders.

No domestic interested parties in the sunset reviews of these orders responded to the notice of initiation by the February 16, 1999, deadline (*see* section 351.218(d)(1)(i) of *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13520 (March 20, 1998) ("*Sunset Regulations*")).

Determination to Revoke

Pursuant to section 751(c)(3)(A) of the Act and section 351.218(d)(1)(iii)(B)(3) of the *Sunset Regulations*, if no domestic interested party responds to the notice of initiation, the Department shall issue a final determination, within 90 days after the initiation of the review, revoking the finding or order or terminating the suspended investigation. Because no domestic interested party responded to the notice of initiation by the applicable deadline, February 16, 1999, we are revoking these antidumping and countervailing duty orders.

Effective Date of Revocation and Termination

Pursuant to section 751(c)(6)(A)(iv) of the Act, the Department will instruct the United States Customs Service to terminate the suspension of liquidation of the merchandise subject to these orders entered, or withdrawn from warehouse, on or after January 1, 2000. Entries of subject merchandise prior to the effective date of revocation will continue to be subject to suspension of liquidation and antidumping/countervailing duty deposit requirements. The Department will complete any pending administrative reviews of these orders and will conduct administrative reviews of subject merchandise entered prior to the effective date of revocation in response to appropriately filed requests for review.

Dated May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11569 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–045, A–570–003, A–538–802, A–570–504, A–201–806, C–535–001, A–580–811, A–580–507, A–583–507, A–588–605]

Steel Wire Rope From Japan, Shop Towels From the People's Republic of China, Shop Towels From Bangladesh, Candles From the People's Republic of China, Steel Wire Rope From Mexico, Shop Towels From Pakistan, Steel Wire Rope From South Korea, Malleable Cast Iron Pipe Fittings From South Korea, Malleable Cast Iron Pipe Fittings From Taiwan, Malleable Cast Iron Pipe Fittings From Japan: Extension of Time Limit for Final Results of Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for final results of five-year ("Sunset") reviews.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit for the final results of the sunset reviews on the antidumping duty orders on steel wire rope from Japan, shop towels from the People's Republic of China, shop towels from Bangladesh, candles from the People's Republic of China, steel wire rope from Mexico, steel wire rope from South Korea, malleable cast iron pipe fittings from South Korea, malleable cast iron pipe fittings from Taiwan, and malleable cast iron pipe fittings from Japan, and the countervailing duty order on shop towels from Pakistan. Based on adequate responses from domestic interested parties and inadequate responses from respondent interested parties, the Department is conducting expedited sunset reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy. As a result of this extension, the Department intends to issue its final results not later than August 2, 1999.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith, Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230; telephone: (202) 482–6397, (202) 482–3207 or (202) 482–1560 respectively.

Extension of Final Results

The Department has determined that the sunset reviews of the antidumping duty orders on steel wire rope from Japan, shop towels from the People's Republic of China, shop towels from Bangladesh, candles from the People's Republic of China, steel wire rope from Mexico, steel wire rope from South Korea, malleable cast iron pipe fittings from South Korea, malleable cast iron pipe fittings from Taiwan, and malleable cast iron pipe fittings from Japan, and the countervailing duty order on shop towels from Pakistan are extraordinarily complicated. In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). *See* section 751(c)(6)(C) of the Act. The Department is extending the time limit for completion of the final results of these reviews until not later than August 2, 1999, in accordance with section 751(c)(5)(B) of the Act.

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration,

[FR Doc. 99–11570 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–806]

Carbon Steel Wire Rope From Mexico: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of New Shipper Antidumping Duty Review.

SUMMARY: The Department of Commerce (the Department) received a request from Cablesa, S.A. de C.V. ("Cablesa") to conduct a new shipper review of the antidumping duty order on carbon steel wire rope from Mexico. In accordance with section 351.214 of the Department's regulations, we are initiating this review.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, Laurel LaCivita, or Maureen Flannery, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0666, (202) 482–4236, or (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR Part 351 (1998).

Background

On March 31, 1999, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Act, and section 351.214(c) of the Department's regulations, for a new shipper review of the antidumping duty order on carbon steel wire rope from Mexico, issued on March 25, 1993 (58 FR 16173).

Initiation of Review

In its March 31, 1999, request for review, Cablesa, as required by 19 CFR 351.214(b)(2)(i) and (iii)(A), certified that it did not export the subject merchandise to the United States during the period of investigation (POI) (November 1, 1991 to April 30, 1992), and that since the investigation was initiated on May 5, 1992 (57 FR 19280), it has not been affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Cablesa submitted documentation establishing the date on which the subject merchandise was first entered for consumption into the United States, the volume of that shipment, and the purchasing and invoicing dates of its first sale to an unaffiliated customer in the United States.

Therefore, because Cablesa has complied with sections 351.214(b) and (c) of our regulations, we are initiating a new shipper review of the antidumping duty order on carbon steel wire rope from Mexico. In accordance with 19 CFR 351.214(h)(1), we intend to issue preliminary results of this review no later than 180 days after this initiation.

Section 351.214(g)(1)(i)(A) states that when a new shipper review is initiated during the month immediately following the anniversary month of the underlying order, the period of review shall be the twelve-month period immediately preceding the anniversary month. Therefore, the period of review

for this new shipper review of Cablesa is March 1, 1998 to February 28, 1999.

Concurrent with publication of this notice and in accordance with 19 CFR 351.214(e), we will instruct the United States Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Cablesa, until the completion of this review.

Interested parties desiring disclosure under administrative protective order must submit applications in accordance with 19 CFR 351.305 and 351.306.

This initiation and notice are in accordance with section 751(a) of the Act (19 U.S.C. 1675(a)) and 19 CFR 351.221.

Dated: April 30, 1999.

Roland MacDonald,

Acting Deputy Assistant Secretary for Import Administration.

[FR Doc. 99–11573 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–602]

Industrial Phosphoric Acid From Belgium; Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review of industrial phosphoric acid from Belgium.

SUMMARY: In response to requests from petitioner and one domestic producer, the Department of Commerce is conducting an administrative review of the antidumping duty order on industrial phosphoric acid from Belgium. The period of review is August 1, 1997 through July 31, 1998. This review covers imports of industrial phosphoric acid from one producer, Societe Chimique Prayon-Rupel S.A. ("Prayon").

We have preliminarily found that sales of subject merchandise have been made below normal value. If these preliminary results are adopted in our final results, we will instruct the Customs Service to assess antidumping duties based on the difference between the export price and normal value.

Interested parties are invited to comment on these preliminary results. Parties who submit arguments are requested to submit with the argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Thomson or Jim Terpstra, AD/CVD Enforcement, Group II Office IV, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4793, and 482–3965, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations refer to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 20, 1987, the Department published in the **Federal Register** (52 FR 31439) the antidumping duty order on industrial phosphoric acid ("IPA") from Belgium. On August 11, 1998, the Department published in the **Federal Register** (63 FR 42821) a notice of opportunity to request an administrative review of this antidumping duty order. On August 27, 1998, in accordance with 19 CFR 351.213(b)(1), the petitioner FMC Corporation ("FMC"), and Albright & Wilson Americas Inc. ("Wilson"), a domestic producer of the subject merchandise, requested that the Department conduct an administrative review of Prayon's exports of subject merchandise to the United States. We published the notice of initiation of this review on September 29, 1998 (63 FR 51893).

Scope of the Review

The products covered by this review include shipments of IPA from Belgium. This merchandise is currently classifiable under the Harmonized Tariff Schedule (HTS) item numbers 2809.2000 and 4163.0000. The HTS item number is provided for convenience and Customs purposes. The written description remains dispositive.

Product Comparisons

We calculated monthly, weighted-average normal values (NVs). The industrial phosphoric acid exported by Prayon to the United States is PRAYPHOS P5, a refined industrial phosphoric acid, and is the identical merchandise sold by Prayon in its home market in Belgium. Therefore, we have compared U.S. sales to contemporaneous sales of identical merchandise in Belgium.

Export Price

Prayon sells to end-users in the United States through its affiliated sales agent. For these sales, we used export price (EP). In accordance with sections 772(a) and (c) of the Act, we calculated an EP because Prayon sold the merchandise directly to the first unaffiliated purchaser in the United States prior to importation. Additional factors used to determine EP include: (1) whether the merchandise was shipped directly from the manufacturer to the unaffiliated U.S. customer; (2) whether this was the customary commercial channel between the parties involved; and (3) whether the function of the U.S. affiliate was limited to that of a processor of sales-related documentation and a communications link with the unrelated buyer. Where the facts indicate that the activities of the U.S. affiliate were ancillary to the sale (*e.g.*, arranging transportation or customs clearance, invoicing), we treat the transactions as EP sales. *See, e.g., Certain Corrosion Resistant Steel Flat Products From Canada: Final Results of Antidumping Duty Administrative Review*, 63 FR 12725, 12738 (March 16, 1998). The record in this case indicates that Prayon has correctly classified its U.S. sales as EP sales. Prayon's affiliated sales agent in the United States, Quadra Corporation (USA) ("Quadra"), served only as a processor of sales-related documentation.

EP was based on the delivered price to unaffiliated purchasers in, or for exportation to, the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. customs brokerage fees, merchandise processing fees, and U.S. inland freight expenses.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, in accordance with section 773(a)(1)(B) of the Act, we based NV on home market sales.

We also excluded from our NV analysis sales to affiliated home market customers where the weighted-average sales prices to the affiliated parties were less than 99.5 percent of the weighted-average sales prices to unaffiliated parties. *See Usinor Sacilor* v. *United States*, 872 F. Supp. 1000, 1004 (CIT 1994).

We made adjustments, consistent with section 773(a)(6)(B) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410.

In calculating the credit expense on its home market sales, Prayon reported the discount on accounts receivable sold to its affiliated coordination center. Because Prayon did not submit any information which could serve as a benchmark to determine whether these affiliated party transactions were conducted at arm's-length, we must assume that they are not arm's-length transactions. Accordingly, we have used the standard credit calculation when calculating the amount of credit to deduct from normal value. We used the monthly home market short-term rates provided by Prayon for borrowing from unaffiliated entities in calculating inventory carrying costs as the basis for the monthly home market short-term interest rates used in the credit calculation. *See* Import Administration Policy Bulletin 98–2.

In calculating the credit expense on its U.S. sales, Prayon reported the discount on accounts receivable sold to its affiliated coordination center in Belgian francs. Because Prayon did not submit any information which could serve as a benchmark to determine whether these affiliated party transactions were conducted at arm's-length, we must assume that they are not arm's-length transactions. Therefore, we have disregarded the credit expenses reported by Prayon. Instead, we have utilized the weighted-average short-term dollar lending rates calculated by the Federal Reserve in calculating Prayon's imputed credit expense. *See* Import Administration Policy Bulletin 98–2.

No other adjustments were claimed or allowed.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the export price (EP) or the constructed export price (CEP) transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value, that of the sales from which we derive selling, general and administrative expenses and profit. For EP, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make an LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997).

Prayon did not claim an LOT adjustment; however, we requested information concerning Prayon's distribution system, including selling functions, to determine whether such an adjustment was necessary. Prayon reported that all sales during the period of review (POR), in both the comparison market (the home market in this case) and the United States, were to end-users and distributors. In the U.S. market, Prayon sells to end-users through its affiliated sales agent. The subject merchandise is shipped from tankage in a storage facility in Canada directly to the customer. In the home market, Prayon sells through several channels of distribution. The first channel includes direct sales made to end-users. For the other channels, Prayon sells to either end-users or distributors through its affiliated sales agent. For all home market customers, Prayon ships the subject merchandise via independent carriers directly to the customer from its storage facilities at the plant. We have examined information provided by Prayon concerning these sales and determined that the selling functions are the same in the home market and U.S. market. Prayon negotiates all final prices and quantities, and bears the cost of storage and handling, surveys and delivery to customer. Prayon does not maintain inventories for its customers, provide after-sales service, or offer advertising or other sales support activities to its customers in either market. Therefore, we preliminarily determine that sales in the home market and sales in the United States are at the same LOT and that no adjustment is warranted.

Commissions

The Department operates under the assumption that commission payments to affiliated parties (in either the United States or home market) are not at arm's length. The Court of International Trade has held that this is a reasonable assumption. *See Outokumpu Copper Rolled Products AB* v. *United States*, 850 F. Supp. 16, 22 (CIT 1994).

Accordingly, the Department has established guidelines to determine whether affiliated party commissions are paid on an arm's-length basis such that an adjustment for such commissions can be made. *See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan*, 61 FR 57629 (November 7, 1996). First, we compare the commissions paid to affiliated and unaffiliated sales agents in the same market. If there are no commissions paid to unaffiliated parties, we then compare the commissions earned by the affiliated selling agent on sales of merchandise produced by the respondent to commissions earned on sales of merchandise produced by unaffiliated sellers or manufacturers. If there is no benchmark which can be used to determine whether the affiliated party commission is an arm's-length value (*i.e.*, the producer does not use an unaffiliated selling agent and the affiliated selling agent does not sell subject merchandise for an unaffiliated producer), the Department assumes that the affiliated party commissions are not paid on an arm's-length basis.

In this case, Prayon used an affiliated sales agent in the home market and a different affiliated sales agent in the United States. In its December 16, 1998 response, Prayon submitted its commission rates with its affiliated sales agents in both the home and U.S. market. We issued a supplemental questionnaire to Prayon, requesting that it indicate whether the commissions were paid at arm's length by reference to commission payments to unaffiliated parties in the foreign market and other markets, and to submit evidence

demonstrating the arm's-length nature of the commissions. Prayon then submitted documentation indicating that its commission rates with unaffiliated parties in the foreign market and in other markets are comparable to its affiliated party commission rates.

Our preliminary analysis of the submitted documentation indicates that the affiliated commissions in both the home and U.S. market are made at arm's-length. Therefore, for purposes of the preliminary determination, we are accepting Prayon's reported home and U.S. market commissions. Accordingly, we preliminarily determine to make a circumstance of sale adjustment for commissions in both the home and U.S. market. However, we have asked for certain additional information in order to clarify the submitted documentation. This information will not be readily available for the preliminary determination. For further explanation of this issue, *see Memorandum from Analyst to Holly A. Kuga* ("*Arm's Length Commission Memorandum*"), dated May 3, 1999.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on rates certified by the Federal Reserve Bank in effect on the dates of U.S. sales. *See Change in Policy Regarding Currency Conversions*, 61 FR 9434 (March 8, 1996).

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following margin exists for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Prayon	4.27

The Department will disclose calculations made in connection with its preliminary determination within five days of the date of publication of this notice. Interested parties may also request a hearing within 30 days of publication. If requested, a hearing will be held two days after the date of filing of rebuttal briefs, or the first work day thereafter. Interested parties may submit case briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than five days after the date of filing of case briefs. The Department will issue a notice of the final results of this administrative review, which will include the results of its analysis of issues raised in any such briefs, within 120 days from the publication of these preliminary results.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. In accordance with 19 CFR 351.212(b), we have calculated an importer-specific duty assessment rate based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of the same sales. The rate will be assessed uniformly on all entries of that particular company made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of industrial phosphoric acid from Belgium entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(c) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required where the weighted-average margin is *de minimis*, *i.e.*, less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less-than-fair-value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, a previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original investigation, the cash deposit rate will be 14.67 percent, the "all others" rate established in the LTFV investigation.

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary, Import Administration.

[FR Doc. 99–11574 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–806]

Amended Final Results of Antidumping Duty Administrative Review: Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Amended final results of antidumping duty administrative review.

SUMMARY: On February 25, 1998, the United States Court of International Trade affirmed the Department of Commerce's remand determination results affecting the final assessment rates for Taiwan International Standard Electronics, Ltd. and Tecom Co., Ltd. in the first administrative review of the antidumping duty order on certain small business telephone systems and subassemblies from Taiwan. No parties have appealed this decision. The review covers the period August 3, 1989 through November 30, 1990. As there is now a final and conclusive court decision in this action, we are amending our final results of review and we will instruct the Customs Service to liquidate all appropriate entries.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Sanjay Mullick or Kris Campbell at (202) 482–0588 or (202) 482–3813, respectively, Group I, Office of AD/CVD Enforcement 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended (the Act), in effect as of December 31, 1994. In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations

codified at 19 CFR Part 353 (April 1, 1997).

SUPPLEMENTARY INFORMATION:

Case History

On July 1, 1992, the Department published its final results in the administrative review of the antidumping duty order on certain small business telephone systems and subassemblies (SBTs) from Taiwan, covering the period August 3, 1989 to November 30, 1990.[1] The review covered seven manufacturers/exporters of the subject merchandise, including Taiwan International Standard Electronics, Ltd. (TAISEL) and Tecom Co., Ltd. (Tecom). The antidumping duty rate assigned to TAISEL as Best Information Available (BIA) was 129.73 percent and the antidumping duty rate calculated for Tecom was 18.10 percent. TAISEL and Tecom filed motions with the Court of International Trade (CIT) challenging the final results.

On April 4, 1997, the CIT issued remands concerning this segment of the proceeding.[2] With respect to TAISEL, the CIT directed the Department to (1) reconsider TAISEL's response in order to determine whether the Department could exclude returned entries of SBTs covered by canceled sales from assessment of antidumping duties; and (2) assign to TAISEL a BIA rate consistent with the Federal Circuit's decision in *Allied-Signal Aerospace Co.* v. *United States* (Allied-Signal).[3] With respect to Tecom, the CIT directed the Department to (1) use the data contained on a computer tape Tecom submitted on July 29, 1991; (2) reconsider Tecom's claim for a level-of-trade adjustment; and (3) reconsider Tecom's claims for circumstances-of-sale adjustments for home market warranty expenses, warehousing expenses, technical service expenses and bad debt expenses, as well as its claim for an adjustment to FMV for the provision of free gifts.

On July 3, 1997, the Department filed its remand redetermination with the CIT.[4] With respect to TAISEL, the Department re-examined the record and found that TAISEL provided supporting documentation to show that certain entries were returned as a result of canceled sales. Also, the Department assigned TAISEL a BIA margin based on the margin recalculated for Tecom in the remand redetermination, consistent with the ruling in *allied-Signal*. With respect to Tecom, the Department used the data contained in the July 29, 1991 computer tape and granted Tecom a level-of-trade adjustment. The Department continued to disallow the circumstance-of-sale adjustments for home market warranty expenses, warehousing expenses, technical service expenses and bad debt expenses as well as its claim for an adjustment to FMV for the provision of free gifts after reconsidering Tecom's claims for these adjustments, because it found no new evidence to support Tecom's claims. The Department determined TAISEL and Tecom's revised margins pursuant to the above adjustments.

On February 25, 1998, the CIT affirmed the Department's final remand results.[5] On April 16, 1998 we published a notice of court decision.[6] As there is now a final and conclusive court decision in this action, we are amending our final results of review in this matter and we will instruct the U.S. Customs Service to liquidate entries subject to this review in accordance with the remand results.

Amendment to Final Results of Review

Pursuant to Section 516A(e) of the Act, we are amending the final results of administrative review of the antidumping duty order on certain small business telephone sytems and subassemblies thereof from Taiwan for the period August 3, 1989 through November 30, 1990. As a result of the remand determination, we have assigned TAISEL a BIA margin based on the margin recalculated for Tecom. The final weighted-average margins for TAISEL and Tecom are as follows:

Manufacturer/Exporter	Weighted average margin percentage
TAISEL	8.11
Tecom	8.11

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. To determine the amount of antidumping duties for TAISEl, we will instruct the Customs Service to assess entry-specific antidumping duty amounts, which we calculated based on an *ad valorem* rate of 8.11 percent, applied to those sales determined to have been entered into the Untied States and not returned to Taiwan. For Tecom, we calculated importer-specific *ad valorem* duty assessment rate for the merchandise based on the ratio of the total amount of antidumping duties calculated for the importer-specific sales examined during the POR to the total importer-specific entry value of sales examined during the POR. The Department will issue appraisement instruction to the Customs Service after publication of this amended final results of review.

This notice is published in accordance with section 751(a)(1) of the Act.

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary, for Import Administration.

[FR Doc. 99–11577 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–M

[1] *Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Final Results of Administrative Review*, 57 FR 29283 (July 1, 1992).

[2] *Taiwan International Standard Electronics, Ltd.* v. *United States*, 963 F. Supp. 1202 (CIT 1997); *Tecom Co., Ltd.* v. *United States*, Slip Op. 97–42 (CIT April 4, 1997).

[3] 996 F.2d 1185 (Fed. Cir. 1993).

[4] *Small Business Telephone Systems and Subassemblies Thereof from Taiwan*; Final Results of Redetermination Pursuant to Court Remand, Court Nos. 92–08–00532 and 92–08–00528 (July 3, 1997).

[5] *Tawain International Standard Electronics Ltd.* v. *United States*, Slip Op. 98–18 (CIT February 25, 1998); *Tecom Co., Ltd.* v. *United States*, Slip Op. 98–19 (CIT February 25, 1998).

[6] *Certain Small Business Telephone Systems and Subassemblies Thereof From Taiwan; Notice of Court Decision*, 63 FR 18883 (April 16, 1998).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–054; A–588–604]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof From Japan; Antidumping Duty Administrative Reviews; Time Limits

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limits.

SUMMARY: The Department of Commerce (the Department) is extending the time limits for the preliminary results of the 1997–1998 administrative reviews of the antidumping duty order [A–588–604] and finding [A–588–054] on tapered roller bearings from Japan. These reviews cover 4 manufacturers/exporters and resellers of the subject merchandise to the United States and the period October 1, 1997 through September 30, 1998.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah Scott at (202) 482–2657 or John Kugelman at (202) 482–0649, AD/CVD Enforcement Office Eight, Import Administration, International Trade

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Because it is not practicable to complete these reviews within the normal statutory time limit, the Department is extending the time limits for completion of the preliminary results until September 20, 1999 in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended. See Memorandum from Joseph A. Spetrini to Robert S. LaRussa, on file in Room B–099 of the main Commerce building. The deadline for the final results of this review will continue to be 120 days after publication of the preliminary results.

These extensions are in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (19 U.S.C. 1675 (a)(3)(A)).

Dated: May 3, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 99–11571 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–807]

Certain Steel Concrete Reinforcing Bars From Turkey: Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: In response to a request by Ekinciler Holding A.S., Ekinciler Demir Celik A.S., and Ferromin International Trade Corp. (collectively "Ekinciler"), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on certain steel concrete reinforcing bars (rebar) from Turkey. In addition, in response to a request by ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S. (ICDAS), the Department is also conducting a new shipper review of the antidumping duty order on rebar from Turkey. The period of review is October 10, 1996, through March 31, 1998, for Ekinciler and October 10, 1996, through July 31, 1998, for ICDAS.

We have preliminarily determined that sales have been made below the normal value by the companies subject to these reviews. If these preliminary results are adopted in the final results of these reviews, we will instruct the Customs Service to assess antidumping duties on all appropriate entries.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Shawn Thompson or Irina Itkin, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1776 or (202) 482–0656, respectively.

SUPPLEMENTARY INFORMATION:

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce regulations are to 19 CFR Part 351 (1998).

Background

On April 30, 1998, the Department received a request from Ekinciler to conduct an administrative review of the antidumping duty order on rebar from Turkey. On May 29, 1998, the Department published in the **Federal Register** a notice of initiation of an administrative review of Ekinciler covering the period October 10, 1996, through March 31, 1998 (63 FR 29370).

Also on April 30, 1998, ICDAS requested that we conduct a new shipper review pursuant to section 751(a)(2)(B) of the Act and 19 CFR 351.214(b). In this request, ICDAS certified that it did not export the subject merchandise to the United States during the period covered by the original less-than-fair-value (LTFV) investigation (the "POI"), and that it is not affiliated with any company which exported subject merchandise to the United States during the POI. Pursuant to 19 CFR 351.214(b)(2)(iv), ICDAS submitted documentation establishing the date on which it intended to first ship and enter rebar for consumption in the United States, the volume of that shipment, and the date of the first sale to an unaffiliated customer in the United States. Based on the above information, the Department initiated a new shipper review covering ICDAS (*Certain Steel Concrete Reinforcing Bars from Turkey: Initiation of New Shipper Antidumping Duty Administrative Review* (63 FR 29372, May 29, 1998)). The Department is now conducting this review in accordance with section 751 of the Act and 19 CFR 351.214.

On May 18, 1998, ICDAS agreed to waive time limits applicable to the new shipper review and conduct the new shipper review concurrently with the administrative review.

On May 29, 1998, we issued our questionnaire to Ekinciler and ICDAS. On June 9, 1998, ICDAS requested that the Department expand the period of review (POR) in the new shipper review to include June 1998, in order to allow the Department to capture the company's first sale to an unaffiliated party in the United States, as well as the corresponding entry. On June 11, 1998, we expanded the POR in this review to include June 1998.

We received a response to Sections A through C of the questionnaire (*i.e.*, the sections regarding sales to the home market and the United States) from Ekinciler in July 1998 and a response to Section D (*i.e.*, the section regarding cost of production (COP) and constructed value (CV)) in August 1998. We received a response to Sections A through C of this questionnaire from ICDAS in August 1998. ICDAS was not required to respond to Section D.

In its August 1998 questionnaire response, ICDAS informed the Department that it did not ship subject merchandise to the United States until the end of June 1998. Accordingly, we expanded the POR through July 1998 in order to capture the company's first entry. We determined that expansion of the POR would not cause undue delay in the completion of the review. For further discussion, see the memorandum on this topic from Irina Itkin to Louis Apple, dated April 12, 1999.

In August and September 1998, we issued supplemental questionnaires to Ekinciler and ICDAS, respectively. We received responses to these questionnaires in September and October 1998.

On October 23, 1998, the Department published in the **Federal Register** notices of postponement of the final results until no later than April 30, 1999 (63 FR 56909 and 63 FR 56910).

In January and February 1999, we issued additional supplemental questionnaires to ICDAS and Ekinciler, respectively. We received responses to these questionnaires in January, February, and March 1999.

In February and March 1999, the Department conducted verification of the sales data submitted by ICDAS, in accordance with section 782(i) of the Act and 19 CFR 351.307(b)(1)(iv).

Scope of Reviews

The product covered by these reviews is all stock deformed steel concrete reinforcing bars sold in straight lengths and coils. This includes all hot-rolled deformed rebar rolled from billet steel,

rail steel, axle steel, or low-alloy steel. It excludes (i) plain round rebar, (ii) rebar that a processor has further worked or fabricated, and (iii) all coated rebar. Deformed rebar is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers 7213.10.000 and 7214.20.000. The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of these reviews is dispositive.

Periods of Review

The POR is October 10, 1996, through March 31, 1998, for Ekinciler and October 10, 1996, through July 31, 1998, for ICDAS.

Level of Trade and Constructed Export Price (CEP) Offset

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade as export price (EP) or CEP. The NV level of trade is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive selling, general and administrative expenses (SG&A) and profit. For EP, the U.S. level of trade is also the level of the starting-price sale, which is usually from the exporter to the unaffiliated U.S. customer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different level of trade than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa,* 62 FR 61731 (Nov. 19, 1997).

Neither Ekinciler nor ICDAS claimed that it made home market sales at more than one level of trade. Based on the information on the record, no level of trade adjustment was warranted for either company. For a detailed explanation of this analysis, see the memorandum entitled "Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review on Certain Steel Concrete Reinforcing Bars from Turkey," dated April 30, 1999 (the "concurrence memorandum").

Regarding Ekinciler, in order to determine whether NV was established at a level of trade which constituted a more advanced stage of distribution than the level of trade of the CEP, we compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, which excludes economic activities occurring in the United States, pursuant to section 772(d) of the Act. We found that Ekinciler performed essentially the same selling functions in its sales offices in Turkey for both home market and U.S. sales. Therefore, Ekinciler's sales in Turkey were not at a more advanced stage of marketing and distribution than the constructed U.S. level of trade, which represents an F.O.B. foreign port price after the deduction of expenses associated with U.S. selling activities. Because we find that no difference in level of trade exists between markets, we have not granted a CEP offset to Ekinciler. For further discussion, see the concurrence memorandum noted above.

Comparisons to Normal Value

To determine whether sales of rebar from Turkey were made in the United States at less than normal value, we compared the CEP or EP, as appropriate, to the NV. Because Turkey's economy experienced high inflation during the POR (over 70 percent), as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred and did not apply our "90/60" contemporaneity rule (*see, e.g., Certain Welded Carbon Steel Pipe and Tube from Turkey: Final Results and Partial Rescission of Antidumping Administrative Review,* 63 FR 35191 (June 29, 1998); and *Certain Porcelain on Steel Cookware from Mexico: Final Results of Antidumping Duty Administrative Review,* 62 FR 42496, 42503 (August 7, 1997)). This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

We first attempted to compare products sold in the U.S. and home markets that were identical with respect to the following characteristics: grade, size, ASTM specification, and form. Where there were no home market sales of merchandise that were identical in these respects to the merchandise sold in the United States, we compared U.S. products with the most similar merchandise sold in the home market based on the characteristics listed above, in that order of priority.

Export Price/Constructed Export Price

For all U.S. sales by Ekinciler, we used CEP, in accordance with section 772(b) of the Act. For all U.S. sales by ICDAS, we used EP, in accordance with section 772(a) of the Act, because the subject merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation and CEP methodology was not otherwise warranted based on the facts of record.

A. Ekinciler

We based CEP on packed prices to the first unaffiliated purchaser in the United States. We made deductions from CEP for discounts, as appropriate. We also made deductions for foreign brokerage and handling expenses, inspection fees, ocean freight, marine insurance, U.S. customs duties, discharge expenses (offset by despatch revenue), wharfage expenses, sorting expenses, truck loading expenses, U.S. warehousing expenses and insurance, U.S. inland freight, and U.S. inland insurance, where appropriate, in accordance with section 772(c)(2)(A) of the Act. We based the amount of foreign brokerage and handling expenses on the amount that Ekinciler paid to an affiliated party, because we determined that these expenses were at arm's length. For further discussion, see the concurrence memorandum.

We made additional deductions from CEP, where appropriate, for Exporters' Association fees, bank charges, credit expenses, U.S. indirect selling expenses, and U.S. inventory carrying costs, in accordance with section 772(d)(1) of the Act. We recalculated U.S. credit expenses using the weighted-average of the U.S. interest rates reported in Ekinciler's response. This interest rate was based on the actual borrowing experience of Ekinciler's affiliated parties for their U.S.-dollar-denominated loans.

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit, to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred

by Ekinciler and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

B. ICDAS

We based EP on packed prices to the first unaffiliated purchaser in the United States. We made deductions for foreign inland freight expenses, ocean freight expenses, inspection fees, and loading charges, where appropriate, in accordance with section 772(c)(2)(A) of the Act.

Normal Value

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), we compared the volume of each respondent's home market sales of the foreign like product to the volume of U.S. sales of subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Based on this comparison, we determined that each respondent had a viable home market during the POR. Consequently, we based NV on home market sales.

Both respondents made sales of rebar to affiliated parties in the home market during the POR. Consequently, we tested these sales to ensure that, on average, they were made at "arm's-length" prices, in accordance with 19 CFR 351.403(c). To conduct this test, we compared the unit prices of sales to affiliated and unaffiliated customers net of all movement charges, direct selling expenses, and packing. Where prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined that sales made at arm's length (*see* 19 CFR 351.403(c) and 62 FR 27355). Accordingly, for Ekinciler, we only included in our margin analysis those sales to the sales to the affiliated party that were made at arm's length. Regarding ICDAS, we did not include in our analysis any sales made to affiliated parties because they failed the "arm's length" test. Because the volume of sales by ICDAS to its affiliated parties was greater than five percent of the company's total home market sales, pursuant to 19 CFR 351.403(d), we based our analysis on the downstream sales of the affiliates to their unaffiliated customers.

A. Ekinciler

Pursuant to section 773(b)(2)(A)(ii) of the Act, there were reasonable grounds to believe or suspect that Ekinciler had made home market sales at prices below their COPs in this (the first) review because the Department had disregarded sales below the COP for this company in the LTFV investigation. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Steel Concrete Reinforcing Bars from Turkey*, 62 FR 9737, 9740 (Mar. 4, 1997). As a result, the Department initiated an investigation to determine whether Ekinciler made home market sales during the POR at prices below their respective COPs.

We calculated the COP based on the sum of Ekinciler's cost of materials and fabrication for the foreign like product, plus amounts for SG&A and packing costs, in accordance with section 773(b)(3) of the Act. We relied on Ekinciler's information as submitted, except in the specific instances discussed below.

(1) We considered Ekinciler to be the manufacturer of all rebar which was rolled by unaffiliated subcontractors because we find that Ekinciler controlled the production of this merchandise. *See* the memorandum on this topic from the Team to Louis Apple, dated April 30, 1999; and

(2) We revised the calculation of depreciation expenses related to the revaluation of fixed assets in order to use the index published by Turkish Ministry of Finance. See *World Accounting*, Orsini, Gould, McAllister, & Parikh, Matthew Bender & Co., Inc., 1998, page TRK–30.

As noted above, we determined that the Turkish economy experienced significant inflation during the POR. Therefore, in order to avoid the distortive effect of inflation on our comparison of costs and prices, we requested that Ekinciler submit the product-specific cost of manufacturing (COM) incurred during each month of the POR. We calculated a POR-average COM for each product after indexing the reported monthly costs during the POR to an equivalent currency level using the Turkish Wholesale Price Index from the International Financial Statistics published by the International Monetary Fund. We then restated the POR-average COMs in the currency values of each respective month.

We compared the weighted-average COP figures to home market prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges and selling expenses.

In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made: (1) in substantial quantities within an extended period of time; and (2) at prices which permitted the recovery of all costs within a reasonable period of time in the normal course of trade. *See* sections 773(b)(2)(B), (C), and (D) of the Act.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of Ekinciler's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of Ekinciler's sales of a given product were at prices below the COP, we found that sales of that model were made in "substantial quantities" within an extended period of time (as defined in section 773(b)(2)(B) of the Act), in accordance with section 773(b)(2)(C)(i) of the Act. In such cases, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(2)(D) of the Act. Therefore, for purposes of this administrative review, we disregarded the below-cost sales and used the remaining above-cost sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act. Where all sales of a specific product were at prices below the COP, we disregarded all sales of that product.

For those comparison products for which there were sales at prices above the COP, we based NV on ex-factory, ex-warehouse or delivered prices to home market customers. We excluded from our analysis home market re-sales by Ekinciler of merchandise produced by unaffiliated companies. Where appropriate, we added an amount for interest revenue received from home market customers for delayed payment of invoices. Also where appropriate, we made deductions from the starting price for foreign inland freight, inland insurance, and off-site warehousing expenses, in accordance with section 773(a)(6)(B) of the Act. We deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Where appropriate, we made adjustments to NV to account for differences in physical characteristics of the merchandise, in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable costs of manufacturing for the foreign like product and subject merchandise, using

POR-average costs as adjusted for inflation for each month of the POR, as described above.

B. ICDAS

We based NV on the starting price to unaffiliated customers. We made deductions for inland freight expenses (offset by freight revenue), where appropriate, pursuant to section 773(a)(6)(B) of the Act. Pursuant to section 773(a)(6)(C)(iii) if the Act, we also made deductions for home market credit expenses (offset by interest revenue), where appropriate. We recalculated home market credit expenses using the interest rates observed at verification.

Pursuant to section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410(c), we made circumstance-of-sale adjustments by adding U.S. credit expenses, bank charges, and Exporters' Association fees.

In addition, we deducted home market packing costs and added U.S. packing costs, in accordance with section 773(a)(6) of the Act.

Currency Conversion

The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for Turkish Lira. Therefore, we made currency conversions based on the daily exchange rates from the Dow Jones News/Retrieval Service.

Preliminary Results of the Review

We preliminarily determine that the following margins exist for the respondents during the period October 10, 1996, through March 31, 1998 (for Ekinciler) and October 10, 1996, thorough July 31, 1998 (for ICDAS):

Manufacturer/producer/exporter	Margin percentage
Ekinciler Holding A.S./ Ekinciler Demir Celik A.S.	1.50
ICDAS Celik Enerji Tersane ve Ulasim Sanayi A.S.	10.22

The Department will disclose to parties the calculations performed in connection with these preliminary results within five days of the date of publication of this notice. Interested parties may request a hearing within 30 days of publication. Any hearing, if requested, will be held two days after the date rebuttal briefs are filed. Interested parties may submit cases briefs not later than 30 days after the date of publication of this notice. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice. The Department will issue the final results of the administrative and new shipper reviews, including the results of its analysis of issues raised in any such written comments, within 120 days of publication of these preliminary results.

Upon completion of the administrative and new shipper reviews, the Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Pursuant to 19 CFR 351.212(b)(1), we have calculated importer-specific assessment rates based on the ratio of the total amount of antidumping duties calculated for the examined sales to the total entered value of those sales, where available. Where the entered value was not available, we estimated the entered value by subtracting international movement expenses from the gross sales value. Pursuant to 19 CFR 351.106(c)(2), we will instruct the Customs Service to liquidate without regard to antidumping duties any entries for which the assessment rate is *de minimis* (*i.e.*, less than 0.50 percent). The assessment rate will be assessed uniformly on all entries of that particular importer made during the POR. The Department will issue appraisement instructions directly to the Customs Service.

Further, the following deposit requirements will be effective for all shipments of rebar from Turkey entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of these administrative and new shipper reviews, as provided for by section 751(a)(2)(C) of the Act: 1) The cash deposit rates for the reviewed companies will be the rates established in the final results of these reviews; 2) for previously investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; 3) if the exporter is not a firm covered in these reviews, or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and 4) the cash deposit rate for all other manufacturers or exporters will continue to be 16.06 percent, the all others rate established in the LTFV investigation.

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties. These administrative and new shipper reviews and notice are in accordance with sections 751(a)(1) and (a)(2)(B) of the Act (19 U.S.C. 1675(a)(1) and (a)(2)(B)) and 19 CFR 351.213 and 214.

Dated: April 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11572 Filed 05–06–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Opportunity To Apply for Membership on the U.S.-Korea Committee on Business Cooperation

SUMMARY: The Department of Commerce is currently seeking interim applications for membership on the U.S. side of the U.S.-Korea Committee on Business Cooperation (CBC). The purpose of the CBC is to facilitate stronger commercial ties between U.S. and Korean private sector businesses. This is accomplished by undertaking work programs, reporting on the results, and presenting written recommendations to the two governments. The CBC is chaired by the U.S. Secretary of Commerce and the Korean Minister of Commerce, Industry and Energy. Its activities are coordinated by an equal number of private sector representatives from the United States and Korea. The CBC held its second meeting in Seoul, Korea, on March 27, 1999. The work of the CBC is currently focused through eight sector-specific subgroups: (1) government procurement, (2) environmental technologies, (3) venture capital, (4) automobiles, (5) filmed entertainment, (6) electronic commerce, (7) a business opportunity network on the Internet, and (8) telecommunications. In particular, the Department is seeking representatives from the following sectors: electronic commerce, energy, and biotechnology.

MEMBERSHIP OPPORTUNITY: The CBC charter will expire October 1, 1999, and may be renewed upon the mutual agreement of the U.S. and Korea. There are several vacancies on the U.S. side of the CBC. Applications are now being sought for U.S. private sector members

to serve beginning immediately and until October 1, 1999. Private sector members will serve at the discretion of the Secretary. They are expected to participate fully in defining and implementing CBC work programs, reporting on the results, and presenting written recommendations to the two governments. It is expected that private sector individuals chosen for the CBC will attend at least 75% of CBC meetings, which are held alternately in the U.S. and Korea. Private sector members are fully responsible for travel, living and personal expenses associated with their participation in the CBC. The private sector members will serve in a representative capacity presenting the views and interests of the particular business sector in which they operate, not those of their individual firms. Private sector members are not special government employees.

Objectives

The goals of the CBC are as follows:

- Identifying commercial opportunities, impediments, and issues of concern to the respective business communities;
- Improving the dissemination of appropriate commercial information on both markets;
- Adopting sectoral or project-oriented approaches to expand business opportunities, addressing specific problems, and making recommendations to decision-makers where appropriate;
- Promoting trade/business development and promotion programs to assist the respective business communities in accessing each market, including trade missions, exhibits, seminars, and other events;
- Facilitating appropriate technical cooperation; and
- Considering other steps that may be taken to foster growth and enhance commercial relations.

Membership Criteria

Eligibility criteria. An applicant must be:

- a U.S. citizen residing in the United States; and
- not a registered foreign agent under the Foreign Agents Registration Act of 1938 (FARA).

In reviewing eligible applicants, the Commerce Department will consider:

- Expertise in one of the business sectors noted above in which the CBC will be active;
- Readiness to initiate and be responsible for activities in one or more of the business sectors in which the CBC will be active; and
- Prospective member contributes to membership diversity of company size, type, location, demographics and/or traditional under-representation in business.

To be considered for membership, please provide the following: name and title of the individual requesting consideration; name and address of the company or organization sponsoring each individual; company's product or service line; size of the company; export experience and major markets; a brief statement of why each candidate should be considered for membership on the CBC; the particular segment of the business community each candidate would represent; a personal resume; and a statement signed by the applicant that he or she is a U.S. citizen residing in the United States and not a registered foreign agent under FARA. Up to two applicants from the same organization can be considered.

DEADLINE: In order to receive full consideration, requests must be received no later than May 25, 1999.

ADDRESSES: Please send your requests for consideration to Philip R. Agress, Director, Office of Korea and Southeast Asia, U.S. Department of Commerce, Room 2320, 14th St. and Constitution Ave., NW, Washington, D.C. 20230, fax (202) 482–0469.

FOR FURTHER INFORMATION CONTACT: Linda Droker, Director, Korea and Taiwan Affairs, U.S. Department of Commerce, Room 2036, 14th St. and Constitution Ave., NW, Washington, D.C. 20230, telephone (202) 482–3876, fax (202) 482–3316.

Authority: 15 U.S.C. 1512.

Dated: May 4, 1999.

Philip Agress,

Acting Deputy Assistant Secretary for Asia and the Pacific.

[FR Doc. 99–11517 Filed 05–06–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Egypt Presidents' Council: Membership

AGENCY: International Trade Administration, Commerce.

ACTION: Amendment to notice of membership opportunity: Extension to deadline for applications.

SUMMARY: The International Trade Administration of the U.S. Department of Commerce established and monitors the activities of the U.S.-Egypt Presidents' Council, the private sector component of the Gore-Mubarak Partnership. The **Federal Register** published a notice of membership opportunities for American business representatives on the U.S. side of the Council on April 12, 1999. The deadline was May 7, 1999. This notice hereby extends the deadline by which applications must be received.

DATES: In order to receive full consideration, requests must be received no later than: Friday, May 21, 1999.

ADDRESSES: Please send your requests for consideration to Thomas Sams, Egypt Desk Officer, Office of the Near East, U.S. Department of Commerce either by fax on 202–482–0878 or by mail to Room H–2029B, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Tom Sams, Office of the Near East, Room H–2029B, U.S. Department of Commerce, Washington, DC 20230, phone: 202–482–4441.

SUPPLEMENTARY INFORMATION: This amends the notice of membership opportunities on the U.S.-Egypt Presidents' Council published in the **Federal Register** on April 12, 1999 (64 FR 17617–17618).

Dated: May 4 1999.

Thomas R. Parker,

Director, Office of the Near East.

[FR Doc. 99–11632 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DA–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–508–605]

Industrial Phosphoric Acid From Israel: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results and Partial Rescission of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the countervailing duty order on industrial phosphoric acid from Israel for the period January 1, 1997 through December 31, 1997. For information on the net subsidy for each reviewed company, as well as for all non-reviewed companies, please see the *Preliminary Results of Review* section of this notice. If the final results remain the same as these preliminary results, we will instruct the U.S. Customs

Service to assess countervailing duties as detailed in the *Preliminary Results of Review*. Interested parties are invited to comment on these preliminary results. *See Public Comment* section of this notice.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Dana Mermelstein or Sean Carey, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0984 or (202) 482–3691, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 19, 1987, the Department published in the **Federal Register** (52 FR 31057) the countervailing duty order on industrial phosphoric acid from Israel. On August 11, 1998, the Department published a notice of "Opportunity to Request Administrative Review" (63 FR 42821) of this countervailing duty order. We received a timely request for review, and we initiated the review, covering the period January 1, 1997 through December 31, 1997, on September 29, 1998 (63 FR 51893). In accordance with 19 CFR 351.213(b), this review covers only those producers or exporters of the subject merchandise for which a review was specifically requested. Accordingly, this review covers Rotem-Amfert Negev Ltd. (Rotem) and Haifa Chemicals Ltd. (Haifa). Haifa did not export the subject merchandise during the period of review (POR). Therefore, we are rescinding the review with respect to Haifa. This review covers 11 programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA) effective January 1, 1995 (the Act). The Department is conducting this administrative review in accordance with section 751(a) of the Act. All citations to the Department's regulations reference 19 CFR Part 351 (1998).

Scope of the Review

Imports covered by this review are shipments of industrial phosphoric acid (IPA) from Israel. Such merchandise is classifiable under item number 2809.20.00 of the Harmonized Tariff Schedule (HTS). The HTS item number is provided for convenience and U.S. Customs Service purposes. The written description of the scope remains dispositive.

Subsidies Valuation Information

Period of Review

The period for which we are measuring subsidies is calendar year 1997.

Allocation Period

In *British Steel plc.* v. *United States*, 879 F.Supp. 1254 (February 9, 1995) (*British Steel*), the U.S. Court of International Trade (the Court) ruled against the allocation period methodology for non-recurring subsidies that the Department had employed for the past decade, as it was articulated in the *General Issues Appendix* appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225 (July 9, 1993) (GIA). In accordance with the Court's decision on remand, the Department determined that the most reasonable method of deriving the allocation period for nonrecurring subsides is a company-specific average useful life (AUL). This remand determination was affirmed by the Court on June 4, 1996. *British Steel*, 929 F.Supp 426, 439 (CIT 1996). Accordingly, the Department has applied this method to those non-recurring subsidies that have not yet been countervailed. Rotem submitted an AUL calculation based on depreciation expenses and asset values of productive assets reported in its financial statements. Rotem's AUL was derived by adding the sum of average gross book value of depreciable fixed assets for ten years and dividing these assets by the total depreciation charges for the related periods. We found this calculation to be reasonable and consistent with our company-specific AUL objective. Rotem's calculation resulted in an average useful life of 23 years, which we have used as the allocation period for non-recurring subsidies received during the POR. For non-recurring subsidies received prior to the POR and already countervailed based on an allocation period established in an earlier segment of the proceeding, it is not reasonable or practicable to reallocate those subsidies over a different period of time. Since the countervailing duty rate in earlier segments of the proceeding was calculated based on a certain allocation period and resulted in a certain benefit stream, redefining the allocation period in later segments of the proceeding would entail taking the original grant amount and creating an entirely new benefit stream for that grant. Such a practice may lead to an increase or decrease in the total amount countervailed and, thus, would result in the possibility of over- or under-countervailing the actual benefit. Therefore, for purposes of these preliminary results, the Department is using the original allocation period assigned to each non-recurring subsidy received prior to the POR. *See Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review*, 62 FR 16549 (April 7, 1997).

Privatization

Israel Chemicals Limited (ICL), the parent company which owns 100 percent of Rotem's shares, was partially privatized in 1992, 1993, 1994, and 1995. In this administrative review, the Government of Israel (GOI) and Rotem reported that additional shares of ICL were sold in 1997. We have previously determined that the partial privatization of ICL represents a partial privatization of each of the companies in which ICL holds an ownership interest. *See Final Results of Countervailing Duty Administrative Review; Industrial Phosphoric Acid from Israel*, 61 FR 53351, 53352 (October 11, 1996) (*1994 Final Results*). In this review and prior reviews of this order, the Department found that Rotem and/or its predecessor, Negev Phosphates Ltd., received non-recurring countervailable subsidies prior to these partial privatizations. Further, the Department found that a portion of the price paid by a private party for all or part of a government-owned company represents partial repayment of prior subsidies. *See GIA*, 58 FR at 37262. Therefore, in 1992, 1993, and 1995 reviews, we calculated the portion of the purchase price paid for ICL's shares that is attributable to repayment of prior subsidies. In the 1994 privatization, less than 0.5 percent of ICL shares were privatized. We determined that the percentage of subsidies potentially repaid through this privatization could have no measurable impact on Rotem's overall net subsidy rate. Thus, we did not apply our repayment methodology to the 1994 partial privatization. *See 1994 Final Results*, 61 FR at 53352. However, we are applying this methodology to the 1997 partial privatization because 17 percent of ICL's shares were sold. This approach is consistent with our findings in the *GIA* and Department precedent under the URAA. *See e.g., GIA*, 58 FR at 37259; *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom; Final Results of Countervailing Duty Administrative Review*, 61 FR 58377 (November 14, 1996); *Final Affirmative Countervailing*

Duty Determination: Certain Pasta from Italy, 61 FR 30288 (June 14, 1996).

Grant Benefit Calculations

To calculate the benefit for the POR, we followed the same methodology used in the final results of the 1996 administrative review. We converted Rotem's shekel-denominated grants into U.S. dollars, using the exchange rate in effect on the date the grant was received. We then applied the grant methodology to determine the benefit for the POR. *See Industrial Phosphoric Acid from Israel; Final Results of Countervailing Duty Administrative Review*, 63 FR 13626, 13633 (March 20, 1998) (*1995 Final Results*).

Discount Rates

We considered Rotem's cost of long-term borrowing in U.S. dollars as reported in the company's financial statements for use as the discount rate used to allocate the countervailable benefit over time. However, this information includes Rotem's borrowing from its parent company, ICL, and thus does not provide an appropriate discount rate. Therefore, we have turned to ICL's cost of long-term borrowing in U.S. dollars in each year from 1984 through 1997 as the most appropriate discount rate. ICL's interest rates are shown in the notes to the company's financial statements, public documents which are in the record of this review. *See Comment 9* in the *1995 Final Results* (63 FR at 13633–4).

Analysis of Programs

I. Programs Conferring Subsidies

A. Encouragement of Capital Investments Law (ECIL)

The ECIL program is designed to encourage the distribution of the population throughout Israel, to create new sources of employment, to aid the absorption of immigrants, and to develop the economy's production capacity. To be eligible for benefits under the ECIL, including investment grants, capital grants, accelerated depreciation, reduced tax rates, and certain loans, applicants must obtain approved enterprise status. Investment grants cover a percentage of the cost of the approved investment, and the amount of the grant depends on the geographic location of eligible enterprises. For purposes of the ECIL program, Israel is divided into three zones—Development Zones A and B, and the Central Zone. Under the ECIL program the Central Zone was not eligible for benefits. In *Final Affirmative Countervailing Duty Determination: Industrial Phosphoric Acid From Israel*, 52 FR 25447 (July 7, 1987) (*IPA Investigation*), the Department found the ECIL grant program to be *de jure* specific because the program limits the availability of grants to enterprises located in specific regions. In this review, no new information or evidence of changed circumstances has been submitted to warrant reconsideration of this determination.

Rotem is located in Development Zone A, and received ECIL investment, drawback, and capital grants in disbursements over a period of years for several projects. As explained in the "Allocation Period" section above, for grants that have been allocated in prior administrative reviews, we are continuing to use the allocation period assigned to these grants. For grants received during the POR, we have used the AUL calculated by Rotem in this review, which is 23 years. To calculate the benefit for the POR, we followed the same methodology used in the final results of the 1995 administrative review, as indicated in the "Grant Benefit Calculations" section above.

To calculate the total subsidy in the POR, we first summed the grant amounts allocated to and received in 1997, after taking into account the partial privatizations in 1992, 1993, 1995, and 1997. To derive the subsidy rates, as discussed in the *1995 Final Results*, we attributed ECIL grants to a particular facility over the sales of the product produced by that facility plus sales of all products into which that product may be incorporated. Accordingly, we attributed ECIL grants to Rotem's phosphate rock mines to total sales; we attributed grants to Rotem's green acid facility to total sales minus direct sales of phosphate rock; and, finally, we attributed grants to Rotem's IPA facilities to sales of IPA, MKP, fertilizers, and "IPA-Akonomika" and MKP–HCL (by-products of IPA production which contribute to Rotem's sales revenue). We summed the rates obtained on this basis, and preliminarily determine the net countervailable subsidy from this program to be 5.43 percent *ad valorem* for the POR.

B. Infrastructure Grant Program

Under the Infrastructure Grant Program, the GOI establishes new industrial areas by partially reimbursing companies for their costs of developing the infrastructure in certain geographical zones. Rotem received assistance under this program during the POR. Therefore, within the meaning of section 771(5)(B)(i), a subsidy is bestowed because the GOI provided a financial contribution, which conferred a benefit. We analyzed whether this program is specific within the meaning of section 751(5A)(D) of the Act. Because the infrastructure grants are limited to an enterprise or industry located in certain zones within the jurisdiction of the authority providing the subsidy, we find this program to be regionally specific in accordance with section 771(5A)(D)(iv). We view these grants as non-recurring based on the analysis set forth in the "Allocation" section of the *GIA* (58 FR at 37226) because these benefits are exceptional, and the company cannot expect to receive benefits on an ongoing basis from review period to review period. Therefore, we calculated the benefit under this program using the methodology for non-recurring grants noted above in the "Grant Benefit Calculations" section. We then divided the grant amount by Rotem's total sales because the grant benefitted Rotem's total production. On this basis, we preliminarily determine the net countervailable subsidy from this program to be 0.22 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determined that the producer and/or exporter of the subject merchandise did not apply for or receive benefits under these programs during the POR:

A. Encouragement of Industrial Research and Development Grants (EIRD)
B. Environmental Grant Program
C. Reduced Tax Rates under ECIL
D. ECIL Section 24 loans
E. Dividends and Interest Tax Benefits under Section 46 of the ECIL
F. ECIL Preferential Accelerated Depreciation
G. Exchange Rate Risk Insurance Scheme
H. Labor Training Grants
I. Long-term Industrial Development Loans

Preliminary Results of Review

In accordance with 19 CFR 351.213(b), we calculated an individual subsidy rate for each producer/exporter subject to this administrative review. For the period January 1, 1997 through December 31, 1997, we preliminarily determine the net subsidy for Rotem to be 5.65 percent *ad valorem*. If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service (Customs) to assess countervailing duties as indicated above. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties as indicated above of the f.o.b. invoice price on all shipments of the subject merchandise from reviewed companies, entered, or withdrawn from warehouse, for consumption on or after

the date of publication of the final results of this review. Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested review will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F.Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993). Therefore, the cash deposit rates for all companies except those covered by this review will be unchanged by the results of this review. We will instruct Customs to continue to collect cash deposits for non-reviewed companies at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order will be the rate for that company established in the most recently completed administrative proceeding under the URAA. If such a review has not been conducted, the rate established in the most recently completed administrative proceeding conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments, is applicable. *See 1992/93 Final Results*, 61 FR 28842. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997 through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by this order are the cash deposit rates in effect at the time of entry.

Public Comment

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Case briefs must be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, must be submitted no later than five days after the time limit for filing case briefs. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f). Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs, that is, thirty-seven days after the date of publication of these preliminary results. Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date case briefs, under 19 CFR 351.309(c)(ii), are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing.

These preliminary results are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1) and 19 U.S.C 1677f(i)(1)).

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11575 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium From Canada: Preliminary Results of the Sixth Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1, 1997 through December 31, 1997. We have preliminarily determined that certain producers/exporters have received countervailable subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the *Preliminary Results of Reviews* section of this notice. Interested Parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Annika O'Hara or Blanche Ziv, AD/CVD Enforcement, Group 1, Office 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3798 or (202) 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

The Department of Commerce (the Department) is conducting these administrative reviews in accordance with section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act (URAA), effective January 1, 1995 (the Act). Unless otherwise indicated, all citations to the statute are references to the provisions of the Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (1998).

Background

On August 31, 1992, the Department published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392). On August 11, 1998, the Department published a notice of "Opportunity to Request Administrative Review" of these orders (63 FR 42821). We received a timely request for review from Norsk Hydro Canada Inc. (NHCI) on August 25, 1998, and we initiated these reviews, covering the period January 1, 1997, through December 31, 1997, on September 29, 1998 (63 FR 51893).

In accordance with 19 CFR 351.213(b), these reviews cover NHCI, the only producer or exporter of the subject merchandise for which a review was specifically requested. These reviews cover 17 subsidy programs.

On October 6, 1998, the Department issued countervailing duty questionnaires to NHCI, the Government of Canada (GOC), and the Government of Quebec (GOQ). We received questionnaire responses from NHCI on November 20, 1998, the GOQ on November 23, 1998, and the GOC on November 27, 1998.

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review (POR) for which we are measuring subsidies is from January 1, 1997 through December 31, 1997.

Analysis of Programs

I. Programs Preliminarily Determined to Confer Subsidies

A. Exemption From Payment of Water Bills

Pursuant to a December 15, 1988, agreement between NHCI and La Société du Parc Industriel et Portuaire de Bécancour (Industrial Park), NHCI was exempt from paying its water bills. In accordance with this agreement, NHCI did not pay the invoiced amounts of its water bills, except for the taxes associated with these bills, until June 1997. By June 1997, NHCI had used the entire credit granted by the Industrial Park and began paying its water bills in full.

In *Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30948 (July 13, 1992) (*Magnesium from Canada*), the Department determined that the exemption received by NHCI was limited to a specific enterprise or industry, or group of enterprises or industries, because no other company received such an exemption. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

We preliminarily determine the countervailable benefit to be the amount NHCI would have paid for water absent the exemption. To calculate the benefit under this program, we divided the amount NHCI would have paid during the POR by the company's total sales of Canadian-manufactured products during the same period. Thus, we preliminarily determine the countervailable subsidy provided by this program to be 0.18 percent *ad valorem*.

The water bill credit program was terminated in June 1997. As of June 30, 1997, the credit given for water consumption had been reached and NHCI began to make water bill payments. Since NHCI has continued to make water bill payments thereafter, we preliminarily determine this program terminated with no residual benefits. Moreover, there is no evidence on the record which would indicate that residual benefits are being provided or received or that a substitute program has been implemented. Therefore, we will not examine this program in the future, and the cash deposit rate will be zero for this program.

B. Article 7 Grants From the Québec Industrial Development Corporation

The Société de Développement Industriel du Québec (SDI) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of "special economic importance and value to the province." (*See Magnesium from Canada* at 30949.)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In *Magnesium from Canada*, we determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries. In these reviews, neither the GOQ nor NHCI provided new information which would warrant reconsideration of this determination.

For the reasons set forth in *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*, 61 FR 11186, 11187 (March 19, 1996), we preliminarily determine that the Article 7 assistance received by NHCI was a non-recurring grant because it represented a one-time provision of funds.

We calculated the benefit received by NHCI using our standard grant methodology. As the discount rate, we used the company's cost of long-term, fixed-rate debt in the year in which the grant was awarded. We divided the portion of the benefit allocated to the POR by NHCI's total sales of Canadian-manufactured products during the same period. We preliminarily determine the net subsidy provided by this program to be 1.84 percent *ad valorem*.

II. Programs Preliminarily Determined To Be Not Used

We examined the following programs and preliminarily determine that NHCI did not apply for or receive benefits under these programs during the POR:

- St. Lawrence River Environment Technology Development Program.
- Program for Export Market Development.
- The Export Development Corporation.
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec.
- Opportunities to Stimulate Technology Programs.
- Development Assistance Program.
- Industrial Feasibility Study Assistance Program.
- Export Promotion Assistance Program.
- Creation of Scientific Jobs in Industries.
- Business Investment Assistance Program.
- Business Financing Program.
- Research and Innovation Activities Program.
- Export Assistance Program.
- Energy Technologies Development Program.
- Transportation Research and Development Assistance Program.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1, 1997, through December 31, 1997, we preliminarily determine the net subsidy rate for NHCI to be 2.02 percent *ad valorem*. If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the Customs Service to assess countervailing duties at the net subsidy rate.

The Department also intends to instruct the Customs Service to collect cash deposits of estimated countervailing duties (exclusive of the net subsidy rate calculated for the water program, see section I. A. above), at the rate of 1.84 percent of the f.o.b. value of all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b). Pursuant to 19 CFR 351.212(c), for all companies for which a review was not requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company* v. *United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council* v. *United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except those covered by these reviews will be unchanged by the results of these reviews.

We will instruct the the Customs Service to continue to collect cash deposits for non-reviewed companies, except Timminco Limited (which was excluded from the orders during the investigation), at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by these orders are those established in the most recently completed administrative proceeding, conducted pursuant to the statutory provisions that were in effect prior to the URAA amendments. *See Final Results of the Second Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium from Canada*, 62 FR 48607 (September 16, 1997). These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1, 1997, through December 31, 1997, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited (which was excluded from the orders during the original investigation).

Public Comment

Interested parties may request a hearing not later than 30 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted five days after the time limit for filing the case brief. Parties who submit an argument in these proceedings are requested to submit with the argument (1) a statement of the issue, and (2) a brief summary of the argument. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish the final results of these administrative reviews, including the results of its analysis of issues raised in any case or rebuttal briefs or at a hearing.

These administrative reviews and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11576 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Notice of Extending Comment Period to May 14, 1999

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of extending comment period to May 14, 1999.

SUMMARY: In connection with the Department of Commerce's request for public comments on its proposed safe harbor documents announced in the notice published on April 22, 1999 (pages 19747–19748), the Department has posted new "Frequently Asked Questions" and extended the comment period on all posted documents to May 14, 1999. All documents for comment are posted on the Department's web page, at http://www.ita.doc.gov/ecom.

DATES: The deadline for public comments is May 14, 1999.

Comment Submission Procedure

Please submit comments on any draft documents to the Department of Commerce electronically in an HTML format to the following email address: Ecommerce@ita.doc.gov. If organizations do not have the technical ability to provide comments in an HTML format, they can forward them in the body of the email, or in a Word or WordPerfect format. If necessary, hard copies of comments can be mailed to the Electronic Commerce Task Force, U.S. Department of Commerce, Room 2009, 14th and Constitution Ave., NW, Washington DC 20230, or faxed to 202–501–2548. If you would like to speak to someone or want hard copies please call Brenda Carter-Nixon on (202) 482–5227.

Dated: April 30, 1999.

Eric Fredell,

International Trade Specialist, International Trade Administration/ Trade Development.

[FR Doc. 99–11455 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 990309065–9065–01]

RIN 0693–ZA29

Professional Research Experience Program (PREP)

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of availability of funds for cooperative agreements to provide fellowships for undergraduate, graduate, and post-doctoral students.

SUMMARY: This notice is to invite proposals from accredited colleges and universities to participate in the PREP program. Under this program, NIST provides financial assistance to accredited colleges and universities to enable those institutions to provide laboratory experiences and financial assistance to undergraduate, graduate, and post-doctoral students at the NIST, Boulder Laboratories in Boulder, Colorado. It is anticipated that two (2) or more awards will be made contingent on the availability of funds in fiscal year 1999. However, in fiscal year 1998, 96 PREP fellowships were provided (some students received more than one fellowship). Approximately $1,375,000 in fellowships were awarded under this program in 1998.

DATES: Applications must be received at the address below no later than 5 p.m., Mountain Standard Time on June 7, 1999, in order to be considered for the Fall, 1999 awards. Late applications will be rejected and returned to the sender.

ADDRESSES: Request application materials from and send applications to: PREP Program Coordinator, Division 360, National Institute of Standards and Technology, 325 Broadway, Boulder, CO 80303.

Application materials may also be downloaded from the World Wide Web at the following address: *http://www.boulder.nist.gov/exec/bdprepo.htm*.

FOR FURTHER INFORMATION CONTACT: Phyllis Wright, Program Coordinator, telephone (303) 497–3244, or e-mail phyllis.wright@nist.gov.

SUPPLEMENTARY INFORMATION:

Catalog of Federal Domestic Assistance Name and Number: 11.609—Measurement and Engineering Research and Standards.

Authority: Section 18 of the NIST Act, as amended (15 USC 278g–1)

Program Description

PREP is designed to provide funding to eligible colleges and universities to enable them to provide fellowships to undergraduate, graduate, and post-doctoral students. Through these fellowships, students will participate in valuable laboratory experiences and will receive financial assistance. Through this program NIST sponsors will often become mentors and work collaboratively with the faculty and advisors at the university to further the success of the student. The majority of the laboratory research experiences will take place at the NIST laboratory in Boulder, Colorado.

Fellowships will be awarded to students by the selected colleges and universities to encourage the growth and progress of science and engineering in the United States, including the encouragement of women and minority students seeking to further their professional development. A major objective is to nurture students considered to be potential future NIST employees.

Undergraduate and graduate students receiving NIST–PREP fellowships must be accepted for enrollment for academic credit as full-time students at an accredited university and remain affiliated with the university during the term of the fellowship. Fellowships may be extended after graduation only as long as necessary to complete research projects started by the student while enrolled as a student with the university. Post-doctoral students must be affiliated with a university during the term of the fellowship.

Funding Availability

Applications for cooperative agreements should be for one year, with options for renewal at the discretion of NIST for up to four additional years without competition.

Fellowships will be awarded by the cooperating colleges and/or universities contingent solely upon the availability of NIST program funds and the selection of students by potential NIST sponsors. Fellowships will be negotiated between the university and NIST, and can include the following: undergraduate fellowships can include a stipend and full tuition payment at the in-state rate; graduate fellowships can consist of a stipend, tuition assistance, and insurance; and postgraduate fellowships are negotiated between university and NIST as part of the cooperative agreement and may consist of a stipend, travel, moving expenses, and other miscellaneous expenses.

Matching Requirements

Cost sharing and matching is not required under this program. However, in the interest of furthering the education and development of future scientists and engineers, applicants are encouraged to cost share on a voluntary basis. Voluntary costs sharing may include any eligible costs under the applicable costs principles that meet the test of reasonableness, allocability, and allowability. Such voluntary cost sharing may include, but is not limited to, cash contributions for direct costs, contributions of indirect costs, or in-kind contributions. While cost sharing is not required, any cost the share contribution will be taken into consideration in reviewing the competitiveness of the proposed project budget.

Type of Funding Instrument

NIST expects to award two or more cooperative agreements. This information is provided in the interest of maximum openness of the agency's intent. It is not intended to bind the agency to any specific number of cooperative agreements. As the funding instrument will be a cooperative agreement, NIST anticipates that it will be substantially involved with the applicant institution in the implementation and management of all cooperative agreements awarded. It is anticipated that before fellowships are offered to students, the students will be screened by the appropriate officials of the applicant organization and NIST sponsors. Criteria for such screening will be mutually developed by NIST and the applicant organization.

Eligibility Criteria

Accedited educational institutions that offer undergraduate and graduate degrees in physics, chemistry, materials science, mathematics, computer science, or engineering are eligible to participate in this program. Students who receive fellowships under the program must be citizens of the United States or lawfully admitted to the United States for permanent residence, and show evidence of a 3.0 or higher grade point average in a curriculum acceptable to the sponsoring educational institution and NIST. Undergraduate and graduate students must be enrolled full-time, and post-graduate students must be associated with the accredited educational institution. Post-doctoral students who receive fellowships under the program must begin the program within five years of receiving their doctoral degree. In most cases, applicants must insure the availability

of students for on-site work experiences in Boulder, Colorado concurrently with the university classroom studies.

Award Period

Applicants must propose undergraduate fellowships for one semester time periods, and graduate and postdoctoral fellowships for one year time periods. Undergraduate and graduate fellowships may be renewed as long as the student adequate progress toward a degree in a curriculum acceptable to the sponsoring educational institution and NIST, and maintains a 3.0 or higher grade point average. Proposed graduate fellowships must not exceed six years. Proposed post-doctoral fellowships may be renewed, but must not exceed a total of three years.

Indirect Costs

Applicants are encouraged to propose to cover indirect costs as cost share under the program. However, indirect costs are eligible project costs. Any indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated with the applicant's cognizant or oversight Federal agency prior to the proposed effective date of the award.

Applicant Forms

Standard Form (SF)424, Application for Financial Assistance, SF 424A, SF 424B, and CD–511 shall be used for applying an financial assistance. Awards resulting from this competition will be administered in accordance with 15 CFR 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profits, and Commercial Organizations;" and OMB Circular A–21, "Cost Principles for Educational Institutions;" and other award terms and conditions. An application kit may be requested from the contact person at the address listed above. Proposals may be structured in any way that the applicants believe will best present their proposed project. A format that NIST offers for consideration by applicant is as follows:

Proposal Summary

I. Introduction: Describe the institution's qualifications for conducting the proposed project.

II. Need Assessment: Document and explain the needs to be met by the proposed project or problems to be solved as a result of conducting the proposed project

III. Objectives: Provide detailed expected project outcomes and benefits to the college or university expressed in measurable terms.

IV. Evaluation: Delineate plans for measuring success or determining the degree to which the project objectives were met.

V. Budget: Prepare SF–424–A and provide a detailed budget narrative to explain fully and justify all proposed project funding including each level of fellowships (undergraduate, graduate, and post-graduate) and other resources.

VI. Future or Other: Describe plans for continuing the project Necessary Funding beyond Federal funding currently requested. It is up to the applicant organization to determine appropriate application criteria for use by undergraduate, graduate, and post-doctoral students in applying for the fellowship program. There is no prescribed format. Examples of criteria previously used can be obtained from the contact person listed above or by downloading copies from the PREP web site at http://www.boulder.nist.gov/exec/bdprepo.htm.

Project Funding Priorities

Applicants must be able to provide students for on site work experiences at the NIST laboratories in Boulder, Colorado. The student must also be enrolled in an academic program acceptable to both the sponsoring institution and NIST while working in the laboratories.

Application Evaluation Criteria

Applications will be evaluated by a panel of at least three independent reviewers who are knowledgeable in the subject matter of this solicitation and its objectives. All applications will be evaluated and scored on the basis of the evaluation criteria delineated below:

1. Experience in providing students pursuing degrees in physics, chemistry, materials science, mathematics, computer science or engineering with work experiences in laboratories or other settings consistent with furthering the students' education. Unsatisfactory performance on any previous Federal awards may result in an application not being considered for funding. (30 Points)

2. Soundness of the applicant's academic program, proposed project objectives, and appropriateness of proposed student work assignments in light of ongoing research at NIST/Boulder and the students' academic programs. (30 Points)

3. Adequacy and reasonableness of plans for administering the project and coordinating with the NIST Program Officer in Boulder. (20 Points)

4. Cost realism of the proposed project budget (proposed fellowships and other proposed costs) in light of the activities proposed and the objectives of the sponsoring institution and NIST. (20 Points)

Selection Procedures

Selection Procedures

The selection of institutions to be recommended for an award will be made by the Executive Officer at the NIST Laboratory in Boulder, Colorado. In recommending applications for funding, the Executive Officer will take into consideration the results of the evaluations and scores of the independent review panel, the needs of the NIST laboratories, and the selection official's judgement as to which applications, taken as a whole, are likely to best further the goals of the PREP program. The final selection of applications and award of cooperative agreements will be made by the NIST Grants Officer in Gaithersburg, Maryland.

Other Requirements

Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DoC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DoC to cover preaward costs.

No Obligation for Future Funding

If an application is selected for funding, DoC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DoC.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is receive, or

3. Other arrangements satisfactory to DoC are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

1. Nonprocurement Debarment and Suspension: Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace: Grantees (as defined at 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying: Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applicants/bids for cooperative agreements for more than $100,000; and

4. Anti-Lobbying Disclosures: Any applicant who has paid or will pay for lobbying using any funds must submit in SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine of imprisonment as provided in 18 U.S.C. 1001.

Intergovernmental Review

Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Purchase of American-Made Equipment and Products

Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

Executive Order 12866

This funding notice was determined to be "not significant" for purposes of Executive Order 12866.

Paperwork Reduction Act

This Notice involves collections of information subject to the Paperwork Reduction Act (PRA), which have been approved by the Office of Management and Budget (OMB) under OMB Control Numbers 0348–0043, 0348–0044, 0348–0040, and 0348–0046. Notwithstanding, any other provision of law no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection displays a current valid OMB control number.

Dated: May 3, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11568 Filed 5–6–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990430116–9116–01; I.D. 042099A]

Taking of Marine Mammals Incidental to Commercial Fishing Operations; Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean (ETP); Initial Finding

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce.

ACTION: Finding.

SUMMARY: On April 29, 1999, the National Marine Fisheries Service (NMFS) made the initial finding required by the International Dolphin Conservation Program Act (IDCPA). NMFS found that there is insufficient evidence that chase and encirclement by the tuna purse seine fishery "is having a significant adverse impact" on depleted dolphin stocks in the ETP. Based on this initial finding, and effective on the effective date of the final regulations to implement the IDCPA, tuna products containing tuna harvested in the ETP by purse seine vessels with carrying capacity greater than 400 short tons may be labeled "dolphin-safe" only if no dolphins were killed or seriously injured during the set in which the tuna were caught.

DATES: The initial finding will become effective on the effective date of the final regulations to implement the IDCPA which will be published in the **Federal Register**.

ADDRESSES: The Report to Congress and supporting documentation may be found on the internet at http://swfsc.ucsd.edu/mm res.html or http://www.nmfs.gov/prot_res/main/new.html. Copies may also be obtained from the Marine Mammal Division, Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, P.O. Box 271, La Jolla , California 92038-0271.

FOR FURTHER INFORMATION CONTACT: J. Allison Routt, NMFS, Southwest Region, Protected Resources Division, (562–980–4020).

SUPPLEMENTARY INFORMATION:

Background

One of the primary fishing methods used to harvest tuna in the ETP is dolphin encirclement. Under this method, fishermen set their nets around groups of dolphins because schools of tuna swim below them. Over the years, fishermen have developed techniques to reduce the number of dolphins killed annually by encirclement from over 350,000 animals in the early 1970s to approximately 2,000 in 1998. However, the practice remains controversial and, in 1989, U.S. tuna canners agreed to use only tuna that had been caught by methods other than encirclement and began to use dolphin-safe labels on their cans. In 1990, the term "dolphin safe" was defined statutorily to mean no intentional dolphin encirclement per trip. Amendments to the statute in 1992 prohibited the sale of non-dolphin safe tuna in the United States after June 1, 1994.

As a result of the U.S. statutes, in 1995 several Latin American countries agreed in the Panama Declaration to limit dolphin mortalities associated with tuna fishing in the ETP to no more than 5,000 dolphins per year, with additional limits on individual stocks. The Panama Declaration was signed by the nations participating in the voluntary international dolphin

conservation program in the ETP, including the United States. In exchange, the United States agreed to modify its standards for the "dolphin safe" label. In order to implement the Panama Declaration, Congress enacted the IDCPA. However, Congress was reluctant to permit the labeling standard to change immediately, without additional research on fishery impacts on depleted dolphin stocks.

Statutory Requirements

Section 304(a) of the Marine Mammal Protection Act (MMPA), as revised by the IDCPA, requires the NMFS, in consultation with the Marine Mammal Commission and the Inter-American Tropical Tuna Commission (IATTC), to "conduct a study of the effect of intentional encirclement (including chase) on dolphins and dolphin stocks incidentally taken in the course of purse seine fishing for yellowfin tuna in the ETP." The law requires the study to consist of abundance surveys and stress studies to address the question of whether encirclement is having a significant adverse impact on depleted dolphin stocks.

Under the IDCPA, the dolphin-safe labeling standard could change depending upon the results of this study. The IDCPA states that the Secretary of Commerce shall make a finding in March 1999, based on the initial results of the study regarding whether the intentional deployment on or encirclement of dolphins with purse seine nets "is having a significant adverse impact" on any depleted dolphin stock in the ETP. The authority to make this determination has been delegated to NMFS. Unless there is an initial finding that the best scientific information available in March 1999 supports a scientific conclusion that the fishery is causing a "significant adverse impact," the new dolphin-safe labeling standard in paragraph (h)(1) of the Dolphin Protection Consumer Information Act (DPCIA) (i.e., that no dolphins were killed or seriously injured during the sets in which the tuna were caught) automatically replaces the prior labeling standard, which permitted no intentional encirclement of dolphins during the trip in which the tuna was caught. Similarly, NMFS has been delegated the Secretary's authority to make a final finding by December 31, 2002, after additional research is conducted.

Scientific Results

The initial results from the NMFS study are presented in a Report to Congress. This report also describes the research program's development of a decision analysis framework to quantitatively evaluate the various types of information gathered in the study in order to make the "significant adverse impact" determination required by the IDCPA.

The study looked at three dolphin stocks: the northeastern offshore spotted dolphin, the eastern spinner dolphin, and the coastal spotted dolphin stocks. The first two stocks are listed as depleted under the Marine Mammal Protection Act (MMPA). The status of the coastal spotted dolphin is uncertain but since it might also be considered depleted, the research survey was designed to produce an estimate of abundance for this stock as well.

When the eastern spinner dolphin stock was listed as depleted under the MMPA in 1993, the population was estimated to be approximately 44 percent of its pre-exploitation population size. The northeastern offshore spotted dolphin in 1993 was estimated to be between 19 and 28 percent of its pre-exploitation population.

According to new abundance estimates from data collected during the 1998 research abundance survey and other available data noted above, the number of the northeastern offshore spotted dolphin is now estimated to be 1,011,104 animals, and the estimated number of eastern spinner dolphins is now 1,157,746 animals. These numbers are large; however, the population assessment model and analysis indicate that these populations are apparently not increasing at the expected rate despite the low level of reported mortalities from the ETP purse seine fishery since 1991 and the reproductive potential for these populations.

With respect to the coastal spotted dolphin, the 1998 population number is estimated to be 108,289 animals. However, much of the essential information is lacking for coastal spotted dolphins, especially from the early years of the fishery when the impact on the stocks would have likely been the greatest. The Report to Congress concludes that a direct comparison to a 1988 estimate of 29,800 coastal spotted dolphins is of questionable value since the difference is too large in size to "solely be attributable to population growth."

The Report endeavors to address the issue of slow recovery of the populations but admits that attributing causality is even more difficult than interpreting abundance and trend data. The report attempted to address two sources identified as possible causes for slow recovery: changing environmental conditions and indirect or unobserved effects of tuna fishing.

With regard to changing ocean conditions, the environmental data examined to date shows no evidence of a recent ocean environmental shift or other long-term change that might affect population growth rates for depleted ETP dolphin stocks. Therefore, NMFS looked closely at whether fishing might be the cause. NMFS conducted a literature review that led to the conclusion that stress caused by encirclement could not be dismissed as a possible source of the observed failure to recover at expected rates. Although the stress literature review concluded that fishery-related stresses could possibly affect mortality or reproduction in dolphin stocks, it could not attribute population level impacts of stress as a cause of the failure of the northeastern offshore spotted dolphin and eastern spinner dolphin stocks in the ETP to recover as expected. In addition, separation of dolphin cows and calves and underreported direct kills are two other possible causes of the failure to recover. Moreover, these potential causes are not mutually exclusive.

Although NMFS considered the best available scientific data in the Report, there are several sources of uncertainty regarding these data. For example, the Report to Congress's conclusion that two of the depleted dolphin stocks have failed to recover as expected could be affected substantially because the Tuna Vessel Observer Data (TVOD) may be biased because of inconsistencies in data collection. For the final report and finding, NMFS will pursue a careful evaluation of the data focusing on the recently identified concerns and will conduct a peer-reviewed analysis of these various data sources. In addition it is possible that, since observed mortality has been substantially reduced only in the last ten years, insufficient time has passed to allow detection of recovery because of lags resulting from the time between birth and sexual maturity.

More scientific research is necessary to better evaluate the effect of the tuna purse seine fishery on depleted dolphin stocks in the ETP. As mandated by the IDCPA, NMFS, in cooperation with other IDCP member countries, will continue to collect data for estimating population abundance of dolphin stocks in the ETP in order to determine whether there are significant adverse impacts to depleted dolphin stocks for the final finding. A final finding will be made between July 1, 2001, and December 31, 2002.

Rationale for Finding

The initial finding relies on two determinations: that there is a significant adverse impact on the depleted stocks; and that the significant impact is due to the practices of the purse seine fishery. For the reasons briefly outlined below, NMFS has determined that there is insufficient evidence to conclude that intentional deployment on or encirclement of dolphins with purse seine nets is having a significant adverse impact on any depleted dolphin stock in the ETP. Because of this initial finding, the "dolphin safe" labeling standard specified in paragraph (h)(1) of the DPCIA will change on the effective date of the final regulations to implement the IDCPA.

While the rate of recovery of the dolphin stocks may be lower than expected, there is insufficient information to conclude that there has been a significant adverse impact on the depleted stocks. Additionally, observed dolphin mortality is extremely low. The numbers of dolphins currently killed by the purse seine fishery is in the low thousands, as opposed to the hundreds of thousands in the early 1970s. Furthermore, the total annual mortality of all dolphins in the ETP due to the purse seine fishery is capped at 5,000 by a binding international agreement. The dramatic reduction in dolphin mortality over the past 12 years can be attributed to continued cooperation in the International Dolphin Conservation Program through the auspices of the IATTC. The current low level of observed dolphin mortalities in the ETP tuna purse seine fishery creates an expectation that the fishery will not prevent the depleted populations from recovering.

Finally, there is no solid evidence in any of the scientific studies to date that links the apparent failure of dolphin stocks to recover at the rate expected based on historical data to the current tuna purse seine fishery practices. The Report to Congress does not provide evidence that the ETP tuna purse seine fishery is the cause of the apparent failure of the northeastern offshore spotted dolphin and eastern spinner dolphin stocks to recover as expected; nor does it dismiss the fishery as a possible cause. Due to the large disparity in population abundance estimates of coastal spotted dolphins in the late 1980s versus 1998, it is difficult to evaluate whether the coastal spotted dolphin population in the ETP has been affected by the ETP tuna purse seine fishery. As mandated under the IDCPA, NMFS will continue to conduct IDCPA research on population abundance and stress of dolphins affected by the ETP tuna purse seine fishery. The final finding will be made between July 1, 2001, and December 31, 2002.

Authority: Section 5(c) of Pub. L. 105–42; 16 U.S.C. section 1385

Dated: April 30, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11398 Filed 5-6-99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042099B]

Marine Mammals; File No. 545–1488

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the North Gulf Oceanic Society, SPWS Building, 3776 Lake Avenue, Suite 204, P.O. Box 15244, Homer, Alaska 99603 has been issued a permit to take killer whales (*Orcinus orca*) for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Alaska Region, P.O. Box 21668, Juneau, AK 99802–1668 (907/586–7221).

FOR FURTHER INFORMATION CONTACT: Sara Shapiro or Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On March 16, 1999, notice was published in the **Federal Register** (64 FR 13004) that a request for a scientific research permit to take killer whales had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Dated: April 30, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11535 Filed 5-6-99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title and OMB Number: Continued Health Care Benefit Program; OMB Number 0704–0364.

Type of Request: Reinstatement.

Number of Respondents: 600.

Responses Per Respondent: 1.

Annual Response: 600.

Average Burden Per Response: 15 minutes.

Annual Burden Hours: 150.

Needs and Uses: The information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a program of temporary health benefit coverage comparable to the health benefits provided for former civilian employees of the Federal Government. Respondents are beneficiaries who lose their Military Health System entitlement who desire to enroll in the Continued Health Care Benefits Program. These beneficiaries include former active duty members and their families, unmarried former spouses, emancipated children, and children placed for adoption or legal custody. Interested beneficiaries are required to provide a written election to obtain this continued coverage.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Allison Eydt.

Written comments and recommendations on the proposed information collection should be sent to Ms. Eydt at the Office of Management and Budget, Desk Officer for DoD (Health Affairs), Room 10235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: April 30, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–11434 Filed 5–6–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–14]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–14, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

22 APR 1999
In reply refer to:
I-99/04254

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-14, concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance (LOA) to New Zealand for defense articles and services estimated to cost $397 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: New Zealand

(ii) Total Estimated Value:

Major Defense Equipment*	$270 million
Other	$127 million
TOTAL	$397 million

(iii) Description of Articles or Services Offered: Twenty-eight F-16A/B Block 15 aircraft, 28 F-100-PW-200E engines, 12 ALQ-131 Block II pods, 12 Litening II targeting pods, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics to ensure long-term program support.

(iv) Military Department: Air Force (NAK and SBA)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: None

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(vii) Date Report Delivered to Congress: 22 APR 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

New Zealand - F-16A/B Block 15 Aircraft

The Government of New Zealand has requested a possible sale of 28 F-16A/B Block 15 aircraft, 28 F-100-PW-200E engines, 12 ALQ-131 Block II pods, 12 Litening II targeting pods, spare and repair parts, devices, support equipment, publications and technical documentation, personnel training and training equipment, U.S. Government and contractor engineering and logistics personnel services and other related elements of logistics to ensure long-term program support. The estimated cost is $397 million.

This proposed sale will contribute to the foreign policy and national security of the United States by helping to improve the security of a friendly country which has been and continues to be an important force for political stability and economic progress in the Southwestern Pacific region.

These F-16A/B aircraft will be used to increase New Zealand's small fighter inventory and eventually replace their aging fleet of A-4 aircraft, as well as enhance its interoperability with U.S. forces. New Zealand will use these aircraft to modernize its air defense capability and will have no difficulty absorbing them into its inventory.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Lockheed Martin, Fort Worth, Texas. There are no offset agreements proposed to be entered into in connection with this potential sale.

Implementation of this proposed sale will require the assignment of one U.S. Government personnel and two contractor representatives for two years in-country.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-14

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The F-16A/B Block 15 weapon system is unclassified, except as mention below. Sensitive elements of the F-16A/B Block 15 aircraft include the Pratt and Whitney F-100-PW-220E engine, AN/ALR-69 Radar Warning Receiver, AN/APG-66 radar, the fly-by-wire flight control system and the diagnostics in the Avionics Intermediate Shop. The system design notes on the software architecture are also critical elements. Classified elements of the F-16A/B include the F-100 engine infrared signature, AN/ALE-40 Chaff/Flare Dispenser, radar software documentation, six Line Replaceable Units and Operational Flight Program (OFP) of the AN/ALR-69, the OFP of the Fire Control Computer, and operating manuals and maintenance technical orders containing performance information, operating and test procedures, weapons delivery information, repair procedures, and other information related to support operation and repair at the organizational and intermediate levels. The hardware, software, and data identified are classified to protect vulnerabilities, design and performance parameters, munitions related data, and similar critical information.

2. The F-100 engine and the associated component parts used in F-16A/B aircraft are unclassified. However, several manufacturing processes, design practices, and metallurgical fabrication techniques used are advanced technology methods found only with the U.S. propulsion industry. The sale of F-100 engines to New Zealand will not include the transfer of sensitive technology as the sale does not include sensitive manufacturing, design, or metallurgical processes or information.

3. The AN/ALQ-131 Block II Electronic Countermeasures system consists of pods, support equipment, and support documentation. The AN/ALQ-131 pod is an advanced tactical system designed for use on high performance aircraft. The Block II support equipment contains all equipment required to maintain the pod at the intermediate and organizational level. The external view of these end items is unclassified, but some internal components are classified. Related documentation to successfully operate and support the items at the intermediate and organizational level will be released. Classified hardware elements of the AN/ALQ-131 pod include the antenna transmitter group and receiver processor assemblies classified Confidential. Some end item hardware, software, operational techniques and other data are classified at the Confidential and Secret level.

4. The Litening II navigation and targeting pod is a joint development of Rafael (Israel) and Northrup-Grumman (U.S.). The pod and all subsystems are Unclassified but contain technology representing the latest state-of-the-art in several areas. Sensitive elements include the Forward Looking Infrared (FLIR) navigation system which includes a zoom future but does not provide a terrain following capability.

5. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, it might be able to develop countermeasures or countertactics which could reduce weapon system effectiveness. Of additional concern, but requiring a much longer exploitation period, is the possibility such information could be used in the development of a systems with similar or advanced capabilities.

6. A determination has been made that New Zealand can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–11437 Filed 5–6–99; 8:45 am]
BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0083]

Proposed Collection; Comment Request Entitled Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0083).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Qualification Requirements. This OMB clearance currently expires on August 31, 1999.

DATES: Comments may be submitted on or before July 6, 1999.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Ralph DeStefano, Federal Acquisition Policy Division, GSA (202) 501–1758.

SUPPLEMENTARY INFORMATION:

A. Purpose

Under the Qualified Products Program, an end item, or a component thereof, may be required to be prequalified. The solicitation at FAR 52.209–1, Qualification Requirements, requires offerors who have met the qualification requirements to identify the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known).

The contracting officer uses the information to determine eligibility for award when the clause at 52.209–1 is included in the solicitation. The offeror must insert the offeror's name, the manufacturer's name, source's name, the item name, service identification, and test number (to the extent known). Alternatively, items not yet listed may be considered for award upon the submission of evidence of qualification with the offer.

B. Annual Reporting Burden

Public reporting burden for this collection of information is estimated to average *15* minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

The annual reporting burden is estimated as follows: Respondents, *2,207;* responses per respondent, *100;* total annual responses, *220,700;* preparation hours per response, *.25;* and total response burden hours, *55,175.*

OBTAINING COPIES OF PROPOSALS: Requester may obtain a copy of the justification from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0083, Qualification Requirements, in all correspondence.

Dated: May 4, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 99–11523 Filed 5–6–99; 8:45 am]
BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense, Department of Defense Education Activity (DoDEA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Pub. L. 92–463, notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held from 8 a.m. to 5 p.m. on May 26, 1999. The meeting will be open to the public and will be held in the 9th floor conference room at the Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, Virginia 22203–1635. The purpose of the meeting is to recommend to the Director, Department of Defense Dependents' Schools (DoDDS), general policies for the operation of the DoDDS; to provide the Director, DoDDS, with information about effective educational programs and practices that should be considered by DoDDS; and to perform other tasks as may be required by the Secretary of Defense. The focus of this meeting will be on the Domestic Dependent Elementary and Secondary Schools (DDESS) and inclusion of DDESS representation on the ACDE. For further information contact Ms. Polly Purser at 703–696–4235, extension 1911.

Dated: May 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–11436 Filed 5–6–99; 8:45 am]
BILLING CODE 6001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Strategic Environmental Research and Development Program, Scientific Advisory Board

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee (P.L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: June 16 and June 17, 1999 from 0830 to 1700.

Place: National Rural Electric Cooperative Association, 4301 Wilson Boulevard, Conference Center Room 1, Arlington, VA.

Matters To Be Considered: Research and Development proposals and continuing projects requesting Strategic Environmental Research and Development Program funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Amy Kelly, SERDP Program Office, 901 North Stuart Street, Suite 303, Arlington, VA or by telephone at (703) 696–2124.

Dated: May 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–11435 Filed 5–6–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of revised non-foreign overseas per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 207. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 207 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: May 1, 1999.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 206. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The text of the Bulletin follows:

BILLING CODE 5001–10–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/30	161		63		224	03/01/1999
10/01 - 04/30	89		56		145	03/01/1999
BARROW	115		73		188	03/01/1999
BETHEL	105		60		165	03/01/1999
COLD BAY	110		68		178	03/01/1999
CORDOVA	85		62		147	03/01/1998
CRAIG						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
DEADHORSE	80		67		147	03/01/1999
DENALI NATIONAL PARK						
06/01 - 08/31	115		52		167	03/01/1998
09/01 - 05/31	90		50		140	03/01/1998
DILLINGHAM	95		59		154	10/01/1998
DUTCH HARBOR-UNALASKA	110		71		181	03/01/1999
EARECKSON AIR STATION	80		57		137	03/01/1999
EIELSON AFB						
05/15 - 09/15	118		58		176	03/01/1999
09/16 - 05/14	81		54		135	03/01/1999
ELMENDORF AFB						
05/01 - 09/30	161		63		224	03/01/1999
10/01 - 04/30	89		56		145	03/01/1999
FAIRBANKS						
05/15 - 09/15	118		58		176	03/01/1999
09/16 - 05/14	81		54		135	03/01/1999
FT. RICHARDSON						
05/01 - 09/30	161		63		224	03/01/1999
10/01 - 04/30	89		56		145	03/01/1999
FT. WAINWRIGHT						
05/15 - 09/15	118		58		176	03/01/1999
09/16 - 05/14	81		54		135	03/01/1999
GLENNALLEN	90		52		142	10/01/1998
HEALY						
06/01 - 08/31	115		52		167	03/01/1998
09/01 - 05/31	90		50		140	03/01/1998
HOMER						
05/15 - 09/15	115		58		173	03/01/1999
09/16 - 05/14	98		57		155	03/01/1999
JUNEAU	105		68		173	03/01/1999
KAKTOVIK	175		74		249	03/01/1999
KAVIK CAMP	125		69		194	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
KENAI-SOLDOTNA				
05/01 - 09/30	114	63	177	03/01/1999
10/01 - 04/30	76	59	135	03/01/1999
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
KING SALMON	101	70	171	03/01/1999
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	99	67	166	03/01/1999
KOTZEBUE				
05/01 - 08/31	137	75	212	03/01/1999
09/01 - 04/30	73	61	134	03/01/1999
KULIS AGS				
05/01 - 09/30	161	63	224	03/01/1999
10/01 - 04/30	89	56	145	03/01/1999
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/15 - 09/15	118	58	176	03/01/1999
09/16 - 05/14	81	54	135	03/01/1999
NOME				
03/01 - 03/31	117	58	175	03/01/1999
04/01 - 02/29	92	56	148	03/01/1999
NUIQSUT	120	69	189	03/01/1999
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/30	122	65	187	03/01/1999
10/01 - 04/30	86	61	147	03/01/1999
SITKA-MT. EDGECOMBE				
09/05 - 03/31	83	59	142	10/01/1998
04/01 - 09/04	101	60	161	03/01/1998
SKAGWAY				
05/01 - 09/30	110	74	184	03/01/1999
10/01 - 04/30	88	73	161	03/01/1999
SPRUCE CAPE	99	67	166	03/01/1999

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
TANANA						
03/01 - 03/31	117		58		175	03/01/1999
04/01 - 02/29	92		56		148	03/01/1999
UMIAT	107		33		140	03/01/1999
VALDEZ						
05/15 - 10/01	110		63		173	03/01/1999
10/02 - 05/14	84		60		144	03/01/1999
WAINWRIGHT	127		82		209	03/01/1999
WRANGELL						
05/01 - 09/30	110		74		184	03/01/1999
10/01 - 04/30	88		73		161	03/01/1999
YAKUTAT	110		68		178	03/01/1999
[OTHER]	80		57		137	03/01/1999
AMERICAN SAMOA						
AMERICAN SAMOA	73		53		126	03/01/1997
GUAM						
GUAM (INCL ALL MIL INSTAL)	150		79		229	10/01/1998
HAWAII						
CAMP H M SMITH	110		61		171	10/01/1998
EASTPAC NAVAL COMP TELE AREA	110		61		171	10/01/1998
FT. DERUSSEY	110		61		171	10/01/1998
FT. SHAFTER	110		61		171	10/01/1998
HICKAM AFB	110		61		171	10/01/1998
HONOLULU NAVAL & MC RES CTR	110		61		171	10/01/1998
ISLE OF HAWAII: HILO	80		52		132	06/01/1998
ISLE OF HAWAII: OTHER	100		54		154	10/01/1998
ISLE OF KAUAI						
12/01 - 04/30	136		64		200	10/01/1998
05/01 - 11/30	115		62		177	06/01/1998
ISLE OF KURE	65		41		106	05/01/1999
ISLE OF MAUI	112		64		176	10/01/1998
ISLE OF OAHU	110		61		171	10/01/1998
KANEOHE BAY MC BASE	110		61		171	10/01/1998
KEKAHA PACIFIC MISSILE RANGE FAC						
12/01 - 04/30	136		64		200	10/01/1998
05/01 - 11/30	115		62		177	06/01/1998
KILAUEA MILITARY CAMP	80		52		132	06/01/1998
LUALUALEI NAVAL MAGAZINE	110		61		171	10/01/1998
NAS BARBERS POINT	110		61		171	10/01/1998
PEARL HARBOR [INCL ALL MILITARY]	110		61		171	10/01/1998
SCHOFIELD BARRACKS	110		61		171	10/01/1998
WHEELER ARMY AIRFIELD	110		61		171	10/01/1998
[OTHER]	79		62		141	06/01/1993

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LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
JOHNSTON ATOLL				
JOHNSTON ATOLL	13	9	22	10/01/1998
MIDWAY ISLANDS				
MIDWAY ISLANDS [INCL ALL MILITAR	65	41	106	05/01/1999
NORTHERN MARIANA ISLANDS				
ROTA	105	71	176	10/01/1998
SAIPAN	170	78	248	05/01/1997
[OTHER]	61	53	114	05/01/1997
PUERTO RICO				
BAYAMON				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
CAROLINA				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
FAJARDO [INCL CEIBA & LUQUILLO]	82	60	142	03/01/1998
FT. BUCHANAN [INCL GSA SVC CTR,				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
HUMACAO	82	60	142	03/01/1998
LUIS MUNOZ MARIN IAP AGS				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
MAYAGUEZ	94	60	154	06/01/1998
PONCE	101	67	168	09/01/1998
ROOSEVELT RDS & NAV STA	82	60	142	03/01/1998
SABANA SECA [INCL ALL MILITARY]				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
SAN JUAN & NAV RES STA				
04/16 - 11/14	150	70	220	04/01/1999
11/15 - 04/15	167	72	239	04/01/1999
[OTHER]	66	57	123	09/01/1998
VIRGIN ISLANDS (U.S.)				
ST. CROIX				
04/15 - 12/14	107	75	182	08/01/1998
12/15 - 04/14	131	78	209	08/01/1998
ST. JOHN				
04/15 - 12/14	286	89	375	10/01/1998
12/15 - 04/14	413	102	515	08/01/1998
ST. THOMAS				
04/15 - 12/14	171	75	246	08/01/1998
12/15 - 04/14	285	87	372	08/01/1998

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
WAKE ISLAND						
WAKE ISLAND	60		32		92	09/01/1998

Civilian Bulletin No. 207 Page 6

Dated: May 3, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–11438 Filed 5–6–99; 8:45 am]

BILLING CODE 5001–10–C

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Record system notice amendment.

SUMMARY: The Department of the Air Force proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on June 7, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record system being amended are set forth below followed by the notice as amended, published in its entirety.

Dated: May 3, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F011 AF AMC A

SYSTEM NAME:

Air Force Operations Resource Management Systems (AFORMS) *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F011 AF XO A'.

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Following 'Air Force civilian employees' add 'or contractors,'

CATEGORIES OF RECORDS IN THE SYSTEM:

First line, delete 'base level'. Lines eight and nine, delete 'and flying history information is maintained at Norton Air Force Base, CA'. Delete the fifth paragraph.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 60-1, Flight Management' and insert 'Air Force Instruction 11-401, Flight Management, and AFI 11-402, Aviation and Parachutist Service, Aeronautical Ratings and Badges'.

PURPOSE(S)

Item (8) Delete 'Operations' and insert 'the Air Staff, major command'

Item (9) Delete last part of paragraph which reads 'including flying safety data involving AFORMS flying hour/ individual information stored in the Norton Air Force Base, flying safety data bank maintained by the USAF Inspection and Safety Center'

OTHER BASE USERS: CONSOLIDATED BASE PERSONNEL OFFICE. Delete 'CONSOLIDATED BASE PERSONNEL OFFICE' and insert MILITARY PERSONNEL FLIGHT'

AIR FORCE MANPOWER AND PERSONNEL CENTER. Delete AIR FORCE MANPOWER AND PERSONNEL CENTER' and insert 'AIR FORCE PERSONNEL CENTER'

HQ USAF. Delete last portion beginning with 'Air Force Accounting and Finance Center'

ADD SEPARATE ENTRY

'DEFENSE FINANCE ACCOUNTING SYSTEM - uses AFORMS information to validate all flying payments.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480.'

* * * * *

F011 AF XO A

SYSTEM NAME:

Air Force Operations Resource Management Systems (AFORMS).

SYSTEM LOCATION:

Headquarters United States Air Force and major command headquarters. Host, tenant and squadron Operations System Management offices at Air Force installations, and McDonnell Douglas Training Systems, McDonnell Aircraft Company, 12301 Missouri Bottom Road, Hazelwood, MO 63042. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, Air Force civilian employees, or contractors, Air Force Reserve and Air National Guard personnel, Army, Navy and Marine Corps active duty military personnel and those foreign military personnel who are assigned to aviation duties by competent authority and attached to the USAF for flying support or who have been suspended from flying duties for a period of not more than 5 years.

CATEGORIES OF RECORDS IN THE SYSTEM:

The AFORMS data base contains a master file of flying records for each individual in categories listed above, a month-to-date transaction file and a twelve month history file. A centralized file of selected information from each individual's master record is also maintained at HQ USAF. In addition to automated data files, this system uses manual files for maintaining historical data and important source documents. An Individual Flight Record Folder (FRF) is established for each category of fliers listed above and is the prime repository for a computer listing which itemizes each individual's flight accomplishments as well as various source documents which serve to validate information entered into the computer data base for the system. Each Host Operations System Management (HOSM) office maintains a file of Aeronautical Orders and Military Pay Orders to provide source documentation of flying pay actions initiated by the flight manager. Information which is maintained in the automated files is derived directly from the AFORMS master file or from subsequent processing of information entered into the master file.

Categories of information maintained in the master file are: IDENTIFICATION DATA - provides individual identifiers and other information directly related to each individual in the file.

DUTY ASSIGNMENT DATA - Includes information such as the major command of assignment for the individual, the Air Force Specialty Code indicating professional duties, the unit, the responsible Operations system manager, base of assignment, etc.

AIRCREW TRAINING AND QUALIFICATION DATA - includes information such as flight and ground professional flying training accomplishments, aircrew qualification status, physical status for flight duties, types of aircraft assigned, etc.

FLYING PAY ENTITLEMENT DATA - Includes information needed to administer the payment of flying incentive pay for each individual.

LOCAL USE DATA - contains information used by major or local command to supplement general system information as needed to meet unique unit requirements within the categories of information listed herein.

SYSTEM CONTROL DATA - Contains computer data used to automatically control internal system functions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

37 U.S.C. 301a, Incentive pay: Public Law 92–204 (Appropriations Act for 1973), Section 715; Public Law 93–570 (Appropriations Act for 1974); Public Law 93–294 (Aviation Career Incentive Act of 1974; DOD Directive 7730.57 (Aviation Career Incentive Act and Required Annual Report); Air Force Instruction 11–401, Flight Management; Air Force Instruction 11-402, Aviation and Parachutist Service, Aeronautical Ratings and Badges; and E.O. 9397 (SSN).

PURPOSE(S):

The AFORMS provides information and automated data processing capabilities used to manage and administer Air Force operations such as aircrew training and evaluation, flight scheduling functions, flying safety and related functions needed to attain and maintain combat or mission readiness. All information is entered into the system at the air base level. This information is then processed for use by flying resource managers at all levels through periodic computer product reports or automated systems interfaces.

The specific uses of information and user categories for this system are: BASE LEVEL ACTIVITIES -

(1) To establish each member's flying pay entitlement status and to monitor continuing entitlement in accordance with existing directions;

(2) To record each individual's flying activities, both hours and specific events, and provide indications of successful attainment of standards or deficiencies;

(3) To establish each individual's Aviation Service code for use in indicating type of flying activity or reason for inactive status if applicable;

(4) To determine each rated member's eligibility to perform operational flying in accordance with existing USAF directives;

(5) To provide an indication of each rated member's total operational flying time in terms of total aviation career duties;

(6) To establish 'suspense lists' for use in scheduling flying personnel for flights, schools, tests and similar events directly related to their duties as professional airmen;

(7) To provide each applicable individual and manager with all aviation career profile information needed to monitor flying career development, professional qualifications and training deficiencies;

(8) To provide information requested by the Air Staff, major command, or other base functions, which relates to the flying duties and accomplishments of all personnel in the file;

(9) To provide statistical data for management analysis and review of all aspects of each base's flying programs.

OTHER BASE USERS: MILTARY PERSONNEL FLIGHT - uses information provided by this system, through an automated data interface, to report the flying status of all individuals in the files; provides flying career background information used for assignment actions.

ACCOUNTING AND FINANCE OFFICE - uses Military Pay Orders, prepared by flight management offices, to start and stop flying incentive pay in accordance with each individual's flying status and eligibility as reflected by the information in the system; uses the files to perform payment audits to identify individuals being paid improperly.

BASE SUPPLY - uses flying status information to determine which individuals are qualified to draw all authorized flying equipment.

BASE MEDICAL FACILITY - uses system data to determine projected workloads associated with scheduled flight physical examinations.

MAJOR COMMANDS - use all system data to measure the effectiveness of subordinate unit training programs and to check command-wide flying effectiveness.

AIR FORCE PERSONNEL CENTER - uses AFORMS information to establish assignment objectives and career development programs for USAF military personnel in the system.

HQ USAF - uses various identification and flying data to establish statistical data needed to verify the effectiveness of standard procedures, determine the need for policy modification, provide a timely and accurate census of various types of flyers and provide a centralized point for collection and collation of data used by all levels of management.

The Defense Finance and Accounting Service uses AFORMS information to validate all flying payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, on computer magnetic tapes, magnetic disks, and CD-ROM.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties and individuals in files. Access is specifically controlled by the Host Operations System Management office. Records are stored in locked cabinets or rooms. Computer terminals are locked when not in use or kept under surveillance.

RETENTION AND DISPOSAL:

Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquires to or visit the Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480 or to the local HOSM office of the individual.

Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. Include name and Social Security Number. Make base level inquiries to or visit the local servicing HOSM office of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Operational Training Division, Directorate of Operations and Training, Deputy Chief of Staff/Air and Space Operations, 1480 Air Force Pentagon, Washington, DC 20330-1480 or to their local HOSM office. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from individuals, aircrew managers, automated system interfaces and from source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 AF PC W

SYSTEM NAME:

Suggestions, Inventions, Scientific Achievements *(June 11, 1997, 62 FR 31793).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'F038 AF AFCQMI A'.

SYSTEM NAME:

Delete 'Suggestions' and replace with 'Ideas'.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any individual submitting an idea, invention, or scientific achievement.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Files are originated when personnel initiate an idea, invention, or scientific achievement. Case files and computer output products are reviewed by the Manpower and Quality Office personnel. Copy of approved award is filed in civilian employee's official personnel file. Copy of approved award is not retained elsewhere for military member.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by Social Security Number or Idea number.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Computer storage devices are protected by computer system software.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Directorate of Manpower, Organization and Quality, Deputy Chief of Staff, Plans and Programs, Headquarters United States Air Force, 1070 Air Force Pentagon, Washington, DC 20330-1070.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information obtained from source document (AF Form 1000, Idea Submission) include name, Social Security Number, job title, home or mailing address, grade and organizational address.'

* * * * *

F038 AF AFCQMI A

SYSTEM NAME:

Ideas, Inventions, Scientific Achievements.

SYSTEM LOCATION:

Systems Integration and Support Division, Air Force Center for Quality and Management Innovation, 550 E Street East, Randolph Air Force Base, TX 78150-4451.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual submitting an idea, invention, or scientific achievement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files include idea forms, evaluations and substantiating documentation consisting of forms, which contain name, Social Security Number, job title, home or mailing address, grade and organizational address; certificates, administrative correspondence; records of committee actions; award actions; reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation as implemented by Air Force Instruction 38-401 and E.O. 9397 (SSN).

PURPOSE(S):

Files are originated when personnel initiate an idea, invention, or scientific achievement. Case files and computer output products are reviewed by the Manpower and Quality Office personnel. Copy of approved award is filed in civilian employee's official personnel file. Copy of approved award is not retained elsewhere for military member.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in paper and electronic media including computers and computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number or Idea number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Idea files are retained for 18 months after actual or projected implementation date for ideas in the idea pool or 1 year after disapproved ideas. Computer records destroyed by erasing, deleting or overwriting; paper copies by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Directorate of Manpower, Organization and Quality, Deputy Chief of Staff, Plans and Programs, Headquarters United States Air Force,

1070 Air Force Pentagon, Washington, DC 20330-1070.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to Directorate of Manpower, Organization and Quality, Deputy Chief of Staff, Plans and Programs, Headquarters United States Air Force, 1070 Air Force Pentagon, Washington, DC 20330-1070.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Directorate of Manpower, Organization and Quality, Deputy Chief Staff, Plans and Programs, Headquarters United States Air Force, 1070 Air Force Pentagon, Washington, DC 20330-1070.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source document (AF Form 1000, Idea Submission) include name, Social Security Number, job title, home or mailing address, grade and organizational address.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 SAFCB A

SYSTEM NAME:

Military Records Processed by the Air Force Correction Board *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Secretary of the Air Force, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002 and the Washington National Records Center, Suitland, MD 20409.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Executive Secretary, Air Force Board for the Correction of Military Records, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.'

* * * * *

F036 SAFCB A

SYSTEM NAME:

Military Records Processed by the Air Force Correction Board.

SYSTEM LOCATION:

Office of the Secretary of the Air Force, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002 and the Washington National Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All members or former members of the Air Force; Army Air Forces, Air Corps, United States Army; Air Service, United States Navy; and Aviation Section, Signal Corps, United States Army, who have applied to the Air Force Board for the Correction of Military Records (AFBCMR).

CATEGORIES OF RECORDS IN THE SYSTEM:

Case files consist of applications to AFBCMR for correction of military records, with supporting evidence, staff advisory opinions and final determinations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 79 - Correction of Military Records.

PURPOSE(S):

To review applications for correction of military records to determine the existence of an error or injustice and, when appropriate, make recommendations to the Secretary of the Air Force.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Case files are maintained for 75 years then destroyed. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Secretary, Air Force Board for the Correction of Military Records, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Executive Secretary, Air Force Board for the Correction of Military Records, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Executive Secretary, Air Force Board for the Correction of Military Records, Headquarters, United States Air Force, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

Request for review must provide applicant's full name, Social Security Number, and AFBCMR docket number (if known). Reviews are held at 1535 Command Drive, Andrews Air Force Base, MD 20762-7002 between the hours of 0900 to 1600. An applicant must present a personal identification document. A designated representative must present a letter of authorization from the applicant.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting and appealing initial agency determinations are published in Air Force Instruction 37-132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from applicants, Air Force offices and/or other Government agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 SAFPC A

SYSTEM NAME:

Air Force Discharge Review Board Retain Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).'

* * * * *

F036 SAFPC A

SYSTEM NAME:

Air Force Discharge Review Board Retain Files.

SYSTEM LOCATION:

Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Air Force Personnel who submit applications for review of discharge/separation/dismissal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of correspondence between applicant and Discharge Review Board; duplicates of summary of board proceedings and summary of applicant's military record; and miscellaneous control records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553, Review of discharge or dismissal.

PURPOSE(S):

Used by the Air Force Discharge Review Board as a temporary reference file.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name, Social Security Number or Military Service Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in safes.

RETENTION AND DISPOSAL:

Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

Written requests should contain the full name; service number and Social Security Number of the requester. Visitors must have some form of identification such as driver's license, in addition to the above information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's military personnel record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 SAFPC B

SYSTEM NAME:

Air Force Discharge Review Board Original Case Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.'

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F036 SAFPC B

SYSTEM NAME:

Air Force Discharge Review Board Original Case Files.

SYSTEM LOCATION:

National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Air Force Personnel who submit applications for review of discharge/separation/dismissal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Original copy of summary of board proceedings, individual's application form, order appointing Discharge Review Board members, summary of applicant's military personnel record, correspondence between applicant and Discharge Review Board and magnetic recording of hearing (if required).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553, Review of discharge or dismissal.

PURPOSE(S):

Documents are created and placed in the applicant's military personnel file as a permanent record of the Board's action in the performance of its statutory function. Files are used by the Air Force Personnel Center to create new discharge documents if required and to notify the applicant of the outcome of his or her case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's

compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and recording.

RETRIEVABILITY:

Retrieved by name, Social Security Number or Military Service Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms and controlled by personnel screening.

RETENTION AND DISPOSAL:

Retained permanently at the National Personnel Records Center (Military Personnel Records), 9700 Page Boulevard, St. Louis, MO 63132.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

Written requests should contain the full name, service number and Social Security Number of the requester. Visitors must have some form of identification such as driver's license, in addition to the above information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's military personnel record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 SAFPC C

SYSTEM NAME:

Air Force Discharge Review Board Voting Cards *(June 11, 1997, 62 FR 31793)*.

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.'

* * * * *

F036 SAFPC C

SYSTEM NAME:

Air Force Discharge Review Board Voting Cards.

SYSTEM LOCATION:

Office of the Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Air Force Personnel who submit applications for review of discharge/separation/dismissal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Voting cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553, Review of Discharge or Dismissal.

PURPOSE(S):

Used by the Air Force Discharge Review Board to record votes of board members on individual cases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in card files.

RETRIEVABILITY:

Retrieved by name, Social Security Number or Military Service Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and, by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration)

SYSTEM MANAGER(S) AND ADDRESS:

Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

Written requests should contain the full name; service number and Social Security Number of the requester. Visitors must have some form of identification such as driver's license, in addition to the above information.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's military personnel record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 SAFPC D

SYSTEM NAME:

Air Force Discharge Review Board Case Control/Locator Cards *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.'

* * * * *

F036 SAFPC D

SYSTEM NAME:

Air Force Discharge Review Board Case Control/Locator Cards.

SYSTEM LOCATION:

Air Force Personnel Center, Randolph Air Force Base, TX 78150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Former Air Force personnel who submit applications for review of discharge/separation/dismissal.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case control/locator cards.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 1553, Review of discharge or dismissal.

PURPOSE(S):

Used by personnel at the Air Force Personnel Center who are responsible for servicing the Air Force Discharge Review Board to keep track of cases and to record the daily activity relating to each case.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in card files.

RETRIEVABILITY:

Retrieved by name, Social Security Number or Military Service Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are controlled by personnel screening.

RETENTION AND DISPOSAL:

Disposition pending (no records will be destroyed until authorized by the National Archives and Records Administration).

SYSTEM MANAGER(S) AND ADDRESS:

Director, Secretary of the Air Force Personnel Council, 1535 Command Drive, Andrews Air Force Base, MD 20762-7002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Air Force Personnel Center, SAF/MIBR, 550 C Street, Suite 40, Randolph Air Force Base, TX 78150-4742.

Written inquiries should contain individual's full name and Military Service Number or Social Security Number. Visitor must supply their full name and Military Service Number or Social Security Number and provide some form of identification such as driver's license or credit card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Air Force Personnel Center, SAF/MIBR, 550 C Street, Suite 40, Randolph Air Force Base, TX 78150-4742.

Written inquiries should contain individual's full name and Military Service Number or Social Security Number. Visitor must supply their full name and Military Service Number or Social Security Number and provide some form of identification such as driver's license or credit card.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's application form and military personnel record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11439 Filed 5–6–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Air Force

Privacy Act of 1974; System of Records

AGENCY: Department of the Air Force, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Department of the Air Force proposes to amend systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 7, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Air Force Access Programs Manager, Headquarters, Air Force Communications and Information Center/ITC, 1250 Air Force Pentagon, Washington, DC 20330–1250.

FOR FURTHER INFORMATION CONTACT: Mrs. Anne Rollins at (703) 588–6187.

SUPPLEMENTARY INFORMATION: The Department of the Air Force's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed amendments are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed

by the notices as amended, published in their entirety.

Dated: May 3, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

F036 USAFE A

SYSTEM NAME:

Student Identification/Locator Card *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'United States Air Forces in Europe/Professional Military Education (USAFE/PME), (Kisling NCO Academy), Unit 3345, Box 570, APO AE 09021-5570.'

* * * * *

F036 USAFE A

SYSTEM NAME:

Student Identification/Locator Card.

SYSTEM LOCATION:

United States Air Forces in Europe/ Professional Military Education (USAFE/PME), (Kisling NCO Academy), Unit 3345, Box 570, APO AE 09021-5570.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All students attending United States Air Force in Europe (USAFE) NCO academies and leadership schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

Questionnaire including military data such as name, Social Security Number, grade, age, race, education data, personal data, locator data, and evaluation data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and Duties; delegation as implemented by Air Force Instruction 36-2302, Noncommissioned Officer Professional Military Education, USAFE Supplement 1.

PURPOSE(S):

Used for student identification, locator purposes, and to evaluate student academic progress.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

Records are used to verify past attendance and final academic standing/ awards.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Destroy 10 years after student completes training by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Information Management, United States Air Forces in Europe/ Professional Military Education (USAFE/PME), (Kisling NCO Academy), Unit 3345, Box 570, APO AE 09021-5570.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Commandant at United States Air Forces in Europe/Professional Military Education (USAFE/PME), (Kisling NCO Academy), Unit 3345, Box 570, APO AE 09021-5570'

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Commandant at United States Air Forces in Europe/ Professional Military Education (USAFE/PME), (Kisling NCO Academy), Unit 3345, Box 570, APO AE 09021-5570.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual student.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA B

SYSTEM NAME:

Master Cadet Personnel Record (Active/Historical) *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

United States Air Force Academy, Dean of the Faculty Examinations and Records, HQ USAFA/DFRR, 2354 Fairchild Drive, Suite 6D106, United States Air Force Academy, CO 80840-6210.

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with '(1) Active: Records used in the candidate selection process for the USAF Academy include high school records and college transcripts, College Entrance Examinations Board test scores; admission test scores; personnel data records; personal data to include address; telephone number; Social Security Number; population or ethnic group selections; height; weight; citizenship; statements of reasons for attending the Academy and preparatory school and college records, if applicable; invitation to travel letter; transfer/validation credit information; computer generated products containing academic grade information; parental addresses by state roster and verification of independent studies; computer listings of minority students by population or ethnic group; listings of international cadets; special order assigning cadets to the Cadet Wing; Cadet wing, squadron, and class alpha rosters, and matriculation rosters.

(2) Historical: Selected special orders (appointment, assignment, awards, separation, etc.); letters and records of resignation/separation actions, (if applicable); College Entrance Examination Board test scores; personnel data records, and biographical data; computer generated products reflecting academic grade information; grade and quality point averages; course grade distributions; overall military and academic orders of merit; graduation data; majors awarded; types of degrees conferred; and academic and military honors.'

* * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Office of the Registrar, Dean of the Faculty Examinations and Records, HQ USAFA/ DFRR, 2354 Fairchild Drive, Suite

6D106, United States Air Force Academy, CO 80840-6210.'

* * * * *

F036 USAFA B

SYSTEM NAME:

Master Cadet Personnel Record (Active/Historical).

SYSTEM LOCATION:

United States Air Force Academy, Dean of the Faculty Examinations and Records, HQ USAFA/DFRR, 2354 Fairchild Drive, Suite 6D106, United States Air Force Academy, CO 80840-6210.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former United States Air Force (USAF) Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Active: Records used in the candidate selection process for the USAF Academy include high school records and college transcripts, College Entrance Examinations Board test scores; admission test scores; personnel data records; personal data to include address; telephone number; Social Security Number; population or ethnic group selections; height; weight; citizenship; statements of reasons for attending the Academy and preparatory school and college records, if applicable; invitation to travel letter; transfer/validation credit information; computer generated products containing academic grade information; parental addresses by state roster and verification of independent studies; computer listings of minority students by population or ethnic group; listings of international cadets; special order assigning cadets to the Cadet Wing; Cadet wing, squadron, and class alpha rosters, and matriculation rosters.

(2) Historical: Selected special orders (appointment, assignment, awards, separation, etc.); letters and records of resignation/separation actions, (if applicable); College Entrance Examination Board test scores; personnel data records, and biographical data; computer generated products reflecting academic grade information; grade and quality point averages; course grade distributions; overall military and academic orders of merit; graduation data; majors awarded; types of degrees conferred; and academic and military honors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; superintendent; faculty, and E.O. 9397 (SSN).

PURPOSE(S):

(1) Active: These records form the nucleus of the Master Cadet Personnel Record for candidates selected to attend the Academy. These records are used to record the academic, athletic and military training histories of cadets who attend the Academy. They provide a means of checking the performance of each cadet, recording all grades for completed courses, computing grade point averages, identifying deficiencies, and insuring all requirements for graduation are met. Grade information is used by cadets, Academy instructors, counselors, and advisors in selecting majors, determining academic requirements for specific majors, and scheduling courses. Computer listings are also used by faculty and staff members to readily identify cadets by squadron, class, and population or ethnic group. Academic Review Committees and the Academy Board use these records to evaluate cadet performance and to determine eligibility for continuance at the Academy.

(2) Historical: These records form a complete history of each cadet who attended the Academy. They record academic, athletic, and military performance of each cadet and to coordinate statistics relating to cadet strength and attrition. Files are reviewed by organizations within the Department of Defense to determine qualifications for assignments; by Air Force Reserve Officer Training Corps (AFROTC), recruiting and medical services units to determine qualifications and eligibility for training programs and for military service, and by the Air Force Personnel Center (AFPC) to confirm or recreate a military service record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Files are disclosed to the Federal Bureau of Investigation for conducting background investigations for security clearances, and to the Department of Veterans Affairs for determining eligibility for benefits.

Academic and personnel information is released to nominating officials, and to the Western Athletic Conference (WAC) officials on cadets participating in WAC-sponsored intercollegiate athletics.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in computers, on computer output products, and on microfilm.

RETRIEVABILITY:

Retrieved by name and Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system, by person(s) responsible for servicing the record system in performance of their official duties, who are properly screened and cleared for need-to-know. Records are stored in locked file containers, cabinets, vaults or rooms, and in computerized data storage devices controlled by computer system software.

RETENTION AND DISPOSAL:

Temporary documents are destroyed 90 days after disenrollment or graduation. Permanent documents are microfilmed one year after graduation. The microfilm is retained permanently in the office of the Registrar. Paper copy is destroyed after 6 years. Records are destroyed by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Registrar, Dean of the Faculty Examinations and Records, HQ USAFA/DFRR, 2354 Fairchild Drive, Suite 6D106, United States Air Force Academy, CO 80840-6210.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Dean of the Faculty Examinations and Records, HQ USAF/DFRR, 2354 Fairchild Drive, Suite 6D106, United States Air Force Academy, CO 80840-6210.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Dean of the Faculty Examinations and Records, HQ USAF/DFRR, 2354 Fairchild Drive, Suite 6D106, United States Air Force Academy, CO 80840-6210.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and

appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from forms the individual fills out during the admissions process; other educational institutions; College Entrance Examination Board and American College Testing scores; Air Force medical examination; individual and personnel records; grades; tests; examinations given at the Academy; high school and college transcripts, and from actions taken by the Academy Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Evaluation material used to determine potential for promotion in the Military Services may be exempt pursuant to 5 U.S.C. 552a(k)(7), but only to the extent that the disclosure of such material would reveal the identity of a confidential source.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F036 USAFA I

SYSTEM NAME:

Educational Research Data Base *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Cadet History Data Base'.

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Institutional Research and Assessment Division, Headquarters, United States Air Force Academy, (HQ USAFA/XPR), 2304 Cadet Drive, Suite 300, United States Air Force Academy, CO 80840-5002'.

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry 'and names of cadets whose parents are general officers'.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete the third paragraph.

* * * * *

F036 USAFA I

SYSTEM NAME:

Cadet History Data Base.

SYSTEM LOCATION:

Chief, Institutional Research and Assessment Division, Headquarters, United States Air Force Academy, (HQ USAFA/XPR), 2304 Cadet Drive, Suite 300, United States Air Force Academy, CO 80840-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Current and former USAF Academy cadets.

CATEGORIES OF RECORDS IN THE SYSTEM:

High school, college and USAF career information. Including active duty, reserve, and national guard military performance, academic performance, certain medical, disciplinary and personal facts, and test data from interest/personality profiles, and names of cadets whose parents are general officers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 9331, Establishment; Superintendent; faculty; and E.O. 9397 (SSN).

PURPOSE(S):

Used by USAF Academy faculty and staff in conducting studies and analysis relating to attitudes, retention, graduate professional performance, and career pattern.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be furnished to congressional nominating source for the purpose of enhancing the nomination selection process.

The Association of Graduates may receive information to foster graduates' fellowship and professional development, as well as promote institutional development.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of record system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Records are retained until superseded, obsolete, no longer needed for reference, or upon inactivation. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting overwriting or degaussing.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Institutional Research and Assessment Division, Headquarters, United States Air Force Academy (HQ USAFA/XPR), 2304 Cadet Drive, Suite 300, United States Air Force Academy, CO 80840-5002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address inquiries to the Chief, Institutional Research and Assessment Division, Headquarters, United States Air Force Academy (HQ USAFA/XPR), 2304 Cadet Drive, Suite 300, United States Air Force Academy, CO 80840-5002.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address requests to the Chief, Institutional Research and Assessment Division, Headquarters, United States Air Force Academy (HQ USAFA/XPR), 2304 Cadet Drive, Suite 300, United States Air Force Academy, CO 80840-5002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, medical institutions, automated system interfaces, Cadet Administrative Management Information System data base, Association of Graduates, and source documents (such as reports).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F036 USAFA L

SYSTEM NAME:

Cadet Awards Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chief, Development and Alumni Programs Division, HQ USAFA/XPA, 2304 Cadet Drive, Suite 351, United States Air Force Academy, CO 80840-5002.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Relatives of deceased persons who are memorialized through cadet awards, former USAF Academy cadets who have been honorably discharged due to medical disqualification and USAF Academy cadets winning individual cadet awards.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Cadet Awards files by award area, including names of persons memorialized, donor information to include amounts given, and historical data on cadet winners; names, addresses and phone numbers of relatives of deceased persons who are memorialized.'

* * * * *

PURPOSE(S):

Add to entry ', and to invite relatives to awards ceremonies presented in memory of their deceased next of kin.'

* * * * *

F036 USAFA L

SYSTEM NAME:

Cadet Awards Files.

SYSTEM LOCATION:

Chief, Development and Alumni Programs Division, HQ USAFA/XPA, 2304 Cadet Drive, Suite 351, United States Air Force Academy, CO 80840-5002.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Relatives of deceased persons who are memorialized through cadet awards, former USAF Academy cadets who have been honorably discharged due to medical disqualification and USAF Academy cadets winning individual cadet awards.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cadet Awards files by award area, including names of persons memorialized, donor information to include amounts given, and historical data on cadet winners; names, addresses and phone numbers of relatives of deceased persons who are memorialized.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 903, United States Air Force Academy.

PURPOSE(S):

For continuing award sponsorship business with donors, which consist of private individuals, patriotic and veteran organizations, and major air command and used by Cadet Awards Council to aid in their selection of individuals to receive annual award presented to disabled former cadets, and to invite relatives to awards ceremonies presented in memory of their deceased next of kin.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to donors.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and in computer databases.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in file containers/cabinets. Awards Council Chairman and appointed project officer are only persons reviewing financial statements, when available and applicable.

RETENTION AND DISPOSAL:

Records are maintained five years in office area before retiring to base staging area for 45 additional years.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Development and Alumni Programs Division, HQ USAFA/XPA, 2304 Cadet Drive, Suite 351, United States Air Force Academy, CO 80840-5002.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief, Development and Alumni Programs Division, HQ USAFA/XPA, 2303 Cadet Drive, Suite 351, United States Air Force Academy, CO 80840-5002.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address requests to the Chief, Development and Alumni Programs Division, HQ USAFA/XPA, 2304 Cadet Drive, Suite 351, United States Air Force Academy, CO 80840-5002.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from educational institutions, from individual or next of kin.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F051 USAFE A

SYSTEM NAME:

Civil Process Case Files *(June 11, 1997, 62 FR 31793).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Staff Judge Advocate General/ International Law (JAI), Headquarters, United States Air Forces in Europe, APO AE 09094–5001.'

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph and replace with 'Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in the international agreements and arrangements regulating the stationing and status in the Federal Republic of Germany of U.S. military and civilian personnel. Information disclosed to courts or authorities of the Federal Republic of Germany may be further disclosed by the Federal Republic of

Germany to claimants, creditors or their attorneys.'

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RETENTION AND DISPOSAL:

Delete entry and replace with 'Paper records are destroyed 2 years after close of calendar year in which last record is filed.'

* * * * *

F051 USAFE A

SYSTEM NAME:

Civil Process Case Files.

SYSTEM LOCATION:

Office of the Staff Judge Advocate General/International Law (JAI), Headquarters, United States Air Forces in Europe, APO AE 09094–5001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members and civilian employees and their dependents upon whom service is made of documents issued by German courts, customs and taxing agencies, and other administrative agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents from German authorities regarding payment orders, execution orders, demands for payment of indebtedness, notifications to establish civil liability, customs and tax demands, assessing fines and penalties, demands for court costs or for costs for administrative proceedings summons and subpoenas, paternity notices, complaints, judgments, briefs, final and interlocutory orders, orders of confiscation, notices, and other judicial or administrative writs; correspondence between United States (US) Government authorities and the Federal Republic of Germany; identifying data on individuals concerned; and similar relevant documents and reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties, delegation by; Agreement to Supplement the Agreement between the Parties to the North Atlantic Treaty regarding the Status of their Forces with respect to Foreign Forces stationed in the Federal Republic of Germany (NATO SOFA Supplementary Agreement); 1 United States Treaty 531; Treaties and Other International Acts Series 5351, and 48 United Nations Treaties Series 262, Article 32; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure that military members and civilian employees' obligations under the NATO SOFA Supplementary Agreement are honored and the rights of these personnel are protected by making legal assistance available.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may be disclosed to foreign law enforcement or investigatory or administrative authorities, to comply with requirements imposed by, or to claim rights conferred in the international agreements and arrangements regulating the stationing and status in the Federal Republic of Germany of U.S. military and civilian personnel. Information disclosed to courts or authorities of the Federal Republic of Germany may be further disclosed by the Federal Republic of Germany to claimants, creditors or their attorneys.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in steel filing cabinets.

RETRIEVABILITY:

By individual's surname.

SAFEGUARDS:

All information is maintained in areas accessible only to designated individuals having official need therefor in the performance of their duties. Records are housed in buildings protected by military police or security guards.

RETENTION AND DISPOSAL:

Paper records are destroyed 2 years after close of calendar year in which last record is filed.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Staff Judge Advocate General/International Law JAI), Headquarters, United States Air Forces in Europe, APO AE 09094–5001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this record system contains information on themselves may write to or visit the Office of the Staff Judge Advocate General/International Law (JAI), Headquarters, United States Air Forces in Europe, APO AE 09094–5001.

Individuals should furnish their full name, rank/grade, Social Security Number, sufficient details to permit locating the records, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system may write to or visit the Office of the Staff Judge Advocate General/International Law (JAI), Headquarters, United States Air Forces in Europe, APO AE 09094–5001.

Individuals should furnish their full name, rank/grade, Social Security Number, sufficient details to permit locating the records, and signature.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The individual to whom the record pertains, German authorities and Air Force records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11440 Filed 5–6–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 7, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been

published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record systems being amended are set forth below, as amended, published in their entirety.

Dated: May 3, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.05 DMDC

SYSTEM NAME:

Noncombatant Evacuation and Repatriation Data Base *(February 22, 1993, 58 FR 10854).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Defense Manpower Data Center, DoD Center, Oracle/UNIX Computer Center, 400 Gigling Road, Seaside, CA 93955-6771. Information may be accessed by remote terminals at the repatriation centers. The location of the repatriation centers can be obtained from the Headquarters Department of the Army, Office of Deputy Chief of Staff for Personnel, DAPE-PR, Washington, DC 20310–0300.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'The records are maintained for the purposes of tracking and accounting for individuals evacuated from emergency situations in foreign countries, securing relocation and assistance services, and assessing and recovering relocation costs.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending'.

* * * * *

S322.05 DMDC

SYSTEM NAME:

Noncombatant Evacuation and Repatriation Data Base.

SYSTEM LOCATION:

Defense Manpower Data Center, DoD Center, Oracle/UNIX Computer Center, 400 Gigling Road, Seaside, CA 93955-6771. Information may be accessed by remote terminals at the repatriation centers. The location of the repatriation centers can be obtained from the Headquarters Department of the Army, Office of Deputy Chief of Staff for Personnel, DAPE-PR, Washington, DC 20310–0300.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All noncombatant evacuees including service members, their dependents, DoD and non-DoD employees and dependents, U.S. residents abroad, foreign nationals and corporate employees and dependents.

CATEGORIES OF RECORDS IN THE SYSTEM:

Social Security Number, name, date of birth, passport number, country of citizenship, marital status, sex, employer, destination address and type of assistance needed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 12656, Assignment of Emergency Preparedness Responsibilities, November 18, 1988; DoD Directive 3025.14, Protection and Evacuation of U.S. Citizens and Designated Aliens in Danger Areas Abroad and E.O. 9397 (SSN).

PURPOSE(S):

The records are maintained for the purposes of tracking and accounting for individuals evacuated from emergency situations in foreign countries, securing relocation and assistance services, and assessing and recovering relocation costs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To individuals who have been evacuated but who have been separated from their family and/or spouse. Information will be released to the individual indicating where the family member was evacuated from and final destination.

To Department of State to plan and monitor evacuation effectiveness and need for services and to verify the number of people by category who have been evacuated.

To the American Red Cross so that upon receipt of information from a repatriation center that a DoD family has arrived safely in the U.S., the Red Cross may notify the service member (sponsor) still in the foreign country that his/her family has safely arrived in the United States.

To the Immigration and Naturalization Service to track and make contact with all foreign nationals who have been evacuated to the U.S.

To the Department of Health and Human Services for purposes of giving financial assistance and recoupment of same. To identify individuals who might arrive with an illness which would require quarantine.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and hard copy storage.

RETRIEVABILITY:

Retrieved by name, Social Security Number, or location of evacuation point or repatriation center.

SAFEGUARDS:

Computerized records are maintained in a controlled area accessible only to authorized personnel. At Defense Manpower Data Center (DMDC), entry to these areas is restricted by the use of locks, guards, and administrative procedures. Access to personal information is limited to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, Suite 400, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this record system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road,

Suite 2533, Fort Belvoir, VA 22060-6221.

Written inquiry should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The Military Services, DoD Components, from individuals via application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

S322.35 DMDC

SYSTEM NAME:

Survey and Census Data Base *(June 25, 1996, 58 FR 32779).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who completed census or survey forms, including military members, civilians, persons eligible for DoD benefits, men and women of military age, and applicants to the military services.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disposition pending'.

* * * * *

S322.35 DMDC

SYSTEM NAME:

Survey and Census Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who completed census or survey forms, including military members, civilians, persons eligible for DoD benefits, men and women of military age, and applicants to the military services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Survey responses and census information:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 2358, Research and Development Projects; DoD Directive 5124.2, Under Secretary of Defense for Personnel and Readiness (USD(P&R)); and E.O. 9397 (SSN).

PURPOSE(S):

The purposes of the system are to count DoD personnel and beneficiaries for evacuation planning, apportionment when directed by oversight authority and for other policy planning purposes, and to obtain characteristic information on DoD personnel and households to support manpower and benefits research; to sample attitudes and/or discern perceptions of social problems observed by DoD personnel and to support other manpower research activities; to sample attitudes toward enlistment in and determine reasons for enlistment decisions. This information is used to support manpower research sponsored by the Department of Defense and the military services.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The information may be used to support manpower research sponsored by other Federal agencies.

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic computer tape.

RETRIEVABILITY:

Records can be retrieved by Social Security Number; by institutional affiliation such as service membership; and by individual characteristics such as educational level.

SAFEGUARDS:

Access to data at all locations is restricted to those who require the records in the performance of their official duties. Access is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Defense Manpower Data Center, 1600 Wilson Boulevard, 4th Floor, Arlington, VA 22209–2593.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, and current address and telephone numbers of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some acceptable identification such as driver's license or military or other identification card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, and current address and telephone numbers of the individual. In addition, the approximate date and location where the survey was completed should be provided.

For personal visits, the individual should be able to provide some

acceptable identification such as driver's license or military or other identification card.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

RECORD SOURCE CATEGORIES:

The survey and census information is provided by the individual; additional data obtained from Federal records are linked to individual cases in some data sets.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11441 Filed 5–6–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records Notice

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend records systems.

SUMMARY: The Department of the Navy proposes to amend seven systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 7, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend seven systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the systems of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records systems being amended are set forth below, as amended, published in their entirety.

Dated: May 3, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05810–2

SYSTEM NAME:

Military Justice Correspondence and Information File *(February 22, 1993, 58 FR 10774).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 20), Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047 and duplicate copies may be maintained in local legal office file.'

* * * * *

N05810–2

SYSTEM NAME:

Military Justice Correspondence and Information File.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 20), Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047 and duplicate copies may be maintained in local legal office file.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, retired, and discharged Navy and Marine Corps personnel who were the subject of military justice proceedings or investigations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files contain background information relevant to specific military justice cases, and copies of incoming and outgoing correspondence relating to military justice cases.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations.

PURPOSE(S):

To provide a record of individual inquiries and JAG responses concerning military justice related matters, and to maintain background information on military justice matters to assist in responding to inquiries.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, binder-notebooks, and computer hard drive and floppy disks.

RETRIEVABILITY:

Files are kept in alphabetical order according to the last name of the individual who is the subject of the file.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office space in which the file cabinets and storage devices are located is locked outside of working hours.

RETENTION AND DISPOSAL:

Records are maintained in office for two years and then forwarded to the Federal Records Center, Suitland, MD 20409 for storage; files containing background material are maintained on computer hard drive for two years and then purged.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Judge Advocate General (Military Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Criminal Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

Information may be obtained by written request stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Criminal Law

Division, Office of the Judge Advocate General at the above address. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' identification card, driver's license, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Criminal Law), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 716 Sicard Street SE, Suite 1000, Washington, DC 20374-5047.

Information may be obtained by written request stating the full name of the individual concerned. Written requests must be signed by the requesting individual. Personal visits may be made to the Criminal Law Division, Office of the Judge Advocate General at the above address. Individuals making such visits should be able to provide some acceptable identification, e.g., Armed Forces' identification card, driver's license, etc.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records in this system are compiled from information received from naval field offices, records of trial, and correspondence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05819–4

SYSTEM NAME:

Complaints of Wrong Under Article 138/Article 1150 *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066 and duplicate copies may be maintained in local legal office files. Complaints, three years old or older, are stored at the Federal Records Center, Suitland, MD 20409.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Last name of the complainant.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Assistant Judge Advocate General (Administrative Law), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.'

* * * * *

N05819–4

SYSTEM NAME:

Complaints of Wrong Under Article 138/Article 1150.

SYSTEM LOCATION:

Office of the Judge Advocate General (Code 13), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066 and duplicate copies may be maintained in local legal office files. Complaints, three years old or older, are stored at the Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty Navy and Marine Corps personnel who have submitted complaints of wrong pursuant to Article 138, Uniform Code of Military Justice, or Article 1150 of the U. S. Navy Regulations (1990) which have been forwarded to the Secretary of the Navy for final review of the proceedings.

CATEGORIES OF RECORDS IN THE SYSTEM:

Files consist of complaint or report, the investigations into the complaint or report, the action of the general court-martial authority, and action of the Secretary of the Navy accumulated at the Office of the Judge Advocate General.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Article 138, Uniform Code of Military Justice and Article 1150 of the U.S. Navy Regulations (1990).

PURPOSE(S):

Used by JAG as a working file to review and make recommendations to the Secretary of the Navy on Article 138 and Article 1150 complaints.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Last name of the complainant.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are located is locked outside office working hours. Automated files are password protected.

RETENTION AND DISPOSAL:

Permanent. Retire to Washington National Records Center when 3 years old. Transfer to National Archives and Records Administration when 20 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Administrative Law), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

The written request should contain full name and the approximate date the complaint was submitted for review, if known. Written requests must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Administrative Law), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

The written request should contain full name and the approximate date the complaint was submitted for review, if known. Written requests must be signed by the requesting individual

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Complainant; investigatory files; individuals interviewed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05830–1

SYSTEM NAME:

JAG Manual Investigative Records *(February 22, 1993, 58 FR 10782).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'For those records of incidents occurring prior to 1996, and all Litigation type investigations: Office of the Judge Advocate General (Code 35), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

For all other incidents occurring after 1996: the General Court Martial Convening Authority of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'The records are retained for 75 years. All naval activities which prepare JAG manual Investigative Reports or Command Investigations or which are intermediate addresses, typically retain duplicate copies in local files for a two year period. The release authority or the General Court Martial Convening authority retires his reports after two years to a Federal Storage Facility where they are retained for 75 years.'

* * * * *

N05830–1

SYSTEM NAME:

JAG Manual Investigative Records.

SYSTEM LOCATION:

For those records of incidents occurring prior to 1996, and all Litigation type investigations: Office of the Judge Advocate General (Code 35), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

For all other incidents occurring after 1996: the General Court Martial Convening Authority of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual who participated in, who was involved in, who incurred an injury, disease, or death in, who was intoxicated (drugs or alcohol) during, before, or after, or who had an interest in any accident, incident, transaction, or situation involving or affecting the Department of the Navy, naval personnel, or any procedure, operation, material, or design involving the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records contain all documented evidence relevant to the item under investigation, together with an investigating officer's report, which makes findings of fact and expresses opinions and recommendations, the reviewing authority's actions which either approved or modified the investigating officer's report or returned the entire record for further investigation or remedial action to perfect the record, and, the results of hearings afforded persons who incurred injuries and diseases, to allow them to explain or rebut adverse information in the record.

The Judge Advocate General's correspondence to locate and obtain required investigations is also included in the record. Some records contain only a field command's explanation as to why an investigation is not required, together with documents pertinent to this lack of requirement. Some records contain only an accident, injury, or death report, prepared for the Department of the Navy by the Army, Air Force, Coast Guard, or other agency under reciprocal agreements, in situations where the Navy or Marine Corps could not conduct the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Requirement that Enlisted Men Make Up Time Lost Due to Misconduct or Abuse of Alcohol or Drugs (10 U.S.C. 972(5)); Retirement or Separation for Physical Disability (10 U.S.C. 1201–1221); E.O. 11476; Manual for Courts-Martial, paragraph 133b; Uniform Code of Military Justice (10 U.S.C. 815, 832, 869, 873, 935, 936, and 938–940); Collection From Third Party Payers Act (10 U.S.C. 2095); Military Claims Act (10 U.S.C. 2733); Foreign Claims Act (10 U.S.C. 2734, 2734a, 2734b); Emergency Payment of Claims (10 U.S.C. 2736); Non-scope Claims (10 U.S.C. 2737); Duties of the Secretary of the Navy (10 U.S.C. 5013); Duties of the Office of the Chief of Naval Operations (10 U.S.C. 5031–5033, 5035–5037); Duties of the Bureaus and Offices of the Department of the Navy and Duties of the Judge Advocate General (10 U.S.C. 5131–5153); Duties of the Commandant of the Marine Corps (10 U.S.C. 5043); Reservist's Disability and Death Benefits (10 U.S.C. 6148); Requirement of exemplary conduct (10 U.S.C. 5947); Promotion of Accident and Occupational Safety by the Secretary of the Navy (10 U.S.C. 7205); Admiralty Claims (10 U.S.C. 7622–23); Public Vessels Act (46 U.S.C. 781–790); Suits in Admiralty Act (46 U.S.C. 741–752); Admiralty Extension Act (46 U.S.C. 740); Transportation Safety Act (49 U.S.C. 1901); Federal Tort Claims Act (28 U.S.C. 1346, 2671–2680); Financial Liability of Accountable Officers (31 U.S.C. 82, 89–92); Military Personnel and Civilian Employee's Claims Act of 1964, as amended (31 U.S.C. 240–243); Federal Claim Collection Acts (31 U.S.C. 71–75, 951–953); Forfeiture of Pay for Time Lost Due to Incapacitation Caused by Alcohol or Drug Use (37 U.S.C. 802); Eligibility for Certain Veterans Benefits (38 U.S.C. 105); Postal claims (39 U.S.C. 712); Federal Medical Care Recovery Act (42 U.S.C. 2651–2653); General Authority to Maintain Records (5 U.S.C. 301); Records Management By Agency Heads (44 U.S.C. 3101); and E.O. 9397 (SSN).

PURPOSE(S):

JAG Manual Investigative Records are used internally within the Department of the Navy as a basis for evaluating procedures operations, material, and designs with a view to improving the efficiency and safety of the Department of the Navy; determinations concerning status of personnel regarding disability benefits, entitlements to pay during periods of disability, severance pay, retirement pay, increases of pay for longevity, survivors' benefits, and involuntary extensions of enlistments, dates of expiration of active obligated service and accrual of annual leave; determinations concerning relief of accountable personnel from liability for losses of public funds or property; determinations pertaining to disciplinary or punitive action and evaluation of petitions, grievances, and complaints; adjudication, pursuit, or defense of claims for or against the

Government; and public information releases.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Department of Veterans Affairs for use in determinations concerning entitlements to veterans and survivors' benefits.

To Servicemen's Group Life Insurance administrators for determinations concerning payment of life insurance proceeds.

To the U.S. Government Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters.

To contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems.

To agencies of the Federal, State or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of record notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper documents and data stored prior to 1985 are stapled together (with real evidence attached, if any) in paper file folders and stored in metal file cabinets, on shelves, and in cardboard boxes.

Records of reports received and stored since 1985 are maintained within a computer data base.

RETRIEVABILITY:

Records and data stored prior to 1985 are filed in calendar year groupings by surname of individual, bureau number of aircraft, name of ship, hull number of unnamed watercraft, or vehicle number of Government vehicles, or date of incident. Incidents are topically cross-referenced.

Records stored since 1985 are maintained on data base and are retrievable from the data base in calendar year groupings by surname, Social Security Number, bureau number of aircraft, name of ship, hull number of unmanned watercraft, vehicle number of Government vehicles, or date of incident. Incidents are topically cross-referenced.

SAFEGUARDS:

Files are maintained in file cabinets and other storage devices under the control of authorized personnel during working hours; the office spaces in which the file cabinets and storage devices are locked outside official working hours. Access to the building is protected by uniformed guards requiring positive identification for admission. The data base system is protected by user account number and password sign-on, data base access authority, data set authority for add and delete, and data item authority for list and update.

RETENTION AND DISPOSAL:

The records are retained for 75 years. All naval activities which prepare JAG manual Investigative Reports or Command Investigations or which are intermediate addresses, typically retain duplicate copies in local files for a two year period. The release authority or the General Court Martial Convening authority retires his reports after two years to a Federal Storage Facility where they are retained for 75 years.

SYSTEM MANAGER(S) AND ADDRESS:

Office of the Judge Advocate General (Code 35), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066 for those incidents occurring prior to 1996, and all Litigation type investigations.

For all other incidents occurring after 1996: The General Court Martial Convening Authority of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Office of the Judge Advocate General (Claims, Investigations, and Tort Litigation), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066 for incidents occurring prior to 1996 and all Litigation type investigations.

All other requests should be directed to the General Court Martial Convening Authority of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain as much identifying data as possible, including, but not limited to the complete names of all individuals involved, the location and date of incident, the bureau number of aircraft or name and hull number of ship, government vehicle number, and type of incident.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Office of the Judge Advocate General (Claims, Investigations, and Tort Litigation), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066 for incidents occurring prior to 1996 and all Litigation type investigations.

All other requests should be directed to the General Court Martial Convening Authority of the activity in question. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

The request should contain as much identifying data as possible, including, but not limited to the complete names of all individuals involved, the location and date of incident, the bureau number of aircraft or name and hull number of ship, government vehicle number, and type of incident.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records of JAG Manual Investigations are compilations of evidence, information, and data concerning the circumstances of incidents, accidents, events, transactions, and situations, prepared by administrative fact-finding bodies of utilization by proper authorities in making determinations, decisions, or evaluations relating to the matters under investigation.

Records may contain: (1) Testimony or statements of individuals who are parties to the investigations, witnesses, and others having pertinent knowledge concerning matters under investigation; (2) documentary evidence, including records and reports of military or Federal, state, or foreign, civilian law enforcement investigation, judicial, or corrections authorities; medical records

and reports, investigations and accident and injury reports prepared by federal, state, or foreign governmental agencies or other organizations or persons; court records and other public records; official logs and other official naval records; letters and correspondence, personnel, pay, and medical records; financial records, receipts, and cost estimates; publications, and other pertinent documents and writings; (3) pertinent real evidence; and (4) pertinent demonstrative evidence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05890–1

SYSTEM NAME:

Claims Information System *(February 22, 1993, 58 FR 10786).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete paragraph 1, and replace with 'Primary location: Office of the Judge Advocate General (Code 35), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.'

Paragraph 3, line 4, after the word 'commands' add 'with'.

Paragraph 4, beginning at line 2, delete 'U.S. Sending State Office for Australia;'.

Paragraph 6, line 1, after 'Military' add 'personnel'.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Paragraph 3, line 7, replace 'resulting from such tortious conduct' with 'or illness.'

* * * * *

N05890–1

SYSTEM NAME:

Claims Information System.

SYSTEM LOCATION:

Primary location: Office of the Judge Advocate General (Code 35), Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

Secondary locations:

Federal Tort Claims Files and Military Claims Files are located at Naval Legal Service Offices and Detachments, overseas commands with a Navy or Marine Corps judge advocate attached, and the Federal Records Center, Suitland, MD. Local commands, with which claims under the Federal Tort Claims Act or Military Claims Act are initially filed, retain copies of such claims and accompanying files.

Affirmative Claims Files are located at Naval Legal Service Offices and Detachments; U.S. Sending State Office For Italy; with overseas commands with a Navy or Marine Corps judge advocate attached; the Federal Records Center, Suitland, MD; and such other offices or officers as may be designated by the Judge Advocate General.

Foreign Claims Files are located at U.S. Sending State Office for Italy; Naval Missions (including the office of the naval section of military missions); Military Assistance Advisory Groups (including the Office of Chiefs, Naval Section, Military Assistance Advisory Groups); Office of the Naval Advisory to Argentina; naval attaches; any command which has appointed a Foreign Claims Commission; and the Federal Records Center, Suitland, MD. Local commands, with which claims under the Foreign Claims Act are initially filed and which do not have or choose to appoint a Foreign Claims Commission, retain copies of such claims and accompanying files.

Nonscope Claims Files are located at Naval Legal Service Offices and Detachments, and the Federal Records Center, Suitland, MD. Local commands, with which claims under the 'Nonscope' Claims Act are initially filed, retain copies of such claims and accompanying files.

Military personnel and Civilian Employees' Claims Files are located at Naval Legal Service Offices and Detachments; the Federal Records Center, Suitland, MD; naval activities where there are officers specifically designated by the Judge Advocate General to adjudicate personnel claims.

U.S. Postal Service Indemnity Claims Files are located at the Federal Records Center, Suitland, MD 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who have filed claims against the Department of the Navy under the Federal Tort Claims Act, Military Claims Act, the 'Nonscope' Claims Act, or Military and Civilian Employees' Claims Act.

All individuals who have filed claims with the U.S. Postal Service for loss or damage to mailed matter, and which claims have been paid by the U.S. Postal Service and thereafter forwarded for reimbursement by the Department of the Navy pursuant to 39 U.S.C. 406 and 2601.

All individuals against whom the Navy has claims sounding in tort, and all individuals who are in the military or retired or are dependents of military members and have been provided medical care by a naval medical facility or civilian medical facility for injuries or illness.

All commercial insurance carriers against whom recovery has been sought by the Department of the Navy. Any medical personnel involved in medical malpractice claims against the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

The files may contain claims filed, correspondence, investigative reports, personnel, medical and dental records, x-rays, allied reports (such as police and U.S. Postal Service investigations), photographs, drawings, legal research and memoranda, opinions of experts and others, court documents, reports of injuries to individuals entitled to care at Navy expense, reports of damage to Navy property, statements of charges for medical and dental treatment, copies of orders, copies of insurance policies, government bills of lading, copies of powers of attorney, estimates of loss or damage, inventories, demands on carriers for reimbursement, substantiating documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Federal Tort Claims Act (28 U.S.C. 1346(b), 2671–2680); 32 CFR 750.21–750.40; Medical Care Recovery Act (42 U.S.C. 2651–2653); Collection From Third Party Payers Act (10 U.S.C. 1095); Federal Claims Collection Act (31 U.S.C. 3701, 3711, 3716–3719); 32 CFR 757.1–757.21; Foreign Claims Act (10 U.S.C. 2734); Military Claims Act (10 U.S.C. 2733); 32 CFR 750.41–750.60; 'Nonscope' Claims Act (10 U.S.C. 2737); 32 CFR 750.60–750.69; Military and Civilian Employees Claims Act (31 U.S.C. 3701, 3721); 32 CFR 751.0–751.3; 10 U.S.C. 1552; 39 U.S.C. 406 and 2601; 5 U.S.C. 301, Departmental Regulations; 44 U.S.C. 3101; and 31 U.S.C. 3729.

PURPOSE(S):

To manage and evaluate, and process claims both for and against the Department of the Navy for purposes of adjudication, collection and litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The Federal Tort Claims Files and Military Claims Files are used by the claimant or his authorized representative for those claims for

which payment is determined proper; to third parties in those cases in which they indemnify the U.S. Government or to verify claims; to officials and employees of the General Accounting Office and of the Department of Treasury for those claims for which payment is determined proper.

The Affirmative Claims Files are used by insurance companies to support claims by documenting injuries or diseases for which treatment was provided at government expense; by civilian attorneys representing injured parties and the government's interest. For those claims for which payment is determined proper, the files or portions thereof may be provided to the Department of the Treasury.

The Nonscope Claims Files are used by officials and employees of the Department of Justice to defend unauthorized suits brought against the U.S. under the Military Personnel and Civilian Employees' Claim Act. To the claimant of his/her authorized representative.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of system of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders stored in file cabinets or other storage devices. Some records are also maintained on magnetic disc, magnetic tape, or within a computer system.

RETRIEVABILITY:

Filed alphabetically by name of claimant or by a locally assigned claim number. Additionally, Military Personnel and Civilian Employees' Claims Act files may be filed alphabetically by name of common carrier, warehousemen, contractors, and insurers.

SAFEGUARDS:

Documents and computer disks are maintained in filing cabinets or other storage devices under control of authorized personnel during working hours. Password access is restricted to those personnel with a need-to-know. The office space in which the file cabinets and storage devices are located is locked and guarded outside official working hours.

RETENTION AND DISPOSAL:

Records are destroyed four years after final action.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Claims and Tort Litigation), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Deputy Assistant Judge Advocate General (Claims and Tort Litigation), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

The request should contain full name and address of the individual concerned and must be signed. Visitors should be able to identify themselves by any commonly recognized evidence of identity.

RECORD ACCESS PROCEDURES:

Individuals seeking access to record about themselves contained in this system of records should address written inquiries to the Deputy Assistant Judge Advocate General (Claims and Tort Litigation), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

The request should contain full name and address of the individual concerned and must be signed. Visitors should be able to identify themselves by any commonly recognized evidence of identity.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The sources of information contained in the files include the following: X-rays and medical and dental records from civilian and military doctors and medical facilities; investigative reports of accidents from military and civilian police agencies; report of circumstances if incidents from operators of Government vehicles an equipment; witnesses; correspondence from claimants, their insurance companies, state commissions, United States Attorneys, and various other Government agencies with information concerning the claim; line of duty investigations; commercial credit and asset reports; questionnaires completed by accident victims; statements of charges from civilian and military doctors and medical facilities; information provided by the claimant; investigative reports from personal property offices; investigative reports from a military member's command or an investigative agency; information contributed from commercial carriers; substantiating documents; allied reports (such as U.S. Postal Service investigative reports); legal memoranda.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05891–1

SYSTEM NAME:

NJAG Litigation Case File *(February 22, 1993, 58 FR 10788).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete 'NJAG' and replace with 'JAG'.

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20375-5066 and duplicate copies may be maintained in local legal office files.'

* * * * *

N05891–1

SYSTEM NAME:

JAG Litigation Case File.

SYSTEM LOCATION:

Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20375-5066 and duplicate copies may be maintained in local legal office files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who may or have instituted litigation concerning matters under the cognizance of the Judge Advocate General, Department of the Navy. Excluded are cases arising in admiralty, under the Federal Tort Claims Act, and from matters under the cognizance of the Navy's General Counsel Office.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records, correspondence, pleadings, documents, memoranda, and notes relating to the litigation or anticipated litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5148; and 44 U.S.C. 3101.

PURPOSE(S):

To represent the Department of the Navy and cognizant officials in litigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To U.S. Attorneys, litigants, and other parties in litigation.

To Federal and state courts to whom and which information may be provided.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders.

RETRIEVABILITY:

Name of litigant or anticipated litigant.

SAFEGUARDS:

Records are maintained in file cabinets accessible only to persons responsible for servicing the record system in performing their official duties.

RETENTION AND DISPOSAL:

Generally retained in office files for six years after final action, then destroyed. Specially designated files are retained for longer periods and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20375-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20375-5066. Written requests should include full name and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20375-5066. Written requests should include full name and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From all sources with information which may impact upon actual or anticipated litigation, e.g., other record systems within DON, DOD, and other agencies and departments of the Federal Government, particularly the Department of Justice; state and local governments and law enforcement agencies; counsel and parties in litigation; third parties who provide information voluntarily or in response to discovery, etc.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05801–2

SYSTEM NAME:

Legal Assistance Management Information System *(September 9, 1996, 61 FR 47483).*

CHANGES:

* * * * *

STORAGE:

Line 2, after the word 'on' add 'computers and'.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Replace '200 Stovall Street, Alexandria, VA 22332-2400.' with 'Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.'

* * * * *

N05801–2

SYSTEM NAME:

Legal Assistance Management Information System.

SYSTEM LOCATION:

Naval Legal Service Offices (NLSO) and NLSO detachments and other commands that provide legal assistance services under the auspices of the Navy's Legal Assistance Program through an assigned judge advocate or civilian attorney. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel, retirees, dependents, and authorized civilians who have been provided legal assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Legal Assistance Card Files contain basic client identification information; e.g., name, address, duty station, telephone number(s), a brief description of the subject of the visit, name of the attorney assigned, and attorney time expended.

Legal Assistance Client Case Files contain personal and privileged information on the client and about the legal matter(s) for which the client is seeking assistance, including various documents related to the client's case, such as copies of client records provided to the attorney; memoranda of attorney-client interviews and attorney-client telephone conversations; memoranda of meetings and telephone conversations with relevant third parties; copies of statutes and case law relevant to the case; attorney research and notes; copies of all documents prepared, and of all correspondence sent or received, by the legal assistance provider; and a record of the results obtained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 1044; and 32 CFR part 727, Legal Assistance.

PURPOSE(S):

Data from the records is compiled for the purpose of generating periodic workload productivity and statistical reports, for internal management of the office, and for counsel assignment. To provide an administrative record for use by attorneys and clerical personnel directly involved in rendering legal assistance.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Navy's

compilation do not apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper card and case files are stored in file cabinets. Electronic records are stored on computers and computer disks.

RETRIEVABILITY:

Name of client.

SAFEGUARDS:

Cards, case files, and computer disks are maintained in metal filing cabinets or other storage devices under the control of authorized personnel during working hours. The office space in which the file cabinets and storage devices are located in locked outside normal working hours. The files are not accessible to the public or to persons within the command without an official need-to-know.

RETENTION AND DISPOSAL:

Most files are maintained for two years after the completion of the services and then destroyed. However, some files may be maintained indefinitely if a future legal dispute or inquiry about the matters addressed in the file is reasonably foreseeable.

Files are maintained for two years after completion of the services and then destroyed

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Assistant Judge Advocate General (Legal Assistance), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the office providing the legal assistance or to the Deputy Assistant Judge Advocate General (Legal Assistance), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

The written request should include full name and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the office providing the legal assistance or to the Deputy Assistant Judge Advocate General (Legal Assistance), Office of the Judge Advocate General, Department of the Navy, Washington Navy Yard, 1322 Patterson Avenue, SE, Suite 3000, Washington, DC 20374-5066.

The written request should include full name, address, and telephone number of the requester and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Basic information is provided by the client. Additional information regarding the case, including actions taken and the ultimate disposition of the case, is provided by the attorney rendering the service.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N11101–2

SYSTEM NAME:

Family Housing Requirements Survey Record System *(February 22, 1993, 58 FR 10816).*

CHANGES:

* * * * *

AUTHORITY:

Add to entry 'E.O. 9397 (SSN).'

* * * * *

STORAGE:

Delete entry and replace with 'Automated and paper records.'

* * * * *

SAFEGUARDS:

Add to entry 'Automated files are password protected.'

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual.'

* * * * *

N11101–2

SYSTEM NAME:

Family Housing Requirements Survey Record System.

SYSTEM LOCATION:

Military installations with family housing offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officer and enlisted personnel and only key and essential civilian personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Non-individual oriented input documents that reflect local housing assets; family housing survey questionnaires indicating family size, individual preference for housing, housing cost, and indication as to suitability of housing for need of individual.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To determine the housing requirement for the location to support proposed family housing construction, leasing, mobile home spaces and other military construction programs submitted for OSD support and Congressional approval.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and paper records.

RETRIEVABILITY:

Social Security Number.

SAFEGUARDS:

Housing files used solely within housing office; tape files used solely within data processing system; and protected by the military installation's security measures. Automated files are password protected.

RETENTION AND DISPOSAL:

Held three years and destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332. Subordinate record holders of questionnaires: Family housing office at military installation.

NOTIFICATION PROCEDURE:

Contact housing office of installation at which individual was assigned when the individual completed the family housing questionnaire.

RECORD ACCESS PROCEDURES:

The agency's rules for access to records may be obtained from the installation family housing office.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11442 Filed 5–6–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Delete records systems.

SUMMARY: The Department of the Navy proposes to delete nine systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The actions will be effective on June 7, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to delete systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The deletions are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered system report.

Dated: May 3, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01130-1

SYSTEM NAME:

Low Quality Recruiting Report *(February 22, 1993, 58 FR 10707).*

Reason: Program no longer exists. All files have been destroyed.

N01136-1

SYSTEM NAME:

Navy Awareness System *(February 22, 1993, 58 FR 10711).*

Reason: Program no longer exists. All files have been destroyed.

N07220–1

SYSTEM NAME:

Armed Forces Health Professional Scholarship System *(February 22, 1993, 58 FR 10799).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. System of records notice T7340, Defense Joint Military Pay System-Active Component.

N07220–2

SYSTEM NAME:

Retired Pay System *(February 22, 1993, 58 FR 10799).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. System of records notice T7347b, Defense Military Retiree and Annuity Pay System.

N07220–3

SYSTEM NAME:

Reserve Pay System *(February 22, 1993, 58 FR 10800).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. System of records notice T7346, Defense Joint Military Pay System-Reserve Component.

N07220–4

SYSTEM NAME:

Naval Reserve Officer Training Corps Pay System *(February 22, 1993, 58 FR 10801).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. System of records notice T7346, Defense Joint Military Pay System-Reserve Component.

N07220–5

SYSTEM NAME:

Joint Uniform Military Pay System (JUMPS) *(February 22, 1993, 58 FR 10802).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. System of records notice T7340, Defense Joint Military Pay System-Active Component.

N07220–6

SYSTEM NAME:

Midshipman Pay System *(March 18, 1997, 62 FR 12806).*

Reason: These records are now under the cognizance of the Defense Finance and Accounting Service. System of records notice T7340, Defense Joint Military Pay System-Active Component.

N12950–6

SYSTEM NAME:

Computer Assisted Manpower Analyses System (CAMAS) *(February 22, 1993, 58 FR 10828).*

Reason: System obsolete. Records have been destroyed.

[FR Doc. 99–11443 Filed 5–6–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 7, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 3, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.
Title: Equity in Athletics Disclosure Act.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Burden:
Responses: 1,800.
Burden Hours: 9,900.
Abstract: The Equity in Athletics Disclosure Act amended the Higher Education Act of 1965 to require coeducational institutions of higher education that participate in any program under Title IV of the Higher Education Act of 1965 and have an intercollegiate program, to annually make available upon request a report on institutional financing and student and staff participation in men's and women's intercollegiate athletics.

[FR Doc. 99–11479 Filed 5–6–99; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–145–A]

Application To Export Electric Energy; British Columbia Power Exchange Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: British Columbia Power Exchange Corporation (Powerex) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before June 7, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: On May 30, 1997, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized Powerex to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company. That two-year authorization will expire on May 30, 1999. On April 15, 1999, Powerex filed an application with FE for renewal of this export authority and requested that the Order be issued for an additional two-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–145. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–145 proceeding.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the Powerex request to export to Mexico should be clearly marked with Docket EA–145–A. Additional copies are to be filed directly with Mr. Douglas Little, Vice President, Trade Policy & Development, British Columbia Power Exchange Corporation, 666 Burrard Street, Suite 1400, Vancouver, British Columbia, Canada V6C 2X8, AND Paul W. Fox, Esq., Bracewell & Patterson, L.L.P., 111 Congress Avenue, Suite 2300, Austin, Texas 78701, AND Tracey L. Bradley, Energy Regulatory Consultant, Bracewell & Patterson, L.L.P., 2000 K Street, NW, Suite 500, Washington, DC 20006.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory Programs," then "Electricity Regulation," and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on April 30, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–11519 Filed 5–6–99; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 99–19; Computational Structural Biology

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications in its Computational Structural Biology subprogram. There is an immediate

need for greatly improved computational approaches for gene product structure and function elucidation. This solicitation seeks sophisticated prediction, modeling and simulation research for the exploration of the interrelationship of macromolecular sequence, structure and function. The goal will be to establish a robust computational process for predicting the three-dimensional architecture for gene products and for gaining further insight into their biological role.

DATES: Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication. All preapplications, referencing Program Notice 99–19, should be received by DOE by 4:30 P.M., E.D.T., June 15, 1999. A response discussing the programmatic relevance of the proposed submission will be communicated by July 1, 1999. Formal applications submitted in response to this notice must be received by 4:30 P.M., E.D.T., October 5, 1999, to be accepted for merit review and consideration for award in mid-Fiscal Year 2000.

ADDRESSES: Preapplications referencing Program Notice 99–19, must be sent by E-mail to sharon.betson@science.doe.gov. Preapplications will also be accepted if mailed to the following address: Ms. Sharon Betson, Office of Biological and Environmental Research, SC–73, 19901 Germantown Road, Germantown, Maryland 20874–1290.

Formal applications, referencing Program Notice 99–19, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, Maryland 20874–1290, ATTN: Program Notice 99–19. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Charles G. Edmonds, Office of Biological and Environmental Research, SC–73, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–0042, FAX: (301) 903–0567, E-mail: charles.edmonds@science.doe.gov. The full text of Program Notice 99–19 is available via the Internet using the following web site address: http://www.er.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Office of Biological and Environmental Research supports a directed, basic research program in the areas of environmental, life and medical science. Major research program emphases are placed on characterization of human and microbial genomes, model organisms for understanding human gene function, structural biology, the biological effects of low dose radiation, global climate change, improved technology for cleanup of DOE contaminated sites, advanced imaging technologies, and molecular nuclear medicine. With the accelerating increase in nucleic acid and derived amino acid sequence data flowing from genome projects and in the particular context of these DOE supported basic research efforts, there is an immediate need for greatly improved experimental and computational approaches for gene product structure and function determination. OBER presently supports a program in computational structural biology that is intended to address this need.

This notice is to solicit applications for grants to maintain and enhance this program which focuses on sophisticated prediction, modeling and simulation research to provide a generalizable approach to the interrelationship of macromolecular sequence, structure and function. *The rapid influx of newly discovered genes, the remarkably large proportion of which no function can so far be inferred, require a global predictive capability. We are seeking tools for the robust prediction of structure and inference of function for any gene and on a whole genome scale of analysis.*

Research applications that integrate existing software tools in novel ways and/or develop new computational strategies to exploit databases of macromolecular structural information, including both high and low resolution structures, are a continuing interest of the program. This includes the goals of predicting the structure and function of newly discovered gene sequences as well as the prediction or computational design of the chemical properties and architectural arrangement of proteins or nucleic acids needed for a particular functional application. Examples of existing approaches that fall into this category are knowledge-based or molecular extension methods (e.g., homology model building), ab initio structure prediction (finding structures that fit sequences) and the development of tools to assign existing or new sequences to specific structures (e.g., finding sequences that fit structures through threading or inverse folding algorithms). Attention may also be focussed on the problem of negative design, the identification of aspects of sequence that precludes its fitting a known structure. Awardees will be expected to attend the biannual Critical Assessment of Techniques for Protein Structure Prediction (CASP) experiment and participate at an appropriate level in the comparative exercise.

Further, the use of structure from experimental and/or computational sources to provide insight into function is a specific target of this solicitation. Computational and visualization techniques exploiting structure to characterize recognition within macromolecular ensembles, ligand-receptor and other specific molecular interactions and to extend this to the understanding and modeling of elaborate functional aggregates including metabolic pathways and interacting circuits are specifically encouraged. This solicitation includes but is not limited to participation in structural genomics projects, i.e., the collaborative experimental, theoretical and computational efforts which seek to establish a catalogue of the structures of a representative set of protein folds occurring in nature and thus facilitating the modeling of the structure of any genomically derived amino acid sequence by reference to its nearest catalogued archetype.

Applications that exploit the latest multiple approaches (in algorithms, simulation, modeling and graphical representation/visualization) or provide for the interpretation and the integration and joint utilization through the World Wide Web of the growing body of sequence, structural and physical information tools will also be considered particularly responsive. We encourage the development of teams to accelerate the deployment of robust software available to the entire community. Established programs should demonstrate such capabilities or discuss plans for web access and dissemination. The long term goal of the program is to develop well-integrated software packages that meet the scientific and technical goals outlined above.

The transformation of the accumulating database of genomic information into a practical understanding of structure-function relationships in biological macromolecules and of the complicated systems which constitute living cells, tissues and organisms is paramount. The ultimate objective of the extension of this new understanding of individual reactive entities to the genome scale will be the elucidation of a vocabulary and

grammar of connectedness in molecular function. Through escalating levels of complexity from functional aggregates to metabolic circuits and homeostatic networks we will arrive at a systems view of biology. This will enable diverse applications in human health, including individualized medicine and drug design, in biotechnology, including, new and improved biomaterials and new biocatalysis in industry and manufacturing, in environmental science for the design of enzymes for effective and efficient removal of environmental contaminants and in energy technology for the development and conversion of biomass for fuels.

Program Funding

It is anticipated that approximately $2.0 million will be available for multiple grant awards during Fiscal Year 2000 contingent upon the availability of appropriated funds. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research, and programmatic needs. We expect to award several grants in this area of research of up to $500,000 per year.

Preapplications

A brief preapplication should be submitted. The preapplication should identify on the cover sheet the institution, PI name, address, telephone, fax and E-mail address for the principal investigator, and title of the project. The preapplication should consist of two to three pages narrating the research objective, methods for accomplishment and benefits of the effort.

Preapplications will be evaluated relative to the scope and research needs for the Computational Structural Biology subprogram.

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project.

2. Appropriateness of the Proposed Method or Approach.

3. Competency of Applicant's Personnel and Adequacy of Proposed Resources.

4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

To provide a consistent format for the submission, review and solicitation of grant applications submitted under this notice, the preparation and submission of grant applications must follow the guidelines given in the Application Guide for the Office of Science Financial Assistance Program 10 CFR part 605.

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.er.doe.gov/production/grants/grants.html. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules", which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994), or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, D.C. on April 29, 1999.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 99–11532 Filed 5–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Chicago Operations Office; Notice of Solicitation Entitled "Support of the U.S. Chemical Industry's Technology Vision 2020", Financial Assistance Solicitation No. DE–SC02–99CH10989

AGENCY: DOE, Chicago Operation Office.

ACTION: Notice of solicitation for cooperative agreement proposals.

SUMMARY: The Department of Energy (DOE) Office of Industrial Technologies (OIT) announces its intention to issue a competitive solicitation for applications for financial assistance to conduct innovative research and development (R&D). The R&D should improve energy efficiency and support the goals of *Technology Vision 2020: The Chemical Industry*. The Chemical industry and the DOE have entered into a Memorandum of Understanding to provide a framework for joint research, development, and demonstration among industry, academia, and government. OIT seeks collaborative R&D projects that address priority needs that are detailed in industry-developed Technology Roadmaps and other selected topic areas. Roadmap areas for the upcoming solicitation include Computational Chemistry, Materials of Construction, Separations, and Selected Topics Related to Catalysis, Alternative Synthetic Pathways, and the Application and Use of Alternative Chemicals—specifically C1 Compounds as Alternative Raw Materials/Feedstocks, Alternative Reaction Conditions, and Supercritical/Dense Phase Fluids As Solvent Replacements in Production of Chemicals and in Other Applications.

DATES: The complete solicitation document will be available on or about May 24, 1999 on the internet by accessing either the OIT grant program home page at http://www.oit.doe.gov/chemcials/page3.html or the DOE Chicago Operations Office Acquisition and Assistance Group home page at http://www.ch.doe.gov/business/ACQ.htm under the heading "Current Acquisition Activities" Solicitation No. DE–SC02–99CH10989. Applications are anticipated to be due no later than 3:00 p.m. (CDT), July 30, 1999. Selection of applications for award is anticipated by October 13, 1999.

DATES: Completed applications referencing Solicitation Number DE–SC02–99CH10989 must be submitted to the U.S. Department of Energy, Chicago Operations Office, Attn: Jennifer Stricker, Bldg. 2101, Rm. 3F–13, 9800 South Cass Avenue, Argonne, IL 60439–4899.

SUPPLEMENTARY INFORMATION: As a result of this solicitation, DOE expects to award twelve (12) to fifteen (15) cooperative agreements. Total estimated Government funding for the solicitation is approximately $12 million with anticipated Government funding of approximately $4 million for FY00. DOE

will consider projects ranging from one (1) to three (3) years in length.

Eligible applicants must have a teaming arrangement consisting of two or more chemical companies. (A "chemical company" is defined as a private (profit or non-profit) organization that manufactures chemicals or provides products or serves to such manufactures. In addition to chemical manufacturers, raw material suppliers, equipment and technology suppliers, architectural and engineering companies, software and consulting firms, trade and professional associations, and research institutes that routinely conduct a minimum of 10% of their business with chemical industry manufactures are within the scope of the definition.) In addition, the teaming arrangement may also include, but is not limited to, universities, trade associations, DOE National Laboratories, and small businesses. All projects must offer significant energy savings when compared to the currently-used technology. Eligible applicants must cost share at least 50% of project costs and projects should be planned for one to three years in duration. Teaming arrangements with DOE National Laboratories are encouraged, however national laboratories may not serve as the prime applicant and may not provide cost share. Industry partner(s) must perform at least 50% of the proposed effort. Further, applicants should describe the work to be performed and plans for project management and technology commercialization; describe how the work will advance one or more of the priority needs of the roadmaps and/or above topic areas; estimate energy savings and waste and emission reductions; describe the innovative aspects of the technology; and provide information on the qualifications and experience of both the project team and of key personnel.

FOR FURTHER INFORMATION CONTACT: Jennifer Stricker at (630) 252–2888, U.S. Department of Energy, 9800 South Cass Avenue, Argonne, IL 60439–4899; by fax at (630) 252–5045; or by e–mail at jennifer.stricker@ch.doe.gov.

Issued in Chicago, Illinois on April 28, 1999.

John D. Greenwood,

Acquisition and Assistance Group Manager.

[FR Doc. 99–11406 Filed 5–6–99; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Mid-Columbia Coho Salmon Reintroduction Feasibility Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of Finding of No Significant Impact (FONSI) and floodplain statement of findings.

SUMMARY: This notice announces BPA's proposal to fund research for 2 to 3 years on the feasibility of reintroducing coho salmon into mid-Columbia River basin tributaries. The research would take place in the Methow and Wenatchee river basins in Chelan and Okanogan counties, Washington. BPA has prepared an Environmental Assessment (EA) (DOE/EA–1282) evaluating the proposed project. Based on the analysis in the EA, BPA has determined that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental Policy Act (NEPA) of 1969. Therefore, the preparation of an Environmental Impact Statement (EIS) is not required, and BPA is issuing this FONSI.

The FONSI includes a finding that there is no practicable alternative to locating a portion of the project within 100-year floodplains.

ADDRESSES: For copies of this FONSI or the EA, please call BPA's toll-free document request line: 800–622–4520.

FOR FURTHER INFORMATION CONTACT: Nancy Weintraub, KECN, Bonneville Power Administration, P.O. Box 3621, Portland, Oregon, 97208–3621, phone number 503–230–5373, fax number 503–230–5699.

SUPPLEMENTARY INFORMATION: BPA proposes to fund coho research and broodstock development in the Wenatchee and Methow river basins for 2 to 3 years. BPA is responding to a need to determine the ecological risks and biological feasibility of reintroducing coho to mid-Columbia River basin tributaries, from which they have been extirpated for at least a half century. Reintroduction of coho into the mid-Columbia region has been identified by regional fish-managing entities as one of fifteen high-priority projects for the Columbia River basin. The project is included in the Northwest Power Planning Council's (Council) Fish and Wildlife Program, and was recommended by the Council to BPA for funding in 1996. However, before a full-scale reintroduction program is implemented, feasibility research needs to be conducted. Besides BPA, project participants include Yakama Indian Nation (YIN) and Washington Department of Fish and Wildlife (WDFW), co-managers; National Marine Fisheries Service (NMFS); U.S. Fish and Wildlife Service (USFWS); U.S. Forest Service (USFS); and Confederated Tribes of the Colville Indian Reservation.

Federal and State fish agencies and YIN, as well as environmental groups and individual citizens, have been strongly interested in the project. In the Wenatchee and Methow basins, there are several fish species listed under the Endangered Species Act (ESA), as well as several other game fish species, which are the subject of various enhancement programs. The primary concern of most organizations and citizens has been the potential for reintroduced coho to prey on or compete with other weakened, sensitive, or prized species in the two basins. BPA has participated in extensive discussions leading to alternatives that BPA seriously considered and included in this EA/FONSI (see below). BPA has remained open to the views of the community and all project participants as well as those of the original project proponents (YIN). We realize this project, if fully implemented, could increase the risk of harm to other sensitive fish species in the basin. We believe, however, that in this first phase, the feasibility studies, the risks are low and that they are manageable through monitoring and annual review by project participants, with adjustments as necessary to minimize risks. This FONSI documents that the research can be conducted without significant environmental impacts.

Several possible alternative plans have been identified and are addressed in the EA (Chapter 2). Briefly, they are as follows:

- *Tribal Alternative (Proposed Action):* BPA would fund research into all life phases of coho and their interactions with other species in the Wenatchee and Methow basins, including survival, natural spawning, predation, residualism, and productivity studies; genetics monitoring; and a broodstock development program. Research would depend on acclimation and release of up to 1,000,000 coho smolts in the Wenatchee basin and up to 400,000 smolts in the Methow. Up to three of six alternative acclimation sites would be developed in the Wenatchee; up to three existing acclimation sites in the Methow would be used.

• *Phased Study Alternative:* BPA would fund research as described above, including coho releases and acclimation site development, in the Wenatchee basin only.

• Hatchery Releases Alternative: BPA would fund research, including coho releases, designed to answer one key question: can adult coho return to the mid-Columbia in sufficient numbers to replace themselves? Coho would be acclimated and released only at existing hatcheries in the Wenatchee basin; acclimation in natural habitats would not take place. Studies of coho predation and ability to naturally reproduce would not be done.

• *No-Action Alternative:* Continue coho releases of 700,000 smolts/yearlings/etc. as is done currently under the Management Agreement for 1997 Brood Upper Columbia River Coho, a stipulated order under *United States* v. *Oregon*. There would be no BPA funding or participation and no in-basin acclimation. Release numbers and locations would be agreed to annually by parties to the order. Little, if any, research would be done.

Table 4 in the EA summarizes the impacts of each alternative. The impacts of two of the three action alternatives (Tribal and Phased Study) are similar in nature and intensity; the primary difference between the two is that the geographic scope is reduced in the Phased Study alternative. The impacts of the third action alternative (Hatchery Releases) overall are lower in intensity than the other two. BPA has determined, based on the context and intensity of these impacts, that they are not significant, using the definition of this concept in section 1508.27 of the Council on Environmental Quality Regulations for implementing the National Environmental Policy Act. This determination is based on the following discussion of each point listed in section 1508.27:

1. The project aims to develop knowledge about how a largely domesticated stock might be reintroduced and naturalized in a basin where it has long been absent. This knowledge may be applicable throughout the Columbia basin. When combined with other current and future research on similar issues, the cumulative benefit of the mid-Columbia project would be to increase the chances that other reintroduction projects would succeed, and that the concomitant resource risks would be reduced. These activities would serve to answer critical uncertainties associated with future reintroduction activities. While the benefits of the proposed research warrant BPA funding, the results from this 2–3 year project alone would not significantly increase the potential for success of reintroduction projects in the region.

2. Implementation of the Tribal, Phased Study, or Hatchery Releases alternatives would not affect the health and safety of the people of the Wenatchee or Methow basins. As documented in section 3.4.1.2 and 3.4.2 of the EA, water and chemical use and wastewater discharges would be within permitted amounts. Water temperatures of local rivers would not be increased because amounts used for acclimation sites (Tribal and Phased Study alternatives) would be small, in most cases water would be part of natural or existing ponds, and use would occur in early spring when water is cold and flows are high (section 3.4.1.3). Screw traps are an obstacle to recreational boaters such as rafters, kayakers, and others. However, traps would be located away from high-use areas for recreational boaters and would be flagged to warn boaters of their presence. These issues are not significant in the context of NEPA because the risks are small relative to other factors affecting health and safety in the local area.

3. Research activities for all alternatives would take place in environmentally sensitive areas. However, because acclimation sites are already developed in the Methow basin (Tribal alternative), and because only one of six alternative sites in the Wenatchee basin requires construction-type activity to develop (Tribal and Phased Study), most sensitive areas would not be affected. Specifically:

a. In the Wenatchee basin, Icicle Creek near one proposed acclimation site, and White River near another have been recommended by the Wenatchee National Forest for inclusion in the National Wild and Scenic Rivers System as Recreational Rivers. Installation of a temporary smolt screen at Icicle Creek, and installation of a temporary net and smolt exit pipe in a beaver dam at White River Side Channels, would not adversely affect the recreational and other values of the rivers (EA, section 3.4.1.3).

b. Although proposed acclimation sites are located in ecologically critical areas such as wetlands, floodplains, and State Shoreline areas, development of only one alternative site in the Wenatchee basin (Two Rivers) would adversely affect those areas. A wetland, a 100-year floodplain, and a State Shoreline area could be affected if that site is developed (Tribal Alternative and Phased Study). Acclimation ponds for the site would be dug on the property of an operating sand and gravel quarry in an already disturbed area. The smolt exit channel, however, would disturb or destroy riparian and/or wetland vegetation for a distance of about 80 meters (260 feet). Plant surveys would be completed before ponds and channels are designed and constructed to determine if any sensitive species occupy the area. If any sensitive species are found, the areas would be avoided or the site would not be developed. To avoid impacts on wetlands, information from wetlands delineation surveys would be used during final design to develop mitigation measures, if necessary, to ensure that the project would result in no net loss of wetlands. Buffers from construction activities would be provided. Upon completion of construction, disturbed land would be restored to its previous condition wherever possible. (EA, section 3.4.1.3). Therefore, impacts on wetlands, floodplains, and State Shorelines would not be significant.

The actions proposed would not affect prime farmland or park lands, as there are none present in the vicinity.

4. The impacts of actions proposed under the three action alternatives are not significant due to their controversy. Controversy that surfaced during development and review of the draft EA centered on the number and locations of coho smolt releases and the consequent level of risk to endangered spring chinook populations in the Wenatchee basin, as originally proposed under the Tribal Alternative. BPA and project participants subsequently developed release numbers and sites for 1999 that parties agree pose minimal risk to spring chinook, and they are committed to reaching agreement on future release numbers and sites to maintain minimal risk for the research period.

5. The impacts of actions proposed under the three action alternatives are not significant due to the degree of highly uncertain, unique, or unknown risks. These issues were raised by project participants and members of the public, particularly in regard to the risks of predation by coho smolts on spring chinook. Concerns were that not enough research has been completed to date to confirm that releases of coho smolts in or near spring chinook habitat would not pose a significant predation risk. While one year of study has been completed in the Yakima Basin that did not show significant predation of coho smolts on spring chinook, several project participants believe that additional studies are needed. In order to address this issue, proposed smolt release numbers in Nason Creek, the primary spring chinook habitat, were

reduced for 1999, and an additional year of study is planned in the Yakima Basin. The fish managers (YIN and WDFW) have agreed that they will annually review the results of the previous year's research and come to agreement on release numbers and locations for the subsequent years based on the results of the ongoing research. The Biological Opinion from the National Marine Fisheries Service supports the conclusion that, with monitoring and risk containment measures (EA, section 3.3.1.2), the risk to spring chinook would not jeopardize their continued existence.

6. The actions proposed would not establish a precedent for future actions with significant effects or represent a decision in principle about a future consideration. Contrary to the assertions of some, this project does not constitute a decision to reintroduce coho to mid-Columbia tributaries. BPA is unwilling to commit substantial resources to such an effort without some indication of its potential for success, as reintroduction of an extirpated fish species is not a well-researched action. If research shows that the potential exists for full-scale reintroduction to be successful, and that impacts to other sensitive species can be minimized to acceptable levels, then, under NEPA, the time would be "ripe" to assess the effects of such a program.

7. The proposal is not connected (40 CFR 1508.25(a)(1)) to other actions with potentially significant impacts, nor is it related to other proposed actions with cumulatively significant impacts (40 CFR 1508.25(a)(2)). Section 3.6 of the EA addresses the cumulative fishery resource impacts. Although the proposed action is related to actions being addressed under the Impacts of Artificial Salmon and Steelhead Production Strategies in the Columbia River Basin Draft Environmental Impact Statement (Draft EIS), it is not precluded by 40 CFR 1506.1 or 10 CFR 1021.211 because it is not a major Federal action and would not significantly affect the quality of the human environment. The actions proposed are independent of the actions proposed under the Draft EIS and would not prejudice the ultimate decision on the program, as they are low-tech, minimal-impact actions to be taken for research purposes to answer specific questions regarding the potential impacts of and viability of an artificial coho production program in the mid-Columbia. Additional environmental review would be completed prior to the initiation of any long-term, full-scale production program.

8. There are no sites listed on or eligible for the National Register of Historic Places at or near any facility location. Only one of the six potential acclimation sites in the Wenatchee basin (Tribal and Phased Study alternatives) could require ground disturbance (EA, section 3.4.1.3). If developed, its final location would be surveyed before construction to insure that it would not adversely affect cultural resources, including tribal traditional use areas.

9. Several fish, wildlife, and plant species in the Wenatchee and Methow basins are listed or proposed for listing under the Endangered Species Act. Of those discussed in the EA in Chapter 3, the following could be affected:

a. *Upper Columbia River spring-run chinook,* listed as Endangered, spawn and rear in habitat near proposed coho release sites in the Wenatchee and Methow basins. However, little impact to spring chinook is expected because most coho acclimation/release sites are downstream of the primary spawning and summer rearing areas; once released, coho tend to migrate downstream rapidly; most returning adult coho spawners will home to their points of release, which are downstream of the spring chinook spawning/rearing reaches; and most adult coho would be collected to develop the localized broodstock, so few would be spawning in the wild. In addition, as discussed in #4 and #5 above and in section 3.3.1.2 of the EA, risk of impact to spring chinook would be further minimized by working with other fish managers to determine coho release sites and numbers that minimize risk; by releasing coho smolts in low densities; by releasing fish that more closely resemble sizes of wild coho, which tend to be smaller than hatchery fish; and by waiting until smolts are ready to actively migrate before releasing them.

b. *Bull trout* are listed as Threatened. There could be minor, temporary disturbances to bull trout migratory corridor habitat during construction of the Two Rivers acclimation site smolt exit channel, but erosion and sedimentation control best management practices would ensure impacts were not significant. Migratory adult bull trout could be taken during rotary screw trap sampling, beach seining, electro-fishing, and adult coho broodstock collection. To minimize impacts, rotary traps would be attended 24 hours a day and checked every hour to remove fish and debris from the livebox. Bull trout found in the livebox would be released immediately. Bull trout captured by other collection methods also would be released immediately. To reduce potential mortality from electro-fishing, only personnel trained in the technique would be employed. They would follow guidelines for such procedures recently established by NMFS (NMFS 1998) (EA, section 3.5.1; Biological Assessment [BA], section 5.10). Therefore, impacts to bull trout would not be significant.

c. *The grizzly bear* is listed as Threatened. To access the White River Side Channel acclimation site (Tribal and Phased Study alternatives), the Sears Creek Road would be plowed in late March. This area has been identified as potential spring emergence grizzly habitat, although no use occurs at present. The project would install a locked gate at the point where plowing would begin to control the amount of disturbance from use of the road. All the acclimation sites are in areas with at least moderate human disturbance. There would be no disturbance to grizzly bear habitat from the project (EA, section 3.4.1.3; BA, section 5.4). Therefore, there would be no significant effects to grizzly bears from this project.

d. *Two plants—Ute's Ladies Tresses* (Threatened) and *Wenatchee (Oregon) checkermallow* (Proposed, Wenatchee basin only)—could be at or near the Two Rivers acclimation site (Tribal and Phased Study alternatives). If the site were developed, it would be surveyed before ground disturbing activity begins. If plants are found, they would be avoided or the site would not be developed, so these two plants would not be adversely affected (EA, section 3.4.1.3).

Other listed and proposed fish and wildlife species in the two basins would not be adversely affected (EA, Chapter 3).

10. The actions proposed would not threaten to violate Federal, State, or local law or requirements imposed for the protection of the environment. The following permits and consultation may be required and will be obtained, as needed: Section 7 consultation and incidental take permit for trapping and electroshocking activities proposed in 2000 and 2001 (NMFS and USFWS), shoreline development permit (Chelan County), hydraulic project approval permit (Washington Department of Fish and Wildlife), State water quality certification (Washington Department of Ecology), modifications to National Pollutant Discharge Elimination System permits, USFS land use permits, Clean Water Act Section 404 permit (U.S. Army Corps of Engineers), and use permits for nets across highway culverts (Washington Department of Transportation). Final determinations regarding the need for permits will be

made after project participants decide on the final course of action.

Floodplain Statement of Findings

This is a Floodplain Statement of Findings prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetlands Involvement was published in the **Federal Register** on November 9, 1998, and impacts to floodplains and wetlands were assessed in the EA (section 3.4.1.3). At one alternative acclimation site (Two Rivers), BPA would dig a smolt exit channel from the new ponds to the Little Wenatchee River, within the 100-year floodplain. The channel needs to pass through the floodplain in order to allow smolts access to the river. There are no alternatives that would avoid constructing the smolt exit channel in the floodplain at the Two Rivers site; however, there are alternative acclimation sites identified in the EA that would not affect floodplains. The actions proposed would conform to applicable State and local floodplain protection standards; a county floodplain development permit would be obtained, if needed, for work in the floodplain of the Little Wenatchee River.

The steps to be taken to avoid or minimize potential harm to or within the affected floodplain and wetlands include:

- In floodplain and shoreline areas, disturbed land would be restored as closely as possible to pre-project contours and replanted with native and local species. However, site topography could require bank disruption. A restoration and monitoring plan would be prepared before disturbing floodplain and shoreline areas.
- Erosion control measures would be implemented within the 60-meter (200-foot) State Shoreline area.
- Location of new structures within the identified shoreline and floodplain would be avoided.

BPA will endeavor to allow 15 days of public review after publication of this statement of findings before implementing the selected alternative.

Determination

Based on the information in the EA, as summarized here, BPA determines that the actions proposed, as described and analyzed in either the Tribal, Phased Study, or Hatchery Releases alternatives, are not major Federal actions significantly affecting the quality of the human environment within the meaning of NEPA, 42 U.S.C. 4321 *et seq*. Therefore, an EIS will not be prepared, and BPA is issuing this FONSI.

Issued in Portland, Oregon, on April 28, 1999.

James R. Meyer,

Acting Vice President, Environment, Fish and Wildlife Group.

[FR Doc. 99–11533 Filed 5–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Energy Conservation Program for Consumer Products: Energy Conservation Program for Fluorescent Lamp Ballasts, Clothes Washers, and Water Heaters

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of public workshops.

SUMMARY: The Energy Policy and Conservation Act, as amended (EPCA or Act), requires the Department of Energy (DOE or Department) to consider amending the energy conservation standards for certain major household appliances. This notice announces three public workshops as steps in the appliance standards rulemaking procedures. These public workshops will be conducted for the rulemakings on revised energy efficiency standards for fluorescent lamp ballasts, clothes washers, and water heaters.

DATES: The following table lists the respective analyses release dates, workshop dates, and comment period dates.

	Fluorescent lamp ballasts	Clothes washers	Water heaters
Release Analyses	April 27, 1999	June 14, 1999	June 14, 1999.
Comments Due	May 18, 1999	July 6, 1999	July 6, 1999.
Workshops	June 1, 1999	July 22, 1999	July 23, 1999.
Comments Due	June 15, 1999	August 3, 1999	August 3, 1999.

ADDRESSES: The Department will hold the public workshops between the hours of 9:00 a.m. and 4:00 p.m. at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–245, Washington, DC 20585. Written comments are welcome, especially following the workshops. Please submit one signed copy and a computer diskette (WordPerfect 6.1) or 10 copies (no telefacsimiles) to: U.S. Department of Energy, Attn: Brenda Edwards-Jones, Office of Energy Efficiency and Renewable Energy, EE–43, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–2945, e-mail: Brenda.Edwards-Jones@ee.doe.gov.

The Department will also accept electronically-mailed comments, but you must supplement such comments with a signed hard copy.

You should identify all comments on both the envelope and document with the name of the product and the appropriate docket number: Fluorescent Lamp Ballasts, EE–RM–97–500; Clothes Washers, EE–RM–94–403; or Water Heaters, EE–RM–97–900.

If you submit information or data that you believe is confidential, and should not be publicly disclosed, you should submit one complete copy of your document and ten (10) copies or one electronic copy from which the information believed to be confidential has been deleted. We will make our own determination regarding the confidentiality of the information or data according to our regulations at 10 CFR 1004.11.

Copies of the completed analyses may also be obtained from: U.S. Department of Energy, Office of Codes and Standards, 1000 Independence Avenue, SW, Room 1J–018, Washington, DC 20585.

Public information: The public may access the Freedom of Information Reading room, located at the U.S. Department of Energy, Forrestal Building, 1000 Independence Avenue, SW, Room 1E–190, Washington, DC 20585, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, (except Federal holidays). Call (202) 586–3142 for information.

FOR FURTHER INFORMATION CONTACT: Edward Pollock, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence

Avenue, SW, Washington, DC 20585–0121, (202) 586–5778, e-mail: Edward.Pollock@ee.doe.gov, or Michael J. McCabe, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–40, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–9155, e-mail: Michael.McCabe@ee.doe.gov; Eugene Margolis, Esq. U.S. Department of Energy, Office of General Counsel, Forrestal Building, Mail Station GC–72, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9507, e-mail: Eugene.Margolis@hq.doe.gov.

SUPPLEMENTARY INFORMATION: In its administration of the Appliance Standards Program, DOE has published procedures to make the rulemaking process more accessible to the public. (Procedures for Consideration of New or Revised Energy Conservation Standards for Consumer Products, 61 FR 36974, July 15, 1996). As part of the revised procedures, the Department pledged to provide "early opportunities for public input to and comment on the analyses." (61 FR 36976).

This notice announces three public workshops by which the Department plans to obtain public comment on the analyses being prepared for Notices of Proposed Rulemakings on revised energy efficiency standards for fluorescent lamp ballasts, clothes washers, and water heaters. In addition to providing interested parties the opportunity to comment on the analyses, the workshops will also provide interested parties with the opportunity to comment on what levels of revised energy efficiency standards proposals they could support from the analyses.

Prior to the public workshops, the Department will make publicly available the analytical results that it presently plans to use in its formal decision process. The material to be presented will be the bases for the Technical Support Documents for the Notices of Proposed Rulemakings. DOE staff and contractors will prepare the material.

These analytical results will be available from the Office of Codes and Standards (OCS) Internet site (http:www.eren.doe.gov/buildings/codes_standards/index.htm), and the DOE Freedom of Information Reading Room. The analyses that the Department plans to provide for review for each product are the results of the engineering cost-efficiency curves, life-cycle costs, paybacks, national energy savings, net national employment impacts, manufacturer impact analyses, and environmental effects. The complete set of analyses will be available according to the schedule in the **DATES** section of this Notice.

Once the analytical results are publicly available for each product, the Department will provide periods during which it will receive comments on both the analyses as well as on the policy implications drawn from the analyses. The Department will review and analyze the comments it receives on the policy recommendations and analyses.

Following receipt and review of comments for each product, the Department will conduct a workshop. The workshops will all have similar formats, wherein there will be a summary of the analytical results that will have been publicly available prior to each respective workshop, followed by a summary discussion of the comments received prior to the workshop. Lastly, a senior DOE official will facilitate a discussion on which standard levels participants at the workshop believe can be supported by the analyses.

The Department will conduct these workshops prior to our selection of proposed revisions to the energy efficiency standards for fluorescent lamp ballasts, clothes washers, and water heaters, and the Department will consider output from the workshops in the development of those proposals.

Following the respective workshops, the Department will provide an additional comment period, during which interested parties will have an opportunity to comment on the proceedings at the workshops, as well as on any aspect of the rulemaking proceedings, including what policy implications the commenters might draw from the analyses.

The Department will also consider all comments provided after the respective workshops in its determination of the appropriate revised energy-efficiency standards to propose.

If you would like to participate in the workshops, receive workshop material, or be added to the DOE mailing list to receive future notices and information regarding these workshops, please contact Ms. Brenda Edwards-Jones, (202) 586–2945.

Issued in Washington, DC, on May 4, 1999.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 99–11566 Filed 5–6–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–337–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

April 30, 1999.

Take notice that on April 26, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP99–337–000 a request pursuant to §§ 157.205, and 157.212, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to relocate an existing delivery point serving Northern States Power Company on the Faribault Branchline located in Rice County, Minnesota under Northern's blanket certificate issued in Docket No. CP82–401–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern states that the new delivery point will serve as a master meter and provide a central measurement point on the Faribault branchline and that no facilities are proposed to be retired or abandoned. Northern states that the total estimated cost to install the master meter is $228,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–11509 Filed 5–6–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–118–000, et al.]

Capital Center Generating Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 26, 1999.

Take notice that the following filings have been made with the Commission:

1. Capital Center Generating Company, LLC

[Docket No. EG99–118–000]

Take notice that on April 16, 1999, Capital Center Generating Company, LLC (CCGC), with its address c/o Noresco, Inc., 255 Main Street, Suite 500, Hartford, CT 06106, filed with the Federal Energy Regulatory Commission (FERC or Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CCGC is a Rhode Island limited liability company that will be engaged directly and exclusively in the business of developing, owning and operating an eligible facility to be located in Providence, Rhode Island, The eligible facility will consist of an approximately 6 MW gas-fired electric generation project and related interconnection facilities. The output of the eligible facility will be sold at wholesale to consumers located in the United States.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Lamar Power Partners, L.P.

[Docket No. EG99–119–000]

Take notice that on April 21, 1999, Lamar Power Partners, L.P. (Lamar Power) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations.

Lamar Power, a Delaware limited partnership, is developing a natural gas-fired eligible facility with a capacity of 1,000 megawatts, powered by four high efficiency "F" technology combustion turbines, which will be located in or near Paris, Texas.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Ocean Energy Services, Inc., Tractebel Energy Marketing, Inc., Eagle Gas Marketing Company, Lambda Energy Marketing Company, TECO EnergySource, Inc.

[Docket Nos. ER96–588–009, ER94–142–022, ER96–1503–012, ER94–1672–017, ER96–1563–013]

Take notice that on April 21, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

4. Global Energy & Technology, Inc., Texpar Energy, Inc., Conectiv Energy Supply, Inc., Nine Energy Services, LLC Woodruff Energy, Applied Resources Integrated Services, Incorporated, Bonneville Fuels Management Corporation, Poco Petroleum, Inc., and Lakeside Energy Services, LLC

[Docket Nos. ER97–3416–005, ER95–62–017, ER98–2045–004, ER98–1915–004, ER97–3526–004, ER97–3526–005, ER97–2604–006, ER96–659–013, ER97–2197–006, ER97–2198–007, ER99–505–001]

Take notice that on April 23, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. CSW Energy Services, Inc., QST Energy Trading Inc., ONEOK Power Marketing Company, InterCoast Power Marketing Company, and NGTS Energy Services

[Docket Nos. ER98–2075–005, ER96–553–014, ER98–3897–003, ER94–6–013, ER96–2892–009]

Take notice that on April 22, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. Lakewood Cogeneration Limited Partnership

[Docket No. ER99–1213–000]

Take notice that on April 20, 1999, Lakewood Cogeneration Limited Partnership (Lakewood) submitted for filing a second amended Code of Conduct Regarding the Relationship between Lakewood Cogeneration Limited Partnership and Consumers Energy Company (Code of Conduct) in compliance with Ordering Paragraph A of the Commission's February 26, 1999 Order Conditionally Accepted for Filing Proposed Market-Based Rates.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER99–2532–000]

Take notice that on April 20, 1999, Pacific Gas and Electric Company (PG&E) tendered for filing new Procedures for implementation of § 3.3 of the 1987 Agreement between PG&E and the City and County of San Francisco (City). PG&E also tendered for filing two Facilities Authorization Letters (Authorization Letters) between PG&E and City, respectively for large and small facilities.

The purpose of the Procedures is to allow for the filing of Facilities Authorization Letters, which streamline the procedures for filing numerous Facilities, and to facilitate payment of PG&E's costs of designing, constructing, procuring, testing, placing in operation, owning, operating and maintaining the customer-specific Facilities required for firm transmission and distribution service requested by City under these Facilities Authorization Letters.

PG&E has requested permission to use automatic rate adjustments whenever the California Public Utilities Commission (CPUC) authorizes a new Electric Rule 2 Cost of Ownership Rate but cap the monthly Transmission-level rates, respectively, at 0.58% and 1.19% for Customer-financed and PG&E-financed Facilities, and cap the monthly Distribution-level rates, respectively, at 0.77% and 1.34% for Customer-financed and PG&E-financed facilities.

Copies of this filing have been served upon City and the CPUC.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Mississippi Power Company and Southern Company Services, Inc.

[Docket No. ER99–2533–000]

Take notice that on April 20, 1999, Mississippi Power Company and Southern Company Services, Inc., its

agent, on tendered for filing a Service Agreement, pursuant to the Southern Companies Electric Tariff Volume No. 4—Market Based Rate Tariff, with South Mississippi Electric Power Association for the Hattiesburg Industrial Park Delivery Point to Pearl River Electric Power Association. The agreement will permit Mississippi Power to provide wholesale electric service to South Mississippi Electric Power Association at a new service delivery point.

Copies of the filing were served upon South Mississippi Electric Power Association, the Mississippi Public Service Commission, and the Mississippi Public Utilities Staff.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Consumers Energy Company and Southwood 2000, Inc.

[Docket Nos. ER99–2554–000, ER99–2555–000]

Take notice that on April 21, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Boralex Stratton Energy, Inc., Arizona Public Service Company

[Docket Nos. ER99–2562–000, ER99–2572–000]

Take notice that on April 22, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. David N. Bassett, John R. Cooper, Kevin J. Donovan, Douglas F. Egan, George J. Grunbeck, Sanford L. Hartman, J.W. Maitland Horner, P. Chrisman Iribe, Peter E. Meier, M. Richard Smith, Suzanne Rich, Steven A. Wolfgram

[Docket Nos. ID–3134–002, ID–3132–002, ID–3273–000, ID–3274–000, ID–3235–001, ID–3275–000, ID–3276–000, ID–3131–003, ID–3237–001, ID–3277–000, ID–3278–000, ID–3238–001]

Take notice that on April 22, 1999, the above named individuals filed with the Federal Energy Regulatory Commission an application for authority to hold interlocking positions in Pittsfield Generating Company, L.P. and/or Lake Road Generating Company, L.P., both with their principal place of business at One Bowdoin Square, Boston, Massachusetts 02114.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11464 Filed 5–6–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–64–000, et al.]

The Cleveland Electric Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

April 28, 1999.

Take notice that the following filings have been made with the Commission:

1. The Cleveland Electric Illuminating Company

[Docket No. EC99–64–000]

Take notice that on April 22, 1999, The Cleveland Electric Illuminating Company (CEI) filed an amendment to an application pursuant to section 203 of the Federal Power Act, 16 U.S.C. 824b, for authorization to acquire certain jurisdictional transmission facilities. CEI's application was filed on April 16, 1999 in Docket No. EC99–64–000.

CEI states that copies of the amendment were served on the Public Utilities Commission of Ohio and the Pennsylvania Public Utility Commission.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company of New York, Inc., NRG Energy, Inc., Arthur Kill Power LLC, Astoria Gas Turbine Power LLC

[Docket Nos. EC99–68–000 and ER99–2610–000]

Take notice that on April 26, 1999, Consolidated Edison Company of New York, Inc., NRG Energy, Inc., Arthur Kill Power LLC, and Astoria Gas Turbine Power LLC (collectively, the Applicants) tendered for filing an application under section 203 of the Federal Power Act for approval to transfer certain jurisdictional facilities associated with the sale of the Arthur Kill Generation Station, located on Staten Island, New York and 20 gas turbine electric generation units at the Astoria Gas Turbine Site in Queens, New York. The Applicants also tendered for filing pursuant to section 205 of the Federal Power Act two continuing site agreements related to the transfer of facilities.

The Applicants have served a copy of this filing on the New York Public Service Commission.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Hinson Power Company

[Docket No. EC99–69–000]

Take notice that on April 26, 1999, Hinson Power Company (Hinson), a power marketer, tendered for filing an application under Section 203 of the Federal Power Act for authorization to transfer control of its jurisdictional assets.

Under the proposed transaction, Hinson's stock would be acquired by Columbia Falls Aluminum Company and Columbia Falls Aluminum Company would be merged with and into Glencore Acquisition LLC with the surviving corporation continuing under the name of Columbia Falls Aluminum Company LLC.

Comment date: May 26, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Somerset Power LLC

[Docket No. EG99–122–000]

Take notice that on April 26, 1999, Somerset Power LLC, with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Somerset Power states that it is a limited liability company organized under the laws of the State of Delaware. Somerset Power will be engaged directly

and exclusively in owning an approximately 229 MW coal and jet fuel-fired electric generating facility located in Somerset, Massachusetts. Electric energy produced by the facility will be sold at wholesale to the Independent System Operator and into the New England Power Pool.

Comment date: May 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

5. Somerset Operations Inc.

[Docket No. EG99–123–000]

Take notice that on April 26, 1999, Somerset Operations Inc. (Somerset Operations), with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, MN 55403, filed with the Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Somerset Operations states that it is a corporation organized under the laws of the State of Delaware. Somerset Operations will be engaged directly and exclusively in operating an approximately 229 MW coal and jet fuel-fired electric generating facility located in Somerset, Massachusetts. Electric energy produced by the facility will be sold at wholesale to the Independent System Operator and into the New England Power Pool.

Comment date: May 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

6. LSP–Kendall Energy, LLC

[Docket No. EG99–124–000]

Take notice that on April 26, 1999, LSP–Kendall Energy, LLC (Applicant), a Delaware limited liability company with a principal place of business at Two Tower Center, 10th Floor, East Brunswick, NJ 08816, filed with the Federal Energy Regulatory Commission (Commission), an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

The Applicant will begin constructing a natural gas-fired combined cycle electric generation facility with a nominal capacity of up to approximately one thousand one hundred (1,100) megawatts in Kendall County, Illinois (the Facility). The Facility is scheduled to commence commercial operation in the Summer of 2001. The Applicant is engaged directly, or indirectly through one or more affiliates as defined in Section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, and exclusively in the business of owning or operating, or both owning and operating, all or part of one or more eligible facilities and selling electric energy from the Facility at wholesale.

Comment date: May 19, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

7. Southwestern Public Service Company

[Docket No. ER85–477–018]

Take notice that on April 23, 1999, Southwestern Public Service Company tendered for filing an amended compliance filing in Docket No. ER85–477–010.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); NRG Power Marketing, Inc.; Cabrillo Power I LLC; Cabrillo Power II LLC; El Segundo Power, LLC; Energy Masters Int'l, Inc.; Long Beach Generation LLC; Somerset Power LLC; Cadillac Renewable Energy LLC; NRG Generating (Parlin) Cogeneration Inc.; Arthur Kill Power LLC; Huntley Power LLC; Astoria Power LLC; Dunkirk Power LLC

[Docket Nos. ER98–2640–002; ER97–4281–006; ER99–1115–002; ER99–1116–002; ER98–1127–003; ER94–1402–021; ER98–1796–002; ER99–1712–001; ER98–4515–001; ER96–1679–001; ER96–1680–001; ER99–2161–001; ER99–2162–001; ER99–2160–001; and ER99–2168–001]

Take notice that on April 20, 1999, Northern States Power Company (Minnesota) and its affiliates Northern States Power Company (Wisconsin), NRG Power Marketing, Inc., Cabrillo Power I LLC, Cabrillo Power II LLC, El Segundo Power, LLC, Energy Masters Int'l, Inc., Long Beach Generation LLC, Somerset Power LLC, Cadillac Renewable Energy LLC, NRG Generating (Parlin) Cogeneration Inc., Arthur Kill Power LLC, Huntley Power LLC, Astoria Power LLC, and Dunkirk Power LLC tendered for filing notification of a change in status to reflect certain departures from the facts the Commission relied upon in granting market-based rate authority. The companies informed the Commission of a planned merger between Northern States Power Company (Minnesota) and New Century Energies, Inc.

Comment date: May 10, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Duquesne Light Company

[Docket No. ER99–1132–001]

Take notice that on April 23, 1999, Duquesne Light Company tendered for filing an amendment to its proposed changes to Duquesne's Open Access Transmission Tariff (OATT) and for an order accepting its proposed changes.

Duquesne has requested an effective date of April 23, 1999.

A copy of this filing was served on the Pennsylvania Public Utility Commission and customers presently taking service under Duquesne's OATT.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Somerset POWERS LLC

[Docket No. ER99–1712–002]

Take notice that on April 22, 1999, Somerset Power LLC, with its principal office at 1221 Nicollet Mall, Suite 700, Minneapolis, Minnesota 55403, tendered for filing with the Commission its modified rate schedule, pursuant to the Commission's March 31, 1999, Order requiring a compliance filing.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. California Independent System Operator Corporation

[Docket No. ER99–2563–000]

Take notice that on April 22, 1999, the California Independent System Operator Corporation (ISO), tendered for filing amendments to its Employees Code of Conduct and Governors Code of Conduct.

The ISO states that this filing has been served upon the Public Utilities Commission of California, the California Energy Commission, the California Electricity Oversight Board, and all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Puget Sound Energy, Inc.

[Docket No. ER99–2564–000]

Take notice that on April 22, 1999, Puget Sound Energy, Inc., as Transmission Provider, tendered for filing a Service Agreement for Firm Point-To-Point Transmission Service (Firm Point-To-Point Service Agreement) and a Service Agreement for Non-Firm Point-To-Point Transmission Service (Non-Firm Point-To-Point

Service Agreement) with Reliant Energy Services, Inc. (Reliant), as Transmission Customer.

A copy of the filing was served upon Reliant.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Niagara Mohawk Power Corporation

[Docket No. ER99–2565–000]

Take notice that on April 22, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Merchant Energy Group of the Americas, Inc., (MEGA). This Transmission Service Agreement specifies that MEGA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and MEGA to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for MEGA as the parties may mutually agree.

Niagara Mohawk requests an effective date of April 15, 1999, Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and MEGA.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Niagara Mohawk Power Corporation

[Docket No. ER99–2566–000]

Take notice that on April 21, 1999, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between Niagara Mohawk and Merchant Energy Group of the Americas, Inc., (MEGA). This Transmission Service Agreement specifies that MEGA has signed on to and has agreed to the terms and conditions of Niagara Mohawk's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow Niagara Mohawk and MEGA to enter into separately scheduled transactions under which Niagara Mohawk will provide transmission service for MEGA as the parties may mutually agree.

Niagara Mohawk requests an effective date of April 15, 1999. Niagara Mohawk has requested waiver of the notice requirements for good cause shown.

Niagara Mohawk has served copies of the filing upon the New York State Public Service Commission and MEGA.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Kansas City Power & Light Company

[Docket No. ER99–2567–000]

Take notice that on April 22, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 15, 1999, between KCPL and Kansas City, KS Board of Public Utilities. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636.

KCPL proposes an effective date of April 21, 1999 and requests waiver of the Commission's notice requirement. This Agreement provides for the rates and charges for Non-Firm Transmission Service.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Kansas City Power & Light Company

[Docket No. ER99–2568–000]

Take notice that on April 22, 1999, Kansas City Power & Light Company (KCPL), tendered for filing a Service Agreement dated April 15, 1999, between KCPL and Kansas City, KS Board of Public Utilities. In its filing, KCPL states that the rates included in the above-mentioned Service Agreement are KCPL's rates and charges in the compliance filing to FERC Order No. 888–A in Docket No. OA97–636–000.

KCPL proposes an effective date of March 27, 1999 and requests a waiver of the Commission's notice requirement to allow the requested effective date. This Agreement provides for the rates and charges for Short-term Firm Transmission Service.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. UtiliCorp United Inc.

[Docket No. ER99–2569–000]

Take notice that on April 21, 1999, UtiliCorp United Inc., tendered for filing, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with CMMPA/Utilities Plus. The Service Agreement provides for the sale of capacity and energy by UtiliCorp United Inc., to CMMPA/Utilities Plus pursuant to the tariff.

UtiliCorp requests waiver of the Commission's Regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER99–2570–000]

Take notice that on April 21, 1999, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, Revisions to the Point-to-Point Transmission Service Agreement between PacifiCorp's Transmission Function and PacifiCorp's Merchant Function.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Illinois Power Company

[Docket No. ER99–2571–000]

Take notice that on April 22, 1999, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 62526, tendered for filing a Power Sales Tariff, Service Agreement under which Omaha Public Power District will take service under Illinois Power Company's Power Sales Tariff. The agreements are based on the Form of Service Agreement in Illinois Power's tariff.

Illinois Power has requested an effective date of March 23, 1999.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. UtiliCorp United Inc.

[Docket No. ER99–2573–000]

Take notice that on April 21, 1999, UtiliCorp United Inc., tendered for filing, a Service Agreement under its Market-Based Power Sales Tariff, FERC Electric Tariff Original Volume No. 28, with Minnesota Power, Inc. The Service Agreement provides for the sale of capacity and energy by UtiliCorp United Inc. to Minnesota Power, Inc., pursuant to the tariff.

UtiliCorp requests waiver of the Commission's regulations to permit the Service Agreement to become effective in accordance with its terms.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. Carolina Power & Light Company

[Docket No. ER99–2574–000]

Take notice that on April 22, 1999, Carolina Power & Light Company (CP&L), tendered for filing an executed Service Agreement with Duke Energy Trading and Marketing, L.L.C., under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4. This Service Agreement supersedes the un-executed Agreement originally filed in Docket No. ER98–3385–000 and approved effective May 18, 1998.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Florida Power Corporation

[Docket No. ER99–2575–000]

Take notice that on April 22, 1999, Florida Power Corporation (FPC), tendered for filing an amendment to its Open Access Transmission Tariff that provides for the establishment of a charge for redispatch for network integration transmission service and network contract demand transmission service.

FPC requests that the Commission waive its notice requirements to allow the amendment to become effective on May 10, 1999.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Peco Energy Company

[Docket No. ER99–2576–000]

Take notice that on April 21, 1999, PECO Energy Company (PECO), tendered a Service Agreement dated April 9, 1999 with Cinergy Capital & Trading, Inc. (CCT), under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff). The Service Agreement adds CCT as a customer under the Tariff.

PECO requests an effective date of April 9, 1999, for the Service Agreement.

PECO states that copies of this filing have been supplied to CCT and to the Pennsylvania Public Utility Commission.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

24. Public Service Company of New Mexico

[Docket No. ER99–2577–000]

Take notice that on April 22, 1999, Public Service Company of New Mexico (PNM), tendered for filing a mutual netting/close-out agreement between PNM and Avista Energy, Inc., (Avista).

PNM requested waiver of the Commission's notice requirement so that service under the PNM/Avista netting agreement may be effective as of April 1, 1999.

Copies of the filing were served on Avista and the New Mexico Public Regulation Commission.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

25. CSW Power Marketing, Inc.

[Docket No. ER99–2579–000]

Take notice that on April 22, 1999, the above-mentioned Affiliated Power Producer filed a quarterly report for the quarter ending March 31, 1999.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

26. Duke Energy Corporation

[Docket No. ER99–2580–000]

Take notice that on April 22, 1999, Duke Energy Corporation (Duke), tendered for filing a revised true-up filing for Calendar Year 1997, under Article II.3 of the Settlement Agreement approved by Commission's Letter Order issued October 9, 1991 in Docket No. ER90–315–000.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

27. New Century Services, Inc.

[Docket No. ER99–2581–000]

Take notice that on April 23, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Non-Firm Point-to-Point Transmission Service between the Companies and Statoil Energy Trading, Inc.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

28. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–2584–000]

Take notice that on April 23, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Florida Power & Light Company (FP&L), dated April 22, 1999. This Service Agreement specifies that FP&L has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and FP&L to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of April 22, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

29. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–2586–000]

Take notice that on April 23, 1999, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and Morgan Stanley Capital Group Inc. (MORGAN), dated April 14, 1999. This Service Agreement specifies that MORGAN has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and MORGAN to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of April 14, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

30. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER99–2587–000]

Take notice that on April 23, 1999, Jersey Central Power & Light Company,

Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and DTE Energy Trading, Inc. (DET), dated March 1, 1999. This Service Agreement specifies that DET has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and DET to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 1, 1999, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11466 Filed 5–6–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER97–3729–001, et al.]

PJM Interconnection, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 30, 1999.

Take notice that the following filings have been made with the Commission:

1. PJM Interconnection, L.L.C.

[Docket No. ER97–3729–001]

Take notice that on April 27, 1999, in accordance with a letter order issued by the Commission on March 19, 1999 in the above captioned docket, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C., and the PJM Open Access Transmission Tariff.

PJM requests an effective date of April 1, 1999, for the compliance amendments, the date previously set by the Commission for implementation of market based rates in the PJM Interchange Market.

Copies of this filing were served upon all PJM Members, the state electric regulatory commissions in the PJM Control Area, and all parties to this docket.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER98–3527–003]

Take notice that on April 27, 1999, in compliance with PJM Interconnection, L.L.C., 86 FERC ¶ 61,247 (1999), PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the PJM Open Access Transmission Tariff, modifying the PJM Market Monitoring Plan (Plan).

PJM requests an effective date of April 1, 1999, for the compliance amendments as previously set by the Commission for the Plan.

Copies of this filing were served upon all PJM Members, each state electric utility regulatory commission in the PJM control area, and all parties to this docket.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Carolina Power & Light Company

[Docket No. ER99–2275–000]

Take notice that on April 27, 1999, Carolina Power & Light Company requested withdrawal of the Service Agreement filed with the Federal Energy Regulatory Commission in the above-referenced docket on March 26, 1999.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. Green Mountain Energy Resources Inc.

[Docket No. ER99–2489–000]

Take notice that on April 27, 1999, Green Mountain Energy Resources Inc. (Green Mountain), tendered for filing an amendment to its filing of a Petition For Acceptance of Initial Rate Schedule, Waivers And Blanket Authority, dated April 13, 1999 and filed with the Federal Energy Regulatory Commission on April 14, 1999. The intent of the amendment is to expand on Section II of the Petition titled "Description of the Applicant."

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Energy Corporation

[Docket No. ER99–2611–000]

Take notice that on April 27, 1999, Duke Energy Corporation (Duke), tendered for filing Service Agreements with Carolina Power & Light Company (CP&L), for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement for OASIS #73500 be permitted to become effective on October 1, 2000. Duke also requests that the proposed Service Agreement for OASIS #75469 be permitted to become effective July 1, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. West Texas Utilities Company

[Docket No. ER99–2612–000]

Take notice that on April 27, 1999, West Texas Utilities Company (WTU), tendered for filing an Assignment of Service Agreements between WTU, Midwest Electric Cooperative, Inc. (Midwest) and Big Country Electric Cooperative, Inc. (Big Country), an Assignment of Service Agreement between WTU, Stamford Electric Cooperative, Inc. (Stamford) and Big Country, two Service Agreement between WTU and Big Country under WTU's Wholesale Power Choice (WPC) Tariff and Exhibit A's describing points

of delivery for service to Big Country. Pursuant to the Assignment Agreements, Midwest and Stamford have agreed to assign to Big Country their existing Service Agreements with WTU under WTU's WPC Tariff.

WTU requests an effective date of January 1, 1999, for the agreements and Exhibit A's to the Big Country Service Agreements. Accordingly, WTU requests waiver of the Commission's notice requirements.

WTU states that copies of this filing have been served on the affected customers and the Public Utility Commission of Texas.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Carolina Power & Light Company

[Docket No. ER99–2617–000]

Take notice that on April 27, 1999, Carolina Power & Light Company (CP&L), tendered for filing a quarterly report of transaction summaries for service under the provisions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 4, for the quarter ending March 31, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Consumers Energy Company

[Docket No. ER99–2618–000]

Take notice that on April 27, 1999, Consumers Energy Company (Consumers), tendered for filing an executed service agreement for Non-Firm Point-to-Point Transmission Service with Columbia Energy Power Marketing Corporation (Customer), pursuant to the Joint Open Access Transmission Service Tariff filed on December 31, 1996 by Consumers and The Detroit Edison Company (Detroit Edison).

The agreement has an effective date of April 12, 1999.

Copies of the filed agreement were served upon the Michigan Public Service Commission, Detroit Edison, and the Customer.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER99–2619–000]

Take notice that on April 27, 1999, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), collectively referred to as the Companies, tendered for filing with the Federal Energy Regulatory Commission their quarterly reports under Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9) for the period of January 1, 1999 to March 31, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corp., on Behalf of Monongahela Power Co. The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2620–000]

Take notice that on April 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 52 to add Illinois Power Company to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is April 26, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2621–000]

Take notice that on April 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 45 to add one (1) new Customer to the Standard Generation Service Rate Schedule under which Allegheny Power offers standard generation and emergency service on an hourly, daily, weekly, monthly or yearly basis. Allegheny Power requests a waiver of notice requirements to make service available as of April 26, 1999, to Nicole Energy Services, Inc.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Power Service Corp., on Behalf of Monongahela Power Co., The Potomac Edison Company and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2622–000]

Take notice that on April 27, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power) tendered for filing Supplement No. 21 to add two (2) new Customers to the Market Rate Tariff under which Allegheny Power offers generation services.

Allegheny Power requests a waiver of notice requirements to make service available as of April 26, 1999, to Nicole Energy Services, Inc., and Tennessee Valley Authority.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Company

[Docket No. ER99–2623–000]

Take notice that on April 27, 1999, Florida Power & Light Company (FPL), tendered for filing a Service Agreement with PP&L, Inc., for service pursuant to FPL's Market Based Rates Tariff.

FPL requests that the Service Agreement be made effective on April 1, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Indeck Pepperell Power Associates Inc.

[Docket No. ER99–2624–000]

Take notice that on April 27, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement)

between Indeck Pepperell and PG&E Energy Trading Power, L.P., (PG&E Energy Trading), dated March 26, 1999, for service under Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of April 1, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Florida Power Corporation

[Docket No. ER99–2625–000]

Take notice that on April 27, 1999, Florida Power Corporation (FPC), tendered for filing a service agreement between Koch Energy Trading, Inc., and FPC for service under FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Volume Number No. 8, as amended. This Tariff was accepted for filing by the Commission on June 26, 1997, in Docket No. ER97–2846–000.

The service agreement is proposed to be effective April 16, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corporation

[Docket No. ER99–2626–000]

Take notice that on April 27, 1999, Florida Power Corporation (FPC), tendered for filing a report of short-term transactions that occurred under its Market-Based Rate Wholesale Power Sales Tariff (FERC Electric Tariff No. 8) during the quarter ending March 31, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11467 Filed 05–06–99; 8:45 am]

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–67–000, et al.]

Portland General Electric Company, et al.; Electric Rate and Corporate Regulation Filings

April 29, 1999.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Company

[Docket No. EC99–67–000]

Take notice that on April 23, 1999, Portland General Electric Company (PGE) submitted an application pursuant to section 203 of the Federal Power Act for authority to sell certain jurisdictional transmission facilities, as more fully set forth in the application, to PP&L Montana, LLC, or, in part and in the alternative, to Montana Power Company.

A copy of this application has been served upon the Oregon Public Utility Commission.

Comment date: May 24, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Coastal Technology Nicaragua, S.A.

[Docket No. EG99–125–000]

Take notice that on April 27, 1999, Coastal Technology Nicaragua, S.A. (Applicant), West Wind Building, P.O. Box 1111, Grand Cayman, Cayman Islands, BWI, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Applicant, a Nicaragua Corporation intends to operate certain power generating facilities in Nicaragua. These facilities will include a 50.9 MW fuel oil fired power plant near Managua, Nicaragua.

Comment date: May 20, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Coastal Technology Pakistan (Private) Limited

[Docket No. EG99–126–000]

Take notice that on April 27, 1999, Coastal Technology Pakistan (Private) Limited, (Applicant), 73–E, G.D. Arcade, Fazal-ul-Haq Road, Islamabad, Pakistan, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Applicant, a Pakistan limited liability corporation intends to operate certain generating facilities in Pakistan. These facilities will include a 124.7 MW oil fired thermal electric generating facility located near Farouqabad, Pakistan.

Comment date: May 5, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. PG&E Energy Services Corporation; Morgan Stanley Capital Group Inc.; Merchant Energy Group of the Americas, Inc.; Williams Energy Marketing & Trading Company

[Docket Nos. ER95–1614–019; ER94–1384–023; ER98–1055–005; ER95–305–020]

Take notice that on April 27, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

5. Energy2, Inc.; Energy Atlantic, LLC; Questar Energy Trading Company; Brennan Power, Inc.; ENMAR Corporation; Preferred Energy Services, Inc.; Conoco Power Marketing, Inc.; California Polar Power Brokers, LLC; Brooklyn Navy Yard Cogeneration, L.P.

[Docket Nos. ER96–3086–009; ER98–4381–002; ER96–404–014; ER97–1630–003; ER99–254–002; ER96–2141–011; ER95–1441–017; ER98–701–002; ER97–886–005]

Take notice that on April 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

6. American Energy Trading, Inc.

[Docket No. ER97–360–010]

Take notice that on April 23, 1999, the above-mentioned power marketer filed a quarterly report with the Commission in the above-mentioned proceeding for information only. This filing is available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

7. ProLiance Energy, LLC and Atlanta Gas Light Services, Inc.

[Docket Nos. ER97–420–009 and ER97–542–007]

Take notice that on April 28, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

8. Sempra Energy Trading Corp.

[Docket No. ER99–1473–000]

Take notice that on April 26, 1999, Sempra Energy Trading Corp. (SET), tendered for filing an amendment to its filing of January 26, 1999. In that filing, SET sought authorization to make sales of certain ancillary services in southern Nevada and Arizona at market-based rates.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER99–1871–000]

Take notice that on April 22, 1999, Carolina Power & Light Company amended the original filing made in this docket on February 18, 1999.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. New Century Services, Inc.

[Docket No. ER99–2582–000]

Take notice that on April 23, 1999, New Century Services, Inc., on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (collectively Companies), tendered for filing a Service Agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Statoil Energy Trading, Inc.

The Companies request that the Agreement be made effective on March 29, 1999.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Consolidated Edison Company of New York, Inc. and Delmarva Power & Light Company

[Docket Nos. ER99–2585–000 and ER99–2588–000]

Take notice that on April 23, 1999 the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Electric Company and Cambridge Electric Light Company

[Docket No. ER99–2589–000]

Take notice that on April 26, 1999, Commonwealth Electric Company (Commonwealth) and Cambridge Electric Light Company (Cambridge), (collectively referred to as the Companies), tendered for filing with the Federal Energy Regulatory Commission executed Service Agreements between the Companies and the following Market-Based Power Sales Customers (collectively referred to herein as the Customers):

Select Energy, Inc. and Sithe Power Marketing, Inc.

These Service Agreements specify that the Customer has signed on to and has agreed to the terms and conditions of the Companies' Market-Based Power Sales Tariffs designated as Commonwealth's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 7) and Cambridge's Market-Based Power Sales Tariff (FERC Electric Tariff Original Volume No. 9). These Tariffs, accepted by the FERC on February 27, 1997, and which have an effective date of February 28, 1997, will allow the Companies and the Customers to enter into separately scheduled short-term transactions under which the Companies will sell to the Customers capacity and/or energy as the parties may mutually agree.

The Companies request an effective date as specified on each Service Agreement.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. Tampa Electric Company

[Docket No. ER99–2592–000]

Take notice that on April 26, 1999, Tampa Electric Company (Tampa Electric), tendered for filing an updated weekly capacity charge for short term power service provided under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively, Southern Companies). Tampa Electric also tendered for filing updated caps on energy charges for emergency assistance and short term power service under the contract.

Tampa Electric requests that the updated capacity charge and caps on charges be made effective as of May 1, 1999, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. Tampa Electric Company

[Docket No. ER99–2593–000]

Take notice that on April 26, 1999, Tampa Electric Company (Tampa Electric), tendered for filing cost support schedules showing an updated daily capacity charge for its scheduled/short-term firm interchange service provided under interchange contracts with each of 17 other utilities. Tampa Electric also tendered for filing updated caps on the charges for emergency and scheduled/short-term firm interchange transactions under the same contracts.

Tampa Electric requests that the updated daily capacity charge and caps on charges be made effective as of May 1, 1999, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commissions.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Tampa Electric Company

[Docket No. ER99–2594–000]

Take notice that on April 26, 1999, Tampa Electric Company (Tampa Electric), tendered for filing updated transmission service rates under its agreements to provide qualifying facility transmission service for Mulberry Phosphates, Inc. (Mulberry), Cargill

Fertilizer, Inc. (Cargill), and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the updated transmission service rates be made effective as of May 1, 1999, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Mulberry, Cargill, Auburndale, and the Florida Public Service Commission.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Boston Edison Company

[Docket No. ER99–2598–000]

Take notice that on April 23, 1999, Boston Edison Company (BECo), tendered for filing an Interconnection Agreement between BECo and ANP Blackstone Energy Company (ANP). The agreement provides for the payment for the construction of transmission facilities necessary to connect ANP's generation in Blackstone, Massachusetts to BECo's 345 kV Line No. 336.

BECo requests an effective date of June 1, 1999.

Comment date: May 13, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Northeast Utilities Service Company

[Docket No. ER99–2601–000]

Take notice that on April 26, 1999, Northeast Utilities Service Company (NUSCO) on behalf of its affiliates, The Connecticut Light and Power Company, Western Massachusetts Electric Company, and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Middleton Municipal Electric Department (Middleton).

NUSCO states that a copy of this filing was mailed to Middleton.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. LSP-Kendall Energy, LLC

[Docket No. ER99–2602–000]

Take notice that on April 26, 1999, LSP-Kendall Energy, LLC (LSP-Kendall), tendered for filing an initial rate schedule and request for certain waivers and authorizations pursuant to section 35.12 of the Regulations of the Federal Energy Regulatory Commission (the Commission). The initial rate schedule provides for the sale to wholesale purchasers of the output of an electric power generation facility to be developed by LSP-Kendall in Kendall County, Illinois.

LSP-Kendall requests that the Commission set an effective date for the rate schedule on the date which is sixty (60) days from the date of this filing, or the date the Commission issues an order accepting the rate schedule, whichever first occurs.

A copy of the filing was served upon the Illinois Commerce Commission.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Consumers Energy Company

[Docket No. ER99–2605–000]

Take notice that on April 26, 1999, Consumers Energy Company (Consumers), tendered for filing 19 executed service agreements for unbundled wholesale power service at cost-based rates pursuant to Consumers' Power Sales Tariff accepted for filing in Docket No. ER97–964–000. The service agreements all have effective dates of April 14, 1999 and are with the following customers:

1. Amoco Energy Trading Corporation
2. Cargill-Alliant, L.L.C.
3. Columbia Power Marketing Corporation
4. DTE Energy Trading, Inc.
5. Duke Power
6. DukeSolutions, Inc.
7. e prime, Inc.
8. The Energy Authority, Inc.
9. Entergy Power Marketing Corporation
10. FirstEnergy Trading and Power Marketing Inc.
11. Griffin Energy Marketing, L.L.C.
12. Merchant Energy Group of the Americas, Inc.
13. NorAm Energy Services, Inc.
14. PacifiCorp Power Marketing, Inc.
15. Plum Street Energy Marketing, Inc.
16. SCANA Energy Marketing, Inc.
17. Southern Company Services, Inc.
18. Tenaska Power Services Co.
19. Tennessee Valley Authority

Copies of the filing have been served on the Michigan Public Service Commission and the customers listed above.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

20. Genessee Power Station L.P. and Grayling Generating Station L.P.

[Docket Nos. ER99–2607–000 and ER99–2608–000]

Take notice that on April 26, 1999 the above-mentioned Affiliated Power Producers filed quarterly reports for the quarter ending March 31, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

21. FirstEnergy Operating Companies

[Docket No. ER99–2609–000]

Take notice that on April 26, 1999, the FirstEnergy Operating Companies tendered for filing an application to increase the rates charged for transmission service under the FirstEnergy Open Access Tariff. This filing is made pursuant to section 205 of the Federal Power Act.

Comment date: May 14, 1999, in accordance with Standard Paragraph E at the end of this notice.

22. Western Kentucky Energy Corp. and WKE Station Two Inc.

Docket Nos. ER99–2627–000 and ER99–2628–000]

Take notice that on April 27, 1999, the above-mentioned Affiliated Power Producers filed quarterly reports for the quarter ending March 31, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

23. Williams Generation Company-Hazelton; Consolidated Water Power Company; Potomac Electric Power Company

Docket Nos. ER99–2629–000; ER99–2630–000; ER99–2590–000]

Take notice that on April 27, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Comment date: May 17, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://

www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11463 Filed 5–6–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG99–94–000, et al.]

Westwood Operating Company, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

April 27, 1999.

Take notice that the following filings have been made with the Commission:

1. Westwood Operating Company, L.L.C.

[Docket No. EG99–94–000]

Take notice that on April 26, 1999, Westwood Operating Company, L.L.C. (Applicant), 139 East Fourth Street, P.O. Box 960, Cincinnati, Ohio 45201, filed with the Federal Energy Regulatory Commission an amended application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's Regulations.

Applicant, a Delaware Limited Liability Company, is a wholly owned subsidiary of Cinergy Capital & Trading, Inc., an Indiana Corporation. Applicant will be engaged directly and exclusively in the business of operating a 30 MW waste coal-fired generating facility located in Schuylkill County, Pennsylvania. Applicant will operate and maintain the facility pursuant to an agency relationship with the owner of the eligible facility. Applicant further states that all material facts set forth in its previous application for exempt wholesale generator status remain true, except as amended by this application.

Comment date: May 12, 1999, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Energy Services, Inc., Exact Power Co., Inc., CMS Marketing Services and Trading Company, Illinova Energy Partners, Inc., Coral Power, L.L.C. and Unicom Power Marketing, Inc.

[Docket Nos. ER95–1021–015 ER97–382–009 ER96–2350–017 ER94–1475–016 ER96–25–015 ER97–3954–007]

Take notice that on April 26, 1999, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only. These filings are available for public inspection and copying in the Public Reference Room or on the web at www.ferc.fed.us/ online/rims.htm for viewing and downloading (call 202–208–2222 for assistance).

3. Montaup Electric Company

[Docket No. ER99–1663–000]

Take notice that on April 21, 1999, Montaup Electric Company (Montaup), tendered for filing a corrected amendment to its April 15, 1999, filing in the above-referenced docket.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER99–2556–000]

Take notice that on April 21, 1999, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to Enserch Energy Services (New York), Inc. (Enserch NY) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement with Enserch NY becomes effective as of April 12, 1999.

NYSEG has served copies of the filing upon the New York State Public Service Commission and Enserch NY.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Virginia Electric and Power Company

[Docket No. ER99–2557–000]

Take notice that on April 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing a Service Agreement for Long Term Firm Point-to-Point Transmission Service with PECO Energy Company under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreement, Virginia Power will provide Long Term Firm Point-to-Point Transmission Service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of June 1, 1999.

Copies of the filing were served upon PECO Energy Company, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Virginia Electric and Power Company

[Docket No. ER99–2558–000]

Take notice that on April 21, 1999, Virginia Electric and Power Company (Virginia Power), tendered for filing an Amendment to the Service Agreement for Network Integration Transmission Service and an Amendment to the Network Operating Agreement between Virginia Power and the towns of Stantonsburgh, Black Creek and Lucama, North Carolina. Under the tendered Amended Agreements, Virginia Power's Wholesale Power Group will be substituted for the towns of Stantonsburgh, Black Creek and Lucama as the transmission customer while all other provisions of the filed agreements remain in effect.

Virginia Power requests an effective date of August 1, 1998.

Copies of the filing were served upon The Wholesale Power Group, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2559–000]

Take notice that on April 21, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 51 to add Duke Power to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is April 20, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Northern Indiana Public Service Company

[Docket No. ER99–2560–000]

Take notice that on April 21, 1999, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a Service Agreement pursuant to its Power Sales Tariff with Minnesota Power, Inc., (MP).

Northern Indiana has requested an effective date of April 19, 1999.

Copies of this filing have been sent to MP, to the Indiana Utility Regulatory Commission, and to the Indiana Office of Utility Consumer Counselor.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Dayton Power and Light Company

[Docket No. ER99–2561–000]

Take notice that on April 21, 1999, Dayton Power and Light Company (Dayton), tendered for filing service agreements establishing NorAm Energy Services, Inc., as a customer under the terms of Dayton's Market-Based Sales Tariff.

Dayton requests an effective date of one day subsequent to this filing for the service agreements. Accordingly, Dayton requests waiver of the Commission's notice requirements.

Copies of this filing were served upon NorAm Energy Services, Inc., and the Public Utilities Commission of Ohio.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. Allegheny Power Service Corp., on behalf of Monongahela Power Co., The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER99–2583–000]

Take notice that on April 21, 1999, Allegheny Power Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 50 to add PECO Energy Company—Power Team to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission.

The proposed effective date under the Service Agreement is April 20, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission.

Comment date: May 11, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. Geysers Power Company LLC

[Docket No. QF95–61–002]

Take notice that on April 21, 1999, Geysers Power Company, LLC, 50 West San Fernando Street, San Jose, California 95113 (Geysers Power), tendered for filing with the Federal Energy Regulatory Commission an application for recertification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The facility is a 63 MW geothermal small power production facility located in The Geysers area of Sonoma County, California, and known as Calpine Geothermal Unit 9/10 (Facility). The Facility is being acquired by Geysers Power from Pacific Gas & Electric Company (PG&E). Geysers Power states that the purpose of this Application is to reflect proposed changes in the ownership of the Facility and to confirm the status of the Facility as a qualifying small power production facility and an eligible facility under the Solar, Wind, Waste And Geothermal Power Production Incentives Act of 1990.

The Facility is interconnected with PG&E. Geysers Power expects to sell power into the deregulated California electricity market. Standby, back-up and/or interruptible power will be purchased from PG&E.

Comment date: May 21, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11465 Filed 5–6–99; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6337–7]

Air Pollution Control; Proposed Action on Clean Air Act Grant to the Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination under section 105(c) of the Clean Air Act (CAA) that a reduction in expenditures of non-Federal funds for the Santa Barbara County Air Pollution Control District (SBAPCD, or "District") in Santa Barbara, California is the result of a non-selective reduction in expenditures. This determination, when final, will permit the SBAPCD to be awarded financial assistance for FY–99 by EPA, under section 105(c) of the CAA.

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by June 7, 1999.

ADDRESSES: All comments and/or requests for a public hearing should be mailed to: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415) 744–1076.

FOR FURTHER INFORMATION CONTACT: Sara Bartholomew, Grants and Program Integration Office (AIR–8), Air Division, U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1250.

SUPPLEMENTARY INFORMATION: Under the authority of section 105 of the CAA, EPA provides financial assistance (grants) to the SBAPCD to aid in the operation of its air pollution control programs. In FY–98, EPA awarded the SBAPCD $422,000, which represented approximately 10% of the District's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "[n]o agency shall receive any grant under this section during any fiscal year when

its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(2). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–99 section 105 application, SBAPCD projected expenditures of non-Federal funds for recurrent expenditures (or its maintenance of effort (MOE)) of $3,285,988. This amount represents a shortfall of $133,552 from the actual FY–98 MOE of $3,419,540. In order for the District to be eligible to be awarded its FY–99 grant, EPA must make a determination under § 105(c)(2).

The SBAPCD is a single-purpose agency whose primary source of funding is permit fee revenue. Fees associated with permits issued by the SBAPCD go directly to the district to fund its operations. It is the "unit of Government" for section 105(c)(2) purposes. The SBAPCD submitted documentation to EPA which shows that air permit fee revenues have continued to decrease due to emission reductions from permitted sources and a decline in oil and gas activity. As a result, the SBAPCD's overall budget and its MOE decreased. The SBAPCD also submitted documentation to EPA which shows that the District lost 12.75 staff positions since FY97. These reductions in fees and staff have been non-selective in that all programs within SBAPCD have been impacted.

In summary, the SBAPCD's MOE reductions resulted from budget cuts stemming from a loss of fee revenues due to circumstances beyond the District's control. EPA proposes to determine that the SBAPCD's lower FY–99 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the SBAPCD to be awarded financial assistance for FY–99.

This document constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by June 7, 1999 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by June 7, 1999.

If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Sara Bartholomew at the above address.

Dated: April 23, 1999.

David P. Howekamp,

Director, Air Division, Region 9.

[FR Doc. 99–11563 Filed 5–6–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6242–4]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared April 12, 1999 Through April 16, 1999 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (64 FR 17362).

Draft EISs

ERP No. D–DOA–F36162–MN, Rating EC2, Snake River Watershed Plan, Watershed Protection and Flood Prevention, NPDES Permit and COE section 404 Permit, Marshall Pennington and Polk Counties, MN.

Summary: EPA expressed environmental concerns regarding alternatives, characterization of the affected environment, impacts to wetlands and waters of the United States, and mitigation. EPA requested that those issues be addressed in the final document.

ERP No. D–USA–G11036–AR, Rating EC2, Fort Chaffee Disposal and Reuse, Implementation, Ozark Mountains, Sebastian, Crawford, Franklin, Smith, Barling and Greenwood Counties, AR.

Summary: EPA had environmental concerns regarding potential wetland, and landfill expansion impact. EPA requested that the final document provide additional information on these issues.

ERP No. DA–NOA–K91007–00, Rating EC2, Pacific Coast Salmon Plan (1997) for Amendment 14, Fishery Management Plan, Comprehensive Updating, Exclusive Economic Zone (EEZ), Off the Coasts of WA, OR and CA.

Summary: EPA requested addition information on hook-and release mortality assumptions, misidentification of harvestable fish and modelling limits.

Final EISs

ERP No. F–COE–K01008–CA, Santa Maria and Sisquoc Rivers Specific Plan, Mining and Reclamantion Plans, (MRPs), Coast Rock Site and S.P. Milling Site, Conditional Use Permits, Approval of Reclamantion Plans, and Section 404 Permits, Santa Barbara and San Luis Obispo County, CA.

Summary: The FEIS satisfactorily addressed EPA's previous objections. EPA requested that the mitigation measures described in the FEIS be included in the Corps' Record of Decision and as permit conditions in the Clean Water Act Section 404 permits for the proposed mining activities.

ERP No. F–SFW–K65115–CA, Headwaters Forest Acquisition and the Palco Sustained Yield Plan and Habitat Conservation Plan, Implementation, Humboldt, Del Norte and Mendocino Counties, CA.

Summary: EPA supports the proposed HCP, EPA remains concerned with the ability of the lead agencies to fully implement all commitments and with the precedent of permitting timber harvest at a level that exceeds growth for the first two decades. Since these watersheds are already over the cumulative effects threshold, EPA recommended reduced harvest levels or limitations on clearcutting.

ERP No. FC–NOA–L64015–AK, Groundfish Fishery of the Bering Sea and Aleutian Islands Area and Groundfish of the Gulf of Alaska, Implementation of Groundfish Total Allowable Catch Specifications and Prohibited Species Catch Limits Under the Authority of the Fishery Management Plans, AK.

Summary: EPA believes that NMFS was generally responsive to EPA's concerns at the DEIS stage. However, EPA continue to be concerned with the range of alternatives related to the "Total Allowable Catch" and the depth of discussion on impacts to Sensitive Species and Native Subsistence need.

ERP No. FS–NOA–A91054–00, Atlantic, Gulf and Caribean Exclusive Economic Zones (EEZ) Billfish Fishery Management Plan, White and Blue Marlin, Sailfish, and the Longbill Spearfish, Implemetation.

Summary: EPA had not objections to the proposed regulations.

Dated: May 4, 1999.

William A. Dickerson,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 99–11558 Filed 05–06–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6242–3]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 *or* (202) 564–7153.

Weekly receipt of Environmental Impact Statements

Filed April 26, 1999 Through April 30, 1999

Pursuant to 40 CFR 1506.9.

EIS No. 990144, FINAL EIS, AFS, FL, Florida National Forests, Revised Land and Resource Management Plan, Implementation, Apalachicola, Choctowhatchee, Ocala and Osceola National Forests, Several Counties, FL, Due: June 07, 1999, Contact: Marsha Kearney (850) 942–9300.

EIS No. 990145, DRAFT EIS, AFS, UT, South Manti Timber Salvage, To address Ecological and Economic Values affected by Spruce Beetle Activity in the South Manti Project, Manti-La National Forest, Ferron-Price and Sanpeter Ranger Districts, Sanpete and Sevier Counties, UT, Due: June 21, 1999, Contact: Don Fullmer (435) 637–2817.

EIS No. 990146, DRAFT EIS, FHW, NV, US–95 Improvements, Along Summerlin Parkway to the Local and Arterial Road Network in the Northwest Region of Las Vegas, Construction and Operation, Clark County, NV, Due: July 09, 1999, Contact: Daryl James (775) 888–7013.

EIS No. 990147, DRAFT EIS, SFW, WA, Little Pend Oreille National Wildlife Refuge, Implementation, Comprehensive Conservation Plan, Stevens and Pend Oreille Counties, WA, Due: June 30, 1999, Contact: Mike Marxen (503) 590–6596.

Amended Notices

EIS No. 990071, DRAFT EIS, FHW, CT, CT 82/85/11 Corridor Transportation Improvements, Funding and COE Section 404 Permit, In the Towns of Salem, Montville, East Lyme and Waterford, CT, Due: May 21, 1999, Contact: Donald J. West (860) 659–6703.

Published FR 03–19–99—Review Period extended.

EIS No. 990075, FINAL EIS, COE, TX, Dallas Floodway Extension, Implementation, Trinity River Basin, Flood Damage Reduction and Environmental Restoration, Dallas County, TX, Due: May 19, 1999, Contact: Gene T. Rice, Jr. (817) 978–2110.

Published FR—12–04–98—Review Period Extended.

EIS No. 990101, DRAFT EIS, COE, IL, WI, Upper Des Plaines River Flood Damage Reduction Project, Recommended Plan to Construction of a Lateral Storage Area, National Economic Development (NED), Lake County, IL and Kenosha and Racine Counties, WI, Due: June 04, 1999, Contact: Keith Ryder (312) 353–6400.

Published FR 04–09–99 Review Period Extended.

EIS No. 990115, DRAFT EIS, SFW, WI, Karner Blue Butterfly Habitat Conservation Plan State-wide, Application for an Incidental Take Permit, several counties, WI, Due: June 15, 1999, Contact: Lisa Mandell (612) 713–5343.

Published FR–04–16–99 Due Date Correction.

Dated: May 4, 1999.

William D. Dickerson,

Director, Office of Federal Activities.

[FR Doc. 99–11557 Filed 05–06–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6337–6]

Meeting of the Ozone Transport Commission for the Northeast United States

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The United States Environmental Protection Agency is announcing the Annual meeting of the Ozone Transport Commission to be held on June 16, 1999.

This meeting is for the Ozone Transport Commission to deal with appropriate matters within the transport region, as provided for under the Clean Air Act Amendments of 1990. This meeting is not subject to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended.

DATES: The meeting will be held on June 16, 1999 from 9:00 a.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at: The Gideon Putnam Hotel and Conference Center, 24 Gideon Putnam Road, Saratoga Springs, NY 12866, (518) 584–3000.

FOR FURTHER INFORMATION CONTACT: *EPA:* Susan Studlien, U.S. Environmental Protection Agency—Region I, John F. Kennedy Federal Building, Boston, MA 02203, (617) 918–1510.

FOR DOCUMENTS AND PRESS INQUIRIES CONTACT: Stephanie A. Cooper, Ozone Transport Commission, 444 North Capitol Street, N.W., Suite 638, Washington, DC 20001, (202) 508–3840, e-mail: ozone@sso.org, website: http://www.sso.org/otc.

SUPPLEMENTARY INFORMATION: The Clean Air Act Amendments of 1990 contain at Section 184 provisions for the "Control of Interstate Ozone Air Pollution." Section 184(a) establishes an ozone transport region comprised of the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, parts of Virginia and the District of Columbia.

The Assistant Administrator for Air and Radiation of the Environmental Protection Agency convened the first meeting of the commission in New York City on May 7, 1991. The purpose of the Transport Commission is to deal with ground level oxone formation, transport, and control within the transport region.

The purpose of this notice is to announce that this Commission will meet on June 16, 1999. The meeting will be held at the address noted earlier in this notice.

Section 176A(b)(2) of the Clean Air Act Amendments of 1990 specifies that the meetings of the Ozone Transport Commission are not subject to the provisions of the Federal Advisory Committee Act. This meeting will be open to the public as space permits.

TYPE OF MEETING: Open.

AGENDA: Copies of the final agenda will be available from Stephanie Cooper of the OTC office (202) 508–3840 (by e-mail: ozone@sso.org or via our website at http://www.sso.org/otc) on Wednesday, June 9, 1999. The purpose of this meeting is to review air quality needs within the Northeast and Mid-Atlantic States, including reduction of motor vehicle and stationary source air pollution. The OTC is also expected to address issues related to the transport of

ozone into its region, including actions by EPA under sections 110 of the Clean Air Act, to evaluate the potential for additional emission reductions through new motor vehicle emission standards, and to discuss market-based programs to reduce pollutants that cause ozone.

Dated: April 30, 1999.

John DeVillars,

Regional Administrator, Region I.

[FR Doc. 99–11564 Filed 5–6–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–3139–EM]

Florida; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency for the State of Florida, (FEMA–3139–EM), dated April 27, 1999, and related determinations.

EFFECTIVE DATE: April 28, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of an emergency for the State of Florida is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared an emergency by the President in his declaration of April 27, 1999:

Martin County for appropriate assistance for required emergency protective measures as authorized under Title V of the Stafford Act.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence W. Zensinger,

Human Services Division Director, Response and Recovery Directorate.

[FR Doc. 99–11530 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1271–DR]

Georgia; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Georgia, (FEMA–1271–DR), dated April 20, 1999, and related determinations.

EFFECTIVE DATE: April 26, 1999.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Georgia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 20, 1999:

Candler County for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 99–11528 Filed 5–6–99; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Open Meeting, Technical Mapping Advisory Council

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. 1, the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Technical Mapping Advisory Council.

Date of Meeting: May 27–28, 1999.

Place: Portland Marriott Downtown; 1401 SW Naito Parkway; Portland, Oregon.

Times: May 27: 9:00 a.m. to 5:00 p.m.; May 28: 9:00 a.m. to 12 noon.

Proposed Agenda:

1. Call to Order and Announcements.
2. Action on Minutes of Previous Meeting.
3. Review Revised Draft Standards for Base Maps and DFIRM Products.
4. Discuss Federal/State/Local Partnerships and Cooperation.
5. Discuss Challenges of Unique Flood Hazards.
6. Establish Guidelines for Invited Guests.
7. Discuss the Role of the Council's Technical Advisors.
8. New Business.
9. Adjournment.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Federal Emergency Management Agency, 500 C Street SW., room 421, Washington, DC 20472, telephone (202) 646–2756 or by facsimile at (202) 646–4596.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first-served basis. Members of the general public who plan to attend the meeting should contact Sally Magee, Federal Emergency Management Agency, 500 C Street SW., room 444, Washington, DC 20472, telephone (202) 646–8242 or by facsimile at (202) 646–4596 on or before May 14, 1999.

Minutes of the meeting will be prepared and will be available upon request 30 days after they have been approved by the next Technical Mapping Advisory Council meeting.

Dated: April 29, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11531 Filed 05–06–99; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY

Background. Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved

collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, with revision, of the following report:

1. Report title: The Ongoing Intermittent Survey of Households

Agency form number: FR 3016

OMB Control number: 7100-0150

Effective Date: [Insert date 30 days from publication in Federal Register]

Frequency: on occasion

Reporters: households and individuals

Annual reporting hours: 405 burden hours

Estimated average hours per response: 4.2 minutes

Number of respondents: 500

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 15 U.S.C. 1691b) and is given confidential treatment (5 U.S.C. 552(b)(6)).

Abstract: The Federal Reserve uses this voluntary telephone survey to obtain household-based information specifically tailored to the Federal Reserve's policy, regulatory, and operational responsibilities, and the survey is necessary to provide information on developing events in the financial markets. Intermittently, on request, the University of Michigan's Survey Research Center includes survey questions on behalf of the Federal Reserve in an addendum to their regular monthly Survey of Consumer Attitudes and Expectations. The frequency and content of the questions depends on changing economic, regulatory, legislative, and consumer developments.

Board of Governors of the Federal Reserve System, May 3, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99-11489 Filed 5-6-99; 8:45AM]

BILLING CODE 6210-01-F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 21, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Stoinoff Investments, L.P., Hiawassee, Georgia, and James M. Stoinoff and Elizabeth S. Stoinoff, as general partners, both of Hiawassee, Georgia; to retain voting shares of Chatuge Bank Shares, Inc., Hiawassee, Georgia, and thereby indirectly retain voting shares of Bank of Hiawassee, Hiawassee, Georgia.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Scherrie Viola Giamanco, Mt. Vernon, Illinois; to retain voting shares of First Nokomis Bancorp, Inc., Nokomis, Illinois, and thereby indirectly retain voting shares of Ayars State bank, Moweaqua, Illinois, and First National Bank of Nokomis, Nokomis, Illinois.

Board of Governors of the Federal Reserve System, May 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11452 Filed 5–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 1, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. BancTenn Corp., Kingsport, Tennessee; to acquire up to 8.75 percent of the voting shares of Independence Bank, Kernersville, North Carolina.

Board of Governors of the Federal Reserve System, May 3, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11451 Filed 5–6–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, May 12, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11679 Filed 5–5–99; 11:54 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 9723149]

LS Enterprises, LLC et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before July 6, 1999.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: John Dugan and Andrew Caverly, Boston Regional Office, Federal Trade Commission, 101 Merrimac Street, Suite 810, Boston, MA 02114–4719, (617) 424–5960.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46, and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for April 21, 1999), on the World Wide Web, at "http://www.ftc.gov/os/actions97.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Avenue, NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from LS Enterprises, LLC, Internet Promotions, LLC, and Louis Salatto. The proposed respondents promoted and sold various products and services through the Internet via unsolicited commercial E-Mail ("UCE). In particular, the proposed respondents promoted and sold UCE products and services, whereby the proposed respondents offered to assist in sending bulk UCE on behalf of other companies or individuals who were selling products or services, and sold UCE software and mailing lists so that other companies or individuals could send their own bulk UCE. The proposed respondents also promoted and sold various work-at-home and business opportunities via UCE.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

The Commission's complaint alleges several unfair or deceptive acts or practices related to the proposed respondents' promotion and sale of various products and services via UCE. The complaint charges that, with respect to the promotion and sale of UCE products and services, the proposed respondents: falsely represented that they acted as an E-Mail Internet Service Provider; falsely represented their experience in providing UCE services; made false and unsubstantiated earnings claims for purchasers of their UCE products and services; and made false and unsubstantiated claims about the receptivity of consumers on their E-Mail recipient lists towards receiving UCE.

The complaint further charges that the proposed respondents made several false or unsubstantiated claims in the promotion and sale of various work-at-home and business opportunities via UCE. The complaint charges that in a promotion concerning setting consumers up with jobs as "mystery shoppers," the proposed respondents: falsely represented that they acted as contractors for major corporations to hire consumers to work as "mystery shoppers," have hired thousands of consumers to work as "mystery shoppers," have actual job openings for "mystery shoppers" all over the country, and will give consumers as many "mystery shopper" assignments from the proposed respondents as they want or need; and made false and unsubstantiated earnings and free merchandise claims. The complaint also charges that in a general work-at-home promotion, the proposed respondents: falsely claimed that they have helped thousands of consumers to find home-based work; and made false and unsubstantiated claims about earnings, when consumers can begin work, and when and for how long they can receive paychecks. Finally, in a promotion concerning the sale of reproduction and distribution rights for various consumer manuals, the complaint charges that the proposed respondents: falsely related their experience in selling consumer manuals; and made false and unsubstantiated earnings claims

associated with the sale of these manuals.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the proposed respondents from engaging in similar acts in the future. Parts I and II of the proposed order apply to the promotion of any UCE product or service, or any product or service concerning business opportunities or work-at-home opportunities. Part I prohibits the proposed respondents from misrepresenting in any manner, expressly or by implication: (A) Their ability to provide any such product or service; (B) their experience in providing any such product or service; (C) that they act as contractors for other companies to hire consumers for any type of work; or (D) the availability of actual job openings or any other type of employment opportunities, or the level of assistance provided by them in securing any job or other type of employment opportunity. Part II prohibits the proposed respondents from making any claim about: (A) The amount of earnings, income, or sales that a prospective purchaser could reasonably expect to attain; (B) the amount of time within which a prospective purchaser could reasonably expect to: (1) begin earning money; (2) continue earning money; (3) attain any amount of earnings, income, or sales; or (4) recoup his or her investment; (C) the availability of free merchandise; or (D) the receptivity of persons on any type of mailing list towards receiving commercial solicitations, unless the representation is true and, at the time it is made, the proposed respondents possess and rely upon competent and reliable evidence that substantiates the representation.

Part III of the proposed order prohibits misrepresentations in UCEs, including, but not limited to, misrepresentations in the subject line or the text of the UCE. Part IV applies to the sale of any product or service, and prohibits the proposed respondents from making any representation, in any manner, expressly or by implication, about the benefits, performance, efficacy, or success rate of such product, unless such representation is true and, at the time the representation is made, the proposed respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part V of the proposed order contains a bond provision requiring the proposed respondents to post a $100,000 bond before advertising, promoting, offering for sale, selling, or distributing any UCE product or service via any media, or any other product or service via UCE.

Part VI of the proposed order contains record-keeping requirements for materials that demonstrate the compliance of the proposed respondents with the proposed order. Part VII requires distribution of a copy of the consent decree to certain current and future personnel who have responsibilities related to the subject matter of the order. Part VIII provides for Commission notification upon any change in the corporate respondents affecting compliance obligations arising under the order. Part IX provides for Commission notification upon any change in the individual respondent's employment status. Part X requires the filing of compliance report(s). Finally, Part XI provides for the termination of the order after twenty years under certain circumstances.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 99–11492 Filed 5–6–99; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will address religious views on research involving human embryonic stem cells. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on May 7, 1999 from 1:00 pm–1:30 pm.

Dates/times	Location
May 7, 1999 8:30 am–2:30 pm.	Riggs Library, Healy Hall, Georgetown University, 37th and O Streets, NW Washington, DC 20057.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1995 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research. NBAC is aware of the requirement to publish notices 15 calendar days prior to a meeting. However, this meeting has a short lead time due to it being a special addition to NBAC's meeting schedule.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Patricia Norris by telephone, fax machine, or mail as shown below and as soon as possible at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Norris, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: April 29, 1999.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 99–11481 Filed 5–6–99; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement 99083]

Program To Build Capacity To Develop, Implement, and Evaluate Health Education and Promotion Activities in Tribal Communities; Notice of Availability of Funds

A. Purpose

The Agency for Toxic Substances and Disease Registry (ATSDR) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to build capacity in tribal communities to develop, implement, and evaluate health education and health promotion activities in tribal communities. This program addresses the "Healthy People 2000" priority areas of educational and community-based programs, and environmental health. This five-year cooperative agreement program is designed to assist American Indian and Alaska Native Nations and consortia of Indian tribes in dealing with present and potential environmental health challenges related to National Priorities List (NPL) and CERCLA hazardous substances waste sites and releases on or adjacent to Indian lands. Specifically, cooperative agreement funds will be used to assist tribal and village governments in addressing community health concerns related to environmental toxins. This will be accomplished by increasing tribal capacity to develop, implement, and evaluate culturally relevant and appropriate environmental health education and promotion activities for American Indian and Alaska Native communities and for the health professionals and para-professionals serving these communities.

B. Eligible Applicants

This program is directed only to federally-recognized Indian tribes or consortia of Indian tribes. Indian tribes are defined in section 101(36) (42 U.S.C. 9601 (36)) as "any Indian tribe, band, nation, or other organized group or community, including any Alaska Native Village but not including any Alaska Native regional or village corporation, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians."

C. Availability of Funds

Approximately $170,000 is available in FY 1999 to fund 3–4 awards. The average award is anticipated to be approximately $50,000, ranging from $35,000 to $75,000. It is expected the awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

The funding awarded may be expended for reasonable program purposes, such as personnel, travel, supplies and services, including contractual services. ATSDR funding is generally not to be used for the purchase of furniture or equipment. Any equipment purchased will be forwarded to ATSDR at the end of the funding period. The awardees shall serve as the direct recipients in this grant program and must perform a substantive role in carrying out project activities. They cannot merely serve as a conduit for an award to another party or provide funds to an ineligible party.

D. Program Requirements

In conducting activities related to NPL sites and hazardous substance releases to achieve the purpose of the program, the recipient shall be responsible for conducting activities under 1, below, and ATSDR will be responsible for conducting activities under 2, below:

1. Recipient Activities

a. Conduct community-based health education and promotion needs assessment(s) and asset inventory(ies), and develop project period and budget period workplans based on these identified needs and resources. Children should be recognized as a susceptible population of special interest and concern.

b. Develop environmental health education materials for American Indian and Alaska Native communities and the health professionals and paraprofessionals serving them, including materials in appropriate languages, literacy levels, and age-groups.

c. Implement methods to disseminate educational materials to American Indian and Alaska Native communities and the health professionals and para-professionals serving them. These materials should also be made available to other tribes and audiences as feasible and appropriate.

d. Develop and implement health education and promotion activities related to preventing and managing environmental health problems related to NPL sites or hazardous substances releases on or adjacent to tribal lands. These activities should be designed to improve the knowledge and skills of community members and health professionals and paraprofessionals concerning such topics as:

(1) Health conditions possibly related to hazardous substances at sites, including prevention, diagnosis, and treatment of exposure-related conditions in adults and children;

(2) Health studies being done by ATSDR concerning acute or chronic exposure of American Indian/Alaska Natives to hazardous substances;

(3) Chemical-specific and site-specific information resources;

(4) American Indian and Alaska Native community risk communication and outreach;

(5) Environmental health guidelines and policy, and health-based environmental standards.

e. Evaluate the effectiveness and impact of project activities and the overall health education and promotion program.

f. Attend and participate in annual ATSDR Partners' Meetings held in Atlanta, Georgia, or other locations, including assisting in planning meeting and presenting program activities and evaluation results.

2. ATSDR Activities

a. Assist in development of a needs assessment process, the identification of education and training needs of target audiences, and the development of work plans.

b. Assist in the design, implementation, and evaluation of community environmental health education materials, including providing examples of materials developed by other tribes under cooperative agreement.

c. Provide assistance in the dissemination of educational materials developed under cooperative agreement to the attention of State, regional, or national audiences.

d. Assist in the design and implementation of community and health professional education and promotion activities and training activities for tribal staff and others serving the environmental health needs of American Indian and Alaska Native communities. This assistance could include providing current information and instructional resources about the possible health effects related to

exposure to hazardous substances in the environment.

e. Assist in development of an overall evaluation plan to determine the effectiveness and impact of the project on the knowledge, skills, attitudes, and behaviors of target audiences.

f. Provide site-specific assistance and direction on possible cost recovery activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, excluding appendices, printed on one side, one-inch margins, and unreduced font.

F. Submission and Deadline

Submit the original and two copies of PHS 516l (OMB Number 0937-0189). Forms are in the application kit. On or before July 15, 1999, submit the application to: Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement #99083, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U. S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by ATSDR.

1. Proposed Program—50 percent

a. Clearly stated understanding of environmental health problem(s) to be addressed, including the proximity of NPL sites and any special risks to children as a susceptible population.

b. Clear and reasonable project goals.

c. Extent to which stated project objectives are realistic, measurable, and related to program requirements.

d. Identification of specific target audiences and their environmental health education and promotion needs.

e. Specificity and feasibility of the proposed timeline for implementing project activities.

2. Proposed Personnel—20 percent

a. Ability of the applicant to provide adequate program staff and support staff, including any proposed consultants or contractors. Award should support at least 1 full-time employee.

b. Experience of proposed staff in conducting needs assessments, developing materials, implementing activities, and conducting program evaluation related to community health education and promotion.

c. Experience of staff in conducting culturally appropriate activities for tribal communities.

3. Capability—30 percent

a. Cultural-appropriateness of the health education and promotion activities proposed for the proposed target groups—including collaboration with tribal colleges and universities in the development of the activities.

b. Thoroughness of the health education and promotion activities proposed.

c. Extent to which the evaluation plan includes measures of program outcome and effectiveness, such as changes in participants' knowledge, attitudes, and behaviors.

d. Plans for collaborative efforts and appropriate letters of support, including coordination with tribal colleges and universities.

4. Proposed Budget—(not scored)

The extent to which the proposed budget is reasonable, clearly justified with a budget narrative, and consistent with the intended use of cooperative agreement funds.

H. Other Requirements

Technical Reporting

Provide CDC with the original plus two copies of:

1. Quarterly progress reports;

2. financial status report, no more than 90 days after the end of the budget period, and

3. final financial report and performance report, no more than 90 days after the end of the project.

Send all reports to: Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146.

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1, in the application kit. Additional ATSDR requirements are also included in Attachment 1.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 104(i)(14) and (15) and 126 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA) [42 U.S.C. 9604 (i)(14), (15) and 9626]. The Catalog of Federal Domestic Assistance Number is 93.161.

J. Where To Obtain Additional Information

To receive additional written information, and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement Number of interest (Announcement 99083). You will receive a complete program description, information on application procedures, and application forms. See also the CDC home page on the Internet for a complete copy of the announcement: *http://www.cdc.gov*

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nelda Godfrey, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, telephone (770) 488–2722, e-mail address: nag9@cdc.gov.

Programmatic technical assistance may be obtained from: Christine Rosheim, D.D.S., M.P.H., Health Education Specialist, Division of Health

Education and Promotion, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, Mailstop E–33, Atlanta, GA 30333, Telephone (404) 639–6851.

Dated: May 3, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–11482 Filed 5–6–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Bunker Hill Workshop on Early Detection of Nephropathy

The Agency for Toxic Substances and Disease Registry announces the following meeting:

NAME: Bunker Hill Workshop on Early Detection of Nephropathy.

TIMES AND DATES: 9 a.m.–5 p.m., May 25, 1999, 9 a.m.–5 p.m., May 26, 1999.

PLACE: Sheraton Buckhead Hotel, 3405 Lenox Road, NE, Atlanta, Georgia 30326, telephone 404/848–7308.

STATUS: Open to the public, limited only by the space available. The meeting room accommodates approximately 100 people.

PURPOSE: The Agency for Toxic Substances and Disease Registry (ATSDR) is developing a Medical Monitoring for Disorders of the Kidney Associated with the Bunker Hill Site. In order to assure that the program is based on the latest scientific findings in this field, the Agency is convening a workshop of experts to provide guidance and input.

MATTER TO BE CONSIDERED: As a result of contamination by the Bunker Hill Mining site in Kellog, Idaho, the workers and surrounding population were exposed to nephrotoxic heavy metals, primarily lead and cadmium. This workshop will bring together international experts to provide ATSDR information and individual input on the latest scientific findings in this field and how they may be applied to the medical monitoring program at the Bunker Hill location. Of special interest to ATSDR is the availability of biomarkers to screen for early signs of reversible nephropathy before progressive renal dysfunction occurs.

CONTACT PERSON FOR MORE INFORMATION: Erik Auf der Heide, M.D., MPH., Division of Health Education and Promotion, Agency for Toxic Substances and Disease Registry, 1600 Clifton Rd, NE, M/S E–33, Atlanta, Georgia 30333, telephone 404/639–6252, e-mail: eaa9@cdc.gov.

Dated: May 3, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–11483 Filed 05–06–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99113]

Cooperative Agreement for a National Poison Prevention and Control Program; Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and Health Resources Services Administration (HRSA) announce the availability of fiscal year 1999 funds for a cooperative agreement program for a National Poison Prevention and Control Program.

The purpose of the program is to support an integrated system of poison prevention and control services including; coordination of all poison control centers (PCCs) through development, implementation and evaluation of standardized public education, development of a plan to improve national toxicosurveillance and development of a single, nationwide toll-free telephone number and related public service media campaign.

For additional background see: Addendum 2 in the application kit.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and Federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

C. Availability of Funds

Approximately $1,050,000 is available in FY 1999 to fund one award. It is expected that the award will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Cooperative Activities

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1 (Recipient Activities) and CDC, in consultation with HRSA, will be responsible for the activities under 2 (CDC Activities).

1. Recipient Activities

(a) Develop a plan and begin implementation to assess and improve the current national toxicosurveillance system.

(b) Develop and coordinate a plan with poison control centers, State health departments, and voluntary organizations to provide standardized public education for poison control services.

(c) Develop a plan and begin implementation of a national public service media campaign to familiarize the public with poison control services.

(d) Develop a plan for and begin implementation of a national poison prevention and control program including a nationwide toll-free number with 24 hour capability that provides nationwide access by all U.S. residents to poison prevention and control information.

2. CDC Activities

(a) Provide technical advice and consultation, in conjunction with HRSA, on all aspects of recipient activities.

(b) Assist in the development and implementation of the public service media campaign to familiarize the public with poison control services.

(c) Assist in the assessment of the national toxicosurveillance system and related improvement plan.

E. Application Content

Use the information in the Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than [30] double-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application must include:

1. Abstract:

A one page abstract and summary of the proposed effort.

2. Background and Need:

Application should describe the background and need for an integrated program of poison prevention and control services including; development, implementation and evaluation of standardized public education, development of a plan to improve national toxicosurveillance and coordination of all poison control centers (PCCs) through the development of a single, nationwide toll-free telephone number and related public service media campaign.

3. Methods:

Describe activities required to implement an integrated system of poison prevention and control services, (refer to purpose). Provide (a) goals and objectives for implementation; (b) timeline for implementation of activities that is logically sequenced. Describe the coordination of the poison control centers and other organizations who will participate and how this will occur. Include letters of support from all involved individuals and organizations.

4. Evaluation:

Provide and describe how the proposed evaluation system will document program process and effectiveness and the impact on delivering poison prevention and control services. Document staff availability and expertise and capacity to perform the evaluations. Indicate willingness to participate in a process of continuous improvement which may require frequent review of progress and process utilized, remidiation of identified barriers, and adoption of modified methods and measures.

5. Staff and Resources:

Describe the responsibilities of a program coordinator and each of the other staff members responsible for carrying out the national poison prevention and control program. Description should include: experience, professional education and the time devoted to program. Curriculum Vitae should be included for each critical staff member.

6. Budget:

A detailed budget with accompanying narrative justifying all individual budget items which make up the total amount of funds requested. The budget should be consistent with the stated goals and objectives.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189) Forms are in the application kit. On or before July 7, 1999, submit the application to the Grants Management Specialist identified in the "Where To Obtain Additional Information" Section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (25 Percent)

The extent to which the applicant presents an understanding of the need for a national poison prevention and control program and demonstrates experience in this area, especially the ability to work with poison control centers and their key issues, and describes the likely impact of their activities on this problem.

2. Methods (30 Percent)

The extent to which the applicant provides a detailed description of all proposed activities and collaboration needed to achieve each objective and the overall program goal(s). The extent to which the applicant provides a reasonable logically sequenced and complete schedule for implementing all activities. The extent to which position descriptions, lines of command, and collaborations are appropriate to accomplishing the program goal(s) and objectives.

3. Evaluation (10 Percent)

The extent to which the proposed evaluation plan is detailed and capable of documenting program process and outcome measures. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, and capacity to perform the evaluation.

4. Staff and Resources (35 Percent)

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, including a full-time coordinator and resources to accomplish the proposed goal(s)and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

5. Budget and Justification (Not scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with the stated objectives and planned program activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. semiannual progress reports;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where To Obtain Additional Information" Section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I. (List all applicable requirements by number and title. The Grants Management Branch will include the applicable descriptions in the application kit.)

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a), 317(k)(2), 391, 392, 394, and 394A [42 U.S.C. 241(a), 247b(k)(2), 230b, 280b–1, 280b–2, 280b–3] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

See also the CDC home page on the Internet: http://www.cdc.gov for this and other program announcements.

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest. Please refer to Program Announcement 99113 when you request information. After reviewing the Program Announcement, for business management assistance, contact: Joanne Wojick, Grants Management Specialist Grants Management Branch, Procurement and Grants Office, Announcement 99113, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone (404) 488–2717, Email address jcw6@cdc.gov.

For program technical assistance, contact: Paul Burlack, Centers for Disease Control and Prevention, National Center for Injury Prevention and Control, 4770 Buford Highway N.E., Mailstop F41, Atlanta, GA 30341–3724, Telephone (770) 488–4031, pab5@cdc.gov.

Dated: May 3, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11484 Filed 5–6–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Collection of Fees at United States Ports Designated To Conduct Rodent Infestation Inspections and Issue Deratting and Deratting Exemption Certificates

AGENCY: Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (DHHS).

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC) is adopting a requirement for collection of user fees for conducting rodent infestation inspection of ships, and issuing Deratting and Deratting Exemption Certificates. While the United States does not require these certificates for ships to enter its seaports, the United States conducts inspections and issues certificates in accordance with 42 CFR 71.46 and Article 17 of the International Health Regulations.

DATES: Effective date is June 6, 1999.

FOR FURTHER INFORMATION CONTACT: James E. Barrow, Chief, Program Operations Branch, Division of Quarantine, National Center for Infectious Diseases, CDC, Mailstop E–03, Atlanta, Georgia 30333, telephone: (404) 639–8107, fax (404) 639–2599, e-mail: jeb1@cdc.gov.

Authority: 42 U.S.C. 264–271, 42 CFR 71.46, IHR Articles 17 and 53.

SUPPLEMENTARY INFORMATION: A proposal to charge fees for rodent infestation inspections of ships, and issuance of Deratting and Deratting Exemption Certificates, where these services are provided directly by employees or vendors of the CDC was published in the **Federal Register** on November 24, 1998 (63 FR 64967).

Comments Received

Interested parties were afforded an opportunity to comment on the proposal. One media inquiry and no comments were received during the comment period.

Conclusion

CDC has determined that in the interest of defraying the cost of inspection and certificate issuance, user fees will be implemented for rodent infestation of ships, and issuance of Deratting and Deratting Exemption Certificates. Rodent infestation inspections for ships will be conducted at 11 major ports upon request, including: Baltimore, Maryland; Honolulu, Hawaii; Houston, Texas; Jacksonville, Florida; Los Angeles, California; Miami, Florida; New Orleans, Louisiana; New York, New York; San Francisco, California; Savannah, Georgia; and Seattle, Washington.

Cost Impact

The United States does not require a Rodent Infestation Inspection, or a Deratting or Deratting Exemption Certificate, for ships to enter its seaports. Article 17 of the International Health Regulations, published by the World Health Organization, Geneva, Switzerland, requires that each Health Administration provide these services, and Article 82 outlines the criteria for charging fees. 42 CFR 71.46 authorizes the performance of these services by the Public Health Service as carried out by CDC. CDC has for many years offered these services at no cost to the owners or agents of ships requesting them. These user fees will, in a manner consistent with most other countries, pass the cost of conducting these services along as a charge to those receiving and benefitting from the inspections and certificates.

Regulatory Impact

The requirements adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this action does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This action (1) is not a "significant regulatory action" under Executive Order 12866; (2) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act; and (3) does not impose additional costs upon any State or local government as a result of a mandate imposed upon them as a government agency, as described in the Unfunded Mandates Reform Act.

Collection of Information

This final rule contains no new collection-of-information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

User Fee Administration

1. Effective June 6, 1999, user fees will be collected for all rodent infestation inspections of ships, and the associated issuance of Deratting and Deratting Exemption Certificates, by CDC and its vendors.

2. Rodent infestation inspections for ships will be conducted at 11 ports upon request, including: Baltimore, Maryland; Honolulu, Hawaii; Houston, Texas; Jacksonville, Florida; Los Angeles, California; Miami, Florida; New Orleans, Louisiana; New York, New York; San Francisco, California; Savannah, Georgia; and Seattle, Washington.

3. Costs are determined by taking into consideration such items as salaries, benefits, vendor services, printing, supplies, and agency overhead. The charge for the first full year during which fees for rodent infestation inspections and issuance of Deratting and Deratting Exemption Certificates are assessed is $150 for each inspection conducted. Shipping companies will be provided by mail instructions for submitting fees. The fees will be due at the address specified in the bill, not later than 30 days following the inspection. Arrangements may also be made to prepay user fees and draw against those prepayments.

Dated: May 3, 1999.

Joseph R. Carter,

Acting Associate Director for Management and Operation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11485 Filed 5–6–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Quarterly Performance Report, ORR–6.

OMB No.: 0970–0036.

Description: Data gathered from the Quarterly Performance Report (Form ORR–6) are used by ORR to estimate the number of months of Refugee Cash Assistance (RCA) and Refugee Medical Assistance (RMA) that ORR can provide based on appropriations; to determine priorities; and standards, budget requests, and assistance policies; to analyze data on service caseloads and program outcomes in order to monitor performance; and to compute refuge medical assistance (RMA) utilization rates.

Respondents: State, Local or Tribal Governments.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Program Estimates (CMA)	48	4	3.875	744

Estimated Total Annual Burden Hours: 744.

Additional Information: Copies of the proposed collection may be writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment: OMB is required to make a decision concerning the collection of information between 30 to 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Ms. Lori Schack.

Dated: May 3, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–11536 Filed 5–6–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0123]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Food Labeling; Notification Procedures for Statements on Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 7, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Food Labeling; Notification Procedures for Statements on Dietary Supplements—21 CFR 101.93 (OMB Control Number 0910–0331—Extension)

Section 403(r)(6) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 343(r)(6)) requires that the agency be notified by manufacturers, packers, and distributors of dietary supplements that they are marketing a dietary supplement product that bears on its label or in its labeling a statement provided for in section 403(r)(6) of the act. Section 403(r)(6) of the act requires that the agency be notified, with a submission about such statements, no later than 30 days after the first marketing of the dietary supplement. Information that is required in the submission includes: (1) The name and address of the manufacturer, packer, or distributor of the dietary supplement product; (2) the text of the statement that is being made; (3) the name of the dietary ingredient or supplement that is the subject of the statement; (4) the name of the dietary supplement (including the brand name); and (5) a signature of a responsible individual who can certify the accuracy of the information presented.

The agency established § 101.93 (21 CFR 101.93) as the procedural regulation for this program. Section 101.93 provides details of the procedures associated with the submission and identifies the information that must be included in order to meet the requirements of section 403 of the act.

Description of Respondents: Businesses or other for-profit organizations.

In the **Federal Register** of February 4, 1999 (64 FR 5664), the agency requested comments on the proposed collections of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
101.93	700	1	700	0.5 to 1	350 to 700

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The agency believes that there will be minimal burden on the industry to generate information to meet the requirements of section 403 of the act in submitting information regarding section 403(r)(6) of the act statements on labels or labeling of dietary supplements. The agency is requesting only information that is immediately available to the manufacturer, packer, or distributor of the dietary supplement that bears such a statement on its label or in its labeling. This estimate is based on the average number of notification submissions received by the agency in the last 3 years.

Dated: April 29, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11453 Filed 5–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0124]

Agency Information Collection Activities; Submission for OMB Review; Comment Request and Correction; Premarket Notification for a New Dietary Ingredient

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA). In addition, this document is correcting the information collection notice that appeared in the **Federal Register** of February 9, 1999 (64 FR 6364).

DATES: Submit written comments on the collection of information by June 7, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with section 3507 of the PRA (44 U.S.C. 3507), FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910–0330—Extension)

Description: Section 413(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 350b(a)) provides for the notification of the Secretary of Health and Human Services (the Secretary) (and by delegation FDA) at least 75 days before the introduction or delivery for introduction into interstate commerce of a dietary supplement that contains a new dietary ingredient. The agency established 21 CFR 190.6 as the procedural regulation for this program. This regulation provides details of the administrative procedures associated with the submission and identifies the information that must be included in the submission in order to meet the requirements of section 413(a) of the act and to show the basis on which a manufacturer or distributor of a new dietary ingredient or a dietary supplement containing a new dietary ingredient has concluded that the dietary supplement containing such dietary ingredient will reasonably be expected to be safe.

Description of Respondents: Businesses or other for-profit organizations.

In the **Federal Register** of February 9, 1999 (64 FR 6364), the agency requested comments on the proposed collections of information. No comments were received.

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
190.6	11	1	11	20	220

[1] There are no capital costs or operating and maintenance costs associated with this collection of information

The agency believes that there will be a minimal burden on the industry to generate data to meet the requirements of the premarket notification program because the agency is requesting only that information that the manufacturer or distributor should already have developed to satisfy itself that a dietary supplement containing a new dietary ingredient is in full compliance with the act. However, the agency estimates that extracting and summarizing the relevant information from the company's files, and presenting it in a format that will meet the requirements of section 413 of the act, will require a burden of approximately 20 hours of work per submission. This estimate is based on the average number of premarket notifications received by the agency in the last 3 years.

Additionally, in FR Doc. 99–3014, appearing on page 6364 in the **Federal Register** of Tuesday, February 9, 1999, the following correction is made:

1. On page 6365, in the first column, the title "New Dietary Ingredient Premarket Notification—21 CFR 190.6 (OMB Control Number 0910–0330—

Extension)" is corrected to read "Premarket Notification for a New Dietary Ingredient—21 CFR 190.6 (OMB Control Number 0910–0330—Extension)"

Dated: April 29, 1999.

William K. Hubbard,

Associate Commissioner for Policy Coordination.

[FR Doc. 99–11454 Filed 5–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1076]

Risk Assessment of the Public Health Impact of Foodborne Listeria Monocytogenes; Request for Comments and for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for comments and for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA), in consultation with the U.S. Department of Agriculture's Food Safety and Inspection Service (USDA/FSIS), is announcing plans to conduct a risk assessment (RA) to determine the prevalence and extent of exposure of consumers to foodborne *Listeria monocytogenes* and to assess the resulting public health impact of such exposure. The agencies request comments on certain aspects of their approach to the RA and request that scientific data and information relevant to the conduct of the RA be submitted.

DATES: Written comments and scientific data and information by July 6, 1999.

ADDRESSES: Submit written comments and scientific data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Richard C. Whiting, Center for Food Safety and Applied Nutrition (HFS–300), Food and Drug Administration, rm. 3822, 200 C St. SW., Washington, DC 20204, 202–260–0511, FAX 202–260–9653, or e-mail "rwhiting@bangate.fda.gov".

SUPPLEMENTARY INFORMATION:

I. Background

L. monocytogenes is a bacterium that occurs widely in both the agricultural (soil, plants, and water) and food processing environment. The bacterium is resistant to various environmental conditions such as high salt or acidity (Ref. 1). *L. monocytogenes* grows at low oxygen conditions and refrigeration temperatures, and survives for long periods of time in the environment, on foods, in processing plants, and in household refrigerators. Although frequently present in raw foods of both plant and animal origin, it also can be present in cooked foods due to post-processing contamination. *L. monocytogenes* has been isolated in such foods as: Raw and pasteurized fluid milk, cheeses (particularly soft-ripened varieties), ice cream, raw vegetables, fermented raw meat sausages, raw and cooked poultry, raw meats (all types), and raw and smoked fish (Refs. 1, 2, and 3). Even when L. monocytogenes is initially present at a low level in a contaminated food, the organism can multiply during storage, including storage at refrigeration temperatures. A survey of a wide variety of foods from the refrigerators of listeriosis patients in the United States found 11 percent of the samples contained L. monocytogenes (Ref. 4).

It is well established that ingestion of *L. monocytogenes* can cause serious human illness, listeriosis (Refs. 1, 2, 5, 6, and 7). In 1997, the Centers for Disease Control and Prevention (CDC) Foodborne Diseases Active Surveillance Network (FoodNet) showed that of all foodborne illnesses, the rate of hospitalization was highest for persons infected with *L. monocytogenes* (88 percent). Similarly, of all of the foodborne pathogens tracked by CDC, *L. monocytogenes* had the highest case fatality rate in that 20 percent of persons infected died. CDC also found that the incidence of listeriosis is 0.5 per 100,000 population, compared to a combined rate of 51.2 per 100,000 for all 9 of the foodborne illnesses surveyed (Ref. 8). Thus, although serious, listeriosis is a relatively rare foodborne illness. Most cases of listeriosis occur in pregnant women or individuals with a predisposing disease (such as alcoholism, diabetes, or cirrhosis of the liver) or an impaired immune system resulting from either a disease (such as AIDS) or immunosuppressive treatment for a malignancy or an organ transplant. (Refs. 1 and 6).

Listeriosis has a long incubation time (up to 5 weeks) and a range of symptoms. Infection of a pregnant woman may result in flu-like symptoms with fever, muscular pain, or headache, or the listeriosis infection may be asymptomatic. Importantly, however, when a pregnant woman contracts listeriosis, the fetus or newborn infant is likely to suffer severe consequences from the maternal infection, including: Spontaneous abortion, fetal death, stillbirth, neonatal septicemia, or meningitis. In nonpregnant adults, septicemia and meningitis are the most common result of a listeriosis infection, although organ infections and mild gastroenteritis can also occur.

Although the consequences of listeriosis may be severe, an estimated 2 to 6 percent of the healthy population harbors *L. monocytogenes* in their intestinal tract without signs of illness (Refs. 1 and 6). Because the documented prevalence of *L. monocytogenes* in people and in commonly eaten foods is much higher than the documented incidence of listeriosis, some experts believe that the ingestion of low levels of *L. monocytogenes* may not result in illness and thus, may not constitute a general public health hazard (Refs. 9 and 10).

Since 1990, CDC has documented a decrease in the incidence of listeriosis. Although not certain, this decrease may be attributed to government and industry programs directed at improved sanitation and process control. Listeriosis is typically characterized by sporadic cases. However, a recent multi-State listeriosis outbreak associated with the consumption of processed meats, with at least 73 illnesses and 16 deaths, has reaffirmed concerns that more preventative efforts are needed.

Historically, FDA has had a policy of "zero tolerance" for *L. monocytogenes* based on the absence of the microorganism in a 25-gram sample of a given production lot. In other words, FDA's position has been that the detection of any *L. monocytogene* in a 25-gram sample renders the food adulterated within the meaning of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 342(a)(1)). As recently as 1995, FDA affirmed this policy, as reflected in the decision in *United States* v. *Union Cheese Co.*, 902 F. Supp. 778, 784, 786 (N.D. Ohio 1995). In that litigation, FDA's expert witness testified that the *L. monocytogenes* bacterium grows at refrigerator temperatures and that the level of *L. monocytogenes* required to cause illness is unknown (902 F. Supp at 784). FSIS (which regulates meat and poultry) likewise has historically had a zero tolerance policy for *L. monocytogenes*.

Other countries, including certain major trading partners of the United States, take a slightly different approach to *L. monocytogenes* contamination. Relying upon their interpretation of the existing scientific data, countries such as Canada and Denmark have a "non-zero tolerance" for *L. monocytogenes* for some classes of foods (Refs. 10 and 11).

For example, in Canada, ready-to-eat foods that have not been associated with an outbreak and do not allow any growth of *L. monocytogenes* during a 10-day period of refrigerated storage may contain up to 100 *L. monocytogenes* organisms per gram without being considered unlawful (Ref. 12). Denmark has six classes of foods that have to meet various criteria for *L. monocytogenes*. In raw, ready to eat foods, for example, 2 of 5 samples can contain between 10 and 100 organisms per gram, and no sample can exceed 100 organisms per gram. Although the course taken by other countries concerning *L. monocytogenes* contamination is not determinative of the U.S. approach, the policies of certain major trading partners provides further context to any reexamination of current U.S. policy.

Quantitative RA has recently been identified as a useful tool for evaluating the public health impact of microbial contamination. USDA/FSIS and FDA recently completed a quantitative RA of *Salmonella* Enteritidis in shell eggs and egg products (Ref. 13). This RA is being used to review and evaluate Federal regulatory approaches to ensuring the safety of these products.

As noted, although the incidence of listeriosis is relatively low, the consequences of such infection are quite serious. A quantitative RA of the prevalence and extent of exposure of *L. monocytogenes* will provide a structured approach to synthesize and evaluate the available data and information. To the extent that U.S. policy regarding *L. monocytogenes* contamination requires reexamination, such a RA can serve as a foundation for such reconsideration.

II. Objectives of the Risk Assessment

As noted previously, FDA and USDA/FSIS are jointly planning to conduct an assessment of the risk posed by *L. monocytogenes* to American consumers. A RA is a systematic and comprehensive collection of information and analysis of such information that promotes an understanding of the interactions of various factors in a complex situation and provides a basis for making decisions. The goal of this RA is to provide FDA and FSIS with the information needed to review current programs relating to the regulation of *L. monocytogenes* contamination in foods to ensure that such programs provide maximum public health protection.

III. Risk Assessment Plan

The RA will seek and analyze three types of information: Information concerning the epidemiology of foodborne listeriosis, information concerning the level of *L. monocytogenes* contamination of foods and consumption levels of such foods (i.e., an exposure assessment), and information regarding the human health consequences of such exposure (i.e., a dose-response analysis).

1. The RA will analyze epidemiological evidence concerning the foods implicated both in documented outbreaks and in sporadic cases of listeriosis, the numbers of *L. monocytogenes* consumed, the populations which became ill, and the severity of their illnesses.

2. The exposure assessment component of the RA will determine the frequency of occurrence of *L. monocytogenes* in different classes of foods, particularly the ready-to-eat foods that are intended for consumption without additional heating. Ready-to-eat foods are represented by numerous types of dairy, seafood, meat, and plant products. The RA also will collect and analyze information on the number of viable organisms associated with these foods at the time of consumption. When data are collected at processing stages prior to consumption, the RA will utilize models for growth, survival, or thermal inactivation to estimate actual exposure of the consumer to *L. monocytogenes*. The RA also will utilize food consumption databases to assess the amount of these foods that are consumed. The RA will use the information about the frequency of occurrence and numbers of *L. monocytogenes* and food consumption to estimate the number of *L. monocytogenes* cells consumed.

3. The RA will include an evaluation of the dose-response relationship, which will describe the health effects from consuming specific numbers of *L. monocytogenes* organisms. The information that will form the basis of the dose-response relationship element of the RA may come from epidemiological, animal, or in vitro studies. FDA and FSIS recognize that the frequency and severity of illness may be affected by the food matrix, characteristics of specific strains of the organism, and variability in human susceptibility.

The RA will examine a number of issues, including: What foods contribute most to the consumption of *L. monocytogenes*, what are the numbers of organisms when a food is contaminated, how frequently are foods heavily contaminated, are some strains of *L. monocytogenes* more virulent that others, what is the extent of organism growth during storage (including storage at refrigeration temperatures), and what is the likelihood of illness to various subpopulations from consuming different numbers of *L. monocytogenes*. All assumptions and uncertainties in the RA will be identified and documented. The RA process will also include an evaluation of the adequacy of current scientific knowledge, data, and information. This will suggest where future research could be directed to reduce any uncertainty in the risk estimate that prevents a clear understanding of the causes and impact of listeriosis.

IV. Data and Information Requested

FDA and FSIS request comments on the risk assessment approach outlined previously and the submission of any information relevant to this RA. The agencies specifically request scientifically valid data on the quantitative levels of *L. monocytogenes* in foods and data relating to rate of consumption of foods likely to contain high levels of *L. monocytogenes*.

FDA believes that the credibility and validity of the RA require that the process for the conduct of the RA be transparent, and thus, all the data and information evaluated in the context of the RA and utilized in the RA must be publically available. Accordingly, any data or information submitted in response to this notice should be in a form that permits public disclosure. Submitters of data and information should not mark any information as "Confidential" and should fully expect that any data or information submitted will be made available to the public. Questions regarding the public availability of data and information submitted in response to this notice should be directed to the contact person above.

As noted, the purpose of this request for data is to gather relevant information to facilitate a valid RA of *L. monocytogenes* with the larger goal of providing a sound scientific basis for the agencies' policies regarding the regulation of *L. monocytogenes* contamination in food. Although FDA would seek to remove from the market any existing food product known to be adulterated, FDA does not intend to utilize the submitted data and information to support future enforcement activity against the manufacturers submitting the data. Accordingly, it is acceptable that data submitted in response to this notice be "blinded" in the sense that the data need not identify the particular manufacturer or processor that was the source of the samples underlying the results.

The RA team plans to present a summary of available literature to the National Advisory Committee on Microbiological Criteria for Foods at a meeting scheduled for May 26 through 28, 1999, in Chicago, IL. A copy of the literature summary will be available prior to that meeting on the Internet at "http://vm.cfsan.fda.gov". Comments and data submitted in response to this notice or at that meeting will be incorporated into the RA process, and the completed RA will be publically presented in September 1999.

Two copies of comments and scientific data and information are to be submitted, except that individuals may submit one copy. Comments and scientific data and information should be addressed to the Dockets Management Branch (address above) and identified with the docket number found in brackets in the heading of this document. Received materials may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Ryser, E. T. and E. H. Marth, *Listeria, listeriosis, and food safety*, Dekker, NY, 1991.
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3. FDA, *Bad Bug Book* (Foodborne Pathogenic Microorganisms and Natural Toxins), 1999, Internet address: "http://vm.cfsan.fda.gov/mow/intro.html".
4. Pinner, R. W., A. Schuchat, B. Swaminathan, P. S. Hayes, K. A. Deaver, R. E. Weaver, B. D. Plikaytis, M. Reeves, C. V. Broome, and J. D. Wenger, "Role of Foods in Sporadic Listeriosis. 2. Microbiologic and Epidemiologic Investigation," *Journal of the American Medical Association*, 267:2046–2050, 1992.
5. CAST, "Foodborne Pathogens," Council for Agricultural Science and Technology, Task Force Report 122, Ames, IA, 1994.
6. Rocourt, J. and P. Cossart, "Listeria monocytogenes," In *Food Microbiology, Fundamentals and Frontiers*, edited by M. P. Doyle, L. R. Beuchat, and T. J. Montville, ASM Press, Washington, DC, 1997.
7. Miller, A. L., J. L. Smith, and G. A. Somkuti, "Foodborne Listeriosis," Soc. Indust. Microbiol., Elsevier, NY, 1990.
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9. Farber, J. M., W. H. Ross, and J. Harwig, " Health Risk Assessment of *Listeria monocytogenes* in Canada," *International Journal of Food Microbiology*, 30:145–156, 1996.
10. ICMSF, "Choice of Sampling Plan and Criteria for Listeria monocytogenes," *International Journal of Food Microbiology*, 22:83–96, 1994.
11. IFST, Microbiological Criteria for Retail Foods, Professional Food Microbiology Group, Inst. Food Science and Technology, Lett. Appl. Microbiol, 20:331–332, 1995.
12. Health Canada, Compliance Guide/ Policy on *Listeria monocytogenes* in Ready-to-Eat Foods, 1994.
13. FSIS, *Salmonella* Enteritidis Risk Assessment, Shell Eggs and Egg Products, USDA, FSIS, Washington, DC, 1998.

Dated: April 29, 1999.

William K. Hubbard,

Acting Director Commissioner for Policy.

[FR Doc. 99–11319 Filed 05–06–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1168]

Public Health Impact of Foodborne Listeria Monocytogenes

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting; request for comments.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition, in conjunction with the Risk Assessment Working Group of the National Advisory Committee on Microbiological Criteria for Foods, and in cooperation with the Food Safety and Inspection Service, the U.S. Department of Agriculture, is announcing a public meeting to discuss issues related to risk assessment models being developed to examine the relationship between *Listeria monocytogenes* and human health. The agency invites comments on issues related to the public meeting.

DATES: The public meeting will be held on Thursday, May 27, 1999, from 8 a.m. to 5 p.m. Registration must be submitted by May 20, 1999. Submit written comments by June 30, 1999.

ADDRESSES: The public meeting will be held at the Ambassador West Hotel, 1300 North State Pkwy., Chicago, IL. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Executive Operations Staff (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail "cderoeve@bangate.fda.gov".

Interested persons should send registration information (including name, title, firm name, address, telephone number, and fax number), written material with an outline of their presentation, and requests to make oral presentations to the contact person by May 20, 1999.

There is no registration fee for this public meeting, but advance registration is suggested because space may be limited.

SUPPLEMENTARY INFORMATION: This purpose of the public meeting is to provide an opportunity for an open discussion on the issues related to risk assessment models under development that will be used to examine the relationship between *L. monocytogenes* and human health.

The agenda will include presentations on such topics as: (1) Introduction to the risk assessment, (2) epidemiology of *L. monocytogenes* outbreaks, (3) presence of *L. monocytogenes* in foods, (4) consumption patterns of foods containing *L. monocytogenes*, and (5) characteristics of *L. monocytogenes* dose-response.

The sponsoring agencies encourage individuals with relevant scientific data or information, (i.e., information concerning the epidemiology, exposure, and dose-response relationship of *L. monocytogenes*) to present such information at the meeting or in written comments.

Transcripts of the public meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at 10 cents per page. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11317 Filed 05–06–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1075]

Public Health Impact of Vibrio Parahaemolyticus in Molluscan Shellfish

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meeting.

SUMMARY: The Food and Drug Administration (FDA), Center for Food Safety and Applied Nutrition, in conjunction with the Risk Assessment Working Group of the National Advisory Committee on Microbiological Criteria for Foods, in cooperation with the Food Safety and Inspection Service, U.S. Department of Agriculture (FSIS/USDA) is announcing a public meeting to discuss issues related to risk assessment models being developed to examine the relationship between *Vibrio parahaemolyticus* and human health.

DATE: The public meeting will be held on Wednesday, May 26, 1999, from 8 a.m. to 5 p.m. Submit written notices of participation by May 20, 1999. Written comments will be accepted until June 30, 1999.

ADDRESSES: The public meeting will be held at the Ambassador West Hotel, 1300 North State Parkway, Chicago, IL. Submit registration and written notices of participation to Catherine M. DeRoever (address below). Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Catherine M. DeRoever, Executive Operations Staff (HFS–22), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–205–4251, FAX 202–205–4970, or e-mail "cderoeve@bangate.fda.gov".

Those persons interested in attending the public meeting should, by May 20, 1999, fax their name, title, firm name, address, and telephone number to Catherine M. DeRoever (fax number above).

Those persons interested in presenting information at the meeting should, by May 20, 1999, fax their name, title, firm name, address, telephone number, and an outline of their presentation to Catherine M. DeRoever (fax number above).

There is no registration fee for this public meeting, but advance registration is suggested. Interested persons are encouraged to register early because space may be limited.

SUPPLEMENTARY INFORMATION: This public meeting will provide an opportunity for an open discussion of the issues related to risk assessment models under development that will be used to examine the relationship between *V. parahaemolyticus* and human health.

The agenda will include presentations on such topics as: (1) Introduction to the risk assessment, (2) preharvest and harvest, (3) postharvest, (4) epidemiology of *V. parahaemolyticus* outbreaks, (5) consumption patterns, and (6) characteristics of *V. parahaemolyticus* dose-response.

The sponsoring agencies encourage individuals with relevant scientific data or information, i.e., information concerning preharvesting, harvesting and postharvesting, epidemiology, exposure, and dose-response relationship of *V. parahaemolyticus*, to present such information at the meeting or in written comments to this record.

A transcript of the public meeting will be prepared. Copies of the transcript may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting. The transcript of the public meeting and submitted comments will be available for public examination at the Dockets Mnagement Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11316 Filed 5–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1075]

Risk Assessment on the Potential Public Health Impact of Vibrio Parahaemolyticus in Molluscan Shellfish; Request for Scientific Data and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; request for scientific data and information.

SUMMARY: The Food and Drug Administration (FDA) is announcing a call for scientific data and information relevant to the agency's planned risk assessment on the potential public health impact of pathogenic *Vibrio parahaemolyticus* infections resulting from the consumption of raw molluscan shellfish. The risk assessment will assist FDA by providing a scientific framework for developing food safety policies relating to raw molluscan shellfish contaminated with pathogenic *V. parahaemolyticus*. FDA plans to hold public meetings to present the process of the risk assessment, to present information collected, and to allow interested parties additional opportunities to present data to facilitate this effort.

DATES: Submit scientific data and information by July 6, 1999.

ADDRESSES: Submit scientific data and information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marianna D. Miliotis, Center for Food Safety and Applied Nutrition (HFS–327), Food and Drug Administration, 200 C St., SW., rm. 3472, Washington, DC 20204, 202–205–4824, FAX 202–205–4939, or e-mail "mmilioti@bangate.fda.gov."

SUPPLEMENTARY INFORMATION:

I. Background

A. Vibrio parahaemolyticus

V. parahaemolyticus is a gram-negative, halophilic bacterium that occurs naturally in estuarine environments and, therefore, can be present in many fishery products, including molluscan shellfish (Ref. 1). The organism can cause acute gastroenteritis in consumers (Refs. 2, 3, and 4), and in some individuals can also cause septicemia (Ref. 5) and even death (Ref. 6), though such cases have been reported only rarely. Worldwide, this organism is one of the leading causes of foodborne illnesses (Ref. 7). In the United States, the outbreaks caused by this organism usually have been associated with cooked crabs (Ref. 8), and illnesses transmitted by raw molluscan shellfish generally have been limited to sporadic cases (Ref. 9). However, in 1997 *V. parahaemolyticus* from molluscan shellfish caused a large outbreak of illness involving a total of 209 individuals in the Pacific Northwest region, from California to British Columbia (Ref. 10). Many of these cases implicated oysters from specific growing areas, and the magnitude of this outbreak was considerably larger than

any previously caused by shellfish in the United States. In 1998, outbreaks caused by molluscan shellfish-borne *V. parahaemolyticus* occurred again, this time in three different coastal regions of the United States. Overall, more than 500 individuals from the Gulf Coast (Ref. 11), the Northeast (Ref. 12), and the Pacific Northwest (Ref. 13) reportedly became ill after consuming raw molluscan shellfish, and many of these cases were culture confirmed as attributable to *V. parahaemolyticus*.

V. parahaemolyticus has been widely studied for years, and many of the factors influencing its pathogenicity and natural occurrence have been reported. For example, the organism is mesophilic, halophilic, grows optimally in alkaline pH, and causes illnesses and outbreaks principally during warmer weather months (Refs. 2, 5, and 14). However, those environmental factors and production practices that influence the incidence and prevalence of the organism and which would enable reliable estimates of risks associated with the consumption of seafood, especially molluscan shellfish, remain unknown.

Investigations of both the 1997 and the June 1998 outbreaks demonstrated both epidemiological and direct relationships between illness and raw oyster consumption (Refs. 10 and 11). Moreover, accounts from some patients indicated that illness may result from the consumption of a single infected oyster, which suggests the possibility of a highly virulent strain, or a low infectious dose. A single serotype of *V. parahaemolyticus*, that being O3:K6, was identified as predominant in the June 1998 outbreak (Ref. 11). In September 1998, the same serotype of V. parahaemolyticus again was identified in a U.S. outbreak caused by raw oysters, this time in the Northeast region (Ref. 12). Prior to 1998, with the exception of one isolated case in 1972 (Ref. 15), serotype O3:K6 had been associated only with outbreaks in Asian countries (Japan, Bangladesh, Laos, and Taiwan) (Ref. 16). Notably, this serotype has repeatedly been associated with outbreaks, whereas most other serotypes are primarily associated with sporadic cases. For example, in Japan there were 43 *V. parahaemolyticus* outbreaks involving 1,131 patients during the summer of 1998. Thirty of the outbreaks (70 percent) were due to serotype O3:K6 (Ref. 16). Based on all information available, the Centers for Disease Control and Prevention (CDC) have described the O3:K6 serotype as "an outbreak strain" of *V. parahaemolyticus*, and FDA concurs with this current assessment. Other serotypes of the organism, such as O4:K8 currently seen predominantly in Japan (Ref. 17), may also merit special concern. FDA therefore believes that the U.S. outbreaks of illness in 1997 and 1998 have identified certain serotypes of *V. parahaemolyticus* as important emerging pathogens linked to the consumption of raw molluscan shellfish, particularly oysters.

However, since not all *V. parahaemolyticus* strains are enteropathogenic as determined by their ability to produce a thermostable direct hemolysin (TDH) (Ref. 18), FDA is concerned that determining the total concentration of this species in shellfish is unlikely to be useful for evaluating the risk of illness posed by *V. parahaemolyticus*. Other strain characteristics, such as invasion of the enterocytes (Ref. 19) and production of an enterotoxin (Ref. 20) may also be important to pathogenicity and thus useful in identification of pathogenic *V. parahaemolyticus*, other than the production of TDH.

B. Current Efforts

FDA and the States share responsibility for the safety of molluscan shellfish for human consumption through the National Shellfish Sanitation Program (NSSP), a long-standing Federal/State cooperative program recognized by FDA for the sanitary control of molluscan shellfish produced and sold for human consumption. To promote safety, the NSSP has developed and maintained recommended shellfish sanitation control practices for adoption by member States. These control practices or guidelines are set out in the "NSSP Guide for the Control of Molluscan Shellfish" (Ref. 21) which also includes State growing area classification and dealer certification programs, and FDA evaluation of State shellfish control programs.

In 1984, FDA entered into a Memorandum of Understanding (MOU) with the Interstate Shellfish Sanitation Conference (ISSC) recognizing the ISSC as the primary voluntary national organization of State shellfish regulatory officials that provides guidance and counsel on matters for the sanitary control of shellfish. The purpose of the ISSC is to provide a formal structure for State regulatory authorities to participate in establishing updated regulatory guidelines and procedures for uniform State application of the program. The ISSC has adopted formal procedures for State representatives to review shellfish sanitation issues and develop regulatory guidelines. Following FDA concurrence, these guidelines are published in revision of the NSSP guidelines mentioned above (Ref. 21).

Historically, most illness caused by consumption of molluscan shellfish can be traced back to pathogens resulting from sewage contaminated water, and the NSSP has focused on control measures to prevent illnesses caused by pathogens that may occur in fecal material (Ref. 22). *V. parahaemolyticus*, however, occurs naturally in estuarine environments. Thus, there is uncertainty about the effectiveness of current NSSP measures to control *V. parahaemolyticus* in molluscan shellfish.

In addition, FDA has previously indicated that *V. parahaemolyticus* in raw molluscan shellfish should not exceed a level of 10,000 cells per gram. This limit was based on data and reports from human volunteer studies (Refs. 2, 3, 14 and 23) conducted more than 25 years ago, and on investigations of U.S. outbreaks caused predominantly by cross contamination of cooked crabs (Ref. 8), which supported an estimation of minimum infectious dose of about 10^5 cells. However, the overall levels of *V. parahaemolyticus* found in oysters from harvest sites implicated during the 1997 and 1998 U.S. outbreaks suggest that the number of pathogenic cells required to cause illness is probably far less than previously believed, and it may be as low as 100 and 1,000 cells. FDA now believes the 10,000 cells per gram level may be inadequate to protect the public health and did not rely on this level during the recent outbreaks. Instead, during the recent U.S. outbreaks, closing shellfish waters to harvesting was based on the occurrence of human illness. Reopening was based primarily on two factors: (1) Change in a season and/or conditions, particularly temperature, to those which historically have not been associated with illness, and (2) absence of the particular strains of *V. parahaemolyticus* associated with the outbreak. However, it is not certain that these measures are the most appropriate or effective.

II. Questions to be Considered by the Risk Assessment

FDA is requesting scientific data and information that will allow it to respond to the following questions:

1. What is the frequency of occurrence of pathogenic strains of *V. parahaemolyticus* in the shellfish waters? What parameters (e.g., water temperature, salinity, turbidity, and nutrient profiles) can be used as indicators of the presence of the organism in growing waters?

2. What is the frequency of occurrence of pathogenic strains of *V. parahaemolyticus* in molluscan shellfish, and what are the numbers of viable pathogenic organisms at time of consumption? How are levels present in the bivalves at the time of consumption related to the initial levels in the growing waters?

3. What is known about the dose-response relationship from outbreak, epidemiological, animal and other studies? What are the differences in dose-response relations among different strains and serotypes of *V. parahaemolyticus*, and among the different human susceptible subpopulations?

4. What is the role of postharvest handling that may be influencing the numbers of *V. parahaemolyticus* in oysters? What reductions in risks can be achieved by intervention strategies such as depuration or relaying?

5. What is the adequacy of current scientific knowledge, and where should future research be focused to reduce the uncertainty in the risk estimate?

III. Scope of the Risk Assessment

Risk assessment is separate from risk management and risk communication. Thus, FDA's risk assessment will determine the relationships between molluscan shellfish, *V. parahaemolyticus* and illnesses; it will not determine an acceptable level of pathogenic *V. parahaemolyticus*.

To accurately assess the exposure to pathogenic *V. parahaemolyticus*, the consumption of raw molluscan shellfish, especially oysters, will be considered. Exposure is a function of the *V. parahaemolyticus* prevalence in the shellfish and the consumption patterns of the population. The number of pathogenic *V. parahaemolyticus* in raw molluscan shellfish at consumption is the critical exposure information. Modeling will be used when *V. parahaemolyticus* data are collected during outbreaks, and at retail outlets to estimate actual exposure.

The risk assessment will produce estimates of illness for levels of pathogenic *V. parahaemolyticus* likely to be consumed by different subpopulations. All assumptions and uncertainties will be identified and documented.

FDA expects the risk assessment to provide the scientific underpinnings FDA needs to develop food safety policies that reduce the risk of disease resulting from ingestion of *V. parahaemolyticus* in molluscan shellfish, and other seafood consumed raw. Among other things, FDA anticipates that the data from the risk assessment will assist in determining the principal factors that should be considered in developing criteria for closing of shellfish waters to harvest in order to prevent illness and reopening waters after outbreaks of *V. parahaemolyticus* are over.

IV. Request for Data and Information

FDA is requesting scientific data and information that will allow it to respond to the questions under section II of this document. The purpose of this request for data is to gather relevant information to facilitate a valid risk assessment of *V. parahaemolyticus* with the larger goal of providing a sound scientific basis for the food safety policies relating to raw molluscan shellfish contaminated with *V. parahaemolyticus*. FDA does not intend to utilize the submitted data and information to support future enforcement activity against seafood producers submitting the data. Accordingly, it is acceptable that data submitted in response to this notice be "blinded" in the sense that the data need not identify the particular seafood producer or processor that was the source of the samples underlying the results.

Two copies of the scientific data and information are to be submitted, except that individuals may submit one copy. Scientific data and information should be addressed to the Dockets Management Branch (address above) and be identified with the docket number found in brackets in the heading of this document. Received materials may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

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15. Fishbein, M., B. Wentz, W. L. Landry, and B. MacEachern, *International Symposium on Vibrio parahaemolyticus*, p. 53 to 58, Saikon Publishing Co., Tokyo, 1974.

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21. ISSC and FDA, *Guide for the Control of Molluscan Shellfish*, U.S. DHHS, Washington, DC. p. 406, 1997.

22. Fisher, L. M., *Shellfish Sanitation*, Public Health Reports No. 1178, U.S. Public Health Service, Washington, D.C., 1927.

23. Doyle, M. P., *Lancet*, 336:1111–1115, 1990.

Dated: April 29, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11318 Filed 5–6–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–194]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this

collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Medicare Disproportionate Share Adjustment Procedure and Criteria and Supporting Regulations in 42 CFR, Section 412.106;

Form No.: HCFA R–194;

Use: Regulation sets up an alternative process for hospitals that choose to have their disproportionate share adjustment statistics calculated based on their cost reporting periods rather than the Federal fiscal year.

Frequency: On occasion;

Affected Public: Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 100;

Total Annual Responses: 100;

Total Annual Hours Requested: 100.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 28, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–11461 Filed 5–6–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIAAA.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the NATIONAL INSTITUTE ON ALCOHOL ABUSE AND ALCOHOLISM, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIAAA.

Date: June 4, 1999.

Open: 8:30 a.m. to 8:45 a.m.

Agenda: To discuss administrative details.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 8:45 a.m. to 4:30 p.m.

Agenda: To review and evaluate the laboratory of clinical studies.

Place: National Institutes of Health, Building 1, Wilson Hall, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Benedict J. Latteri, Acting Deputy Director, Division of Intramural Clinical and Biological Research, National Institute on Alcohol Abuse and Alcoholism, 9000 Rockville Pike, Room 1B58, Building 31—MSC 2088, Bethesda, MD 20892–2088, 301–402–1227.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, National Institutes of Health.

[FR Doc. 99–11539 Filed 5–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: May 13, 1999.

Time: 1 p.m. to Adjournment.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, 7201 Wisconsin Avenue, Bethesda, MD 20814, (Telephone Conference Call).

Contact Person: Arthur Schaerdel, DVM, The Bethesda Gateway Building, 7201 Wisconsin Avenue/suite 2C212, Bethesda, MD 20892, (301) 496–9666.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS).

Dated: May 3, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11540 Filed 5–6–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4281–N–09]

Notice of Designation of Urban Empowerment Zones

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of designation of Urban Empowerment Zones.

SUMMARY: On April 16, 1998, HUD published a notice inviting applications for designation of Empowerment Zones, which receive special tax benefits for area businesses. This notice announces the fifteen urban areas designated as Empowerment Zones in response to the applications submitted. This notice also announces the names of fifteen other communities, called Strategic Planning Communities, that were finalists in the competition.

FOR FURTHER INFORMATION CONTACT: Elaine Braverman, Empowerment Zone/Enterprise Community Initiative, Department of Housing and Urban Development, Room 7130, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–6339. (This telephone number is not toll-free.) For persons with hearing or speech disabilities, this telephone number may be accessed via TTY (text telephone) by calling the Federal Information Relay Service at 1–800–877–8339 (toll-free).

SUPPLEMENTARY INFORMATION: The rule that governs the selection of this second round of urban Empowerment Zones (published on April 16, 1998 at 63 FR 19151) is based on section 1391 of the Internal Revenue Code (26 U.S.C. 1391), as amended by sections 952–954 of the Taxpayer Relief Act of 1997 (Pub. L. 105–34, 111 Stat. 788, enacted on August 5, 1997) (the 1997 Act). Section 952 of the Taxpayer Relief Act of 1997 added a new section 1391(g), which changed the eligibility criteria for this second round of 20 Empowerment Zones. Fifteen of the new zones were to be in urban areas, designated by the Secretary of HUD, and five of them were to be in rural areas, designated by the Secretary of Agriculture. The Act expanded the eligibility criteria slightly, provided different tax incentives applicable to the new EZs, and made other changes affecting EZs, thus necessitating changes to the implementing regulations.

The notice inviting applications from States and local governments for nomination of urban areas as Empowerment Zones also was published on April 16, 1998. That notice provided for an application deadline of October 9, 1998. HUD carefully considered all applications, and on January 13, 1999, Vice President Al Gore announced the urban areas that were designated by HUD as Empowerment Zones and the rural areas that were designated by the Department of Agriculture as rural Empowerment Zones. On that date, Vice President Gore also announced the fifteen communities, called Strategic Planning Communities, that were finalists in the competition.

Appendix A to this notice lists the urban areas that HUD designated as urban Empowerment Zones. Appendix A to this notice also lists the communities, called Strategic Planning Communities, that were finalists in the competition.

Authority: 26 U.S.C. 1391.

Dated: April 30, 1999.

Cardell Cooper,

Assistant Secretary for Community Planning and Development.

APPENDIX A

State	City
Empowerment Zones	
California	Santa Ana.
Connecticut	New Haven.
Florida	Miami.
Indiana	Gary/E. Chicago, Indiana.
Massachusetts	Boston.
Minnesota	Minneapolis.
Missouri	St. Louis/E. St. Louis, Illinois.
New Jersey	Cumberland County.
Ohio	Cincinnati.
Ohio	Columbus.
South Carolina	Columbia/Sumter.
Tennessee	Knoxville.
Texas	El Paso.
Virginia	Norfolk/Portsmouth.
West Virginia	Huntington, West Virginia/Ironton, Ohio.
Strategic Planning Communities	
Alabama	Birmingham.
Alaska	Anchorage.
Arkansas	Little Rock/North Little Rock.
Kentucky	Louisville.
Louisiana	New Orleans.
Mississippi	Jackson.
Missouri	Kansas City/Kansas City Kansas.
New Jersey	Newark/Elizabeth.
New York	New York City/Brooklyn.
Nevada	Las Vegas/North Las Vegas.
Rhode Island	Providence
South Carolina	Charleston/North Charleston.
Texas	San Antonio.
Vermont	Burlington/Plattsburgh, New York.
Washington	Tacoma/Lakewood.

[FR Doc. 99–11506 Filed 5–6–99; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4432–N–18]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, room 7256, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1226; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. this Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v, *Veterans Administration, No. 88–2503–OG (D.D.C.).*

Propoerties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the

property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or make available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mack Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: AIR FORCE: Ms. Barbara Jenkins, Air Force Real Estate Agency, (Area–MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; ENERGY: Ms. Marsha Penhaker, Department of Energy, Facilities Planning and Acquisition Branch, FM–20, Room 6H–058, Washington, DC 20585; (202) 586–0426; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5056; (202) 685–9200; (These are not toll-free numbers).

Dated: April 29, 1999.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Economic Development.

TITLE V, FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 5/7/99

Suitable/Available Properties

Buildings (by State)

New Hampshire

Bldg. 97
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199920064
Status: Unutilized
Comment: 573 sq. ft., most recent use—scale house/storage, off-site use only.

Rhode Island

Bldg. 118
Naval Undersea Warfare Center
Middletown Co: Newport RI 02841–1708
Landholding Agency: Navy
Property Number: 77199920065
Status: Excess
Comment: 1604 sq ft., presence of asbestos/lead paint, most recent use—offices/storage, off-site use only.

Bldg. 136
Naval Undersea Warfare Center
Middletown Co: Newport RI 02841–1708
Landholding Agency: Navy
Property Number: 77199920066
Status: Excess
Comment: 882 sq. ft., presence of asbestos/lead paint, most recent use—operations office, off-site use only.

Unsuitable Properties

Buildings (by State)

Alaska

Bldg. 32–189
Elmendorf Air Force Base
Anchorage Co: AK 99506–3230
Landholding Agency: Air Force
Property Number: 18199920001
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area; Extensive deterioration.

California

Bldg. 739
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920028
Status: Excess
Reason: Extensive deterioration.

Bldg. 703
Naval Air Weapons Station, Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920029
Status: Excess
Reason: Extensive deterioration.

Bldg. 870
Naval Air Weapons Station,
Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920030
Status: Excess
Reason: Extensive deterioration.

Bldg. 871
Naval Air Weapons Station,
Point Mugu
Oxnard Co: Ventura CA 93042–5001
Landholding Agency: Navy
Property Number: 77199920031
Status: Excess
Reason: Extensive deterioration.

Bldg. 00431
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920032
Status: Excess
Reason: Extensive deterioration.

Bldg. 00483
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920033
Status: Excess
Reason: Extensive deterioration.

Bldg. 00484
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920034
Status: Excess
Reason: Extensive deterioration.

Bldgs. 00491, 00493
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920035
Status: Excess
Reason: Extensive deterioration.

Bldg. 00669
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920036
Status: Excess
Reason: Extensive deterioration.

Bldg. 00929
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920037

Status: Excess
Reason: Extensive deterioration.

Bldg. 00955
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920038
Status: Excess
Reason: Extensive deterioration.

Bldg. 02092
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920039
Status: Excess
Reason: Extensive deterioration.

Bldgs. 02294–02297
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920040
Status: Excess
Reason: Extensive deterioration.

Bldg. 02309
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920041
Status: Excess
Reason: Extensive deterioration.

Bldg. 02330
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920042
Status: Excess
Reason: Extensive deterioration.

Bldg. 02338
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920043
Status: Excess
Reason: Extensive deterioration.

Bldg. 91065
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920044
Status: Excess
Reason: Extensive deterioration.

Bldg. 00032
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920045
Status: Excess
Reason: Extensive deterioration.

Bldgs. 00352–00355
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920046
Status: Excess
Reason: Extensive deterioration.

Bldg. 00682
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920047
Status: Excess
Reason: Extensive deterioration.

Bldg. 01026
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920048
Status: Excess
Reason: Extensive deterioration.

Bldgs. 02299, 02300
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920049
Status: Excess
Reason: Extensive deterioration.

Bldgs. 02328, 92331
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920050
Status: Excess
Reason: Extensive deterioration.

Bldg. 02332
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920051
Status: Excess
Reason: Extensive deterioration.

Bldgs. 02336, 02337
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920052
Status: Excess
Reason: Extensive deterioration.

Bldg. 30702
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920053
Status: Excess
Reason: Extensive deterioration.

Bldgs. 30713, 30745
Naval Air Weapons Station
China Lake Co: CA 93555–6001
Landholding Agency: Navy
Property Number: 77199920054
Status: Excess
Reason: Extensive deterioration.

Florida

Facility 1737
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 1819992002
Status: Underutilized
Reason: Secured Area.

Facility 5200
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 18199920003
Status: Underutilized
Reason: Secured Area.

Facility 49950
Cape Canaveral Air Station
Cape Canaveral Co: Brevard FL 32907–
Landholding Agency: Air Force
Property Number: 1819992004
Status: Underutilized
Reason: Secured Area.

Illinois

Bldg. 996
Fermi National Accelerator
Laboratory
Batavia Co: Dupage IL 60510–
Landholding Agency: Energy
Property Number: 41199920001
Status: Excess
Reason: Extension deterioration.

Bldg. 910
Naval Training Center
Great Leakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area.

Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area.

Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area.

Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area.

Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area.

Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area.

Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area.

Montana

Bldgs. 1218, 1220
Malmstrom Air Force Base
Malmstrom AFB: Cascade, MT 59402–
Landholding Agency: Air Force
Property Number: 18199920005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldgs. 1210, 1212, 1214,1216
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade, MT 59402–
Landholding Agency: Air Force
Property Number: 18199920006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 1701
Malmstrom Air Force Base
Malmstrom AFB Co: Cascade, MT 59402–

Landholding Agency: Air Force
Property Number: 18199920007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 117
New Boston Air Force Station
Amherst Co: Hillsborough, NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199920008
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 129
New Boston Air Force Station
Amherst Co: Hillsborough, NH 03031–1514
Landholding Agency: Air Force
Property Number: 18199920009
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material, Secured Area.

Bldg. 5210
Newington POL DFS
Newington Co: Rockingham, NH 03801–
Landholding Agency: Air Force
Property Number: 18199920010
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material.

New York

Facility 1200
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920011
Status: Unutilized
Reason: no public access.

Facility 1202
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920012
Status: Unutilized
Reason: no public access.

Facility 1203
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920013
Status: Unutilized
Reason: no public access.

Facility 1204
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920014
Status: Unutilized
Reason: no public access.

Facility 1205
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920015
Status: Unutilized
Reason: no public access.

Facility 1206
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920016
Status: Unutilized
Reason: no public access.

Facility 1207
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920017
Status: Unutilized
Reason: no public access.

Facility 1208
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920018
Status: Unutilized
Reason: no public access.

Facility 1209
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920019
Status: Unutilized
Reason: no public access.

Facility 1210
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920020
Status: Unutilized
Reason: no public access.

Facility 1259
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920021
Status: Unutilized
Reason: no public access.

Facility 1260
Verona Test Annex
Town of Verona Co: Oneida NY 13478–
Landholding Agency: Air Force
Property Number: 18199920022
Status: Unutilized
Reason: no public access.

Peconic "H" Facility
Brookhaven Co: Suffolk NY 00000–
Landholding Agency: GSA
Property Number: 54199920002
Status: Excess
Reason: no public access
GSA Number: 1–U–NY–641B.

North Carolina

Bldg. TC–849
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

Bldg. TC–852
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920063
Status: Unutilized
Reasons: Secured Area, Extensive deterioration.

South Dakota

Bldg. 608
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920023
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Within airport runway clear zone, Secured Area.

Bldg. 3501
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706
Landholding Agency: Air Force
Property Number: 181999200024
Status: Unutilized
Reason: Secured Area.

5 Bldgs.
Ellsworth Air Force Base
6926, 6928, 6929, 6930, 6931
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920025
Status: Unutilized
Reason: Secured Area.

Bldg. 8001
Ellsworth Air Force Base
Ellsworth AFB Co: Pennington SD 57706–
Landholding Agency: Air Force
Property Number: 18199920026
Status: Unutilized
Reason: Secured Area.

Virginia

Bldg. SC–319
Armed Forces Staff College
Norfolk Naval Base
Norfolk Co: VA 23511–1702
Landholding Agency: Navy
Property Number: 77199920067
Status: Excess
Reason: Extensive deterioration.

Bldg. 449
Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration.

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration.

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration.

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration.

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration.

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073

Status: Excess
Reason: Extensive deterioration.

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration.

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration.

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration.

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration.

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration.

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration.

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration.

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration.

Bldg. 717
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration.

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration.

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration.

Washington

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material; Secured Area.

[FR Doc. 99–11214 Filed 5–6–99; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–011288

Applicant: H. Allen Netherland, Escatawpa, MS

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–008520

Applicant: Edward Louis, Henry Doorly Zoo, Omaha, NE

The applicant has requested amendment of an application originally published March 4, 1999. The revised application requests a permit to import biological samples of all species of lemur collected from animals in the wild on Madagascar for the purpose of scientific research in lemur genetics. This notification covers activities conducted by this applicant for a period of five years

PRT–834015

Applicant: NIH/National Cancer Institute, Frederick, MD

The applicant requests to have their permit re-issued for the import of hair, tissue, and blood samples from Vicuna (*Vicugna vicugna*) from Bolivia and Argentina, Chile, and Peru for the purpose of enhancement of the survival of the species through scientific research over a five year period.

PRT–011262

Applicant: Douglas Yajko, Glenwood Springs, CO

The applicant requests a permit to import a sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Namibia for the purpose of enhancement to the survival of the species.

PRT–011261

Applicant: Robert Senter, Sr., Plaistow, NH

The applicant requests a permit to import a sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Zimbabwe for the purpose of enhancement to the survival of the species.

PRT–011260

Applicant: Clifford Senter, Plaistow, NH

The applicant requests a permit to import a sport-hunted trophy of a cheetah (*Acinonyx jubatus*) from Zimbabwe for the purpose of enhancement to the survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

PRT–010370

Applicant: Monterey Bay Aquarium, Monterey, CA

Permit Type: Take for scientific research.

Name and Number of Animals: Southern sea otter (*Enhydra lutris nereis*), up to 10.

Summary of Activity to be Authorized: The applicant requests a permit to develop and test an enhanced radio tagging technique for Southern sea otters.

Source of Marine Mammals: Captive sea otters held by Monterey Bay Aquarium under Section 109(h) of the Marine Mammal Protection Act. *Period of Activity*: Up to 5 years, if issued.
Applicant: Renee Snider, Elk Grove, CA.

PRT–011107

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound

polar bear population, Canada for personal use.
Applicant: Terry Michael Marshall, Wildwood, MO.

PRT–011106

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.
Applicant: Ray Richard Fisher, II, Charlotte, NC.

PRT–011105

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Canada for personal use.
Applicant: Allen L. Ebnet, Aitkin, MN.

PRT-MA–011207

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Canada for personal use.
Applicant: Michael J. Boyce, Reno, NV.

PRT–011282

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.
Applicant: William F. Chesley, Crofton, MD.

PRT–011279

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.
Applicant: Warren F. Florkiewicz, Scottsdale, AZ.

PRT–011278

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Canada for personal use.

Written data or comments, requests for copies of the complete application, or requests for a public hearing on this application should be sent to the U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Room 700, Arlington, Virginia 22203, telephone 703/358–2104 or fax 703/358–2281 and must be received within 30 days of the date of publication of this notice. Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 3, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–11472 Filed 5–6–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service.

Endangered Species Permit Applications

AGENCY: Fish and Wildlife Service.
ACTION: Notice of receipt of permit applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10 (a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Permit No. TE–001075
Applicant: Marc Blain, Pasadena, California

The applicant requests a permit amendment to take (harass by survey) the southwestern willow flycatcher (*Empidonax traillil extimus*) in conjunction with presence or absence surveys throughout Los Angeles, San Bernardino, Orange, Riverside, and San Diego Counties, California, for the purpose of enhancing its survival.

Permit No. TE–011021
Applicant: U.S. Bureau of Reclamation, Denver, Colorado

The applicant requests a permit to take (capture, mark, and collect) the desert pupfish (*Cyprinodon macularius*) in conjunction with presence or absence surveys and scientific research throughout the shoreline pools, irrigation drains, and tributaries of the Salton Sea, California, for the purpose of enhancing its survival.

Permit No. TE–010350
Applicant: Lisa Edgington, Los Angeles, California

The applicant requests a permit to take (remove and reduce to possession) specimens of Lyon's pentachaeta (*Pentachaeta lyonii*) in conjunction with scientific research throughout the species' range for the purpose of enhancing its survival.

Permit No. TE–009396
Applicant: Zay Denise Ebsen, El Cajon, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in conjunction with surveys in Riverside, San Diego, and Orange Counties, California for the purpose of enhancing their survival.

Permit No. TE–009838
Applicant: Siskiyou Resource Geographic, Ashland, Oregon

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the species range in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–009396
Applicant: Mary Anne Pentis, Ramona, California

The applicant requests a permit to take (collect and reduce to possession) the San Diego mesa mint (*Pogogyne abramsii*), Otay mesa mint (*Pogogyne nudiuscula*), button celery (*Eryngium aristualtum parishii*), and spreading Navarretia (*Navarretia fossalis*), and take (survey, collect, and sacrifice) the San Diego fairy shrimp (*Brachinecta sandiegonensis*) and the Riverside fairy shrimp (*Streptocephalus woottoni*) in San Diego County, California, in conjunction with surveys and scientific research for the purpose of enhancing their survival.

Permit No. TE–010897
Applicant: Ricardo Montijo, Santa Barbara, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the species range in California, in conjunction with surveys for the purpose of enhancing their survival.

Permit No. TE–797999
Applicant: Merkel & Associates, San

Diego, California

The applicant requests a permit to take (harass by survey, collect, and sacrifice) the Conservancy fairy shrimp (*Branchinecta conservatio*), longhorn fairy shrimp (*Branchinecta longiantenna*), vernal pool tadpole shrimp (*Lepidurus packardi*), San Diego fairy shrimp (*Brachinecta sandiegonensis*), and the Riverside fairy shrimp (*Streptocephalus woottoni*) throughout the species range in California, in conjunction with surveys for the purpose of enhancing their survival.

DATES: Written comments on these permit applications must be received by June 7, 1999.

ADDRESSES: Written data or comments should be submitted to the Chief, Division of Recovery, Planning and Permits, Ecological Services, Fish and Wildlife Service, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181; Fax: (503) 231–6243. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 20 days of the date of publication of this notice to the address above; telephone: (503) 231–2063. Please refer to the respective permit number for each application when requesting copies of documents.

Dated: April 29, 1999.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 99–11486 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Geological Survey

Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel Meeting; Advisory Panel Meeting

AGENCY: U.S. Geological Survey.

ACTION: Notice of meeting.

SUMMARY: The Land Processes Distributed Active Archive Center (DAAC) Science Advisory Panel will meet at the U.S. Geological Survey (USGS) Earth Resources Observation Systems (EROS) Data Center (EDC) near Sioux Falls, South Dakota, on May 25–27, 1999. The Committee, comprised of 12 members from academia, government, and private industry provide Land Process DAAC management and staff with advice and guidance in development, implementation, and operation of DAAC data processing, archiving, and distribution systems and related science support capabilities.

Topics to be reviewed and discussed by the Panel include Landsat 7 flight and ground systems status, data and product distribution and pricing policies, Earth Observing System (EOS) Data Gateway devleopment and implementation status, validation science support, systems test activities, EOS Core System (ECS) maintenance and operations status and plans, and FY 1999 budget and activities update.

DATES: May 25–27, 1999, beginning at 8:30 a.m. on Tuesday, May 25 and adjourning at 2:00 p.m. on Thursday, May 27.

FOR FURTHER INFORMATION CONTACT: Dr. G. Bryan Bailey, Land Processes DAAC Project Scientist, U.S. Geological Survey, EROS Data Center, Sioux Falls, South Dakota 57198 at (605) 594–6001 or e-mail at gbbailey@usgs.gov

SUPPLEMENTARY INFORMATION: Meetings of the Land Processes DAAC Science Advisory Panel are open to the public.

Dated: April 27, 1999.

Richard E. Witmer,

Chief, National Mapping Division.

[FR Doc. 99–11460 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Irrigation Operation and Maintenance Rate Adjustment for San Carlos Irrigation Project, Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Irrigation Operation and Maintenance (O&M) Rate Adjustment.

SUMMARY: The Bureau of Indian Affairs is adjusting the irrigation assessment rates for operating and maintaining the San Carlos Irrigation Project for the 1999 season.

DATES: The new irrigation assessment rate for 1999 will become effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Wayne Nordwall, Area Director, Bureau of Indian Affairs, Phoenix Area Office, P.O. Box 10, Phoenix, AZ 85001, telephone (602) 379–6956.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301 and the Act of August 15, 1914 (38 Stat. 583, 25 U.S.C. 385). The Secretary has delegated this authority to the Assistant Secretary-Indian Affairs under part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

This notice is given in accordance with Section 171.1(e) of part 171, Subchapter H, Chapter 1, of Title 25 of the Code of Federal Regulations, which provides for fixing and announcing the rates for annual operation and maintenance assessments and related information for BIA operated and owned irrigation projects.

The assessment rates are based on an estimate of the cost of normal operation and maintenance of the irrigation project. Normal operation and maintenance means the expenses we incur to provide direct support or benefit to the project's activities for administration, operation, maintenance, and rehabilitation. We must include at least:

(a) Personnel salary and benefits for the project engineer/manager and our employees under his/her management control,

(b) Materials and supplies,

(c) Major and minor vehicle and equipment repairs,

(d) Equipment, including transportation, fuel, oil, grease, lease and replacement,

(e) Capitalization expenses,

(f) Acquisition expenses, and

(g) Other expenses we determine necessary to properly perform the activities and functions characteristic of an irrigation project

Payments

The irrigation operation and maintenance assessments become due based on locally established payment requirements. No water shall be delivered to any of these lands until all irrigation charges have been paid.

Interest and Penalty Fees

Interest, penalty, and administrative fees will be assessed, where required by law, on all delinquent operation and maintenance assessment charges as prescribed in the Code of Federal Regulations, Title 4, Part 102, Federal Claims Collection Standards; and 42 BIAM Supplement 3, part 3.8 Debt

Collection Procedures. Beginning 30 days after the due date interest will be assessed at the rate of the current value of funds to the U.S. Treasury. An administrative fee of $12.50 will be assessed each time an effort is made to collect a delinquent debt; a penalty charge of 6 percent per year will be charged on delinquent debts over 90 days old and will accrue from the date the debt became delinquent. After 180 days a delinquent debt will be forwarded to the United States Treasury for further action in accordance with the Debt Collection Improvement Act of 1996 (Pub. L. 104–134).

Comments: On September 17, 1997, the Bureau of Indian Affairs published a notice in the **Federal Register**, 62 FR 44992, proposing to adjust the irrigation assessment rates for operating and maintaining SCIP for 1998, 1999, and subsequent years. The notice of proposed rate adjustment provided a 30-day public comment period. No comments were received for the 1998 irrigation season and a **Federal Register** notice was published on March 16, 1998, 62 FR 12818–12819, for the 1998 irrigation season only. Comments were received for the proposed adjustment to the assessment for 1999.

The San Carlos Irrigation and Drainage District (SCIDD) commented on the proposed 1999 irrigation assessment increase of $6.00 per acre to a $26.00 per acre assessment. Their comment questioned the inclusion in the assessment of the cost for future repair of the spillway gates at Coolidge Dam. Coolidge Dam is part of the infrastructure of the San Carlos Irrigation Project (SCIP). Subsequent to correspondence and meetings between BIA and SCIDD to review the proposed rate increase of $6.00 per acre, the BIA has decided not to increase the assessment to $26.00 at this time. The irrigation assessment for SCIP will remain at $20.00 per acre until further notice. The BIA has initiated a study of the spillway gates at Coolidge Dam to analyze the benefits of their repairing. Upon completion of the study, SCIP will review its possible impact on any future irrigation rate assessment.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Executive Order 12630

The Department has determined that this rate adjustment does not have significant "takings" implications.

Executive Order 12612

The Department has determined that this rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Rate Adjustment: The following table illustrates the rate adjustment:

SAN CARLOS IRRIGATION PROJECT IRRIGATION RATE PER ASSESSABLE ACRE

	1998	1999
Rate	$20.00	$20.00

Dated: April 29, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11456 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–962–1410–00–P]
[AA–9288, AA–9330, and AA–10424]

Alaska Native Claims Selection

In accordance with Departmental regulations 43 CFR 2650.7(d), notice is hereby given that decisions to issue conveyance under the provisions of Sec. 14(h)(1) of the Alaska Native Claims Settlement Act of December 18, 1971, (ANCSA), 43 U.S.C. 1601, 1613(h)(1), will be issued to the Calista Corporation for three sites aggregating approximately 529 acres. The lands involved are in the vicinity of Nunivak Island, Alaska.

Seward Meridian, Alaska

T. 1 N., R. 103 W.,
T. 2 S., R. 103 W.,

A notice of the decisions will be published once a week, for four (4) consecutive weeks, in the *Anchorage Daily News.* Copies of the decisions may be obtained by contacting the Alaska State Office of the Bureau of Land Management, 222 West Seventh Avenue, #13, Anchorage, Alaska 99513–7599 ((907) 271–5960).

Any party claiming a property interest which is adversely affected by the decisions, shall have until June 7, 1999 to file an appeal. However, parties receiving service by certified mail shall have 30 days from the date of receipt to file an appeal. Appeals must be filed in the Bureau of Land Management at the address identified above, where the requirements for filing an appeal may be obtained. Parties who do not file an appeal in accordance with the requirements in 43 CFR Part 4, Subpart E, shall be deemed to have waived their rights.

Patricia A. Baker,

Land Law Examiner Branch of ANCSA Adjudication.

[FR Doc. 99–11488 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–08–1020–00]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of new member orientation meeting and council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management

Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, The Department of the Interior, Bureau of Land Management (BLM), announces an orientation meeting of the New Mexico Resource Advisory Council (RAC). This meeting is focused toward the new RAC members. Existing RAC members may also attend.

The one day orientation meeting will be held on Wednesday June 16, 1999 at the Amberley Suite Hotel, 7620 Pan American NE, Albuquerque, NM 87109. This meeting starts at 8 a.m. The draft agenda for the orientation meeting includes presentation and discussion on the regulations and laws under which the RAC functions, the RAC Charter, travel voucher procedures, summaries of recent RAC recommendations, Southwest Strategy, the BLM/New Mexico Strategic Plan and minutes from previous RAC meetings. Agenda items may be change depending on the needs of the RAC. This RAC meetings is open to the public. The end time of 4:30 p.m. for the orientation meeting may be changed depending on the needs of the RAC.

The regular RAC meeting will be held on Thursday, June 17 and Friday, June 18, 1999 at the Amberly Suite Hotel, 7620 Pan American NE, Albuquerque, NM 87109. The meeting on June 17 and 18, 1999 starts at 8 a.m. both days. The draft agenda for the RAC meeting includes getting acquainted and welcome, agreement on the meeting agenda, any RAC comments on the draft summary minutes of the last RAC meeting on November 19 and 20, 1998 in Las Cruces, NM., check in with RAC members, presentation and discussion on Standard and Guidelines Resource Management Plan Amendment/ Environmental Impact Statement, public comment to the RAC, facilitated dialogue on RAC Standards and Guidelines, BLM Field Managers presentations, RAC selection of draft agenda items and location for next RAC meeting, presentation and discussion on Rio Grand Corridor proposed plan and final EIS and RAC assessment of this meeting. Specific agenda items, dates, times and locations may be adjusted with approval of the RAC.

The time for the public to address the RAC is 3 p.m. to 5 p.m. Thursday, June 17, 1999. The RAC may reduce or extend the end time of 5 p.m. depending on the number of people wishing to address the RAC. The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its Agenda items. The meeting on June 18, 1999, is planned to end at 5 p.m. The end time of 5 p.m. for the meeting may be changed depending on the work remaining for the RAC.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, PO Box 27115, Santa Fe, New Mexico 87502–0115, telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for public land health and guidelines for livestock grazing management.

Dated: April 30, 1999.

M.J. Chávez,

State Director.

[FR Doc. 99–11487 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–FB–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–384 (Final) and 731–TA–806–808 (Final)]

Certain Hot-Rolled Steel Products From Brazil, Japan, and Russia; Notice of Commission Determination to Conduct a Portion of the Hearing In Camera

AGENCY: International Trade Commission.

ACTION: Closure of a portion of a Commission hearing to the public.

SUMMARY: Upon request of Japanese respondents (Nippon Steel Corporation, NKK Corporation, Kobe Steel, Ltd., Kawasaki Steel Corporation, Sumitomo Metal Industries, Ltd., and Nisshin Steel Co., Ltd.) and Brazilian respondents (USIMINAS, COSIPA, and CSN), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for May 4, 1999, *in camera*. *See* Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. See Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Aaron Fishman, Office of General Counsel, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436, telephone 202–205–3115, e-mail afishman@usitc.gov. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–1810.

SUPPLEMENTARY INFORMATION: The Commission believes that the Japanese and Brazilian respondents have justified the need for a closed session. The Japanese and Brazilian respondents seek a closed session to allow for a company by company analysis of certain domestic producers' valuation and cost allocation of internal transfers of certain hot-rolled steel products. Because such discussions will necessitate disclosure of business proprietary information (BPI), they can only occur if a portion of the hearing is held *in camera*. In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will include the usual public presentations by petitioners and by respondents, with questions from the Commission. In addition, the hearing will include an *in camera* session for a confidential presentation by the Japanese and Brazilian respondents and for questions from the Commission relating to the BPI, followed by an *in camera* rebuttal presentation by petitioners. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in this investigation. See 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that, in her opinion, a portion of the Commission's hearing in *Certain Hot-Rolled Steel Products from Brazil, Japan, and Russia*, Inv. Nos. 701–TA–384 (Final) and 731–TA–806–808 (Final), may be closed to the public to prevent the disclosure of BPI.

Issued: May 4, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11538 Filed 5–6–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–345]

Recent Trends in U.S. Services Trade

AGENCY: United States International Trade Commission.

ACTION: Scheduling of 2000 report on Recent Trends in U.S. Services Trade and the opportunity for the public to submit information.

EFFECTIVE DATE: April 27, 1999.

SUMMARY: The Commission has prepared and published annual reports on U.S. trade in selected industries/commodity areas in conjunction with Commission investigation No. 332–345, *U.S. Trade Shifts in Selected Industries,* since 1993. Under the investigation the Commission publishes two annual reports, *Shifts in U.S. Merchandise Trade, and Recent Trends in U.S. Services Trade.* The latest version of the Recent Trends report may be obtained from the ITC's Internet server (http://www.usitc.gov). A printed report may be requested by contacting the Office of the Secretary at 202–205–2000 or by fax at 202–205–2104. The Commission plans to publish its 1999 report on services trade in May 1999. The 2000 report, scheduled to be published in May 2000, will cover cross-border trade for the period ending in 1998 and transactions by affiliates based outside the country of their parent firm for the period ending in 1997.

FOR FURTHER INFORMATION CONTACT: Questions about the *Recent Trends* report may be directed to the project leader, Dennis Luther, Office of Industries (202–205–3497). For information on the legal aspects, please contact Mr. William Gearhart, Office of General Counsel (202–205–3091). The media should contact Ms. Margaret O'Laughlin, Public Affairs Officer (202–205–1819). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202–205–1810). Inquiries or suggestions from the public regarding the report are welcome and should be addressed to the Secretary to the Commission, at (202–205–2000), U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

Background

The initial notice of institution of this investigation was published in the **Federal Register** of September 8, 1993 (58 FR 47287). The Commission expanded the scope of this investigation to cover services trade in a separate report, which it announced in a notice published in the **Federal Register** of December 28, 1994 (59 FR 66974). The services trade report has been published annually since June 1996 under investigation No. 332–345, while the merchandise trade report has been published under the same investigation annually since September 1993.

As in past years, the report will summarize trade in services in the aggregate and provide analyses of trends and developments in trade in selected service industries that occurred in the latest period for which data are published by the U.S. Department of Commerce, Bureau of Economic Analysis.

Written Submission

No public hearing is planned. However, interested persons are invited to submit written information relating to trade in service industries for the May 2000 report. Commercial or financial information which a submitter desires the Commission to treat as confidential must be provided on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's rules and practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested persons. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission in accordance with § 201.8 at the earliest practical date and should be received no later than the close of business on August 31, 1999. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Issued: May 3, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11537 Filed 5–6–99; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 17, 1998 and published in the **Federal Register** on December 29, 1998 (63 FR 71655), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made application to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of B.I. Chemicals, Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated B.I. Chemicals, Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11444 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 14, 1998, and published in the **Federal Register** on December 23, 1998 (63 FR 71154), B.I. Chemicals, Inc., 2820 N. Normandy Drive, Petersburg, Virginia 23805, made

application by letter to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firms plans to bulk manufacture amphetamine for distribution to its customers.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of B.I. Chemicals, Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated B.I. Chemicals, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11445 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 2, 1998, and published in the **Federal Register** on December 11, 1998, (63 FR 68473), Cauldron Inc., DBA Cauldron Process Chemistry, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of amphetamine, a basic class of controlled substance listed in Schedule II.

The firm plans to bulk manufacture amphetamine for the purpose of performing bioequivalency studies.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cauldron Inc. to manufacture the listed controlled substance is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11446 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Notice of Registration

By Notice dated December 28, 1998, and published in the **Federal Register** on January 4, 1999, (64 FR 181), Cauldron Inc., DBA Cauldron Process Chemistry, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application by letter to the Drug Enforcement Administration to be registered as an importer of phenylacetone (8501), a basic class of controlled substance listed in Schedule II.

The firm plans to import the phenylacetone for the bulk manufacture of amphetamine basic class.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Cauldron Inc. to import phenylacetone is consistent with the public interest and with United States obligations under international treaties, conventions, or protocols in effect on May 1, 1971, at this time. DEA has investigated Cauldron Inc. to ensure that the company's registration is consistent with the public interest. Therefore, pursuant to Section 1008(a) of the Controlled Substances Import and Export Act and in accordance with Title 21, Code of Federal Regulations, Section 1301.34, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11447 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 15, 1999, Dupont Pharmaceuticals, 1000 Stewart Avenue, Garden City, New York 11530, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Oxycodone (9143)	II
Hydrocodone (9193)	II
Oxymorphone (9652)	II

The firm plans to manufacture the listed controlled substances to make finished products.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than July 6, 1999.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11449 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Purusant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under Section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with Section 1301.34 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on March 19, 1999, Noramco of Delaware, Inc., Division of McNeilab, Inc., 500 Old Swedes Landing Road, Wilmington, Delaware 19801, made application by renewal to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Opium, raw (9600)	II
Opium granulated (9640)	II

The firm plans to import the listed controlled substances for the bulk manufacture of other controlled substances.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of these basic classes of controlled substances may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 7, 1999.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11450 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 1999, and published in the **Federal Register** on February 4, 1999, (64 FR 5689), Orpharm, Inc., 4815 Dacoma, Houston, Texas 77072, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methadone (9250)	II
Methadone-intermediate (9254)	II
levo-alphacetylmethadol (9648)	II

The firm plans to manufacture methadone and methadone-intermediate for production of LAAM.

DEA has considered the factors in 21 U.S.C. § 823(a) and determined that the registration of Orpharm, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Orpharm, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 C.F.R. 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11448 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 1990–99]

Announcement of District Advisory Council on Immigration Matters Sixth Meeting

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of meeting.

SUMMARY: The Immigration and Naturalization Service (Service) has established a District Advisory Council on Immigration Matters (DACOIM) to provide the New York District Director of the Service with recommendations on ways to improve the response and reaction to customers in the local jurisdiction, and to develop new partnerships with local officials and community organizations to build and enhance a broader understanding of immigration policies and practices. The purpose of this notice is to announce the forthcoming meeting.

DATES AND TIMES: The Sixth meeting of the DACOIM is scheduled for May 27, 1999, at 1 p.m.

ADDRESSES: The meeting will be held at Orange County Community College, 115 South Street, Middletown, New York, 10940, in the Biotech Building (between Ramview and South Street), Room 207.

FOR FURTHER INFORMATION CONTACT: Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736.

SUPPLEMENTARY INFORMATION: Meetings will be held tri-annually on the fourth Thursday during the months of January, May, and September 1999.

Summary of Agenda

The purpose of the meeting will be to conduct general business, review subcommittee reports, and facilitate public participation. The DACOIM will be chaired by Charles Troy, Assistant District Director for Management, New York District, Immigration and Naturalization Service.

Public Participation

The DACOIM meeting is open to the public, but advance notice of attendance

is requested to ensure adequate seating. Persons planning to attend should notify the contact person at least two (2) days prior to the meeting. Members of the public may submit written statements at any time before or after the meeting for consideration by the DACOIM. Written statements should be sent to Susan Young, Designated Federal Officer, Immigration and Naturalization Service, 26 Federal Plaza, Room 14–100, New York, New York, 10278, telephone: (212) 264–0736. Only written statements received by 5 p.m. on May 24, 1999, will be considered for presentation at the meeting. Minutes of the meeting will be available upon request.

Dated: April 30, 1999.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 99–11512 Filed 5–6–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 3, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection if information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration.

Title: Construction Roofing Industry Partnership Pilot Program.

OMB Number: 1218–0NEW.

Frequency: On occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 24.

Estimated Time Per Respondent: 16 hours (applications) and 8 hours (report).

Total Burden Hours: 404 hours.

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: In OSHA's construction standards that address roofing work, employers are required to protect employees from hazards such as falls from roofs and burns from hot asphalt. The Construction Industry Partnership Pilot Program fosters compliance with these standards through outreach efforts and incentives that reward voluntary compliance.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–11554 Filed 5–6–99; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Office of The Secretary

Submission for OMB Emergency Review; Comment Request

May 1, 1999.

The Department of Labor has submitted the following information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by May 10, 1999. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor Departmental Clearance Officer, Ira Mills ((202) 219–5096 x143)

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for Employment and Training, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316).

The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Agency: Employment and Training Administration.

Title: Welfare-to-Work Census Employment Project: Solicitation for Grant Applications.

OMB Number: 1205–0new.

Frequency: One-time only.

Affected Public: Private non-profit entities.

Number of Respondents: 10.

Estimated Time Per Respondent: 100 hours.

Total Burden Hours: 1,000.

Total Burden Cost (capital/startup): $40,000.

Total Burden Cost (operating/maintaining): 0.

Description: The Balanced Budget Act of 1997, signed by the President on August 5, 1997, authorized the Department of Labor to provide Welfare-to-Work (WtW) grants to States and local communities to provide transitional employment assistance to move Temporary Assistance for Needy Families (TANF) recipients with significant employment barriers into unsubsidized jobs providing long-term employment opportunities. The Department of Labor seeks applicants who have a nationwide network of non-profit affiliate organizations to facilitate the employment of WtW program

participants as enumerators for Census 2000 in local areas across the country.

Ira Mills,

Departmental Clearance Officer.

[FR Doc. 99–11555 Filed 5–6–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration; Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decision shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determination as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decision are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determination Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data maybe obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

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General Wage Determination Publication

General wage determination issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 28th day of April 1999.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 99–11108 Filed 5–6–99; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Notice of Cancellation of Public Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

SUMMARY: Notice is hereby given that the public meeting scheduled for the Advisory Committee on Construction Safety and Health (ACCSH) on May 6 and 7 is being canceled.

FOR FURTHER INFORMATION CONTACT: Theresa Berry, Office of Public Affairs, Room N–3647, telephone (202) 693–1999 at the Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210.

SUPPLEMENTARY INFORMATION: Due to the absence of quorum of the ACCSH members the meeting is being canceled. The Occupational Safety and Health Administration will reschedule the meeting for the near future.

An official record of past meetings is available for public inspection at the OSHA Docket Office, Room N–2625, telephone 202–693–2350.

ACCSH was established under section 107(e)(1) of the Contact Work Hours and Safety Standards Act (40 U.S.C. 333)

and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656).

Signed at Washington, DC this 3rd day of May, 1999.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 99–11553 Filed 05–06–99; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (99–065)]

NASA Advisory Council (NAC), Space Science Advisory Committee (SScAC), Astronomical Search for Origins and Planetary Systems (ORIGINS); Subcommittee Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science Advisory Committee, ORIGINS Subcommittee.

DATES: Monday, May 24, 1999, 8:30 a.m. to 5 p.m.; Tuesday, May 25, 1999, 8:30 a.m. to 5 p.m.

ADDRESSES: NASA Headquarters, Conference Room MIC–7 West, Room 7H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Dr. Harley Thronson, Code SR, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0362.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the capacity of the room. The agenda for the meeting includes the following topics:

—Response from Origins Theme Director to Actions from last OS Meeting
—Report from Origins Theme Director
—Astrobiology Laboratory at Ames Research Center
—SIM Science Team Announcement of Opportunity
—SIM Architecture Downselect Process
—Evaluation of Future Mission Concepts for the OSS Strategic Plan.

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 29, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–11547 Filed 5–6–99; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–064]

NASA Advisory Council; meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council.

DATES: Thursday, May 20, 1999, 8:30 a.m. to 4:15 p.m. and Friday, May 21, 1999, 8:00 a.m. to 10:00 a.m. and 1:30 p.m. to 3:00 p.m., except, if launch of the NASA Space Shuttle Mission STS–96, occurs on Thursday, May 20, 1999, then the Thursday meeting start time will be 11:00 a.m.; and if that launch occurs on May 21st, then the Friday meeting time will be 10:00 a.m. to 12:00 Noon.

ADDRESSES: NASA Visitors Center, Center for Space Education, Building M6–306, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Dakon, Code Z, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0732.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—International Space Station Update
—ISS Probability Risk Assessment
—ISS Research Status
—Space Transportation Architecture Studies and Faster, Better, Cheaper Update
—Committee/TaskForce/Working Group Reports
—Discussion of Findings and Recommendations

A detailed agenda and further information about the NASA Advisory Council is available on the world wide web at: http://www.hq.nasa.gov/office/codez/nac.htm

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: April 29, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 99–11546 Filed 5–6–99; 8:45 am]

BILLING CODE 7510–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Company (Diablo Canyon Nuclear Power Plant, Units 1 and 2); Exemption

I

Pacific Gas and Electric Company, et al. (the licensee) is the holder of Facility Operating License Nos. DPR–80 and DPR–82, which authorize operation of the Diablo Canyon Nuclear Power Plant (DCNPP), Units 1 and 2. The license provides, among other things, that the licensee is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility consists of two pressurized-water reactors at the licensee's site located in San Luis Obispo County, California.

II

Section 50.60 of Title 10 of the *Code of Federal Regulations* (10 CFR), "Acceptance criteria for fracture prevention measures for lightwater nuclear power reactors for normal operation," paragraph (a) states, in part, that "all light-water nuclear power reactors, * * * must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H to this part." Pressurized water reactor licensees have installed cold overpressure mitigation systems/low temperature overpressure protection systems (LTOP) in order to protect the reactor coolant pressure boundary from being operated outside of the boundaries established by the pressure temperature (P/T) limit curves and to provide pressure relief of the reactor coolant pressure boundaries during low temperature overpressurization events.

III

Section 50.12(a) of 10 CFR, "Specific exemption," states that * * *

The Commission may, upon application by any interested person, or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are: (1) Authorized by law, will not present an undue risk to the public health

and safety, and are consistent with the common defense and security. (2) The Commission will not consider granting an exemption unless special circumstances are present.

Section 50.12(a)(2)(ii) of 10 CFR states that special circumstances are present when "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.* * *" The licensee's proposed use of Code Case N–514 will be used as an alternative method for establishing the setpoints for the LTOP systems. Based on the conservatism that is incorporated into the methods of Appendix G of Section XI to the ASME Code for calculating P/T limit curves, it is concluded that permitting the LTOP setpoints to be established in accordance with the Code Case (e.g., at a level ≤110% of the limit defined by the P/T limit curves) would provide an adequate margin of safety against brittle fracture failure of the reactor pressure vessels. Accordingly, the Commission has determined that special circumstances as defined in 10 CFR 50.12(a)(2)(ii) exist.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Pacific Gas and Electric Company an exemption from the requirements of 10 CFR 50.60 and 10 CFR Part 50, Appendix G, to establish LTOP setpoints. The licensee will be allowed to use Code Case N–514 to establish LTOP setpoints to be used in their P/T limit curves.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the environment (64 FR 23688).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 3rd day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11515 Filed 5–6–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Oversight Process Pilot Workshop

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission (NRC) will hold an additional session to the Regulatory Oversight Process Pilot Workshop on May 20, 1999 (April 23, 1999; 64 R 20025). This session will provide an overview of the regulatory oversight processes and is intended for those who cannot attend the entire workshop. Topics to be covered are an overview of the pilot program, performance indicator, baseline inspection program, significance determination process, enforcement, and assessment. This meeting is open to the public.

DATES: The additional session will be held on May 20, 1999, from 2:00 p.m. to 5:00 p.m.

ADDRESSES: The workshop will be held at the Philadelphia Airport Ramada Inn, 76 Industrial Highway (Rt. 291), Essington, PA 19029. The hotel phone number is (610) 521–9600 or (800) 277–3900.

FOR FURTHER INFORMATION CONTACT: August Spector at 301–415–2140 or Lee Miller at 301–415–1361, Mail Stop: O–5H4, Inspection Program Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Cornelius F. Holden,

Acting Chief, Inspection Program Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11516 Filed 5–6–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Patricia H. Paige, Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR part 213 on March 26, 1996 (64 FR 14772). Individual authorities established or revoked under Schedules A and B and established under Schedule C between February 1, 1999, and March 31, 1999, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during February 1999.

One Schedule A authorities was established:

Department of Health and Human Services

Intermittent positions, at GS–15 and below and WG–10 and below, on teams under the National Disaster Medical System including Disaster Medical Assistance Teams and specialty teams, to respond to disasters, emergencies, and incidents/events involving medical, mortuary and public health needs. Effective March 3, 1999.

No Schedule A authorities were revoked during March 1999.

Schedule B

No Schedule B authorities were established or revoked during February 1999.

No Schedule B authorities were established or revoked during March 1999.

Schedule C

The following Schedule C authorities were established during February and March 1999:

Council on Environmental Quality

Special Assistant to the Chair, Council on Environmental Quality. Effective March 8, 1999.

Commodity Futures Trading Commission

Administrative Assistant to the Commissioner. Effective February 4, 1999.

Department of Agriculture

Confidential Assistant to the Administrator, Food and Nutrition Service. Effective February 3, 1999.

Regional Director, Outreach to the Associate Chief, Natural Resources

Conservation Service. Effective February 3, 1999.

Staff Assistant to the Confidential Assistant, Office of the Secretary. Effective February 3, 1999.

Confidential Assistant to the Administrator, Rural Utilities Service. Effective February 18, 1999.

Confidential Assistant to the Chief, Forest Service. Effective March 4, 1999.

Deputy Chief of Staff to the Chief of Staff. Effective March 4, 1999.

Speech Writer to the Director, Office of Communications. Effective March 4, 1999.

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective March 8, 1999.

Special Assistant to the Director, Civil Rights. Effective March 16, 1999.

Confidential Assistant to the Deputy Administrator, Office of Community Development. Effective March 25, 1999.

Confidential Assistant to the Administrator, Economic Research Service. Effective March 25, 1999.

Regional Director, Davis, California, to the Administrator, Farm Service Agency. Effective March 25, 1999.

Staff Assistant to the Administrator, Farm Service Agency. Effective March 25, 1999.

Confidential Assistant to the Administrator, Risk Management Agency. Effective March 29, 1999.

Department of Commerce

Special Assistant to the Assistant Secretary for Legislative and Intergovernmental Affairs. Effective February 9, 1999.

Confidential Assistant to the Assistant Secretary and Commissioner of Patents and Trademarks. Effective February 22, 1999.

Assistant Director for Public Affairs to the Director of Public Affairs and Press Secretary. Effective February 26, 1999.

Congressional Affairs Officer to the Associate Director for Communications. Effective February 26, 1999.

Special Assistant to the Assistant to the Secretary and Director, Office of Policy and Strategic Planning. Effective March 4, 1999.

Senior Advisor to the Assistant Secretary for Market Access and Compliance. Effective March 11, 1999.

Department of Defense

Director, Cooperative Threat Reduction to the Assistant Secretary for Strategy and Threat Reduction. Effective February 24, 1999.

Speechwriter to the Assistant Secretary for Public Affairs. Effective February 24, 1999.

Staff Specialist to the Special Assistant to the President/Senior Director for Intelligence Programs. Effective March 9, 1999.

Assistant for Anti-Terrorism Policy to the Deputy Assistant Secretary (Policy and Missions). Effective March 11, 1999.

Department of Education

Confidential Assistant to the Chief of Staff. Effective February 3, 1999.

Confidential Assistant to the Director, Office of Bilingual Education and Minority Languages Affairs. Effective February 12, 1999.

Director, Intergovernmental and Interagency Affairs Coordination to the Deputy Assistant Secretary, Intergovernmental and Interagency Affairs Coordination. Effective February 12, 1999.

Confidential Assistant to the Assistant Secretary, Office of Elementary and Secondary Education. Effective February 17, 1999.

Confidential Assistant to the Special Assistant to the Secretary, Office of the Secretary. Effective February 26, 1999.

Special Assistant to the Director, Scheduling and Briefing. Effective March 2, 1999.

Confidential Assistant to the Assistant Secretary, Office of Postsecondary Education. Effective March 8, 1999.

Special Assistant to the Assistant Secretary, Office of Postseconadry Education. Effective March 11, 1999.

Special Assistant to the Director, White House Initiative on Hispanic Education. Effective March 15, 1999.

Special Assistant to the Counselor to the Secretary. Effective March 15, 1999.

Department of Energy

Director of Communications to the Assistant Secretary for Energy Efficiency and Renewable Energy. Effective February 3, 1999.

Scheduler to the Assistant Secretary for Human Resources and Administration. Effective February 5, 1999.

Deputy Assistant Secretary for House Liaison to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective February 17, 1999.

Senior Advisor for Scheduling and Advance to the Director of Scheduling. Effective February 22, 1999.

Senior Advisor for Community and Intergovernmental Involvement to the Assistant Secretary for Environmental Management. Effective March 2, 1999.

Special Projects Officer to the Director, Office of Public Affairs. Effective March 2, 1999.

Special Projects Officer to the Director, Office of Public Affairs. Effective March 4, 1999.

Special Assistant for Community Outreach to the Assistant Secretary for Environment, Safety and Health. Effective March 5, 1999.

Special Assistant to the Principal Deputy Assistant Secretary for Environmental Management. Effective March 8, 1999.

Special Assistant to the Director of Field Management. Effective March 8, 1999.

Department of Health and Human Services

Special Assistant (Speechwriter) to the Director of Speechwriting. Effective February 22, 1999.

Confidential Assistant (Scheduling) to the Director of Scheduling. Effective February 24, 1999.

Special Assistant to the Director of Communications. Effective March 5, 1999.

Special Assistant to the Assistant Secretary, Administration for Aging. Effective March 5, 1999.

Department of Housing and Urban Development

Special Assistant (Advance) to the Director, Executive Services. Effective February 1, 1999.

Scheduling Assistant to the Director of Executive Scheduling. Effective February 1, 1999.

Special Counsel to the General Counsel. Effective February 9, 1999.

Special Counsel to the General Counsel. Effective February 12, 1999.

Deputy Assistant Secretary for Policy, Program and Legislative Initiatives to the Assistant Secretary for Public and Indian Housing. Effective February 26, 1999.

Assistant for Congressional Relations to the Deputy Assistant Secretary for Congressional Relations. Effective March 4, 1999.

Special Assistant to the Secretary's Representative, Office of the Secretary's Representative, Southeast/Caribbean. Effective March 23, 1999.

Deputy Assistant Secretary for Strategic Planning to the Assistant Secretary for Congressional and Intergovernmental Relations. Effective March 25, 1999.

Deputy General Counsel for Programs and Regulations to the General Counsel. Effective March 30, 1999.

Department of the Interior

Deputy Scheduler (Outreach) to the Deputy Chief of Staff. Effective March 9, 1999.

Department of Justice

Deputy Director, Office of Public Affairs to the Director, Office of Public Affairs. Effective March 15, 1999.

Department of Labor

Legislative Officer to the Assistant Secretary for Congressional and Intergovernmental Affairs. Effective March 19, 1999.

Director of Communications and Public Information to the Assistant Secretary of Labor. Effective March 23, 1999.

Department of State

Legislative Management Officer to the Deputy Assistant Secretary. Effective February 3, 1999.

Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs. Effective February 17, 1999.

Staff Assistant to the Assistant Secretary, Bureau of Legislative Affairs. Effective February 17, 1999.

Staff Assistant to the Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective February 22, 1999.

Special Advisor to the Deputy Assistant Secretary, Bureau of International Narcotics and Law Enforcement. Effective February 22, 1999.

Foreign Affairs Officer to the Under Secretary for Global Affairs. Effective February 22, 1999.

Legislative Management Officer to the Assistant Secretary, Bureau of Legislative Affairs. Effective February 24, 1999.

Foreign Affairs Officer to the Deputy Director, Office of Policy Planning. Effective March 17, 1999.

Department of the Treasury

Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective February 22, 1999.

Director, Public and Business Liaison to the Deputy Assistant Secretary Public Liaison, Office of Legislative Affairs and Public Liaison. Effective March 11, 1999.

Senior Deputy to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective March 12, 1999.

Director, Public and Business Liaison to the Deputy Assistant Secretary for Public Liaison. Effective March 12, 1999.

Legislative Analyst to the Assistant Secretary for Legislative Affairs. Effective March 15, 1999.

Senior Advisor to the Assistant Secretary (Financial Markets). Effective March 17, 1999.

Department of Veterans Affairs

Executive Assistant to the Deputy Secretary of Veterans Affairs. Effective February 23, 1999.

Executive Assistant to the Secretary of Veterans Affairs. Effective March 8, 1999.

Special Assistant to the Assistant Secretary for Public and Intergovernmental Affairs. Effective March 23, 1999.

Environmental Protection Agency

Congressional Liaison Specialist to the Assistant Administrator, Office of Congressional and Intergovernmental Relations. Effective March 4, 1999.

Equal Employment Opportunity Commission

Attorney-Advisor (Civil Rights) to the Chairman. Effective February 12, 1999.

Farm Credit Administration

Public and Congressional Affairs Specialist to the Director, Office of Congressional and Public Affairs. Effective February 8, 1999.

Secretary of the Board to the Chairman and Chief Executive Officer. Effective February 9, 1999.

Special Assistant to the Member, Farm Credit Administration Board. Effective February 23, 1999.

Federal Deposit Insurance Corporation

Confidential Assistant to the Deputy to the Chairman. Effective February 10, 1999.

Federal Maritime Commission

Special Advisor to the Commissioner. Effective February 5, 1999.

Office of National Drug Control Policy

Staff Assistant to the Director, Office of the National Drug Control Policy. Effective February 24, 1999.

Staff Assistant to the Director, Office of the National Drug Control Policy. Effective March 1, 1999.

Office of Personnel Management

Special Assistant to the Director of Communications. Effective February 12, 1999.

Office of Science and Technology Policy

Public Affairs Specialist to the Chief of Staff, Office of the Director. Effective February 12, 1999.

Securities and Exchange Commission

Legislative Affairs Specialist to the Director, Legislative Affairs. Effective February 9, 1999.

Small Business Administration

Regional Administrator, Region III, Philadelphia, PA to the Administrator, Small Business Administration. Effective February 22, 1999.

U.S. Arms Control and Disarmament Agency

Confidential Assistant to the Assistant Director, Multilateral Affairs Bureau. Effective February 9, 1999.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954—1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 99–11514 Filed 5–6–99; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–23821]

Notice of Applications for Deregistration Under Section 8(f) of the Investment Company Act of 1940

April 30, 1999.

The following is a notice of applications for deregistration under section 8(f) of the Investment Company Act of 1940 for the month of April, 1999. A copy of each application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth St., N.W., Washington, DC 20549–0102 (tel. 202–942–8090). An order granting each application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on any application by writing to the SEC's Secretary at the address below and serving the relevant applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 25, 1999, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary, SEC, 450 Fifth Street, N.W., Washington, DC 20549–0609. For Further Information Contact: Diane L. Titus, at (202) 942–0564, SEC, Division of Investment Management, Office of Investment Company Regulation, Mail Stop 5–6, 450 Fifth Street, N.W., Washington, DC 20549–0506.

Paragon Portfolio [File No. 811–5879]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On March 26, 1996, seven of applicant's series, Treasury Money Market Fund, Short-Term Government Fund, Intermediate-Term Bond Fund, Value Equity Income Fund, Louisiana Tax-Free Fund, Value Growth Fund, and Gulf South Growth Fund (collectively, the "Paragon Funds"), transferred their assets to a corresponding series of The One Group®, in exchange for shares of the corresponding series of The One Group®

based on net asset value. On April 29, 1996, the sole shareholder of the remaining series of applicant, Power Intermediate-Term Bond Portfolio, Power Value Growth Portfolio, Power Value Equity Income Portfolio, and Power Gulf South Growth Portfolio (collectively, the "Power Portfolios"), redeemed its interest in each Power Portfolio at net asset value. The Paragon Funds paid approximately $71,000 in expenses incurred in connection with the reorganization. All other expense related to the reorganization were paid by Banc One Investment Advisors Corporation applicant's investment adviser, and The One Group®

Filing Dates: The application was filed on February 3, 1999, and amended on March 31, 1999.

Applicant's Address: 4900 Sears Tower, Chicago, Illinois 60606.

DEM, Inc. [File No. 811–9118]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. By April 7, 1999, applicant will have completed a liquidating distribution to its stockholders at net asset value. Applicant incurred approximately $49,123 in expenses in connection with the liquidation.

Filing Dates: The application was filed on December 21, 1998 and amended on March 26, 1999.

Applicant's Address: World Trade Center—Baltimore, 28th floor, 401 East Pratt Street, Baltimore, Maryland 21202.

Tax-Exempt Money Market Fund [811–3442]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On October 14, 1988, applicant transferred all of its assets, subject to liabilities, to the Tax-Exempt Portfolio of Cash Equivalent Fund in exchange for share based on net asset value per share. Expenses incurred in connection with the merger were $28,000 and were borne by applicant.

Filing Dates: The application was filed on December 10, 1997, and amended on February 16, 1999.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606–5808.

Kemper Short-Term Global Income Fund [811–6147]

Summary: Applicant seeks an order declaring that it has ceased to be an investment company. On August 26, 1994, applicant transferred all of its assets, less reserves for debt, to the Kemper Global Income Fund in exchange for Class A shares based on net asset value per share. Expenses incurred in connection with the merger were $32,000 and were borne by applicant.

Filing Dates: the application was filed on December 10, 1997, and amended on February 16, 1999.

Applicant's Address: 222 South Riverside Plaza, Chicago, IL 60606–5808.

Zazove Convertible Fund, L.P. [File No. 811–8324]

Summary: Appplicant seeks an order declaring that it has ceased to be an investment company. On January 1, 1999, applicant transferred all of its assets to Zazove Convertible Securities Fund, Inc. ("Convertible Securities Fund") in exchange for shares of the Convertible Securities Fund based on net asset value. The Convertible Securities Fund will pay approximately $40,000 in expenses in connection with the merger.

Filing Dates: The application was filed on January 27, 1999, and amended on April 21, 1999.

Applicant's Address: 4801 West Peterson Avenue, Suite 615, Chicago, Illinois 60646.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11458 Filed 5–6–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 27015]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

April 30, 1999.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 24, 1999, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 24, 1999, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Columbia Energy Group (70–9421)

Columbia Energy Group ("Columbia"), 13880 Dulles Corner Lane, Herndon, Virginia 20171–4600, a registered holding company, has filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(f) of the Act.

Columbia proposes to engage in the business of factoring accounts receivable ("Receivables") through one or more, existing or newly formed or acquired, direct or indirect subsidiaries ("Factoring Subsidiaries"). Factoring Subsidiaries would factor Receivables of associate and nonassociate companies.

Factoring Subsidiaries also propose to enter into agreements to purchase and sell Receivables with third-party financial institutions ("Purchasers"). Columbia states that the Factoring Subsidiaries will require no additional financing to acquire associate or nonassociate Receivables, because they will sell the Receivables to Purchasers the day the Receivables are acquired. Columbia will report the acquisition and sale of all Receivables as sales under generally accepted accounting principles.

Factoring Subsidiaries would purchase Receivables from an associate company at a discounted rate that, among other things, reflects its cost of capital and the collection histories of the associates generating the Receivables. Columbia expects that Purchasers of associate Receivables will elect to maintain current collection procedures, which are managed by associate companies. Accordingly, the discounting of Receivables acquired by both Factoring Subsidiaries and Purchasers would incorporate a collection fee component attributable to the collection services rendered by associate companies. The acquisition of Receivables from associate and nonassociate companies would be limited so that the trailing twelve-month average amount of nonassociate company Receivables held as of the end

of any calendar month would be less than the trailing twelve-month average amount of any Receivables acquired from associate companies held as of the end of the same calendar month.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11457 Filed 5–6–99; 8:45 am]

BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974; Computer Matching Program (SSA/Department of Labor (DOL)—SSA Match Number 1013

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct with DOL.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Reform and Oversight of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 966–0869 or writing to the Associate Commissioner for Program Support, 4400 West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 (Public Law (Pub. L.) 100–503) amended the Privacy Act (5 U.S.C. 552a) by establishing the conditions under which computer matching involving the Federal Government could be performed and adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) further amended the Privacy Act regarding protections for such individuals.

The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, or local government records. Among other things, it requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies participating in the matching programs;

(2) Obtain the approval of the matching agreement by the Data Integrity Boards (DIB) of the participating Federal Agencies;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that this computer matching program complies with the requirements of the Privacy Act, as amended.

Dated: April 16, 1999.

Kenneth S. Apfel,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) With the Department of Labor (DOL)

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

The purpose of this matching program is to establish conditions and procedures for DOL's disclosure of certain Federal Employee Compensation Act benefit data to SSA. The data is needed by SSA in the process of verifying the eligibility of, and the amount of benefits payable to individuals under the Disability Insurance Program administered by SSA under title II of the Social Security Act (the Act), and in verifying eligibility and payment amounts of individuals under the Supplemental Security Income (SSI) program. The SSI program was created under title XVI of the Act to provide benefits to individuals with income and resources below levels established by law and regulations.

C. Authority for Conducting the Matching Program

Sections 224, 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 424a, 1383(e)(1)(B) and 1383(f)).

D. Categories of Records and Individuals Covered by the Match

DOL will provide SSA with an electronic or magnetic tape file extracted from the Office of Workers' Compensation Programs Federal Employees' Compensation Act File, DOL(GOVT–1). The extracted file will contain certain workers' compensation payment information. Each record on the DOL file will be matched to SSA's Supplemental Security Income Record, SSA/OSR 09–60–0103; Master Files of Social Security Number (SSN) Holders and SSN Applications, SSA/OSR 09–60–0058; and Master Beneficiary Record, SSA/OSR 09–60–0090, to identify individuals potentially subject to benefit reductions or termination of payment eligibility under applicable requirements of the above described benefit programs.

E. Inclusive Dates of the Match

The matching program shall become effective upon signing of the agreement by both parties to the agreement and approval of the agreement by the Data Integrity Boards of the respective agencies, but no sooner than 40 days after notice of this matching program is sent to Congress and the Office of Management and Budget, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 99–11508 Filed 5–6–99; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF STATE

[Public Notice No. 3032]

Advisory Committee on Historical Diplomatic Documentation; Notice of Meeting

The Advisory Committee on Historical Diplomatic Documentation will meet in the Department of State, 2201 "C" Street NW, Washington, DC, May 24–25, 1999, in Conference Room 1406. Prior notification and a valid photo are mandatory for entrance into the building. One week before the meeting prospective public attendees must notify Gloria Walker, Office of Historian (202–663–1124) providing

relevant date(s) of birth, social security number(s) and telephone number(s).

The Committee will meet in open session from 1:30 p.m. through 4:30 p.m. on the afternoon of Monday, May 24, 1999. The remainder of the Committee's sessions from 9 a.m. until 5 p.m. on Tuesday, May 25, 1999, will be closed in accordance with section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463). The agenda calls for discussions involving consideration of matters not subject to public disclosure under 5 U.S.C. 552b(c)(1), and that the public interest requires that such activities be withheld from disclosure.

Questions concerning the meeting should be directed to William Z. Slany, Executive Secretary, Advisory Committee on Historical Diplomatic Documentation, Department of State, Office of the Historian, Washington, DC 20520, telephone (202) 663–1123, (e-mail pahistoff@panet.us-state.gov).

Dated: April 28, 1999.

William Z. Slany,

Executive Secretary.

[FR Doc. 99–11551 Filed 5–6–99; 8:45 am]

BILLING CODE 4710–45–U

DEPARTMENT OF STATE

[Public Notice 3049]

Office of the Deputy Assistant Secretary for Energy, Sanctions, and Commodities; Receipt of Application for a Presidential Permit for Pipeline Facilities To Be Constructed and Maintained on the Borders of the United States

AGENCY: Department of State.

SUMMARY: The Department of State has received an application from the Penn Octane Corporation requesting a permit, pursuant to Executive Order 11423 of August 16, 1968, as amended by Executive Order 12847 of May 17, 1993, authorizing Penn Octane to construct and maintain two pipelines to transport liquefied petroleum gas (LPG) and refined product (motor gasoline and diesel fuel) crossing the international boundary between the United States and Mexico at a point in El Paso County, Texas. Penn Octane Corporation is a publicly held company having its principal office in Los Angeles, California. The project consists of two pipelines of approximately 21 miles in length crossing beneath the Rio Grande River.

DATES: Interested parties are invited to submit, in duplicate, comments relative to this proposal on or before June 3, 1999.

FOR FURTHER INFORMATION CONTACT: Matthew McManus, Division Chief, Energy Producing Countries, Department of State, Washington, D.C., 20520. (202) 647–4557.

Dated: May 4, 1999.

Matthew McManus,

Division Chief, Energy Producing Countries, Bureau of Economic and Business Affairs.

[FR Doc. 99–11552 Filed 5–6–99; 8:45 am]

BILLING CODE 4710–07–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect To List of Countries Denying Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of counties denying fair market opportunities for products and suppliers of the United States in airport construction procurements.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative ("USTR") has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

DATES: Effective May 1, 1999.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: John Ellis, Director of Government Procurement Issues, (202) 395–3063; or Stephen Kho, Assistant General Counsel, (202) 395–3581.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway safety and Capacity Expansion Act of 1987, Pub. L. 100–223 (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide by May 1, 1999, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–11480 Filed 5–6–99; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

AGENCY: Office of the Secretary, DOT.

ACTION: Announcement of public forum on economic analysis in rulemaking.

TIME AND DATE: 1:00 p.m.–4:00 p.m., May 17, 1999.

PLACE: Nassif Building, Room 2230, Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590.

STATUS: Open to public with attendance limited to space available.

PURPOSE: The purpose of the forum is to have an exchange of ideas and to start a dialogue that will better enable the Department to analyze its rules. We do not want comments on specific rules or proposals, although it would be appropriate to use an existing rule to illustrate a point.

SUMMARY: The Department of Transportation will be hosting a public forum on economic analysis in rulemaking. Expert panelists from the Air Transport Association (David Swierenga), American Trucking Association (Bob Castello), Association of American Railroads (Peter French), International Brotherhood of Teamsters (Mike Conyingham), National Highway Traffic Safety Administration (Larry Blincoe), Public Citizen (Joan Claybrook), and U.S. Coast Guard (Fred Scheer) will give their perspective on the Department's economic analysis of rules. The moderator of the forum will present a series of issues to the panel for discussion; the audience will also be encouraged to ask questions or make comments. The forum will address various issues such as problems with data, valuation of costs and benefits, and the basis of assumptions in DOT's analysis. This forum is one of three—the other two will be on risk assessment and small entities—the Department will be sponsoring before October 1, 1999, in which we will ask the public to join us.

REGISTRATION: Participants are requested to register their intent to attend this forum meeting by pointing their web browser to the following URL: http://course.ost.dot.gov. Also, remember to use the buttons provided on the web

pages to navigate from screen to screen, rather than the browser controls, whenever possible. If you do not have internet access, you can register by calling 202–366–4723 or by writing to the contact person below. Please include your name, address, and phone number in your letter/postcard. Also, remember that space is limited and registration is on a first-come-first-served basis.

FOR FURTHER INFORMATION CONTACT: Blane Workie, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW, Washington, DC 20590. Phone: (202) 366–4723 (voice), (202) 755–7687 (TDD); Email: blane.workie@ost.dot.gov.

Issued in Washington, DC., this 3rd day of May, 1999.

Robert C. Ashby,

Deputy Assistant General Counsel for Regulation and Enforcement.

[FR Doc. 99–11494 Filed 05–06–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Index of Administrator's Decisions and Orders in Civil Penalty Actions; Publication

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of publication.

SUMMARY: This notice constitutes the required quarterly publication of an index of the Administrator's decisions and orders in civil penalty cases. This publication represents the quarter ending on March 31, 1999. This publication ensures that the agency is in compliance with statutory indexing requirements.

FOR FURTHER INFORMATION CONTACT: James S. Dillman, Assistant Chief Counsel for Litigation (AGC–400), Federal Aviation Administration, 400 7th Street, SW, Suite PL 200–A, Washington, DC 20590; telephone (202) 366–4118.

SUPPLEMENTARY INFORMATION: The Administrative Procedure Act requires Federal agencies to maintain and make available for public inspection and copying current indexes containing identifying information regarding materials required to be made available or published. 5 U.S.C. 552(a)(2). In a notice issued on July 11, 1990, and published in the **Federal Register** (55 FR 29148; July 17, 1990), the FAA announced the public availability of several indexes and summaries that provide identifying information about the decisions and orders issued by the Administrator under the FAA's civil penalty assessment authority and the rules of practice governing hearings and appeals of civil penalty actions. 14 CFR part 13, subpart G.

The FAA maintains an index of the Administrator's decisions and orders in civil penalty actions organized by order number and containing identifying information about each decision or order. The FAA also maintains a cumulative subject-matter index and digests organized by order number.

The indexes are published on a quarterly basis (*i.e.*, January, April, July, and October.) This publication represents the quarter ending on March 31, 1999.

The FAA first published these indexes and digests for all decisions and orders issued by the Administrator through September 30, 1990. 55 FR 35984; October 31, 1990. The FAA announced in that notice that only the subject-matter index would be published cumulatively and that the order number index would be non-cumulative. The FAA announced in a later notice that the order number indexes published in January would reflect all of the civil penalty decisions for the previous year. 58 FR 5044; 1/19/93.

The previous quarterly publications of these indexes have appeared in the **Federal Register** as follows:

Dates of quarter	Federal register publication
11/1/89–9/30/90	55 FR 45984; 10/31/90.
10/1/90–12/31/90 ..	56 FR 44886; 2/6/91.
1/1/91–3/31/91	56 FR 20250; 5/2/91.
4/1/91–6/30/91	56 FR 31984; 7/12/91.
7/1/91–9/30/91	56 FR 51735; 10/15/91.
10/1/91–12/31/91 ..	57 FR 2299; 1/21/92.
1/1/92–3/31/92	57 FR 12359; 4/9/92.
4/1/92–6/30/92	57 FR 32825; 7/23/92.
7/1/92–9/30/92	57 FR 48255; 10/22/92.
10/1/92–12/31/92 ..	58 FR 5044; 1/19/93.
1/1/93–3/31/93	58 FR 21199; 4/19/93.
4/1/93–6/30/93	58 FR 42120; 8/6/93.
7/1/93–9/30/93	58 FR 58218; 10/29/93.
10/1/93–12/31/93 ..	59 FR 5466; 2/4/94.
1/1/94–3/31/94	59 FR 22196; 4/29/94.
4/1/94–6/30/94	59 FR 39618; 8/3/94.
7/1/94–12/31/94	60 FR 4454; 1/23/95.
1/1/95–3/31/95	60 FR 19318; 4/17/95.
4/1/95–6/30/95	60 FR 36854; 7/18/95.
7/1/95–9/30/95	60 FR 53228; 10/12/95.
10/1/95–12/31/95 ..	61 FR 1972; 1/24/96.
1/1/96–3/31/96	61 FR 16955; 4/18/96.
4/1/96–6/30/96	61 FR 37526; 7/18/96.
7/1/96–9/30/96	61 FR 54833; 10/22/96.
10/1/96–12/31/96 ..	62 FR 2434; 1/16/97.
1/1/97–3/31/97	62 FR 24533; 5/2/97.
4/1/97–6/30/97	62 FR 38339; 7/17/97.
7/1/97–9/30/97	62 FR 53856; 10/16/97.
10/1/97–12/31/97 ..	63 FR 3373; 1/22/98.
1/1/98–3/31/98	63 FR 19559; 4/20/98.
4/1/98–6/30/98	63 FR 37914; 7/14/98.
7/1/98–9/30/98	63 FR 57729; 10/28/98.
10/1/98–12/31/98 ..	64 FR 1855; 1/12/99.

The civil penalty decisions and orders, and the indexes and digests are available in FAA offices. In addition, the Administrator's civil penalty decisions have been published by commercial publishers (Hawkins Publishing Company and Clark Boardman Callaghan) and are available on computer on-line services (Westlaw, LEXIS, Compuserve and FedWorld). (A list of the addresses of the FAA offices where the civil penalty decisions may be reviewed and information regarding these commercial publications and computer databases are provided at the end of this notice.)

Information regarding the accessibility of materials filed in recently initiated civil penalty cases in FAA civil penalty cases at the DOT Docket and over the Internet is also set forth at the end of this notice.

Civil Penalty Actions—Orders Issued by the Administrator

Order Number Index

(This index includes all decisions and orders issued by the Administrator from January 1, 1999, to March 31, 1999.)

1999–1—American Airlines
3/2/99—CP95SW0195, CP95SO0196, CP95SW0197, CP95SW0199, CP95SW0200, CP95SW0201, CP95SW0202, CP95SW0207, CP95SW0208, CP95SW0209, CP95SW0210, CP95SW0211, CP95SW0212, CP95SW0213, CP95SW0215, CP95SW0216, CP95SW0217, CP95SW0294, CP95SW0295, CP96SW0132, CP96SW0133, CP96SW0134, CP96SW0170

1999–2—Oxygen Systems
3/4/99—CP97SO0071

Civil Penalty Actions—Orders Issued by the Administrator

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- Default Judgment ..... 91–11 Continental Airlines; 92–47 Cornwall; 94 8 Nunez; 94–22 Harkins; 94–28 Toyota; 95–10 Diamond; 97–28 Continental Airlines; 97–33 Rawlings; 98–13 Air St. Thomas.
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- Regulate proceedings ..... 97–20 Werle.
- Sanction ..... 90–37 Northwest Airlines; 91–54 Alaska Airlines, 94–22 Harkins; 94–28 Toyota.
- Service of law judges by parties ..... 97–18 Robinson.
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- Agent/independent contractor of ..... 92–70 USAir.
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46302	98–24 Stevens.
46303	97–7 Stalling.
49 U.S.C. App.:	
1301 (31) (operate)	93–18 Westair Commuter.
(32) (person)	93–18 Westair Commuter.
1356	90–18 & 90–19, 91–2 Continental Airlines.
1357	90–18, 90–19 & 91–2 Continental Airlines; 91–41 [Airport Operator]; 91–58 [Airport Operator].
1421	92–10 Flight Unlimited; 92–48 USAir; 92–70 USAir; 93–9 Wendt.
1429	92–73 Wyatt.
1471	89–5 Schultz; 90–10 Webb; 90–20 Degenhardt; 90–12, 90–18 & 90–19 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 90–23 Broyles; 90–26 & 90–43 Waddell; 90–33 Cato; 90–37 Northwest Airlines; 90–39 Hart; 91–2 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 91–53 Koller; 92–5 Delta Air Lines; 92–10 Flight Unlimited; 92–46 Sutton-Sautter; 92–51 Koblick; 92–74 Wendt; 92–76 Safety Equipment; 94–20 Conquest Helicopters; 94–40 Polynesian Airways; 96–6 Ignatov; 97–7 Stalling.
1472	96–6 Ignatov.
1475	90–20 Degenhardt; 90–12 Continental Airlines; 90–18, 90–19 & 91–1 Continental Airlines; 91–3 Lewis; 91–18 [Airport Operator]; 94–40 Polynesian Airways.
1486	90–21 Carroll; 96–22 Woodhouse.
1809	92–77 TCI; 94–19 Pony Express; 94–28 Toyota; 94–31 Smalling; 95–12 Toyota.

Civil Penalty Actions—Orders Issued by the Administrator

Digests

(Current as of March 31, 1999)

The digests of the Administrator's final decisions and orders are arranged by order number, and briefly summarize key points of the decision. The following compilation of digests includes all final decisions and orders issued by the Administrator from January 1, 1999, to March 31, 1999. The FAA will publish non-cumulative supplements to this compilation on a quarterly basis (*e.g.*, April, July, October, and January of each year).

These digests do not constitute legal authority, and should not be cited or relied upon as such. The digests are not intended to serve as a substitute for proper legal research. Parties, attorneys, and other interested persons should always consult the full text of the Administrator's decisions before citing them in any context.

In the Matter of American Airlines

Order No. 99–1 (3/2/99)

Badge Display Requirement. This appeal involved 23 related security cases and 51 alleged violations of the badge display requirement at Dallas/Fort Worth Airport by American employees. Under the Air Carrier Standard Security Program, the

employees' badges were not adequately displayed when they were hidden inside a shirt or pants pocket or under an outer garment. American knew or should have known that the FAA intended continuous display. Before the FAA initiated the instant cases, it repeatedly provided American notice that the security program required continuous display. It did so first when the FAA provided American a copy of the proposed change, again when it actually promulgated the change, and finally when it initiated each of the hundreds of Dallas-Fort Worth badge display cases that the agency ultimately closed administratively prior to the instant cases.

Due Process. Due process does not require an evidentiary hearing where there are no factual issues to resolve. The law judge ordered American to outline, in its prehearing brief, its anticipated factual presentation and any justification for lowering the sanctions, but American failed to comply. Later, when Complainant FAA filed its motion for decision, American again had the opportunity, as well as the obligation, to show that a hearing was necessary, but once again American filed no affidavits or other evidence.

American has never denied that the badges of its employees and contractors were hidden. For example, it stated in its appeal brief that "[t]he 23 badge cases pending before [the Administrator] involve circumstances where an American employee wore his identification media * * * attached to a work shirt or placed in a pocket [so that] it was covered by an outer garment * * *."

Work on Particular Flight. An airline employee's work on a particular flight is not an element of a violation of 14 CFR 108.5. The badge display requirement applies to all portions of the Security Identification Display Area. American does not dispute that the American employees were inside the Security Identification Display Area, or that American conducts operations subject to Part 108 at the Dallas-Fort Worth Airport.

Conclusion. American's appeal is denied and American is assessed civil penalties of $250,500.

In the Matter of Oxygen Systems, Inc.

Order No. 99–2 (3/4/99)

Appeal Dismissed for Failure to Perfect. Respondent Oxygen Systems filed a timely notice of appeal from the law judge's written initial decision. However, Oxygen Systems failed to file an appeal brief or request for an extension of time. In addition, Oxygen Systems failed to reply to Complainant FAA's motion to dismiss the appeal for failure to perfect. Accordingly, Oxygen Systems' appeal is dismissed under 14 CFR 13.233(D)(2).

Commercial Reporting Services of the Administrator's Civil Penalty Decisions and Orders

1. *Commercial Publications:* The Administrator's decisions and orders in civil penalty cases are available in the following commercial publications:

Civil Penalty Cases Digest Service, published by Hawkins Publishing Company, Inc., P.O. Box 480, Mayo, MD, 21106, (410) 798–1677;

Federal Aviation Decisions, Clark Boardman Callaghan, a subsidiary of West Information Publishing Company, 50 Broad Street East, Rochester, NY 14694, 1–800–221–9428.

2. *CD–ROM.* The Administrator's orders and decisions are available on CD–ROM through Aeroflight Publications, P.O. Box 854, 433 Main Street, Gruver, TX 79040, (806) 733–2483.

3. *On-Line Services.* The Administrator's decisions and orders in civil penalty cases are available through the following on-lien services:

- Westlaw (the Database ID is FTRAN–FAA)
- LEXIS [Transportation (TRANS) Library, FAA file.]
- Compuserve
- FedWorld

Docket

The FAA Hearing Docket is located at FAA Headquarters, 800 Independence Avenue, SW, Room 926A, Washington, DC, 20591 (tel. no. 202–267–3641.) The clerk of the FAA Hearing Docket is Ms. Stephanie McClain. All documents required to be filed in civil penalty proceedings must be filed with the FAA Hearing Docket Clerk at the FAA Hearing Docket. (See 14 CFR 13.210.) Materials contained in the dockets of any case not containing sensitive security information (protected by 14 CFR part 191) may be viewed at the FAA Hearing Docket.

In addition, materials filed in the FAA Hearing Docket in non-security cases in which the complaints were filed on or after December 1, 1997, are available for inspection at the Department of Transportation Docket, located at 400 7th Street, SW, Room PL–401, Washington, DC, 20590, (tel. no. 202–366–9329.) While the originals will be retained in the FAA Hearing Docket, the DOT Docket will scan copies of documents in non-security cases in which the complaint was filed after December 1, 1997, into their computer database. Individuals who have access to the Internet can view the materials in these dockets using the following Internet address: http://dms.dot.gov.

FAA Offices

The Administrator's decisions and orders, indexes, and digests are available for public inspection and copying at the following location in FAA headquarters; FAA Hearing Docket, Federal Aviation Administration, 800 Independence Avenue, SW, Room 924A, Washington, DC 20591; (202) 267–3641.

These materials are also available at all FAA regional and center legal offices at the following locations:

Office of the Regional Counsel for the Aeronautical Center (AMC–7), Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73125; (405) 954–3296.

Office of the Regional Counsel for the Alaskan Region (AAL–7), Alaskan Region Headquarters 222 West 7th Avenue, Anchorage, AL 99513; (907) 271–5269.

Office of the Regional Counsel for the Central Region (ACE–7), Central Region Headquarters, 601 East 12th Street, Federal Building, Kansas City, MO 64106; (816) 426–5446.

Office of the Regional Counsel for the Eastern Region (AEA–7), Eastern Region Headquarters, JFK International Airport, Federal Building, Jamaica, NY 11430; (718) 553–3285.

Office of the Regional Counsel for the Great Lakes Region (AGL–7), 2300 East Devon Avenue, Suite 419, Des Plaines, IL 60018; (708) 294–7108.

Office of the Regional Counsel for the New England Region (ANE–7), New England Region Headquarters, 12 New England Executive Park, Room 401, Burlington, MA 01803–5299; (617) 238–7050.

Office of the Regional Counsel for the Northwest Mountain Region (ANM–7), Northwest Mountain Region Headquarters, 1601 Lind Avenue, SW, Renton, WA 98055–4056; (425) 227–2007.

Office of the Regional Counsel for the Southern Region (ASO–7), Southern Region Headquarters, 1701 Columbia Avenue, College Park, GA 30337; (404) 305–5200.

Office of the Regional Counsel for the Southwest Region (ASW–7), Southwest Region Headquarters, 2601 Meacham Blvd., Fort Worth, TX 76137–4298; (817) 222–5087.

Office of the Regional Counsel for the Technical Center (ACT–7), Federal Aviation Administration Technical Center, Atlantic City International

Airport, Atlantic City, NJ 08405; (609) 485–7087.

Office of the Regional Counsel for the Western-Pacific Region (AWP–7), Western-Pacific Region Headquarters, 15000 Aviation Boulevard, Lawndale, CA 90261; (310) 725–7100.

Issued in Washington, DC on April 26, 1999.

James S. Dillman,

Assistant Chief Counsel for Litigation.

[FR Doc. 99–11178 Filed 05–06–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 99–02–C–00–CID To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Eastern Iowa Airport, Cedar Rapids, IA

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Eastern Iowa Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Commentst must be received on or before June 7, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street, Kansas City, MO 64106

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Lawrence K. Mullendore, Airport Director, The Eastern Iowa Airport, at the following address: Cedar Rapids Airport Commission, 2515 Wright Brothers Boulevard, Cedar Rapids, IA 52404.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Cedar Rapids Airport Commission under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Lorna Sandridge, PFC Program Manager, FAA, Central Region, 601 E. 12th Street, Kansas City, MO 64106, (816) 426–4730. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Eastern Iowa Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On January 13, 1999, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Eastern Iowa Airport, Cedar Rapids, Iowa, was not substantially complete within the requirements of § 158.25 of part 158. The Cedar Rapids Airport Commission submitted supplemental information on April 14, 1999. The FAA will approve or disapprove the supplemental application, in whole or in part, no later than August 16, 1999.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July, 2000.

Proposed charge expiration date: June, 2004.

Total estimated PFC revenue: $4,303,003.

Brief description of proposed project(s): Construct snow removal equipment and deicing material building; acquire snow removal multipurpose unit broom, snow blower, and snow plow, acquire two snow plow trucks, two each snow plow, dump box, and spreader; acquire high-rise turret with penetrating nozzle; acquire disabled passenger lift; replace multiple user flight information display system; renovate terminal public-use corridor and waiting areas near the airline ticketing areas; and construct new loading bridge.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTRACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eastern Iowa Airport.

Issued in Kansas City, Missouri on April 23, 1999.

Gerorge A. Hendon,

Manager, Airports Division, Central Region.

[FR Doc. 99–11544 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Customer Service Survey of FTA Circular 4220.1D, Third Party Contracting Requirements

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Transit Administration ("FTA") is publishing a notice of its Customer Service Survey for FTA Circular 4220.1D. The objective of this survey is to assess the degree to which the changes implemented in FTA Circular 4220.1D ("Circular") have met the needs of grant recipients and contractors (including Disadvantaged Business Enterprises) in accomplishing their procurement function. Many of your comments may also provide useful information for the preparation of a Notice of Proposed Rulemaking on Third Party Procurement Requirements, which will be issued by FTA later this year. In addition, suggestions and ideas are being sought for improvement in the Circular and other procurement related documents such as the Best Practices Procurement Manual.

DATES: Survey responses due by May 14, 1999.

ADDRESSES: All responses to the survey should be mailed to: Leon Snead & Company, P.C.; 416 Hungerford Drive, Suite 400; Rockville, Maryland 20850.

FOR FURTHER INFORMATION CONTACT: Ms. Lucy Jackson, (202) 366–4980 or Mr. Reginald Lovelace, (202) 366–2654, Office of Procurement.

SUPPLEMENTARY INFORMATION: This Customer Service Survey should take no more than thirty (30) minutes to complete. Your prompt response will insure that you play a meaningful role in the maintenance and continual updating of the Best Practices Procurement Manual and the administrative and regulatory requirements imposed in FTA Circular 4220.1D. FTA's goal is to reduce the unnecessarily burdensome requirements imposed upon our customers while providing an enhanced level of technical assistance.

You are encouraged to distribute copies of the survey to other individuals who are directly and/or indirectly involved in the procurement process. It will be helpful to FTA to hear all of their perspectives. The responses to the survey will remain confidential. The information provided and the resultant findings will not be associated with any individual or organization.

Issued on May 3, 1999.

Gordon J. Linton,

Administrator.

BILLING CODE 4910-57-U

ATTACHMENT

CUSTOMER SURVEY
IMPLEMENTATION OF FTA CIRCULAR 4220.1D AND BEST PROCUREMENT PRACTICES

1. Select your organization's size/type from the choices below:
   - ❑ LT100 veh.
   - ❑ 100-500 veh.
   - ❑ 500 veh.+
   - ❑ State DOT
   - ❑ FTA
   - ❑ Vendor/Certified DBE
   - ❑ Vendor
   - ❑ Other _____

2. Indicate your occupation (i.e. General Manager, Procurement Specialist, etc.)

   _____

3. What is the most convenient medium for you to receive the Best Practices Procurement Manual?
   - ❑ Internet by itself
   - ❑ Other media _____

3a. If other media, please explain: _____

4. Is the five (5) year contract period of performance limitation in FTA C4220.1D appropriate for all contracts?
   - ❑ Yes
   - ❑ No

4a. If no, please explain: _____

5. Is the current FTA C4220.1D more or less useful than FTA C4220.1B?
   - ❑ (5) Much more
   - ❑ (4) Little more
   - ❑ (3) No difference
   - ❑ (2) Little less
   - ❑ (1) Much less
   - ❑ N/A

5a. Please explain: _____

6. Have revisions contained in FTA C4220.1D expedited your procurement process?
   - ❑ Yes
   - ❑ No
   - ❑ N/A

6a. Please explain: _____

7. The advance payment prohibition in FTA C4220.1D is clear and easily implemented.
   - ❑ (5) Strongly agree
   - ❑ (4) Somewhat agree
   - ❑ (2) Disagree
   - ❑ (1) Strongly disagree

❑ (3) Neutral ❑ N/A

7a. Please explain: _____

8. Which requirements can be waived under the Circular? (Write in below.)

_____

_____

❑ Don't Know

9. Are the FTA sponsored courses beneficial?

❑ Yes
❑ No
❑ N/A

9a. If no, please explain: _____

10. Are current types and levels of technical assistance (TA) adequate?

❑ Yes
❑ No
❑ N/A

10a. If no, what TA would address your needs: _____

11. Do your contract solicitations provide for assignment of Contract Rights?

❑ Yes
❑ No
❑ N/A

12. Are income generating contracts (such as advertising) normally awarded on a competitive basis?

❑ Yes
❑ No

12a. If no, please explain: _____

13. Are there specific provisions in the circular that are unclear and need to be rewritten? If yes, please cite each provision by paragraph number and state the nature of the problem.

14. Are there any provisions in the circular that you feel are inappropriate or are there other provisions that should be included?

❑ Yes
❑ No

14a. If yes, please explain:

15. Comments:

[FR Doc. 99–11496 Filed 5–6–99; 8:45 am]
BILLING CODE 4910–57–C

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5101; Notice 1]

Comments on Truck Splash and Spray Reduction for a Report to Congress

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice requesting comments.

SUMMARY: The Senate Appropriations Committee has directed NHTSA to provide Congress with a report updating the agency's research on truck splash and spray by conducting a comprehensive review and evaluation of spray suppression measures that can be employed on heavy duty vehicles to provide clearer highway visibility and safety during periods of adverse weather conditions. The report is due to Congress by October 21, 1999. This notice invites any interested person to provide NHTSA with any information or data in this area that the person believes NHTSA should consider in preparing this report to Congress.

DATES: All comments received by NHTSA no later than June 21, 1999 will be considered in preparing this report to Congress on progress in heavy vehicle splash and spray suppression.

ADDRESSES: All comments should refer to Docket No. NHTSA–99–5101; Notice 7 and be submitted to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, D.C. 20590. Docket hours are from 10:00 a.m. to 5:00 p.m. Monday through Friday.

For public comments and other information related to previous notices on this subject, please refer to Docket No. 83–005, NHTSA Docket, Room 5111, 400 Seventh Street, SW, Washington, DC 20590. NHTSA Docket hours are from 9:30 am to 4:00 pm Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Jere Medlin, Office of Crash Avoidance Standards, NPS–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–5276, fax (202) 366–4329.

SUPPLEMENTARY INFORMATION: The terms "splash and spray" are commonly used to describe the adverse effects on driver visibility caused by other vehicles when traveling on wet roads. While spray clouds are produced by all vehicles traveling on wet roads, those produced by large trucks and buses are much larger than the clouds produced by passenger cars and light trucks. This can result in reduced driver visibility for adjacent motorists and for the driver of the large truck or bus.

NHTSA and others have studied the subject of splash and spray for more than 30 years. The most recent time the agency evaluated this subject was in late 1993, in response to a request from the Senate Appropriations Committee. In its report on NHTSA's FY94 appropriation, the Committee asked that the agency report "* * * on the status of recent technological progress in the design and testing of splash and spray suppression devices [for large commercial vehicles] and NHTSA's view on the need for regulation in this safety area." In response, NHTSA submitted a report to Congress in March 1994, "Splash and Spray Suppression, Technological Developments in the Design and Testing of Spray Reduction Devices for Heavy Trucks" (DOT HS 808 085), copies of which are available from the National Technical Information Service, Springfield, Virginia 22161. The report provided a comprehensive evaluation and summary of available data and studies conducted before and after NHTSA terminated rulemaking on splash and spray in 1988. The 1994 report concluded the following about developments in splash and spray reduction for heavy trucks:

1. There are no data available to support the position that heavy truck splash and spray presents a major safety problem, in terms of crashes caused and injuries in those crashes. The greatest involvement ever found for splash and spray was that it was a factor in 0.41% of crashes studied according to a 1959 British study. A more recent study in Indiana found that splash and spray could not be documented as a cause of any crash studied, and a North Carolina study found that splash and spray was a factor in 0.0055% of 450,000 crashes evaluated. No information has become available since 1988 suggesting that splash and spray is a larger safety problem than was previously known.

2. No study or other information has become available since 1988 that would cause the Agency to change its previous determination that no technology or combination of technologies has been demonstrated that will consistently and significantly reduce splash and spray from tractors, semi-trailers, and trailers to the extent that driver visibility will be significantly improved.

3. Several manufacturers of large trucks believe that aerodynamic improvements, which were made to their vehicles in an effort to improve fuel economy and reduce operating costs, will also serve to reduce splash and spray. This belief is based on very limited testing under controlled conditions. More extensive testing conducted in connection with NHTSA's previous rulemaking indicated that aerodynamic devices are not as effective at suppressing spray in the presence of crosswinds. Previous engineering analysis suggested that aerodynamic devices on truck tractors would not be effective at reducing spray when the tractor was connected to a trailer or semitrailer that was not a van. The testing done to date by truck manufacturers of more aerodynamic tractors has not examined these previously identified concerns to see if they are still valid.

4. The truck manufacturers appear to be working to reduce the splash and spray generated by their vehicles in the absence of any government requirement for them to do so. In addition to the efforts of Freightliner and Paccar in testing more aerodynamic truck tractors, the SAE has worked for years to develop a consensus test procedure that can be used to evaluate the performance of spray suppression devices.

Given these circumstances and the information available to it, the Agency has no plans to initiate a new rulemaking action on heavy truck splash and spray reduction.

More recently, in its report on NHTSA's appropriation for fiscal year 1999, the Senate Committee on Appropriations has again asked the agency to review this matter as follows:

> Spray suppression research.—The Committee acknowledges the work previously undertaken by NHTSA in the area of spray suppression research and evaluation of abatement technologies and continues to support further research by NHTSA in this area to make travel on the Nation's highways safer and less stressful. The Committee is aware of the progress made in the European Union in designing beneficial performance standards and implementing roadway spray suppression regulations to improve highway visibility. The Committee directs NHTSA to update its research by conducting a comprehensive review and evaluation of spray suppression measures that can be employed on heavy duty vehicles (over 8,500 pounds gross vehicle weight rating) to provide clearer highway visibility and safety during periods of adverse weather conditions. NHTSA shall publish and report its findings to Congress within 12 months of enactment.

The agency has begun gathering the information it will need to respond to this request. NHTSA will conduct a comprehensive review and evaluation of spray suppression measures that can be employed on heavy duty vehicles to update its research since 1993. However, to ensure that the agency is aware of and considers all relevant information on this subject when preparing the Report to Congress, NHTSA is publishing this notice to invite public comment. All interested persons are invited to provide data and other relevant information which has become available since 1993, particularly developments that were not included in NHTSA's 1994 Report to Congress, concerning spray suppression measures that can be employed on heavy duty vehicles.

The agency will consider all public comments it has received by June 21, 1999, when preparing the report to Congress. While NHTSA is interested in any splash and spray information the public may have to offer, the agency is especially interested in responses to the following questions.

Questions

1. Please provide information and data on any technological improvements made since 1993 in the design and/or testing of splash and spray devices for use on heavy duty vehicles. NHTSA is especially interested in supporting data that are the basis for the commenter's conclusion that the device represents a technological improvement that will consistently and significantly reduce splash and spray to the extent that driver visibility will be significantly improved.

2. Please provide information on any data bases that NHTSA should examine or consider to estimate the extent to which splash and spray from heavy duty vehicles contributes to crashes on the public roads.

3. In the agency's rulemaking on this subject that was terminated in 1988, NHTSA indicated that aerodynamic improvements, made by large truck manufacturers to their vehicles to improve fuel economy and reduce operating costs, had shown promise for reducing splash and spray in some situations. That is, if such aerodynamic devices were attached to a truck tractor pulling a van-type semitrailer and if there were little or no crosswind present, the devices could improve visibility to a level that would be helpful to other motorists. In its March 1994 report to Congress, the agency indicated that several large truck manufacturers believed that aerodynamic improvements made since 1988 would reduce splash and spray. However, this was based on very limited testing under controlled conditions. The testing done by truck manufacturers did not examine whether the previously identified concerns were still valid.

Please provide information on any aerodynamic improvements to truck tractors since 1993, and data showing to what extent, if any, such improvements have lessened the amount of splash and spray generated by tractor/van-semitrailer combinations with crosswinds present. NHTSA had found in its testing that a crosswind of 8 miles per hour or more significantly diminished the benefits of the splash and spray countermeasures that were tested. In a 1987 rulemaking notice on this subject, NHTSA cited National Weather Service data indicating the mean wind velocity for the vast majority of the United States is 8 mph or greater. Similarly, please provide information and supporting data on other solutions that have been developed since 1993, which lessen the amount of splash and spray generated by other tractor/trailer combinations, such as tanks or flatbeds, or other types of heavy duty vehicles with crosswinds present.

4. Please provide information on any aftermarket devices introduced since 1993 that are intended to reduce the amount of splash and spray generated by heavy duty vehicles. Include a specific description of the devices, a brief explanation of how they reduce splash and spray, and all tests and other data that demonstrate the devices are effective in reducing splash and spray across a range of heavy vehicles under representative weather conditions.

5. If a person believes that some means would be effective at reducing splash and spray from tractor-single trailer combinations, please provide any information and data on whether that means would also work to reduce spray from tractors combined with double or triple trailers.

6. In its March 1994 report to Congress, NHTSA provided a comprehensive summary of the data and studies that were conducted before and after the agency terminated its rulemaking on splash and spray in 1988. This included all relevant information of which the agency was aware. NHTSA would like commenters to provide information on any study or testing of splash and spray suppression measures that was not considered in the 1994 report to Congress but should be considered in preparing this report to Congress.

7. Please provide information on the costs associated with splash and spray devices introduced since 1993, both original equipment and aftermarket, along with data on how effective the devices are at reducing splash and spray across a range of heavy duty vehicles and representative weather conditions.

8. In its current request that NHTSA again review this matter, the Senate Appropriations Committee stated that "The Committee is aware of the progress made in the European Union in designing beneficial performance standards and implementing roadway spray suppression regulations to improve highway visibility." NHTSA is aware of European Economic Community (EEC) Directive 91–226, "Spray Suppression Systems," issued in April 1991. The Directive applies to heavy duty vehicles and involves EEC member component type-approval addressing two types of spray suppression devices: (1) energy absorption and (2) air/water separator. The Directive includes laboratory performance tests of the devices along with vehicle location and component marking requirements.

Please provide any information along with supporting data on how effective EEC Directive 91–226 has been at reducing splash and spray across a range of heavy duty vehicles and representative weather conditions, to what extent driver visibility is improved, and whether U.S. trucks would need additional equipment, like fenders, to achieve the same visibility benefits from the spray suppression equipment.

9. In 1994 the Society of Automotive Engineers published a "Recommended Practice For Splash and Spray Evaluation," J2245. It provides general guidelines for measuring splash and spray from vehicles operating over wet pavements. The guidelines describe two methods of analysis: (1) video-digitizing and (2) laser. The video-digitizing method uses video images and contrast measurements between black and white checkerboards when a spray cloud is superimposed on them as a means of measuring the obscuring spray. The laser method uses laser transmittance through the spray cloud as the means of measurement. The test procedures involve actual test vehicles fitted with splash and spray devices, and include measurements under various wind conditions.

NHTSA is interested in any information along with supporting data on the use of these two test procedures by manufacturers and others. Specifically, the agency would like to know whether one method is preferred over the other, and why, along with information on the extent to which each method represents real world conditions. In addition, please provide any information on how well reductions in splash and spray through either method correlate to improvements in actual driver visibility.

The agency invites written comments from all interested persons. It is requested that two copies of each written comment be submitted. As always, NHTSA will try to consider comments that it receives after the comment closing date. However, in this case, the deadline imposed by the Senate Appropriations Committee means that comments submitted after the closing date of June 21, 1999 are less likely to be considered.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without

regard to the 15 page limit. This limitation is intended to encourage commenters to detail their primary arguments in concise fashion.

If a commenter wishes to submit specified information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and two copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation, 49 CFR Part 512.

Comments on this notice will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date. Those persons desiring to be notified upon receipt of their written comments in the Docket Section should enclose, in the envelope with their comments, a self-addressed stamped postcard. Upon receipt, the docket supervisor will return the postcard by mail.

Issued on: May 4, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–11545 Filed 5–6–99; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33733 (Sub–No. 1)]

CSX Transportation, Inc.—Trackage Rights Exemption—Consolidated Rail Corporation

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33733 to permit the trackage rights to expire on the Split Date (as described in this decision) or June 30, 1999, whichever occurs first, in accordance with the agreement of the parties. [1]

The Conrail trackage that is the subject of the trackage rights is to be allocated to Conrail's subsidiary, New York Central Lines LLC, and operated by CSXT, after what is referred to as the "Split Date," or the date of the division of Conrail's assets, as authorized by the Board in *CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company—Control and Operating Leases/Agreements—Conrail Inc., and Consolidated Rail Corporation*, STB Finance Docket No. 33388 (STB served July 23, 1998). CSXT states that it expects the Split Date to occur on June 1, 1999. The parties intend for the trackage rights to terminate on the Split Date, but if the Split Date does not occur before June 30, 1999, the parties' agreement provides for termination of the trackage rights on June 30, 1999.

DATES: This exemption will be effective on June 1, 1999.

Petitions to reopen must be filed by May 25, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33733 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative Charles M. Rosenberger, Senior Counsel, CSX Transportation, Inc., 500 Water Street, J–150, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, N.W., Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 3, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11567 Filed 5–6–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Wednesday, May 12 through Friday, May 14, 1999, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services for minority veterans, to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 430, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 a.m. to 5 p.m. On May 12, the meeting will focus on the findings of the committee's site visit to VA facilities in the Caribbean. The Committee will also review reports of the four subcommittees. On Thursday, May 13, the Committee will concentrate on VA programs and facilities located in the mid-western states to include Michigan, Ohio, Indiana, Kentucky, Iowa, and Kansas as well as receive a briefing from the Director, Center for Women Veterans. On Friday, May 14, the Committee will begin drafting the annual report for Fiscal Year 1999. These sessions will be open to the public. For those wishing to attend, please contact Mr. Anthony T. Hawkins, Department of Veterans Affairs at (202) 273–6708, prior to May 10, 1999. The Committee will accept written comments from interested parties on issues affecting minority veterans. Comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (OOM), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 29, 1999.

[1] On March 25, 1999, CSX Transportation, Inc. (CSXT) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by Consolidated Rail Corporation (Conrail) to grant temporary overhead trackage rights to CSXT, to operate its trains, locomotives, cars and equipment with CSXT's own crews, over Conrail's Porter Branch between milepost 246.7± at Willow Creek, IN, and milepost 259.5± at Gibson, IN (CP Ivanhoe), a total distance of approximately 12.8 miles. *See CSX Transportation, Inc.—Trackage Rights Exemption— Consolidated Rail Corporation*, STB Finance Docket No. 33733 (STB served Apr. 13, 1999). The trackage rights operations under the exemption became effective on April 1, 1999, and are subject to standard labor protective conditions.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–11505 Filed 5–6–99; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Cooperative Studies Evaluation Committee; Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 (Federal Advisory Committee Act) as amended, by section 5(c) of Pub. L. 94–409, that a meeting of the Research and Development Cooperative Studies Evaluation Committee will be held at the Marriott Residence Inn, 500 Army Navy Drive, Arlington, VA 22202, May 11–13, 1999. The session on May 11 will begin at 7:30 a.m. until 5:45 p.m., on May 12 from 7:30 a.m. until 5:00 p.m. and on May 13 from 7:30 a.m. until 12:00 noon. The meeting will be for the purpose of reviewing the following six new proposals: treatment of knee osteoarthritis, Type II Diabetes, statins in reducing the risk of stroke, Pallidal procedure for Parkinson's disease, homocysteinemia in kidney and end stage renal disease, and genetic tissue banking in clinical research. The Committee will also review the progress of four on going studies on Antiarrhythmic Therapy, group treatment of PTSD, computer-assisted neuropsychological screening battery and Naltrexone treatment of alcoholism.

The Committee advises the Chief Research and Development Officer through the Chief of the Cooperative Studies Program on the relevance and feasibility of the studies, the adequacy of the protocols, and the scientific validity and propriety of technical details, including protection of human subjects.

The meeting will be open to the public from 7:30 a.m. to 8:00 a.m. on all three days to discuss the general status of the program. Those who plan to attend should contact Dr. Ping Huang, Coordinator, Research and Development Cooperative Studies Evaluation Committee, Department of Veterans Affairs, Washington, DC, (202–273–8295).

The meeting will be closed during the following portions: on May 11, from 8:15 a.m. until 5:45 p.m., on May 12, from 8:00 a.m. until 5:00 p.m. and on May 13 from 8:00 a.m. until 12:00 noon. These portions of the meeting involve consideration of specific proposals in accordance with provisions set forth in section 10(d) of Pub. L. 92–463, as amended by Pub. L. 94–409, and 5 U.S.C. 552b(c)(6) and (9)(B). During the closed sessions of the meeting, discussions and recommendations will deal with qualifications of personnel conducting the studies (the disclosure of which would constitute a clearly unwarranted invasion of personal privacy), as well as staff and consultant critiques of research protocols, and similar documents, and the medical records of patients who are study subjects (the premature disclosure of which would significantly frustrate implementation of proposed agency action regarding such research projects).

Dated: May 3, 1990.

By Direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–11504 Filed 5–6–99; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 64, No. 88
Friday, May 7, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99-320-000]

Sumas Energy 2, Inc.; Notice of Application for Section 3 Authorization and Request for a Presidential Permit

Correction

In notice document 99–11082, appearing on page 23832, in the issue of Tuesday, May 4, 1999, make the following correction:

On page 23832, in the second column, the docket number is corrected to read as set forth above.

[FR Doc. C9–11082 Filed 5-6-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–01; NMNM–102308]

Notice of Proposed Withdrawal; New Mexico

Correction

In notice document 99–9556, beginning on page 18932, in the issue of Friday, April 16, 1999, make the following corrections:

1. On page 18932, in the third column, in the **SUPPLEMENTARY INFORMATION:** section, in the last line, "Geoplogy" should read "Geology".

2. On page 18933, in the first column, under the first heading **New Mexico Principal Meridian, New Mexico**, in the fifth line, "E¼, NW¼" should read "E½, NW¼".

2. On the same page, in the same column, under the same heading, in the seventh line, "E½,SW¼" should read "E½SW¼".

3. On the same page, in the same column, under the same heading, in the 20th line, "W½NE¼, SE¼, NE¼, W½" should read "W½NE¼, SE¼NE¼, W½".

[FR Doc. C9–9556 Filed 5–6–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items in the Possession of Bandelier National Monument, National Park Service, Los Alamos, NM

Correction

In notice document 99–10209 beginning on page 20020 in the issue of Friday, April 23, 1999, make the following correction(s):

On page 20021, in the first column, in the fourth line from the bottom, "[*thirty days after publication in the Federal Register*]" should read "May 24, 1999".

[FR Doc. C9–10209 Filed 5-6-99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99-AGL-7]

Modification of Class E Airspace; Flint, MI

Correction

In rule document 99–10432 beginning on page 20162 in the issue of Monday, April 26, 1999, make the following correction(s):

On page 20163, in the second column, in the eighth line, "long. 83°46′39″W." should read "long. 83°46′29″W.".

[FR Doc. C9–10432 Filed 5–6–99; 8:45 am]

BILLING CODE 1505–01–D

VOL
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ISS
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Federal Register

Friday
May 7, 1999

Part II

Department of Health and Human Services

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412, 413, 483, and 485

[HCFA–1053–P]

RIN 0938–AJ50

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2000 Rates

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare hospital inpatient prospective payment systems for operating costs and capital-related costs to implement changes arising from our continuing experience with the systems. In addition, in the addendum to this proposed rule, we are describing proposed changes in the amounts and factors necessary to determine rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 1999. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the prospective payment systems. Finally, we are proposing changes to the policies governing payment to hospitals for the direct costs of graduate medical education.

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 6, 1999.

ADDRESSES: Mail written comments (an original and three copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: HCFA–1053–P P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (an original and three copies) to one of the following addresses:

Room 445–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–11–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850

FOR FURTHER INFORMATION CONTACT:

Steve Phillips, (410) 786–4531, Operating Prospective Payment, DRG, and Wage Index Issues

Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, and Graduate Medical Education Issues

SUPPLEMENTARY INFORMATION:

Comments, Procedures, Availability of Copies, and Electronic Access

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code HCFA–1053–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 445–G of the Department's offices at 200 Independence Avenue, SW, Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

For comments that relate to information collection requirements, mail a copy of comments to:

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, HCFA Desk Officer; and

Health Care Financing Administration, Office of Information Services, Security Standards Group, Division of HCFA Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke HCFA–1053–P.

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $8.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

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I. Background

A. Summary

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

Certain specialty hospitals are excluded from the prospective payment systems. Under section 1886(d)(1)(B) of the Act, the following hospitals and hospital units are excluded from the prospective payment system: psychiatric hospitals or units, rehabilitation hospitals or units, children's hospitals, long-term care hospitals, and cancer hospitals. For these hospitals and units, Medicare payment for operating costs is based on reasonable costs subject to a hospital-specific annual limit.

Under section 1886(a)(4) of the Act, costs incurred in connection with approved graduate medical education (GME) programs are excluded from the operating costs of inpatient hospital services. Hospitals with approved GME programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The regulations governing the hospital inpatient prospective payment system are located in 42 CFR part 412. The regulations governing excluded hospitals and hospital units are located in parts 412 and 413, and the GME regulations are located in part 413.

On July 31, 1998, we published a final rule in the **Federal Register** (63 FR 40954) that implemented both statutory requirements and other changes to the Medicare hospital inpatient prospective

payment systems for both operating costs and capital-related costs, as well as changes addressing payment for excluded hospitals and payments for GME costs. Generally, these changes were effective for discharges occurring on or after October 1, 1998.

In addition, on February 25, 1999, we published in the **Federal Register** (64 FR 9378) a final rule that implemented revised wage index values, geographic adjustment factors, operating standardized amounts, and capital Federal rates for hospitals subject to the inpatient hospital prospective payment system. These changes are effective for discharges occurring on or after March 1, 1999.

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for both operating costs and capital-related costs. We also are proposing changes concerning GME costs and excluded hospitals and units, including critical access hospitals (CAHs). This proposed rule would be effective for discharges occurring on or after October 1, 1999.

We note that the efforts that we are undertaking to make the Medicare computer systems compliant on January 1, 2000, will not delay our ability to make timely and updated payments to hospitals under the FY 2000 prospective payment system final rule that will follow this proposed rule. The following is a summary of the major changes that we are proposing to make.

1. Proposed Changes to the DRG Reclassifications and Recalibrations of Relative Weights

Section 1886(d)(4)(C) of the Act requires us to adjust the DRG classifications and relative weights at least annually. In order to avoid compromising our ability to process and pay hospital claims during the period leading up to and immediately following January 1, 2000, we are not implementing any revisions to the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM) coding system. The changes that we are proposing to make relating to DRG reclassifications and recalibrations for FY 2000 are set forth in section II of is preamble.

2. Proposed Changes to the Hospital Wage Index

In section III of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- The FY 2000 wage index update, using FY 1996 wage data.
- The exclusion from the wage index of Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- Revisions to the wage index based on hospital redesignations.

3. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section IV of this preamble, we discuss several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth proposed changes concerning the following:

- Sole community hospitals.
- Rural referral centers.
- Indirect medical education adjustment.
- Medicare Geographic Classification Review Board (MGCRB) decisions.
- Direct GME programs.

4. Proposed Changes to the Prospective Payment System for Capital-Related Costs

In section V of this preamble, we discuss the special exceptions process for certain eligible hospitals to receive additional payments for major construction or renovation projects that began soon after the start of the capital prospective payment system.

5. Proposed Changes for Hospitals and Hospital Units Excluded From the Prospective Payment Systems

In section VI of this preamble, we discuss the following proposals concerning excluded hospital and hospital units and CAHs:

- Limits on and adjustments to the proposed target amounts for FY 2000.
- Changes in bed size or status of excluded hospitals or hospital units.
- Payment for services furnished at satellite hospital locations.
- Responsibility for care of patients in hospitals within hospitals.
- The allowable emergency response time for CAHs located in frontier or other specifically defined remote areas.
- Compliance with minimum data set requirements by CAHs with swing bed approval.

6. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2000 prospective payment rates for operating costs and capital-related costs. We also address update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2000 for hospitals and hospital units excluded from the prospective payment system.

7. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

8. Capital Acquisition Model

Appendix B contains the technical appendix on the proposed FY 2000 capital cost model.

9. Report to Congress on the Update Factor for Hospitals under the Prospective Payment System and Hospitals and Units Excluded From the Prospective Payment System

Section 1886(e)(3)(B) of the Act requires the Secretary to report to Congress on our initial estimate of a recommended update factor for FY 2000 for both hospitals included in and hospitals excluded from the prospective payment systems. This report is included as Appendix C to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, Appendix D provides our recommendation of the appropriate percentage change for FY 2000 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals) for hospital inpatient services paid for under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. The March 1, 1999 report made several recommendations concerning hospital inpatient payment policies. These recommendations, and the action we are proposing to take with regard to them

(when an action is recommended) are discussed in detail in this document. See section VII of this preamble for specific information. For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220.

II. Proposed Changes to DRG Reclassifications and Recalibrations of Relative Weights

A. Background

Under the prospective payment system, we pay for inpatient hospital services on the basis of a rate per discharge that varies by the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case takes an individual hospital's payment rate per case and multiplies it by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGs.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

As discussed in more detail in section II.B.8 of this preamble, we are not implementing any revisions to the ICD–9–CM codes. We have undertaken, and continue to undertake, major efforts to ensure that all of the Medicare computer systems are ready to function on January 1, 2000. If we were to implement changes to the ICD–9–CM codes on October 1, 1999, we would endanger the functioning of the Medicare computer systems, and, specifically, we might compromise our ability to process hospital bills. We can, however, reclassify existing codes into different DRGs, if appropriate. The proposed changes to the DRG classification system, and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 1999, are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using ICD–9–CM codes. The Medicare fiscal intermediary enters the information into its claims processing system and subjects it to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG can be accomplished.

After screening through the MCE and any further development of the claims, cases are classified by the GROUPER software program into the appropriate DRG. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and demographic information (that is, sex, age, and discharge status). It is used both to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights and to classify current cases for purposes of determining payment. The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights.

Currently, cases are assigned to one of 499 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body (for example, MDC 6, Diseases and Disorders of the Digestive System); however, some MDCs are not constructed on this basis since they involve multiple organ systems (for example, MDC 22, Burns).

In general, cases are assigned to an MDC based on the principal diagnosis, before assignment to a DRG. However, there are five DRGs to which cases are directly assigned on the basis of procedure codes. These are the DRGs for liver, bone marrow, and lung transplants (DRGs 480, 481, and 495, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs (based on a surgical hierarchy that orders individual procedures or groups of procedures by resource intensity) and medical DRGs. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, GROUPER does not consider other procedures; that is, nonsurgical procedures or minor surgical procedures generally not performed in an operating room are not listed as operating room (OR) procedures in the GROUPER decision tables. However, there are a few non-OR procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

The changes we are proposing to make to the DRG classification system for FY 2000 and other decisions concerning DRGs are set forth below.

2. MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)

Based on inquiries we have received, we reviewed the appropriateness of including diagnosis codes V29.2 (Newborn observation for suspected respiratory condition) and V29.3 (Newborn observation for other genetic problem) in the list of allowable secondary diagnoses under DRG 391 (Normal Newborn). Currently, when one of these codes is the only secondary diagnosis for an otherwise healthy newborn, the case is assigned to DRG 390 (Neonate with Other Significant Problems).

Diagnosis codes V29.2 and V29.3 are used to indicate that the newborn was observed for a suspected condition but none was found. Other newborn observation codes in this series (V29.0, V29.1, V29.8, and V29.9) are included in the allowable secondary diagnoses under DRG 391. We believe that the presence of diagnosis code V29.2 or V29.3 should not exclude a newborn from being classified as normal. Therefore, we are proposing to include diagnosis codes V29.2 and V29.3 in the list of allowable secondary diagnosis under DRG 391.

3. MDC 19 (Mental Diseases and Disorders)

We have received correspondence about the title of DRG 425, "Acute Adjustment Reaction and Disturbances of Psychosocial Dysfunction" under MDC 19. The correspondents state that the use of the terms "disturbances" and "dysfunction" is redundant since the terms have similar meanings. They suggested that we remove the term "disturbances."

We agree with the correspondents and are proposing to revise the title of DRG 425 to read "Acute Adjustment Reaction and Psychological Dysfunction."

4. MDC 22 (Burns)

In the FY 1999 final prospective payment system rule that was effective October 1, 1998 (63 FR 40957), we implemented an extensive redesign of the DRGs for burns to more appropriately capture the variation in resource use associated with different classes of burn patients. The redesigned DRGs, 504 through 511, are split on such factors as whether there is an extensive burn, a full-thickness burn, or an inhalation injury, as well as other factors such as skin graft, trauma, or presence of a CC. DRGs 504 and 505 are assigned to cases with extensive third degree burns; that is, cases in which the burns cover at least 20 percent of body surface area combined with a third degree burn covering at least 10 percent of body surface area. DRGs 506 through 509 are assigned to all other cases with full-thickness burns (that is, a third degree burn). Finally, DRGs 510 and 511 are assigned to cases with nonextensive burns (that is, only first and second degree burns).

After these DRGs went into effect on October 1, 1998, we were contacted by several hospitals about our inclusion of the following codes as full-thickness burns:

948.00 Body burn involving less than 10 percent of body surface, third degree less than 10 percent or unspecified
948.10 Body burn involving 10 to 19 percent of body surface, third degree less than 10 percent or unspecified
948.20 Body burn involving 20 to 29 percent of body surface, third degree less than 10 percent or unspecified
948.30 Body burn involving 30 to 39 percent of body surface, third degree less than 10 percent or unspecified
948.40 Body burn involving 40 to 49 percent of body surface, third degree less than 10 percent or unspecified
948.50 Body burn involving 50 to 59 percent of body surface, third degree less than 10 percent or unspecified
948.60 Body burn involving 60 to 69 percent of body surface, third degree less than 10 percent or unspecified
948.70 Body burn involving 70 to 79 percent of body surface, third degree less than 10 percent or unspecified
948.80 Body burn involving 80 to 89 percent of body surface, third degree less than 10 percent or unspecified
948.90 Body burn involving 90 percent or more of body surface, third degree less than 10 percent or unspecified

The hospitals are concerned that the use of the fifth digit "0" on codes 948.10 through 948.90 can capture cases in which there actually is no third degree burn. The hospitals requested that we consider removing from the full-thickness burn DRGs 506 through 509 all codes in the 948 category with a fifth digit of "0".

We agree that the codes in category 948 with a fifth digit of "0" should not be assigned to DRGs 506 through 509 as full-thickness burns since not all of these cases will have a third degree burn. Therefore, we are proposing to remove these codes from DRGs 506 through 509 and to add them to DRG 510 (Nonextensive Burns with CC or Significant Trauma) and DRG 511 (Nonextensive Burns without CC or Significant Trauma).

If a case with a code of 948.10 is a full-thickness burn, this information would be captured in the burn code for the site of the burn (for example, 943.35 (Third degree burn of shoulder)) and the case would be correctly assigned to a full-thickness burn DRG. Hospitals have been instructed in *Coding Clinic for ICD–9–CM*, Fourth Quarter, 1994 (pages 22 through 28) to code the site of the burn first (940 through 947), when known. Codes from category 948 may be used as a principal diagnosis only when the site of the burn is not specified. Category 948 is used as an additional code to provide information on the percentage of total body that is burned or to show the percentage of burn that was third degree. When hospitals report codes properly, full-thickness burns will be assigned to a code for burn of the specific site (940 through 947). This site code also shows the degree of the burn. Furthermore, for those rare cases where the site is not provided, but it is known that 10 percent or more of the body has a third degree burn, hospitals may report this information through the use of category 948 with a fifth digit of "1" through "9". All of these cases will be classified as full-thickness burns in DRGs 506 through 509. Therefore, our proposal to remove codes 948.1 through 948.9 with a fifth digit of "0" will not prevent cases from being assigned to one of the full-thickness DRGs when there is a third degree burn and the case is correctly coded.

5. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. It is, therefore, necessary to have a decision rule by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most to least resource intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibration, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications, to determine if the ordering of classes coincided with the intensity of resource utilization, as measured by the same billing data used to compute the DRG relative weights.

A surgical class can be composed of one or more DRGs. For example, in MDC 5, the surgical class "heart transplant" consists of a single DRG (DRG 103) and the class "major cardiovascular procedures" consists of two DRGs (DRGs 110 and 111). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting each DRG for frequency to determine the average resources for each surgical class.

For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other OR procedures" as discussed below.

This methodology may occasionally result in a case involving multiple procedures being assigned to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average relative weight is ordered above a surgical class with a higher average relative weight. For example, the "other OR procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the relative weight for the DRG or

DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other OR procedures" class is a group of procedures that are least likely to be related to the diagnoses in the MDC but are occasionally performed on patients with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average weights for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, by virtue of the hierarchy change, the relative weights are likely to shift such that the higher-ordered surgical class has a lower average weight than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing to modify the surgical hierarchy as set forth below. As we stated in the September 1, 1989 final rule (54 FR 36457), we are unable to test the effects of proposed revisions to the surgical hierarchy and to reflect these changes in the proposed relative weights due to the unavailability of revised GROUPER software at the time the proposed rule is prepared. Rather, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification and then determine the average charge for each DRG. These average charges then serve as our best estimate of relative resource use for each surgical class. We test the proposed surgical hierarchy changes after the revised GROUPER is received and reflect the final changes in the DRG relative weights in the final rule. Further, as discussed in section II.C of this preamble, we anticipate that the final recalibrated weights will be somewhat different from those proposed, since they will be based on more complete data. Consequently, further revision of the hierarchy, using the above principles, may be necessary in the final rule.

At this time, we propose to revise the surgical hierarchy for the Pre-MDC DRGs and MDC 3 (Diseases and Disorders of the Ear, Nose, Mouth and Throat) as follows:

- In the Pre-MDC DRGs, we would reorder Lung Transplant (DRG 495) above Bone Marrow Transplant (DRG 481).
- In MDC 3, we would reorder Tonsil and Adenoid Procedure Except Tonsillectomy and/or Adenoidectomy Only (DRGs 57 and 58) above Cleft Lip and Palate Repair (DRG 52).

6. Refinement of Complications and Comorbidities (CC) List

There is a standard list of diagnoses that are considered CCs. We developed this list using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we do not propose to delete any of the diagnosis codes on the CC list.

In the September 1, 1987 final notice concerning changes to the DRG classification system (52 FR 33143), we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered a valid CC in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes to preclude coding of CCs for closely related conditions, to preclude duplicative coding or inconsistent coding from being treated as CCs, and to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair.

In the May 19, 1987 proposed notice concerning changes to the DRG classification system (52 FR 18877), we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for a condition should not be considered CCs for one another.
- Conditions that may not co-exist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- The same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended to be only a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered complications or comorbidities of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule for the revision made for the discharges occurring in FY 1989 (53 FR 38485); the September 1, 1989 final rule for the FY 1990 revision (54 FR 36552); the September 4, 1990 final rule for the FY 1991 revision (55 FR 36126); the August 30, 1991 final rule for the FY 1992 revision (56 FR 43209); the September 1, 1992 final rule for the FY 1993 revision (57 FR 39753); the September 1, 1993 final rule for the FY 1994 revisions (58 FR 46278); the September 1, 1994 final rule for the FY 1995 revisions (59 FR 45334); the September 1, 1995 final rule for the FY 1996 revisions (60 FR 45782); the August 30, 1996 final rule for the FY 1997 revisions (61 FR 46171); the August 29, 1997 final rule for the FY 1998 revisions (62 FR 45966); and the July 31, 1998 final rule for the FY 1999 revisions (63 FR 40954)). We are not proposing to add or delete any codes from the CC list.

In addition, as discussed in detail in section II.B.8 of this preamble, because we are not making changes to the ICD–9–CM codes for FY 2000, we do not need to modify the current list for new or deleted codes. Therefore, there are no proposed revisions to the CC Exclusions List for FY 2000.

7. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive OR Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic OR Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive OR Procedure Unrelated to Principal Diagnosis) in order to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the OR procedures performed is related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue

60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining OR procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990, August 30, 1991, September 1, 1992, September 1, 1993, September 1, 1994, September 1, 1995, August 30, 1996, and August 29, 1997, we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. (See 55 FR 36135, 56 FR 43212, 57 FR 23625, 58 FR 46279, 59 FR 45336, 60 FR 45783, 61 FR 46173, and 62 FR 45981, respectively.) No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962).

a. Adding Procedure Codes to MDCs. We annually conduct a review of procedures producing DRG 468 or 477 assignments on the basis of volume of cases in these DRGs with each procedure. Our medical consultants then identify those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we identified several procedures that we are proposing to move from DRG 468 to one of the surgical DRGs. We did not identify any necessary changes in procedures under DRG 477 and are, therefore, not proposing to move any procedures from DRG 477 to one of the surgical DRGs.

First, we are proposing to move three codes from DRG 468 to MDC 1 (Diseases and Disorders of the Nervous System), all of which would be assigned to DRGs 7 and 8 (Peripheral and Cranial Nerve and Other Nervous System Procedure).[1] Procedure code 38.7 (Interruption of the vena cava) is sometimes performed in conjunction with treatment for the principal diagnosis 434.11 (Cerebral embolism with infarction), which is assigned to MDC 1. Under the current configuration, procedure code 38.7 is not assigned to MDC 1. Therefore when this procedure is performed by a neurological condition, such as a cerebral embolism with infarction, the discharge does not group to one of the surgical DRGs within MDC 1. It is assigned instead to DRG 468 as an unrelated procedure. Since our medical advisors tell us that procedure code 38.7 is appropriately performed for neurological conditions, we are proposing to add it to DRGs 7 and 8.

Second, we are also proposing that procedure codes 83.92 (Insertion or replacement of skeletal muscle stimulator) and 83.93 (Removal of skeletal muscle stimulator) both be categorized with other procedures on the nervous system. These procedures can be performed on patients with a principal diagnosis in MDC 1, such as 344.00 (Quadriplegia unspecified) or 344.31 (Monoplegia of lower limb, affecting dominant side). Therefore, these two codes would also be assigned to DRGs 7 and 8.

Third, procedure code 39.50 (Angioplasty or atherectomy of noncoronary vessel) is not currently assigned to MDC 4 (Diseases and Disorders of the Respiratory System). This procedure can be performed for patients who develop pulmonary embolism. The principal diagnosis for pulmonary embolism is in MDC 4, and, to increase clinical coherence, we propose to add procedure code 39.50 to that MDC in DRGs 76 and 77 (Other Respiratory System OR Procedures).

Fourth, insertion of totally implantable infusion pump (procedure code 86.06) is not assigned to MDC 5 (Diseases and Disorders of the Circulatory System) in the current DRG configuration. Infusion pumps should be assigned to all MDCs where subcutaneous insertion of the pump is appropriate. Procedure code 86.06 may be performed on patients with a principal diagnosis in MDC 5 such as 451.83 (Phlebitis and thrombophlebitis of the deep veins of other extremities). Therefore, we are proposing to add procedure code 86.06 to DRG 120 (Other Circulatory System OR Procedures) in MDC 5.

b. Reassignment of Procedures Among DRGs 468, 476, and 477. We also reviewed the list of procedures that produce assignments to DRGs 468, 476, and 477 to ascertain if any of those procedures should be moved from one of these DRGs to another based on average charges and length of stay. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGS 468 or 476.

8. Changes to the ICD–9–CM Coding System

As described in section II.B.1 of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and HCFA, that is charged with the mission of maintaining and updating the ICD–9–CM system. That mission includes approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while HCFA has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List and Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as

[1] A single title combined with two DRG numbers is used to signify pairs. Generally, the first DRG is for cases with CC and the second DRG is for cases without CC. If a third number is included, it represents cases with patients who are age 0–17. Occasionally, a pair of DRGs is split between age >17 and age 0–17.

well as physicians, medical record administrators, health information management professionals, and other members of the public to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for FY 2000 at public meetings held on June 14 and November 2, 1998. Even though the Committee conducted public meetings and considered approval of coding changes for FY 2000 implementation, we are not implementing any changes to ICD–9–CM codes for FY 2000. We have undertaken, and continue to undertake, major efforts to ensure that all of the Medicare computer systems are ready to function on January 1, 2000. If we were to make system changes to capture additions, deletions, and modifications to ICD–9–CM codes for FY 2000, we would endanger the functioning of the Medicare computer systems, and, specifically, we might compromise our ability to process hospital bills. Therefore, the code proposals presented at the public meetings held on June 14 and November 2, 1998, that (if approved) ordinarily would have been included as new codes for October 1, 1999, will not be included in this proposed rule. These code changes to ICD–9–CM will be considered for inclusion in the next annual update for FY 2001. The initial meeting for consideration of coding changes for implementation in FY 2001 will be held on May 13, 1999.

Copies of the minutes of the 1998 meetings can be obtained from the HCFA Home Page at http://www.hcfa.gov/pubaffr.htm, under the "What's New" listing. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, Maryland 20782. Comments may be sent by E-mail to: dfp4@cdc.gov.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; HCFA, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, Division of Acute Care; C4–07–07; 7500 Security Boulevard; Baltimore, Maryland 21244–1850. Comments may be sent by E-mail to: pbrooks@hcfa.gov.

9. Other Issue: Implantation of Muscle Stimulator

In the July 31, 1998 final rule, we responded to a comment on the DRG assignment for implantation of a muscle stimulator (63 FR 40964). In that document, we stated that we would readdress this issue after reviewing the FY 1998 MedPAR file.

There is concern in the manufacturing industry that the current DRG assignment for the implantation of a muscle stimulator and the associated tendon transfer for quadriplegics is inappropriate. When the procedures are performed during two separate admissions, the tendon transfer (procedure code 82.56 (Other hand tendon transfer or transplantation)) is assigned to DRGs 7 and 8 and the insertion of the muscle stimulator (procedure code 83.92 (Insertion or replacement of skeletal muscle stimulator)) is assigned to DRG 468. However, when both procedures are performed in the same admission, the case is assigned to DRGs 7 and 8.

As discussed in section II.B.7.a of this preamble, we are proposing to assign code 83.92 to DRGs 7 and 8 in MDC 1. Therefore, if a case involves either procedure code 82.56 or 83.92, or both procedure codes, the case would be assigned to DRGs 7 and 8.

A presentation on one type of muscle stimulator was made by a device manufacturer before the ICD–9–CM Coordination and Maintenance Committee on November 2, 1998. The manufacturer strongly suggested that a new code assignment be made for the procedure for insertion of this stimulator and that it be placed in category 04.9 (Other operations on cranial and peripheral nerves). However, based on comments received by the Committee, there was an overwhelming response from the coding community that a new code should not be created. The commenters believe that these codes (82.56 and 83.92) adequately described the procedures since the patient receives a tendon transfer in addition to the skeletal muscle stimulator insertion. This is done so that the quadriplegic patient can achieve some hand grasping ability where there was none before. Some quadriplegic patients receive the tendon transfer on one admission and the stimulator insertion on a subsequent admission. Others have both procedures performed on the same admission. Since the tendon transfer and stimulator insertion are being performed on quadriplegic patients, a condition found in MDC 1, we propose to add procedure codes 82.56 and 83.92 to DRGs 7 and 8.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 2000 recalibration as we did for FY 1999. (See the July 31, 1998 final rule (63 FR 40965).) That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we propose to use the most current charge information available, the FY 1998 MedPAR file. (For the FY 1999 recalibration, we used the FY 1997 MedPAR file.) The MedPAR file is based on fully-coded diagnostic and surgical procedure data for all Medicare inpatient hospital bills.

The proposed recalibrated DRG relative weights are constructed from FY 1998 MedPAR data, based on bills received by HCFA through December 1998, from all hospitals subject to the prospective payment system and short-term acute care hospitals in waiver States. The FY 1998 MedPAR file includes data for approximately 11.2 million Medicare discharges.

The methodology used to calculate the proposed DRG relative weights from the FY 1998 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the proposed DRG classification revisions discussed above in section II.B of this preamble. As noted in section II.B.5, due to the unavailability of revised GROUPER software, we simulate most major classification changes to approximate the placement of cases under the proposed reclassification. However, there are some changes that cannot be modeled.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment.
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG.
- We then eliminated statistical outliers, using the same criteria as was used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight. A transfer case is counted as a

fraction of a case based on the ratio of its length of stay to the geometric mean length of stay of the cases assigned to the DRG. That is, a 5-day length of stay transfer case assigned to a DRG with a geometric mean length of stay of 10 days is counted as 0.5 of a total case.

• We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1998 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from HCFA as transplant centers.)

• Acquisition costs for kidney, heart, heart-lung, liver, and lung transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs (DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant for heart and heart-lung transplants); DRG 480 (Liver Transplant); and DRG 495 (Lung Transplant)). Because these costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to prevent the relative weights for these DRGs from including the effect of the acquisition costs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We propose to use that same case threshold in recalibrating the DRG weights for FY 2000. Using the FY 1998 MedPAR data set, there are 39 DRGs that contain fewer than 10 cases. We computed the weights for the 39 low-volume DRGs by adjusting the FY 1999 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The weights developed according to the methodology described above, using the proposed DRG classification changes, result in an average case weight that is different from the average case weight before recalibration. Therefore, the new weights are normalized by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payment to hospitals is affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.b of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to assure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Use of Non-MedPAR Data for Reclassification and Recalibration of the DRGs

1. Introduction

As in past years, in the DRG reclassification and recalibration process for the FY 2000 proposed rule, we used the MedPAR file, which consists of data for approximately 11 million Medicare discharges. In the FY 1999 rulemaking process, we used the FY 1997 MedPAR file to recalibrate DRGs and evaluate possible changes to DRG classifications; for this FY 2000 proposed rule, we used the FY 1998 MedPAR file. The Conference Report that accompanied the Balanced Budget Act of 1997 stated that "in order to ensure that Medicare beneficiaries have access to innovative new drug therapies, the conferees believe that HCFA should consider, to the extent feasible, reliable, validated data other than Medicare Provider Analysis and Review (MedPAR) data in annually recalibrating and reclassifying the DRGs." (H. R. Conf. Rep. No. 105–217 at 734 (1997)).

Consistent with that language, we considered non-MedPAR data both in the rulemaking process for FY 1999 and in developing this proposed rule. We received non-MedPAR data from entities on behalf of the manufacturer of a specific drug, platelet inhibitors; the manufacturer is seeking to obtain a new DRG assignment for cases involving platelet inhibitors. The non-MedPAR data purported to show cases involving platelet inhibitors. As discussed further below, we concluded it was not feasible to use the non-MedPAR data submitted to us because, among other things, we did not have information to verify that the cases actually involved the drug, nor did we have information to verify that the cases reflected a representative sample (and did not simply reflect high cost cases).

Effective October 1, 1998, we implemented a code for platelet inhibitors, but until we receive bills for Medicare discharges occurring during FY 1999, the MedPAR data do not enable us to distinguish between cases with platelet inhibitors and cases without platelet inhibitors (63 FR 40963). Representatives of the pharmaceutical company first presented us with non-MedPAR data during the rulemaking process for FY 1999. The data was compiled by a health information company, and purported to show, for cases from a sample of hospitals, the average standardized charges (as calculated by the health information company) for different classes of patients.

In the FY 1999 final rule, we stated a number of reasons why we rejected the non-MedPAR data we had received. First, we could not validate whether the data reflected Medicare beneficiaries. Second, the data came from a limited number of hospitals (83) having an information sharing contract with the health information company that compiled the database; the company failed to provide us with information that would enable us to verify whether the data reflected a representative sample of hospitals or claims. Third, for over 90 percent of the cases, the company failed to provide us with information on which hospital furnished the treatment. This means that we could not validate the data on standardized charges nor could we use the data to determine an appropriate DRG weight for the DRG *from which* the cases would be reclassified. For these reasons (and others), we concluded in the July 31, 1998 final rule that we could not use the data to change the DRG assignment of cases involving platelet inhibitor drug therapy from DRG 112 (Percutaneous Cardiovascular Pacemaker Procedures) to DRG 116 (Other Permanent Cardiac Pacemaker Implant or PTCA with Coronary Artery Stent Implant).

After publication of the July 31, 1998 final rule, we met and corresponded on several occasions with the manufacturers, vendors, and legal representatives of the pharmaceutical company in an effort to resolve data issues. We reiterated that, among other things, we needed to know for each case

the hospital that furnished the services. We have not received information necessary to validate the data itself or its representativeness.

We remain open to considering non-MedPAR data in the DRG reclassification and recalibration process, but, consistent with the Conference Report, as well as our longstanding policies, the data must be "reliable" and "validated." The July 31, 1998 final rule reflects the major factors that we consider in evaluating whether data are feasible, reliable, and validated, but we believe it might be useful to discuss these issues in greater detail.

2. The DRG Reclassification and Recalibration Process

In order to understand whether it is feasible to use non-MedPAR data, and whether the data are reliable and validated, it is critical to understand the DRG recalibration and reclassification process. As described earlier, one of the first steps in the annual DRG recalibration is that the Medicare hospital inpatient claims (in the MedPAR file) from the preceding Federal fiscal year are classified using the DRG classification system (proposed or final) for the upcoming year. Cases are classified into DRGs based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. Each case is classified into one and only one DRG.

As the term suggests, the relative weight for each DRG reflects *relative* resource use. The recalibration process requires data that enable us to compare resource use across DRGs. As explained earlier, as part of the recalibration process, we standardize the charges reflected on each Medicare claim to remove the effects of area wage differences, the IME adjustment, and the DSH adjustment; in order to standardize charges, we need to know which hospital furnished the service. For each DRG, we calculate the average of the standardized charges for the cases classified to the DRG. To calculate DRG relative weights, we compare average standardized charges across DRGs.

In evaluating whether it is appropriate to reclassify cases from one DRG to another, we examine the average standardized charges for those cases. The recalibration process and the reclassification process are integrally related; to evaluate whether cases involving a certain procedure should be reclassified, we need to have information that (1) enables us to identify cases that involve the procedure and cases that do not involve the procedure, and (2) enables us to determine appropriate DRG relative weights if certain cases are reclassified.

3. Feasible, Reliable, Validated Data

As indicated earlier, the Conference Report reflected the conferees' belief that, "to the extent feasible," HCFA should consider "reliable, validated data" in recalibrating and reclassifying DRGs. The concepts of reliability and validation are closely related. In order for us to use non-MedPAR data, the non-MedPAR data must be reliable in and of itself in that the data must be independently validated. When an entity submits non-MedPAR data, we must be able to independently review the medical records and verify that a particular procedure was performed for each of the cases that purportedly involved the procedure. This verification requires the identification of a particular Medicare beneficiary and the hospital where the beneficiary was treated, as well as the dates involved. Although it is unlikely that we would review 100 percent of thousands of cases submitted for review, at a minimum, we must be able to validate data through a random sampling methodology. We must also be able to verify the charges that are reflected in the data.

Independent validation is particularly critical in part because the non-MedPAR data might be submitted by (or on behalf of) entities that have a financial interest in obtaining a new DRG assignment and in obtaining the highest possible DRG relative weight. If we receive non-MedPAR data that purport to reflect cases involving a certain procedure and a certain level of charges, we must have some way to verify the data.

Even if non-MedPAR data are reliable and verifiable, that does not mean it is necessarily "feasible" to use the data for purposes of recalibration and reclassification. In order to be feasible for these purposes, the non-MedPAR data must enable us to appropriately measure relative resource use across DRGs. It is critical that cases are classified into one *and only one* DRG in the recalibration process, and that we have information that enables us to standardize charges for each case and determine appropriate DRG relative weights. Moreover, the data must reflect a complete set of cases or, at a minimum, a representative sample of hospitals and claims.

If cases are classified into more than one DRG (or into the incorrect DRG) in the recalibration process, or if the non-MedPAR data reflect an unrepresentative sample of cases, the measure of relative resource would be distorted. For example, cases of percutaneous transluminal coronary angioplasty (PTCA) treated with GPIIb/IIIa platelet inhibitors (procedure code 99.20) are currently classified to DRG 112. The drug manufacturer has provided us with information on the average charges for a sample of cases that purportedly involve PTCA, for the purpose of evaluating whether these cases should be moved to the higher-weighted DRG 116. However, without adequate identification of the cases to allow us to specifically identify all of the cases treated with platelet inhibitors, the relative weight for DRG 112 would reflect the costs of platelet inhibitor cases. This distortion would result in excessive payments under DRG 112, and thus undermine the integrity of the recalibration process.

Therefore, in order for the use of non-MedPAR data to be feasible, generally we must be able to accurately and completely identify all of the cases to be reclassified from one DRG to another. At a minimum, we must have some mechanism for ensuring that DRG weights are not inappropriately inflated (or deflated) to the extent that a DRG weight reflects cases that would be reclassified to a different DRG.

In short, then, for use of non-MedPAR data to be feasible for purposes of DRG recalibration and reclassification, the data must, among other things (1) be independently verifiable, (2) reflect a complete set of cases (or a representative sample of cases), and (3) enable us to calculate appropriate DRG relative weights and ensure that cases are classified to the "correct" DRG, and to one DRG only, in the recalibration process.

Applying this analysis, the non-MEDPAR data we have received with respect to platelet inhibitors are unreliable and its use is not feasible. The health information company, on behalf of the pharmaceutical company, has provided us with a sample of cases that purported to reflect platelet inhibitors, and also purported to reflect the standardized charges for those cases, but the company has failed to provide us with information that would enable us to verify that the cases actually involved platelet inhibitors or verify the level of charges.

Moreover, the data are not useful for purposes of measuring relative resource use. We have not received sufficient information to verify whether the hospitals are representative of all hospitals in the country and whether the non-MedPAR data reflects a representative sample of all cases involving platelet inhibitors. Also, we have not received sufficient information

to use the non-MedPAR data to calculate appropriate DRG relative weights.

4. Submission of Data

Finally, in order for use of non-MEDPAR data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by August 1, approximately 8 months prior to the publication of the proposed rule, so that we can test the data and make a preliminary assessment as to the feasibility of its use. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with the next year's proposed rule.

5. How the Prospective Payment System Ensures Access to New Technologies

As noted at the outset of this discussion, the Conference Report that accompanied the BBA indicated that we should consider non-MEDPAR data, to the extent feasible, "in order to ensure that Medicare beneficiaries have access to innovative new drug therapies." (H. R. Conf. Rep. No. 105–217 at 734 (1997)) There seems to be a concern that, if a new technology is introduced, and if the new technology is costly, then Medicare would not make adequate payment if the new technology is not immediately placed in a new DRG. This concern is unfounded. As explained below, the Medicare hospital inpatient prospective payment does ensure access to new drug therapies, and new technologies in general.

First, to the extent a case involving a new technology is extremely costly relative to the cases reflected in the DRG relative weight, the hospital might qualify for outlier payments, additional payments over and above the standard PPS payment.

Second, Medicare promotes access to new technologies by making payments under the propsective payment system that are designed to ensure that Medicare payments for a hospital's cases *as a whole* are adequate. We establish DRGs based on factors such as clinical coherence and resource utilization. Each diagnosis-related group encompasses a variety of cases, reflecting a range of services and a range of resources. Generally, then, each DRG reflects some higher cost cases and some lower cost cases.

For some cases, the hospital's costs might be higher than the payment under the propsective payment system; this does not mean that the DRG classifications are "inappropriate." For other cases, the hospital's costs will be lower than the payment under the prospective payment system. We believe that Medicare makes appropriate payments for a hospital's cases as a whole.

Each year we examine the best data available to assess whether DRG changes are appropriate and to recalibrate DRG relative weights. As we have indicated on numerous occasions, it usually takes 2 years from the time a procedure is assigned a code to collect the appropriate MedPAR data and then make an assessment as to whether a DRG change is appropriate. This timetable applies to reclassifications that would lead to decreased payment as well as those that would increase payment. In fact, the introduction of new technologies itself might lead to either higher than average costs or *lower* costs.

Our ability to evaluate and implement potential DRG changes depends on the availability of validated, representative data. We believe that our policies ensure access to new technologies and are critical to the integrity of the recalibration process. As explained above, we remain open to using non-MedPAR data if the data are reliable and validated and enable us to appropriately measure relative resource use.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprised of two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA.

We note that effective April 1, 1990, the term Metropolitan Area (MA) replaced the term Metropolitan Statistical Area (MSA) (which had been used since June 30, 1983) to describe the set of metropolitan areas comprised of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

B. FY 2000 Wage Index Update

The proposed FY 2000 wage index values in section VI of the Addendum to this proposed rule (effective for hospital discharges occurring on or after October 1, 1999 and before October 1, 2000) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1996 (the FY 1999 wage index was based on FY 1995 wage data).

We note that the FY 1999 wage index published in the July 31, 1998 final rule was further revised on February 25, 1999 (64 FR 9378) to reflect approved revisions to the hospital wage data used to compute the wage index. In that final rule, we implemented revised wage index values, geographic adjustment factors, operating standardized amounts, and capital Federal rates for hospitals subject to the inpatient hospital prospective payment system. These changes are effective for discharges occurring on or after March 1, 1999.

The proposed FY 2000 wage index includes the following categories of data associated with costs paid under the

hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 1999 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 1999, the proposed wage index for FY 2000 also continues to exclude the direct and overhead salaries and hours for services not paid through the inpatient prospective payment system such as skilled nursing facility services, home health services, or other subprovider components that are not subject to the prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of the BBA provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

C. FY 2000 Wage Index Proposals

In the July 31, 1998 final rule, we reiterated our position that, to the greatest degree possible, the hospital wage index should reflect the wage costs associated with the areas of the hospital included under the hospital inpatient prospective payment system (63 FR 40970). That final rule contained a detailed discussion concerning the costs related to teaching physicians, residents, and CRNAs, all of which are paid by Medicare separately from the prospective payment system. For reasons outlined in detail in that final rule, we decided not to remove those costs from the calculation of the FY 1999 wage index, but to review updated data and consider removing them in developing the FY 2000 wage index.

In response to concerns within the hospital industry related to the removal of these costs from the wage index calculation, the American Hospital Association (AHA) convened a workgroup to develop a consensus recommendation. The workgroup, which consisted of representatives from national and state hospital associations, recommended that costs related to teaching physicians, residents, and CRNAs should be phased out of the wage index calculation over a 5-year period. As discussed in more detail below, based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we are proposing to phase out these costs from the calculation of the wage index over a 5-year period. The proposed FY 2000 wage index is based on a blend of 80 percent of an average hourly wage including these costs, and 20 percent of an average hourly wage excluding these costs.

1. Teaching Physician Costs

Before FY 1999, we included direct physician Part A costs and excluded contract physician Part A costs from the wage index calculation. Since some States prohibit hospitals from directly employing physicians, hospitals in these States were unable to include physician Part A costs because they were incurred under contract rather than directly. Therefore, for cost reporting periods beginning in 1995, we began separately collecting physician Part A costs (both direct and contract) so we could evaluate how to best handle these costs in the wage index calculation. Based on our analysis of the 1995 wage data, we decided to include the contract physician salaries in the wage index beginning with FY 1999.

In the July 31, 1998 final rule, in response to comments regarding the inclusion in physician Part A costs of teaching physician costs for which teaching hospitals are already compensated through the Medicare GME payment, we stated that we would collect teaching physician data "as expeditiously as possible in order to analyze whether it is feasible to separate teaching physician costs from other physician Part A costs" (63 FR 40968). Excluding teaching physician costs from the wage index calculation is consistent with our general policy to exclude from that calculation those costs that are paid separately from the prospective payment system.

Because the FY 1996 cost reports did not identify teaching physician salaries and hours separately from physician Part A costs, we instructed our fiscal intermediaries to collect, through a survey, teaching physician costs and hours from the teaching hospitals they service. Specifically, we requested collection of data on the costs and hours related to teaching physicians that were included in Line 4 (salaried), Line 10 (contracted), Line 12 (home office and related organizations), and Line 18 (wage-related costs) of the Worksheet S–3, Part II. In our instructions accompanying the survey, we indicated that these teaching-related costs are those payable under the per resident amounts (§ 413.86) and reported on Worksheet A, Line 23 of the hospital's cost report.

The survey data collected as of the last week of January 1999 are included in the preliminary public use file made available on the Internet on February 5, 1999. At that time, we had received completed surveys for over one-half of teaching hospitals reporting physician Part A costs on their Worksheet S–3, Part II (372 out of 700). In early February 1999, we instructed intermediaries to review the survey data for consistency with the Supplemental Worksheet A–8–2 of the hospitals' cost reports. Supplemental Worksheet A–8–2 is used to apply the reasonable compensation equivalency limits to the costs of provider-based physicians, itemizing these costs by the corresponding line number on Worksheet A.

When we notified the fiscal intermediaries (and the fiscal intermediaries notified the hospitals) of the availability to review the survey data on the Internet, we also established deadlines of March 5, 1999 for hospitals to request changes to the teaching survey data, and April 5, 1999, for the fiscal intermediaries to submit the data to HCRIS. The additional data collected from the hospitals through the fiscal intermediaries by April 5 will be included in the final wage data file released in May 1999.

Due to the extraordinary effort needed to collect these data and the importance of accurately removing teaching physician costs, we will consider requests from a hospital to revise its teaching survey data as reflected on the final wage data file released in May 1999. (We are not extending the deadline for requests for revisions to cost report data.) Requests must be received by HCFA and the hospital's fiscal intermediary no later than June 7, 1999, and must include all necessary supporting documentation. As described above, these data were not originally collected on the FY 1996 cost report. The deadlines established under our annual process for editing and verifying the wage data reflect the fact that hospitals prepare and submit their cost reports at least 1 year, and generally more than 1 year, before the deadline for requesting changes. Because the timeframe in which the survey data were collected was considerably shorter, we have extended the deadline for revising those data.

Since we published the July 31, 1998 final rule, we have received a recommendation from the hospital industry concerning the methodology that could be used to exclude physician

teaching-related costs from the wage index. The industry recommended that we implement a 5-year phase-out of all physician Part A wage costs that are teaching-related, as well as all resident and Part A CRNA costs. In FY 2000, the first year of the phase-out, the applicable wage index would be based on a blend of 80 percent of the current policy, which would include all physician Part A costs, and 20 percent of the new policy, which would exclude teaching physician Part A, resident, and CRNA costs. The percentages would be adjusted 20 percent each year until FY 2004, when all teaching physician, resident, and CRNA costs would be eliminated from the wage index calculation.

The workgroup also recommended that if the teaching data collected by the intermediaries are not accurate or reliable, HCFA would include only 20 percent of reported physician Part A costs in the calculation, based on the assumption that 80 percent of total physician Part A costs are related to teaching physicians.

We appreciate the industry's willingness to work with us on this issue and recommend a reasonable and practical solution. In developing our proposed FY 2000 wage index, we have adopted most of the components of this recommendation.

In developing the proposed FY 2000 wage index, we calculated the teaching costs to be removed from the wage index as follow. If we had complete survey data for a hospital, that amount was subtracted from the amount reported on the Worksheet S–3 for physician Part A costs. However, relying solely on the survey data would have resulted in the removal of no teaching physician costs for many hospitals.

As noted above, the hospital industry recommended that if HCFA believes the survey data are not reliable or accurate, it should remove 80 percent of the total physician Part A costs and hours. Although we considered this option, we believe that removing 80 percent of the total physician Part A costs and hours across the board would not recognize the variations among hospitals in terms of the percentage of their physician Part A costs consisting of teaching physician costs. Of the hospitals for which we have survey data, teaching physician costs, as reflected on the survey, amount to, on average, approximately 68 percent. If we adopted the recommended methodology, we would not only negate the efforts of those hospitals and their fiscal intermediaries that did complete the teaching physician survey, we would also actually penalize hospitals that cooperated in completing the survey by removing an amount in excess of actual teaching physician Part A costs they reported.

Therefore, under our proposal, for any hospital that completed the survey, we removed from the wage data the physician Part A teaching costs and hours reported on the survey form. These data had been verified by the fiscal intermediary before submission to HCFA. If we did not have survey data for a teaching hospital as of February 22, 1999, we removed 80 percent of the hospital's reported total physician Part A costs and hours for the proposed wage index. Based upon our communications with fiscal intermediaries, we believe we will have a substantially higher response rate for the survey data by the time we calculate the final FY 2000 wage index values. As discussed above, we have instructed the fiscal intermediaries to undertake a further attempt to collect these data for those hospitals that initially did not report survey data. We believe that since the average percentage of teaching costs compared to total physician Part A costs is less than 80 percent, it would be an advantage to a hospital to complete the survey.

Although removing 80 percent from the amount reported on the Worksheet S–3 for physician Part A costs allows an estimate of teaching physician costs to be removed in the majority of cases in which survey data are not available, there are instances in which a teaching hospital did not report either survey data or any physician Part A costs on its Worksheet S–3. We have identified 72 such teaching hospitals in our database. For purposes of calculating the proposed FY 2000 wage index for these 72 hospitals, we subtracted the costs reported on Line 23 of the Worksheet A, Column 1 (Resident and Other Program Costs) from Line 1 of the Worksheet S–3. These costs (from Line 23, Column 1 of Worksheet A) are included in Line 1 of the Worksheet S–3, which is the sum of Column 1, Worksheet A. They also represent costs for which the hospital is paid through the per resident amount under the direct GME payment. Therefore, we believe it is appropriate to remove these costs from the wage index calculation in situations in which hospitals have failed to otherwise identify their teaching physician costs. To determine the hours to be removed, we divided the costs reported on Line 23 of the Worksheet A, Column 1 by the national average hourly wage for physician Part A costs based upon Line 4 of the Worksheet S–3 (the national average hourly wage is $54.48). We have indicated these 72 hospitals by an asterisk in Table 3C of this proposed rule.

We invite comments as to whether the proposed method we have used to remove teaching-related costs based on the amount included in Line 23, Column 1 of Worksheet A would be an appropriate method for removing GME costs in the future (and perhaps other excluded area costs as well). We are especially concerned that the earliest cost report on which we will be able to make the necessary changes to capture the separate reporting of teaching physician Part A costs would be cost reports that would be submitted for cost reporting periods beginning during FY 1998. Therefore, we are considering the potential for subtracting the costs in Lines 20, 22, and 23 of Worksheet A from Line 1 of Worksheet S–3, Part II, in calculating the FY 2001 wage index. The current Worksheet S–3 is not designed to net out of Line 1 costs that are otherwise included in Column 1 of Worksheet A, but it would be possible to use data from the Worksheet A in a manner similar to that described above.

2. Resident and CRNA Part A Costs

The wage index presently includes salaries and wage-related costs for residents in approved medical education programs and for CRNAs employed by hospitals under the rural pass-through provision (§ 412.113(c)). Because Medicare pays for these costs outside the prospective payment system, removing these costs from the wage index calculation would be consistent with our general policy to exclude costs that are not paid through the prospective payment system. However, because these costs were not separately identifiable before the FY 1995 wage data, we could not remove them.

We began collecting the resident and CRNA wage data separately on the FY 1995 cost report. However, there were data reporting problems associated with these costs. For example, the original FY 1995 cost report instructions for reporting resident costs on Line 6 of Worksheet S–3, Part III, erroneously included teaching physician salaries and other teaching program costs. Also, the FY 1995 Worksheet S–3 did not provide for separate reporting of CRNA wage-related costs. These problems were corrected in the reporting instructions for the FY 1996 cost report, and we are now proposing to remove CRNA and resident costs over a 5-year period.

3. Transition Period

The proposed FY 2000 wage index is based on a blend of 80 percent of

hospitals' average hourly wages without removing the costs and hours associated with teaching physician Part A, residents, and CRNAs, and 20 percent of the average hourly wage after removing these costs and hours from the wage index calculation. This methodology is consistent with the recommendation of the industry workgroup for a 5-year phase-out of these costs. The transition methodology is discussed in detail in section III.E of this preamble.

D. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 2000 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1996 Medicare cost reports. The data file used to construct the proposed wage index includes FY 1996 data submitted to the Health Care Provider Cost Report Information System (HCRIS) as of early February 1999. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

From mid-January to mid-February 1999, we asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. Some unresolved data elements are included in the calculation of the proposed FY 2000 wage index pending their resolution before calculation of the final FY 2000 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data (through HCRIS) no later than April 5, 1999. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we removed data for eight hospitals that failed edits. For four of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program or are in bankruptcy status. Two hospitals had negative average hourly wages after allocating overhead to their excluded areas, and were therefore removed from the calculation. The data from the remaining two hospitals were removed because inclusion of their data would have significantly distorted the wage index values. The data for these hospitals will be included in the final wage index if we receive corrected data that pass our edits. As a result, the proposed FY 2000 wage index is calculated based on FY 1996 wage data for 5,035 hospitals.

E. Computation of the Wage Index

The method used to compute the proposed FY 2000 wage index is as follows:

Step 1—As noted above, we are proposing to base the FY 2000 wage index on wage data reported on the FY 1996 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1995 and before October 1, 1996. In addition, we included data from a few hospitals that had cost reporting periods beginning in September 1995 and reported a cost reporting period exceeding 52 weeks. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1996 data.

Step 2—Salaries—The method used to compute a hospital's average hourly wage is a blend of 80 percent of the hospital's average hourly wage including all teaching physician Part A, resident, and CRNA costs, and 20 percent of the hospital's average hourly wage after eliminating all teaching physician, resident, and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, including all teaching physician Part A, resident, and CRNA costs, we subtracted from Line 1 (total salaries) the Part B salaries reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to skilled nursing facility services, home health services, and other subprovider components not subject to the prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Lines 2, 4, and 6. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, and physician Part A services (Lines 9 and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, 16, 18, and 20). We note that contract labor and home office salaries for which no corresponding hours are reported were not included.

We then calculated a hospital's salaries plus wage-related costs by subtracting from total salaries the salaries plus wage-related costs for teaching physicians (see section III.C.1 of this preamble for a detail discussion of this policy), Part A CRNAs (Lines 2 and 16), and residents (Lines 6 and 20).

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus Lines 3, 5, and 7 of Worksheet S–3, Part II). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Finally, we subtracted the computed overhead salaries and hours associated with excluded areas from the total salaries and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1995 through April 15, 1997 for private industry hospital workers from the Bureau of Labor Statistics' Compensation and Working Conditions. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/95	11/15/95	1.023163
11/14/95	12/15/95	1.021153
12/14/95	01/15/96	1.019151
01/14/96	02/15/96	1.017157
02/14/96	03/15/96	1.015246
03/14/96	04/15/96	1.013489

MIDPOINT OF COST REPORTING PERIOD—Continued

After	Before	Adjustment factor
04/14/96	05/15/96	1.011888
05/14/96	06/15/96	1.010428
06/14/96	07/15/96	1.009099
07/14/96	08/15/96	1.007900
08/14/96	09/15/96	1.006788
09/14/96	10/15/96	1.005719
10/14/96	11/15/96	1.004695
11/14/96	12/15/96	1.003653
12/14/96	01/15/97	1.002529
01/14/97	02/15/97	1.001325
02/14/97	03/15/97	1.000000
03/14/97	04/15/97	0.998514

For example, the midpoint of a cost reporting period beginning January 1, 1996 and ending December 31, 1996 is June 30, 1996. An adjustment factor of 1.009099 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1996 and covers a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under sections 1886(d)(8)(B) or 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Because the proposed FY 2000 wage index is based on a blend of average hourly wages, we then added 80 percent of the average hourly wage calculated without removing teaching physician Part A, residents, and CRNA costs, and 20 percent of the average hourly wage calculated with these costs removed.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage (using the same blending methodology described in Step 7). Using the data as described above, the national average hourly wage is $20.9675.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $9.96607 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the hospital wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of the BBA provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to assure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2000, this change affects 185 hospitals in 39 MSAs. The MSAs affected by this provision are identified in Table 4A by a footnote.

F. Revisions to the Wage Index Based on Hospital Redesignation

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system.

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the hospitals that are redesignated are subject to that combined wage index value.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.
- The wage index value for an urban area is calculated exclusive of the wage data for hospitals that have been reclassified to another area. However, geographic reclassification may not reduce the wage index value for an urban area below the statewide rural wage index value.

We note that, except for those rural areas in which redesignation would reduce the rural wage index value, the wage index value for each area is computed exclusive of the wage data for hospitals that have been redesignated from the area for purposes of their wage index. As a result, several urban areas listed in Table 4A have no hospitals

remaining in the area. This is because all the hospitals originally in these urban areas have been reclassified to another area by the MGCRB. These areas with no remaining hospitals receive the prereclassified wage index value. The prereclassified wage index value will apply as long as the area remains empty.

The proposed revised wage index values for FY 2000 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located. When the wage index value of the area to which a hospital is redesignated is lower than the wage index value for the rural areas of the State in which the hospital is located, the redesignated hospital receives the higher wage index value, that is, the wage index value for the rural areas of the State in which it is located, rather than the wage index value otherwise applicable to the redesignated hospitals.

Tables 4D and 4E list the average hourly wage for each labor market area, before the redesignation of hospitals, based on the FY 1996 wage data. In addition, Table 3C in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital based on the preliminary FY 1996 data as of February 22, 1999. The MGCRB will use the average hourly wage published in the final rule to evaluate a hospital's application for reclassification for FY 2001, unless that average hourly wage is later revised in accordance with the wage data correction policy described in § 412.63(w)(2). In such cases, the MGCRB will use the most recent revised data used for purposes of the hospital wage index. We note that in adjudicating these wage index reclassification requests during FY 2000, the MGCRB will use the average hourly wages for each hospital and labor market area that are reflected in the final FY 2000 wage index.

At the time this proposed wage index was constructed, the MGCRB had completed its review of FY 2000 reclassification requests. The proposed FY 2000 wage index values incorporate all 441 hospitals redesignated for purposes of the wage index (hospitals redesignated under section 1886(d)(8)(B) or 1886(d)(10) of the Act) for FY 2000. The final number of reclassifications may be different because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule following this proposed rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive, that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this **Federal Register** document. The request for withdrawal of an application for reclassification that would be effective in FY 2000 must be received by the MGCRB by June 21, 1999. A hospital that requests to withdraw its application may not later request that the MGCRB decision be reinstated.

G. Requests for Wage Data Corrections

To allow hospitals time to evaluate the wage data used to construct the proposed FY 2000 hospital wage index, we made available to the public a data file containing the FY 1996 hospital wage data. As stated in section II.D of this preamble, the data file used to construct the proposed wage index includes FY 1996 data submitted to HCRIS as of early February 1999. In a memorandum dated February 1, 1999, we instructed all Medicare intermediaries to inform the prospective payment hospitals that they serve of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available February 5, 1999 through the Internet at HCFA's home page (http://www.hcfa.gov). We also instructed the intermediaries to advise hospitals of the availability of these data either through their representative hospital organizations or directly from HCFA. Additional details on ordering this data file are discussed in section IX.A of this preamble, "Requests for Data from the Public."

In addition, Table 3C in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values. It should be noted that the hospital average hourly wages shown in Table 3C do not reflect any changes made to a hospital's data after February 22, 1999. Changes approved by a hospital's fiscal intermediary and forwarded to HCRIS by April 5, 1999 will be reflected on the final public use wage data file scheduled to be made available May 7, 1999.

We believe hospitals have had ample time to ensure the accuracy of their FY 1996 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. However, if, after review of the wage data file released February 5, 1999, a hospital believed that its FY 1996 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by March 5, 1999. Hospitals were notified of this deadline, and of all other possible deadlines and requirements, through written communications from their fiscal intermediaries in early February 1999.

Any wage data corrections to be reflected in the final wage index must have been reviewed and verified by the intermediary and transmitted to HCFA on or before April 5, 1999. (The deadline for hospitals to request changes from their fiscal intermediaries was March 5, 1999.) These deadlines are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final prospective payment rates to be published by August 1, 1999. We cannot guarantee that corrections transmitted to HCFA after April 5, 1999 will be reflected in the final wage index.

After reviewing requested changes submitted by hospitals, intermediaries transmitted any revised cost reports to HCRIS and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted.

This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the intermediary's resolution of a requested change, the hospital may

contact HCFA in an effort to resolve policy disputes. We note that the April 5 deadline also applies to these requested changes. We will not consider factual determinations at this time, as these should have been resolved earlier in the process.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2000 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes.

The final wage data public use file will be released by May 7, 1999. Hospitals should examine both Table 3C of this proposed rule and the May 7 final public use wage data file (which reflects revisions to the data used to calculate the values in Table 3C) to verify the data HCFA is using to calculate the wage index. Hospitals will have until June 7, 1999 to submit requests to correct errors in the final wage data due to data entry or tabulation errors by the intermediary or HCFA. The correction requests that will be considered at that time will be limited to errors in the entry or tabulation of the final wage data that the hospital could not have known about before the release of the final wage data public use file.

The final wage data file released on May 7, 1999 will contain the wage data that will be used to construct the wage index values in the final rule. As noted above in section III.C of this preamble, this file will include hospitals' teaching survey data as well as cost report data. As with the file made available in February 1999, HCFA will make the final wage data file released in May 1999 available to hospital associations and the public (on the Internet). However, with the exception of the teaching survey data, this file is being made available only for the limited purpose of identifying any potential errors made by HCFA or the intermediary in the entry of the final wage data that result from the correction process described above (with the March 5 deadline), not for the initiation of new wage data correction requests. Hospitals are encouraged to review their hospital wage data promptly after the release of the final file.

If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or HCFA error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and HCFA. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be *received* by HCFA and the intermediaries no later than June 7, 1999. Requests mailed to HCFA should be sent to: Health Care Financing Administration; Center for Health Plans and Providers; Attention: Stephen Phillips, Technical Advisor; Division of Acute Care; C4–07–07; 7500 Security Boulevard; Baltimore, MD 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact HCFA immediately to discuss its findings.

At this point in the process, changes to the hospital wage data will be made only in those very limited situations involving an error by the intermediary or HCFA that the hospital could not have known about before its review of the final wage data file. (As noted above, however, we are also allowing hospitals to request changes to their teaching survey data. These requests must comply with all of the documentation and deadline requirements as otherwise specified in this proposed rule.) Specifically, neither the intermediary nor HCFA will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to HCRIS on or before April 5, 1999.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the February 1999 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or HCFA during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 7, 1999) will be incorporated into the final wage index to be published by July 30, 1999 and effective October 1, 1999.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the intermediary's attention. Moreover, because hospitals will have access to the final wage data by early May 1999, they will have the opportunity to detect any data entry or tabulation errors made by the intermediary or HCFA before the development and publication of the FY 2000 wage index by July 30, 1999 and the implementation of the FY 2000 wage index on October 1, 1999. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be free of these errors. Nevertheless, in the unlikely event that errors should occur after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(w)(2), we may make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or HCFA made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2000 (that is, by the June 7, 1999 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the intermediary will notify the hospital of any changes, we do not foresee any specific circumstances under which midyear corrections would be made. However, should a midyear correction be necessary, the wage index change for the affected area will be effective prospectively from the date the correction is made.

In the September 1, 1994 **Federal Register**, we stated that we did not believe that a "formal appeals process" regarding intermediary decisions denying hospital requests for wage data revisions was necessary, given the numerous opportunities provided to hospitals to verify and revise their data (59 FR 45351). We continue to believe that the process described above provides hospitals more than adequate opportunity to ensure that their data are correct. Nevertheless, we wish to clarify that, while there is no formal appeals process that culminates before the publication of the final rule and that is described above, hospitals may later seek formal review of denials of requests for wage data revisions made as a result of that process.

Once the final wage index values are calculated and published in the **Federal Register**, the last opportunity for a hospital to seek to have its wage data revised is under the limited circumstances described in § 412.63(w)(2). As we noted in the September 1, 1995 **Federal Register**, however, hospitals are entitled to appeal any denial of a request for a wage data revision made as a result of HCFA's wage data correction process to the Provider Reimbursement Review Board (PRRB), consistent with the rules for PRRB appeals found at 42 CFR part 405, Subpart R (60 FR 45795). As we also stated in the 1995 **Federal Register**, and as the regulation at § 412.63(w)(5) provides, any subsequent reversal of a denial of a wage revision request that

results from a hospital's appeal to the PRRB or beyond will be given effect by paying the hospital under a revised wage index that reflects the revised wage data at issue. The revised wage data will not, however, be used for purposes of revisiting past adjudications of requests for geographic reclassification.

IV. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Sole Community Hospitals (SCHs)(§ 412.92)

If a hospital is classified as a SCH because, by reason of certain factors, it is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries in a geographic area, the hospital is paid based on the highest of the following: the applicable adjusted Federal rate; the updated hospital-specific rate based on a 1982 base period; or the updated hospital-specific rate based on a 1987 base period. Under our existing rules, urban hospitals within 35 miles of another hospital cannot qualify as SCHs. Since 1983, we have consistently defined an "urban" area for purposes of determining if a hospital qualifies for SCH status as a MSA or NECMA as defined by OMB.

In the past, we have considered and rejected two alternatives to the MSA definitions of an urban area for SCH purposes. These alternatives were the urbanized areas as defined by the Census Bureau and the health facility planning areas (HFPAs) as used by the Health Resource Services Administration. We have concluded that the MSA definition continues to be the most appropriate geographic delimiter available at this time. Therefore, we propose to continue to apply the MSA definition of an urban area for SCH status purposes.

We propose to continue our current policy for several reasons. First, as we have previously noted, since OMB considers local commuting patterns in establishing urban definitions, we believe that residents in urban areas have access to hospital services either by living in close proximity to a hospital or by establishing a heavy commuting pattern to an area in which a hospital is located (48 FR 39780, September 1, 1983). We do not believe that either Census Bureau urbanized areas or HFPAs take commuting patterns into account in the way that OMB's MSAs do. We believe commuting patterns serve as an important indicia of whether a hospital is the sole hospital reasonably accessible by Medicare beneficiaries in an area.

In addition, we note that our use of MSAs to define urban areas for SCH status purposes has direct statutory support. Section 1886(d)(2)(D) of the Act specifically authorizes us to use OMB's MSA definition of urban areas for purposes of calculating the prospective payment system standardized amounts. SCH status represents an adjustment to the usual prospective payment that a hospital would receive, and since that prospective payment is based on the standardized amount, among other factors, we believe it would be anomalous to employ one definition of urban area for purposes of calculating the standardized amount and another for purposes of determining if the hospital qualified as a SCH. To do so would be to use one set of geographic delimiters in applying the general rule (payment under the prospective payment system based on the standardized amount) but a different set in determining exceptions to the rule (payment under the prospective payment system adjusted to take into account SCH status). We do not think this would be appropriate. For this reason, also, we propose to continue to define "urban" for SCH purposes as meaning MSAs as defined by OMB, not as meaning either Census Bureau urbanized areas or HFPAs.

B. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, § 412.96 sets forth the criteria a hospital must meet in order to receive special treatment under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban rather than the rural standardized amount. As of that date, the other urban and rural standardized amounts were the same. However, rural referral centers continue to receive special treatment under both the disproportionate share hospital (DSH) payment adjustment and the criteria for geographic reclassification.

One of the criteria under which a rural hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size criterion can qualify as a rural referral center if the hospital meets two mandatory criteria (specifying a minimum case-mix index and a minimum number of discharges) and at least one of the three optional criteria (relating to specialty composition of medical staff, source of inpatients, or volume of referrals). With respect to the two mandatory criteria, a hospital may be classified as a rural referral center if its—

- Case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- Number of discharges is at least 5,000 discharges per year or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that HCFA will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105).

These values are based on discharges occurring during FY 1998 (October 1, 1997 through September 30, 1998) and include bills posted to HCFA's records through December 1998. Therefore, we are proposing that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1999, must have a case-mix index value for FY 1998 that is at least—

- 1.3438; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by HCFA for the census region in which the hospital is located.

The median case-mix values by region are set forth in the following table:

Region	Case-mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2480
2. Middle Atlantic (PA, NJ, NY)	1.2504

Region	Case-mix index value
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.3269
4. East North Central (IL, IN, MI, OH, WI)	1.2593
5. East South Central (AL, KY, MS, TN)	1.2772
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1871
7. West South Central (AR, LA, OK, TX)	1.3003
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3280
9. Pacific (AK, CA, HI, OR, WA)	1.3277

The preceding numbers will be revised in the final rule to the extent required to reflect the updated FY 1998 MedPAR file, which will contain data from additional bills received through March 31, 1999.

For the benefit of hospitals seeking to qualify as referral centers or those wishing to know how their case-mix index value compares to the criteria, we are publishing each hospital's FY 1998 case-mix index value in Table 3C in section IV of the Addendum to this proposed rule. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that HCFA will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards. The proposed regional standards are based on discharges for urban hospitals' cost reporting periods that began during FY 1997 (that is, October 1, 1996 through September 30, 1997). That is the latest year for which we have complete discharge data available.

Therefore, we are proposing that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 1999, must have as the number of discharges for its cost reporting period that began during FY 1998 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table.

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6672
2. Middle Atlantic (PA, NJ, NY)	8635
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	7753
4. East North Central (IL, IN, MI, OH, WI)	7390
5. East South Central (AL, KY, MS, TN)	6741
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5662
7. West South Central (AR, LA, OK, TX)	5344
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	7993
9. Pacific (AK, CA, HI, OR, WA)	5993

We note that the number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals. These numbers will be revised in the final rule based on the latest FY 1997 cost report data.

We reiterate that an osteopathic hospital, if it is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 1999, must have at least 3,000 discharges for its cost reporting period that began during FY 1997.

C. Changes to the Indirect Medical Education Adjustment (§ 412.105)

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment to reflect the higher indirect operating costs associated with GME. The regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105.

In the August 29, 1997 final rule (62 FR 46029), we redesignated the previous § 412.105(g) as § 412.105(f), and added a new paragraph (g) to implement section 1886(d)(5)(B) of the Act as revised by section 4621 of the Balanced Budget Act of 1997. However, when we redesignated paragraph (g) as paragraph (f), we inadvertently did not revise all of the relevant cross-references to reflect this redesignation. Specifically, at § 412.105(f)(1)(iii), there are three cross-references to paragraph (g)(1)(ii). These cross-references are incorrect in light of the redesignation of previous paragraph (g) as paragraph (f). We are proposing to revise § 412.105(f)(1)(iii) to correct these cross-references.

D. Medicare Geographic Classification Review Board: Conforming Changes §§ 412.256 and 412.276

In the May 12, 1998 final rule (63 FR 26321), we revised the regulations governing the timeframes for submittal of applications by hospitals to the MGCRB for geographic reclassifications and for MGCRB decisions to take into consideration the revised statutory publication schedule for the annual prospective payment policies and rates (that is, August 1 instead of September 1) implemented by the BBA. In making those changes, we inadvertently omitted conforming changes to two other sections of the regulations that also specify timeframes that are affected by the change to an August 1 publication date—§§ 412.256 and 412.276. We propose to revise § 412.256(c)(2) to specify that at the request of the hospital, the MGCRB may, for good cause, grant a hospital that has submitted an application by September 1 (instead of October 1) an extension beyond September 1 (instead of October 1) to complete its application. In addition, we propose to revise § 412.276(a) to specify that the MGCRB notifies the parties in writing, with a copy to HCFA, and issues a decision within 180 days after the "first day of the 13-month period preceding the Federal fiscal year for which the hospital had filed a completed application" for reclassification, to make the language consistent with the statute and the May 1998 changes made to the application deadline in § 412.256(a)(2).

E. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based on the number of residents trained by the hospital. The BBA revised section 1886(h) of the Act to cap the number of residents that hospitals may count for direct GME. We have issued rules to implement the caps for GME (62 FR 46002, August 29, 1997; 63 FR 26327, May 12, 1998; and 63 FR 40986, July 31, 1998). Since the publication of these rules we have received a number of questions relating to GME. In addition, we have received information related to other aspects of our GME policies. In response to these questions and information, we are clarifying certain GME policies and also making some technical changes to the regulations text. In addition, we are proposing certain changes in GME policy.

1. Approved Geriatric Programs

Under sections 1886(h)(5)(F) and (G) of the Act and § 413.86(g), Medicare counts each resident within an initial residency period as a 1.0 full-time equivalent (FTE) for purposes of determining GME payments. Each resident beyond the initial residency period is counted as 0.5 full-time equivalent. Section 1886(h)(5)(F) of the Act extends the initial residency period by up to 2 years if an individual is in a geriatric or preventive medicine residency or fellowship. At § 413.86(b), we specify that an "approved geriatric program" is "a fellowship program of one or more years in length that is approved by the Accreditation Council for Graduate Medical Education (ACGME) under the ACGME's criteria for geriatric fellowship programs." In recent years, geriatric programs have been approved by other national organizations. Consistent with the statute, we are proposing to clarify the definition of approved geriatric programs at § 413.86(b) to include fellowship programs approved by the American Osteopathic Association, the Commission on Dental Accreditation, and the Council on Podiatric Medical Education. These organizations, in addition to ACGME, are recognized by HCFA as the accrediting bodies for determining approved educational activities. We also would make a conforming change to § 413.86(g)(1)(iii) to recognize approved geriatric programs accredited by all national approving organizations.

2. Hospital Payment for Resident Training in Nonhospital Settings

Under sections 1886(d)(5)(B)(iv) and 1886(h)(4)(E) of the Act, hospitals may count residents working in nonhospital sites for indirect and direct medical education respectively if the hospital incurs "all or substantially all" of these education costs. The requirements for counting the time residents spend training in nonhospital settings are addressed at § 413.86(f)(4). Currently, the requirements for hospital payment under this provision are that the resident spend his or her time in patient care activities and that a written agreement exist between the hospital and the nonhospital site. This written agreement must indicate that the hospital will incur the cost of the residents' salaries and fringe benefits while the residents are training in the nonhospital site and that the hospital is providing reasonable compensation to the nonhospital site for supervisory teaching activities. In addition, the written agreement must indicate the compensation the hospital is providing to the nonhospital site for supervisory teaching activities.

Under the statute, the time residents spend at nonhospital sites may be counted "if the hospital incurs all, or substantially all, of the costs of the training program in that setting." The existing regulations text, however, is framed in terms of the hospital having an agreement that it "will incur" the costs in the nonhospital setting. We are proposing to make a technical change to the regulations text by adding a new § 413.86(f)(4)(iii), to clarify that in order to count residents at a nonhospital site, the hospital must actually incur all or substantially all of the costs for the training program, as defined in § 413.86(b), in the nonhospital site. This definition of all or substantially all requires the hospital to incur the expenses of the residents' salaries and fringe benefits (including travel and lodging where applicable) and the portion of the cost of teaching physicians' salaries and fringe benefits attributable to direct GME.

3. New Residency Programs

In the regulations we published on August 29, 1997 and May 12, 1998, we established special rules for adjusting the full-time equivalent (FTE) resident caps for indirect and direct GME for new medical residency programs. In general, the special rules allow for adjustments to the caps based on a number of residents participating in the program in its third year of existence. In §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii), we set forth a methodology for adjusting hospital FTE caps for new medical residency training programs established on or after January 1, 1995. We are proposing the following clarifications, technical changes, and policy changes:

a. In § 413.86(g)(6)(i), we specify that, if a hospital had no residents before January 1, 1995, the adjustments for new programs are based on the highest number of residents in any program year during the third year of the newly established program. However, § 413.86(g)(6)(ii) does not explicitly state the methodology for adjusting caps for hospitals that did have residents in the most recent cost reporting period ending before January 1, 1995. The adjustments of the caps for programs established on or after January 1, 1995 and on or before August 5, 1997, also are made based on the number of residents in the third year of the new program. We are proposing to revise § 413.86(g)(6)(ii) to clarify that, for a hospital that did have residents in the most recent cost reporting period ending on or before December 31, 1996 (the proposed revised date described in section IV.E.3.d. of this preamble), the adjustment is based on the highest number of residents in any program year in the third year of the new program.

b. Sections 413.86(g)(6)(i) and 413.86(g)(6)(ii) specify that the adjustment to the cap is also based on the number of years in which residents are expected to complete each program based on the minimum accredited length for the type of program. We are proposing to add language to clarify how to account for situations in which the residents spend an entire program year (or years) at one hospital and the remaining year (or years) of the program at another hospital. In this situation, the adjustment to the FTE cap is based on the number of years the residents are training at each hospital, not the minimum accredited length for the type of program. If we were to use the minimum accredited length for the program in this case, the total adjustment to the cap might exceed the total accredited slots available to the hospitals participating in the program. In the May 12, 1998 final rule (63 FR 26334), we specified that the adjustment to the FTE cap may not exceed the number of accredited resident slots available.

c. It was brought to our attention that the regulations do not explicitly address how to apply the cap during the first 3 years of a new program before the adjustments to the cap are established. We are proposing to clarify our policy on new residency programs by adding language in §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii) to specify how to determine the hospital's cap in the first 3 years of a new residency program, before the implementation of the hospital's permanent adjustment to its FTE cap effective beginning with the fourth year of the program. We are proposing to specify that the cap may be adjusted during each year of the first 3 years of the hospital's new residency program, using the actual number of residents participating in the new program. The adjustment may not exceed the number of accredited slots available to the hospital for each program year.

d. As discussed above, on August 29, 1997, we implemented the hospital-specific caps on the number of residents that a hospital can count for purposes of GME payments in a final rule with comment period (62 FR 46002). In both the May 12, 1998 and July 31, 1998 final rules (63 FR 26327 and 63 FR 40954), we responded to comments we received on this provision. We did not receive any comments about hospitals that participated in residency training in the

past, had terminated their participation prior to the hospitals' cost reporting period ending in calendar year 1996, and have now again begun a new residency program. After publication of the July 31, 1998 final rule, we were contacted by representatives of some hospitals that had a resident cap of zero because they had temporarily terminated their GME programs in the past and had no residents training during the cost reporting period ending in 1996. Based on the existing regulations, these hospitals have FTE caps of zero. There is no provision in the existing regulations for making adjustments to the cap to allow these hospitals to receive payment for indirect and direct GME for allopathic and osteopathic residents.

To address this issue, we are proposing to revise § 413.86(g)(6)(i) to allow for an adjustment to a hospital's FTE cap if the hospital had no allopathic and osteopathic residents in its cost reporting period ending during calendar year 1996. This change would allow all hospitals that did not participate in allopathic and osteopathic resident training in the cost reporting period ending in calendar year 1996 to receive adjustments to the indirect and direct GME FTE caps for new residency programs. We believe it is appropriate to revise the regulations to allow for payment during the first 3 years of the new program and for an adjustment to the FTE cap 3 years after these hospitals restart participation in residency training, similar to the existing adjustment for hospitals that never participated in residency training. We propose to revise § 413.86(g)(6)(i) to allow a hospital that has zero residents for the cost reporting period ending during the calendar year 1996 to receive an adjustment. This change would be effective for discharges occurring on or after October 1, 1999, for purposes of the IME adjustment and for cost reporting periods beginning on or after October 1, 1999, for purposes of direct GME.

In addition, we are proposing to make a change in § 413.86(g)(6)(ii) to make the language similar to that in § 413.86(g)(6)(i) to specify that hospitals that did have residents in the cost reporting period ending on or before December 31, 1996, are allowed adjustments to the cap for new programs begun on or after January 1, 1995, and on or before August 5, 1997. Currently, § 413.86(g)(6)(ii) refers to a hospital that did have residents in its most recent cost reporting period ending on or before January 1, 1995. The regulation states that these hospitals also may qualify for an adjustment to the caps, but only for medical residency programs created on or after January 1, 1995, and on or before August 5, 1997. Since we are proposing to revise § 413.86(g)(6)(i) to indicate that a hospital may qualify for an adjustment to the cap under that paragraph if it did not have residents in the cost reporting period ending during calendar year 1996, we are proposing to make a similar change in § 413.86(g)(6)(ii) to indicate that this paragraph provides for an adjustment to the cap for hospitals that did have residents in its most recent reporting period ending on or before December 31, 1996. We are proposing this revision to make the language of these two paragraphs consistent. Hospitals may qualify either under § 413.86(g)(6)(i) or § 413.86(g)(6)(ii). For hospitals that qualify under § 413.86(g)(6)(i), the FTE caps are established 3 years after the hospital either begins or restarts participation in residency training for programs that began on or after January 1, 1995. However, for hospitals that qualify under § 413.86(g)(6)(ii), adjustments to the cap are limited to those programs that began on or after January 1, 1995 and on or before August 5, 1997.

e. We are proposing to make technical changes to §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii), which refer to whether a hospital had residents in its most recent cost reporting period on or before December 31, 1996. Instead of simply specifying "residents," we are proposing to reference "allopathic and osteopathic residents," because the FTE cap applies only to allopathic and osteopathy residents. There is no FTE cap on the number of podiatry and dentistry residents. Therefore, we are proposing to add the words "allopathic and osteopathic" in §§ 413.86(g)(6)(i) and 413.86(g)(6)(ii) before the word "resident".

4. Adjustment to GME Caps for Certain Hospitals To Account for Residents in New Medical Residency Training Programs

Section 4623 of the BBA amended section 1886(h) of the Act to provide for "special rules" in applying FTE caps for medical residency training programs established on or after January 1, 1995. In the August 29, 1997 and May 12, 1998 final rules (62 FR 46002 and 63 FR 26327), we implemented special rules to account for residents in new medical residency training programs. We are proposing to implement another special rule to permit an adjustment to the FTE cap for a hospital if the entire facility was under construction prior to August 5, 1997 (the date of enactment of the BBA) and if the hospital sponsored a new medical residency training program but the residents temporarily trained at another hospital.

Under current policies, if a new medical residency training was established on or after January 1, 1995, a hospital may receive an adjustment to its FTE cap to account for residents in the new program. If the residents in the new program begin training in one hospital and are subsequently "transferred" to another hospital, the second hospital does *not* receive an adjustment to its FTE cap; if we made an adjustment for the second hospital, then two hospitals would receive an adjustment for the same resident.

We believe, however, that an adjustment for the second hospital might be appropriate in certain limited circumstances. If the second hospital sponsored a new medical residency training program but the residents in the new program temporarily trained at the first hospital because the second hospital was still being built, then we believe it might be appropriate to permit an adjustment for the second hospital. Otherwise, the second hospital's FTE cap would be zero, and the hospital would not receive any GME or IME payments.

We are proposing to permit an adjustment under this policy only if the second hospital (the sponsor of the new program) began construction of its entire facility prior to the date of enactment of the BBA. Prior to August 5, 1997, a hospital would not have had knowledge of the provisions of the BBA and thus would not have known that a decision to temporarily train residents at another hospital might have resulted in the hospital being unable to receive GME and IME payments in the future. In contrast, a hospital that began construction of an entirely new facility on or after August 5, 1997 would have had notice of changes in the law prior to making a decision to temporarily train residents at another hospital.

Thus, we are proposing to add a new § 413.86(g)(7) (existing § 413.86(g)(7) would be redesignated as § 413.86(g)(9)) to address application of the FTE caps with regard to a hospital that began construction of an entire facility prior to August 5, 1997, sponsored medical residency training programs, and temporarily trained those residents at another hospital(s) until the new facility was completed. For hospitals that meet these criteria, we propose that the FTE caps will be determined in a manner similar to those hospitals that qualify for an adjustment to the FTE cap under § 413.86(g)(6)(i). That is, the hospital's cap would equal the lesser of (a) the product of the highest number of

residents in any program year during the third year of the first program's existence for all new residency training programs at either the newly constructed facility or the temporary training site and the number of years in which residents are expected to complete the programs based on the minimum accredited length for each type of program; or (b) the number of accredited slots available for each year of the program. If the medical residency training programs sponsored by the newly constructed hospital have been in existence for 3 years or more by the time the residents begin training at the newly constructed hospital, the newly constructed hospital's cap would be the number of residents training in the third year of the first of those programs begun at the a temporary training site. If the medical residency training programs sponsored by the newly constructed hospital have been in existence for less than 3 years when the residents begin training at the newly constructed hospital, the hospital's cap would be based on the number of residents training at the newly constructed hospital in the third year of the first of those programs (including the years at the temporary training site). This provision would be effective for portions of cost reporting periods occurring on or after October 1, 1999.

5. Temporary Adjustments to FTE Cap To Reflect Residents Affected by Hospital Closure

In the May 12, 1998 prospective payment system final rule (63 FR 26330), we indicated that we would allow a temporary adjustment to a hospital's resident cap under limited circumstances and if certain criteria are met when a hospital assumes the training of additional residents because of another hospital's closure. The temporary adjustment to the FTE cap is available to the hospital only for the period of time necessary to train those displaced residents. Once the residents leave the hospital or complete their programs, the hospital cap would be based solely on the statutory base year (with any applicable adjustments for new medical residency training programs or affiliated group arrangements).

Under current policies, we permit a temporary adjustment to the FTE cap for a hospital only if it assumed additional medical residents from a hospital that closed in the July 1996–June 1997 residency training year. We are proposing to allow adjustments to address hospital closures after this period. Thus, we would allow an adjustment for a hospital if it takes on additional residents from a hospital that closes at any time on or after July 1, 1996. This adjustment is intended to account for residents who may have partially completed a medical residency training program and would be unable to complete their training without a residency position at another hospital.

We are proposing this change because hospitals have indicated a reluctance to accept additional residents from a closed hospital without a temporary adjustment to their caps. Therefore, we are proposing to add a new § 413.86(g)(8) to allow a temporary adjustment to a hospital's FTE cap to reflect residents added because of a hospital's closure at any time on or after July 1, 1996. We would allow an adjustment to a hospital's FTE cap if the hospital meets the following criteria: (a) the hospital is training additional residents from a hospital that closed on or after July 1, 1996; and (b) the hospital that is training the additional residents who are assumed from the closed hospital submits a request to its fiscal intermediary at least 60 days before the beginning of training of the residents for a temporary adjustment to its FTE cap, documents that the hospital is eligible for this temporary adjustment to its FTE cap by identifying the residents who have come from the closed hospital and have caused the hospital to exceed its cap, and specifies the length of time that the adjustment is needed. After the displaced residents leave the hospital's training program or complete their residency program, the hospital's cap would be based solely on the statutory base year (with any applicable adjustments for new medical residency training programs or affiliated group arrangements).

6. Determining the Weighted Number of FTE Residents

Section 413.86(g)(1)(ii) states that for residency programs in osteopathy, dentistry, and podiatry, the minimum requirement for certification in a specialty or subspecialty is the minimum number of years of formal training necessary to satisfy the requirements of the appropriate approving body listed in § 415.200(a). This reference is incorrect. The correct section in which approving bodies for residency programs are listed is § 415.152. We propose to make this correction.

Section 413.86(g)(1)(i) specifies that the initial residency period is the minimum number of years of formal training necessary to satisfy board eligibility in the particular specialty for which the resident is training, as specified in the 1985–1986 Directory of Residency Training Programs. Section 1886(h)(5)(G)(iii) of the Act allows the Secretary to increase or decrease the initial residency period if the minimum number of years of formal training specified in a later edition of the directory is different from the period specified in the 1985–1986 Directory of Residency Training Programs. We are proposing to revise the regulations text to state that the initial residency period is determined using the most recently published edition of the Graduate Medical Education Directory, not the 1985–1986 Directory.

7. Clarification of a Statement in the Preamble of the May 12, 1998 Final Rule Relating to Affiliated Groups

In the May 12, 1998 final rule (63 FR 26341), in the third column of page 26341, in the sentence prior to section "O. Payment to Managed Care Plans for Graduate Medical Education," we stated, "If the combined FTE counts for the individual hospitals that are members of the same affiliated group do not exceed the aggregate cap, we will pay each hospital based on its FTE cap as adjusted per agreements." The phrase "do not exceed" should have read "exceed." Thus, the sentence should have read, "If the combined FTE counts for individual hospitals that are members of the same affiliated group exceed the aggregate cap, we will pay each hospital based on its FTE cap as adjusted per agreements." We regret any confusion that resulted from this misstatement.

V. Proposed Changes to the Prospective Payment System for Capital-Related Costs: Special Exceptions Process

Section 1886(g) of the Act requires the Secretary to pay for hospital capital-related costs "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in an August 30, 1991 final rule (56 FR 43409), in which we established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Generally, during the transition period, inpatient capital-related costs will be paid on a per discharge basis, and the amount of payment depends on the relationship between the hospital-specific rate and the Federal rate during the hospital's base year. A hospital with

a base year hospital-specific rate less than the Federal rate will be paid under the fully prospective payment methodology during the transition period. This method is based on a dynamic blend percentage of the hospital's hospital-specific rate and the applicable Federal rate for each year during the transition period. A hospital with a base period hospital-specific rate greater than the Federal rate will be paid under the hold harmless payment methodology during the transition period. A hospital paid under the hold harmless payment methodology receives the higher of (1) a blended payment of 85 percent of reasonable cost for old capital plus an amount for new capital based on a portion of the Federal rate or (2) a payment based on 100 percent of the adjusted Federal rate. The amount recognized as old capital is generally limited to the allowable Medicare capital-related costs that were in use for patient care as of December 31, 1990. Under limited circumstances, capital-related costs for assets obligated prior to December 31, 1990, but put in use for patient care after December 31, 1990 may also be recognized as old capital if certain conditions are met. These costs are known as obligated capital costs. New capital costs are generally defined as allowable Medicare capital-related costs for assets put in use for patient care after December 31, 1990. Beginning in FY 2001, at the conclusion of the transition period for the capital prospective payment system, capital payments will be based solely on the Federal rate for most hospitals.

In the August 30, 1991 final rule, we also established a capital exceptions policy, which provides for exceptions payments during the transition period (§ 412.348). We also indicated that we would carefully monitor the impact of the capital prospective payment system in order to determine whether some type of permanent exceptions process was necessary and the circumstances under which additional payments would be made.

In the Conference Report that accompanied the Omnibus Budget Reconciliation Act (OBRA) of 1993 (Pub. L. 103–66), Congress addressed obligated capital criteria for hospitals in States with a lengthy certificate of need (CON) process. The language states, "The conferees note that in the proposed rule for fiscal year 1994 changes to the hospital inpatient prospective payment system that was published in the **Federal Register** on May 26, 1993, the Secretary indicated that insufficient information was available to complete a systematic evaluation of the obligated capital criteria for hospitals in states with a lengthy Certificate-of-Need process in time to consider appropriate changes during the fiscal year 1994 rulemaking process. The conferees expect the Secretary to complete the assessment in time for consideration in the fiscal year 1995 rulemaking process and that appropriate changes in payment policy will be made to address the problems of hospitals subject to a lengthy Certificate-of-Need review process or subject to other circumstances which are not fully addressed in the current rules. In addition, the conferees believe the Secretary should evaluate whether current policies provide adequate protection to sole community hospitals and hospitals that serve a disproportionate share of low income patients." (H.R. Conf. Rep. No. 103–66, at 744 (1993)).

In the May 27, 1994 proposed hospital inpatient prospective payment rule (59 FR 27744), we described our analysis of provisions related to obligated capital for hospitals subject to lengthy CON processes and proposed a change to the deadline for putting an asset into use for patient care (§ 412.302(c)(2)(i)(D)). We proposed changing the deadline from "the earlier of" September 30, 1996, or 4 years from the date of CON approval to "the later of" September 30, 1996, or 4 years from the date of CON approval.

In addition, in the May 27, 1994 proposed rule, we noted that the same hospitals that had asked for changes in the obligated capital provisions had also recommended changes to the capital exceptions policy, which would provide exceptions payments after the conclusion of the capital prospective payment transition period. These hospitals had asked that the minimum payment level for urban hospitals with at least 100 beds and a DSH percentage of at least 20.2 percent be guaranteed through the rest of the transition and extended for at least 10 years after the transition. We noted that we had tried to address the concerns of these hospitals in developing the proposed special exceptions process that was discussed in the same proposed rule.

In the September 1, 1994 final rule (59 FR 45376), we adopted the proposed change to the deadline for putting an asset into use in the obligated capital regulations (§ 412.348). We also implemented the capital special exceptions process and adopted qualifying criteria for the classes of eligible hospitals. The classes of eligible hospitals include urban hospitals with a DSH percentage of 20.2 percent and at least 100 beds and sole community hospitals.

Under the special exceptions provision at § 412.348(g), an additional payment may be made for up to 10 years beyond the end of the capital prospective payment system transition period for eligible hospitals that meet (1) a project need requirement, (2) a project size requirement, and (3) in the case of certain urban hospitals, an excess capacity test. In the September 1, 1994 final rule, we described the special exceptions process as "* * * narrowly defined, focusing on a small group of hospitals who found themselves in a disadvantaged position. The target hospitals were those who had an immediate and imperative need to begin major renovations or replacements just after the beginning of the capital prospective payment system. These hospitals would not be eligible for protection under the old capital and obligated capital provisions, and would not have been allowed any time to accrue excess capital prospective payments to fund these projects." (59 FR 45385)

In addition to sole community hospitals and urban hospitals with at least 100 beds that have a DSH percentage of at least 20.2 percent, hospitals eligible for special exceptions include urban hospitals with at least 100 beds that receive at least 30 percent of their revenue from State or local funds for indigent care, and hospitals with a combined inpatient Medicare and Medicaid utilization of at least 70 percent.

To qualify for a special exceptions payment, a hospital must satisfy a project need requirement as described at § 412.348(g)(2) and a project size requirement as described at § 412.348(g)(5). For hospitals in States with CON requirements, the project need requirement is satisfied by obtaining a CON approval. For other hospitals, the project need requirement is satisfied by meeting an age of assets test. The project size requirement is satisfied if the hospital completes the qualifying project between the period beginning on or after its first cost reporting period beginning on or after October 1, 1991, and the end of its last cost reporting period beginning before October 1, 2001, and the project costs are (1) at least $200 million or (2) at least 100 percent of the hospital's operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. The minimum payment level under special exceptions for all qualifying hospitals is 70 percent of allowable capital-related costs. Special exception payments are offset against positive Medicare capital and operating margins.

When we established the special exceptions process, we selected the hospital's cost reporting period beginning before October 1, 2001, as the project completion date in order to limit cost-based exceptions payments to a period of not more than 10 years beyond the end of the transition to the fully Federal capital prospective payment system. Because hospitals are eligible to receive special exceptions payments for up to 10 years from the year in which they complete their project (but for not more than 10 years after September 30, 2001, the end of the capital prospective payment transition), if a project is completed by September 30, 2001, exceptions payments could continue up to September 30, 2011. In addition, we believed that for projects completed after the September 30, 2001, hospitals would have had the opportunity to reserve their prior years' capital prospective payment system payments for financing projects.

In the July 31, 1998 final rule (63 FR 40999), we stated that a few hospitals had expressed concern with the required completion date of October 1, 2001, and other qualifying criteria for the special exceptions payment. Therefore, we solicited certain information from hospitals on major capital construction projects that might qualify for the capital special exceptions payments so we could determine if any changes in the special exceptions criteria or process were necessary.

Four hospitals responded timely with information on their major capital construction projects. The hospitals submitted information about their location, the cost of the project, the date that the certificate of need approval was received, the start date of the project, and the anticipated completion date.

Some hospitals suggested that we change the existing project completion date criterion, that is, the criterion that the qualifying projects must be completed between the hospital's first cost reporting period beginning on or after October 1, 1991, and the end of its last cost reporting period beginning before October 1, 2001. They proposed that, as an alternative, a hospital be eligible for the special exceptions payment if the hospital had received its CON approval for the qualifying project by September 1, 1995, and had spent $750,000 or 10 percent of total project cost by that date, and that the project completion date be changed to December 31, 2005 (which would be well beyond the 10 years we have established for the capital prospective payment system transition). However, other hospitals recommended that we not institute a date by which a hospital must have received its CON approval.

In addition, some hospitals have suggested other ways in which the special exceptions process could be revised. Some of these hospitals expressed concern about the project size requirement and stated that small community-based institutions were unlikely to be able to support debt in the range of $200 million.

We understand that a few hospitals may not meet the DSH percentage requirement of at least 20.2 percent. Some of these hospitals suggested lowering the qualifying percentage to 15 percent. They also suggested changing the payment level for special exceptions from 70 percent to 85 percent and changing the requirement at § 412.348(g)(8)(ii)(B) that special exception payments be offset against positive Medicare operating and capital margins. They suggested limiting the offset provision to capital margins. In addition, some of these hospitals suggested capping special exceptions payments that result from changes to the current special exceptions process at $40 million annually.

While we have no specific proposal at this time to revise the special exceptions process, we specifically invite comments from hospitals and other interested parties on the suggestions and recommendations discussed above. We note that, since the capital special exceptions process is budget neutral, any liberalization of the policy would require a commensurate reduction in the capital rate paid to all hospitals. Even after the end of the capital prospective payment system transition, we will continue to make an adjustment to the capital Federal rate in a budget neutral manner to pay for exceptions, as long as an exceptions policy is in force. Currently, the limited special exceptions policy will allow for exceptions payments through September 30, 2011.

We have little information about the impact of any of the recommended changes, since no hospitals are currently being paid under the special exceptions process. Until FY 2001, the special exceptions provision pays either the same as the regular exceptions process or less for high DSH and sole community hospitals. We will attempt to obtain information on projects that may qualify for special exceptions payments through our fiscal intermediaries during the comment period. However, we are reluctant to place a significant data gathering burden on fiscal intermediaries at this time because of their current workload resulting from the major efforts to make the Medicare computer systems compliant on January 1, 2000. Based on comments that we receive from hospitals and any data received from the fiscal intermediaries, we may address changes to the special exceptions criteria in the final rule, or we may propose changes in the criteria in the FY 2001 hospital inpatient prospective payment system proposed rule.

VI. Proposed Changes for Hospitals and Hospital Units Excluded From the Prospective Payment System

A. Limits on and Adjustments to the Target Amounts for Excluded Hospitals and Units (§§ 413.40(b)(4) and (g))

1. Updated Caps

Section 1886(b)(3) of the Act (as amended by section 4414 of the BBA) establishes caps on the target amounts for certain excluded hospitals and units for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. The caps on the target amounts apply to the following three categories of excluded hospitals: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

A discussion of how the caps on the target amounts were calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46018); the May 12, 1998 final rule (63 FR 26344); and the July 31, 1998 final rule (64 FR 41000). For purposes of calculating the caps, the statute requires us to calculate the 75th percentile of the target amounts for each class of hospital (psychiatric, rehabilitation, or long-term care) for cost reporting periods ending during FY 1996. The resulting amounts are updated by the market basket percentage to the applicable fiscal year.

The current estimate of the market basket increase for excluded hospitals and units for FY 2000 is 2.6 percent. Accordingly, the proposed caps on target amounts for cost reporting periods beginning in FY 2000 are as follows:

- Psychiatric hospitals and units: $11,067
- Rehabilitation hospitals and units: $20,071
- Long-term care hospitals: $39,596

2. New Excluded Hospitals and Units (§ 413.40(f))

a. Updated Caps for New Hospitals and Units. Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals. Under the statutory methodology, for a hospital that is within a class of hospitals specified in the statute and that first

receives payments as a hospital or unit excluded from the prospective payment system on or after October 1, 1997, the amount of payment will be determined as follows. For the first two 12-month cost reporting periods, the amount of payment is the lesser of (1) the operating costs per case, or (2) 110 percent of the national median of target amounts for the same class of hospitals for cost reporting periods ending during FY 1996, updated to the first cost reporting period in which the hospital receives payments and adjusted for differences in area wage levels.

The proposed amounts included in the following table reflect the updated 110 percent of the wage neutral national median target amounts for each class of excluded hospitals and units for cost reporting periods beginning during FY 2000. These figures are updates to the final FY 1999 figures by the estimated market basket increase of 2.6 percent. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	Labor-related share	Nonlabor-related share
Psychiatric	$6,376	$2,536
Rehabilitation	12,537	4,984
Long-Term Care	16,158	6,424

b. Multicampus Excluded Hospitals. Section 1886(b) of the Act, as amended by the BBA, provides for caps on target amounts for certain classes of excluded hospitals, and also provides a statutory payment methodology for new excluded hospitals. A question has arisen regarding the appropriate target amount to be used for an excluded hospital or unit that was part of a multicampus hospital but alters its organizational structure so that it is no longer part of that multicampus hospital. The question was raised by long-term care hospitals that are seeking alternate structures due to the application of the cap on hospital-specific target amounts specified in § 413.40(c)(4)(iii).

In these cases, to determine the appropriate target amount, we must determine whether the excluded hospital or unit established under the organizational restructure is a new provider. Under § 413.40(f)(1), a new excluded hospital or unit is a provider of hospital inpatient services that (1) has operated as the type of hospital or unit for which HCFA granted it approval to participate in the Medicare program, under present or previous ownership (or both), for less than 1 full year; and (2) has provided the type of hospital inpatient services for which HCFA granted it approval to participate for less than 2 full years. For a new children's hospital, a 2-year exemption from the application of the target amount is permitted (§ 413.40(f)(2)(i)). For the first two 12-month cost reporting periods, a new psychiatric or rehabilitation hospital or unit or a long-term care hospital receives the lower of its new inpatient operating cost per case or 110 percent of a national median of target amounts for the class of hospital, updated and adjusted for area wages (§ 413.40(f)(2)(ii)).

If the entity that separated itself from the multicampus hospital provides inpatient services of a different type than it had when it was part of the multicampus hospital so that it qualifies as a different class of excluded hospital or unit (for example, from long-term care to rehabilitation), we would calculate a new target amount per discharge for the newly created hospital or unit. However, if the entity does not operate as a different class of hospital or unit, it does not meet the criteria at § 413.40(f)(1) to qualify as a new provider. Instead, if the entity replaces a hospital or unit that had been excluded from the prospective payment system (for example, the entity had previously been a long-term care hospital before becoming part of the multicampus hospital), the previously established hospital-specific target amount for the hospital prior to becoming part of the multicampus hospital would again be applicable. This is consistent with our current policy for a hospital or unit excluded from the prospective payment system that has periods in which the hospital or unit is not subject to the target amount, as specified at § 413.40(b)(1)(i). The target amount established earlier for the hospital or unit is again applicable despite intervening cost reporting periods during which the hospital or unit was not subject to that target amount due to other provisions of the law or regulations that applied while it was part of the multicampus hospital. In contrast, we propose to revise § 413.40(b)(1)(iii) to specify that if the entity continues to operate as the same class of hospital that is excluded from the prospective payment system, but does not replace a provider that existed prior to being part of a multicampus hospital (for example, a newly created long-term care hospital became part of a multicampus hospital and subsequently separates from the multicampus hospital to operate separately), the base period for calculating a hospital-specific target amount for the newly separated hospital is the first cost reporting period of at least 12 months effective with the revised Medicare certification.

3. Exceptions

The August 29, 1997 final rule with comment period (62 FR 46018) specified that a hospital that has a hospital-specific target amount that is capped at the 75th percentile of target amounts for hospitals in the same class (psychiatric, rehabilitation, or long-term care) would not be granted an adjustment payment (also referred to as an exception payment) based solely on a comparison of its costs or patient mix in its base year to its costs or patient mix in the payment year. Since the hospital's target amount would not be determined based on its own experience in a base year, any comparison of costs or patient mix in its base year to costs or patient mix in the payment year would be irrelevant.

In addition, the July 31, 1998 final rule (63 FR 41001) revised § 413.40(g)(1) to specify, under paragraph (g)(1)(iv), that in the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the amount of the adjustment payment may not exceed the applicable limit amounts for hospitals of the same class.

Similarly, for hospitals and units with a FY 1998 hospital-specific revised target amount established under the rebasing provision at § 413.40(b)(1)(iv), in determining whether the hospital qualifies for an adjustment and the amount of the adjustment, we compare the hospital's operating costs to the average costs and statistics for the cost reporting periods used to determine the FY 1998 revised target amount. Since the rebased FY 1998 target amount is an average of three cost reporting periods, as described in § 413.40(b)(1)(iv), comparisons of costs from the cost year to the FY 1998 cost period would be inaccurate. Therefore, as specified in the August 29, 1997 final rule with comment period (62 FR 46018), a determination of whether the hospital qualifies for an adjustment and the amount of an adjustment is based on a comparison of the hospital's operating costs and its costs used to calculate the FY 1998 rebased target amount.

The conditions that must be met to qualify for an adjustment remain unchanged, as specified in Chapter 30 of the Provider Reimbursement Manual. Making comparisons between the base year and the cost year requires that each particular inpatient service be

compared. For example, to determine whether the hospital qualifies for an adjustment and the amount of an adjustment for increased routine services or an increase in a particular ancillary service, we compare the costs incurred by the hospital in the cost year to the hospital's routine services or ancillary services in the base year. Therefore, for hospitals that have been rebased under the provisions of § 413.40(b)(1)(iv) and qualify for an adjustment under the provisions of § 413.40(g), the base year figures used for costs, utilization, length-of-stay, etc., are determined based on the average of the costs and utilization statistics from the same 3 cost reporting years used in calculating the FY 1998 rebased target amount. While we recognize that additional calculations are necessary to prepare an adjustment payment request in this manner, we believe it is the most equitable means of determining an adjustment payment. We also point out that the averaging calculation for the various cost centers and utilization statistics must only be performed the first year a provider requests an adjustment after FY 1998, and thereafter those averaged calculations may be utilized for subsequent years' adjustment requests.

Therefore, once these averages are calculated, the same values will be used for determining the amount of any subsequent year adjustments.

We propose to revise § 413.40(g)(1) to clarify these limitations on the adjustment payments.

4. Development of Case-Mix Adjusted Prospective Payment System for Rehabilitation Hospitals and Units

Section 4421 of the BBA added a new section 1886(j) to the Act which mandates the phase-in of a case-mix adjusted prospective payment system for inpatient rehabilitation services (freestanding hospitals and units) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002. The prospective payment system will be fully implemented for cost reporting periods beginning on or after October 1, 2002.

As provided in section 1886(j)(3)(A) of the Act, the prospective payment rates will be based on the inpatient operating and capital costs of rehabilitation facilities. Payments will be adjusted for case-mix using patient classification groups, area wages, inflation, and outlier and any other factors the Secretary determines necessary. We will set prospective payment amounts so that total payments under the system during FY 2001 and FY 2002 are projected to equal 98 percent of the amount of payments that would have been made under the current payment system. Outlier payments in a fiscal year may not be projected or estimated to exceed 5 percent of the total payments based on the rates for that fiscal year.

B. Changes in Bed Size or Status of Hospital Units Excluded Under the Prospective Payment System

Existing regulations (§§ 412.25(b) and (c)) specify that, for purposes of payment to a psychiatric or rehabilitation unit that is excluded from the prospective payment system, changes in the bed size or the status of excluded hospital units will be recognized only at the beginning of a cost reporting period. These regulations have been in effect since the inception of the inpatient hospital prospective payment system and were intended to simplify administration of the exclusion provisions of the prospective payment systems by establishing clear rules for the timing of changes in these excluded units.

Recently, a number of hospitals have suggested that we consider a change in our policy to recognize, for purposes of exclusion from the prospective payment system, reductions in number of beds in, or entire closure of, units at any time during a cost reporting period. They indicated that the bed capacity made available as a result of these changes could be used, as they need them, to provide additional services to meet patient needs in the acute care part of the hospital that is paid under the prospective payment system.

We have evaluated the concerns of the hospitals and the effect on the administration of the Medicare program and the health care of beneficiaries of making these payment changes. As a result of this evaluation, we believe it is reasonable to adopt a more flexible policy on recognition of hospitals' changes in the use of their facilities. However, we note that whenever a hospital establishes an excluded unit within the hospital, our Medicare fiscal intermediary must be able to determine costs of the unit separately from costs of the part of the hospital paid under the prospective payment system. The proper determination of costs ensures that the hospital is paid the correct amount for services in each part of the facility, and that payments under the prospective payment system do not duplicate payments made under the rules applicable to excluded hospitals and units, or vice versa. For this reason, we do not believe it would be appropriate to recognize, for purposes of exclusion from the prospective payment system, changes in the bed size or status of an excluded unit that are so frequent that they interfere with the ability of the intermediary to accurately determine costs.

Moreover, section 1886(d)(1)(B) of the Act authorizes exclusion from the prospective payment system of specific types of hospitals and units, but not of specific admissions or stays, such as admissions for rehabilitation or psychiatric care, in a hospital paid under the prospective payment system. Without limits on the frequency of changes in excluded units for purposes of proper Medicare payment, there is the potential for some hospitals to adjust the status or size of their excluded units so frequently that the units would no longer be distinct entities and the exclusion would effectively apply only to certain types of care.

To provide more flexibility to hospitals while not recognizing changes that undermine statutory requirements and principles, we propose to revise §§ 412.25(b) and (c) to provide that, for purposes of exclusion from the prospective payment system, the number of beds and square footage of an excluded unit may be decreased, or an excluded unit may be closed in its entirety, at any time during a cost reporting period under certain conditions. The hospital would be required to give the fiscal intermediary and the HCFA Regional Office a 30-day advance written notice of the intended change and to maintain all information needed to accurately determine costs attributable to the excluded unit and proper payments. However, any unit that is closed during a cost reporting period could not be paid again as a unit excluded from the prospective payment system until the start of the next cost reporting period. If the number of beds or square footage of a unit excluded from the prospective payment system is decreased during a cost reporting period, that decrease would remain in effect for the remainder of that period.

We note that the number of beds and square footage of the part of the hospital paid under the prospective payment system may also be affected by a change in the size or status of a unit that is excluded from the prospective payment system. If the bed capacity and square footage were previously part of the excluded unit and are then included in the part of the hospital paid under the prospective payment system and are used to treat acute patients rather than excluded unit patients, the additional bed capacity and square footage would, starting with the effective date of the change, be counted as part of the

hospital paid under the prospective payment system. We would count the bed capacity and square footage for purposes of calculating available bed-days and the number of beds under §§ 412.105 and 412.106, relating to payments for the indirect costs of GME and service to a disproportionate share of low-income patients. On the other hand, if the bed capacity and square footage are taken out of service or added to another Medicare provider, such as a distinct-part SNF, they would not be counted as part of the hospital paid under the prospective payment system.

C. Payment for Services Furnished at Satellite Hospital Locations

Under Medicare, each hospital is treated, for purposes of certification, coverage, and payment, as a single institution. That is, each entity that is approved to participate in Medicare as a "hospital" must separately comply with applicable health and safety requirements as a condition of participation under regulations at Part 482, with provider agreement requirements specified in regulations at Part 489, and with requirements relating to the scope of benefits under Medicare Part A and B specified in parts 409 and 410. Our policies that involve the movement of patients from one hospital to another, or from outpatient to inpatient status at a same hospital, are premised on the assumption that each hospital is organized and operated as a separate institution.

Section 412.22(e) of the regulations permits an entity that is located in the same building or in separate buildings on the same campus as another hospital to be treated, for purposes of exclusion under the prospective payment systems, as a "hospital within a hospital." This status is available, however, only when the entity meets specific, stringent criteria designed to ensure that the hospital-within-a-hospital is organized as a separate entity and operates as a separate entity.

Recently, we have received several requests for approval of "satellite" arrangements, under which an existing hospital that is excluded under the prospective payment system, and that is either a freestanding hospital or a hospital-within-a-hospital under § 412.22(e), wishes to lease space in a building or on a campus occupied by another hospital, and, in some cases, to have most or all services to patients furnished by the other hospital under contractual agreements, including arrangements permitted under section 1861(w)(1) of the Act. In most cases, a hospital intends to have several of these satellite locations so that the hospital would not exist at any single location, but only as an aggregation of beds located at several sites. Generally, the excluded hospital seeks to have the satellite facility treated as if the satellite facility were "part of" the excluded hospital.

The fundamental problem with satellite arrangements is that the satellite facility might be "part of" the excluded hospital only on a nominal basis (that is, only on paper). The satellite facility might not operate as part of the excluded hospital, but instead might effectively be a "part of" the hospital within which it is located, or might effectively be its own separate entity. From a payment perspective, if the satellite facility is effectively *not* part of the excluded hospital, then Medicare would make inappropriately high payments if Medicare treats the satellite facility as part of the excluded hospital.

Perhaps most significantly, if Medicare treated the satellite facility as part of the excluded hospital, the services in the satellite facility might inappropriately be paid by Medicare on the basis of reasonable costs (subject to limits) when they should be paid on the basis of prospective payment. If the satellite facility operates as "part of" the prospective payment system hospital in which it is located, and not as part of the excluded hospital with which it is affiliated, then the considerations underlying exclusion from the prospective payment system do not apply to the services furnished in satellite facilities. Thus, if the satellite facility is effectively part of the prospective payment system hospital, then the services should be paid under the prospective payment system.

Satellite arrangements can lead to inappropriate Medicare payments in a number of ways. For example, an excluded long-term care hospital might set up a satellite facility within an acute care hospital paid under the prospective payment system. Such a configuration could make it relatively easy for the prospective payment hospital to discharge a patient prematurely to the excluded long-term care hospital satellite location that is in its building or on its campus. The result could be inappropriate duplication of payment, in that the prospective payment system hospital would receive full payment under the DRG system even if it did not complete the acute treatment of the patient, and the hospital excluded under the prospective payment systems would receive payment for some services that should have been furnished in the prospective payment system hospital and paid under the prospective payment system. While the discharge and transfer regulations at § 412.4 provide disincentives to these inappropriate transfers in some 10 DRGs, there are many other cases not assigned to these DRGs in which such transfers could occur.

Another potential abuse related to duplication of Medicare payment could occur with respect to the preadmission payment window provisions of section 1886(a)(4) of the Act (implemented under regulations at §§ 412.2(c)(5) and 413.40(c)(2)). Under the regulations, services provided by the hospital or by an entity wholly owned or operated by the hospital within the 3 calendar days before admission to a prospective payment system hospital, or within 1 calendar day before admission to a hospital excluded from the prospective payment system, are treated for payment purposes as if they had been furnished during the inpatient stay. For prospective payment system hospitals, the provision is designed to prevent services historically furnished by hospitals during the early parts of inpatient stays from being "unbundled" and furnished just prior to admission and billed on an outpatient basis. If this situation were to occur, the result would be that outpatient payment under Medicare Part B would be made for services for which Part A payment is provided under the prospective payment system, that is, duplication of payments for outpatient and inpatient services. For hospitals excluded from the prospective payment system, the payment window provision is intended to minimize beneficiary liability for Part B deductible and coinsurance amounts while encouraging use of outpatient facilities rather than inpatient facilities when appropriate.

If excluded hospitals were able to set up satellite facilities within hospitals paid under the prospective payment system and obtain exclusion from the prospective payment system for the satellite facilities, the two hospitals could easily circumvent the preadmission payment window requirements by setting up outpatient departments of both hospitals at each site where both have inpatient facilities, and scheduling patients who are to be admitted to one hospital to receive preadmission care at the outpatient department of the other hospital. Thus, exclusion of satellite facilities could result in payments that are inconsistent with the purpose of the payment window. (We note that this abuse could also occur, at least theoretically, if the satellite facilities were not excluded from the prospective payment system. However, allowing exclusion from the

prospective payment system of satellites increases the likelihood that such arrangements will actually be set up.)

There also is a potential for satellite facilities to be used as a means to avoid the effects of section 4416 of the BBA, which is implemented in regulations at § 413.40(f)(2)(ii). This section limits the target amounts for psychiatric and rehabilitation hospitals and units and long-term care hospitals that are first paid as hospitals excluded from the prospective payment system on or after October 1, 1997, to 110 percent of the national median of the target amounts of similarly classified hospitals. This limitation applies to the hospital's first two 12-month cost reporting periods. Section 413.40(c)(4)(iii), which implements provisions of section 4414 of the BBA, sets the 75th percentile of the target amounts of similarly classified hospitals as a limit on costs for psychiatric and rehabilitation hospitals and units and long-term care hospitals excluded from the prospective payment system before October 1, 1997. If we permitted exclusion of satellite facilities, a hospital chain could set up new locations and avoid the limits applicable to new providers by characterizing the new locations as satellites of existing hospitals. This result would effectively nullify the anticipated budgetary savings of section 4416 of the BBA in such situations.

While many hospitals furnish care to cancer patients, exclusion from the prospective payment system as a cancer hospital is not available to a facility unless it was classified as such on or before December 31, 1991 (section 1886(d)(10)(B)(v) of the act and regulations at § 412.23(f)). The statute effectively prohibits recognition of newly established hospitals as cancer hospitals. If we were to permit satellite locations of excluded hospitals to be set up within prospective payment system hospitals and to be excluded from the prospective payment system, existing cancer hospitals might set up satellite locations in prospective payment hospitals, thus avoiding the prohibition on new cancer hospitals. This practice would be inconsistent with section 1886(d)(10)(B)(v) and its implementing regulations. It also could potentially allow a hospital under the prospective payment system to admit or transfer all high-cost cancer patients to the "cancer hospital satellite" while making a profit on the low-cost cancer patients remaining at the prospective payment system hospital.

Finally, we note that rehabilitation units that are excluded from the prospective payment system are required to have a medical director of rehabilitation who furnishes services to the unit or its patients at least 20 hours per week (§ 412.29(f)(1)). However, this requirement presumably would not apply if the facility is described not as a unit of the hospital in which it is based, but as a satellite of an existing rehabilitation hospital, since that hospital would already have its medical director. The existence of a high level of physician oversight of rehabilitation is a key identifier of the kind of unit that provides inpatient hospital-level rehabilitation care as its primary activity, not merely as an adjunct or extension of acute care. We believe allowing satellites of rehabilitation hospitals to be set up in prospective payment system hospitals and excluded from the prospective payment system would undermine the requirement for that level of physician oversight, and limit our ability to exclude only those units providing the appropriate level of rehabilitation services.

We believe that a number of excluded hospitals are seeking satellite arrangements so that the services furnished in the satellite facility are inappropriately paid on an excluded basis when they should be paid on a prospective basis. We also believe that a number of excluded hospitals are seeking satellite arrangements in order to avoid the effect of the payment caps that apply to new hospitals and would apply to the satellite facility if the satellite facility received separate certification. And, as discussed above, satellite arrangements can lead to other problems. To prevent inappropriate Medicare payment for services furnished in satellite facilities, we propose to revise §§ 412.22 and 412.25 to provide for payment to satellite facilities of hospitals and units that are excluded from the prospective payment system under specific rules. With respect to both hospitals and units, we would define "satellite facility" as a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more buildings on the same campus as buildings also used by another hospital, but is not a "hospital-within-a-hospital," since it is also part of another hospital. If the satellite facility is located in a hospital that is paid under the prospective payment system, Medicare would pay for services furnished at the satellite facility by using the same rates that apply to the prospective payment hospital within which the satellite is located. As explained earlier, we believe that, if the satellite facility is effectively "part of" the prospective payment system hospital, then it should be paid under the prospective payment system.

If the satellite facility is located in a hospital excluded from the prospective payment system, then Medicare would pay for the services furnished in the satellite facility as follows: we would examine the discharges of the satellite facility and we would apply the target amount for the excluded hospital *in which the hospital is located*, subject to the applicable cap for the hospital *of which the satellite is a part*. Also, when the satellite facility is established, we would treat the satellite facility as a new hospital for payment purposes. That is, for the satellite's first two 12-month cost reporting periods, the satellite would be subject to the cap that applies to new hospitals of the same class as the hospital of which the satellite is a part. We believe that application of the cap for new hospitals is appropriate because we believe that a number of hospitals are attempting to avoid the new hospital caps by characterizing entities as satellites rather than new hospitals.

Under our proposal, satellite facilities excluded from the prospective payment system prior to the effective date of the revised regulations (October 1, 1999) would not be subject to those new regulations as long as they operate under the same terms and conditions in effect on September 30, 1999. We would make this exception available only to those facilities that can document to the HCFA regional offices that they are operating as satellite facilities excluded from the prospective payment system as of that date, not to facilities that might be excluded from the prospective payment system as of that date and at some later time enter into satellite arrangements. The proposed rules for payments to satellite facilities would not apply to multicampus arrangements, that is, those in which a hospital has several locations but does not share a building or a campus with any other hospital at any location.

We also solicit comment on a possible further exception. In section 4417 of the BBA, Congress extended the long-term care hospital exclusion to a hospital "that first received payment under this subsection [subsection 1886(d)(1)(B)(iv) of the Act] in 1986 which has an average inpatient length of stay (as determined by the Secretary) of greater than 20 days and that has 80 percent or more of its annual Medicare inpatient discharges with a principal diagnosis of neoplastic disease in the 12-month cost reporting period ending in fiscal year 1997." In view of the specific provision made for a hospital meeting these requirements, we are considering whether a satellite facility opened by such a hospital

should be exempt from the proposed rules on satellites on this preamble. We welcome comment on this issue and on whether such an exclusion could be implemented without compromising the effectiveness of the proposed changes.

We recognize that there may be some operational difficulties differentiating services, costs, and discharges of the satellite facilities from those of the existing hospital that is excluded from the prospective payment system. If these operational problems cannot be overcome, we might, in the final rule, revise §§ 412.22 and 412.25 to prohibit exclusion of any hospital or hospital unit from the prospective payment system that is structured, entirely or in part, as a satellite facility in a hospital paid under the prospective payment system. The effect of this change would be that all Medicare payments to such a hospital or hospital unit with a satellite facility would be made under the prospective payment system.

Before deciding to propose these changes, we considered whether the hospital-within-a-hospital rules in § 412.22(e) provide adequate protection against abuses of the prospective payment system exclusion by satellite facilities. For the reasons described below, we concluded that they do not.

The current hospital-within-a-hospital criteria were issued through proposed rules published in the **Federal Register** on May 27, 1994 (59 FR 27708) and final rules published on September 1, 1994 (59 FR 45330). In those documents, we explained that the DRG system is based on an averaging concept that provides appropriate payment for the type and mix of cases treated by acute care hospitals, but that the averaging concept underlying the DRG system does not apply to long-stay hospitals, which have few short-stay or low-cost cases and might be systematically underpaid if the prospective payment system were applied to them. We explained that it would not be appropriate to make prospective payment system exclusion available to long-stay units of acute hospitals, since those units account for only part of the hospital's patient load and the principles underlying the prospective payment system do apply to the larger hospital. We also stated that the hospital-within-a-hospital criteria, now codified at § 412.22(e), ensure that facilities structured as hospitals-within-hospitals are sufficiently separate from the host hospitals to warrant exclusion from the prospective payment system as separate hospitals.

The considerations that make it inappropriate to exclude long-stay units of general hospitals from the prospective payment system also make it inappropriate, in our view, to allow exclusion from prospective payment system of facilities that treat only a part of the patient load of the larger prospective payment system hospitals in which they are located, but are presented as satellites of another facility. In responding to a comment in the September 1, 1994 final rule, we stated that we believe that the hospital-within-a-hospital criteria should have application in all cases involving joint occupancy of a building or campus by an applicant long-term hospital and another hospital (59 FR 45330). After further review of the issue, however, we have now concluded that while the hospital-within-a-hospital criteria are designed to prevent potential abuses similar to those posed by satellites, the criteria themselves cannot be effectively applied to satellite arrangements. This is because the criteria are designed to apply to hospitals that exist only in one location. For example, under § 412.22(e)(5)(ii), one criterion for showing separate operation of a hospital-within-a-hospital is that the hospital's costs of services obtained under contracts or other arrangements from the host hospital (or from a controlling third entity) be no more than 15 percent of the hospital's total inpatient operating cost. Because a satellite facility would integrate its costs with those of the hospital with which it is affiliated, it is possible that the entire hospital could meet this test even though all costs of the satellite facility were incurred under contracts or arrangements. Likewise, the criterion regarding the source of inpatient referrals (§ 412.22(e)(5)(iii)) could be met by an entire hospital, even though most or all patients treated at a satellite facility were referred from the hospital in which the satellite is located. Thus, existing hospital-within-a-hospital criteria are not adequate to deal with satellite issues.

D. Responsibility for Care of Patients in Hospitals Within Hospitals

Normally, hospitals that admit patients, including hospitals subject to the prospective payment system and "hospitals-within-hospitals" that are excluded from the prospective payment system, accept overall responsibility for the patients' care and furnish all services they require. In accordance with section 1886(d)(5)(I) of the Act and implementing regulations at § 412.4, for payment purposes, the prospective payment system distinguishes between "discharges" (situations in which a patient leaves an acute care hospital paid under the prospective payment system after receiving complete acute care treatment) and "transfers" (situations in which acute care treatment is not completed at the first hospital and the patient is transferred to another acute care hospital for continued, related care). The payment rules at § 413.30, which apply to hospitals excluded from the prospective payment system, also are premised on the assumption that discharges occur only when the excluded hospital's care of the patient is complete.

It has come to our attention that, given the co-location of prospective payment system facilities and facilities excluded from the prospective payment system in a hospital-within-a-hospital, and the absence of clinical constraints on the movement of patients, there may be situations where, in such settings, patients appear to have been moved from one facility to another for financial rather than clinical reasons. The excluded hospital-within-a-hospital might have incentives to inappropriately discharge patients early (to the prospective payment system hospital within which it is located) in order to minimize its overall costs and in turn to minimize its cost per discharge. If the excluded hospital-within-a-hospital inappropriately discharges patients to the prospective payment system hospital without providing a complete episode of the type of care furnished by the excluded hospital, then Medicare would make inappropriate payments to the hospital-within-a-hospital. This is the case because payments made to an excluded hospital are made on a per-stay basis, up to the hospital's per discharge target amount, and any artificial decrease in the hospital's cost per stay could lead to the hospital inappropriately avoiding its target amount cap mandated by section 4414 of the BBA and receiving inappropriate bonus and relief payments under section 4415 of the BBA.

For example, if a long-term care hospital has an average length of stay of 30 days and incurs a cost per patient-day of $1,500, its average cost per stay is $45,000 ($1,500 × 30). If that hospital discharged 20 percent of its patients to a prospective payment system hospital before the 30th day of their stay at the long-term care hospital, the patients might still stay, on average, a total of 30 days at the two hospitals. However, by transferring an increased number of patients early during the period, the long-term care hospital would be able to reduce its cost per discharge.

If the hospital's cap on its target amount is $38,593 and the hospital's cost per discharge is $45,000, then the hospital's payments would be based on

a target amount of $38,593. If, as a result of the inappropriate discharges, the cost per stay is $37,500, Medicare payment to the hospital would be based on a target amount of $37,500, plus an additional amount under the bonus provisions of § 413.40(d)(2). In addition, a separate DRG payment would be made to the prospective payment system hospital that completed the treatment at the satellite location. Thus, Medicare payments for a 30-day period of inpatient care would increase without any additional quality of care or benefit to the patient. The additional payment would merely be a result of artificially decreasing the long-term care hospital's cost per discharge and adding a second payment to the prospective payment system hospital.

We believe it is important to address possible financial incentives for inappropriate early discharges from excluded hospitals-within-hospitals to prospective payment system hospitals. Therefore, we considered several approaches for preventing inappropriate Medicare payments to an excluded hospital-within-a-hospital for inappropriate discharges to the prospective payment system hospital in which it is located. One approach would be to provide that, if an excluded hospital-within-a-hospital transfers patients from its beds to beds of the prospective payment system hospital with which it is located, the hospital-within-a-hospital would not qualify for exclusion in the next cost reporting period. We recognize that this approach might "penalize" hospitals for transfers that are medically appropriate. However, we need to balance (1) our concern with preventing inappropriate Medicare payment and (2) our need to have a rule that is administratively feasible.

A second possible approach would be to provide that the hospital-within-a-hospital would qualify for exclusion only if it transfers patients to the prospective payment system hospital only when the services the patients require cannot be furnished by the hospital-within-a-hospital. This approach has the advantage of specifically targeting inappropriate early discharges, but it has the significant disadvantage of being difficult if not impossible to administer because of the extent of case review that would be required to implement it.

After considering these options, we have decided to propose a third approach. Under this approach, we would deny exclusion to a hospital-within-a-hospital for a cost reporting period if, during the most recent cost reporting period for which information is available, the excluded hospital-within-a-hospital transferred more than 5 percent of its inpatients to the prospective payment system hospital in which it is located. We believe that a 5-percent allowance of transfers under this approach would (1) avoid the need for administratively burdensome case review, (2) provide adequate flexibility for transfers in those cases where the hospital-within-a-hospital is not equipped or staffed to provide the services required by the patient, and (3) limit the extent to which patients may be transferred inappropriately.

We welcome comments on our proposed approach as well as suggestions on other ways to address the possible incentives for inappropriate transfers in a manner that is administratively feasible.

E. Critical Access Hospitals (CAHS)

1. Emergency Response Time Requirements for CAHs in Frontier and Remote Areas

Because of the high cost of staffing rural hospital emergency rooms and the low volume of services in those facilities, we do not require CAHs to have emergency personnel on site at all times. Thus, for CAHs, the regulations at § 485.618(d) require a doctor of medicine or a doctor of osteopathy, a physician assistant, or a nurse practitioner with training and experience in emergency care to be on call and immediately available by telephone or radio contact, and available on site within 30 minutes, on a 24-hour basis. We included this requirement because we recognize the need of rural residents to have reasonable access to emergency care in their local communities.

Section 1820(h) of the Act, as added by section 4201 of the BBA, states that any medical assistance facility (MAF) in Montana shall be deemed to have been certified by the Secretary as a CAH if that facility is otherwise eligible to be designated by the State as a CAH. However, under the current requirements, following the initial transition of a MAF to CAH status, the former MAF would be subject to the CAH requirements during any subsequent review, one of which is the 30-minute emergency response time for emergency services currently required under § 485.518(d).

Recently, some facilities have suggested that in many "frontier" areas (that is, those having fewer than six residents per square mile), the requirement of a 30-minute response might be too restrictive for CAHs, especially those MAFs transitioning to CAH status.

We are aware it is costly and difficult to recruit and train the personnel needed to operate emergency rooms in the most remote, sparsely populated rural areas. On the other hand, in contemplating any changes to the emergency response timeframe for CAHs, we must ensure that the response time is not extended to the point that patient health and safety are jeopardized.

In order to recognize the special needs of sparsely populated rural areas in meeting beneficiaries' health needs, and at the same time to protect patients' health and safety, we are proposing to revise § 485.618(d) to allow a response time of up to 60 minutes for a CAH if (1) it is located in an area of the State that is defined as a frontier area (that is, having fewer than six residents per square mile based on the latest population data published by the Bureau of the Census) or meets other criteria for a remote location adopted by the State and approved by HCFA under criteria specified in its rural health care plan under section 1820(b) of the Act; (2) the State determines that, under its rural health care plan, allowing the longer emergency response time is the only feasible method of providing emergency care to residents of the area; and (3) the State maintains documentation showing that a response time up to 60 minutes at a particular CAH it designates is justified because other available alternatives would increase the time required to stabilize the patient in an emergency. The criteria for remote location would, like other parts of the rural health care plan, be subject to review and approval by the HCFA Regional Office, as would the State's documentation regarding the emergency response time.

We note that, under the terms of the Montana State Code applicable to MAFs, at times when no emergency response person is available to come to the facility, a MAF's director of nursing is permitted to come to the facility and authorize the transfer of a patient seeking emergency services to another facility. Under one possible reading of the State requirement, this activity could be seen as an alternative way of complying with the emergency services requirement and the MAF's (and CAH's) responsibilities under section 1867 of the Act (the Emergency Medical Treatment and Active Labor Amendments Provision) to provide emergency medical screening and stabilization services to patients who come to the hospital seeking emergency treatment. We request comments on

whether the Medicare regulations in §§ 485.618(d) and 489.24 should be further revised to explicitly permit this practice to continue following the transition of a MAF to CAH status. We are particularly interested in obtaining comment from practitioners on the risks and benefits involved in adoption of this practice.

2. Compliance With Minimum Data Set (MDS) Requirements by CAHs With Swing-Bed Approval

Existing regulations allow CAHs to obtain approval from HCFA to use their inpatient beds to provide posthospital SNF care (§ 485.645). To obtain such approval, however, the CAH must agree to meet specific requirements that also apply to SNFs, including the comprehensive assessment requirements at § 483.20(b) of the SNF conditions of participation.

Section 483.20(b)(1) specifies that a SNF must make a comprehensive assessment of a resident's needs, using the resident assessment instrument specified by the State. Section 483.20(b)(2) further specifies that, subject to the timeframes in § 413.343(b), the assessments must be conducted within 14 calendar days after the patient is admitted; within 14 days after the facility determines, or should have determined, that there is a significant change in the patient's physical or mental condition; and at least once every 12 months. Section 413.343(b) specifies that in accordance with the methodology in § 413.337(c) related to the adjustment of the Federal rates for case-mix (the SNF prospective payment system), patient assessments must be performed on the 5th, 14th, 30th, 60th, and 90th days following admission.

It is clear that the timeframes for patient assessments required under § 413.343(b) are linked to the prospective payment system for SNFs. The methodology specifically referenced in § 413.337(c) refers to the SNF prospective payment system. Therefore, it is apparent that the patient assessments and concomitant timeframes for performing such assessments are inextricably intertwined with the case-mix adjustment under the SNF prospective payment system. CAHs with swing-bed approval are not paid for their services to SNF-level patients under that SNF prospective payment system but are paid under the payment method described in § 413.114, which does not include a case-mix adjustment. Therefore, the timeframes for patient assessments as dictated by § 413.343(b) are not applicable to CAHs and are not required to be met by CAHs. Nevertheless, to make it explicit that the patient assessment timeframes required under § 413.343(b) do not apply, we propose to revise § 485.645 to state that the requirements in § 413.343(b), and the timeframes specified in § 483.20, do not apply to CAHs.

VII. MedPAC Recommendations

We have reviewed the March 1, 1999 report submitted by MedPAC to Congress and have given its recommendations careful consideration in conjunction with the proposals set forth in this document. Recommendations 3A and 3B concerning the update factors for inpatient hospital operating costs and for hospitals and hospital distinct-part units excluded from the prospective payment system are discussed in Appendix D to this proposed rule. Other recommendations are discussed below.

A. Excluded Hospitals and Hospital Units (Recommendations 4B and 4C)

Recommendation: The Congress should adjust the wage-related portion of the excluded hospital target amount caps (the 75th percentile of target amounts for hospitals in the same class (psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospitals)) to account for geographic differences in labor costs. The Commission presumes legislation would be necessary to adjust the caps for wages.

Response: We previously addressed this issue in the May 12, 1998 final rule (63 FR 26345). In that discussion, we explain why we believe the statutory language, the statutory scheme, and the legislative history, viewed together, strongly argue against making a wage adjustment in applying the target amount caps under the current statute.

Recommendation: Additional research in case-mix classification systems for psychiatric patients should be encouraged, with the aim of developing a case-mix adjusted prospective payment system for psychiatric patients in the future.

Response: As MedPAC indicated in its recommendation discussion, prior research has indicated substantial difficulties in developing a psychiatric case-mix classification system. Another issue is the adequate identification of a system that reflects the unique characteristics of psychiatric care for the Medicare population, primarily the elderly. During the past year, we have met with industry representatives to discuss further research efforts on this issue as well as understand the initial impacts of the recent legislative changes to excluded hospital payment system on psychiatric hospitals and units. We will continue these efforts in FY 2000.

B. Disproportionate Share Hospitals (DSH) (Recommendations 3C, 3D, and 3E)

Recommendations: The Congress should require that disproportionate share payments be distributed according to each hospital's share of low-income patient costs, defined broadly to include all care to the poor. The measure of low-income costs should reflect: (1) Medicare patients eligible for Supplemental Security Income, Medicaid patients, patients sponsored by other indigent care programs, and uninsured and underinsured patients as represented by uncompensated care (both charity and bad debts); and (2) services provided in both inpatient and outpatient settings.

As under current policy, disproportionate share payment should be made in the form of an adjustment to the per-case payment rate. In this way, the total payment each hospital receives will reflect its volume of Medicare patients.

Through a minimum threshold for low-income share, the formula for distributing disproportionate share payments should concentrate payments among hospitals with the highest shares of poor patients. A reasonable range for this threshold would be levels that make between 50 percent and 60 percent of hospitals eligible for a payment. The size of the payment adjustment, however, should increase gradually from zero at the threshold. The same distribution formula should apply to all hospitals covered by prospective payment.

The Secretary should collect the data necessary to revise the disproportionate share payment system from all hospitals paid under prospective payment system.

Response: We continue to give careful consideration to MedPAC's recommendations concerning the DSH adjustment made to operating payments under the prospective payment system.

We are in the process of preparing a report to Congress on the Medicare DSH adjustment that includes several options for amending the statutory disproportionate share adjustment formula. We believe that any adjustment to the DSH formula or data sources should be directed and supported by the Congress.

The MedPAC option involves collecting data on uncompensated care, that is, charity and bad debts. Ideally, this would be a direct measure of a hospital's indigent care burden. However, there are problems associated with verification of such data and

consistency of reporting nationally. We appreciate the Commission's recommendations about and assistance with the Medicare DSH adjustment as we formulate our legislative proposal and await Congressional action.

VIII. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have set up a process under which commenters can gain access to the raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at HTTP://WWW.HCFA.GOV/STATS/PUBFILES.HTML. Data files are listed below with the cost of each. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to HCFA-PUF) to cover the cost to the following address: Health Care Financing Administration, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MEDPAR-Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.) The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11 million records. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 1998 MedPAR file used for the FY 2000 final rule will be cutoff 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge
File Cost: $3,655.00 per fiscal year
Periods Available: FY 1988 through FY 1998

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of HCFA Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 1998 MedPAR file used for the FY 2000 final rule will be cutoff 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge
File Cost: $1,130.00 per State per year
Periods Available: FY 1988 through FY 1998

3. HCFA Wage Data

This file contains the hospital hours and salaries for 1996 used to create the proposed FY 2000 prospective payment system wage index. The file will be available by the beginning of February for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
1999	1996	2000
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/most recent year on the Internet
File Cost: $165.00 per year
Periods Available: FY 2000 PPS Update

4. HCFA Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/most recent year on the Internet
File Cost: $165.00 per year
Periods Available: FY 2000 PPS Update

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA)

Media: Diskette/Internet
File Cost: $165.00 per year
Periods Available: FY 2000 PPS Update

6. Reclassified Hospitals New Wage Index (Formerly: Reclassified Hospitals by Provider Only)

This file contains a list of hospitals that were reclassified for the purpose of assigning a new wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00 per year
Periods Available: FY 2000 PPS Update

7. PPS–IV to PPS–XII Minimum Data Sets

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted,

final settled, or reopened) submitted for a Medicare participating hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS–IV	10/01/86	10/01/87
PPS–V	10/01/87	10/01/88
PPS–VI	10/01/88	10/01/89
PPS–VII	10/01/89	10/01/90
PPS–VIII	10/01/90	10/01/91
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(Note: The PPS–XIII and PPS–XIV Minimum Data Sets are part of the PPS–XIII and PPS–XIV Hospital Data Set Files.)

File Cost: $770.00 per year

8. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to HCFA. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

MEDIA: TAPE/CARTRIDGE

	Periods beginning on or after	and before
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(Note: The PPS–XIII and PPS–XIV Capital Data Sets are part of the PPS–XIII and PPS–XIV Hospital Data Set Files.)

File Cost: $770.00 per year

9. PPS–XIII and PPS–XIV Hospital Data Set

The file contains cost, statistical, financial, and other data from the Medicare Hospital Cost Report. The data set includes only the most current cost (as submitted, final settled, or reopened) submitted for a Medicare Certified Hospital by the Medicare Fiscal Intermediary to HCFA. The data set are updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Diskette/Internet
File Cost: $2,500.00

	Periods beginning on or after	and before
PPS–XIII	10/01/95	10/01/96
PPS–XIV	10/01/96	10/01/97

10. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet
File Cost: $265.00
Periods Available: FY 2000 PPS Update

11. HCFA Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/most recent year on Internet
Price: $165.00 per year/per file
Periods Available: FY 1985 through FY 1998

12. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hardcopy image has been copied to diskette. There are two versions of this file as published in the **Federal Register:**

- NPRM.
- Final rule.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2000 PPS Update

13. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2000 PPS Update

14. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/Internet
File Cost: $165.00
Periods Available: FY 2000 PPS Update

For further information concerning these data tapes, contact The HCFA Public Use Files Hotline at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4531.

B. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the **DATES** section of this preamble and respond to those comments in the preamble to that rule. We emphasize that, given the statutory requirement under section 1886(e)(5) of the Act that our final rule for FY 2000 be published by August 1, 1999, we will consider only those

comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 483

Grant programs-health, Health facilities, Health professions, Health records, Medicaid, Medicare, Nursing homes, Nutrition, Reporting and recordkeeping requirements, Safety.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Chapter IV is amended as set forth below:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

A. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 412.22 is amended by adding new paragraphs (e)(6) and (h) to read as follows:

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(e) *Hospitals-within-hospitals.* * * *

(6) *Responsibility for care of patients.* During the most recent cost reporting period for which information is available, the hospital transferred no more than 5 percent of its inpatients to the prospective payment system hospital within which it is located.

* * * * *

(h) *Satellite facilities.* (1) For purposes of paragraphs (h)(2) through (h)(5) of this section, a satellite facility is a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.

(2) Effective for cost reporting periods beginning on or after October 1, 1999, payment for services furnished in satellite facilities of hospitals excluded from the prospective payment systems is made in accordance with the rules specified in paragraphs (h)(3) and (h)(4) of this section.

(3) If the satellite facility occupies space in the same building or on the same campus as a hospital paid under the prospective payment system, payment for services furnished at the satellite facility is based on the same rates that apply to the prospective payment system hospital within which the satellite is located.

(4) If the satellite facility occupies space in the same building or on the same campus as a hospital excluded from the prospective payment systems, payment for services furnished at the satellite facility is made as follows:

(i) For the first two 12-month cost reporting periods during which the satellite facility treats patients, payment for services furnished at the satellite facility is made in accordance with the provisions of § 413.40(f)(2) of this subchapter.

(ii) For subsequent cost reporting periods, payment for services furnished at the satellite facility is made based on the target amount of the excluded hospital in which the satellite is located, but is subject to the cap at the hospital of which the satellite is a part.

(5) The provisions of paragraphs (h)(2) through (h)(4) of this section do not apply to any hospital or entity structured as a satellite facility on September 30, 1999, and excluded from the prospective payment systems on that date, to the extent the hospital continues operating under the same terms and conditions, including the number of beds and square footage considered, for purposes of Medicare participation and payment, to be part of the hospital, in effect on September 30, 1999.

3. Section 412.25 is amended by revising paragraphs (b) and (c) and adding a new paragraph (e) to read as follows:

§ 412.25 Excluded hospital units: common requirements.

* * * * *

(b) *Changes in the size of excluded units.* For purposes of exclusions from the prospective payment systems under this section, changes in the number of beds and square footage considered to be part of each excluded unit are allowed as specified in paragraphs (b)(1) and (b)(2) of this section.

(1) *Increase in size.* The number of beds and square footage of an excluded unit may be increased only at the start of a cost reporting period.

(2) *Decrease in size.* The number of beds and square footage of an excluded unit may be decreased at any time during a cost reporting period if the hospital notifies the fiscal intermediary and the HCFA Regional Office in writing of the planned decrease at least 30 days before the date of the decrease, and maintains the information needed to accurately determine costs that are attributable to the excluded unit. Any decrease in the number of beds or square footage considered to be part of an excluded unit made during a cost reporting period continues in effect for the remainder of that period.

(c) *Changes in the status of hospital units.* For purposes of exclusions from the prospective payment systems under this section, the status of each hospital unit (excluded or not excluded) is determined as specified in paragraphs (c)(1) and (c)(2) of this section.

(1) The status of a hospital unit may be changed from not excluded to excluded only at the start of a cost reporting period. If a unit is added to a hospital after the start of a cost reporting period, it cannot be excluded from the prospective payment systems before the start of a hospital's next cost reporting period.

(2) The status of a hospital unit may be changed from excluded to not excluded at any time during a cost reporting period, but only if the hospital notifies the fiscal intermediary and the HCFA Regional Office in writing of the change at least 30 days before the date of the change, and maintains the information needed to accurately determine costs that are or are not attributable to the excluded unit. A change in the status of a unit from excluded to not excluded that is made during a cost reporting period continues in effect for the remainder of that period.

* * * * *

(e) *Satellite facilities.* (1) For purposes of paragraphs (e)(2) through (e)(5) of this section, a satellite facility is a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital.

(2) Effective for cost reporting periods beginning on or after October 1, 1999, payment for services furnished in psychiatric or rehabilitation units that are structured, entirely or in part, as satellite facilities are made in accordance with the rules specified in paragraphs (e)(3) and (e)(4) of this section.

(3) If the satellite facility occupies space in the same building or on the same campus as a hospital paid under the prospective payment systems,

payment for services furnished at the satellite facility is based on same rates that apply to the prospective payment system hospital within which the satellite is located.

(4) If the satellite facility occupies space in the same building or on the same campus as a hospital excluded from the prospective payment systems, payment for services furnished at the satellite facility is made as follows:

(i) For the first two 12-month cost reporting periods during which the satellite facility treats patients, payment for services furnished at the satellite facility is made in accordance with the provisions of § 413.40(f)(2) of this subchapter.

(ii) For subsequent cost reporting periods, payment for services furnished at the satellite facility is made based on the target amount of the excluded hospital in which the satellite is located, but is subject to the cap of the hospital of which the satellite is a part.

(5) The provisions of paragraph (e)(2) through (e)(4) of this section do not apply to any unit structured as a satellite facility on September 30, 1999, and excluded from the prospective payment systems on that date, to the extent the unit continues operating under the same terms and conditions, including the number of beds and square footage considered to be part of the unit, in effect on September 30, 1999.

§ 412.105 [Amended]

4. Section 412.105 is amended by revising the cross reference "paragraph (g)(1)(ii) of this section" in paragraphs (f)(1)(iii) (three times) and (f)(2)(v) to read "paragraph (f)(1)(ii) of this section".

§ 412.256 [Amended]

5. In § 412.256, paragraph (c)(2), the date "October 1", appearing in two places, is revised to read "September 1".

6. Section 412.276 is amended by revising paragraph (a) to read as follows:

§ 412.276 Timing of MGCRB decision and its appeal.

(a) *Timing.* The MGCRB notifies the parties in writing, with a copy to HCFA, and issues a decision within 180 days after the first day of the 13-month period preceding the Federal fiscal year for which a hospital has filed a complete application. The hospital has 15 days from the date of the decision to request Administrator review.

* * * * *

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

B. Part 413 is amended as follows:

1. The authority citation for Part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.40 is amended by revising paragraphs (b)(1)(iii) and (g)(1) to read as follows:

§ 413.40 Ceiling on the rate-of-increase in hospital inpatient costs.

* * * * *

(b) *Cost reporting periods subject to the rate-of-increase ceiling.* (1) *Base period.* * * *

(iii) When the operational structure of a hospital or unit changes (that is, a freestanding hospital becomes a unit or vice versa, or an entity of a multicampus hospital becomes a newly created hospital or unit or vice versa), the base period for the hospital or unit that changed its operational structure is the first cost reporting period of at least 12 months effective with the revised Medicare certification classification.

* * * * *

(g) *Adjustment.* (1) *General rules.* (i) HCFA may adjust the amount of the operating costs considered in establishing the rate-of-increase ceiling for one or more cost reporting periods, including both periods subject to the ceiling and the hospital's base period, under the circumstances specified in paragraphs (g)(2), (g)(3), and (g)(4) of this section.

(ii) When an adjustment is requested by the hospital, HCFA makes an adjustment only to the extent that the hospital's operating costs are reasonable, attributable to the circumstances specified separately, identified by the hospital and verified by the intermediary.

(iii) When an adjustment is requested by the hospital, HCFA makes an adjustment only if the hospital's operating costs exceed the rate-of-increase ceiling imposed under this section.

(iv) In the case of a psychiatric hospital or unit, rehabilitation hospital or unit, or long-term care hospital, the amount of payment under paragraph (g)(3) of this section may not exceed the payment amount based on the target amount determined under paragraph (c)(4)(iii) of this section.

(v) In the case of a hospital or unit that received a revised FY 1998 target amount under the rebasing provisions of paragraph (b)(1)(iv) of this section, the amount of an adjustment payment for a cost reporting period is based on a comparison of the hospital's operating costs for the cost reporting period to the average costs and statistics for the cost reporting periods used to determine the FY 1998 rebased target amount.

* * * * *

§ 413.86 [Amended]

3. Section 413.86 is amended as follows:

a. In paragraph (b), the definition of "approved geriatric program" is revised to read: "*Approved geriatric program* means a fellowship program of one or more years in length that is approved by one of the national organizations listed in § 415.152 of this chapter under that respective organization's criteria for geriatric fellowship programs."

b. In paragraph (b), under paragraph (1) of the definition of "approved medical residency program", the reference "§ 415.200(a) of this chapter" is revised to read "§ 415.152 of this chapter".

c. In paragraph (e)(1)(ii)(C), the reference "paragraph (j)(2) of this section" is revised to read "paragraph (k)(1) of this section".

d. In paragraph (e)(1)(iv), the reference, "paragraph (j)(1) of this section", is revised to read "paragraph (k)(1) of this section".

e. A new paragraph (f)(4)(iii) is added, paragraphs (g)(1) (i), (ii), and (iii), (g)(6) introductory text and (g)(6) (i) and (ii) are revised, paragraph (g)(7) is redesignated as paragraph (g)(9), and new paragraphs (g)(7) and (g)(8) are added to read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(f) *Determining the total number of FTE residents.* * * *

(4) * * *

(iii) The hospital must incur all or substantially all of the costs for the training program in the nonhospital setting in accordance with the definition in paragraph (b) of this section.

(g) *Determining the weighted number of FTE residents.* * * *

(1) * * *

(i) For residency programs other than those specified in paragraphs (g)(1)(ii) and (g)(1)(iii) of this section, the initial residency period is the minimum

number of years of formal training necessary to satisfy the requirements for initial board eligibility in the particular specialty for which the resident is training, as specified in the most recently published edition of the Graduate Medical Education Directory.

(ii) For residency programs in osteopathy, dentistry, and podiatry, the minimum requirement for certification in a specialty or subspecialty is the minimum number of years of formal training necessary to satisfy the requirements of the appropriate approving body listed in § 415.152 of this chapter.

(iii) For residency programs in geriatric medicine accredited by the appropriate approving body listed in § 415.152 of this chapter, these programs are considered approved programs on the later of—

(A) The starting date of the program within a hospital; or

(B) The hospital's cost reporting periods beginning on or after July 1, 1985.

* * * * *

(6) If a hospital establishes a new medical residency training program as defined in paragraph (g)(9) of this section on or after January 1, 1995, the hospital's FTE cap described under paragraph (g)(4) of this section may be adjusted as follows:

(i) If a hospital had no allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, and it establishes a new medical residency training program on or after January 1, 1995, the hospital's unweighted FTE resident cap under paragraph (g)(4) of this section may be adjusted based on the product of the highest number of residents in any program year during the third year of the first program's existence for all new residency training programs and the number of years in which residents are expected to complete the program based on the minimum accredited length for the type of program. The adjustment to the cap may not exceed the number of accredited slots available to the hospital for the new program.

(A) If the residents are spending an entire program year (or years) at one hospital and the remainder of the program at another hospital, the adjustment to each respective hospital's cap is equal to the product of the highest number of residents in any program year during the third year of the first program's existence and the number of years the residents are training at each respective hospital.

(B) Prior to the implementation of the hospital's adjustment to its FTE cap beginning with the fourth year of the hospital's residency program(s), the hospital's cap may be adjusted during each of the first 3 years of the hospital's new residency program using the actual number of residents participating in the new program. The adjustment may not exceed the number of accredited slots available to the hospital for each program year.

(C) Except for rural hospitals, the cap will not be adjusted for new programs established more than 3 years after the first program begins training residents.

(D) Rural hospitals that qualify for an adjustment to its FTE cap under paragraph (g)(6)(i) of this section are permitted to be part of the same affiliated group for purposes of an aggregate FTE limit.

(ii) If a hospital had allopathic or osteopathic residents in its most recent cost reporting period ending on or before December 31, 1996, the hospital's unweighted FTE cap may be adjusted for new medical residency training programs established on or after January 1, 1995 and on or before August 5, 1997. The adjustment to the hospital's FTE resident limit for the new program is based on the product of the highest number of residents in any program year during the third year of the newly established program and the number of years in which residents are expected to complete each program based on the minimum accredited length for the type of program.

(A) If the residents are spending an entire program year (or years) at one hospital and the remainder of the program at another hospital, the adjustment to each respective hospital's cap is equal to the product of the highest number of residents in any program year during the third year of the first program's existence and the number of years the residents are training at each respective hospital.

(B) Prior to the implementation of the hospital's adjustment to its FTE cap beginning with the fourth year of the hospital's residency program, the hospital's cap may be adjusted during each of the first 3 years of the hospital's new residency program, using the actual number of residents in the new programs. The adjustment may not exceed the number of accredited slots available to the hospital for each program year.

* * * * *

(7) A hospital that began construction of its facility prior to August 5, 1997, sponsored new medical residency training programs, and temporarily trained those residents at another hospital(s) until the facility was completed may receive an adjustment to its FTE cap.

(i) The newly constructed hospital's FTE cap is equal to the lesser of:

(A) The product of the highest number of residents in any program year during the third year of the first program's existence for all new residency training programs and the number of years in which residents are expected to complete the programs based on the minimum accredited length for each type of program; or

(B) The number of accredited slots available to the hospital for each year of the programs.

(ii) If the medical residency training programs sponsored by the newly constructed hospital have been in existence for 3 years or more by the time the residents begin training at the newly constructed hospital, the newly constructed hospital's cap will be based on the number of residents training in the third year of the first of those programs begun at the temporary training site.

(iii) If the medical residency training programs sponsored by the newly constructed hospital have been in existence for less than 3 years by the time the residents begin training at the newly constructed hospital, the newly constructed hospital's cap will be based on the number of residents training at the newly constructed hospital in the third year of the first of those programs (including the years at the temporary training site).

(iv) The provisions of this paragraph (g)(7) are applicable during portions of cost reporting periods occurring on or after October 1, 1999.

(8) A hospital may receive a temporary adjustment to its FTE cap to reflect residents added because of another hospital's closure if the hospital meets the following criteria:

(i) The hospital is training additional residents from a hospital that closed on or after July 1, 1996.

(ii) At least 60 days before the hospital begins to train the residents, the hospital submits a request to its fiscal intermediary for a temporary adjustment to its FTE cap, documents that the hospital is eligible for this temporary adjustment by identifying the residents who have come from the closed hospital and have caused the hospital to exceed its cap, and specifies the length of time the adjustment is needed.

* * * * *

PART 483—REQUIREMENTS FOR STATES AND LONG-TERM CARE FACILITIES

C. Part 483 is amended as set forth below:

1. The authority citation for Part 483 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 483.20, the introductory text of paragraph (b)(2) is revised to read as follows:

§ 483.20 Resident assessment.

* * * * *

(b) *Comprehensive assessments.*

* * *

(2) *When required.* Subject to the timeframes prescribed in § 413.343(b) of this chapter, a facility must conduct a comprehensive assessment of a resident in accordance with the timeframes specified in paragraphs (b)(2)(i) through (iii). However, the timeframes prescribed in § 413.343(b) of this chapter do not apply to CAHs.

* * * * *

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

D. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. Section 485.618 is amended by revising paragraph (d) to read as follows:

§ 485.618 Conditions of participation: Emergency services.

* * * * *

(d) *Standard: Personnel.* There must be a doctor of medicine or osteopathy, a physician assistant, or a nurse practitioner with training or experience in emergency care on call and immediately available by telephone or radio contact, and available on site within the following timeframes:

(1) Within 30 minutes, on a 24-hour a day basis, if the CAH is located in an area other than an area described in paragraph (d)(2) of this section; or

(2) Within 60 minutes, on a 24-hour a day basis, if the following requirements are met:

(i) The CAH is located in an area designated as frontier (that is, an area having fewer than six residents per square mile based on the latest population data published by the Bureau of the Census) or in an area that meets criteria for a remote location adopted by the State in its rural health care plan, and approved by HCFA, under section 1820(b) of the Act;

(ii) The State has determined under criteria in its rural health care plan that allowing an emergency response time longer than 30 minutes is the only feasible method of providing emergency care to residents of the area served by the CAH; and

(iii) The State maintains documentation showing that the response time of up to 60 minutes at a particular CAH it designates are justified because other available alternatives would increase the time needed to stabilize a patient in an emergency.

* * * * *

3. In § 485.645, the introductory text of paragraph (d) is republished and paragraph (d)(6) is revised to read as follows:

§ 485.645 Special requirements for CAH providers of long-term care services ("swing beds").

* * * * *

(d) *SNF services.* CAH is substantially in compliance with the following SNF requirements contained in subpart B of part 483 of this chapter:

* * * * *

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), (d), and (e) of this chapter, except that the CAH is not required to comply with the requirements for frequency, scope and number of assessments prescribed in § 413.343(b)).

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: April 9, 1999.

Nancy Ann DeParle,

Administrator, Health Care Financing Administration.

Dated: April 26, 1999.

Donna E. Shalala,

Secretary.

(Editorial Note: The following addendum and appendixes will not appear in the Code of Federal Regulations.)

Addendum—Proposed Schedule of Standardized Amounts Effective With Discharges Occurring On or After October 1, 1999; Payment Amounts for Blood Clotting Factor Effective for Discharges Occurring On or After October 1, 1999; and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 1999

I. Summary and Background

In this addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare inpatient operating costs and Medicare inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the prospective payment system.

For discharges occurring on or after October 1, 1999, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals located in Puerto Rico, each hospital's payment per discharge under the prospective payment system will be based on 100 percent of the Federal national rate.

Sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge. Medicare-dependent, small rural hospitals are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 cost per discharge, whichever is higher. For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a national rate.

As discussed below in section II, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2000. The changes, to be applied prospectively, would affect the calculation of the Federal rates. In section III of this addendum, we are proposing updates to the payments per unit for blood clotting factor provided to hospital inpatients who have hemophilia. We also are proposing to add another product (clotting factor, porcine (HCPCS code J7191)) to the list of clotting factors that would be paid under this benefit.

In section IV of this addendum, we discuss our proposed changes for

determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2000. Section V of this addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2000. The tables to which we refer in the preamble to the proposed rule are presented at the end of this addendum in section VI.

II. Proposed Changes to Prospective Payment Rates for Inpatient Operating Costs for FY 2000

The basic methodology for determining prospective payment rates for inpatient operating costs is set forth at § 412.63 for hospitals located outside of Puerto Rico. The basic methodology for determining the prospective payment rates for inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the proposed factors used for determining the prospective payment rates. The Federal and Puerto Rico rate changes, once issued as final, would be effective with discharges occurring on or after October 1, 1999. As required by section 1886(d)(4)(C) of the Act, we must also adjust the DRG classifications and weighting factors for discharges in FY 2000.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section VI of this addendum reflect—

- Updates of 0.9 percent for all areas (that is, the market basket percentage increase of 2.7 percent minus 1.8 percentage points);
- An adjustment to ensure budget neutrality as provided for in sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure budget neutrality as provided for in section 1886(d)(8)(D) of the Act by removing the FY 1999 budget neutrality factor and applying a revised factor;
- An adjustment to apply the revised outlier offset by removing the FY 1999 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contains a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the prospective payment system and how they are used in computing the Federal rates.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates (52 FR 33043, 33066).

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (C) of the Act required us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of variation in cost among hospitals. These effects include case mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the prospective payment system. The average labor share in Puerto Rico is 71.3 percent. We are proposing to revise the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 1998 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1,000,000. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on 1997 population estimates published by the Bureau of the Census, 61 areas meet the criteria to be defined as large urban areas for FY 2000. These areas are identified by a footnote in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the area average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban areas' and the other areas' average standardized amounts for FY 2000 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XV) of the Act specifies that, for hospitals in all areas, the update factor for the standardized amounts for FY 2000 is equal to the market basket percentage increase minus 1.8 percentage points.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the proposed hospital market basket increase for FY 2000 is 2.7 percent. Thus, for FY 2000,

the proposed update to the average standardized amounts equals 0.9 percent.

As in the past, we are adjusting the FY 1999 standardized amounts to remove the effects of the FY 1999 geographic reclassifications and outlier payments before applying the FY 2000 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2000.

Although the update factor for FY 2000 is set by law, we are required by section 1886(e)(3) of the Act to report to the Congress on our initial recommendation of update factors for FY 2000 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix C to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act), as well as our responses to MedPAC's recommendation concerning the update factor, are set forth as Appendix D to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment. Section 1886(d)(4)(C)(iii) of the Act specifies that beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used historical discharge data to simulate payments and compared aggregate payments using the FY 1999 relative weights and wage index to aggregate payments using the proposed FY 2000 relative weights and wage index. The same methodology was used for the FY 1999 budget neutrality adjustment. (See the discussion in the September 1, 1992 final rule (57 FR 39832).) Based on this comparison, we computed a budget neutrality adjustment factor equal to 0.997393. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 0.999910. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 1999 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 1999. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment. Section 1886(d)(8)(B) of the Act provides that certain rural hospitals are deemed urban effective with discharges occurring on or after October 1, 1988. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that total aggregate payments under the prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used historical discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. Based on these simulations, we are applying an adjustment factor of 0.994453 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 1999 budget neutrality adjustment factor. We note that the proposed FY 2000 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 26, 1999. The effects of any additional reclassification changes resulting from appeals and reviews of the MGCRB decisions for FY 2000 or from a hospital's request for the withdrawal of a reclassification request will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 2000.

c. Outliers. Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). Section 1886(d)(3)(B) of the Act requires the Secretary to adjust both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section 1886(d)(9)(B)(iv) of the Act requires the Secretary to adjust the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases. Furthermore, under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total payments based on DRG prospective payment rates.

For FY 1999, the fixed loss cost outlier threshold is equal to the prospective payment for the DRG plus $11,100 ($10,129 for hospitals that have not yet entered the prospective payment system for capital-related costs). The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) is 80 percent. We applied an outlier adjustment to the FY 1999 standardized amounts of 0.948740 for the large urban and other areas rates and 0.9392 for the capital Federal rate.

In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated proposed outlier thresholds for FY 2000 so that outlier payments are projected to equal 5.1 percent of total payments based on DRG prospective

payment rates. In accordance with section 1886(d)(3)(E), we reduced the proposed FY 2000 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers. To calculate FY 2000 outlier thresholds, we simulated payments by applying FY 2000 rates and policies to the December 1998 update of the FY 1998 MedPAR file and the December 1998 update of the provider-specific file. As we have explained in the past, to calculate outlier thresholds we apply a cost inflation factor to update costs for the cases used to simulate payments. For FY 1998, we used a cost inflation factor of minus 2.005 percent (a cost per case decrease of 2.005 percent). For FY 1999, we used a cost inflation factor of minus 1.724 percent. To set the proposed FY 2000 outlier thresholds, we used a cost inflation factor (or cost adjustment factor) of zero percent. This factor reflects our analysis of the best available cost report data as well as calculations (using the best available data) indicating that the percentage of actual outlier payments for FY 1998, is higher than we projected before the beginning of FY 1998, and that the percentage of actual outlier payments for FY 1999 will likely be higher than we projected before the beginning of FY 1999. The calculations of "actual" outlier payments are discussed further below. Based on these simulations, we are proposing a fixed loss cost outlier threshold in FY 2000 equal to the prospective payment rate for the DRG plus $14,575 ($13,309 for hospitals that have not yet entered the prospective payment system for capital-related costs). In addition, we are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both inpatient operating costs and inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 2000 will result in outlier payments equal to 5.1 percent of operating DRG payments and 6.0 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors applied to the standardized amounts for FY 2000 are as follows:

	Operating standardized amounts	Capital Federal rate
National	0.948934	0.9397
Puerto Rico	0.969184	0.9334

We apply the proposed outlier adjustment factors after removing the effects of the FY 1999 outlier adjustment factors on the standardized amounts.

Table 8A in section VI of this addendum contains the updated Statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals to be used in calculating cost outlier payments for those hospitals for which the intermediary is unable to compute a reasonable hospital-specific cost-to-charge ratio. These Statewide average ratios would replace the ratios published in the July 31, 1998 final rule (63 FR 41099), effective October 1, 1999. Table 8B contains comparable Statewide average capital cost-to-charge ratios. These average ratios would be used to calculate cost outlier payments for those hospitals for which the intermediary computes operating cost-to-charge ratios lower than 0.212473 greater than 1.280336 and capital cost-to-charge ratios lower than 0.0130310 or greater than 0.17166. This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 2000 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or outside the three standard deviations range.

In the July 31, 1998 final rule (63 FR 41009), we stated that, based on available data, we estimated that actual FY 1998 outlier payments would be approximately 5.4 percent of actual total DRG payments. This was computed by simulating payments using actual FY 1997 bill data available at the time. That is, the estimate of actual outlier payments did not reflect actual FY 1998 bills but instead reflected the application of FY 1998 rates and policies to available FY 1997 bills. Our current estimate, using available FY 1998 bills, is that actual outlier payments for FY 1998 were approximately 6.5 percent of actual total DRG payments. We note that the MedPAR file for FY 1998 discharges continues to be updated. Thus, the data indicate that, for FY 1998, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 1998 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 1998). In fact, the data indicate that the proportion of actual outlier payments for FY 1998 exceeds 6 percent. Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 1998.

We currently estimate that actual outlier payments for FY 1999 will be approximately 6.2 percent of actual total DRG payments, higher than the 5.1 percent we projected in setting outlier policies for FY 1999. This estimate is based on simulations using the December 1998 update of the provider-specific file and the December 1998 update of the FY 1998 MedPAR file (discharge data for FY 1998 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 1999 by applying FY 1999 rates and policies to available FY 1998 bills.

5. FY 2000 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except for hospitals in Puerto Rico. Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A and 1C, as set forth in this addendum, contain the proposed labor-related and nonlabor-related shares that would be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the prospective payment rates as described in this addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act requires that we make an adjustment to the labor-related portion of the prospective payment rates to account for area differences in hospital wage levels. This

adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III of this preamble, we discuss the data and methodology for the proposed wage index. The proposed wage index is set forth in Tables 4A through 4F of this addendum.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2000, we propose to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 1999, we will publish them in the final rule and use them in determining FY 2000 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.15
County of Kauai	1.225
County of Maui	1.225
County of Kalawao	1.225

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section VI of this addendum contains the relative weights that we propose to use for discharges occurring in FY 2000. These factors have been recalibrated as explained in section II of the preamble.

D. Calculation of Prospective Payment Rates for FY 2000

General Formula for Calculation of Prospective Payment Rates for FY 2000

Prospective payment rate for all hospitals located outside of Puerto Rico except sole community hospitals and Medicare-dependent, small rural hospitals = Federal rate.

Prospective payment rate for sole community hospitals = Whichever of the following rates yields the greatest aggregate payment: 100 percent of the Federal rate, 100 percent of the updated FY 1982 hospital-specific rate, or 100 percent of the updated FY 1987 hospital-specific rate.

Prospective payment rate for Medicare-dependent, small rural hospitals = 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

Prospective payment rate for Puerto Rico = 50 percent of the Puerto Rico rate + 50 percent of a discharge-weighted average of the national large urban standardized amount and the national other standardized amount.

1. Federal Rate

For discharges occurring on or after October 1, 1999 and before October 1, 2000, except for sole community hospitals, Medicare-dependent, small rural hospitals, and hospitals in Puerto Rico, the hospital's payment is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the type of hospital and designation of the hospital as large urban or other (see Table 1A in section VI of this addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located (see Tables 4A, 4B, and 4C of section VI of this addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section VI of this addendum).

2. Hospital-Specific Rate (Applicable Only to Sole Community Hospitals and Medicare-Dependent, Small Rural Hospitals)

Sections 1886(d)(5)(D)(i) and (b)(3)(C) of the Act provide that sole community hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, or the updated hospital-specific rate based on FY 1987 cost per discharge.

Sections 1886(d)(5)(G) and (b)(3)(D) of the Act provide that Medicare-dependent, small rural hospitals are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on both the FY 1982 cost per discharge and the FY 1987 cost per discharge. For a more detailed discussion of the calculation of the FY 1982 hospital-specific rate and the FY 1987 hospital-specific rate, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); and the September 4, 1990 final rule (55 FR 35994).

a. *Updating the FY 1982 and FY 1987 Hospital-Specific Rates for FY 2000.* We are proposing to increase the hospital-specific rates by 0.9 percent (the hospital market basket percentage increase of 2.7 percent minus 1.8 percentage points) for sole community hospitals and Medicare-dependent, small rural hospitals located in all areas for FY 2000. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2000, is the market basket rate of increase minus 1.8 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for Medicare-dependent, small rural hospitals equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2000, is the market basket rate of increase minus 1.8 percentage points.

b. Calculation of Hospital-Specific Rate. For sole community hospitals and

Medicare-dependent, small rural hospitals, the applicable FY 2000 hospital-specific rate would be calculated by increasing the hospital's hospital-specific rate for the preceding fiscal year by the applicable update factor (0.9 percent), which is the same as the update for all prospective payment hospitals. In addition, the hospital-specific rate would be adjusted by the budget neutrality adjustment factor (that is, 0.997393) as discussed in section II.A.4.a of this Addendum. This resulting rate would be used in determining under which rate a sole community hospital or Medicare-dependent, small rural hospital is paid for its discharges beginning on or after October 1, 1999, based on the formula set forth above.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 1999 and Before October 1, 2000.

a. Puerto Rico Rate. The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section VI of the addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI of the addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section VI of the addendum).

b. National Rate. The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section VI of the addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI of the addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section VI of the addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to the Payment Rates for Blood Clotting Factor for Hemophilia Inpatients

As discussed in our August 29, 1997 final rule with comment period (62 FR 46002) and our May 12, 1998 final rule (63 FR 26327), section 4452 of Public Law 105–33 amended section 6011(d) of Public Law 101–239 to reinstate the add-on payment for the costs of administering blood clotting factor to Medicare beneficiaries who have hemophilia and who are hospital inpatients for discharges occurring on or after October 1, 1997.

We are proposing to calculate the add-on payment for FY 2000 using the same methodology we described in the August 29, 1997 and May 12, 1998 final rules. That is, we are proposing to establish a price per unit of clotting factor based on the average wholesale price (AWP). To identify the AWP, we are using the most recent data available from First DataBank, a commercial source of AWPs in electronic format. The add-on payment amount for each clotting factor, as described by HCFA's Common Procedure Coding System (HCPCS), is based on the median AWP of the several products available in that category of factor, discounted by 15 percent.

We also are proposing to add HCPCS code J7191 (clotting factor, porcine) to the list of clotting factors that will be paid under this benefit. This code was recently reestablished in the HCPCS coding system because it represents a unique product that is different from the other clotting factors listed.

Based on the methodology described above, we are proposing the following prices per unit of factor for FY 2000:

J7190 Factor VIII (antihemophilic factor, human)	0.79
J7191 Factor VIII (antihemophilic factor, porcine)	1.87
J7192 Factor VIII (antihemophilic factor, recombinant)	1.03
J7194 Factor IX (complex)	0.45
J7196 Other hemophilia clotting factors (for example, anti-inhibitors)	1.43
Q0160 Factor IX (antihemophilic factor, purified, nonrecombinant)	0.97
Q0161 Factor IX (antihemophilic factor, purified, recombinant)	1.00

These prices for blood clotting factor administered to inpatients who have hemophilia would be effective for discharges beginning on or after October 1, 1999 through September 30, 2000. Payment will be made for blood clotting factor only if there is an ICD–9–CM diagnosis code for hemophilia included on the bill.

IV. Proposed Changes to Payment Rates for Inpatient Capital-Related Costs for FY 2000

The prospective payment system for hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, hospital inpatient capital-related costs are paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth at §§ 412.308 through 412.352. Below we discuss the factors that we used to determine the proposed Federal rate and the hospital-specific rates for FY 2000. The rates would be effective for discharges occurring on or after October 1, 1999.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of

the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966) we implemented section 4402 of the BBA, which requires that for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. A small part of that reduction will be restored effective October 1, 2002. As a result of the February 25, 1999 final rule (64 FR 9378), the Federal rate changed effective March 1, 1999, because of revisions to the GAF.

For each hospital, the hospital-specific rate was calculated by dividing the hospital's Medicare inpatient capital-related costs for a specified base year by its Medicare discharges (adjusted for transfers), and dividing the result by the hospital's case mix index (also adjusted for transfers). The resulting case-mix adjusted average cost per discharge was then updated to FY 1992 based on the national average increase in Medicare's inpatient capital cost per discharge and adjusted by the exceptions payment adjustment factor and the budget neutrality adjustment factor to yield the FY 1992 hospital-specific rate. Since FY 1992, the hospital-specific rate has been updated annually for inflation and for changes in the exceptions payment adjustment factor. For FYs 1992 through 1995, the hospital-specific rate was also adjusted by a budget neutrality adjustment factor. For discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted hospital-specific rate is reduced by 17.78 percent. A small part of this reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the exceptions payment adjustment factor, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projects changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the model is still used to estimate the exceptions payment adjustment and other factors. The model and its application are described in greater detail in Appendix B of this proposed rule.

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1998, as a result of section 4406 of the BBA, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for inpatient capital-related costs. Accordingly, for capital-related costs we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Inpatient Capital-Related Prospective Payment Rate Update

In the July 31, 1998 final rule (63 FR 41011) we established a capital Federal rate of $378.05 for FY 1999. As of the March 1, 1999 revision, the Federal rate for FY 1999 is $378.10. As a result of the changes we are proposing to the factors used to establish the Federal rate in this preamble, the proposed FY 2000 Federal rate is $374.31.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 2000 capital Federal rate. In particular, we explain why the proposed FY 2000 Federal rate has decreased 1.00 percent compared to the FY 1999 Federal rate. Even though the proposed FY 2000 Federal capital rate is less than the FY 1999 Federal rate, we estimate aggregate capital payments will increase by 2.66 percent during this same period. This increase is primarily due to the increase in the Federal blend percentage from 80 to 90 percent for fully prospective payment hospitals.

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment transition system are estimated to increase in FY 2000 compared to FY 1999.

1. Standard Federal Rate Update

a. Description of the Update Framework. Under section 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index and other factors. The update framework consists of a capital input price index (CIPI) and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 2000 under that framework is −0.6 percent. This proposal is based on a projected 0.5 percent increase in the CIPI, a −0.7 percent adjustment for the FY 1998 DRG reclassification and recalibration, and a forecast error correction of −0.4 percent. We explain the basis for the FY 2000 CIPI projection in section II.D of this addendum. Here we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher-weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 1998 DRG reclassification and

recalibration as part of our FY 2000 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2000, we are projecting a 0.5 percent increase in the case-mix index. We estimate that real case-mix increase will equal 0.5 percent in FY 2000. Therefore, the proposed net adjustment for case-mix change in FY 2000 is 0.0 percentage points.

We estimate that FY 1998 DRG reclassification and recalibration resulted in a 0.7 percent change in the case mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a −0.7 percent adjustment for DRG reclassification and recalibration in the proposed update for FY 2000.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of −0.4 percentage points was calculated for the FY 1998 update. That is, current historical data indicate that the FY 1998 CIPI used in calculating the forecasted FY 1998 update factor overstated realized price increases by 0.4 percent. Therefore, we are making a −0.4 percent adjustment for forecast error in the proposed update for FY 2000.

Under the capital prospective payment system update framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2000, we have developed a Medicare-specific intensity measure based on a 5-year average using FY 1994–1998 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.8 percent in FY 1994, 1.7 percent in FY 1995, 1.6 percent in FY 1996, 0.3 percent in FY 1997, and −0.4 percent in FY 1998. For FY 1995 and FY 1996, we estimate that real case-mix increase was 1.0 to 1.4 percent each year. The estimate for those years is supported by past studies of case-mix change by the RAND Corporation. The most recent study was "Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J.P. Newhouse, and D.A. Relles, R–4098–HCFA/ProPAC (1991). The study suggested that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.5 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1994 through FY 1998. Based on this analysis, we believe that all of the observed case-mix increase for FY 1994, FY 1997 and FY 1998 is real. The increases for FY 1995 and FY 1996 were in excess of our estimate of real case mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI hospital component), and changes in real case-mix. Given estimates of real case mix of 0.8 percent for FY 1994, 1.0 percent for FY 1995, 1.0 percent for FY 1996, 0.3 percent for FY 1997, and −0.4 for FY 1998, we estimate that case-mix constant intensity declined by an average 1.3 percent during FYs 1994 through 1998, for a cumulative decrease of 6.3 percent. If we assume that real case-mix increase was 0.8 percent for FY 1994, 1.4 percent for FY 1995, 1.4 percent for FY 1996, 0.3 percent for FY 1997, and −0.4 for FY 1998, we estimate that case-mix constant intensity declined by an average 1.5 percent during FYs 1994 through 1998, for a cumulative decrease of 7.1 percent. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 2000.

b. Comparison of HCFA and MedPAC Update Recommendations. MedPAC recommends a −1.1 to 1.8 percent update to the standard capital Federal rate and we are recommending a −0.6 percent update. There are some significant differences between the HCFA and MedPAC update frameworks, which account for the difference in the respective update recommendations. A major difference is the input price index that each framework uses as a beginning point to estimate the change in input prices since the previous year. The HCFA capital input price index (the CIPI) includes price measures for interest expense, which are an indicator of the interest rates facing hospitals during their capital purchasing decisions. The MedPAC capital market basket does not include interest expense; instead the MedPAC update framework includes a financing policy adjustment when necessary to account for the prolonged changes in interest rates. HCFA's CIPI is vintage-weighted, meaning that it takes into account price changes from past purchases of capital when determining the current period update. MedPAC's capital market basket is not vintage-weighted, accounting only for the current year price changes. This year, due to the difference between HCFA's and MedPAC's input price index, the percentage change in HCFA's CIPI is 0.5 percent, and the percentage change in MedPAC's market basket is 1.9 percent.

MedPAC and HCFA also differ in the adjustments they make to their price indices. (See Table 1 for a comparison

of HCFA and MedPAC's update recommendations.) MedPAC makes an adjustment for productivity, while HCFA has not adopted an adjustment for capital productivity or efficiency. MedPAC employs the same productivity adjustment in its operating and capital framework. We have identified a total intensity factor but have not identified an adequate total productivity measure. For the FY 2000 update, the Commission is also including a site-of-care substitution adjustment to account for the decline in the average length of Medicare acute inpatient stays. This adjustment is designed to shift funding along with associated costs when Medicare patients are discharged to postacute settings that replace acute impatient days. Other factors, such as technological advances that allow for a decreased need in follow-up care and BBA mandated policy on payment for transfer cases that limits payments within certain DRGs, are reflected in the site-of-care substitution adjustment as well. A negative intensity adjustment would capture the site of care substitution accounted for in MedPAC's update framework. However, we did not make a negative adjustment for intensity this year. We may examine the appropriateness of adopting a negative intensity adjustment at a later date.

MedPAC recommends a −1.8 to a −0.9 adjustment for site-of-care substitutions for FY 2000. For FY 2000, MedPAC recommends a −1.0 to a 0.0 adjustment for productivity. We recommend a 0.0 intensity adjustment. Additionally, since long-term interest rates are low by historical standards, MedPAC recommends a −0.3 to a 0.0 adjustment to the update for FY 2000, to reflect changes in the real interest rates.

We recommend a 0.0 total case mix adjustment since we are projecting a 0.5 percent increase in the case mix index and we estimate that real case-mix increase will equal 0.5 percent in FY 2000. MedPAC makes a two-part adjustment for case mix changes, which takes into account changes in case mix in the past year. They recommend a 0.0 adjustment for coding change and an 0.0 to 0.2 adjustment for within-DRG complexity change. We recommend a −0.4 adjustment for forecast error correction, and MedPAC recommends a −0.4 adjustment for forecast error correction.

The net result of these adjustments is that MedPAC has recommended a −1.1 to 1.8 percent update to the capital Federal rate for FY 2000. MedPAC believes that the annual updates to the capital and operating payments under the prospective payment system should not differ substantially, even though they are determined separately, since they correspond to costs generated by providing the same inpatient hospital services to the same Medicare patients. This range for the capital update is consistent with the prospective payment system operating update range of 0.0 to 2.6 recommended by the Commission. We describe the basis for our proposed −0.6 percent total update in the preceding section. Our recommendation is within the range recommended by MedPAC.

Also, MedPAC argued that the distinction between inpatient operating and capital payment rates is arbitrary and does not foster efficient overall decision making about the allocation of resources. Accordingly, MedPAC recommended that once the transition to fully perspective capital payment is completed, a single PPS payment rate should be developed for hospital inpatient services to Medicare beneficiaries. MedPAC indicated that a single PPS payment rate for both operating and capital PPS costs would be consistent with the way that hospitals purchase a majority of goods and services.

We responded to a similar comment in the July 31, 1998 final rule (63 FR 41013) and in the September 1, 1995 final rule (60 FR 45816). In those rules, we stated that our long-term goal was to develop a single update framework for operating and capital prospective payments and that we would begin development of a unified framework. We indicated that, in the meantime, we would maintain as much consistency as possible between the current operating and capital frameworks in order to facilitate the eventual development of a unified framework. In addition, we stated that because of the similarity of the update frameworks, the update frameworks could be combined without too much difficulty. We maintain our goal of combining the update frameworks at the end of the capital transition period and may examine combining the payment systems after the conclusion of the capital prospective payment transition period.

TABLE 1.—HCFA'S FY 2000 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION

	HCFA's update factor	MedPAC's recommendation
Capital Input Price Index Financing Policy Adjustment	0.5	1.9
Financing Policy Adjustment	.....	−0.3 to 0.0
Policy Adjustment Factors:		
Productivity	.....	−1.0 to 0.0
Intensity	0.0	.....
Science and Technology	.....	0.5 to 1.0
Intensity	.....	(1)
Real within DRG Change	.....	(2)
Site-of-Care Substitution	.....	−1.8 to −0.9
Subtotal	0.0	−2.3 to 0.1
Case-Mix Adjustment Factors:	.....	.....
Projected Case-Mix Change	−0.5	.....
Real Across DRG Change	0.5	.....
Coding Change	.....	0.0
Real within DRG Change	(3)	0.0 to 0.2
Subtotal	0.0	0.0 to 0.2
Effect of FY 1998 Reclassification and Recalibration	0.7	.....
Forecast Error Correction	−0.4	−0.4

TABLE 1.—HCFA'S FY 2000 UPDATE FACTOR AND MEDPAC'S RECOMMENDATION—Continued

	HCFA's update factor	MedPAC's recommendation
Total Update	−0.6	−1.1 to 1.8

[1] Included in MedPAC's productivity measure.
[2] Included in MedPAC's case-mix adjustment.
[3] Included in HCFA's intensity factor.

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on the portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments (for example, 90 percent for cost reporting periods beginning in FY 2000 for hospitals paid under the fully prospective payment methodology). Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of outlier payments under the Federal rate to total inpatient capital-related payments under the Federal rate. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments. The inpatient capital-related outlier reduction factor reflects the inpatient capital-related outlier payments that would be made if all hospitals were paid 100 percent of the Federal rate. For purposes of calculating the outlier thresholds and the outlier reduction factor, we model payments as if all hospitals were paid 100 percent of the Federal rate because, as explained above, outlier payments are made only on the portion of the Federal rate that is included in the hospital's inpatient capital-related payments.

In the July 31, 1998 final rule, we estimated that outlier payments for capital in FY 1999 would equal 6.08 percent of inpatient capital-related payments based on the Federal rate (63 FR 41013). Accordingly, we applied an outlier adjustment factor of 0.9392 to the Federal rate. Based on the thresholds as set forth in section II.A.4.d of this Addendum, we estimate that outlier payments for capital will equal 6.03 percent of inpatient capital-related payments based on the Federal rate in FY 2000. Therefore, we are proposing an outlier adjustment factor of 0.9397 to the Federal rate. Thus, estimated capital outlier payments for FY 2000 represent a lower percentage of total capital standard payments than in FY 1999.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the outlier adjustment to the Federal rate for FY 2000 is 1.0005 (0.9397/0.9392). The outlier adjustment increases the FY 2000 Federal rate by 0.05 percent compared with the FY 1999 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the GAF are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes. We use the actuarial model, described in Appendix B of this proposed rule, to estimate the aggregate payments that would have been made on the basis of the Federal rate without changes in the DRG classifications and weights and in the GAF. We also use the model to estimate aggregate payments that would be made on the basis of the Federal rate as a result of those changes. We then use these figures to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF.

For FY 1999, we calculated a GAF/DRG budget neutrality factor of 1.0027. In the February 25, 1999 final rule (64 FR 9381), we adopted an incremental GAF/DRG budget neutrality factor of 1.0028 for discharges on or after March 1, 1999. For FY 2000, we are proposing a GAF/DRG budget neutrality factor of 0.9986. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 1999 to FY 2000 is 0.9986. The proposed cumulative change in the rate due to this adjustment is 1.0015 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, and the proposed incremental factor for FY 2000: $0.9980 \times 1.0053 \times 0.9998 \times 0.9994 \times 0.9987 \times 0.9989 \times 1.0028 \times 0.9986 = 1.0015$).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2000 geographic reclassification decisions made by the MGCRB compared to FY 1999 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of additional payments for exceptions under § 412.348 relative to total payments under the hospital-specific rate and Federal rate. We use the model originally developed for determining the budget neutrality adjustment factor to determine the exceptions payment adjustment factor. We describe that model in Appendix B to this proposed rule.

For FY 1999, we estimated that exceptions payments would equal 2.17 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we applied an exceptions reduction factor of 0.9783 (1–0.0217) in determining the Federal rate. For this proposed rule, we estimate that exceptions payments for FY 2000 will equal 2.48 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we are proposing an exceptions payment reduction factor of 0.9752 to the Federal rate for FY 2000. The proposed

exceptions reduction factor for FY 2000 is 0.32 percent lower than the factor for FY 1999.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net adjustment to the FY 2000 Federal rate is 0.9752/0.9783, or 0.9968.

5. Standard Capital Federal Rate for FY 2000

For FY 1999 (effective March 1, 1999), the capital Federal rate was $378.10. As a result of changes we are proposing to the factors used to establish the Federal rate, the proposed FY 2000 Federal rate is $374.31. The proposed Federal rate for FY 2000 was calculated as follows:

- The proposed FY 2000 update factor is 0.9940; that is, the proposed update is −0.60 percent.
- The proposed FY 2000 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 0.9986.
- The proposed FY 2000 outlier adjustment factor is 0.9397.
- The proposed FY 2000 exceptions payments adjustment factor is 0.9752.

Since the Federal rate has already been adjusted for differences in case mix, wages, cost of living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we propose to make no additional adjustments in the standard Federal rate for these factors other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the factors and adjustments for FY 2000 affected the computation of the proposed FY 2000 Federal rate in comparison to the FY 1999 Federal rate. The proposed FY 2000 update factor has the effect of decreasing the Federal rate by 0.60 percent compared to the rate in FY 1999, while the proposed geographic and DRG budget neutrality factor has the effect of decreasing the Federal rate by 0.14 percent. The proposed FY 2000 outlier adjustment factor has the effect of increasing the Federal rate by 0.05 percent compared to FY 1999. The proposed FY 2000 exceptions reduction factor has the effect of decreasing the Federal rate by 0.32 percent compared to the exceptions reduction for FY 1999. The combined effect of all the proposed changes is to decrease the proposed Federal rate by 1.00 percent compared to the Federal rate for FY 1999.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 1999 FEDERAL RATE AND PROPOSED FY 2000 FEDERAL RATE

	FY 1999	Proposed FY 2000	Change	Percent change
Update factor [1]	1.0010	0.9940	0.9940	−0.60
GAF/DRG Adjustment Factor [1]	1.0028	0.9986	0.9986	−0.14
Outlier Adjustment Factor [2]	0.9392	0.9397	1.0005	0.05
Exceptions Adjustment Factor [2]	0.9783	0.9752	0.9968	−0.32
Federal Rate	$378.10	$374.31	0.9900	−1.00

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 1999 to FY 2000 resulting from the application of the 0.9986 GAF/DRG budget neutrality factor for FY 2000 is 0.9986.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2000 outlier reduction factor is 0.9397/0.9392, or 1.0005.

6. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section IV of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a geographic adjustment factor (GAF) to both portions of the blended rate. The GAF is calculated using the operating PPS wage index and varies depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Since we implemented a separate GAF for Puerto Rico in 1998, we also propose to apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. We apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. The Puerto Rico GAF budget neutrality factor is 1.0015, while the DRG adjustment is 1.0001, for a combined cumulative adjustment of 1.0016.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of the BBA. For FY 1999, before application of the GAF, the special rate for Puerto Rico hospitals was $181.10. With the changes we are proposing to the factors used to determine the rate, the proposed FY 2000 special rate for Puerto Rico is $174.15.

B. Determination of Hospital-Specific Rate Update

Section 412.328(e) of the regulations provides that the hospital-specific rate for FY 2000 be determined by adjusting the FY 1999 hospital-specific rate by the following factors:

1. Hospital-Specific Rate Update Factor

The hospital-specific rate is updated in accordance with the update factor for the standard Federal rate determined under § 412.308(c)(1). For FY 2000, we are proposing that the hospital-specific rate be updated by a factor of 0.9940.

2. Exceptions Payment Adjustment Factor

For FYs 1992 through FY 2001, the updated hospital-specific rate is multiplied by an adjustment factor to account for estimated exceptions payments for capital-related costs under § 412.348, determined as a proportion of the total amount of payments under the hospital-specific rate and the Federal rate. For FY 2000, we estimate that

exceptions payments will be 2.48 percent of aggregate payments based on the Federal rate and the hospital-specific rate. Therefore, we propose that the updated hospital-specific rate be reduced by a factor of 0.9752. The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the hospital-specific rate. The proposed net adjustment to the FY 2000 hospital-specific rate is 0.9752/0.9783, or 0.9968.

3. Net Change to Hospital-Specific Rate

We are providing a chart to show the net change to the hospital-specific rate. The chart shows the factors for FY 1999 and FY 2000 and the net adjustment for each factor. It also shows that the proposed cumulative net adjustment from FY 1999 to FY 2000 is 0.9908, which represents a proposed decrease of 0.92 percent to the hospital-specific rate. For each hospital, the proposed FY 2000 hospital-specific rate is determined by multiplying the FY 1999 hospital-specific rate by the cumulative net adjustment of 0.9908.

PROPOSED FY 2000 UPDATE AND ADJUSTMENTS TO HOSPITAL-SPECIFIC RATES

	FY 1999	Proposed FY 2000	Net adjustment	Percent change
Update Factor	1.0010	0.9940	0.9940	−0.60
Exceptions Payment Adjustment Factor	0.9783	0.9752	0.9968	−0.32
Cumulative Adjustments	0.9793	0.9703	0.9908	−0.92

Note: The update factor for the hospital-specific rate is applied cumulatively in determining the rates. Thus, the incremental increase in the update factor from FY 1999 to FY 2000 is 0.9940. In contrast, the exceptions payment adjustment factor is not applied cumulatively. Thus, for example, the incremental increase in the exceptions reduction factor from FY 1999 to FY 2000 is 0.9752/0.9783, or 0.9968.

C. Calculation of Inpatient Capital-Related Prospective Payments for FY 2000

During the capital prospective payment system transition period, a hospital is paid for the inpatient capital-related costs under one of two payment methodologies—the fully prospective payment methodology or the hold-harmless methodology. The payment methodology applicable to a particular hospital is determined when a hospital comes under the prospective payment system for capital-related costs by comparing its hospital-specific rate to the Federal rate applicable to the hospital's first cost reporting period under the prospective payment system. The applicable Federal rate was determined by making adjustments as follows:

- For outliers by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and,
- For the payment adjustment factors applicable to the hospital (that is, the hospital's GAF, the disproportionate share adjustment factor, and the indirect medical education adjustment factor, when appropriate).

If the hospital-specific rate is above the applicable Federal rate, the hospital is paid under the hold-harmless methodology. If the hospital-specific rate is below the applicable Federal rate, the hospital is paid under the fully prospective methodology.

For purposes of calculating payments for each discharge under both the hold-harmless payment methodology and the fully prospective payment methodology, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) ×
(COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable).

The result is the adjusted Federal rate.

Payments under the hold-harmless methodology are determined under one of two formulas. A hold-harmless hospital is paid the higher of the following:

- 100 percent of the adjusted Federal rate for each discharge; or
- An old capital payment equal to 85 percent (100 percent for sole community hospitals) of the hospital's allowable Medicare inpatient old capital costs per discharge for the cost reporting period plus a new capital payment based on a percentage of the adjusted Federal rate for each discharge. The percentage of the adjusted Federal rate equals the ratio of the hospital's allowable Medicare new capital costs to its total Medicare inpatient capital-related costs in the cost reporting period.

Once a hospital receives payment based on 100 percent of the adjusted Federal rate in a cost reporting period beginning on or after October 1, 1994 (or the first cost reporting period after obligated capital that is recognized as old capital under § 412.302(c) is put in use for patient care, if later), the hospital continues to receive capital prospective payment system payments on that basis for the remainder of the transition period.

Payment for each discharge under the fully prospective methodology is the sum of the following:

- The hospital-specific rate multiplied by the DRG relative weight for the discharge and by the applicable hospital-specific transition blend percentage for the cost reporting period; and
- The adjusted Federal rate multiplied by the Federal transition blend percentage.

The blend percentages for cost reporting periods beginning in FY 2000 are 90 percent of the adjusted Federal rate and 10 percent of the hospital-specific rate.

Hospitals may also receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. Outlier payments are made only on that portion of the Federal rate that is used to calculate the hospital's inpatient capital-related payments. For fully prospective hospitals, that portion is 90 percent of the Federal rate for discharges occurring in cost reporting periods beginning during FY 2000. Thus, a fully prospective hospital will receive 90 percent of the capital-related outlier payment calculated for the case for discharges occurring in cost reporting periods beginning in FY 2000. For hold-harmless hospitals paid 85 percent of their reasonable costs for old inpatient capital, the portion of the Federal rate that is included in the hospital's outlier payments is based on the hospital's ratio of Medicare inpatient costs for new capital to total Medicare inpatient capital costs. For hold-harmless hospitals that are paid 100 percent of the Federal rate, 100 percent of the Federal rate is included in the hospital's outlier payments.

The proposed outlier thresholds for FY 2000 are in section II.A.4.c of this

Addendum. For FY 2000, a case qualifies as a cost outlier if the cost for the case (after standardization for the indirect teaching adjustment and disproportionate share adjustment) is greater than the prospective payment rate for the DRG plus $14,575.

During the capital prospective payment system transition period, a hospital may also receive an additional payment under an exceptions process if its total inpatient capital-related payments are less than a minimum percentage of its allowable Medicare inpatient capital-related costs. The minimum payment level is established by class of hospital under § 412.348. The proposed minimum payment levels for portions of cost reporting periods occurring in FY 2000 are:

- Sole community hospitals (located in either an urban or rural area), 90 percent;
- Urban hospitals with at least 100 beds and a disproportionate share patient percentage of at least 20.2 percent; and
- Urban hospitals with at least 100 beds that qualify for disproportionate share payments under § 412.106(c)(2), 80 percent; and
- All other hospitals, 70 percent.

Under § 412.348(d), the amount of the exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to that system. Any amount by which the hospital's cumulative payments exceed its cumulative minimum payment is deducted from the additional payment that would otherwise be payable for a cost reporting period.

New hospitals are exempted from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. A new hospital's old capital costs are its allowable costs for capital assets that were put in use for patient care on or before the later of December 31, 1990 or the last day of the hospital's base year cost reporting period, and are subject to the rules pertaining to old capital and obligated capital as of the applicable date. Effective with the third year of operation, we will pay the hospital under either the fully prospective methodology, using the appropriate transition blend in that Federal fiscal year, or the hold-harmless methodology. If the hold-harmless methodology is applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period.

D. Capital Input Price Index

1. Background

Like the prospective payment hospital operating input price index, the Capital Input Price Index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

Using Medicare cost reports, AHA data, and Securities Data Corporation data, a vintage-weighted price index was developed to measure price increases associated with capital expenses. We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. Currently, the CIPI is based to FY 1992 and was last rebased in 1997. The most recent explanation of the CIPI was discussed in the final rule with comment period for FY 1998 published in the August 29, 1997 **Federal Register** (62 FR 46050). The following **Federal Register** documents also describe development and revisions of the methodology involved with the construction of the CIPI: September 1, 1992 (57 FR 40016), May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), and September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), August 30, 1996 (61 FR 46196), June 2, 1997 (62 FR 29953), August 29, 1997 (62 FR 46050), May 8, 1998 (63 FR 25619), and July 31, 1998 (63 FR 41017).

2. Forecast of the CIPI for Federal Fiscal Year 2000

We are forecasting the CIPI to increase 0.5 percent for FY 2000. This reflects a projected 1.6 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 3.2 percent increase in other capital expense prices in FY 2000, partially offset by a 3.2 percent decline in vintage-weighted interest rates in FY 2000. The weighted average of these three factors produces the 0.5 percent increase for the CIPI as a whole.

V. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

A. Rate-of-Increase Percentages for Excluded Hospitals and Hospital Units

The inpatient operating costs of hospitals and hospital units excluded from the prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors). In the case of a psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, or long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts for hospitals and units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Section 1886(b)(3)(B) of the Act, which is implemented in regulations at § 413.40(c)(3)(vii), provides that for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000, the update factor depends on the hospital's or hospital unit's costs in relation to the ceiling. For hospitals with costs exceeding the ceiling by 10 percent or more, the update factor is the market basket increase. For hospitals with costs exceeding the ceiling by less than 10 percent, the update factor is the market basket minus .25 percent for each percentage point by which costs are less than 10 percent over the ceiling. For hospitals with costs equal to or less than the ceiling but greater than 66.7 percent of the ceiling, the update factor is the greater of 0 percent or the market basket minus 2.5 percent. For hospitals with costs that do not exceed 66.7

percent of the ceiling, the update factor is 0.

The most recent forecast of the market basket increase for FY 2000 for hospitals and hospital units excluded from the prospective payment system is 2.6 percent. Therefore, the update to a hospital's target amount for its cost reporting period beginning in FY 2000 would be between 0 and 2.6 percent.

In addition, § 413.40(c)(4)(iii) requires that for cost reporting periods beginning on or after October 1, 1999 and before October 1, 2000, the target amount for each psychiatric hospital or hospital unit, rehabilitation hospital or hospital unit, and long-term care hospital cannot exceed a cap on the target amounts for hospitals in the same class. For cost reporting periods beginning in FY 2000, the proposed caps are $11,076 for psychiatric hospitals and hospital units, $20,071 for rehabilitation hospitals and hospital units, and $39,596 for long-term care hospitals. Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement. Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units (psychiatric, rehabilitation, and long-term care) effective October 1, 1997.

VI. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 3C, 4A, 4B, 4C, 4D, 4E, 4F, 5, 7A, 7B, 8A, and 8B are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor

Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor

Table 1D—Capital Standard Federal Payment Rate

Table 3C—Hospital Case Mix Indexes for Discharges Occurring in Federal Fiscal Year 1998 and Hospital Average Hourly Wage for Federal Fiscal Year 2000 Wage Index

Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas

Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas

Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified

Table 4D—Average Hourly Wage for Urban Areas

Table 4E—Average Hourly Wage for Rural Areas

Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)

Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric Mean Length of Stay, and Arithmetic Mean Length of Stay Points Used in the Prospective Payment System

Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 98 MEDPAR Update 12/98 GROUPER V16.0

Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 98 MEDPAR Update 12/98 GROUPER V17.0

Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 1999

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
2,804.51	1,139.95	2,760.12	1,121.90

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large urban areas		Other areas	
	Labor	Nonlabor	Labor	Nonlabor
National	2,780.77	1,130.30	2,780.77	1,130.30
Puerto Rico	1,335.82	537.70	1,314.67	529.19

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	374.31
Puerto Rico	174.15

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX

Prov.	Case mix index	Avg. hourly wage
010001	1.4554	15.85
010004	0.9916	15.02
010005	1.1743	16.26
010006	1.4464	17.31
010007	1.1415	14.80
010008	1.1818	17.65
010009	1.0947	17.53
010010	1.0813	15.91
010011	1.5845	20.63
010012	1.2638	19.30
010015	1.0478	18.35
010016	1.2449	16.13
010018	0.9705	18.96
010019	1.2752	15.49
010021	1.2478	14.63
010022	0.9572	20.51
010023	1.6841	16.26
010024	1.4253	16.03
010025	1.3495	14.53
010027	0.8128	14.93
010029	1.5973	16.41
010031	1.4197	18.02
010032	0.8709	12.65
010033	1.9994	19.23
010034	1.0469	14.73
010035	1.2391	17.48
010036	1.0924	22.58
010038	1.2343	18.33
010039*	1.6327	18.81
010040	1.4992	19.10
010043	1.0500	16.20
010044	1.0251	17.02
010045	1.1784	15.01
010046	1.4732	17.18
010047	0.9281	16.38
010049	1.1802	14.48
010050	1.0767	15.42
010051	0.8974	9.94
010052	1.0154	13.86
010053	1.0510	13.18
010054	1.1343	17.12
010055	1.4214	18.19
010056	1.3310	19.08
010058	1.0341	12.78
010059	1.0571	18.19
010061	1.1108	15.92
010062	1.0103	13.57
010064	1.7507	20.90
010065	1.3275	15.64
010066	0.8966	12.07
010068	1.3058	18.74
010069	1.1341	13.57
010072	1.0767	14.35
010073	0.8779	12.83
010078	1.2917	17.71
010079	1.1849	16.87
010080	.....	13.85
010081	1.6352	10.92
010083	1.0573	16.21
010084	1.5014	18.78
010085	1.3174	23.43

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
010086	1.0101	14.93
010087	1.7240	18.39
010089	1.2016	16.61
010090	1.6543	18.11
010091	0.9852	16.36
010092	1.4229	16.25
010094	1.1553	18.56
010095	1.0478	11.90
010097	0.8658	12.90
010098	0.9903	14.28
010099	1.1704	15.93
010100	1.2946	15.48
010101	1.0189	15.42
010102	0.9304	12.73
010103	1.8373	19.09
010104	1.6940	17.84
010108	1.1487	8.43
010109	1.0505	14.09
010110	0.9677	15.91
010112	1.1430	15.11
010113	1.6124	17.24
010114	1.2547	17.26
010115	0.8486	13.75
010118	1.2460	17.93
010119	0.8454	18.17
010120	0.9887	17.03
010121	1.2837	15.18
010123	1.1677	18.16
010124	1.2293	16.27
010125	1.0592	14.42
010126	1.1226	17.64
010127	1.3140	19.61
010128	0.9181	12.57
010129	1.0657	14.43
010130	1.0438	16.35
010131	1.3316	17.91
010134	0.8091	10.78
010138	0.9201	12.13
010139	1.6352	19.95
010143	1.2331	15.67
010144	1.4122	17.12
010145	1.3320	19.99
010146	1.1893	18.86
010148	0.9793	14.64
010149	1.2499	17.08
010150	1.0444	16.87
010152	1.2458	15.08
010155	1.0820	16.70
020001	1.5225	27.97
020001	0.8749	.....
020002	1.0518	26.91
020004	1.1822	26.40
020005	0.8955	29.01
020006	1.1279	26.77
020007	0.8238	24.96
020009	0.8160	23.18
020010	0.9401	18.64
020011	0.9160	29.47
020012	1.2784	23.92
020013	0.9595	26.82
020014	1.1175	24.09

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
020014	1.4452	18.50
020017	1.4913	24.97
020018	0.9175	.....
020019	0.7991	.....
020021	0.7833	.....
020024	1.1070	22.73
020025	0.8911	27.15
020026	1.2510	.....
020027	0.9446	.....
030001	1.2609	19.47
030002	1.8047	21.41
030003	2.2773	23.68
030004	0.9879	17.73
030006	1.5274	17.64
030007	1.2554	18.56
030008	2.1835	.....
030009	1.2480	17.93
030010	1.3865	18.80
030011	1.4370	20.08
030012	1.2400	19.28
030012	1.3439	17.62
030013	1.2707	21.02
030014	1.5090	19.47
030016	1.2344	20.56
030017	1.4184	19.80
030018	1.8588	18.91
030019	1.2360	19.91
030022	1.4920	15.79
030023	1.4956	22.44
030024*	1.7461	21.86
030025	0.9555	17.67
030027	0.9637	17.56
030030	1.6444	21.62
030033	1.2359	16.84
030034	0.9867	19.09
030035	1.1565	19.72
030036	1.2807	18.94
030037	2.0840	21.43
030038	1.6154	22.08
030040	1.0766	17.97
030041	0.8876	17.44
030043	1.2210	20.58
030044	0.8783	16.47
030047	0.8953	19.69
030049	0.8732	19.09
030054	0.8646	14.49
030055	1.2321	18.28
030059	1.2861	21.05
030060	1.1438	16.77
030061	1.6876	17.35
030062	1.1773	17.48
030064	1.7545	18.54
030065	1.8106	19.93
030067	1.0273	15.62
030068	1.0198	17.35
030069	1.3658	19.00
030071	0.9615	.....
030073	1.0330	.....
030074	0.8723	.....
030075	0.8002	.....
030076	0.8839	.....

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
030077	0.8563	.....
030078	1.1466	.....
030079	0.9065	.....
030080	1.3765	19.99
030083	1.2782	23.64
030084	1.1334	.....
030085	1.4665	17.84
030087	1.6818	20.39
030088	1.3654	19.58
030089	1.6757	19.50
030092	1.5829	21.56
030093	1.4182	19.47
030094	1.2704	19.78
030095	1.1383	14.25
030099	0.9405	18.07
030100	2.0377	.....
030101	1.4091	.....
030102	2.6049	.....
040001	1.0898	15.57
040002	1.1548	14.09
040003	1.1009	14.00
040004	1.6240	17.29
040005	1.0392	12.88
040007	1.6923	19.52
040008	1.0369	12.70
040011	0.9437	12.27
040014	1.3239	15.39
040015	1.2153	14.60
040016	1.6757	17.54
040017	1.1681	14.95
040018	1.2213	17.56
040019	1.0343	25.71
040020	1.6155	14.81
040021	1.1803	16.28
040022	1.4732	16.00
040024	0.9967	15.73
040025	0.9089	10.95
040026	1.5803	18.24
040027	1.2533	14.54
040028	1.0058	12.84
040029	1.2994	17.78
040030	0.8774	14.15
040032	0.9640	13.33
040035	0.9449	11.21
040036	1.4553	17.91
040037	1.0573	13.48
040039	1.2280	13.84
040040	0.9016	17.43
040041	1.2600	13.36
040041	1.3395	22.59
040042	1.1970	14.66
040044	1.0388	11.44
040045	1.0120	18.77
040047	1.0272	16.39
040048	.....	15.82
040050	1.1538	11.79
040051	1.0863	16.28
040053	1.0741	15.82
040054	0.9793	15.04
040055	1.4239	16.10
040058	1.0515	15.67
040060	0.9756	11.47
040062	1.6588	17.28
040064	1.0572	12.40
040066	1.0456	17.64
040067	1.0993	13.49
040069	1.0282	16.11
040070	0.9322	15.48
040071	1.6635	16.12
040072	1.0381	15.84
040074	1.2312	17.38
040075	1.0116	12.75
040076	1.0811	18.55
040077	1.0517	12.46
040078	1.5208	17.86
040080	1.0062	15.74
040081	0.8665	10.68
040082	1.0845	16.51
040084	1.1071	17.25
040085	1.1521	15.78
040088	1.3888	15.67
040090	0.8936	17.55
040091	1.1718	17.04
040093	0.9205	12.90
040100	1.1466	14.97
040105	0.9914	14.24
040106	0.9670	15.40
040107	1.0684	19.62
040109	1.1501	13.98
040114	1.8323	18.31
040116	1.1343	19.57
040118	1.4187	17.43
040119	1.1546	14.62
040124	1.0493	17.25
040126	0.9485	11.68
040132	.....	13.18
040134	2.7108	.....
040135	2.3711	.....
050002	1.4958	27.60
050006	1.4137	19.53
050007	1.4826	29.54
050008	1.4218	25.86
050009	1.6817	26.25
050013	1.9898	24.85
050014	1.2086	24.53
050015	1.4488	25.38
050016	1.1530	20.15
050017*	2.0931	23.63
050018	1.3662	14.66
050021	.....	28.50
050022	1.6635	22.55
050024	1.3224	20.34
050025*	1.7835	20.30
050026*	1.5148	28.57
050028	1.3534	16.45
050029	1.4007	23.29
050030	1.3133	21.01
050033	1.4634	24.56
050036	1.7263	20.47
050038	1.3484	27.83
050039	1.6233	22.25
050040	1.1965	30.67
050042	1.2702	22.23
050043	1.4929	33.51
050045	1.2651	20.73
050046	1.1767	26.35
050047	1.5561	29.44
050051	1.1204	17.84
050054	1.1916	19.37
050055	1.2420	29.09
050056	1.3412	23.82
050057	1.6051	21.27
050058	1.4966	25.37
050060	1.5503	20.92
050061	1.4118	23.74
050063*	1.3493	23.07
050065	1.6823	21.18
050066	1.3020	21.42
050067	1.2472	21.30
050068	1.1039	28.48
050069	1.6089	29.30
050070	1.2353	32.60
050071	1.3248	33.14
050072	1.3875	32.97
050073	1.2629	34.61
050074	0.8073	.....
050075	1.3484	33.52
050076	2.0314	33.88
050077	1.5621	23.22
050078	1.2974	25.98
050079	1.4850	30.03
050082	1.6712	21.70
050084	1.6107	23.10
050088	0.9686	24.06
050089	1.3384	19.12
050090	1.2640	23.81
050091	1.0925	22.22
050092	0.8469	15.38
050093	1.5659	24.08
050095	.....	33.38
050096	1.1356	21.67
050097	1.5113	22.61
050099	1.4590	23.66
050100	1.6407	30.06
050101	1.3575	30.01
050102	1.3583	21.29
050103*	1.5762	25.38
050104	1.4490	25.44
050107	1.4605	21.76
050108	1.8355	26.46
050109	.....	26.48
050110	1.2159	20.18
050111	1.2944	21.74
050112	1.3623	26.31
050113	1.3163	27.73
050114	1.3788	25.91
050115	1.4961	20.94
050116	1.5241	24.81
050117	1.3978	20.44
050118	1.1846	23.94
050121	1.2928	18.94
050122	1.5685	.....
050124	1.2796	23.02

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
050125	1.3663	24.04
050126	1.4556	23.84
050127	1.2518	19.76
050128	1.6084	24.18
050129	1.7494	13.86
050131	1.2640	29.06
050132	1.3640	22.91
050133	1.2704	24.40
050135	1.4808	27.03
050136	1.3536	24.43
050137	1.2990	30.07
050138	2.0444	37.41
050139	1.2535	31.38
050140	1.3204	33.66
050144	1.4207	25.75
050145	1.3756	33.06
050146	1.5841	.....
050148	1.1044	21.06
050149	1.4969	21.91
050150	1.2679	23.48
050152	1.3293	28.42
050153	1.6402	29.59
050155	1.0988	22.94
050158	1.2998	27.67
050159	1.3323	25.21
050167	1.3726	21.68
050168	1.5375	24.56
050169	1.4739	24.64
050170	1.4500	22.20
050172	1.2520	17.70
050173	1.3744	23.33
050174	1.7008	31.21
050175	1.2719	27.38
050177	1.1869	20.25
050179	1.2306	19.29
050180	1.5813	32.19
050183	1.2743	19.98
050186	1.3455	21.91
050188	1.4391	27.44
050189	0.9661	23.24
050191	1.4683	19.96
050193	1.1582	23.73
050194	1.2312	28.27
050195	1.5639	34.54
050196	1.2815	16.69
050197	1.9562	31.26
050204	1.5299	24.39
050205	1.2841	24.02
050211	1.3183	31.15
050213	1.5713	20.73
050214	1.5448	20.87
050215	1.5700	29.63
050215	1.2334	23.00
050217	1.2876	19.89
050219	1.1425	25.47
050219	.....	26.32
050222	1.5157	27.04
050224	1.5832	23.79
050225	1.5625	20.93
050225	1.0612	20.15
050226	1.3274	24.24
050228	1.3089	30.16
050230	1.4112	25.30
050231	1.6440	25.63
050232	1.5636	23.38
050233	.....	31.40
050234	1.1512	27.98
050235	1.5544	25.86
050236	1.5146	26.27
050238	1.5288	24.00
050239*	1.5967	20.55
050240	1.5246	25.18
050241	1.1378	27.22
050242	1.4446	30.14
050243	1.5312	22.91
050245	1.5041	22.10
050248	1.2054	25.99
050251	1.1113	18.50
050253	1.4184	19.76
050254	1.1991	19.69
050256	1.7681	21.74
050257	0.9509	19.59
050260	0.9690	23.52
050261	1.2103	20.45
050262	1.8148	28.30
050264	1.3466	29.45
050267	1.6936	24.75
050270	1.3630	23.83
050272	1.3986	21.44
050274	0.9467	21.19
050276	1.1725	28.51
050276	1.4351	23.14
050277	1.4815	22.31
050278	1.5070	23.84
050279	1.2886	21.06
050280	1.6534	24.46
050282	1.3492	23.98
050286	0.9172	17.80
050289	1.7279	28.87
050290	1.6741	26.37
050291	1.1709	26.49
050292	1.1236	22.38
050293	1.0656	19.18
050295	1.4569	20.28
050296	1.2171	25.32
050298	1.3268	20.52
050299	1.3252	25.26
050300	1.4143	22.46
050301	1.2326	26.03
050302	.....	29.19
050305	1.5862	32.71
050307	1.2747	24.39
050308	1.5099	28.40
050309	1.2834	24.40
050310	.....	20.62
050312	1.9696	23.79
050313	1.1560	23.10
050315	1.3473	21.92
050317	.....	19.45
050320	1.2371	30.56
050324	2.0030	26.27
050327	1.6651	22.32
050329	1.2991	19.54
050331	1.3646	25.53
050334	1.7493	32.02
050335	1.4570	21.04
050336	1.3561	20.10
050342	1.2512	21.90
050343	0.9711	17.24
050348	1.7865	20.71
050349	0.8866	15.05
050350	1.4046	23.77
050351	1.4821	24.94
050352	1.3151	23.59
050353	1.6183	23.25
050355	0.8385	17.16
050357	1.3583	23.64
050359	1.2481	20.40
050360	1.4309	31.76
050366	1.3334	21.40
050367	1.2586	29.48
050369	1.3031	19.87
050373	1.4037	21.92
050376	1.4260	25.30
050377	1.0300	25.64
050377	0.8258	.....
050378	1.0916	22.24
050379	1.0223	16.90
050380	1.6105	30.58
050382	1.3610	21.00
050385	1.3408	25.92
050388	0.8708	13.20
050390	1.1966	22.39
050391	1.3438	22.42
050392	0.9321	21.93
050394	1.5689	22.32
050396	1.6448	23.63
050397	0.9378	20.77
050401	1.1055	17.78
050404	1.0623	19.28
050406	1.0266	17.12
050407	1.2842	30.12
050410	1.0721	16.47
050411	1.3571	32.24
050414	1.3002	24.34
050417	1.3224	21.89
050419	1.3788	23.12
050420	1.3048	22.68
050421	1.2343	.....
050423	1.0115	22.33
050424	1.8351	23.78
050425	1.2290	33.69
050426	1.3912	23.71
050427	0.9378	20.07
050430	1.0036	21.14
050432	1.5223	21.50
050433	0.9711	16.80
050434	1.0630	15.63
050435	1.1647	32.99
050436	1.0075	16.36
050436	0.9233	18.33
050438	1.7365	24.08
050440	1.2718	30.82

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
050441	1.9387	29.05
050443	0.8693	16.43
050444	1.3199	24.67
050446	0.8088	20.54
050447	1.0794	18.34
050448	1.1060	20.08
050449	1.2885	22.13
050454*	1.7746	28.69
050455	1.7950	19.92
050455	1.2816	23.39
050456	1.2213	17.62
050457	1.9135	31.18
050459	1.5161	37.09
050464	1.7086	22.31
050468	1.5610	23.17
050469	1.1462	19.84
050470	1.1450	17.03
050470	1.2419	24.35
050471	1.8998	24.29
050476	1.3673	23.14
050477	1.4363	27.71
050478	0.9815	23.05
050481	1.3946	22.95
050482	1.0697	16.93
050483	2.2575	21.60
050483	1.5954	26.32
050485	1.6061	23.70
050486	.....	24.50
050488	1.3254	32.86
050491	1.1970	24.15
050492	1.4174	21.42
050494	1.2385	25.41
050496	1.7580	33.02
050498	1.2265	24.87
050502	1.7255	22.63
050503	1.3465	23.59
050506	1.3628	21.22
050510	1.2780	33.46
050512	1.4414	34.31
050515	1.3431	35.04
050516	1.5018	25.14
050517	1.2038	20.37
050522	1.1580	31.73
050523	1.2445	28.42
050526	1.2949	23.19
050528	1.1896	18.69
050531	1.1101	20.73
050534	1.2830	23.31
050535	1.5228	24.23
050537	1.3702	22.21
050539	1.3242	22.78
050541	1.5636	34.62
050542	0.9778	19.06
050543	0.8445	20.38
050545	0.7605	27.57
050546	0.6961	27.76
050547	0.9021	27.08
050548	.....	26.59
050549	1.6004	27.34
050550	1.3676	25.54
050551	1.3528	24.05
050552	1.2749	22.87
050557	1.5186	21.92
050559	1.2852	24.67
050561	1.2134	33.93
050564	1.3221	24.51
050565	1.3123	22.88
050567	1.5510	24.23
050568	1.3424	20.73
050569	1.2039	24.94
050570	1.6495	24.50
050571	1.3940	24.37
050573	1.5642	25.14
050575	1.1445	.....
050577	1.3610	20.52
050578	1.2810	30.24
050579	1.4312	30.07
050581	1.4505	23.58
050583	1.6150	23.36
050584	1.2149	23.16
050585	1.2567	26.50
050586	1.3530	23.84
050588	1.2804	30.39
050590	1.3223	.....
050591	1.3152	22.29
050592	1.2657	26.05
050594	1.6258	22.78
050597	1.2269	22.78
050598	1.3408	28.11
050601	1.6473	32.87
050603	1.4112	22.61
050604	1.4593	33.32
050607	.....	24.10
050608	1.2805	16.15
050609	1.4876	31.93
050613	1.1408	22.73
050615	1.5445	23.61
050616	1.3408	22.80
050618	1.0867	21.70
050623	1.6040	30.32
050624	1.3287	20.88
050625	1.6313	24.43
050630	1.2732	24.10
050633	1.2945	21.98
050635	.....	37.85
050636	1.4342	20.83
050638	1.1056	23.63
050641	1.2985	21.30
050643	0.9493	.....
050644	1.0737	23.12
050660	1.4981	.....
050661	.....	20.48
050662	0.8152	28.29
050663	1.1713	23.71
050667	1.0811	24.11
050668	1.1187	39.90
050670	0.7555	21.88
050674	1.2384	36.24
050675	2.2195	15.84
050676	1.0018	17.53
050677	1.3671	33.71
050678	1.2889	19.79
050680	1.1161	27.32
050682	0.9235	17.97
050684	1.2411	21.81
050685	1.1904	32.13
050686	1.2873	33.25
050688	1.1889	30.00
050689	1.4877	34.19
050690	1.4194	33.83
050693	1.3143	33.30
050694	1.3869	22.23
050695	1.0637	23.52
050696	2.1089	26.41
050697	1.3282	21.47
050699	0.5913	28.48
050700	.....	28.45
050701	1.3166	27.62
050702	.....	12.25
050704	1.0850	20.76
050707	0.9714	27.51
050708	1.4521	21.91
050709	1.2542	19.42
050710	1.3382	26.81
050713	0.7909	15.30
050714	1.3545	.....
050715	.....	19.12
050717	1.2615	.....
050718	0.7586	.....
050719	3.1984	.....
050720	0.9144	.....
060001	1.6827	19.81
060003	1.2712	19.32
060004	1.2022	21.79
060006	1.2559	17.86
060007	1.1616	16.38
060008	1.0845	17.09
060009	1.5000	21.18
060010	1.6680	22.72
060011	1.3912	22.01
060012	1.3799	19.77
060013	1.3198	19.14
060014	1.8158	20.45
060015	1.6295	23.57
060016	1.1644	15.96
060018	1.2890	22.76
060020	1.6161	17.73
060022	1.5680	19.65
060023	1.6349	19.68
060024	1.7013	21.98
060027	1.6853	21.67
060028	1.5673	22.25
060029	0.8934	21.41
060030	1.3522	20.03
060031	1.5399	19.40
060032	1.4830	22.37
060033	1.1419	13.82
060034	1.5815	21.41
060036	1.1374	19.24
060037	1.0041	14.05
060038	0.9494	14.31
060041	0.9290	14.83
060042	1.0390	20.08

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
060043	0.8765	13.05
060044	1.1677	18.54
060046	1.0277	20.44
060047	0.9573	15.12
060049	1.3269	20.83
060050	1.2499	16.80
060052	1.0358	12.55
060053	1.0148	14.94
060054	1.4104	19.39
060056	0.9009	17.05
060057	1.0271	23.38
060058	0.9425	16.91
060058	1.3708	24.88
060060	0.9192	14.89
060062	0.8672	14.94
060063	.....	15.09
060064	1.4858	20.93
060065	1.2927	24.30
060066	0.9930	14.07
060068	.....	19.64
060070	1.1240	16.58
060071	1.2070	16.95
060073	0.9583	15.84
060075	1.2386	22.85
060076	1.4334	19.29
060087	.....	21.03
060088	1.0054	16.67
060090	0.9024	14.51
060096	1.1102	23.11
060100	1.5342	22.00
060103	1.3190	22.34
060104	1.2281	22.30
060107	1.1971	13.64
060109	1.0979	.....
070001	1.7556	26.51
070002	1.8370	25.46
070003	1.1151	26.09
070004	1.2021	17.57
070005	1.4405	25.57
070006	1.3841	28.71
070007	1.3504	20.38
070008	1.2547	26.03
070010	1.6964	25.94
070011	1.3837	18.74
070012	1.1748	23.84
070015	1.3856	21.37
070016	1.4249	26.23
070017	1.3692	25.33
070018	1.3688	28.88
070019	1.1852	24.70
070020	1.3279	25.66
070021	1.2354	27.20
070022	1.8624	25.08
070024	1.3266	24.98
070025*	1.8697	21.03
070026	.....	18.79
070027	1.3119	23.11
070028	1.5539	24.76
070029	1.3338	22.75
070030	1.2872	25.55
070031	1.2430	21.66

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
070033	1.4104	28.06
070034	1.3899	27.67
070035	1.4195	23.06
070036	1.7249	28.95
070038	0.7820	.....
070039	0.9541	29.07
080001	1.7050	25.28
080001	1.3001	16.14
080002	.....	15.60
080003	1.3859	22.40
080004	1.2655	19.76
080005	.....	14.43
080006	1.2940	22.26
080007	1.4146	20.38
090001	1.6063	25.97
090002	1.3508	19.70
090003*	1.3694	28.74
090004	1.7901	24.54
090006	1.3157	20.08
090007	1.3060	21.66
090008	1.5079	21.25
090010	1.0721	15.87
090011	2.1212	27.37
100001*	1.5321	17.59
100002	1.4384	21.32
100004	1.0139	15.25
100006	1.6140	20.63
100007	1.8868	21.89
100008	1.6004	20.72
100009	1.4674	24.29
100010	1.5057	21.91
100012	1.6358	18.17
100014	1.4840	19.83
100015	1.4801	18.24
100017	1.5926	17.77
100018	1.5487	21.46
100019	1.5570	19.81
100020	1.3913	26.18
100022*	1.7896	25.89
100023	1.3582	21.11
100024	1.3508	20.78
100025	1.7579	19.12
100026	1.5828	20.78
100027	1.0140	12.94
100028	1.2109	19.75
100029	1.3427	19.18
100030	1.2532	18.82
100032	1.8549	19.32
100034	1.7609	18.23
100035	1.5876	19.58
100038	1.6639	24.78
100039	1.5294	20.25
100040	1.7522	18.37
100043	1.3301	17.46
100044	1.3902	21.14
100045	1.3907	20.04
100046	1.4313	.....
100047	1.8501	18.89
100048	0.9391	13.50
100049	1.2657	18.57
100050	1.1486	16.60

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
100051	1.2376	18.84
100052	1.3877	16.19
100053	1.2157	18.71
100054	1.2782	18.19
100055	1.3757	17.62
100056	1.4971	23.65
100057	1.3578	18.92
100060	1.8350	22.39
100060	1.5612	21.03
100061	1.4669	21.79
100062	1.7286	17.96
100063	1.1599	16.23
100067	1.3589	17.40
100068	1.3616	18.65
100070	1.4351	20.33
100071	1.2326	16.48
100072	1.2524	19.22
100073	1.7197	18.16
100075	1.5968	18.05
100076	1.3003	16.25
100077	1.3909	19.62
100078	1.0296	18.15
100079	1.3325	.....
100080	1.6003	21.16
100081	1.1021	13.83
100082	1.4970	19.80
100084	1.3481	20.40
100085	1.4397	21.08
100086	1.2342	21.16
100087	1.8333	22.84
100088	1.6475	19.90
100088	1.3183	18.47
100090	1.3787	17.88
100092	1.5757	18.19
100093	1.5959	16.63
100098	1.0984	19.03
100099	1.2201	15.30
100102	1.0153	19.33
100103	0.9381	18.10
100105	1.4533	21.50
100106	1.0265	19.31
100107	1.3135	18.01
100108	0.9981	11.47
100109	1.3849	22.76
100110	1.3691	19.64
100112	0.9729	9.77
100113	1.9447	22.26
100114	1.3410	23.45
100117	1.1881	18.73
100118	1.2985	19.76
100121	1.1822	19.34
100122	1.2062	18.06
100124	1.2948	18.95
100125	1.2698	17.33
100126	1.4687	17.90
100127	1.6571	19.87
100128	2.2008	21.37
100129	1.2934	18.57
100130	1.1799	19.10
100131	1.3441	22.17
100132	1.2951	16.90

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
100134	0.9749	13.47
100135	1.5663	18.14
100137	1.2769	19.05
100138	1.0055	11.01
100139	1.0923	15.64
100140	1.2176	17.39
100142	1.2184	18.68
100144	1.1622	15.02
100145	.....	19.11
100146	0.9700	17.87
100146	1.3080	19.02
100147	1.0087	14.68
100150	1.3244	21.02
100151	1.7633	19.41
100154	1.5916	19.85
100156	1.1116	17.13
100159	0.9604	16.38
100160	1.2033	21.63
100161	1.7011	21.50
100162	1.3957	19.52
100165	1.1517	15.32
100166	1.4343	19.96
100167	1.3554	21.81
100168	1.3364	20.13
100169	1.7635	20.78
100170*	1.4176	15.12
100172	1.4427	15.18
100173	1.6517	17.34
100174	1.3757	20.51
100175	1.1552	16.74
100176	2.0762	24.70
100177	1.2940	22.00
100179	1.7112	20.91
100180	1.4416	18.48
100181	1.1072	24.57
100183	1.1925	20.84
100187	1.4354	20.69
100189	1.3293	21.01
100199	1.3519	23.37
100200	1.2394	22.26
100203	.....	18.86
100204	1.6275	19.93
100206	1.3738	20.31
100207	.....	15.92
100208	1.3742	20.83
100209	1.4794	19.73
100210	1.5725	19.18
100211	1.3995	25.53
100212	1.6223	25.34
100213	1.5101	19.12
100217	1.2750	19.87
100220	1.6359	19.82
100221	1.8123	27.48
100222	0.9440	21.20
100223	1.4649	18.76
100224	1.3348	24.70
100225	1.3371	20.64
100226	1.3524	24.83
100228	1.2825	23.70
100229	1.3301	18.21
100230	1.3524	20.60
100231	1.6807	17.40
100232	1.2520	17.32
100234	1.2585	21.58
100235	.....	17.66
100236	1.3919	15.54
100237	2.1914	22.93
100238	1.5456	17.63
100239	1.4273	19.76
100240	1.0888	17.93
100241	0.8966	13.83
100242	1.4285	17.12
100243	1.4081	20.24
100244	1.3741	17.41
100246	1.3684	21.10
100248	1.5873	31.86
100252	1.2004	17.87
100253	1.4328	20.60
100254	1.5393	20.91
100255	1.2547	21.02
100256	2.0100	24.26
100258	1.6900	21.88
100259	1.3406	19.86
100260	1.4566	21.20
100262	1.3401	19.59
100263	.....	16.90
100264	1.3627	17.61
100265	1.2933	19.80
100266	1.3562	17.73
100267	1.3062	17.10
100268	1.1954	23.59
100269	1.4338	21.20
100270	1.0126	19.86
100271	1.7709	19.92
100275	1.3951	21.33
100276	1.2359	21.98
100277	1.0352	16.14
100279	1.2735	21.84
100280	1.2949	16.58
100281	1.2798	22.02
100282	1.0837	18.66
100284	1.0788	.....
110001	1.2556	17.87
110002	1.2532	17.37
110003	1.3668	16.02
110004	1.3570	20.11
110005	1.1963	19.26
110006	1.4200	20.13
110007	1.6126	14.39
110008	1.2429	18.26
110009	1.1330	14.82
110010	2.1782	24.55
110011	1.1632	18.28
110013	1.0596	16.03
110014	0.9440	16.12
110015	1.1403	19.48
110016	1.2276	15.77
110017	0.9321	10.54
110018	1.1960	21.04
110020	1.1927	18.44
110023	1.3373	18.54
110024	1.3655	19.75
110025	1.3797	18.65
110026	1.1361	16.14
110027	1.1146	14.83
110028	1.7778	19.89
110029	1.3534	20.05
110030	1.2999	17.68
110031	1.2251	21.58
110032	1.2506	16.19
110033	1.4221	22.19
110034	1.5852	18.24
110035	1.3916	20.98
110036	1.8560	23.78
110038	1.4425	16.38
110039	1.4188	20.77
110040	1.0642	16.40
110041	1.1822	16.69
110042	1.1544	20.55
110043	1.8078	17.16
110044	1.1887	19.60
110045	1.1386	19.94
110046	1.2456	19.23
110048	1.2374	15.65
110049	1.0998	14.21
110050	1.1806	18.76
110051	1.0250	15.75
110052	.....	15.06
110054	1.3606	19.32
110056	1.0843	16.50
110059	1.2164	17.70
110061	1.0960	13.72
110062	0.9058	12.21
110063	1.0542	17.97
110064	1.4839	18.24
110065	1.0322	13.32
110066	1.4496	20.65
110069	1.2569	18.35
110070	1.1398	18.23
110071	1.0981	14.83
110072	0.9722	12.43
110073	1.1437	15.14
110074	1.4973	20.04
110075	1.3226	17.01
110076	1.4639	20.40
110078	1.7586	24.70
110079	1.4465	20.14
110080	1.3579	23.43
110082	2.0915	22.01
110083*	1.7615	21.27
110086	1.2837	14.98
110087	1.3551	20.54
110089	1.2041	18.58
110091	1.2791	21.38
110092	1.0878	15.09
110094	0.9920	13.87
110095	1.3537	15.95
110096	1.0806	16.32
110097	1.0653	15.62
110098	0.9870	14.04
110100	1.0558	20.38
110101	1.1014	11.73
110103	0.9309	11.94

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
110104	1.0963	15.32
110105	1.2997	16.52
110107	1.8897	17.41
110108	0.9511	15.14
110109	1.1080	20.99
110111	1.2038	17.37
110112	0.9917	19.13
110113	1.0478	15.19
110114	1.0441	15.13
110115	1.7526	24.79
110118	1.1376	15.40
110120	1.0386	16.08
110121	1.2784	15.58
110122	1.3818	18.82
110124	1.2091	17.13
110125	1.2562	17.33
110127	0.8873	13.76
110128	1.1933	18.97
110130	1.0064	13.08
110132	1.1478	15.02
110134	0.9656	11.56
110135	1.3363	17.07
110136	1.0986	16.17
110140	1.0445	17.88
110141	0.9996	12.51
110142	0.9525	12.30
110142	0.9525	12.30
110142	1.0382	12.54
110143	1.4339	21.45
110144	1.0712	17.98
110146	1.0854	17.61
110150	1.4073	18.77
110152	1.0430	14.77
110153	1.0912	18.69
110154	0.9773	14.81
110155	1.1399	17.14
110156	1.0511	15.14
110161	1.3149	20.87
110162	0.7514	.....
110163	1.4628	18.99
110164	1.4190	19.40
110165	1.4270	19.00
110166	1.4482	19.85
110168	1.6676	19.82
110169	1.2028	18.72
110171	1.6118	20.18
110172	1.3576	25.44
110174	0.9161	14.30
110176	3.7291	22.39
110177	1.5099	19.66
110178	.....	16.92
110179	1.1507	20.38
110181	0.9038	13.72
110183	1.3120	21.44
110184	1.2434	20.72
110185	1.1874	16.25
110186	1.2548	17.21
110187	1.2728	21.45
110188	1.3549	19.95
110189	1.1692	18.84
110190	1.0644	19.43

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
110191	1.3076	19.11
110192	1.4458	20.77
110193	1.2436	18.78
110194	0.8938	15.09
110195	1.0992	10.52
110198	1.2884	26.19
110200	1.8855	17.14
110201	1.5094	19.24
110203	0.9314	20.30
110204	0.8249	20.57
110205	1.0578	26.12
110207	1.0103	12.87
110208	0.9617	14.89
110209	0.7100	20.46
110209	0.9560	17.78
110210	.....	11.07
110211	0.9611	21.82
110212	1.0043	12.66
110213	.....	13.20
110215	1.0941	.....
110216	2.1653	.....
110217	2.8336	.....
120001*	1.8196	26.74
120002	1.2037	24.38
120003	1.1393	23.85
120004	1.2630	24.05
120005	1.2464	20.54
120006	1.2735	23.72
120007	1.7320	23.27
120009	0.9632	19.02
120010*	1.8265	25.40
120011	1.3581	33.55
120012	0.8391	22.52
120014	1.2760	24.05
120016	1.0574	29.41
120018	.....	25.61
120019	1.3200	21.92
120019	0.9579	14.67
120021	0.9290	19.42
120022*	1.6850	17.94
120022*	1.6850	17.94
120022*	1.2230	15.96
120022*	1.2230	15.96
120024	1.0727	22.28
120025	.....	19.02
120026	1.2644	23.22
120027	1.4120	24.55
120028	1.2471	22.84
130001	0.9699	24.95
130002	1.3252	16.19
130003	1.3332	19.97
130005	1.4390	20.19
130006	1.8346	18.87
130007	1.6708	19.84
130008	0.9590	12.92
130009	0.9294	18.30
130010	0.8911	21.43
130011	1.2864	19.08
130012	0.9929	22.62
130013	1.3310	19.22
130014	1.3257	17.98

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
130015	0.8827	15.27
130016	1.0155	17.00
130017	1.1012	16.88
130018	1.6256	17.97
130019	1.1193	17.23
130021	0.9513	12.26
130022	1.2324	19.50
130024	1.1558	18.38
130025	1.0970	15.27
130026	1.1726	20.55
130027	0.9243	20.70
130028	1.2865	18.21
130029	1.0707	19.87
130030	0.8409	18.40
130031	1.0121	17.65
130034	1.0325	18.82
130034	1.8152	18.40
130035	1.1048	20.47
130036	1.3946	13.79
130037	1.3076	17.74
130043	0.9605	16.07
130044	0.9724	13.18
130045	0.9752	16.47
130048	0.9815	15.09
130049	1.2325	20.05
130049	1.5824	20.72
130056	0.8528	15.66
130058	.....	17.75
130060	1.2796	20.85
130061	1.2950	16.78
130061	1.1145	17.32
130062	0.6352	15.11
130063	1.3116	.....
140001	1.2277	15.44
140002	1.2578	19.26
140003	1.0026	16.59
140004	1.1657	17.52
140005	0.9695	10.87
140007	1.4700	22.40
140007	1.4015	21.54
140008	1.4683	20.79
140010	1.3722	24.43
140011	1.2029	17.28
140012	1.2779	20.11
140013	1.5702	17.35
140014	1.1734	20.76
140015	1.2861	15.02
140018	1.2551	20.84
140019	1.1122	15.34
140025	1.0822	16.43
140027	1.2700	17.50
140027	1.3076	18.47
140029	1.3389	21.03
140030	1.8231	22.44
140031	1.2022	15.82
140032	1.3343	17.34
140033	1.2879	22.56
140034	1.1842	18.96
140035	0.9867	13.00
140036	1.2425	17.04
140036	1.1031	25.40

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
140037	1.0365	12.50
140038	1.1040	16.59
140040	1.2582	16.25
140041	1.1609	17.28
140042	1.0170	15.61
140043	1.1892	18.95
140045	1.0337	20.65
140046	1.3056	16.46
140047	1.0942	15.68
140048	1.3053	20.58
140049	1.6549	18.31
140051	1.5123	21.59
140052	1.3010	19.60
140053	2.0144	17.82
140054	1.3340	26.64
140055	1.0128	14.80
140058	1.2361	17.27
140059	1.1346	15.39
140061	1.0918	15.96
140062	1.2453	27.09
140063	1.4369	22.39
140064	1.3182	19.26
140065	1.4623	22.75
140066	1.1771	16.14
140068	1.2906	18.87
140069	1.0478	17.29
140070	1.2528	19.30
140074	1.0760	19.01
140075	1.3678	22.51
140077	1.2460	16.64
140079	1.2649	24.08
140081	1.0822	15.51
140082	1.3677	22.62
140083	1.2487	18.13
140084	1.2530	19.97
140087	1.3481	18.36
140088	1.7061	24.19
140089	1.2734	17.21
140090*	1.5241	22.31
140091	1.9064	20.70
140093	1.1684	19.15
140094	1.3427	19.89
140097	0.9518	16.90
140100	1.3290	19.06
140101	1.2258	26.09
140102	1.0431	15.13
140103	1.4249	17.86
140105	1.2912	22.56
140107	1.0115	12.76
140108	1.3343	30.11
140109	1.1455	15.47
140110	1.2406	18.68
140112	1.1571	16.24
140113	1.5610	17.92
140114	1.3330	20.11
140116	1.2349	21.83
140117	1.5621	19.72
140118	1.7257	23.06
140119	1.7733	26.00
140120	1.3738	14.84
140121	1.3603	9.53
140122	1.5424	23.75
140125	1.3486	17.10
140127	1.4176	19.42
140128	1.0297	17.67
140129	1.1653	15.25
140130	1.2502	23.77
140132	1.4907	22.86
140133	1.4008	19.88
140135	1.2769	17.69
140137	1.0216	16.51
140138	1.0656	14.59
140139	1.1054	16.58
140140	1.1358	15.30
140141	1.2625	15.18
140143	1.0965	18.76
140144	0.9972	20.02
140145	1.1515	16.61
140146	1.0726	23.74
140147	1.2513	24.82
140148	1.8284	19.50
140150	1.6430	27.88
140151	1.0622	19.30
140152	1.1938	20.67
140155	1.3261	17.52
140158	1.3600	22.27
140160	1.1729	17.88
140161	1.2205	19.04
140162	1.6991	18.42
140164	1.4369	18.09
140165	1.0868	15.42
140166	1.1672	17.58
140167	1.0995	16.17
140168	1.1300	16.46
140170	1.1305	14.14
140171	0.9892	14.73
140172	1.5894	20.07
140173	0.8708	18.48
140174	1.6068	19.89
140176	1.2498	21.41
140177	1.2111	18.17
140179	1.3636	20.88
140180	1.4489	23.25
140181	1.4225	19.95
140182	1.3614	20.48
140184	1.2130	15.88
140185	1.4938	17.36
140186	1.3433	17.49
140187	1.5860	17.72
140188	0.9891	14.84
140189	1.2539	19.08
140190	1.0732	15.88
140191	1.4402	24.74
140193	1.0284	15.52
140197	1.2538	17.98
140199	1.0796	18.83
140200	1.4770	21.65
140202	1.3288	22.18
140203	1.1563	20.78
140205	0.9505	17.24
140206	1.2043	20.39
140207	1.2975	20.20
140208	1.7189	23.94
140209	1.6299	17.79
140210	1.1139	12.66
140211	1.2088	21.49
140213	1.2799	26.20
140215	0.9874	14.45
140217	1.3239	22.26
140218	0.9885	15.08
140220	1.1219	16.73
140223	1.5500	21.28
140224	1.4304	22.99
140228	1.6774	18.67
140230	0.9389	16.60
140231	1.5601	21.61
140233	1.7821	18.39
140234	1.2228	18.72
140236	1.0843	13.13
140239	1.7286	18.88
140240	1.3944	21.83
140242	1.6388	22.64
140246	1.0612	12.82
140250	1.3284	23.41
140251	1.3090	20.54
140252	1.4991	24.55
140253	1.1636	16.74
140258	1.5756	16.51
140271	0.9729	15.36
140275	1.2733	17.96
140276	2.0648	25.46
140280	1.3777	18.84
140285	1.2740	14.71
140286	1.1868	19.84
140288	1.6194	20.59
140289	1.3449	16.45
140290	1.3397	25.88
140291	1.3337	22.44
140292	1.2935	22.71
140297	.....	21.47
140300	1.4604	23.46
150001	1.1062	21.70
150002	1.4495	18.66
150003	1.7952	19.31
150004	1.5197	19.70
150005	1.1497	19.00
150006	1.2614	20.04
150007	1.1968	19.53
150009	1.3657	17.53
150010	1.3618	18.48
150011	1.2157	19.19
150012	1.6189	20.52
150013	1.1006	16.00
150014	1.6067	21.28
150015	1.2931	22.06
150017	1.9040	18.89
150018	1.4570	18.62
150019	1.0936	15.29
150020	1.1517	14.46
150021	1.6877	.....
150022	1.0903	17.92
150023	1.5766	18.71
150024	1.3391	17.83

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
150025	1.4398	18.15
150026	1.2090	20.51
150029	1.3389	21.74
150030	1.2446	17.33
150031	1.0811	18.01
150032	.....	20.64
150033	1.5737	21.69
150034	1.4854	21.29
150035	1.4921	19.82
150036	0.9960	20.38
150037	1.2881	17.79
150039	1.0016	17.42
150042	1.2830	17.12
150043	1.1042	17.98
150044	1.2625	17.64
150044	1.2486	18.32
150045	1.0927	17.04
150046	1.3943	17.32
150047	1.5983	20.57
150048	1.1912	16.96
150049	1.2166	16.85
150050	1.1659	17.14
150051	1.5099	18.20
150052	1.0909	15.36
150053	0.9867	18.75
150054	1.1350	17.33
150054	1.0816	15.23
150056	1.8874	23.30
150057	2.2401	16.86
150058	1.7056	20.94
150059	1.3586	20.80
150060	1.1860	16.01
150061	1.2108	17.21
150062	1.1076	18.41
150063	1.0891	21.09
150064	1.1810	16.88
150065	1.1695	19.01
150066	1.0226	14.60
150067	1.1260	17.08
150069	1.2233	17.39
150070	0.9579	17.20
150071	1.0955	14.73
150072	1.1997	16.11
150073	1.0623	19.03
150074	1.6321	18.80
150075	1.1204	14.98
150076	1.1815	22.34
150077	0.8126	17.58
150078	1.0515	19.01
150079	1.1737	15.45
150082	1.5261	17.88
150084	1.9911	22.92
150086	1.2506	17.34
150088	1.3443	19.45
150089	1.4584	22.79
150090	1.3311	19.06
150091	1.0358	19.89
150092	1.0071	15.92
150094	0.9754	18.34
150095	1.0873	17.12
150096	1.0067	20.03
150097	1.0922	18.31
150098	1.1583	14.30
150099	.....	19.05
150100	1.6560	17.45
150101	1.0932	17.56
150102	1.0786	11.50
150103	0.9709	17.31
150104	1.1262	17.26
150105	1.3363	19.17
150106	1.0512	18.91
150109	1.3950	18.23
150109	0.9960	14.44
150110	0.9833	18.58
150111	1.1623	16.17
150112	1.2432	19.82
150113	1.2363	19.30
150114	0.9759	16.96
150115	1.3380	17.06
150122	1.1564	19.35
150123	1.1155	15.16
150124	1.0883	15.07
150125	1.4626	20.31
150126	1.4875	20.33
150126	1.0382	15.85
150127	1.0281	22.81
150129	1.1879	23.39
150130	1.3446	16.19
150132	1.4200	19.37
150132	1.4200	19.37
150133	1.1908	16.49
150134	1.1980	17.06
150136	0.9556	19.28
160001	1.2605	19.03
160002	1.0936	15.37
160003	0.9983	15.77
160007	1.0218	15.66
160008	1.1414	14.97
160009	1.2218	16.09
160012	1.0466	16.54
160013	1.1370	17.06
160014	1.0250	15.09
160014	1.0321	14.26
160016	1.1679	18.37
160018	0.9632	14.16
160020	1.0694	13.91
160021	1.1170	15.49
160023	1.0888	14.20
160024	1.6094	18.95
160026	1.0266	18.66
160027	1.0851	15.74
160028	1.2340	20.44
160029	1.5289	20.40
160030	1.3882	17.99
160031	1.1181	15.28
160032	1.1544	16.18
160033	1.9173	18.37
160034	1.1493	14.51
160035	0.8438	15.92
160036	1.0544	18.91
160037	1.0584	18.40
160039	1.0389	17.63
160040	1.2661	16.83
160041	1.0648	15.58
160043	0.9893	15.63
160044	1.2182	16.04
160045	1.8186	20.12
160046	1.0239	14.77
160047	1.3703	16.93
160048	1.2473	13.14
160049	0.9262	13.36
160050	1.0709	16.42
160051	0.8978	14.27
160052	0.9936	17.55
160054	1.0281	15.71
160055	0.9846	14.06
160056	1.0679	15.38
160057	1.2435	17.41
160058	1.8383	20.34
160060	1.0430	15.95
160061	1.0815	17.57
160063	1.1620	16.30
160064	1.5348	19.94
160065	1.0510	16.51
160066	1.1016	16.26
160067	1.4226	17.85
160068	1.0237	15.85
160069	1.5362	18.49
160070	0.9937	15.66
160072	1.0339	14.19
160073	0.9954	15.05
160075	1.0796	17.89
160076	1.0993	17.31
160077	1.1152	11.40
160079	1.4125	17.71
160079	1.4017	16.15
160081	1.1531	16.51
160082	1.9254	18.80
160083	1.6684	18.41
160085	1.0030	18.55
160086	0.9493	16.46
160088	1.1546	17.53
160089	1.1915	16.74
160090	1.0124	16.60
160091	1.0383	12.19
160092	1.0124	15.80
160093	1.0155	15.95
160094	1.1043	16.56
160097	1.0774	15.21
160098	0.9397	15.54
160099	0.9650	13.79
160101	1.0852	17.87
160102	1.3435	18.36
160103	0.9416	17.15
160104	1.3010	19.76
160106	1.1089	16.66
160107	1.1508	16.56
160108	1.0237	15.42
160109	1.0167	16.49
160110	1.5117	19.93
160111	0.9983	13.17
160112	1.3773	16.28
160113	1.0930	14.58

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
160114		0.9786	14.95
160115		0.9774	15.76
160116		1.1196	16.69
160117		1.4123	17.29
160118		0.9961	15.84
160120		0.9938	12.56
160122		1.1131	18.52
160124		1.2998	17.16
160126		0.9654	17.74
160129		0.9727	15.89
160130		1.1286	15.45
160131		1.0444	14.69
160134		0.9506	13.32
160135		1.0170	16.33
160138		1.0149	15.71
160140		1.1324	18.80
160142		1.0194	16.14
160143		1.1242	15.92
160145		1.0697	15.17
160146		1.4409	13.50
160147		1.2762	18.39
160151		1.0545	15.74
160152		0.9384	15.22
160153		1.7613	19.69
170001		1.2074	17.52
170004		1.0753	13.06
170006		1.1961	19.31
170008		1.0034	13.90
170009		1.1438	19.59
170010		1.3587	17.90
170012		1.4141	16.76
170013		1.2829	17.89
170014		1.0333	17.34
170015		0.9812	16.34
170016		1.7067	18.60
170017		1.2014	17.87
170018		1.1012	14.36
170019		1.2360	16.56
170022		1.0526	17.85
170023		1.4684	19.36
170024		1.0663	13.06
170025		1.1917	16.37
170026		1.0818	13.89
170027		1.3172	16.39
170030		1.0591	15.24
170031		0.8922	13.47
170032		1.0128	14.48
170033		1.4150	16.05
170034		1.0335	15.02
170035		0.8966	15.62
170036		.....	14.17
170038		0.8998	14.21
170039		1.0943	14.30
170040		1.5837	17.97
170041		1.0521	11.47
170044		0.9951	14.78
170045		1.0889	12.11
170049		1.3499	18.64
170051		0.9890	14.16
170052		1.0435	14.62
170053		0.9336	9.03
170054		1.0324	12.77
170055		0.9801	14.99
170056		0.8854	14.87
170057		.....	15.09
170058		1.1572	18.17
170060		1.0218	17.23
170061		1.1583	14.14
170063		0.8974	11.49
170064		.....	12.42
170066		0.9451	14.48
170067		0.9987	12.71
170068		1.2647	15.82
170070		1.0543	13.37
170072		0.9012	13.34
170073		1.0417	16.47
170074		1.2016	14.40
170075		0.9266	11.26
170076		1.0220	13.58
170077		0.9136	13.11
170079		0.9666	14.21
170080		0.9657	12.20
170081		0.9118	12.51
170082		0.9428	12.39
170084		0.8978	12.16
170085		0.8828	14.51
170086		1.6770	19.85
170088		0.9319	11.37
170089		0.9738	18.08
170090		0.9616	11.27
170092		.....	12.85
170093		0.8913	12.79
170094		0.9571	17.71
170095		1.0123	15.75
170097		0.9071	15.66
170098		1.1366	14.10
170099		1.1582	13.55
170100		.....	14.47
170101		0.9709	13.16
170102		0.9675	13.35
170103		1.3238	16.66
170104		1.4841	19.76
170105		1.0598	15.93
170106		0.9341	14.68
170109		0.9347	16.87
170110		0.9851	15.55
170112		1.1373	13.39
170113		1.0737	13.25
170114		0.9511	14.51
170115		0.9965	13.03
170116		1.0601	15.76
170117		0.9782	15.28
170119		0.9547	13.97
170120		1.2724	15.91
170122		1.7580	18.62
170124		0.9913	10.21
170126		0.9316	12.13
170128		0.9622	14.99
170131		.....	13.10
170133		1.1289	16.90
170134		0.8746	12.90
170137		1.1809	17.42
170139		0.9898	13.28
170142		1.3140	17.32
170143		1.1148	15.88
170144		1.5078	16.09
170145		1.1143	16.75
170146		1.4429	19.97
170147		1.1965	16.28
170148		1.3707	17.25
170150		1.1488	15.43
170151		0.9381	13.37
170152		1.0039	13.68
170160		0.9959	13.31
170164		0.9827	15.25
170166		1.1079	17.57
170171		1.0545	13.81
170175		1.3046	16.60
170176		1.6707	20.32
170182		1.4297	14.20
170183		1.9808	19.09
170184		.....	27.01
180001		1.3847	19.52
180002		1.0822	18.13
180004		1.1128	15.99
180005		1.1971	20.63
180006		0.9090	11.23
180007		1.4645	17.20
180009		1.3630	20.81
180010		1.9327	17.55
180011		1.3163	16.93
180012		1.4400	18.74
180012		0.8766	13.61
180013		1.4541	17.35
180014		1.6943	19.54
180016		1.3332	18.84
180017		1.3056	15.17
180018		1.2982	18.92
180019		1.1910	16.76
180020		1.1105	17.78
180021		1.0495	15.16
180023		0.9502	15.22
180024		1.4092	15.33
180025		1.2023	17.17
180026		1.2026	14.16
180027		1.2506	14.89
180028		1.0909	19.35
180030		1.1726	17.02
180031		1.1189	13.79
180032		1.0597	16.09
180033		1.0978	13.77
180034		1.0888	17.32
180035		1.6441	19.45
180036		1.1569	19.12
180037		1.3126	19.85
180038		1.4604	16.19
180040*		1.9257	19.33
180041		1.1796	15.17
180042		1.1689	16.29
180043		1.1236	16.76
180044		1.1974	17.82
180045		1.4022	17.73
180046		1.0438	17.91

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
180047	0.9987	15.04
180048	1.2470	19.58
180049	1.3488	16.08
180050	1.2186	18.48
180051	1.3835	15.68
180053	1.0555	14.63
180054	1.0903	16.39
180055	1.2207	14.64
180056	1.1035	16.62
180058	1.0460	14.36
180059	0.8719	14.26
180060	.....	7.21
180063	1.0712	11.91
180064	1.1788	14.49
180065	1.0766	14.41
180066	1.0776	18.56
180067	1.8904	18.53
180069	1.1224	17.30
180070	1.1057	13.84
180072	1.1158	17.85
180075	.....	15.07
180078	1.0782	19.16
180079	1.1805	13.41
180080	1.0799	16.48
180087	1.2301	14.97
180088	1.6075	21.86
180088	1.4138	21.69
180092	1.2224	16.31
180093	1.4101	16.70
180094	1.0268	12.51
180095	1.1318	13.40
180099	1.0392	13.29
180101	1.1741	19.56
180102	1.4371	17.88
180103	2.3154	19.79
180104	1.5469	19.20
180105	0.8827	14.00
180108	0.8257	14.62
180115	0.9594	17.11
180116	1.2331	16.94
180117	1.1147	18.38
180118	0.9643	12.15
180120	1.0167	17.81
180121	1.1698	14.51
180122	1.0642	16.97
180123	1.3539	18.53
180124	1.3287	18.41
180125	1.1259	19.73
180126	1.1152	12.40
180127	1.2902	17.35
180128	1.0669	17.05
180129	0.9818	17.86
180130	1.4359	19.11
180132	1.2721	17.26
180133	1.3322	21.66
180134	1.0885	13.63
180136	1.8166	17.71
180138	1.1992	18.51
180139	1.0560	18.77
180140	0.9768	20.40
180141	1.8575	19.04

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
180141	1.1972	12.59
180142	1.7800	.....
190001	0.8866	16.91
190002	1.6874	18.84
190003	1.3295	22.15
190004	1.4230	17.54
190005	1.5174	16.71
190006	1.4666	17.73
190007	1.0552	13.60
190008	1.6186	16.89
190009	1.2882	14.21
190010	1.2081	17.02
190011	1.1424	15.17
190013	1.3002	16.57
190014	1.1875	17.02
190014	0.9519	12.03
190015	1.2666	17.44
190017	1.3398	15.79
190018	1.1056	16.98
190019	1.7887	17.40
190020	1.1956	17.31
190025	1.3076	16.07
190026	1.5552	17.21
190027	1.5165	16.19
190029	1.1492	17.11
190033	0.9722	10.74
190034	1.1705	16.68
190036*	1.6847	19.96
190037	0.9649	12.02
190039	1.4112	17.17
190040	1.3287	20.32
190041	1.6088	17.90
190043	1.0328	12.57
190044	1.1661	17.20
190046	1.4251	19.35
190048	1.1957	16.34
190049	0.9392	16.42
190050	1.0736	15.38
190053	1.1486	12.50
190054	1.2942	16.47
190059	0.8905	15.84
190060	1.3931	18.37
190064	1.5246	19.90
190065	1.4989	19.39
190071	0.8369	13.59
190077	0.8858	12.83
190078	1.1110	13.50
190079	1.3557	17.29
190081	0.8865	12.02
190083	1.0658	16.14
190086	1.3284	14.93
190088	1.2141	19.63
190089	1.1099	12.79
190090	1.0416	16.56
190092	.....	18.07
190095	0.9939	15.73
190098	1.5397	19.22
190099	1.1795	18.92
190102	1.6352	15.80
190103	0.9074	15.57
190106	1.1251	17.75

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
190109	1.2494	14.53
190110	0.9774	11.08
190111*	1.5870	20.05
190112	1.6970	19.21
190113	1.3935	18.99
190114	1.0147	12.91
190115	1.2775	20.49
190118	0.9963	12.95
190120	0.9962	13.69
190122*	1.2965	14.84
190124	1.6278	22.38
190125	1.4991	18.63
190128	1.1982	19.71
190130	0.9925	12.43
190131	1.2614	19.60
190133	1.0847	13.48
190134	1.0023	12.68
190135	1.4331	20.93
190136	0.9971	11.33
190138	.....	22.71
190142	0.9232	14.98
190144	1.1836	16.84
190145	0.9751	13.99
190146	1.5262	20.09
190147	0.9769	14.32
190148	0.9448	14.02
190149	0.9966	15.19
190151	1.0782	11.92
190152	1.5096	20.40
190155	.....	11.08
190156	0.9565	12.48
190158	1.2674	19.62
190160	1.2596	18.47
190161	1.0853	12.58
190162	1.2971	17.97
190164	1.1850	16.33
190167	1.1284	16.29
190170	0.9050	13.58
190173	1.3272	18.83
190175	1.4238	20.69
190176	1.6021	16.67
190177	1.7143	20.32
190178	0.9276	10.49
190182	1.3004	20.03
190183	1.1923	16.11
190184	0.9965	14.86
190185	1.3089	19.37
190186	0.9403	16.36
190189	.....	26.54
190190	0.9141	18.68
190191	1.1473	18.14
190196	0.9516	14.87
190197	1.1818	17.92
190199	1.0597	12.58
190200	1.4899	19.41
190201	1.0997	19.14
190202	1.1256	17.90
190203	1.4061	21.43
190204	1.4939	21.21
190205	1.9208	18.10
190206	1.6291	19.82

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
190207	1.2579	17.67
190208	0.8059	14.61
190218	1.0606	18.16
190223	.....	19.26
190227	1.0049	12.11
190231	1.5614	16.89
190235	.....	16.80
190236	1.4216	22.18
190237	2.4934	.....
190238	1.6330	.....
190239	1.1544	.....
190240	0.9642	.....
200001	1.3472	17.49
200002	1.1142	18.77
200003	1.0982	16.74
200006	1.0868	16.34
200007	1.0197	17.62
200008	1.2216	20.50
200009	1.8812	20.62
200012	1.1783	17.01
200013	1.1139	16.49
200015	.....	20.11
200016	1.0407	17.66
200017	.....	19.70
200018	1.2072	17.24
200019	1.2519	18.48
200020	1.1541	20.60
200021	1.1958	18.88
200023	0.8402	14.92
200024	1.4798	18.65
200025	1.2493	19.07
200026	0.9915	17.28
200027	1.2369	18.28
200028	0.9205	16.93
200031	1.2258	15.90
200032	1.3282	17.92
200033	1.7813	21.40
200034	1.2763	19.13
200037	1.2272	18.24
200038	1.1414	19.21
200039	1.2559	20.29
200040	1.1170	19.13
200041	1.1252	17.66
200043	0.8031	16.54
200050	1.2072	18.08
200051	0.9896	19.48
200052	0.9958	15.12
200055	1.0875	17.13
200062	0.9507	16.51
200063	1.2430	19.67
200066	1.1419	16.32
210001	1.4438	18.73
210002	2.0439	22.84
210003	1.6821	25.37
210004	1.3607	23.44
210005	1.2933	19.62
210006	1.1140	17.77
210007	1.8016	21.54
210008	1.3069	19.50
210009	1.8548	21.81
210010	1.1378	26.83
210011	1.3632	21.24
210012	1.6193	23.43
210013	1.3591	18.85
210015	1.3063	16.69
210016	1.8523	22.01
210017	1.2499	17.17
210018	1.2636	21.41
210019	1.6163	19.09
210022	1.4875	21.32
210023	1.4502	21.80
210024	1.6941	19.56
210025	1.3279	19.57
210026	1.3217	11.64
210027	1.2802	18.49
210028	1.1693	18.86
210029	1.2777	21.43
210030	1.2555	21.02
210031	1.3110	15.59
210032	1.1730	18.50
210033	1.2407	19.91
210034	1.3165	16.12
210035	1.3414	20.61
210037	1.2643	18.74
210038	1.4181	23.26
210039	1.1915	20.73
210040	1.3180	25.08
210043	1.2815	40.60
210044	1.3645	22.24
210045	1.0892	9.88
210048	1.2893	22.39
210049	1.1702	17.67
210051	1.4024	20.76
210054	1.3673	23.51
210055	1.3658	20.09
210056	1.3928	20.94
210057	1.3587	22.57
210058	1.5007	21.37
210059	1.1847	23.13
210060	1.2753	.....
210061	1.1313	20.02
220001	1.2879	26.32
220002	1.4678	22.58
220003	1.1104	19.14
220004	.....	20.01
220006	1.3867	22.04
220008	1.2973	21.89
220010	1.3481	22.06
220011	1.0947	23.85
220012	1.3117	28.24
220015	1.1691	21.73
220016	1.3445	21.30
220017	1.3512	24.90
220019	1.1561	19.13
220020	1.2448	20.00
220023	0.6351	18.76
220024	1.2167	21.59
220025	1.1442	19.94
220028*	1.4573	22.18
220029	1.1595	21.19
220030	1.1073	14.54
220031	1.9074	22.82
220033	1.2602	20.83
220035	1.3063	22.00
220036	1.6289	24.16
220038	1.3130	23.31
220041	1.1893	22.83
220042	1.2662	25.28
220046	1.3199	23.90
220049	1.2823	17.27
220050	1.1667	20.83
220051	1.1784	20.48
220052	1.2993	23.01
220053	1.1637	21.27
220055	1.2850	21.57
220055	1.2703	19.76
220057	1.3594	21.93
220060	1.2295	26.98
220062	0.5638	20.06
220063	1.2671	20.91
220064	1.2833	17.90
220065	1.3711	20.10
220066	1.3459	19.43
220067	1.2869	25.74
220068	.....	6.45
220070	1.2165	16.72
220071	1.9239	24.67
220073	1.3015	26.08
220074	1.3358	15.22
220075	1.7972	19.96
220076	1.2501	20.83
220077	1.8283	24.48
220079	1.0997	21.01
220080	1.3044	17.16
220081	0.9163	25.77
220082	1.2658	20.02
220083	1.1887	20.93
220084	1.2481	24.66
220086	1.7933	30.00
220088	1.6455	22.71
220089	1.2583	21.81
220090	1.2260	21.42
220092	1.1838	17.04
220094	.....	21.99
220095	1.1894	21.45
220098	1.3175	20.34
220098	1.2347	20.43
220100	1.3674	25.39
220101	1.4449	24.15
220104	1.4666	26.76
220105	1.2706	21.69
220106	1.2167	24.34
220107	.....	20.14
220108	1.1915	22.52
220110	2.1015	29.15
220111	1.2455	23.07
220116	1.9143	27.64
220118	.....	30.02
220119	1.2616	22.78
220123	1.0317	17.74
220126	1.2498	20.96
220128	.....	21.92
220133	0.7187	24.34

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
220135	1.2824	25.08
220153	1.0071	15.97
220154	0.9023	14.84
220162	1.4831	.....
220163	2.0302	27.35
220171	1.6811	23.43
230001	1.1539	19.20
230002	1.2731	21.91
230003	1.1409	19.61
230004	1.6874	22.42
230005	1.2532	19.40
230006	1.0501	18.47
230007	.....	19.43
230012	0.9650	18.67
230012	1.9036	23.94
230013	1.3748	20.12
230015	1.0768	20.43
230017	1.6133	20.40
230019	1.5299	19.05
230020	1.7464	21.04
230021	1.5000	18.57
230021	1.1691	18.89
230024	1.4282	27.96
230027	1.0357	18.03
230029	1.5743	21.12
230030	1.3405	17.29
230031	1.4291	17.00
230032*	1.7456	20.08
230034	1.2673	17.23
230035	1.0750	17.56
230035	1.6288	23.05
230036	1.2559	21.76
230037	1.1615	19.07
230038	1.7574	23.40
230040	1.1346	20:39
230041	1.2536	19.03
230042	1.2327	19.49
230046	1.9231	25.91
230047	1.3568	20.64
230053	1.5887	22.22
230054	1.8405	19.54
230055	1.1698	19.84
230056	0.8968	16.41
230058	1.1023	18.23
230059	1.4582	18.96
230060	1.3307	17.87
230062	0.9642	16.30
230063	1.2587	20.22
230065	1.3139	21.28
230066	1.3669	21.51
230069	1.1982	22.49
230070	1.6490	20.06
230071	1.1156	22.16
230075	1.5045	19.43
230076	1.4082	23.82
230077	2.0553	20.39
230078	1.1150	16.25
230078	1.1358	15.56
230080	1.2452	18.91
230081	1.2102	18.04
230082	1.1207	17.74

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
230085	1.2359	17.54
230086	0.9482	16.98
230087	1.0847	15.77
230089	1.2859	21.39
230092	1.3590	18.96
230093	1.2299	19.99
230095	1.1731	16.78
230096	1.1072	22.56
230097	1.6199	20.10
230099	1.1231	20.25
230100	1.1427	13.11
230101	1.0672	18.61
230103	1.0527	20.76
230104	1.5554	23.47
230105	1.7966	20.88
230106	1.1826	18.35
230107	0.9423	14.67
230108	1.2079	17.42
230110	1.3163	17.65
230113	0.8490	11.17
230115	1.0580	16.87
230116	0.8654	16.36
230118	1.1403	21.71
230119	1.3594	23.96
230120	1.1248	19.64
230121	1.2279	19.37
230122	1.3518	18.09
230125	.....	15.35
230128	1.4028	23.58
230130	1.6932	22.52
230132	1.3334	26.17
230133	1.2298	17.57
230134	.....	15.32
230135	1.2320	22.74
230137	.....	18.34
230142	1.2837	20.04
230143	1.2803	16.45
230144	1.1223	21.00
230145	1.1219	16.60
230146	1.2603	18.63
230147	1.4098	20.40
230149	1.1317	14.17
230151	1.4140	20.89
230153	1.0658	17.33
230154	0.8898	14.58
230155	1.0298	16.99
230156	1.7470	23.28
230157	1.1677	19.72
230159	1.0227	18.61
230162	0.9532	17.77
230165	1.9359	23.23
230167	1.7502	20.32
230169	1.3613	22.75
230171	1.0817	14.96
230172	1.1873	20.22
230174	1.3724	20.85
230175	2.3801	21.81
230176	1.2168	21.86
230178	0.9485	16.08
230180	1.1229	15.48
230184	1.2534	17.29

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
230188	1.1197	15.56
230189	0.9464	15.91
230190	0.8801	23.71
230191	0.9321	17.12
230193	1.3023	20.18
230195	1.3569	22.37
230197	1.4043	21.62
230199	1.0833	18.40
230201	1.2527	15.32
230204	1.3728	21.89
230205	0.9894	13.89
230207	1.2522	20.46
230208	1.3046	17.15
230211	0.9159	17.51
230212	1.0559	22.18
230213	0.9300	15.32
230216	1.5737	19.59
230217	1.2657	20.95
230219	0.8632	20.70
230221*	.....	21.55
230222	1.3904	20.79
230223	1.2692	21.50
230227	1.4208	21.21
230230	1.5877	22.53
230232	.....	12.64
230235	1.0880	15.95
230236*	1.3245	23.22
230239	1.1705	19.23
230241	1.1942	18.85
230244	1.4114	21.08
230253	0.9600	21.95
230254	1.2928	21.28
230257	0.9141	20.47
230259	1.1398	21.15
230264	1.6552	15.18
230269	1.3095	22.81
230270	1.2029	20.08
230273	1.5232	23.40
230275	0.5244	17.60
230276	0.5657	18.55
230277	1.2488	22.50
230278	.....	16.66
230279	0.6538	16.04
230280	1.0995	14.22
230283	2.2297	.....
240001	1.5271	22.84
240002	1.7570	23.02
240004*	1.5922	16.53
240005	0.8861	16.98
240006	1.1644	27.11
240007	1.0673	16.98
240008	1.1466	21.81
240009	0.9419	16.69
240010	1.9784	22.62
240011	1.1515	18.96
240013	1.2854	18.97
240014	1.0968	21.86
240016	1.3901	19.86
240017	1.1526	17.23
240018	1.2687	19.07
240019	1 1859	21.13

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
240020		1.1172	19.57
240021		0.9884	17.40
240022		1.1049	19.16
240023		0.9789	20.39
240025		1.0980	17.25
240027		1.0711	16.25
240028		1.1581	19.38
240029		1.1501	17.99
240030		1.2802	18.44
240031		0.9276	18.07
240036		1.5871	20.12
240037		1.0154	18.46
240038		1.5017	26.35
240040		1.2684	19.90
240041		1.1728	19.21
240043		1.2228	17.31
240044		1.1357	18.92
240045		1.1584	20.99
240047*		1.5726	21.86
240048		.....	23.31
240049		.....	22.13
240050		1.2114	24.50
240051		0.9654	18.23
240052		1.3024	19.22
240053		1.4855	21.29
240056		1.2541	22.29
240057		1.8364	23.24
240058		0.9292	14.91
240059		1.0456	21.96
240061		1.7666	24.44
240063		1.4484	23.54
240064		1.3259	20.76
240065		1.1496	12.55
240066		1.2838	22.05
240069		1.1917	19.18
240071		1.1069	19.19
240072		1.0236	18.00
240073		0.9003	15.63
240075		1.2015	21.19
240076		1.0725	21.07
240077		0.9002	14.95
240078		1.5426	22.71
240079		0.9545	17.82
240080*		1.6152	23.73
240082		1.1235	18.03
240083		1.2898	19.29
240084		1.3236	19.61
240085		1.0306	18.02
240086		1.0482	15.33
240087		1.1607	17.06
240088		1.4006	21.02
240089		0.9225	18.42
240090		1.1288	18.05
240093		1.2970	18.62
240094		0.9639	20.57
240096		0.9900	18.34
240096		1.2640	23.33
240097		1.1145	23.62
240098		0.9270	20.60
240099		1.0725	14.36
240099		1.6247	18.12

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
240100		1.2887	19.19
240101		1.2099	17.75
240102		0.9273	15.56
240103		1.2125	16.88
240103		1.2125	16.88
240103		1.2687	16.60
240104		1.1691	24.02
240105		.....	14.79
240106		1.3931	25.05
240107		0.9756	19.03
240108		0.9778	16.46
240109		0.9814	13.15
240110		0.9389	17.28
240111		0.9906	17.04
240112		0.9763	15.31
240114		0.9379	15.49
240115		1.6118	22.16
240116		0.9248	15.18
240117		1.1441	17.57
240119		0.8604	22.50
240121		0.9071	21.37
240122		1.0827	18.04
240123		1.0205	15.60
240124		0.9613	19.05
240125		0.9698	13.15
240127		1.0079	14.77
240128		1.1138	16.08
240129		0.9949	15.42
240130		0.9322	15.65
240132		1.2724	24.50
240133		1.2207	18.52
240135		0.9181	13.60
240137		1.1748	19.18
240138		0.9322	13.74
240139		0.9615	17.02
240141		1.1553	21.99
240142		1.0125	20.61
240142		0.9881	16.75
240143		0.9663	14.28
240144		1.0451	15.87
240145		0.9125	15.00
240145		1.5277	15.71
240146*		0.9085	16.79
240148		1.0240	11.48
240150		0.8795	12.83
240152		1.0247	20.20
240153		1.0015	15.61
240154		1.0211	17.06
240155		0.9166	20.42
240157		1.0227	14.69
240160		1.0601	16.60
240161		1.0376	15.42
240163		0.9706	17.87
240166		1.1526	16.39
240169		0.9599	18.62
240170		1.1056	17.65
240171		1.0083	16.72
240172		0.9741	14.91
240173		0.9979	16.74
240179		1.0343	16.65
240184		0.9677	14.40

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
240187		1.2492	17.51
240193		1.0038	16.30
240200		0.8955	14.73
240205		0.9180	.....
240206		0.8312	.....
240210*		1.2515	24.03
240211		0.9639	20.55
250002		0.8834	15.58
250003		0.9935	15.66
250004		1.5311	16.96
250006		0.9628	15.70
250007		1.2280	19.16
250008		1.0292	13.32
250009		1.2659	16.18
250010		1.0112	13.34
250012		0.9335	18.48
250015		1.0386	11.07
250017		1.0281	17.30
250018		0.9366	13.47
250019		1.4832	17.15
250020		0.9513	13.88
250021		0.8379	9.06
250023		0.8948	13.54
250024		0.8937	11.59
250025		1.1497	17.72
250027		0.9761	12.42
250029		0.8705	14.85
250030		0.9210	13.63
250031		1.2477	18.77
250032		1.2190	17.26
250033		1.0137	15.76
250034		1.5454	18.13
250035		0.8365	17.41
250036		0.9962	13.79
250037		0.8845	10.32
250038		0.9382	13.62
250039		0.9970	16.51
250040		1.3147	15.64
250042		1.2629	16.47
250043		0.8997	13.65
250045		1.2675	19.48
250045		1.6478	19.71
250047		0.9058	31.60
250049		0.8840	10.76
250050		1.2669	13.92
250051		0.9264	9.60
250057		1.1777	13.76
250058		1.1857	15.42
250059		1.0828	14.23
250060		0.7514	7.99
250061		0.8571	13.97
250063		0.8311	14.97
250065		0.8934	12.68
250066		0.9138	14.33
250067		1.1596	15.29
250068		0.8244	11.43
250069		1.2682	15.77
250071		0.8972	11.21
250072		1.4321	16.93
250077		0.9343	11.41
250078		1.5470	15.50

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
250079	0.8546	19.06
250081	1.2791	28.31
250082	1.4189	13.84
250083	0.9426	9.20
250084	1.0988	19.74
250085	0.9829	13.85
250088	0.9803	16.69
250089	1.0904	13.05
250093	1.1718	15.09
250094	1.3373	17.85
250095	0.9932	16.36
250096	1.2105	17.07
250097	1.2848	18.41
250098	0.9421	14.30
250099	1.2923	14.41
250101	0.8831	16.31
250102	1.5195	20.02
250104	1.4439	17.54
250105	0.9369	14.60
250107	0.8803	13.63
250109	0.8900	14.55
250109	1.7757	18.47
250112	0.9912	14.20
250117	1.0628	14.52
250119	1.0603	12.74
250120	1.0638	14.41
250122	1.1763	17.72
250123	1.2209	17.41
250124	0.9344	12.67
250125	1.2793	14.49
250126	0.9351	14.71
250127	0.9230	.....
250128	1.0367	13.00
250131	1.0826	10.28
250134	0.9667	17.98
250136	0.9182	18.05
250138	1.2054	17.60
250141	1.2067	17.12
250145	0.8696	11.40
250146	0.9386	13.28
250148	1.2354	11.98
250149	0.9690	12.98
250150	1.2560	.....
260001	1.6327	17.55
260002	1.4385	20.59
260003	1.1303	14.33
260004	0.9725	13.75
260004	1.4534	18.46
260006	1.5184	18.53
260008	0.9887	16.25
260009	1.2916	17.94
260011	1.5348	18.32
260012	1.0036	14.46
260013	1.1872	15.54
260015	1.1793	21.33
260017	1.1724	15.80
260018	0.8885	12.23
260019	1.1438	23.67
260020	1.8100	21.86
260020	1.0367	11.27
260021	1.4386	17.57
260022	1.2556	19.35
260023	1.4179	15.82
260024	0.9716	13.47
260025	1.3037	14.94
260027	1.6145	21.01
260029	1.1888	17.47
260030	1.1362	11.24
260031	1.5358	18.30
260032	1.7220	20.92
260034	1.0233	17.22
260035	1.0045	12.59
260036	1.0042	18.31
260039	1.0672	14.20
260040	1.6796	15.08
260042	1.2519	17.44
260044	1.0069	17.12
260047	1.6390	17.28
260048	1.2487	21.43
260050	1.0545	18.74
260052	1.3663	17.86
260053	1.1247	12.01
260054	1.3540	17.37
260055	0.9667	17.76
260057	1.0072	15.33
260059	1.2431	15.79
260061	1.1196	15.01
260062	1.1845	20.26
260063	1.0723	16.85
260064	1.3319	16.50
260066	1.0139	14.42
260067	0.8926	12.16
260068	1.6802	19.83
260070	1.0377	21.69
260073	1.0843	13.01
260074	1.2962	15.42
260077	1.7288	18.26
260078	1.1814	15.48
260079	1.0620	14.83
260080	0.9887	12.56
260081	1.6619	18.96
260082	1.1478	15.79
260085	1.5799	19.51
260086	0.9285	14.87
260091	1.6909	19.61
260094	1.1873	15.87
260095	1.3659	19.77
260096	1.5613	21.72
260097	1.1415	15.79
260100	1.0128	15.73
260102	0.9990	16.37
260103	1.3189	17.35
260104	1.7127	19.02
260105	1.8623	20.80
260108	1.8507	20.92
260109	0.9915	13.44
260110	1.6688	15.72
260113	1.2254	14.79
260115	1.2279	17.90
260116	1.1034	14.57
260119	1.2149	16.20
260120	1.1954	17.13
260122	1.0917	14.54
260123	1.0482	14.00
260127	1.0625	15.95
260129	.....	14.64
260131	1.2658	19.75
260134	1.1709	16.58
260137	1.7105	15.22
260138	1.9075	21.41
260141	1.9978	17.96
260142	1.1255	16.03
260143	0.9900	11.94
260147	0.9530	13.66
260148	0.9021	10.34
260158	1.0544	12.40
260159	1.0116	18.22
260160	1.1476	16.19
260162	1.5659	20.71
260163	1.2449	14.81
260164	0.9182	14.31
260166	1.2191	19.53
260172	0.9615	12.49
260173	1.0061	11.98
260175	1.1279	16.29
260176*	1.7243	19.59
260177	1.3381	20.75
260178	1.4663	21.20
260179	1.6090	20.76
260180	1.6591	18.54
260183	1.6570	17.65
260186	1.5847	18.06
260188	1.2749	18.58
260189	0.9425	10.75
260190	1.1964	18.16
260191	1.2874	19.34
260193	1.2224	20.51
260195	1.2469	15.95
260197	1.0913	16.37
260198	1.2980	17.64
260200	1.2109	18.88
260205	1.1102	.....
260206	2.6705	.....
270002	1.2837	17.19
270003	1.2133	22.13
270004	1.6933	29.28
270006	0.8808	16.19
270007	1.0011	13.17
270009	1.0272	17.75
270011	1.0451	19.82
270012	1.6015	23.06
270013	.....	20.40
270014	1.8492	18.48
270016	0.9184	19.77
270017	1.2649	19.58
270019	1.0264	12.78
270021	1.1688	16.65
270023	1.2657	20.40
270026	0.9058	16.07
270027	1.0591	9.78
270028	1.1731	17.21
270029	0.9220	17.89
270032	1.1300	17.03

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
270033	0.8642	16.46
270035	1.0008	17.65
270036	0.9192	14.08
270039	1.0442	15.35
270040	1.1242	19.19
270041	1.0456	16.78
270044	1.1398	13.46
270046	.....	17.10
270048	1.0107	15.84
270049	1.7664	21.17
270050	0.9917	18.04
270051	1.3153	20.23
270052	1.0056	14.80
270057	1.2986	20.01
270058	0.9229	14.07
270059	0.7512	15.60
270060	0.9524	14.02
270063	0.9338	14.23
270073	1.0809	15.53
270074	0.8747	.....
270075	0.8274	.....
270079	0.9338	17.80
270080	1.1410	11.35
270081	0.9579	15.52
270082	1.1020	16.13
270083	1.0098	20.82
270084	0.9151	16.66
280001	1.0632	17.89
280003	2.1214	22.00
280005	1.3518	18.75
280009	1.7680	18.70
280010	0.8073	16.54
280011	0.8552	13.96
280012	.....	16.41
280013	1.7249	22.18
280014	0.9006	15.24
280015	1.0730	14.64
280017	1.0693	14.19
280020	1.8118	19.40
280021	1.1765	16.69
280022	0.9681	15.71
280023	1.3951	21.30
280024	0.9612	13.91
280025	0.9725	14.27
280025	0.9215	13.56
280026	1.0478	16.06
280028	1.0763	15.89
280029	1.2096	19.46
280030*	1.7665	33.26
280031	0.9937	13.22
280032	1.3465	19.18
280033	1.0807	14.93
280034	.....	15.28
280035	0.9131	15.33
280037	1.0308	16.17
280038	1.0606	16.47
280039	1.0637	15.19
280040	1.7299	18.97
280041	0.9617	13.39
280042	1.0305	15.30
280043	0.9752	15.79
280045	1.0415	14.23
280046	1.0475	13.72
280046	0.9996	17.09
280047	1.1206	18.37
280048	1.1137	14.07
280049	1.0856	15.63
280050	0.8924	15.34
280052	1.0652	13.65
280054	1.2488	17.58
280055	0.9146	12.99
280056	0.9322	14.02
280057	0.9635	15.76
280058	1.2363	17.88
280060	1.6236	28.61
280061	1.4119	17.95
280062	1.1814	13.67
280064	1.0153	15.51
280065	1.2669	18.53
280066	1.0217	11.64
280068	0.9304	10.13
280070	0.9912	13.74
280073	0.9848	14.79
280074	0.9716	15.22
280075	1.1052	13.79
280076	1.0343	13.92
280077	1.3025	19.01
280077	1.3234	23.89
280079	1.0819	9.91
280080	1.0579	14.35
280081	1.7240	20.92
280082	1.0785	13.13
280083	1.0611	17.55
280084	0.9595	11.69
280085	0.8186	21.58
280088	.....	21.64
280089	0.8837	17.16
280090	0.8017	14.72
280091	1.0928	15.15
280092	0.9075	14.20
280092	1.2667	17.95
280094	0.9966	15.89
280097	1.0876	14.30
280098	0.8804	10.17
280101	1.0046	17.42
280102	.....	12.94
280104	0.9207	13.38
280105	1.2360	18.78
280106	1.0160	15.54
280107	1.1351	13.46
280108	1.0618	17.22
280109	0.9496	11.06
280110	0.9845	12.30
280111	1.2660	23.10
280115	0.9779	16.43
280117	1.0965	16.82
280118	0.9029	16.92
280119	0.9435	.....
280123	.....	20.77
280125	1.2266	.....
290001	1.6951	22.42
290002	0.9418	16.63
290003	1.6685	23.40
290005	1.3281	17.80
290006	1.2282	19.88
290007	1.6911	29.69
290008	1.2553	20.25
290009	1.6213	22.74
290010	1.1253	14.48
290011	1.0959	16.44
290012	1.3501	21.17
290014	1.0289	18.38
290015	0.9745	17.83
290016	1.1219	12.81
290019	1.3294	20.93
290020	0.9828	26.15
290021	1.6752	21.13
290022	1.5923	24.08
290027	0.8876	16.43
290029	0.9227	.....
290032	1.4102	22.79
290036	0.5760	18.61
290038	0.9313	23.14
290039	1.3278	25.60
290041	1.2669	.....
300001	1.4837	21.40
300003	2.0054	23.25
300005	1.3435	19.99
300006	1.1762	18.93
300007	1.0889	19.34
300008	1.2468	16.46
300009	1.0545	20.01
300010	1.2618	19.38
300011	1.3250	21.24
300011	.....	19.27
300013	1.1145	18.97
300014	1.2417	19.80
300015	1.1214	19.92
300016	1.2108	18.50
300017	1.3267	22.34
300018	1.3658	20.89
300019	1.2426	20.61
300020	1.3820	21.65
300021	1.0741	17.35
300022	1.1274	17.19
300023	1.3989	20.39
300028	1.2859	18.05
300029	1.3196	20.90
300033	1.0986	19.85
300034	2.1601	23.52
310001	1.7852	26.81
310002	1.8508	26.61
310003	1.2974	26.83
310005	1.2946	23.05
310006	1.2111	21.50
310008	1.3295	24.95
310009	1.3229	23.19
310010	1.2488	21.11
310011	1.2569	23.22
310012	1.6481	26.32
310013	1.3697	22.11
310014	1.6478	28.70
310015	2.0223	27.58

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
310016	1.2886	25.72
310017	1.3522	26.07
310018	1.0775	24.53
310019	1.6742	22.82
310020	1.3766	19.27
310021	1.5395	14.69
310022	1.3224	20.73
310024	1.3248	22.78
310025	1.1869	22.58
310026	1.2370	23.87
310027	1.3153	21.77
310028	1.2506	23.52
310029	1.9412	23.20
310031	2.7731	25.18
310032	1.3215	23.30
310034	1.2861	21.69
310036	1.1416	19.82
310037	1.3994	27.44
310038*	2.0125	25.33
310038*	2.0125	25.33
310038*	1.5187	17.94
310038*	1.5187	17.94
310039	1.2510	22.03
310040	1.2033	24.30
310041	1.3451	23.78
310042	1.2924	24.27
310043	1.1890	22.09
310044	1.3276	20.43
310045	1.4835	28.21
310047	1.3317	24.52
310048	1.2890	23.33
310049	1.2304	24.76
310050	1.2126	22.59
310051	1.3939	25.27
310052	1.3013	22.58
310054	1.3465	24.38
310057	1.3027	20.45
310058	1.1447	26.10
310060	1.1968	19.11
310061	1.2042	20.80
310063*	1.3466	21.90
310064	1.3576	22.05
310067	1.3003	22.27
310069	1.2634	24.17
310070	1.4213	25.04
310072	1.3710	22.22
310073	1.6733	25.62
310074	1.3502	24.46
310075	1.4191	26.46
310076	1.4966	28.90
310077	1.6653	25.06
310078	1.4152	23.48
310081	1.3497	23.89
310083	1.2748	23.68
310084	1.3299	24.09
310086	1.2171	21.44
310087	1.3363	20.89
310088	1.1986	22.34
310090	1.3887	24.24
310091	1.2672	21.64
310092	1.3184	22.34

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
310093	1.1947	21.23
310096	1.9874	26.30
310105	1.2351	24.49
310108	1.4307	23.23
310110	1.2698	20.05
310111	1.2535	21.72
310112	1.3035	22.52
310113	1.2899	22.95
310115	1.2997	20.07
310116	1.2877	25.24
310118	1.2498	23.69
310120	1.2025	21.69
310121	.....	18.74
320001	1.5282	17.85
320002	1.3475	18.74
320003	1.0738	15.35
320004	1.2912	17.12
320005	1.3136	19.87
320006*	1.3522	19.34
320009	1.5961	17.68
320011	1.1434	21.09
320012	1.0462	16.00
320013	1.1399	22.59
320014	1.0829	15.97
320016	1.1832	18.78
320017	1.1293	18.15
320019	1.5028	19.26
320021	1.8076	15.29
320022	1.2332	17.66
320023	1.0237	16.42
320030	1.1556	13.86
320031	0.9451	13.99
320032	0.9020	16.45
320033	1.1699	20.31
320035	1.0266	24.07
320037	1.1663	17.08
320038	1.2324	16.29
320046	1.4430	20.43
320048	1.4178	19.17
320057	0.9720	.....
320058	0.8862	.....
320059	1.0641	.....
320060	0.9268	.....
320061	1.1304	.....
320062	0.8542	.....
320063	1.2511	19.83
320065	1.2158	16.10
320067	0.8657	57.24
320068	0.8982	18.60
320069	0.9785	11.31
320070	0.9556	.....
320074	1.0897	18.65
320079	1.2128	19.42
330001	1.1867	25.21
330002	1.4494	28.92
330003	1.3431	17.65
330004	1.2951	19.59
330005	1.6834	24.28
330006	1.3333	25.46
330007	1.3686	18.65
330008	1.1791	17.76

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
330009	1.3308	30.42
330010	1.2833	14.74
330011	1.2963	17.63
330012	1.7216	29.82
330013	2.0344	19.11
330014	1.3868	27.44
330016	0.9933	17.41
330019	1.3623	32.45
330020	1.0286	14.55
330023	1.3016	24.27
330024	1.8309	33.55
330025	1.1142	16.03
330027	1.4665	32.50
330028	1.4110	27.08
330029	1.1574	16.56
330030	1.4176	15.06
330033	1.3126	16.75
330034	0.5350	30.78
330036	1.2759	24.32
330037	1.2231	16.00
330038	1.1805	16.01
330039	.....	12.47
330041	1.2877	30.42
330043	1.3072	27.15
330044	1.2664	18.70
330045	1.3750	27.17
330046	1.4572	31.91
330047	1.1976	17.53
330048	1.2590	17.62
330049	1.2689	19.31
330053	1.2232	15.67
330055	1.5716	28.99
330056	1.4640	30.21
330057	1.6852	18.34
330058	1.3123	16.98
330059	1.6000	31.58
330061	1.2766	25.07
330062	1.0980	15.28
330064	1.4278	32.87
330065	1.2356	18.37
330066	1.2664	19.12
330067	1.3300	20.94
330072	1.4065	30.35
330073	1.1715	15.88
330074	1.2824	18.18
330075	1.0926	17.26
330078	1.4535	17.49
330079	1.2821	16.76
330080	1.2129	24.70
330084	1.0650	23.03
330085	1.2897	18.78
330086	1.2267	30.69
330088	1.0497	25.62
330090	1.5603	18.68
330091	1.3782	18.53
330092	0.9905	12.65
330094	1.2369	17.72
330095	1.3277	18.34
330096	1.1197	16.60
330097	1.2448	16.96
330100	0.9996	28.11

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
330101	1.7924	29.22
330102	1.2990	17.25
330103	1.2013	16.48
330104	1.4136	28.77
330106	1.7000	35.87
330106	1.2141	17.58
330107	1.2746	28.08
330108	1.2381	17.08
330111	1.0714	15.20
330114	0.9051	18.24
330115	1.1308	16.56
330116	0.8461	24.23
330118	1.6337	20.76
330119	1.7045	34.75
330121	1.0146	14.77
330122	1.0120	21.20
330125	1.8884	22.57
330126	1.1356	22.70
330127	1.3758	28.67
330128	1.3080	26.63
330132	1.1999	14.70
330133	1.3624	32.28
330135	1.1989	18.33
330136	1.3313	17.26
330140	1.8200	19.50
330140	1.3693	29.22
330144	0.9879	12.52
330148	1.0686	15.04
330151	1.0943	13.97
330152	1.4603	29.48
330153	1.7146	17.40
330154	1.7635	.....
330157	1.3770	20.82
330159	1.2596	17.87
330160	1.4253	30.17
330162	1.2101	27.72
330163	1.2553	20.46
330164	1.3684	19.48
330166	1.0688	14.18
330167	1.7206	30.07
330169	1.4402	25.15
330171	1.3082	25.43
330177	0.9538	14.54
330179	0.8481	12.69
330180	1.2145	14.94
330181	1.3234	32.47
330182	2.5161	31.33
330184	1.3694	27.49
330185	1.2686	26.89
330188	1.2751	18.72
330189	1.1706	17.66
330191	1.3142	18.85
330193	1.3060	29.82
330194	1.8125	35.57
330194	1.3303	24.74
330196	1.2593	26.62
330197	1.1217	17.00
330198	1.3920	23.63
330199	1.3788	27.66
330201	1.6461	30.33
330202	1.3273	31.24
330203*	1.3894	19.24
330204	1.3574	26.81
330205	1.2183	19.46
330208	1.2533	25.82
330209	1.2122	24.88
330211	1.1003	19.10
330212	1.1260	21.18
330213	1.1307	18.51
330214	1.8224	32.20
330218	1.0787	21.71
330219	1.6427	20.48
330221	1.2963	30.00
330222	1.2742	17.71
330223	1.0460	17.28
330224	1.2634	20.89
330225	1.1993	25.80
330226	1.2803	17.67
330229	1.2988	16.25
330230	1.3375	28.86
330230	1.3883	30.32
330231	1.0207	26.61
330232	1.2609	19.50
330233	1.4708	33.48
330234	2.3386	32.95
330235	1.1656	19.45
330236	1.3899	29.54
330238	1.2178	14.80
330239	1.2090	17.28
330241	2.0171	22.60
330242	1.2839	24.74
330245	1.4700	17.28
330245	1.3066	17.65
330246	1.3232	26.51
330247*	0.8513	27.71
330249	1.1964	16.48
330250	1.2370	19.20
330252	.....	17.04
330254	1.1706	16.73
330258	1.2649	30.47
330259	1.4768	23.87
330261	1.3026	26.17
330263	1.0017	19.64
330264	1.1964	23.14
330265	1.3296	15.62
330267	1.3404	23.56
330268	0.9562	14.62
330270	2.0235	28.24
330273	1.2927	25.89
330275	1.3100	17.41
330275	1.5329	17.72
330276	1.1583	17.75
330277	1.1061	17.16
330279	1.2903	19.91
330285	1.8644	22.47
330286	1.3310	25.09
330290	1.7051	31.84
330293	1.1270	15.38
330304	1.2324	29.51
330306	1.3441	27.62
330307	1.3062	20.74
330308	.....	36.84
330327	0.8784	16.97
330331	1.3609	31.04
330332	1.2164	27.16
330333	1.2125	36.77
330333	1.1649	18.57
330336	1.3036	30.17
330338	1.2490	22.14
330339	0.9024	19.67
330340	1.1793	26.92
330350	1.7306	30.38
330353	1.3031	33.55
330354	1.5849	.....
330357	1.3385	34.68
330359	.....	29.29
330372	1.2176	22.50
330381	1.2997	29.24
330385	1.1314	26.39
330386	1.1741	24.67
330387	0.7617	.....
330389	1.7689	30.82
330390	1.3621	29.79
330393	1.7194	27.99
330394	1.5580	18.54
330395	1.3507	36.12
330396	1.1230	28.11
330397	1.3749	31.00
330399	1.2641	35.55
330400	0.8760	.....
340001	1.4552	18.47
340002	1.8350	18.79
340002	1.6766	19.97
340003	1.1378	21.97
340004	1.5051	17.89
340005	1.1264	14.09
340006	1.0454	15.57
340007	1.1632	17.17
340008	1.1038	18.38
340009	.....	20.50
340011	1.1008	14.92
340012	1.1768	16.66
340013	1.2426	17.43
340014	1.5356	19.86
340015	1.2423	19.01
340016	1.1688	16.40
340017	1.2562	19.22
340018	1.1436	15.16
340019	0.9955	11.80
340020	1.2435	16.75
340021	1.2560	19.67
340022	1.1245	16.72
340023	1.3399	15.75
340024	1.1416	16.64
340025	1.2473	16.82
340027	1.2113	17.30
340030	2.0492	20.05
340031	0.9575	12.39
340031	1.2347	19.73
340032	1.3541	20.47
340035	1.0956	18.10
340036	1.1309	16.97
340037	1.0053	15.53

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
340038	1.1024	17.01
340039	1.2595	20.01
340040	1.7834	20.07
340041	1.2546	18.97
340042	1.1890	16.63
340044	1.1035	16.37
340045	1.0223	12.42
340047*	1.8843	19.30
340048	0.6134	13.11
340049	0.7590	16.50
340051	1.2900	18.60
340051	1.8432	20.66
340052	0.9876	21.37
340053	1.6323	19.49
340054	1.1763	14.47
340055	1.2604	18.18
340060	1.0860	17.83
340061	1.7099	20.76
340063	1.0057	17.19
340064	1.1560	17.26
340065	1.3378	18.32
340067	1.0061	18.61
340068	1.2336	16.70
340069	1.8138	20.05
340070	1.2544	18.38
340071	1.1438	16.37
340072	1.1338	15.60
340073	1.3879	20.69
340075	1.2367	18.21
340080	0.9831	16.85
340084	1.1281	21.78
340085	1.1702	16.24
340087	1.1121	16.70
340088	1.2513	19.83
340089	0.9805	13.86
340090	1.1718	17.47
340093	1.0391	15.16
340094	1.3870	18.39
340096	1.1754	17.98
340097	1.1310	18.42
340098	1.5829	20.17
340099	1.1295	15.09
340101	1.0709	15.36
340104	0.8681	15.87
340105	1.3491	18.91
340106	1.1393	18.08
340107	1.2314	16.95
340109	1.3469	17.96
340111	1.1160	14.49
340112	0.9984	14.52
340113	1.8531	21.03
340114	1.6133	20.82
340115	1.5465	18.67
340116	1.8578	19.23
340119	1.2151	16.85
340120	1.1381	14.38
340121	1.0491	15.97
340123	1.1262	16.22
340124	1.1113	14.05
340125	1.4577	19.63
340126	1.3187	17.72

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
340127	1.3001	17.28
340130	1.3606	19.40
340131	1.5381	18.94
340132	1.2828	16.94
340133*	1.0724	14.35
340137	1.2697	.....
340138	1.0673	19.28
340141	1.7101	22.23
340142	1.1894	16.09
340143	1.4503	20.95
340144	1.2523	15.98
340145	1.3242	19.20
340146	1.0434	13.01
340147	1.2397	19.11
340148	1.3626	19.61
340151	1.2105	16.57
340155	1.3964	20.42
340156	0.7272	.....
340158	1.0734	17.26
340159	1.1779	16.80
340160	1.1654	15.53
340162	.....	16.64
340164	1.3649	19.68
340166	1.3051	19.22
340168	0.4822	14.75
340171	1.1342	20.05
340173	1.2028	20.21
350001	0.9646	15.10
350002	1.8458	17.28
350003	1.2077	17.43
350004	1.9288	17.90
350005	1.0897	16.03
350006	1.3848	16.62
350007	0.9036	13.28
350008	0.9721	21.70
350009	1.1842	18.28
350010	1.1308	15.28
350011	1.9255	18.49
350012	1.0794	12.73
350013	1.0590	16.68
350014	1.0303	15.79
350015	1.7237	15.87
350016	.....	11.63
350017	1.3344	17.78
350018	1.0338	13.64
350019	1.7223	19.40
350021	0.9859	12.69
350023	0.9505	13.34
350024	1.0054	14.37
350025	0.9807	16.24
350027	1.0099	17.12
350029	0.8409	12.80
350030	1.0670	17.35
350033	0.9292	14.90
350034	0.9296	18.32
350035	0.8734	10.16
350038	1.0785	18.74
350039	1.0406	17.31
350041	0.9448	14.68
350042	1.0516	16.75
350043	1.6090	17.16

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
350044	0.9036	10.53
350047	1.1408	17.93
350049	1.2037	14.53
350050	0.9242	10.57
350051	0.9872	17.53
350053	1.0058	13.94
350055	0.9910	12.37
350056	0.9210	14.67
350058	0.9553	14.35
350060	0.8626	9.60
350061	1.0444	14.59
350063	0.8913	.....
350064	0.8650	.....
350068	2.5336	.....
350069	1.1398	.....
360001	1.3040	17.61
360002	1.1823	17.40
360003	1.7502	22.03
360006	1.9071	22.09
360007	1.0921	17.10
360008	1.2559	18.28
360009	1.5436	17.53
360010	1.2815	18.09
360011	1.2938	18.95
360012	1.3003	19.22
360013	1.1471	20.81
360014	1.1215	19.88
360016	1.6714	18.71
360017	1.9258	22.50
360018*	1.6881	21.13
360019	1.2251	20.17
360020	1.4563	22.96
360024	1.3152	18.54
360025	1.3536	19.19
360026	1.3138	17.04
360027	1.4730	20.43
360028	1.4907	17.27
360029	1.1938	18.22
360030	1.3469	15.35
360031	1.1971	19.90
360032	1.1591	17.93
360034	1.3273	15.56
360035	1.6456	18.97
360036	1.3111	19.14
360037*	2.1426	22.52
360038	1.6235	19.09
360039	1.2937	17.52
360040	1.2913	18.12
360041	1.2871	18.42
360042	1.1662	16.12
360044	1.1478	16.79
360045	1.4244	21.18
360046	1.1481	19.32
360047	1.1315	15.34
360048*	1.8813	21.29
360049	1.2245	18.81
360050	1.2304	12.89
360051	1.6220	20.71
360052*	1.6960	19.75
360054	1.2429	16.19
360055	1.3166	23.27

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
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TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
360056	1.3960	18.36
360057	1.0590	13.81
360058	1.1936	17.92
360059	1.6088	20.39
360062	1.4087	20.31
360063	1.1347	22.79
360064	1.6113	20.64
360065	1.2531	19.45
360066	1.6390	20.03
360067	1.1463	14.57
360068	1.7916	21.92
360069	1.1347	17.88
360070	1.7820	17.55
360071	1.4177	23.80
360072	1.2731	17.97
360074*	1.2996	18.32
360075	1.3460	19.25
360076	1.3579	19.59
360077	1.6157	20.82
360078	1.2427	20.79
360079*	1.8438	22.00
360080	1.1427	16.66
360081	1.3387	19.64
360082	1.2779	22.86
360083	.....	18.46
360084	1.6077	20.09
360085	1.8767	20.73
360086	1.4308	17.04
360087	1.4296	20.04
360088	1.3224	22.31
360089	1.1349	20.56
360090	1.2682	20.40
360091	1.3213	21.03
360092	1.1373	15.91
360093	1.1774	18.57
360094	1.3412	18.31
360095	1.2596	18.71
360096	1.0736	17.16
360098	1.4620	18.34
360099	0.9911	16.43
360100	1.2362	17.66
360101	1.3303	22.31
360102	1.2046	16.41
360103	.....	22.66
360104	1.1889	.....
360106	1.1909	16.18
360107	1.2449	14.54
360108	1.0519	16.51
360109	1.1015	19.52
360112	1.9154	22.68
360113	1.3257	22.27
360114	1.0880	17.13
360115	1.3591	18.19
360116	1.1091	18.08
360118	1.3515	18.60
360121	1.2071	21.42
360123	1.2382	19.13
360125	1.1479	18.17
360126	1.2125	20.46
360126	1.8377	.....
360127	1.1473	16.92
360128	1.1568	15.58
360129	0.9446	15.42
360130	1.0122	15.34
360131	1.3308	18.29
360132	1.4132	18.27
360133	1.6508	19.03
360134	1.7520	20.24
360136	1.0180	17.85
360137	1.7424	20.26
360140	0.9460	19.13
360141	1.6432	22.85
360142	1.0527	17.32
360143	1.3343	20.44
360144	1.2946	21.92
360145	1.6897	19.39
360147	1.2436	16.59
360148	1.1482	18.89
360149	1.2611	18.79
360150	1.3025	20.63
360150	1.3486	14.24
360151	1.3908	17.49
360152	1.5270	22.00
360153	1.1281	14.89
360154	1.0435	13.78
360155	1.3677	20.90
360156	1.2714	17.92
360159	1.1769	20.71
360161*	1.3552	19.43
360162	1.0718	18.32
360163	1.8472	20.38
360164	.....	16.16
360165	1.1740	19.48
360166	.....	16.98
360170	1.4424	17.18
360172	1.3450	18.47
360172	1.0594	11.46
360174	1.2393	19.09
360175	1.1888	20.41
360176	1.1416	15.55
360177	1.3276	19.41
360178	1.3155	17.40
360179	1.4147	18.82
360180	2.1660	22.09
360184	0.5560	19.35
360185	1.2279	18.67
360186	1.0613	20.86
360187	1.4008	18.02
360188	0.9300	17.53
360188	1.3145	19.84
360189	1.0999	17.37
360192	1.3351	21.00
360193	.....	17.67
360194	1.1660	17.69
360195	1.1446	19.02
360197	1.1572	19.42
360200	0.9136	17.76
360203	1.1642	15.61
360204	1.2012	19.35
360210	1.1861	20.28
360211	1.2583	19.58
360212	1.3502	20.23
360213	1.2562	18.33
360218	1.3312	18.41
360230	1.5295	21.44
360231	1.1521	13.56
360234	1.3657	22.06
360236	1.2693	19.57
360239	1.2655	19.86
360241	0.4070	22.08
360243	0.6871	13.58
360244	.....	10.55
360245	0.7435	15.06
360247	0.4015	18.11
360248	.....	21.65
370001	1.7396	21.23
370002	1.2252	14.08
370004	1.1874	16.77
370005	0.9385	17.38
370006	1.1866	12.54
370007	1.1476	17.00
370008	1.3755	17.30
370011	1.0368	14.64
370012	0.8370	10.80
370013	1.8507	18.04
370014	1.1884	19.63
370015	1.1919	17.91
370016	1.3306	16.64
370017	1.1140	12.98
370019	1.3158	16.88
370020	1.2742	13.48
370021	0.8613	11.26
370022	1.3170	17.90
370023	1.2564	16.82
370025	1.3094	16.40
370026	1.4938	16.90
370028	1.8978	19.71
370029	1.1615	13.89
370030	1.1993	15.47
370032	1.5960	16.70
370033	1.0434	12.39
370034	1.2300	14.51
370034	1.1035	13.64
370035	1.7244	18.96
370037	1.7347	17.75
370038	0.9601	12.81
370039	1.1556	16.27
370040	1.0121	14.34
370041	0.9415	17.41
370042	0.8490	14.61
370043	0.9307	16.08
370045	1.0379	12.44
370046	0.9834	18.15
370047	1.4255	15.67
370048	1.2037	17.44
370051	0.9449	12.18
370054	1.3630	16.56
370056	1.5715	18.88
370057	1.0250	14.66
370059	1.1266	16.46
370060	1.0540	15.12
370063	1.1044	17.06
370064	0.9378	9.78

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
370065	0.9995	16.56
370071	1.0274	14.95
370072	0.8645	26.05
370076	1.2553	12.86
370077	.....	17.62
370078	1.6857	17.24
370079	0.9312	13.60
370080	0.9515	14.34
370082	0.8548	13.57
370083	0.9662	11.49
370084	1.0191	21.75
370085	0.8886	11.88
370086	1.1148	13.56
370089	1.2157	14.50
370091	1.6647	17.58
370092	0.9950	14.68
370093	1.7953	18.57
370094	1.4453	18.38
370095	0.9872	14.13
370097	1.3458	15.72
370099	1.1231	16.17
370100	0.9784	17.10
370103	0.9071	15.90
370105	1.9589	21.06
370106	1.5282	18.62
370108	0.9670	12.24
370112	1.0284	15.25
370113	1.2334	16.20
370114	1.6444	15.98
370121	1.0409	19.55
370122	1.0451	12.15
370123	1.4513	16.36
370125	0.9024	13.55
370126	0.9646	18.24
370131	0.9766	16.24
370133	1.0621	10.47
370138	1.0490	16.02
370139	1.0965	13.30
370140	1.0464	15.23
370141	1.3716	6.09
370146	1.0935	12.56
370148	1.4521	.....
370149	1.3479	16.72
370153	1.1151	15.32
370154	1.0475	16.29
370158	1.0197	15.09
370159	1.2547	15.49
370163	0.9790	14.56
370165	1.2623	13.22
370166	1.0457	17.82
370169	1.0462	11.80
370170	1.0246	.....
370171	1.0343	.....
370172	0.8992	.....
370173	1.0625	.....
370174	0.7213	.....
370176	1.2190	16.03
370177	0.9910	11.88
370178	0.9838	11.64
370179	0.9498	19.27
370180	0.9870	.....
370183	1.0383	7.62
370186	0.9785	13.35
370190	1.4695	13.70
370192	1.4803	16.74
370196	0.8822	.....
370197	.....	21.57
370198	1.4366	.....
370199	1.0307	.....
370200	1.1673	.....
380001	1.3046	22.03
380002	1.2175	19.48
380003	1.1750	24.74
380004	1.7385	23.16
380005	1.1745	23.24
380006	1.2246	20.54
380007	1.6509	24.16
380008	1.0680	21.19
380009	1.7977	25.28
380010	1.0413	19.75
380011	1.1006	21.14
380013	1.1883	20.10
380014	1.6527	23.48
380017	1.9295	23.68
380018	1.8300	22.08
380019	1.2442	20.77
380020	1.4525	21.35
380021	1.2077	20.64
380022	1.1107	21.61
380023	1.1378	19.24
380025	1.2975	24.67
380026	1.1414	19.27
380027	1.2810	20.16
380029	1.1411	18.57
380031	0.9370	22.83
380033	1.7968	22.62
380035	1.3525	21.65
380036	1.0858	19.33
380037	1.2271	21.23
380038	1.2457	25.58
380039	1.2601	22.12
380040	1.2922	21.64
380042	1.0121	19.81
380047	1.6765	21.95
380048	1.0418	18.38
380050	1.4266	18.25
380051	1.6342	21.24
380052	1.2506	17.77
380055	.....	21.25
380056	1.0970	17.16
380060	1.4584	23.48
380061	1.5207	22.63
380062	1.2197	18.52
380063	.....	19.36
380064	1.3207	19.87
380065	1.3101	22.17
380066	1.3211	20.42
380068	.....	22.76
380069	1.0679	19.58
380070	1.3454	24.71
380071	1.2327	20.47
380072	0.9961	16.32
380075	1.4249	22.17
380078	1.1368	19.10
380081	1.0229	20.59
380082	1.2627	22.58
380083	1.1660	21.81
380084	1.2367	23.64
380087	1.2347	16.75
380088	1.0722	19.52
380089	1.2780	23.74
380090	1.2983	27.09
380091	1.2616	22.83
390001	1.5197	16.39
390002	1.3158	18.08
390003	1.2403	17.24
390004	1.3978	18.82
390005	1.0949	15.36
390006*	1.8485	18.13
390009*	1.7387	20.16
390010	1.2504	17.42
390011	1.2787	18.07
390012	1.2197	20.00
390013	1.2401	19.33
390015	1.1331	12.94
390016	1.2482	17.95
390017	1.1848	16.22
390018	1.2431	18.98
390019	1.0762	16.40
390022	1.3535	22.86
390024	1.1793	25.03
390026	1.2757	22.18
390027	1.7878	27.37
390028*	1.8892	18.48
390030	1.2187	18.40
390031	1.2151	18.69
390032	1.2603	18.15
390035	1.2652	18.51
390036	1.5396	18.78
390039	1.1414	16.54
390040	0.9484	15.12
390041	1.2691	19.58
390042	1.5798	21.10
390043	1.1762	16.36
390044	1.6420	19.50
390045	1.7171	18.75
390046	1.6108	20.42
390047*	1.7435	23.61
390048	1.1520	18.38
390049	1.6125	21.02
390049	1.7948	24.39
390050	2.1150	21.43
390050	1.2393	20.86
390051	2.1342	26.05
390052	1.1532	17.10
390054	1.2344	17.50
390055	1.8882	25.85
390056	1.1202	17.17
390057	1.3145	19.74
390058	1.2840	19.25
390060	1.2088	13.63
390061	1.4935	16.95
390062	1.2449	16.45

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
390063		1.8347	19.51
390065		1.2323	20.00
390066		1.2608	18.70
390067		1.8041	20.18
390068		1.3029	17.55
390069		1.2663	19.76
390070		1.4168	20.07
390071		1.1082	16.23
390072		1.0501	15.56
390073		1.6668	20.64
390074		1.2477	16.60
390075		1.3927	17.27
390076		1.2793	21.43
390078		1.1506	18.23
390079		1.7570	17.76
390080		1.2902	18.82
390081		1.2995	23.99
390083		1.2055	.....
390084		1.2684	16.35
390086		1.1376	17.25
390088		1.3701	22.85
390090		1.8017	20.68
390091		1.1279	18.36
390093		1.1549	16.61
390095		1.2035	13.05
390096		1.4931	19.25
390097		1.2755	21.52
390100		1.6536	19.89
390101		1.2027	17.10
390102		1.3963	19.51
390103		1.0916	17.71
390104		1.0666	16.17
390106		1.1160	16.28
390107		1.3258	19.18
390108		1.4022	21.43
390109		1.2016	14.66
390110		1.5961	19.51
390111		1.9406	26.03
390112		1.2965	14.04
390113		1.2515	17.53
390114		1.2347	23.03
390115		1.3973	24.42
390116		1.2899	20.60
390117		1.1722	16.90
390118		1.2135	16.90
390119*		1.3898	18.48
390121		1.3957	18.64
390122		1.0603	17.46
390123		1.2758	20.44
390125		1.2067	15.94
390126		1.2899	20.94
390127		1.2286	21.88
390128		1.2202	19.99
390130		1.1343	17.33
390131		1.3302	16.83
390132		1.2935	21.10
390136		1.1431	17.61
390137		1.5156	16.54
390138		1.3212	18.86
390139		1.5084	22.94
390142*		1.6088	27.22

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
390145		1.3880	20.34
390146		1.2154	17.70
390147		1.2654	21.11
390150		1.1815	19.66
390151		1.2305	20.51
390152		1.1114	19.15
390153		1.2214	23.14
390154		1.2689	15.85
390156		1.4094	20.88
390157		1.3940	19.83
390158		.....	21.69
390160		1.2380	20.67
390161		1.1893	12.37
390162		1.5191	21.01
390163		1.2262	15.64
390164*		2.1709	21.74
390166		1.1125	19.96
390166		1.1125	19.96
390167		.....	22.91
390168		1.2596	18.99
390169		1.3383	18.99
390170		1.8481	22.99
390173		1.2222	17.82
390174*		1.6754	23.61
390176		1.1817	17.36
390178		1.3114	17.47
390179		1.3111	21.16
390180		1.4554	25.02
390181		1.0732	17.09
390183		1.1620	18.28
390184		1.1309	20.75
390185		1.2171	17.65
390189		1.1411	18.67
390191		1.1707	16.20
390192		1.1740	16.32
390193		1.1938	16.50
390194		1.1395	20.15
390195		1.8245	23.69
390196		1.5792	.....
390197		1.2825	18.99
390197		1.3365	11.12
390198*		1.2667	15.51
390199		1.2670	16.66
390200		0.9701	13.59
390201		1.2646	20.50
390203		1.3562	22.06
390204		1.2728	20.85
390206		1.4000	16.78
390206		1.4000	16.78
390209		1.0811	16.96
390211		1.2184	17.88
390213		1.1284	17.17
390215		1.2563	20.84
390217		1.2232	19.29
390219		1.3072	22.71
390220		1.1652	18.52
390222		1.3140	20.91
390223		1.7334	22.13
390224		0.8802	15.91
390225		1.1951	18.17
390226		1.6039	22.46

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
390228		1.2976	19.81
390231		1.5675	22.40
390231		1.1916	9.56
390233		1.3507	18.20
390235		1.4144	23.54
390236		1.2254	17.03
390237		1.5705	19.89
390238		1.2725	1.27
390238		1.1545	10.04
390242		.....	18.10
390244		0.9245	14.41
390245		1.3199	20.15
390246		1.1920	17.75
390247		1.0511	20.67
390249		0.9293	10.73
390256		1.8901	23.84
390258		1.4575	21.36
390258		1.3348	22.53
390260		1.0990	21.19
390262		1.9276	18.62
390263		1.4224	23.62
390265		1.2935	19.51
390266		1.2118	16.24
390267		1.2589	20.79
390268		1.3375	21.02
390270		1.3851	17.83
390272		0.4768	.....
390277		0.4015	27.10
390278		0.6660	18.99
390283		1.2887	.....
390284		1.3639	.....
400001		1.2182	9.86
400002		1.6803	9.31
400003		1.3589	10.13
400004		1.1421	8.48
400005		1.1211	7.85
400006		1.1593	8.22
400007		1.2021	7.86
400009		1.0530	8.37
400010		0.8902	11.66
400011		1.0733	7.44
400012		1.3428	7.81
400013		1.2616	8.21
400014		1.3935	9.54
400015		1.3307	10.33
400016		1.3663	12.07
400017		1.1570	8.57
400018		1.2817	9.45
400019		1.6576	10.13
400021		1.4432	11.68
400024		0.9500	7.56
400026		0.9640	7.12
400027		1.1026	8.49
400028		1.2500	8.40
400031		1.2515	9.78
400032		1.2212	9.42
400048		1.0249	9.47
400061		1.7094	16.08
400079		1.2218	.....
400087		1.4156	9.83
400094		0.9947	5.15

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
400098	1.3998	8.17
400102	1.1591	7.73
400103	1.3870	10.59
400104	1.2767	9.68
400105	1.2171	10.06
400106	1.2574	8.51
400109	1.4773	10.18
400110	1.1292	10.52
400112	1.0540	9.97
400113	1.1575	9.48
400114	1.0784	6.41
400115	1.0386	9.13
400118	1.2392	8.70
400120	1.2554	9.74
400121	0.9964	7.11
400122	1.0235	8.48
400123	1.2031	9.00
400124	2.8358	11.16
400125	1.0022	.....
410004	1.2575	22.06
410005	1.3735	21.26
410006	1.3057	21.68
410007	1.6365	20.98
410008	1.2136	22.62
410009	1.2941	24.08
410010	1.1611	27.14
410011	1.2705	24.37
410012	1.9068	21.33
410013	1.2981	25.01
420002	1.5015	20.20
420004	1.8164	19.41
420005	1.1323	15.99
420006	1.1199	18.24
420007	1.5710	17.43
420009	1.1697	17.25
420010	1.1774	17.91
420011	1.2438	14.99
420014	1.0197	16.72
420015	1.3348	17.18
420016	0.9571	18.15
420018	1.8110	19.73
420019	1.2145	15.55
420020	1.1846	20.16
420023	1.4298	20.97
420026	1.8901	21.90
420027	1.3308	18.08
420030	1.2081	17.82
420031	0.8622	13.07
420033	1.1653	21.09
420036	1.2907	19.80
420037	1.1948	21.96
420038	1.3155	16.15
420039	1.0701	16.96
420042	.....	14.66
420043	1.1867	18.36
420048	1.2366	29.62
420049	1.2046	19.23
420051	1.6466	18.25
420053	1.1427	16.48
420054	1.2398	16.55
420055	1.0585	16.18
420056	1.1158	14.85
420057	1.1156	14.50
420059	0.9738	19.13
420061	1.1761	17.78
420062	1.1904	18.92
420064	1.1038	16.15
420065	1.3912	19.06
420066	0.9834	15.52
420067	1.2163	18.30
420068	1.3854	17.21
420069	1.0602	16.40
420070	1.2331	17.45
420071	1.3510	18.29
420072	0.9129	12.34
420073	1.2802	19.20
420074	1.0257	13.80
420075	0.9395	16.29
420078*	1.8578	20.68
420079	1.5179	18.77
420080	1.3722	24.83
420082	1.5853	18.88
420083	1.3596	20.41
420085	1.4116	18.33
420086	1.4340	19.31
420087	1.5959	17.43
420088	1.0878	17.09
420089	1.2941	21.66
420091	1.2732	18.57
420093	1.0353	16.77
420094	.....	32.68
430004	0.9973	17.85
430005	1.3588	15.92
430007	1.0895	14.06
430008	1.0971	16.54
430010	1.1605	16.11
430011	1.2930	16.42
430012	1.3230	17.56
430013	1.2073	17.24
430014	1.3653	18.56
430015	1.2134	16.41
430016	1.8711	18.97
430018	0.8815	15.15
430022	0.8616	12.95
430023	0.8729	11.64
430024	0.9364	13.99
430026	.....	10.85
430027	1.7681	18.32
430028	1.0724	16.78
430029	0.9602	15.10
430031	0.9138	12.46
430033	0.9935	14.64
430034	0.9461	12.85
430036	0.9551	13.78
430037	0.9633	15.95
430038	1.0095	11.94
430040	1.0511	13.37
430041	0.9140	12.62
430043	1.1323	13.43
430044	0.9084	16.45
430047	1.0274	17.06
430048	1.2378	17.26
430049	0.8812	14.44
430051	0.9318	17.03
430054	0.9648	13.50
430056	0.8301	10.74
430057	0.8972	15.15
430060	1.0902	8.64
430062	.....	10.89
430064	1.0191	12.74
430065	.....	12.77
430066	0.9635	13.44
430073	1.0646	14.98
430076	0.9475	12.25
430076	1.3562	15.61
430077	1.6605	17.72
430079	1.0029	12.98
430081	0.8954	.....
430082	0.8549	.....
430083	0.9273	.....
430084	0.8155	.....
430085	0.7910	.....
430087	.....	10.45
430089	0.8333	17.01
430090	1.3320	.....
430091	1.4528	.....
430092	2.2007	.....
430093	0.9966	.....
440001	1.1722	15.01
440002	1.6649	24.36
440003	1.2128	17.47
440006	1.4058	20.39
440007	1.0032	7.77
440008	0.9784	14.04
440009	1.1552	15.46
440010	0.9307	13.59
440011	1.3832	17.16
440012	1.7143	18.79
440014	1.0046	14.61
440015	1.7923	21.09
440016	1.0334	14.94
440017	1.7422	20.93
440018	1.2965	18.21
440019	1.7372	28.22
440020	1.1314	14.70
440022	.....	19.02
440023	1.1030	14.14
440024	1.2947	18.10
440025	1.1538	15.28
440026	0.8073	22.92
440029	1.2585	18.52
440030	1.2098	15.57
440031	1.0300	14.30
440031	1.5024	19.61
440032	1.0048	13.60
440033	1.1602	14.04
440034	1.5621	17.93
440035	1.2301	18.16
440039	1.8871	16.52
440040	0.9687	17.50
440041	1.0284	13.63
440046	1.2336	16.83
440047	0.9254	17.00

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
440048		1.8710	18.14
440049		1.6635	15.23
440050		1.3867	16.76
440051		0.9145	14.91
440052		1.0633	16.27
440053		1.3201	17.69
440054		1.1349	12.31
440056		1.1422	14.25
440057		1.0340	12.72
440058		1.2124	18.86
440059		1.4182	17.53
440060		1.1653	15.86
440061		1.1496	16.48
440063		1.6724	18.29
440064		1.0863	17.38
440065		1.2816	18.69
440067		1.2422	28.28
440068		1.2251	17.45
440070		1.0077	15.04
440071		1.3615	16.17
440073		1.2785	18.56
440078		1.0266	13.09
440081		1.0950	17.97
440082		2.0471	19.61
440083		0.9670	59.16
440084		1.2064	13.37
440091		1.6371	19.72
440100		1.0065	13.95
440102		1.1313	13.96
440103		1.1144	19.21
440104		1.7388	22.39
440105		1.7270	16.03
440109		1.0889	14.25
440110		1.1002	15.92
440111*		1.4426	21.12
440114		1.0554	13.61
440115		1.0675	12.97
440115		1.4538	16.64
440120		1.6404	18.30
440125		1.5584	16.11
440130		1.1384	16.67
440131		1.1174	14.68
440132		1.1314	15.91
440133		1.5479	21.70
440135		1.2196	35.34
440137		1.0844	14.70
440141		0.9706	12.48
440142		1.0003	13.01
440143		1.0461	17.33
440144		1.2139	16.67
440145		0.9559	13.66
440147		1.7001	22.01
440148		1.1231	17.64
440149		1.0945	13.89
440150		1.3319	13.04
440151		1.1148	15.43
440152		2.0165	17.84
440153		1.1547	16.10
440157		1.0819	9.02
440159		1.1218	17.62
440161		1.8684	20.39
440162		.....	14.41
440166		1.6849	18.14
440168		1.0561	17.15
440173		1.6008	18.47
440174		1.0302	17.01
440175		1.0716	17.29
440176		1.3816	18.75
440180		1.2237	17.01
440181		0.9662	11.85
440182		0.9596	18.91
440183		1.5917	19.43
440184		1.2536	18.06
440185		1.1857	18.73
440186		1.0479	18.28
440187		1.1048	14.46
440189		1.4799	16.19
440192		1.0810	19.97
440193		1.2265	18.40
440194		1.2532	19.21
440197		1.3616	23.08
440200		1.0421	15.85
440203		0.9727	16.61
440206		0.9468	13.75
440209		.....	14.75
440210		0.8584	12.33
440211		0.7073	.....
440212		1.3679	.....
440213		2.6309	.....
440214		1.3295	.....
450002*		1.5334	19.92
450004		1.1433	15.28
450005		1.1877	15.66
450007		1.2689	15.75
450008		1.2584	15.75
450010		1.4340	16.08
450011		1.5214	17.66
450014		1.1172	18.22
450015*		1.6355	16.44
450016		1.6644	17.31
450018		1.4434	19.81
450020		0.9601	16.97
450021		1.8595	22.03
450024		1.4525	16.10
450024		1.6146	15.16
450025		1.7316	16.44
450028		1.5003	18.28
450029		1.6807	17.69
450031		1.4829	20.90
450032		1.3571	15.24
450033		1.7144	20.86
450034		1.5651	18.91
450035		1.4731	16.91
450037		1.5577	18.65
450039*		1.4262	18.83
450040		1.5483	17.52
450042		1.7715	17.01
450044		1.6187	17.61
450046*		1.3251	16.99
450047		1.1488	12.50
450050		0.9407	13.00
450051		1.5714	20.08
450052		1.0002	13.53
450053		1.1028	17.31
450054*		1.6343	21.98
450055		1.1125	14.81
450056		1.6257	19.22
450058		1.6338	16.98
450059		1.3021	14.21
450063		0.9097	13.81
450064		1.4200	15.43
450065		1.0265	19.61
450068		1.9331	22.90
450072		1.1764	17.34
450073		1.1207	16.62
450076		1.7329	.....
450078		0.8770	13.49
450079		1.5311	19.49
450080		1.1778	16.19
450081		1.0574	16.17
450082		0.9688	13.30
450083		1.8071	20.18
450085		1.0524	14.22
450087		1.4467	21.44
450090		1.1231	13.91
450092		1.2254	15.68
450094		1.3268	19.20
450096		1.4156	16.63
450097		1.3392	18.27
450098		1.0981	15.48
450099		1.1515	22.88
450101		1.4797	15.29
450102		1.7275	17.15
450104		1.1833	15.96
450107		1.5329	20.74
450108		1.0388	13.53
450109		0.9217	12.77
450110		.....	21.44
450111		1.2306	19.27
450112		1.2588	12.04
450113		1.3241	15.15
450118		1.6610	15.83
450119		1.4076	18.32
450121		1.5363	17.37
450123		1.1893	19.19
450124		1.6632	20.61
450126		1.3278	17.45
450128		1.1963	15.62
450130		1.5006	17.86
450131		1.2640	17.62
450132		1.6184	14.38
450133		1.6016	19.64
450137		1.5728	23.96
450140		0.9222	18.07
450143		1.0314	13.28
450144		1.0945	16.30
450145		0.8669	14.84
450146		0.9518	13.75
450147		1.3039	14.90
450148		1.2199	16.91
450149		1.4914	24.00
450150		0.9050	12.56
450151		1.1034	14.84

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
450152	1.2307	17.33
450153	1.5443	24.00
450154	1.1796	11.36
450155	1.0303	23.77
450157	1.0679	14.62
450160	0.9623	8.75
450162	1.2163	22.12
450163	1.0057	16.98
450164	1.1844	19.21
450165	1.0389	15.16
450166	0.9373	10.28
450169	.....	15.88
450170	0.9628	13.96
450176	1.2927	16.30
450177	1.2044	15.38
450178	1.0248	16.76
450181	1.0084	14.02
450184	1.4589	19.47
450185	1.0264	13.06
450187	1.1969	17.14
450188	0.9950	13.78
450191	1.0176	18.80
450192	1.1764	21.53
450193	2.0194	22.73
450194	1.3017	19.15
450196	1.4365	16.49
450200	1.4455	17.38
450201	1.0178	17.05
450203	1.1592	18.66
450209	1.5655	18.66
450210	1.0520	14.23
450211	1.3626	16.69
450213	1.7288	17.44
450214	1.3280	17.25
450217	0.9354	11.69
450219	1.0891	15.42
450221	1.1920	16.99
450222	1.4941	18.38
450224	1.3678	22.83
450229	1.5725	16.39
450231	1.6282	13.25
450234	1.0450	13.26
450235	1.0681	13.42
450236	1.1453	15.68
450237	1.5262	17.40
450239	1.0080	13.64
450241	0.9562	13.66
450243	0.9422	12.31
450246	1.0110	18.31
450249	1.0667	11.63
450250	0.9906	14.91
450253	1.1234	15.35
450258	1.0358	13.23
450259	.....	17.85
450264	0.8807	13.89
450269	0.9963	14.16
450270	1.0793	9.86
450271	1.2394	15.39
450272	1.2614	17.91
450276	1.0966	12.71
450278	0.8254	13.79
450280	1.5815	19.01
450283	1.0413	13.89
450286	.....	12.12
450288	1.1566	15.67
450289	1.4681	18.08
450293	0.9461	14.43
450296	1.3456	20.66
450299	1.5412	17.97
450303	0.9624	11.59
450306	1.0914	13.32
450307	0.7995	16.23
450309	1.0981	11.91
450315	0.9788	20.80
450320	1.2431	19.63
450321	0.9220	13.09
450322	0.5973	12.33
450324	1.5343	17.87
450327	0.9680	15.98
450330	1.1267	18.42
450334	0.9752	12.27
450337	0.9932	17.42
450340	1.4589	15.85
450341	1.0144	19.27
450346	1.5017	14.22
450347	1.2197	17.54
450348	1.1296	12.94
450352	1.1887	17.50
450353	1.1374	15.00
450355	1.0444	14.32
450358	2.0739	18.73
450362	1.0903	14.71
450369	1.0535	15.17
450370	1.2082	15.44
450371	1.2448	11.90
450372	1.2359	18.76
450373	1.1042	17.60
450374	0.8698	12.69
450378	1.1823	23.06
450379	1.5578	20.28
450381	0.9504	13.57
450388	1.7801	17.56
450389	1.2887	18.15
450393	1.2516	15.73
450395	1.0414	13.48
450400	1.3751	11.53
450411	0.9314	13.56
450417	1.0236	13.85
450418	1.3841	20.58
450419	1.2162	14.50
450422	1.0412	24.33
450423	1.5371	19.44
450424	1.2463	17.09
450429	1.1179	10.12
450431	1.5626	34.88
450438	1.1330	14.95
450446	0.7612	21.97
450447	1.3910	16.35
450451	1.1844	18.35
450457	1.8463	19.35
450460	1.0034	16.62
450462	1.7354	19.83
450464	0.9328	10.87
450465	1.3057	15.22
450467	1.0766	15.02
450469	1.3918	22.10
450473	1.0190	14.19
450475	1.0903	16.25
450484	1.4886	19.59
450488	1.3273	18.73
450489	0.9699	12.93
450497	1.1188	11.89
450498	0.9736	0.87
450508	1.3853	19.37
450514	1.0764	22.28
450517	0.9583	12.86
450518	1.5216	18.98
450523	1.4806	20.26
450530	1.1943	22.91
450534	0.9671	22.77
450535	1.2284	21.26
450537	1.3420	20.83
450538	.....	19.69
450539	1.2651	14.25
450544*	1.1442	19.38
450545	1.3928	16.97
450547	1.0633	13.81
450551	1.1045	24.23
450558	1.7912	20.15
450559	.....	11.50
450561	.....	16.82
450563	1.2647	30.37
450565	1.2567	16.45
450570	1.1346	17.71
450571	1.4908	16.80
450573	0.9885	15.61
450574	0.9302	14.24
450575	1.1445	19.06
450578	0.9365	16.87
450580	1.1534	15.36
450583	1.0350	15.50
450583	1.1976	21.38
450584	1.1771	12.42
450586	1.0584	12.79
450587	1.1745	17.11
450591	1.1460	17.92
450596	1.2182	14.82
450597	0.9687	16.18
450603	0.7880	12.77
450604	1.3023	14.47
450605	1.1873	20.15
450609	0.8938	10.73
450610	1.4674	16.49
450614	0.9889	13.25
450615	1.0755	14.75
450617	1.3306	19.54
450620	1.1230	12.27
450623	1.1390	21.83
450626	1.0109	18.56
450628	1.0152	16.83
450630	1.5199	19.19
450631	1.6593	17.56
450632	0.9391	11.63

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

	Prov.	Case mix index	Avg. hourly wage
450633		1.5493	19.26
450634		1.5955	20.29
450638		1.5280	21.11
450639		1.4800	20.14
450639		1.1078	14.71
450641		1.0511	13.50
450643		1.2200	17.43
450643		1.8171	18.65
450644		1.4350	20.79
450644		1.2078	17.67
450646		1.4571	19.99
450647		1.8915	22.10
450648		1.0015	12.59
450649		1.0322	15.37
450651		1.6801	20.31
450652		0.9063	15.24
450653		1.0888	19.28
450654		0.9486	13.41
450656		1.3894	18.56
450658		0.9605	15.15
450659		1.4874	20.56
450661		1.1066	20.22
450662		1.4702	18.42
450665		0.8639	13.60
450666		1.3180	19.35
450668		1.6257	18.50
450669		1.3474	22.28
450670		1.3446	18.20
450672		1.5857	21.04
450673		1.0157	13.84
450674		1.1515	20.62
450675		1.3677	23.26
450677		1.3317	18.71
450678		1.4729	20.75
450681		1.3177	.....
450683		1.2745	19.95
450684		1.2398	22.85
450686		1.5933	14.85
450688		1.3163	20.90
450690		1.3862	16.37
450694		1.1409	18.03
450696		1.3358	17.57
450697		1.3692	15.93
450698		0.9124	14.40
450700		0.9465	15.12
450702		1.5056	21.01
450703		1.1321	18.80
450704		1.2418	21.62
450705		0.8800	22.32
450705		1.7726	20.82
450709		1.1858	17.96
450711		1.6329	17.93
450712		0.5447	16.89
450713		1.4868	23.11
450715		1.4311	19.11
450716		1.2675	19.99
450716		1.3205	16.71
450717		1.2910	19.45
450718		1.1993	19.07
450723		1.4195	20.55
450724		1.2576	20.07
450725		.....	19.56
450727		1.0735	17.75
450728		0.8255	12.93
450730		1.3987	20.88
450733		1.4711	20.37
450735		0.8297	8.00
450742		1.2724	20.74
450743		1.4594	14.65
450746		0.9226	18.45
450747		1.3312	17.38
450749		1.0333	12.95
450750		1.0162	14.72
450751		1.2148	22.25
450754		0.9405	14.89
450757		0.8760	13.96
450761		0.9449	11.14
450763		1.0029	17.56
450766		2.0829	18.19
450769		0.8529	13.62
450770		0.9940	15.51
450771		1.9141	17.74
450774		1.6697	16.52
450775		1.3635	19.97
450776		1.0096	10.19
450777		0.9775	19.59
450779		1.2926	22.97
450780		1.7465	15.28
450785		0.9897	18.55
450788		1.5030	20.78
450794		.....	18.40
450795		0.9920	14.17
450796		3.3883	.....
450797		0.7701	18.59
450798		0.7662	9.22
450801		1.4574	16.35
450802		1.4444	18.90
450803		1.0998	16.20
450804		1.7558	20.19
450807		0.8919	13.23
450808		1.9103	45.47
450809		1.5476	12.09
450810		0.9739	.....
450811		2.4111	18.38
450812		.....	20.74
450813		0.9720	.....
450815		2.5623	.....
450817		0.6826	.....
450818		1.1788	.....
450819		1.2321	.....
450820		1.0337	.....
450822		1.2194	.....
460001		1.7791	20.63
460003		1.6039	20.60
460005		1.6610	17.58
460006		1.3361	19.65
460007		1.3066	20.57
460008		1.3692	23.97
460009*		1.8478	21.14
460010		2.0938	21.25
460013		1.4314	18.21
460014		1.2150	16.70
460015		1.2389	19.99
460016		0.9921	18.08
460017		1.4000	6.88
460018		0.9273	16.86
460019		1.0515	16.83
460020		0.9556	17.03
460021		1.3838	20.26
460022		0.9569	18.21
460023		1.1748	21.33
460024		.....	13.03
460025		0.8253	12.51
460026		1.0648	17.34
460027		0.9545	20.85
460029		1.0958	17.45
460030		1.1965	17.22
460032		0.9812	19.55
460033		0.9710	15.72
460035		0.9482	10.14
460036		1.0012	22.38
460037		0.9093	18.77
460039		1.0603	24.48
460041		1.3034	21.69
460042		1.3720	17.85
460043		0.9896	23.90
460044		1.1363	20.69
460046		.....	17.11
460047		1.6725	20.94
460049		1.9835	18.82
460051		1.1533	20.98
460052		1.4619	.....
470001		1.3024	19.61
470003		1.8178	22.10
470004		1.0690	18.10
470005		1.2301	21.51
470006		1.2402	18.39
470008		1.2583	19.41
470010		1.0674	19.47
470011		1.1523	21.20
470012		1.2771	18.52
470015		1.2008	19.26
470018		1.2257	20.77
470020		0.9900	18.99
470023		1.3178	20.34
470024		1.1530	20.41
490001		1.1947	24.76
490002		1.0751	12.74
490003		0.6419	18.00
490004		1.2734	18.67
490005		1.5964	16.91
490006		1.2135	15.23
490007		2.0980	18.43
490009		1.9433	22.95
490010		1.0335	18.58
490011		1.4669	18.20
490012		1.1951	13.78
490013		1.2469	16.93
490014		1.5363	24.56
490015		1.5153	19.36
490017		1.3909	15.07
490018		1.3011	17.67
490019		1.1928	16.93

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
490020	1.2250	17.67
490021	1.3802	19.45
490022	1.5525	21.01
490023	1.2187	18.87
490024	1.6719	16.89
490027	1.1135	14.46
490030	1.1907	10.50
490031	1.0746	15.82
490032*	1.7258	25.58
490033	1.1993	18.33
490037	1.2001	15.97
490038	1.2145	15.71
490040	1.4731	22.35
490041	1.2784	16.55
490042	1.2285	15.27
490043	1.3526	20.68
490044	1.3206	17.63
490045	1.2191	19.63
490046	1.5460	18.61
490047	1.1059	17.16
490048	1.5709	17.89
490050	1.4272	22.71
490052	1.6374	16.94
490053	1.3173	15.69
490054	1.0322	15.55
490057	1.5692	19.07
490059	1.5895	20.22
490060	1.0646	19.20
490063	1.7720	27.25
490066	1.3206	17.88
490067	1.2570	17.19
490069	1.4162	13.29
490071	1.4080	19.47
490074	.....	13.34
490075	1.3803	19.19
490077	1.2281	19.79
490079	1.3125	16.44
490079	1.3236	23.38
490083	.....	16.64
490084	1.1288	16.38
490085	1.1577	16.40
490088	1.1207	20.76
490089	1.0686	15.86
490090	1.1204	16.35
490091	1.2337	19.83
490092	1.2211	12.97
490093	1.4392	16.48
490094	1.0907	16.79
490097	1.2114	15.86
490098	1.2065	14.70
490099	0.9562	16.88
490100	.....	17.22
490101	1.2299	24.85
490104	0.6981	28.49
490105	0.5822	18.25
490106	0.8713	16.91
490107	1.3325	22.41
490107	1.2448	21.42
490108	0.8976	19.75
490109	0.8779	21.16
490110	1.3090	15.84

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
490111	1.2008	17.34
490112	1.6550	20.52
490112	0.9491	21.43
490113	1.3260	23.08
490114	1.1579	16.91
490115	1.1607	17.10
490116	1.1694	16.44
490117	1.1533	13.84
490119	1.3405	17.87
490122	1.3606	23.62
490123	1.1354	16.85
490124	1.0889	19.36
490126	1.3233	17.07
490127	1.0414	14.48
490129	1.0562	27.47
490130	1.3109	16.28
490132	1.0184	17.02
500001	1.4839	21.30
500002	1.4064	21.04
500003	1.3996	24.31
500005	1.7494	23.48
500007	1.3375	22.43
500007	1.7377	27.24
500008	1.9429	24.19
500011	1.3347	25.18
500012	1.5545	22.28
500014	1.5643	23.93
500015	1.3297	23.24
500016	1.4969	23.90
500019	1.3825	22.37
500019	1.0542	16.63
500021	1.4811	24.46
500023	1.2084	27.19
500024	1.6908	28.85
500025	1.9076	23.96
500026	1.4496	23.35
500027*	1.6837	25.11
500028	1.0717	18.86
500029	0.9116	17.15
500030	1.4523	24.13
500031	1.2466	23.37
500033	1.3324	21.39
500036	1.3903	21.89
500037	1.1389	19.69
500039	1.3777	23.32
500042	1.4121	22.13
500043	1.0020	20.25
500044	1.9366	23.11
500045	1.0116	22.10
500048	0.9588	19.01
500049	1.4726	22.95
500050	1.3485	20.97
500051	1.6734	24.48
500052	1.1378	.....
500053	1.3294	22.05
500054	1.8773	22.90
500055	1.1299	22.88
500057	1.3026	18.04
500058	1.4858	23.40
500059	1.0767	22.54
500060	1.3734	23.58

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
500061	1.0038	20.40
500062	1.0655	19.46
500064	1.6399	24.53
500068	1.0553	18.70
500069	1.1143	20.63
500071	1.2830	19.38
500072	1.2022	24.46
500074	1.1040	17.83
500077	1.3318	22.93
500079	1.3197	22.98
500080	0.8124	13.80
500084	1.2783	17.76
500085	0.9278	28.61
500086	1.2605	22.31
500088	1.2964	23.71
500089	1.0388	17.94
500090	0.8380	16.33
500092	1.0142	17.40
500094	0.8826	18.11
500096	0.9385	20.96
500097	1.0798	19.71
500098	1.0464	16.38
500101	1.0138	19.45
500102	0.9022	20.33
500104	1.2658	22.58
500106	0.9351	18.71
500107	1.2050	17.30
500107	1.2050	17.30
500107	1.4730	20.61
500110	1.2039	21.41
500118	1.1500	22.92
500118	1.2716	18.35
500119	1.3565	21.57
500122	1.2754	21.91
500123	0.9512	19.58
500124	1.3682	24.15
500129	1.6395	23.60
500132	0.9695	19.42
500134	0.6470	20.96
500138	3.6799	.....
500139	1.4685	20.88
500140	.....	1.00
500141	1.3697	22.94
500143	0.5986	17.60
500146	.....	17.85
510001	1.9505	17.87
510002	1.2866	17.34
510005	1.0195	14.43
510006	1.2718	17.53
510007*	1.5744	20.25
510008	1.2176	17.29
510012	1.0090	20.21
510013	1.1010	16.62
510015	0.9623	14.56
510016	.....	14.52
510018	1.0667	16.48
510020	1.0824	12.65
510022	1.8964	19.84
510023	1.2383	15.94
510024	1.5822	18.80
510026	1.0565	13.46

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
510027	0.9592	17.58
510028	1.0482	20.73
510029	1.2825	17.05
510029	1.1570	15.37
510030	1.0525	18.31
510030	1.1257	17.66
510031	1.4148	18.49
510033	1.2896	18.81
510035	1.2262	18.65
510036	0.9851	13.20
510038	1.0644	14.34
510039	1.3991	16.04
510043	0.9349	14.29
510046	1.2728	17.73
510047	1.2608	19.12
510048	1.1326	20.37
510050	1.7469	16.57
510053	1.0811	15.59
510055	1.2272	22.84
510058	1.2791	17.98
510059	1.9378	16.77
510060	1.0503	15.66
510061	1.0234	14.22
510062	1.2784	17.63
510065	.....	13.72
510066	.....	12.72
510067	1.2058	18.11
510068	1.2072	16.29
510070	1.2966	16.36
510071	1.3310	16.24
510072	1.0568	17.66
510077	1.1382	16.41
510080	1.1488	14.80
510081	1.0777	13.00
510082	1.1599	13.38
510084	1.0387	12.48
510086	1.1038	13.79
510088	1.0373	.....
520003	1.0889	16.43
520004	1.1781	18.17
520006	1.0164	20.44
520007	1.0498	13.11
520008	1.6388	23.11
520009	1.6963	18.51
520010	1.1567	20.34
520011	1.1930	20.38
520013	1.3708	21.64
520014	1.1081	16.40
520015	1.1985	18.32
520016	0.9785	13.29
520017	1.1935	19.32
520018	1.1169	18.64
520019	1.3094	18.31
520021	1.4602	19.46
520024	1.0420	14.61
520025	1.0655	18.11
520026	1.0229	19.81
520027	1.2629	18.86
520028	1.3300	19.14
520029	0.8925	16.75
520030	1.7397	20.01

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
520031	1.0727	18.71
520032	1.2635	17.84
520033	1.2390	18.77
520034	1.1068	16.69
520035	1.3242	17.10
520037	1.7020	20.05
520038	1.3352	17.71
520039	0.9971	19.60
520040	1.5273	20.48
520044	1.4160	17.79
520045	1.6446	19.67
520047	0.9370	17.87
520048	1.4946	18.61
520049	2.0474	19.57
520051*	1.8401	19.06
520053	1.1887	16.49
520054	1.0540	15.99
520057	1.1966	18.32
520058	1.1064	18.13
520059	1.4353	19.85
520060	1.4753	17.05
520062	1.2495	17.80
520063	1.1851	20.77
520064	1.5705	21.46
520066	1.4668	22.24
520068	0.9622	18.08
520069	1.2302	17.00
520070	1.5249	17.82
520071	1.2534	18.75
520074	1.0579	19.57
520075	1.4850	19.09
520076	1.1802	16.51
520077	0.9304	15.54
520078	1.6347	20.13
520082	1.1943	16.74
520083	1.7211	25.85
520084	1.0805	18.95
520087	1.6998	19.39
520088	1.2750	20.15
520090	1.2589	18.00
520091	1.2781	20.07
520092	1.0851	17.56
520094	0.7814	19.78
520095	1.2912	18.51
520096	1.3837	19.30
520097	1.3186	19.57
520098*	1.7679	20.03
520100	1.2558	18.38
520101	1.0673	17.85
520102	1.1747	19.83
520103	1.3291	21.23
520107	1.2651	20.54
520109	1.0080	18.63
520110	1.2429	20.03
520111	1.0771	17.24
520112	1.1370	18.18
520113	1.2753	20.59
520114	1.0715	17.38
520115	1.2443	17.38
520116	1.2746	18.57
520117	1.0104	17.42

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
520118	0.9267	12.44
520120	0.9639	15.62
520121	0.9809	17.58
520122	0.9984	16.76
520123	0.9687	17.41
520124	1.0565	16.39
520130	1.0658	14.49
520131	1.0212	18.80
520132	1.2099	17.28
520134	1.1056	17.61
520135	0.9696	14.47
520136*	1.5145	19.85
520138	1.8811	20.56
520139	1.2600	21.28
520140	1.6657	20.99
520141	.....	16.95
520142	0.8561	17.70
520144	1.0159	16.62
520145	0.9104	17.24
520146	1.0606	15.73
520148	1.1740	16.93
520149	0.8682	13.30
520151	1.0569	18.08
520152	1.1284	21.33
520153	0.9014	15.45
520154	1.1279	17.92
520156	1.1295	19.84
520157	1.1386	17.28
520159	0.9313	18.74
520160	1.7788	18.84
520161	0.9970	18.57
520170	1.1959	22.45
520171	0.9550	15.73
520173	1.1310	19.81
520177	1.7167	21.29
520178	1.0405	17.04
520187	0.6853	.....
530002	1.1871	17.59
530003	0.8651	15.78
530004	0.9408	16.19
530005	1.1117	15.15
530006	1.1073	19.34
530007	1.0694	18.06
530008	1.2168	19.71
530009	0.9868	19.45
530010	1.2449	18.93
530011	1.1582	17.44
530012	1.6193	19.48
530014	1.4152	17.32
530015	1.2824	22.65
530016	1.2295	17.71
530017	0.9391	13.71
530018	0.9886	17.87
530019	0.9196	16.76
530022	1.1517	17.88
530023	0.8312	20.75
530025	1.3777	20.32
530026	1.1298	18.92
530027	0.8284	29.77
530029	1.0012	17.97
530031	0.8249	13.38

Average hourly wage based on data on file as of February 22, 1999. It does not reflect any changes processed after that date.
Asterisk denotes teaching physician costs removed based on costs reported on worksheet a, col. 1, line 23 of FY 1996 cost report.

TABLE 3C.—HOSPITAL CASE MIX INDEXES FOR DISCHARGES OCCURRING IN FEDERAL FISCAL YEAR 1998; HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEAR 2000 WAGE INDEX—Continued

Prov.	Case mix index	Avg. hourly wage
530032	0.9898	20.21

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 Abilene, TX Taylor, TX	0.8269	0.8780
0060 Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4559	0.5840
0080 Akron, OH Portage, OH Summit, OH	1.0277	1.0189
0120 [2] Albany, GA Dougherty, GA Lee, GA	0.8189	0.8721
0160 [2] Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8633	0.9042
0200 [2] Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.8613	0.9028
0220 Alexandria, LA Rapides, LA	0.7988	0.8574
0240 Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9754	0.9831
0280 Altoona, PA Blair, PA	0.9422	0.9600
0320 Amarillo, TX Potter, TX Randall, TX	0.8150	0.8693
0380 Anchorage, AK Anchorage, AK	1.3143	1.2058
0440 Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1565	1.1047
0450 Anniston, AL Calhoun, AL	0.8548	0.8981
0460 Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.8944	0.9264
0470 Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4737	0.5995
0480 Asheville, NC Buncombe, NC Madison, NC	0.8978	0.9288
0500 Athens, GA Clarke, GA Madison, GA Oconee, GA	0.9556	0.9694
0520 [1] Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	1.0119	1.0081
0560 Atlantic-Cape May, NJ Atlantic, NJ Cape May, NJ	1.1076	1.0725
0600 Augusta-Aiken, GA–SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	0.9117	0.9387
0640 [2] Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9511	0.9663
0680 [2] Bakersfield, CA Kern, CA	1.0153	1.0105
0720 [1] Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	1.0176	1.0120
0733 Bangor, ME Penobscot, ME	0.9706	0.9798
0743 Barnstable-Yarmouth, MA Barnstable, MA	1.3013	1.1976
0760 Baton Rouge, LA Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8796	0.9159
0840 Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8555	0.8986
0860 Bellingham, WA Whatcom, WA	1.1509	1.1010
0870 [2] Benton Harbor, MI Berrien, MI	0.8904	0.9236
0875 [1] Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.1861	1.1240
0880 Billings, MT Yellowstone, MT	1.1802	1.1201
0920 Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8030	0.8605
0960 Binghamton, NY Broome, NY Tioga, NY	0.8701	0.9091
1000 Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9010	0.9311
1010 Bismarck, ND Burleigh, ND Morton, ND	0.7973	0.8563
1020 Bloomington, IN Monroe, IN	0.8680	0.9076
1040 Bloomington-Normal, IL McLean, IL	0.9084	0.9363
1080 Boise City, ID Ada, ID Canyon, ID	0.9178	0.9430
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1247	1.0838

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
1125 Boulder-Longmont, CO Boulder, CO	1.0045	1.0031
1145 Brazoria, TX Brazoria, TX	0.8592	0.9013
1150 Bremerton, WA Kitsap, WA	1.1122	1.0755
1240 Brownsville-Harlingen-San Benito, TX Cameron, TX	0.9243	0.9475
1260 Bryan-College Station, TX Brazos, TX	0.8453	0.8913
1280 [1] Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9586	0.9715
1303 Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	1.0455	1.0309
1310 Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4555	0.5836
1320 Canton-Massillon, OH Carroll, OH Stark, OH	0.8722	0.9106
1350 Casper, WY Natrona, WY	0.9292	0.9510
1360 Cedar Rapids, IA Linn, IA	0.9110	0.9382
1400 Champaign-Urbana, IL Champaign, IL	0.9255	0.9484
1440 Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.8997	0.9302
1480 Charleston, WV Kanawha, WV Putnam, WV	0.9187	0.9436
1520 [1] Charlotte-Gastonia-Rock Hill, NC–SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	0.9522	0.9670
1540 Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0681	1.0461
1560 Chattanooga, TN–GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9892	0.9926
1580 [2] Cheyenne, WY Laramie, WY	0.8891	0.9227
1600 [1] Chicago, IL Cook, IL DeKalb, IL DuPage, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.0858	1.0580
1620 Chico-Paradise, CA Butte, CA	1.0381	1.0259
1640 [1] Cincinnati, OH–KY–IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9477	0.9639
1660 Clarksville-Hopkinsville, TN–KY Christian, KY Montgomery, TN	0.8413	0.8884
1680 [1] Cleveland-Lorain-Elyria, OH Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	0.9724	0.9810
1720 Colorado Springs, CO El Paso, CO	0.9311	0.9523
1740 Columbia, MO Boone, MO	0.8982	0.9291
1760 Columbia, SC Lexington, SC Richland, SC	0.9452	0.9621
1800 Columbus, GA–AL Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA	0.8565	0.8994
1840 [1] Columbus, OH Delaware, OH Fairfield, OH Franklin, OH Licking, OH Madison, OH Pickaway, OH	0.9802	0.9864
1880 Corpus Christi, TX Nueces, TX San Patricio, TX	0.9318	0.9528
1900 [2] Cumberland, MD–WV (Maryland Hospitals) Allegany, MD Mineral, WV	0.9096	0.9372
1900 Cumberland, MD–WV (West Virginia Hospitals) Allegany, MD Mineral, WV	0.8890	0.9226
1920 [1] Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	0.9230	0.9466
1950 Danville, VA Danville City, VA Pittsylvania, VA	0.9153	0.9412
1960 Davenport-Moline-Rock Island, IA–IL Scott, IA Henry, IL Rock Island, IL	0.8795	0.9158
2000 Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9388	0.9577
2020 [2] Daytona Beach, FL Flagler, FL Volusia, FL	0.9074	0.9356
2030 Decatur, AL Lawrence, AL Morgan, AL	0.9983	0.9988
2040 Decatur, IL Macon, IL	0.8413	0.8884
2080 [1] Denver, CO Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO	1.0247	1.0168
2120 Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.8849	0.9197
2160 [1] Detroit, MI Lapeer, MI	1.0463	1.0315

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Macomb, MI Monroe, MI Oakland, MI St. Clair, MI Wayne, MI		
2180 Dothan, AL Dale, AL Houston, AL	0.7916	0.8521
2190 Dover, DE Kent, DE	0.9426	0.9603
2200 Dubuque, IA Dubuque, IA	0.8606	0.9023
2240 Duluth-Superior, MN–WI St. Louis, MN Douglas, WI	1.0278	1.0190
2281 Dutchess County, NY Dutchess, NY	0.9837	0.9888
2290 Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9049	0.9339
2320 El Paso, TX El Paso, TX	0.8983	0.9292
2330 Elkhart-Goshen, IN Elkhart, IN	0.9142	0.9404
2335 [2] Elmira, NY Chemung, NY	0.8633	0.9042
2340 Enid, OK Garfield, OK	0.8034	0.8608
2360 Erie, PA Erie, PA	0.9078	0.9359
2400 Eugene-Springfield, OR Lane, OR	1.0761	1.0515
2440 [2] Evansville-Henderson, IN–KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8480	0.8932
2440 Evansville-Henderson, IN–KY (KY Hospital) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8380	0.8860
2520 Fargo-Moorhead, ND–MN Clay, MN Cass, ND	0.8707	0.9095
2560 Fayetteville, NC Cumberland, NC	0.8673	0.9071
2580 Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.7852	0.8474
2620 Flagstaff, AZ–UT Coconino, AZ Kane, UT	1.0453	1.0308
2640 Flint, MI Genesee, MI	1.1132	1.0762
2650 Florence, AL Colbert, AL Lauderdale, AL	0.8007	0.8588
2655 Florence, SC Florence, SC	0.8706	0.9095
2670 Fort Collins-Loveland, CO Larimer, CO	1.0406	1.0276
2680 [1] Ft. Lauderdale, FL Broward, FL	1.0239	1.0163
2700 [2] Fort Myers-Cape Coral, FL Lee, FL	0.9074	0.9356
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	1.0240	1.0164
2720 Fort Smith, AR–OK Crawford, AR Sebastian, AR Sequoyah, OK	0.7923	0.8526
2750 [2] Fort Walton Beach, FL Okaloosa, FL	0.9074	0.9356
2760 Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.8941	0.9262
2800 [1] Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9003	0.9306
2840 Fresno, CA Fresno, CA Madera, CA	1.0371	1.0253
2880 Gadsden, AL Etowah, AL	0.8842	0.9192
2900 Gainesville, FL Alachua, FL	1.0181	1.0124
2920 Galveston-Texas City, TX Galveston, TX	0.9569	0.9703
2960 Gary, IN Lake, IN Porter, IN	0.9449	0.9619
2975 Glens Falls, NY Warren, NY Washington, NY	0.8693	0.9085
2980 Goldsboro, NC Wayne, NC	0.8418	0.8888
2985 Grand Forks, ND–MN Polk, MN Grand Forks, ND	0.9190	0.9438
2995 Grand Junction, CO Mesa, CO	0.9291	0.9509
3000 [1] Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	1.0169	1.0115
3040 Great Falls, MT Cascade, MT	1.0626	1.0425
3060 Greeley, CO Weld, CO	0.9449	0.9619
3080 Green Bay, WI Brown, WI	0.9305	0.9519
3120 [1] Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9122	0.9390
3150 Greenville, NC Pitt, NC	0.9570	0.9704
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9199	0.9444
3180 [2] Hagerstown, MD Washington, MD	0.9096	0.9372
3200 Hamilton-Middletown, OH Butler, OH	0.9080	0.9360
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9896	0.9929
3283 [1 2] Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2692	1.1773
3285 Hattiesburg, MS Forrest, MS Lamar, MS	0.7453	0.8177
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.9255	0.9484
3320 Honolulu, HI	1.1600	1.1070

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Honolulu, HI		
3350 Houma, LA	0.7916	0.8521
Lafourche, LA		
Terrebonne, LA		
3360 [1] Houston, TX	0.9286	0.9505
Chambers, TX		
Fort Bend, TX		
Harris, TX		
Liberty, TX		
Montgomery, TX		
Waller, TX		
3400 Huntington-Ashland, WV–KY–OH	0.9851	0.9898
Boyd, KY		
Carter, KY		
Greenup, KY		
Lawrence, OH		
Cabell, WV		
Wayne, WV		
3440 Huntsville, AL	0.8912	0.9242
Limestone, AL		
Madison, AL		
3480 [1] Indianapolis, IN	0.9876	0.9915
Boone, IN		
Hamilton, IN		
Hancock, IN		
Hendricks, IN		
Johnson, IN		
Madison, IN		
Marion, IN		
Morgan, IN		
Shelby, IN		
3500 Iowa City, IA	0.9705	0.9797
Johnson, IA		
3520 Jackson, MI	0.8930	0.9254
Jackson, MI		
3560 Jackson, MS	0.8519	0.8960
Hinds, MS		
Madison, MS		
Rankin, MS		
3580 Jackson, TN	1.0953	1.0643
Madison, TN		
Chester, TN		
3600 [1] [2] Jacksonville, FL	0.9074	0.9356
Clay, FL		
Duval, FL		
Nassau, FL		
St. Johns, FL		
3605 [2] Jacksonville, NC	0.8349	0.8838
Onslow, NC		
3610 [2] Jamestown, NY	0.8633	0.9042
Chautauqua, NY		
3620 Janesville-Beloit, WI	0.9703	0.9796
Rock, WI		
3640 Jersey City, NJ	1.1718	1.1147
Hudson, NJ		
3660 Johnson City-Kingsport-Bristol, TN–VA	0.8935	0.9258
Carter, TN		
Hawkins, TN		
Sullivan, TN		
Unicoi, TN		
Washington, TN		
Bristol City, VA		
Scott, VA		
Washington, VA		
3680 [2] Johnstown, PA	0.8488	0.8938
Cambria, PA		
Somerset, PA		
3700 Jonesboro, AR	0.7324	0.8079
Craighead, AR		
3710 Joplin, MO	0.7756	0.8403
Jasper, MO		
Newton, MO		
3720 Kalamazoo-Battlecreek, MI	1.0095	1.0065
Calhoun, MI		
Kalamazoo, MI		
Van Buren, MI		
3740 Kankakee, IL	0.8349	0.8838
Kankakee, IL		
3760 [1] Kansas City, KS–MO	0.9301	0.9516
Johnson, KS		
Leavenworth, KS		
Miami, KS		
Wyandotte, KS		
Cass, MO		
Clay, MO		
Clinton, MO		
Jackson, MO		
Lafayette, MO		
Platte, MO		
Ray, MO		
3800 [2] Kenosha, WI	0.8842	0.9192
Kenosha, WI		
3810 Killeen-Temple, TX	1.0031	1.0021
Bell, TX		
Coryell, TX		
3840 Knoxville, TN	0.9315	0.9526
Anderson, TN		
Blount, TN		
Knox, TN		
Loudon, TN		
Sevier, TN		
Union, TN		
3850 Kokomo, IN	0.9075	0.9357
Howard, IN		
Tipton, IN		
3870 La Crosse, WI–MN	0.9024	0.9321
Houston, MN		
La Crosse, WI		
3880 Lafayette, LA	0.8160	0.8700
Acadia, LA		
Lafayette, LA		
St. Landry, LA		
St. Martin, LA		
3920 Lafayette, IN	0.8898	0.9232
Clinton, IN		
Tippecanoe, IN		
3960 Lake Charles, LA	0.7901	0.8510
Calcasieu, LA		
3980 [2] Lakeland-Winter Haven, FL	0.9074	0.9356
Polk, FL		
4000 Lancaster, PA	0.8944	0.9264
Lancaster, PA		
4040 Lansing-East Lansing, MI	1.0091	1.0062
Clinton, MI		
Eaton, MI		
Ingham, MI		
4080 Laredo, TX	0.8407	0.8880
Webb, TX		
4100 [2] Las Cruces, NM	0.8613	0.9028
Dona Ana, NM		
4120 [1] Las Vegas, NV–AZ	1.1182	1.0795
Mohave, AZ		
Clark, NV		
Nye, NV		
4150 Lawrence, KS	0.8306	0.8806
Douglas, KS		
4200 Lawton, OK	0.8475	0.8929
Comanche, OK		
4243 Lewiston-Auburn, ME	0.8971	0.9283
Androscoggin, ME		
4280 Lexington, KY	0.8683	0.9078
Bourbon, KY		
Clark, KY		
Fayette, KY		
Jessamine, KY		
Madison, KY		
Scott, KY		
Woodford, KY		
4320 Lima, OH	0.8995	0.9300
Allen, OH		
Auglaize, OH		
4360 Lincoln, NE	0.9768	0.9841
Lancaster, NE		
4400 Little Rock-North Little Rock, AR	0.8698	0.9089
Faulkner, AR		
Lonoke, AR		
Pulaski, AR		
Saline, AR		
4420 Longview-Marshall, TX	0.8828	0.9182
Gregg, TX		
Harrison, TX		
Upshur, TX		
4480 [1] Los Angeles-Long Beach, CA	1.1903	1.1267
Los Angeles, CA		
4520 Louisville, KY–IN	0.9296	0.9512
Clark, IN		
Floyd, IN		
Harrison, IN		
Scott, IN		
Bullitt, KY		
Jefferson, KY		
Oldham, KY		
4600 Lubbock, TX	0.8438	0.8902

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Lubbock, TX		
4640 Lynchburg, VA ..	0.9048	0.9338
Amherst, VA		
Bedford, VA		
Bedford City, VA		
Campbell, VA		
Lynchburg City, VA		
4680 Macon, GA	0.8615	0.9029
Bibb, GA		
Houston, GA		
Jones, GA		
Peach, GA		
Twiggs, GA		
4720 Madison, WI	1.0096	1.0066
Dane, WI		
4800 [2]Mansfield, OH	0.8722	0.9106
Crawford, OH		
Richland, OH		
4840 Mayaguez, PR ..	0.4862	0.6103
Anasco, PR		
Cabo Rojo, PR		
Hormigueros, PR		
Mayaguez, PR		
Sabana Grande, PR		
San German, PR		
4880 McAllen-Edinburg-Mission, TX	0.8152	0.8694
Hidalgo, TX		
4890 Medford-Ashland, OR	1.0600	1.0407
Jackson, OR		
4900 Melbourne-Titusville-Palm Bay, FL	0.9390	0.9578
Brevard, Fl		
4920 [1]Memphis, TN–AR–MS	0.8070	0.8634
Crittenden, AR		
DeSoto, MS		
Fayette, TN		
Shelby, TN		
Tipton, TN		
4940 Merced, CA.		
Merced, CA	1.0615	1.0417
5000 [1]Miami, FL	1.0314	1.0214
Dade, FL		
5015 [1]Middlesex-Somerset-Hunterdon, NJ	1.1028	1.0693
Hunterdon, NJ		
Middlesex, NJ		
Somerset, NJ		
5080 [1]Milwaukee-Waukesha, WI	0.9840	0.9890
Milwaukee, WI		
Ozaukee, WI		
Washington, WI		
Waukesha, WI		
5120 [1]Minneapolis-St. Paul, MN–WI	1.0630	1.0427
Anoka, MN		
Carver, MN		
Chicago, MN		
Dakota, MN		
Hennepin, MN		
Isanti, MN		
Ramsey, MN		
Scott, MN		
Sherburne, MN		
Washington, MN		
Wright, MN		
Pierce, WI		
St. Croix, WI		
5140 Missoula, MT	0.9281	0.9502
Missoula, MT		
5160 Mobile, AL	0.8301	0.8803
Baldwin, AL		
Mobile, AL		
5170 Modesto, CA	1.0183	1.0125
Stanislaus, CA		
5190 [1]Monmouth-Ocean, NJ	1.1371	1.0920
Monmouth, NJ		
Ocean, NJ		
5200 Monroe, LA	0.8304	0.8805
Ouachita, LA		
5240 [2]Montgomery, AL	0.7542	0.8243
Autauga, AL		
Elmore, AL		
Montgomery, AL		
5280 Muncie, IN	1.0869	1.0587
Delaware, IN		
5330 Myrtle Beach, SC	0.8647	0.9052
Horry, SC		
5345 Naples, FL	1.0234	1.0160
Collier, FL		
5360 [1]Nashville, TN ..	0.9140	0.9403
Cheatham, TN		
Davidson, TN		
Dickson, TN		
Robertson, TN		
Rutherford TN		
Sumner, TN		
Williamson, TN		
Wilson, TN		
5380 [1]Nassau-Suffolk, NY	1.3274	1.2140
Nassau, NY		
Suffolk, NY		
5483 [1 2]New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2692	1.1773
Fairfield, CT		
New Haven, CT		
5523 [2]New London-Norwich, CT	1.2692	1.1773
New London, CT		
5560 [1]New Orleans, LA	0.9073	0.9356
Jefferson, LA		
Orleans, LA		
Plaquemines, LA		
St. Bernard, LA		
St. Charles, LA		
St. James, LA		
St. John The Baptist, LA		
St. Tammany, LA		
5600 [1]New York, NY	1.4302	1.2777
Bronx, NY		
Kings, NY		
New York, NY		
Putnam, NY		
Queens, NY		
Richmond, NY		
Rockland, NY		
Westchester, NY		
5640 [1]Newark, NJ	1.0873	1.0590
Essex, NJ		
Morris, NJ		
Sussex, NJ		
Union, NJ		
Warren, NJ		
5660 Newburgh, NY–PA	1.1019	1.0687
Orange, NY		
Pike, PA		
5720 [1]Norfolk-Virginia Beach-Newport News, VA–NC	0.8378	0.8859
Currituck, NC		
Chesapeake City, VA		
Gloucester, VA		
Hampton City, VA		
Isle of Wight, VA		
James City, VA		
Mathews, VA		
Newport News City, VA		
Norfolk City, VA		
Poquoson City, VA		
Portsmouth City, VA		
Suffolk City, VA		
Virginia Beach City VA		
Williamsburg City, VA		
York, VA		
5775 [1]Oakland, CA ...	1.5199	1.3320
Alameda, CA		
Contra Costa, CA		
5790 Ocala, FL	0.9712	0.9802
Marion, FL		
5800 Odessa-Midland, TX	0.8016	0.8595
Ector, TX		
Midland, TX		
5880 [1]Oklahoma City, OK	0.8705	0.9094
Canadian, OK		
Cleveland, OK		
Logan, OK		
McClain, OK		
Oklahoma, OK		
Pottawatomie, OK		
5910 Olympia, WA	1.2750	1.1810
Thurston, WA		
5920 Omaha, NE–IA ..	1.0722	1.0489
Pottawattamie, IA		
Cass, NE		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Douglas, NE		
Sarpy, NE		
Washington, NE		
5945 [1] Orange County, CA	1.1539	1.1030
Orange, CA		
5960 [1] Orlando, FL	0.9997	0.9998
Lake, FL		
Orange, FL		
Osceola, FL		
Seminole, FL		
5990 [2] Owensboro, KY	0.8129	0.8677
Daviess, KY		
6015 Panama City, FL	0.9266	0.9491
Bay, FL		
6020 Parkersburg-Marietta, WV–OH (West Virginia Hospitals)	0.8500	0.8947
Washington, OH		
Wood, WV		
6020 [2] Parkersburg-Marietta, WV–OH (Ohio Hospitals)	0.8722	0.9106
Washington, OH		
Wood, WV		
6080 [2] Pensacola, FL	0.9074	0.9356
Escambia, FL		
Santa Rosa, FL		
6120 Peoria-Pekin, IL	0.8495	0.8943
Peoria, IL		
Tazewell, IL		
Woodford, IL		
6160 [1] Philadelphia, PA–NJ	1.1077	1.0726
Burlington, NJ		
Camden, NJ		
Gloucester, NJ		
Salem, NJ		
Bucks, PA		
Chester, PA		
Delaware, PA		
Montgomery, PA		
Philadelphia, PA		
6200 [1] Phoenix-Mesa, AZ	0.9546	0.9687
Maricopa, AZ		
Pinal, AZ		
6240 Pine Bluff, AR	0.7689	0.8353
Jefferson, AR		
6280 [1] Pittsburgh, PA	0.9537	0.9681
Allegheny, PA		
Beaver, PA		
Butler, PA		
Fayette, PA		
Washington, PA		
Westmoreland, PA		
6323 Pittsfield, MA	1.0767	1.0519
Berkshire, MA		
6340 Pocatello, ID	0.9068	0.9352
Bannock, ID		
6360 Ponce, PR	0.5026	0.6243
Guayanilla, PR		
Juana Diaz, PR		
Penuelas, PR		
Ponce, PR		
Villalba, PR		
Yauco, PR		
6403 Portland, ME	0.9552	0.9691
Cumberland, ME		
Sagadahoc, ME		
York, ME		
6440 [1] Portland-Vancouver, OR–WA	1.1091	1.0735
Clackamas, OR		
Columbia, OR		
Multnomah, OR		
Washington, OR		
Yamhill, OR		
Clark, WA		
6483 [1] Providence-Warwick-Pawtucket, RI	1.0789	1.0534
Bristol, RI		
Kent, RI		
Newport, RI		
Providence, RI		
Washington, RI		
6520 Provo-Orem, UT	0.9786	0.9853
Utah, UT		
6560 Pueblo, CO	0.8943	0.9264
Pueblo, CO		
6580 [2] Punta Gorda, FL	0.9074	0.9356
Charlotte, FL		
6600 Racine, WI	0.9310	0.9522
Racine, WI		
6640 [1] Raleigh-Durham-Chapel Hill, NC	0.9631	0.9746
Chatham, NC		
Durham, NC		
Franklin, NC		
Johnston, NC		
Orange, NC		
Wake, NC		
6660 Rapid City, SD	0.8449	0.8910
Pennington, SD		
6680 Reading, PA	0.9526	0.9673
Berks, PA		
6690 Redding, CA	1.1392	1.0934
Shasta, CA		
6720 Reno, NV	1.0763	1.0516
Washoe, NV		
6740 Richland-Kennewick-Pasco, WA	1.1338	1.0898
Benton, WA		
Franklin, WA		
6760 Richmond-Petersburg, VA	1.0053	1.0036
Charles City County, VA		
Chesterfield, VA		
Colonial Heights City, VA		
Dinwiddie, VA		
Goochland, VA		
Hanover, VA		
Henrico, VA		
Hopewell City, VA		
New Kent, VA		
Petersburg City, VA		
Powhatan, VA		
Prince George, VA		
Richmond City, VA		
6780 [1] Riverside-San Bernardino, CA	1.0622	1.0422
Riverside, CA		
San Bernardino, CA		
6800 Roanoke, VA	0.8224	0.8747
Botetourt, VA		
Roanoke, VA		
Roanoke City, VA		
Salem City, VA		
6820 Rochester, MN	1.1056	1.0712
Olmsted, MN		
6840 [1] Rochester, NY	0.9448	0.9619
Genesee, NY		
Livingston, NY		
Monroe, NY		
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.8861	0.9205
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.8823	0.9178
Edgecombe, NC		
Nash, NC		
6920 [1] Sacramento, CA	1.2482	1.1640
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9422	0.9600
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9650	0.9759
Benton, MN		
Stearns, MN		
7000 St. Joseph, MO	0.8836	0.9187
Andrew, MO		
Buchanan, MO		
7040 [1] St. Louis, MO–IL	0.9186	0.9435
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 [2] Salem, OR	1.0071	1.0049

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4706	1.3023
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	0.9884	0.9920
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7870	0.8487
Tom Green, TX		
7240 [1] San Antonio, TX	0.8271	0.8781
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 [1] San Diego, CA	1.1943	1.1293
San Diego, CA		
7360 [1] San Francisco, CA	1.3976	1.2576
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 [1] San Jose, CA	1.3714	1.2415
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4740	0.5998
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.0576	1.0391
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0927	1.0626
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.4068	1.2633
Santa Cruz, CA		
7490 Santa Fe, NM	0.9115	0.9385
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3127	1.2048
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9928	0.9951
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9892	0.9926
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 [2] Scranton-Wilkes-Barre-Hazleton, PA	0.8488	0.8938
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 [1] Seattle-Bellevue-Everett, WA	1.1390	1.0932
Island, WA		
King, WA		
Snohomish, WA		
7610 [2] Sharon, PA	0.8488	0.8938
Mercer, PA		
7620 [2] Sheboygan, WI	0.8842	0.9192
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9213	0.9454
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.9142	0.9404
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA–NE	0.8051	0.8620
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.8778	0.9146
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9893	0.9927
St. Joseph, IN		
7840 Spokane, WA	1.0891	1.0602
Spokane, WA		
7880 Springfield, IL	0.8772	0.9142
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8003	0.8585
Christian, MO		
Greene, MO		
Webster, MO		
8003 Springfield, MA	0.9914	0.9941
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9249	0.9479
Centre, PA		
8080 [2] Steubenville-Weirton, OH–WV (Ohio Hospitals)	0.8722	0.9106
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8080 Steubenville-Weirton, OH–WV (West Virginia Hospitals)	0.8702	0.9092
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.0623	1.0423
San Joaquin, CA		
8140 [2] Sumter, SC	0.8541	0.8976
Sumter, SC		
8160 Syracuse, NY	0.9527	0.9674
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.1755	1.1171
Pierce, WA		
8240 [2] Tallahassee, FL	0.9074	0.9356
Gadsden, FL		
Leon, FL		
8280 [1] Tampa-St. Petersburg-Clearwater, FL	0.9260	0.9487
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 Terre Haute, IN	0.8673	0.9071
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana, AR-Texarkana, TX	0.8206	0.8734
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9810	0.9870
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.9195	0.9441
Shawnee, KS		
8480 Trenton, NJ	1.0051	1.0035
Mercer, NJ		
6520 Tucson, AZ	0.8831	0.9184
Pima, AZ		
8560 Tulsa, OK	0.7852	0.8474
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
8600 Tuscaloosa, AL	0.7994	0.8579
Tuscaloosa, AL		
8640 Tyler, TX	0.8572	0.8999
Smith, TX		
8680 [2] Utica-Rome, NY	0.8633	0.9042
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.2783	1.1831
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.0983	1.0663
Ventura, CA		
8750 Victoria, TX	0.8062	0.8628
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0623	1.0423
Cumberland, NJ		
8780 Visalia-Tulare-Portersville, CA	1.0409	1.0278
Tulare, CA		
8800 Waco, TX	0.7561	0.8258
McLennan, TX		
8840 [1] Washington, DC–MD–VA–WV	1.1118	1.0753
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.9039	0.9332
Black Hawk, IA		
8940 Wausau, WI	0.9545	0.9686
Marathon, WI		
8960 [1] West Palm Beach-Boca Raton, FL	1.0167	1.0114
Palm Beach, FL		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) – FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
9000 [2] Wheeling, WV–OH (West Virginia Hospitals)	0.8206	0.8734
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2] Wheeling, WV–OH (Ohio Hospitals)	0.8722	0.9106
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9117	0.9387
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.7730	0.8384
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8611	0.9027
Lycoming, PA		
9160 Wilmington-Newark, DE–MD	1.1388	1.0931
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9962	0.9974
New Hanover, NC		
Brunswick, NC		
9260 [2] Yakima, WA	1.0474	1.0322
Yakima, WA		
9270 Yolo, CA	1.0591	1.0401
Yolo, CA		
9280 York, PA	0.9348	0.9549
York, PA		
9320 Youngstown-Warren, OH	1.0098	1.0067
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0770	1.0521
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	1.0024	1.0016
Yuma, AZ		

[1] Large Urban Area.
[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2000.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7542	0.8243
Alaska	1.2181	1.1447
Arizona	0.8610	0.9026
Arkansas	0.7290	0.8054
California	1.0153	1.0105
Colorado	0.8852	0.9199
Connecticut	1.2692	1.1773
Delaware	0.9259	0.9486

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS—Continued

Nonurban area	Wage index	GAF
Florida	0.9074	0.9356
Georgia	0.8189	0.8721
Hawaii	1.0812	1.0549
Idaho	0.8715	0.9101
Illinois	0.8121	0.8672
Indiana	0.8480	0.8932
Iowa	0.8000	0.8583
Kansas	0.7512	0.8221
Kentucky	0.8129	0.8677
Louisiana	0.7519	0.8226
Maine	0.8706	0.9095
Maryland	0.9096	0.9372
Massachusetts	0.9914	0.9941
Michigan	0.8904	0.9236
Minnesota	0.8753	0.9128
Mississippi	0.7453	0.8177
Missouri	0.7701	0.8362
Montana	0.8528	0.8967
Nebraska	0.8075	0.8638
Nevada	0.9633	0.9747
New Hampshire	0.9978	0.9985
New Jersey [1]		
New Mexico	0.8613	0.9028
New York	0.8633	0.9042
North Carolina	0.8349	0.8838
North Dakota	0.7750	0.8398
Ohio	0.8722	0.9106
Oklahoma	0.7345	0.8095
Oregon	1.0071	1.0049
Pennsylvania	0.8488	0.8938
Puerto Rico	0.4379	0.5681
Rhode Island [1]		
South Carolina	0.8541	0.8976
South Dakota	0.7663	0.8334
Tennessee	0.7743	0.8393
Texas	0.7008	0.7839
Utah	0.8219	0.8743
Vermont	0.9524	0.9672
Virginia	0.7938	0.8537
Washington	1.0474	1.0322
West Virginia	0.8206	0.8734
Wisconsin	0.8842	0.9192
Wyoming	0.8891	0.9227

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8269	0.8780
Akron, OH	1.0091	1.0062
Albany, GA	0.8189	0.8721
Alexandria, LA	0.7988	0.8574
Amarillo, TX	0.8150	0.8693
Anchorage, AK	1.3143	1.2058
Ann Arbor, MI	1.1437	1.0963
Atlanta, GA	1.0119	1.0081
Austin-San Marcos, TX	0.9511	0.9663

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Baltimore, MD	1.0176	1.0120
Baton Rouge, LA	0.8796	0.9159
Beaumont-Port Arthur, TX	0.8555	0.8986
Bergen-Passaic, NJ	1.1861	1.1240
Billings, MT	1.1496	1.1002
Biloxi-Gulfport-Pascagoula, MS	0.8030	0.8605
Binghamton, NY	0.8701	0.9091
Birmingham, AL	0.9010	0.9311
Bismarck, ND	0.7973	0.8563
Boise City, ID	0.9178	0.9430
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	1.1247	1.0838
Burlington, VT	1.0046	1.0031
Caguas, PR	0.4555	0.5836
Champaign-Urbana, IL	0.9255	0.9484
Charleston-North Charleston, SC	0.8997	0.9302
Charleston, WV	0.8950	0.9268
Charlotte-Gastonia-Rock Hill, NC–SC	0.9522	0.9670
Chattanooga, TN–GA	0.9586	0.9715
Chicago, IL	1.0858	1.0580
Cincinnati, OH–KY–IN	0.9477	0.9639
Clarksville-Hopkinsville, TN–KY	0.8413	0.8884
Cleveland-Lorain-Elyria, OH	0.9724	0.9810
Columbia, MO	0.8815	0.9173
Columbia, SC	0.9308	0.9521
Columbus, GA–AL	0.8379	0.8859
Columbus, OH	0.9660	0.9766
Corpus Christi, TX	0.9172	0.9425
Dallas, TX	0.9230	0.9466
Danville, VA	0.8795	0.9158
Davenport-Moline-Rock Island, IA–IL	0.8694	0.9086
Dayton-Springfield, OH	0.9284	0.9504
Denver, CO	1.0247	1.0168
Des Moines, IA	0.8849	0.9197
Dothan, AL	0.7916	0.8521
Dover, DE	1.0618	1.0419
Duluth-Superior, MN–WI	1.0278	1.0190
Elkhart-Goshen, IN	0.9142	0.9404
Eugene-Springfield, OR	1.0761	1.0515
Evansville-Henderson, IN–KY	0.8480	0.8932
Fargo-Moorhead, ND–MN (ND and SD Hospitals)	0.8707	0.9095
Fargo-Moorhead, ND–MN (MN Hospital)	0.8753	0.9128
Fayetteville, NC	0.8673	0.9071
Flagstaff, AZ–UT	0.9960	0.9973
Fort Collins-Loveland, CO	1.0301	1.0205
Fort Pierce-Port St. Lucie, FL	1.0240	1.0164
Fort Smith, AR–OK	0.7774	0.8416
Fort Walton Beach, FL	0.9005	0.9307
Forth Worth-Arlington, TX	0.9003	0.9306
Fresno, CA	1.0371	1.0253
Gadsden, AL	0.8842	0.9192
Gainesville, FL	1.0042	1.0029
Goldsboro, NC	0.8418	0.8888
Grand Forks, ND–MN	0.9190	0.9438
Grand Rapids-Muskegon-Holland, MI	1.0062	1.0042
Great Falls, MT	1.0626	1.0425
Greeley, CO	0.9292	0.9510
Green Bay, WI	0.9305	0.9519
Greensboro-Winston-Salem-High Point, NC	0.9122	0.9390
Greenville, NC	0.9313	0.9524
Greenville-Spartanburg-Anderson, SC	0.9199	0.9444
Hagerstown, MD	0.8943	0.9264
Harrisburg-Lebanon-Carlisle, PA	0.9787	0.9854
Hartford, CT	1.1220	1.0820
Hickory-Morganton-Lenoir, NC	0.9255	0.9484
Honolulu, HI	1.1600	1.1070
Houston, TX	0.9286	0.9505
Huntington-Ashland, WV–KY–OH	0.9563	0.9699
Huntsville, AL	0.8912	0.9242
Indianapolis, IN	0.9876	0.9915
Iowa City, IA	0.9556	0.9694
Jackson, MS	0.8519	0.8960
Jackson, TN	1.0339	1.0231
Jacksonville, FL	0.8993	0.9299
Johnson City-Kingsport-Bristol, TN–VA	0.8935	0.9258
Jonesboro, AR	0.7324	0.8079
Joplin, MO	0.7756	0.8403
Kalamazoo-Battlecreek, MI	1.0095	1.0065
Kansas City, KS–MO	0.9301	0.9516
Knoxville, TN	0.9315	0.9526
Kokomo, IN	0.9075	0.9357
Lafayette, LA	0.8160	0.8700
Lansing-East Lansing, MI	0.9980	0.9986
Las Vegas, NV–AZ	1.1182	1.0795
Lexington, KY	0.8683	0.9078
Lincoln, NE	0.9535	0.9679
Little Rock-North Little Rock, AR	0.8498	0.8945
Longview-Marshall, TX	0.8618	0.9032
Los Angeles-Long Beach, CA	1.1903	1.1267
Louisville, KY–IN	0.9296	0.9512
Macon, GA	0.8615	0.9029
Madison, WI	1.0096	1.0066
Memphis, TN–AR–MS	0.8070	0.8634
Merced, CA	1.0615	1.0417
Milwaukee-Waukesha, WI	0.9840	0.9890
Minneapolis-St. Paul, MN–WI	1.0630	1.0427
Missoula, MT	0.9281	0.9502
Monmouth-Ocean, NJ	1.0829	1.0561
Monroe, LA	0.8143	0.8688
Montgomery, AL	0.7542	0.8243
Myrtle Beach, SC	0.8465	0.8922
Nashville, TN	0.9008	0.9310
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2692	1.1773
New London-Norwich, CT	1.0860	1.0581
New Orleans, LA	0.9073	0.9356
New York, NY	1.4302	1.2777
Newark, NJ	1.0873	1.0590
Newburgh, NY–PA	1.0805	1.0545
Norfolk-Virginia Beach-Newport News, VA–NC	0.8378	0.8859
Oakland, CA	1.5199	1.3320
Oklahoma City, OK	0.8705	0.9094
Omaha, NE–IA	1.0722	1.0489
Orange County, CA	1.1539	1.1030
Orlando, FL	0.9997	0.9998
Peoria-Pekin, IL	0.8495	0.8943
Philadelphia, PA–NJ	1.1077	1.0726
Phoenix-Mesa, AZ	0.9546	0.9687
Pittsburgh, PA	0.9537	0.9681
Pocatello, ID	0.8715	0.9101
Portland, ME	0.9552	0.9691
Portland-Vancouver, OR–WA	1.1091	1.0735
Provo-Orem, UT	0.9786	0.9853
Raleigh-Durham-Chapel Hill, NC	0.9631	0.9746
Roanoke, VA	0.8224	0.8747
Rockford, IL	0.8861	0.9205
Sacramento, CA	1.2482	1.1640
Saginaw-Bay City-Midland, MI	0.9422	0.9600
St. Cloud, MN	0.9650	0.9759
St. Louis, MO–IL	0.9186	0.9435
Salt Lake City-Ogden, UT	0.9884	0.9920
San Diego, CA	1.1943	1.1293
Santa Fe, NM	0.9115	0.9385
Santa Rosa, CA	1.3127	1.2048
Seattle-Bellevue-Everett, WA	1.1390	1.0932
Sharon, PA	0.8488	0.8938
Sherman-Denison, TX	0.8782	0.9149
Sioux City, IA–NE	0.8051	0.8620
South Bend, IN	0.9791	0.9856
Springfield, MO	0.8003	0.8585
Syracuse, NY	0.9527	0.9674
Tallahassee, FL	0.8545	0.8979
Tampa-St. Petersburg-Clearwater, FL	0.9260	0.9487
Texarkana, AR-Texarkana, TX	0.8206	0.8734
Toledo, OH	0.9810	0.9870
Tulsa, OK	0.7852	0.8474
Tuscaloosa, AL	0.7994	0.8579
Tyler, TX	0.8572	0.8999

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Vallejo-Fairfield-Napa, CA	1.2291	1.1517
Victoria, TX	0.8062	0.8628
Waco, TX	0.7561	0.8258
Washington, DC–MD–VA–WV	1.1118	1.0753
Waterloo-Cedar Falls, IA	0.9039	0.9332
Wausau, WI	0.9545	0.9686
West Palm Beach-Boca Raton, FL	1.0167	1.0114
Wichita, KS	0.8857	0.9202
Rural Colorado	0.8852	0.9199
Rural Florida	0.9074	0.9356
Rural Illinois	0.8121	0.8672
Rural Louisiana	0.7519	0.8226
Rural Michigan	0.8904	0.9236
Rural Minnesota	0.8753	0.9128
Rural Missouri	0.7701	0.8362
Rural Montana	0.8528	0.8967
Rural Oregon	1.0071	1.0049
Rural Pennsylvania (NY Hospital)	0.8633	0.9042
Rural Tennessee	0.7743	0.8393
Rural Texas (OK Hospital)	0.7345	0.8095
Rural Virginia (KY Hospital)	0.8129	0.8677
Rural Washington	1.0370	1.0252
Rural Wyoming	0.8891	0.9227

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS

Urban area	Average hourly wage
Abilene, TX	17.3384
Aguadilla, PR	9.5600
Akron, OH	21.5487
Albany, GA	15.2742
Albany-Schenectady-Troy, NY	18.0615
Albuquerque, NM	17.5627
Alexandria, LA	16.6620
Allentown-Bethlehem-Easton, PA	21.7512
Altoona, PA	19.7557
Amarillo, TX	16.8825
Anchorage, AK	27.2347
Ann Arbor, MI	24.2486
Anniston, AL	17.9235
Appleton-Oshkosh-Neenah, WI	18.7525
Arecibo, PR	9.9315
Asheville, NC	18.8257
Athens, GA	20.0661
Atlanta, GA	21.2165
Atlantic-Cape May, NJ	22.9089
Augusta-Aiken, GA–SC	19.1161
Austin-San Marcos, TX	19.9429
Bakersfield, CA	20.3276
Baltimore, MD	21.3358
Bangor, ME	20.3521
Barnstable-Yarmouth, MA	27.2846
Baton Rouge, LA	18.4438
Beaumont-Port Arthur, TX	17.9374
Bellingham, WA	24.1321
Benton Harbor, MI	17.9119
Bergen-Passaic, NJ	25.2711
Billings, MT	24.7467
Biloxi-Gulfport-Pascagoula, MS	16.6634
Binghamton, NY	18.2442
Birmingham, AL	18.8910
Bismarck, ND	16.4329
Bloomington, IN	18.1990
Bloomington-Normal, IL	19.0474
Boise City, ID	19.1895
Boston-Worcester-Lawrence-Lowell-Brockton, MA–NH	23.5756
Boulder-Longmont, CO	21.0610
Brazoria, TX	18.0160
Bremerton, WA	23.3211
Brownsville-Harlingen-San Benito, TX	19.3812
Bryan-College Station, TX	17.7233
Buffalo-Niagara Falls, NY	20.0987
Burlington, VT	21.9214
Caguas, PR	9.5514
Canton-Massillon, OH	18.5824
Casper, WY	19.4829
Cedar Rapids, IA	19.1010
Champaign-Urbana, IL	19.4065
Charleston-North Charleston, SC	18.7959
Charleston, WV	19.2624
Charlotte-Gastonia-Rock Hill, NC–SC	19.9662
Charlottesville, VA	22.3946
Chattanooga, TN–GA	20.7419
Cheyenne, WY	17.3158
Chicago, IL	22.7675
Chico-Paradise, CA	21.7666
Cincinnati, OH–KY–IN	19.8701
Clarksville-Hopkinsville, TN–KY	17.1337
Cleveland-Lorain-Elyria, OH	20.3885
Colorado Springs, CO	19.5228
Columbia, MO	18.8334
Columbia, SC	19.8182
Columbus, GA–AL	17.9587
Columbus, OH	20.5518
Corpus Christi, TX	19.5374
Cumberland, MD–WV	18.6405
Dallas, TX	19.3512
Danville, VA	19.1906
Davenport-Moline-Rock Island, IA–IL	18.4412
Dayton-Springfield, OH	19.9120
Daytona Beach, FL	18.9525
Decatur, AL	20.9325
Decatur, IL	17.6402
Denver, CO	21.4632
Des Moines, IA	18.5542
Detroit, MI	21.9391
Dothan, AL	16.5159
Dover, DE	19.7645
Dubuque, IA	18.0451
Duluth-Superior, MN–WI	21.5499
Dutchess County, NY	22.2045
Eau Claire, WI	18.9735
El Paso, TX	18.8348
Elkhart-Goshen, IN	19.1690
Elmira, NY	18.0730
Enid, OK	16.8452
Erie, PA	19.0352
Eugene-Springfield, OR	22.0108
Evansville, Henderson, IN–KY	17.5709
Fargo-Moorhead, ND–MN	18.2572
Fayetteville, NC	17.9896
Fayetteville-Springdale-Rogers, AR	16.4641
Flagstaff, AZ–UT	21.9164
Flint, MI	23.3401
Florence, AL	16.7894
Florence, SC	18.2544
Fort Collins-Loveland, CO	21.8189
Fort Lauderdale, FL	21.5452
Fort Myers-Cape Coral, FL	18.6973
Fort Pierce-Port St. Lucie, FL	21.1349
Fort Smith, AR–OK	16.6129
Fort Walton Beach, FL	18.4550
Fort Wayne, IN	18.7461
Fort Worth-Arlington, TX	18.8776
Fresno, CA	21.7462
Gadsden, AL	18.4020
Gainesville, FL	21.3475
Galveston-Texas City, TX	20.0636
Gary, IN	19.8645
Glens Falls, NY	18.2269
Goldsboro, NC	17.6500
Grand Forks, ND–MN	19.2683
Grand Junction, CO	19.4809
Grand Rapids-Muskegon-Holland, MI	21.3218
Great Falls, MT	22.2802
Greeley, CO	19.8126
Green Bay, WI	19.3280
Greensboro-Winston-Salem-High Point, NC	19.1271
Greenville, NC	20.0665
Greenville-Spartanburg-Anderson, SC	19.2880
Hagerstown, MD	18.7266
Hamilton-Middletown, OH	18.8172
Harrisburg-Lebanon-Carlisle, PA	20.7504
Hartford, CT	23.2800
Hattiesburg, MS	16.1993
Hickory-Morganton-Lenoir, NC	19.3688
Honolulu, HI	24.3141
Houma, LA	16.5978
Houston, TX	19.4711
Huntington-Ashland, WV–KY–OH	20.6552
Huntsville, AL	18.6863
Indianapolis, IN	20.7074
Iowa City, IA	20.3481
Jackson, MI	18.7230
Jackson, MS	17.7577
Jackson, TN	22.9654
Jacksonville, FL	18.8568
Jacksonville, NC	16.6300
Jamestown, NY	16.6418
Janesville-Beloit, WI	20.3455
Jersey City, NJ	24.5703
Johnson City-Kingsport-Bristol, TN–VA	18.6209
Johnstown, PA	17.5658
Jonesboro, AR	15.3149

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Joplin, MO	16.2618
Kalamazoo-Battlecreek, MI	21.1395
Kankakee, IL	17.5067
Kansas City, KS–MO	19.5015
Kenosha, WI	18.4010
Killeen-Temple, TX	21.0317
Knoxville, TN	19.4838
Kokomo, IN	18.8885
La Crosse, WI–MN	18.9205
Lafayette, LA	16.9163
Lafayette, IN	18.6572
Lake Charles, LA	16.5668
Lakeland-Winter Haven, FL	18.6713
Lancaster, PA	18.7531
Lansing-East Lansing, MI	21.1588
Laredo, TX	17.6272
Las Cruces, NM	17.9392
Las Vegas, NV–AZ	23.4456
Lawrence, KS	17.4151
Lawton, OK	17.7694
Lewiston-Auburn, ME	18.8110
Lexington, KY	18.1825
Lima, OH	18.8613
Lincoln, NE	20.4820
Little Rock-North Little Rock, AR	18.2375
Longview-Marshall, TX	18.5109
Los Angeles-Long Beach, CA	24.8769
Louisville, KY–IN	19.4923
Lubbock, TX	17.6926
Lynchburg, VA	18.9720
Macon, GA	18.0637
Madison, WI	21.1696
Mansfield, OH	17.9415
Mayaguez, PR	10.1946
McAllen-Edinburg-Mission, TX	17.0929
Medford-Ashland, OR	22.2257
Melbourne-Titusville-Palm Bay, FL	19.6889
Memphis, TN–AR–MS	16.9175
Merced, CA	21.7673
Miami, FL	21.6256
Middlesex-Somerset-Hunterdon, NJ	23.6066
Milwaukee-Waukesha, WI	20.6321
Minneapolis-St. Paul, MN–WI	22.2877
Missoula, MT	19.1769
Mobile, AL	17.4061
Modesto, CA	21.3504
Monmouth-Ocean, NJ	23.8424
Monroe, LA	17.4115
Montgomery, AL	14.6992
Muncie, IN	22.7904
Myrtle Beach, SC	18.1305
Naples, FL	21.4581
Nashville, TN	19.1647
Nassau-Suffolk, NY	29.6122
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	26.1133
New London-Norwich, CT	22.3392
New Orleans, LA	19.0247
New York, NY	29.8414
Newark, NJ	25.1990
Newburgh, NY–PA	23.1041
Norfolk-Virginia Beach-Newport News, VA–NC	17.5474
Oakland, CA	31.7590
Ocala, FL	20.3639

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Odessa-Midland, TX	16.8070
Oklahoma City, OK	18.2516
Olympia, WA	26.7328
Omaha, NE–IA	22.4822
Orange County, CA	24.1961
Orlando, FL	20.9377
Owensboro, KY	16.1873
Panama City, FL	19.4291
Parkersburg-Marietta, WV–OH	17.8217
Pensacola, FL	17.8744
Peoria-Pekin, IL	17.6840
Philadelphia, PA–NJ	23.1971
Phoenix-Mesa, AZ	20.0149
Pine Bluff, AR	16.1227
Pittsburgh, PA	19.9963
Pittsfield, MA	22.5755
Pocatello, ID	19.0128
Ponce, PR	10.5379
Portland, ME	19.9935
Portland-Vancouver, OR–WA	23.2544
Providence-Warwick, RI	22.6214
Provo-Orem, UT	20.5053
Pueblo, CO	18.7505
Punta Gorda, FL	17.9293
Racine, WI	19.5201
Raleigh-Durham-Chapel Hill, NC	20.1948
Rapid City, SD	17.7159
Reading, PA	19.9741
Redding, CA	23.8872
Reno, NV	22.5678
Richland-Kennewick-Pasco, WA	23.7721
Richmond-Petersburg, VA	21.0784
Riverside-San Bernardino, CA	22.6264
Roanoke, VA	17.2365
Rochester, MN	23.1823
Rochester, NY	19.8100
Rockford, IL	18.5789
Rocky Mount, NC	18.4997
Sacramento, CA	26.1722
Saginaw-Bay City-Midland, MI	19.6590
St. Cloud, MN	19.7777
St. Joseph, MO	18.5272
St. Louis, MO–IL	19.2606
Salem, OR	21.0721
Salinas, CA	30.8347
Salt Lake City-Ogden, UT	20.7240
San Angelo, TX	16.5012
San Antonio, TX	17.3414
San Diego, CA	24.9816
San Francisco, CA	29.7441
San Jose, CA	28.9924
San Juan-Bayamon, PR	9.9392
San Luis Obispo-Atascadero-Paso Robles, CA	22.1746
Santa Barbara-Santa Maria-Lompoc, CA	22.9107
Santa Cruz-Watsonville, CA	29.4979
Santa Fe, NM	19.0044
Santa Rosa, CA	27.5249
Sarasota-Bradenton, FL	20.8165
Savannah, GA	20.7408
Scranton-Wilkes Barre-Hazleton, PA	17.2531
Seattle-Bellevue-Everett, WA	23.8788
Sharon, PA	17.4261
Sheboygan, WI	17.3719

TABLE 4D.—AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

Urban area	Average hourly wage
Sherman-Denison, TX	19.3180
Shreveport-Bossier City, LA	19.1689
Sioux City, IA–NE	16.7521
Sioux Falls, SD	18.4052
South Bend, IN	20.7423
Spokane, WA	22.8349
Springfield, IL	18.3917
Springfield, MO	16.7813
Springfield, MA	22.2268
State College, PA	19.3927
Steubenville-Weirton, OH–WV	18.2449
Stockton-Lodi, CA	22.2735
Sumter, SC	17.4486
Syracuse, NY	19.9107
Tacoma, WA	24.3185
Tallahassee, FL	18.5118
Tampa-St. Petersburg-Clearwater, FL	19.2631
Terre Haute, IN	18.1855
Texarkana, AR-Texarkana, TX	17.1104
Toledo, OH	21.0109
Topeka, KS	19.2788
Trenton, NJ	19.2422
Tucson, AZ	18.5156
Tulsa, OK	16.4631
Tuscaloosa, AL	16.7614
Tyler, TX	17.6966
Utica-Rome, NY	17.5752
Vallejo-Fairfield-Napa, CA	28.2652
Ventura, CA	24.0627
Victoria, TX	16.7918
Vineland-Millville-Bridgeton, NJ	22.2740
Visalia-Tulare-Porterville, CA	21.8242
Waco, TX	15.8347
Washington, DC–MD–VA–WV	23.3111
Waterloo-Cedar Falls, IA	18.3856
Wausau, WI	20.0138
West Palm Beach-Boca Raton, FL	21.2057
Wheeling, OH–WV	16.1880
Wichita, KS	19.1154
Wichita Falls, TX	16.2079
Williamsport, PA	18.0547
Wilmington-Newark, DE–MD	23.8786
Wilmington, NC	20.8870
Yakima, WA	21.8824
Yolo, CA	20.5840
York, PA	19.5997
Youngstown-Warren, OH	21.1722
Yuba City, CA	22.5818
Yuma, AZ	21.0182

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS

Nonurban area	Average hourly wage
Alabama	15.8142
Alaska	25.5400
Arizona	18.0528
Arkansas	15.2856
California	21.2880
Colorado	18.5603

TABLE 4E.—AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

Nonurban area	Average hourly wage
Connecticut	26.6122
Delaware	19.4135
Florida	19.0250
Georgia	17.1694
Hawaii	22.6698
Idaho	18.2722
Illinois	17.0275
Indiana	17.7798
Iowa	16.7742
Kansas	15.7503
Kentucky	17.0443
Louisiana	15.5331
Maine	18.2533
Maryland	19.0722
Massachusetts	20.7873
Michigan	18.6349
Minnesota	18.3523
Mississippi	15.6269
Missouri	16.1473
Montana	17.8810
Nebraska	16.9308
Nevada	20.1989
New Hampshire	20.9206
New Jersey [1]	.....
New Mexico	18.0601
New York	18.1015
North Carolina	17.5057
North Dakota	16.2498
Ohio	18.2882
Oklahoma	15.4011
Oregon	21.1083
Pennsylvania	17.7969
Puerto Rico	9.1814
Rhode Island [1]	.....
South Carolina	17.9076
South Dakota	16.0683
Tennessee	16.2348
Texas	14.6891
Utah	17.2326
Vermont	19.9290
Virginia	16.6151
Washington	21.9605
West Virginia	17.2069
Wisconsin	18.5387
Wyoming	18.6424

[1] All counties within the State are classified as urban.

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclassified hospitals	GAF—reclassified hospitals
Aguadilla, PR	0.9593	0.9719	.....	.....
Arecibo, PR	0.9965	0.9976	.....	.....
Caguas, PR	0.9584	0.9713	0.9584	0.9713
Mayaguez, PR	1.0229	1.0156	.....	.....
Ponce, PR	1.0574	1.0390	.....	.....
San Juan-Bayamon, PR	0.9973	0.9982	.....	.....
Rural Puerto Rico	0.9213	0.9454	.....	.....

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 EXCEPT FOR TRAUMA	3.0845	6.5	9.3
2	01	SURG	CRANIOTOMY FOR TRAUMA AGE >17	3.0989	7.4	9.9
3	01	SURG	*CRANIOTOMY AGE 0–17	1.9619	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.3104	4.9	7.5
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.4462	2.5	3.4
6	01	SURG	CARPAL TUNNEL RELEASE	.8119	2.2	3.1
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.3667	6.6	9.8
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC.	1.3303	2.2	3.1
9	01	MED	SPINAL DISORDERS & INJURIES	1.1785	4.6	6.2
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2044	4.9	6.7
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8277	3.0	4.1
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.8908	4.6	6.3
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7585	4.2	5.2
14	01	MED	SPECIFIC CEREBROVASCULAR DISORDERS EXCEPT TIA	1.1924	4.7	6.1
15	01	MED	TRANSIENT ISCHEMIC ATTACK & PRECEREBRAL OCCLUSIONS.	.7405	3.0	3.7
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.0998	4.6	5.9
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6405	2.6	3.4
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9365	4.2	5.5
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6504	3.0	3.8
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.6065	7.7	10.2
21	01	MED	VIRAL MENINGITIS	1.5010	5.0	6.8
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	.9637	3.8	4.9
23	01	MED	NONTRAUMATIC STUPOR & COMA	.7756	3.1	4.2
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9782	3.7	5.1
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.5911	2.6	3.4
26	01	MED	SEIZURE & HEADACHE AGE 0–17	.6296	2.8	3.6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3532	3.3	5.3
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.2680	4.5	6.2
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.6844	2.8	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0–17	.3318	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8463	3.2	4.3
32	01	MED	CONCUSSION AGE >17 W/O CC	.5282	2.1	2.7
33	01	MED	*CONCUSSION AGE 0–17	.2085	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	1.0267	4.0	5.3
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.5931	2.7	3.5
36	02	SURG	RETINAL PROCEDURES	.6804	1.2	1.4
37	02	SURG	ORBITAL PROCEDURES	1.0261	2.6	3.9
38	02	SURG	PRIMARY IRIS PROCEDURES	.4871	1.9	2.6
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5682	1.4	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.8131	2.2	3.3
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0–17	.3378	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6222	1.6	2.1
43	02	MED	HYPHEMA	.4416	2.5	4.1
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6449	4.1	5.0
45	02	MED	NEUROLOGICAL EYE DISORDERS	.6946	2.8	3.4
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7524	3.5	4.6
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.4795	2.5	3.2
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0–17	.2975	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.8471	3.7	5.0
50	03	SURG	SIALOADENECTOMY	.8390	1.6	2.0
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY.	.8486	1.9	2.9
52	03	SURG	CLEFT LIP & PALATE REPAIR	.7954	1.6	2.0
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1767	2.3	3.6
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0–17	.4823	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES.	.8648	1.9	2.8
56	03	SURG	RHINOPLASTY	.8881	2.1	2.8
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	1.1571	3.0	4.8
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17.	.2739	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.6700	1.9	2.6
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0–17	.2086	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.2529	2.9	4.8
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0–17	.2953	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.3078	3.0	4.5
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.2517	4.4	6.7
65	03	MED	DYSEQUILIBRIUM	.5270	2.3	2.9
66	03	MED	EPISTAXIS	.5551	2.6	3.2
67	03	MED	EPIGLOTTITIS	.8059	2.9	3.7
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6764	3.4	4.2
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5210	2.7	3.3
70	03	MED	OTITIS MEDIA & URI AGE 0–17	.3989	2.3	2.7
71	03	MED	LARYNGOTRACHEITIS	.6206	2.8	3.4
72	03	MED	NASAL TRAUMA & DEFORMITY	.6464	2.6	3.4
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7671	3.3	4.3
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0–17.	.3356	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.1078	7.8	9.9
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.6947	8.3	11.1
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2105	3.6	5.1
78	04	MED	PULMONARY EMBOLISM	1.3898	6.1	7.1
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC.	1.6472	6.6	8.4
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC.	.9030	4.5	5.6
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0–17	1.5196	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3674	5.2	7.0
83	04	MED	MAJOR CHEST TRAUMA W CC	.9723	4.3	5.5
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5250	2.6	3.2
85	04	MED	PLEURAL EFFUSION W CC	1.2450	5.0	6.5

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
86	04	MED	PLEURAL EFFUSION W/O CC	.6706	2.8	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3741	4.8	6.3
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9431	4.3	5.3
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0887	5.1	6.1
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6753	3.7	4.3
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0–17	.6245	3.3	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.1783	5.0	6.2
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7624	3.5	4.3
94	04	MED	PNEUMOTHORAX W CC	1.1942	4.8	6.4
95	04	MED	PNEUMOTHORAX W/O CC	.5973	3.0	3.6
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7963	3.9	4.8
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5974	3.1	3.7
98	04	MED	BRONCHITIS & ASTHMA AGE 0–17	.6783	3.3	4.5
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.6842	2.4	3.1
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5289	1.8	2.2
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8502	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5426	2.1	2.7
103	05	SURG	HEART TRANSPLANT	19.0801	35.2	56.0
104	05	SURG	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W CARDIAC CATH.	7.2220	9.3	11.9
105	05	SURG	CARDIAC VALVE & OTHER MAJOR CARDIOTHORACIC PROC W/O CARDIAC CATH.	5.6426	7.6	9.4
106	05	SURG	CORONARY BYPASS W PTCA	7.3332	9.1	10.9
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.4624	9.3	10.5
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.7505	8.3	11.0
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	4.0337	6.9	7.8
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.1531	7.3	9.6
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.2236	4.9	5.7
112	05	SURG	PERCUTANEOUS CARDIOVASCULAR PROCEDURES	1.9200	2.7	3.8
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.7188	9.5	12.5
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS.	1.5531	6.0	8.2
115	05	SURG	PRM CARD PACEM IMPL W AMI, HRT FAIL OR SHK, OR AICD LEAD OR GNRTR PR.	3.4736	6.2	8.4
116	05	SURG	OTH PERM CARD PACEMAK IMPL OR PTCA W CORONARY ARTERY STENT IMPLNT.	2.4635	2.8	3.9
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT.	1.2942	2.7	4.1
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5475	2.0	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.2288	3.0	4.9
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.0093	5.0	8.2
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.6318	5.6	6.8
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.1091	3.4	4.2
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5135	2.7	4.4
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4018	3.4	4.5
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0436	2.2	2.9
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.5151	9.3	12.1
127	05	MED	HEART FAILURE & SHOCK	1.0156	4.2	5.4
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7656	5.1	5.9
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0799	1.8	2.8
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9475	4.7	5.9
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.6057	3.7	4.5
132	05	MED	ATHEROSCLEROSIS W CC	.6723	2.5	3.1
133	05	MED	ATHEROSCLEROSIS W/O CC	.5656	1.9	2.4
134	05	MED	HYPERTENSION	.5857	2.6	3.3
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC.	.8643	3.3	4.4
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.6011	2.3	2.9
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0–17	.8188	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8164	3.1	4.0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5087	2.1	2.5
140	05	MED	ANGINA PECTORIS	.5840	2.3	2.8
141	05	MED	SYNCOPE & COLLAPSE W CC	.7094	2.9	3.7
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5426	2.2	2.7
143	05	MED	CHEST PAIN	.5348	1.8	2.2
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1513	3.8	5.3
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.6502	2.2	2.8
146	06	SURG	RECTAL RESECTION W CC	2.7908	9.1	10.3
147	06	SURG	RECTAL RESECTION W/O CC	1.6377	6.1	6.7
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4324	10.1	12.1
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5743	6.2	6.7
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8115	9.1	11.0
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3464	4.9	6.0
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9571	6.9	8.3
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.2162	5.0	5.6
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1380	10.1	13.2
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3793	3.5	4.5
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0–17.	.8432	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2385	4.0	5.6
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6580	2.1	2.6
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3127	3.7	5.0
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.7817	2.2	2.7
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1002	2.9	4.2
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC.	.6292	1.6	2.0
163	06	SURG	*HERNIA PROCEDURES AGE 0–17	.8720	2.1	2.1
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.3538	7.3	8.5
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2706	4.4	4.9
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4861	4.1	5.2
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC.	.9038	2.4	2.8
168	03	SURG	MOUTH PROCEDURES W CC	1.2131	3.3	4.7
169	03	SURG	MOUTH PROCEDURES W/O CC	.7494	1.9	2.5
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8361	7.8	11.2
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.2561	3.6	4.8
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3135	5.1	6.9
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7110	2.7	3.8
174	06	MED	G.I. HEMORRHAGE W CC	.9997	3.9	4.9
175	06	MED	G.I. HEMORRHAGE W/O CC	.5466	2.5	2.9
176	06	MED	COMPLICATED PEPTIC ULCER	1.0992	4.1	5.3
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.8823	3.7	4.5
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6525	2.7	3.2
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0909	4.8	6.2
180	06	MED	G.I. OBSTRUCTION W CC	.9229	4.2	5.4
181	06	MED	G.I. OBSTRUCTION W/O CC	.5285	2.8	3.4
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7834	3.4	4.3
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5726	2.4	3.0
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0–17.	.5266	2.3	3.0
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8560	3.3	4.5
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0–17.	.3214	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.7772	2.9	3.9
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0941	4.1	5.6
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5841	2.4	3.2
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0–17	.9681	3.8	5.6
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.3647	10.6	14.2
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.8479	5.7	7.0

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4150	10.3	12.7
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6394	5.4	6.6
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	2.9468	8.4	10.0
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6603	4.9	5.7
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.4209	7.1	8.6
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2360	3.9	4.5
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY.	2.3278	7.2	9.7
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	3.0720	7.2	11.1
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.5771	10.3	14.2
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.3202	5.0	6.6
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3042	5.0	6.7
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.2186	4.6	6.0
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W CC	1.1831	4.7	6.4
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG, CIRR, ALC HEPA W/O CC.	.7257	3.1	4.1
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1049	4.0	5.2
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6473	2.3	2.9
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.1217	4.6	5.2
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8053	5.9	6.8
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2625	4.5	4.9
212	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0–17.	.8468	11.1	11.1
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.7128	6.1	8.3
214	08	SURG	NO LONGER VALID	.0000	.0	.0
215	08	SURG	NO LONGER VALID	.0000	.0	.0
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.1374	6.9	9.5
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND, FOR MUSCSKELET & CONN TISS DIS.	2.7842	8.6	12.6
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W CC.	1.4902	4.2	5.3
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE >17 W/O CC.	1.0127	2.7	3.2
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP, FOOT, FEMUR AGE 0–17.	.5841	5.3	5.3
221	08	SURG	NO LONGER VALID	.0000	.0	.0
222	08	SURG	NO LONGER VALID	.0000	.0	.0
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	.9394	2.0	2.6
224	08	SURG	SHOULDER, ELBOW OR FOREARM PROC, EXC MAJOR JOINT PROC, W/O CC.	.8046	1.7	2.0
225	08	SURG	FOOT PROCEDURES	1.0528	3.2	4.5
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.4373	4.1	6.0
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.8175	2.1	2.8
228	08	SURG	MAJOR THUMB OR JOINT PROC, OR OTH HAND OR WRIST PROC W CC.	1.0502	2.4	3.6
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC.	.7328	1.9	2.4
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.1609	3.2	4.7
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.3614	3.1	4.6
232	08	SURG	ARTHROSCOPY	1.1675	2.4	4.1
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	2.0314	5.3	7.5
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC.	1.2439	2.7	3.4

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
235	08	MED	FRACTURES OF FEMUR	.7475	3.8	5.1
236	08	MED	FRACTURES OF HIP & PELVIS	.7167	3.9	5.0
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH.	.5445	2.9	3.6
238	08	MED	OSTEOMYELITIS	1.2827	6.4	8.4
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	.9657	4.9	6.3
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.2316	5.0	6.7
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6066	3.2	4.0
242	08	MED	SEPTIC ARTHRITIS	1.0152	5.1	6.6
243	08	MED	MEDICAL BACK PROBLEMS	.7170	3.8	4.7
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7014	3.8	4.8
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4801	2.8	3.6
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5573	3.0	3.7
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5564	2.6	3.4
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.7566	3.6	4.6
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6508	2.5	3.5
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6705	3.2	4.1
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4615	2.3	2.9
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0–17.	.2537	1.8	1.8
253	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W CC.	.7273	3.7	4.8
254	08	MED	FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE >17 W/O CC.	.4344	2.6	3.2
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM, LOWLEG EX FOOT AGE 0–17.	.2954	2.9	2.9
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.7645	3.8	5.1
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.9153	2.3	2.9
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7242	1.8	2.1
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.8671	1.9	2.8
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6428	1.3	1.5
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9205	1.7	2.2
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.8409	2.7	3.9
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC.	2.0527	8.6	11.8
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1213	5.3	7.1
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5630	4.4	7.0
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8479	2.4	3.3
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.9756	2.9	4.1
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES.	1.1919	2.4	3.8
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6213	5.6	7.9
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7435	2.2	3.1
271	09	MED	SKIN ULCERS	.9921	5.6	7.1
272	09	MED	MAJOR SKIN DISORDERS W CC	.9989	4.8	6.3
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.6270	3.3	4.4
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1271	4.7	6.5
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.6269	2.5	3.8
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6538	3.5	4.4
277	09	MED	CELLULITIS AGE >17 W CC	.8323	4.7	5.8
278	09	MED	CELLULITIS AGE >17 W/O CC	.5628	3.7	4.4
279	09	MED	CELLULITIS AGE 0–17	.6722	4.1	5.1
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC.	.6740	3.3	4.2
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC.	.4577	2.4	3.1

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0–17	.2569	2.2	2.2
283	09	MED	MINOR SKIN DISORDERS W CC	.7141	3.6	4.7
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4375	2.5	3.2
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE, NUTRIT, & METABOL DISORDERS.	2.0096	7.7	10.6
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.2196	5.2	6.6
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8074	7.4	10.4
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.0819	4.6	5.7
289	10	SURG	PARATHYROID PROCEDURES	.9714	2.0	3.0
290	10	SURG	THYROID PROCEDURES	.9187	1.9	2.4
291	10	SURG	THYROGLOSSAL PROCEDURES	.6730	1.6	2.0
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.4603	7.1	10.4
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.1770	3.5	4.9
294	10	MED	DIABETES AGE >35	.7528	3.7	4.8
295	10	MED	DIABETES AGE 0–35	.7460	3.0	3.9
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8567	4.0	5.3
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC.	.5213	2.8	3.5
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0–17	.4976	2.4	3.5
299	10	MED	INBORN ERRORS OF METABOLISM	.9448	3.8	5.4
300	10	MED	ENDOCRINE DISORDERS W CC	1.0797	4.8	6.2
301	10	MED	ENDOCRINE DISORDERS W/O CC	.5883	2.8	3.6
302	11	SURG	KIDNEY TRANSPLANT	3.5315	8.2	9.7
303	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.5381	7.2	8.7
304	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3395	6.5	8.9
305	11	SURG	KIDNEY, URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1790	3.2	3.9
306	11	SURG	PROSTATECTOMY W CC	1.2476	3.7	5.4
307	11	SURG	PROSTATECTOMY W/O CC	.6587	2.0	2.4
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.5880	4.1	6.1
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.9430	2.0	2.5
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.0881	3.0	4.3
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.6130	1.6	1.9
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0283	3.1	4.6
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6653	1.8	2.4
314	11	SURG	*URETHRAL PROCEDURES, AGE 0–17	.4950	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0624	4.5	7.8
316	11	MED	RENAL FAILURE	1.3389	4.9	6.7
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6906	2.1	3.2
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1406	4.4	6.0
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.6201	2.1	2.9
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8664	4.4	5.4
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5797	3.3	3.9
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0–17	.5653	3.0	3.8
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.7851	2.4	3.2
324	11	MED	URINARY STONES W/O CC	.4491	1.6	1.9
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC.	.6292	3.0	3.9
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC.	.4193	2.2	2.7
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0–17	.3541	3.1	3.1
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7043	2.7	3.7
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.5215	1.7	2.5
330	11	MED	*URETHRAL STRICTURE AGE 0–17	.3189	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC.	1.0149	4.1	5.5
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC.	.6079	2.6	3.4
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0–17	.7660	3.3	4.4
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5888	4.3	5.0
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1891	3.3	3.5
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8981	2.8	3.6
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6235	2.0	2.2

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.1598	3.3	5.1
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.0637	2.9	4.5
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0–17	.2834	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.1125	2.1	3.2
342	12	SURG	CIRCUMCISION AGE >17	.8606	2.6	3.5
343	12	SURG	*CIRCUMCISION AGE 0–17	.1540	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.0994	1.6	2.4
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	.8850	2.5	3.7
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	.9669	4.2	5.7
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5868	2.3	3.1
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.6994	3.2	4.2
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.4393	2.0	2.5
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.6962	3.6	4.4
351	12	MED	*STERILIZATION, MALE	.2363	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.6762	2.7	3.9
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.9662	5.4	7.1
354	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5142	4.8	5.8
355	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9471	3.2	3.4
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7930	2.2	2.6
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3678	7.0	8.7
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2377	3.7	4.4
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8724	2.7	2.9
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8832	2.5	3.0
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1850	2.4	3.4
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.3020	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.7775	2.5	3.3
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.7605	2.6	3.5
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.8299	4.9	7.1
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2435	4.7	6.7
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5558	2.2	3.0
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.0486	4.8	6.2
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5540	2.4	3.2
370	14	SURG	CESAREAN SECTION W CC	1.1037	4.5	6.0
371	14	SURG	CESAREAN SECTION W/O CC	.7226	3.5	3.6
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.5785	2.6	3.3
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.4018	1.9	2.1
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7118	2.5	3.2
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.6856	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.5246	2.4	3.5
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.3418	3.1	5.4
378	14	MED	ECTOPIC PREGNANCY	.9321	2.3	2.8
379	14	MED	THREATENED ABORTION	.4438	2.1	3.1
380	14	MED	ABORTION W/O D&C	.3447	1.6	1.9
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY.	.5785	1.7	2.3
382	14	MED	FALSE LABOR	.2097	1.2	1.3
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS.	.5250	2.8	4.0
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.3457	1.8	2.4
385	15		*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3760	1.8	1.8
386	15		*EXTREME IMMATURITY OR RESPIRATORY DISTRESS SYNDROME, NEONATE.	4.5376	17.9	17.9
387	15		*PREMATURITY W MAJOR PROBLEMS	3.0991	13.3	13.3
388	15		*PREMATURITY W/O MAJOR PROBLEMS	1.8699	8.6	8.6

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
389	15		*FULL TERM NEONATE W MAJOR PROBLEMS	1.8398	4.7	4.7
390	15		*NEONATE W OTHER SIGNIFICANT PROBLEMS	1.6011	3.4	3.4
391	15		*NORMAL NEWBORN	.1526	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.1400	7.2	9.7
393	16	SURG	*SPLENECTOMY AGE 0–17	1.3479	9.1	9.1
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.6743	4.1	6.8
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8170	3.3	4.6
396	16	MED	RED BLOOD CELL DISORDERS AGE 0–17	1.0895	2.1	3.2
397	16	MED	COAGULATION DISORDERS	1.2145	3.9	5.4
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2525	4.7	6.0
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.7076	3.0	3.7
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6450	5.9	9.1
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC.	2.6136	7.8	11.0
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.0641	2.8	4.2
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.7141	5.7	8.0
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8541	3.2	4.3
405	17		*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0–17	1.9110	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W CC.	2.7825	7.5	10.1
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R. PROC W/O CC.	1.2467	3.4	4.2
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R. PROC.	1.9957	4.7	7.8
409	17	MED	RADIOTHERAPY	1.0593	4.5	6.1
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	.8997	2.8	3.6
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.4177	1.8	2.3
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.4028	1.5	2.0
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC.	1.3970	5.5	7.5
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC.	.7882	3.1	4.2
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.5467	10.3	14.1
416	18	MED	SEPTICEMIA AGE >17	1.5004	5.6	7.3
417	18	MED	SEPTICEMIA AGE 0–17	.8818	3.6	4.9
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	.9925	4.8	6.1
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8892	3.9	4.9
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.6151	3.0	3.7
421	18	MED	VIRAL ILLNESS AGE >17	.6676	3.1	3.9
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0–17	.4797	2.4	3.0
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.6009	5.7	7.7
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS.	2.3807	8.7	14.0
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOLOGICAL DYSFUNCTION.	.6802	3.0	4.1
426	19	MED	DEPRESSIVE NEUROSES	.5384	3.4	4.7
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5750	3.4	5.0
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.6910	4.4	6.8
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8447	4.9	6.7
430	19	MED	PSYCHOSES	.7925	6.0	8.4
431	19	MED	CHILDHOOD MENTAL DISORDERS	.7467	4.7	7.0
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.7113	3.3	5.2
433	20		ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2974	2.3	3.1
434	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W CC.	.7290	3.9	5.2
435	20		ALC/DRUG ABUSE OR DEPEND, DETOX OR OTH SYMPT TREAT W/O CC.	.4270	3.4	4.4
436	20		ALC/DRUG DEPENDENCE W REHABILITATION THERAPY	.7934	10.7	13.6
437	20		ALC/DRUG DEPENDENCE, COMBINED REHAB & DETOX THERAPY.	.6899	7.5	9.0
438			NO LONGER VALID	.0000	.0	.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6217	5.0	7.4
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9196	5.7	8.9

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
441	21	SURG	HAND PROCEDURES FOR INJURIES	.9185	2.2	3.1
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.2447	5.2	7.9
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	.9604	2.5	3.3
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7068	3.3	4.3
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4796	2.4	3.0
446	21	MED	*TRAUMATIC INJURY AGE 0–17	.2962	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	.5218	1.9	2.5
448	21	MED	*ALLERGIC REACTIONS AGE 0–17	.0974	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.8140	2.6	3.7
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4356	1.6	2.0
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0–17	.2631	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	.9922	3.5	4.9
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.5065	2.2	2.9
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8161	3.2	4.5
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4661	1.9	2.6
456	.....		NO LONGER VALID	.0000	.0	.0
457	.....		NO LONGER VALID	.0000	.0	.0
458	.....		NO LONGER VALID	.0000	.0	.0
459	.....		NO LONGER VALID	.0000	.0	.0
460	.....		NO LONGER VALID	.0000	.0	.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1304	2.4	4.5
462	23	MED	REHABILITATION	1.3558	9.8	12.4
463	23	MED	SIGNS & SYMPTOMS W CC	.6814	3.3	4.3
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4953	2.5	3.2
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6710	2.0	3.6
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6995	2.3	3.9
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.5054	2.1	3.3
468	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6495	9.4	13.3
469	.....		**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470	.....		**UNGROUPABLE	.0000	.0	.0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.2312	4.9	5.6
472	.....		NO LONGER VALID	.0000	.0	.0
473	17		ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.7175	7.8	13.4
474	.....		NO LONGER VALID	.0000	.0	.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT.	3.7064	8.0	11.2
476	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2619	8.6	11.7
477	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.7659	5.3	8.0
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3493	5.0	7.3
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4604	2.9	3.8
480	.....	SURG	LIVER TRANSPLANT	10.7204	17.6	23.1
481	.....	SURG	BONE MARROW TRANSPLANT	8.6480	22.2	25.1
482	.....	SURG	TRACHEOSTOMY FOR FACE, MOUTH & NECK DIAGNOSES	3.6326	9.9	12.9
483	.....	SURG	TRACHEOSTOMY EXCEPT FOR FACE, MOUTH & NECK DIAGNOSES.	15.9802	32.9	40.6
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5399	9.0	13.3
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	3.0215	7.4	9.1
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA.	4.8710	8.4	12.3
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9497	5.3	7.4
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.7592	12.0	18.2
489	25	MED	HIV W MAJOR RELATED CONDITION	1.7870	6.1	8.7
490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	.9616	3.8	5.3
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.6696	3.0	3.5
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	4.4339	11.4	16.8
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8341	4.3	5.7

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type of DRG	DRG title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0276	2.0	2.5
495	.....	SURG	LUNG TRANSPLANT	9.1249	13.1	15.9
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.6734	8.4	10.8
497	08	SURG	SPINAL FUSION W CC	2.8425	4.9	6.3
498	08	SURG	SPINAL FUSION W/O CC	1.7943	2.8	3.4
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4487	3.6	4.8
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC.	.9837	2.3	2.8
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.5446	8.0	10.0
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.5591	5.2	6.3
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2047	3.1	4.0
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	12.8853	23.5	31.1
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	2.1552	2.6	5.1
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.1711	12.5	16.8
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.8963	6.8	9.5
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.5807	5.8	8.6
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	.8575	3.9	5.4
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.3433	5.1	7.4
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.8283	3.5	5.2

* Medicare data have been supplemented by data from 19 states for low volume DRGS.
** DRGS 469 and 470 contain cases which could not be assigned to valid DRGS.
Note: Geometric mean is used only to determine payment for transfer cases.
Note: Arithmetic mean is presented for informational purposes only.
Note: Relative weights are based on medicare patient data and may not be appropriate for other patients.

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY98 MEDPAR Update 12/98 Grouper V16.0]

	DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1		36506	9.2605	2	4	7	12	19
2		7109	9.8658	3	5	7	12	20
3		7	10.5714	1	4	12	12	14
4		6015	7.4519	1	3	5	9	16
5		98703	3.4164	1	1	2	4	7
6		377	3.1326	1	1	2	4	7
7		11683	9.7496	2	4	7	12	19
8		3373	3.1254	1	1	2	4	7
9		1698	6.1143	1	3	5	8	12
10		19098	6.5697	2	3	5	8	13
11		3155	4.0396	1	2	3	5	8
12		44239	6.2732	2	3	4	7	12
13		6486	5.1576	2	3	4	6	9
14		354618	6.0040	2	3	5	7	11
15		143996	3.7354	1	2	3	5	7
16		12049	5.9114	2	3	5	7	11
17		3303	3.3657	1	2	3	4	6
18		27014	5.4748	2	3	4	7	10
19		7911	3.7895	1	2	3	5	7
20		6115	9.9243	2	5	8	13	19
21		1409	6.8027	2	3	5	9	13
22		2567	4.9003	2	2	4	6	9
23		7637	4.1747	1	2	3	5	8
24		54321	5.0362	1	2	4	6	10
25		24173	3.3500	1	2	3	4	6
26		29	3.5862	1	1	3	4	6
27		3593	5.2931	1	1	3	7	12
28		11084	6.0999	1	3	5	8	12
29		3704	3.6126	1	2	3	5	7
30		1	13.0000	13	13	13	13	13
31		3126	4.3349	1	2	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
32	1388	2.6981	1	1	2	3	5
34	19926	5.3284	1	2	4	6	10
35	4860	3.4829	1	2	3	4	7
36	4637	1.4238	1	1	1	1	2
37	1545	3.8460	1	1	3	5	8
38	106	2.6415	1	1	2	3	5
39	1458	1.8759	1	1	1	2	4
40	1967	3.3421	1	1	2	4	7
42	3287	2.1150	1	1	1	2	4
43	84	4.0476	1	2	2	4	7
44	1346	4.9562	2	3	4	6	9
45	2489	3.4339	1	2	3	4	6
46	3035	4.5519	1	2	3	6	9
47	1196	3.1304	1	1	2	4	6
48	1	6.0000	6	6	6	6	6
49	2268	5.0004	1	2	4	6	10
50	2816	1.9950	1	1	1	2	3
51	275	2.8873	1	1	1	3	7
52	242	1.9463	1	1	1	2	3
53	2676	3.6214	1	1	2	4	8
54	1	1.0000	1	1	1	1	1
55	1548	2.8443	1	1	2	3	6
56	583	2.8405	1	1	2	3	6
57	496	4.7702	1	1	3	5	12
59	76	2.5921	1	1	2	3	6
60	4	1.2500	1	1	1	1	2
61	236	4.8051	1	1	3	6	10
62	2	2.5000	2	2	3	3	3
63	3257	4.4473	1	2	3	5	9
64	3255	6.6224	1	2	4	8	14
65	31668	2.9110	1	1	2	4	5
66	6943	3.2093	1	2	3	4	6
67	510	3.7118	1	2	3	4	7
68	13096	4.1846	2	2	3	5	7
69	4070	3.3174	1	2	3	4	6
70	38	2.7368	1	2	2	3	5
71	108	3.4259	1	2	3	4	6
72	789	3.5349	1	2	3	4	7
73	6418	4.3408	1	2	3	5	8
74	1	2.0000	2	2	2	2	2
75	40117	9.9090	3	5	7	12	19
76	40189	11.0696	3	5	9	14	21
77	2189	5.1092	1	2	4	7	10
78	29868	7.0817	3	5	6	9	12
79	203034	8.4200	3	4	7	10	16
80	8367	5.5711	2	3	5	7	10
81	9	6.1111	1	4	6	7	9
82	67396	6.9696	2	3	5	9	14
83	6816	5.4608	2	3	4	7	10
84	1499	3.2115	1	2	3	4	6
85	21440	6.5169	2	3	5	8	13
86	1715	3.7638	1	2	3	5	7
87	67211	6.2429	1	3	5	8	12
88	395665	5.2571	2	3	4	7	9
89	507777	6.1138	2	3	5	8	11
90	46106	4.3389	2	3	4	5	7
91	63	3.9683	1	2	3	5	7
92	14068	6.2258	2	3	5	8	12
93	1431	4.2851	1	2	4	6	8
94	12904	6.3868	2	3	5	8	13
95	1503	3.6334	1	2	3	4	7
96	63347	4.7647	2	3	4	6	8
97	28210	3.7386	1	2	3	5	7
98	18	4.5000	2	2	3	4	5
99	19288	3.1362	1	1	2	4	6
100	7679	2.1705	1	1	2	3	4

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V16.0]

	DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
101		19908	4.4001	1	2	3	6	8
102		4712	2.7177	1	1	2	3	5
103		526	55.9620	9	15	38	81	125
104		32469	11.8910	3	6	10	15	22
105		28435	9.4345	4	6	7	11	17
106		3874	10.9174	5	7	9	13	18
107		96633	10.4780	5	7	9	12	17
108		5213	10.9714	3	6	9	14	21
109		66066	7.8103	4	5	7	9	13
110		58950	9.5307	2	5	8	11	18
111		6548	5.6188	2	4	5	7	8
112		80275	3.8243	1	1	3	5	8
113		45999	11.8933	3	5	9	15	23
114		8660	8.1865	2	4	7	10	16
115		14332	8.4104	2	4	7	11	16
116		270327	3.9279	1	1	3	5	8
117		3493	4.1457	1	1	3	5	9
118		6394	2.8907	1	1	2	4	6
119		1547	4.8946	1	1	3	6	11
120		36472	8.2124	1	2	5	11	18
121		168411	6.5102	2	4	5	8	12
122		83057	3.9825	1	2	4	5	7
123		41857	4.4094	1	1	2	6	10
124		144199	4.4338	1	2	3	6	8
125		69258	2.8460	1	1	2	4	6
126		5245	11.8471	3	6	9	15	23
127		720949	5.3848	2	3	4	7	10
128		13882	5.8857	3	4	5	7	9
129		4476	2.8132	1	1	1	3	7
130		93152	5.8377	2	3	5	7	10
131		26175	4.4798	1	3	4	6	7
132		166567	3.0916	1	2	2	4	6
133		7046	2.3686	1	1	2	3	4
134		32604	3.3402	1	2	3	4	6
135		7501	4.3393	1	2	3	5	8
136		1134	2.9365	1	1	2	4	6
138		203034	3.9942	1	2	3	5	8
139		74491	2.5373	1	1	2	3	5
140		89482	2.8042	1	1	2	3	5
141		85001	3.7313	1	2	3	5	7
142		40519	2.7087	1	1	2	3	5
143		173003	2.1910	1	1	2	3	4
144		77203	5.3186	1	2	4	7	11
145		6725	2.8174	1	1	2	4	5
146		12161	10.3049	5	7	9	12	17
147		2295	6.7115	3	5	7	8	10
148		142496	12.0975	5	7	10	14	21
149		16260	6.7259	4	5	6	8	10
150		22047	11.0292	4	6	9	14	19
151		4378	5.9826	2	3	6	8	11
152		4733	8.2766	3	5	7	10	14
153		1785	5.6112	3	4	5	7	8
154		32146	13.1977	4	7	10	16	25
155		5559	4.4970	1	2	4	6	8
156		5	10.6000	2	2	11	13	22
157		8532	5.5772	1	2	4	7	11
158		4386	2.6423	1	1	2	3	5
159		17279	4.9647	1	2	4	6	10
160		10447	2.7383	1	1	2	4	5
161		12543	4.1562	1	2	3	5	9
162		6726	1.9967	1	1	1	2	4
163		6	3.3333	1	3	3	5	5
164		5059	8.5274	4	5	7	10	14
165		1803	4.9434	2	3	5	6	8
166		3401	5.1541	2	3	4	6	10
167		2666	2.7817	1	2	2	3	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
168	1649	4.6731	1	2	3	6	10
169	857	2.4982	1	1	2	3	5
170	12092	11.1993	2	5	8	14	22
171	1053	4.7673	1	2	4	6	9
172	31897	6.9143	2	3	5	9	14
173	2312	3.7855	1	1	3	5	8
174	249000	4.8426	2	3	4	6	9
175	25202	2.9397	1	2	3	4	5
176	17587	5.2799	2	3	4	6	10
177	10522	4.4893	2	2	4	6	8
178	3593	3.1795	1	2	3	4	6
179	12330	6.1658	2	3	5	8	12
180	90227	5.3446	2	3	4	7	10
181	24379	3.4107	1	2	3	4	6
182	234882	4.3349	1	2	3	5	8
183	76735	2.9911	1	1	2	4	6
184	89	3.0225	1	1	2	3	7
185	4222	4.5246	1	2	3	6	9
186	7	3.2857	1	2	3	4	4
187	838	3.9224	1	2	3	5	8
188	75482	5.5481	1	2	4	7	11
189	9623	3.2219	1	1	2	4	6
190	66	5.5909	1	2	4	7	9
191	9649	14.1563	4	7	10	17	28
192	834	7.0432	2	4	6	9	12
193	6497	12.6191	5	7	10	15	23
194	742	6.5660	2	4	6	8	11
195	5896	9.9910	4	6	8	12	17
196	1262	5.6830	2	4	5	7	9
197	22829	8.6119	3	5	7	10	15
198	6333	4.5173	2	3	4	6	8
199	1863	9.6334	2	5	7	13	19
200	1177	11.0110	2	4	8	14	22
201	1502	14.0752	4	6	11	18	28
202	27309	6.5861	2	3	5	8	13
203	29813	6.7010	2	3	5	9	13
204	54942	5.9723	2	3	5	7	11
205	23086	6.3271	2	3	5	8	12
206	1713	4.1004	1	2	3	5	8
207	32550	5.1222	1	2	4	6	10
208	9792	2.9086	1	1	2	4	6
209	353744	5.1342	3	3	4	6	8
210	133786	6.7558	3	4	5	8	11
211	29098	4.9011	3	3	4	6	7
212	8	3.6250	1	2	4	5	5
213	7866	8.3354	2	4	6	10	17
216	6023	9.5177	2	4	7	12	19
217	19595	12.5727	3	5	9	15	26
218	22521	5.2767	2	3	4	6	9
219	19288	3.1965	1	2	3	4	5
220	4	9.2500	1	1	6	12	18
223	17769	2.5644	1	1	2	3	5
224	7897	2.0380	1	1	2	3	4
225	5773	4.4653	1	2	3	6	9
226	5252	5.9842	1	2	4	8	12
227	4296	2.7491	1	1	2	3	5
228	2550	3.5910	1	1	2	4	8
229	1137	2.4450	1	1	2	3	5
230	2280	4.7487	1	2	3	6	10
231	10903	4.6309	1	2	3	6	10
232	527	4.0892	1	1	2	5	9
233	4814	7.4909	2	3	5	9	16
234	2558	3.4461	1	2	3	4	7
235	5355	5.0045	1	2	4	6	9
236	39188	4.9057	1	3	4	6	9
237	1699	3.5621	1	2	3	4	6

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 12/98 Grouper V16.0]

	DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
238		7684	8.2965	3	4	6	10	16
239		55608	6.2447	2	3	5	8	12
240		12878	6.6378	2	3	5	8	13
241		3005	4.0090	1	2	3	5	7
242		2655	6.5646	2	3	5	8	13
243		83845	4.7270	1	3	4	6	9
244		12628	4.8210	1	3	4	6	9
245		4919	3.5727	1	2	3	4	7
246		1343	3.7312	1	2	3	5	7
247		14016	3.4163	1	2	3	4	7
248		8925	4.6222	1	2	4	6	9
249		10902	3.5356	1	1	2	4	7
250		3601	4.1172	1	2	3	5	8
251		2274	2.9081	1	1	2	4	5
253		18995	4.7535	1	3	4	6	9
254		9941	3.2011	1	2	3	4	6
256		5904	5.0899	1	2	4	6	10
257		19379	2.9197	1	2	2	3	5
258		16797	2.0623	1	1	2	2	3
259		3704	2.7608	1	1	2	3	6
260		4700	1.4715	1	1	1	2	2
261		1775	2.1808	1	1	1	3	4
262		645	3.9271	1	1	3	5	8
263		25880	11.3104	3	5	8	14	22
264		3815	7.0029	2	3	5	8	13
265		4082	6.9581	1	2	4	8	14
266		2523	3.3436	1	1	2	4	7
267		240	4.0833	1	1	3	5	9
268		873	3.7537	1	1	2	4	8
269		8758	7.8451	2	3	5	10	16
270		2727	3.0983	1	1	2	4	7
271		22440	7.0501	3	4	6	8	13
272		5622	6.2757	2	3	5	7	12
273		1342	4.3644	1	2	3	5	8
274		2431	6.4825	1	3	5	8	13
275		201	3.7612	1	1	2	5	8
276		989	4.4034	1	2	4	5	8
277		83986	5.7562	2	3	5	7	10
278		27530	4.4238	2	3	4	5	8
279		11	5.0909	1	3	4	5	8
280		14848	4.2196	1	2	3	5	8
281		6385	3.0641	1	1	3	4	6
282		1	3.0000	3	3	3	3	3
283		5325	4.7213	1	2	4	6	9
284		1773	3.1985	1	1	3	4	5
285		5979	10.5514	3	5	8	13	21
286		2145	6.6112	2	3	5	8	13
287		5999	10.4182	3	5	7	12	20
288		1972	5.7221	2	3	4	6	9
289		4787	3.0171	1	1	2	3	6
290		8532	2.4319	1	1	2	3	4
291		76	2.0132	1	1	1	2	3
292		4798	10.3558	2	4	8	13	21
293		318	4.9119	1	2	4	6	10
294		83797	4.7445	1	2	4	6	9
295		3416	3.8662	1	2	3	5	7
296		232852	5.2808	2	3	4	6	10
297		36465	3.5335	1	2	3	4	6
298		86	3.5116	1	1	2	4	7
299		1113	5.3998	1	2	4	7	11
300		16055	6.2361	2	3	5	8	12
301		2798	3.5647	1	2	3	4	7
302		7788	9.7017	5	6	7	11	17
303		19947	8.7442	4	5	7	10	15
304		12267	8.8996	2	4	7	11	18
305		2771	3.8964	1	2	3	5	7

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
306	9087	5.4264	1	2	3	7	12
307	2172	2.3596	1	1	2	3	4
308	8237	6.1412	1	2	4	8	13
309	4040	2.5252	1	1	2	3	5
310	25234	4.3353	1	2	3	5	9
311	7913	1.9368	1	1	1	2	4
312	1652	4.5745	1	1	3	6	10
313	636	2.4009	1	1	2	3	5
314	1	2.0000	2	2	2	2	2
315	28095	7.8214	1	2	5	10	17
316	93946	6.6586	2	3	5	8	13
317	787	3.1525	1	1	2	3	6
318	6040	5.9818	1	3	4	8	12
319	452	2.8496	1	1	2	4	6
320	182629	5.4053	2	3	4	7	10
321	26785	3.8728	2	2	3	5	7
322	66	3.7273	1	2	3	4	6
323	16620	3.2068	1	1	2	4	6
324	7588	1.9258	1	1	1	2	4
325	7746	3.8615	1	2	3	5	7
326	2359	2.6880	1	1	2	3	5
327	9	3.4444	1	2	3	6	6
328	682	3.7097	1	2	3	5	7
329	107	2.4579	1	1	1	3	5
331	44791	5.5053	1	3	4	7	11
332	4640	3.4358	1	1	3	4	7
333	264	4.4356	1	2	3	5	10
334	14143	5.0008	3	3	4	6	8
335	10325	3.5485	2	3	3	4	5
336	46390	3.6056	1	2	3	4	7
337	30864	2.2143	1	1	2	3	3
338	2138	5.1300	1	2	3	7	12
339	1797	4.5042	1	1	3	6	10
340	2	1.0000	1	1	1	1	1
341	4067	3.1913	1	1	2	3	6
342	874	3.4748	1	2	2	4	7
344	4100	2.3539	1	1	1	2	5
345	1230	3.7195	1	1	2	4	8
346	4931	5.7175	1	3	4	7	11
347	370	3.1595	1	1	2	4	7
348	3080	4.1844	1	2	3	5	8
349	591	2.5296	1	1	2	3	5
350	6519	4.3806	2	2	4	5	8
352	692	3.9263	1	1	3	5	7
353	2693	7.0791	3	4	5	8	13
354	8980	5.7827	3	3	4	7	10
355	5919	3.4087	2	3	3	4	5
356	28210	2.5548	1	2	2	3	4
357	6046	8.6508	3	5	7	10	16
358	24803	4.4161	2	3	3	5	7
359	29406	2.8913	2	2	3	3	4
360	17303	3.0327	1	2	3	3	5
361	473	3.3742	1	1	2	4	7
362	1	1.0000	1	1	1	1	1
363	3572	3.2900	1	2	2	3	7
364	1811	3.5400	1	1	2	4	7
365	2008	7.1116	2	3	5	9	15
366	4324	6.6751	1	3	5	8	14
367	466	3.0193	1	1	2	4	6
368	2756	6.2144	2	3	5	8	12
369	2740	3.2281	1	1	2	4	6
370	1120	5.9848	3	3	4	5	9
371	1192	3.6460	2	3	3	4	5
372	847	3.2621	1	2	2	3	5
373	3838	2.1449	1	2	2	2	3
374	134	3.1716	1	2	2	3	4

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
375	5	4.4000	1	1	5	5	9
376	199	3.4472	1	1	2	3	7
377	35	5.4000	1	1	3	5	13
378	173	2.7746	1	2	2	3	4
379	350	3.0914	1	1	2	3	6
380	87	1.8851	1	1	1	2	3
381	183	2.3005	1	1	1	3	5
382	54	1.2963	1	1	1	1	2
383	1486	3.9711	1	2	3	5	8
384	121	2.4132	1	1	2	3	5
385	1	2.0000	2	2	2	2	2
389	6	5.8333	1	5	5	7	7
390	9	3.3333	1	1	4	4	5
392	2630	9.6696	3	4	7	12	20
394	1779	6.8375	1	2	4	8	15
395	77187	4.5508	1	2	3	6	9
396	17	3.1765	1	1	2	4	6
397	19143	5.3427	1	2	4	7	11
398	18492	5.9583	2	3	5	7	11
399	1493	3.7173	1	2	3	5	7
400	7294	9.1058	2	3	6	11	20
401	6217	11.0227	2	5	8	14	22
402	1452	4.1887	1	1	3	5	9
403	36218	8.0041	2	3	6	10	16
404	4103	4.3359	1	2	3	6	9
406	2824	10.1331	3	5	8	13	21
407	667	4.1829	1	2	3	5	7
408	2404	7.7417	1	2	5	10	18
409	3746	6.1030	2	3	4	6	12
410	49872	3.5697	1	2	3	4	6
411	21	2.2857	1	1	2	3	4
412	28	2.0000	1	1	1	2	4
413	7391	7.4619	2	3	6	10	15
414	687	4.1499	1	2	3	5	9
415	42535	14.0456	4	6	11	17	28
416	213568	7.3051	2	4	6	9	14
417	41	4.7805	1	2	4	6	10
418	22297	6.0470	2	3	5	7	11
419	15835	4.9039	2	2	4	6	9
420	3029	3.6524	1	2	3	5	7
421	13089	3.9185	1	2	3	5	7
422	91	2.9890	1	1	2	4	6
423	9072	7.7017	2	3	6	9	16
424	1385	14.0072	2	5	10	17	27
425	15534	4.0610	1	2	3	5	8
426	4568	4.6421	1	2	3	6	9
427	1659	4.9458	1	2	3	6	11
428	855	6.7766	1	2	4	8	14
429	29447	6.5176	2	3	5	8	13
430	58875	8.3608	2	3	6	11	17
431	306	6.9869	1	3	5	8	13
432	438	5.2283	1	2	3	5	10
433	6312	3.1039	1	1	2	4	6
434	21675	5.1476	1	2	4	6	10
435	14502	4.3431	1	2	4	5	8
436	3279	13.5166	4	7	12	21	27
437	11570	8.9775	3	5	8	11	15
439	1183	7.4480	1	3	5	9	15
440	5298	8.9332	2	3	6	11	19
441	562	3.0498	1	1	2	4	7
442	15691	7.9084	1	3	6	10	16
443	3343	3.2767	1	1	2	4	7
444	5016	4.2845	1	2	3	5	8
445	2198	3.0100	1	1	2	4	6
447	4686	2.5378	1	1	2	3	5
448	2	1.5000	1	1	2	2	2

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V16.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
449	25965	3.6989	1	1	3	4	7
450	6281	2.0492	1	1	1	2	4
451	4	3.7500	1	1	2	4	8
452	22264	4.9182	1	2	3	6	10
453	4242	2.8868	1	1	2	4	5
454	5953	4.4749	1	2	3	5	9
455	974	2.6078	1	1	2	3	5
461	3446	4.5133	1	1	2	5	11
462	10911	12.2067	4	6	10	16	23
463	16562	4.2876	1	2	3	5	8
464	4467	3.1842	1	2	3	4	6
465	202	3.5693	1	1	1	4	7
466	1753	3.9395	1	1	2	4	8
467	1206	3.2629	1	1	2	4	6
468	59861	13.2552	3	6	10	17	26
471	11866	5.6302	3	3	5	6	9
473	7998	13.1317	2	3	7	19	33
475	109305	11.0583	2	5	9	15	22
476	5166	11.6465	2	6	10	15	21
477	26937	8.0048	1	3	6	10	17
478	118559	7.2875	1	3	5	9	15
479	21234	3.7671	1	2	3	5	7
480	446	23.0807	7	11	16	28	47
481	269	25.0632	11	19	23	30	40
482	6415	12.8803	4	7	10	15	23
483	42782	38.7045	14	21	32	48	70
484	392	13.2219	1	6	10	18	27
485	3148	9.0886	4	5	7	11	17
486	2027	12.1722	1	5	10	16	24
487	3604	7.3047	1	3	6	9	15
488	784	18.0982	3	7	13	23	37
489	14037	8.7084	2	3	6	11	18
490	4768	5.2685	1	2	4	7	10
491	11583	3.5480	2	2	3	4	6
492	2575	16.8287	4	5	12	27	35
493	55018	5.7173	1	3	5	7	11
494	26030	2.5108	1	1	2	3	5
495	130	15.9154	6	8	13	22	29
496	1095	10.7826	4	5	8	13	21
497	23026	5.2674	2	3	5	7	11
498	16601	3.4126	1	2	3	4	6
499	33369	4.8049	1	2	4	6	9
500	40659	2.7628	1	1	2	3	5
501	1974	10.0172	4	5	8	12	19
502	544	6.2702	3	4	5	7	11
503	5860	3.9602	1	2	3	5	7
504	121	31.1488	9	15	26	40	62
505	157	5.0446	1	1	2	6	11
506	1107	16.4625	4	7	13	22	33
507	410	9.4780	2	4	8	13	20
508	1102	7.4093	2	3	5	9	14
509	493	4.9270	1	2	3	6	11
510	1017	6.9646	2	3	5	8	15
511	301	4.7176	1	2	3	6	9
	11177104						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY

[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	36506	9.2605	2	4	7	12	19
2	7109	9.8658	3	5	7	12	20

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
3	7	10.5714	1	4	12	12	14
4	6015	7.4519	1	3	5	9	16
5	98703	3.4164	1	1	2	4	7
6	377	3.1326	1	1	2	4	7
7	11683	9.7496	2	4	7	12	19
8	3373	3.1254	1	1	2	4	7
9	1698	6.1143	1	3	5	8	12
10	19098	6.5697	2	3	5	8	13
11	3155	4.0396	1	2	3	5	8
12	44239	6.2732	2	3	4	7	12
13	6486	5.1576	2	3	4	6	9
14	354510	6.0035	2	3	5	7	11
15	143996	3.7354	1	2	3	5	7
16	12049	5.9114	2	3	5	7	11
17	3303	3.3657	1	2	3	4	6
18	27014	5.4748	2	3	4	7	10
19	7911	3.7895	1	2	3	5	7
20	6115	9.9243	2	5	8	13	19
21	1409	6.8027	2	3	5	9	13
22	2567	4.9003	2	2	4	6	9
23	7637	4.1747	1	2	3	5	8
24	54321	5.0362	1	2	4	6	10
25	24173	3.3500	1	2	3	4	6
26	29	3.5862	1	1	3	4	6
27	3593	5.2931	1	1	3	7	12
28	11084	6.0999	1	3	5	8	12
29	3704	3.6126	1	2	3	5	7
30	1	13.0000	13	13	13	13	13
31	3126	4.3349	1	2	3	5	8
32	1388	2.6981	1	1	2	3	5
34	19926	5.3284	1	2	4	6	10
35	4860	3.4829	1	2	3	4	7
36	4637	1.4238	1	1	1	1	2
37	1545	3.8460	1	1	3	5	8
38	106	2.6415	1	1	2	3	5
39	1458	1.8759	1	1	1	2	4
40	1967	3.3421	1	1	2	4	7
42	3287	2.1150	1	1	1	2	4
43	84	4.0476	1	2	2	4	7
44	1346	4.9562	2	3	4	6	9
45	2489	3.4339	1	2	3	4	6
46	3035	4.5519	1	2	3	6	9
47	1196	3.1304	1	1	2	4	6
48	1	6.0000	6	6	6	6	6
49	2268	5.0004	1	2	4	6	10
50	2816	1.9950	1	1	1	2	3
51	275	2.8873	1	1	1	3	7
52	242	1.9463	1	1	1	2	3
53	2676	3.6214	1	1	2	4	8
54	1	1.0000	1	1	1	1	1
55	1548	2.8443	1	1	2	3	6
56	583	2.8405	1	1	2	3	6
57	496	4.7702	1	1	3	5	12
59	76	2.5921	1	1	2	3	6
60	4	1.2500	1	1	1	1	2
61	236	4.8051	1	1	3	6	10
62	2	2.5000	2	2	3	3	3
63	3257	4.4473	1	2	3	5	9
64	3255	6.6224	1	2	4	8	14
65	31668	2.9110	1	1	2	4	5
66	6943	3.2093	1	2	3	4	6
67	510	3.7118	1	2	3	4	7
68	13096	4.1846	2	2	3	5	7
69	4070	3.3174	1	2	3	4	6
70	38	2.7368	1	2	2	3	5
71	108	3.4259	1	2	3	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
72	789	3.5349	1	2	3	4	7
73	6418	4.3408	1	2	3	5	8
74	1	2.0000	2	2	2	2	2
75	40117	9.9090	3	5	7	12	19
76	40189	11.0696	3	5	9	14	21
77	2189	5.1092	1	2	4	7	10
78	29868	7.0817	3	5	6	9	12
79	203034	8.4200	3	4	7	10	16
80	8367	5.5711	2	3	5	7	10
81	9	6.1111	1	4	6	7	9
82	67396	6.9696	2	3	5	9	14
83	6816	5.4608	2	3	4	7	10
84	1499	3.2115	1	2	3	4	6
85	21440	6.5169	2	3	5	8	13
86	1715	3.7638	1	2	3	5	7
87	67211	6.2429	1	3	5	8	12
88	395665	5.2571	2	3	4	7	9
89	507777	6.1138	2	3	5	8	11
90	46106	4.3389	2	3	4	5	7
91	63	3.9683	1	2	3	5	7
92	14068	6.2258	2	3	5	8	12
93	1431	4.2851	1	2	4	6	8
94	12904	6.3868	2	3	5	8	13
95	1503	3.6334	1	2	3	4	7
96	63347	4.7647	2	3	4	6	8
97	28210	3.7386	1	2	3	5	7
98	18	4.5000	2	2	3	4	5
99	19288	3.1362	1	1	2	4	6
100	7679	2.1705	1	1	2	3	4
101	19908	4.4001	1	2	3	6	8
102	4712	2.7177	1	1	2	3	5
103	526	55.9620	9	15	38	81	125
104	32469	11.8910	3	6	10	15	22
105	28435	9.4345	4	6	7	11	17
106	3874	10.9174	5	7	9	13	18
107	96633	10.4780	5	7	9	12	17
108	5213	10.9714	3	6	9	14	21
109	66066	7.8103	4	5	7	9	13
110	58950	9.5307	2	5	8	11	18
111	6548	5.6188	2	4	6	7	8
112	80275	3.8243	1	1	3	5	8
113	45978	11.8914	3	5	9	15	23
114	8660	8.1865	2	4	7	10	16
115	14332	8.4104	2	4	7	11	16
116	270327	3.9279	1	1	3	5	8
117	3493	4.1457	1	1	3	5	9
118	6394	2.8907	1	1	2	4	6
119	1547	4.8946	1	1	3	6	11
120	36569	8.2082	1	2	5	11	18
121	168411	6.5102	2	4	5	8	12
122	83057	3.9825	1	2	4	5	7
123	41857	4.4094	1	1	2	6	10
124	144199	4.4338	1	2	3	6	8
125	69258	2.8460	1	1	2	4	6
126	5245	11.8471	3	6	9	15	23
127	720949	5.3848	2	3	4	7	10
128	13882	5.8857	3	4	5	7	9
129	4476	2.8132	1	1	1	3	7
130	93152	5.8377	2	3	5	7	10
131	26175	4.4798	1	3	4	6	7
132	166567	3.0916	1	2	2	4	6
133	7046	2.3686	1	1	2	3	4
134	32604	3.3402	1	2	3	4	6
135	7501	4.3393	1	2	3	5	8
136	1134	2.9365	1	1	2	4	6
138	203034	3.9942	1	2	3	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
139	74491	2.5373	1	1	2	3	5
140	89482	2.8042	1	1	2	3	5
141	85001	3.7313	1	2	3	5	7
142	40519	2.7087	1	1	2	3	5
143	173003	2.1910	1	1	2	3	4
144	77203	5.3186	1	2	4	7	11
145	6725	2.8174	1	1	2	4	5
146	12161	10.3049	5	7	9	12	17
147	2295	6.7115	3	5	7	8	10
148	142496	12.0975	5	7	10	14	21
149	16260	6.7259	4	5	6	8	10
150	22047	11.0292	4	6	9	14	19
151	4378	5.9826	2	3	6	8	11
152	4733	8.2766	3	5	7	10	14
153	1785	5.6112	3	4	5	7	8
154	32146	13.1977	4	7	10	16	25
155	5559	4.4970	1	2	4	6	8
156	5	10.6000	2	2	11	13	22
157	8532	5.5772	1	2	4	7	11
158	4386	2.6423	1	1	2	3	5
159	17279	4.9647	1	2	4	6	10
160	10447	2.7383	1	1	2	4	5
161	12543	4.1562	1	2	3	5	9
162	6726	1.9967	1	1	1	2	4
163	6	3.3333	1	3	3	5	5
164	5059	8.5274	4	5	7	10	14
165	1803	4.9434	2	3	5	6	8
166	3401	5.1541	2	3	4	6	10
167	2666	2.7817	1	2	2	3	5
168	1649	4.6731	1	2	3	6	10
169	857	2.4982	1	1	2	3	5
170	12092	11.1993	2	5	8	14	22
171	1053	4.7673	1	2	4	6	9
172	31897	6.9143	2	3	5	9	14
173	2312	3.7855	1	1	3	5	8
174	249000	4.8426	2	3	4	6	9
175	25202	2.9397	1	2	3	4	5
176	17587	5.2799	2	3	4	6	10
177	10522	4.4893	2	2	4	6	8
178	3593	3.1795	1	2	3	4	6
179	12330	6.1658	2	3	5	8	12
180	90227	5.3446	2	3	4	7	10
181	24379	3.4107	1	2	3	4	6
182	234882	4.3349	1	2	3	5	8
183	76735	2.9911	1	1	2	4	6
184	89	3.0225	1	1	2	3	7
185	4222	4.5246	1	2	3	6	9
186	7	3.2857	1	2	3	4	4
187	838	3.9224	1	2	3	5	8
188	75482	5.5481	1	2	4	7	11
189	9623	3.2219	1	1	2	4	6
190	66	5.5909	1	2	4	7	9
191	9649	14.1563	4	7	10	17	28
192	834	7.0432	2	4	6	9	12
193	6497	12.6191	5	7	10	15	23
194	742	6.5660	2	4	6	8	11
195	5896	9.9910	4	6	8	12	17
196	1262	5.6830	2	4	5	7	9
197	22829	8.6119	3	5	7	10	15
198	6333	4.5173	2	3	4	6	8
199	1863	9.6334	2	5	7	13	19
200	1177	11.0110	2	4	8	14	22
201	1502	14.0752	4	6	11	18	28
202	27309	6.5861	2	3	5	8	13
203	29813	6.7010	2	3	5	9	13
204	54942	5.9723	2	3	5	7	11

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
205	23086	6.3271	2	3	5	8	12
206	1713	4.1004	1	2	3	5	8
207	32550	5.1222	1	2	4	[illegible]	10
208	9792	2.9086	1	1	2	4	6
209	353674	5.1341	3	3	4	6	8
210	133764	6.7556	3	4	6	8	11
211	29096	4.9012	3	3	4	6	7
212	8	3.6250	1	2	4	5	5
213	7866	8.3354	2	4	6	10	17
216	6023	9.5177	2	4	7	12	19
217	19595	12.5727	3	5	9	15	26
218	22521	5.2767	2	3	4	6	9
219	19288	3.1965	1	2	3	4	5
220	4	9.2500	1	1	6	12	18
223	17769	2.5644	1	1	2	3	5
224	7897	2.0380	1	1	2	3	4
225	5773	4.4653	1	2	3	[illegible]	9
226	5252	5.9842	1	2	4	8	12
227	4296	2.7491	1	1	2	3	5
228	2550	3.5910	1	1	2	4	8
229	1137	2.4450	1	1	2	3	5
230	2280	4.7487	1	2	3	6	10
231	10903	4.6309	1	2	3	6	10
232	527	4.0892	1	1	2	5	9
233	4814	7.4909	2	3	5	9	16
234	2558	3.4461	1	2	3	4	7
235	5355	5.0045	1	2	4	6	9
236	39179	4.9058	1	3	4	6	9
237	1699	3.5621	1	2	3	4	6
238	7684	8.2965	3	4	6	10	16
239	55608	6.2447	2	3	5	8	12
240	12878	6.6378	2	3	5	8	13
241	3005	4.0090	1	2	3	5	7
242	2655	6.5646	2	3	5	8	13
243	83845	4.7270	1	3	4	6	9
244	12628	4.8210	1	3	4	6	9
245	4919	3.5727	1	2	3	4	7
246	1343	3.7312	1	2	3	5	7
247	14016	3.4163	1	2	3	4	7
248	8925	4.6222	1	2	4	6	9
249	10902	3.5356	1	1	2	4	7
250	3601	4.1172	1	2	3	5	8
251	2274	2.9081	1	1	2	4	5
253	18995	4.7535	1	3	4	6	9
254	9941	3.2011	1	2	3	4	6
256	5904	5.0899	1	2	4	6	10
257	19379	2.9197	1	2	2	3	5
258	16797	2.0623	1	1	2	2	3
259	3704	2.7608	1	1	2	3	6
260	4700	1.4715	1	1	1	2	2
261	1775	2.1808	1	1	1	3	4
262	645	3.9271	1	1	3	5	8
263	25866	11.3105	3	5	8	14	22
264	3810	7.0034	2	3	5	8	13
265	4082	6.9581	1	2	4	8	14
266	2523	3.3436	1	1	2	4	7
267	240	4.0833	1	1	3	5	9
268	873	3.7537	1	1	2	4	8
269	8758	7.8451	2	3	6	10	16
270	2727	3.0983	1	1	2	4	7
271	22440	7.0501	3	4	6	8	13
272	5622	6.2757	2	3	5	7	12
273	1342	4.3644	1	2	3	5	8
274	2431	6.4825	1	3	5	8	13
275	201	3.7612	1	1	2	5	8
276	989	4.4034	1	2	4	5	8

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 12/98 Grouper V17.0]

	DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile	
277		83986	5.7562	2	3	5	7	10	345
278		27530	4.4238	2	3	4	5	8	346
279		11	5.0909	1	3	4	5	8	347
280		14848	4.2196	1	2	3	5	8	348
281		6385	3.0641	1	1	3	4	6	349
282		1	3.0000	3	3	3	3	3	350
283		5325	4.7213	1	2	4	6	9	352
284		1773	3.1985	1	1	3	4	6	353
285		5979	10.5514	3	5	8	13	21	354
286		2145	6.6112	2	3	5	8	13	355
287		5999	10.4182	3	5	7	12	20	356
288		1972	5.7221	2	3	4	6	9	357
289		4787	3.0171	1	1	2	3	6	358
290		8532	2.4319	1	1	2	3	4	359
291		76	2.0132	1	1	1	2	3	360
292		4798	10.3558	2	4	8	13	21	361
293		318	4.9119	1	2	4	6	10	362
294		83797	4.7445	1	2	4	6	9	363
295		3416	3.8662	1	2	3	5	7	364
296		232852	5.2808	2	3	4	6	10	365
297		36465	3.5335	1	2	3	4	6	366
298		86	3.5116	1	1	2	4	7	367
299		1113	5.3998	1	2	4	7	11	368
300		16055	6.2361	2	3	5	8	12	369
301		2798	3.5647	1	2	3	4	7	370
302		7788	9.7017	5	6	7	11	17	371
303		19947	8.7442	4	5	7	10	15	372
304		12267	8.8996	2	4	7	11	18	373
305		2771	3.8964	1	2	3	5	7	374
306		9087	5.4264	1	2	3	7	12	375
307		2172	2.3596	1	1	2	3	4	376
308		8237	6.1412	1	2	4	8	13	377
309		4040	2.5252	1	1	2	3	5	378
310		25234	4.3353	1	2	3	5	9	379
311		7913	1.9368	1	1	1	2	4	380
312		1652	4.5745	1	1	3	6	10	381
313		636	2.4009	1	1	2	3	5	382
314		1	2.0000	2	2	2	2	2	383
315		28095	7.8214	1	2	5	10	17	384
316		93946	6.6586	2	3	5	8	13	385
317		787	3.1525	1	1	2	3	6	389
318		6040	5.9818	1	3	4	8	12	390
319		452	2.8496	1	1	2	4	6	392
320		182629	5.4053	2	3	4	7	10	394
321		26785	3.8728	2	2	3	5	7	395
322		66	3.7273	1	2	3	4	6	396
323		16620	3.2068	1	1	2	4	6	397
324		7588	1.9258	1	1	1	2	4	398
325		7746	3.8615	1	2	3	5	7	399
326		2359	2.6880	1	1	2	3	5	400
327		9	3.4444	1	2	3	6	6	401
328		682	3.7097	1	2	3	5	7	402
329		107	2.4579	1	1	1	3	5	403
331		44791	5.5053	1	3	4	7	11	404
332		4640	3.4358	1	1	3	4	7	406
333		264	4.4356	1	2	3	5	10	407
334		14143	5.0008	3	3	4	6	8	408
335		10325	3.5485	2	3	3	4	5	409
336		46390	3.6056	1	2	3	4	7	410
337		30864	2.2143	1	1	2	3	3	411
338		2138	5.1300	1	2	3	7	12	412
339		1797	4.5042	1	1	3	6	10	413
340		2	1.0000	1	1	1	1	1	414
341		4067	3.1913	1	1	2	3	6	415
342		874	3.4748	1	2	2	4	7	416
344		4100	2.3539	1	1	1	2	5	417

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
345	1230	3.7195	1	1	2	4	8
346	4931	5.7175	1	3	4	7	11
347	370	3.1595	1	1	2	4	7
348	3080	4.1844	1	2	3	5	8
349	591	2.5296	1	1	2	3	5
350	6519	4.3806	2	2	4	5	8
352	692	3.9263	1	1	3	5	7
353	2693	7.0791	3	4	5	8	13
354	8980	5.7827	3	3	4	7	10
355	5919	3.4087	2	3	3	4	5
356	28210	2.5548	1	2	2	3	4
357	6046	8.6508	3	5	7	10	16
358	24803	4.4161	2	3	3	5	7
359	29406	2.8913	2	2	3	3	4
360	17303	3.0327	1	2	3	3	5
361	473	3.3742	1	1	2	4	7
362	1	1.0000	1	1	1	1	1
363	3572	3.2900	1	2	2	3	7
364	1811	3.5400	1	1	2	4	7
365	2008	7.1116	2	3	5	9	15
366	4324	6.6751	1	3	5	8	14
367	466	3.0193	1	1	2	4	6
368	2756	6.2144	2	3	5	8	12
369	2740	3.2281	1	1	2	4	6
370	1120	5.9848	3	3	4	5	9
371	1192	3.6460	2	3	3	4	5
372	847	3.2621	1	2	2	3	5
373	3838	2.1449	1	2	2	2	3
374	134	3.1716	1	2	2	3	4
375	5	4.4000	1	1	5	5	9
376	199	3.4472	1	1	2	3	7
377	35	5.4000	1	1	3	5	13
378	173	2.7746	1	2	2	3	4
379	350	3.0914	1	1	2	3	6
380	87	1.8851	1	1	1	2	3
381	183	2.3005	1	1	1	3	5
382	54	1.2963	1	1	1	1	2
383	1486	3.9711	1	2	3	5	8
384	121	2.4132	1	1	2	3	5
385	1	2.0000	2	2	2	2	2
389	6	5.8333	1	5	5	7	7
390	9	3.3333	1	1	4	4	5
392	2630	9.6696	3	4	7	12	20
394	1779	6.8375	1	2	4	8	15
395	77187	4.5508	1	2	3	6	9
396	17	3.1765	1	1	2	4	6
397	19143	5.3427	1	2	4	7	11
398	18492	5.9583	2	3	5	7	11
399	1493	3.7173	1	2	3	5	7
400	7294	9.1058	2	3	6	11	20
401	6217	11.0227	2	5	8	14	22
402	1452	4.1887	1	1	3	5	9
403	36218	8.0041	2	3	6	10	16
404	4103	4.3359	1	2	3	6	9
406	2824	10.1331	3	5	8	13	21
407	667	4.1829	1	2	3	5	7
408	2404	7.7417	1	2	5	10	18
409	3746	6.1030	2	3	4	6	12
410	49872	3.5697	1	2	3	4	6
411	21	2.2857	1	1	2	3	4
412	28	2.0000	1	1	1	2	4
413	7391	7.4619	2	3	6	10	15
414	687	4.1499	1	2	3	5	9
415	42535	14.0456	4	6	11	17	28
416	213568	7.3051	2	4	6	9	14
417	41	4.7805	1	2	4	6	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
418	22297	6.0470	2	3	5	7	11
419	15835	4.9039	2	2	4	6	9
420	3029	3.6524	1	2	3	5	7
421	13089	3.9185	1	2	3	5	7
422	91	2.9890	1	1	2	4	6
423	9072	7.7017	2	3	6	9	16
424	1385	14.0072	2	5	10	17	27
425	15534	4.0610	1	2	3	5	8
426	4568	4.6421	1	2	3	6	9
427	1659	4.9458	1	2	3	6	11
428	855	6.7766	1	2	4	8	14
429	29435	6.5167	2	3	5	8	13
430	58875	8.3608	2	3	5	11	17
431	306	6.9869	1	3	5	8	13
432	438	5.2283	1	2	3	5	10
433	6312	3.1039	1	1	2	4	6
434	21675	5.1476	1	2	4	6	10
435	14502	4.3431	1	2	4	5	8
436	3279	13.5166	4	7	12	21	27
437	11570	8.9775	3	5	8	11	15
439	1183	7.4480	1	3	5	9	15
440	5298	8.9332	2	3	6	11	19
441	562	3.0498	1	1	2	4	7
442	15691	7.9084	1	3	6	10	16
443	3343	3.2767	1	1	2	4	7
444	5016	4.2845	1	2	3	5	8
445	2198	3.0100	1	1	2	4	6
447	4686	2.5378	1	1	2	3	5
448	2	1.5000	1	1	2	2	2
449	25965	3.6989	1	1	3	4	7
450	6281	2.0492	1	1	1	2	4
451	4	3.7500	1	1	2	4	8
452	22264	4.9182	1	2	3	6	10
453	4242	2.8868	1	1	2	4	5
454	5953	4.4749	1	2	3	5	9
455	974	2.6078	1	1	2	3	5
461	3446	4.5133	1	1	2	5	11
462	10911	12.2067	4	6	10	16	23
463	16562	4.2876	1	2	3	5	8
464	4467	3.1842	1	2	3	4	6
465	202	3.5693	1	1	1	4	7
466	1753	3.9395	1	1	2	4	8
467	1206	3.2629	1	1	2	4	6
468	59764	13.2659	3	6	10	17	26
471	11866	5.6302	3	3	5	6	9
473	7998	13.1317	2	3	7	19	33
475	109305	11.0583	2	5	9	15	22
476	5166	11.6465	2	6	10	15	21
477	26937	8.0048	1	3	6	10	17
478	118559	7.2875	1	3	5	9	15
479	21234	3.7671	1	2	3	5	7
480	446	23.0807	7	11	16	28	47
481	269	25.0632	11	19	23	30	40
482	6415	12.8803	4	7	10	15	23
483	42777	38.7018	14	21	32	48	70
484	392	13.2219	1	6	10	18	27
485	3148	9.0886	4	5	7	11	17
486	2027	12.1722	1	5	10	16	24
487	3604	7.3047	1	3	6	9	15
488	784	18.0982	3	7	13	23	37
489	14037	8.7084	2	3	5	11	18
490	4768	5.2685	1	2	4	7	10
491	11583	3.5480	2	2	3	4	6
492	2575	16.8287	4	5	12	27	35
493	55018	5.7173	1	3	5	7	11
494	26030	2.5108	1	1	2	3	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM, SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY98 MEDPAR Update 12/98 Grouper V17.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
495	130	15.9154	6	8	13	22	29
496	1095	10.7826	4	5	8	13	21
497	23026	6.2674	2	3	5	7	11
498	16601	3.4126	1	2	3	4	6
499	33369	4.8049	1	2	4	6	9
500	40659	2.7628	1	1	2	3	5
501	1974	10.0172	4	5	8	12	19
502	544	6.2702	3	4	5	7	11
503	5860	3.9602	1	2	3	5	7
504	121	31.1488	9	15	26	40	62
505	157	5.0446	1	1	2	6	11
506	966	16.7598	4	8	13	22	33
507	349	9.4413	2	4	8	13	19
508	599	8.5192	2	3	6	9	17
509	210	5.3000	1	2	4	7	10
510	1661	7.3323	2	3	5	9	16
511	645	5.1581	1	2	3	6	11
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TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 1999

State	Urban	Rural
ALABAMA	0.373	0.377
ALASKA	0.507	0.732
ARIZONA	0.368	0.536
ARKANSAS	0.478	0.452
CALFORNIA	0.369	0.472
COLORADO	0.449	0.559
CONNECTICUT	0.500	0.505
DELAWARE	0.495	0.453
DISTRICT OF COLUMBIA	0.519	.....
FLORIDA	0.378	0.387
GEORGIA	0.486	0.487
HAWAII	0.492	0.556
IDAHO	0.548	0.576
ILLINOIS	0.443	0.543
INDIANA	0.559	0.596
IOWA	0.506	0.629
KANSAS	0.420	0.627
KENTUCKY	0.491	0.515
LOUISIANA	0.430	0.495
MAINE	0.615	0.570
MARYLAND	0.764	0.821
MASSACHUSETTS	0.528	0.559
MICHIGAN	0.469	0.580
MINNESOTA	0.518	0.591
MISSISSIPPI	0.472	0.488
MISSOURI	0.423	0.506
MONTANA	0.501	0.559
NEBRASKA	0.488	0.626
NEVADA	0.296	0.474
NEW HAMPSHIRE	0.575	0.595
NEW JERSEY	0.412	.....
NEW MEXICO	0.477	0.510
NEW YORK	0.545	0.620
NORTH CAROLINA	0.536	0.506
NORTH DAKOTA	0.616	0.662
OHIO	0.521	0.565
OKLAHOMA	0.438	0.531

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 1999—Continued

State	Urban	Rural
OREGON	0.545	0.593
PENNSYLVANIA	0.407	0.531
PUERTO RICO	0.488	0.589
RHODE ISLAND	0.590	.....
SOUTH CAROLINA	0.453	0.455
SOUTH DAKOTA	0.536	0.617
TENNESSEE	0.465	0.495
TEXAS	0.415	0.517
UTAH	0.529	0.654
VERMONT	0.644	0.603
VIRGINA	0.473	0.494
WASHINGTON	0.590	0.660
WEST VIRGINIA	0.592	0.574
WISCONSIN	0.562	0.634
WYOMING	0.475	0.677

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1999

State	Ratio
ALABAMA	0.047
ALASKA	0.066
ARIZONA	0.042
ARKANSAS	0.051
CALIFORNIA	0.039
COLORADO	0.050
CONNECTICUT	0.039
DELAWARE	0.054
DISTRICT OF COLUMBIA	0.039
FLORIDA	0.046
GEORGIA	0.056
HAWAII	0.046
IDAHO	0.060

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1999—Continued

State	Ratio
ILLINOIS	0.043
INDIANA	0.059
IOWA	0.054
KANSAS	0.049
KENTUCKY	0.051
LOUISIANA	0.053
MAINE	0.040
MARYLAND	0.013
MASSACHUSETTS	0.056
MICHIGAN	0.045
MINNESOTA	0.049
MISSISSIPPI	0.048
MISSOURI	0.048
MONTANA	0.051
NEBRASKA	0.057
NEVADA	0.031
NEW HAMPSHIRE	0.066
NEW JERSEY	0.037
NEW MEXICO	0.045
NEW YORK	0.052
NORTH CAROLINA	0.050
NORTH DAKOTA	0.075
OHIO	0.052
OKLAHOMA	0.052
OREGON	0.050
PENNSYLVANIA	0.042
PUERTO RICO	0.049
RHODE ISLAND	0.035
SOUTH CAROLINA	0.047
SOUTH DAKOTA	0.060
TENNESSEE	0.055
TEXAS	0.051
UTAH	0.054
VERMONT	0.051
VIRGINIA	0.060
WASHINGTON	0.066
WEST VIRGINIA	0.056
WISCONSIN	0.056

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 1999—Continued

State	Ratio
WYOMING	0.054

Appendix A: Regulatory Impact Analysis

I. Introduction

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612), unless we certify that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

Also, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Pub. L. 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment system, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

II. Objectives

The primary objective of the hospital inpatient prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

As has been the case in our previously published regulatory impact analyses, the following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 2000, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

IV. Hospitals Included in and Excluded From the Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 45 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 50 such hospitals in Maryland remain excluded from the prospective payment system under the waiver at section 1814(b)(3) of the Act. Thus, as of February 1999, we have included 4,874 hospitals in our analysis. This represents about 82 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

The remaining 18 percent are specialty hospitals that are excluded from the prospective payment system and continue to be paid on the basis of their reasonable costs (subject to a rate-of-increase ceiling on their inpatient operating costs per discharge). These hospitals include psychiatric, rehabilitation, long-term care, children's, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

V. Impact on Excluded Hospitals and Units

As of February 1999, there were 1,085 specialty hospitals excluded from the prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by speciality, there were 587 psychiatric, 191 rehabilitation, 208 long-term care, 70 childrens', 19 Christian Science Sanatoria, and 10 cancer hospitals. In addition, there were 1,494 psychiatric and 901 rehabilitation units in hospitals otherwise subject to the prospective payment system. These excluded units are also paid in accordance with § 413.40. Under § 413.40(a)(2)(i)(A), the target rate-of-increase ceiling is not applicable to the 36 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

As required by section 1886(b)(3)(B) of the Act, the update factor applicable to the rate-of-increase limit for excluded hospitals and units for FY 2000 would be between 0 and 2.6 percent, depending on the hospital's or unit's costs in relation to its limit for the most recent cost reporting period for which information is available.

The impact on excluded hospitals and units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the percentage increases in the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and units receive. Conversely, for excluded hospitals and units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under the Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the prospective payment systems for operating and capital-related costs. We estimate the total impact of these changes for FY 2000 payments compared to FY 1999 payments to be approximately a $250 million reduction. We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 1998 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not

incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 1998 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the general prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. Payments under the capital prospective payment system, or payments for costs other than inpatient operating costs, are not analyzed here. Estimated payment impacts of proposed FY 2000 changes to the capital prospective payment system are discussed below in section VII of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of the annual reclassification of diagnoses and procedures and the recalibration of the DRG relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of changes in hospitals' wage index values reflecting the wage index update (FY 1996 data).
- The effects of fully removing from the wage index the costs and hours associated with teaching physicians Part A, residents, and CRNAs; and the effects of our proposal to implement the first year of a 5-year phase-out of these costs, by calculating a wage index based on 20 percent of hospitals' average hourly wages after removing the costs and hours associated with teaching physicians, residents, and CRNAs, and 80 percent of hospitals' average hourly wages with these costs included.
- The effects of geographic reclassifications by the MGCRB that will be effective in FY 2000.
- The total change in payments based on FY 2000 policies relative to payments based on FY 1999 policies.

To illustrate the impacts of the FY 2000 proposed changes, our analysis begins with a FY 2000 baseline simulation model using: the FY 1999 GROUPER (version 16.0); the FY 1999 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2000 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 1999 to FY 2000. Four factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban and the other areas average standardized amounts for FY 2000 using the most recently forecasted hospital market basket increase for FY 2000 of 2.7 percent minus 1.8 percentage points. Similarly, section 1886(b)(3)(C)(ii) of the Act provides that the update factor applicable to the hospital-specific rates for sole community hospitals (SCHs), essential access community hospitals (EACHs) (which are treated as SCHs for payment purposes), and Medicare-dependent, small rural hospitals (MDHs) is equal to the market basket increase of 2.7 percent minus 1.8 percentage points (for an update of 0.9 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 1999 to FY 2000 is a change in MGCRB reclassification status from one year to the next. That is, hospitals reclassified in FY 1999 that are no longer reclassified in FY 2000 may have a negative payment impact going from FY 1999 to FY 2000; conversely, hospitals not reclassified in FY 1999 that are reclassified in FY 2000 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage increase in payments for the category may be below the national mean.

A third significant factor is that we currently estimate that actual outlier payments during FY 1999 will be 6.2 percent of actual total DRG payments. When the FY 1999 final rule was published, we projected FY 1999 outlier payments would be 5.1 percent of total DRG plus outlier payments, and the standardized amounts were reduced correspondingly. The effects of the higher than expected outlier payments during FY 1999 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 1999 payments per case to estimated FY 2000 payments per case.

Fourth, payments per case in FY 1999 are reduced from FY 1999 for hospitals that receive the IME or the DSH adjustments. Section 1886(d)(5)(B)(ii) of the Act provides that the IME adjustment is reduced from approximately a 6.5 percent increase for every 10 percent increase in a hospital's resident-to-bed ratio in FY 1999, to a 6.0 percent increase in FY 2000. Similarly, in accordance with section 1886(d)(5)(F)(ix) of the Act, the DSH adjustment for FY 2000 is reduced by 3 percent from what would otherwise have been paid, compared to a 2 percent reduction for FY 1999.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,874 hospitals included in the analysis. This is 100 fewer hospitals than were included in the impact analysis in the FY 1999 final rule with comment period (63 FR 41106).

The next four rows of Table I contain hospitals categorized according to their geographic location (all urban, which is further divided into large urban and other urban, or rural). There are 2,712 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,553 hospitals located in large urban areas (populations over 1 million), and 1,160 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 2,162 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2000 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations (after consideration of geographic reclassifications) are 2,790, 1,628, 1,161, and 2,085, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,772 nonteaching hospitals in our analysis, 868 teaching hospitals with fewer than 100 residents, and 234 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.) The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (151), SCHs (639), MDHs (353), and SCH and RRCs (58) shown here were not reclassified for purposes of the standardized amount. There are three SCHs that will be reclassified for the standardized amount in FY 2000 that, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1997 Medicare cost report files, if available (otherwise FY 1996 data are used). Data needed to determine ownership status or Medicare utilization percentages were unavailable for 37 hospitals. For the most part, these are new hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first three groupings display hospitals that were reclassified by the MGCRB for both FY 1999 and FY 2000, or for either of those 2 years, by urban and rural status. The next rows illustrate the overall number of FY 2000 reclassifications, as well as the numbers of reclassified hospitals grouped by urban and rural location. The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent Changes in Payments Per Case]

	Number of hosps.[1] (0)	Drg recalib.[2] (1)	New wage date[3] (2)	Remove GME and CRNA costs[4] (3)	Blended wage index costs[5] (4)	DRG & WI changes[6] (5)	MGCRB reclassification[7] (6)	All FY 2000 changes[8] (7)
(BY GEOGRAPHIC LOCATION):								
ALL HOSPITALS	4,875	0.0	0.2	0.2	0.0	0.0	0.0	−0.6
URBAN HOSPITALS	2,712	−0.1	0.1	0.2	0.0	−0.2	−0.4	−0.8
LARGE URBAN	1,552	−0.1	−0.1	0.1	0.0	−0.4	−0.5	−1.0
OTHER URBAN	1,160	−0.1	0.4	0.4	0.1	0.1	−0.3	−0.3
RURAL HOSPITALS	2,162	0.2	0.8	0.4	0.1	0.9	2.5	0.9
BED SIZE (URBAN):								
0–99 BEDS	879	0.2	−0.1	0.3	0.1	−0.1	−0.5	−0.3
100–199 BEDS	918	0.1	0.1	0.3	0.1	0.0	−0.5	−0.3
200–299 BEDS	553	0.0	0.2	0.3	0.1	0.0	−0.4	−0.6
300–499 BEDS	423	−0.1	0.1	0.3	0.1	−0.2	−0.3	−0.8
500 OR MORE BEDS	139	−0.2	−0.1	−0.1	0.0	−0.5	−0.4	−2.0
BED SIZE (RURAL):								
0–49 BEDS	1,194	0.5	0.6	0.4	0.1	0.9	0.2	1.5
50–99 BEDS	581	0.3	0.7	0.4	0.1	0.8	0.9	1.1
100–149 BEDS	232	0.2	0.8	0.5	0.1	0.8	3.8	0.8
150–199 BEDS	85	0.1	1.0	0.4	0.1	1.0	4.3	1.1
200 OR MORE BEDS	70	0.0	0.9	0.4	0.1	0.8	4.2	0.0
URBAN BY CENSUS DIVISION:								
NEW ENGLAND	149	0.0	0.5	0.1	0.0	0.3	−0.3	−0.6
MIDDLE ATLANTIC	416	0.0	−0.5	−0.3	−0.1	−0.8	−0.4	−2.0
SOUTH ATLANTIC	401	−0.1	0.8	0.5	0.1	0.6	−0.4	0.2
EAST NORTH CENTRAL	446	−0.1	0.7	0.0	0.0	0.4	−0.4	−0.3
EAST SOUTH CENTRAL	157	−0.1	0.8	0.4	0.1	0.6	−0.4	0.1
WEST NORTH CENTRAL	183	−0.1	−0.2	0.1	0.0	−0.5	−0.4	−1.0
WEST SOUTH CENTRAL	343	0.0	−1.2	0.5	0.1	−1.4	−0.4	−2.0
MOUNTAIN	126	−0.1	0.3	0.2	0.0	0.0	−0.4	−0.3
PACIFIC	444	−0.1	−0.3	0.7	0.1	−0.4	−0.4	−0.9
PUERTO RICO	47	0.2	0.9	0.3	0.1	0.9	−0.5	0.5
RURAL BY CENSUS DIVISION:								
NEW ENGLAND	52	0.1	0.0	0.0	0.0	−0.2	2.3	0.2
MIDDLE ATLANTIC	81	0.2	−0.5	0.2	0.0	−0.5	2.2	0.0
SOUTH ATLANTIC	285	0.2	1.7	0.6	0.1	1.8	2.7	0.8
EAST NORTH CENTRAL	301	0.2	0.8	0.5	0.1	0.8	2.0	0.8
EAST SOUTH CENTRAL	270	0.3	1.6	0.6	0.1	1.8	2.5	1.8
WEST NORTH CENTRAL	490	0.2	1.2	0.2	0.0	1.2	2.3	1.6
WEST SOUTH CENTRAL	338	0.3	−1.1	0.5	0.1	−0.9	3.5	−0.2
MOUNTAIN	201	0.3	0.5	0.3	0.1	0.5	2.0	1.4
PACIFIC	139	0.2	0.4	0.5	0.1	0.4	1.9	0.4
PUERTO RICO	5	0.2	3.2	0.4	0.1	3.2	0.7	2.5
(BY PAYMENT CATEGORIES):								
URBAN HOSPITALS	2,790	−0.1	0.1	0.2	0.0	−0.1	−0.3	−0.8
LARGE URBAN	1,628	−0.1	−0.1	0.1	0.0	−0.3	−0.4	−1.0
OTHER URBAN	1,161	−0.1	0.4	0.3	0.1	0.2	−0.3	−0.2
RURAL HOSPITALS	2,085	0.2	0.8	0.4	0.1	0.8	2.2	0.9
TEACHING STATUS:								
NON-TEACHING	3,772	0.1	0.3	0.4	0.1	0.2	0.3	0.1
LESS THAN 100 RESIDENTS	868	−0.1	0.2	0.2	0.0	−0.1	−0.3	−0.6
100+ RESIDENTS	234	−0.1	−0.1	−0.1	0.0	−0.4	−0.2	−2.0
DISPROPORTIONATE SHARE HOSPITALS (DSH):								
NON-DSH	3,048	0.0	0.3	0.3	0.1	0.1	0.2	−0.3
URBAN DSH								
100 BEDS OR MORE	1,365	−0.1	0.0	0.2	0.0	−0.2	−0.3	−0.9
FEWER THAN 100 BEDS	86	0.2	−0.3	0.5	0.1	−0.2	−0.5	−0.3
RURAL DSH								
SOLE COMMUNITY (SCH)	153	0.4	0.8	0.4	0.1	1.0	−0.1	1.5
REFERRAL CENTERS (RRC)	55	0.2	1.4	0.6	0.1	1.4	4.7	1.0
OTHER RURAL DSH HOSPITALS								
100 BEDS OR MORE	57	0.3	1.4	0.6	0.1	1.6	1.1	−0.1
FEWER THAN 100 BEDS	110	0.5	1.7	0.6	0.1	2.0	0.2	2.7
URBAN TEACHING AND DSH:								
BOTH TEACHING AND DSH	703	−0.1	0.0	0.1	0.0	−0.3	−0.4	−1.0

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent Changes in Payments Per Case]

	Number of hosps.[1] (0)	Drg recalib.[2] (1)	New wage date[3] (2)	Remove GME and CRNA costs[4] (3)	Blended wage index costs[5] (4)	DRG & WI changes[6] (5)	MGCRB reclassification[7] (6)	All FY 2000 changes[8] (7)
TEACHING AND NO DSH	337	−0.1	0.2	0.1	0.0	−0.1	−0.3	−1.0
NO TEACHING AND DSH	748	0.0	0.1	0.5	0.1	0.0	−0.2	−0.1
NO TEACHING AND NO DSH	1,002	0.0	0.2	0.3	0.1	0.1	−0.5	−0.3
RURAL HOSPITAL TYPES:								
NONSPECIAL STATUS HOSPITALS	884	0.3	1.1	0.6	0.1	1.3	1.1	0.9
RRC	151	0.1	0.9	0.5	0.1	0.9	5.6	0.3
SCH	639	0.3	0.3	0.2	0.0	0.4	0.3	1.2
MDH	353	0.4	0.6	0.4	0.1	0.9	0.3	1.3
SCH AND RRC	58	0.1	0.3	0.2	0.0	0.2	2.2	1.4
TYPE OF OWNERSHIP:								
VOLUNTARY	2,838	0.0	0.1	0.2	0.0	−0.1	−0.1	−0.7
PROPRIETARY	743	0.0	0.1	0.4	0.1	0.0	0.0	−0.3
GOVERNMENT	1,256	0.1	0.6	0.4	0.1	0.5	0.2	−0.2
UNKNOWN	37	−0.1	−0.3	−0.4	−0.1	−0.6	−0.2	−2.0
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:								
0–25	372	0.0	−0.4	0.6	0.1	−0.5	−0.1	−2.0
25–50	1,745	−0.1	0.0	0.2	0.0	−0.3	−0.2	−1.0
50–65	1,893	0.0	0.3	0.2	0.0	0.2	0.1	−0.2
OVER 65	822	0.1	0.7	0.3	0.1	0.6	0.3	0.2
UNKNOWN	42	−0.1	−0.3	−0.4	−0.1	−0.6	−0.2	−2.0
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:								
RECLASSIFICATION STATUS DURING FY 1999 AND FY 2000:								
RECLASSIFIED DURING BOTH FY 1999 AND FY 2000	373	0.1	0.6	0.4	0.1	0.5	5.6	−0.3
URBAN	55	0.0	0.1	0.5	0.1	0.0	4.1	−2.0
RURAL	318	0.1	0.8	0.4	0.1	0.7	6.3	0.5
RECLASSIFIED DURING FY 2000 ONLY	131	0.0	1.2	0.3	0.1	1.0	3.3	4.5
URBAN	30	−0.2	1.2	0.2	0.0	0.8	2.2	2.9
RURAL	101	0.2	1.1	0.4	0.1	1.2	5.4	7.3
RECLASSIFIED DURING FY 1999 ONLY	136	0.1	0.4	0.4	0.1	0.4	−0.7	−6.0
URBAN	32	−0.1	−0.1	0.4	0.1	−0.3	−0.9	−6.0
RURAL	104	0.3	1.0	0.5	0.1	1.1	−0.4	−5.0
FY 2000 RECLASSIFICATIONS:								
ALL RECLASSIFIED HOSPITALS	504	0.0	0.7	0.4	0.1	0.6	5.1	0.8
STANDARDIZED AMOUNT ONLY	65	0.2	0.6	0.5	0.1	0.7	2.7	−0.7
WAGE INDEX ONLY	393	0.0	0.8	0.4	0.1	0.6	5.5	1.0
BOTH	46	0.1	0.4	0.4	0.1	0.3	3.8	0.2
NONRECLASSIFIED	4,344	0.0	0.1	0.2	0.0	−0.1	−0.5	−0.7
ALL URBAN RECLASSIFIED	85	−0.1	0.5	0.3	0.1	0.3	3.4	−0.1
STANDARDIZED AMOUNT ONLY	13	0.1	−0.4	0.5	0.1	−0.3	0.9	−4.0
WAGE INDEX ONLY	49	−0.2	0.8	0.3	0.1	0.5	4.3	0.5
BOTH	23	0.1	−0.2	0.4	0.1	−0.2	0.4	−0.9
NONRECLASSIFIED	2,627	−0.1	0.1	0.2	0.0	−0.2	−0.6	−0.9
ALL RURAL RECLASSIFIED	419	0.1	0.8	0.4	0.1	0.8	6.1	1.4
STANDARDIZED AMOUNT ONLY	52	0.2	1.3	0.6	0.1	1.4	4.0	1.9
WAGE INDEX ONLY	344	0.1	0.7	0.4	0.1	0.7	6.0	1.3
BOTH	23	0.1	1.4	0.4	0.1	1.3	9.3	1.8
NONRECLASSIFIED	1,717	0.3	0.8	0.4	0.1	0.9	−0.4	0.9
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	26	0.2	0.7	0.6	0.1	0.8	−0.5	−9.0

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 1998, and hospital cost report data are from reporting periods beginning in FY 1996 and FY 1997.

[2] This column displays the payment impact of the recalibration of the DRG weights based on FY 1998 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[3] This column shows the payment effects of updating the data used to calculate the wage index with data from the FY 1996 cost reports.

[4] This column displays the impact of completely removing the costs and hours associated with teaching physicians Part A, residents, and CRNAs from the wage index calculation.

[5] This column illustrates the payment impact of phasing out the costs and hours associated with teaching physicians Part A, residents, and CRNAs, by calculating the wage index by blending 20 percent of an average hourly wage after removing these costs with 80 percent of an average hourly wage without removing these costs.

[6] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, and the budget neutrality adjustment factor for these two changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 1, 2, 3, and 4, and the FY 2000 budget neutrality factor of 0.997393.

[7] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2000 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2000. Reclassification for prior years has no bearing on the payment impacts shown here.

[8] This column shows changes in payments from FY 1999 to FY 2000. It incorporates all of the changes displayed in columns 5 and 6 (the changes displayed in columns 1, 2, and 4 are included in column 5). It also displays the impact of the FY 2000 update, changes in hospitals' reclassification status in FY 2000 compared to FY 1999, the difference in outlier payments from FY 1999 to FY 2000, and the reductions to payments through the IME and DSH adjustments taking effect during FY 2000. The sum of these columns may be different from the percentage changes shown here due to rounding and interactive effects.

B. Impact of the Proposed Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 1)

In column 1 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 1999 DRG relative weights (GROUPER version 16) to aggregate payments using the proposed FY 2000 DRG relative weights (GROUPER version 17). Overall payments are unaffected by the DRG reclassification and recalibration. Consistent with the minor changes we are proposing for the FY 2000 GROUPER, the redistributional impacts of DRG reclassifications and recalibration across hospital groups are very small (a 0.1 percent decrease for large and other urban hospitals; a 0.2 percent increase for rural hospitals). Within hospital categories, the net effects for urban hospitals are small positive changes for small hospitals (a 0.2 percent increase for hospitals with fewer than 100 beds), and small decreases for larger hospitals (a 0.2 percent decrease for hospitals with more than 500 beds). Among rural hospitals, small hospital categories experience the largest increases, a 0.5 percent increase for hospitals with fewer than 50 beds.

The breakdown by urban census division shows that the decrease among urban hospitals is spread across most census categories. Payments to urban hospitals in New England, the Middle Atlantic, and the West South Central census divisions are unchanged, while payments to urban hospitals in Puerto Rico rise by 0.2 percent. All rural hospital census divisions experience payment increases ranging from 0.1 percent for hospitals in New England, to 0.3 percent for hospitals in the East South Central, West South Central, and Mountain census divisions. All other divisions experience a 0.2 percent increase.

This pattern of payment increases for small hospitals and decreases for larger hospitals persists among other categories. Declines in the relative weights of several specific DRGs likely contribute to this trend. Among these DRGs, the relative weight for DRG 108 (Other Cardiothoracic Procedures), declined from 5.9764 in FY 1999 to 5.7505 in this proposed rule for FY 2000. Also, the relative weight for DRG 112 (Percutaneous Cardiovascular Procedures) declined from 1.9893 in FY 1999 to 1.9200 in this proposed rule for FY 2000. Although these cardiovascular procedures are not necessarily limited to very large hospitals, we would expect they are more likely to occur in larger hospitals. As the relative weights of DRGs predominantly occurring in large hospitals decline, the relative weights of other DRGs rise, leading to the small payment increases in hospitals less likely to be affected by the declines in the DRGs noted above.

C. Impact of Updating the Wage Data (Column 2)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 2000 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1995 and before October 1, 1996. As with the previous column, the impact of the new data on hospital payments is isolated by holding the other payment parameters constant in the two simulations. That is, column 2 shows the percentage changes in payments when going from a model using the FY 1999 wage index (effective for discharges on or after March 1, 1999 (64 FR 9378)) based on FY 1995 wage data before geographic reclassifications to a model using the FY 2000 prereclassification wage index based on FY 1996 wage data.

The wage data collected on the FY 1996 cost reports is similar to the data used in the calculation of the FY 1999 wage index. For example, the wage index values used here include all physician Part A costs (direct and contracted), resident costs, and CRNA costs. Also, as in the calculation for the FY 1999 wage index, contract labor costs and hours for top management positions are included, and the overhead costs allocated to patient care areas excluded from the calculation of the wage index are excluded as well.

The results indicate that the new wage data have an overall impact of a 0.2 percent increase in hospital payments (prior to applying the budget neutrality factor, see column 5). Rural hospitals especially appear to benefit from the update. Their payments increase by 0.8 percent. These increases are attributable to relatively large increases in the wage index values for the rural areas of particular States; Arizona, Puerto Rico, and South Carolina all had increases greater than 6 percent in their prereclassification wage index values. At the same time, several States experience large declines due to moving to the FY 1996 wage data; Massachusetts, Texas, and Utah all had decreases greater than 6 percent.

Urban hospitals as a group are not significantly affected by the updated wage data. The gains of hospitals in other urban areas (0.4 percent increase) are offset by decreases among hospitals in large urban areas (0.1 percent decrease). Urban West South Central hospitals experience a 1.0 percent decrease, largely due to a number of MSAs in Texas with prereclassified FY 2000 wage indexes that fall by 6 percent or more. We note that the wage data used for the proposed wage index are based upon the data available as of February 22, 1999, and therefore, do not reflect revision requests received by the fiscal intermediaries after February 22, 1999. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions are likely to affect the impacts shown in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year.

The largest increases are seen in the rural census divisions. Rural Puerto Rico experiences the greatest positive impact, 3.2 percent. Hospitals in three other census divisions receive positive impacts over 1.0 percent; South Atlantic at 1.7 percent, East South Central at 1.6 percent, and West North Central at 1.2 percent.

D. Impact of Removing Teaching Physicians' Part A, Residents', and CRNAs' Costs (Column 3)

As discussed in section III.C of the preamble, we are proposing to revise the calculation of the wage index by phasing out the costs and hours associated with teaching physicians Part A, residents, and CRNAs. Although the proposed FY 2000 wage index is based upon a blend of 20 percent of hospitals' average hourly wages after removing these costs and 80 percent of average hourly wages calculated without removing these costs, this column displays the impacts on payments per case of completely removing these costs from the wage index calculation.

As described above in section III.C.1 of the preamble, we determined teaching physician costs by first subtracting the costs and hours attributable to teaching physicians based upon the special survey data we collected for this purpose. If these data were not available from the survey for a particular teaching hospital, 80 percent of the total physician Part A costs and hours for that hospital were removed, consistent with the recommendation of hospital (see discussion in section III.C.1 of the preamble). If a teaching hospital did not separately report its physician Part A costs on the cost report, the amount reported on Line 23, Column 1, of the Worksheet A was removed from the total wage data (as was an associated amount for hours). Resident and CRNA costs and hours were removed in their entirety, based upon the data separately attributed to these employees on the Worksheet S–3.

Column 3 shows the payment impacts of completely removing these costs, relative to wage index values calculated based on the FY 1996 wage data without removing these costs. The overall payment impact of completely removing these costs and hours from the wage index calculation would be a 0.2 percent increase in total payments (prior to applying budget neutrality). The FY 2000 proposed wage index is, however, based on a blended average hourly wage. The impacts of this blended approach are shown in column 4.

The impact of removing these costs from the wage index calculation are generally positive across the majority of hospital categories. However, examining the impacts across urban and rural census divisions indicate that urban Middle Atlantic hospitals experience a 0.3 percent decrease. This effect is attributable to the concentration of teaching hospitals in this census division. The largest positive impact occurs in the

urban Pacific census division, a 0.7 percent payment increase.

As noted above, the data used to prepare the proposed FY 2000 wage index are subject to revision. In particular, in early February 1999, we instructed the fiscal intermediaries to review the survey data on collected teaching physician costs. We have also extended the deadline for teaching hospitals to request revisions to their teaching physician survey data until June 7, 1999. The extent of these requests and the number of changes that are approved by the fiscal intermediaries may change the impacts in the final rule.

E. Impact of 5-Year Phase-Out of Teaching Physicians', Residents', and CRNA Costs (Column 4)

As described above in section III.E of this preamble, the proposed FY 2000 wage index is calculated by blending 80 percent of hospitals' average hourly wages calculated without removing teaching physician Part A, residents, or CRNA costs (and hours); and 20 percent of average hourly wages calculated after removing these costs (and hours). This constitutes the first year of a 5-year phase-out of these costs, where the proportion of the calculation based upon average hourly wages after removing these costs increases by 20 percentage points per year.

This column shows the impact of the blended wage index relative to a wage index using FY 1996 wage data without removing costs or hours of teaching physicians Part A, residents, or CRNAs. The impacts in column 4 are minimal (an increase or decrease of 0.1 percent). As expected, the hospital categories experiencing negative payment impacts in column 3 experience either negative 0.1 percent changes or no change here. The overall impact is 0.0 percent.

The combined wage index changes in Table I are determined by summing the individual impacts in columns 2 and 4. For example, the urban West South Central census division loses 1.2 percent from the new wage data, and gains 0.1 percent from the blended wage index. Therefore, the combined impact of the proposed FY 2000 wage index for these hospitals is a 1.1 percent decrease.

The following chart compares the shifts in wage index values for labor market areas for FY 2000 relative to FY 1999. This chart demonstrates the impact of the proposed changes for the FY 2000 wage index relative to the FY 1999 wage index. The majority of labor market areas (299) experience less than a 5 percent change. A total of 47 labor market areas experience an increase of more than 5 percent with 14 having an increase greater than 10 percent. A total of 28 areas experience decreases of more than 5 percent. Of those, 7 decline by 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 1999	FY 2000
Increase more than 10 percent	9	14
Increase more than 5 percent and less than 10 percent	29	33
Increase or decrease less than 5 percent	305	299
Decrease more than 5 percent and less than 10 percent	28	21
Decrease more than 10 percent	0	7

Among urban hospitals, 169 would experience an increase of between 5 and 10 percent and 40 more than 10 percent. A total of 139 rural hospitals have increases greater than 5 percent, but none greater than 10 percent. On the negative side, 130 urban hospitals and 187 rural hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. There are no rural hospitals with decreases greater than 10 percent, and 21 urban hospitals in this category. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	40	0
Increase more than 5 percent and less than 10 percent	169	139
Increase or decrease less than 5 percent	2352	1836
Decrease more than 5 percent and less than 10 percent	130	187
Decrease more than 10 percent	21	0

F. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 5)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared simulated aggregate payments using the FY 1999 DRG relative weights and wage index to simulated aggregate payments using the proposed FY 2000 DRG relative weights and blended wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 0.997393. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 5. The 0.0 percent impact for All Hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 1, 2, and 4, minus approximately 0.3 percent attributable to the budget neutrality factor. There may be some variation of plus or minus 0.1 percent due to rounding.

G. Impact of MGCRB Reclassifications (Column 6)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 6 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2000. As noted below, these decisions affect hospitals' standardized amount and wage index area assignments. In addition, rural hospitals reclassified for purposes of the standardized amount qualify to be treated as urban for purposes of the DSH adjustment.

Beginning in 1998, by February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. (In previous years, these determinations were made by March 30.) The MGCRB may approve a hospital's reclassification request for the purpose of using the other area's standardized amount, wage index value, or both or for FYs 1999–2001 for purposes of

qualifying for a DSH adjustment or to receive a higher DSH payment.

The proposed FY 2000 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2000. The wage index values also reflect any decisions made by the HCFA Administrator through the appeals and review process for MGCRB decisions as of February 27, 1999. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 2000.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.994453 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this proposed rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.5 percent, while payments to urban hospitals decline 0.4 percent. Hospitals in other urban areas see a decrease in payments of 0.3 percent, while large urban hospitals lose 0.5 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among all rural hospital groups. The smallest increases among the rural census divisions is 0.7 percent for Puerto Rico and 1.9 percent for Pacific. The largest increase is in rural West South Central, with an increase of 3.5 percent.

Among rural hospitals designated as RRCs, 127 hospitals are reclassified for purposes of the wage index only, leading to the 5.6 percent increase in payments among RRCs overall. This positive impact on RRCs is also reflected in the category of rural hospitals with 200 or more beds, which has a 4.2 percent increase in payments.

Rural hospitals reclassified for FY 1999 and FY 2000 experience a 6.3 percent increase in payments. This may be due to the fact that these hospitals have the most to gain from reclassification and have been reclassified for a period of years. Rural hospitals reclassified for FY 2000 only experience a 5.4 percent increase in payments, while rural hospitals reclassified for FY 1999 only experience a 0.4 percent decrease in payments. Urban hospitals reclassified for FY 1999 but not FY 2000 experience a 0.9 percent decline in payments overall. Urban hospitals reclassified for FY 2000 but not for FY 1999 experience a 3.3 percent increase in payments.

The FY 2000 Reclassification rows of Table I show the changes in payments per case for all FY 2000 reclassified and nonreclassified hospitals in urban and rural locations for each of the three reclassification categories (standardized amount only, wage index only, or both). The table illustrates that the largest impact for reclassified rural hospitals is for those hospitals reclassified for both the standardized amount and the wage index. These hospitals receive a 9.3 percent increase in payments. In addition, rural hospitals reclassified just for the wage index receive a 6.0 percent payment increase. The overall impact on reclassified hospitals is to increase their payments per case by an average of 5.1 percent for FY 2000.

The reclassification of hospitals primarily affects payment to nonreclassified hospitals through changes in the wage index and the geographic reclassification budget neutrality adjustment required by section 1886(d)(8)(D) of the Act. Among hospitals that are not reclassified, the overall impact of hospital reclassifications is an average decrease in payments per case of about 0.5 percent. Rural nonreclassified hospitals decrease by 0.4 percent, and urban nonreclassified hospitals lose 0.6 percent (the amount of the budget neutrality offset).

The foregoing analysis was based on MGCRB and HCFA Administrator decisions made by February 27, 1999. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

H. All Changes (Column 7)

Column 7 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2000 (including statutory changes), to our estimate of payments per case in FY 1999. It includes the effects of the 0.9 percent update to the standardized amounts and the hospital-specific rates for SCHs and MDHs. It also reflects the 1.1 percentage point difference between the projected outlier payments in FY 2000 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 1999 (6.2 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

Additional changes affecting the difference between FY 1999 and FY 2000 payments are the reductions to the IME and DSH adjustments enacted by the Balanced Budget Act of 1997. These changes initially went into effect during FY 1998 and include additional decreases in payment for each of several succeeding years. As noted in the introduction to this impact analysis, for FY 2000, IME is reduced to approximately a 6.0 percent rate of increase, and DSH is reduced by 3 percent from what hospitals otherwise would receive. We estimate the overall effect of these statutory changes to be a 0.5 percent reduction in FY 2000 payments. For hospitals receiving both IME and DSH, the impact is estimated to be a 0.8 percent reduction in payments per case.

We also note that column 8 includes the impacts of FY 2000 MGCRB reclassifications compared to the payment impacts of FY 1999 reclassifications. Therefore, when comparing FY 2000 payments to FY 1999, the percent changes due to FY 2000 reclassifications shown in column 6 need to be offset by the effects of reclassification on hospitals' FY 1999 payments (column 7 of Table 1, July 31, 1998 final rule (63 FR 41106)). For example, the impact of MGCRB reclassifications on rural hospitals' FY 1999 payments was approximately a 2.7 percent increase, more than offsetting the 2.5 percent increase in column 6 for FY 2000. Therefore, the net change in FY 2000 payments due to reclassification for rural hospitals is actually a decrease of 0.2 percent relative to FY 1999. However, last year's analysis contained a somewhat different set of hospitals, so this might affect the numbers slightly.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 7 may not equal the sum of the changes in columns 5 and 6, plus the other impacts that we are able to identify.

The overall payment change from FY 1999 to FY 2000 for all hospitals is a 0.6 percent decrease. This reflects the 0.9 percent update for FY 2000, the 1.1 percent lower outlier payments in FY 1999 compared to FY 1999 (5.1 percent compared to 6.2 percent); and the 0.5 percent reduction due to lower IME and DSH payments.

Hospitals in urban areas experience a 0.8 percent drop in payments per case compared to FY 1999. The 0.4 percent negative impact due to reclassification is offset by an identical negative impact for FY 1999. The impact of reducing IME and DSH is a 0.6 percent reduction in FY 2000 payments per case. Payment to hospitals in large urban areas are expected to fall 1.0 percent per case compared to 0.3 percent per case for hospitals in other urban areas.

Hospitals in rural areas, meanwhile, experience a 0.9 percent payment increase. As discussed previously, this is primarily due to the positive effect due to the wage index and DRG changes (0.9 percent increase).

Among census divisions, urban Middle Atlantic and the West South Central display the largest negative impacts, 2.0 percent decrease in payments per case for hospitals in these two divisions. These negative impacts are primarily related to the relatively large decreases attributable to the proposed wage index. Hospitals in the South Atlantic and East South Central census divisions, along with Puerto Rico, are the only urban categories grouped by census division exhibiting increases in payments per case for FY 2000. Again, this appears to be related to the proposed FY 2000 wage index.

The only rural census division to experience a negative payment impact is West South Central (0.2 percent fall), and as is generally the case, this appears to be related to a negative payment impact related to their FY 1996 wage data. The largest increases by rural hospitals are in Puerto Rico at 2.5 percent. Among rural census divisions, the largest increases are in the East South Central and West North Central, with 1.8 percent and 1.6 percent increases in their FY 2000 payments per case, respectively. As with the other impacts discussed above, this is generally due to updating the wage data. One rural census division that did not experience an increase in payments as large

as suggested by the positive impact of updating the wage data was the South Atlantic. This census division experienced a 3.8 percent payment increase due to geographic reclassification in FY 1999, but the effect of geographic reclassification in FY 2000 was only 2.7 percent.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 1.2 percent, 1.3 percent, and 1.4 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 1999 to FY 2000 (from 6.2 of total DRG plus outlier payments to 5.1 percent) as do hospitals paid based on the national standardized amounts.

The largest negative payment impacts from FY 1999 to FY 2000 are among hospitals that were reclassified for FY 1999 and are not reclassified for FY 2000. Overall, these hospitals lose 6.0 percent. The urban hospitals in this category lose 6.0 percent, while the rural hospitals lose 5.0 percent. On the other hand, hospitals reclassified for FY 2000 that were not reclassified for FY 1999 would experience the greatest payment increases: 4.5 percent overall; 7.3 percent for 101 rural hospitals in this category and 2.9 percent for 32 urban hospitals.

TABLE II—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments Per Case]

	Number of hospitals (1)	Average FY1999 payment per case (2) [1]	Average FY 2000 payment per case (3) [1]	All changes (4)
(BY GEOGRAPHIC LOCATION):				
ALL HOSPITALS	4,875	6,770	6,730	−0.6
URBAN HOSPITALS	2,712	7,346	7,285	−0.8
LARGE URBAN AREAS	1,552	7,879	7,787	−1.2
OTHER URBAN AREAS	1,160	6,623	6,604	−0.3
RURAL HOSPITALS	2,162	4,505	4,546	0.9
BED SIZE (URBAN):				
0–99 BEDS	679	4,973	4,957	−0.3
100–199 BEDS	918	6,165	6,147	−0.3
200–299 BEDS	553	6,998	6,958	−0.6
300–499 BEDS	423	7,803	7,741	−0.8
500 OR MORE BEDS	139	9,912	9,733	−1.8
BED SIZE (RURAL):				
0–49 BEDS	1,194	3,725	3,779	1.5
50–99 BEDS	581	4,226	4,274	1.1
100–149 BEDS	232	4,605	4,643	0.8
150–199 BEDS	85	4,930	4,983	1.1
200 OR MORE BEDS	70	5,734	5,733	0.0
URBAN BY CENSUS DIVISION:				
NEW ENGLAND	149	7,723	7,677	−0.6
MIDDLE ATLANTIC	416	8,278	8,110	−2.0
SOUTH ATLANTIC	401	6,990	7,001	0.2
EAST NORTH CENTRAL	446	6,994	6,973	−0.3
EAST SOUTH CENTRAL	157	6,579	6,586	0.1
WEST NORTH CENTRAL	183	7,053	6,981	−1.0
WEST SOUTH CENTRAL	343	6,785	6,660	−1.8
MOUNTAIN	126	7,016	6,996	−0.3
PACIFIC	444	8,460	8,388	−0.9
PUERTO RICO	47	3,108	3,124	0.5
RURAL BY CENSUS DIVISION:				
NEW ENGLAND	52	5,356	5,369	0.2
MIDDLE ATLANTIC	81	4,862	4,860	0.0
SOUTH ATLANTIC	285	4,681	4,721	0.8
EAST NORTH CENTRAL	301	4,559	4,596	0.8
EAST SOUTH CENTRAL	270	4,162	4,239	1.8
WEST NORTH CENTRAL	490	4,279	4,349	1.6
WEST SOUTH CENTRAL	338	4,002	3,993	−0.2
MOUNTAIN	201	4,751	4,817	1.4
PACIFIC	139	5,600	5,625	0.4
PUERTO RICO	5	2,334	2,392	2.5
(BY PAYMENT CATEGORIES):				
URBAN HOSPITALS	2,790	7,310	7,251	−0.8
LARGE URBAN	1,628	7,806	7,715	−1.2
OTHER URBAN	1,161	6,610	6,596	−0.2
RURAL HOSPITALS	2,085	4,480	4,519	0.9
TEACHING STATUS:				
NON-TEACHING	3,772	5,473	5,477	0.1
FEWER THAN 100 RESIDENTS	868	7,184	7,138	−0.6
100 OR MORE RESIDENTS	234	10,858	10,658	−1.8
DISPROPORTIONATE SHARE HOSPITALS (DSH):				

TABLE II—IMPACT ANALYSIS OF CHANGES FOR FY 2000 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments Per Case]

	Number of hospitals (1)	Average FY1999 payment per case (2) [1]	Average FY 2000 payment per case (3) [1]	All changes (4)
NON-DSH	3,048	5,792	5,775	−0.3
URBAN DSH:				
100 BEDS OR MORE	1,365	7,972	7,900	−0.9
FEWER THAN 100 BEDS	86	5,193	5,180	−0.3
RURAL DSH:				
SOLE COMMUNITY (SCH):	153	4,205	4,266	1.5
REFERRAL CENTERS (RRC)	55	5,357	5,408	1.0
OTHER RURAL DSH HOSPITALS:				
100 BEDS OR MORE	57	4,186	4,183	−0.1
FEWER THAN 100 BEDS	110	3,597	3,692	2.7
URBAN TEACHING AND DSH:				
BOTH TEACHING AND DSH	703	8,936	8,826	−1.2
TEACHING AND NO DSH	337	7,281	7,211	−1.0
NO TEACHING AND DSH	748	6,371	6,362	−0.1
NO TEACHING AND NO DSH	1,002	5,646	5,630	−0.3
RURAL HOSPITAL TYPES:				
NONSPECIAL STATUS HOSPITALS	884	3,964	3,997	0.9
RRC	151	5,225	5,243	0.3
SCH	639	4,470	4,524	1.2
MDH	353	3,757	3,805	1.3
SCH AND RRC	58	5,368	5,442	1.4
TYPE OF OWNERSHIP:				
VOLUNTARY	2,838	6,943	6,895	−0.7
PROPRIETARY	743	6,202	6,181	−0.3
GOVERNMENT	1,256	6,286	6,273	−0.2
UNKNOWN	37	9,806	9,626	−1.8
MEDICARE UTILIZATION AS A PERCENT OF INPATIENT DAYS:				
0–25	372	8,826	8,692	−1.5
25–50	1,745	7,924	7,844	−1.0
50–65	1,893	5,997	5,986	−0.2
OVER 65	822	5,272	5,285	0.2
UNKNOWN	42	9,716	9,539	−1.8
HOSPITALS RECLASSIFIED BY THE MEDICARE GEOGRAPHIC REVIEW BOARD:				
RECLASSIFICATION STATUS DURING FY 1999 AND FY 2000:				
RECLASSIFIED DURING BOTH FY 1999 AND FY 2000	373	5,819	5,803	−0.3
URBAN	55	8,004	7,849	−1.9
RURAL	318	5,202	5,226	0.5
RECLASSIFIED DURING FY 2000 ONLY	131	6,183	6,459	4.5
URBAN	30	8,096	8,327	2.9
RURAL	101	4,362	4,682	7.3
RECLASSIFIED DURING FY 1999 ONLY	136	5,577	5,267	−5.6
URBAN	32	6,976	6,568	−5.8
RURAL	104	4,611	4,369	−5.3
FY 2000 RECLASSIFICATIONS:				
ALL RECLASSIFIED HOSPITALS	504	5,896	5,943	0.8
STANDARDIZED AMOUNT ONLY	65	4,764	4,732	−0.7
WAGE INDEX ONLY	393	5,981	6,041	1.0
BOTH	46	6,156	6,168	0.2
NONRECLASSIFIED	4,344	6,889	6,839	−0.7
ALL URBAN RECLASSIFIED	85	8,039	8,028	−0.1
STANDARDIZED AMOUNT ONLY	13	5,253	5,032	−4.2
WAGE INDEX ONLY	49	8,867	8,908	0.5
BOTH	23	6,894	6,834	−0.9
NONRECLASSIFIED	2,627	7,318	7,255	−0.9
ALL RURAL RECLASSIFIED	419	5,075	5,144	1.4
STANDARDIZED AMOUNT ONLY	52	4,468	4,551	1.9
WAGE INDEX ONLY	344	5,110	5,175	1.3
BOTH	23	5,281	5,379	1.8
NONRECLASSIFIED	1,717	4,108	4,143	0.9
OTHER RECLASSIFIED HOSPITALS (SECTION 1886(d)(8)(B))	26	4,781	4,361	−8.8

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 2000 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the projected payments per case for FY 2000 with the average estimated per case payments for FY 1999, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 7 of Table I.

VII. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

We now have cost report data for the 5th and 6th years of the capital prospective payment system (cost reports beginning in FY 1996 and in FY 1997) available through the December 1998 update of the HCRIS. We also have updated information on the projected aggregate amount of obligated capital approved by the fiscal intermediaries. However, our impact analysis of payment changes for capital-related costs is still limited by the lack of hospital-specific data on several items. These are the hospital's projected new capital costs for each year, its projected old capital costs for each year, and the actual amounts of obligated capital that will be put in use for patient care and recognized as Medicare old capital costs in each year. The lack of this information affects our impact analysis in the following ways:

- Major investment in hospital capital assets (for example, in building and major fixed equipment) occurs at irregular intervals. As a result, there can be significant variation in the growth rates of Medicare capital-related costs per case among hospitals. We do not have the necessary hospital-specific budget data to project the hospital capital growth rate for individual hospitals.
- Our policy of recognizing certain obligated capital as old capital makes it difficult to project future capital-related costs for individual hospitals. Under § 412.302(c), a hospital is required to notify its intermediary that it has obligated capital by the later of October 1, 1992, or 90 days after the beginning of the hospital's first cost reporting period under the capital prospective payment system. The intermediary must then notify the hospital of its determination whether the criteria for recognition of obligated capital have been met by the later of the end of the hospital's first cost reporting period subject to the capital prospective payment system or 9 months after the receipt of the hospital's notification. The amount that is recognized as old capital is limited to the lesser of the actual allowable costs when the asset is put in use for patient care or the estimated costs of the capital expenditure at the time it was obligated. We have substantial information regarding intermediary determinations of projected aggregate obligated capital amounts. However, we still do not know when these projects will actually be put into use for patient care, the actual amount that will be recognized as obligated capital when the project is put into use, or the Medicare share of the recognized costs. Therefore, we do not know actual obligated capital commitments for purposes of the FY 2000 capital cost projections. In Appendix B of this proposed rule, we discuss the assumptions and computations that we employ to generate the amount of obligated capital commitments for use in the FY 2000 capital cost projections.

In Table III of this section, we present the redistributive effects that are expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals in FY 2000. In addition, we have integrated sufficient hospital-specific information into our actuarial model to project the impact of the proposed FY 2000 capital payment policies by the standard prospective payment system hospital groupings. While we now have actual information on the effects of the transition payment methodology and interim payments under the capital prospective payment system and cost report data for most hospitals, we still need to randomly generate numbers for the change in old capital costs, new capital costs for each year, and obligated amounts that will be put in use for patient care services and recognized as old capital each year. We continue to be unable to predict accurately FY 2000 capital costs for individual hospitals, but with the most recent data hospitals' experience under the capital prospective payment system, there is adequate information to estimate the aggregate impact on most hospital groupings.

B. Projected Impact Based on the Proposed FY 2000 Actuarial Model

1. Assumptions

In this impact analysis, we model dynamically the impact of the capital prospective payment system from FY 1999 to FY 2000 using a capital cost model. The FY 2000 model, as described in Appendix B of this proposed rule, integrates actual data from individual hospitals with randomly generated capital cost amounts. We have capital cost data from cost reports beginning in FY 1989 through FY 1997 as reported on the December 1998 update of HCRIS, interim payment data for hospitals already receiving capital prospective payments through PRICER, and data reported by the intermediaries that include the hospital-specific rate determinations that have been made through January 1, 1999 in the provider-specific file. We used these data to determine the proposed FY 2000 capital rates. However, we do not have individual hospital data on old capital changes, new capital formation, and actual obligated capital costs. We have data on costs for capital in use in FY 1997, and we age that capital by a formula described in Appendix B. Therefore, we need to randomly generate only new capital acquisitions for any year after FY 1997. All Federal rate payment parameters are assigned to the applicable hospital.

For purposes of this impact analysis, the proposed FY 2000 actuarial model includes the following assumptions:

- Medicare inpatient capital costs per discharge will change at the following rates during these periods:

AVERAGE PERCENTAGE CHANGE IN CAPITAL COSTS PER DISCHARGE

Fiscal year	Percentage change
1998	−0.71
1999	−0.15
2000	0.75

- The Medicare case-mix index will increase by 1.0 percent in FY 1999 and 0.5 percent in FY 2000.
- The Federal capital rate and hospital-specific rate were updated in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs, and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 2000 update is −0.6 percent (see section IV of the Addendum to this proposed rule).

2. Results

We have used the actuarial model to estimate the change in payment for capital-related costs from FY 1999 to FY 2000. Table III shows the effect of the capital prospective payment system on low capital cost hospitals and high capital cost hospitals. We consider a hospital to be a low capital cost hospital if, based on a comparison of its initial hospital-specific rate and the applicable Federal rate, it will be paid under the fully prospective payment methodology. A high capital cost hospital is a hospital that, based on its initial hospital-specific rate and the applicable Federal rate, will be paid under the hold-harmless payment methodology. Based on our actuarial model, the breakdown of hospitals is as follows:

CAPITAL TRANSITION PAYMENT METHODOLOGY FOR FY 2000

Type of Hospital	Percent of hospitals	Percent of discharges	Percent of capital costs	Percent of capital payments
Low Cost Hospital	66	61	54	59
High Cost Hospital	34	39	46	41

A low capital cost hospital may request to have its hospital-specific rate redetermined based on old capital costs in the current year, through the later of the hospital's cost reporting period beginning in FY 1994 or the first cost reporting period beginning after obligated capital comes into use (within the limits established in § 412.302(e) for putting obligated capital into use for patient care). If the redetermined hospital-specific rate is greater than the adjusted Federal rate, these hospitals will be paid under the hold-harmless payment methodology. Regardless of whether the hospital became a hold-harmless payment hospital as a result of a redetermination, we continue to show these hospitals as low capital cost hospitals in Table III.

Assuming no behavioral changes in capital expenditures, Table III displays the percentage change in payments from FY 1999 to FY 2000 using the above described actuarial model. With the proposed Federal rate, we estimate aggregate Medicare capital payments will increase by 2.66 percent in FY 2000.

TABLE III.—IMPACT OF PROPOSED CHANGES FOR FY 2000 ON PAYMENTS PER DISCHARGE

	Number of hospitals	Discharges	Adjusted Federal payment	Average Federal percent	Hospital specific payment	Hold harmless payment	Exceptions payment	Total payment	Percent change over FY 1999
FY 1999 Payments per Discharge:									
Low Cost Hospitals	3,200	6,737,171	$521.48	81.42	$58.83	$3.46	$8.72	$592.49	
Fully Prospective	2,977	6,138,720	511.78	80.00	64.57	.....	8.44	584.79	.....
100% Federal Rate	193	538,418	642.90	100.00	.....	.....	4.44	647.34	.....
Hold Harmless	30	60,033	423.55	60.65	.....	388.55	75.12	887.21	.....
High Cost Hospitals	1,634	4,248,111	658.19	97.70	.....	22.81	14.66	695.65	.....
100% Federal Rate	1,424	3,876,299	677.27	100.00	.....	.....	7.26	684.53	.....
Hold Harmless	210	371,812	459.27	72.18	.....	260.63	91.71	811.60	.....
Total Hospitals	4,834	10,985,282	574.34	87.91	36.08	10.94	11.01	632.38	.....
FY 2000 Payments per Discharge:									
Low Cost Hospitals	3,200	6,785,508	573.45	90.60	29.15	2.91	10.29	615.79	3.93
Fully Prospective	2,977	6,182,772	569.26	90.00	31.99	.....	9.24	610.48	4.39
100% Federal Rate	194	543,519	632.85	100.00	.....	.....	4.51	637.36	−1.54
Hold Harmless	29	59,217	465.60	68.51	.....	333.70	173.36	972.66	9.63
High Cost Hospitals	1,634	4,278,443	649.22	98.47	.....	16.61	24.44	690.27	−0.77
100% Federal Rate	1,442	3,951,867	663.34	100.00	.....	.....	11.28	674.62	−1.45
Hold Harmless	192	326,576	478.35	78.33	.....	217.65	183.66	879.66	8.38
Total Hospitals	4,834	11,063,951	602.75	93.72	17.87	8.21	15.76	644.59	1.93

We project that low capital cost hospitals paid under the fully prospective payment methodology will experience an average increase in payments per case of 4.39 percent, and high capital cost hospitals will experience an average decrease of 0.77 percent. These results are due to the change in the blended percentages to the payment system to 90 percent adjusted Federal rate and 10 percent hospital-specific rate.

For hospitals paid under the fully prospective payment methodology, the Federal rate payment percentage will increase from 80 percent to 90 percent and the hospital-specific rate payment percentage will decrease from 20 to 10 percent in FY 2000. The Federal rate payment percentage for hospitals paid under the hold-harmless payment methodology is based on the hospital's ratio of new capital costs to total capital costs. The average Federal rate payment percentage for high cost hospitals receiving a hold-harmless payment for old capital will increase from 72.18 percent to 78.83 percent. We estimate the percentage of hold-harmless hospitals paid based on 100 percent of the Federal rate will increase from 87.1 percent to 88.2 percent. We estimate that the few remaining high cost hold-harmless hospitals (192) will experience an increase in payments of 8.38 percent from FY 1999 to FY 2000. The increase occurs because we estimate that exception payments per discharge will increase 50.1 percent from FY 1999 to FY 2000 for high cost hold-harmless hospitals. While we estimate that this group's regular hold-harmless payments for old capital will decline by 16.5 percent due to the retirement of old capital, we estimate that its high overall capital costs will cause an increase in these hospitals' exceptions payments from $91.71 per discharge in FY 1999 to $183.66 per discharge in FY 2000. This is primarily due to the estimated decrease in outlier payments, which will cause an estimated increase in exceptions payments to cover unmet capital costs.

We expect that the average hospital-specific rate payment per discharge will decrease from $64.57 in FY 1999 to $31.99 in FY 2000. This is mostly due to the decrease in the hospital-specific rate payment percentage from 20 percent in FY 1999 to 10 percent in FY 2000.

We are proposing no changes in our exceptions policies for FY 2000. As a result, the minimum payment levels would be—

• 90 percent for sole community hospitals;
• 80 percent for urban hospitals with 100 or more beds and a disproportionate share patient percentage of 20.2 percent or more; or
• 70 percent for all other hospitals.

We estimate that exceptions payments will increase from 1.74 percent of total capital payments in FY 1999 to 2.45 percent of payments in FY 2000. The projected distribution of the exception payments is shown in the chart below:

ESTIMATED FY 2000 EXCEPTIONS PAYMENTS

Type of hospital	Number of hospitals	Percent of exceptions payments
Low Capital Cost	180	40
High Capital Cost	208	60
Total	388	100

C. Cross-Sectional Comparison of Capital Prospective Payment Methodologies

Table IV presents a cross-sectional summary of hospital groupings by capital prospective payment methodology. This distribution is generated by our actuarial model.

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS

	(1) Total number of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
By Geographic Location:				
All hospitals	4,834	4.6	33.8	61.6
Large urban areas (populations over 1 million)	1,531	4.8	41.7	53.4
Other urban areas (populations of 1 million of fewer)	1,146	5.7	42.0	52.4
Rural areas	2,157	3.8	23.9	72.3
Urban hospitals	2,677	5.2	41.8	53.0
0–99 beds	650	6.5	34.3	59.2
100–199 beds	912	7.2	48.5	44.3
200–299 beds	553	4.2	42.3	53.5
300–499 beds	423	1.4	39.2	59.3
500 or more beds	139	1.4	39.6	59.0
Rural hospitals	2,157	3.8	23.9	72.3
0–49 beds	1,190	3.4	16.8	79.7
50–99 beds	580	4.5	29.5	66.0
100–149 beds	232	4.7	36.6	58.6
150–199 beds	85	3.5	30.6	65.9
200 or more beds	70	1.4	48.6	50.0
By Region:				
Urban by Region	2,677	5.2	41.8	53.0
New England	148	0.7	28.4	70.9
Middle Atlantic	412	2.7	36.4	60.9
South Atlantic	399	5.3	52.9	41.9
East North Central	444	6.1	31.8	62.2
East South Central	154	10.4	46.8	42.9
West North Central	179	3.4	40.2	56.4
West South Central	331	10.3	59.2	30.5
Mountain	123	5.7	50.4	43.9
Pacific	440	3.4	36.6	60.0
Puerto Rico	47	2.1	27.7	70.2
Rural by Region	2,157	3.8	23.9	72.3
New England	52	1.9	23.1	75.0
Middle Atlantic	80	6.3	20.0	73.8
South Atlantic	285	1.4	34.7	63.9
East North Central	300	3.3	18.3	78.3
East South Central	270	2.6	34.1	63.3
West North Central	490	3.7	15.9	80.4
West South Central	337	3.9	27.9	68.2
Mountain	200	8.5	18.0	73.5
Pacific	138	5.1	23.9	71.0
By Payment Classification:				
Large urban areas (populations over 1 million)	1,607	4.7	41.8	53.6
Other urban areas (populations of 1 million of fewer)	1,147	5.8	41.3	52.9
Rural areas	2,080	3.8	23.6	72.5
Teaching Status:				
Non-teaching	3,732	5.0	33.1	61.9
Fewer than 100 Residents	868	3.8	37.0	59.2
100 or more Residents	234	1.3	33.3	65.4

TABLE IV.—DISTRIBUTION BY METHOD OF PAYMENT (HOLD-HARMLESS/FULLY PROSPECTIVE) OF HOSPITALS RECEIVING CAPITAL PAYMENTS—Continued

	(1) Total number of hospitals	(2) Hold-harmless		(3) Percentage paid fully prospective rate
		Percentage paid hold-harmless (A)	Percentage paid fully federal (B)	
Disproportionate share hospitals (DSH):.				
Non-DSH	3,014	4.6	29.9	65.5
Urban DSH:				
100 or more beds	1,362	4.4	44.6	51.0
Less than 100 beds	84	8.3	23.8	67.9
Rural DSH:				
Sole Community (SCH)	153	5.9	20.9	73.2
Referral Center (RRC)	55	3.6	43.6	52.7
Other Rural:.				
100 or more beds	57	1.8	43.9	54.4
Less than 100 beds	109	2.8	25.7	71.6
Urban teaching and DSH:				
Both teaching and DSH	703	2.7	37.7	59.6
Teaching and no DSH	337	4.5	33.8	61.7
No teaching and DSH	743	6.5	48.7	44.8
No teaching and no DSH	971	6.1	41.6	52.3
Rural Hospital Types:				
Non special status hospitals	881	1.7	25.0	73.3
RRC/EACH	151	0.7	43.0	56.3
SCH/EACH	638	7.7	21.0	71.3
Medicare-dependent hospitals (MDH)	352	2.3	16.2	81.5
SCH, RRC and EACH	58	12.1	25.9	62.1
Type of Ownership:				
Voluntary	2,826	4.0	33.4	62.6
Proprietary	721	7.6	59.1	33.3
Government	1,255	3.8	20.8	75.4
Medicare Utilization as a Percent of Inpatient Days:				
0–25	360	4.4	27.8	67.8
25–50	1,739	4.8	36.6	58.7
50–65	1,885	4.2	33.3	62.5
Over 65	817	4.7	32.9	62.4

As we explain in Appendix B of this proposed rule, we were not able to determine a hospital-specific rate for 40 of the 4,874 hospitals in our database. Consequently, the payment methodology distribution is based on 4,834 hospitals. These data should be fully representative of the payment methodologies that will be applicable to hospitals.

The cross-sectional distribution of hospital by payment methodology is presented by: (1) Geographic location; (2) region; and (3) payment classification. This provides an indication of the percentage of hospitals within a particular hospital grouping that will be paid under the fully prospective payment methodology and the hold-harmless payment methodology.

The percentage of hospitals paid fully Federal (100 percent of the Federal rate) as hold-harmless hospitals is expected to increase to 33.8 percent in FY 2000.

Table IV indicates that 61.6 percent of hospitals will be paid under the fully prospective payment methodology. (This figure, unlike the figure of 66 percent for low cost capital hospitals in the chart on "Capital Transition Payment Methodology for FY 2000," in section VII.B.2. of this preamble takes into account the effects of redeterminations. In other words, this figure does not include low cost hospitals that, following a hospital-specific rate redetermination, are now paid under the hold-harmless methodology.) As expected, a relatively higher percentage of rural and governmental hospitals (72.5 percent and 75.4 percent, respectively by payment classification) are being paid under the fully prospective payment methodology. This is a reflection of their lower than average capital costs per case. In contrast, only 33.3 percent of proprietary hospitals are being paid under the fully prospective methodology. This is a reflection of their higher than average capital costs per case. (We found at the time of the August 30, 1991 final rule (56 FR 43430) that 62.7 percent of proprietary hospitals had a capital cost per case above the national average cost per case.)

D. Cross-Sectional Analysis of Changes in Aggregate Payments

We used our FY 2000 actuarial model to estimate the potential impact of our proposed changes for FY 2000 on total capital payments per case, using a universe of 4,834 hospitals. The individual hospital payment parameters are taken from the best available data, including: the January 1, 1999 update to the provider-specific file, cost report data, and audit information supplied by intermediaries. In Table V we present the results of the cross-sectional analysis using the results of our actuarial model and the aggregate impact of the proposed FY 2000 payment policies. Columns 3 and 4 show estimates of payments per case under our model for FY 1999 and FY 2000. Column 5 shows the total percentage change in payments from FY 1999 to FY 2000. Column 6 presents the percentage change in payments that can be attributed to Federal rate changes alone.

Federal rate changes represented in Column 6 include the 1.0 percent decrease in the Federal rate, a 0.5 percent increase in case mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB. Column 5 includes the effects of the Federal rate changes represented in Column 6. Column 5 also reflects the effects

of all other changes, including the change from 80 percent to 90 percent in the portion of the Federal rate for fully prospective hospitals, the hospital-specific rate update, changes in the proportion of new to total capital for hold-harmless hospitals, changes in old capital (for example, obligated capital put in use), hospital-specific rate redeterminations, and exceptions. The comparisons are provided by: (1) Geographic location, (2) region, and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 1.9 percent in FY 2000, despite the effect of the 1.4 percent decrease attributable to the reduction in the Federal rate and other factors (which include changes in the adjustment to the Federal rate, the increase in case mix, and the other components of column 6 of table V).

Our comparison by geographic location shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (1.8 percent and 2.8 percent, respectively). This difference is due to the higher rate of decrease for urban hospitals relative to rural hospitals (1.6 percent and 0.4 percent, respectively) from the Federal rate changes alone. Urban hospitals will gain approximately the same as rural hospitals (3.4 percent versus 3.2 percent) from the effects of all other changes.

Most regions are estimated to receive increases in total capital payments per case, partly due to the increased share of payments that are based on the Federal rate (from 80 to 90 percent). Changes by region vary from a low of 1.1 percent decrease (West South Central urban region) to a high of 5.9 percent increase (West North Central rural region).

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (3.1 percent, a 3.9 percent increase from the effects of all other changes and a 0.8 percent decrease due to Federal rate changes). Payments to voluntary hospitals will increase 1.9 percent (a 3.3 percent increase from the effects of all other changes and a 1.4 percent decrease due to Federal rate changes), and payments to proprietary hospitals will increase 1.1 percent (a 3.1 percent increase from the effects of all other changes and a 2.0 percent decrease due to Federal rate changes).

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both and for purposes of DSH, for FY 1999–2001. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2000 compared to the effects of reclassification for FY 1999, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2000 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2000 as a whole are projected to experience a 2.8 percent increase in payments (a 3.1 percent increase attributable to the effects of all other changes and a 0.3 percent decrease attributable to Federal rate changes). Payments to nonreclassified hospitals will increase slightly less (1.9 percent) than reclassified hospitals (2.8 percent) overall. Payments to nonreclassified hospitals will decrease more than reclassified hospitals from the Federal rate changes (1.5 percent compared to 0.3 percent), but they will gain about the same from the effects of all other changes (3.4 percent compared to 3.1 percent).

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 1999 Compared to FY 2000]

	Number of hospitals	Average FY 1999 payments/case	Average FY 2000 payments/case	All changes	Portion attributable to Federal rate change
By Geographic Location:					
All hospitals	4,834	632	645	1.9	−1.4
Large urban areas (populations over 1 million)	1,531	731	742	1.5	−1.8
Other urban areas (populations of 1 million or fewer)	1,146	622	636	2.3	−1.3
Rural areas	2,157	426	438	2.8	−0.4
Urban hospitals	2,677	684	697	1.8	−1.6
0–99 beds	650	501	507	1.1	−1.6
100–199 beds	912	602	609	1.2	−1.5
200–299 beds	553	660	673	2.0	−1.6
300–499 beds	423	704	720	2.3	−1.5
500 or more beds	139	892	906	1.5	−1.9
Rural hospitals	2,157	426	438	2.8	−0.4
0–49 beds	1,190	346	359	3.9	0.2
50–99 beds	580	400	413	3.4	−0.1
100–149 beds	232	439	451	2.7	−0.4
150–199 beds	85	459	479	4.3	−0.4
200 or more beds	70	549	550	0.1	−1.1
By Region:					
Urban by Region	2,677	684	697	1.8	−1.6
New England	148	693	715	3.1	−1.0
Middle Atlantic	412	751	759	1.1	−2.2
South Atlantic	399	671	692	3.1	−1.0
East North Central	444	645	663	2.7	−0.9
East South Central	154	642	662	3.1	−1.3
West North Central	179	664	672	1.3	−1.8
West South Central	331	664	657	−1.1	−2.9
Mountain	123	657	667	1.6	−1.2
Pacific	440	762	773	1.5	−1.9
Puerto Rico	47	298	295	−1.0	−1.4

TABLE V.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued

[FY 1999 Compared to FY 2000]

	Number of hospitals	Average FY 1999 payments/case	Average FY 2000 payments/case	All changes	Portion attributable to Federal rate change
Rural by Region	2,157	426	438	2.8	−0.4
New England	52	507	515	1.6	−0.6
Middle Atlantic	80	446	458	2.7	−1.3
South Atlantic	285	439	451	2.6	−0.4
East North Central	300	441	449	1.8	−0.4
East South Central	270	391	403	3.2	0.4
West North Central	490	417	442	5.9	0.6
West South Central	337	380	381	0.3	−1.7
Mountain	200	447	466	4.3	0.5
Pacific	138	498	512	2.8	−0.7
By Payment Classification:					
All hospitals	4,834	632	645	1.9	−1.4
Large urban areas (populations over 1 million)	1,607	724	735	1.5	−1.8
Other urban areas (populations of 1 million or fewer)	1,147	620	635	2.3	−1.3
Rural areas	2,080	423	435	2.9	−0.4
Teaching Status:					
Non-teaching	3,732	532	541	1.7	−1.2
Fewer than 100 Residents	868	664	679	2.1	−1.6
100 or more Residents	234	946	967	2.2	−1.8
Urban DSH:					
100 or more beds	1,362	724	737	1.8	−1.6
Less than 100 beds	84	505	500	−0.9	−1.2
Rural DSH:					
Sole Community (SCH/EACH)	153	390	418	7.3	0.1
Referral Center (RRC/EACH)	55	484	492	1.8	−0.5
Other Rural:					
100 or more beds	57	392	396	1.1	−0.6
Less than 100 beds	109	331	348	5.3	1.4
Urban teaching and DSH:					
Both teaching and DSH	703	794	811	2.1	−1.7
Teaching and no DSH	337	681	696	2.2	−1.6
No teaching and DSH	743	607	614	1.3	−1.5
No teaching and no DSH	971	573	580	1.3	−1.5
Rural Hospital Types:					
Non special status hospitals	881	378	387	2.6	−0.4
RRC/EACH	151	490	500	1.9	−0.9
SCH/EACH	638	428	446	4.4	0.0
Medicare-dependent hospitals (MDH)	352	345	357	3.5	0.0
SCH, RRC and EACH	58	498	511	2.4	0.2
Hospitals Reclassified by the Medicare Geographic Classification Review Board:					
Reclassification Status During FY1999 and FY2000:					
Reclassified During Both FY1999 and FY2000	373	553	561	1.3	−1.3
Reclassified During FY2000 Only	131	594	642	8.1	3.1
Reclassified During FY1999 Only	136	531	513	−3.4	−6.3
FY2000 Reclassifications:					
All Reclassified Hospitals	504	562	578	2.8	−0.3
All Nonreclassified Hospitals	4,304	642	654	1.9	−1.5
All Urban Reclassified Hospitals	85	751	775	3.2	−1.1
Urban Nonreclassified Hospitals	2,592	682	694	1.7	−1.6
All Reclassified Rural Hospitals	419	489	502	2.6	0.1
Rural Nonreclassified Hospitals	1,712	381	394	3.4	−0.4
Other Reclassified Hospitals (Section 1886(D)(8)(B))	26	463	429	−7.3	−8.8
Type of Ownership:					
Voluntary	2,826	646	658	1.9	−1.4
Proprietary	721	634	641	1.1	−2.0
Government	1,255	555	572	3.1	−0.8
Medicare Utilization as a Percent of Inpatient Days:					
0–25	360	768	789	2.8	−2.1
25–50	1,739	726	737	1.5	−1.7
50–65	1,885	575	588	2.2	−1.2

Appendix B: Technical Appendix on the Capital Cost Model and Required Adjustments

Under section 1886(g)(1)(A) of the Act, we set capital prospective payment rates for FY 1992 through FY 1995 so that aggregate prospective payments for capital costs were projected to be 10 percent lower than the amount that would have been payable on a reasonable cost basis for capital-related costs in that year. To implement this requirement, we developed the capital acquisition model to determine the budget neutrality adjustment factor. Even though the budget neutrality requirement expired effective with FY 1996, we must continue to determine the recalibration and geographic reclassification budget neutrality adjustment factor and the reduction in the Federal and hospital-specific rates for exceptions payments. To determine these factors, we must continue to project capital costs and payments.

We used the capital acquisition model from the start of prospective payments for capital costs through FY 1997. We now have 6 years of cost reports under the capital prospective payment system. For FY 1998, we developed a new capital cost model to replace the capital acquisition model. This revised model makes use of the data from these cost reports.

The following cost reports are used in the capital cost model for this proposed rule: the December 31, 1998 update of the cost reports for PPS–IX (cost reporting periods beginning in FY 1992), PPS–X (cost reporting periods beginning in FY 1993), PPS–XI (cost reporting periods beginning in FY 1994), PPS–XII (cost reporting periods beginning in FY 1995), PPS–XIII (cost reporting periods beginning in FY 1996), and PPS–XIV (cost reporting periods beginning in FY 1997). In addition, to model payments, we use the January 1, 1999 update of the provider-specific file, and the March 1994 update of the intermediary audit file.

Since hospitals under alternative payment system waivers (that is, hospitals in Maryland) are currently not paid under the capital prospective payment system, we excluded these hospitals from our model.

We developed FY 1992 through FY 1999 hospital-specific rates using the provider-specific file and the intermediary audit file. (We used the cumulative provider-specific file, which includes all updates to each hospital's records, and chose the latest record for each fiscal year.) We checked the consistency between the provider-specific file and the intermediary audit file. We ensured that increases in the hospital-specific rates were at least as large as the published updates (increases) for the hospital-specific rates each year. We were able to match hospitals to the files as shown in the following table:

Source	Number of hospitals
Neither File	1
Audit File only	53
Provider-Specific File Only	103
Provider-Specific and Audit File	4717
Total	4874

Sixty-three of the 4,874 hospitals had unusable or missing data, or had no cost reports available. For 21 of the 63 hospitals, we were unable to determine a hospital-specific rate from the available cost reports. However, there was adequate cost information to determine that these hospitals were paid under the hold-harmless methodology. Since the hospital-specific rate is not used to determine payments for hospitals paid under the hold-harmless methodology, there was sufficient cost report information available to include these 21 hospitals in the analysis. We were able to estimate hospital-specific amounts from the PPS–IX cost report data for an additional 2 hospitals. Hence, we were able to use 23 of the 63 hospitals. We used 4,834 hospitals for the analysis. Forty hospitals could not be used in the analysis because of insufficient information. These hospitals account for less than 0.2 percent of admissions. Therefore, any effects from the elimination of their cost report data should be minimal.

We analyzed changes in capital-related costs (depreciation, interest, rent, leases, insurance, and taxes) reported in the cost reports. We found a wide variance among hospitals in the growth of these costs. For hospitals with more than 100 beds, the distribution and mean of these cost increases were different for large changes in bed-size (greater than ±20 percent). We also analyzed changes in the growth in old capital and new capital for cost reports that provided this information. For old capital, we limited the analysis to decreases in old capital. We did this since the opportunity for most hospitals to treat "obligated" capital put into service as old capital has expired. Old capital costs should decrease as assets become fully depreciated and as interest costs decrease as the loan is amortized.

The new capital cost model separates the hospitals into three mutually exclusive groups. Hold-harmless hospitals with data on old capital were placed in the first group. Of the remaining hospitals, those hospitals with fewer than 100 beds comprise the second group. The third group consists of all hospitals that did not fit into either of the first two groups. Each of these groups displayed unique patterns of growth in capital costs. We found that the gamma distribution is useful in explaining and describing the patterns of increase in capital costs. A gamma distribution is a statistical distribution that can be used to describe patterns of growth rates, with the greatest proportion of rates being at the low end. We use the gamma distribution to estimate individual hospital rates of increase as follows:

(1) For hold-harmless hospitals, old capital cost changes were fitted to a truncated gamma distribution, that is, a gamma distribution covering only the distribution of cost decreases. New capital costs changes were fitted to the entire gamma distribution, allowing for both decreases and increases.

(2) For hospitals with fewer than 100 beds (small), total capital cost changes were fitted to the gamma distribution, allowing for both decreases and increases.

(3) Other (large) hospitals were further separated into three groups:

- Bed-size decreases over 20 percent (decrease).
- Bed-size increases over 20 percent (increase).
- Other (no change).

Capital cost changes for large hospitals were fitted to gamma distributions for each bed-size change group, allowing for both decreases and increases in capital costs. We analyzed the probability distribution of increases and decreases in bed size for large hospitals. We found the probability somewhat dependent on the prior year change in bed size and factored this dependence into the analysis. Probabilities of bed-size change were determined. Separate sets of probability factors were calculated to reflect the dependence on prior year change in bed size (increase, decrease, and no change).

The gamma distributions were fitted to changes in aggregate capital costs for the entire hospital. We checked the relationship between aggregate costs and Medicare per discharge costs. For large hospitals, there was a small variance, but the variance was larger for small hospitals. Since costs are used only for the hold-harmless methodology and to determine exceptions, we decided to use the gamma distributions fitted to aggregate cost increases for estimating distributions of cost per discharge increases.

Capital costs per discharge calculated from the cost reports were increased by random numbers drawn from the gamma distribution to project costs in future years. Old and new capital were projected separately for hold-harmless hospitals. Aggregate capital per discharge costs were projected for all other hospitals. Because the distribution of increases in capital costs varies with changes in bed size for large hospitals, we first projected changes in bed size for large hospitals before drawing random numbers from the gamma distribution. Bed-size changes were drawn from the uniform distribution with the probabilities dependent on the previous year bed-size change. The gamma distribution has a shape parameter and a scaling parameter. (We used different parameters for each hospital group, and for old and new capital.)

We used discharge counts from the cost reports to calculate capital cost per discharge. To estimate total capital costs for FY 1998 (the MedPAR data year) and later, we use the number of discharges from the MEDPAR data. Some hospitals have considerably more discharges in FY 1998 than in the years for which we calculated cost per discharge from the cost report data. Consequently, a hospital with few cost report discharges would have a high capital cost per discharge, since fixed

costs would be allocated over only a few discharges. If discharges increase substantially, the cost per discharge would decrease because fixed costs would be allocated over more discharges. If the projection of capital cost per discharge is not adjusted for increases in discharges, the projection of exceptions would be overstated. We address this situation by recalculating the cost per discharge with the MedPAR discharges if the MedPAR discharges exceed the cost report discharges by more than 20 percent. We do not adjust for increases of less than 20 percent because we have not received all of the FY 1998 discharges, and we have removed some discharges from the analysis because they are statistical outliers. This adjustment reduces our estimate of exceptions payments, and consequently, the reduction to the Federal rate for exceptions is smaller. We will continue to monitor our modeling of exceptions payments and make adjustments as needed.

The average national capital cost per discharge generated by this model is the combined average of many randomly generated increases. This average must equal the projected average national capital cost per discharge, which we projected separately (outside this model). We adjusted the shape parameter of the gamma distributions so that the modeled average capital cost per discharge matches our projected capital cost per discharge. The shape parameter for old capital was not adjusted since we are modeling the aging of "existing" assets. This model provides a distribution of capital costs among hospitals that is consistent with our aggregate capital projections.

Once each hospital's capital-related costs are generated, the model projects capital payments. We use the actual payment parameters (for example, the case-mix index and the geographic adjustment factor) that are applicable to the specific hospital.

To project capital payments, the model first assigns the applicable payment methodology (fully prospective or hold-harmless) to the hospital as determined from the provider-specific file and the cost reports. The model simulates Federal rate payments using the assigned payment parameters and hospital-specific estimated outlier payments. The case-mix index for a hospital is derived from the FY 1998 MedPAR file using the proposed FY 2000 DRG relative weights included in section VI. of the Addendum to this proposed rule. The case-mix index is increased each year after FY 1998 based on analysis of past experiences in case-mix increases. Based on analysis of recent case-mix increases, we estimate that case-mix will increase 0.5 percent in FY 1999 and 0.5 percent in FY 2000. (Since we are using FY 1998 cases for our analysis, the FY 1998 increase in case mix has no effect on projected capital payments.)

Changes in geographic classification and revisions to the hospital wage data used to establish the hospital wage index affect the geographic adjustment factor. Changes in the DRG classification system and the relative weights affect the case-mix index.

Section 412.308(c)(4)(ii) requires that the estimated aggregate payments for the fiscal year, based on the Federal rate after any changes resulting from DRG reclassifications and recalibration and the geographic adjustment factor, equal the estimated aggregate payments based on the Federal rate that would have been made without such changes. For FY 1999, the budget neutrality adjustment factors were 1.00294 for the national rate and 1.00233 for the Puerto Rico rate.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we applied separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We applied the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 since the geographic adjustment factor for Puerto Rico was implemented in 1998.

To determine the factors for FY 2000, we first determined the portions of the Federal national and Puerto Rico rates that would be paid for each hospital in FY 2000 based on its applicable payment methodology. Using our model, we then compared, separately for the national rate and the Puerto Rico rate, estimated aggregate Federal rate payments based on the FY 1999 DRG relative weights and the FY 1999 geographic adjustment factor to estimated aggregate Federal rate payments based on the FY 1999 relative weights and the FY 2000 geographic adjustment factor. In making the comparison, we held the FY 2000 Federal rate portion constant and set the other budget neutrality adjustment factor and the exceptions reduction factor to 1.00. We determined that, to achieve budget neutrality for the changes in the national geographic adjustment factor, an incremental budget neutrality adjustment of 0.99845 for FY 2000 should be applied to the previous cumulative FY 1999 adjustment of 1.00294, yielding a cumulative adjustment of 1.00139 through FY 2000. For the Puerto Rico geographic adjustment factor, an incremental budget neutrality adjustment of 1.00151 for FY 2000 should be applied to the previous cumulative FY 1999 adjustment of 1.00233, yielding a cumulative adjustment of 1.00384 through FY 2000. We apply these new adjustments, then compare estimated aggregate Federal rate payments based on the FY 1999 DRG relative weights and the FY 2000 geographic adjustment factors to estimated aggregate Federal rate payments based on the FY 2000 DRG relative weights and the FY 2000 geographic adjustment factors. The incremental adjustment for DRG classifications and changes in relative weights would be 1.00014 nationally and for Puerto Rico. The cumulative adjustments for DRG classifications and changes in relative weights and for changes in the geographic adjustment factors through FY 2000 would be 1.00153 nationally, and 1.00398 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			Cumulative
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG reclassifications and recalibration	Combined	
1992	.....	.....	.....	1.00000	.....	.....	.....	.....
1993	.....	.....	0.99800	0.99800	.....	.....	.....	.....
1994	.....	.....	1.00531	1.00330	.....	.....	.....	.....
1995	.....	.....	0.99980	1.00310	.....	.....	.....	.....
1996	.....	.....	0.99940	1.00250	.....	.....	.....	.....
1997	.....	.....	0.99873	1.00123	.....	.....	.....	.....
1998	.....	.....	0.99892	1.00015	.....	.....	.....	1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99845	1.00014	0.99859	1.00153	1.00151	1.00014	1.00165	1.00398

The methodology used to determine the recalibration and geographic (DRG/GAF) budget neutrality adjustment factor is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the geographic adjustment factor (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients or the large urban add-on payments.

In addition to computing the DRG/GAF budget neutrality adjustment factor, we used the model to simulate total payments under the prospective payment system.

Additional payments under the exceptions process are accounted for through a reduction in the Federal and hospital-specific rates. Therefore, we used the model to calculate the exceptions reduction factor. This exceptions reduction factor ensures that aggregate payments under the capital prospective payment system, including exceptions payments, are projected to equal the aggregate payments that would have been made under the capital prospective payment system without an exceptions process. Since changes in the level of the payment rates change the level of payments under the exceptions process, the exceptions reduction factor must be determined through iteration.

In the August 30, 1991 final rule (56 FR 43517), we indicated that we would publish each year the estimated payment factors generated by the model to determine payments for the next 5 years. The table below provides the actual factors for FYs 1992 through 1999, the proposed factors for FY 2000, and the estimated factors that would be applicable through FY 2004. We caution that these are estimates for FYs 2000 and later, and are subject to revisions resulting from continued methodological refinements, receipt of additional data, and changes in payment policy changes. We note that in making these projections, we have assumed that the cumulative national DRG/GAF budget neutrality adjustment factor will remain at 1.00153 (1.00398 for Puerto Rico) for FY 2000 and later because we do not have sufficient information to estimate the change that will occur in the factor for years after FY 2000.

The projections are as follows:

Fiscal year	Update factor	Exceptions reduction factor	Budget neutrality factor	DRG/GAF adjustment factor [1]	Outlier adjustment factor	Federal rate adjustment	Federal rate (after outlier) reduction
1992	N/A	0.9813	0.9602	.....	.9497	.....	415.59
1993	6.07	.9756	.9162	.9980	.9496	.....	417.29
1994	3.04	.9485	.8947	1.0053	.9454	[2] .9260	378.34
1995	3.44	.9734	.8432	.9998	.9414	.....	376.83
1996	1.20	.9849	N/A	.9994	.9536	[3] .9972	461.96
1997	0.70	.9358	N/A	.9987	.9481	.....	438.92
1998	0.90	.9659	N/A	.9989	.9382	[4] .8222	371.51
1999	0.10	.9783	N/A	1.0028	.9392	.....	378.10
2000	−0.60	.9752	N/A	.9986	.9397	.....	374.31
2001	0.50	.9645	N/A	[5] 1.0000	[5] .9397	.....	372.06
2002	0.50	[6] 1.0000	N/A	1.0000	.9397	.....	387.68
2003	0.50	[6] 1.0000	N/A	1.0000	.9397	[4] 1.0255	399.57
2004	-0.60	[6] 1.0000	N/A	1.0000	.9397	.....	401.97

[1] Note: The incremental change over the previous year.
[2] Note: OBRA 1993 adjustment.
[3] Note: Adjustment for change in the transfer policy.
[4] Note: Balanced Budget Act of 1997 adjustment.
[5] Note: Future adjustments are, for purposes of this projection, assumed to remain at the same level.
[6] Note: We are unable to estimate exceptions payments for the year under the special exceptions provision (§ 412.348(g) of the regulations) because the regular exceptions provision (§ 412.348(e)) expires.

Appendix C: Report to Congress

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THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

APR 1 1999

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 2000 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates an update for all PPS hospitals equal to the market basket rate of increase (2.7 percent) minus 1.8 percentage points. However, based on the continuing decline in hospital operating costs and the related record levels of hospital Medicare and total operating profit margins, we recommend an update for hospitals in both large urban and other areas of zero percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection in order to maintain access to services for Medicare beneficiaries. Medicare-dependent small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection in order to maintain access to services for beneficiaries. As you know, SCHs and MDHs are PPS hospitals. However, SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate and MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. We also recommend an update of zero percent to the hospital-specific rate.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Current law mandates that the update for all hospitals and distinct part units excluded from PPS equals the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit, or 0 if costs do not exceed two thirds of the limit. The President's FY 2000 budget incorporates an increase to the TEFRA limit using 2.7 percent for the excluded hospital market basket increase. Therefore, depending on the hospital's costs in relation to its limit, the update would be the market basket increase

minus a percentage between 0 and 2.5 percentage points, or 0. Thus, we recommend an increase in the TEFRA limits of between 0 and 2.7 percent.

My recommendation for the updates is based on cost projections used in the President's FY 2000 budget. A final recommendation on the appropriate percentage increases for FY 2000 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate the Health Care Financing Administration's analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 2000.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,

Donna E. Shalala

Donna E. Shalala

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

APR 1 1999

The Honorable Albert Gore, Jr.
President of the Senate
Washington, D.C. 20510

Dear Mr. President:

Section 1886(e)(3) of the Social Security Act (the Act) requires me to report to Congress the initial estimate of the applicable percentage increase in hospital inpatient payment rates for fiscal year (FY) 2000 that I will recommend for hospitals subject to the Medicare prospective payment system (PPS) and for hospitals and units excluded from PPS. This submission constitutes the required report.

Current law mandates an update for all PPS hospitals equal to the market basket rate of increase (2.7 percent) minus 1.8 percentage points. However, based on the continuing decline in hospital operating costs and the related record high levels of hospital Medicare and total operating profit margins, we recommend an update for hospitals in both large urban and other areas of zero percent.

Sole community hospitals (SCHs) are the sole source of care in their area and are afforded special payment protection in order to maintain access to services for Medicare beneficiaries. Medicare-dependent small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their area and are afforded special payment protection in order to maintain access to services for beneficiaries. As you know, SCHs and MDHs are PPS hospitals. However, SCHs are paid the higher of a hospital-specific rate or the Federal PPS rate and MDHs are paid the Federal PPS rate, or, if their hospital-specific rate exceeds the Federal PPS rate, the Federal rate plus 50 percent of the difference between the hospital-specific rate and the Federal rate. We also recommend an update of zero percent to the hospital-specific rate.

Hospitals and distinct part hospital units excluded from PPS are paid based on their reasonable costs subject to a limit under the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Current law mandates that the update for all hospitals and distinct part units excluded from PPS equals the rate of increase in the excluded hospital market basket less a percentage between 0 and 2.5 percentage points, depending on the hospital's costs in relation to its limit, or 0 if costs do not exceed two thirds of the limit. The President's FY 2000 budget incorporates an increase to the TEFRA limit using 2.7 percent for the excluded hospital market basket increase. Therefore, depending on the hospital's costs in relation to its limit, the update would be the market basket increase

minus a percentage between 0 and 2.5 percentage points, or 0. Thus, we recommend an increase in the TEFRA limits of between 0 and 2.7 percent.

My recommendation for the updates is based on cost projections used in the President's FY 2000 budget. A final recommendation on the appropriate percentage increases for FY 2000 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate the Health Care Financing Administration's analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission.

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any adjustment to the DRG weighting factors for FY 2000.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Donna E. Shalala

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Appendix D: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Several provisions of the Act address the setting of update factors for inpatient services furnished in FY 2000 by hospitals subject to the prospective payment system and those excluded from the prospective payment system. Section 1886(b)(3)(B)(i)(XV) of the Act sets the FY 2000 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 1.8 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2000 percentage increase in the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the prospective payment system, or the rate of increase in the market basket minus 1.8 percentage points. Under section 1886(b)(3)(B)(ii) of the Act, the FY 2000 percentage increase in the rate of increase limits for hospitals excluded from the prospective payment system ranges from the percentage increase in the excluded hospital market basket to 0 percent, depending on the hospital's costs in relation to its limit for the most recent cost reporting period for which information is available.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the first quarter 1999 forecast of the FY 2000 market basket increase of 2.7 percent for hospitals subject to the prospective payment system, the proposed updates to the standardized amounts are 0.9 percent (that is, the market basket rate of increase minus 1.8 percent percentage points) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to sole community and Medicare-dependent, small rural hospitals is also 0.9 percent. The proposed update for hospitals excluded from the prospective payment system would range from 0 percent to the percentage increase in the excluded hospital market basket (currently estimated at 2.6 percent).

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this appendix provides the recommendations of appropriate update factors, the analysis underlying our recommendations, and our responses to the MedPAC recommendations concerning the update factors.

In its March 1, 1999 report, MedPAC stated that the legislated update of market basket increase minus 1.8 percentage points would provide a reasonable level of payment to hospitals. Although MedPAC suggests that a somewhat lower update could be justified in light of changes in the utilization and provision of hospital inpatient care, the Commission does not believe it is necessary to recommend a lower update for FY 2000. MedPAC did not make a separate recommendation for the hospital-specific rates applicable to sole community and Medicare-dependent, small rural hospitals. We discuss MedPAC's recommendations concerning the update factors and our responses to these recommendations below.

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is 0.0 percentage points for hospitals located in large urban and other areas. We are also recommending an update of 0.0 percentage points to the hospital-specific rate for sole community hospitals and Medicare-dependent, small rural hospitals. These figures are consistent with the President's FY 2000 budget recommendations. We believe these recommended update factors would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund. When the President's budget was submitted, the market basket rate of increase was projected at 2.7 percent. This proposed recommendation is based on a more recent forecast of the market basket, although still 2.7 percent.

We recommend that hospitals excluded from the prospective payment system receive an update of between 0 and 2.6 percentage points. The update for excluded hospitals and units is equal to the increase in the excluded hospital operating market basket less a percentage between 0 and 2.5 percentage points, or 0 percentage points, depending on the hospital's or unit's costs in relation to its rate-of-increase limit. The market basket rate of increase is currently forecast at 2.6 percent. This recommendation is consistent with the President's FY 2000 budget, although we note that the market basket rate of increase was forecast at 2.7 percent when the budget was submitted.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of MedPAC in setting these recommended update factors. Our responses to the MedPAC recommendations concerning the update factors are discussed below.

III. MedPAC Recommendations for Updating the Prospective Payment System Standardized Amounts

For FY 2000, MedPAC's update framework would support an update to the standardized amounts under the prospective payment system between the increase in the hospital market basket minus 2.5 percentage points and the increase in the hospital market basket plus 0.1 percentage points. MedPAC notes that hospital total revenue margins have continued to increase this decade and the percentage of hospitals with negative total revenue margins remains much lower than it was a decade ago. Thus, MedPAC believes the statutory update of market basket increase minus 1.8 percentage points for FY 2000 is reasonable and appropriate.

MedPAC's estimate of the market basket increase is 2.3 percent, based on the fourth quarter 1998 estimate. MedPAC's market basket estimate focuses on employee compensation changes in the hospital industry and the economy in general, while HCFA's market basket forecast gives less weight to the projected changes in the hospital industry's wages. When MedPAC published its recommendations, HCFA's market basket forecast was 2.5 percent. Thus, MedPAC's update framework reflects a 0.2 percent adjustment for this difference.

Response: Our update recommendation of 0.0 percent is within the range of updates MedPAC has suggested for the prospective payment system hospitals, albeit at the low end. Our recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, and changes in case mix:

a. *Productivity.* Service level productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use a labor productivity measure since this update framework applies to operating payment. To recognize that we are apportioning the short run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure for operating costs by the share of direct labor services in the market basket rate of increase to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through 1989, or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

Since it is not possible at this time to develop a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with

a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of labor in total operating inputs, as calculated in the hospital market basket rate of increase. This method estimates an expected labor productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality enhancing intensity growth, and net of expected decline in intensity due to reduction of cost ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected output growth is simply the sum of the expected change in intensity (0.0 percent), projected admissions change (1.0 percent for FY 2000), and projected real case-mix growth (0.5 percent), or 1.5 percent. The share of direct labor services in the market basket rate of increase (consisting of wages, salaries, and employee benefits) is 61.4 percent.

Multiplying the expected change in total hospital service output (1.5 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.4, provides our productivity standard of 0.3 percent, thus our recommendation includes a −0.3 percent update for improved productivity.

In past years, MedPAC's recommendation has taken into account product change. This year, while there is not a specific mention of product change in MedPAC's recommendation, similar factors do appear in their discussion of "site of service substitution." HCFA takes this factor into account when measuring change in intensity, as discussed below. In addition, MedPAC's update framework contains a productivity adjustment of between −1.0 to 0.0 percent, which is slightly more optimistic than our estimate.

b. *Intensity.* We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 2000, we recommend an adjustment of 0.0 percent. The basis of this recommendation is discussed below.

We have no empirical evidence that accurately gauges the level of quality-enhancing technology changes. A study published in the Winter 1992 issue of the *Health Care Financing Review*, "Contributions of case mix and intensity change to hospital cost increases" (pp. 151–163), suggests that one-third of the intensity change is attributable to high-cost technology. The balance was unexplained but the authors speculated that it is attributable to fixed costs in service delivery.

Typically, a specific new technology increases cost in some uses and decreases cost in other uses. Concurrently, health status is improved in some situations while in other situations it may be unaffected or even worsened using the same technology. It is difficult to separate out the relative significance of each of the cost increasing effects for individual technologies and new technologies.

All things being equal, per-discharge fixed costs tend to fluctuate in inverse proportion to changes in volume. Fixed costs exist whether patients are treated or not. If volume is declining, per-discharge fixed costs will rise, but the reverse is true if volume is increasing.

Following methods developed by HCFA's Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FYs 1994 through 1998 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Medical CPI hospital component and changes in real case mix. Thus, in order to measure changes in intensity, one must measure changes in real case mix.

For FYs 1994 through 1998, observed case-mix index change ranged from a low of −.04 percent to a high of 1.7 percent, with a 5-year average change of 1.0 percent. Based on evidence from past studies of case-mix change, we estimate that real case-mix change fluctuates between 1.0 and 1.4 percent and the observed values generally fall in this range, although some years the figures fall outside this range. The average percentage change in charge per discharge was 2.9 percent and the average annual change in the medical CPI was 4.6 percent. Dividing the change in charge per discharge by the quantity of the real case-mix index change and the medical CPI, yields an average annual change in intensity of −2.9 percent. Assuming the technology/fixed cost ratio still holds, technology would account for a −1.0 percent annual decline while fixed costs would account for a −1.9 percent annual decline. The decline in fixed costs per discharge makes intuitive sense as volume, measured by total discharges, has increased during the period. Since we estimate that intensity has declined during that period, we are recommending a 0.0 percent intensity adjustment for FY 2000.

MedPAC does not make an intensity recommendation per se, but its recommendation for the FY 2000 update includes two categories that we consider to be comparable with our intensity recommendation. MedPAC is recommending a 0.5 to 1.0 update for scientific and technological advances to account for increased costs of systems conversions necessary for computer compliance on January 1, 2000. MedPAC's recommendation also takes into account the increasingly apparent trend of some acute care providers to shift care to a postacute care facility. While this can occur for many reasons, there is good reason to suspect prospective payment system payment limits. Accordingly, MedPAC recommends an adjustment of −1.8 to −0.9 for site-of-care substitution.

As we mentioned in last year's final rule, higher input prices that hospitals incur to convert computer systems to be complaint on January 1, 2000, will be accounted for through the market basket. We agree with MedPAC that the site of care substitution effect is real and believe that it is factored into our intensity recommendation.

c. *Change in Case-Mix.* Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 2000 update recommendation, we are projecting a 0.5 percent increase in the case-mix index. Unlike in past years, where we differentiated between "real" case-mix increase and increases attributable to changes in coding behavior, we do not feel changes in coding behavior will impact the overall case-mix in FY 2000. As such, we project the entire change will be "real."

MedPAC also does not expect any case-mix change due to coding changes. MedPAC's estimate of overall case-mix change ranges from 0.0 to 0.2 percentage points for FY 2000.

d. *Effect of FY 1998 DRG Reclassification and Recalibration.* We estimate that DRG reclassification and recalibration for FY 1998 resulted in a 0.7 percent decrease in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. MedPAC does not make an adjustment for DRG reclassification and recalibration in its update recommendation.

We make a forecast error correction if the actual market basket change for a previous fiscal year differs from the forecasted market basket by 0.25 percentage points or more. Our update framework for FY 2000 does not reflect a forecast error correction because, for FY 1998, there was less than a 0.25 percentage point difference between the actual market basket and the forecasted market basket.

TABLE 1.—COMPARISON OF FY 2000 UPDATE RECOMMENDATIONS

	HHS	MedPAC
Market Basket	MB	MB
Difference between HCFA & MedPAC Market Baskets		–0.4
Subtotal	MB	MB
Policy Adjustments Factors:		
Productivity	–0.3	–1.0 to 0.0
Site of Service Substitution	([3])	–1.8 to –0.9
Intensity	0.0.	
Science & Technology		0.5 to 1.0
Practice Patterns		([1])
Real Within DRG Change		([2])
Subtotal	–0.3	–2.3 to 0.1
Case-Mix Adjustment Factors:		
Projected Case-Mix Change	–0.5.	
Real Across DRG Change	0.5	0.0
Real Within DRG Change	([3])	0.0 to 0.2
Subtotal	0.0	0.0 to 0.2
Effect of 1998 Reclassification & Recalibration	–0.7.	
Forecast Error Correction	0.0	0.0
Total Recommended Update	MB –1.0	MB –2.7 to MB 0.1

[1] Included in MedPAC's Productivity Measure.
[2] Included in MedPAC's Case-Mix Adjustment.
[3] Included in HHS' Intensity Factor.

While the above analysis would support a recommendation that the update be no less than the market basket minus 1.0 percentage points, we are recommending an update of 0.0 percentage points. We note that had our framework included the negative intensity adjustment, the framework would have suggested an update in the range of market basket increase minus 3.9 percentage points and market basket increase minus 2.0 percentage points. However, consistent with past update recommendations, we did not make a negative adjustment for intensity this year. A negative intensity adjustment would capture the site of care substitution adjustment in MedPAC's recommendation. In conjunction with our Office of Actuary, we do intend to reexamine our update framework and the appropriateness of a negative intensity adjustment.

For FY 2000, we believe that a 0.0 update factor appropriately reflects current trends in health care delivery, including the recent decreases in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services. Our recommendation is within the range of MedPAC's recommendation. We also recommend that the hospital-specific rates applicable to sole community hospitals be increased by the same update, 0.0 percentage points.

IV. MedPAC Recommendation for Updating the Rate-of-Increase Limits for Excluded Hospitals and Hospital Units (Recommendation 4A)

For hospitals and units excluded from the prospective payment system, MedPAC's recommendation is that the Secretary "should increase the market basket amount in the target amount update formula by 0.4 percentage points for fiscal year 2000." For cost reporting periods beginning in FY 2000, the statute provides that the update to the target amounts for excluded hospitals or units is equal to the increase in the excluded hospital operating market basket less a percentage between 0 and 2.5 percentage points, or 0 percent, depending on the hospital's or unit's costs in relation to its target amount for the most recent cost reporting period for which information is available. MedPAC believes that the update formula for excluded hospitals should be adjusted upward by 0.4 percentage points, to reflect (1) a −0.1 percent adjustment for differences between HCFA's and MedPAC's market baskets and (2) a 0.5 percent adjustment for scientific and technological advances.

Response: We believe that the statutory update is adequate and that an upward adjustment to the statutory formula is unnecessary. Thus, we recommend that hospitals excluded from the prospective payment system receive an update between 0 percent and the increase in the market basket for excluded hospitals. Overall declines in inpatient operating costs and high levels of Medicare profit margins support our recommendation. We believe this update would ensure that Medicare acts as a prudent purchaser and would provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

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federal register

Friday
May 7, 1999

Part III

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Internet Crimes Against Children Task Force Program; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1222]

RIN 1121–ZB55

Internet Crimes Against Children Task Force Program

AGENCY: Office of Juvenile Justice and Delinquency Prevention, Office of Justice Programs, Justice.

ACTION: Announcement of Discretionary Competitive Assistance Grant.

SUMMARY: Notice is hereby given that the Office of Juvenile Justice and Delinquency Prevention (OJJDP), pursuant to Public Law 105–277, October 19, 1998, Making Appropriations for the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies for the Fiscal Year Ending September 30, 1999, is requesting applications from State and local law enforcement agencies interested in participating in the Internet Crimes Against Children Task Force (ICAC Task Force) Program. The ICAC Task Force Program encourages communities to develop regional multidisciplinary, multijurisdictional task forces to prevent, interdict, and investigate sexual exploitation offenses against children by offenders using online technology.

DATES: Applications must be received by June 21, 1999.

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org.

FOR FURTHER INFORMATION CONTACT: Michael Medaris, ICAC Task Force Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–616–8937. [This is not a toll-free number.]

SUPPLEMENTAL INFORMATION:

Purpose

The purpose of this program is to assist State and local law enforcement agencies to enhance their investigative response to sexual exploitation of children by offenders using the Internet, online communication systems, or other computer technology. For purposes of this program announcement, "Internet crimes against children (ICAC)" refers to sexual exploitation of children that is facilitated by computers and includes crimes of child pornography and online solicitation for sexual purposes.

Background

In his 1984 novel, *Neuromancer*, William Gibson created a world he named "Cyberspace." Gibson theorized that online human interaction with computers would create a virtual universe where electronic actions could entail physical repercussions. Fifteen years later, cyberspace is a reality. Started by the Internet, accelerated by the World Wide Web, and fueled by the data demands of the Information Age, today's cyberspace covers the entire world through instantaneous information exchange.

Industry experts estimate that more than 10 million children currently go online and, by the year 2002, 45 million children will use cyberspace to talk with friends, explore the universe, or complete homework assignments. In cyberspace, children are a mouse click away from exploring our greatest museums, libraries, and universities. Unfortunately, they are also a mouse click away from sexual exploitation and victimization.

While providing almost limitless opportunities to learn, the Internet has also become the new schoolyard for predators seeking children to victimize. Yesterday's enticements of puppy dogs and candy bars are augmented in today's chat rooms with anonymity and pornography. Cloaked in the anonymity of cyberspace, sex offenders can capitalize on the natural curiosity of children, seeking victims with little risk of detection. Preferential sex offenders [1] no longer need to lurk in parks and malls. Instead, they can roam from chat room to chat room trolling for children susceptible to victimization. This alarming trend has grave implications for parents, teachers, and law enforcement officers because it circumvents conventional safeguards in place for the physical world and provides sex offenders virtually unlimited opportunities for unsupervised contact with children.

In 1982, New York v. Ferber (458 U.S. 747), the Supreme Court stated: "The distribution of photographs and films depicting sexual activity by juveniles is intrinsically related to the sexual abuse of children * * * the materials produced are a permanent record of the children's participation and the harm to the child is exacerbated by their circulation." There are much more insidious implications to child pornography than the mere depiction of a child's molestation. It not only depicts the sexual assault of a child, but is also used by child molesters to recruit, seduce, and control future victims. While not all molesters collect pornography and not all child pornography collectors molest children, there is a significant consensus among law enforcement officers about the role pornography plays in recruiting and controlling additional victims. Child pornography is used to break down inhibitions, validate sex between children and adults as normal, and control the victim throughout the molestation. When the offender loses interest, it is often used as blackmail to ensure the child's silence and in these most egregious cases, child pornography allows the molester to go unpunished—and what is most important and indeed tragic—the victim untreated. It is clear to OJJDP that this inexorable confluence of the increasing online presence of children, the proliferation of child pornography, and predators ceaselessly searching for unsupervised contact with underage victims presents a significant threat to the health and safety of children and a formidable challenge for law enforcement today and into the foreseeable future.

Many factors complicate law enforcement's response to these challenges. Because the Internet transcends State and local boundaries, very few investigations begin and end within the same jurisdiction. Most investigations involve multiple jurisdictions, which then require close coordination and cooperation between Federal, State, and local law enforcement agencies.

Evidence collection in cases of Internet crimes against children invariably requires specialized knowledge. Many preferential sex offenders tend to be avid recordkeepers, and their computers, magnetic media, and related equipment can be rich sources of evidence. However, routine forensic examination procedures are insufficient for seizing, preserving, and analyzing this information. In addition, specific legal issues regarding property and privacy rights may be triggered with the seizure of computers and related technology.

When appropriate, medical and psychological evaluation of child victims should also be a part of the law enforcement response. While ensuring that injuries or diseases related to the exploitation are treated, forensic medical examinations can also provide crucial corroborative evidence.

Routine interviewing practices are inadequate for collecting evidence from child victims of Internet crimes. Some children deny they are victims because of embarrassment or fear of ridicule

[1] For the purposes of this program, "preferential sex offenders" are defined as individuals whose primary sexual focus is children.

from their peers or discipline from their parents. Others bond with the offender, remain susceptible to further manipulation, and resent what they perceive as interference from law enforcement. Investigators who lack understanding of the dynamics of juvenile sexual exploitation risk losing information critical for conviction of the perpetrator or identification of additional victims.

The factors cited above almost routinely complicate the investigative process, and while no two cases will raise identical issues of jurisdiction, evidence collection, and victim services, it is logical to presume that investigations characterized by a multijurisdictional, multidisciplinary approach are more likely to result in successful prosecutions.

A variety of Federal activities are assisting and can further assist law enforcement in responding to these offenses. The Innocent Images program, located in the Federal Bureau of Investigation's (FBI's) Baltimore Field Division, works specifically on computer-facilitated child sexual exploitation cases and has developed substantial technical and investigative expertise. Each FBI Field Division has two designated Crimes Against Children coordinators who work with State and local law enforcement agencies to investigate and prosecute child abduction and exploitation cases that transcend jurisdictional boundaries.

The U.S. Customs Service (USCS) and the U.S. Postal Inspection Service (USPIS) have successfully investigated hundreds of child pornography cases and have developed specialized expertise in undercover operations targeting preferential sex offenders and child pornography.

With OJJDP and private sector funding, the National Center for Missing and Exploited Children (NCMEC) serves as the national resource center and clearinghouse for missing and exploited children issues. NCMEC's Exploited Child Unit coordinates a comprehensive training and technical assistance program that includes prevention and awareness activities, and the CyberTipline (www.missingkids.com). The Tipline collects online reports from citizens regarding computer-facilitated sexual exploitation of children and rapidly forwards the information to law enforcement agencies with investigative jurisdiction. Brought online in March 1998, the CyberTipline has provided information that has enabled law enforcement officers to arrest individuals seeking sex with underage victims and safely recover and return children enticed from home by sex offenders.

NCMEC's law enforcement training and technical assistance program was developed in partnership with the FBI, OJJDP, USCS, USPIS, and the Child Exploitation and Obscenity Section (CEOS) of the Criminal Division, U.S. Department of Justice. NCMEC has also developed a broad-based education and awareness campaign that features the Kids and Company curriculum, Know the Rules teen awareness program, and two pamphlets, *Child Safety on the Information Highway* and *Teen Safety on the Information Highway*, that provide information about safe Internet practices for children and youth. These programs and materials are offered free of charge, and OJJDP encourages communities working on child victimization issues to use them. Additional information regarding NCMEC's broad array of services for children, parents, educators, and law enforcement officers can be obtained by calling 800–843–5678 or by accessing NCMEC's Web site at www.missingkids.com.

In fiscal year (FY) 1998, OJJDP awarded funds to 10 State or local law enforcement agencies to develop regional multijurisdictional and multiagency task forces to prevent, interdict, and investigate ICAC offenses. Under the Internet Crimes Against Children Task Force (ICAC Task Force) Program, the following jurisdictions received FY 1998 funding: Bedford County, Virginia, Sheriff's Department; Broward County, Florida, Sheriff's Department; Colorado Springs, Colorado, Police Department; Dallas, Texas, Police Department; Illinois State Police; New York State Division of Criminal Justices Services; Portsmouth, New Hampshire, Police Department; Sacramento County, California, Sheriff's Office; South Carolina Office of the Attorney General; and Wisconsin Department of Justice. These agencies have become regional clusters of ICAC technical and investigative expertise and offer prevention and investigative services to children, parents, educators, law enforcement officers, and other individuals working on child sexual exploitation issues.

In the 21st century, law enforcement will be increasingly challenged by sex offenders using computer technology to victimize children. To help meet this challenge, at the direction of Congress, OJJDP is continuing a competitive grant program, the ICAC Task Force Program, which will award cooperative agreements to State and local law enforcement agencies seeking to improve their investigative response to the computer-facilitated sexual exploitation of children.

Program Strategy

The OJJDP ICAC Task Force Program seeks to enhance the national response by developing a State and local law enforcement network composed of regional task forces. The program encourages communities to develop multijurisdictional and multiagency responses and provides funding to enable State and local law enforcement agencies to acquire the knowledge, personnel resources, and specialized equipment to prevent, interdict, or investigate ICAC offenses. Although the ICAC Task Force Program emphasizes law enforcement investigations, OJJDP encourages jurisdictions to include intervention, prevention, and victim services activities as part of their comprehensive approach.

A total of $2.4 million is available to fund new ICAC Task Force Program grants in FY 1999. OJJDP intends to award 8 to 10 new cooperative agreement awards of up to $300,000 each to State or local law enforcement agencies or combinations of State or local law enforcement agencies. Successful applicants will be expected to serve as regional clusters of ICAC technical and investigative expertise, collaborate with existing OJJDP ICAC Task Forces, and become part of a national law enforcement network designed to protect children on the information highway.

Cooperative agreements will be competitively awarded as follows:

- At least two cooperative agreements will be reserved for rural States or rural jurisdictions.[2]
- No more than two cooperative agreements will be awarded to jurisdictions proposing to expand existing ICAC law enforcement programs.

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[2] For the purposes of the ICAC Program, a "rural State" means a State that has a population density of 52 or fewer persons per square mile or a State in which the largest county has fewer than 150,000 population based on the decennial census of 1990 through FY 1997. "A rural area or jurisdiction" means one that lies outside a Metropolitan Area (MA) as determined by the Office of Management and Budget as of June 30, 1996, and that has a total population of no more than 100,000, based on the most recent census data. Tribal governments and small towns and cites may be included in this definition, provided they meet the above criteria. In small jurisdictions where the larger surrounding jurisdiction is responsible for providing any of the necessary human services (probation, law enforcement, social services, etc.), a joint application is recommended. To determine if a jurisdiction is within an MA and therefore not considered a rural jurisdiction under the ICAC Task Force Program, visit the Census Web site at www.census.gov/population/www/metroarea.html.

• Applicants from States where there are existing OJJDP ICAC Task Forces, *i.e.*, California, Colorado, Florida, Illinois, New Hampshire, New York, South Carolina, Texas, Virginia, and Wisconsin, must clearly indicate protocols or procedures to coordinate their investigations and other activities with existing Task Forces within their States.

Successful applicants will develop or enhance an investigative ICAC response that includes prevention, education, and victim services activities and investigators working in a multiagency, interdisciplinary task force environment.

Eligibility Requirements

Applicants must be State and/or local law enforcement agencies. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly indicated as the primary applicant (for correspondence, award, and management purposes) and the other(s) indicated as coapplicant(s).

Applications should include evidence of multidisciplinary, multijurisdictional partnerships among public agencies, private organizations, community-based groups, and prosecutors' offices. Applications should also include prevention activities.

Goal

To enhance State and local law enforcement ICAC investigative response.

Objectives

Projects must accomplish the following objectives:

• Develop or expand multiagency, multijurisdictional task forces that include, but are not limited to, representatives from law enforcement, prosecution, victim services, and child protective services agencies. Relevant nongovernment organizations may also be included, and OJJDP encourages applicants to invite task force participation by Federal law enforcement.

• Institute policies and procedures that comply with the OJJDP ICAC Task Force Program Operational and Investigative Standards (see "OJJDP Program Management" below). Requests from eligible law enforcement agencies for copies of this document must be faxed on official letterhead to the Juvenile Justice Clearinghouse at 301–519–5600 (Attention: Corey Mackison).

• Ensure investigative capacity by properly equipping and training ICAC Task Force investigators. Task Force investigators should be computer literate, knowledgeable regarding child exploitation issues, and familiar with Federal and State statutes and caselaw pertaining to ICAC investigations.

• Develop and maintain case management systems to document reported offenses and investigative results and to make or receive outside agency referrals of ICAC cases.

• Develop response protocols or memorandums of understandings that foster collaboration, information sharing, and service integration among public and private organizations to provide services to sexually exploited children.

OJJDP Program Management

On the information highway, conventional law enforcement boundaries are virtually meaningless and the governing factors of time, place, and distance lose their sway. Offenders eagerly adapted the jurisdictional murkiness and metaphysical aspects of the Internet to further their criminal activities. These factors, which are conducive to criminal activity, present unique coordination and communication challenges for State and local law enforcement.

Few ICAC cases start and end within same the jurisdiction, and investigations usually cross town, State, or even international borders. Accordingly, nearly all ICAC investigations involve multiple jurisdictions and require interagency coordination and communication. Absent meaningful case coordination, it is likely that law enforcement will simultaneously investigate identical suspects and organizations or target undercover operatives of other law enforcement agencies. Lack of communication and coordination can also contribute to law enforcement officers inadvertently disrupting clandestine investigations of other agencies.

The obvious need for interagency cooperation and coordination also galvanizes interest in establishing standards for ICAC undercover investigations. Representatives from Federal, State, and local law enforcement agencies have repeatedly expressed concern about initiating investigations that are based on referrals from outside agencies that may be predicated on information acquired through inappropriate officer conduct or investigative techniques.

The clandestine nature of undercover operations along with the Internet's metaphysical aspect significantly exacerbates these concerns. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children. These operations allow law enforcement to go on the offensive and—what is most important—children do not have to be victimized to bring a case. While there is substantial consensus that carefully managed undercover operations by well-trained officers are very effective, they also generate significant concerns regarding legal, coordination, communication, and resource management issues.

To address these concerns, OJJDP's overall ICAC Task Force program management involves:

• Ensuring that ICAC Task Force personnel are adequately trained and equipped.

• Establishing and/or maintaining ICAC Task Force investigative standards to facilitate interagency case referrals.

• Advocating coordination and collaboration among Federal, State, and local law enforcement agencies investigating ICAC offenses.

• Fostering meaningful information sharing to avoid redundant investigations or activities that could disrupt ongoing investigations of other agencies.

• Maintaining a national oversight board composed of local prosecutors and law enforcement executives to review undercover operations proposals and to formulate policy for the operation of the ICAC Task Force Program.

OJJDP has established ICAC Task Force operational and investigative standards through a collaborative process with the 10 original ICAC Task Force agencies and the FBI, NCMEC, USCS, USPIS, CEOS, and the Executive Office for United States Attorneys. The standards were designed by the Task Force agencies to foster information sharing, coordinate investigations, ensure the probative quality of undercover operations, and facilitate interagency case referrals through standardization of investigative practices.

OJJDP has also established an ICAC Task Force Review Board (Board) to assist in the administration of the ICAC Task Force Program. As a condition of award, each grantee designates a policy-level law enforcement official or prosecutor to be a Board member. Although the Board's primary responsibility is to review proposed undercover operations for compliance with the standards, a major focus of the Board is to encourage case coordination and facilitate information sharing on trends, innovative investigative techniques, and prosecution strategies. Technical advice is provided to the

Board by CEOS, the FBI, and other Federal law enforcement agencies.

In addition, each ICAC Task Force member sends at least one investigator and one policy-level official to the ICAC Task Force orientation seminar. The next seminar, scheduled for September 26–30, 1999, at NCMEC's Jimmy Ryce Law Enforcement Training Center, was developed by OJJDP and NCMEC in consultation with Federal law enforcement agencies. The seminar will provide information regarding legal issues, specific investigative techniques, undercover operation documentation requirements, behavioral characteristics of preferential sex offenders, and other topics relevant to child exploitation cases.

Expenses associated with attendance at the orientation seminar will be reimbursed by OJJDP and NCMEC. Expenses associated with Board responsibilities will be covered by grant funds.

Selection Criteria

The OJJDP Administrator is committed to the concept of a national network of State and local law enforcement to respond to online enticement and child pornography offenses. Under this concept, the ICAC Task Forces will be positioned throughout the country to serve as regional sources of technical, educational, and investigative expertise to provide assistance to parents, teachers, law enforcement, and other professionals working on child sexual exploitation issues. Therefore, in selecting applicants, consideration will be given to achieving an equitable geographic distribution.

OJJDP will convene a peer review panel to evaluate and rank applications and to make funding recommendations to the OJJDP Administrator. Although peer review recommendations are given weight, they are advisory only and final award decisions will be made by the OJJDP Administrator. OJJDP will negotiate specific terms of the award with applicants being considered for the award. Applicants will be evaluated and rated according to the criteria outlined below.

Problem(s) To Be Addressed (10 points)

The applicant should clearly identify the need for this project and demonstrate an understanding of the program concept. While OJJDP recognizes that Internet crimes against children are an emerging problem, applicants should include data that illustrate the size and scope of the problem in the State and local jurisdiction, where available. If statistics or other research findings are used to support a statement or position, applicants must include the relevant source information.

Goals and Objectives (10 points)

Applicants must establish clearly defined, measurable, and attainable goals and objectives for this program.

Project Design (35 points)

The applicant must present a clear workplan that contains program elements directly linked to the achievement of the project objectives. The workplan must indicate significant project milestones, product due dates, and the nature of the products to be delivered. The applicant must explain in clear terms how the State or local task force will be developed and implemented. In those States currently participating in the OJJDP ICAC Task Force Program, an explanation of how activities will be coordinated with the existing OJJDP ICAC Task Force must be included. In addition, letters of support from State and local prosecution offices and the cognizant United States Attorney should be provided.

Management and Organizational Capability (30 points)

Applicant's management structure and staffing must be adequate and appropriate for the successful implementation of the project. Applicants must present a workplan that identifies responsible individuals, their time commitment, major tasks, and milestones. Applicants must describe how Internet crimes against children activities will be continued following Federal funding support. In addition, direct letters of support from State and local prosecution offices and the local district United States Attorney should be provided.

Budget (15 points)

Applicants must provide a proposed budget that is complete, detailed, reasonable, allowable, and cost effective in relation to the activities to be undertaken. Budgets must allow for required travel, including four trips for one individual to the quarterly ICAC Task Force Board meetings.

Format

The narrative must not exceed 35 pages in length (excluding forms, assurances, and appendixes) and must be submitted on 8½- by 11-inch paper, double-spaced on one side of the paper in a standard 12-point font. These requirements are necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

Award Period

The project will be for up to an 18-month budget and project period. Funding of the project beyond the initial project period will be contingent upon performance of the grantee, and availability of funds.

Award Amount

The total amount available for this program is $2.4 million. OJJDP intends to award 8 to 10 cooperative agreements of up to $300,000 each for the 18-month project period.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.543. This form is included in OJJDP's Application Kit, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to askncjrs@ncjrs.org. The kit is also available online at www.ojjdp.ncjrs.org.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice is requesting applicants to provide information on the following: (1) active Federal grant award(s) supporting this or related efforts, including awards from the U.S. Department of Justice; (2) any pending application(s) for Federal funds for this or related efforts; and (3) plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

- Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).
- Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).
- Services of some kind (*e.g.*, technical assistance, research, or

evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Note: In the lower left-hand corner of the envelope, the applicant must clearly write "Internet Crimes Against Children Task Force Program."

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5 p.m. EDT on June 21, 1999.

Contact

For further information, call Michael Medaris, ICAC Task Force Program Manager, Missing and Exploited Children's Program, 202–616–3637, or send an e-mail inquiry to medarism@ojp.usdoj.gov.

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Dated: May 3, 1999.

Shay Bilchik,

Administrator, Office of Juvenile Justice and Delinquency Prevention.

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federal register

Friday
May 7, 1999

Part IV

Department of Education

34 CFR Part 300

Assistance to States for the Education of Children With Disabilities; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 300

RIN 1820–AB40

Assistance to States for the Education of Children With Disabilities

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Final regulations; preamble amendment.

SUMMARY: The Department of Education published in the **Federal Register** on March 12, 1999 (64 FR 12406), the final regulations for Assistance to States for the Education of Children with Disabilities and Early Intervention Program for Infants and Toddlers with Disabilities. The preamble to the final regulations did not include information concerning the biennial performance report. This document supplements the preamble of that document by adding the necessary information:

FOR FURTHER INFORMATION CONTACT: Joleta Reynolds, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3090, Mary E. Switzer Building, Washington, DC 20202. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 a.m. and 8:00 p.m., Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The following information addresses the biennial performance report:

Paperwork Reduction Act of 1995

Sections 300.137–300.139 and 300.146 contain information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Education has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Collection of Information: Biennial Performance Report for Part B of the Individuals with Disabilities Education Act, §§ 300.137–300.139 and 300.146.

Each State educational agency is required to establish goals for the performance of children with disabilities in that State, and establish performance indicators the State will use to assess progress toward achieving those goals. The statute mandates that States report every two years to the Secretary the progress of the State, and of children with disabilities in the State, toward meeting the State's goals.

State educational agencies are required by statute to make reports available to the public regarding the number of children with disabilities who participate in regular assessments, and the number participating in alternate assessments. In the biennial performance report, State educational agencies are asked to provide the U.S. Department of Education with a copy of these reports.

In addition, the statute requires States to examine data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children. Since this information is relevant to drop-out rates for children with disabilities and graduation rates for children with disabilities, this information is included in the biennial performance report.

The statute also requires States to submit data to the Secretary to determine if a significant disproportionality based on race is occurring in the State with respect to the identification of children with disabilities. To reduce the reporting burden for States, this separate reporting requirement is combined with the biennial performance report.

The annual reporting and recordkeeping burden for this collection of information is estimated to average 20 hours biennially for each response for 58 respondents, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection information. Thus, the total annual reporting and recordkeeping burden for this collection is estimated to be 580 hours.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 10235, New Executive Office Building, Washington, DC 20503; Attention: Desk Officer for U.S. Department of Education.

The Department considers comments by the public on these proposed collections of information in—

- Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility;
- Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used;
- Enhancing the quality, usefulness, and clarity of the information to be collected; and
- Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

OMB is required to make a decision concerning the collections of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Electronic Access to This Document

You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the World Wide Web at either of the following sites:

http://gcs.ed.gov/fedreg.htm

http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) at (202) 512–1530 or, toll free at 1–888–293–6498.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at:

http://www.access.gpo.gov/nara/index.html

List of Subjects in 34 CFR Part 300

Administrative practice and procedure, Education of individuals with disabilities, Elementary and secondary education, Equal educational opportunity, Grant programs—education, Privacy, Private Schools, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Number: 84.027 Assistance to States for the Education of Children with Disabilities)

Dated: April 30, 1999.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–11321 Filed 5–6–99; 8:45 am]

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Part V

Department of Housing and Urban Development

24 CFR Part 888

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 2000; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 888

[Docket No. FR–4496–N–01]

Fair Market Rents for the Section 8 Housing Assistance Payments Program—Fiscal Year 2000

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of Proposed Fiscal Year (FY) 2000 Fair Market Rents (FMRs).

SUMMARY: Section 8(c)(1) of the United States Housing Act of 1937 requires the Secretary to publish FMRs annually to be effective on October 1 of each year. FMRs are used for the Section 8 Existing certificate and voucher program and the new merged tenant-based certificate and voucher program; the Moderate Rehabilitation Single Room Occupancy program; the project-based voucher program; and any other programs whose regulations specify their use. Today's notice proposes revised FMRs that reflect estimated 40th percentile rent levels trended to April 1, 2000.

DATES: Comments Due Date: July 6, 1999.

ADDRESSES: Interested persons are invited to submit comments regarding HUD's estimates of the FMRs as published in this Notice to the Office of the General Counsel, Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410. Communications should refer to the above docket number and title and should contain the information specified in the "Request for Comments" section. To ensure that the information is fully considered by all of the reviewers, each commenter is requested to submit two copies of its comments, one to the Rules Docket Clerk and the other to the Economic and Market Analysis Staff in the appropriate HUD Field Office. A copy of each communication submitted will be available for public inspection and copying during regular business hours (7:30 a.m.–5:30 p.m. Eastern Time) at the above address.

FOR FURTHER INFORMATION CONTACT: Gerald Benoit, Operations Division, Office of Rental Assistance, telephone (202) 708–0477. For technical information on the development of schedules for specific areas or the method used for the rent calculations, contact Alan Fox, Economic and Market Analysis Division, Office of Economic Affairs, telephone (202) 708–0590, Extension 5863 (e-mail: alan__fox@hud.gov). Hearing- or speech-impaired persons may use the Telecommunications Devices for the Deaf (TTY) by contacting the Federal Information Relay Service at 1–800–877–8339. (Other than the "800" TTY number, telephone numbers are not toll free.)

SUPPLEMENTARY INFORMATION: Section 8 of the United States Housing Act of 1937 (the Act) (42 U.S.C. 1437f) authorizes housing assistance to aid lower income families in obtaining decent, safe, and sanitary housing. Housing assistance payments are limited by FMRs established by HUD for different areas. In general, the FMR for an area is the amount that would be needed to pay the gross rent (shelter rent plus utilities) of privately owned, decent, safe, and sanitary rental housing of a modest (non-luxury) nature with suitable amenities.

Publication of FMRs

Section 8(c) of the Act requires the Secretary of HUD to publish FMRs periodically, but not less frequently than annually. The Department's regulations provide that HUD will develop FMRs by publishing proposed FMRs for public comment and, after evaluating the public comments, publish the final FMRs (see 24 CFR 888.115). Schedule B of the proposed FY 2000 FMR schedules at the end of this document lists the FMR levels for Section 8 existing housing. Schedule D lists FMRs for the rental of manufactured home spaces in the Section 8 Existing certificate and voucher program and the new merged tenant-based certificate and voucher program in areas where modifications based on public comments have been approved for FMRs greater than 30 percent of the 2-bedroom FMR.

Method Used to Develop FMRs

FMR Standard

FMRs are gross rent estimates; they include shelter rent and the cost of utilities, except telephone. HUD sets FMRs to assure that a sufficient supply of rental housing is available to program participants. To accomplish this objective, FMRs must be both high enough to permit a selection of units and neighborhoods and low enough to serve as many families as possible. The level at which FMRs are set is expressed as a percentile point within the rent distribution of standard quality rental housing units. The current definition used is the 40th percentile rent, the dollar amount below which 40 percent of the standard quality rental housing units rent. The 40th percentile rent is drawn from the distribution of rents of units which are occupied by recent movers (renter households who moved into their unit within the past 15 months). Newly built units less than two years old are excluded, and adjustments have been made to correct for the below market rents of public housing units included in the data base.

Data Sources

HUD used the most accurate and current data available to develop the FMR estimates. The sources of survey data used for the base-year estimates are:

(1) The 1990 Census, which provides statistically reliable rent data for all FMR areas;

(2) The Bureau of the Census' American Housing Surveys (AHSs), which are used to develop between-Census revisions for the largest metropolitan areas and which have accuracy comparable to the decennial Census; and

(3) Random Digit Dialing (RDD) telephone surveys of individual FMR areas, which are based on a sampling procedure that uses computers to select statistically random samples of rental housing.

The base-year FMRs are updated using trending factors based on Consumer Price Index (CPI) data for rents and utilities or HUD regional rent change factors developed from RDD surveys. Annual average CPI data are available individually for 96 metropolitan FMR areas. (Buffalo and New Orleans no longer are surveyed separately in the Consumer Price Index survey.) RDD regional rent change factors are developed annually for the metropolitan and nonmetropolitan parts of each of the 10 HUD regions. The RDD factors are used to update the base year estimates for all FMR areas that do not have their own local CPI survey.

State Minimum FMRs

FMRs are established at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties, subject to a ceiling rent cap. The State minimum also affects a small number of metropolitan areas whose rents would otherwise fall below the State minimum.

Bedroom Size Adjustments

FMRs have been calculated separately for each bedroom size category. For areas whose FMRs are based on the State minimums, the rents for each bedroom size are the higher of the rent for the area or the Statewide average of nonmetropolitan counties for that bedroom size. For all other FMR areas,

the bedroom intervals are based on data for the specific area. Exceptions have been made for some areas with local bedroom size rent intervals below an acceptable range. For those areas the intervals selected were the minimums determined after outliers had been excluded from the distribution of bedroom intervals for all metropolitan areas. Higher ratios continue to be used for three-bedroom and larger size units than would result from using the actual market relationships. This is done to assist the largest, most difficult to house families in finding program-eligible units.

RDD Surveys

RDD surveys are used to obtain statistically-reliable FMR estimates for selected FMR areas. This survey technique involves drawing random samples of renter units occupied by recent movers. RDD surveys exclude public housing units, other assisted units for which the market rent cannot be determined, units built in the past two years, seasonal units, non-cash rental units, and those owned by relatives. A HUD analysis has shown that the slight downward RDD survey bias caused by including some rental units that are in substandard condition is almost exactly offset by the slight upward bias that results from surveying only units with telephones.

Approximately 8,000–12,000 telephone numbers need to be contacted to achieve the target survey sample level of 200 eligible recent mover responses. RDD surveys have a high degree of statistical accuracy; there is a 95 percent likelihood that the recent mover rent estimates developed using this approach are within 3 to 4 percent of the actual rent value. Virtually all of the estimates are within 5 percent of the actual value.

Today's notice proposes FMRs based on RDD surveys conducted in late-1998 and early-1999 for the following areas:

Proposed FMR increase above normal update factor

Pike County, AL
Denver, CO
Henry County, IN
Wayne County, IN
Perry County, MO
St. Francois County, MO
Kansas City, MO–KS
Charlotte-Gastonia-Rock Hill, NC–SC
Harnett County, NC
Columbus, OH
Portland-Vancouver, OR–WA
Pittsburgh, PA
Greenville-Spartanburg-Anderson, SC
Knoxville, TN

Proposed FMR decrease

Modesto, CA
Barnstable-Yarmouth, MA
Barnstable County, MA
Dukes County, MA
Middlesex-Somerset-Hunterdon, NJ
Allentown-Bethlehem-Easton, PA

Proposed FMR increase by normal update factor

Little Rock-North Little Rock, AR
Santa Barbara-Santa Maria-Lompoc, CA
Santa Rosa, CA
Wilmington-Newark, DE
Fort Lauderdale, FL
Miami, FL
New Orleans, LA
Grand Rapids-Muskegon-Holland, MI
Cape Girardeau County, MO
Ste. Genevieve County, MO
Albuquerque, NM
Akron, OH
San Juan-Bayamon, PR
Charleston-North Charleston, SC
San Antonio, TX

AHS Areas

AHSs cover the largest metropolitan areas on a four-year cycle. The 40th percentile rents for these areas are calculated from the distributions of two-bedroom units occupied by recent movers. Public housing units, newly constructed units, and units that fail a housing quality test are excluded from the rental housing distributions before the FMRs are calculated.

Detailed rent data from the metropolitan AHSs conducted in 1998 are not yet available. If increases are warranted by data that are processed in time for the 2000 Final FMRs they will be put into effect at that time; any proposed decreases will be delayed until the 2001 proposed FMR publication.

Manufactured Home Space FMRs

FMRs for the rental of manufactured home spaces in the Section 8 Existing certificate and voucher program and the new merged tenant-based certificate and voucher program are 30 percent of the applicable Section 8 existing housing program FMR for a two-bedroom unit. HUD accepts public comments requesting modifications of these FMRs where the 30 percent FMRs are thought to be inadequate. In order to be accepted as a basis for revising the FMRs, comments must contain statistically valid survey data that show the 40th percentile space rent (excluding the cost of utilities) for the entire FMR area. Manufactured home space FMR revisions are published as final FMRs in Schedule D. Once approved, the revised manufactured home space FMRs establish new base year estimates that are updated annually using the same data used to update the other FMRs.

Request for Comments

HUD seeks public comments on FMR levels for specific areas. Comments on FMR levels must include sufficient information (including local data and a full description of the rental housing survey methodology used) to justify any proposed changes. Changes may be proposed in all or any one or more of the bedroom-size categories on the schedule. Recommendations and supporting data must reflect the rent levels that exist within the entire FMR area.

HUD recommends use of professionally-conducted Random Digit Dialing (RDD) telephone surveys to test the accuracy of FMRs for areas where there is a sufficient number of Section 8 units to justify the survey cost of $10,000–$12,000. Areas with 500 or more program units usually meet this cost criterion, and areas with fewer units may meet it if actual two-bedroom rents are significantly different from the FMRs proposed by HUD. In addition, HUD has developed a version of the RDD survey methodology for smaller, nonmetropolitan PHAs. This methodology is designed to be simple enough to be done by the PHA itself, rather than by professional survey organizations, at a cost of $5,000 or less.

PHAs in nonmetropolitan areas may, in certain circumstances, do surveys of groups of counties. All grouped county surveys must be approved in advance by HUD. PHAs are cautioned that the resulting FMRs will not be identical for the counties surveyed; each individual FMR area will have a separate FMR based on the relationship of rents in that area to the combined rents in the cluster of FMR areas. In addition, PHAs are advised that counties whose FMRs are based on the State minimum will not have their FMRs revised unless the grouped survey results show a revised FMR above the State minimum level.

PHAs that plan to use the RDD survey technique should obtain a copy of the appropriate survey guide. Larger PHAs should request HUD's survey guide entitled "Random Digit Dialing Surveys; A Guide to Assist Larger Public Housing Agencies in Preparing Fair Market Rent Comments." Smaller PHAs should obtain a guide entitled "Rental Housing Surveys; A Guide to Assist Smaller Public Housing Agencies in Preparing Fair Market Rent Comments." These guides are available from HUD USER on 1–800–245–2691, or from HUD's Worldwide Web site, in Microsoft Word or Adobe Acrobat format, at the following address:

http://www.huduser.org/datasets/fmr.html.

HUD prefers, but does not mandate, the use of RDD telephone surveys, or the more traditional method described in the survey guide intended for small PHAs along with the simplified RDD methodology. Other survey methodologies are acceptable as long as the surveys submitted provide statistically reliable, unbiased estimates of the 40th percentile gross rent. Survey samples should preferably be randomly drawn from a complete list of rental units for the FMR area. If this is not feasible, the selected sample must be drawn so as to be statistically representative of the entire rental housing stock of the FMR area. In particular, surveys must include units of all rent levels and be representative by structure type (including single-family, duplex and other small rental properties), age of housing unit, and geographic location. The decennial Census should be used as a starting point and means to verify whether the sample is representative of the FMR area's rental housing stock.

Local rental housing surveys conducted with alternative methods must include the following documentation:

—Identification of the 40th percentile gross rent (gross rent is rent including the cost of utilities) and the actual distribution (or distributions, if more than one bedroom size is surveyed) of the surveyed units, rank-ordered by gross rent.
—An explanation of how the rental housing sample was drawn and a copy of the survey questionnaire, transmittal letter, and any publicity materials.
—An explanation of how the contract rents of the individual units surveyed were converted to gross rents. (For RDD-type surveys, HUD requires use of the Section 8 utility allowance schedule.)
—An explanation of how the survey excluded units built within two years prior to the survey date.
—The date the rent data were collected so that HUD can apply a trending factor to update the estimate to the midpoint of the applicable fiscal year. If the survey has already been trended to this date, the date the survey was conducted and a description of the trending factor used.
—Copies of all survey sheets.

Since FMRs are based on standard quality units and units occupied by recent movers, both of which are difficult to identify and survey, HUD will accept surveys of all rental units and apply appropriate adjustments.

Most surveys cover only one- and two-bedroom units, in which case HUD will make the adjustments for other size units consistent with the differentials established on the basis of the 1990 Census data for the FMR area. When three- and four-bedroom units are surveyed separately to determine FMRs for these unit size categories, the commenter should multiply the 40th percentile survey rents by 1.087 and 1.077, respectively, to determine the FMRs. The use of these factors will produce the same upward adjustments in the rent differentials as those used in the HUD methodology.

Other Matters

A Finding of No Significant Impact with respect to the environment as required by the National Environmental Policy Act (42 U.S.C. 4321–4374) is unnecessary, since the Section 8 Existing certificate and voucher program and the new merged tenant-based certificate and voucher program are categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.19(c)(d).

The undersigned, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), hereby certifies that this Notice does not have a significant economic impact on a substantial number of small entities, because FMRs do not change the rent from that which would be charged if the unit were not in the Section 8 program.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611, *Federalism*, has determined that this Notice will not involve the preemption of State law by Federal statute or regulation and does not have Federalism implications. The Fair Market Rent schedules do not have any substantial direct impact on States, on the relationship between the Federal government and the States, or on the distribution of power and responsibility among the various levels of government.

The Catalog of Federal Domestic Assistance program number is 14.156, Lower-Income Housing Assistance Program (section 8).

Accordingly, the Fair Market Rent Schedules, which will be codified in 24 CFR part 888, are proposed to be amended as follows:

Dated: April 30, 1999.

Andrew Cuomo,

Secretary.

Fair Market Rents for the Section 8 Housing Assistance Payments Program

Schedules B and D—General Explanatory Notes

1. Geographic Coverage

a. *Metropolitan Areas.*—FMRs are housing market-wide rent estimates that are intended to provide housing opportunities throughout the geographic area in which rental housing units are in direct competition. The FMRs shown in Schedule B are determined for the same areas as the Office of Management and Budget's (OMB) most current definitions of metropolitan areas, with the exceptions discussed in paragraph b. HUD uses the OMB Metropolitan Statistical Area (MSA) and Primary Metropolitan Statistical Area (PMSA) definitions for FMR areas because they closely correspond to housing market area definitions.

b. *Exceptions to OMB Definitions.*—The exceptions are counties deleted from several large metropolitan areas whose revised OMB metropolitan area definitions were determined by HUD to be larger than the housing market areas. The FMRs for the following counties (shown by the metropolitan area) are calculated separately and are shown in Schedule B within their respective States under the "Metropolitan FMR Areas" listing:

Metropolitan Area and Counties Deleted

Chicago, IL: DeKalb, Grundy and Kendall Counties
Cincinnati-Hamilton, OH–KY–IN: Brown County, Ohio; Gallatin, Grant and Pendleton Counties in Kentucky; and Ohio County, Indiana
Dallas, TX: Henderson County
Flagstaff, AZ–UT: Kane County, UT
New Orleans, LA: St. James Parish
Washington, DC–MD–VA–WV: Berkeley and Jefferson Counties in West Virginia; and Clarke, Culpeper, King George and Warren counties in Virginia

c. *Nonmetropolitan Area FMRs.*—FMRs also are established for nonmetropolitan counties and for county equivalents in the United States, for nonmetropolitan parts of counties in the New England states, and for FMR areas in Puerto Rico, the Virgin Islands, and the Pacific Islands. Nonmetropolitan area FMRs are set at the higher of the local 40th percentile rent level or the Statewide average of nonmetropolitan counties. (The State minimum also affects a small number of metropolitan areas whose rents would

otherwise fall below the State minimum.)

d. *Virginia Independent Cities.*—FMRs for the areas in Virginia shown in the table below were established by combining the Census data for the nonmetropolitan counties with the data for the independent cities that are located within the county borders. Because of space limitations, the FMR listing in Schedule B includes only the name of the nonmetropolitan county.

The complete definitions of these areas including the independent cities are as follows:

VIRGINIA NONMETROPOLITAN COUNTY FMR AREA AND INDEPENDENT CITIES INCLUDED

County	Cities
Alleghany	Clifton Forge and Covington.
Augusta	Staunton and Waynesboro.
Carroll	Galax.
Frederick	Winchester.
Greensville	Emporia.
Henry	Martinsville.
Montgomery	Radford.
Rockbridge	Buena Vista and Lexington.
Rockingham	Harrisonburg.
Southhampton	Franklin.
Wise	Norton.

2. Bedroom Size Adjustments

Schedule B shows the FMRs for 0-bedroom through 4-bedroom units. The FMRs for unit sizes larger than 4 bedrooms are calculated by adding 15 percent to the 4-bedroom FMR for each extra bedroom. For example, the FMR for a 5-bedroom unit is 1.15 times the 4-bedroom FMR, and the FMR for a 6-bedroom unit is 1.30 times the 4 bedroom FMR. FMRs for single-room-occupancy (SRO) units are 0.75 times the 0 bedroom FMR.

3. FMRs for Manufactured Home Spaces

FMRs for Section 8 manufactured home spaces in the Section 8 Existing certificate and voucher program and the new merged tenant-based certificate and voucher program are 30 percent of the two-bedroom Section 8 existing housing program FMRs, with the exception of the areas listed in Schedule D whose manufactured home space FMRs have been modified on the basis of public comments. Once approved, the revised manufactured home space FMRs establish new base-year estimates that are updated annually using the same data used to estimate the Section 8 existing housing FMRs. The FMR area definitions used for the rental of manufactured home spaces in the Section 8 Existing certificate and voucher program and the new merged tenant-based certificate and voucher program are the same as the area definitions used for other FMRs.

4. Arrangement of FMR Areas and Identification of Constituent Parts

a. The FMR areas in Schedule B are listed alphabetically by metropolitan FMR area and by nonmetropolitan county within each State. The exception FMRs for manufactured home spaces in Schedule D are listed alphabetically by State.

b. The constituent counties (and New England towns and cities) included in each metropolitan FMR area are listed immediately following the listings of the FMR dollar amounts. All constituent parts of a metropolitan FMR area that are in more than one State can be identified by consulting the listings for each applicable State.

c. Two nonmetropolitan counties are listed alphabetically on each line of the nonmetropolitan county listings.

BILLING CODE 4210-32-P

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ALABAMA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anniston, AL MSA	259	307	383	535	606	Calhoun
Birmingham, AL MSA	368	415	484	657	728	Blount, Jefferson, St. Clair, Shelby
Columbus, GA-AL MSA	350	389	467	610	662	Russell
Decatur, AL MSA	344	348	438	567	678	Lawrence, Morgan
Dothan, AL MSA	312	319	396	545	553	Dale, Houston
Florence, AL MSA	292	335	431	538	603	Colbert, Lauderdale
Gadsden, AL MSA	259	317	366	475	584	Etowah
Huntsville, AL MSA	361	423	521	694	827	Limestone, Madison
Mobile, AL MSA	379	423	485	653	766	Baldwin, Mobile
Montgomery, AL MSA	395	422	499	679	818	Autauga, Elmore, Montgomery
Tuscaloosa, AL MSA	341	365	485	667	705	Tuscaloosa

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	245	291	347	450	516
Bullock	245	291	347	450	516
Chambers	245	291	347	450	517
Chilton	253	291	347	450	516
Clarke	245	291	347	450	516
Cleburne	245	291	347	450	516
Conecuh	245	291	347	450	516
Covington	245	291	347	450	516
Cullman	245	291	347	461	560
Dekalb	245	291	347	450	516
Fayette	245	291	347	450	516
Geneva	245	291	347	450	516
Hale	245	291	347	450	516
Jackson	264	291	347	450	552
Lee	258	361	463	602	761
Macon	267	300	400	501	561
Marion	245	291	347	450	516
Monroe	245	291	347	450	516
Pickens	245	291	347	450	516
Randolph	245	291	347	450	516
Talladega	245	291	347	450	516
Walker	245	302	356	460	585
Wilcox	245	291	347	450	516

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bibb	245	291	347	468	561
Butler	245	291	347	450	516
Cherokee	245	291	347	450	516
Choctaw	245	291	347	450	516
Clay	245	291	347	450	516
Coffee	245	344	447	622	698
Coosa	245	291	347	450	516
Crenshaw	245	291	347	450	516
Dallas	245	291	347	450	516
Escambia	245	291	347	450	516
Franklin	245	291	347	450	516
Greene	245	291	347	450	516
Henry	245	291	347	450	516
Lamar	245	291	347	450	516
Lowndes	245	291	347	450	516
Marengo	245	291	347	450	516
Marshall	281	291	354	490	580
Perry	245	291	347	450	516
Pike	293	341	407	528	615
Sumter	245	291	347	450	516
Tallapoosa	246	291	347	450	516
Washington	245	291	347	450	516
Winston	245	291	347	450	516

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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A L A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Anchorage, AK MSA	500	591	783	1090	1287	Anchorage

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aleutian East	522	588	664	828	1085
Bethel	674	843	1068	1337	1496
Dillingham	651	662	881	1102	1234
Haines	486	602	685	932	959
Kenai Peninsula	441	563	678	942	1113
Kodiak Island	694	763	991	1239	1607
Matanuska-Susitna	466	631	710	964	1139
North Slope	779	798	987	1372	1599
Pr.Wales-Outer Ketchikan	364	579	666	924	976
Skagway-Yakutat-Angoon	445	453	587	736	825
Valdez-Cordova	545	668	742	947	1128
Wrangell-Petersburg	397	585	711	906	995
Aleutian West	447	506	567	711	796
Bristol Bay	541	624	701	975	1061
Fairbanks North Star	411	559	734	1009	1189
Juneau	726	838	1067	1420	1475
Ketchikan Gateway	533	652	873	1215	1279
Lake & Peninsula	417	675	759	947	1063
Nome	686	849	953	1327	1497
Northwest Arctic	825	929	1042	1451	1711
Sitka	574	682	765	1065	1257
Southeast Fairbanks	457	480	579	725	813
Wade Hampton	390	587	662	827	927
Yukon-Koyukuk	520	586	661	826	956

A R I Z O N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Flagstaff, AZ	428	464	602	807	969	Coconino
Las Vegas, NV-AZ MSA	497	590	702	977	1154	Mohave
Phoenix-Mesa, AZ MSA	422	512	642	893	1052	Maricopa, Pinal
Tucson, AZ MSA	383	460	611	850	1003	Pima
Yuma, AZ MSA	370	428	570	792	798	Yuma

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Apache	361	380	483	630	749
Gila	361	380	483	630	749
Greenlee	361	380	483	630	749
Navajo	361	380	483	630	749
Yavapai	384	400	534	745	820
Cochise	361	380	483	630	749
Graham	361	380	483	630	749
La Paz	361	380	483	630	749
Santa Cruz	361	400	496	630	749

A R K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Fayetteville-Springdale-Rogers, AR MSA	307	386	507	685	709	Benton, Washington
Fort Smith, AR-OK MSA	304	308	405	541	568	Crawford, Sebastian
Jonesboro, AR MSA	311	338	398	548	579	Craighead
Little Rock-North Little Rock, AR MSA	378	419	498	689	805	Faulkner, Lonoke, Pulaski, Saline
Memphis, TN-AR-MS MSA	389	454	533	740	778	Crittenden

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

A R K A N S A S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Pine Bluff, AR MSA	289	343	451	569	738	Jefferson
Texarkana, TX-Texarkana, AR MSA	308	376	459	605	642	Miller

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Arkansas	260	282	361	493	535
Baxter	237	302	401	516	628
Bradley	237	282	361	478	535
Carroll	279	305	361	478	572
Clark	260	282	366	478	578
Cleburne	269	282	361	478	542
Columbia	237	282	361	478	535
Cross	246	312	361	485	573
Desha	237	282	361	478	535
Franklin	248	282	361	478	535
Garland	237	302	404	564	666
Greene	254	282	361	478	535
Hot Spring	237	282	361	478	535
Independence	249	289	361	478	535
Jackson	245	282	361	478	535
Lafayette	248	282	361	478	535
Lee	261	282	361	478	535
Little River	237	282	367	509	600
Madison	271	282	367	478	535
Mississippi	270	293	392	517	580
Montgomery	237	282	361	478	535
Newton	237	282	361	478	535
Perry	237	282	361	478	535
Pike	237	282	361	478	535
Polk	237	282	361	478	535
Prairie	237	282	361	478	535
St. Francis	237	288	361	488	575
Searcy	237	282	361	478	535
Sharp	237	282	361	478	535
Union	297	314	377	506	619
White	237	282	361	494	535
Yell	246	282	361	478	535

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashley	237	282	361	478	566
Boone	281	286	379	528	623
Calhoun	237	282	361	478	535
Chicot	237	282	361	478	535
Clay	237	282	361	478	535
Cleveland	237	282	361	478	535
Conway	237	293	392	489	549
Dallas	237	282	361	478	535
Drew	237	307	410	567	577
Fulton	245	282	361	478	535
Grant	246	293	361	478	540
Hempstead	237	282	361	478	535
Howard	237	282	361	478	535
Izard	237	282	361	478	535
Johnson	237	282	361	478	535
Lawrence	237	282	361	478	535
Lincoln	256	282	367	490	535
Logan	248	282	361	478	535
Marion	237	282	361	478	535
Monroe	241	282	361	478	535
Nevada	237	282	361	494	535
Ouachita	277	282	361	498	588
Phillips	237	282	361	478	535
Poinsett	237	282	361	478	535
Pope	237	310	392	544	627
Randolph	237	282	361	478	535
Scott	237	282	361	478	535
Sevier	259	282	361	478	535
Stone	237	282	361	478	535
Van Buren	237	282	361	478	591
Woodruff	237	282	361	478	535

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 4

C A L I F O R N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bakersfield, CA MSA	365	410	515	715	791	Kern
Chico-Paradise, CA MSA	338	429	571	783	936	Butte
Fresno, CA MSA	379	424	506	704	812	Fresno, Madera
Los Angeles-Long Beach, CA PMSA	505	605	766	1033	1233	Los Angeles
Merced, CA MSA	398	449	545	753	889	Merced
Modesto, CA MSA	441	474	579	807	951	Stanislaus
Oakland, CA PMSA	607	734	921	1263	1509	Alameda, Contra Costa
Orange County, CA PMSA	660	720	891	1240	1380	Orange
Redding, CA MSA	379	420	526	731	861	Shasta
Riverside-San Bernardino, CA PMSA	448	499	609	845	999	Riverside, San Bernardino
Sacramento, CA PMSA	440	496	621	861	1015	El Dorado, Placer, Sacramento
Salinas, CA MSA	536	627	756	1051	1103	Monterey
San Diego, CA MSA	532	608	761	1058	1248	San Diego
San Francisco, CA PMSA	764	989	1251	1716	1815	Marin, San Francisco, San Mateo
San Jose, CA PMSA	866	988	1221	1673	1879	Santa Clara
San Luis Obispo-Atascadero-Paso Robles, CA MSA	514	580	736	1022	1207	San Luis Obispo
Santa Barbara-Santa Maria-Lompoc, CA MSA	624	693	878	1223	1380	Santa Barbara
Santa Cruz-Watsonville, CA PMSA	642	764	1021	1419	1662	Santa Cruz
Santa Rosa, CA PMSA	603	684	886	1232	1454	Sonoma
Stockton-Lodi, CA MSA	413	467	600	834	984	San Joaquin
Vallejo-Fairfield-Napa, CA PMSA	580	659	804	1116	1317	Napa, Solano
Ventura, CA PMSA	557	641	811	1079	1256	Ventura
Visalia-Tulare-Porterville, CA MSA	370	393	513	715	816	Tulare
Yolo, CA PMSA	476	544	673	932	1102	Yolo
Yuba City, CA MSA	329	384	494	689	796	Sutter, Yuba

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alpine	307	460	520	723	778
Calaveras	370	429	571	795	937
Del Norte	314	430	571	796	939
Humboldt	316	438	574	801	947
Inyo	317	429	550	722	778
Lake	345	439	586	739	961
Mariposa	331	421	541	709	836
Modoc	335	375	483	673	778
Nevada	384	525	699	972	1126
San Benito	460	541	677	944	1105
Siskiyou	321	375	483	673	778
Trinity	344	375	483	673	778

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Amador	423	466	622	866	965
Colusa	335	375	483	673	778
Glenn	307	375	483	673	778
Imperial	346	433	533	743	778
Kings	355	413	516	718	845
Lassen	375	380	494	673	778
Mendocino	424	511	627	873	879
Mono	468	561	746	1037	1226
Plumas	338	375	483	673	778
Sierra	307	411	506	703	830
Tehama	320	375	483	673	778
Tuolumne	339	463	617	859	1013

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

COLORADO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Boulder-Longmont, CO PMSA	525	629	806	1123	1324	Boulder
Colorado Springs, CO MSA	443	476	634	884	1044	El Paso
Denver, CO PMSA	458	547	728	1011	1193	Adams, Arapahoe, Denver, Douglas, Jefferson
Fort Collins-Loveland, CO MSA	438	541	668	928	1096	Larimer
Grand Junction, CO MSA	403	419	524	706	840	Mesa
Greeley, CO PMSA	440	486	612	849	1004	Weld
Pueblo, CO MSA	425	440	550	740	883	Pueblo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alamosa	385	400	499	673	802
Baca	385	400	499	673	802
Chaffee	385	400	499	673	802
Clear Creek	385	449	508	707	833
Costilla	385	400	499	673	802
Custer	385	400	499	673	802
Dolores	385	400	499	673	802
Elbert	425	471	539	673	883
Garfield	447	479	605	756	990
Grand	457	461	584	731	885
Hinsdale	385	407	499	673	802
Jackson	385	400	499	673	802
Kit Carson	385	400	499	673	802
La Plata	503	556	733	1021	1205
Lincoln	385	400	499	673	802
Mineral	385	400	499	673	802
Montezuma	385	400	499	673	802
Morgan	385	400	499	673	802
Ouray	385	400	505	673	817
Phillips	385	400	499	673	802
Prowers	385	400	499	673	802
Rio Grande	385	400	499	673	802
Saguache	385	400	499	673	802
San Miguel	708	1023	1124	1404	1812
Summit	496	594	761	1059	1303
Washington	385	400	499	673	802

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Archuleta	460	504	596	804	956
Bent	385	400	499	673	802
Cheyenne	385	400	499	673	802
Conejos	385	400	499	673	802
Crowley	385	400	499	673	802
Delta	385	400	499	673	802
Eagle	518	564	753	1047	1234
Fremont	385	400	499	673	802
Gilpin	385	512	650	859	949
Gunnison	385	400	499	673	802
Huerfano	385	400	499	673	802
Kiowa	385	400	499	673	802
Lake	385	400	499	673	802
Las Animas	385	411	499	673	802
Logan	385	400	499	673	802
Moffat	385	400	499	673	802
Montrose	385	400	505	700	825
Otero	385	400	499	673	802
Park	385	426	555	770	876
Pitkin	577	790	1053	1388	1578
Rio Blanco	385	400	499	673	802
Routt	385	465	615	855	1007
San Juan	385	400	499	673	802
Sedgwick	385	400	499	673	802
Teller	385	456	608	845	853
Yuma	385	400	499	673	802

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

CONNECTICUT

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bridgeport, CT PMSA	462	601	724	905	1129	Fairfield county towns of Bridgeport town, Easton town Fairfield town, Monroe town, Shelton town Stratford town, Trumbull town New Haven county towns of Ansonia town, Beacon Falls town Derby town, Milford town, Oxford town, Seymour town
Danbury, CT PMSA	624	747	933	1231	1419	Fairfield county towns of Bethel town, Brookfield town Danbury town, New Fairfield town, Newtown town Redding town, Ridgefield town, Sherman town Litchfield county towns of Bridgewater town New Milford town, Roxbury town, Washington town
Hartford, CT PMSA	438	545	697	875	1062	Hartford county towns of Avon town, Berlin town Bloomfield town, Bristol town, Burlington town Canton town, East Granby town, East Hartford town East Windsor town, Enfield town, Farmington town Glastonbury town, Granby town, Hartford town Manchester town, Marlborough town, New Britain town Newington town, Plainville town, Rocky Hill town Simsbury town, Southington town, South Windsor town Suffield town, West Hartford town, Wethersfield town Windsor town, Windsor Locks town Litchfield county towns of Barkhamsted town Harwinton town, New Hartford town, Plymouth town Winchester town Middlesex county towns of Cromwell town, Durham town East Haddam town, East Hampton town, Haddam town Middlefield town, Middletown town, Portland town New London county towns of Colchester town, Lebanon town Tolland county towns of Andover town, Bolton town Columbia town, Coventry town, Ellington town Hebron town, Mansfield town, Somers town, Stafford town Tolland town, Vernon town, Willington town Windham county towns of Ashford town, Chaplin town Windham town
New Haven-Meriden, CT PMSA	533	654	809	1036	1200	Middlesex county towns of Clinton town, Killingworth town New Haven county towns of Bethany town, Branford town Cheshire town, East Haven town, Guilford town Hamden town, Madison town, Meriden town, New Haven town North Branford tow, North Haven town, Orange town Wallingford town, West Haven town, Woodbridge town
New London-Norwich, CT-RI MSA	495	599	729	912	1042	Middlesex county towns of Old Saybrook town New London county towns of Bozrah town, East Lyme town Franklin town, Griswold town, Groton town, Ledyard town Lisbon town, Montville town, New London town North Stonington t, Norwich town, Old Lyme town Preston town, Salem town, Sprague town, Stonington town Waterford town Windham county towns of Canterbury town, Plainfield town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	799	935	1141	1529	1689	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	453	612	758	945	1059	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	434	526	656	819	918	Windham county towns of Thompson town
NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	362	586	661	919	1083	Hartland town
Litchfield	421	574	765	955	1087	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	624	707	944	1313	1548	Chester town, Deep River town, Essex town Westbrook town
New London	529	647	735	949	1204	Lyme town, Voluntown town
Tolland	362	586	661	919	925	Union town
Windham	417	510	661	828	1039	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	490	542	618	801	911	Kent
Wilmington-Newark, DE-MD PMSA	446	589	687	932	1126	New Castle

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sussex	429	456	582	765	816

D I S T O F C O L U M B I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	630	716	840	1145	1380	District of Columbia

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

F L O R I D A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Daytona Beach, FL MSA	389	456	583	774	822	Flagler, Volusia
Fort Lauderdale, FL PMSA	486	572	708	985	1159	Broward
Fort Myers-Cape Coral, FL MSA	418	482	581	812	847	Lee
Fort Pierce-Port Lucie, FL MSA	465	510	661	859	926	Martin, St. Lucie
Fort Walton Beach, FL MSA	406	443	503	682	804	Okaloosa
Gainesville, FL MSA	406	443	539	738	872	Alachua
Jacksonville, FL MSA	424	475	572	756	841	Clay, Duval, Nassau, St. Johns
Lakeland-Winter Haven, FL MSA	389	426	482	597	652	Polk
Melbourne-Titusville-Palm Bay, FL MSA	389	455	569	762	888	Brevard
Miami, FL PMSA	455	571	712	978	1133	Dade
Naples, FL MSA	434	612	736	1024	1141	Collier
Ocala, FL MSA	406	443	503	661	775	Marion
Orlando, FL MSA	504	572	682	896	1093	Lake, Orange, Osceola, Seminole
Panama City, FL MSA	406	443	503	642	688	Bay
Pensacola, FL MSA	406	443	503	673	793	Escambia, Santa Rosa
Punta Gorda, FL MSA	406	466	620	860	1015	Charlotte
Sarasota-Bradenton, FL MSA	407	517	658	846	920	Manatee, Sarasota
Tallahassee, FL MSA	415	460	606	792	954	Gadsden, Leon
Tampa-St. Petersburg-Clearwater, FL MSA	408	486	602	800	968	Hernando, Hillsborough, Pasco, Pinellas
West Palm Beach-Boca Raton, FL MSA	498	581	719	955	1182	Palm Beach

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Baker	385	421	476	591	642
Calhoun	385	421	476	591	642
Columbia	385	421	476	591	642
Dixie	385	421	476	591	642
Gilchrist	385	421	476	591	642
Gulf	385	421	476	591	642
Hardee	385	421	476	591	642
Highlands	385	421	476	593	662
Indian River	385	481	619	774	866
Jefferson	385	421	476	591	642
Levy	385	421	476	591	642
Madison	385	421	476	591	642
Okeechobee	385	421	476	591	648
Sumter	385	421	476	591	642
Taylor	385	421	476	591	643
Wakulla	385	421	476	591	642
Washington	385	421	476	591	642

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bradford	385	421	476	591	642
Citrus	385	421	476	591	642
Desoto	385	421	476	591	642
Franklin	385	421	476	591	642
Glades	385	421	476	591	642
Hamilton	385	421	476	591	642
Hendry	385	421	490	615	689
Holmes	385	421	476	591	642
Jackson	385	421	476	591	642
Lafayette	385	421	476	591	642
Liberty	385	421	476	591	642
Monroe	551	622	799	1101	1310
Putnam	385	421	476	591	642
Suwannee	385	421	476	591	642
Union	385	421	476	591	642
Walton	385	421	476	613	766

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

GEORGIA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany, GA MSA	303	355	433	591	640	Dougherty, Lee
Athens, GA MSA	373	402	520	710	855	Clarke, Madison, Oconee
Atlanta, GA MSA	549	611	712	949	1148	Barrow, Bartow, Carroll, Cherokee, Clayton, Cobb, Coweta Dekalb, Douglas, Fayette, Forsyth, Fulton, Gwinnett Henry, Newton, Paulding, Pickens, Rockdale, Spalding Walton
Augusta-Aiken, GA-SC MSA	359	429	506	687	813	Columbia, Mcduffie, Richmond
Chattanooga, TN-GA MSA	366	427	513	663	755	Catoosa, Dade, Walker
Columbus, GA-AL MSA	350	389	467	610	662	Chattahoochee, Harris, Muscogee
Macon, GA MSA	391	436	507	699	719	Bibb, Houston, Jones, Peach, Twiggs
Savannah, GA MSA	365	453	527	711	739	Bryan, Chatham, Effingham

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Appling	280	337	412	534	607
Bacon	280	337	412	534	607
Baldwin	280	358	437	559	611
Ben Hill	280	337	412	534	615
Bleckley	280	337	412	534	607
Brooks	280	337	412	534	607
Burke	280	337	412	534	607
Calhoun	280	337	412	534	607
Candler	280	337	412	534	607
Chattooga	280	337	412	534	607
Clinch	280	337	412	534	607
Colquitt	280	337	412	534	607
Crawford	280	337	412	534	607
Dawson	280	364	484	606	747
Dodge	280	337	412	534	607
Early	280	337	412	534	607
Elbert	280	337	412	534	607
Evans	280	337	412	534	607
Floyd	280	337	413	545	607
Gilmer	280	337	412	534	607
Glynn	390	437	494	663	813
Grady	285	337	412	534	607
Habersham	300	337	412	534	612
Hancock	280	337	412	534	607
Hart	280	337	412	534	607
Irwin	280	337	412	534	607
Jasper	280	337	417	566	607
Jefferson	280	337	412	534	615

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atkinson	280	337	412	534	607
Baker	280	337	412	534	607
Banks	280	337	412	534	607
Berrien	280	337	412	534	607
Brantley	280	337	412	534	607
Bulloch	337	342	440	566	719
Butts	280	370	491	657	689
Camden	391	443	495	689	814
Charlton	280	337	412	534	607
Clay	280	337	412	534	607
Coffee	280	337	412	534	615
Cook	280	337	412	534	607
Crisp	283	337	412	534	607
Decatur	280	337	412	534	607
Dooly	280	337	412	534	607
Echols	280	337	412	534	607
Emanuel	280	337	412	534	607
Fannin	280	337	412	534	607
Franklin	280	337	412	534	607
Glascock	280	337	412	534	607
Gordon	332	337	420	542	692
Greene	280	337	412	534	607
Hall	296	450	529	662	739
Haralson	280	337	412	534	607
Heard	280	337	412	534	607
Jackson	311	337	423	534	696
Jeff Davis	280	337	412	534	607
Jenkins	280	337	412	534	607

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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G E O R G I A continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Johnson	280	337	412	534	607
Lanier	280	337	412	534	607
Liberty	348	388	442	614	619
Long	280	364	412	534	607
Lumpkin	280	377	424	567	696
Macon	280	337	412	534	607
Meriwether	280	337	412	534	607
Mitchell	280	337	412	534	607
Montgomery	280	337	412	534	607
Murray	280	337	412	534	607
Pierce	280	337	412	534	607
Polk	280	337	412	557	607
Putnam	280	337	412	534	615
Rabun	280	337	412	534	607
Schley	280	337	412	534	607
Seminole	280	337	412	534	607
Stewart	280	337	412	534	607
Talbot	280	337	412	534	607
Tattnall	280	337	412	534	607
Telfair	280	337	412	534	607
Thomas	280	347	412	534	607
Toombs	280	337	412	534	607
Treutlen	280	337	412	534	607
Turner	280	337	412	534	607
Upson	289	337	412	534	607
Warren	280	337	412	534	607
Wayne	289	337	412	534	607
Wheeler	280	337	412	534	607
Whitfield	280	367	442	564	665
Wilkes	280	337	412	534	607
Worth	280	337	412	534	607

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Lamar	280	346	412	534	653
Laurens	286	337	412	534	607
Lincoln	280	337	412	534	607
Lowndes	313	379	458	643	711
Mcintosh	280	337	412	534	607
Marion	280	337	412	534	607
Miller	280	337	412	534	607
Monroe	280	337	412	543	607
Morgan	280	337	427	534	607
Oglethorpe	280	337	412	534	607
Pike	325	352	446	621	625
Pulaski	280	337	412	534	607
Quitman	280	337	412	534	607
Randolph	280	337	412	534	607
Screven	280	337	412	534	607
Stephens	280	337	412	534	607
Sumter	280	342	412	534	607
Taliaferro	280	337	412	534	607
Taylor	280	337	412	534	607
Terrell	280	337	412	534	607
Tift	280	337	412	534	607
Towns	280	337	412	534	607
Troup	280	381	429	536	607
Union	280	337	430	539	607
Ware	309	347	412	534	641
Washington	280	337	412	534	607
Webster	280	337	412	534	607
White	280	337	412	534	621
Wilcox	280	337	412	534	607
Wilkinson	280	337	412	534	607

H A W A I I

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Honolulu, HI MSA	604	723	851	1150	1244	Honolulu

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 7

C O N N E C T I C U T continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Stamford-Norwalk, CT PMSA	799	935	1141	1529	1689	Fairfield county towns of Darien town, Greenwich town New Canaan town, Norwalk town, Stamford town Weston town, Westport town, Wilton town
Waterbury, CT MSA	453	612	758	945	1059	Litchfield county towns of Bethlehem town, Thomaston town Watertown town, Woodbury town New Haven county towns of Middlebury town, Naugatuck town Prospect town, Southbury town, Waterbury town Wolcott town
Worcester, MA-CT	434	526	656	819	918	Windham county towns of Thompson town

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Hartford	362	586	661	919	1083	Hartland town
Litchfield	421	574	765	955	1087	Canaan town, Colebrook town, Cornwall town, Goshen town Kent town, Litchfield town, Morris town, Norfolk town North Canaan town, Salisbury town, Sharon town Torrington town, Warren town
Middlesex	624	707	944	1313	1548	Chester town, Deep River town, Essex town Westbrook town
New London	529	647	735	949	1204	Lyme town, Voluntown town
Tolland	362	586	661	919	925	Union town
Windham	417	510	661	828	1039	Brooklyn town, Eastford town, Hampton town Killingly town, Pomfret town, Putnam town, Scotland town Sterling town, Woodstock town

D E L A W A R E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Dover, DE MSA	490	542	618	801	911	Kent
Wilmington-Newark, DE-MD PMSA	446	589	687	932	1126	New Castle

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sussex	429	456	582	765	816

D I S T O F C O L U M B I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Washington, DC-MD-VA	630	716	840	1145	1380	District of Columbia

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I L L I N O I S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Decatur, IL MSA	272	352	453	612	634	Macon
De Kalb County, IL	440	512	648	901	1044	Dekalb
Grundy County, IL	383	443	588	776	826	Grundy
Kankakee, IL PMSA	348	421	561	717	787	Kankakee
Kendall County, Il	531	605	729	1015	1020	Kendall
Peoria-Pekin, IL MSA	379	417	560	745	915	Peoria, Tazewell, Woodford
Rockford, IL MSA	363	465	566	712	830	Boone, Ogle, Winnebago
St. Louis, MO-IL MSA	323	393	510	664	734	Clinton, Jersey, Madison, Monroe, St. Clair
Springfield, IL MSA	313	388	517	688	783	Menard, Sangamon

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	260	292	376	493	599
Bond	260	292	376	493	554
Bureau	260	328	385	493	554
Carroll	260	292	376	493	554
Christian	280	292	378	495	554
Clay	260	292	376	493	554
Crawford	260	292	376	493	554
De Witt	264	292	376	497	554
Edgar	260	292	376	493	554
Effingham	260	301	376	493	554
Ford	247	348	452	580	634
Fulton	268	300	387	507	570
Greene	260	292	376	493	554
Hancock	260	292	376	493	554
Henderson	260	292	376	493	554
Jackson	315	316	400	567	635
Jefferson	261	306	383	522	554
Johnson	260	292	376	493	554
La Salle	315	370	493	666	747
Lee	290	298	399	498	560
Logan	291	309	412	516	647
Macoupin	260	292	376	493	554
Marshall	260	292	376	493	554
Massac	261	292	376	493	554
Montgomery	260	292	376	493	554
Moultrie	260	292	376	506	554
Piatt	260	316	411	561	576
Pope	260	292	376	493	554
Putnam	260	292	376	493	554

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alexander	260	292	376	493	554
Brown	260	292	376	493	554
Calhoun	260	292	376	493	554
Cass	261	292	376	493	554
Clark	260	292	376	493	554
Coles	275	327	435	578	683
Cumberland	260	292	376	493	554
Douglas	278	292	376	493	554
Edwards	260	292	376	493	554
Fayette	260	292	376	493	554
Franklin	260	292	376	493	554
Gallatin	260	292	376	493	554
Hamilton	260	293	376	493	554
Hardin	260	292	376	493	554
Iroquois	260	292	376	493	554
Jasper	260	294	376	493	554
Jo Daviess	288	311	376	493	554
Knox	260	292	376	493	572
Lawrence	260	292	376	493	554
Livingston	260	320	428	552	602
Mcdonough	260	297	376	493	593
Marion	265	292	376	493	554
Mason	260	292	376	493	561
Mercer	260	292	376	493	554
Morgan	260	330	438	584	615
Perry	261	292	376	493	554
Pike	260	292	376	493	554
Pulaski	260	292	376	493	554
Randolph	260	292	376	493	554

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

ILLINOIS continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Richland	260	292	376	493	554
Schuyler	260	292	376	493	554
Shelby	260	292	376	493	554
Stephenson	275	314	398	497	558
Vermilion	260	332	414	518	580
Warren	275	292	376	493	554
Wayne	260	292	376	493	554
Whiteside	275	312	416	521	587

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Saline	260	292	376	493	554
Scott	260	292	376	493	554
Stark	260	292	376	493	554
Union	260	292	376	493	554
Wabash	260	292	376	493	585
Washington	260	311	415	520	675
White	260	292	376	493	554
Williamson	260	292	378	525	554

INDIANA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bloomington, IN MSA	371	480	639	888	1049	Monroe
Cincinnati, OH-KY-IN	316	406	544	729	787	Dearborn
Elkhart-Goshen, IN MSA	375	427	540	691	793	Elkhart
Evansville-Henderson, IN-KY MSA	321	382	496	620	694	Posey, Vanderburgh, Warrick
Fort Wayne, IN MSA	321	409	508	655	711	Adams, Allen, De Kalb, Huntington, Wells, Whitley
Gary, IN PMSA	389	511	638	801	895	Lake, Porter
Indianapolis, IN MSA	366	459	552	691	775	Boone, Hamilton, Hancock, Hendricks, Johnson, Madison Marion, Morgan, Shelby
Kokomo, IN MSA	345	408	532	684	745	Howard, Tipton
Lafayette, IN MSA	349	444	591	822	971	Clinton, Tippecanoe
Louisville, KY-IN MSA	318	408	501	691	729	Clark, Floyd, Harrison, Scott
Muncie, IN MSA	298	371	440	596	704	Delaware
Ohio County, IN	294	330	422	544	599	Ohio
South Bend, IN MSA	322	428	563	703	789	St. Joseph
Terre Haute, IN MSA	290	339	433	540	603	Clay, Vermillion, Vigo

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Bartholomew	399	429	518	647	851
Blackford	281	316	417	522	585
Carroll	281	316	405	521	573
Crawford	281	316	405	521	573
Decatur	281	343	438	567	617
Fayette	297	335	428	551	648
Franklin	281	316	405	521	641
Gibson	281	316	405	521	573
Greene	281	316	405	521	573
Jackson	345	361	446	590	634
Jay	281	316	405	521	573

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Benton	281	316	405	521	573
Brown	281	373	491	682	706
Cass	281	316	405	521	573
Daviess	281	316	405	521	573
Dubois	281	316	405	521	591
Fountain	281	316	405	521	573
Fulton	309	324	405	545	573
Grant	296	316	405	523	573
Henry	308	347	444	572	628
Jasper	281	341	405	521	573
Jefferson	281	316	405	521	573

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I N D I A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Jennings	293	316	405	521	573
Kosciusko	281	372	449	582	629
La Porte	286	346	463	593	648
Marshall	333	338	449	565	629
Miami	281	316	405	521	573
Newton	293	316	405	521	573
Orange	281	316	405	521	573
Parke	281	316	405	521	599
Pike	281	316	405	521	573
Putnam	305	356	437	587	592
Ripley	281	316	405	529	600
Spencer	281	316	405	521	573
Steuben	344	388	464	580	648
Switzerland	281	316	405	521	573
Wabash	281	316	405	521	573
Washington	281	316	405	521	573
White	281	316	405	521	633

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Knox	286	316	410	521	574
Lagrange	286	330	420	547	636
Lawrence	281	316	405	525	573
Martin	281	316	405	521	573
Montgomery	328	345	430	546	604
Noble	324	331	411	530	587
Owen	281	316	405	521	600
Perry	281	316	405	521	573
Pulaski	281	316	405	521	573
Randolph	281	316	405	521	573
Rush	289	316	405	521	600
Starke	281	316	405	521	573
Sullivan	281	316	405	521	573
Union	281	316	405	521	573
Warren	281	316	405	521	573
Wayne	339	381	488	628	690

I O W A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cedar Rapids, IA MSA	275	389	500	696	747	Linn
Davenport-Moline-Rock Island, IA-IL MSA	282	390	483	624	676	Scott
Des Moines, IA MSA	358	452	558	723	760	Dallas, Polk, Warren
Dubuque, IA MSA	293	358	460	588	717	Dubuque
Iowa City, IA MSA	346	446	574	796	941	Johnson
Omaha, NE-IA MSA	338	463	585	767	860	Pottawattamie
Sioux City, IA-NE MSA	344	413	515	642	734	Woodbury
Waterloo-Cedar Falls, IA MSA	272	348	435	580	681	Black Hawk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	265	328	411	522	576
Allamakee	265	328	411	528	604
Audubon	265	328	411	522	576
Boone	265	348	411	528	625
Buchanan	279	328	411	522	576
Butler	282	328	411	522	576
Carroll	265	328	411	522	576
Cedar	265	332	411	522	576
Cherokee	265	328	411	522	576

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	265	328	411	522	576
Appanoose	265	328	411	522	580
Benton	272	328	411	522	576
Bremer	265	328	411	522	612
Buena Vista	280	328	411	522	576
Calhoun	265	328	411	522	576
Cass	265	328	411	522	576
Cerro Gordo	265	347	430	573	601
Chickasaw	265	328	411	522	576

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

I O W A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clarke	272	328	411	522	576
Clayton	265	328	411	522	576
Crawford	265	328	411	522	576
Decatur	265	328	411	522	576
Des Moines	265	338	435	545	608
Emmet	265	328	411	522	608
Floyd	288	328	411	522	576
Fremont	291	328	411	522	606
Grundy	265	328	411	522	592
Hamilton	303	343	416	522	583
Hardin	265	328	411	522	576
Henry	265	336	427	534	604
Humboldt	265	328	411	522	576
Iowa	265	328	411	522	576
Jasper	265	336	426	532	596
Jones	274	328	411	522	576
Kossuth	265	328	411	522	576
Louisa	265	328	411	522	576
Lyon	265	328	411	522	576
Mahaska	265	328	411	522	576
Marshall	292	361	453	575	635
Mitchell	265	328	411	522	576
Monroe	265	345	411	522	608
Muscatine	265	328	435	579	608
Osceola	265	328	411	522	576
Palo Alto	265	328	411	522	576
Pocahontas	265	328	411	522	576
Ringgold	265	328	411	522	576
Shelby	265	328	411	522	576
Story	345	419	495	684	784
Taylor	265	328	411	522	577
Van Buren	265	328	411	522	576
Washington	265	328	411	522	606
Webster	265	328	417	525	585
Winneshiek	265	328	411	522	576
Wright	265	328	411	522	576

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Clay	265	328	411	522	576
Clinton	265	328	417	522	584
Davis	265	328	411	522	576
Delaware	265	328	411	522	576
Dickinson	265	328	411	522	576
Fayette	265	328	411	522	576
Franklin	272	328	411	522	576
Greene	265	328	411	522	576
Guthrie	265	328	411	522	605
Hancock	265	328	411	522	576
Harrison	265	328	411	522	576
Howard	265	328	411	522	601
Ida	272	328	411	522	576
Jackson	265	328	414	522	580
Jefferson	265	335	446	581	733
Keokuk	265	328	411	522	576
Lee	265	328	424	531	595
Lucas	265	328	411	522	576
Madison	265	328	428	548	600
Marion	265	364	446	558	625
Mills	265	354	418	525	586
Monona	265	328	411	522	576
Montgomery	291	329	411	522	576
O'Brien	265	328	411	522	576
Page	265	328	411	522	576
Plymouth	265	328	430	537	601
Poweshiek	280	348	446	558	625
Sac	265	328	411	522	576
Sioux	265	328	411	522	576
Tama	265	328	411	522	576
Union	265	328	411	522	606
Wapello	265	328	415	522	581
Wayne	265	328	411	522	576
Winnebago	265	333	411	522	576
Worth	265	328	411	522	585

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kansas City, MO-KS MSA	379	477	574	794	880	Johnson, Leavenworth, Miami, Wyandotte
Lawrence, KS MSA	356	426	547	761	876	Douglas
Topeka, KS MSA	334	384	500	676	762	Shawnee
Wichita, KS MSA	328	394	527	712	770	Butler, Harvey, Sedgwick

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	270	307	393	507	564
Atchison	270	307	393	507	604
Barton	270	307	393	507	564
Brown	270	307	393	507	564
Chautauqua	270	307	393	507	564
Cheyenne	270	307	393	507	564
Clay	270	307	393	507	564
Coffey	279	307	393	507	589
Cowley	288	307	393	519	564
Decatur	270	307	393	507	564
Doniphan	270	307	393	507	564
Elk	270	307	393	507	564
Ellsworth	270	307	393	507	564
Ford	311	367	457	576	648
Geary	332	349	437	564	611
Graham	270	307	393	507	564
Gray	270	307	393	507	564
Greenwood	270	307	393	507	564
Harper	270	307	393	507	564
Hodgeman	270	307	393	507	564
Jefferson	270	307	400	531	564
Kearny	301	307	404	544	597
Kiowa	270	307	393	507	564
Lane	270	307	393	507	564
Linn	270	307	393	507	564
Lyon	270	307	393	507	601
Marion	270	307	393	507	564
Meade	270	307	393	507	564
Montgomery	270	307	393	507	564
Morton	270	329	393	507	564
Neosho	270	307	393	507	564
Norton	270	307	393	507	564
Osborne	270	307	393	507	565
Pawnee	270	307	393	507	564

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	270	307	393	507	564
Barber	270	307	393	507	564
Bourbon	270	307	393	507	564
Chase	270	307	393	507	564
Cherokee	270	307	393	507	564
Clark	270	307	393	507	564
Cloud	270	307	393	507	564
Comanche	270	307	393	507	564
Crawford	270	307	400	507	564
Dickinson	270	307	393	507	564
Edwards	270	307	393	507	564
Ellis	270	307	393	507	564
Finney	354	378	484	631	798
Franklin	304	319	411	526	641
Gove	270	307	393	507	564
Grant	280	355	407	557	607
Greeley	270	307	393	507	564
Hamilton	270	307	393	507	564
Haskell	270	314	393	507	564
Jackson	270	307	393	507	564
Jewell	270	307	393	507	564
Kingman	270	307	393	507	564
Labette	270	307	393	507	564
Lincoln	270	307	393	507	564
Logan	270	307	393	507	564
Mcpherson	272	307	393	507	564
Marshall	270	307	393	507	564
Mitchell	270	307	393	507	564
Morris	270	307	393	507	564
Nemaha	270	307	393	507	564
Ness	270	307	393	507	564
Osage	270	307	393	507	564
Ottawa	270	307	393	507	564
Phillips	270	307	393	507	564

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K A N S A S continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pottawatomie	270	307	393	507	577
Rawlins	270	307	393	507	564
Republic	270	307	393	507	564
Riley	335	369	491	613	745
Rush	270	307	393	507	564
Saline	353	365	481	665	673
Seward	326	355	472	592	660
Sherman	270	807	393	507	564
Stafford	270	307	393	507	564
Stevens	270	308	393	507	580
Thomas	270	307	393	507	564
Wabaunsee	270	307	393	507	564
Washington	270	307	393	507	564
Wilson	270	307	393	507	564
Pratt	270	307	393	517	564
Reno	270	307	393	507	612
Rice	270	307	393	507	564
Rooks	270	307	393	507	564
Russell	270	307	393	507	564
Scott	270	307	393	517	594
Sheridan	270	307	393	507	564
Smith	270	307	393	507	564
Stanton	270	307	393	507	564
Sumner	270	307	393	531	564
Trego	270	307	393	507	564
Wallace	270	307	393	507	564
Wichita	270	307	404	507	629
Woodson	270	307	393	507	564

K E N T U C K Y

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Cincinnati, OH-KY-IN	316	406	544	729	787	Boone, Campbell, Kenton
Clarksville-Hopkinsville, TN-KY MSA	339	380	446	608	625	Christian
Evansville-Henderson, IN-KY MSA	321	382	496	620	694	Henderson
Gallatin County, KY	264	360	440	552	721	Gallatin
Grant County, KY	263	313	414	578	684	Grant
Huntington-Ashland, WV-KY-OH MSA	304	357	440	561	618	Boyd, Carter, Greenup
Lexington, KY MSA	344	428	524	715	807	Bourbon, Clark, Fayette, Jessamine, Madison, Scott Woodford
Louisville, KY-IN MSA	318	408	501	691	729	Bullitt, Jefferson, Oldham
Owensboro, KY MSA	300	311	408	548	573	Daviess
Pendleton County, KY	265	307	409	514	574	Pendleton

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adair	249	304	359	475	522
Anderson	274	290	376	469	527
Barren	249	301	359	464	522
Bell	249	290	362	464	522
Bracken	249	290	359	464	522
Breckinridge	249	290	359	464	522
Caldwell	249	290	359	464	522
Carlisle	249	290	359	464	522
Casey	249	290	359	464	522
Clinton	249	290	359	464	522
Allen	249	290	359	464	522
Ballard	249	290	359	464	522
Bath	249	290	359	464	522
Boyle	296	300	400	501	561
Breathitt	249	290	359	464	522
Butler	249	290	359	464	522
Calloway	249	290	359	464	522
Carroll	249	290	359	464	522
Clay	249	290	359	464	522
Crittenden	249	290	359	464	522

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

K E N T U C K Y continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Cumberland	249	290	359	464	522
Elliott	249	290	359	464	522
Fleming	249	290	359	464	522
Franklin	249	366	449	579	732
Garrard	249	290	359	464	522
Grayson	249	290	359	464	522
Hancock	249	290	359	468	555
Harlan	249	378	431	562	663
Hart	249	290	359	464	522
Hickman	249	290	359	464	522
Jackson	249	290	359	464	522
Knott	249	290	359	464	522
Larue	249	290	359	464	522
Lawrence	249	290	359	464	522
Leslie	249	290	359	464	522
Lewis	249	290	359	464	522
Livingston	287	290	387	538	542
Lyon	249	290	359	464	522
Mccreary	249	290	359	464	522
Magoffin	249	290	359	464	522
Marshall	249	296	359	464	558
Mason	249	290	359	464	522
Menifee	249	290	359	464	522
Metcalfe	249	290	359	464	522
Montgomery	249	290	359	464	522
Muhlenberg	249	290	359	464	522
Nicholas	249	290	359	464	522
Owen	249	290	359	464	535
Perry	279	290	374	467	524
Powell	249	290	350	464	522
Robertson	249	290	359	464	522
Rowan	249	290	359	464	542
Shelby	250	329	368	514	522
Spencer	249	296	359	464	522
Todd	249	290	359	464	522
Trimble	249	290	359	464	522
Warren	249	322	430	537	621
Wayne	249	290	359	464	522
Whitley	249	290	359	464	522

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Edmonson	249	290	359	464	522
Estill	249	290	359	464	522
Floyd	262	319	359	498	572
Fulton	249	290	359	464	522
Graves	249	290	359	464	522
Green	249	290	359	464	522
Hardin	309	318	397	535	634
Harrison	249	291	368	464	568
Henry	249	290	359	464	522
Hopkins	249	290	359	464	527
Johnson	249	290	359	464	522
Knox	249	344	441	552	678
Laurel	325	367	436	587	609
Lee	249	290	359	464	522
Letcher	249	290	359	464	522
Lincoln	249	290	359	464	522
Logan	249	290	359	473	522
Mccracken	282	303	379	485	623
Mclean	249	290	359	464	522
Marion	249	290	359	464	522
Martin	249	290	359	464	522
Meade	257	320	368	486	606
Mercer	249	290	359	473	522
Monroe	249	290	359	464	522
Morgan	249	290	359	464	522
Nelson	273	290	370	464	522
Ohio	249	290	359	464	522
Owsley	249	290	359	464	522
Pike	267	305	370	464	548
Pulaski	273	290	368	465	522
Rockcastle	249	290	359	464	522
Russell	249	290	359	464	522
Simpson	249	311	364	465	522
Taylor	300	355	397	532	601
Trigg	249	290	359	464	522
Union	249	290	359	464	522
Washington	249	294	359	464	522
Webster	249	290	359	464	522
Wolfe	249	290	359	464	522

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 19

L O U I S I A N A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Alexandria, LA MSA	280	350	439	608	618	Rapides
Baton Rouge, LA MSA	304	377	468	649	766	Ascension, East Baton Rouge, Livingston, West Baton Rouge
Houma, LA MSA	276	323	414	575	680	Lafourche, Terrebonne
Lafayette, LA MSA	293	337	401	552	653	Lafayette, Acadia, St. Landry, St. Martin
Lake Charles, LA MSA	376	437	554	726	910	Calcasieu
Monroe, LA MSA	303	339	452	609	633	Ouachita
New Orleans, LA	365	418	521	709	858	Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles St. John the Baptist, St. Tammany
St. James Parish, LA	275	312	415	517	580	St. James
Shreveport-Bossier City, LA MSA	341	388	487	651	799	Bossier, Caddo, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allen	268	291	358	469	523
Avoyelles	268	291	358	469	525
Bienville	268	291	358	475	562
Cameron	268	291	358	469	523
Claiborne	268	291	358	469	523
De Soto	268	291	358	469	527
East Feliciana	268	291	358	469	523
Franklin	268	291	358	469	527
Iberia	283	295	366	469	523
Jackson	268	291	358	469	523
La Salle	268	291	358	469	527
Madison	268	291	358	469	523
Natchitoches	286	293	378	524	527
Red River	268	291	358	469	527
Sabine	268	298	358	469	552
St. Mary	293	314	394	537	560
Tensas	268	291	358	469	523
Vermilion	268	291	358	469	523
Washington	268	291	358	469	523
West Feliciana	268	348	466	583	654

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Assumption	293	315	373	469	523
Beauregard	326	355	421	550	605
Caldwell	268	291	358	469	523
Catahoula	268	291	358	469	523
Concordia	268	291	358	469	523
East Carroll	268	291	358	469	523
Evangeline	268	291	358	469	523
Grant	268	291	358	469	523
Iberville	268	291	358	469	539
Jefferson Davis	268	291	358	469	531
Lincoln	315	317	395	542	650
Morehouse	268	291	358	469	523
Pointe Coupee	268	291	358	469	568
Richland	268	291	358	469	527
St. Helena	268	291	358	469	523
Tangipahoa	287	298	383	502	535
Union	268	291	358	469	527
Vernon	307	342	390	505	596
West Carroll	268	291	358	469	523
Winn	268	291	358	469	523

M A I N E

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Bangor, ME MSA	350	427	547	715	767	Penobscot county towns of Bangor city, Brewer city Eddington town, Glenburn town, Hampden town, Hermon town Holden town, Kenduskeag town, Milford town Old Town city, Orono town, Orrington town Penobscot Indian I, Veazie town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 20

M A I N E continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Lewiston-Auburn, ME MSA	322	388	499	625	709	Waldo county towns of Winterport town Androscoggin county towns of Auburn city, Greene town Lewiston city, Lisbon town, Mechanic Falls tow Poland town, Sabattus town, Turner town, Wales town
Portland, ME MSA	381	491	646	808	906	Cumberland county towns of Cape Elizabeth tow, Casco town Cumberland town, Falmouth town, Freeport town Gorham town, Gray town, North Yarmouth tow Portland city, Raymond town, Scarborough town South Portland cit, Standish town, Westbrook city Windham town, Yarmouth town York county towns of Buxton town, Hollis town Limington town, Old Orchard Beach
Portsmouth-Rochester, NH-ME PMSA	479	573	737	945	1159	York county towns of Berwick town, Eliot town Kittery town, South Berwick town, York town
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Androscoggin	321	397	527	658	737	Durham town, Leeds town, Livermore town Livermore Falls to, Minot town
Aroostook	321	377	483	615	708	
Cumberland	470	479	638	868	996	Baldwin town, Bridgton town, Brunswick town Harpswell town, Harrison town, Naples town New Gloucester tow, Pownal town, Sebago town
Franklin	328	377	483	615	708	
Hancock	346	424	525	661	734	
Kennebec	334	417	501	629	708	
Knox	321	414	537	716	754	
Lincoln	418	465	529	735	868	
Oxford	321	377	483	615	708	
Penobscot	321	377	483	615	708	Alton town, Argyle unorg., Bradford town, Bradley town Burlington town, Carmel town, Carroll plantation Charleston town, Chester town, Clifton town Corinna town, Corinth town, Dexter town, Dixmont town Drew plantation, East Central Penob, East Millinocket t Edinburg town, Enfield town, Etna town, Exeter town Garland town, Greenbush town, Greenfield town Howland town, Hudson town, Kingman unorg., Lagrange town Lakeville town, Lee town, Levant town, Lincoln town Lowell town, Mattawamkeag town, Maxfield town Medway town, Millinocket town, Mount Chase town Newburgh town, Newport town, North Penobscot un Passadumkeag town, Patten town, Plymouth town Prentiss plantatio, Seboeis plantation, Springfield town Stacyville town, Stetson town, Twombly unorg. Webster plantation, Whitney unorg., Winn town Woodville town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A I N E continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Piscataquis	321	377	483	615	708	
Sagadahoc	452	517	638	849	1048	
Somerset	336	384	483	615	726	
Waldo	321	377	483	615	708	Belfast city, Belmont town, Brooks town, Burnham town Frankfort town, Freedom town, Islesboro town Jackson town, Knox town, Liberty town, Lincolnville town Monroe town, Montville town, Morrill town Northport town, Palermo town, Prospect town Searsmont town, Searsport town, Stockton Springs t Swanville town, Thorndike town, Troy town, Unity town Waldo town
Washington	321	377	483	615	708	
York	397	454	608	761	851	Acton town, Alfred town, Arundel town, Biddeford city Cornish town, Dayton town, Kennebunk town Kennebunkport town, Lebanon town, Limerick town Lyman town, Newfield town, North Berwick town Ogunquit town, Parsonsfield town, Saco city Sanford town, Shapleigh town, Waterboro town, Wells town

M A R Y L A N D

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Baltimore, MD	431	527	643	851	974	Anne Arundel, Baltimore, Carroll, Harford, Howard Queen Anne's, Baltimore city
Columbia, MD	570	766	892	1179	1473	Columbia
Cumberland, MD-WV MSA	337	405	501	662	756	Allegany
Hagerstown, MD PMSA	338	406	507	664	758	Washington
Washington, DC-MD-VA	630	716	840	1145	1380	Calvert, Charles, Frederick, Montgomery, Prince George's
Wilmington-Newark, DE-MD PMSA	446	589	687	932	1126	Cecil

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Caroline	369	398	497	652	741
Garrett	330	442	497	648	817
St. Mary's	503	598	689	961	1098
Talbot	436	462	616	772	1011
Worcester	330	398	498	692	741
Dorchester	330	426	497	648	741
Kent	334	411	549	685	826
Somerset	393	441	497	690	816
Wicomico	371	429	554	703	775

M A S S A C H U S E T T S

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Barnstable-Yarmouth, MA MSA	434	582	776	971	1088	Barnstable county towns of Barnstable town, Brewster town Chatham town, Dennis town, Eastham town, Harwich town Mashpee town, Orleans town, Sandwich town, Yarmouth town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	669	752	942	1177	1382	Bristol county towns of Berkley town, Dighton town Mansfield town, Norton town, Taunton city Essex county towns of Amesbury town, Beverly city Danvers town, Essex town, Gloucester city, Hamilton town Ipswich town, Lynn city, Lynnfield town, Manchester town Marblehead town, Middleton town, Nahant town Newbury town, Newburyport city, Peabody city Rockport town, Rowley town, Salem city, Salisbury town Saugus town, Swampscott town, Topsfield town Wenham town Middlesex county towns of Acton town, Arlington town Ashland town, Ayer town, Bedford town, Belmont town Boxborough town, Burlington town, Cambridge city Carlisle town, Concord town, Everett city Framingham town, Holliston town, Hopkinton town Hudson town, Lexington town, Lincoln town Littleton town, Malden city, Marlborough city Maynard town, Medford city, Melrose city, Natick town Newton city, North Reading town, Reading town Sherborn town, Shirley town, Somerville city Stoneham town, Stow town, Sudbury town, Townsend town Wakefield town, Waltham city, Watertown town Wayland town, Weston town, Wilmington town Winchester town, Woburn city Norfolk county towns of Bellingham town, Braintree town Brookline town, Canton town, Cohasset town, Dedham town Dover town, Foxborough town, Franklin town Holbrook town, Medfield town, Medway town, Millis town Milton town, Needham town, Norfolk town, Norwood town Plainville town, Quincy city, Randolph town, Sharon town Stoughton town, Walpole town, Wellesley town Westwood town, Weymouth town, Wrentham town Plymouth county towns of Carver town, Duxbury town Hanover town, Hingham town, Hull town, Kingston town Marshfield town, Norwell town, Pembroke town Plymouth town, Rockland town, Scituate town Wareham town Suffolk county towns of Boston city, Chelsea city Revere city, Winthrop town Worcester county towns of Berlin town, Blackstone town Bolton town, Harvard town, Hopedale town, Lancaster town Mendon town, Milford town, Millville town Southborough town, Upton town
Brockton, MA PMSA	447	589	722	898	1024	Bristol county towns of Easton town, Raynham town Norfolk county towns of Avon town Plymouth county towns of Abington town, Bridgewater town Brockton city, East Bridgewater t, Halifax town

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Hanson town, Lakeville town, Middleborough town Plympton town, West Bridgewater t, Whitman town
Fitchburg-Leominster, MA MSA.....	350	491	638	870	891	Middlesex county towns of Ashby town Worcester county towns of Ashburnham town, Fitchburg city Gardner city, Leominster city, Lunenburg town Templeton town, Westminster town, Winchendon town
Lawrence, MA-NH PMSA.....	484	584	735	919	1130	Essex county towns of Andover town, Boxford town Georgetown town, Groveland town, Haverhill city Lawrence city, Merrimac town, Methuen town North Andover town, West Newbury town
Lowell, MA-NH PMSA.....	491	634	766	960	1073	Middlesex county towns of Billerica town, Chelmsford town Dracut town, Dunstable town, Groton town, Lowell city Pepperell town, Tewksbury town, Tyngsborough town Westford town
New Bedford, MA MSA.....	469	573	652	815	915	Bristol county towns of Acushnet town, Dartmouth town Fairhaven town, Freetown town, New Bedford city Plymouth county towns of Marion town, Mattapoisett town Rochester town
Pittsfield, MA MSA.....	323	458	564	708	877	Berkshire county towns of Adams town, Cheshire town Dalton town, Hinsdale town, Lanesborough town, Lee town Lenox town, Pittsfield city, Richmond town Stockbridge town
Providence-Fall River-Warwick, RI-MA PMSA.....	408	555	667	838	1032	Bristol county towns of Attleboro city, Fall River city North Attleborough, Rehoboth town, Seekonk town Somerset town, Swansea town, Westport town
Springfield, MA MSA.....	419	518	654	817	1005	Franklin county towns of Sunderland town Hampden county towns of Agawam town, Chicopee city East Longmeadow to, Hampden town, Holyoke city Longmeadow town, Ludlow town, Monson town Montgomery town, Palmer town, Russell town Southwick town, Springfield city, Westfield city West Springfield t, Wilbraham town Hampshire county towns of Amherst town, Belchertown town Easthampton town, Granby town, Hadley town Hatfield town, Huntington town, Northampton city Southampton town, South Hadley town, Ware town Williamsburg town
Worcester, MA-CT.....	434	526	656	819	918	Hampden county towns of Holland town Worcester county towns of Auburn town, Barre town Boylston town, Brookfield town, Charlton town Clinton town, Douglas town, Dudley town East Brookfield to, Grafton town, Holden town Leicester town, Millbury town, Northborough town Northbridge town, North Brookfield t, Oakham town Oxford town, Paxton town, Princeton town, Rutland town Shrewsbury town, Southbridge town, Spencer town Sterling town, Sturbridge town, Sutton town

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M A S S A C H U S E T T S continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Uxbridge town, Webster town, Westborough town West Boylston town, West Brookfield to, Worcester city
NONMETROPOLITAN COUNTIES	**O BR**	**1 BR**	**2 BR**	**3 BR**	**4 BR**	**Towns within non metropolitan counties**
Barnstable	418	574	765	956	1071	Bourne town, Falmouth town, Provincetown town Truro town, Wellfleet town
Berkshire	381	463	546	749	897	Alford town, Becket town, Clarksburg town, Egremont town Florida town, Great Barrington t, Hancock town Monterey town, Mount Washington t, New Ashford town New Marlborough to, North Adams city, Otis town Peru town, Sandisfield town, Savoy town, Sheffield town Tyringham town, Washington town, West Stockbridge t Williamstown town, Windsor town
Dukes	566	575	766	957	1074	
Franklin	411	509	651	816	985	Ashfield town, Bernardston town, Buckland town Charlemont town, Colrain town, Conway town Deerfield town, Erving town, Gill town, Greenfield town Hawley town, Heath town, Leverett town, Leyden town Monroe town, Montague town, New Salem town Northfield town, Orange town, Rowe town, Shelburne town Shutesbury town, Warwick town, Wendell town Whately town
Hampden	415	565	754	1003	1237	Blandford town, Brimfield town, Chester town Granville town, Tolland town, Wales town
Hampshire	581	588	785	984	1101	Chesterfield town, Cummington town, Goshen town Middlefield town, Pelham town, Plainfield town Westhampton town, Worthington town
Nantucket	734	984	1312	1640	1836	
Worcester	462	482	642	804	899	Athol town, Hardwick town, Hubbardston town New Braintree town, Petersham town, Phillipston town Royalston town, Warren town

M I C H I G A N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Ann Arbor, MI PMSA	480	581	717	940	1054	Lenawee, Livingston, Washtenaw
Benton Harbor, MI MSA	380	384	504	630	707	Berrien
Detroit, MI PMSA	396	538	650	813	911	Lapeer, Macomb, Monroe, Oakland, St. Clair, Wayne
Flint, MI PMSA	375	426	534	682	747	Genesee
Grand Rapids-Muskegon-Holland, MI MSA	397	464	566	710	794	Allegan, Kent, Muskegon, Ottawa
Jackson, MI MSA	299	402	509	636	713	Jackson
Kalamazoo-Battle Creek, MI MSA	353	426	537	673	751	Calhoun, Kalamazoo, Van Buren
Lansing-East Lansing, MI MSA	398	468	605	790	913	Clinton, Eaton, Ingham

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I C H I G A N continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Saginaw-Bay City-Midland, MI MSA	347	383	509	636	713	Bay, Midland, Saginaw

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alcona	290	331	419	545	621
Alpena	290	331	419	545	625
Arenac	290	331	419	545	621
Barry	290	358	476	597	668
Branch	336	344	422	577	621
Charlevoix	353	357	452	614	636
Chippewa	290	331	419	545	621
Crawford	317	331	428	585	621
Dickinson	290	357	440	550	621
Gladwin	290	331	419	545	621
Grand Traverse	384	411	549	686	770
Hillsdale	290	331	419	545	621
Huron	290	331	419	545	621
Iosco	290	331	419	545	657
Isabella	324	346	463	625	759
Keweenaw	290	331	419	545	621
Leelanau	393	425	497	650	816
Mackinac	290	331	419	545	621
Marquette	290	331	419	545	621
Mecosta	290	331	419	567	673
Missaukee	305	331	419	545	621
Montmorency	290	331	419	545	621
Oceana	309	331	419	545	621
Ontonagon	290	331	419	545	621
Oscoda	290	331	419	545	621
Presque Isle	290	331	419	545	621
St. Joseph	290	338	419	547	621
Schoolcraft	290	331	419	545	621
Tuscola	315	344	459	573	641

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alger	290	331	419	545	621
Antrim	290	348	419	545	621
Baraga	290	331	419	545	621
Benzie	303	331	419	563	621
Cass	290	331	421	575	621
Cheboygan	305	331	419	545	637
Clare	301	331	419	545	621
Delta	290	331	419	545	621
Emmet	324	388	459	602	641
Gogebic	290	331	419	545	621
Gratiot	303	331	419	545	621
Houghton	290	331	419	545	621
Ionia	356	360	451	562	632
Iron	290	331	419	545	621
Kalkaska	290	331	420	547	691
Lake	293	331	419	545	621
Luce	290	331	419	545	621
Manistee	290	331	419	545	621
Mason	290	331	419	545	621
Menominee	290	331	419	545	621
Montcalm	294	331	419	545	621
Newaygo	334	358	420	545	621
Ogemaw	302	332	419	545	621
Osceola	290	331	419	545	621
Otsego	297	360	454	631	731
Roscommon	320	331	419	545	621
Sanilac	290	341	419	547	621
Shiawassee	290	364	438	610	653
Wexford	290	335	434	569	673

M I N N E S O T A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Duluth-Superior, MN-WI MSA	281	362	465	621	723	St. Louis
Fargo-Moorhead, ND-MN MSA	337	464	560	777	832	Clay
Grand Forks, ND-MN MSA	348	415	546	753	840	Polk

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 26

M I N N E S O T A continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
La Crosse, WI-MN MSA	285	367	467	625	757	Houston
Minneapolis-St. Paul, MN-WI MSA	416	535	684	925	1048	Anoka, Carver, Chisago, Dakota, Hennepin, Isanti, Ramsey Scott, Sherburne, Washington, Wright
Rochester, MN MSA	314	441	577	798	896	Olmsted
St. Cloud, MN MSA	326	421	498	629	802	Benton, Stearns

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Aitkin	270	350	466	584	652
Beltrami	266	341	456	597	638
Blue Earth	363	438	546	699	887
Carlton	266	324	411	515	589
Chippewa	266	324	411	515	589
Cook	315	324	423	578	602
Crow Wing	266	324	432	541	679
Douglas	266	324	411	515	589
Fillmore	266	324	411	515	589
Goodhue	307	395	527	672	738
Hubbard	272	324	411	515	589
Jackson	266	324	411	515	589
Kandiyohi	328	414	504	632	761
Koochiching	322	328	436	545	714
Lake	266	324	411	515	589
Le Sueur	266	324	411	515	635
Lyon	266	324	411	515	610
Mahnomen	266	324	411	515	589
Martin	266	324	411	515	589
Mille Lacs	283	324	412	574	676
Mower	266	324	411	515	589
Nicollet	334	357	475	630	666
Norman	266	324	411	515	589
Pennington	266	324	411	550	589
Pipestone	266	324	411	515	589
Red Lake	266	336	411	515	589
Renville	266	324	411	515	589
Rock	266	324	411	515	589
Sibley	266	324	411	515	589
Stevens	303	383	432	541	606
Todd	266	324	411	515	589
Wabasha	288	351	444	557	636
Waseca	347	381	483	606	693

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Becker	266	382	429	537	602
Big Stone	266	324	411	515	589
Brown	266	344	411	515	589
Cass	266	324	411	515	589
Clearwater	266	324	411	515	589
Cottonwood	266	324	411	515	589
Dodge	266	324	411	515	589
Faribault	266	324	411	515	589
Freeborn	266	324	419	552	591
Grant	266	324	411	515	589
Itasca	341	345	450	562	630
Kanabec	266	335	434	543	608
Kittson	266	324	411	515	589
Lac qui Parle	266	324	411	515	589
Lake of the Woods	266	324	411	515	589
Lincoln	266	324	411	515	589
Mcleod	316	407	543	674	757
Marshall	266	324	411	515	589
Meeker	317	373	473	594	678
Morrison	295	324	411	515	589
Murray	266	324	411	515	589
Nobles	266	324	411	515	589
Otter Tail	266	324	411	515	589
Pine	294	324	411	518	589
Pope	266	324	411	515	589
Redwood	266	324	411	515	589
Rice	315	431	575	717	803
Roseau	322	328	430	555	604
Steele	315	366	487	609	682
Swift	266	324	411	515	589
Traverse	266	324	411	515	589
Wadena	266	324	411	515	589
Watonwan	266	324	411	515	589

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I N N E S O T A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Wilkin	266	324	411	515	589
Yellow Medicine	266	324	411	515	589
Winona	310	404	512	640	717

M I S S I S S I P P I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Biloxi-Gulfport-Pascagpula, MS MSA	357	419	482	672	792	Hancock, Harrison, Jackson
Hattiesburg, MS MSA	275	337	413	554	660	Forrest, Lamar
Jackson, MS MSA	363	414	507	674	711	Hinds, Madison, Rankin
Memphis, TN-AR-MS MSA	389	454	531	740	778	Desoto

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	248	294	366	468	597
Amite	248	294	364	468	527
Benton	248	294	364	468	527
Calhoun	248	294	364	468	527
Chickasaw	248	294	364	468	527
Claiborne	248	294	364	468	527
Clay	248	294	364	468	532
Copiah	248	294	364	468	527
Franklin	251	294	364	468	527
Greene	248	294	364	468	527
Holmes	248	294	364	468	527
Issaquena	260	358	475	595	666
Jasper	248	294	364	468	527
Jefferson Davis	248	294	364	468	527
Kemper	250	294	364	468	527
Lauderdale	248	320	402	522	564
Leake	248	294	364	468	527
Leflore	248	294	364	469	563
Lowndes	306	330	391	490	553
Marshall	248	294	364	468	535
Montgomery	248	294	364	468	527
Newton	248	294	364	468	527
Oktibbeha	304	317	387	538	635
Pearl River	260	294	364	470	527
Pike	252	294	364	468	527
Prentiss	251	294	364	468	527
Scott	248	294	364	468	527
Simpson	251	294	364	468	527

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alcorn	248	294	364	468	527
Attala	248	294	364	468	527
Bolivar	282	294	379	473	541
Carroll	248	294	364	468	527
Choctaw	248	294	364	468	527
Clarke	248	294	364	468	527
Coahoma	288	294	388	487	545
Covington	248	294	364	468	527
George	248	294	364	468	527
Grenada	248	295	364	497	527
Humphreys	248	294	364	468	527
Itawamba	248	294	364	468	527
Jefferson	248	294	364	468	527
Jones	248	294	364	468	527
Lafayette	251	344	458	574	642
Lawrence	248	294	364	468	527
Lee	310	334	402	503	564
Lincoln	248	294	364	468	527
Marion	248	294	364	468	527
Monroe	248	294	364	468	527
Neshoba	248	294	364	468	527
Noxubee	252	294	364	468	527
Panola	256	294	364	468	527
Perry	248	294	364	468	527
Pontotoc	248	294	364	468	527
Quitman	248	294	364	468	527
Sharkey	252	294	364	468	527
Smith	248	294	364	468	527

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 28

M I S S I S S I P P I continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Stone	248	294	364	468	527
Tallahatchie	248	294	364	468	527
Tippah	248	294	364	468	527
Tunica	248	294	364	468	527
Walthall	248	294	364	468	527
Washington	268	319	426	550	606
Webster	250	294	364	468	527
Winston	248	294	364	468	527
Yazoo	252	294	364	468	527

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Sunflower	274	298	364	468	559
Tate	248	335	387	485	637
Tishomingo	248	294	364	468	527
Union	248	294	364	468	527
Warren	248	324	404	558	669
Wayne	248	294	364	468	527
Wilkinson	248	294	364	468	527
Yalobusha	250	294	364	468	527

M I S S O U R I

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Columbia, MO MSA	262	369	481	668	787	Boone
Joplin, MO MSA	256	296	393	517	556	Jasper, Newton
Kansas City, MO-KS MSA	379	477	574	794	880	Cass, Clay, Clinton, Jackson, Lafayette, Platte, Ray
St. Joseph, MO MSA	246	298	398	502	558	Andrew, Buchanan
St. Louis, MO-IL MSA	323	393	510	664	734	Crawford-Sullivan (part), Franklin, Jefferson, Lincoln St. Charles, St. Louis, Warren, St. Louis city
Springfield, MO MSA	268	340	440	608	633	Christian, Greene, Webster

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	239	299	396	499	598
Audrain	255	275	354	478	553
Barton	239	275	354	460	528
Benton	269	275	366	460	528
Butler	239	275	354	460	528
Callaway	282	286	381	483	626
Cape Girardeau	246	303	402	536	657
Carter	239	275	354	460	528
Chariton	239	275	354	460	528
Cole	239	316	420	561	588
Crawford	262	316	355	468	528
Dallas	239	275	354	460	528
Dekalb	247	275	354	465	528
Douglas	239	275	354	460	528
Gasconade	239	275	354	460	528
Grundy	239	275	354	460	528
Henry	272	277	370	463	608
Holt	239	275	354	460	528
Howell	239	275	354	460	528

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Atchison	239	275	354	460	528
Barry	239	284	354	460	528
Bates	239	275	354	460	538
Bollinger	239	275	354	460	528
Caldwell	239	277	373	466	528
Camden	315	318	424	589	693
Carroll	239	275	354	460	528
Cedar	239	275	354	460	528
Clark	239	275	354	460	528
Cooper	239	275	354	460	528
Dade	239	275	354	460	528
Daviess	239	275	354	460	528
Dent	239	275	354	460	528
Dunklin	239	275	354	460	528
Gentry	239	275	354	460	528
Harrison	239	275	354	460	528
Hickory	239	275	354	460	528
Howard	239	275	354	460	530
Iron	239	275	354	460	528

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

M I S S O U R I continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Johnson	287	321	418	554	655
Laclede	239	275	354	463	528
Lewis	239	275	354	460	528
Livingston	239	275	355	460	528
Macon	239	275	354	460	528
Maries	239	275	354	460	528
Mercer	239	275	354	460	528
Mississippi	239	275	354	460	528
Monroe	239	275	354	460	528
Morgan	239	275	354	460	528
Nodaway	252	306	376	477	576
Osage	239	275	354	460	528
Pemiscot	239	275	354	460	528
Pettis	256	301	402	506	605
Pike	239	275	354	460	555
Pulaski	239	335	376	498	555
Ralls	239	275	354	460	528
Reynolds	239	275	354	460	528
St. Clair	239	275	354	460	528
St. Francois	262	329	417	523	686
Schuyler	239	275	354	460	528
Scott	287	289	387	522	601
Shelby	239	275	354	460	528
Stone	277	295	367	468	528
Taney	270	299	391	528	620
Vernon	239	275	354	471	528
Wayne	239	275	354	460	528
Wright	239	275	354	460	528

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Knox	239	275	354	460	528
Lawrence	253	282	354	460	528
Linn	239	275	354	460	528
Mcdonald	239	275	354	460	528
Madison	239	275	354	460	528
Marion	239	275	354	460	528
Miller	262	316	354	463	548
Moniteau	239	275	354	460	528
Montgomery	239	275	354	460	528
New Madrid	239	275	354	460	528
Oregon	239	275	354	460	528
Ozark	239	275	354	460	528
Perry	289	294	393	523	550
Phelps	247	297	380	516	560
Polk	239	276	354	460	553
Putnam	239	275	354	460	528
Randolph	239	275	354	460	528
Ripley	239	275	354	460	528
Ste. Genevieve	239	284	366	468	593
Saline	239	275	364	460	528
Scotland	239	275	354	460	528
Shannon	239	275	354	460	528
Stoddard	239	275	354	460	528
Sullivan	239	275	354	460	528
Texas	239	275	354	460	528
Washington	279	338	379	473	531
Worth	239	275	354	460	528

M O N T A N A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Billings, MT MSA	328	381	510	685	831	Yellowstone
Great Falls, MT MSA	328	379	500	651	775	Cascade
Missoula County, MT PMSA	338	385	513	661	840	Missoula

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING PAGE 30

M O N T A N A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaverhead	298	344	454	590	689
Blaine	298	344	454	590	689
Carbon	339	398	517	672	784
Chouteau	298	344	454	590	689
Daniels	298	365	454	590	689
Deer Lodge	298	344	454	590	689
Fergus	298	344	454	590	689
Gallatin	367	428	574	738	943
Glacier	298	344	454	590	689
Granite	298	344	454	590	689
Jefferson	314	344	454	590	689
Lake	324	344	454	590	689
Liberty	298	344	454	590	689
Mccone	298	363	454	590	689
Meagher	298	365	454	590	689
Musselshell	303	344	454	590	689
Petroleum	298	344	454	590	689
Pondera	298	364	454	590	689
Powell	303	344	454	590	689
Ravalli	298	344	454	590	689
Roosevelt	311	344	454	590	689
Sanders	298	344	454	590	689
Silver Bow	298	344	454	590	689
Sweet Grass	321	344	454	590	689
Toole	304	344	454	590	689
Valley	298	344	454	590	689
Wibaux	298	365	454	590	689

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Big Horn	298	344	454	590	689
Broadwater	298	344	454	590	735
Carter	298	365	454	590	689
Custer	298	344	454	590	689
Dawson	298	344	454	590	689
Fallon	298	344	454	590	689
Flathead	298	345	461	643	757
Garfield	298	344	454	590	689
Golden Valley	298	364	454	590	689
Hill	307	344	454	590	689
Judith Basin	298	365	454	590	689
Lewis and Clark	331	388	516	717	849
Lincoln	324	344	454	590	689
Madison	304	344	454	590	689
Mineral	298	344	454	590	704
Park	298	344	454	590	697
Phillips	298	344	454	590	689
Powder River	298	349	454	590	689
Prairie	298	344	454	590	689
Richland	298	372	454	590	689
Rosebud	298	344	454	590	689
Sheridan	306	344	454	590	689
Stillwater	304	344	454	590	689
Teton	298	344	454	590	689
Treasure	298	344	454	590	689
Wheatland	298	344	454	590	689

N E B R A S K A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Lincoln, NE MSA	314	403	531	705	823	Lancaster
Omaha, NE-IA MSA	338	463	585	767	860	Cass, Douglas, Sarpy, Washington
Sioux City, IA-NE MSA	344	413	515	641	734	Dakota

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	248	332	439	550	659
Arthur	238	307	391	500	569
Blaine	238	307	391	500	569
Box Butte	258	307	391	501	591
Brown	238	307	391	500	581
Burt	238	307	391	500	569
Cedar	238	307	391	500	569
Cherry	238	322	391	503	592
Clay	238	307	391	500	569
Cuming	238	323	391	500	569
Dawes	254	307	391	504	594
Deuel	238	307	391	500	569
Dodge	238	307	403	531	569
Fillmore	238	307	391	500	569
Frontier	267	307	391	500	569
Gage	238	308	398	507	569
Garfield	238	307	391	500	569
Grant	238	307	391	500	569
Hall	285	376	501	659	738
Harlan	238	307	391	501	569
Hitchcock	238	307	391	500	569
Hooker	238	321	391	501	569
Jefferson	238	307	391	500	569
Kearney	238	307	391	500	594
Keya Paha	238	307	391	500	569
Knox	238	318	391	500	569
Logan	238	307	391	500	595
Mcpherson	238	307	391	501	569
Merrick	238	307	391	500	569
Nance	238	307	391	500	569
Nuckolls	238	307	391	500	569
Pawnee	238	307	391	504	569
Phelps	266	307	391	501	594
Platte	238	307	391	546	569
Red Willow	238	307	391	500	579
Rock	238	314	391	500	569
Saunders	238	307	391	500	569
Seward	295	307	399	500	569
Sherman	238	309	391	500	595
Stanton	238	307	391	500	569

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Antelope	238	322	391	503	569
Banner	238	307	391	501	569
Boone	238	307	391	500	592
Boyd	238	320	391	500	569
Buffalo	256	371	465	581	702
Butler	238	307	391	500	569
Chase	238	323	391	500	596
Cheyenne	266	307	391	500	569
Colfax	259	319	391	500	569
Custer	266	309	391	500	591
Dawson	261	319	391	504	569
Dixon	265	307	391	500	569
Dundy	238	307	391	500	569
Franklin	238	307	391	505	569
Furnas	238	307	391	500	592
Garden	238	319	391	503	594
Gosper	238	307	391	500	576
Greeley	238	307	391	500	579
Hamilton	238	307	391	504	569
Hayes	238	321	391	500	592
Holt	238	307	391	500	569
Howard	238	307	391	500	569
Johnson	238	311	391	500	569
Keith	238	307	391	500	569
Kimball	238	307	391	501	594
Lincoln	244	319	391	500	569
Loup	238	307	391	500	593
Madison	244	321	424	549	669
Morrill	238	309	391	500	592
Nemaha	238	307	391	500	569
Otoe	238	307	391	500	595
Perkins	238	307	391	500	569
Pierce	238	307	391	500	569
Polk	238	307	391	500	569
Richardson	238	307	391	500	569
Saline	238	320	391	500	569
Scotts Bluff	242	318	403	500	592
Sheridan	238	307	391	500	570
Sioux	238	307	391	500	594
Thayer	238	322	391	500	569

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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NEBRASKA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Thomas	238	307	391	500	569
Valley	238	307	391	500	569
Webster	238	307	391	500	569
York	238	307	396	500	569
Thurston	238	307	391	500	569
Wayne	272	307	391	500	592
Wheelen	238	307	391	501	569

NEVADA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Las Vegas, NV-AZ MSA	497	590	702	977	1154	Clark, Nye
Reno, NV MSA	481	558	717	999	1180	Washoe

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Churchill	440	447	597	823	977
Elko	400	457	609	804	1001
Eureka	324	529	596	742	830
Lander	327	507	596	745	976
Lyon	388	464	596	829	977
Pershing	451	457	609	762	871
White Pine	325	448	596	804	845
Douglas	395	576	723	1003	1116
Esmeralda	424	529	596	743	833
Humboldt	477	500	603	791	846
Lincoln	325	489	596	746	834
Mineral	329	450	599	785	982
Storey	457	463	609	848	1001
Carson City	342	468	625	869	1026

NEW HAMPSHIRE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Boston, MA-NH PMSA	669	752	942	1177	1382	Rockingham county towns of Seabrook town South Hampton town
Lawrence, MA-NH PMSA	484	584	735	919	1130	Rockingham county towns of Atkinson town, Chester town Danville town, Derry town, Fremont town, Hampstead town Kingston town, Newton town, Plaistow town, Raymond town Salem town, Sandown town, Windham town
Lowell, MA-NH PMSA	491	634	766	960	1073	Hillsborough county towns of Pelham town
Manchester, NH PMSA	395	563	703	879	985	Hillsborough county towns of Bedford town, Goffstown town Manchester city, Weare town Merrimack county towns of Allenstown town, Hooksett town Rockingham county towns of Auburn town, Candia town Londonderry town
Nashua, NH PMSA	465	648	804	1094	1302	Hillsborough county towns of Amherst town, Brookline town Greenville town, Hollis town, Hudson town Litchfield town, Mason town, Merrimack town Milford town, Mont Vernon town, Nashua city New Ipswich town, Wilton town
Portsmouth-Rochester, NH-ME PMSA	479	573	737	945	1159	Rockingham county towns of Brentwood town East Kingston town, Epping town, Exeter town Greenland town, Hampton town, Hampton Falls town

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEW HAMPSHIRE continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
						Kensington town, New Castle town, Newfields town Newington town, Newmarket town, North Hampton town Portsmouth city, Rye town, Stratham town
						Strafford county towns of Barrington town, Dover city Durham town, Farmington town, Lee town, Madbury town Milton town, Rochester city, Rollinsford town Somersworth city
NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Belknap	431	498	655	885	1076	
Carroll	360	494	658	825	1029	
Cheshire	447	531	679	884	1048	
Coos	308	377	483	630	746	
Grafton	397	479	638	825	1042	
Hillsborough	423	529	705	932	1122	Antrim town, Bennington town, Deering town Francestown town, Greenfield town, Hancock town Hillsborough town, Lyndeborough town, New Boston town Peterborough town, Sharon town, Temple town Windsor town
Merrimack	445	532	663	850	949	Andover town, Boscawen town, Bow town, Bradford town Canterbury town, Chichester town, Concord city Danbury town, Dunbarton town, Epsom town, Franklin city Henniker town, Hill town, Hopkinton town, Loudon town Newbury town, New London town, Northfield town Pembroke town, Pittsfield town, Salisbury town Sutton town, Warner town, Webster town, Wilmot town
Rockingham	462	541	724	1004	1159	Deerfield town, Northwood town, Nottingham town
Strafford	409	555	740	928	1040	Middleton town, New Durham town, Strafford town
Sullivan	430	437	567	745	794	

NEW JERSEY

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Atlantic-Cape May, NJ PMSA	499	568	756	947	1082	Atlantic, Cape May
Bergen-Passaic, NJ PMSA	634	773	906	1207	1489	Bergen, Passaic
Jersey City, NJ PMSA	583	687	801	1018	1120	Hudson
Middlesex-Somerset-Hunterdon, NJ PMSA	678	743	927	1259	1454	Hunterdon, Middlesex, Somerset
Monmouth-Ocean, NJ PMSA	596	714	906	1204	1412	Monmouth, Ocean
Newark, NJ PMSA	550	702	846	1066	1347	Essex, Morris, Sussex, Union, Warren
Philadelphia, PA-NJ PMSA	486	597	738	923	1158	Burlington, Camden, Gloucester, Salem
Trenton, NJ PMSA	492	686	836	1132	1367	Mercer
Vineland-Millville-Bridgeton, NJ PMSA	482	586	707	881	991	Cumberland

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

N E W M E X I C O

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albuquerque, NM MSA	393	468	585	807	952	Bernalillo, Sandoval, Valencia
Las Cruces, NM MSA	293	368	437	599	706	Dona Ana
Santa Fe, NM MSA	423	600	741	995	1126	Los Alamos, Santa Fe

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Catron	271	317	393	528	596
Cibola	282	308	393	528	596
Curry	271	315	412	528	596
Eddy	278	307	393	528	614
Guadalupe	271	307	393	528	600
Hidalgo	271	307	393	528	596
Lincoln	307	315	415	547	684
Mckinley	271	340	433	539	604
Otero	271	307	393	548	596
Rio Arriba	317	324	398	528	596
San Juan	306	328	409	568	673
Sierra	271	307	393	528	596
Taos	465	471	628	785	1034
Union	271	330	393	528	596

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Chaves	271	308	406	559	596
Colfax	271	315	393	528	596
Debaca	271	308	393	528	596
Grant	321	366	468	628	709
Harding	271	307	393	528	596
Lea	271	307	393	528	596
Luna	298	328	420	563	635
Mora	271	307	393	528	596
Quay	271	392	442	553	618
Roosevelt	271	307	393	528	596
San Miguel	300	307	405	528	596
Socorro	271	307	393	528	612
Torrance	297	321	393	528	596

N E W Y O R K

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Albany-Schenectady-Troy, NY MSA	399	491	604	758	847	Albany, Montgomery, Rensselaer, Saratoga, Schenectady Schoharie
Binghamton, NY MSA	358	402	501	637	714	Broome, Tioga
Buffalo-Niagara Falls, NY PMSA	356	423	510	637	714	Erie, Niagara
Dutchess County, NY PMSA	577	732	905	1176	1374	Dutchess
Elmira, NY MSA	358	402	493	624	744	Chemung
Glens Falls, NY MSA	358	466	568	711	795	Warren, Washington
Jamestown, NY MSA	358	402	483	624	714	Chautauqua
Nassau-Suffolk, NY PMSA	775	934	1139	1585	1698	Nassau, Suffolk
New York, NY PMSA	727	810	920	1150	1289	Bronx, Kings, New York, Putnam, Queens, Richmond Rockland
Westchester County, NY	698	910	1108	1440	1719	Westchester
Newburgh, NY-PA PMSA	462	600	734	931	1062	Orange
Rochester, NY MSA	385	501	609	781	853	Genesee, Livingston, Monroe, Ontario, Orleans, Wayne
Syracuse, NY MSA	383	462	572	730	810	Cayuga, Madison, Onondaga, Oswego
Utica-Rome, NY MSA	358	402	492	624	714	Herkimer, Oneida

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NEW YORK continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Allegany	356	400	480	621	710
Chenango	379	400	480	621	710
Columbia	445	467	599	785	840
Delaware	356	400	480	621	763
Franklin	356	400	480	621	710
Greene	356	461	553	714	871
Jefferson	383	452	531	665	744
Otsego	356	421	484	625	794
Schuyler	385	410	487	678	799
Steuben	368	419	480	628	710
Tompkins	464	500	642	896	1056
Wyoming	356	400	480	621	710

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Cattaraugus	356	400	480	621	710
Clinton	356	400	517	646	724
Cortland	356	425	532	665	787
Essex	356	405	508	636	710
Fulton	356	400	480	621	710
Hamilton	356	428	492	621	710
Lewis	356	400	480	621	710
St. Lawrence	356	400	480	621	710
Seneca	380	408	493	637	710
Sullivan	461	517	630	871	883
Ulster	437	607	730	951	1197
Yates	356	400	480	621	710

NORTH CAROLINA

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Asheville, NC MSA	343	415	541	705	760	Buncombe, Madison
Charlotte-Gastonia-Rock Hill, NC-SC MSA	510	575	648	854	1023	Cabarrus, Gaston, Lincoln, Mecklenburg, Rowan, Union
Fayetteville, NC MSA	376	427	479	663	788	Cumberland
Goldsboro, NC MSA	308	355	431	555	648	Wayne
Greensboro--Winston-Salem--High Point, NC MSA	407	464	553	762	775	Alamance, Davidson, Davie, Forsyth, Guilford, Randolph Stokes, Yadkin
Greenville, NC MSA	402	407	528	712	871	Pitt
Hickory-Morganton, NC MSA	388	423	491	619	734	Alexander, Burke, Caldwell, Catawba
Jacksonville, NC MSA	351	409	463	642	759	Onslow
Norfolk-Virginia Beach-Newport News, VA-NC MSA	436	491	580	809	951	Currituck
Raleigh-Durham-Chapel Hill, NC MSA	456	553	649	871	1027	Chatham, Durham, Franklin, Johnston, Orange, Wake
Rocky Mount, NC MSA	328	355	431	571	630	Edgecombe, Nash
Wilmington, NC MSA	450	494	605	828	987	Brunswick, New Hanover

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alleghany	292	342	409	527	624
Ashe	292	337	409	527	598
Beaufort	292	337	409	527	598
Bladen	292	337	409	527	598
Carteret	331	362	442	614	683
Cherokee	292	337	409	527	598
Clay	292	337	409	527	598
Columbus	292	337	409	527	598
Dare	303	480	553	758	775
Gates	292	337	409	527	598

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anson	292	337	409	527	598
Avery	326	367	447	560	626
Bertie	292	337	409	527	598
Camden	292	373	497	622	698
Caswell	292	337	409	527	598
Chowan	292	337	409	527	598
Cleveland	292	343	409	542	598
Craven	292	365	440	575	616
Duplin	292	337	409	527	598
Graham	292	337	409	527	598

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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NORTH CAROLINA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Granville	308	337	409	542	613
Halifax	292	337	409	527	598
Haywood	304	346	421	565	615
Hertford	292	337	409	527	598
Hyde	292	337	409	527	598
Jackson	292	337	409	572	748
Lee	292	373	442	572	620
Mcdowell	292	356	427	583	691
Martin	292	337	409	527	598
Montgomery	292	337	409	527	598
Northampton	292	337	409	527	598
Pasquotank	337	360	449	624	630
Perquimans	292	337	409	527	598
Polk	292	370	415	527	598
Robeson	292	344	409	527	598
Rutherford	295	337	409	527	598
Scotland	292	337	409	527	598
Surry	292	337	409	527	598
Transylvania	338	361	457	606	648
Vance	309	350	409	527	598
Washington	292	337	409	527	598
Wilkes	332	374	421	582	654
Yancey	292	343	409	527	617

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Greene	292	337	409	527	598
Harnett	330	381	462	598	675
Henderson	378	389	481	640	737
Hoke	292	337	409	527	598
Iredell	394	404	530	666	745
Jones	292	337	409	527	598
Lenoir	292	337	409	527	598
Macon	292	349	409	527	598
Mitchell	292	382	439	599	626
Moore	292	352	420	574	689
Pamlico	292	337	409	527	598
Pender	292	354	409	527	644
Person	292	337	439	572	670
Richmond	292	337	409	527	598
Rockingham	292	337	409	527	598
Sampson	292	337	409	527	598
Stanly	292	337	415	560	598
Swain	292	337	409	527	598
Tyrrell	292	337	409	527	598
Warren	292	337	409	527	598
Watauga	381	457	578	787	949
Wilson	305	337	414	527	598

NORTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bismarck, ND MSA	343	384	512	713	843	Burleigh, Morton
Fargo-Moorhead, ND-MN MSA	337	464	560	777	832	Cass
Grand Forks, ND-MN MSA	348	415	546	753	840	Grand Forks

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	229	288	371	482	563
Benson	260	288	371	482	563
Bottineau	229	288	371	482	563
Burke	249	288	371	482	563
Dickey	249	288	371	482	563
Dunn	229	288	371	482	563
Emmons	229	288	371	482	563
Golden Valley	229	295	392	490	563

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barnes	229	290	383	501	563
Billings	249	288	371	482	563
Bowman	229	288	371	482	563
Cavalier	229	296	394	491	606
Divide	229	288	371	482	563
Eddy	229	288	371	482	563
Foster	229	288	373	482	563
Grant	229	288	371	482	563

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

NORTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Griggs	229	288	371	482	563
Kidder	229	288	371	482	563
Logan	229	288	371	482	563
Mcintosh	229	288	371	482	563
Mclean	243	288	371	482	563
Mountrail	253	288	371	482	563
Oliver	229	288	371	482	563
Pierce	229	288	371	497	563
Ransom	234	288	371	482	563
Richland	241	288	378	482	563
Sargent	229	288	371	482	563
Sioux	229	288	371	482	563
Stark	229	288	371	482	563
Stutsman	274	288	375	523	616
Traill	241	306	371	482	563
Ward	229	315	420	568	677
Williams	229	288	371	482	563
Hettinger	229	288	371	482	563
Lamoure	249	288	371	482	563
Mchenry	229	288	371	482	563
Mckenzie	229	288	371	482	563
Mercer	229	288	371	482	563
Nelson	229	288	371	482	563
Pembina	229	288	371	489	581
Ramsey	236	315	420	526	687
Renville	265	288	371	485	573
Rolette	248	316	381	482	563
Sheridan	229	288	371	482	563
Slope	229	288	371	482	563
Steele	229	288	371	482	563
Towner	262	295	392	490	645
Walsh	305	326	405	507	567
Wells	244	288	371	482	563

OHIO

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Akron, OH PMSA	371	450	578	723	811	Portage, Summit
Brown County, OH	293	345	430	557	614	Brown
Canton-Massillon, OH MSA	288	375	478	598	672	Carroll, Stark
Cincinnati, OH-KY-IN	316	406	544	729	787	Clermont, Hamilton, Warren
Cleveland-Lorain-Elyria, OH PMSA	398	500	619	787	887	Ashtabula, Cuyahoga, Geauga, Lake, Lorain, Medina
Columbus, OH MSA	393	465	597	758	871	Delaware, Fairfield, Franklin, Licking, Madison, Pickaway
Dayton-Springfield, OH MSA	384	430	549	709	795	Clark, Greene, Miami, Montgomery
Hamilton-Middletown, OH PMSA	318	453	580	725	812	Butler
Huntington-Ashland, WV-KY-OH MSA	304	357	440	561	618	Lawrence
Lima, OH MSA	288	345	454	579	635	Allen, Auglaize
Mansfield, OH MSA	288	345	439	548	614	Crawford, Richland
Parkersburg-Marietta, WV-OH MSA	306	367	420	545	591	Washington
Steubenville-Weirton, OH-WV MSA	288	339	425	542	605	Jefferson
Toledo, OH MSA	360	438	535	689	748	Fulton, Lucas, Wood
Wheeling, WV-OH MSA	314	344	425	542	605	Belmont
Youngstown-Warren, OH MSA	301	355	445	559	636	Columbiana, Mahoning, Trumbull

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O H I O continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	279	331	412	526	589
Athens	330	373	438	574	705
Clinton	318	408	490	683	689
Darke	306	331	415	526	589
Erie	279	372	464	626	759
Gallia	279	331	412	526	589
Hancock	354	358	453	578	633
Harrison	279	331	412	526	589
Highland	279	331	412	526	589
Holmes	279	331	412	526	589
Jackson	279	331	412	526	589
Logan	327	332	428	576	600
Meigs	279	331	412	526	589
Monroe	279	331	412	526	589
Morrow	279	331	412	526	589
Noble	279	331	412	526	597
Paulding	279	331	412	526	589
Pike	293	349	433	555	619
Putnam	289	331	412	526	589
Sandusky	279	362	464	585	647
Seneca	280	331	412	530	589
Tuscarawas	279	331	432	541	606
Van Wert	279	335	412	526	589
Wayne	279	369	454	576	635
Wyandot	279	331	412	526	589

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Ashland	279	331	435	544	609
Champaign	279	340	442	552	618
Coshocton	279	331	412	526	589
Defiance	291	331	436	550	611
Fayette	303	331	412	526	589
Guernsey	279	331	412	526	589
Hardin	279	331	412	526	589
Henry	301	334	416	537	611
Hocking	279	331	412	526	589
Huron	323	352	438	578	615
Knox	328	361	463	598	661
Marion	279	331	412	526	589
Mercer	279	331	412	526	606
Morgan	279	336	412	526	589
Muskingum	279	331	412	526	589
Ottawa	279	412	474	645	689
Perry	279	331	412	526	589
Preble	286	339	422	541	604
Ross	323	337	412	526	589
Scioto	279	331	412	526	589
Shelby	279	340	454	566	635
Union	279	386	509	637	737
Vinton	279	331	412	526	589
Williams	296	331	412	526	589

O K L A H O M A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Enid, OK MSA	297	301	399	555	635	Garfield
Fort Smith, AR-OK MSA	304	308	405	541	568	Sequoyah
Lawton, OK MSA	367	369	470	652	714	Comanche
Oklahoma City, OK MSA	332	361	469	652	729	Canadian, Cleveland, Logan, Mcclain, Oklahoma Pottawatomie
Tulsa, OK MSA	333	398	521	725	855	Creek, Osage, Rogers, Tulsa, Wagoner

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O K L A H O M A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adair	247	284	354	471	540
Atoka	247	284	354	471	540
Beckham	251	284	354	471	540
Bryan	247	284	354	471	540
Carter	247	286	357	497	540
Choctaw	247	284	354	471	540
Coal	247	284	354	471	540
Craig	247	284	354	483	572
Delaware	247	284	354	471	550
Ellis	247	284	354	471	540
Grady	271	284	367	499	602
Greer	247	284	354	471	540
Harper	247	284	354	471	540
Hughes	247	284	354	471	540
Jefferson	247	284	354	471	540
Kay	274	290	381	531	622
Kiowa	247	284	354	471	540
Le Flore	247	284	354	471	540
Love	247	284	358	471	540
Mcintosh	247	284	354	471	540
Marshall	247	284	354	471	540
Murray	247	284	354	471	540
Noble	247	284	354	471	540
Okfuskee	247	284	354	471	540
Ottawa	266	284	354	471	540
Payne	286	337	432	596	669
Pontotoc	247	284	354	471	540
Roger Mills	247	284	354	471	540
Stephens	251	284	354	471	562
Tillman	247	284	354	471	540
Washita	247	284	354	471	540
Woodward	247	284	354	471	540

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Alfalfa	247	284	354	471	540
Beaver	247	288	354	471	540
Blaine	247	284	354	471	540
Caddo	247	284	354	471	540
Cherokee	259	293	354	471	548
Cimarron	247	284	354	471	540
Cotton	247	284	354	471	540
Custer	247	284	363	505	583
Dewey	247	284	354	471	540
Garvin	247	284	354	471	544
Grant	247	284	354	471	540
Harmon	247	284	354	471	540
Haskell	247	284	354	471	540
Jackson	247	321	391	514	580
Johnston	247	284	354	471	540
Kingfisher	247	292	362	474	540
Latimer	247	284	354	471	540
Lincoln	265	284	354	471	540
Mccurtain	247	284	354	471	540
Major	247	297	354	491	540
Mayes	247	288	383	483	540
Muskogee	268	301	354	489	540
Nowata	247	284	354	471	540
Okmulgee	251	284	354	471	540
Pawnee	279	284	367	472	540
Pittsburg	247	284	354	471	540
Pushmataha	247	284	354	471	540
Seminole	247	284	354	471	540
Texas	247	294	354	472	540
Washington	247	339	413	548	640
Woods	247	284	354	471	540

O R E G O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Eugene-Springfield, OR MSA	336	461	600	838	968	Lane
Medford-Ashland, OR MSA	345	452	604	840	936	Jackson
Portland-Vancouver, OR-WA PMSA	463	569	702	976	1060	Clackamas, Columbia, Multnomah, Washington, Yamhill

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

O R E G O N continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Salem, OR PMSA	391	461	591	813	852	Marion, Polk

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Baker	313	371	481	662	738
Clatsop	361	428	560	764	858
Crook	313	371	481	662	738
Deschutes	387	444	595	828	958
Gilliam	313	395	481	662	738
Harney	313	371	481	662	738
Jefferson	313	371	481	662	738
Klamath	313	371	481	662	783
Lincoln	380	386	514	715	777
Malheur	313	371	481	662	738
Sherman	313	371	481	662	738
Umatilla	313	371	481	662	738
Wallowa	313	371	481	662	738
Wheeler	313	371	481	662	738

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	374	485	615	925	983
Coos	313	382	507	706	738
Curry	313	426	565	724	890
Douglas	313	371	481	662	788
Grant	313	371	481	662	738
Hood River	368	414	562	732	865
Josephine	313	380	489	662	772
Lake	313	371	481	662	738
Linn	376	446	579	796	888
Morrow	313	371	481	662	738
Tillamook	313	371	481	662	738
Union	313	371	481	662	738
Wasco	381	472	528	719	808

P E N N S Y L V A N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Allentown-Bethlehem-Easton, PA MSA	373	506	602	784	881	Carbon, Lehigh, Northampton
Altoona, PA MSA	285	362	434	566	633	Blair
Erie, PA MSA	289	377	444	573	641	Erie
Harrisburg-Lebanon-Carlisle, PA MSA	343	439	563	709	790	Cumberland, Dauphin, Lebanon, Perry
Johnstown, PA MSA	289	367	442	573	641	Cambria, Somerset
Lancaster, PA MSA	380	466	580	758	815	Lancaster
Newburgh, NY-PA PMSA	462	600	734	931	1062	Pike
Philadelphia, PA-NJ PMSA	486	597	738	923	1158	Bucks, Chester, Delaware, Montgomery, Philadelphia
Pittsburgh, PA PMSA	378	461	558	699	781	Allegheny, Beaver, Butler, Fayette, Washington Westmoreland
Reading, PA MSA	300	444	548	684	772	Berks
Scranton--Wilkes-Barre--Hazleton, PA MSA	289	404	484	604	730	Columbia, Lackawanna, Luzerne, Wyoming
Sharon, PA MSA	317	367	442	573	641	Mercer
State College, PA MSA	415	508	629	824	882	Centre
Williamsport, PA MSA	289	369	444	573	641	Lycoming
York, PA MSA	322	442	548	683	765	York

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

PENNSYLVANIA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	283	381	505	655	829
Bedford	283	360	431	563	629
Cameron	283	360	431	563	629
Clearfield	283	360	431	563	629
Crawford	283	360	431	563	629
Forest	283	360	431	563	629
Fulton	283	360	431	563	629
Huntingdon	283	360	431	563	629
Jefferson	283	360	431	563	629
Lawrence	283	360	431	563	629
Mifflin	315	360	431	563	629
Montour	335	360	453	629	743
Potter	283	360	431	563	629
Snyder	341	360	432	563	629
Susquehanna	339	360	431	563	668
Union	342	454	567	709	792
Warren	283	360	431	563	629
Armstrong	287	380	431	563	707
Bradford	287	364	444	581	636
Clarion	283	360	431	563	629
Clinton	283	360	431	563	629
Elk	283	360	431	563	629
Franklin	283	360	437	602	629
Greene	283	360	431	563	629
Indiana	325	362	431	563	629
Juniata	283	360	431	563	629
Mc Kean	283	362	431	563	629
Monroe	453	540	667	911	1018
Northumberland	299	378	462	614	683
Schuylkill	283	360	449	563	629
Sullivan	283	360	431	563	629
Tioga	283	360	431	563	629
Venango	283	360	431	563	629
Wayne	284	439	517	659	847

RHODE ISLAND

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
New London-Norwich, CT-RI MSA	495	599	729	912	1042	Washington county towns of Hopkinton town, Westerly town
Providence-Fall River-Warwick, RI-MA PMSA	408	555	667	838	1032	Bristol county towns of Barrington town, Bristol town Warren town Kent county towns of Coventry town, East Greenwich tow Warwick city, West Greenwich tow, West Warwick town Newport county towns of Jamestown town Little Compton tow, Tiverton town Providence county towns of Burrillville town Central Falls city, Cranston city, Cumberland town East Providence ci, Foster town, Glocester town Johnston town, Lincoln town, North Providence t North Smithfield t, Pawtucket city, Providence city Scituate town, Smithfield town, Woonsocket city Washington county towns of Charlestown town, Exeter town Narragansett town, North Kingstown to, Richmond town South Kingstown to

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

RHODE ISLAND continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Newport	558	650	835	1045	1169	Middletown town, Newport city, Portsmouth town
Washington	659	742	834	1076	1185	New Shoreham town

SOUTH CAROLINA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Augusta-Aiken, GA-SC MSA	359	429	506	687	813	Aiken, Edgefield
Charleston-North Charleston, SC MSA	403	468	537	714	832	Berkeley, Charleston, Dorchester
Charlotte-Gastonia-Rock Hill, NC-SC MSA	510	575	648	854	1023	York
Columbia, SC MSA	432	476	547	723	832	Lexington, Richland
Florence, SC MSA	327	364	473	590	662	Florence
Greenville-Spartanburg-Anderson, SC MSA	388	470	530	668	786	Anderson, Cherokee, Greenville, Pickens, Spartanburg
Myrtle Beach, SC MSA	424	431	552	690	773	Horry
Sumter, SC MSA	346	383	435	595	707	Sumter

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Abbeville	287	335	407	523	598
Bamberg	287	335	407	523	598
Beaufort	410	503	579	723	810
Chester	287	335	407	523	598
Clarendon	287	335	407	523	598
Darlington	287	335	407	523	598
Fairfield	287	385	439	547	613
Greenwood	288	335	407	523	598
Jasper	287	335	407	523	598
Lancaster	301	336	407	523	598
Lee	287	335	407	523	598
Marion	287	335	407	523	598
Newberry	287	335	407	523	598
Orangeburg	287	335	407	523	598
Union	287	335	407	523	598

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Allendale	287	335	407	523	598
Barnwell	302	335	409	523	598
Calhoun	287	335	407	523	598
Chesterfield	287	335	407	523	598
Colleton	287	335	407	523	598
Dillon	287	335	407	523	598
Georgetown	287	365	410	523	623
Hampton	287	335	407	523	598
Kershaw	287	335	407	523	598
Laurens	287	335	407	523	598
Mccormick	287	335	407	523	637
Marlboro	287	335	407	523	598
Oconee	287	335	407	523	598
Saluda	287	335	407	523	598
Williamsburg	287	335	407	523	598

SOUTH DAKOTA

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Rapid City, SD MSA	355	423	563	766	926	Pennington
Sioux Falls, SD MSA	343	475	602	762	875	Lincoln, Minnehaha

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

SOUTH DAKOTA continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Aurora	254	340	423	560	648
Bennett	254	337	423	560	648
Brookings	272	431	478	646	762
Brule	254	337	423	560	648
Butte	293	400	531	694	818
Charles Mix	254	337	423	560	648
Clay	254	337	423	560	695
Corson	254	337	423	560	648
Davison	266	337	423	567	648
Deuel	254	337	423	560	648
Douglas	282	337	423	560	648
Fall River	290	337	423	560	648
Grant	254	337	423	560	648
Haakon	254	345	423	560	648
Hand	254	337	423	560	648
Harding	254	345	423	560	648
Hutchinson	254	337	423	560	648
Jackson	254	342	423	560	648
Jones	254	337	423	560	648
Lake	254	342	423	560	648
Lyman	254	337	423	560	648
Mcpherson	254	337	423	560	648
Meade	357	403	537	703	830
Miner	254	342	423	560	648
Perkins	254	337	423	560	648
Roberts	254	337	423	560	648
Shannon	254	342	423	560	648
Stanley	254	345	423	560	648
Todd	280	337	423	560	648
Turner	254	337	423	560	648
Walworth	254	345	423	560	648
Ziebach	254	337	423	560	648

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Beadle	254	337	423	560	648
Bon Homme	282	337	423	560	648
Brown	254	337	423	560	648
Buffalo	254	337	423	560	654
Campbell	254	337	423	560	648
Clark	254	337	423	560	648
Codington	254	337	423	560	648
Custer	254	337	423	560	648
Day	284	337	423	560	648
Dewey	254	337	423	560	648
Edmunds	254	337	423	560	648
Faulk	254	337	446	560	648
Gregory	255	337	423	560	648
Hamlin	254	337	423	560	648
Hanson	258	353	470	591	661
Hughes	279	337	446	587	695
Hyde	254	343	423	560	648
Jerauld	254	340	423	560	648
Kingsbury	277	337	423	560	648
Lawrence	291	419	537	722	817
Mccook	254	337	423	560	648
Marshall	300	337	423	560	648
Mellette	303	342	423	560	648
Moody	254	337	423	560	648
Potter	254	337	423	560	648
Sanborn	254	337	423	560	648
Spink	276	337	430	560	648
Sully	254	337	423	560	648
Tripp	254	337	423	560	648
Union	267	337	423	560	648
Yankton	254	337	423	560	648

TENNESSEE

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Chattanooga, TN-GA MSA	366	427	513	663	755	Hamilton, Marion
Clarksville-Hopkinsville, TN-KY MSA	339	380	446	608	625	Montgomery
Jackson, TN MSA	263	347	465	643	647	Madison, Chester

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E N N E S S E E continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Johnson City-Kingsport-Bristol, TN-VA MSA	305	364	450	584	692	Carter, Hawkins, Sullivan, Unicoi, Washington
Knoxville, TN MSA	305	375	471	628	754	Anderson, Blount, Knox, Loudon, Sevier, Union
Memphis, TN-AR-MS MSA	389	454	533	740	778	Fayette, Shelby, Tipton
Nashville, TN MSA	427	511	630	858	963	Cheatham, Davidson, Dickson, Robertson, Rutherford Sumner, Williamson, Wilson

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Bedford	238	306	374	471	524
Bledsoe	238	279	352	463	519
Campbell	240	279	352	463	519
Carroll	238	289	352	463	519
Clay	242	279	352	463	519
Coffee	238	332	373	519	591
Cumberland	251	279	365	509	519
Dekalb	238	279	352	463	519
Fentress	238	279	352	463	519
Gibson	238	279	352	463	519
Grainger	242	279	352	463	519
Grundy	238	279	352	463	519
Hancock	238	279	352	463	519
Hardin	238	279	352	463	519
Henderson	238	279	352	463	519
Hickman	281	285	378	498	529
Humphreys	238	290	352	463	519
Jefferson	259	279	361	463	574
Lake	238	279	352	463	519
Lawrence	238	279	352	463	519
Lincoln	238	279	356	463	519
Mcnairy	238	279	352	463	519
Marshall	280	305	397	502	558
Meigs	238	279	352	463	519
Moore	238	279	352	463	519
Obion	276	280	358	474	519
Perry	238	281	352	463	519
Polk	238	279	352	463	519
Rhea	238	297	352	468	519
Scott	238	279	352	463	519
Smith	238	279	352	463	519
Trousdale	238	292	388	487	638
Warren	264	279	360	463	519

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Benton	256	292	352	463	519
Bradley	238	300	400	542	658
Cannon	238	279	352	463	519
Claiborne	238	279	352	463	519
Cocke	238	279	352	463	519
Crockett	238	279	352	463	519
Decatur	238	279	352	463	519
Dyer	297	301	401	502	626
Franklin	249	279	352	484	569
Giles	238	303	375	469	525
Greene	238	279	352	463	519
Hamblen	238	280	367	488	519
Hardeman	238	279	352	463	519
Haywood	250	290	387	484	542
Henry	238	279	352	463	519
Houston	238	279	352	463	519
Jackson	238	279	352	463	519
Johnson	238	279	352	463	519
Lauderdale	238	279	355	463	519
Lewis	238	279	352	463	519
Mcminn	238	279	352	465	519
Macon	238	279	352	463	519
Maury	341	348	463	580	647
Monroe	238	279	352	463	519
Morgan	238	279	352	463	519
Overton	238	279	352	463	519
Pickett	238	279	352	463	519
Putnam	289	292	375	516	555
Roane	256	279	352	473	569
Sequatchie	238	279	352	463	519
Stewart	238	279	352	463	519
Van Buren	238	279	352	463	519
Wayne	238	279	352	463	519

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

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TENNESSEE continued

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Weakley	257	279	352	463	519

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
White	242	279	352	463	519

TEXAS

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Abilene, TX MSA	334	372	480	647	786	Taylor
Amarillo, TX MSA	283	357	444	619	730	Potter, Randall
Austin-San Marcos, TX MSA	435	526	700	972	1149	Bastrop, Caldwell, Hays, Travis, Williamson
Beaumont-Port Arthur, TX MSA	322	390	475	629	666	Hardin, Jefferson, Orange
Brazoria, TX PMSA	458	511	638	889	1046	Brazoria
Brownsville-Harlingen-San Benito, TX MSA	339	427	533	667	833	Cameron
Bryan-College Station, TX MSA	377	438	554	772	911	Brazos
Corpus Christi, TX MSA	353	433	553	753	890	Nueces, San Patricio
Dallas, TX	508	584	749	1036	1225	Collin, Dallas, Denton, Ellis, Hunt, Kaufman, Rockwall
El Paso, TX MSA	398	446	528	731	867	El Paso
Fort Worth-Arlington, TX PMSA	434	472	612	854	1007	Hood, Johnson, Parker, Tarrant
Galveston-Texas City, TX PMSA	450	462	579	804	949	Galveston
Henderson County, TX	293	348	425	580	696	Henderson
Houston, TX PMSA	426	479	620	864	1018	Chambers, Fort Bend, Harris, Liberty, Montgomery, Waller
Killeen-Temple, TX MSA	397	413	523	727	799	Bell, Coryell
Laredo, TX MSA	321	370	486	607	683	Webb
Longview-Marshall, TX MSA	318	359	440	600	655	Gregg, Harrison, Upshur
Lubbock, TX MSA	305	386	500	696	771	Lubbock
Mc Allen-Edinburg-Mission, TX MSA	275	366	419	523	587	Hidalgo
Odessa-Midland, TX MSA	305	352	470	653	757	Ector, Midland
San Angelo, TX MSA	283	361	438	601	709	Tom Green
San Antonio, TX MSA	372	429	555	772	913	Bexar, Comal, Guadalupe, Wilson
Sherman-Denison, TX MSA	283	387	467	596	713	Grayson
Texarkana, TX-Texarkana, AR MSA	308	376	459	605	642	Bowie
Tyler, TX MSA	354	391	477	661	699	Smith
Victoria, TX MSA	350	354	447	620	699	Victoria
Waco, TX MSA	308	377	496	660	695	Mclennan
Wichita Falls, TX MSA	339	379	457	608	717	Archer, Wichita

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Anderson	330	372	417	581	587
Angelina	300	348	392	544	641
Armstrong	275	318	415	521	587
Austin	275	318	383	525	587
Bandera	295	318	383	521	587
Bee	275	318	383	514	587
Borden	275	318	383	514	587
Brewster	275	318	383	518	620
Brooks	275	318	383	514	587
Burleson	275	318	402	544	663
Calhoun	294	318	383	530	627
Camp	372	377	471	590	659
Cass	275	318	383	514	587
Cherokee	307	319	390	514	587
Clay	275	324	383	514	598
Coke	275	318	383	514	587
Collingsworth	275	318	383	514	587
Comanche	275	318	383	514	587
Cooke	298	318	403	548	608
Crane	275	318	383	514	587
Crosby	275	318	383	514	587
Dallam	275	318	383	514	587
Deaf Smith	275	318	383	514	596
Dewitt	275	318	383	514	587
Dimmit	275	318	383	514	587
Duval	275	318	383	514	587
Edwards	275	318	383	514	587
Falls	275	318	383	514	587
Fayette	275	318	383	514	587
Floyd	275	318	383	514	587
Franklin	275	318	383	530	587
Frio	275	318	383	514	587
Garza	275	318	383	514	587
Glasscock	275	318	383	514	587
Gonzales	275	318	383	514	587
Grimes	275	318	383	518	611
Hall	275	318	383	514	587
Hansford	275	318	383	514	602
Hartley	275	318	383	514	587
Hemphill	275	354	396	553	587

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Andrews	275	318	383	514	587
Aransas	275	338	451	627	631
Atascosa	275	318	383	514	587
Bailey	275	318	383	514	587
Baylor	275	318	383	514	587
Blanco	275	318	405	565	595
Bosque	275	318	383	514	587
Briscoe	275	318	383	514	587
Brown	275	318	384	516	630
Burnet	278	318	391	543	635
Callahan	275	318	383	514	587
Carson	275	318	383	514	587
Castro	277	318	383	514	587
Childress	275	318	383	514	587
Cochran	275	318	383	514	587
Coleman	275	318	383	514	587
Colorado	275	318	383	514	587
Concho	275	318	383	514	587
Cottle	275	318	383	514	587
Crockett	275	318	383	514	587
Culberson	275	318	383	514	587
Dawson	275	318	383	514	587
Delta	275	329	383	514	587
Dickens	275	318	383	514	587
Donley	275	318	383	514	587
Eastland	275	318	383	514	587
Erath	285	323	417	540	587
Fannin	279	318	383	516	587
Fisher	275	318	383	514	587
Foard	275	318	383	514	587
Freestone	275	318	383	514	587
Gaines	281	318	383	514	587
Gillespie	275	346	449	617	629
Goliad	275	318	383	514	587
Gray	301	318	408	514	606
Hale	275	318	383	514	587
Hamilton	275	318	383	514	587
Hardeman	275	318	383	514	587
Haskell	275	318	383	514	587
Hill	275	318	383	514	587

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hockley	281	328	383	519	587
Houston	275	318	383	514	587
Hudspeth	331	374	417	524	688
Irion	275	318	383	514	587
Jackson	275	319	383	514	587
Jeff Davis	275	318	383	514	587
Jim Wells	275	318	383	514	594
Karnes	275	318	383	514	587
Kenedy	275	318	383	514	587
Kerr	275	356	445	619	730
King	275	318	383	514	587
Kleberg	334	346	422	590	694
Lamar	275	341	401	561	663
Lampasas	275	318	383	521	615
Lavaca	275	318	383	514	587
Leon	275	353	395	514	651
Lipscomb	275	318	383	514	587
Llano	275	354	471	591	774
Lynn	275	318	383	514	587
Mcmullen	275	318	383	514	587
Marion	275	318	383	514	608
Mason	275	318	383	514	587
Maverick	275	318	383	514	587
Menard	275	318	383	514	587
Mills	275	318	383	514	587
Montague	275	318	383	514	587
Morris	275	318	383	514	587
Nacogdoches	290	350	454	567	670
Newton	275	318	383	514	587
Ochiltree	275	318	383	514	587
Palo Pinto	275	318	383	514	610
Parmer	275	318	383	514	587
Polk	307	335	390	525	637
Rains	275	356	431	597	602
Real	275	318	383	514	587
Reeves	275	318	383	514	587
Roberts	275	321	383	514	587
Runnels	275	318	383	514	587
Sabine	275	318	383	514	587
San Jacinto	288	325	383	514	600

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Hopkins	321	345	405	565	608
Howard	293	318	383	518	587
Hutchinson	275	318	396	553	653
Jack	275	318	383	514	587
Jasper	275	318	391	521	639
Jim Hogg	275	318	383	514	587
Jones	275	318	383	514	587
Kendall	275	401	451	627	741
Kent	275	318	383	514	587
Kimble	275	318	417	523	587
Kinney	275	318	383	514	587
Knox	275	318	383	514	587
Lamb	275	318	383	514	587
La Salle	275	318	383	514	587
Lee	312	350	393	549	616
Limestone	275	318	383	514	587
Live Oak	275	318	383	514	587
Loving	275	318	383	514	587
Mcculloch	283	318	383	514	587
Madison	275	327	383	514	604
Martin	275	318	383	514	587
Matagorda	318	347	431	597	602
Medina	275	318	383	514	587
Milam	275	318	383	514	587
Mitchell	275	318	383	514	587
Moore	275	323	383	514	596
Motley	275	318	383	514	587
Navarro	329	346	416	528	587
Nolan	283	318	383	514	587
Oldham	275	318	415	521	609
Panola	275	324	383	514	587
Pecos	275	318	383	518	611
Presidio	275	318	383	514	587
Reagan	350	356	473	594	777
Red River	275	354	396	514	587
Refugio	275	318	383	514	587
Robertson	275	364	406	514	587
Rusk	287	318	383	514	587
San Augustine	275	318	383	514	587
San Saba	275	318	383	514	587

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

T E X A S continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Schleicher	275	318	383	514	587
Shackelford	275	318	383	514	587
Sherman	275	318	383	514	587
Starr	275	318	383	514	587
Sterling	275	318	383	514	587
Sutton	275	318	383	514	587
Terrell	275	318	383	514	587
Throckmorton	275	318	383	514	587
Trinity	286	323	383	514	587
Upton	275	318	383	514	587
Val Verde	275	365	430	536	632
Walker	371	394	482	640	676
Washington	341	348	465	581	763
Wheeler	275	318	383	514	587
Willacy	275	318	383	514	587
Wise	275	321	385	537	587
Yoakum	275	362	445	556	730
Zapata	275	318	383	514	587

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Scurry	275	318	397	555	655
Shelby	275	318	383	514	587
Somervell	315	354	396	544	587
Stephens	275	318	383	514	587
Stonewall	275	318	383	514	587
Swisher	275	318	383	514	587
Terry	275	318	383	514	587
Titus	292	363	411	568	587
Tyler	275	318	409	514	674
Uvalde	275	318	383	514	587
Van Zandt	294	318	397	542	655
Ward	275	318	383	514	587
Wharton	275	318	383	514	587
Wilbarger	275	318	383	514	605
Winkler	275	318	383	514	587
Wood	275	318	396	553	653
Young	275	318	383	514	594
Zavala	275	318	383	514	587

U T A H

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Kane County, UT	312	383	479	642	773	Kane
Provo-Orem, UT MSA	431	455	563	780	923	Utah
Salt Lake City-Ogden, UT MSA	440	510	647	900	1055	Davis, Salt Lake, Weber

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Beaver	298	365	457	612	736
Cache	332	408	512	684	823
Daggett	324	443	588	738	826
Emery	298	365	457	612	736
Grand	298	365	457	612	736
Juab	298	365	457	612	736
Morgan	298	365	457	612	736
Rich	298	365	457	612	736
Sanpete	298	365	457	612	736
Summit	441	544	679	916	1114
Uintah	298	365	457	612	736
Washington	367	452	600	802	982

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Box Elder	332	368	461	617	744
Carbon	320	365	457	612	736
Duchesne	298	365	457	612	736
Garfield	298	365	457	612	736
Iron	304	414	516	645	758
Millard	298	365	457	612	736
Piute	298	365	457	612	736
San Juan	298	365	457	612	736
Sevier	302	365	457	612	736
Tooele	298	379	457	612	736
Wasatch	298	379	457	612	736
Wayne	298	365	457	612	736

.Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V E R M O N T

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Components of FMR AREA within STATE
Burlington, VT MSA	427	523	697	950	1147	Chittenden county towns of Burlington city Charlotte town, Colchester town, Essex town Hinesburg town, Jericho town, Milton town, Richmond tow St. George town, Shelburne town, South Burlington c Williston town, Winooski city Franklin county towns of Fairfax town, Georgia town St. Albans city, St. Albans town, Swanton town Grand Isle county towns of Grand Isle town South Hero town

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR	Towns within non metropolitan counties
Addison	421	508	591	824	924	
Bennington	374	471	606	770	897	
Caledonia	331	396	483	609	699	
Chittenden	387	625	705	979	1154	Bolton town, Buels gore, Huntington town, Underhill tow Westford town
Essex	324	390	483	609	699	
Franklin	348	394	483	613	705	Bakersfield town, Berkshire town, Enosburg town Fairfield town, Fletcher town, Franklin town Highgate town, Montgomery town, Richford town Sheldon town
Grand Isle	324	390	483	609	699	Alburg town, Isle La Motte town, North Hero town
Lamoille	336	467	557	763	875	
Orange	349	458	564	745	835	
Orleans	324	390	483	609	699	
Rutland	378	490	599	751	841	
Washington	362	449	606	758	850	
Windham	410	474	629	798	879	
Windsor	441	498	623	800	948	

V I R G I N I A

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Charlottesville, VA MSA	430	508	650	864	968	Albemarle, Fluvanna, Greene, Charlottesville city
Clarke County, VA	312	440	569	782	798	Clarke
Culpeper County, VA	384	561	652	862	1032	Culpeper
Danville, VA MSA	293	369	434	582	702	Pittsylvania, Danville city
Johnson City-Kingsport-Bristol, TN-VA MSA	305	364	450	584	692	Scott, Washington, Bristol city
King George County, VA	378	502	564	784	790	King George
Lynchburg, VA MSA	349	384	443	582	702	Amherst, Bedford, Campbell, Bedford city, Lynchburg city
Norfolk-Virginia Beach-Newport News, VA-NC MSA	436	491	580	809	951	Gloucester, Isle of Wight, James City, Mathews, York Chesapeake city, Hampton city, Newport News city Norfolk city, Poquoson city, Portsmouth city

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Richmond-Petersburg, VA MSA	474	537	625	870	1026	Suffolk city, Virginia Beach city, Williamsburg city Charles City, Chesterfield, Dinwiddie, Goochland, Hanover Henrico, New Kent, Powhatan, Prince George Colonial Heights city, Hopewell city, Petersburg city Richmond city
Roanoke, VA MSA	295	369	479	615	766	Botetourt, Roanoke, Roanoke city, Salem city
Warren County, VA	305	418	557	730	912	Warren
Washington, DC-MD-VA	630	716	840	1145	1380	Arlington, Fairfax, Loudoun, Prince William, Spotsylvania Stafford, Alexandria city, Fairfax city Falls Church city, Fauquier, Fredericksburg city Manassas city, Manassas Park city

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Accomack	341	368	430	571	688
Amelia	287	362	425	571	688
Augusta	287	372	452	595	724
Bland	287	362	425	571	688
Buchanan	287	362	425	571	688
Caroline	407	412	551	731	771
Charlotte	287	362	425	571	688
Cumberland	287	394	457	571	688
Essex	287	404	477	664	783
Franklin	287	362	425	571	688
Giles	287	362	425	571	688
Greensville	287	372	425	571	688
Henry	287	362	425	571	688
King and Queen	287	412	464	580	688
Lancaster	359	403	455	606	738
Louisa	287	374	461	640	688
Madison	288	428	482	604	790
Middlesex	287	364	425	571	688
Nelson	287	362	425	571	688
Northumberland	287	362	425	571	688
Orange	319	433	580	807	947
Patrick	287	362	425	571	688
Pulaski	287	362	425	571	688
Richmond	287	383	429	571	705
Rockingham	287	398	503	690	809
Shenandoah	378	388	478	662	752
Southampton	287	362	425	571	688
Sussex	287	362	425	571	688

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Alleghany	299	362	425	571	688
Appomattox	287	362	425	571	688
Bath	287	362	425	571	688
Brunswick	287	362	425	571	688
Buckingham	287	362	425	571	688
Carroll	287	362	425	571	688
Craig	287	362	425	571	688
Dickenson	287	362	425	571	688
Floyd	287	362	425	571	688
Frederick	390	450	541	741	887
Grayson	287	362	425	571	688
Halifax	287	362	425	571	688
Highland	287	362	425	571	688
King William	287	394	441	571	688
Lee	287	362	425	571	688
Lunenburg	287	362	425	571	688
Mecklenburg	287	362	425	571	688
Montgomery	295	388	456	633	749
Northampton	287	362	425	571	688
Nottoway	287	362	425	571	688
Page	334	376	425	571	688
Prince Edward	322	364	425	571	688
Rappahannock	291	472	531	737	869
Rockbridge	287	362	425	571	688
Russell	287	362	425	571	688
Smyth	287	362	425	571	688
Surry	298	362	425	571	688
Tazewell	287	362	425	571	688

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

V I R G I N I A continued

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Westmoreland	287	388	515	648	839
Wythe	300	362	425	571	688
Wise	287	362	425	571	688

W A S H I N G T O N

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Bellingham, WA MSA	397	515	686	947	1123	Whatcom
Bremerton, WA PMSA	434	501	649	877	1066	Kitsap
Olympia, WA PMSA	447	548	685	942	1111	Thurston
Portland-Vancouver, OR-WA PMSA	463	569	702	976	1060	Clark
Richland-Kennewick-Pasco, WA MSA	495	567	679	945	1109	Benton, Franklin
Seattle-Bellevue-Everett, WA PMSA	501	610	772	1071	1266	Island, King, Snohomish
Spokane, WA MSA	318	432	522	709	794	Spokane
Tacoma, WA PMSA	386	461	613	853	964	Pierce
Yakima, WA MSA	358	440	546	732	764	Yakima

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adams	317	380	494	652	724
Chelan	317	380	494	652	724
Columbia	317	380	494	652	724
Douglas	371	392	494	652	724
Garfield	317	380	494	652	724
Grays Harbor	324	380	499	673	776
Kittitas	317	380	494	652	724
Lewis	317	380	494	652	724
Mason	360	446	549	722	776
Pacific	317	380	494	652	724
San Juan	392	535	713	940	1119
Skamania	317	380	494	652	724
Wahkiakum	317	380	494	652	724
Whitman	342	389	518	719	852

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Asotin	317	380	494	652	724
Clallam	370	457	582	749	818
Cowlitz	356	398	513	712	724
Ferry	317	380	494	652	724
Grant	341	380	494	652	724
Jefferson	317	410	504	683	724
Klickitat	317	380	494	652	724
Lincoln	317	380	494	652	724
Okanogan	317	380	494	652	724
Pend Oreille	317	380	494	652	868
Skagit	432	528	623	778	870
Stevens	317	380	494	652	724
Walla Walla	317	380	494	661	781

W E S T V I R G I N I A

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Berkeley County, WV	410	438	516	644	724	Berkeley
Charleston, WV MSA	287	389	494	678	742	Kanawha, Putnam
Cumberland, MD-WV MSA	337	405	501	662	756	Mineral
Huntington-Ashland, WV-KY-OH MSA	304	357	440	561	618	Cabell, Wayne
Jefferson County, WV	415	459	569	740	838	Jefferson

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SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

W E S T V I R G I N I A continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Parkersburg-Marietta, WV-OH MSA	306	367	420	545	591	Wood
Steubenville-Weirton, OH-WV MSA	288	339	425	542	605	Brooke, Hancock
Wheeling, WV-OH MSA	314	344	425	542	605	Marshall, Ohio

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Barbour	255	324	362	466	542
Braxton	255	311	362	466	542
Clay	255	311	362	466	542
Fayette	255	311	362	466	542
Grant	255	311	362	466	542
Hampshire	255	311	364	479	542
Harrison	280	345	398	496	596
Lewis	255	341	362	466	542
Logan	261	311	362	469	555
Marion	255	322	397	508	587
Mercer	255	311	362	466	542
Monongalia	321	355	432	596	704
Morgan	347	391	438	550	613
Pendleton	255	311	362	466	542
Pocahontas	255	311	362	466	542
Raleigh	294	347	404	520	609
Ritchie	255	311	362	466	542
Summers	255	311	362	466	542
Tucker	255	311	362	466	542
Upshur	255	311	364	466	542
Wetzel	288	311	391	488	616
Wyoming	255	311	362	466	542

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Boone	255	311	362	466	542
Calhoun	255	311	362	466	542
Doddridge	264	311	362	466	542
Gilmer	280	311	362	466	542
Greenbrier	255	352	375	468	542
Hardy	255	311	362	466	542
Jackson	255	319	362	495	542
Lincoln	255	311	362	466	542
Mcdowell	255	311	362	466	542
Mason	255	311	362	466	557
Mingo	255	311	362	466	549
Monroe	255	311	362	466	542
Nicholas	255	311	362	466	542
Pleasants	263	311	362	466	556
Preston	255	327	362	466	542
Randolph	255	311	362	466	542
Roane	255	311	362	466	542
Taylor	312	337	368	466	542
Tyler	255	311	381	477	542
Webster	255	311	362	466	542
Wirt	255	311	362	466	542

W I S C O N S I N

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Appleton-Oshkosh-Neenah, WI MSA	321	395	502	633	730	Calumet, Outagamie, Winnebago
Duluth-Superior, MN-WI MSA	281	362	465	621	723	Douglas
Eau Claire, WI MSA	346	377	494	634	714	Chippewa, Eau Claire
Green Bay, WI MSA	380	418	537	746	750	Brown
Janesville-Beloit, WI MSA	353	446	552	691	775	Rock
Kenosha, WI PMSA	391	485	595	819	921	Kenosha
La Crosse, WI-MN MSA	285	367	467	625	757	La Crosse
Madison, WI MSA	439	552	667	926	1092	Dane

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

WISCONSIN continued

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Milwaukee-Waukesha, WI PMSA	377	493	619	776	867	Milwaukee, Ozaukee, Washington, Waukesha
Minneapolis-St. Paul, MN-WI MSA	416	535	684	925	1048	Pierce, St. Croix
Racine, WI PMSA	335	415	548	707	774	Racine
Sheboygan, WI MSA	306	394	481	601	746	Sheboygan
Wausau, WI MSA	376	389	486	663	735	Marathon

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Adams	276	322	410	523	590
Barron	276	322	410	523	590
Buffalo	276	322	410	523	590
Clark	276	322	410	523	590
Crawford	276	322	410	523	590
Door	276	342	424	546	662
Florence	276	322	410	523	590
Forest	276	322	410	523	590
Green	281	322	410	552	590
Iowa	286	322	410	539	590
Jackson	276	322	410	523	590
Juneau	282	322	410	523	590
Lafayette	281	322	410	523	590
Lincoln	276	322	410	523	590
Marinette	276	322	410	523	590
Menominee	276	322	410	523	590
Oconto	276	322	410	523	590
Pepin	276	322	410	523	590
Portage	336	355	460	574	710
Richland	276	322	410	523	590
Sauk	323	334	445	555	622
Shawano	281	322	410	523	590
Trempealeau	276	322	410	523	590
Vilas	276	322	410	523	590
Washburn	276	322	410	523	590
Waushara	276	322	410	523	590

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Ashland	301	334	410	523	590
Bayfield	276	322	410	523	590
Burnett	276	322	410	523	590
Columbia	276	328	431	565	634
Dodge	350	355	466	584	652
Dunn	276	322	421	563	695
Fond du Lac	320	434	514	699	721
Grant	280	322	410	523	590
Green Lake	276	322	410	523	590
Iron	276	322	410	523	590
Jefferson	276	366	475	614	671
Kewaunee	276	322	410	523	590
Langlade	276	322	410	523	590
Manitowoc	279	322	410	523	590
Marquette	276	322	410	523	590
Monroe	276	322	410	547	590
Oneida	276	323	410	527	632
Polk	276	322	417	523	590
Price	276	322	410	523	590
Rusk	276	322	410	523	590
Sawyer	276	322	410	523	590
Taylor	276	322	410	523	590
Vernon	276	322	410	523	590
Walworth	288	405	526	685	770
Waupaca	276	322	410	523	620
Wood	299	343	425	533	599

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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W Y O M I N G

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Casper, WY MSA	322	374	477	654	773	Natrona
Cheyenne, WY MSA	364	456	609	778	945	Laramie

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Albany	308	386	515	715	845
Campbell	317	337	432	575	679
Converse	293	337	432	573	659
Fremont	293	337	432	573	659
Hot Springs	293	337	432	573	659
Lincoln	293	337	432	573	659
Park	293	337	432	573	666
Sheridan	293	337	432	573	666
Sweetwater	305	337	432	575	679
Uinta	307	337	432	574	694
Weston	293	337	432	573	659

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Big Horn	293	337	432	573	659
Carbon	293	337	432	573	659
Crook	293	337	432	573	659
Goshen	293	337	432	573	659
Johnson	293	337	432	573	659
Niobrara	293	337	432	573	659
Platte	293	337	432	573	659
Sublette	326	367	432	573	659
Teton	391	498	661	889	970
Washakie	293	337	432	573	659

P A C I F I C I S L A N D S

NONMETROPOLITAN COUNTIES	0 BR	1 BR	2 BR	3 BR	4 BR
Pacific Islands	683	821	972	1218	1371

NONMETROPOLITAN COUNTIES 0 BR 1 BR 2 BR 3 BR 4 BR

P U E R T O R I C O

METROPOLITAN FMR AREAS	0 BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
Aguadilla, PR MSA	211	257	306	380	428	Aguada Municipio, Aguadilla Municipio, Moca Municipio
Arecibo, PR PMSA	228	277	325	408	459	Arecibo Municipio, Camuy Municipio, Hatillo Municipio
Caguas, PR PMSA	267	321	379	477	530	Caguas Municipio, Cayey Municipio, Cidra Municipio Gurabo Municipio, San Lorenzo Municipio
Mayaguez, PR MSA	251	306	363	451	508	Anasco Municipio, Cabo Rojo Municipio Hormigueros Municipio, Mayaguez Municipio Sabana Grande Municipio, San German Municipio
Ponce, PR MSA	249	305	359	449	504	Guayanilla Municipio, Juana Diaz Municipio Penuelas Municipio, Ponce Municipio, Villalba Municipio Yauco Municipio
San Juan-Bayamon, PR PMSA	335	409	483	604	678	Aguas Buenas Municipio, Barceloneta Municipio Bayamon Municipio, Canovanas Municipio Carolina Municipio, Catano Municipio, Ceiba Municipio Comerio Municipio, Corozal Municipio, Dorado Municipio Fajardo Municipio, Florida Municipio, Guaynabo Municipio Humacao Municipio, Juncos Municipio Las Piedras Municipio, Loiza Municipio Luquillo Municipio, Manati Municipio, Morovis Municipio

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR. 041599

SCHEDULE B - 40TH PERCENTILE FAIR MARKET RENTS FOR EXISTING HOUSING

PUERTO RICO continued

METROPOLITAN FMR AREAS	O BR	1 BR	2 BR	3 BR	4 BR	Counties of FMR AREA within STATE
						Naguabo Municipio, Naranjito Municipio Rio Grande Municipio, San Juan Municipio Toa Alta Municipio, Toa Baja Municipio Trujillo Alto Municipio, Vega Alta Municipio Vega Baja Municipio, Yabucoa Municipio

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
Adjuntas Municipio.....	200	247	289	365	404	Aibonito Municipio.....	200	247	289	365	404
Arroyo Municipio.....	200	247	289	365	404	Barranquitas Municipio..	200	247	289	365	404
Ciales Municipio.....	200	247	289	365	404	Coamo Municipio.....	200	247	289	365	404
Culebra Municipio.....	200	247	289	365	404	Guanica Municipio.....	200	247	289	365	404
Guayama Municipio.....	200	247	289	365	404	Isabela Municipio.....	200	247	289	365	404
Jayuya Municipio.....	200	247	289	365	404	Lajas Municipio.....	200	247	289	365	404
Lares Municipio.....	200	247	289	365	404	Las Marias Municipio....	200	247	289	365	404
Maricao Municipio.....	200	247	289	365	404	Maunabo Municipio.....	200	247	289	365	404
Orocovis Municipio.....	200	247	289	365	404	Patillas Municipio.....	200	247	289	365	404
Quebradillas Municipio..	200	247	289	365	404	Rincon Municipio.....	200	247	289	365	404
Salinas Municipio.....	200	247	289	365	404	San Sebastian Municipio.	200	247	289	365	404
Santa Isabel Municipio..	200	247	289	365	404	Utuado Municipio.....	200	247	289	365	404
Vieques Municipio.....	200	247	289	365	404						

VIRGIN ISLANDS

NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR	NONMETROPOLITAN COUNTIES	O BR	1 BR	2 BR	3 BR	4 BR
St. Croix.....	477	579	683	853	956	St. Johns/St. Thomas....	613	743	875	1094	1225

Note: The FMRS for unit sizes larger than 4 BRs are calculated by adding 15% to the 4 BR FMR for each extra bedroom. For example, the FMR for a 5 BR unit is 1.15 times the 4BR FMR, and the FMR for a 6 BR unit is 1.30 times the 4 BR FMR.

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Schedule D: FY 2000 40th Percentile Fair Market Rents For Manufactured Home Spaces In The Section 8 Choice Housing Program

Area Name	Space Rent
California	
Los Angeles, CA	$383
Orange County, CA	$468
Riverside-San Bernardino, CA	$304
San Diego, CA	$423
San Jose, CA	$489
Vallejo-Fairfield-Napa, CA	$321
Mendocino County, CA	$246
Colorado	
Boulder-Longmont, CO	$344
Denver, CO	$327
Delaware	
Dover, DE	$176
Sussex County, DE	$121
Maryland	
Hagerstown, MD	$220
St. Mary's County, MD	$265
Minnesota	
Minneapolis-St. Paul, MN-WI	$275
Nevada	
Reno, NV	$289
New York	
Dutchess County, NY	$371
Jamestown, NY	$176
Newburgh, NY-PA	$349
Rochester, NY	$245
Utica-Rome, NY	$220
Tompkins County, NY	$205
Oregon	
Salem, OR	$236
Portland-Vancouver, OR-WA	$284
Benton County, OR	$209
Deschutes County, OR	$259
Linn County, OR	$189
Utah	
Provo-Orem, UT	$223
Vermont	
Washington County, VT	$211
West Virginia	
Berkeley County, WV	$143
Jefferson County, WV	$146
Morgan County, WV	$140

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federal register

Friday
May 7, 1999

Part VI

Department of Education

Hispanic-Serving Institutions Program; Notice

Department of Education

[CFDA No.: 84.031S]

Hispanic-Serving Institutions Program; Notice Inviting Applications for New Awards for Fiscal Year 1999

Purpose of Program

Provide grants and related assistance to eligible Hispanic-Serving institutions of higher education to enable them to improve their academic quality, institutional management, and fiscal stability and thereby increase their self-sufficiency and expand their capacity to serve Hispanic students and other low-income individuals.

Deadline for Transmittal of Applications: June 25, 1999.

Deadline for Intergovernmental Review: August 25, 1999.

Applications Available: May 10, 1999.

Available Funds: Approximately $16,000,000.

Estimated Range of Awards: $375,000 to $425,000 per year for development grants.

Estimated Average Size of Awards: $392,000 per year for development grants.

Estimated Number of Awards: 40 development grants.

Project Period: 60 months for development grants.

Note: The Department is not bound by any estimates in this notice.

Statutory Priorities: Under 34 CFR 75.105(c)(3) and Section 511(d) of the Higher Education Act, as amended (HEA), the Secretary gives an absolute preference to applications that contain satisfactory evidence that the Hispanic-Serving institution has entered into or will enter into a collaborative arrangement with at least one local educational agency or community-based organization to provide that agency or organization with assistance (from funds other than funds provided under Title V of the HEA) in reducing dropout rates for Hispanic students, improving rates of academic achievement for Hispanic students, and increasing the rates at which Hispanic secondary school graduates enroll in higher education. The Secretary will fund under this competition only applications that meet this priority.

As described under Section 514(b), the Secretary also gives an absolute preference to grants for cooperative arrangements that are geographically and economically sound or will benefit the applicant Hispanic-Serving institution. Only applications that meet this priority will be funded.

Special Funding Consideration: In tie-breaking situations described in 34 CFR 607.23 of the Strengthening Institutions Program regulations, the Secretary awards one additional point to an application from an institution that has an endowment fund for which the market value in 1996–1997, per full-time equivalent (FTE) student, was less than the average per FTE student at similar type institutions; and one additional point to an application from an institution that had expenditures for library materials in 1996–1997, per FTE student, that were less than the average per FTE student, at similar type institutions.

For the purpose of these funding considerations, an applicant must be able to demonstrate that the market value of its endowment fund per FTE student, or expenditures for library materials per FTE student, were less than the following approximated national averages for base year 1996–1997:

	Average Market Value of Endowment Fund, Per FTE	Average Library Expenditures for Materials, Per FTE
Two-year Public Institutions	$1,332	$45
Two-year Non-profit, Private Institutions	11,567	121
Four-year Public Institutions	2,829	165
Four-year Non-profit Private Institutions .:....	42,579	254

If a tie still remains after applying the additional points, the Secretary determines that an institution will receive an award according to a combined ranking of two-year and four-year institutions. This ranking is established by combining library expenditures and endowment values per FTE student. The institutions with the lowest combined library expenditures per FTE student and endowment values per FTE student are ranked higher in strict numerical order.

Applicable Regulations: (a) The Department of Education General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 82, 85, and 86; and (b) the regulations for the Strengthening Institutions Program in 34 CFR Part 607, except those regulatory sections that have been superseded by the Higher Education Amendments of 1998 (Public Law 105–244).

Supplementary Information: The Higher Education Amendments of 1998 amended the Higher Education Act of 1965 (HEA) regarding the Hispanic-Serving Institutions Program in several respects. First, it moved the program Title V of the HEA. It made specific changes to the eligibility requirements for new grants and authorized uses of grant funds. Key statutory provisions that directly impact the program are:

a. As amended, section 504(a)(2) of the HEA provides that an institution that receives a five-year individual grant under Title V, is not eligible to receive an additional development grant until two years after the date on which the five-year grant terminates.

b. As amended, section 503(b) of the HEA authorizes the use of grant funds for the following activities: (1) Purchase, rental, or lease of scientific or laboratory equipment for educational purposes, including instructional and research purposes. (2) Construction, maintenance, renovation, and improvement in classrooms, libraries, laboratories, and other instructional facilities, including the integration of computer technology into institutional facilities to create smart buildings.

(3) Support of faculty exchanges, faculty development and faculty fellowships to assist in attaining advanced degrees in the field of instruction of the faculty.

(4) Purchase of library books, periodicals, and other educational materials, including telecommunications program material.

(5) Tutoring, counseling, and student service programs designed to improve academic success.

(6) Funds management, administrative management, and acquisition of equipment for use in strengthening funds management.

(7) Joint use of facilities, such as laboratories and libraries.

(8) Establishing or improving a development office to strengthen or improve contributions from alumni and the private sector.

(9) Establishing or improving an endowment fund.

(10) Creating or improving facilities for Internet or other distance learning academic instruction capabilities, including purchase or rental of telecommunications technology equipment or services.

(11) Establishing or enhancing a teacher education program designed to qualify students to teach in public, elementary and secondary schools.

(12) Establishing community outreach programs that will encourage elementary and secondary school students to develop the academic skills and the interest to pursue postsecondary education.

(13) Expanding the number of Hispanic and other underrepresented graduate and professional students that

can be served by an institution by expanding courses and institutional resources.

(14) Other activities proposed in the application that contribute to carrying out the purposes of the program and are approved by the Secretary as part of the review and acceptance of the application.

As amended, section 503(c) (1) and (2) of the HEA provides that grantees under the Developing Hispanic-Serving Institutions Program may use up to 20 percent of grant funds to establish or increase an endowment fund. However, the grantee institution must provide matching funds from non-Federal sources in an amount equal to or greater than the grant funds used for the endowment fund.

For Further Information Contact or Applications: Carl Person, U.S. Department of Education, 400 Maryland Avenue, SW, the Portals Building Suite CY–80, Washington, D.C. 20202–5335. Telephone (202) 708–8839 or (202) 708–8816. The e-mail address for Mr. Person is Carl__Person@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–888–877–8339.

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Program Authority: 20 U.S.C. 1057.

Dated: May 3, 1999.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education.

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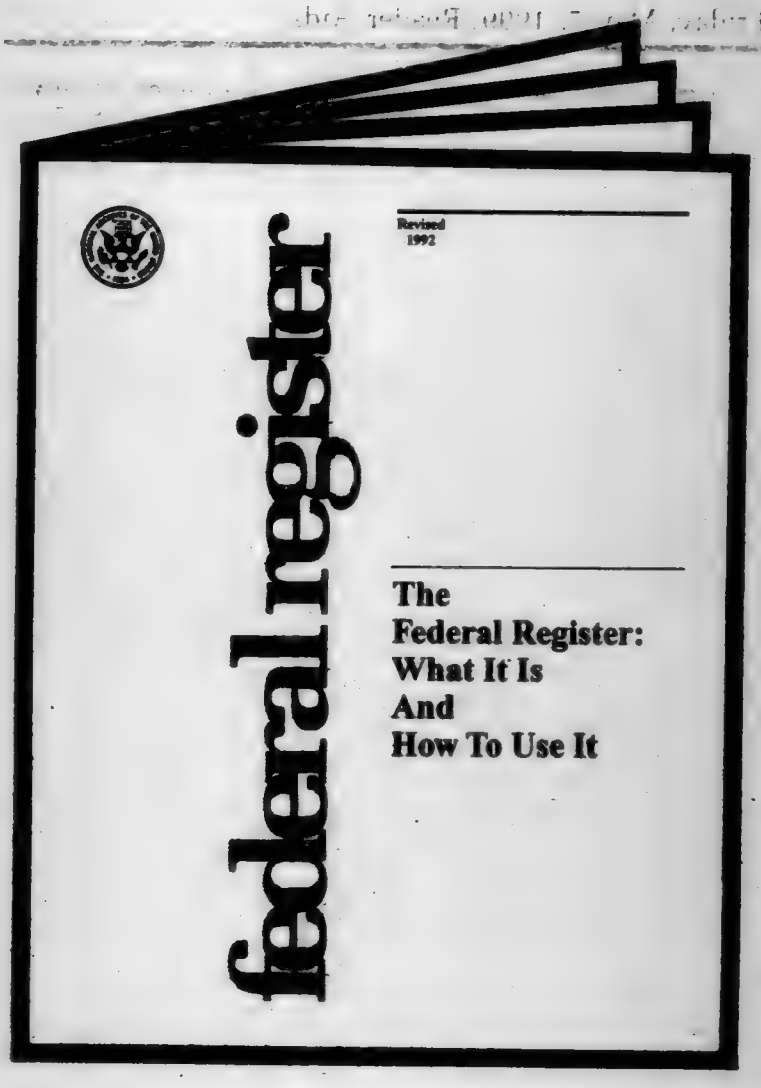
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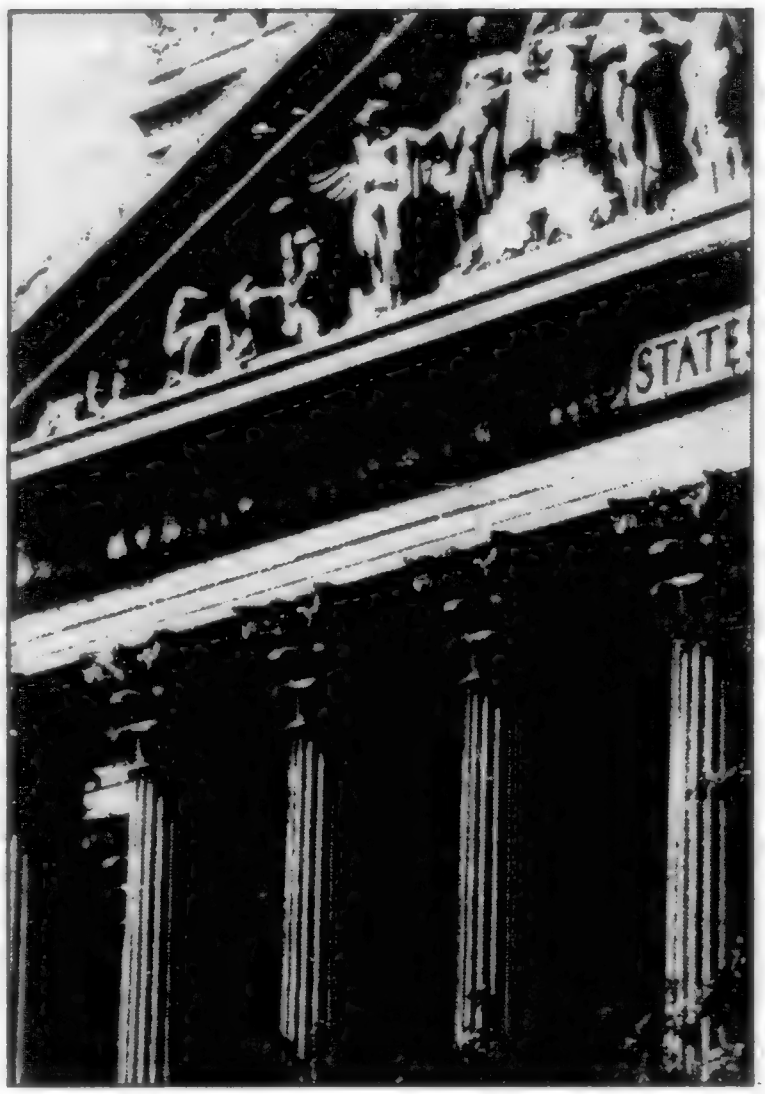
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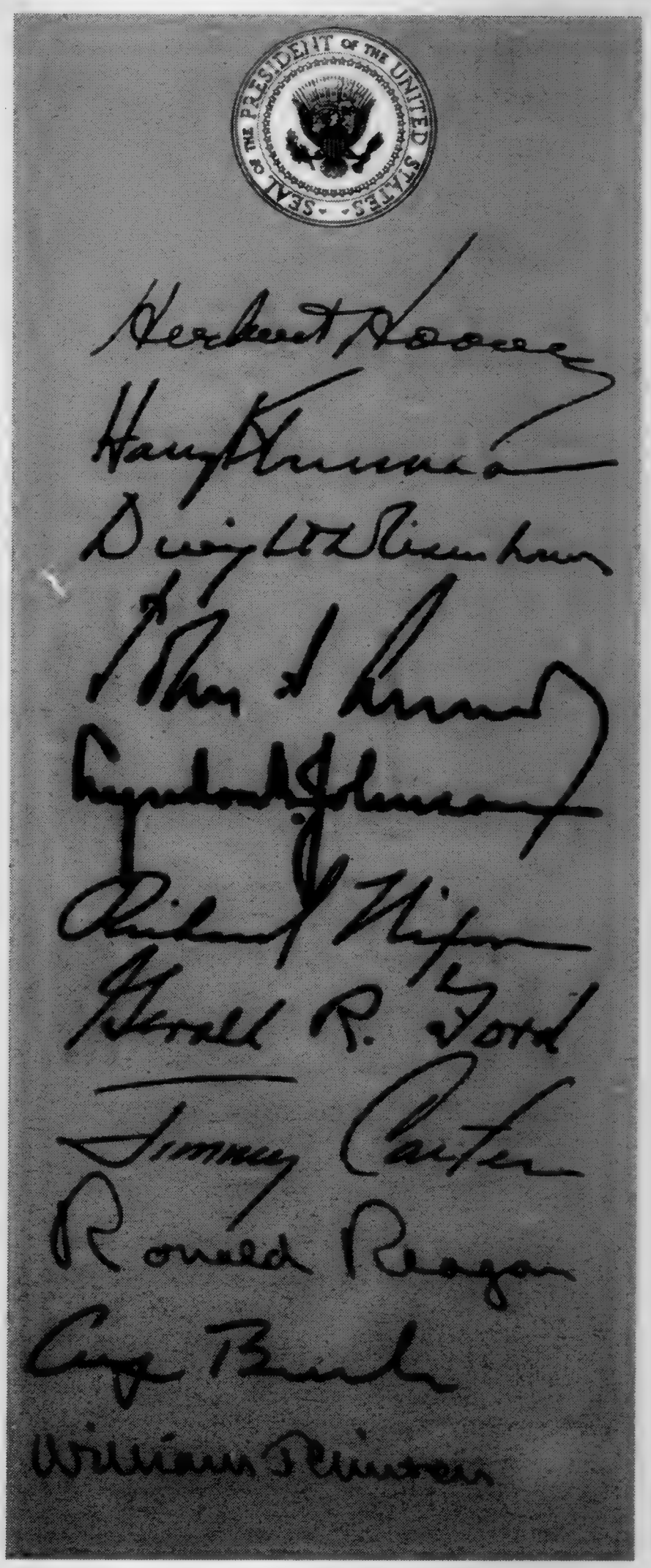
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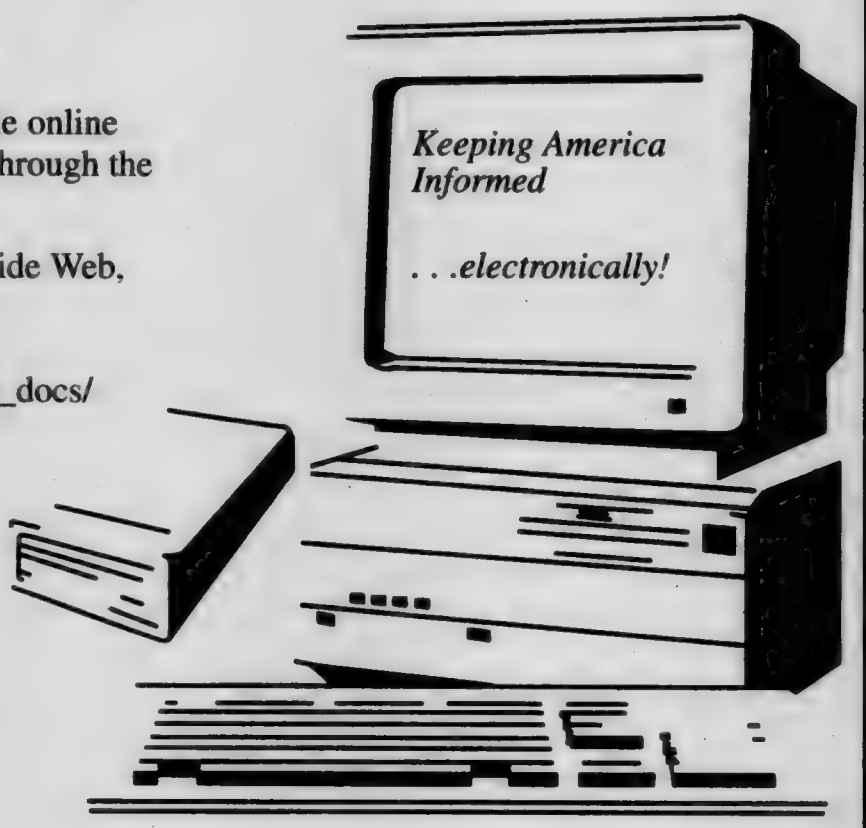
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Rules and Regulations

Federal Register
Vol. 64, No. 89
Monday, May 10, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 457

Common Crop Insurance Regulations; Grape Crop Insurance Provisions

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) finalizes specific crop provisions for the insurance of grapes. The intended effect of this action is to provide policy changes to better meet the needs of the insured by adding provisions that allow grape producers in Idaho, Oregon, and Washington to select one price election and one coverage level for each varietal group specified in the Special Provisions and provide year-round coverage in California, Idaho, Mississippi, Oregon, Texas, and Washington for insureds with no break in coverage from the prior crop year to be effective for the 2000 and subsequent crop year.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Hoy, Insurance Management Specialist, Product Development Division, Federal Crop Insurance Corporation, United States Department of Agriculture, 9435 Holmes Road, Kansas City, MO, 64131, telephone (816) 926–7730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be exempt for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget (OMB).

Paperwork Reduction Act of 1995

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the collections of information in this rule have been approved by the Office of Management and Budget (OMB) under control number 0563–0053 through April 30, 2001.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The amount of work required of the insurance companies will not increase because the information used to determine eligibility must already be collected under the present policy. No additional work is required as a result of this action on the part of either the insured or the insurance companies. Additionally, the regulation does not require any action on the part of small entities than is required on the part of large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

National Performance Review

This regulatory action is being taken as part of the National Performance Review Initiative to eliminate unnecessary or duplicate regulations and improve those that remain in force.

Background

On Wednesday, September 2, 1998, FCIC published a notice of proposed rulemaking in the **Federal Register** at 63 FR 46706–46708 to revise 7 CFR 457.138, Grape Crop Insurance Provisions, effective for the 2000 and succeeding crop years.

Following publication of the proposed rule, the public was afforded 30 days to submit written comments and opinions. A total of six comments were received from an insurance service organization, two reinsured companies, a producer association, and a representative of a producer association. The producer association and one reinsured company concurred with the proposed changes

made to the regulation. The comments received and FCIC's responses are as follows:

Comment: An insurance service organization suggested issuing an amendatory endorsement, rather than reissuing the entire Grape Crop Provisions, to minimize cost for companies that provide insurance for grapes.

Response: The crop insurance policy is contractual in nature and the subject matter is complicated and difficult to read and understand. Use of an amendatory endorsement attached to a complicated policy, part of which is no longer in effect, may cause confusion and misunderstanding. This is especially true if a major change, such as a provision for year-round coverage, is made to the policy. FCIC has been attempting to construct crop insurance policies that are easier to understand by using common terms, provisions, and policy format. Reissuing a complete policy when major changes are made is necessary to achieve this goal.

Comment: A reinsured company questioned whether rates will reflect the increased exposure resulting from the extended coverage and suggested that they should.

Response: FCIC will determine if the extended insurance period results in additional risk not reflected in the current premium rate structure for grapes. Premium rates will be adjusted to reflect any increased risk.

Comment: A reinsured company suggested that an insured would have nothing to lose by applying for increased coverage prior to the sales closing date but following a cause of loss that could or would reduce the yield of the insured crop. The commenter questioned how the provision will be administered and objected to the proposed changes if expenses for delivery of the program will increase. The commenter also questioned when coverage would begin for a newly written policy.

Response: Under the terms of the policy, if the potential exists for grape yields to be affected, the coverage level or ratio of the price election to the maximum price election cannot be increased by the insured. All grape producers are required to annually complete a worksheet to certify if damage (e.g., disease, hail, freeze) occurred to the vines or if cultural practices used will reduce the insured's crop production from previous levels. Agents will also be able to access weather and crop information; therefore, insurance providers should be able to determine if damage exists.

The extended period of coverage for grapes is during the period of dormancy when the risk of loss is generally low, especially in California where winter damage is minimal. FCIC believes that occurrences of insured causes of loss during the extended period of coverage will be infrequent; therefore, expenses resulting from administration of the additional coverage should be minimal. Coverage for new insureds will not attach until the day following the sales closing date unless the application is received on or within 8 days prior to the sales closing date. Insurance will then attach on the 10th day after the properly completed application is received in the crop insurance provider's office, unless the acreage is inspected during the 10 day period and does not meet insurability requirements. For existing policies, coverage will begin with the 2000 crop year and will not provide coverage retroactively to cover the uninsured period in the 1999 crop year.

Comment: A representative of a producer association recommended that, in addition to the proposed changes, sections 2 and 3 of the Grape Crop Provisions be revised to permit grape producers in the State of Oregon to: (1) Establish basic units by variety; (2) establish optional units only if each optional unit is located on non-contiguous land, unless otherwise allowed by written agreement; (3) select only one price election and coverage level for each grape variety in the county specified in the Special Provisions; and (4) apply for a written agreement to establish a price election if the Special Provisions do not provide a price election for a specific variety that is insured.

Response: Revising the Grape Crop Provisions to provide coverage by variety in the State of Oregon requires extensive, detailed production and price information data on the varieties produced. This coverage is available in California because detailed data is available by crush district from the California Department of Food and Agriculture. FCIC is revising the Grape Crop Provisions to allow grape producers in Idaho, Oregon, and Washington to select one coverage level and one price election for each varietal group designated in the Special Provisions because it has obtained sufficient data. Currently, FCIC has access to only limited statewide data from the National Agriculture and Statistic Service on grape varieties produced in Oregon. Additional data on grape variety production, acreage, price, and critical temperatures in each county or district are necessary to provide coverage and price elections based on grape varieties in Oregon. If data are available, FCIC will work with grape producers in Oregon and other states to determine if different coverage and price elections can be provided by grape variety.

In addition to the changes described above and minor editorial changes, FCIC has made the following change to the Grape Crop Provisions:

Section 3—Amended section 3(f) of the proposed rule for clarification. The phrase "after coverage begins" that followed "* * * you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer. * * *" was removed. The phrase is unnecessary and may cause confusion.

List of Subjects in 7 CFR Part 457

Crop insurance, Grape.

Final Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation amends the Common Crop Insurance Regulations (7 CFR part 457) by amending 7 CFR 457.138, for the 2000 and succeeding crop years, to read as follows:

PART 457—COMMON CROP INSURANCE REGULATIONS

1. The authority citation for 7 CFR part 457 continues to read as follows:

Authority: 7 U.S.C. 1506(l), 1506(p).

2. Section 457.138 is revised by amending the introductory text to read as follows:

§ 457.138 Grape crop insurance provisions.

The grape crop insurance provisions for the 2000 and succeeding crop years are as follows:

* * * * *

3. In § 457.138, sections 3(b) and 3(c) are revised and a new section 3(f) is added at the end of section 3 to read as follows:

3. Insurance Guarantees, Coverage Levels, and Prices for Determining Indemnities.

* * * * *

(b) In Idaho, Oregon, and Washington, you may select only one price election and coverage level for each grape varietal group specified in the Special Provisions.

(c) In all states except California, Idaho, Oregon, and Washington, you may select only one price election and coverage level for all the grapes in the county insured under this policy unless the Special Provisions provide different price elections by varietal group, in which case you may select one price

election for each varietal group designated in the Special Provisions. The price elections you choose for each varietal group must have the same percentage relationship to the maximum price offered by us for each varietal group. For example, if you choose 100 percent of the maximum price election for one varietal group, you must also choose 100 percent of the maximum price election for all other varietal groups.

* * * * *

(f) In California, Idaho, Mississippi, Oregon, Texas, and Washington, you may not increase your elected or assigned coverage level or the ratio of your price election to the maximum price election we offer if a cause of loss that could or would reduce the yield of the insured crop is evident prior to the time that you request the increase.

4. In § 457.138, section 9(a)(2) is redesignated as 9(a)(3) and a new section 9(a)(2) is added to read as follows:

9. Insurance Period.

(a) * * *

(1) * * *

(2) In California, Idaho, Mississippi, Oregon, Texas, and Washington, for each subsequent crop year that the policy remains continuously in force, coverage begins on the day immediately following the end of the insurance period for the prior crop year. Policy cancellation that results solely from transferring to a different insurance provider for a subsequent crop year will not be considered a break in continuous coverage.

* * * * *

Signed in Washington, DC on April 6, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–11595 Filed 5–7–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AF67

Dairy Market Loss Assistance Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule sets forth the regulations for the Dairy Market Loss Assistance Program as authorized by the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1999 ("the 1999 Act"). Eligible dairy producers may receive a direct payment on the first 26,000 hundredweight (cwt) of milk marketed commercially during the 1997 or 1998 calendar year. The payment per cwt will depend upon the amount of the eligible milk production under the program. This action is designed to provide immediate financial assistance to producers of dairy operations who recently experienced a severe decline in the price received for their milk.

DATES: Effective May 7, 1999.

FOR FURTHER INFORMATION CONTACT: Raellen Erickson, Program Specialist, Farm Service Agency (FSA), USDA, STOP 0512, 1400 Independence Avenue, SW, Washington, D.C. 20250–0512; telephone: (202) 720–7320.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is in conformance with Executive Order 12866 and has been determined to be significant and therefore has been reviewed by the Office of Management and Budget.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an Environmental Impact Statement is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates subject to the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Paperwork Reduction Act and Notice and Comment

Section 1133 of the 1999 Act exempts this rulemaking from notice and comment, from the Paperwork Reduction Act, and provides that the provisions of 5 U.S.C. 808 which allow exemption from layovers for Congressional review shall be applied. Accordingly this rule and its information collection requirements are made effective immediately in accordance with these provisions. Because of the foregoing provisions and because this rule provides needed time-sensitive relief, delay in completing this rule would be contrary to the public interest.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Background

Section 1111, Market Loss Assistance, of the 1999 Act (Pub. L. 105–277, 112 Stat. 2681) directs the Secretary of Agriculture to provide $200 million in assistance to dairy producers. Section 1131 of the 1999 Act provides that the Secretary shall use the funds, facilities, and authorities of the Commodity Credit Corporation (CCC) to carry out the program. The program will be administered by the Farm Service Agency (FSA).

The estimated 116,000 dairy operations in the United States account for about $22.86 billion in milk production annually. The Basic Formula Price (BFP), which is the price that the Federal Milk Marketing Order system sets for milk used in manufacturing and is the price mover for fluid milk, exceeded previous record highs in July, August, October, November, and December 1998. The 1998 BFP averaged

$14.20 per cwt, compared with the previous record of $13.39 per cwt in 1996.

Milk prices were high because dairy product supplies were low relative to demand. Milk production per cow was relatively weak in the summer months of 1998 due to poor forage quality in the Northern States and relatively high temperatures in the Western States. The high milk prices and low feed costs, along with low cow cull prices have encouraged dairy farmers to increase production. Milk production in the October through December 1998 period increased 2.4 percent above the same period in 1997. This increase is significantly above the past 5-year average increase of 0.15 percent for the October through December 1998 period. The January 1999 milk production increased by 3.7 percent over January 1998 milk production.

Cow productivity is expected to increase by 2.0 percent, and cow numbers are expected to decline less than half the trend of the past decade. The increase in milk production is expected to cause the BFP to decline.

Payments under this program will be limited to dairy operations which produced and marketed milk commercially during the fourth quarter of 1998. Eligible dairy operations can receive payments with respect to the first 26,000 cwt of milk marketed commercially in either calendar year 1997 or 1998 but not both. Changes in dairy operations or producer status from the fourth quarter of 1998 to the date of application will not affect the Dairy Market Loss Assistance payment. The Dairy Market Loss Assistance payment is limited to: (1) The dairy operation that was in existence during the fourth quarter of 1998; and (2) the person(s) involved in such dairy operation during the fourth quarter of 1998.

The per cwt payment rate will be the $200 million available for the Dairy Market Loss Assistance Program divided by the eligible production of milk (limited to 26,000 cwt per dairy operation) marketed commercially during the base period. Persons representing dairy operations making application for the benefits under this part shall self-certify with respect to either 1997 or 1998 calendar year milk production for the dairy operation. This includes any milk marketed from any person who is involved in marketed milk from the dairy operation which marketed milk during the selected marketing period. The calendar year milk marketings selected for the base period by the dairy operation cannot be combined with or changed to any milk marketings from another calendar year, as certified on the application, Form CCC–1040.

Eligible dairy operations must also: (1) Have produced and marketed milk commercially anytime during the fourth quarter of 1998; and (2) apply for cash payments during the application period. Persons representing dairy operations shall self-certify that they meet all eligibility requirements.

Persons representing dairy operations may apply in person at county FSA offices during regular business hours and at that time complete the Dairy Market Loss Assistance Program Payment application on Form CCC–1040. Alternatively, dairy operations may request the Dairy Market Loss Assistance Program Payment application by mail, telephone, facsimile from their designated county FSA office or obtain the application via the internet. The internet website is located at www.fsa.usda.gov/dafp/psd/. The completed application, Form CCC–1040, must be received by a dairy operation's local county FSA office by the due date as specified in the program regulations and can be returned in person, by mail, or by facsimile.

This rule is being made effective immediately. Because of the negative impact the rapid decline in the price of milk has on dairy operations, particularly small dairy operations, a delay in making this assistance available would be contrary to the public interest and the purpose of the authorizing statute.

List of Subjects in 7 CFR Part 1430

Dairy products, Price support programs, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Part 1430 is amended by adding Subpart D—Dairy Market Loss Assistance Program to read as follows:

PART 1430—DAIRY PRODUCTS

1. Subpart D—Dairy Market Loss Assistance Program is added to read as follows:

Subpart D—Dairy Market Loss Assistance Program

Sec.

1430.500 Applicability.
1430.501 Administration.
1430.502 Definitions.
1430.503 Time and method for application.
1430.504 Eligibility.
1430.505 Proof of production.
1430.506 Payment rate and dairy operation payment.
1430.507 Misrepresentation and scheme or device.
1430.508 Maintaining records.
1430.509 Refunds; joint and several liability.

Authority: Pub. L. 105–227, 112 Stat. 2681.

§ 1430.500 Applicability.

This subpart establishes the Dairy Market Loss Assistance Program. The purpose of this program is to provide benefits to dairy operations under Pub. L. 105–277, 112 Stat. 2681, in order to provide financial assistance to dairy operations in connection with normal milk production that is sold on the commercial market.

§ 1430.501 Administration.

(a) The provisions of §§ 1430.351, 1430.352, 1430.354, 1430.355, and 1430.360 shall be applied to this subpart in the same manner as they are applied to the subpart in which they are located.

(b) The provisions of §§ 1430.1 through 1430.349, 1430.353, 1430.356 through 1430.359, 1430.361 through 1430.362, and 1430.400 through 1430.410 are not applicable to this subpart.

(c) This subpart shall be administered by the Farm Service Agency (FSA) under the general direction and supervision of the Executive Vice President, CCC or designee. The program shall be carried out in the field by State and county FSA committees under the general direction and supervision of the State and county FSA committees.

(d) State and county committees, and representatives and employees thereof, do not have the authority to modify or waive any of the provisions of the regulations in this subpart.

(e) The State committee shall take any action required by this subpart which has not been taken by the county committee. The State committee shall also:

(1) Correct, or require a county committee to correct, any action taken by such county committee which is not in accordance with the regulations of this subpart; or

(2) Require a county committee to withhold taking any action which is not in accordance with the regulations of this subpart.

(f) No delegation in this subpart to a State or county committee shall preclude the Executive Vice President, CCC, or a designee, from determining any question arising under the program or from reversing or modifying any determination made by a State or county committee.

(g) The Deputy Administrator for Farm Programs, FSA, may authorize State and county committees to waive or modify deadlines and other program requirements in cases where timeliness or failure to meet such other requirements does not adversely affect the operation of the program.

§ 1430.502 Definitions.

The definitions set forth in this section shall be applicable for all purposes of administering the Dairy Market Loss Assistance Program established by this subpart.

Application means the Dairy Market Loss Assistance Program Payment application, CCC–1040.

Application period means April 12, 1999 through May 21, 1999.

Base period means the calendar year, either 1997 or 1998, as selected by the dairy operation, during which milk was produced and marketed.

Commodity Credit Corporation means the Commodity Credit Corporation.

Dairy operation means any person or group of persons who as a single unit as determined by CCC, produce and market milk commercially produced from cows and whose production and facilities are located in the United States.

Department means the United States Department of Agriculture.

Deputy Administrator means the Deputy Administrator for Farm Programs (DAFP), Farm Service Agency (FSA) or a designee.

Eligible production means milk that had been produced by cows in the United States and marketed commercially in the United States anytime during the 1997 and or 1998 calendar year, subject to a maximum of 26,000 cwt per dairy operation.

Farm Service Agency or FSA means the Farm Service Agency of the Department.

Fourth quarter of 1998 means the period from October 1, 1998 through December 31, 1998.

Marketed commercially means sold to the market to which the dairy operation normally delivers whole milk and receives a monetary amount.

Milk handler means the marketing agency to or through which the producer commercially markets whole milk.

Milk marketing means a marketing of milk for which there is a verifiable sales or delivery record of milk marketed for commercial use.

Person means any individual, group of individuals, partnership, corporation, estate, trust, association, cooperative, or other business enterprise or other legal entity who is, or whose members are, a citizen or citizens of, or legal resident alien or aliens in the United States.

Secretary means the Secretary of the United States Department of Agriculture or any other officer or employee of the Department who has been delegated the authority to act in the Secretary's stead with respect to the program established in this part.

United States means the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1430.503 Time and method for application.

(a) Dairy operations may obtain an application, Form CCC–1040 (Dairy Market Loss Assistance Program Payment Application), in person, by mail, by telephone, or by facsimile from any county FSA office. In addition, applicants may download a copy of the CCC–1040 at http://www.fsa.usda.gov/dafp/psd/.

(b) A request for benefits under this subpart must be submitted on a completed Form CCC–1040. The Form CCC–1040 should be submitted to the county FSA office serving the county where the dairy operation is located but, in any case, must be received by the county FSA office by the close of business on May 21, 1999. Applications not received by the close of business on May 21, 1999, will be disapproved as not having been timely filed and the dairy operation will not be eligible for benefits under this program.

(c) All persons who share in the milk production of a dairy operation that marketed milk during the fourth quarter of 1998 must certify on the same CCC–1040 in order to obtain the total milk production of the dairy operation before the application is complete.

(d) The dairy operation requesting benefits under this subpart must certify with respect to the accuracy and truthfulness of the information provided in their application for benefits. All information provided is subject to verification and spot checks by CCC. Refusal to allow CCC or any other agency of the Department of Agriculture to verify any information provided will result in a determination of ineligibility. Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be approved. Providing a false certification to the Government is punishable by imprisonment, fines and other penalties.

§ 1430.504 Eligibility.

(a) To be eligible to receive cash payments under this subpart, a dairy operation must:

(1) Have produced and marketed milk commercially in the United States anytime during the fourth quarter of 1998;

(2) Indicate all milk commercially marketed by all persons in the dairy operation during calendar year 1997 and 1998 to establish the base period for determining the total pounds of milk that will be converted to hundredweight (cwt) used for payment; and

(3) Apply for payments during the application period.

(b) A dairy operation must submit a timely application and comply with all other terms and conditions of this subpart and those that are otherwise contained in the application to be eligible for benefits under this subpart.

§ 1439.505 Proof of production.

(a) Dairy operations selected for spotchecks by CCC must, in accordance with instructions issued by the Deputy Administrator, provide adequate proof that the dairy operation was commercially marketing milk anytime during the fourth quarter of 1998. The dairy operation must also provide proof of production for the 1997 or 1998 calendar year to verify the base period. The documentary evidence of milk production claimed for payment shall be reported to CCC together with any supporting documentation under paragraph (b) of this section. The pounds of 1997 or 1998 calendar year milk production must be documented using actual records.

(b) All persons involved in such dairy operation marketing milk during the fourth quarter of 1998 shall provide any available supporting documents to assist the county FSA office in verifying that the dairy operation produced and marketed milk commercially during the fourth quarter of 1998 and the base period milk marketings indicated on Form CCC–1040. Examples of supporting documentation include, but are not limited to: tank records, milk handler records, milk marketing payment stubs, daily milk marketings, copies of any payments received as compensation from other sources, or any other documents available to confirm the production and production history of the dairy operation. In the event that supporting documentation is not presented to the county FSA office requesting the information, dairy operations will be determined ineligible for benefits.

§ 1430.506 Payment rate and dairy operation payment.

(a) Payments under this subpart may be made to dairy operations only on the first 26,000 cwt of milk produced by them from cows in the United States actually marketed in the United States during the base period. A payment rate will be determined after the conclusion of the application period, and shall be calculated by:

(1) Converting whole pounds of milk to cwt;

(2) Totaling the eligible cwt (not to exceed 26,000 cwt) of milk marketed commercially during the base period from all approved applications; and

(3) Dividing the amount available for Dairy Market Loss Assistance Program by the total eligible cwt submitted and approved for payment.

(b) Each dairy operation payment will be calculated by multiplying the payment rate determined in paragraph (a) (3) of this section by the dairy operation's eligible production.

(c) In the event that approval of all eligible applications would result in expenditures in excess of the amount available, CCC shall reduce the payment rate in such manner as CCC, in its sole discretion, finds fair and reasonable.

§ 1430.507 Misrepresentation and scheme or device.

(a) A dairy operation shall be ineligible to receive assistance under this program if it is determined by the State committee or the county committee to have:

(1) Adopted any scheme or device which tends to defeat the purpose of this program;

(2) Made any fraudulent representation; or

(3) Misrepresented any fact affecting a program determination.

(b) Any funds disbursed pursuant to this part to a dairy operation engaged in a misrepresentation, scheme, or device, or to any other person as a result of the dairy operation's actions, shall be refunded with interest together with such other sums as may become due. Any dairy operation or person engaged in acts prohibited by this section and any dairy operation or person receiving payment under this subpart shall be jointly and severally liable for any refund due under this section and for related charges. The remedies provided in this subpart shall be in addition to other civil, criminal, or administrative remedies which may apply.

§ 1430.508 Maintaining records.

Dairy operations making application for benefits under this program must maintain accurate records and accounts that will document that they meet all eligibility requirements specified in this subpart and the pounds of milk marketed commercially during the fourth quarter of 1998 and the base period. Such records and accounts must be retained for at least three years after the date of the cash payment to dairy operations under this program.

§ 1430.509 Refunds; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the application, or this subpart, and if any refund of a payment to CCC shall otherwise become due in connection with the application, or this subpart, all payments made under this subpart to any dairy operation shall be refunded to CCC together with interest as determined in accordance with paragraph (c) of this section and late-payment charges as provided for in part 1403 of this chapter.

(b) All persons listed on a dairy operation's application shall be jointly and severally liable for any refund, including related charges, which is determined to be due for any reason under the terms and conditions of the application or this subpart.

(c) Interest shall be applicable to refunds required of the dairy operation if CCC determines that payments or other assistance were provided to the producer was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available. Such interest shall accrue from the date such benefits were made available to the date of repayment or the date interest increases as determined in accordance with applicable regulations. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the dairy operation.

(d) Interest determined in accordance with paragraph (c) of this section may be waived by CCC with respect to refunds required of the dairy operation because of unintentional misaction on the part of the dairy operation, as determined by CCC.

(e) Late payment interest shall be assessed on all refunds in accordance with the provisions of, and subject to the rates prescribed in 7 CFR part 1403.

(f) Dairy operations must refund to CCC any excess payments made by CCC with respect to such application.

(g) In the event that a benefit under this subpart was provided as the result of erroneous information provided by any person, the benefit must be repaid with any applicable interest.

Signed at Washington, D.C., on April 30, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

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BILLING CODE 3410–05–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 9

RIN 3150–AB94

Government in the Sunshine Act Regulations

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule: Notice of intent to implement currently effective rule and request for comments.

SUMMARY: The Nuclear Regulatory Commission (Commission) is announcing its intent to implement a final rule, published and made effective in 1985, that amended its regulations applying the Government in the Sunshine Act. The Commission is taking this action to provide an opportunity for public comment on its intent because of the time that has passed since the Commission last addressed this issue. This action is necessary to complete resolution of this issue.

DATES: The May 21, 1985, interim rule became effective May 21, 1985. Submit comments by June 9, 1999. Unless the Commission takes further action, non-Sunshine Act discussions may be held beginning June 1, 1999.

ADDRESSES: Submit written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.

FOR FURTHER INFORMATION CONTACT: Trip Rothschild, Assistant General Counsel, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555, (301) 415–1607.

SUPPLEMENTARY INFORMATION: The Commission, through this notice of the Commission's intent to implement a rule published and made effective in 1985, seeks to bring closure to a rulemaking that amended the NRC's regulations applying the Government in the Sunshine Act. Because of the years that have elapsed, the Commission is providing this notice of its intent to implement this rule and is providing an opportunity for additional public comment on the Commission's proposal to implement.

The purpose of the rule is to bring the NRC's Sunshine Act regulations, and the way they are applied by NRC, into closer conformity with Congressional intent, as set forth in the legislative history of the Sunshine Act and as clarified in a unanimous Supreme Court decision, *FCC* v. *ITT World*

Communications, 466 U.S. 463 (1984). The NRC's original Sunshine Act regulations, adopted in 1977, treated every discussion of agency business by three or more Commissioners, no matter how informal or preliminary it might be, as a "meeting" for Sunshine Act purposes. As the 1984 Supreme Court decision made clear, however, "meetings," to which the Act's procedural requirements apply, were never intended to include casual, general, informational, or preliminary discussions, so long as the discussions do not effectively predetermine final agency action. These kinds of "non-Sunshine Act discussions," which can be an important part of the work of a multi-member agency, had been foreclosed at NRC since 1977 by the agency's unduly restrictive interpretation of the Sunshine Act.

In response to the Supreme Court's clarification of the law, the Commission in 1985 issued an immediately effective rule that revised the definition of "meeting" in the NRC's Sunshine Act regulations. To ensure strict conformity with the law, the new NRC rule incorporated verbatim the Supreme Court's definition of "meeting." The rule change drew criticism, however, much of it directed at the fact that it was made immediately effective, with an opportunity to comment only after the fact. To address some of the concerns raised, the NRC informed the Congress that it would not implement the rule until procedures were in place to monitor and keep minutes of all non-Sunshine Act discussions among three or more Commissioners. No such procedures were ever adopted, however, nor was the rule itself implemented, and the issue remained pending from 1985 on.

The Commission believes that it is time to bring the issue of the NRC's Sunshine Act rules to a resolution. As noted, because of the many years that have passed since the Commission last addressed this issue, the NRC is providing this notice of its intent finally to implement and use the 1985 rule, and providing 30 days for public comment on the Commission's proposal to implement. The Commission will not modify its current practices, under which no non-Sunshine Act discussions take place, until it has had the opportunity to consider any comments received.

I. Background

On April 30, 1984, the United States Supreme Court issued its first decision interpreting the Government in the Sunshine Act, *Federal Communications Commission* v. *ITT World Communications*, 466 U.S. 463. Though the case could have been decided on narrow, fact-specific grounds, the Court used the opportunity to offer guidance on what leading commentators have described as "one of the most troublesome problems in interpreting the Sunshine Act": the definition of "meeting" as that term is used in the Act. R. Berg and S. Klitzman, An Interpretive Guide to the Government in the Sunshine Act (1978), at 3. The Court rejected the broad view of the term "meeting" that the U.S. Court of Appeals for the District of Columbia Circuit had taken. It declared that the statutory definition of a "meeting" contemplated "discussions that 'effectively predetermine official actions.'" The Court went on:

> Such discussions must be "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." 466 U.S. at 471.

The Court reviewed the legislative history, demonstrating how in the process of revising the original bill, Congress had narrowed the Act's scope. In the Court's words, "the intent of the revision clearly was to permit preliminary discussion among agency members." *Id.* at 471, n.7. The Court explained Congress's reasons for limiting the reach of the Sunshine Act:

> Congress in drafting the Act's definition of "meeting" recognized that the administrative process cannot be conducted entirely in the public eye. "[I]nformal background discussions [that] clarify issues and expose varying views" are a necessary part of an agency's work. [Citation omitted.] The Act's procedural requirements effectively would prevent such discussions and thereby impair normal agency operations without achieving significant public benefit. Section 552b(a)(2) therefore limits the Act's application. * * *

Id. at 469–70.

At the time the Supreme Court handed down the ITT decision, the Nuclear Regulatory Commission had for almost eight years applied the Government in the Sunshine Act as though it required every discussion of agency business to be conducted as a "meeting." Recognizing that the Supreme Court's guidance indicated that the NRC's interpretation of "meeting" had been unduly broad, the NRC's Office of the General Counsel (OGC) advised the Commissioners in May 1984 that the decision seemed significant: the decision was unanimous and it was the first time that the Supreme Court had addressed the Act. OGC suggested that revisions in the NRC's regulations might be appropriate to bring the NRC into line with Congressional intent.

Soon after that, in August 1984, the Administrative Conference of the United States (a body, since abolished, to which the Sunshine Act assigned a special role in the implementation of the Act by federal agencies) issued Recommendation 84–3, based upon an extensive study of the Sunshine Act. The Administrative Conference was troubled by what it saw as one harmful effect of the Act on the functioning of the multi-member agencies. Commenting that "one of the clearest and most significant results of the Government in the Sunshine Act is to diminish the collegial character of the agency decision making process," the Administrative Conference recommended that Congress consider whether the Act should be revised. The Conference observed:

> Although the legislative history indicates Congress believed that, after the initial period of adjustment, Sunshine would not have a significant inhibiting effect on collegial exchanges, unfortunately this has not been the case.

If Congress decided that revisions were in order, the Conference said, it recommended that agency members be permitted to discuss "the broad outlines of agency policies and priorities" in closed meetings. The Administrative Conference did not address the distinction between "meetings" and those discussions that are outside the scope of the Act.

II. The NRC's 1985 Rule

On May 21, 1985 (50 FR 20889), the Nuclear Regulatory Commission issued new regulations implementing the Government in the Sunshine Act. As a legal matter, the NRC could have continued to use the language of its existing regulations, and reinterpreted them in accordance with the Supreme Court's decision. However, the NRC decided that in the interest of openness, it should declare explicitly that its view of the Act's requirements had changed in light of the Court's ruling.

The revised rule conforms the definition of "meeting" in the Commission's rules to the guidance provided by the Supreme Court by incorporating the very language of the Court's decision into its revised definition. Specifically, it provides, at 10 CFR 9.101(c):

> Meeting means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to

be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§ 9.105. 9.106, or 9.108(c) do not constitute "meetings" within this definition.

Under the rule, which was adopted as an immediately effective "interim" rule (it was characterized as "interim" to reflect the fact that it was being made effective before any comments were received and addressed), with an opportunity for public comment, briefings were excluded from the category of "meetings." In the NRC's pre-1985 regulations, by contrast, briefings were treated as meetings, as a matter of policy.

The NRC's 1985 rule proved controversial. In response to Congressional criticism, much of it directed at the Commission's decision to make the rule immediately effective, the Commission assured the Congress that it would conduct no non-Sunshine Act discussions until procedures were in place to govern such discussions.

In December 1985, the NRC's Office of the General Counsel forwarded a final rulemaking paper in which comments on the interim rule were analyzed and responded to. However, by the time that the Commission was briefed on the comments, the American Bar Association had announced its intention to address Sunshine Act issues, including matters directly related to the NRC's rulemaking. The Commission therefore decided to withhold action on the matter and to defer actual implementation and use of the 1985 rule pending receipt of the ABA's views.

III. The American Bar Association Acts

In the fall of 1985, William Murane, Chairman of the Administrative Law Section of the American Bar Association, announced that the Council of the Administrative Law Section had decided to involve itself in the controversy over the Sunshine Act and its effect on the collegial character of agency decision making. Administrative Law Review, Fall 1985, Vol. 37, No. 4, at p. v. The Task Force established by the Administrative Law Section ultimately focused on a single issue: the definition of "meeting" under the Sunshine Act. Its report and recommendations were accepted by the Administrative Law Section in April 1986 and by the full American Bar Association in February 1987.

The ABA's recommendation and report confirmed that the Commission's reading of the Sunshine Act, as interpreted by the Supreme Court in the ITT decision, was legally correct. Moreover, the legal standard set forth in the ABA recommendation incorporated the identical language from the Supreme Court opinion which the NRC had included in its 1985 rule: i.e., the provision stating that for a discussion to be exempt from the definition of "meeting," it must be "[not] sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating [agency] members to form reasonably firm positions regarding matters pending or likely to arise before the agency." Subject to that qualification, the ABA guidelines provide that the definition of "meeting" does not include:

(a) Spontaneous casual discussions among agency members of a subject of common interest; (b) Briefings of agency members by staff or outsiders. A key element would be that the agency members be primarily receptors of information or views and only incidentally exchange views with one another; (c) General discussions of subjects which are relevant to an agency's responsibilities but which do not pose specific problems for agency resolution; and (d) Exploratory discussions, so long as they are preliminary in nature, there are no pending proposals for agency action, and the merits of any proposed agency action would be open to full consideration at a later time. [1]

The ABA report disposed of the suggestion, advanced by some critics of the NRC's interim rule, "that the Supreme Court's opinion should be limited to the facts before the Court." While it recognized that the case could have been decided on fact-specific grounds, the report observed that:

[I]t cannot be assumed that the Supreme Court got carried away or that it was unaware that the definition of "meeting" was controversial and "one of the most troublesome problems in interpreting the Sunshine Act." [Interpretive Guide 3.] We concluded therefore, that the Supreme Court meant what it said in ITT World Communications, and that it intended to provide guidance to agencies and the courts in applying the definition of "meeting." Report at 7.

The ABA report also rejected the argument that because of the "difficulty of specifying in advance those characteristics of a particular discussion which will cause it to fall short of becoming a meeting," the Supreme Court's view of the Act should not become part of agency practice. [Emphasis in the original.] The logic of this argument, said the ABA report, would permit no discussion whatever of agency business except in "meetings," a result which "seems clearly to us not to have been intended by Congress."

[1] A fuller description of the types of discussions fitting in these four categories may be found at pages 9 to 11 of the ABA report.

Report at 8. The report noted that this argument in essence was a claim that agencies should apply a different standard from the one specified by Congress for distinguishing "meetings" from discussions that are not "meetings." The ABA explained:

* * * Congress can hardly have gone to such pains to articulate a narrower standard had it not expected the agencies to use the leeway such a standard provides, and if they are to do so, they must attempt to set out in advance, whether by regulation or internal guidelines, the elements or characteristics of a discussion which will cause it to fall short of being a meeting. Report at 8, fn. 9.

The ABA report's conclusion was a measured endorsement of the value of non-Sunshine Act discussions. After stressing that its purpose was not to urge agencies to close discussions now held in open session, the report made clear that its focus, rather, was on the discussions which, because of the Sunshine Act, are never initiated in the first place. It said:

But the fact is that the Sunshine Act has had an inhibiting effect on the initiation of discussions among agency members. This is the conclusion of the Welborn report [to the Administrative Conference], and it is confirmed by our meeting with agency general counsels * * * [T]he Act has made difficult if not impossible the maintenance of close day-to-day working relationships in [five-member and three-member] agencies. * * * We believe that a sensible and sensitive application of the principles announced in the ITT case can ease the somewhat stilted relationships that exist in some agencies. Report at 11–12. [Emphasis in the original.]

The ABA report made clear that it did not regard the opportunity for non-Sunshine Act discussions as a panacea for the Sunshine-caused loss of collegiality which the Administrative Conference had identified, and which the ABA's own inquiry had confirmed. The Report concluded that the impact of loosened restrictions was likely to be "slight," though it saw "some tendency to increase collegiality * * * to the extent that it would contribute to more normal interpersonal relationships among agency members." Report at 12. The Report also observed that collegiality is most important in group decision-making sessions, where the Act's "meeting" requirements clearly apply.

The ABA report recommended that agencies follow procedures for the monitoring and memorialization of non-Sunshine Act discussions to give assurance to the public that they are staying within the law. The ABA made clear that this was a policy recommendation, not a matter of legal obligation. (The report noted at one

point that if a discussion "is not a 'meeting,' no announcement or procedures are required because the Act has no application." Report at 6.) The ABA recommended that General Counsels brief agency members in advance on the requirements of the law, to assure their familiarity with the restrictions on non-Sunshine Act discussions, and that non-Sunshine Act discussions (other than "spontaneous casual discussions of a subject of common interest") be monitored, either by the General Counsel or other agency representatives, and memorialized through notes, minutes, or recordings.

IV. Further Developments

On August 5, 1987, an amendment was offered to the NRC authorization bill to bar the Commission from using any funds in fiscal year 1988 or 1989 "to hold any Nuclear Regulatory Commission meeting in accordance with the interim [Sunshine Act] rule [published in] the **Federal Register** on May 21, 1985." 133 Cong. Rec. H7178 (Aug. 5. 1987).[2] As Chairman Philip Sharp of the Subcommittee on Energy and Power of the House Committee on Energy and Commerce explained, the amendment "simply neutralizes a rule change." The amendment, passed by a voice vote, was not passed by the Senate and thus was not enacted into law.

The Commission took no further action regarding the Sunshine Act after 1985, and the issue was allowed to become dormant. While the "interim" rule of 1985 has remained in effect and on the books, at 10 Code of Federal Regulations, Part 9, the Commission has continued to apply its pre-1985 rules. Accordingly, all discussions of business by three or more Commissioners have continued to be treated as "meetings," whether formal or informal, deliberative or informational, decision-oriented or preliminary, planned or spontaneous. No non-Sunshine Act discussions of any kind have been held. In the meantime, some other agencies adopted and implemented rules that permit informal discussions that clarify issues and expose varying views but do not effectively predetermine official actions, discussions of the sort that the Court's ITT decision said are a "necessary part of an agency's work." 466 U.S. at 469–70. See, for example, the Occupational Safety and Health Review Commission's (OSHRC) and Defense Nuclear Facility Safety Board's (DNFSB) definitions of "meeting", at 29 CFR 2203.2(d) (50 FR 51679; 1985) and 10 CFR 1704.2(d)(5) (56 FR 9609; 1991), respectively.

In February 1995, Commissioner Steven M.H. Wallman of the Securities and Exchange Commission, joined by twelve other Commissioners or former Commissioners of four independent regulatory agencies (the Securities and Exchange Commission, Federal Communications Commission, Commodity Futures Trading Commission, Federal Trade Commission), wrote to the Administrative Conference of the United States to urge a reevaluation of the Sunshine Act. The group expressed strong support for the Act's objective of ensuring greater public access to agency decision-making, but questioned whether the Act, as currently structured and interpreted, was achieving those goals. The group said that the Act has a "chilling effect on the willingness and ability of agency members to engage in an open and creative discussion of issues." It continued:

> In almost all cases, agency members operating under the Act come to a conclusion about a matter * * * without the benefit of any collective deliberations. [Footnote omitted.] This is directly in conflict with the free exchange of views that we believe is necessary to enable an agency member to fulfill adequately his or her delegated duties, and to be held accountable for his or her actions.
>
> We are also of the view that the Act is at odds with the underlying principles of multi-headed agencies. These agencies were created to provide a number of benefits, including collegial decision making where the collective thought process of a number of tenured, independent appointees would be better than one. Unfortunately, the Act often turns that goal on its head, resulting in greater miscommunication and poorer decision making by precluding, as a matter of fact, the members from engaging in decision making in a collegial way. As a result, the Act inadvertently transforms multi-headed agencies into bodies headed by a number of individually acting members. [Footnote omitted.]

The group identified as one problem the issue confronted by the NRC's 1985 rulemaking: that "many agencies" avoided the problem of distinguishing between "preliminary conversations, which are outside of the Act, and deliberations, which trigger the Act," by a blanket prohibition, as a matter of general policy, against any conversation among a quorum of agency members, except in "meetings" under the Sunshine Act. While such bright-line policies were easy to apply and effective, the letter said, they were often over-inclusive, barring discussion of even the most preliminary views and often impeding the process of agency decision-making.

The Administrative Conference, then soon to be abolished, took up the group's challenge, assembled a special committee to study the Sunshine Act, and convened a meeting in September, 1995, to discuss the Act, its problems, and possible remedies. The Conference appeared to be looking for some compromise, acceptable both to the Federal agencies and to representatives of the media, that would acknowledge the Act's impairment of the collegial process and try to remedy that by giving greater flexibility to agencies in applying the Act. No consensus developed, however. The Administrative Conference, apparently recognizing that there would be no meeting of the minds between critics and defenders of the Sunshine Act, did not pursue its efforts to find common ground.

V. Conclusions

The Commission has taken into account information from a number of quarters, as well as its own experience in implementing the Sunshine Act. It has considered, among other things, the language of the statute and its legislative history; the Supreme Court's decision in the ITT case; Recommendation 84–3 of the Administrative Conference of the United States; the findings of the American Bar Association; actual practice at other federal agencies, including the DNFSB and OSHRC; and the advice letter from numerous Commissioners and former Commissioners of four other independent regulatory agencies.

Based on all of these, the Commission believes that while the Sunshine Act's objectives, which include increasing agency openness and fostering public understanding of how the multi-member agencies do business, are laudable, it is important to recognize exactly what it was that Congress legislated. The legislative history, as the Supreme Court explained, shows that Congress carefully weighed the competing considerations involved: the public's right of access to significant information, on the one hand, and the agencies' need to be able to function in an efficient and collegial manner on the other. Congress struck a balance: it did not legislate openness to the maximum extent possible, nor did it provide unfettered discretion to agencies to offer only as much public access as they might choose. Rather, it crafted a system in which the Sunshine Act would apply only to "meetings," a term carefully defined to exclude preliminary, informal, and informational discussions, and then provided a series of exemptions to permit closure of certain

[2] The text of the amendment and the colloquy surrounding its adoption by the House of Representatives are also reprinted in full in SECY–88–25.

categories of "meetings." Unfortunately, in part because of advice from the Justice Department in 1977 that later proved to be erroneous, the Commission's original Sunshine Act regulations did not give due recognition to the balance contemplated by Congress. Rather, the regulations mistakenly took the approach that every discussion among three or more Commissioners, no matter how far removed from being "discussions that effectively predetermine official actions," in the Supreme Court's words, should be considered a "meeting." 466 U.S. at 471.

At the time that the Commission changed its Sunshine Act rules in 1985, many of its critics appeared to believe that if the rule change were implemented, numerous discussions currently held in public session would instead be held behind closed doors. This was a misapprehension. Indeed, if there is one point that needs to be emphasized above any other, it is that the objective of the 1985 rule is not that discussions heretofore held in public session should become non-Sunshine Act discussions; rather, the focus of the 1985 rule is on the discussions that currently do not take place at all. This was also the focus of the American Bar Association and the authors of the 1995 letter to the Administrative Conference.

The Commission believes that non-Sunshine Act discussions can benefit the agency and thereby benefit the public which the NRC serves. This view did not originate with the Commission by any means. On the contrary, as described above, the starting point of the Commission's analysis is Congress's recognition that " 'informal background discussions [that] clarify issues and expose varying views' are a necessary part of an agency's work," and that to apply the Act's requirements to them would, in the words of the Supreme Court, "impair normal agency operations without achieving significant public benefit." 466 U.S. 463, 469.

For convenience, the currently effective (but not implemented) 1985 rule is included in this notice and the Commission is providing 30 days for public comment on its stated intent to implement the 1985 rule. No non-Sunshine Act discussions will be held during the period for public comment and for a 21-day period following close of the comment period to allow the Commission to consider the public comments. Absent further action by the Commission, non-Sunshine Act discussions may be held commencing 21 days after the close of the comment period.

From previous comments, the following are possible questions about the 1985 rule, and the Commission's responses to those questions.

1. What types of discussions does the Commission have in mind, and what does it seek to accomplish with this rule?

Answer: First and foremost, the Commission would like to be able to get together as a body with no fixed agenda other than to ask such questions as: "How is the Commission functioning as an agency? How has it performed over the past year? What have been its major successes and failures? What do we see coming in the next year? In the next five years, and ten years? How well are our components serving us? Are we getting our message to the industry we regulate and to the public? Are we working effectively with the Congress?" This kind of "big picture" discussion can be invaluable. One of the regrettable effects of the Sunshine Act, as documented as long ago as 1984, in Administrative Conference Recommendation 84–3, has been the loss of collective responsibility at the agencies, and the shift of authority from Presidentially appointed and accountable agency members to the agencies' staffs. The Commission believes that "big picture" discussions served a valuable function in pre-Sunshine Act days at NRC and can do so again, helping to assure that the Commissioners serve the public with maximum effectiveness and accountability.

The Commission believes that some kinds of general, exploratory discussions can be useful in generating ideas. Such ideas, if developed into more specific proposals, will become the subject of subsequent "meetings." The Commission recognizes that it would be incumbent on the participants in such non-Sunshine Act discussions to assure that they remain preliminary and do not effectively predetermine final agency action. The Commission believes that the guidelines proposed by the American Bar Association are the most suitable criteria for assuring compliance with the Act's requirements.

The Commission also believes that spontaneous casual discussions of matters of mutual interest—for example, a recent news story relating to nuclear regulation—can be beneficial, helping both to ensure that Commissioners are informed of matters relevant to their duties and to promote sound working relationships among Commissioners.

2. Is it really clear that the law permits non-Sunshine Act discussions?

Answer: Yes, beyond any reasonable doubt. Congress so provided, a unanimous Supreme Court has so found, the American Bar Association Task Force on the Sunshine Act agreed, the Council of the Administrative Law Section of the American Bar Association adopted the Task Force's views, and the ABA's full House of Delegates accepted the Administrative Law Section's report and recommendation.

3. Didn't the ITT case involve a trip to Europe by less than a quorum of FCC members, and couldn't the case be viewed as relating to those specific facts?

Answer: The case was resolved on two separate grounds. Although the Supreme Court did not have to reach the issue of what constitutes a "meeting" under the Sunshine Act, it did so, in order (so the ABA report concluded) to provide guidance to agencies and the courts on a difficult aspect of Sunshine Act law. In addressing the ambiguity in the definition of "meeting" and thus the uncertainty as to the Act's scope, the Supreme Court was acting to resolve a problem that had been apparent literally from the day of its enactment into law, as President Ford's statement in signing the bill, on September 13, 1976, makes clear. He wrote:

> I wholeheartedly support the objective of government in the sunshine. I am concerned, however, that in a few instances unnecessarily ambiguous and perhaps harmful provisions were included in S.5. * * * The ambiguous definition of the meetings covered by this act, the unnecessary rigidity of the act's procedures, and the potentially burdensome requirement for the maintenance of transcripts are provisions which may require modification.

Government in the Sunshine Act—S.5 (P.L. 94–409), Source Book: Legislative History, Text, and Other Documents (1976), at 832.

4. On the meaning of "meeting" as used in the Sunshine Act, aren't the views of Congressional sponsors of the legislation entitled to consideration?

Answer: Yes, when they appear in the pre-enactment legislative history. In the present case, for example, the Supreme Court cited the remarks of the House sponsor of the Sunshine Act, Representative Dante Fascell, who introduced the report of the Conference Committee to the House. He explained to his colleagues that the conferees had narrowed the Senate's definition of "meeting" in order "to permit casual discussions between agency members that might invoke the bill's requirements" under the Senate's approach. 122 Cong. Rec. 28474 (1976), cited at 466 U.S. 463, 470 n.7. Likewise, Senator Chiles, the Senate sponsor of the bill, described the definition of "meeting" in the final bill as a "compromise version." 122 Cong. Rec. S15043 (Aug. 31, 1976), reprinted in

Government in the Sunshine Act Source Book. In any case, however, once the Supreme Court has declared what the law requires, federal agencies are bound to follow its guidance.

5. Is there any basis in the legislative history for the notion that non-Sunshine Act discussions are not only permissible, but useful?

Answer: Yes. The point was made forcefully by Professor Jerre Williams (subsequently a judge on the Fifth Circuit Court of Appeals), presenting the views of the American Bar Association. He testified, in Congressional hearings on the bill:

> One of the most critical facets of the American Bar Association view has to do with the definition of "meeting." The ABA firmly agrees that policy must not be determined by informal closed-door caucuses in advance of open meetings. On the other hand, however, the ABA believes it important that "chance encounters and informational or exploratory discussions" by agency members should not constitute meetings unless such discussions are "relatively formal" and "predetermine" agency action.
>
> It should be a matter of concern to all those interested in good government that agency members be allowed to engage in informal work sessions at which they may "brainstorm" and discuss various innovative proposals without public evaluation or censorship of their search for new and creative solutions in important policy areas.
>
> All persons who have engaged in policymaking have participated in such informal sessions. Sometimes outlandish suggestions are advanced, hopefully humorous suggestions abound. But out of all this may come a new, creative, important idea. There is time enough to expose that idea to public scrutiny once it has been adequately evaluated as a viable alternative which ought to be seriously considered. [Emphasis added.] Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives, 94th Cong., First Session (Nov. 6 and 12, 1975), at 114–15.

6. Why is the NRC paying so much attention to the ITT case and ignoring the Philadelphia Newspapers case which dealt specifically with NRC?

Answer: First of all, the ITT case dealt with the issue of what is a "meeting," whereas *Philadelphia Newspapers, Inc.* v. *NRC,* 727 F.2d 1195 (D.C. Cir. 1984). dealt with an unrelated issue: whether a particular "meeting" could be closed under the Sunshine Act. Secondly, the ITT case was decided by the Supreme Court, and as such would be entitled to greater weight than the decision of one panel of a Court of Appeals, even if they were on the same issue. Thirdly, the full D.C. Circuit, sitting *en banc,* has severely criticized the Philadelphia Newspapers decision for digressing from Congressional intent and thereby reaching an "untoward result." *Clark-Cowlitz Joint Operating Agency* v. *FERC,* 798 F.2d 499, 503 n.5 (D.C. Cir. 1984).

7. If it is so clear that non-Sunshine Act discussions are permissible, why did the NRC interpret the Act differently for so many years?

Answer: In part, the answer lies in the fact that the Justice Department, in the years 1977 to 1981, took an expansive view of the definition of "meeting." (See the letter from Assistant Attorney General Barbara A. Babcock reprinted in the Interpretive Guide at p. 120.) In contrast, Berg and Klitzman, the authors of the Interpretive Guide, believed that Congress had consciously narrowed the definition. (See the Interpretive Guide at 6–7.) Because the Justice Department defends Sunshine Act suits in the courts, its view of the law's requirements carried considerable weight. The Supreme Court's decision in the ITT case resolved the issue definitively.

8. Didn't the NRC acknowledge in its 1977 rulemaking that it was going beyond the law's requirements in the interest of the Act's "presumption in favor of opening agency business to public observation"? Why isn't that rationale still applicable today?

Answer: There are at least three factors today that were not present in 1977: (1) the Supreme Court's ITT decision, which makes clear that Congress gave the agencies authority to hold such discussions because it thought they were an important part of doing the public's business; (2) the Administrative Conference recommendation stating that the Sunshine Act has had a much more deleterious effect on the collegial nature of agency decision making than had been foreseen; and (3) the American Bar Association report stating that Congress gave the agencies the latitude to hold non-Sunshine Act discussions in the expectation they would use it, and suggesting that the use of such discussions might help alleviate some of the problems caused by the Sunshine Act. Moreover, the Commission has had the benefit of its own and other agencies' experience under the Act. It should be emphasized that the Commission, by implementing this rule, is not implicitly or explicitly urging that the Sunshine Act be altered; rather, it is saying that the Sunshine Act should not be applied even more restrictively than Congress intended when it enacted the statute.

9. Why does the NRC put such reliance on the ABA report, when the ABA made a point of saying that it was not urging the closing of any meetings now open?

Answer: The question misses the point of the ABA comment. In the context in which the comment appears in the ABA report, it is clear that the ABA was expressing its concern for the discussions that currently do not happen at all, either in open or in closed session, because the Sunshine Act inhibits the initiation of discussions. Its point was similar to that made by Professor Williams in the hearings on the bill in 1975, when he urged that agency members not be deprived of the opportunity to generate ideas in "brainstorming sessions"—ideas which may subsequently be the subject of "meetings" if they turn out to warrant formal consideration. As we have emphasized above, the Commission is not proposing to close any meetings currently held as open public meetings.

10. How does the Commission intend to differentiate between "meetings" and "non-Sunshine Act discussions"?

Answer: The Commission intends to abide by the guidance provided by the Court in *FCC* v. *ITT World Communications* and contained in our regulations, in differentiating between "meetings" and non-Sunshine Act discussions. Applying this guidance, the Commission may consider conducting a non-Sunshine Act discussion when the discussion will be casual, general, informational, or preliminary, so long as the discussion will not effectively predetermine final agency action. Whenever the Commission anticipates that a discussion seems likely to be "sufficiently focused on discreet proposals or issues as to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency," the Commission will treat those discussions as "meetings." See id. at 471.

Further, to ensure that we appropriately implement the Supreme Court guidance in differentiating between non-Sunshine Act discussions and meetings, the Commission will consider the ABA's remarks on the seriousness of this task. For instance, the ABA cautioned that a non-Sunshine Act discussion "does not pose specific problems for agency resolution" and agency "members are not deliberating in the sense of confronting and weighing choices." Report at 9–11.

Some specific examples of the kinds of topics that might be the subject of non-Sunshine Act discussions would include generalized "big picture" discussions on such matters as the following: "How well is the agency functioning, what are our successes and

failures, what do we see as major challenges in the next five and ten years, what is the state of our relations with the public, industry, Congress, the press?

Preliminary, exploratory discussions that generate ideas might include, for example, "Is there more that we could be doing through the Internet to inform the public and receive public input? How does our use of the Internet compare with what other agencies are doing?" Such ideas, if followed up with specific proposals, would become the subject of later "meetings" within the meaning of the Sunshine Act.

Spontaneous, casual discussions of matters of mutual interest could include discussions of a recent news story relating to NRC-licensed activities, or a Commissioner's insights and personal impressions from a visit to a licensed facility or other travel. Under this heading, three Commissioners would be permitted to have a cup of coffee together and to talk informally about matters that include business-related topics. Under the Commission's pre-1985 rule, such informal get-togethers were precluded.

Briefings in which Commissioners are provided information but do not themselves deliberate on any proposal for action could include routine status updates from the staff.

Discussions of business-related matters not linked to any particular proposal for Commission action might include an upcoming Congressional oversight hearing or a planned all-hands meeting for employees.

11. Apart from the issue of the definition of "meeting," are there other changes that the interested public should be aware of?

Answer: Yes, one minor procedural point. The 1985 rule includes a provision stating that transcripts of closed Commission meetings will be reviewed for releasability only when there is a request from a member of the public for the transcript. Reviewing transcripts for releasability when no one is interested in reading them would be a waste of agency resources and thus of the public's money.

12. Will the Commission adopt any particular internal procedures for its non-Sunshine Act discussions?

Answer: For an initial 6-month period of non-Sunshine Act discussions, the Commission will maintain a record of the date and subject of, and participants in, any scheduled non-Sunshine Act discussions that three or more Commissioners attend. After the six-month period, the Commission will revisit the usefulness of the record-keeping practice.

List of Subjects in 10 CFR Part 9

Criminal penalties, Freedom of information, Privacy, Reporting and recordkeeping requirements, Sunshine Act.

The May 21, 1985 (50 FR 20863), rule is currently effective but has never been implemented. For the convenience of the reader, the Commission is republishing the text of that rule.

PART 9—PUBLIC RECORDS

1. The authority citation for part 9 continues to read as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

Subpart A is also issued 5 U.S.C. ; 31 U.S.C 9701; Pub. L. 99–570. Subpart B is also issued under 5 U.S.C. 552a. Subpart C is also issued under 5 U.S.C. 552b.

2. In § 9.101, paragraph (c) is republished for the convenience of the reader as follows:

§ 9.101 Definitions.

* * * * *

(c) Meeting means the deliberations of at least a quorum of Commissioners where such deliberations determine or result in the joint conduct or disposition of official Commission business, that is, where discussions are sufficiently focused on discrete proposals or issues as to cause or to be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency. Deliberations required or permitted by §§ 9.105, 9.106, or 9.108(c), do not constitute "meetings" within this definition.

* * * * *

3. In § 9.108, paragraph (c) is republished for the convenience of the reader as follows:

§ 9.108 Certification, transcripts, recordings and minutes

* * * * *

(c) In the case of any meeting closed pursuant to § 9.104, the Secretary of the Commission, upon the advice of the General Counsel and after consultation with the Commission, shall determine which, if any, portions of the electronic recording, transcript or minutes and which, if any, items of information withheld pursuant to § 9.105(c) contain information which should be withheld pursuant to § 9.104, in the event that a request for the recording, transcript, or minutes is received within the period during which the recording, transcript, or minutes must be retained, under paragraph (b) of this section.

* * * * *

Dated at Rockville, Maryland, this 4th day of May, 1999.

For the Nuclear Regulatory Commission.

Annette Vietti-Cook,

Secretary of the Commission.

[FR Doc. 99–11669 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF COMMERCE

Bureau of the Census

15 CFR Part 30

[Docket No. 990416099–9099–01]

RIN 0607–AA32

New Canadian Province Import Code for Territory of Nunavut

AGENCY: Bureau of the Census, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of the Census is amending the Foreign Trade Statistics Regulations (FTSR), to add a new Canadian Province/Territory code for the Territory of Nunavut. This Canadian Territory code is being added to the existing Canadian Province/Territory codes used for reporting Canadian Province of Origin information on Customs Entry Records.

EFFECTIVE DATE: The provisions of this rule are effective April 1, 1999.

FOR FURTHER INFORMATION CONTACT: C. Harvey Monk, Jr., Chief, Foreign Trade Division, Bureau of the Census, Room 2104, Federal Building 3, Washington, DC 20233–6700, by telephone on (301) 457–2255, by fax on (301) 457–2645, or by e-mail at c.h.monk.jr@ccmail.census.gov. For information on the specific Customs reporting requirements contact: Dave Kahne, U.S. Customs Service, Room 5.2C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, by telephone on (202) 927–0159 or by fax on (202) 927–1096.

SUPPLEMENTARY INFORMATION:

Background Information

On November 29, 1996, the U.S. Bureau of the Census (Census Bureau), Department of Commerce, and the U.S. Customs Service (Customs), Department of the Treasury, announced the implementation of the requirements for collecting Canadian Province of Origin information on Customs Entry Records in the **Federal Register** (61 FR 60531). The Supplementary Information contained in that notice fully recounts the development of the program for collecting Canadian Province of Origin information on Customs import

documents. Please refer to that notice for details on the implementation of that program.

The reporting provisions for collecting Canadian Province of Origin information are incorporated in FTSR, 15 CFR 30.80, "Imports from Canada." The Census Bureau is now amending 15 CFR 30.80(d) to add a new Canadian Province/Territory code (XV) for the Territory of Nunavut. The Canadian Province codes are used to report Canadian Province of Origin information on Customs Entry Records required for all U.S. imports that originate in Canada. The Census Bureau is coordinating the implementation of this rule with Customs. This action is taken to fulfill the requirements of the 1987 agreement between the United States and Canada under which the countries agreed to replace their requirements for reporting export data by substituting exchanged import information. The Department of Treasury concurs with the provisions contained in this final rule.

Program Requirements

In order to include the new Canadian Province/Territory code for the Territory of Nunavut, the Census Bureau is revising 15 CFR 30.80(d) to add the code XV for Nunavut to the list of valid Canadian Province/Territory codes.

Rulemaking Requirements

This rule is exempt from all requirements of Section 553 of the Administrative Procedures Act because it deals with a foreign affairs function (5 U.S.C. (A) (1)).

Regulatory Flexibility Act

Because a notice of proposed rulemaking is not required by 5 U.S.C. 553 or any other law, a Regulatory Flexibility Analysis is not required and has not been prepared (5 U.S.C. 603(a)).

Executive Orders

This rule has been determined to be not significant for purposes of Executive Order 12866. This rule does not contain policies with Federalism implications sufficient to warrant preparation of the Federalism assessment under Executive Order 12612.

Paperwork Reduction Act

Notwithstanding any other provisions of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) of 1995, Pub. L. 104–13, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This rule covers collection of information subject to PRA provisions, which OMB cleared under Control Number 1515–0065. For further information on the OMB submission, contact Dave Kahne, U.S. Customs Service, Room 5.2C, 1300 Pennsylvania Avenue, NW, Washington, DC 20229, by telephone on 202–927–0159 or by fax on 202–927–1096.

This rulemaking will have no impact on the current reporting-hour burden requirements as approved under OMB control number 1515–0065.

List of Subjects in 15 CFR Part 30

Economic statistics, Exports, Foreign trade, Reporting and recordkeeping requirements.

Amendments to 15 CFR Part 30

For the reasons set out in the preamble, the Census Bureau is amending 15 CFR Chapter I, Part 30, as follows:

PART 30—FOREIGN TRADE STATISTICS

1. The authority citation for 15 CFR Part 30 continues to read as follows:

Authority: 5 U.S.C. 301; 13 U.S.C. 301–307; Reorganization Plan No. 5 of 1950 (3 CFR 1949–1953 Comp., 1004); Department of Commerce Organization Order No. 35–2A, August 4, 1975, 40 FR 42765.

Subpart F—Special Provisions for Particular Types of Import Transactions

2. Section 30.80 (d) is revised to read as follows:

§ 30.80 Imports from Canada.

* * * * *

(d) The Province of Origin code replaces the Country of Origin code only for imports that have been determined, under applicable Customs rules, to originate in Canada. Valid Canadian Province/Territory codes are:

XA—Alberta
XB—New Brunswick
XC—British Columbia
XM—Manitoba
XN—Nova Scotia
XO—Ontario
XP—Prince Edward Island
XQ—Quebec
XS—Saskatchewan
XT—Northwest Territories
XV—Nunavut
XW—Newfoundland
XY—Yukon

Approved: New Canadian Province Import Code for Nunavut Docket Number 990416099–9099–01.

Dated: April 13, 1999.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 99–11677 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0130]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of bis(2,2,6,6-tetramethyl-4-piperidinyl) sebacate as a thermal/light stabilizer for polymeric adhesives and pressure-sensitive adhesives. This action responds to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective May 10, 1999. Submit written objections and request for a hearing by June 9, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 6, 1998 (63 FR 11263), FDA announced that a food additive petition (FAP 8B4574) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., P.O. Box 2005, Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of bis(2,2,6,6-tetramethyl-4-piperidinyl) sebacate as a thermal/light stabilizer for polymeric adhesives and pressure-sensitive adhesives.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in

§ 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 8B4574 (63 FR 11263). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 9, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * * * *
Bis(2,2,6,6-tetramethyl-4-piperidinyl) sebacate (CAS Reg. No. 52829–07–9)	For use only: 1. In adhesives complying with § 175.105 of this chapter. 2. At levels not to exceed 0.1 percent by weight of pressure-sensitive adhesives complying with § 175.125 of this chapter.
* * *	* * * * *

Dated: May 3, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11737 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–032]

Drawbridge Operation Regulations; Connecticut River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District issued a temporary deviation from the drawbridge operation regulations governing the operation of the Middletown Swing Bridge, mile 32.0, across the Connecticut River between Middletown and Portland, Connecticut. The deviation requires the bridge to open on signal only after a two hour advance notice from April 24 through June 21, 1999. The deviation is necessary to facilitate needed repairs to the bridge.

DATES: The deviation is effective from April 24, 1999 through June 21, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph Schmied, Bridge Management Specialist, at (212) 668–7195.

SUPPLEMENTARY INFORMATION: The Middletown Swing Bridge, mile 32.0, across the Connecticut River has a vertical clearance of 25 feet at mean high water and 27 feet at mean low water in the closed position. The operating regulations for the bridge are in 33 CFR 117.205.

The owner, the Connecticut Department of Transportation (CDOT), requested a temporary deviation from the operating regulations for the Middletown Swing Bridge in order to facilitate necessary structural repairs and painting of the bridge. The work is essential for public safety and continued operation of the bridge.

The deviation requires the bridge, from April 24 through June 21, 1999, between 6 a.m. and 4:30 p.m., to open on signal only after a two hour advance notice is given by calling (508) 726–0456. Vessels that can pass under the bridge without an opening may do so at all times.

The Coast Guard reviewed CDOT's proposed maintenance plan and determined that the time period of the deviation is reasonable given the work that is scheduled to be performed on the bridge.

The deviation from the normal operating regulations was authorized under 33 CFR 117.35.

Dated: April 27, 1999.

R.M. Larrabee,

Rear Admiral, U.S. Coast Guard Commander, First Coast Guard District.

[FR Doc. 99–11587 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD1–98–170]

RIN 2121–AA97

Safety Zone; Port of New York/New Jersey Fleet Week

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing five safety zones in New York Harbor's Upper Bay and the Hudson River that will be activated annually for the Fleet Week Parade of Ships, for Air and Sea demonstrations, and for the departure of the participating U.S. Navy Aircraft or Helicopter Carrier. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of New York Harbor's Upper Bay and the Hudson River .

DATES: This final rule is effective annually from 8 a.m. on the Wednesday before Memorial Day until 4 p.m. on the Wednesday following Memorial Day.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On February 24, 1999, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Safety Zone: Port of New York/New Jersey Fleet Week in the **Federal Register** (64 FR 9107). The Coast Guard received no letters commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Good cause exists for making this regulation effective less than 30 days after **Federal Register** publication. Due to the date of publication for this regulation's NPRM with 60-day comment period, there was insufficient time to draft and publish the final rule 30 days before its effective date. Any delay encountered in this regulation's effective date would be contrary to pubic interest since immediate action is needed to prevent traffic from transiting a portion of New York Harbor's Upper Bay and Hudson River and provide for the safety of life on navigable waters during this annual event. Additionally, the public was notified of this event when the NPRM was published in the Local Notice of Mariners on March 2, 1999.

Background and Purpose

The Intrepid Sea, Air and Space Museum, Manhattan, NY, sponsors the annual Fleet Week Parade of Ships, as well as associated Sea and Air demonstrations. These events take place annually from the Wednesday before Memorial Day to the Wednesday following Memorial Day on the waters of New York Harbor's Upper Bay and the Hudson River. The Coast Guard expects no more than 500 spectator craft for these events.

Parade of Ships

The Coast Guard is establishing three safety zones for the actual parade of ships on the Wednesday before Memorial Day. The first zone is a moving safety zone for the Parade of Ships to include all waters 500 yards ahead and astern, and 200 yards on each side of the designated column of parade vessels as the column transits the Port of New York and New Jersey from the Verrazano Narrows Bridge to Riverside State Park on the Hudson River between West 137th and West 144th Streets, Manhattan.

The second zone established for the parade of ships expands from the column of parade vessels east to the Manhattan shoreline between Piers 83 and 90. This expansion gives the public an unobstructed view of the parade of ships from the pierside reviewing stand.

The third zone activates as each vessel leaves the parade of ships and proceeds to its berthing area. The moving safety zone will expand to include all waters within a 200-yard radius of each vessel until it is safely berthed.

These three safety zones are effective annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day. They are needed to protect the maritime public from possible hazards to navigation associated with a parade of naval vessels transiting the waters of New York Harbor and the Hudson river in close proximity. These vessels have limited maneuverability and require a clear traffic lane to safely navigate.

Air and Sea Demonstration

The Coast Guard is establishing a safety zone for the Fleet Week Sea and Air demonstrations held on and over the Hudson River between Piers 83 and 90. This safety zone includes all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″N 074°00′13″W (NAD 1983), south to approximate position 40°45′54″N 074°00′25″W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall. This safety zone is effective annually from 10 a.m. until 5 p.m., Friday through Monday, Memorial Day weekend. It is needed to protect boaters and demonstration participants from the hazards associated with military personnel demonstrating the capabilities of aircraft and watercraft in a confined area of the Hudson River. This safety zone prevents vessels from transiting only a portion of the Hudson River. Marine traffic will still be able to transit through the western 600 yards of the 950-yard wide Hudson River during the Sea and Air demonstrations. Vessels moored at piers within the safety zone, however, will not be allowed to transit from their moorings without permission from the captain of the Port, New York, during the effective periods of the safety zone. The Captain of the Port does not anticipate any negative impact on recreational or commercial vessel traffic due to this safety zone.

U.S. Navy Vessel Departure

Finally, the Coast Guard is establishing a moving safety zone for the departure of the participating U.S. Navy Aircraft or Helicopter Carrier in this annual event. This safety zone includes all waters 500 yards ahead and astern, and 200 yards on each side of the vessel as it transits the Port of New York and New Jersey from its mooring at the Intrepid Sea, Air and Space Museum, Manhattan, to the COLREGS Demarcation line at Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805). The regulation is effective

annually, on the Wednesday following Memorial Day. Departure time is dependent on tide, weather, and granting of authority for departure by the Captain of the Port, New York. The safety zone is needed to protect the maritime public from possible hazards to navigation associated with a large naval vessel transiting the Port of New York and New Jersey with limited maneuverability in restricted waters. It provides a clear traffic lane for the U.S. Navy ship to safely navigate from its berth. The specific ship which this moving safety zone applies to will be published in the Local Notice to Mariners and broadcast by maritime information broadcasts and facsimile prior to the start of Fleet Week events.

Discussion of Comments and Changes

The Coast Guard received no letters commenting on the proposed rulemaking. No changes were made to the proposed rule.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of New York Harbor's Upper Bay and the Hudson River during the event, the effect of this regulation will not be significant for the following reasons: the regulations will be in effect for barely a week a year; the maritime community will receive extensive advance notice through Local Notices to Maritimers, facsimile, and marine information broadcasts; Fleet Week is an annual event with local support; at no time will any of the affected waterways be entirely closed to marine traffic; alternative routes are available for commercial and recreational vessels that can safely navigate the Harlem and East Rivers, Kill Van Kull, Arthur Kill, and Buttermilk Channel; and similar safety zones have been established for several past Fleet Week parades and Sea and Air demonstrations with minimal or no disruption to vessel traffic or other interests in the port. These safety zones have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This final rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This final rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This final rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This final rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR 165 as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add § 165.163 to read as follows:

§ 165.163 Safety Zones; Port of New York/New Jersey Fleet Week.

(a) The following areas are established as safety zones:

(1) Safety Zone A—(i) *Location.* A moving safety zone for the Parade of Ships including all waters 500 yards ahead and astern, and 200 yards of each

side of the designated column of parade vessels as it transits the Port of New York and New Jersey from the Verrazano Narrows Bridge to Riverside State Park on the Hudson River between West 137th and West 144th Streets, Manhattan.

(ii) *Enforcement period.* Paragraph (a)(1)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(2) *Safety Zone B*—(i) *Location.* A safety zone including all waters of the Hudson River between Piers 83 and 90, Manhattan, from the parade column east to the Manhattan shoreline.

(ii) *Enforcement period.* Paragraph (a)(2)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(3) Safety Zone C—

(i) *Location.* A moving safety zone including all waters of the Hudson River within a 200-yard radius of each parade vessel upon its leaving the parade of ships until it is safely berthed.

(ii) *Enforcement period.* Paragraph (a)(3)(i) of this section is enforced annually from 8 a.m. until 5 p.m. on the Wednesday before Memorial Day.

(4) Safety Zone D—

(i) *Location.* A safety zone including all waters of the Hudson River bound by the following points: from the southeast corner of Pier 90, Manhattan, where it intersects the seawall, west to approximate position 40°46′10″N 074°00′13″W (NAD 1983), south to approximate position 40°45′54″N 074°00′25″W (NAD 1983), then east to the northeast corner of Pier 83 where it intersects the seawall.

(ii) *Enforcement period.* Paragraph (a)(4)(i) of this section is enforced annually from 10 a.m. until 5 p.m., from Friday through Monday, Memorial Day weekend.

(5) Safety Zone E—

(i) *Location.* A moving safety zone including all waters 500 yards ahead and astern, and 200 yards on each side of the departing U.S. Navy Aircraft or Helicopter Carrier as it transits the Port of New York and New Jersey from its mooring at the Intrepid Sea, Air and Space Museum, Manhattan, to the COLREGS Demarcation line at Ambrose Channel Entrance Lighted Bell Buoy 2 (LLNR 34805).

(ii) *Enforcement period.* Paragraph (a)(5)(i) of this section is enforced annually on the Wednesday following Memorial Day. Departure time is dependent on tide, weather, and granting of authority for departure by the Captain of the Port, New York.

(b) *Effective period.* This section is effective annually from 8 a.m. on the Wednesday before Memorial Day until 4 p.m. on the Wednesday following Memorial Day.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. these personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U. S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 29, 1999.

L.M. Brooks,

Captain, U. S. Coast Guard, Acting Captain of the Port, New York.

[FR Doc. 99–11686 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–98—006]

RIN 2121–AA97

Security Zone: Dignitary Arrival/ Departure New York, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing permanent security zones around the Wall Street heliport on the East River and the Marine Air Terminal at La Guardia Airport on Bowery Bay to protect the Port of New York/New Jersey, the President, Vice President, and visiting heads of foreign states or foreign governments during their arrival, departure, and transits to and from the Wall Street heliport and the Marine Air Terminal. This action is necessary to protect visiting dignitaries and the Port of New York/New Jersey against terrorism, sabotage or other subversive acts and incidents of a similar nature during the dignitaries' visit to New York City. This action establishes permanent exclusion areas that are active only from shortly before the dignitaries' arrival into an area until shortly after the dignitaries' departure from that area.

DATES: This final rule is effective June 9, 1999.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Coast Guard Activities New York, 212 Coast Guard Drive, room 205, Staten Island, New York 10305, between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (718) 354–4193.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 22, 1998, the Coast Guard published a notice of proposed rulemaking (NPRM), entitled Security Zone: Dignitary Arrival/Departure New York, NY in the **Federal Register** (63 FR 70707). The Coast Guard received one letter commenting on the proposed rulemaking. No public hearing was requested, and none was held.

Background and Purpose

New York City is often visited by the President and Vice President of the United States, as well as visiting heads of foreign states or foreign governments, on the average of 8 times per year. Often these visits are on short notice. The President, Vice President, and visiting heads of foreign states or foreign governments require Secret Service protection. These dignitaries arrive at John F. Kennedy, La Guardia, or Newark, New Jersey International Airports. They then transit to either the Wall Street or West 30th Street heliports or they fly directly into the Marine Air Terminal at La Guardia. Due to the sensitive nature of these visits a security zone is needed. Standard security procedures are enacted to ensure the proper level of protection to prevent sabotage or other subversive acts, accidents, or other activities of a similar nature. In the past, temporary security zones were requested by the U.S. Secret Service with limited notice for preparation by the U.S. Coast Guard and no opportunity for public comment. Establishing permanent security zones by notice and comment rulemaking gave the public the opportunity to comment on the security zones. This final rule establishes two permanent security zones that could be activated upon request of the U.S. Secret Service pursuant to their authority under 18 U.S.C. § 3056.

The activation of a particular security zone will be announced via facsimile and marine information broadcasts.

Discussion of Comments and Changes

The Coast Guard received one letter commenting on the proposed rule. One change is being made to the proposed rule in response to the comment received.

The comment notified the Coast Guard that the West 30th Street Heliport will not continue to operate from its current location after May 12, 2001, when its lease expires. After this time it will either cease operations entirely, or be moved to Pier 72 or 76.

The comment also stated a community boathouse is scheduled to open in spring, 1999, and a public launch will be established in spring, 2000, within the southern 200 yards of the proposed security zone at the West 30th Street heliport. These facilities are located within the Hudson River Park that runs along the Hudson River from Battery Park City to West 59th Street. The comment noted that boaters using these two facilities probably will not have access to facsimile machines or marine information broadcasts regarding the activation of this security zone.

Finally, the comment requested that the southern boundary be moved approximately 200 yards north to not interfere with the community boathouse and public launch. In response to these concerns the Coast Guard is requesting the security requirements at the West 30th Street heliport be reviewed by the U.S. Secret Service. The West 30th Street security zone is being removed from this rulemaking due to this review process. Upon completion of the security review, proposed regulations for a security zone at this location will be published by a separate rulemaking, if they are still deemed necessary.

Regulatory Evaluation

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this final rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The Coast Guard anticipates that these security zones will be activated on an average of 8 times per year. Costs resulting from these regulations, if any, will be minor and have no significant adverse financial effect on vessel operators. Although this regulation prevents traffic from transiting through the enacted security zone, the effect of this regulation will not be significant for the following reasons: the limited duration of the security zone, the limited number of instances the zones will be activated, and the extensive notifications that will be made to the local maritime community via facsimile and marine information broadcasts. The activation of either of the two security zones will be for 45 minutes. These security zones have been narrowly tailored to impose the lease impact on maritime interests yet provide the level of security deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this final rule will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This final rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*)

Federalism

The Coast Guard has analyzed this final rule under the principles and criteria contained in Executive Order 12612 and has determined that this final rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A Federal mandate is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This final rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard considered the environmental impact of this final rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this final rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination and checklist are not required.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this final rule and research the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This rule will not impose, on any State, local, or tribal governemnt, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimze litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to safety disproportinately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add § 165.164 to read as follows:

§ 165.164 Security Zones; Dignitary Arrival/Departure New York, NY.

(a) The following areas are established as security zones:

(1) *Location.* Wall Street heliport: All waters of the East River within the following boundaries: East of a line drawn between approximate position 40°42′01″N 074°00′39″W (east of The Battery) to 40°41′36″N 074°00′52″W (NAD 1983) (point north of Governors Island) and north of a line drawn from the point north of Governors Island to the southwest corner of Pier 7 North, Brooklyn; and south of a line drawn between the northeast corner of Pier 13, Manhattan, and the northwest corner of Pier 2 North, Brooklyn.

(2) [*Reserved*]

(3) *Location.* Marine Air Terminal, La Guardia Airport: All waters of Bowery Bay, Queens, New York, south of a line drawn from the western end of La Guardia Airport at approximate position 40°46′47″N 073°53′05″W (NAD 1983) to the Rikers Island Bridge at approximate position 40°46′51″N 073°53′21″W (NAD 1983) and east of a line drawn between the point at the Rikers Island Bridge to a point on the shore in Queens, New York, at approximate position 40°46′36″N 073°53′31″W (NAD 1983).

(4) The security zone will be activated 30 minutes before the dignitaries' arrival into the zone and remain in effect until 15 minutes after the dignitaries' departure from the zone.

(5) The activation of a particular zone will be announced by facsimile and marine information broadcasts.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.33 apply .

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel using siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 23, 1999.

R.E. Bennis,

Captain, Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11685 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH121–2; FRL–6337–5]

Approval and Promulgation of Implementation Plans; Ohio; Designation of Areas for Air Quality Planning Purposes; Ohio

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On March 17, 1999, EPA published a direct final rule (64 FR 13070) approving, and an accompanying proposed rule (64 FR 13146) proposing to approve requests to redesignate Lake and Jefferson Counties, Ohio as attaining the sulfur dioxide (SO_2) national ambient air quality standards (NAAQS). At that time EPA also approved and proposed to approve plans for maintaining the SO_2 NAAQS in Lake and Jefferson Counties. These actions were taken in response to an October 26, 1995, request by the State of Ohio. The EPA is withdrawing this direct final rule due to the receipt of an adverse comment on these actions as they relate to Jefferson County. In separate final rules, EPA will (1) announce final action on the Lake County SO_2 redesignation and maintenance plan and, (2) respond to the comments received on the Jefferson County SO_2 redesignation and maintenance plan and announce final action on the redesignation and maintenance plan.

DATES: This withdrawal is made on May 10, 1999.

ADDRESSES: Copies of the documents relevant to these actions are available for public inspection during normal business hours at the following location: Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR18–J), Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Telephone: (312) 886–6036.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Sulfur dioxide.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 29, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Accordingly, under the authority of 42 U.S.C. 7401 et seq., the direct final rule published on March 17, 1999 (64 FR 13070) is withdrawn. Therefore, the amendments to 40 CFR part 52 which added 52.870(c)(118) and amended 52.1881 (a)(4) and (a)(8) and added 52.1881(a)(13) are withdrawn. The amendment to 40 CFR part 81 which revised the table in § 81.336 entitled Ohio-SO_2 is withdrawn.

[FR Doc. 99–11562 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6338–5]

National Priorities List for Uncontrolled Hazardous Waste Sites

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA" or "the Act"), as amended, requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule adds a total of 10 new sites to the NPL: 7 sites to the General Superfund Section of the NPL and 3 sites to the Federal Facilities Section of the NPL.

EFFECTIVE DATE: The effective date for this amendment to the NCP shall be June 9, 1999.

ADDRESSES: For addresses for the Headquarters and Regional dockets, as well as further details on what these

dockets contain, see section II, "Availability of Information to the Public" in the "Supplementary Information" portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (mail code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Public Law 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken.

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40

CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on January 19, 1999 (64 FR 2941).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions * * *." 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to respond to the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which that contamination has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by a remedial investigation/feasibility study (RI/FS) as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the known boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met:

(i) Responsible parties or other persons have implemented all appropriate response actions required;

(ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or

(iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate.

As of April 26, 1999, the Agency has deleted 184 sites from the NPL.

H. Can Portions of Sites be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of April 26, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that

the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) the site qualifies for deletion from the NPL.

Of the 184 sites that have been deleted from the NPL, 175 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 424 sites also on the NPL CCL. Thus, as of April 26, 1999, the CCL consists of 599 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund/.

II. Availability of Information to the Public

A. Can I Review the Documents Relevant to This Final Rule?

Yes, documents relating to the evaluation and scoring of the site in this final rule are contained in dockets located both at EPA Headquarters and in the appropriate Regional office.

B. What Documents Are Available for Review at the Headquarters Docket?

The Headquarters docket for this rule contains HRS score sheets, the Documentation Record describing the information used to compute the score, pertinent information regarding statutory requirements or EPA listing policies that affect the site, and a list of documents referenced in the Documentation Record. The Headquarters docket also contains comments received, and the Agency's responses to those comments. The Agency's responses are contained in the "Support Document for the Revised National Priorities List Final Rule, May 1999."

C. What Documents Are Available for Review at the Regional Dockets?

The Regional dockets contain all the information in the Headquarters docket, plus the actual reference documents containing the data principally relied upon by EPA in calculating or evaluating the HRS score for the site. These reference documents are available only in the appropriate Regional docket.

D. How Do I Access the Documents?

You may view the documents, by appointment only, after the publication of this document. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Please contact the Regional dockets for hours.

Following is the contact information for the EPA Headquarters: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA, 703/603–8917.

The contact information for the Regional dockets are as follows:

Barbara Callahan, Region 1 (CT, ME, MA, NH, RI, VT), U.S. EPA, Records Center, Mailcode HBS, One Congress Street, Suite 1100, Boston, MA 02114–2023; 617/918–1356

Ben Conetta, Region 2 (NJ, NY, PR, VI), U.S. EPA, 290 Broadway, New York, NY 10007–1866; 212/637–4435

Dawn Shellenberger (GCI), Region 3 (DE, DC, MD, PA, VA, WV), U.S. EPA, Library, 1650 Arch Street, Mailcode 3PM52, Philadelphia, PA 19103; 215/814–5364.

Sherryl Decker, Region 4 (AL, FL, GA, KY, MS, NC, SC, TN), U.S. EPA, 61 Forsyth Street, SW, 9th floor, Atlanta, GA 30303; 404/562–8127.

Region 5 (IL, IN, MI, MN, OH, WI), U.S. EPA, Records Center, Waste Management Division 7–J, Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604; 312/886–7570.

Brenda Cook, Region 6 (AR, LA, NM, OK, TX), U.S. EPA, 1445 Ross Avenue, Mailcode 6SF–RA, Dallas, TX 75202–2733; 214/665–7436.

Carole Long, Region 7 (IA, KS, MO, NE), U.S. EPA, 726 Minnesota Avenue, Kansas City, KS 66101; 913/551–7224.

David Williams, Region 8 (CO, MT, ND, SD, UT, WY), U.S. EPA, 999 18th Street, Suite 500, Mailcode 8EPR–SA, Denver, CO 80202–2466; 303/312–6757.

Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105; 415/744–2343.

David Bennett, Region 10 (AK, ID, OR, WA), U.S. EPA, 11th Floor, 1200 6th Avenue, Mail Stop ECL–115, Seattle, WA 98101; 206/553–2103.

E. How Can I Obtain a Current List of NPL Sites?

You may obtain a current list of NPL sites via the Internet at http://www.epa.gov/superfund/ (look under site information category) or by contacting the Superfund Docket (see contact information above).

III. Contents of This Final Rule

A. Addition to the NPL

This final rule adds 10 sites to the NPL: 7 sites to the General Superfund Section of the NPL and 3 sites to the Federal Facilities Section of the NPL. Table 1 presents the 7 sites in the General Superfund Section and Table 2 contains the 3 sites in the Federal Facilities Section. Sites in each table are arranged alphabetically by State. Please note that EPA is changing the name of the Little Creek Naval Amphibious Base site to Naval Amphibious Base Little Creek. EPA believes this change more accurately reflects the site.

TABLE 1.—NATIONAL PRIORITIES LIST FINAL RULE, GENERAL SUPERFUND SECTION

State	Site name	City/county
AL	American Brass	Headland.
IL	DePue/New Jersey Zinc/Mobil Chem Corp	DePue.
LA	Central Wood Preserving Co	Slaughter.
LA	Ruston Foundry	Alexandria.
MO	Armour Road	North Kansas City.
NY	Computer Circuits	Hauppauge.
NY	Stanton Cleaners Area Ground Water Contamination	Great Neck.

Number of Sites Added to the General Superfund Section: 7.

TABLE 2.—NATIONAL PRIORITIES LIST FINAL RULE, FEDERAL FACILITIES SECTION

State	Site name	City/county
MD	Andrews Air Force Base	Camp Springs
MD	Brandywine DRMO	Brandywine
VA	Naval Amphibious Base Little Creek	Virginia Beach

Number of Sites Added to the Federal Facilities Section: 3.

B. Status of NPL

With the 10 new sites added in today's rule, the NPL now contains 1,212 sites (1,056 in the General Superfund section and 156 in the Federal Facilities section). These numbers also reflect the removal of the Del Amo site from the NPL in response to an opinion by the District of Columbia Court of Appeals.

There was a separate proposed rule published on April 23, 1999 (64 FR 19968) that proposes to add 12 new sites to the NPL along with a reproposal of one site. With a rule proposing to add one new site to the NPL published elsewhere in today's **Federal Register**, there are now 63 sites proposed and awaiting final agency action; 56 in the General Superfund section and 7 in the Federal Facilities section. Final and proposed sites now total 1,275.

C. What Did EPA Do With the Public Comments It Received?

EPA reviewed all comments received on the sites in this rule. The following sites were proposed on January 19, 1999 (64 FR 2950): American Brass, Central Wood Preserving Co., Ruston Foundry, Armour Road, and Stanton Cleaners Area Ground Water Contamination. The Computer Circuits site and the three Federal Facilities Section sites were proposed on July 28, 1998 (63 FR 40247).

For the Ruston Foundry sites, EPA received only comments in favor of placing the site on the NPL. EPA received no comments on the actual scoring of this sites and the Agency has identified no other reason to change the original HRS scores for the site. Therefore, EPA is placing this site on the final NPL at this time.

No comments were received on several sites (American Brass, Armour Road, Central Wood Preserving Co., and Stanton Cleaners Area Ground Water Contamination) and therefore, EPA is placing them on the final NPL at this time.

EPA responded to all relevant comments received on the other sites. EPA's responses to site-specific public comments are addressed in the "Support Document for the Revised National Priorities List Final Rule, May 1999

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Final Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Final Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small

entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule revises the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this regulation does not require a regulatory flexibility analysis.

VII. Possible Changes to the Effective Date of the Rule

A. Has This Rule Been Submitted to Congress and the General Accounting Office?

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA has submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A "major rule" cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Could the Effective Date of This Final Rule Change?

Provisions of the Congressional Review Act (CRA) or section 305 of CERCLA may alter the effective date of this regulation.

Under the CRA, 5 U.S.C. 801(a), before a rule can take effect the federal agency promulgating the rule must submit a report to each House of the Congress and to the Comptroller General. This report must contain a copy of the rule, a concise general statement relating to the rule (including whether it is a major rule), a copy of the cost-benefit analysis of the rule (if any), the agency's actions relevant to provisions of the Regulatory Flexibility Act (affecting small businesses) and the Unfunded Mandates Reform Act of 1995 (describing unfunded federal requirements imposed on state and local governments and the private sector), and any other relevant information or requirements and any relevant Executive Orders.

EPA has submitted a report under the CRA for this rule. The rule will take effect, as provided by law, within 30 days of publication of this document, since it is not a major rule. Section 804(2) defines a major rule as any rule that the Administrator of the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) finds has resulted in or is likely to result in: an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. NPL listing is not a major rule because, as explained above, the listing, itself, imposes no monetary costs on any person. It establishes no enforceable duties, does not establish that EPA necessarily will undertake remedial action, nor does it require any action by any party or determine its liability for site response costs. Costs that arise out of site responses result from site-by-site decisions about what actions to take, not directly from the act of listing itself. Section 801(a)(3) provides for a delay in the effective date of major rules after this report is submitted.

C. What Could Cause the Effective Date of This Rule to Change?

Under 5 U.S.C. 801(b)(1) a rule shall not take effect, or continue in effect, if Congress enacts (and the President signs) a joint resolution of disapproval, described under section 802.

Another statutory provision that may affect this rule is CERCLA section 305, which provides for a legislative veto of regulations promulgated under CERCLA. Although *INS* v. *Chadha*, 462 U.S. 919,103 S. Ct. 2764 (1983) and *Bd. of Regents of the University of Washington* v. *EPA*, 86 F.3d 1214,1222 (D.C. Cir. 1996) cast the validity of the legislative veto into question, EPA has transmitted a copy of this regulation to the Secretary of the Senate and the Clerk of the House of Representatives.

If action by Congress under either the CRA or CERCLA section 305 calls the effective date of this regulation into question, EPA will publish a document of clarification in the **Federal Register**.

VIII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply to This Final Rule?

No. This rulemaking does not involve technical standards. Therefore, EPA did

not consider the use of any voluntary consensus standards.

IX. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply to This Final Rule?

No. While this rule revises the NPL, no action will result from this rule that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

X. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply to This Final Rule?

This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

XI. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Final Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XII. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Final Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

XIII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Final Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and record keeping requirements, Superfund, Water pollution control, Water supply.

Dated: April 30, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

2. Table 1 and Table 2 of Appendix B to Part 300 are amended by adding the following sites in alphabetical order to read as follows:

Appendix B to Part 300—National Priorities List

TABLE 1.—GENERAL SUPERFUND SECTION

State	Site name	City/county notes(a)
*	* * * * * *	*
AL	American Brass	Headland.
*	* * * * * *	*
IL	DePue/New Jersey Zinc/Mobil ChemCorp	DePue.
*	* * * * * *	*
LA	Central Wood Preserving Co	Slaughter.
*	* * * * * *	*
LA	Ruston Foundry	Alexandria.
*	* * * * * *	*
MO	Armour Road	North Kansas City.
*	* * * * * *	*
NY	Computer Circuits	Hauppauge.
*	* * * * * *	*
NY	Stanton Cleaners Area Ground Water Contamination	Great Neck.
*	* * * * * *	*

TABLE 2.—FEDERAL FACILITIES SECTION

State	Site name	City/county notes(a)
*	* * * * * *	*
MD	Andrews Air Force Base	Camp Springs.
*	* * * * * *	*
MD	Brandywine DRMO	Brandywine.
*	* * * * * *	*
VA	Naval Amphibious Base Little Creek	Virginia Beach.
*	* * * * * *	*

[FR Doc. 99–11705 Filed 5–7–99; 8:45 am]
BILLING CODE 0560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 498

[HCFA–3139–F]

RIN 0938–AC88

Medicare Program and Medicaid Programs; Effective Dates of Provider Agreements and Supplier Approvals; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correcting amendments.

SUMMARY: This document restores regulations that we inadvertently removed when we published a final rule concerning effective dates for provider agreements and supplier approvals. These regulations were published in the August 18, 1997 issue of the **Federal Register** (62 FR 43931).

EFFECTIVE DATE: September 17, 1997.

FOR FURTHER INFORMATION CONTACT: Cathy Johnson, (410) 786–5241.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections established uniform criteria for determining the effective dates of Medicare and Medicaid provider agreements.

Need for Correction

The August 18, 1997 final rule inadvertently removed coding and paragraphs (a)(2) and (a)(3) from § 498.3. These corrections are necessary to restore valid regulations in § 498.3.

List of Subjects in 42 CFR Part 498

Administrative practice and procedure, Appeals, Medicare, Practitioners, providers, and suppliers.

Accordingly, 42 CFR part 498 is corrected by making the following correcting admendments:

PART 498—APPEALS PROCEDURES FOR DETERMINATIONS THAT AFFECT PARTICIPATION IN THE MEDICARE PROGRAM AND FOR DETERMINATIONS THAT AFFECT THE PARTICIPATION OF CERTAIN ICFs/MRs AND CERTAIN NFs IN THE MEDICAID PROGRAM

1. The authority citation for part 498 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

2. In § 498.3, paragraph (a) is revised to read as follows:

§ 498.3 Scope and applicability.

(a) *Scope.* (1) This part sets forth procedures for reviewing initial determinations that HCFA makes with respect to the matters specified in paragraph (b) of this section, and that the OIG makes with respect to the matters specified in paragraph (c) of this section. It also specifies, in paragraph (d) of this section, administrative actions that are not subject to appeal under this part.

(2) The determinations listed in this section affect participation in the Medicare program. Many of the procedures of this part also apply to other determinations that do not affect participation in Medicare. Some examples follow:

(i) HCFA's determination to terminate an NF's Medicaid provider agreement.

(ii) HCFA's determination to cancel the approval of an ICF/MR under section 1910(b) of the Act.

(iii) HCFA's determination, under the Clinical Laboratory Improvement Act (CLIA), to impose alternative sanctions or to suspend, limit, or revoke the certificate of a laboratory even though it does not participate in Medicare.

(3) The following parts of this chapter specify the applicability of the provisions of this part 498 to sanctions or remedies imposed on the indicated entities:

(i) Part 431, subpart D—for nursing facilities (NFs).

(ii) Part 488, subpart E (§ 488.330(e))—for SNFs and NFs.

(iii) Part 493, subpart R (§ 493.1844)—for laboratories.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 28, 1999.

Neil J. Stillman,

Deputy Assistant, Secretary for Information Resources Management.

[FR Doc. 99–11510 Filed 5–7–99; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7712]

List of Communities Eligible for the Sale of Flood Insurance

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Final rule.

SUMMARY: This rule identifies communities participating in the National Flood Insurance Program (NFIP). These communities have applied to the program and have agreed to enact certain floodplain management measures. The communities' participation in the program authorizes the sale of flood insurance to owners of property located in the communities listed.

EFFECTIVE DATES: The dates listed in the third column of the table.

ADDRESSES: Flood insurance policies for property located in the communities listed can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the NFIP at: Post Office Box 6464, Rockville, MD 20849, (800) 638–6620.

FOR FURTHER INFORMATION CONTACT: Robert F. Shea, Jr., Division Director, Program Support Division, Mitigation Directorate, 500 C Street SW., room 417, Washington, DC 20472, (202) 646–3619.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Since the communities on the attached list have recently entered the NFIP, subsidized flood insurance is now available for property in the community.

In addition, the Associate Director of the Federal Emergency Management Agency has identified the special flood hazard areas in some of these communities by publishing a Flood Hazard Boundary Map (FHBM) or Flood Insurance Rate Map (FIRM). The date of the flood map, if one has been published, is indicated in the fourth column of the table. In the communities listed where a flood map has been published, Section 102 of the Flood Disaster Protection Act of 1973, as amended, 42 U.S.C. 4012(a), requires the purchase of flood insurance as a condition of Federal or federally related financial assistance for acquisition or construction of buildings in the special flood hazard areas shown on the map.

The Associate Director finds that the delayed effective dates would be contrary to the public interest. The Associate Director also finds that notice and public procedure under 5 U.S.C. 553(b) are impracticable and unnecessary.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR Part 10, Environmental Considerations. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director certifies that this rule will not have a significant economic impact on a substantial number of small entities in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule creates no additional burden, but lists those communities eligible for the sale of flood insurance.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp., p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State/location	Community No.	Effective date of eligibility	Current effective map date
NEW ELIGIBLES—Emergency Program			
North Dakota:			
Braddock, city of, Emmons County	380260	March 29, 1999	
Chippewa Indian Reservation, Turtle Mountain Band of, Rolette County.	380714	.....do	
Rolette County, unincorporated areas	380101	.....do	
NEW ELIGIBLES—Regular Program			
Georgia:			
Marshallville, city of, Macon County	130536	March 19, 1999	April 3, 1996.
North Carolina:			
[1] Middlesex, town of, Nash County	370445	.....do	January 20, 1982.
Washington:.			
Rainier, town of, Thurston County	530260	March 29, 1999	NSFHA.
REINSTATEMENTS			
Georgia:			
Ivey, town of, Wilkerson County	130420	August 6, 1986 Emerg., June 3, 1986 Reg., June 3, 1986 Susp., March 19, 1999 Rein.	June 3, 1986.
Wisconsin:			
Kohler, village of, Sheboygan County	550426	May 13, 1975 Emerg., April 2, 1991 Reg., April 2, 1991 Susp., March 31, 1999 Rein.	April 2, 1991.
REGULAR PROGRAM CONVERSIONS			
Region II			
New Jersey:			
Ewing, township of, Mercer County	345294	March 9, 1999 Suspension Withdrawn.	March 9, 1999.
Region VI			
Louisiana:			
Delhi, town of, Richland Parish	220155	.....do	Do.
Texas:			
Cameron County, unincorporated areas	480101	.....do	Do.
Mount Pleasant, city of, Titus County	480621	.....do	Do.
Muenster, city of, Cooke County	480767	.....do	Do.
South Padre Island, town of, Cameron County	480115	.....do	Do.
Region IX			
Arizona:			
Yavapai County, unincorporated areas	040093	.....do	Do.
Region II			
New Jersey:			
Barnegat Light, borough of, Ocean County	345280	March 23, 1999 Suspension Withdrawn	March 23, 1999.
Beach Haven, borough of, Ocean County	345282	.....do	Do.
Harvey Cedars, borough of, Ocean County	345296	.....do	Do.
Long Beach, township of, Ocean County	345301	.....do	Do.
Ship Bottom, borough of, Ocean County	345320	.....do	Do.
New York: Barneveld, village of, Oneida County	361569	.....do	Do.
Region VI			
Oklahoma: Osage County, unincorporated areas	400146	.....do	Do.
Region VIII			
Colorado:			
Larimer County, unincorporated areas	080101	.....do	Do.
Loveland, city of, Larimer County	080103	.....do	Do.
Wyoming:			
East Thermopolis, town of, Hot Springs County	560025	.....do	Do.
Region IX			
California:			
Yolo County, unincorporated areas	060423	.....do	Do.

[1] The Town of Middlesex has adopted the Nash County (CID #370278) Flood Insurance Rate Map dated January 20, 1982 panel 145.

Code for reading third column: Emerg.—Emergency; Reg.—Regular; Rein.—Reinstatement; Susp.—Suspension; With.—Withdrawn; NSFHA—Non Special Flood Hazard Area.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Issued: April 28, 1999.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 99–11668 Filed 5–7–99; 8:45 am]

BILLING CODE 6718–05–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 1

[OST Docket No. 1; Amendment 1–298]

Organization and Delegation of Powers and Duties; Delegations to the Maritime Administrator

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Secretary of Transportation (Secretary) is delegating to the Maritime Administration his authority to make determinations concerning the employment of a vessel in the coastwise trade under section 502 and 503 of the "Coast Guard Authorization Act of 1998". Section 502 authorizes the Secretary to issue a certificate of documentation with the appropriate endorsement for employment in the coastwise trade to eligible vessels as a small passenger vessel or an uninspected passenger vessel when, after notice and an opportunity to comment, a determination has been made that the employment of the vessel in coastwise trade will not adversely affect U.S. vessel builders and the coastwise trade business of any person who employs vessels built in the U.S. in that business. Section 503 authorizes the Secretary to revoke endorsements issued under section 502 when, after an opportunity for public comment, a determination has been made that a vessel's employment has substantially changed or has had a negative impact upon U.S. vessel builders or a coastwise trade business that employs vessels built in the United States.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Richard Weaver, Chief, Division of Management and Organization, Maritime Administration, MAR–318, Room 7301, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–2811; or Blane Workie, Office of General Counsel (C–50), Department of Transportation, Room 10424, 400 Seventh Street, SW., Washington, DC 20590, Phone: (202) 366–4723.

SUPPLEMENTARY INFORMATION: The Secretary of Transportation is delegating to the Maritime Administrator his authority to make determinations under sections 502 and 503 of Public Law 105–383. Under section 502, the Secretary of Transportation may waive the U.S.-built vessel requirements of sections 12106 and 12108 of title 46 of the U.S.C., section 8 of the Act of June 19, 1886 (46 U.S.C. App. 289), and section 27 of the Merchant Marine Act, 1920 (46 U.S.C. App. 883). Section 502 authorizes the Secretary to issue a "certificate of documentation" with the appropriate endorsement for employment in the coastwise trade as a small passenger vessel or an uninspected passenger vessel for an eligible vessel authorized to carry no more than 12 passengers for hire. However, the Secretary, after notice and an opportunity for public comment, must determine that the employment of the vessel in the coastwise trade will not adversely affect: (1) United States vessel builders; or (2) the coastwise trade business of any person who employs vessels built in the United States in that business.

The Secretary delegates this authority to make determinations to the Maritime Administrator because the Maritime Administration assists domestic shippers in locating suitable coastwise trade eligible vessels and is best suited to determine the effect and substantiality of vessel waivers of the coastwise trade laws on U.S. vessel builders and U.S.-built vessel coastwise trade businesses, including the economic development of affected ports and communities. The Coast Guard issues vessel documents and endorsements for vessels granted waivers under section 502. See 49 CFR 1.46(d). The Coast Guard and the Maritime Administration will coordinate the processing of requests for waivers under section 502.

Under section 503, the Secretary has the authority to revoke endorsements issued under section 502 when, after an opportunity for public comment, the Secretary makes a determination that the employment of a vessel in the coastwise trade has substantially changed since the issuance of an endorsement under section 502 of Public Law 105–383. The Secretary delegates this authority to make determinations under section 503 to the Maritime Administration for the same reasons given above for delegating the authority to make determinations under section 502. Upon making the determination that the employment of a vessel in the coastwise trade has substantially changed and the vessel is no longer eligible for a coastwise endorsement, the Maritime Administration will coordinate with the Coast Guard for revocation of applicable endorsements.

Since this amendment relates to departmental organization, procedure and practice, notice and comment are unnecessary under 5 U.S.C. 553(b). Further, since the amendment expedites the Maritime Administration's ability to meet the statutory intent of title V, Public Law 105–383, covered by this delegation, the Secretary finds good cause under 5 U.S.C. 553(d)(3) for the final rule to be effective on the date of publication in the **Federal Register**.

List of Subjects in 49 CFR Part 1

Authority delegations (Government agencies), Organization and functions (Government agencies).

In consideration of the foregoing, Part 1 of Title 49, Code of Federal Regulations, is amended, effective upon publication, to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 49 U.S.C. 322; Public Law 101–552, 28 U.S.C. 2672; 31 U.S.C. 3711(a)(2).

2. In § 1.66 (Delegations to Maritime Administrator) the following paragraph (cc) is added at the end thereof.

§1.66 Delegations to Maritime Administrator.

* * * * *

(cc) Carry out the functions and exercise the authority vested in the Secretary to make the necessary determinations concerning the employment of a vessel under sections 502 and 503 of title V, Pub. L. 105–383, titled the Coast Guard Authorization Act of 1998.

Issued at Washington, DC, this 27th day of April, 1999.

Rodney E. Slater,

Secretary of Transportation.

[FR Doc. 99–11495 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

50 CFR Part 679

[Docket No. 980923246–9106–02; I.D. 071598A]

RIN 0648–AK20

Fisheries in the Exclusive Economic Zone Off Alaska; Hired Skipper Requirements for the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS publishes a final rule implementing a change in the Individual Fishing Quota (IFQ) Program for fixed gear Pacific halibut and sablefish fisheries in and off Alaska. This action modifies the vessel ownership requirements for quota share (QS) holders wishing to hire skippers to harvest the IFQ allocations derived from QS for Pacific halibut and sablefish in the fixed gear IFQ fisheries. This action is necessary to promote an owner-operator catcher vessel fleet in the halibut and sablefish fixed gear fisheries off Alaska and to further the objectives of the IFQ Program.

DATES: Effective June 9, 1999.

ADDRESSES: Copies of the Regulatory Impact Review/Final Regulatory Flexibility Analysis (RIR/FRFA) for this action may be obtained from the Alaska Region, NMFS, Room 453, 709 West 9th Street, Juneau, AK 99801, or P.O. Box 21668, Juneau, AK 99802, Attention: Lori J. Gravel.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

The IFQ Program is a limited access system for managing the fixed gear fisheries for Pacific halibut (*Hippoglossus stenolepis*) and sablefish (*Anoplopoma fimbria*) in waters of the exclusive economic zone off Alaska. The North Pacific Fishery Management Council (Council), under authority of the Magnuson-Stevens Fishery Conservation and Management Act and the Northern Pacific Halibut Act of 1982 (Halibut Act), recommended the IFQ Program, which NMFS implemented in 1995. The IFQ Program is designed to reduce excessive fishing capacity, while maintaining the social and economic character of the fixed gear fishery and the coastal communities where many of these fishermen are based. To this end, various program constraints limit consolidation of QS and ensure that practicing fishermen, rather than investment speculators, retain harvesting privileges. The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMPs) and the IFQ Program implementing regulations prohibit all leasing of IFQ derived from QS in categories B, C, and D (QS which authorizes the harvest but not the processing of IFQ species onboard the vessel) and require that holders of such QS be aboard the vessel harvesting IFQ species during all fishing operations.

An exception to this owner-aboard provision allows initial recipients of B, C, or D category QS to employ a hired skipper to fish their IFQ provided that the QS holder owns the vessel on which the IFQ are being fished. This exception was created to allow fishermen who had operated their fishing businesses with hired skippers before the IFQ Program was implemented to continue operating this way under the IFQ Program. While the IFQ Program promotes an owner-operator fixed gear fishery for sablefish and halibut, this exception allows initial recipients of QS to remain ashore while having their IFQ harvested by a hired skipper. By limiting this exception to initial recipients, the Council designed the hired skipper provision to expire with the eventual transfer of all QS out of the possession of initial recipients.

A problem developed in the first years of the IFQ Program because the regulations do not clearly define vessel ownership. Some initial recipients of QS purchased a nominal interest in a vessel, as little as 1 percent or less, and thereby save the costs of operating a wholly-owned vessel and crew. Although such nominal vessel ownership served the objective of fishing capacity reduction, it compromised the Council's social and economic intent for an owner-operator fishery in which QS holders actually participate in harvesting operations. Also, such nominal vessel ownerships created the potential for excessive loss of crew member jobs.

This action revises the regulations to specify a minimum vessel ownership interest that must be acquired before the QS holder may hire a skipper to harvest the IFQ. Under the new regulations, initial recipients of B, C, or D category QS who wish to hire skippers to fish the IFQ derived from their QS must own a minimum of a 20 percent interest in the vessel on which the IFQ species are being harvested.

QS holders whose applications to hire skippers were approved prior to April 17, 1997, the date of the Council's first review of the analysis of this issue, are exempt from the requirement provided that (1) the QS holder's percentage of ownership in the vessel which the hired skipper will operate does not fall below the percentage held in that vessel at the time he or she had a hired-skipper application approved prior to April 17, 1997, and (2) the QS holder has acquired no additional QS after September 23, 1997, the date of the Council's final action to recommend this regulatory change. A QS holder who held less than a 20 percent interest in a vessel prior to April 17, 1997, must continue to hold at least that percentage in order to be elgible to hire a skipper to fish his or her IFQ on that vessel. Moreover, because an initial recipient of QS may hire a skipper to fish not only the QS acquired as an initial allocation but also any QS acquired through transfer, the maximum amount of QS that can be used under this exemption is the level held prior to September 23, 1997, the date of the Council's final action on this proposal. This restriction assures that only existing business arrangements regarding levels of vessel ownership and QS holdings can use this exemption.

Changes from the Proposed Rule

A sentence has been added to § 679.42(i)(1) and to § 679.42(j) to clarify the means by which a person's vessel ownership is determined. Presently, NMFS requests that vessel ownership be validated by submission of a facsimile of either a U.S. Coast Guard Abstract of Title or a bill of sale. While such documents may be preferable as evidence that a person holds the required minimum percentage of ownership interest, other documents may also provide adequate proof of ownership. Therefore, the regulatory language is amended to clarify that; for purposes of the minimum vessel ownership interest requirements, NMFS requires only that the evidence of ownership be in writing. NMFS will make its determination on the basis of written documentation only. This requirement is to ensure that vessel ownership claims are adequately supported in applications for hired skipper cards.

A more detailed explanation of this action may be found in the preamble to the proposed rule (63 FR 69256, December 16, 1998). The proposed rule invited public comment through January 16, 1999, on the proposed

action. NMFS received no comments on the proposed rule.

Small Entity Compliance Guide

The following information satisfies the Small Business Regulatory Enforcement Fairness Act of 1996, which requires a plain language guide to assist small entities in complying with this rule. This rule requires a QS holder to own at least a 20 percent interest in a vessel to hire a skipper to fish his or her IFQ.

What small entities will this rule impact?

Any person who holds an initial allocation of QS, whether an individual or a corporation or a partnership, is allowed by the regulations to hire a skipper to fish the person's IFQ, provided that the QS holder owns the fishing boat on which the IFQ is harvested. This action defines exactly what is meant by "ownership" of a boat for purposes of the IFQ Program's hired skipper provisions: To hire a skipper to fish your IFQ, you must own at least 20 percent interest in the boat used to harvest your IFQ. For example, if you wish to hire a skipper to fish your IFQ and you hold only 15 percent ownership interest in your boat, you will have to acquire an additional 5 percent of ownership interest to be able to hire a skipper to fish your IFQ on that boat. Of course, you may still choose to be aboard the vessel when it fishes your IFQ, in which case you need not have any ownership interest in the boat.

Are there any exceptions to the 20–percent minimum ownership interest requirement?

Yes. If you hired a skipper prior to April 17, 1997, on a boat in which you owned less than 20 percent interest, you may continue to hire a skipper to fish your IFQ on that boat as long as you maintain the percentage of interest in the boat that you held on April 17, 1997. For example, if you held 10 percent interest in a boat on April 17, 1997, and had hired a skipper to fish your IFQ from that boat prior to that date, then you may continue to hire a skipper to fish your IFQ from that boat as long as you own no less than 10 percent of the boat. This is the grandfather clause to the 20–percent minimum vessel ownership requirement.

Are there any limitations on the grandfather clause?

Yes. The rule also requires that persons eligible to take advantage of the grandfather clause have acquired no additional QS through transfer after September 23, 1997. The grandfather provision is limited, because, if you are eligible to hire a skipper, you may hire a skipper to fish not only the QS you acquired through initial issuance but also all QS that you acquired thereafter through approved transfer. While allowing for certain business practices that existed prior to April 17, 1997, the Council chose to limit the amount of QS that may be subject to the grandfather clause. For example, if you held 5 percent interest in a boat on which you employed a skipper to fish your IFQ prior to April 17, 1997, you may continue to use a hired skipper on that boat as long as you own no less than 5 percent interest in the boat and have not acquired any additional QS through transfer after September 23, 1997. If you have acquired additional QS after that date, you are no longer eligible to take advantage of the grandfather provision and must acquire additional interest in your boat to equal no less than 20 percent if you wish to hire a skipper to fish your IFQ. You may always fish your IFQ yourself and not be obliged to hold any ownership interest in the boat on which you fish your IFQ.

How will NMFS determine whether a person holds the required minimum percentage of vessel ownership?

NMFS will make that determination on the basis of written documentation submitted with the application for a hired skipper card. That documentation may be in the form of a U.S. Coast Guard Abstract of Title, or of a bill of sale, or other such documentation, as long as the evidence is in writing.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to penalty for failure to comply with a collection-of-information subject to the requirements of the PRA, unless that collection-of-information displays a currently valid OMB control number.

This rule contains a collection-of-information requirement subject to the Paperwork Reduction Act. The requirement that QS holders provide written evidence of the percentage of vessel ownership clarifies a collection of information that has been approved by the Office of Management and Budget (OMB) under control number 0648–0272.

NMFS prepared a Final Regulatory Flexibility Analysis (FRFA) for this action. The total universe of small entities affected by this proposed action would comprise approximately 6,000 persons who hold initial allocations of QS and are eligible to hire skippers in the IFQ Program. NMFS has no data at present to indicate how many of these persons own their own vessels at the required minimum of 20 percent. Nor does NMFS have data to analyze the amount of financial burden that acquisition of additional ownership would impose on those who at present own less than 20 percent interest in a vessel and wish to hire skippers. The grandfather clause would in part mitigate the impact of the action by allowing those who had hired skippers prior to April 17, 1997, to continue to do so at the percentage of vessel ownership held on that date. However, consistent with Council intent, this action will likely reduce the number of QS holders employing hired skippers. Consequently, it will also affect persons who hire themselves out as skippers for vessels owned by others.

In developing this amendment, the Council considered numerous alternatives to develop an action that would minimize the negative economic impact while addressing the issue of nominal vessel ownership in the IFQ hired skipper provisions. Minimum vessel ownership percentages of 5, 20, 49, and 51 percent were analyzed and reviewed before recommending the present action as resolving the issue in a way least burdensome to the affected entities. Nevertheless, the financial impact of this action could potentially be borne by all initial recipients of QS in categories B, C, or D, as well as by skippers who would hire themselves out to operate vessels in the IFQ fisheries. No comments were received on the Initial Regulatory Flexibility Analysis. A copy of the FRFA analysis is available from NMFS (see **ADDRESSES**).

List of Subjects in 50 CFR Part 679

Alaska fisheries, Reporting and recordkeeping requirements.

Dated: May 4, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 679 is amended as follows:

PART 679–FISHERIES IN THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.42, revise paragraph (i)(1); remove the first sentence of the

introductory text of paragraph (j) and add two sentences in its place, and add paragraph (j)(5) to read as follows:

§ 679.42 Limitations on use of QS and IFQ.

* * * * *

(i) * * *

(1) An individual who received an initial allocation of QS assigned to categories B, C, or D does not have to be aboard the vessel on which his or her IFQ is being fished or to sign IFQ landing reports if that individual owns at least a 20–percent interest in the vessel and is represented on the vessel by a master employed by that individual. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. This minimum 20–percent ownership requirement does not apply to any individual who received an initial allocation of QS assigned to categories B, C, or D and who, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that individual, provided the individual continues to own the vessel from which the IFQ is being fished at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that this individual has not acquired additional QS through transfer after September 23, 1997.

* * * * *

(j) *Use of IFQ resulting from QS assigned to vessel categories B, C, or D by corporations and partnerships.* Except as provided in paragraph (j)(5) of this section, a corporation or partnership that received an initial allocation of QS assigned to categories B, C, or D may fish the IFQ resulting from that QS and any additional QS acquired within the limitations of this section provided that the corporation or partnership owns at least a 20– percent interest in the vessel on which its IFQ is fished, and that it is represented on the vessel by a master employed by the corporation or partnership that received the initial allocation of QS. NMFS will determine ownership interest for purposes of this paragraph only on the basis of written documentation. * * *

* * * * *

(5) A corporation or a partnership that received an initial allocation of QS assigned to categories B, C, or D and that, prior to April 17, 1997, employed a master to fish any of the IFQ issued to that corporation or partnership may continue to employ a master to fish its IFQ on a vessel owned by the corporation or partnership provided that the corporation or partnership continues to own the vessel at no lesser percentage of ownership interest than that held on April 17, 1997, and provided that corporation or partnership did not acquire additional QS through transfer after September 23, 1997.

* * * * *

[FR Doc. 99–11699 Filed 5–7–99, 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–253–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. This proposal would require repetitive inspections to detect damage of certain taxi light assemblies, and replacement with a new or serviceable part, if necessary. This proposal also would require eventual replacement of certain taxi light assemblies with improved parts, which would constitute terminating action for the repetitive inspections. This proposal is prompted by a report that a damaged taxi light detached from an airplane and was ingested into the airplane engines. The actions specified by the proposed AD are intended to prevent damage to the taxi light assembly, which could result in detachment of the taxi light assembly from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines.

DATES: Comments must be received by June 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: David Herron, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2672; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–253–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–253–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that certain taxi light assemblies mounted on the nose landing gear assemblies of certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes have been found to be damaged. That damage has been attributed to contact between the light assembly and the tow bar during towing operations. Such contact occurs due to the proximity of the taxi lights to the fitting for towing operations. In one incident, a damaged taxi light assembly detached from the airplane, and debris from the taxi light assembly was ingested into both engines of a Boeing Model 737 series airplane during takeoff. That ingestion resulted in a loss of thrust, which forced the flightcrew to make an emergency landing. A damaged taxi light assembly, if not corrected, could result in detachment of the taxi light from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines. Such loss of thrust could result in reduced controllability of the airplane.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive detailed visual inspections to detect damage (including cracking, corrosion, deformation, or evidence of impact) of certain taxi light assemblies, and replacement with a new or serviceable part, if necessary. The proposed AD also would require eventual replacement of certain taxi light assemblies with improved parts, which would constitute terminating action for the repetitive inspections. The actions are required to be accomplished in accordance with the applicable maintenance manual.

Cost Impact

There are approximately 2,857 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,159 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be $69,540, or $60 per airplane, per inspection cycle.

It would take approximately 2 work hours per airplane to accomplish the proposed replacement, at an average

labor rate of $60 per work hour. Required parts would cost approximately $549 per airplane. Based on these figures, the cost impact of the proposed replacement on U.S. operators is estimated to be $775,371, or $669 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 98–NM–253–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; that are not equipped with a Grimes Aerospace taxi light assembly having part number (P/N) 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to the taxi light assembly, which could result in detachment of the taxi light from the airplane, ingestion of taxi light debris into an engine, and consequent loss of thrust from one or both engines; accomplish the following:

Initial and Repetitive Inspections

(a) Within 60 days after the effective date of this AD, perform a detailed visual inspection to detect damage (including cracking, corrosion, deformation, or evidence of impact) of the taxi light assembly mounted on the nose landing gear of the airplane. Repeat the inspection thereafter at intervals not to exceed 1 day, until the requirements of paragraph (c) have been accomplished.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as an intensive visual inspection of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying glasses, etc., may be used. Surface cleaning and elaborate access procedures may be necessary.

Replacement

(b) If any damage of the taxi light assembly is detected during any inspection performed in accordance with paragraph (a) of this AD, prior to further flight, replace the existing taxi light assembly with a new or serviceable taxi light assembly in accordance with the applicable maintenance manual. If the existing taxi light assembly is replaced with a Grimes Aerospace taxi light assembly having P/N 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA: no further action is required by this AD.

Terminating Action

(c) Within 2 years after the effective date of this AD: Replace the existing taxi light assembly with a Grimes Aerospace taxi light assembly having P/N 50–0199–9, 50–0199–11, 50–0128–1A, 50–0128–1MA, 50–0128–3A, or 50–0128–3MA; in accordance with the applicable maintenance manual. Such replacement constitutes terminating action for the repetitive inspection requirement of paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11617 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–16–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Models 737–100, –200, –300, –400, and –500 Series Airplanes; and Model 727–100 and –200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Models 737–100, –200, –300, –400, and –500 series airplanes, and all Models 727–100 and –200 series airplanes. This proposal would require a one-time inspection to determine the presence and condition of the breather plug in each fuel tank boost pump; and

either installation of a new plug or replacement of the boost pump with a new pump, if necessary. This proposal is prompted by a report that breather plugs were missing from fuel tank boost pumps. The actions specified by the proposed AD are intended to prevent possible ignition of fuel vapor in the fuel boost pump, which could result in a fuel tank explosion in the event of a boost pump internal failure.

DATES: Comments must be received by June 24, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Dorr Anderson, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2684; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–18–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–18–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports indicating that breather plugs were missing from the Argo-Tech/TRW fuel tank boost pumps of two Boeing Model 727 series airplanes. One fuel pump on each airplane was missing its associated breather plug. At another facility, an operator reported finding 2 breather plugs in a test stand filter, which suggests that those plugs may have been removed from boost pumps but not reinstalled.

A breather plug serves as a flame arrestor in the return line from the boost pump to the fuel tank. The purpose of the flame arrestor is to quench a flame front initiated inside the fuel pump and prevent it from propagating back to the fuel tank.

The breather plug on an Argo-Tech/TRW boost pump is retained within the boost pump return line by an adhesive bond. When a boost pump is installed in an airplane, the breather plug is also mechanically retained within the pump return line by a mating surface on the airplane side of the installation. If the pump is removed from the airplane, the plug is secured within the pump by only the adhesive bond. Any failure of that adhesive could result in loss of the breather plug. A loose, damaged, or missing breather plug, if not detected and corrected, could result in possible ignition of fuel vapor in the fuel boost pump and a consequent fuel tank explosion in the event of a boost pump internal failure.

Other Affected Models

Certain Boeing Model 737 series airplanes also are equipped with Argo-Tech/TRW boost pumps, which incorporate the breather plugs; therefore, those airplanes also may be subject to the unsafe condition identified in this proposed AD.

Explanation of Relevant Service Information

The FAA has reviewed Boeing Telex M–7200–98–03173, dated October 21, 1998, which describes procedures for a one-time inspection of each fuel tank boost pump to determine the presence and condition of its breather plug. For any plug that is loose, damaged, or missing, the telex provides procedures for either installation of a new breather plug or replacement of the boost pump with a new pump.

Temporary Revision (TR) No. 28–1 to the Argo Overhaul Manual ("Plug-in Booster Pump"), dated November 13, 1998, provides procedures for the installation of breather plugs into fuel tank boost pumps.

Accomplishment of the actions specified in the telex and the TR is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the telex and the TR described previously, except as discussed below.

Differences Between Proposed AD and Telex: Compliance Times

The compliance times recommended in the telex differ from those proposed by this AD. The telex recommends a longer compliance time for inspection of the boost pumps of the main fuel tanks, and the proposed AD would allow a longer compliance time for inspection of the boost pumps of the center and auxiliary fuel tanks.

For the inspections of the boost pumps in the main fuel tanks, the proposed AD would require a 12-month compliance time, whereas the telex recommends accomplishment at the next "C" check or within 6,000 flight hours for Model 737 series airplanes. (The telex does not specify a compliance time for inspection of affected Model 727 series airplanes.) The FAA has determined that 12 months would allow operators sufficient time to complete the required inspections of all affected airplanes during regular maintenance, without compromising safety. Further, the FAA has determined that an adequate supply of parts is expected to be available within this compliance time.

For the inspections of the boost pumps of Model 737 center fuel tanks and Model 727 center and auxiliary fuel

tanks, the proposed AD would allow a compliance time longer than that recommended by the telex. (The telex does not specify a compliance time for inspection of Model 727 center fuel tanks.) While the FAA recognizes the unsafe condition identified in this proposed AD, the FAA also finds that the burden that would be imposed on operators by specifying a 30-day compliance time is unjustified. The 6-month compliance time proposed by this AD was determined to be appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, and the practical aspects of an orderly inspection of the fleet during regular maintenance periods.

In consideration of all of these factors, the FAA has determined that the proposed compliance times would represent an appropriate interval in which the proposed actions could be accomplished within the fleet in a timely manner, and still maintain an adequate level of safety.

Difference Between Proposed AD and Telex: Approved Installation Method

In addition, operators should note that, although the telex recommends that the manufacturer be contacted for instructions regarding installation of breather plugs, if necessary, this proposal would require such installation to be accomplished in accordance with Argo Overhaul Manual TR 28–1. (The proposed AD would optionally require replacement of the pump with a new pump, in accordance with Boeing maintenance manual procedures.)

Cost Impact

There are approximately 2,477 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,345 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 2 work hours per boost pump to accomplish the proposed inspection at an average labor rate of $60 per work hour. (There are 6 boost pumps in the center and main fuel tanks on Model 737 series airplanes, 8 boost pumps in the center and main fuel tanks on Model 727 series airplanes, and 2 boost pumps in each auxiliary fuel tank, which may be installed on some affected airplanes of both models.) Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $120 per boost pump.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 99–NM–18–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes that are equipped with Argo-Tech/TRW fuel boost pumps; and all Model 727–100 and –200 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible ignition of fuel tank vapor in the fuel boost pump, which could result in a fuel tank explosion, accomplish the following:

Inspection and Corrective Actions

(a) Perform a one-time detailed inspection to detect discrepant breather plugs (including loose, damaged, and missing plugs) in the fuel tank boost pumps, at the time specified in paragraph (a)(1) or (a)(2), as applicable, of this AD; in accordance with Boeing Telex M–7200–98–03173, dated October 21, 1998. If any discrepancy is detected, prior to further flight, either install a new breather plug in accordance with Temporary Revision (TR) No. 28–1 of the Argo Overhaul Component Maintenance Manual, dated November 13, 1998; or replace the boost pump with a new pump, in accordance with procedures specified in section 28–22–41 of the Boeing 737 Airplane Maintenance Manual (AMM) or Section 28–22–21 of the Boeing 727 AMM, as applicable.

(1) For center fuel tanks installed on Model 737 series airplanes, and for auxiliary fuel tanks installed on Model 727 and 737 series airplanes: Inspect within 6 months after the effective date of this AD.

(2) For main fuel tanks installed on Model 737 series airplanes, and for center and main fuel tanks installed on Model 727 series airplanes: Inspect within 12 months after the effective date of this AD.

Spares

(b) As of the effective date of this AD, no person shall install on any airplane an Argo-Tech/TRW fuel boost pump, unless that pump has been inspected and applicable corrective actions have been performed in accordance with the requirements of this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197

and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 3, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11615 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 884

[Docket No. 99N–0922]

Obstetrics and Gynecology Devices; Proposed Requirement for Premarket Approval and Change in Classification of Glans Sheath Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to require the filing of a premarket approval application (PMA) or a notice of completion of a product development protocol (PDP) for the glans sheath medical device. The agency is also summarizing its proposed findings regarding the degree of risk of illness or injury intended to be eliminated or reduced by requiring the device to meet the statute's approval requirements as well as the benefits to the public from the use of the device. In addition, FDA is announcing the opportunity for interested persons to request the agency to change the classification of the device based on new information. This action is being taken to establish that there is sufficient information to provide reasonable assurance of the safety and effectiveness of this type of device.

DATES: Written comments by August 9, 1999; requests for a change in classification by May 26, 1999.

ADDRESSES: Submit written comments or requests for a change in classification to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Colin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION:

I. Background

Section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c) requires the classification of medical devices into one of three regulatory classes: Class I (general controls), class II (special controls), and class III (premarket approval). Generally, devices that were on the market before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments) (Pub. L. 94–295), and devices marketed on or after that date that are substantially equivalent to such devices have been, or are being, classified by FDA. For convenience, this preamble refers to both the devices that were on the market before May 28, 1976, and the substantially equivalent devices that were marketed on or after that date as "preamendments devices."

Section 515(b)(1) of the act (21 U.S.C. 360e(b)(1)) establishes the requirement that a preamendments device that FDA has classified into class III is subject to premarket approval. A preamendments class III device may be commercially distributed without an approved PMA or a notice of completion of a PDP until 90 days after the effective date of the final rule FDA issues requiring premarket approval for the device, or 30 months after final classification of the device, whichever is later. Also, a preamendments device subject to the rulemaking procedure under section 515(b) of the act is not required to have an approved investigational device exemption (IDE) (part 812 (21 CFR part 812)) contemporaneous with its interstate distribution until the date identified by FDA in the final rule requiring the submission of a PMA or PDP for the device. At that time, an IDE must be submitted only if a PMA has not been submitted or a PDP has not been declared completed.

Section 515(b)(2)(A) of the act provides that a proceeding to issue a final rule to require premarket approval shall be initiated by publication of a notice of proposed rulemaking containing: (1) The proposed rule, (2) proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to have an approved PMA or a declared completed PDP and the benefit to the public from the use of the device, (3) an opportunity to submit comments on the proposed rule and the proposed findings, and (4) an opportunity to request a change in the classification of the device based on new information relevant to the classification of the device.

Section 515(b)(2)(B) of the act provides that if FDA receives a request for a change in the classification of the device within 15 days of the publication of the notice, FDA shall, within 60 days of the publication of the notice, consult with the appropriate FDA advisory committee and publish a notice denying the request for change of classification or announcing its intent to initiate a proceeding to reclassify the device under section 513(e) of the act. If FDA does not initiate such a proceeding, section 513(b)(3) of the act provides that FDA shall, after the close of the comment period on the proposed rule and consideration of any comments received, issue a final rule to require premarket approval, or publish a notice terminating the proceeding. If FDA terminates the proceeding, FDA is required to initiate reclassification of the device under section 513(e) of the act, unless the reason for termination is that the device is a banned device under section 516 of the act (21 U.S.C. 360f).

If a proposed rule to require premarket approval for a preamendments device is made final, section 501(f)(2)(B) of the act (21 U.S.C. 351(f)(2)(B)) requires that a PMA or a notice of completion of a PDP for any such device be filed within 90 days after the effective date of the final rule or 30 months after FDA's final classification of the device under section 513 of the act, whichever is later. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, commercial distribution of the device is required to cease. The device may, however, be distributed for investigational use if the manufacturer, importer, or other sponsor of the device complies with the IDE regulations. If a PMA or a notice of completion of a PDP is not filed by the later of the two dates, and no IDE is in effect, the device is deemed to be adulterated within the meaning of section 501(f)(1)(A) of the act, and subject to seizure and condemnation under section 304 of the act (21 U.S.C. 334) if its distribution continues. Shipment of the device in interstate commerce will be subject to injunction under section 302 of the act (21 U.S.C. 332), and the individuals responsible for such shipment will be subject to prosecution under section 303 of the act (21 U.S.C. 333). In the past, FDA has requested that manufacturers take action to prevent the further use of devices for which no PMA has been filed and may determine that such a request is appropriate for the glans sheath device.

The act does not permit an extension of the 90-day period after the effective date of the final rule, within which an

application or a notice is required to be filed. The House Report on the amendments states that "the thirty month 'grace period' afforded after classification of a device into class III * * * is sufficient time for manufacturers and importers to develop the data and conduct the investigations necessary to support an application for premarket approval" (H. Rept. 94–853; 94th Cong., 2d sess. 42 (1976)).

The Safe Medical Devices Act of 1990 (the SMDA) added section 515(i) to the act requiring FDA to review the classification of preamendments class III devices for which no final rule has been issued requiring the submission of PMA's and to determine whether or not each device should be reclassified into class I or class II or remain in class III. For devices remaining in class III, the SMDA directed FDA to develop a schedule for issuing regulations to require premarket approval. The SMDA does not, however, prevent FDA from proceeding immediately to rulemaking under section 515(b) of the act on specific devices, in the interest of public health, independent of the procedures of section 515(i) of the act. Indeed, proceeding directly to rulemaking under section 515(b) of the act is consistent with Congress' objective in enacting section 515(i) of the act, i.e., that preamendments class III devices for which PMA's or notices of completed PDP's have not been required either be reclassified to class I or class II or be subject to the requirements of premarket approval. Moreover, in this proposal, interested persons are being offered the opportunity to request reclassification of glans sheath devices.

A. Classification of the Glans Sheath Device(s)

In the **Federal Register** of December 29, 1994 (59 FR 67185), FDA issued a final rule classifying glans sheath devices into class III. The preamble to the proposal to classify these devices (57 FR 42908, September 17, 1992) included the recommendation of the Obstetrics-Gynecology Devices Panel (the Panel), an FDA advisory committee, which met on March 7, 1989, regarding the classification of these devices (Ref. 1). During that meeting, the Panel concluded that "glans cap" devices, whose generic description FDA later changed to glans sheath devices (59 FR 67185), were a different type of generic device than were condom devices classified at 21 CFR 884.5300. The Panel recommended that glans sheath devices be classified into class III, and identified certain risks to health presented by the devices. The Panel believed that the devices presented a potential unreasonable risk to health and that insufficient information existed to determine that general controls are sufficient to provide reasonable assurance of the safety and effectiveness of the devices or that application of special controls would provide such assurance.

FDA agreed with the Panel's recommendations and proposed that glans sheath devices be classified into class III (57 FR 42908). The proposal stated that FDA believed that general controls, or special controls, such as postmarket surveillance, the development of guidelines, the establishment of a performance standard, or other actions, are insufficient to provide reasonable assurance of the safety and effectiveness of the devices. The proposal stated that FDA believes that such devices present a potential unreasonable risk of illness or injury and that, in the absence of valid scientific evidence in the literature from published studies or test and clinical data that demonstrate the biocompatibility of materials, or that measure performance characteristics, such as slippage, bursting, and tearing, the devices should be subject to premarket approval to ensure the safety and effectiveness of the devices.

In the **Federal Register** of January 6, 1989 (54 FR 550), FDA published a notice of intent to initiate proceedings to require premarket approval for 31 class III preamendments devices. Among other items, the notice described the factors FDA takes into account in establishing priorities for proceedings under section 515(b) of the act for issuing final rules requiring that preamendments class III devices have approved PMA's or declared completed PDP's. In the **Federal Register** of May 6, 1994 (59 FR 23731), FDA issued a notice of availability of a preamendments class III devices strategy document which updated its priorities and set forth the agency's plans for implementing the provisions of section 515(i) of the act for preamendments class III devices for which FDA had not yet required PMA approval. Although glans sheath devices were not included in the lists of devices identified in these notices and the strategy paper, using the factors set forth in these documents, FDA has recently determined that glans sheath devices identified in § 884.5320 (21 CFR 884.5320) have a high priority for initiating a proceeding for requiring premarket approval because the safety and effectiveness of these devices have not been established by valid scientific evidence as defined in (§ 860.7 (21 CFR 860.7)). Moreover, FDA believes that insufficient information exists to assess the safety and effectiveness of glans cap devices in preventing pregnancy and to derive reported failure or pregnancy rates based upon usage of the devices. FDA also believes that failure of the devices, which do not protect the shaft and foreskin of the penis against infection, may result in the release of infected semen into the vagina or otherwise result in the transmission of disease. Accordingly, FDA is commencing a proceeding under section 515(b) of the act to require that the glans sheath have an approved PMA or declared completed PDP.

B. Dates New Requirements Apply

In accordance with section 515(b) of the act, FDA is proposing to require that a PMA or a notice of completion of a PDP be filed with the agency for the glans sheath device within 90 days after the effective date of any final rule issued on the basis of this proposal. An applicant whose device was in commercial distribution before May 28, 1976, or whose device has been found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing the glans sheath during FDA's review of the PMA or notice of completion of the PDP. FDA intends to review any PMA for the device within 180 days, and any notice of completion of a PDP for the device within 90 days of the date of filing. FDA cautions that, under section 515(d)(1)(B)(i) of the act, FDA may not enter into an agreement to extend the review period of a PMA beyond 180 days unless the agency finds that "* * * the continued availability of the device is necessary for the public health."

FDA intends that, under § 812.2(d), the preamble to any final rule based on this proposal will state that, as of the date on which a PMA or a notice of completion of a PDP is required to be filed, the exemptions in § 812.2(c)(1) and (c)(2) from the requirements of the IDE regulations for preamendments class III devices will cease to apply to any glans sheath device which is: (1) Not legally on the market on or before that date; or (2) legally on the market on or before that date but for which a PMA or notice of completion of PDP is not filed by that date, or for which PMA approval has been denied or withdrawn.

If a PMA, notice of completion of a PDP, or an IDE application for a glans sheath device is not submitted to FDA within 90 days after the effective date of any final rule FDA may issue requiring premarket approval for the devices, commercial distribution of the devices must cease. FDA , therefore, cautions that for manufacturers not planning to

submit a PMA or notice of completion of a PDP immediately, IDE applications should be submitted to FDA, at least 30 days before the end of the 90-day period after the effective date of the final rule that is published to minimize the possibility of interrupting all availability of the device. FDA considers investigations of glans sheath devices to pose a significant risk as defined in the IDE regulation.

C. Description of the Device

The glans sheath device is a sheath which covers only the glans penis or part thereof, and may also cover the area in the immediate proximity thereof, the corona and frenulum, but not the entire shaft of the penis. It is indicated only for the prevention of pregnancy and not for the prevention of sexually transmitted diseases (STD's).

FDA considers the use of glans sheath devices for preventing the transmission of STD's, such as, acquired immunodeficiency syndrome (AIDS) caused by the human immunodeficiency virus (HIV) from HIV-infected semen or vaginal secretions, to constitute investigational use of the device. Any glans sheath device in interstate commerce that is used, or that is labeled or promoted to be used, for preventing the transmission of STD's must already have in effect an approved IDE, or an approved PMA or declared completed PDP.

D. Proposed Findings with Respect to Risks and Benefits

As required by section 515(b) of the act, FDA is publishing its proposed findings regarding: (1) The degree of risk of illness or injury designed to be eliminated or reduced by requiring the glans sheath to have an approved PMA or a declared completed PDP, and (2) the benefits to the public from the use of the device.

E. Risk Factors

Glans sheath devices are associated with the following risks:

1. Pregnancy

Undesired pregnancy could occur if the device leaks, breaks, or dislodges during intercourse. For women for whom pregnancy is contraindicated due to medical conditions such as heart disease or diabetes mellitus, the risk of an unwanted pregnancy can be severe, even life threatening (Ref. 2). A search of the literature found no published studies or controlled clinical data which demonstrated the safety and effectiveness of the glans sheath device, or the expected failure or pregnancy rates for use of the glans sheath. Additionally, no testing or clinical study data were available regarding leakage, breakage, or dislodgement of glans sheaths during intercourse. References to this type of device in the literature described it as an unsafe method of contraception (Refs. 3 and 4).

2. Transmission of Diseases

If the device fails due to leakage, breakage, or dislodgement during intercourse, contact with infected semen or vaginal secretions containing infectious agents could result in the transmission of STD's, including AIDS, hepatitis B, cytomegalovirus infection, syphilis, and disseminated gonorrhea (Refs. 5 through 8). Organisms causing these systemic infections remain viable in the blood stream rendering almost all body fluids and semen infectious. The HIV virus causing AIDS has been isolated from infected blood, saliva, vaginal secretions, and semen. Semen from infected persons has been shown to be an important vehicle in spreading the disease (Refs. 5 through 8).

3. Adverse Tissue Reaction

Materials and substances that comprise the glans sheath could cause local tissue irritation and sensitization or systemic toxicity when the device contacts the glans penis or vaginal and cervical mucosa. Because of such intended contact, testing the biocompatibility of materials and substances that comprise the glans sheath is essential to provide reasonable assurance of the device's safety.

F. Benefits of the Device

The glans sheath covers only the glans penis or part thereof, and may also cover the area in the immediate proximity thereof, the corona and frenulum, so it may be acceptable to those individuals who would not otherwise use a full-sheath condom. The glans sheath may be an alternate preferred method of contraception which, arguably, may serve to increase penile stimulation by reducing the degree of interference and loss of sensitivity attributed to the use of contraceptives, in particular, in comparison to the use of full-sheath condoms. FDA has concluded from a review of the scientific literature that the safety and effectiveness of the glans sheath device for contraceptive use for the prevention of pregnancy have not been established by valid scientific evidence as defined in § 860.7.

II. PMA Requirements

A PMA for the glans sheath device must include the information required by section 515(c)(1) of the act and § 814.20 (21 CFR 814.20) of the procedural regulations for PMA's. Such a PMA should include a detailed discussion of the risks as well as a discussion of the effectiveness of the device for which premarket approval is sought. In addition, a PMA must include all data and information on: (1) Any risks known, or that should be reasonably known, to the applicant that have not been identified in the proposal (57 FR 42908); (2) the effectiveness of the specific glans sheath that is the subject of the application; and (3) full reports of all preclinical and clinical information from investigations on the safety and effectiveness of the device for which premarket approval is sought.

A PMA should include valid scientific evidence as defined in § 860.7 and should be obtained from well-controlled clinical studies, with detailed data, in order to provide reasonable assurance of the safety and effectiveness of the particular glans sheath for its intended use. In addition to the basic requirements described in § 814.20(b)(6)(ii) for a PMA, it is recommended that such studies employ a protocol that meets the criteria described in the following paragraphs.

Applicants should submit any PMA in accordance with FDA's "Premarket Approval Manual." This manual is available on the world wide web at "http://www.fda.gov/cdrh/dsma/manuals.html".

A. General Protocol Requirements

Glans sheath devices should be evaluated in a prospective, randomized, clinical trial that uses adequate controls. The study must attempt to answer all of the questions concerning safety and effectiveness of the devices, including the risk to benefit ratio. The questions should relate to the pathophysiologic effects which the devices produce, as well as the primary and secondary variables analyzed to evaluate safety and effectiveness. Study endpoints and study success must be defined.

Biocompatibility testing for new material and/or the finished devices should be performed according to the Office of Device Evaluation (ODE) blue book memorandum #G95–1 entitled "Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing'" (Ref. 9). This memorandum includes the FDA-modified matrix that designates the type of testing needed for various medical devices. The memorandum is available upon request from CDRH's Division of Small Manufacturers Assistance (address above) and is also available on the world wide web at "http://www.fda.gov/cdrh/g951.html". The following tests should be considered: Cytotoxicity, sensitization, mucosal irritation, acute systemic

toxicity, mutagenicity, and implantation (90 day).

Specific considerations include the following:

1. The selection of materials to be used in device manufacture and their toxicological evaluation should initially take into account a full characterization of the materials, such as chemical composition of components, known and suspected impurities, and processing. Any surface coatings to be applied are to be fully characterized, including materials, physical specifications, and application processes.

2. The materials of manufacture, the final product, and possible leachable chemicals or degradation products should be considered for their relevance to the overall toxicological evaluation of the devices.

3. Any in vitro or in vivo experiments or tests must be conducted according to recognized good laboratory practices followed by an evaluation by competent informed persons.

4. Any change in chemical composition, manufacturing process, physical configuration or intended use of the devices must be evaluated with respect to possible changes in toxicological effects and the need for additional testing.

5. The biocompatibility evaluation performed in accordance with the guidance should be considered in conjunction with other information from other nonclinical studies and postmarket experiences for an overall safety assessment.

Guidance concerning the type of information that should be provided regarding materials, finished product, processing, testing, and labeling may be found in the Office of Device Evaluation's draft guidance entitled "Testing Guidance For Male Condoms Made From New Material," June 29, 1995 (Ref. 10). This guidance is available upon request from CDRH's Division of Small Manufacturers Assistance and is also available on the world wide web at "http://www.fda.gov/cdrh/ode/oderp455.html". The following types of information should be provided:

1. The identity of resin manufacturers.

2. The chemical composition and specifications for raw materials, including molecular weight and molecular weight distribution, and a description of the quality control testing performed.

3. A complete description of the chemical composition and specifications for the finished device, including the molar ratio of component monomers for fabricating the finished material(s), physical characteristics (length, width, thickness, etc.).

4. The chemical composition and specifications for any retention ring materials, lubricants, or dusting agent.

5. Details on the processes used to manufacture the finished device to include: A flow diagram for all aspects of manufacturing and points where in-process quality assurance testing is performed, and descriptions of process control parameters, handling and/or reworking procedures for product that fails in-process quality assurance tests, procedures for adding lubricants and/or dusting agents, and packaging procedures.

6. Data from physical testing conducted on the finished device using appropriate sampling procedures and established performance limits and tolerances, to include tensile strength, force at break (vulnerability to puncture), elongation (elasticity), tear resistance, and other measures of flexural characteristics.

7. If a shelf-life period or expiration date is stated in device labeling, data from accelerated and/or real time testing of the packaged product, including lubricants and other agents, demonstrating the physical and mechanical integrity of the device for the shelf-life or expiration date period claimed in labeling.

8. Labeling providing: A complete description of the device, indications, adequate directions for use, and full disclosure of the safety and effectiveness findings from preclinical and clinical studies, including the recommended use of a pregnancy rate table and the disclosure that the product does not protect against HIV infection and other STD's. (See FDA guidance entitled "Uniform Contraceptive Labeling," July 23, 1998, which is available from CDRH's Division of Small Manufacturers Assistance (address above) and is also available on the world wide web at "http://www.fda.gov/cdrh/ode/contrlab.html".)

Examples of questions to be addressed by the clinical studies include, but are not limited to, the following:

1. What are the findings of preliminary studies conducted to evaluate the clinical performance (slippage and breakage) and the acceptability for use of the glans sheath device, including incidents of genital irritation or other adverse occurrences?

2. What breakage, slippage, partial slippage, dislodgement and adverse reaction data and rates are derived from the clinical trial(s) studying slippage and breakage, and what are the design and statistical analysis particulars of the trial(s), including whether the study followed a randomized, cross-over design and what patient population, inclusion/exclusion criteria, sample size, and statistical analysis models were chosen?

3. What pregnancy, breakage, slippage, and adverse event data and rates are derived from the clinical trial(s) evaluating the safety, effectiveness, and ease of use of the glans sheath device, and what are the design and statistical analysis particulars of the clinical study(ies), including whether the study(ies) followed a randomized controlled design, and what number of menstrual cycles of product use, population size, inclusion/exclusion criteria, sample size, and statistical analysis models were chosen?

Statistically valid investigations should include a clear statement of the objectives, method of selection of subjects, nature of the control group, effectiveness and/or safety parameters, method of analysis, and presentation of statistical results of the study. Appropriate rationale, supported by background literature on previous uses of the particular glans sheath device and proposed mechanisms for its effect, should be presented as justification for the questions to be answered, and the definitions of study endpoints and success. Clear study hypotheses should be formulated based on this information.

B. Study Sample Requirements

The subject population should be well defined. Ideally, the study population should be as homogeneous as possible in order to minimize selection bias and reduce variability. Otherwise, a large population may be necessary to achieve statistical significance. Justification must be provided for the sample size used to show that a sufficient number of patients were enrolled to attain statistically and clinically meaningful results. Eligibility criteria for the subject population should include the subject's potential for benefit, the ability to detect a benefit in the subject, the absence of both contraindications and any competing risk, and assurance of subject compliance. In a heterogeneous sample, stratification of the patient groups participating in the multi-center clinical study may be necessary to analyze homogeneous subgroups and thereby minimize potential bias. All endpoint variables should be identified, and a sufficient number of patients from each subgroup analysis should be included to allow for stratification by pertinent demographic characteristics.

The investigations should include an evaluation of comparability between

treatment groups and control groups (including historical controls). Baseline (e.g., age, gender, etc.) and other variables should be measured and compared between the treatment and control groups. The baseline variables should be measured at the time of treatment assignment, not during the course of the study. Other variables should be measured during the study as needed to completely characterize the particular device's safety and effectiveness.

C. Study Design

All potential sources of error, including selection bias, information bias, misclassification bias, comparison bias, or other potential biases should be evaluated and minimized. The study should clearly measure any possible placebo effect. Treatment effects should be based on objective measurements. The validity of these measurement scales should be shown to ensure that the treatment effect being measured reflects the intended uses of the particular device.

Adherence to the protocol by subjects, investigators, and all other individuals involved is essential and requires monitoring to assure compliance by both patients and practitioners. Subject exclusion due to dropout or loss to followup greater than 20 percent may invalidate the study due to bias potential; therefore, initial patient screening and compliance of the final subject population will be needed to minimize the dropout rate. All dropouts must be accounted for and the circumstances and procedures used to ensure patient compliance must be well documented.

Endpoint assessment cannot be based solely on statistical value. Instead, the clinical outcome must be carefully defined to distinguish between the evaluation of the proper function of the device versus its benefit to the subject. Statistical significance and effectiveness of the device must be demonstrated by the statistical results. However, under certain restricted circumstances, a clinically significant result may be documented without statistical significance.

Observation of all potential adverse effects must be recorded and monitored throughout the study and the followup period. All adverse effects must be documented and evaluated.

D. Statistical Analysis Plan

The involvement of a biostatistician is recommended to provide proper guidance in the planning, design, conduct, and analysis of a clinical study. There must be sufficient documentation of the statistical analysis and results including comparison group selection, sample size justification, stated hypothesis test(s), population demographics, study site pooling justification, description of statistical tests applied, clear presentation of data, and a clear discussion of the statistical results and conclusions.

In addition to this generalized guidance, the investigator or sponsor is expected to incorporate additional requirements necessary for a well-controlled scientific study. These additional requirements are dependent on what the investigator or sponsor intends to measure or what the expected treatment effect is based on each device's intended use.

E. Clinical Analysis

The analysis which results from the study should include a complete description of all the statistical procedures employed, including assumption verification, pooling justification, population selection, statistical model selection, etc. If any procedures are uncommon or derived by the investigator or sponsor for the specific analysis, an adequate description must be provided of the procedure for FDA to assess its utility and adequacy. Data analysis and interpretations from the clinical investigation should relate to the medical claims.

F. Monitoring

Rigorous monitoring is required to assure that the study procedures are collected in accordance with the study protocol. Attentive monitors, who have appropriate credentials and who are not aligned with patient management or otherwise biased, contribute prominently to a successful study.

III. PDP Requirements

A PDP for any of these devices may be submitted in lieu of a PMA and must follow the procedures outlined in section 515(f) of the act. A PDP should provide: (1) A description of the device; (2) preclinical trial information (if any); (3) clinical trial information (if any); (4) a description of the manufacturing and processing of the device; (5) the labeling of the device; and (6) all other relevant information about the device. In addition, the PDP must include progress reports and records of the trials conducted under the protocol on the safety and effectiveness of the device for which the completed PDP is sought. FDA's current thinking on the PDP process and the relative duties and responsibilities of the agency and applicant is provided in the draft guidance entitled "Guidance for Industry—Contents of a Product Development Protocol; Draft." This draft guidance is available on the world wide web at "http://www.fda.gov/cdrh/pdp/pdp.html".

IV. Opportunity to Request a Change in Classification

Before requiring the filing of a PMA or a notice of completion of a PDP for a device, FDA is required by section 515(b)(2)(A)(i) through (iv) of the act and 21 CFR 860.132 to provide an opportunity for interested persons to request a change in the classification of the device based on new information relevant to its classification. Any proceeding to reclassify the device will be under authority of section 513(e) of the act.

A request for a change in the classification of the glans sheath device is to be in the form of a reclassification petition containing the information required by § 860.123 (21 CFR 860.123), including information relevant to the classification of the device, and shall, under section 515(b)(2)(B) of the act, be submitted by May 26, 1999.

The agency advises that, to ensure timely filing of any such petition, any request should be submitted to the Dockets Management Branch (address above) and not to the address provided in § 860.123(b)(1). If a timely request for a change in the classification of the glans sheath is submitted, FDA will, by July 9, 1999 after consultation with the appropriate FDA advisory committee and by an order published in the **Federal Register**, either deny the request or give notice of its intent to initiate a change in the classification of the device in accordance with section 513(e) of the act and 21 CFR 860.130 of the regulations.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcripts of the Obstetrics-Gynecology Devices Panel meeting, March 7, 1989.

2. Willson, J., and E. Carrington, *Obstetrics and Gynecology*, C. V. Mosby Co., chs. 22 and 27, 1987.

3. "Other Methods, Past, Present and Future * * * American, or Grecian Tips," in "Sex With Health The Which? Guide to Contraceptives, Abortion and Sex-related Diseases," published by Consumers' Association (British), November 1974.

4. Peel, J., and M. Potts, "The Condom," in "Textbook of Contraceptive Practice," Cambridge University Press, p. 58, 1969.

5. "Leads from the MMWR Morbidity and Mortality Weekly Report * * * 'Heterosexual

Transmission of Human T-Lymphotropic Virus Type III/Lymphadenopathy-Associated Virus,'" *Journal of the American Medical Association*, 254(15): pp. 2051 to 2054, 1985.

6. Winklestein, Jr., W. et al., "Sexual Practices and Risk of Infection by the Human Immunodeficiency Virus," *Journal of the American Medical Association*, 253(3): pp. 321 to 325, 1987.

7. Stone, K. M. et al., "Primary Prevention of Sexually Transmitted Diseases," *Journal of the American Medical Association*, 255(13): pp. 1763 to 1766, 1986.

8. Peterman, T. A., and J. W. Curran, "Sexual Transmission of Human Immunodeficiency Virus," *Journal of the American Medical Association*, 256(16): pp. 2222 to 2226, 1986.

9. "Use of International Standard ISO–10993, 'Biological Evaluation of Medical Devices Part 1: Evaluation and Testing,'" ODE "Blue Book," General Program Memorandum #G95–1, FDA, Center for Devices and Radiological Health, Office of Device Evaluation, Rockville, MD 20857, May 1, 1995.

10. "Testing Guidance for Male Condoms Made From New Materials," FDA, Center for Devices and Radiological Health, Office of Device Evaluation, Obstetrics–Gynecology Devices Branch, Rockville, MD 20857, June 29, 1995.

VI. Environmental Impact

The agency has determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Pub. L. 104–121) and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. FDA believes that only one firm, which previously distributed a glans sheath type of device in 1989, may be affected and required to submit a PMA at a cost of approximately $1.2 million. However, because this type device has been classified into class III since December 29, 1994, and any manufacturer of this device that was legally in commercial distribution before May 28, 1976, or found by FDA to be substantially equivalent to such a device, will be permitted to continue marketing during FDA's review of the PMA or notice of completion of the PDP, the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, under the Regulatory Flexibility Act, no further analysis is required.

VIII. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The burden hours required for § 884.5320(c) are included in the collection entitled "Premarket Approval of Medical Devices—21 CFR Part 814," submitted on January 27, 1999 (64 FR 4112), for OMB approval.

IX. Submission of Comments with Data

Interested persons may, on or before August 9, 1999, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Interested persons may, on or before May 26, 1999 submit to the Dockets Management Branch a written request to change the classification of the glans sheath. Two copies of any request are to be submitted except that individuals may submit one copy. Comments or requests are to be identified with the docket number found in brackets in the heading of this document. Received comments and requests may be seen in the office above between 9 a.m. and 4 p.m. Monday through Friday.

List of Subjects in 21 CFR Part 884

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 884 be amended as follows:

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

1. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 884.5320 is amended by revising paragraph (c) to read as follows:

§ 884.5320 Glans sheath.

* * * * *

(c) *Date premarket approval application (PMA) or notice of completion of a product development protocol (PDP) is required.* A PMA or a notice of completion of a PDP is required to be filed with the Food and Drug Administration on or before (date 90 days after date of publication of the final rule in the **Federal Register**), for any glans sheath that was in commercial distribution before May 28, 1976, or that has, on or before (date 90 days after date of publication of the final rule in the **Federal Register**) been found to be substantially equivalent to a glans sheath that was in commercial distribution before May 28, 1976. Any other glans sheath shall have an approved PMA or a declared completed PDP in effect before being placed in commercial distribution.

Dated: April 30, 1999.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 99–11733 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Parts 0, 16, 20, and 50

[AG Order No. 2218–99]

RIN 1105–AA63

Federal Bureau of Investigation, Criminal Justice Information Services Division Systems and Procedures

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The United States Department of Justice (DOJ) proposes amending DOJ regulations relating to criminal justice information systems of the Federal Bureau of Investigation (FBI) to address the following programmatic and nomenclature changes: to permit access to criminal history record information (CHRI) and related information, subject to appropriate controls, by a private entity under a specific agreement with an authorized governmental agency to perform an administration of criminal justice function (privatization); to

permit access to CHRI and related information, subject to appropriate controls, by a noncriminal justice governmental agency that is performing criminal justice dispatching functions or data processing/ information services for a criminal justice agency; to acknowledge access to CHRI and related information by the National Instant Criminal Background Check System (NICS) under the Brady Handgun Violence Prevention Act of 1993; to add express authority for the Director of the FBI from time to time to determine and establish revised fee amounts; and to modernize language to ensure that the regulations accurately reflect current FBI practices, names of systems and programs, and addresses.

DATES: Written comments must be received on or before June 9, 1999.

ADDRESSES: All comments concerning this proposed rule should be mailed to: Mr. Harold M. Sklar, Attorney-Advisor, Federal Bureau of Investigation, CJIS Division, Module E–3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

FOR FURTHER INFORMATION CONTACT: Mr. Harold M. Sklar, Attorney-Advisor, telephone number (304) 625–2000.

SUPPLEMENTARY INFORMATION: The FBI manages two systems for the exchange of criminal justice information: the National Crime Information Center (NCIC) and the Fingerprint Identification Records System (FIRS). This rule proposes changes to regulations relating to CHRI and related information maintained in these systems. The changes proposed in this rule fall into five categories, discussed below.

1. Access to CHRI and Related Information, Subject to Appropriate Controls, by a Private Contractor Pursuant to a Specific Agreement with an Authorized Governmental Agency To Perform an Administration of Criminal Justice Function (Privatization). Section 534 of title 28 of the United States Code authorizes the Attorney General to exchange identification, criminal identification, crime, and other records for the official use of authorized officials of the federal government, the states, cities, and penal and other institutions. This statute also provides, however, that such exchanges are subject to cancellation if dissemination is made outside the receiving departments or related agencies. Agencies authorized access to CHRI traditionally have been hesitant to disclose that information, even in furtherance of authorized criminal justice functions, to anyone other than actual agency employees lest such disclosure be viewed as unauthorized.

In recent years, however, governmental agencies seeking greater efficiency and economy have become increasingly interested in obtaining support services for the administration of criminal justice from the private sector. With the concurrence of the FBI's Criminal Justice Information Services Advisory Policy Board, the DOJ has concluded that disclosures to private persons and entities providing support services for criminal justice agencies may, when subject to appropriate controls, properly be viewed as permissible disclosures for purposes of compliance with 28 U.S.C. 534.

We are therefore proposing to revise 28 CFR 20.33(a)(7) to provide express authority for such arrangements. The proposed authority is similar to the authority that already exists in 28 CFR 20.21(b)(3) for state and local CHRI systems. Provision of CHRI under this authority would only be permitted pursuant to a specific agreement with an authorized governmental agency for the purpose of providing services for the administration of criminal justice. The agreement would be required to incorporate a security addendum approved by the Director of the FBI (acting for the Attorney General). The security addendum would specifically authorize access to CHRI, limit the use of the information to the specific purposes for which it is being provided, ensure the security and confidentiality of the information consistent with applicable laws and regulations, provide for sanctions, and contain such other provisions as the Director of the FBI (acting for the Attorney General) may require. The security addendum, buttressed by ongoing audit programs of both the FBI and the sponsoring governmental agency, will provide an appropriate balance between the benefits of privatization, protection of individual privacy interests, and preservation of the security of the FBI's CHRI systems.

The FBI will develop a security addendum to be made available to interested governmental agencies. We anticipate that the security addendum will include physical and personnel security constraints historically required by NCIC security practices and other programmatic requirements, together with personal integrity and electronic security provisions comparable to those in NCIC User Agreements between the FBI and criminal justice agencies, and in existing Management Control Agreements between criminal justice agencies and noncriminal justice governmental entities. The security addendum will make clear that access to CHRI will be limited to those officers and employees of the private contractor or its subcontractor who require the information to perform properly services for the sponsoring governmental agency, and that the service provider may not access, modify, use, or disseminate such information for inconsistent or unauthorized purposes.

2. Access to CHRI and Related Information, Subject to Appropriate Controls, by a Noncriminal Justice Governmental Agency Performing Criminal Justice Dispatching Functions or Data Processing/Information Services for a Criminal Justice Agency. Noncriminal justice governmental agencies are sometimes tasked to perform dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such delegated tasks involve the administration of criminal justice, the performance of those tasks does not convert an otherwise noncriminal justice agency into a criminal justice agency. This regulation authorizes the delegation of such tasks to noncriminal justice agencies if done pursuant to executive order, statute, regulation, or inter-agency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to CHRI to accomplish that limited function. We propose to revise 28 CFR 20.33(a)(6) and the appendix in order to confirm the authority of these noncriminal justice governmental agencies to receive CHRI and related information when approved by the FBI, subject to appropriate controls that may be imposed by the FBI.

3. Access to CHRI and Related Information by the National Instant Criminal Background Check System (NICS). The Brady Handgun Violence Prevention Act of 1993, Public Law 103–159, provides for the establishment of a National Instant Criminal Background Check System (NICS). Prior to transferring a firearm to a non-licensee, a federal firearm licensee must check the NICS (via a criminal justice agency) to see if the prospective transferee is prohibited under federal or state law from possessing a firearm. Because CHRI may contain information relevant to determining if possession of a firearm by a person is prohibited, the NICS will execute an NCIC check as part of each NICS query. Follow-up access to

the FIRS may also be necessary to resolve questions of identity. We propose to revise 28 CFR 20.33(a)(5) to confirm authority for the dissemination of CHRI and related information to criminal justice agencies for the conduct of background checks under the NICS.

4. Authority for the Director of the FBI Periodically To Revise Fee Amounts. Part 16, subpart C of title 28 of the Code of Federal Regulations establishes procedures by which an individual may obtain a copy of his or her identification record to review and may request a change, correction, or update to that record. Under 28 CFR 16.33, an individual requesting production of his or her identification record pays a fee of $18 for each such request. The authority for this fee is the Independent Offices Appropriation Act (31 U.S.C. 9701), as implemented by guidelines issued by the DOJ, *User Fee Program* (Supplement, *Department of Justice Budget Formulation and Execution Calls*), and Office of Management and Budget (OMB) Circular Number A–25, Revised (July 8, 1993). These authorities generally require that a benefit or service provided to or for any person by a federal agency be self-sustaining to the fullest extent possible, that charges be fair and equitable, and that fee amounts be periodically reassessed and adjusted as warranted.

We propose to revise 28 CFR 16.33 by adding express authority for the Director of the FBI from time to time to determine and establish a revised fee amount. The exercise of this authority by the Director of the FBI will be subject to all applicable laws, regulations, or directions of the Attorney General of the United States, and the Director of the FBI will publish in the **Federal Register** appropriate notice of revised fee amounts.

5. Update of Nomenclature and Addresses. Throughout the parts of title 28 affected by this proposed rule, the language is modernized to reflect accurately current FBI practices, the current names of systems and programs, and the name and address of the new FBI facility in West Virginia where the systems are located. The broader term "fingerprints" has been substituted for "fingerprint cards" to encompass both "hard copy" fingerprint cards as well as the electronic submission of fingerprint data. The term "fingerprints" is further intended to encompass not only all depictions of physical fingerprints (for example, inked images, electronic images, and electronic encoding) but also all related biographical or other information typically appearing on a fingerprint card. The terms "computerized criminal history" and "CCH" are changed to "Interstate Identification Index" and "III." The FBI "Identification Division" is changed to "Criminal Justice Information Services Division" or "CJIS." "NCIC Advisory Policy Board" is changed to "CJIS Advisory Policy Board." Minor modifications are being made to the definitions in 28 CFR part 20, subpart A; definitions are being added for the terms "Control Terminal Agency," "criminal history records repository," "Federal Service Coordinator," "Fingerprint Identification Records System" (FIRS), "Interstate Identification Index System" (III System), "National Crime Information Center" (NCIC), "National Fingerprint File" (NFF), and "National Identification Index" (NII); the definition of "Department of Justice criminal history record information system" is being eliminated; and the definitions are being placed in alphabetical order. In addition to the foregoing changes, the Department of Justice is currently reviewing additional changes to these regulations to be promulgated in future rulemaking. We note that 28 CFR part 20, subpart B, which also contains dated nomenclature and addresses, would not be directly changed by this proposed rule. The Department of Justice may consider possible changes to 28 CFR part 20, subpart B at some later time.

Applicable Administrative Procedures and Executive Orders; Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact on a substantial number of small entities. Most of the matters addressed by this proposed rule relate to nomenclature changes and to intra- and intergovernmental authorities not involving the private sector, or to governmental interaction with individuals in non-business contexts. The one change that relates to the private sector provides expanded authority for the dissemination of criminal justice information to private entities with whom authorized governmental agencies have contracted for criminal justice support services. Far from having any adverse effect on small entities, this change will, if anything, result in expanded opportunities for the private sector to conduct business with criminal justice agencies.

Executive Order 12866

This proposed rule has been drafted and reviewed in accordance with Executive Order 12866, section (1)(b), Principles of Regulation. The Department of Justice has determined that this proposed rule is not a significant regulatory action under Executive Order 12866, section 3(f) and accordingly this proposed rule has not been reviewed by the Office of Management and Budget.

In view of the FBI's desire to provide this increased flexibility to the states as soon as possible, a thirty day comment period is considered appropriate.

Executive Order 12612

This regulation will not have substantial, direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This proposed rule is not a major rule as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. 5 U.S.C. 804. This proposed rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Paperwork Reduction Act of 1995

This proposed rule does not contain collection of information requirements. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is not required.

Executive Order 12988: Civil Justice Reform

This proposed rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects

28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Governmental agencies), Whistleblowing.

28 CFR Part 16

Administrative practice and procedure, Courts, Freedom of Information, Privacy, Sunshine Act.

28 CFR Part 20

Classified information, Crime, Intergovernmental relations, Investigations, Law enforcement, Privacy.

28 CFR Part 50

Administrative practice and procedure.

Accordingly, Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

PART 0—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

§ 0.85 [Amended]

2. Amend § 0.85 as follows:

a. Remove the two references in paragraph (b) to "fingerprint cards" and add in their place the term "fingerprints";

b. Revise paragraph (j) to read as follows:

§ 0.85 General functions.

* * * * *

(j) Exercise the power and authority vested in the Attorney General to approve and conduct the exchanges of identification records enumerated at § 50.12(a) of this chapter.

* * * * *

PART 16—PRODUCTION OR DISCLOSURE OF MATERIAL OR INFORMATION

3. The authority citation for part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

4. Section 16.30 is revised to read as follows:

§ 16.30 Purpose and scope.

This subpart contains the regulations of the Federal Bureau of Investigation (FBI) concerning procedures to be followed when the subject of an identification record requests production of that record to review it or to obtain a change, correction, or updating of that record.

5. Section 16.31 is revised to read as follows:

§ 16.31 Definition of identification record.

An FBI identification record, often referred to as a "rap sheet," is a listing of certain information taken from fingerprint submissions retained by the FBI in connection with arrests and, in some instances, includes information taken from fingerprints submitted in connection with federal employment, naturalization, or military service. The identification record includes the name of the agency or institution that submitted the fingerprints to the FBI. If the fingerprints concern a criminal offense, the identification record includes the date of arrest or the date the individual was received by the agency submitting the fingerprints, the arrest charge, and the disposition of the arrest if known to the FBI. All arrest data included in an identification record are obtained from fingerprint submissions, disposition reports, and other reports submitted by agencies having criminal justice responsibilities. Therefore, the FBI Criminal Justice Information Services Division is not the source of the arrest data reflected on an identification record.

6. Section 16.32 is amended by revising the first sentence to read as follows:

§ 16.32 Procedure to obtain an identification record.

The subject of an identification record may obtain a copy thereof by submitting a written request via the U.S. mails directly to the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306.

* * *

7. Section 16.33 is amended by adding a sentence at the end of this section to read as follows:

§ 16.33 Fee for production of identification record.

* * * Subject to applicable laws, regulations, and directions of the Attorney General of the United States, the Director of the FBI may from time to time determine and establish a revised fee amount to be assessed under this authority. Notice relating to revised fee amounts shall be published in the **Federal Register**.

§ 16.34 [Amended]

8. Section 16.34 is amended as follows:

a. Remove the reference to the former address, from "Assistant Director" through zip code "20537–9700," and add in its place the following new address: "FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D–2, 1000 Custer Hollow Road, Clarksburg, WV 26306";

b. Remove the remaining reference to "FBI Identification Division" and add in its place "FBI CJIS Division."

PART 20—CRIMINAL JUSTICE INFORMATION SYSTEMS

9. The authority citation for part 20 continues to read as follows:

Authority: 28 U.S.C. 534; Public Law 92–544, 86 Stat. 1115; 42 U.S.C. 3711, *et seq.*, Public Law 99–169, 99 Stat. 1002, 1008–1011, as amended by Public Law 99–569, 100 Stat. 3190, 3196.

10–11. Section 20.1 is revised to read as follows:

§ 20.1 Purpose.

It is the purpose of these regulations to assure that criminal history record information wherever it appears is collected, stored, and disseminated in a manner to ensure the accuracy, completeness, currency, integrity, and security of such information and to protect individual privacy.

12. Section 20.3 is revised to read as follows:

§ 20.3 Definitions.

As used in these regulations:

(a) *Act* means the Omnibus Crime Control and Safe Streets Act, 42 U.S.C. 3701, *et seq.*, as amended.

(b) *Administration of criminal justice* means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.

(c) *Control Terminal Agency* means a duly authorized state, foreign, or international criminal justice agency with direct access to the National Crime Information Center telecommunications network providing statewide (or equivalent) service to its criminal justice users with respect to the various

systems managed by the FBI CJIS Division.

(d) *Criminal history record information* means information collected by criminal justice agencies on individuals consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittal, sentencing, correctional supervision, and release. The term does not include identification information such as fingerprint records if such information does not indicate the individual's involvement with the criminal justice system.

(e) *Criminal history record information system* means a system including the equipment, facilities, procedures, agreements, and organizations thereof, for the collection, processing, preservation, or dissemination of criminal history record information.

(f) *Criminal history record repository* means the state agency designated by the governor or other appropriate executive official or the legislature to perform centralized recordkeeping functions for criminal history records and services in the state.

(g) *Criminal justice agency* means:

(1) Courts; and

(2) A governmental agency or any subunit thereof that performs the administration of criminal justice pursuant to a statute or executive order, and that allocates a substantial part of its annual budget to the administration of criminal justice. State and federal Inspector General Offices are included.

(h) *Direct access* means having the authority to access systems managed by the FBI CJIS Division, whether by manual or automated methods, not requiring the assistance of or intervention by any other party or agency.

(i) *Disposition* means information disclosing that criminal proceedings have been concluded and the nature of the termination, including information disclosing that the police have elected not to refer a matter to a prosecutor or that a prosecutor has elected not to commence criminal proceedings; or disclosing that proceedings have been indefinitely postponed and the reason for such postponement. Dispositions shall include, but shall not be limited to, acquittal, acquittal by reason of insanity, acquittal by reason of mental incompetence, case continued without finding, charge dismissed, charge dismissed due to insanity, charge dismissed due to mental incompetency, charge still pending due to insanity, charge still pending due to mental incompetence, guilty plea, nolle prosequi, no paper, nolo contendere plea, convicted, youthful offender determination, deceased, deferred disposition, dismissed—civil action, found insane, found mentally incompetent, pardoned, probation before conviction, sentence commuted, adjudication withheld, mistrial—defendant discharged, executive clemency, placed on probation, paroled, or released from correctional supervision.

(j) *Executive order* means an order of the President of the United States or the Chief Executive of a state that has the force of law and that is published in a manner permitting regular public access.

(k) *Federal Service Coordinator* means a non-Control Terminal Agency that has a direct telecommunications line to the National Crime Information Center network.

(l) *Fingerprint Identification Records System* or "FIRS" means the following FBI records: criminal fingerprints and/or related criminal justice information submitted by authorized agencies having criminal justice responsibilities; civil fingerprints submitted by federal agencies and civil fingerprints submitted by persons desiring to have their fingerprints placed on record for personal identification purposes; identification records, sometimes referred to as "rap sheets," which are compilations of criminal history record information pertaining to individuals who have criminal fingerprints maintained in the FIRS; and a name index pertaining to all individuals whose fingerprints are maintained in the FIRS. See the FIRS Privacy Act System Notice periodically published in the **Federal Register** for further details.

(m) *Interstate Identification Index System* or "III System" means the cooperative federal-state system for the exchange of criminal history records, and includes the National Identification Index, the National Fingerprint File, and, to the extent of their participation in such system, the criminal history record repositories of the states and the FBI.

(n) *National Crime Information Center* or "NCIC" means the computerized information system, which includes telecommunications lines and any message switching facilities that are authorized by law, regulation, or policy approved by the Attorney General of the United States to link local, state, tribal, federal, foreign, and international criminal justice agencies for the purpose of exchanging NCIC related information. The NCIC includes, but is not limited to, information in the III System. See the NCIC Privacy Act System Notice periodically published in the **Federal Register** for further details.

(o) *National Fingerprint File* or "NFF" means a database of fingerprints, or other uniquely personal identifying information, relating to an arrested or charged individual maintained by the FBI to provide positive identification of record subjects indexed in the III System.

(p) *National Identification Index* or "NII" means an index maintained by the FBI consisting of names, identifying numbers, and other descriptive information relating to record subjects about whom there are criminal history records in the III System.

(q) *Nonconviction data* means arrest information without disposition if an interval of one year has elapsed from the date of arrest and no active prosecution of the charge is pending; information disclosing that the police have elected not to refer a matter to a prosecutor, that a prosecutor has elected not to commence criminal proceedings, or that proceedings have been indefinitely postponed; and information that there has been an acquittal or a dismissal.

(r) *State* means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Statute* means an Act of Congress or of a state legislature or a provision of the Constitution of the United States or of a state.

13. Subpart C is revised to read as follows:

Subpart C—Federal Systems and Exchange of Criminal History Record Information

20.30 Applicability.
20.31 Responsibilities.
20.32 Includable offenses.
20.33 Dissemination of criminal history record information.
20.34 Individual's right to access criminal history record information.
20.35 Criminal Justice Information Services Advisory Policy Board.
20.36 Participation in the Interstate Identification Index System.
20.37 Responsibility for accuracy, completeness, currency, and integrity.
20.38 Sanction for noncompliance.

Subpart C—Federal Systems and Exchange of Criminal History Record Information

§ 20.30 Applicability.

The provisions of this subpart of the regulations apply to the III System and the FIRS, and to duly authorized local, state, tribal, federal, foreign, and international criminal justice agencies

to the extent that they utilize the services of the III System or the FIRS. This subpart is applicable to both manual and automated criminal history records.

§ 20.31 Responsibilities.

(a) The Federal Bureau of Investigation (FBI) shall manage the NCIC.

(b) The FBI shall manage the FIRS to support identification and criminal history record information functions for local, state, tribal, and federal criminal justice agencies, and for noncriminal justice agencies and other entities where authorized by federal statute, state statute pursuant to Public Law 92–544, 86 Stat. 1115, Presidential executive order, or regulation or order of the Attorney General of the United States.

(c) The FBI CJIS Division may manage or utilize additional telecommunication facilities for the exchange of fingerprints, criminal history record related information, and other criminal justice information.

(d) The FBI CJIS Division shall maintain the master fingerprint files on all offenders included in the III System and the FIRS for the purposes of determining first offender status; to identify those offenders who are unknown in states where they become criminally active but are known in other states through prior criminal history records; and to provide identification assistance in disasters and for other humanitarian purposes.

§ 20.32 Includable offenses.

(a) Criminal history record information maintained in the III System and the FIRS shall include serious and/or significant adult and juvenile offenses.

(b) The FIRS excludes arrests and court actions concerning nonserious offenses, e.g., drunkenness, vagrancy, disturbing the peace, curfew violation, loitering, false fire alarm, non-specific charges of suspicion or investigation, and traffic violations (except data will be included on arrests for vehicular manslaughter, driving under the influence of drugs or liquor, and hit and run), when unaccompanied by a § 20.32(a) offense. These exclusions may not be applicable to criminal history records maintained in state criminal history record repositories, including those states participating in the NFF.

(c) The exclusions enumerated above shall not apply to federal manual criminal history record information collected, maintained, and compiled by the FBI prior to the effective date of this subpart.

§ 20.33 Dissemination of criminal history record information.

(a) Criminal history record information contained in the III System and the FIRS may be made available:

(1) To criminal justice agencies for criminal justice purposes, which purposes include the screening of employees or applicants for employment hired by criminal justice agencies;

(2, To federal agencies authorized to receive it pursuant to federal statute or Executive order;

(3) For use in connection with licensing or employment, pursuant to Public Law 92–544, 86 Stat. 1115, or other federal legislation, and for other uses for which dissemination is authorized by federal law. Refer to § 50.12 of this chapter for dissemination guidelines relating to requests processed under this paragraph;

(4) For issuance of press releases and publicity designed to effect the apprehension of wanted persons in connection with serious or significant offenses;

(5) To criminal justice agencies for the conduct of background checks under the National Instant Criminal Background Check System (NICS);

(6) To noncriminal justice governmental agencies performing criminal justice dispatching functions or data processing/information services for criminal justice agencies; and

(7) To private contractors pursuant to a specific agreement with an agency identified in paragraphs (a)(1) or (a)(6) of this section and for the purpose of providing services for the administration of criminal justice pursuant to that agreement. The agreement must incorporate a security addendum approved by the Attorney General of the United States, which shall specifically authorize access to criminal history record information, limit the use of the information to the purposes for which it is provided, ensure the security and confidentiality of the information consistent with these regulations, provide for sanctions, and contain such other provisions as the Attorney General may require. The power and authority of the Attorney General hereunder shall be exercised by the FBI Director (or the Director's designee).

(b) The exchange of criminal history record information authorized by paragraph (a) of this section is subject to cancellation if dissemination is made outside the receiving departments, related agencies, or service providers identified in paragraphs (a)(6) and (a)(7).

(c) Nothing in these regulations prevents a criminal justice agency from disclosing to the public factual information concerning the status of an investigation, the apprehension, arrest, release, or prosecution of an individual, the adjudication of charges, or the correctional status of an individual, which is reasonably contemporaneous with the event to which the information relates.

(d) Criminal history records received from the III System or the FIRS shall be used only for the purpose requested and a current record should be requested when needed for a subsequent authorized use.

§ 20.34 Individual's right to access criminal history record information.

The procedures by which an individual may obtain a copy of his or her identification record from the FBI to review and request any change, correction, or update are set forth in §§ 16.30–16.34 of this chapter. The procedures by which an individual may obtain a copy of his or her identification record from a state or local criminal justice agency are set forth in section 20.34 of the appendix to this part.

§ 20.35 Criminal Justice Information Services Advisory Policy Board.

(a) There is established a CJIS Advisory Policy Board, the purpose of which is to recommend to the FBI Director general policy with respect to the philosophy, concept, and operational principles of various criminal justice information systems managed by the FBI's CJIS Division.

(b) The Board includes representatives from state and local criminal justice agencies; members of the judicial, prosecutorial, and correctional segments of the criminal justice community; a representative of federal agencies participating in the CJIS systems; and representatives of criminal justice professional associations.

(c) All members of the Board will be appointed by the FBI Director.

(d) The Board functions solely as an advisory body in compliance with the provisions of the Federal Advisory Committee Act. Title 5, United States Code, Appendix 2.

§ 20.36 Participation in the Interstate Identification Index System.

(a) In order to acquire and retain direct access to the III System, each Control Terminal Agency and Federal Service Coordinator shall execute a CJIS User Agreement (or its functional equivalent) with the Assistant Director in Charge of the CJIS Division, FBI, to abide by all present rules, policies, and procedures of the NCIC, as well as any rules, policies, and procedures hereinafter recommended by the CJIS

Advisory Policy Board and adopted by the FBI Director.

(b) Entry or updating of criminal history record information in the III System will be accepted only from state or federal agencies authorized by the FBI. Terminal devices in other agencies will be limited to inquiries.

§ 20.37 Responsibility for accuracy, completeness, currency, and integrity.

It shall be the responsibility of each criminal justice agency contributing data to the III System and the FIRS to assure that information on individuals is kept complete, accurate, and current so that all such records shall contain to the maximum extent feasible dispositions for all arrest data included therein. Dispositions should be submitted by criminal justice agencies within 120 days after the disposition has occurred.

§ 20.38 Sanction for noncompliance.

Access to systems managed or maintained by the FBI is subject to cancellation in regard to any agency or entity that fails to comply with the provisions of subpart C.

14. The appendix to part 20 is amended by revising the commentary for subparts A and C to read as follows:

Appendix to Part 20—Commentary on Selected Sections of the Regulations on Criminal History Record Information Systems

Subpart A–§ 20.3(d). The definition of criminal history record information is intended to include the basic offender-based transaction statistics/III System (OBTS/III) data elements. If notations of an arrest, disposition, or other formal criminal justice transaction occurs in records other than the traditional "rap sheet," such as arrest reports, any criminal history record information contained in such reports comes under the definition of this subsection.

The definition, however, does not extend to other information contained in criminal justice agency reports. Intelligence or investigative information (e.g., suspected criminal activity, associates, hangouts, financial information, and ownership of property and vehicles) is not included in the definition of criminal history information.

§ 20.3(g). The definitions of criminal justice agency and administration of criminal justice in § 20.3(b) of this part must be considered together. Included as criminal justice agencies would be traditional police, courts, and corrections agencies, as well as subunits of noncriminal justice agencies that perform the administration of criminal justice pursuant to a federal or state statute or executive order and allocate a substantial portion of their budgets to the administration of criminal justice. The above subunits of noncriminal justice agencies would include, for example, the Office of Investigation of the Food and Drug Administration, which has as its principal function the detection and apprehension of persons violating criminal provisions of the Federal Food, Drug and Cosmetic Act. Also included under the definition of criminal justice agency are umbrella-type administrative agencies supplying criminal history information services, such as New York's Division of Criminal Justice Services.

§ 20.3(i). Disposition is a key concept in section 524(b) of the Act and in §§ 20.21(a)(1) and 20.21(b) of this part. It therefore is defined in some detail. The specific dispositions listed in this subsection are examples only and are not to be construed as excluding other, unspecified transactions concluding criminal proceedings within a particular agency.

§ 20.3(q). The different kinds of acquittals and dismissals delineated in § 20.3(i) are all considered examples of nonconviction data.

* * * * *

Subpart C—§ 20.31. This section defines the criminal history record information system managed by the Federal Bureau of Investigation. Each state having a record in the III System must have fingerprints on file in the FBI CJIS Division to support the III System record concerning the individual.

Paragraph (b) is not intended to limit the identification services presently performed by the FBI for local, state, tribal, and federal agencies.

§ 20.32. The grandfather clause contained in paragraph (c) of this section is designed, from a practical standpoint, to eliminate the necessity of deleting from the FBI's massive files the non-includable offenses that were stored prior to February, 1973. In the event a person is charged in court with a serious or significant offense arising out of an arrest involving a non-includable offense, the non-includable offense will also appear in the arrest segment of the III System record.

§ 20.33(a)(3). This paragraph incorporates provisions cited in 28 CFR 50.12 regarding dissemination of identification records outside the federal government for noncriminal justice purposes.

§ 20.33(a)(6). Noncriminal justice governmental agencies are sometimes tasked to perform criminal justice dispatching functions or data processing/information services for criminal justice agencies as part, albeit not a principal part, of their responsibilities. Although such inter-governmental delegated tasks involve the administration of criminal justice, performance of those tasks does not convert an otherwise non-criminal justice agency to a criminal justice agency. This regulation authorizes this type of delegation if it is effected pursuant to executive order, statute, regulation, or inter-agency agreement. In this context, the noncriminal justice agency is servicing the criminal justice agency by performing an administration of criminal justice function and is permitted access to criminal history record information to accomplish that limited function. An example of such delegation would be the Pennsylvania Department of Administration's Bureau of Consolidated Computer Services, which performs data processing for several state agencies, including the Pennsylvania State Police. Privatization of the data processing/information services or dispatching function by the noncriminal justice governmental agency can be accomplished pursuant to § 20.33(a)(7) of this part.

§ 20.34. The procedures by which an individual may obtain a copy of his manual identification record are set forth in 28 CFR 16.30–16.34.

The procedures by which an individual may obtain a copy of his III System record are as follows:

If an individual has a criminal record supported by fingerprints and that record has been entered in the III System, it is available to that individual for review, upon presentation of appropriate identification, and in accordance with applicable state and federal administrative and statutory regulations. Appropriate identification includes being fingerprinted for the purpose of insuring that he is the individual that he purports to be. The record on file will then be verified as his through comparison of fingerprints.

Procedure. 1. All requests for review must be made by the subject of the record through a law enforcement agency which has access to the III System. That agency within statutory or regulatory limits can require additional identification to assist in securing a positive identification.

2. If the cooperating law enforcement agency can make an identification with fingerprints previously taken which are on file locally and if the FBI identification number of the individual's record is available to that agency, it can make an on-line inquiry through NCIC to obtain his III System record or, if it does not have suitable equipment to obtain an on-line response, obtain the record from Clarksburg, West Virginia, by mail. The individual will then be afforded the opportunity to see that record.

3. Should the cooperating law enforcement agency not have the individual's fingerprints on file locally, it is necessary for that agency to relate his prints to an existing record by having his identification prints compared with those already on file in the FBI, or, possibly, in the state's central identification agency.

4. The subject of the requested record shall request the appropriate arresting agency, court, or correctional agency to initiate action necessary to correct any stated inaccuracy in his record or provide the information needed to make the record complete.

§ 20.36. This section refers to the requirements for obtaining direct access to the III System.

§ 20.37. The 120-day requirement in this section allows 30 days more than the similar provision in subpart B in order to allow for processing time that may be needed by the states before forwarding the disposition to the FBI.

PART 50—STATEMENTS OF POLICY

15. The authority citation for part 50 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510; and 42 U.S.C. 1921 *et seq.*, 1973c.

16. Section 50.12 is revised to read as follows:

§ 50.12 Exchange of FBI identification records.

(a) The Federal Bureau of Investigation, hereinafter referred to as the FBI, is authorized to expend funds for the exchange of identification records with officials of federally chartered or insured banking institutions to promote or maintain the security of those institutions and, if authorized by state statute and approved by the Director of the FBI, acting on behalf of the Attorney General, with officials of state and local governments for purposes of employment and licensing, pursuant to section 201 of Public Law 92–544, 86 Stat. 1115. Also, pursuant to 15 U.S.C. 78q, 7 U.S.C. 21(b)(4)(E), and 42 U.S.C. 2169, respectively, such records can be exchanged with certain segments of the securities industry, with registered futures associations, and with nuclear power plants. The records also may be exchanged in other instances as authorized by federal law.

(b) The FBI Director is authorized by 28 CFR 0.85(j) to approve procedures relating to the exchange of identification records. Under this authority, effective September 6, 1990, the FBI Criminal Justice Information Services (CJIS) Division has made all data on identification records available for such purposes. Records obtained under this authority may be used solely for the purpose requested and cannot be disseminated outside the receiving departments, related agencies, or other authorized entities. Officials at the governmental institutions and other entities authorized to submit fingerprints and receive FBI identification records under this authority must notify the individuals fingerprinted that the fingerprints will be used to check the criminal history records of the FBI. The officials making the determination of suitability for licensing or employment shall provide the applicants the opportunity to complete, or challenge the accuracy of, the information contained in the FBI identification record. These officials also must advise the applicants that procedures for obtaining a change, correction, or updating of an FBI identification record are set forth in 28 CFR 16.34. Officials making such determinations should not deny the license or employment based on information in the record until the applicant has been afforded a reasonable time to correct or complete the record, or has declined to do so. A statement incorporating these use-and-challenge requirements will be placed on all records disseminated under this program. This policy is intended to ensure that all relevant criminal record information is made available to provide for the public safety and, further, to protect the interests of the prospective employee/licensee who may be affected by the information or lack of information in an identification record.

Dated: April 29, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–11344 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–99–016]

RIN 2115–AE46

Special Local Regulations for Marine Events; Night in Venice, Great Egg Harbor, City of Ocean City, NJ

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to amend permanent special local regulations established for the Night in Venice, a marine event held annually in Great Egg Harbor, by redefining the regulated area. This action is necessary to provide a current description of the event area. This action is intended to enhance the safety of life and property during the event.

DATES: Comments must reach the Coast Guard on or before July 9, 1999.

ADDRESSES: You may mail comments to Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or hand-deliver to Room 119 at the same address between 9:30 a.m. and 2 p.m., Monday through Friday, except Federal holidays. The telephone number is (757) 398–6204. Commander (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble will become part of this docket and will be available for inspection and copying at the above address between 9:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD 05–99–016) and the specific section of this proposal to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address listed under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The current regulations at 33 CFR 100.54 establish special local regulations for the Night in Venice, a marine event held annually in Great Egg Harbor Bay. The purpose of these regulations is to control vessel traffic during the event to enhance the safety of participants, spectators, and transiting vessels. The regulated area was initially described in the current regulations by referencing prominent aids to navigation in the event area. Since the initial publication of the regulations at 33 CFR 100.504, the referenced buoys and markers have been renamed and/or repositioned.

Discussion of Proposed Rule

The Coast Guard proposes to amend the special local regulations previously established for this event by redefining the regulated area, using current aids to navigation and prominent landmarks. The general shape and overall size of the regulated area will remain the same.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order. It is not

significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This proposal merely redefines the regulated area of an existing regulation and does not impose any new restrictions on vessel traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small Entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because this proposal merely redefines the regulated area of an existing regulation and does not impose any new restrictions on vessel traffic, the Coast Guard expects the impact of this proposal to be minimal.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b), that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposal will economically affect it.

Assistance for Small Entities

In accordance with section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), the Coast Guard wants to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business or organization is affected by this rule and you have questions concerning its provisions or options for compliance, please contact S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

Unfunded Mandates

Under section 201 of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1531), the Coast Guard assessed the effects of this proposal on State, local and tribal governments, in the aggregate, and the private sector. The Coast Guard determined that this regulatory action requires no written statement under section 202 of the UMRA (2 U.S.C. 1531) because it will not result in the expenditure of $100,000,000 in any one year by State, local and tribal governments, in the aggregate, or the private sector.

Collection of Information

This proposal does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under figure 2–1, paragraph (34)(h) of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. Special local regulations issued in conjunction with a regatta or marine parade are excluded under that authority.

List of Subjects in 33 CFR Part 100

Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46 and 33 CFR 100.35.

2. Section 100.504 is amended by revising paragraph (a) to read as follows:

§ 100.504 Night in Venice, Great Egg Harbor Bay, City of Ocean City, NJ.

(a) *Regulated area.* The waters of Great Egg Harbor Bay and Beach Thorofare from Intracoastal Waterway Light 275 (LLNR 36045) northward along the entire width of the Intracoastal Waterway to the 9th Street Bridge, thence northeastward along the Ocean City Waterfront to the Long Port-Ocean City Bridge, thence northward along the Long Port-Ocean City Bridge to the northern shore, thence westward to Ships Channel Buoy 6 (LLNR 1350), thence southward to Intracoastal Waterway Light 252 (LLNR 35980), thence southwestward to the 9th Street Bridge.

* * * * *

Dated: April 16, 1999.

Roger T. Rufe, Jr.,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 99–11683 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD07–99–019]

RIN 2115–AE46

Special Local Regulations; Charleston Harbor Grand Prix, Charleston, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary special local regulations in the coastal waters off Isle of Palms, SC, for the Charleston Harbor Grand Prix, sponsored by Charleston Harbor Maritime Associates, LLC. The two day race will occur on August 14 and 15, 1999, between the hours of 12 p.m. and 3 p.m. each day, Eastern Daylight time (EDT) offshore Isle of Palms. The regulations are necessary to provide for the safety of life on navigable waters during the event.

DATES: Comments must be received on or before July 9, 1999.

ADDRESSES: Comments may be mailed to Commander, U.S. Coast Guard Group Charleston, 196 Tradd Street, Charleston, SC 29401, or may be delivered to the Operations Office at the same address between 7:30 a.m. and 3:30 p.m. Monday through Friday, except federal holidays. The telephone number is (843) 724–7628.

FOR FURTHER INFORMATION CONTACT: LTJG S.S. Brisco, (843) 724–7628, Project Manager, Coast Guard Group Charleston, SC.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their name and address, identify this rulemaking (GGD07–99–019) and the specific section of this proposal to which each

comment applies, and give a reason for each comment.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in the view of the comments. The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, it will hold a public hearing at the time and place announced by a notice in the **Federal Register**.

Background and Purpose

The proposed regulations are needed to provide for the safety of life during the Charleston Harbor Grand Prix. These proposed regulations are intended to promote safe navigation offshore Isle of Palms immediately before, during, and after the races by controlling the traffic entering, exiting, and transiting within the regulated area. The anticipated concentration of spectator vessels and participating vessels associated with the race poses a safety concern, which is addressed in these proposed special local regulations.

The proposed regulations will encompass an area north of the Charleston Harbor entrance lighted buoy 7 (LLNR 2405) with four (4) conspicuous markers indicating the corners of the regulated area. These proposed regulations would prohibit the entry or movement of spectator vessels and other non-participating vessel traffic within the regulated area on August 14 and 15, 1999, between 11 a.m. and 4 p.m. each day or at the discretion of the Coast Guard Patrol Commander.

Regulatory Evaluation

This proposal is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The proposed regulation will only be in effect for five (5) hours each day in a limited area off Charleston Harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant economic impact on a substantial number of small entities. "Small Entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their field, and governmental jurisdictions with populations of less than 50,000.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant effect upon a substantial number of small entities because this regulation will only be in effect in a limited area off Charleston Harbor for five (5) hours on two separate days.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this action and has determined under Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this proposed rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways. Proposed Regulations: In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations, as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. Add § 100.35T–07–019 to read as follows:

§ 100.35T–07–019; Charleston Harbor Grand Prix; Charleston, SC.

(a) *Definitions:*

(1) *Regulated area.* The regulated area includes all waters in the Atlantic Ocean north of Charleston Harbor entrance lighted buoy 7 (LLNR 2405) bounded by the following 4 points:

(i) 32°48′538″N, 079°43′352″W;

(ii) 32°47′279″N, 079°42′390″W;

(iii) 32°45′156″N, 079°47′740″W;

(iv) 32°46′608″N, 079°48′146″W; All coordinates reference Datum NAD: 83. Four (4) conspicuous markers will indicate the corners of the regulated area.

(2) *Spectator area.* Spectators vessels are required to remain seaward of a line drawn from 32°45′181″N, 079°46′765″W to 32°46′557″N, 079°43′420″W.

(3) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Group Charleston, South Carolina.

(b) *Special local regulations.* (1) No person or vessel may enter, transit, or remain in the regulated area unless participating in the event or authorized by the Coast Guard Patrol Commander.

(2) The Coast Guard Patrol Commander may delay, modify, or cancel the race as conditions or circumstances require.

(3) Spectator and other non-participating vessels may watch the participants on the seaward side of the racecourse maintaining a minimum distance of 500 yards behind the markers. Upon the completion of the last race all vessels may resume normal operations.

(c) *Dates.* These regulations become effectice at 11 a.m. and terminate at 4 p.m. EDT each day on August 14 and 15, 1999.

Dated: April 29, 1999.

G.W. Sutton,

Captain, U.S. Coast Guard, Acting Commander, Seventh Coast Guard District.

[FR Doc. 99–11687 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–030]

RIN 2121–AA98

Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on western Long Island Sound for the Koechlin Wedding Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of western Long Island Sound.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–030), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York, (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–030) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a Fireworks display in western Long Island Sound. This proposed regulation establishes a temporary safety zone in all waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°56′33″N 073°41′25″W (NAD 1983), approximately 400 yards east of Milton Point, Rye, New York. The proposed safety zone is effective from 8:30 p.m. until 10 p.m. on Saturday July 24, 1999. There is no rain date for this event. The proposed safety zone prevents vessels from transiting a portion of western Long Island Sound and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. There is also insufficient time to publish a Temporary final rule 30 days before the event and provide a 60 day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the Koechlin Wedding Fireworks held in western Long Island Sound, New York. This event will be held on Saturday, July 24, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of western Long Island Sound during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels may safely transit to the east of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and government jurisdiction with population of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (See **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposes rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–030, to read as follows:

§ 165.T01–030 Safety Zone: Koechlin Wedding Fireworks, Western Long Island Sound, Rye, New York

(a) *Location.* The following area is a safety zone: All waters of western Long Island Sound within a 360-yard radius of the fireworks barge in approximate position 40°56′33″ N 073°41′25″ W (NAD 1983), approximately 400 yards East of Milton Point, Rye, New York.

(b) *Effective period.* This section is effective on Saturday, July 24, 1999, from 8:30 p.m. until 10 p.m. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the port or the designated on scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11690 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–041]

RIN 2121–AA98

Safety Zone: Hastings-on-Hudson Fireworks, Hudson River, New York

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone in the Hudson River for the Hastings-on-Hudson Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of the Hudson River.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–041), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–041) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments

should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Fireworks by Grucci has submitted an Application for Approval of a Marine Event for a fireworks display in the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″N 073°53′25″W (NAD 1983), approximately 335 yards west of Hastings-on-Hudson, New York, and approximately 500 yards west of City Hall. The proposed safety zone is effective from 8:30 p.m. until 10 p.m. on July 3, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on July 5, 1999. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 750 yards of the 1,350-yard wide river. The Captain of the Port does not anticipate any negative impact on the vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. There is also insufficient time to publish a Temporary final rule 30 days before the event and provide a 60 day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the Hastings-on-Hudson Fireworks display held in the Hudson River, New York. This event will be held on Saturday, July 3, 1999. If the event is cancelled due to inclement weather, then the event will be held on July 5, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Hudson River during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels may safely transit to the west of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (**ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a

mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165, 100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–041 to read as follows:

§ 165.T01–041 Safety Zone: Hastings-on-Hudson Fireworks, Hudson River, New York.

(a) *Location.* The following area is a safety zone: All waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°59′44.5″N 073°53′25″W (NAD 1983), approximately 335 yards west of Hastings-on-Hudson, New York and approximately 500 yards west of City Hall.

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on July 3, 1999. If the event is cancelled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on July 5, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11689 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–037]

RIN 2121–AA98

Safety Zone: PricewaterhouseCooper LLP Fireworks, Hudson River, Manhattan, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the Hudson River for the PricewaterhouseCooper Fireworks Display. This action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic on a portion of the Hudson River.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–037), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–037) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a Fireworks display on the Hudson River. This proposed regulation establishes a temporary safety zone in all waters of the Hudson River within a 360-yard radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York. The proposed safety zone would be effective on Friday, June 25, 1999, from 8:30 p.m. until 10 p.m. There is no rain date for this event. The proposed safety zone prevents vessels from transiting a portion of the Hudson River and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Public notifications will be made prior to the event via local notice to mariners, and information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for one and a half hour long local event and should have negligible impact on vessel transits. There is also insufficient time to publish a Temporary final rule 30 days before the event and provide a 60 day comment period.

Discussion of Proposed Rule

The proposed safety zone is for the PricewaterhouseCooper LLP Fireworks

held on the Hudson River at Pier 60, Chelsea Piers, Manhattan, New York. This event will be held on Friday, June 25, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not bee reviewed by the Office of management and Budget under the Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of the Lower Hudson River during the event, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at, Piers 59—62 and the Piers at Castle Point, New Jersey, that vessels may safely transit to the east of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners, and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and government jurisdiction with population of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Tile II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions of State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–037 to read as follows:

§ 165.T01–037 Safety Zone: PricewaterhouseCooper LLP Fireworks, Hudson River, Manhattan, New York

(a) *Location.* The following area is a safety zone: All waters of the Hudson River within a 360-year radius of the fireworks barge in approximate position 40°44′49″N 074°01′02″W (NAD 1983), approximately 500 yards west of Pier 60, Manhattan, New York.

(b) *Effective period.* This section is effective on Friday, June 25, 1999, from 8:30 p.m. until 10 p.m. There is no rain date for this event.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other

means, the operator of a vessel shall proceed as directed.

Dated: April 27, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11688 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–042]

RIN 2121–AA98

Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, NY

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on Hempstead Harbor for the Glen Cove, NY fireworks display. this action is necessary to provide for the safety of life on navigable waters during the event. This action is intended to restrict vessel traffic in a portion of Hempstead Harbor.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Comments may be mailed to the Waterways Oversight Branch (CGD01–99–042), Coast Guard Activities New York, 212 Coast Guard Drive, Staten Island, New York 10305, or deliver them to room 205 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

The Waterways Oversight Branch of Coast Guard Activities New York maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at room 205, Coast Guard Activities New York, between 8 a.m. and 3 p.m., Monday through Friday, except federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant J. Lopez, Waterways Oversight Branch, Coast Guard Activities New York (718) 354–4193.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD01–99–042) and the specific section of this document to which each comment applies, and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose stamped, self-addressed postcards or envelopes.

The Coast Guard will consider all comments received during the comment period. It may change this proposed rule in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Waterways Oversight Branch at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

Bay Fireworks has submitted an Application for Approval of a Marine Event for a fireworks display on Hempstead Harbor. This proposed regulation establishes a temporary safety zone in all waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″N 073°39′34″W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR 27065). The proposed safety zone is effective from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is cancelled due to inclement weather, then this event will be held from 8:30 p.m. until 10 p.m. on July 5, 1999. The proposed safety zone prevents vessels from transiting a portion of Hempstead Harbor and is needed to protect boaters from the hazards associated with fireworks launched from a barge in the area. Marine traffic will still be able to transit through the western 1,075 yards of Hempstead Harbor. The Captain of the Port does not anticipate any negative impact on vessel traffic due to this event. Additionally, vessels are not precluded from mooring at or getting underway from public or private facilities at Glen Cove or Red Spring Point, NY in the vicinity of this event. Public notifications will be made prior to the event via local notice to mariners, and marine information broadcasts. The Coast Guard is limiting the comment period for this NPRM to 30 days because the proposed safety zone is only for a one and a half hour long local event and it should have negligible impact on vessel transits. The Coast Guard expects to receive no comments on this NRPM due to the limited duration of the event and the fact that it should not interfere with vessel transits.

Discussion of Proposed Rule

The proposed safety zone is for the Glen Cove, NY fireworks display held on Hempstead Harbor, New York. This event will be held on Sunday, July 4, 1999. If the event is cancelled due to inclement weather, then the event will be held on July 5, 1999. This rule is being proposed to provide for the safety of life on navigable waters during the event and to give the marine community the opportunity to comment on this event.

Regulatory Evaluation

This proposed rule is not significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although this regulation prevents traffic from transiting a portion of Hempstead Harbor, the effect of this regulation will not be significant for several reasons: the minimal time that vessels will be restricted from the area, that vessels are not precluded from getting underway, or mooring at public or private facilities in Glen Cove or Red Spring Point, NY in the vicinity of this event, that vessels may safely transit to the west of the zone, and advance notifications which will be made to the local maritime community by the Local Notice to Mariners and marine information broadcasts.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule does not provide for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 12612 and has determined that this proposed rule does not have sufficient implications for federalism to warrant the preparation of a Federalism Assessment.

Unfunded Mandates

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) [Pub. L. 104–4, 109 Stat. 48] requires Federal agencies to assess the effects of certain regulatory actions on State, local, and tribal governments, and the private sector. UMRA requires a written statement of economic and regulatory alternatives for rules that contain Federal mandates. A "Federal mandate" is a new or additional enforceable duty imposed on any State, local, or tribal government, or the private sector. If any Federal mandate causes those entities to spend, in the aggregate, $100 million or more in any one year, the UMRA analysis is required. This proposed rule does not impose Federal mandates on any State, local, or tribal governments, or the private sector.

Environment

The Coast Guard has considered the environmental impact of this proposal and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1C, this proposal is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Other Executive Orders on the Regulatory Process

In addition to the statutes and Executive Orders already addressed in this preamble, the Coast Guard considered the following executive orders in developing this proposed rule and reached the following conclusions:

E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights. This proposed rule will not effect a taking of private property or otherwise have taking implications under this Order.

E.O. 12875, Enhancing the Intergovernmental Partnership. This proposed rule will not impose, on any State, local, or tribal government, a mandate that is not required by statute and that is not funded by the Federal government.

E.O. 12988, Civil Justice Reform. This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of this Order to minimize litigation, eliminate ambiguity, and reduce burden.

E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to safety disproportionately affecting children.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR Part 165 as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

2. Add temporary § 165.T01–042 to read as follows:

§ 165.T01–042 Safety Zone: Glen Cove, New York Fireworks, Hempstead Harbor, New York.

(a) *Location.* The following area is a safety zone: All waters of Hempstead Harbor within a 360-yard radius of the fireworks barge in approximate position 40°51′58″N 073°39′34″W (NAD 1983), approximately 500 yards northeast of Glen Cove Breakwater Light 5 (LLNR) 27065).

(b) *Effective period.* This section is effective from 8:30 p.m. until 10 p.m. on July 4, 1999. If the event is canceled due to inclement weather, then this section is effective from 8:30 p.m. until 10 p.m. on July 5, 1999.

(c) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: April 23, 1999.

R.E. Bennis,

Captain, U.S. Coast Guard, Captain of the Port, New York.

[FR Doc. 99–11684 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 207–0135 EC; FRL–6336–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision—South Coast Air Quality Management District; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the comment period.

SUMMARY: EPA is reopening the comment period for a proposed rule published March 18, 1999 (64 FR 13375). On March 18, 1999, EPA proposed a limited approval and limited disapproval of revisions to the California State Implementation Plan controlling oxides of nitrogen emissions in the South Coast Air Quality Management District. This rule concerned South Coast Air Quality Management District Rule 1134.

At the request of the South Coast Air Quality Management District, EPA is reopening the comment period.

DATES: Comments must be received on or before May 19, 1999.

ADDRESSES: Comments should be submitted to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

FOR FURTHER INFORMATION CONTACT: Ed Addison U.S. EPA Region IX, at (415) 744–1160.

Dated: April 21, 1999.

Laura Yoshii,

Deputy, Regional Administrator, Region IX.

[FR Doc. 99–11707 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–60–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WI90–01–7321; FRL–6339–3]

Approval and Promulgation of Maintenance Plan Revisions; Wisconsin

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Proposed rule.

SUMMARY: We propose approval of a February 22, 1999, request from Wisconsin for State Implementation Plan (SIP) revisions to the ozone maintenance plans for Kewaunee, Sheboygan and Walworth Counties. The revisions would remove the contingency measures from the contingency plan portion of the maintenance plans.

DATES: Written comments on this proposal must be received on or before June 9, 1999.

ADDRESSES: Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the following location:

Regulation Development Section, Air Programs Branch, (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Please contact Jacqueline Nwia at (312) 886–6081 before visiting the Region 5 office.

FOR FURTHER INFORMATION CONTACT: Jacqueline Nwia, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6081.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

What action Is USEPA taking?
What is the background?
What information did the State submit?
Why is the request approvable?

What Action Is USEPA Taking?

We propose approval of revisions to the ozone maintenance plans for Kewaunee, Sheboygan and Walworth Counties, Wisconsin. The revisions remove the contingency measures from the contingency plan portion of the ozone maintenance plans.

What Is the Background?

USEPA designated Kewaunee, Sheboygan and Walworth Counties as nonattainment for the one-hour ozone National Ambient Air Quality Standard (NAAQS) in 1991. Since then, these Counties attained the one-hour ozone standard and USEPA redesignated them to attainment on August 26, 1996 (61 FR 43668). As part of the redesignation, Wisconsin submitted maintenance plans which USEPA approved into the SIP. The purpose of the maintenance plans is to ensure maintenance of the one-hour ozone NAAQS through the 10 year maintenance period. The maintenance plan contains contingency measures. Contingency provisions should identify and correct any violation of the one-hour ozone NAAQS in a timely fashion. Triggers are included in the contingency provisions. These triggers identify the need to implement contingency measures to correct an air quality problem. Triggering events may be linked to ozone air quality and/or an emission level of ozone precursors. The contingency measures would be implemented to correct a violation of the one-hour ozone standard.

We approved the maintenance plans for Kewaunee, Sheboygan and Walworth Counties on August 26, 1996 (61 FR 43668).

What Information Did the State Submit?

On February 22, 1999, Wisconsin submitted a request to revise the Kewaunee, Sheboygan and Walworth County ozone maintenance plans. Specifically, the State requested removal of the following contingency measures from the Kewaunee and Sheboygan County maintenance plans:

(1) Lower the major source threshold for industrial sources, and

(2) Implement gasoline standards to lower volatile organic compound emissions.

For Walworth County, the State requested removal of the following contingency measures from the maintenance plan:

(1) Implement Stage II vapor recovery, and

(2) Impose non-control technology guideline reasonably available control technology limits on industrial sources.

The State held a public hearing on October 27, 1998 in Milwaukee. The State did not receive public comments on the proposed revision.

Why Is the Request Approvable?

We promulgated a new National Ambient Air Quality Standard (NAAQS) for ozone on July 18, 1998. The new ozone NAAQS is 0.08 parts per million (ppm), averaged over 8 hours, which replaced the 0.12 ppm, 1-hour NAAQS.

On July 16, 1997, President Clinton issued a directive to Administrator Browner (62 FR 38421). The directive describes a plan to implement the eight-hour ozone and fine particulate matter standards and continue to implement the one-hour standard. A December 29, 1997, memorandum entitled "Guidance for Implementing the 1-Hour and Pre-Existing PM10 NAAQS" reflected the President's directive. This document provides guidance for the transition from the one-hour to the eight-hour standard.

The guidance document explains that maintenance plans remain in effect for areas where the one-hour standard is revoked. However, those maintenance plans may be revised to withdraw untriggered or unimplemented contingency measure provisions linked to the one-hour ozone standard.

USEPA revoked the one-hour ozone standard in Kewaunee, Sheboygan and Kewaunee Counties based on 1994–1996 quality assured air monitoring data on June 5, 1998 (63 FR 31014). The contingency measures proposed for removal have neither been triggered nor implemented.

We deemed Wisconsin's SIP revision request complete on March 5, 1999.

USEPA Proposed Action

After review of the SIP revision request, we find that the requested removal of the contingency measures from the maintenance plans of Kewaunee, Sheboygan, and Walworth Counties is approvable because the 1-hour standard is no longer applicable in the area as a result of revocation of the standard and these contingency measures are untriggered and unimplemented. This request meets our guidance and policies. Written comments must be received by USEPA on or by June 9, 1999.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875

Enhancing Intergovernmental Partnerships. Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084

Consultation and Coordination With Indian Tribal Governments. Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This proposed rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) of the Clean Air Act (Act) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action of the revisions to the ozone maintenance plans for these counties promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

VI. List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Nitrogen oxides, Implementation plans.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 21, 1999.

William E. Muno,

Acting Regional Administrator, Region 5.

[FR Doc. 99–11711 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6338–4]

National Priorities List for Uncontrolled Hazardous Waste Sites, Proposed Rule

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA" or "the Act"), requires that the National Oil and Hazardous Substances Pollution Contingency Plan ("NCP") include a list of national priorities among the known releases or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The National Priorities List ("NPL") constitutes this list. The NPL is

intended primarily to guide the Environmental Protection Agency ("EPA" or "the Agency") in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with the site and to determine what CERCLA-financed remedial action(s), if any, may be appropriate. This rule proposes to add one new site to the Federal Facilities section of the NPL. The site is the Alameda Naval Air Station site located in Alameda, California.

DATES: Comments regarding any of these proposed listings must be submitted (postmarked) on or before July 9, 1999.

ADDRESSES: By Postal Mail: Mail original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; (Mail Code 5201G); 401 M Street, SW; Washington, DC 20460; 703/603–9232.

By Express Mail: Send original and three copies of comments (no facsimiles or tapes) to Docket Coordinator, Headquarters; U.S. EPA; CERCLA Docket Office; 1235 Jefferson Davis Highway; Crystal Gateway #1, First Floor; Arlington, VA 22202.

By E-Mail: Comments in ASCII format only may be mailed directly to superfund.docket@epa.gov. E-mailed comments must be followed up by an original and three copies sent by mail or express mail.

For additional Docket addresses and further details on their contents, see section II, "Public Review/Public Comment," of the **SUPPLEMENTARY INFORMATION** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Yolanda Singer, phone (703) 603–8835, State, Tribal and Site Identification Center, Office of Emergency and Remedial Response (Mail Code 5204G), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460, or the Superfund Hotline, Phone (800) 424–9346 or (703) 412–9810 in the Washington, DC, metropolitan area.

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I. Background

A. What Are CERCLA and SARA?

In 1980, Congress enacted the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601–9675 ("CERCLA" or "the Act"), in response to the dangers of uncontrolled releases of hazardous substances. CERCLA was amended on October 17, 1986, by the Superfund Amendments and Reauthorization Act ("SARA"), Pub. L. 99–499, 100 Stat. 1613 *et seq.*

B. What Is the NCP?

To implement CERCLA, EPA promulgated the revised National Oil and Hazardous Substances Pollution Contingency Plan ("NCP"), 40 CFR part 300, on July 16, 1982 (47 FR 31180), pursuant to CERCLA section 105 and Executive Order 12316 (46 FR 42237, August 20, 1981). The NCP sets guidelines and procedures for responding to releases and threatened releases of hazardous substances, pollutants, or contaminants under CERCLA. EPA has revised the NCP on several occasions. The most recent comprehensive revision was on March 8, 1990 (55 FR 8666).

As required under section 105(a)(8)(A) of CERCLA, the NCP also includes "criteria for determining priorities among releases or threatened releases throughout the United States for the purpose of taking remedial action and, to the extent practicable, taking into account the potential urgency of such action for the purpose of taking removal action." ("Removal" actions are defined broadly and include a wide range of actions taken to study, clean up, prevent or otherwise address releases and threatened releases 42 U.S.C. 9601(23).)

C. What Is the National Priorities List (NPL)?

The NPL is a list of national priorities among the known or threatened releases of hazardous substances, pollutants, or contaminants throughout the United States. The list, which is appendix B of the NCP (40 CFR part 300), was required under section 105(a)(8)(B) of CERCLA, as amended by SARA. Section 105(a)(8)(B) defines the NPL as a list of "releases" and the highest priority "facilities" and requires that the NPL be revised at least annually. The NPL is intended primarily to guide EPA in determining which sites warrant further investigation to assess the nature and extent of public health and environmental risks associated with a release of hazardous substances. The NPL is only of limited significance, however, as it does not assign liability to any party or to the owner of any specific property. Neither does placing a site on the NPL mean that any remedial or removal action necessarily need be taken. See Report of the Senate Committee on Environment and Public Works, Senate Rep. No. 96–848, 96th Cong., 2d Sess. 60 (1980), 48 FR 40659 (September 8, 1983).

For purposes of listing, the NPL includes two sections, one of sites that are generally evaluated and cleaned up by EPA (the "General Superfund

section"), and one of sites that are owned or operated by other Federal agencies (the "Federal Facilities section"). With respect to sites in the Federal Facilities section, these sites are generally being addressed by other Federal agencies. Under Executive Order 12580 (52 FR 2923, January 29, 1987) and CERCLA section 120, each Federal agency is responsible for carrying out most response actions at facilities under its own jurisdiction, custody, or control, although EPA is responsible for preparing an HRS score and determining whether the facility is placed on the NPL. EPA generally is not the lead agency at Federal Facilities Section sites, and its role at such sites is accordingly less extensive than at other sites.

D. How Are Sites Listed on the NPL?

There are three mechanisms for placing sites on the NPL for possible remedial action (see 40 CFR 300.425(c) of the NCP): (1) A site may be included on the NPL if it scores sufficiently high on the Hazard Ranking System ("HRS"), which EPA promulgated as a appendix A of the NCP (40 CFR part 300). The HRS serves as a screening device to evaluate the relative potential of uncontrolled hazardous substances to pose a threat to human health or the environment. On December 14, 1990 (55 FR 51532), EPA promulgated revisions to the HRS partly in response to CERCLA section 105(c), added by SARA. The revised HRS evaluates four pathways: Ground water, surface water, soil exposure, and air. As a matter of Agency policy, those sites that score 28.50 or greater on the HRS are eligible for the NPL; (2) Each State may designate a single site as its top priority to be listed on the NPL, regardless of the HRS score. This mechanism, provided by the NCP at 40 CFR 300.425(c)(2) requires that, to the extent practicable, the NPL include within the 100 highest priorities, one facility designated by each State representing the greatest danger to public health, welfare, or the environment among known facilities in the State (see 42 U.S.C. 9605(a)(8)(B)); (3) The third mechanism for listing, included in the NCP at 40 CFR 300.425(c)(3), allows certain sites to be listed regardless of their HRS score, if all of the following conditions are met:

- The Agency for Toxic Substances and Disease Registry (ATSDR) of the U.S. Public Health Service has issued a health advisory that recommends dissociation of individuals from the release.
- EPA determines that the release poses a significant threat to public health.
- EPA anticipates that it will be more cost-effective to use its remedial authority than to use its removal authority to respond to the release.

EPA promulgated an original NPL of 406 sites on September 8, 1983 (48 FR 40658). The NPL has been expanded since then, most recently on January 19, 1999 (64 FR 2942).

E. What Happens to Sites on the NPL?

A site may undergo remedial action financed by the Trust Fund established under CERCLA (commonly referred to as the "Superfund") only after it is placed on the NPL, as provided in the NCP at 40 CFR 300.425(b)(1). ("Remedial actions" are those "consistent with permanent remedy, taken instead of or in addition to removal actions. * * *" 42 U.S.C. 9601(24).) However, under 40 CFR 300.425(b)(2) placing a site on the NPL "does not imply that monies will be expended." EPA may pursue other appropriate authorities to remedy the releases, including enforcement action under CERCLA and other laws.

F. How Are Site Boundaries Defined?

The NPL does not describe releases in precise geographical terms; it would be neither feasible nor consistent with the limited purpose of the NPL (to identify releases that are priorities for further evaluation), for it to do so.

Although a CERCLA "facility" is broadly defined to include any area where a hazardous substance release has "come to be located" (CERCLA section 101(9)), the listing process itself is not intended to define or reflect the boundaries of such facilities or releases. Of course, HRS data (if the HRS is used to list a site) upon which the NPL placement was based will, to some extent, describe the release(s) at issue. That is, the NPL site would include all releases evaluated as part of that HRS analysis.

When a site is listed, the approach generally used to describe the relevant release(s) is to delineate a geographical area (usually the area within an installation or plant boundaries) and identify the site by reference to that area. As a legal matter, the site is not coextensive with that area, and the boundaries of the installation or plant are not the "boundaries" of the site. Rather, the site consists of all contaminated areas within the area used to identify the site, as well as any other location to which contamination from that area has come to be located, or from which that contamination came.

In other words, while geographic terms are often used to designate the site (e.g., the "Jones Co. plant site") in terms of the property owned by a particular party, the site properly understood is not limited to that property (e.g., it may extend beyond the property due to contaminant migration), and conversely may not occupy the full extent of the property (e.g., where there are uncontaminated parts of the identified property, they may not be, strictly speaking, part of the "site"). The "site" is thus neither equal to nor confined by the boundaries of any specific property that may give the site its name, and the name itself should not be read to imply that this site is coextensive with the entire area within the property boundary of the installation or plant. The precise nature and extent of the site are typically not known at the time of listing. Also, the site name is merely used to help identify the geographic location of the contamination. For example, the "Jones Co. plant site," does not imply that the Jones company is responsible for the contamination located on the plant site.

EPA regulations provide that the "nature and extent of the threat presented by a release" will be determined by a Remedial Investigation/Feasibility Study ("RI/FS") as more information is developed on site contamination (40 CFR 300.5). During the RI/FS process, the release may be found to be larger or smaller than was originally thought, as more is learned about the source(s) and the migration of the contamination. However, this inquiry focuses on an evaluation of the threat posed; the boundaries of the release need not be exactly defined. Moreover, it generally is impossible to discover the full extent of where the contamination "has come to be located" before all necessary studies and remedial work are completed at a site. Indeed, the boundaries of the contamination can be expected to change over time. Thus, in most cases, it may be impossible to describe the boundaries of a release with absolute certainty.

Further, as noted above, NPL listing does not assign liability to any party or to the owner of any specific property. Thus, if a party does not believe it is liable for releases on discrete parcels of property, supporting information can be submitted to the Agency at any time after a party receives notice it is a potentially responsible party.

For these reasons, the NPL need not be amended as further research reveals more information about the location of the contamination or release.

G. How Are Sites Removed From the NPL?

EPA may delete sites from the NPL where no further response is appropriate under Superfund, as

explained in the NCP at 40 CFR 300.425(e). This section also provides that EPA shall consult with states on proposed deletions and shall consider whether any of the following criteria have been met: (i) Responsible parties or other persons have implemented all appropriate response actions required; (ii) All appropriate Superfund-financed response has been implemented and no further response action is required; or (iii) The remedial investigation has shown the release poses no significant threat to public health or the environment, and taking of remedial measures is not appropriate. As of April 26, 1999, the Agency has deleted 184 sites from the NPL.

H. Can Portions of Sites Be Deleted From the NPL as They Are Cleaned Up?

In November 1995, EPA initiated a new policy to delete portions of NPL sites where cleanup is complete (60 FR 55465, November 1, 1995). Total site cleanup may take many years, while portions of the site may have been cleaned up and available for productive use. As of April 26, 1999, EPA has deleted portions of 16 sites.

I. What Is the Construction Completion List (CCL)?

EPA also has developed an NPL construction completion list ("CCL") to simplify its system of categorizing sites and to better communicate the successful completion of cleanup activities (58 FR 12142, March 2, 1993). Inclusion of a site on the CCL has no legal significance.

Sites qualify for the CCL when: (1) Any necessary physical construction is complete, whether or not final cleanup levels or other requirements have been achieved; (2) EPA has determined that the response action should be limited to measures that do not involve construction (e.g., institutional controls); or (3) The site qualifies for deletion from the NPL.

Of the 184 sites that have been deleted from the NPL, 175 sites were deleted because they have been cleaned up (the other 9 sites were deleted based on deferral to other authorities and are not considered cleaned up). In addition, there are 424 sites also on the NPL CCL. Thus, as of February 3, 1999, the CCL consists of 599 sites. For the most up-to-date information on the CCL, see EPA's Internet site at http://www.epa.gov/superfund.

II. Public Review/Public Comment

A. Can I Review the Documents Relevant to This Proposed Rule?

Yes, documents that form the basis for EPA's evaluation and scoring of the Alameda Naval Air Station site in this rule are contained in dockets located both at EPA Headquarters in Washington, DC and in the Region 9 office in San Francisco, CA.

B. How Do I Access the Documents?

You may view the documents, by appointment only, in the Headquarters or the Region 9 docket after the appearance of this proposed rule. The hours of operation for the Headquarters docket are from 9 a.m. to 4 p.m., Monday through Friday excluding Federal holidays. Please contact the Region 9 docket for hours.

Following is the contact information for the EPA Headquarters docket: Docket Coordinator, Headquarters, U.S. EPA CERCLA Docket Office, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA 22202, 703/603–9232. (Please note this is a visiting address only. Mail comments to EPA Headquarters as detailed at the beginning of this preamble.)

The contact information for the Region 9 docket is as follows: Carolyn Douglas, Region 9 (AZ, CA, HI, NV, AS, GU), U.S. EPA, 75 Hawthorne Street, San Francisco, CA 94105, 415/744–2343.

You may also request copies from EPA Headquarters or the Region 9 docket. An informal request, rather than a formal written request under the Freedom of Information Act, should be the ordinary procedure for obtaining copies of any of these documents.

C. What Documents Are Available for Public Review at the Headquarters Docket?

The Headquarters docket for this rule contains: HRS score sheets for the proposed site; a Documentation Record for the site describing the information used to compute the score; information for any site affected by particular statutory requirements or EPA listing policies; and a list of documents referenced in the Documentation Record.

D. What Documents Are Available for Public Review at the Regional 9 Docket?

The Region 9 docket for this rule contains all of the information in the Headquarters docket, plus, the actual reference documents containing the data principally relied upon and cited by EPA in calculating or evaluating the HRS score for the Alameda Naval Air Station site. These reference documents are available only in the Region 9 docket.

E. How Do I Submit My Comments?

Comments must be submitted to EPA Headquarters as detailed at the beginning of this preamble in the **ADDRESSES** section.

F. What Happens to My Comments?

EPA considers all comments received during the comment period. Significant comments will be addressed in a support document that EPA will publish concurrently with the **Federal Register** document if, and when, the site is listed on the NPL.

G. What Should I Consider When Preparing My Comments?

Comments that include complex or voluminous reports, or materials prepared for purposes other than HRS scoring, should point out the specific information that EPA should consider and how it affects individual HRS factor values or other listing criteria (*Northside Sanitary Landfill* v. *Thomas*, 849 F.2d 1516 (D.C. Cir. 1988)). EPA will not address voluminous comments that are not specifically cited by page number and referenced to the HRS or other listing criteria. EPA will not address comments unless they indicate which component of the HRS documentation record or what particular point in EPA's stated eligibility criteria is at issue.

H. Can I Submit Comments After the Public Comment Period Is Over?

Generally, EPA will not respond to late comments. EPA can only guarantee that it will consider those comments postmarked by the close of the formal comment period. EPA has a policy of not delaying a final listing decision solely to accommodate consideration of late comments.

I. Can I View Public Comments Submitted by Others?

During the comment period, comments are placed in the Headquarters docket and are available to the public on an "as received" basis. A complete set of comments will be available for viewing in the Regional docket approximately one week after the formal comment period closes.

J. Can I Submit Comments Regarding Sites Not Currently Proposed to the NPL?

In certain instances, interested parties have written to EPA concerning sites which were not at that time proposed to the NPL. If those sites are later proposed to the NPL, parties should review their earlier concerns and, if still appropriate, resubmit those concerns for consideration during the formal

comment period. Site-specific correspondence received prior to the period of formal proposal and comment will not generally be included in the docket.

III. Contents of This Proposed Rule

A. Proposed Addition to the NPL

With today's proposed rule, EPA is proposing to add one site to the Federal Facilities section; the Alameda Naval Air Station site in Alameda, California. The site is being proposed based on an HRS score of 28.50 or above.

B. Status of NPL

A final rule published elsewhere in today's **Federal Register** finalizes 10 sites to the NPL; resulting in an NPL of 1,212 sites (1,056 in the General Superfund section and 156 in the Federal Facilities section). With this proposal of one new site, there are now 63 sites proposed and awaiting final agency action, 56 in the General Superfund section and 7 in the Federal Facilities section. (Please note there was a separate proposed rule published recently on April 23, 1999 (64 FR 19968) that proposes to add 12 new sites to the NPL along with a reproposal of one site.) Final and proposed sites now total 1,275.

IV. Executive Order 12866

A. What Is Executive Order 12866?

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

B. Is This Proposed Rule Subject to Executive Order 12866 Review?

No, the Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866 review.

V. Unfunded Mandates

A. What Is the Unfunded Mandates Reform Act (UMRA)?

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal Agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Before EPA promulgates a rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

B. Does UMRA Apply to This Proposed Rule?

No, EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments in the aggregate, or by the private sector in any one year. This rule will not impose any federal intergovernmental mandate because it imposes no enforceable duty upon State, tribal or local governments. Listing a site on the NPL does not itself impose any costs. Listing does not mean that EPA necessarily will undertake remedial action. Nor does listing require any action by a private party or determine liability for response costs. Costs that arise out of site responses result from site-specific decisions regarding what actions to take, not directly from the act of listing a site on the NPL.

For the same reasons, EPA also has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. In addition, as discussed above, the private sector is not expected to incur costs exceeding $100 million. EPA has fulfilled the requirement for analysis under the Unfunded Mandates Reform Act.

VI. Effect on Small Businesses

A. What Is the Regulatory Flexibility Act?

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

B. Has EPA Conducted a Regulatory Flexibility Analysis for This Rule?

No. While this rule proposes to revise the NPL, an NPL revision is not a typical regulatory change since it does not automatically impose costs. As stated above, adding sites to the NPL does not in itself require any action by any party, nor does it determine the liability of any party for the cost of cleanup at the site. Further, no identifiable groups are affected as a whole. As a consequence, impacts on any group are hard to predict. A site's inclusion on the NPL could increase the likelihood of adverse impacts on responsible parties (in the form of cleanup costs), but at this time EPA

cannot identify the potentially affected businesses or estimate the number of small businesses that might also be affected.

The Agency does expect that placing the sites in this proposed rule on the NPL could significantly affect certain industries, or firms within industries, that have caused a proportionately high percentage of waste site problems. However, EPA does not expect the listing of these sites to have a significant economic impact on a substantial number of small businesses.

In any case, economic impacts would occur only through enforcement and cost-recovery actions, which EPA takes at its discretion on a site-by-site basis. EPA considers many factors when determining enforcement actions, including not only a firm's contribution to the problem, but also its ability to pay. The impacts (from cost recovery) on small governments and nonprofit organizations would be determined on a similar case-by-case basis.

For the foregoing reasons, I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. Therefore, this proposed regulation does not require a regulatory flexibility analysis.

VII. National Technology Transfer and Advancement Act

A. What Is the National Technology Transfer and Advancement Act?

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

B. Does the National Technology Transfer and Advancement Act Apply To This Proposed Rule?

No. This proposed rulemaking does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

VIII. Executive Order 12898

A. What Is Executive Order 12898?

Under Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," as well as through EPA's April 1995, "Environmental Justice Strategy, OSWER Environmental Justice Task Force Action Agenda Report," and National Environmental Justice Advisory Council, EPA has undertaken to incorporate environmental justice into its policies and programs. EPA is committed to addressing environmental justice concerns, and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income, bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities.

B. Does Executive Order 12898 Apply To This Proposed Rule?

No. While this rule proposes to revise the NPL, no action will result from this proposal that will have disproportionately high and adverse human health and environmental effects on any segment of the population.

IX. Executive Order 13045

A. What Is Executive Order 13045?

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

B. Does Executive Order 13045 Apply To 3501 This Proposed Rule?

This proposed rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because the Agency does not have reason to believe the environmental health or safety risks addressed by this section present a disproportionate risk to children.

X. Paperwork Reduction Act

A. What Is the Paperwork Reduction Act?

According to the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, an Agency may not conduct or sponsor, and a person is not required to respond to a collection of information that requires OMB approval under the PRA, unless it has been approved by OMB and displays a currently valid OMB control number. The OMB control numbers for EPA's regulations, after initial display in the preamble of the final rules, are listed in 40 CFR Part 9. The information collection requirements related to this action have already been approved by OMB pursuant to the PRA under OMB control number 2070–0012 (EPA ICR No. 574).

B. Does the Paperwork Reduction Act Apply to This Proposed Rule?

No. EPA has determined that the PRA does not apply because this rule does not contain any information collection requirements that require approval of the OMB.

XI. Executive Order 12875

What Is Executive Order 12875 and Is It Applicable to This Proposed Rule?

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

This proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of

section 1(a) of Executive Order 12875 do not apply to this rule.

XII. Executive Order 13084

What Is Executive Order 13084 and Is It Applicable to This Proposed Rule?

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments because it does not significantly or uniquely affect their communities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, hazardous waste, Intergovernmental relations, Natural resources, Oil pollution, penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Dated: April 30, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 99–11706 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–133, RM–9523]

Radio Broadcasting Services; Evergreen, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 230A at Evergreen, Montana, as the community's first local broadcast service. The channel can be allotted to Evergreen without a site restriction at coordinates 48–33–33 NL and 114–16–32 WL. Canadian concurrence will be requested for the allotment of Channel 230A at Evergreen.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–133, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11641 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–134, RM–9543 and RM–9572]

Radio Broadcasting Services; Victor, MT or Drummond, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on two mutually exclusive petitions for rule making proposing a first local service at Victor or Drummond, Montana. The first is filed by Mountain West Broadcasting proposing the allotment of Channel 269C3 at Victor, Montana (RM–9543). The channel can be allotted to Victor without a site restriction at coordinates 46–25–00 NL and 114–08–57 WL. The second is filed by Battani Corporation requesting the allotment of Channel 268C at Drummond, Montana (RM–9572). The channel can be allotted to Drummond with a site restriction 51.8 kilometers (32.2 miles) southwest of the community. The coordinates for Channel 268C at Drummond are 46–16–47 and 113–31–05. Canadian concurrence will be requested for the allotment of Channel 269C3 at Victor and Channel 268C at Drummond.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009 and Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–134, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11642 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–135, RM–9522]

Radio Broadcasting Services; Groveton, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Trinity County Radio proposing the allotment of Channel 251A at Groveton, Texas, as the community's first local service. The channel can be allotted to Groveton without a site restriction at coordinates 31–03–30 NL and 95–07–36 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, Virginia 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–135, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11643 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–136, RM–9570]

Radio Broadcasting Services; Babb, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by the Battani Corporation proposing the allotment of Channel 233C3 at Babb, Montana, as the community's first local service. The channel can be allotted to Babb with a site restriction 12 kilometers (7.4 miles) southwest of the community at coordinates 48–45–34 NL and 113–31–17 WL. Canadian concurrence will be requested for the allotment of Channel 233C3 at Babb.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Robert Lewis Thompson, Taylor Thiemann & Aitken, L.C., 908 King Street, Suite 300, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–136, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11644 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–137, RM–9571]

Radio Broadcasting Services; Amazonia, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Mountain West Broadcasting proposing the allotment of Channel 273A at Amazonia, Missouri, as the community's first local service. The channel can be allotted to Amazonia with a site restriction 6.7 kilometers (4.1 miles) northeast of the community at coordinates 39–56–34 NL and 94–51–22 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Victor A. Michael, President, Mountain West Broadcasting, 6807 Foxglove Drive, Cheyenne, Wyoming 82009.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–137, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11645 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 99–138, RM–9569]

Radio Broadcasting Services; Lovelady, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Lovelady Broadcasting Company proposing the allotment of Channel 282C3 at Lovelady, Texas, as the community's first local broadcast service. The channel can be allotted to Lovelady with a site restriction 4.1 kilometers (2.5 miles) north of the community at coordinates 31–09–51 NL and 95–27–09 WL.

DATES: Comments must be filed on or before June 21, 1999, and reply comments on or before July 6, 1999.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Ann Bavender, Fletcher, Heald & Hildreth, P.L.C., 1300 N. 17th Street, 11th Floor, Arlington, VA 22209.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 99–138, adopted April 21, 1999, and released April 30, 1999. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 99–11646 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 990429112–9112–01; I.D. 040899A]

RIN 0648–AM58

Designated Critical Habitat: Proposed Critical Habitat for the Oregon Coast Coho Salmon Evolutionarily Significant Unit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; and notification of public hearings.

SUMMARY: NMFS proposes to designate critical habitat for the Oregon Coast Coho Salmon (*Oncorhynchus kisutch*) Evolutionarily Significant Unit (ESU) previously listed as a threatened species under the Endangered Species Act (ESA). Proposed critical habitat occurs in Oregon coastal river basins between Cape Blanco and the Columbia River. The areas described in this proposed rule represent the current freshwater and estuarine range inhabited by the ESU. Freshwater critical habitat includes all waterways and substrates below longstanding, naturally impassable barriers (i.e., natural

waterfalls in existence for at least several hundred years) and several dams that block access to former coho salmon habitats. The economic and other impacts resulting from this critical habitat designation are expected to be minimal.

DATES: Written comments on the proposed Oregon Coast coho salmon critical habitat designation must be received by July 9, 1999. See **SUPPLEMENTARY INFORMATION** for dates and times of public hearings. Requests for specific locations or additional public hearings must be received by June 24, 1999.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** for locations of public hearings. Written comments on this proposed rule or requests for additional public hearings or reference materials should be sent to Branch Chief, Protected Resources Division, NMFS, Northwest Region, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737; telefax (503) 230–5435.

FOR FURTHER INFORMATION CONTACT: Garth Griffin, (503) 231–2005, or Chris Mobley, (301) 713–1401.

SUPPLEMENTARY INFORMATION:

Background

The history of petitions received regarding coho salmon is summarized in the proposed rule published on July 25, 1995 (60 FR 38011). The most comprehensive petition was submitted by the Pacific Rivers Council and by 22 co-petitioners on October 20, 1993. In response to that petition, NMFS assessed the best available scientific and commercial data, including technical information from Pacific Salmon Biological and Technical Committees (PSBTCs) in Washington, Oregon, and California. The PSBTCs consisted of scientists from Federal, state, and local resource agencies, Indian tribes, universities, industries, professional societies, and public interest groups with technical expertise relevant to coho salmon. NMFS also established a Biological Review Team (BRT), composed of staff from its Northwest Fisheries Science Center and Southwest Regional Office, which conducted a coastwide status review for coho salmon (Weitkamp *et al.*, 1995; NMFS, 1997).

Based on the results of the BRT report, and after considering other information and existing conservation measures, NMFS published a proposed listing determination (60 FR 38011, July 25, 1995) that identified six ESUs of coho salmon, ranging from southern British Columbia to central California. The Oregon Coast ESU, Southern Oregon/Northern California Coasts ESU, and Central California Coast ESU were proposed for listing as threatened species, and the Olympic Peninsula ESU was found not to warrant listing. The Puget Sound/Strait of Georgia ESU and the lower Columbia River/southwest Washington Coast ESU were identified as candidates for listing. NMFS is in the process of completing status reviews for the latter two ESUs; results and findings for both will be announced in an upcoming **Federal Register** document.

On August 10, 1998, NMFS issued a final rule listing the Oregon coast coho salmon ESU as a threatened species (63 FR 42587). Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of the final listing, NMFS found that critical habitat was not determinable for this ESU. However, NMFS has compiled and reviewed the relevant information and now determines that sufficient information exists to propose designating critical habitat for the Oregon Coast ESU. NMFS will consider all available information and data in finalizing this proposal.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species * * * upon a determination by the Secretary that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the ESA, means "* * * to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

In designating critical habitat, NMFS considers the following requirements of the species: (1) Space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of this species (50 CFR 424.12(b)). In addition to these factors, NMFS also focuses on the known physical and biological features (primary constituent elements) within the designated area that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, spawning sites, food resources, water quality and quantity, and riparian vegetation (50 CFR 424.12(b)).

Use of the term "essential habitat" within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.*

Consideration of Economic and Other Factors

The economic and other impacts of a critical habitat designation have been considered and evaluated in this proposed rulemaking. NMFS identified present and anticipated activities that may adversely modify the area(s) being considered or that may be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (see 16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts resulting specifically from a critical habitat designation, above the economic and other impacts attributable to listing the species or resulting from other authorities. Since listing a species under the ESA provides significant protection to a species' habitat, in many cases, the economic and other impacts resulting from the critical habitat designation, over and above the impacts of the listing itself, are minimal. In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Impacts attributable to listing include those resulting from the "take" prohibitions contained in section 9 of the ESA and associated regulations. "Take," as defined in the ESA means "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct" (16 U.S.C. 1532(19)). Harm can occur through destruction or modification of habitat (whether or not designated as critical) that significantly

impair essential behaviors, including breeding, feeding, rearing or migration (63 FR 24148, May 1, 1998).

Significance of Designating Critical Habitat

The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and by describing the features within those areas that are essential to the species, thus alerting public and private entities to the area's importance. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the ESA section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species" (50 CFR 402.02). Using these definitions, activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside the species' current range have been designated. Federal agencies are required to consult with NMFS under section 7 (50 CFR 402.14(a)), when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides Federal agencies with a clear indication as to when consultation under section 7 of the ESA is required, particularly in cases where the proposed action would not result in immediate mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when a migratory species is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to section 7 (i.e., activities outside critical habitat that may affect essential features of the designated area).

A critical habitat designation will also assist Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in section 7 consultations. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in an agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state, and private conservation and management efforts in such areas. Management efforts may address special considerations needed in critical habitat areas, including conservation regulations that restrict private as well as Federal activities. The economic and other impacts of these actions would be considered at the time regulations are proposed and, therefore, are not considered in the critical habitat designation process. Other Federal, state, and local authorities, such as zoning or wetlands and riparian lands protection, may also benefit critical habitat areas.

Process for Designating Critical Habitat

Developing a proposed critical habitat designation involves three main considerations. First, the biological needs of the species are evaluated, and essential habitat areas and features are identified. If alternative areas exist that would provide for the conservation of the species, such alternatives are also identified. Second, the need for special management considerations or protection of the area(s) or features identified are evaluated. Finally, the probable economic and other impacts of designating these essential areas as "critical habitat" are evaluated. After considering the requirements of the species, the need for special management, and the impacts of the designation, a notification of the proposed critical habitat is published in the **Federal Register** for comment. The final critical habitat designation is promulgated after considering all comments and any new information received on the proposal. Final critical habitat designations may be revised, using the same process, as new information becomes available.

A description of the essential habitat, need for special management, impacts of designating critical habitat, and the proposed action are described in the following sections.

Critical Habitat of the Oregon Coast Coho Salmon ESU

The Oregon Coast ESU is identified as all naturally spawned populations of coho salmon in coastal streams south of the Columbia River and north of Cape Blanco (60 FR 38011, July 25, 1995). Biological information for Oregon Coast coho salmon can be found in species status assessments by NMFS (Weitkamp *et al.*, 1995; NMFS, 1997) and by the Oregon Department of Fish and Wildlife (ODFW) (Nickelson *et al.*, 1992; Kostow, 1995; and Oregon Coastal Salmon Restoration Initiative (OCSRI), 1997), and in species life history summaries by Laufle *et al.*, 1986, Emmett *et al.*, 1991, and Sandercock, 1991 and in the proposed rule **Federal Register** document (60 FR 38011, July 25, 1995).

More than one million coho salmon are believed to have returned to Oregon coastal rivers in the early 1900s (Lichatowich, 1989), the bulk of them originating in this ESU. Current production is estimated to be less than 10 percent of historical levels. ODFW recognizes at least 80 coho salmon populations within the range of this ESU (Kostow, 1995). Spawning is distributed over a relatively large number of basins, both large and small, with the bulk of the production being skewed to the southern portion of the ESU's range. There, the coastal lake systems (e.g., the Tenmile, Tahkenitch, and Siltcoos Basins) and the Coos and Coquille Rivers have been particularly productive for coho salmon. Major hydrologic units inhabited by this ESU include the Necanicum, Nehalem, Wilson-Trask-Nestucca, Siletz-Yaquina, Alsea, Siuslaw, Siltcoos, Umpqua, Coos, Coquille, and Sixes River Basins. Within these basins, numerous small streams, tributaries, and off-channel areas provide important habitat for coho salmon.

Defining specific river reaches that are critical for coho salmon is difficult because of the current low abundance of the species and of our imperfect understanding of the species' freshwater distribution, both current and historical. For example, ODFW has conducted systematic spawner surveys for the species since the 1950's and has noted that fish are often widely scattered in

larger basins and that marginal habitats may only be inhabited during years of high abundance (Kostow, 1995). Several recent efforts have been made to characterize the species' status and distribution in Oregon (Emmett *et al.*, 1991; Nickelson *et al.*, 1992; The Wilderness Society, 1993; Kostow, 1995; Weitkamp *et al.*, 1995; and OCSRI, 1997) or to identify watersheds important to at-risk populations of salmonids and resident fishes (Forest Ecosystem Management Assessment Team (FEMAT), 1993). Key among these is the ODFW effort (OCSRI, 1997) to develop a series of maps depicting "core areas" for coho salmon and other species. These core areas are defined as "reaches or watersheds within individual coastal basins that are judged to be of critical importance to the sustenance of salmon populations that inhabit those basins" (OCSRI, 1997) and are derived from 1:100,000 U.S. Geological Survey (USGS) hydrologic unit maps. The areas depicted are primarily river reaches where best available data or professional judgement indicate high concentrations of spawning or rearing coho salmon. Within the range of the Oregon Coast ESU, more than 80 areas have been identified as draft core areas, the vast majority of which are located in the larger river basins. Notably missing are core areas for smaller coastal streams which comprise approximately half of the populations in the ESU (but a small fraction of the overall ESU production). While NMFS believes that this mapping effort holds great promise to focus habitat protection and restoration efforts, the core areas are still in a draft stage and include only a subset of the areas that NMFS believes are critical habitat for coho salmon (i.e., they do not specifically identify migration corridors or essential habitat for populations in smaller streams).

Based on consideration of the best available information regarding the species' current distribution, NMFS believes that the preferred approach to identifying critical habitat for this ESU is to designate all areas accessible to any life stage of the species within the range of specified river basins. NMFS believes that adopting a more inclusive, watershed-based description of critical habitat is appropriate because it (1) recognizes the species' extensive use of diverse habitats and underscores the need to account for all of the habitat types supporting the species' freshwater and estuarine life stages; (2) takes into account the natural variability in habitat use that makes precise mapping problematic (e.g., some streams/reaches may have fish present only in years with plentiful rainfall); and (3) reinforces the important linkage between aquatic areas and adjacent riparian/upslope areas.

While NMFS is proposing to focus on accessible river reaches, it is important to note that habitat quality is intrinsically related to the quality of upland areas and upstream areas (including headwater or intermittent streams) which provide key habitat elements (e.g., large woody debris, gravel, water quality) crucial for coho salmon in downstream reaches. NMFS recognizes that estuarine habitats are critical for coho salmon and has included them in this designation. Marine habitats (i.e., oceanic or nearshore areas seaward of the mouth of coastal rivers) are also vital to the species, and ocean conditions may have a major influence on its survival. However, NMFS is still evaluating whether these areas currently warrant consideration as critical habitat, particularly whether marine areas require special management consideration or protection. Therefore, NMFS is not proposing to designate critical habitat in marine areas at this time. If additional information becomes available that supports the inclusion of such areas, NMFS may revise this designation.

Essential features of coho salmon critical habitat include adequate (1) substrate, (2) water quality, (3) water quantity, (4) water temperature, (5) water velocity, (6) cover/shelter, (7) food, (8) riparian vegetation, (9) space, and (10) safe passage conditions. Given the vast geographic range occupied by the Oregon Coast ESU and the diverse habitat types used by the various life stages, it is not practical to describe specific values or conditions for each of these essential habitat features. However, good summaries of these environmental parameters and freshwater factors that have contributed to the decline of this and other salmonids can be found in reviews by Barnhart, 1986, Pauley *et al.*, 1986, California Advisory Committee on Salmon and Steelhead Trout (CACSST), 1988, Bjornn and Reiser, 1991, Nehlsen *et al.*, 1991, California State Lands Commission, 1993, Reynolds *et al.*, 1993, Botkin *et al.*, 1995, McEwan and Jackson, 1996, NMFS, 1996a, and Spence *et al.*, 1996.

Adjacent Riparian Zones

NMFS' past critical habitat designations for listed anadromous salmonids have included the adjacent riparian zone as part of the designation. In the final designations for Snake River spring/summer chinook, fall chinook, and sockeye (58 FR 68543, December 28, 1993), NMFS included the adjacent riparian zone as part of critical habitat and defined it in the regulation as those areas within a horizontal distance of 300 feet (91.4 meters) from the normal high water line. In the critical habitat designation for Sacramento River winter run chinook (58 FR 33212, June 16, 1993), NMFS included "adjacent riparian zones" as part of the critical habitat but did not define the extent of that zone in the regulation. The preamble to that rule stated that the adjacent riparian zone was limited to "those areas that provide cover and shade."

Streams and stream functioning are inextricably linked to adjacent riparian and upland (or upslope) areas. Streams regularly submerge portions of the riparian zone via floods and channel migration, and portions of the riparian zone may contain off-channel rearing habitats used by juvenile salmonids during periods of high flow. The riparian zone also provides an array of important watershed functions that directly benefit salmonids. Vegetation in the zone shades the stream, stabilizes banks, and provides organic litter and large woody debris. The riparian zone stores sediment, recycles nutrients and chemicals, mediates stream hydraulics, and controls microclimate. Healthy riparian zones help ensure water quality essential to salmonids as well as the forage species they depend on (Reiser and Bjornn, 1979; Meehan, 1991; FEMAT, 1993; and Spence *et al.*, 1996). Human activities in the adjacent riparian zone, or in upslope areas, can harm stream function and can harm salmonids, both directly and indirectly, by interfering with the watershed functions described here. For example, timber harvest, road-building, grazing, cultivation, and other activities can increase sediment, destabilize banks, reduce organic litter and woody debris, increase water temperatures, simplify stream channels, and increase peak flows. These adverse modifications reduce the value of habitat for salmon and, in many instances, may result in injury or mortality of fish. Because human activity may adversely affect these watershed functions and habitat features, NMFS concluded the adjacent riparian zone could require special management consideration, and, therefore, was appropriate for inclusion in critical habitat.

The Snake River salmon critical habitat designation relied on analyses and conclusions reached by FEMAT (1993) regarding interim riparian reserves for fish-bearing streams on Federal lands within the range of the

northern spotted owl. The interim riparian reserve recommendations in the FEMAT report were based on a systematic review of the available literature, primarily for forested habitats, concerning riparian processes as a function of distance from stream channels. The interim riparian reserves identified in the FEMAT report for fish-bearing streams on Federal forest lands are intended to (1) provide protection to salmonids, as well as riparian-dependent and associated species, through the protection of riparian processes that influence stream function, and (2) provide a high level of fish habitat and riparian protection until site-specific watershed and project analyses can be completed. The FEMAT report identified several alternative ways that interim riparian reserves providing a high level of protection could be defined, including the 300-foot (91.4 meter) slope distance, a distance equivalent to two site-potential tree heights, the outer edges of riparian vegetation, the 100-year flood plain, or the area between the edge of the active stream channel to the top of the inner gorge, whichever is greatest. The U.S. Forest Service (USFS) and U.S. Bureau of Land Management (BLM) ultimately adopted these riparian reserve criteria as part of an Aquatic Conservation Strategy aimed at conserving fish, amphibians, and other aquatic-and riparian-dependent species in the Record of Decision (ROD) for the Northwest Forest Plan (FEMAT ROD, 1994).

While NMFS has used the findings of the FEMAT report to guide its analyses in ESA section 7 consultations with the USFS and BLM regarding management of Federal lands, NMFS recognizes that the interim riparian reserves may be conservative with regard to the protection of adjacent riparian habitat for salmonids since they are designed to protect salmonids as well as terrestrial species that are riparian dependent or associated. Moreover, NMFS' analyses have focused more on the stream functions important to salmonids and on how proposed activities will affect the riparian area's contribution to properly functioning conditions for salmonid habitat.

Since the adoption of the Northwest Forest Plan, NMFS has gained experience working with Federal and non-Federal landowners to determine the likely effects of proposed land management actions on stream functions. In freshwater and estuarine areas, these activities include, but are not limited to, agriculture; forestry; grazing; bank stabilization; construction/urbanization; dam construction/operation; dredging and dredged spoil disposal; habitat restoration projects; irrigation withdrawal, storage, and management; mineral mining; road building and maintenance; sand and gravel mining; wastewater/pollutant discharge; wetland and floodplain alteration; and woody debris/structure removal from rivers and estuaries. NMFS has developed numerous tools to assist Federal agencies in analyzing the likely impacts of their activities on anadromous fish habitat. With these tools, Federal agencies are better able to judge the impacts of their actions on salmonid habitat, taking into account the location and nature of their actions. NMFS' primary tool guiding Federal agencies is a document titled "Making Endangered Species Act Determinations of Effect for Individual or Grouped Actions at the Watershed Scale" (NMFS, 1996b). This document presents guidelines to facilitate and standardize determinations of "effect" under the ESA and includes a matrix for determining the condition of various habitat parameters. This matrix is being implemented in several northern California and Oregon coastal watersheds and is expected to help guide efforts to define salmonid risk factors and conservation strategies throughout the West Coast.

Several recent literature reviews have addressed the effectiveness of various riparian zone widths for maintaining specific riparian functions (e.g., sediment control, large woody debris recruitment) and overall watershed processes. These reviews provide additional useful information about riparian processes as a function of distance from stream channels. For example, Castelle *et al.*, 1994 conducted a literature review of riparian zone functions and concluded that riparian widths in the range of 30 meters (98 ft) appear to be the minimum needed to maintain biological elements of streams. They also noted that site-specific conditions may warrant substantially larger or smaller riparian management zones. Similarly, Johnson and Reba (1992) summarized the technical literature and found that available information supported a minimum 30-meter (98 ft) riparian management zone for salmonid protection.

A recent assessment funded by NMFS and several other Federal agencies reviewed the technical basis for various riparian functions as they pertain to salmonid conservation (Spence *et al.*, 1996). These authors suggest that a functional approach to riparian protection requires a consistent definition of riparian ecosystems based on "zones of influence" for specific riparian processes. They noted that in constrained reaches where the active channel remains relatively stable through time, riparian zones of influences may be defined based on site-potential tree heights and distance from the active channel. In contrast, they note that, in unconstrained reaches (e.g., streams in broad valley floors) with braided or shifting channels, the riparian zone of influence is more difficult to define, but recommend that it is more appropriate to define the riparian zone based on some measure of the extent of the flood plain.

Spence *et al.*, 1996 reviewed the functions of riparian zones that are essential to the development and maintenance of aquatic habitats favorable to salmonids and the available literature concerning the riparian distances that would protect these functional processes. Many of the studies reviewed indicate that riparian management widths designed to protect one function in particular, recruitment of large woody debris, are likely to be adequate to protect other key riparian functions. The reviewed studies concluded that the vast majority of large woody debris is obtained within one site-potential tree height from the stream channel (Murphy and Koski, 1989; McDade *et al.*, 1990; Robison and Beschta, 1990; Van Sickle and Gregory, 1990; FEMAT, 1993; and Cederholm, 1994). Based on the available literature, Spence *et al.*, 1996 concluded that fully protected riparian management zones of one site-potential tree would adequately maintain 90 to 100 percent of most key riparian functions of Pacific Northwest forests if the goal was to maintain instream processes over a time frame of years to decades.

Based on experience gained since the designation of critical habitat for Snake River salmon and after considering public comments and reviewing additional scientific information regarding riparian habitats, NMFS defines coho salmon critical habitat based on key riparian functions. Specifically, the adjacent riparian area is defined as the area adjacent to a stream that provides the following functions: shade, sediment, nutrient or chemical regulation, streambank stability, and input of large woody debris or organic matter. Specific guidance on assessing the potential impacts of land use activities on riparian functions can be obtained by consulting with NMFS (see **ADDRESSES**), local foresters, conservation officers, fisheries biologists, or county extension agents.

The physical and biological features that create properly functioning

salmonid habitat vary throughout the range of coho salmon and the extent of the adjacent riparian zone may change accordingly, depending on the landscape under consideration. While a site-potential tree height can serve as a reasonable benchmark in some cases, site-specific analyses provide the best means to characterize the adjacent riparian zone because such analyses are more likely to accurately capture the unique attributes of a particular landscape. Knowing what may be a limiting factor to the properly functioning condition of a stream channel on a land use or land type basis and how that may or may not affect the function of the riparian zone will significantly assist Federal agencies in assessing the potential for impacts to listed coho salmon. On Federal lands within the range of the northern spotted owl, Federal agencies should continue to rely on the Aquatic Conservation Strategy of the Northwest Forest Plan to guide their consultations with NMFS. Where there is a Federal action on non-Federal lands, Federal agencies should consider the potential effects of the activities they fund, permit, or authorize on the riparian zone adjacent to a stream that may influence the following functions: shade, sediment delivery to the stream, nutrient or chemical regulation, streambank stability, and the input of large woody debris or organic matter. In areas where the existing riparian zone is seriously diminished (e.g., in many urban settings and agricultural settings where flood control structures are prevalent), Federal agencies should focus on maintaining any existing riparian functions and restoring others where appropriate by cooperating with local watershed groups and landowners. NMFS acknowledges in its description of riparian habitat function that different land use types (e.g., timber, urban, and agricultural) will have varying degrees of impact and that activities requiring a Federal permit will be evaluated on the basis of disturbance to the riparian zone. In many cases the evaluation of an activity may focus on a particular limiting factor for a watercourse (e.g., temperature, stream bank erosion, sediment transport) and whether that activity may or may not contribute to improving or degrading the riparian habitat.

Finally, NMFS emphasizes that a designation of critical habitat does not prohibit landowners from conducting actions that modify streams or the adjacent terrestrial habitat. Critical habitat designation serves to identify important areas and essential features within those areas, thus alerting both Federal and non-Federal entities to the importance of the area for listed salmonids. Federal agencies are required by the ESA to consult with NMFS to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify critical habitat in a way that appreciably diminishes the value of critical habitat for both the survival and recovery of the listed species. The designation of critical habitat will assist Federal agencies in evaluating how their actions on Federal or non-Federal lands may affect listed coho salmon and determining when they should consult with NMFS on the impacts of their actions. When a private landowner requires a Federal permit that may result in the modification of coho salmon habitat, Federal permitting agencies will be required to ensure that the permitted action, regardless of whether it occurs in the stream channel, adjacent riparian zone, or upland areas, does not appreciably diminish the value of critical habitat for both the survival and recovery of the listed species or jeopardize the species' continued existence. For other actions, landowners should consider the needs of the listed fish and NMFS will assist them in assessing the impacts of actions.

Barriers Within the Species' Range

Within the range of the Oregon Coast ESU, coho salmon face a multitude of barriers that limit the access of juvenile and adult fish to essential freshwater habitats. In some cases these are natural barriers (e.g., waterfalls or high-gradient velocity barriers) that have been in existence for hundreds or thousands of years. Some pose an obvious physical barrier to any anadromous salmonids while others may only be surmountable during years when extreme river conditions (e.g., floods) provide passage.

Man-made barriers created in the past several decades can create significant problems for anadromous salmonids (California Department of Fish and Game (CDFG), 1965; CACSST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; and National Research Council, 1996). The extent of barriers such as culverts and road crossing structures that impede or block fish passage appears to be substantial. For example, of 532 fish presence surveys conducted in Oregon coastal basins during the 1995 survey season, nearly 15 percent of the confirmed "end of fish use" were due to human barriers, principally road culverts (OCSRI, 1997). Pushup dams/diversions and irrigation withdrawals also present significant barriers or lethal conditions (e.g., stranding, high water temperatures) to coho salmon. However, because these manmade barriers can, under certain flow conditions, be surmounted by fish or present only a temporary/seasonal barrier, NMFS does not consider them to delineate the upstream extent of critical habitat.

Since man-made impassable barriers are widely distributed throughout the range of the ESU, they can have a major downstream influence on coho salmon. Such impacts may include (1) depletion and storage of natural flows which can drastically alter natural hydrological cycles; (2) increased juvenile and adult mortality due to migration delays resulting from insufficient flows or habitat blockages; (3) loss of sufficient habitat due to delay and blockage; (4) stranding of fish resulting from rapid flow fluctuations; (5) entrainment of juveniles into poorly screened or unscreened diversions; and (6) increased mortality resulting from increased water temperatures (CACSST, 1988; Bergren and Filardo, 1991; CDFG, 1991; Reynolds *et al.*, 1993; Chapman *et al.*, 1994; Cramer *et al.*, 1995; and NMFS, 1996a). In addition to these factors, reduced flows negatively affect fish habitats in some areas due to increased deposition of fine sediments in spawning gravels, decreased recruitment of large woody debris and spawning gravels, and encroachment of riparian and non-endemic vegetation into spawning and rearing areas resulting in reduced available habitat (CASST, 1988; FEMAT, 1993; Botkin *et al.*, 1995; and NMFS, 1996a). These dam-related factors will be effectively addressed through ESA section 7 consultations and the recovery planning process.

Several hydropower and water storage projects have been built which either block access to areas used historically by coho salmon or alter the hydrograph of downstream river reaches. NMFS has identified several dams within the range of the Oregon Coast ESU that currently have no fish passage facilities to allow coho salmon access to former spawning and rearing habitats (see Table 27 to this part). While these blocked areas are potentially significant in certain basins (e.g., areas above several dams in the Umpqua River basin), NMFS believes that currently accessible habitat may be sufficient for the conservation of the ESU. NMFS has concluded that the potential for restoring access to former spawning and rearing habitat above currently impassable man-made barriers is a significant factor to be considered in determining whether such habitat is essential for the conservation of species. NMFS solicits comments and scientific information on this issue and will consider such information prior to

issuing any final critical habitat designation. This may result in the inclusion of areas above some man-made impassable barriers in a future critical habitat designation.

In the range of this ESU, at least one hydropower dam (e.g., Soda Springs Dam) is undergoing or is scheduled for relicensing by the Federal Energy Regulatory Commission (FERC). NMFS will evaluate information developed during the process of relicensing to determine whether fish passage facilities are needed at such dams to restore access to historically available habitat. Even though habitat above such barriers is not currently designated as critical, this conclusion does not foreclose the potential importance of restoring access to these areas. Therefore, NMFS will determine on a case-by-case basis during FERC relicensing proceedings whether fish passage facilities will be required to provide access to habitat that is essential for the conservation of Oregon Coast coho salmon.

Land Ownership Within the Species' Range

Table 27 to this part summarizes the major river basins inhabited by the Oregon Coast ESU, as well as counties containing basins designated as critical habitat. Major river basins containing spawning and rearing habitat for this ESU comprise approximately 10,606 square miles in Oregon. The following counties lie partially or wholly within these basins: Benton, Clatsop, Columbia, Coos, Curry, Douglas, Jackson, Josephine, Lane, Lincoln, Polk, Tillamook, Washington, and Yamhill. NMFS has also derived estimates of land ownership for each of the major river basins in the range of this ESU. Due to data limitations which prevent mapping the precise river reaches inhabited by coho salmon, the ownership estimates were based on land area within entire river basins. Aggregating all basins in the Oregon Coast ESU yields ownership estimates of approximately 35 percent Federal, 9 percent state/local, 56 percent private/other, and less than 1 percent tribal lands. These data underscore that all landholders have a role to play in protecting and restoring coho salmon and their habitat in the Oregon Coast ESU.

Critical Habitat and Indian Lands

The unique and distinctive political relationship between the United States and Indian tribes is defined by treaties, statutes, executive orders, judicial decisions, and agreements, and differentiates tribes from the other entities that deal with, or are affected by, the Federal Government. This relationship has given rise to a special Federal trust responsibility, involving the legal responsibilities and obligations of the United States toward Indian tribes and the application of fiduciary standards of due care with respect to Indian lands, tribal trust resources, and the exercise of tribal rights.

Indian lands (Indian lands are defined in the Secretarial Order of June 5, 1997, as "any lands title to which is either: (1) held in trust by the United States for the benefit of any Indian tribe or individual; or (2) held by any Indian tribe or individual subject to restrictions by the United States against alienation") were retained by tribes or have been set aside for tribal use pursuant to treaties, statutes, judicial decisions, executive orders, or agreements. These lands are managed by Indian tribes in accordance with tribal goals and objectives, within the framework of applicable laws.

As a means of recognizing the responsibilities and relationship described here and implementing the Presidential Memorandum of April 24, 1994, Government-to-Government Relations with Native American Tribal Governments, the Secretary of Commerce, and the Secretary of the Interior issued the Secretarial Order entitled "American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act" on June 5, 1997. The Secretarial Order clarifies the responsibilities of NMFS and the U.S. Fish and Wildlife Service (Services) when carrying out authorities under the ESA and requires that they consult with, and seek the participation of, the affected Indian tribes to the maximum extent practicable. The Secretarial Order further provides that the Services "shall consult with the affected Indian tribe(s) when considering the designation of critical habitat in an area that may impact tribal trust resources, tribally owned fee lands, or the exercise of tribal rights. Critical habitat shall not be designated in such areas unless it is determined essential to conserve a listed species."

NMFS has determined that the Indian tribes potentially affected by a critical habitat designation for the Oregon Coast ESU include the Siletz Tribe, Cow Creek Tribe, Coquille Tribe, and Coos/Lower Umpqua/Siuslaw Tribe. The major river basins containing reservation lands are identified in Table 27 to this part. NMFS has not yet identified tribally owned fee lands or other areas where designation of critical habitat may impact tribal trust resources or the exercise of tribal rights. NMFS will identify any such lands during government-to-government consultation with affected tribes.

NMFS will notify and work with these tribes in accordance with the agency's trust responsibilities and the Secretarial Order concerning critical habitat designation in this ESU, but the agency is not proposing to designate critical habitat on the described tribal lands at this time. In addition, tribally owned fee lands and other areas where critical habitat designation may impact the exercise of tribal rights or trust resources may be identified and included or excluded from critical habitat designation in a subsequent action. If any such lands are determined to be essential to conserve listed coho salmon, such lands may be designated critical habitat in a subsequent action.

Need for Special Management Considerations or Protection

An array of management issues encompasses these habitats and their features, and special management considerations will be needed (especially on lands and streams under Federal ownership) to ensure that the essential areas and features are maintained or restored. Activities that may require special management considerations for freshwater and estuarine life stages of listed coho salmon include, but are not limited to, (1) land management; (2) timber harvest; (3) point and non-point water pollution; (4) livestock grazing; (5) habitat restoration; (6) beaver removal; (7) irrigation water withdrawals and returns; (8) mining; (9) road construction; (10) dam operation and maintenance; (11) diking and streambank stabilization; and (12) dredge and fill activities. Not all of these activities are necessarily of current concern within every watershed; however, they indicate the potential types of activities that will require consultation in the future. Activities that are conducted on private or state lands that are not federally permitted or funded, are not subject to any additional regulations under this proposed rule. However, non-Federal landowners should be aware that any significant habitat modifications that could adversely affect listed fish, could result in a "taking" (i.e., harming or killing) of the listed species, which is prohibited under section 9 of the ESA. While marine areas are also a critical link in the species' life cycle, NMFS has not yet concluded that special management considerations are needed to conserve the habitat features in these areas. Hence, only the freshwater and estuarine areas (and their adjacent

riparian zones) are being proposed for critical habitat at this time.

Activities That May Affect Critical Habitat

A wide range of activities may affect the essential habitat requirements of listed coho salmon and other salmonids. More in-depth discussions are contained in the **Federal Register** documents announcing the proposed listing determination (60 FR 38011, July 25, 1995) as well as NMFS' document entitled "Steelhead Factors for Decline: A Supplement to the Notice of Determination for West Coast Steelhead" (NMFS, 1996a). These activities include water and land management actions of Federal agencies (i.e., USFS, BLM, U.S. Army Corps of Engineers (Corps), Federal Highway Administration (FHA), U.S. Environmental Protection Agency (EPA), Natural Resource Conservation Service (NRCS), and FERC and related or similar actions of other federally regulated projects and lands including livestock grazing allocations by USFS and BLM; hydropower sites licensed by FERC; dams built or operated by the Corps; timber sales conducted by the USFS and BLM; road building activities authorized by the FHA, USFS, and BLM; and mining and road building activities authorized by the State of Oregon. Other actions of concern include dredge and fill, mining, diking, and bank stabilization activities authorized or conducted by the Corps, and habitat modifications authorized by the Federal Emergency Management Agency (FEMA). Additionally, actions of concern could include approval of water quality standards and pesticide labeling and use restrictions administered by EPA.

The Federal agencies that will most likely be affected by this critical habitat designation include the USFS, BLM, Corps, FHA, NRCS, FEMA, EPA, and FERC. This designation will provide clear notification to these agencies, private entities, and the public of critical habitat designated for Oregon Coast coho salmon and of the boundaries of the habitat and protection provided for that habitat by the section 7 consultation process. This designation will also assist these agencies and others in evaluating the potential effects of their activities on coho salmon and their critical habitat and in determining if consultation with NMFS is needed.

Expected Economic Impacts

The economic impacts to be considered in a critical habitat designation are the incremental effects of critical habitat designation above the economic impacts attributable to listing or attributable to authorities other than the ESA (see Consideration of Economic and Other Factors). Incremental impacts result from special management activities in those areas, if any, outside the present distribution of the listed species that NMFS has determined to be essential to the conservation of the species. For the Oregon Coast ESU, NMFS has determined that the present geographic extent of their freshwater and estuarine range is likely sufficient to provide for conservation of the species, although the quality of that habitat needs improvement on many fronts. Because NMFS is not designating any areas beyond the current range of this ESU as critical habitat, the designation will result in few, if any, additional economic effects beyond those that may have been caused by listing and by other statutes.

USFS and BLM manage areas of proposed critical habitat for the Oregon Coast ESU. The Corps and other Federal agencies that may be involved with funding or permits for projects in critical habitat areas may also be affected by this designation. Because NMFS believes that virtually all "adverse modification" determinations pertaining to critical habitat would also result in "jeopardy" conclusions under ESA section 7 consultations (i.e., as a result of the species being listed), the designation of critical habitat is not expected to result in significant incremental restrictions on Federal agency activities. Critical habitat designation will, therefore, result in few, if any, additional economic effects beyond those that may have been caused by the ESA listing and by other statutes.

Public Comments Solicited

To ensure that the final action resulting from this proposal will be as accurate and effective as possible, NMFS is soliciting comments and suggestions from the public, other governmental agencies, the scientific community, industry, and any other interested parties.

NMFS requests quantitative evaluations describing the quality and extent of marine, estuarine, and freshwater habitats (including adjacent riparian zones) for juvenile and adult coho salmon as well as information on areas that may qualify as critical habitat in coastal Oregon. Areas that include the physical and biological features essential to the recovery of the species should be identified. Essential features include, but are not limited to, (1) habitat for individual and population growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and rearing of offspring; and (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species. NMFS is also requesting information regarding coho salmon distribution and habitat requirements within the range of Indian lands identified in this proposal and whether these lands should be considered essential for the conservation of the listed species or whether recovery can be achieved by limiting the designation to other lands.

NMFS recognizes that there are areas within the proposed boundaries of the ESU that historically constituted coho salmon habitat but may not be currently occupied. NMFS requests information about coho salmon in these currently unoccupied areas and whether these habitats should be considered essential to the recovery of the species or excluded from designation.

For areas where natural barriers are believed to pose a migration barrier for the species, NMFS specifically requests data and analyses concerning the following: (1) Historic accounts indicating coho salmon or other anadromous salmonids occurred above the barrier; (2) data or reports analyzing the likelihood that coho salmon or other anadromous salmonids would migrate above the barrier; and (3) other information indicating that a particular barrier is or is not naturally impassable to anadromous salmonid migration. NMFS will evaluate all new information received concerning this issue and will reconsider this issue in its final critical habitat designation.

For areas potentially qualifying as critical habitat, NMFS is requesting the following information: (1) The activities that affect the area or could be affected by the designation and (2) the economic costs and benefits of additional requirements of management measures likely to result from the designation. The economic cost to be considered in the critical habitat designation under the ESA is the probable economic impact "of the [critical habitat] designation upon proposed or ongoing activities" (50 CFR 424.19). NMFS must consider the incremental costs resulting specifically from a critical habitat designation that are above the economic effects attributable to listing the species. Economic effects attributable to listing include actions resulting from section 7 consultations under the ESA to avoid jeopardy to the species and from the taking prohibitions under section 9 of

the ESA. Comments concerning economic impacts should distinguish the costs of listing from the incremental costs that can be directly attributed to the designation of specific areas as critical habitat.

NMFS will review all public comments and any additional information regarding critical habitat of the Oregon Coast ESU and complete a final rule as soon as practicable. The availability of new information may cause NMFS to reassess the proposed critical habitat designation of this ESU.

Public Hearings

Joint Department of Commerce and Interior ESA implementing regulations state that the Secretaries shall promptly hold at least one public hearing if any person so requests within 45 days of publication of a proposed regulation to list species or to designate critical habitat (50 CFR 424.16(c)(3)). Public hearings on the proposed rule provide the opportunity for the public to give comments and to permit an exchange of information and opinion among interested parties. NMFS encourages the public's involvement in such ESA matters.

The public hearings on this action are scheduled as follows:

1. Monday, May 24, 6:30 p.m. to 9:00 p.m., Tillamook County Courthouse, Commissioners Conference Room, 201 Laurel Avenue, Tillamook, Oregon.

2. Tuesday, May 25, 6:30 p.m. to 9:00 p.m., Umpqua Discovery Center, 409 Riverfront Way, Reedsport, Oregon.

3. Wednesday, May 26, 6:30 p.m. to 9:00 p.m., Douglas County Courthouse, Room 216, 1036 SE Douglas Avenue, Roseburg, Oregon.

4. Thursday, May 27, 6:30 p.m. to 9:00 p.m., Eugene City Hall, Council Chambers, 777 Pearl Street, Eugene, Oregon.

These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other aids should be directed to Garth Griffin (see **ADDRESSES**) by 7 days prior to each meeting date.

Requests for specific locations or additional public hearings must be received by June 24, 1999 (see **ADDRESSES**).

References

A complete list of all references cited herein and maps describing the range of listed coho salmon ESUs are available upon request (see **ADDRESSES**) or via the internet at www.nwr.noaa.gov.

Classification

NMFS has determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation made pursuant to the ESA. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

NMFS proposes to designate only the current range of the Oregon Coast ESU as critical habitat. Given the affinity of this species to spawn in small tributaries, this current range encompasses a wide range of habitat, including headwater streams, as well as mainstem, off-channel, and estuarine areas. Areas excluded from this proposed designation include marine habitats in the Pacific Ocean and historically occupied areas above 6 impassable dams and headwater areas above impassable natural barriers (e.g., long-standing, natural waterfalls). Since NMFS is designating the current range of the listed species as critical habitat, this designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS and ensure that their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of habitat areas outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of that action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act. Until that time, a more detailed analysis would be premature and would not reflect the true economic impacts of the proposed action on local businesses, organizations, and governments.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the proposed critical habitat designation, if adopted, would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

This proposed rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

List of Subjects in 50 CFR Part 226

Endangered and threatened species, Incorporation by reference.

Dated: May 4, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 226 is proposed to be amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533

§§ 226.211—226.214 [Added and reserved]

2. Sections 226.211 through 226.214 are added and reserved.

3. Section 226.215 is added to read as follows:

§ 226.215 Oregon Coast coho salmon (Oncorhynchus kisutch).

Critical habitat is designated to include all river reaches accessible to listed coho salmon within the range of this ESU, except for reaches on Indian lands defined in Table 27 to this part. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches in hydrologic units and counties identified in Table 27 to this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years) and specific dams within the historical range of the ESU identified in Table 27 to this part. Hydrologic units are those defined by the Department of the Interior (DOI), U.S. Geological Survey (USGS) publication, "Hydrologic Unit Maps," Water Supply Paper 2294, 1987, and by the following DOI, USGS, 1:500,000 scale hydrologic unit map: State of Oregon (1974), which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the USGS publication and

maps may be obtained from the USGS, Map Sales, Box 25286, Denver, CO 80225. Copies may be inspected at NMFS, Protected Resources Division, 525 NE Oregon Street—Suite 500, Portland, OR 97232–2737, or NMFS, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

(a) *Oregon Coast coho salmon (Oncorhynchus kisutch).* Critical habitat is designated to include all river reaches accessible to listed coho salmon from coastal streams south of the Columbia River and north of Cape Blanco, Oregon. Critical habitat consists of the water, substrate, and adjacent riparian zone of estuarine and riverine reaches (including off-channel habitats) in hydrologic units and counties identified in Table 27 of this part. Accessible reaches are those within the historical range of the ESU that can still be occupied by any life stage of coho salmon. Inaccessible reaches are those above specific dams identified in Table 27 of this part or above longstanding, naturally impassable barriers (i.e., natural waterfalls in existence for at least several hundred years).

(b) [Reserved]

Tables 7 through 26 to this part [Added and reserved]

4. Tables 7 through 26 to this part are added and reserved.

5. Table 27 is added to part 226 to read as follows:

TABLE 27 TO PART 226—HYDROLOGIC UNITS AND COUNTIES CONTAINING CRITICAL HABITAT FOR OREGON COAST COHO SALMON, TRIBAL LANDS WITHIN THE RANGE OF THE ESU, AND DAMS/RESERVOIRS REPRESENTING THE UPSTREAM EXTENT OF CRITICAL HABITAT

Hydrologic unit name	Hydrologic unit No.	Counties and *tribal lands* contained in hydrologic unit and within the Range of ESU [1, 2]	Dams
Necanicum	17100201	Clatsop (OR), Tillamook (OR).	
Nehalem	17100202	Clatsop (OR), Columbia (OR), Tillamook (OR), Washington (OR).	
Wilson-Trask-Nestucca	17100203	Lincoln (OR), Polk (OR), Tillamook (OR), Washington (OR), Yamhill (OR).	McGuire Dam.
Siletz-Yaquina	17100204	Benton (OR), Lincoln (OR), Polk (OR), Tillamook (OR); *Siletz Tribe.*	
Alsea	17100205	Benton (OR), Lane (OR), Lincoln (OR).	
Siuslaw	17100206	Benton (OR), Douglas (OR), Lane (OR).	
Siltcoos	17100207	Douglas (OR), Lane (OR).	
North Umpqua	17100301	Douglas (OR), Lane (OR)	Cooper Creek Dam; Soda Springs Dam.
South Umpqua	17100302	Coos (OR), Douglas (OR), Jackson (OR), Josephine (OR); *Cow Creek Tribe.*	Ben Irving Dam; Galesville Dam.
Umpqua	17100303	Coos (OR), Douglas (OR), Lane (OR).	
Coos	17100304	Coos (OR), Douglas (OR); *Coos, Lower Umpqua, and Siuslaw Tribe; Coquille Tribe.*	Lower Pony Creek Dam.
Coquille	17100305	Coos (OR), Curry (OR), Douglas (OR).	
Sixes	17100306	Coos (OR), Curry (OR).	

[1] Some counties have very limited overlap with estuarine, riverine, or riparian habitats identified as critical habitat for this ESU. Consult USGS hydrologic unit maps (available from USGS) to determine specific county and basin boundaries.
[2] Tribal lands are specifically excluded from critical habitat for this ESU.

[FR Doc. 99–11696 Filed 5–7–99; 8:45 am]
BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 64, No. 89
Monday, May 10, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–484–801]

Electrolytic Manganese Dioxide From Greece: Preliminary Results of Antidumping Duty Administrative Review and Extension of Final Results

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and extension of final results.

SUMMARY: In response to a request by a respondent, Tosoh Hellas A.I.C., and an interested party, Eveready Battery Corporation, the Department of Commerce is conducting an administrative review of the antidumping duty order on electrolytic manganese dioxide from Greece.

We have preliminarily determined that sales by Tosoh Hellas A.I.C. have not been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct U.S. Customs to refund the amount of estimated antidumping duties that it collected on all appropriate entries.

We invite interested parties to comment on these preliminary results. Parties who submit comments in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Hermes Pinilla or Robin Gray, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations at 19 CFR part 351 (1998).

Background

On April 17, 1989, the Department published in the **Federal Register** (54 FR 15243) the antidumping duty order on electrolytic manganese dioxide (EMD) from Greece. On April 13, 1998, the Department published a notice of "Opportunity to Request Administrative Review" with respect to the antidumping duty order on EMD from Greece. Tosoh Hellas A.I.C. (Tosoh) requested a review on April 29, 1998, and Eveready Battery Company requested a review on April 30, 1998. In response to these requests, the Department published a notice of initiation of administrative review on May 29, 1998, in accordance with 19 CFR 351.213(b) (63 FR 29379). Although we initiated on both companies (*i.e.*, Tosoh and Eveready Battery Company), we are conducting an administrative review only of Tosoh because Eveready Battery Company is an importer and not a foreign manufacturer/exporter. On January 4, 1999, we extended the deadline for the preliminary results of the review until April 29, 1999 (see 64 FR 85). The Department is conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

Imports covered by this review are shipments of EMD from Greece. This merchandise is currently classifiable under HTS item number 2820.10.0000. EMD is manganese dioxide (MnO_2) that has been refined in an electrolysis process. The subject merchandise is an intermediate product used in the production of dry-cell batteries. EMD is sold in three physical forms, powder, chip or plate, and two grades, alkaline and zinc chloride. EMD in all three forms and both grades is included in the scope of the order. The written product description remains dispositive.

Extension of Final Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the foregoing time, the Department may extend the 120-day period for making a final determination to 180 days.

We determine that it is not practicable to issue the final results of this review within 120 days for the reasons contained in the Memorandum from Richard W. Moreland to Robert S. LaRussa, April 29, 1999, on file in Room B–099 of the Main Commerce Building. Therefore, we are extending the due date for the final results of review to 180 days after the publication of these preliminary results of review.

Period of Review

The period of review (POR) is from April 1, 1997, through March 31, 1998.

Product Comparability and Home Market Viability

In an October 16, 1998, submission, and in several subsequent submissions from Kerr-McGee Chemical LLC and Chemetals Inc. (collectively "Petitioners"), the Petitioners allege three points concerning the selection of comparable merchandise: (1) the EMD grade Tosoh sold in the home market is not a foreign like product under the definition set forth in sections 771(16)(B) or (C) of the Act; (2) the market for EMD in Greece is not viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation exists which warrants rejection of home market sales for comparison purposes.

We have preliminarily determined the following: 1) the subject merchandise sold in Greece is a foreign like product as defined under section 771(16)(B) of the Act; (2) the home market is viable within the meaning of section 773(a)(1)(C)(ii) of the Act; and (3) a particular market situation does not exist within the meaning of section 773(a)(1)(iii) of the Act.

First, we examined whether the EMD grade sold in the home market met the standards of section 771(16)(B) of the Act. Specifically, pursuant to section 771(16)(B) of the Act, we evaluated the following criteria: (1) whether the

foreign like product was produced in the same country and by the same person as the subject merchandise; (2) whether the merchandise in question is like in component material or materials and in the purposes for which used; and (3) whether the two grades (*i.e.*, zinc-chloride and alkaline) of EMD are approximately equal in commercial value.

Based on the information provided on the record we found that the merchandise in question is produced in the same country and by the same person as the subject merchandise. In addition, we found that both grades of EMD are produced using the same component materials and both grades are used in the production of dry-cell batteries.

With regard to the commercial-value criterion, we preliminarily determine that the two products are "approximately equal in commercial value" as set forth in section 771(16)(B)(iii) of the Act, based on Tosoh's statement that "there is no significant disparity between the grades that would prevent their being used for a proper price-to-price comparison." See Tosoh's January 25, 1999, submission at page 14. In addition, the products satisfy our twenty-percent difference-in-merchandise test which we generally apply to evaluate the commercial-value criterion of the statute. We have solicited additional information on this issue, however; and will analyze the issue further before making our final determination.

Based on the reasons stated above, we determined that zinc-chloride-grade EMD is a foreign like product as defined under section 771(16)(B) of the Act. For a detailed explanation of our analysis, see the Decision Memorandum from Office Director to Deputy Assistant Secretary dated April 29, 1999.

Second, we analyzed whether the home market for EMD is viable within the meaning of section 773(a)(1)(C)(ii) of the Act. Section 773(a)(1)(B)(i) of the Act identifies normal value as the price at which the foreign like product is first sold for consumption in the exporting country. Pursuant to section 773(a) of the Act, the Department will use sales in the home market as the basis for calculating normal value unless one of the conditions in section 773(a)(1)(C) applies, in which case the Department may use third-country sales as a basis for normal value. Where the home market is not viable, the Department calculates normal value based on sales to a viable third-country market or on constructed value. Under section 773(a)(1)(C)(ii) of the Act, the home market is viable where the Department determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by an exporter or producer in a country is five percent or more of the aggregate quantity (or value) of its sales of the like product to the United States. The statute provides further that, where the aggregate quantity (or value) of the foreign like product sold in the home market is below five percent of the aggregate quantity (or value) of sales of the subject merchandise in the United States, this amount will normally be considered to be insufficient. See section 773(a)(1)(C) of the Act.

To determine whether sales of the foreign like product in the home market are in sufficient quantity to form the basis for normal value, we compared Tosoh's aggregate quantity of sales of the foreign like product in the home market to the aggregate quantity of its sales of the subject merchandise to the United States. Based on the information submitted by Tosoh, we determined that Tosoh's home market sales exceed the five-percent threshold required to find them viable as defined in section 773(a)(1)(C)(ii) of the Act.

In their October 16, 1998, submission, the Petitioners note that section 773(a)(1)(C)(iii) of the Act authorizes the Department to use third-country sales for its price-to-price comparison when a particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price. Citing the Department's decision to use third-country sales in the *Final Determination of Sales at Less Than Fair Value; Fresh Salmon From Chile*, 63 FR 31411 (June 9, 1998) (*Salmon from Chile*), the Petitioners contend that there are several similarities between that case and this one. For example, they assert that the key factors in the Department's particular-market-situation determination in *Salmon from Chile* were that the home market sales involved almost exclusively "off-quality" grades of salmon that were not sold in the United States and such sales were incidental to respondents. According to the Petitioners, comparable factors are also present in this case: (1) Tosoh's home market sales during the review period consisted solely of a grade of EMD for which there is no market in the United States; and (2) the home market sales are for an aberrant use and of such small volume as to be incidental to Tosoh. The Petitioners rely on the Statement of Administrative Action (SAA) that accompanied the URAA, H. Doc. 103–316, vol. 1, 103d Cong., 2d Sess. at 822 (1994), which, they assert, establishes that a particular market situation might exist where a single sale in the home market exceeds the quantitative viability threshold of five percent or where there is government control over pricing to such an extent that home market prices cannot be considered to be set competitively. In addition, the Petitioners contend, the SAA also mentions situations in which demand patterns are different in the foreign market and the United States as a possible circumstance for finding a particular market situation and basing normal value on sales to a different market.

We have found no evidence of a particular market situation, within the meaning of section 773(a)(1)(C)(iii) of the Act, which would prevent a proper price comparison and which warrants a departure from the normal five-percent viability test. For example, there is no evidence to suggest that a single sale in the home market constitutes five percent of sales to the United States, that there are extensive government controls over pricing in the Greek home market, or that there are differing patterns of demand for EMD in the United States and in the home market. For a detailed explanation of our analysis, see our Decision Memorandum.

Regarding the Petitioners' reliance on *Salmon from Chile*, in that case the Department determined that a particular market situation existed because the home market was incidental to the respondents' operations. The Department found that the merchandise sold in the home market was comprised mostly of "industrial" or "off-quality" grade salmon (*i.e.*, salmon with severe defects or of poor quality) sold directly from the factory depending on availability whereas the merchandise sold in the U.S. market was comprised of "premium" grade sold through distributors. The record in this case does not demonstrate that the EMD Tosoh sold in the home market had severe defects or was of poor quality. In addition, unlike in *Salmon from Chile*, the respondent in this case guarantees the quality of its products, regardless of EMD grade, and both types of EMD grades meet the general specifications customers required. Also, we have not found any evidence to suggest that home market sales are incidental to Tosoh.

Therefore, we have used Tosoh's home market sales in our determination of normal value for these preliminary results.

Constructed Export Price

For the price to the United States, we used constructed export price (CEP) as defined in section 772(b) of the Act. We calculated CEP based on packed, carriage and insurance, or delivered price to unaffiliated purchasers in the United States. We made deductions for any movement expenses in accordance with section 772(c)(2)(A) of the Act.

In accordance with section 772(d)(1) of the Act and the SAA (at 823–824), we calculated the CEP by deducting selling expenses associated with economic activities occurring in the United States, including direct selling expenses, and indirect selling expenses incurred in the United States.

With respect to CEP profit, section 772(d)(3) of the Act requires the Department, in determining CEP, to identify and deduct from the starting price in the U.S. market an amount for profit allocable to selling and further-manufacturing activities in the United States. Section 772(f) of the Act provides the rule for determining the amount of CEP profit to deduct from the CEP starting price. In this review, since we do not have any cost information to calculate CEP profit, we determined that the best available sources of profit information are the 1997 financial statements which the respondent and its U.S. affiliate submitted in response to section A of our questionnaire. See Analysis Memorandum dated April 29, 1999.

Normal Value

In calculating normal value, as we stated above, we determined that the quantity of foreign like product sold by the respondent in the exporting country was sufficient to permit a proper comparison with the sales of the subject merchandise to the United States pursuant to section 773(a)(1) of the Act because the quantity of sales in the home market was greater than five percent of the sales to the U.S. market. Therefore, in accordance with section 773(a)(1)(B)(i) of the Act, we based normal value on the price at which the foreign like product was for consumption in the exporting country. See Analysis Memorandum dated April 29, 1999.

We calculated monthly, weighted-average normal values. Because identical merchandise was not sold during the relevant contemporaneous period, we compared U.S. sales to sales of the most similar foreign like product in accordance with section 771(16)(B) of the Act.

Home market prices were based on packed, free-on-truck prices to the unaffiliated purchasers in the home market. Where applicable, we made adjustments for differences in packing and for movement expenses in accordance with sections 773(a)(6)(A) and (B) of the Act. We also made adjustments for differences in costs attributable to differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act.

Level of Trade

To the extent practicable, we determined normal value for sales at the same level of trade as the U.S. sales in accordance with section 773(a)(1)(B) of the Act. The normal value level of trade is that of the starting-price sales in the home market, as adjusted under section 772(d) of the Act. See 19 CFR 351.412(c)(ii).

To determine whether home market sales were at a different level of trade than U.S. sales, we examined stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. Tosoh reported one channel of distribution in the home market. Therefore, we found that the one home market channel constituted one level of trade. All of Tosoh's U.S. sales were CEP sales. In this case, we identified the level of trade based on the price after the deduction of expenses and profit under section 772(d) of the Act. Based on our analysis, we considered CEP sales to constitute a single level of trade. Based on the record, we found that there were significant differences between the selling activities associated with the home market level of trade and those associated with the CEP level of trade. Therefore, we determined that CEP sales are at a different level of trade than the home market sales. Consequently, we could not match U.S. sales to sales at the same level of trade in the home market. Moreover, data necessary to determine a level-of-trade adjustment was not available. Therefore, because home market sales were made at a more advanced stage of distribution than that of the CEP level, we made a CEP-offset adjustment when comparing CEP and home market sales in accordance with section 773(a)(7)(B) of the Act. For a more detailed description of our analysis, see the Level-of-Trade section of our Analysis Memorandum dated April 29, 1999.

Preliminary Results of Review

As a result of our review, we preliminarily determine the weighted-average dumping margin for the period April 1, 1997, through March 31, 1998 to be as follows:

Company	Margin (Percent)
Tosh	0.00

Public Comment

Because we are requesting additional information, we will establish a briefing schedule at a later date. Parties should contact the Department within 15 days of the date of publication of this notice for the briefing and hearing schedule. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed.

Oral presentations will be limited to issues raised in the briefs. All memoranda to which we refer in this notice can be found in the public reading room, located in the Central Records Unit, room B–099 of the main Department of Commerce building. Any hearing, if requested, will be held three days after the scheduled date for submission of rebuttal briefs.

The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 180 days of publication of these preliminary results.

Upon completion of the final results of this administrative review, if there is no change from our preliminary results, we will instruct the U.S. Customs Service to liquidate all appropriate entries at without regard to antidumping duties.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash-deposit rate for Tosoh will be the rate established in the final results of this review (except that no deposit will be required if the firm has a zero or *de minimis* margin, *i.e.*, a margin less than 0.5 percent); (2) for previously reviewed or investigated companies not listed

above, the cash-deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation (LTFV), but the manufacturer is, the cash-deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash-deposit rate for all other manufacturers or exporters will be 36.72 percent. This is the "all others" rate from the LTFV investigation which we are reinstating in accordance with the decisions by the Court of International Trade in *Floral Trade Council* v. *United States*, Slip Op. 93–79 (May 25, 1993), and *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93–83 (May 25, 1993). These cash-deposit rates, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this determination in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: April 29, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11723 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–501]

Final Results of Expedited Sunset Review: Natural Bristle Paintbrushes and Brush Heads From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of expedited sunset review: natural bristle paintbrushes and brush heads from the People's Republic of China.

SUMMARY: On January 4, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping order on natural bristle paintbrushes and brush heads from the People's Republic of China (64 FR 364) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate and substantive comments filed on behalf of the domestic industry and inadequate response (in this case, no response) from respondent interested parties, the Department determined to conduct an expedited review. As a result of this review, the Department finds that revocation of the antidumping order would be likely to lead to continuation or recurrence of dumping at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Scott E. Smith or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–6397 or (202) 482–1560, respectively.

EFFECTIVE DATE: May 10, 1999.

Statute and Regulations

This review was conducted pursuant to sections 751(c) and 752 of the Act. The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Scope

The merchandise subject to this antidumping order is natural bristle paint brushes and brush heads from the People's Republic of China. Natural bristle "bristle packs," which are groups of natural bristles held together at the base with glue that closely resemble a traditional paintbrush head are within the scope of the order.[1] Excluded from the order are paintbrushes with a blend of 60 percent synthetic and 40 percent natural fibers.[2] The merchandise under review is currently classifiable under item 9603.40.40.40 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise is dispositive.

This review covers imports from all manufacturers and exporters of Chinese natural bristle paintbrushes and brush heads.

Background

On January 4, 1999, the Department initiated a sunset review of the antidumping order on natural bristle paintbrushes and brush heads from the People's Republic of China (64 FR 364), pursuant to section 751(c) of the Act. The Department received a Notice of Intent to Participate on behalf of the Paint Applicator Division ("PAD") of the American Brush Manufacturers Association and its participating members on January 19, 1999, within the deadline specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. PAD claimed interested party status under 771(9)(E) of the Act as a trade association, the majority of whose members manufacture, produce, or wholesale a domestic like product in the U.S. The member companies of PAD also claimed interested party status under 771(9)(C) of the Act as U.S. producers of a domestic like product.[3] In addition, PAD indicated that five of its member companies were among the original petitioners in the proceeding.[4] We received a complete substantive response from PAD on February 3, 1999, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). We did not receive a substantive response from any respondent interested party to this proceeding. As a result, pursuant to 19 CFR 351.218(e)(1)(ii)(C), the Department determined to conduct an expedited, 120-day, review of this order.

Determination

In accordance with section 751(c)(1) of the Act, the Department conducted this review to determine whether revocation of the antidumping order would be likely to lead to continuation

[1] *See* Memo to Joe Spetrini, Re: Final Scope Ruling on Antidumping Duty Order on Natural Bristle Paintbrushes and Brush Heads from the People's Republic of China (May 12, 1997).

[2] *See Scope Rulings*, 59 FR 25615 (May 17, 1994).

[3] The members of PAD are: EZ Paintr Corporation, Bestt Liebco, Wooster Brush Company, Purdy Corporation, Tru*Serv Manufacturing and Linzer Products Corporation.

[4] These five companies are: EZ Paintr Corporation, Bestt Liebco (formerly Joseph Lieberman & Sons, Inc.), Wooster Brush Company, Purdy Corporation, Tru*Serv Manufacturing (formerly Baltimore Brush & Roller Co., Inc.).

or recurrence of dumping. Section 752(c) of the Act provides that, in making this determination, the Department shall consider the weighted-average dumping margins determined in the investigation and subsequent reviews and the volume of imports of the subject merchandise for the period before and the period after the issuance of the antidumping order, and shall provide to the International Trade Commission ("the Commission") the magnitude of the margin of dumping likely to prevail if the order is revoked.

The Department's determinations concerning continuation or recurrence of dumping and the magnitude of the margin are discussed below. In addition, PAD's comments with respect to continuation or recurrence of dumping and the magnitude of the margin are addressed within the respective sections below.

Continuation or Recurrence of Dumping

Drawing on the guidance provided in the legislative history accompanying the Uruguay Round Agreements Act ("URAA"), specifically the Statement of Administrative Action ("the SAA"), H.R. Doc. No. 103–316, vol. 1 (1994), the House Report, H.R. Rep. No. 103–826, pt.1 (1994), and the Senate Report, S. Rep. No. 103–412 (1994), the Department issued its *Sunset Policy Bulletin* providing guidance on methodological and analytical issues, including the bases for likelihood determinations. In its *Sunset Policy Bulletin*, the Department indicated that determinations of likelihood will be made on an order-wide basis (*see* section II.A.3). In addition, the Department indicated that normally it will determine that revocation of an antidumping order is likely to lead to continuation or recurrence of dumping where (a) Dumping continued at any level above *de minimis* after the issuance of the order, (b) imports of the subject merchandise ceased after the issuance of the order, or (c) dumping was eliminated after the issuance of the order and import volumes for the subject merchandise declined significantly (*see* section II.A.3).

In addition to the guidance on likelihood determinations provided in the *Sunset Policy Bulletin* and legislative history, section 751(c)(4)(B) of the Act provides that the Department shall determine that revocation of an order is likely to lead to continuation or recurrence of dumping where a respondent interested party waives its participation in the sunset review. In the instant review, the Department did not receive a response from any respondent interested party. Pursuant to section 351.218(d)(2)(iii) of the *Sunset Regulations*, this constitutes a waiver of participation.

The antidumping duty order on natural bristle paintbrushes and brush heads from the People's Republic of China was published in the **Federal Register** on February 14, 1986 (51 FR 5580). Since that time, the Department has conducted several administrative reviews.[5] The order remains in effect for all manufacturers and exporters of the subject merchandise.

In its substantive response, PAD argues that the Department should determine that revocation of the antidumping duty order on imports on natural bristle paintbrushes and brush heads and brush heads from China would likely result in the continuation of dumping in the United States (*see* February 3, 1999 Substantive Response of PAD at 11). With respect to whether dumping continued at any level above *de minimis* after the issuance of the order, PAD states that dumping has continued at substantial margins since the order was imposed in 1986 (*see* February 3, 1999 Substantive Response of PAD at 12).

With respect to whether imports of the subject merchandise ceased after the issuance of the order, PAD states that imports of natural bristle paintbrushes from China have declined significantly since the order was imposed (*see* February 3, 1999 Substantive Response of PAD at 14). Citing USDOC trade statistic data and U.S. Census Bureau trade statistic data, PAD asserts that imports of the subject merchandise have decreased from 38,000,000 units in 1984 (the last full year before the petition was filed) to 1,225,000 units in 1997 (the most recent full year for which data are available). PAD notes, however, the imports of subject merchandise continue.

In conclusion, PAD argues that the Department should determine that there is a likelihood that dumping would continue were the order revoked because (1) Dumping margins above *de minimis* levels have been in place since the imposition of the order, (2) imports of subject merchandise, while significantly below pre-order levels, have, nevertheless, continued since the issuance of the order, and (3) there was an increase in imports from 1994 to 1995 which coincided with the period of review in which the Department preliminarily determined that imports were being dumped at substantial margins.

As discussed in Section II.A.3 of the *Sunset Policy Bulletin*, the SAA at 890, and the House Report at 63–64, if companies continue dumping with the discipline of an order in place, the Department may reasonably infer that dumping would continue if the discipline were removed. Dumping margins above *de minimis* levels continue to exist for shipments of the subject merchandise from all Chinese producers/exporters.[6]

Consistent with section 752(c) of the Act, the Department also considered the volume of imports before and after issuance of the order. The Department, utilizing U.S. Census Bureau IM146 reports and data from our original investigation and subsequent administrative reviews, can confirm that imports of the subject merchandise decreased sharply following the imposition of the order but have continued in commercial quantities throughout the life of the order.

Based on this analysis, the Department finds that the existence of dumping margins after the issuance of the order is highly probative of the likelihood of continuation or recurrence of dumping. Deposit rates above *de minimis* levels continue in effect for exports of the subject merchandise by all known Chinese manufacturers/exporters. Therefore, given that dumping has continued over the life of the order, respondent interested parties have waived their right to participate in this review before the Department, and absent argument and evidence to the contrary, the Department determines that dumping is likely to continue if the order were revoked.

[5] *See Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 55 FR 42599 (October 22, 1990); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 61 FR 52917 (October 9, 1996); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 62 FR 11823 (March 13, 1997); and *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 63 FR 12449 (March 13, 1998).

[6] *See Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 55 FR 42599 (October 22, 1990); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 61 FR 52917 (October 9, 1996); *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 62 FR 11823 (March 13, 1997); and *Natural Bristle Paint Brushes and Brush Heads From the People's Republic of China; Final Results of Administrative Review of Antidumping Order*, 63 FR 12449 (March 13, 1998).

Magnitude of the Margin

In the *Sunset Policy Bulletin,* the Department stated that it will normally provide to the Commission the margin that was determined in the final determination in the original investigation. Further, for companies not specifically investigated or for companies that did not begin shipping until after the order was issued, the Department normally will provide a margin based on the "all others" rate from the investigation. (*See* section II.B.1 of the *Sunset Policy Bulletin.*) Exceptions to this policy include the use of a more recently calculated margin, where appropriate, and consideration of duty absorption determinations. (*See* sections II.B.2 and 3 of the *Sunset Policy Bulletin.*)

The Department, in its notice of the antidumping duty order on natural bristle paintbrushes and brush heads from the PRC, established a country-wide weighted-average dumping margin of 127.07 percent for all imports of the subject merchandise from the People's Republic of China (51 FR 5580, February 14, 1986). We note that, to date, the Department has not issued any duty absorption findings in this case.

In its substantive response, PAD argues that the Department should report to the Commission the more recently calculated and higher margin of 351.92 percent for all Chinese exporters and producers (61 FR 52917, October 9, 1996).[7] PAD asserts that the circumstances for reporting a more recent and higher margin as described by the Department in its policy bulletin and recent determinations are present (*see* February 3, 1999 Substantive Response of PAD at 18). Citing the *Sunset Policy Bulletin,* PAD states that in certain circumstances, because a foreign exporter or producer may "choose to increase dumping in order to maintain or increase market share," higher, more recently calculated margins may be more probative of a company's likely behavior in the absence of the order.

The Department agrees with PAD's argument concerning the choice of the margin rate to report to the Commission. We find increasing import volumes coupled with increasing dumping margins provide sufficient cause for the Department to report to the Commission a rate other than that calculated in the original investigation.[8]

The Department established on February 14, 1986, in the antidumping duty order, a deposit rate of 127.07 percent on all PRC-origin natural bristle paintbrushes and brush heads. On October 22, 1990, the Department calculated a margin rate for Peace Target, Inc. of 47.1 percent (55 FR 42599, 42601); all other Chinese producers/exporters retained the deposit rate established in the antidumping duty order (51 FR 5580). These deposit rates remained in effect until October 9, 1996 at the conclusion of the 1994/1995 administrative review (*see* 61 FR 52917). The Department, in the Final Results of the 1994/1995 administrative review, calculated dumping margins of 351.92 percent and therefore, established duty deposit requirements for both Hebei Animal By-Products Import/Export Corporation and the PRC as a whole (61 FR 52920). For the Final Results of the 1995/1996 administrative review, the Department established a deposit rate of 351.92 percent for all Chinese producers/exporters of the subject merchandise. Although it appears that imports during 1994 increased only slightly, there was a dramatic increase in imports during 1995, increasing roughly 200 percent from 1994 levels.[9] Therefore, the significant rise in the dumping margin during this period was associated with a substantial increase in imports. Following the publication of the 1994/1995 Final Results on October 9, 1996, imports of the subject merchandise dramatically decreased, falling by almost 70 percent between 1995 and 1996.[10]

According to the *Sunset Policy Bulletin,* "a company may choose to increase dumping in order to maintain or increase market share. As a result, increasing margins may be more representative of a company's behavior in the absence of an order" (*see* section II.B.2 of the *Sunset Policy Bulletin*). In addition, the Sunset Policy Bulletin notes that the Department will normally consider market share. However, absent information on relative market share, and absent argument or evidence to the contrary, we have relied on import volumes in the present case. Therefore, in light of the correlation between an increase in imports and an increase in the dumping margins, the Department finds this more recent rate is the most probative of the behavior of Chinese producers/exporters of natural bristle paintbrushes and brush heads if the order were revoked. Thus, the Department will report to the Commission the company-specific rate and country-wide rate from the Final Results of the administrative review for the period February 1, 1994 through January 31, 1995 as contained in the Final Results of Review section of this notice.

Final Results of Review

As a result of this review, the Department finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the margin listed below:

Manufacturer/exporter	Margin (percent)
Hebei Animal By-Products Import/Export Corp.	351.92
All Other Chinese Manufacturers/Exporters	351.92

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: May 4, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11719 Filed 5–7–99; 8:45 am]

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[7] PAD states that the Department has issued final determinations of dumping margins of 351.92 percent for a total of six companies in three different review periods (1994–1995, 1995–1996, and 1996–1997) and a preliminary determination of a dumping margin of 351.92 percent for one additional company in a fourth review period (1997–1998) (February 3, 1999 Substantive Response of PAD at 18, 19).

[8] The Department recognizes that where a more recent dumping margin is "more representative of a company's behavior in the absence of the order," that is the margin that should be reported to the Commission (*see* section II.B.2 of the *Sunset Policy Bulletin*). The "more representative" standard may be satisfied if the Department finds an "increase in imports ... corresponding to the increase in the dumping margin" (*see Final Results of Expedited Sunset Review: Barium Chloride From the People's Republic of China,* 64 FR 5633, 5635 (February 4, 1999).

[9] According to U.S. Census Bureau IM146 Reports, in 1995, subject merchandise increased by more than 7 million units, from 3.3 million units in 1994 to 10.4 million units in 1995.

[10] *See* U.S. Census Bureau IM146 Reports for HTSUS item number 9603.40.40.40.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–807]

Polyethylene Terephthalate Film From Korea: Preliminary Results of Antidumping Duty New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty new shipper review.

SUMMARY: In response to a request from one respondent, the Department of Commerce (the Department) is conducting a new shipper review of the antidumping duty order on polyethylene terephthalate film, sheet, and strip (PET film) from the Republic of Korea. The review covers one manufacturer/exporter of the subject merchandise to the United States and the period June 1, 1997 through May 31, 1998. We preliminarily determine that HSI Industries (HSI) did not sell subject merchandise below normal value (NV) during the period of review. If these preliminary results are adopted in our final results of review, we will instruct the U.S. Customs Service to assess no antidumping duties for HSI for the period covered by this new shipper review.

Interested parties are invited to comment on these preliminary results. Parties who submit argument in this proceeding are requested to submit with the argument: (1) a statement of issues and (2) a summary of the arguments (no longer than five pages, including footnotes).

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Michael J. Heaney or John Kugelman, AD/CVD Enforcement Group III, Office 8, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–4475/0649.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act) are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (1998).

SUPPLEMENTARY INFORMATION:

Background

On June 30, 1998 and July 1, 1998, the Department received requests from HSI and Kohap, Ltd. (Kohap) for new shipper reviews pursuant to section 751(a)(2) of the Act and § 351.214(b) of the Department's regulations. On July 16, 1998, we published the notice of initiation for this new shipper review (63 FR 38371). On August 12, 1998, Kohap, Ltd. (Kohap) withdrew its request for a new shipper review. On December 7, 1998, we postponed the preliminary results until May 12, 1999, and rescinded the review with respect to Kohap (63 FR 67455).

Scope of the Review

Imports covered by this review are shipments of all gauges of raw, pretreated, or primed polyethylene terephthalate film, sheet, and strip, whether extruded or coextruded. The films excluded from this review are metallized films and other finished films that have had at least one of their surfaces modified by the application of a performance-enhancing resinous or inorganic layer of more than 0.00001 inches (0.254 micrometers) thick. Roller transport cleaning film which has at least one of its surfaces modified by the application of 0.5 micrometers of SBR latex has also been ruled as not within the scope of the order.

PET film is currently classifiable under Harmonized Tariff Schedule (HTS) subheading 3920.62.00.00. The HTS subheading is provided for convenience and for U.S. Customs purposes. The written description remains dispositive as to the scope of the product coverage.

The review covers the period June 1, 1997 through May 31, 1998. The Department is conducting this review in accordance with section 751(a)(2)(B) of the Act, as amended.

Fair Value Comparisons

To determine whether sales of PET film in the United States were made at less than fair value, we compared USP to the NV, as described in the "United States Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to individual U.S. transactions.

United States Price (USP)

In calculating USP, the Department treated HSI's sales as export price (EP) sales, because the merchandise was sold to unaffiliated U.S. purchasers prior to the date of importation and constructed export price (CEP) methodology was not otherwise indicated. *See* section 772(a) of the Act.

EP was based on the delivered price to unaffiliated purchasers in the United States. We made adjustments, where applicable, for Korean inland freight, Korean brokerage charges, ocean freight, U.S. brokerage charges, U.S. inland freight, and U.S. customs duties. We made an addition to EP for duty drawback pursuant to section 772(c)(1)(B) of the Act.

Normal Value (NV)

In order to determine whether there were sufficient sales of PET film in the home market (HM) to serve as a viable basis for calculating NV, we compared the volume of home market sales of PET film to the volume of PET film sold in the United States, in accordance with section 773(a)(1)(C) of the Act. HSI's aggregate volume of HM sales of the foreign like product was greater than five percent of its respective aggregate volume of U.S. sales of the subject merchandise. Therefore, we have based NV on HM sales.

In accordance with section 773(a)(6) of the Act, we adjusted NV, where appropriate, by deducting home market packing expenses and adding U.S. packing expenses. We also adjusted NV for differences in credit expenses and deducted inland freight.

Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote

from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP affects price comparability, we adjust NV under section 773(A)(7)(B) of the Act (the CEP offset provision). (*See e.g.*, Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value, 62 FR 61731 (November 19, 1997).)

In implementing these principles in this review, we asked HSI to identify the specific differences and similarities in selling functions and/or support services between all phases of marketing in the home market and the United States. HSI identified two channels of distribution in the home market: (1) Wholesalers/distributors and (2) end-users. For both channels, HSI performs similar selling functions such as order processing, delivery arrangement, and customer liaison. Because channels of distribution do not qualify as separate levels of trade when the selling functions performed for each customer class are sufficiently similar, we determined that there exists one LOT for HSI's home market sales.

For the U.S. market HSI reported one LOT: EP sales made directly to its U.S. customers. When we compared EP sales to home market sales, we determined that sales in both markets were made at the same LOT. For both EP and home market transactions HSI sold directly to the customer and provided similar levels of order processing, delivery arrangement, and customer liaison. Based upon the foregoing, we determined that HSI sold at the same LOT in the U.S. as it did in the home market, and consequently no LOT adjustment is warranted.

Preliminary Results of Review

We preliminarily determine that a margin of 0.00 percent exists for HSI for the period June 1, 1997 through May 31, 1998. We will disclose calculations performed in connection with this preliminary results of review within 10 days after the date of any public announcement, or if there is no public announcement within 5 days of publication of this notice. Interested parties may submit case briefs and/or written comments no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in such briefs or comments, may be filed no later than 5 days after the deadline for filing case briefs. Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 2 days after the deadline for filing rebuttal briefs unless the Secretary alters the date. The Department will issue the final results of this administrative review, which will include the results of its analysis of issues raised in any such written comments or at a hearing, within 90 days after the date of these preliminary results.

Upon completion of this new shipper administrative review, the Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. We have calculated importer-specific *ad valorem* duty assessment rates based on the total amount of antidumping duties calculated for the examined sales as a percentage of the total value of subject merchandise entered during the POR. These rates will be assessed uniformly on all entries made during the POR. The Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties.

Upon completion of this review, the posting of a bond, or security in lieu of cash deposit, pursuant to section 751(a)(2)(B)(iii) of the Act and § 351.214(e) of the Department's regulations will no longer be permitted and, should the final results yield a margin of dumping, a cash deposit will be required for each entry of the merchandise.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this new shipper review for all shipments of PET film from the Republic of Korea entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this new shipper review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for HSI will be the rate established in the final results of this new shipper review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the less than fair value (LTFV) investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in the final results of this review or the LTFV investigation; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21.5%, the "all others" rate established in the LTFV investigation.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This new shipper review and notice are in accordance with section 751(a)(2)(B) of the Act 19 CFR 351.214(d).

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11724 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–028]

Roller Chain, Other Than Bicycle From Japan: Preliminary Results, Intent Not To Revoke in Part, and Partial Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results, determination not to revoke in part, and partial rescission of antidumping duty administrative review.

SUMMARY: In response to timely requests for administrative review from the petitioner, the American Chain Association, and five manufacturers/exporters for the period April 1, 1997, through March 31, 1998, the Department of Commerce is conducting an administrative review of the antidumping finding on roller chain, other than bicycle from Japan. We have preliminarily determined that sales of the subject merchandise have been made below normal value. If these preliminary results are adopted in our final results of administrative review, we will instruct the U.S. Customs Service to assess antidumping duties based on the difference between the export price or constructed export price and the normal value.

Because two respondents failed verification, we based the margin for

these companies on the facts available, in accordance with 776(a)(2) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on the preliminary results of this review. Parties who submit comments on issues in this proceeding should submit with each comment (1) a statement of the issue; and (2) a brief summary of their comment.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Zev Primor or Wendy Frankel, AD/CVD Enforcement, Group II, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4114 and (202) 482–5849, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1973, the Department published in the **Federal Register** an antidumping finding on roller chain, other than bicycle from Japan (roller chain) (38 FR 9926). On April 13, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" of this antidumping finding for the period of review (POR), April 1, 1997, through March 31, 1998 (63 FR 17985). On April 24, 1998, and April 30, 1998, we received requests for administrative review of this antidumping finding from five manufacturers/exporters of roller chain from Japan: (1) Daido Kogyo Company, Ltd. (DK); (2) Enuma Chain Manufacturing Company (Enuma); (3) Sugiyama Chain Company, Ltd. (Sugiyama); (4) Izumi Chain Manufacturing Company, Ltd. (Izumi); and (5) Oriental Chain Company (OCM), as well as from two resellers of roller chain from Japan to the United States: (1) Daido Tsusho Company, Ltd./Daido Corporation (DT) and (2) Tsubakimoto Chain Company, Ltd./U.S.-Tsubaki (Tsubakimoto). On April 27, 1998, the petitioner, the American Chain Association (ACA), requested an administrative review of these same seven entities, as well as four other manufacturers/exporters and three other resellers of roller chain from Japan to the United States. The four other manufacturers/exporters are: (1) HKK Chain Corp./Hitachi Metals Techno Ltd. (HMTL); (2) Pulton Chain Company Inc. (Pulton); (3) R.K. Excel Company Ltd. (RK); and (4) Kaga Industries Co., Ltd. (Kaga). The three other resellers are: (1) Alloy Tool Steel Inc. (ATSI); (2) HMTL/Hitachi Maxco Ltd./HKK (Hitachi Maxco); and (3) Nissho Iwai Corporation (NIC). In their April 24, 1998 letters, Daido and Enuma also requested partial revocation of the finding as to themselves, pursuant to section 351.222(b)(2)(i) of the Department's regulations. (*See* the "Determination Not to Revoke" section of this notice.) On May 29, 1998, the Department published a "Notice of Initiation of Administrative Review" (63 FR 29370) covering the POR April 1, 1997, through March 31, 1998, for the above manufacturers/exporters/resellers (collectively, the respondents).

On June 12, 1998, we issued antidumping questionnaires to the respondents. The Department received questionnaire responses in August, September, and October 1998. We issued supplemental questionnaires in November and December 1998, and January 1999. We received responses to these supplemental questionnaires in December 1998, and January and February 1999.

Partial Rescissions

1. Pulton

As a result of our analysis of factual information submitted to us during the course of this review, we have determined that Pulton made no shipments of subject merchandise to the United States during the POR. We confirmed with the United States Customs Service (Customs) that Pulton did not have entries of subject roller chain during the POR. Therefore, we are rescinding the review with respect to this company.

2. HMTL

HMTL and HMTL/Hitachi Maxco also claim to have made no shipments of roller chain to the United States during the POR. We confirmed with Customs that HMTL and HMTL/Hitachi Maxco did not have entries of subject roller chain during the POR. Consequently, we are rescinding the review with respect to these parties.

3. HKK Japan

Sugiyama sold roller chain in the United States through multiple channels of distribution. In one channel, Sugiyama sold roller chain to HKK Chain Sales, Inc. (HKK Japan), an affiliated home market reseller, who in turn sold roller chain to HKK Chain Corp. of America (HKK America), its affiliated U.S. reseller. In a different channel, Sugiyama sold roller chain directly to an affiliated U.S. reseller (hereinafter referred to as Company A since this relationship is proprietary). Pursuant to section 771(33) of the Act, we have treated HKK Japan, HKK America, and Company A as affiliates of Sugiyama. With respect to the above-referenced channels of distribution, we used United States sales of roller chain, produced and/or resold by Sugiyama, through HKK America and Company A in our margin analysis for Sugiyama. In the absence of other sales, we did not consider HKK Japan for a separate rate and are, therefore, rescinding the review with respect to HKK Japan.

4. ATSI and NIC

RK and NIC exported, and ATSI imported, roller chain produced by RK during the POR. NIC is RK's affiliated trading company in Japan. All of NIC's sales to the United States of RK-produced merchandise are made through ATSI, NIC's affiliated U.S. reseller. For purposes of these sales, we have treated RK, NIC, and ATSI as affiliated parties pursuant to section 771(33) of the Act. We used United States sales of RK-produced merchandise through NIC in our margin analysis for RK. RK also sells its merchandise directly to ATSI in the United States, who in turn sells the merchandise to unaffiliated U.S. customers. We also used these transactions in our margin analysis for RK. In the absence of other sales, we did not consider ATSI and NIC for separate rates and are rescinding the review for this purpose for these entities.

5. DT

DT sold roller chain produced by Enuma and DK during the POR. We examined the information on the record and have determined that Enuma had knowledge at the time of sale to DT that the roller chain it produced was destined for sale in the United States. *See e.g., Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coils From Taiwan*, 64 FR 15493, 15498 (March 31, 1999). Therefore, for sales by DT of Enuma-produced merchandise, we used the prices between Enuma and DT as United States prices and included these sales in the margin calculations for Enuma. With regard to DT's sales of DK-produced merchandise, we have treated

DT and DK as affiliated parties pursuant to section 771(33) of the Act, and have included all sales of DK-produced merchandise by or through DT in the margin calculations for DK. Under these circumstances, we did not consider DT for a separate rate in this POR and are rescinding the review for this purpose with respect to DT.

6. Tsubakimoto

We initiated the 1997–1998 review of Tsubakimoto pending the determination in the 1996–1997 administrative review regarding whether or not Tsubakimoto was revoked from the finding as a manufacturer and reseller of subject merchandise, or just as a manufacturer. We have since completed that review and determined that the revocation of Tsubakimoto from the order applied to Tsubakimoto as both a manufacturer and a reseller of subject merchandise. *See Roller Chain, Other Than Bicycle From Japan: Final Results and Partial Rescission of Antidumping Duty Administrative Review*, 63 FR 63671 (November 16, 1998) (*1996–1997 Roller Chain*). Therefore, we are preliminarily rescinding this review with respect to Tsubakimoto. However, this rescission is contingent upon the outcome of another issue in this review, the nature of which is proprietary. For further discussion of this issue and its effect on our preliminary decision to rescind this review with respect to Tsubakimoto, *see* Memorandum From Howard Smith, Financial Analyst, AD/CVD Enforcement, Group II, Office IV to The File, regarding: Preliminary Decision to Rescind with Respect to Tsubakimoto Chain Company, Ltd./U.S.-Tsubaki, the 1997–1998 Antidumping Duty Administrative Review of Roller Chain, Other Than Bicycle, from Japan, (April 30, 1999), on file in the CRU.

Extension of Deadlines

Under section 751(a)(3)(A) of the Act, the Department may extend the deadline for completion of a preliminary determination if it determines that it is not practicable to complete the review within the statutory time limit. On October 14, 1998, the Department extended the time limit for the preliminary results of this case (*Notice of Extension of Time Limits for Preliminary Results of Antidumping Duty Administrative Review*, 63 FR 55090).

Scope of the Review

The merchandise subject to this review is roller chain, other than bicycle, from Japan. The term "roller chain, other than bicycle," as used in this review, includes chain, with or without attachments, whether or not plated or coated, and whether or not manufactured to American or British standards, which is used for power transmissions and/or conveyance. This chain consists of a series of alternately-assembled roller links and pin links in which the pins articulate inside from the bushings and the rollers are free to turn on the bushings. Pins and bushings are press fit in their respective link plates. Chain may be single strand, having one row of roller links, or multiple strand, having more than one row of roller links. The center plates are located between the strands of roller links. Such chain may be either single or double pitch and may be used as power transmission or conveyor chain. This review also covers leaf chain, which consists of a series of link plates alternately assembled with pins in such a way that the joint is free to articulate between adjoining pitches. This review further covers chain model numbers 25 and 35. Roller chain is currently classified under the Harmonized Tariff Schedule of the United States (HTSUS) subheading 7315.11.00 through 7619.90.00. Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description remains dispositive.

On March 24, 1998, the Department determined that certain models of silent timing chain produced and exported by Kaga for use in automobiles are outside the scope of the antidumping finding. (*See Final Scope Ruling: Kaga's Request for Scope Ruling on Automotive Silent Timing Chain*, March 24, 1998, on file in the Central Records Unit (CRU) in room B–099 of the Main Commerce Building).

Scope Issues

During the course of this review, Sugiyama raised the issue of whether 2-pitch roller chain and wrench roller chain are within the scope of the order. While these two products have been included in these preliminary review results, the Department is addressing these inquiries in the context of a separate scope proceeding and will issue its preliminary decision on these two issues shortly. Parties interested in submitting comments on the preliminary scope decision should submit such comments in the context of the separate scope proceeding, not in the context of this administrative review. The results of this scope proceeding will to the extent practicable be reflected in the analysis conducted for the final review results covering the POR.

Verification

As provided in section 782(i) of the Act, we verified information provided by the following five respondents: Izumi, Kaga, OCM, RK, and Sugiyama and its affiliates. We used standard verification procedures, including on-site inspection of the respondents' facilities, the examination of relevant sales, financial, and/or cost records, and selection of original documentation containing relevant information. Our verification results are outlined in the verification reports placed on file in the CRU.

Affiliation Issues

During the course of the 1996–1997 administrative review of this finding, we noted that the majority of Izumi's home market sales were made to an affiliated home market manufacturer, hereafter referred to as Company X for proprietary reasons. Therefore, we reviewed the appropriateness of continuing our analysis of Izumi as a separate entity. In the final results of that review, we found that there was not sufficient evidence on the record of the 1996–1997 administrative review to determine that Izumi and Company X should be collapsed under the antidumping law. *See Decision Memorandum: Roller Chain, Other than Bicycle, from Japan—Izumi Chain Mfg. Co. Ltd., Affiliation Issue, 1996–1997 Administrative Review*, dated November 4, 1998, at 22. However, we stated in those final results that we would request additional information for this analysis, and further examine this issue in the context of the ongoing 1997–1998 administrative review of this finding. *See 1996–1997 Roller Chain*. During the course of the instant review, we issued an additional questionnaire to Company X and conducted verification of the information pertaining to this issue at the corporate headquarters and production facilities of both Izumi, Company X, and a joint-venture distribution company.

After analyzing the record evidence concerning this issue, we preliminarily find that the record evidence does not support a determination to collapse Izumi and Company X. The analysis entails references to business proprietary matters. Consequently, for a detailed discussion of our analysis, *see Decision Memorandum: Roller Chain, Other than Bicycle, from Japan—Izumi Chain Mfg. Co. Ltd. Affiliation Issue, 1997–1998 Administrative Review (Izumi Affiliation Memo)*, dated April 30, 1999.

Facts Available

1. Application of Facts Available (FA)

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form requested, significantly impedes a proceeding under the antidumping statute, or provides information that cannot be verified, the Department shall use, subject to section 782(d) of the Act, FA in reaching the applicable determination.

Section 782(d) of the Act provides certain conditions that must be satisfied before the Department may, subject to subsection (e), disregard all or part of the information submitted by a respondent. First, this section states that, if the Department determines that a response to a request for information does not comply with the request, it shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. Section 782(d) of the Act continues that, if the party submits further information in response to the deficiency and the Department finds the response is still deficient or submitted beyond the applicable time limits, the Department may disregard all or part of the original and subsequent responses.

Section 782(e) of the Act states that the Department shall not decline to consider information deemed "deficient" under section 782(d) if: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

2. Selection of Adverse FA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. *See* the Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316, at 870 (1994). To examine whether the respondent "cooperated" by "acting to the best of its ability" under section 776(b), the Department considers, inter alia, the accuracy and completeness of submitted information and whether the respondent has hindered the calculation of accurate dumping margins. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–53820 (October 16, 1997).

A. Total FA

Izumi. Upon reviewing Izumi's initial response to the Department's antidumping questionnaire in this administrative review, we determined that there were certain deficiencies in Izumi's submitted information. Pursuant to section 782(d) of the Act, we provided Izumi the opportunity to explain its deficiencies and provide corrected data as appropriate. Subsequent to our receipt of Izumi's response to the Department's supplemental questionnaire, we attempted to verify the information submitted by Izumi at its corporate headquarters in Japan. Upon arrival at the verification site, Izumi provided the verification team a revised cost of production (COP) and CV database that was significantly different from its prior cost responses. Although the verifiers attempted to determine the accuracy of the information submitted by Izumi, they were unable to do so. *See Memorandum to the File* regarding *Verification of the Constructed Value and Sales Questionnaire Responses of Izumi Chain Mfg. Co., Ltd., Roller Chain, Other Than Bicycle, from Japan, Administrative Review (1997–1998) (Izumi Verification Report)*, dated April 30, 1999.

After careful analysis of Izumi's responses, and as a result of our verification, we have determined that Izumi failed to satisfy all five of the requirements set forth in section 782(e) of the Act. First, the predominant portion of Izumi's submitted information could not be verified, as required by section 782(e)(2) of the Act. At the beginning of verification Izumi informed the verifying officials that the company had not prepared any of the documentation requested in the verification outline, nor had it prepared worksheets or any other form of documentation to aid in the verification process. Moreover, throughout the verification, Izumi reiterated that it could not explain the methodology it had used to prepare its questionnaire responses because the individual responsible for preparing those responses no longer worked at the company. Izumi further explained that this individual had not left any worksheets or explanatory information with regard to preparation of the questionnaire responses. Additionally, Izumi stated that since its record keeping system is paper-based (not all information is maintained on computer), it would be virtually impossible to trace most of its reported sales values, quantities, or costs through its record-keeping system. Specifically, (1) Izumi was unable to explain the methodology used to allocate material costs to individual products; (2) Izumi was unable to reconcile man hours or the total labor expense used to calculate direct labor costs to any of the company's internal books and records or to its financial statements; (3) Izumi was unable to reconcile the costs used to calculate variable overhead costs to any internal company ledgers or financial statements; (4) there were significant discrepancies between the amounts recorded in Izumi's books and ledgers for selling, general and administrative (SG&A) expenses and the values used to report SG&A expenses in Izumi's questionnaire response; and (5) Izumi was unable to reconcile the total sales quantities and values reported for U.S., home market and third country sales to its internal books and records or to its financial statements. Additionally, Izumi stated that it could not identify the methodology used to derive the revised cost data presented to the verifiers at the beginning of verification. Despite repeated requests for clarification on this point by the verifiers, company officials were unable to explain the methodology used to derive the data that had been revised only days earlier.

Second, the last-minute submission of a cost database that was significantly different from Izumi's prior cost responses, along with the verification failures, raise serious concerns as to the completeness and reliability of the information reported. Because the verification failures involve significant elements of both sales and cost information, if the Department attempted to calculate a margin based on the reported information, whether or not that margin was based on price-to-price comparisons or price-to-CV comparisons, the calculated margin would be suspect. Therefore, the results of verification provide no basis upon which to conclude that the information reported can serve as a reliable basis for reaching the applicable determination. Thus, Izumi failed to satisfy criterion (3) of section 782 (e) of the Act.

Third, Izumi has not demonstrated that it acted to the best of its ability, pursuant to section 782(e)(4) of the Act, in providing the necessary information

and in meeting the requirements established by the Department with respect to the verification of that information. Specifically, Izumi presented what was tantamount to a new cost response on the first day of verification, when its supplemental cost response had been submitted to the Department only several weeks prior to the verification. Moreover, the company was completely unprepared for the verification and offered no reasonable explanation for its lack of preparation. The company made no attempt at verification to trace through its paper-based record system, most cost items, as well as through its home market and third country sales.

For the reasons stated above, it is clear that Izumi has not met all of the requirements enumerated in section 782(e) of the Act and, therefore, application of section 782(e) of the Act does not overcome section 776(a)'s direction to use facts otherwise available where information cannot be verified. Thus, a determination based on the use of facts otherwise available is warranted for Izumi in this case.

As discussed above, in selecting from the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 63 FR 53808, 53819–20 (October 16, 1997). Izumi was unable to substantiate the majority of its submitted data at verification. In fact, Izumi repeatedly stated during the verification that it was unable to explain the methodology used to derive reported costs, and was unable to provide substantiating data or reconcile reported data to its internal books and ledgers as well as financial statements. Accordingly, Izumi did not act to the best of its ability to comply with the Department's requests for information and, thus, under section 776(b) of the Act, an adverse inference is warranted. *See* the SAA at 870. Pursuant to section 776(b) of the Act, we are therefore basing Izumi's margin on total adverse FA for purposes of the preliminary results. As total adverse FA for Izumi, we have selected 17.57 percent, a rate calculated for Hitachi Metals in the 1987–1988 administrative review of this proceeding. Because we are applying FA based on secondary information (*i.e.*, a margin from a prior administrative review of this finding), we are required pursuant to section 776(c) of the Act, to corroborate, to the extent practicable, such information. For this discussion, *see* "Corroboration of Information Used as Facts Available" section of this notice. For a detailed discussion of the FA issue, *see* the Memorandum From the Senior Director, AD/CVD Enforcement, Group II, Office IV to the Deputy Assistant Secretary, AD/CVD Enforcement, Group II, regarding: Determination To Apply Facts Available Based on Results of Verification of Izumi Chain Manufacturing Company, Ltd., (April 30, 1999), on file in CRU.

OCM. After reviewing OCM's initial response to the Department's antidumping questionnaire in this administrative review, we determined there were certain deficiencies in OCM's submitted information. Pursuant to section 782(d) of the Act, we provided OCM an opportunity to explain its deficiencies and provide corrected data as appropriate. Subsequent to our receipt of OCM's response to the Department's supplemental questionnaire, we attempted to verify the information submitted by OCM at its corporate headquarters in Japan. However, the Department was unable to successfully verify significant elements of the cost and sales information reported by OCM. *See Memorandum to the File* regarding *Verification of the Cost and Sales Responses of Oriental Chain Manufacturing. Co., Ltd. in the 1997–1998 Antidumping Duty Administrative Review of Roller Chain, Other Than Bicycle, from Japan (OCM Verification Report)* dated April 30, 1999. Specifically, at verification, we found that a significant portion of the home market sales examined were unreported sales of merchandise identical to that sold in the United States during the POR. Regarding the reported costs examined at verification, the Department found that (1) for the control numbers examined, the per-unit cost of manufacturing (COM) used in the overall COM reconciliation differed from the per-unit COM reported to the Department, and, therefore, the reconciliation did not substantiate the reported costs; (2) company officials could not substantiate the raw material consumption quantities used to calculate the reported material costs; and (3) company officials failed to reconcile reported direct labor costs to actual labor expenses recorded in OCM's accounting records.

We have determined that the unreported home market sales discovered at verification are particularly significant because of the methodology used by OCM to report home market sales and the fact that the unreported sales constitute a significant portion of the sales examined. In a letter to the Department dated August 11, 1998, OCM stated that it could not reasonably report all home market sales because of the time required to identify the product characteristics for certain models. As an alternative, OCM stated that it planned to report home market sales of models that closely match (*i.e.*, that are identical or very similar in terms of product characteristics) the models sold in the United States during the POR. We have allowed OCM's reporting methodology given that it has been the Department's practice in previous administrative reviews of roller chain from Japan to allow respondents to report only a limited number of home market sales, contingent upon the Department's determination at verification that the reported home market sales constitute all appropriate comparison sales. However, because of the methodology used by OCM to report home market sales and the manner in which company officials maintain OCM's sales information, we were unable to use OCM's accounting records to verify, in *total*, the value or quantity of reported home market sales. Thus, we examined sales ledgers for particular months in order to determine whether company officials had properly reported OCM's home market sales of roller chain. Due to time constraints and the significant amount of monthly roller chain sales, we did not examine all sales in the selected months. Rather, we randomly selected transactions from OCM's sales ledgers and requested that company officials demonstrate that they reported the correct quantity and value for the selected transactions. We found that a significant portion of the sales selected had not been reported to the Department. *See OCM Verification Report* at 26. This finding, particularly in the absence of a total value and quantity reconciliation, raises serious concerns regarding the completeness of the reported home market sales database.

Furthermore, we have found that OCM's failure to substantiate important elements of cost is significant. The fact that OCM reconciled manufacturing costs in the company's cost of manufacturing statement to per-unit cost of manufacturing figures which differed from those reported, indicates that OCM failed to report the proper unit costs to the Department. In addition, despite the fact that in its supplemental questionnaire the Department cautioned OCM to report actual costs that take into account

variances, at verification OCM failed to reconcile reported labor costs and material costs (specifically, the material consumption quantities used to calculate material costs) to actual costs.

After careful analysis of OCM's responses, and as a result of our verification, we have determined that OCM failed to satisfy several of the requirements set forth in section 782(e) of the Act. First, OCM's information could not be verified. Second, the nature of the verification failures indicates that the information provided is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination. Third, OCM has not demonstrated that it acted to the best of its ability, pursuant to section 782(e)(4) of the Act, in providing the necessary information and in meeting the requirements established by the Department with respect to the verification of that information. Specifically, despite the Department's instructions and warnings regarding reporting and verification requirements, the company continued to report information in a manner that did not conform with the Department's normal requirements and it was unprepared to demonstrate at verification that it was appropriate for the Department to calculate antidumping duty margins using the reported information. These failures, particularly in light of the Department's early notification, clearly demonstrate that OCM failed to meet all of the requirements of section 782(e) of the Act. Thus, a determination based on the use of total FA is warranted for OCM.

As discussed above, in selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. In the instant review, although the OCM was aware of the Department's requirements, it did not act to the best of its ability to comply with the Department's requests for information or prepare for verification and, thus, under section 776(b) of the Act, an adverse inference is warranted. *See* the SAA at 870. Pursuant to section 776(b) of the Act, we are therefore, basing OCM's margin on total adverse FA for purposes of the preliminary results. As total adverse FA, we have selected 17.57 percent, a rate calculated for Hitachi Metals in the 1987–1988 administrative review of this proceeding. Because we are applying FA based on secondary information, *i.e.*, a margin from a prior administrative review of this finding, we are required, pursuant to section 776(c) of the Act, to corroborate to the extent practicable, such information. For this discussion *see* "Corroboration of Information Used as Facts Available" section of this notice. For a detailed discussion of the FA issue, *see* Memorandum From the Senior Director, AD/CVD Enforcement, Group II, Office IV to the Deputy Assistant Secretary, AD/CVD Enforcement, Group II, regarding: Determination To Apply Facts Available Based on Results of Verification of Oriental Chain Manufacturing Co., (April 30, 1999), on file in the CRU.

3. Corroboration of Information Used as FA

Section 776(b) of the Act authorizes the Department to use as adverse FA information derived from the petition, the final determination from the less than fair value (LTFV) investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is described in the SAA (at 870) as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise."

The SAA further provides that "corroborate" means simply that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). Thus, to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used. However, unlike other types of information, such as input costs or selling expenses, there are no independent sources for calculated dumping margins. The only source for margins is an administrative determination. Thus, in an administrative review, if the Department chooses, as total adverse FA, a calculated dumping margin from a prior segment of the proceeding, it is not necessary to question the reliability of the margin from that time period (*i.e.*, the Department can normally be satisfied that the information has probative value and that it has complied with the corroboration requirements of section 776(c) of the Act). *See e.g.*, *Elemental Sulphur from Canada: Preliminary Results of Antidumping Duty Administrative Review*, 62 FR at 971 (January 7, 1997) and *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, et al.; Final Results of Antidumping Duty Administrative Review*, 62 FR 2081, 2088 (January 15, 1997) (*AFBs–1997*).

As to the relevance of the margin used for adverse FA, the Department stated in *Tapered Roller Bearings from Japan; Final Results of Antidumping Duty Administrative Review* 62 FR 47454 (September 9, 1997) that it will "consider information reasonably at its disposal as to whether there are circumstances that would render a margin irrelevant. Where circumstances indicate that the selected margin is not appropriate as adverse [FA], the Department will disregard the margin and determine an appropriate margin." *See also Fresh Cut Flowers from Mexico; Preliminary Results of Antidumping Duty Administrative Review*, 60 FR 49567 (September 26, 1995).

In this instance, we have no reason to believe that application of the 17.57 percent rate for Hitachi Metals would be inappropriate as an adverse FA rate for certain respondents in the instant review. Therefore, where we have applied, as FA, the 17.57 percent margin from a prior administrative review of this finding, we have satisfied the corroboration requirements under section 776(c) of the Act.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products within the scope of this review that were produced by the respondents, and sold in the ordinary course of trade in the comparison market during the POR, to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales.

Fair Value Comparisons

With respect to Enuma, DK, Kaga, Sugiyama and RK, in determining whether these respondents' sales of roller chain to customers in the United States were made at less than fair value, we compared export price (EP) and constructed export price (CEP) to NV, as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice. In accordance with section 777A(d)(2) of the Act, we calculated monthly weighted-average prices for NV and compared these to the prices of individual U.S. transactions.

In the case of Sugiyama, the company reported that, for certain sales made by HKK America to unaffiliated U.S. customers, the roller chain was shipped directly from Sugiyama to the U.S. customers (without first entering into HKK America's U.S. inventory).

Sugiyama classified these sales as EP sales. When sales are made prior to the date of importation through an affiliate in the United States, the Department uses the following criteria to determine whether U.S. sales should be classified as EP sales: (1) whether the merchandise in question is shipped directly from the manufacturer to the unaffiliated buyer without being introduced into the physical inventory of the selling agent; (2) whether direct shipment from the manufacturer to the unaffiliated buyer is the customary channel for sales of the subject merchandise between the parties involved; and (3) whether the affiliate in the United States acts only as a processor of sales-related documentation and a communication link (*i.e.*, "a paper-pusher") with the unaffiliated U.S. buyer. Where the factors indicate that the activities of the selling entity in the United States are ancillary to the sale (*e.g.*, arranging transportation or customs clearance), we treat the transactions as EP sales. Where the U.S. selling agent is substantially involved in the sales process (*e.g.*, negotiating prices), we treat the transactions as CEP sales. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Stainless Steel Wire Rod From Spain*, 63 FR 10849, 10852 (March 5, 1998).

Based on our review of the record information concerning Sugiyama's sales to HKK America, where the merchandise is shipped directly from Sugiyama's plant to HKK America's U.S. customer, we preliminarily determine that these sales are CEP transactions. We note that, according to Sugiyama, "most of HKK America's sales of subject merchandise is merchandise produced by Sugiyama and which is warehoused by HKK America prior to shipment to the first unaffiliated U.S. customer." *See* Sugiyama's October 15, 1998, questionnaire response at A–19. Furthermore, in describing the sales in question, Sugiyama states that "occasionally, HKK America sells to customers merchandise that is shipped directly from Sugiyama to the U.S. customers (without first entering into HKK America's U.S. inventory)." *See* Sugiyama's October 15, 1998, questionnaire response at A–20. Since the sales in question do not follow the normal sales path for U.S. sales made by HKK America, and, by Sugiyama's own admission, these sales only occur "occasionally," we find that these sales do not follow HKK America's customary channel of distribution. With respect to HKK America's role in these sales, Sugiyama states that the "sales agreement is between HKK America and its U.S. customers" and that the sales price is negotiated by HKK America, and not Sugiyama. *See* Sugiyama's January 20, 1999, submission at 7. Moreover, Sugiyama states that HKK America (and not Sugiyama) provides the following services to HKK America's U.S. customers: inventory maintenance; freight and delivery services; and customer relations through commission agents. Thus, HKK America acted as more than just a paper processor or communication link for sales of Sugiyama-produced merchandise. Accordingly, for purposes of these preliminary results, we are treating the sales in question as CEP sales. *See Roller Chain, Other Than Bicycle, from Japan: Calculation Memorandum of the Preliminary Results for the 1997–1998 Administrative Review of Sugiyama Chain Company, Ltd. and its Affiliates*, April 30, 1999, on file in the CRU.

Immediately prior to verification, Sugiyama notified the Department that it included in its home market sales database a certain number of sales that it now considers to be export sales to third countries. According to Sugiyama, these sales involve customers in Japan who take delivery of the merchandise in Japan, but then sell the roller chain outside of Japan. Although these sales are coded in Sugiyama's internal records as export sales, Sugiyama states that it originally reported these sales as home market sales because there is no independent documentation confirming that these sales were, in fact, for an export destination. Upon review, however, Sugiyama now believes that the internal export coding for these sales is sufficient evidence that they were exported.

Since Sugiyama has been unable to provide any independent documentation confirming that these sales were exported to third countries, we preliminarily find that these sales should remain in the home market database. Accordingly, we have included these sales in our calculation of normal value. For a further discussion of this issue, *see Roller Chain, Other Than Bicycle, from Japan: Calculation Memorandum of the Preliminary Results for the 1997–1998 Administrative Review of Sugiyama Chain Company, Ltd. and its Affiliates*, April 30, 1999.

Export Price

We calculated EP in accordance with sections 772(a) and (c) of the Act where the respondents sold the subject merchandise directly to the first unaffiliated purchasers in the United States prior to importation and CEP was not otherwise warranted based on the facts on the record. Specifically, for Enuma, DK, Kaga, and Sugiyama, we calculated EP based on the packed prices to unaffiliated customers in the United States from which we made deductions, where appropriate, for foreign inland freight from the plant to the port, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, and discounts because these expenses were incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery.

Constructed Export Price

The Department based its margin calculation on CEP, as defined in section 772(b), (c) and (d) of the Act, where sales to the first unaffiliated purchaser in the United States took place after importation or where CEP methodology was otherwise warranted. For DK, Kaga, Sugiyama, and RK (Enuma had no CEP transactions), we calculated CEP based on delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for discounts. Also where appropriate, we deducted credit expenses, direct selling expenses and indirect selling expenses, including inventory carrying costs, which related to commercial activity in the United States. We also made deductions, where appropriate, for commissions, movement expenses (foreign inland freight, foreign brokerage and handling, international freight and insurance, U.S. duties, U.S. brokerage and handling, U.S. inland-freight and insurance, and U.S. warehousing), and pursuant to section 772(d)(3), where applicable, we made an adjustment for CEP profit.

With regard to RK and Sugiyama, the only respondents in this review who further-manufactured the merchandise in the United States, we made a deduction for the cost of further manufacturing in the United States in accordance with section 772(d)(2) of the Act.

Normal Value

1. Viability

In accordance with section 773(a)(1)(C)(ii) of the Act, we determined that the home market for each respondent serves as a viable basis for calculating NV because the aggregate volume of each respondent's HM sales of the foreign like product was greater than five percent of the aggregate volume of its U.S. sales of the subject merchandise.

2. Arm's-Length Transactions: Enuma and Sugiyama

Sales to affiliated customers in the home market made by Enuma and Sugiyama, which were determined not to be at arm's-length, were excluded from our analysis. To test whether these sales were made at arm's-length, we compared the starting prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403, and in accordance with our practice, where prices to the affiliated party were on average less than 99.5 percent of the price to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. We disregarded all sales to Sugiyama's and Enuma's HM customers that did not pass the arm's-length test.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on constructed value (CV), that of the sales from which we derive selling, general and administrative expenses and profit.

For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP, it is the level of the constructed sale from the exporter to the importer. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997) (*Carbon Steel Plate*).

The statute and the SAA support analyzing the LOT of CEP sales at the level of the constructed sale to the U.S. importer—that is, the level after expenses associated with economic activities in the United States have been deducted pursuant to section 772(d) of the Act. The Department has adopted this interpretation in previous cases. *See e.g., Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order*, 63 FR 50867, 50872 (September 23, 1998) *(DRAMs Final Results 96–97); see also Notice of Final Determination of Sales at Less Than Fair Value; Static Random Access Memory Semiconductors From the Republic of Korea*, 63 FR 8945 (February 23, 1998) (*SRAMs 1996*).

To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.

Customer categories such as distributors, retailers, or end-users are commonly used by petitioners or respondents to describe different LOTs, but, without substantiation, these are insufficient to establish that a claimed LOT is valid. An analysis of the chain of distribution and of the selling functions substantiates or invalidates the claimed LOTs.

Our analysis of the marketing process, in both the home market and United States, begins with goods being sold by the producer and extends to the sale to the final user. The chain of distribution between the producer and the final user may have many or few links, and each respondent's sales occur somewhere along this chain. In the United States, the respondent's sales are generally to an importer, whether independent or affiliated. We review and compare the distribution systems in the home market and the United States, including selling functions, class of customer, and the extent and level of selling expenses for each claimed LOT.

Unless we find that there are different selling functions for sales to the U.S. and home market, we will not determine that there are separate LOTs. Different LOTs necessarily involve differences in selling functions, but differences in selling functions, even substantial ones, are not alone sufficient to establish a difference in the LOTs. Differences in LOTs are characterized by purchasers at different stages in the chain of distribution and sellers performing qualitatively or quantitatively different functions in selling to them.

If the comparison-market sale is at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See e.g., Carbon Steel Plate*, 62 FR at 61732.

Based on our analysis of these factors, we found for Enuma, Kaga, and RK that no LOT difference existed between their respective U.S. and home market sales. Therefore, we have made no LOT adjustment under section 773(a)(7)(A) of the Act for any of these three respondents. Further, based on our analysis of these factors, we concluded for DK and Sugiyama that the CEP sales are at a different LOT from the home market sales. With respect to Sugiyama, we determined that sales in the home market were made at two distinct LOTs. The first level was the same LOT as Sugiyama's U.S. sales. The second LOT in the home market is at a more remote LOT . In addition, we found that a pattern of consistent price differences existed between the two LOTs in the home market. Therefore, for Sugiyama, where appropriate (*i.e.*, where we were unable to compare sales at the same level of trade), we made a LOT adjustment under section 773(a)(7)(A) of the Act. In the case of DK, because the available data do not provide an appropriate basis for making a LOT adjustment, but the LOT in the home market is at a more advanced stage of distribution than the LOT of the CEP, we made a CEP offset adjustment in accordance with section 773(a)(7)(B) of the Act. For a detailed discussion of these LOT issues, see the April 30, 1999, memoranda to the File from the Team, regarding the LOT analysis for DK, Enuma, Kaga, RK, and Sugiyama, respectively.

Constructed Value

For Sugiyama's, and RK's, products for which we could not determine the NV based on HM sales of roller chain, because there were no contemporaneous sales of a comparable product, we compared U.S. prices to CV. In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of the cost of manufacturing (COM) of the product sold in the United States, plus amounts for home market SG&A expenses, profit, and U.S. packing costs. In accordance with section 773(e)(2)(A) of the Act, we used the actual amounts incurred and realized by the respective manufacturers in connection with the production and sale of the foreign like product, in the ordinary course of trade, for consumption in the foreign country to calculate SG&A expenses and profit.

Price-to-Price Comparisons

In accordance with section 773(a)(1)(B)(i) of the Act, we based NV on the price at which the foreign like product was first sold for consumption in the exporting country in the usual commercial quantities and in the

ordinary course of trade and, to the extent practicable, at the same level of trade as the EP or CEP sale. In accordance with section 773(a)(6) of the Act, where applicable, we made adjustments to home market prices for discounts, movement expenses (inland freight, insurance, and warehousing), technical services, and advertising expenses. To adjust for differences in circumstances of sales (COS) between the home market and the EP and/or CEP transactions in the United States, we reduced home market prices by an amount for home market credit and direct selling expenses, where applicable. For comparison to EP transactions we also made an upward adjustment for U.S. credit and direct selling expenses, where appropriate. We also made adjustments for indirect selling expenses incurred on comparison market or U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset), pursuant to 19 CFR 351.410(e). In addition, based on our determination as to DK's LOT (*see* "Level of Trade" section of this notice), we made a CEP offset adjustment pursuant to section 773(a)(7)(B) of the Act. *See Carbon Steel Plate*, 62 FR at 61732. Further, based on our determination as to Sugiyama's LOT (*see* "Level of Trade" section of this notice), where appropriate, we made a LOT adjustment pursuant to section 773(a)(7)(A) of the Act. To adjust for differences in packing between the two markets, we deducted HM packing costs and added U.S. packing costs. In addition, we made adjustments, where appropriate, for differences in costs attributable to physical differences of the merchandise (DIFMER) pursuant to section 773(a)(6)(C)(ii) of the Act.

Price-to-CV Comparisons

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410 for COS differences. For comparisons to EP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales and adding U.S. direct selling expenses. For comparisons to CEP, where appropriate, we made COS adjustments by deducting direct selling expenses incurred on home market sales. We also made adjustments, where applicable, for the commission offset in the manner described above.

Currency Conversion

Pursuant to section 773A(a) of the Act, for purposes of the preliminary results, we converted foreign currencies into U.S. dollars using the official exchange rates in effect on the date of the U.S. sales. These official exchange rates are based on the daily rates identified by the Dow Jones Business Information Services. Section 773A(a) of the Act directs the Department to use a daily exchange rate to convert foreign currencies into U.S. dollars unless the daily rate involves a "fluctuation." It is our practice to find that a fluctuation exists when the daily exchange rate differs from a benchmark rate by 2.25 percent. *See Preliminary Results of Antidumping Duty Administrative Review: Certain Welded Carbon Steel Pipe and Tube from Turkey*, 61 FR 35188, 35192 (July 5, 1996). The benchmark rate is defined as the moving average of the rates for the past 40 business days. Where we determined that the daily rates applicable to this review fluctuated, as defined above, we converted foreign currencies into U.S. dollars using the benchmark exchange rate.

Determination Not To Revoke

Pursuant to 19 CFR 351.222(b)(2), DK and Enuma, in letters dated April 24, 1998, requested revocation of the antidumping finding in part. In accordance with 19 CFR 351.222(e), their requests were accompanied by certifications that the companies had not sold the subject merchandise at less than NV during the current POR and would not do so in the future. DK and Enuma further certified that they sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. Each company also agreed to immediate reinstatement of the antidumping duty finding, as long as any exporter or producer is subject to the finding, if the Department concludes that, subsequent to the revocation, DK or Enuma sold the subject merchandise at less than NV. Additionally, the companies claimed that the *de minimis* standard for purposes of revocation is two percent rather than 0.5 percent, citing sections 773(b)(3) and 735(a)(4) of the Act, and section 351.106(b)(1) of the Department's regulations.

As to the companies' claim that the *de minimis* standard for purposes of revocation is two percent rather than 0.5 percent, Article 5.8 of the WTO Antidumping Agreement explicitly requires signatories to apply the two percent *de minimis* standard in antidumping investigations. *See* Article 5.8. There is no such requirement regarding reviews. *See Professional Electric Power Tools from Japan: Final Results of Antidumping Duty Administrative Review*, 63 FR 6891, 6897 (February 11, 1998). In conformity with Article 5.8 of the WTO Antidumping Agreement, sections 733(b) and 735(a) of the Act were amended by the URAA to require that, in investigations, the Department treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as *de minimis*. Hence, pursuant to this change, the Department is now required to apply a two percent *de minimis* standard during investigations initiated after January 1, 1995, the effective date of the URAA (*see* sections 733(b)(3) and 735(a)(4)). However, the Act does not mandate a change to the Department's regulatory practice of using a 0.5 percent *de minimis* standard during administrative reviews. As discussed above, the WTO Antidumping Agreement, the Act, the SAA and the Department's regulations recognize investigations and reviews to be two distinct segments of an antidumping proceeding. In addition, the Statement of Administrative Action (SAA) also clarifies that "[t]he requirements of Article 5.8 apply only to investigations, not to reviews of antidumping duty orders or suspended investigations." *See* SAA at 845. The SAA further states that "in antidumping investigations, Commerce [shall] treat the weighted-average dumping margin of any producer or exporter which is below two percent ad valorem as de minimis." SAA at 844. Likewise, "[t]he Administration intends that Commerce will continue its present practice in reviews of waiving the collection of estimated cash deposits if the deposit rate is below 0.5 percent ad valorem, the existing regulatory standard for de minimis." SAA at 845 (emphasis added). *See* 19 CFR 351.106; *see* also High-Tenacity Rayon Filament Yarn from Germany; Final Results of Antidumping Duty Administrative Review, 61 FR 51421 (October 2, 1996). In addition, although the Department makes its determinations based on U.S. laws and regulations, we note that a recent WTO Panel Report found that the *de minimis* standard in Article 5.8 of the WTO Antidumping Agreement does not apply in the context of Article 9.3 duty assessment procedures (*i.e.* administrative reviews). *See* page 150 of the WTO Panel Report, *United States—Anti-dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above From Korea*, WT/DS99/R (adopted March 19, 1999).

Based upon the fact that Daido and Enuma have not demonstrated three consecutive years of sales at not less

than NV, we preliminarily determine that these companies have not met the requirements for revocation set forth in 19 CFR 351.222(b)(2)(i). Therefore, the Department preliminarily determines not to revoke the antidumping duty finding with respect to these companies.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that the following weighted-average dumping margins exist for the period April 1, 1997 through March 31, 1998:

Manufacturer/exporter	Weighted-average margin (percent)
Daido Kogyo Company, Ltd	0.90
Enuma Chain Mfg. Company	0.03
Izumi Chain Mfg. Company Ltd ..	17.57
Kaga Industries Co., Ltd	7.43
OCM Chain Company	17.57
R.K. Excel Company, Ltd	0.15
Sugiyama Chain Company, Ltd	8.02

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within 5 days of the date of publication of this notice. Any interested party may request a hearing within 30 days of the date of publication of this notice. Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue and (2) a brief summary of the argument. All case briefs must be submitted within 30 days of the date of publication of this notice. Rebuttal briefs, which are limited to issues raised in the case briefs, may be filed not later than seven days after the case briefs are filed. A hearing, if requested, will be held two days after the date the rebuttal briefs are filed or the first business day thereafter.

The Department will publish a notice of the final results of this administrative review, which will include the results of its analysis of the issues raised in any written comments or at the hearing, within 120 days from the publication of these preliminary results.

The Department shall determine, and Customs shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue appraisement instructions directly to Customs. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by the determination and for future deposits of estimated duties. For duty assessment purposes, for CEP sales we calculated a customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer, and dividing this amount by the total estimated entered value of subject merchandise sold to each customer/importer during the POR. In order to estimate the entered value, we subtracted international and U.S. movement expenses and selling expenses incurred in the United States from the gross sales value. For assessment of EP sales we calculated a per unit customer or importer-specific assessment rate by aggregating the dumping margins calculated for all U.S. sales to each customer/importer and dividing this amount by the total quantity of those sales.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of roller chain from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed companies will be the rate established in the final results of this administrative review, except if the rate is less than 0.5 percent *ad valorem* and, therefore, *de minimis*, no cash deposit will be required; (2) for exporters not covered in this review, but covered in the original less than fair value (LTFV) investigation or a previous review, the cash deposit rate will continue to be the company-specific rate published in the most recent period; (3) if the exporter is not a firm covered in this review, a previous review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews or the original LTFV investigation, the cash deposit rate will be 15.92 percent, the "All Others" rate which is based on the first review conducted by the Department in which a new shipper rate [1] was established in the final results of administrative review (48 FR 51801, November 14, 1983). These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act (19 U.S.C. 1675(a)(1)).

Dated: April 30, 1999.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 99–11720 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

[1] In 1993, the Department began using the all others rate from the original investigation as the appropriate cash deposit rate for companies not covered by a review or the original investigation. Prior to that time, the Department's practice was to use a "new shippers" rate resulting from a particular review as the cash deposit rate for companies whose first shipment occurred after the period covered by the review. The Department used as the "new shippers" rate the highest of the rates of all responding firms with shipments during the review period. This "new shippers" rate is unrelated to new shipper reviews conducted pursuant to the URAA under section 751(a)(2)(B) of the Act.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–834–803]

Titanium Sponge From the Republic of Kazakhstan: Postponement of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Extension of time limit for preliminary results of antidumping duty administrative review.

SUMMARY: The Department of Commerce ("the Department") is extending by 120 days the time limit for the preliminary results of the antidumping duty administrative review of the antidumping finding on titanium sponge from the Republic of Kazakhstan ("Kazakhstan") (A–834–803), covering the period August 1, 1997, through July 31, 1998, since it is not practicable to complete this review within the time limits mandated by the Tariff Act of 1930, as amended ("the Act") (19 U.S.C. 1675 (a)(3)(A)).

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Mark Manning or Wendy Frankel,

Antidumping Duty and Countervailing Duty Enforcement, Office Four, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3936 and 482–5849, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's regulations are to the current regulations as codified at 19 CFR 351 (1998).

Background

On September 29, 1998 (63 FR 51893), the Department initiated an administrative review of the antidumping finding on titanium sponge from Kazakhstan, covering the period August 1, 1997, through July 31, 1998. In our notice of initiation, we stated our intention to issue the final results of these reviews no later than August 31, 1999.

Postponement of Preliminary Results of Review

Section 751(a)(3)(A) of the Act requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the foregoing time, section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations allows the Department to extend the time for making a preliminary and final determination to a maximum of 365 days and 180 days, respectively.

Due to the complexity of the legal and methodological issues presented by this review, the Department has determined that it is not practicable to complete the preliminary determination on this review within the time limit mandated by the Act (*See* Titanium Sponge from the Republic of Kazakhstan (A–834–803); Extension of Preliminary Results Review, dated April 29, 1999). Therefore, the Department is extending the deadline for issuing the preliminary results of this review until no later than August 31, 1999. The deadline for issuing the final results of this review will be no later than 120 days from the publication of the preliminary results.

This extension is in accordance with section 751(a)(3)(A) of the Act (19 U.S.C. 1675 (a)(3)(A)).

Dated: April 30, 1999.

Bernard Carreau,

Deputy Assistant Secretary for Import Administration

[FR Doc. 99–11721 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license world-wide to NIST's interest in the invention embodied in U.S. Patent Application 07/892,037, titled, "Photovoltaic Solar Water Heating System", filed June 2, 1992; NIST Docket No. 91–023US to Four Seasons Solar Products Corporations, having a place of business at 5005 Veterans Memorial Highway, Holbrook, NY 11741. The grant of the license would be for all fields of use.

FOR FURTHER INFORMATION CONTACT: D. Berkley, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899–2200.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the, **Federal Register** Vol. 59 (March 30, 1994). NIST and Four Seasons Solar Products Corporation may enter into a Cooperative Research and Development Agreement (CRADA) to further development of the invention.

U.S. Patent application 07/892,037 is owned by the U.S. Government, as represented by the Secretary of Commerce. The present invention relates to a system for heating water using solar energy, the system comprises a photovoltaic array, a water heater comprising a variable resistive load, and a controller for varying either the load characteristics of the resistive load or the power generating characteristics of the photovoltaic array, or both, to ensure maximum power transfer efficiency.

Dated: May 3, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11647 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration (NOAA)

[Docket No.: 990208045–9045–01]

RIN 0647–ZA61

AMS Industry, Government Scholarship, and Fellowship Program

SUBJECT: American Meteorological Society's Industry, Government Scholarship, and Fellowship Program.

AGENCY: National Weather Service (NWS), Commerce.

ACTION: Notice.

SUMMARY: The NWS issues this notice to announce its intention to continue funding without competition a graduate fellowship through the American Meteorological Society's (AMS) Industry/Government Scholarship and Fellowship Program, unless qualification statements are submitted as a result of this notice. The recipient of the fellowship award chosen by the AMS will receive $15,000 toward the cost of the first year graduate study in the atmospheric, oceanic, or hydrologic sciences.

FOR FURTHER INFORMATION CONTACT: Allan C. Eustis, Chief, NWS Office of Industrial Meteorology, Room 17146, 1325 East West Highway, Silver Spring, Maryland 20910. Telephone 301–713–0258.

SUPPLEMENTARY INFORMATION: The AMS is the only known national scientific professional society which coordinates and manages a unique graduate fellowship program designed solely to recruit young people entering their first year of graduate study in the fields of atmospheric, oceanic, or hydrologic sciences. Administration costs of the

program are funded by the AMS. Participating universities provide the fellowship awardees with a tuition waiver. The recipient can apply the entire amount to the cost of the first year of graduate study. Ultimately, the awardee has the opportunity to make significant contributions to the atmospheric, oceanic, and hydrologic sciences sooner than if the fellowship awards were not available.

Subject to the availability of fiscal year 1999 funds, the NWS intends to support a single awardee beginning with the 1999 academic year.

Executive Order 12866. It has been determined that this notice is not significant under Executive Order 12866.

(**Authority:** 15 U.S.C. 313 and 15 U.S.C. 1540)

Catalogue of Federal Domestic Assistance: Refer to Catalogue of Federal Domestic Assistance under number 11.449, which addresses Independent Education and Science Projects and Programs.

Dated: May 4, 1999.

John E. Jones, Jr.,

Deputy Assistant Administrator for Weather Services.

[FR Doc. 99–11700 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–KE–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043099C]

Mid-Atlantic Fishery Management Council (MAFMC); Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council and its Tilefish Committee will hold a public meeting.

DATES: The meeting will be held on Tuesday, May 25, 1999, from 10:00 a.m. until 5:00 p.m.

ADDRESSES: This meeting will be held at the Ramada Inn, 76 Industrial Highway, Essington, PA; telephone: 610–521–9600.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: Agenda item for this meeting is approval of the Tilefish Fishery Management Plan for public hearings.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, such issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis at the Council (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11698 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050399C]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will meet in Anchorage, AK the week of June 7, 1999.

DATES: See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The Scientific and Statistical Committee (SSC) of the Council will meet at the Fishermen's Hall, 503 Marine Way, Kodiak, AK.

The Advisory Panel (AP) of the Council (AP) will meet at the Elk's Lodge, 102 Marine Way, Kodiak, AK.

The Council will meet at the Best Western Kodiak Inn, 236 Rezanof Drive West, Kodiak, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

1. The SSC will begin at 8:00 a.m. on Monday, June 7, continuing through Wednesday, June 9, 1999.

2. The AP will begin at 8:00 a.m. on Monday, June 7, and continue through at least Thursday, June 10, 1999.

3. The Council will begin at 8:00 a.m. on Wednesday, June 9, continuing through at least Monday, June 14, and possibly continue into Tuesday, June 15, if necessary to complete the agenda.

Other workgroup or committee meetings may be held during the week. Notices of these meetings will be posted at the meeting location. All meetings are open to the public with the exception of Council executive sessions, which may be held during the noon hour during the meeting week, if necessary, to discuss personnel, international issues, or litigation.

The agenda for the Council's plenary session will include the following issues. The Council may take appropriate action on any of the issues identified.

1. The Council will receive the following reports, taking action if required:

a. Reports from NMFS and the Alaska Department of Fish and Game (ADF&G) on the current status of the groundfish fisheries off Alaska.

b. Reports from the U.S. Coast Guard and NMFS Enforcement on recent enforcement activities.

2. Final review and approval of alternatives and options for implementation of Steller sea lion protection measures for 2000 and beyond.

3. Final review and approval of fishery management plan amendments to conform with requirements of the American Fisheries Act (AFA), and final review and approval of an amendment package for fishery management measures to mitigate impacts of the AFA on non-pollock fisheries.

4. The Council will receive a committee report on implementation issues surrounding the development of inshore cooperatives.

5. The Council will hold an initial discussion of potential amendments to the Magnuson-Stevens Fishery Conservation and Management Act.

6. Under Groundfish Management, the Council will consider the following subjects:

a. Initial review of an analysis for a halibut mortality avoidance program, if available.

b. Review a request for an experimental fishing permit for a bait testing project for Pacific cod fisheries.

c. Initial review of an analysis for allocation of Bering Sea/Aleutian

Islands Pacific cod between freezer longliners and other fixed gear.

7. Initial review of a rebuilding plan for *bairdi* crab in the Bering Sea/Aleutian Islands.

The agendas for the SSC and AP will include the above agenda issues, with the exception of Item 1, standard reports.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during the meeting. Council action will be restricted to those issues specifically identified in the agenda listed in this notice.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen, 907–271–2809, at least 7 working days prior to the meeting date.

Dated: May 4, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11697 Filed 5–7–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 9, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651, or should be electronically mailed to the internet address *Pat__Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 4, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: Reinstatement.

Title: Discretionary Grant Application under Indian Education.

Frequency: Annually.

Affected Public: State, local or Tribal Gov't; SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 5,840.

Abstract: Application for funding for Indian Education discretionary programs of Demonstration Grants for Indian Children and Professional Development. The information is used to determine applicant eligibility and amount of awards for projects selected for funding.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, this 30-day public comment period notice will be the only public comment notice published for this information collection.

[FR Doc. 99–11629 Filed 5–7–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics, (ACES)

AGENCY: U.S. Department of Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics (ACES). This notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: May 20–21, 1999.

TIMES:

May 20—Full Council, 9:00 a.m.–1:00 p.m.; Management Committee, 1:00 p.m.–4:30 p.m.; Statistics Committee, 1:00 p.m.–4:30 p.m.; Strategy/Policy Committee, 1:00 p.m.–4:30 p.m.

May 21, 1999—Full Council 12:00 p.m.–2:30 p.m.; Statistics Committee, 8:45 a.m.–11:45 a.m.; Strategy/Policy Committee, 8:45 a.m.–11:45 a.m.; and Management Committee, 8:45 a.m.–11:45 a.m.

LOCATION: Phoenix Park Hotel, 520 North Capitol Street NW, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, National Center for Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, DC 20208–5530—(202) 219–1835.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under Section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses

disseminated by NCES are of high quality and are not subject to political influence. In addition, ACES is required to advise the Commissioner of NCES and the National Assessment Governing Board on technical and statistical matters related to the National Assessment of Education Progress (NAEP). The meeting of the Council is open to the public.

The proposed agenda for the full Council includes the following:

• A status report from the NCES Commissioner on the condition of NCES;

• A presentation and discussion of legislated cost and market basket studies contained in the Higher Education Act; and

• The presentation of Committee reports. Individual meetings of the three ACES subcommittees will focus on specific topics:

• The agenda for the Management Committee includes discussion of the Education Statistics Services Institute's (ESSI) evaluation, the Commissioner's management report, a briefing on customer service activities, a report on NCES's technology activities, and a discussion of the IPEDS redesign.

• The agenda for the Statistics Committee includes a discussion of the response probability convention in assessment scales, a briefing on NAEP and international assessments, a discussion on NAGB's perspectives on the future of NAEP, a report on the total survey error project, a joint session with the Policy Committee to discuss the NAEP/SASS research activity, and a discussion on NAEP technical and policy issues.

• The agenda for the Strategy/Policy Committee includes a report on teacher licensure, a progress report on instructional practices, and a report from NECS's taskforce on life long learning.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, NW, Room 400J, Washington, DC 20208–7575.

Dated: May 3, 1999.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 99–11701 Filed 5–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Public Forum

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of information collection activity.

SUMMARY: This notice announces that the National Assessment Governing Board (NAGB) will submit an Information Collection Request (ICR) to the Office of Management and Budget for approval.

The ICR is: An Investigation of Alternative Methods for Scale Anchoring and Item Mapping in the National Assessment of Educational Progress.

DATES: Public comments must be submitted on or before June 9, 1999.

ADDRESSES: Written comments should be submitted by June 9, 1999. Mail to Patricia Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168. Copies of the complete ICR and accompanying appendices may be obtained from the NAEP ALS Project Manager at the address above.

Comments may also be submitted electronically by sending electronic mail (e-mail) to *Hanick@ACT.org.* Electronic comments must be identified by the title of the ICR. No confidential business information should be submitted through e-mail.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as confidential business information (CBI). Information so marked will not be disclosed except in accordance with the procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by NAGB without prior notice.

FOR FURTHER INFORMATION CONTACT: Patirica Hanick, NAEP ALS Project Manager, ACT, Inc., 2255 North Dubuque Road, P.O. Box 168, Iowa City, IA 52243–0168, Telephone: (319) 337–1452 or (800) 525–6930, e-mail: *Hanick@ACT.org.*

SUPPLEMENTARY INFORMATION: Electronic copies of this ICR can be obtained from the contact person listed above.

I. Information Collection Request

NAGB is seeking comments on the following Information Collection Request (ICR).

Title: An Investigation of Alternative Methods for Scale Anchoring and Item Mapping in the National Assessment of Educational Progress.

Affected Entities: Parties affected by this information collection are persons who served as panelists for pilot studies, achievement levels-setting (ALS) meetings, and validation research for the 1998 Science NAEP.

Abstract. The purpose of this information collection activity is to gather research information for NAGB to be used in evaluating the procedures for the selection of exemplar items to represent student performance on NAEP. Exemplar items are used as one of the primary means of communicating student performance on NAEP. The criteria for selecting exemplar items is critical to the "message" portrayed by the items when reporting the outcomes of NAEP to the public.

Two statistical criteria currently guide the selection of exemplar items: One based on item difficulty, and the other on item discrimination. Part One of the study will examine that statistical criteria used to select exemplar items by comparing various scale anchoring and item mapping methodologies. The results of these systematic comparisons will be judged not only statistically, but also according to the degree to which they agree with informed judgments about item difficulty. Collecting responses from informed judges is Part Two of the study. Because these individuals have participated in the process of setting achievement levels for the 1998 Science NAEP, they are likely to be keenly interested in the research study.

In Part One of the study, several technical aspects of the anchoring process will be investigated:

(1) Stringency of difficulty criterion (response probability criterion);

(2) Point versus interval-based estimates;

(3) Empirical versus model-based estimates;

(4) Type of discrimination criterion.

Before conducting the data analysis of the anchoring process, cross validation analyses of random half-samples of the data will be done. Four methods of analyzing the student data are planned:

(1) Empirical/interval estimation;

(2) Empirical/point estimation;

(3) Model-based/interval estimation;

(4) Model-based/point estimation.

Three factors will be considered as the criteria to determine which anchoring/mapping method is best:

(1) Consistency of results across subsamples;

(2) The degree to which the results are supported by informed judgment;

(3) The number of exemplar items produced by the method.

In Part Two of the study each prospective respondent will be sent a selection of items from the 1990 Science NAEP Physical Science item pool. All of the items have been "released" for public review. Respondents will be asked to rank order the items according to the perceived level of difficulty. The ranking task will involve four overlapping sets of 8–9 items per set. Each item will be displayed on a separate card. Item sets will include obtained and bogus clusters. Participants will be asked if the items appear to cluster together, and if so, what are the common tasks or content areas that form the basis of the cluster. They will be asked to determine if the clusters reflect Basic, Proficient, or Advanced performance, based on the NAGB policy definitions of achievement levels. Finally, participants will be asked the following question:

If you were told that American students can do item N, what would you assume this meant? Specifically, what percent of students would need to be able to answer correctly in order for you to agree that students can do the item? (40%, 50%, 60%, 70%, 80%, (90%, 100%).

The results of Part One will then be evaluated according to the degree to which they agree with the informed judgments about item difficulty.

The response rate for the survey used in Part Two is expected to be 80% or higher. Only persons who served as panelists for pilot studies, achievement levels-setting meetings, and validation research for the 1998 Science NAEP will be invited to participate. These individuals have shown keen interest in NAEP by their participation in the ALS process. The mailing list for these individuals is being updated, and those who can be contacted will be asked in advance if they will agree to participate in the survey. Only persons who consent will receive the survey and accompanying materials. Follow-up procedures will include mailing reminder postcards, making telephone calls, and sending replacement materials.

No third party notification or public disclosure burden is associated with this collection.

Burden Statement: The estimated total respondent burden is 228 hours, and the average burden per respondent is 1.5 hours. This is a one-time survey. Neither small business nor other small entities are included in the survey.

II. Request for Comments

NAGB solicits comments to:

(i) Evaluate whether the proposed collection of information is an appropriate method to determine the "message" portrayed by the items regarding student performance on NAEP reported to the public.

(ii) Enhance the accuracy, quality, and utility of the information to be collected.

(iii) Evaluate whether the design of this survey maximizes the response rate, i.e. the number of selected persons who will respond.

Records are kept of all public comments and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 825, 800 North Capitol Street, NW, Washington, DC from 8:30 a.m. to 5 p.m.

Dated: May 5, 1999.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 99–11660 Filed 5–7–99; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Kirtland Area Office (Sandia)

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Kirtland Area Office (Sandia). The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, May 19, 1999: 5:30 p.m.–9 p.m. (MST).

ADDRESSES: North Valley Center, 3825 4th, NW, Albuquerque, New Mexico 87110, (505) 761–4025.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, PO Box 5400, Albuquerque, NM 87185, (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

5:30 p.m.

DOE Quarterly Report

6 p.m.

- Call to Order/Roll—Diane Terry, Acting Chair
- Public Comments (10 minutes)
- Opening Comments from Acting Chair (Including brief overview of retreat, any update information and incorporation deadline)
- Facilitated Check-in
- Review Agenda
- Approve Minutes from Last Meeting
- Committee Reports

New Business

Vote on Tobi for Monthly Meeting Facilitator 7 p.m.

- Process Work lead by Tobi
  1. Including information on important issues that need to be discussed, as identified by the CAB at Retreat
  2. Consensus Building Process
  3. Ground Rules
  4. Vision Statement

Break (15 Minutes)

8:15–8:55 p.m.

- Group Discussion:
  1. Leadership Criteria
  2. Process for Electing New Officers

Public Comments (5 Minutes)

9 p.m.
Adjourn

A final agenda will be available at the meeting Wednesday, May 19, 1999.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments. This notice is being published less 15 days before the date of the meeting due to programmatic issues that needed to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, PO Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on May 4, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11727 Filed 5–7–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–240–001]

Dynegy Midstream Pipeline, Inc.; Notice of Tariff Compliance Filing

May 4, 1999.

Take notice that on April 28, 1999, Dynegy Midstream Pipeline, Inc. (DMP), 1000 Louisiana, Suite 5800, Houston, TX 77002, submitted for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets:

First Revised Sheet No. 31
First Revised Sheet No. 199

DMP states that it is submitting these sheets in compliance with the March 31, 1999 Letter Order in the above-referenced proceeding approving a non-conforming service agreement with Kansas Gas Service Company. DMP states that the March 31 Order required DMP to reflect the non-conforming service agreement with Kansas Gas Service in its tariff. DMP requests waiver of the 30-day notice requirement so that these sheets may be made effective May 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11606 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–369–000]

East Tennessee Natural Gas Company, Notice of Request Under Blanket Authorization

May 4, 1999.

Take notice that on April 29, 1999, East Tennessee Natural Gas Company (East Tennessee), Post Office Box 2511, Houston, Texas 77252, filed in Docket No. CP99–369–000 a request pursuant to Sections 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for authorization to abandon by sale to the Knoxville Utilities Board (KUB), a municipality engaged in the local distribution of natural gas to the public, its Knoxville Lateral located in Knox County, Tennessee for a purchase price of $44,500. East Tennessee makes such request under its blanket certificate issued in Docket No. CP82–412–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission. The filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

East Tennessee states that the Knoxville Lateral was constructed in order to facilitate the transportation and sale of natural gas in interstate commerce, and that KUB is the only customer served by the Knoxville Lateral. Specifically, East Tennessee proposes to abandon approximately 5.5 miles of 12-inch diameter gas pipeline and related appurtenances that extends from East Tennessee's Mile Post 3116A–101+0.0 to Mile Post 3116–101+5.54 (Side Valve 3116A–101 to Side Valve 3116A–1401). East Tennessee states that the metering facility associated with this lateral, Meter No. 75–9005, will continue to be owned by East Tennessee.

East Tennessee avers that no environmental effects will result from this proposed abandonment and sale, since ownership of the existing facilities will simply be transferred to KUB. No facilities will be constructed or removed, and it is indicated that KUB intends to operate the pipeline as part of its integrated local distribution system.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and, pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205), a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for fling a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11609 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–286–000]

Granite State Gas Transmission, Inc., Notice of Proposed Changes in FERC Gas Tariff

May 4, 1999.

Take notice that on April 28, 1999, Granite State Gas Transmission, Inc. (Granite State) tendered for filing with the Commission the revised tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, for effectiveness on May 1, 1999:

First Revised Sheet No. 10
Fourth Revised Sheet No. 24
Second Revised Sheet No. 141
Second Revised Sheet No. 142
Third Revised Sheet No. 144
First Revised Sheet No. 145
First Revised Sheet No. 146
First Revised Sheet No. 147
First Revised Sheet No. 148
First Revised Sheet No. 149
First Revised Sheet No. 150
First Revised Sheet No. 441

According to Granite State, the primary purpose of its tariff filing is to revise the methodology in its Rate Schedule LMS (Load Management Service) for settling cash-outs with its transportation customers or imbalances between nominations for service and actual deliveries of gas. Granite State further states that, since it commenced restructured operations on November 1, 1993, in compliance with Order Nos. 636, *et seq.*, as an Operational Balancing Agreement (OBA) holder with Tennessee Gas Pipeline (Tennessee) it subscribed to Tennessee's Load Management Service to manage over and under daily and monthly transportation service deliveries from Tennessee for ultimate transportation and delivery to customers on Granite

State. To integrate the Tennessee Load Management Service with its operations, Granite State adopted a new Rate Schedule LMS which was a mirror of the Tennessee Load Management Service.

Granite State says that the foregoing arrangement for load balancing on its system worked well as long as Tennessee was the only upstream pipeline connected to its system. Lately, however, Granite State states that its system has been connected at two locations, in Westbrook, Maine, and Newington, New Hampshire, to the pipeline jointly owned by the Portland Natural Gas Transmission System (PNGTS) and Maritime and Northeast Pipeline, L.L.C. and PNGTS has commenced delivering gas to Granite State at these interconnections for further transportation and delivery to customers directly connected to the Granite State system. It is further stated that Maritimes is forecasting an in-service date of November, 1999, for the pipeline facilities authorized in Docket Nos. CP96–809, *et al.*

According to Granite State the revisions in its Rate Schedule LMS methodology are necessary because Granite State is now an intervening pipeline between Point Operators and OBA holders in its system and three (3) upstream pipelines. Granite State further states that the revisions in its Load Management Service which it proposes will pass through to the Point Operators and OBA holders on its system the settlements with upstream pipelines for delivery imbalances so that Granite State neither gains nor loses in the settlement process.

Granite State states that copies of its filing have been served on its firm and interruptible customers and on the regulatory agencies of the states of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20406, in accordance with sections 385.214 or 385.211 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www/ferc/fed/us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11604 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC99–49–000]

New England Power Company, Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission, Electric Company, Inc., AllEnergy Marketing Company, L.L.C. and NGG Holding LCC; Filings

May 4, 1999.

Take notice that on March 22, 1999, March 31, 1999, April 7, 1999, April 14, 1999 and April 27, 1999 New England Power Company (NEP), its affiliates holding jurisdictional assets (Massachusetts Electric Company, The Narragansett Electric Company, New England Electric Transmission Corporation, New England Hydro-Transmission Corporation, New England Hydro-Transmission Electric Company, Inc., and AllEnergy Marketing Company, L.L.C.) (collectively, the NEES Companies) and NGG Holdings LLC (NGG), submitted for filing as part of Appendix G to their merger application, the following: (a) Applications with the Nuclear Regulatory Commission and the New Hampshire Public Utilities Commission (March 22, 1999); (b) a Joint Petition filed with the Vermont Public Service board (March 31, 1999); (c) a letter regarding the acquisition of New England Electric System by the National Electric Group plc filed with the Connecticut Department of Utility control (April 7, 1999); (d) a letter from the Federal Trade Commission granting Applicant's request for early termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (April 14, 1999); and (e) an Application-Declaration filed with the Securities and Exchange Commission under the Public Utility Holding Company Act of 1935 (April 27, 1999).

Any person desiring to be heard or to protest such filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 24, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11678 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER99–2595–000 and ER99–2596–000]

Northeast Empire Limited Partnership #2; Northeast Empire Limited Partnership #1; Notice of Filings

May 4, 1999.

Take notice that on April 23, 1999, the above-mentioned public utilities filed their quarterly transaction report for the first quarter ending March 31, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 13, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11602 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–371–000]

Reliant Energy Gas Transmission Company; Notice of Request Under Blanket Authorization

May 4, 1999.

Take notice that on April 29, 1999, Reliant Energy Gas Transmission Company ("REGT"), 1111 Louisiana Street, Houston, Texas 77002–5231, filed in Docket No. CP99–371–000 a request pursuant to Sections 157.205 and 157.211 of the Commission's Regulations (18 CFR 157.205 and 157.211 under the Natural Gas Act (NGA) for authorization to construct and operate delivery point facilities in Arkansas under REGT's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001, pursuant to Section 7 of the NGA, all as more fully set forth in the request which is filing may be viewed on the web at http://www.ferc.fed.us/online/htm (call 202–208–2222 for assistance).

REGT specifically proposes to install a 6-inch meter station, 3-inch regulator, and approximately 200 feet of 6-inch pipe on Line LT–1 in Lafayette County, Arkansas to provide additional service to Entergy Couch power plant. It is stated that the maximum deliverable volumes will be 7,300 Mdth equivalent annually and 20 MDth equivalent on a peak day. It is asserted that the cost of these new facilities is estimated to be $138,097.

Any person or the Commission's Staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rule (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11608 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–397–000]

Southern Natural Gas Company; Notice of Application

May 4, 1999.

Take notice that on April 29, 1999, Southern Natural Gas Company (Applicant), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP99–397–000 an application pursuant to the provisions of Sections 7(b) and 7(c) of the Natural Gas Act, as amended, and Subpart F of the Regulations of the Federal Energy Regulatory Commission's (Commission) thereunder, for permission and approval to abandon certain pipeline facilities and for a certificate of public convenience and necessity authorizing the construction and operation of approximately 1,430 feet of replacement pipeline and appurtenant facilities located at the Boeuf River crossing and 1,017 feet of replacement pipeline and appurtenant facilities located at the Bayou Macon crossing, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Applicant requests authorization to abandon and replace certain pipeline segments of its North Main Line, North Main Loop Line, and North Main 2nd Loop Line at the Boeuf River crossing in Morehouse and West Carroll Parishes, Louisiana and the North Main Line and North Main Loop Line at the Bayou Macon crossing in East and West Carroll Parishes, Louisiana. Applicant states that at the Boeuf River crossing, it proposes to abandon approximately .16 miles of three 12-inch O.D. segments of its North Main Line, three 12-inch O.D. of its North Main Line, three 12-inch O.D. of its North Main Loop Line, and four 12-inch O.D. segments of its North Main 2nd Loop Line. Applicant further states that at the Bayou Macon crossing, it proposes to abandon approximately 0.08 miles of three 12-inch O.D. segments of its North Main Line and three 12-inch O.D. segments of its North Main Loop Line. Applicant indicates that it also requests authorization to construct, install, and operate approximately 1430 feet of one 20-inch North Main Line segment, one 18-inch North Main Loop Line segment, and one one 24-inch North Main 2nd Loop Line segment as replacements for the Boeuf River crossings and approximately 1,017 feet of one 22-inch North Main Line segment and one 22-inch North Main Loop Line segments as replacements for the Bayou Macon crossings. Applicant asserts that the total cost of the abandonments and replacements is estimated to be $3.5 million. Applicant requests Commission approval by June 1, 1999, so that construction may begin by July 1, 1999.

Any person desiring to be heard or to make any protest with reference to said application should on or before May 11, 1999, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding.

Any person wishing to become a party to the proceeding or to participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on this application if no petition to intervene is filed within the time required herein, and if the Commission on its own review of the matter finds that the abandonment is required by the public convenience and necessity. If a petition for leave to intervene is timely filed, or if the Commission on its motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provide for, unless otherwise advised, it will be unnecessary for Applicant to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11613 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–285–000]

Viking Gas Transmission Company; Notice of Filing

May 4, 1999.

Take notice that on April 27, 1999, Viking Gas Transmission Company ("Viking") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets with a proposed effective date of May 27, 1999:

Second Revised Sheet No. 68
Original Sheet No. 85A
Fourth Revised Sheet No. 86

The purpose of this filing is to provide for the reservation of capacity for use in future expansion projects. Reservation of capacity shall enable Viking to maximize the efficient use of capacity that is or will become available and shall minimize the cost of construction and the environmental impacts of new facilities consistent with existing Commission precendent.

Viking states that copies of the filing have been mailed to all of its jurisdictional customers and to affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www/ferc/fed/us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11605 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2597–000]

Virginia Electric and Power Company; Notice of Filing

May 4, 1999.

Take notice that on April 23, 1999, Virginia Electric and Power Company filed revisions to previously filed Quarterly Reports of Short-Term Transactions.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 13, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11603 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–367–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

May 4, 1999.

Take notice that on April 28, 1999, Williams Gas Pipelines Central, Inc. (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP99–367–000 a request pursuant to Sections 157.205, 157.212, and 157.216, of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212, and 157.216) for authorization: (1) To replace and to relocate the Buildex, Inc. Meter setting and appurtenant facilities, (2) to construct approximately 1,400 feet of 4-inch lateral pipeline, and (3) to abandon in place approximately 172 feet of 4-inch connecting pipeline, all in Platte County, Missouri under the blanket certificate issued in Docket No. CP82–479–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Williams states that the estimated construction cost is approximately $82,079, and the reclaim cost is approximately $921. Williams also states that this change is not prohibited by an existing tariff and that it has sufficient capacity to accomplish the deliveries specified without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed fro filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11610 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2146–083]

Alabama Power Company; Notice of Availability of Environmental Assessment

May 4, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application for the proposed Amendment of License for the Coosa River Project, located in Talladega County, Alabama, and has prepared a draft and, subsequently, a

final Environmental Assessment (EA) for the proposed action.

In the final EA, the Commission's staff analyzed the potential environmental impacts of The Utilities Board of the City of Sylacauga, Alabama (Board) constructing and operating a raw water intake and pumping station on Lay Reservoir. The staff concluded that, given the mitigative measures proposed by the Board, approval of the action would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA may also be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11607 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Amendment of License and Soliciting Comments, Motions to Intervene, and Protests

May 4, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Amendment to License.

b. *Project No:* 2407–044.

c. *Date Filed:* April 16, 1999.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Yates and Thurlow.

f. *Location:* The project is located on the Tallapoosa River, near the Town of Tallassee, in Tallapoosa and Elmore Counties, Alabama. The project occupies 9.41 acres of United States Lands within the Yates Project boundary that are administered by the Department of Interior, Bureau of Land Management.

g. *Filed Pursuant to:* 18 CFR 4.200 or 16 USC 791(a)–825(r)

h. *Applicant Contact:* Mr. James R. Schauer, Alabama Power, Company, 600 North 18th Street, P.O. Box 2641, Birmingham, AL 35291, (205) 257–1401.

i. *FERC Contact:* Any questions on this notice should be addressed to J.W. Flint, 202–219–2667.

j. *Deadline for filing comments and or motions:* June 2, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426

Please include the project number (2407–044) on any comments or motions filed.

k. *Description of Amendment:* The licensee proposes to replace the Unit 3 turbine runner and wicket gates. The new components will be designed to be more efficient and resistant to cavitation. The Licensee will require the turbine manufacturer to achieve the upgrades or capacity and efficiency without changing the current hydraulic capacity of 1200 cfs.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on the web at http// ww.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protests, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters in title "COMMENTS" "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11611 Filed 5–7–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request for Extension of Time To Commence and Complete Project Construction and Soliciting Comments, Motions To Intervene, and Protests

May 4, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Request for Extension of Time to Commence and Complete Project Construction.

b. *Project No.:* 10395–023.

c. *Date Filed:* March 31, 1999.

d. *Applicant:* City of Augusta, Kentucky.

e. *Name of Project:* Meldahl Hydroelectric Project.

f. *Location:* At the U.S. Army Corps of Engineers' Captain Anthony Meldahl Locks and Dam on the Ohio River, in Bracken County, Kentucky.

g. *Filed Pursuant to:* Public Law 105–213; 112 Stat. 884 (1998).

h. *Applicant Contacts:* Mr. Edward J. Rudd, P.O. Box 25 Brooksville, Kentucky, 41004, (606) 735–2950, Fax: (606) 735–2125; Mr. John R. Molm, Troutman, Sanders, LLP, 1300 I Street, N.W. Suite 500 East, Washington, D.C. 20005, (202) 274–2950, Fax: (202) 274–2994.

i. *FERC Contact:* Any questions in this notice should be addressed to Mr. Lynn R. Miles, Sr. at (202) 219–2671, or e-mail address: lynn.miles@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 7, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

Please include the project number (10395–023) on any comments or motions filed.

k. *Description of Request:* The licensee requests that the deadline for commencement of construction for FERC Project No. 10395–023 be extended to July 31, 2001. The deadline for completion of construction would be extended to July 31, 2003.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representative.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11612 Filed 05–07–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

May 5, 1999.

The Following Notice of Meeting is Published Pursuant to Section 3(A) of The Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 12, 1999, 10:00 a.m.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR: David P. Boergers, secretary, telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a List of Matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

Consent Agenda—Hydro 719th Meeting—May 12, 1999; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–10536, 004, PUBLIC UTILITY DISTRICT NO. 1 OF, OKANOGAN COUNTY, WASHINGTON
OTHER#S P–10536, 005, PUBLIC UTILITY DISTRICT NO. 1 OF, OKANOGAN COUNTY, WASHINGTON

CAH–2.
DOCKET# P–2696, 010, NIAGARA MOHAWK POWER CORPORATION

CAH–3.
OMITTED

CAH–4.
DOCKET# P–2640 013, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.
OTHER# P–2395 006, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.
P–2421, 006, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.
P–2473, 005, FRASER PAPERS, INC. AND FLAMBEAU HYDRO, L.L.C.

CAH–5.
DOCKET# P–11543 000, RICHARD D. ELY, III

Consent Agenda—Electric

CAE–1.
DOCKET# ER99–2184, 000, CONSUMERS ENERGY COMPANY

CAE–2.
OMITTED

CAE–3.
DOCKET# ER99–2244, 000, NIAGARA MOHAWK POWER CORPORATION

CAE–4.
DOCKET# ER99–2157, 000 ROCKY ROAD POWER, LLC
OTHER#S ER99–2160, 000 ASTORIA POWER LLC
ER99–2161, 000, ARTHUR KILL POWER LLC
ER99–2162, 000, HUNTLEY POWER LLC
ER99–2168, 000, DUNKIRK POWER LLC
ER99–2181, 000, SIGCORP ENERGY SERVICES, LLC
ER99–2198, 000, OTTER TAIL POWER COMPANY
ER99–2287, 000, BLACK HILLS CORPORATION
ER99–2329, 000, SOUTH EASTERN ELECTRIC DEVELOPMENT CORPORATION

CAE–5.
DOCKET# ER99–2218, 000, DETROIT EDISON COMPANY

CAE–6.
DOCKET# ER99–1650, 000, ILLINOIS POWER COMPANY
OTHER#S ER99–1331, 000, ILLINOIS POWER COMPANY

CAE–7.
OMITTED

CAE–8.
OMITTED

CAE–9.
DOCKET# ER98–2048, 000, ALLEGHENY POWER SERVICE CORPORATION

CAE–10.
OMITTED

CAE–11.
OMITTED

CAE–12.
OMITTED

CAE–13.
OMITTED

CAE–14.
OMITTED

CAE–15.
OMITTED
CAE–16.
OMITTED
CAE–17.
OMITTED
CAE–18.
OMITTED
CAE–19.
OMITTED
CAE–20.
DOCKET# OA97–97, 004, ATLANTIC CITY ELECTRIC COMPANY
OTHER#S OA97–2, 004, NEVADA POWER COMPANY
OA97–121, 004, ORANGE & ROCKLAND UTILITIES, INC.
OA97–451, 004, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
OA97–467, 004, DELMARVA POWER & LIGHT COMPANY
OA97–596, 005, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING, INC.
CAE–21.
DOCKET# OA97–117, 008, ALLEGHENY POWER SERVICE CORPORATION, MONONGAHELA POWER COMPANY, THE POTOMAC EDISON COMPANY AND WEST PENN POWER COMPANY
OTHER#S OA97–126, 007, ILLINOIS POWER COMPANY
OA97–158, 007, NIAGARA MOHAWK POWER CORPORATION
OA97–216, 007, WISCONSIN ELECTRIC POWER COMPANY
OA97–279, 007, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
OA97–313, 007, MIDAMERICAN ENERGY COMPANY
OA97–408, 007, AMERICAN ELECTRIC POWER SERVICE CORPORATION, APPALACHIAN POWER COMPANY AND COLUMBUS SOUTHERN POWER COMPANY, ET AL.
OA97–411, 006, PACIFICORP
OA97–431, 007, BOSTON EDISON COMPANY
OA97–456, 002, BALTIMORE GAS AND ELECTRIC COMPANY
OA97–456, 003, BALTIMORE GAS AND ELECTRIC COMPANY
OA97–459, 008, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON COMPANY OF INDIANA, INC.
CAE–22.
DOCKET# EL98–52, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
OTHER#S ER99–1957, 000, NORTHEAST POWER COORDINATING COUNCIL
ER99–1967, 000, COMMONWEALTH EDISON COMPANY AND COMMONWEALTH EDISON OF INDIANA
ER99–1968, 000, ILLINOIS POWER COMPANY
ER99–1969, 000, ENTERGY SERVICES, INC.
ER99–1972, 000, SOUTHERN INDIANA GAS & ELECTRIC COMPANY
ER99–1973, 000, MEMBER SYSTEMS OF NEW YORK POWER POOL
ER99–1984, 000, ALLIANT ENERGY CORPORATE SERVICES
ER99–1986, 000, VIRGINIA ELECTRIC AND POWER COMPANY
ER99–1987, 000, DAYTON POWER & LIGHT COMPANY
ER99–1991, 000, AMERICAN ELECTRIC POWER SERVICE CORPORATION
ER99–1994, 000, CAROLINA POWER & LIGHT COMPANY
ER99–1996, 000, MADISON GAS & ELECTRIC COMPANY
ER99–1997, 000, CINERGY SERVICES, INC.
ER99–1998, 000, WESTERN RESOURCES, INC.
ER99–1999, 000, CENTRAL ILLINOIS LIGHT COMPANY
ER99–2000, 000, SOUTHERN COMPANY SERVICES, INC.
ER99–2001, 000, OHIO VALLEY ELECTRIC CORPORATION
ER99–2002, 000, ALLEGHENY POWER SERVICE COMPANY
ER99–2003, 000, FLORIDA POWER CORPORATION, FLORIDA POWER & LIGHT COMPANY AND TAMPA ELECTRIC COMPANY
ER99–2004, 000, WPS RESOURCES CORPORATION
ER99–2008, 000, EAST TEXAS ELECTRIC COOPERATIVE, INC.
ER99–2009, 000, MAINE PUBLIC SERVICE COMPANY
ER99–2010, 000, PJM INTERCONNECTION, L.L.C.
ER99–2011, 000, DUKE ENERGY CORPORATION
ER99–2012, 000, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL
ER99–2014, 000, DETROIT EDISON COMPANY AND CONSUMERS ENERGY COMPANY
ER99–2015, 000, DUQUESNE LIGHT COMPANY
ER99–2016, 000, SOUTH CAROLINA ELECTRIC & GAS COMPANY
ER99–2018, 000, AMEREN SERVICES COMPANIES
ER99–2019, 000, WISCONSIN ELECTRIC POWER COMPANY
ER99–2031, 000, WOLVERINE POWER SUPPLY COOPERATIVE, INC.
ER99–2032, 000, LOUISVILLE GAS AND ELECTRIC COMPANY AND KENTUCKY UTILITIES COMPANY
ER99–2033, 000, CLECO CORPORATION
ER99–2035, 000, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY
ER99–2036, 000, OKLAHOMA GAS & ELECTRIC COMPANY
ER99–2037, 000, EMPIRE DISTRICT ELECTRIC COMPANY
ER99–2038, 000, SOUTHWEST POWER POOL
ER99–2040, 000, UNITED ILLUMINATING COMPANY
ER99–2042,000, FIRSTENERGY CORPORATION
ER99–2074,000, ELECTRIC ENERGY, INC.
ER99–2075,000, NORTHERN INDIANA PUBLIC SERVICE COMPANY
CAE–23.
DOCKET# EL98–52,002, NORTH AMERICAN ELECTRIC RELIABILITY COUNCIL

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP99–283,000, SABINE PIPE LINE COMPANY
CAG–2.
DOCKET# RP98–290,002, VIKING GAS TRANSMISSION COMPANY
CAG–3.
DOCKET# RP99–267,000, DESTIN PIPELINE COMPANY, L.L.C.
CAG–4.
DOCKET# RP98–290,001, VIKING GAS TRANSMISSION COMPANY
CAG–5.
DOCKET# RP99–133,001, MISSISSIPPI RIVER TRANSMISSION CORPORATION
OTHER#S RP99–133,002, MISSISSIPPI RIVER TRANSMISSION CORPORATION
CAG–6.
DOCKET# RP99–176,005, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–7.
DOCKET# RP98–394,001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP98–394,002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–8.
DOCKET# RP99–69,003, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–9.
DOCKET# RP98–42,012, ANR PIPELINE COMPANY
CAG–10.
DOCKET# RP97–369,011, PUBLIC

SERVICE COMPANY OF COLORADO, ET AL.
OTHER#S RP98–39,019, NORTHERN NATURAL GAS COMPANY
RP98–40,021, PANHANDLE EASTERN PIPE LINE COMPANY
RP98–42,013, ANR PIPELINE COMPANY
RP98–43,011, ANADARKO GATHERING COMPANY
RP98–52,030, WILLIAMS NATURAL GAS COMPANY
RP98–53,020, KN INTERSTATE GAS TRANSMISSION COMPANY
RP98–54,021, COLORADO INTERSTATE GAS COMPANY
CAG–11.
OMITTED
CAG–12.
DOCKET# MG99–10,001, PORTLAND NATURAL GAS TRANSMISSION SYSTEM
CAG–13.
DOCKET# CP98–538,001, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–14.
OMITTED
CAG–15.
DOCKET# CP98–800,000, EASTERN SHORE NATURAL GAS COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
DOCKET# RM99–2,000, REGIONAL TRANSMISSION ORGANIZATIONS NOTICE OF PROPOSED RULEMAKING.

Oil and Gas Agenda

I. PIPELINE RATE MATTERS
PR–1.
RESERVED
II. PIPELINE CERTIFICATE MATTERS
PC–1.
RESERVED

David P. Boergers,
Secretary.

[FR Doc. 99–11778 Filed 5–6–99; 12:13 pm]
BILLING CODE 6717–01–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6339–1]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for Customer Satisfaction Surveys

AGENCY: Environmental Protection Agency (EPA).
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Information Collection Request for Customer Satisfaction Surveys, EPA #1711.02, OMB Control Number 2090–0019, expiring 10/31/99. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before June 9, 1999.

ADDRESSES: USEPA, Office of Policy, ORMI/CSP—2161, 401 M Street SW, Washington, DC 20460. For printed copies of the ICR, call: 202–260–3096; to fax requests and comments, dial: 202–260–4968; electronically access a draft burden table at: *http://www.epa.gov/customerservice/ombdraft.htm* after May 15; when completed for OMB submittal, the full application will be accessible electronically at: *http://www.epa.gov/icr/icr/1711.htm*

FOR FURTHER INFORMATION CONTACT: Pat Bonner, telephone: 202–260–0599; fax 202–260–4968.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which request or receive Agency information, products or services, or participate in Agency processes.

Title: Information Collection Request for Customer Satisfaction Surveys, OMB Control Number 2090–0019, EPA ICR Number 1711.02, expiring 10/31/99.

Abstract: Voluntary customer surveys will involve individuals who experience EPA services directly. The EPA will use all available feedback gathering mechanisms to determine the level of customer satisfaction with attributes of its services. The EPA will use information obtained to assist in evaluating and improving service delivery and processes. The Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The EPA encourages comments to evaluate or suggest: whether the proposed collection of information is necessary for the proper performance of the functions of the Agency; the accuracy of the Agency's burden estimate and the validity of the methodology and assumptions used; how to enhance the quality, utility, and clarity of the information to be collected; and how to minimize the burden of the collection of information on those who are to respond, including appropriate applications of information technology.

Burden: The average estimated respondent burden is 14.4 minutes. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency, including the time needed to: review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Time is the only direct respondent cost. Respondent cost was calculated using $550.00 as the median for a middle income family weekly earnings for wage and salary workers. The EPA estimates the following for the year 2000–2002:

Year	Respondents	Burden hours	Respondent cost
2000	97,900	31,500	$433,125
2001	89,900	17,600	242,000
2002	95,400	18,600	255,750

Dated: April 21, 1999.

Paul Lapsley,

Acting Director, Regulatory Information Division, Office of Policy.

[FR Doc. 99–11709 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6338–7]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; the 1999 National Survey of Local Emergency Planning Committees

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The 1999 National Survey of Local Emergency Planning Committees. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1903.01.

SUPPLEMENTARY INFORMATION:

Title: The 1999 National Survey of Local Emergency Planning Committees, (EPA ICR No. 1903.01). This is a new collection.

Abstract: The Environmental Protection Agency, Office of Chemical Emergency Preparedness and Prevention (CEPPO) proposes to conduct a nationwide survey of Local Emergency Planning Committees (LEPCs). The information will be used to assess the general progress, status, and activity level of LEPCs. This collection also addresses reporting requirements under the Government Performance and Results Act (GPRA) of 1993, which stipulates that agencies focus on evaluating their program activities in terms of outputs and outcomes. This ICR is necessary to evaluate whether CEPPO is successfully providing national leadership and assistance to local communities in preparing for and preventing chemical emergencies.

In general, LEPCs provide local citizens an opportunity to participate actively in understanding chemical hazards, planning for emergency response, and reducing the risk of chemical emergencies. To be judged effective, LEPCs must be compliant with the requirements of EPCRA and actively carry out these responsibilities. LEPC's level of satisfaction with the information, guidance, and support they receive will heavily influence their ability to fulfill their duties. The 1999 National Survey of LEPCs will collect information to evaluate the status and activity level of these planning bodies and their satisfaction with CEPPO products and services.

This proposed information collection builds upon previous assessments conducted by CEPPO. In 1994, a nationwide survey of LEPCs revealed various strengths and weaknesses among LEPCs. Since that time, no systematic nationwide measurement of the progress of LEPCs has been conducted. Over the past five years, local emergency planning has evolved, most notably, in the amount of information that is now available to assist LEPCs in preparing for and preventing chemical emergencies. Moreover, in June 1999, this information will expand further with the addition of facility specific chemical hazards data and risk management plans made available under amendments to the Clean Air Act in 1990 (Section 112(r)—the Risk Management Program Rule for the prevention of chemical accidents).

The primary goals of this research are to: (1) track the progress of LEPCs by updating the 1994 baseline data on a series of key performance indicators; and (2) probe current LEPC practices and preferences regarding several important sets of issues—including: communications with local citizens, proactive accident prevention efforts, and the effectiveness of selected CEPPO products and services.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 02/12/99 (64 FR 7189–7190); two (2) comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.25 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Chairs or other leaders on Local Emergency Planning Committees (LEPCs).

Estimated Number of Respondents: 3,300.

Frequency of Response: This is a one-time survey.

Estimated Total Annual Hour Burden: 825 hours.

Estimated Total Annualized Capital, Operating/Maintenance Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1903.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 4, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–11713 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6339–7]

Notice of FIPS Waiver

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The Chief Information Officer for the Environmental Protection Agency has granted an extension to the Agency of its waiver (published at 62 FR 17187, effective March 21, 1997) to use the RSA cryptographical features provided in Lotus Notes in lieu of the Secure Hashing Standard (FIPS PUB 180–1), Digital Signature Standard (FIPS PUB 186), and Data Encryption Standard (FIPS PUB 46–2). This waiver is pursuant to section 111(d)(3) of the Federal Property and Services Act of 1949, as amended.

DATES: This waiver extension takes effect on April 9, 1999 and is valid until January 1, 2002. If the vendor incorporates Federal standards into the core product prior to January 1, 2002, EPA will end the waiver early at that time.

FOR FURTHER INFORMATION CONTACT: Mark Day, Office of Information Resources Management, 401 M Street SW (3401), Washington, DC 20460, 202–260–4465.

SUPPLEMENTARY INFORMATION: Federal Information Processing Standards publications (FIPS PUBS) for the Secure Hashing Standard (FIPS PUB 180–1), Digital Signature Standard (FIPS PUB 186–1), and the Data Encryption Standard (FIPS PUB 46–2) establish standards for generating digital signatures (which can be used to verify authenticity) and for the encryption of sensitive information transmitted and stored electronically. These FIPS publications also allow Federal agencies to waive them under certain circumstances:.

A waiver may be granted if compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system; or compliance with a standard would cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

The Chief Information Officer for the Environmental Protection Agency (EPA) has granted a waiver of FIPS PUBS 180–1, 186–1, and 46–2 to enable EPA to use the build-in cryptographic features of the groupware product Lotus Notes. The installed version of Lotus Notes, currently used by EPA, does not employ FIP standard cryptography. Rather it uses cryptography that enjoys widespread use in the private sector, domestically and internationally. This cryptography is Message Digest 2 (MD–2), the Rivest, Shamir, and Adelman (RSA) signature algorithm, and RC–4 symmetric encryption algorithm.

EPA determined that the cryptographic protection embedded in Lotus Notes provides an appropriate level of security to protect the unclassified information used, communicated, and stored by EPA. Upon reviewing RSA's cryptographic capabilities, Agency personnel have concluded that if properly implemented, Lotus Notes provides a full range of security functionality that fully satisfies Agency requirements.

The additional costs required to purchase and maintain FIPS-complaint products that provide equivalent security functionality as that provided by non-standard, but commercially acceptable cryptography found in Lotus Notes is a significant factor underlying the granting of this waiver. The acquisition costs for either software- or hardware-based products that implement existing Federal cryptographic standards are unnecessary. By using the cryptography embedded in Lotus Notes, EPA is able to avoid unnecessary costs, while utilizing security functionality widely accepted by the public and private sectors.

In accordance with FIPS requirements, notice of this waiver has been sent to the National Institute of Standards and Technology, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Government Affairs of the Senate.

Dated: April 9, 1999.

Alvin M. Pesachowitz,

Acting Assistant Administrator and Chief Information Officer.

[FR Doc. 99–11714 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6338–8]

Use of Monitored Natural Attenuation at Superfund, RCRA Corrective Action, and Underground Storage Tank Sites; OSWER Directive 9200.4–17P; Final

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This Directive replaces the Interim Draft that was released December 1, 1997. The Directive clarifies the U.S. Environmental Protection Agency's (EPA) policy regarding the use of Monitored Natural Attenuation for the remediation of contaminated soil and groundwater at sites regulated under Office of Solid Waste and Emergency Response (OSWER) programs. These include programs administered under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"), the Resource Conservation and Recovery Act (RCRA), the Office of Underground Storage Tanks (OUST), and the Federal Facilities Restoration and Reuse Office (FFRRO). The Directive is intended to promote consistency in how monitored natural attenuation remedies are proposed, evaluated, and approved. As a policy document, it does not provide technical guidance on evaluating Monitored Natural Attenuation remedies. It provides guidance to EPA staff, to the public, and to the regulated community on how EPA intends to exercise its discretion in implementing national policy on the use of Monitored Natural Attenuation. The Directive does not, however, substitute for EPA's statutes or regulations, nor is it a regulation itself and, thus, it does not impose legally-binding requirements on EPA, States, or the regulated community, and may not apply to a particular situation based upon the circumstances. EPA may change this guidance in the future, as appropriate.

ADDRESSES: Electronic Access. This document can be accessed in electronic form (PDF format) through the Internet at (http://www.epa.gov/swerust1/directiv/d9200417.htm). Order Copies. To order paper copies of this report, please call the U.S. Environmental Protection Agency's (EPA) RCRA, Superfund, OUST & EPCRA Hotline at (800) 424–9346 or DC Area Local (703) 412–9810 or TDD (800) 553–7672 or TDD DC Area Local (703) 412–3323 Monday through Friday between 9:00 a.m. and 6:00 p.m. EST. Docket. This document is available at three OSWER dockets:

(1) The UST Docket is open to the general public by appointment only between the hours of 9:00 a.m. and 4:00 p.m. EST Monday through Friday. No security clearance is necessary. Visitors may make photocopies of documents. The street address is: Office of Underground Storage Tanks Docket, 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202. Telephone numbers are (703) 603–9230 and (703) 603–9234 (fax).

(2) The RCRA Docket is located in the RCRA Information Center (RIC). The RIC is open to the public from 9:00 a.m. to 4:00 p.m., Monday through Friday, however, it is recommended that visitors call ahead to make an appointment so that the material they wish to view is ready when they arrive. Patrons may call for assistance at (703) 603–9230, send a fax to (703) 603–9234, or send an E-mail to rcra-docket@epamail.epa.gov. Patrons may write to: RCRA Information Center (5305W), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The RIC is located at 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202.

(3) The Superfund Docket is open to the general public by appointment only between the hours of 9:00 a.m. to 4:00 p.m. Monday through Friday. No clearance is necessary and requestors of documents must make their own photocopies. There is no photocopying charge for documents less than 266 pages in length. The street address of the Superfund Docket/Document Information Center is 1235 Jefferson Davis Highway, Ground Level, Arlington, VA 22202. The telephone numbers are (703) 603–9232 and (703) 603–9240 (fax). The E-mail address is: superfund.docket@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the OSWER Monitored Natural Attenuation Directive contact Hal White, via E-mail at white.hal@epa.gov, telephone at (703)–603–7177, fax at (703)–603–9163, or via U.S. Mail to US EPA (5403G), 401 M Street, SW, Washington DC 20460.

Dated: April 28, 1999.

Sammy Ng,

Acting Director, Office of Underground Storage Tanks.

[FR Doc. 99–11712 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 99–845]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 5, 1999, the Commission released a public notice announcing the May 25 and May 26, 1999, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

FOR FURTHER INFORMATION CONTACT: Jeannie Grimes at (202) 418–2320 or jgrimes@fcc.gov. The address is: Network Services Division, Common Carrier Bureau, Federal Communications Commission, The Portals, 445 Twelfth Street, SW, Suite 6–A320, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: May 5, 1999.

The next meeting of the North American Numbering Council (NANC) will be held on Tuesday, May 25, 1999, from 8:30 a.m., until 5:00 p.m., and on Wednesday, May 26, 1999, from 8:30 a.m., until 12 noon. The meeting will be held at the Federal Communications Commission, Portals II, 445 Twelfth Street, SW, Room TW–C305, Washington, DC 20554.

This meeting is open to the members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Jeannie Grimes at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, May 25, 1999

1. Approval of April 21–22, 1999, meeting minutes.
2. Local Number Portability Administration (LNPA) Working Group Report. Description of "next steps" regarding the identification and management of LNP implementation issues.
3. Industry Numbering Committee (INC) Report.
4. Numbering Resource Optimization (NRO) Working Group Report. Update on review of three COCUS alternatives (AT&T, Lockheed Martin NANPA, and US West models) and possible fourth alternative.
5. Cost Recovery Working Group Report.
6. North American Numbering Plan Administration (NANPA) Oversight Working Group Report.

Wednesday, May 26, 1999

7. Lockheed Martin NANPA periodic report on exhaust projection; information on Central Office Code (CO Code) numbering usage and assignment trends. NANC discussion of future collaboration with NANPA on the exhaust study.
8. Steering Group Report.
9. Number Portability N–1 Structure. Informational report regarding an initiative by Committee T1S1, proposing reexamination of the number portability N–1 structure.
10. Other Business.

Federal Communications Commission.

Diane Griffin Harmon,

Assistant Chief, Network Services Division, Common Carrier Bureau.

[FR Doc. 99–11704 Filed 5–7–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 24, 1999.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Wittkopf Enterprises Limited Partnership, Florence, Wisconsin; to acquire voting shares of Florence Bancorporation, Inc., Florence, Wisconsin, and thereby indirectly acquire voting shares of State Bank of Florence, Florence, Wisconsin.

Board of Governors of the Federal Reserve System, May 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11590 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 25, 1999.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Robert W. Gentry, Denton, Texas; to acquire additional voting shares of Lake Cities Financial Corporation, Lake Dallas,Texas, and thereby indirectly acquire additional voting shares of Lake Cities State Bank, Lake Dallas, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. William Marvin Eames, Lafayette, California; to acquire additional voting shares of East County Bank, Antioch, California.

Board of Governors of the Federal Reserve System, May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11732 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 1999.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105-1521:

1. BT Financial Corporation, Johnstown, Pennsylvania; to acquire 100 percent of the voting shares of First Philson Corp., Berlin, Pennsylvania, and thereby indirectly acquire First Philson Bank, N.A., Berlin, Pennsylvania.

2. First Leesport Bancorp, Inc., Leesport, Pennsylvania; to merge with Merchants of Shenadoah Ban-Corp, Shenadoah, Pennsylvania, and thereby indirectly acquire Merchants Bank of Pennsylvania, Shenadoah, Pennsylvania.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. The Sanwa Bank, Limited, Osaka, Japan; to acquire up to 32 percent of the voting share of the Toyo Trust and Banking Company, Tokyo, Japan, and thereby indirectly acquire Toyo Trust Company of New York, New York, New York.

Board of Governors of the Federal Reserve System, May 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11588 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling, Green, Ohio (in formation), and its wholly-owned subsidiary, FWBI Acquisition Corp., Bowling Green, Ohio; to merge with First Western Bancorp, Inc., New Castle, pennsylvania, and thereby indirectly acquire First Western Bank, N.A., New Castle, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Florida Business BancGroup, Inc., Tampa, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Bay Cities Bank, Tampa, Florida (in organization).

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Union Financial Group, Ltd., Swansea, Illinois; to acquire 100 percent

of the voting shares of Union Bank of Illinois, Swansea, Illinois (in organization). Comments regarding this application must be received by May 25, 1999.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Kircher Bank Shares, Inc., Olivia, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Citizens State Bank of Olivia, Olivia, Minnesota.

D. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, P.O. Box 291, Minneapolis, Minnesota 55480-0291:

1. Stockman Financial Corporation, Miles City, Montana; to acquire 100 percent of the voting shares of Terry Bancshares, Inc., Terry, Montana, and thereby indirectly acquire State Bank of Terry, Terry, Montana.

Board of Governors of the Federal Reserve System, May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11731 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 24, 1999.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervisor) 1455 East Sixth Street, Cleveland, Ohio 44101-2566:

1. Sky Financial Group, Inc., Bowling Green, Ohio; to acquire Wood Bancorp, Inc., Bowling Green, Ohio, and thereby indirectly acquire First Federal Bank, FSB, Bowling Green, Ohio, and thereby engage in permissible savings and loan activities, pursuant to § 225.28(b)(4)(ii) of Regulation Y. Comments regarding this application must be received by June 3, 1999.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63102-2034:

1. Commonwealth Bancshares, Inc., Shelbyville, Kentucky; to engage *de novo* through its subsidiary, First Security Trust Bank, F.S.B. Florence, Kentucky (in organization), in operating a federal savings bank, pursuant to § 225.28(b)(4)(ii). Comments regarding this application must be received by June 3, 1999.

Board of Governors of the Federal Reserve System, May 4, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11589 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 25, 1999.

A. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Stichting Prioriteit ABN AMRO Holding, Stichting Administratiekantoor ABN AMRO Holding, ABN AMRO Holding N.V., and ABN AMRO Bank N.V., all in Amsterdam, The Netherlands; to acquire a 50 percent equity interest in ABN AMRO Rothschild LLC, New York, New York (Company), and thereby engage in providing financial and investment advisory services and agency transactional services, pursuant to §§ 225.28(b)(6) and (7) of Regulation Y, and underwriting equity securities (*see Citicorp*, 73 Fed. Res. Bull. 473 (1987), as modified; *J.P. Morgan & Co.*, 75 Fed. Res. Bull. 192 (1989), as modified).

Company proposes to provide advisory services with respect to registered public offerings, private placements, and secondary block trades of equity securities. Company also proposes to engage in the syndication of equity underwriting commitments, supervision of the execution of equity underwriting commitments, coordination of distribution activities for equity offerings, and coordination of after-market trading in connection with distributions of equity securities. These activities will be conducted in North and South America.

Board of Governors of the Federal Reserve System, May 5, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11730 Filed 5–7–99; 8:45 am]

BILLING CODE 6210–01–F

GENERAL SERVICES ADMINISTRATION

Governmentwide Policy Advisory Board, Committee for Excellence in Customer Satisfaction

AGENCY: Office of Governmentwide Policy.

ACTION: Notice of open meeting.

SUMMARY: Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act and is

intended to notify the public of the opportunity to attend.

DATES AND TIMES: May 27, 1999, 9:00 AM to 5:00 PM.

ADDRESSES: Old Executive Office Building, 17th and Pennsylvania Avenue, NW, Washington, DC. Morning session: Vice President's Ceremonial Office (Room 274) Afternoon session: Indian Treaty Room (Room 474).

FOR FURTHER INFORMATION CONTACT: Lt. Colonel Vic Helbling, Project Manager, Customer Satisfaction Initiative, Federal Quality Consulting Group, 1700 G Street, NW-Third Floor-Washington, DC 20552. Telephone: (202) 906–6068. Facsimile: (202) 906–6162. E-Mail: customer.service@npr.gov.

SUPPLEMENTARY INFORMATION: This is the first meeting of the Governmentwide Policy Board's Committee for Excellence in Customer Satisfaction. The Committee is responsible for providing advice and recommendations regarding new and ongoing initiatives to improve customer satisfaction with the services provided by the Executive Branch.

The Committee's planned agenda includes the following:

9:00 to 9:15 Call to Order and Opening Remarks. Moreley Winograd, Senior Policy Advisor to the Vice President.
9:15 to 9:45 Introductions and Small Group Discussions.
9:45 to 10:00 Break.
10:00 to 12 noon Perspectives on Improving Customer Service and the Role of the Committee—Executive Roundtable Discussion.
12 noon to 1:00 Lunch.
1:15 to 1:30 Security Clearance for re-entry. Convene in the Indian Treaty Room #474 of the Old Executive Office Building with Agency Heads and members of the President's Management Council (PMC).
1:30 to 2:00 Recap of the morning session and Introductions of Small Groups.
2:00 to 2:30 Committee Members Interview Agency Heads and PMC members on Roles and Relationships.
2:30 to 2:45 Break.
2:45 to 4:00 Executive Roundtable Discussion on the Charter and Action Items for the Committee and Agency Heads.
4:00 to 4:30 Summary of Decisions.
4:30 to 5:00 Public Comment Period.
5:00 Adjourn.

The meeting of the Committee is open to the public; however, advance registration is required due to the limited seating available and the need to obtain prior clearance to enter the Old Executive Office Building. Attendance will be confirmed on a first-come, first-served basis. You must provide the following information by the close-of-business on May 25, 1999, to the point of contact listed above in order to be admitted: (a) Full name of the attendee; (2) Date of birth, and (3) Social Security number. In order to enter the Old Executive Office Building at the time of the meeting, you must present a form of legal identification bearing your picture and the personal information requested in this paragraph.

With advance notification to the contact person listed above, members of the public may make brief statements from 4:30 to 5:00. Oral statements may not exceed 5 minutes in length. Written statements may also be filed with the Committee for its consideration. Written statements should be submitted to the address listed above no later than May 26,1999.

Individuals requiring special assistance should contact the person listed above no later than May 17, 1999.

Dated: May 4, 1999.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 99–11717 Filed 5–7–99; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy; Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS on June 7–8, 1999, at the Radisson-Barcelo, Washington, DC. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, June 7 and Tuesday, June 8 from 8:30 a.m. to 6:00 p.m. at the Radisson-Barcelo, 2121 P Street, NW, Washington, DC 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Appropriations, Discrimination, International, Prevention, Prison, Racial Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, DC 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than May 21, 1999.

Dated: April 14, 1999.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 99–11591 Filed 5–7–99; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Health Care Policy and Research

Agency Information Collection Activities; Proposed Collection: Comment Request

AGENCY: Agency for Health Care Policy and Research, HHS.

ACTION: Notice.

SUMMARY: This notice announces the Agency for Health Care Policy and Research's (AHCPR) intention to request the Office of Management and Budget (OMB) to allow a proposed information collection: "Medical Expenditure Panel Survey Medical Provider Component (MEPS–MPC) for 1998, 1999 and 2000." In accordance with the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)), AHCPR, invites the public to comment on this proposed information collection.

DATES: Comments on this notice must be received by June 9, 1999.

ADDRESSES: Written comments should be submitted to: Allison Eydt, Human Resources and Housing Branch, Office of Information and Regulatory Affairs, OMB: New Executive Office Building, Room 10235; Washington, DC 20503.

All comments will become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Ruth A. Celtnieks, AHCPR Reports Clearance Officer, (301) 594–6659.

SUPPLEMENTARY INFORMATION:

Proposed Project

Medical Panel Expenditure Survey Medical Provider Component (MEPS–MPC) for 1998, 1999 and 2000.

The "Medical Panel Expenditure Survey Medical Provider Component (MEPS–MPC) for 1998, 1999 and 2000."

is a survey of hospitals, physicians and other medical providers. The purpose of this survey is to supplement and verify the information provided by household respondents in the household component of the MEPS (MEPS–HC) about the use of medical services. With the permission of members of the households surveyed in the MEPS–HC, we plan to contact their medical providers to determine the actual dates of service, the diagnoses, the services provided, the amount that was charged the amount that was paid and the source of payment. Thus, the MPC is derived from or is based upon the core survey, the MEPS–HC.

The Medical Expenditure Panel Survey Household Component (MEPS–HC) to be conducted will provide annual, nationally representatives estimates of health care use, expenditures, and sources of payment and insurance coverage for the U.S. civilian non-institutionalized population. MEPS is cosponsored by the Agency for Health Care Policy and Research (AHCPR) and the National Center for Health Statistics (NCHS).

MEPS data confidentially is protected under sections 308(d) and 903(c) of the Public Health Service Act (42 U.S.C. 242m and 42 U.S.C. 299a–1).

Data from medial providers linked to household respondents in the MEPS Household component for calendar year 1998 will be collected beginning in 1999 and continuing into the year 2000, data for calendar year 1999 will be collected beginning in 2000 and continue into the year 2001. Data for calendar year 2000 will be collected beginning in 2001 and continue into the year 2002.

Method of Collection

The medical provider survey will be conducted predominantly by telephone, but may include self-administered mail surveys, if requested by the respondent.

The estimated annual hour burden is as follows:

Type of provider	Number of respondents	Average number of patients/providers	Average number of events/patient	Average burden/event
Hospital	3,500	2	3.2	5 min. (.083 hrs.)
Office-based doctor	8,500	1.3	3.5	5 min.
Separately billing doctor (e.g., radiologists, anesthesiologists or those who bill hospital patients directly).	800	1	1.3	5 min
Home health	500	1.1	5.8	5 min.
Pharmacy	6,000	1.8	10.3	3 min.

Estimated Annual Burden Total: 11,759 hours.

Request for Comments

Comments are invited on: (a) The necessity of the proposed collection; (b) the accuracy of the Agency's estimate of burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information upon the respondents, including the use of automated collection techniques of other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection.

Copies of these proposed collection plans and instruments can be obtained from the AHCPR Reports Clearance Office (see above).

Dated: May 3, 1999.

John M. Eisenberg,

Administrator.

[FR Doc. 99–11534 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Hanford Thyroid Morbidity Study Advisory Committee: Cancellation of Meeting.

This notice announces the cancellation of a previously announced advisory committee meeting.

Federal Notice Citation of Previous Announcement: 64 FR 19542–19543, April 21, 1999.

Previously Announced Times and Dates: 1 p.m.–5 p.m., May 6, 1999, and 7 p.m.–9 p.m., May 6, 1999.

Change in the Meeting: This meeting has been cancelled.

Contact Persons for Additional Information: General information may be obtained from Mr. Mike Donnelly, Radiation Studies Branch (RSB), Division of Environmental Hazards and Health Effects (DEHHE), National Center for Environmental Health (NCEH), CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044. Technical information may be obtained from Dr. Paul Garbe, RSB, DEHHE, NCEH, CDC, 4770 Buford Highway, NE, (F–35), Atlanta, Georgia 30341–3724, telephone 770–488–7040, fax 770–488–7044.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and the Agency for Toxic Substances and Disease Registry.

Dated: April 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11633 Filed 5–7–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Institute for Occupational Safety and Health; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting:

Name: Safety and Occupational Health Study Section (SOHSS), National Institute for Occupational Safety and Health (NIOSH).

Times and Dates: 8 a.m.–5:30 p.m., June 17, 1999. 8 a.m.–5:30 p.m., June 18, 1999.

Place: Holiday Inn, 480 King Street, Alexandria, Virginia, 22314.

Status: Open 8 a.m.–8:15 a.m., June 17, 1999; Closed 8:15 a.m.–5:30 p.m., June 17, 1999; Closed 8 a.m.–5:30 p.m., June 18, 1999.

Purpose: The Safety and Occupational Health Study Section will review, discuss, and evaluate grant application(s) received in response to the Institute's standard grants review and funding cycles pertaining to research issues in occupational safety and health and allied areas.

It is the intent of NIOSH to support broad-based research endeavors in keeping with the Institute's program goals which will lead to improved understanding and appreciation for the magnitude of the aggregate health burden associated with occupational injuries and illnesses, as well as to support more focused research projects which will lead to improvements in the delivery of occupational safety and health services and the prevention of work-related injury and illness. It is anticipated that research funded will promote these program goals.

Matters to be Discussed: The meeting will convene in open session from 8:00–8:15 a.m. on June 17, 1999, to address matters related to the conduct of Study Section business. The remainder of the meeting will proceed in closed session. The purpose of the closed sessions is for the Safety and Occupational Health Study Section to consider safety and occupational health related grant applications. These portions of the meeting will be closed to the public in accordance with provisions set forth in section 552b(c)(4) and (6) title 5 U.S.C., and the Determination of the Associate Director for Management and Operations, CDC, pursuant to Public Law 92–463. Agenda items are subject to change as priorities dictate.

Contact Person for More Information: Pervis C. Major, Ph.D., Scientific Review Administrator, Office of Extramural Coordination and Special Projects, Office of the Director, NIOSH, 1095 Willowdale Road, Morgantown, West Virginia 26505. telephone 304/285–5979.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 30, 1999.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11634 Filed 5–7–99; 8:45 am]

BILLING CODE 4163–19–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–0791]

Agency Emergency Processing Under OMB Review; Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for emergency processing under the Paperwork Reduction Act of 1995 (the PRA). The proposed collection of information concerns a survey of medical device manufacturers for Year 2000 compliance of their manufacturing systems. The list of the Year 2000 compliant facilities will be made available to the public via the World Wide Web.

DATES: Submit written comments on the collection of information by May 17, 1999.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Desk Officer for FDA. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: FDA has requested emergency processing of this proposed collection of information under section 3507(j) of the PRA (44 U.S.C. 3507(j)) and 5 CFR 1320.13. FDA is requesting certain information on the Year 2000 compliance status of medical device manufacturing processes. This information is needed immediately in order to allow the agency to: (1) Assess the impact of the Year 2000 problem on the continued availability of an adequate supply of safe and effective medical devices and medical/surgical supplies; (2) properly advise the health-care industry and the U.S. public regarding the preparedness of the medical device industry; and (3) assess the need for additional government actions to address potential supply disruptions. This information is essential to the mission of the agency. The potential existence of Year 2000 problems in the medical device industry could pose potentially serious health and safety consequences. The use of normal clearance procedures would prolong the time needed to assess Year 2000 compliance by regulated industry.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Survey of Medical Device Manufacturers for Year 2000 Compliance of Manufacturing Systems

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 375(b)) permits the Secretary of Health and Human Services (the Secretary) to disseminate information regarding food, drugs, devices, and cosmetics in situations involving, in the opinion of the Secretary, imminent danger to health, or gross deception of the consumer. Manufacturers will be asked to provide a status on their Year 2000 readiness and will also be asked if they have contingency plans. The survey will also ask if they have tested, verified, and certified their systems. Finally, the request will ask for a single point of contact at the manufacturer to discuss information.

The manufacturer will be able to provide facsimile, electronic, or paper copy of the information to FDA for inclusion in the web site data base. Government agencies, as well as health-care facilities and the general public, will have access to the web site to be able to assess their vulnerability to Year 2000 problems and to take corrective actions, if necessary, in advance of January 1, 2000. The posting of information on compliant facilities is designed to provide health care facilities with a positive statement as to the status of compliant firms.

Respondents: Medical Device Manufacturers

FDA estimates the burden of this collection as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
13,500		1	13,500	13	175,500

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

FDA's mailing lists were used to estimate the number of medical device manufacturers who would be subject to this collection. FDA estimates that it will take manufacturers an average of 13 hours to collect, prepare, and submit the requested information. These estimates include allowance for variance in the number of devices to be reported by a manufacturer.

Dated: May 5, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11734 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1069]

Changes in the Procedures for Providing Public Notice of the Availability of Completed Environmental Assessments and Findings of No Significant Impact

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA), Center for Drug Evaluation and Research (CDER), is announcing changes in the procedures used for providing public notice of the availability of completed environmental assessments (EA's) and findings of no significant impact (FONSI's) for new drug applications (NDA's), abbreviated new drug applications (ANDA's), and supplemental applications.

EFFECTIVE DATE: May 10, 1999.

ADDRESSES: Copies of EA's and FONSI's are available on the Internet at "http://www.fda.gov.cder/foi/index.htm" or may be requested by writing the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Nancy B. Sager, Center for Drug Evaluation and Research (HFD–357), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5633.

SUPPLEMENTARY INFORMATION: Under the National Environmental Policy Act of 1969 (NEPA), Congress declared that it will be the continuing policy of the Federal Government to "use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." (See 42 U.S.C. 4331(a).) NEPA requires all Federal agencies to include in every recommendation or report for major Federal actions significantly affecting the quality of the human environment a detailed statement assessing the environmental impact of, and alternatives to, the proposed action and to make available to the public such statements. (See 42 U.S.C. 4332 and 40 CFR 1506.6.)

FDA regulations in part 25 (21 CFR part 25) govern compliance with NEPA, as implemented by the regulations of the Council on Environmental Quality (CEQ) in 40 CFR part 1500. Under FDA regulations, actions to approve NDA's, ANDA's, and supplements to existing approvals ordinarily require the preparation of an EA. (See § 25.20(l).)

In accordance with FDA regulations, FDA must make completed EA's and FONSI's for NDA's, ANDA's, and supplements available to the public upon request in accordance with the procedures in 40 CFR 1506.6. (See § 25.51(b)(2).) The regulations at 40 CFR 1506.6 require that certain environmental documents be made available to the public under the provisions of the Freedom of Information Act (5 U.S.C. 552) and that these documents be made available to the public without charge, to the extent practicable. (See 40 CFR 1506.6(f).) This is the procedure used by CDER to provide completed EA's and FONSI's for NDA's, ANDA's, and supplements for human drugs to the public when they are requested.

Although not required by regulation, CDER has also periodically published notices in the **Federal Register** (57 FR 18887, 61 FR 49470, 62 FR 22960, 63 FR 27300) that provide a listing of EA's and FONSI's that are available for NDA's, ANDA's, and supplements. FDA is announcing that CDER will no longer publish such notices, because the environmental documents are now available on the Internet.

In 1996, FDA established the Center for Drug Evaluation and Research (CDER) Freedom of Information Office Electronic Reading Room, which can be accessed through the Internet at "http://www.fda.gov.cder/foi/index.htm". The electronic reading room provides a listing of applications approved by CDER and electronic copies of agency documents used to support the approval of the applications under the heading "Drug Approval Packages." The agency documents include an EA and FONSI for each application unless the action was categorically excluded from the requirement to prepare an EA. (See § 25.31.)

Publication of a notice in the **Federal Register** announcing the availability of completed EA's and FONSI's for NDA's, ANDA's, and supplements duplicates the information available through the CDER Freedom of Information Office Electronic Reading Room. Therefore, to promote efficient operations, FDA will discontinue publication of such **Federal Register** notices, effective immediately.

Dated: April 30, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11583 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0611]

Determination of Regulatory Review Period for Purposes of Patent Extension; Femara®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Femara® and is publishing this notice

of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Femara® (letrozole). Femara® is indicated for the treatment of advanced breast cancer in postmenopausal women with disease progression following antiestrogen therapy. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Femara® (U.S. Patent No. 4,978,672) from Novartis Corp., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 16, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Femara® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Femara® is 2,160 days. Of this time, 1,794 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: August 28, 1991. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 28, 1991.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: July 25, 1996. FDA has verified the applicant's claim that the new drug application (NDA) for Femara® (NDA 20–726) was initially submitted on July 25, 1996.

3. *The date the application was approved*: July 25, 1997. FDA has verified the applicant's claim that NDA 20–726 was approved on July 25, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,232 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 9, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 8, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–11584 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0487]

Determination of Regulatory Review Period for Purposes of Patent Extension; Denavir™

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Denavir™ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory

review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Denavir™ (Penciclovir). Denavir™ is indicated for the treatment of recurrent herpes labialis (cold sores) in adults. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Denavir™ (U.S. Patent No. 5,075,445) from Beecham Group p.l.c., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 28, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Denavir™ represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Denavir™ is 1,299 days. Of this time, 954 days occurred during the testing phase of the regulatory review period, 345 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: March 7, 1993. The applicant claims March 5, 1993, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 7, 1993, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: October 16, 1995. FDA has verified the applicant's claim that the new drug application (NDA) for Denavir™ (NDA 20–629) was initially submitted on October 16, 1995.

3. *The date the application was approved*: September 24, 1996. FDA has verified the applicant's claim that NDA 20–629 was approved on September 24, 1996.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 640 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 9, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 8, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–11585 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Airline Catering Workshop on Sanitation, HACCP and the 1999 Food Code; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

The Food and Drug Administration (FDA), in cooperation with the International Inflight Food Service Association, is announcing the following workshop: Airline Catering Workshop on Sanitation, HACCP and the 1999 Food Code. The workshop will discuss issues on sanitation, Hazard Analysis Critical Control Point and the 1999 Food Code.

Date and Time: The workshop will be held on Wednesday, June 2, 1999, 8:30 a.m. to 5 p.m.

Location: The workshop will be held at the Marriott Hotel, 1500 Convention Center Dr., Arlington, TX 76011, 817–261–8200.

Contact: Martha S. Baldwin, Dallas District, Food and Drug Administration, 3310 Live Oak St., Dallas, TX 75204, 214–655–5310, ext. 544, FAX 214–655–5200, e-mail "mbaldwin@ora.fda.gov".

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by May 26, 1999.

If you need special accommodations due to a disability, please contact Martha S. Baldwin at least 7 days in advance.

Dated: May 4, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11736 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 97D–0228]

Guidance for Industry: Computerized Systems Used in Clinical Trials; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled

"Guidance for Industry: Computerized Systems Used in Clinical Trials." The guidance document provides guidance for computerized systems used to create, modify, maintain, archive, retrieve, or transmit clinical data intended for submission to FDA. Whether collected or reported electronically or in paper form, clinical data must meet certain quality standards, and this guidance is intended to provide information on how computerized systems can meet these standards.

DATES: Written comments on the guidance may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: Computerized Systems Used in Clinical Trials" to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs (ORA), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document. Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: James F. McCormack, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0425.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: Computerized Systems Used in Clinical Trials." This guidance pertains to long-standing regulations covering clinical trial records under 21 CFR parts 300, 500, and 800. On March 20, 1997 (62 FR 13430), FDA published a regulation providing uniform, enforceable, baseline standards for electronic records and electronic signatures, codified in 21 CFR part 11. To formulate supplemental guidance on the use of computerized systems in clinical trials, an agency working group representing the Bioresearch Monitoring Program Managers from each center within FDA and the Office of Regulatory Affairs prepared a draft of this present guidance. In the **Federal Register** of June 18, 1997 (63 FR 33094), FDA published the draft guidance which allowed 60 days for public comment. Upon petition, FDA extended the comment period for an additional 60 days. FDA received more than 500 comments from 24 respondents. Over the following 12 months, the agency working group reviewed all public comments and made appropriate changes to the guidance.

This guidance document represents the agency's current thinking on computerized systems used in clinical trials. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information contained in the guidance document may be applicable to all situations. The document is intended to provide useful information and does not set forth requirements.

II. Comments

Interested persons, may, at any time, submit to the Dockets Management Branch (address above) written comments regarding this guidance document. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document. A copy of the guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the guidance using the World Wide Web (WWW). For WWW access, connect to the Office of Regulatory Affairs at "http://www.fda.gov/ora/compliance_ref/bimo/default.html".

Dated: May 3, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11582 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98D–0512]

"Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and for the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use;'" Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a document entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use.'" This guidance document is intended to assist applicants in the preparation of the content and format of the chemistry, manufacturing, and controls (CMC) section and the establishment description section of a biologics license application (BLA), revised Form FDA 356h, for human blood and blood components intended for transfusion or for further manufacture. In addition, this guidance document provides assistance for the completion of the BLA. This action is part of FDA's continuing effort to achieve the objectives of the President's "Reinventing Government" initiatives and the Food and Drug Administration Modernization Act of 1997 (Modernization Act), to reduce unnecessary burdens for industry without diminishing public health protection.

DATES: Written comments may be submitted at any time.

ADDRESSES: Submit written requests for single copies of the guidance entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h,

'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use'" to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448. Send one self-addressed adhesive label to assist the office in processing your requests. The document may also be obtained by mail by calling the CBER Voice Information System at 1–800–835–4709 or 301–827–1800, or by fax by calling the FAX Information System at 1–888–CBER–FAX or 301–827–3844. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

Submit written comments on the guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Astrid L. Szeto, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a document entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use.'" This guidance document is intended to provide instructions on the completion of the revised Form FDA 356h, including CMC and establishment description sections for human blood and blood components intended for transfusion or for further manufacture. The guidance announced in this notice has been revised based on comments received on the draft guidance entitled "Guidance for Industry: For the Submission of Chemistry, Manufacturing and Controls and Establishment Description Information for Human Blood and Blood Components Intended for Transfusion or for Further Manufacture and For the Completion of the Form FDA 356h, 'Application to Market a New Drug, Biologic or an Antibiotic Drug for Human Use'" announced in the **Federal Register** of July 10, 1998 (63 FR 37401) and finalizes that draft document.

In the **Federal Register** of July 8, 1997 (62 FR 36558), FDA announced the availability of a new harmonized Form FDA 356h entitled "Application to Market a New Drug, Biologic, or an Antibiotic for Human Use." The new harmonized form is intended to be used by applicants for all drug and biological products, to include blood and blood components. Manufacturers may voluntarily begin using the form for human blood and blood components. FDA will announce in the future when manufacturers are required to use this form for all products. Use of the new harmonized form will allow biological product manufacturers to submit a single application, the BLA, instead of two separate license application submissions, a product license application (PLA) and an establishment license application (ELA).

This guidance document represents the agency's current thinking on content and format of the CMC and establishment description information sections of a license application for human blood and blood components intended for transfusion or for further manufacture. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirement of the applicable statute, regulations, or both. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information may be applicable to all situations. The document is intended to provide information and does not set forth requirements.

II. Comments

Interested persons, may at any time, submit written comments to the Dockets Management Branch (address above) regarding this guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments should be identified with the docket number found in the brackets in the heading of this document. A copy of the document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the World Wide Web (WWW). For WWW access, connect to CBER at "http://www.fda.gov/cber/guidelines.htm".

Dated: April 30, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–11735 Filed 5–7–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Research, Purification, and Further Development of Immunosuppressive Factor(s) Released From Human Glioblastoma Cells in Culture

The National Cancer Institute's Experimental Immunology Branch has identified and characterized the activity of a soluble factor(s) produced by human glioblastoma tumor cells that suppresses T cell responses in health donor blood samples.

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) Collaborator to aid NCI in the further characterization and commercial development of the immune-suppressive factor(s) generated from glioblastoma tumor cells. The glioblastoma-generated factor(s) appear to act by causing antigen-presenting cells (APCs), such as monocytes, to undergo a change in cytokine production which induces apotosis or antigen-specific unresponsiveness ("anergy") in T cells. NCI has partially purified and characterized the immunosuppressive factor(s). Several applications for this technology have been identified. They include (1) therapy for graft-host rejection in transplantation surgeries; (2) treatment of autoimmune diseases; and (3) suppression of severe allergic responses. NCI is looking for a CRADA Collaborator with a demonstrated record of success in protein purification and immunosuppressive therapeutics for the eventual use of this factor(s) in the clinical treatment of patients. The proposed term of the CRADA can be up to five (5) years.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than July 9, 1999. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly S. Symonds, Ph.D., Technology Development Specialist (Tel. #301–496–0477, FAX #301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) needed for participation in the CRADA opportunity should be addressed to Marlene Shinn, M.S., J.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, ext. 285; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. NCI is looking for a CRADA partner to aide NCI in characterization and commercial development of the tumor cell-derived immune-suppressive factor(s). The expected duration of the CRADA would be from one (1) to five (5) years.

Cancer patients frequently demonstrate an impaired *in vitro* and *in vitro* T cell immune activity. This deficiency is often reflected in animal models and affects both tumor antigens and non-tumor antigens. Cytokine dysfunction appears to contribute to tumor-associated immune dysregulation, with decreases of IL–2 and/or IFN-gamma production and increases in IL–4, IL–5, IL–6, and/or IL–10 production. Human gliomas are frequently very immunosuppressive and provide an interesting example of tumor-associated immune dysfunction. T cells from glioma patients are impaired in their ability to respond *in vitro* to antigens and to T cell mitogens by proliferation and IL–2 production. *In vitro* and clinical findings suggest that one or more factors released into the glioma culture supernatant (GCS) elicit immunoregulatory effects on systematic cellular immunity.

To test this hypothesis, NCI scientist investigated whether GCS would affect monocyte-generated cytokines and T cells from healthy donors of human peripheral blood mononuclear cells (PBMCs). Incubation of PBMC with GCS decreased production of IL–12, IFN-gamma, and TNF-alpha, and increased production of IL–6 and IL–10. The GCS-induced underproduction of IL–12 and overproduction of IL–10 in monocytes was correlated with a decrease in IL–12 p40 and an increase in IL–10 mRNA expression. Incubation with GCS also resulted in reduced expression of MHC class II and CD80/86 costimulatory molecules on monocytes. Experiments using exogenous IL–6, TGF-beta-1, TGF-beta-2, or CDGP, either singly or in combination, did not elicit the changes in with IL–12 or IL–10 production.

NCI scientists have shown that the immunosuppressive effects found in GCS are due to a factor(s) that is resistant to extremes in pH, differentially susceptible to temperature, susceptible to trypsin, and has a minimum molecular mass of 40 kDa. NCI scientists have also demonstrated that the glioblastoma factor(s) alter the cytokine profiles of monocytic APC(s) that, in turn, inhibit T cell function. Thus, the scientists have shown that monocytes can serve as an intermediate between tumor-generated immune-suppressive factors and the T cell responses that are suppressed in glomas. NCI scientists are currently exploring the possibility that T cells that recognize antigens presented on treated monocytes will undergo apoptosis or anergy, while T cells that do not recognize those antigens will retain their normal activities.

NCI predicts that the therapeutic use of the glioblastoma-generated immunosuppressive factor(s), once fully characterized and purified, will be applicable to a wide variety of fields. For example, there is a great need for immunosuppressive therapy following transplantation surgeries. A major challenge of tissue transplantation is to selectively deplete the immune system of responses against antigens found on the surface of grafted foreign tissue without concomitantly compromising immunity to antigens of infectious agents or tumors. At present, the standard approach is to continuously treat the transplant recipient with immunosuppressive drugs that are non-specific rendering the patient susceptible to opportunistic infections and/or cancer. By treating transplant recipients with donor antigen-presenting cells (APCs) that have been incubated ex vivo with glioblastoma culture supernatant (GCS), the recipient may be able to be depleted of all donor-specific T lymphocytes that are responsible for initiating graft rejection while at the same time maintaining immune integrity.

Immunnosuppressive drugs are also used to treat autoimmune diseases in which the autoantigen is known. Thus, it may be possible to delete autoimmune-specific T cells by treating the patient with autologous antigen-presenting cells that have been incubated with GCS and pulsed with the antoantigen *ex vivo*. Such an approach may eliminate the need for, or reduce the use of, immunosuppressive drugs in both tissue transplantation and autoimmune diseases.

The described methods are the subject of a U.S. provisional patent application filed on March 24, 1999 by the Public Health Service on behalf of the Federal Government. Furthermore, the initial report and characterization of the invention is described in: Zou et al, Journal of Immunology, vol. 162: 4882–4892 (1999).

Under the present proposal, the goal of the CRADA will be to enhance the development of the GCS-generated immunosuppressive factor(s) in the following areas:

1. Further purification and characterization of the factor(s).
2. Examination of the ability of the purified immunosuppressive factor to induce apoptosis or anergy in T cells through a monocyte intermediate using *in vitro* and *in vivo* models.

Party Contributions

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the glioblastoma-generated immunosuppressive factor(s).
3. Planning research studies and interpreting research results.
4. Carrying out research to validate the immunosuppressive activities of the GCS-generated factor(s).
5. Publishing research results.
6. Developing additional potential applications of the factor(s).

The role of the CRADA Collaborator may include, but not limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
4. Publishing research results.

Selecting criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. A demonstrated record of success in the areas of protein purification, characterization and therapeutic development.
2. A demonstrated background and expertise in immunological sciences.

3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through expertise and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (e.g., facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

6. The demonstration of expertise in the commercial development and production of products related to this area of technology.

7. The Level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: April 30, 1999.

Kathleen Sybert,

Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 99–11658 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Inventions; Availability for Licensing

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J.R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: .

Title: "Monoclonal Antibodies Specific for Human Thymidylate Synthase"—Prognosticator of Breast and Colorectal Cancer Survival

Inventors: Drs. Patrick G. Johnston (NCI), Carmen J. Allegra (NCI), Bruce A. Chabner (NCI) and Chi-Ming Liang (NCI).

DHHS Ref. No.: E–137–90/0 [= USPA SN: 07/690,841—Filed April 24, 1991].

The fluoropyrimidines are an important group of antineoplastic agents that are widely used in the treatment of gastrointestinal tumors, breast tumors, and epithelial tumors of the upper aerodigestive tract. Thymidylate synthase ("TS") catalyzes the methylation of deoxyurdine monophasphate ("dUMP") to deoxythymidine monphosphate ("dTMP"). The de novo synthesis of dTMP is an essential step in the synthesis of pyrimidine nucleotides and DNA biosynthesis. Thymidylate synthase ("TS") enzyme inhibition is one of the main biochemical events underlying the antineoplastic action of the fluropyrimidines 5-fluorouracil ("5-FU") and fluorodeoxyuridine ("FudR").

The clinical importance of Thymidylate synthase ("TS") has been noted by several investigators who have demonstrated *in vivo* as well as *in vitro* that TS enzyme levels in neoplastic cells rise rapidly when cells are exposed to 5-fluorouracil. Thus, the ability of a tumor to acutely over express the TS enzyme may play a key role in the development of tumor resistance and may represent an important protective mechanism in response to this drug.

The quantitation and detection of TS in human tissues has traditionally been performed by enzymatic biochemical assays that either measure catalytic activity or measure the amount of radiolabeled FdUMP binding to TS following extraction of the enzyme from cells and tissue. These assays have several limitations when applied to the measurement of TS activity in human tissue samples. While the assays have the required sensitivity for quantitating enzyme *in vitro* malignant cells in culture, they lack adequate sensitivity to measure the lower levels of enzyme activity in human tumors. Recently, monoclonal antibodies have been developed to human thymidylate synthase that have the required sensitivity and specificity to detect and quantitate thymidylate synthase enzyme in formalin-fixed tissue sections. These monoclonal antibodies to TS provide a method for determining the prognosis of a patient afflicted with breast cancer or with primary colorectal cancer by measuring the level of TS expression in biopsy tissue samples by using these antibodies specific to thymidylate synthase.

These monoclonal antibodies further provide a method for predicting the benefit of chemotherapy for a patient afflicted with breast cancer. The aforementioned methodology is derived from the discovery that high thymidylate synthase expression is associated with a poor prognosis in node-positive, but not in node-negative breast cancer patients. Further, with some 2,500 patients, thymidylate synthase expression was not found to be correlated with other prognostic factors including tumor size, ER status, PR Status, tumor grade, vessel invasion, and histology.

The expression of TS is also an important independent prognosticator of disease-free survival and overall survival in patients with colorectal cancer. In a study of the prognostic importance of the level of thymidylate synthase ("TS") expression in patients with primary colorectal cancer, the level of TS expression in the primary rectal cancers of 294 of 801 patients was immunohistochemically assessed with the TS–106 monoclonal antibodies. Forty-nine percent of patients whose tumors had low TS levels were disease free at 5 years compared with 27% of patients with high levels of TS. Moreover, 60% of patients with low TS

levels were alive after 5 years compared with 40% of patients with high TS levels. The level of TS expression remained prognostic for both disease-free survival and survival independent of the stage of disease and other pathologic characteristics evaluated.

The present invention relates to monoclonal antibodies that are specific for the protein thymidylate synthase, and TS–106 hybridoma producing these monoclonal antibodies. The invention further relates to methods of detection and diagnostic kits to test for the presence of thymidylate synthase.

The above mentioned invention is available for licensing, including any foreign intellectual property rights, on an exclusive or non-exclusive basis.

Dated: April 29, 1999.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 99–11659 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 11, 1999.

Time: 4:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Philip Perkins, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4148, MSC 7804, Bethesda, MD 20892, (301) 435–1718.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 14, 1999.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 14, 1999.

Time: 3:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: May 14, 1999.

Time: 12:00 p.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: J. Terrell Hoffeld, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4116, MSC 7816, Bethesda, MD 20892, (301) 435–1781.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93,844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11650 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Clinical Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Governors of the Warren Grant Magnuson Clinical Center.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in section 552b(b)(6), Title 5 U.S.C., as amended for discussion of personnel qualifications and performance, the disclosure of which, would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Governors of the Warren Grant Magnuson Clincal Center.

Date: June 4, 1999.

Open: 9:00 a.m. to 12:00 p.m.

Agenda: Discussion of the Clinical Center budget, organizational planning, and operations.

Place: National Institute of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Closed: 12:00 p.m. to 1:00 p.m.

Agenda: To review and evaluate the self assessment survey of the Board.

Place: National Institutes of Health, Clinical Center Medical Board Room, 2C116, 9000 Rockville Pike, Bethesda, MD 20892.

Contact Person: Maggi Stakem, Office of the Director, National Institutes of Health, Warren Grant Magnuson Clinical Center, Building 10, Room 2C146, 9000 Rockville Pike, Bethesda, MD 20892, 301/496–4114.

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11655 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the

National Cancer Institute Director's Consumer Liaison Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: National Cancer Institute Director's Consumer Liaison Group.
Date: May 11, 1999.
Time: 3:00 p.m. to 4:30 p.m.
Agenda: Concept review.
Place: National Institutes of Health, National Cancer Institute, Building 31, Room 10A06, Bethesda, MD 20892–2580, (Telephone Conference Call).
Contact Person: Eleanor Nealon, Director, Office of Liaison Activities, Building 31—Room 10A16, 9000 Rockville Pike, Rockville, MD 20892, 301/594–3194.

This notice is being published less than 15 days prior to the meeting due to the unexpected need to review these specific report recommendations.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11654 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Initial Review Group, Comparative Medicine Review Committee.
Date: June 8–9, 1999.
Open: June 8, 1999, 8:00 a.m. to 9:30 a.m.
Agenda: To discuss program planning and program accomplishments.
Place: Park International Hotel, 11410 Rockville Pike, Rockville, MD 20850.
Closed: June 8, 1999, 9:30 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Park International Hotel, 11410 Rockville Pike, Rockville, MD 20850.
Contact Person: Raymond O'Neill, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11656 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, Comparative Medicine.
Date: June 10, 1999.
Time: 8:00 a.m. to Adjournment.
Agenda: To review and evaluate grant applications.
Place: Park International Hotel, 11410 Rockville Pike, Rockville, MD 20850.
Contact Person: John D. Harding, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0820.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11657 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Initial Review Group, Biomedical Research and Research Training Review Committee C.
Date: June 16, 1999.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Arthur L. Zachary, PHD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–13, Bethesda, MD 20892, (301) 594–2886.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry

Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11649 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Sexually Transmitted Diseases Prevention—Primate Unit.

Date: May 21, 1999.

Time: 9:00 AM to 12:00 pm.

Agenda: To review and evaluate contract proposals.

Place: Georgetown Holiday Inn, Kaleidoscope Room, 2101 Wisconsin Ave. NW, Washington, DC 20007.

Contact Person: Anna Ramsey-Ewing, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Solar Building, Room 4C37, 6003 Executive Boulevard MSC 7610, Bethesda, MD 20892–7610, 301–435–8536.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11651 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel.

Date: May 5, 1999.

Time: 10:00 a.m. to 11:00 a.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute of General Medical Sciences, Natcher Building, Room 2AS–43J, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Peter C. Preusch, Health Scientist Administrator, Div. of Pharmacology, Physiology, and Biologic Chem, National Institute of General Medical Sciences, Natcher Building, Room 2AS–43J, Bethesda, MD 20892, (301) 594–5938.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–11652 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Initial Review Group, Clinical Aging Review Committee.

Date: June 10–11, 1999.

Time: June 10, 1999, 7:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: William A. Kachadorian, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2c212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Initial Review Group, Neuroscience of Aging Review Committee.

Date: June 14–16, 1999.

Time: June 14, 1999, 8:00 a.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place; Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Louise L. Hsu, SRA, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 4, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11653 Filed 5–7–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number: TE 011301.

Applicant: WDH Ecological Services, Benton, Kentucky (William D. Hendricks, P.I.).

The applicant requests a permit to take (capture and release, radio-telemetry) the following endangered bat species: Ozark big-eared bat (*Corynorhinus (=Plecotus) townsendii ingens*), Virginia big-eared bat (*Corynorhinus (=Plecotus) townsendii virginianus*), Gray bat (*Myotis grisescens*), Indiana bat (*Myotis sodalis*), Mexican long-nosed bat (*Leptonycteris nivalis*), and Sanborn's long nosed bat (*Leptonycteris curasoae (=sanborni) yerbabuenae*). Applicant requests authority to conduct activities in the states of Arkansas, Alabama, California, Illinois, Indiana, Michigan, Minnesota, Missouri, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Tennessee, Texas, Virginia, and West Virginia. Activities are proposed for the enhancement of survival of the species in the wild.

Permit Number: TE 842849.

Applicant: Davey Resource Group, Kent, Ohio (Michael Johnson, P.I.).

Applicant requests an amendment to permit number TE 842849 to expand scope of authorized activities. Permit currently authorizes take (capture and release, radio-telemetry) of Indiana bat (*Myotis sodalis*) in Ohio; applicant requests additional Ohio sites and Greenup County, Kentucky, site be added as authorized locations for permitted activities. Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: May 3, 1999.

T.J. Miller,

Acting Program Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 99–11728 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Elk Valley Rancheria Liquor Licensing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that the Elk Valley Rancheria Liquor Licensing Ordinance was duly adopted and certified by Resolution No. 97–16 of the Elk Valley Tribal Council on July 9, 1997. The Ordinance provides for the regulation of the sale, possession and consumption of liquor in the area of the Susanville Indian Rancheria, under the jurisdiction of the Susanville Indian Rancheria, and is in conformity with the laws of the State of California.

DATES: This ordinance is effective as of May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jim James, Office of Tribal Services, Division of Tribal Government Services, 1849 C Street, NW, MS 4631 MIB, Washington, DC 20240–4401; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Elk Valley Rancheria Liquor Licensing Ordinance is to read as follows:

Elk Valley Rancheria Liquor Licensing Ordinance

An Ordinance of the Tribal Council of the Elk Valley Rancheria Regulating the sale, distribution and control of alcoholic beverages on the Elk Valley Rancheria.

Chapter 1. General Provisions

Section 1.1 *Declaration of findings.* The Tribal Council of the Elk Valley Rancheria hereby finds as follows:

A. Under the Constitution of the Tribe, Article V, Section 1(1), the Tribal Council is charged with the duty of protecting the safety and welfare of the Elk Valley Rancheria.

B. The Introduction, possession and sale of alcoholic beverages on the Elk Valley Rancheria is a matter of special concern to the tribe.

C. Federal law leaves to Tribes the decision regarding when and to what extent alcoholic beverage transactions shall be permitted on Indian reservations.

D. Present day circumstances make a complete ban on alcoholic beverages within the Elk Valley Rancheria ineffective and unrealistic. At the same time, a need still exists for strict Tribal regulation and control over alcoholic beverage distribution.

E. The enactment of an Ordinance governing alcoholic beverage sales on the Elk Valley Rancheria and providing for the purchase and sale of alcoholic beverages through Tribally licensed outlets will increase the ability of the Tribal government to control the distribution, sale, and possession of liquor on the Elk Valley Rancheria, and at the same time will provide an important and urgently needed source of revenue for the continued operation of the Tribal government and delivery of Tribal governmental services.

Section 1.2 *Declaration of Policy.* Under the inherent sovereignty of the Tribe, the Elk Valley Rancheria Liquor Licensing Ordinance shall be deemed an exercise of the Tribe's power, for the protection of the welfare, health, peace, morals, and safety of the people of the Tribe, and all its provisions shall be liberally construed for the accomplishment of that purpose, and it is declared to be public policy that the sale and possession of alcoholic beverages affects the public interest of the people, and should be regulated to the extent of prohibiting all sale and possession of acholic beverages, except as provided in this Ordinance. In order to provide for Tribal control over liquor sales and possession within the Reservation, and to provide a source of revenue for the continued operation of the Tribal government and the delivery of Tribal governmental services, the Tribal Council promulgates this Ordinance.

Section 1.3 *Repeal of Prior Liquor Ordinances.* To the extent not previously repealed, either expressly or by implication, any prior Liquor

Ordinance remaining in effect is hereby expressly repealed.

Section 1.4 *Short Title.* This Ordinance shall be known and cited as the "Elk Valley Rancheria Liquor Licensing Ordinance."

Section 1.5 *Purpose.* The purpose of this Ordinance is to prohibit the importation, manufacture, distribution and sale of alcoholic beverages on the Elk Valley Rancheria, except pursuant to a license issued by the Tribal Council under the provisions of this Ordinance.

Section 1.6 *Sovereign Immunity preserved.* Nothing in this Ordinance is intended or shall be construed as a waiver of the sovereign immunity of the Elk Valley Rancheria. No officer or employee of the Elk Valley Rancheria is authorized nor shall he/she attempt to waive the immunity of the Tribe under the provisions of this ordinance unless such officer or employee has express, specific written authorization from the Tribal Council.

Section 1.7 *Applicability within the Reservation.* This Ordinance shall apply to all persons within the exterior boundaries of the Elk Valley Rancheria consistent with the applicable federal Indian liquor laws.

Section 1.8 *Interpretation and Findings.* The Tribal Council, in the first instance, may interpret any ambiguities contained in this Ordinance.

Section 1.9 *Application of 18 U.S.C. 1161.* The importation, manufacture, distribution and sale of alcoholic beverages on the Elk Valley Rancheria shall be in conformity with this Ordinance and in conformity with the laws of the State of California as that phrase or term is used in 18 U.S.C. 1161.

Section 1.10 *Severability.* If any part or provision of this Ordinance or the application thereof to any persons or circumstance is held invalid, the remainder of the Ordinance, including the application of such part or provision to other persons or circumstances, shall not be affected thereby and shall continue in full force and effect. To this end the provisions of this Ordinance are severable.

Section 1.11 *Effective Date.* This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Chapter 2. Definitions

Section 2.1 *Interpretation.* In construing the provisions of this Ordinance, the following words or phrases shall have the meaning designated unless a different meaning is expressly provided or the context clearly indicates otherwise.

Section 2.2 *Alcohol.* "Alcohol" means ethyl alcohol, hydrated oxide of ethyl, or spirits of wine, from whatever source or by whatever process produced.

Section 2.3 *Alcoholic Beverage.* "Alcoholic beverage" includes all alcohol, spirits, liquor, wine, beer, and any liquid or solid containing alcohol, spirits wine or beer, and which contains one half of one percent or more of alcohol by volume and which is fit for beverage purposes either alone or when diluted, mixed, or combined with other substances. It shall be interchangeable in this Ordinance with the term "liquor'.

Section 2.4 *Beer.* "Beer" means any alcoholic beverage obtained by the fermentation of any infusion or decoction of barley, malt, hops, or any other similar product, or any combination thereof in water, and includes ale, porter, brown, stout, lager beer, small beer, and strong beer, and also includes sake, otherwise known as Japanese rice wine.

Section 2.5 *Tribal Council.* "Tribal Council" means the governing body of the Elk Valley Rancheria as provided for under article IV, Sect. 1 of the Tribal Constitution.

Section 2.6 *Distilled Spirits.* "Distilled spirits" means any alcoholic beverage obtained by the distillation of fermented agricultural products, and includes alcohol for beverage use, spirits of wine, whiskey, rum, brandy, and gin, including all dilutions and mixtures thereof.

Section 2.7 *Importer.* "Importer" means any person who introduces alcohol or alcoholic beverages into the Elk Valley Rancheria from outside the exterior boundaries thereof for the purpose of sale or distribution within the Rancheria, provided however, the term importer as used herein shall not include a wholesaler licensed by any state or tribal government selling alcoholic beverages to a seller licensed by a state or tribal government to sell at retail.

Section 2.8 *Liquor License.* "Liquor license" means a license issued by the Tribal Council under the provision of this Ordinance authorizing the sale, manufacture, or importation of alcoholic beverages on or within the Rancheria, consistent with federal law.

Section 2.9 *Manufacturer.* "Manufacturer" means any persons engaged in the manufacture of alcohol or alcoholic beverages.

Section 2.10 *Person.* "Person" means any individual, whether Indian or non-Indian, receiver, assignee, trustee in bankruptcy, trust, estate, firm, partnership, joint venture, corporation, association, society, or any group of individuals acting as a unit, whether mutual, cooperative, fraternal, non-profit or otherwise, and any other Indian tribe, band or group, whether recognized by the United States Government or otherwise. The term shall also include the business enterprises of the Tribe. It shall be interchangeable in the Ordinance with the term "seller" or "licensee."

Section 2.11 *Rancheria.* "Rancheria" means all lands within the exterior boundaries of the Elk Valley Rancheria and such other lands as may hereafter be acquired by the Tribe, whether within or without said boundaries, under any grant, transfer, purchase, gift, adjudication, executive order, Act of Congress, or other means of acquisition.

Section 2.12 *Sale.* "Sale" means the exchange of property and/or any transfer of the ownership of, title to, or possession of property for a valuable consideration, exchange or barter, in any manner or by any means whatsoever. It includes conditional sales contracts, leases with options to purchase, and any other contract under which possession of property is given to the purchaser, buyer, or consumer but title is retained by the vendor, retailer, manufacturer, or wholesaler, as security for the payment of the purchase price. Specifically, it shall include any transaction whereby, for any consideration, title to alcoholic beverages is transferred from one person to another, and includes the delivery of alcoholic beverages pursuant to an order. The term "sale" shall also specifically include the transfer of alcoholic beverages from one person to another pursuant to a complimentary or free beverage policy, promotion, plan, or scheme of the seller.

Section 2.13 *Seller.* "Seller" means any person who, while within the exterior boundaries of the Rancheria, sells, solicits or receives an order for any alcohol, alcoholic beverages, distilled spirits, beer, or wine.

Section 2.14 *Wine.* "Wine" means the product obtained from the normal alcoholic fermentation of the juice of the grapes or other agricultural products containing natural or added sugar or any such alcoholic beverage to which is added grape brandy, fruit brandy, or spirits of wine, which is distilled from the particular agricultural product or products of which the wine is made, and other rectified wine products.

Chapter 3. Prohibition of the Unlicensed Sale of Liquor

Section 3.1 *Prohibition of the Unlicensed Sale of Liquor.* No person shall import for sale, manufacture,

distribute or sell alcoholic beverages within the Reservation without first applying for and obtaining a written license from the Tribal Council issued in accordance with the provisions of this Ordinance.

Section 3.2 *Authorization to Sell Liquor.* Any person for and obtaining a liquor license under the provisions of this Ordinance shall have the right to engage only in those liquor transactions expressly authorized by such license and only at those specific places or areas designated in said license.

Section 3.3 *Types of Licenses.* The Tribal Council shall have the authority to issue the following types of liquor licenses within the Reservation:

A. "Retail on-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer only on the premises or at the location designated in the license.

B. "Retail on-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer only on the premises or at the location designated in the license.

C. "Retail off-sale general license" means a license authorizing the applicant to sell alcoholic beverages at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.

D. "Retail off-sale beer and wine license" means a license authorizing the applicant to sell beer and wine at retail to be consumed by the buyer off the premises or at a location other than the one designated in the license.

E. "Manufacturers license" means a license authorizing the applicant to manufacture alcoholic beverages for the purpose of sale on the Rancheria.

Chapter 4. Applications for Licenses

Section 4.1 *Application Form and Content.* An application for licensing under this Ordinance shall be made to the Tribal Council and shall contain the following information:

A. The name and address of the applicant. In the case of a corporation, the names and addresses of all of the principal officers, directors and stockholders of the corporation. In the case of a partnership, the name and address of each partner.

B. The specific area, location and/or premises for which the license is applied for.

C. The type of liquor license applied for (i.e. retail on-sale general license, etc.).

D. Whether the applicant has a California state liquor license.

E. A statement by the applicant to the effect that the applicant has not been convicted of a felony and has not violated and will not violate or cause or permit to be violated any of the provisions of this Ordinance or any of the provisions of the California Alcoholic Beverage Control Act.

F. The signature and fingerprint of the applicant. In the case of a partnership, the signature and fingerprint of each partner. In the case of a corporation, the signature and fingerprint of each of the officers of the corporation under the seal of the corporation. In the case of a tribal business enterprise, the signature and fingerprint of the officers of the enterprise or any persons maintaining day-to-day control and management of the enterprise, whichever is applicable.

G. The application shall be verified under oath, notarized and accompanied by the license fee required by this Ordinance.

Section 4.2 *Fee Accompany Application.* The Tribal Council shall by resolution establish a fee schedule for the issuance, renewal and transfer of the following types of licenses:

A. Retail on-sale general license;

B. Retail on-sale beer and wine license;

C. Retail off-sale general license;

D. Retail off-sale beer and wine license; and E. Manufacturers license.

Section 4.3 *Investigation.* Upon receipt of an application for the issuance, transfer or renewal of a license and the application fee required herein, the Tribal Council shall make a thorough investigation to determine whether the applicant and the premises for which a license is applied for qualify for a license and whether the provisions of the Ordinance have been complied with, and shall investigate all matters connected therewith which may affect the health, safety and welfare of the Tribe.

Section 4.4 *Denial of Application.* An application shall not be denied, except for good cause. However, the Tribal Council shall deny an application for issuance, renewal, or transfer of a license if either the applicant or the proposed premises:

A. has not complied with application procedures;

B. does not meet application requirements;

C. would tend to create a law enforcement problem;

D. obtained a license on the basis of false, misleading , or misrepresented information; or

E. fails to qualify for the issuance of findings of the Tribal required by Section 5.2 of this Ordinance.

Chapter 5. Issuance, Renewal and Transfer of Licenses

Section 5.1 *Public Hearing.* Upon receipt of proper application for issuance, renewal or transfer of a license, and the payment of all fees required under this Ordinance, the Secretary of the Tribal Council shall set the matter for a public hearing. Notice of the time and place of the hearing shall be given to the applicant and the public at least ten calendar days before the hearing. Notice shall be given to the applicant by prepaid U.S. mail at the address listed in the application. Notice shall be given to the public by publication in a newspaper of general circulation sold on the Rancheria. The notice published in the newspaper shall include the name of the applicant and the type of license applied for and a general description of the area where liquor will be sold. At the hearing, the Tribal Council shall hear from any person who wishes to speak for or against the application. The Tribal Council shall have the authority to place time limits on each speaker and limit or prohibit repetitive testimony.

Section 5.2 *Tribal Council Action on the Application.* Within thirty (30) days of the conclusion of the public hearing, the Tribal Council shall act on the matter. The Tribal Council shall have the authority to deny, approve, or approve with conditions the application. Before approving the application, the Tribal Council shall find: (1) that the applicant has met all procedural requirements of the application process; (2) that investigation of the application has not produced any information that would disqualify the applicant from obtaining a license under this Ordinance; (3) that the site for the proposed premises has adequate parking, lighting, security and ingress and egress so as not to adversely affect adjoining properties or businesses; and (4) that the sale of alcoholic beverages at the proposed premises is consistent with the Tribe's Zoning Ordinance.

Upon approval of an application the Tribal Council shall issue a license to the applicant in a form to be approved from time to time by the Tribal Council by resolution. All businesses shall post their Tribal liquor license issued under the Ordinance in a conspicuous place upon the premises where alcoholic beverages are sold, manufactured or offered for sale.

Section 5.3 *Multiple Locations.* Each license shall be issued to a specific person. Separate license shall be issued for each of the premises of any business

establishment having more than one location.

Section 5.4 *Term of License.* Temporary license. All licenses issued by the Tribal Council shall be issued on a calendar year basis and shall be renewed annually; provided, however, that the Tribal Council may issue special licenses for the sale of alcoholic beverages on a temporary basis for premises temporarily occupied by the licensee for a picnic, social gathering or similar occasion at a fee to be established by the Tribal Council by resolution.

Section 5.5 *Transfer of Licenses.* Each license issued or renewed under this Ordinance is separate and distinct and is transferable from the licensee to another person and/or from one premises to another premises only with the approval of the Tribal Council. The Tribal Council shall have the authority to approve, deny or approve with conditions any application for the transfer of any license. In the case of a transfer to a new person, the application for transfer shall contain all of the information required of an original applicant under Section 4.1 of this Ordinance. In the case of a transfer to a new location, the application shall contain an exact description of the location where the alcoholic beverages are proposed to be sold.

Chapter 6. Revocation of Licenses

Section 6.1 *Revocation of License.* The Tribal Council shall revoke a license upon any of the following grounds:

A. The misrepresentation of a material fact by an applicant in obtaining a license or a renewal thereof.

B. The violation of any condition imposed by the Tribal Council on the issuance, transfer, or renewal of a license.

C. A plea, verdict, or judgment of guilty, or the plea of nolo contendere to any public offense involving moral turpitude under any federal or state law prohibiting or regulating the sale, use, possession, or giving away of alcoholic beverages or intoxicating liquors.

D. The violation of any tribal Ordinance.

E. The failure to take reasonable steps to correct objectionable conditions on the licenses premises or any immediate adjacent area leased, assigned or rented by the licensee constituting a nuisance within a reasonable time after receipt of a notice to make such corrections has been received from the Tribal Council or its authorized representative.

Section 6.2 *Accusations.* The Tribal Council on its own motion, through the adoption of an appropriate resolution meeting the requirements of this Section, or any person, may initiate revocation proceedings by filing an accusation with the Secretary of the Tribal Council. The accusation shall be in writing and signed by the maker, and shall state facts showing that there are specific grounds under this Ordinance which would authorize the Tribal Council to revoke the license or licenses of the licensee against whom the accusation is made. Upon receipt of any accusation which meets the foregoing requirements, the Secretary shall cause the matter to be set for hearing before the Tribal Council. Thirty days prior to the date set for the hearing, the Secretary shall mail a copy of the accusation along with a notice of the day and time of the hearing before the Tribal Council. The notice shall command the licensee to appear and show cause why the licensee's license should not be revoked. The notice shall state that the licensee has the right to file a written response to the accusation, verified under oath and signed by the licensee ten days prior to the hearing date.

Section 6.3 *Hearing.* Any hearing held on any accusation shall be held before a quorum of the Tribal Council under such rules of procedure as it may adopt. Both the licensee and the person filing the accusation, including the Tribe, shall have the right to present witnesses to testify and to present written documents in support of their positions to the Tribal Council. The Tribal Council shall render its decision within 60 days after the date of the hearing. The decision of the Tribal Council shall be final and non-appealable.

Chapter 7. Enforcement

Section 7.1 *General Penalties.* Any person adjudged to be in violation of this Ordinance shall be subject to a civil penalty of not more than Five Hundred Dollars ($500.00) for each such violation. The Tribal Council may adopt by resolution a separate schedule of fines for each type of violation, taking into account its seriousness and the threat it may pose to the general health and welfare of tribal members. Such schedule may also provide, in the case of repeated violations, for imposition of monetary penalties greater than the Five Hundred Dollars ($500.00) limitation set forth above. The penalties provided for herein shall be in addition to any criminal penalties which may hereafter be imposed in conformity with federal law by separate Chapter, or provision of this Ordinance or by a separate Ordinance adopted by the Tribal Council.

Section 7.2 *Initiation of Action.* Any violation of this Ordinance shall constitute a public nuisance. The Tribal Council may initiate and maintain an action in tribal court or any court of competent jurisdiction to abate and permanently enjoin any nuisance declared under this Ordinance. Any action taken under this Section shall be in addition to any other penalties provided for this Ordinance.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11593 Filed 5–6–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Pueblo of Taos Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This Notice is published in accordance with authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161. I certify that Resolution No. 99–04, enacting the Liquor Ordinance of the Pueblo of Taos was duly adopted by the Pueblo of Taos on February 25, 1999. The Ordinance provides for the regulation of the activities of the regulation, manufacture, distribution, possession, sale, and consumption of liquor on the Pueblo of Taos lands under the jurisdiction of the Pueblo of Taos, the provisions for criminal jurisdiction to be exercised in accordance with applicable Federal case law, statutes, and regulations.

DATES: This Ordinance is effective as of May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Division of Tribal Government Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Liquor Ordinance of the Pueblo of Taos is to read as follows:

Taos Pueblo Liquor Ordinance

Section 1. Introduction

A. *Title.* The title of this ordinance shall be the Taos Pueblo Liquor Ordinance.

B. *Authority.* This Ordinance is enacted in accordance with the inherent governmental powers of the Taos Pueblo, whose traditional law

empowers its Tribal Council to enact ordinances. This Ordinance is in conformance with the laws of New Mexico, as required in 18 U.S.C. 1161.

Section 2. Definitions

A. "Alcoholic beverage" or "Liquor" includes the four varieties of liquor commonly referred to as alcohol, spirits, wine, and beer, and all fermented, spirituous, vinous or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous, or malt liquor, or any otherwise intoxicating liquid, including every liquid or solid or semi-solid or other substance, patented or not, containing alcohol, spirits, wine, or beer and intended for oral consumption.

B. "Governor" means the Governor of the Taos Pueblo or his designee.

C. "Licensed Establishment" means a location on Taos Pueblo Lands designated by the Taos Pueblo Tribal Council as a licensed establishment for the purpose of selling alcoholic beverages. Designation by the Tribal Council must show the location of the land and building of the establishment, by map and general description.

D. "Minor" means any person under the age of twenty-one (21) years.

E. "Person" means a natural person, corporation, firm, partnership, joint venture, association, or other entity, including, but not limited to, the Pueblo and an agency of the Pueblo.

F. "Pueblo" means the Taos Pueblo, a federally-recognized tribe of Indians, located within the exterior boundaries of the State of New Mexico.

G. "Taos Pueblo Lands" means lands owned by the Pueblo within the exterior boundaries of Taos Pueblo's Grant, its Tenorio Tract, Karavas Tract, or Tracts A, B, or C, including any lands which may in the future lawfully come within the ownership and jurisdiction of the Pueblo.

Section 3. Purposes

A. Tribal Council Control of Location of Sales

Taos Pueblo has decided to open certain limited locations within its jurisdiction to the possession, consumption and sale of alcoholic beverages by enacting this Ordinance adopted pursuant to 18 U.S.C. 1161. The locations which are open to the sale, possession, and consumption of alcoholic beverages shall be only commercial establishments in which the Pueblo owns a controlling interest, which are located on Taos Pueblo Lands and which are Licensed Establishments. No licensed establishment shall be located closer than 500 feet from any church, school, or military installation. A licensed establishment will be specifically designated so as to permit sales either by the package or by the drink, provided that any convenience store shall be open only to sale and possession, but not consumption, of alcoholic beverages.

B. Control of Sales and Distribution; Provision of Tribal Revenue

This Ordinance shall govern all sales and distribution of alcoholic beverages on Taos Pueblo Lands and will allow the licensing of liquor establishments and the granting of liquor permits to persons to provide an additional source of revenue for tribal operations.

C. Goals of Regulation

Pueblo regulation of the sale, possession, and consumption of liquor on Taos Pueblo Lands is necessary to protect the health, security, and general welfare of the Pueblo, and to address tribal concerns relating to alcohol use. To further these goals and provide an additional source of governmental revenue, the Pueblo has adopted this Ordinance, which shall be liberally construed to fulfill the purposes for which it has been adopted.

Section 4. Sales, Purchases, Distribution, Possession, Consumption

A. Authorization

Persons are hereby authorized to introduce, sell, dispense, purchase, distribute, warehouse, possess and consume alcoholic beverages at Licensed Establishments on Taos Pueblo Lands in accordance with the laws of the State of New Mexico, provided, however, that any person who sells alcoholic beverages on Taos Pueblo Lands must first obtain a tribal liquor permit from the Tribal Council or be employed by the holder of such a permit.

B. Tribal Liquor Licenses for Establishments

Each tribal liquor license for an establishment shall set forth the location and description of the building and premises for which the license is issued and shall define by map and general description the area of the Licensed Establishment within which the holder of a tribal liquor permit may sell alcoholic beverages.

C. Tribal Liquor Permits

1. In General. A tribal liquor permit shall authorize the holder thereof and its employees to sell alcoholic beverages at retail in cans, bottles or any other package for one year within a strictly defined area which shall be the Licensed Establishment; provided, however, that a tribal liquor permit shall be valid only if the holder thereof and its employees who sell, serve or dispense liquor are in compliance with the laws of any other jurisdiction which may have authority with regard to liquor sales and regulation on Taos Pueblo Lands, and provided further, that the liquor business conducted at the Licensed Establishment shall be conducted by the permittee or its employees directly, and shall not be conducted by any lessee, sublessee, assignee or other transferee.

2. Permit Procedure. a. Only persons authorized by the Taos Pueblo Tribal Council may be granted a permit to sell intoxicating beverages.

b. A person applying for a permit must furnish to the Governor a completed application for a tribal liquor permit. If the applicant is an entity other than a natural person, the application shall provide the required information with respect to each member of its governing board, any individual who owns or controls a financial interest of more than ten percent in such entity, and any individual who manages the liquor business. Such application must contain, among other things, the following information:

(i) An exhaustive listing of all jobs, businesses, and other employment for the immediately preceding ten years;

(ii) A listing of all residences for the immediately preceding ten years, including street address, city, and state, and dates of residence at each different location;

(iii) A list of every liquor license or permit, by number and state, in which the applicant has directly or indirectly owned or had any interest;

(iv) Detail with respect to past criminal activity, including conviction for any felony, conviction for any misdemeanors, and conviction for a violation of any federal or state liquor control act in any calendar year, except that traffic offenses need not be listed; and

(v) Detail as to whether the applicant ever applied for a liquor license or permit from any government entity and was denied and the reasons for any denial.

c. The applicant shall provide two complete sets of fingerprints on a form designated; and the costs associated with supplying the complete sets and the investigation thereafter will be borne exclusively by the applicant.

d. The applicant must give his/her consent that the fingerprints may be processed by local and national law enforcement agencies and all other available agencies. If the search, by

virtue of the fingerprint submission, reveals any adverse information which was not shown by the applicant on the application, the applicant will be given an opportunity to explain the circumstance of such omission or challenge the authenticity of the revealed information.

F. Granting, Denial, Termination or Revocation of Licenses and Permits

The granting, denial, termination, or revocation of a license for an establishment or a permit to an applicant will be within the discretion of the Taos Pueblo Tribal Council. The Governor, after reviewing the application and making appropriate inquiry, will make a recommendation to the Tribal Council. The following classes of persons shall be prohibited from being granted a permit to sell or serve intoxicating beverages:

1. Any person convicted of a felony; and

2. A minor.

Revocation of a liquor license or liquor permit will occur only following an opportunity to be heard. Any holder of a tribal liquor permit who is found, after notice and hearing, to have violated this Ordinance or to have provided false information on his/her application, shall have his/her tribal liquor permit revoked and shall be ineligible to apply for a new tribal liquor permit for three months after the date of the revocation.

Section 5. Prohibited Sales and Practices

No holder of a tribal liquor permit and none of its employees may:

A. Sell, serve, or dispense intoxicating beverages to any person who is obviously intoxicated;

B. Award alcoholic beverages as prizes;

C. Sell alcoholic beverages at a drive-up or walk-up window;

D. Sell alcoholic beverages to a minor who has not attained the age of 21;

E. Knowingly sell alcoholic beverages to an adult purchasing such liquor on behalf of a minor or an intoxicated person; and

F. Allow a person to bring alcoholic beverages onto the premises of a Licensed Establishment for the purposes of consuming them himself/herself or providing them to other individuals.

Section 6. Criminal Penalties

A. Penalties

Any person guilty of a violation of this Ordinance shall be liable upon conviction for up to 90 days confinement and/or fine of $500 for each violation, plus costs.

B. Limitations

1. Indian Civil Rights Act

Notwithstanding any other provision of this Ordinance, no penalty may be imposed pursuant or related to this Ordinance in contravention of any limitation imposed by the Indian Civil Rights Act of 1968, 82 Stat. 77, 25 U.S.C. 1301 *et seq.* ("ICRA") or other applicable Federal law.

2. Violations by Non-Indians

Nothing in this Ordinance shall be construed to authorize the criminal trial or punishment by the Tribal Court of any non-Indian except the extent allowed under Federal law. When any provision of this Ordinance is violated by a non-Indian, he/she shall be referred to state and/or Federal authorities for prosecution under applicable law. It is the intent of the Pueblo that any non-Indian referred to state and/or Federal authorities be prosecuted to the full extent of applicable law. In addition, any non-Indian, upon committing any violation of the Ordinance, may be subject to a civil action for trespass, and upon having been determined by the Tribal Court to have committed the violation, shall be found to have trespassed upon Taos Pueblo Lands and shall be assessed such damages as the Court deems appropriate.

Section 7. Rules and Regulations

The Tribal Council may adopt and enforce rules and regulations to implement this Ordinance. The rules and regulations will be in conformance with New Mexico state law, if applicable, and with this Ordinance.

Section 8. Citations; Enforcement

Citations for violations of any provision of this Ordinance or rules or regulations promulgated hereunder may be issued by an officer of the Taos Pueblo police department or any person authorized by the Governor.

Section 9. Repeal of Prior Inconsistent Enactments by Tribal Council

This Ordinance repeals all prior enactments of the Taos Pueblo Tribal Council which are inconsistent with the provisions of this Ordinance. This repeal shall be effective on the date of publication of this Ordinance in the **Federal Register**.

Section 10. Severability

In the event any provision of this Ordinance or its application to any particular activity is held to be invalid or illegal by a court of competent jurisdiction, the remaining provisions and the remaining applications of such provision shall remain in full force and effect.

Section 11. Sovereign Immunity

The sovereign immunity of the Taos Pueblo is not waived by this Ordinance.

Section 12. Amendments

This Ordinance may be amended only by majority vote of the Tribal Council.

Section 13. Effective Date

This Ordinance shall be effective as a matter of tribal law as of the date of its adoption by the Tribal Council, and effective as a matter of federal law on such date as the Secretary of the Interior certifies and publishes the same in the **Federal Register**.

Dated: April 30, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11594 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Mission Valley Power Utility, Montana Power Rate Adjustment

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of proposed rate adjustment.

SUMMARY: The Bureau of Indian Affairs (BIA) proposes to adjust the electric power rates for operation and maintenance of the Mission Valley Power (MVP), the Confederated Salish and Kootenai Tribal entity operating the power facility of the Flathead Irrigation and Power Project of the Flathead Reservation under a Public Law 93–638 contract.

DATES: Comments must be submitted on or before June 9, 1999.

ADDRESSES: Written comments on rate adjustments should be sent to Assistant Secretary—Indian Affairs, Attn: Branch of Irrigation and Power, MS–4513–MIB, Code 210, 1849 "C" Street, NW, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Stan Speaks, Area Director, Bureau of Indian Affairs, Portland Area Office, 911 N.E. 11th Avenue, Portland, Oregon 97232–4169, telephone (503) 231–6702; or General Manager, Mission Valley Power, P. O. Box 1269, Polson, Montana 59860–1269, telephone (406) 883–5361.

SUPPLEMENTARY INFORMATION: The authority to issue this document is vested in the Secretary of the Interior by 5 U.S.C. 301; the Act of August 7, 1946, c. 802, Section 3 (60 Stat. 895; 25 U.S.C.

385c); the Act of May 25, 1948 (62 Stat. 269); and the Act of December 23, 1981, section 112 (95 Stat. 1404). The Secretary has delegated this authority to the Assistant Secretary—Indian Affairs pursuant to part 209 Departmental Manual, Chapter 8.1A and Memorandum dated January 25, 1994, from Chief of Staff, Department of the Interior, to Assistant Secretaries, and Heads of Bureaus and Offices.

The Montana Power Company (MPC) raised its wholesale rates effective September 5, 1997, and September 5, 1998, based on adjustments in the Consumer Price Index. At the present time MPC supplies a portion of MVP's wholesale power requirements through a contract that will expire in the year 2015. Accordingly, the BIA is proposing to adjust the rates at the recommendation of MVP to reflect the adjusted cost of service and power provided to MVP by MPC. The impact of the wholesale rate change is indicated in the previous table. The planned effective date of the proposed rate adjustment will be June 1, 1999.

Executive Order 12988

The Department has certified to the Office of Management and Budget (OMB) that this proposed rate adjustment meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

Executive Order 12866

This proposed rate adjustment is not a significant regulatory action and has been reviewed by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This proposed rate making is not a rule for the purposes of the Regulatory Flexibility Act because it is "a rule of particular applicability relating to rates." 5 U.S.C. 601(2).

Executive Order 12630

The Department has determined that this proposed rate adjustment does not have significant "takings" implications.

Executive Order 12612

The Department has determined that this proposed rate adjustment does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights, and responsibilities of states.

NEPA Compliance

The Department has determined that this proposed rate adjustment does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act of 1995

This proposed rate adjustment does not contain collections of information requiring approval under the Paperwork Reduction Act of 1995.

Unfunded Mandates Act of 1995

This proposed rate adjustment imposes no unfunded mandates on any governmental or private entity and is in compliance with the provisions of the Unfunded Mandates Act of 1995.

Rate Adjustment

The following table illustrates the impact of the proposed rate adjustment:

POWER RATE ADJUSTMENT

Rate class	Present rate	Proposed rate
Residential:		
Basic Rate	$5.00/mo	Unchanged.
Energy Rate	0.04725/kwh	$0.04739/kwh.
Minimum Monthly Bill	10.00/mo—May 1–October 31	Unchanged.
	20.00/mo—November 1–April 30	Unchanged.
Small Commercial (without demand):		
Basic Rate	5.00/mo	Unchanged.
Energy Rate	0.05495/kwh	0.05509/kwh.
Small Commercial with Demand:		
Basic Rate:		
Single Phase	20.00/mo	Unchanged.
Three Phase	40.00/mo	Unchanged.
Demand Rate	4.50/kw	Unchanged.
Energy Rate	0.04050/kwh	0.04064/kwh.
Large Commercial with Demand:		
Basic Rate	125.00/mo	Unchanged.
Demand Rate	5.00/KW	Unchanged.
Energy Rate	0.03115/kwh	0.03129/kwh.
Irrigation:		
Horsepower Rate	11.05/hp	Unchanged.
Energy Rate	0.03572/kwh	0.03586/kwh.
Minimum Seasonal Rate	132.00 or 6.00/hp whichever is greater	Unchanged.
Area Lights Installed on Existing Pole or Structure:	Monthly Rate	Monthly Rate
7,000 lumen unit, M.V.*	6.85	$6.87.
20,000 lumen unit, M.V.*	9.80	9.82.
9,000 lumen unit, H.P.S	6.35	6.36.
22,000 lumen unit, H.P.S	8.58	8.60.
*Continuing Service Only		
Area Lights Installed with New Pole:		
7,000 lumen unit, M.V.*	$8.60	$8.62.
20,000 lumen unit, M.V.*	11.25	11.28.
9,000 lumen unit, H.P.S	8.10	8.12.
22,000 lumen unit, H.P.S	10.30	10.32.
*Continuing Service Only		
Street Lighting (Metered):		
Basic Rate	5.00/mo	Unchanged.

POWER RATE ADJUSTMENT—Continued

Rate class	Present rate	Proposed rate
Energy Rate	0.05495/kwh)	Unchanged.
Street Lighting (Unmetered):	This rate class applies to municipalities or communities where there are ten or more lighting units billed in a group. This rate schedule is subject to a negotiated contract with MVP and is unchanged as part of this rate adjustment.	Unchanged.

Dated: April 29, 1999.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 99–11581 Filed 5–7–99; 845 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1430–01; NMNM–102308]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Secretary of the Interior proposes to withdraw 8,470.59 acres of Federal surface and minerals and 480 acres of Federal minerals underlying private surface to protect possible cave systems north and northeast of the existing "cave protection area" protected by the Lechuguilla Cave Protection Act (107 Stat. 1983 (1993)). An additional 8,198.72 acres of State land and mineral estate within the proposed withdrawal area, if acquired by the United States, would become subject to the withdrawal. Notice of the proposed withdrawal has been published which closed the land for up to 2 years from settlement, sale, location, or entry under the public land laws, including the mining laws, and from mineral leasing, subject to valid existing rights. This notice provides a public comment period and opportunity for public meetings.

DATES: Comments and requests for a public meeting must be received by August 9, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Carlsbad Field Office Manager, BLM, Carlsbad Field Office, 620 E. Greene St., Carlsbad, New Mexico 88220.

FOR FURTHER INFORMATION CONTACT: Clarence Hougland, Bureau of Land Management, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, 505–438–7593.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 64 FR 18932, April 16, 1999 which segregated the land and minerals described therein from settlement, sale, location, or entry under the public land laws, including the mining laws, and from mineral leasing, subject to valid existing rights, for up to 2 years from the date of publication of that notice

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, objections, or meeting requests in connection with the proposed withdrawal may present their views in writing to the Carlsbad Field Office Manager.

Notice is hereby given that a public meeting will be held to discuss the proposed withdrawal and solicit comments from the public. A notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

Dated: April 28, 1999.

Richard A. Whitley,

Acting State Director.

[FR Doc. 99–11695 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1430–01; CARI 0330]

Public Land Order No. 7389; Revocation of Public Land Order No. 2929; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes a public land order in its entirety as it affects 40 acres of public land withdrawn for the Forest Service's Kennedy Meadow Administrative Site. The land is no longer needed for the purpose for which it was withdrawn. The revocation is needed to make the land available for a land exchange in accordance with the provisions of Section 206 of the Federal Land Policy and Management Act of 1976. The land is temporarily closed to surface entry and mining due to the pending land exchange. The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931), 2135 Butano Drive, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2929, which withdrew public land for the Forest Service's Kennedy Meadow Administrative Site, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 22 S., R. 36 E.,
Sec. 8, NW¼SW¼.

The area described contains 40 acres in Tulare County.

2. The above described land is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 716 (1994).

Dated: April 29, 1999.

John Berry,

Assistant Secretary of the Interior.

[FR Doc. 99–11694 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–090–5700–77; WYW–139483]

Realty Action; Direct Sale of Public Lands; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; direct sale of public lands in Lincoln County.

SUMMARY: The Bureau of Land Management has determined that the lands described below are suitable for public sale under section 203 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713:

Sixth Principal Meridian

T. 25 N., R. 118 W.,
Section 19, lot 38;
Section 20, lot 33.

The above lands aggregate 40 acres.

FOR FURTHER INFORMATION CONTACT: Becky Heick, Realty Specialist, Bureau of Land Management, Kemmerer Field Office, 312 Highway 189 North, Kemmerer, Wyoming 83101, 307–828–4506.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management proposes to sell the surface estate of the above land to Mr. Robert Kirk, an adjacent landowner, by direct sale, at fair market value. The disposal of this land will resolve an inadvertent trespass.

The proposed sale is consistent with the Kemmerer Resource Area Management Plan and would serve important public objectives which cannot be achieved prudently or feasibly elsewhere. The lands contain no significant public values. The planning document and environmental assessment covering the proposed sale are available for review at the Bureau of Land Management, Kemmerer Field Office, Kemmerer, Wyoming.

Conveyance of the above public lands will be subject to:

1. Reservation of a right-of-way to the United States for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals pursuant to section 209(a) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1719.

Pursuant to the authority contained in Section 4 of Executive Order 11990 dated May 24, 1977 (42 FR 26961), and the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1713, 1718, 1719, this sale will be subject to a permanent restriction which constitutes a covenant running with the land for the purpose of protecting and preserving the wetland areas. The land may not be used for the construction or placement of any buildings, structures, facilities, or other improvements, excluding fences, and that "new construction" on the land as defined in Section 7(b) of Executive Order 11990 is prohibited. Draining or causing to drain any of the areas that are too wet for crop production would be prohibited. No disturbance of willows or filling of wet areas or alteration of the river channel for the purpose of creating farmable lands will be allowed without formal consultation with the Corps of Engineers. The restriction applies to the entire 40 acre parcel.

Sale of the parcel will result in the cancellation of the Curtis Allotment and the 25 associated federal AUMs. Robert Kirk is the current lessee of this allotment, and has signed a waiver allowing for cancellation of this grazing permit.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for leasing under the mineral leasing laws.

For a period of 45 days after issuance of this notice, interested parties may submit comments to the Field Manager, Kemmerer Field Office, Bureau of Land Management, 312 Hwy. 189 North, Kemmerer, WY 83101. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this proposed realty action will become final.

Dated: April 21, 1999.

Jeff Rawson,

Field Manager.

[FR Doc. 99–11716 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 1, 1999. Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by May 26, 1999.

Carol D. Shull,

Keeper of the National Register.

LOUISIANA

Ascension Parish, Dixon House, 38127 LA 42, Prairieville, 99000634

MASSACHUSETTS

Barnstable County, Bridge Road Cemetery, Bridge Rd., Eastham, 99000636

Middlesex County

Rogers Fort Hill Park Historic District, Roughly bounded by High St., Mansur St., Concord R., and Lowell Cemetery, Lowell, 99000635

MISSOURI

Clay County

Excelsior Springs Hall of Waters Commercial West Historic District, Roughly along portions of Thompson, and St. Louis Aves.; South, Main, Marietta, and Spring Sts.; and Elms Blvd., Excelsior Springs, 99000637

Excelsior Springs Hall of Waters Commercial East Historic District, Roughly along portions of East and West Broadway and Main St., Excelsior Springs, 99000638

NEW YORK

Suffolk County

Quogue Life-Saving Station, 78 Dune Rd., Quogue, 99000640

NORTH CAROLINA

Wayne County

Mount Olive Historic District, Roughly bounded by Park Ave., Wooten, Nelson, and Johnson Sts., Mount Olive, 99000639

OREGON

Deschutes County

Gerking, Jonathan N.B., Homestead, 65725 Gerking Market Rd., Bend vicinity, 99000644

Multnomah County

Bramhall, Jennie, House, 5125 NE Garfield Ave., Portland, 99000643

Leutgert, Henry C., Building (Eliot Neighborhood MPS), 2323, 2325, 2327, and 2329 NE Rodney, Portland, 99000642

Wasco County

Kelly, Joseph D. and Margaret, House, 921 E. 7th St., The Dalles, 99000641

PENNSYLVANIA

Cumberland County

Dykeman's Spring, Dykeman Rd., 0.25 mi E of PA 696, Shippenburg, 99000645

Lancaster County

Weber—Weaver Farm, (Lancaster County MPS), 1835 Pioneer Rd., West Lampeter, 99000646

Montgomery County

Fetter's Mill, 2543 Fetter's Mill Dr., Bryn Athyn, Lower Moreland, 99000647

A Request for a move has been made for the following resource:

MISSOURI

Callaway County

Robnett—Payne House, 601 W. Sixth St., Fulton, 98001136

[FR Doc. 99–11702 Filed 5–7–99; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

Sunshine Meeting Notice; USITC–99–020

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: May 17, 1999 at 2:00 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none
2. Minutes
3. Ratification List
4. Inv. Nos. 731–TA–825–826 (Preliminary) (Certain Polyester Staple Fiber from Korea and Taiwan)—briefing and vote
5. Outstanding action jackets:
   (1) Document No. GC–99–027: Inv. No. 337–TA–411 (Certain Organic Photoconductor Drums and Products Containing Same)
   (2) Document No. GC–99–034: Inv. No. 337–TA–392 (Certain Digital Satellite Systems (DSS) Receivers and Components Thereof)
   (3) Document No. INV–99–077: Institution of five-year reviews on Certain Industrial Belts, Industrial Nitrocellulose, Steel Rails, Drafting Machines, Small Business Telephone Systems, Mechanical Transfer Presses, Multiangle Laser Light-Scattering Instruments, and Benzyl Paraben

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

Issued: May 4, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11750 Filed 5–5–99; 4:47 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities: Proposed Reinstatement of OMB Control Number 1103–0030; Comment Request

ACTION: Notice of Information Collection Under Review for Reinstatement; COPS Department Initial Report.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 14, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–616–5998. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement:

(2) *Title of the Form/Collection:* COPS Department Initial Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form: COPS 012/01. Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The COPS Initial Report will be mailed to all new COPS grant recipients. Recipients must complete the form within thirty days of the date of their first grant award to comply with their grant program requirements.

The COPS Department Initial Report will collect basic information about recipient's sworn personnel and the recipient's level of community policing plans and programs at the beginning of the grant period Survey questions will allow the COPS Office to establish a baseline of each grant recipient's community policing plans and programs at the beginning of the grant period for the purpose of monitoring progress of grant recipients in implementing community policing programs and activities with their federal COPS grant.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS Department Initial Report: Approximately 1,066 respondents, at 1.5 hours per respondent (including recordkeeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 2,400 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–11630 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Reinstatement of OMB Control Number 1103–0030; Comment Request

ACTION: Notice of information collection under review; COPS officer progress report.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following

information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by May 14, 1999. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be directed to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 395–3122, Washington, DC 20530.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are requested. Comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1100 Vermont Ave, NW, Washington, DC 20530–0001. Additionally, comments may be submitted to COPS via facsimile to 202–616–5998. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement.

(2) *Title of the Form/Collection:* COPS Officer Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form COPS 013/01, Office of Community Oriented Policing Services, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* The COPS Officer Progress Report will be mailed to all COPS grant recipients. Recipients must complete the report every six months following the date of the grant award to comply with their grant program requirements.

The information collected on the COPS Officer Progress Report will be used to track summary data on the characteristics of officers hired with COPS funding and to monitor the progress of grantees in hiring, training, and deploying these officers into community policing. In addition, semiannual submission of the COPS Officer Progress Reports will assist the COPS Office in identifying recipients which may be in need of additional information or technical assistance concerning appropriate professional training and activities for officers deployed in community policing.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* COPS Officer Progress Report: Approximately 11,300 respondents, reporting on an estimate number of 5 officers, at 2 hours per response (including record-keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 11,300 hours.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Brenda E. Dyer,

Department Clearance Officer, United States Department of Justice.

[FR Doc. 99–11631 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Extension of a Currently Approved Collection; Comment Request

ACTION: Notice of information collection under review; application for cancellation of removal.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10318, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Extension of a Currently Approved Collection.

(2) *Title of the Form/Collection:* Application for Cancellation of Removal.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–42, Executive Office of Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Individual aliens determined to be removable from the United States. This information collection is necessary to determine the statutory eligibility of individual aliens who have been determined to be removable from the United States for cancellation of their removal, as well as to provide information relevant to a favorable exercise of discretion in their case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 1640 responses per year at 5 hours, 45 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 9,430 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11637 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities; Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired; Comment Request.

ACTION: Notice of information collection under review; appeal fee waiver request.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10319, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Resinstatment, Without Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Appeal Fee Waiver Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–26A, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Individual aliens appearing before the Board of Immigration Appeals (BIA). This form is used to apply for a waiver of the fee required to properly file an appeal with the BIA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 6100 responses per year at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 6100 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11638 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired; Comment Request.

ACTION: Notice of information collection under review; notice of appeal to the Board of Immigration Appeals of decision of immigration judge.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10320, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of

information should address one or more of the following four points:

(1) evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of response.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of Form/Collection:* Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–26, Executive Office for Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* A party (either individual aliens or the Immigration and Naturalization Service) who disagrees with the decision of an Immigration Judge may request a final decision of the Attorney General. Review of such appeals has been delegated to the Board of Immigration Appeals (BIA). This information collection is used to consider appeals to the BIA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 27,000 responses per year at 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 13,500 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11639 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review; Agency Information Collection Activities: Reinstatement, Without Change, of a Previously Approved Collection for Which Approval Has Expired; Comment Request.

ACTION: Notice of information collection under review; Change of Address Form.

Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on March 3, 1999, at 64 FR 10319, allowing for a 60-day comment period.

The purpose of this notice is to allow an additional 30 days for public comments until June 9, 1999.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, Attention: Department of Justice Desk Office, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 850, 1001 G Street, NW, Washington, DC 20530. Additionally, comments may be submitted to DOJ via facsimile to (202) 514–1590.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, Without Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Change of Address Form.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form EOIR–33, Executive Office of Immigration Review, U.S. Department of Justice.

(4) *Affected public who will be asked to respond, as well as a brief abstract:* Individuals in immigration proceedings are statutorily required to report any change of address. The information in the form is used by the Immigration Courts and the Board of Immigration Appeals to ascertain where to send the notice of the next administrative action or notice of any decisions which have been rendered in an individual's case.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 15,000 responses per year at 15 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 600 annual burden hours.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW, Washington, DC 20530.

Dated: May 4, 1999.

Robert B. Briggs,

Clearance Officer, Department of Justice.

[FR Doc. 99–11640 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–30–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that two proposed Consent

Decrees in *United States* v. *Alshabkhoun, et al.*, Civ. No. 98–C–583–S (W.D. Wi.) were lodged with the United States District Court for the Western District of Wisconsin on April 22, 1999. This case arises, and the proposed Consent Decrees secure relief, under the Clean Water Act, 33 U.S.C. 1251–1387.

The proposed Consent Decrees would each provide for prohibitions of future violations of the provisions of the Clean Water Act. In addition, one decree would provide for a $2,200 penalty under the Clean Water Act by Defendant Paul M. Garbelman, and the other would provide for a $3,000 penalty under the Act by Defendant David W. Rogerson.

The Department of Justice will receive, until thirty (30) days from the date of this notice, written comments relating to the proposed Consent Decrees. Comments should be addressed to the United States Department of Justice, Assistant Attorney General, Environment and Natural Resources Division, 601 D Street, NW., Suite 8000, Washington, DC 20004, to the attention of Lewis M. Barr, Senior Trial Counsel, Environmental Defense Section, and should refer to *United States* v. *Alshabkhoun, et al.*, Civ. No. 98–C–583–S (W.D. Wi.) and to DJ Reference No. 90–5–1–1–4485.

The proposed Consent Decrees may be examined at the Clerk's Office, United States District Court for the Western District of Wisconsin, United States Courthouse, 120 North Henry St., Madison, WI 53703–2559, during regular business hours, or copies may be requested from Lewis M. Barr at (202) 514–4206.

Letitia J. Grishaw,

Chief, Environmental Defense Section, Environment and Natural Resources Division.

[FR Doc. 99–11663 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act

Notice is hereby given that a proposed consent decree in *United States* versus *Coon Refrigeration, et al.*, Civil Action No. 90–212 (W.D. Pa.), was lodged on April 28, 1999 with the United States District Court for the Western District of Pennsylvania. The United States filed its action pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act to recover costs incurred and to be incurred in cleaning up the Pagan Road Superfund Site in western Pennsylvania. The proposed consent decree requires CBS Corporation, formerly known as Westinghouse Electric Corporation, to pay the United States $300,000 in reimbursement of past response costs incurred at the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* versus *Coon Refrigeration, et al.*, DOJ Ref. #90–11–2–619.

The proposed consent decree may be examined at the office of the United States Attorney, 100 State Street, Suite 302, Erie, PA Protection Agency, 615 Arch Street, Philadelphia, PA 19103, and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC. 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC. 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 for the consent decree (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11667 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, the Department of Justice gives notice that a proposed consent decree in the consolidated cases captioned *United States* v. *Ford Motor Company, et al.*, Case No. 98–73266 (E.D. Mich.) (formerly designated Case No. 98–60085) and *Ford Motor Company, et al.* v. *United States*, Case No. 98–71305 (E.D. Mich.) was lodged with the United States District Court for the Eastern District of Michigan on April 20, 1999, pertaining to the Willow Run Creek Superfund Site, located in Wayne and Washtenaw Counties, Michigan (the "Site").

The proposed consent decree would resolve the United States' civil claims for past response costs relating to the Site under section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended "CERCLA"), 42 U.S.C. 9607, against the eight defendants named in Case No. 98–73266. The eight settling defendants are Ford Motor Company; General Motors Corporation; Chrysler Corporation; Chrysler Pentastar Aviation, Inc.; The Regents of the University of Michigan; Wayne County, Michigan; Ypsilanti Township, Michigan; and the Ypsilanti Community Utilities Authority. As provided by the proposed consent decree, the eight settling defendants would pay a total of $1.10 million to the EPA Hazardous Substances Superfund.

The proposed consent decree also would resolve CERCLA contribution claims for past and future response costs relating to the Site (including claims arising out of injury to, destruction of, of loss of natural resources at the Site) asserted against the United States. Under the proposed consent decree, the United States, on behalf of certain Settling Federal Agencies, would pay an additional $50,000 to the EPA Hazardous Substances Superfund, and would pay $450,000 to the plaintiffs in Case No. 98–71305.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Ford Motor Company, et al.*, Case No. 98–73266 (E.D. Mich.), and DOJ Reference No. 90–1–3–1753.

The proposed consent decree may be examined at: (1) The Office of the United States Attorney for the Eastern District of Michigan, 211 W. Fort Street, Suite 2300, Detroit, MI 48226–3211; (2) the United States Environmental Protection Agency (Region 5), 77 West Jackson Boulevard, Chicago, IL 60604–3590 (contact Thomas Kenney (312–886–0708)); and (3) the U.S. Department of Justice, Environment and Natural Resources Division Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and DOJ Reference Number and enclose a check

in the amount of $9.50 for the consent decree only (38 pages at 25 cents per page reproduction costs), or $10.00 for the consent decree and all appendices (40 pages), made payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11664 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

Notice is hereby given that a proposed consent decree in *United States* v. *Marshall, et al.*, Civil Action No. 98–1478A, was lodged on April 19, 1999 with the United States District Court for the Northern District of West Virginia. The United States filed this action pursuant to the Clean Air Act to obtain an injunction requiring compliance with the National Emissions Standards for the Hazardous Air Pollutant (NESHAPs) Asbestos and to obtain civil penalties for violations of the Clean Air Act and federal regulations. The Consent Decree Sahara Holdings Limited Liability Company to demolish and properly dispose of the Broaddus Apartment Building in Clarksburg, West Virginia. Allen G. Saoud, a former principal in Sahara Holdings Limited Liability Company is required to participate in the demolition and disposal. In addition, the City of Clarksburg has committed to spend up to $10,000 to assist in the proper disposal of the materials removed from the Broaddus Apartment Building.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC, 20530, and should refer to *United States* v. *Marshall, et al.*, Do Ref. #90–5–2–1–2064.

The proposed consent decree may be examined at the office of the United States Attorney, 12th and Chapline Streets, Room 236, Federal Building, Wheeling, West Virginia; the Region III Office of the Environmental Protection Agency, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and at the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.75 for the consent decree without attachments or $22.50 for the consent decree with the attachments (25 cents per page reproduction costs) for each decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11665 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *The Port of Seattle, et al.*, Civil Action No. C99–665–R, was lodged on April 30, 1999, with the United States District Court for the Western District of Washington. The Consent Decree requires each defendant to compensate the trustees for natural resource damages at the Tulalip Landfill Superfund Site, which consist of the State of Washington Department of Ecology, the Tulalip Tribes of Washington, the National Oceanic and Atmospheric Administration of the United States Department of Commerce, and the United States Department of the Interior, for natural resource damages at the Tulalip Landfill Superfund Site that have resulted from the release of hazardous substances at the Site. Under the Consent Decree, six private parties, the Tulalip Tribes of Washington and the United States on behalf of the United States Navy and the United States Bureau of Indian Affairs, will pay a total of $675,348 for natural resource damages.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *The Port of Seattle, et al.*, DOJ Ref. #90–11–3–1412/6.

The proposed consent decree may be examined at the office of the United States Attorney, 1010 Fifth Avenue, Seattle, WA 98104, and at the Consent Decree Library, 1120 G Street, N.W., 3rd Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW, 3rd Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 99–11666 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 162–99]

Privacy Act of 1974; Notice of Modified System of Records

The Department of Justice proposes to modify the Pubic Safety Officers Benefits System, JUSTICE/OJP–012. The primary purpose for establishing the system of records was to determine whether the surviving beneficiaries of public safety officers killed in the line of duty were eligible for benefits as authorized by the Public Safety Benefits Act.

The Department now proposes to modify the system to reflect the expanded scope of the PSOB program, specifically through the addition to categories of individuals and records. The system is expanded to reflect the addition of data on public safety officers permanently and totally disabled in the line of duty, and the dependents of public safety officers eligible for educational benefits. The expansion of the categories of individuals and records, as identified in the attached **Federal Register** notice, permits the agency to maintain records as public safety officers permanently and totally disabled in the line of duty and survivor's eligibility to educational benefits in order to ascertain eligibility under the program.

In addition, the Department is revising the "System Location" and "System Manager and Address' sections to reflect a move of the system, and updating the 'Storage" and "Retention" sections to reflect an automation of the system.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed new routine uses. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and

Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 by June 9, 1999.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: April 30, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/OJP–012

SYSTEM NAME:

Public Safety Officers Benefits System.

SYSTEM LOCATION:

Bureau of Justice Assistance, Office of Justice Programs, (OJP), 810 Seventh Street, NW, Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Public Safety Officers who are permanently and totally disabled by a traumatic injury in the line of duty and the surviving beneficiaries of public safety officers who died while in the line of duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains an index by claimant survivor and deceased or permanently and disabled Public Safety Officers; case files of eligibility documentation; and benefit payment records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintaining this system exists under 42 U.S.C. 3796 and 44 U.S.C. 3103.

PURPOSES:

Information contained in this system is used or may be used to determine and record eligibility of Public Safety Officers under the Public Safety Officers Benefits Act and the Federal Law Enforcement Dependents Assistance Act.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, or any information derived therefrom, may be disclosed as follows: To State and local agencies to verify and certify eligibility for benefits; to researchers for the purpose of researching the cause and prevention of public safety officer line of duty deaths; to appropriate Federal agencies to coordinate benefits paid under similar programs; in a proceeding before a court or adjudicative body before which the OJP is authorized the appear, when i. The OJP, or any subdivision thereof, or ii. Any employee of the OJP in his or her official capacity, or iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee, or iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation; to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy; to the National Archives and Records Administration (NARA) and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906; to a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information in this system is maintained on a master index, in folders and in an automated information system.

RETRIEVABILITY:

Information is retrieved by name of claimant, name of deceased or disabled Public Safety Officer, and case file number.

SAFEGUARDS:

Computerized information is safeguarded and protected by computer password key and limited access. Noncomputerized data is safeguarded in locked cabinets. All files are maintained in a guarded building.

RETENTION AND DISPOSAL:

Files are retained in the Public Safety Officer Benefits (PSOB) Office on hard copy and on a computer network. Files will be disposed of pursuant to OJP Handbook 1330.2A.

SYSTEM MANAGER(S) AND ADDRESS:

PSOB Program Officer, Bureau of Justice Assistance, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

Request for access to a record from this system should be made in writing with the envelope and the letter clearly marked "Privacy Access Request." Access requests will be directed to the System Manager listed above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their request to the System Manager listed above and state clearly and concisely what information is being contested, the reason for contesting it and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Public agencies including employing agency, beneficiaries, educational institutions, physicians, hospitals, official state and Federal Documents.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–11661 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

EAAG/A Order No. 163–99]

Privacy Act of 1974; Notice of Modified System of Records

Section 5301 of the Anti-Drug Abuse Act of 1988 (Pub. L. 100–690, codified at 21 U.S.C. 862), and section 815 of the 1993 National Defense Authorization Act (Pub. L. 102–484 codified at 10 U.S.C. 2408), provide that certain individuals convicted of drug trafficking or possession are disqualified from receiving certain Federal benefits, and individuals convicted of certain defense-contract related felonies may not be employed by or engage in certain activities with defense contractors or first tier subcontractors. The Attorney General has directed the Denial of Federal Benefits Clearinghouse of the Department of Justice to perform certain duties in order that the purpose of this act be fulfilled. These duties include maintaining an information clearinghouse for persons so disqualified and forwarding to the General Services Administration (GSA) data concerning court denials of Federal benefits for inclusion in GSA's Lists of Parties excluded for Federal

Procurement and Nonprocurement Programs, more commonly referred to as the "Debarment List" and for employment eligibility purposes.

The Department now proposes to modify the system to clarify an existing Privacy Act routine use disclosure regarding the disclosure for disqualification for certain Federal benefits, defense-related employment, and other activities and to reinstate a Privacy Act routine use regarding disclosure to courts for verification purposes. The routine use disclosure, as modified, allows for disclosure to Federal agencies, certain private entities, certain defense-related contractors and first-tier subcontractors, and makes it clear that such parties will only have access to Clearinghouse information in order to verify eligibility for Federal benefits, employment or other certain activities, pursuant to the mandate in the Anti-Drug Abuse Act and the Defense Authorization Act. The routine use will permit disclosure of information to these parties only for the aforementioned purposes. In addition, a routine use disclosure to courts is being reinstated to allow for disclosure of clearinghouse information for verification purposes.

Moreover, the Department is expanding the record source category to include: (1) The individuals convicted of qualifying offenses and, (2) U.S. Attorneys.

A number of smaller, less substantive changes are also being made. The system location section is being revised to reflect the current location of the system at 810 Seventh Street, NW., Washington, DC 20531. The authority section is being revised to refer to the current statutory citations, 21 U.S.C. 862 and 10 U.S.C. 2408(c). The system is also being revised to reflect the fact that information is now being maintained in a database in a secured computer network and the information is now retrievable by case number, as well as name of individual and Social Security number. The reference to computer diskettes under Safeguards has been removed, as information is no longer being maintained in that format. Finally, the category of records section is being revised to include additional clarifying information and to read more clearly.

Title 5 U.S.C. 552a(e)(4) and (11) provide that the public be given 30 days in which to comment on the proposed new routine uses. Any comments must be submitted in writing to Mary Cahill, Management Analyst, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 June 1, 1999.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

A modified system description is set forth below.

Dated: April 30, 1999.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/OJP–13

SYSTEM NAME:

Denial of Federal Benefits Clearinghouse System (DEBAR).

SYSTEM LOCATION:

Office of Justice Programs; Denial of Federal Benefits Program (DFBP), 810 Seventh Street NW, Washington, DC 20531.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual convicted of a Federal or State offense involving drug trafficking or possession of a controlled substance who has been denied Federal benefits by Federal or State courts and any individual convicted of defense-contract related felonies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include any which are necessary to identify a person who is convicted of drug trafficking or possession of a controlled substance and sentenced by a State or Federal judge to a denial of Federal benefits pursuant to 21 U.S.C. 862; convicted of a defense contract-related felony and sentenced by a Federal judge to a denial of Federal benefits pursuant to 10 U.S.C. 2408; and any records which may be relevant to consideration of employment or other Federal benefits. For example, included are current and prior offense and arrest data such as type of offense for which the individual is being placed on a list of ineligibles to receive benefits; court and sentencing data, including community service sentencing, if any; identification of benefits to be denied and status thereof, including period of denial; and treatment data. Records also include court orders, notices from U.S. Attorneys concerning convictions, Federal agency benefit listings, and a log of groups or individuals requesting information about an offender's denials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The system is established and maintained in accordance with 21 U.S.C. 862 and 10 U.S.C. 2408(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Records, or any information derived therefrom, may be disclosed as follows: to the General Services Administration (GSA) for inclusion in the publication, "Lists of Parties Excluded from Federal Procurement and Nonprocurement Programs," more commonly known as the "Debarment List;" to Federal agencies, certain private entities, certain defense-related contractors and first-tier subcontractors that require access to such records in order to verify disqualifying convictions prior to awarding a Federal benefit, as defined under 21 U.S.C. 862, or employment under 10 U.S.C. 2408(a); to the sentencing court for verification purposes; in a proceeding before a court or adjudicative body before which the OJP is authorized to appear, when: i. The OJP, or any subdivision thereof; or ii. Any employee of the OJP in his or her official capacity; or iii. Any employee of the OJP in his or her individual capacity, where the Department of Justice has agreed to represent the employee; or iv. The United States, where the OJP determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the OJP to be arguably relevant to the litigation; to the news media and the public pursuant to 28 CFR 50.2 may be made available from systems of records maintained by the Department of Justice, unless it is determined that release of the specific information in a particular case would constitute an unwarranted invasion of personal privacy; to a Member of Congress or a staff person acting on the Member's behalf, when the Member or staff officially requests the information on behalf of, and at the request of, the individual who is the subject of the record; to the National Archives and Records Administration (NARA) and the General Services Administration (GSA) in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information maintained in the system is stored in a database on a secured computer network, as well as in manual file folders.

RETRIEVABILITY:

Data is retrievable by name of individual, social security number, and case number.

SAFEGUARDS:

Information contained in the system is maintained in accordance with DFBP procedures. Manual information in the system is safeguarded in locked file cabinets within a limited access room in a limited access building. Access to manual files is limited to personnel who have a need for files to perform official duties. Operational access to information maintained on a dedicated computer system, is controlled by levels of security provided by password keys to prevent unauthorized entry, and an audit trail of accessed information. Access is also limited to personnel who have a need to know to perform official duties.

RETENTION AND DISPOSAL:

Data is maintained for current and prior years in a master file. Data is not destroyed, but maintained for historical purposes.

SYSTEM MANAGER(S) AND ADDRESS:

Director, DFBP, Office of Justice Programs, 810 Seventh Street, NW, Washington, DC 20531.

NOTIFICATION PROCEDURE:

Same as above.

RECORD ACCESS PROCEDURES:

A request for access to a record from the system shall be in writing, with the envelope and letter marked "Privacy Access Request." Direct the access request to the System Manager listed above. Identification of individuals requesting access to their records will include fingerprinting (28 CFR 20.34).

CONTESTING RECORDS PROCEDURES:

An individual desiring to contest or amend information maintained in the system should direct the request to the System Manager listed above. The request should state clearly and concisely the information being contested, the reasons for contesting the information, and the proposed information amendment(s) sought.

RECORD SOURCE CATEGORIES:

Sources of information contained in the system are Federal and State courts, individuals convicted of certain drug offenses, individuals convicted of defense-contract related felonies, United States Attorneys, and Federal agencies.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 99–11662 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–CJ–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated January 27, 1999, and published in the **Federal Register** on February 10, 1999, (64 FR 6684), Isotec, Inc., 3858 Benner Road, Miamisburg, Ohio 45342, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
N-Ethylamphetamine (1475)	I
N,N-Dimethylamphetamine (1480)	I
Aminorex (1585)	I
Methaqualone (2565)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
Mescaline (7381)	I
2,5-Dimethoxyamphetamine (7396).	I
3,4-Methylenedioxyamphetamine (7400).	I
3,4-Methylenedioxy-N-ethylamphetamine (7404).	I
3,4-Methylenedioxymethamphetamine (7405).	I
4-Methoxyamphetamine (7411)	I
Psilocybin (7437)	I
Psilocyn (7438)	I
N-Ethyl-1-phenylcyclohexylamine (7455).	I
Dihydromorphine (9145)	I
Normorphine (9313)	I
Acetylmethadol (9601)	I
Alphacetylmethadol Except Levo-Alphacetylmethadol (9603).	I
Normethadone (9635)	I
3-Methylfentanyl (9813)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Methylphenidate (1724)	II
Amobarbital (2125)	II
Pentobarbital (2270)	II
Secobarbital (2315)	II
1-Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Phenylacetone (8501)	II
1-Piperidinocyclohexanecarbonitrile (8603).	II
Codeine (9050)	II
Dihydrocodeine (9120)	II
Oxycodone (9143)	II
Hydromorphone (9150)	II
Benzoylecgoning (9180)	II
Ethylmorphine (9190)	II
Hydrocodone (9193)	II
Isomethadone (9226)	II
Meperidine (9230)	II
Methadone (9250)	II
Methadone intermediate (9254)	II
Dextropropoxyphene, bulk (non-dosage forms) (9273).	II
Morphine (9300)	II
Levo-Alphacetylmethadol (9648)	II
Oxymorphone (9652)	II
Fentanyl (9801)	II

The firm plans to use small quantities of the listed controlled substances to produce standards for analytical laboratories.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Isotec, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Isotec, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11693 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 96–41]

Paul W. Saxton, Continuation of Registration

On July 15, 1996, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Paul W. Saxton, D.O. (Respondent) of Sandy, Utah, notifying him or an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration AS9420059 and deny any pending applications for renewal of such registration as a practitioner pursuant to 21 U.S.C. 823(f) and 824(a)(4), for reason that his continued registration would be inconsistent with the public interest.

By letter dated August 15, 1996, Respondent, through counsel, filed a request for a hearing, and following prehearing procedures, a hearing was held in Salt Lake City, Utah on March 4 through 7, 1997; March 17 through 19, 1997; and June 23 through 27, 1997, before Administration Law Judge Gail A. Randall. At the hearing, both parties called witnesses to testify and introduced documentary evidence. After the hearing counsel for both parties submitted proposed findings of fact, conclusions of law and argument. On October 6, 1998, Judge Randall issued her Opinion and Recommended Rulings, Findings of Fact, Conclusions of Law and Decision, recommending that Respondent's DEA Certificate of Registration be continued with no adverse action being taken. No exceptions were filed by either party to the Administration Law Judge's Decision, however on November 5, 1998, Respondent filed an Application for Attorney's Fees and Expenses. Thereafter, on November 19, 1998, Judge Randall transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Recommended Rulings, Findings of Fact, Conclusions of Law and Decision of the Administration Law Judge. His adoption is in no manner diminished by any recitation of facts, issues and conclusions herein, or of any failure to mention a matter of fact or law.

As a preliminary matter, the Deputy Administrator finds that Respondent's Application for Attorney's Fees and Expenses filed on November 5, 1998, was premature. Pursuant to 5 U.S.C. 504 and 28 CFR 24.101, *et seq.*, such a request may only be filed after a party has prevailed in an action brought by DEA. Since this final order is the final agency action in this matter, Respondent's request was premature and is therefore denied.

The Deputy Administrator finds that Respondent has been practicing osteopathic medicine since 1979, and since about 1990, the primary aspect of his practice has been the treatment of pain.

The Utah agency responsible for issuing licenses to professionals received complaints concerning Respondents in July 1988, January 1989 and August 1993. Following an investigation of these complaints, no action was taken against Respondent. Respondent however did admit that he prescribed anabolic steroids for muscle enhancement until sometime in 1992. In 1992 he was told by state and Federal investigators that this practice became illegal in the State of Utah in 1990 and federally in February 1991. There is no evidence that Respondent has prescribed anabolic steroids for muscle enhancement after being advised that such practice was illegal.

In January 1994, the state agency received a complaint from a pharmacist that Respondent had prescribed six different controlled substances to one individual on January 10, 1994. As a result, the state agency and DEA initiated an investigation of Respondent. Investigators obtained patient prescription profiles from local pharmacies. Then on November 30, 1995, the investigators executed an administrative inspection warrant at Respondent's office during which the investigators seized 38 patient charts. Also during execution of the administrative inspection warrant it was discovered that Respondent has purchased controlled substances but had not maintained a log or other record, other than the patient charts, indicating the disposition of the drugs, nor had Respondent conducted a biennial inventory of the controlled substances that he had purchased.

Next, the Government had an expert in pain management and the proper use of controlled substances review 18 of the 38 patient medical records that were seized from Respondent's office. After reviewing these records the Government's expert concluded that there are "consistent patterns supporting the contention that [Respondent] has been inappropriately and excessively prescribing controlled substances, particularly opioids."

Since Respondent's patients that are at issue in this proceeding were supposedly being treated by Respondent for chronic pain, there was extensive evidence presented by both the Government and Respondent regarding the treatment of chronic pain patients. The Government's expert defined chronic pain as "pain which has been present for over 6 months." He stated that pain is subjective and therefore a physician has to rely on a patient's complaints of pain. He further stated that the source of an individual's pain may never be identified. The Government's expert acknowledged that using opioids to relieve chronic pain is a legitimate medical practice and that some patients may require opioids for the rest of their lives to control chronic pain. He testified that once a diagnosis was made, a physician should start with the most benign medications at the least dose and increase the dose or change the medication as needed. According to the Government's expert there does not appear to be an arbitrary upper dosage limit for most opioids, however increasing dosage levels may not be appropriate if the pain is not responding to the opioids because "[m]any types of pain are not responsive to opioids. * * * Regardless of what dose." Nevertheless the Government's expert testified that:

> [M]ost chronic pain patients are never going to be pain free. * * * But I think if their pain is managed at a level where they can function where the pain isn't a big issue in their life anymore, then that's considered reasonable control. * * * [But] there are a lot of other treatment options that would be used before opioids would be tried.

Two experts testified on behalf of Respondent. The first, an expert in family practice with chronic pain patients comprising the predominant portion of his practice, defined intractable pain as "[p]ain that has resisted all reasonable efforts to eliminate the source or to eliminate the symptoms." He testified that there is no ceiling on the use of controlled substances in the treatment of chronic pain, and that the dosage and length of therapy are irrelevant as measurements to determine the quality of medical treatment received by chronic pain patients. This expert further testified that a physician should not reduce the levels of a patient's medications if the patient's pain is being managed, and that it is appropriate to prescribe combinations of controlled substances since different medications work for different levels of pain and there are varying effective time spans for various medications. It was the opinion of this expert that physicians are afraid to prescribe narcotics for fear of prosecution by regulatory agencies.

Respondent's other expert witness was qualified as an expert in family practice with a subspecialty in pain management and opioid treatment. He has published numerous articles regarding the treatment of chronic pain patients. According to this expert, there is a difference of opinion on the medical profession regarding the use of opioids in the management of chronic pain, with two differing approaches classified as the therapeutic school, to which Respondent and his experts belong, and the dependency school, to which the Government's expert belongs. The field of pain management is a controversial issue with the treatment policy evolving within the medical profession.

According to this expert, the measure of successful treatment of a chronic pain

patient is whether the patient has experienced an increase in his/her level of comfort and function and has an improved quality of life. A physician has to trust his/her patient and individualize the treatment. There is no ceiling or upper limit on the use of opioids and in determining whether a dosage level is adequate for a chronic pain patient one should not look at the number of pills consumed, but should look at the functioning level of the patient. The expert further testified that prescribing combinations of drugs meets the standards of the therapeutic school since a patient might use one type of drug for light pain and another type for more severe pain.

Respondent also introduced into evidence a copy of a document written in 1997 by the American Academy of Pain Medicine (AAPM) and the American Pain Society (APS) entitled "The Use of Opioids for the Treatment of Chronic Pain," (hereinafter referred to as "Consensus Statement"). One conclusion of the Consensus Statement is that "[p]ain is often managed inadequately, despite the ready availability of safe and effective treatments," because impediments "to the use of opioids include * * * fear if regulatory action." The Consensus Statement also provided guidance for regulatory agencies for determining accepted principles of practice for the use of opioids for chronic pain patients. The Consensus Statement indicated that in initially evaluating a patient a complete history and physical examination should be conducted. The treatment plan should be individualized and should include different types of treatment modalities. Consultation with a specialist in pain medicine or with a psychologist may be warranted. The Consensus Statement further provided that "[t]he management of pain in patients with a history of addiction or a comorbid psychiatric disorder requires special consideration, but does not necessarily contraindicate the use of opioids." Review of treatment efficacy should occur periodically and complete documentation is essential.

Respondent testified that his treatment objectives for his chronic pain patients are (1) to improve the patient's quality of life; (2) to increase the patient's level of comfort; and (3) to increase that patient's ability to function. He further testified that when he diagnoses a patient with chronic pain, he uses the "stepladder approach" to prescribing medication, starting with noncontrolled substances, then Schedule III and IV controlled substances, and then if necessary Schedule II controlled substances. In treating his chronic pain patients, Respondent also uses other modalities in conjunction with his prescribing of controlled substances.

After reviewing the 18 patient records, the Government's expert provided an opinion regarding the appropriateness of Respondent's prescribing of controlled substances for each patient and regarding a number of general inadequacies he found in Respondent's treatment of his chronic pain patients. However, in rendering this opinion the Government's expert did not examine any patient personally; did not interview any of the patients; did not obtain a medical history; and did not discuss the information in the charts, or the lack therefor, with Respondent, the treating physician.

According to the Government's expert, Respondent's treatment of the patients was inadequate because the patients entering into treatment with Respondent received inadequate evaluations and diagnosis, since Respondent provided a general physical examination rather than an examination tailored to the patient's specific pain complaint. However, the Government's expert admitted at the hearing that he could not decipher the meaning of some of Respondent's abbreviations found in the patient records. The Government's expert was also of the opinion that Respondent's treatment was inadequate because he simultaneously prescribed similar medications without medical justification, allowing the patient to determine which of the overlapping medications to take, and he made no attempt to reduce or control medication doses responsive to the patient's condition. In addition, Respondent prescribed controlled substances to several patients known by him to have ongoing substance abuse or psychiatric problems, with some patients actually having recently completed substance abuse treatment, which according to the Government's expert made continued controlled substance use suspect. Further, the Government's expert found that if Respondent's prescribing of controlled substances for family members was not blatantly illegal, it was at least ethically prohibited. The Government's expert also concluded that Respondent appeared reluctant to seek help from other medical specialists outside of his area of expertise; failed to correlate treatment with the patient's improvement or lack of improvement; and failed to use other modes of treatment other than prescribing controlled substances.

The Government's expert testified that based upon his review of the patient records, "I do not believe that there was sufficient diagnosis or basis for the prescribing of the substances prescribed by [Respondent]."

Respondent's first expert reviewed Respondent's patient charts, read the report of the Government's expert, and discussed the patient charts with Respondent. He concluded that in his opinion, Respondent was thorough in his diagnosis, that he adequately examined the patients, and that he had maintained adequate charts. In his opinion, Respondent's prescribing was well within the standards of reasonable medical care; his monitoring of the patients' medications was adequate; his evaluation of each patient on a regular basis was adequate; and his prescribing of narcotic analgesics was forlegitimate clinical reasons.

Respondent's other expert testified concerning Respondent's treatment in general and specifically regarding Respondent's treatment of eight of the patients at issue. In rendering his opinion, he reviewed the patient charts and discussed the patients' treatment with Respondent. According to this expert, Respondent met the standard of care in his treatment under the therapeutic school treatment approach for chronic pain patients. However, the expert acknowledged that Respondent's practices were not without flaws. In his opinion, Respondent did not document his initial findings regarding the medical history and physical examination in the recommended detail when making his chronic pain diagnostic evaluation of his patients; he did not consistently consult previous treating physicians; while he discussed the risks with his patients, to include acetaminophen toxicity, he did not chart the possible side effects in all of the medical records; and although he did consult with specialists in many instances, Respondent could have utilized consultants more consistently in his patients' care. During his testimony, this expert stressed the need for thorough documentation stating that "there should be clear-cut indications in the medical record that [the patient's] function is better with the medications. And if it's not, then the doctor puts himself at risk if he doesn't document sufficiently in the record that the patient actually is doing better."

However, this expert also testified that Respondent had a working diagnosis for each patient which justified the prescribed medications; had an adequate treatment plan documented in his patient charts; saw his patients frequently to monitor their progress; prescribed controlled substances in compliance with applicable law; and maintained quite

adequate records after the sparse initial visit entries. He further testified that in his opinion, Respondent's prescribing practices were appropriate.

In her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, Judge Randall went into great detail regarding the medical problems and treatment of the patients at issue in this proceeding. She discussed the prescription profiles, the information contained in the patient charts, the experts' testimony, Respondent's testimony, and the testimony of some of the patients. Since the Deputy Administrator is adopting Judge Randall's findings of fact in their entirety, there is no need for him to reiterate them. However, the Deputy Administrator makes the following general findings regarding Respondent's treatment of the patients at issue.

In general, the patients at issue suffered from a variety of problems including headaches, low back pain, pain in other parts of their bodies, sleep disturbances, multiple sclerosis, and depression. These patients were seen by Respondent at least monthly, and sometimes weekly. At virtually every visit, they were prescribed a combination of several different controlled substances, as well as other medication. Respondent explained the use of these medications, warned of the dangers of misusing the medications, and adjusted the medication regimen periodically to find the best combination of drugs. In addition, these patients received other forms of treatment such as osteopathic manipulations, traction, physical therapy, trigger point injections, range of motion exercises, transcutaneous electric nerve stimulation, and training in the proper use of body mechanics.

Respondent prescribed large quantities of controlled substances to these patients on a regular basis; however, he appeared to monitor his patients' use of the medications. He would not refill a prescription without seeing the patient. If Respondent became concerned about the amount of controlled substances being consumed by a patient, he would evaluate whether the patient appeared coherent and able to function. Respondent would perform liver toxicity tests to determine whether a patient was consuming too much acetaminophen and when a patient would experience a side effect from a drug, Respondent would discontinue the medication. Respondent assisted one patient in tapering off all medication, however the patient's pain became intolerable and Respondent resumed prescribing controlled substances for the patient.

A couple of the patient charts indicate that Respondent performed an impairment evaluation using the American Medical Association guidelines. Respondent also referred many of these patients to specialists, such as neurologists or psychiatrists, or to pain clinics. For the most part, these specialists confirmed Respondent's diagnosis, however, several of the specialists expressed concerns regarding the amount of controlled substances being prescribed by Respondent to the patients. Reports from these specialists, including those that expressed concerns, are included in the patients' charts. Two of Respondent's patients were referred to the pain clinic where the Government's expert was the medical director. In neither instance did the Government's expert contact Respondent to learn of the patient's history, however the Government's expert testified that there was no medical standard requiring such contact. One patient left the clinic because he could not afford to continue his treatment there. The other patient was tapered off his medication while at the clinic, but when the clinic could not manage the patient's pain, he was put back on narcotics. According to this patient, the clinic encouraged extensive daily exercise and meditation, however he further testified that this was not realistic if one has a job given the time constraints.

According to the Government's expert there were a number of "red flags" in Respondent's charts which should have alerted Respondent to the fact that these drugs were not being used for a legitimate medical purpose. First, some patients were involved in a number of accidents, however Respondent was not always told of them. On one occasion, a patient was arrested for driving under the influence of drugs. Respondent regulated the patient's medication, but after the patient's second arrest, Respondent refused to prescribe any more medication unless the patient signed a written promise not to drive while taking the medication. Second, a number of the patients were being treated by other doctors. In some of these instances, Respondent was not aware of the other doctors' treatment. According to Respondent and the patients, if he was made aware of the other treatment, he would discuss the situation with the patients and indicate that they could have only one treating, physician. Third, on several occasions' Respondent was contacted by pharmacists, a home health care nurse and/or insurance carriers regarding the large amount of controlled substances being prescribed to patients. Respondent credibly testified that he took these concerns into consideration when treating the patients. Fourth, one of Respondent's patients was sharing drugs with a family member and another with a friend. Also two of Respondent's patients had allegedly altered prescriptions. With all of these patients, Respondent advised them that this behavior was unacceptable and if it continued they would no longer be his patients. In fact, Respondent did ultimately stop treating one of them. Fifth, the spouse of one of Respondent's patients told Respondent of her husband's past drug problems and that he faked pain and exhibited drug seeking behavior. Respondent met with the patient and his wife to discuss this situation and determined that the patient had chronic pain and needed the medication. Respondent's expert testified that a family member's concerns should be addressed, but often a family member needs to be educated that just because a person is taking a large number of controlled substances does mean that the person is an addict or abuser. Sixth, one of the patient charts indicated that the patient lost several prescriptions, however Judge Randall found that the patient credibly testified that he never lied to Respondent in order to obtain more prescriptions. Seventh, Respondent resumed prescribing controlled substances to a patient after he completed drug detoxification treatment. According to Respondent, he evaluated the patient and determined that he still suffered from chronic pain and needed the medication. Finally, one of Respondent's patients was hospitalized for an amphetamine overdose. Respondent's expert testified that this was a "big red flag" but if the patient had chronic pain, she was entitled to relief.

The concerns of the Government's expert have been discussed generally above. The Government's expert expressed specific concerns regarding each of the patients. Most notable is the expert's disagreement with Respondent's continued prescribing of acetaminophen-based products to a patient who developed hepatitis. In fact, Respondent's expert indicated that he would have altered the prescriptions for this patient once it was learned that she had hepatitis.

As discussed above, one of Respondent's experts found that Respondent's patient chart were lacking details regarding his initial evaluation and diagnosis, however the expert found Respondent's treatment reasonable and prescribing appropriate.

The expert found that the prescribing of a combination of drugs at the same time is appropriate because each drug has specific indications. The expert also opined that prescribing beyond the recommended doses found in the Physician's Desk Reference (PDR) is not acting outside the standard of care because the PDR is merely a guide.

A number of Respondent's patients testified at the hearing in this matter. In addition, Respondent introduced letters from 99 of Respondent's patients. Essentially, these patients indicated that before seeing Respondent they could not function due to their chronic pain. Some indicated that they had been to other doctors but nothing worked to relieve them of their pain. However, they all indicated that due to Respondent's treatment, including the prescribed medications, their level of comfort has increased and their quality of life has improved. Some indicated that they were now able to work full-time and others indicated that they were able to participate in family activities and life in general. Several of the patients indicated that they had stopped taking medications for a period of time, but the pain was intolerable and they had to resume taking narcotics prescribed by Respondent. One patient indicated that it was his goal to ultimately be drug-free, but he does not want to be drug-free and disabled. Regarding the combination of prescriptions issued by Respondent, a number of the patients stated that they take different drugs depending on the severity of the pain and never take the drugs simultaneously. In addition, a number of patients indicated that Respondent did not tell them to take their prescriptions to different pharmacies to avoid suspicion. In fact, Respondent encouraged them to establish a relationship with one pharmacy and take all of their prescriptions to that pharmacy to be filled.

The Government also introduced into evidence at the hearing the testimony of two pharmacists and statements from 13 other pharmacists regarding their concerns about Respondent's controlled substance prescribing. One pharmacist testified that Respondent's prescribing placed the health and overall well-being of his patients at risk. He was concerned about the number of prescriptions issued by Respondent, the frequency of the prescriptions and the toxicity associated with taking those prescriptions. He further testified that he filled the prescriptions of other physicians who treat chronic pain, but they did not write as many controlled substance prescriptions as Respondent. He also indicated that when he expressed his concerns to Respondent regarding prescriptions issued to three patients who lived together, Respondent "basically * * * told me that he was the doctor, I was the pharmacist. * * * He was very flippant about the way that he told me off, basically just to mind my own business, that I had no reason to be calling him." The other pharmacist testified that he had concerns regarding some of Respondent's prescriptions; that he contacted Respondent regarding these concerns; but that he never refused to fill any of Respondent's prescriptions.

As to 10 of the pharmacists' statements, the Deputy Administrator agrees with Judge Randall's finding that they were "(1) lacking in foundational information about the declarants' credentials, (2) so lacking in factual specificity about the events related, and (3) so vague as to what was said to the Respondent and what he replied, that, without the declarants' testimony and opportunity for cross-examination, . . . these statements [are] worth very little weight in this matter."

The other three pharmacists' statements also lacked foundational information about the pharmacists' credentials other than that they were licensed at some point. One pharmacist expressed general concerns about three specific patients and that these concerns were raised with Respondent. However there was no information in this statement as to when these concerns were raised with Respondent and what specifically Respondent was told about the patients' behavior at the pharmacy. Another pharmacist indicated that he no longer fills Respondent's prescriptions, but he also indicated that he never called Respondent to voice his concerns. This pharmacist also named a specific patient however there was no other evidence presented linking this patient to Respondent. The third pharmacist described his experiences with a specifically named patient, however there was no evidence linking the behavior of this patient with conduct by Respondent. As with the other statements, Judge Randall concluded and the Deputy Administrator agrees that these statements are entitled to little weight.

Respondent testified at the hearing about the pharmacists' concerns stating that, "The captain of the ship is the physician, the buck stops here. I'm the ultimate individual because I'm the individual who prescribes the medication. Therefore, I take into consideration what the pharmacist says, but it's my responsibility to prescribe the medication."

Respondent acknowledged at the hearing that between December 1993 and September 1995, he had ordered multiple dosage units of controlled substances that he either took himself or gave to family members for their documented medical conditions, or that were to be used for emergency situations in his office.

Respondent admitted at the hearing that in 1995 he had not maintained a complete and accurate record in a formal log of controlled substances he dispensed in his office, and that he had not taken a biennial inventory of controlled substances prior to November 1995. However, Respondent introduced evidence at the hearing that in December 1995, he began maintaining a log which reflects his controlled substance dispensing, and he also introduced a copy of his in-office inventory of controlled substances as of January 2, 1996.

A former member of the Utah medical examining board who was also the president of the state osteopathic association from 1984 to 1991, testified that he has known Respondent since 1974; that Respondent has a reputation in the medical community as being skilled in the practice of osteopathic medicine; that he has referred his patients to Respondent for treatment; that it is appropriate for a physician to maintain controlled substances in his office for treating family members; and that Respondent's professional charges were reasonable within thee osteopathic community.

Respondent testified at the hearing that between 1994 and 1997, he took three courses on pain management which consisted of guest lectures "who were considered 'authorities' in the pain treatment and how these individuals managed their chronic intractable pain patients."

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Deputy Administrator may revoke a DEA Certificate of Registration and deny any pending application for renewal of such registration, if he determines that the continued registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any one or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. See *Henry J. Schwarz, Jr., M.D.*, 54 FR 16,422 (1989).

It is the Government's position that factors two, four and five apply in this case. Because of his failure to keep proper records, Respondent was unable to account for large quantities of drugs that he had ordered. He prescribed large quantities of controlled substances to individuals who he knew or should have known abused the drugs. In addition, he prescribed controlled substances to patients without adequate justification for the prescribing. Respondent ignored the concerns of pharmacists and other health care professionals thereby threatening his patients' health and safety. The Government further argued that Respondent violated state law by prescribing controlled substances for family members and by prescribing anabolic steroids for muscle enhancement. It is the Government's position that Respondent's cavalier attitude towards the handling of controlled substances places his patients at risk.

Conversely, Respondent contends that the Government has failed to establish a factual basis for the revocation of his DEA registration. It is Respondent's position that there were problems with the Government's investigation and that the Government's expert was not provided adequate information in order to render a meaningful opinion regarding Respondent's treatment of his patients. The Government took 38 out of over 500 patients charts and then only had its expert review 18 of the charts. The pharmacists' statements were too general to be used against him. Also, the Government failed to link any patient abuse of the prescriptions to any conduct, or lack thereof, by Respondent. It is Respondent's position that he prescribed controlled substances to his patients for legitimate medical purposes and that his failure to maintain records in the form prescribed by DEA does not warrant revocation in this case. Respondent contends that his medical practices pose no danger to the public health and safety, but that his patients will be in danger if his registration is revoked and they can no longer obtain controlled substances to enable them to continue functioning as productively as possible.

Regarding factor one, there is no evidence in the record that the state licensing board has taken any action against Respondent's license to practice medicine or handle controlled substances. Likewise regarding factor three, there is no evidence in the record that Respondent has been convicted of any controlled substance related offense.

However, factors two and four, Respondent's experience in dispensing controlled substances and his compliance with applicable laws relating to controlled substances, are relevant in determining whether Respondent's continued registration is in the public interest. Pursuant to 21 CFR 1306.04, prescriptions for controlled substances must be issued for a legitimate medical purpose by a practitioner acting in the usual course of professional practice.

The Government alleged that Respondent's prescribing to the patients at issue in this proceeding, as well as to his family members was not for a legitimate medical purpose. First, in support of its position the Government argued that Respondent's prescribing exceeded the recommended amounts and length of time set forth in the PDR. However, DEA has previously held that the PDR is not binding on a physician. *See Margaret E. Sarver, M.D.*, 61 FR 57,896 (1996). The Deputy Administrator agrees with Judge Randall's conclusion that exceeding the recommendations in the PDR may warrant further investigation but it does not, in and of itself, make the prescriptions not legitimate.

Second, the Government contended that there was inadequate diagnosis and evaluation to justify Respondent's prescribing of controlled substances. According to the Government's expert, there was insufficient information in the patient charts to warrant the prescriptions and Respondent did not refer the patients to specialists. One of Respondent's experts agreed with the Government's expert testifying that in his opinion the patient charts were lacking in detail regarding Respondent's initial evaluation and diagnosis, and on two occasions he would have referred the patients to specialists. But Respondent's expert also testified that subsequent entries in the patient charts were sufficient and that Respondent did refer other patients to specialists. Judge Randall concluded and the Deputy Administrator agrees that based upon a review of the patient charts, as well as, Respondent's testimony, the patients' testimony and statements, the experts' testimony, and reports from specialists found in the charts, the preponderance of the evidence supports a conclusion that the prescribing was justified.

Third, the Government argued that Respondent failed to reduce the dosage levels prescribed and that his prescribing was not responsive to the patients' medical conditions. All of the experts testified that there is no upper limit on the use of narcotics in the treatment of chronic pain. Respondent's experts testified that dosage levels should not be reduced so long as the amount of drugs prescribed are effectively managing the patient's pain; that Respondent's prescribing was responsive to the patients' medical conditions; and that the amount of pills prescribed alone should not be the test for determining whether the prescriptions are legitimate. Rather, one should look at whether the amount of drugs prescribed are enabling the patient to function. Respondent monitored his patients' use of controlled substances by seeing them at least monthly, and according to Respondent none of his patients were over-medicated. There is no evidence in the record that any of Respondent's patients were addicts. The term "addict" is defined in 21 U.S.C. 802(1) to mean, "any individual who habitually uses any narcotic drug so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of narcotic drugs as to have lost the power of self-control with reference to his addiction." To the contrary, Respondent's patients testified and/or submitted statements indicating that because of Respondent's treatment they are able to be functioning members of society.

Fourth, the Government argued that Respondent improperly prescribed controlled substances to patients who had recently completed substance abuse treatment. But, the Government witness and the Consensus Statement both indicated that it is not illegal to prescribe narcotics to these patients, but that a physician should use extra caution in so prescribing. The record indicates that Respondent evaluated these patients and determined that they still suffered from chronic pain requiring narcotics. Respondent monitored these patients' use of controlled substances.

Fifth, the Government contended that Respondent improperly prescribed controlled substances to family members. However, there is no evidence that it is illegal to do so.

Finally, the Government argued that Respondent improperly prescribed similar controlled substances simultaneously. But Respondent testified that he uses the stepladder approach to prescribing controlled substances. Therefore, he may prescribe a relatively weak opiate and a stronger opiate so that he patient can take the medication that correlates with his/her level of pain. Respondent's experts testified that this approach to prescribing meets the standard of care followed by the therapeutic school in the treatment of chronic pain. Different drugs work differently for different people, and since pain is subjective, the physician has to trust his patients.

The Government questioned the trustworthiness of a number of Respondent's patients, including one who indicated that he lost prescriptions; two who shared their drugs with others; those who went to other doctors at the same time that they were being treated by Respondent; and one whose spouse indicated that he faked pain to get prescriptions. However, Respondent investigated the claims, discussed the claims with the patients, made judgments as to whether or not to believe the patients, and carefully monitored any future behavior.

The Deputy Administrator agrees with Judge Randall's conclusion that based upon a review of the patient charts, Respondent's testimony, the patients' testimony and/or statements, and the experts' testimony, the preponderance of the evidence supports a conclusion that Respondent prescribed controlled substances for a legitimate medical purpose.

However, the Deputy Administrator finds that Respondent did prescribe anabolic steroids for muscle enhancement when it was illegal to do so. As Judge Randall stated, "[t]he Government is legitimately concerned about the Respondent's failure to remain current with the law concerning anabolic steroid prescribing. It is the registrant's responsibility to know the state of the law affecting his profession, and 'I didn't know' does not justify the Respondent's unlawful prescribing of anabolic steroids in 1992."

In addition at the time of the investigation in this matter, Respondent failed to keep complete and accurate records of his controlled substance handling as required by 21 U.S.C. 287 CFR 1304.04 and 1304.21. However, according to Respondent he has properly maintained the required records since 1995.

As other conduct which may threaten the public health and safety under factor five, the Government asserted that Respondent failed to acknowledge warnings of local pharmacists; failed to obtain information from other physicians treating a patient at the same time as Respondent; failed to alter his prescribing in response to a hospice nurse's concerns; failed to deny controlled substance prescriptions to an individual after he completed drug treatment; and improperly continued to prescribe acetaminophen to a patient after she was diagnosed with hepatitis.

The Deputy Administrator concurs with Judge Randall's conclusion that Respondent's treatment of the patient with hepatitis did place the patient's health at risk. However, the Deputy Administrator also agrees with Judge Randall that the Government's other concerns did not place his patients or the public health and safety at risk. He considered the concerns of the other health care professionals and the fact that a patient had just completed drug treatment in determining the appropriate treatment for a patient. While it may have been prudent for Respondent to contact other physicians who treated his patients, this is not required and no evidence was presented to indicate that the health and safety of his patients or the general public was endangered by his failure to do so.

After reviewing the record in this matter, Judge Randall noted, "[w]ithout a doubt, the Government had legitimate concerns as a result of its initial investigation of the Respondent and his prescribing practices." The Deputy Administrator finds it noteworthy that even one of Respondent's experts testified that Respondent's documentation was lacking and that lack of sufficient documentation places a physician at risk. However, despite the large number of prescriptions issued by Respondent, the pharmacists' concerns, and the evaluation of the Government's expert, the Government has failed to prove by a preponderance of the evidence that Respondent's continued registration would be inconsistent with the public interest. As a result, Judge Randall recommended that no action be taken against Respondent's registration.

In evaluating this case, it is apparent that there is disagreement within the medical community regarding the use of controlled substances in the treatment of chronic pain. As Judge Randall noted, "DEA is in a difficult position, for it is asked to determine appropriate prescribing practices in a treatment area in which the medical profession is not in accord: the treatment of chronic pain patients." However, DEA has previously held that it is not DEA's role to resolve this disagreement. In *William F. Skinner, M.D.*, 60 FR 62,887 (1995), the then-Deputy Administrator found that, "the conflicting expert opinion evidence presented leads to the conclusion that the medical community has not reached a consensus as to the appropriate level of prescribing of controlled substances in the treatment of chronic pain patients. * * * It remains the role of the treating physician to make medical treatment decisions consistent with a medical standard of care and the dictates of the Federal and State law."

Here, the Government's evidence is outweighed by the testimony of Respondent and his experts, the patients' testimony and statements, and the patient charts.

While it is true that Respondent prescribed anabolic steroids for muscle enhancement and did not maintain proper records of his controlled substance handling, revocation of his registration is not warranted. Respondent admitted that his prescribing of anabolic steroids was illegal. However, he ceased such prescribing immediately upon learning that it was illegal and has not prescribed anabolic steroids for muscle enhancement since. Judge Randall stated, "[a]lthough this corrective action does not justify the Respondent's failure to remain current in the law, * * * his actions show his desire and willingness to comply with the law in the prescribing of controlled substances."

Respondent also clearly did not maintain adequate controlled substances records, but he accepted responsibility for his inadequate recordkeeping and now maintains complete and accurate records. Here Judge Randall stated, "[a]gain, the Respondent's remedial efforts do not justify his prior failure to comply with record-keeping requirements, but such efforts do demonstrate that the DEA has certainly acquired this Respondent's attention. His response has been to take affirmative action to correct his prior mistakes."

The Deputy Administrator finds it significant that Respondent has taken several courses since the investigation of his practice concerning pain management and handling controlled substances. As Judge Randall noted, "although such remedial actions do not justify the Respondent's prior lack of knowledge, it does demonstrate his sincerity in updating his credentials, consistent with his current medical practice."

The Deputy Administrator agrees with Judge Randall that based upon the record as a whole, no adverse action is warranted against Respondent's DEA Certificate of Registration. However, the Deputy Administrator notes that the

treatment of chronic pain patients is a difficult business. Since pain is mainly subjective, physicians must rely heavily on the complaints of patients. Because of this, physicians must be ever vigilant for evidence of diversion of controlled substances for other than legitimate medical purposes.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 C.F.R. 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration AS9420059, previously issued to Paul W. Saxton, D.O., be, and it hereby is, continued with no adverse action being taken.

Dated: May 3, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–11580 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 2, 1999, Sigma Aldrich Research Biochemicals, Inc., Attn: Richard Milius, 1–3 Strathmore Road, Natick, Massachusetts 01760, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Cathinone (1235)	I
Methcathinone (1237)	I
Aminorex (1585)	I
Alpha-Ethyltryptamine (7249)	I
Lysergic acid diethylamide (7315)	I
Tetrahydrocannabinols (7370)	I
4-Bromo-2, 5-dimethoxyamphetamine (7391).	I
4-Bromo-2,5-dimethoxyphenethylamine (7392)	I
2, 5-Dimethoxyamphetamine (7396)	I
3, 4-Methylenedioxyamphetamine (7400)	I
N-Hydroxy-3, 4-methylenedioxyamphetamine (7402)	I
3, 4-Methylenedioxymethamphetamine (7405).	I
1- [1- (2-Thienyl) cyclohexyl] piperidine (7470).	I
Heroin (9200)	I
Normorphine (9313)	I
Amphetamine (1100)	II
Methamphetamine (1105)	II
Phenylcyclohexylamine (7460)	II
Phencyclidine (7471)	II
Cocaine (9041)	II
Codeine (9050)	II
Diprenorphine (9058)	II
Benzoylecgonine (9180)	II
Levomethorphan (9210)	II
Levorphanol (9220)	II
Meperidine (9230)	II
Metazocine (9240)	II
Methadone (9250)	II
Morphine (9300)	II
Thebaine (9333)	II
levo-alphacetylmethadol (9648)	II
Fentanyl (9801)	II

The firm plans to manufacturer the listed controlled substances for laboratory reference standards and neurochemicals.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than (60 days from publication).

Dated: April 26, 1999.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 99–11692 Filed 5–7–99; 8:45 am]

BILLING CODE 4410–09–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

May 5, 1999.

TIME AND DATE: 10:00 a.m., Thursday, May 13, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will hear oral argument on the following:

1. *Secretary of Labor* versus *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc. (Issues include whether the judge correctly determined that (1) citations should be dismissed based on their failure to state reasonable abatement times and (2) 30 CFR § 56.14107 cannot be applied to require supplementation of factory installed guards on haul trucks, and that the exception is subsection (b) applied.)

TIME AND DATE: The meeting will commence following upon the conclusion of oral argument in the case which commences at 10:00 a.m. on Thursday, May 13, 1999.

PLACE: Room 6005, 6th Floor, 1730 K Street, NW, Washington, DC.

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. *Secretary of Labor* versus *Newmont Gold Co.*, Docket Nos. WEST 97–164–RM, etc. (*See* oral argument listing, *supra*, for issues.)

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2796.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll-free.

Sandra G. Farrow,

Acting Chief Docket Clerk.

[FR Doc. 99–11890 Filed 5–6–99; 3:58 pm]

BILLING CODE 6735–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel, International section, to the National Council on the Arts will be held on May 19, 1999. The panel will meet from 8:15 a.m. to 9:00 a.m. in Room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications and proposals for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to subsection

(c)(4), (6) and (9)(B) of section 552b of Title 5, United States code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5691.

Dated: May 4, 1999.

Kathy Plowitz-Worden,

Panel Coordinator.

[FR Doc. 99–11636 Filed 5–7–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Anthropological and Geographic Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting of the Advisory Panel for Anthropological and Geographic Sciences (#1757);

Date & Time: May 21, 1999; 8:30 a.m.–5:00 p.m.

Room: 950.

Contact Person: Dr. John Yellen, Program Director for Archaeology, Archaeometry & Systematic Collections Program, National Science Foundation, 4201 Wilson Boulevard, Suite 995, Arlington, VA 22230. Telephone: (703) 306–1759.

Agenda: To review and evaluate Instrumentation proposals as part of the selection process for awards.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11626 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Biological Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences (#1754).

Date and Time: May 24th & 25th, 8:00 a.m.–5:00 p.m.

Place: Natioal Science Foundation, 4201 Wilson Blvd., Room 320, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. William Gordon, Program Director, Research Experiences for Undergraduates, Room 615, National Science Foundation, 4201 Wilson Boulevard, VA 22230.

Telephone: (703) 306–1469.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted in response to the Research. Experiences for Undergraduates program announcement (NSF 96–102).

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1999.

Linda Allen-Benton,

Acting Director, Division of Human Resource Management.

[FR Doc. 99–11625 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199)

Date and Time: May 24–25, 1999: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 390, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Costello Brown, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1640.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Minority Graduate Education proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1999.

Linda Allen-Benton,

Acting Division Director, Division of Human Resource Management.

[FR Doc. 99–11627 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Human Resource Development; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and Committee Code: Special Emphasis Panel in Human Resource Development (#1199).

Date and Time: May 27–28, 1999: 8:30 a.m. to 5:00 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 365, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Jesse Lewis, Program Director, Human Resource Development Division, Room 815, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1634.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for continuation of financial support.

Agenda; Review for the Centers of Research and Excellence in Science and Technology Reverse Site Visit.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: May 4, 1999.

Linda Allen-Benton,

Acting Division Director, Division of Human Resource Management.

[FR Doc. 99–11628 Filed 5–7–99; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters".

3. The form number if applicable: NRC Form 241.

4. How often the collection is required: NRC Form 241 must be submitted each time an Agreement State licensee wants to engage in or revise its activities involving the use of radioactive byproduct material in a non-Agreement State, areas of exclusive Federal jurisdiction, or offshore waters. The NRC may waive the requirements for filing additional copies of NRC Form 241 during the remainder of the calendar year following receipt of the initial form from a person engaging in activities under the general license.

5. Who will be required or asked to report: Any persons who hold a specific license from an Agreement State and want to conduct the same activity in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters under the general license in 10 CFR 150.20.

6. An estimate of the number of responses: The NRC annually receives approximately 4600 responses from Agreement States associated with NRC Form 241. These responses include 200 initial reciprocity requests on NRC Form 241, and 1100 revisions and 3300 clarifications of the information submitted on the forms.

7. The estimated number of annual respondents: 200 respondents.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 1200 hours.

9. An indication of whether Section 3507(d), Public Law 104–13 applies:

10. Abstract: Under the reciprocity provisions of 10 CFR part 150, any Agreement State licensee who engages in activities (use of radioactive byproduct material) in non-Agreement States, areas of exclusive Federal jurisdiction, or offshore waters, under the general license in Section 150.20, is required to file four copies of NRC Form 241, "Report of Proposed Activities in Non-Agreement States, Areas of Exclusive Federal Jurisdiction, or Offshore Waters," and four copies of its Agreement State license at least 3 days before engaging in each such activity. This mandatory notification permits NRC to schedule inspections of the activities to determine whether the activities are being conducted in accordance with requirements for protection of the public health and safety.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0013), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11672 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* Registration Certificate—*in vitro* Testing with Byproduct Material Under General License.

3. *The form number if applicable:* NRC Form 483.

4. *How often the collection is required:* There is a one-time submittal of information to receive a validated copy of NRC Form 483 with an assigned registration number. In addition, any changes in the information reported on NRC Form 483 must be reported in writing to the Commission within 30 days after the effective date of such change.

5. *Who will be required or asked to report:* Any physician, veterinarian in the practice of veterinary medicine, clinical laboratory or hospital which desires a general license to receive, acquire, possess, transfer, or use specified units of byproduct material in certain *in vitro* clinical or laboratory tests.

6. *An estimate of the number of responses:* 364 (104 registration certificates from NRC licensees and 260 registration certificates from Agreement State licensees).

7. *The estimated number of annual respondents:* 364 (104 NRC licensees and 260 Agreement State licensees).

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 42 hours, 7 minutes per response.

9. *An indication of whether section 3507(d), Pub. L. 104–13 applies:* N/A.

10. *Abstract:* Section 31.11 of 10 CFR establishes a general license authorizing any physician, clinical laboratory,

veterinarian in the practice of veterinary medicine, or hospital to possess certain small quantities of byproduct material for *in vitro* clinical or laboratory tests not involving the internal or external administration of the byproduct material or the radiation therefrom to human beings or animals. Possession of byproduct material under 10 CFR 31.11 is not authorized until the physician, clinical laboratory, veterinarian in the practice of veterinary medicine, or hospital has filed NRC Form 483 and received from the Commission a validated copy of NRC Form 483 with a registration number.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0038), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11673 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: Exercise of Discretion for an Operating Facility, NRC Enforcement Policy (NUREG–1600).

3. The form number if applicable: Not applicable.

4. How often the collection is required: On occasion.

5. Who will be required or asked to report: Nuclear power reactor licensees and gaseous diffusion plant certificate holders.

6. An estimate of the number of responses: 38 annually.

7. The estimated number of annual respondents: 38.

8. An estimate of the total number of hours needed annually to complete the requirement or request: 2,280.

9. An indication of whether section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: The NRC's revised Enforcement Policy includes the circumstances in which the NRC may exercise enforcement discretion. This enforcement discretion is designated as a Notice of Enforcement Discretion (NOED) and relates to circumstances which may arise where a nuclear power plant licensee's compliance with a Technical Specification Limiting Condition for Operation or with other license conditions would involve an unnecessary plant transient or performance of testing, inspection, or system realignment that is inappropriate for the specific plant conditions, or unnecessary delays in plant startup without a corresponding health and safety benefit. Similarly, for a gaseous diffusion plant, circumstances may arise where compliance with a Technical Safety Requirement or other certificate condition would unnecessarily call for a total plant shutdown, or, notwithstanding that a safety, safeguards or security feature was degraded or inoperable, compliance would unnecessarily place the plant in a transient or condition where those features could be required.

A licensee or certificate holder seeking the issuance of a NOED must provide a written justification, which documents the safety basis for the request and provides whatever other information the NRC staff deems necessary to decide whether or not to exercise discretion.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 9, 1999. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0136), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, MD, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–11675 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 98–067]

In the Matter of Sheila N. Burns; Order Prohibiting Involvement in NRC–Licensed Activities (Effective Immediately)

I

Sheila N. Burns was employed as a radiographer's assistant by International Radiography and Inspection Services, Inc. (IRIS or Licensee), Tulsa, Oklahoma. IRIS holds License No. 35-30246–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license authorizes IRIS to possess and utilize sealed radiation sources in the performance of industrial radiography in accordance with the conditions specified in the license.

II

On November 7, 1998, Ms. Burns and another IRIS employee were performing radiography at Sagebrush Pipeline Equipment Company in Sapulpa, Oklahoma, using a radiographic exposure device (camera) containing approximately 87 curies of iridium-192. Ms. Burns was the radiographer's assistant on this job; the other IRIS employee was a radiographer. In accordance with 10 CFR 34.46, the radiographer's assistant was required to be under the personal supervision of the radiographer when using the radiographic exposure device or performing radiation surveys.

On November 9, 1998, the radiation safety officer for IRIS notified the NRC Operations Center in Rockville, Maryland, of an incident that occurred on November 7, 1998, involving Ms. Burns and the radiographer. The incident resulted in a radiation exposure to Ms. Burns in excess of the annual limit in 10 CFR 20.1201.

The NRC conducted an inspection and investigation to review the circumstances surrounding this incident, and identified numerous apparent violations of radiation safety requirements associated with this incident, many of which were committed deliberately. The results of the NRC investigation were described in an investigation report issued on January 5, 1999. The results of the inspection were described in an inspection report issued on March 3, 1999. On January 25, February 4, and March 18, 1999, respectively, the NRC conducted separate predecisional enforcement conferences with Ms. Burns, the radiographer, and IRIS representatives. The conferences were conducted to discuss the apparent violations and to assist the NRC in reaching enforcement decisions in this matter.

With respect to Ms. Burns, the NRC has determined that she engaged in the following acts of deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused IRIS to be in willful violation of regulatory requirements by: (1) Knowingly conducting radiography at a site at which there was no radiation survey instrument, contrary to the requirements of 10 CFR 34.25(a); (2) knowingly conducting radiography without performing radiation surveys each time the radiographic source was returned to its shielded position following an exposure, contrary to the requirements of 10 CFR 34.49(b); and (3) knowingly conducting radiography without wearing all required personal radiation monitoring equipment, contrary to the requirements of 10 CFR 34.47(a). In addition, Ms. Burns knowingly provided false and misleading information to IRIS's radiation safety officer following the incident, contrary to the requirements of 10 CFR 30.10(a)(2). With regard to the latter violation, Ms. Burns knowingly provided IRIS officials with false information which was intended to cause them to believe that the radiographer was in the restroom at the time of the exposure incident, that she and the radiographer had followed radiation safety requirements regarding the use of radiation survey instruments and personal dosimetry, that she had inadvertently used a faulty alarm ratemeter that night, and that she and the radiographer had halted radiography work following her pocket dosimeter going off-scale.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Ms. Burns' deliberate misconduct, which caused IRIS to violate the Commission's regulations and resulted in a radiation exposure in excess of the annual limit in 10 CFR 20.1201, and her misrepresentations to IRIS officials, have raised serious doubt as to whether she can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if Sheila N. Burns were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that Sheila N. Burns be prohibited from any involvement in NRC-licensed activities for a period of 3 years from the date of this Order. Additionally, Sheila N. Burns is required to notify the NRC of her first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of Sheila N. Burns's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *It is Hereby Ordered*, Effective Immediately, That:

1. Sheila N. Burns is prohibited for 3 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If Sheila N. Burns is currently involved with another licensee in NRC-licensed activities, she must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 3 years after the 3-year period of prohibition has expired, Sheila N. Burns shall, within 20 days of her acceptance of each employment offer involving NRC-licensed activities or her becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where she is, or will be, involved in NRC-licensed activities. In the first notification Ms. Burns shall include a statement of her commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that she will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by Sheila N. Burns of good cause.

V

In accordance with 10 CFR 2.202, Ms. Burns must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny

each allegation or charge made in this Order and shall set forth the matters of fact and law on which Ms. Burns or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Ms. Burns if the answer or hearing request is by a person other than Ms. Burns. If a person other than Ms. Burns requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Ms. Burns or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Ms. Burns may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–11670 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[IA 99–002]

In the Matter of James S. Dawson; Order Prohibiting Involvement in NRC-Licensed Activities (Effective Immediately)

I

James S. Dawson was employed as a radiographer by International Radiography and Inspection Services, Inc. (IRIS or Licensee), Tulsa, Oklahoma. IRIS holds License No. 35–30246–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR Part 34. The license authorizes IRIS to possess and utilize sealed radiation sources in the performance of industrial radiography in accordance with the conditions specified in the license.

II

On November 7, 1998, Mr. Dawson and another IRIS employee were performing radiography at Sagebrush Pipeline Equipment Company in Sapulpa, Oklahoma, using a radiographic exposure device (camera) containing approximately 87 curies of iridium-192. Mr. Dawson was the radiographer on this job; the other IRIS employee was a radiographer's assistant. In accordance with 10 CFR 34.46, the radiographer's assistant was required to be under the personal supervision of Mr. Dawson when using the radiographic exposure device or performing radiation surveys. Thus, Mr. Dawson was responsible for assuring that certain NRC-licensed activities carried out by the radiographer's assistant were being performed appropriately and in compliance with NRC requirements.

On November 9, 1998, the radiation safety officer for IRIS notified the NRC Operations Center in Rockville, Maryland, of an incident that occurred on November 7, 1998 involving Mr. Dawson and the radiographer's assistant. The incident resulted in a radiation exposure to the radiographer's assistant in excess of the annual limit in 10 CFR 20.1201.

The NRC conducted an inspection and investigation to review the circumstances surrounding this incident, and identified numerous apparent violations of radiation safety requirements associated with this incident, many of which were committed deliberately. The results of the NRC investigation were described in an investigation report issued on January 5, 1999. The results of the inspection were described in an inspection report issued on March 3, 1999. On January 25, February 4, and March 18, 1999, respectively, the NRC conducted separate predecisional enforcement conferences with the radiographer's assistant, Mr. Dawson, and IRIS representatives. The conferences were conducted to discuss the apparent violations and to assist the NRC in reaching enforcement decisions in this matter.

With respect to Mr. Dawson, the NRC has determined that he engaged in the following acts of deliberate misconduct prohibited by 10 CFR 30.10(a)(i) that caused IRIS to be in willful violation of regulatory requirements by: (1) Knowingly conducting radiography at a site at which there was no radiation survey instrument, contrary to the requirements of 10 CFR 34.25(a); (2) knowingly conducting radiography without performing radiation surveys each time the radiographic source was returned to its shielded position following an exposure, contrary to the requirements of 10 CFR 34.49(b); (3) knowingly conducting radiography without wearing all of the required personal radiation monitoring equipment, contrary to the requirements of 10 CFR 34.47(a); (4) knowingly permitting the radiographer's assistant to resume work associated with licensed material after the radiographer's assistant's pocket dosimeter went off-scale and before a determination of the radiographer's assistant's radiation exposure had been made, contrary to the requirements of 10 CFR 34.47(d); and (5) knowingly failing to immediately contact the IRIS radiation safety officer after the radiographer's assistant's pocket dosimeter went off-scale, contrary to the requirements of IRIS's operating and emergency procedures (i.e., Item 3.1.2.1 IRIS' Radiation Safety Manual). In addition, Mr. Dawson knowingly provided false and misleading information to IRIS's radiation safety officer following the incident, contrary to the requirements of 10 CFR 30.10(a)(2). With regard to the latter violation, Mr. Dawson knowingly provided IRIS officials with false information which was intended to cause them to believe that Mr. Dawson was in the restroom at the time of the exposure incident, that he and the radiographer's assistant had followed radiation safety requirements regarding the use of radiation survey instruments and personal dosimetry, and that he had halted radiography work following the radiographer's assistant's pocket dosimeter going off-scale.

III

The NRC must be able to rely on the Licensee and its employees to comply with NRC requirements, including the requirement to provide information that is complete and accurate in all material respects. Mr. Dawson's deliberate misconduct, which caused IRIS to violate the Commission's regulations and resulted in a radiation exposure to the radiographer's assistant in excess of the annual limit in 10 CFR 20.1201, and his misrepresentations to IRIS officials, have raised serious doubt as to whether he can be relied upon to comply with NRC requirements, and to provide complete and accurate information to the NRC and its licensees.

Consequently, I lack the requisite reasonable assurance that licensed activities will be conducted in compliance with the Commission's requirements and that the health and safety of the public will be protected if James S. Dawson were permitted at this time to be involved in NRC-licensed activities. Therefore, the public health, safety and interest require that James S. Dawson be prohibited from any involvement in NRC-licensed activities for a period of 5 years from the date of this Order. Additionally, James S. Dawson is required to notify the NRC of his first employment in NRC-licensed activities following the prohibition period. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of James S. Dawson's conduct described above is such that the public health, safety and interest require that this Order be immediately effective.

IV

Accordingly, pursuant to sections 81, 161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 10 CFR 30.10, and 10 CFR 150.20, *it is hereby ordered*, effective immediately, that:

1. . James S. Dawson is prohibited for 5 years from the date of this Order from engaging in NRC-licensed activities. NRC-licensed activities are those activities that are conducted pursuant to a specific or general license issued by the NRC, including, but not limited to, those activities of Agreement State licensees conducted pursuant to the authority granted by 10 CFR 150.20.

2. If James S. Dawson is currently involved with another licensee in NRC-licensed activities, he must immediately cease those activities, and inform the NRC of the name, address and telephone number of the employer, and provide a copy of this order to the employer.

3. For a period of 5 years after the 5-year period of prohibition has expired, James S. Dawson shall, within 20 days of his acceptance of each employment offer involving NRC-licensed activities or his becoming involved in NRC-licensed activities, as defined in Paragraph IV.1 above, provide notice to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, of the name, address, and telephone number of the employer or the entity where he is, or will be, involved in NRC-licensed activities. In the first notification Mr. Dawson shall include a statement of his commitment to compliance with regulatory requirements and the basis why the Commission should have confidence that he will now comply with applicable NRC requirements.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by James S. Dawson of good cause.

V

In accordance with 10 CFR 2.202, Mr. Dawson must, and any other person adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this Order and shall set forth the matters of fact and law on which Mr. Dawson or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Attn: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011, and to Mr. Dawson if the answer or hearing request is by a person other than Mr. Dawson. If a person other than Mr. Dawson requests a hearing, that person shall set forth with particularity the manner in which his or her interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by Mr. Dawson or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202(c)(2)(i), Mr. Dawson may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section IV above shall be final 20 days from the date of this Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section IV shall be final when the extension expires if a hearing request has not been received. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

Dated this 29th day of April 1999.

For the Nuclear Regulatory Commission.

Malcolm R. Knapp,

Deputy Executive Director for Regulatory Effectiveness.

[FR Doc. 99–11671 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company, et al.; Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License (FOL) Nos. NPF–87 and No. NPF–89 issued to Texas Utilities Electric Company, et al. (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively,

located at site in Somervell County, Texas.

The proposed amendments would change the FOL for Unit 2 and the Technical Specifications for Units 1 and 2 to reflect an increase in allowable thermal power to 3445 megawatts (thermal), an increase of approximately 1 percent.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 9, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated December 21, 1998, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 3rd day of May 1999.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11676 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Notice of Public Meeting of the Interagency Steering Committee on Radiation Standards

AGENCIES: Nuclear Regulatory Commission and Environmental Protection Agency.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) will host a meeting of the Interagency Steering Committee on Radiation Standards (ISCORS) on June 10, 1999, in Rockville, Maryland. The purpose of ISCORS is to foster early resolution and coordination of

regulatory issues associated with radiation standards.

Agencies represented on ISCORS include the U.S. Nuclear Regulatory Commission, U.S. Environmental Protection Agency, U.S. Department of Energy, U.S. Department of Defense, U.S. Department of Transportation, the Occupational Safety and Health Administration of the U.S. Department of Labor, the U.S. Department of Health and Human Services, and any successor agencies. The Office of Science and Technology Policy, the Office of Management and Budget, and a State representative are observers at meetings.

The objectives of ISCORS are to: (1) Facilitate a consensus on allowable levels of radiation risk to the public and workers; (2) promote consistent and scientifically sound risk assessment and risk management approaches in setting and implementing standards for occupational and public protection from ionizing radiation; (3) promote completeness and coherence of Federal standards for radiation protection; and (4) identify interagency radiation protection issues and coordinate their resolution.

ISCORS meetings include presentations by the chairs of the subcommittees and discussion of current radiation protection issues. Committee meetings normally involve pre-decisional intra-governmental discussions and, as such, are normally not open for observation by members of the public or media. However, for the June 10 meeting, all interested members of the public are invited to attend.

DATES: The meeting will be held from 1 p.m. to 4 p.m. on Thursday, June 10, 1999.

ADDRESSES: The meeting will be held in the NRC auditorium, at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland 20852.

Summaries of previous ISCORS meetings are available at the NRC's Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20555; telephone 202–634–3273; fax 202–634–3343.

FOR FURTHER INFORMATION, CONTACT: Patricia A. Santiago, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone 301–415–7269; fax 301–415–5398; E-mail pas2@NRC.GOV.

SUPPLEMENTARY INFORMATION: Visitor parking around the NRC building is limited; however, the workshop site is located adjacent to the White Flint Metro Station on the Red Line. Seating for the public will be on a first-come, first-served basis.

Dated at Rockville, MD, this 26th day of April 1999.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Decommissioning Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11674 Filed 5–7–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Thursday, May 6, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public.

MATTERS TO BE CONSIDERED:

Thursday, May 6

9:00 a.m.—Briefing on Operating Reactors and Fuel Facilities (Public Meeting) (Contact: Glenn Tracy, 301–415–1725).

*The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1963).

In addition, distribution of this meeting notice over the internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

William M. Hill, Jr.,

SECY, Tracking Officer, Office of the Secretary, 5/5/99.

[FR Doc. 99–11795 Filed 5–6–99; 12:10 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17f–2(e); SEC File No. 270–37; OMB Control No. 3235–0031

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 17f–2(e) requires members of national securities exchanges, brokers, dealers, registered transfer agents, and registered clearing agencies claiming exemption from the fingerprinting requirements of Rule 17f–2 to prepare and maintain a statement supporting their claim for exemption. Approximately 75 respondents incur an annual total burden of 37.5 hours complying with the requirements of Rule 17f–2(e).

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Officer of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: April 28, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11601 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23824; 812–11566]

Warburg Pincus Asset Management, Inc., et al.; Notice of Application

May 5, 1999.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from section 15(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order to permit the implementation, without prior shareholder approval, of certain advisory and sub-advisory agreements in connection with the acquisition ("Acquisition") of Warburg Pincus Asset Management Holdings, Inc. ("Warburg Holdings") by Credit Suisse Group ("Credit Suisse"). The order would cover a period of up to 150 days following the later of: (i) The date on which the Acquisition is consummated (the "Acquisition Date"), or (ii) the date on which the requested order is issued (but in no event later than December 31, 1999). The order also would permit the payment of all fees earned under the new advisory agreements during this period following shareholder approval.

APPLICANTS: Warburg Pincus Asset Management, Inc. ("Warburg"), Credit Suisse Asset Management ("CSAM–U.S."), Abbott Capital Management, LLC ("Abbott") and Blackrock Institutional Management Corporation ("Blackrock") (collectively, the "Advisers").

FILING DATES: The application was filed on April 7, 1999. Applicants have agreed to file an amendment to the application, the substance of which is reflected in this notice, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 27, 1999, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. Warburg, 466 Lexington Avenue, New York, NY 10017. CSAM–U.S., One Citicorp Center, 153 East 53rd Street, New York, NY 10022. Abbott, 50 Rowes Wharf, Suite 240, Boston, MA 02110–3328. Blackrock, 345 Park Avenue, New York, NY 10154.

FOR FURTHER INFORMATION CONTACT: Janet M. Grossnickle, Attorney-Adviser, at (202) 942–0526, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Warburg, a Delaware corporation, is an investment adviser registered under the Investment Advisers Act of 1940 ("Advisers Act"). Abbott, a Delaware limited liability company, is an investment adviser registered under the Advisers Act. Blackrock, a Delaware corporation, is an investment adviser registered under the Advisers Act. Warburg is a wholly-owned subsidiary of Warburg Holdings.

2. Warburg serves as the adviser or sub-adviser to various management investment companies registered under the Act ("Funds").[1] Abbott serves as sub-adviser to four of the Funds, Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus Post-Venture Capital Fund, Inc., and the Post-Venture Capital Portfolios of Warburg, Pincus Institutional Fund, Inc., and Warburg, Pincus Trust. Blackrock serves as a sub-adviser to four of the Funds, but is seeking relief only with respect to two Funds, Warburg, Pincus WorldPerks Money Market Fund, Inc. and Warburg, Pincus WorldPerks Tax Free Money Market Fund, Inc. The advisory and sub-advisory agreements currently in effect between the Advisers and the Funds are each referred to as an "Existing Advisory Agreement" and collectively, as the "Existing Advisory Agreements."

3. On February 15, 1999, Warburg Holdings entered into an acquisition agreement with Credit Suisse, under which Warburg Holdings will be acquired by Credit Suisse. Credit Suisse, a Switzerland corporation, is a global financial services company. Applicants expect the Acquisition to be consummated in June 1999. Upon consummation of the Acquisition, Credit Suisse intends to combine Warburg with CSAM–U.S. (the "Reorganization"). Such combined businesses are expected to be conducted by CSAM–U.S. as a wholly-owned U.S. subsidiary of Credit Suisse (the "New Adviser"). The Reorganization is expected to occur simultaneously with the Acquisition. CSAM–U.S. is registered as an investment adviser under the Advisers Act. New Adviser will succeed to CSAM–U.S.'s registration under the Advisers Act after the Reeorganization.

4. Applicants state that the Acquisition will result in an assignment and thus the automatic termination of the Existing Advisory Agreements. Applicants also state that the Reorganization may be deemed an assignment of each Fund's Existing Advisory Agreements if it does not occur simultaneously with the Acquisition. Applicants requests an exemption to permit the implementation, without prior shareholder approval, of new advisory and sub-advisory agreements with respect to the Funds ("New Advisory Agreements"). The requested exemption will cover the period of not more than 150 days beginning on the later of the Acquisition Date or the date of the issuance of the requested order and continuing with respect to each Fund through the date on which each New Advisory Agreement is approved or disapproved by the Fund's shareholders, but in no event later than December 31, 1999 ("Interim Period"). Applicants represent that the New Advisory Agreements will contain

[1] Warburg serves as the adviser to the following funds: Warburg, Pincus Balanced Fund, Inc., Warburg, Pincus Capital Appreciation Fund, Warburg, Pincus Cash Reserve Fund, Inc., Warburg, Pincus Emerging Growth Fund, Inc., Warburg, Pincus Emerging Markets Fund, Inc., Warburg, Pincus Fixed Income Fund, Warburg, Pincus Global Fixed Income Fund, Inc., Warburg, Pincus Global Post-Venture Capital Fund, Inc., Warburg, Pincus Growth & Income Fund, Inc., Warburg, Pincus Health Sciences Fund, Inc., Warburg, Pincus Institutional Fund, Inc., Warburg, Pincus Intermediate Maturity Government Fund, Inc., Warburg, Pincus International Equity Fund, Inc., Warburg, Pincus International Small Company Fund, Inc., Warburg, Pincus Japan Growth Fund, Inc., Warburg, Pincus Japan Small Company Fund, Inc. Warburg, Pincus Major Foreign Markets Fund, Inc., Warburg, Pincus New York Intermediate Municipal Bond Fund, Inc., Warburg, Pincus New York Tax Exempt Fund, Inc., Warburg, Pincus Post-Venture Capital Funds, Inc., Warburg, Pincus Small Company Growth Fund, Inc., Warburg, Pincus Small Company Value Fund, Inc., Warburg, Pincus Trust, Warburg, Pincus Trust II, Warburg, Pincus WorldPerks Money Market Fund, Inc., and Warburg, Pincus WorldPerks Tax Free Money Market Fund, Inc. Warburg serves as a sub-adviser to the Growth and Income Portfolio of the Variable Investors Series Trust, the International Growth Fund of WM Trust II, and the International Growth Fund of the WM Variable Trust.

substantially the same terms and conditions as the Existing Advisory Agreements, except in each case for the effective and the termination dates. Applicants further represent that each Fund will receive, during the Interim Period, the same scope and quality of investment advisory services, provided in the same manner by substantially the same personnel, at the same fee levels as it received prior to the Acquisition.

5. Applicants state that the board of directors of each Fund (the "Board") will meet prior to the Acquisition Date to consider approval of the New Advisory Agreements and submission of the New Advisory Agreements to the shareholders for their approval, in accordance with section 15(c) of the Act.[2] Applicants state that the Board will evaluate whether the terms of the New Advisory Agreements are in the best interests of the Funds and their shareholders.

6. Applicants submit that it will not be possible to obtain shareholder approval of the New Advisory Agreements in accordance with section 15(a) of the Act prior to the Acquisition Date. Applicants state that each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Advisory Agreements to be held during the Interim Period.

7. Applicants also request an exemption to permit the Advisers to receive from each Fund all fees earned under the New Advisory Agreements during the Interim Period, if and to the extent the New Advisory Agreements are approved by the shareholders of each Fund.[3] Applicants propose to enter into an escrow arrangement with an unaffiliated financial institution (the "Escrow Agent"). Advisory fees payable by the Funds to the Advisers under the New Advisory Agreements during the Interim Period will be paid into an interest-bearing escrow account maintained by the Escrow Agent. The amounts in the Escrow account (including interest earned on such paid fees) will be paid to the Advisers only after the New Advisory Agreements are approved by the shareholders of the relevant Fund in accordance with section 15(a) of the Act. If shareholder approval is not obtained and the Interim Period has ended, the Escrow Agent will return the escrow amounts to the appropriate Fund. Before the release of any such escrow amounts, the Boards will be notified.

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in pertinent part, that it shall be unlawful for any person to serve or act as an investment adviser of a registered investment company, except pursuant to a written contract that has been approved by the vote of a majority of the outstanding voting securities of such registered investment company. Section 15(a) of the Act further requires that such written contract provide for its automatic termination in the event of its "assignment." Section 2(a)(4) of the Act defines "assignment" to include any direct or indirect transfer of an investment advisory or investment sub-advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor.

2. Applicants state that the Acquisition will result in an assignment of the Existing Advisory Agreements and the Existing Advisory Agreements will terminate by their own terms. Applicants further state that if the Reorganization occurs after the Acquisition, the then-existing advisory agreements will be transferred to the New Adviser, which could be deemed to constitute an assignment of those agreements.

3. Rule 15a–4 under the Act provides, in pertinent part, that if an investment advisory contract with a registered investment company is terminated by an assignment, the adviser may continue to serve for 120 days under a written contract that has not been approved by the company's shareholders, provided that: (a) The new contract is approved by that company's board of directors (including a majority of the non-interested directors); (b) the compensation to be paid under the new contract does not exceed the compensation that would have been paid under the contract most recently approved by the company's shareholders; and (c) neither the adviser nor any controlling person of the adviser "directly or indirectly receives money or other benefit" in connection with the assignment. Applicants state that they cannot rely on rule 15a–4 because of the benefits to Warburg arising from the Acquisition.

4. Section 6(c) provides that the SEC may exempt any person, security, or transaction from any provision of the Act, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard.

5. Applicants note that the terms and timing of the Acquisition were determined in response to a number of factors beyond the scope of the Act and substantially unrelated to the Funds. Applicants state that it may not be possible for the Funds to obtain shareholder approval of the New Advisory Agreements prior to the Acquisition Date. Applicants submit that the Boards will meet to approve the New Advisory Agreements prior to the Acquisition Date, in accordance with section 15(c) under the Act.

6. Applicants submit that the Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds during the Interim Period will be at least equivalent to the scope and quality of services previously provided. During the Interim Period, the Advisers will operated under the New Advisory Agreements, which will be substantially the same as the respective Existing Advisory Agreements, except for the effective and the termination dates. Applicants state that the fees to be paid during the Interim Period will not be greater than the fees currently paid by the Funds. Applicants also assert that allowing the implementation of the New Advisory Agreements will ensure that there will be no disruption to the investment program and the delivery of related services to the Funds.

Applicant's Conditions

Applicants agree as conditions to the issuance of the exemptive order requested by the application that:

1. The New Advisory Agreements will contain substantially the same terms and conditions as the Existing Advisory Agreements, except for the dates of execution and termination.

2. The portion of the advisory fees earned by the Advisers during the Interim Period will be maintained in an interest-bearing escrow account (including interest earned on such amounts), and amounts in the account will be paid: (a) To the applicable Adviser after the requisite approval of each New Advisory Agreement by the relevant Fund's shareholders is obtained; or (b) in the absence of such

[2] Applicants acknowledge that, to the extent that the Board of any Fund cannot meet to approve a New Advisory Agreement prior to the Acquisition Date, such Fund may not rely on the exemptive relief requested in this application.

[3] Applicants state that if the Acquisition Date precedes issuance of the requested order, the Advisers will continue to serve as Advisers after the Acquisition Date (and prior to the issuance of the order) in a manner consistent with their fiduciary duty to continue to provide advisory services to the Funds even though approval of the New Advisory Agreements has not yet been secured from the Funds' shareholders. Applicants also state that the Funds may be required to pay, with respect to the period until receipt of the order, no more than the actual out-of-pocket costs to the Advisers for providing advisory services.

approval by the end of the Interim Period, to the Fund.

3. Each Fund will promptly schedule a meeting of shareholders to vote on the approval of the New Advisory Agreements to be held during the Interim Period.

4. Warburg will pay the costs of preparing and filing the application, and Warburg and Credit Suisse will pay the costs relating to the solicitation and approval of the Funds' shareholders of the New Advisory Agreements.

5. The Advisers will take all appropriate actions to ensure that the scope and quality of advisory and other services provided to the Funds by the Advisers during the Interim Period will be at least equivalent, in the judgment of the respective Boards, including a majority of the directors who are not "interested persons" of the Funds, as defined in section 2(a)(19) of the Act ("Disinterested Directors"), to the scope and quality of services currently provided under the Existing Advisory Agreements. In the event of any material change in the personnel providing services pursuant to the New Advisory Agreements, the Advisers will apprise and consult with the relevant Fund's Board to ensure that the Boards, including a majority of the Disinterested Directors, are satisfied that the services provided will not be diminished in scope or quality.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11691 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41357; File No. SR–CBOE–99–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the Dow Jones High Yield Select 10 Index and RAES Order Size

April 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 10, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to increase the maximum size of orders on the Dow Jones High Yield Select 10 Index ("index"), from 20 to 100 contracts, eligible for entry into CBOE's Retail Automated Execution System ("RAES").

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the propose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add an interpretation of Rule 6.8 to allow the appropriate Floor Procedure Committee ("FPC") to increase the maximum size of option orders on the Dow Jones High Yield Select 10 Index ("Index"), from 20 to 100 contracts, eligible for execution through RAES. The Exchange expects this change to enhance the depth and liquidity of the market for options on the Index.

In adopting the new RAES rule applicable to options on the Index, the appropriate FPC will have the discretion to set the eligible order size for RAES orders up to one hundred (100) contracts. The Exchange believes that expanding the eligible contract limit size for RAES will provide the benefits of more timely and cost-effective executions of customer orders to a greater number of orders than would be the case if no change were made; enhance information gathering through the audit trail; enhance fill reporting and price reporting; increase customer confidence; and reduce transactions that have to be executed manually on the trading floor thereby increasing the efficiency in the handling of non-RAES orders.

CBOE believes that this proposed rule change will not impose any significant burdens on the operation, security, integrity, or capacity of RAES, but will increase the efficiency of Exchange operations.[3]

By expanding the maximum size of option orders on the Dow Jones High Yield Select 10 Index eligible for entry through RAES from 20 up to 100 contracts, the proposed rule will better serve the needs of the CBOE's public customers and Exchange members who make a market for such customers and is consistent with and furthers the objectives of Section 6(b)(5) of the Exchange Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change. or

(B) institute proceeding the determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

[3] The SEC has approved increasing interest rate option orders up to 100 contracts on RAES, Release No. 34–38002 (December 5, 1996), 61 FR 65422 (December 12, 1996).

Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–06 and should be submitted by June 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11597 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41354; File No. SR–NYSE–99–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Revisions to the Exchange's Floor Conduct and Safety Guidelines

April 30, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1944 [1] ("Act"), and Rule 19b–4 thereunder,[2] notice is hereby given that on April 21, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items, I, II, and III below, which Items have been prepared by the Exchange. The Exchange has designed this proposal as one which is concerned solely with the administration of the Exchange under Section 19(b)(3)(A)(iii) of the Act,[3] and Rule 19b–4(f)(3) thereunder,[4] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Floor Conduct and Safety Guidelines ("Guidelines") to require terminated or transferred Floor employees or members to surrender their Exchange-issued identification card ("Floor bage") to the Exchange's Security Office within five business days of termination. In addition, the proposed rule would require that members and member organizations notify the Security Office of a member's or Floor employee's termination within 24 hours of the termination. The text of the proposed rule change is available at the Exchange and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the Guidelines is to ensure that the behavior and practices of individuals on the Floor of the Exchange contribute to the efficient, undisrupted conduct of business on the Floor and do not jeopardize the safety or welfare of others.

Exchange rules require all members and Floor employees of members and member organizations to be registered with, and qualified and approved by, the Exchange. When entering and while on the Floor, members and Floor employees of members and member organizations must display their Floor badge at all times.

Currently, Exchange policy requires that the Floor badges of terminated employees must be surrendered to the Exchange's Security Office or to the Exchange's Floor Operations Support Department within five business days of termination of employment.

To ensure that only authorized members and Floor employees may gain access to the Floor (thereby strengthening overall security), the Guidelines will be revised to require that members and member organizations:

- Notify the Security Office of a member's or Floor employee's termination within 24 hours of the termination, and
- Submit the terminated member's or Floor employee's badge to the Security Office within five business days of termination.

The Guidelines will incorporate the requirement for 24-hour notice to and submission of Floor badges directly to the Security Office, with no option to submit badges to the Floor Operations Support Department.

The required 24-hour notification to the Security Office will enable Security staff to deactivate Floor badges electronically, immediately upon notification and prior to the badges actually being surrendered, thereby barring access to the Floor by terminated persons.

Members and member organizations who reassign members or Floor employees to non-Floor functions will be subject to this policy concerning surrender of the Floor badges. In addition to enhancing Floor security, this policy will provide a centralized and more efficient means for accountability of Floor badges.

Failure by members and member organizations to adhere to these Guidelines may result in the imposition of fines (in the amount of $1000) in accordance with the Guidelines.

These proposed revisions to the Guidelines do not affect the existing structure of fines, penalties, and disciplinary actions contained in the Guidelines; nor do they affect the rights of members, member organizations and Floor employees of members and member organizations to appeal, pursuant to existing Exchange rules and procedures, any penalties that are imposed under the Guidelines.

2. Statutory Basis

The proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act [5] which requires that the rules of the Exchange be designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market. The proposed rule change

[4] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 15 U.S.C. 78s(b)(3)(A)(iii).
[4] 17 CFR 240.19b–4(f)(3).
[5] 15 U.S.C. 78f(b)(5).

supports these goals by promoting the efficient, undisrupted conduct of business on the Floor.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change is concerned solely with the administration of the Exchange, and as such, takes effect upon filing with the Commission pursuant to Section 19(b)(3)(A)(iii) of the Act[6] and Rule 19b–4(f)(3) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to file number SR–NYSE–99–16, and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11598 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

[6] 15 U.S.C. 78s(b)(3)(A)(iii).

[7] 17 CFR 240.19b–4(f)(3).

[8] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41353; File No. SR–PCX–98–62]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Differential Index Options

April 30, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 18, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Exchange filed with the Commission Amendments No. 1[3] and 2[4] to the proposed rule change on April 8, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to trade a standardized index option, the Differential Index Option, whose value at expiration will be based on the relative performance of either a designated index versus a benchmark index, a designated stock versus a benchmark index, or a designated stock versus a benchmark stock.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Proposal. The Exchange is proposing to trade a new type of standardized index option, the Differential Index Option, that will offer new investment and hedging opportunities.[5] Differential Index Options will have a value at expiration based on an index, called the "differential index," that measures the relative performance of (1) A designated index versus a benchmark index over a specific time period ("Index Differential Option"); (2) a designated stock versus a benchmark index over a specific time period ("Equity Differential Option"); or (3) a designated stock versus a benchmark stock over a specific period of time ("Paired Stock Differential Option"). If the percent gain in the level

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Letter to Michael A. Walinskas, Division of Market Regulation, Commission, from Robert P. Pacileo, PCX, dated April 7, 1999 ("Amendment No. 1"). Amendment No. 1 makes certain technical changes to the proposed rule change. Amendment No. 1 also specifies the procedures the Exchange will follow if an underlying differential index previously approved for options trading does not meet the Exchange's requirements for continued approval. In addition, Amendment No. 1 clarifies the conditions under which Exchange Rule 6.11, relating to restrictions on Exchange options transactions and exercises, will be applicable to Differential Index Options.

[4] *See* Letter to Michael A. Walinskas, Division of Market Regulation, Commission, from Robert P. Pacileo, PCX, dated April 7, 1999 ("Amendment No. 2"). Amendment No. 2 provides information as to what the Exchange will do to make adjustments in value for differential index options contracts when certain corporate events take place in the case of Equity Differential and Paired Stock Differential options, or when significant action has been taken by the publisher of an index in the case of Index Differential options. Amendment No. 2 also specifies that if the Exchange chooses as either a designated or benchmark index an index that has been approved for index warrant trading only, to establish the appropriate position limit the Exchange will (i) use the procedures set forth in its narrow-based index options rules with respect to differential options using a narrow-based index warrant and (ii) consult with the Commission with respect to differential options using a broad-based index warrant. Furthermore, Amendment No. 2 indicates the Exchange's intent to trade flexible exchange-traded options on Differential index options and provides the proposed rule language governing these options.

[5] The proposal is similar to filings of the American Stock Exchange and the Chicago Board Options Exchange, Inc. *See* Exchange Act Release No. 40537 (October 8, 1998), 63 FR 56052 (October 20, 1998); SR–CBOE–98–50.

of the designated index or stock during the period is greater than the percent gain in the underlying benchmark index or stock, then a Differential Call Option originally struck at the money will have a positive value at expiration and a Differential Put Option originally struck at the money will expire worthless. If the percentage gain in the level of the designated index or stock during the period is less than the percent gain in the underlying benchmark, then a Differential Put Option originally struck at the money will have a positive value at expiration and a Differential Call Option originally struck at the money will expire worthless. Thus, a Differential Index Option affords an investor the opportunity, through a single investment, to participate in the relative out-performance of a designated index or stock versus a benchmark index or stock (a Differential Call Option) or the relative under-performance of a designated index or stock versus a benchmark index or stock (a Differential Put Option) over the life of the option, regardless of the absolute performance of the designated index or stock.

For example, an investor may feel that Microsoft will out-perform the technology sector for the next few months, but is unsure whether the overall technology sector will move higher or lower. If the investor were to buy an at-the-money standardized Microsoft call option, and the stock declined, the option would expire worthless, even if the stock declined by a much smaller percentage than the technology sector. On the other hand, if the investor were to purchase an at-the-money Equity Differential Call Option on the relative performance of Microsoft versus the PSE Technology 100 Index ("Tech 100"), a benchmark measure of the technology sector, and Microsoft declined by a smaller percentage than the Tech 100, the Equity Differential Call Option would have a positive value at expiration. Conversely, an investor who believes that Microsoft will under-perform the Tech 100 may purchase at-the-money Equity Differential Put Options. If Microsoft under-performs the Tech 100, the Differential Put Options will have a positive value at expiration, regardless of whether Microsoft itself has increased or decreased on an absolute basis. This example can be applied to the other types of Differential Options; the different in the relative performance of a designated stock versus a benchmark stock, such as Microsoft versus Compaq ("Paired Differential Stock Option"), or the relative performance between two indexes, such as the PSE Technology 100 and the Wilshire Small Cap Index ("Differential Index Option").

a. Differential Calculation. The underlying security for a Differential Index Option is an index (called the "differential index") of the performance of the designated stock or index relative to the benchmark stock or index. The differential index is calculated as follows: on December 31 of each year, prior to the listing of a Differential Index Option series, base reference prices are established for the designated index or stock and the benchmark index or stock (typically, the closing levels on a designated business day). Thereafter, percent changes from the base values of both the designated index or stock and the benchmark index or stock are continuously calculated and the percent change in the benchmark is subtracted from the percent change in the designated index or stock, providing a positive number if the designated index or stock has either out-gained or suffered a lesser percentage decline than the benchmark, and a negative number if the benchmark has out-gained the designated index or stock or suffered a lesser percent loss.

The percentage differential in the relative gain or loss is then multiplied by 100 and added to a fixed base index value (typically 100) to yield the differential index that will underlie the Differential Index Options:

$$Dt=((I_t/I_0)-(B_t/B_0))\times 100+f$$

Where:

D=differential index;
I=designated index or security;
B=benchmark index or security;
t=current or settlement value of index or security;
0=base reference value of index or security;
f=a fixed base index value, typically 100.

Thus, if the designated index or security has out-performed the benchmark by 7%, and the fixed value, f, is set at 100, the differential index value would be 107; if it has under-performed by 7%, the differential index value would be 93. The base reference values will remain in effect for a predetermined, fixed period (expected to be between six months and two years). Similar to other index values published by the Exchange, the value of each differential index will be calculated continuously and disseminated under a separate symbol every 15 seconds over the Consolidated Tape Association's Network B.

b. Designated Indexes, Designated stocks, Benchmark Indexes and Benchmark Stocks. Only stocks that meet the current Exchange Rules for listing standardized equity options will be eligible designated stocks in Equity Differential Options. Only stocks that meet the current Exchange Rules for listing standardized equity options will be eligible designated stocks or benchmark stocks in Paired Stock Differential Options. In this way, only the most liquid, actively traded stocks will be considered.

Similarly, only indexes that meet the current Exchange Rules for listing standardized index options and have been approved for options or warrant trading by the Commission will be eligible for designation either as designated indexes or benchmark indexes in Equity and Index Differential Options. In this way, only those indexes already deemed by the Commission to be suitable for options trading will be considered.

c. Expiration and Settlement. The proposed Differential Index Options will be European style (*i.e.*, exercises permitted at expiration only) and cash settled. Index Differential Options in which both the designated or benchmark indexes are broad-based will trade between the hours of 7:00 a.m. and 1:15 p.m., Pacific Time. All other Differential Index Options will trade between 7:00 a.m. and 1:02 p.m., Pacific Time. Differential Index Options will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an expiring option series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

While the Exchange seeks approval to list series of Differential Index Options as set forth in proposed PCX Rules 7.20 through 7.31 and Rule 8.102, the Exchange anticipates that it will initially list only five series with expirations corresponding to the four calendar months in the March cycle in the current calendar year, and a fifth series expiring in March of the following calendar year.

The exercise settlement value for Differential Index Options will be calculated based on the respective exercise settlement values for standardized options on each of the designated and benchmark indexes expiring on the same day. The exercise settlement value for Equity Differential Options will be calculated based on the primary exchange regular-way opening sale price of the designated stock, or, if the stock is traded through the Nasdaq system, the first reported regular-way

sale that occurs after the best bid and best offer for that security are unlocked and uncrossed and is greater than or equal to the best bid and less than or equal to the best offer at the time of the reported sale and the exercise settlement value for standardized options on the benchmark index expiring on the same day. The exercise settlement value for Paired Stock Differential Options will be calculated based on the primary exchange regular-way opening sale prices of the designated and benchmark stocks, or, if the stock is traded through the Nasdaq system, the first reported regular-way sale that occurs after the best bid and best offer for that security are unlocked and uncrossed and is greater than or equal to the best bid and less than or equal to the best offer at the time of the reported sale.

d. Applicable Exchange Rules. Proposed PCX Rules 7.20 through 7.31 and Rule 8.102 will apply to Differential Index Options contracts. These Rules cover issues such as surveillance, exercise price and position limits. Differential Index Options will also be subject to (1) the PCX's surveillance procedures currently used to monitor trading in each of the Exchange's index and equity options, and (2) sales practice and suitability rules applicable to standardized options. The Exchange currently intends to create Differential Index Options using the indexes and options currently traded on the PCX.

Differential Index Options are "securities" under section 3(a)(10) of the Act, and therefore are exempt pursuant to section 28(a) of the Act from any state law that prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities. Differential Index Options will be traded pursuant to the Exchange's rules and rule amendments discussed herein, subject to prior approval by the Commission.

e. Position Limits. The Exchange proposes that the position limits for Differential Index Options be set at the lower of the separate position limits for standardized index options trading on the designated index or the benchmark index. In the event that one or both of the indexes is not currently the subject of standardized index options trading, but rather has been approved for index warrant trading only, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the indexes if such options were trading.[6] For Equity Differential Options, the Exchange proposes that the limits be set at the position limit of standardized options trading on the designated stock. In the event that standardized options currently do not trade on the designated stock, the Exchange will establish a position limit at the level that would be in effect if standardized options did trade on such stock. For Paired Stock Differential Options, the Exchange proposes that the position limits be set at the lower of the separate position limits of standardized equity options trading on the designated or benchmark stocks. In the event that one or both of the stocks is not currently the subject of standardized options trading, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the stocks if such options were trading.

The Exchange also proposes, for position and exercise limit purposes, to require that positions in Differentials with the same designated or benchmark stock or narrow-based index be aggregated. For example, if a Paired Stock Differential Option has been created using Microsoft Corporation stock as the benchmark and Compaq, Inc. as the designated stock, positions in that Differential Option will be aggregated for position and exercise limit compliance purposes with positions in other Paired Stock Differentials that use one of these two stocks. Furthermore, Equity Differential Options using narrow-based indexes versus either Microsoft or Compaq as the benchmark or designated stock also will be aggregated for position and exercise limit compliance purposes with positions in Paired Stock Differential Options using one of those two stocks. However, with respect to the use of broad-based indexes as either the benchmark or designated index in an Equity or Index Differential, no aggregation of positions will be required. For example, if Equity Differentials are created using the PSE Tech 100 Index as the benchmark index and Apple Computer, Inc., Philip Morris Companies, Inc. and Telecommunications, Inc. as designated stocks, members will not be required to aggregate positions in those differentials to determine whether an account is in compliance with position and exercise limit rules.

The Exchange further proposes that Differential Index Options not be aggregated with other standardized options on the underlying designated stock or index nor on the underlying benchmark stock or index for purposes of determining whether an account is in compliance with position and exercise limit rules. The Exchange believes this policy is appropriate for the following reasons. First and foremost, the value of Differential Index Options will be calculated in a different manner from the value of other currently trading standardized equity and index options. In fact, because of the subtraction of the benchmark from the designated stock or index, the value of a Differential Index Option may appreciate (depreciate) even as the value of the corresponding standardized option on the designated stock or index decreases (increases). Further, the value of a Differential Index Option is in part a function of the correlation between the designated stock or index and the benchmark (*i.e.*, the tendency of the designated stock or index and the benchmark to move concurrently). This correlation component of the Differential Index Option price is not considered in determining the value of other standardized options on either the designated or benchmark stock or index. As a result, the Differential index Option is likely to be more or less sensitive to movements in the designated stock or index than the other standardized options on that stock or index, and changes in Differential Index Option may be in the opposite direction from changes in other standardized options prices. Therefore, any attempt to aggregate Differential Index Options with other standardized options for determination of position limits would be combining contracts that, by nature, can change in value quite differently.

Differential Index Options also have certain terms not found in many other standard equity and index options. Differential Index Options are cash settled, based on opening prices of the designated stock or index and the benchmark and feature European exercise. Each Differential Index Option contract changes in value as a function of the differential performance of a $10,000 long position in the designated stock or index and a $10,000 short position in the benchmark. May standardized equity options are settled by physical delivery of 100 shares of the underlying stock, worth $5,000 per contract for a $50 stock, and feature American exercise. Standardized index options typically feature European exercise, cash settlement and represent

[6] In the event that one or both of the indexes is the subject of index warrant trading only, the position limit for a differential option using a narrow-based index warrant will be established using PCX's narrow-based index options rules. *See* PCX Rule 7.3. The Exchange will consult with the Commission to establish a position limit for a differential option using a broad-based index warrant. *See* Amendment No. 2, *supra* note 4.

approximately $25,000 worth of a basket of stocks (with the index at the 250 level). Any meaningful aggregation of positions in contracts with different terms would be difficult to establish as a simple rule, and would require a case-by-case analysis of the terms for each Differential Index Option contract compared to other standardized contracts on the designated and/or benchmark stock or index.

The Exchange also believes that the aggregation of position limits hinders the probability of success of any new product. The aggregation of positions in Differential Options with positions in standardized options will result in the new product competing with the established product for a limited amount of potential volume. Thus, in the Exchange's view, with aggregated position limits, new products cannot "grow the pie" and increase overall liquidity in all the products; they start at a disadvantage which may be impossible to overcome.

f. Customer Margin. Since Differential Index Options are similar to other index options, the Exchange proposes to apply standard index options margin treatment to Differential Index Options.[7] Differential Index Options on the relative performance of one broad-based index versus another will be margined as broad-based index options and short positions therein will require margin equal to the current market value of the option plus an amount equal to 15% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market value of the option plus 10% of the Differential Index. All other Index Differential Options, Equity Differential Options, and Paired Stock Differential Options will be margined as narrow-based index options and short positions therein will require an amount equal to the current market value of the Differential Index Option plus an amount equal to 20% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market price of the options plus 10% of the Index. The Exchange believes that this method of determining customer margin is appropriate because the range of volatities expected for Differential Indexes should not be significantly different than the expected rage for other indexes and equities. The volatility of a Differential Index is based upon the volatilities of the designated and benchmark indexes or stock and the correlation of these components.[8]

2. Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[9] in general, and furthers the objectives of section 6(b)(5),[10] in particular, because it is designed to promote just and equitable principles of trade, to facilitate transactions in securities, and to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

II. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–98–62 and should be submitted by June 1, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11600 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–M

[7] *See* PCX Rule 2.16(c) for margin requirements for standard index options.

[8] *See* Amendment No. 1, *supra*, note 3.

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41350; File No. SR–PCX–99–02]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change Relating to Matters Subject to Arbitration

I. Introduction

On February 3, 1999, the Pacific Stock Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change would amend PCX Rule 12.1 to allow for claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, to be eligible for submission to arbitration only where all parties have agreed to arbitration after the claim has arisen. Notice of the proposed rule change, together with the substance of the proposal, was provided in a Commission release and in the **Federal Register**.[3] The Commission received no comment letters. This Order approves the proposed rule change.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 41206 (March 23, 1999) 64 FR 15388 (March 31, 1999).

II. Description of the Proposal

The proposed rule change will modify the current requirement in PCX Rule 12.1 that any employment-related disputes between a registered representative and a member or member organization be addressed by arbitration. The proposal provides that claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, are eligible for arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise.

The proposed rule change is the most recent in a series of rule changes implemented by self regulatory organizations ("SROs") which modify or clarify exchange rules with regard to arbitration of employment related claims, including claims of sexual harassment.[4] The proposed rule change is substantially similar to the rule changes the Commission approved for the other SROs; however, PCX has broadened the scope of the previously approved rule changes, to mandate that all claims related to employment, including sexual harassment, or any discrimination claim in violation of a statute, are eligible for arbitration at the Exchange only if the parties agree to arbitrate the claims after they arise.

III. Discussion

Under the Act, SROs are assigned rulemaking and enforcement responsibilities to perform their role in regulating the securities industry for the protection of investors and other related purposes. Pursuant to section 19(b)(2) of the Act,[5] the Commission is required to approve an SRO's proposed rule change if the Commission determines that the proposal is consistent with applicable statutory standards. These standards include section 6(b)(5) of the Act,[6] which provides that the Exchange's rules must be designed to, among other things, "promote just and equitable principles of trade," and "protect investors and the public interest." Section 6(b)(5) also provides that the Exchange's rules may not be designed to "regulate * * * matters not related to the purposes of the [Exchange Act] or the administration of the [Exchange]."

The Exchange's proposed rule change is consistent with section 6(b) of the Act in general, and furthers the objectives of section 6(b)(5) of the Act in particular, in that it is designed to promote just and equitable principles of trade and the protection of investors and the public interest by improving the administration of an impartial arbitration forum for the resolution of disputes between members and persons associated with members. Furthermore, the proposed rule change is intended to provide uniformity throughout the securities industry as other SROs have modified or clarified their rules with regard to the arbitration of employment related claims. It is reasonable for the Exchange to make a policy determination that in this unique area it will not, as an SRO, permit the use of arbitration unless there is a post-dispute agreement. It is also not improper under the Act for one SRO's policy determination to differ from that of another.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposal, SR–PCX–99–02, be and hereby is approved.[8]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11599 Filed 5–07–99; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Exchange Act Release No. 40109 (June 22, 1998) 63 FR 35299 (June 29, 1998) (National Association of Securities Dealers ("NASD") no longer requires associated persons, solely by virtue of their association or registration with the NASD, to arbitrate claims of statutory employment discrimination); Exchange Act Release No. 40858 (December 29, 1998) 64 FR 1051 (January 7, 1999) (New York Stock Exchange removes mandatory arbitration of statutory employment discrimination claims from its rules, allowing arbitration only pursuant to a post-dispute agreement to arbitrate); Exchange Act Release No. 40861 (December 29, 1998) 64 FR 1039 (January 7, 1999) (Boston Stock Exchange excludes from mandatory arbitration any employee dispute between a registered representative or associated persons and a member organization alleging employment discrimination in violation of a statute, including sexual harassment, unless the parties agree to arbitrate the claim after it has arisen); Exchange Act Release No. 41080 (February 22, 1999) 64 FR 10033 (March 1, 1999) (Chicago Board Options Exchange adopts new Interpretation .03 under Exchange Rule 18.1 to clarify that a claim involving employment discrimination, including sexual harassment, is not appropriate for mandatory arbitration at the Exchange).

[5] 15 U.S.C. 78s(b)(2).

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78s(b)(2).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Wisconsin State Advisory Council; Public Hearing

The U.S. Small Business Administration Wisconsin State Advisory Council, located in the geographical area of Milwaukee, Wisconsin, will hold a public meeting from 12:00 p.m. to 1:00 p.m. May 20, 1999 at Metro Milwaukee Area Chamber (MMAC) Association of Commerce Building; 756 North Milwaukee Street, Fourth Floor, Milwaukee, Wisconsin to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Yolanda Lassiter, U. S. Small Business Administration, 310 West Wisconsin Avenue Milwaukee, Wisconsin 53203; (O) 414 297–1092; (F) 414 297–3928.

Shirl Thomas,

Director, Office of External Affairs.

[FR Doc. 99–11648 Filed 5–7–99; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3050]

Proposed Information Collection

AGENCY: Department of State.

ACTION: 60-Day notice of proposed information collection; Foreign Service written examination registration form.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. The purpose of this notice is to allow 60 days for public comment in the **Federal Register** preceding submission to OMB. This process is conducted in accordance with the Paperwork Reduction Act of 1995.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular submission (we are also submitting an emergency approval request).

Originating Office: PER/REE.

Title of Information Collection: Foreign Service Written Examination Registration Form.

Frequency: Annually.

Form Number: NA.

Respondents: Individuals who wish to register for the Foreign Service Written Examination.

Estimated Number of Respondents: 10,000.

Average Hours Per Response: 1/6.

Total Estimated Burden: 1,666 hours.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed information collection is necessary for the proper performance of the functions of the agency.
- Evaluate the accuracy of the agency's estimate of the burden of the

proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to REE, 1800 North Kent Street (703) 875–7252, U.S. Department of State, Arlington, VA 22209.

Dated: April 27, 1999.

Ruben Torres,

Executive Director.

[FR Doc. 99–11725 Filed 5–7–99; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice 3051]

Information Collection Under Emergency Review

AGENCY: Department of State.

ACTION: Notice of information collection under emergency review: Foreign Service written examination registration form.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Emergency Review.

Originating Office: PER/REE.

Title of Information Collection: Foreign Service Written Examination Registration Form.

Frequency: Annually.

Form Number: NA.

Respondents: Individuals who wish to register for the Foreign Service Written Exam.

Estimated Number of Respondents: 10,000.

Average Hours Per Response: 1/6.

Total Estimated Burden: 1,666 hours.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by June 1, 1999. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until 4/13/1999. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

For Additional Information: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to PER/REE, 1800 N. Kent St., (703) 875–7252, U.S. Department of State, Arlington, VA 22209.

Dated: April 27, 1999.

Ruben Torres,

Executive Director.

[FR Doc. 99–11726 Filed 5–7–99; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[OST–1999–5631]

Notice Concerning the Interagency Task Force on the Roles and Missions of the U.S. Coast Guard

AGENCY: Office of the Secretary, DOT.

ACTION: Notice.

SUMMARY: The President has directed, through Executive Order 13115, an independent study on the Roles and Missions of the U.S. Coast Guard. The Interagency Task Force shall report to the President through the Secretary of Transportation, providing advice and recommendations on the appropriate roles and missions for the U.S. Coast Guard through year 2020. The Task Force will seek ultimately to identify and distinguish which Coast Guard roles, missions, and functions: (a) might be added or enhanced; (b) might be maintained at current levels of performance; or (c) might be reduced or eliminated. The Task Force will also consider whether current Coast Guard roles, missions, and functions might be better performed by private organizations, public authorities, local or State governments, or other federal agencies. The Task Force will also consider the impact on Coast Guard roles, missions, and functions of future prospects in the areas of technology, demographics, the law of the sea, national security, etc. The Task Force is seeking comments from the public and industry on the issues listed above concerning the appropriate roles and missions of the Coast Guard.

ADDRESSES: Your written comments must be signed and refer to docket number OST–1999–5631. Send them to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 7th Street, SW., Washington, DC 20590–0001. To be considered for the report, comments should be received by 1 June 1999. All comments received will be available for public examination at this address between 10 a.m. and 5 p.m., ET. Monday through Friday, except Federal Holidays. Persons who wish notification of the receipt of their comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: CAPT John Crowley, Jr., Interagency Task Force on the Roles and Missions of the U.S. Coast Guard, 1111 Jefferson Davis Highway, Suite 502 West Tower, Arlington, VA 22302, telephone (703) 416–0192, facsimile (703) 416–6793.

Issued in Washington, DC this 3rd day of May, 1999.

Mortimer L. Downey,

Deputy Secretary of Transportation.

[FR Doc. 99–11681 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–98–4370]

Transportation Equity Act for the 21st Century (TEA–21); Implementation for the Transportation and Community and System Preservation Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications for Fiscal Year (FY) 2000 Transportation and Community and System

Preservation (TCSP) grants; request for FY 2000 TCSP research proposals; request for comments on program implementation and research needs.

SUMMARY: This document provides guidance on section 1221 of the Transportation Equity Act for the 21st Century (TEA–21), which established the Transportation and Community and System Preservation Pilot Program. The TCSP provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. The States, local governments, metropolitan planning organizations (MPOs), and other local and regional public agencies are eligible for discretionary grants to plan and implement transportation strategies which improve the efficiency of the transportation system, reduce environmental impacts of transportation, reduce the need for costly future public infrastructure investments, ensure efficient access to jobs, services and centers of trade, and examine development patterns and identify strategies to encourage private sector development patterns which achieve these goals. FY 2000 is the second year of the TCSP pilot program.

Through the TCSP, the States, local governments, MPOs, and other public agencies will develop, implement and evaluate current preservation practices and activities that support these practices, as well as develop new, innovative approaches to meet the purposes of the TCSP grant program (see section II in preamble). Funding for the TCSP was authorized at $25 million per year for FY's 2000 through 2003 by TEA–21. The Administration's FY 2000 budget proposes to increase the funding for TCSP to $50 million as part of the President's Livability Initiative. The FHWA seeks requests for FY 2000 TCSP grants, proposals for FY 2000 TCSP research, and public comments from all interested parties regarding implementation of the TCSP program and research related to the program in FY 2001 and beyond.

DATES: Requests for FY 2000 grants should be received in the appropriate FHWA Division office by July 15, 1999. Proposals for FY 2000 TCSP research should be received in the FHWA Office of Planning and Environment by September 15, 1999. Comments on program implementation, research needs, and priorities should be received by the DOT Docket Clerk on or before July 15, 1999.

ADDRESSES: Grant requests should be submitted to the FHWA Division Office in the State of the applicant. Division addresses and telephone numbers are provided in an attachment to this notice. Research proposals should be submitted to the Office of Human Environment, Planning and Environment, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590.

Your signed, written comments on program implementation should refer to FHWA Docket No. 98–4370 appearing at the top of this notice and you should submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Susan B. Petty, Office of Human Environment, Planning and Environment, (HEHE), (202) 366–0106; or S. Reid Alsop, Office of the Chief Counsel, HCC–31, (202) 366–1371; Federal Highway Administration, 400 Seventh Street SW, Washington DC 20590.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register's** home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*. Information is also available on the FHWA Web page: (*http://www.fhwa.dot.gov/programs.html*).

Background

Section 1221 of the TEA–21 (Pub. L. 105–178, 112 Stat. 107 (1998)) established the TCSP. The Department of Transportation's Strategic Plan (1997–2003) includes a series of goals related to safety, mobility and access, economic growth and trade, enhancement of communities and the natural environment, and national security. The TCSP pilot program furthers each of these goals and provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. By funding innovative activities at the neighborhood, local, metropolitan, regional, and State levels, the program is intended to increase the knowledge of the costs and benefits of different approaches to integrating transportation investments, community preservation, land development patterns and environmental protection. It will enable communities to investigate and address important relationships among these many factors.

This notice includes three sections: Section I—Program Background and Information of Implementation of TCSP in FY 1999; Section II—Requests for FY 2000 TCSP Grants; and Section III—Requests for FY 2000 TCSP Research Proposals.

Section I: Program Background and Implementation of TCSP in FY 1999

Introduction

The TCSP provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. States, local governments and MPOs are eligible for discretionary grants to plan and implement strategies which improve the efficiency of the transportation system, reduce environmental impacts of transportation, reduce the need for costly future public infrastructure investments, ensure efficient access to jobs, services and centers of trade, and examine development patterns and identify strategies to encourage private sector development patterns which achieve these goals. Through the TCSP, States, local governments, and MPOs implement and evaluate current preservation practices and activities that support these practices, as well as develop new and innovative approaches. FY 2000 is the second year of the TCSP program.

The TCSP supports high priority goals of the administration for transportation systems to foster sustainable communities and minimize greenhouse gas emissions that contribute to global climate change. Transportation systems interact with built, social and natural systems to produce short and long term environmental, social equity and economic results. The TCSP strengthens these inter-relationships between transportation plans, strategies and investments and community development and preservation to help create sustainable communities. Within

the context of sustainable communities, reduction of greenhouse gas emissions in the transportation sector is one focus for the TCSP.

FY 1999 TCSP Program Implementation Process

The DOT established this program in cooperation with other Federal agencies, State, regional, and local governments. The FHWA is administering this program and has established a working group with representatives from the Federal Transit Administration (FTA), the Federal Railroad Administration (FRA), the Research and Special Programs Administration/Volpe Center (RSPA), the Office of the Secretary of Transportation (OST), and the Environmental Protection Agency (EPA). The working group prepared the initial design and implementation of this program. In the first year of the program, the working group gathered input through a **Federal Register** notice (under FHWA Docket No. 98–4370) (September 16, 1998, 63 FR 49632) and through meetings with stakeholders conducted as part of DOT's outreach activities following the passage of the TEA–21.

In FY 1999, the FHWA received more than 520 Letters of Intent requesting TCSP funding. These requests totaled almost $400 million and were received from agencies in 49 States and the. District of Columbia. To review and evaluate the Letters of Intent, the FHWA established a review process which included review and comments from the field staff of the FHWA, the FTA, and the EPA as well as a 20-person review panel comprised of technical program experts representing the agencies participating in the working group described above. The review panel recommended to the FHWA Administrator the applicants that were asked to develop full proposals for further consideration. A similar panel reviewed the full proposals. Information on the review process is included below.

On April 26, 1999, the FHWA announced the award of 35 TCSP grants for FY 1999. Grants were awarded to 28 States and the District of Columbia. A list of the grants awarded in FY 1999 and a brief description of each proposal are included under Attachment I to this notice.

Summary of Comments to the Docket

The September 16, 1998, **Federal Register** notice (63 FR 49632) requested comments on TCSP program implementation in FY 2000 and beyond. Letters from the following organizations were submitted to the docket (FHWA–1998–4370):

American Public Transit Association (APTA)
Metro (Portland, Oregon)
Metropolitan Transportation Commission (San Francisco, California)
Missouri Department of Natural Resources
Montana Department of Transportation
NAHB Research Center
National Association of Home Builders
New York State Thruway Authority
The Trust for Public Land
Washington State Department of Transportation
Wisconsin Department of Transportation

Most of these letters included several comments. Some comments responded directly to questions posed in the September 16, 1998, **Federal Register** notice, while some comments expressed other perspectives and concerns. Comments that respond to a question posed in the **Federal Register** notice have been presented in items numbered one through six in this section. Other comments have been grouped to provide a logical presentation and avoid repetition and are included under items numbered 7 though 10 in this section. Many of the comments received were extensive, and have been paraphrased. The complete docket may be viewed at the locations provided under the captions **ADDRESSES** and Electronic Access in this preamble.

1. Project Selection Criteria

The FHWA asked whether there should be any additional weight or priority applied to any of the criteria for FY 2000 and beyond; and whether additional criteria for proposal evaluation should be added.

Comments: Several commenters offered suggestions for factors that should be considered when evaluating TCSP proposals, including: Evidence that the applicant can effectively complete the project in a timely manner; whether the results could be replicated both locally and nationally (i.e., avoid projects that are unique to local circumstances); projects that have a high likelihood of success; and planning proposals that would lead to implementation activities. A commenter also suggested that TCSP proposals should be selected based on how well they help answer key research questions and data uncertainties. This commenter also proposed that the overall project selection could be balanced using an "Experimental Design" that provides a mix of different types of projects that focus on each of the key research issues.

One commenter proposed that TCSP applications should be given priority based on their ability to demonstrate: Adopted regional and local policies that show a commitment to linking transportation investments with land use development; a commitment to State growth management requirements (such as having urban growth boundaries); and substantial financial commitment to local transportation investments that support alternative modes of travel and environmentally sensitive land use development. Another commenter suggested that program eligibility should require that proposals clearly address the link between land use and transportation in the preservation of the viability and effectiveness of the transportation system and the community it serves. This commenter argued that the TCSP program criteria and guidance, as currently written, would allow activities with no relation to this land use/transportation link. While supporting these points, another commenter added that the role transit can play in land use considerations should also be emphasized in program guidance.

A commenter proposed that implementation grants in regions pursuing a consistent set of mutually supportive policies should be given higher priority and areas pursuing conflicting policies should receive lower priority. The following example was given for a high priority implementation grant: projects reinforcing established urban growth boundaries, which would prevent "leapfrog" development and the need to build additional highway capacity. An example of a lower priority project would be in an area that proposes a transit-based development project while simultaneously building new highway capacity in the same corridor without a planning study demonstrating that these actions are consistent.

Similar perspectives were offered by commenters who said that implementation grants should be awarded in areas demonstrating an understanding of the "land use/transportation link" and are currently applying that understanding towards transportation system and community preservation. These commenters proposed that priority be given to areas that have demonstrated a strong commitment to these principles through planning, public outreach, adoption of supportive land use regulations, and commitment of Federal, State, and local funding to these activities.

Response: We concur with the comments made regarding factors that should be considered. With the intense

competition during the first round of the Letters of Intent (LOIs) review, the workgroup focused on proposals that could begin immediately upon selection, where the sponsor appeared to have the resources to produce a successful project, and those LOIs that would produce results, tools, and lessons that would be transferrable to other areas.

Language clarifying the distinction between planning grants and implementation grants has been added to this notice. The FHWA will continue to rely on input from the FHWA, the FTA, and the EPA field offices to address concerns about the "lower priority" project described by the commenter in this item number 1. This type of concern also underscores the importance of funding only those activities that are consistent with the Statewide or metropolitan planning processes (see item number 2, "Planning").

The FHWA has added information in this notice about the types of projects that were selected, grant and research themes for consideration, and abstracts of the selected grants. It is the intent of this pilot program to fund activities which address the interaction of transportation and community and system preservation. The FHWA believes that effectively linking land use and transportation planning is a principle strategy to be investigated under TCSP. However, the FHWA is also interested in pursuing other strategies that should also be developed and evaluated under TCSP.

2. Planning

The FHWA asked how it can ensure that TCSP-funded activities support the existing statewide and metropolitan planning process. How can the FHWA support innovative activities, integrate new planning techniques and refocus the planning process to ensure TCSP-related activities are addressed? What is the best way for local governments and non-traditional partners to coordinate with the State and metropolitan planning process?

Comments: In general, there was strong support that TCSP proposals should be consistent with and supported by statewide and metropolitan planning processes. However, several commenters expressed concern that the TCSP pilot could circumvent the existing statewide and metropolitan planning processes, and proposed that the FHWA should require all LOIs to include written confirmation or a letter of support from the applicable State or MPO that the proposed project is consistent with the statewide or metropolitan planning process. One commenter contrasted the TCSP pilot to other discretionary programs (e.g., Access to Jobs) that explicitly require coordination with the metropolitan planning process.

Regarding the involvement of non-traditional partners, one commenter suggested that letters of support from these partners should be required as part of the LOI. A similar comment was made that a demonstration should be made that all appropriate parties are involved, including affected governments and transportation agencies, as well as neighborhood, business, environmental, and social interest groups.

One commenter said that it is appropriate in the first year of the pilot program to award grants for projects which have not been included in the metropolitan or statewide transportation improvement program (23 CFR part 450), and went on to say that beyond the first year, projects should be part of the metropolitan transportation planning process before an LOI is submitted. This commenter suggested that to meet the Transportation Improvement Plan(TIP)/ State TIP fiscal constraint requirement, the TIP/STIP could note that the project is conditioned upon DOT's approval of the project, but establish the area's commitment to the project. Otherwise, this commenter added, including the project in the TIP/STIP becomes a *pro forma* activity with the decision to support the project coming from the Federal rather than the local level.

Two commenters supported using TCSP grants for a stand-alone phase of a multi-phased project that has already been partially funded.

Response: Section II of this preamble, "Relationship of the TCSP to the Transportation Planning Process," describes the FHWA's commitment to the transportation planning process that was established by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (Pub. L. 102–240, 105 Stat. 1914 (1991)). Generally, the LOIs demonstrated coordination with the appropriate State DOTs, MPOs, and transit providers in the text of the LOI and some submitted letters of support. Also, input from the FHWA, the FTA, and the EPA's field offices was specifically sought on this topic because these offices are familiar with metropolitan and statewide planning processes and practices. This notice did not require States or MPOs to act as "clearinghouses" for LOIs, but rather encouraged coordination and partnerships. The **Federal Register** notice for FY 2000 continues to emphasize that the TCSP pilot should support statewide and metropolitan planning processes. In addition, the notice encourages TCSP applicants to notify the appropriate State DOT and MPO of their application to further promote this coordination. Future reviews of full grant applications will continue to look for evidence of this support.

As one commenter suggested, TCSP projects could be included in a TIP/ STIP for informational purposes. If the applicant is successful in receiving funds through the competitive process, the project could then be formally incorporated into the TIP/STIP. In general, projects should not be included in the TIP/STIP as a pro forma activity, but should reflect consistency with the appropriate regional or statewide long-range transportation plan, which has been developed in accordance with the requirements in the planning rule (23 CFR part 450). A single phase of a multi-phased project would be eligible for TCSP funds if the project meets the appropriate criteria. However, as noted in the FY 1999 **Federal Register** notice, TCSP funds are intended to fund new and innovative activities, and not to be applied towards routine or ongoing activities that would otherwise be undertaken by the State or MPO.

3. Grants

The FHWA asked how it can ensure improvements to a single location, neighborhood street, or job center provide meaningful community preservation impacts on the larger region. How should the FHWA balance grant-making between planning and implementation grants? Should there be a cap on the size of grants? Should land acquisition and right-of-way purchases be funded?

Comments: One commenter proposed that initially there should be no fixed percentage between grants to localities that are new to community preservation practices (referred to as planning grants in the FY 99 program) and those localities that have already implemented some of these practices (referred to as implementation grants in the FY 1999 program) and research, but early in the TCSP program, higher priority should be placed on research and evaluation in the first three years and equal weight on start-up and on-going grantees. In comparison, two commenters advocated that there be no cap on grants or a specific split between planning and implementation activities, but recognized that given the available funds, a large grant request may not be feasible. Another commenter supported a mix of grants, but recommended that most of the TCSP funds should be used

for grantees that are already involved in community preservation activities since the greatest benefits of the TCSP program will come from the demonstration of actual practices.

Another commenter said that proposals for grantees already involved in community preservation practices should demonstrate that prior public information and involvement has occurred with all potentially affected parties and that the project has already been approved by the appropriate MPO. In addition to public involvement, proposals for larger grants should also be able to demonstrate by analysis of data and forecasts the expected impact of the project on the region and perform a benefit and cost analysis that quantifies all expected impacts.

Four commenters stated that land acquisition and right-of-way purchases should be eligible for funding. One commenter clarified that with the high cost of these types of activities the DOT should make certain that they meet all of the TCSP criteria.

Response: Rather than setting specific limits on the types of grantees, the FHWA will continue to seek a range of proposals, which would take into consideration the category of grantee, type of project, geographic location, population served, and urban/suburban/rural mix. One immediate goal of the pilot is to fund activities that will provide demonstrable results, be instructive to future applicants and contribute to the body of knowledge regarding the relationship between transportation and community and system preservation. The FHWA will also consider the percentage of grantees that are new to community preservation and those that have already begun some of these practices. The FHWA will use the results of evaluations of individual projects and research to set priorities for the program in the future. Because it is too early in the program for these results, in FY 2000, the FHWA is not setting specific priorities but offers suggestions of new areas to consider (see "Strategic Priorities" in Section II of this preamble).

While research is an important component of the TCSP program, the FHWA disagrees with the comment that a majority of TCSP funds should be used for research, rather than for grant activities. All over the country, States, MPOs, local governments, and their partners are engaged in, or are planning to begin activities consistent with the TCSP objectives. The FHWA intends to use the available TCSP funds for grantees to test, evaluate, and share these activities. In addition, because TCSP requires evaluation and measurable results from grants, the individual projects will further the knowledge base on community preservation practices. As discussed under item number 5 in this section evaluation is an important component of each successful grant. Since the FHWA is interested in increasing the knowledge base, producing tools, and lessons which can be replicated across the country, projects which would produce quantitative data and forecasts (including benefit and cost analyses) would be reviewed favorably.

Public involvement is a high priority in the TCSP pilot and is a fundamental component of the metropolitan and statewide planning process. To the extent that TCSP proposals implement or are linked to the transportation planning process, these proposals should receive adequate public involvement (including the involvement of non-traditional partners). The involvement and participation of non-traditional partners was a priority for all grants that were submitted in FY 1999.

Right-of-way and land acquisition are currently eligible activities within the context of a project or program that meets the TCSP criteria. As stand-alone activities, they would still need to meet the appropriate criteria.

4. Project Timeliness

The FHWA asked how important the time line should be for implementation of projects in evaluation of proposals.

Comments: Some commenters thought timeliness was a very important consideration in grant selections, while others thought it should not be a primary concern. One commenter replied that timeliness of grants to States, local governments, and MPOs that have already initiated community preservation programs and policies is less important than for other applicants because public involvement and benefits and costs may have already been estimated in a prior planning study. The commenter also stated that timing is less important for grantees that are just beginning preservation practices since a primary purpose of TCSP planning grants is to provide the opportunity for "learning by doing" through integration of transportation, land use, community development, and environmental planning. In comparison, another commenter stated that timing is important for grants to recipients that have not yet initiated community preservation programs and policies. A third commenter stated that timely implementation is very important and should be used as a mandatory criterion for the program, adding that grant awards should only be made if results are available to impact the next transportation authorization bill in 2003. Another commenter agreed that timely implementation should be used as a mandatory criterion for the program, and that awards should only be made if the grantee can show it is ready to implement the project in the year the grant is made.

Response: The FHWA agrees with the commenters that timeliness of the projects is important and should be a consideration in grant selection. The FHWA will look at the applicant's ability to carry out the TCSP proposal in a timely fashion and produce results that could be shared nationally.

5. Evaluation of Projects

The FHWA asked how project sponsors can effectively evaluate the results of activities. How can the results of individual project evaluations be used to evaluate the overall impacts of TCSP?

Comments: One commenter responded that collecting the appropriate data and analyzing complex relationships for evaluation purposes can be expensive, and that the level of resources devoted to evaluation will vary depending on the type of project. At a minimum, the desired results of the project should be defined in terms of travel behavior, land use, and community design and amenities. A means of measuring whether these results have been achieved should be included in the evaluation plan. A recommendation was made that a certain percentage of projects be evaluated by an independent party, preferably by an academic institution, adding that since the funding for research and evaluation is limited, it may be useful to focus these activities at a few centers, with each center specializing on one specific type of project or research issue. Two other commenters proposed that the FHWA contract with independent groups or non-profit associations to assess the results of the program, and to inform the reauthorization process in 2003.

Another commenter was concerned about the TCSP's emphasis on performance measures because this is an area of much debate and practical examples are difficult to identify and implement. This commenter stated that the major focus of the TCSP program should be on achieving the primary objectives for which the program was created and not directing a disproportionate share of limited TCSP funds to measuring outcomes, adding that project evaluation will be determined in part by the objectives of a particular project which may be

difficult to measure with quantitative measures or analytical procedures. Ultimately, this commenter argued, the first few years of the program will reveal how projects can be deemed successful or not.

Response: The FHWA agrees with the commenters above which stated that evaluation was very important to TCSP. The FHWA is working with the DOT's Volpe National Transportation Systems Center and an independent consulting firm to evaluate the TCSP program, during the time frame of TEA–21. Furthermore, detailed guidance on evaluating individual grants has been provided to FY 1999 TCSP grantees and is electronically available on the website *www.fhwa.dot.gov*. The FHWA does not anticipate that an appropriate project evaluation would use a significant portion of project funding.

Since the TCSP program is a discretionary pilot that seeks to encourage innovation and new strategies that go beyond traditional transportation programs, it is incumbent on the FHWA to ensure that appropriate evaluations are conducted to determine the effectiveness of the strategies tested. Measurements should be reasonable based on the objectives of the project and the need to inform future proposals and funding decisions. The FHWA agrees that evaluation should be appropriate and meaningful for guiding future funding decisions and increasing our knowledge base about the interaction of transportation and community and system preservation. The TCSP is a small pilot program to develop new, effective strategies that can then be used through regular transportation and land use programs. It is not intended to implement preservation activities nationwide. Therefore, the evaluation of strategies tested under TCSP is a principle outcome of the TCSP activities.

6. Research

The FHWA asked what gaps currently exist in our knowledge of transportation and community preservation practices. What experience—both good and bad—do we have with work in this field? What tools do practitioners need to achieve the integration of these issues in the transportation planning process and in project implementation?

Comments: One commenter noted that by reducing the cost of living and working outside central cities, U.S. investment in urban and rural interstate highways has been a major influence on the growth of suburbs and low density residential development. As urban population and congestion has grown, transportation investment has improved access to the suburbs, which in turn has encouraged decentralized, sometimes specialized, employment sub-centers. More is known about the impact of transportation investment on land use than the impact of land use patterns on transportation modes. This commenter also added that for a variety of reasons, continued transportation investment in new highway capacity, subsidizing alternative modes, zoning/growth management, and neotraditional planning have been the major policy approaches that have been adopted or pursued. There are very few examples where such programs have been in place long enough to determine cause-effect relationships. Nor have appropriate data always been gathered to develop solid estimates and forecasts of the impact of specific policies. This commenter said the TCSP program is an excellent opportunity to conduct research that would begin to determine the cause-effect relationships of these investments and policy approaches, and proposed the following research questions:

(a) What specific factors cause some people to leave cities and the suburbs to live in the rural fringe when simultaneously other persons choose to relocate in renewed urban areas to take advantage of urban amenities?

(b) Is there a "self-selection" bias that needs to be accounted for in evaluating the relationship between population densities, urban form, and transportation behavior? Is the apparent average travel time of approximately one hour per day masking the real differences in travel time that is occurring? What are the impacts of current congestion management and environmental protection policies on travel?

(c) The rule of thumb is that commute times to work have remained roughly unchanged over time at about 20–25 minutes. Are people adjusting their lifestyles to maintain relatively constant travel times? Similarly, do people have a roughly constant "travel time budget" of roughly one hour per day for all travel, or is it different, in different geographic regions? If so, how important is it to relieve congestion? Is there an opportunity to lay the foundation to identify differences in "travel time budgets" in different regions of the U.S.? What are the characteristics of those who travel less (or more) than these apparent constants?

(d) The intent of urban growth boundaries is to encourage high densities and minimize urban/suburban sprawl. In some instances, this strategy to contain urban sprawl is being weakened by smaller urbanized areas (within one hour commuting) seeking economic development in their jurisdiction. In what circumstances is this desirable? What are effective policies to limit undesirable outcomes. What opportunities are there to correct mispricing?

One commenter found that the FY 1999 **Federal Register** notice placed an emphasis on urban growth boundaries as a growth management tool, but argued that the successes of this tool are limited, and at best not very well understood. This commenter felt that analyses of the relationship among urban growth boundaries, highway planning, mass transit approaches, and housing affordability are needed before more real-world experimentation with this tool is conducted, and encouraged the FHWA to devote a significant portion of TCSP funds to research the effectiveness of land use control policies such as urban growth boundaries. This commenter urged the FHWA to direct TCSP funding toward evaluating current land use-air quality models and creating new models, as well as the relationship between highway expansion, land development patterns, and air quality.

Response: The FHWA agrees with the commenters that there is much to be learned about how to create livable communities. In section II of this preamble on strategic priorities and research for the FY 2000 TCSP, the FHWA requests grants and research to begin to address these questions.

7. Eligible Grant Recipients

Comments: One commenter encouraged the FHWA to allow non-governmental entities to apply for implementation grants to provide maximum flexibility to this new program. Another commenter said that given the intent of the TCSP program (to address the relationship between transportation and community and system preservation) it is important that all entities with responsibility for the transportation system be eligible to receive funding. This commenter recommended that toll authorities and agencies be added to the list of eligible recipients for this program particularly since toll authorities provide transportation services that would be provided by the department of transportation in another State.

Response: Eligible grant recipients were established by section 1221 of TEA–21. The September 16, 1998, **Federal Register** notice further clarified the legislative language by providing the following examples of units of local government: Towns, cities, public transit agencies, air resources boards, school boards, and park districts. If the toll authority is recognized by the State

as a unit of local government, then it is an eligible recipient for TCSP grant funds. Non-governmental entities are encouraged to form partnerships with eligible grant recipients as the project sponsor.

8. Local Matching Funds/Use of Other Federal Funds

Comments: One commenter observed that although the program encourages local matching funds, there is no requirement for a local match. This commenter advocated that local communities would take more ownership of projects that require a firm match of funds generated at the community level, and suggested a mandatory match ratio of 10 to 20 percent of local funds, with a related 80 to 90 percent of Federal funds. According to this commenter, the local match could come from local or statewide nonprofit groups or local, regional, or State governmental entities. Other commenters supported a local match requirement, and added that investment of other Federal funds (including transportation funds authorized under TEA–21, as well as Federal grants for Housing and Clean Water) would also demonstrate local commitment.

Response: The September 16, 1998, **Federal Register** notice, under "Priorities for all Grants" stated that applications for grants will be evaluated, among other factors, on a demonstrated commitment of non-Federal resources. As the commenter correctly stated, matching funds were not required. However, TEA–21 directs the Secretary to give priority to applicants that demonstrate a commitment of non-Federal resources to the proposed project. The FHWA agrees that providing local matching funds demonstrates a stronger commitment at the local level. In response to the comment regarding the use of Federal funds to demonstrate local commitment, the FHWA also considers this to be a demonstration of commitment. A number of successful TCSP applicants in FY 1999 combined grant resources from other FHWA, FTA, EPA and the Housing and Urban Development (HUD) programs to support an innovative project. However, since the TCSP funds are intended to be used for innovative activities, we did not review favorably proposals that could be funded with other traditional sources of funds.

9. Urban Versus Rural Emphasis

Comments: One commenter found that the FY 1999 **Federal Register** notice showed a bias toward larger metropolitan areas, noting that smaller metropolitan areas are under growth pressures and could also benefit from the TCSP pilot program. The suggestion was made that the next solicitation for projects should use a broader range of examples of potential projects to include both rural and small metropolitan areas. In contrast, another commenter suggested that the TCSP program should focus on urban areas, because those areas experience the most intense pressure involving land use, transportation and community preservation.

Response: The TCSP program is applicable in a wide variety of settings where communities are trying to address the integration of transportation and community and system preservation, and that TCSP funds are equally applicable in urban, suburban, and rural areas. As noted in this preamble, the FHWA will continue to seek a range of proposals, which would take into consideration the type of project, geographic location, and a mix of urban, suburban, and rural settings.

10. Federal Involvement in Local Land Use Actions.

Comments: One commenter claimed that through the TCSP program, the FHWA is engaging in local land uses issues where historically local governments and the electorate have made decisions. This commenter expressed concern that the TCSP pilot would provide a precedent by providing Federal funds to governmental entities and non-governmental groups to develop and adopt certain land use policies and restrictions.

Response: The FHWA has no intention of using the TCSP pilot to involve itself in local land use decisions. The FHWA is interested in promoting and funding sound, yet innovative planning that simultaneously considers transportation and community and system preservation in the long-term. The FHWA strongly supports the statewide and metropolitan planning process that was created by the ISTEA, and relies on States and MPOs to use these processes, agency partnerships, and public involvement activities to identify proposals that would be eligible for TCSP funds.

11. Review Process

Comments: One commenter strongly supported a joint review and approval process by the FHWA and the FTA.

Response: An interagency work group comprised of the FHWA, the FTA, the FRA, the OST, the RSPA, and the EPA has reviewed all of the FY 1999 letters of intent and full grant applications for the TCSP pilot. Participation has occurred at the field level (Regional and Division/State offices) as well as from each agency's headquarters office. Final decisions have been made by the FHWA Administrator based on the recommendations of this coordinated, interagency partnership.

Information From the Technical Review Panel

A 20-person panel including technical program experts in highway, transit, environment, railroad and planning reviewed the FY 1999 Letters of Intent and grant proposals for TCSP. The feedback from the interdisciplinary experts that participated on the review panel on the FY 1999 TCSP applications will be helpful to those developing proposals for FY 2000. The panel used the criteria that were established in section 1221 of TEA–21 and included in the **Federal Register** notice (September 16, 1998, 63 FR 49632). In addition, the panel looked for innovative strategies to meet the TCSP goals and geographic and population diversity to include proposals to address urban, suburban, rural, and disadvantaged populations. The panel noted that the more than 520 LOI's submitted were worthwhile projects but that because of funding limitations, it was necessary to identify only a very small number that best met the purposes of the pilot program. The following information from the panel discussions may be helpful to those applicants that were not selected in FY 1999, as well as for those applying in FY 2000:

(a) Purposes of the TCSP: Section 1221 of TEA–21 identifies five purposes for TCSP projects. The purposes are broad and include transportation efficiency, environment, access to jobs, services, and centers of trade, efficient use of existing infrastructure, and land development patterns. A key element of TCSP is exploring the link between transportation and land development patterns. The panel looked for innovative approaches that would test and evaluate the effectiveness of integrating land use planning and transportation planning to meet the purposes of TCSP. The panel looked for proposals that were developed to specifically address each of these. In some cases, a proposal would indicate that if congestion were reduced that would also increase access to jobs planned in the future. The panel looked for more proactive solutions, such as, working with agencies and the private sector organizations involved in employment and jobs to assure that the transportation system would meet the needs for access to jobs. Similarly, on environmental issues, some applications

limited the potential impacts of their proposal to air quality issues rather than addressing broader human and natural environmental issues such as watersheds, ecosystems, habitat fragmentation, and community and cultural impacts.

(b) Innovation: The TCSP is a small pilot program that is developing and testing new strategies that can be used by State and local agencies nationwide in their ongoing transportation programs. Funding in TCSP is not intended to implement community preservation practices nationwide, but to pilot test new approaches. As a pilot program, TCSP is an opportunity for agencies to support and encourage non-traditional approaches. Therefore, it may be appropriate to request TCSP to support a smaller innovative portion of a larger project that can be funded under other transportation funding. This may also help to increase the local matching share committed to the project which is also a factor in project selection. In addition, leveraging other Federal funds (e.g., EPA, HUD, or other highway and transit funding) as part of a larger project will also demonstrate local commitment to the project.

The review panel recognized that what is innovative in one area may not be innovative in another area and considered this in the evaluation. This is consistent with the legislation which seeks to encourage community preservation practices in areas that have not done this before as well as to reward and encourage localities that propose expanding on already successfully implemented preservation practices.

(c) Evaluation and Results: The evaluation component of TCSP projects needs to demonstrate the expected results of the proposed activities and measure the outcomes. This is critical for this pilot program so that other communities can learn from and apply the lessons learned. Therefore, clearly stating the objectives of the projects and activities and the anticipated results were important in successful proposals. In addition, successful proposals included a schedule of major milestones for the project. If the project was a planning study, the application demonstrated the likelihood that the results or recommendations of the study will be implemented, by whom and when.

(d) Partnerships: The TCSP encourages public and private participation in proposed projects. In addition; TCSP encourages including non-traditional partners on the project team. The type and scope of the project will determine the best mix of partners and whether these should include members of the general public, as well as environmental, community, business, and other groups. The roles and functions of the partners should also be explained. For example, are these groups to be surveyed or educated or will representatives of these groups serve on the project team or on an advisory group?

FY 1999 TCSP Grant Awards

The activities and research funded under the TCSP program will develop, implement and evaluate transportation strategies that support transportation and community and system preservation practices. The program will demonstrate transportation strategies that incorporate the short- and long-term environmental, economic, and social equity effects to help build sustainable communities. Examples of preservation strategies being developed by TCSP grantees in the first year of the program include transportation initiatives which: integrate land use and transportation planning; balance economic growth, environment and community values; create a long range vision for a community or region; reuse existing infrastructure to meet the purposes of TCSP; develop urban, suburban and rural strategies for communities; and establish non-traditional partnerships to meet TCSP goals. Attachment I to this notice lists the grants selected for TCSP funding in FY 1999 and includes a brief abstract of each project.

Section II: Requests for FY 2000 TCSP Grants

Introduction

The grants and research funded under the TCSP program will develop, implement and evaluate transportation strategies that support transportation and community and system preservation practices. The program will demonstrate transportation strategies that incorporate beneficial short-and long-term environmental, economic, and social equity effects to help build sustainable communities.

TCSP is included in the President's Livability Initiative. This initiative strengthens current Federal programs, proposes new ones to help create livable communities, and includes programs in the EPA, the HUD, the Department of Interior (DOI), the Department of Justice (DOJ) and other agencies in addition to the DOT (see *http://www.whitehouse.gov/CEQ/011499.html*). Within the DOT, the Livability Initiative will help ease traffic congestion and promote community livability through a 15 percent proposed increase for several DOT programs that provide flexible support to State and local efforts to improve transportation and land use planning, strengthen existing transportation systems, and promote broader use of alternative modes of transportation. The Administration's Livability Agenda includes increased funding for mass transit, Congestion Mitigation and Air Quality Improvement Program (CMAQ), Transportation Enhancements, and TCSP. The TCSP pilot program in FY 2000 is proposed to increase from $25 million authorized under TEA–21 to $50 million.

In FY 1999, the FHWA used a two-step procedure to solicit and select TCSP proposals. Applicants were first requested to submit brief LOIs. The FHWA selected a small number of applicants based on these LOIs to prepare full grant requests for further consideration. After the review of the full grant request, 35 proposals from agencies in 28 States were selected to receive TCSP funds. In FY 2000, the FHWA has changed this procedure and is using a one-step process. The FHWA is no longer asking for LOI, but only a grant request. From the grants submitted on July 15, 1999, the FHWA will select those funded in October, 1999.

With almost $400 million requested in FY 1999, competition for these funds is expected to remain high. Grants may be spent over a period of up to two years but no commitment can be made for second or subsequent years of grant awards. Thus, phased projects should stand alone and be capable of being implemented and producing results in each phase. A sample outline and format for FY 2000 TCSP grant requests is provided in Attachment II to this notice.

Eligible Recipients

State agencies, metropolitan planning organizations and units of local governments that are recognized by a State are eligible recipients of TCSP grant funds. This would include towns, cities, public transit agencies, air resources boards, school boards, and park districts but not neighborhood groups or developers. While non-governmental organizations are not eligible to receive TCSP funds under section 1221 of TEA–21, these organizations that have projects they wish to see funded under this program are encouraged to form partnerships with an eligible recipient as the project sponsor.

States or MPOs may be both a project sponsor and endorse other activities proposed and submitted by a local government within its boundary. A

State or MPO may consider packaging related activities for submittal as one larger grant request.

Purposes of the TCSP Grant Program

Activities funded under TCSP should address and integrate each of the purposes of the program listed below. Priority will be given to those proposals which most clearly and comprehensively meet and integrate the purposes and are most likely to produce successful results. How well proposed projects achieve each of these purposes will be a principal criterion in selecting proposals for funding. Applicants should develop proposals that specifically address these purposes. Grant proposals should address how proposed activities will meet and integrate all of the following:

1. Improve the efficiency of the transportation system.

Proposals for TCSP activities should identify, develop and evaluate new strategies and measures of transportation efficiency that are based on maximizing the use of existing community infrastructure, such as highways, railroads, transit systems and the built environment. Proposals should address the transportation system as a whole rather than focusing on one mode of transportation. This may include for example, improving the integration of various modes of travel such as highway, transit, pedestrian, bicycling, and rail or improving the efficiency of port, rail and highway connections for freight and jobs. Performance measures should include a focus on movement of people and goods and access rather than movement of automobiles, and on services provided rather than vehicle miles traveled.

2. Reduce the impacts of transportation on the environment.

Proposals for TCSP activities should explore the long-term direct and indirect social, economic and environmental impacts of transportation investments on the natural and built environment. Consideration of environmental factors should not be limited to air quality but should also address, if appropriate, ecosystems, habitat fragmentation, water quality as well as community and cultural issues such as disadvantaged populations and environmental justice. Performance measures should relate the results of TCSP activities to the larger community and regional environment and the transportation system.

3. Reduce the need for costly future public infrastructure.

Proposals for TCSP activities should describe how they will reduce the need for costly future public infrastructure investment or create tools and techniques to measure these savings over the life cycle of the activities. Performance measures should include projected life cycle savings obtained through avoiding future investments or maintenance.

4. Ensure efficient access to jobs, services and centers of trade.

Proposals for TCSP activities should clearly demonstrate how they improve efficient, affordable access to jobs, services and centers of trade and address benefits for disadvantaged populations. This could also include the use of new technologies that increase access for people and businesses while reducing the need to travel. Performance measures should include improved access to jobs and services, and improved freight movements.

5. Encourage private sector development patterns.

Proposals for TCSP activities should identify and test effective strategies to encourage private sector investments that result in land development patterns that help meet the goals of this pilot program. Effectively linking land use and transportation is a key feature of TCSP. Performance measures should demonstrate and monitor changes in development patterns and private sector investment trends or opportunities resulting from TCSP-related activities.

Priorities for Selection of Grants

In addition to meeting the purposes of TEA–21 discussed earlier in this preamble, applications for grants will be evaluated based on the following factors:

a. A demonstrated commitment of non-Federal resources. Although matching funds are not required, priority will be given to projects which leverage non-Federal funds and take advantage of in-kind contributions such as maintenance agreements, land donations and volunteer time. The contribution of local funds and resources for a project demonstrates local commitment to a project and increases the likelihood that it will be fully implemented. In addition to non-Federal funds, grantees are encouraged to pursue other Federal resources to support Livability Initiatives such as Transportation Enhancement, Congestion Management and Air Quality funds, as well as HUD, EPA, DOI and other programs. A description of the President's Livability Initiative can be found on the White House Web site (*http:www.whitehouse.gov/CEQ/011499.html*) and click on "Virtual Library."

b. An evaluation component. The plans to evaluate the project's objectives and outcomes is a key element of the grant proposal. The evaluation plan should include major milestones and deliverables for the project. See the discussion on Evaluation in this section.

c. An equitable distribution of grants with respect to a diversity of populations. The FHWA will also be ensuring the equitable distribution of funds to geographic regions, including an appropriate mix of rural, suburban and urban activities. Applicants should describe the populations that will be served by the project, including disadvantaged populations.

d. Demonstrated commitment to public and private involvement including the participation of non-traditional partners in the project team. Such partners might include public utility operators, social services agencies, community groups, environmental organizations, non-profit organizations, public health agencies, private land development organizations and real estate investors. The TCSP also envisions non-traditional partners working on the project team and help develop the assumptions and scenarios. This approach would be broader than public involvement processes where transportation professionals prepare projects, scenarios and assumptions and present these in public forums for review and comment. In the proposal, applicants should describe the role and commitments of their partners.

Category of Grantee

The TCSP was intended to support localities which have already begun some preservation practices and to encourage those areas that are just starting. The legislation referred to grants to these types of grantees as implementation grants and planning grants, respectively. These terms proved to be confusing to applicants in FY 1999 because they are common terms used in transportation projects. Many interpreted the terms to describe the activities conducted under a specific grant proposal rather than describing the community preservation activities of the grantee. Therefore, in FY 2000 the FHWA is asking grant applicants to identify themselves as either: (a) grantees that are just beginning to start community preservation practices, or (b) grantees that have already initiated transportation related community preservation programs and policies. This later category would include grantees who have coordinated with State and locally adopted preservation and development plans; integrated transportation and community and system preservation practices; promoted investments in transportation

infrastructure and transportation activities that minimize adverse environmental impacts and lower total life cycle costs; or encouraged private sector investments and innovative strategies that address the purposes of the TCSP program.

Eligible Activities

Activities eligible for TCSP funding include activities eligible for Federal highway and transit funding (title 23, U.S.C., or Chapter 53 of title 49, U.S.C.) or other activities determined by the Secretary to be appropriate. This allows a broad range of transportation activities to be funded. Grants will be awarded for new and innovative transportation activities that meet the purposes of the TCSP program, but remain unfunded under the current Federal-aid program.

Strategic Priorities for FY 2000 TCSP

Grants will be awarded for activities that meet the purposes of the program described above and are innovative. The goal of the TCSP is to develop a broad range of strategies for urban, suburban and rural communities to help promote liveable communities through transportation investments and operations. The legislative language that created TCSP is general and provides States, MPOs and local agencies flexibility to create innovative approaches to addressing the goals. As the program evolves over the next four years, the FHWA will use individual project evaluations conducted by grantees, the results of research, and overall program evaluation to determine the strategic priorities for TCSP. This information is not yet available since this is the first year of the program and grants were just recently awarded. Therefore, in the second year of the program, rather than setting specific strategic priorities, the FHWA is providing information on the proposals funded in FY 1999 and several suggestions to prospective applicants of areas that are of interest to the FHWA. The FHWA continues to seek additional strategies that are innovative and can be replicated by others. Applicants should highlight innovative and unique aspects of their proposals, and how the results of their proposal will further the purposes of the TCSP.

Examples of preservation strategies being developed by TCSP grantees in the first year of the program include transportation initiatives which: Integrate land use and transportation planning; balance economic growth, environment and community values; create a long range vision for a community or region; reuse existing infrastructure to meet the purposes of TCSP; develop urban, suburban and rural strategies for communities; and establish non-traditional partnerships to meet TCSP goals. A common theme in the proposals was that the objectives were to use transportation solutions in unique ways to help to meet long-term community goals rather than to only address current mobility needs. Applicants should not seek to duplicate the strategies being evaluated in FY 1999 unless there is a significant change in the scope, application, or results of the strategy.

The FHWA is also interested in proposals which measure the results and broad impacts on communities of current preservation practices including urban growth boundaries, infill development, and land use changes. This suggestion is also included in the request for research proposals below as an opportunity for an independent assessment of the outcomes of current preservation practices. Other areas that may be considered include integrating community health and safety goals with transportation to promote livable communities; planning or implementing regional and local strategies to mitigate greenhouse gas emissions; using technology and communications that provide people and businesses with improved access to goods and services to promote livable communities; and enhancing intermodal and freight access to promote economic growth and access to jobs in communities.

The FHWA is particularly interested in supporting projects that are ready to begin and have plans to collect and document results that can be shared with others quickly and successfully. The proposal should highlight when the proposal would be initiated and when results are expected.

Evaluation

Every proposal funded under the grant program should include a description of the applicant's plans for monitoring, evaluation and analysis of the grant activity, and for providing the results of this analysis to the FHWA. This information is necessary to provide an opportunity for the DOT, States, MPOs, and local governments to learn more about the practical implications of integrating land development, transportation, and environmental decisionmaking. The grant request may include funding for travel for one representative to attend two national workshops to present the plans, status, and results of the project.

The measures used to evaluate project results should be based on the goals and objectives of the project. In addition to individual project evaluations, an overall program evaluation will be conducted by the FHWA under the research component of the program described in Section III of this notice.

Developing measures to determine the results of the projects is difficult and there is no general consensus on operative measures. A resource guide on program evaluation for TCSP projects is available on the FHWA Web page (*http://tcsp-hwa.volpe.dot.gov/index.html*). Methods to measure and evaluate current and future performance may include, for example:

1. Quantitative assessments such as measurement of changes in traffic flow and mode choice (e.g., increased pedestrian and bicycle traffic), environmental impacts and reduced vehicle miles of travel or number of trips;

2. Analytic procedures which forecast the current and future impacts of projects, such as, travel demand, land development, or economic forecasting; or

3. Qualitative assessment, such as, interviews, surveys, changes in local ordinances, or other anecdotal evidence.

Relationship of the TCSP to the Transportation Planning Process

The TCSP will complement, improve and enhance the Statewide and MPO planning process created by the ISTEA, and refined by TEA–21. This process promotes the ongoing, cooperative and active involvement of the public, transportation providers, public interest groups, and State, metropolitan and local government agencies in the development of statewide and metropolitan transportation plans and improvement programs (23 CFR part 450).

Grant proposals should clearly demonstrate the coordination and consistency with appropriate statewide and metropolitan transportation planning processes. TCSP applicants are encouraged to notify the appropriate State DOT and MPO of their application to ensure this coordination. In addition, the FHWA will post the list of FY 2000 applications and titles of the proposals on its Web site as soon as it is available.

The DOT fully supports this planning process, which has brought diverse constituencies and government agencies together, and views the TCSP activities as a logical step in the continuing improvement of transportation planning at the State and regional level. The TCSP can help broaden the scope and impact of the planning process to better integrate land development planning, environmental goals and objectives, economic development, social equity considerations, and other private sector

activities. The integration of interest groups, investors and developers through partnering with government applicants is a goal of the program. The TCSP activities also consider incorporation of much longer planning horizons and consider the impacts on future generations.

Activities funded by this program may be used to test or implement new, innovative planning methods and programs that significantly enhance the existing statewide and MPO transportation planning processes. The TCSP funds are intended to leverage new transportation and community preservation initiatives rather than to fund the ongoing planning activities of States and MPOs. The TCSP-funded activities should demonstrate coordination with the State or MPO to ensure the planning process is not circumvented. In addition, activities should encourage and improve public involvement in the overall planning process as well as in the individual project.

Construction projects funded by the TCSP will ultimately be included in an approved State or MPO TIP. The TCSP funds should not be requested for projects that have already been scheduled for funding and are in the current State or MPO TIP. Highway and transit projects which either use Federal funds or require Federal approvals, and are in air quality nonattainment or maintenance areas, should be included in an air quality conformity analysis required as part of the transportation planning process. Because TCSP projects may target improved air quality as part of their broader goals, documentation of the beneficial air quality impacts of the project will be important.

Non-construction activities funded by the TCSP, such as the development of regional plans and policies, project evaluations and land development code changes, may not need to appear in a statewide or MPO TIP, but should still have the support or endorsement of the State or MPO. Planning activities funded by TCSP should be reflected in the metropolitan area's Unified Planning Work Program. Non-construction activities may result in changes to existing State and MPO plans and, therefore, need coordination with other jurisdictions within a metropolitan region or State.

Schedule and Administrative Processes for FY 2000 Applications

There are several options for the administration of grants under TCSP. The FHWA has established financial management systems with the State Departments of Transportation and anticipates that most TCSP grants will be channeled through this established process. However, if another process such as a cooperative agreement or grant through another eligible agency (e.g., a public transit agency) is preferred, the applicant can work with the appropriate FHWA Division Office to develop a different funding mechanism.

An applicant should send four (4) printed copies and a diskette with a file (optional, as described in Attachment II of this notice) of the TCSP grant request to the FHWA Division Office in the State in which the project is located by July 15, 1999. Applicants should note that the FHWA is not requesting the 4-page LOI's that were used for the FY 1999 selection process. The FHWA will use input from field staff and an interagency technical review panel similar to the process used in FY 1999 to evaluate proposals that will be funded. Questions about the grant program should be directed to the FHWA Division Office in the State in which the applicant is located. The time line for FY 2000 applications for TCSP and a proposed time line for FY 2000 follows:

FY 2000 TIME LINE FOR TCSP

TCSP milestones	FY 2000
Issue Federal Register Notice Request for FY 2000 Grants, Research proposals, and comments.	May 1999.
Grant requests and comments due to FHWA Division Offices.	July 15, 1999.
Research proposals due to FHWA.	Sept. 15, 1999.
Grants awarded	Oct. 1999.
Research projects awarded	Jan. 2000.

Section III: Requests for FY 2000 TCSP Research Proposals

Introduction

The TCSP includes a comprehensive research program to investigate the relationships between transportation, community preservation, and the environment, and to investigate the role of the private sector in shaping such relationships. The research program also includes monitoring, evaluation, and analysis of projects carried out under the grant program.

Program Evaluation and Outreach

Program and project evaluation is an important part of the TCSP. To meet the purposes of the pilot program and develop strategies and methodologies that can be used by localities, measurable results and a means to disseminate this information are needed. In addition to the evaluation of each project conducted by the grantee, the FHWA will conduct an overall program evaluation combining the results of the grants and the research program to help set the strategic direction and future priorities for the TCSP. An important measure for the success of TCSP is the extent to which the results and best practices from the pilot program are used effectively by government agencies, the private sector, and others.

Under the research component of TCSP, the FHWA will establish outreach, technical assistance, and other means to share and implement the results elsewhere. Current outreach plans include **Federal Register** notices, the grant workshop, the FHWA web site information, and participation in other conferences and meetings.

Research Program

The goal of the research program is to build a knowledge base of work in this field that will enable State, regional and local government agencies, the private sector and neighborhood groups, through transportation activities, to help shape sustainable communities that meet current and long-term environmental, social equity, and economic goals. With coordination and input from its partners and stakeholders, the FHWA will identify and initiate needed research to support the purposes of the TCSP. The research program is integral to the TCSP, and it will support and complement the activities conducted through planning and implementation grants. Likewise, applied research activities that may be a part of a grant activity would be beneficial to the research program.

This notice requests comments and suggestions on the research program and also solicits specific research proposals. The FHWA anticipates that most of the TCSP funds will be allocated for grants and that limited funding will be available for research. The FHWA is soliciting comments on the research needs to support the TCSP and will initiate TCSP research to meet the needs that are identified. In addition to FHWA conducted research under the TCSP, the FHWA is soliciting research proposals for consideration in funding in FY 2000. The research may be conducted through cooperative agreements with organizations, contract support, or through State, local, and MPO grants.

The FHWA emphasizes that it anticipates that very limited funds will be available for research in FY 2000. The FHWA proposes to solicit research

proposals that address the following areas:

1. Evaluation of results of current community preservation practices. Information is needed on the specific outcomes of current statewide, regional, and local community preservation practices, such as, green corridors, smart growth, urban growth boundaries, higher density development, and land use controls to improve transportation efficiency. Research should include both costs and benefits of these initiatives and performance measures.

2. The FHWA is seeking research on the development of needed tools and methodologies to support decision makers. Transportation-related tools and analytical techniques will be enhanced to help support the State and local decision makers in taking a longer term view and balancing economic, social equity, and environmental goals.

Attachment I: FY 1999 TCSP Grant

Transportation and Community and System Preservation Pilot Program

Project Description Summaries

Alaska

01: Municipality of Anchorage: "Anchorage Metropolitan Area Transportation Study (AMATS) Community Transportation Cooperative" $250,000

Re-design the public involvement program by determining the most effective processes and technology to empower the public, to facilitate communication, and to motivate the community to engage in meaningful dialogue in land use and transportation issues. Apply the new program to the Ship Creek Multimodal Transportation Plan, an area with controversial land use/transportation/community preservation issues located adjacent to the downtown Anchorage Central Business District.

Arizona

05: City of Tempe: "Transit Overlay District and University Drive Subarea Study/ Integrated Transportation Plan, Model, and Local Transit-Oriented Design Guidelines" $225,000

Complete the community-driven elements of the comprehensive transportation and land use plan.

Activities include:

- A transportation subarea study and implementation plan for University Drive that will coordinate neighborhood goals to narrow/traffic calm the street while identifying strategies to combat a range of area transportation issues with an approach that emphasizes both non-SOV transportation and community redevelopment.
- Creating a transit-oriented overlay district model, which can be supported by neighborhoods and the development community. Implement on University Drive and in the NewTowN service area. Apply to other parts of Tempe and communities.

California

13: San Francisco Planning Department: "Land Use Support for the Mission Street Transit Corridor" $177,000

Develop a plan for transit-oriented development in the Mission Street Transit Corridor and its diverse mix of mostly medium- and low-income residents, who depend on transit for journey-to-work trips. Prepare a transit-oriented land use plan for the Balboa Park Station at the southern end of the corridor and use as a model for how transit-oriented development can increase the city's share of new mixed-use residential and commercial development, how it can strengthen land use and transit links, how it can increase transit use, how it can encourage mixed-use residential and commercial infill sensitive to neighborhoods, how it can refocus the city's neighborhoods towards transit and away from the automobile, and how it can ease some of the burdens placed on private-sector development.

45: City of Escalon: "Escalon High School Linkage Project" $150,000

Link the community high school with a variety of land uses via two separate alternative transportation corridors: (1) The Southern Link—A pedestrian plaza, roadside park and woonerf on a portion of SR–120 abandoned as a result of highway realignment; and (2) The Northern Link—A Class-I bicycle lane along Miller Avenue providing a direct link between the high school and community center and a bicycle/pedestrian activated crossing signal. Mitigate the impacts associated with the widen roadways. Populations benefitting from the project include both students and senior citizens.

64: Mono County: "Lee Vining Community Planning Project" $182,000

Create a consensus-driven vision to provide transportation and land-use planning guidance to a small town that serves as a main gateway to Yosemite National Park. Identify the community's role in balancing the need for tourism with the preservation of community character and quality of life. Balance the multiple needs and users who depend on a major state highway facility serving as a local Main Street. Identify mitigation opportunities for seasonal traffic impacts in and around the park, focusing on the proper integration of the YARTS with Lee Vining and other communities bordering the park. Provide a model for intergovernmental cooperation and public involvement for unincorporated rural areas struggling with transportation and land-use issues.

Connecticut

01: Hartford Metropolitan Area: "Picture It Better Together: Taking Transportation Goals From Policy to Reality" $480,000

Examine the links between transportation, land use, and economic development at both the neighborhood and regional level by researching sustainable development practices informed by local and regional perspectives. Identify traditional forms of circulation and land use patterns in three prototypical communities—one urban, one suburban, and one rural—then plan for integrative patterns of development in each. Research and form best development practices, business incentives, and public/private support for these strategies at the regional level and facilitate discussions about regional interdependence. Develop human-scaled land use designs at the neighborhood level to integrate multiple transport modes and address traffic conflicts.

District of Columbia

01: Metropolitan Washington Region: "Implement Adopted Transportation Vision for the Metropolitan Washington: Develop Circulation Systems and Green Space" $380,000

Implement two key components of the region transportation vision: (1) improvements of circulation systems within the regional core and regional activity centers and (2) integration of green space into a regional greenways system. Involve key agencies, officials, and stakeholders and identify financial resources for project implementation. Design comprehensive regional programs which identify priority projects for implementation and encourage the inclusion of these projects into the region's Constrained Long Range Plan (CLRP) and Transportation Improvement Program (TIP).

Florida

05: Gainesville Metropolitan Area: "Develop and Apply Integrated Land Use and Transportation Sketch Planning Methods" $150,000

Develop sketch planning methods and simple model refinements to better estimate the effects of various land use, non-motorized transportation and transit strategies on travel choices and behavior. Develop analytical methods to post-process certain outputs of the traditional four-step travel demand forecasting process to better represent the land use-transportation connection. The goal is not methodological elegance but rather ease of rise and improved predictive power. Activity addresses all modes of travel, particularly as they relate to different land use characteristics within the metropolitan area.

Idaho

01: Ada/Canyon Counties: "Treasure Valley Futures: New Choices for the American West" $510,000

Develop an education process which defines barriers to attaining these goals and identifies a range of alternative choices for policy implementation that can be incorporated directly into the existing land use and transportation policy framework. The project should result in an increase in the number of policy decisions being made by agencies and other groups supporting local and regional objectives. The project approach is designed to work within the Treasure Valley's fragmented political framework and deeply held beliefs concerning private property rights.

Kentucky

01: Central Bluegrass Region: "An Integrated Model for Transportation Planning and Context Sensitive Design" $435,000

Produce two linked products that will aid in realizing and attaining TCSP goals. Provide innovative guidance and strategies to aid communities in reconciling development pressures with the need for livable communities through the Corridor Master Planning Handbook. Detail the fusion of visualization software with group facilitation and decision techniques for purposes of promoting consensus across a diverse community regarding roadway improvements through the Visualization Guide. These tools will address local planning questions that arise from regional concerns and aid in understanding the link between them. The project focuses on the development challenges found in the historic Bluegrass Region of Kentucky and involves both traditional and non-traditional partners.

Louisiana

01: New Orleans Metropolitan Area: "Transportation/Community Systems Optimization Through Non-Traditional Partnering and Infrastructure Prioritization" $450,000

Develop and implement various mechanisms to affect land use growth factors and system tools in order to guide transportation development, community and system preservation and regional metropolitan sprawl. Traditional tools and non-traditional approaches will be employed. Develop regional strategies and tools leading to a long-range plan and a map of growth/sprawl boundaries for a regional livability standard based on balance and sustainability. Develop a capital project management plan for the effective and efficient timing and construction of transportation infrastructure, and establish a framework for the control and monitoring of regional metropolitan sprawl. Form coalitions of interest groups in the region to realize the level of knowledgeable voter tax support to implement sustainable land use and transportation growth measures.

Maryland

04: State of Maryland: "Maryland Integrating Transportation and Smart Growth (MINTS)" $450,000

Use integrated Smart Growth and transportation planning strategies to: maintain and enhance existing communities and contribute to their quality of life and economic vitality; demonstrate how investments in transportation strategies can encourage well planned growth where it is desired and discourage new development where it is inconsistent with Smart Growth objectives; and use sound growth management to facilitate community conservation, preservation of infrastructure capacity, and "smart" transportation strategies. The project will be carried out in 2–3 locations representing two distinct growth-management settings: (1) an urban community with challenges to improve the efficiency of the existing transportation system, to conserve the community, and to prompt re-development and infill development and (2) in exurban and suburban areas with sprawling development patterns which threaten rural resource protection goals, generate highway and other infrastructure needs, and environmental and transportation system efficiency issues.

Michigan

05: Saginaw Metropolitan Area: "Retrofitting Anytown, USA" $48,000

Conduct a public design charrette to look at retrofitting two intersecting suburban corridors, making the area both pedestrian and transit friendly. Focus on issues of pedestrian mobility and accessibility, and public transit with the "visioning" and recommendations providing planning directions to local agencies and private enterprises to retrofit the existing auto-dominated environment.

12: Lansing/Tri-County Region: "Regional Growth: Choices for Our Future" $355,000

The Tri-County Regional Planning Commission, representing Clinton, Eaton and Ingham Counties and the Lansing, Michigan metropolitan area, has initiated Regional Growth: Choices For Our Future to Develop a series of innovative pilot planning techniques which will demonstrate enhanced planning methods which may be readily transferred to similar efforts nationwide. Formulate consensus on a new land use patterns and on new policies to guide land use change. Evaluate and track successful implementation by creating a "Sprawl Index" and a comprehensive evaluation program using real cost studies and fiscal impact analysis, analysis of how transportation investment decisions and asset management strategies effect urban sprawl, gathering information on why people relocate, and developing monitoring measures.

Missouri

06: Kansas City Metropolitan Area: "SMART CHOICES—Options for Creating Quality Places" $600,000

The Mid-America Regional Council (MARC), project will build on regional and local planning efforts addressing the better integration of transportation investments and land use decisions. Provide tools specifically designed for Midwestern communities to promote urban and suburban development compatible with sustainable community design. Activities include: (1) the development of Transit-Oriented Development prototypes, education, and other implementation strategies; (2) a cost-of-development analysis that will provide fiscal information relative to alternative development; and, (3) an interactive compact disc to communicate information on alternative design concepts and specifications.

Montana

06: City of Laurel: "Transportation and Community Sustainability Plan" $85,000

Develop a 'Transportation and Community Sustainability Plan' for the City of Laurel. Activities include: (1) analyzing the traffic and community impacts of major transportation features; (2) analyzing the overall transportation system (current and planned) and its implications for sustainability; (3) analyzing the land use patterns and their contributions to the traffic situation; (4) analyzing the sustainability of the community's commercial core in the face of transportation-related threats; (5) analyzing non-motorized travel; (6) analyzing how different assumptions in transportation and land use can lead to more sustainable scenarios for the future; and (7) creating an action plan for a more sustainable Laurel.

New Jersey

14: Northern New Jersey: "Preparing Modern Intermodal Freight Infrastructure to Support Brownfield Economic Redevelopment" $700,000

Facilitate the redevelopment of abandoned industrial brownfield sites by freight related businesses at the port, airport, and rail terminals in northern New Jersey. Leverage statewide and regional resources to overcome current constraints affecting brownfield redevelopment. Conduct a market analysis, compile an inventory of promising brownfield sites, perform outreach to communities and carry out detailed case studies. Completed plan will address needed transportation access to brownfield sites and effectively market the sites for freight related activities and provide new employment opportunities for urban residents, avert inefficient sprawl, reduce the volume of trucks on regional roads and safeguard the environment.

34: State of New Jersey: "Transit-friendly Communities for New Jersey" $535,000

Work with diverse community partners to develop specific ways that New Jersey towns can become more "transit friendly," by building on both NJT's initiatives to make train stations themselves "passenger friendly" and on statewide "smart growth" initiatives to reduce sprawl and encourage new development within walking distance of transit stations. Develop educational workshops, technical assistance and demonstration projects in four to six communities to shape a new vision for linking train stations to community enhancement. Implement a series of short-term, catalytic demonstration projects in the districts immediately around train stations to spur community involvement and leverage local investment and participation. Maximize its relevancy to the state's diverse community involvement and leverage local investment and participation. Leverage the talents and resources of NJT's non-profit and government partners to shape the future of communities around NJT stations well into the 21st Century. Develop models for other New Jersey communities to follow in future NJT projects. Ensure that communities understand how transportation investments can enhance the environment, create strong downtown centers, and improve quality of life.

New York

02: City of Troy: "Waterfront Redevelopment" $70,000

Develop a Transportation and Land Use Study as a part of a redevelopment planning process for South Troy's Working Waterfront. Address the needs of this long underutilized waterfront and facilitate the area's development as an appealing and efficient business, residential, cultural, and recreational center. Inventory and analyze the existing land use pattern and transportation system, evaluate redevelopment alternatives, and identify and implement a series of compatible land use and transportation strategies and projects for the study area. Combine planning techniques including community workshops and visioning sessions, design charettes, and planning and architecture student involvement. Build upon collaborative working relationships with traditional and nontraditional partners including community-based, organizations and nonprofit agencies, as well as private, public, local, regional, County and State agency representatives. Develop a plan to maximize efficiency in transportation access while minimizing environmental and related impacts of the proposed redevelopment.

North Carolina

06: Research Triangle Region: "Regional Development and Mobility Principles" $450,000

Develop strategies to change the 6-county Research Triangle region's current pattern of development from a conventional suburban expansion model to one based more on principles supportive of compact urban form with walkable. Activities include: A *detailed description and analysis* comparing the land use, transportation, fiscal and environmental implications of the preferred regional development pattern to the current development pattern. A *comprehensive set of strategies* composed of design and development standards, infrastructure policies, fiscal tools, and legislative authority needed to achieve the preferred development pattern. A *set of computer visualizations* and supporting explanatory material showing how places within the region could develop differently under the preferred pattern or under the current pattern. A *community outreach and feedback effort* to explain the project's work, monitor communities' views of the work, and revise the work to address community concerns.

Ohio

10: Woodmere Village, Cleveland: Making Chagrin Boulevard a "Place" Instead of a Dividing Road: A Greater Cleveland Demonstration Project in Woodmere Village, Ohio" $195,000

Redefining Woodmere Village, a small, predominantly African-American suburb of Cleveland, in a highly creative manner. Create an environment for small town community interactions while simultaneously handling 26,000–36,000 ADT on its "Main Street." Provide a local demonstration project which balances the interests of "home," "place" and business with the goal of commuter convenience. Set the stage to adopt new zoning and land use policies to encourage denser, more sustainable development in the future.

12: City of Dayton: "Tool Town" $300,000

Evaluate the existing buildings, transportation infrastructure, and utilities and the development of a schematic campus master plan with capital costs, an implementation schedule, and funding strategies. Tool Town will make more efficient use of existing transportation network and other infrastructure and reuse land and the built environment, both of which will curb additional regional sprawl. The effort will also create jobs that can be filled by Dayton residents; support the long-term viability of tooling and machining in our region; help tooling and machining industry compete globally; and retain these secure, high-paying jobs in the United States.

Oregon

05: Portland Metropolitan Area: "Urban Reserve Planning for the Portland, Oregon Metropolitan Region" $500,000

Develop master planning for the area must occur before development begins to ensure efficient provision of services and infrastructure and effective environmental conservation. Help local governments address the difficult transportation, land-use and environmental challenges of the area, including: Streams on the recent federal listing of endangered fish; Mitigation of addition impacts on severe downstream flooding; Local topography that creates a serious challenge in transitioning from a few two-lane country roads to a system that can serve the expected future population.

11: Willamette Valley: "Evaluate the Transportation Impacts of Possible Futures in Oregon's Willamette Valley Organization" $600,000

Provide a unique, long-range, regional focus on: (1) the transportation consequences of continuing current land development patterns in the Valley; (2) the benefits possible through alternative, transportation-efficient development patterns that are based on more compact growth and urban designs that reduce reliance on the automobile; and (3) the benefits possible through certain changes in the transportation system. Focus on all current and future travel between the metropolitan areas, cities and towns in the 11,500 square mile Valley. Activities include: (1) the development, modeling and analysis of possible future land use and transportation scenarios; (2) public outreach and education; (3) development of recommended actions and implementation strategies to achieve a preferred future; and (4) development of regional benchmarks and a monitoring framework to track progress.

Pennsylvania

05: Centre County: "Creating a Community-based Sustainable Future for I–99: A Watershed Approach" $500,000

Establish a collaborative, multi-municipal model interchange overlay district ordinance to better manage and guide development surrounding the 12 interchanges in Centre County of I–99 in Centre County and create a watershed-wide (mid-Bald Eagle watershed including the Spring Creek Basin), community-based collaborative land use and sustainability plan to meet the long-term needs of the community.

08: Philadelphia Metropolitan Area: "Implement Transit Oriented Development in the Philadelphia Metropolitan Area: Schuylkill Valley Metro (SVM) Corridor Station Area Planning and Implementation" $665,600

Implement TOD principles and induce private sector investment in TODs by: (1) creating an innovative LEM Product that provides mortgage financing for housing in transit dense areas, (2) undertaking a region wide advocacy project to sow the seeds of public support for TODs, (3) producing a transit corridor-specific real estate market demand feasibility study that provide a greater level of understanding of TODs within the real estate community (thereby reducing the perceived risk to developers) and (4) preparing zoning ordinance language, to implement focused station area plans, that provides a supportive regulatory environment for TOD. Innovative activities include: (1) the proposed LEM Product; (2) the timing of the planning and development regulations work and garnering public support for TOD, well in advance of implementing a major transportation investment; and (3) basing the development controls on a corridor and station-focused real estate market study.

Rhode Island

11: City of Providence: "Olneyville Square Inter-modal Transit Center" $600,000

Revitalize neighborhood by using transportation and intermodal facilities that will capitalize on an urban river, recycle brownfields, promote home-ownership and support small business development. Focus on the commercial heart of the neighborhood, which was once the second largest commercial area in the City, by: siting a public Transit Center, linking the Woonasquatucket Greenway/Bikeway project to the Transit Center, and re-connecting Olneyville Square and the Transit Center to the West Broadway neighborhood.

South Carolina

01: Berkeley, Charleston, Dorchester Region: "Development and Implementation of a Model Program Strategy to Link Transportation, Infrastructure and Land Use Planning for the Berkeley Charleston Dorchester Region of South Carolina" $300,000

Evaluate past and future growth patterns and promote sustainable growth in the Berkeley, Charleston, and Dorchester region, the Berkeley-Charleston-Dorchester Council of Governments (BCDCOG). Utilize satellite imagery to graphically depict growth patterns over twenty years in the region and using the identified patterns to project impacts for the future. Estimate the costs of sprawl. Evaluate environmental losses of growth patterns at the continued rate and pattern. Compile

alternative land use and growth pattern strategies and the identify techniques to encourage organized and sustainable growth. Illustrate the impacts and costs (in environmental losses as well as fiscal impacts) of particular growth patterns as experienced in the past twenty years, as well as to project those same impacts and costs if a similar pattern of growth is continued. Develop alternatives and recommendations to encourage smarter and more efficient growth.

Tennessee

01: Johnson City: "The Land Use and Transportation Plan" $275,000

Integrate land use planning with transportation planning to increase the performance and efficiency of the transportation system. Adopted formal code changes to land use regulations based on the principles of traditional neighborhood development and transit oriented development. Create opportunities for intensified mixed-use development to occur in neighborhood nodes and permit increased accessibility for pedestrians, bicycles, and transit. Evaluate projected traffic volume and type with and without adoption of the new regulations. The results of the Land Use and Transportation will be able to be used by other communities across the State of Tennessee and nationally.

Texas

14: City of Houston: "Main Street Corridor Planning and Research Project" $500,000

Develop a singular, urban vision for the eight-mile Main Street Corridor. Encourage transit and pedestrian-oriented development, improve access to the corridor, explore ground-breaking implementation strategies, and institute innovative evaluation techniques. Build partnerships among public agencies, private and non-profit interests as a vital component of the planning process. Reinforce trends toward inner city revitalization leading to a reduction of automobile dependency and improved air quality in the region.

Utah

07: Greater Wasatch Area: "Envision Utah" $425,000

Create a broadly and publicly supported Quality Growth Strategy-a vision to protect Utah's environment, economic strength, and quality of life for our children. Create a replicable process for planning and managing rapid growth and development. Seek community feedback and participation to assist in the development of a publicly supported Quality Growth Strategy and pursuit of actual implementation of this strategy in the Greater Wasatch Area. Develop and draft final Quality Growth Strategy and pursue actual implementation of this strategy in the Greater Wasatch Area. Utilize modeling tools to assist Envision Utah in the cost and impact analysis of the alternative growth scenarios.

Virginia

03: Charlottesville Metropolitan Area: "Jefferson Area Eastern Planning Initiative" $517,920

Develop a new model for integrated land use/transportation planning and use it to achieve a regional plan which lays the groundwork for the community's 50-year vision. Build upon planning tools the PDC has developed to improve the multi-modal design of neighborhoods, commercial centers, and transportation corridors. Package as a handbook, CD-Rom, and on the Web to make it easy for other small urban and rural communities to use them.

Washington

02: Central Puget Sound Region: "Transit Station Communities Project" $400,000

Use a variety of tools that will contribute to the success of intermodal facilities by working with citizens, neighborhood groups, the business sector, developers, elected officials, and agency personnel to create more livable communities. Organize and initiate both region wide coordination as well as local technical assistance efforts. Coordinate the numerous and disparate station area planning and development activities throughout the region to reach out to local jurisdictions, the development community, and the public to increase the level of awareness and understanding of the opportunities and challenges of intermodal station planning. Provide direct technical assistance and improve community outreach and test a variety of different techniques aimed at advancing local implementation and expanding local community participation.

West Virginia

01: City of Martinsburg: "Historic Baltimore & Ohio Roundhouse Renovation Project" $300,000

Develop plans and specifications to renovate/restore the Historic B&O Roundhouse complex. Establish an intermodal operations center to coordinate these services in relation to port commerce, commuter systems, commercial trade, travel and tourism which ties together the highway, rail and air transportation system from within the inland intermodal port area to the historic infrastructure links in a manner which will enhance commerce, cultural/recreational opportunities, and transportation best practices. Develop a Facility Use Plan to chart the course for the complex's development. Provide direction for local officials and the community as they strive to both preserve and effectively transform the existing facility into a key element of the entire transportation, retail trade and community complex. Purchase a trolley bus which will be used as a key short term commuter link with the existing transportation system by providing access to the MARC Train and the Pan Tran Public Transportation System.

Wisconsin

01: Dane County: "Design Dane Phase II" $365,000

Provide Dane County communities with the tools necessary to thoroughly evaluate competing land development scenarios. Design a technical geographic model, standards, and process to more efficiently present to decision makers the true costs and benefits of alternative growth patterns. Consider alternatives to simply adding more lanes when making improvements to congested roadways. Coordinate between land use and transportation decision making in communities along roadway corridors. Design and implement transit-oriented development (TOD) projects that may be used as models for future development within our primary transit corridor.

Attachment II: Sample Outline and Format for FY 2000 TCSP Grant Requests:

Cover Sheet With Abstract (1 Page)

I. Project Information

Project Title and Location: _____
Agency: _____
Key Contact: _____
Address: _____
Phone/Fax/E-mail: _____
Amount Requested: $ _____

Abstract

This should be a brief paragraph describing the project and the expected results. Describe the scale of activity such as rural, urban, statewide, etc. and provide information on the types of populations affected by the project (i.e., size of population, commuter, disadvantaged, minority, etc.).

II. Project Description

Narrative: Briefly describe the project, the geographic scale of the proposed activity (system, region, corridor, etc.), its expected results in the short-and longer-term (20–40 years), and the applicant's expectations or vision for the ultimate impact of the activity.

III. Purpose and Criteria

Objectives: Further describe the project and its objectives. Relate how it furthers and integrates each of the following purposes of the TCSP program:

1. Improve the efficiency of the transportation system;
2. Reduce the impacts of transportation on the environment;
3. Reduce the need for costly future investments in public infrastructure;
4. Ensure efficient access to jobs, services, and centers of trade; and
5. Examine development patterns and identify strategies to encourage private sector development patterns which achieve the goals of the TCSP.

IV. Category of Grantee

Grantees should determine if their agency is: (a) Just beginning community preservation practices in their area, or (b) If they have already implemented community preservation practices. Grantees in this later category should provide brief information on established community preservation practices within their community or jurisdiction.

V. Coordination

Indicate how the proposal is consistent with State and metropolitan planning processes and how the appropriate MPO or State Department of Transportation coordination will be demonstrated.

VI. Partners

List, and briefly describe if necessary, the agencies, organizations, and companies participating in the activities or on the project team. Describe the role and functions of the non-traditional partners participating on the project team. Describe plans for involvement or education of the private and public sector.

VII. Schedule

Provide a schedule to complete the major steps or milestones in the project. Include dates of major milestones for project activities, the evaluation and when written reports of the project activities will be submitted.

VIII. Budget and Resources

This section should include a list of all funding, both Federal and non-Federal, and in-kind resources for the project. Priority is given to proposals that demonstrate a commitment of non-Federal resources. Proposals should clearly describe use of in-kind and direct funding contributions and distinguish contributions that are made directly for the proposed projects from those made for other related activities. The budget should include a list of the major costs by category for the project. This could include, for example, personnel costs, travel, services, project evaluation including any contract services, etc. The budget should also show how the TCSP funds and other matching funds are used for these activities. The budget may include the costs for travel for one representative of the project team to participate and present the status and results of the project at two national conferences.

IX. Project Evaluation Plan

The FHWA has prepared guidance on the preparation of evaluation plans for TCSP. This will assist in preparing and summarizing the preliminary plans for evaluation of the activity, including means of monitoring, indicators and measures of performance, and plans for reporting results. Copies of this guidance can be found on the FHWA website (*http://www.fhwa.dot.gov/program.html*) or from the FHWA's Division office in the applicant's State (see Attachment III):

Proposal format for submissions: This example format will assist applicants in preparing your proposal submission. The FHWA does not anticipate that these grant requests will be very lengthy (recommend no more than 15 pages). Any attachments that are included should be directly related to the proposal. Because the FHWA will make copies of the grant proposals for the review process, requests should be in a similar format:

General Format

Page Size: 8½" x 11" (including maps and attachments)
12 point font, single sided
Clip the top left corner—no binding or staples
Any colored documents (including maps) should be reproducible in black and white
Include on each page of your submission the project title and page number

Format for Additional Electronic Submission (Optional)

Electronic Format: Include proposal (without attachments) in WordPerfect version 6/7/8 or Word version 97 or earlier on 3½ inch floppy disk labeled with your project title and name.

No watermarks, embedded text, or graphics.

Project submission: Please submit 4 copies and an electronic file of the grant request to the FHWA's Division office in your State. The request should be in the Division office by Thursday, July 15, 1999.

Attachment III—FHWA Division Offices

State	FHWA address, phone no.
Alabama	500 Eastern Boulevard, Suite 200, Montgomery, AL 36117–2018, 334–223–7374.
Alaska	P.O. Box 21648, Juneau, AK 99802–1648, 907–586–7180.
Arizona	234 N. Central Avenue, Suite 330, Phoenix, AZ 85004, 602–379–3916.
Arkansas	Federal Office Building, 700 West Capitol Avenue, Room 3130, Little Rock, AR 72201–3298, 501–324–5625.
California	980 9th Street, Suite 400, Sacramento, CA 95814–2724, 916–498–5015.
Colorado	555 Zang Street, Room 250, Lakewood, CO 80228–1097, 303–969–6730, Ext. 371.
Connecticut	628–2 Hebron Avenue, Suite 303, Glastonbury, CT 06033–5007, 860–659–6703, Ext. 3008.
Delaware	300 South New Street, Room 2101, Dover, DE 19904–6726, 302–734–3819.
District of Columbia	Union Center Plaza, 820 First Street, N.E., Suite 750, Washington, DC 20002 202–523–0163.
Florida	227 North Bronough Street, Room 2015, Tallahassee, FL 32301, 850–942–9586.
Georgia	61 Forsyth St., SW, 17th Floor, Suite 17T100, Atlanta, GA 30303–3104, 404–562–3630.
Hawaii	300 Ala Moana Boulevard, Suite 3202, Box 50206, Honolulu, HI 96850, 808–541–2531.
Idaho	3050 Lakeharbor Lane, Suite 126, Boise 83703, 208–334–9180, Ext. 119.
Illinois	3250 Executive Park Drive, Springfield, IL 62703–4514, 217–492–4641.
Indiana	Federal Office Building, Room 254, 575 North Pennsylvania Street, Indianapolis, IN 46204–1576, 317–226–7475.
Iowa	105 6th Street, P.O. Box 627, Ames, IA 50010–6337, 515–233–7302.
Kansas	3300 South Topeka Blvd., Suite 1, Topeka, KS 66611–2237, 785–267–7281.
Kentucky	John C. Watts Federal Building and U.S. Courthouse , 330 West Broadway Street, P.O. Box 536, Frankfort, KY 40602, 502–223–6723.
Louisiana	Federal Building, Room 255, 750 Florida St., Room 255, P.O. Box 3929, Baton Rouge, LA 70801, 225–389–0245.
Maine	Edmund S. Muskie Federal Building, 40 Western Avenue, Room 614, Augusta, ME 04330, 207–622–8487, Ext. 20.
Maryland	The Rotunda, Suite 220, 711 West 40th Street, Baltimore 21211–2187, 410–962–4342, Ext. 124.
Massachusetts	Transportation Systems Center, 55 Broadway, 10th Floor, Cambridge 02142 617–494–3657.
Michigan	Federal Building, Room 207, 315 West Allegan Street, Lansing, MI 48933, 517–377–1844.
Minnesota	Galtier Plaza, Box 75, 175 East Fifth Street, Suite 500, St. Paul, MN 55101–2904, 651–291–6105.
Mississippi	666 North Street, Suite 105, Jackson 39202–3199, 601–965–4223.
Missouri	209 Adams Street, Jefferson City 65101, 573–636–7104.
Montana	2880 Skyway Drive, Helena, MT 59602, 406–449–5303, Ext. 236.
Nebraska	Federal Building, Room 220, 100 Centennial Mall North, Lincoln, NE 69508–3851, 402–437–5521.
Nevada	705 North Plaza Street, Suite 220, Carson City, NV 89701–0602, 775–687–5321.
New Hampshire	279 Pleasant Street, Room 204, Concord, NH 03301–2509, 603–225–1606.
New Jersey	840 Bear Tavern Road, Suite 310, West Trenton, NJ 08628–1019, 609–637–4200.
New Mexico	604 W. San Mateo Road, Santa Fe, NM 87505, 505–820–2022.

State	FHWA address, phone no.
New York	Leo W. O'Brien Federal Building, Clinton & N. Pearl Ss., 9th Floor, Albany, NY 12207, 518–431–4131.
North Carolina	310 New Bern Avenue, Suite 410, Raleigh, NC 27601, 919–856–4347.
North Dakota	1471 Interstate Loop, Bismarck, ND 58501–0567, 701–250–4347.
Ohio	200 North High Street, Room 328, Columbus, OH 43215, 614–280–6896.
Oklahoma	300 N. Meridian, Suite 105 S, Oklahoma City, OK 73107–6560. 405–605–6174.
Oregon	The Equitable Center, Suite 100, 530 Center St., N.E., Salem, OR 97301, 503–399–5749.
Pennsylvania	228 Walnut Street, Room 558, Harrisburg 17101–1720, 717–221–4585.
Puerto Rico	Federico Degetau Federal Building and U.S. Courthouse, Carlos Chardon St., Rm 329, San Juan, PR 00918–1755, 787–766–5600, Ext. 230.
Rhode Island	380 Westminster Mall, Fifth Floor, Providence, RI 02903, 401–528–4560.
South Carolina	Strom Thurmond Federal Building, 1835 Assembly Street, Suite 758, Columbia, SC 29201, 803–765–5282.
South Dakota	The Sibley Building, 116 East Dakota Avenue, Pierre, SD 57501–3110, 605–224–7326, Ext. 3043.
Tennessee	249 Cumberland Bend Drive, Nashville, TN 37228, 615–736–5394.
Texas	Federal Office Building, Room 826, 300 East Eighth Street, Austin , TX 78701, 512–916–5511.
Utah	2520 W. 4700 South, Suite 9A, Salt Lake City, UT 84118, 801–963–0182.
Vermont	Federal Building, 87 State St., P.O. Box 568, Montpelier 05601, 802–828–4433.
Virginia	The Dale Building, Suite 205, 1504 Santa Rosa Road, Richmond 23229, 804–281–5103.
Washington	Suite 501, Evergreen Plaza, 711 South Capitol Way, Olympia, WA 98501, 360–753–9554.
West Virginia	Geary Plaza, Suite 200, 700 Washington Street. E, Charleston, WV 25301–1604, 304–347–5929.
Wisconsin	Highpoint Office Park, 567 D'Onofrio Drive, Madison, WI 53719–2814, 608–829–7506.
Wyoming	1916 Evans Avenue, Cheyenne, WY 82001–3764, 307–772–2004, Ext. 41.
FHWA/FTA Metropolitan Offices	
New York	6 World Trade Center, Room 320, New York, NY 10048, FAX: 212–466–1939, 212–668–2201.
	26 Federal Plaza, Suite 2940, New York, NY 10278–0194, FAX 212–264–8973, 212–668–2170.
Philadelphia	1760 Market St., Suite 510, Philadelphia, Pa 19103, 215–656–7070, FAX: 215–656–7260, 215–656–7111.
Chicago	200 West Adams, Room 2410, Chicago, IL 60606, 312–886–1616, FAX: 312–886–0351 312–886–1604.
Los Angeles	201 N. Figueroa Street, Suite 1460, Los Angeles, CA 90012; 213–202–3950; FAX: 213–202–3961.

Authority: 23 U.S.C. 315; sec. 1221, Pub.L. 105–178, 112 Stat. 107, 221 (1998); 49 CFR 1.48.

Issued on: May 3, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–11586 Filed 05–07–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Reconsideration of Waiver of Compliance

In accordance with Title 49 Code of Federal Regulations Sections 211.9 and 211.41 notice is hereby given that the Federal Railroad Administration (FRA) has received a request for reconsideration of a waiver of compliance from certain requirements of Federal railroad safety regulations. The individual petition is described below, including the parties seeking relief, the regulatory provisions involved and the nature of the relief being requested.

National Railroad Passenger Corporation (Waiver Petition Docket Number H–96–1)

The Federal Railroad Administration has received a request from the National Railroad Passenger Corporation (Amtrak) to modify conditions set forth in the conditionally approved Petition for Waiver of Compliance, H–96–1. That waiver is for the development, testing, installation, and demonstration of a communication-based train control system in Amtrak's Detroit to Chicago Corridor.

Amtrak requests that Condition No. 1, of H–96–1, "Waiver is not for revenue service," be changed to include daily revenue service trains, with newly defined conditions.

The waiver granted permission to operate a test train at speeds exceeding 79 MPH, but not to exceed 110 MPH, with the following conditions:

1. Waiver is not for revenue service.

2. Compliance with Test Plan 081776–070 REV. A04.

3. Waiver is granted until July 1, 1997.

4. FRA reserves the right to modify or rescind this waiver upon receipt of information pertaining to the safety of rail operations or in the event of noncompliance with the conditions of this approval.

(Condition 3 has since been modified twice, with the waiver currently granted until December of 1999.)

A test train was operated successfully at speeds up to 100 MPH in the fall of 1996. Much was accomplished in these tests, much data was collected, and the supplier of this system, Harmon Industries, is currently deeply involved in the integration of the system. This integration involves an exhaustive investigation of all possible failure modes of the train control system in order to be able to certify the fail-safety of the system when the final release to Amtrak is made for in-service testing for revenue service.

It has become apparent the vendor will not be able to fully complete the validation and verification of the wayside and location processor subsystems until mid-year 2000, and the host (on-board) processor subsystem until the end of the third quarter of year 2001.

The partners in this project believe that an important part of the development of this project, that must not be delayed, is the next step in

testing to determine the reliability of the system in regular revenue service.

In view of the significant delays encountered in developing the full validation and verification, Amtrak now would like to commence testing the system in revenue service. They propose that the system actually be placed in daily service for a significant "burn-in" period with close monitoring to develop the availability/reliability of the system. This would be done in parallel with the ongoing validation and verification effort, and would be done in such a way that it would not have an adverse impact on the revenue service trains. Initially, revenue service trains would be ITCS equipped and operated through the ITCS test territory with the P2A valve cut out and no ITCS operating rules in effect, at speeds not to exceed 79 MPH. After this first 90 day period the P2A valve would be cut in and ITCS operating rules would be in effect, with maximum speed being 79 MPH for an additional 90 days. Further, Amtrak requests that the limits of the test bed for the purpose of this waiver, be extended as wayside equipment is cut-over, eastward from Signal 175 to Signal 150 west of Oshtemo, Michigan, and westward from Signal 195 to Signal 216, west of Three Oaks, Michigan.

Amtrak's proposed timetables are:

ITCS Cutover, P2A valve cut out

- Estimated Duration—90 days
- Maximum Passenger Speed—79 MPH
- Location—Signal 175 (M.P.175.2) to Signal 195 (M.P. 195.55)
- ITCS Operating Rules not in effect
- Commence—April 1999

P2A valve cut-in

- Estimated Duration—90 days
- Maximum Passenger Speed—79 MPH
- Location—Signal 175 (M.P.175.2) to Signal 195 (M.P. 195.55)
- ITCS Operating Rules in effect
- Commence—July 1999

ITCS data from the following sources will be evaluated via remote modem technology from Harmon's Grain Valley technical facility:

- Departure Test Devices
- Wayside Interface Units and Wayside Interface Unit-Servers
- Locomotive and Non-Powered Control Units On-board Computer
- Home and Intermediate Signals
- Grade Crossings

Revenue Service, Limited

- Estimated Duration—300 days
- Maximum Passenger Speed—90 MPH
- Location—Signal 150 to Signal 216
- ITCS Operating Rules in effect
- Commence—October 1999

FRA feels that Amtrak can continue, under H–96–1 existing conditions, with ITCS Cutover, P2A Cut-Out. This is a 90 day period allowing for wayside equipment cutover, and on-board data gathering within the 20 mile test bed and at speeds not to exceed 79 MPH, with no ITCS rules in effect, and the P2A valve not cut-in to the ITCS. This period is to commence in April 1999.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning this proceedings should identify by the docket number (1) and must be submitted in triplicate to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 30 days of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11624 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–4990.

Applicant: Colorado and Kansas Railroad Company, Mr. John A. Stiehl, Authorized Agent for Board of Directors, P.O. Box 128, Louisville, Colorado 80027.

Colorado and Kansas Railroad Company seeks approval of the proposed temporary discontinuance of the automatic block signal system, on the main track and siding, between NA Junction, milepost 869.40 and Towner, milepost 747.50, Colorado, on the Hoisington Subdivision, with restoration by January 1, 2001.

The reason given for the proposed changes is to enable the Colorado and Kansas Railroad Company start-up operation to begin in advance of completion of costly signal repairs.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11623 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–1999–4992

Applicants:

Consolidated Rail Corporation,
Mr. J. F. Noffsinger,
Chief Engineer—C&S Assets,
2001 Market Street, P.O. Box 41410,
Philadelphia, Pennsylvania 19101–1410

CSX Transportation, Incorporated,
Mr. R. M. Kadlick,
Chief Engineer Train Control,
500 Water Street (S/C J–350),
Jacksonville, Florida 32202

Consolidated Rail Corporation (Conrail) and CSX Transportation, Incorporated (CSXT) jointly seek approval of the proposed discontinuance and removal of the traffic control system, on the single main track Lurgan Branch, between "CP Ship" Interlocking, milepost 40.2 and CP Lurgan," milepost 42.4, near Lurgan, Pennsylvania, on the Conrail's Philadelphia Division. The proposed changes include the discontinuance and removal of "CP Lurgan" and intermediate signal P413; conversion of signal P412 to an inoperative approach signal; and extension of the manual block from CSXT to "CP Ship."

The reason given for the proposed change is to retire facilities no longer required for present operation.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11621 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No.: FRA–1999–4991.

Applicant: Maine Coast Railroad Corporation, Ms. Sharon S. White, President, P.O. Box 614, Wiscasset, Maine 04578.

Maine Coast Railroad Corporation seeks approval of the proposed temporary discontinuance of the Bath Interlocking, Carlton Drawbridge, on the single main track, at Bath, Maine, on the Rockland Branch, associated with the rehabilitation of the damaged interlocking. Once the shipment of necessary parts and materials for the redesigned interlocking arrive, work will begin, with an expected April 1999 completion.

The reason given for the proposed changes is that the drawbridge interlocking was severely damaged on or around August 31, 1998, and was removed from service. Maine Coast Railroad Corporation now believes that the removal of the interlocking from service will exceed the six month period described in 49 CFR 235.7(a)(4), pending rehabilitation of the interlocking.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at http://dms.dot.gov.

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11622 Filed 5–7–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Docket No.: FRA–1999–5023
Applicant: Union Pacific Railroad Company, Mr. Phil Abaray, Chief Engineer—Signal/Quality, 1416 Dodge Street, Room 1000, Omaha, Nebraska 68179–1000

Union Pacific Railroad Company seeks approval of the proposed temporary discontinuance of the signal system, on the No. 2 Main track, between mileposts 32.9 and 33.2, on the Martinez Subdivision, near Martinez, California, during construction of a new CTC signal system on the No. 2 Main and adjacent tracks, for approximately four months.

The reason given for the proposed changes is to make room for and allow construction of a new CTC signal system on the No. 2 Main track and adjacent tracks.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11620 Filed 5–7–99; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Notice of Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of Title 49 Code of Federal Regulations Part 236

Pursuant to Title 49 Code of Federal Regulations (CFR) Part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR Part 236 as detailed below.

Docket No. FRA–1999–5187.
Applicant: Wisconsin Central Limited, Mr. Glenn J. Kerbs, Vice President Engineering, P.O. Box 5062, Rosemont, Illinois 60017–5062.

Wisconsin Central Limited seeks approval of the proposed discontinuance and removal of existing Stevens Point East interlocking, milepost CM246.98, at Stevens Point, Wisconsin, consisting of the removal of all existing interlocked signals, and conversion of the two power-operated switches to hand operation.

The reasons given for the proposed changes are track changes associated with the proposed siding extension, and installation of a new power-operated switch at milepost CM244.3.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the Protestant in the proceeding. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

All communications concerning this proceeding should be identified by the docket number and must be submitted to the Docket Clerk, DOT Central Docket Management Facility, Room PI–401, Washington, DC 20590–0001. Communications received within 45 days of the date of this notice will be considered by the FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9:00 a.m.–5:00 p.m.) at DOT Central Docket Management Facility, Room PI–401 (Plaza Level), 400 Seventh Street, SW, Washington, DC 20590–0001. All documents in the public docket are also available for inspection and copying on the internet at the docket facility's Web site at *http://dms.dot.gov.*

FRA expects to be able to determine these matters without an oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on May 3, 1999.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 99–11619 Filed 5–7–99; 8:45 am]

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Monday
May 10, 1999

Part II

Department of Defense

Department of the Army, Corps of Engineers

Environmental Protection Agency

33 CFR Part 323
40 CFR Part 232
Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material"; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 323

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 232

[FRL–6338–9]

Revisions to the Clean Water Act Regulatory Definition of "Discharge of Dredged Material"

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DOD; and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are promulgating a final rule amending a Clean Water Act (CWA) section 404 regulation that defines the term "discharge of dredged material." This action conforms that definition to the results of a lawsuit holding that by asserting jurisdiction over any redeposit of dredged material, including incidental fallback, the Agencies had exceeded our statutory authority under the CWA. Today's action is intended to comply with the injunction issued by the district court in that case. Today's rule responds to the court decision by deleting language from the regulation that was held to exceed our CWA statutory authority and by adding clarifying language.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: For information on the final rule, contact Mr. John Lishman of EPA at (202) 260–9180 or Mr. Mike Smith or Mr. Sam Collinson of the Corps at (202) 761–0199. For questions on project-specific activities, contact your local Corps District office. Addresses and telephone numbers for Corps District offices can be obtained from the Corps Regulatory Homepage at http://www.usace.army.mil/inet/functions/cw/cecwo/reg/district.htm. If you do not have access to the Internet, telephone numbers for Corps District offices can be obtained by calling the National Wetlands hotline at 800–832–7828.

SUPPLEMENTARY INFORMATION:

I. Background

A. Potentially Affected Entities

Persons or entities engaged in discharging dredged material to waters of the US could be affected by today's rule. Today's rule addresses the regulatory definition of "discharge of dredged material," a term which is important in determining what types of activities do or do not require a CWA section 404 permit. As described further below, today's action does not increase regulatory burdens, but rather conforms the language in our section 404 regulations to the outcome of a lawsuit challenging the regulatory definition. Examples of entities that might potentially be affected include:

Category	Examples of potentially affected entities
State/Tribal governments or instrumentalities	State/tribal agencies or instrumentalities that discharge dredged material to waters of the U.S.
Local governments or instrumentalities	Local governments or instrumentalities that discharge dredged material to waters of the U.S.
Industrial, commercial, or agricultural entities	Industrial, commercial, or agricultural entities that discharge dredged material to waters of the U.S.
Land developers and landowners	Land developers and landowners that discharge dredged material to waters of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to carry out activities affected by this action. This table lists the types of entities that the Agencies are now aware of that carry out activities potentially affected by this action. Other types of entities not listed in the table could also perform activities that are affected. To determine whether your organization or its activities are affected by this action, you should carefully examine the preamble discussion in section II of today's final rule. If you still have questions regarding the applicability of this action to a particular activity, consult the Corps District offices as listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

B. Tulloch Rule and Related Litigation

Section 404 of the Act authorizes the Corps (or a State with an authorized permitting program) to issue permits for the discharge of dredged or fill material into waters of the United States. On August 25, 1993 (58 FR 45008), we issued a regulation (the "Tulloch rule") defining the term "discharge of dredged material" as:

> Any addition of dredged material into, including any redeposit within, the waters of the United States. The term includes, but is not limited to the following: * * * any addition, including any redeposit, of dredged material, including excavated material, into waters of the United States which is incidental to any activity, including mechanized landclearing, ditching, channelization, or other excavation.

33 CFR 323.2(d)(1); 40 CFR 232.2.

The American Mining Congress and several other trade associations challenged this regulation. On January 23, 1997, the U.S. District Court for the District of Columbia ruled that the regulation exceeded our authority under the CWA because it impermissibly regulated "incidental fallback" of dredged material.[1] The court concluded that incidental fallback is not subject to the CWA as an "addition" of pollutants, and declared the rule "invalid and set aside." The Court also enjoined us from applying or enforcing the regulation. The government appealed the court's ruling and, on June 19, 1998, the U.S. Court of Appeals for the District of Columbia Circuit affirmed the district court's decision.[2] *American Mining Congress* v. *United States Army Corps of Engineers*, 951 F.Supp. 267 (D.D.C. 1997); *aff'd sub nom, National Mining Association* v. *United States Army Corps of Engineers*, 145 F.3d 1339 (D.C. Cir. 1998) ("*NMA*").

II. Today's Rule

Today's rule modifies our definition of "discharge of dredged material" in order to respond to the Court of Appeals' holding in *NMA*, and is intended to comply with the district court's injunction. The D.C. Circuit

[1] Incidental fallback results in the return of dredged material virtually to the spot from which it came. *See, NMA*, 145 F.3d at 1403.

[2] The *NMA* decision did not address the definition of "discharge of fill material" (33 CFR 323.2(f); 40 CFR 232.2), and thus did not affect the regulation of discharges of fill material, nor are the Agencies altering that definition in today's rulemaking.

found that the Tulloch rule changed the prior regulatory regime by regulating incidental fallback for the first time. 145 F.3d at 1402. The court found that the rule accomplished this result by defining "discharge" to include "any redeposit" of dredged material. *See*, 145 F.3d at 1403 ("It is undisputed that by requiring a permit for '*any* redeposit' the Tulloch rule covers incidental fallback") (emphasis in original) (citation omitted). The court concluded that incidental fallback is not an "addition" of a pollutant, and that, therefore, our assertion of authority to regulate *any* redeposit of dredged material exceeded our statutory authority. 145 F.3d at 1405 ("We hold only that by asserting jurisdiction over '*any* redeposit,' including incidental fallback, the Tulloch rule outruns the Corps's statutory authority") (emphasis in original). To conform our regulation to this holding we have made two modifications to the rule. First, today's rule deletes use of the word "any" as a modifier of the term "redeposit." Second, today's rule expressly excludes "incidental fallback" from the definition of "discharge of dredged material."

Today's rule does not alter the well-settled doctrine, recognized in *NMA*, that some redeposits of dredged material in waters of the United States constitute a discharge of dredged material and therefore require a section 404 permit. *See* 145 F.3d at 1405 ("But we do not hold that the Corps may not legally regulate some forms of redeposit under its section 404 permitting authority."); 145 F.3d at 1405, n.6 (recognizing that "a redeposit could be an addition to [a] new location and thus a discharge").

Deciding when a particular redeposit is subject to CWA jurisdiction will require a case-by-case evaluation, based on the particular facts of each case. Judicial decisions have established, and the D.C. Circuit recognized in *NMA*, that redeposits associated with the following are subject to CWA jurisdiction: mechanized landclearing, redeposits at various distances from the point of removal (e.g., sidecasting), and removal of dirt and gravel from a streambed and its subsequent redeposit in the waterway after segregation of minerals. 145 F.3d at 1407. *See also, Avoyelles Sportsmen's League* v. *Marsh*, 715 F.2d 897 (5th Cir. 1983) (mechanized landclearing requires section 404 permit); *United States* v. *M.C.C. of Florida*, 772 F.2d 1501 (11th Cir. 1985), *vacated on other grounds*, 481 U.S. 1034 (1987), *readopted in relevant part on remand*, 848 F.2d 1133 (11th Cir. 1988) (redeposit of river bottom sediments on adjacent sea grass beds is an "addition"); *Rybachek* v. *EPA*, 904 F.2d 1276 (9th Cir. 1990) (resuspension of materials by placer miners as part of gold extraction operations is an "addition of a pollutant" under the CWA subject to EPA's regulatory authority); *NMA*, 951 F.Supp. at 270 ("Sidecasting, which involves placing removed soil alongside a ditch, and sloppy disposal practices involving significant discharges into waters, have always been subject to section 404").

Determining whether a particular redeposit constitutes incidental fallback and, under the court's decision is not subject to section 404, will also require evaluation on a case-by-case basis. The *NMA* decision indicates incidental fallback "* * * returns dredged material virtually to the spot from which it came." 145 F.3d at 1403. It also describes incidental fallback as occurring "when redeposit takes place in substantially the same spot as the initial removal." 145 F.3d at 1401. Similarly, the district court described incidental fallback as "the incidental soil movement from excavation, such as the soil that is disturbed when dirt is shoveled, or the back-spill that comes off a bucket and falls back into the same place from which it was removed." 951 F.Supp. at 270.

The court in *NMA* recognized that the CWA "sets out no bright line between incidental fallback on the one hand and regulable redeposits on the other" and that "a reasoned attempt to draw such a line would merit considerable deference." 145 F.3d at 1405. We have not attempted to draw such a line here. Nor have we evaluated (as we did when promulgating the Tulloch rule) the complex legal, factual and policy questions associated with interpreting the reach of the CWA. Rather, we have promulgated today's rule to comply with the injunction issued in *NMA*, and as described below, will expeditiously undertake notice and comment rulemaking that will make a reasoned attempt to more clearly delineate the scope of CWA jurisdiction over redeposits of dredged material in waters of the U.S. In the interim, we will determine on a case-by-case basis whether a particular redeposit of dredged material in waters of the United States requires a section 404 permit, consistent with our CWA authorities and governing case law. Entities that are engaging, or intend to engage, in activities in waters of the U.S. that may result in a "discharge of dredged material" as that term is defined in today's final rule are hereby given notice that the agencies intend to regulate those activities that we find, based on the particular circumstances, would result in an addition of pollutants to waters of the U.S.

III. Future Notice and Comment Rulemaking

As explained in the preamble language accompanying the issuance of theTulloch rule (57 FR 26894 (June 16, 1992); 58 FR 45008 (August 25, 1993)), some small volume discharges associated with mechanized landclearing, ditching, channelization, or other excavation activities were not consistently subject to environmental review under the pre-Tulloch regulations even though waters of the U.S., including wetlands, were destroyed or degraded. By using specialized dredging and disposal techniques some developers sought to use a loophole in those regulations to convert wetlands without the need to obtain a CWA section 404 permit. The section 404 environmental review process is not aimed at preventing development, but instead is designed to avoid unacceptable adverse environmental impacts, and to the extent adverse impacts cannot be avoided, assure they are appropriately minimized or mitigated.

The Agencies are particularly concerned that, without further action to clarify the definition of "discharge of dredged material," large-scale destruction of wetlands could occur, resulting in increased flooding or runoff and harm to neighboring property, pollution of streams and rivers, and loss of valuable habitat. Moreover, available information indicates that such losses are already occurring. Accordingly, the Agencies will expeditiously undertake additional notice and comment rulemaking in furtherance of the CWA's objective to "restore and maintain the chemical, physical, and biological integrity of the Nation's waters." Additionally, the *NMA* court recognized that the CWA "sets out no bright line between incidental fallback on the one hand and regulable redeposits on the other" and that "a reasoned attempt to draw such a line would merit considerable deference." (145 F.3d at 1405). Further rulemaking thus is appropriate not only to ensure that the Nation's wetlands and other waters of the U.S. will continue to receive the protection required by section 404 of the CWA, but also to enhance clarity, certainty, and consistency in determining what activities are subject to section 404 in light of the *NMA* decision.

IV. Related Statutes and Executive Orders

A. Findings Under 5 U.S.C. 553

Under the Administrative Procedure Act (APA), 5 U.S.C. 553, agencies are required to publish a notice of proposed rulemaking and provide an opportunity for the public to comment on any substantive rulemaking action. Notice and comment is not required, however,

> when the agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.

5 U.S.C. 553(b)(3)(B).

Today's rule merely conforms the language in our section 404 regulations to the current status of those regulations after the *NMA* case. The district court judgment, as affirmed by the D.C. Circuit, invalidated application of our regulation to incidental fallback and enjoined us from applying or enforcing the rule. By expressly excluding incidental fallback from the definition of "discharge of dredged material," today's revisions conform the regulations to reflect the legal status quo in light of the *NMA* decision. Therefore, we find that solicitation of public comment is unnecessary.

Under 5 U.S.C. 553(d)(1) and (3), rules must be published at least 30 days prior to their effective date, except where the rule "grants or recognizes an exemption or relieves a restriction," or where justified by the agency for "good cause." Today's rule, in accordance with the *NMA* decision, removes the requirement for a section 404 permit for incidental fallback in waters of the U.S. Accordingly, today's rule is effective immediately.

B. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by the Office of Management and Budget (OMB). The current OMB approval number for information requirements related to the CWA section 404 program is 0710–0003 (expires June 30, 2000). Today's rule merely conforms the definition of "discharge of dredged material" to reflect the ruling in the *NMA* case. It does not establish or modify any information reporting, or record-keeping requirements, and therefore is not subject to the requirements of the Paperwork Reduction Act.

C. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. Today's rule does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

D. Other Statutes and Executive Orders

Today's rule does not establish any new requirements, mandates or procedures. As explained above, today's rule merely conforms the regulations' definition of "discharge of dredged material" to reflect the judicial decision in the *NMA* case. Because today's rule is a "housekeeping" measure undertaken to conform the regulatory language to that judicial determination, it does not result in any additional or new regulatory requirements. In fact, the judicial determination which it reflects has the practical effect of removing incidental fallback from coverage under the regulations. Accordingly, it has been determined that this rule is not a "significant regulatory action" under Executive Order 12866, and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the APA or any other statute, and because it does not impose any requirements on small entities, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule is not subject to E.O. 13045 (62 FR 19885, April 23, 1997) because it is not economically significant as defined under E.O. 12866. Further, EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, we have made such a good cause finding, including the reasons therefore, and established an effective date of May 10, 1999. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

33 CFR Part 323

Navigation, Water Pollution Control, Waterways

40 CFR Part 232

Environmental protection, Wetlands, Water Pollution Control.

Dated: April 27, 1999.

Carol D. Browner,

Administrator, Environmental Protection Agency.

Dated: April 30, 1999.

Joseph W. Westphal,

Assistant Secretary of the Army (Civil Works), Department of the Army.

In consideration of the foregoing, 33 CFR Part 323 and 40 CFR Part 232 are amended as set forth below:

33 CFR CHAPTER II—CORPS OF ENGINEERS, DEPARTMENT OF THE ARMY

PART 323—[AMENDED]

1. The authority citation for Part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend section 323.2(d) as follows:

a. In the first sentence of paragraph (d)(1), remove the words "any redeposit of dredged material" and add, in their place, the words "redeposit of dredged material other than incidental fallback".

b. In paragraph (d)(1)(iii), remove the words "any redeposit," and add, in their place, the words "redeposit other than incidental fallback,".

c. In paragraph (d)(2), add at the end thereof a new paragraph (d)(2)(iii) to read as follows:

§ 232.2 Definitions.

* * * * *

(d) * * *

(2) * * *

(iii) Incidental fallback.

* * * * *

40 CFR CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 232—[AMENDED]

3. The authority citation for Part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

4. In § 232.2 the definition of "discharge of dredged material" is amended as follows:

a. In the first sentence of paragraph (1), remove the words "any redeposit of dredged material" and add, in their place, the words "redeposit of dredged material other than incidental fallback".

b. In paragraph (1)(iii), remove the words "any redeposit," and add, in their place, the words "redeposit other than incidental fallback,".

c. In paragraph (2), add at the end thereof a new paragraph (2)(iii) to read as follows:

§ 232.2 Definitions.

* * * * *

Discharge of dredged material * * *

(2) * * *

(iii) Incidental fallback.

* * * * *

[FR Doc. 99–11680 Filed 5–5–99; 3:41 pm]

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Part III

Environmental Protection Agency

40 CFR Part 9 and Chapter VII

Department of Defense

40 CFR Chapter VII

Uniform National Discharge Standards for Vessels of the Armed Forces; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9 and Chapter VII

DEPARTMENT OF DEFENSE

40 CFR Chapter VII

[FRL–6335–5]

RIN 2040–AC96

Uniform National Discharge Standards for Vessels of the Armed Forces

AGENCY: Environmental Protection Agency (EPA) and Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: This rule applies to discharges incidental to the normal operation of Armed Forces vessels and determines which of these discharges the Armed Forces will be required to control by using a marine pollution control device (MPCD), and which discharges will not require controls.

Today's rule also establishes the mechanism by which States can petition EPA and DOD to review whether or not a discharge should require control by a MPCD or to review a Federal performance standard for a MPCD; and the processes EPA and States must follow to establish no-discharge zones (where any release of a specified discharge is prohibited).

This rule completes the first phase of a three-phase process to set uniform national discharge standards (UNDS) for Armed Forces vessels. This Phase I rule determines the types of vessel discharges that require control by MPCDs and which do not, based on consideration of the anticipated environmental effects of the discharge and other factors listed in the Clean Water Act. Future rulemakings will promulgate the MPCD performance standards for those types of discharges requiring MPCDs (Phase II), and specify the requirements for the design, construction, installation, and use of MPCDs (Phase III).

Uniform national discharge standards will result in enhanced environmental protection because standards will be established for certain discharges that currently are not regulated comprehensively. These standards will also advance the ability of the Armed Forces to better design and build environmentally sound vessels, to train crews to operate vessels in a manner that is protective of the environment, and to maintain operational flexibility both domestically and internationally. In addition, these standards are expected to stimulate the development of innovative vessel pollution control technology.

DATES: The regulation shall become effective June 9, 1999.

ADDRESSES: The complete public record for this rulemaking, including responses to comments received during the rulemaking, can be found under docket number W–97–21. The record is available for review at the Office of Water Docket, Room EB–57, 401 M Street SW., Washington, D.C. 20460 from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Gregory Stapleton (U.S. EPA) at (202) 260–0141, or Mr. David Kopack (U.S. Navy) at (703) 602–3594 ext. 243.

SUPPLEMENTARY INFORMATION:

Regulated Entities

This rule applies to discharges incidental to the normal operation of Armed Forces vessels in State waters and the contiguous zone, establishes procedures by which States can petition EPA and DOD to review whether a discharge should be controlled or to review a performance standard, and establishes procedures for creating no-discharge zones in State waters. Regulated categories and entities include:

Category	Examples of regulated entities
Federal Government.	Vessels of the Armed Forces, including the Navy, Military Sealift Command, Marine Corps, Army, Air Force, and Coast Guard.

The preceding table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA and DOD are now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether a particular category of vessel, discharge from a vessel, or governmental entity is regulated by this action, carefully examine the applicability criteria at 40 CFR 1700.1 in the regulatory text following this preamble. For answers to questions regarding the applicability of this action to a particular entity, consult one of the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Exclusions

This rule does not apply to commercial vessels; private vessels; vessels owned or operated by State, local, or tribal governments; vessels under the jurisdiction of the Army Corps of Engineers; vessels, other than those of the Coast Guard, under the jurisdiction of the Department of Transportation or other federal agencies; vessels preserved as memorials and museums; time- and voyage-chartered vessels; vessels under construction; vessels in drydock; and amphibious vehicles.

Supporting Documentation

The technical basis for this rule is detailed in the "Technical Development Document for Phase I Uniform National Discharge Standards for Vessels of the Armed Forces" (EPA–821–R–99–001), hereafter referred to as the Technical Development Document. This background document is available through EPA's Internet Home Page at http://www.epa.gov/OST/guide, or through the UNDS Internet Home Page at http://206.5.146.100/n45/doc/unds/unds.html. This document is also available from the National Service Center for Environmental Publications, 11029 Kenwood Road, Cincinnati, OH 45242; telephone: 1–800–490–9198; Internet: http://www.epa.gov/ncepi.

Overview

This preamble describes the legal authority, background, technical basis, and other aspects of the final regulation. The definitions, acronyms, and abbreviations used in this notice are defined in Appendix A to the preamble. The regulatory text for this rule (40 CFR Part 1700) follows the preamble.

Organization of This Document

I. Summary of This Rulemaking
  A. Pollution Control Requirements for Vessel Discharges
  B. Effect on State and Local Laws and Regulations
II. Legal Authority and Background
  A. Clean Water Act Statutory Requirements
  B. Summary of Public Outreach and Consultation With States, Tribes, and Federal Agencies
III. Description of Armed Forces Vessels
IV. Developments Since Proposal
  A. Peer Review
  B. Public Comments
V. Related Acts of Congress and Executive Orders
  A. Executive Order 12866
  B. Unfunded Mandates Reform Act
  C. Executive Order 12875: Enhancing the Intergovernmental Partnership
  D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments
  E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act
  F. Paperwork Reduction Act
  G. Executive Order 13045
  H. Endangered Species Act

I. National Technology Transfer and Advancement Act
J. Congressional Review Act
Appendix to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

I. Summary of This Rulemaking

A. Pollution Control Requirements for Vessel Discharges

Today's rule creates a new 40 CFR part 1700 establishing uniform national discharge standards that apply to discharges, other than sewage, incidental to the normal operation of vessels of the Armed Forces. Incidental discharges include effluent from the normal operation of vessel systems or hull protective coatings, but do not include such things as emergency discharges, air emissions, or discharges of trash. These regulations apply to 39 types of vessel discharges and determine which of those discharges require control through the use of marine pollution control devices (MPCDs). A MPCD is any equipment or management practice installed or used onboard a vessel to control a discharge. Today's rule also identifies discharges that are excluded from any requirement for a MPCD because of their low potential for causing adverse impacts on the marine environment. The preamble for the proposed rule and the Technical Development Document describe these discharges in detail. See 63 FR at 45309–45325 (August 25, 1998).

In today's rule, EPA and DOD are requiring the 25 discharges listed in Table 1 to be controlled by MPCDs. These discharges are defined at 40 CFR 1700.4 in the regulatory text following the preamble, and are described in detail in the preamble for the proposed rule (63 FR at 45309–45318). The preamble for the proposed rule and the Technical Development Document also discuss whether and to what extent the discharges have the potential to cause adverse impacts on the marine environment, the availability of MPCDs to mitigate adverse impacts, and the rationale for requiring the use of MPCDs.

TABLE 1.—DISCHARGES REQUIRING MARINE POLLUTION CONTROL DEVICES

Aqueous Film-Forming Foam.
Catapult Water Brake Tank and Post-Launch Retraction Exhaust.
Chain Locker Effluent.
Clean Ballast.
Compensated Fuel Ballast.
Controllable Pitch Propeller Hydraulic Fluid.
Deck Runoff.
Dirty Ballast.
Distillation and Reverse Osmosis Brine.
Elevator Pit Effluent.
Firemain Systems.
Gas Turbine Water Wash.
Graywater.
Hull Coating Leachate.
Motor Gasoline Compensating Discharge.
Non-Oily Machinery Wastewater.
Photographic Laboratory Drains.
Seawater Cooling Overboard Discharge.
Seawater Piping Biofouling Prevention.
Small Boat Engine Wet Exhaust.
Sonar Dome Discharge.
Submarine Bilgewater.
Surface Vessel Bilgewater/Oil-Water Separator Discharge.
Underwater Ship Husbandry.
Weildeck Discharges.

This rule imposes no controls on the 14 types of discharges listed in Table 2. These 14 discharges are defined at 40 CFR 1700.5 in the regulatory text following this preamble. Based on the information in the record, these discharges exhibit a low potential for causing adverse impacts on the marine environment. Therefore, EPA and DOD have determined that it is not reasonable and practicable to require the use of MPCDs to mitigate adverse impacts on the marine environment. The preamble for the proposed rule (63 FR at 45318–45325) and the Technical Development Document describe each of these discharges and the reasons why MPCDs are not required.

TABLE 2.—DISCHARGES EXEMPTED FROM CONTROLS

Boiler Blowdown.
Catapult Wet Accumulator Discharge.
Cathodic Protection.
Freshwater Lay-up.
Mine Countermeasures Equipment Lubrication.
Portable Damage Control Drain Pump Discharge.
Portable Damage Control Drain Pump Wet Exhaust.
Refrigeration/Air Conditioning Condensate.
Rudder Bearing Lubrication.
Steam Condensate.
Stern Tube Seals and Underwater Bearing Lubrication.
Submarine Acoustic Countermeasures Launcher Discharge.

TABLE 2.—DISCHARGES EXEMPTED FROM CONTROLS—Continued

Submarine Emergency Diesel Engine Wet Exhaust.
Submarine Outboard Equipment Grease and External Hydraulics.

In developing this rule, EPA and DOD considered the seven factors listed at CWA 312(n)(2)(B) to determine whether a discharge requires control by a MPCD:

- The nature of the discharge;
- The environmental effects of the discharge;
- The practicability of using the MPCD;
- The effect that installing or using the MPCD would have on the operation or the operational capability of the vessel;
- Applicable U.S. law;
- Applicable international standards; and
- The economic costs of installing and using the MPCD.

In making the determinations, EPA and DOD assessed each discharge for its potential to cause adverse impacts on the marine environment due to the chemical constituents present in the discharge (including bioaccumulative chemicals of concern), thermal pollution, or by introducing nonindigenous aquatic species. EPA and DOD conducted an extensive data gathering effort to characterize the nature of these discharges. This effort included surveys and consultations involving DOD and Coast Guard personnel with expertise in vessel operations and shipboard systems or equipment generating the discharges. The survey and consultation results were supplemented with sampling, where necessary. Details of these efforts are summarized in the preamble to the proposed rule and in the Technical Development Document. See 63 FR at 45305–45306.

A detailed description of the assessment methodology is presented in the preamble for the proposed rule (63 FR at 45306–45307) and the Technical Development Document. The preamble for the proposed rule and the Technical Development Document also describe the results of the assessment and conclusions about the potential for each discharge to cause adverse impacts on the marine environment.

For each discharge that was determined to have the potential to adversely impact the marine environment, EPA and DOD conducted an initial evaluation of the practicability, operational impact, and economic cost of using a MPCD to control each discharge. The results of the MPCD assessments are presented in the Technical Development Document.

EPA and DOD first determined whether a control technology or management practice is currently in place to control the discharge for environmental protection on any vessel type. The use of existing controls on a vessel was considered sufficient demonstration that at least one reasonable and practicable control is available for at least one vessel type.

For discharges without any existing pollution controls, EPA and DOD analyzed potential pollution control options to determine whether it is reasonable and practicable to require the use of MPCDs. For every discharge that was found to have a potential to cause adverse environmental effects, EPA and DOD identified at least one potential MPCD option that could mitigate the environmental impacts of the discharge from at least one class of Armed Forces vessel. Because of this, EPA and DOD determined for these discharges that it is reasonable and practicable to require a MPCD for at least one vessel type.

This Phase I UNDS rule does not address whether existing control technologies or management practices are adequate to mitigate potential adverse impacts. Because of the diversity of vessel types and designs, these controls are usually not uniformly applied to all vessels generating the discharge. In addition, these existing controls do not necessarily represent the only control options available. In a future rulemaking (UNDS Phase II), EPA and DOD will perform a more detailed assessment of the MPCD control options available for each class of vessels and develop MPCD performance standards for the discharges requiring control. The Phase II rule may distinguish among vessel types and sizes, between new and existing vessels, and may determine that MPCD standards are not necessary or appropriate for a particular type or age of vessel. See CWA section 312(n)(3)(B) and (C).

Under Executive Order 13089 (63 FR 32701, June 16, 1998), all Federal agencies whose actions may affect U.S. coral reef ecosystems shall identify these actions, and use their programs and authorities to protect and enhance the conditions of such ecosystems. This Phase I rule is only a preliminary step that simply identifies the discharges that will require control and the discharges that will not require control. These 14 discharges were excluded from control because they exhibit a low potential for causing adverse impacts on the marine environment. Therefore, EPA and DOD have determined that this is not an action that will affect coral reef ecosystems. EPA and DOD will examine the effects of regulated UNDS discharges on coral reefs during Phase II of the UNDS rulemaking, which will establish performance standards for the 25 discharges identified in Phase I as requiring control.

Under Executive Order 13112 (64 FR 6183, Feb 8, 1999), each Federal agency whose actions may affect the status of invasive species shall, to the extent practicable and permitted by law, identify such actions, and, subject to the availability of appropriations, use relevant programs and authorities to, among other things, prevent, detect, control, and monitor the introduction of invasive species. As discussed above, during Phase I of the UNDS process, we evaluated all discharges for the potential to introduce invasive species. Any discharges that were identified as having the potential for introducing invasive species are required by this rule to be controlled by an MPCD. During Phase II, we will consider the control of invasive species when setting standards for these discharges.

B. Effect on State and Local Laws and Regulations

Today's rule affects State and local laws and regulations in several ways. Under CWA section 312(n)(6), States and their political subdivisions are prohibited from adopting or enforcing any State or local statute or regulation with respect to the discharges exempted from control (listed in Table 2) once this rule is in effect, other than to establish no-discharge zones for these discharges. States and their political subdivisions will be similarly prohibited from adopting or enforcing any statutes or regulations affecting the discharges requiring marine pollution control devices (listed in Table 1) once regulations governing MPCDs for those discharges are in effect.

Second, this rule establishes the procedural mechanisms by which a State may petition EPA and DOD to review whether a discharge should be controlled by a MPCD. Finally, this rule codifies the process for establishing no-discharge zones (where any release of a

specified discharge is prohibited) where necessary to protect and enhance the quality of some or all of the waters within a State. These procedures, contained in 40 CFR 1700.6 through 1700.13, are discussed in the preamble for the proposed rule (63 FR at 45326–45328).

II. Legal Authority and Background

A. Clean Water Act Statutory Requirements

This regulation is promulgated under the authority of section 312 and 502 of the Clean Water Act (33 U.S.C. 1322 and 1362). The Assistant Secretary of the Navy has been delegated the authority and responsibility of the Secretary of Defense to develop Uniform National Discharge Standards pursuant to section 312 of the Clean Water Act, including authority to sign this final action.

B. Summary of Public Outreach and Consultation With States, Tribes, and Federal Agencies

In developing this rule, EPA and DOD consulted with other interested Federal agencies, States, and environmental organizations. Other Federal agencies that have been involved in UNDS development include the Coast Guard (for the Department of Transportation), the Department of State, and the National Oceanic and Atmospheric Administration (for the Department of Commerce). The Coast Guard has been involved in all aspects of UNDS development. The other agencies have participated with the DOD, EPA, and the Coast Guard in the UNDS Executive Steering Committee, which is responsible for UNDS policy development and is composed of senior-level managers. Separately, the DOD and EPA have held discussions with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service on UNDS matters.

Two mechanisms have been used to consult with States. First, a representative from the Environmental Council of the States (ECOS) is a member of the Executive Steering Committee. ECOS is the national association of State and territorial environmental commissioners and has been established, in part, to provide State positions on environmental issues to EPA. Second, representatives from the Navy (as the lead for the DOD), EPA, and the Coast Guard met with each State expressing an interest in the UNDS development. Information on participation of States in the consultation meetings and the subjects discussed is presented in the Technical Development Document and supporting documents in the public record for this rule. See "Uniform National Discharge Standards (UNDS) State Consultation Meetings (Round #1) Compendium of Minutes" and "Uniform National Discharge Standards (UNDS) Consultation Meetings (Round #2) Compendium of Minutes."

The Navy and EPA publish a newsletter that contains feature articles on UNDS-related subjects (e.g., nonindigenous species, Navy research and development programs), provides answers to frequently asked questions, and provides an update on recent progress and upcoming events. The newsletter is mailed to State and environmental group representatives, Armed Forces and EPA contacts, and interested members of the general public. The Navy also maintains an UNDS web site on the Internet (http://206.5.146.100/n45/doc/unds/unds.html) that provides UNDS legislative information, a summary of the technical and management approach to rule development, and a description of the benefits expected to result from the development of UNDS.

In August 1998, EPA and DOD also sent an informational letter and fact sheet on UNDS to members of EPA's Tribal Operations Committee and 38 intertribal organizations. The Tribal Operations Committee is comprised of 19 Tribal leaders or their Environmental Program Managers (referred to as the "Tribal Caucus") and EPA's Senior Leadership Team, including the Administrator, the Deputy Administrator and EPA's Assistant Administrators and Regional Administrators.

III. Description of Armed Forces Vessels

Section 312(a)(14) of the CWA, as amended by the National Defense Authorization Act of 1996, defines a vessel of the Armed Forces as "(A) any vessel owned or operated by the Department of Defense, other than a time or voyage chartered vessel; and (B) any vessel owned or operated by the Department of Transportation that is designated by the Secretary of the department in which the Coast Guard is operating as a vessel equivalent to a vessel [owned or operated by the DOD]." Section 312 of the CWA defines new vessel and existing vessel as every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on the navigable waters of the United States. See CWA sections 312(a)(1) and 312(a)(2). Also see 40 CFR 140.1(d).

The scope of the UNDS legislation addresses incidental discharges from over 7,000 vessels (i.e., ships, submarines, and small boats and craft) of differing designs and mission requirements. The Armed Forces that operate vessels subject to UNDS include the Navy, Military Sealift Command, Army, Marine Corps, Air Force, and Coast Guard. Table 3 summarizes the number of vessels operated by each of these branches of the Armed Forces as of August 1997. Armed Forces vessels and their operating locations are discussed in more detail in the Technical Development Document and in the preamble to the proposed rule. See 63 FR at 45302–45304.

This rule applies only to Armed Forces vessels. This rule does not apply to commercial vessels; privately owned vessels; vessels owned or operated by State, local, or tribal governments; vessels under the jurisdiction of the Army Corps of Engineers; vessels, other than those of the Coast Guard, under the jurisdiction of the Department of Transportation; vessels owned or operated by other Federal agencies that are not part of the Armed Forces; vessels preserved as memorials and museums; time- and voyage-chartered vessels; vessels under construction; vessels in drydock; and amphibious vehicles. For additional discussion regarding the types of vessels that are beyond the scope of this rule, see the Technical Development Document.

TABLE 3.—NUMBER OF ARMED FORCES VESSELS (AUGUST 1997)

Branch of armed forces	Number of vessels
Navy	4,760
Military Sealift Command	57
Army	334
Marine Corps	538
Air Force	36
Coast Guard	1,445
Total:	7,170

IV. Developments Since Proposal

A. Peer Review

A technical report was prepared for each of the discharges covered by this rule. These Nature of Discharge (NOD) reports include a discussion of how the discharge is generated, discharge volumes and frequencies, where the discharge occurs, chemical constituents present in the discharge, and relevant regulatory information. The NOD reports also present an assessment of the potential for a discharge to cause an adverse impact on the marine environment. NOD reports for each discharge are included as an appendix

to the Technical Development Document.

NOD reports for five discharges were selected for peer review. Peer reviewers were asked whether the data and process information presented in the NOD reports are sufficient to characterize the discharges; whether the analyses are appropriate for the discharges; and whether the conclusions regarding the discharges' potential for causing adverse environmental impacts are supported by the information presented in the NOD reports.

Comments submitted by the peer reviewers are compiled in the "Peer Review Comments Document for Nature of Discharge Reports," which is in the rulemaking record. Specific responses to peer review comments and how those comments were addressed in developing the final rule are provided in the document titled "Uniform National Discharge Standards for Vessels of the Armed Forces Phase I Response to Peer Review Comments." Except as discussed below, the changes resulting from peer review were largely editorial.

Upon reviewing the comments, EPA and DOD reassessed the steam condensate discharge by comparing the constituent concentrations to chronic, rather than acute, water quality criteria because the discharge can be either intermittent or continuous. The constituents exceeding the chronic criteria are the same as those exceeding the acute water quality criteria. As discussed in the preamble to the proposed rule, EPA and DOD determined that because of the low mass loadings released in the discharge (a fleetwide total of 49 lbs/year copper and 28 lbs/year nickel; the mass discharged in any given port is only a fraction of that total), the steam condensate discharge has a low potential to cause an adverse impact on the marine environment. Comparing the steam condensate discharge to chronic water quality criteria does not change this conclusion.

Several comments addressed the thermal analysis of the steam condensate discharge. The potential for adverse thermal impacts from the steam condensate discharge is discussed below in section IV.B.2 of the preamble.

B. Public Comments

Only two letters providing comments on the proposed rule were received—both from States. The most significant of these comments addressed:

- The types of MPCDs that should be considered in setting performance standards or the constituents the MPCDs should be designed to remove;
- The methodology used in Phase I to assess the potential for discharges to cause adverse impacts on the marine environment;
- The relationship of UNDS to the establishment of total maximum daily loads (TMDLs) for waterbodies and the imposition of wasteload allocations; and
- The exclusion of National Defense Reserve Fleet vessels from UNDS requirements.

A detailed discussion of EPA and DOD's responses to the comments on the proposed rule is provided in "Response to Public Comments on Proposed Uniform National Discharge Standards, Phase I," which is in the rulemaking record. An overview of the more significant comments is presented below.

1. MPCD Design

The comments regarding MPCDs generally raised issues that will be addressed during the development of the Phase II rule and are beyond the scope of this Phase I rule. For example, the comments suggested that pierside MPCDs should be considered during the development of UNDS and identified certain constituents that MPCDs should be designed to remove (i.e., pathogens in graywater, and non-indigenous aquatic species in dirty ballast water and compensated fuel ballast water). In UNDS Phase II, EPA and DOD will perform a more detailed assessment of the MPCD control options available for each class of vessels and promulgate MPCD performance standards for the discharges requiring control.

2. Environmental Assessment Methodology

With respect to the comments about the environmental assessment methodology used for this rule, EPA and DOD believe that the analyses performed for this rule are consistent with the requirements of CWA section 312(n) and are sufficient for the purpose of determining which discharges should require the use of a MPCD to mitigate adverse impacts on the marine environment, and to determine for which discharges it is not reasonable and practicable to require the use of a MPCD to mitigate adverse impacts on the marine environment.

In response to public and peer review comments regarding the hydrodynamic model used to evaluate the thermal effects from steam condensate discharges, EPA and DOD reanalyzed the discharge plume characteristics. First, EPA and DOD reassessed the thermal effects model used at proposal to confirm that accurate values had been used for input parameters such as current velocity and air temperature. This review identified several instances where overly conservative values had been used at proposal (e.g., information in the record shows that a more accurate discharge temperature for modeling thermal effects is 180°F rather than the original 212°F), resulting in overstating the thermal effects. EPA and DOD corrected these values in its modeling for the final rule, as discussed in detail in the comment response documents for public and peer review comments, and in the Technical Development Document.

EPA and DOD also used a more sophisticated model capable of predicting the plume size and temperature, taking into account factors (e.g., tidal effects and turbulent mixing in the water body) that are not adequately taken into account by the model used at proposal. This hydrodynamic and transport model, CH3D, predicts the thermal plume from an aircraft carrier will extend no more than 80 meters from the discharge pipe along the length of the vessel (not extending beyond the end of the ship) and 30 meters away from the vessel.

The thermal plume from other ships typically docked in Bremerton, Washington was also reassessed using these corrected values. The model results indicate that these ships will not generate a thermal plume exceeding Washington State thermal criteria, and that aircraft carriers are the only vessels that may exceed criteria.

Both the original and more sophisticated models continue to overestimate the size of the thermal plume because they do not account adequately for either the mixing that initially occurs as the discharge enters the receiving water or the loss of heat to the atmosphere. However, EPA and DOD note that for an aircraft carrier, the predicted plume would cover only about 5% of the width and 2% of the length (less than 0.1% of the total surface area) of the inlet where the ships are docked. Such a localized plume would have a low potential for interfering with the passage of aquatic organisms in the water body and would have a limited impact on the organisms that reside near the water surface. In addition, because the discharge is freshwater (no salinity) and warmer than the receiving water, the plume floats along the surface of the water and has no significant impact on bottom-dwelling organisms. Therefore, the steam condensate discharge has a low potential to cause adverse impacts on the marine environment and the discharge does not require control by a MPCD.

3. TMDL/Wasteload Allocations

One commenter asserted that, where Armed Forces vessels are identified as sources contributing to violations of water quality standards, States should be allowed to impose a wasteload allocation to Armed Forces vessels even if it causes the vessels to install pollution control devices not identified by uniform national discharge standards. EPA and DOD disagree with the commenter's assertion. Even though Armed Forces vessels may discharge chemical substances for which TMDLs are being written, section 312(n)(6) of the CWA preempts States from regulating these discharges once the UNDS regulations are effective, including issuing a wasteload allocation (WLA) for these discharges. A State, however, may avail itself of the provisions in CWA section 312(n)(7) to establish a no-discharge zone, either through State prohibition or EPA prohibition (see 40 CFR 1700.7–1700.10).

It is also noted that the UNDS legislation amended the CWA to exclude from the definition of "pollutant" a "discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of section 312 of the CWA. CWA § 502(6). Because CWA section 303(d)(1)(C) provides that States establish TMDLs for "pollutants" which the Administrator identifies under section 402(a)(2) as suitable for such calculation, and because Armed Forces vessel discharges are not "pollutants" as that term is defined in the CWA, EPA and DOD interpret the CWA to mean that TMDLs may not be written for discharges incidental to the normal operation of a vessel of the Armed Forces.

4. National Defense Reserve Fleet (NDRF) Vessels

In its comments, one State questioned the reason for excluding NDRF vessels from the requirements of UNDS. Under CWA section 312(a)(14), a vessel owned or operated by the Department of Transportation is not defined as a "vessel of the Armed Forces"—and thus is not subject to uniform national discharge standards—unless it has been designated by the Secretary of Transportation as being "a vessel equivalent to a vessel [owned or operated by the Department of Defense]." NDRF vessels are owned or operated by the Department of Transportation, and they have not been designated by the Secretary of Transportation as being equivalent to vessels owned or operated by DOD. Consequently, NDRF vessels are not vessels of the Armed Forces, as defined by the statute, and they are not subject to uniform national discharge standards.

V. Related Acts of Congress and Executive Orders

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), EPA and DOD must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this Phase I rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

B. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under Section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Today's rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, or tribal governments or the private sector. The rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. Thus today's rule is not subject to the requirements of Sections 202 and 205 of the UMRA.

Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under Section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with regulatory requirements. EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. This rule does not significantly or uniquely affect small governments because the preemption that occurs after promulgation of this rule applies to both large governments (States) as well as their political subdivisions (which would include small governments). Further, the preemption originates from the CWA rather than this rule. Finally, the no-discharge zone procedures in the rule would apply only to States, not their political subdivisions. Thus, this rule is not subject to the requirements of Section 203 of the UMRA. Nevertheless, as described elsewhere in this preamble and in the record for the rule, DOD and EPA sought meaningful and timely input from States and localities on this rule.

C. Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a

description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. The rule applies to vessels of the Armed Forces. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. As previously discussed, this rule does not impose any mandates on tribal governments. Further, as discussed elsewhere in this preamble and the record to the rule, EPA and DOD do not anticipate any significant or unique effects to communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act, as Amended by the Small Business Regulatory Enforcement Fairness Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA and DOD generally are required to prepare a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if the Administrator of EPA and the Secretary of Defense certify that the rule will not have a significant economic impact on a substantial number of small entities, EPA and DOD are not required to prepare that analysis. The RFA recognizes three kinds of small entities, and defines them as follows: (1) Small governmental jurisdictions: any government of a district with a population of less than 50,000; (2) Small business: any business which is independently owned and operated and not dominant in its field, as defined by the Small Business Administration regulations under the Small Business Act; and (3) Small organization: any not for profit enterprise that is independently owned and operated and not dominant in its field. This Phase I rule addresses discharges from vessels of the Armed Forces and imposes information collection requirements on States that wish to establish no-discharge zones or petition the Secretary of Defense and the Administrator to review a determination regarding the need for a marine pollution control device or a standard issued under Phase II of the rule. Small entities are not affected by this rule. Pursuant to section 605(b) of the RFA, the Administrator and the Secretary certify that this Phase I rule will not have a significant economic impact on a substantial number of small entities.

F. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, as an amendment to the collection assigned OMB control number 2040–0187. There were no OMB or public comments on this information collection request.

There are three information collections associated with this rule, each of which is required by statute in order for a State to obtain a benefit. Each information collection is discussed separately below (including authority and projected annual hour and cost burdens). The total projected annual hour burden for all three information collections is 958 hours; the projected annual cost burden is $31,871.

In order for a State to establish a No-discharge Zone (NDZ) by State prohibition, EPA must make the following determinations: (i) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (ii) that the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(A), 33 U.S.C. 1322(n)(7)(A)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.9(a). The information requested from the State will be used by EPA to make the determinations it is required to make by law in order for a State prohibition to be effective.

The projected annual hour burden for requests by a State to EPA to make the determinations required for the State to establish a NDZ by State prohibition is 717 hours (with an average of 179.25 burden hours per response and an estimated 4 respondents per year). The projected annual cost burden is $23,815 (with an average of $23,215 for labor, $0 for capital and start-up costs, $600 for operation and maintenance, and $0 for the purchase of services).

In order for EPA to establish a NDZ by EPA prohibition (upon application of a State), EPA must make the following determinations: (i) that the protection and enhancement of the quality of the specified waters require a prohibition of the discharge; (ii) that adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the waters to which the prohibition would apply; and (iii) that the prohibition will not have the effect of discriminating against a vessel of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessel (see CWA section 312(n)(7)(B), 33 U.S.C. 1322(n)(7)(B)). The State must provide EPA enough information to be able to make those determinations. The specific information being requested is listed in 40 CFR 1700.10(a). The information requested from the State will be used by EPA to make the determinations it is

required to make by law in order to establish a NDZ.

The projected annual hour burden for applications by a State to EPA to establish a NDZ by EPA prohibition is 194.25 hours (with an average of 194.25 burden hours per response and an estimated 1 respondent per year). The projected annual cost burden is $6,478 (with an average of $6,328 for labor, $0 for capital and start-up costs, $150 for operation and maintenance, and $0 for the purchase of services).

The Governor of any State may request EPA and the Secretary of Defense to review (i) a determination of whether an UNDS discharge requires a control, or (ii) a standard of performance for a control on an UNDS discharge, by submitting a petition which discusses significant new scientific and technical information that could reasonably result in a change to the determination or standard (see CWA section 312(n)(5)(D), 33 U.S.C. 1322(n)(5)(D)). The State must provide EPA this information and a discussion of how the information is relevant to one or more of the seven factors which EPA and the Secretary of Defense are required to consider in making these determinations and standards (see CWA section 312(n)(2)(B), 33 U.S.C. 1322(n)(2)(B)). These requirements are listed in 40 CFR 1700.12. The information requested from the State will be used by EPA and the Secretary of Defense in order to review any determinations and standards promulgated under UNDS.

The projected annual hour burden for petitions from a State to EPA and DOD to review a determination or standard is 46.25 hours (with an average of 46.25 burden hours per response and an estimated 1 respondent per year). The projected annual cost burden is $1,578 (with an average of $1,428 for labor, $0 for capital and start-up costs, $150 for operation and maintenance, and $0 for the purchase of services).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. EPA is amending the table in 40 CFR part 9 of currently approved ICR control numbers issued by OMB for various regulations to list the information requirements contained in this final rule.

G. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it is not economically significant under E.O. 12866 and it does not establish an environmental standard intended to mitigate health or safety risks.

H. Endangered Species Act

EPA and DOD have discussed the applicability of the Endangered Species Act (ESA) to the three phases of the Uniform National Discharge Standards rulemaking with the U.S. Fish and Wildlife Service and National Marine Fisheries Service. As Phase I is a preliminary step, simply identifying the discharges that will require control and the discharges that will not require control, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service have agreed that the consultation requirements of section 7 of the ESA do not apply to this rule. If EPA and DOD determine that Phase II may affect listed species, EPA and DOD will initiate consultation during Phase II of the UNDS rulemaking, which will establish performance standards for the discharges identified in Phase I as requiring control.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), EPA and DOD are required to use voluntary consensus standards in their regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA or DOD, the Act requires the Agency and Department to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards.

EPA and DOD find that this rule does not address any technical standards subject to the NTTAA. It simply addresses which discharges would or would not require a MPCD.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 9, 1999.

Appendix to the Preamble—Abbreviations, Acronyms, and Other Terms Used in This Document

Administrator—The Administrator of the U.S. Environmental Protection Agency
CFR—U.S. Code of Federal Regulations
Clean Water Act—The Federal Water Pollution Control Act Amendments of 1972 (33 U.S.C. 1251 *et seq.*)
CWA—Clean Water Act
DOD—U.S. Department of Defense

EPA—U.S. Environmental Protection Agency
MPCD—Marine pollution control device
NDRF—National Defense Reserve Fleet
No-discharge zone—An area of water into which one or more specified discharges is prohibited, as established under procedures set forth in 40 CFR 1700.7 to 1700.10
UNDS—Uniform national discharge standards

List of Subjects

40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

40 CFR Part 1700

Environmental protection, Armed Forces, Vessels, Coastal zone, Reporting and recordkeeping requirements, Water pollution control.

Dated: April 27, 1999.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Dated: April 7, 1999.

Robert B. Pirie, Jr.,

Assistant Secretary of the Navy (Installations and Environment).

For the reasons set forth in the preamble, EPA amends 40 CFR Chapter I and EPA and DOD establish 40 CFR chapter VII of the Code of Federal Regulations consisting of part 1700 as follows:

CHAPTER I—ENVIRONMENTAL PROTECTION AGENCY

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 et seq., 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006. 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 et seq.,1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. P.973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 et seq., 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

40 CFR CHAPTER VII—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE

2. In § .9.1 the table is amended by adding a new heading with an entry in numerical order to read as follows:

§ .9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
* * * * *	
* *	
Uniform National Discharge Standards for Vessels of the Armed Forces	
1700.9–1700.12	2040–0187
* * * * *	
* *	

3. Chapter VII consisting of Part 1700 is established to read follows:

CHAPTER VII—ENVIRONMENTAL PROTECTION AGENCY AND DEPARTMENT OF DEFENSE; UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES

PART 1700—UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES

Subpart A—Scope

Sec.
1700.1 Applicability.
1700.2 Effect.
1700.3 Definitions.

Subpart B—Discharge Determinations

1700.4 Discharges requiring control.
1700.5 Discharges not requiring control.

Subpart C—Effect on States

1700.6 Effect on State and local statutes and regulations.

No-Discharge Zones

1700.7 No-discharge zones.
1700.8 Discharges for which no-discharge zones can be established.
1700.9 No-discharge zones by State prohibition.
1700.10 No-discharge zones by EPA prohibition.

State Petition for Review

1700.11 State petition for review of determinations or standards.
1700.12 Petition requirements.
1700.13 Petition decisions.

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

1700.14 Marine Pollution Control Device (MPCD) Performance Standards. [reserved]

Authority: 33 U.S.C. 1322, 1361.

Subpart A—Scope

§ 1700.1 Applicability.

(a) This part applies to the owners and operators of Armed Forces vessels, except where the Secretary of Defense finds that compliance with this part is not in the interest of the national security of the United States. This part does not apply to vessels while they are under construction, vessels in drydock, amphibious vehicles, or vessels under the jurisdiction of the Department of Transportation other than those of the Coast Guard.

(b) This part also applies to States and political subdivisions of States.

§ 1700.2 Effect.

(a) This part identifies those discharges, other than sewage, incidental to the normal operation of Armed Forces vessels that require control within the navigable waters of the United States and the waters of the contiguous zone, and those discharges that do not require control. Discharges requiring control are identified in § 1700.4. Discharges not requiring control are identified in § 1700.5. Federal standards of performance for each required Marine Pollution Control Device are listed in § 1700.14. This part is not applicable beyond the contiguous zone.

(b) This part prohibits States and their political subdivisions from adopting or enforcing State or local statutes or regulations controlling the discharges from Armed Forces vessels listed in §§ 1700.4 and 1700.5 according to the timing provisions in § 1700.6, except to establish a no-discharge zone by State prohibition in accordance with § 1700.9, or to apply for a no-discharge zone by EPA prohibition in accordance with § 1700.10. This part also provides a mechanism for States to petition the Administrator and the Secretary to review a determination of whether a discharge requires control, or to review a Federal standard of performance for a Marine Pollution Control Device, in accordance with §§ 1700.11 through 1700.13.

§ 1700.3 Definitions.

Administrator means the Administrator of the United States Environmental Protection Agency or that person's authorized representative.

Armed Forces vessel means a vessel owned or operated by the United States Department of Defense or the United States Coast Guard, other than vessels that are time or voyage chartered by the Armed Forces, vessels of the U.S. Army Corps of Engineers, or vessels that are memorials or museums.

Discharge incidental to the normal operation of a vessel means a discharge, including, but not limited to: graywater, bilgewater, cooling water, weather deck runoff, ballast water, oil water separator effluent, and any other pollutant discharge from the operation of a marine propulsion system, shipboard maneuvering system, crew habitability system, or installed major equipment, such as an aircraft carrier elevator or a catapult, or from a protective,

preservative, or absorptive application to the hull of a vessel; and a discharge in connection with the testing, maintenance, and repair of any of the aforementioned systems whenever the vessel is waterborne, including pierside. A discharge incidental to normal operation does not include:

(1) Sewage;

(2) A discharge of rubbish, trash, or garbage;

(3) A discharge of air emissions resulting from the operation of a vessel propulsion system, motor driven equipment, or incinerator;

(4) A discharge that requires a National Pollutant Discharge Elimination System (NPDES) permit under the Clean Water Act; or

(5) A discharge containing source, special nuclear, or byproduct materials regulated by the Atomic Energy Act.

Environmental Protection Agency, abbreviated EPA, means the United States Environmental Protection Agency.

Marine Pollution Control Device, abbreviated MPCD, means any equipment or management practice installed or used on an Armed Forces vessel that is designed to receive, retain, treat, control, or discharge a discharge incidental to the normal operation of a vessel, and that is determined by the Administrator and Secretary to be the most effective equipment or management practice to reduce the environmental impacts of the discharge consistent with the considerations in Clean Water Act section 312(n)(2)(B).

No-discharge zone means an area of specified waters established pursuant to this regulation into which one or more specified discharges incidental to the normal operation of Armed Forces vessels, whether treated or untreated, are prohibited.

Secretary means the Secretary of the United States Department of Defense or that person's authorized representative.

United States includes the States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Canal Zone, and the Trust Territory of the Pacific Islands.

Vessel includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on navigable waters of the United States or waters of the contiguous zone, but does not include amphibious vehicles.

Subpart B—Discharge Determinations

§ 1700.4 Discharges requiring control.

For the following discharges incidental to the normal operation of Armed Forces vessels, the Administrator and the Secretary have determined that it is reasonable and practicable to require use of a Marine Pollution Control Device for at least one class of vessel to mitigate adverse impacts on the marine environment:

(a) Aqueous Film-Forming Foam: the firefighting foam and seawater mixture discharged during training, testing, or maintenance operations.

(b) Catapult Water Brake Tank & Post-Launch Retraction Exhaust: the oily water skimmed from the water tank used to stop the forward motion of an aircraft carrier catapult, and the condensed steam discharged when the catapult is retracted.

(c) Chain Locker Effluent: the accumulated precipitation and seawater that is emptied from the compartment used to store the vessel's anchor chain.

(d) Clean Ballast: the seawater taken into, and discharged from, dedicated ballast tanks to maintain the stability of the vessel and to adjust the buoyancy of submarines.

(e) Compensated Fuel Ballast: the seawater taken into, and discharged from, ballast tanks designed to hold both ballast water and fuel to maintain the stability of the vessel.

(f) Controllable Pitch Propeller Hydraulic Fluid: the hydraulic fluid that discharges into the surrounding seawater from propeller seals as part of normal operation, and the hydraulic fluid released during routine maintenance of the propellers.

(g) Deck Runoff: the precipitation, washdowns, and seawater falling on the weather deck of a vessel and discharged overboard through deck openings.

(h) Dirty Ballast: the seawater taken into, and discharged from, empty fuel tanks to maintain the stability of the vessel.

(i) Distillation and Reverse Osmosis Brine: the concentrated seawater (brine) produced as a byproduct of the processes used to generate freshwater from seawater.

(j) Elevator Pit Effluent: the liquid that accumulates in, and is discharged from, the sumps of elevator wells on vessels.

(k) Firemain Systems: the seawater pumped through the firemain system for firemain testing, maintenance, and training, and to supply water for the operation of certain vessel systems.

(l) Gas Turbine Water Wash: the water released from washing gas turbine components.

(m) Graywater: galley, bath, and shower water, as well as wastewater from lavatory sinks, laundry, interior deck drains, water fountains, and shop sinks.

(n) Hull Coating Leachate: the constituents that leach, dissolve, ablate, or erode from the paint on the hull into the surrounding seawater.

(o) Motor Gasoline and Compensating Discharge: the seawater taken into, and discharged from, motor gasoline tanks to eliminate free space where vapors could accumulate.

(p) Non-Oily machinery wastewater: the combined wastewater from the operation of distilling plants, water chillers, valve packings, water piping, low- and high-pressure air compressors, and propulsion engine jacket coolers.

(q) Photographic Laboratory Drains: the laboratory wastewater resulting from processing of photographic film.

(r) Seawater Cooling Overboard Discharge: the discharge of seawater from a dedicated system that provides noncontact cooling water for other vessel systems.

(s) Seawater Piping Biofouling Prevention: the discharge of seawater containing additives used to prevent the growth and attachment of biofouling organisms in dedicated seawater cooling systems on selected vessels.

(t) Small Boat Engine Wet Exhaust: the seawater that is mixed and discharged with small boat propulsion engine exhaust to cool the exhaust and quiet the engine.

(u) Sonar Dome Discharge: the leaching of antifoulant materials into the surrounding seawater and the release of seawater or freshwater retained within the sonar dome.

(v) Submarine Bilgewater: the wastewater from a variety of sources that accumulates in the lowest part of the submarine (i.e., bilge).

(w) Surface Vessel Bilgewater/Oil-Water Separator Effluent: the wastewater from a variety of sources that accumulates in the lowest part of the vessel (the bilge), and the effluent produced when the wastewater is processed by an oil water separator.

(x) Underwater Ship Husbandry: the materials discharged during the inspection, maintenance, cleaning, and repair of hulls performed while the vessel is waterborne.

(y) Welldeck Discharges: the water that accumulates from seawater flooding of the docking well (welldeck) of a vessel used to transport, load, and unload amphibious vessels, and from maintenance and freshwater washings of the welldeck and equipment and vessels stored in the welldeck.

§ 1700.5 Discharges not requiring control.

For the following discharges incidental to the normal operation of Armed Forces vessels, the Administrator and the Secretary have

determined that it is not reasonable or practicable to require use of a Marine Pollution Control Device to mitigate adverse impacts on the marine environment:

(a) Boiler Blowdown: the water and steam discharged when a steam boiler is blown down, or when a steam safety valve is tested.

(b) Catapult Wet Accumulator Discharge: the water discharged from a catapult wet accumulator, which stores a steam/water mixture for launching aircraft from an aircraft carrier.

(c) Cathodic Protection: the constituents released into surrounding water from sacrificial anode or impressed current cathodic hull corrosion protection systems.

(d) Freshwater Lay-up: the potable water that is discharged from the seawater cooling system while the vessel is in port, and the cooling system is in lay-up mode (a standby mode where seawater in the system is replaced with potable water for corrosion protection).

(e) Mine Countermeasures Equipment Lubrication: the constituents released into the surrounding seawater by erosion or dissolution from lubricated mine countermeasures equipment when the equipment is deployed and towed.

(f) Portable Damage Control Drain Pump Discharge: the seawater pumped through the portable damage control drain pump and discharged overboard during testing, maintenance, and training activities.

(g) Portable Damage Control Drain Pump Wet Exhaust: the seawater mixed and discharged with portable damage control drain pump exhaust to cool the exhaust and quiet the engine.

(h) Refrigeration and Air Conditioning Condensate: the drainage of condensed moisture from air conditioning units, refrigerators, freezers, and refrigerated spaces.

(i) Rudder Bearing Lubrication: the oil or grease released by the erosion or dissolution from lubricated bearings that support the rudder and allow it to turn freely.

(j) Steam Condensate: the condensed steam discharged from a vessel in port, where the steam originates from port facilities.

(k) Stern Tube Seals and Underwater Bearing Lubrication: the seawater pumped through stern tube seals and underwater bearings to lubricate and cool them during normal operation.

(l) Submarine Acoustic Countermeasures Launcher Discharge: the seawater that is mixed with acoustic countermeasure device propulsion gas following a countermeasure launch that is then exchanged with surrounding seawater, or partially drained when the launch assembly is removed from the submarine for maintenance.

(m) Submarine Emergency Diesel Engine Wet Exhaust: the seawater that is mixed and discharged with submarine emergency diesel engine exhaust to cool the exhaust and quiet the engine.

(n) Submarine Outboard Equipment Grease and External Hydraulics: the grease released into the surrounding seawater by erosion or dissolution from submarine equipment exposed to seawater.

Subpart C—Effect on States

§ 1700.6 Effect on State and local statutes and regulations.

(a) After the effective date of a final rule determining that it is not reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge, except that States may establish a no-discharge zone by State prohibition (as provided in § 1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10).

(b)(1) After the effective date of a final rule determining that it is reasonable and practicable to require use of a Marine Pollution Control Device regarding a particular discharge incidental to the normal operation of an Armed Forces vessel, States may apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10) for that discharge.

(2) After the effective date of a final rule promulgated by the Secretary governing the design, construction, installation, and use of a Marine Pollution Control Device for a discharge listed in § 1700.4, States or political subdivisions of States may not adopt or enforce any State or local statute or regulation, including issuance or enforcement of permits under the National Pollutant Discharge Elimination System, controlling that discharge except that States may establish a no-discharge zone by State prohibition (as provided in § 1700.9), or apply for a no-discharge zone by EPA prohibition (as provided in § 1700.10).

(c) The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for any discharge listed in § 1700.4 or § 1700.5, or review a Federal standard of performance for a Marine Pollution Control Device.

No-Discharge Zones

§ 1700.7 No-discharge zones.

For this part, a no-discharge zone is a waterbody, or portion thereof, where one or more discharges incidental to the normal operation of Armed Forces vessels, whether treated or not, are prohibited. A no-discharge zone is established either by State prohibition using the procedures in § 1700.9, or by EPA prohibition, upon application of a State, using the procedures in § 1700.10.

§ 1700.8 Discharges for which no-discharge zones can be established.

(a) A no-discharge zone may be established by State prohibition for any discharge listed in § 1700.4 or § 1700.5 following the procedures in § 1700.9. A no-discharge zone established by a State using these procedures may apply only to those discharges that have been preempted from other State or local regulation pursuant to § 1700.6.

(b) A no-discharge zone may be established by EPA prohibition for any discharge listed in § 1700.4 or § 1700.5 following the procedures in § 1700.10.

§ 1700.9 No-discharge zones by State prohibition.

(a) A State seeking to establish a no-discharge zone by State prohibition must send to the Administrator the following information:

(1) The discharge from § 1700.4 or § 1700.5 to be prohibited within the no-discharge zone.

(2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.

(3) A determination that the protection and enhancement of the waters described in paragraph (a)(2) of this section require greater environmental protection than provided by existing Federal standards.

(4) A complete description of the facilities reasonably available for collecting the discharge including:

(i) A map showing their location(s) and a written location description.

(ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.

(iii) The schedule of operating hours of the facilities.

(iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.

(v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.

(5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying the prohibition to all vessels in the area, the State must demonstrate the technical or environmental basis for applying the prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

(i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.

(ii) A description of State efforts to control the discharge from non-Armed Forces vessels.

(b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the two determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of any prohibition on Armed Forces vessels.

(1) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.

(2) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, of the vessels.

(c) EPA will notify the State in writing of the result of the determinations under paragraph (b) of this section, and will provide a written explanation of any negative determinations. A no-discharge zone established by State prohibition will not go into effect until EPA determines that the conditions of paragraph (b) of this section have been met.

§ 1700.10 No-discharge zones by EPA prohibition.

(a) A State requesting EPA to establish a no-discharge zone must send to the Administrator an application containing the following information:

(1) The discharge from § 1700.4 or § 1700.5 to be prohibited within the no-discharge zone.

(2) A detailed description of the waterbody, or portions thereof, to be included in the prohibition. The description must include a map, preferably a USGS topographic quadrant map, clearly marking the zone boundaries by latitude and longitude.

(3) A technical analysis showing why protection and enhancement of the waters described in paragraph (a)(2) of this section require a prohibition of the discharge. The analysis must provide specific information on why the discharge adversely impacts the zone and how prohibition will protect the zone. In addition, the analysis should characterize any sensitive areas, such as aquatic sanctuaries, fish-spawning and nursery areas, pristine areas, areas not meeting water quality standards, drinking water intakes, and recreational areas.

(4) A complete description of the facilities reasonably available for collecting the discharge including:

(i) A map showing their location(s) and a written location description.

(ii) A demonstration that the facilities have the capacity and capability to provide safe and sanitary removal of the volume of discharge being prohibited in terms of both vessel berthing and discharge reception.

(iii) The schedule of operating hours of the facilities.

(iv) The draft requirements of the vessel(s) that will be required to use the facilities and the available water depth at the facilities.

(v) Information showing that handling of the discharge at the facilities is in conformance with Federal law.

(5) Information on whether vessels other than those of the Armed Forces are subject to the same type of prohibition. If the State is not applying a prohibition to other vessels in the area, the State must demonstrate the technical or environmental basis for applying a prohibition only to Armed Forces vessels. The following information must be included in the technical or environmental basis for treating Armed Forces vessels differently:

(i) An analysis showing the relative contributions of the discharge from Armed Forces and non-Armed Forces vessels.

(ii) A description of State efforts to control the discharge from non-Armed Forces vessels.

(b) The information provided under paragraph (a) of this section must be sufficient to enable EPA to make the three determinations listed below. Prior to making these determinations, EPA will consult with the Secretary on the adequacy of the facilities and the operational impact of the prohibition on Armed Forces vessels.

(1) The protection and enhancement of the specified waters require a prohibition of the discharge.

(2) Adequate facilities for the safe and sanitary removal of the discharge are reasonably available for the specified waters.

(3) The prohibition will not have the effect of discriminating against vessels of the Armed Forces by reason of the ownership or operation by the Federal Government, or the military function, or the vessels.

(c) If the three conditions in paragraph (b) of this section are met, EPA will by regulation establish the no-discharge zone. If the conditions in paragraphs (b) (1) and (3) of this section are met, but the condition in paragraph (b)(2) of this section is not met, EPA may establish the no-discharge zone if it determines that the significance of the waters and the potential impact of the discharge are of sufficient magnitude to warrant any resulting constraints on Armed Forces vessels.

(d) EPA will notify the State of its decision on the no-discharge zone application in writing. If EPA approves the no-discharge zone application, EPA will by regulation establish the no-discharge zone by modification to this part. A no-discharge zone established by EPA prohibition will not go into effect until the effective date of the regulation.

State Petition for Review

§ 1700.11 State petition for review of determinations or standards.

The Governor of any State may submit a petition requesting that the Administrator and Secretary review a determination of whether a Marine Pollution Control Device is required for any discharge listed in § 1700.4 or § 1700.5, or review a Federal standard of performance for a Marine Pollution Control Device. A State may submit a petition only where there is new, significant information not considered previously by the Administrator and Secretary.

§ 1700.12 Petition requirements.

A petition for review of a determination or standard must include:

(a) The discharge from § 1700.4 or § 1700.5 for which a change in determination is requested, or the performance standard from § 1700.14 for which review is requested.

(b) The scientific and technical information on which the petition is based.

(c) A detailed explanation of why the State believes that consideration of the new information should result in a change to the determination or the standard on a nationwide basis, and an

explanation of how the new information is relevant to one or more of the following factors:

(1) The nature of the discharge.

(2) The environmental effects of the discharge.

(3) The practicability of using a Marine Pollution Control Device.

(4) The effect that installation or use of the Marine Pollution Control Device would have on the operation or operational capability of the vessel.

(5) Applicable United States law.

(6) Applicable international standards.

(7) The economic costs of the installation and use of the Marine Pollution Control Device.

§ 1700.13 Petition decisions.

The Administrator and the Secretary will evaluate the petition and grant or deny the petition no later than two years after the date of receipt of the petition. If the Administrator and Secretary grant the petition, they will undertake rulemaking to amend this part. If the Administrator and Secretary deny the petition, they will provide the State with a written explanation of why they denied it.

Subpart D—Marine Pollution Control Device (MPCD) Performance Standards

§ 1700.14 Marine Pollution Control Device (MPCD) Performance Standards. [Reserved.]

[FR Doc. 99–11164 Filed 5–7–99; 8:45 am]

BILLING CODE 6560–50–P

federal register

Monday
May 10, 1999

Part IV

Department of Education

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind; Notice

DEPARTMENT OF EDUCATION

Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priorities for fiscal year (FY) 2000 and subsequent fiscal years

SUMMARY: The Secretary proposes funding priorities under the Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program. The Secretary may use these priorities for competitions in FY 2000 and in subsequent years. The Secretary takes this action to assist with the establishment of interpreter training programs or to assist ongoing programs to train a sufficient number of qualified interpreters throughout the country to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind by— (a) Training new manual, tactile, oral, and cued speech interpreters; (b) Ensuring the maintenance of the skills of working interpreters; and (c) Providing opportunities for interpreters to raise their level of competence and expand their skills.

DATES: Comments must be received on or before June 9, 1999.

ADDRESSES: Address all comments about these proposed priorities to Mary Lovley, U.S. Department of Education, 400 Maryland Avenue, SW., Mary E. Switzer Building, Room 3217; Washington, DC 20202–2736. If you prefer to send your comments through the Internet, use the following address: Mary__Lovley@ed.gov

You must include the term "Grants for Training Interpreters" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Mary Lovley. Telephone: (202) 205–9393. If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 401–3664.

Individuals with disabilities may obtain this document in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: The Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind program is authorized under section 302(f) of the Rehabilitation Act of 1973, as amended.

Goals 2000: Educate America Act

The Goals 2000: Educate America Act (Goals 2000) focuses the Nation's education reform efforts on the eight National Education Goals and provides a framework for meeting them. Goals 2000 promotes new partnerships to strengthen schools and expands the Department's capacities for helping communities to exchange ideas and obtain information needed to achieve the goals.

These proposed priorities support the National Education Goal that, by the year 2000, every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The proposed priorities further the objectives of this Goal by focusing available funds on projects that train a sufficient number of qualified interpreters throughout the country to meet the communication needs of individuals who are deaf or hard of hearing and individuals who are deaf-blind. Training and improving the manual, tactile, oral, and cued speech interpreting skills of interpreters working in vocational rehabilitation environments will improve the ability of individuals who are deaf or hard of hearing and individuals who are deaf-blind to function successfully in their vocational pursuits.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which the Secretary chooses to use any of these priorities, the Secretary invites applications through a notice in the **Federal Register**. A notice inviting applications under these competitions will be published in the **Federal Register** concurrent with or following publication of the notice of final priorities.

Priorities

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet one of the following priorities. The Secretary proposes to fund under these competitions only applications that meet one of these absolute priorities:

Proposed Priority 1—National Project With Major Emphasis on Distance Education as a Medium for Interpreter Training

Background

Historically interpreter training programs have been located in colleges and universities in metropolitan areas or in areas of high population. While demand for interpreter services exceeds the supply of interpreters even in metropolitan areas, the dearth of interpreters in rural areas is marked. *A Study of Interpreter Services for Persons Who are Deaf or Hard of Hearing,* published in 1993, concluded that "there is sufficient work/need for additional professional interpreters in every state and many major communities." Organizations such as the National Association of the Deaf (NAD) and the Registry of Interpreters for the Deaf (RID) have also identified the shortage of qualified interpreters. Some States, such as Alaska, Idaho, Montana, Nebraska, Nevada, North Dakota, Rhode Island, Vermont, and West Virginia, as well as Puerto Rico, the U.S. Virgin Islands, and the Trust Territories of the Pacific other than Guam, have no degree granting interpreter training program. Due to the relatively sparse population in large geographical areas, student enrollment may not be sufficient to support interpreter training programs should they be established in these areas. As a result, individuals living in these States or areas who are interested in obtaining interpreter training must seek that training at a great distance from their homes. Further, the few working interpreters living in these States or areas who wish to maintain or upgrade their skills often find it difficult to locate nearby sources for continuing education. Distance education can help fill this void. The challenge, however, is to effectively deliver the interpreter training curricula, which is a skill-based, visual-based curricula rather than a knowledge-based or text-based curricula. Therefore, it is of critical importance that interpreter training curricula be modified to make the best use of a blend of all of the available technologies, such as video conferencing, internet web classes and chat rooms, e-mail, and voice mail. With proper curricular modifications, interpreter training can be provided via distance education to rural areas, remote locations, and areas with low populations in a cost-effective manner.

The Rehabilitation Services Administration (RSA) has determined that a national project is needed that will focus on adapting existing model interpreter training curricula used by two-year and four-year interpreter training programs for delivery via distance education. In addition, there is a need for technical assistance to, and coordination and cooperation with, interpreter training programs across the Nation on matters related to the use of distance education as a medium for interpreter training.

Priority

A project must—

- Be national in scope;
- Adapt or modify existing model interpreter training curricula or develop new appropriate interpreter training curricula for delivery via distance education and package it for easy use by the RSA-funded regional interpreter training projects and other trainers and interpreter training programs;
- Develop detailed instruction manuals to accompany each packaged curriculum;
- Provide technical assistance to interpreter training programs on the feasibility and effectiveness of distance interpreter education;
- Establish cooperative working relationships with the RSA-funded regional interpreter training projects;
- Furnish technical assistance to the RSA-funded regional interpreter training projects in developing and using distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind in their regions;
- Provide technical assistance and professional development opportunities for interpreter trainers across the Nation on the development and use of distance education as a mechanism for training interpreters to meet the communication needs of individuals who are deaf, hard of hearing, or deaf-blind. The technical assistance must address matters such as the proper use of the distance interpreter education curriculum; the proper use of the most current and available technologies, such as video conferencing, videotaping, internet web classes and chat rooms, e-mail, and voice mail; the technical infrastructure needed to successfully conduct distance interpreter education; and the policy implications and barriers that exist in providing distance interpreter education across a State or across State lines (e.g., classification of distance education students as in-State or out-of-State, the geographic area the institution is designed to serve, etc.); and
- Disseminate the packaged distance education curricula to interpreter educators nationwide.

Proposed Priority 2—National Project With Major Emphasis on Training Interpreter Educators

Background

In order to train qualified interpreters, interpreter educators must be both sufficient in number and current in knowledge and best practices. There are, however, very few programs that prepare interpreter educators to teach the interpreting process and the skill of interpreting. As a result, many faculty teaching at the 100-plus interpreter training programs have had little or no opportunity to study how to teach interpretation. Further, over the last 10 years RSA has funded the development of model curricula emphasizing the interpreting needs of culturally diverse communities, deaf-blind interpreting, and interpreting in educational and rehabilitation environments. Due to the low number of programs to train interpreter educators, this curriculum is not being shared widely and, as a result, is not being used extensively.

The model curricula on interpreting in educational environments and interpreting in rehabilitation environments is available at the National Clearinghouse of Rehabilitation Training Materials at Oklahoma State University, 5202 Richmond Hill Drive, Stillwater, OK 74078–4080. The model curricula on the interpreting needs of culturally diverse communities and interpreting for individuals who are deaf-blind are being developed under currently funded projects. These curricula will be available at the National Clearinghouse of Rehabilitation Training Materials once these projects have completed their activities. The project developing the model curriculum on the interpreting needs of culturally diverse communities ends on December 31, 2000, and the project developing the model curriculum on interpreting for individuals who are deaf-blind ends on September 30, 2000.

Another aspect of training a sufficient number of qualified interpreters is the practice of mentoring. Mentors are experienced interpreters and interpreter educators who provide one-on-one technical assistance to novice interpreters or to working interpreters who wish to improve or expand their skills or work toward certification. While "mentoring is not a substitute for comprehensive interpreter education or for the internships and practicums associated with such formal training" (RID Standard Practice Paper on "Mentoring"), it supports and augments the training received in those settings. While the field of interpreting embraces the use of mentoring, there is no established uniform mechanism for training individuals to serve as mentors.

In order to train a sufficient number of qualified interpreters throughout the country, there is a need to increase the number of highly trained interpreter educators and mentors. A national project is needed to address these issues.

Priority

A project must—

- Be national in scope;
- Develop a new curriculum, or update a former or existing curriculum, to prepare interpreter educators and, once this is developed, use it to train both working interpreter educators who need to obtain, enhance, or update their training and new interpreter educators. This newly developed or updated curriculum must include all issues pertinent to the training of interpreters and the use of the model curricula developed by recent and current RSA-funded national interpreter training projects that emphasize the interpreting needs of culturally diverse communities, interpreting for deaf-blind individuals, and interpreting in educational and rehabilitation environments;
- Identify and update or develop a model mentor training curriculum that includes elements such as diagnostic assessment, goal setting, discourse analysis, and effective feedback provision and, once this is developed, train experienced interpreters or interpreter educators to serve as mentors. This mentor training program must train mentors to serve in a variety of situations or environments (i.e., in urban and rural settings; in various regions; in culturally diverse environments; in situations in which various modes of communication (deaf-blind, oral, cued speech, etc.) are present; in specialized settings (legal, medical, educational, etc.); and with interns at varying skill levels, etc.);
- Provide technical assistance to organizations or bodies establishing mentorship programs and to existing mentorship programs on all aspects of mentoring, including the identification of trained mentors;
- Ensure that the curricula are developed with input from a culturally diverse, consumer-based consortium;
- Ensure that training is available to culturally diverse audiences and is sensitive to the needs of all audiences;

• Use innovative as well as traditional approaches to the provision of training (i.e., distance education, short-term intensive training sessions or seminars, delivering training to communities in need, etc.); and

• Establish cooperative relationships with the regional interpreter training projects the Secretary plans to propose in fiscal year 2000.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation To Comment

We invite you to submit comments and recommendations regarding these proposed priorities. During and after the comment period, you may inspect all public comments about these proposed priorities in the Mary E. Switzer Building, Room 3217, 330 C Street, SW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 29 U.S.C.772(f).

Dated: May 5, 1999.

(Catalog of Federal Domestic Assistance Number 84.160, Training of Interpreters for Individuals Who Are Deaf or Hard of Hearing and Individuals Who Are Deaf-Blind)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 99–11703 Filed 5–7–99; 8:45 am]

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federal register

Monday
May 10, 1999

Part V

Securities and Exchange Commission

17 CFR Parts 240 and 249
Broker-Dealer Registration and Reporting; Final Rule and Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–41356; File No. S7–17–96]

RIN 3235–AG69

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission is amending Form BDW and related filing procedures under the Securities Exchange Act of 1934. The amendments implement changes recommended to allow filings from the World Wide Web. The amendments clarify Form BDW and its filing procedures. Some other minor rule revisions relating to the status of Form BDW as a report under the Securities Exchange Act of 1934 and when a filed Form BDW becomes effective are also being adopted.

EFFECTIVE DATE: June 9, 1999.

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel, or Brian Baysinger, Attorney, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

As part of its continuing effort to simplify the registration forms used by broker-dealers, the Securities and Exchange Commission ("Commission") is revising Form BDW,[1] the uniform request for broker-dealer withdrawal under the Securities Exchange Act of 1934 ("Exchange Act").[2] The amendments to Form BDW adopted today by the Commission are the result of discussions held among the Commission staff, the Forms/CRD Committee of the North American Securities Administrators Association, Inc. ("NASAA"), National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, and representatives of the securities industry. The amendments adopted today were proposed in Securities Exchange Act Release No. 37432.[3] The comment period for the Proposing Release ended on August 19, 1996. No comments were received.

By simplifying the form and clarifying its requirements, the revisions are designed to reduce the regulatory burden on broker-dealers and to improve the usefulness of the information contained in Form BDW to the Commission, self-regulatory organizations ("SROs"), and state securities regulators. The amendments are also designed to implement changes recommended in connection with changes to the Central Registration Depository system ("CRD") that will allow filings from the World Wide Web. The CRD, a computer system operated by the NASD, maintains registration information regarding broker-dealers and their registered personnel for use by the Commission, SROs and state securities regulators.[4] The new system will be known as "Web CRD".[5]

The NASD anticipates Web CRD will become operational on August 16, 1999. Adoption of the amendments to Form BDW now will facilitate the NASD's implementation of the new system. Web CRD is expected to provide the Commission, SROs, and state securities regulators with (i) streamlined capture and display of data; (ii) better access to information through the use of standardized and specialized computer searches; and (iii) electronic filing by broker-dealers of uniform forms, including Forms BD, BDW, U–4, and U–5.[6] The Commission is also amending Exchange Act Rule 15b6–1[7] to permit broker-dealers that are withdrawing from registration to consent to a delay in the effectiveness of their notice of withdrawal. The amendments will also permit the Commission to extend the effective date for such period as the Commission by order may determine is necessary or appropriate in the public interest or for the protection of investors. The Commission is similarly amending Rules 15Bc3–1[8] and 15Cc1–1[9] relating to the withdrawal from registration of municipal securities dealers and government securities brokers and government securities dealers. These amendments are being adopted, in part, to provide the broker-dealers, municipal securities dealers and government securities brokers and government securities dealers adequate flexibility to bring their business operations to an orderly close in circumstances in which the 60-day period currently provided under Rule 15b6–1, 15Bc3–1 or 15Cc1–1 would not be sufficient. These amendments are also being adopted to provide the Commission greater flexibility in concluding investigations of broker-dealers, municipal securities dealers and government securities brokers and government securities dealers before they complete the withdrawal process.

The amendments to Rules 15b6–1, 15Bc3–1 and 15Cc1–1, together with amendments to Form BDW, are discussed further below.

II. Form BDW

A. Items 4, 5, 6, and 8

The Commission is amending Items 4, 5, 6, and 8 of Form BDW. Item 4 asks when the withdrawing broker-dealer stopped doing business and, in the case of partial withdrawals from registration,[10] when the broker-dealer stopped doing business in the states designated in Item 3. As currently drafted, Item 4 presumes that broker-dealers filing Form BDW are registered entities. Certain states, however, also require broker-dealers with pending applications for registration on Form BD to file Form BDW to withdraw their pending applications.[11] In order to accommodate those states, Item 4 is being amended to require disclosure of

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[1] Form BDW is required to be used by all broker-dealers that seek to withdraw from registration with the Commission. *See* 17 CFR 240.15b6–1; 17 CFR 249.501a.

[2] 15 U.S.C. 78a *et seq.*

[3] Securities Exchange Act Release No. 37432 (July 12, 1996), 61 FR 37701 (July 19, 1996)("Proposing Release"). The Proposing Release also proposed amendments relating to filing procedures for Forms BD and BDW that are not being adopted today because changes to the design of the CRD system made since the Proposing Release, have necessitated changes to those proposed filing procedures. The Commission is today proposing in a separate release revisions to Form BD, the rules and instructions relating to Form BD, and the filing procedures relating to Forms BD. *See* Securities Exchange Act Release No. 34–41351.

[4] The revisions to Form BDW in certain respects conform it to analogous amendments to Form BD that were adopted on July 12, 1996. Although adopted, those amendments to Form BD have not yet been implemented because Web CRD is not yet operational. *See* Securities Exchange Act Release No. 37431 (July 12, 1996), 61 FR 37701 ("Form BD Release"). The Commission is today proposing in a separate release further revisions to the adopted but not implemented Form BD that will facilitate its use on Web CRD scheduled to become operational on August 16, 1999. *See* Securities Exchange Act Release No. 34–41351.

[5] CRD/PD Bulletin, Volume 6, No. 5, March 1999 (available from the www.nasdr.com website).

[6] Forms BD and BDW are joint forms used by the Commission, certain; SROs, and all of the states to register, and terminate the registration of, broker-dealers. Forms U–4 and U–5 are used by the SROs and states to register, and terminate the employment of, broker-dealer personnel.

[7] 17 CFR 240.15b6–1.

[8] 17 CFR 240.15Bc3–1

[9] 17 CFR 240.15Cc1–1

[10] The instructions to the form have been revised to explain that a partial withdrawal terminates registration only with designated states and SROs, but does not terminate registration with the Commission and at least one SRO and state.

[11] The Commission does not require a broker-dealer that has an application for registration pending to file Form BDW in order to withdraw its pending application. Broker-dealers may withdraw a pending application simply by providing notice in writing to the Commission and the applicable SRO.

the date on which the broker-dealer withdrew its request for registration.

The Commission is also amending Item 5, which requests information concerning any funds and securities that withdrawing broker-dealers may owe to their customers or to other broker-dealers. Specifically, Item 5 requires disclosure of the number of customers to which funds or securities are owed, the amount of money and the market value of securities owed to customers or other broker-dealers, and the arrangements that have been made for payment. As amended, Item 5 will require a broker-dealer that files a partial withdrawal (i.e., a withdrawal from registration with a specific state or SRO) to provide the names of the states from which it is requesting withdrawal and in which it still owes customer funds or securities. This amendment will assist state securities regulators in monitoring the amount of funds or securities owed to customers in their states.

The proposed revisions to Item 5 will also change the requirement that broker-dealers submit a FOCUS report or a statement of financial condition when filing Form BDW. Currently, a broker-dealer is required to file with Form BDW, a FOCUS report or, if the broker-dealer is not subject to the FOCUS filing requirement, a statement of financial condition, regardless of whether the broker-dealer owes funds or securities to customers or to other broker-dealers. The Commission is reducing the filing burden on broker-dealers by requiring only that a FOCUS report or a statement of financial condition be filed with Form BDW when a broker-dealer is requesting full withdrawal from registration (i.e., a withdrawal from registration with the Commission, all SROs, and all states) and the broker-dealer owes money or securities to any customer or to any other broker-dealer.

In addition, the Commission is amending Item 6 of Form BDW, which requires disclosure of certain regulatory and other disciplinary matters that are also reportable on Form BD. Item 6 is being amended to delete the requirement that broker-dealers reiterate information already required to be disclosed on Form BD or elsewhere on Form BDW.[12] Instead, Item 6 will remind broker-dealers that they must update any incomplete or inaccurate disciplinary information on Form BD prior to filing Form BDW.[13]

Item 6 is also being amended to ask whether the broker-dealer is the subject of, or is named in, any investment-related investigation, consumer-initiated complaint, or private civil litigation. Item 6 currently requires disclosure if the broker-dealer is the subject of any "proceeding" not reported on Form BD, or any complaint or investigation. The question, therefore, is being revised to elicit more precise information by using specific, rather than general, terms.

Finally, the Commission is expanding Item 8, the execution paragraph, to require the registrant's agent to certify that the information contained on Form BDW is complete and current, and to certify further that all of the information on Form BD is accurate and complete at the time Form BDW is filed.

B. Instructions

The Commission is also expanding the general filing instructions to Form BDW to provide greater guidance to broker-dealers filing Form BDW.[14] The revised instructions also clarify attendant requirements that may arise out of filing Form BDW, particularly those raised by filing the form electronically with Web CRD. As amended, the instructions also include an explanation of the terms "jurisdiction," "investment-related," and "investigation."[15] These definitions are intended to assist broker-dealers in responding to questions about their disciplinary history and are consistent with the definitions adopted in the Form BD Release.[16]

C. Clarifying Amendments

In addition to the substantive amendments to Form BDW discussed above, the Commission is adopting several clarifying amendments to Form BDW. Item 3, for example, is being revised to inform broker-dealers that the "SEC" box should be checked only if a broker-dealer is intending to conduct an intrastate brokerage business and is not a municipal securities dealer.[17]

III. Rule 15b6–1

The Commission is also amending Exchange Act Rule 15b6–1,[18] which requires broker-dealers to file a notice of withdrawal on Form BDW in accordance with that form's instructions. The rule provides generally that withdrawal from broker-dealer registration automatically becomes effective 60 days after the filing date of the Form BDW, unless the Commission institutes a proceeding to impose terms or conditions upon the withdrawal.[19] As amended, the rule will also permit broker-dealers to consent to a delay in the effectiveness of their notice of withdrawal. In addition, the amendments will allow the Commission to extend the effective date of withdrawal for the period of time that the Commission determines is necessary or appropriate in the public interest or for the protection of investors. Under the rule, the Commission must make this determination by order.

As explained in the Proposing Release, the Commission determined that there may be circumstances in which it would be advisable to provide broker-dealers seeking to withdraw from registration greater flexibility in scheduling the termination of their business operations. While a broker-dealer must cease all securities activities when it files a request for withdrawal on Form BDW, it may need additional time to unwind its non-securities business operations before its Form BDW becomes effective. The Commission, too, may determine that it would be appropriate for a broker-dealer that is under investigation by the Commission to maintain its registered status in order to allow the Commission to conclude its pending investigation without

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[12] Specifically, the question "is broker-dealer now the subject of any unsatisfied customer claims for funds or securities not reported under Item 5" would be deleted. These claims generally are already reportable under Item 5.

[13] Exchange Act Rule 15b3–1 [17 CFR 240.15b3–1] requires broker-dealers to amend any information on Form BD whenever it becomes inaccurate.

[14] The changes to Form BDW and its instructions are those identified in the proposing release except that the words "or paper" are being deleted from the second sentence of section "A.1." of the Form BDW Instructions and the abbreviations "ASE" and "PSE" in section 3 of Form BDW are being updated to "AMEX" and "PCX".

[15] *E.g.*, the definition of the term "investigation" includes grand jury investigations, Commission investigations after the "Wells" notice has been given, formal investigations by SROs, or actions or procedures designated as investigations by states. The definition does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

[16] See supra notes 1 and 4 and accompanying text.

[17] Exchange Act Rule 15Ba2–2 [17 CFR 240.15Ba2–2] requires a non-bank municipal securities dealer whose business is exclusively intrastate to file with its application on Form BD a statement that it is filing for registration as an intrastate dealer. Thus, a non-bank municipal securities dealer cannot conduct an intrastate municipal securities business without being registered with the Commission.

[18] 17 CFR 240.15b6–1. See also supra notes 6, 7 and 8 and accompanying text. The Commission is considering further amendments to Rules 15b6–1, 15Bc3–1, and 15Cc1–1 [17 CFR 240.15b6–1, 17 CFR 15Bc3–1, and 17 CFR 15Cc1–1] to provide for electronic filing of Form BDW with Web CRD.

[19] The amendment to Rule 15b6–1 [17 CFR 240.15b6–1] is consistent with a similar provision under Section 15(b)(1) of the Exchange Act [15 U.S.C. § 78o(b)]. Section 15(b)(1) generally requires broker-dealer registration to be granted within 45 days after the filing of Form BD, unless the applicant consents to a longer period of time.

prematurely instituting a proceeding to impose conditions on the broker-dealer's withdrawal. In such instances, the interests of the Commission may be served by having the broker-dealer consent to an extension of the effective date of the broker-dealer's withdrawal from registration beyond the 60-day period currently provided under Rule 15b6–1. The Commission's interests also may be served by permitting the Commission to extend the effective date for a period that it determines by order is necessary or appropriate in the public interest or for the protection of investors.

Withdrawal from broker-dealer registration will continue to become effective automatically 60 days after the filing date in all other cases—that is, unless there has been express consent by the broker-dealer, the issuance of a Commission order, or the initiation of a proceeding by the Commission extending the effective date of withdrawal.

The Commission is similarly amending Rules 15Bc3–1 [20] and 15Cc1–1 [21] relating to the withdrawal from registration of municipal securities dealers and government securities brokers and government securities dealers.

IV. Conforming Amendments

The Commission is amending Exchange Act Rule 15b1–1 [22] to clarify that an application for registration filed on Form BD with the Central Registration Depository shall be considered a "report" filed with the Commission for purposes of Section 15(b) of the Exchange Act.[23] This amendment is intended to conform the language in Rule 15b1–1 with language already contained in corresponding rules governing the filing requirements for municipal securities dealers, government securities brokers, and government securities dealers. The Commission is also amending Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, and 15Cc1–1 under the Exchange Act [24] to clarify that the filing of Form BD or Form BDW by broker-dealers, municipal securities dealers, and government securities brokers and government securities dealers would, in each instance, constitute a "report" filed with the Commission within the meaning of Sections 15(b), 15B(c), 15C(c) 17(a), 18(a), and 32(a) of the Exchange Act.[25] The Commission is also amending Rule 15Ca1–1 to clarify when notice of government securities broker-dealer activities would be considered filed with the Commission.

V. Effective Date

Use of the revised Form BDW adopted today is intended to coincide with the implementation of Web CRD scheduled to begin on August 1, 1999. As a result, the amendments to Form BDW become effective on August 1, 1999. Thus, all Form BDW filings made on or after August 1, 1999 must be made on the revised Form BDW adopted today.

Amendments to Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 become effective June 9, 1999.

VI. Cost Benefit Analysis

Form BDW is filed only one time by a registered broker-dealer. The amendments to Form BDW adopted today do not materially alter the disclosure required on Form BDW. As a result, the costs to broker-dealers of gathering the information necessary to complete a Form BDW will remain the same as those currently applicable under the present Form BDW.

The actual filing of the Form on Web CRD will result in savings of approximately 15 minutes per Form over the current paper filing system according to staff estimates.

In addition, the implementation of the amendments to Form BDW will facilitate the overall internet-based filing system of Web CRD covering Forms BD and BDW as well as U–4 and U–5. This internet-based filing system will provide ongoing efficiencies for filers, regulators, and the public through reductions in the time required for filing and accessing filed information.

VII. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act [26] requires the Commission, in adopting rules under the Exchange Act, to consider the competitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessary or appropriate in furthering the purpose of the Exchange Act. Moreover, Section 3 of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996 provides that whenever the Commission is engaged in a rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition and capital formation.

The Commission is of the view that the amendments to Form BDW, and the amendments to Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 under the Exchange Act [27] would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, the form revisions and rule amendments adopted today will reduce the regulatory burden on broker-dealers by clarifying the information required to be filed on Form BDW and by facilitating the filing of Form BDW electronically with the CRD.

VIII. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Chairman of the Commission has certified that the adoption of the amendments would not have a significant economic impact on a substantial number of small entities.[28] This certification, including the reasons therefor, is attached to this release as Appendix A.

IX. Paperwork Reduction Act Analysis

Certain of the amendments to Form BDW contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*) ("PRA"). The Commission submitted the proposal to the Office of Management and Budget ("OMB") for review in accordance with PRA requirements in effect at the time the amendments were proposed. The title for this collection of information is: "Form BDW." OMB has approved the amendments to Form BDW and has assigned Form BDW OMB Number

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[20] 17 CFR 240.15Bc3–1.

[21] 17 CFR 240.15Cc1–1.

[22] 17 CFR 240.15b1–1.

[23] 15 U.S.C. 78o(b).

[24] 17 CFR 240.15b1–1, 17 CFR 240.15b3–1, 17 CFR 240.15b6–1, 17 CFR 240.15Ba2–2, 17 CFR 240.15Bc3–1, and 17 CFR 240.15Cc1–1.

[25] 15 U.S.C. 78o(b), 78o–4(c), 78o–5(c), 78q(a), 78r(a), and 78ff(a).

[26] 15 U.S.C. 78w(a)(2).

[27] 17 CFR 240.15b1–1, 17 CFR 240.15b3–1, 17 CFR 240.15b6–1, 17 CFR 240.15Ba2–2, 17 CFR 240.15Bc3–1, 17 CFR 240.15Ca1–1, and 17 CFR 240.15Cc1–1.

[28] Under the Exchange Act, a small broker or dealer entity is defined as "a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year as of which its audited statements were prepared pursuant to 240.17a–5(d) or, if not required to file such statements, a broker or dealer that had total capital (net worth plus subordinated liabilities) of less than $500,000 on the last business day of the preceding fiscal year (or in the time that it has been in business, if shorter) and is not affiliated with any person (other than a natural person) that is not a small business or small organization as defined in this section." 17 CFR 240.010(c).

3235–0018, with an expiration date of October 31, 1999.

The Commission solicited public comment on the collection of information requirements contained in the Proposing Release. No comments were received.

The amendments to Form BDW are designed to reduce the regulatory burden on broker-dealers and to improve the usefulness of the information to federal and state securities regulators by simplifying the form and clarifying its requirements. The amendments are also designed to implement changes to the CRD system, including providing for electronic filing of Form BDW.[29]

This collection of information will be used by the Commission to determine whether it is in the public interest to permit a broker-dealer to withdraw its registration. This collection of information is also important to a withdrawing broker-dealer's customers and to the general public because it provides, among other things, the name and address of the broker-dealer's agent to contact regarding the broker-dealer's unfinished business.

The likely respondents to the proposed collection of information will be the 900 or fewer broker-dealers that withdraw from registration annually. They will be required to respond to the proposed collection of information before being allowed to withdraw their registration with the Commission. The Commission expects that the proposed collection of information on revised Form BDW will result in no additional burdens to broker-dealers seeking to withdraw from registration on Form BDW. The Commission estimates that the average burden to complete Form BDW will be approximately 15 minutes, or 0.25 hours. (based on the Commission staff's experience in administering the form). Approximately 900 respondents file one response per year, resulting in an estimated total annual reporting burden of 225 hours.

As adopted, respondents will be required to retain the collection of information for a period of no less than six years and to make it available for inspection upon a regulatory request. Disclosure of data solicited in this collection of information by the respondents is mandatory before a request for withdrawal from registration may become effective. Disclosure of social security numbers, however, is voluntary. The responses provided by the respondents will be made a matter of public record and will be available for inspection by any member of the public.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

[29] Rules 15b6–1, 15Bc3–1, and 15Cc1–1 under the Exchange Act [17 CFR 240.15b6–1, 17 CFR 240.15B3–1, and 17 CFR 240.15Cc1–1] require broker-dealers to file a notice of withdrawal on Form BDW in accordance with the instructions contained therein.

X. Statutory Basis

The foregoing amendments are adopted pursuant to Sections 15(b), 15B, 15C and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15b1–1 by revising paragraph (c) to read as follows:

§ 240.15b1–1 Application for registration of brokers or dealers.

* * * * *

(c) An application for registration that is filed with the Central Registration Depository pursuant to this section shall be considered a "report" filed with the Commission for purposes of Sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

3. By amending § 240.15b3–1 by revising paragraph (c) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) Every amendment filed with the Central Registration Depository pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

4. By revising § 240.15b6–1 to read as follows:

§ 240.15b6–1 Withdrawal from registration.

(a) Notice of withdrawal from registration as a broker or dealer pursuant to Section 15(b) of the Act shall be filed on Form BDW (17 CFR 249.501a) in accordance with the instructions contained therein. Every notice of withdrawal from registration as a broker or dealer shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements. Prior to filing a notice of withdrawal from registration on Form BDW (17 CFR 249.501a), a broker or dealer shall amend Form BD (17 CFR 249.501) in accordance with § 240.15b3–1(a) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a broker or dealer pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)) shall become effective for all matters (except as provided in this paragraph (b) and in paragraph (c) of this section) on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such broker or dealer consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15(b) of the Act (15 U.S.C. 78o(b)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such broker or dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) With respect to a broker's or dealer's registration status as a member within the meaning of Section 3(a)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78ccc(a)(2)) for purposes of the application of Sections 5, 6, and 7 (15 U.S.C. 78eee, 78fff, and 78fff–1) thereof to customer claims arising prior to the effective date of withdrawal pursuant to paragraph (b) of this section, the effective date of a

broker's or dealer's withdrawal from registration pursuant to this paragraph (c) shall be six months after the effective date of withdrawal pursuant to paragraph (b) of this section or such shorter period of time as the Commission may determine.

(d) Every notice of withdrawal filed with the Central Registration Depository pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15(b), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

5. By amending § 240.15Ba2–2 by revising paragraph (d) to read as follows:

§ 240.15Ba2–2 Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(d) Every application or amendment filed with the Central Registration Depository pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15(b), 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78o–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

6. By revising § 240.15Bc3–1 to read as follows:

§ 240.15Bc3–1 Withdrawal from registration of municipal securities dealers.

(a) Notice of withdrawal from registration as a municipal securities dealer pursuant to Section 15B(c) (15 U.S.C. 78o–4(c)) shall be filed on Form MSDW (17 CFR 249.1110), in the case of a municipal securities dealer which is a bank or a separately identifiable department or division of a bank, or Form BDW (17 CFR 249.501a), in the case of any other municipal securities dealer, in accordance with the instructions contained therein. Prior to filing a notice of withdrawal from registration on Form MSDW (17 CFR 249.1110) or Form BDW (17 CFR 249.501a), a municipal securities dealer shall amend Form MSD (17 CFR 249.1100) in accordance with § 240.15Ba2–1(b) or amend Form BD (17 CFR 249.501) in accordance with § 240.15Ba2–2(c) to update any inaccurate information.

(b) Every notice of withdrawal from registration as a municipal securities dealer that is filed on Form BDW (17 CFR 249.501a) shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements. Every notice of withdrawal on Form MSDW (17 CFR 249.1110) shall be filed with the Commission.

(c) A notice of withdrawal from registration filed by a municipal securities dealer pursuant to Section 15B(c) (15 U.S.C. 78o–4(c)) shall become effective for all matters on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such municipal securities dealer consents or which the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15B(c) (15 U.S.C. 78o–4(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of, such municipal securities dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (c), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (c) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(d) Every notice of withdrawal filed with the Central Registration Depository pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15B(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o–4(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

7. By amending § 240.15Ca1–1 by revising paragraph (c) to read as follows:

§ 240.15Ca1–1 Notice of government securities broker-dealer activities.

* * * * *

(c) Any notice required pursuant to this section shall be considered filed with the Commission if it is filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements.

8. By revising § 240.15Cc1–1 to read as follows:

§ 240.15Cc1–1 Withdrawal from registration of government securities brokers or government securities dealers.

(a) Notice of withdrawal from registration as a government securities broker or government securities dealer pursuant to Section 15C(a)(1)(A) of the Act (15 U.S.C. 78o–5(a)(1)(A)) shall be filed on Form BDW (17 CFR 249.501a) in accordance with the instructions contained therein. Every notice of withdrawal from registration as a government securities broker or dealer shall be filed with the Central Registration Depository (operated by the National Association of Securities Dealers, Inc.) in accordance with applicable filing requirements. Prior to filing a notice of withdrawal from registration on Form BDW (17 CFR 249.501a), a government securities broker or government securities dealer shall amend Form BD (17 CFR 249.501) in accordance with 17 CFR 400.5(a) to update any inaccurate information.

(b) A notice of withdrawal from registration filed by a government securities broker or government securities dealer shall become effective for all matters on the 60th day after the filing thereof with the Commission, within such longer period of time as to which such government securities broker or government securities dealer consents or the Commission by order may determine as necessary or appropriate in the public interest or for the protection of investors, or within such shorter period of time as the Commission may determine. If a notice of withdrawal from registration is filed with the Commission at any time subsequent to the date of the issuance of a Commission order instituting proceedings pursuant to Section 15C(c) (15 U.S.C. 78o–5(c)) to censure, place limitations on the activities, functions or operations of, or suspend or revoke the registration of such government securities broker or government securities dealer, or if prior to the effective date of the notice of withdrawal pursuant to this paragraph (b), the Commission institutes such a proceeding or a proceeding to impose terms or conditions upon such withdrawal, the notice of withdrawal shall not become effective pursuant to this paragraph (b) except at such time and upon such terms and conditions as the Commission deems necessary or appropriate in the public interest or for the protection of investors.

(c) Every notice of withdrawal filed with the Central Registration Depository pursuant to this section shall constitute a "report" filed with the Commission within the meaning of Sections 15(b), 15C(c), 17(a), 18(a), 32(a) (15 U.S.C. 78o(b), 78o–5(c), 78q(a), 78r(a), 78ff(a)) and other applicable provisions of the Act.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

9. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

10. By revising Form BDW (referenced in § 249.501a) to read as follows:

Note: Form BDW does not and the amendments will not appear in the Code of Federal Regulations. Revised Form BDW is attached as an Appendix to this document.

Dated: April 30, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Appendix A

Securities and Exchange Commission Regulatory Flexibility Act Certification

I, Arthur Levitt, Jr., Chairman of the U.S. Securities and Exchange Commission ("Commission"), hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendments to Form BDW and Rules 15b1–1, 15b3–1, 15b6–1, 15Ba2–2, 15Bc3–1, 15Ca1–1, and 15Cc1–1 ("Rules") under the Securities Exchange Act of 1934 ("Exchange Act") would not, if adopted, have a significant economic impact on a substantial number of small entities. The proposed amendments would facilitate implementation of filing of Form BDW (the form on which broker-dealers request withdrawal from registration) via the internet as part of Web CRD. The Commission receives roughly 900 Forms BDW a year. The proposed amendments would also clarify certain provisions of Form BDW and its status as a report under the Exchange Act, as well as permit the Commission to delay, or broker-dealers to consent to delay, the effectiveness of a filed Form BDW. The proposed amendments should not materially affect the substance of the required disclosures or the filing and delivery obligations under Form BDW or the Rules. Consequently, no new preparation, printing, or distribution costs would be incurred. Finally, the proposed amendments would impose no new recordkeeping requirements or compliance burdens on small entities. Accordingly, the proposed amendments would not have a significant economic impact on a substantial number of small entities.

Dated: April 30, 1999.

Arthur Levitt, Jr.,

Chairman.

Billing Code 8010–01–P

Form BDW

OMB APPROVAL	
OMB Number:	3235-0018
Expires:	October 31, 1999
Estimated average burden hours per form:	0.25

Uniform Request for Broker-Dealer Withdrawal

SEC 122 (4/1999)

FORM BDW INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Broker-Dealers must file Form BDW to withdraw their registration from the Securities and Exchange Commission ("SEC"), Self-Regulatory Organizations ("SROs"), and appropriate *jurisdictions*. These instructions apply to filing Form BDW electronically with the Central Registration Depository ("CRD"). Some *jurisdictions* may require a separate paper filing of Form BDW and/or additional filing requirements. Thus, the applicant should contact the appropriate *jurisdiction(s)* for specific filing requirements.
2. All questions must be answered and all fields requiring a response must be complete before the filing is accepted. If filing Form BDW on paper, enter "None" or "N/A" where appropriate.
3. File Form BDW with the CRD, operated by the NASD. Prior to filing Form BDW, amend Form BD to update any incomplete or inaccurate information.
4. A paper copy of this Form BDW (or a reproduction of this form printed off the CRD), with original manual signature(s), must be retained by the broker-dealer filing the Form BDW and be made available for inspection upon a regulatory request. A paper copy of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) also must be retained by the broker-dealer filing the Form BDW.

B. FULL WITHDRAWAL (terminates registration with the SEC, all SROs, and all *jurisdictions*):

1. Complete all items except Item 3.
2. If Item 5 is answered "yes," file with the CRD a paper copy of FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. For firms that do not file FOCUS Reports, file a statement of financial condition giving the type and amount of the firm's assets and liabilities and net worth. This information must reflect the finances of the firm no earlier than 10 days before this Form BDW is filed.

C. PARTIAL WITHDRAWAL (terminates registration with specific *jurisdictions* and SROs, but does not terminate registration with the SEC and at least one SRO and *jurisdiction*):

1. Complete all items.
2. Check with *jurisdiction(s)* where registered for additional filing requirements.

The CRD mailing address for questions and correspondence is:

NASAA/NASD Central Registration Depository
P.O. Box 9495
Gaithersburg, MD 20898-9495

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

The term **JURISDICTION** means a state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

The term **INVESTIGATION** includes: (a) grand jury investigations, (b) U.S. Securities and Exchange Commission investigations after the "Wells" notice has been given, (c) NASD Regulation, Inc. investigations after the "Wells" notice has been given or after a person associated with a member, as defined in The NASD By-Laws, has been advised by the staff that it intends to recommend formal disciplinary action or, (d) formal investigations by other SROs or, (e) actions or procedures designated as *investigations* by *jurisdictions*. The term *investigation* does not include subpoenas, preliminary or routine regulatory inquiries or requests for information, deficiency letters, "blue sheet" requests or other trading questionnaires, or examinations.

The term **INVESTMENT-RELATED** pertains to securities, commodities, banking, insurance or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

Federal Information Law and Requirements - SEC's Collection of Information:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. Sections 15, 15C, 17(a) and 23(a) of the Securities Exchange Act of 1934 authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§ 78o, 78o-5, 78q, and 78w. Filing of this Form is mandatory. The principal purpose of this Form is to permit the Commission to determine whether it is in the public interest to permit a broker-dealer to withdraw its registration. The Form also is used by broker-dealers to advise certain self-regulatory organizations and all of the states that they want to withdraw from registration. The Commission and the National Association of Securities Dealers, Inc. maintain files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on the application facing page of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. The information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

FORM BDW (REV. 4/1998)

UNIFORM REQUEST FOR WITHDRAWAL FROM BROKER-DEALER REGISTRATION

OFFICIAL USE

WARNING: INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACT MAY CONSTITUTE CRIMINAL VIOLATIONS.

1. A. FULL NAME OF BROKER-DEALER (If sole proprietor, state last, first and middle name): | B. IRS Emp. Ident. No.:

C. NAME UNDER WHICH BUSINESS IS CONDUCTED, IF DIFFERENT: | D. FIRM CRD NO.:

E. SEC FILE NO.: | F. FIRM MAIN ADDRESS: NUMBER AND STREET | CITY | STATE/COUNTRY | ZIP+4/POSTAL CODE

G. MAILING ADDRESS, IF DIFFERENT: NUMBER AND STREET | CITY | STATE/COUNTRY | ZIP+4/POSTAL CODE | H. AREA CODE / TELEPHONE NO.:

2. Check One: ☐ Full Withdrawal (skip Item 3) ☐ Partial Withdrawal (Check box(es) where withdrawing in Item 3.)

3. SEC ☐ SECURITIES AND EXCHANGE COMMISSION (check only if intending to conduct an intrastate business)

SRO ☐ AMEX ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PCX ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

4. Date firm ceased business or withdrew registration request (for partial withdrawals, give the date ceased business in the *jurisdictions* checked in Item 3): MM / DD / YYYY

5. Does the broker-dealer owe any money or securities to any customer or broker-dealer? YES ☐ NO ☐

If partial withdrawal, indicate *jurisdiction(s)* from which you are withdrawing where you owe funds or securities to customers in such *jurisdiction(s)*: _____ , _____ , _____ .

If full withdrawal, complete A-D below.

A. Number of customers owed funds or securities: _____

B. Amount of money owed to: customers $ _____ broker-dealers $ _____

C. Market value of securities owed to: customers $ _____ broker-dealers $ _____

D. Describe arrangements made for payment: _____

If this is a full withdrawal and Item 5 is answered "yes," file with the CRD a FOCUS Report Part II (or Part IIA for non-carrying or non-clearing firms) "Statement of Financial Condition" and "Computation of Net Capital" sections. For firms that do not file FOCUS Reports, file a statement of financial condition giving the type and amount of the firm's assets and liabilities and net worth. The FOCUS Report and the statement of financial condition must reflect the finances of the firm no earlier than 10 days before this Form BDW is filed.

6. Is the broker-dealer now the subject of or named in any *investment-related:* YES / NO

- *investigation* ☐ ☐
- consumer-initiated complaint ☐ ☐
- private civil litigation ☐ ☐

NOTE: Update any incomplete or inaccurate information contained in Item 11 of Form BD.

7. NAME AND ADDRESS OF THE PERSON WHO WILL HAVE CUSTODY OF BOOKS AND RECORDS: | AREA CODE / TELEPHONE NO.:

ADDRESS WHERE BOOKS AND RECORDS WILL BE LOCATED, IF DIFFERENT: NUMBER AND STREET | CITY | STATE/COUNTRY | ZIP+4/POSTAL CODE

8. **EXECUTION:** The undersigned certifies that he/she has executed this form on behalf of, and with the authority of, the broker-dealer, and that all information herein, including any attachments hereto, is accurate, complete, and current. The undersigned and broker-dealer further certify that all information previously submitted on Form BD is accurate and complete as of this date, and that the broker-dealer's books and records will be preserved and available for inspection as required by law.

Date (MM/DD/YYYY) _____ Name _____

By: _____ Signature _____ Print Name and Title

Subscribed and sworn before me this _____ day of _____ , _____ Year by _____ Notary Public

My Commission expires _____ County of _____ State of _____

[FR Doc. 99–11359 Filed 5–7–99; 8:45 am]

BILLING CODE 8010–01–C

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 240 and 249

[Release No. 34–41351; File No. S7–16–99]

RIN 3235–AH73

Broker-Dealer Registration and Reporting

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission is proposing technical amendments to Form BD, the uniform broker-dealer registration form, and related rules under the Securities Exchange Act of 1934. The proposed amendments would modify the version of Form BD that was adopted in 1996 but never implemented. The primary purpose of the amendments is to aid the implementation of electronic filing in the new, Internet-based Central Registration Depository system. This computer system, which is operated by the National Association of Securities Dealers, Inc., maintains registration information regarding broker-dealers and their registered personnel. The formatting and technical changes proposed today are needed to accommodate the shift from the network-based architecture and proprietary software approach anticipated in the 1996 Central Registration Depository system to the new, Internet-based system.

DATES:omments must be submitted on or before June 9, 1999.

ADDRESSES: All comments concerning the rule proposal should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File Number S7–16–99; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the public reference room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet Web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Catherine McGuire, Chief Counsel or Barbara A. Stettner, Special Counsel, (202) 942–0073, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is proposing technical amendments to Form BD, the uniform application for broker-dealer registration, and related rules under the Securities Exchange Act of 1934 ("Exchange Act").[1] The proposed amendments would modify the version of Form BD that was adopted in 1996 but never implemented ("1996 Form BD").[2] The amendments are necessary to accommodate the shift from the proposed network-based and proprietary software approach anticipated in the 1996 Central Registration Depository ("CRD") system ("Redesigned CRD") to "Web CRD," the new, Internet-based CRD system. The CRD is operated and maintained by the National Association of Securities Dealers, Inc. ("NASD")[3] and is used by the Commission,[4] self-regulatory organizations ("SROs"), and state securities regulators in connection with registering and licensing broker-dealers and their registered personnel. The 1996 Form BD amendments were based upon the electronic filing approach of the 1996 Redesigned CRD, which differs significantly from the electronic filing approach of Web CRD. Web CRD will replace the current CRD system ("Legacy CRD"), which was created in 1981 as a cooperative effort with the North American Securities Administrators Association ("NASAA"), in order to facilitate the "one-stop" filing process for broker-dealers and their associated persons.[5]

Web CRD's Internet-based system is expected to further streamline and lower the costs associated with the one-stop registration process for broker-dealers and their associated persons. It is also expected to provide the Commission, SROs, and state securities regulators with enhanced access to registrant disciplinary and disclosure information. Web CRD is scheduled to be operational beginning August 16, 1999.

The proposed amendments are the result of discussions between the Commission staff, NASAA's CRD Project Committee (formerly the CRD/Forms Revision Committee), the NASD, the New York Stock Exchange, Inc., and representatives from the securities industry.

II. Background

On January 12, 1995, the Commission proposed amendments to Form BD in order to respond to anticipated design updates (i.e., Redesigned CRD) being developed for the Legacy CRD system.[6] Redesigned CRD was a comprehensive project undertaken by the NASD involving the creation of proprietary software and a network-based architecture that would have allowed broker-dealers to electronically file with the CRD. This system would have required broker-dealers to obtain through a subscription agreement the software developed by the NASD as well as computer hardware that met minimum configuration requirements. Redesigned CRD was intended to enable broker-dealers and their associated persons to file Forms BD, BDW, U–4, and U–5[7] electronically through a direct link to the CRD.[8] On July 18, 1996, the Commission adopted the amendments to 1996 Form BD that were necessary to fully implement the new system. These amendments, which elicited more precise disclosure from applicants and reorganized disclosure items into related categories, were intended to

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[1] 17 CFR 240.15b1–1; 17 CFR 249.501; 15 U.S.C. §§ 78a et seq.

[2] Securities Exchange Act Release No. 37431 (July 12, 1996), 61 FR 139 (July 18, 1996).

[3] For purposes of this release, the term "NASD" will be sued to encompass both the NASD and NASD Regulation, Inc. ("NASDR") unless specified otherwise. The NASDR is the regulatory subsidiary of the NASD and is responsible for the operation of the CRD system.

[4] In 1992, the Commission joined the CRD system and adopted amendments to the broker-dealer registration process. Those amendments required, among other things, that all broker-dealers file Form BD with the Commission through the CRD. These changes were made as part of the Commission's ongoing effort to reduce the costs associated with broker-dealer registration. Securities Exchange Act Release No. 31660 (Dec. 28, 1992), 58 FR 11 (Jan. 4, 1993).

[5] Applicants seeking broker-dealer registration with the Commission, the NASD, the Chicago Board Options Exchange ("CBOE"), and the various states currently file a single Form BD with the NASD. The NASD manually enters the information into the CRD system, which then makes the information available (electronically) to the Commission and the appropriate states for review. Applicants may also seek registration with SROs other than the NASD and the CBOE through Form BD, but they may also be required to submit a copy of the paper Form BD to those SROs that do not participate in the CRD system. The NASD anticipates more SROs to become full participants in Web CRD after the system is operational.

[6] Securities Exchange Act Release No. 35224 (Jan. 12, 1995); 60 FR 4040 (Jan. 19, 1995).

[7] Forms BD and BDW are joint forms used by the Commission, SROs, and the states. The forms are used, respectively, to register, and to terminate the registration of, broker-dealers. SROs and the states use Forms U–4 and U–5 to register, and terminate the registration of, associated persons of broker-dealers.

[8] The direct link with the CRD would have been accomplished through several methods, including computer-to-computer interface, network access, and standard dial-up access.

become effective with the implementation of Redesigned CRD.

At that time, the NASD expected to implement Redesigned CRD in September 1996. However, a test of the system that began in May 1996 revealed that the NASD's proprietary software needed additional changes. The NASD also determined that broker-dealers needed more time to prepare their internal operations and infrastructure to support electronic filings through Redesigned CRD. The NASD, therefore, delayed the implementation of Redesigned CRD. Because of this delay, on September 4, 1996, the Commission suspended the compliance date for the 1996 Form BD amendments.[9] Applicants seeking broker-dealer registration were instructed to continue filing the 1993 version of Form BD until Redesigned CRD was fully operational.

In February 1997, following a reassessment of the CRD technology, the NASD decided to abandon the network-based, Redesigned CRD system and proceed instead with the Internet-based, Web CRD system. Because the implementation of 1996 Form BD was tied to the Redesigned CRD system, the use of the Form was further delayed. Moreover, because Web CRD would take additional time to fully develop, the substantive disclosure questions adopted in the 1996 Form BD could not be implemented immediately. As a result, the Commission adopted "Interim Form BD," effective March 16, 1998.[10] Interim Form BD requires registrants to file the same disclosure information called for by the 1996 Form BD amendments in a format that is compatible with the Legacy CRD system.[11] Thus, while Interim Form BD incorporated all of the substantive changes of the 1996 Form BD amendments relating to disclosure of disciplinary history, it did not incorporate the formatting changes adopted in connection with the electronic filing approach contemplated in Redesigned CRD. Interim Form BD remains in effect today.

Today's proposed amendments would adapt 1996 Form BD to Web CRD's Internet-based environment. Web CRD will be a secure Web-based system that applicants will access through the NASD's Web site[12] with significantly less difficulty and at lower costs than would have been possible under Redesigned CRD. Under Web CRD, a firm will need access to the Internet through an account with an Internet Service Provider ("ISP")[13] (e.g., AmericaOnLine, MCI WorldCom, Microsoft Network) to submit filings electronically.[14]

Web CRD will streamline the registration process for broker-dealers, and help broker-dealers submit more complete and accurate filings. For example, Web CRD will employ completeness checks to alert firms when required information is missing. If a firm files a form containing incomplete information in a "Mandatory Field," Web CRD will automatically reject the submission and prompt the firm to re-submit a completed form. Completeness checks should reduce costly registration delays resulting from deficient filings. Web CRD also categorizes disclosure information on the Disclosure Reporting Pages ("DRPs") through the use of pull-down menus[15] that provide specific options ("Pick Lists"), as well as "Text Boxes." Pick Lists are intended to elicit precise information about a registrant's disclosure history and to capture standardized responses when possible. Text Boxes are intended to provide applicants with the opportunity to fully describe the details of a disclosable event in their own words. The use of Pick Lists and Text Boxes is also expected to benefit regulators by streamlining the capture and display of data, which should enhance regulators' ability to use standardized and specialized computer searches. By giving regulators better access to information, Web CRD is expected to bolster the oversight of broker-dealers and their registered personnel.

The amendments to Form BD proposed today consist mainly of technical changes necessary to accommodate Web CRD's Internet environment. The proposed amendments are intended to elicit the same level of disclosure required by both the 1996 Form BD and the Interim Form BD, but require the information to be submitted in a different format than is required today. Other changes being proposed are intended to clarify the current Form, to update references, or to streamline the registration process. The amendments proposed to Exchange Act Rules 15b3–1, 15Ba2–2, and 15Ca2–2 are necessary to implement Web CRD.

III. Proposed Amendments to Form BD

The Commission is proposing to make technical and formatting amendments to 1996 Form BD, to its general filing instructions and terms, and to its Schedules DRP and E. These changes are necessary to accommodate Web CRD's Internet-based environment. The proposed amendments would correct oversights, replace outdated information, and clarify instructions. They would also replace Legacy CRD references with Web CRD references, establish certain information fields as "read-only,"[16] and make conforming changes based on the reorganization of the NASD manual in 1996[17] throughout Form BD. One change proposed is intended to help eliminate incorrect succession filings by requiring broker-dealers to discuss these filings with CRD personnel prior to submission.[18] Another proposed amendment would make questions in the DRPs pertaining to sanctions consistent.[19]

As mentioned above, the Commission is also proposing amendments to 1996 Form BD's corresponding DRPs, which must be completed when an applicant answers "Yes" to one of the disclosure questions in Item 11 of proposed Form BD. The proposed DRPs are designed to correspond to DRPs that are proposed in

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[9] Securities Exchange Act Release No. 37632 (September 4, 1996), 61 FR 47412 (September 9, 1996).

[10] Securities Exchange Act Release No. 39677 (February 18, 1998), 63 FR 9413 (February 25, 1998).

[11] One of the principal goals of Redesigned CRD, and the 1996 amendments to Form BD, was to make certain information regarding broker-dealers and their associated persons, that is required to be reported on the applicable registration forms, more readily available to the public. Accordingly, pending the implementation of Web CRD, Interim Form BD incorporated the enhanced disclosure elicited by 1996 Form BD Question 11 into the existing Form BD Question 7. Interim Form BD Question 7, therefore, requests information about the disciplinary history of the applicant and its control affiliates, including information relating to statutory disqualifications, other relevant history, and the applicant's financial soundness. In order to make the disclosures more organized and complete, Question 7 is divided into broad categories: criminal, civil, regulatory, and financial.

[12] Broker-dealers will submit filings through the NASDR's Web site at <https://crd.nasdr.com/crdmain>.

[13] A broker-dealer would also need access to an Internet browser (e.g., Netscape, Internet Explorer) in order to submit filings over the Internet. Internet browsers typically are provided by the ISP or can be downloaded free of charge from the Internet.

[14] In contrast, Redesigned CRD would have required firms to obtain NASD-developed software under a subscription agreement as well as computer hardware that met certain minimum configuration requirements (which may have involved costly upgrades to existing hardware). Broker-dealers would also have incurred costs associated with on-line usage fees and reports derived from the Redesigned CRD system.

[15] Pull-down menus are used to select options that are not readily visible on the screen. Pull-down menus are used by clicking the mouse and holding it on the option selected. The other choices then appear in a menu (or list) format.

[16] Read only fields could not be altered by the applicants.

[17] See NASD Notice to Members 96–26.

[18] See discussion regarding Item 5 on Form BD in Appendix A.

[19] See discussion regarding Civil Judicial Action DRP, Part II, Question 13.C (Sanction Detail). Specifically, the proposed amendments would change Question 13.C to ask, among other things, whether any portion of a penalty assessed against the applicant was waived.

connection with Forms U–4 and U–5.[20] While there are more technical and formatting amendments proposed for the DRPs than for the main part of Form BD, the proposed amendments primarily involve restructuring and reformatting to facilitate electronic filing in the Web CRD environment. They are not intended to make substantive changes to the information requested, with the exception of Question 13 in the Civil Judicial DRP which would now require the applicant to indicate whether any portion of a penalty assessed against it was waived.

By way of background, the DRPs that accompanied the 1996 Form BD ("1996 DRPs") elicited more detailed information about reportable events than previously elicited on DRPs. Regulators had indicated that they needed this additional detail in order to make informed licensing and registration decisions. Consistent with the overall approach taken in Redesigned CRD, the additional detail would have been entered into many discrete fields. While this approach was intended to provide all CRD users with maximum flexibility in making queries to and deriving customized reports from the system, it had unanticipated practical drawbacks. One significant drawback was the fragmentation of the information once it was retrieved from the system.[21] Another drawback was that the numerous data fields and data tables demanded substantial time to process queries, which in turn resulted in delays in system response and other impediments to system performance.

The DRPs proposed today would eliminate these practical problems through the use of improved formatting. For example, the proposed DRPs would reduce the number of data fields and add Text Boxes. These Text Boxes would not only accommodate Web CRD, but would also allow applicants to describe events in context. The proposed DRPs would also contain Pick Lists in certain discrete fields. Pick Lists should create more consistency in the data entered in those fields. In response to concerns that the categories enumerated in the Pick Lists might not completely or accurately describe an event, the category of "Other" would be included where applicable. Therefore, while the Pick Lists would elicit more precise information, in a large percentage of questions the availability of "Other" would continue to provide for flexibility in response to DRP questions.

In sum, regulators should be able to use Web CRD to more efficiently gather the information needed to make informed registration and licensing decisions. Web CRD should also help regulators to process registration-related filings more efficiently and effectively and significantly enhance their ability to use the system for regulatory purposes. Finally, Web CRD should make it easier for registrants to comply with their filing obligations.[22]

A detailed textual description of the proposed amendments to Form BD, its instructions and terms, Schedule E, and the DRPs (collectively, "Appendix A") is available on the Commission's Web site at http://www.sec.gov[23] or may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001; (202) 942–0073.[24] Form BD as proposed to be amended is attached as Appendix B to this document.

IV. Electronic Filing and Re-Filing

Web CRD is intended to expedite the electronic filing of registration and licensing information for broker-dealers and their associated persons. While initial applications for broker-dealer registration on Form BD would continue to be filed on paper, the proposed amendments provide that all subsequent amendments to the Form would be made electronically through Web CRD.[25] The proposed amendments would also require registered broker-dealers to electronically re-file certain information in Web CRD that is already filed in Legacy CRD. The key dates and events associated with the transition from Legacy CRD to Web CRD, including the proposed Web CRD filing and re-filing requirements for broker-dealer applicants and registered broker-dealers, are described below.

A. Key Dates

July 31, 1999 Through August 15, 1999

As the NASD transitions from Legacy CRD to Web CRD, there will be a two-week period beginning July 31, 1999 and ending August 15, 1999 ("System Transition Period"), during which neither system will process Form BD filings and amendments, or Form BDW filings. Initial filings of Form BD received during this period will be held until August 16, 1999 and then input into Web CRD by the NASD. Amendments to Form BD received by the CRD during this period will be returned with instructions to re-submit the amendments electronically after August 16, 1999. Forms BDW seeking withdrawal from registration with all jurisdictions that are received during this period would be held by the CRD until August 16, 1999, then input into Web CRD by the NASD. Forms BDW seeking withdrawal from registration with only some jurisdictions that are received by the CRD during this period will be returned with instructions to re-submit the filing electronically after August 16, 1999. During the System Transition Period, the NASD will also transfer certain information from Legacy CRD to Web CRD.[26]

August 1, 1999

It is anticipated that the proposed amendments to Form BD will become effective on August 1, 1999. Any filings submitted on Interim Form BD after July 31, 1999 will be returned by CRD.

August 16, 1999

It is anticipated that Web CRD will be operational on August 16, 1999. The requirements for broker-dealer applicants filing initial Form BD, for registered broker-dealers filing amendments to Form BD, or for currently registered broker-dealers re-filing certain information in Web CRD

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[20] Release No. 34–41326 (April 22, 1999); File No. SR–NASD–98–96.

[21] The 1996 DRP data structure was designed to provide regulators with the ability to sort information and create reports using all of the discrete data fields. As a practical matter, however, the NASD determined that the numerous data fields would have resulted in the retrieval of information that was separated from its context.

[22] In addition, by providing for Internet access, Web CRD is expected to streamline the procedures to process and respond to requests from the public for information about particular broker-dealers and their associated persons.

[23] On the SEC Web site see "Current SEC Rulemaking; Proposed Rules; Release No. 34–41351, File No. S7–16–99."

[24] Appendix A will not be published in the **Federal Register.**

[25] The NASD expects, however, that all filings for both broker-dealers and their associated persons will eventually be submitted exclusively through electronic means.

[26] Since March 1998, the NASD has been converting the following broker-dealer information from Legacy CRD to Web CRD: Base information (i.e., the broker-dealer's general CRD record information including the broker-dealer's CRD number, name, Commission number, IRS number, NASD district assignment, CRD contact, and related telephone number), Registration Status, Current Address (main and mailing), Types of Business (e.g., municipal securities dealer, corporate debt securities broker), and Form U–6 Disclosure (e.g., Commission and NASD actions). This initial conversion was done to accommodate the NASD's Public Disclosure Program on the Internet. During the System Transition Period, the NASD will transfer any remaining data described above. In addition, it will convert the following information: Name Change History (i.e., old name, new name, effective date of change), Mass Transfer History (e.g., firm name and CRD number, pre- and post-merger, acquisition), and Branch Information (Schedule E).

on or after August 16, 1999, are described below.

B. Filings on or After August 16, 1999

1. Initial Filings of Form BD by Broker-Dealer Applicants

Under the proposed amendments, broker-dealer applicants would continue to obtain the paper version of Form BD from the Commission [27] or from the NASD.[28] They would also continue to mail the completed initial Form BD to the CRD, which would manually input the information into the Web CRD system. This manual process would allow the NASD to establish a base record of information on broker-dealer applicants as well as begin the process of establishing a unique Web CRD user account for each broker-dealer.

Before a broker-dealer could access Web CRD, it would first need to designate an "account administrator." This person, who may be someone within the firm or a third-party,[29] would serve as the point-of-contact between the broker-dealer and Web CRD.[30] The NASD would establish a user account for the broker-dealer's account administrator and send a letter of confirmation to the broker-dealer containing the account administrator's user name and initial password. Among other things, the account administrator would be responsible for identifying any additional persons who would need access to Web CRD [31] to submit filings on the firm's behalf . Designated persons would then be given passwords and the authorization to use Web CRD as determined by the account administrator.

Each broker-dealer would have a separate, unique account with the NASD that would enable it to access its own records and file subsequent amendments to its Form BD in Web CRD. Once the CRD has established an account for a broker-dealer, it would manually input the information from the broker-dealer into Web CRD, and it would then disseminate the information to the Commission, SROs, and state securities regulators with which the broker-dealer is requesting registration. Thus, except for the establishment of an account and account administrator, the processing of the initial Form BD would not significantly differ from the filing procedures currently in place under Legacy CRD.

2. Re-Filing and Amendments to Form BD by Registered Broker-Dealers

The proposed amendments would also require registered broker-dealers to establish Web CRD accounts to accommodate both the transfer of existing Form BD information from Legacy CRD to Web CRD and the electronic filing of Form BD amendments in Web CRD. Beginning August 16, 1999, all Form BD amendments and re-filings would be submitted electronically through the NASD's Web site at https://crd.nasdr.com/crdmain.

Due to technical issues identified by the NASD, certain broker-dealer information currently contained in Legacy CRD will not be transferred by the NASD to Web CRD.[32] Therefore, beginning on August 16, 1999, broker-dealers would be required to re-file the following information: Item 11 Disclosure (Schedule DRP), Direct/Indirect Owners (Schedules A and B), Control/Financial Information (*i.e.*, direct owners, executive officers, and indirect owners), Industry Arrangements (*e.g.*, custodial arrangements, holding company status), and Affiliated Firms. The proposed amendments would require a registered broker-dealer to re-file this information when it files its first amendment in Web CRD but, in any event, no later than December 15, 1999.[33]

V. Other Proposed Amendments

The Commission is also proposing to amend Rules 15b3–1, 15Ba2–2, and 15Ca2–1 under the Exchange Act. Rules 15b3–1 and 15Ca2–1 both contain "Temporary Filing Instructions" for Form BD that are now outdated. The proposed amendments would delete the outdated instructions and add "Temporary Re-Filing Instructions" for Form BD to all three rules.

VI. Effective Date

The Commission anticipates that the proposed amendments to Form BD would become effective on August 1, 1999. Initial Forms BD that are completed and submitted to CRD during the System Transition Period would be accepted by the CRD and entered into Web CRD by the NASD beginning on August 16, 1999.[34] Any Form BD amendments submitted to Web CRD during the System Transition Period, however, would be returned with instructions to re-submit on or after August 16, 1999. Broker-dealers may have difficulty complying with the requirement in Exchange Act Rule 15b3–1 to promptly file amendments because (1) they will not be able to file amendments to their Form BDs during the System Transition Period, and (2) they must re-file certain information from their Forms BD in Web CRD at the same time they are required to file their first amendment in Web CRD. Therefore, the proposed amendments would provide that broker-dealers will be considered to have met this requirement if they file an amendment that should have been filed during the System Transition Period no later than September 14, 1999 (*i.e.*, 30 days from August 16, 1999).[35] In addition, during the period from August 16 to December 15, 1999, the staff of the Division of Market Regulation will not recommend

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[27] Applicants can, and will continue to be able to, request Form BD from the Commission's Publications Office at (202) 942–4040 or from any of the Commission's Regional or District Offices listed at <http://www.sec.gov/asec/secaddr.htm>. In addition, Form BD will be available from the Commission's Web site at <http://www.sec.gov> (under "Current SEC Rulemaking; Proposed Rules; Release No. 34–41351, File No. S7–16–99").

[28] Form BD will also be available from the NASD's Publications Office at (301) 590–6201 or can be downloaded from NASD's Web site at <http://www.nasdr.com>.

[29] Broker-dealers would have the option to designate a third party (*e.g.*, a service bureau or clearing firm) as its account administrator. However, if a broker-dealer opts for a third-party account administrator, it must acknowledge that the broker-dealer is responsible for filings made by those designated persons on behalf of the firm.

[30] The NASD anticipates that information packages on how to establish a Web CRD user account would be made available concurrently with Form BD.

[31] The account administrator would be responsible for determining who would have access to Web CRD and could limit such access in any manner. For example, a person responsible for Form U–4 filings might not have access to Form BD on Web CRD. In addition, the account administrator could choose to allow read-only access to many individuals within the broker-dealer.

[32] Large portions of Form BD data are currently stored as text fields in Legacy CRD. It is not technology possible for the NASD to convert this data to the counterpart text fields of Web CRD.

[33] The December 15, 1999 date was chosen to ensure that re-filing would take place prior to the annual shutdown of CRD for renewals and to have the re-filing complete before the Year 2000.

[34] As already described in Section IV.A., Forms BDW seeking withdrawal from registration with all jurisdictions that are received during this period would be held by the CRD until August 16, 1999, then input into Web CRD by the NASD. Forms BDW seeking withdrawal from registration with only some jurisdictions that are received by the CRD during this period would be returned with instructions to re-submit the filing electronically after August 16, 1999. In addition, the NASD also would accept a paper-filed Form BDW seeking withdrawal from registration in all jurisdictions after August 16, 1999 if it was the first filing made by broker-dealer in the Web CRD system.

[35] The Commission has not defined with constitutes "prompt" filing for purposes of Rule 15B3–1 because whether a filing is deemed "promptly filed" needs to be determined on a facts-and-circumstances basis. Moreover, the concept of "promptness" changes with the evolution of technology. However, in no event would filing an amendment after 30 days be considered "prompt" at a time other than during the System Transition Period.

enforcement action for filings of any amendment to Form BD that would also trigger the re-filing obligation, if the amendment was filed within 30 days from when the disclosable event occurred. In any event, however, all re-filings would have to be completed on or before December 15, 1999.

VII. Request for Comment

The Commission is soliciting comment on whether the changes to Form BD and the related rules described above will provide more meaningful information to the Commission and other securities regulators without increasing the regulatory burden on broker-dealers. In particular, the Commission requests comment on whether the restructuring of Form BD to accommodate Web CRD would create additional burdens on broker-dealers and whether the restructuring will result in ultimate cost savings to broker-dealers. The Commission is preliminarily of the view that the costs associated with filing in Web CRD are minimal and will ultimately decrease. The Commission is also preliminarily of the view that most broker-dealers either already have Internet access or would be able to obtain Internet access at a minimal cost. However, the Commission requests comment as to whether "hardship exemptions," such as is provided for the Commission's EDGAR system would be appropriate for Web CRD.[36]

VIII. Cost Benefit Analysis

No statutory mandate directs the Commission to undertake a specific cost-benefit analysis of a rule. Instead, pursuant to Section 23(a)(2) of the Exchange Act, the Commission is directed to consider, among other matters, the impact any rule would have on competition. The Commission may not adopt a rule which would impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission preliminarily believes that the benefits of Web CRD to the industry outweigh the costs associated with the one-time re-filing requirement[37] for registered broker-dealers. Based on discussions with industry representatives, the Commission expects that when Web CRD is fully implemented, it will minimize future regulatory burdens on broker-dealers for filing Form BD and related amendments. Specifically, postage, duplication costs, and staff time would be reduced by using the Internet to file Form BD amendments. The Commission estimates that broker-dealers filed approximately 15,350 Form BD amendments in Legacy CRD for fiscal year 1998. Industry representatives estimate that each amendment in Legacy CRD typically requires $.60 for duplication costs (*i.e.*, $.05 per page at approximately 12 pages), $180 for postage (*i.e.*, $12 × approximately 15 next-day mailings to the CRD, SROs, and relevant states), and $140 of staff time required to fill out the amendment to Form BD and submit it to the appropriate regulators (*i.e.*, 4 hours of staff time per amendment × an average compensation rate of $35 per hour). Thus, the total annual cost burden to the industry to amend Form BD in Legacy CRD is approximately $4,921,210 (*i.e.*, [$.60 + $180 + $140] × a yearly average of 15,350 amendments).

In contrast, industry representatives estimate that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments). Therefore, the Commission estimates that the annual cost burden to the industry to amend Form BD under Web CRD will be approximately $177,293 (*i.e.*, .33 hours × a yearly average of 15,350 amendments × an average compensation rate of $35 per hour).[38] This would result in a total annual cost savings of over $4.5 million for all broker-dealers amending Form BD.

Because the Form would still be filed initially on paper, the proposed amendments do not alter the current burden on initial filers of Form BD. In addition, the proposed amendments requiring broker-dealers to designate an account administrator and establish an ISP account are not expected to significantly alter the current burden on broker-dealers. As described above, the account administrator will be the point-of-contact between the broker-dealer and the CRD. According to industry representatives, the account administrator will most likely be the person who already performs filing and reporting functions for the firm (either internally or as a third-party filer). It is anticipated, therefore, that this person will continue to be the point-of-contact with the CRD and continue to perform similar reporting and administrative tasks for the firm. The Commission seeks comment, however, on any additional burden that will be placed on broker-dealers due to the requirement of designating an account administrator.

With respect to ISP accounts, the Commission is preliminarily of the view that the requirement that broker-dealers have Internet access (either internally or through a third-party filer) would not significantly alter the current burden on broker-dealers. Most broker-dealers already have Internet access and, for those that do not, the cost of obtaining an ISP account averages approximately $20 per month. In addition, many broker-dealers use the Internet for other business purposes such as sending and receiving e-mail, maintaining a Web site, or delivering documents. For these broker-dealers, the additional burden to file amendments to Form BD through the Internet would be only a fraction of their total costs associated with their use of the Internet. The Commission requests comment, however, on the percentage of brokers who do not currently have Internet access as well as the marginal costs associated with filing amendments to Form BD through an existing ISP account.

The Commission also preliminarily believes that Web CRD will benefit regulators and the public by streamlining the capture of relevant information pertaining to broker-dealers and their associated persons. Precise information regarding a broker-dealer's activities and disciplinary history is needed for investigations and examinations by regulators. It also is a valuable informational resource for investors in deciding whether to entrust their financial assets to a particular broker-dealer.[39] While it is impossible to quantify these benefits, the Commission believes that these benefits exceed the recordkeeping and reporting burden imposed on broker-dealers.

IX. Effects on Competition, Efficiency, and Capital Formation

Section 23(a)(2) of the Exchange Act[40] requires the Commission, in adopting rules under the Exchange Act, to consider the anticompetitive effects of such rules, if any, and to refrain from adopting a rule that would impose a burden on competition not necessarily

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[36] See "Temporary" and "Continuing" Hardship Exemptions at 17 CFR 232.201 and 17 CFR 232.202, respectively.

[37] See discussion in Section XI (Paperwork Reduction Analysis) regarding the burden hours for the one-time re-filing of certain information on Form BD.

[38] Broker-dealers that employ third-party filers account for approximately 3,009 (See Footnote No. 44 *infra*) of the Form BD amendments (*i.e.*, an approximate cost burden of $34,754). See discussion in Section XI (Paperwork Reduction Act Analysis) regarding the cost burdens on these broker-dealers.

[39] The NASD receives approximately 525,000 inquiries each year from the public requesting information about broker-dealers or their associated persons.

[40] 15 U.S.C. 78w(a)(2).

or appropriate in furthering the purpose of the Exchange Act.

Moreover, Section 3 of the Exchange Act as amended by the National Securities Markets Improvement Act of 1996, provides that whenever the Commission is engaged in rulemaking and is required to consider or determine whether an action is necessary or appropriate in the public interest, the Commission shall consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

The Commission is preliminarily of the view that the proposed amendments to Form BD and the related rules under the Exchange Act would not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, the form revisions proposed today will reduce the regulatory burden on broker-dealers by facilitating electronic filing over the Internet, a more efficient and cost-effective means for broker-dealers to meet their regulatory and reporting obligations. The Commission requests comment, however, on any competitive burdens that might result from adoption of the form revisions described in this release. In addition, for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission is also requesting information regarding the potential impact of the proposed rules on the economy an annual basis. Commentators should provide empirical data to support their views.

X. Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[41] regarding the proposed amendments to Form BD. The IRFA indicates that the proposed revisions are intended to respond to the shift from the network-based architecture and proprietary software approach anticipated in the 1996 CRD system to the Internet-based Web CRD. The adoption of the proposed revisions to Form BD not only will provide benefits to securities regulators in the retrieval of information, but will also ease the burden of registration by future registrants. The IRFA also indicates that, except for the one-time re-filing requirement on registered broker-dealers, the proposed revisions to Form BD will reduce aggregate cost and time burdens on broker-dealers who are required to file, or make amendments to, Form BD. The IRFA further indicates that because the proposed amendments generally are intended to lessen the burden of registration, small broker-dealers will be affected in the same manner as other registrants. Thus, exempting small broker-dealers from Form BD disclosures would be unwarranted.

The Commission requests comment, however, on whether there would be a significant economic impact on a substantial number of small entities that might result from adoption of the Form BD revisions described in this release.

A copy of the IRFA may be obtained from Barbara A. Stettner, Special Counsel, Office of Chief Counsel, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–1001; (202) 942–0073.

XI. Paperwork Reduction Act Analysis

Certain provisions of the proposal to amend Form BD contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 (44 U.S.C. Section 3501 *et seq.*). The Commission has submitted the proposal to the Office of Management and Budget ("OMB") for review in accordance with PRA requirements in effect at this time. The title for this collection of information: "Application for Registration as a Broker or Dealer," which the Commission is proposing to amend, contains a currently approved collection of information under OMB control number 3235–0012. The information received by Form BD is mandatory and the responses are not kept confidential. An agency may not sponsor, conduct, or require response to an information collection unless a currently valid OMB control number is displayed.

The proposed amendments to Form BD are expected to provide securities regulators with better information about a registrant's disciplinary history by grouping disciplinary information into related categories and by customizing the corresponding DRPs used to disclose details of the registrant's disciplinary history. The proposed amendments also are intended to elicit more precise information about the business activities of broker-dealer applicants.[42]

As discussed above, the proposed amendments to Form BD respond to certain recommended changes to the CRD system that have led to its redesign as an Internet-based system. Web CRD is expected to be more useful to securities regulators. It will also allow broker-dealers to file amendments to Form BD and other uniform registration forms electronically. Because Web CRD is intended to operate in an electronic environment, paper amendments to Form BD will no longer be submitted by broker-dealers. Rather, broker-dealers will be able to access and update their respective Forms BD through the NASD's Web site.

This should result in cost-savings related to copying, postage, and staff time. Under Web CRD, broker-dealers will not have to obtain dedicated computer systems or proprietary software as would have been required under Redesigned CRD. Rather, a firm only needs access to the Internet and an Internet browser through an account with an ISP to submit filings electronically.

Broker-dealers already are required pursuant to Rule 15b1–1[43] under the Exchange Act to file for registration on Form BD and, pursuant to Rule 15b3–1(b),[44] to promptly file an amendment to Form BD if any information contained therein becomes inaccurate. The proposed amendments are intended to adapt Form BD to Web CRD's Internet-based environment. Therefore, except for the one-time re-filing requirement, the proposed amendments to Form BD will not impose any significant additional recordkeeping, reporting or other compliance requirement on broker-dealers. Initial filings of Form BD will continue to be made on paper and the electronic filing of Form BD amendments is expected to reduce time and cost burdens on broker-dealers.

With respect to the one-time re-filing requirement, the Commission staff estimates (based on discussions with industry representatives) that the average time necessary to complete a re-filing will be as follows: (1) approximately 30 large firms (total capital of more than $500 billion) will require approximately 40 hours each to re-file, (2) approximately 170 medium firms (total capital between $499 billion and $20 million) will require approximately 24 hours each to re-file, and (3) approximately 6,640 small

[41] 5 U.S.C. 603 (1990).

[42] The Commission uses the information disclosed by applicants in Form BD to: (i) Determine whether broker-dealer applicants meet the standards for registration set forth in the provisions of the Exchange Act; (ii) develop and maintain a central information resource where members of the public may obtain relevant, current information about broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers, and where the Commission and other securities regulators may obtain information for investigatory purposes; and (iii) develop statistical information concerning broker-dealers, municipal securities dealers, and government securities brokers or government securities dealers.

[43] 17 CFR 240.15b1–1.

[44] 17 CFR 240.15b3–1(b).

firms[45] (total capital below $20 million) will require approximately 2 hours each to re-file. Thus, the total burden hours for the re-filing of certain disclosure information into Web CRD is estimated as 18,560 hours [30 large firms × 40 (1,200) + 170 medium firms × 24 (4,080) + 6,640 small firms × 2 (13,280) = 18,560].

Broker-dealer applicants are also subject to Form BD's initial reporting obligation. Form BD is only submitted once and is updated by amendment (see discussion on Form BD amendments below). For fiscal year 1998, the Commission received approximately 790 Form BDs for an initial or successor application for registration as a broker-dealer, non-bank municipal securities dealer, or non-bank government securities broker-dealer (pursuant to Rules 15b1–1, 15b1–3, 15b1–4, 15Ba2–2(a), 15Ba2–4, 15Ba2–5, 15Ca2–1, 15Ca2–3, and 15Ca2–4). Although the time necessary to complete Form BD will vary depending on the nature and complexity of the applicant's securities business, Commission staff estimates that the average time necessary to complete the initial form is approximately 2.75 hours. Thus, the Commission estimates that total annual burden hours required for the initial filing of a Form BD is 2,173 hours (2.75 × 790). It is important to note that the proposed amendments do not alter the current burden on initial filers of Form BD because a Form BD filed for the first time is still required to be filed on paper.

Under Web CRD, all amendments to Form BD would be filed electronically. For fiscal year 1998, the Commission received approximately 15,350 amendments. Of these 15,350 amendments, approximately 3,009 were from broker-dealers that employ third-party filers.[46] Because these broker-dealers would incur cost burdens rather than hour burdens, they will be removed from the total annual hour burden calculation (see discussion regarding cost burdens on broker-dealers that employ third-party filers below). Therefore, for purposes of the annual hour burden calculation, the total annual number of amendments to Form BD would be 12,341 (*i.e.*, 15,350 total amendments—3,009 amendments filed by third-party filers). The staff estimates that the average time necessary to complete an amendment on Web CRD will be approximately 20 minutes (*i.e.*, 5 minutes for simple amendments and up to 30 minutes for more complicated amendments).

Thus, the total annual burden hours for the filing of Form BD amendments is 4,073 hours (.33 hours × approximately 12,341 [15,350 − 3009] amendments per year).

The staff estimates that the total annual filing burden for Form BD and Form BD amendments is 6,246 hours (2,173 for initial filings of Form BD + 4,073 for amendments to Form BD). This is a reduction of approximately 1,030 total burden hours from the annual regulatory burden anticipated in Redesigned CRD. However, the total one-time re-filing burden would be approximately 18,560 hours. Accordingly, for the year when Web CRD is first implemented, the total hour burden will be approximately 24,806 hours.

The Commission also anticipates that the burden hours discussed above would apply similarly to broker-dealers who rely on third-party filers. Instead of incurring the cost of staff time, however, these broker-dealers would be billed by third-party filers at an average compensation rate of $35 per hour. Therefore, a small broker-dealer would pay a third-party filer $70 (2 hours for re-filing × $35 per hour) to comply with its one-time re-filing obligation. This would amount to a total, one-time cost burden of $58,100 ($70 × 1,660 small broker-dealers that employ third-party filers).

Broker-dealers that employ third-party filers to file amendments to Form BD would also incur a cost burden. As discussed above in Section VIII (Cost Benefit Analysis), the Commission estimates that approximately 15,350 amendments to Form BD are filed each year by broker-dealers. Of these 15,350 amendments, approximately 3,009 are from broker-dealers that employ third-party filers. The average time necessary to complete an amendment on Web CRD is estimated to be approximately 20 minutes. Therefore, the total annual cost burden to broker-dealers that employ third-party filers to file amendments to Form BD would be approximately $34,754 (*i.e.*, .33 hours × 3,009 amendments × an average compensation rate of $35 per hour). The staff estimates that the total annual cost burden to these broker-dealers for re-filing and amending Form BD is approximately $92,854 (*i.e.*, $58,100 + $34,754).

With respect to ISP accounts, the Commission is preliminarily of the view that most broker-dealers already have Internet access (either internally or through a third-party filer), which they currently use to send and receive e-mail, to maintain a Web site, or to deliver documents. Therefore, the use of their existing Internet accounts for filing in Web CRD would be incremental and would not significantly alter their current burden. As discussed above in Section VIII (Cost Benefit Analysis), for those broker-dealers that do not currently have access to the Internet, the cost burden of obtaining an ISP account is approximately $20 per month. The Commission preliminarily estimates that approximately 5% of all broker-dealers (approximately 425 broker-dealers) do not currently have access to the Internet either directly or through the use of a third-party filer. Therefore, the total annual cost burden for obtaining and maintaining an Internet account would be approximately $102,000 [$20 × 12 months × (.05 × 8500)].

Accordingly, for the year when Web CRD is first implemented, the total cost burden would be $194,854 (*i.e.*, $102,000 for ISP accounts + $92,854 for broker-dealers employing third-party filers to amend and re-file Form BD).

It is important to note that regardless of whether a broker-dealer employs a person internally or hires a third-party to file information in CRD, ultimately the same costs would apply. The Commission seeks comment, however, on the costs associated with third-party filers, and in particular, whether broker-dealers employing third-party filers would bear different cost burdens than their counterparts who file with CRD internally. In addition, the Commission requests comment on the total number of broker-dealers who employ third-party filers.

Pursuant to 44 USC 3506(c)(2)(B), the Commission solicits comments to —

(i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility;

---

[45] The Commission estimate that approximately 20% of the small broker-dealer population (*i.e.*, 1,660 [.20 × 8,300 small broker-dealer]) employ third parties to file information related to their respective Forms BD with the CRD. These broker-dealers would not incur an hour burden and, therefore, for purposes of the Paperwork Reduction Act, are removed from the hour-burden calculation for small broker-dealers (*i.e.*, 8,300 total small broker-dealers—1,660 small broker-dealers that employ third party filers = 6,640 small broker-dealers that would incur hour burdens). As discussed below, however, the 1,660 broker-dealers would incur a cost burden with respect to re-filing and Form BD amendments.

[46] Out of the approximate 15,350 amendments filed each year, approximately 15,043 are filed by small broker-dealer (*i.e.*, 8,300 small broker-dealers = 98% of the broker-dealer community; 15,350 × .98 = 15,043). As discussed in footnote 43, *supra*, approximately 1,660 (20%) of small broker-dealers employ third-party filers and, therefore, would be responsible for approximately 3,009 of the total annual amendments to Form BD (*i.e.*, 15,043 amendments by small broker-dealer community × .20 = 3,009 amendments).

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collections of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected;

(iv) Minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons desiring to submit comments on the collection of information requirements should direct them to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Washington, DC 20503, and should also send a copy of their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609 with reference to File No. S7–16–99. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication, so a comment to OMB is best assured of having its full affect if OMB receives it within 30 days of publication.

XII. Statutory Basis

The foregoing amendments are being proposed pursuant to the Exchange Act and particularly to Sections 15(a), 15(b), 15B, 15C, and 23(a) therein.[47]

List of Subjects in 17 CFR Parts 240 and 249

Broker-dealers, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78f, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll(d), 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. By amending § 240.15b3–1 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and adding paragraph (c) to read as follows:

§ 240.15b3–1 Amendments to application.

* * * * *

(c) *Temporary re-filing instructions.* (1) Every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered "Yes," the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered "Yes," the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered "Yes," the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

3. By amending § 240.15Ba2–2 by adding paragraph (e) to read as follows:

§ 240.15Ba2–2. Application for registration of non-bank municipal securities dealers whose business is exclusively intrastate.

* * * * *

(e) Temporary re-filing instructions. (1) Every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered "Yes," the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered "Yes," the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered "Yes," the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (e)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

4. By amending § 240.15Ca2–1 by removing paragraph (b), redesignating paragraph (c) as paragraph (b), and adding a new paragraph (c) to read as follows:

§ 240.15Ca2–1 Application for registration as a government securities broker or government securities dealer.

* * * * *

(c) Temporary re-filing instructions. (1) Every registered broker-dealer shall re-file with the Central Registration Depository, at the time the broker-dealer submits its first amendment on or after August 16, 1999 but, in any event, no later than December 15, 1999, the following information from its current Form BD:

(i) Question 8 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(ii) Question 9 (if answered "Yes," the broker-dealer must also complete relevant items in Section IV of Schedule D);

(iii) Question 10(a) (if answered "Yes," the broker-dealer must also complete relevant items in Section V of Schedule D);

(iv) Question 10(b) (if answered "Yes," the broker-dealer must also complete relevant items in Section VI of Schedule D);

(v) Question 11 (if any item in Question 11 is answered "Yes," the broker-dealer must also complete the relevant DRP(s)); and

(vi) Schedules A and B.

(2) Every registered broker-dealer, at the time it re-files the information required by paragraph (c)(1) of this section, shall review, and amend as necessary, the information in Form BD that was transferred by the National Association of Securities Dealers to the Central Registration Depository prior to August 16, 1999.

[47] 15 U.S.C. 78o(a), 78o(b), 78o–4(a)(2), 78o–5(a)(2), and 78w(a).

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

10. The authority citation for part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

11. By revising Form BD (referenced in § 249.501) to read as set forth in Appendix B below:

Note: Form BD does not and the revisions will not appear in the Code of Federal Regulations. Revised Form BD is attached as Appendix B to this document.

Dated: April 30, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

Note: Appendices A and B to this document are available in the Commission's Public Reference Room and will be available on the Commission's Web site at www.sec.gov.

BILLING CODE 8010–01–P

Appendix B

Form BD

OMB APPROVAL	
OMB Number:	3235-0012
Expires:	TBD
Estimated average burden hours per:	
Response	2.75
Amendment	0.33

Uniform Application for Broker-Dealer Registration

FORM BD INSTRUCTIONS

A. GENERAL INSTRUCTIONS

1. Form BD is the Uniform Application for Broker-Dealer Registration. Broker-Dealers must file this form to register with the Securities and Exchange Commission, the *self-regulatory organizations*, and *jurisdictions* through the Central Registration Depository ("CRD") system, operated by the NASD.
2. **UPDATING** – By law, the *applicant* must promptly update Form BD information by submitting amendments whenever the information on file becomes inaccurate or incomplete for any reason.
3. **CONTACT EMPLOYEE** – The individual listed as the contact employee must be authorized to receive all compliance information, communications, and mailings, and be responsible for disseminating it within the *applicant's* organization.
4. **GOVERNMENT SECURITIES ACTIVITIES**
   - A. Broker-dealers registered or *applicants* applying for registration under Section 15(b) of the Exchange Act that conduct (or intend to conduct) a government securities business in addition to other broker-dealer activities (if any) must file a notice on Form BD by answering "yes" to Item 2B.
   - B. Section 15C of the Securities Exchange Act of 1934 requires sole government securities broker-dealers to register with the SEC. To do so, answer "yes" to Item 2C if conducting only a government securities business.
   - C. Broker-dealers registered under Section 15(b) of the Exchange Act that cease to conduct a government securities business must file notice when ceasing their activities in government securities. To do so, file an amendment to Form BD and answer "yes" to Item 2D.

NOTE: Broker-dealers registered under Section 15C may register under Section 15(b) by filing an amendment to Form BD and answering "yes" to Items 2A and 2D. By doing so, broker-dealer expressly consents to withdrawal of broker-dealer's registration under 15C of the Exchange Act.

5. **FEDERAL INFORMATION LAW AND REQUIREMENTS** – An agency may not conduct or sponsor, and a *person* is not required to respond to, a collection of information unless it displays a currently valid control number. Section 15, 15c, 17(a) and 23(a) of the Exchange Act authorize the Commission to collect the information on this Form from registrants. See 15 U.S.C. §§78o, 78o-5, 78-q and 78w. Filing of this Form is mandatory; however the social security number information, which aids in identifying the *applicant*, is voluntary. The principal purpose of this Form is to permit the Commission to determine whether the *applicant* meets the statutory requirement to engage in the securities business. The Form also is used by *applicants* to register as broker-dealers with certain *self-regulatory organizations* and all of the states. The Commission and the National Association of Securities Dealers, Inc. maintain the files of the information on this Form and will make the information publicly available. Any member of the public may direct to the Commission any comments concerning the accuracy of the burden estimate on application facing page of this Form, and any suggestions for reducing this burden. This collection of information has been reviewed by the Office of Management and Budget in accordance with the clearance requirements of 44 U.S.C. §3507. This information contained in this form is part of a system of records subject to the Privacy Act of 1974, as amended. The Securities and Exchange Commission has published in the Federal Register the Privacy Act Systems of Records Notice for these records.

B. PAPER FILING INSTRUCTIONS (FIRST TIME *APPLICANTS* FILING WITH CRD AND WITH SOME *JURISDICTIONS*)

1. **FORMAT**
   - A. A full paper Form BD is required when the *applicant* is filing with the CRD for the first time. In addition, some *jurisdictions* may require a separate paper filing of Form BD. The *applicant* should contact the appropriate *jurisdiction(s)* for specific filing requirements.
   - B. Attach an Execution Page (Page 1) with original manual signatures to the initial Form BD filing.
   - C. Type all information.
   - D. Give the name of the broker-dealer and date on each page.
   - E. Use only the current version of Form BD and its Schedules or a reproduction of them.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP(BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). Attach a copy of the fully completed DRP(BD) or DRP(U-4) previously submitted. If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the items on the *applicant's* appropriate DRP(BD).
3. **SCHEDULES A, B AND C** – File Schedules A and B only with initial applications for registration. Use Schedule C to update Schedules A and B. Individuals not required to file a Form U-4 (individual registration) with the CRD system who are listed on Schedules A, B, or C must attach page 2 of Form U-4. The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21. Signatures are not required.
4. **SCHEDULE D** – Schedule D provides additional space for explaining answers to Item 1C(2), and "yes" answers to Items 5, 7, 8, 9, 10, 12, and 13 of Form BD.

C. ELECTRONIC FILING INSTRUCTIONS (*APPLICANTS* / REGISTERED BROKER-DEALERS FILING AMENDMENTS WITH CRD)

1. **FORMAT**
   - A. Items 1-13 must be answered and all fields requiring a response must be completed before the filing will be accepted.
   - B. *Applicant* must complete the execution screen certifying that Form BD and amendments thereto have been executed properly and that the information contained therein is accurate and complete.
   - C. To amend information, *applicant* must update the appropriate Form BD screens.
   - D. A paper copy, with original manual signatures, of the initial Form BD filing and amendments to Disclosure Reporting Pages (DRPs BD) must be retained by the *applicant* and be made available for inspection upon a regulatory request.
2. **DISCLOSURE REPORTING PAGE (DRP)** – Information concerning the *applicant* or *control affiliate* that relates to the occurrence of an event reportable under Item 11 must be provided on the *applicant's* appropriate DRP(BD). If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete the *control affiliate* name and CRD number of the *applicant's* appropriate DRP(BD). Details for the event must be submitted on the *control affiliate's* appropriate DRP(BD) or DRP(U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all of the questions and complete all fields requiring a response on the *applicant's* appropriate DRP(BD) screen.

3. **DIRECT AND INDIRECT OWNERS** – Amend the Direct Owners and Executive Officers screen and the Indirect Owners screen when changes in ownership occur. *Control affiliates* that are individuals who are not required to file a Form U-4 (individual registration) with the CRD must complete page 2 of Form U-4 (i.e., submit/file the information elicited by the Personal Data, Residential History, and Employment and Personal History sections of that Form). The *applicant* broker-dealer must be listed in Form U-4 Item 20 or 21.

The CRD mailing address for questions and correspondence is:

NASAA/NASD CENTRAL REGISTRATION DEPOSITORY
P.O. BOX 9495
GAITHERSBURG, MD 20898-9495

EXPLANATION OF TERMS

(The following terms are italicized throughout this form.)

1. GENERAL

APPLICANT – The broker-dealer applying on or amending this form.

CONTROL – The power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise. Any *person* that (i) is a director, general partner or officer exercising executive responsibility (or having similar status or functions); (ii) directly or indirectly has the right to vote 25% or more of a class of a voting security or has the power to sell or direct the sale of 25% or more of a class of voting securities; or (iii) in the case of a partnership, has the right to receive upon dissolution, or has contributed, 25% or more of the capital, is presumed to control that company. (This definition is used solely for the purpose of Form BD.)

JURISDICTION – A state, the District of Columbia, the Commonwealth of Puerto Rico, or any subdivision or regulatory body thereof.

PERSON – An individual, partnership, corporation, trust, or other organization.

SELF-REGULATORY ORGANIZATION – Any national securities or commodities exchange or registered securities association, or registered clearing agency.

2. FOR THE PURPOSE OF ITEM 5 AND SCHEDULE D

SUCCESSOR – An unregistered entity that assumes or acquires substantially all of the assets and liabilities, and that continues the business of, a registered predecessor broker-dealer, who ceases its broker-dealer activities. [See Securities Exchange Act Release No. 31661 (December 28, 1992), 58 FR 7 (January 4, 1993)]

3. FOR THE PURPOSE OF ITEM 11 AND THE CORRESPONDING DISCLOSURE REPORTING PAGES (DRPs)

CONTROL AFFILIATE – A *person* named in Items 1A, 9 or in Schedules A, B or C as a control person or any other individual or organization that directly or indirectly controls, is under common control with, or is controlled by, the *applicant*, including any current employee except one performing only clerical, administrative, support or similar functions, or who, regardless of title, performs no executive duties or has no senior policy making authority.

INVESTMENT OR INVESTMENT-RELATED – Pertaining to securities, commodities, banking, insurance, or real estate (including, but not limited to, acting as or being associated with a broker-dealer, municipal securities dealer, government securities broker or dealer, issuer, investment company, investment adviser, futures sponsor, bank, or savings association).

INVOLVED – Doing an act or aiding, abetting, counseling, commanding, inducing, conspiring with or failing reasonably to supervise another in doing an act.

FOREIGN FINANCIAL REGULATORY AUTHORITY – Includes (1) a foreign securities authority; (2) other governmental body or foreign equivalent of a *self-regulatory organization* empowered by a foreign government to administer or enforce its laws relating to the regulation of *investment* or *investment-related* activities; and (3) a foreign membership organization, a function of which is to regulate the participation of its members in the activities listed above.

PROCEEDING – Includes a formal administrative or civil action initiated by a governmental agency, *self-regulatory organization* or a *foreign financial regulatory authority*; a *felony* criminal indictment or information (or equivalent formal charge); or a *misdemeanor* criminal information (or equivalent formal charge). Does not include other civil litigation, investigations, or arrests or similar charges effected in the absence of a formal criminal indictment or information (or equivalent formal charge).

CHARGED – Being accused of a crime in a formal complaint, information, or indictment (or equivalent formal charge).

ORDER – A written directive issued pursuant to statutory authority and procedures, including orders of denial, suspension, or revocation; does not include special stipulations, undertakings or agreements relating to payments, limitations on activity or other restrictions unless they are included in an *order*.

FELONY – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *felony* is an offense punishable by a sentence of at least one year imprisonment and/or a fine of at least $1,000. The term also includes a general court martial.

MISDEMEANOR – For *jurisdictions* that do not differentiate between a *felony* and a *misdemeanor*, a *misdemeanor* is an offense punishable by a sentence of less than one year imprisonment and/or a fine of less than $1,000. The term also includes a special court martial.

FOUND – Includes adverse final actions, including consent decrees in which the respondent has neither admitted nor denied the findings, but does not include agreements, deficiency letters, examination reports, memoranda of understanding, letters of caution, admonishments, and similar informal resolutions of matters.

MINOR RULE VIOLATION – A violation of a *self-regulatory organization* rule that has been designated as "minor" pursuant to a plan approved by the U.S. Securities and Exchange Commission. A rule violation may be designated as "minor" under a plan if the sanction imposed consists of a fine of $2,500 or less, and if the sanctioned person does not contest the fine. (Check with the appropriate *self-regulatory organization* to determine if a particular rule violation has been designated as "minor" for these purposes).

ENJOINED – Includes being subject to a mandatory injunction, prohibitory injunction, preliminary injunction, or a temporary restraining order.

FORM BD
PAGE 1
(Execution Page)
(REV. x/1999)

UNIFORM APPLICATION FOR BROKER-DEALER REGISTRATION

Date: _____ SEC File No.: 8-_____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

WARNING: Failure to keep this form current and to file accurate supplementary information on a timely basis, or the failure to keep accurate books and records or otherwise to comply with the provisions of law applying to the conduct of business as a broker-dealer would violate the Federal securities laws and the laws of the *jurisdictions* and may result in disciplinary, administrative, injunctive or criminal action.

INTENTIONAL MISSTATEMENTS OR OMISSIONS OF FACTS MAY CONSTITUTE CRIMINAL VIOLATIONS.

☐ APPLICATION ☐ AMENDMENT

1. Exact name, principal business address, mailing address, if different, and telephone number of *applicant*:

A. Full name of *applicant* (if sole proprietor, state last, first and middle name):

_____

B. IRS Empl. Ident. No.:

_____

C. (1) Name under which broker-dealer business primarily is conducted, if different from Item 1A.

_____

(2) List on Schedule D, Page 1, Section I any other name by which the firm conducts business and where it is used.

D. If this filing makes a name change on behalf of the applicant, enter the new name and specify whether the name change is of the ☐ *applicant* name (1A) or ☐ business name (1C):

Please check above. _____

E. Firm main address: (Do not use a P.O. Box)

_____
(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

Branch offices or other business locations must be reported on Schedule E.

F. Mailing address, if different:

_____

G. Business Telephone Number:

_____ _____
(Area Code) (Telephone Number)

H. Contact Employee:

_____ _____ _____
(Name and Title) (Area Code) (Telephone Number)

EXECUTION:

For the purposes of complying with the laws of the State(s) designated in Item 2 relating to either the offer or sale of securities or commodities, the undersigned and *applicant* hereby certify that the *applicant* is in compliance with applicable state surety bonding requirements and irrevocably appoint the administrator of each of those State(s) or such other person designated by law, and the successors in such office, attorney for the *applicant* in said State(s), upon whom may be served any notice, process, or pleading in any action or *proceeding* against the *applicant* arising out of or in connection with the offer or sale of securities or commodities, or out of the violation or alleged violation of the laws of those State(s), and the *applicant* hereby consents that any such action or *proceeding* against the *applicant* may be commenced in any court of competent jurisdiction and proper venue within said State(s) by service of process upon said appointee with the same effect as if *applicant* were a resident in said State(s) and had lawfully been served with process in said State(s).

The *applicant* consents that service of any civil action brought by or notice of any *proceeding* before the Securities and Exchange Commission or any *self-regulatory organization* in connection with the *applicant's* broker-dealer activities, or of any application for a protective decree filed by the Securities Investor Protection Corporation, may be given by registered or certified mail or confirmed telegram to the *applicant's* contact employee at the main address, or mailing address if different, given in Items 1E and 1F.

The undersigned, being first duly sworn, deposes and says that he/she has executed this form on behalf of, and with the authority of, said *applicant*. The undersigned and *applicant* represent that the information and statements contained herein, including exhibits attached hereto, and other information filed herewith, all of which are made a part hereof, are current, true and complete. The undersigned and *applicant* further represent that to the extent any information previously submitted is not amended such information is currently accurate and complete.

_____ _____
Date (MM/DD/YYYY) Name of Applicant

By: _____ _____
Signature Print Name and Title

Subscribed and sworn before me this _____ day of _____, _____ by _____
Year Notary Public

My Commission expires _____ County of _____ State of _____

This page must always be completed in full with original, manual signature and notarization.
To amend, circle items being amended. Affix notary stamp or seal where applicable.

DO NOT WRITE BELOW THIS LINE – FOR OFFICIAL USE ONLY

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Applicant Name: _____ Date: _____ Firm CRD No.: _____

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2. Indicate by checking the appropriate box(es) each governmental authority, organization, or *jurisdiction* in which the *applicant* is registered or registering as a broker-dealer.

SECURITIES AND EXCHANGE COMMISSION

If *applicant* is registered or registering with the SEC, check here and answer Items 2A through 2D below. ☐

	YES	NO
A. Is *applicant* registered or registering as a broker-dealer under Section 15(b) or Section 15B of the Securities Exchange Act of 1934?	☐	☐
B. Is *applicant* registered or registering as a broker-dealer under Section 15(b) of the Securities Exchange Act of 1934 and also acting or intending to act as a government securities broker or dealer?	☐	☐
C. Is *applicant* registered or registering solely as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934? *Do not answer "yes" to Item 2C if applicant answered "yes" to Item 2A or Item 2B.*	☐	☐
D. Is *applicant* ceasing its activities as a government securities broker or dealer?	☐	☐

If applicant answers "yes" to Items 2A and 2D, applicant expressly consents to the withdrawal of its registration as a government securities broker or dealer under Section 15C of the Securities Exchange Act of 1934. See "Instructions."

SRO

☐ AMEX ☐ BSE ☐ CBOE ☐ CHX ☐ CSE ☐ NASD ☐ NYSE ☐ PHLX ☐ PCX ☐ OTHER *(specify)* _____

JURISDICTION

☐ Alabama	☐ Hawaii	☐ Michigan	☐ North Carolina	☐ Texas
☐ Alaska	☐ Idaho	☐ Minnesota	☐ North Dakota	☐ Utah
☐ Arizona	☐ Illinois	☐ Mississippi	☐ Ohio	☐ Vermont
☐ Arkansas	☐ Indiana	☐ Missouri	☐ Oklahoma	☐ Virginia
☐ California	☐ Iowa	☐ Montana	☐ Oregon	☐ Washington
☐ Colorado	☐ Kansas	☐ Nebraska	☐ Pennsylvania	☐ West Virginia
☐ Connecticut	☐ Kentucky	☐ Nevada	☐ Puerto Rico	☐ Wisconsin
☐ Delaware	☐ Louisiana	☐ New Hampshire	☐ Rhode Island	☐ Wyoming
☐ District of Columbia	☐ Maine	☐ New Jersey	☐ South Carolina	
☐ Florida	☐ Maryland	☐ New Mexico	☐ South Dakota	
☐ Georgia	☐ Massachusetts	☐ New York	☐ Tennessee	

3. A. Indicate legal status of *applicant:*

☐ Corporation ☐ Partnership ☐ Sole Proprietorship ☐ Limited Liability Company ☐ Other *(specify)* _____

B. Month *applicant's* fiscal year ends: _____

C. If other than a sole proprietor, indicate date and place *applicant* obtained its legal status (i.e., state or country where incorporated, where partnership agreement was filed, or where *applicant* entity was formed):

State/Country of formation: _____ Date of formation: _____ (MM/DD/YYYY)

Schedule A and, if applicable, Schedule B must be completed as part of all initial applications. Amendments to these schedules must be provided on Schedule C.

4. If *applicant* is a sole proprietor, state full residence address and Social Security Number.

Social Security Number: __ __ __ - __ __ - __ __ __ __

_____
(Number and Street) (City) (State/Country) (Zip+4/Postal Code)

	YES	NO
5. Is *applicant* at the time of this filing *succeeding* to the business of a currently registered broker-dealer? *Do not report previous successions already reported on Form BD.* *If "Yes," contact CRD prior to submitting form; complete appropriate items on Schedule D, Page 1, Section III.*	☐	☐
6. Does *applicant* hold or maintain any funds or securities or provide clearing services for any other broker or dealer?	☐	☐
7. Does *applicant* refer or introduce customers to any other broker or dealer? *If "Yes," complete appropriate items on Schedule D, Page 1, Section IV.*	☐	☐

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PAGE 3
(REV. x/1999)

Applicant Name: _____
Date: _____ Firm CRD No.: _____

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	YES	NO
8. Does *applicant* have any arrangement with any other *person*, firm, or organization under which:		
A. any books or records of *applicant* are kept or maintained by such other *person*, firm or organization?	☐	☐
B. accounts, funds, or securities of the *applicant* are held or maintained by such other *person*, firm, or organization?	☐	☐
C. accounts, funds, or securities of customers of the *applicant* are held or maintained by such other *person*, firm or organization?	☐	☐
For purposes of 8B and 8C, do not include a bank or satisfactory control location as defined in paragraph (c) of Rule 15c3-3 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-3).		
If "Yes" to any part of Item 8, complete appropriate items on Schedule D, Page 1, Section IV.		
9. Does any *person* not named in Item 1 or Schedules A, B, or C, directly or indirectly:		
A. *control* the management or policies of the *applicant* through agreement or otherwise?	☐	☐
B. wholly or partially finance the business of *applicant*?	☐	☐
Do not answer "yes" to 9B if the person finances the business of the applicant through: 1) a public offering of securities made pursuant to the Securities Act of 1933; 2) credit extended in the ordinary course of business by suppliers, banks, and others; or 3) a satisfactory subordination agreement, as defined in Rule 15c3-1 under the Securities Exchange Act of 1934 (17 CFR 240.15c3-1).		
If "Yes" to any part of Item 9, complete appropriate items on Schedule D, Page 1, Section IV.		
10. A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?	☐	☐
If "Yes" to Item 10A, complete appropriate items on Schedule D, Page 2, Section V.		
B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?	☐	☐
If "Yes" to Item 10B, complete appropriate items on Schedule D, Page 3, Section VI.		
11. Use the appropriate DRP for providing details to "yes" answers to the questions in Item 11. Refer to the Explanation of Terms section of Form BD Instructions for explanations of italicized terms.		
CRIMINAL DISCLOSURE		
A. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to any *felony?*	☐	☐
(2) been *charged* with any *felony?*	☐	☐
B. In the past ten years has the *applicant* or a *control affiliate:*		
(1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving:* investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?	☐	☐
(2) been *charged* with a *misdemeanor* specified in 11B(1)?	☐	☐
REGULATORY ACTION DISCLOSURE		
C. Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:		
(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
(2) *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of its regulations or statutes?	☐	☐
(3) *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
(4) entered an *order* against the *applicant* or a *control affiliate* in connection with *investment-related* activity?	☐	☐
(5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or *ordered* the *applicant* or a *control affiliate* to cease and desist from any activity?	☐	☐

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Applicant Name: _____
Date: _____ Firm CRD No.: _____

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		YES	NO
REGULATORY ACTION DISCLOSURE	D. Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority:*		
	(1) ever *found* the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?	☐	☐
	(2) ever *found* the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?	☐	☐
	(3) ever *found* the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
	(4) In the past ten years, entered an *order* against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?	☐	☐
	(5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by *order*, prevented it from associating with an *investment-related* business or restricted its activities?	☐	☐
	E. Has any *self-regulatory organization* or commodities exchange ever:		
	(1) *found* the *applicant* or a *control affiliate* to have made a false statement or omission?	☐	☐
	(2) *found* the *applicant* or a *control affiliate* to have been involved in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?	☐	☐
	(3) *found* the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?	☐	☐
	(4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?	☐	☐
	F. Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?	☐	☐
	G. Is the *applicant* or a *control affiliate* now the subject of any regulatory *proceeding* that could result in a "yes" answer to any part of 11C, D, or E?	☐	☐
CIVIL JUDICIAL DISCLOSURE	H. (1) Has any domestic or foreign court:		
	(a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?	☐	☐
	(b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?	☐	☐
	(c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or *control affiliate* by a state or *foreign financial regulatory authority*?	☐	☐
	(2) Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H(1)?	☐	☐
FINANCIAL DISCLOSURE	I. In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:		
	(1) has been the subject of a bankruptcy petition?	☐	☐
	(2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?	☐	☐
	J. Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?	☐	☐
	K. Does the *applicant* have any unsatisfied judgments or liens against it?	☐	☐

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PAGE 5
(REV. x/1999)

Applicant Name: _____
Date: _____ Firm CRD No.: _____

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12. Check types of business engaged in (or to be engaged in, if not yet active) by *applicant*. Do not check any category that accounts for (or is expected to account for) less than 1% of annual revenue from the securities or investment advisory business.

A. Exchange member engaged in exchange commission business other than floor activities	☐ EMC
B. Exchange member engaged in floor activities	☐ EMF
C. Broker or dealer making inter-dealer markets in corporate securities over-the-counter	☐ IDM
D. Broker or dealer retailing corporate equity securities over-the-counter	☐ BDR
E. Broker or dealer selling corporate debt securities	☐ BDD
F. Underwriter or selling group participant (corporate securities other than mutual funds)	☐ USG
G. Mutual fund underwriter or sponsor	☐ MFU
H. Mutual fund retailer	☐ MFR
I. 1. U.S. government securities dealer	☐ GSD
2. U.S. government securities broker	☐ GSB
J. Municipal securities dealer	☐ MSD
K. Municipal securities broker	☐ MSB
L. Broker or dealer selling variable life insurance or annuities	☐ VLA
M. Solicitor of time deposits in a financial institution	☐ SSL
N. Real estate syndicator	☐ RES
O. Broker or dealer selling oil and gas interests	☐ OGI
P. Put and call broker or dealer or option writer	☐ PCB
Q. Broker or dealer selling securities of only one issuer or associate issuers (other than mutual funds)	☐ BIA
R. Broker or dealer selling securities of non-profit organizations (e.g., churches, hospitals)	☐ NPB
S. Investment advisory services	☐ IAD
T. 1. Broker or dealer selling tax shelters or limited partnerships in primary distributions	☐ TAP
2. Broker or dealer selling tax shelters or limited partnerships in the secondary market	☐ TAS
U. Non-exchange member arranging for transactions in listed securities by exchange member	☐ NEX
V. Trading securities for own account	☐ TRA
W. Private placements of securities	☐ PLA
X. Broker or dealer selling interests in mortgages or other receivables	☐ MRI
Y. Broker or dealer involved in a networking, kiosk or similar arrangement with a:	
1. bank, savings bank or association, or credit union	☐ BNA
2. insurance company or agency	☐ INA
Z. Other *(give details on Schedule D, Page 1, Section II)*	☐ OTH

	YES	NO
13. A. Does *applicant* effect transactions in commodity futures, commodities or commodity options as a broker for others or as a dealer for its own account?	☐	☐
B. Does *applicant* engage in any other non-securities business?	☐	☐

If "yes," describe each other business briefly on Schedule D, Page 1, Section II.

Schedule A of FORM BD

DIRECT OWNERS AND EXECUTIVE OFFICERS

(Answer for Form BD Item 3)

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule A only in new applications to provide information on the **direct** owners and executive officers of the *applicant*. Use Schedule B in new applications to provide information on **indirect** owners. File all amendments on Schedule C. **Complete each column.**

2. List below the names of:

   (a) each Chief Executive Officer, Chief Financial Officer, Chief Operations Officer, Chief Legal Officer, Chief Compliance Officer, Director, and individuals with similar status or functions;

   (b) in the case of an *applicant* that is a corporation, each shareholder that directly owns 5% or more of a class of a voting security of the *applicant*, unless the *applicant* is a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934);

   Direct owners include any *person* that owns, beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 5% or more of a class of a voting security of the *applicant*. For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.

   (c) in the case of an *applicant* that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 5% or more of the partnership's capital; and

   (d) in the case of a trust that directly owns 5% or more of a class of a voting security of the *applicant*, or that has the right to receive upon dissolution, or has contributed, 5% or more of the *applicant's* capital, the trust and each trustee.

   (e) in the case of an *applicant* that is a Limited Liability Company ("LLC"), (i) those members that have the right to receive upon dissolution, or have contributed, 5% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Are there any indirect owners of the *applicant* required to be reported on Schedule B? ☐ Yes ☐ No

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter "I" if the owner is an individual.

5. Complete the "Title or Status" column by entering board/management titles; status as partner, trustee, sole proprietor, or shareholder; and for shareholders, the class of securities owned (if more than one is issued).

6. Ownership codes are: NA – less than 5%; A – 5% but less than 10%; B – 10% but less than 25%; C – 25% but less than 50%; D – 50% but less than 75%; E – 75% or more

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".

   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
			MM	YYYY			PR		

Schedule B of FORM BD

INDIRECT OWNERS

(Answer for Form BD Item 3)
(REV. x/1999)

Applicant
Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

1. Use Schedule B only in new applications to provide information on the **indirect** owners of the *applicant*. Use Schedule A in new applications to provide information on **direct** owners. File all amendments on Schedule C. **Complete each column.**

2. With respect to each owner listed on Schedule A, (except individual owners), list below:
   (a) In the case of an owner that is a corporation, each of its shareholders that beneficially owns, has the right to vote, or has the power to sell or direct the sale of, 25% or more of a class of a voting security of that corporation;
   For purposes of this Schedule, a *person* beneficially owns any securities (i) owned by his/her child, stepchild, grandchild, parent, stepparent, grandparent, spouse, sibling, mother-in-law, father-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law, sharing the same residence; or (ii) that he/she has the right to acquire, within 60 days, through the exercise of any option, warrant or right to purchase the security.
   (b) In the case of an owner that is a partnership, all general partners and those limited and special partners that have the right to receive upon dissolution, or have contributed, 25% or more of the partnership's capital; and
   (c) In the case of an owner that is a trust, the trust and each trustee.
   (d) In the case of an owner that is a Limited Liability Company ("LCC"), (i) those members that have the right to receive upon dissolution, or have contributed, 25% or more of the LLC's capital, and (ii) if managed by elected managers, all elected managers.

3. Continue up the chain of ownership listing all 25% owners at each level. Once a public reporting company (a company subject to Sections 12 or 15(d) of the Securities Exchange Act of 1934) is reached, no ownership information further up the chain of ownership need be given.

4. In the "DE/FE/I" column, enter "DE" if the owner is a domestic entity, or enter "FE" if owner is an entity incorporated or domiciled in a foreign country, or enter"I" if the owner is an individual.

5. Complete the "Status" column by entering status as partner, trustee, shareholder, etc., and if shareholder, class of securities owned (if more than one is issued).

6. Ownership codes are: C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

7. (a) In the "*Control Person*" column, enter "Yes" if *person* has "*control*" as defined in the instructions to this form, and enter "No" if the *person* does not have *control*. Note that under this definition most executive officers and all 25% owners, general partners, and trustees would be "*control persons*".
   (b) In the "PR" column, enter "PR" if the owner is a public reporting company under Sections 12 or 15(d) of the Securities Exchange Act of 1934.

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Entity in Which Interest is Owned	Status	Date Status Acquired MM	Date Status Acquired YYYY	Ownership Code	*Control Person*	PR	CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only

Schedule C of FORM BD **AMENDMENTS TO SCHEDULES A & B** (Amendments to answers for Form BD Item 3) (REV. x/1999)	*Applicant* Name: _____ Date: _____ Firm CRD No.: _____	OFFICIAL USE

1. This Schedule C is used to amend Schedules A and B of Form BD. Refer to those schedules for specific instructions for completing this Schedule C. **Complete each column.** File with a completed Execution Page (Page 1).

2. In the Type of Amendment ("Type of Amd.") column, indicate "A" (addition), "D" (deletion), or "C" (change in information about the same *person*).

3. Ownership codes are: NA – less than 5% A – 5% but less than 10% B – 10% but less than 25% C – 25% but less than 50% D – 50% but less than 75% E – 75% or more F – Other General Partners

4. **List below all changes to Schedule A: (DIRECT OWNERS AND EXECUTIVE OFFICERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Title or Status	Date Title or Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
				MM	YYYY			PR		

5. **List below all changes to Schedule B: (INDIRECT OWNERS)**

FULL LEGAL NAME (Individuals: Last Name, First Name, Middle Name)	DE/FE/I	Type of Amd.	Entity in Which Interest is Owned	Status	Date Status Acquired		Ownership Code	*Control Person*		CRD No. If None: S.S. No., IRS Tax No. or Employer ID.	Official Use Only
					MM	YYYY			PR		

Schedule D of FORM BD

Page 1

(REV. x/19'99)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

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Use this Schedule D Page 1 to report details for items listed below. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information.

This is an ☐ INITIAL ☐ AMENDED detail filing for the Form BD items checked below:

SECTION I *Other Business Names*

(Check if applicable) ☐ Item 1C(2)

List each of the "other" names and the *jurisdiction(s)* in which they are used.

1. Name	*Jurisdiction*	2. Name	*Jurisdiction*
3. Name	*Jurisdiction*	4. Name	*Jurisdiction*

SECTION II *Other Business*

(Check one) ☐ Item 12Z ☐ Item 13B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section.

Briefly describe any other business (ITEM 12Z); or any other non-securities business (ITEM 13B). Use reverse side of this sheet for additional comments if necessary.

SECTION III *Successions*

(Check if applicable) ☐ Item 5

Date of *Succession* MM / DD / YYYY	Name of Predecessor	
Firm CRD Number	IRS Employer Identification Number (if any)	SEC File Number (if any)

Briefly describe details of the *succession* including any assets or liabilities not assumed by the *successor*. Use reverse side of this sheet for additional comments if necessary.

SECTION IV *Introducing and Clearing Arrangements / Control Persons / Financings*

(Check one) ☐ Item 7 ☐ Item 8A ☐ Item 8B ☐ Item 8C ☐ Item 9A ☐ Item 9B

Applicant must complete a separate Schedule D Page 1 for each affirmative response in this section including any multiple responses to any item. Complete the "Effective Date" box with the Month, Day and Year that the arrangement or agreement became effective. When reporting a change or termination of an arrangement or agreement, enter the effective date of the change.

Firm or Organization Name	CRD Number (if any)	
Business Address *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY
Individual Name (if applicable) *(Last, First, Middle)*	CRD Number (if any)	
Business Address (if applicable) *(Street, City, State/Country, Zip+4/Postal Code)*	Effective Date MM / DD / YYYY	Termination Date MM / DD / YYYY

Briefly describe the nature of reference or arrangement (ITEM 7 or ITEM 8); the nature of the *control* or agreement (ITEM 9A); or the method and amount of financing (ITEM 9B). Use reverse side of this sheet for additional comments if necessary.

Schedule D of FORM BD

Page 2

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE | OFFICIAL USE ONLY

Use this Schedule D Page 2 to report details for Item 10A. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 2 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10A

☐ 10A. Directly or indirectly, does *applicant control*, is *applicant controlled* by, or is *applicant* under common *control* with, any partnership, corporation, or other organization that is engaged in the securities or investment advisory business?

SECTION V ***Complete this section for control issues relating to ITEM 10A only.***

The details supplied relate to:

1 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Partnership, Corporation, or Organization Name | CRD Number (if any)

(check only one)

This Partnership, Corporation, or Organization ☐ *controls applicant* ☐ is *controlled* by *applicant* ☐ is under common *control* with *applicant*

Business Address *(Street, City, State/Country, Zip+4/Postal Code)* | Effective Date MM / DD / YYYY | Termination Date MM / DD / YYYY

Is Partnership, Corporation or Organization a foreign entity? ☐ Yes ☐ No | If Yes, provide country of domicile or incorporation: | Check "Yes" or "No" for activities of this partnership, corporation, or organization: ▶ Securities Activities: ☐ Yes ☐ No | Investment Advisory Activities: ☐ Yes ☐ No

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 3 organizations to report, complete additional Schedule D Page 2s.

Schedule D of FORM BD

Page 3

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

OFFICIAL USE ONLY

Use this Schedule D Page 3 to report details for Item 10B. Report only new information or changes/updates to previously submitted details. Do not repeat previously submitted information. Supply details for all partnerships, corporations, organizations, institutions and individuals necessary to answer each item completely. Use additional copies of Schedule D Page 3 if necessary.

Use the "Effective Date" box to enter the Month, Day, and Year that the affiliation was effective or the date of the most recent change in the affiliation.

This is an ☐ INITIAL ☐ AMENDED detail filing for Form BD Item 10B

☐ 10B. Directly or indirectly, is *applicant controlled* by any bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings bank or association, credit union, or foreign bank?

SECTION VI ***Complete this section for control issues relating to ITEM 10B only.***

Provide the details for each organization or institution that *controls* the *applicant*, including each organization or institution in the *applicant's* chain of ownership. The details supplied relate to:

1 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

2 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

3 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

4 Financial Institution Name | CRD Number (if applicable)

Institution Type *(i.e., bank holding company, national bank, state member bank of the Federal Reserve System, state non-member bank, savings association, credit union, or foreign bank)*

Effective Date MM / DD / YYYY

Termination Date MM / DD / YYYY

Business Address *(Street, City, State/Country, Zip+4/Postal Code)*

If foreign, country of domicile or incorporation

Briefly describe the *control* relationship. Use reverse side of this sheet for additional comments if necessary.

If *applicant* has more than 4 organizations/institutions to report, complete additional Schedule D Page 3s.

Schedule E of FORM BD

(REV. x/1999)

Applicant Name: _____

Date: _____ Firm CRD No.: _____

OFFICIAL USE

INSTRUCTIONS

General: Use this schedule to register or report branch offices or other business locations of the *applicant*. Repeat Items 1-12 for each branch office or other business location. Each item must be completed unless otherwise noted. Use additional copies of this schedule as necessary. If this branch office or other business location is using a name in connection with securities activities other than the *applicant's* name, such name must be reported under Item 1C(2) on Page 1 of this form.

Specific:

Item 1. Specify only one box. Check "Add" when a branch office or other business location is opened and the *applicant* is filing the initial notice, "Delete" when a branch office or other business location is closed, and "Amendment" to indicate any other change to previously filed information.

Item 2. CRD will assign this branch number when the *applicant* adds a branch office or other business location as discussed in Item 1 above. If known, complete this item for all deletions and amendments.

Item 3. The Billing Code is an alpha/numeric value consisting of up to eight characters. It is the responsibility of the firm to establish and maintain its own unique billing codes. This is not a required field.

Item 4. Complete this item for all entries. A physical location must be included; post office box designations alone are not sufficient.

Item 5. Complete this item only when the *applicant* changes the address of an existing branch office or other business location.

Item 6. If the branch office or other business location occupies or shares space on premises within a bank, savings bank or association, credit union, or other financial institution, enter the name of the institution in the space provided.

Item 7. Complete this item for all entries. Enter the name of the supervisor or registered representative in charge who is physically at this location.

Item 8. Provide the CRD number for the branch office supervisor named in Item 7.

Item 9. Complete this item for all entries. Provide the date that the branch office or other business location was opened (ADD), closed (DELETE), or the effective date of the change (AMENDMENT).

Item 10. Check "Yes" or "No" to denote whether the location will be an Office of Supervisory Jurisdiction (OSJ) as defined in NASD Rule 3010.

Item 11. Check "Yes" or "No" to denote whether the location is a business location that will operate pursuant to a written agreement or contract (other than an insurance agency agreement) with the main office and any one or more of the following will apply: the location (A) assumes liability for its own expenses or has its expenses paid by a party other than the *applicant*; (B) has primary responsibility for decisions relating to the employment and remuneration of its registered representatives; (C) deems 5% or more of its total registered representatives to be "independent contractors" for tax purposes; or (D) engages in separate market making and/or underwriting activities.

Item 12. Check the appropriate box(es) if the branch or other business location is registering with the NASD or registering or reporting with a *jurisdiction*.

---

1. *Check only one box:*
   ☐ Add ☐ Delete ☐ Amendment
2. CRD Branch Number _____
3. Billing Code _____
4. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
6. _____ Institution Name (if applicable)
7. _____ Supervisor Name
8. _____ CRD Number of Supervisor
9. _____ Effective Date (MM/DD/YYYY)
10. OSJ ☐ Yes ☐ No
11. ☐ Yes ☐ No
    If Yes, indicate each Item 11 subset that applies:
    ☐ A ☐ B ☐ C ☐ D
12. ☐ NASD ☐ *Jurisdiction*

---

1. *Check only one box:*
   ☐ Add ☐ Delete ☐ Amendment
2. CRD Branch Number _____
3. Billing Code _____
4. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code

If applicant is changing the address, enter the new address in Item 5.

5. _____ Street
   _____ P.O. Box (if applicable), Suite, Floor
   _____ City, State/Country, Zip Code + 4/Postal Code
6. _____ Institution Name (if applicable)
7. _____ Supervisor Name
8. _____ CRD Number of Supervisor
9. _____ Effective Date (MM/DD/YYYY)
10. OSJ ☐ Yes ☐ No
11. ☐ Yes ☐ No
    If Yes, indicate each Item 11 subset that applies:
    ☐ A ☐ B ☐ C ☐ D
12. ☐ NASD ☐ *Jurisdiction*

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Items 11A and 11B*** of Form BD;

Check ☑ item(s) being responded to:

11A In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted of or pled guilty or nolo contendere ("no contest") in a domestic, foreign, or military court to any *felony*?
- ☐ (2) been *charged* with any *felony*?

11B In the past ten years has the *applicant* or a *control affiliate*:

- ☐ (1) been convicted or pled guilty or nolo contendere ("no contest") in a domestic, foreign or military court to a *misdemeanor involving*: investments or an *investment-related* business, or any fraud, false statements or omissions, wrongful taking of property, bribery, perjury, forgery, counterfeiting, extortion, or a conspiracy to commit any of these offenses?
- ☐ (2) been *charged* with a *misdemeanor* specified in 11B(1)?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

Multiple counts of the same charge arising out of the same event(s) should be reported on the same DRP. Unrelated criminal actions, including separate cases arising out of the same event, must be reported on separate DRPs. Use this DRP to report all charges arising out of the same event. One event may result in more than one affirmative answer to the above items.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

Applicable court documents (i.e., criminal complaint, information or indictment as well as judgment of conviction or sentencing documents) must be provided to the CRD if not previously submitted. Documents will not be accepted as disclosure in lieu of answering the questions on this DRP.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliates*
- ☐ One or more *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

CRIMINAL DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. If charge(s) were brought against an organization over which the applicant or *control affiliate* exercise(d) control: Enter organization name, whether or not the organization was an *investment-related* business and the *applicant's* or *control affiliate's* position, title or relationship.

2. Formal Charge(s) were brought in: (include name of Federal, Military, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case number).

3. **Event Disclosure Detail** (Use this for both organizational and individual charges.)

A. Date First Charged (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

B. Event Disclosure Detail (include Charge(s)/Charge Description(s), and for each charge provide: 1. number of counts, 2. *felony* or *misdemeanor*, 3. plea for each charge, and 4. product type if charge is *investment-related*):

C. Did any of the Charge(s) within the Event involve a *Felony*? ☐ Yes ☐ No

D. Current status of the Event? ☐ Pending ☐ On Appeal ☐ Final

E. Event Status Date (complete unless status is Pending) (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

4. **Disposition Disclosure Detail**: Include for each charge, A. Disposition Type [e.g., convicted, acquitted, dismissed, pretrial, etc.], B. Date, C. Sentence/Penalty, D. Duration [if sentence-suspension, probation, etc.], E. Start Date of Penalty, F. Penalty/Fine Amount and G. Date Paid.

5. Provide a brief summary of circumstances leading to the charge(s) as well as the disposition. Include the relevant dates when the conduct which was the subject of the charge(s) occurred. (The information must fit within the space provided.)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Items 11C, 11D, 11E, 11F or 11G*** of Form BD;
Check ☑ item(s) being responded to:

11C Has the U.S. Securities and Exchange Commission or the Commodity Futures Trading Commission ever:
- ☐ (1) found the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) found the *applicant* or a *control affiliate* to have been involved in a violation of its regulations or statutes?
- ☐ (3) found the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) entered an order against the *applicant* or a *control affiliate* in connection with *investment-related* activity?
- ☐ (5) imposed a civil money penalty on the *applicant* or a *control affiliate*, or ordered the *applicant* or a *control affiliate* to cease and desist from any activity?

11D Has any other federal regulatory agency, any state regulatory agency, or *foreign financial regulatory authority*:
- ☐ (1) ever found the *applicant* or a *control affiliate* to have made a false statement or omission or been dishonest, unfair, or unethical?
- ☐ (2) ever found the *applicant* or a *control affiliate* to have been *involved* in a violation of *investment-related* regulations or statutes?
- ☐ (3) ever found the *applicant* or a *control affiliate* to have been a cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) in the past ten years, entered an order against the *applicant* or a *control affiliate* in connection with an *investment-related* activity?
- ☐ (5) ever denied, suspended, or revoked the *applicant's* or a *control affiliate's* registration or license or otherwise, by order, prevented it from associating with an *investment-related* business or restricted its activities?

11E Has any *self-regulatory organization* or commodities exchange ever:
- ☐ (1) found the *applicant* or a *control affiliate* to have made a false statement or omission?
- ☐ (2) found the *applicant* or a *control affiliate* to have been *involved* in a violation of its rules (other than a violation designated as a "*minor rule violation*" under a plan approved by the U.S. Securities and Exchange Commission)?
- ☐ (3) found the *applicant* or a *control affiliate* to have been the cause of an *investment-related* business having its authorization to do business denied, suspended, revoked, or restricted?
- ☐ (4) disciplined the *applicant* or a *control affiliate* by expelling or suspending it from membership, barring or suspending its association with other members, or otherwise restricting its activities?

11F ☐ Has the *applicant's* or a *control affiliate's* authorization to act as an attorney, accountant, or federal contractor ever been revoked or suspended?

11G ☐ Is the *applicant* or a *control affiliate* now the subject of any regulatory proceeding that could result in a "yes" answer to any part of 11C, D, or E?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Items 11C, 11D, 11E, 11F or 11G. Use only one DRP to report details related to the same event. If an event gives rise to actions by more than one regulator, provide details for each action on a separate DRP.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliates*
- ☐ One or more *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

PART II

1. Regulatory Action initiated by:

☐ SEC ☐ Other Federal ☐ State ☐ SRO ☐ Foreign

(Full name of regulator, *foreign financial regulatory authority*, federal, state or *SRO*)

2. Principal Sanction: (check appropriate item)

☐ Civil and Administrative Penalty(ies)/Fine(s)	☐ Disgorgement	☐ Restitution
☐ Bar	☐ Expulsion	☐ Revocation
☐ Cease and Desist	☐ Injunction	☐ Suspension
☐ Censure	☐ Prohibition	☐ Undertaking
☐ Denial	☐ Reprimand	☐ Other _____

Other Sanctions:

3. Date Initiated (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

4. Docket/Case Number:

5. *Control Affiliate* Employing Firm when activity occurred which led to the regulatory action (if applicable):

6. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed	☐ Derivative(s)	☐ Investment Contract(s)
☐ Annuity(ies) - Variable	☐ Direct Investment(s) - DPP & LP Interest(s)	☐ Money Market Fund(s)
☐ CD(s)	☐ Equity - OTC	☐ Mutual Fund(s)
☐ Commodity Option(s)	☐ Equity Listed (Common & Preferred Stock)	☐ No Product
☐ Debt - Asset Backed	☐ Futures - Commodity	☐ Options
☐ Debt - Corporate	☐ Futures - Financial	☐ Penny Stock(s)
☐ Debt - Government	☐ Index Option(s)	☐ Unit Investment Trust(s)
☐ Debt - Municipal	☐ Insurance	☐ Other _____

Other Product Types:

7. Describe the allegations related to this regulatory action. (The information must fit within the space provided.):

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, regulatory action appealed to: (SEC, *SRO*, Federal or State Court) and Date Appeal Filed:

(continued)

REGULATORY ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete item 13 only.

10. How was matter resolved: (check appropriate item)

☐ Acceptance, Waiver & Consent (AWC) ☐ Decision & Order of Offer of Settlement ☐ Settled
☐ Consent ☐ Dismissed ☐ Stipulation and Consent
☐ Decision ☐ Order ☐ Vacated

11. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation:

12.

A. Were any of the following Sanctions Ordered? (Check all appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions Ordered:

C. Sanction detail: if suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against applicant or *control affiliate*, date paid and if any portion of penalty was waived:

13. Provide a brief summary of details related to the action status and (or) disposition and include relevant terms, conditions and dates. (The information must fit within the space provided.)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Item 11H*** of Form BD;

Check ☑ item(s) being responded to:

11H(1) Has any domestic or foreign court:

- ☐ (a) in the past ten years, *enjoined* the *applicant* or a *control affiliate* in connection with any *investment-related* activity?
- ☐ (b) ever *found* that the *applicant* or a *control affiliate* was *involved* in a violation of *investment-related* statutes or regulations?
- ☐ (c) ever dismissed, pursuant to a settlement agreement, an *investment-related* civil action brought against the *applicant* or a *control affiliate* by a state or *foreign financial regulatory authority*?

11H(2) ☐ Is the *applicant* or a *control affiliate* now the subject of any civil *proceeding* that could result in a "yes" answer to any part of 11H?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

One event may result in more than one affirmative answer to Item 11H. Use only one DRP to report details related to the same event. Unrelated civil judicial actions must be reported on separate DRPs.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliate(s)*
- ☐ One or more *control affiliate(s)*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

Court Action initiated by: (Name of regulator, *foreign financial regulatory authority*, *SRO*, commodities exchange, agency, firm, private plaintiff, etc.)

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

2. Principal Relief Sought: (check appropriate item)

☐ Cease and Desist ☐ Disgorgement ☐ Money Damages (Private/Civil Complaint) ☐ Restraining Order
☐ Civil Penalty(ies)/Fine(s) ☐ Injunction ☐ Restitution ☐ Other _____

Other Relief Sought:

_____
_____

3. Filing Date of Court Action (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

4. Principal Product Type: (check appropriate item)

☐ Annuity(ies) - Fixed ☐ Derivative(s) ☐ Investment Contract(s)
☐ Annuity(ies) - Variable ☐ Direct Investment(s) - DPP & LP Interest(s) ☐ Money Market Fund(s)
☐ CD(s) ☐ Equity - OTC ☐ Mutual Fund(s)
☐ Commodity Option(s) ☐ Equity Listed (Common & Preferred Stock) ☐ No Product
☐ Debt - Asset Backed ☐ Futures - Commodity ☐ Options
☐ Debt - Corporate ☐ Futures - Financial ☐ Penny Stock(s)
☐ Debt - Government ☐ Index Option(s) ☐ Unit Investment Trust(s)
☐ Debt - Municipal ☐ Insurance ☐ Other _____

Other Product Types:

_____

5. Formal Action was brought in (include name of Federal, State or Foreign Court, Location of Court - City or County and State or Country, Docket/Case Number):

_____

6. *Control Affiliate* Employing Firm when activity occurred which led to the civil judicial action (if applicable):

7. Describe the allegations related to this civil action. (The information must fit within the space provided.):

_____
_____
_____
_____
_____

8. Current Status? ☐ Pending ☐ On Appeal ☐ Final

9. If on appeal, action appealed to (provide name of court): Date Appeal Filed (MM/DD/YYYY):

_____

10. If pending, date notice/process was served (MM/DD/YYYY): _____ ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

(continued)

CIVIL JUDICIAL ACTION DISCLOSURE REPORTING PAGE (BD)

(continuation)

If Final or On Appeal, complete all items below. For Pending Actions, complete Item 14 only.

11. How was matter resolved: (check appropriate item)

☐ Consent ☐ Judgment Rendered ☐ Settled
☐ Dismissed ☐ Opinion ☐ Withdrawn ☐ Other_____

12. Resolution Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

13. **Resolution Detail:**

A. Were any of the following Sanctions Ordered or Relief Granted? (Check appropriate items):

☐ Monetary/Fine ☐ Revocation/Expulsion/Denial ☐ Disgorgement/Restitution
Amount: $ ☐ Censure ☐ Cease and Desist/Injunction ☐ Bar ☐ Suspension

B. Other Sanctions:

C. Sanction detail: if suspended, enjoined or barred, provide duration including start date and capacities affected (General Securities Principal, Financial Operations Principal, etc.). If requalification by exam/retraining was a condition of the sanction, provide length of time given to requalify/retrain, type of exam required and whether condition has been satisfied. If disposition resulted in a fine, penalty, restitution, disgorgement or monetary compensation, provide total amount, portion levied against *applicant* or *control affiliate*, date paid and if any portion of penalty was waived:

14. Provide a brief summary of circumstances related to action(s), allegation(s), disposition(s) and/or finding(s) disclosed above. (The information must fit within the space provided.):

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Item 11I*** of Form BD;

Check ☑ item(s) being responded to:

11I In the past ten years has the *applicant* or a *control affiliate* of the *applicant* ever been a securities firm or a *control affiliate* of a securities firm that:

- ☐ (1) has been the subject of a bankruptcy petition?
- ☐ (2) has had a trustee appointed or a direct payment procedure initiated under the Securities Investor Protection Act?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

If a *control affiliate* is an individual or organization registered through the CRD, such *control affiliate* need only complete Part I of the *applicant's* appropriate DRP (BD). Details of the event must be submitted on the *control affiliate's* appropriate DRP (BD) or DRP (U-4). If a *control affiliate* is an individual or organization not registered through the CRD, provide complete answers to all the items on the *applicant's* appropriate DRP (BD). The completion of this DRP does not relieve the *control affiliate* of its obligation to update its CRD records.

PART I

A. The *person(s)* or entity(ies) for whom this DRP is being filed is (are):

- ☐ The *Applicant*
- ☐ *Applicant* and one or more *control affiliates*
- ☐ One or more *control affiliates*

If this DRP is being filed for a *control affiliate*, give the full name of the *control affiliate* below (for individuals, Last name, First name, Middle name).

If the *control affiliate* is registered with the CRD, provide the CRD number. If not, indicate "non-registered" by checking the appropriate checkbox.

NAME OF APPLICANT	APPLICANT CRD NUMBER

BD DRP - CONTROL AFFILIATE

CRD NUMBER

This *Control Affiliate* is ☐ Firm ☐ Individual

Registered: ☐ Yes ☐ No

NAME (For individuals, Last, First, Middle)

☐ This DRP should be removed from the BD record because the *control affiliate(s)* are no longer associated with the BD.

B. If the *control affiliate* is registered through the CRD, has the *control affiliate* submitted a DRP (with Form U-4) or BD DRP to the CRD System for the event? If the answer is "Yes," no other information on this DRP must be provided.

☐ Yes ☐ No

NOTE: The completion of this form does not relieve the *control affiliate* of its obligation to update its CRD records.

PART II

1. Action Type: (check appropriate item)

☐ Bankruptcy ☐ Declaration ☐ Receivership
☐ Compromise ☐ Liquidated ☐ Other _____

2. Action Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

(continued)

BANKRUPTCY / SIPC DISCLOSURE REPORTING PAGE (BD)

(continuation)

3. If the financial action relates to an organization over which the *applicant* or *control affiliate* exercise(d) *control*, enter Organization Name and the *applicant's* or *control affiliate's* position, title or relationship:

Was the Organization *investment-related?* ☐ Yes ☐ No

4. Court action brought in (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country), Docket/Case Number and Bankruptcy Chapter Number (if Federal Bankruptcy Filing):

5. Is action currently pending? ☐ Yes ☐ No

6. If not pending, provide Disposition Type: (check appropriate item)

☐ Direct Payment Procedure ☐ Dismissed ☐ Satisfied/Released
☐ Discharged ☐ Dissolved ☐ SIPA Trustee Appointed ☐ Other _____

7. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

8. Provide a brief summary of events leading to the action and if not discharged, explain. (The information must fit within the space provided.):

9. If a SIPA trustee was appointed or a direct payment procedure was begun, enter the amount paid or agreed to be paid by you; or the name of the trustee:

Currently Open? ☐ Yes ☐ No

Date Direct Payment Initiated/Filed or Trustee Appointed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

10. Provide details to any status/disposition. Include details as to creditors, terms, conditions, amounts due and settlement schedule (if applicable). (The information must fit within the space provided.)

Rev. Form BD (x/1999)

BOND DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Item 11J*** of Form BD;

Check ☑ item(s) being responded to:

11J ☐ Has a bonding company ever denied, paid out on, or revoked a bond for the *applicant*?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF APPLICANT	APPLICANT CRD NUMBER

1. Firm Name: (Policy Holder)

2. Bonding Company Name:

3. Disposition Type: (check appropriate item)

☐ Denied ☐ Payout ☐ Revoked

4. Disposition Date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. If disposition resulted in Payout, list Payout Amount and Date Paid:

6. Summarize the details of circumstances leading to the necessity of the bonding company action: (The information must fit within the space provided.)

JUDGMENT / LIEN DISCLOSURE REPORTING PAGE (BD)

GENERAL INSTRUCTIONS

This Disclosure Reporting Page (DRP BD) is an ☐ INITIAL *OR* ☐ AMENDED response used to report details for affirmative responses to ***Item 11K*** of Form BD;

Check ☑ item(s) being responded to:

11K ☐ Does the *applicant* have any unsatisfied judgments or liens against it?

Use a separate DRP for each event or *proceeding*. An event or *proceeding* may be reported for more than one *person* or entity using one DRP. File with a completed Execution Page.

It is not a requirement that documents be provided for each event or *proceeding*. Should they be provided, they will not be accepted as disclosure in lieu of answering the questions on this DRP.

NAME OF APPLICANT	APPLICANT CRD NUMBER

1. Judgment / Lien Amount:

2. Judgment / Lien Holder:

3. Judgment / Lien Type: (check appropriate item)
☐ Civil ☐ Default ☐ Tax

4. Date Filed (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

5. Is Judgment/Lien outstanding? ☐ Yes ☐ No

If No, provide status date (MM/DD/YYYY): ☐ Exact ☐ Explanation

If not exact, provide explanation: _____

If No, how was matter resolved? (check appropriate item)
☐ Discharged ☐ Released ☐ Removed ☐ Satisfied

6. Court (Name of Federal, State or Foreign Court), Location of Court (City or County and State or Country) and Docket/Case Number:

7. Provide a brief summary of events leading to the action and any payment schedule details including current status (if applicable). (The information must fit within the space provided.):

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[FR Doc. 99–11358 Filed 5–7–99; 8:45 am]
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S. 531/P.L. 106–26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

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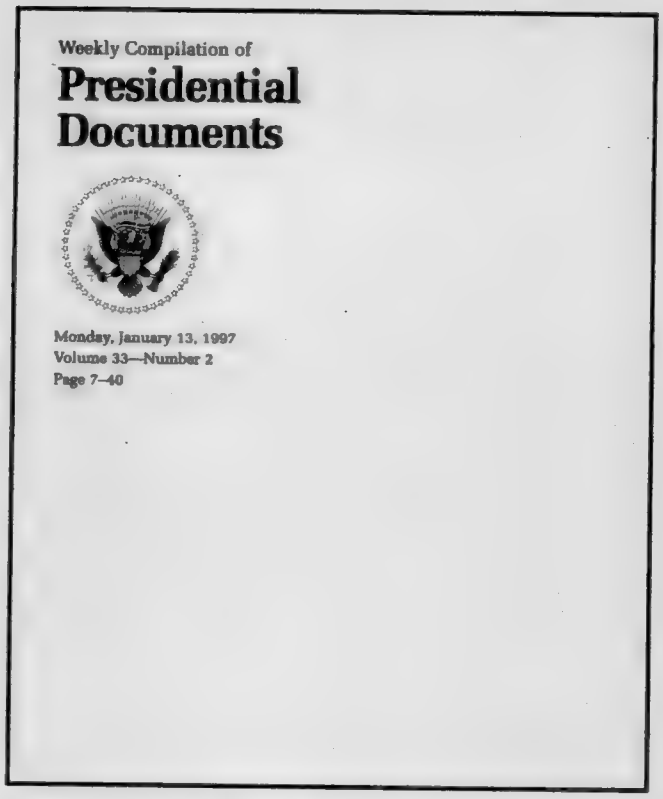
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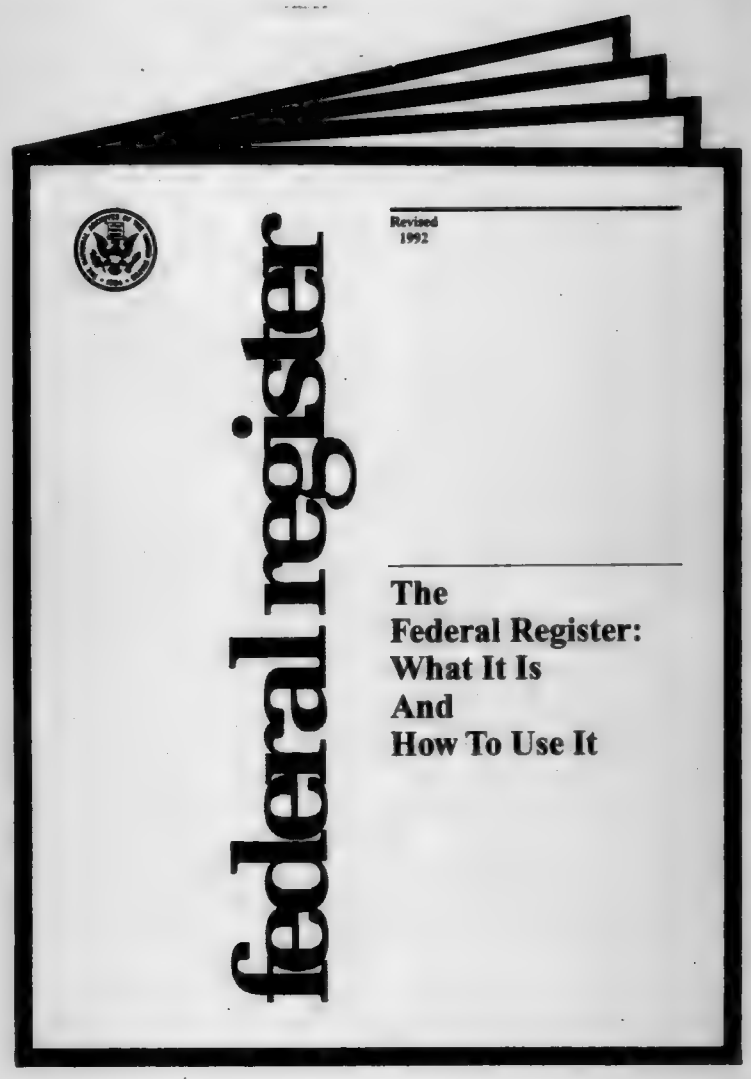
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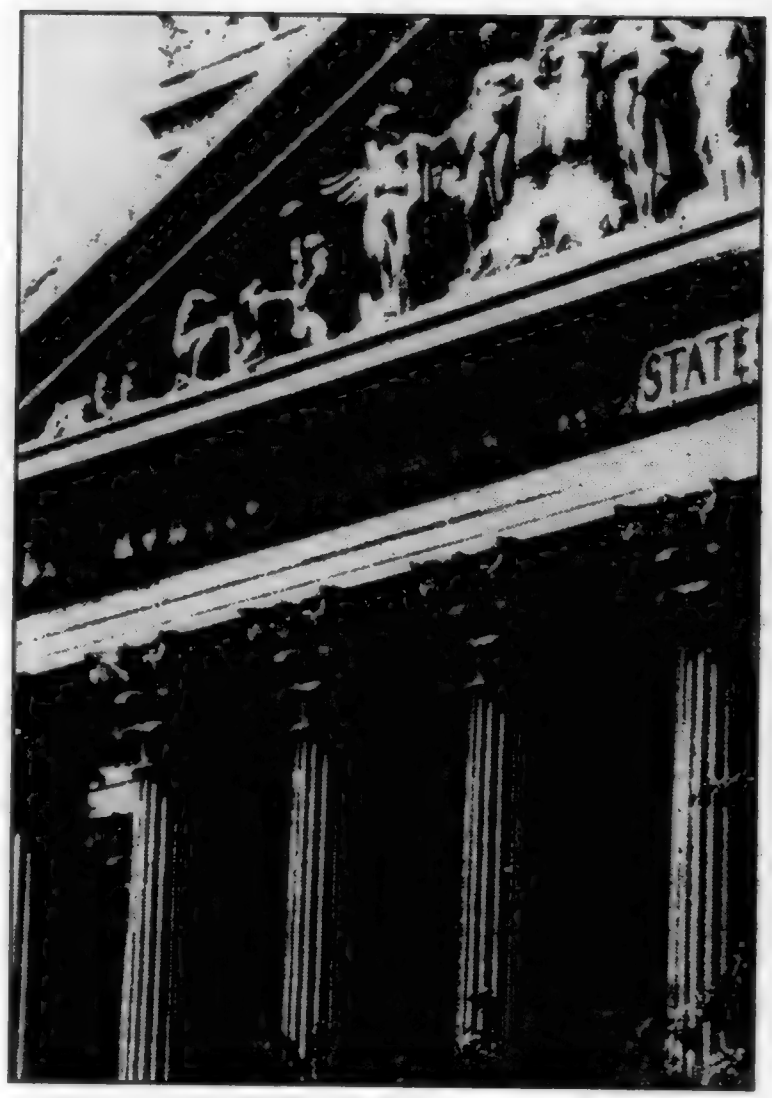
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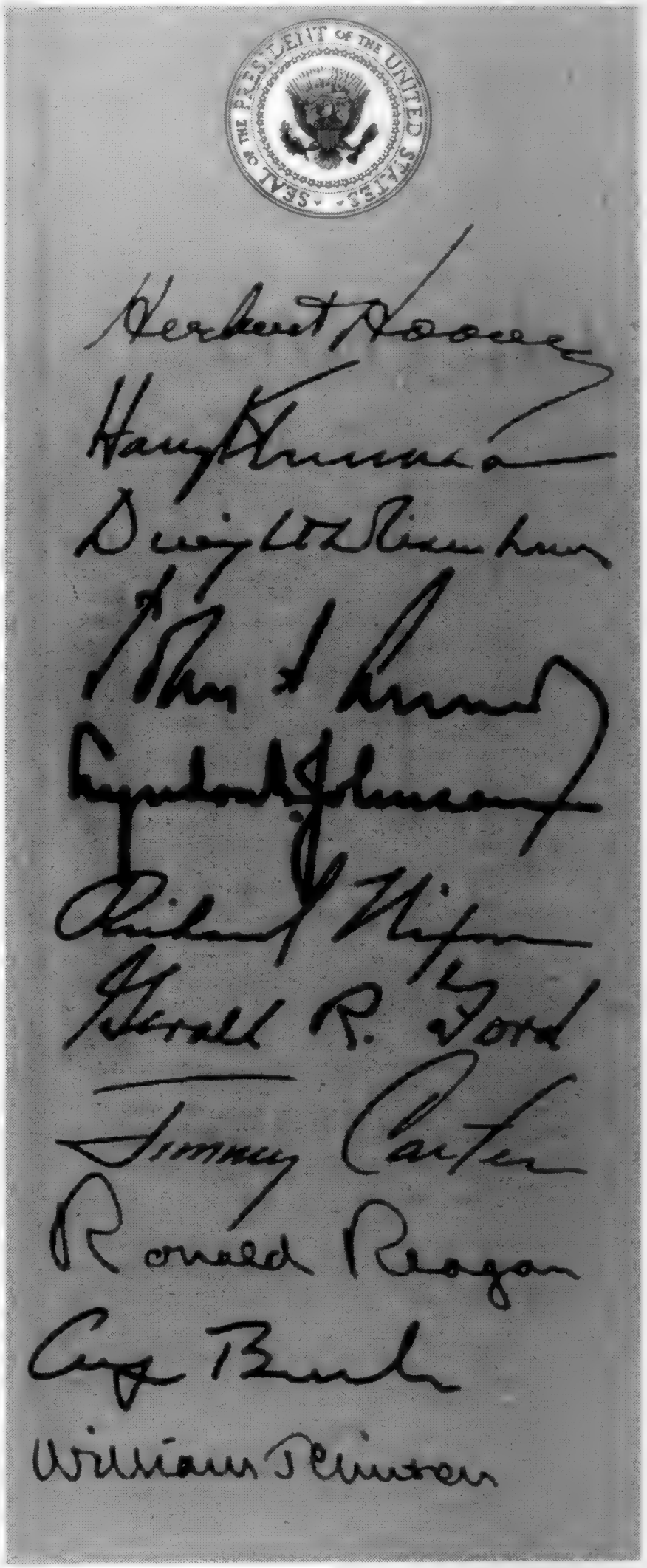
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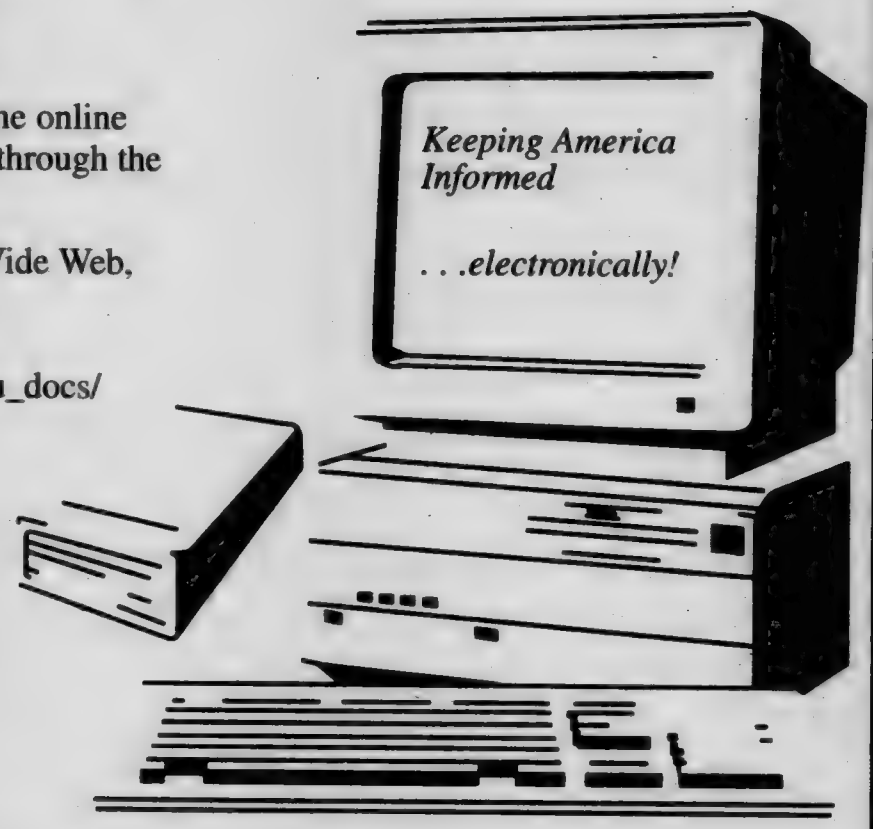
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Vol. 64, No. 90
Tuesday, May 11, 1999

Presidential Documents

Title 3—

The President

Proclamation 7193 of May 5, 1999

National Day of Prayer, 1999

By the President of the United States of America

A Proclamation

From our earliest days, whether in times of joy or of challenge, Americans have raised their hearts and voices in prayer. On the Great Plains, American Indians prayed for peace and for blessings upon their children and their friends. The Pilgrims prayed from the moment they first set foot on this continent. Our Nation's founders prayed as they forged a democracy based on freedom and respect for human rights. Our military leaders and the millions of men and women who have served in our Armed Forces have prayed in the midst of every conflict in which our Nation has fought. And so it continues to this day, as Americans of every race, background, and creed pray in churches, mosques, synagogues, temples, and their own homes for guidance, wisdom, and courage in confronting the challenges before us.

We can pray openly thanks to the religious freedom guaranteed for us by the First Amendment to the Constitution. That freedom and the diversity of faiths it has fostered are among America's most important achievements. They have made our Nation a beacon for generations of people from around the world who have traveled here seeking to worship according to their conscience without fear of coercion or constraint.

On this National Day of Prayer, observed so soon after the tragedy in Littleton, Colorado, and the tornadoes that devastated communities in Kansas, Texas, and Oklahoma, we are more keenly aware than ever of the power and solace we find in prayer. Throughout the days that have followed the deaths of and injury to so many of our fellow citizens, Americans have united in prayer for those who died or were harmed, for the comfort and peace of their families, for the wisdom to heal our society, and for the strength to overcome such tragedies. For as Martin Luther King, Jr., so eloquently said, "When our days become dreary with low-hovering clouds of despair, and when our nights become darker than a thousand midnights, let us remember that there is a creative force in this universe . . . a power that is able to make a way out of no way and transform dark yesterdays into bright tomorrows."

The Congress, by Public Law 100–307, has called on our citizens to reaffirm the role of prayer in our society and to honor the religious diversity our freedom permits by recognizing annually a "National Day of Prayer."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 6, 1999, as a National Day of Prayer. I encourage the citizens of this great Nation to pray, each in his or her own manner, seeking strength from God to face the problems of today, requesting guidance for the uncertainties of tomorrow, and giving thanks for the rich blessings that our country has enjoyed throughout its history.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99-12012
Filed 5-10-99; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7194 of May 5, 1999

Mother's Day 1999

By the President of the United States of America

A Proclamation

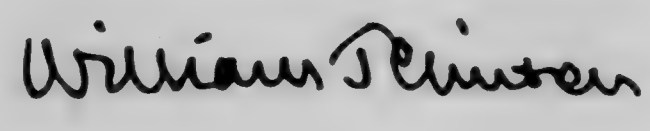
There is nothing more precious than the bond between a mother and her child. With unconditional love and infinite patience, our mothers nurture us throughout our lives, helping us to meet life's challenges and achieve our dreams. Mothers—whether biological or adoptive, foster or stepmothers—are the cornerstones of our families, and our families are the foundation of our Nation. Mothers are the bridges that link America's best promise to its brightest reality.

The role of women has changed dramatically in the last half-century, bringing exciting new opportunities as well as fresh challenges. Today, our mothers can be mayors and managers, heads of households and homemakers—yet they still make us the center of their lives and the focus of their love. Regardless of whether they work inside or outside the home, we still turn to our mothers when we need reassurance, advice, or comfort. Devotion and love, loyalty and selflessness—these are the traits that define motherhood.

For 85 years, we have reserved the second Sunday in May as a special day to honor our mothers for their strength, nobility, and generosity. In so many ways, we owe our successes—and those of our Nation—to the loving influence of our mothers. Although we can never repay them for their gift of life and love, we can honor them in person or cherish their beloved memory. The Congress, by a joint resolution approved May 8, 1914 (38 Stat. 770), has designated the second Sunday in May of each year as "Mother's Day" and requested the President to call for its appropriate observance.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 9, 1999, as Mother's Day. I urge all Americans to express their love and appreciation for their mothers on this day and every day and to observe the day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fifth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.



[FR Doc. 99–12013
Filed 5–10–99; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 64, No. 90
Tuesday, May 11, 1999

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–99–02]

Milk in the Iowa Marketing Area

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document revises certain sections of the Iowa Federal milk order for the months of April, May, and June 1999 in regard to the percentage of a supply plant's receipts that must be delivered to fluid milk plants in order to qualify the supply plant for pooling. A pool supply plant regulated under the Iowa order (Order 79) requested that the percentages for the months of April through August 1999 be reduced by 10 percentage points, from 20 percent to 10 percent. In a separate action, the period of time for commenting on the proposed revision for the months of June, July and August 1999 is being reopened and extended.

EFFECTIVE DATES:

1. The amendment numbered 2 is effective April 1, 1999, through May 31, 1999.

2. The amendment numbered 3 is effective June 1, 1999, through June 30, 1999.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

The Department is issuing this final rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Agricultural Marketing Agreement Act of 1937 (the "Act"), as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may request modification or exemption from such order by filing with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Small Business Consideration

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Agricultural Marketing Service has considered the economic impact of this action on small entities and has certified that this rule will not have a significant economic impact on a substantial number of small entities. For the purpose of the Regulatory Flexibility Act, a dairy farm is considered a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. For the purposes of determining which dairy farms are "small businesses," the $500,000 per year criterion was used to establish a production guideline of 326,000 pounds per month. Although this guideline does not factor in additional monies that may be received by dairy producers, it should be an inclusive standard for most "small" dairy farmers. For purposes of determining a handler's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees.

For the month of February 1999, 3,788 dairy farmers were producers under the Iowa order. Of these, 3,714 producers (i.e., 98 percent) were considered small businesses, having monthly milk production under 326,000 pounds. A further breakdown of the monthly milk production of the producers on the order during February 1999 was as follows: 2,804 produced less than 100,000 pounds of milk; 776 produced between 100,000 and 200,000; 134 produced between 200,000 and 326,000; and 74 produced over 326,000 pounds. During the same month, 11 handlers were pooled under the order. Five were considered small businesses.

The reduction of the required supply plant shipping percentage by 10 percentage points for the months of April and May and by 5 percentage points for the month of June 1999 would allow the milk of producers traditionally associated with the Iowa market to continue to be pooled and priced under the order. The revision would lessen the likelihood that more milk shipments to pool plants might be required under the order than are actually needed to supply the fluid milk needs of the market and would result in savings in hauling costs for handlers and producers.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the provisions of § 1079.7(b)(1) of the Iowa Federal milk order.

Issuance of Notice of Proposed Revision

Notice of proposed rulemaking was published in the **Federal Register** (64 FR 19071) concerning a proposed reduction in the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa order. The revisions were proposed to be effective for the months of April through August 1999. The public was afforded the opportunity to comment on the proposed reduction by submitting written data, views and arguments by April 26, 1999.

One comment partly supporting the proposed revision was received.

Statement of Consideration

This document revises certain provisions of the Iowa Federal milk order in regard to the percentage of a supply plant's receipts of milk that must be delivered to fluid milk plants in order to qualify the supply plant for pooling. A proposal to reduce the percentages by 10 percentage points from 20 percent to 10 percent for the months of April through August 1999 was requested by Beatrice Cheese, Inc. (Beatrice), a proprietary manufacturer of dairy products in Fredericksburg, Iowa, regulated under Order 79 as a pool supply plant. Beatrice states that the decrease is warranted due to the fact that raw milk supplies from outside of Iowa's traditional procurement area result in a supply of milk for the market that exceeds the needs of the fluid milk plants in Federal Order 79, and that these available supplies have replaced milk shipped to distributing plants by Beatrice. Beatrice further contends that the reduction would allow the milk of dairymen who historically have supplied the market to continue to be pooled under the Federal order and would also prevent uneconomic milk movements.

Comments from Anderson-Erickson Dairy Company, a pool distributing plant regulated under Order 79, did not oppose the proposed 10-percentage point reduction for the months of April and May, but proposed a reduction of no more than 5 percentage points for June and opposed immediate action to reduce the percentage for the months of July and August 1999. According to Anderson-Erickson, the milk supply situation in Iowa is volatile and the summer could likely lead to a marketing scenario different from the one posited by Beatrice.

After consideration of all relevant material, including the proposal set forth in the aforesaid notice and other available information, it is hereby found and determined that the supply plant shipping percentage requirements for pool supply plants § 1079.7(b) should be decreased 10 percentage points during the months of April and May 1999, and 5 percentage points during June 1999. The lesser reduction for the month of June reflects historical production patterns. The volume of milk associated with the Iowa market generally starts to decline for the month of June and declines even further during the months of July and August. In a separate document published in the **Federal Register**, the time for filing comments regarding the proposed revision of the shipping plant percentage under Order 79 is being reopened and extended until June 14. This further opportunity to submit comments should be sufficient to determine whether a further reduction in the pool supply plant shipping percentage of 5 percent is appropriate for June and whether any reduction is necessary for the months of July and August 1999.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area for the months of April 1999 through June 1999;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this temporary revision. One comment supporting the revision was received.

Therefore, good cause exists for making this temporary revision effective less than 30 days from the date of publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

For the reasons set forth in the preamble, 7 CFR Part 1079 is amended as follows:

PART 1079—MILK IN THE IOWA MARKETING AREA

1. The authority for 7 CFR Part 1079 continues to read as follows:

Authority: 7 U.S.C. 601–674.

§ 1079.7 [Amended]

2. In § 1079.7, paragraph (b), the introductory text is amended by revising the words "20 percent" to read "10 percent" effective April 1, 1999, through May 31, 1999.

3. In § 1079.7, paragraph (b), the introductory text is amended by revising the words "20 percent" to read "15 percent" effective June 1, 1999, through June 30, 1999.

Dated: May 5, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–11767 Filed 5–7–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–100–AD; Amendment 39–11162; AD 99–10–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–100, 747–200, and 747–SP Series Airplanes and Military Type E–4B Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–100, –200, and 747–SP series airplanes and military type E–4B airplanes, that requires repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. This amendment also provides for optional terminating action for the repetitive inspection requirements. This amendment is prompted by reports indicating that fatigue cracks were found on the aft surface of the wing front spar web. The actions specified by this AD are intended to detect and correct such fatigue cracking, which could result in a fuel leak, and consequent increased risk of a fire.

DATES: Effective June 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of June 15, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing

Model 747–100, –200, and 747–SP series airplanes and military type E–4B airplanes was published in the **Federal Register** on May 28, 1998 (63 FR 29151). That action proposed to require repetitive inspections to detect cracking of the wing front spar web, and repair of cracked structure. That proposal also provided for optional terminating action for the repetitive inspection requirements.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule, and one commenter has no objection to the proposed rule.

Request to Allow Use of Additional Service Information

Two commenters request that the proposed rule be revised to allow inspection and modification of the wing front spar web to be accomplished in accordance with the original issue of Boeing Alert Service Bulletin 747–57A2303, dated December 19, 1996. The notice of proposed rulemaking (NPRM) proposed to require inspection and modification of the wing front spar web in accordance with only Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997. The commenters point out that Boeing Service Bulletin 747–57A2303, Revision 1, states that no more work is necessary for airplanes inspected or modified in accordance with the original issue of the service bulletin. One of the commenters states that revising the final rule to allow inspection and modification of the wing front spar web in accordance with the original issue of the service bulletin would preclude the need for affected operators to obtain approval for an alternative method of compliance.

The FAA concurs with the commenters' request to allow inspection and modification of the wing front spar web in accordance with the original issue of Boeing Alert Service Bulletin 747–57A2303. The FAA has reviewed the original issue of the service bulletin and determined that the procedures in the original issue are substantially similar to those described in Revision 1. Therefore, "**NOTE 2**" has been added to this final rule to specify that inspections and modifications accomplished prior to the effective date of this AD in accordance with the original issue of Boeing Alert Service Bulletin 747–57A2303 are considered acceptable for compliance with this AD.

Request to Terminate Repetitive Inspections Required by AD 95–02–15

One commenter requests that the proposal (Docket number 97–NM–100–AD) be revised to state that, if the terminating action proposed in the NPRM (replacement of the wing front spar web with a new shot-peened wing front spar web) is accomplished, certain inspections outboard of front spar station inboard (FSSI) 669 that are currently required by AD 95–02–15, amendment 39–9134 (60 FR 9613, March 21, 1995), are no longer necessary. The commenter points out that the subject area in the proposal overlaps considerably with the subject area of AD 95–02–15. The commenter also states that a similar revision should be made to the NPRM for docket number 97–NM–82–AD, which proposed the supersedure of AD 95–02–15, to state that certain inspections outboard of FSSI 669 are no longer necessary if the replacement of the wing front spar web with a new shot-peened wing front spar web is accomplished in accordance with this AD. The commenter states that addressing the area of overlap in the final rule would preclude the need for affected operators to obtain FAA approval for an alternative method of compliance for the inspections of the subject area of AD 95–02–15.

The FAA partially concurs with the commenter's request to revise the NPRM's for docket numbers 97–NM–82–AD and 97–NM–100–AD. On July 15, 1998, the FAA issued AD 98–15–21, amendment 39–10672 (63 FR 39487, dated July 23, 1998), which supersedes AD 95–02–15. Because that AD has already been issued, no revision to that final rule will be made at this time. However, the FAA concurs that accomplishment of the optional terminating action specified in this final rule would eliminate the need for inspections in accordance with AD 98–15–21 for the modified area only (i.e., FSSI 669 to FSSI 697 inclusive). Therefore, paragraph (c) of this final rule has been revised to state that replacement of the affected wing front spar web with a new shot-peened wing front spar web in accordance with Boeing Service Bulletin 747–57A2303, Revision 1, constitutes terminating action for repetitive inspections in accordance with AD 98–15–21 for the modified area only. In addition, "**NOTE 3**" has been added to this final rule to clarify that the area subject to the optional terminating action specified in paragraph (c) of this final rule overlaps with part of the wing front spar that is the subject of AD 98–15–21.

Request to Approve Alternative Method of Compliance for Terminating Action

One commenter requests that the proposed rule be revised to allow modifications of the wing front spar web accomplished previously in accordance with Boeing Service Letter 747–SL–57–084–C, dated October 12, 1996, and Boeing Repair Drawing 112U8040, to be considered terminating action for the requirements of this AD. The commenter states that such a modification was coordinated through the manufacturer, and the commenter has accomplished the modification on several of its airplanes.

The FAA does not concur with the commenter's request to approve an alternative method of compliance for the terminating action. The service letter and repair drawing referenced by the commenter are not approved by the FAA. Therefore, the FAA finds that modifications accomplished in accordance with these data may not be adequate to ensure that the unsafe condition is adequately addressed. In addition, the FAA finds that adding such an alternative method of compliance for the terminating action to the final rule would unduly complicate this AD action and may be confusing to some operators. However, the operator may request approval of an alternative method of compliance in accordance with paragraph (d) of the final rule. No change to the final rule is necessary in this regard.

Explanation of Changes Made to the Proposal

The FAA has revised paragraph (b)(2) of the final rule to add a provision that allows repair of any crack in the subject area to be accomplished in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 190 airplanes of the affected design in the worldwide fleet. The FAA estimates that 95 airplanes of U.S. registry will be

affected by this AD, that it will take approximately 64 work hours per airplane to accomplish the required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $364,800, or $3,840 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating modification, it would take approximately 518 work hours per airplane to accomplish the modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $17,000 per airplane. Based on these figures, the cost impact of the optional terminating modification is estimated to be $48,080 per airplane.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–10–09 Boeing: Amendment 39–11162. Docket 97–NM–100–AD.

Applicability: Model 747–100, 747–200, and 747–SP series airplanes and military type E–4B airplanes; as listed in Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

Note 2: Inspections and modifications accomplished prior to the effective date of this AD in accordance with Boeing Alert Service Bulletin 747–57A2303, dated December 19, 1996, are considered acceptable for compliance with the applicable action specified in this amendment.

To detect and correct fatigue cracking of the wing front spar web, which could result in a fuel leak, and consequent increased risk of a fire, accomplish the following:

Initial and Repetitive Inspections

(a) Perform an ultrasonic inspection to detect cracking of the wing front spar web at the fastener rows behind and between the upper link fittings for the number 2 and 3 engine struts, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes identified as Group 1, 2, 3, or 5 in the alert service bulletin: Inspect prior to the accumulation of 12,500 total flight cycles, or within 15 months after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 2,200 flight cycles.

(2) For airplanes identified as Group 4, 6, 7, 8, 9, or 10 in the alert service bulletin: Inspect prior to the accumulation of 18,000 total flight cycles, or within 15 months after the effective date of this AD, whichever occurs later. Repeat the inspection thereafter at intervals not to exceed 3,000 flight cycles.

Corrective Actions

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, accomplish either paragraph (b)(1) or (b)(2) of this AD.

(1) Accomplish the terminating action in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997. Accomplishment of this action constitutes terminating action for the repetitive inspection requirements of this AD; or

(2) Repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle, ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Optional Terminating Action

(c) Replacement of the affected wing front spar web with a new shot-peened wing front spar web in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–57A2303, Revision 1, dated September 25, 1997, constitutes terminating action for the repetitive inspection requirements of this AD, and, for the modified area only, for the repetitive inspection requirements of AD 98–15–21, amendment 39–10672.

Note 3: The area subject to the optional terminating action specified in paragraph (c) of this AD overlaps with part of the wing front spar that is the subject of AD 98–15–21.

Alternative Method of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections and replacement shall be done in accordance with Boeing Service Bulletin 747–57A2303, Revision 1, dated

September 25, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(g) This amendment becomes effective on June 15, 1999.

Issued in Renton, Washington, on May 3, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11618 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–286–AD; Amendment 39–11163; AD 99–10–10]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–200, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747–200, –300, and –400 series airplanes, that requires replacement of fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new corrosion-resistant pins. This amendment is prompted by reports of cracked fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut due to fatigue and corrosion. The actions specified by this AD are intended to prevent cracking or corrosion of the fuse pins of the nacelle strut, which could result in failure of the fuse pin and strut-to-wing attachment, and consequent loss of the strut and separation of the engine from the airplane.

DATES: Effective June 15, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 15, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tamara L. Anderson, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2771; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747–200, –300, and –400 series airplanes was published in the **Federal Register** on February 18, 1999 (64 FR 8024). That action proposed to require replacement of fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new corrosion-resistant pins.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

One commenter supports the proposed rule. The second commenter states that the proposed rule will have no impact on it; therefore, the commenter supports the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 282 airplanes of the affected design in the worldwide fleet. The FAA estimates that 43 airplanes of U.S. registry will be affected by this AD, that it will take approximately 105 work hours per airplane to accomplish the required replacement, and that the average labor rate is $60 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $270,900, or $6,300 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–10–10 Boeing: Amendment 39–11163. Docket 98–NM–286–AD.

Applicability: Model 747–200 and –300 series airplanes equipped with General Electric Model CF6–80C2 series engines, and Model 747–400 series airplanes; as listed in Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996, certificated in any category; except those airplanes on which modifications of the strut/wing

structure have been accomplished in accordance either of the following AD's:

- AD 95–13–05, amendment 39–9285 (60 FR 33333, June 28, 1995), or
- AD 95–13–06, amendment 39–9286 (60 FR 33338, June 28, 1995).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracking or corrosion of the fuse pins of the nacelle strut, which could result in failure of the fuse pin and strut-to-wing attachment, and consequent loss of the strut and separation of the engine from the airplane, accomplish the following:

(a) Within 10 months after the effective date of this AD, replace the fuse pins in the upper link, midspar fittings, and diagonal brace of the nacelle strut with new corrosion-resistant pins, in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996.

Note 2: Replacement of the fuse pins accomplished prior to the effective date of this AD in accordance with the Accomplishment Instructions of Boeing Service Bulletin 747–54–2155, dated September 23, 1993, or Revision 1, dated December 8, 1994, is considered acceptable for compliance with the applicable action specified in this amendment.

Note 3: All fuse pins in the strut do not have to be replaced at the same time; however, the fuse pins do have to be replaced in sets, as specified in Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996.

(b) Accomplishment of the replacement of the fuse pins specified in paragraph (a) of this AD constitutes terminating action for the repetitive inspections of the fuse pins of the upper link, required by AD 97–14–06, amendment 39–10064; of the fuse pins of the midspar fitting, required by AD 92–24–51, amendment 39–8439; and of the fuse pins of the diagonal brace, required by AD 93–03–14, amendment 39–8518.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The replacement shall be done in accordance with Boeing Service Bulletin 747–54–2155, Revision 2, dated June 6, 1996. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on June 15, 1999.

Issued in Renton, Washington, on May 3, 1999.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11616 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–09–AD; Amendment 39–11168; AD 99–10–15]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS332L2

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to AS332L2 helicopters. This action requires inspecting each main rotor head drag damper (damper) for a tear, crack, or bonding separation in the elastomer and, if necessary, replacing the damper with an airworthy damper. This amendment is prompted by a report of increased helicopter vibration in flight that was traced to the delamination of the elastomer on a damper. This condition, if not corrected, could result in failure of a damper and subsequent loss of control of the helicopter.

DATES: Effective May 26, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99-SW–09-AD, 2601 Meacham Blvd, Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mike Mathias, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0111, telephone (817) 222–5123, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, has notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332L2 helicopters. The DGAC advises that it has received a report of damper elastomer impending separation on this model helicopter.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS332L2 helicopters of the same type design registered in the United States, this AD is being issued to prevent failure of a damper. This AD requires inspecting each damper for a tear, crack, or bonding separation in the elastomer and, if necessary, replacing the damper with an airworthy damper.

None of the Model AS332L2 helicopters affected by this action are on the U.S. Register. All helicopters included in the applicability of this rule are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the

unsafe condition is addressed in the event that any of these subject helicopters are imported and placed on the U.S. Register in the future.

Should an affected helicopter be imported and placed on the U.S. Register in the future, it would require approximately ⅔ of a work hour to accomplish each of the inspections initially and to replace unairworthy parts at an average labor rate of $60 per work hour. Required parts would be approximately $4,000 per helicopter. Based on these figures, the total cost impact of the AD is estimated to be $4,040 per helicopter.

Since this AD action does not affect any helicopter that is currently on the U.S. Register, it has no adverse economic impact and imposes no additional burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days after publication in the **Federal Register**.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–09–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that notice and prior public comment are unnecessary in promulgating this regulation; and, therefore, it can be issued immediately to correct an unsafe condition in aircraft since none of these model helicopters are registered in the United States. It is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

AD 99–10–15 Eurocopter France: Amendment 39–11168. Docket No. 99–SW–09–AD.

Applicability: AS332L2 helicopters, with main rotor head drag damper, part number (P/N) 332A311980–02, having elastomeric bearings P/N J19084–4, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect delamination of an elastomeric bearing that could result in failure of a main rotor head drag damper (damper) and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 hours time-in-service (TIS), inspect each damper, P/N 332A311980–02, for a tear, crack, or bonding separation in the elastomer as follows: (See Figure 1.)

(1) Separate the elastomer in Area A (outside reinforcement) and in area B (inside reinforcement).

(2) If a tear, crack, or bonding separation is found, replace the damper with an airworthy damper.

Note 2: American Eurocopter Master Servicing Recommendation (PRE) 05.99.00, rush revision date-code 97–46, and the Aircraft Maintenance Manual Nos. 05.21.00.213 and 05.21.00.213.001 pertain to the subject of this AD.

(b) Thereafter, prior to the first flight of each day or at intervals not to exceed 20 hours TIS, whichever occurs first, perform the inspection in paragraph (a). If a tear, crack, or bonding separation is found in the elastomer, replace the damper with an airworthy damper.

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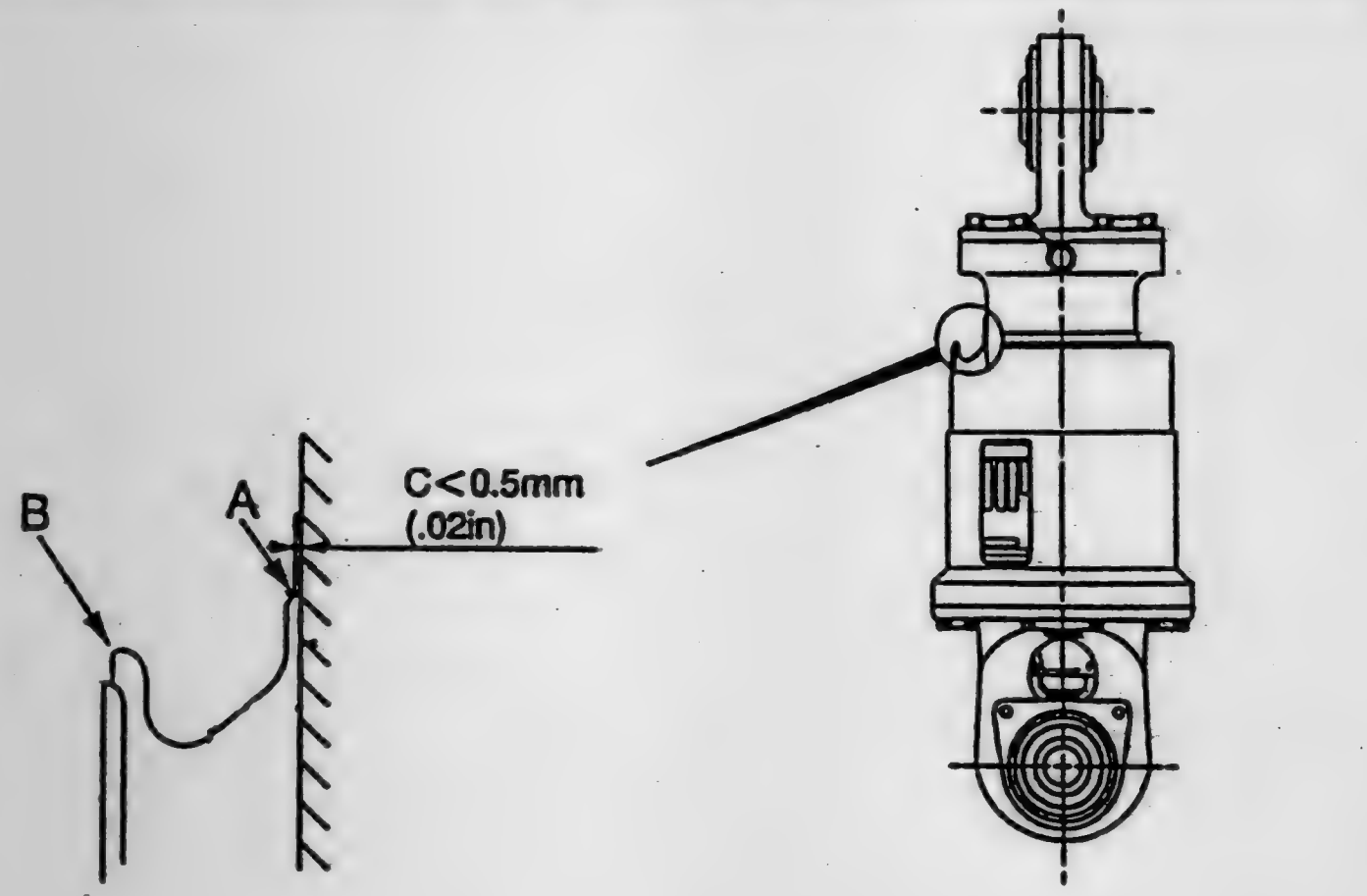


Figure 1

BILLING CODE 4910–13–C

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Standards Staff. Operators shall submit their requests through an FAA Principal Maintenance Inspector who may concur or comment and then send it to the Manager, Rotorcraft Standards Staff.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Standards Staff.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(e) This amendment becomes effective on May 26, 1999.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 97–378–009(AB), dated December 17, 1997.

Issued in Fort Worth, Texas, on May 4, 1999.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 99–11781 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–03–AD; Amendment 39–11081; AD 99–06–17]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Models PC–12 and PC–12/45 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action confirms the effective date of Airworthiness Directive (AD) 99–06–17, which applies to certain Pilatus Aircraft Ltd. (Pilatus) Models PC–12 and PC–12/45 airplanes. AD 99–06–17 requires installing a support bracket and a cut-out relay for the second generator control unit. AD 99–06–17 also requires making all the wiring additions and adjustments necessary for the above-referenced installations. This AD was the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified in this AD are intended to prevent damage to electrical components because incorrectly connected cables or broken or damaged wires cause excessive voltages to the second generator, which could result in loss of electrical power during any phase of flight.

EFFECTIVE DATE: June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Roman T. Gabrys, Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with request for comments in the **Federal Register** on March 23, 1999 (64 FR 13882). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA anticipates that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, was received within the comment period, the regulation would become effective on June 16, 1999. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Kansas City, Missouri, on May 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11780 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 251

[Docket No. RM 99–1 CARP]

Payment of Arbitrators; Distribution Proceedings

AGENCY: Copyright Office, Library of Congress.

ACTION: Final regulations.

SUMMARY: The Copyright Office is announcing final regulations that prescribe how the arbitrators who serve on a copyright arbitration royalty panel shall be reimbursed for their services.

DATES: Effective June 10, 1999.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Attorney Advisor, Copyright Arbitration Royalty Panel ("CARP"), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. Telephone (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION: Copyright arbitration royalty panels (CARPs) are *ad hoc* panels administered by the Librarian of Congress and the Copyright Office. The CARPs adjust the rates and distribute the royalty fees collected under the various compulsory licenses and statutory obligations of the Copyright Act.

Three arbitrators serve on each panel. Upon the recommendation of the Register of Copyrights, the Librarian of Congress selects two of the arbitrators, who in turn choose a third person to serve as the chairperson. Prior to the passage in 1997 of the Technical Corrections to the Satellite Home Viewer Act of 1994, Public Law 105–80, 111 Stat. 1529, the Librarian of Congress had no express authority to pay the arbitrators for their services, even in those instances when the Library held the royalty fees that were the subject of a distribution proceeding. Consequently, the responsibility for paying the arbitrators fell to the parties participating in the proceeding.

This changed with the passage of the technical amendments act which, *inter alia*, revised section 801(d). Section 801(d) now reads, in relevant part, as follows:

> The Librarian of Congress, upon the recommendation of the Register of Copyrights, . . . shall reimburse the arbitrators presiding in distribution proceedings at such intervals and in such manner as the Librarian shall provide by regulation. . . . Payments to the arbitrators shall be considered reasonable costs incurred by the Library of Congress and the Copyright Office for purposes of section 802(h)(1).

17 U.S.C. 801(d). The change allows the Librarian of Congress to use the royalty fees that have been collected under title 17 to pay the arbitrators who determine the distribution of these same royalty fees. Payments to these arbitrators are identified as reasonable costs of the Library and shall be made in accordance with the regulations promulgated by the Librarian of Congress.

The final regulations announced herein amend 37 CFR 251.54 to specify how often and in what manner the arbitrators shall receive payment for their service on a CARP. In accordance with the administrative processes associated with making payments for services contracted for outside the Library of Congress, payment shall be made within 30 days of the receipt of a proper statement of cost. In the case of a distribution proceeding, each arbitrator shall receive payment directly from the Library of Congress. In the case of a rate adjustment proceeding, each arbitrator shall receive payment directly from the parties participating in the proceeding.

The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for notice and comment, and a delay in the effective date, do not apply to the proposed amendments to § 251.54, of title 37 of the CFR, because the regulations pertain to agency management of a contractual obligation. No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for these amendments. Accordingly, the Copyright Office is adopting the amendments as final regulations upon publication in the **Federal Register**.

List of Subjects in 37 CFR Part 251

Administrative practice and procedure, Hearing and appeal procedures.

For the reasons set out in the preamble, chapter II of title 37 of the Code of Federal Regulations is to be amended as follows:

PART 251—COPYRIGHT ARBITRATION ROYALTY PANEL RULES OF PROCEDURE

1. The authority citation for part 251 continues to read as follows:

Authority: 17 U.S.C. 801–803.

2. Revise § 251.54 to read as follows:

§ 251.54 Assessment of costs of arbitration panels.

(a) The ordinary and necessary costs of an arbitrator shall be assessed, in accordance with § 251.38, as follows:

(1) In the case of a rate adjustment proceeding, the parties to the proceeding shall bear the entire cost thereof in such manner and proportion as the panel shall direct.

(2) In the case of a distribution proceeding, the parties to the proceeding shall bear the total cost of the proceeding in direct proportion to their share of the distribution. These costs shall be considered reasonable costs incurred by the Librarian of Congress and the Copyright Office. Such costs shall be deducted from the royalty fees which have been deposited and collected under title 17 of the United States Code and which are the subject of the distribution proceeding.

(b) Each arbitrator shall itemize his or her expenses on the statement of cost in a format approved by the General Counsel and shall specify the name and address to whom payment should be made. In the case of a rate adjustment proceeding, each statement of cost shall specify each party's share of the total cost and the amount owed by that party to each arbitrator, or alternatively, reflect the method of payment agreed upon by the parties and the arbitrators.

(c) The statements of cost shall be sent to the Library of Congress no more frequently than once a month.

(1) In the case of a distribution proceeding, the statements of cost shall be sent to the Accounting Operations Section, Financial Services Directorate, Library of Congress, 101 Independence

Avenue, SE, Washington, DC 20540–9112, and a copy of the statements of cost shall be submitted to the Copyright Office as directed in paragraph (c)(2) of this section.

(2) In the case of a rate adjustment proceeding, the statements of cost shall be sent to the CARP Specialist, P.O. Box 70977, Southwest Station, Washington, DC 20024, or hand delivered to the Office of the Copyright General Counsel, Room 403, James Madison Building, 101 Independence Avenue, SE, Washington, DC 20540.

(d) In the case of a rate adjustment proceeding, all parties to the proceeding shall have 30 days from receipt of a proper statement of cost in which to tender payment to the arbitrators, unless otherwise directed by the panel. Payment should be in the form of a money order, check, bank draft, or electronic fund transfer.

(e) In the case of a distribution proceeding, the Library of Congress shall reimburse the arbitrators directly from the royalty fees collected under title 17 of the United States Code which are the subject of the CARP proceeding. Payment of approved costs shall be made within 30 days of the receipt of a proper statement of cost in the form of an electronic fund transfer in accordance with the regulations of the Library of Congress.

Dated: April 28, 1999.

Marybeth Peters,

Register of Copyrights.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 99–11883 Filed 5–10–99; 8:45 am]

BILLING CODE 1410–33–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AF22

Schedule for Rating Disabilities; Diseases of the Ear and Other Sense Organs

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document amends that portion of the Department of Veterans Affairs (VA) Schedule for Rating Disabilities that addresses the ear and other sense organs. The intended effect of this action is to update this portion of the rating schedule to ensure that it uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review.

DATES: Effective Dates: This amendment is effective June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington DC 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of its review of the Schedule for Rating Disabilities, VA published a proposal to amend that portion of the Schedule pertaining to the ear and other sense organs in the **Federal Register** of April 12, 1994 (59 FR 17295–17301). Interested persons were invited to submit written comments on or before June 13, 1994. We received comments from the Veterans of Foreign Wars, Disabled American Veterans, and three individuals.

The evaluation of hearing impairment in the previous rating schedule was based on two criteria: the results of a puretone audiometry test and the results of a controlled speech discrimination test. Based on the results of these tests, one of two tables was used to determine a Roman numeral designation for hearing impairment: Table VI, where the number is determined by combining the percent of speech discrimination with the average puretone decibel (dB) loss, and Table VIa, which is based solely on average puretone dB loss, and was used only if language difficulties or inconsistent speech audiometric scores made use of Table VI inappropriate. The Roman numeral designations determined for each ear using Table VI or VIa were then combined using Table VII, in order to determine the percentage evaluation for hearing impairment. We proposed no change in this method of evaluation and included information about it in § 4.85, "Evaluation of hearing impairment" and § 4.86, "Auditory acuity, hearing aids, and evidence other than puretone audiometry and controlled speech." In response to several comments we received about the method of evaluation, and requesting more specific details, we have reorganized §§ 4.85 and 4.86 for the sake of clarity, as explained in detail below.

One commenter stated that nowhere is VA's authority to use the specific hearing tests it uses spelled out in the regulations. We agree that the tests required were not specified in the rating schedule and have therefore stated in § 4.85(a) that the Maryland CNC speech discrimination test and the puretone audiometry test are to be used for evaluating hearing impairment. The use of the Maryland CNC speech discrimination test and the puretone threshold average determined by an audiometry test was established by a regulation on the evaluation of hearing loss published in the **Federal Register** on November 18, 1987 (52 FR 44117). That regulation changed the method of evaluating hearing loss based on a VA study on hearing loss testing methods and assistive hearing devices that had been requested by Congress in 1984. The results of the study were published in a VA report titled "Report on Hearing Loss Study" that was issued on January 6, 1986. Although the regulation revised the rating schedule to incorporate rating tables based on the new method of evaluation, it did not add to the schedule specific details about the new testing methods.

One commenter stated that if only VA examinations or authorized audiological clinic examinations are to be used, this should be stated in the proposed regulation. Based on this comment, we have stated in § 4.85(a) that an examination for hearing impairment for VA purposes must be conducted by a state-licensed audiologist. This will help to assure that examinations of veterans will be accurate and consistent because state licensing agencies require that audiologists meet specific educational and training requirements and pass a national competency examination.

Two commenters noted that the meaning of average puretone decibel loss is not explained in the rating schedule. We agree that this information should be included in the rating schedule and have added an explanation in § 4.85(d). For VA purposes, the average puretone decibel loss means a four-frequency puretone threshold average obtained by adding the puretone thresholds at four specified frequencies'1000, 2000, 3000, and 4000 Hertz and dividing by four. This method and the reasons for its selection were explained in the 1987 regulation referred to above. Current terminology is "puretone threshold average" rather than "average puretone decibel loss," and we have used this language in § 4.85 and have revised the labels in Tables VI and VIa. For clarity, we have also titled Table VIa, untitled in the proposed rule, "Numeric Designation of Hearing Impairment Based Only on Puretone Threshold Average" and retitled Table VI, titled "Numeric Designation of Hearing Impairment" in the proposed rule, "Numeric Designation of Hearing Impairment Based on Puretone Threshold Average and Speech Discrimination." In the proposed rule we inadvertently placed

the numeric tables in § 4.86, we have moved them to § 4.85(h) as the more appropriate location. We removed the examples from § 4.85 because the directions for using the tables are clear enough without them.

We also proposed to add two new provisions for evaluating veterans with certain patterns of hearing impairment that cannot always be accurately assessed under § 4.85, because the speech discrimination test may not reflect the severity of communicative functioning these veterans experience. These veterans were identified in review studies carried out by the Veterans Health Administration's (VHA's) Audiology and Speech Pathology Service in 1991. One of the new provisions, proposed as § 4.85(d), stated that if puretone thresholds in any four of the five frequencies of 500, 1000, 2000, 3000, and 4000 Hertz are 55 dB's or more, an evaluation could be based either on Table VI or Table VIa, whichever results in a higher evaluation. (This provision has been redesignated § 4.86(a), as discussed below.)

One commenter, although offering no rationale for the comment, suggested that the level of hearing loss for this provision should be 50 dB instead of 55.

To conduct a speech discrimination test in someone with hearing impairment, the sounds must be amplified sufficiently for the individual to hear the words. The greater the dB threshold level, the higher the level of amplification that is needed. Up to a 50 dB threshold level, amplification sufficient to conduct a speech discrimination test is feasible. However, with a 55 dB threshold level—the level at which speech becomes essentially inaudible—the high level of amplification needed to attempt to conduct a speech discrimination test would be painful to most people, and speech discrimination tests may therefore not be possible or reliable. The new provision will allow evaluation of hearing impairment in such individuals on the basis of puretone threshold average only, if that results in a higher evaluation than one based on a combination of speech discrimination and puretone threshold average.

The same commenter suggested applying proposed § 4.85(d) if three of the five specified frequencies have a threshold of 55 dB or more because the frequencies of 2000 and above are the most important frequencies for speech discrimination, and precipitous hearing impairment in the high frequencies is extremely handicapping in the work environment.

The frequencies selected and the dB threshold were chosen because VHA, through their clinical studies, found that speech discrimination studies are quite variable in veterans with a 55 dB threshold in four or more frequencies and may not accurately reflect the true extent of disability. Also based on the results of their studies, they did not extend the recommendation for an alternative method of evaluation to those with that extent of hearing impairment at only three frequencies. In view of VHA's recommendations, based on tests conducted on 1565 individuals, we make no change based on this comment.

The second provision we proposed to add (as § 4.85(e)) was to direct the rating agency to choose the Roman numeral designation derived from either table VI or VIa, whichever is higher, when puretone thresholds are 30 dB or less at frequencies of 1000 Hertz and below, and are 70 dB or more at 2000 Hertz. It also directed the rating agency to elevate that Roman numeral designation one level. This provision was meant to compensate for a pattern of hearing impairment that is an extreme handicap in the presence of any environmental noise. VHA found that when this pattern of impairment is present, a speech discrimination test conducted in a quiet room with amplification of the sounds does not always reflect the extent of impairment experienced in the ordinary environment. This provision allows evaluation of hearing impairment in these individuals on puretone average only, if that results in a higher evaluation. (This provision has been redesignated § 4.86(b), as discussed below.)

One commenter said it appears in proposed § 4.85(d) and (e) that 500 Hertz is one of the frequencies to be used in the puretone average, although when § 4.85 was revised in 1987, the supplementary information stated that puretone frequencies at 1000, 2000, 3000, and 4000 Hertz were to be used to determine the puretone threshold average. The commenter also said that the use of four frequencies in some circumstances and of five or more in others requires an explanation of why such a methodology does not give rise to disparate treatment.

In the proposed rule, the four frequency puretone threshold average was the basis of the evaluation for hearing impairment in all cases, and the 500 Hertz frequency was to be used only to help select the veterans to whom the special provisions would be applied. However, in order to remove any suggestion of disparate treatment, and after consultation with VHA, we removed the 500 Hertz stipulations from the two proposed special provisions. VHA assured us that this change would not affect the need for the special provisions and would not affect the disability ratings of any group of veterans.

One commenter suggested that the language for evaluation parallel the language of 38 CFR 3.385.

The purpose of § 3.385, "Disability due to impaired hearing," is to explain the basis for determining whether impaired hearing is a disability, which is different from the purpose of § 4.85, which is to explain how to evaluate hearing impairment, once it has been determined to be a disability, for purposes of disability compensation. Since these regulations serve different purposes, and different frequencies are involved, the use of parallel language is neither necessary nor feasible.

When the puretone threshold average is 105 dB or more, tables VI and VIa require a numeric designation of XI, the highest level of evaluation. This is unchanged from the previous schedule. One commenter stated that a loss of greater than 92 dB, rather than 105 dB, would result in total impairment in everyone, according to the *American Academy of Otolaryngology and Otolaryngology Guide for the Evaluation of Hearing Impairment.*

Methods of measuring hearing impairment and assessing disability based on the results vary from one organization to another, making direct comparisons infeasible. Not all organizations use the same range of frequencies, for example, to determine a puretone threshold average. While VA uses 1000, 2000, 3000, and 4000 Hertz for evaluation, based on the results of the VA study referred to above, the American Medical Association (AMA), in its "Guides to the Evaluation of Permanent Impairment" 4th ed., 1993, uses 500, 1000, 2000, and 3000 Hertz. The National Institute for Occupational Safety and Health proposed using puretone thresholds at 1000, 2000, 3000, and 4000 Hertz, as has the American Speech and Hearing Association Task Force, and their rationale is that these frequencies are most sensitive to discrimination ability in quiet and in noise. Not all organizations use a speech discrimination test in evaluating hearing impairment; the AMA, for example, does not. The guide referred to by the commenter is no longer in existence, but the AMA Guides states that the criteria it uses are adapted from the 1979 Academy of Otolaryngology-Head and Neck Surgery Guide. The AMA Guides considers impairment of hearing to be total if the average of the four puretone

frequencies they use is over 91.7 dB. However, total impairment of hearing under their system does not mean that a 100-percent disability evaluation is assigned. Under the AMA disability evaluation system, each disability is considered in terms of its effect on the whole person. The evaluation they would assign for a bilateral puretone threshold of 91.7 dB (in workers' compensation claims, for example) is 35 percent, not 100 percent. With a unilateral puretone threshold of 91.7 dB (with the other ear normal), the AMA system would evaluate monaural hearing impairment at 100 percent, and binaural hearing impairment at approximately 17 percent, but the actual evaluation they would assign is six percent. Thus, direct comparisons of different systems of evaluating disability due to hearing loss are not possible, and we make no change based on this comment.

One commenter pointed out that § 4.86 in the previous schedule stated that evaluations are intended to make proper allowance for improvement by hearing aids and that examination to determine the improvement is not necessary. The commenter further stated that because Table VI appears to be unchanged in the proposed regulations, it would appear that Table VI continues to be built on the assumption of improvement with hearing aids and that performing audiology tests with hearing aids or adjusting the rating values based on an assumption of improvement with hearing aids violates the policy of determining impairment of body function without the use of any prosthetic device.

We are unaware of any general policy which prohibits consideration of the effect of a prosthetic device in determining the degree of impairment. In fact, there is a standard method for measuring best corrected vision, and the rating schedule requires that examinations for visual impairment include corrected, as well as uncorrected, visual acuity. However, there is no standard procedure for measuring best corrected hearing, and the amended instruction (§ 4.85(a)) states that examinations for hearing impairment will be conducted without the use of hearing aids. Section 4.85(a) is clear enough that, in order to avoid confusion, we have removed the language in proposed § 4.86(b) stating that the evaluations are designed to measure the best residual uncorrected hearing and that examinations comparing hearing with and without hearing aids are unnecessary. VHA consultants indicated that it is well accepted in the audiological literature that the better the speech discrimination score, the better the overall result with hearing aids, but they also stated that the language in the former rating schedule about anticipated improvement by a hearing aid did not in any way affect the method of evaluation or disability ratings themselves, and that removal of that language would also have no effect on the method of evaluation or on disability ratings.

The previous § 4.87 and proposed § 4.86(a) defined "impairment of auditory acuity," for VA purposes. However, that term is not used elsewhere in the rating schedule, although the terms "hearing impairment," "hearing loss," and "deafness" are used. We have therefore removed § 4.86(a) as unnecessary and have, for the sake of clarity, used "hearing impairment" in all other parts of the rating schedule to designate a loss of hearing except where the statutory terms "deafness" or "hearing loss" are required (by 38 U.S.C. 1114(k)).

Former section 4.86a, "Evidence other than puretone audiometry and controlled speech," explained that where claims contain evidence which predates the use of puretone audiometry and controlled speech, determination of service connection will be evaluated under the regulations in effect on December 17, 1987. We proposed to retain this instruction in § 4.86(c). One commenter suggested that this is not a rating regulation and that it properly belongs in Part 3 of 38 CFR.

We agree that regulations regarding service connection are not appropriate in the rating schedule, which is used for the evaluation of disabilities, and we have removed § 4.86(c). This completes the removal of the contents of proposed § 4.86. We have, however, retained § 4.86, retitled it "Exceptional patterns of hearing impairment," and added paragraphs (a) and (b) for the two provisions that were proposed as § 4.85(d) and (e). This change better highlights the unusual aspects of evaluating these uncommon patterns of hearing impairment.

The previous schedule did not provide specific instructions on evaluating bilateral hearing impairment when hearing impairment is service-connected in only one ear. One commenter suggested that we add a note indicating that a non-service-connected ear is to be treated as having normal hearing.

We concur and have added § 4.85(f) to specify that a non-service-connected ear will be assigned a Roman numeral designation of I, subject to the provisions of § 3.383, "Special consideration for paired organs and extremities." This is consistent with the manner in which we evaluate other paired organs, where only one of the pair is service-connected (38 CFR 4.73 (muscle injuries) and 38 CFR 4.124a (diseases of the cranial and peripheral nerves)).

One commenter stated that the regulation should include a specific effective date and should state whether the regulatory change constitutes a liberalizing law or issue.

The effective date of the regulation will be 30 days after publication of this final rule in the **Federal Register**. The revisions of the sections addressing ear and other sense organs are part of the overall revision of the rating schedule based on medical advances, etc., rather than representing liberalizing interpretations of regulations. We have explained above the reasons for the provisions of § 4.86. The preamble erred in discussing these provisions as liberalizations. Rather, they are an attempt to assure more equitable evaluations in a small number of veterans with unusual patterns of hearing impairment.

Special monthly compensation (SMC) is a benefit authorized by 38 U.S.C. 1114 that is payable in addition to the compensation payable for specific disabilities, or combinations of disabilities, based upon the extent of impairment under the Schedule for Rating Disabilities. We proposed removing the footnote regarding SMC in Table VII in favor of a single note at the end of § 4.85 directing the rating agency to refer to § 3.350 ("Special monthly compensation ratings") to determine whether a claimant is entitled to SMC. One commenter suggested that we retain this footnote.

In response to the comment, and for the sake of consistency with references to SMC that we have made in other revised sections of the rating schedule, we have added this information as § 4.85(g) and also restored a footnote to Table VII, Percentage Evaluations for Hearing Impairment, indicating that the rating agency is to review for entitlement to special monthly compensation under § 3.350. (We proposed to put the information now in § 4.85(g) in a footnote following § 4.86, but moved it to § 4.85 instead to remove ambiguity about whether it referred only to the provisions of § 4.86 or to all hearing evaluations.) A single footnote to Table VII is adequate because we have deleted all but one diagnostic code (DC), 6100, for hearing impairment, since it is unnecessary for any practical purpose to have multiple diagnostic codes to indicate various evaluation

levels of the same disability. SMC may be warranted not only when hearing impairment is evaluated at 100 percent, but also for various levels of deafness (or hearing impairment) when they occur in combination with blindness, and the single footnote will assure that SMC is always considered when there is hearing impairment. We believe that the combination of the footnote and § 4.85(g) is the most effective method for ensuring complete review for special monthly compensation.

38 U.S.C. 1114(k) authorizes payment of SMC if there is absence of air and bone conduction in both ears. The implementing regulation, 38 CFR 3.350(a)(5), states that deafness of both ears, having absence of air and bone conduction, will be held to exist when bilateral hearing loss is equal to or greater than the minimum bilateral hearing loss required for a maximum rating (100 percent) under the schedule. One commenter suggested that we add a footnote to the 80- and 90-percent levels indicating entitlement to special monthly compensation, because these evaluations constitute deafness, for all practical purposes.

We do not concur. Complete loss of air and bone conduction would result in no response on audiometry, even at 105 dB, according to VHA consultants, and would therefore warrant a 100-percent evaluation. If there is a response on audiometry, which would necessarily be the case to establish an 80- or 90-percent evaluation for hearing impairment, there is not complete absence of air and bone conduction, and the hearing impairment in those cases would not meet the requirements of 38 U.S.C. 1114(k). Such a footnote would therefore be contrary to statutory requirements.

The previous schedule listed mastoiditis under its own diagnostic code (6206), with evaluation based on suppuration and impairment of hearing. We proposed to combine it with suppurative otitis media under DC 6200. The previous schedule provided neither diagnostic code nor evaluation criteria for cholesteatoma; raters have generally evaluated it analogous to otitis media. We also proposed to include cholesteatoma under DC 6200, because the three conditions are closely related, and their manifestations may be essentially the same. One commenter suggested that we assign separate diagnostic codes for cholesteatoma and mastoiditis because the proposed rule is ambiguous as to whether one of these conditions must accompany otitis media to assign a 10-percent evaluation and because mastoiditis and cholesteatoma can exist without forming pus (suppuration).

Chronic otitis media, mastoiditis, and cholesteatoma may exist with or without suppuration. However, two or more of these conditions, all of which are interrelated, commonly coexist, and their manifestations may be very similar. For example, chronic mastoiditis may develop simultaneously with otitis media or may occur as a later complication. Therefore, a single diagnostic code and set of evaluation criteria for all three conditions is appropriate, and we have revised the title of DC 6200 to clarify that it can apply to any of these conditions. We have also added aural polyps to the criteria for a 10-percent evaluation because they are a possible consequence of chronic otitis media. We have also expanded the note directing that hearing impairment be evaluated separately to include a list of other possible complications—labyrinthitis, tinnitus, facial nerve paralysis, and bone loss of skull—that would also warrant separate evaluations. These criteria better encompass the usual range of impairments that may develop in this group of conditions. Placing these related conditions under a single diagnostic code will help assure that the same impairment is not evaluated twice when more than one of these conditions is present in an individual.

The previous schedule addressed otitis interna under DC 6203 and evaluated it based on the extent of hearing loss. We proposed to eliminate this diagnostic code because otitis interna is an archaic name for a general ear infection condition which is more accurately classified as a peripheral vestibular disorder, DC 6204. One commenter suggested that we provide instructions under peripheral vestibular disorders explaining how to evaluate otitis interna. We do not concur. Otitis interna is an obsolete term, and conditions which it formerly encompassed are best evaluated under the criteria for peripheral vestibular disorders.

The previous rating schedule provided three evaluation levels for Meniere's syndrome, DC 6205, based on the severity and frequency of attacks. Among other things, we proposed to provide objective measures for the frequency of the attacks. One commenter stated that the prodromal signs, the duration of the episode, and the recovery period for an attack may last as long as ten days, and therefore suggested that the frequency of attacks proposed for the 100-percent evaluation (more than once weekly) and 60-percent evaluation (once a week or less) was too stringent. The commenter also said that "attacks occurring once a week or less" should be better defined.

Attacks of vertigo in Meniere's syndrome appear suddenly and last from a few to 24 hours (*Boies Fundamentals of Otolaryngology, Sixth Edition*, W.B. Saunders Company, 1989, p.139, and *The Merck Manual of Diagnosis and Therapy*, Merck Research Laboratories, 1992, p. 2336). Since the attacks of vertigo (often accompanied by nausea, vomiting, hearing impairment, and tinnitus) generally subside within 24 hours, requiring attacks more than once weekly for a 100-percent level, and one to four times a month for a 60-percent level, are reasonable requirements, in our judgment, that are equivalent to, but more objective than, the requirements of "frequent and typical," and "less frequent" in the previous schedule. In response to the comment, however, we better defined the criteria by changing the requirements for a 60-percent evaluation from "deafness with attacks of vertigo and cerebellar gait occurring once a week or less" to "hearing impairment with attacks of vertigo and cerebellar gait occurring from one to four times a month, with or without tinnitus," and by changing the requirements for a 30-percent evaluation from "deafness with occasional vertigo" to "hearing impairment with vertigo less than once a month, with or without tinnitus." Tinnitus is commonly, but not universally, present in Meniere's syndrome. We included the phrase "with or without tinnitus" in these criteria to emphasize that the overall evaluation of Meniere's syndrome is the same whether or not tinnitus is present. This will avoid the assignment of a separate evaluation for tinnitus when evaluating the syndrome under DC 6205, and at the same time, indicate that the absence of tinnitus in certain cases has no effect on the evaluation to be assigned under DC 6205.

We proposed to retain "deafness" as one of the criteria at the 100-percent evaluation level of Meniere's syndrome (DC 6205). One commenter suggested that there be a footnote appended to the 100-percent level, signaling that entitlement to Special Monthly Compensation is payable.

We do not concur. A particular level of impaired hearing is not a requirement for the 100-percent level for Meniere's syndrome. The term "deafness" was meant to indicate any level of hearing impairment, and we have changed "deafness" to "hearing impairment" in the criteria for Meniere's syndrome to make that clear. The requirements for a 100-percent evaluation of Meniere's syndrome are met if there is any level

of hearing impairment, and vertigo and cerebellar gait occur more than once weekly. 38 CFR 3.350(a)(5), on the other hand, requires an absence of air and bone conduction and hearing loss equal to or greater than the minimum bilateral hearing loss required for a 100-percent rating, for entitlement to SMC on the basis of hearing impairment. For this reason, a footnote referring to entitlement to SMC is not appropriate here, and § 4.85(g) and the footnote to Table VII will assure consideration of SMC in any case of hearing impairment.

Another commenter suggested that we add a note under Meniere's syndrome instructing the rating agency that hearing impairment will be rated separately and combined. We did not adopt this suggestion because the evaluation criteria and percentages are based on all of the manifestations of Meniere's syndrome, with attacks often consisting of hearing impairment, vertigo, tinnitus, and staggering gait. Any of the symptoms may be intermittent. It would be contrary to 38 CFR 4.14 (Avoidance of pyramiding), which prohibits the evaluation of the same manifestation under different diagnoses, to evaluate hearing impairment separately, and also use it to support an evaluation under DC 6205. However, we have added a note stating that Meniere's syndrome may be evaluated either under DC 6205 or by separately evaluating vertigo (as a peripheral vestibular disorder), hearing impairment, and tinnitus, whichever method results in a higher overall evaluation. The note also prohibits combining an evaluation for hearing impairment, tinnitus, or vertigo with an evaluation under DC 6205.

The previous schedule provided a minimum 10-percent evaluation for malignant neoplasms of the ear, DC 6208. We proposed to delete the minimum evaluation. One commenter suggested that we reinstate the minimum 10-percent evaluation because it was meant to compensate for skull loss.

In our judgment, loss of function is the most accurate and equitable basis for evaluating the residuals of this condition. If a malignant neoplasm results in skull loss, the skull loss would be separately evaluated under the skeletal system (DC 5296).

The previous rating schedule provided a 10-percent evaluation for tinnitus, DC 6260, with the criteria being: "persistent as a symptom of head injury, concussion or acoustic trauma." We proposed to remove the requirement that tinnitus be a symptom of head injury, concussion or acoustic trauma and that it be persistent and instead provide a 10-percent evaluation for recurrent tinnitus. One commenter suggested that we add a note following tinnitus instructing that the evaluation for tinnitus be combined with ratings for hearing impairment, suppurative otitis media, and peripheral vestibular disorder.

We agree and have added a note under DC 6260 stating that a separate evaluation for tinnitus under DC 6260 may be combined with an evaluation under DC's 6100, 6200, 6204, or other diagnostic code except when tinnitus supports an evaluation under one of those diagnostic codes.

We added the word "nonsuppurative" to the proposed title of DC 6201, "chronic nonsuppurative otitis media with effusion (serous otitis media)," to better distinguish it from DC 6200, "chronic suppurative otitis media, mastoiditis, or cholesteatoma." We also made additional nonsubstantive changes throughout this final rule for the sake of clarity and succinctness.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605 (b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

This regulatory action has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: January 8, 1999.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4 is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Section 4.85 is revised to read as follows:

§ 4.85 Evaluation of hearing impairment.

(a) An examination for hearing impairment for VA purposes must be conducted by a state-licensed audiologist and must include a controlled speech discrimination test (Maryland CNC) and a puretone audiometry test. Examinations will be conducted without the use of hearing aids.

(b) Table VI, "Numeric Designation of Hearing Impairment Based on Puretone Threshold Average and Speech Discrimination," is used to determine a Roman numeral designation (I through XI) for hearing impairment based on a combination of the percent of speech discrimination (horizontal rows) and the puretone threshold average (vertical columns). The Roman numeral designation is located at the point where the percentage of speech discrimination and puretone threshold average intersect.

(c) Table VIa, "Numeric Designation of Hearing Impairment Based Only on Puretone Threshold Average," is used to determine a Roman numeral designation (I through XI) for hearing impairment based only on the puretone threshold average. Table VIa will be used when the examiner certifies that use of the speech discrimination test is not appropriate because of language difficulties, inconsistent speech discrimination scores, etc., or when indicated under the provisions of § 4.86.

(d) "Puretone threshold average," as used in Tables VI and VIa, is the sum of the puretone thresholds at 1000, 2000, 3000 and 4000 Hertz, divided by four. This average is used in all cases (including those in § 4.86) to determine the Roman numeral designation for hearing impairment from Table VI or VIa.

(e) Table VII, "Percentage Evaluations for Hearing Impairment," is used to determine the percentage evaluation by combining the Roman numeral designations for hearing impairment of each ear. The horizontal rows represent the ear having the better hearing and the vertical columns the ear having the poorer hearing. The percentage evaluation is located at the point where the row and column intersect.

(f) If impaired hearing is service-connected in only one ear, in order to determine the percentage evaluation from Table VII, the non-service-connected ear will be assigned a Roman Numeral designation for hearing

impairment of I, subject to the provisions of § 3.383 of this chapter.

(g) When evaluating any claim for impaired hearing, refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation due either to deafness, or to deafness in combination with other specified disabilities.

(h) *Numeric tables VI, VIA*, and VII.*

BILLING CODE 8320-01-P

TABLE VI

NUMERIC DESIGNATION OF HEARING IMPAIRMENT BASED ON PURETONE THRESHOLD AVERAGE AND SPEECH DISCRIMINATION

Puretone Threshold Average

% of discrimination	0-41	42-49	50-57	58-65	66-73	74-81	82-89	90-97	98+
92-100	I	I	I	II	II	II	III	III	IV
84-90	II	II	II	III	III	III	IV	IV	IV
76-82	III	III	IV	IV	IV	V	V	V	V
68-74	IV	IV	V	V	VI	VI	VII	VII	VII
60-66	V	V	VI	VI	VII	VII	VIII	VIII	VIII
52-58	VI	VI	VII	VII	VIII	VIII	VIII	VIII	IX
44-50	VII	VII	VIII	VIII	VIII	IX	IX	IX	X
36-42	VIII	VIII	VIII	IX	IX	IX	X	X	X
0-34	IX	X	XI	XI	XI	XI	XI	XI	XI

TABLE VIA*

NUMERIC DESIGNATION OF HEARING IMPAIRMENT BASED ONLY ON PURETONE THRESHOLD AVERAGE

Puretone Threshold Average

0-41	42-48	49-55	56-62	63-69	70-76	77-83	84-90	91-97	98-104	105+
I	II	III	IV	V	VI	VII	VIII	IX	X	XI

* This table is for use only as specified in §§ 4.85 and 4.86.

TABLE VII

PERCENTAGE EVALUATION FOR HEARING IMPAIRMENT (DIAGNOSTIC CODE 6100)

Poorer Ear

Better Ear	XI	X	IX	VIII	VII	VI	V	IV	III	II	I
XI	100*										
X	90	80									
IX	80	70	60								
VIII	70	60	50	50							
VII	60	60	50	40	40						
VI	50	50	40	40	30	30					
V	40	40	40	30	30	20	20				
IV	30	30	30	20	20	20	10	10			
III	20	20	20	20	20	10	10	10	0		
II	10	10	10	10	10	10	10	0	0	0	
I	10	10	0	0	0	0	0	0	0	0	0

* Review for entitlement to special monthly compensation under §3.350 of this chapter.

BILLING CODE 8320-01-C

3. Section 4.86 is revised to read as follows:

§ 4.86 Exceptional patterns of hearing impairment.

(a) When the puretone threshold at each of the four specified frequencies (1000, 2000, 3000, and 4000 Hertz) is 55 decibels or more, the rating specialist will determine the Roman numeral designation for hearing impairment from either Table VI or Table VIa, whichever results in the higher numeral. Each ear will be evaluated separately.

(b) When the puretone threshold is 30 decibels or less at 1000 Hertz, and 70 decibels or more at 2000 Hertz, the rating specialist will determine the Roman numeral designation for hearing impairment from either Table VI or Table VIa, whichever results in the higher numeral. That numeral will then be elevated to the next higher Roman numeral. Each ear will be evaluated separately.

(Authority: 38 U.S.C. 1155)

§ 4.86a [Removed]

4. Section 4.86a is removed.

5. Section 4.87 is revised to read as follows:

§ 4.87 Schedule of ratings—ear.

		Rating
	DISEASES OF THE EAR	
6200	Chronic suppurative otitis media, mastoiditis, or cholesteatoma (or any combination):	
	During suppuration, or with aural polyps	30
	Note: Evaluate hearing impairment, and complications such as labyrinthitis, tinnitus, facial nerve paralysis, or bone loss of skull, separately.	
6201	Chronic nonsuppurative otitis media with effusion (serous otitis media):	
	Rate hearing impairment	
6202	Otosclerosis:	
	Rate hearing impairment	
6204	Peripheral vestibular disorders:	
	Dizziness and occasional staggering ..	30
	Occasional dizziness	10
	Note: Objective findings supporting the diagnosis of vestibular disequilibrium are required before a compensable evaluation can be assigned under this code. Hearing impairment or suppuration shall be separately rated and combined.	
6205	Meniere's syndrome (endolymphatic hydrops):	
	Hearing impairment with attacks of vertigo and cerebellar gait occurring more than once weekly, with or without tinnitus	100
	Hearing impairment with attacks of vertigo and cerebellar gait occurring from one to four times a month, with or without tinnitus	60
	Hearing impairment with vertigo less than once a month, with or without tinnitus	30
	Note: Evaluate Meniere's syndrome either under these criteria or by separately evaluating vertigo (as a peripheral vestibular disorder), hearing impairment, and tinnitus, whichever method results in a higher overall evaluation. But do not combine an evaluation for hearing impairment, tinnitus, or vertigo with an evaluation under diagnostic code 6205.	
6207	Loss of auricle:	
	Complete loss of both	30
	Complete loss of one	10
	Deformity of one, with loss of one-third or more of the substance	10
6208	Malignant neoplasm of the ear (other than skin only)	100
	Note: A rating of 100 percent shall continue beyond the cessation of any surgical, radiation treatment, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based on that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
6209	Benign neoplasms of the ear (other than skin only):	
	Rate on impairment of function.	
6210	Chronic otitis externa:	
	Swelling, dry and scaly or serous discharge, and itching requiring frequent and prolonged treatment	10
6211	Tympanic membrane, perforation of	0
6260	Tinnitus, recurrent	10
	Note: A separate evaluation for tinnitus may be combined with an evaluation under diagnostic codes 6100, 6200, 6204, or other diagnostic code, except when tinnitus supports an evaluation under one of those diagnostic codes.	

(Authority: 38 U.S.C. 1155)

6. Section 4.87a is revised to read as follows:

§ 4.87a Schedule of ratings—other sense organs.

		Rating
6275	Sense of smell, complete loss	10
6276	Sense of taste, complete loss	10
	Note: Evaluation will be assigned under diagnostic codes 6275 or 6276 only if there is an anatomical or pathological basis for the condition.	

(Authority: 38 U.S.C. 1155)

§ 4.87b [Removed]

7. Section 4.87b is removed.

[FR Doc. 99–11768 Filed 5–10–99; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NV 030–0015; FRL–6339–4]

Clean Air Act Approval and Promulgation of New Source Review Provisions Implementation Plan for Nevada State Clark County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating approval of the new source review (NSR) program submitted by the Clark County Air Pollution Control District (CCAPCD) for the purpose of meeting the nonattainment and prevention of significant deterioration (PSD) NSR requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The requested revision was submitted by the State to satisfy certain Federal requirements for an approvable nonattainment new source review SIP. This submittal also satisfies the requirements for a Prevention of Significant Deterioration (PSD) program. The intended effect of this rulemaking is to regulate air pollution in accordance with the Act. Thus, EPA is finalizing the approval of these revisions into the Nevada state implementation plan (SIP) under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

EFFECTIVE DATE: This action is effective on June 10, 1999.

ADDRESSES: Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are available for inspection at the following locations:

Permits Office (Air-3), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW, Washington, DC 20406.

Clark County Health District, 625 Shadow Lane, Las Vegas, NV 89127

Nevada Division of Environmental Protection, 333 W. Nye Lane, Carson City, NV 89710

FOR FURTHER INFORMATION CONTACT: Steve Branoff, Environmental Engineer, Permits Office (Air-3), Air Division, EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1290.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The air quality planning requirements for nonattainment NSR are set out in Part D of Title I of the Act, with implementing regulations at 40 CFR 51.160 through 51.165. The air quality planning requirements for PSD are set out in Part C of Title I of the Act, with implementing regulations at 40 CFR 51.166. On November 30, 1993, CCAPCD submitted its NSR rules to EPA as a proposed revision to the SIP. On July 28, 1995, EPA proposed to approve with contingencies, and to disapprove in the alternative, the submitted SIP revisions. See 61 FR 17675. Full approval as a final action was contingent upon CCAPCD making required changes to the submitted rules. EPA requested public comments on the proposed approval and received none.

CCAPCD has since submitted to EPA revised NSR rules. The revisions contain the required changes and EPA is therefore promulgating final approval of the revised rules. The specific changes that CCAPCD made to its rules are detailed below.

The Clark County Board of Health (the governing board for the CCAPCD) adopted changes to the new source review rules in "installments" at public hearings on December 21, 1995; December 19, 1996; January 23, 1997; April 24, 1997; June 26, 1997, January 22, 1998 and April 23, 1998. There was substantial input from the public and the regulated community at these

hearings and the workshops that preceded them.

For Rule 58, CCAPCD submitted the revised rule to the State of Nevada for inclusion to the SIP on November 18, 1996. The State submitted Rule 58 to EPA on January 17, 1997. The SIP revision was reviewed by EPA and determined to be complete on March 10, 1997. For Rules 0 and 12, CCAPCD submitted the revised rules to the State of Nevada for inclusion to the SIP on March 3, 1999. The State submitted Rules 0 and 12 to EPA on March 15, 1999. The SIP revision was reviewed by EPA and determined to be complete on March 30, 1999.

In its July 28, 1995 proposed approval, EPA identified a number of deficiencies in CCAPCD's November 30, 1993 submittal which had to be corrected as a condition of full approval. At that time, CCAPCD had proposed draft rules which corrected the deficiencies. EPA's technical support document (TSD) for the July 28, 1995 proposed approval contains a discussion of how CCAPCD's proposed draft rules would correct the deficiencies, as well as how they would meet the general NSR requirements of the Act. The rules in CCAPCD's current submittal are substantially similar to the draft rules upon which EPA based its proposed approval. Below is a discussion of the portions of CCAPCD's January 17, 1997 and March 15, 1999 submittals which correct the deficiencies identified by EPA.

Corrected Deficiencies

Rule 0

Modification: In its July 28, 1995 proposed approval, EPA specified that "the rule fails to require review for modifications which involve a major increase in actual emissions, but no increase in potential to emit. To correct this deficiency, calculations in the District rule must be based on increases in actual emissions." In the March 15, 1999 submittal, CCAPCD corrected the definition of modification to reference a change resulting in a "net emissions increase." As suggested in EPA's proposed approval, the federal definition of "net emissions increase" was also incorporated into the rule. In concert, these definitions satisfy EPA's requirement for review of modifications.

Regulated Air Pollutant: EPA specified that "the definition of regulated air pollutant in the submitted rule . . . should be corrected for rule consistency." With revisions to the definition in the March 15, 1999 submittal, CCAPCD satisfies EPA's suggestion.

Volatile Organic Compound: EPA's proposed approval described CCAPCD's definition of Volatile Organic Compound "contains a list of substances exempt from regulation as VOCs which is inconsistent with the exemption list in 40 CFR 51.100(s)." CCAPCD's March 15, 1999 submittal corrected this discrepancy by incorporating the CFR definition verbatim. This language satisfies EPA's requirements.

Rule 12

Public Notice: In its July 28, 1995 proposed approval, EPA specified that a "thirty-day public comment period should be required for each permit application, as specified by 40 CFR 51.166(q). All public comment, oral and written, received within the specified time, should be considered in making the final decision on the approvability of the permit application." The March 15, 1999 submittal includes section 12.3.4.2, to require consideration of public comments, and section 12.3.4 to require a minimum thirty-day public comment period. The addition of these sections satisfies EPA's requirements.

Variance to Rule Requirements: EPA specified that "no variance may be granted to a source required by federal standards to undergo new source review." The March 15, 1999 submittal removed provisions for a variance to the major source impact analysis for NO_x and therefore satisfies EPA's requirements in that regard.

Fugitive Emissions: EPA's proposed approval explained that "fugitives must also be included in the major source applicability determination, defined by a source's potential to emit, for all other regulated pollutants, if the source belongs to one of the source categories listed in 40 CFR 51.165(a)(1)(iv)(C)." Revisions to the definitions of potential to emit, section 0.116, and stationary source, section 0.133, ensured that fugitive emissions would be included in applicability determination. The language in the March 15, 1999 submittal satisfies EPA's requirements.

Additional Impact Analysis for Attainment Pollutants: EPA specified that the rule failed to require an additional impact analysis for VOC, lead and CO: "The rule must be amended to require the additional impact analysis for pollutants subject to regulation under the Act which will be emitted by the new source or modifications." In sections 12.2.5.7, 12.2.10.6, 12.2.13.6, 12.2.15.7, 12.2.16.7, and 12.2.17.6, the March 15, 1999 submittal requires such analysis for all criteria pollutants at major sources and major modifications in attainment areas. The language satisfies EPA's requirement.

Alternative Siting Analysis: EPA specified that the rule lacked a requirement that an alternative siting analysis, required by CAA section 173(a)(5), be performed by all permit applicants for sources located within a nonattainment area. CCAPCD has added section 12.1.4.1.k to require a demonstration that the benefits of a proposed major source or modification significantly outweigh the environmental and social costs imposed as a result of its location in the non-attainment area. The language in the March 15, 1999 submittal satisfies EPA's requirements.

Class I Area Visibility Protection: EPA specified that the rule lacked the visibility protection requirements of CAA section 169(a) and described in 40 CFR 51.307. While there are currently no Class I areas in Clark County, the requirement needed to be incorporated into the rule. The March 15, 1999 submittal included such provisions in sections 12.2.5.8, 12.2.10.7, 12.2.13.7, 12.2.15.8, 12.2.16.8, and 12.2.17.7 and satisfies EPA's requirements.

PSD Ambient Air Increments: EPA specified that the rule lacked "provisions which set the maximum allowable increases in PM–10, SO2, and NO2 to those increments listed in 40 CFR 51.166(c), for designated attainment or unclassifiable areas." The March 15, 1999 submittal lists these increments in sections 12.2.5.6, 12.2.15.6, and 12.2.16.6, and therefore satisfies EPA's requirements.

Offsets: EPA specified that the submitted rule failed to meet the requirements of CAA section 173, which requires offsets to be federally enforceable prior to the issuance of an Authority to Construct Permit, and in effect by the time operation commences. The March 15, 1999 submittal lists this requirement in sections 12.4.1.4, 12.4.2.4, 12.4.3.4, and 12.4.4.4 and therefore satisfies EPA's requirements.

Additional Requirements: EPA specified that the submitted rule failed to "require new source review for a source or modification which becomes major due to a relaxation in a federally-enforceable limit." Section 0.133.b.2 of the March 15, 1999 submittal includes the following language from the "major stationary source" definition in 40 CFR 51.165(a)(5)(ii): "at such time that a particular source or modification becomes a major stationary source . . . the requirements of regulations approved pursuant to this shall apply to the source or modification as though construction had not yet commenced." This satisfies EPA's requirements.

Hazardous Air Pollutants: EPA specified that the rule's list of hazardous air pollutants needed to "include the pollutants listed in 40 CFR 51.166(b)(23)(I), which are not also regulated by Section 112(b)(1) of the Act." The March 15, 1999 submittal includes definition 0.123, "Regulated Air Pollutant," which satisfies EPA's requirements under PSD.

Rule 58

Adjustment at Time of Use: EPA noted the submitted rule was not clear that emission reduction credits (ERCs) must be surplus at time of use to all federally-enforceable requirements, including, but not limited to, Reasonably Available Control Technology (RACT) requirements. Section 58.8 of the January 17, 1997 submittal prescribes that ERCs must be surplus at the time of use. This satisfies EPA's requirements.

Prior Shutdowns: EPA specified that the submitted rule must not disallow "prior shutdown" credits as required in 40 CFR 51.165(a)(1)(xxv). Section 58.3.3.1 of the January 17, 1997 submittal limits shutdown credits as defined by this CFR section. The federal regulation limits shutdown credits either when the District attainment plan has been disapproved, or when this plan is not yet due, but a due date during the creation of this plan is missed. In this case, sources which seek ERCs due to a shutdown must do so at the time operation of the source ceases. This section satisfies EPA's requirements.

Property Rights: EPA specified that the submitted rule incorrectly referred to procedures for banking ERCs "in a legally protected manner." The January 17, 1997 submittal did not include language suggesting that banked ERCs could be protected under property rights laws and, therefore, this submittal can be approved by EPA.

Mobile and Area Sources: EPA specified that the submitted rule allowed reductions generated by mobile and area sources to be credited as ERCs which may be used as offsets but failed to provide for the federal enforceability and quantification of these credits. The January 17, 1997 submittal removed all credits for area and mobile source reductions and therefore can be approved by EPA.

Final Action and Implications

EPA is promulgating final approval of CCAPCD's NSR program as submitted on January 17, 1997 and on March 15, 1999. This submittal consists of Clark County Air Pollution Control Regulations sections 0 (Definitions), 12 (Preconstruction Review for New or Modified Stationary Sources), and 58 (Emission Reduction Credits).

EPA did not receive any comments on the changes detailed above that were necessary to make CCAPCD's program fully approvable. The scope of this approval applies to all new or modified sources (as defined in the program) within the Clark County Air Pollution Control District.

Scope of This Approval

As discussed above, the submitted rules (0, 12, and 58) contain provisions which satisfy the federal requirements for approval of nonattainment New Source Review (NSR) and Prevention of Significant Deterioration (PSD) programs. In addition, these rules contain provisions which are outside the scope of the above two programs, such as requirements for stationary sources of hazardous air pollutants and requirements for both minor stationary sources and stationary sources located in attainment areas to obtain emission reduction credits. Today's approval of rules 0, 12, and 58 is promulgated for the purpose of meeting the nonattainment and PSD program requirements of the Clean Air Act only, and does not imply approval of requirements contained in these rules for any other purpose. Therefore, approval of these rules does not constitute approval of the CCAPCD requirements to develop a program to regulate new or modified sources of hazardous air pollutants, as described by section 112(g) of the Act. In addition, approval of these rules does not constitute approval of emission reduction credit programs (such as the "road paving" offset program contained in section 12.4.5 of the current submittal) for the purpose of ensuring emissions reductions required to reach attainment of the PM–10 or PM–2.5 national ambient air quality standards.

Administrative Review

Copies of CCAPCD's submittal and other information relied upon for this final approval are contained in docket number NSRR 2–95 CCAPCD, at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in development of this final approval. The docket is available for public inspection at the location listed under the **ADDRESSES** section of this document.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may

not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, versus *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

H. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 52

Environmental Protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, and Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Nevada was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 21, 1999.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart DD—Nevada

2. Section 52.1470 is amended by adding paragraphs (c)(36) and (c)(37) to read as follows:

§ 52.1470 Identification of plan.

* * * * *

(c) * * *

(36) On January 17, 1997, regulations for the following Health District were submitted by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Air Pollution Control District.

(*1*) Section 58 revised on December 21, 1995.

(37) On March 15, 1999, regulations for the following Health District were submitted by the Governor's designee.

(i) Incorporation by reference.

(A) Clark County Air Pollution Control District.

(*1*) Sections 0 and 12 revised on April 23, 1998.

[FR Doc. 99–11708 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[UT10–1–6700a; UT–001–0014a; UT–001–0015a; FRL–6340–1]

Approval and Promulgation of Air Quality Implementation Plans; Utah; Foreword and Definitions, Revision to Definition for Sole Source of Heat and Emissions Standards, Nonsubstantive Changes; General Requirements, Open Burning and Nonsubstantive Changes; and Foreword and Definitions, Addition of Definition for PM_{10} Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule; withdrawal.

SUMMARY: On March 26, 1999, EPA published a direct final rule (64 FR 14620) approving, and an accompanying proposed rule (62 FR 26463) proposing to approve, revisions submitted by the Governor of the State of Utah on July 11, 1994, February 6, 1996 and July 9, 1998. These revisions contain requirements for residential solid fuel burning and open burning, and add a definition for "PM_{10} Nonattainment Area" to the SIP. We are withdrawing this final rule due to adverse comment received from the Utah Petroleum Association on the portion of this action approving the "PM_{10} Nonattainment Area" definition. In a subsequent final rule, we will summarize and respond to the comment received and take final rulemaking action on this requested Utah SIP revision.

DATES: As of May 11, 1999, we withdraw the direct final rule published on March 26, 1999.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air and Radiation Program, Environmental Protection Agency, Region VIII, 999 18th Street, Suite 500, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Cindy Rosenberg, EPA, Region VIII, (303) 312–6436.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

Patricia D. Hull,

Acting Regional Administrator, Region VIII.

[FR Doc. 99–11829 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1815, 1816, 1819, and 1852

Small Disadvantaged Business Participation Evaluation and Incentives

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This final rule conforms the NASA FAR Supplement (NFS) to recent changes made to the Federal Acquisition Regulation (FAR) regarding the evaluation and incentive for small disadvantaged business (SDB) participation in competitive negotiated acquisitions. Specifically, this rule requires that evaluation of SDB participation be limited to SDBs in the Major SIC Groups designated by the Department of Commerce, and that it be accomplished normally as a subfactor under the NASA Mission Suitability evaluation factor. This rule also limits incentives for use of SDB firms to an award fee provision or the designated FAR incentive clause provision. Moreover, both incentives are limited to use of SDBs in the designated Major SIC Groups. This rule also makes editorial revisions to reflect recent FAR terminology and clause title changes associated with implementation of the Historically Underutilized Business Zone (HUBZone) Empowerment Contracting Program. Finally, editorial changes are made to correct a NASA official's title and to eliminate an erroneous designation of the NASA Mentor-Protege program as a pilot program.

EFFECTIVE DATE: May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Code HK, Washington, DC 20546, telephone: (202) 358–0478; email: *thomas.otoole@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

Background

Federal Acquisition Circular 97–07 revised the FAR to prescribe procedures for the evaluation and incentive of SDB participation in Government contracts. With respect to evaluation, it required that the proposed participation of SDBs in the Department of Commerce designated Major SIC Groups be evaluated in unrestricted competitive negotiations expected to exceed $500,000 ($1,000,000 for construction). In addition, two forms of post-award incentives for use of SDBs in the designated SIC Major Groups were prescribed: the clause at 52.219–26, Small Disadvantaged Business Participation Program—Incentive Subcontracting, or an award fee provision. NASA procedures for award fee already required evaluation of SDB utilization, but needed revision to limit evaluation to SDBs in the designated Major SIC Groups.

Impact

Regulatory Flexibility Act

This final rule does not constitute a significant revision within the meaning of FAR 1.501 and Pub. L. 98–577, and publication for comments is not required. However, comments from small business entities concerning the affected NFS coverage will be considered in accordance with 5 U.S.C. 610. Such comments may be submitted separately and should cite 5 U.S.C. 601, *et seq.*

Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1815, 1816, 1819, and 1852

Government procurement.

Tom Luedtke,

Acting Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1815, 1816, 1819, and 1852 are amended as follows:

PART 1815—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR Parts 1815, 1816, 1819, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. In section 1815.304, the section heading is revised and paragraph (c) is added to read as follows:

1815.304 Evaluation factors and significant subfactors. (NASA supplements paragraph (c))

(c)(4)(A) The extent of participation of small disadvantaged business (SDB) concerns shall be evaluated as a subfactor under the Mission Suitability factor. If a Mission Suitability factor is not used, the SDB participation shall be evaluated as a separate factor or subfactor, as appropriate.

(B) SDB concerns that choose the FAR 19.11 price evaluation adjustment shall receive the lowest possible score/rating under the FAR 15.304(c)(4) evaluation.

3. In section 1815.304–70, paragraph (b)(2) is revised to read as follows:

1815.304–70 NASA evaluation factors.

* * * * *

(b) * * *

(2) The Mission Suitability factor may identify evaluation subfactors to further define the content of the factor. Each Mission Suitability subfactor shall be weighted and scored. The adjectival rating percentages in 1815.305(a)(3)(A) shall be applied to the subfactor weight to determine the point score. The number of Mission Suitability subfactors is limited to five. The Mission Suitability evaluation subfactors and their weights shall be identified in the RFP.

* * * * *

4. In section 1815.404–470, paragraph (c)(5) is revised to read as follows:

1815.404–470 NASA structured approach for profit or fee objective.

* * * * *

(c) * * *

(5) Federal socioeconomic programs. In addition to rewarding contractors for unusual initiative in supporting Government socioeconomic programs, failure or unwillingness on the part of the contractor to support these programs should be viewed as evidence of poor performance for the purpose of establishing this profit/fee objective factor. However, this factor does not apply to utilization of small disadvantaged businesses. Incentives for use of these firms may only be structured according to FAR 19.1203 and 19.1204(c).

* * * * *

PART 1816—TYPES OF CONTRACTS

5. In section 1816.405–274, paragraph (f) is revised to read as follows:

1816.405–274 Award fee evaluation factors.

* * * * *

(f)(1) The contractor's performance against the subcontracting plan incorporated in the contract shall be evaluated. Emphasis may be placed on the contractor's accomplishment of its goals for subcontracting with small business, HUBZone small business, and women-owned small business concerns.

(2) The contractor's performance against the contract target for participation as subcontractors by small disadvantaged business concerns in the SIC Major Groups designated by the Department of Commerce (see FAR 19.201(c)) shall also be evaluated if the clause at FAR 52.219–26, Small Disadvantaged Business Participation—Incentive Subcontracting, is not included in the contract (see FAR 19.1204(c)).

(3) The contractor's achievements in subcontracting high technology efforts as well as the contractor's performance under the Mentor-Protégé Program, if applicable, may also be evaluated.

(4) The evaluation weight given to the contractor's performance against the considerations in paragraphs (f)(1) through (f)(3) of this section should be significant (up to 15 percent of available award fee). The weight should motivate the contractor to focus management attention to subcontracting with small, HUBZone, and women-owned small business concerns, and with small disadvantaged business concerns in designated SIC Major Groups to the maximum extent practicable, consistent with efficient contract performance.

* * * * *

PART 1819—SMALL BUSINESS PROGRAMS

6. In section 1819.201, the section heading and paragraph (a) are revised and paragraph (f)(1) is added to read as follows:

1819.201 General Policy. (NASA supplements paragraphs (a), (c), (d), and (f))

(a)(i) NASA is committed to providing to small, HUBZone, small disadvantaged, and women-owned small business concerns, maximum practicable opportunities to participate in Agency acquisitions at the prime contract level. The participation of NASA prime contractors in providing subcontracting opportunities to such entities is also an essential part of the Agency's commitment. The participation of these entities is particularly emphasized in high-technology areas where they have not traditionally dominated.

(ii) NASA annually negotiates Agency small, HUBZone, small disadvantaged, and women-owned small business prime and subcontracting goals with the Small Business Administration pursuant to section 15(g) of the Small Business Act (15 U.S.C. 644). In addition, NASA has the following statutory goals based on the total value of prime and subcontract awards:

(A) Under Public Laws 101–144, 101–507, and 102–389, an annual goal of at least 8 percent for prime and subcontract awards to small disadvantaged business (SDB) concerns, Historically Black Colleges and Universities (HBCUs), minority institutions (MIs), and women-owned small businesses (WOSBs) (see 1819.7000); and

(B) Under 10 U.S.C. 2323, an annual goal of 5 percent for prime and subcontract awards to SDBs, HBCUs, and WOSBs.

* * * * *

(f)(1) The NASA Ombudsman, the Deputy Associate Administrator for Procurement (Code H), is the designated official for determining whether the use of the SDB mechanism in FAR subpart 19.11 has resulted in an undue burden on non-SDB firms in the Department of Commerce designated SIC Major Groups, or is otherwise inappropriate.

1819.202–170 [Amended]

7. In the last sentence to section 1819.202–170, the word "(Technical)" is removed.

1819.705–470 [Amended]

8. In the last sentence to section 1819.705–470, the word ", HUBZone," is added before the phrase "and women-owned small business concerns".

9. Section 1819.708–70 is revised to read as follows:

1819.708–70 NASA solicitation provision and contract clause.

(a) The contracting officer shall insert the provision at 1852.219–73, Small Business Subcontracting Plan, in invitations for bids containing the clause at FAR 52.219–9 with its Alternate I. Insert in the last sentence the number of calendar days after request that the offeror must submit a complete plan.

(b) The contracting officer shall insert the clause at 1852.21975, Small Business Subcontracting Reporting, in solicitations and contracts containing the clause at FAR 52.219–9, except for contracts covered by an approved commercial plan.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

10. In section 1852.219–73, the section title, date, and paragraph (b) are revised to read as follows:

1852.219–73 Small Business Subcontracting Plan.

As prescribed in 1819.708–70(a), insert the following provision:

Small Business Subcontracting Plan

May 1999

* * * * *

(b) The contract expected to result from this solicitation will contain FAR clause 52.219–9, "Small Business Subcontracting Plan." The apparent low bidder must submit the complete plan within [Insert number of days] calendar days after request by the Contracting Officer.

(End of provision)

11. In section 1852.219–75, the section title and date are revised to read as follows:

1852.219–75 Small Business Subcontracting Reporting.

* * * * *

Small Business Subcontracting Reporting

May 1999

* * * * *

1852.219–77 [Amended]

12. In section 1852.219–77, the date is revised to read "May 1999" and in paragraph (d), the word "pilot" is removed.

[FR Doc. 99–11885 Filed 5–10–99; 8:45 am]
BILLING CODE 7510–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of Reclassification of *Lesquerella stonensis* (Stones River bladderpod)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of candidate taxa reclassification.

SUMMARY: In this document, we explain the changes in the status of *Lesquerella stonensis* (Stones River bladderpod), a plant that is under review for possible addition to the List of Endangered and Threatened Plants under the Endangered Species Act of 1973, as amended (Act). We are removing this species from candidate status at this time.

ADDRESSES: You may submit questions concerning this notice to the Chief, Division of Endangered Species, U.S. Fish and Wildlife Service, 1849 C Street, N.W., Mail Stop 452 ARLSQ, Washington, D.C. 20240.

FOR FURTHER INFORMATION CONTACT: Chief, Division of Endangered Species (see **ADDRESSES** section) (telephone: 703/358–2171).

SUPPLEMENTARY INFORMATION:

Background

Candidate taxa are those taxa for which we have on file sufficient information to support issuance of a proposed rule to list under the Act. In addition to our annual review of all candidate taxa, we have an on-going review process, particularly to update taxa whose status may have changed markedly. This notice provides the specific explanation for the reclassification of this species.

It is important to note that candidate assessment is an ongoing function and changes in status should be expected. We may restore species to candidate status that are removed from the candidate list if additional information supporting such a change becomes available. We most recently requested such information in the plant and animal candidate notice of review published in the **Federal Register** on September 19, 1997 (62 FR 49398).

Finding

Lesquerella stonensis Rollins (Stones River bladderpod), a small winter annual plant, occurs in three populations found in the floodplain of the Stones River, Rutherford County, Tennessee. The three populations are divided among 20 sites located on U.S. Army Corps of Engineers' (COE) lands, Tennessee Department of Environment and Conservation's (TDEC) lands, and privately owned lands. Over half of the known populations are on lands managed by the COE and the TDEC. This species requires annual disturbance in order to complete its life cycle. Historically, natural events such as flooding maintained its habitat by removing perennial grasses and woody plants that quickly invade the floodplain without regular natural or artificial disturbance. Annual crop production is currently the primary means of artificially maintaining *L. stonensis'* habitat, provided there is no fall planting and herbicide use is limited.

The Smithsonian Institution's January 9, 1975, report to Congress on those plants considered to be endangered, threatened, or extinct (House Document No. 94–51) included *Lesquerella stonensis*. We first designated *Lesquerella stonensis* as a candidate species in the December 15, 1980, Notice of Review (45 FR 82480). In designating this species a candidate, we considered the encroachment of more competitive vegetation and the loss of habitat through conversion of land to uses other than cultivation of annual crops as the primary threats to the species. In 1994, we entered into cooperative agreements with TDEC and the Tennessee Wildlife Resources Agency (TWRA) to determine the management regimes needed to protect and to maintain healthy, viable populations of *Lesquerella stonensis*. This information provided the basis for the 1998 Cooperative Management Agreement (CMA) among the Service, TWRA, TDEC, and COE for the conservation of *L. stonensis*. Under the CMA, appropriate agricultural management techniques will provide the disturbance required for the species. We believe that the CMA secures into the foreseeable future the 14 sites where the species occurs on public conservation lands. These populations are distributed over the historic range of the species. The TDEC will continue to work with the owners of the six privately owned sites to gain appropriate management for these sites and to obtain long-term protection for them. We conclude that habitat loss and modification are not likely to cause *L. stonensis* to become endangered or to be in danger of extinction in the foreseeable future over all or a significant portion of its range; therefore, neither the issuance of a proposed rule nor continuation of candidate status for this species is warranted.

Author

Staff biologists in our regional and field offices prepared the evaluation summarized in this document by Scott Hicks, Division of Endangered Species (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended, 16 U.S.C. 1531 *et seq.*

Dated: April 14, 1999.

Jamie Rappaport Clark,
Director, Fish and Wildlife Service.

[FR Doc. 99–11746 Filed 5–10–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 990304063–9063–01; I.D. 050599B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Processors using Trawl Gear in the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for Pacific cod by catcher processors using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the portion of the

1999 total allowable catch (TAC) of Pacific cod allocated to catcher processors using trawl gear in this area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 6, 1999, until 2400 hrs, A.l.t., December 31, 1999.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586-7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Final 1999 Harvest Specifications of Groundfish for the BSAI (64 FR 12103, March 11, 1999) established the portion of the TAC of Pacific cod allocated to catcher processors using trawl gear in the BSAI as 38,475 metric tons (mt) in accordance with § 679.20(c)(3)(iii) and § 679.20(a)(7)(i)(B).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the portion of the TAC of Pacific cod allocated to catcher processors using trawl gear in the BSAI will be reached. The Regional Administrator is establishing a directed fishing allowance of 14,000 mt, and is setting aside the remaining 24,475 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is closing directed fishing for Pacific cod by catcher processors using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to prevent overharvesting the 1999 TAC of Pacific cod allocated to catcher processors using trawl gear in the BSAI. A delay in the effective date is impracticable and contrary to the public interest. The Pacific cod directed fishing allowance established for catcher processors will soon be reached. Further delay would only result in overharvest, which would disrupt the FMP's objective of providing sufficient Pacific cod to support bycatch needs in other anticipated groundfish fisheries throughout the year. NMFS finds for good cause that the implementation of this action can not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11820 Filed 5–6–99; 2:20 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 90
Tuesday, May 11, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–15–AD]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft, Inc. Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 77–25–03, which currently requires repetitively inspecting the landing gear actuator rod ends that are equipped with grease fittings for cracks on Fairchild Aircraft, Inc. (Fairchild Aircraft) Models SA226–T, SA226–AT, and SA226–TC airplanes. AD 77–25–03 also requires replacing the landing gear actuator rod ends with an improved part either immediately or at a certain time period depending on the results of the inspections. Replacement of all six rod ends terminates the repetitive inspection requirements of AD 77–25–03. The AD proposed in this document is the result of failures of the landing gear rod ends on airplanes where the rod ends were replaced in accordance with AD 77–25–03. Fairchild has re-designed the landing gear rod ends as a result of these failures. The proposed AD would require replacing all landing gear rod ends with these improved design parts on all SA226 series airplanes, including those manufactured since AD 77–25–03 was issued (i.e., the Model SA226–T(B) airplanes). The actions specified by the proposed AD are intended to prevent failure of the landing gear actuator caused by cracks in the rod ends, which could result in the inability to lower the landing gear during a landing with consequent possible loss of control of the airplane.

DATES: Comments must be received on or before July 16, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; telephone: (210) 824–9421; facsimile: (210) 820–8609. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Hung Viet Nguyen, FAA, Airplane Certification Office, 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150; telephone: (817) 222–5133; facsimile: (817) 222–5960.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–CE–15–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–15–AD, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 77–25–03, Amendment 39–3090, currently requires repetitively inspecting the landing gear actuator rod ends that are equipped with grease fittings for cracks on Fairchild Aircraft, Inc. (Fairchild Aircraft) Models SA226–T, SA226–AT, and SA226–TC airplanes. AD 77–25–03 also requires replacing the landing gear actuator rod ends with improved design parts either immediately or at a certain time period depending on the results of the inspections. Replacement of all six rod ends terminates the repetitive inspection requirement of AD 77–25–03.

Accomplishment of the actions of AD 77–25–03 is required in accordance with Swearingen Aviation Corporation Service Bulletin A32–014, dated November 17, 1977.

Actions Since Issuance of Previous Rule

The FAA has received reports of failures of the landing gear rod ends on airplanes where the rod ends were replaced in accordance with AD 77–25–03. The flight time accumulated on the landing gear actuators varies between the failures; however, the reports show that these parts are not meeting their life limits. Fairchild has re-designed the landing gear rod ends, part number (P/N) VTA00350, as a result of these failures.

Cracks in the landing gear actuator rod ends, if not detected and corrected in a timely manner, could result in failure of the landing gear actuator and the inability to lower the landing gear during a landing with consequent possible loss of control of the airplane.

Relevant Service Information

Fairchild has issued Service Bulletin SB A32–014, Revised: January 26, 1999, which specifies procedures for replacing the existing landing gear actuator rod ends with ones of improved design, P/N VTA00350.

The FAA's Determination

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that AD action should be taken to prevent the above-referenced condition from occurring on all SA226 series airplanes, including those manufactured since AD 77–25–03 was issued (i.e., the Model SA226–T(B) airplanes).

Explanation of the Provisions of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop in other Fairchild Models SA226–T, SA226–T(B), SA226–AT, and SA226–TC airplanes of the same type design that are equipped with any landing gear actuator rod end other than P/N VTA00350 (or FAA-approved equivalent part number), the FAA is proposing AD action. The proposed AD would supersede AD 77–25–03, and would require replacing all landing gear rod ends with these improved design parts, P/N VTA00350 (or FAA-approved equivalent part number).

Accomplishment of the proposed replacements would be required in accordance with Fairchild Aircraft Service Bulletin SB A32–014, Revised: January 26, 1999.

Cost Impact

The FAA estimates that 190 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 6 workhours per airplane to accomplish the proposed replacements, and that the average labor rate is approximately $60 an hour. Parts cost approximately $169 per rod (6 rods per airplane). Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $261,060, or $1,374 per airplane.

This figure is based upon the presumption that no affected airplane owner/operator has accomplished the proposed replacement.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Airworthiness Directive (AD) 77–25–03, Amendment 39–3090, and by adding a new AD to read as follows:

Fairchild Aircraft, Inc.: Docket No. 99–CE–15–AD; Supersedes AD 77–25–03, Amendment 39–3090.

Applicability: The following airplanes models and serial numbers, certificated in any category; that are equipped with any landing gear actuator rod end other than part number (P/N) VTA00350 (or FAA-approved equivalent part number).

Model	Serial No.
SA226–T	T201 through T275 and T277 through T291.
SA226–T(B)	T(B) 276 and T(B) 292 through T(B)417.
SA226–AT ...	AT001 through AT074.
SA226–TC ...	TC201 through TC396, TC398 through TC413, and TC418 through TC419.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent failure of the landing gear actuator caused by cracks in the rod ends, which could result in the inability to lower the landing gear during a landing with consequent possible loss of control of the airplane, accomplish the following:

(a) Within the next 500 hours time-in-service (TIS) after the effective date of this AD, replace any landing gear actuator rod end that is not P/N VTA00350 (or FAA-approved equivalent part number) with one that incorporates this part number. Accomplish this replacement in accordance with Fairchild Aircraft Service Bulletin SB A32–014, Revised: January 26, 1999.

(b) As of the effective date of this AD, no person may install, on any affected airplane, any landing gear actuator rod end that is other than P/N VTA00350 (or FAA-approved equivalent part number).

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Airplane Certification Office (ACO), 2601 Meacham Boulevard, Fort Worth, Texas 76193–0150.

(1) The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Fort Worth ACO.

(2) Alternative methods of compliance approved in accordance with AD 77–25–03 are not considered approved as alternative methods of compliance for this AD.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Fort Worth ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to Fairchild Aircraft, Inc., P.O. Box 790490, San Antonio, Texas 78279–0490; or may examine this document at the FAA, Central Region, Office of the Regional Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(f) This amendment supersedes AD 77–25–03, Amendment 39–3090.

Issued in Kansas City, Missouri, on May 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11779 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–29]

Proposed Modification of Class E Airspace; La Crosse, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at La Crosse, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 330° helicopter point in space approach, has been developed for Saint Francis Medical Center. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify the existing controlled airspace for La Crosse, WI, to the southeast in order to include the point in space approach serving Saint Francis Medical Center.

DATES: Comments must be received on or before June 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–29, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–29." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, S.W., Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at La Crosse, WI, to accommodate aircraft executing the proposed GPS SIAP 330° helicopter point in space approach for Saint Francis Medical Center by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 La Crosse, WI [Revised]

La Crosse Municipal Airport, WI
(Lat. 43° 52′ 46″N., long. 091° 15′ 24″W.)
La Crosse VOR/DME

(Lat. 43° 52′ 34″N., long. 091° 15′ 22″W.)
Saint Francis Medical Center, WI
Point In Space Coordinates
(Lat. 43° 47′ 39″N., long. 091° 14′ 00″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of La Crosse Municipal Airport and within 3.2 miles each side of the La Crosse VOR/DME 187° radial extending from the 6.9-mile radius to 12.3 miles south of the airport, and within a 6.0-mile radius of the point in space serving Saint Francis Medical Center.

* * * * *

Issued in Des Plaines, Illinois on April 26, 1999.

Chrstopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11871 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–30]

Proposed Modification of Class E Airspace; Mankato, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Mankato, MN. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 270° helicopter point in space approach, has been developed for Immanuel-St. Joseph's Hospital. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify the existing controlled airspace for Mankato, MN, to the southwest in order to include the point in space approach serving Immanuel-St. Joseph's Hospital.

DATES: Comments must be received on or before June 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–30, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018 telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–30." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 to modify Class E airspace at Mankato, MN, to accommodate aircraft executing the proposed GPS SIAP 270° helicopter point in space approach for Immanuel-St. Joseph's Hospital by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Mankato, MN [Revised]

Mankato Municipal Airport, MN
(Lat. 44° 13′ 18″N., long. 093° 55′ 07″W.)
Immanuel-St. Joseph's Hospital, MN
Point In Space Coordinates
(Lat. 44° 09′ 48″N., long. 093° 57′ 40″W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of Mankato Municipal Airport and within 2.0 miles each side of the 047° bearing from the airport extending from the 7.0-mile radius to 8.0 miles northeast of the airport, and within a 6.0-mile radius of the point in space serving Immanuel-St. Joseph's Hospital.

* * * * *

Issued in Des Plaines, Illinois on April 26, 1999.

Christopher R. Blum;

Manager, Air Traffic Division.

[FR Doc. 99–11870 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AGL–28]

Proposed Modification of Class E Airspace; Eau Claire, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Eau Claire, WI. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), 065° helicopter point in space approach, has been developed for Luther Hospital. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. This action proposes to modify the existing controlled airspace for Eau Claire, WI, to the southwest in order to include the point in space approach serving Luther Hospital.

DATES: Comments must be received on or before June 30, 1999.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL–7, Rules Docket No. 99–AGL–28, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Airspace Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–AGL–28." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–230, 800 Independence Avenue, SW, Washington, DC 20591, or by calling (202) 267–3484. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to the 14 CFR part 71 to modify Class E airspace at Eau Claire, WI, to accommodate aircraft executing the proposed GPS SIAP 065° helicopter point in space approach for Luther Hospital by modifying existing controlled airspace. Controlled airspace extending upward from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The area would be depicted on appropriate aeronautical charts. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9F dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore this, proposed regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Eau Claire, WI [Revised]

Chippewa Valley Regional Airport, WI
(Lat. 44°51′55″ N., long. 091°29′06″ W.)
Eau Claire VORTAC
(Lat. 44°53′52″ N., long. 091°28′43″ W.)
Luther Hospital, WI
Point In Space Coordinates
(Lat. 44°48′24″ N., long. 091°31′51″ W.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Chippewa Valley Regional Airport and within 1.9 miles each side of the southwest localizer course extending from the 6.7-mile radius to 13.2 miles southwest of the airport, and within 3.1 miles each side of the Eau Claire VORTAC 004° radial extending from the 6.7-mile radius to 9.6 miles north of the airport, and within a 6.0-mile radius of the point in space serving Luther Hospital.

* * * * *

Issued in Des Plaines, Illinois on April 26, 1999.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 99–11869 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–120168–97]

RIN 1545–AW73

Preparer Due Diligence Requirements for Determining Earned Income Credit Eligibility; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of notice of public hearing on proposed rulemaking.

SUMMARY: This document provides notice of cancellation of a public hearing on proposed regulations relating to the due diligence requirements in determining eligibility for the earned income credit for paid preparers of federal income tax returns or claims for refund.

DATES: The public hearing originally scheduled for Thursday, May 20, 1999, at 10 a.m., is cancelled.

FOR FURTHER INFORMATION CONTACT: Michael L. Slaughter of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking by cross-reference to temporary regulations, and notice of public hearing that appeared in the **Federal Register** on Monday, December 21, 1998 (63 FR 70357), announced that a public hearing was scheduled for Thursday, May 20, 1999, at 10 a.m., in room 2615, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The subject of the public hearing is proposed regulations under section 6695 of the Internal Revenue Code. The public comment period for these proposed regulations expired on Monday, March 22, 1999. The outlines of topics to be addressed at the hearing were due on Thursday, April 29, 1999.

The notice of proposed rulemaking and notice of public hearing, instructed those interested in testifying at the public hearing to submit a request to speak and an outline of the topics to be addressed. As of May, 5, 1999, no one has requested to speak. Therefore, the public hearing scheduled for Thursday, May 20, 1999, is cancelled.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 99–11756 Filed 5–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1, 2, 3 and 6

[Docket No. 990401084–9084–01]

RIN 0651–AB00

Trademark Law Treaty Implementation Act Changes

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking; Notice of hearing.

SUMMARY: The Patent and Trademark Office (Office) proposes to amend its rules to implement the Trademark Law Treaty Implementation Act of 1998 (TLTIA), Pub. L. No. 105–330, 112 Stat. 3064 (15 U.S.C. 1051), and to otherwise simplify and clarify procedures for registering trademarks, and for maintaining and renewing trademark registrations.

DATES: Comments must be received by June 25, 1999 to ensure consideration. A public hearing will be held at 10:00 a.m., June 10, 1999, in the South Tower Building, 1st floor, 2900 Crystal Drive, Arlington, Virginia 22202–3513. Submit requests to present oral testimony on or before June 3, 1999.

ADDRESSES: Mail comments to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513, attention Mary Hannon; fax comments to (703) 308–9395, attention Mary Hannon; or email comments to *tltia.comments@uspto.gov*. Copies of all comments will be available for public inspection in Suite 10B10, South Tower Building, 10th floor, 2900 Crystal Drive, Arlington, Virginia 22202–3513, from 8:30 a.m. until 5:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Mary Hannon, Office of Assistant Commissioner for Trademarks, (703) 308–8910, ext. 37.

SUPPLEMENTARY INFORMATION: TLTIA implements the Trademark Law Treaty (TLT). The purpose of TLT is to make the procedural requirements of the different national trademark offices more consistent.

TLTIA was enacted October 30, 1998. Title I of TLTIA, which contains the provisions that implement the treaty, will become effective October 30, 1999.

References below to "the Act," "the Trademark Act" or "the statute" refer to the Trademark Act of 1946, as amended, 15 U.S.C. 1051 *et seq.* "TMEP" is the *Trademark Manual of Examining Procedure* (2nd ed., Rev. 1.1, August 1997).

Application Filing Dates

TLTIA § 103 adds §§ 1(a)(4) and 1(b)(4) of the Act to give the Office authority to establish and change filing date requirements. The Office proposes to eliminate several of the current minimum requirements necessary to receive a filing date. The goal is to make it easier for applicants to obtain filing dates, but also to ensure that the Office has enough information to begin examination, and to provide third parties who search Office records with accurate information about pending applications.

The Office proposes the following minimum filing requirements for granting a filing date: (1) the name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) a list of the goods or services; and (5) the filing fee for at least one class of goods or services.

Section 44(e) of the Act, as amended, no longer requires that a certified copy of the foreign registration accompany an application based on § 44(e). The Office proposes to require submission of the foreign certificate before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office also proposes to eliminate the current filing date requirements for an allegation of the applicant's use or bona fide intention to use the mark in commerce; for a specimen, and date of first use in commerce in a § 1(a) application; and for a signature. These elements will be required before the mark is published for opposition or approved for registration on the Supplemental Register.

Bulky Specimens

Proposed § 2.56(d)(1) requires that specimens be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with current § 2.56. The Office proposes to add § 2.56(d)(2), stating that if an applicant submits a specimen that exceeds the size requirement (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long), insert it in the application file wrapper, and destroy the original bulky specimen.

Currently, when an applicant submits a specimen that does not conform to the requirements of § 2.56 (i.e., is not flat, exceeds the size limitation, etc.), the Office retains the specimen even though it is impossible to attach it to the application file wrapper. This requires substantial special handling because the Office must store and track the specimens separately from the application file wrappers. Because the number of newly filed applications has increased from approximately 83,000 to over 233,000 per year over the past ten years, and the number of pending applications has increased from less than 100,000 to over 350,000 in the same period, it has become increasingly difficult to ensure that the bulky specimens follow the application files. As the number of applications has increased, bulky materials submitted as specimens have also increased, requiring an increased use of limited resources to handle the bulky materials. Further, because specimens of this nature are often misplaced or lost during examination processing, the Office must then require new specimens, slowing examination and inconveniencing applicants.

Because the requirement for flat specimens can be easily satisfied through the use of photographs, photocopies, or other means of reproduction, the Office will no longer retain bulky materials submitted as specimens. In very limited circumstances, the Office will continue to accept specimens consisting of videotapes, audiotapes, CDs, computer diskettes, and similar materials where there are no non-bulky alternatives, and the submission is the only means available for showing use of the mark.

Number of Specimens Required

The Office proposes to amend §§ 2.56(a), 2.76(b)(2), 2.86(b), and 2.88(b)(2) to require one rather than three specimens with an application under § 1 of the Act, or an amendment to allege use or statement of use of a mark in an application under § 1(b) of the Act. The Office previously required three specimens so that an interested party, such as a potential opposer, could permanently remove a specimen from an application file, yet not leave the file without specimens. TMEP § 905.01. However, multiple copies of specimens are no longer necessary because the public may make photocopies of a single specimen.

Person Who May Sign Verified Statement

Currently, §§ 1(a)(1)(A) and 1(b)(1)(A) of the Act require that an application by a juristic applicant be signed "by a member of the firm or an officer of the corporation or association applying." TLTIA § 103 amends §§ 1(a) and 1(b) of the Act to eliminate the specification of the appropriate person to sign on behalf of an applicant. The legislative history states:

> Under the existing provision, the Patent and Trademark Office has been limited to accepting, for example, only the signature of an officer of a corporation on an application when another corporate manager's signature would be appropriate because the corporate manager has specific knowledge of the facts asserted in the application. The unnecessary rigidity of the existing provision has worked a hardship on applicants who have been denied filing dates because the person verifying their application has not met the strict requirement of being an officer of the corporate applicant. Additionally, the Patent and Trademark Office has had difficulty applying the officer requirement to foreign juristic entities whose managers are not clearly officers under the United States corporate standards.

H.R. Rep. No. 194, 105th Cong., 1st Sess. 12 (1997).

Proposed §§ 2.33(a)(2), 2.76(b)(1), 2.88(b)(1), 2.89(a)(3), and 2.89(b)(3) require that a person properly authorized to sign on behalf of the applicant sign the verification. Proposed § 2.33(a)(2) states that a person who is properly authorized to sign on behalf of the applicant includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant.

The same principles apply to the verification of an affidavit or declaration of continued use or excusable nonuse under § 8 of the Act. Proposed § 2.161(b) requires that a person properly authorized to sign on behalf of the owner sign the verification. Proposed § 2.161(b)(2) states that a person who is properly authorized to sign on behalf of the owner includes a person with legal authority to bind the owner and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the owner.

Filing by Owner

Although TLTIA amends the statute to eliminate the specification of the proper party to sign on behalf of an applicant or registrant, the statute still requires that the owner of the mark file an application for registration, amendment to allege use, statement of use, request for extension of time to file a statement of use, and § 8 affidavit. See sections 1(a)(1), 1(b)(1), 1(d)(1), 1(d)(2), and 8(b) of the Act.

TLTIA § 105 amends § 8 of the Act to require that the owner of the mark file an affidavit of continued use or excusable nonuse within the time period set forth in § 8(a) of the Act. The legislative history states:

Throughout the revised section 8, the term "registrant" has been replaced by the term "owner." The practice at the Patent and Trademark Office has been to require that the current owner of the registration file all the post-registration affidavits needed to maintain a registration. The current owner of the registration must aver to actual knowledge of the use of the mark in the subject registration. However, the definition of "registrant" in section 45 of the Act states that the "terms 'applicant' and 'registrant' embrace the legal representatives, predecessors, successors and assigns of each applicant and registrant." Therefore, use of the term "registrant" in section 8 of the Act would imply that any legal representative, predecessor, successor or assign of the registrant could successfully file the affidavits required by sections 8 and 9. To correct this situation, and to keep with the general principal [sic], as set out in section 1, that the owner is the proper person to prosecute an application, section 8 has been amended to state that the owner must file the affidavits required by the section.

H.R. Rep. No. 194, 105th Cong., 1st Sess. 18–19 (1997).

Therefore, the Office proposes to amend §§ 2.163(a) and 2.164(b) to make it clear that filing by the owner is a minimum requirement that cannot be cured after expiration of the filing period set forth in § 8 of the Act.

Sections 1(a) and 1(b) of the Act require that an application for registration of a mark be filed by the owner. Therefore, the Office also proposes to add new § 2.71(d), stating that although a mistake in setting out the applicant's name can be corrected, the application cannot be amended to set forth a different entity as the applicant; and that an application is void if it is filed in the name of an entity that did not own the mark as of the filing date of the application. This codifies current practice. TMEP § 802.07. *Huang* v. *Tzu Wei Chen Food Co. Ltd.*, 7 USPQ2d 1335 (Fed. Cir. 1988) (application filed in name of individual two days after mark was acquired by newly formed corporation held void); *Accu Personnel Inc.* v. *Accustaff Inc.*, 38 USPQ2d 1443 (TTAB 1996) (application filed in name of entity that did not yet exist not void); *In re Tong Yang Cement Corp.*, 19 USPQ2d 1689 (TTAB 1991) (application filed by joint venturer void where mark owned by joint venture); *U.S. Pioneer Electronics Corp.* v. *Evans Marketing, Inc.*, 183 USPQ 613 (Comm'r Pats. 1974) (misidentification of applicant's name may be corrected).

The Office also proposes to amend §§ 2.88(e)(3), 2.89(a)(3), and 2.89(b)(3) to state that if a statement of use or request for an extension of time to file a statement of use is unsigned or signed by the wrong party, a substitute verification must be submitted before the expiration of the statutory period for filing the statement of use. This is consistent with current practice. See TMEP §§ 1105.05(f)(i)(A) and 1105.05(d). Sections 1(d) (1) and (2) of the Act require verification by the owner within the statutory period for filing the statement of use. Therefore, the Office cannot extend or waive the deadline for filing the verification. *In re Kinsman*, 33 USPQ2d 1057 (Comm'r Pats. 1993).

Revival of Abandoned Applications

TLTIA §§ 103 and 104 amend §§ 1(d)(4) and 12(b) of the Act to permit the revival of an abandoned application where the delay in responding to an Office action or notice of allowance is "unintentional." Currently, an abandoned application can be revived only if the delay was "unavoidable," a much stricter standard. The "unavoidable delay" standard has been removed from the statute. See the discussion below of the proposed amendments to § 2.66 for the requirements for filing a petition to revive.

Post Registration

Statutory Changes

TLTIA §§ 105 and 106 amend: (1) § 8 of the Act, 15 U.S.C. 1058, to add a requirement for filing an affidavit or declaration of continued use or excusable nonuse (§ 8 affidavit) in the year before the end of every ten-year period after the date of registration; and (2) § 9 of the Act, 15 U.S.C. 1059, to delete the requirement for a declaration of continued use or excusable nonuse in a renewal application. Thus, every tenth year, the owner of a registration must file both a § 8 affidavit and a renewal application.

The statutory filing periods for the ten-year § 8 affidavits are the same as the statutory filing periods for the renewal applications. The Office will create a combined "Section 8 and 9" form to make it easy to make both filings in a single document. In substance, the requirements of the combined filing under amended §§ 8 and 9 will be the same as the requirements for renewal under current law.

A § 8 affidavit between the fifth and sixth year after the date of registration is also required. This is consistent with current law. No renewal application will be required during the sixth year.

TLTIA §§ 105 and 106 amend §§ 8 and 9 of the Act to permit filing within a six-month grace period after the end of the statutory filing period, with an additional surcharge.

TLTIA §§ 105 and 106 also amend §§ 8 and 9 to allow for the correction of deficient filings after the statutory filing period expires, with payment of an additional surcharge. The amended Act does not define deficiency or place any limits on the type of deficiency or omission that can be cured after expiration of the statutory filing period. The Commissioner has broad discretion to establish procedures and fees for curing deficiencies or omissions.

Fee Changes

The Office proposes to decrease the renewal fee from $300 to $200 per class.

As a result of increased administrative costs, the Office proposes to increase the filing fees for § 8 affidavits and for § 15 affidavits from $100 to $200 per class.

The proposed surcharge for filing a § 8 affidavit or § 9 renewal application during the grace period is $100 per class. This is consistent with the current renewal grace period fee.

The proposed surcharge for correcting a deficiency in a § 8 affidavit or a § 9 renewal application is $100. Sections 8(c)(2) and 9(a) of the Act require a surcharge for correcting deficiencies.

Recording Assignments and Changes of Name

Currently, the Office will record only an original document or a true copy of an original. TLTIA § 107 amends § 10 of the Act to allow recordation of a document that is not an original or a true copy.

Assignment of § 1(b) Applications

TLTIA § 107 amends § 10 to permit an assignment after the applicant files an amendment to allege use under § 1(c) of the Act. Currently, a § 1(b) application cannot be assigned until after the filing of a statement of use under § 1(d) of the Act, except to a successor to the applicant's business, or the portion of the business to which the mark pertains. This amendment corrects an oversight in the Trademark Law Revision Act of 1988 (Title 1 of Pub. Law No. 100–667, 102 Stat. 3935 (15 U.S.C. 1051)), which amended § 10 of the Act to permit an assignment of a § 1(b) application to someone other than a successor to the applicant's business only after the filing of a statement of use under § 1(d) of the Act. The substance of statements of use and amendments to allege use are the same, and the only difference is the time of filing, so there is no reason to treat them differently.

Discussion of Specific Rules Changed or Added

The Office proposes to amend rules 1.1, 1.4, 1.5, 1.6, 1.23, 2.1, 2.6, 2.17,

2.20, 2.21, 2.31, 2.32, 2.33, 2.34, 2.35, 2.37, 2.38, 2.39, 2.45, 2.51, 2.52, 2.56, 2.57, 2.58, 2.59, 2.66, 2.71, 2.72, 2.76, 2.86, 2.88, 2.89, 2.101, 2.111, 2.146, 2.151, 2.155, 2.156, 2.160, 2.161, 2.162, 2.163, 2.164, 2.165, 2.166, 2.167, 2.168, 2.173, 2.181, 2.182, 2.183, 2.184, 2.185, 2.186, 3.16, 3.24, 3.25, 3.28, 3.31, and 6.1.

The Office proposes to revise § 1.1(a)(2) to set forth all the addresses for filing trademark correspondence in one rule.

The Office proposes in § 1.1(a)(2)(i) to exempt papers filed electronically from the requirement that correspondence be mailed to the street address of the Office.

The Office proposes to state in § 1.1(a)(2)(v) that an applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Office's electronic form.

The Office proposes to amend § 1.4(a)(2) to correct a cross-reference.

The Office proposes to add a new § 1.4(d)(1)(iii) to provide for signature of electronically transmitted trademark filings, where permitted.

The Office proposes to amend § 1.5(c) to clarify the requirements for identifying trademark applications and registrations.

The Office proposes to amend § 1.6(a) to provide that the Office will consider trademark-related correspondence transmitted electronically to have been filed on the date of transmission, regardless of whether that date is a Saturday, Sunday, or Federal holiday within the District of Columbia. This is consistent with the treatment of correspondence filed as Express Mail with the United States Postal Service under § 1.10.

The Office proposes to amend § 1.23 to allow payments for electronic applications and other electronic submissions authorized by the Office by a credit card identified on the electronic form.

The Office proposes to revise § 2.1 to update a cross-reference.

The Office proposes to amend § 2.6(a)(5) to decrease the filing fee for a renewal application from $300 to $200 per class.

The Office proposes to amend § 2.6(a)(6) to delete reference to the three-month renewal grace period. TLTIA changes the grace period to six months.

The Office proposes to amend § 2.6(a)(12) to increase the fee for filing a § 8 affidavit from $100 to $200 per class, due to increased administrative costs.

The Office proposes to revise § 2.6(a)(13) to increase the fee for filing a § 15 affidavit from $100 to $200 per class, due to increased administrative costs.

The Office proposes to remove § 2.6(a)(14) because it is unnecessary. The cost of a combined affidavit or declaration under §§ 8 and 15 of the Act is the sum of the cost of the individual filings.

The Office proposes to add new § 2.6(a)(14) requiring a $100 surcharge per class for filing a § 8 affidavit during the grace period.

The Office proposes to amend § 2.6(a)(19) to increase the fee for filing a request to divide an application from $100 to $300 per new application created. The Office believes that a $300 fee reflects the extensive amount of work required to process a request to divide.

The Office proposes to add new § 2.6(a)(20), requiring a $100 surcharge for correcting a deficiency in a § 8 affidavit. Amended § 8(c)(2) of the Act requires a deficiency surcharge.

The Office proposes to add new § 2.6(a)(21), requiring a $100 surcharge for correcting a deficiency in a renewal application. Section 9(a) of the Act, as amended, requires a deficiency surcharge.

The Office proposes to add new § 2.17(c), stating that to be recognized as a representative in a trademark case, an attorney as defined in § 10.1(c) may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office. This codifies current practice.

The Office proposes to add new § 2.17(d), stating that someone may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations; and that someone relying on a power of attorney concerning numerous applications or registrations must: (1) include a copy of the previously filed power of attorney; or (2) refer to the previously filed power of attorney, specifying: the filing date; the application serial number, registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

The Office proposes to revise § 2.20 to delete the requirement for a declaration by a "member of the firm or an officer of the corporation or association," because this requirement has been deleted from §§ 1(a) and 1(b) of the Act.

The Office proposes to revise § 2.21, listing the minimum requirements for receipt of an application filing date. The proposed minimum filing requirements are: (1) the name of the applicant; (2) a name and address for correspondence; (3) a clear drawing of the mark; (4) an identification of goods or services; and (5) the filing fee for at least one class of goods or services.

The Office proposes to delete the following minimum requirements for receiving a filing date: a stated basis for filing; a verification or declaration signed by the applicant; an allegation of use in commerce, specimen, and date of first use in commerce in an application under § 1(a) of the Act; an allegation of the applicant's bona fide intention to use the mark in commerce in an application under § 1(b) or § 44 of the Act; a claim of priority in an application under § 44(d) of the Act; and a certified copy of a foreign registration in an application under § 44(e) of the Act. A claim of priority under § 44(d) must be filed before the end of the priority period. All other elements must be provided before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes to require in § 2.21(a)(3) a "clear drawing of the mark" rather than the drawing "substantially meeting all the requirements of § 2.52" that is now required.

The Office proposes to state in § 2.21(b) that the Office "may" rather than "will" return the papers and fees to the applicant when an application does not meet the minimum filing requirements. A new procedure is being considered under which the Office would retain applications that do not meet the minimum filing requirements. Applicants would have an opportunity to supply the missing element and receive a filing date as of the date the Office receives the missing element. Until a new policy is announced, the Office will continue to return the papers and fees to the applicant.

The Office proposes to delete the center heading "THE WRITTEN APPLICATION" before § 2.31 because it is unnecessary. The heading "APPLICATION FOR REGISTRATION," immediately before § 2.21, encompasses the rules that now fall under the heading "THE WRITTEN APPLICATION."

The Office proposes to remove and reserve § 2.31, and to move the substance of the requirement that the application be in English to § 2.32(a).

The Office proposes to change the heading of § 2.32 to "Requirements for

written application," and to revise the rule. Proposed § 2.32(a) lists the requirements for the written application, now listed in § 2.33(a)(1).

Proposed § 2.32 does not require a statement of the applicant's method or intended method of use of the mark, because §§ 1(a) and 1(b) of the Act, as amended, no longer require that applicants state the mode or manner in which a mark is used.

The Office proposes to change the heading of § 2.33 to "Verified statement" and revise the rule.

The Office proposes to revise § 2.33(a) to state that the application must include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant. The proposed rule further states that a person who is properly authorized to sign on behalf of the applicant includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant.

The Office proposes to move the substance of § 2.32(b) to § 2.33(c), and revise it to state that the Office may require a substitute verification of the applicant's continued use or bona fide intention to use the mark when the applicant does not file the verified statement within a reasonable time after the date it is signed. This codifies present practice. Section 2.32(b) now states only that a verification of the applicant's continued use of the mark is required where the application is not filed within a reasonable time after it is signed. However, the Office also requires verification of the applicant's continued *bona fide intention to use* the mark in commerce when a verification under § 1(b) or § 44 of the Act is not filed within a reasonable time after it is signed. TMEP § 803.04.

The Office proposes to add § 2.33(d), stating that where an electronically transmitted filing is permitted, the person who signs the verified statement must either: (1) place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic document; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission; or (2) use some other form of electronic signature that the Commissioner may designate.

Proposed § 2.33(d)(1) states that applicants who submit electronic documents must sign and date in permanent ink, and maintain a verified statement confirming that the signatory has adopted the symbol shown in the signature block to verify the contents of the document, and that the information in the electronic submission is identical to the information in the paper copy of the submission.

The Office proposes to add new § 2.34, "Bases for filing." Currently, an applicant must establish a basis for filing to receive a filing date. Under the proposed new rules, a stated filing basis will no longer be included as one of the minimum requirements for receipt of a filing date. If missing, it must be provided before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes that the requirements for each of the four bases be moved from § 2.21(a)(5) to § 2.34(a). Section 2.34(a)(1) will list the requirements for an application under § 1(a) of the Act, now listed in §§ 2.21(a)(5)(i), 2.33(a)(1)(iv), 2.33(a)(1)(vii), 2.33(a)(2), and § 2.33(b)(1). Section 2.34(a)(2) will list the requirements for an application under § 1(b) of the Act, now listed in §§ 2.21(a)(5)(iv) and 2.33(a)(1)(iv).

Section 2.34(a)(3) will list the requirements for an application under § 44(e) of the Act, now listed in §§ 2.21(a)(5)(ii) and 2.33(a)(1)(viii). Section 2.34(a)(3)(ii) will require a certified copy of a foreign registration. Currently, a § 44(e) applicant must submit a foreign certificate to receive a filing date. However, TLTIA § 108 amends § 44(e) of the Act to delete the requirement that the application be "accompanied by" the foreign certificate. The Office proposes to require that the applicant submit the certificate before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes to add § 2.34(a)(3)(iii), stating that if it appears that the foreign registration will expire before the mark in the United States application will register, the applicant must submit a certification from the foreign country's trademark office, showing that the registration has been renewed and will be in force at the time the United States registration will issue. This codifies current practice. TMEP § 1004.03.

The Office proposes that § 2.34(a)(4) will list the requirements for an application under § 44(d) of the Act, now listed in §§ 2.21(a)(5)(iii), 2.33(a)(1)(ix), and 2.39. Proposed § 2.34(a)(4)(i) requires that a priority claim be filed within six months of the filing date of the foreign application. This is consistent with Articles 4(C)(1) and 4(D)(1) of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967 (Paris Convention).

The Office proposes to state in § 2.34(b)(1) that an applicant may claim more than one basis, provided that the applicant meets the requirements for all bases claimed. This codifies current practice. The Office also proposes to state that the applicant may not claim both §§ 1(a) and 1(b) for the identical goods or services in one application.

In § 2.34(b)(2), the Office proposes to require that the applicant specify which basis covers which goods or services when an applicant claims more than one basis.

In § 2.34(c), the Office proposes to set forth the definition of "commerce" currently found in § 2.33(a)(3).

The Office proposes to remove § 2.37.

The Office proposes to redesignate § 2.35 as § 2.37.

The Office proposes to add new § 2.35, "Adding, deleting, or substituting bases."

The Office proposes to state in § 2.35(a) that the applicant may add or substitute a basis for registration before publication, and that the applicant may delete a basis at any time.

The Office proposes to state in § 2.35(b) that the applicant cannot amend an application to add or substitute a basis after publication. This changes practice. Prior to 1995, the Office did not accept amendments adding or substituting a basis for registration after publication. This policy was changed by *In re Monte Dei Maschi Di Siena*, 34 USPQ2d 1415 (Comm'r Pats. 1995). Currently, the Office will accept an amendment to add or substitute a basis for registration after publication if the applicant files a petition to the Commissioner; republication is required. TMEP § 1006.04.

After three years of experience, the Office does not believe that accepting these amendments is in the public interest, because the amendments reopen examination. This delays later-filed conflicting applications, which must be suspended indefinitely until the earlier-filed application is either registered or abandoned. Therefore, the Office proposes to prohibit amendments that add or substitute a basis after publication.

The Office proposes to state in § 2.35(c) that when the applicant substitutes a basis, the Office will presume that the original basis was valid, unless there is contradictory evidence in the record, and the application will retain the original filing date.

Under present practice, if the applicant changes the basis from § 1(a) or § 1(b) to § 44(e), or from § 44(e) to either § 1(a) or § 1(b), the applicant retains the original filing date. However, if an application is filed solely under § 44(d), and the applicant amends to substitute a different basis after the expiration of the six-month priority period, the effective filing date of the application becomes the date the applicant perfects the amendment claiming the new basis. TMEP § 1006.03.

The Office proposes to change this practice, to allow a § 44(d) applicant to retain the priority filing date when the applicant substitutes a new basis after the expiration of the six-month priority period.

The Office proposes to state in § 2.35(d) that if an applicant properly claims a § 44(d) basis in addition to another basis, the applicant will retain the priority filing date under § 44(d) no matter which basis the applicant perfects. This codifies current practice. TMEP § 1006.01.

The Office proposes to state in § 2.35(e) that the applicant may add or substitute a § 44(d) basis only within the six-month priority period following the filing date of the foreign application. This is consistent with current practice (TMEP § 1006.05), and with Articles 4(C)(1) and 4(D)(1) of the Paris Convention.

In § 2.35(f), the Office proposes to state that an applicant who adds a basis must state which basis covers which goods or services.

The Office proposes to state in § 2.35(g) that if an applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis. This codifies current practice.

The Office proposes to state in § 2.35(h) that once an applicant claims a § 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under § 1(a) of the Act for those goods or services unless the applicant files an allegation of use under § 1(c) or § 1(d) of the Act.

The Office proposes to amend § 2.38(a) to update a cross-reference.

The Office proposes to remove and reserve § 2.39, and to move the requirements for filing a priority claim under § 44(d) of the Act to § 2.34(a)(4), discussed above.

The Office proposes to revise §§ 2.45(a) and (b) to: (1) delete the requirement for a statement of the method or intended method of use in a certification mark application; and (2) require a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services. Sections 1(a) and 1(b) of the Act, as amended, no longer require a statement of the method or intended method of use of a mark. The requirement for a copy of the certification standards codifies current practice. TMEP § 1306.06(g)(ii).

The Office proposes to remove §§ 2.51(c) through (e), and move the substance of those rules to § 2.52.

The Office proposes to revise § 2.52(a) to define the term "drawing," to indicate that a drawing may only depict a single mark, and to define the terms "typed drawing" and "special form drawing."

The Office proposes to add guidelines in § 2.52(a) for drawings of various types of unusual marks, such as marks that include color, three-dimensional objects, motion, sound or scent; and to add guidelines for showing placement of the mark on goods, packaging for goods, or in advertising of services.

The Office proposes to indicate the recommended format for the drawing of a mark in § 2.52(b).

The Office proposes to revise § 2.52(c) to state that for an electronically filed application, if the mark cannot be shown as a "typed drawing," the applicant must attach a digitized image of the mark to the application.

The Office proposes to consolidate §§ 2.56, 2.57 and 2.58 into § 2.56, and to remove and reserve §§ 2.57 and 2.58.

The Office proposes to revise § 2.56(a) to require one rather than three specimens with an application under § 1(a) of the Act, or an allegation of use under § 1(c) or § 1(d) of the Act in an application under § 1(b) of the Act. See the discussion above under "Supplementary Information/Number of Specimens Required."

The Office proposes to add § 2.56(b)(1), stating that a trademark specimen is a label, tag, or container for the goods, or a display associated with the goods; and that the Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods. This is consistent with the current § 2.56.

The Office proposes to add § 2.56(b)(2), stating that a service mark specimen must show the mark as actually used in the sale or advertising of the services. This is consistent with the current § 2.58(a).

The Office proposes to add § 2.56(b)(3), stating that a collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services. This codifies current practice. TMEP § 1303.02(b).

The Office proposes to add § 2.56(b)(4), stating that a collective membership mark specimen must show use by members to indicate membership in the collective organization. This codifies current practice. TMEP § 1304.09(c).

The Office proposes to add § 2.56(b)(5), stating that a certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of the person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services. This codifies current practice. TMEP § 1306.06(c).

The Office proposes to add § 2.56(c), stating that a photocopy or other reproduction of a specimen is acceptable, but that a photocopy or facsimile that merely reproduces the drawing is not a proper specimen. This is consistent with the current § 2.57.

Proposed new § 2.56(d)(1) states that a specimen must be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. This is consistent with the current § 2.56.

The Office proposes to add § 2.56(d)(2), stating that if the applicant files a specimen that is too large (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper. See the discussion above under "Supplementary Information/Bulky Specimens."

The Office proposes to add § 2.56(d)(4), stating that if the application is filed electronically, the specimen must be submitted as a digitized image.

The Office proposes to revise § 2.59 to clarify and simplify the language.

The Office proposes to rewrite § 2.66 to set forth the requirements for filing a petition to revive an abandoned application when the delay in responding to an Office action or notice of allowance is "unintentional." Currently, an applicant can revive an abandoned application only if the delay was "unavoidable," a much stricter standard. TLTIA §§ 103 and 104 amend §§ 1(d)(4) and 12(b) of the Act to permit an application to be revived if the delay is "unintentional." The "unavoidable delay" standard has been removed from the statute, effective October 30, 1999.

The Office proposes to add §§ 2.66(a)(1) and (2), requiring that the applicant file a petition to revive within (1) two months of the mailing date of the notice of abandonment; or (2) two months of actual knowledge of abandonment. Currently, the deadline for filing a petition to revive is sixty days. TMEP § 1112.05(a). The two-month deadline will make it easier to calculate the due date for a petition because it will not be necessary to count days.

The Office also proposes to state in § 2.66(a)(2) that an applicant must be diligent in checking the status of an application. This codifies current practice. TMEP §§ 413 and 1112.05(b)(ii). The Office now denies petitions to revive when the applicant waits too long before checking the status of an application. To be diligent, the applicant must check the status of the application within one year of the last filing or receipt of a notice from the Office. Applicants can check the status of applications through the Trademark Status Line, or through the Office's World Wide Web site at *www.uspto.gov*. This is consistent with proposed § 2.146(i), discussed below.

The Office proposes to amend §§ 2.66(b)(2) and (c)(2) to require "a statement, signed by someone with firsthand knowledge of the facts, that the delay * * * was unintentional," rather than the "showing of the causes of the delay" that these rules now require.

The Office proposes to delete the requirement that a petition to revive include a statement that is verified or supported by a declaration under § 2.20. This is unnecessary because § 10.18(b), as amended effective December 1, 1997, states that any party who presents a paper to the Office is certifying that all statements are true and attesting to an awareness of the penalty for perjury. This proposed amendment is consistent with amendments to §§ 1.8(b)(3), 1.10(d), 1.10(e), 1.137(a)(3), and 1.137(b)(3), also effective December 1, 1997. 62 FR 53186 (Oct. 10, 1997).

The Office proposes to amend § 2.66(b)(3) to state that if the applicant did not receive the Office action, the applicant need not include a proposed response to an Office action with a petition to revive. This codifies current practice.

The Office proposes to amend §§ 2.66(c)(3) and (4) to state that if the applicant did not receive the notice of allowance, the petition to revive need not include a statement of use or request for an extension of time to file a statement of use, or the fees for the extension requests that would have been due if the application had never been abandoned. This codifies current practice.

The Office proposes to add § 2.66(c)(5), stating that unless a statement of use is filed with or before the petition to revive, or the petition states that the applicant did not receive the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use. This codifies current practice.

The Office proposes to add § 2.66(f)(3), stating that if the Commissioner denies the petition to revive, the applicant may request reconsideration by: (1) filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with proposed § 2.146(j).

The Office proposes to revise § 2.71(a) to state that the applicant may amend the identification to clarify or limit, but not broaden, the identification of goods and/or services. This simplifies the language of the current § 2.71(b).

Proposed § 2.71(b)(1) states that if the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification or declaration under § 2.20. This changes current practice. Currently, the applicant must submit a signed verification to receive an application filing date, and if the verification is signed by the wrong party, the applicant cannot file a substitute verification unless the party who originally signed had "color of authority" (i.e., firsthand knowledge of the facts and actual or implied authority to act on behalf of the applicant). TMEP § 803. As discussed above, the Office proposes to delete the requirement that the applicant submit a signed verification in order to receive a filing date. If the verification is unsigned or signed by the wrong party, the applicant must replace the declaration before the mark is published for opposition or approved for registration on the Supplemental Register.

The Office proposes to delete the requirement for a verification "by the applicant, a member of the applicant firm, or an officer of the applicant corporation or association" from § 2.71(c). This is consistent with the amendments to §§ 1(a) and 1(b) of the Act.

The Office also proposes to delete the "color of authority" provisions from § 2.71(c). Because the statute no longer specifies who has "statutory" authority to sign, the "color of authority" provisions are unnecessary.

The Office proposes to state in § 2.71(b)(2) that if the declaration or verification of a statement of use under § 2.88 or a request for extension of time to file a statement of use under § 2.89 is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use. This is consistent with current practice and with the proposed amendments to §§ 2.88(e)(3), 2.89(a)(3), and 2.89(b)(3), discussed below.

The Office proposes to add new § 2.71(d), stating that a mistake in setting out the applicant's name can be corrected, but the application cannot be amended to set forth a different entity as the applicant; and that an application filed in the name of an entity that did not own the mark on the filing date of the application is void. This codifies current practice. TMEP § 802.07. See the discussion above under "Supplementary Information/Filing by Owner."

The Office proposes to revise § 2.72 to remove paragraph (a), and redesignate paragraphs (b) through (d) as (a) through (c).

The Office proposes that new paragraphs (a) through (c) will each state that an applicant may not amend the description or drawing of the mark if the amendment materially alters the mark; and that the Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark in the original application. These provisions are now stated in paragraph (a).

Under the current § 2.72, as interpreted by *In re ECCS, Inc.*, 94 F.3d 1578, 39 USPQ2d 2001 (Fed. Cir. 1996) and *In re Dekra e.V.*, 44 USPQ2d 1693 (TTAB 1997), an applicant may amend an application to correct an "internal inconsistency." An application is "internally inconsistent" if the mark on the drawing does not agree with the mark on the specimens in an application based on use, or with the mark on the foreign registration in an application based on § 44 of the Act.

Currently, because §§ 2.72(b), (c) and (d) do not expressly prohibit an

amendment that materially alters the mark on the original drawing, the Office accepts amendments that correct "internal inconsistencies," regardless of whether the amendment materially alters the mark on the original drawing. TMEP § 807.14(a).

The Office does not believe that it is in the public interest to accept amendments that materially alter the mark on the original drawing. When the Office receives a new application, the mark on the drawing is promptly filed in the Trademark Search Library and entered into the Office's electronic and administrative systems. Accepting an amendment that materially alters the mark on the original drawing is unfair to third parties who search Office records between the application filing date and the date the amendment is entered, because they do not have accurate information about earlier-filed applications. A third party may innocently begin using a mark that conflicts with the amended mark, but not with the original mark, relying on the search of Office records. Also, an examining attorney may approve a later-filed application for registration of a mark that conflicts with the amended mark, but not with the original mark. Therefore, the Office proposes to amend § 2.72 to prohibit amendments that materially alter the mark on the original drawing.

The Office proposes to revise § 2.76(b)(1) to state that a complete amendment to allege use must include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant.

The Office proposes to further revise § 2.76(b)(1) to delete the requirement for a statement of the method or manner of use of the mark in an amendment to allege use, because this requirement has been removed from §§ 1(a) and 1(b) of the Act.

The Office proposes to revise § 2.76(b)(2) to require one rather than three specimens with an amendment to allege use. See the above discussion under "Supplementary Information/ Number of Specimens Required."

The Office proposes to add new § 2.76(i), stating that if an amendment to allege use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

The Office proposes to add new § 2.76(j), noting that the requirements for multi-class applications are stated in § 2.86.

The Office proposes to change the heading of § 2.86 to "Application may include multiple classes." The Office proposes to remove current § 2.86(a), which states that an applicant may recite more than one item of goods, or more than one service, in a single class, if the applicant either has used or has a bona fide intention to use the mark on all the goods or services. The substance of this provision will be moved to §§ 2.34(a)(1)(v), 2.34(a)(2)(ii), 2.34(a)(3)(iv) and 2.34(a)(4)(iv).

The Office proposes to revise § 2.86(a) to include sections now found in § 2.86(b), stating that the applicant may apply to register the same mark for goods and/or services in multiple classes in a single application, provided that the applicant specifically identifies the goods and services in each class; submits a fee for each class; and either includes dates of use and one specimen, or a statement of a bona fide intention to use the mark in commerce, for each class. The Office also proposes to add in § 2.86(a)(3) a provision that the applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

The Office proposes to state in § 2.86(b) that a statement of use or amendment to allege use must include the required fee, dates of use, and one specimen for each class. The requirement for only one specimen is consistent with the proposed amendments to §§ 2.56(a), 2.76(b)(2), and 2.88(b)(2).

The Office also proposes to add to § 2.86(b) a provision that the applicant may not file the statement of use or amendment to allege use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. This is consistent with the current §§ 2.76(c) and 2.88(c).

The Office proposes to delete the current § 2.86(c), which prohibits an applicant from claiming both use in commerce and intent-to-use in a single multi-class application. However, the Office proposes to state in § 2.86(a)(3) that the applicant may not claim both use in commerce and intent-to-use for the identical goods or services in one application.

The Office proposes to move the substance of the last sentence of the current § 2.86(b) to new § 2.86(c).

The Office proposes to revise § 2.88(b)(1) to state that a complete statement of use must include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant.

The Office proposes to revise § 2.88(b)(1) to delete the requirement for a statement of the method or manner of use in a statement of use. This requirement has been removed from § 1(d)(1) of the Act.

The Office proposes to revise § 2.88(b)(2) to require one specimen with a statement of use, rather than the three specimens now required. This is consistent with the proposed amendment of § 2.56(a).

The Office proposes to revise § 2.88(e)(3) to state that if the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(f)(i)(A). Section 1(d)(1) of the Act specifically requires verification by the applicant within the statutory period for filing the statement of use.

The Office proposes to add § 2.88(k), stating that if the statement of use is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce. This codifies current practice. TMEP § 803.04.

The Office proposes to add § 2.88(l), noting that the requirements for multi-class applications are stated in § 2.86.

The Office proposes to revise §§ 2.89(a)(3) and (b)(3) to require that a request for an extension of time to file a statement of use include a statement that is verified or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant; and that if the extension request is unsigned or signed by the wrong party, the applicant must submit a substitute verification or declaration on or before the statutory deadline for filing the statement of use. This is consistent with current practice. TMEP § 1105.05(d). Sections 1(d) (1) and (2) of the Act specifically require verification by the applicant within the statutory filing period.

The Office proposes to revise § 2.89(d) to remove paragraph (1), which requires a statement that the applicant has not yet made use of the mark in commerce on all the goods and services. The Commissioner has held that an extension request that omits this allegation is substantially in compliance with § 2.89(d) if the request contains a statement that the applicant has a continued bona fide intention to use the mark in commerce. *In re Schering-Plough Healthcare Products Inc.*, 24

USPQ2d 1709 (Comm'r Pats. 1992). Therefore, the requirement is unnecessary.

The Office proposes to add § 2.89(h), stating that if the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 that the applicant still has a bona fide intention to use the mark in commerce. This codifies current practice. TMEP § 803.04.

The Office proposes to revise § 2.101(d)(1) to update a cross-reference.

The Office proposes to revise § 2.111(c)(1) to update a cross-reference.

The Office proposes to revise § 2.146(d) to delete "sixty days" and substitute "two months" as the deadline for filing certain petitions. This will make it easier to calculate the due date for a petition because it will not be necessary to count days.

The Office proposes to add § 2.146(i), stating that where a petitioner seeks to reactivate an application or registration that was abandoned or cancelled due to the loss or mishandling of papers mailed to or from the Office, the petition will be denied if the petitioner was not diligent in checking the status of the application or registration. This codifies current practice. TMEP §§ 413 and 1704. Even where a petitioner can show that the Office actually received papers, or can swear that a notice from the Office was never received by the petitioner, the Office now denies the petition if the petitioner waited too long before investigating the problem. This is because third parties may rely to their detriment on the information in the records of the Office that an application is abandoned or that a registration is expired. A third party may have diligently searched Office records and begun using a mark because the search showed no earlier-filed conflicting marks, or an examining attorney may have searched Office records and approved an earlier-filed application for a conflicting mark. This is consistent with the proposed amendment of § 2.66(a)(2), discussed above.

The Office proposes to add § 2.146(j), stating that if the Commissioner denies the petition, the petitioner may request reconsideration by: (1) filing the request within two months of the mailing date of the decision denying the petition; and (2) paying a second petition fee under § 2.6. Currently, the rules do not specifically provide for requests for reconsideration of petition decisions, but the Commissioner has the discretion to consider these requests under § 2.146(a)(3). The Office believes that an additional fee should be required to pay for the work done in processing the request for reconsideration. This is consistent with proposed § 2.66(f)(3), discussed above.

The Office proposes to revise § 2.151 to update a cross-reference and simplify the language.

The Office proposes to revise § 2.155 to update a cross-reference and simplify the language.

The Office proposes to revise § 2.156 to update a cross-reference and simplify the language.

The Office proposes to add § 2.160, "Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation." Proposed §§ 2.160(a) (1) and (2) list the deadlines for filing the affidavit or declaration, and proposed § 2.160(a)(3) states that the owner may file the affidavit or declaration within six months after expiration of these deadlines, with an additional grace period surcharge. Currently, there is no grace period for filing a § 8 affidavit.

Proposed § 2.160(b) advises that § 2.161 lists the requirements for the affidavit or declaration.

The Office proposes to change the heading of § 2.161 to "Requirements for a complete affidavit or declaration of continued use or excusable nonuse," and to revise § 2.161 to list the proposed requirements for the affidavit or declaration.

The Office proposes to revise § 2.161(a) to state that the owner must file the affidavit or declaration within the period set forth in § 8 of the Act.

The Office proposes to revise § 2.161(b) to state that the affidavit or declaration must include a verified statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in § 8 of the Act. The Office also proposes to revise § 2.161(b)(2) to state that a person properly authorized to sign on behalf of the owner includes a person with legal authority to bind the owner and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the owner.

The Office proposes to add § 2.161(d)(2), requiring a surcharge for filing an affidavit or declaration of continued use or excusable nonuse during the grace period.

The Office proposes to add § 2.161(d)(3), stating that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the particular class(es) covered by the affidavit or declaration are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.164 are met; and that if additional fees are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

Proposed § 2.161(e) requires that the affidavit or declaration list both the goods or services on which the mark is in use in commerce and the goods or services for which excusable nonuse is claimed. Currently, a list of the goods or services is not required when excusable nonuse is claimed. *In re Conusa Corp.*, 32 USPQ2d 1857 (Comm'r Pats. 1993). However, TLTIA § 105 amends § 8(b)(2) of the Act to specifically require "an affidavit setting forth those goods on or in connection with which the mark is not in use."

The Office proposes to eliminate the requirement that the affidavit or declaration specify the type of commerce in which the mark is used, currently required by § 2.162(e). Section 8 of the Act does not require that the affidavit or declaration list the type of commerce. Because the definition of "commerce" in § 45 of the Act is "all commerce which may lawfully be regulated by Congress," the Office will presume that a registrant who states that the mark is in use in commerce is stating that the mark is in use in a type of commerce that Congress can regulate.

The Office proposes to move the substance of § 2.162(f) to § 2.161(f)(2), and to revise it to add a requirement that the affidavit state the date when use of the mark stopped and the approximate date when use will resume. This codifies current practice. Office actions are often issued requiring a statement as to when use of the mark stopped and when use will resume, because this information is needed to determine whether the nonuse is excusable, within the meaning of § 8 of the Act.

The Office proposes to move the substance of § 2.162(e) to § 2.161(g), and to revise it to state that the affidavit must include a specimen for each class of goods or services; that the specimen should be no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long; and that if the applicant files a specimen that exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69

inches (29.7 cm.) long) and put it in the file wrapper. See the discussion above under "Supplementary Information/ Bulky Specimens."

The Office proposes to add § 2.161(h), requiring a designation of a domestic representative if the registrant is not domiciled in the United States. This reflects § 8(f) of the Act, as amended, and is consistent with current practice.

The Office proposes to move the substance of § 2.163 to § 2.162, and to revise it to say that the only notice of the requirement for filing the § 8 affidavit or declaration of continued use or excusable nonuse is sent with the certificate of registration when it is originally issued. This merely clarifies, and does not change, current practice.

The Office proposes to move the substance of current § 2.164 to the introductory text of new § 2.163.

The Office proposes to state in § 2.163(a) that if the owner of the registration files the affidavit or declaration within the time periods set forth in § 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

The Office proposes to add § 2.163(b), stating that a response to an examiner's Office action must be filed within six months of the mailing date, or before the end of the filing period set forth in § 8(a) or § 8(b) of the Act, whichever is later, or the registration will be cancelled.

The Office proposes to add § 2.164, "Correcting deficiencies in affidavit or declaration." This section changes current practice. There are now some deficiencies that can be corrected after the statutory deadline for filing the affidavit or declaration, such as supplying evidence that the party who filed the affidavit or declaration was the owner of the mark as of the filing date, or submitting an additional fee. Other requirements must be satisfied before the expiration of the statutory deadline to avoid cancellation of the registration. *In re Mather Tucker's Food Experience (Canada) Inc.*, 925 F.2d 1402, 17 USPQ2d 1795 (Fed. Cir. 1991) (allegation of use in commerce); *In re Metrotech*, 33 USPQ2d 1049 (Comm'r Pats. 1993) (specimen); *In re Bonbons Barnier S.A.*, 17 USPQ2d 1488 (Comm'r Pats. 1990) (listing of goods or services).

TLTIA § 105 adds § 8(c)(2) of the Act to allow correction of deficiencies, with payment of a deficiency surcharge. The Act does not define "deficiency," but instead gives the Office broad discretion to set procedures and fees for correcting deficiencies.

Proposed § 2.164(a)(1) states that if the owner files the affidavit or declaration within the period set forth in § 8(a) or § 8(b) of the Act, deficiencies can be corrected before the end of this period without paying a deficiency surcharge; and deficiencies can be corrected after the expiration of this period with payment of the deficiency surcharge.

The Office proposes to state in § 2.164(a)(2) that if the owner files the affidavit or declaration during the grace period, deficiencies can be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with a deficiency surcharge.

The Office proposes to state in § 2.164(b) that if the affidavit or declaration is not filed within the time periods set forth in § 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

Because § 8(c)(2) of the Act specifically requires a deficiency surcharge, the Office proposes to require the deficiency surcharge for correcting any type of deficiency, even one that could be corrected for no fee under current law.

The Office proposes to change the heading of § 2.165 to "Petition to Commissioner to review refusal"; to remove the last two sentences of the current § 2.165(a)(1); and to simplify the language of the rule.

The Office proposes to remove present § 2.166 because it is unnecessary. Proposed §§ 2.163(b) and 2.165(b) set forth the times when a registration will be cancelled.

The Office proposes to add § 2.166, "Affidavit of continued use or excusable nonuse combined with renewal application," stating that an affidavit or declaration under § 8 of the Act and a renewal application under § 9 of the Act may be combined in a single document.

The Office proposes to revise § 2.167(c) to delete the requirement that an affidavit or declaration under § 15 of the Act (§ 15 affidavit) specify the type of commerce in which the mark is used.

The Office proposes to change the heading of § 2.168 to "Affidavit or declaration under § 15 combined with affidavit or declaration under § 8, or with renewal application." The Office proposes to revise § 2.168(a) to state that a § 15 affidavit may be combined with a § 8 affidavit, if the combined affidavit meets the requirements of both §§ 8 and 15 of the Act. The Office proposes to revise § 2.168(b) to state that a § 15 affidavit can be combined with a renewal application under § 9 of the Act, if the requirements of both §§ 9 and 15 of the Act are met.

The Office proposes to revise § 2.173(a) to simplify the language.

The Office proposes to revise § 2.181 to indicate that renewal of a registration is subject to the provisions of § 8 of the Act. This is consistent with the amendment to § 9(a) of the Act.

The Office proposes to change the heading of § 2.182 to "Time for filing renewal application," and to revise it to state that the renewal application must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date with an additional fee. This changes current practice. Section 9 of the Act now requires filing within six months before the expiration of the registration, or within a three-month grace period thereafter with a late fee.

The Office proposes to change the heading of § 2.183 to "Requirements for a complete renewal application," and to revise it to delete the present renewal requirements and substitute new ones based on amended § 9 of the Act. In particular, the Office proposes to delete the requirements for a specimen and declaration of use or excusable nonuse on or in connection with the goods or services listed in the registration, because these requirements have been removed from § 9 of the Act. The proposed requirements for renewal are: (1) a signed request for renewal; (2) a renewal fee for each class; (3) a grace period surcharge for each class if the renewal application is filed during the grace period; (4) if the registrant is not domiciled in the United States, a designation of a domestic representative; and (5) if the renewal application covers less than all the goods or services, a list of the particular goods or services to be renewed.

The Office proposes to state in § 2.183(f) that if the fee submitted is enough to pay for at least one class, but not enough to pay for all the classes, and the class(es) covered by the renewal application are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied; that additional fee(s) may be submitted if the requirements of § 2.185 are met; and that if the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

The Office proposes to revise and simplify the language of current § 2.184 and to transfer some of its provisions to new § 2.186. The revised provisions state that the Office will issue a notice if the renewal application is not

acceptable; that a response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later; and that the registration will expire if the renewal application is not filed within the time periods set forth in § 9(a) of the Act.

The Office proposes to add § 2.185, "Correcting deficiencies in renewal application." This section changes current practice. There are now some deficiencies that can be corrected after the statutory deadline for filing the renewal application, such as supplying evidence that the party who filed the application was the owner of the registration on the filing date. Other requirements, such as the renewal fee, must be met before the end of the statutory filing period, or the registration will expire. *In re Culligan International Co.*, 915 F.2d 680, 16 USPQ2d 1234 (Fed. Cir. 1990).

Under amended § 9, the renewal application must be filed within the renewal period or grace period specified in § 9(a) of the Act, or the registration will expire. However, if the renewal application is timely filed, any deficiencies may be corrected after expiration of the statutory filing period, with payment of a deficiency surcharge.

The Office proposes to state in § 2.185(a)(1) that if the renewal application is filed within one year before the registration expires, deficiencies may be corrected before the registration expires without paying a deficiency surcharge, or after the registration expires with payment of the deficiency surcharge required by § 9(a) of the Act.

The Office proposes to state in § 2.185(a)(2) that if the renewal application is filed during the grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge, and after the expiration of the grace period with payment of the deficiency surcharge required by § 9(a) of the Act.

The Office proposes to state in § 2.185(b) that if the renewal application is not filed within the time periods set forth in § 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

Because § 9(a) of the Act specifically requires a deficiency surcharge, the Office proposes to charge the deficiency surcharge for correcting any type of deficiency, even one that could be corrected for no fee under current law.

The Office proposes to add new § 2.186, "Petition to Commissioner to review refusal of renewal."

Proposed § 2.186(a) states that a response to the examiner's initial refusal is required before filing a petition to the Commissioner, unless the examiner directs otherwise. This is consistent with the current § 2.184(a).

Proposed § 2.186(b) states that if the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the action may be filed within six months of the mailing date of the Office action maintaining the refusal; and that if no petition is filed within six months of the mailing date of the Office action, the registration will expire. This is consistent with the current § 2.184(b).

Proposed § 2.186(c) states that a decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court. This is consistent with the current § 2.184(d).

The Office proposes to amend § 3.16 to state that an applicant may assign an application based on § 1(b) of the Act once the applicant files an amendment to allege use under § 1(c) of the Act.

The Office proposes to change the heading of § 3.24 to "Requirements for documents and cover sheets relating to patents and patent applications." The Office proposes to list the recording requirements for patents in § 3.24, and to add new § 3.25 listing the recording requirements for trademark applications and registrations.

Section 3.25 identifies the types of documents one can submit when recording documents that affect some interest in trademark applications or registrations. The section also identifies the Office's preferred format for cover sheets and other documents.

The Office proposes to revise § 3.28 to state a preference that separate cover sheets be used for patents and trademarks.

The Office proposes to revise § 3.31(a)(4) to set forth the requirements for identifying a trademark application where the application serial number is not known.

The Office proposes to delete the requirement currently in § 3.31(a)(9) that a cover sheet contain a statement that the information on the cover sheet is correct and that any copy of the document submitted is a true copy.

The Office proposes to amend § 3.31(b) to state that a cover sheet "should" not refer to both patents and trademarks; and to put the public on notice that if a cover sheet contains both patent and trademark information, all information will become public after recordation.

The Office proposes to add § 3.31(d) to state the Office's preference that a trademark cover sheet include the serial number or registration number of the trademark affected by the conveyance or transaction, an identification of the mark, and a description of the mark.

The Office proposes to add § 3.31(e) to state the Office's preference that the cover sheet include the total number of applications, registrations, or patents identified on the cover sheet and the total fee.

The Office proposes to revise § 6.1 to incorporate classification changes that became effective January 1, 1997, as listed in the International Classification of Goods and Services for the Purposes of the Registration of Marks (7th ed. 1996), published by the World Intellectual Property Organization (WIPO).

Environmental, Energy, and Other Considerations

The Office has determined that the proposed rule changes have no federalism implications affecting the relationship between the National Government and the State as outlined in Executive Order 12612.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration, that the proposed rule changes will not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rule implements the Trademark Law Treaty Implementation Act and simplifies and clarifies procedures for registering trademarks and maintaining and renewing trademark registrations. The rule will not significantly impact any businesses. The principal effect of the rule is to make it easier for applicants to obtain a filing date. No additional requirements are added to maintain registrations. Furthermore, this rule simplifies the procedures for registering trademarks in proposed sections 2.21, 2.32, 2.34, 2.45, 2.76, 2.88, 2.161, 2.167 and 2.183 of the Trademark rules. As a result, an initial regulatory flexibility analysis was not prepared.

The proposed rule changes are in conformity with the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), Executive Order 12612, and the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*). The proposed changes have been determined to be not significant for purposes of Executive Order 12866.

Notwithstanding any other provision of law, no person is required to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements

of the PRA unless that collection of information displays a currently valid OMB control number.

This rule contains collections of information requirements subject to the PRA. This rule discusses changes in the information required from the public to obtain registrations for trademarks and service marks, to submit affidavits or declarations of continued use or excusable nonuse, statements of use, requests for extensions of time to file statements of use, and to renew registrations. This rule proposes to delete requirements to identify the method of use of a mark and the type of commerce in which a mark is used. Additionally, the rule removes the requirement that requests for recordation of documents be accompanied by originals or true copies of these documents. The rule proposes to allow for the filing of powers of attorney that pertain to multiple registrations or applications for registration, and proposes certain requirements for filing such powers of attorney. Additionally, the rule proposes requirements for submitting § 8 affidavits of continued use or excusable nonuse combined with § 9 renewal applications, or § 15 affidavits or declarations of incontestability combined with either § 8 affidavits or declarations or with § 9 renewal applications.

An information collection package supporting the changes to the above information requirements, as discussed in this rule, has been submitted to OMB for review and approval. The public reporting burden for this collection of information is estimated to average as follows: seventeen minutes for applications to obtain registrations based on an intent to use the mark under § 1(b) of the Act, if completed using paper forms; fifteen minutes for applications to obtain registrations based on an intent to use the mark under § 1(b) of the Act, if completed using an electronic form; twenty-three minutes for applications to obtain registrations based on use of the mark under § 1(a) of the Act, if completed using paper forms; twenty-one minutes for applications to obtain registrations based on use of the mark under § 1(a) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on an earlier-filed foreign application under § 44(d) of the Act, if completed using paper forms; nineteen minutes for applications to obtain registrations based on an earlier-filed foreign application under § 44(d) of the Act, if completed using an electronic form; twenty minutes for applications to obtain registrations based on registration of a mark in a foreign applicant's country of origin under § 44(e) of the Act; thirteen minutes for allegations of use of the mark under §§ 2.76 and 2.88; ten minutes for requests for extension of time to file statements of use under § 2.89; fourteen minutes for renewal applications under § 9 of the Act combined with affidavits or declarations of continued use or excusable nonuse under § 8 of the Act; fourteen minutes for combined affidavits/declarations of use and incontestability under §§ 8 and 15 of the Act; eleven minutes for an affidavit or declaration of continued use or excusable nonuse under § 8 of the Act; eleven minutes for a renewal application under § 9 of the Act; eleven minutes for a declaration of incontestability under § 15 of the Act; three minutes for powers of attorney and designations of domestic representatives; and thirty minutes for a trademark recordation form cover sheet. These time estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments are invited on: (1) whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

This rule also involves information requirements associated with amendments, oppositions, and petitions to cancel. The amendments and the oppositions have been previously approved by OMB under control number 0651–0009. The petitions to cancel have been previously approved by OMB under control number 0651–0040. These requirements are not being resubmitted for review at this time. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202–3513 (Attn: Ari Leifman), and to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C. 20230 (Attn: PTO Desk Officer).

Proposed §§ 2.21, 2.32, 2.34, 2.45, 2.76, 2.88, 2.161, 2.167, and 2.183 may lessen the public reporting burden.

An application to obtain a registration can only be accepted for review if a respondent provides certain required minimum elements; otherwise, the Office will return the application to the respondent. Proposed § 2.21 lessens the number of these required minimum elements. Therefore, the number of applications returned to respondents may decline, and this may result in fewer multiple submissions of applications to obtain registrations from single respondents.

An application to obtain registration must identify at least one legal basis for filing the application. Currently, two of these bases, use of the mark and a bona fide intention to use the mark, may not be identified in a single application. Proposed § 2.34 allows a respondent to assert each of these bases with respect to different goods or services in a single application. This may allow some applicants to submit a single application rather than multiple applications.

Currently, applicants must describe the manner in which the mark is used or intended to be used in applications for registration of trademarks and service marks, in applications for registration of collective membership marks, in applications for registration of certification marks, in amendments to allege use of a mark, and in statements of use. Proposed § 2.32 removes this requirement with respect to applications for registration of trademarks, service marks and collective membership marks; proposed § 2.45 removes this requirement with respect to applications to register certification marks; proposed § 2.76 removes this requirement with respect to amendments to allege use; and proposed § 2.88 removes this requirement with respect to statements of use. The Office estimates that the removal of this requirement may reduce the time needed to complete each of these submissions by two minutes.

Currently, the type of commerce in which a mark is used must be specified in affidavits or declarations of continued use or excusable nonuse, in applications for renewal, and in declarations of incontestability. Proposed § 2.161 eliminates this requirement with respect to declarations of continued use; proposed § 2.167 eliminates this requirement with respect to declarations of incontestability; and proposed § 2.183 eliminates this requirement with respect to applications for renewal. The Office estimates that the removal of this requirement may reduce the time needed to complete each of these submissions by one minute.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Patents.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

37 CFR Part 3

Administrative practice and procedure, Patents, Trademarks.

37 CFR Part 6

Trademarks.

For the reasons given in the preamble and under the authority contained in 35 U.S.C. 6 and 15 U.S.C. 41, as amended, the Patent and Trademark Office proposes to amend parts 1, 2, 3, and 6 of title 37 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for part 1 continues to read as follows:

Authority: 35 U.S.C. 6, unless otherwise noted.

1a. Amend § 1.1 by revising paragraph (a)(2) to read as follows:

§ 1.1 Addresses for correspondence with the Patent and Trademark Office.

(a) * * *

(2) *Trademark correspondence.*

(i) Send all trademark filings and correspondence, except as specified below or unless submitting electronically, to: Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202–3513.

(ii) Send trademark-related documents for the Assignment Division to record to: Commissioner of Patents and Trademarks, Box Assignment, Washington, D.C. 20231.

(iii) Send requests for certified or uncertified copies of trademark applications and registrations, other than coupon orders for uncertified copies of registrations, to: Commissioner of Patents and Trademarks, Box 10, Washington, D.C. 20231.

(iv) Send requests for coupon orders for uncertified copies of registrations to: Commissioner of Patents and Trademarks, Box 9, Washington, D.C. 20231.

(v) An applicant may transmit an application for trademark registration electronically, but only if the applicant uses the Patent and Trademark Office's electronic form.

* * * * *

2. Amend § 1.4 by revising the last sentence of paragraph (a)(2), revising paragraphs (d)(1) and (d)(1)(ii), and adding a new paragraph (d)(1)(iii) to read as follows:

§ 1.4 Nature of correspondence and signature requirements.

(a) * * *

(2) * * * See particularly the rules relating to the filing, processing, or other proceedings of national applications in subpart B, §§ 1.31 to 1.378; of international applications in subpart C, §§ 1.401 to 1.499; of reexamination of patents in subpart D, §§ 1.501 to 1.570; of interferences in subpart E, §§ 1.601 to 1.690; of extension of patent term in subpart F, §§ 1.710 to 1.785; and of trademark applications and registrations, §§ 2.11 to 2.186.

* * * * *

(d)(1) Each piece of correspondence, except as provided in paragraphs (e) and (f) of this section, filed in a patent or trademark application, reexamination proceeding, patent or trademark interference proceeding, patent file or trademark registration file, trademark opposition proceeding, trademark cancellation proceeding, or trademark concurrent use proceeding, which requires a person's signature, must:

(i) * * *

(ii) Be a direct or indirect copy, such as a photocopy or facsimile transmission(§ 1.6(d)), of an original. In the event that a copy of the original is filed, the original should be retained as evidence of authenticity. If a question of authenticity arises, the Office may require submission of the original; or

(iii) Where an electronically transmitted trademark filing is permitted, the person who signs the filing must either:

(A) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission. Additionally, the person who signs the filing must maintain a verified statement confirming that the signatory has adopted the symbol shown in the signature block to verify the contents of the filing, and that the information in the electronic submission is identical to the information in the paper copy of the submission. This verified statement should not be submitted; or

(B) Sign the verified statement using some other form of electronic signature specified by the Commissioner.

* * * * *

3. Amend § 1.5 by revising paragraph (c) to read as follows:

§ 1.5 Identification of application, patent or registration.

* * * * *

(c)(1) A letter about a trademark application should identify the serial number, the name of the applicant, and the mark.

(2) A letter about a registered trademark should identify the registration number, the name of the registrant, and the mark.

* * * * *

4. Amend § 1.6 by revising paragraph (a)(1), and adding new paragraph (a)(4), to read as follows:

§ 1.6 Receipt of correspondence.

(a) * * *

(1) The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia. Except for correspondence transmitted by facsimile under paragraph (a)(3), or filed electronically under paragraph (a)(4) of this section, no correspondence is received in the Office on Saturdays, Sundays, or Federal holidays within the District of Columbia.

* * * * *

(4) Trademark-related correspondence transmitted electronically will be stamped with the date on which the Office receives the transmission.

* * * * *

5. Revise § 1.23 to read as follows:

§ 1.23 Method of payment.

All payments of money required for Patent and Trademark Office fees, including fees for the processing of international applications (§ 1.445), shall be made in U.S. dollars and in the form of cashier's checks, Treasury notes, post office money orders, or by certified check. If sent in any other form, the Office may delay or cancel the credit until collection is made. Payments for USPTO electronic applications and other electronic submissions authorized by the USPTO may be made by credit card identified on the electronic form. Money orders and checks must be made payable to the Commissioner of Patents and Trademarks. Remittances from foreign countries must be payable and immediately negotiable in the United States for the full amount of the fee required. Money sent by mail to the Office will be at the risk of the sender; letters containing currency should be registered.

PART 2—RULES APPLICABLE TO TRADEMARK CASES

6. The authority citation for part 2 continues to read as follow:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

6a. Revise § 2.1 to read as follows:

§ 2.1 Sections of part 1 applicable.

Sections 1.1 to 1.26 of this chapter apply to trademark cases, except those parts that specifically refer to patents, and except § 1.22 to the extent that it is inconsistent with §§ 2.85(e), 2.101(d), 2.111(c), 2.164, or 2.185. Other sections of part 1 incorporated by reference in part 2 also apply to trademark cases.

7. Section 2.6 is amended by revising the introductory text, paragraphs (a)(5), (a)(6), (a)(12), (a)(13), (a)(14), (a)(19), (a)(20), and (a)(21) to read as follows:

§ 2.6 Trademark fees.

The Patent and Trademark Office requires the following fees and charges:

(a) * * *

(5) For filing an application for renewal of a registration, per class	$200.00
(6) Additional fee for filing a renewal application during the grace period, per class	100.00
* * * * * * *	
(12) For filing an affidavit under section 8 of the Act, per class	200.00
(13) For filing an affidavit under section 15 of the Act, per class	200.00
(14) Additional fee for filing a section 8 affidavit during the grace period, per class	100.00
* * * * * * *	
(19) For filing a request to divide an application, per new application (file wrapper) created	300.00
(20) For correcting a deficiency in a section 8 affidavit	100.00
(21) For correcting a deficiency in a renewal application	100.00

8. Amend § 2.17 by adding paragraphs (c) and (d) to read as follows:

§ 2.17 Recognition for representation.

* * * * *

(c) To be recognized as a representative, an attorney as defined in § 10.1(c) of this chapter may file a power of attorney, appear in person, or sign a paper on behalf of an applicant or registrant that is filed with the Office in a trademark case.

(d) A party may file a power of attorney that relates to more than one trademark application or registration, or to all existing and future applications and registrations of that party. A party relying on a power of attorney concerning more than one application or registration must:

(1) Include a copy of the previously filed power of attorney; or

(2) Refer to the power of attorney, specifying the filing date of the previously filed power of attorney; the application serial number (if known), registration number, or *inter partes* proceeding number for which the original power of attorney was filed; and the name of the party who signed the power of attorney; or, if the application serial number is not known, submit a copy of the application or a copy of the mark, and specify the filing date.

9. Revise § 2.20 to read as follows:

§ 2.20 Declarations in lieu of oaths.

Instead of an oath, affidavit, verification, or sworn statement, the following language may be used:

I declare pursuant to the provisions of 18 U.S.C. 1001 and under the penalty of perjury that all statements made of my own knowledge are true and that all statements made on information and belief are believed to be true. I understand that willful false statements and the like are punishable by fine or imprisonment, or both, and may jeopardize the validity of the application or document or any registration resulting therefrom.

10. Revise § 2.21 to read as follows:

§ 2.21 Requirements for receiving a filing date.

(a) The Office will grant a filing date to an application that contains all of the following:

(1) The name of the applicant;

(2) A name and address for correspondence;

(3) A clear drawing of the mark;

(4) A listing of the goods or services; and

(5) The filing fee for at least one class of goods or services, required by § 2.6.

(b) If the applicant does not submit all the elements required in paragraph (a), the Office may return the papers with an explanation of why the filing date was denied.

(c) The applicant may correct and resubmit the application papers. If the resubmitted papers and fee meet all the requirements of paragraph (a) of this section, the Office will grant a filing date as of the date the Office receives the corrected papers.

§ 2.31 [Reserved]

11. Remove and reserve § 2.31.

12. Revise § 2.32 to read as follows:

§ 2.32 Requirements for written application.

(a) The application must be in English and include the following:

(1) A request for registration;

(2) The name of the applicant(s);

(3)(i) The citizenship of the applicant(s); or

(ii) If the applicant is a corporation, association, partnership or other juristic person, the state or nation under the laws of which the applicant is organized; and

(iii) If the applicant is a partnership, the names and citizenship of the general partners;

(4) The address of the applicant;

(5) One or more bases, as required by § 2.34(a);

(6) A list of the particular goods or services on or in connection with which the applicant uses or intends to use the mark. In a United States application filed under section 44 of the Act, the scope of the goods or services covered by the section 44 basis may not exceed the scope of the goods or services in the foreign application or registration; and

(7) The international class of goods or services, if known. See § 6.1 of this chapter for a list of the international classes of goods and services.

(b) The application must include a verified statement that meets the requirements of § 2.33.

(c) For the requirements for a multiple class application, see § 2.86.

13. Revise § 2.33 to read as follows:

§ 2.33 Verified statement.

(a) The application must include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant. A person who is properly authorized to sign on behalf of the applicant includes a person with legal authority to bind the applicant and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the applicant.

(b)(1) In an application under section 1(a) of the Act, the verified statement must allege:

That the applicant has adopted and is using the mark shown in the accompanying drawing; that the applicant believes it is the owner of the mark; that the mark is in use in commerce, specifying the type of commerce; that to the best of the declarant's knowledge and belief, no other person has

the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; that the specimen shows the mark as used on or in connection with the goods or services; and that the facts set forth in the application are true.

(2) In an application under section 1(b) or section 44 of the Act, the verified statement must allege:

That the applicant has a bona fide intention to use the mark shown in the accompanying drawing in commerce on or in connection with the specified goods or services; that the applicant believes it is entitled to use the mark; that to the best of the declarant's knowledge and belief, no other person has the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when applied to the goods or services of the other person, to cause confusion or mistake, or to deceive; and that the facts set forth in the application are true.

(c) If the verified statement is not filed within a reasonable time after it is signed, the Office may require the applicant to submit a substitute verification or declaration under § 2.20 of the applicant's continued use or bona fide intention to use the mark in commerce.

(d) Where an electronically transmitted filing is permitted, the person who signs the verified statement must either:

(1) Place a symbol comprised of numbers and/or letters between two forward slash marks in the signature block on the electronic submission; and print, sign and date in permanent ink, and maintain a paper copy of the electronic submission. Additionally, the applicant must maintain a verified statement confirming that the signatory has adopted the symbol shown in the signature block to verify the contents of the document, and that the information in the electronic submission is identical to the information in the paper copy of the submission. The applicant should not submit this verified statement; or

(2) Sign the verified statement using some other form of electronic signature specified by the Commissioner.

14. Add § 2.34 to read as follows:

§ 2.34 Bases for filing.

(a) The application must include one or more of the following four filing bases:

(1) *Use in commerce under section 1(a) of the Act.* The requirements for an application based on section 1(a) of the Act are:

(i) The trademark owner's verified statement that the mark is in use in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the mark was in use in commerce on or in connection with the goods or services listed in the application as of the application filing date;

(ii) The date of the applicant's first use of the mark anywhere on or in connection with the goods or services;

(iii) The date of the applicant's first use of the mark in commerce as a trademark or service mark, specifying the type of commerce; and

(iv) One specimen showing how the applicant actually uses the mark in commerce.

(v) An application may list more than one item of goods, or more than one service, provided the applicant has used the mark on or in connection with all the specified goods or services. The dates of use required by paragraphs (ii) and (iii) of this section may be for only one of the items specified.

(2) *Intent-to-use under section 1(b) of the Act.*

(i) In an application under section 1(b) of the Act, the trademark owner must verify that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(3) *Registration of a mark in a foreign applicant's country of origin under section 44(e) of the Act.* The requirements for an application under section 44(e) of the Act are:

(i) The trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(ii) A certification or certified copy of a registration in the applicant's country of origin showing that the mark has been registered in that country, and that the registration is in full force and effect. The certification or certified copy must show the name of the owner, the mark, and the goods or services for which the mark is registered. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iii) If the record indicates that the foreign registration will expire before the United States registration will issue, the applicant must submit a certification or certified copy from the country of origin to establish that the registration has been renewed and will be in force at the time the United States registration will issue. If the certification or certified copy is not in the English language, the applicant must submit a translation.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(4) *Claim of priority, based upon an earlier-filed foreign application, under section 44(d) of the Act.* The requirements for an application under section 44(d) of the Act are:

(i) A claim of priority, filed within six months of the filing date of the foreign application. Before publication or registration on the Supplemental Register, the applicant must either:

(A) Specify the filing date and country of the first regularly filed foreign application; or

(B) State that the application is based upon a subsequent regularly filed application in the same foreign country, and that any prior-filed application has been withdrawn, abandoned or otherwise disposed of, without having been laid open to public inspection and without having any rights outstanding, and has not served as a basis for claiming a right of priority.

(ii) Include the trademark owner's verified statement that it has a bona fide intention to use the mark in commerce on or in connection with the goods or services listed in the application. If the verification is not filed with the initial application, the verified statement must allege that the applicant had a bona fide intention to use the mark in commerce as of the filing date of the application.

(iii) Before the application can be approved for publication, or for registration on the Supplemental Register, the applicant must establish a basis under section 1(a), section 1(b) or section 44(e) of the Act.

(iv) The application may list more than one item of goods, or more than one service, provided the applicant has a bona fide intention to use the mark in commerce on or in connection with all the specified goods or services.

(b)(1) The applicant may claim more than one basis, provided that the applicant satisfies all requirements for the bases claimed. However, the

applicant may not claim both sections 1(a) and 1(b) for the identical goods or services in the same application.

(2) If the applicant claims more than one basis, the applicant must list each basis, followed by the goods or services to which that basis applies. If some or all of the goods or services are covered by more than one basis, this must be stated.

(c) The word "commerce" means commerce that Congress may lawfully regulate, as specified in section 45 of the Act.

§ 2.37 [Removed]

15. Remove § 2.37.

§ 2.35 [Redesignated as § 2.37]

16. Redesignate § 2.35 as § 2.37.

17. Add new § 2.35 to read as follows:

§ 2.35 Adding, deleting, or substituting bases.

(a) Before publication, the applicant may add or substitute a basis, if the applicant meets all requirements for the new basis, as stated in § 2.34. The applicant may delete a basis at any time.

(b) An applicant may not amend an application to add or substitute a basis after the mark has been published for opposition. The applicant may delete a basis after publication.

(c) When the applicant substitutes a basis, the Office will presume that the original basis was valid and the application will retain the original filing date, unless there is contradictory evidence in the record.

(d) If an applicant properly claims a section 44(d) basis in addition to another basis, the applicant will retain the priority filing date under section 44(d) no matter which basis the applicant perfects.

(e) The applicant may add or substitute a section 44(d) basis only within the six-month priority period following the filing date of the foreign application.

(f) When the applicant adds or substitutes a basis, the applicant must list each basis, followed by the goods or services to which that basis applies.

(g) When the applicant deletes a basis, the applicant must also delete any goods or services covered solely by the deleted basis.

(h) Once an applicant claims a section 1(b) basis as to any or all of the goods or services, the applicant may not amend the application to seek registration under section 1(a) of the Act for those goods or services unless the applicant files an allegation of use under section 1(c) or section 1(d) of the Act.

18. Amend § 2.38 by revising paragraph (a) to read as follows:

§ 2.38 Use by predecessor or by related companies.

(a) If the first use of the mark was by a predecessor in title or by a related company (sections 5 and 45 of the Act), and the use inures to the benefit of the applicant, the dates of first use (§§ 2.34(a)(1)(ii) and (iii)) may be asserted with a statement that first use was by the predecessor in title or by the related company, as appropriate.

* * * * *

§ 2.39 [Removed]

19. Remove and reserve § 2.39.

20. Revise § 2.45 to read as follows:

§ 2.45 Certification mark.

(a) In an application to register a certification mark under section 1(a) of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is used; allege that the applicant exercises legitimate control over the use of the mark; allege that the applicant is not engaged in the production or marketing of the goods or services to which the mark is applied; and include a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

(b) In an application to register a certification mark under section 1(b) or section 44 of the Act, the application shall include all applicable elements required by the preceding sections for trademarks. In addition, the application must: specify the conditions under which the certification mark is intended to be used; allege that the applicant intends to exercise legitimate control over the use of the mark; and allege that the applicant will not engage in the production or marketing of the goods or services to which the mark is applied. When the applicant files an amendment to allege use under section 1(c) of the Act, or a statement of use under section 1(d) of the Act, the applicant must submit a copy of the standards that determine whether others may use the certification mark on their goods and/or in connection with their services.

§ 2.51 [Amended]

21. In § 2.51, remove paragraphs (c), (d) and (e).

22. Revise § 2.52 to read as follows:

§ 2.52 Types of drawings and format for drawings.

(a) A drawing depicts the mark sought to be registered. The drawing must show only one mark. The applicant must include a clear drawing of the mark when the application is filed. There are two types of drawings:

(1) *Typed drawing.* The drawing may be typed if the mark consists only of words, letters, numbers, common forms of punctuation, or any combination of these elements. In a typed drawing, every word or letter must be typed in uppercase type. If the applicant submits a typed drawing, the application is not limited to the mark depicted in any special form or lettering.

(2) *Special form drawing.* A special form drawing is required if the mark has a two or three-dimensional design; or color; or words, letters, or numbers in a particular style of lettering; or unusual forms of punctuation.

(i) Special form drawings must be made with a pen or by a process that will provide high definition when copied. A photolithographic, printer's proof copy, or other high quality reproduction of the mark may be used. Every line and letter, including color lining and lines used for shading, must be black. All lines must be clean, sharp, and solid, and must not be fine or crowded. Gray tones or tints may not be used for surface shading or any other purpose.

(ii) If necessary to adequately depict the commercial impression of the mark, the applicant may be required to submit a drawing that shows the placement of the mark by surrounding the mark with a proportionately accurate broken-line representation of the particular goods, packaging, or advertising on which the mark appears. The applicant must also use broken lines to show any other matter not claimed as part of the mark. For any drawing using broken lines to indicate placement of the mark, or matter not claimed as part of the mark, the applicant must include in the body of the application a written description of the mark and explain the purpose of the broken lines.

(iii) If the mark has three-dimensional features, the applicant must submit a drawing that depicts a single rendition of the mark, and the applicant must include a description of the mark indicating that the mark is three-dimensional.

(iv) If the mark has motion, the applicant may submit a drawing that depicts a single point in the movement, or the applicant may submit a square drawing that contains up to four freeze frames showing various points in the movement, whichever best depicts the commercial impression of the mark. The applicant must also submit a written description of the mark.

(v) If the mark has color, the applicant may claim that all or part of the mark consists of one or more colors. To claim

color, the applicant must submit a statement explaining where the color or colors appear in the mark and the nature of the color(s).

(vi) If a drawing cannot adequately depict all significant features of the mark, the applicant must also submit a written description of the mark.

(3) *Sound, scent, and non-visual marks.* The applicant is not required to submit a drawing if the applicant's mark consists only of a sound, a scent, or other completely non-visual matter. For these types of marks, the applicant must submit a detailed written description of the mark.

(b) *Recommended Format for special form drawings*—(1) *Type of paper and ink.* The drawing should be on a piece of non-shiny, white paper that is separate from the application. Black ink should be used to depict the mark.

(2) *Size of paper and size of mark.* The drawing should be on paper that is 8 to 8½ inches (20.3 to 21.6 cm.) wide and 11 to 11.69 inches (27.9 to 29.7 cm.) long. One of the shorter sides of the sheet should be regarded as its top edge. The drawing should be between 2.5 inches (6.1 cm.) and 4 inches (10.3 cm.) high and/or wide. There should be at least a 1 inch (2.5 cm.) margin between the drawing and the edges of the paper, and at least a 1 inch (2.5 cm.) margin between the drawing and the heading.

(3) *Heading.* Across the top of the drawing, beginning one inch (2.5 cm.) from the top edge, the applicant should type the following: applicant's name; applicant's address; the goods or services recited in the application, or a typical item of the goods or services if numerous items are recited in the application; the date of first use of the mark and first use of the mark in commerce in an application under section 1(a) of the Act; the priority filing date of the relevant foreign application in an application claiming the benefit of a prior foreign application under section 44(d) of the Act. If the information in the heading is lengthy, the heading may continue onto a second page, but the mark should be depicted on the first page.

(c) *Drawings in electronically transmitted applications.* For an electronically transmitted application, if the drawing is in special form, the applicant must attach a digitized image of the mark to the electronic submission.

23. Revise § 2.56 to read as follows:

§ 2.56 Specimens.

(a) An application under section 1(a) of the Act, an amendment to allege use under § 2.76, and a statement of use under § 2.88 must each include one specimen showing the mark as used on or in connection with the goods, or in the sale or advertising of the services in commerce.

(b)(1) A trademark specimen is a label, tag, or container for the goods, or a display associated with the goods. The Office may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods.

(2) A service mark specimen must show the mark as actually used in the sale or advertising of the services.

(3) A collective trademark or collective service mark specimen must show how a member uses the mark on the member's goods or in the sale or advertising of the member's services.

(4) A collective membership mark specimen must show use by members to indicate membership in the collective organization.

(5) A certification mark specimen must show how a person other than the owner uses the mark to certify regional or other origin, material, mode of manufacture, quality, accuracy, or other characteristics of that person's goods or services; or that members of a union or other organization performed the work or labor on the goods or services.

(c) A photocopy or other reproduction of a specimen of the mark as actually used on or in connection with the goods, or in the sale or advertising of the services, is acceptable. However, a photocopy of the drawing required by § 2.51 is not a proper specimen.

(d)(1) The specimen should be flat, and not larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen of this size is not available, the applicant may substitute a suitable photograph or other facsimile.

(2) If the applicant files a specimen exceeding these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper.

(3) In the absence of non-bulky alternatives, the Office may accept an audio or video cassette tape recording, CD–ROM, or other appropriate medium.

(4) For an electronically transmitted application, or other electronic submission, the specimen must be submitted as a digitized image.

§ 2.57 [Removed]

24. Remove and reserve § 2.57.

§ 2.58 [Removed]

25. Remove and reserve § 2.58.

26. Revise § 2.59 to read as follows:

§ 2.59 Filing substitute specimen(s).

(a) In an application under section 1(a) of the Act, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. The applicant must verify by an affidavit or declaration under § 2.20 that the substitute specimens were in use in commerce at least as early as the filing date of the application. Verification is not required if the specimen is a duplicate or facsimile of a specimen already of record in the application.

(b) In an application under section 1(b) of the Act, after filing either an amendment to allege use under § 2.76 or a statement of use under § 2.88, the applicant may submit substitute specimens of the mark as used on or in connection with the goods, or in the sale or advertising of the services. If the applicant submits substitute specimen(s), the applicant must:

(1) For an amendment to allege use under § 2.76, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce prior to filing the amendment to allege use.

(2) For a statement of use under § 2.88, verify by affidavit or declaration under § 2.20 that the applicant used the substitute specimen(s) in commerce either prior to filing the statement of use or prior to the expiration of the deadline for filing the statement of use.

27. Revise § 2.66 to read as follows:

§ 2.66 Revival of abandoned applications.

(a) The applicant may file a petition to revive an application abandoned because the applicant did not timely respond to an Office action or notice of allowance. The applicant must file the petition:

(1) Within two months of the mailing date of the notice of abandonment; or

(2) Within two months of actual knowledge of the abandonment, if the applicant did not receive the notice of abandonment, and the applicant was diligent in checking the status of the application.

(b) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to an Office action are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the response on or before the due date was unintentional; and

(3) Unless the applicant alleges that it did not receive the Office action, the proposed response.

(c) The requirements for filing a petition to revive an application abandoned because the applicant did not timely respond to a notice of allowance are:

(1) The petition fee required by § 2.6;

(2) A statement, signed by someone with firsthand knowledge of the facts, that the delay in filing the statement of use (or request for extension of time to file a statement of use) on or before the due date was unintentional;

(3) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the required fees for the number of requests for extensions of time to file a statement of use that the applicant should have filed under § 2.89 if the application had never been abandoned;

(4) Unless the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, either a statement of use under § 2.88 or a request for an extension of time to file a statement of use under § 2.89; and

(5) Unless a statement of use is filed with or before the petition, or the applicant alleges that it did not receive the notice of allowance and requests cancellation of the notice of allowance, the applicant must file any further requests for extensions of time to file a statement of use under § 2.89 that become due while the petition is pending, or file a statement of use under § 2.88.

(d) In an application under section 1(b) of the Act, the Commissioner will not grant the petition if this would permit the filing of a statement of use more than 36 months after the mailing date of the notice of allowance under section 13(b)(2) of the Act.

(e) The Commissioner will grant the petition to revive if the applicant complies with the requirements listed above and establishes that the delay in responding was unintentional.

(f) If the Commissioner denies a petition, the applicant may request reconsideration, if the applicant:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

28. Revise § 2.71 to read as follows:

§ 2.71 Amendments to correct informalities.

The applicant may amend the application during the course of examination, when required by the Office or for other reasons.

(a) The applicant may amend the application to clarify or limit, but not to broaden, the identification of goods and/or services.

(b)(1) If the declaration or verification of an application under § 2.33 is unsigned or signed by the wrong party, the applicant may submit a substitute verification or declaration under § 2.20.

(2) If the declaration or verification of a statement of use under § 2.88, or a request for extension of time to file a statement of use under § 2.89, is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the statutory deadline for filing the statement of use.

(c) The applicant may amend the dates of use, provided that the applicant supports the amendment with an affidavit or declaration under § 2.20, except that the following amendments are not permitted:

(1) In an application under section 1(a) of the Act, the applicant may not amend the application to specify a date of use that is subsequent to the filing date of the application;

(2) In an application under section 1(b) of the Act, after filing a statement of use under § 2.88, the applicant may not amend the statement of use to specify a date of use that is subsequent to the expiration of the deadline for filing the statement of use.

(d) The applicant may amend the application to correct the name of the applicant, if there is a mistake in the manner in which the name of the applicant is set out in the application. The amendment must be supported by an affidavit or declaration under § 2.20, signed by the applicant. However, the application cannot be amended to set forth a different entity as the applicant. An application filed in the name of an entity that did not own the mark as of the filing date of the application is void.

29. Revise § 2.72 to read as follows:

§ 2.72 Amendments to description or drawing of the mark.

(a) In an application based on use in commerce under section 1(a) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens originally filed, or substitute specimens filed under § 2.59(a), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(b) In an application based on a bona fide intention to use a mark in commerce under section 1(b) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The specimens filed with an amendment to allege use or statement of use, or substitute specimens filed under § 2.59(b), support the proposed amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

(c) In an application based on a claim of priority under section 44(d) of the Act, or on a mark duly registered in the country of origin of the foreign applicant under section 44(e) of the Act, the applicant may amend the description or drawing of the mark only if:

(1) The description or drawing of the mark in the foreign registration certificate supports the amendment; and

(2) The proposed amendment does not materially alter the mark. The Office will determine whether a proposed amendment materially alters a mark by comparing the proposed amendment with the description or drawing of the mark filed with the original application.

30. Amend § 2.76 by revising paragraphs (b), (e)(2), and (e)(3), and adding paragraphs (i) and (j) to read as follows:

§ 2.76 Amendment to allege use.

* * * * *

(b) A complete amendment to allege use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, and those goods or services specified in the application on or in connection with which the applicant uses the mark in commerce.

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) * * *

(2) One specimen or facsimile of the mark as used in commerce; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person

properly authorized to sign on behalf of the applicant that the mark is in use in commerce.

* * * * *

(i) If the applicant does not file the amendment to allege use within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(j) For the requirements for a multiple class application, see § 2.86.

31. Revise § 2.86 to read as follows:

§ 2.86 Application may include multiple classes.

(a) In a single application, an applicant may apply to register the same mark for goods and/or services in multiple classes. The applicant must:

(1) Specifically identify the goods or services in each class;

(2) Submit an application filing fee for each class; and

(3) Include either dates of use (see §§ 2.34(a)(1)(ii) and (iii)) and one specimen for each class, or a statement of a bona fide intention to use the mark in commerce on or in connection with all the goods or services specified in each class. The applicant may not claim both use in commerce and a bona fide intention to use the mark in commerce for the identical goods or services in one application.

(b) An amendment to allege use under § 2.76 or a statement of use under § 2.88 must include, for each class, the required fee, dates of use, and one specimen. The applicant may not file the amendment to allege use or statement of use until the applicant has used the mark on all the goods or services, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

(c) The Office will issue a single certificate of registration for the mark, unless the applicant files a request to divide. See § 2.87 for information regarding requests to divide.

32. Amend § 2.88 by revising paragraphs (b) and (e) and by adding paragraphs (k) and (l) to read as follows:

§ 2.88 Filing statement of use after notice of allowance.

* * * * *

(b) A complete statement of use must include:

(1) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that:

(i) The applicant believes it is the owner of the mark; and

(ii) The mark is in use in commerce, specifying the date of the applicant's first use of the mark and first use of the mark in commerce, the type of commerce, and those goods or services specified in the notice of allowance on or in connection with which the applicant uses the mark in commerce;

(2) One specimen of the mark as actually used in commerce. See § 2.56 for the requirements for specimens; and

(3) The fee per class required by § 2.6.

* * * * *

(e) The Office will review a timely filed statement of use to determine whether it meets the following minimum requirements:

(1) The fee for at least a single class, required by § 2.6;

(2) One specimen of the mark as used in commerce;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant that the mark is in use in commerce. If the verification or declaration is unsigned or signed by the wrong party, the applicant must submit a substitute verification on or before the statutory deadline for filing the statement of use.

* * * * *

(k) If the statement of use is not filed within a reasonable time after the date it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the mark is still in use in commerce.

(l) For the requirements for a multiple class application, see § 2.86.

33. Amend § 2.89 by revising paragraphs (a), (b), and (d) and by adding paragraph (h) to read as follows:

§ 2.89 Extensions of time for filing a statement of use.

(a) The applicant may request a six-month extension of time to file the statement of use required by § 2.88. The extension request must be filed within six months of the mailing date of the notice of allowance under section 13(b)(2) of the Act and must include the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6; and

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification within six months of the mailing date of the notice of allowance.

(b) Before the expiration of the previously granted extension of time, the applicant may request further six-month extensions of time to file the statement of use by submitting the following:

(1) A written request for an extension of time to file the statement of use;

(2) The fee per class required by § 2.6;

(3) A statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the applicant (see § 2.33(a)(2)) that the applicant still has a bona fide intention to use the mark in commerce, specifying the relevant goods or services. If the verification is unsigned or signed by the wrong party, the applicant must submit a substitute verification before the expiration of the previously granted extension; and

(4) A showing of good cause, as specified in paragraph (d) of this section.

* * * * *

(d) The showing of good cause must include a statement of the applicant's ongoing efforts to make use of the mark in commerce on or in connection with each of the relevant goods or services. Those efforts may include product or service research or development, market research, manufacturing activities, promotional activities, steps to acquire distributors, steps to obtain governmental approval, or other similar activities. In the alternative, the applicant must submit a satisfactory explanation for the failure to make efforts to use the mark in commerce.

* * * * *

(h) If the extension request is not filed within a reasonable time after it is signed, the Office may require a substitute verification or declaration under § 2.20 stating that the applicant still has a bona fide intention to use the mark in commerce.

34. Amend § 2.101 by revising paragraph (d)(1) to read as follows:

§ 2.101 Filing an opposition.

* * * * *

(d)(1) The opposition must be accompanied by the required fee for each party joined as opposer for each class in the application for which registration is opposed (see § 2.6). If no fee, or a fee insufficient to pay for one person to oppose the registration of a mark in at least one class, is submitted within thirty days after publication of the mark to be opposed or within an extension of time for filing an

opposition, the opposition will not be refused if the required fee(s) is submitted to the Patent and Trademark Office within the time limit set in the notification of this defect by the Office.

* * * * *

35. Amend § 2.111 by revising paragraph (c)(1) to read as follows:

§ 2.111 Filing petition for cancellation.

* * * * *

(c)(1) The petition must be accompanied by the required fee for each class in the registration for which cancellation is sought (see § 2.6). If the fee submitted is insufficient for a cancellation against all of the classes in the registration, and the particular class or classes against which the cancellation is filed are not specified, the Office will issue a written notice allowing petitioner a set time in which to submit the required fees(s) (provided that the five-year period, if applicable, has not expired) or to specify the class or classes sought to be cancelled. If the required fee(s) is not submitted, or the specification made, within the time set in the notice, the cancellation will be presumed to be against the class or classes in ascending order, beginning with the lowest numbered class, and including the number of classes in the registration for which the fees submitted are sufficient to pay the fee due for each class.

* * * * *

36. Amend § 2.146 by revising paragraph (d) and by adding paragraphs (i) and (j) to read as follows:

§ 2.146 Petitions to the Commissioner.

* * * * *

(d) A petition must be filed within two months of the mailing date of the action from which relief is requested, unless a different deadline is specified elsewhere in this chapter.

* * * * *

(i) Where a petitioner seeks to revive or reinstate an application or registration that was abandoned or cancelled because papers were lost or mishandled by the Office, the Commissioner may deny the petition if the petitioner was not diligent in checking the status of the application or registration.

(j) If the Commissioner denies a petition, the petitioner may request reconsideration, if the petitioner:

(1) Files the request within two months of the mailing date of the decision denying the petition; and

(2) Pays a second petition fee under § 2.6.

37. Revise § 2.151 to read as follows:

§ 2.151 Certificate.

When the Office determines that a mark is registrable, a certificate will be issued stating that the applicant is entitled to registration on the Principal Register or on the Supplemental Register. The certificate will state the date on which the application for registration was filed in the Office, the act under which the mark is registered, the date of issue, and the number of the registration. A reproduction of the mark and pertinent data from the application will be sent with the certificate. A notice of the requirements of section 8 of the Act will accompany the certificate.

38. Revise § 2.155 to read as follows:

§ 2.155 Notice of publication.

The Office will send the registrant a notice of publication of the mark and of the requirement for filing the affidavit or declaration required by section 8 of the Act.

39. Revise § 2.156 to read as follows:

§ 2.156 Not subject to opposition; subject to cancellation.

The published mark is not subject to opposition, but is subject to petitions to cancel as specified in § 2.111 and to cancellation for failure to file the affidavit or declaration required by section 8 of the Act.

40. Add § 2.160 to read as follows:

§ 2.160 Affidavit or declaration of continued use or excusable nonuse required to avoid cancellation of registration.

(a) During the following time periods, the owner of the registration must file an affidavit or declaration of continued use or excusable nonuse, or the registration will be cancelled:

(1)(i) For registrations issued under the Trademark Act of 1946, between the fifth and the sixth year after the date of registration; or

(ii) For registrations issued under prior Acts, between the fifth and the sixth year after the date of publication under section 12(c) of the Act; and

(2) For all registrations, within the year before the end of every ten-year period after the date of registration.

(3) The affidavit or declaration may be filed within a grace period of six months after the end of the deadline set forth in paragraphs (a)(1) and (a)(2), with payment of the grace period surcharge required by section 8(c)(1) of the Act and § 2.6.

(b) For the requirements for the affidavit or declaration, see § 2.161.

41. Revise § 2.161 to read as follows:

§ 2.161 Requirements for a complete affidavit or declaration of continued use or excusable nonuse.

A complete affidavit or declaration under section 8 of the Act must:

(a) Be filed by the owner within the period set forth in section 8 of the Act;

(b) Include a statement that is signed and verified (sworn to) or supported by a declaration under § 2.20 by a person properly authorized to sign on behalf of the owner, attesting to the continued use or excusable nonuse of the mark within the period set forth in section 8 of the Act. A person who is properly authorized to sign on behalf of the owner includes a person with legal authority to bind the owner and/or a person with firsthand knowledge and actual or implied authority to act on behalf of the owner.

(c) Include the registration number;

(d)(1) Include the fee required by § 2.6 for each class of goods or services that the affidavit or declaration covers;

(2) If the affidavit or declaration is filed during the grace period under section 8(c)(1) of the Act, include the late fee per class required by § 2.6;

(3) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.164 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class;

(e)(1) Specify the goods or services for which the mark is in use in commerce, and/or the goods or services for which excusable nonuse is claimed under § 2.161(f)(2);

(2) If the affidavit or declaration covers less than all the goods or services, or less than all the classes in the registration, specify the goods or services being deleted from the registration;

(f)(1) State that the registered mark is in use in commerce on or in connection with the goods or services in the registration; or

(2) If the registered mark is not in use in commerce on or in connection with all the goods or services in the registration, set forth the date when use of the mark in commerce stopped and the approximate date when use is expected to resume; and recite facts to show that nonuse as to those goods or

services is due to special circumstances that excuse the nonuse and is not due to an intention to abandon the mark. If the facts recited are found insufficient, further evidence or explanation may be submitted, if the requirements of § 2.164 are met;

(g) Include a specimen showing current use of the mark for each class of goods or services, unless excusable nonuse is claimed under § 2.161(f)(2). The specimen must:

(1) Show the mark as actually used on or in connection with the goods or in the sale or advertising of the services. A photocopy or other reproduction of the specimen showing the mark as actually used is acceptable. However, a photocopy that merely reproduces the registration certificate is not a proper specimen;

(2) Be flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long. If a specimen exceeds these size requirements (a "bulky specimen"), the Office will create a facsimile of the specimen that meets the requirements of the rule (i.e., is flat and no larger than 8½ inches (21.6 cm.) wide by 11.69 inches (29.7 cm.) long) and put it in the file wrapper;

(h) If the registrant is not domiciled in the United States, the registrant must list the name and address of a United States resident upon whom notices or process in proceedings affecting the registration may be served.

42. Revise § 2.162 to read as follows:

§ 2.162 Notice to registrant.

When a certificate of registration is originally issued, the Office includes a notice of the requirement for filing the affidavit or declaration of use or excusable nonuse under section 8 of the Act. However the affidavit or declaration must be filed within the time period required by section 8 of the Act even if this notice is not received.

43. Revise § 2.163 to read as follows:

§ 2.163 Acknowledgment of receipt of affidavit or declaration.

The Office will issue a notice as to whether an affidavit or declaration is acceptable, or the reasons for refusal.

(a) If the owner of the registration filed the affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected if the requirements of § 2.164 are met.

(b) A response to the refusal must be filed within six months of the mailing date of the Office action, or before the end of the filing period set forth in section 8(a) or section 8(b) of the Act, whichever is later. If no response is filed within this time period, the registration will be cancelled.

44. Add § 2.164 to read as follows:

§ 2.164 Correcting deficiencies in affidavit or declaration.

(a) If the owner of the registration files an affidavit or declaration within the time periods set forth in section 8 of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in affidavits or declarations timely filed within the periods set forth in sections 8(a) and 8(b) of the Act.* If the owner timely files the affidavit or declaration within the relevant filing period set forth in section 8(a) or section 8(b) of the Act, deficiencies may be corrected before the end of this filing period without paying a deficiency surcharge. Deficiencies may be corrected after the end of this filing period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(2) *Correcting deficiencies in affidavits or declarations filed during the grace period.* If the affidavit or declaration is filed during the six-month grace period provided by section 8(c)(1) of the Act, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 8(c)(2) of the Act and § 2.6.

(b) If the affidavit or declaration is not filed within the time periods set forth in section 8 of the Act, or if it is filed within that period by someone other than the owner, the registration will be cancelled. These deficiencies cannot be cured.

45. Revise § 2.165 to read as follows:

§ 2.165 Petition to Commissioner to review refusal.

(a) A response to the examiner's initial refusal to accept an affidavit or declaration is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.163(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the affidavit or declaration, a petition to the Commissioner to review the action may be filed. The petition must be filed within six months of the mailing date of the action maintaining the refusal, or the Office will cancel the registration and issue a notice of the cancellation.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

46. Revise § 2.166 to read as follows:

§ 2.166 Affidavit of continued use or excusable nonuse combined with renewal application.

An affidavit or declaration under section 8 of the Act and a renewal application under section 9 of the Act may be combined into a single document, provided that the document meets the requirements of both sections 8 and 9 of the Act.

47. Amend § 2.167 by revising paragraph (c) to read as follows:

§ 2.167 Affidavit or declaration under section 15.

* * * * *

(c) Recite the goods or services stated in the registration on or in connection with which the mark has been in continuous use in commerce for a period of five years after the date of registration or date of publication under section 12(c) of the Act, and is still in use in commerce;

* * * * *

48. Revise § 2.168 to read as follows:

§ 2.168 Affidavit or declaration under section 15 combined with affidavit or declaration under section 8, or with renewal application.

(a) The affidavit or declaration filed under section 15 of the Act may also be used as the affidavit or declaration required by section 8, if the affidavit or declaration meets the requirements of both sections 8 and 15.

(b) The affidavit or declaration filed under section 15 of the Act may be combined with an application for renewal of a registration under section 9 of the Act, if the requirements of both sections 9 and 15 are met.

49. Amend § 2.173 by revising the heading and paragraph (a) to read as follows:

§ 2.173 Amendment of registration.

(a) The registrant may apply to amend the registration or to disclaim part of the mark in the registration. A written request specifying the amendment or disclaimer must be submitted. The request must be signed by the registrant and verified or supported by a declaration under § 2.20, and accompanied by the required fee. If the amendment involves a change in the mark, a new specimen showing the mark as used on or in connection with the goods or services, and a new drawing of the amended mark, must be submitted. The certificate of registration or, if the certificate is lost or destroyed, a certified copy of the certificate, must also be submitted. The registration as amended must still contain registrable matter, and the mark as amended must be registrable as a whole. An amendment or disclaimer must not

materially alter the character of the mark.

* * * * *

50. Amend § 2.181 by revising paragraph (a)(1) to read as follows:

§ 2.181 Term of original registrations and renewals.

(a)(1) Subject to the provisions of section 8 of the Act requiring an affidavit or declaration of continued use or excusable nonuse, registrations issued or renewed under the Act, prior to November 16, 1989, whether on the Principal Register or on the Supplemental Register, remain in force for twenty years from their date of issue or expiration, and may be renewed for periods of ten years from the expiring period unless previously cancelled or surrendered.

* * * * *

51. Revise § 2.182 to read as follows:

§ 2.182 Time for filing renewal application.

An application for renewal must be filed within one year before the expiration date of the registration, or within the six-month grace period after the expiration date of the registration. If no renewal application is filed within this period, the registration will expire.

52. Revise § 2.183 to read as follows:

§ 2.183 Requirements for a complete renewal application.

A complete renewal application must include:

(a) A request for renewal of the registration, signed by the registrant or the registrant's representative;

(b) The fee required by § 2.6 for each class;

(c) The additional fee required by § 2.6 for each class if the renewal application is filed during the six-month grace period set forth in section 9(a) of the Act;

(d) If the registrant is not domiciled in the United States, the name and address of a United States resident on whom notices or process in proceedings affecting the registration may be served; and

(e) If the renewal application covers less than all the goods or services in the registration, a list of the particular goods or services to be renewed.

(f) If at least one fee is submitted for a multi-class registration, but the class(es) to which the fee(s) should be applied are not specified, the Office will issue a notice requiring either the submission of additional fee(s) or an indication of the class(es) to which the original fee(s) should be applied. Additional fee(s) may be submitted if the requirements of § 2.185 are met. If the required fee(s) are not submitted and the class(es) to which the original fee(s) should be applied are not specified, the Office will presume that the fee(s) cover the classes in ascending order, beginning with the lowest numbered class.

53. Revise § 2.184 to read as follows:

§ 2.184 Refusal of renewal.

(a) If the renewal application is not acceptable, the Office will issue a notice stating the reason(s) for refusal.

(b) A response to the refusal of renewal must be filed within six months of the mailing date of the Office action, or before the expiration date of the registration, whichever is later, or the registration will expire.

(c) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire.

54. Add § 2.185 to read as follows:

§ 2.185 Correcting deficiencies in renewal application.

(a) If the renewal application is filed within the time periods set forth in section 9(a) of the Act, deficiencies may be corrected, as follows:

(1) *Correcting deficiencies in renewal applications filed within one year before the expiration date of the registration.* If the renewal application is filed within one year before the expiration date of the registration, deficiencies may be corrected before the expiration date of the registration without paying a deficiency surcharge. Deficiencies may be corrected after the expiration date of the registration with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(2) *Correcting deficiencies in renewal applications filed during the grace period.* If the renewal application is filed during the six-month grace period, deficiencies may be corrected before the expiration of the grace period without paying a deficiency surcharge. Deficiencies may be corrected after the expiration of the grace period with payment of the deficiency surcharge required by section 9(a) of the Act and § 2.6.

(b) If the renewal application is not filed within the time periods set forth in section 9(a) of the Act, the registration will expire. This deficiency cannot be cured.

55. Add § 2.186 to read as follows:

§ 2.186 Petition to Commissioner to review refusal of renewal.

(a) A response to the examiner's initial refusal of the renewal application is required before filing a petition to the Commissioner, unless the examiner directs otherwise. See § 2.184(b) for the deadline for responding to an examiner's Office action.

(b) If the examiner maintains the refusal of the renewal application, a petition to the Commissioner to review the refusal may be filed. The petition must be filed within six months of the mailing date of the Office action maintaining the refusal, or the renewal application will be abandoned and the registration will expire.

(c) A decision by the Commissioner is necessary before filing an appeal or commencing a civil action in any court.

PART 3—ASSIGNMENT, RECORDING AND RIGHTS OF ASSIGNEE

56. The authority citation for part 3 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

56a. Revise § 3.16 to read as follows:

§ 3.16 Assignability of trademarks prior to filing of an allegation of use statement.

Before an allegation of use under either 15 U.S.C. 1051(c) or 15 U.S.C. 1051(d) is filed, an applicant may only assign an application to register a mark under 15 U.S.C. 1051(b) to a successor to the applicant's business, or portion of the business to which the mark pertains, if that business is ongoing and existing.

57. Amend § 3.24 by revising the heading to read as follows:

§ 3.24 Requirements for documents and cover sheets relating to patents and patent applications.

* * * * *

58. Add § 3.25 to read as follows:

§ 3.25 Recording requirements for trademark applications and registrations.

(a) *Documents affecting title.* To record documents affecting title, a legible cover sheet (see § 3.31) and one of the following must be submitted:

(1) The original document;

(2) A copy of the document;

(3) A copy of an extract from the document evidencing the effect on title; or

(4) A statement signed by both the party conveying the interest and the party receiving the interest explaining how the conveyance affects title.

(b) *Name changes.* Only a legible cover sheet is required (See § 3.31).

(c) *All documents.* All documents submitted to the Office should be on white and non-shiny paper that is no larger than 8½ × 14 inches (21.6 × 33.1 cm.) with a one-inch (2.5 cm) margin on all sides. Only one side of each page should be used.

59. Revise § 3.28 to read as follows:

§ 3.28 Requests for recording.

Each document submitted to the Office for recording must include at least one cover sheet as specified in § 3.31 referring either to those patent applications and patents, or to those trademark applications and registrations, against which the document is to be recorded. If a document to be recorded includes interests in, or transactions involving, both patents and trademarks, separate patent and trademark cover sheets should be submitted. Only one set of documents and cover sheets to be recorded should be filed. If a document to be recorded is not accompanied by a completed cover sheet, the document and the incomplete cover sheet will be returned pursuant to § 3.51 for proper completion. The document and a completed cover sheet should be resubmitted.

60. Amend § 3.31 by revising paragraphs (a) and (b) and by adding paragraphs (d) and (e) to read as follows:

§ 3.31 Cover sheet content.

(a) Each patent or trademark cover sheet required by § 3.28 must contain:

(1) The name of the party conveying the interest;

(2) The name and address of the party receiving the interest;

(3) A description of the interest conveyed or transaction to be recorded;

(4) Identification of the interests involved:

(i) *For trademark assignments and trademark name changes:* Each trademark registration number and each trademark application number, if known, against which the Office is to record the document. If the trademark application number is not known, a copy of the application or a reproduction of the trademark must be submitted, along with an estimate of the date that the Office received the application; or

(ii) *For any other document affecting title to a trademark or patent application, registration or patent:* Each trademark or patent application number or each trademark registration number or patent against which the document is to be recorded;

(5) The name and address of the party to whom correspondence concerning the request to record the document should be mailed;

(6) The date the document was executed;

(7) An indication that the assignee of a trademark application or registration who is not domiciled in the United States has designated a domestic representative (see § 3.61); and

(8) The signature of the party submitting the document.

(b) A cover sheet should not refer to both patents and trademarks, since any information, including information about pending patent applications, submitted with a request for recordation of a document against a trademark application or trademark registration will become public record upon recordation.

* * * * *

(d) Each trademark cover sheet required by § 3.28 seeking to record a document against a trademark application or registration should include, in addition to the serial number or registration number of the trademark, identification of the trademark or a description of the trademark, against which the Office is to record the document.

(e) Each patent and trademark cover sheet required by § 3.28 should contain the number of applications, patents or registrations identified in the cover sheet and the total fee.

PART 6—CLASSIFICATION OF GOODS AND SERVICES UNDER THE TRADEMARK ACT

61. The authority citation for part 6 continues to read as follows:

Authority: 15 U.S.C. 1112, 1123; 35 U.S.C. 6, unless otherwise noted.

62. Revise § 6.1 to read as follows:

§ 6.1 International schedule of classes of goods and services.

Goods

1. Chemicals used in industry, science and photography, as well as in agriculture, horticulture and forestry; unprocessed artificial resins; unprocessed plastics; manures; fire extinguishing compositions; tempering and soldering preparations; chemical substances for preserving foodstuffs; tanning substances; adhesives used in industry.

2. Paints, varnishes, lacquers; preservatives against rust and against deterioration of wood; colorants; mordants; raw natural resins; metals in foil and powder form for painters, decorators, printers and artists.

3. Bleaching preparations and other substances for laundry use; cleaning, polishing, scouring and abrasive preparations; soaps; perfumery, essential oils, cosmetics, hair lotions; dentifrices.

4. Industrial oils and greases; lubricants; dust absorbing, wetting and binding compositions; fuels (including motor spirit) and illuminants; candles, wicks.

5. Pharmaceutical, veterinary, and sanitary preparations; dietetic substances adapted for medical use, food for babies; plasters, materials for dressings; material for stopping teeth, dental wax; disinfectants; preparations for destroying vermin; fungicides, herbicides.

6. Common metals and their alloys; metal building materials; transportable buildings of metal; materials of metal for railway tracks; nonelectric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; safes; goods of common metal not included in other classes; ores.

7. Machines and machine tools; motors and engines (except for land vehicles); machine coupling and transmission components (except for land vehicles); agricultural implements other than hand-operated; incubators for eggs.

8. Hand tools and implements (hand-operated); cutlery; side arms; razors.

9. Scientific, nautical, surveying, electric, photographic, cinematographic, optical, weighing, measuring, signalling, checking (supervision), life-saving and teaching apparatus and instruments; apparatus for recording, transmission or reproduction of sound or images; magnetic data carriers, recording discs; automatic vending machines and mechanisms for coin operated apparatus; cash registers, calculating machines, data processing equipment and computers; fire extinguishing apparatus.

10. Surgical, medical, dental, and veterinary apparatus and instruments, artificial limbs, eyes, and teeth; orthopedic articles; suture materials.

11. Apparatus for lighting, heating, steam generating, cooking, refrigerating, drying, ventilating, water supply, and sanitary purposes.

12. Vehicles; apparatus for locomotion by land, air, or water.

13. Firearms; ammunition and projectiles; explosives; fireworks.

14. Precious metals and their alloys and goods in precious metals or coated therewith, not included in other classes; jewelry, precious stones; horological and chronometric instruments.

15. Musical instruments.

16. Paper, cardboard and goods made from these materials, not included in other classes; printed matter; bookbinding material; photographs; stationery; adhesives for stationery or household purposes; artists' materials; paint brushes; typewriters and office requisites (except furniture); instructional and teaching material (except apparatus); plastic materials for packaging (not included in other

classes); playing cards; printers' type; printing blocks.

17. Rubber, gutta-percha, gum, asbestos, mica and goods made from these materials and not included in other classes; plastics in extruded form for use in manufacture; packing, stopping and insulating materials; flexible pipes, not of metal.

18. Leather and imitations of leather, and goods made of these materials and not included in other classes; animal skins, hides; trunks and travelling bags; umbrellas, parasols and walking sticks; whips, harness and saddlery.

19. Building materials (non-metallic); nonmetallic rigid pipes for building; asphalt, pitch and bitumen; nonmetallic transportable buildings; monuments, not of metal.

20. Furniture, mirrors, picture frames; goods (not included in other classes) of wood, cork, reed, cane, wicker, horn, bone, ivory, whalebone, shell, amber, mother-of-pearl, meerschaum and substitutes for all these materials, or of plastics.

21. Household or kitchen utensils and containers (not of precious metal or coated therewith); combs and sponges; brushes (except paint brushes); brush-making materials; articles for cleaning purposes; steel-wool; unworked or semi-worked glass (except glass used in building); glassware, porcelain and earthenware not included in other classes.

22. Ropes, string, nets, tents, awnings, tarpaulins, sails, sacks and bags (not included in other classes); padding and stuffing materials (except of rubber or plastics); raw fibrous textile materials.

23. Yarns and threads, for textile use.

24. Textiles and textile goods, not included in other classes; beds and table covers.

25. Clothing, footwear, headgear.

26. Lace and embroidery, ribbons and braid; buttons, hooks and eyes, pins and needles; artificial flowers.

27. Carpets, rugs, mats and matting, linoleum and other materials for covering existing floors; wall hangings (non-textile).

28. Games and playthings; gymnastic and sporting articles not included in other classes; decorations for Christmas trees.

29. Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, milk and milk products; edible oils and fats.

30. Coffee, tea, cocoa, sugar, rice, tapioca, sago, artificial coffee; flour and preparations made from cereals, bread, pastry and confectionery, ices; honey, treacle; yeast, baking powder; salt, mustard; vinegar, sauces (condiments); spices; ice.

31. Agricultural, horticultural and forestry products and grains not included in other classes; live animals; fresh fruits and vegetables; seeds, natural plants and flowers; foodstuffs for animals; malt.

32. Beers; mineral and aerated waters and other nonalcoholic drinks; fruit drinks and fruit juices; syrups and other preparations for making beverages.

33. Alcoholic beverages (except beers).

34. Tobacco; smokers' articles; matches.

Services

35. Advertising; business management; business administration; office functions.

36. Insurance; financial affairs; monetary affairs; real estate affairs.

37. Building construction; repair; installation services.

38. Telecommunications.

39. Transport; packaging and storage of goods; travel arrangement.

40. Treatment of materials.

41. Education; providing of training; entertainment; sporting and cultural activities.

42. Providing of food and drink; temporary accommodation; medical, hygienic and beauty care; veterinary and agricultural services; legal services; scientific and industrial research; computer programming; services that cannot be classified in other classes.

Dated: May 3, 1999.

Q. Todd Dickinson,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

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DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

RIN 2900–AH43

Schedule for Rating Disabilities; Eye

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend that portion of its rating schedule that addresses the eye. The intended effect of this action is to ensure that this section of the Schedule for Rating Disabilities uses current medical terminology and provides unambiguous criteria for evaluating disabilities of the eye.

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are in response to "RIN 2900–AH43." All written comments received will be available for public inspection at the above address in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: Caroll McBrine, M.D., Consultant, Regulations Staff (211B), Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Ave., NW, Washington, DC, 20420, (202) 273–7230.

SUPPLEMENTARY INFORMATION: As part of a comprehensive review of its rating schedule, VA published an advance notice of proposed rulemaking regarding impairments of the eye, ear and other sense organs in the **Federal Register** on May 2, 1991 (56 FR 20170). In response, we received a number of comments from private and VA physicians and from other VA employees. For the reasons discussed below, this document proposes to amend the portion of the rating schedule that addresses disabilities of the eye.

The comments received included suggestions that we delete several diagnostic codes, provide diagnostic codes for additional conditions, and change evaluation criteria for a number of conditions. We have considered these comments as explained below.

In addition to publishing an advance notice of proposed rulemaking, we also contracted with an outside consultant to recommend changes to ensure that the schedule uses current medical terminology and unambiguous criteria, and that it reflects medical advances that have occurred since the last review. The consultant convened a panel of non-VA specialists to review the portion of the rating schedule that addresses eye conditions in order to formulate recommendations. We are proposing to adopt many of the recommendations the contract consultants submitted. However, we do not propose to adopt recommendations that address areas, such as frequency of examinations, that are clearly beyond the scope of the contract or that deal with issues that affect the internal consistency of the rating schedule, such as percentage evaluations. Assignments of disability

ratings are supposed to reflect relative levels of economic impairment, and the consultants did not consider eye disabilities in relation to the other parts of the rating schedule in making their recommendations. Relevant recommendations from these individuals are discussed below.

We determined that a number of grammatical changes would be helpful in eliminating ambiguity and ensuring that the schedule presents the rating criteria for listed disabilities as precisely as possible. We are thus proposing editorial changes, primarily in syntax and punctuation, throughout this portion of the schedule. These changes, which will not be addressed individually, are intended to clarify the rating criteria and represent no substantive amendment.

For VA purposes, the evaluation of visual impairment is based on impairment of visual acuity, visual field, and muscle function. General instructions for rating these disabilities are currently contained in §§ 4.75 through 4.84a of 38 CFR, and in notes appended to various diagnostic codes. The material is randomly organized, however, and we propose to reorganize it so that all material related to a single issue is grouped together. We propose to reorganize these instructions under four topics: (1) General considerations for evaluating visual impairment; (2) Visual acuity; (3) Visual fields; and (4) Muscle function.

We propose that § 4.75, "General considerations for evaluating visual impairment," be composed of six paragraphs: (a) Visual impairment, (b) Examination for visual impairment, (c) Service-connected visual impairment of only one eye, (d) Maximum evaluation for visual impairment of one eye, (e) Anatomical loss of one eye without prosthesis, and (f) Special monthly compensation.

For the sake of clarity, we propose that paragraph (a), "Visual impairment," state that the evaluation of visual impairment is based on impairment of visual acuity (excluding developmental errors of refraction), visual field, and muscle function.

Proposed paragraph (b) of § 4.75, "Examination for visual impairment," is derived from current §§ 4.75 and 4.77 and the notes following diagnostic code 6080 and would require that a licensed optometrist or ophthalmologist conduct the examination and that the examiner identify the disease, injury, or other pathologic process responsible for any visual impairment found. It also states that examinations for the evaluation of visual fields or muscle function will be conducted only when there is a medical indication of disease or injury that may be associated with visual field defect or impaired muscle function. It also states that the fundus must be examined with the veteran's pupils dilated (unless medically contraindicated).

The method of evaluation when visual impairment of only one eye is service-connected is not specifically addressed in current regulations. We propose to add paragraph (c), "Service-connected visual impairment of only one eye," to direct that when visual impairment of only one eye is service-connected, either directly or by aggravation, the visual acuity of the non-service-connected eye shall be considered to be 20/40, subject to the provisions of 38 CFR 3.383(a) (which directs that when there is blindness in one eye as a result of service-connected disability and blindness in the other eye as a result of non-service-connected disability, compensation is payable as if both were service-connected). This method is consistent with current VA practice in determining the level of disability when only one eye is service-connected. The approach is also consistent with VAOPGCPREC 32–97, in which the General Counsel held that, if a claimant has service-connected hearing loss in one ear and nonservice-connected hearing loss in the other ear, the hearing in the ear having nonservice-connected loss should be considered normal for purposes of computing the service-connected disability rating, unless the claimant is totally deaf in both ears. In VAOPGCPREC 32–97, the General Counsel noted that the statutory scheme governing VA benefits generally authorizes compensation for service-connected disabilities only, see 38 U.S.C. 101 (13), 1110, and 1131, and does not permit combination of ratings for service-connected and nonservice-connected disabilities for compensation purposes. See 38 U.S.C. 1523 (authorizing, for nonservice-connected pension purposes, combination of ratings for service-connected and nonservice-connected disabilities) and 1157 (authorizing compensation based on the combination of ratings for service-connected disabilities). *See also* 38 CFR 3.323; 38 CFR 4.14 ("the use of manifestations not resulting from service-connected disease or injury in establishing the service-connected evaluation * * * [is] to be avoided."). Therefore, we propose to consider the visual acuity of the nonservice-connected eye to be 20/40, the level of visual acuity that warrants a zero-percent evaluation, so that any loss of visual acuity in the non-service-connected eye will not affect the determination of the level of disability for the service-connected eye. Adding the provisions of paragraph (c) will remove any doubt about the correct method of evaluation, and will assure that evaluations will be consistent, in cases where visual impairment of only one eye is service-connected.

In conjunction with the addition of paragraph (c) of § 4.75, we propose to remove current § 4.78, "Computing aggravation," which states that aggravation of preexisting visual disability will be determined based upon the evaluation of vision in both eyes before and after suffering the aggravation, even if the impairment of vision in only one eye is service-connected, and that with subsequent increase in the disability of either eye due to intercurrent injury or disease not associated with service, the basis of compensation will be the condition of the eyes before suffering the subsequent increase. This section is not consistent with VA's method of evaluating visual impairment incurred in service in one eye only nor is it consistent with the statutory scheme, as discussed above. Furthermore, its application may, in some cases, result in a higher evaluation for a condition that is aggravated by service than for an identical condition incurred in service, and this is simply not equitable. This method is also inconsistent with the method of evaluating other paired organs, such as the hands, where only the service-connected hand is evaluated, regardless of the status of the non-service-connected hand, again subject to the provisions of 38 CFR 3.383(a), and where the same method is used for incurrence as for aggravation. For these reasons, we propose to remove the material in § 4.78 in favor of the clear and consistent method of evaluation described in paragraph (c).

Proposed paragraph (d) of § 4.75, "Maximum evaluation for visual impairment of one eye," is derived from current § 4.80, "Rating of one eye," which states that the combined ratings for disabilities of the same eye should not exceed the amount for total loss of vision of that eye unless there is enucleation or a serious cosmetic defect added to the total loss of vision. Some of this language—"disabilities of the same eye," "total loss of vision," and "serious cosmetic defect"—is subjective or ambiguous. Since some disabilities (e.g., malignant neoplasm) that may affect only one eye can be evaluated up to 100 percent, we propose to change the reference to "disabilities" of one eye to "visual impairment" of one eye to clarify that it is only an evaluation for

visual impairment that is limited to 30 percent. In place of "shall not exceed the maximum," we propose to use the more direct language "shall not exceed 30 percent," in order to remove any ambiguity. Only anatomical loss of an eye can result in a higher evaluation (under diagnostic code 6063). We further propose to change "serious cosmetic defect" to "disfigurement," because a proposed diagnostic code (7800) and evaluation criteria for disfigurement of the head, face, or neck were published in the **Federal Register** of January 19, 1993 (*See* 58 FR 4969) as part of the revision of the portion of the rating schedule that addresses the skin, but there is no diagnostic code that addresses "serious cosmetic defect." Section 4.75(d) is therefore proposed to read "The evaluation for visual impairment of one eye shall not exceed 30 percent unless there is anatomical loss of the eye. The evaluation for visual impairment of one eye may, however, be combined with evaluations for other disabilities, e.g., disfigurement, that are not based on visual impairment."

We propose that paragraph (e) of § 4.75, "Anatomical loss of one eye with inability to wear a prosthesis," require that evaluations be increased by 10 percent when there is anatomical loss of one eye, and a prosthesis cannot be worn. This is derived from material in a footnote to diagnostic codes 6064, 6065, and 6066 concerning the evaluation for anatomical loss of one eye, and we therefore propose to delete that portion of the footnote as redundant. We further propose to add for clarity a statement that the maximum evaluation shall not exceed 100 percent.

We propose that paragraph (f) of § 4.75, "Special monthly compensation," direct the rating agency to refer to 38 CFR 3.350 to determine whether the veteran may be entitled to special monthly compensation (SMC). This is similar to instructions we have placed in other revised portions of the rating schedule where there is potential entitlement to special monthly compensation, e.g., in the portion that addresses gynecological conditions and disorders of the breasts. This is intended as an additional reminder to the rating agency to assure that SMC is assigned when warranted.

We propose that §§ 4.76, 4.77, and 4.78 address impairment of visual acuity, visual fields, and muscle function, respectively, with each section containing subsections that address examinations and evaluations of the impairments, as discussed in more detail below.

We propose that § 4.76, "Visual acuity," derived from material currently found in §§ 4.75 and 4.84, plus M21–1, Part VI, consist of two paragraphs: (a) Examination of visual acuity and (b) Evaluation of visual acuity.

We propose that paragraph (a) of § 4.76, which is based on current § 4.75, require that, to be adequate for VA purposes, *uncorrected* and *corrected* visual acuity for *distance* and *near* be recorded, as determined using Snellen's test type or its equivalent.

We propose two subparagraphs under proposed paragraph (b) of § 4.76, "Evaluation of visual acuity." Subparagraph (1) would require that visual acuity be generally evaluated on the basis of corrected distance vision. However, when the lens required to correct distance vision in the poorer eye differs by more than three diopters from the lens required to correct distance vision in the better eye, and the difference is not due to a congenital/developmental refractive error, the visual acuity of the poorer eye for evaluation purposes shall be either its uncorrected visual acuity or its visual acuity as corrected by a lens that does not differ by more than three diopters from the lens needed for correction of the other eye, whichever results in the better combined visual acuity. The current schedule has similar provisions but uses a four-diopter, rather than a three-diopter, difference, and refers only to spherical correction. We propose to use three diopters of difference instead of four because our contract consultants suggested that, since three diopters of difference would cause a patient to be symptomatic, requiring a four-diopter difference is too stringent. The consultants further pointed out that the astigmatism that underlies this disorder may require cylindrical, as well as spherical, correction, and we therefore propose to delete the language referring to spherical correction.

Paragraph (b)(2) of § 4.76 would direct that, as long as the individual customarily wears contact lenses, VA evaluate visual acuity for eyes affected by a corneal disorder that results in severe irregular astigmatism that can be improved more by contact lenses than by eyeglass lenses, as corrected by contact lenses. The current § 4.75 states that the best distant vision obtainable after best correction by glasses shall be the basis of rating except in cases of keratoconus in which contact lenses are medically required. However, on the recommendation of our contract consultants, we propose to include corneal disorders other than keratoconus, if they also result in astigmatism where contact lenses are more useful for correction than eyeglasses. We propose to remove the requirement that contact lenses be "medically required" in order to use this method of evaluation, in favor of a requirement that it be used only if contact lenses improve visual acuity better than eyeglass lenses, and if the individual customarily wears contact lenses (because some patients cannot wear contact lenses even though they would improve their vision). This provision assures an accurate assessment of corrected vision for those with a cornea that is scarred or irregularly shaped, and in whom individually fitted contact lenses provide the best visual acuity.

Paragraph (b)(3) of § 4.76 would require that in cases where the examiner reports a difference equal to two or more scheduled steps between near and distance corrected vision, with the near vision being worse, the examination must include at least two recordings of near and distance corrected vision and an explanation of the reason for the difference. We propose to require two recordings of visual acuity and an explanation of the cause of the difference between near and distance vision to assure that the presence of such a difference, which is very unusual, is confirmed and that any pathologic condition responsible for the difference is diagnosed. Current § 4.84 states that when there is a substantial difference between the near and distant corrected vision, the case should be referred to the Director, Compensation and Pension Service. We propose to specify a difference of two or more scheduled steps because our medical consultants stated that amount would be considered a "substantial" difference, and this more objective standard will assure consistency in determining which cases require application of this special provision. Evaluations of visual acuity are ordinarily based on distance vision, and distance vision is normally very similar, if not identical, to near vision. Since that is not true of these cases, and because near vision is so important for many tasks, we propose to adjust the evaluation for distance vision in these cases. In order to assure consistent and fair evaluations in these cases without the need to refer them to the Director of the Compensation and Pension Service, we propose, after consultation with licensed optometrists and ophthalmologists, that evaluation be made as if distance vision were one step poorer than measured, which, while recognizing that distance vision is the principal basis of the evaluation of visual acuity, will approximately

compensate for the additional loss of near vision in these cases.

We propose that § 4.77, "Visual Fields," be composed of three paragraphs: (a) Examination of visual fields, (b) Evaluation of visual fields, and (c) Combination of visual field defect and decreased visual acuity.

Paragraph (a) of § 4.77, "Examination of visual fields," derived from current § 4.76, Examination of field vision, would require use of a Goldmann kinetic perimeter or equivalent kinetic method to measure visual fields. We propose to revise the language, for the sake of accuracy, by changing the requirement for using a 3mm. white test object to one for using a standard target size and luminance (Goldmann equivalent (III/4e). This equivalent is a test object with an area of 4mm^2, average diameter of 0.43 degrees visual angle, and zero decibels of attenuation of luminance (maximum brightness for the Goldmann perimeter). Although the static (automated, computerized) perimeter is now in common use, the visual fields measured by the static and kinetic methods are not always comparable, and standards remain uncertain, despite ongoing research on this subject. Until there are reliable standards for comparing the results from static and kinetic perimetry, we propose to retain the requirement for the use of Goldmann kinetic perimetry, which is more reliable than the alternatives.

Paragraph (b) of § 4.77, "Evaluation of visual fields," derived from current § 4.76a, "Computation of average concentric contraction of visual fields," would establish the method for determining the extent of concentric visual field defect by measuring the remaining visual field in the eight principal meridians (horizontal, vertical, and main diagonals) and averaging them. We propose to remove the example in current § 4.76a since, in our judgment, it is unnecessary. We propose to delete the statement from § 4.76 that concentric contraction to five degrees or less is the equivalent of 5/200 visual acuity because this information is included under diagnostic code 6080 (visual field defects) and there is no need, nor would it serve any useful purpose, to repeat it in § 4.76.

We propose that paragraph (c) of § 4.77, "Combination of visual field defect and decreased visual acuity," direct how to determine the evaluation when both visual acuity and visual field are impaired in one or both eyes. VA's Adjudication Manual, M21–1, Part VI, currently directs that such cases be referred to the Director of the Compensation and Pension Service for evaluation. We propose that the percentage evaluation for visual acuity and for visual field loss each be determined and then combined under 38 CFR 4.25 (Combined ratings table). This change is consistent with the method of combining disabilities elsewhere in the body, which is allowed as long as the same disability is not evaluated twice, and would eliminate the need to refer these cases to the Director of the Compensation and Pension Service. It would provide a fair and consistent method of evaluation that takes into account both facets of visual impairment.

We propose that § 4.78, "Muscle function," be composed of two paragraphs: (a) Examination of muscle function, and (b) Evaluation of muscle function.

Paragraph (a) of § 4.78, "Examination of muscle function," derived from current § 4.77, would require that the Goldmann perimeter be used to measure muscle function and that the areas of diplopia be charted. We propose to delete as unnecessary the statement that impairment of muscle function is to be supported by record of actual appropriate pathology because § 4.75(b) includes a requirement that the disease, injury, or other pathologic process responsible for any visual impairment found must be identified and that examinations for the evaluation of visual fields or muscle function will be conducted only when there is a medical indication of disease or injury that may be associated with visual field defect or impaired muscle function. Section 4.75(b) is sufficient, in our judgment, to assure that the underlying pathology is identified.

Paragraph (b) of § 4.78, "Evaluation of muscle function," would establish a revised method of evaluating muscle function when another type of visual impairment is also present. Current note (2) following diagnostic code 6090 states that an evaluation for diplopia will be applied to only one eye and may not be combined with an evaluation for decreased visual acuity or visual field loss in the same eye. It further states that when both diplopia and decreased visual acuity or visual field loss are present in both eyes, the evaluation for diplopia shall be assigned to the poorer eye, and the evaluation for either corrected visual acuity or contraction of visual field to the better eye. It does not address the situation where diplopia is present, and another type of visual impairment is present in only one eye. Under the current method, lower evaluations may result when the diplopia is taken into account in the evaluation than when it is not, unless the diplopia is very severe. VA's manual for adjudication procedures, M21–1, states that this method is to be used only if it would be advantageous to the veteran.

For the sake of equitable and fair evaluations, we propose, after consultation with licensed optometrists and ophthalmologists, that subparagraph (1) establish the following method of evaluating diplopia, whether associated with unilateral or bilateral impaired visual acuity or visual field. We propose that, for the poorer eye (or the affected eye, if only one eye is service-connected), the rating agency assign a level of visual acuity (for decreased visual acuity or visual field defect expressed as a level of visual acuity) one step poorer than it would be otherwise, if the evaluation for diplopia under diagnostic code 6090 is 20/70 or 20/100; a level two steps poorer if the evaluation for diplopia is 20/200 or 15/200; and a level three steps poorer if the evaluation for diplopia is 5/200. The adjusted level, however, could not exceed 5/200. The percentage evaluation would then be determined under diagnostic codes 6064 through 6066, using the adjusted visual acuity for the poorer eye (or the affected eye), and the corrected visual acuity for the better eye. Under this method, the severity of diplopia would correlate with the evaluation level, with the higher evaluation assigned when the diplopia is worse, and the adjusted evaluation could never be lower than one that doesn't take diplopia into account, as can happen under the current method. An evaluation for diplopia of 20/40, assigned when diplopia affects only vision at 31 to 40 degrees on upward gaze, would have no effect on the overall evaluation. This method allows a full range of evaluation for visual impairment of a single eye, but does not exceed it. Unlike the current schedule provision, it also provides a method of evaluating visual impairment when both diplopia and loss of visual acuity are present in only one eye, or when they are present in both eyes, but only one eye is service-connected.

The current schedule contains a statement that diplopia which is occasional or correctable is not considered a disability. Since this fact is pertinent to the issue of service connection for diplopia, but has no bearing on evaluation, including it in the rating schedule is unnecessary and inappropriate.

Paragraph (b)(2) of § 4.78, derived from § 4.77 and the third note following diagnostic code 6090, would define impairment of muscle function and establish the procedure for evaluating

diplopia when the affected field extends beyond more than one quadrant or range of degrees.

Paragraph (b)(3) of § 4.78, derived from note (4) following diagnostic code 6090, would require that the evaluation for diplopia under diagnostic code 6090 be increased to the next higher evaluation provided in the rating schedule whenever diplopia exists in separate areas of the same eye.

Current § 4.79, "Loss of use of one eye, having only light perception," duplicates 38 CFR 3.350(a)(4), (b)(2) and (b)(3), which reflect statutory criteria for entitlement to special monthly compensation. Because it is redundant, we propose to delete § 4.79 in favor of a footnote following diagnostic codes 6066 and 6080 referring the rating agency to § 3.350.

We propose to delete current §§ 4.80 and 4.84 and the notes following the diagnostic codes in these sections because the material will be moved to proposed §§ 4.75 through 4.78.

Current Table IV, "Table for Rating Bilateral Blindness or Blindness Combined with Hearing Loss with Dictator's Code and 38 CFR Citations," is a chart displaying SMC codes to be used by the rating agency when dictating rating decisions for transcription. The dictator's rating codes have been changed since they were first published in Table IV, and they appear in their current form in Appendix A of Part I of M21–1, VA's Adjudication Procedures Manual. This chart's only purpose is to simplify the process of dictating ratings to a transcription unit. Since it has no bearing on the evaluation of disabilities, and contains no policy guidelines which rating agencies must follow, we propose to delete Table IV from the rating schedule.

Current Table V, "Ratings for Central Visual Acuity Impairment," repeats the evaluations and diagnostic codes for impaired visual acuity in chart form. Since diagnostic codes 6061 through 6066 establish evaluation criteria in a format which is consistent with the rest of the rating schedule, we propose to delete Table V as redundant and unnecessary for any regulatory purpose. Since current § 4.83a explains how to use Table V, we also propose to remove § 4.83a. Current § 4.83 explains how to record ratings for impairment of central visual acuity, and it is therefore directed more at examiners than at rating agencies. Since the method described is standard, we propose to delete that section as unnecessary.

Uveitis, keratitis, scleritis, iritis, cyclitis, choroiditis, retinitis, recent intra-ocular hemorrhage, detachment of retina, and unhealed eye injury (diagnostic codes 6000 through 6009) are currently evaluated at levels of 10 to 100 percent based on impairment of visual acuity or field loss, pain, rest-requirements, or episodic incapacity, combining an additional rating of 10 percent during continuance of active pathology. We propose a revised set of evaluation criteria in the form of a general rating formula following diagnostic code 6009. We propose that evaluation be based either on visual impairment or on incapacitating episodes, whichever results in a higher evaluation. We propose to define an incapacitating episode, for VA purposes, as one requiring bedrest and treatment by a physician or other healthcare provider. We propose to establish evaluation levels of 10, 20, 40, and 60 percent based on incapacitating episodes, in order to accommodate this broad group of conditions with the potential for a wide range of length of periods of incapacitation. We propose an evaluation of 60 percent with incapacitating episodes of at least six weeks total duration per year; of 40 percent with incapacitating episodes of at least four weeks, but less than six weeks, total duration per year; of 20 percent with incapacitating episodes of at least two weeks, but less than four weeks, total duration per year; and of 10 percent with incapacitating episodes total of at least one week, but less than two weeks, total duration per year. These criteria are clearer and more objective than current criteria, and will allow the extent of incapacitating episodes to be consistently taken into account.

We propose to change the terminology in several diagnostic codes to reflect current medical usage, in accord with suggestions by our consultants. We propose to change the title of diagnostic code 6000, "uveitis," to "choroidopathy," because the term "choroidopathy" includes pathological conditions of the choroid other than inflammation, and also encompasses the subcategories of uveitis, iritis, cyclitis, and choroiditis. We therefore propose to delete diagnostic codes 6003 (iritis), 6004 (cyclitis), and 6005 (choroiditis), since they are included in diagnostic code 6000. Similarly, we propose to change the title of diagnostic code 6001, "keratitis," to "keratopathy," a broader category that includes corneal conditions other than inflammation, and the title of diagnostic code 6006, "retinitis," to "retinopathy or maculopathy," broader terms that encompass not only retinitis but other retinal and macular diseases and degenerations, for the same reason. We propose to revise the title of diagnostic code 6007 (hemorrhage, intra-ocular, recent) to "intra-ocular hemorrhage" because both recent (or acute) and chronic intra-ocular hemorrhage may be disabling. We propose to edit the title of diagnostic code 6010 (tuberculosis of eye) and to correct an erroneous reference to codes under which inactive tuberculosis of the eye is evaluated. The current schedule refers to §§ 4.88b and 4.89, but § 4.88b was redesignated § 4.88c in a separate rulemaking, and the correct section references are now 4.88c and 4.89. We propose to simplify the title of diagnostic code 6011 from "retina, localized scars, atrophy, or irregularities of, centrally located, with irregular, duplicated, enlarged or diminished image" to "retinal scars, atrophy, or irregularities." We propose to retain a ten-percent evaluation under diagnostic code 6011 for localized scars, atrophy, or irregularities that are centrally located and that result in an irregular, duplicated, enlarged, or diminished image. Evaluation of these conditions would otherwise be based on visual impairment, as defined in proposed § 4.75(a).

We propose to revise the title of diagnostic code 6012, "glaucoma, congestive or inflammatory," to "angle-closure glaucoma," the current medical term for the condition. For the same reason, we propose to change the title of diagnostic code 6013, "glaucoma, simple, primary, noncongestive," to "open-angle glaucoma."

Diagnostic code 6012, angle-closure glaucoma, is currently evaluated either as iritis (diagnostic code 6003) or by rating at 100 percent if there are "frequent attacks of considerable duration; during continuance of actual total disability." "Frequent" and "considerable" are subjective terms that are susceptible to different interpretations. In addition, these criteria are difficult to apply because acute attacks are usually of short duration, and it is unlikely that an examination for disability could be scheduled and conducted during such an attack. Therefore, we propose to evaluate this condition similarly to diagnostic codes 6000 through 6009, based either on visual impairment or on incapacitating episodes, whichever results in a higher evaluation. Because in some cases this condition is characterized primarily by frequent and sometimes prolonged intermittent episodes of incapacitation, we propose to provide a wide range of evaluations—from 20 to 60 percent—based on incapacitating episodes. We also propose to establish a ten-percent

minimum evaluation if continuous medication is required. A minimum evaluation is not warranted if there is no visual impairment and no treatment is needed other than frequent observation. We propose these more objective criteria in order to provide clearer guidance on evaluation and to assure more consistent evaluations. With these criteria, the direction to rate as iritis is not needed, and we propose to delete it.

Diagnostic code 6013, open-angle glaucoma, is currently evaluated on impairment of visual acuity or field loss, with a minimum evaluation of ten percent. We propose that it be evaluated on visual impairment, which will allow consideration of impairment of visual acuity, visual field, or muscle function, with a ten-percent minimum evaluation if continuous medication is required. A minimum evaluation is not warranted if there is no visual impairment and no treatment is needed other than frequent observation.

We propose to update the term "new growth" to "neoplasm" in the titles of diagnostic codes 6014 and 6015, which address malignant and benign eye tumors, respectively.

Malignant neoplasms (diagnostic code 6014) are now evaluated at 100 percent pending completion of surgery or other indicated treatment, and, when healed, are rated on residuals. However, not all malignant neoplasms of the eye are totally disabling or require treatment that is totally disabling for a period of time. For example, eye malignancies such as iris melanoma and choroid melanoma often require no treatment other than observation, even though they are malignant on pathology examination. We therefore propose to evaluate malignancies of the eyeball similar to the way we proposed to evaluate skin malignancies (published in the **Federal Register** of January 19, 1993 (*See* 58 FR 4969)). If a malignant neoplasm of the eyeball requires therapy that is comparable to that used for internal malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the eye, or surgery more extensive than enucleation, a 100 percent evaluation would be assigned from the date of onset of treatment, and would continue, with a mandatory VA examination six months following the completion of such antineoplastic treatment, and any change in evaluation based upon that or any subsequent examination would be subject to the effective date provisions of § 3.105(e). If there has been no local recurrence or metastasis, evaluation would then be made on residuals. These revisions are similar to those now in effect for malignant neoplasms in several revised sections of the rating schedule (e.g., gynecological conditions and disorders of the breast, respiratory system, endocrine system). If treatment is confined to the eye, the provisions for a 100 percent evaluation would not apply. If no treatment other than observation is required, we propose that evaluation be made by separately evaluating visual impairment and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), and combining the evaluations under § 4.25. In our judgment, neoplasms that require only periodic observation, without surgical or other medical intervention, are not totally disabling and therefore do not warrant the total evaluation ordinarily provided for malignant neoplasms. If treatment comparable to that for internal malignancies is needed, eye malignancies would be evaluated in the same manner as internal malignancies requiring treatment.

Benign neoplasms (diagnostic code 6015) are currently evaluated on impaired vision, with a minimum evaluation of 10 percent, and healed benign neoplasms are rated on residuals. A standard ophthalmology text, (Frank W. Newell, M.D., *Ophthalmology Principles and Concepts*, p. 207, 7th ed. 1992), indicates no specific impairment due to benign neoplasms, and no need for continuing medication. A minimum evaluation for all cases is therefore not warranted, and we propose to remove it. We propose that evaluation be based on visual impairment, with that evaluation to be combined with an evaluation for any nonvisual impairment, e.g., disfigurement. These criteria better encompass the impairments that may result from benign neoplasms. We propose to revise the title of diagnostic code 6015 from "new growths, benign (eyeball and adnexa, other than superficial)" to "benign neoplasms (of eyeball and adnexa)" because without the requirement for a minimum evaluation, the distinction between superficial and other types of benign neoplasm is not relevant.

We propose to edit the title of diagnostic code 6017, "conjunctivitis, trachomatous, chronic" to "trachomatous conjunctivitis" and the title of diagnostic code 6018, "conjunctivitis, other, chronic" to "chronic conjunctivitis (nontrachomatous)." Evaluations of healed trachomatous and nontrachomatous conjunctivitis are currently based on residuals, with a zero-percent evaluation if there are no residuals. We propose to remove the zero-percent evaluation level. 38 CFR 4.31 provides for a zero-percent evaluation in all cases when the criteria for a compensable evaluation is not met, which obviates the need to include zero-percent evaluation criteria in this case. Active trachomatous conjunctivitis is currently evaluated on impairment of visual acuity, with a minimum evaluation of 30 percent while there is active pathology; other forms of active conjunctivitis are evaluated at 10 percent when there are "objective symptoms." We propose to change "objective symptoms" to "objective findings, such as red, thick conjunctivae, mucous secretion, etc." under diagnostic code 6018, since symptoms are, by definition, subjective, and to change "healed" to "inactive" because conjunctivitis may be active intermittently. We propose that inactive trachomatous conjunctivitis and inactive chronic conjunctivitis be evaluated on residuals, such as visual impairment, disfigurement (diagnostic code 7800), etc. Our contract consultants suggested that these categories of conjunctivitis be combined because of the rarity of trachoma. Because trachoma is much more severe than most other types of chronic conjunctivitis and often leads to blindness, it warrants a 30-percent minimum evaluation, when active, an evaluation level that cannot be justified for other types of conjunctivitis. Since we must assure appropriate evaluations for these disparate conditions, we do not propose to adopt the consultants' suggestion.

Ptosis (diagnostic code 6019) is currently evaluated equivalent to visual acuity of 5/200 whenever the pupil is wholly obscured, equivalent to 20/100 if the pupil is one-half or more obscured, and on disfigurement if less than one-half of the pupil is obscured. The extent to which a pupil is obscured can be difficult to determine reliably, and an evaluation for ptosis based directly on visual impairment was recommended by our contract consultants. We propose to adopt their suggestion and, in the absence of visual impairment, base evaluation on disfigurement (diagnostic code 7800).

Our contract consultants recommended that we add a note providing an alternative evaluation as disfigurement (diagnostic code 7800) for ectropion (diagnostic code 6020), entropion (diagnostic code 6121), lagophthalmos (diagnostic code 6022), eyebrows, loss of complete, unilateral or bilateral (diagnostic code 6023), eyelashes, loss of, complete, unilateral or bilateral (diagnostic code 6024), and epiphora (diagnostic code 6025). The diagnosis of one of these conditions is

sufficient to assign the current percentage evaluations because the diagnosis itself implies the presence of some degree of disfigurement, which is the primary basis of these evaluations. Since an evaluation for disfigurement is encompassed in the percentages provided, the suggested note would be redundant, and we do not propose to adopt the consultants' suggestion.

We propose to change the title of diagnostic code 6025 from "epiphora" to "disorders of the lacrimal apparatus (epiphora, dacryocystitis, etc.)" because all disorders of the lacrimal apparatus are evaluated in the same way, and they commonly occur together. In conjunction with this change, we propose to delete dacryocystitis (diagnostic code 6031), as our consultants suggested, because it will be included under diagnostic code 6025.

We propose to change the title of diagnostic code 6026 from "neuritis, optic", to "optic neuropathy", a broader term that includes conditions other than inflammation of the optic nerve. It is likely that optic nerve conditions other than neuritis are currently being evaluated under this code, because there is no other diagnostic code that specifically addresses diseases of the optic nerve, but this change will assure consistency by including all optic nerve disorders under diagnostic code 6026.

Current diagnostic codes 6027, "cataract, traumatic," and 6028, "cataract, senile, and others," are evaluated under the same criteria—impairment of vision preoperatively, and impairment of vision and aphakia postoperatively—because they result in identical impairment. We therefore propose to delete diagnostic code 6028 and to establish a single diagnostic code, 6027, "cataract of any type," for all types of cataracts. We propose that evaluation preoperatively be based on visual impairment and postoperatively on visual impairment if a replacement lens is present, and on aphakia if there is no replacement lens. Our contract consultants suggested we add a diagnostic code for pseudophakia to the rating schedule. The term "pseudophakia" has two meanings—one, a condition where the lens has been replaced status post-cataract removal and the other, a condition in which a degenerated lens is spontaneously replaced by some other type of tissue. Dorland's Illustrated Medical Dictionary (27th ed. 1988) does not include the former definition. Therefore, to avoid confusion, instead of adding a code for pseudophakia, we propose to use clear and unambiguous language in diagnostic code 6027 concerning the post-operative evaluation of cataracts and to include pseudophakia as a parenthetical expression after "if a replacement lens is present."

Current diagnostic codes 6029, "aphakia," and 6033, "lens, crystalline, dislocation of," are evaluated under the same criteria because they result in identical impairments. We propose to combine the conditions under diagnostic code 6029, retitle it "aphakia or dislocation of crystalline lens," and delete diagnostic code 6033, since there is no need to retain two separate diagnostic codes for these conditions for statistical or other purposes. There is currently a minimum evaluation of 30 percent under diagnostic code 6029, whether unilateral or bilateral, and there are a number of additional rules for evaluation that are applied depending on whether one or both eyes are aphakic. In order to simplify the current method of evaluation, which has sometimes caused confusion, we propose to instruct the rating agency to evaluate on the basis of visual impairment, elevated by one step. We propose to retain the minimum 30-percent evaluation for unilateral or bilateral aphakia. These minimum evaluations are warranted because the severe hyperopia that results from aphakia cannot be adequately corrected. In addition, there is substantial magnification of the image in an aphakic eye, peripheral vision is reduced, and with aphakia of a single eye, image fusion may be difficult because of the great difference in refraction between the eyes. Glare and photophobia are common additional problems, and eyeglasses cause a ring scotoma so that objects appear to jump in and out of view. The proposed criteria are consistent with other methods of evaluating conditions manifested primarily by visual impairment, take into account visual problems other than loss of visual acuity that are not precisely measurable, and are clearer, which should assure consistent evaluations.

We propose to revise the title of diagnostic code 6030 from "accommodation, paralysis of" to "paralysis of accommodation (due to neuropathy of the Oculomotor Nerve)" because pathology of that cranial nerve is the usual etiology.

We propose to change the title of diagnostic code 6032 from "eyelids, loss of portion of" to "loss of eyelids, partial or complete," because complete loss of eyelids may also require evaluation and can be evaluated under the same criteria. Diagnostic code 6032 is currently rated as disfigurement (diagnostic code 7800). Our contract consultants suggested we combine an evaluation for the underlying disease (none of which they named) with an evaluation for visual impairment. Instead, we propose to direct that an evaluation for visual impairment be combined with an evaluation for disfigurement (diagnostic code 7800). An underlying disease producing other impairments would be evaluated under the appropriate body system, but it is not necessary to provide this instruction here because it is not unique to this condition.

Pterygium, diagnostic code 6034, is currently evaluated on loss of vision, if any, and we propose that it be evaluated on visual impairment, disfigurement (diagnostic code 7800), conjunctivitis (diagnostic code 6018), etc. This proposed change better encompasses the possible range of impairments from pterygium.

A note currently following diagnostic code 6035, keratoconus, requires a 30-percent minimum evaluation when "contact lenses are medically required." We propose to delete the minimum evaluation and base evaluation on corrected visual acuity (using contact lenses rather than eyeglass lenses for that determination if they provide the best corrected visual acuity and are customarily worn by the individual) because decreased visual acuity is the only disabling effect of keratoconus. If contact lenses best correct the visual impairment, and can be worn by the individual, there would be no significant additional disability to warrant a minimum evaluation, and the corrected visual acuity using contact lenses would be a reasonable basis of evaluation. If eyeglass lenses can correct the visual acuity, the usual method of determining corrected visual acuity would be the basis of evaluation.

We propose to add diagnostic code 6036 for "status post corneal transplant," a common condition, with evaluation based on visual impairment. Either loss of visual acuity or visual field loss or both may occur in corneal transplant, and this direction allows any visual impairment to be evaluated. Since pain, photophobia, and glare sensitivity may be disabling following corneal transplant, we propose a minimum of evaluation of ten percent if those symptoms are present.

The current schedule uses 19 different diagnostic codes to designate impairment of central visual acuity, and some designate more than one level of visual acuity, e.g., diagnostic code 6078 designates six different levels. No useful purpose is served by this large number of codes, and we propose to decrease the number to six for more ease of use.

We propose to retain separate codes for anatomical loss of both eyes (diagnostic code 6061); for light perception only, both eyes (diagnostic code 6062); for anatomical loss of one eye (diagnostic code 6063); for light perception only, one eye, (diagnostic code 6064); for vision in one eye 5/200 (1.5/60) (diagnostic code 6065); and for impairment of visual acuity 10/200 (3/60) or better (diagnostic code 6066). In addition, we propose to remove the term "blindness" from the titles of diagnostic codes 6062 and 6064 in favor of the terms "light perception only, both eyes" and "light perception only, one eye," respectively because the term "blindness," as used in 38 U.S.C. 1114, "Rates of wartime disability compensation," has more than one meaning, and using it in the rating schedule to refer to only one level of visual impairment promotes confusion.

In the current rating schedule, footnote number five, attached to diagnostic codes 6061–63 and 6067–71, refers to entitlement to SMC, and footnote number six, attached to diagnostic codes 6064–66, refers both to entitlement to SMC and to evaluation when there is inability to wear a prosthesis following anatomical loss of an eye. (Footnotes number five and six are currently the only footnotes in this section.) We have discussed above our proposal to remove the part of the footnote that addresses the inability to wear a prosthesis. We propose to place the material concerning SMC in footnote number one, following diagnostic code 6066 and also following diagnostic code 6080. We propose to remove footnotes five and six and to attach footnote number one to diagnostic codes 6061 through 6064, under diagnostic code 6065 at the 100 percent evaluation for "vision in one eye 5/200, in the other eye 5/200," and under diagnostic code 6080 at "visual field, concentric contraction of, to 5 degrees" (because concentric contraction of the visual field to five degrees is the equivalent of 5/200, and must also be considered for SMC (see 38 CFR 3.350)). This combination of footnotes and paragraph (f) of § 4.75 referring to SMC is, in our opinion, the best way to ensure complete review for SMC.

We propose to update the subpart title "Ratings for Impairment of Field of Vision" to "Ratings for Impairment of Visual Fields" and the title of diagnostic code 6080 from "Field vision, impairment of" to "Visual field defects," in accordance with current usage. In order to make the evaluations for visual field defects under diagnostic code 6080 more comprehensive, as suggested by our consultants, we propose to add evaluations for loss of superior and inferior altitudinal fields. Inferior field loss will be evaluated at 10 percent for the unilateral and 30 percent for the bilateral condition (or impaired visual acuity of 20/70 (6/21) for each affected eye), and superior field loss will be evaluated at 10 percent for both the unilateral and bilateral conditions (or impaired visual acuity of 20/50 (6/15) for each affected eye). For the sake of accuracy, we propose, under diagnostic code 6080, to make 10 percent (or impaired visual acuity of 20/50 (6/15) for each affected eye), instead of 20 percent, the evaluation for unilateral or bilateral condition for both concentric contraction to 46 to 60 degrees and for loss of the nasal half of the visual field. This will correct the bilateral percentage evaluation, currently indicated to be 20 percent for these conditions, because both bilateral and unilateral visual acuity of 20/50 warrant a 10-percent, not a 20-percent, evaluation. Notes one and two, currently following diagnostic code 6080, discuss the requirements for correct diagnosis, demonstrable pathology, and contraction within the stated degrees for concentric contraction ratings. We propose to delete these notes because similar information is contained in § 4.1, proposed § 4.77(a), and under diagnostic code 6080, and they are therefore redundant.

We propose to revise the evaluation criteria for diagnostic code 6081, "scotoma, unilateral," which currently provide a minimum 10-percent evaluation for a large or centrally located scotoma, by changing "large" to "affecting at least one-quarter of the visual field (quadrantanopsia)." This language is clearer, and the term "quadrantanopsia," is widely accepted. We propose that evaluation otherwise be based on visual impairment, which is not a substantive change from the current direction to "rate on loss of central visual acuity or impairment of field vision."

Symblepharon (diagnostic code 6091) is currently rated under the criteria for diagnostic code 6090 (diplopia). However, it may also result in other types of impairments, and we therefore propose to direct that it be evaluated on visual impairment, lagophthalmos (diagnostic code 6022), disfigurement (diagnostic code 7800), etc.

Diplopia is currently evaluated under diagnostic code 6090 and also under diagnostic code 6092, which is described as "diplopia, due to limited muscle function" and evaluated according to the criteria under diagnostic code 6090. We propose to eliminate diagnostic code 6092 because diplopia due to limited muscle function is not functionally distinct from diplopia (double vision) and does not warrant a separate code. As stated above, we propose to delete the note following diagnostic code 6090 regarding a citing of the correct diagnosis as redundant.

For purposes of clarity, we propose to make numerous additional nonsubstantive changes in this document.

The Secretary hereby certifies that this regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604. This regulation has been reviewed by the Office of Management and Budget under Executive Order 12866.

The Catalog of Federal Domestic Assistance numbers are 64.104 and 64.109.

List of Subjects in 38 CFR Part 4

Disability benefits, Individuals with disabilities, Pensions, Veterans.

Approved: December 14, 1998.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is proposed to be amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

1. The authority citation for part 4 continues to read as follows:

Authority: 38 U.S.C. 1155.

Subpart B—Disability Ratings

2. Sections 4.75 and 4.76 are revised to read as follows:

§ 4.75 General considerations for evaluating visual impairment.

(a) *Visual impairment.* The evaluation of visual impairment is based on impairment of visual acuity (excluding developmental errors of refraction), visual field, and muscle function.

(b) *Examination for visual impairment.* To be adequate for VA purposes, an examination to evaluate visual impairment must be conducted by a licensed optometrist or

ophthalmologist. The examiner must identify the disease, injury, or other pathologic process responsible for any visual impairment found. Examinations for the evaluation of visual fields or muscle function will be conducted only when there is a medical indication of disease or injury that may be associated with visual field defect or impaired muscle function. The fundus must be examined with the veteran's pupils dilated (unless medically contraindicated).

(c) *Service-connected visual impairment of only one eye.* If visual impairment of only one eye is service-connected, either directly or by aggravation, the visual acuity of the non-service-connected eye shall be considered to be 20/40 for evaluation purposes, subject to the provisions of § 3.383(a) of this chapter.

(d) *Maximum evaluation for visual impairment of one eye.* The evaluation for visual impairment of one eye shall not exceed 30 percent unless there is anatomical loss of the eye. The evaluation for visual impairment of one eye may, however, be combined with evaluations for other disabilities, e.g., disfigurement, that are not based on visual impairment.

(e) *Anatomical loss of one eye with inability to wear a prosthesis.* When there is anatomical loss of one eye, the evaluation for visual acuity under diagnostic code 6063 shall be increased by 10 percent if the veteran is unable to wear a prosthesis, but the maximum evaluation shall not exceed 100 percent.

(f) *Special monthly compensation.* When evaluating any claim involving visual impairment, the rating agency shall refer to § 3.350 of this chapter to determine whether the veteran may be entitled to special monthly compensation. Footnotes in the schedule indicate levels of visual impairment that potentially establish entitlement to special monthly compensation; however, other levels of visual impairment combined with disabilities of other body systems may also establish entitlement.

(Authority: 38 U.S.C. 1155 and 1114)

§ 4.76 Visual acuity.

(a) *Examination of visual acuity.* To be adequate for VA purposes, an examination to evaluate visual acuity must record *uncorrected* and *corrected* visual acuity for *distance* and *near,* as determined using Snellen's test type or its equivalent.

(b) *Evaluation of visual acuity.* (1) For VA purposes, visual acuity shall generally be evaluated on the basis of corrected distance vision. However, when the lens required to correct distance vision in the poorer eye differs by more than three diopters from the lens required to correct distance vision in the better eye, and the difference is not due to congenital or developmental refractive error, the visual acuity of the poorer eye for evaluation purposes shall be either its uncorrected visual acuity or its visual acuity as corrected by a lens that does not differ by more than three diopters from the lens needed for correction of the other eye, whichever results in better combined visual acuity.

(2) Provided that he or she customarily wears contact lenses, VA shall evaluate the visual acuity of any individual affected by a corneal disorder that results in severe irregular astigmatism that can be improved more by contact lenses than by eyeglass lenses, as corrected by contact lenses.

(3) In any case where the examiner reports that there is a difference equal to two or more scheduled steps between near and distance corrected vision, with the near vision being worse, the examination report must include at least two recordings of near and distance corrected vision and explain the reason for the difference. Evaluation in those cases will be based on distance vision adjusted to one step poorer than measured.

§ 4.76a [Removed]

3. Section 4.76a is removed.

4. Sections 4.77, 4.78 and 4.79 are revised to read as follows:

§ 4.77 Visual fields.

(a) *Examination of visual fields.* To be adequate for VA purposes, examinations of visual fields must be conducted using a Goldmann kinetic perimeter or equivalent kinetic method, using a standard target size and luminance (Goldmann's equivalent (III/4-e)). At least two recordings of visual fields must be made, and the examination must be supplemented by the use of a tangent screen when the examiner indicates it is necessary. At least 16 meridians 22½ degrees apart must be charted for each eye (see Figure 1). See Table III for the normal extent of the visual fields (in degrees) at the 8 principal meridians (45 degrees apart). The confirmed visual fields shall be made a part of the examination report.

(b) *Evaluation of visual fields.* The average concentric contraction of the visual field of each eye is determined by measuring the remaining visual field (in degrees) at each of eight principal meridians 45 degrees apart, adding them, and dividing the sum by eight.

(c) *Combination of visual field defect and decreased visual acuity.* To determine the evaluation for visual impairment when both decreased visual acuity and visual field defect are present in one or both eyes, the rating agency shall combine the evaluations for visual acuity and visual field defect (expressed as a level of visual acuity) (see § 4.25).

(Authority: 38 U.S.C. 1155)

§ 4.78 Muscle function.

(a) *Examination of muscle function.* To be adequate for VA purposes, measurement of muscle function must be performed using a Goldmann Perimeter Chart which identifies the four major quadrants, (upward, downward, left and right lateral) and the central field (20 degrees or less) (see Figure 2). The examiner will chart the areas in which diplopia exists and include the plotted chart in the examination report.

(b) *Evaluation of muscle function.* (1) An evaluation for diplopia shall be assigned to only one eye. When both diplopia and decreased visual acuity or visual field defect are present in an individual, the rating agency shall assign a level of corrected visual acuity for the poorer eye (or the affected eye, if only one eye is service-connected), that is: one step poorer than it would otherwise warrant if the evaluation for diplopia under diagnostic code 6090 is 20/70 or 20/100; two steps poorer if the evaluation under diagnostic code 6090 is 20/200 or 15/200; and three steps poorer if the evaluation under diagnostic code 6090 is 5/200. These adjusted levels of corrected visual acuity, however, shall not exceed a level of 5/200. The percentage evaluation for visual impairment shall then be determined under diagnostic codes 6064 through 6066, using the adjusted visual acuity for the poorer eye (or the affected eye), and the corrected visual acuity for the better eye.

(2) When diplopia is present in more than one quadrant or range of degrees, the rating agency shall evaluate diplopia on the quadrant and degree range that provides the highest evaluation.

(3) When diplopia exists in two separate areas of the same eye, the equivalent visual acuity under diagnostic code 6090 shall be increased to the next poorer level of visual acuity, but not to exceed 5/200.

(Authority: 38 U.S.C. 1155)

§ 4.79 Schedule of ratings—eye.

DISEASES OF THE EYE

	Rating
6000 Choroidopathy, including uveitis, iritis, cyclitis, and choroiditis	
6001 Keratopathy	
6002 Scleritis	
6006 Retinopathy or maculopathy	
6007 Intraocular hemorrhage	
6008 Detachment of retina	
6009 Unhealed eye injury	

GENERAL RATING FORMULA FOR DIAGNOSTIC CODES 6000 THROUGH 6009

	Rating
Evaluate on the basis of either visual impairment or incapacitating episodes, whichever results in a higher evaluation.	
With incapacitating episodes of at least six weeks total duration per year	60
With incapacitating episodes of at least four weeks, but less than six weeks, total duration per year	40
With incapacitating episodes of at least two weeks, but less than four weeks, total duration per year	20
With incapacitating episodes of at least one week, but less than two weeks, total duration per year	10
Note: For VA purposes, an incapacitating episode is a period of acute symptoms severe enough to require bed rest and treatment by a physician or other healthcare provider.	
6010 Tuberculosis of eye:	
Active:	100
Inactive: Rate under §§ 4.88c or 4.89 of this part, whichever is appropriate.	
6011 Retinal scars, atrophy, or irregularities:	
Localized scars, atrophy, or irregularities of the retina, unilateral or bilateral, that are centrally located and that result in an irregular, duplicated, enlarged, or diminished image	10
Otherwise, evaluate on visual impairment.	
6012 Angle-closure glaucoma:	
Evaluate on the basis of either visual impairment or incapacitating episodes, whichever results in a higher evaluation.	
Minimum evaluation if continuous medication is required	10
With incapacitating episodes of at least six weeks total duration per year	60
With incapacitating episodes of at least four weeks, but less than six weeks, total duration per year	40
With incapacitating episodes of at least two weeks, but less than four weeks, total duration per year	20
Note: For VA purposes, an incapacitating episode is a period of acute symptoms severe enough to require bed rest and treatment by a physician or other healthcare provider.	
6013 Open-angle:	
Evaluate on visual impairment.	
Minimum evaluation if continuous medication is required	10
6014 Malignant neoplasms (eyeball only):	
Note (1): If a malignant neoplasm of the eyeball requires therapy that is comparable to that used for systemic malignancies, i.e., systemic chemotherapy, X-ray therapy more extensive than to the area of the eye, or surgery more extensive than enucleation, a rating of 100 percent shall be assigned that shall continue beyond the cessation of any surgical, X-ray, antineoplastic chemotherapy or other therapeutic procedure. Six months after discontinuance of such treatment, the appropriate disability rating shall be determined by mandatory VA examination. Any change in evaluation based upon that or any subsequent examination shall be subject to the provisions of § 3.105(e) of this chapter. If there has been no local recurrence or metastasis, rate on residuals.	
Note (2): To evaluate residuals, or malignant neoplasms that do not require therapy comparable to that for systemic malignancies, evaluate visual impairment and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), separately and combine the evaluations.	
6015 Benign neoplasms (of eyeball and adnexa):	
Evaluate visual impairment and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), separately and combine the evaluations.	
6016 Nystagmus, central	10
6017 Trachomatous conjunctivitis:	
Active: Evaluate on visual impairment, minimum	30
Inactive: Evaluate on residuals, such as visual impairment and disfigurement (diagnostic code 7800).	
6018 Chronic conjunctivitis (nontrachomatous):	
Active (with objective findings, such as red, thick conjunctivae, Mucous secretion, etc.)	10
Inactive: Evaluate on residuals, such as visual impairment and disfigurement (diagnostic code 7800).	
6019 Ptosis, unilateral or bilateral:	
Evaluate on visual impairment, or; in the absence of visual impairment, evaluate on disfigurement (diagnostic code 7800).	
6020 Ectropion:	
Bilateral	20
Unilateral	10
6021 Entropion:	
Bilateral	20
Unilateral	10
6022 Lagophthalmos:	
Bilateral	20
Unilateral	10
6023 Loss of eyebrows, complete, unilateral or bilateral	10
6024 Loss of eyelashes, complete, unilateral or bilateral	10
6025 Disorders of the lacrimal apparatus (epiphora, dacryocystitis, etc.):	

GENERAL RATING FORMULA FOR DIAGNOSTIC CODES 6000 THROUGH 6009—Continued

	Rating
Bilateral	20
Unilateral	10
6026 Optic neuropathy:	
Evaluate on visual impairment.	
6027 Cataract of any type:	
Preoperative:	
Evaluate on visual impairment.	
Postoperative:	
If a replacement lens is present (pseudophakia), evaluate on visual impairment. If there is no replacement lens, evaluate on aphakia.	
6029 Aphakia or dislocation of crystalline lens:	
Evaluate on visual impairment, and elevate the resulting level of visual impairment one step.	
Minimum (unilateral or bilateral)	30
6030 Paralysis of accommodation (due to neuropathy of the Oculomotor Nerve)	20
6032 Loss of eyelids, partial or complete:	
Evaluate both visual impairment and nonvisual impairment, e.g., disfigurement (diagnostic code 7800), separately and combine the evaluations.	
6034 Pterygium:	
Evaluate on visual impairment, disfigurement (diagnostic code 7800), conjunctivitis (diagnostic code 6018), etc.	
6035 Keratoconus:	
Evaluate loss of visual acuity.	
6036 Status post corneal transplant	
Evaluate visual impairment.	
Minimum, if there is pain, photophobia, and glare sensitivity	10
6037 Pinguecula:	
Evaluate on disfigurement (diagnostic code 7800).	
Impairment of Central Visual Acuity:	
6061 Anatomical loss both eyes [1]	100
6062 Light perception only, in both eyes [1]	100
6063 Anatomical loss of one eye: [1]	
In the other eye 5/200 (1.5/60)	100
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	60
In the other eye 20/50 (6/15)	50
In the other eye 20/40 (6/12)	40
6064 Light perception only, in one eye: [1]	
In the other eye 5/200 (1.5/60)	100
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	50
In the other eye 20/50 (6/15)	40
In the other eye 20/40 (6/12)	30
6065 Vision in one eye 5/200 (1.5/60):	
In the other eye 5/200 (1.5/60)	[1] 100
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	50
In the other eye 20/50 (6/15)	40
In the other eye 20/40 (6/12)	30
6066 Visual acuity in one eye 10/200 (3/60) or better	
Vision in one eye 10/200 (3/60):	
In the other eye 10/200 (3/60)	90
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	50
In the other eye 20/50 (6/15)	40
In the other eye 20/40 (6/12)	30
Vision in one eye 15/200 (4.5/60):	
In the other eye 15/200 (4.5/60)	80
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	40
In the other eye 20/50 (6/15)	30
In the other eye 20/40 (6/12)	20

GENERAL RATING FORMULA FOR DIAGNOSTIC CODES 6000 THROUGH 6009—Continued

	Rating
Vision in one eye 20/200 (6/60):	
In the other eye 20/200 (6/60)	70
In the other eye 20/100 (6/30)	60
In the other eye 20/70 (6/21)	40
In the other eye 20/50 (6/15)	30
In the other eye 20/40 (6/12)	20
Vision in one eye 20/100 (6/30):	
In the other eye 20/100 (6/30)	50
In the other eye 20/70 (6/21)	30
In the other eye 20/50 (6/15)	20
In the other eye 20/40 (6/12)	10
Vision in one eye 20/70 (6/21):	
In the other eye 20/70 (6/21)	30
In the other eye 20/50 (6/15)	20
In the other eye 20/40 (6/12)	10
Vision in one eye 20/50 (6/15):	
In the other eye 20/50 (6/15)	10
In the other eye 20/40 (6/12)	10
Vision in one eye 20/40 (6/12):	
In the other eye 20/40 (6/12)	0

[1] Review for entitlement to special monthly compensation under § 3.350 of this chapter.

RATINGS FOR IMPAIRMENT OF VISUAL FIELDS

	Rating
6080 Visual field defects:	
Homonymous hemianopsia	30
Loss of temporal half of visual field:	
Bilateral	30
Unilateral	10
Or rate each affected eye as 20/70 (6/21).	
Loss of nasal half of visual field:	
Bilateral	10
Unilateral	10
Or rate each affected eye as 20/50 (6/15).	
Loss of inferior half of visual field:	
Bilateral	30
Unilateral	10
Or rate each affected eye as 20/70 (6/21).	
Loss of superior half of visual field:	
Bilateral	10
Unilateral	10
Or rate each affected eye as 20/50 (6/15).	
Concentric contraction of visual field:	
With remaining field of 5 degrees[1]	
Bilateral	100
Unilateral	30
Or rate each affected eye as 5/200 (1.5/60).	
With remaining field of 6 to 15 degrees:	
Bilateral	70
Unilateral	20
Or rate each affected eye as 20/200 (6/60).	
With remaining field of 16 to 30 degrees:	
Bilateral	50
Unilateral	10
Or rate each affected eye as 20/100 (6/30).	
With remaining field of 31 to 45 degrees:	
Bilateral	30
Unilateral	10
Or rate each affected eye as 20/70 (6/21).	
With remaining field of 46 to 60 degrees:	
Bilateral	10
Unilateral	10
Or rate each affected eye as 20/50 (6/15).	
6081 Scotoma, unilateral:	
Minimum, with scotoma affecting at least one-quarter of the visual field (quadrantanopsia) or with centrally located scotoma of any size	10
Otherwise, evaluate on visual impairment.	

[1] Review for entitlement to special monthly compensation under § 3.350 of this chapter.

RATINGS FOR IMPAIRMENT OF MUSCLE FUNCTION

Degree of diplopia	Equivalent visual acuity
6090 Diplopia (double vision):	
(a) Central 20 degrees	5/200 (1.5/60)
(b) 21 degrees to 30 degrees:	
(1) Down	15/200 (4.5/60)
(2) Lateral	20/100 (6/30)
(3) Up	20/70 (6/21)
(c) 31 degrees to 40 degrees:	
(1) Down	20/200 (6/60)
(2) Lateral	20/70 (6/21)
(3) Up	20/40 (6/12)
6091 Symblepharon: Evaluate on visual impairment, lagophthalmos (diagnostic code 6022), disfigurement (diagnostic code 7800), etc., depending on particular findings in individual case.	

(Authority: 38 U.S.C 1155)

§§ 4.80, 4.83 and 4.84 [Removed and Reserved]

5. Sections 4.80, 4.83 and 4.84 are removed and reserved.

§§ 4.83a and 4.84a [Removed]

6. Sections 4.83a and 4.84a are removed.

[FR Doc 99–11771 Filed 5–10–99; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6339–2]

New Jersey: Authorization of State Hazardous Waste Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act, as amended, 42 U.S.C. 6901 *et seq.* ("RCRA"), and the regulations thereunder, the State of New Jersey (the "State") has applied for final authorization of its hazardous waste program adopted in October 1996. The Environmental Protection Agency, Region 2 ("EPA") has reviewed the State's application and has made a decision, subject to EPA's receipt and evaluation of public comment, that the State's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Accordingly, EPA proposes to approve and authorize the State's hazardous waste program.

DATES: Comments on this proposed rule must be received by the close of business on June 10, 1999.

ADDRESSES: Written comments should be sent to Ms. Kathleen C. Callahan, Director, Division of Environmental Planning and Protection, U.S. EPA, Region II, 290 Broadway, New York, New York 10007–1866, (212) 637–3724.

Copies of the State's application for authorization are available for inspection and copying as follows:

The New Jersey Department of Environmental Protection ("NJDEP")
Address: Public Access Center, NJDEP, 401 East State Street, 1st Floor, Trenton, NJ 08625
Hours: Monday through Friday (excluding holidays), 8:30AM–1:00PM, 2:00PM–4:30PM
Telephone: (609) 777–3373

EPA
Address: EPA's Library, 16th Floor, 290 Broadway, New York, NY 10007–1866
Hours: Monday through Thursday (excluding holidays), 9:00AM–4:30PM, Friday (excluding holidays), 9:00AM–1:00PM
Telephone: (212) 637–3185

FOR FURTHER INFORMATION CONTACT: Call Elizabeth Butler at (212) 637–4163.

Summary

I. State Authorization Under RCRA

Pursuant to section 3006 of RCRA, 42 U.S.C. 6926, EPA may, upon application by a state, authorize the applicant state's hazardous waste program to operate in the state in lieu of the federal hazardous waste program. The federal hazardous waste program (the "Federal Program") is comprised of the regulations published in Title 40 of the Code of Federal Regulations under the authority of RCRA. To qualify for final authorization, a state's hazardous waste program must: (1) be equivalent with the Federal Program; (2) be consistent with the Federal Program; and (3) provide for adequate enforcement. RCRA section 3006(b), 42 U.S.C. 6926(b).

II. Background—History of RCRA Authorization Within the State

In 1985, the State was granted final authorization by EPA for the RCRA base program, effective February 21, 1985 (50 FR 5260, 2/7/85). At that time the base program covered the essential core of the Federal Program as reflected in the initial enactment of RCRA prior to its amendment by the Hazardous and Solid Waste Amendments of 1984. In 1988 and 1993 EPA authorized the State for a small number of additional regulations (53 FR 30054, 8/10/88, and 58 FR 59370, 11/9/93).

On October 21, 1996, the State repealed its then existing hazardous waste program, including the authorized provisions, and adopted a new program (N.J.A.C. 7:26G–1.1 *et seq.*, 28 New Jersey Register 4606, 10/21/96). As part of this October 21, 1996 adoption, the State adopted, with certain exceptions and modifications, 40 CFR parts 124, 260–266, 268 and 270 as set forth in the July 1, 1993 CFR, by incorporation by reference, and designated these provisions N.J.A.C. 7:26G–4 through N.J.A.C. 7:26G–13, inclusive. (28 New Jersey Register 4652–4668, 10/21/96. N.J.A.C. 7:26G–4 through N.J.A.C. 7:26G–13 are referred to below as the "State Program"). Under cover of a letter dated January 13, 1999, the State submitted an application meeting the requirements of 40 CFR part 271, requesting authorization of the State Program.[1]

[1] The State's redesignation of the Parts of the Federal Program adopted by incorporation by reference on October 21, 1996, and comprising the State Program, is as follows: N.J.A.C. 7:26G–4 (40 CFR part 260); N.J.A.C. 7:26G–5 (40 CFR part 261); N.J.A.C. 7:26G–6 (40 CFR part 262); N.J.A.C. 7:26G–7 (40 CFR part 263); N.J.A.C. 7:26G–8 (40 CFR part 264); N.J.A.C. 7:26G–9 (40 CFR part 265); N.J.A.C.

III. Decision

A. Proposed Authorization

EPA has reviewed the State's application and has determined that the State Program, with limited exceptions, possesses the requisite equivalence and consistency with the Federal Program. Furthermore, the State's application indicates that the State possesses the necessary enforcement resources and is prepared to utilize those resources to provide adequate enforcement of the State Program. Accordingly, EPA has determined that the State Program qualifies for authorization and is proposing today, subject to public comment, to authorize the State Program, with the exceptions noted below.

In several instances the State has not incorporated a federal regulation by reference and has not adopted a substitute regulation. These instances are all clearly indicated in the State's October 21, 1996 adoption. None of these omitted federal regulations, however, are required to be adopted for authorization, for various reasons including, for example, that they are not applicable or delegable to states. Thus, the State's failure to either adopt these particular federal regulations, or to adopt substitute regulations, in no way impairs the equivalence or consistency of the State Program.

EPA notes that its determination to authorize the State Program is based on the information submitted to EPA by the State. If, after public comment, EPA authorizes the State Program, should the criteria upon which EPA bases its approval subsequently change for any reason, including without limitation changes in State laws, regulations or administrative procedures which negate the equivalency or consistency of one or more provisions of the State Program, or in any way limit the State's ability to enforce or properly administer the State Program, EPA may revisit its approval. In such event, EPA may exercise its authority, provided in 40 CFR 271.22, to afford the State an opportunity to correct any program deficiencies, or EPA may withdraw authorization of the State Program, in whole or in part. Furthermore, ultimate authorization of the State Program by EPA shall not be deemed in any way as a waiver by EPA of any of its statutory rights under RCRA including but not limited to sections 3004(v), 3005(c)(3), 3007, 3008, 3013, 3020(c) and 7003 (42 U.S.C. 6924(v), 6925(c)(3), 6927, 6928, 6934, 6939b(c) and 6973).

B. Exceptions

In N.J.A.C. 7:26G–8.1(a), the State incorporates by reference 40 CFR part 264 , the part of the Federal Program fixing the standards for the owners and operators of hazardous waste treatment, storage and disposal facilities. In the remaining subparagraphs of 7:26G–8.1 [(b) through (h)] the State neither omits 40 CFR 264.101, 264.552 and 264.553, nor adopts these federal regulations with modifications. Thus, the State has adopted 40 CFR 264.101, 264.552 and 264.553 by means of incorporation by reference through 7:26G–8.1(a). The above three sections of the Federal Program are the sections implementing the corrective action provisions of RCRA, which provisions were incorporated into RCRA upon the enactment of the Hazardous and Solid Waste Amendments of 1984. The State, despite its adoption of 40 CFR 264.101, 264.552 and 264.553, informed EPA in its application that it was not applying for authorization for corrective action at this time, and would apply for corrective action authorization under a separate application in the future. Accordingly, while EPA is today proposing to authorize N.J.A.C. 7:26G–8.1(a), EPA is not proposing to authorize the State for corrective action at this time, and 40 CFR 264.101, 264.552 and 264.553 shall remain in full force and effect. Consequently, until the State is authorized for corrective action, EPA shall continue to issue corrective action permits within the State.

In N.J.A.C. 7:26G–12.1(a), the State incorporates by reference 40 CFR 270.73(a) and (b). The State, however, does not incorporate by reference 40 CFR 270.73(c)–(g). Rather, the State replaces these subparagraphs of 40 CFR 270.73 with 7:26G–12.1(c)(16). Title 40 CFR 270.73 is the regulation in the Federal Program governing the loss of interim status (RCRA section 3005(c)(2)(C) and (e)(2)(3), 42 U.S.C. 6925(c)(2)(C) and (e)(2)(3)). N.J.A.C. 7:26G–12.1(c)(16) provides that the State may terminate interim status at its discretion, under a variety of circumstances subject to a hearing, if requested. By contrast, the federal loss of interim status regulations, excluded by the State and replaced by 7:26G–12.1(c)(16), are non-discretionary and operate automatically, without the opportunity for a hearing, if the requirements cited in these federal provisions are not met. Since 7:26G–12.1(c)(16) is discretionary and lacks automatic application, it is not equivalent to 40 CFR 270.73(c)–(g), is less stringent than 40 CFR 270.73(c)–(g), and therefore, cannot be authorized. Consequently, EPA is not proposing to authorize the State for N.J.A.C. 7:26G–12.1(c)(16), and 40 CFR 270.73(c)–(g) shall remain in full force and effect.

IV. Regulatory Requirements

A. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 ("UMRA"), Public Law 104–4, establishes requirements for federal agencies to assess the effects of certain regulatory actions on state, local, and tribal governments, and upon the private sector. Under section 202 of UMRA, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a federal mandate that may result in estimated costs to state or local governments in the aggregate, or to the private sector, of $100 million or more. EPA has determined that today's proposed rule does not include a federal mandate that may result in estimated costs of $100 million or more to either state or local governments in the aggregate, or to the private sector. This federal action approves preexisting requirements of State law, and imposes no new requirements. Accordingly, no additional costs to State or local governments, or to the private sector, result from this action.

UMRA, section 203, further provides that before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments it must develop a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of such governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements. Like section 202, the requirements of section 203 of UMRA do not apply to today's proposed rule, since this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate treatment, storage or disposal facilities, they are already subject to the regulatory requirements under existing State law which are proposed to be authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of today's proposed authorization of the State Program.

7:26G–10 (40 CFR part 266); N.J.A.C. 7:26G–11 (40 CFR part 268); N.J.A.C. 7:26G–12 (40 CFR part 270); and N.J.A.C. 7:26G–13 (40 CFR part 124).

B. Certification Under the Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

EPA has determined that today's proposed rule will not have a significant economic impact on a substantial number of small entities. Such small entities which are hazardous waste generators, transporters, or which own and/or operate treatment, storage or disposal facilities are already subject to the regulatory requirements of existing State law which EPA proposes to authorize. EPA's proposed authorization therefore, will not add any burdens, since authorization will result only in an administrative change, rather than a change in the substantive requirements imposed on these small entities.

Accordingly, pursuant to 5 U.S.C. 605(b), I hereby certify that authorization of the State Program will not have a significant economic impact on a substantial number of small entities. This authorization approves regulatory requirements under existing State law to which small entities are already subject. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed or final rule. Authorization of the State Program will not impose any additional information requirements upon the regulated community.

D. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, section 12(d) (15 U.S.C. 272 note, *Utilization of Consensus Technical Standards by Federal Agencies*) directs all federal agencies to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs federal agencies to provide Congress, through the Office of Management and Budget, with an explanation in any instance where they decide not to use available and applicable voluntary consensus standards. Authorization of the State Program does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

E. Compliance With Executive Order 12866

The Office of Management and Budget has exempted this proposed rule from the requirements of section 6 of E.O. 12866.

F. Compliance With Executive Order 12875

E.O. 12875 is intended to develop an effective process to permit elected officials and other representatives of state or local governments to provide meaningful input in the development of regulatory proposals containing significant unfunded mandates. Since today's rule proposes authorization of preexisting requirements of State law, no new unfunded mandates result from this action. (See also the discussion under IV.A, above, Unfunded Mandates Reform Act).

G. Compliance With Executive Order 13045

E.O.13045, *Protection of Children from Environmental Health Risks and Safety Risks,* applies only to federal rules that are "economically significant" as defined under Executive Order 12866 (i.e., a rule "that has an annual effect on the economy of $100 million or more or would adversely affect in a material way the economy, a sector of the economy, productivity, competition , jobs, the environment, public health or safety, or State, local, or tribal governments or communities", E.O. 13045, 62 FR 19885, 4/23/97). EPA has determined that the authorization of the State Program will not have a significant effect on the economy within the meaning of E.O. 12866, since today's rule proposes authorization of preexisting requirements of State law, and imposes no new requirements. (See also IV.A and F above). Accordingly, E.O. 13045 is inapplicable to today's proposed rule.

Authority: This document is issued under the authority of sections 2002(a), 3006 and 7004(b) of RCRA, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 19, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–11710 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2505

RIN 3045–AA21

Rules Implementing the Government in the Sunshine Act

AGENCY: Corporation for National and Community Service.

ACTION: Proposed rule.

SUMMARY: These proposed rules will implement provisions of the Government in the Sunshine Act (Sunshine Act). The Sunshine Act applies to meetings of agencies of the United States government that are headed by collegial bodies composed of two or more members, a majority of whom are appointed by the President with the advice and consent of the Senate. The Act provides that meetings, as defined in the Act, shall be held in public except where stated exemptions apply. The Sunshine Act applies to meetings of the Board of Directors of the Corporation for National and Community Service(the Corporation). The Corporation invites comments from the public on these proposed rules.

DATES: The Corporation will consider public comments received on or before July 12, 1999.

ADDRESSES: Comments may be mailed or delivered to Frank Trinity, Associate General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525, sent by facsimile transmission to (202) 565–2796, or sent electronically to: ftrinity@cns.gov. Copies of all communications received will be available for review at the Corporation by members of the public.

FOR FURTHER INFORMATION CONTACT: Frank Trinity, Associate General Counsel, Corporation for National and Community Service, (202) 606–5000, ext. 256. T.D.D. (202) 565–2799.

This notice may be requested in an alternative format for persons with visual impairments.

SUPPLEMENTARY INFORMATION: The Corporation for National and Community Service (Corporation) is a Government corporation established in 1993 that administers programs under the Domestic Volunteer Service Act of 1973 and the National and Community Service Act of 1990. In 1993, Congress also established the Corporation's Board of Directors (the Board) and directed that members of the Board be appointed by the President and confirmed by the Senate. The Board has several statutory responsibilities, including the review and approval of specific plans and proposals submitted by the Corporation's Chief Executive Officer under the national service laws. To carry out its statutory duties, the Board meets at least three times per year.

The Sunshine Act defines meetings and sets certain requirements for advance public notice of such meetings (5 U.S.C. 552b(e)) and permits agencies to close the meetings to public attendance and to withhold information regarding meetings when an agency finds that any of the ten exemptions enumerated in the Sunshine Act applies, 5 U.S.C. 552b(c). The Sunshine Act provides for procedures that must be followed by agencies in invoking an exemption, 5 U.S.C. 552b(d), (f). The Sunshine Act requires agencies to adopt, after opportunity for public comment, regulations to implement the Sunshine Act, 5 U.S.C. 552b(g). Consistent with this requirement, the Corporation proposes regulations to implement the provisions of 5 U.S.C. 552b(b)–(f). The proposed regulations are intended to follow the exemptions provided in the Sunshine Act and to implement fully the Sunshine Act's procedural requirements regarding public notice of meetings, availability of transcripts or other records of meetings, and closure of meetings.

Executive Order 12866

The Corporation has determined that this regulatory action is not a "significant" rule within the meaning of Executive Order 12866 because it is not likely to result in: (1) an annual effect on the economy of $100 million or more, or an adverse and material effect on a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal government or communities; (2) the creation of a serious inconsistency or interference with an action taken or planned by another agency; (3) a material alteration in the budgetary impacts of entitlement, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) the raising of novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Corporation has determined that this regulatory action will not result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, the Corporation has not performed the initial regulatory flexibility analysis that is required under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) for major rules that are expected to have such results.

Other Impact Analyses

Because the proposed changes do not authorize any information collection activity this regulatory action is not subject to review and approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3500 *et seq.*).

For purposes of Title II of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1531–1538, as well as Executive Order 12875, this regulatory action does not contain any federal mandate that may result in increased expenditures in either Federal, State, local, or tribal governments in the aggregate, or impose an annual burden exceeding $100 million on the private sector.

List of Subjects in 45 CFR Part 2505

Sunshine Act.

For the reasons stated in the preamble, part 2505 of chapter XXV, title 45 of the Code of Federal Regulations is proposed to be added to read as follows:

PART 2505—RULES IMPLEMENTING THE GOVERNMENT IN THE SUNSHINE ACT

Sec.

2505.1 Applicability.
2505.2 Definitions.
2505.3 To what extent are meetings of the Board open to the public?
2505.4 On what grounds may the Board close a meeting or withhold information?
2505.5 What are the procedures for closing a meeting, withholding information, and responding to requests by affected persons to close a meeting?
2505.6 What are the procedures for making a public announcement of a meeting?
2505.7 What are the procedures for changing the time or place of a meeting following the public announcement?

Authority: 5 U.S.C. 552b; 42 U.S.C. 12651c(c)

§ 2505.1 Applicability.

(a) This part implements the provisions of section 3(a) of the Government in the Sunshine Act (5 U.S.C. 552b). These procedures apply to meetings of the Corporation's Board of Directors, or to any subdivision of the Board that is authorized to act on its behalf. The Board of Directors may waive the provisions of this part to the extent authorized by law.

(b) Nothing in this part expands or limits the present rights of any person under the Freedom of Information Act (5 U.S.C. 552), except that the exemptions set forth in § 2505.4 shall govern in the case of any request made pursuant to the Freedom of Information Act to copy or inspect the transcript, recording, or minutes described in § 2505.5.

(c) Nothing is this part authorizes the Corporation to withhold from any individual any record, including transcripts, recordings, or minutes required by this part, which is otherwise accessible to such individual under the Privacy Act (5 U.S.C. 552a).

§ 2505.2 Definitions.

As used in this part:

(a) *Board* means the Board of Directors established pursuant to 42 U.S.C. 12651a, or any subdivision of the Board that is authorized to act on its behalf.

(b) *Chairperson* means the Member elected by the Board to serve as Chairperson.

(c) *General Counsel* means the Corporation's principal legal officer or other attorney acting at the designation of the Corporation's principal legal officer.

(d) *Corporation* means the Corporation for National and Community Service established pursuant to 42 U.S.C. 12651.

(e) *Meeting* means the deliberations of at least a quorum of the Corporation's Board of Directors where such deliberations determine or result in the joint conduct or disposition of official Corporation business. A meeting may be conducted under this part through telephone or similar communications equipment by means of which all participants may communicate with each other. The term meeting includes a portion thereof. The term meeting does not include:

(1) Notation voting or similar consideration of business, whether by circulation of material to the Members individually in writing or by a polling of the members individually by telephone.

(2) Action by a quorum of the Board to—

(i) Open or to close a meeting or to release or to withhold information pursuant to § 2505.5;

(ii) Set an agenda for a proposed meeting;

(iii) Call a meeting on less than seven days' notice as permitted by § 2505.6(b); or

(iv) Change the subject-matter or the determinations to open or to close a publicly announced meeting under § 2505.7(b).

(3) A gathering for the purpose of receiving briefings from the Corporation's staff or expert consultants, provided that Members of the Board do not engage in deliberations at such sessions that determine or result in the joint conduct or disposition of official Corporation business on such matters.

(4) A gathering for the purpose of engaging in preliminary discussions or exchanges of views that do not effectively predetermine official Corporation action on a particular matter.

(f) *Member* means a current member of the Corporation's Board of Directors.

(g) *Presiding Officer* means the Chairperson or, in the absence of the Chairperson, the Vice Chairperson of the Board of Directors or other member authorized to act in this capacity by the Board.

(h) *Quorum* means the number of Members authorized to conduct Corporation business pursuant to the Board's bylaws.

§ 2505.3 To what extent are meetings of the Board open to the public?

The Board shall conduct meetings, as defined in § 2505.2, in accordance with this part. Except as provided in § 2505.4, the Board's meetings shall be open to the public. The public is invited to attend all meetings of the Board that are open to the public but may not participate in the Board's deliberations at such meetings or record any meeting by means of electronic, photographic, or other device.

§ 2505.4 On what grounds may the Board close a meeting or withhold information?

The Board may close a meeting or withhold information that otherwise would be required to be disclosed under §§ 2505.5, 2505.6 and 2505.7 if it properly determines that an open meeting or disclosure is likely to—

(a) Disclose matters that are—

(1) Specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign policy; and

(2) In fact properly classified pursuant to such Executive order;

(b) Relate solely to the internal personnel rules and practices of the Corporation;

(c) Disclose matters specifically exempted from disclosure by statute (other than 5 U.S.C. 552), provided that such statute—

(1) Requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or

(2) Establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(d) Disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(e) Involve accusing any person of a crime, or formally censuring any person;

(f) Disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(g) Disclose investigatory records compiled for law enforcement purposes, or information which, if written, would be contained in such records, but only to the extent that the production of such records or information would—

(1) Interfere with enforcement proceedings;

(2) Deprive a person of a right to a fair trial or an impartial adjudication;

(3) Constitute an unwarranted invasion of personal privacy;

(4) Disclose the identity of a confidential source and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source;

(5) Disclose investigative techniques and procedures; or

(6) Endanger the life or physical safety of law enforcement personnel;

(h) Disclose information contained in or related to examination, operating or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institution;

(i) Disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed action of the Corporation, except that this provision shall not apply in any instance where the Corporation has already disclosed to the public the content or nature of its proposed action, or where the Corporation is required by law to make such disclosure on its own initiative prior to taking final action; or

(j) Specifically concerning the Corporation's issuance of a subpoena or the Corporation's participation in a civil action or proceeding, an action in a foreign court or international tribunal, or an arbitration, or the initiation, conduct, or disposition by the Corporation of a particular case of formal adjudication pursuant to the procedures in 5 U.S.C. 554 or otherwise involving a determination on the record after opportunity for a hearing.

§ 2505.5 What are the procedures for closing a meeting, withholding information, and responding to requests by affected persons to close a meeting?

(a) The Board may vote to close a meeting or withhold information pertaining to a meeting. Such action may be taken only when a majority of the entire membership of the Board votes to take such action. A separate vote shall be taken with respect to each action under § 2505.4. The Board may act by taking a single vote with respect to a series of meetings which are proposed to be closed to the public, or with respect to any information concerning a series of meetings, so long as each meeting in the series involves the same particular matters and is scheduled to be held no more than thirty days after the initial meeting in the series. Each Member's vote under this paragraph shall be recorded and no proxies shall be allowed.

(b) If your interests may be directly affected if a meeting is open you may request that the Board close the meeting on one of the grounds referred to in § 2505.4(e), (f), or (g).You should submit your request to the Office of the General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525. The Board shall, upon the request of any one of its members, determine by recorded vote whether to grant your request.

(c) Within one working day of any vote taken pursuant to this section, the Board shall make publicly available a written copy of such vote reflecting the vote of each Member on the question. If a meeting is to be closed to the public, the Board shall, within one working day, make available a full written explanation of its action closing the meeting and a list of all persons expected to attend the meeting and their affiliation.

(d) For each closed meeting, the General Counsel shall publicly certify that, in his or her opinion, the meeting may be closed to the public and shall state each relevant exemption relied upon. A copy of the certification shall be available for public inspection.

(e) For each closed meeting, the Board shall issue a statement setting forth the time, place, and persons present. A copy of such statement shall be available for public inspection.

(f) (1) For each closed meeting, with the exception of a meeting closed pursuant to § 2505.4(h) or (j), the Board shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting.

(2) For meetings that are closed pursuant to § 2505.4(h) or (j), the Board may maintain a set of minutes in lieu of a transcript or recording. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any vote. All documents considered in connection with any action shall be identified in such minutes.

(3) The Corporation shall make promptly available to the public, in a place easily accessible to the public, the transcript, electronic recording, or minutes of the discussion of any item on the agenda, or of any item of the testimony of any witness received at the meeting, except for such item or items of such discussion or testimony as the Corporation determines to contain information which may be properly withheld. Copies of such transcript, or minutes, or a transcription of such recording disclosing the identity of each speaker, shall be furnished to any person at the actual cost of duplication or transcription. The Corporation shall maintain the transcript, recording, or minutes for each closed meeting for at least two years or at least one year after the conclusion of any Corporation business acted upon at the meeting, whichever occurs later.

§ 2505.6 What are the procedures for making a public announcement of a meeting?

(a) For each meeting, the Board shall make a public announcement, at least one week before the meeting, of—

(1) The meeting's time and place;

(2) The matters to be considered;

(3) Whether the meeting is to be open or closed; and

(4) The name and business telephone number of the official designated by the Board to respond to requests for information about the meeting.

(b) The one week advance notice required by paragraph (a) of this section may be reduced only if—

(1) The Board determines by recorded vote that Board business requires that the meeting be scheduled in less than seven days; and

(2) The public announcement required by paragraph (a) of this section is made at the earliest practicable time and posted on the Corporation's home page.

(c) Immediately following a public announcement required by paragraph (a) of this section, the Corporation will submit for publication in the **Federal Register** a notice of the time, place, and subject-matter of the meeting, whether the meeting is open or closed, any change in one of the preceding, and the name and phone number of the official designated by the agency to respond to requests for information about the meeting.

§ 2505.7 What are the procedures for changing the time or place of a meeting following the public announcement?

(a) After there has been a public announcement of a meeting, the time or place of the meeting may be changed only if the Board publicly announces the change at the earliest practicable time. Such a change need not be determined by recorded vote.

(b) After there has been a public announcement of a meeting, the subject-matter of the meeting, or the determination of the Board to open or to close a meeting may be changed only when—

(1) The Board determines, by recorded vote, that Board business so requires and that no earlier announcement of the change was possible; and

(2) The Board publicly announces the change and the vote of each Member at the earliest practicable time.

(c) The deletion of any subject-matter previously announced for a meeting is not a change requiring the approval of the Board under paragraph (b) of this section.

Dated: May 6, 1999.

Thomas L. Bryant,

Acting General Counsel.

[FR Doc. 99–11882 Filed 5–10–99; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF43

Endangered and Threatened Wildlife and Plants; Proposed Rule To Delist the Douglas County Population of Columbian White-Tailed Deer

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We (the U.S. Fish and Wildlife Service) propose to remove the Douglas County population of the Columbian white-tailed deer (*Odocoileus virginianus leucurus*) from the Lists of Endangered and Threatened Wildlife and Plant species (delist), pursuant to the Endangered Species Act of 1973, as amended.

Two populations of this subspecies exist, one in Douglas County, Oregon, (Douglas County population), and the other in Columbia and Clatsop counties, Oregon, and Wahkiakum County, Washington (Columbia River population). The Columbian white-tailed deer was listed as endangered in 1967 under the Endangered Species Preservation Act, and subsequently listed under the Endangered Species Act of 1973 as amended (Act).

The Douglas County population has increased from a low of fewer than 300 deer in 1940 to a current total of about 5,500 deer. The range of this population also has increased. Habitat has been secured and/or protected for the population, enabling it to increase in numbers and range to the point where a change in status is appropriate.

The Douglas County population of Columbian white-tailed deer meets the recovery plan's criteria for delisting. The Columbia River population numbers meet the criteria for downlisting to threatened, but do not presently meet the objectives for secure habitat needed to delist the population. We anticipate another proposed rule in the future to downlist this population.

This proposed rule includes a proposed 5-year post-delisting monitoring plan for the Douglas County population as required for species that are delisted due to recovery. Monitoring will include population trends and productivity.

DATES: We must receive your comments on the Douglas County population of Columbian white-tailed deer delisting by July 12, 1999. Public hearing requests must be received by June 25, 1999.

ADDRESSES: Send comments and materials concerning this proposal to the Supervisor, U.S. Fish and Wildlife Service, Southwest Oregon Field Office, 2900 N.W. Stewart Parkway, Roseburg, Oregon 97470. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Craig Tuss, Field Supervisor, U.S. Fish and Wildlife Service (See ADDRESSES section), (telephone 541/957–3474; facsimile 541/957–3475) for information pertaining to the Douglas County population.

SUPPLEMENTARY INFORMATION:

Background

The Columbian white-tailed deer (*Odocoileus virginianus leucurus*) resembles other white-tailed deer subspecies, ranging in size from 39 to 45 kilograms (kg) (85 to 100 pounds (lbs)) for females and 52 to 68 kg (115 to 150 lbs) for males. Generally a red-brown color in summer, and gray in winter, the species has white rings around the eyes and a white ring just behind the nose. Its tail is long and triangular in shape, and is brown on the dorsal (upper) surface and fringed in white (Oregon Department of Fish and Wildlife (ODFW) 1995). The species was formerly distributed throughout the bottomlands and prairie woodlands of the lower Columbia, Willamette, and Umpqua River basins in Oregon and southern Washington (Bailey 1936). It is the westernmost representative of the 38 subspecies of white-tailed deer. Early accounts suggested this deer was locally common, particularly in riparian areas along the major rivers (Gavin 1978). The decline in deer numbers was rapid with the arrival and settlement of pioneers in the fertile river valleys. Conversion of brushy riparian land to agriculture, urbanization, uncontrolled sport and commercial hunting, and perhaps other factors apparently caused the extirpation of this deer over most of its range by the early 1900's (Gavin 1978). Only a small herd of 200 to 400 animals in the lower Columbia River area of Clatsop and Columbia counties, Oregon, and Cowlitz and Wahkiakum counties, Washington, and a disjunct population of unknown size in Douglas County, Oregon, survived. These two remnant populations are geographically separated by about 320 kilometers (km) (200 miles (mi)) of unsuitable or discontinuous habitat.

Population declines led to classification of this subspecies as endangered in 1967 (32 FR 4001). Prior to 1977, the Douglas County population was considered a black-tailed deer (*Odocoileus hemionus columbiana*) or a hybrid between the black-tailed deer and the Columbian white-tailed deer by the State of Oregon, and was managed accordingly, including by a regulated harvest. In 1978, the State of Oregon recognized the white-tailed deer population in Douglas County as the Columbian white-tailed deer and prohibited hunting of white-tailed deer in that County (ODFW 1995). The Columbian white-tailed deer was removed from the State of Oregon list of threatened and endangered species in 1996 because the State considers the population to have recovered.

The Columbian White-Tailed Deer Recovery Plan (Recovery Plan) was approved by us in 1976, and a revised version was approved in 1983. Because of the distance between these populations and differences in habitats and threats, the Recovery Plan addresses the recovery of each population separately.

Crews (1939) estimated the population in the 1930's in Douglas County at 200 to 300 individuals within a range of about 78 square kilometers (sq km) (30 square miles (sq mi)). In 1970, ODFW estimated that 450 to 500 deer were present. By 1983, the number had increased to about 2,500 (Smith 1985). The population has continued to grow and presently numbers about 5,500 deer (ODFW 1995).

Along with this increase in numbers, the range also has expanded. The deer have expanded to the north and west in the last 10 years, and now occupy an area of approximately 800 sq km (308 sq mi)(ODFW 1995). The highest densities of Columbian white-tailed deer are found along the south bank of the North Umpqua River within about 1 km (0.6 mi) of the river. Within this zone, browse lines are becoming evident in some areas, and higher parasite loads and bacterial infections are beginning to become apparent due to high concentrations of deer (Kistner and Denney 1991). High internal parasite loads are generally considered to be indicators of high deer densities (ODFW 1995).

Most habitat for the Douglas County population is on private lands, and 3,713 hectares (ha) (9,191 acres (ac)) of suitable habitat are presently considered secure on Federal, County and private lands. For the purpose of delisting, habitat is considered secure if it is protected by legally binding measures or law from adverse human activities for the foreseeable future. The majority of this secure habitat (2,804 ha) (6,941 ac) is managed by the U.S. Department of the Interior, Bureau of Land Management (BLM), Roseburg District. About 2,658 ha (6,581 ac) is managed as the North Bank Habitat Management Area, which was acquired by the BLM in order to secure habitat for the Douglas County population of Columbian white-tailed deer, and its primary purpose is to manage for the species (BLM 1998). BLM also manages another 145 ha (360 ac) of for the species (Lowell Hayes, BLM, *in litt.* 1998). Douglas County provides another 626 ha (1,550 ac) of secure habitat, and includes the Kanipe Ranch property (444 ha) (1,100 ac), which was deeded to the County with the stipulation that it be managed as a wildlife area and the County manages it in that manner; Whistler Park (40 ha)(100 ac), which the County manages as a park; and the Glide Transfer Site (141 ha)(350 ac) which is managed as an experimental forest, with wildlife habitat as one of its objectives (Frank M. Nielsen, Douglas County Public Works Department, *in litt.* 1998; David Peterson, U.S. Fish and Wildlife Service, pers. comm. 1998). Several other organizations are providing secure habitat, including the Nature Conservancy, which owns about 8 ha (20 ac) and manages it as a natural area and will continue to do so into perpetuity; 12 ha (30 ac) is provided by Oregon Department of Fish and Wildlife, which manages the land for wildlife and public fishing; and Ramp Canyon (263 ha) (650 ac) is managed by the Ramp Canyon Board, comprised of private citizens, as an outdoor recreation site which provides habitat for the Douglas County population of Columbian white-tailed deer (D. Peterson, pers. comm. 1998).

Though not considered secure, habitat on private lands within the core range of this population that contains key foraging, hiding, fawning, and travel corridors is also providing a measure of protection for the subspecies. Douglas County has implemented land use plans and zoning ordinances that apply to private land to protect habitat and assist in recovery (Douglas County 1997). These protection measures include retention of existing land uses that maintain essential habitat components. Minimum lot sizes for farm use and timberlands, and building setbacks along riparian zones, have been established to assure maintenance of habitat and travel corridors (ODFW 1995; Douglas County 1997).

The Recovery Plan described the criteria for reclassification of the Douglas County population to threatened status. This criteria was maintenance of a total of 1,000 animals in the herd in combination with

moderate habitat protection (such as provided by Douglas County Land Use Plans and zoning ordinances) (Service 1983). The Recovery Plan also had an objective of at least 500 deer distributed on at least 2,222 ha (5,500 ac) of suitable, secure habitat for the Douglas County population to be considered recovered and subject to removal from the Lists of Endangered and Threatened Wildlife (Service 1983). The figure of 500 deer was calculated based on existing sex ratios and distribution, and is theoretically required to eliminate the potentially deleterious effects of inbreeding. The theory and formulas for calculating this number were developed and discussed by Senner (1980).

From 1994 to 1997, population estimates indicated that 507, 424, 558 and 618 deer have been present on secure habitat (S. Denney, ODFW, *in litt.* 1997). The rest of the population is found on habitat not considered secure. The current total population size is roughly five times the population size required for downlisting, which greatly reduces the risk to the population. It is also anticipated that as habitat management and restoration activities are implemented by the BLM in the North Bank Habitat Area, which contains the majority of secure lands, the carrying capacity and numbers of deer on these lands will increase accordingly. The Douglas County population has met the objectives in the Recovery Plan, and greatly exceeded the habitat objectives.

Distinct Vertebrate Population Segment

The Douglas County and Columbia River populations of the Columbian white-tailed deer qualify as distinct under our Policy Regarding the Recognition of Distinct Vertebrate Population Segments Under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), published in the **Federal Register** on February 7, 1996 (61 FR 4722). For a population to be listed under the Act as a distinct vertebrate population segment, three elements are considered—(1) the discreteness of the population segment in relation to the remainder of the species to which it belongs; (2) the significance of the population segment to the species to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing (i.e., is the population segment, when treated as if it were a species, endangered or threatened?).

The Douglas County and Columbia River populations of Columbian white-tailed deer are discrete as they are geographically isolated and separated from each other. Historically, this subspecies ranged from the south end of Puget Sound in Washington south to the Roseburg area in Oregon (Bailey 1936). At the present time, only two locations for this subspecies exist. The subspecies' range has been reduced to its present locations along the Columbia River in Washington and Oregon and in Douglas County, Oregon. The populations are separated by over 320 km (200 mi) of discontinuous or unsuitable habitat. Columbian white-tailed deer are not migratory and appear to restrict their movements to relatively small home ranges (ODFW 1995). As a result, the wide geographic gap in suitable habitat between the Columbia River and Douglas County populations identifies this subspecies as having two discrete and isolated population segments.

Regarding significance, there are some recognized ecological differences between the habitats of the Columbia River and Douglas County populations, although both subpopulations are tied to riparian areas. The Douglas County population occurs in a relatively dry area that has rolling hills, grasslands, and oak forests (ODFW 1995). Smith (1981) found that oak woodland/grassland habitat is important to this population, and heavily used by Columbian white-tailed deer. The Columbia River population, by contrast, occurs in wet bottomlands and dense forest swamps where there is little elevational relief, and which receive a large amount of precipitation (ODFW 1995).

As previously mentioned, the Columbian white-tailed deer was listed as endangered in 1967 (32 FR 4001), and subsequently listed under the Act (see Previous Federal Action section below). The Recovery Plan addressed recovery objectives and criteria for each population, and recognized them as two distinct populations because of differences in location, habitats, land use, etc. (Service 1983). For the reasons described herein, we believe that the Douglas County population has met the criteria for delisting. The Columbia River population has met the criteria for downlisting, and we anticipate another proposed rule in the future to downlist this population.

Previous Federal Action

On March 11, 1967, the Columbian white-tailed deer was listed in the **Federal Register** as an endangered species under the Endangered Species Preservation Act (ESPA) of 1966 (32 FR 4001). The ESPA defined listing factors and required publication of the names of fish and wildlife species threatened with extinction. On March 8, 1969, we again published in the **Federal Register** (34 FR 5034) a list of fish and wildlife species threatened with extinction under the Endangered Species Conservation Act of 1969. This list again included the Columbian white-tailed deer. On August 25, 1970, we published a proposed list of endangered species, which included the Columbian white-tailed deer, in the **Federal Register** (35 FR 13519) as part of new regulations implementing the Endangered Species Conservation Act of 1969. This rule became final on October 13, 1970 (35 FR 16047). Species listed as endangered on the above mentioned lists were automatically included in the lists of threatened and endangered species when the Endangered Species Act was authorized in 1973.

The processing of this proposed rule conforms with our listing priority guidance published in the **Federal Register** on May 8, 1998 (63 FR 25502). This guidance clarifies the order in which we will process rulemakings following two related events—(1) the lifting, on April 26, 1996, of the moratorium on final listings imposed on April 10, 1995 (Public Law 104–6) and, (2) the restoration of significant funding for listing through passage of the Omnibus Budget Reconciliation Act following severe funding constraints imposed by a number of continuing resolutions between November 1995 and April 1996. Under this guidance, highest priority (Tier 1) is given to processing emergency listings and second highest priority (Tier 2) to resolving the listing status of outstanding proposed listings, resolving the conservation status of candidate species, processing administrative findings on petitions to add species to the lists or reclassify species from threatened to endangered status, and delisting or reclassifying actions. The lowest priority actions, processing critical habitat designations, are in Tier 3. This proposed rule falls under Tier 2.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act of 1973, as amended (Act)(16 U.S.C. 1531 *et seq.*) and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) set forth the procedures for listing, reclassifying or removing species. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors should also be considered in any decision to delist a species, and their application to

the Columbian white-tailed deer are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* The preferred habitat of the Columbian white-tailed deer includes grass-shrub, spruce-cottonwood swamps, oak mottes, open and closed oak woodland within bottomland and riparian zones, and some coniferous forest. The lowland riparian system, however, is the key habitat component for the deer (Service 1983; Smith 1987). Conversion of these habitat types to residential and intensive agricultural developments was a key factor leading to the listing of this subspecies as endangered.

Within the range of the Douglas County population, 3,713 ha (9,191 ac) are now considered secure habitat, as previously described. These lands were estimated to harbor 507, 424, 558 and 618 deer in each of the years between 1994–1997, respectively (S. Denney, *in litt.* 1997). The remainder of the species' preferred habitats are privately owned. However, since 1983, prime habitat areas for Columbian white-tailed deer have been designated by the Douglas County Land Use Plan (1997) for rural residential, agriculture, grazing and forest, which protects lands from urban development. Key travel corridors and fawning areas along the North Umpqua River are now partly protected from intensive and excessive development by Douglas County, which developed a habitat protection program for the Columbian white-tailed deer within the species' range in that county. Protective measures to conserve habitat for the species include a 30 m (100 ft) structural development setback from streams to preserve riparian corridors, a minimum parcel size of 32 ha (80 ac) within 96 percent of the protected habitat area, and limit rural residential development along the western edge of the protected habitat. The deer population has continued to increase in this area. This sustained increase in numbers in conjunction with habitat protection measures has resulted in a population of Columbian white-tailed deer that is no longer threatened by habitat loss or destruction.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Prior to protection under the Act, the Columbian white-tailed deer experienced intensive hunting pressure that, coupled with habitat loss, resulted in a precipitous population decline. Since protection under the Act and the securing of suitable habitat, the Douglas County population has increased in numbers, and has increased even during the periods of legal sport hunting. Scientific studies, permitted under section 10(a)(1)(A) of the Act, have resulted in the take of as many as 40 deer within 1 year from the Douglas County population. These permitted takings have not had measurable impacts on population trends in this population.

Poaching of several Columbian white-tailed deer has been documented annually, but it is not judged to have a significant impact on the population (ODFW 1995).

Past overutilization was considered a threat to this population and was one of several factors leading to its listing as endangered. Columbian white-tailed deer cannot be legally hunted while the subspecies is listed under the Act. Delisting of the Douglas County population will allow the State of Oregon to regulate the harvest of this subspecies, and may result in an increased level of utilization (ODFW 1995). However, the population now numbers about 5,500 deer, which is considered to be large enough to withstand some regulated harvest. The regulated harvest objective would be to reduce the population density in certain areas, and to expand the range of the subspecies by trapping and transplanting individuals to unoccupied range (ODFW 1995). Also, the population would be monitored for at least 5 years after delisting to ensure that the population remains stable and there are no further risks to the subspecies' well-being. Overutilization is no longer considered a threat to the population.

C. *Disease or predation.* At the time of listing, disease and predation were not thought to be major limiting factors of this population. Parasitism and some bacterial diseases are now beginning to become apparent in areas where deer densities are highest. Continued increases in numbers within the core range may lead to widespread mortality from parasitism and disease (Kistner and Denney 1991). Kistner and Denney's (1991) work included the permitted take of 40 deer to analyze disease and parasite levels. Delisting would allow management practices by the State of Oregon such as hazing to disperse concentrations of deer and depredation permits to remove individual deer. Sport hunting to regulate high-density populations would also be possible. These actions would reduce the likelihood of a density-dependent epizootic disease or infection. It would not, however, totally eliminate the potential for such an occurrence. Predation has not been identified or recognized as a controlling or limiting factor of this population. In conclusion, disease and predation are not considered threats to the population, and delisting of the population would probably facilitate managers' ability to reduce existing problems with disease.

D. *The inadequacy of existing regulatory mechanisms.* The lack of adequate regulatory mechanisms for protecting habitat and controlling take was responsible for the decline of the deer. Listing the deer as endangered under the Act protected individual animals from take, but habitat degradation and destruction on private lands has continued, which was a major factor contributing to the decline. For the Douglas County population, securing 2,222 ha (5,500 ac) of habitat that supports 500 deer assures that adequate habitat will be protected to maintain a minimum viable population (Service 1983). The 3,713 ha (9,191 ac) of habitat secured on BLM, Douglas County, and other lands exceeds this minimum amount. BLM manages the North Bank Management Area and several hundred other hectares (acres) for Columbian white-tailed deer; Douglas County manages 624 ha (1550 ac) as parks, forests, and wildlife areas that provide habitat; and The Nature Conservancy, ODFW, and Ramp Canyon board also manage lands to benefit the species. In addition, passage and implementation of the Douglas County Land Use Plan in 1995 provided additional habitat protection for the population on private land, although this level of habitat protection does not meet the secure habitat criteria. That plan requires retention of wooded habitat on farm and forest land, and 30 meter (100 feet) setbacks for building construction along the North Umpqua River. This portion of the river is the principal travel corridor and dispersal route within the core area of this population. Securing of adequate habitat on Federal and County lands, and the additional zoning requirements have removed this threat to the Douglas County population.

E. *Other natural or manmade factors affecting its continued existence.* With growth of the deer population, deer-human conflicts have increased. Private croplands, gardens, and ornamental plantings have been subject to varying degrees of depredation by the Douglas County population. This has created serious problems because under the Act it is illegal to haze, harass, disperse, or lethally take listed deer, even where serious continued damage is occurring. Unregulated indiscriminate illegal take is occurring and is likely to increase as the herd increases. Illegal unreported forms of control do not allow for

analysis of behavior, population changes or the subsequent formulation of management strategies based on known population dynamics. Removal of the Douglas County population of Columbian white-tailed deer from the endangered and threatened species lists will allow development and implementation of management procedures necessary to control and enhance deer populations, while fostering better land manager-landowner relationships that are necessary for effective long-term conservation.

Fire has historically played a large part in shaping habitat for Columbian white-tailed deer in Douglas County. Although fire may have negative short-term impacts on habitat, deer distribution, and numbers, the long-term effects can be beneficial by removing decadent brush, promoting nutritious vegetation, and maintaining the oak/grassland that the subspecies prefers (ODFW 1995). Columbian white-tailed deer evolved with the occurrence of fire in the ecosystem, and prescribed burning of their habitat would likely be beneficial. Currently, where this population occurs, all wildfires are suppressed because of the proximity of homes and businesses. Given the increasing Douglas County population and resulting range expansion, it is unlikely that fire would pose a significant threat to the population.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this subspecies in determining to propose this rule. Based on this evaluation, the proposed action is to delist the Douglas County population of the Columbian white-tailed deer. The population currently exceeds the minimum population number necessary to assure continued viability. Sufficient suitable habitat has been secured in Douglas County to support delisting that population.

Effects of the Rule

If the Douglas County population of the Columbian white-tailed deer is removed from the Lists of Threatened and Endangered Species, Federal agencies would no longer be required to consult with us under section 7 of the Act to ensure that any action authorized, funded, or carried out by them is not likely to jeopardize the continued existence of the deer. The protection from take under section 9 of the Act would also be eliminated. However, the 1988 amendments to the Act require that all species which have been delisted due to recovery be monitored for at least five years following delisting. We are responsible for implementing a system, in cooperation with the states, to monitor the status of a recovered species.

Delisting the Douglas County population could have several positive effects. Individual deer could be legally controlled by hazing or physical removal, or populations could be controlled where repeated severe damage to agricultural crops, gardens, or ornamental plantings was documented. If delisted, the population could also be regulated through legal harvest. Biological data such as sex ratios, age, reproductive status, and health status (parasitism and bacterial infections) from individual deer taken through legal harvest or the issuance of special permits would be available.

Monitoring

Section 4(g)(1) of the Act requires that whenever a species has recovered and been delisted, we must implement a system, in cooperation with the states, to effectively monitor the status of any species that has recovered to the point where the protective measures provided under the Act are no longer necessary. The purpose of this requirement is to develop a program that detects the failure of any delisted species to sustain itself without the protective measures of the Act. This monitoring program will continue for at least five years and, if at any time during that period data indicates that the species' well-being is under a significant risk, we can initiate listing procedures, including, if appropriate, emergency listing.

The Recovery Team will coordinate monitoring activities and annually review the status of the Douglas County population of Columbian white-tailed deer. Within 6 months following the conclusion of the mandated 5-year monitoring program, the Recovery Team will conduct a comprehensive review of the Douglas County population of Columbian white-tailed deer and forward a report to the Regional Director for approval and release to the general public for review and comment. The review will include a recommendation on whether to (1) continue the monitoring program for an additional five years, (2) terminate the monitoring program, or (3) reconsider the status of the Columbian white-tailed deer.

We will use, to the fullest extent possible, information routinely collected by researchers and land managers in a variety of organizations and agencies, which will supplement data collected under a systematic monitoring program, and consider relisting the species if, during or after the 5-year monitoring effort, we have determined a reversal of recovery has taken place.

If the report recommends, and we have determined, at the end of the mandatory 5-year monitoring period that recovery is complete, and factors that led to the listing of the Douglas County population, or any new factors, have been sufficiently reduced or eliminated, monitoring may be reduced or terminated. If the data show that the Douglas County population is declining, or if one or more factors that have the potential to cause decline are identified, monitoring will continue beyond the 5-year period and the monitoring program may be modified, based on an evaluation of the results of the initial 5-year monitoring program.

The following minimum monitoring activities are necessary:

(1) Monitor Columbian white-tailed deer population parameters using the following measures—

(a) Fall (November 15–December 31) and spring (March 1–April 15) ground surveys of each population/subpopulation. Data collected on these surveys will include—

(i) Sex and age ratios to estimate fawn production, overwinter fawn survival, and genetic effective population size, i.e., the risk of inbreeding.

(ii) Numbers of Columbian white-tailed deer counted to estimate population trends and minimum population size.

(b) Aerial surveys—Aerial surveys using forward looking infra-red scanners (or similar technology) are needed to obtain more precise information on minimum deer numbers. Survey flights will be conducted three times per year for three years over areas of secure habitat, and then once every third year for the duration of the monitoring program should a second five years of monitoring be required. Data from these flights will be used to develop a correlation factor with the ground surveys described in (a) above. The correlation factor will be used to improve estimates of population sizes and trends obtained from ground surveys.

(2) Develop Geographic Information System maps of Columbian white-tailed deer range to use in monitoring habitat loss to human development, habitat improvements, and the locations actually occupied by the deer. This information will be used to encourage local land use planning that protects the habitat of the Columbian white-tailed deer.

Public Comments Solicited

We intend that any final action resulting from this proposal to remove

the Douglas County population from the List of Endangered and Threatened Wildlife will be as accurate and effective as possible. Therefore, we solicit any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal. Comments should be sent to our Southwest Oregon Office (see **ADDRESSES** section). Comments are particularly sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Columbian white-tailed deer and its habitat that would result from implementing the measures outlined in this proposed rule;

(2) Additional information concerning the range, distribution, and population size of this subspecies;

(3) Current or planned activities in the subject area and their possible impacts on Columbian white-tailed deer and its habitat; and

(4) Adequacy of the monitoring plan, and its ability to detect changes in the population.

Our final decision regarding the delisting of the Douglas County population of Columbian white-tailed deer will take into consideration the comments and any additional information that we receive during the comment period. Such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for one or more public hearings on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal in the **Federal Register**. You must make such requests in writing and address them to—Supervisor, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive, Suite 102, Lacey, Washington 98503.

Executive Order 12866

Executive Order 12866 requires agencies to write regulations that are easy to understand. We invite your comments on how to make this proposal easier to understand including answers to questions such as the following: (1) Is the discussion in the "Supplementary Information" section of the preamble helpful in understanding the proposal? (2) Does the proposal contain technical language or jargon that interferes with its clarity? (3) Does the format of the proposal (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? What else could we do to make the proposal easier to understand?

Required Determinations

Paperwork Reduction Act

Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), require that interested members of the public and affected agencies have an opportunity to comment on agency information collection and record keeping activities (see 5 CFR 1320.8(d)). The OMB regulations at 5 CFR 1320.3(c) define a collection of information as the obtaining of information by or for an agency by means of identical questions posed to, or identical reporting, record keeping, or disclosure requirements imposed on ten or more persons. Furthermore, 5 CFR 1320.3(c)(4) specifies that "ten or more persons" refers to the persons to whom a collection of information is addressed by the agency within any 12-month period.

This rule does not include any collections of information that require approval by OMB under the Paperwork Reduction Act. The information needed to monitor the status of the Columbian white-tailed deer will be collected primarily by Service, ODFW, and the BLM. We do not anticipate a need to request data or other information from the public, other than the ODFW, to satisfy monitoring information needs. If it becomes necessary to collect information from ten or more individuals, groups, or organizations per year, we will first obtain information collection approval from OMB.

National Environmental Policy Act

We have determined that an Environmental Assessment or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Supervisor, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Dr., Suite 102, Lacey, Washington 98503.

Author

The primary author of this proposed rule is John Grettenberger, Wildlife Biologist, U.S. Fish and Wildlife Service, Western Washington Office, 510 Desmond Drive SE, Suite 102, Lacey, Washington 98503, (360) 753–9440.

List of Subjects in 50 CFR Part 17

Endangered and Threatened Species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Proposed Regulation Promulgation

For the reasons set out in the preamble, we hereby propose to amend part 17, subchapter B of chapter I, Title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. We propose to amend section 17.11(h) by revising the entry for the Columbian white-tailed deer, *Odocoileus virginianus leucurus*, under "MAMMALS", to read as follows:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
*	*	*	*	*	*	*	*
Deer, Columbian White-tailed.	*Odocoileus virginianus leucurus.*	U.S.A. (WA, OR)	Entire, except Douglas County, OR.	E	1,____	NA	NA
*	*	*	*	*	*	*	*

Dated: April 16, 1999.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 99–11747 Filed 5–10–99; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 64, No. 90
Tuesday, May 11, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 09/216,513, filed December 18,1998, entitled "An Insect Barrier System for Prevention of the Passage of Crawling Insects" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Aqua-Tainer Company of Shorewood, Illinois, an exclusive license to Serial No. 09/216,513.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1158, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5989.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as the Aqua-Tainer Company has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 99–11868 Filed 5–10–99; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that a Federally owned invention U.S. Serial No. 08/944,245, filed October 6, 1997, entitled "Methods and Compositions for Producing Desiccation Tolerant *Paecilomyces fumosoroseus* Spores" is available for licensing and the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Eco Soil Systems, Inc., of San Diego, California, an exclusive license to Serial No. 08/944,245.

DATES: Comments must be received on or before August 9, 1999.

ADDRESSES: Send comments to: USDA, ARS, MWA, Office of Director, National Center for Agricultural Utilization Research, Room 2042, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Eco Soil Systems, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.

[FR Doc. 99–11867 Filed 5–10–99; 8:45 am]
BILLING CODE 3410–03–M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

RIN 0584–AC70

Food Stamp Program: Maximum Allotments for Alaska, Hawaii, Guam, and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: By this notice, the Department of Agriculture is updating for Fiscal Year 1999 the maximum food stamp allotments for participating households in Alaska, Hawaii, Guam, and the Virgin Islands. These annual adjustments, required by law, take into account changes in the cost of food and statutory adjustments since the amounts were last calculated.

EFFECTIVE DATE: This notice is effective May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Branch Chief, Certification Policy Branch, Program Development Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, VA 22302, or telephone at (703) 305–2516. The e-mail address is Margaret.Batko@FNS.USDA.GOV.

SUPPLEMENTARY INFORMATION:

Implementation

As required by section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented this action on October 1, 1998, based on advance notice of the new amounts. As required by regulations published at 47 FR 46485 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by General Notices published in the **Federal Register** and not through rulemaking proceedings.

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final rule and related notice to 7 CFR part 3015, Subpart V (48 FR 29916, June 24, 1983), this program is excluded from the scope of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition, and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through increases in food stamp benefits. However, this money will be distributed among all eligible food stamp vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to review by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of $100 million or more in any one year. Thus today's rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Thrifty Food Plan (TFP) and Allotments

As provided for in section 3(o) of the Act, 7 USC 2012(o), the TFP is a plan for the consumption of foods of different types (food groups) that families might use to provide nutritious meals and snacks for family members. The plan provides for a diet required to feed a family of four persons consisting of a man and woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFPs for Alaska and Hawaii are based on an adjusted average for the six-month period that ends with June 1998. Since the Bureau of Labor Statistics (the source of food price data) no longer publishes monthly information to compute Alaska and Hawaii TFPs, the adjusted average provides a proxy for actual June 1998 TFP costs. The adjusted average is equal to January-June 1998 TFP costs for Alaska and Hawaii increased by the average percentage difference between the cost of the TFP in Alaska and Hawaii in June and the January-June average in 1986 (a 1.53 percent increase over January-June costs in Alaska and 1.82 percent increase in Hawaii).

For the period January through June 1998, the average cost of the TFP was $511.70 in Alaska, and $646.60 in Hawaii. The proxy in Alaska for actual June 1998 TFP costs was $519.53. This proxy is multiplied by three separate adjustment factors to create three TFPs for Urban Alaska, Rural I Alaska, and Rural II Alaska. The proxy in Hawaii for actual June 1998 TFP costs was $658.37. The June 1998 cost of the TFP was $617.40 in Guam and $538.60 in the Virgin Islands.

The maximum food stamp allotment is paid to households that have no net income. For households with some type of income, their allotments are determined by reducing the maximum allotment for their household size by 30 percent of the household's net income in accordance with section 8 (a) of the Act, 7 U.S.C. 2017 (a). To obtain the maximum food stamp allotment for each household size, the TFP costs are divided by four, multiplied by the appropriate household size and economy of scale factor, and the final result rounded down to the nearest dollar.

Pursuant to section 3 (o) (3) of the Act, maximum food stamp benefits for Guam and the Virgin Islands cannot exceed those in the 50 States and the District of Columbia, so they are based upon either the lower of their respective TFPs or the TFP for rural II Alaska.

MAXIMUM ALLOTMENT AMOUNTS [1]—October 1998 as Adjusted

Household size	Urban Alaska	Rural I Alaska	Rural II Alaska	Hawaii	Guam [2]	Virgin Islands [2]
1	$157	$200	$243	$197	$185	$161
2	287	367	446	362	339	296
3	412	525	639	518	486	424
4	523	667	812	658	617	538
5	621	792	965	781	733	639
6	746	951	1158	938	879	767
7	824	1051	1279	1036	972	848
8	942	1201	1462	1185	1111	969
Each Additional Member	+118	+150	+183	+148	+139	+121

[1] Adjusted to reflect the cost of food in June, adjustments for each household size, economies of scale, and 100 percent of the TFP and rounding.

[2] Adjusted to reflect changes in the cost of food in the 48 States and DC, which correlate with price changes in these areas. Maximum allotments in these areas cannot exceed those in Rural II Alaska.

Dated: April 26, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service.

[FR Doc. 99–11757 Filed 5–10–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food And Nutrition Service

RIN 0584–AC69

Food Stamp Program: Maximum Allotments for the 48 States and the District of Columbia, and Income Eligibility Standards for the 48 States and the District of Columbia, Alaska, Hawaii, Guam and the Virgin Islands

AGENCY: Food and Nutrition Service, USDA.

ACTION: General notice.

SUMMARY: The purpose of this notice is to update for Fiscal Year 1999 the maximum allotment levels, which are the basis for determining the amount of food stamps which participating households receive and the gross and net income limits for food stamp eligibility. These adjustments, required by law, take into account changes in the cost of living and statutory adjustments since the amounts were last calculated.

DATES: This notice is effective May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Margaret Werts Batko, Assistant Chief, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2516. The e-mail address is Margaret.Batko@FNS.USDA.GOV

SUPPLEMENTARY INFORMATION:

Implementation

As required by section 3(o) of the Food Stamp Act of 1977 (the Act), 7 U.S.C. 2012(o), State agencies should have implemented the adjustments to the maximum food stamp allotments reflected in this notice on October 1, 1998, based on advance notice of the new amounts. In accordance with regulations published at 47 FR 46485–46487 (October 19, 1982), annual statutory adjustments to the maximum allotment levels and income eligibility standards are issued by general notices published in the **Federal Register** and not through rulemaking proceedings.

Classification

Executive Order 12866

This notice has been determined to be not significant for purposes of Executive Order 12866 and therefore has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule related notice to 7 CFR part 3015, subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

The Under Secretary for Food, Nutrition and Consumer Services has certified that this action will not have a significant economic impact and will not have an impact on a substantial number of small entities. The action will increase the amount of money spent on food through food stamps. However, this money will be distributed among the nation's food vendors, so the effect on any one vendor will not be significant.

Paperwork Reduction Act

This action does not contain reporting or record keeping requirements subject to approval by OMB pursuant to the provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3507.

Unfunded Mandate Reform Act of 1995 (UMRA)

Title II of UMRA establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, FNS generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, or tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. When such a statement is needed for a rule, section 205 of the UMRA generally requires FNS to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, more cost-effective or least burdensome alternative that achieves the objectives of the rule.

This notice contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector of more than $100 million or more in any one year. Thus this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

Income Eligibility Standards

The eligibility of households for the Food Stamp Program, except those in which, in accordance with section 5(a) of the Act, 7 U.S.C. 2014(a), all members are receiving "benefits under a State program funded under part A of title IV of the Social Security Act [], supplemental security income (SSI) benefits under title XVI of the Social Security Act [], or aid to the aged, blind, or disabled under title I, X, XIV, or XV of the Social Security Act * * * ." , is determined by comparing their incomes to the appropriate income eligibility standards (limits). Pursuant to section 5(c)(2) of the Act, households containing an elderly or disabled member are required to have qualifying net incomes, while households which do not contain an elderly or disabled member must have qualifying net incomes *and* qualifying gross incomes. Households in which all members are receiving Social Security Act title IV benefits or SSI are "categorically eligible;" under 7 CFR 273.2(j)(2) their incomes do not have to be below the income limits.

As provided in section 5(c)(1) of the Act, the net and gross income limits applicable to food stamp eligibility are derived from the Federal income poverty guidelines established under section 673(2) of the Community Services Block Grant Act, 42 U.S.C. 9902(2). The net income limit is 100 percent of the poverty line. The gross income limit is 130 percent of the poverty line. The guidelines are updated annually. Based on that update, the Food Stamp Program's income eligibility standards are updated each October 1. Instructions for implementation of the required adjustments for October 1, 1998, were issued by the Deputy Administrator of the Food and Nutrition Service, Food Stamp Program, in a July 30, 1998, memorandum to all State Food Stamp Program Directors. The revised income eligibility standards for the 48 States (including the District of Columbia, Guam and the Virgin Islands), Alaska and Hawaii are as follows:

FOOD STAMP PROGRAM—OCTOBER 1, 1998 TO SEPTEMBER 30, 1999

Household Size	48 States [1]	Alaska	Hawaii
Net Monthly Income Eligibility Standards (100 Percent of Poverty Level)			
1	$671	$ 840	$ 772
2	905	1,131	1,040
3	1,138	1,423	1,309
4	1,371	1,715	1,577
5	1,605	2,006	1,845
6	1,838	2,298	2,114
7	2,071	2,590	2,382
8	2,305	2,881	2,650
Each Add. Member	+234	+292	+269
Gross Monthly Income Eligibility Standards (130 Percent of Poverty Level)			
1	$873	$1,091	$1,004
2	1,176	1,471	1,352
3	1,479	1,850	1,701
4	1,783	2,229	2,050
5	2,086	2,608	2,399
6	2,389	2,987	2,748
7	2,693	3,366	3,097
8	2,996	3,746	3,445
Each Add. Member	+304	+380	+349
Gross Monthly Income Eligibility Standards for Households Where Elderly Disabled Are a Separate Household (165 Percent of Poverty Level)			
1	$1,107	$1,385	$1,274
2	1,492	1,866	1,716
3	1,877	2,348	2,159
4	2,262	2,829	2,602
5	2,647	3,310	3,045
6	3,032	3,791	3,487
7	3,417	4,273	3,930
8	3,802	4,754	4,373
Each Add. Member	+385	+482	+443

[1] Includes District of Columbia, Guam, and the Virgin Islands.

Thrifty Food Plan (TFP) and Allotments

As provided for in section 3(o) of the Act, the TFP is a plan for the consumption of foods of different types (food groups) that a household might use to provide nutritious meals and snacks for household members. The plan reflects a diet required to feed a family of four persons consisting of a man and a woman aged 20 to 50, a child 6 to 8 and a child 9 to 11. The cost of the TFP is adjusted monthly to reflect changes in the costs of the food groups.

The TFP is also the basis for establishing food stamp allotments. *Allotment* is defined in section 3(a) of the Act as "the total value of coupons a household is authorized to receive during each month." Food stamp allotments are adjusted periodically to reflect the changes in food cost levels indicated in the changing amounts of the TFP. Prior to the amendment of section 3(o) of the Act by section 804 of Pub. L. 104–193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, allotment amounts were established on each October 1 at 103% of the cost of the TFP in the previous June. Amended section 3(o)(4) of the Act now provides that the TFP will be adjusted each October 1 to reflect the exact cost, or 100%, of the TFP for the previous June, rounding the results to the nearest lower dollar increment for each household size, except that on October 1,1996, the TFP was not to have been reduced below the amounts in effect on September 30, 1996.

To obtain the maximum food stamp allotment for each household size for the period October 1, 1998, to September 30, 1999, June 1998 TFP costs for the above described four-person household were divided by four, multiplied by the appropriate household size and economy of scale factor, in accordance with section 3(o)(1) of the Act, and the final result was rounded down to the nearest dollar. The maximum benefit, or allotment, is paid to households with no net income. For a household with income, the household's allotment is determined by reducing the maximum allotment for the household's size by 30 percent of the individual household's net income in accordance with section 8(a) of the Act, 7 U.S.C. 2017(a). The following table shows the current allotments for the 48 States and the District of Columbia.

FOOD STAMP PROGRAM—OCTOBER 1, 1998—SEPTEMBER 30, 1999

[Maximum Food Stamp Allotments]

Household size	48 States and the District of Columbia
1	$125
2	230
3	329
4	419
5	497
6	597
7	659
8	754
Each Additional Person	+94

Dated: April 26, 1999.

Samuel Chambers, Jr.,

Administrator, Food and Nutrition Service

[FR Doc. 99–11758 Filed 5–10–99; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tongass Land and Resource Management Plan Revision; Tongass National Forest, AK

AGENCY: Forest Service, USDA.

ACTION: Notice; record of decision.

SUMMARY: The Forest Service gives notice that on April 13, 1999, the Under Secretary for Natural Resources and Environment approved a new Record of Decision (1999 ROD) for the final Environmental Impact Statement on the Tongass Land Management Plan Revision, The Under Secretary's decision adopts, with modifications, Alternative 11 of the Final Environmental Impact Statement. As modified, Alternative 11 consists of extensive standards and guidelines, including land allocations, that comprise a comprehensive ecosystem management strategy. The modifications are set out in the body of the 1999 ROD and amplified in Appendix B of the 1999 ROD.

DATES: The Under Secretary signed the new Record of Decision on April 13, 1999.

ADDRESSES: Copies of the 1999 Record of Decision and the Final Environmental Impact Statement are available from the Tongass National Forest, Alaska Region, Forest Service, USDA, PO Box 309, Petersburg, AK 99833.

FOR FURTHER INFORMATION CONTACT: Merrily Jones, Public Affairs Office, Tongass National Forest, Alaska Region, Forest Service, USDA; telephone: (907) 772–3841 or fax: (907) 772–5895.

SUPPLEMENTARY INFORMATION: The Final Environmental Impact Statement on the Tongass Land Management Plan Revision was filed with the Environmental Protection Agency (EPA) and notice of its availability was published in the **Federal Register** by EPA on June 27, 1997 (62 FR 34745). The 1999 Record of Decision (ROD) presents a comparison of the alternatives considered in the Final Environmental Impact Statement and described the rational for the alternatives elected. This decision is not appealable under Forest Service administrative appeal procedures.

The Forest Supervisor will mail a copy of the 1999 ROD to persons and organizations on mailing lists associated with the Tongass planning endeavor.

The 1999 ROD is also available on the Tongass National Forest's worldwide web site at: http:www.fs.fed. us/r10/ tongass in portable document format (pdf). That site includes additional related information such as a summary of changes, a press release, and a comparison table showing key components of the Tongas decisions in 1979, 1997, and 1999.

Dated: May 6, 1999.

Gloria Manning,

Acting Associate Chief for National Forest Systems.

[FR Doc. 99–11878 Filed 5–10–99; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Renewal of Secretary's 2000 Census Advisory Committee

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of renewal.

SUMMARY: In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and after concurrence of the General Services Administration, the Secretary of Commerce has determined that the renewal of the 2000 Census Advisory Committee is in the public interest in connection with the performance of duties imposed on the Department by law.

EFFECTIVE DATE: March 16, 1999.

FOR FURTHER INFORMATION CONTACT: Maxine Anderson-Brown, Committee Liaison Officer, Department of Commerce, Bureau of the Census, Room 1647, Federal Building 3, Washington,

DC 20233; telephone 301–457–2308, TDD 301–457–2540.

SUPPLEMENTARY INFORMATION: The Committee considers the goals of Census 2000 and user needs for information provided by that census, and provides an outside user perspective about how operational planning and implementation methods proposed for Census 2000 will realize those goals and satisfy those needs. The 2000 Census Advisory Committee provides an opportunity for an open process that informs and welcomes public comment about all aspects of Census 2000. The Committee provides a targeted review focused on the conduct of Census 2000.

The 2000 Census Advisory Committee functions solely as an advisory body and complies fully with the provisions of the Federal Advisory Committee Act. The Committee consists of a Chair, Vice Chair, and a designated representative from each member organization. The Committee is composed of up to forty (40) member organizations. Sixteen (16) ex-officio members are invited to serve in a nonvoting capacity. Ex-officio members are representatives of the Postmaster General, the Chairperson and Ranking Members of the Census Oversight and Appropriations Committees and Subcommittees. The Census Advisory Committees on the African American Population, the American Indian and Alaska Native Populations, the Asian and Pacific Islander Populations, and the Hispanic Population designate one member, as a representative of those four committees, to serve as an ex-officio member. Also, the Committee may include up to four additional nonorganizational members that are appointed by, and serve at the pleasure of, the Secretary.

The Designated Federal Official for the Advisory Committee is the Principal Associate Director for Programs at the Bureau of the Census, reporting through the Under Secretary of Economic Affairs, to the Secretary of Commerce.

The Department of Commerce will file copies of the Committee's renewal charter with appropriate committees in Congress.

Dated: May 4, 1999.

Lee Price,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 99–11592 Filed 5–10–99; 8:45 am]

BILLING CODE 3510–07–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China; Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of Amended Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order in Accordance With Final Court Decision on Certain Cased Pencils from the People's Republic of China.

SUMMARY: On February 2, 1999, the US Court of Appeals for the Federal Circuit issued a mandate affirming the US Court of International Trade's affirmation of the Department of Commerce's voluntary remand results of the final determination of sales at less than fair value in the antidumping duty investigation of certain cased pencils from the People's Republic of China. As there is now a final and conclusive court decision in this action, we are amending our final determination and our antidumping duty order.

EFFECTIVE DATE: May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Roy Malmrose or Melani Miller, Import Administration, International Trade Administration, US Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone: (202) 482–5414 and (202) 482–0116, respectively.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1994, the Department of Commerce ("the Department") published in the **Federal Register** its final determination of sales at less than fair value ("LTFV") on certain cased pencils from the People's Republic of China ("PRC") (59 FR 55625). Subsequent to the publication of the Department's final determination, the petitioners and the respondents challenged this determination before the US Court of International Trade ("CIT"). The Department requested a voluntary remand after concluding that it was appropriate to re-open the administrative record for both factual information and argument to allow parties an opportunity to address the issues of the appropriate prices for US basswood and the appropriate methodology for valuing slats and logs. On March 22, 1996, the Department filed its remand determination with the CIT.

Following the filing of the Department's remand determination, the CIT, on November 13, 1997, affirmed the Department's remand results in *Writing Instrument Manufacturers Association, Pencil Section, et. al.* v. *United States*, 984 F.Supp. 629 (CIT 1997), and upheld the Department on all other challenged aspects of the final determination. Consistent with the US Court of Appeals for the Federal Circuit's ("Federal Circuit") decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the Department published a "Notice of Court Decision" in the **Federal Register** on December 11, 1997 (62 FR 65243). Pursuant to section 516A(e) of the Tariff Act of 1930, as amended ("the Act"), this notice ordered the continued suspension of liquidation of any subject merchandise entered, or withdrawn from warehouse, for consumption until a final and conclusive decision in the case was reached.

In its Notice of Court Decision, the Department also announced that it would instruct the Customs Service to begin suspension of liquidation, effective November 23, 1997, with respect to subject merchandise produced and exported by China First Co. Ltd. ("China First") pending a final and conclusive court decision in this action. While exports of merchandise produced by China First were originally excluded from the antidumping order, the Department's remand determination found that merchandise exported and produced by China First was, in fact, sold at LTFV.

On February 2, 1999, the Federal Circuit issued its mandate affirming its December 11, 1998, judgement in *Writing Instrument Manufacturers Association, Pencil Section, et. al.* v. *United States*, Appeal Nos. 98–1178 and 98–1202 (Fed. Cir., December 11, 1998). This December 11 judgement affirmed the CIT's November 13, 1997, decision which upheld the Department's final and remand determinations in all aspects.

As there is now a final and conclusive court decision with respect to this proceeding, we are amending our final results of review and antidumping order accordingly.

Inclusion in the Application of the Antidumping Duty Order

As discussed above and pursuant to the affirmed remand determination, China First is no longer excluded from the antidumping duty order issued in

this case (*see Antidumping Duty Order: Certain Cased Pencils from the PRC*, 59 FR 66909 (December 28, 1994)) (*"Antidumping Duty Order"*). Therefore, as noted above, subject merchandise exported by China First, irrespective of the identity of the producer, will be subject to a rate of 8.60 percent.

Amendment to Final Determination and Antidumping Order

Because there is now a final and conclusive decision in this court proceeding, effective as of the publication date of this notice, the final dumping margins and the PRC country-wide ("all others") rate are as follows:

Manufacturer/producer/exporter	Margin percentage
China First	8.60
Shanghai Lansheng Corp	19.36
Shanghai Foreign Trade Corp	11.15
Guangdong Stationery/Three Star Stationery	0.00
Guangdong Stationery/all other producers	53.65
PRC country-wide rate	53.65

The above-listed rate for Shanghai Lansheng Corp. ("Shanghai Lansheng") will not affect that company's deposit or assessment rates for any segment of this proceeding. Since publication of the LTFV final determination and order, the Department has completed, pursuant to section 751(a) of the Act, an administrative review covering Shanghai Lansheng's entries for the period December 21, 1994, through November 30, 1995. (*See Certain Cased Pencils from the People's Republic of China; Final Results of Antidumping Duty Administrative Review*, 62 FR 24636 (May 6, 1997) and *Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 62 FR 1734 (January 13, 1997) ("1994–1995 Review"). In that review, the Department determined that Shanghai Lansheng was no longer entitled to a separate rate, and its entries for that period will be assessed at the PRC country-wide rate, which is also its cash deposit rate. Therefore, pursuant to our determination in the 1994–1995 Review, we will continue to instruct the Customs Service to collect a cash deposit rate of 53.65 for Shanghai Lansheng.

Also, as was noted above, China First is no longer excluded from the antidumping duty order issued in this case. Therefore, the Department will instruct the Customs Service to collect a cash deposit rate of 8.60 percent for China First. Guangdong Stationery/Three Star Stationery continues to be excluded from the antidumping order (*see Antidumping Duty Order*).

In all other cases, the Department will instruct the Customs Service to change the cash deposit requirements in accordance with the above rates.

Dated: May 5, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11889 Filed 5–10–99; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–122–814]

Pure Magnesium From Canada; Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of 1997–1998 administrative review and intent not to revoke.

SUMMARY: The Department of Commerce is conducting an administrative review of the antidumping duty order on pure magnesium from Canada. The period of review is August 1, 1997 through July 31, 1998. This review covers imports of pure magnesium from one producer/exporter.

We have preliminarily found that sales of subject merchandise have not been made below normal value. Further, we intend not to revoke the order with respect to pure magnesium from Canada produced by Norsk Hydro Canada Inc. If these preliminary results are adopted in our final results, we will instruct the Customs Service not to assess antidumping duties.

Interested parties are invited to comment on these preliminary results. We will issue the final results not later than 120 days from the date of publication of this notice.

EFFECTIVE DATE: May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith or Melani Miller, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–0189 or (202) 482–0116, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations, codified at 19 CFR part 351 (62 FR 27399, May 19, 1997).

Background

The Department published an antidumping duty order on pure magnesium from Canada on August 31, 1992 (57 FR 39390). On August 11, 1998, the Department published a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on pure magnesium from Canada (63 FR 42821). On August 25, 1998, Magnesium Corporation of America (the "petitioner") requested an administrative review of imports of the subject merchandise produced by Norsk Hydro Canada Inc. ("NHCI") during the period August 1, 1997, through July 31, 1998. NCHI made a similar request for review on August 28, 1998. In accordance with 19 CFR 351.221, we initiated the review on September 29, 1998. The Department is now conducting this administrative review in accordance with section 751 of the Act.

Scope of Review

The product covered by this review is pure magnesium. Pure unwrought magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Granular and secondary magnesium are excluded from the scope currently classifiable under subheading 8104.11.0000 of the Harmonized Tariff Schedule ("HTS"). The HTS item number is provided for convenience and for customs purposes. The written description remains dispositive.

Export Price

For sales to the United States, we used export price ("EP") as defined in section 772(a) of the Act because the merchandise was sold directly to the first unaffiliated purchaser in the United States prior to importation. The use of constructed export prices was not warranted based on the facts of the record. EP was based on the packed, delivered, duties unpaid price to unaffiliated purchasers in the United States. We made a deduction for movement expenses in accordance with section 772(c)(2)(A) of the Act; this included the foreign and U.S. inland freight expenses.

Normal Value

We compared the aggregate quantity of home market and U.S. sales and determined that the quantity of the company's sales in its home market was more than five percent of the quantity of its sales to the U.S. market. Consequently, pursuant to section 773(a)(1) of the Act, we based normal value ("NV") on home market sales.

We made adjustments for differences in packing in accordance with sections 773(a)(6)(A) and B(i) of the Act. We also made adjustments for movement expenses, consistent with section 773(a)(6)(B)(ii) of the Act, for inland freight. In addition, we made adjustments for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments by deducting direct selling expenses incurred on home market sales (credit expenses) and adding U.S. direct selling expenses (credit expenses).

Revocation

Pursuant to 19 CFR 351.222(b)(2), NHCI requested revocation of the antidumping duty order, in part. In accordance with 19 CFR 351.222(e), the request was accompanied by certifications that NHCI had not sold the subject merchandise at less than normal value during the current period of review and would not do so in the future. NHCI further certified that it sold the subject merchandise to the United States in commercial quantities for a period of at least three consecutive years. NHCI also agreed to immediate reinstatement of the antidumping duty order, as long as any exporter or producer is subject to the order, if the Department concludes that NHCI, subsequent to the revocation, sold the subject merchandise at less than normal value.

We must determine, as a threshold matter, in accordance with 19 CFR 351.222, whether the company requesting revocation sold the subject merchandise in commercial quantities in each of the three years forming the basis of the request. *See* Pure Magnesium From Canada; Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part, 64 FR 12977, 12978 (March 16, 1999) ("Fifth Review"). In the Fifth Review, we determined that NHCI did not sell the subject merchandise in the United States in commercial quantities in any of the three years cited by NHCI to support its request for revocation. Two of those three years have been cited by NHCI in support of its current request for revocation. Based on our findings in the Fifth Review, we preliminarily find that NHCI does not qualify for revocation of the order on pure magnesium because it does not have three consecutive years of sales in commercial quantities at not less than normal value, as provided for in 19 CFR 351.222(b) and (e)(1)(ii). Therefore, we do not need to address the issue of whether NHCI's sales in the current review period were in commercial quantities.

Preliminary Results of the Review

As a result of this review, we preliminarily determine that NHCI's margin for the period August 1, 1997, through July 31, 1998, is zero.

Any interested party may request a hearing within 30 days of publication. Any hearing, if requested, will be held 42 days after the publication of this notice, or the first workday thereafter. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 35 days after the date of publication of this notice.

Parties who submit case briefs or rebuttal briefs in this proceeding are requested to submit with each argument (1) a statement of the issue and (2) a brief summary of the argument with an electronic version included. The Department will publish the final results of this administrative review subsequently, including the results of its analysis of issues raised in any such written briefs or hearing. The Department will issue final results of this review within 120 days of publication of these preliminary results.

Furthermore, the following deposit requirements will be effective upon completion of the final results of this administrative review for all shipments of pure magnesium from Canada entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be the rate established in the final results of this administrative review (except no cash deposit will be required for the company if its weighted-average margin is de minimis, i.e., less than 0.5 percent); (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in the original less than fair value investigation or a previous review, the cash deposit will continue to be the most recent rate published in the final determination or final results for which the manufacturer or exporter received an individual rate; (3) if the exporter is not a firm covered in this review, the previous review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous reviews, the cash deposit rate will be 21 percent, the "all others" rate established in Pure Magnesium from Canada; Amendment of Final Determination of Sales At Less Than Fair Value and Order in Accordance With Decision on Remand (58 FR 62643, November 29, 1993).

This notice serves as a preliminary reminder to importers of their responsibility to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 1999.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 99–11886 Filed 5–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C–122–834]

Preliminary Negative Countervailing Duty Determination; Live Cattle From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith, Stephanie Hoffman, James Breeden, or Melani Miller Office I, AD/CVD Enforcement, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0189, (202) 482–4198, (202)

482–1174, or (202) 482–0116, respectively.

Preliminary Determination

The Department of Commerce preliminarily determines that countervailable subsidies are not being provided to producers and exporters of live cattle in Canada.

Petitioner

The petition in this investigation was filed on November 12, 1998, by the Ranchers-Cattlemen Action Legal Foundation (R-Calf, referred to hereafter as the "petitioner").

Case History

Since the publication of the notice of initiation in the **Federal Register** (*see* Initiation of Countervailing Duty Investigation of Live Cattle From Canada, 63 FR 71889 (December 30, 1998) ("Notice of Initiation")), the following events have occurred. On January 28, 1999, we issued a countervailing duty questionnaire to the Government of Canada ("GOC"). In our questionnaire, we indicated that we would be limiting our investigation to the four largest cattle producing provinces in Canada: Alberta, Manitoba, Ontario, and Saskatchewan. Thus, we have not investigated provincial or federal/provincial programs that are not related to the above four provinces. Specifically, we have not included in our investigation the following programs included in our Notice of Initiation: the British Colombia Livestock Feeder Loan Guarantee Program, the Quebec Farm Financing Act, the Technology Innovation Program Under the Agri-Food Agreement, and the Quebec Farm Income Stabilization Insurance Program (FISI).

On January 27, 1999, we postponed the preliminary determination of this investigation until May 3, 1999 (*see* Postponement of Preliminary Countervailing Duty Determination: Live Cattle From Canada, 64 FR 4073) on the basis that it was extraordinarily complicated.

We received a response to our initial questionnaire from the GOC, which included responses from the provincial governments of Alberta ("the GOA"), Manitoba ("the GOM"), Ontario ("the GOO"), and Saskatchewan ("the GOS"), on March 24 and April 8, 1999. On March 24, 1999, the petitioner filed an indirect subsidy allegation regarding silage production. However, there was insufficient evidence to support its claim; therefore, we are not investigating that allegation. On April 7 and 13, 1999, we issued supplemental questionnaires to the GOC and received responses to the supplemental questionnaires on April 16 and 22, 1999.

Scope of Investigation

For purposes of this investigation, the product covered is all live cattle except imports of dairy cows for the production of milk for human consumption and purebred cattle specially imported for breeding purposes and other cattle specially imported for breeding purposes.

The merchandise subject to this investigation is currently classifiable under subheading 0102.90.40 of the Harmonized Tariff Schedule of the United States ("HTSUS"), with the exception of 0102.90.40.72 and 0102.90.40.74. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the scope of this proceeding is dispositive.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations are to the current regulations as codified at 19 CFR Part 351 (April 1998). Although Subpart E of 19 CFR Part 351, published on Novemer 25, 1998 (63 FR 65348) does not apply to this investigation, Subpart E represents the Department's interpretation of the requirements of the Act. *See* 19 CFR 351.702(b).

Injury Test

Because Canada is a "Subsidies Agreement Country" within the meaning of section 701(b) of the Act, the International Trade Commission ("ITC") is required to determine whether imports of the subject merchandise from Canada materially injure, or threaten material injury to, a U.S. industry. On January 25, 1999, the ITC published its preliminary determination finding that there is a reasonable indication that an industry in the United States is being materially injured, or threatened with material injury, by reason of imports from Canada of the subject merchandise (*ee* 64 FR 3716).

Period of Investigation

The period for which we are measuring subsidies ("the POI") is the GOC's fiscal year, April 1, 1997, through March 31, 1998.

Subsidies Valuation Information

Allocation Period

We have used three years as the allocation period in this investigation. Based on information provided by the petitioner, three years is the average useful life ("AUL") of productive assets for the Canadian cattle industry. Parties are not contesting this AUL.

Subsidy Rate Calculation

Due to the extremely large number of cattle producers in Canada, we have collected subsidy information on an industry-wide or "aggregate" basis (*i.e.*, the total amount of benefits provided under a particular program). Moreover, as noted above, we have limited our investigation to the four largest cattle producing provinces in Canada. Therefore, unless otherwise noted, for each program preliminarily found to be countervailable, we have calculated the ad valorem subsidy rate by dividing the total amount of the benefit attributed to cattle producers in the four relevant provinces during the POI by the total sales of all cattle in the same four provinces.

Benchmarks for Long-Term Loans and Discount Rates

To calculate the countervailable benefit from loans and nonrecurring grants, we have used a previously verified benchmark interest rate charged by Canadian commercial banks on loans made to the farming sector. This rate is equal to the prime rate plus one and one-half percentage points. *See* Live Swine From Canada; Preliminary Results of Countervailing Duty Administrative Review, 63 FR 23723, 23726 (April 30, 1998). Accordingly, we have used the average prime rates based on the figures published by the Bank of Canada plus one and one-half percentage points.

Loan Guarantee Programs

For certain loan guarantee programs that we have preliminarily found to be countervailable, the respondents were unable to provide the specific loan information required to perform a precise calculation of the countervailable benefit attributable to cattle producers during the POI. Their inability to provide the data arose because of the nature of the underlying loan instrument (*i.e.*, lines of credit which had no predetermined time frame for the disbursal of principal or set repayment schedule), the extremely large number of loans provided, and the large number of transactions (withdrawals and payments) conducted pursuant to those loans. Therefore, for

these programs, we have estimated the countervailable benefit by calculating the difference between the interest actually paid in the POI and the interest that would have been paid for a commercial loan absent a guarantee. *See* Extruded Rubber Thread From Malaysia: Final Affirmative Countervailing Duty Determination and Countervailing Duty Order, 57 FR 38472 (August 25, 1992). In effect, we are applying our short-term loan methodology to these long-term loan instruments. This approach does not yield a precise measure of the benefit because the loan instruments being examined are effectively lines of credit with balances and interest rates varying from month-to-month. Nonetheless, we believe this methodology is reasonable under the circumstances presented by this investigation.

Also, the respondents reported various fees they paid in connection with the guaranteed loans. However, the information they presented with respect to fees payable on commercial loans was unclear. So, as to avoid a comparison of nominal benchmark rates with effective interest rates on the government-guaranteed loans, we have generally not included the fees in calculating the amounts paid under the government-guaranteed loans. Consequently, we are comparing nominal rates to nominal rates. The one exception to this is the fee specifically paid to FIMCLA for the guarantee, which is an allowable offset under section 771(6)(A) of the Act. We intend to seek further information on the fees that would be paid on commercial loans for our final determination.

I. Programs Preliminarily Determined To Be Countervailable

Loan and Loan Guarantee Programs

A. Farm Improvement and Marketing Cooperative Loans Act ("FIMCLA")

FIMCLA provides federal government guarantees on loans extended by private commercial banks and other lending institutions to farmers across Canada. Created in 1987, the purpose of this program is to increase the availability of loans for the improvement and development of farms and the marketing, processing and distribution of farm products by cooperative associations. Persons engaged in farming operations are eligible for a FIMCLA guarantee if the loan is for one of the following activities: purchase or repair of tools, purchase or repair of machinery, purchase of livestock, alteration or improvement of machinery, erection or construction of fencing or works for drainage, construction or alteration of any building or structure on a farm, or the purchase of additional land. FIMCLA guarantees payment to the lender of up to 95 percent of any loss on a loan made under a FIMCLA loan guarantee. The maximum amount of money that an individual can borrow under this program is C$250,000. For marketing cooperatives, the maximum amount is C$3,000,000. The GOC reported that beef and hog farmers, which are categorized as one group by the FIMCLA administration, received approximately 25 to 30 percent of all guarantees between 1994 and 1998, while other users such as poultry, fruit and vegetables, and dairy producers received less than ten percent of the guarantees.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans, after adjusting for guarantee fees, and the amount the recipients would pay for a comparable commercial loan absent the guarantee. Because the beef and pork industries received a disproportionate share of benefits between 1994 and 1998, we preliminarily determine that the program is specific under section 771(5A)(D)(iii) of the Act. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

In its questionnaire response, the GOC provided a sample of loans guaranteed under the program for beef and hog producers throughout Canada. Because of the large number of loans reported, we agree with the GOC's argument that this sample yields an accurate reflection of all loans provided to beef and hog producers that receive FIMCLA guarantees.

To calculate the subsidy conferred by this program, we used our long-term fixed-rate or variable-rate loan methodology (depending on the terms of the reported loans) to compute the total benefit on the sampled loans. We then calculated the subsidy per dollar loaned to beef and hog producers. This ratio was multiplied by the total value of guaranteed loans outstanding to beef and hog producers in the POI to arrive at the total subsidy. We then divided the total subsidy attributable to the POI by Canada's total sales of live cattle during the POI. On this basis, we preliminarily determine the total benefit from this program to be 0.05 percent ad valorem. Ideally, the denominator used to calculate the total benefit from this program would include Canadian hog sales, but the GOC did not provide the necessary sales data.

B. Alberta Feeder Associations Guarantee Program

The Alberta Feeder Associations Guarantee Act was established in 1938 to encourage banks to lend to cattle producers. The program is administered by the Alberta Department of Agriculture, Food and Rural Development. Under this program, up to 15 percent of the principal amount of commercial loans taken out by feeder associations for the acquisition of cattle is guaranteed. Eligibility for the guarantees is limited to feeder associations located in Alberta. Sixty-two associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee. Because eligibility is limited to feeder associations, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the subsidy conferred by the loan guarantees we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales of live cattle during the POI. On this basis, we preliminarily determine the total benefit from this program to be 0.04 percent ad valorem.

C. Manitoba Cattle Feeder Associations Loan Guarantee Program

The Manitoba Cattle Feeder Associations Loan Guarantee Program was established in 1991 to assist in the diversification of Manitoba farm operations. The program is currently administered by the Manitoba Agricultural Credit Corporation ("MACC"). The provincial government, through MACC, guarantees 25 percent of the principal amount of loans for the

acquisition of livestock by feeder associations. Eligibility for the guarantees is limited to feeder associations located in Manitoba. Associations must be incorporated under the Cooperatives Act of Manitoba, have a minimum of fifteen members, an elected board of directors, and a registered brand for use on association cattle. Ten associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee. Because eligibility is limited to feeder associations, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the subsidy conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales of live cattle during the POI. On this basis, we preliminarily determine the total benefit from this program to be less than 0.01 percent ad valorem.

D. Ontario Feeder Cattle Loan Guarantee Program

The Ontario Feeder Cattle Loan Program was established in 1990 to assist cattle producers. The program is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs ("OMAFRA"). OMAFRA provides a start-up grant of $10,000 to new feeder associations and a 25 percent government guarantee on loans to associations for the purchase and sale of cattle. Eligibility for the guarantees is limited to feeder associations which have at least twenty individuals who own or rent land in Ontario and are not members of other feeder associations. Eighteen associations received guarantees on loans which were outstanding during the POI.

Loan guarantees and grants are financial contributions, as described in section 771(5)(D)(i) of the Act. Loan guarantees provide a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee. In the case of grants, the benefit to recipients is the amount of the grant. Because eligibility for the loan guarantees and grants under this program is limited to feeder associations, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these loan guarantees and grants are countervailable subsidies within the meaning of section 771(5) of the Act.

To calculate the subsidy conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we preliminarily determine the total benefit from this program to be 0.01 percent ad valorem.

Additionally, we preliminary determine that the grants provided under this program are non-recurring because the recipients could not expect to receive them on an on-going basis. However, because the subsidy was below 0.50 percent of the investigated provinces' sales in the year of receipt in each of the relevant years, we expensed the benefit from the grants. For the POI, we divided the grants received during the POI by the investigated provinces' total sales of live cattle during the POI. On this basis we preliminarily determine the countervailable subsidy to be less than 0.01 percent ad valorem.

To calculate the total benefit to cattle producers under this program, we summed the benefit calculated for the loan guarantees and grants. On this basis, we preliminarily determine the total benefit from this program to be 0.01 percent ad valorem.

E. Saskatchewan Feeder Associations Loan Guarantee Program

The Saskatchewan Feeder Associations Loan Guarantee Program was established in 1984 to facilitate the establishment of cattle feeder associations in order to promote cattle feeding in Saskatchewan. The program is administered by the Livestock and Veterinary Operations Branch of the Saskatchewan Agriculture and Food Department. This agency provides a government guarantee for 25 percent of the principal amount on loans to feeder associations for the purchase of feeder heifers and steers. Eligibility for the guarantees is limited to feeder associations with at least twenty members over the age of eighteen, who are not active in other feeder associations. One hundred and sixteen associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee. Because eligibility for the guarantees is limited to feeder associations, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the subsidy conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we preliminarily determine the total benefit from this program to be 0.01 percent *ad valorem*.

F. Saskatchewan Breeder Associations Loan Guarantee Program

The Saskatchewan Breeder Associations Loan Guarantee Program was established in 1991 to facilitate the establishment of cattle breeder associations, in an effort to promote cattle breeding in Saskatchewan. The program is administered by the Livestock and Veterinary Operations Branch of the Saskatchewan Agriculture and Food Department. This agency provides a guarantee on 25 percent of the principal amount of loans to breeder associations for the purchase of certain breeding cattle. Eligibility is limited to breeder associations which consist of at least twenty individuals who are residents of Saskatchewan and over the

age of eighteen. One hundred and seven associations received guarantees on loans which were outstanding during the POI.

A loan guarantee is a financial contribution, as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the difference between the amount the recipients of the guarantee pay on the guaranteed loans and the amount the recipients would pay for a comparable commercial loan absent the guarantee. Because eligibility is limited to feeder associations, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these loan guarantees are countervailable subsidies, to the extent that they lower the cost of borrowing, within the meaning of section 771(5) of the Act.

To calculate the subsidy conferred by the loan guarantees, we applied our short-term loan methodology and compared the amount of interest actually paid during the POI by the associations to the amount that would have been paid at the benchmark rate, as described in the *Subsidies Valuation Information* section, above. We then divided the associations' interest savings by the investigated provinces' total sales during the POI. On this basis, we preliminarily determine the total benefit from this program to be 0.01 percent *ad valorem*.

Provision of Goods or Services

G. Prairie Farm Rehabilitation Community Pasture Program

The Prairie Farm Rehabilitation Administration ("PFRA") was created in the 1930s to rehabilitate drought and soil drifting areas in the Provinces of Manitoba, Saskatchewan, and Alberta. The PFRA established the Community Pasture Program to facilitate improved land use through its rehabilitation, conservation, and management. The goal of the common Pasture Program is to utilize the resource primarily for the summer grazing of cattle to encourage long-term production of high quality cattle. In pursuit of its objectives, the PFRA operates 87 separate pastures encompassing approximately 2.2 million acres. At these pastures, the PFRA offers grazing privileges and. optional breeding services for fees as established by PFRA. The fees are based upon recovery of the costs associated with the grazing and breeding services.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. To determine whether a benefit is conferred in the provision of the service, it is necessary to examine whether the provider receives adequate remuneration. According to section 771(5)(E) of the Act, the adequacy of remuneration with respect to a government's provision of a good or service "* * * shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality, availability, marketability, transportation, and other conditions of purchase or sale." Therefore, to judge the adequacy of remuneration we compared the prices charged for public pasture services to those charged by private providers. Based on this comparison, we preliminarily determine that the price for private pastures is higher than the price for public pastures. The GOC has argued that lower prices for public pasture services should be expected because the quality of services offered is lower. In particular, cattle in public pastures are commingled, while farmers prefer to graze cattle in an exclusive environment. We have not considered making adjustments for differences in the types of services offered at public and private pastures because the GOC was unable to quantify them.

Because use of Community Pastures is limited to Canadian farmers involved in grazing livestock, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that the provision of public pasture services is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price for public pasture service and the price for privately provided pasture. This difference was multiplied by the total number of cow/calf pairs serviced by the PFRA during the POI. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.04 percent ad valorem.

H. Alberta Crown Lands Basic Grazing Program

Over time, Alberta has developed a system for granting grazing rights on public land. Grazing rights began to be issued on public lands in the early 1930s. Today, through Alberta Agriculture and Municipal Affairs, over 10.5 million acres of land are managed by the GOA including a grazing component of approximately two million animal unit months ("AUM's"). AUMs are defined as the amount of forage required to feed one animal for one month while maintaining the vegetative state of the land in good condition.

Leases for grazing rights range from one to twenty year terms, but, in practice, all leases are renewed if the lessee is in good standing. Alberta's Public Lands Act dictates how rental prices will be set. Specifically, section 107 states that annual rent will be equal to a percentage of the forage value of the leased land. When determining the forage value of the land, the administering authority is required to consider the grazing capacity of the land, the average gain in weight of cattle on grass, and the average price per pound of cattle sold in the principal livestock markets in Alberta during the preceding year. Beyond paying the lease fee, lessees are also required to construct and maintain capital improvements necessary for livestock and must comply with all multiple-use and conservation restrictions imposed by the government on the land. Lastly, lessees must pay school and municipal taxes charged on the land being leased.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Alberta Crown Lands Basic Grazing Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOA differ from those offered by private suppliers. In this regard, the GOA has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction and maintenance of fences and water improvements, and the cost of paying property taxes. Although the GOA argued that there were other differences that should be taken into account for such things as multiple-use and conservation requirements, we have not considered making adjustments for such costs because the GOA was unable to quantify them. Comparing the public grazing lease to the adjusted private lease price, we preliminarily determine that the price for private leases is higher than the price for a public grazing lease. This provides a benefit to the recipients equal to the difference between the amount the recipients pay for the good

and the amount the recipients would pay for a comparable good.

Because the use of the Alberta Crown Lands Basic Grazing Program is limited to people grazing livestock, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that the provision of public grazing rights is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price per AUM for a public grazing lease and the adjusted price per AUM for a private grazing lease. We multiplied this difference by the total AUMs provided through Alberta's grazing programs. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.18 percent ad valorem.

I. Manitoba Crown Lands Program

Agricultural Crown land is managed by Manitoba Agriculture Crown Lands ("MACL") whose primary objective is to administer the disposition of Crown lands and to improve the lands' productivity. Crown agricultural land is made available to farmers through cultivation and grazing leases. Lease holders are required to pay an amount-in-lieu of municipal taxes as well as to construct and maintain fences and watering facilities. Also, the public has access to Crown lands at all times without prior permission of the lessee for such activities as wildlife hunting, forestry, winter sports, hiking, and berry picking. During the POI, MACL administered 1.6 million acres of grazing leases accounting for 707,699 AUMs.

Leases for grazing dispositions range from one to fifty year terms. MACL sets rental rates each year by multiplying the number of AUMs the leased land is capable of producing in an average year by an annual AUM rental rate. The AUM rental rate is based on recovering the administrative costs for the program using the previous year's actual costs.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Manitoba Crown Lands Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOM differ from those offered by private suppliers. In this regard, the GOM has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction and maintenance of fences and watering facilities and the cost of paying an amount-in-lieu of municipal taxes. Although the GOM argued that there were other differences that should be taken into account for such things as multiple-use requirements and the isolated nature of Manitoba's Crown lands, we have not considered making the adjustments for such costs because the GOM was unable to quantify them. Comparing the public grazing lease to the adjusted private lease price, we preliminarily determine that the price for private leases is higher than the price for a public grazing lease.

Because use of the Manitoba Crown Lands Program is limited to people involved in grazing livestock, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that the provision of public grazing rights is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price per AUM for a public grazing lease and the adjusted price per AUM for a private grazing lease. We multiplied this difference by the total AUM provided by MACL. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.01 percent *ad valorem*.

J. Saskatchewan Pasture Program

The Saskatchewan Pasture Program has been in place since 1922. It is designed to provide supplemental grazing to Saskatchewan livestock producers and maintain grazing and other fragile lands in permanent cover to promote soil stability. Saskatchewan Agriculture and Food ("SAF") operates 56 provincial community pastures encompassing 804,000 acres. Through these pastures, the SAF offers grazing, breeding, and health services for fees as established by SAF. Fees are based upon recovery of the costs associated with the grazing and breeding services of each pasture.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. Based on a comparison of these prices, we preliminarily determine that the price for private pastures is higher than the price for public pastures. The GOS has argued that lower prices for public pasture services should be expected because the quality of services offered is lower. In particular, cattle in public pastures are commingled, while farmers prefer to graze cattle in an exclusive environment. We have not considered making adjustments for differences in the types of services offered at public and private pastures because the GOS was unable to quantify them.

Because use of the Saskatchewan Pasture Program is limited to Canadian farmers involved in grazing livestock, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that the provision of public pasture services is a countervailable subsidy within the meaning of section 771(5) of the Act.

To measure the benefit, we calculated the difference between the price for public pasture service and the price for privately provided pasture. This difference was multiplied by the total number of AUM provided by SAF during the POI. We treated the resulting amount as a recurring benefit and divided it by the investigated provinces' total sales during the POI. On this basis, we determine the countervailable subsidy to be 0.01 percent *ad valorem*.

Other Programs

K. Northern Ontario Heritage Fund Corporation Agriculture Assistance

The Northern Ontario Heritage Fund Corporation ("NOHFC") was established in 1988 as a Crown corporation for the purpose of promoting and stimulating economic development in northern Ontario. NOHFC focuses on funding infrastructure improvements and development opportunities in northern Ontario. Assistance for these projects is available through forgivable performance loans, incentive term loans, and loan guarantees. With respect to agricultural projects, all assistance provided by NOHFC is in the form of forgivable performance loans. The types of agricultural projects funded include capital projects, marketing projects and research and development projects. Fifty percent of capital project costs may be eligible for funding, up to a maximum of C$2.5 million. For marketing projects, fifty percent of the project costs may receive funding, up to a maximum of C$500,000. For research and development projects, 75 percent of

the project costs may receive funding, up to a maximum of C$500,000. The loans made available to these projects are normally forgiven over two to three years. The extent of debt forgiveness is dependent upon the project meeting its target of increasing the value of farm production by an amount equal to the NOHFC contribution. We do not currently have information on the record as to whether the terms of the loans provide a potential countervailable benefit. However, prior to the issuing of our final determination, we plan on gathering such information.

Debt forgiveness is a financial contribution as described in section 771(5)(D)(i) of the Act, which provides a benefit to the recipients equal to the amount of the debt forgiven. Because benefits under this program are only available in northern Ontario, we preliminarily determine that the program is regionally specific under section 771(5A)(D)(iv) of the Act. Therefore, we preliminarily determine that this debt forgiveness is countervailable within the meaning of section 771(5) of the Act.

We further preliminarily determine that this debt forgiveness is non-recurring because the recipients could not expect to receive it on an ongoing basis. However, because the benefit to cattle producers in Ontario was below 0.50 percent of the investigated provinces' sales in the year of receipt in each of the relevant years, we expensed the debt forgiveness in the year received. To calculate the benefit for the POI, we divided the total amount of the forgiven debt by the investigated provinces' total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be 0.01 percent *ad valorem*.

L. Ontario Livestock, Poultry, and Honeybee Protection Act

This program, which is administered by the Ontario Ministry of Agriculture, Food and Rural Affairs, provides compensation, inter alia, to livestock producers whose animals are injured or killed by wolves or coyotes. Producers apply for, and receive, compensation through the local municipal government. The Ontario Ministry of Agriculture, Food and Rural Affairs reimburses the municipality. Grants for damage to live cattle cannot exceed C$1,000 per head. Although the Ministry of Agriculture does not track the proportion of benefits under this program going to dairy cattle or beef cattle producers, the GOO has reported that beef cattle producers are believed to derive the majority of the benefits from the program.

A grant is a financial contribution as described in section 771(5)(D)(i) of the Act, which provides a benefit to recipients in the amount of the grant. Because this program is limited by law to livestock producers, poultry farmers, and beekeepers, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these grants are countervailable within the meaning of section 771(5) of the Act.

We treated the grants received as a recurring benefit because livestock producers can expect to receive the grants every year. To calculate the benefit, we divided the total amount of grants received by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the countervailable subsidy to be 0.01 percent ad valorem.

M. Ontario Rabies Indemnification Program

This program is administered by the Farm Assistance Branch of the Ontario Ministry of Agriculture, Food and Rural Affairs. It is designed to encourage farmers to report cases of rabies in livestock by compensating livestock producers for damage caused by rabies. Farmers may receive grants up to a maximum of C$1,000 per head of cattle under this program of which 60 percent is funded by the GOO and 40 percent by the GOC.

A grant is a financial contribution as described in section 771(5)(D)(i) of the Act which provides a benefit to recipients in the amount of the grant. Because the legislation administering this program expressly makes it available only to livestock producers, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that these grants are countervailable within the meaning of section 771(5) of the Act.

We treated the grants received as a recurring benefit because farmers can expect to receive the grants every year. To calculate the benefit, we divided the total amount of grants received by the investigated provinces' total sales of live cattle during the POI. On this basis, we determine the countervailable subsidy to be less than 0.01 percent ad valorem.

N. Saskatchewan Livestock and Horticultural Facilities Incentives Program

The purpose of this program is to promote the diversification of the rural economy by encouraging investment in livestock and horticultural facilities. This program allows for an annual rebate of education and health taxes paid on building materials and stationary equipment used in livestock operations as well as greenhouses, and vegetable and raw fruit storage facilities.

A tax benefit is a financial contribution as described in section 771(5)(D)(ii) of the Act which provides a benefit to the recipient in the amount of the tax savings. Because the legislation administering this program expressly makes it available only to the livestock and horticulture industries, we preliminarily determine that the program is specific under section 771(5A)(D)(i) of the Act. Therefore, we preliminarily determine that this tax benefit is countervailable within the meaning of section 771(5) of the Act.

In calculating the benefit, we treated the tax savings as a recurring benefit and divided the tax savings received by the investigated provinces' total sales during the POI. On this basis, we preliminarily determine the countervailable subsidy to be less than 0.01 percent ad valorem.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Canadian Wheat Board

The Canadian Wheat Board ("CWB") has the exclusive authority to market Canadian wheat and barley in export markets and when sold for human consumption in Canada. The petitioner alleged that the CWB pooling system and its control over exports of feed barley send distorted market signals to Canadian farmers with the result that exports of feed barley are less than they otherwise would be and, consequently, that prices in Canada are artificially low. Although there is not an explicit export restriction as was the case in Certain Softwood Lumber Products from Canada, 57 FR 22570, 22605 (1992) ("Lumber") and Leather from Argentina, 55 FR 40212 (1990) ("Leather"), in the petitioner's view, the CWB's actions have the same result as the export restrictions which the Department found countervailable in those cases.

The CWB operates four separate annual pool accounts for the four types of grains it markets. At the start of a pool year (August), the CWB issues initial prices that it will pay for the various grades and grains. Barley farmers look at that initial payment and the projected pool return and determine whether they want to sell their barley domestically or offer it to the CWB for export. The amount of barley offered to the CWB is solely the farmer's decision, although this decision could be influenced by the CWB's published initial price. The CWB accepted all

barley offered to it for export during the POI.

The petitioner has alleged that the CWB's actions have resulted in significant price differentials for feed barley in the Canadian and U.S. markets, and that the U.S. price reflects what the price would be in Canada but for the CWB's control of exports. In making our price comparisons, we reviewed the record evidence with respect to domestic prices of feed barley (specifically, grade Number 1 CW Feed) in Canada, the prices paid by the CWB to Canadian barley farmers, the prices received by the CWB for feed barley exported to the United States, and feed barley prices in the United States (U.S. Number 2 feed). To calculate a Canadian domestic price, we took a simple average of all Canadian "Off-Board" prices on the record for the four provinces under investigation (information is not currently on the record to calculate a weighted average price based upon barley production in each of the four provinces). The U.S. domestic price we examined is based on quotes from Great Falls, Montana (the only U.S. domestic price series currently on the record and the U.S. pricing point used in several economic studies of U.S. and Canadian feed barley prices cited or provided in the record). All prices were quoted at an elevator or feedlot and did not include any elevation or handling charges. Therefore, we did not make any adjustments to the reported prices. We observed that the price differential between the U.S. and Canadian markets was insignificant during the POI. In fact, the Canadian domestic price was actually higher in portions of the POI and after the POI. Therefore, we preliminarily determine that, assuming arguendo that the CWB controlled exports, it did not thereby provide a benefit to Canadian producers of live cattle during the POI.

Notwithstanding the above analysis, we note that the Canadian domestic feed barley market was especially strong during the POI. Because we do not have pricing data on previous years, we cannot determine whether the POI provides a reliable basis upon which to conduct our analysis. Therefore, prior to our final determination, we intend to seek more information on historical pricing in the Canadian domestic market, CWB export prices to the United States and U.S. domestic prices. Furthermore, we intend to do a more extensive analysis of how actions of the CWB may affect market prices in Canada. The fact that there was no significant differential between export and domestic prices in the POI does not necessarily support the conclusion that the actions of the CWB have not resulted in domestic feed barley prices being lower than they otherwise would be.

We note that in a submission dated April 29, 1999, the petitioner has objected to the use of export prices to the United States reported by the CWB. We have determined that these prices can be used for our preliminary determination, but we intend to verify these reported amounts and the underlying data, and may request more detailed data.

B. Net Income Stabilization Account

The Net Income Stabilization Account ("NISA") is designed to stabilize an individual farm's overall financial performance through a voluntary savings plan. Participants enroll all eligible commodities grown on the farm. Farmers may then deposit a portion of their net sales of eligible NISA commodities (up to three percent of net eligible sales) into individual savings accounts, receive matching government deposits (matching funds come from both the federal and provincial governments), and make additional, non-matchable deposits (up to 20 percent of net sales).

NISA provides stabilization assistance on a "whole farm" basis. A producer can withdraw funds from a NISA account under a stabilization or minimum income trigger. The stabilization trigger permits withdrawal when the gross profit margin from the entire farming operation falls below an historical average, based on the previous five years. If poor market performance of some products is offset by increased revenues from others, no withdrawal is triggered. The minimum income trigger permits the producer to withdraw the amount by which income from the farm falls short of a specific minimum income level.

In Live Swine From Canada; Final Results of Changed Circumstances Countervailing Duty Administrative Review, and Partial Revocation, 61 FR 45402 (August 29, 1996), we found that NISA is not de jure specific. Moreover, for hog producers, we found that NISA was not de facto specific. Therefore, the issue in this investigation is whether NISA is de facto specific with respect to cattle producers.

To make our determination, we have examined whether cattle producers are dominant users of the program, or whether cattle producers receive disproportionately large benefits under the program. We found no evidence that cattle producers are dominant users or receive disproportionate benefits from the NISA program. Specifically, the GOC provided information on farmer withdrawals of NISA funds during the POI and the two preceding years. Because NISA does not collect or maintain information concerning withdrawals on a commodity-by-commodity basis; the GOC reported farmer withdrawals by categorizing farms by the source of the majority of their revenues. That is, a farm with over fifty percent of its revenues from cattle sales was classified as a cattle farm. On this basis the GOC reported that, during the POI, cattle farms accounted for 7.7 percent by value of total withdrawals from NISA.

The petitioner also raised a concern that NISA may be regionally specific because cattle in certain provinces are not covered under the program. However, we preliminarily determine that NISA is not limited to a particular region. While several provinces choose not to participate in NISA for particular commodities, the provinces and producers of the commodity do so at their own choice, not because the program is limited to an enterprise or industry located in a particular region.

Based on the above analysis, we preliminarily determine that NISA assistance is not limited to a specific enterprise or industry, or group of enterprises or industries. Therefore, we preliminarily determine that assistance received by cattle producers under the NISA program is not countervailable.

Prior to the initiation of our investigation, the GOC announced a government initiative to aid farmers over the coming years. Information on the proposed aid indicated that it may be administered by the same body that administers NISA. Therefore, when investigating NISA, we asked whether this new aid would constitute a change in the NISA program. The GOC responded that the new program, Agriculture Income Disaster Assistance, would be separate from NISA and NISA's administration. Therefore, because the program is unrelated to NISA and no funds were distributed in the POI, we are not able to make a determination as to whether aid provided through this program constitutes a countervailable subsidy.

C. Alberta Public Grazing Lands Improvement Program

Established in 1970 and terminated in 1995, this program provided a partial credit toward the payment of rent on a public grazing land disposition if the lessee undertook certain pre-approved capital range improvement projects. The leaseholder was required to pay for all the costs incurred for these capital

improvements, and was reimbursed for 25 to 50 percent of these costs through credits on the rental fees otherwise due annually. All improvements belong to the government and, once the improvements are created, the lessee is required to maintain them at his or her own expense.

In order for a financial contribution to exist under this program, the GOA must forego rental fees, or a portion thereof, that are otherwise due as described in section 771(5)(D)(ii) of the Act. However, in this case the reduction in the rental fees corresponds to range improvements on behalf of the government. Furthermore, the increased value of the land as a result of the improvements is captured upon the next setting of rental fees. Based on the above analysis, we preliminarily determine that this program does not provide a financial contribution and, therefore, we preliminarily determine that the program is not countervailable.

D. Saskatchewan Crown Land Improvement Policy

The Crown Land Improvement Policy is designed to provide rental adjustments when Crown land lease holders make capital improvements to the land, such as clearing, bush removal, or breaking and reseeding. In return for the lessee's funding of these improvements, Saskatchewan Agriculture and Food ("SAF") agrees not to increase the rental rate for a certain period of time, depending on the length of the improvement project or may reduce the basis for rent. SAF is willing to reduce the rental rate or freeze the rate because during the improvement project the actual stocking rate of the land is lower than the potential, the improvements do not result in an immediate increase in the productive value of the land, and any improvements belong to the Crown.

In order for a financial contribution to exist under this program the GOS must forego rental fees, or a portion thereof, that are otherwise due as described in section 771(5)(D)(ii) of the Act. However, in this case the reduction in the rental fees corresponds to a reduction in the land's carrying capacity while improvements are undertaken. The increased value of the land as a result of the improvements is captured upon the next setting of rental fees. Based on the above analysis, we preliminarily determine that this program does not provide a financial contribution and, therefore, we preliminarily determine that the program is not countervailable.

Provision of Goods or Services

E. Alberta Grazing Reserve Program

Like the federal government's PFRA Community Pasture Program, Alberta developed community pastures (reserves) on which multiple ranchers' herds can graze. Traditionally, government employees supervised and managed the animals on the reserves and maintained and built range infrastructure. Grazing reserves also provided multiple-use opportunities to other users. As of April 1, 1999, the GOA no longer performs management activities on 32 of its 37 grazing reserves covering 897,920 acres of public land due to a privatization initiative. Under the privatization initiative, livestock management responsibilities were shifted to grazing associations and new negotiated fees have been established. However, during the POI, the government operated 20 reserves, accounting for 180,117 AUMs. The 17 remaining reserves were privately operated and accounted for 149,950 AUMs.

Priority in issuing permits for the public reserves is given to residents who operate a ranch or farm. The Minister of Lands and Forests establishes the amount to be paid for stock grazing on each pasture. The GOA reported that the grazing revenues obtained from this program exceed the cost of the grazing aspects of the program and cover many of the multiple-use functions of the land.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Alberta Grazing Reserve Program, we preliminarily determine that the government is charging more than the private providers of the same services. Specifically, the fees charged by the private grazing associations to its members were lower than those charged by the government. Based on the above, we preliminarily determine that the government is receiving adequate remuneration for its provision of grazing services and, thus, no countervailable subsidy exists.

On a final note, the questionnaire response provided information on the costs faced by the private grazing associations. One element of these costs is a fee paid to the government for use of the land. We have examined whether this fee is in accordance with prevailing market conditions for grazing leases in Alberta. We preliminarily find that this fee is comparable to the adjusted private grazing lease price as discussed in the Alberta Crown Lands Basic Grazing Program, above. Therefore, we preliminarily determine that the government is being adequately remunerated for its provision of grazing land to grazing associations and, thus, no countervailable subsidy exists.

F. Saskatchewan Crown Lands Program

Agricultural Crown land is managed by Saskatchewan Agriculture and Food and is made available to all Saskatchewan agricultural producers for lease. Activities carried out on the land include: grazing, cultivation, community pastures, petroleum and gas leases, and sand, gravel, and quarry leases. Leases for grazing dispositions range from one to 33 year terms. As of 1997, SAF sets rental rates using a formula which takes account of the average price of cattle marketed over a period in the previous year, the average pounds of beef produced from one AUM, the AUM productivity rating of the land in question, reduced stocking expectations, and a fair return for the use of the land and resources. Lessees are responsible for paying taxes, developing and maintaining water facilities and fences, and providing for public access to the land.

The provision of a good or service is a financial contribution as described in section 771(5)(D)(iii) of the Act. As discussed above in connection with the PFRA, a benefit is conferred in the provision of a good or service when the prices charged for government-provided goods or services are less than the prices charged by private suppliers. In the case of the Saskatchewan Crown Lands Grazing Program, a simple comparison of the fees charged would not be appropriate because the grazing rights being offered by the GOS differ from those offered by private suppliers. In this regard, the GOS has provided certain quantifiable adjustments. Specifically, we adjusted the private price downward by deducting costs for the construction and maintenance of fences and water improvements, and the cost of paying property taxes. Although the GOS argued that there were other differences that should be taken into account for such things as multiple-use requirements, we have not considered making adjustments for such costs because the GOS was unable to quantify them. Comparing the public grazing lease to the adjusted private lease price, we preliminarily determine that the price for private leases is lower than the price for a public grazing lease. Therefore, we preliminarily determine

that the government is adequately remunerated for its provision of grazing land and, thus, no countervailable subsidy exists.

G. Manitoba Tripartite Cattle Stabilization Program/Industry Development Transition Fund

The petitioner alleged that when the Manitoba Tripartite Cattle Stabilization Plan was terminated, the cow/calf and feeder cattle plans had surplus funds which allegedly resulted in premium refunds to producers.

In its response, the GOC stated that the producer refunds came solely from producer contributions and did not include government money. Moreover, the refund occurred in 1994, prior to the three-year AUL. Therefore, we preliminarily determine that producers did not receive a countervailable benefit during the POI.

With respect to the second part of this allegation, the Industry Development Transition Fund, the correct name for this program is the Beef Industry Development Fund and the Department declined to initiate on this program. *See* Notice of Initiation at 63 FR 71889, 71891.

Green Box Programs

The GOC has requested "green box" treatment for three programs which we are examining in this investigation: the Canada-Alberta Beef Industry Development Fund ("CABIDF"), the Feed Freight Assistance Adjustment Fund ("FFAF"), and the Saskatchewan Beef Development Fund ("SBDF"). Under section 771(5B)(F) of the Act, domestic support measures provided with respect to the agricultural products listed in Annex 1 to the 1994 WTO Agreement on Agriculture shall be treated as noncountervailable if the Department determines that the measures conform fully with the provisions of Annex 2 of that same Agreement. The GOC claimed that these programs meet these criteria and, therefore, funding for each program should be noncountervailable pursuant to section 771(5B)(F) of the Act. The claims made relating to CABIDF and SBDF are discussed in more detail below. Because the FFAF was not used during the POI, we do not reach the issue of green box treatment for FFAF. *See* the *Programs Preliminarily Determined To Be Not Used* section, below.

H. Canada-Alberta Beef Industry Development Fund

This fund, which was established by the GOC and the GOA in April 1997, supports research, development, and related activities connected to the beef industry in Alberta. It is administered by the Alberta Department of Agriculture, Food, and Rural Development and run by the Alberta Cattle Commission and the Alberta Agricultural Research Institute. Applicants first submit a pre-proposal application, which is evaluated by the Beef Industry Development Committee ("BIDC"), a panel consisting of five voting industry representatives and two non-voting government advisors. Projects are evaluated on the basis of the project's relationship to the Funds's research priorities, its scientific merits, and the usefulness of the project results to the beef industry, directly or indirectly. The Fund's research priorities include projects that will improve regional beef production efficiencies, enhance the ability to sustain beef production in Alberta, and increase the intellectual resources available to Alberta beef producers at educational institutions. Applicants for projects chosen by the Committee are then asked to submit a more detailed proposal, which is evaluated for technical merit by a scientific committee consisting of industry experts and scientists. The scientific committee makes its recommendations to the BIDC which, in turn, further evaluates the proposals based on the objectives listed above and either approves or rejects the proposal.

In order to determine whether CABIDF qualifies for green box treatment under section 771(5B)(F) of the Act, we examined whether CABIDF met the criteria specified in the Act and further detailed in the Department's regulations. A more detailed discussion of the Department's analysis of this issue can be found in the Department's Memorandum to Richard Moreland: "Green Box Claims Made by the Government of Canada," dated May 3, 1999, which is on file in the Central Records Unit.

According to the Act and the Department's regulations, we will treat as noncountervailable domestic support measures relating to agricultural products that conform to the criteria of Annex 2 of the WTO Agriculture Agreement. The Department's regulations further state that we will determine that a particular domestic support measure conforms fully to the green box criteria in the Agreement if we find that the measure (1) is provided through a publicly-funded program (including government revenue forgone) not involving transfers from consumers; (2) does not have the effect of providing price support to producers; and (3) meets the relevant policy-specific criteria and conditions laid out in Annex 2 of the Agreement.

With regard to the first criterion, the GOC has stated that the program in question meets the requirement set forth. In the original and supplemental questionnaire responses, the GOC showed that all monies used to fund this program came directly from the government, whether on a provincial or on a federal level. Although the program's authorizing legislation allows for contributions to the Fund to come from producers, producer organizations, or other parties, the GOC reconfirmed with the Department that no funds were received from any entity other than federal and provincial governments during the POI. Those funds went directly to CABIDF applicants. No transfers from consumers were involved.

As for the second criterion, according to the questionnaire response, none of the projects that have been approved by CABIDF have the effect of providing price support to producers.

Finally, with regard to the last criterion, the policy-specific criteria that must be met are those which are listed under paragraph 2, Annex 2 of the Agriculture Agreement, which focuses on policies which involve expenditures in relation to programs which provide services or benefits to the agriculture or rural community. This includes sub-paragraph (a), which covers projects for research, including general research, research in connection with environmental programs, and research programs relating to particular products. According to its authorizing statute, the purpose of CABIDF is to "provide financial contributions in the form of grants to enhance research and industry development activities with the objective of promoting and enhancing the competitiveness of the beef industry in Alberta." Twenty-nine projects have been approved for CABIDF funds since the program's creation in April 1997. Although the program's legislation allows for approval of other types of projects covered under paragraph 2 (i.e., marketing and promotion, extension and advisory services, and training), the projects that have been approved by CABIDF to date have been related to scientific research activities relating to the beef industry and the agriculture industry in general. All of the approved projects have consisted of grants, not revenue forgone, and none have been paid directly to producers or processors.

Based on the above analysis, we preliminarily find that CABIDF is eligible for green box treatment under section 771(5B)(F) of the Act, and, thus, is not countervailable. However, if an

order is issued, and an administrative review requested, and any of these facts are different, we will re-examine the green box status of this program.

I. Saskatchewan Beef Development Fund

SBDF, which is administered by the Agriculture Research Branch of the Saskatchewan Ministry of Agriculture and Food, supports the development and diversification of Saskatchewan's beef industry through the funding of various projects related to production research, technology transfer, and development and promotion of new products. The ministry-appointed, producer-run governing board, the Saskatchewan Beef Development Board, meets once a year to review and approve project proposals that it deems to be of general benefit to the cattle and beef industries. Priority is given to public research institutions conducting research, development, and promotion activities that will be generally available to the industry.

As was mentioned above, the GOC has requested green box treatment for this program. In order to determine whether SBDF qualifies for green box treatment under section 771(5B)(F) of the Act, we examined whether the SBDF met the criteria specified in the Act and further laid out in the Department's regulations. A more detailed discussion of the Department's analysis of this issue can be found in the Department's Memorandum to Richard Moreland: "Green Box Claims Made by the Government of Canada," dated May 3, 1999, which is on file in the Central Records Unit.

As noted above, we will treat as noncountervailable domestic support measures relating to certain agricultural products that conform to the criteria of Annex 2 of the WTO Agriculture Agreement. Under the Department's regulations, a particular domestic support measure conforms fully to the green box criteria in the Agreement if we find that the measure (1) is provided through a publicly-funded program (including government revenue forgone) not involving transfers from consumers; (2) does not have the effect of providing price support to producers; and (3) meets the relevant policy-specific criteria and conditions laid out in Annex 2 of the Agreement.

With regard to the first criterion, the GOC has stated that this program meets the necessary requirements. In the original and supplemental questionnaire responses, the GOC indicated that all monies used to fund this program came directly from the government, whether on a provincial or on a federal level. Those funds went directly to SBDF applicants. No transfers from consumers were involved.

As for the second criterion, according to the questionnaire responses, none of the projects that have been approved by SBDF have the effect of providing price support to producers.

Finally, with regard to the last criterion, the policy-specific criteria that must be met are those which are listed under paragraph 2, Annex 2 of the Agriculture Agreement. This includes the criteria set forth in sub-paragraphs (a), (c), (d), and (f) of paragraph 2, which focus on programs relating to research, training services, extension and advisory services, and marketing and promotion services. The regulations governing SBDF state that the purpose of the fund is to provide for the enhancement of the Saskatchewan beef and beef cattle industry through research, development, and promotional activities that the board considers to be in the best interests of the industry. The vast majority of projects that have been approved by SBDF to date have been related to scientific research activities relating to the beef industry and the agriculture industry in general. Programs related to training services, marketing and promotion service, and extension and advisory services were also considered and approved. All of these approved projects have consisted of grants, not revenue forgone, and none have been paid directly to producers or processors.

Based on the above analysis, we preliminarily find that SBDF is eligible for green box treatment under section 771(5B)(F) of the Act and, thus, is not countervailable. However, if an order is issued, and an administrative review requested, and any of these facts are different, we will re-examine the green box status of this program.

III. Programs Preliminarily Determined To Be Not Used

Based upon the information provided in the responses, we determine that the producers of the subject merchandise under investigation did not apply for or receive benefits under the following programs during the POI.

A. Feed Freight Assistance Adjustment Fund

Of the four responding provinces in this investigation, only one, Ontario, participated in the Feed Freight Assistance Adjustment Fund program. Specifically, in the year prior to the POI, the first year of the FFAF, a grant was provided to Ontario producers. However, because the benefit was below 0.50 percent of the investigated provinces' total sales, we expensed this grant in the year received. Thus, cattle producers received no benefit during the POI from grants received prior to the POI. During the POI, the respondents reported that Ontario did not receive benefits under FFAF. Therefore, we preliminarily determine that the FFAF program was not used during the POI.

B. Canadian Adaptation and Rural Development (CARDS) Program in Saskatchewan

C. Western Diversification Program

IV. Programs Preliminarily Determined To Be Terminated

A. Ontario Export Sales Aid Program

V. Other Programs Reviewed

The GOC demonstrated that, for the following programs, any benefit to the subject merchandise would be so small that there would be no impact on the overall subsidy rate, regardless of a determination of countervailability. In light of this, we do not consider it necessary to determine whether benefits conferred under these programs to the subject merchandise are countervailable.

A. Ontario Bear Damage to Livestock Compensation Program

B. Ontario Livestock Programs for Purebred Dairy Cattle, Beef, and Sheep Sales Assistance Policy/Swine Assistance Policy

C. Ontario Artificial Insemination of Livestock Act

Verification

In accordance with section 782(i) of the Act, we will verify the information submitted by the respondent prior to making our final determination.

Summary

The total estimated preliminary net countervailable subsidy rate for all producers or exporters of live cattle in Canada is 0.38 percent ad valorem, which is de minimis. Therefore, we preliminarily determine that countervailable subsidies are not being provided to producers, or exporters of live cattle in Canada.

ITC Notification

In accordance with section 703(f) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all nonprivileged and nonproprietary information relating to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will

not disclose such information, either publicly or under an administrative protective order, without the written consent of the Assistant Secretary, Import Administration.

If our final determination is affirmative, the ITC will make its final determination within 75 days after the Department makes its final determination.

Public Comment

In accordance with 19 CFR 351.310, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on this preliminary determination. The hearing is tentatively scheduled to be held 62 days from the date of publication of this notice in the **Federal Register** at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Individuals who wish to request a hearing must submit a written request within 30 days of the publication of this notice in the **Federal Register** to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Requests for a public hearing should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and, (3) to the extent practicable, an identification of the arguments to be raised at the hearing. In addition, six copies of the business proprietary version and six copies of the nonproprietary version of the case briefs must be submitted to the Assistant Secretary no later than 50 days from the date of publication of the preliminary determination. As part of the case brief, parties are encouraged to provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Six copies of the business proprietary version and six copies of the nonproprietary version of the rebuttal briefs must be submitted to the Assistant Secretary no later than 55 days from the date of publication of the preliminary determination. An interested party may make a hearing presentation only on arguments included in that party's case or rebuttal briefs. Written arguments should be submitted in accordance with 19 CFR 351.309 and will be considered if received within the time limits specified above.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Dated: May 3, 1999.

Robert LaRussa,

Assistant Secretary for Import Administration

[FR Doc. 99–11887 Filed 5–10–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

INTERNATIONAL TRADE ADMINISTRATION

[C–423–809 (Belgium), C–475–823 (Italy), C–791–806 (South Africa)]

Notice of Amended Final Determinations: Stainless Steel Plate in Coils from Belgium and South Africa; and Notice of Countervailing Duty Orders: Stainless Steel Plate in Coils from Belgium, Italy and South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 11, 1999.

FOR FURTHER INFORMATION CONTACT: Zak Smith (Belgium), Cynthia Thirumalai (Italy) or Dana Mermelstein (South Africa), Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0189, (202) 482–4087 and (202) 482–0984, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the current regulations codified at 19 CFR part 351 (April 1998).

Scope of Orders

The product covered by these orders is certain stainless steel plate in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject plate products are flat-rolled products, 254 mm or over in width and 4.75 mm or more in thickness, in coils, and annealed or otherwise heat treated and pickled or otherwise descaled. The subject plate may also be further processed (*e.g.*, cold-rolled, polished, *etc.*) provided that it maintains the specified dimensions of plate following such processing. Excluded from the scope of these orders are the following: (1) Plate not in coils, (2) plate that is not annealed or otherwise heat treated and pickled or otherwise descaled, (3) sheet and strip, and (4) flat bars. In addition, certain cold-rolled stainless steel plate in coils is also excluded from the scope of these orders. The excluded cold-rolled stainless steel plate in coils is defined as that merchandise which meets the physical characteristics described above that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after this cold reduction process.

The merchandise subject to these orders is currently classifiable in the Harmonized Tariff Schedule of the United States (HTSUS) at subheadings: 7219.11.00.30, 7219.11.00.60, 7219.12.00.05, 7219.12.00.20, 7219.12.00.25, 7219.12.00.50, 7219.12.00.55, 7219.12.00.65, 7219.12.00.70, 7219.12.00.80, 7219.31.00.10, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.11.00.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of the orders is dispositive.

Amended Final Determinations

Belgium

In accordance with section 705(d) of the Act, on March 31, 1999, the Department published its final determination in the countervailing duty investigation of stainless steel plate in coils from Belgium (64 FR 15567) (*Belgium Final*). Subsequently, on April 5, 1999, the petitioners submitted ministerial-error allegations.

The petitioners allege that the Department neglected to include all relevant years in its net present value calculation when calculating the benefit from the loan provided to Alfin, pursuant to the Industrial Reconversion Zone program. Furthermore, the petitioners allege that, when allocating the benefit from this loan, the Department did not use the proper discount rate. The respondent did not object to the petitioners' allegations. We agree with the petitioners on both counts and have made the necessary adjustments. On this basis, we determine the countervailable subsidy rate for this program to be 0.18 percent ad valorem.

South Africa

In accordance with section 705(d) of the Act, on March 31, 1999, the Department published its final determination in the countervailing duty investigation of stainless steel plate in coils from South Africa (64 FR 15553) (*South Africa Final*). Subsequently, on March 29, 1999, Columbus Stainless, the operating division of the Columbus Joint Venture (Columbus), and the petitioners alleged that the Department had made ministerial errors in calculating the estimated net countervailable subsidy rate. We disagree with Columbus that we made a ministerial error; Columbus' allegation constituted an argument for a methodological change. We agree with the petitioners that we made a ministerial error, and therefore we have made a correction in the calculations. This correction resulted in the estimated net countervailable subsidy rate attributable to the Section 37E program increasing from 3.84 percent ad valorem to 3.86 percent ad valorem. The ministerial-error allegations and the Department's analysis are detailed in an April 30, 1999, Memorandum to Bernard Carreau, Deputy Assistant Secretary for AD/CVD Enforcement II, from David Mueller, Director, Office CVD/AD Enforcement VI, RE: "Ministerial Error Allegations filed by Columbus Stainless and Petitioners in the Final Determination of the Countervailing Duty Investigation of *Certain Stainless Steel Wire Rod [sic] from South Africa*, a public version of which is on file in the Central Records Unit (Room B–099 of the Main Commerce Building). Thus, the total estimated net countervailable subsidy rate is 3.95 percent ad valorem for Columbus. This rate also serves as the "all others" rate. *See South Africa Final*, 64 FR at 15566.

Countervailing Duty Orders

In accordance with section 705(d) of the Act, on March 31, 1999, the Department published its final determinations in the countervailing duty investigations of certain stainless steel plate in coils from Belgium (64 FR 15567), Italy (64 FR 15508) and South Africa (64 FR 15553). On May 3, 1999, in accordance with section 705(d) of the Act, the International Trade Commission (ITC) notified the Department of its final determination, pursuant to section 705(b)(1)(A)(i) of the Act, that an industry in the United States suffered material injury as a result of subsidized imports of stainless steel plate in coils from Belgium, Italy and South Africa. In its final determination, however, the ITC determined that two domestic like products exist for the merchandise covered by the Department's investigation: i) certain cold-rolled stainless steel plate in coils, as defined above, and ii) all other stainless steel plate in coils. The ITC determined pursuant to section 735(b)(1) that a domestic industry in the United States is not materially injured or threatened with material injury by reason of imports of certain cold-rolled stainless steel plate from Belgium and that imports of certain cold-rolled stainless steel plate in coils from Italy and South Africa were "negligible." Therefore, the ITC's affirmative determination of material injury covered all stainless steel plate in coils other than that specifically excluded under the "Scope of the Orders" section above. Accordingly, the scope of the countervailing duty orders has been amended as described above to reflect the ITC's distinction between cold-rolled and all other stainless steel plate in coils.

Therefore, countervailing duties will be assessed on all unliquidated entries of stainless steel plate in coils from Belgium, Italy and South Africa entered, or withdrawn from warehouse, for consumption on or after September 9, 1998, the date on which the Department published its preliminary countervailing duty determinations in the **Federal Register**, and before January 2, 1999, the date the Department instructed the U.S. Customs Service to terminate the suspensions of liquidation in accordance with section 703(d) of the Act, and on all entries and withdrawals on or after the date of publication of these countervailing duty orders in the **Federal Register**. Section 703(d) states that the suspension of liquidation pursuant to a preliminary determination may not remain in effect for more than four months. Entries of stainless steel plate in coils made on or after January 2, 1999, and prior to the date of publication of these orders in the **Federal Register** are not liable for the assessment of countervailing duties due to the Department's termination, effective January 2, 1999, of the suspensions of liquidation.

In accordance with section 706 of the Act, the Department will direct U.S. Customs officers to reinstitute the suspensions of liquidation and to assess, upon further advice by the Department pursuant to section 706(a)(1) of the Act, countervailing duties for each entry of the subject merchandise in an amount based on the net countervailable subsidy rate for the subject merchandise.

On or after the date of publication of this notice in the **Federal Register**, U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties on this merchandise, a cash deposit equal to the countervailable subsidy rates noted below. The All Others rates apply to all producers and exporters of stainless steel plate in coils from Belgium, Italy and South Africa not specifically listed below. The cash deposit rates are as follows:

AD VALOREM RATES

Producer/exporter	Net subsidy rate
Belgium:	
ALZ	2.00 percent.
All Others	2.00 percent.
ItalyNet	
Acciai Speciali Terni	15.16 percent.
All Others	15.16 percent.
South Africa:	
Columbus Stainless (the operating division of the Columbus Joint Venture).	3.95 percent.
All Others	3.95 percent.

This notice constitutes the countervailing duty orders with respect to stainless steel plate in coils from Belgium, Italy and South Africa, pursuant to section 706(a) of the Act. Interested parties may contact the Central Records Unit, Room B–099 of the Main Commerce Building, for copies of an updated list of countervailing duty orders currently in effect.

These countervailing duty orders and amended finals are published in accordance with section 706(a) and 705 of the Act and 19 CFR 351.211 and 351.224.

Dated: May 5, 1999.

Robert S. LaRussa

Assistant Secretary for Import Administration.

[FR Doc. 99–11888 Filed 5–10–99; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990408090–9090–01; I.D. 022399C]

RIN 0648–ZA63

Halibut and Sablefish Fisheries Quota-Share Loan Program; Final Program Notice and Announcement of Availability of Federal Financial Assistance

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and

Atmospheric Administration, Department of Commerce.

ACTION: Announcement of availability of Federal financial assistance and request for public comment concerning future credit authority.

SUMMARY: NMFS announces the availability of long-term loans for financing or refinancing the purchase cost of quota share (QS) in the halibut and sablefish fisheries off Alaska. Only entry-level fishermen or fishermen who fish from small vessels are eligible for these loans.

DATES: NMFS will accept for processing only applications submitted, by first-class U.S. mail, during an application open season that begins May 25, 1999, through June 8, 1999, (precludes applications submitted either before May 25, 1999, or after June 8, 1999. All loan funds available for FY 1999 must be obligated before September 30, 1999. Comments must be received by June 8, 1999.

ADDRESSES: Applicants should send loan applications to the Northwest Financial Services Branch, National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 7600 Sand Point Way, NE (BIN C15700), Building No. 1, Seattle, WA 98115. Comments should be sent to Michael L. Grable, Chief, Financial Services Division, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

In addition, the application will be available to down load from the NMFS Home Page in the near future. It can be accessed through Adobe Acrobat Reader and will be located at:

www.nmfs.gov/sfa.

FOR FURTHER INFORMATION CONTACT: Kimberly Ott at

(206) 526–6122 (voice) or (206) 526–6306 (facsimile) or kimberly.ott@noaa.gov (e-mail).

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Background

The Sustainable Fisheries Act (SFA) (Pub.L. 104–297) amended section 1104A(a)(7) of Title XI of the Merchant Marine Act (46 U.S.C. App. 1274) and section 303(d)(4) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) (16 U.S.C. 1801 *et seq.*) to authorize financing and refinancing the cost of loans available to entry-level fishermen and to fishermen who fish from small boats purchasing individual fishing quota (IFQ).

Although the SFA indicates that loans are available for purchasing IFQ, the basic fishing permit for the halibut and sablefish fisheries is termed "QS" rather than "IFQ." In these fisheries, IFQ is an annual allocation of the pounds of fish that each QS holder may harvest. Consequently, NMFS interprets the SFA to allow loans for the cost of purchasing basic fishing permits rather than annual harvest allocations under those permits. These loans will finance the purchase of halibut and sablefish QS rather than IFQ.

Title XI of the Merchant Marine Act of 1936 (Act) is the credit authority under which NMFS will make these loans. This authority is subject to the Federal Credit Reform Act of 1990 (FCRA) (2 U.S.C. 661). This Act requires estimated net loan losses (FCRA cost) to be appropriated in cash at the time Congress authorizes annual loan ceilings.

Fiscal year (FY) 1999 appropriation for the U.S. Department of Commerce included a $100,000 advance to fund the FCRA cost of this loan program during its second year (October 1, 1998, through September 30, 1999).

The amount of annual FCRA credit authority available is a ratio of the FCRA cost rate and the FCRA cost appropriated. NMFS preliminarily estimates the FCRA cost rate of these loans to be 2 percent. Consequently, the loan cost of $100,000 appropriated for this FY 1999 FCRA will preliminarily support a $5,000,000 credit authority ($5,000,000 times 0.02 equals $100,000).

This credit authority may be enough to fund only about 40 to 50 loans. FY 1999 loan demand will, consequently, most likely exceed loan supply. For the credit authority available during FY 1999, NMFS will not accept FY 1999 applications submitted either before May 25, 1999, or after June 8, 1999.

FY 1998 applicants whose applications were not processed during FY 1998 do not have to reapply during FY 1999. NMFS will automatically treat these applications as if they had been resubmitted during the FY 1999 application open season (but they will be subject to the random selection of all applications). NMFS will, one week before the FY 1999 open season begins, send a confirmation of this to each FY 1998 applicant involved.

NMFS will, at least one week before the FY 1999 open season begins, send a new application form to everyone who (according to the NMFS database) has, since the FY 1998 open season ended, indicated an interest in applying for a loan.

All applications that are not selected for processing during FY 1999 will be held for processing during any subsequent year in which credit authority is available. Applications submitted during the FY 1999 open season (including the FY 1998 applications considered as constructively submitted during the FY 1999 open season) will then have the same priority that NMFS assigned to them during FY 1999. The status of all applications may be effected by policy changes published in subsequent notices.

All applications must be submitted by first-class U.S. mail. No other form of application submission is acceptable (including personal delivery, facsimile delivery, every form of express delivery, every other form of delivery other than U.S. mail, and every form of U.S. mail delivery other than first-class U.S. mail).

To reduce the open-season paperwork burden, applicants need complete only a small portion (Section A) of the application form at the time of initial application. Once an application's priority allows it to be processed, NMFS will request the applicant to complete the rest of the application.

These loans will, until further notice, continue to be available in any year for which adequate FCRA credit authority exists.

SFA amendments to sections 303(d)(4) and 304(d)(2) of the Magnuson-Stevens Act authorize the FCRA cost of IFQ lending to be funded up to 25 percent of the IFQ and Community Development Quota fee revenue from the IFQ fishery involved. Presumably, a portion of halibut and sablefish fees from this revenue source will, in the future, fund the annual FCRA cost of these loans for purchasing halibut and sablefish QS.

NMFS requests public comments during the open season concerning NMFS' plan for using future credit authority. In FY 1998 and FY 1999, the processing priority of applications was, or will be, determined by random selection from a pool of applicants who applied during the open seasons. NMFS plans to retain the pool of applicants who were not selected for processing in FY 1998 and FY 1999 in the randomly selected processing priority determined at the end of the FY 1999 open season and will draw exclusively from those applicants until the waiting list of applicants is exhausted. NMFS will accept, for credit authority available during years after FY 1999, applications submitted at any time after June 8, 1999. Applications submitted after June 8, 1999, will be retained in date order for processing following those applications received during the FY 1998 and FY 1999 open seasons. NMFS does not,

after the FY 1999 open season ends, intend to have further open seasons for this type of loan application in this fishery.

B. Catalog of Federal Domestic Assistance

The Halibut and Sablefish Quota-Share Loan Program is part of the program listed in the "Catalog of Federal Domestic Assistance" under number 11.415: *Fisheries Finance Program.*

II. Definitions

Applicant means either an entry-level fisherman who applies for a loan or a fisherman who fishes from a small vessel who applies for a loan.

Application means a submission for a loan from an applicant.

Application form means NOAA Form 88–1 (bearing Office of Management and Budget (OMB) approval No. 0648–0012 and expiring on January 31, 2002).

Base year means the year in which an applicant applies for a loan and the loan is accepted for processing.

Entry-level fisherman means a fisherman who:

(1) Does not own any QS;

(2) Applies for a loan to purchase QS that involves an IFQ total not greater than 8,000 lb (3,628.7 kg) during the base year; and

(3) Will be a crew member aboard the vessel that harvests the IFQ for the loan QS.

Fisherman who fishes from a small vessel means a fisherman:

(1) Who applies for a loan to purchase halibut or sablefish QS previously assigned under § 676.20(c)(2), sablefish QS previously assigned under § 676.20(c)(3), halibut QS previously assigned under § 676.20(c)(4), and/or halibut QS previously assigned under § 676.20(c)(5);

(2) Whose aggregate ownership of QS (including the loan QS) will involve an IFQ not greater than 50,000 lb (22,679.6 kg) during the base year;

(3) Who will be a crew member aboard the vessel that harvests the IFQ for the aggregate QS such fisherman owns (including the loan QS) at the time the loan QS transfers to such fisherman;

(4) Who has, for at least a total of 150 days at any point in the past, been a crewman aboard any vessel in any U.S. commercial fishery; and

(5) Who does not own, in whole or in part, any vessel of the type involved in the previous assignment of halibut or sablefish QS under § 676.20(c)(1) or (c)(2).

Halibut/sablefish means halibut, sablefish, or halibut and sablefish from the QS fishery off Alaska for halibut and/or the QS fishery off Alaska for sablefish.

IFQ means the annual catch limit of halibut/sablefish that may be harvested by a person who is lawfully allocated a harvest privilege for a specific portion of the total allowable catch of halibut/sablefish.

Loan means a program loan for financing or refinancing the cost of purchasing halibut/sablefish QS.

Loan QS means the QS purchased with the proceeds of a loan.

NMFS means the National Marine Fisheries Service, National Oceanic and Atmospheric Administration, U.S. Department of Commerce.

Notice date means the date this document is published in the **Federal Register**.

NWFSB means the Northwest Financial Services Branch (F/SF23), Northwest Regional Office of the National Marine Fisheries Service, see **ADDRESSES**.

Open season means the period beginning and ending on the dates specified under the DATES heading at the beginning of this document.

Program means the halibut/sablefish loan program described in this document.

QS means a halibut/sablefish permit, the face amount of which is used as a basis for the annual calculation of a person's IFQ.

RAM Program means the Restricted Access Management activities in the Alaska Regional Office of the National Marine Fisheries Service.

Section 676.20(c) means § 676.20(c) of Title 50, Code of Federal Regulations (revised as of October 1, 1995).

Title XI means Title XI of the Merchant Marine Act, 1936 (the statutory credit authority under which lending the purchase cost of IFQ is but one of the eligible fisheries loan purposes).

III. Eligible Applicants

Any entry-level fisherman or fisherman who fishes from a small vessel and is a U.S. citizen is eligible to apply for a loan.

IV. Loan Purpose

(1) *General.* The loan purpose is financing or refinancing the cost of purchasing QS.

(2) *Fishermen who fish from small vessels.* The loan QS must be halibut or sablefish QS previously assigned under § 676.20(c)(2), sablefish QS previously assigned under § 676.20(c)(3), halibut QS previously assigned under § 676.20(c)(4), and/or halibut QS previously assigned under § 676.20(c)(5). Applicants must be eligible to receive (hold) the loan QS. The amount of QS any applicant will own at the time the loan QS transfers to the applicant may not have involved an aggregate IFQ greater than 50,000 lb (22,679.6 kg) during the base year. The IFQ for such QS during any year other than the base year is irrelevant.

If, for example, an applicant who owns QS that involved a 20,000–lb (9,071.8–kg) IFQ during the base year wants a loan to finance the purchase of additional QS, the loan QS may not have involved more than an additional 30,000–lb (13,607.8–kg) IFQ during the base year.

Applicants may not own, in whole or in part, any vessel of the type involved in the previous assignment of halibut or sablefish QS under § 676.20(c)(1) or (c)(2).

Although CFR part 676 is not the CFR part that presently regulates halibut/sablefish, § 676.20(c) is the section that the SFA requires NMFS to use for the matters involved in this document. NWFSB can provide applicants copies of § 676.20(c) and explain how this section controls the loan QS.

Each applicant must be a crewman aboard the vessel that will harvest the total IFQ for all QS that the applicant owns at the time the loan QS transfers to applicant.

(3) *Entry-level fishermen.* The loan QS may be of any type for which the RAM Program will issue a QS certificate in the purchaser's name. The loan QS may not have involved an IFQ greater than 8,000 lb (3,628.7 kg) during the base year. The IFQ for such QS during any year other than the base year is irrelevant.

(4) *Applicants' indirect QS or vessel ownership interests.* NMFS will count against the poundage ceilings in paragraphs IV(2) and (3) of this document of whatever portion of QS interests and of the base-year IFQ applicants indirectly own by virtue of owning corporations, partnerships, or other forms of business organizations that directly own QS. For example, if an applicant owns one-third of the stock in a corporation that owns QS with a base-year IFQ of 30,000–lb (13,607.8–kg), NMFS will, for the purposes of the ceilings, regard the applicant as also owning QS with a base-year IFQ of 10,000 lb (4,535.9 kg).

NMFS will also, for the purpose of the vessel ownership restriction in paragraph IV(2) of this document, consider that applicants indirectly have an ownership interest in vessels which are owned by corporations, partnerships, or other forms of business organizations in which applicants own

any corporate shares, partnership interests, or other interests. For example, if an applicant owns one share of stock in a corporation that owns a vessel of the type involved in the previous assignment of halibut or sablefish QS under § 676.20(c)(1) or (c)(2), NMFS will consider the applicant to partly own such a vessel. Such an applicant will not be eligible for a loan.

(5) *Refinancing.* Applicant may refinance with the proceeds of loans any existing debts that previously financed the purchase cost of QS, provided that the QS purchases would themselves have been eligible for program financing if the program had been available at the time of QS purchase. In the instance of refinancing only, NMFS will consider loans in amounts up to 80 percent of QS' current market value (rather than original purchase cost), provided that loans will, in no event, be for an amount greater than the amount required to fully repay the QS debt being refinanced.

V. Loan Terms and Conditions

(1) *Down payment.* Applicants financing (rather than refinancing) QS purchase cost must fund 20 percent of the purchase cost from funds other than loan proceeds. If the current market value of QS whose purchase cost is being refinanced (rather than financed) is higher than its original purchase price, applicants may need less, or no, down payment. However, if the current value of QS whose purchase costs is being refinanced (rather than financed) is lower than its original purchase price, applicants may be required to provide additional down payment.

(2) *Loan amount.* The amount of a loan that finances (rather than refinances) QS purchase cost may not exceed 80 percent of QS purchase cost. Loan amounts may, however, exceed 80 percent if the current market value of QS whose purchase cost is being refinanced (rather than financed) is higher than its original purchase price.

(3) *Interest rate.* Each loan's annual interest rate will be 2 percent higher than the U.S. Treasury's cost of borrowing public funds of an equivalent maturity. For example, the annual loan interest rate would, on February 17, 1999, have been approximately 7.65 percent for a 20-year maturity. Interest is simple interest.

(4) *Maturity.* Loan maturity may not exceed 25 years, but may be shorter depending on credit and other considerations.

(5) *Repayment.* Repayment will be by equal quarterly installments of principal and interest.

(6) *Security.* The loan QS will, in every case, be the primary security for the loan. NMFS may require additional collateral to ensure the security position of the primary collateral. NMFS may require all parties with significant ownership interests in corporate or partnership applicants to personally guarantee loan repayment. Some credit risks may require additional security.

VI. Application

(1) *Open Season.* NMFS will accept for processing only those applications submitted during the open season. Applications previously filed, but not considered, in FY 1998 will automatically be considered to have been received during the open season (they need not be resubmitted to be included in the random selection process for the FY 1999 credit authority).

(2) *Method of submission.* NMFS will accept only those applications submitted by first-class U.S. mail. NMFS will not accept applications submitted by any other method (including, but not limited to any form of U.S. mail other than first class mail, any other delivery service, personal delivery, delivery by facsimile, etc.).

(3) *Submission address.* NMFS will accept only those applications addressed directly to NWFSB at the mailing address listed in the **ADDRESSES** section of this document.

(4) *Date of submission.* The date of each application's submission will be the date on which the U.S. Postal Service postmarks the envelope containing the application or other evidence of date sent.

(5) *Processing Priority.* Relative processing priority among applications submitted will be decided by random selection from among all applications submitted.

Processing priority does not mean that applications will be approved. It merely means that NWFSB will process applications in the order of their assigned processing priority.

(6) *Application form.* All applicants must use the application form. NMFS will not accept any other form of application. Open-season applicants need complete only Section A of the application. After the open season, NWFSB will contact each applicant whose processing priority makes the applicant's application eligible for processing as an FY 1999 loan and begin a standard due-diligence credit investigation. The application is available from NWFSB. NWFSB will send only Section A of the application to parties requesting the application for the purpose of submitting an open-season application. NWFSB can, upon request, do this by facsimile.

(7) *Notification of processing priority.* NWFSB will, within 7 working days after the last day of the open season, enumerate the processing priority of all open-season applications that NWFSB received. NWFSB will immediately thereafter notify each open-season applicant of the relative likelihood of its application being processed as an FY 1999 loan. NWFSB will then accomplish a due-diligence credit investigation for each application whose processing priority (and other factors) makes it eligible for processing as an FY 1999 loan.

(8) *Application fee.* The application fee is 0.5 percent of the loan amount for which a successful open-season applicant applies. Application fees will be due only for those open-season applications that NWFSB actually accepts for processing as FY 1999 loans. No application fee is due for any open-season application that NWFSB does not accept for processing as an FY 1999 loan. Although the application fee is due when the application is submitted, it is not payable until NMFS requests payment. NMFS will not request payment of the application fee until after it has accepted an application for processing as an FY 1999 loan. At that time an application review or interview will take place with the applicant and other necessary parties that affirms the applicant's compliance with basic loan eligibility and credit criteria. Half the application fee is fully earned at the time NMFS requests payment. NMFS will not return this half regardless of subsequent application disposition. The other half is fully earned only when NMFS issues an approval in a principle letter approving an application. Once it has issued an approval in a principle letter, NMFS will not return the second half of the application fee.

(9) *Crew member transfer eligibility certificate.* Crew member transfer eligibility certificates certify that parties are eligible to receive (hold) QS. The RAM Program issues these certificates to prospective QS purchasers. If, at the time of application, an applicant does not already have a crew member transfer eligibility certificate, NWFSB will advise the applicant how to apply for one. If applicants cannot get transfer eligibility certificates for the QS they intend to purchase, pursuing the loan application process further is pointless. Applicants who do not obtain appropriate transfer eligibility certificates promptly may lose their processing priority to applicants who do.

VII. Loan Processing

NMFS will, to the maximum extent possible, process loan applications in the order of their relative priority. If, however, applicants cannot, in NWFSB's discretion, promptly comply with application processing requirements, they may lose their processing priority to applicants who can. NWFSB will, from time to time, specify compliance time requirements that are responsive to the administrative need to have all credit authority fully obligated before the end of FY 1999. Applicants must comply or lose their application priority to other applicants who will.

NWFSB will conduct a standard due-diligence credit investigation. This should be a relatively simple and quick process. Once NMFS has made a due-diligence credit decision, loan approval requires certain internal clearances that will add some time to processing, but NMFS will try to accelerate processing as much as possible. Upon formal loan approval, NMFS will issue an approval in a principle letter for the applicant's acceptance.

VIII. Loan Closing

NMFS will establish all loan terms and conditions, prepare all closing documents, close all loans, and record all security interests. NMFS should generally have no need for applicants to hire attorneys for any loan purpose, but applicants may do so if they wish. Generally, the only closing costs owed by applicants will be the cost of doing title/lien searches on, or of recording security interests in, loan QS. NWFSB may need to do title/lien searches, and to record security interest, in several different jurisdictions. Closing costs must be paid by applicants at the loan closing.

IX. Title XI and 50 CFR Part 253

The general rules implementing Title XI are 50 CFR part 253, subpart B. Loans will be subject to so much of the other provisions of Title XI and of its implementing rules as can reasonably be applied to loans involving the purchase under this notice of QS (rather than the purchase of fishing vessels, fisheries shoreside facilities, or aquacultural facilities).

X. Administrative Requirements

(1) In accordance with the provisions of the Debt Collection Improvement Act of 1996, a person may not obtain any Federal financial assistance in the form of a loan (other than a disaster loan) or loan guarantee if the person has an outstanding debt (other than a debt under the Internal Revenue Code of 1986) with any Federal agency which is in a delinquent status, as determined under standards prescribed by the Secretary of the Treasury.

(2) Applicants are subject to a name-check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing such criminal charges as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(3) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(4) Applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

i. *Nonprocurement Debarment and Suspension.*

Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form applies;

ii. *Anti-Lobbying.* Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000 the certification form applies.

(5) An applicant classified for tax purposes as an individual, partnership, proprietorship, corporation, or medical corporation is required to submit a taxpayer identification number (TIN) (either social security number, employer identification number as applicable, or registered foreign organization number) on Form W–9, "Payer's Request for Taxpayer Identification Number." Tax-exempt organizations and corporations (with the exception of medical corporations) are excluded from this requirement. Form W–9 shall be submitted to the Finance Officer within 60 days of the award of assistance. The TIN will be provided to the IRS by DoC on Form 1099–G, "Statement for Recipients of Certain Government Payments." Recipients who either fail to provide their TIN or provide an incorrect TIN may have funding suspended until the requirement is met.

Disclosure of a Recipient's TIN is mandatory for Federal income tax reporting purposes under the authority of 26 USC, Section 6011 and 6109(d), and 26 CFR, Section 301.6109–1. This is to ensure the accuracy of income computation by the IRS. This information will be used to identify an individual who is compensated with DoC funds or paid interest under the Prompt Payment Act.

(6) Under the Inspector General Act of 1978, as amended, 5 U.S.C. App. I, section 1 *et seq.*, an audit of the award of assistance may be conducted at any time. The Inspector General of the DoC, or any of his or her duly authorized representatives, shall have access to any pertinent books, documents, papers and records of the Recipient, whether written, printed, recorded, produced or reproduced by any mechanical, magnetic or other process or medium, in order to make audits, inspections, excerpts, transcripts or other examinations as authorized by law. When the OIG requires an audit on a DoC award, the OIG will usually make the arrangements to audit the award, whether the audit is performed by OIG personnel, an independent accountant under contract with the DoC, or any other Federal, state or local audit entity.

Classification

Neither the Administrative Procedure Act nor any other law requires prior notice and opportunity for public comment about this document (which concerns loans). Consequently, the Regulatory Flexibility Act does not require a regulatory flexibility analysis.

This notice is not significant for purposes of E.O. 12866.

This notice contains and refers to collection-of-information requirements subject to the Paperwork Reduction Act. The application requirements contained in the Notice have been approved under OMB control number 0648–0012. The applications for the crew member eligibility certificate referred to have been approved under OMB control number 0648–0272.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Dated: May 5, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11879 Filed 05–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050399B]

Marine Mammals; File No. 782–1510

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that National Marine Fisheries Service, National Marine Mammal Laboratory, has applied in due form for a permit to take killer whales (*Orcinus orca*) for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 10, 1999.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA, 98115–0070 (206/526–6150);and

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4001).

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

The applicant proposes to take up to 350 killer whales (*Orcinus orca*) by biopsy sample over a 5-year period. Animals will be photographed during sampling. Samples will be exported to England for genetic analysis. Up to 2500 will be inadvertently harassed annually. The purpose of the research is to investigate genetic diversity, food web dynamics and contaminant levels in North Pacific killer whales.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Dated: May 4, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11880 Filed 5–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050499A]

Marine Mammals; File No. 758–1459–01

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Kimberlee Beckmen, Institute of Arctic Biology, University of Alaska Fairbanks, Fairbanks, AK 99775–7000, has requested an amendment to scientific research Permit No. 758–1459.

DATES: Written or telefaxed comments must be received on or before June 10, 1999.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668 (309/586–7221).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Ruth Johnson or Sara Shapiro 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 758–1459 issued on August 21, 1998 (63 FR 46417) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Permit No. 758–1459 authorizes the permit holder to take up to six moribund, mortally injured northern fur seals by lethal injection and salvage the liver, blood and blubber.

The permit holder requests authorization to take up to 82 northern fur seal pups up to 5 times to conduct research activities. Up to 9,152 will be inadvertently harassed annually during capture operations. The objective is to determine if the profound decline in lymphocyte proliferation responsiveness in all 4–6 week old pups compared to their neonatal response (observed in 1996) was a normal phenomenon, and determine at what age the maternal antibody protection finally wanes and the pup's own immune system can be fully stimulated.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**,

NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 4, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–11881 Filed 5–10–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 99–15]

36(b)(1) Arms Sales Notification

AGENCY: Defense Security Cooperation Agency, Department of Defense.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Pub. L. 104–164 dated July 21, 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 99–15, with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 5, 1999.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001–10–M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

29 April 1999

In reply refer to:
I-99/05175

Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 99-15, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to United Kingdom for defense articles and services estimated to cost $100 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

MICHAEL S. DAVISON, JR.
LIEUTENANT GENERAL, USA
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on National Security
Senate Committee on Armed Services
House Committee on Appropriations

Transmittal No. 99-15

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act

(i) Prospective Purchaser: United Kingdom

(ii) Total Estimated Value:

Major Defense Equipment*	$ 70 million
Other	$ 30 million
TOTAL	$100 million

(iii) Description of Articles or Services Offered:
Thirty conventionally armed TOMAHAWK BLOCK IIIC Land Attack Missiles (TLAM), containers, engineering technical assistance, spare and repair parts, and other related elements of logistics support.

(iv) Military Department: Navy (AHA)

(v) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vi) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached.

(vii) Date Report Delivered to Congress: 29 Apr 1999

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

United Kingdom - TOMAHAWK BLOCK IIIC Land Attack Missiles

The Government of United Kingdom has requested a possible sale of 30 conventionally armed TOMAHAWK BLOCK IIIC Land Attack Missiles (TLAM), containers, engineering technical assistance, spare and repair parts, and other related elements of logistics support. The estimated cost is $100 million.

This sale will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of the United Kingdom while enhancing weapon system standardization and interoperability; and enhancing the defense of the Western Alliance.

The United Kingdom needs these missiles to augment their present operational inventory and to enhance their submarine launched capability. The missiles will enhance United Kingdom operational effectiveness in support of NATO. The United Kingdom, which already has TOMAHAWK missiles in its inventory, will have no difficulty absorbing these additional missiles.

The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Missile Systems Company, Tucson, Arizona. There are no offset agreements proposed in connection with this sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government personnel or contractor representatives to the United Kingdom.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 99-15

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vi

(vi) Sensitivity of Technology:

1. The conventionally armed TOMAHAWK BLOCK IIIC Land Attack Missile (TLAM) consists of the following classified components:

a. The TOMAHAWK missile (Complete) - Guidance Set, Digital Scene Matching Area Correlator (DSMAC) Global Positioning System (GPS) when software is installed, Data Link when software/firmware is installed, Common Missile Radar Altimeter (CMRA), Operational Flight Software as well as DSMAC and GPS flight software.

2. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness. The consequences of loss of this technology to a technologically advanced or competent adversary could result in the development of countermeasures or equivalent systems which could reduce weapons system effectiveness or be used in the development of a system which similar advanced capabilities.

3. A determination has been made that United Kingdom can provide substantially the same degree of protection for this technology as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 99–11740 Filed 5–10–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Board of Visitors Meeting

AGEMCY Department of Defense Acquisition University.

ACTION: Board of Visitor meeting.

SUMMARY: The next meeting of the Defense Acquisition University (DAU) Board of Visitors (BoV) will be held at the Packard Conference Center, Building 184, Ft. Belvoir, Virginia on Wednesday June 2, 1999 from 0900 until 1600. The purpose of this meeting it to report back to the BoV on continuing items of interest. The agenda will also include a presentation on the most recent efforts to reorganize the University into a unified structure.

The meeting is open to the public; however because of space limitations, allocation of seating will be made on a first-come, first served basis. Persons desiring to attend the meeting should call Mr. John Michel at 703–845–6756.

Dated: May 5, 1999.

L.M. Bynum

Alternate OSD Federal Liaison Officer, Department of Defense.

[FR Doc. 99–11739 Filed 5–10–99; 8:45 am]
BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Marine Corps

Privacy Act of 1974; System of Records

AGENCY: Marine Corps, DoD.

ACTION: Amend and delete record systems.

SUMMARY: The U.S. Marine Corps proposes to delete and amend systems of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: These actions will be effective without further notice on June 10, 1999, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to the Head, FOIA and Privacy Act Section, Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–1775.

FOR FURTHER INFORMATION CONTACT: Ms. B. L. Thompson at (703) 614–4008 or DSN 224–4008.

SUPPLEMENTARY INFORMATION: The U.S. Marine Corps record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed actions are not within the purview of subsection (r) of the Privacy Act (5 U.S.C. 552a), as amended, which would require the submission of a new or altered system report for each system. The specific changes to the record systems being amended are set forth below followed

by the notices, as amended, published in their entirety.

Dated: May 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense

Deletion
MJA00014

SYSTEM NAME:

Confidential Statements of Employment/Financial Interests *(August 3, 1993, 58 FR 41254).*

Reason: These records are being maintained under a government-wide system of records notice, OGC/GOVT-2, Confidential Statements of Employment and Financial Interests.

Amendments
MAA00002

SYSTEM NAME:

Marine Corps Aircrew Performance/ Qualification Information *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraphs three, four, five and six.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are permanent. Five years after any decision or board action, file is retired to the Federal Records Center.'

* * * * *

MAA00002

SYSTEM NAME:

Marine Corps Aircrew Performance/ Qualification Information.

SYSTEM LOCATION:

The Commandant of the Marine Corps (Code A), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps aeronautically designated personnel (Naval Aviators, Naval Aviators, Naval Flight Officers, and aircrew members) who have been the subject of medical qualification, flight pay entitlement, and/or Flight Status Selection Board (FSSB) correspondence.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains information on medical qualification, flight pay entitlements, and/or FSSB correspondence and the background data addressing such correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To maintain records on Marine Corps aeronautically designated personnel for use by Officials and employees of the Marine Corps in the administration and management of such personnel.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual and automated records.

RETRIEVABILITY:

Information is retrieved alphabetically by the last name of the individual concerned.

SAFEGUARDS:

Building containing files employs 24 hour security guards. Offices containing files are locked after working hours and personnel handling records do so only on a 'need-to-know' basis. Such personnel are trained and screened for dependability. Material that could be considered 'career-sensitive' is retained in a safe.

RETENTION AND DISPOSAL:

Files are permanent. Five years after any decision or board action, file is retired to the Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps (Code A), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code AAB), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code AAB), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775 and should contain the full name, Social Security Number and signature.

For personal visits the individual should provide valid identification such as military identification card, Department of Defense building pass, drivers license, or other type identification that includes picture and signature. In the absence of such identification, the individual must provide sufficient data to insure that the individual is the subject of the inquiry.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from Official reports, boards, inquiries and requests. Information is also obtained from the review of Naval Aviator/Naval Flight Officer Reporting Management System data.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MIL00001

SYSTEM NAME:

Assignment and Occupancy of Family House Records *(February 22, 1993, 58 FR 10630).*

CHANGES:

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CATEGORIES OF RECORDS IN THE SYSTEM:

In the last sentence delete 'Manpower Management System and the Joint Uniform Military Pay System' and replace with 'Marine Corps Total Force System (MCTFS).'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual's application and the Marine Corps Total Force System.'

* * * * *

MIL00001

SYSTEM NAME:

Assignment and Occupancy of Family House Records.

SYSTEM LOCATION:

System is organizationally decentralized. Records are maintained at Marine Corps Installations with family housing.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military and civilian personnel eligible for or assigned to family housing on bases/stations.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's application and assignment to and occupancy history of family housing. Records include, but are not limited to information from the Marine Corps Total Force System (MCTFS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 30l, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of the type of quarters and the individuals assigned to quarters for use in the management and administration of such quarters.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

School Districts - By Officials of school district boards of education in performance of their duties under local and/or state compulsory education laws.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and electronics records.

RETRIEVABILITY:

Filed alphabetically by last name of housing occupant and in order of position on waiting list.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel. Access to electronic records is controlled by password or other user identification code.

RETENTION AND DISPOSAL:

Records are destroyed 3 fiscal years following close of fiscal year in which occupancy terminates.

SYSTEM MANAGER(S) AND ADDRESS:

The Commandant of the Marine Corps, Headquarters, U.S. Marine Corps (Code LF), Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commanding Officer of the Marine Corps installation from which family housing has been requested, assigned or vacated. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commanding Officer of the Marine Corps installation(s) at which the individual applied for or occupied family housing. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

Such requests should include name, Social Security Number, quarters number if known, and dates of period addressed in the inquiry.

Personal visits may be made to the installation in question any normal work day between 8:00 a.m.–4:30 p.m. For personal visits the individual should be able to provide valid personal identification.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's application and the Marine Corps Total Force System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MIL00004

SYSTEM NAME:

Personal Property Program *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add the following entries 'DD Form 788 (Application for Shipment of an Automobile)

DD Form 788-1 (Application for Shipment of a Van)

DD Form 788-2 (Application for Shipment of a Motorcycle)

DD Form 1840 (Joint Statement of Loss or Damage at Delivery)

DD Form 1840R (Notice of Loss or Damage)

SF 1200 (U.S. Government Bill of Lading Correction Notice)

SF 1203 (Personal Property Government Bill of Lading)

DD Form 1352-1 (U.S. Customs Declaration)

DD Form 1857 (Temporary Commercial Storage at Government Expense)

DD Form 1164 (Service Order for Household Goods)

DD Form 1701 (Household Goods Descriptive Inventory)

DD Form 1863 (Accessorial Services Mobile Home)

DD Form 2278 (Application for Do It Yourself Move and Counseling Checklist)'.

* * * * *

RETRIEVABILITY:

Delete the entry and replace with 'Paper records retrieved alphabetically by last name. Electronic records retrieved by last name or Social Security Number.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commandant of the Marine Corps (LFT), Headquarters, U.S. Marine Corps, Washington, DC 20380-1775.'

* * * * *

MIL00004

SYSTEM NAME:

Personal Property Program.

SYSTEM LOCATION:

All Marine Corps Bases and Federal Records Centers.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel having shipped or stored personal property or privately owned automobiles.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual's applications for shipment and/or storage, related shipping documents and records of delivery and payment.

DD Form 619 (Statement of Accessorial Services Performed)
DD Form 788 (Application for Shipment of an Automobile)
DD Form 788-1 (Application for Shipment of a Van)
DD Form 788-2 (Application for Shipment of a Motorcycle)
DD Form 828 (Motor Vehicle Shipment Application)
DD Form 1100 (Household Goods Storage)
DD Form 1101 (Household Goods Storage Information)
DD Form 1164 (Service Order for Household Goods)
DD Form 1252 (Owner's U.S. Customs Declaration and Entry and Inspecting Officer's Certificate)
DD Form 1299 (Application for shipment and/or storage of Personal Property)
DD Form 1352-1 (U.S. Customs Declaration)
DD Form 1671 (Reweight of Household Goods)
DD Form 1701 (Household Goods Descriptive Inventory)
DD Form 1780 (Report of Carrier Services Personal Property Shipment)
DD Form 1781 (Property Owners Report on Carriers Report)
DD Form 1797 (Personal Property Counseling Checklist)
DD Form 1799 (Member's Report on Carrier Performance-Mobile Homes)
DD Form 1800 (Mobile Home Shipment Inspection at Destination)
DD Form 1840 (Joint Statement of Loss or Damage at Delivery)
DD Form 1840R (Notice of Loss or Damage)
DD Form 1841 (Schedule of Property Damages)
DD Form 1842 (Claim for Personal Property against the United States)
DD Form 1845 (Demand on Carrier/Contractor)
DD Form 1857 (Temporary Commercial Storage at Government Expense)
DD Form 1863 (Accessorial Services Mobile Home)
DD Form 2278 (Application for Do It Yourself Move and Counseling Checklist)
SF 1200 (U.S. Government Bill of Lading Correction Notice)
SF 1203 (Personal Property Government Bill of Lading)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of shipment and storage of personal property for management and payment of personal property claims by officials and employees of the Marine Corps.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders. Electronic records on mass storage devices and optically stored representations of records.

RETRIEVABILITY:

Paper records retrieved alphabetically by last name. Electronic records retrieved by last name or Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly cleared and trained.

RETENTION AND DISPOSAL:

Records on international shipments of household goods moved via freight forwarders are retained for 6 years after the period covered by the account and then destroyed. All other household goods records are destroyed when 3 years old.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (LFT), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code LFT), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (LFT), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Written requests for information should contain the full name of individual, Social Security Number, current address and telephone number.

For personal visits, the individual should be able to provide acceptable identification and give some verbal information that could be verified with his 'case' folder.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Application and related forms from the individual requesting access; notification of personal clearance from the system manager research note/ documents from records custodians.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MIN00002

SYSTEM NAME:

POW/MIA Intelligence Analysis and Debrief Files *(February 22, 1993, 58 FR 10630).*

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete second paragraph.

* * * * *

MIN00002

SYSTEM NAME:

POW/MIA Intelligence Analysis and Debrief Files.

SYSTEM LOCATION:

Primary system: Headquarters, U.S. Marine Corps, Washington, DC 20380–1775. Major Marine Corps commands maintain derivative files.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Marine Corps or Marine Corps Reserve either currently or previous prisoner of war (POW), detained by hostile forces or declared missing in action (MIA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Narrative of loss incident; investigations regarding loss incident; casualty reports intelligence reports

possible identifying subject; articles, statements, lists and photographs published in world news media or broadcast over hostile public radio; portions of official debriefings or debriefing summaries; and analytical evaluations of information contained in file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps.

PURPOSE(S):

To provide a record of information collected on individuals classified as prisoners of war or missing in action until their return to military control or otherwise change of status.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; photographs, film and tape recordings.

RETRIEVABILITY:

Filed alphabetically by last name of the individual.

SAFEGUARDS:

Secured in GSA approved security containers within locked office spaces. Access is granted only to those authorized persons who are properly cleared and having a need-to-know.

RETENTION AND DISPOSAL:

Records maintained within Marine Corps Intelligence Division as long as individual's status remains POW/MIA. Record is retired to Marine Corps Historical Division two years after return to U.S. control or when status is changed to KIA/KIA-BNR.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code C4I), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code C4I), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code C4I), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Other records of the activity; investigators; witnesses; correspondents; intelligence reports from the services, Defense Intelligence Agency, Central Intelligence Agency, State Department and other government agencies; Foreign Broadcast Information Service; newspapers; magazines; television; radio; and movies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MJA00016

SYSTEM NAME:

Judge Advocate Division 'D' Files *(August 3, 1993, 58 FR 41254).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete the entry and replace with 'All Marine Corps Judge Advocates currently on active duty, in a reserve capacity and those individuals who are in the training cycle to become Judge Advocates.'

* * * * *

MJA00016

SYSTEM NAME:

Judge Advocate Division 'D' Files.

SYSTEM LOCATION:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps Judge Advocates currently on active duty, in a reserve capacity and those individuals who are in the training cycle to become Judge Advocates.

CATEGORIES OF RECORDS IN THE SYSTEM:

The file contains correspondence from the Judge Advocates and prospective Judge Advocates regarding requests for personnel actions such as transfer, school assignment, etc. Additionally, the file contains information pertaining to judge advocate qualifications such as schooling results, commendatory matters and derogatory matter which bears on the assignment and other personnel matters relating to judge advocates.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 30l, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of qualified judge advocates for use in transfer, school assignment and other personnel matters relating to judge advocates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Marine Corps' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and electronic database.

RETRIEVABILITY:

Alphabetically by last name of member.

SAFEGUARDS:

Access is limited. The records are kept in file cabinets within a locked room. Access to electronic records is controlled by password or other user identification code.

RETENTION AND DISPOSAL:

Retained for 2 years, then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

The Director, Judge Advocate Division, Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U.S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests should contain the full name, grade, and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Director, Judge Advocate Division, Headquarters, U. S. Marine Corps (Code JA), Washington, DC 20380–1775.

Written requests should contain the full name, grade, and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals. Service records of the individuals involved. Judge Advocates and Commanders of the individuals involved. Schools from which the individuals have obtained their graduate or undergraduate degrees or currently in residence.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00006

SYSTEM NAME:

Marine Corps Military Personnel Records (OQR/SRB) *(February 22, 1993, 58 FR 10630).*

CHANGES:

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STORAGE:

Delete the entry and replace with 'Records are stored on paper in file folders, magnetic megastorage and on microfiche.'

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RETENTION AND DISPOSAL:

In the second sentence delete 'four months' and replace with 'one year.'

* * * * *

MMN00006

SYSTEM NAME:

Marine Corps Military Personnel Records (OQR/SRB).

SYSTEM LOCATION:

Primary system: Headquarters, U.S. Marine Corps (Code MMSB), 2008 Elliot Road, Quantico, VA 22134–5030.

Decentralized segments: Commanding officer of the organization to which the Marine officer or enlisted individual is assigned for duty and has responsibility for the Officer Qualification Records/ Service Record Books (OQR/SRB).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Marine Corps military personnel (enlisted/officer): Reserve, retired and discharged or otherwise separated.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains the Official Military Personnel File, SRB and OQR.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 5013, Secretary of the Navy; 10 U.S.C. 5041, Headquarters, Marine Corps; and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record on all Marine Corps military personnel for use in management of resources, screening and selection for promotion, training and educational programs, administration of appeals, grievances, discipline, litigations and adjudication of claims and determination of benefits and entitlements.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To officials and employees of the Coast Guard and National Guard in the performance of their official duties relating to screening members who have expressed a positive interest in an interservice transfer, enlistment, appointment or acceptance.

To agents of the Secret Service in connection with matters under the jurisdiction of that agency upon presentation of credentials.

To private organizations under government contract to perform random analytical research into specific aspects of military personnel management and administrative procedures.

To officials and employees of the American Red Cross and Navy Relief Society in the performance of their duties. Access will be limited to those portions of the member's record required to effectively assist the member.

To officials and employees of the Sergeant at Arms of the U.S. House of Representatives in the performance of official duties related to the verification of Marine Corps service of Members of Congress. Access will be limited to those portions of the member's record required to verify service time, active and reserve.

To state, local, and foreign (within Status of Forces agreements) law enforcement agencies or their authorized representatives in connection with litigation, law enforcement, or other matters under the jurisdiction of such agencies.

To officials and employees of the Department of Veterans Affairs, Department of Health and Human Services, and Selective Service Administration in the performance of their official duties related to eligibility, notification, and assistance in obtaining benefits by members and former members of the Marine Corps.

To officials and employees of the Department of Veterans Affairs in the performance of their official duties relating to approved research projects.

To officials and employees of other Departments and Agencies of the Executive Branch of government, upon request, in performance of their official duties related to the management, supervision, and administration of members and former members of the Marine Corps.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on paper in file folders, magnetic megastorage and on microfiche.

RETRIEVABILITY:

The records at Headquarters, U.S. Marine Corps (all active and reserve officer records, all temporary disability retired records, all active and organized reserve and Fleet Marine Corps Reserve enlisted records of personnel joined/ transferred to these components subsequent to June 30, 1974, all former Commandants, all living retired officers (who served in General Officer grade, records of all personnel separated/ retired four months or less) are retrieved by full name and Social Security Number. Except for OQR's and SRB's of participating members, all other categories of Marine Corps military

personnel records are maintained at the National Personnel Records Center, St. Louis, MO. Those retired to St. Louis prior to January 1, 1964 and/or those with military service numbers (MSN) below 1800000 are retrieved by MSN and full name. All other Marine Corps records retired to St. Louis, MO are accessed by MSN and/or Social Security Number and are retrieved by an assigned registry number.

SAFEGUARDS:

Restricted access to building and all areas where data is maintained. Records are maintained in areas accessible only by authorized personnel who have been properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Records are permanent. Records maintained at Headquarters, U.S. Marine Corps are transferred to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100, one year after separation, placement on the Permanent Disability Retired List, retirement, retirement from Fleet Marine Corps Reserve, death of an officer who served in General Officer grade and former Marines no longer considered of newsworthy status.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code MMSB), Headquarters, U.S. Marine Corps, 2008 Elliot Road, Quantico, VA 22134–5030.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Commandant of the Marine Corps (Code MMSB), Headquarters, U.S. Marine Corps, 2008 Elliot Road, Quantico, VA 22134–5030 (for active duty members); or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Individuals seeking to determine information about their OQR/SRB records maintained by their respective commanding officer should address written inquiries to the command concerned. U.S. Marine Corps official mailing addresses are incorporated into Department of the Navy's mailing addresses, published as an appendix to the Navy's compilation of record system notices.

Written requests should contain the full name, Social Security Number, and signature of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written requests to the Commandant of the Marine Corps (Code MMSB), Headquarters, U.S. Marine Corps, 2008 Elliot Road, Quantico, VA 22134–5030 (for active duty personnel); to the respective commanding officer of the command concerned for OQR/SRB; or to the Director, National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 (for separated members).

Written requests should include the full name, Social Security Number, and signature of the requester.

The individual may visit any of the above activities for review of records. Proof of identification may consist of an individual's active, reserve or retired identification card, Armed Forces Report of Transfer or Discharge (DD Form 214), discharge certificate, driver's license, or other data sufficient to insure that the individual is the subject of the record.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Staff agencies and subdivisions of Headquarters, U.S. Marine Corps; Marine Corps commands and organizations; other agencies of federal, state, and local government; medical reports; correspondence from financial and other commercial enterprises; correspondence and records of educational institutions; correspondence of private citizens addressed directly to the Marine Corps or via the U.S. Congress and other agencies; investigations to determine suitability for enlistment, security clearances, and special assignments; investigations related to disciplinary proceedings; and the individual of the record.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00019

SYSTEM NAME:

Drug/Alcohol Abuse Reporting Program *(February 22, 1993, 58 FR 10630).*

CHANGES:

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

Delete paragraphs five and seven.

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MMN00019

SYSTEM NAME:

Drug/Alcohol Abuse Reporting Program.

SYSTEM LOCATION:

Primary System - Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Decentralized Segments - Navy Drug Rehabilitation Centers, Navy and Marine Corps Counseling and Assistance Centers, Navy Regional Medical Centers, Navy Alcohol Rehabilitation Drydocks, Naval Health Research Center, Navy Correction Centers and local activities to which an individual is assigned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military personnel who have been tested for, identified, evaluated, apprehended, or rehabilitated for drug or alcohol abuse or who have been granted drug abuse exemption; or who are seeking assistance in drug or alcohol abuse programs.

All military personnel who have been granted drug abuse exemption.

All military personnel who are seeking assistance in drug or alcohol abuse programs.

CATEGORIES OF RECORDS IN THE SYSTEM:

Drug abuse identification/ rehabilitation statistical reports, alcohol abuse identification/ rehabilitation statistical reports, grant of drug exemption report, request for disposition on drug dependent personnel, grant of exemption/ rehabilitation case file to include medical evaluations, counselor evaluations, monthly progress reports, alcoholism education roster, and such correspondence or messages sent or sent by the system manager pertaining to the individual concerned. Urinalysis specimen control register and military police drug/alcohol related offense reports.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V, Pub.L. 92–129; Section 413, Pub.L. 92–255.

PURPOSE(S):

To provide a record of all individuals participating in drug/alcohol abuse programs for use by Marine Corps Officials in the management of such programs.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records of identity, diagnosis, prognosis, or treatment of any client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains.

Within the Armed Forces or within those components of the Department of Veterans Affairs furnishing health care to veterans or between such components and the Armed Forces.

To medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management or financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit or evaluation, or otherwise disclose identities in any manner.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders, card files, punched cards, magnetic tapes.

RETRIEVABILITY:

Name, Social Security Number, case number. When names and Social Security Numbers are removed, data is aggregated for use in research, management information, and planning.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Paper files are maintained for two years, then destroyed. Records stored on magnetic tapes are maintained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code MRT), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code MRT), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Requests must contain full name, Social Security Number, military status, address and signature of requester. (Those inquiring about records at Confinement Centers must have their signature notarized, if not confined at time of request.) Individuals may visit the Commandant of the Marine Corps, (Code MHH), located in the Clarendon Building, Arlington, VA, for assistance with records at that location; individuals may also visit local activities concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices. Individuals must provide proof of identification such as military identification card, driver's license, or other picture-bearing identification.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code MRT), Headquarters, U.S. Marine Corps, Washington, DC 20380–1775.

Requests must contain full name, Social Security Number, military status, address and signature of requester. (Those inquiring about records at Confinement Centers must have their signature notarized, if not confined at time of request.) Individuals may visit the Commandant of the Marine Corps, (Code MHH), located in the Clarendon Building, Arlington, VA, for assistance with records at that location; individuals may also visit local activities concerned. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices. Individuals must provide proof of identification such as military identification card, driver's license, or other picture-bearing identification.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other records of the activity, medical personnel, military police or other correspondences.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

MMN00044

SYSTEM NAME:

Equal Opportunity Information and Support System *(February 22, 1993, 58 FR 10630).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Central Registry System Discrimination and Sexual Harassment Database (CRS/DASH).'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete this entry and replace with 'Marine Corps personnel who submit complaints of sexual harassment or discrimination and Marine Corps personnel who are under formal or informal investigation as a result of complaints of sexual harassment or discrimination.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the entry and replace with 'Correspondence and records compiled pursuant to the processing of a complaint concerning sexual harassment or discrimination, incident data, endorsements, recommendations and resolutions of formal and informal investigations concerning aspects of equal opportunity complaints.'

* * * * *

PURPOSE(S):

Delete the entry and replace 'To provide a record of Marine Corps personnel who have committed acts of sexual harassment or discrimination,

and a record of any formal or informal investigation conducted in connection with allegations of sexual harassment or discrimination.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraph three.

* * * * *

SAFEGUARDS:

Delete entry and replace with 'The electronic files are maintained in a computer database that is password protected with limited access. The building has controlled access after normal work hours and access is monitored by duty personnel. Access to files is limited to official capacity on a need-to-know basis. All files are encrypted to prevent unlawful downloading of information. Files held by field activities are maintained in an electronic database accessible to only authorized personnel. Paper files maintained at field activities are maintained in areas assessable to only authorized personnel with a need to know.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Paper records are disposed of two years after administrative closing of a complaint. Electronic files are maintained in CRS/DASH electronic archive for five years, then erased.'

* * * * *

MMN00044

SYSTEM NAME:

Central Registry System Discrimination and Sexual Harassment Database (CRS/DASH).

SYSTEM LOCATION:

Commandant of the Marine Corps (Code MPE), Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5101 and all Marine Corps activities. U.S. Marine Corps official mailing addresses are incorporated into the Department of the Navy's address directory, published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Marine Corps personnel who submit complaints of sexual harassment or discrimination and Marine Corps personnel who are under formal or informal investigation as a result of complaints of sexual harassment or discrimination.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence and records compiled pursuant to the processing of a complaint concerning sexual harassment or discrimination, incident data, endorsements, recommendations and resolutions of formal and informal investigations concerning aspects of equal opportunity complaints.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16(b) and (c).

PURPOSE(S):

To provide a record of Marine Corps personnel who have committed acts of sexual harassment or discrimination, and a record of any formal or informal investigation conducted in connection with allegations of sexual harassment or discrimination.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Officials and employees of other Departments and agencies of the Executive Branch of government, upon request, in the performance of their official duties related in equal opportunity matters.

The 'Blanket Routine Uses' set forth at the beginning of the Marine Corp's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic and paper files.

RETRIEVABILITY:

Files are retrieved alphabetically by name of the complainant or by the name of the individual who is the subject of the complaint.

SAFEGUARDS:

The electronic files are maintained in a computer database that is password protected with limited access. The building has controlled access after normal work hours and access is monitored by duty personnel. Access to files is limited to official capacity on a need-to-know basis. All files are encrypted to prevent unlawful downloading of information. Files held by field activities are maintained in an electronic database accessible to only authorized personnel. Paper files maintained at field activities are maintained in areas assessable to only authorized personnel with a need to know.

RETENTION AND DISPOSAL:

Paper records are disposed of two years after administrative closing of a complaint. Electronic files are maintained in CRS/DASH electronic archive for five years, then erased.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant of the Marine Corps (Code MPE), ATTN: Head, Manpower Equal Opportunity Branch, Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5101.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commandant of the Marine Corps (Code MPE), ATTN: Head, Manpower Equal Opportunity Branch, Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5101.

Written request for information should contain the individual's name, Social Security Number, and signature.

Personnel may provide requests in person to the field activity Commanding Officer, or to the Commandant of the Marine Corps (Code MPE), ATTN: Head, Manpower Equal Opportunity Branch, Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5101. Individuals should be able to provide personal identification to include valid military identification or two valid civilian items of identification such as driver's license, passport, credit cards, etc.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commandant of the Marine Corps (Code MPE), ATTN: Head, Manpower Equal Opportunity Branch, Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5101.

Written request for information should contain the individual's name, Social Security Number, and signature.

Personnel may provide requests in person to the field activity Commanding Officer, or to the Commandant of the Marine Corps (Code MPE), ATTN: Head, Manpower Equal Opportunity Branch, Headquarters, U.S. Marine Corps, 3280 Russell Road, Quantico, VA 22134-5101. Individuals should be able to provide personal identification to include valid military identification or two valid

civilian items of identification such as driver's license, passport, credit cards, etc.

CONTESTING RECORD PROCEDURES:

The U.S. Marine Corps rules for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; Marine Corps Order P5211.2; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual concerned, other systems, investigations, witnesses and correspondents.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11745 Filed 5–10–99; 8:45 am]
BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.
ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.
DATES: This amendment will be effective without further notice on June 10, 1999, unless comments are received which result in a contrary determination.
ADDRESSES: Privacy Act Officer, Records Management Program Division, U.S. Total Army Personnel Command, ATTN: TAPC-PDR-P, Stop C55, Ft. Belvoir, VA 22060–5576.
FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390.
SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 5, 1999.
L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0020–1a SAIG

SYSTEM NAME:

Inspector General Investigation Files *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Any individual, military or civilian, against whom allegations of wrongdoing have been made related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority, that have been reviewed or investigated.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Investigative case files containing investigative reports, such as, preliminary inquiries and Reports of Investigation (ROIs), and administrative documents; and computer indices. ROIs include the authority for the inquiry/investigation, matters investigate, narrative, summaries/excerpts of testimony given by witnesses and appended exhibits that may include supporting documents, documentary evidence, summaries of interviews or transcripts of verbatim testimony, or other investigative information from Federal, State, and local investigative agencies and departments. Administrative documents in the files include those that guide or facilitate inquiry/investigative activities in the cases and provide the opening, transfer, or closing data for the cases. Computerized indices contain the names/subjects of the inquiry/investigation, opening and closing dates, codes for the type of allegations and their disposition, brief summaries of allegations, case notes, locations of the inquiries/investigations and the assigned case numbers.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3014; 10 U.S.C. 3020; 10 U.S.C. 3065(a); Inspector General Act of 1978 (Pub L. 95-452), as amended.'

PURPOSE(S):

Delete entry and replace with 'To review and conduct non-criminal law enforcement inquiries/investigations into allegations of wrongdoing by Army personnel related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority and report the results to the Office of the Secretary of Defense, the Department of Defense Inspector General, Office of the Secretary of the Army and Army officials, and to commanders so they may discharge their responsibilities under the Inspector General Act of 1978 for maintaining discipline, law, and order.

To provide detailed information necessary for the Secretary of Defense and Secretary of the Army, Army officials and commanders to direct further investigation, effect corrective personnel or other administrative action; to provide facts and evidence upon which to base prosecution; to provide information to other investigative elements of the Army, Department of Defense, other Federal, State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest; to provide information upon which determinations may be made for individuals' suitability for various personnel actions including but not limited to retention, promotion, assignment, retirement in grade or selection for sensitive or critical positions in the Armed Forces or Federal service.'

* * * * *

A0020–1a SAIG

SYSTEM NAME:

Inspector General Investigation Files.

SYSTEM LOCATION:

Primary location: Office of the U.S. Army Inspector General Agency, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

Secondary location: Offices of Inspector General at major Army commands, field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, against whom allegations of wrongdoing have been made related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority, that have been reviewed or investigated.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative case files containing investigative reports, such as,

preliminary inquiries and Reports of Investigation (ROIs), and administrative documents; and computer indices. ROIs include the authority for the inquiry/investigation, matters investigate, narrative, summaries/excerpts of testimony given by witnesses and appended exhibits that may include supporting documents, documentary evidence, summaries of interviews or transcripts of verbatim testimony, or other investigative information from Federal, State, and local investigative agencies and departments. Administrative documents in the files include those that guide or facilitate inquiry/investigative activities in the cases and provide the opening, transfer, or closing data for the cases. Computerized indices contain the names/subjects of the inquiry/investigation, opening and closing dates, codes for the type of allegations and their disposition, brief summaries of allegations, case notes, locations of the inquiries/investigations and the assigned case numbers.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C. 3014; 10 U.S.C. 3020; 10 U.S.C. 3065(a); Inspector General Act of 1978 (Pub L. 95-452), as amended.

PURPOSE(S):

To review and conduct non-criminal law enforcement inquiries/investigations into allegations of wrongdoing by Army personnel related to violations of laws, rules, or regulations or to mismanagement, gross waste of funds, or abuse of authority and report the results to the Office of the Secretary of Defense, the Department of Defense Inspector General, Office of the Secretary of the Army and Army officials, and to commanders so they may discharge their responsibilities under the Inspector General Act of 1978 for maintaining discipline, law, and order.

To provide detailed information necessary for the Secretary of Defense and Secretary of the Army, Army officials and commanders to direct further investigation, effect corrective personnel or other administrative action; to provide facts and evidence upon which to base prosecution; to provide information to other investigative elements of the Army, Department of Defense, other Federal. State, or local agencies having jurisdiction over the substance of the allegations or a related investigative interest; to provide information upon which determinations may be made for individuals' suitability for various personnel actions including but not limited to retention, promotion, assignment, retirement in grade or selection for sensitive or critical positions in the Armed Forces or Federal service.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; electronic storage media; CD-ROM.

RETRIEVABILITY:

By individual's full name and/or other descriptive information cross-referenced to the case number.

SAFEGUARDS:

Access is limited to authorized individuals having need for the records in the performance of their official duties. Paper files and CD-ROMs are stored in containers with locks, located in a locked room, in a secured building with controlled access. Computer indices are secured in locked rooms with limited/controlled access. Access to computerized information is controlled by a system of assigned passwords and available only to personnel responsible for system operation and maintenance.

RETENTION AND DISPOSAL:

Office of The Inspector General primary location of inquiry/investigative case files that contain allegations, that attract high public and/or Congressional Committee or Sub-Committee interest, or that are deemed to be historical significance by the Inspector General, are retained for 30 years, except that they may be offered to the National Archives after 25 years. Paper files are transferred to a Federal Records Center 2 years after completion of the inquiries/investigations and destroyed by burning upon completion of the transfer. The case files on CD-ROMs are erased by media being physically destroyed, unless retained permanently by the National Archives. Paper files of closed inquiry/investigative cases held by the secondary location Offices of The Inspector General are retained for up to 3 years, at the conclusion of which they are forwarded to the Office of The Inspector General system manager for optical scanning and retention as stated above.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Investigations Division, Office of the Inspector General, Headquarters, Department of the Army, 1700 Army Pentagon, Washington, DC 20310–1700.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, ATTN: Records Release Office, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a fee statement. Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

RECORD ACCESS PROCEDURES:

Individuals seeking to determine if information about themselves is contained in this system should address written inquiries to the Office of the Inspector General, Headquarters, Department of the Army, ATTN: Records Release Office, 1700 Army Pentagon, Washington, DC 20310–1700.

Individual should provide the full name, home address, telephone numbers and Army unit or activity to which assigned at the time of any Army Inspector General investigation, and a fee statement. Requests submitted on behalf of other persons must include their written, notarized or certified authorization.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports, and other sources providing or containing pertinent information.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any

right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for federal civilian employment, military service, federal contracts, or access to classified information may be exempt pursuant to 5 U.S.C. 552a(k)(5), but only to the extent that such material would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) published in 32 CFR part 505. For additional information contact the system manager.

[FR Doc. 99–11741 Filed 5–10–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to amend record systems.

SUMMARY: The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendment will be effective on June 10, 1999,unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767–6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Defense Logistics Agency proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems report. The record system being amended ia set forth below, as amended, published in its entirety.

Dated: May 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.53 DMDC

SYSTEM NAME:

Defense Debt Collection Data Base *(June 25, 1996, 61 FR 32779).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Primary Location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who have been identified as being indebted to the United States Government to include all current, former, and reserve military personnel; deceased military personnel and their survivors; and DoD civilian employees.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Add 'addresses and telephone numbers,' to entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9397 (SSN); and Pub. L. 97–365, Debt Collection Act of 1982, as amended.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete paragraphs two, three, four, and five and replace with 'None'.

SAFEGUARDS:

Delete entry and replace with 'Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.'

* * * * *

S322.53 DMDC

SYSTEM NAME:

Defense Debt Collection Data Base.

SYSTEM LOCATION:

Primary Location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have been identified as being indebted to the United States Government to include all current, former, and reserve military personnel; deceased military personnel and their survivors; and DoD civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computer records containing name, Social Security Number, addresses and telephone numbers, debt principal amount, interest and penalty amount (if any), debt reason, debt status, demographic information such as grade or rank, sex, date of birth, location, and various dates identifying the status changes occurring in the debt collection process.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; E.O. 9397 (SSN); and Pub. L. 97–365, Debt Collection Act of 1982, as amended.

PURPOSE(S):

The purpose of the system of records is to provide the DoD with a central record of all debts and debtors either under current or past financial obligation to the United States Government to control and report on the debt collection process.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored on magnetic tape.

RETRIEVABILITY:

Records are retrieved by social security number and name from a computerized index.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955–6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Individuals are required to provide name, Social Security Number, and address. In addition, individuals must provide either a notarized signature or a signed and dated unsworn declaration in accordance with 28 U.S.C. 1746, stating under penalty of perjury under U.S. law that the information contained in their letter, including their identity, is true and correct.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Privacy Act Officer, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Individuals are required to provide name, Social Security Number, and address. In addition, individuals must provide either a notarized signature or a signed and dated unsworn declaration in accordance with 28 U.S.C. 1746, stating under penalty of perjury under U.S. law that the information contained in their letter, including their identity, is true and correct.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060–6221.

The record accuracy may also be contested through the administrative processes contained in Pub. L. 97–365, Debt Collection Act of 1982.

RECORD SOURCE CATEGORIES:

The military services and any other non-postal Federal agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11744 Filed 5–10–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Army

Corps of Engineers

Intent to Prepare a Draft Environmental Impact Statement for the Proposed Destination Broadwater Resort Facility, Located in Biloxi, Mississippi

AGENCY: Army Corps of Engineers, DoD.

ACTION: Notice of Intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers (Corps), intends to prepare a Draft Environmental Impact Statement (DEIS) to address the potential impacts associated with the construction of the proposed Destination Broadwater resort facility to be located on the Mississippi Sound, in Biloxi, Mississippi. The Corps will be evaluating a permit application for the work under the authority of Section 10 of the Rivers and Harbors Act and section 404 of the Clean Water Act. The EIS will be used as a basis for the permit decision and to ensure compliance with the National Environmental Policy Act (NEPA).

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and the DEIS should be addressed to Mr. Bill Bunkley, Regulatory Branch, phone (334) 694–3780, or Dr. Susan Rees, Coastal Environment Section, phone (334) 694–4141, Mobile District, U.S. Army Corps of Engineers, PO Box 2288, Mobile, AL 36628.

SUPPLEMENTARY INFORMATION: 1. The permit applicant is proposing to construct a resort complex which includes a mixture of 6 dockside casinos, 12 hotels, various retail establishments, entertainment facilities, golf course, and 400-slip marina. The project is to be located at the existing Broadwater Resorts and President Casino site on Beach Boulevard (U.S. Highway 90) in Biloxi, Mississippi. The overall project site consists of approximately 325 acres which can be divided into two distinct functional areas: waterside development south of Highway 90 which will be used for dockside gaming and water-dependent activities, and landside development north of Highway 90 which will accommodate the non-gaming related activities. The waterside development encompasses an area of 134 acres extending approximately 4,100 feet into the Mississippi Sound. A man-made peninsula will be constructed to accommodate six floating casinos arranged around an embayment. Adjacent to each dockside casino will be a 500-room hotel and parking garage. A 400-slip marina is planned on the southernmost end of the project. The proposed landside development is located on approximately 47 acres north of Highway 90 currently occupied by the Broadwater Beach Resort and Broadwater Resort East hotels. The proposed redevelopment of this area includes the construction of 6 convention-oriented hotels (up to 3,250 rooms), a water recreation and amusement park, entertainment and retail areas. The existing 206-acre golf course will be redesigned and upgraded. The proposed work includes the placement of 684,000 cubic yards of dredged and fill material into the Mississippi Sound in order to convert 38.4 acres of water bottoms into land. Approximately 582,000 cubic yards of material will be dredged from the Mississippi Sound from an area covering approximately 52 acres. The proposed project will result in the filling or permanent shading of 66 acres of water bottoms, and filling 3.6 acres of isolated wetlands.

2. Alternatives to the applicant's proposal may exist which would reduce the impacts to the Mississippi Sound. These could include reducing the fill and dredge requirements by locating all non-water dependent facilities such as hotels to the landside development area, reducing the number of dockside casinos, alternate site layouts which may have less protrusion into the Sound, and possible alternate site locations.

3. Scoping:

a. The Corps invites full public participation to promote open

communication on the issues surrounding the proposal. All Federal, State, and local agencies, and other persons or organizations that have an interest are urged to participate in the NEPA scoping process. Public meetings will be held to help identify significant issues and to receive public input and comment.

b. The DEIS will analyze the potential social, economic, and environmental impacts to the local area resulting from the proposed project. Specifically, the following major issues will be analyzed in depth in the DEIS: hydrologic and hydraulic regimes, essential fish habitat and other marine habitat, air quality, cultural resources, wastewater treatment capacities and discharges, transportation systems, alternatives, secondary and cumulative impacts, socioeconomics, environmental justice (effect on minorities and low-income groups), and protection of children (Executive Order 13045).

c. The Corps will serve as the lead Federal agency in the preparation of the DEIS. It is anticipated that the following agencies will be invited and will accept cooperating agency status for the preparation of the DEIS: U.S. Environmental Protection Agency, U.S. Department of the Interior-Fish and Wildlife Service, U.S. Department of Commerce—National Marine Fisheries Service, U.S. Department of Transportation—Federal Highway Administration.

4. It is anticipated that the first scoping meeting will be held in the late May/early June time frame in the local area. Actual time and place for the meeting and subsequent meetings or workshops will be announced by the Mobile District by issuance of a Public Notice and/or local media.

5. It is anticipated that the DEIS will be made available for public review in August 1999.

Ronald A. Krizman,

Chief, Regulatory Branch.

[FR Doc. 99–11841 Filed 5–10–99; 8:45 am]

BILLING CODE 3710–CR–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to Add Systems of Records.

SUMMARY: The Department of the Navy proposes to add three systems of records notices to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on June 10, 1999 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed systems report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 26, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N017252–2

SYSTEM NAME:

Transitional Compensation for Abused Dependents.

SYSTEM LOCATION:

Navy Personnel Command (NPC–661D), 5720 Integrity Drive, Millington, TN 38055–6610 and the Director, Defense Finance and Accounting Service, Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Abused dependents who receive transitional compensation.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 2698, Application for Transitional Compensation; computation sheets; payment schedule; case processing record; direct-deposit form; annual certification form; correspondence to and from the Defense Finance and Accounting Service (DFAS).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. Sections 801–940, 860(c), 1059, 1077, and 1408(b); 38 U.S.C. 1311 and 1313; E.O. 9397 (SSN); and DoD Instruction 1342.24, Transitional Compensation for Abused Dependents.

PURPOSE(S):

To coordinate requests for transitional compensation, to approve requests and forward them to DFAS, and to notify DFAS of any action that affects payment of transitional compensation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Information maintained on the computer is password protected. Computer terminals are located in supervised areas with an access controlled system.

RETENTION AND DISPOSAL:

Department of the Navy records are destroyed when three years old.

Defense Finance and Accounting Service records are retained at DFAS-Cleveland until member is discharged or retires, then transferred to nearest Federal Records Center.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Personnel Command (NPC–661D), 5720 Integrity Drive, Millington, TN 38055–6610.

Director, Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Navy Personnel Command (NPC–661D), 5720 Integrity Drive, Millington, TN 38055–6610 or to the Director, Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

Request should contain full name and Social Security Number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Navy Personnel Command (NPC–661D), 5720 Integrity Drive, Millington TN 38055–661 or the Director, Defense Finance and Accounting Service-Cleveland Center, 1240 East 9th Street, Cleveland, OH 44199–2055.

Request should contain full name and Social Security Number of the individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; military personnel record file.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

NO1752–3

SYSTEM NAME:

Child Sexual Abuse (CSA) Case Management System.

SYSTEM LOCATION:

Navy Personnel Command (NPC–661 and NPC–8) 5720 Integrity Drive, Millington, TN 38055–6610.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy active duty personnel alleged to have committed or been involved with Child Sexual Abuse (CSA) cases.

CATEGORIES OF RECORDS IN THE SYSTEM:

Alleged offender's name, Social Security Number, date of birth, rank, military address, year(s) of alleged incident, expiration of active obligated service, projected rotation date, number of victims, notes, case determination, case number, subsequent reviews.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN) and OPNAV Instruction 1752.2A.

PURPOSE(S):

To maintain copies of all reported Child Sexual Abuse (CSA) cases and maintain a computerized data base of alleged CSA offenders for use in tracking the individual, collecting statistics, conducting research studies, complying with Child Protective Service requirements at state and local levels, and assisting in the development of CSA program policy issues.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside DoD as a routine use pursuant to 5 U.S.C.a(b)(3) as follows:

To Federal, state, or local government agencies when it is deemed appropriate to utilize civilian resources in the counseling and treatment of individuals or families involved in abuse or neglect; or when it is deemed appropriate or necessary to refer a case to civilian authorities for civil or criminal law enforcement.

To officials and employees of Federal, state, and local governments and agencies when required by law and/or regulation in furtherance of local communicable disease control, family abuse prevention programs, preventive medicine and safety programs, and other public health and welfare programs.

To officials and employees of local and state governments and agencies in the performance of their official duties relating to professional certification, licensing, and accreditation of health case providers.

To law enforcement officials to protect the life and welfare of third parties. This release will be limited to necessary information. Consultation with the hospital or regional judge advocate is advised.

To 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

These files are highly sensitive and must be protected from unauthorized disclosure. While records may be maintained in various kinds of filing equipment, specific emphasis is given to ensuring that the equipment areas are monitored or have controlled access. Information maintained on the computer is password protected. Computer terminals are located in supervised areas with an access controlled system.

RETENTION AND DISPOSAL:

Closed records will be maintained on site for a period of four years, after which they will be retired to the National Personnel Records Center, 9700 Page Avenue, St. Louis, MO 63132–5100 and held for a period of 50 years.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Personnel Command (NPC–661D and NPC–8), 5720 Integrity Drive, Millington, TN 38055–6610.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Navy Personnel Command (NPC–661 and 8), 5720 Integrity Drive, Millington, TN 38055–6610.

Request should contain full name and Social Security Number of the individual and be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Navy Personnel Command (NPC–661 and 8), 5720 Integrity Drive, Millington, TN 38055–6610.

Request should contain full name and Social Security Number of the individual and be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Family advocacy files.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12410–1

SYSTEM NAME:

MWR Training Student Database.

SYSTEM LOCATION:

Navy Personnel Command (NPC–654), 5720 Integrity Drive, Millington, TN 38055–6540.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian and military employees attached to nonappropriated fund activities under the Commander, Navy Personnel Command and the Commandant of the Marine Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

Training records pertaining to the enrollment and completion status of persons attending Morale Welfare and Recreation (MWR) related training provided through the Navy Personnel Command.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To manage, supervise, and administer the centrally managed MWR training program for civilian and military employees attached to nonappropriated fund activities under the Commander, Navy Personnel Command and Commandant of the Marine Corps. This includes providing information to supervisors on their employee's training and providing a record of Continuing Education Credits earned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The "Blanket Routine Uses" that appear at the beginning of the Navy and Marine Corps' compilation of systems notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated and manual records.

RETRIEVABILITY:

Name, Social Security Number, class, and/or date of training.

SAFEGUARDS:

Computer processing facilities are located in restricted areas accessible only to authorized persons that are properly screened, cleared, and trained. Manual records are computer printouts are only available to authorized personnel having a need to know. Access to individual computers is password protected. Access to the database is limited to NPC–654 personnel with a need to know. Each user has an individual password for access to the database.

RETENTION AND DISPOSAL:

Destroy 3 years after completion of the annual period or when no longer required for activity review and/or analysis, whichever is later.

SYSTEM MANAGER(S) AND ADDRESS:

Navy Personnel Command, 5720 Integrity Drive, Millington, TN 38055–6610.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Navy Personnel Command (NPC–654), 5720 Integrity Drive, Millington, TN 38055–6540.

Request should contain full name, Social Security Number, activity at which employed/attached, and signature of the requester.

The individual may visit the Navy Personnel Command (NPC–654), located in the Lassen Building, at 7736 Kitty Hawk Avenue, Millington, TN 38055–6540, for assistance with records located in that building.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the Navy Personnel Command (NPC–654), 5720 Integrity Drive, Millington, TN 38055–6540.

Request should contain full name, Social Security Number, activity at which employed/attached, and signature of the requester.

The individual may visit the Navy Personnel Command (NPC–654), located in the Lassen Building, at 7736 Kitty Hawk Avenue, Millington, TN 38055–6540, for assistance with records located in that building.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual and local activity where assigned.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11742 Filed 5–10–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration expands the category of individuals covered in N05100-1, entitled 'Diving Log' from 'Naval personnel' to 'DoD and U.S. Coast Guard personnel'.

DATES: This action will be effective on June 10, 1999, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on April 26, 1999, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 5, 1999.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05100–1

SYSTEM NAME:

Diving Log *(February 22, 1993, 58 FR 10746).*

CHANGES:

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'DoD and Coast Guard military and civilian employees who are involved in diving or who have been exposed to a hyperbaric environment.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To furnish the commanding officer with a summarized diving report for individuals attached to the unit and to monitor types of dives, equipment usage, and mishap trends.

To evaluate the diving program of DoD and Coast Guard components. Pertinent individual records and/or statistical summaries prepared by Naval Safety Center analysts are also provided to all reporting echelons having a responsibility for the diving program and to the Navy Personnel Command, Bureau of Medicine and Surgery, Naval Audit Service, or other activities having responsibility for the administration or control of personnel assignments and hazardous duty payments.'

* * * * *

N05100–1

SYSTEM NAME:

Diving Log.

SYSTEM LOCATION:

Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

DoD and Coast Guard military and civilian employees who are involved in diving or who have been exposed to a hyperbaric environment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Diving Log Report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397 (SSN).

PURPOSE(S):

To furnish the commanding officer with a summarized diving report for individuals attached to the unit and to monitor types of dives, equipment usage, and mishap trends.

To evaluate the diving program of DoD and Coast Guard components. Pertinent individual records and/or statistical summaries prepared by Naval Safety Center analysts are also provided to all reporting echelons having a responsibility for the diving program and to the Navy Personnel Command, Bureau of Medicine and Surgery, Naval Audit Service, or other activities having responsibility for the administration or control of personnel assignments and hazardous duty payments.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tape.

RETRIEVABILITY:

Records may be selected based on any of the data elements contained in the file such as diver's name, Social Security Number, organization unit, type of dive and equipment used.

SAFEGUARDS:

A limited number of data processing personnel have access to the computer facility and to the magnetic tape files and computer programs. All requests for information received from activities or for purposes not directly related to the diving program must be approved by the Commander, Naval Safety Center or his designated representative.

RETENTION AND DISPOSAL:

Permanent. Magnetic tape files contain all available records and are never purged. Reports are not transferred to a records center.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Afloat Safety Programs, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399, Norfolk, VA 23511–5796.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Director of Afloat Safety Programs, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

Requests should contain full name, address, military status and Social Security Number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Director of Afloat Safety Programs, Naval Safety Center, 375 A Street, Norfolk, VA 23511–4399.

Requests should contain full name, address, military status and Social Security Number in order to determine if the system contains any records pertaining to them. Personal visitors will be required to produce military or comparable civilian identification cards.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Commanding Officers of DoD and U.S. Coast Guard units conducting diving or hyperbaric exposure incident to diving.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 99–11743 Filed 5–10–99; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF ENERGY

[Docket No. EA–207]

Application To Export Electric Energy; PDI New England, Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: PDI New England, Inc. (PDI) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 26, 1999.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. § 824a(e)).

On March 29, 1999, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from PDI for authorization to export electric energy to Canada. PDI is a wholly-owned subsidiary of WPS Power Development, Inc. which, in turn, is a wholly-owned indirect subsidiary of WPS Resources Corporation. WPS Resources Corporation is an exempt public utility holding company headquartered in Green Bay, Wisconsin.

PDI and its affiliate, PDI Canada, Inc., is in the process of acquiring certain generating assets that are being divested from Maine Public Service Company (MPS). As part of the forthcoming transaction with MPS, PDI Canada, Inc., will be providing energy to a wholesale customer in the Province of New Brunswick, Canada. PDI may be called upon from time to time to provide backup power to its affiliate, PDI Canada, Inc., to service the contract. Providing such backup power would constitute an export of electricity from the United States to Canada.

The energy to be exported by PDI will be surplus generation produced from the MPS generating assets that will soon be acquired by PDI and PDI Canada, Inc. PDI intends to export to Canada using the existing international transmission facilities owned by MPS. The construction of each of the international transmission facilities to be utilized by PDI, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on the PDI application to export electric energy to Canada should be clearly marked with Docket EA–207. Additional copies are to be filed directly with Gerald L. Mroczkowski, Vice President, PDI New England, Inc., 677 Baeten Road, Green Bay, Wisconsin 54304 *AND* Bradley D. Jackson, Foley & Lardner, 150 East Gilman Street, Madison, Wisconsin 53703–1441.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969 and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Regulatory," then "Electricity," and then "Pending Proceedings" from the options menus.

DOE has granted the applicant's request for an expedited notice and comment period of fifteen (15) days so that PDI might be able to export electric energy to Canada, if called upon, by June 8, 1999.

Issued in Washington, DC, on May 5, 1999.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 99–11865 Filed 5–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of As-Built Exhibit A, F, and G and Soliciting Comments, Motions to Intervene, and Protests

May 5, 1999.

a. *Application Type:* As-Built Exhibits A, F, and G.

b. *Project No:* 5876–038.

c. *Date Filed:* July 30 and August 19, 1993, and April 19, 1999.

d. *Applicant:* Alice Falls Corporation.

e. *Name of Project:* Alice Falls Project.

f. *Location:* On the Ausable River in Clinton and Essex Counties, New York. The project does not utilize any federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mr. David Crandell, Mercer Management, Inc., 330 Broadway, Albany, NY 12207–2981, (518) 434–1412.

i. *FERC Contact:* Any questions on this notice should be addressed to Paul Shannon at (202) 219–2866 or by e-mail at paul.shannon@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* June 14, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (5867–038) on any comments or motions filed.

k. *Descritpion of Filing:* Alice Falls Corporation filed as-built exhibits describing the constructed project features and project boundary. The license authorized the installation of a 400-foot-long transmission line from the powerhouse to a NYSEG overhead transmission line on New York State Route 9. Instead, the licensee installed a 1,500-foot-long underground transmission line that ties into a NYSEG overhead transmission line north of Old State Road. The as-built exhibits revise the project boundary to include the underground transmission line. Also, the as-built exhibits indicate the total capacity of the project's two generating units is 2,100 kW. The licensed units are authorized to have a total capacity of 1,942 kW. The licensee indicates the project's maximum hydraulic capacity remains as licensed at 840 cfs.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR

"MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11765 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

May 5, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No:* 2280–004.

c. *Date Filed:* April 1, 1999.

d. *Applicants:* Cleveland Electric Illuminating Company (CEI) and Pennsylvania Electric Company (Penelec).

e. *Name of Project:* Seneca Pumped Storage Station.

f. *Location:* On the Allegheny River in Warren County, Pennsylvania, at the U.S. Army Corps of Engineers Kinzua Dam and Reservoir. The project occupies federal lands within Allegheny National Forest

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. Section 8.

h. *Applicant Contact:* For CEI: Brian J. McManus, Jones Day, Reavis & Pogue, 1450 G Street, N.W., Washington, DC 20005–2008 (202) 879–5452. For Penelec: Mr. William J. Madden, Jr., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20012 (202) 371–5700.

i. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839 or by e-mail address: james.hunter@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 9, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

Please include the project number (P–2280–004) on any comments or motions filed.

k. *Descritpion of Proposal:* CEI and Penelec, currently co-licensees of the project, propose to transfer Penelec's 20 percent interest in the project to CEI.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comments date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11763 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–310–005]

Natural Gas Pipeline Company of America; Notice of Compliance Filing

May 5, 1999.

Take notice that on April 30, 1999, Natural Gas Pipeline Company of American (Natural) tendered for filing certain tariff sheets to be part of its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective August 1, 1998 and January 1, 1999.

Natural states that the filing is submitted pursuant to the Federal Energy Regulatory Commision's (Commission) order issued February 11, 1999 in Docket Nos. RP98–310–001 and 002, and OPR Letter Order issued April 20, 1999 in Docket No. RP98–310–003. Also, effective August 1, 1998, Natural made conforming changes to its Rate Schedule PALS to reflect provisions previously approved in Docket No. RP98–310 in Natural's form of service agreement.

Natural's Rate Schedule PALS was previously approved in Docket No. RP98–145.

In addition, Natural made conforming changes to the tariff sheets submitted to be effective January 1, 1999 to reflect provisions previously approved in Docket Nos. RP99–176–000 and 001.

Natural requests any waivers that may be required to permit the tendered tariff sheets to become effective August 1, 1998 and January 1, 999, consistent with the Commission's orders issued July 30, 1998, December 30, 1998, February 11, 1999, and the OPR Letter Order issued April 20, 1999, in Docket Nos. RP98–310–000, RP99–176–000, RP98–310–001 and 002, and RP 98–310–003, respectively.

Natural states that copies of the filing have been mailed to its customers, interested state regulatory agencies and all parties set out on the Commision's official service list in Docket No. RP98–310.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 Commission and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 99–11766 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–380–000]

Williams Gas Pipelines Central, Inc.; Notice of Request Under Blanket Authorization

May 5, 1999.

Take notice that on April 29, 1999, Williams Gas Pipelines Central, Inc. (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed a request with the Commission in Docket No. CP99–380–000, pursuant to Section 157.205 and 157.216 (b) of the Requestions under the Natural Gas Act (NGA) for authorization to abandon by reclaim facilities used for the receipt of gas from 1988 C.R.C. E.P.P. (CRCEPP), in Rice County, Kansas, under the blanket authorization issued in Docket No. CP82–479–000, all as more fully set forth in the request on file with the Commission and open to public inspection. "This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

WNG states that the setting has been inactive since March 1998 and that CRCEPP has removed its facilities from the site.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11760 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2692–018, 2686–018, & 2698–016]

Nantahala Power & Light Company; Notice of Availability of Environmental Assessment

May 5, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order 486, 52 FR 47897), the Commission's Office of Hydropower Licensing has reviewed the Nantahala & Tuckasegee Projects Settlement agreement (settlement agreement) setting minimum flows for the three above named projects. The settlement agreement was signed by the licensee. North Carolina Department of Environment and Natural Resources (DENR), United States Department of Agriculture, Forest Service (USFS), and the United States Department of Interior, Fish and Wildlife Service (USFWS). The Nantahala Hydroelectric Project is located on the Nantahala River in the Counties of Macon and Clay, North Carolina. The West Fork Project is located on the West Fork of the Tuckasegee River in Jackson County, North Carolina. The East Fork Project is located on the East Fork of the Tuckasegee River in Jackson County, North Carolina. An Environmental Assessment (EA) was prepared, and the EA finds that approving the settlement agreement would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for inspection and reproduction at the Commission's Public Reference Room, located in Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA may be viewed on the web at http//www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11764 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2004–073 and 11607–000]

Holyoke Water Power Company and Holyoke Gas & Electric Department, Ashburnham Municipal Light Plant, and Massachusetts Municipal Wholesale Electric Company; Notice of Intent to Conduct Public Meeting to Discuss the Draft Environmental Impact Statement for the Proposed Relicensing of the Holyoke Project on the Connecticut River

May 5, 1999.

The Federal Energy Regulatory Commission (Commission) is reviewing the Holyoke Water Power Company's application for a new license for the continued operation of the Holyoke Project on the Connecticut River, Massachusetts. The Commission is similarly reviewing a competing application for the Holyoke Project by the Holyoke Gas & Electric Department, the Ashburnham Municipal light Plant, and the Massachusetts Municipal, Wholesale, Electric Company. On April 16, 1999, the Commission staff mailed the draft Environmental Impact Statement draft (EIS) to the Environmental Protection Agency, resource agencies, and non-governmental organizations (NGOs) and other interested individuals. The draft EIS evaluates the environmental consequences of the proposed relicensing to the Holyoke Project.

The Commission staff will hold a public meeting on May 26, 1999, in the City of Holyoke. The purpose of the meeting is to discuss the draft EIS, the draft EIS findings, and the Commission staff's recommendations. At the meeting, the Commission staff will summarize the status of the relicense proceeding(s), as well as the major draft EIS findings and recommendations. We

invite all interested agencies, NGOs, and individuals to attend the meeting. The time and location of the meeting is shown below.

Date: Wednesday, May 26, 1999

Time: 7:00 p.m. until 11:00 p.m.

Place: Holiday Inn, 245 Whiting Farms Road, Holyoke, MA 01040

The meeting will be recorded by a court reporter, and all statements (oral and written) will become part of the Commission's public record for the project. Before the meeting starts, all individuals who attend, will be asked to identify themselves by signing in. Individuals that intend to make statements during the meeting will be asked to sign in and clearly identify themselves for the record prior to speaking. Time allotted for presentations will be determined by staff based on the length of the meeting and the number of people wanting to speak. All individuals wishing to speak will be provided at least five minutes to present their views.

Interested parties who choose not to speak, or who are unable to attend the public meeting, may provide written comments to the Commission until June 7, 1999. Written comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The first page of all filings should indicate "Holyoke Project, FERC. No. 2004–073" and/or "Holyoke Project, FERC. No 11607–000" at the top of the page. All filings sent to the Secretary of the Commission should contain an original and eight copies. Failure to file an original and eight copies may result in appropriate staff not receiving the benefit of our comments in a timely manner. Furthermore, participants in this proceeding are reminded that if they file comments with the Commission, they must serve a copy of their filing to the parties on the Commission's service list.

For further information, please contact Allan Creamer at (202) 219–0365, or by E-mail at allan.creamer@ferc.fed.us.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11762 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of Licenses and Soliciting Comments, Motions to Intervene, and Protests

May 5, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of Licenses.

b. Project Nos.: (1) 13–009, (2) 2047–005, (3) 2060–006, ((4) 2084–021, (5) 2318–005, (6) 2320–014, (7) 2330–035, (8) 2474–007, (9) 2482–023, (10) 2539–009, (11) 2554–005, (12) 2569–038, (13) 2616–011, (14) 2641–003, (15) 2645–077, (16) 2696–009,[1] (17) 2701–029, (18) 2713–041, (19) 2837–007, (20) 3452–007, (21) 5984–027, (22) 7320–011, (23) 7321–008, (24) 7387–007, (25) 7518–002, (26) 9222–017, (27) 10461–004, (28) 10462–004, and (29) 11408–021.

c. *Date Filed:* February 8, 1999, Date Amended: April 14, 1999.

d. *Applicants:* Niagara Mohawk Power Corporation (NIMO) and Erie Boulevard Hydropower, L.P. (Erie).

e. *Name and Location of Projects:* (1) Green Island: Hudson River in Albany County, New York; (2) Stewarts Bridge: Sacandaga River in Saratoga County, New York; (3) Carry Falls: Raquette River in St. Lawrence County, New York; (4) Upper Raquette River: Raquette River in St. Lawrence County, New York; (5) E.J. West: Sacandaga River in Saratoga County, New York; (6) Middle Raquette River: Raquette River in St. Lawrence County, New York; (7) Lower Raquette River: Raquette River in St. Lawrence County, New York; (8) Oswego River: Oswego River in Oswego County, New York; (9) Hudson River: Hudson River in Warren, Saratoga, and Washington Counties, New York; (10) School Street: Mohawk River in Albany and Saratoga Counties, New York; (11) Feeder Dam: Hudson River in Saratoga County, New York; (12) Black River: Black River in Jefferson County, New York; (13) Hossic River: Hossic River in Rensselaer County, New York; (14) Feeder Dam Transmission Line: Saratoga County, New York; (15) Beaver River: Beaver River in Lewis and Herkimer Counties, New York; (16) Stuyvesant Falls: Kinderhook Creek in Columbia County, New York; (17) West Canada Creek: West Canada Creek in Oneida and Herkimer Counties, New York; (18) Oswegatchie River: Oswegatchie River in St. Lawrence County, New York; (19) Granby: Oswego River in Oswego County, New York; (20) Oak Orchard: New York State Barge Canal in Orleans County, New York; (21) Oswego Falls: Oswego River in Oswego and Onondaga Counties, New York; (22) Chasm: Salmon River in Franklin County, New York; (23) Macomb: Salmon River in Franklin County, New York; (24) Piercefield: Raquette River in St. Lawrence and Franklin Counties, New York; (25) Hogansburg: St. Regis River in Franklin County, New York; (26) Yaleville: Raquette River in St. Lawrence County, New York; (27) Parishville: St. Regis River in St. Lawrence County, New York; (28) Allen Falls: St. Regis River in St. Lawrence County, New York; and (29) Salmon River: Salmon River in Oswego County, New York.

The Green Island Project uses the Corps of Engineers' Troy Lock and Dam and is partially located on federal lands but no tribal lands. The other projects do not utilize federal or tribal lands.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contracts:* For NIMO: Margaret Fabic, Esq., Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428–6593, and Stephen C. Palmer, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007, (202) 424–7500; For Erie: W. Thaddeus Miller, Erie Boulevard Hydropower, L.P., c/o Orion Power Holdings, Inc., 111 Market Place, Suite 520, Baltimore, Maryland 21202, (410) 468–3692, and Mitchell F. Hertz, Esq., Kirkland & Ellis, 655 15th Street, NW, Suite 1200, Washington, DC 20005, (202) 879–5270.

h. *FERC Contact:* Regina Saizan, (202) 219–2673, or e-mail address: regina.saizan@ferc.fed.us.

i. *Deadline for filing comments and or motions:* June 9, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the Project Number (0013–009, et al.) on any comments or motions filed.

j. The transfer of the licenses for these projects to Erie is being sought in connection with the divestiture by NIMO of certain generation and other assets. The sale and transfer of these hydroelectric generating assets effectuates, in part, New York State's efforts to restructure its Electric utility industry and NIMO's comprehensive

[1] An application to surrender the license for Project No. 2696 was filed on May 17, 1996. The surrender of the license became effective on February 17, 1999 (86 FERC ¶ 62,135).

Power Choice Settlement agreement approved by the New York Public Service Commission on March 20, 1998.

The transfer application was filed within five years of the expiration of the licenses for Project Nos. 2047, 2060, and 2084, which are the subject of pending relicense applications. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990, 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318). The transfer would lead to the substitution of the transferee for the transferor as the applicant in the relicensing proceedings for Project Nos. 2047, 2060, and 2084.

In addition, NIMO and Erie request that Erie be substituted for NIMO as the applicant in the pending relicensing proceedings for Project Nos. 2318, 2320, 2330, 2474, 2482, 2539, 2539, 2554, and 2616, following the approval of the transfer of these projects and the conveyance of the project properties. The licenses for the projects expired on December 31, 1993, and the Commission has authorized them to continue to operate.

Project Nos. 10461 and 10462 have pending applications for an original license. NIMO and Erie request that Erie be substituted for NIMO as the applicant in the pending license proceedings for both of these projects following the approval of the transfer of these projects and the conveyance of the project properties.

k. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11761 Filed 5–10–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Amistad and Falcon Projects Rate Order No. WAPA–85

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of a rate order.

SUMMARY: Notice is given of the confirmation and approval by the Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–85 placing a rate formula extension into effect on an interim basis beginning on June 8, 1999, for power marketed by the Western Area Power Administration (Western) from the Amistad and Falcon Projects under Contract No. 7–07–50–P0890 (Contract). The rate formula will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places it into effect on a final basis or until it is replaced by another rate formula.

DATES: The provisional rate formula extension will be placed into effect on an interim basis on June 8, 1999, and will be in effect until FERC confirms, approves, and places the provisional rate formula extension in effect on a final basis for a 5-year period ending June 7, 2004.

FOR FURTHER INFORMATION CONTACT: Ms. Carol Loftin, Rates Manager, Colorado River Storage Project, Customer Service Center, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City, UT 84111.

SUPPLEMENTARY INFORMATION: The Amistad and Falcon Dams are features of international water storage projects located on the Rio Grande River between Texas and Mexico. Western markets the power from these dams under the terms of the Contract dated August 9, 1977, and amended on April 10, 1986. The rate formula of that Contract was approved by the Federal Power Commission, predecessor to FERC, for a 5-year period beginning June 8, 1983, in Docket No. E–9566 on August 12, 1977. A 5-year rate extension approving this same methodology through June 7, 1993, was ordered by FERC on July 20, 1988, in 44 FERC ¶ 62,058. A subsequent 5-year rate extension approving this same methodology through June 7, 1998, was ordered by FERC on September 29, 1993, in 64 FERC ¶ 62,225. Rate Order WAPA–81, which extended the rate formula through June 7, 1999, was published in the **Federal Register** (63 FR 27278) on May 18, 1998.

According to article 9(a) of the Contract, Western calculates the annual installment to be paid by the South Texas Electric Cooperative, Inc. (STEC), and the Medina Electric Cooperative, Inc. (MEC), for the power generated at the Amistad and Falcon Powerplants on or before August 31 of the year preceding the fiscal year to which it pertains.

Each annual installment pays the annual amortized portion of the United States' investment in the Falcon and Amistad hydroelectric facilities with interest, and the associated operation, maintenance, and administrative costs. This repayment schedule is not dependent upon the power and energy made available for sale or the rate of generation each year. Western will continue to provide STEC/MEC with a revised Exhibit A by August 31 of each year using the same methodology.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC.

By subsequent Order effective April 15, 1999, the Secretary rescinded all delegation of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended. Existing DOE procedures for public participation in power rate adjustments are located at 10 CFR part 903, effective on September 18, 1985 (50 FR 37835). DOE procedures have been followed by Western in the development of these provisional rates.

Rate Order No. WAPA–85, confirming, approving, and placing the proposed Amistad and Falcon firm power rate formula extension into effect on an interim basis, is issued, and the extension will be promptly submitted to FERC for confirmation and approval on a final basis.

Dated: April 29, 1999.

Bill Richardson,

Secretary.

Order Confirming, Approving, and Placing a Rate Formula Extension for Amistad and Falcon Projects Into Effect on an Interim Basis

June 8, 1999.

This power rate formula is established pursuant to section 302(a) of the Department of Energy (DOE) Organization Act, 42 U.S.C. 7152(a), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation (Reclamation) under the Reclamation Act of 1902, 43 U.S.C. 371 *et seq.*, as amended and supplemented by subsequent enactments, section 9(c) of the Reclamation Act of 1939, 43 U.S.C. 485h(c), and acts specifically applicable to the Falcon Project and the Amistad Project, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place in effect such rates on an interim basis to the Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove those rates to the Federal Energy Regulatory Commission (FERC). By subsequent Order effective April 15, 1999, the Secretary rescinded all delegation of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903. Filing requirements and procedures for approving power marketing administration rates by FERC are found at 18 CFR part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

DOE: Department of Energy.

DOE Order RA 6120.2: An order dealing with power marketing administration financial reporting used in determining revenue requirements for rate development.

FPC: Federal Power Commission.

FY: Fiscal year; October 1 to September 30.

kWh: Kilowatthour.

MEC: Medina Electric Cooperative, Inc.

Mills/kWh: Mills per kilowatthour.

NEPA: National Environmental Policy Act of 1969.

O&M: Operation and maintenance.

PRS: Power repayment study.

Reclamation: Bureau of Reclamation, U.S. Department of the Interior.

STEC: South Texas Electric Cooperative, Inc.

U.S. Section: U.S. Section of the International Boundary and Water Commission.

Western: Western Area Power Administration, U.S. Department of Energy.

Effective Date

This extension will become effective on an interim basis on June 8, 1999, and will be in effect pending FERC's approval of this or a substitute rate formula on a final basis for a 5-year period through June 7, 2004, or until superseded.

Public Notice and Comment

Paragraph 903.23(a) of 10 CFR part 903 for rate extensions does not require either a consultation and comment period, or public information or comment forums. On August 20, 1998, Western met with the customers, MEC and STEC, in Corpus Christi, Texas, and notified them of Western's intent to extend the rate formula. Western also discussed the number of years covered in the annual installments, operation and maintenance funding, answered questions, and received comments and suggestions. The customers expressed support for the rate formula extension.

Project History

The Amistad and Falcon Dams are features of international water storage projects located on the Rio Grande River between Texas and Mexico. Western markets the power from these dams under the terms of Contract No. 7–07–50–P0890 (Contract), dated August 9, 1977, and amended on April 10, 1986.

On August 12, 1977, in Docket No. E–9566, the FPC approved for a 5-year period the rate formula contained in the Contract, between Reclamation and the two electric cooperatives, to become effective on the date of initial operation of Amistad Powerplant (June 8, 1983). STEC and MEC agreed to purchase the output of the Amistad and Falcon Powerplants for a 50-year period, beginning when initial electric service became available from Amistad. The cooperatives agreed to take all Amistad and Falcon power and to pay the United States the following:

The amount of each annual installment shall be the sum of:

(1) A fixed annual payment of $313,178 as a contribution to the amortization of the United States investment in the Falcon hydroelectric facilities and in the penstocks at Amistad Dam. The annual payment shown above will be adjusted at the time this contract becomes effective; plus

(2) An amount necessary to repay in equal annual installments amortized over a fifty-year period, the United States actual total investment costs, with interest, for hydroelectric power installation at Amistad Dam, not including penstocks, to be under the jurisdiction of the Section, including the costs of engineering plans, supervision, administration of construction, and interest during construction * * * and

(3) The annual operation, maintenance, replacement, and administration costs of the Section and the administration costs of the Bureau related directly or indirectly to the United States power facilities at Amistad Dam and at Falcon Dam, provided that such costs shall be based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices * * *.

The power marketing functions of Reclamation were transferred to Western on October 1, 1977, and Western became responsible for the administration of the above Contract.

Western, STEC, and MEC executed Supplement No. 1 to the Contract on April 10, 1986, to clarify the method for determining the annual installment consistent with DOE Order No. RA 6120.2. Those clarifications address repayment of Falcon hydroelectric facilities within the remaining period, establish interest during construction at 7 percent, capitalize major replacements and additions at current interest rates, and specify the actual date of initial service as June 8, 1983.

Supplement No. 1 requires that the amount of each annual installment be established in advance by the contracting officer in consultation with the U.S. Section and submitted to the cooperatives as Exhibit A on or before August 31 of the year preceding the appropriate fiscal year in accordance with the following:

The amount of each annual installment shall be the sum of:

(1) An annual repayment installment including interest, to amortize within the remaining period, the unpaid United States investment in the Falcon hydroelectric facilities and in the penstocks at Amistad Dam; plus

(2) An annual installment to amortize over a fifty-year period, the United States actual total investment costs with interest, for hydroelectric power facilities, not including penstocks, at Amistad Dam to be under the jurisdiction of the U.S. Section, including the costs of engineering plans, supervision, administration of construction, and interest during construction * * * and

(3) The annual operation, maintenance, replacement, and administration costs of the U.S. Section and the administration costs of Western related directly or indirectly to the United States power facilities at Amistad Dam and at Falcon Dam, provided that such costs shall be based on prudent and businesslike management practices and in accordance with established electric industry operation and maintenance practices * * *.

The billing procedures contained in Supplement No. 1 require Western to submit bills to the cooperatives for each monthly payment on the annual installment on or before the tenth day of the month for which such payment is due. Payments are due and payable by the cooperatives on the first day of the following month. Western divides the calculated annual installment by 12 and bills the customer monthly for this amount.

The rate formula of that Contract was approved by the FPC, predecessor to FERC, for a 5-year period beginning June 8, 1983, in Docket No. E–9566 on August 12, 1977. A 5-year rate extension approving the rate formula, as amended by Supplement No. 1, through June 7, 1993, was ordered by FERC on July 20, 1988, in 44 FERC ¶ 62,058. A subsequent 5-year rate extension approving this same rate formula through June 7, 1998, was ordered by FERC on September 29, 1993, in 64 FERC ¶ 62,225. Rate Order No. WAPA–81, which extended the rate formula through June 7, 1999, was published in the **Federal Register** (63 FR 27278) on May 18, 1998. FERC approval is now sought for another 5-year extension through June 7, 2004, of this same rate formula.

Power Repayment Studies

Electric service Contract No. 7–07–50–P0890, dated August 9, 1977, and Supplement No. 1 thereto require that Western calculate the annual installment to be paid by STEC and MEC for the power generated at the Falcon and Amistad Powerplants, by consultation with the U.S. Section, and submit it to STEC and MEC in the form of a contract exhibit on or before August 31 of the year preceding the FY to which it pertains.

Previously, the annual installment was calculated using data from 3 years. The previous FY reflected actual figures; the current year in which the annual installment is being calculated reflected updated estimates; and the first future year for which the annual installment is being calculated reflects projected estimates. The previous FY actual data is a final calculation for that year and normally does not change in future calculations. Annual installments have been prepared each year, and this 3-year methodology has been followed since the Contract became effective in 1983.

In an effort to streamline and simplify the rate installment computation process and in agreement with STEC, MEC, and the U.S. Section, Western is calculating the annual installment based on 2 years' data. The calculation includes the projected costs of the rate installment year (future fiscal year) and an adjustment from the last historic fiscal year. The adjustment is the surplus or deficit that occurs in the last historic year when actual costs and repayment obligations are subtracted from actual revenues. This surplus or deficit is combined with the projected rate installment year costs to arrive at the rate installment.

Statement of Revenue and Related Expenses

The following table provides a summary of revenues and expenses for the current 5-year rate formula and the actual revenues and expenses for the same period.

AMISTAD/FALCON COMPARISON OF 6-YEAR REVENUES AND EXPENSES—FY 1993–1998

[$1,000]

Item	Projected	Actual	Difference
Total Revenues	20,445	20,572	127R
Revenues Distribution:			
O&M	4,972	5,266	294
Interest	13,893	13,634	(259)
Repayment	1,580	1,947	367
(Deficit)/Surplus	.....	(275)	(275)
Total Revenue Distribution	20,445	20,572	127

The following table provides a summary of the projected revenues and expenses during the provisional rate period.

AMISTAD/FALCON 6-YEAR PROJECTIONS[1] REVENUES AND EXPENSES

[$1,000]

	FY 1999–2004
Total Revenues	20,550
Revenue Distribution:	
O&M	4,912
Interest	13,022
Investment Repayment	2,616
Total	20,550

[1] Although this rate process seeks approval for a 5-year period (FY 2000–2004), 6 years of data (including FY 1999) are shown in the above table because FY 1999 data is an estimate.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations, 40 CFR parts 1500–1508; and DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or environmental impact statement.

Determination under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Availability of Information

Information regarding this rate formula extension is available for public review in the Colorado River Storage Project Customer Service Center, Western Area Power Administration, 257 East 200 South, Suite 475, Salt Lake City, Utah, and in the Power Marketing Liaison Office, Room 8G–027, 1000 Independence Avenue SW., Washington, D.C.

Submission to Federal Energy Regulatory Commission

The rate formula extension herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority vested in me as the Secretary of Energy, I confirm and approve and place into effect on an interim basis an extension of the rate formula provisions contained in Contract No. 7–07–50–P0890 and Supplement No. 1 to that Contract effective on June 8, 1999. The rate formula provisions shall remain in effect on an interim basis, pending Federal Energy Regulatory Commission confirmation and approval of this or a substitute rate on a final basis or until superseded, through June 7, 2004.

Dated: April 29, 1999.

Bill Richardson,

Secretary.

[FR Doc. 99–11866 Filed 5–10–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Services—Rate Order No. WAPA–84

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of Rate Order.

SUMMARY: Notice is given of the confirmation and approval by the Secretary of the Department of Energy (DOE) of Rate Order No. WAPA–84 and Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, and INT–NTS1 placing into effect provisional formula rates for the Desert Southwest Customer Service Region (DSW) network integration transmission services (NTS) for Parker-Davis Project (P–DP) and Pacific Northwest-Pacific Southwest Intertie Project (Intertie) and ancillary services for the Western Area Lower Colorado (WALC) control area. The provisional formula rates will remain in effect on an interim basis until the Federal Energy Regulatory Commission (FERC) confirms, approves, and places them into effect on a final basis.

DATES: The formula rates will be placed into effect from April 1, 1999, through March 31, 2004.

FOR FURTHER INFORMATION CONTACT: Mr. Maher A. Nasir, Rates Team Lead, telephone (602) 352–2768, or Mr. Tyler Carlson, Regional Manager, telephone (602) 352–2453, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457.

SUPPLEMENTARY INFORMATION: On December 7, 1998, the Administrator of Western Area Power Administration (Western) approved formula rate methodologies for short-term sales of NTS and ancillary services in the Western Area Lower Colorado (WALC) control area of the Desert Southwest Region. The six ancillary services include: scheduling, system control, and dispatch service; reactive supply and voltage control service; regulation and frequency response service; energy imbalance service; spinning reserve service, and supplemental reserve service. The provisional formula rates will replace the formula rates for short-term sales.

Provisional Rate Formula for Network Integration Transmission Service

NTS will be separately provided from P–DP and Intertie. The charge for NTS is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling 12-month basis (12–CP). The customer's load-ratio share is equal to the network transmission customer's hourly load coincident with Western's corresponding transmission system's monthly peak divided by the resultant value of the corresponding transmission system's monthly peak minus the coincident peak for all corresponding firm point-to-point transmission service plus corresponding firm point-to-point reservations.

Provisional Rates for Ancillary Services

Six ancillary services will be offered by DSW for WALC, two of which are required to be purchased by the transmission customer. These two are: (1) scheduling, system control, and dispatch service and (2) reactive supply and voltage control service. The remaining four ancillary services (3) regulation and frequency response service; (4) energy imbalance service; (5) spinning reserve service; and (6) supplemental reserve service will be offered, but are subject to availability from DSW generation resources. If DSW is unable to provide these services from its own resources, it will provide the services by making market purchases and passing these costs directly to the customer plus a 10 percent administrative charge.

Scheduling, system control, and dispatch service costs are included in transmission service provided by DSW. The scheduling, system control, and dispatch formula rates apply only to non-transmission customers, and depending on the type of service, will vary between $34.10 and $56.20 per schedule per day.

Reactive supply and voltage control ancillary service is calculated by dividing the combined revenue requirement for the service by the sum of control area average firm power allocation, network transmission 12–CP and firm transmission reservations, yielding a rate of $0.07/kWmonth.

Regulation and frequency response service is not available on a long-term basis from DSW. If available for short-term sales, the price will be equal to the firm-capacity rate of the specific power project supplying the service.

An energy imbalance account will be maintained for each customer scheduling energy in the WALC control area at no charge. DSW reserves the right to assess a penalty applied against deviations outside a 3 percent bandwidth (±1.5 percent deviations), with a 2 MW deviation minimum. A penalty charge of 100 mills/kWh may be assessed for under-deliveries (negative excursion) greater than 1.5 percent and occurring more than five times per month. Over-deliveries (positive excursion) will be credited to the customer for 50 percent of the market value of the over-delivery within 30 days, provided the over-deliveries do not impinge upon DSW operations.

No reserves of either spinning or supplemental are available from DSW resources.

The formula rates for DSW NTS and ancillary services are developed pursuant to the Department of Energy Organization Act (42 U.S.C. 7101 *et seq.*), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of Western; (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to FERC. By subsequent Order effective April 15, 1999, the Secretary rescinded all delegations of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 204–108, as amended.

Rate Order No. WAPA–84 was prepared pursuant to Delegation Order No. 0204–108, the Secretarial Order rescinding delegations to the Deputy Secretary concerning the Power Marketing Administrations effective April 15, 1999, existing DOE procedures for public participation in power rate adjustments in 10 CFR part 903, and procedures for approving power marketing administration rates by FERC in 18 CFR part 300. Rate Order No. WAPA–84, confirming, approving, and placing the provisional formula rates for DSW NTS and ancillary services into effect on an interim basis, is issued, and the new Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, and INT–NTS1 will be submitted promptly to FERC for confirmation and approval on a final basis.

Dated: April 29, 1999.

Bill Richardson,

Secretary.

Order Confirming, Approving, and Placing the Desert Southwest Customer Service Region Network Integration Transmission and Ancillary Services Formula Rates Into Effect on an Interim Basis

April 1, 1999.

The Desert Southwest Customer Service Region (DSW) network integration transmission services (NTS) and ancillary services formula rates are developed pursuant to the Department of Energy (DOE) Organization Act (42 U.S.C. 7101 *et seq.*), through which the power marketing functions of the Secretary of the Interior and the Bureau of Reclamation under the Reclamation Act of 1902 (43 U.S.C. 371 *et seq.*), as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939 (43 U.S.C. 485h(c)), and other acts specifically applicable to the project involved, were transferred to and vested in the Secretary of Energy (Secretary).

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary of Energy; and (3) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). By subsequent Order effective April 15, 1999, the Secretary rescinded all delegations of authority to the Deputy Secretary, whether contained in Delegation Orders, Departmental Directives, or elsewhere, concerning the Department's Power Marketing Administrations, including, but not limited to, authority delegated or affirmed in Delegation Order No. 0204–108, as amended. Existing DOE procedures for public participation in power rate adjustments are found at 10 CFR part 903. Procedures for approving power marketing administration rates by FERC are found at 18 CFR part 300.

Acronyms and Definitions

As used in this rate order, the following acronyms and definitions apply:

access: The contracted right to use an electrical system to transfer electrical energy.

ancillary services: Those services necessary to support the transmission of capacity and energy from resources to loads while maintaining reliable operation of the transmission provider's transmission system in accordance with FERC Order Nos. 888 and 889 and Western's Tariff.

Basin Fund: Upper Colorado River Basin Fund, established as part of Colorado River Storage Project Act of April 11, 1956, for defraying the costs of operation, maintenance, and replacement of and emergency expenditures for all facilities of the CRSP.

BCP: Boulder Canyon Project.

capacity: The rated continuous load-carrying ability, expressed in megawatts (MW) or megavolt-amperes (MVA), of generation, transmission, or other electrical equipment.

control area: An electric system or systems, bounded by interconnections metering and telemetry, capable of controlling generation to maintain its interchange schedule with other control areas and contributing to frequency regulation of the interconnection.

CRSP: Colorado River Storage Project (includes Seedskadee and Dolores Projects).

CRSP CSC: Western's Colorado River Storage Project Customer Service Center, in Salt Lake City, Utah.

customer: Any entity which receives transmission, or ancillary services under this rate order.

DOE: United States Department of Energy.

demand: The rate at which electric energy is delivered to or by a system or part of a system, generally expressed in kilowatts or megawatts, at a given instant or average over any designated interval of time.

DSW: Desert Southwest Customer Service Region.

energy imbalance service: Is provided when a difference occurs between the scheduled and actual delivery of energy to a load or from a generation resource within a control area over a single month.

FERC: Federal Energy Regulatory Commission.

firm point-to-point transmission service: Transmission service that is reserved between points of receipt and delivery.

FRN: **Federal Register** notice.

FY: Fiscal Year.

Glen Canyon: One of the storage units of the CRSP.

Intertie: Pacific Northwest-Pacific Southwest Intertie Project.

kW: Kilowatt; 1,000 watts.

kWh: Kilowatt-hour; the common unit of electrical energy, equal to a kW taken for a period of 1 hour.

kWmonth: Kilowatt-month; the common unit of electrical energy, equal to a kW taken for a period of 1 month.

kWyear: Kilowatt-year; the common unit of electrical energy, equal to a kW taken for a period of 1 year.

load: An end-use device or customer that receives power from the electric system.

load-ratio share: Ratio of a transmission customer's network load to the transmission provider's system peak load calculated on a rolling twelve-month basis.

mill: Unit of monetary value equal to .001 of a U.S. dollar; i.e., 1/10th of a cent.

mills/kWh: Mills per kilowatt-hour.

MW: Megawatt; equal to 1,000 kW or 1,000,000 watts.

NEPA: National Environmental Policy Act of 1969.

NTS: Network integration transmission service.

non-firm point-to-point transmission service: Point-to-point transmission service under the Tariff that is scheduled on an as-available basis and is subject to curtailment or interruption.

OASIS: Open Access Same Time Information System.

operating reserve: Spinning reserve service and supplemental reserve service.

P–DP: Parker-Davis Project.

PCF: Public comment forum.

peak: Those hours or other periods defined by contract or other agreements or guides as periods of higher electrical demand.

PIF: Public information forum.

PRS: Power repayment study.

Rate Brochure: A document prepared for public distribution explaining the background and purpose of this rate adjustment proposal.

reactive power: Portion of total power required to produce flux necessary to the operation of electromagnetic devices (such as, transformers). The unit of measurement is the VAR.

reactive supply and voltage control: Provides reactive supply through changes to generator reactive output to maintain transmission line voltage and facilitate electricity transfers.

Reclamation: U.S. Bureau of Reclamation, Department of the Interior.

regulation and frequency response service: Provides for following the moment-to-moment variations in the demand or supply in a control area and maintaining scheduled interconnection frequency.

RMR: Rocky Mountain Customer Service Region.

SCADA: System Control and Data Acquisition.

schedule: An agreed upon transaction for delivery and receipt of power and energy between the contracting parties and the control area(s) or transmission provider involved in the transaction.

scheduling, system control, and dispatch service: Provides for (a) scheduling; (b) confirming and implementing an interchange schedule with other control areas, including intermediary control areas providing transmission service; and (c) ensuring operational security during the interchange transaction.

SLCA/IP: The Salt Lake City Area/ Integrated Projects, which are the CRSP, Collbran, and Rio Grande projects.

spinning reserve service: Providing capacity that is available to serve load immediately in the event of a system contingency. Spinning reserve may be provided by generating units that are on-line and loaded at less than maximum output.

supplemental reserve service: Is needed to serve load in the event of a system contingency. This service is not available immediately to serve load but rather within a short period of time.

system: An interconnected combination of generation, transmission, and distribution components.

Tariff: Open Access Transmission Service Tariff.

transmission: The movement or transfer of electric energy between points of supply and points at which it is transformed for delivery to customers or is delivered to other electric systems.

transmission customer: An eligible customer (or its designated agent) that can or does execute a transmission service agreement or can or does receive transmission service.

transmission provider: Any public utility that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce.

transmission service: Point-to-point transmission service provided on a firm or non-firm basis.

transmission system: The facilities owned, controlled, or operated by the transmission provider that are used to provide transmission service.

WALC: Western Area Lower Colorado control area.

WACM: Western Area Colorado Missouri control area.

Effective Date

The formula rates will become effective on the first day of the billing period on or after April 1, 1999, and remain in effect until March 31, 2004, pending FERC's approval of them or substitute rates or until superseded. These formula rates will be applied to transmission service agreements under the Tariff and conform with the spirit and intent of FERC Order No. 888.

Public Notice and Comments

The following summarizes the steps taken by DSW to ensure the involvement of interested parties in the rate process:

1. During 1997 and the spring of 1998, DSW hosted a series of meetings presenting alternatives for ancillary services and taking comments from those who attended.

2. A **Federal Register** notice was published on June 19, 1998 (63 FR 118), officially announcing the proposed NTS and ancillary services rates adjustment, initiating the public consultation and comment period, announcing the public information and public comment forums, and outlining procedures for public participation.

3. On June 16, 1998, DSW mailed a copy of the "Parker-Davis Project, Boulder Canyon Project, Pacific Northwest-Pacific Southwest Intertie Project Transmission and Ancillary Services Rate Adjustment Brochure" to all firm transmission and power customers and interested parties of those projects and to the Salt Lake City Area/ Integrated Projects (SLCA/IP) firm power, and Colorado River Storage Project (CRSP) transmission customers who receive services from DSW's control area.

4. On June 30, 1998, DSW held a public information forum (PIF) in which the information contained in the Brochure was explained. After the presentation, participants questioned DSW personnel on the particulars of the proposed rates.

5. On July 30, 1998, DSW held a public comment forum (PCF). Participants gave statements of their concerns on the proposed rates.

6. On August 28, 1998, DSW sent a letter to all participants in the PCF and PIF answering any questions which were not answered in the PIF.

7. The consultation and comment period ended on September 18, 1998.

Project Description

Western is a Federal power marketing administration. It was created in 1977 by section 302(a)(1)(E) and (F) of the Department of Energy Organization Act 42 U.S.C. 7152, to perform the power marketing and transmission functions previously performed by the Bureau of Reclamation (Reclamation) for the Secretary of the Interior. DSW markets approximately 2,243 MW of generation capacity from its two power projects—P–DP and BCP. DSW serves firm electric and transmission customers in a three-State area, over a transmission system of approximately 2,097 miles and 74 substations.

Parker-Davis Project

In 1954, the Parker Dam Project and the Davis Dam Project were consolidated to form the Parker-Davis Project (P–DP). The major works include Davis Dam and Powerplant, Parker Dam and Powerplant, a high-voltage transmission system, and substations which sectionalize the long transmission lines.

Lake Havasu, formed by Parker Dam, provides a forebay and desilting basin from which the Metropolitan Water District pumps water into its Colorado River Aqueduct. Parker Dam Powerplant was added to provide low-cost electrical energy to Arizona and southern California. Davis Dam provides re-regulation of the Colorado River below Hoover Dam and facilitates water delivery beyond the boundary of the United States as required by treaty with Mexico. The Davis Dam portion of the project also provides for production and transmission of electrical energy, contributes to flood control, irrigation and municipal water supplies, navigation improvement, recreation, and wild waterfowl protection and related conservation purposes.

The firm point-to-point transmission service rate for P–DP calculated under rate schedule PD–FT6 is $12.99/kWyear. The non-firm point-to-point transmission service rate for P–DP calculated under rate schedule PD–NFT6 is 2.47 mills/kWh.

Boulder Canyon Project

Authorized by the Act of December 21, 1928 (45 Stat. 1057), subject to the terms of the Colorado River Compact, the Boulder Canyon Project (BCP) was conceived for the regulation of the Colorado River to relieve the constantly recurring cycles of flood and drought for the residences of the Southwest. Hoover Dam facilities include a 1,344,800-kilowatt powerplant. The dam and high-voltage switchyards are located in the Black Canyon of the Colorado River, on the Arizona-Nevada State line. Lake Mead, the reservoir behind Hoover Dam, will hold the entire flow of the river for 2 years. This storage, in addition to providing for improvement of navigation, river regulation, and flood control, provides for the delivery of stored water for irrigation and other beneficial consumptive uses, and for the generation of electrical energy.

Pacific Northwest-Pacific Southwest Intertie Project

The Pacific Northwest-Pacific Southwest Intertie Project (Intertie) was authorized as part of a much larger alternating current and direct current combined transmission system, by Section 8 of the Act of August 31, 1964, 16 U.S.C. 837g. The basic purpose of the combined transmission system was to provide, through power transmission system interconnections, maximum use of the total power resources to meet the Nation's growing demands. This purpose was to be accomplished through: (1) the exchange of summer-winter surplus peaking capacity between the northwest and southwest to reduce capital expenditures for new generating capacity, (2) the sale of northwest secondary energy to the southwest, (3) the sale of southwest energy to the northwest to "firm" peaking hydroelectric sources during critical water years, (4) conservation of significant amounts of fuel through the use of surplus hydroelectric energy, and (5) increased efficiency in the operation of hydroelectric and thermal resources.

The Intertie facilities extend from Mead Substation in southern Nevada near Boulder City and Hoover Dam, southeast through Arizona, to the Phoenix area. The major features of the system are the Mead and Liberty Substations, a 260-mile Mead-Phoenix 500-kV AC Transmission Line from the Marketplace Substation to Perkins Substation, a 238-mile Mead-Liberty 345-kV Transmission Line, a 31-mile Liberty-Westwing 230-kV Transmission Line, and the 22-mile Westwing-Pinnacle Peak 230-kV Transmission Line.

The firm point-to-point transmission service rate for the Intertie calculated under rate schedule INT–FT2 is $6.58/kWyear for service on the 230/345-kV transmission system and $17.23/kWyear for service on the 500-kV transmission system. The non-firm point-to-point transmission service rate for the Intertie calculated under rate schedule INT–NFT2 is 2.00 mills/kWh.

Discussion

Control Area Consolidation

On April 1, 1998, the Western Area Upper Colorado control area, within which SLCA/IP generation and most of the CRSP transmission system lies, was divided between with two other control areas, the Western Area Colorado Missouri (WACM) operated by Western's Rocky Mountain Customer Service Region (RMR), and the Western Area Lower Colorado (WALC), operated by DSW. SLCA/IP generation is consolidated by the DSW operations, and the transmission lines were divided at Four Corners Substation.

Network Integration Transmission Service

DSW will offer NTS to all eligible transmission customers. NTS is subject to availability. NTS will be offered separately for P–DP and Intertie. Annual power repayment studies (PRS), prepared separately for P–DP and Intertie, are used to derive the annual transmission revenue requirement for NTS. Annual transmission costs used to determine this revenue requirement are operation and maintenance expense, administrative and general expense, principal expense, and interest expense.

The monthly charge for NTS is the product of the transmission customer's load-ratio share times one-twelfth of the annual transmission revenue requirement. The customer's load-ratio share is calculated on a rolling twelve-month basis (12–CP). As outlined in DSW's rate adjustment brochure, the customer's load-ratio share is equal to the network transmission customer's hourly load coincident with the corresponding transmission system's monthly peak hour divided by the resultant value of the corresponding transmission system's monthly peak minus the monthly coincident peak for all corresponding firm point-to-point transmission service plus corresponding firm point-to-point reservations. In order to ensure the collection of the transmission systems' annual revenue requirement, the difference between the first two components of the resultant value outlined above constitutes the network transmission systems' monthly peak and is anticipated to be metered. Thus, an NTS customer, based on its 12–CP load, will pay its proportionate share of the revenue requirement for the month. Since DSW's point-to-point transmission customers are charged on a reservation and not a usage basis, for the purposes of determining the NTS charge, the transmission systems' monthly peak will coincide with the network transmission systems' monthly peak.

Based on updated financial and load data a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

Ancillary Services

DSW has marketed the maximum practical amount of power from each of its projects, leaving little or no flexibility for provision of additional electric services from the projects. Changes in water conditions frequently affect the ability of hydroelectric projects to meet obligations on a short-term basis. The unique characteristics of

the hydro resource, Western's marketing plans, and the limitations of the resource due to changing water conditions limit Western's ability to provide generation-related services, including ancillary services using Federal hydro resources.

Six ancillary services will be offered by DSW, two of which are required to be purchased by the transmission customer. These two are: (1) scheduling, system control, and dispatch service and (2) reactive supply and voltage control services. The remaining four ancillary services (3) regulation and frequency response service; (4) energy imbalance service; (5) spinning reserve service; and (6) supplemental reserve service—will be offered but are subject to availability from DSW generation resources. If DSW is unable to provide these services from its own resources, it will provide the services by making market purchases and passing these costs directly to the customer plus a 10 percent administrative charge.

The provisional formula rates for ancillary services are designed to recover only the costs incurred for providing the service(s). The rates for ancillary services are based on WALC control area costs. The formula rates will be recalculated every year, effective October 1, based on the approved formula and updated financial and load data. DSW will provide customer notice of changes in rates no later than September 1 of each year.

The six ancillary services are as follows:

Scheduling, System Control, and Dispatch Service

Scheduling, system control, and dispatch costs are included in the existing firm point-to-point transmission, firm power, and provisional network integration transmission service rates. The provisional scheduling, system control, and dispatch rate formulas apply only to non-transmission customers.

The formula rates for scheduling, system control, and dispatch are based on an annual cost of all capital costs (such as the dispatch center building) and labor costs associated with the service. The ancillary service is charged on a per schedule basis shown on Table 1 (below).

The cost per schedule per day was determined by multiplying the labor cost per minute, times the average number of minutes it takes to accomplish each type of schedule and adding the associated capital cost amortized over 32 years divided by the average number of schedules in a year. DSW will allow up to five schedule changes per transaction per day at no additional charge. The sixth schedule change will be charged as a new schedule.

The rates charged for scheduling, system control, and dispatch ancillary service are contingent on the type of service required (i.e., new versus existing schedule, SCADA versus no SCADA programming, and intra-bus transfer versus no intra-bus transfer). The rates are shown in the table below.

TABLE 1

Schedule type	Maximum Cost ($) per schedule per day
Existing schedule, requires no SCADA programming or intra-bus transfer [1]	34.10
New schedule, requires SCADA programming, no intra-bus transfer	37.50
Existing schedule, requires no SCADA programming, requires intra-bus transfer	46.85
New schedule, requires SCADA programming, and intra-bus transfer	56.20

[1] Multiple exchange of ownership in an interchange schedule is known as intra-bus transfer schedule.

Reactive Supply and Voltage Control Service From Generation Sources

The transmission provider must offer this service to the transmission customer for each transaction on the transmission provider's transmission facilities. The transmission customer must purchase this service from the transmission provider or the control area operator. The rate for reactive supply and voltage control ancillary service is calculated by dividing the combined revenue requirement for the service of P–DP, BCP, and SLCA/IP, by the sum of the control area's average firm-power allocation transmission reservations, network transmission (12–CP) and average firm transmission reservations, yielding a rate of $0.07/kWmonth. Revenues from this service will be allocated to each project based on a relationship to reactive power produced.

The rate presented at the PIF was $.08/kWmonth. The difference in the two rates is due to the addition of the Intertie transmission reservations, which had been inadvertently excluded, to the denominator of the equation.

Regulation and Frequency Response Service

The transmission provider must offer this service when the transmission service is used to serve load within its control area. The transmission customer must either purchase this service from the transmission provider or make alternative comparable arrangements to satisfy its regulation and frequency response service (Regulation) obligation. Regulation is not available from DSW resources on a long-term firm basis.

Initially, DSW proposed a single control area charge. However, based on comments received and further analysis, DSW has determined, if available, it will charge the firm-capacity rate of the project providing the regulation. The effective firm-capacity rate for BCP is found under rate schedule BCP–F5. The effective firm-capacity rate for P–DP is found under rate schedule PD–F6. The effective firm-capacity rate for SLCA/IP is found under rate schedule SP–FR1. If unavailable, DSW, upon request, will obtain the service on the open market for the customer and pass through the cost of the service, plus a 10 percent administrative charge.

Energy Imbalance Service

An energy imbalance account will be maintained for each customer scheduling energy in the WALC control area. There will be no charge for maintaining an energy imbalance account. The transmission provider must offer this service when the transmission service is used to serve load within its control area. The transmission customer must either request this service from the transmission provider or make alternative comparable arrangements to satisfy its energy imbalance service obligation. DSW established guidelines for energy imbalance service as deviations outside a 3 percent bandwidth (± 1.5 percent hourly deviations), with a 2 MW deviation minimum. These guidelines are consistent with FERC for this service. DSW reserves the right to assess a penalty applied against under-delivery (negative excursion) greater than 1.5 percent and occurring more than five times per month may be assessed a penalty charge of 100 mills/kWh; e.g., the sixth time an under-delivery occurs within a month, the 100 mills/kWh charge will be applied.

Any over-delivery (positive excursion) will be credited to the customer for 50 percent of the market value of the over-delivery within 30 days, provided the over-deliveries do not impinge upon DSW operations. Deviation accounting will be completed monthly on an hour-to-hour basis. The market value determinant will be the average monthly nonfirm price from DSW merchants operating within the WALC control area.

Operating Reserves—Spinning Reserve Service

Spinning reserves are unavailable from WALC resources. DSW, upon request, will obtain reserves on the open market for the customer and pass through the cost of those reserves, plus a 10 percent administrative charge. Transmission customers will be responsible for the transmission service to get these reserves to their destination.

Operating Reserves—Supplemental Reserve Service

Supplemental reserves are unavailable from WALC resources. DSW, upon request, will obtain reserves on the open market for the customer and pass through the cost of those reserves, plus a 10 percent administrative charge. Transmission customers will be responsible for the transmission service to get these reserves to their destination.

Existing and Provisional Rates

This rate order seeks to place DSW's first NTS formula rates and ancillary service formula rates for long-term sales, and as such, no existing rates for comparative purposes can be displayed. The following table is a summary of the formula rates for NTS and ancillary services and rates for April 1, 1999, to September 30, 1999, based on these formulas:

TABLE 2

Service type	Service Description	Formula rate with rate for April 1, 1999 to September 30, 1999.
Scheduling, System Control, and Dispatch.	Required to schedule the movement of power through, out of, within, or into a control area.	Included in appropriate transmission rates. For non-transmission customers, rate per schedule per day is between $34.10 for existing schedule and $56.20 for new with intra-bus schedule and SCADA programming.
Reactive Supply and Voltage Control.	Reactive power support provided from generation facilities that is necessary to maintain transmission voltages within acceptable system limits.	$0.07/kWmonth. Combined revenue requirement for service/WALC average firm transmission reservations, (includes electric service reservations and network reservations).
Regulation and Frequency Response.	Necessary for providing generation to match resources and loads on a real-time continuous basis. Rate will be applied to resources reserved for this service.	Not available from DSW resources. If available on short-term it will be priced at the capacity rate of the project supplying the service. If not available, the service will be purchased on the open market and the cost passed to the customer plus a 10 percent administrative charge.
Energy Imbalance	Provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within a control area over a single hour.	No charge for maintaining an energy imbalance account. Under-deliveries outside a 3 percent bandwidth with a 2 MW deviation minimum may be assessed a penalty. Over-deliveries may be credited 50 percent of market within 30 days.
Spinning Reserve	Needed to serve load immediately in the event of a system contingency.	Not available from DSW resources. If requested, DSW will obtain on the open market and pass on cost plus a 10 percent administrative charge.
Supplemental Reserve	Needed to serve load immediately in the event of a system contingency; however, it is not available immediately to serve load but, rather within a short period of time.	Not available from DSW resources. If requested DSW will obtain on the open market and pass on cost plus a 10 percent administrative charge.
Network Integration Transmission Service.	Transmission service based on customer's load-ratio share.	Revenue Requirement/12 x customer's load-ratio share. P-DP = $23,001,589. Intertie = $21,943,150.

Certification of Rates

Western's Administrator has certified that the DSW NTS and ancillary services formula rates placed into effect on an interim basis herein are the lowest possible consistent with sound business principles. The formula rates have been developed in accordance with agency administrative policies and applicable laws.

Comments

During the public consultation and comment period, Western received 19 written comments on the rate adjustment. In addition, customer representatives from 10 organizations asked questions during the June 30, 1998, PIF or commented during the July 30, 1998, PCF. All comments received during the consultation and comment period were reviewed and considered in preparing this rate order.

Representatives from the following organizations made oral comments during either the PIF or the PCF:

Arizona Electric Power Cooperative, Arizona
Arizona Power Authority, Arizona
Arizona Public Service Company, Arizona
Colorado River Energy Distributors Association, Arizona
Irrigation & Electrical District Association of Arizona, and others
K.R. Saline & Associates, Arizona
Metropolitan Water District, Arizona
Meyer, Hendricks, Phoenix, Arizona
Resource Management International, Phoenix, Arizona
Wellton-Mohawk Irrigation and Drainage District, Arizona

Representatives from the following organizations submitted written comments:

Aguila Irrigation District, Arizona
Arizona Electric Power Cooperative, Arizona
Arizona Power Authority, Arizona
Arizona Public Service Company, Arizona
Buckeye Water Conservation & Drainage District, Arizona
Colorado River Commission, Nevada
Colorado River Energy Distributors Association, Arizona
Electrical District No. 2, Pinal County, Arizona
Electrical District No. 3, Maricopa County, Arizona
Electrical District No. 4, Pinal County, Arizona
Electrical District No. 6, Pinal County, Arizona
Electrical District No. 8, Maricopa County, Arizona
Harquahala Valley Power District, Arizona
Irrigation & Electrical District Association of Arizona, and others
Maricopa Water District, Arizona
McMullen Valley Water Conservation & Drainage District, Arizona
Metropolitan Water District of Southern California, California
Roosevelt Irrigation District, Arizona
Salt River Project, Arizona
San Tan Irrigation District, Arizona
City of Stafford, Arizona

The following comments were received during the public comment

period. DSW paraphrased and combined comments when it did not affect the meaning. Several comments are outside the scope of this rate order. In response to these comments, DSW has either indicated the proper forum for the comment or generalized DSW policy for clarification. DSW's response follows each comment.

Network Integration Transmission Service

Comment: Several commentors want to know the level of NTS that Western expects to have available in P-DP and Intertie, and if Western has received any requests for that service. A commentor stated that Western should offer NTS.

Response: At the time this rate order was published, DSW had not received any requests for NTS and no studies have been done to determine availability of NTS for any customers.

Comment: A commentor expressed concern about the effect NTS will have on dispatch of SLCA/IP, P-DP, and BCP generation resources (e.g., redispatch obligation during a transmission constraint). A commentor requests explanation of the process to be undertaken when assessing NTS, and is concerned whether or not Western will consider potential legal, environmental, and operational issues related to providing NTS as part of the impact study prepared for requests for NTS. A commentor questions if the process to assess NTS is in a descriptive form and can it be accessed through the OASIS.

Response: This question is outside the scope of this rate order process because it does not speak to the pricing of the service. Redispatch is discussed in section III of the Tariff. Requests for NTS will be evaluated on a case-by-case basis. The process for this evaluation is discussed in the Tariff, which is available by hot links in the OASIS. Furthermore, Western will evaluate its ability to provide NTS under section 32 of the Tariff and will continue to meet its firm contractual obligations. Western will not enter into any agreements which cause it to operate outside its operational, legal, and environmental parameters.

Comment: A commentor wants clarification of how Western will allocate the cost of a load across two systems when the delivery is from a receipt point to a delivery point for a customer taking NTS.

Response: Each project is treated as a separate transmission system. A customer requesting NTS from two different transmission systems, would have to make separate requests for this service from the respective transmission system's provider, and each transmission system would have to be evaluated for its capability to provide network service. If both transmission systems have the availability to provide NTS, then the transmission customer would have to pay for the network service on each of the transmission systems. DSW's NTS formula rates for the P-DP and Intertie transmission systems are the same, but the variable values for annual revenue requirement and loads are unique for each project. Therefore, a transmission customer receiving NTS on both the P-DP and Intertie transmission systems would receive monthly charges from each project based on the resultant formula calculation for each individual project.

Ancillary Services

Scheduling, System Control, and Dispatch

Comment: A commentor stated that the rate for scheduling, system control, and dispatch service is too high.

Response: Scheduling, system control, and dispatch service costs are included in all types of transmission service provided by DSW. The formula rate presented in this rate order uses an incremental cost approach and is applicable to non-transmission customers.

Comment: A commentor believes that using a per schedule instead of a rate based on megawatts discriminates against small customers and is not comparable to what DSW is charging under its bundled services to its statutory service customers since firm customers are charged on a per kilowatt basis.

Response: DSW's methodology for developing a rate for scheduling, system control, and dispatch service applies incremental cost recovery for services supplied to non-transmission customers. It allows DSW to differentiate between requests that require no programming or intra-bus transfers from those that do. Ultimately, DSW's intent is to recover the costs for providing the service. This intent is consistent with what DSW charges under its bundled services.

Reactive Supply and Voltage Control

Comment: A commentor does not know how Western will determine power factor for customers passing through the system as opposed to serving loads within the control area.

Response: This comment is outside the scope of this rate order process. However, the power factor may be measured at the customer's demarcation points to the WALC control area provided that they can be discretely identified.

Regulation

Comment: A commentor wants to know how and under what conditions does Western expect to have regulation service available to offer on a long-term and short-term basis.

Response: This question is outside the scope of the rate order. DSW has stated in this rate order that it does not expect to have regulation available for sale from its project generation on a long-term basis. However, there may be short-term, hourly regulation available which would be priced at the firm-capacity rate of the project providing the service.

Comment: A commentor wants clarification on how Western plans to price regulation provided by SLCA/IP resources (CRSP CSC rate or DSW rate) and to credit revenues to SLCA/IP resources for regulation provided (CRSP CSC rate or DSW rate).

Response: This comment is addressed in the CRSP CRC rate process. Initially, DSW proposed single control area rate which included SLCA/IP, P-DP, and BCP generation costs. Since that time, DSW has determined it will apply the firm-capacity rate of the generation project providing the regulation service. If unavailable, DSW, upon request, will purchase this service from the market, plus a 10 percent administrative charge.

As approved by FERC at 84 FERC 61 ¶ 039 in the CRSP CSC rate process, the price for regulation will be determined under the SP-FR1 rate schedule. The rate schedule provides for CRSP CSC to ". . . obtain regulation on the open market for the customer and pass through the costs, plus a 10 percent administrative charge, if unavailable from SLCA/IP resources. If available for sale, the SLCA/IP firm-power capacity rate, currently in effect, will be charged."

If a transmission customer purchases this service from SLCA/IP generation, those revenues will go directly to the Basin Fund.

Comment: A commentor expressed a preference for regulation revenue being allocated to the unit (or at least the project) that supplies the service rather than having an allocation based on the installed capacity. A commentor gave an example that if Hoover is providing the regulation, revenue should be credited toward the Hoover project. Another commentor requests that Western consider allocating the revenues assigned to DSW on the same basis as they are allocated between DSW and CRSP CSC, that is, based on the capacity used to provide the service.

Response: Western considered these comments and agrees. Western has

changed the basis for the regulation service charge. The regulation service rate will be equal to the capacity charge for the project which supplies the service and revenues will be credited to that project.

Energy Imbalance

Comment: A commentor expressed concern that it may be risky for Western to allow up to five "free" energy imbalance deviations based on deviation during the most costly hours of the month.

Response: DSW has included in its energy imbalance compensation methodology a provision which allows the transmission customer to exceed the 1.5 percent bandwidth "five times" per month without penalty. DSW included this provision in its proposed methodology because it believes it is fair and reasonable. If DSW determines that exceeding the bandwidth more than "five times" without penalty is not reasonable, it may revise its rate schedule to include a more appropriate penalty. However, given that five times results in 5 hours out of an average of 730 hours in a month, DSW does not believe this is unreasonable and would not result in a significant risk.

Comment: A commentor suggests Western's assessment for under-delivery should be based on the greater of 100 mills/kWh or the real-time cost of dealing with the imbalance and requests that DSW consider imposing a penalty upon entities which continually under-deliver their schedule, even if they remain within the proposed 1.5 percent allowance.

Response: DSW believes 100 mills/kWh is adequate to cover costs. The energy will be returned in addition to the penalty, if DSW determines it should be assessed. Within normal operations, it is reasonable to expect some amount of under-delivery throughout a month.

Spinning and Supplemental Reserves

Comment: A commentor wants to know if Western intends to provide short-term spinning and supplemental reserve services. If so, at what rate?

Response: DSW does not expect to have short-term spinning and supplemental reserve services. DSW will offer to purchase this service for a transmission customer, and pass through the cost, plus a 10 percent administrative charge.

Comment: A commentor requested clarification that Western would obtain reserves only upon the request of specific customers and that those costs would be borne entirely by the requesting customers.

Response: This is correct. The costs to the requesting customer will also include a 10 percent administrative charge.

General

Comment: A commentor wants to know how Western will determine what excess ancillary services are available for the market.

Response: This comment is outside the scope of this rate process. The method for determining excess ancillary services will be determined in the implementation process.

Comment: Several commentors questioned Western's ability to account for and properly allocate across the DSW projects the costs incurred in providing ancillary services.

Response: DSW believes it has allocated costs appropriately among all projects. Costs are in the rates expressed as the revenue requirement. The method for accounting for the costs was developed in an informal work group.

Comment: A commentor suggests that the rate order should document Western's limited ability to provide NTS and ancillary services and recommends adoption of language previously stated by CRSP CSC.

Response: Western recognizes its limited ability to provide generation-related services from all its projects, as reflected in its Tariff which states, "Western has marketed the maximum practical amount of power from each of its projects, leaving little or no flexibility for provision of additional power services."

DSW recognizes the fact that it has limited ability to provide NTS and ancillary services and has stated this fact in this rate order. For those ancillary services that DSW is unable to provide from its own resources, DSW, upon customer request, will purchase the service and pass through the costs to the customer plus a 10 percent administrative charge.

Comment: A commentor stated Western does not have any services available because of its legal and statutory obligations. Several commentors questioned Western's ability to provide these services without contracting away resources which contractually belong to its statutory customers.

Response: As stated in Western's Tariff, Western is, at the request of the Secretary of DOE, undertaking to comply with the principles of FERC Order Nos. 888 and 889 to the extent consistent with applicable law, and accordingly will provide NTS and ancillary services to the extent it has the capability to do so. As stated in the Tariff, "Nothing in this tariff shall alter, amend, or abridge the statutory or contractual obligations of Western to market and deliver Federal power resources and to repay the Federal investment in such projects."

Comment: A commentor wants to know what role the current customers will have when applications for services are entertained. A commentor suggests Western adopt specific processes which would include something like notification of current customers so they can protect their interests by some monitoring function. A commentor requests that Western consider ways to best use existing customer processes.

Response: These questions are outside the scope of this rate order. However, DSW will not implement a new process for customer input on individual requests for firm or non-firm transmission. DSW believes that existing processes (such as Joint Planning) are still the best mechanisms for continuing customer communication.

Comment: A commentor requests Western maintain a record of transactions to identify how the ancillary services are identified and provided, and how the revenues and costs are allocated. A commentor requests clarification on how Western plans to track the services provided by each office and allocate the revenues appropriately. Some recommendations made were that Western adopt a process which documents provider, cost, recipient, and revenue flow, and that there be a record that clearly identifies the flow of these revenues into the Basin Fund. Several commentors questioned Western's ability to properly allocate any revenues that may be received from ancillary service sales.

Response: The comments are outside the scope of this rate order. However, Western has the ability and knowledge to properly allocate any revenues received from the sale of ancillary services to the appropriate project account. For each transaction, Western's financial records will indicate the entity that received the service, the type of service provided, the amount of revenues received, and which fund received the revenues. Western has established a separate code for each transmission and ancillary service. The flow of funds into the Basin Fund will be clearly identified in Western's financial records.

Comment: A commentor requests that Western's OASIS postings and operating procedures reflect the nature of the availability of services.

Response: This request is outside the scope of this rate order. However, the

Tariff outlines Western's limited ability to provide generation-related services, and the Tariff is the governing document under which all OASIS transactions will be conducted.

Comment: Several commentors questioned what policies, procedures, or guidelines has Western developed to ensure that if these additional services are marketed and provided that they will have no adverse operational or financial effect on CRSP CSC customers.

Response: This comment is outside the scope of this rate order. DSW does not anticipate having a substantial amount of ancillary service sales from its Federal generation. Because Western recognizes this fact, and is committed to its statutory obligations, Western has included in its Tariff provisions for purchases from other sources to satisfy requests for specific ancillary services.

DSW will continue to operate in the same manner as it has in the past. That is, it will continue to meet its firm-power obligations and its firm-transmission obligations, all within allowable operational constraints. DSW will continue to review individual requests taking these factors into consideration. Western will also continue to not make any sales of generation-related services from the Federal generators if it does not have the capability to do so.

Western will identify and track services provided by SLCA/IP and ensure that SLCA/IP is being compensated for those services appropriately.

Comment: A commentor wants to know the revenue potential and overhead incurred if Western segregates the merchant function.

Response: This comment is outside the scope of the rate order because, the rate proposal does not include merchant function costs. It is unknown at this time what costs may be incurred for overhead or what revenue potential exists if Western should separate the function.

Comment: A commentor observed that many questions and comments at both the PIF and PCF were about the marketing of services, and not the pricing. A commentor requests Western address the questions related to marketing and marketing activities. A commentor recognizes that many of the questions will not be answered in final decision on rates.

Response: Western agrees that many comments are outside the subject of this rate order but DSW has, when possible, addressed those questions and comments which relate to the marketing of NTS and ancillary services. Those questions or comments which were not addressed will be resolved as Western implements its Tariff, within the limits of its marketing plan.

Comment: A commentor noted that the revenue stream from NTS and ancillary services seem to apply to a revenue requirement which is already being covered by existing DSW customers and appears to be profitable.

Response: For the immediate future, these revenue streams were not included in the rate study projections. However at the end of each year, money from NTS and ancillary services will be included as "other revenue" in the PRS, thus offsetting the revenue requirement.

Comment: A commentor requests that DSW take into consideration the importance of looking at current commitments, and statutory obligations under existing arrangements to understand Western's ability to provide the proposed services.

Response: This rate order presents a methodology for determining rates for each service if it were to be sold. As part of implementing Western's Tariff, it will be determined if resources exist to supply any individual request. All requests will be looked at thoroughly to determine viability in a manner not detrimental to present commitments.

Comment: A commentor questions Western's ability to provide NTS since Western would have to integrate loads and other generators into its control area, causing a change in the operation of its generators. A commentor asserts that integration would result in the violation of a generation project's environmental assessment and marketing plan, and that a change in the operations has not been studied in any of Western's marketing plans. As a result, the commentor requests Western state clearly in its documentation that it cannot provide NTS or ancillary services. A commentor expressed similar concerns. A commentor is concerned about any additional marketing by Western of generation-related services because of the potential increase and magnitude of violations of operating criteria established for Glen Canyon Dam. A commentor is concerned that Western has some unique obligations and legal requirements, particularly related to operations at Glen Canyon Dam, that the commentor wants to ensure are not impinged upon.

Response: Western has committed to providing NTS, to the extent it has the capability to do so. When an application for NTS is received by Western, Western must evaluate its ability to provide the service considering existing contractual firm obligations.

The CRSP CSC, in its Notice of Rate Order, stated, "Western has allocated most of its SLCA/IP power resources to preference entities under long-term commitments. Western will determine if any of its SLCA/IP resources are available to provide the ancillary service requested at the time of the request. If Western does not have the resources available from the SLCA/IP, the CRSP CSC will offer to purchase the resource from the open market or from a control area operator, and pass the cost through to the customer." Since Glen Canyon Dam is a large component of SLCA/IP, no additional sales of generation-related services will be made from Glen Canyon Dam if the resources are not available.

Operational constraints at Glen Canyon Dam will not be violated to provide sales of ancillary or transmission services. DSW and Reclamation ensure that operational constraints are adhered to and when resources are required beyond the operational capability of those facilities, purchases of supplemental resources are made by Western. In recognition of the resource limitations and restrictions of the generation facilities, Western included a provision in its Tariff, that provides Western the option to purchase ancillary services and pass through the cost to the transmission customer.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a proposed rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking of particular applicability involving rates or services applicable to public property.

Environmental Compliance

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*; Council On Environmental Quality Regulations, 40 CFR parts 1500–1508; and DOE NEPA Regulations, 10 CFR part 1021, Western has determined that this action is categorically excluded from the preparation of an environmental assessment or of an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no

clearance of this notice by the Office of Management and Budget is required.

Submission to Federal Energy Regulatory Commission

The formula rates herein confirmed, approved, and placed into effect on an interim basis, together with supporting documents, will be submitted to FERC for confirmation and approval on a final basis.

Order

In view of the foregoing and pursuant to the authority vested in me as the Secretary of Energy, I confirm, approve, and place into effect on an interim basis, effective April 1, 1999, formula rates for transmission and ancillary services under Rate Schedules DSW–SD1, DSW–RS1, DSW–FR1, DSW–EI1, DSW–SPR1, DSW–SUR1, PD–NTS1, and INT–NTS1. The rate schedules shall remain in effect on an interim basis, pending FERC confirmation and approval of them or substitute formula rates on a final basis through March 31, 2004.

Dated: April 29, 1999.

Bill Richardson,

Secretary.

Rate Schedule DSW–SD1; Schedule 1 to Tariff—Scheduling, System Control, and Dispatch Service

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

This service is required to schedule the movement of power through, out of, within, or into the Western Area Lower Colorado control area (WALC). The charges for scheduling, system control, and dispatch service are to be based on the rate referred to below. The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

This formula rate is applicable to transactions with entities not taking transmission service in WALC. Charges for scheduling, system control, and dispatch service are included in the transmission rate. The Desert Southwest Customer Service Region's charges for scheduling, system control, and dispatch service may be modified upon written notice to the customer and any change to the charges for the service shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement.

Formula Rate

Cost per schedule = annual capital costs per schedule + (hourly labor rate × avg time to execute schedule).

Rate

The rates charged for the scheduling, system control, and dispatch service are contingent on the type of service required. The maximum rates that can be charged for the various schedule types are shown in the table below:

Schedule Type	Maximum cost ($) per schedule per day
Existing schedule, requires no SCADA programming or intra-bus transfer [1]	34.10
New schedule, requires SCADA programming, no intra-bus transfer	37.50
Existing schedule, requires no SCADA programming, requires intra-bus transfer	46.85
New schedule, requires SCADA programming, and intra-bus transfer	56.201

[1] Multiple exchange of ownership in an interchange schedule is known as intra-bus transfer schedule.

The above rates are based on FY 1997 financial and load data, and will be in effect April 1, 1999, through September 30, 1999. Based on updated financial and load data, a recalculated rate will go into effect on October 1 of each year during the effective rate period.

Rate Schedule DSW–RS1; Schedule 2 to Tariff—Reactive Supply and Voltage Control From Generation Sources Service

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

In order to maintain transmission voltages on all transmission facilities within acceptable limits, generation facilities under the control of the Western Area Lower Colorado control area (WALC) are operated to produce or absorb reactive power. Thus, reactive supply and voltage control from generation sources service (VAR Support) must be provided for each transaction on the transmission provider's transmission facilities. Generation sources under WALC are the Parker-Davis Project, the Boulder Canyon Project and the Salt Lake City Area/Integrated Projects. This service is required to be offered to the transmission customer by the transmission provider in order to maintain transmission voltages on the transmission provider's transmission facilities within acceptable limits.

The customer must purchase this service from the WALC operator. The charges for such service will be based upon the rate referred to below.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies. The Desert Southwest Customer Service Region (DSW) charges for VAR Support may be modified upon written notice to the customer. Any change to the charges for VAR Support shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSW shall charge the customer in accordance with the rate then in effect.

Formula Rate

$$\underset{\text{Rate}}{\text{WALC VAR Support}} = \frac{\text{Total Annual Combined Revenue Requirement for Service (TACRRS)}}{\text{WALC Transmission Reservations}}$$

$$\text{WALC Transmission Reservations} = \text{Average firm power allocation transmission reservations} + \text{average firm transmission reservations.}$$

TACRRS is determined by combining, for each generation project, the product of the percentage of resource capability used for reactive supply and the total generation projects revenue requirement.

Rate

The rate to be in effect April 1, 1999, through September 30, 1999, is:

Monthly: $0.07/kWmonth.
Weekly: $0.02/kWweek.
Daily: $0.00237/kWday.
Hourly: 0.0986 mills/kWh.

This rate is based on the above formula and on FY 97 financial and load data. Based on updated financial and load data, a recalculated rate will go into effect on October 1 of each year during the effective rate period.

Rate Schedule DSW–FR1; Schedule 3 to Tariff—Regulation and Frequency Response Service

Effective:

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

Regulation and frequency response service (Regulation) is necessary to provide for the continuous balancing of resources, generation, and interchange, with load and for maintaining scheduled interconnection frequency at sixty cycles per second (60 Hz). Regulation is accomplished by committing on-line generation whose output is raised or lowered, predominantly through the use of automatic generating control equipment, as necessary to follow the moment-by-moment changes in load. The obligation to maintain this balance between resources and load lies with the transmission provider. The transmission customers and customers on others' transmission systems within WALC must either purchase this service from WALC or make alternative comparable arrangements to satisfy its Regulation obligation. The charges for Regulation are referred to below. The amount of Regulation will be set forth in the service agreement.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Desert Southwest Customer Service Region's (DSW) charges for Regulation may be modified upon written notice to the Customer. Any change to the Regulation charges shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSW shall charge the customer in accordance with the rate then in effect.

Formula Rate:

Regulation will not be available on a long-term basis from DSW resources. If this service is requested, and DSW determines that it is available on a short-term basis, it will be priced at the firm-capacity rate in effect for the generation project supplying the service. Otherwise, DSW, upon request, will obtain Regulation on the open market for the customer and pass through the cost, plus a 10 percent administrative charge.

Rate

DSW Regulation Rate = market price + 10 percent
OR
=Capacity Rate of Generation Project Supplying Service (depending upon availability)

The effective firm-capacity rate for Parker-Davis Project is found under rate schedule PD–F6. For Boulder Canyon Project, the effective firm-capacity rate is found under BCP–F5. For Salt Lake City Area/Integrated Projects, the effective firm-capacity rate is found under rate schedule SP–FR1.

Rate Schedule DSW–EI1; Schedule 4 to Tariff—Energy Imbalance Service

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

Energy imbalance service is provided when a difference occurs between the scheduled and the actual delivery of energy to a load located within the Western Area Lower Colorado control area (WALC) over a single hour. The transmission customer and customers on others' transmission system within WALC must either obtain this service from WALC or make alternative comparable arrangements to satisfy its energy imbalance service obligation.

The WALC shall establish a deviation band width of ±1.5 percent (with a minimum of 2 MW) of the scheduled transaction to be applied hourly to any energy imbalance that occurs as a result of the customer's scheduled transaction(s). Deviation accounting will be completed monthly on an hour-to-hour basis.

The formula rate used to calculate the charges for service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The energy imbalance service compensation may be modified upon written notice to the customer. Any change to the customer compensation for energy imbalance service shall be as set forth in a revision to this schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. The Desert Southwest Customer Service Region (DSW) shall charge the customer in accordance with the rate then in effect.

Formula Rate

For negative excursions (under-deliveries) outside the bandwidth and occurring more than five times per month, DSW reserves the right to assess a penalty charge of 100 mills/kWh.

For positive excursions (over-deliveries) outside the bandwidth, the customer will be credited on the customer's bill, lagged by 1 month. The credit will be 50 percent of the market value of the over-delivery, provided the over-deliveries do not impinge upon WALC operations. For example, during times of high water or operating constraints, DSW reserves the right to eliminate credits for over-deliveries.

Rate

The bandwidth in effect is 3 percent (±1.5 percent hourly deviation) with a 2 MW deviation minimum.

Rate Schedule DSW-SPR1; Schedule 5 to Tariff—Operating Reserve—Spinning Reserve Service

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

Spinning reserve service (Reserves) is needed to serve load immediately in the event of a system contingency. Reserves may be provided by generating units that are on-line and loaded at less than maximum output. The transmission customer must either purchase this service from the Western Area Lower Colorado control area (WALC), or make alternative comparable arrangements to satisfy its Reserves requirements. The charges for Reserves are referred to below. The amount of Reserves will be set forth in the service agreement.

Formula Rate

No long-term Reserves are available from WALC resources. The Desert Southwest Customer Service Region, upon request, will obtain the Reserves on the open market for the customer and

pass through the cost, plus a 10 percent administrative charge.

Rate

Cost for Reserves = market price + 10 percent.

Rate Schedule PD–NTS1; Attachment H–1 to Tariff—Schedule of Rate for Network Integration Transmission Service on the Parker-Davis Project

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

The transmission customer shall compensate the Parker-Davis Project each month for network integration transmission service (NTS) pursuant to the applicable Network Integration Transmission Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Desert Southwest Customer Service Region (DSW) may modify the charges for NTS upon written notice to the transmission customer. Any change to the charges to the transmission customer for NTS shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSW shall charge the transmission customer in accordance with the revenue requirement then in effect.

Formula Rate

Monthly Charge = Transmission Customer's Load-Ratio Share × (Revenue Requirement/12)

Rate

The projected annual revenue requirement allocated to transmission for FY 1999 for the Parker-Davis Project is $23,001,589. Based on updated financial and load data, a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

Rate Schedule INT–NTS1; Attachment H–2 to Tariff—Schedule of Rate for Network Integration Transmission Service on the Pacific Northwest-Pacific Southwest Intertie Project

Effective

The first day of the first full billing period beginning on or after April 1, 1999, through March 31, 2004.

Applicable

The transmission customer shall compensate the Pacific Northwest-Pacific Southwest Intertie Project (Intertie) each month for network transmission service (NTS) pursuant to the applicable Network Integration Transmission Service Agreement and annual revenue requirement referred to below. The formula for the annual revenue requirement used to calculate the charges for this service under this schedule was promulgated and may be modified pursuant to applicable Federal laws, regulations, and policies.

The Desert Southwest Customer Service Region (DSW) may modify the charges for NTS upon written notice to the transmission customer. Any change to the charges to the transmission customer for NTS shall be as set forth in a revision to this rate schedule promulgated pursuant to applicable Federal laws, regulations, and policies and made part of the applicable service agreement. DSW shall charge the transmission customer in accordance with the revenue requirement then in effect.

Formula Rate

Monthly Charge = Transmission Customer's Load-Ratio Share × (Revenue Requirement/12)

Rate

The projected annual revenue requirement for FY 1999 for the Pacific Northwest-Pacific Southwest Intertie Project is $21,943,150. Based on updated financial and load data, a recalculated revenue requirement will go into effect on October 1 of each year during the effective rate schedule period.

[FR Doc. 99–11864 Filed 5–10–99; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6339–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, NSPS for VOC Equipment Leaks in the Synthetic Organic Chemical Industry (SOCMI)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*), this document announces that the Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS for VOC Equipment Leaks in the Synthetic Organic Chemical Manufacturing Industry (SOCMI). OMB Control number 2060–0012, expiration 7/31/99. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 0662.06.

SUPPLEMENTARY INFORMATION:

Title: NSPS—Equipment Leaks of VOC in the Synthetic Organic Chemical Manufacturing. OMB Control No. 2060–0012; EPA ICR No. 0662.06. Expiration date 7/31/99.This is a request for an extension of a currently approved collection.

Abstract: This ICR contains record keeping and reporting requirements that are mandatory for compliance with 40 CFR part 60.480, subpart VV, VOC Equipment Leaks in SOCMI. This information is used by the Agency to identify sources subject to the standards and to insure that the best demonstrated technology is being properly applied. The standards require periodic recordkeeping to document process information relating to the sources' ability to identify and eliminate leaking equipment. The standards apply to specific pieces of equipment contained within a process unit in the SOCMI, including pumps in light liquid service; compressors; pressure relief devices in gas/vapor, light liquid or heavy liquid service; sampling connection systems; open-ended valves or lines; valves in gas/vapor and light liquid service;

pumps and valves in heavy liquid service; and flanges and other connectors.

In the Administrator's opinion, VOC emissions from equipment leaks in the SOCMI cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Therefore, New Source Performance Standards have been promulgated for this source category as required under section 111 of the Clean Air Act.

Owners or operators of the affected facilities described must make the following one time only reports: notification of the date of construction or reconstruction, notification of the anticipated and actual date of startup, notification of any physical or operational change to an existing facility which may increase the emission rate of any air pollutant to which the standard applies, and the unit identification and number of components subject to the standards. All semiannual reports are to include: process unit identification, number of components leaking and not repaired, dates of process unit shutdowns, and the revisions to items submitted in the initial semiannual report. The source is also required to notify the Administrator of the election to use an alternative standard for valves ninety days before implementing the provision.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 01/05/99 (64 FR 499). No comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 60 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners or operators in the Synthetic Organic Chemicals Manufacturing Industry.

Estimated No. of Respondents: 3228.

Frequency of Response: Semiannual.

Estimated Total Annual Burden on Respondents: 302,881 hours.

Estimated Total Annualized Capital and O&M Costs: $1,223,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 0662.06 and OMB Control No. 2060–0012 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 5, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–11832 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6340–2]

Acid Rain Provisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA today announces the allocation of allowances to small diesel refineries for desulfurization of fuel during 1998. The eligibility for and calculation of allowances to small diesel refineries is in accordance with section 410(h) of the Clean Air Act, implemented at 40 CFR part 73, subpart G.

FOR FURTHER INFORMATION CONTACT: Kenon Smith, EPA Acid Rain Division (6204J), 401 M St., SW, Washington DC; telephone (202) 564–9164.

SUPPLEMENTARY INFORMATION:

EPA's Acid Rain Program was established by Title IV of the Clean Air Act Amendments of 1990 (CAAA) to reduce acid rain in the continental United States. The Acid Rain Program will achieve a 50 percent reduction in sulfur dioxide (SO_2) emissions from utility units. The SO_2 reduction program is a flexible market-based approach to environmental management. As part of this approach, EPA allocates "allowances" to affected utility units. Each allowance is a limited authorization to emit up to one ton of SO_2. At the end of each calendar year, each unit must hold allowances in an amount equal to or greater than its SO_2 emissions for the year. Allowances may be bought, sold, or transferred between utilities and other interested parties. Those units whose annual emissions are likely to exceed their allocations may install control technologies or switch to cleaner fuels to reduce SO_2 emissions or obtain additional allowances.

Section 410(h) of the Clean Air Act provides allowances for small diesel refineries that desulfurize diesel fuel from October 1, 1993 through December 31, 1999. Small refineries are not otherwise affected by the Acid Rain Program and do not need the allowances to comply with any provision of the Clean Air Act. Thus, the allowances serve as a financial benefit to small diesel refineries desulfurizing diesel fuel.

The following table lists the allowances allocated to eligible small diesel refineries for desulfurization in 1998. A total of 25,617 allowances are allocated to 16 refiners. These allowances have a compliance year of 1999.

Refiner	Refinery name or location	Allocation
Big West Oil	Flying J, Utah	1,500
Cenex	Laurel, Montana	1,500
Frontier	Cheyenne, Wyoming	1,500
Giant	Giant	1,350
	Ciniza, New Mexico	1,475
Golden Bear	Oildale, California	142

Refiner	Refinery name or location	Allocation
Holly	Lea, New Mexico	1,500
	Navajo, New Mexico	500
	Montana	289
Hunt	Tuscaloosa, Alabama	1,386
Inland	Woods Cross, Utah	564
Kern	Bakersfield, California	1,500
La Gloria	Tyler, Texas	1,500
Lion	El Dorado, Arkansas	1,500
Pennzoil	Atlas	1,500
	Rasville	470
Pride	Abilene, Texas	238
Sinclair	Little America, Wyoming	1,500
	Sinclair, Wyoming	1,500
	Tulsa, Oklahoma	1,500
U.S. Oil & Refining	Tacoma, Washington	1,056
Wyoming Refining	New Castle, Wyoming	647

Requests for allowances for desulfurization during 1999 are due no later than April 1, 2000. Allowances allocated in 2000 will have a compliance year of 2000.

Dated: April 28, 1999.

Brian J. McLean,

Director, Acid Rain Division.

[FR Doc. 99–11830 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6340–5]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Roosevelt Regional Landfill Regional Disposal Company, Klickitat County, Washington

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: Pursuant to Clean Air Act section 505(b)(2) and 40 CFR 70.8(d), the EPA Administrator is hereby denying a petition to object to a state operating permit issued by the Washington Department of Ecology to Roosevelt Regional Landfill, Regional Disposal Company, Klickitat County, Washington. This order constitutes final action on the petition submitted by TPS Technologies, Inc. Pursuant to section 505(b)(2) of the Clean Air Act ("Act"), petitioner may seek judicial review in the United States Court of Appeals for the appropriate circuit within 60 days of this decision under section 307 of the Act.

ADDRESSES: Copies of the final order, the petition and all pertinent information relating thereto are on file at the following location: Environmental Protection Agency, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington, 98101. The final order is also available electronically at the following address: http://www.epa.gov/ttn/oarpg/t5sn.html

FOR FURTHER INFORMATION CONTACT: Elizabeth Waddell, Office of Air Quality, EPA Region X, telephone (206) 553–4303, e-mail waddell.elizabeth@epa.gov. Interested parties may also contact the Washington Department of Ecology, Central Regional Office, 15 West Yakima, Suite 200, Yakima, Washington 98902–3401.

SUPPLEMENTARY INFORMATION: The Clean Air Act affords EPA the opportunity for a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

TPS Technologies, Inc. submitted a petition to the Administrator on February 26, 1999, seeking EPA's objection to the operating permit issued to Roosevelt Regional Landfill, Regional Disposal Company. The petitioner maintains that the Roosevelt Landfill operating permit is inconsistent with the Act because the permit fails to: (1) Adequately identify all emissions units at this municipal solid waste landfill; (2) adequately calculate emissions of volatile organic compounds from the handling of petroleum contaminated soil and the use of such soil as daily cover; (3) explain the basis for establishing different types of controls on petroleum contaminated soil at two similar landfill facilities; and (4) reflect the comments of EPA Region X's new source review ("NSR") personnel regarding controls on petroleum contaminated soil, to reflect that the facility is either currently out of compliance with NSR requirements or will be subject to NSR in two years. The order denying this petition explains the reasons behind EPA's conclusion that petitioner has failed to demonstrate that the Roosevelt Regional Landfill permit does not assure compliance with the Clean Air Act on the grounds raised.

Dated: May 5, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–11833 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6339–9]

National Advisory Council for Environmental Policy and Technology Reinvention Criteria Committee; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, Public Law 92–463, EPA gives notice of a meeting of the National Advisory Council for Environmental Policy and Technology's (NACEPT) Reinvention Criteria Committee. NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues.

The NACEPT Reinvention Criteria Committee (RCC) has been asked to help the Agency understand how incentives can be used most successfully to inspire firms, companies, communities, and individuals to go beyond mere compliance with existing regulations and to begin the process of addressing outstanding environmental problems. In particular, the committee is focusing on the following questions:

- What opportunities exist for EPA to use incentives to promote environmental stewardship in industry? In local communities? In the general public?
- How can EPA evaluate the effectiveness of incentives to encourage environmental stewardship that leads to improved environmental results? How can EPA measure the impact that incentives have on public confidence? What criteria should be used to decide whether the use of incentives is appropriate?
- How can the concept of performance ladders be used to tailor incentives most effectively?

This meeting is being held to provide the EPA with perspectives from representatives of state, and local governments, environmental organizations, academia, industry, and NGOs.

DATES: The RCC will hold a 1½-day public meeting at the Doyle Hotel, located at 1500 New Hampshire Avenue, NW. in Washington, DC on Monday June 28, from 1:00pm to 5:30pm and Tuesday June 29, 1999 from 8:30am to 5:00pm.

ADDRESSES: Materials or written comments may be transmitted to the committee through Gwendolyn Whitt, Designated Federal Officer, NACEPT RCC, U.S. EPA, Office of Cooperative Environmental Management (1601F), 401 M Street, SW., Washington, DC 20460. There will also be an opportunity for the public to make comments directly to the committee during the first day of the meeting. Requests to make public comments must be submitted no later than June 18,1999 to Gwendolyn Whitt, at the address above or faxed to (202) 260–6882.

FOR FURTHER INFORMATION CONTACT: Gwendolyn Whitt, Designated Federal Officer, NACEPT, at (202) 260–9484.

Dated: May 3, 1999.

Gordon Schisler,

Deputy Director, Office of Cooperative Environmental Management.

[FR Doc. 99–11831 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00269; FRL–6080–8]

Forum on State and Tribal Toxics Action (FOSTTA); June Meeting Canceled

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Forum on State and Tribal Toxics Action (FOSTTA) will not meet in June 1999. In March, the FOSTTA Coordinating Committee decided to forgo the June meeting due to severe cuts to the Office of Pollution Prevention and Toxics (OPPT) fiscal year 1999 budget. In the past, three meetings were funded annually and were typically held in October, March, and June. The next meeting of FOSTTA will be October 18–19, 1999 at a new location, the Key Bridge Marriott Hotel in Arlington, VA. OPPT will issue a **Federal Register** notice in late September to announce the October meeting.

DATES: As part of the effort to increase tribal representation in FOSTTA, the Tribal Affairs Work Group of FOSTTA will meet on June 28, 1999, from 8 a.m. to 5 p.m. and on June 29, 1999, from 8 a.m. to noon. The focus of the meeting will be on orientation and organizational matters with the Tribal representatives who attended the March FOSTTA meeting. The Tribal Affairs Work Group deals specifically with issues of concern to the Indians.

ADDRESSES: The Tribal Affairs Work Group of FOSTTA will meet at the Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: Phil Robinson, Chief of the Liaison Branch, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone: (202) 260–3910; e-mail: robinson.phil@epa.gov.

SUPPLEMENTARY INFORMATION: FOSTTA, a group of state and tribal toxics environmental managers, is intended to foster the exchange of toxics-related program and enforcement information among the states, tribes, EPA's Office of Prevention, Pesticides and Toxic Substances (OPPTS, and the Office of Enforcement and Compliance Assurance (OECA). FOSTTA currently consists of the Coordinating Committee, four issue-specific projects, and two work groups. The projects and work groups are the: Toxic Release Inventory Project, Pollution Prevention Project, Chemical Management Project, Lead (Pb) Project, and the Community-Based Environment Work Group and the Tribal Affairs Work Group.

List of Subjects

Environmental protection.

Dated: April 30, 1999.

Christine M. Augustyniak,

Acting Director, Environmental Assistance Division, Office of Pollution Prevention and Toxics.

[FR Doc. 99–11836 Filed 5–10–99; 8:45 am]

BILLING CODE 6560–50–F

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting; Farm Credit Administration Board; Regular Meeting

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on May 13, 1999, from 9:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Vivian L. Portis, Secretary to the Farm Credit Administration Board, (703) 883–4025, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. In order to increase the accessibility to Board meetings, persons requiring assistance should make arrangements in advance. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

—March 23, 1999 (Open)

B. Report

—FCS Building Association Quarterly Report

C. New Business Regulation

—Investment Management Regulation [Subpart E of Part 615 and § 615.5174] (Final)

Closed Session*

A. Report

—OSMO Report

* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Dated: May 6, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–11986 Filed 5–7–99; 2:59 pm]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission.

April 30, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 12, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1-A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0848.

Title: Deployment of Wireline Services Offering Advanced Telecommunications Capability, CC Docket No. 98–147, FCC 99–48, First Report and Order and FNPRM.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,400 respondents.

Frequency of Response: On occasion reporting requirements; Third party disclosures.

Estimated Time Per Response: 4.5 hours (avg.).

Total Annual Burden: 6,300 hours.

Total Annual Cost: $0.

Needs and Uses: The rules adopted in the 1st R&O require incumbent LECs to make new collocation arrangements, including cageless and shared collocation, available to competing carriers. The Order also adopts certain spectrum compatibility and management rules prohibiting a LEC from denying a carrier's request to deploy technology that is presumed acceptable for deployment. Among other things, whenever an incumbent LEC objects to collocation of equipment by a requesting telecommunications carrier for the purposes within the scope of section 251(c)(6) of the Act, the incumbent LEC shall prove to the state commission that the equipment will not be actually used by the telecommunications carrier for the purpose of obtaining interconnection or access to unbundled network elements. An incumbent that denies collocation of a competitor's equipment, citing safety standards, must provide to the competitive LEC within 5 business days a list of all equipment that the incumbent LEC locates within the premises in question, together with an affidavit attesting that all of that equipment meets or exceeds the safety standard that the incumbent LEC contends the competitor's equipment fails to meet. Upon request, an incumbent LEC must submit to the requesting carrier within ten days of the submission of the request a report indicating the incumbent LEC's available collocation space in a particular LEC premises. All of the collections will be used by the Commission and by competitive carriers to facilitate the deployment of advanced data services and to implement section 706 of the Communications Act of 1934, as amended.

OMB Control Number: 3060–0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace: Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form Number: N/A.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 519 respondents.

Estimated Time Per Response: 146.2 hours per response (avg.).

Frequency of Response: On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 75,895 hours.

Total Annual Cost: $0.

Needs and Uses: In CC Docket No. 96–61, the Commission reinstates the public disclosure requirement and also requires that nondominant interexchange carriers that have Internet websites past this information on-line in a timely and easily accessible manner. The information collection requirements must be disclosed to the public to ensure that consumers have access to the information they need to select a telecommunications carrier and to bring to the Commission attention possible violations of the Communications Act without a specific public disclosure requirement.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11790 Filed 5–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collections Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority 5 CFR 1320 Authority, Comments Requested.

April 30, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with

a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commissions burden estimates; (c)ways to enhance the quality, utility, and clarity of the information collected and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 12, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications, Room 1-A804, 445 Twelfth St., S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0325.

Title: Section 80.605, U.S. Coast Guard Coordination.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; and Business or other for-profit entities.

Number of Respondents: 47.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 52 hours.

Total Annual Cost: $1,134.

Needs and Uses: Section 80.605 is needed to assure that no hazard to marine navigation will result from the grant of applications for non-selectable transponders and shore based radionavigation aids. If this collection was not conducted, stations posing a hazard to marine navigation could be licensed inadvertently and/or long delays in the processing of applications could result due to the necessity for coordination between the FCC, Coast Guard and the applicant.

OMB Approval Number: 3060–0556.

Title: Section 80.1061, Special requirements for 406.025 MHz EPIRBs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; and Businesses or other for-profit entities.

Number of Respondents: 9,500.

Estimated Time Per Response: 0.084 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 798 hours.

Total Annual Cost: None.

Needs and Uses: Section 80.1061 is needed to require owners of 406.025 MHz Emergency Position Indicating Radiobeacons (EPIRBs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). If the collection were not conducted, NOAA would not have access to this information which would increase the time needed to complete a search and rescue operation.

OMB Control Number: 3060–0554.

Title: Section 87.199, Special requirements for 406.025 MHz ELTs.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; and Businesses or other for-profit entities.

Number of Respondents: 500.

Estimated Time Per Response: 0.084 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 42 hours.

Total Annual Cost: None.

Needs and Uses: Section 87.199 is needed to require owners of 406.025 MHz Emergency Locator Transmitters (ELTs) to register information such as name, address, and type of vessel with the National Oceanic and Atmospheric Administration (NOAA). If the collection were not conducted, NOAA would not have access to this information which would increase the time needed to complete a search and rescue operation.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11792 Filed 5–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

April 26, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 12, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–XXXX.

Title: Part 18—Regulations for RF Lighting Devices (Sec. 18.307) (OET Doc. 98–42).

Form Number: N/A.

Type of Review: New collection.

Respondents: Individuals or households, Not-for-profit institutions; Business or other for-profit; and State, Local or Tribal Government.

Number of Respondents: 30.

Estimated Time per Response: 1 hour.

Frequency of Response: Recordkeeping; On occasion reporting requirements.

Total Annual Burden: 30 hours.

Total Annual Cost: None.

Needs and Uses: The collection of information are third party requirements made necessary by Section 18.307 of the Commission Rules governing regulations for radio frequency (RF) lighting devices. The Commission will require that manufacturers of RF lighting devices must provide an advisory statement either on the product packaging or with other user documentation, similar to the following: This product may cause interference to radio equipment and should not be installed near maritime safety communications equipment or other critical navigation or communication equipment operating between 0.45–30 MHz.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11793 Filed 5–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval.

April 29, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0084.

Title: Ownership Report for Noncommercial Educational Station.

Form Number: FCC 323–E.

Type of Review: Revision of a currently approved collection.

Respondents: Not-for-profit institutions.

Number of Respondents: 2,368.

Estimate Time Per Response: 30 mins. (0.5 hours).

Frequency of Response: Recordkeeping; Biennially; On occasion; and Upon renewal reporting requirements.

Total Annual Burden: 1,184 hours.

Total Annual Costs: 1,658,000.

Needs and Uses: FCC Form 323–E is filed by a licensee/permittee of noncommercial AM, FM, and TV stations when the original construction permit is granted; on the date the licensee/permittee applies for a station license; in conjunction with the station's renewal application; and every two years thereafter. The data are used by FCC staff to determine if a licensee/permittee is abiding by the FCC's multiple ownership rules.

OMB Control Number: 3060–0405.

Title: Application for Authority to Construct or Make Changes in an FM Translator or FM Booster Station.

Form Number: FCC 349.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 1,000.

Estimate Time Per Response: 3.0 hours.

Frequency of Response: Recordkeeping; On occasion reporting requirements; Third party disclosure.

Total Annual Burden: 3,000 hours.

Total Annual Costs: 2,398,000.

Needs and Uses: FCC Form 349 is used to apply for authority to construct a new FM transitor or FM booster broadcast station, or to make changes in existing facilities. The data are used by FCC staff to ensure that applicants meet basic statutory requirements and will not cause interference to other licensed broadcast services.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11791 Filed 5–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 3, 1999.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 10, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, S.W., Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les

Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0688.

Title: Abbreviated Cost-of-Service Filing for Cable Network Upgrades.

Form Number: FCC Form 1235.

Type of Review: Extension of a currently approved collection.

Respondents: Business and other for-profit entities; State, local or tribal governments.

Number of Respondents: 100.

Estimated Time Per Response: 10–20 hours.

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 1,500 hours.

Total Annual Cost: $200.

Needs and Uses: FCC Form 1235 is an abbreviated cost of service filing for significant network upgrades that allows cable operators to justify rate increases related to capital expenditures used to improve rate-regulated cable services. FCC Form 1235 is reviewed by the cable operator's respective local franchise authority.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–11794 Filed 5–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 96–128; DA 99–841]

Comments Requested To Update and Refresh Record for the Inmate Payphone Service Proceeding

AGENCY: Federal Communications Commission.

ACTION: Notice; comments requested.

SUMMARY: This document seeks comment to update and refresh the record on inmate issues in the Pay Telephone Reclassification and Compensation proceeding.

DATES: Comments are due on or before June 21, 1999, and reply comments are due on or before July 21, 1999.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, TW–325, Washington, DC 20554. One copy of each filing must be sent also to International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, and one copy to the Chief, Competitive Pricing Division, Common Carrier Bureau, Federal Communications Commission, 445 12th Street, SW, Room 5–A227, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lynne Milne or Renee Terry of the Competitive Pricing Division, Common Carrier Bureau, (202) 418–1520; TTY (202) 418–0484.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice that was released on May 6, 1999 (DA 99–841). The full text of the Public Notice is available for inspection and copying during normal business hours in the FCC Reference Information Center, 445 12th Street, SW, Room CY–A257, Washington, DC 20554. The complete text of this Public Notice also may be purchased from the Commission's duplicating contractor, ITS, 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Martha Contee at (202) 418–0260, TTY (202) 418–2555, or at mcontee@fcc.gov.

1. On January 30, 1998, the United States Court of Appeals for the District of Columbia Circuit granted the Federal Communications Commission's (Commission) motion for voluntary remand of the inmate issues raised on reconsideration of the Commission's decision in the *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*. In this Public Notice, the Common Carrier Bureau invites parties to update their comments and refresh the record in order to provide a full and up–to–date record of the inmate issues in this proceeding.

2. We seek comment on state–imposed rate ceilings. The Inmate Calling Service Providers Coalition (Coalition) requests that the Commission preempt each state ceiling, arguing that state–imposed rate ceilings on intrastate inmate calls prevent payphone providers who serve correctional facilities from recovering the costs of doing business in the correctional facility environment in violation of section 276 of the Telecommunications Act of 1996 (1996 Act). To ensure that the Commission has before it up–to–date data regarding state–imposed ceilings on payphone providers who serve correctional facilities and information regarding the circumstances under which the ceilings apply, we invite the parties to refresh the record regarding the number of states that currently have established such ceilings, the amount of each state's ceiling, and the states, if any, where incumbent local exchange carriers provide services for correctional institutions. In addition, we seek information regarding how the ceilings are applied. For example, please explain whether the ceilings apply to the local call, the operator service charge, or a combination thereof. We also seek information on whether the state–mandated intrastate rate ceilings apply only to correctional facility calls or more generally to all calls made from payphones. Because the Commission's decisions in this proceeding involve a review of state–imposed ceilings, we invite comments from the states on this matter.

3. We seek comment on compensation mechanisms for payphone providers who serve correctional facilities. The Coalition argues that the Commission has failed to prescribe fair compensation to payphone providers who serve correctional facilities in violation of section 276 of the 1996 Act. We invite the parties to update their comments on the compensation mechanism that should be applied to payphone providers who serve correctional facilities. For example, we request that commenters specify a proposed compensation mechanism for payphone providers who serve correctional facilities, if the $0.90 compensation element proposed by the Coalition is not adopted. In addition, we seek comment on whether a national compensation rate for payphone providers who serve correctional facilities should be adopted or whether compensation should be established for federal, state, and local correctional institutions and vary by state; if so, we seek comment on how compensation should be determined.

4. We seek up-to-date information regarding the costs to serve the correctional facilities and the level and nature of bad debt associated with payphone providers who serve correctional facilities. We also seek comment on whether the use of debit cards would mitigate the level of bad debt associated with payphone providers who serve correctional facilities. In particular, we ask what specific factors prohibit the use of debit cards, and if such factors exist in each correctional institution. We also seek comment on whether the incumbent local exchange carriers experience the same type and level of bad debt that the Coalition has suggested in its submissions and we encourage incumbent local exchange carriers to update their comments on this issue.

5. We invite the parties to update their comments to address whether the incumbent local exchange carriers have discontinued all intrastate and interstate subsidies and discrimination with respect to their services for correctional institutions. If not, commenters should

specify the type of subsidy or discrimination that remains.

6. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. As described in *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (May 1, 1998), comments through the ECFS can be sent as an electronic file via the Internet to <http://www.fcc.gov/e-file/ecfs.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and CC Docket No. 96–128. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to ecfs@fcc.gov, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

7. Parties who choose to file by paper must file an original and four copies of all comments and reply comments. All comments and reply comments should reference CC Docket No. 96–128. Paper comments and reply comments must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445—12th Street, SW, TW–A325, Washington, DC 20554. In addition, one copy must be filed with International Transcription Services (ITS), the Commission's duplicating contractor, at its office at 1231 20th Street, NW, Washington, DC 20036, and one copy must be filed with the Chief, Competitive Pricing Division, Common Carrier Bureau, 445—12th Street, SW, Room 5–A227, Washington, DC 20554.

8. Parties submitting diskettes should submit them along with their paper filings to the Commission's Office of the Secretary. Submissions should be on a 3.5 inch diskette formatted in an DOS PC compatible form. The document should be saved into WordPerfect 5.1 for Windows format. The diskette should be submitted in "read only" mode. The diskette should be clearly labelled with the party's name, proceeding, type of submission (comment or reply comment), CC Docket No. 96–128, and date of submission.

9. This matter shall be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules at 47 CFR 1.1200, 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required by 47 CFR 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but-disclose proceedings are set forth in 47 CFR 1.1206(b).

Federal Communications Commission.

Kris A. Monteith,

Deputy Chief, Competitive Pricing Division, Common Carrier Bureau.

[FR Doc. 99–11729 Filed 5–10–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting; Open Commission Meeting, Thursday, May 13, 1999

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, May 13, 1999, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW., Washington, D.C. The Commission will hold an additional Open Meeting on Thursday, May 27, 1999.

Item No, Bureau, and Subject

1—Cable Services—Title: Implementation of Section 304 of the Telecommunications Act of 1996 and Commercial Availability of Navigation Devices (CS Docket No. 97–80). Summary: The Commission will consider an Order on Reconsideration that addresses petitions for reconsideration of the Commission's Report and Order requiring set-top boxes and other navigational devices to be commercially available.

2—Wireless Telecommunications—Title: Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems (CC Docket No. 94–102, RM–8143). Summary: The Commission will consider a Second Report and Order concerning ways to improve wireless 911 call completion.

3—Wireless Telecommunications—Title: Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission's Rules. Summary: The Commission will consider a Notice of Proposed Rulemaking proposing service rules for the commercial spectrum blocks to be auctioned and licensed in the 746–806 MHz band.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Public Affairs, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov/realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12033 Filed 5–7–99; 3:41 pm]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY

Background. Notice is hereby given of the final approval of proposed information collections by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83-Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT:

Chief, Financial Reports Section—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3829)

OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7860)

Final approval under OMB delegated authority of the extension for three years, with revision, of the following reports:

Report title: Annual Report of Foreign Banking Organizations; Foreign Banking Organization Structure Report on U.S. Banking and Nonbanking Activities; Foreign Banking Organization Confidential Report of Operations

Agency form number: FR Y-7; FR Y-7A; FR 2068

OMB control number: 7100-0125

Effective date: December 31, 1999

Frequency: Annual

Reporters: foreign banking organizations

Annual reporting hours: 5,150 hours

Estimated average hours per response: 15.75

Number of respondents: 327

Small businesses are not affected.

General description of report: These information collections are mandatory (12 U.S.C. 1844(c), 3106, and 3108(a)). Upon request from a respondent certain information in the FR Y-7 and FR Y-7A may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (6)). The FR 2068 is a confidential report of operations that is exempted from public disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(8) and 12 CFR 261.11(h).

Abstract: The FR Y-7, FR Y-7A, and FR 2068 are annual reports completed by foreign banking organizations that engage in banking in the United States, either indirectly through a subsidiary bank, Edge or agreement corporation, or commercial lending company, or directly through a branch or agency. The FR Y-7 collects financial, managerial, and organizational information on the foreign banking organization. The FR 2068 collects confidential financial and organizational information, which is not collected in the FR Y-7. A foreign banking organization is currently exempt from filing the FR 2068 if it meets certain criteria related to the size and type of its U.S. banking operations. The FR Y-7A collects structural information on the foreign banking organization and its subsidiaries. All of the reports are filed as of the end of the reporter's fiscal year. The information contained in these reports is used by the Federal Reserve System to assess the foreign banking organization's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

Current Actions: The Federal Reserve is reducing regulatory reporting burden for foreign banking organizations (FBOs) by eliminating the FR 2068 and by reducing and clarifying the amount of information to be reported on the FR Y-7 and FR Y-7A. Most of the information collected in the FR 2068 is now publicly available. The publicly available portion of two of the items currently reported on the FR 2068 will be added to the FR Y-7: (1) financial statements of unconsolidated majority-owned related subsidiaries, and (2) financial data on unconsolidated minority-owned related companies. The most significant changes on the FR Y-7 are the elimination of the information requested on directors and officers, the simplification of the information requested for the organization chart, and the addition of two items currently reported on the FR 2068 as mentioned above. The most significant changes on the FR Y-7A are the simplification of the information requested on securities held through debts previously contracted and on Legal Authority, and the addition of four new items.

The Federal Reserve received two public comment letters from a law firm and a trade association pertaining to the proposed revisions. Both organizations strongly supported the Board's proposal to streamline and reduce the burden associated with these reports. Both commenters also suggested that foreign banking organizations (FBOs) be allowed to include companies not reportable on the FR Y-7 organization chart, for purposes of clarity and retaining a complete record of the FBO's U.S. interest, if the companies are designated as not reportable. The Federal Reserve agrees with this suggestion and has clarified the instructions to allow this option. In addition, both commenters asked for further clarification to the instructions for Report Item 2 of the FR Y-7A, which will be provided later this year in the form of a chart supplementing the instructions.

The trade association also expressed concern about including additional subsidiaries in Report Item 2 of the FR Y-7A, as proposed. The information requested for this item is consistent with the information requested for the organizational chart in Report Item 3 of the FR Y-7. The Federal Reserve needs this information to provide a complete picture of the FBO's organizational structure for purposes of assessing the safety and soundness of the complete organization.

The law firm suggested that the Federal Reserve allow filers for whom required information is not available in accord with their domestic law at April 30 of each year, to submit their entire FR Y-7 filing by June 30 for the fiscal year then-ended. The Federal Reserve needs the data on the current filing system in order to assess the FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

The law firm also suggested several modifications to the Facsimile Confirmation Report which is sent to the institution each year after their initial FR Y-7A filing for verification. The Federal Reserve will review the Facsimile Confirmation Report and will consider incorporating the law firm's suggestions after the year 2000.

Finally, the law firm commented that the estimated burden hours per response are too low. While the Federal Reserve realizes that large organizations may take much more than 15.75 hours to complete this information, small companies with limited U.S. presence require much less time. This amount represents an average for all respondents.

Discontinuance of the following report under OMB delegated authority:

Report title: Notification Pursuant to Section 211.23(h) of Regulation K on Acquisitions by Foreign Banking Organizations

Agency form number: FR 4002

OMB control number: 7100-0110

Frequency: Event-generated

Reporters: foreign banking organizations

Annual reporting hours: 80

Estimated average hours per response: 0.50

Number of respondents: 160

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 1844(c), 3106, and 3108(a)). Upon request from a respondent certain information in the FR 4002 may be given confidential treatment pursuant to the Freedom of Information Act (5 U.S.C. 552(b)(4) and (6)).

Abstract: The FR 4002 is an event-generated information collection that foreign banking organizations are required to submit, in a letter to the appropriate Federal Reserve Bank. The information is due within thirty days of the end of a quarter during which the foreign banking organization acquires shares of companies that engage, directly or indirectly, in business in the United States, or during which a foreign subsidiary of the FBO commences direct activities in the United States. The letter

should include a brief description of the nature and scope of each company's U.S. business(es), including the four-digit Standard Industrial Classification (SIC) code(s) of the U.S. activities of the company and of its direct parent, and a statement of total assets and total revenue of the direct parent. The foreign banking organization is not required to report information whose collection would cause the FBO to incur "unreasonable effort or expense," or information that is otherwise "unknown and not reasonably available."

Current Actions: In December 1997, the Board proposed changes to Regulation K to require the information reported in the FR 4002 annually instead of quarterly (62 FR 68424). If the Board implements these proposed changes, the information collected on the FR 4002 will be reflected annually in the FR Y-7 and FR Y-7A, eliminating the need for this separate information collection. The FR 4002 will be discontinued if these proposed changes to Regulation K are adopted upon publication of the final rulemaking. The Federal Reserve received two public comment letters pertaining to the proposed revisions from a law firm and a trade association. Both organizations strongly supported the Federal Reserve's proposal.

Board of Governors of the Federal Reserve System, May 5, 1999.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 99–11810 Filed 5–10–99; 8:45AM]

Billing Code 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 4, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Banking Corporation of Florida, Naples, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Florida Bank, Naples, Florida (in organization).

B. Federal Reserve Bank of Chicago (Philip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690-1413:

1. Strategic Capital Bancorp, Inc., Champaign, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Strategic Capital Bank, Champaign, Illinois (in organization).

Board of Governors of the Federal Reserve System, May 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11875 Filed 5–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 26, 1999.

A. Federal Reserve Bank of San Francisco (Maria Villanueva, Manager of Analytical Support, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105-1579:

1. Home Valley Bancorp, Grants Pass, Oregon; to engage *de novo* through its subsidiary, Valley Mortgage Funding Corporation, Grants Pass, Oregon, in mortgage lending activities, pursuant to § 225.28(b)(1) of Regulation Y.

Board of Governors of the Federal Reserve System, May 6, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–11876 Filed 5–10–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 12:00 noon, Monday, May 17, 1999.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates

procedural and other information about the meeting.

Dated: May 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12032 Filed 5–7–99; 3:39 pm]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics: Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services Announces the Following Advisory Committee Meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Workgroup on Computer-based Patient Records.

Time and Date: 9 a.m.–5:30 p.m., May 17, 1999; 9 a.m.–5 p.m., May 18, 1999.

Place: Agency for Health Care Policy and Research (AHCPR), AHCPR Conference Center, Conference Rooms C and D, 6010 Executive Boulevard, 4th Floor, Rockville, MD 20852.

Status: Open.

Purpose: At this meeting, the workgroup will hear a series of panel presentations on clinical vocabularies, terminologies, statistical classifications and code sets, clinical specific code sets, medical code sets, nursing code sets, and drug and device code sets.

Contact Person for More Information: Substantive program information as well as summaries of meetings and a roaster of committee members may be obtained from J. Michael Fitzmaurice, Ph.D., Agency for Health Care Policy and Research, 2101 East Jefferson Street, #602, Rockville, MD 20852, phone: 301–594–1483, x1052; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 436–7050. Information also is available on the NCVHS home page of the HHS website: http://aspe.os.dhhs.gov/ncvhs, where an agenda for the meeting will be posted when available.

Dated: May 4, 1999.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 99–11755 Filed 5–10–99; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

Centers for Disease Control and Prevention

[ATSDR–146]

Availability of the Document, Draft Agenda for Public Health Activities for Fiscal Years 1999 and 2000 at U.S. Department of Energy Sites

AGENCIES: Agency for Toxic Substances and Disease Registry (ATSDR), Centers for Disease Control and Prevention (CDC).

ACTION: Notice.

SUMMARY: The Agency for Toxic Substances and Disease Registry jointly announces with the Centers for Disease Control and Prevention of the Department of Health and Human Services and the Office of Environment, Safety, and Health of the Department of Energy, the availability for public comment of the document, Draft Agenda for Public Health Activities for Fiscal Years 1999 and 2000 at U.S. Department of Energy Sites.

DATES: Comments must be received by June 30, 1999.

ADDRESSES: The document is available by contacting the Chief, Program Evaluation, Records, and Information Services Branch, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road (E–56), Atlanta, GA 30333. Please submit written comments relating to the document to the same location. Generally, comments submitted will be available to the public upon request. Information submitted which is claimed as personal, medical, or otherwise confidential and proprietary must be clearly marked as such. Information so marked will not be disclosed except in accordance with 45 CFR Part 5.

FOR FURTHER INFORMATION CONTACT: Further information may be obtained from the location noted above, as well as on the INTERNET websites for ATSDR, CDC, or DOE. These are: http://www.atsdr.cdc.gov/; http://www.cdc.gov/; and http://tis.eh.doe.gov/epi/, respectively.

SUPPLEMENTARY INFORMATION: Congress included language in the Conference Report to the Fiscal Year 1999 Appropriations Bill for the Department of Energy which directed DOE and the Department of Health and Human Services (DHHS) to prepare a consolidated and coherent strategy that includes a public health agenda for each DOE site.

The Department of Health and Human Services conducts epidemiologic investigations involving residents of communities in the vicinity of DOE facilities, workers at DOE facilities, and other persons potentially exposed to radiation and other hazards relevant to nuclear weapons production and research. ATSDR has specific responsibilities for public health activities at DOE sites under sections 104, 105, 107, and 120 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or "Superfund"). These activities include: health consultations and public health assessments at DOE sites listed on, or proposed for, the Superfund National Priorities List and at sites that are the subject of petitions from the public; and other health-related activities such as epidemiologic studies, health surveillance, exposure and disease registries, health education, substance-specific applied research, emergency response, and preparation of toxicological profiles.

CDC and ATSDR have been working with DOE to develop a public health agenda that includes specific site plans for each DOE site, and that lays out a coordinated activity plan based on public health needs established by HHS and DOE. This draft agenda is being made available for public comment, so as to secure the benefit of public review and input before finalizing each site plan.

This document, Draft Agenda for Public Health Activities for Fiscal Years 1999 and 2000 at U.S. Department of Energy Sites, and its availability for public comment are being announced through this **Federal Register** notice.

Dated: March 5, 1999.

Georgi Jones,

Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 99–11772 Filed 5–10–99; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99121]

Environmental Community Based Organization Capacity Building Grant; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a grant program to assist community based organizations (CBO) to educate communities about energy-related health activities conducted near Department of Energy (DOE) sites. The purpose of this program is to conduct workshops, community meetings, collaborate with communities and develop material which may be used to educate communities about energy-related public health activities. This program addresses the "Healthy People 2000" priority area of Environmental Health.

B. Eligible Applicants

The solicitation is open to non-profit community-based organizations with a documented history of providing energy-related environmental health education/training to communities located near DOE nuclear weapons facilities sites.

Note: Pub. L. 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $200,000 is available in FY 1999 to fund up to 4 awards. It is expected that the average award will be $50,000. It is expected that the awards will begin on or about September 1, 1999, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this grant the recipient activities may include:

1. Prepare educational materials related to energy-related public health activities around DOE sites; and

2. Conduct community workshops and public meetings to provide information on the health effects of nuclear and chemical elements on the community.

3. Collaborate with the community to improve community understanding of energy-related health activities.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

F. Submission and Deadline

Application:

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before July 15, 1999, submit the application to the Grants Management Specialist identified in "Where to Obtain Additional Information".

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for orderly processing. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. The extent to which the applicant documents a history of providing education and training on energy-related issues to communities near DOE sites. (25%)

2. The extent to which the proposal addresses a plan for collaborating with the community to enhance the communities' understanding of energy-related health issues. (50%)

3. The qualifications and commitment of the applicant; allocations of time and effort of staff devoted to the project; the qualifications of the primary and support staff; and the adequacy of existing and proposed facilities and resources for conducting project activities. (25%)

4. *Budget:* The proposed budget on the basis of its reasonableness, concise and clear justification, and consistency with the intended use of grant funds. (Not Scored)

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Progress reports annually, no more than 30 days after the end of the budget period;

2. Financial status report, no more than 90 days after the end of the budget period; and,

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in "Where to Obtain Additional Information."

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317 of the Public Health Service Act, [42 U.S.C. section 241(a) and 247(b)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

You can download this proposal and application forms from the internet at: http://www.cdc.gov double click on "funding".

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical

assistance may be obtained from: Victoria Sepe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99121, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, NE, Room 3000, Atlanta, GA 30341 telephone (770) 488–2721, Email address vxw1@cdc.gov.

For program technical assistance, contact: Mr. Art Robinson, Public Health Educator, Division of Environmental Hazards and Health Effects, National Center for Environmental Health, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Chamblee, Georgia 30341, Telephone: (770) 488–7040, E-mail address: ajr3@cdc.gov

Dated: May 5, 1999.

John L. Williams,

Director, Procurement and Grants Office Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11774 Filed 5–10–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99132]

Notice of Availability of Funds; Varicella Surveillance and Epidemiologic Studies

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program to conduct surveillance and case investigations for varicella disease (chickenpox). This program will supplement existing local, State and national surveillance efforts and will facilitate research on impact of varicella vaccine on disease. Funds will be provided to conduct active surveillance and epidemiologic studies to monitor disease trends related to vaccine coverage. This program addresses the "Healthy People 2000" priority area 20, Immunization and Infectious Diseases.

The purpose of this program is:

1. To maintain a surveillance system to accurately monitor trends in varicella incidence by age group.
2. To monitor varicella vaccine coverage by age group.
3. To develop, implement, and evaluate strategies for the prevention and control of varicella.
4. To conduct other applied epidemiological research related to varicella disease and varicella vaccine.

B. Eligible Applicants

Assistance will be provided only to official State and local public health agencies or their bona fide agents including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, federally-recognized Indian tribal governments the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

C. Availability of Funds

1. Approximately $665,000 is available in FY 1999 to fund two to three awards. The average award will be about $200,000, ranging from $150,000 to $250,000. It is expected that awards will begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Funds awarded under this cooperative agreement cannot be used to supplant existing state expenditures in this area.

D. Program Requirements

In conducting the activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under (1.) Recipient Activities and CDC will be responsible for the activities listed under (2.) CDC Activities.

1. Recipient Activities

a. Establish, maintain, and evaluate a surveillance system with the capacity to monitor varicella disease trends by age group in a well-defined population. To ensure statistical validity, these surveillance areas must have populations of at least 300,000 to provide a sufficient number of varicella cases each year as varicella incidence declines with increasing use of the vaccine in children.

b. Perform case investigations and collect, analyze, and disseminate information using this information.

c. Collect and verify with health care providers the immunization status of all reported cases of breakthrough disease, including age of vaccination and other vaccines administered simultaneously or within 30 days.

d. Collect and report information on vaccine coverage by age group (age groups <1 year, 1 year, 2 years, 3 years, 4 years, 5 years, 6 years, 7 years, 8–9 years, 10–12 years, 13–14 years, 15–19 years and >20 years).

e. Develop, implement and evaluate varicella prevention and control strategies including outbreak control.

f. Conduct applied epidemiological research. Examples of such projects include but are not limited to the following: evaluation of risk factors for vaccine failure; evaluation of completeness of reporting by age group; risk factors for severe varicella disease and hospitalization; studies of vaccine effectiveness; reliability of physician diagnosis of breakthrough disease and reliability of parental history of varicella among children less than 10 years.

g. Provide laboratory specimens such as disease-causing isolates to appropriate organizations (which may include CDC) for laboratory evaluation needed for varicella surveillance or as part of epidemiological studies, e.g. virus strain identification, confirmation of breakthrough disease, and molecular epidemiological studies.

h. Manage, analyze and interpret data and present and publish important public health findings.

i. Participate in planning meetings to coordinate varicella surveillance project activities.

j. Function as part of a network of varicella surveillance sites.

3. CDC Activities

a. Provide consultation, scientific and technical assistance in general operation of the project and in the design and conduct of applied research projects.

b. Provide assistance to recipients regarding development and implementation of all surveillance activities, data collection methods including a standard case investigation form, and analysis of data.

c. Assist in the development and implementation of a standard data management process, including development of computer programs for data entry and interim analyses.

d. Assist in monitoring and evaluating scientific and operational accomplishments of the varicella surveillance project and progress in achieving the purpose and overall goals of this program.

e. Participate in analysis and interpretation of data and in presentation and publication of findings.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. The program narrative should include the following sections: background, objectives,

methods, plan of operation, and plan of evaluation. The narrative should describe:

1. The demographic characteristics of the general population upon which the surveillance system will focus.

2. The epidemiology of varicella in the surveillance population during the period 1995–1999 and varicella vaccine coverage among specified age groups during the period 1995–1999. The availability of historical data for baseline disease trends by age group prior to, and following, implementation of a vaccination program is required. These data should be comparable to that proposed for collection through this project in order to monitor trends.

3. The sources of reporting within the reporting area under study. Appropriate reporting and sources for surveillance should be identified and described in detail. If sampling is proposed, it must be described in detail including how it will be performed and how validity will be assured.

4. The operation of the surveillance system. This should include details of reporting, type and format of data to be obtained, mechanism for monitoring the system, and personnel requirements for obtaining, managing and analyzing data. The proposed surveillance system should provide the basis for epidemiological studies of the impact of varicella vaccine, identify cases occurring in vaccinated individuals, document the severity of disease and facilitate public health action.

5. A brief proposal for implementing and evaluating a disease prevention and/or control strategy.

6. A brief proposal for an applied epidemiological research study (addressing issues other than disease prevention and control strategies).

7. Background information and other data to demonstrate that the applicant has the appropriate organizational structure, administrative support, and ability to access appropriate target populations or study subjects.

8. The qualifications, including training and experience, of project personnel, and projected level of effort by each toward accomplishment of the proposed activities.

Budget Instructions

For each line item (as identified on the Form 424a of the application), show both Federal and non-Federal (e.g., State funding) shares of total cost for the varicella surveillance project. For each staff member listed under the Personnel line item, indicate their specific responsibilities relative to each of the proposed projects. Include provisions for travel of the principal investigator and one varicella surveillance project participant to two meetings at CDC in Atlanta during the first year of the program.

A budget justification is required for all budget items, consistent with the purpose and objectives of the project. Letters of support should be included if applicants anticipate the participation of other organizations in conducting proposed activities.

The application narrative (excluding budget, appendices, and required forms) must not exceed 30 single-spaced pages, printed on one side, with one-inch margins, and unreduced font. Only the following information should be presented in appendices: Letters of support, documentation of bona fide agent status, curricula vitaes, and budget. All other materials or information that should be included in the narrative will not be accepted if placed in the appendices.

F. Submission and Deadline

Letter of Intent

In order to enable CDC to determine the level of interest in the program announcement, a non-binding letter-of-intent to apply is requested from potential applicants. The letter-of-intent should include: (1) Name and address of institution, and (2) name, address, and telephone number of contact person. The letter-of-intent should be submitted to the Grants Management Specialist identified in Section J "Where to Obtain Additional Information on or before June 11, 1999."

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are provided in the application kit. On or before July 12, 1999, submit the application to: Mattie Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99132, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000,Atlanta, GA 30341–4146,

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline; or

(b) Sent on or before the deadline date and received in time for submission to the review panel. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier of U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria (a) or (b) above a considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually by an independent review group appointed by CDC according to the following criteria:

(1) Understanding the objectives of the varicella surveillance project (5 points).

(a) Demonstration of a clear understanding of the background and objectives of this cooperative agreement program and the feasibility of accomplishing the outcomes described.

(2) Description of the population base and the vaccine providers in the varicella surveillance project site (5 points)

(a) Clear definition of the geographic area and population base in which the varicella surveillance site will operate. Detailed description of the demographics of the proposed population base including the extent to which the population base is diverse in terms of demographics and special populations.

(b) Description of vaccination providers in both the private and public sectors within the varicella surveillance site.

(3) Adequacy of baseline data for varicella surveillance; availability of trend data for varicella surveillance from 1995–1999 and comparability of these data to the proposed surveillance system (20 points).

(4) Description of existing capacity to perform surveillance for varicella, to assess vaccine impact, and to perform other applied epidemiological research (40 points).

(a) Adequacy of plan for performing and maintaining varicella surveillance that will cover all age groups. Description of methods for monitoring varicella disease in all age groups including the adequacy of an appropriate plan, and the extent to which the proposed sources of case reports will ensure an adequate sample size and representativeness of populations and all age groups at risk for varicella to ensure that the epidemiological analysis of the impact of varicella vaccine will be appropriate and statistically valid. If sampling is proposed, provide a detailed description of how sampling will be performed and how validity will be assured.

(b) Adequacy of plan for monitoring vaccine coverage. Description of plan for obtaining information on vaccine

coverage by age group on an ongoing basis.

(c) Adequacy of plans for data management. Description of plans for data management and analysis.

(d) Quality of proposals submitted for:

(i) Implementing and evaluating a disease prevention and/or control strategy.

(ii) An applied epidemiological research study (addressing an issue other then disease prevention and control strategies).

(5) Operational plan (15 points).

(a) The plan should identify the proposed organizational and operating structure/procedures including the roles and responsibilities of all participating agencies, organizations, institutions, and individuals. Description of applicant's partnerships with necessary and appropriate organizations for establishing and operating the proposed varicella surveillance including appropriate public health action in response to outbreaks.

(b) Ability to function as part of a surveillance network. The extent to which the applicant describes plans for collaboration with other varicella surveillance sites in the establishment and operation of the varicella surveillance and individual varicella surveillance projects, including project design/development (e.g., protocols) and synthesis and dissemination of findings.

(c) Quality of the proposed projects (as requested in the Application Content section above) regarding consistency with public health needs, intent of this program, feasibility, methodology/approach, and collaboration/participation of partner organizations. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

(d) Demonstration of support from non-applicant participating agencies, institutions, organizations, etc. indicated in applicant's operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate collaborators willingness to be participants in the varicella surveillance activities. Do not include letters of support from CDC personnel.

(6) Personnel qualifications and management plan (10 points).

(a) Identification of applicant's key professional personnel to be assigned to the varicella surveillance site and varicella surveillance projects (provide curriculum vitae for each in an appendix). Clear identification of their respective roles in the management and operation of the varicella surveillance site. Descriptions of their experience in conducting work similar to that proposed in this announcement.

(b) Description of all support staff and services to be assigned to the varicella surveillance project.

(7) Evaluation (5 points).

(a) Quality of plan for monitoring and evaluating the completeness of surveillance, the quality of vaccine coverage data, and the scientific and operational accomplishments of the varicella surveillance site and of individual varicella surveillance projects.

(b) Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

(8) Budget (not scored).

Extent to which the line item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

If requesting funds for any contracts, provide the following information for each proposed contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, and (5) method of contractor selection (e.g., sole-source or competitive solicitation).

(9) Human Subjects (not scored).

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual progress reports
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial report and performance report, no more than 90 days after the end of the project period

Send all reports to the Grants Management Specialist identified in Section J "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR98–1 Human Subjects Requirements
AR98–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR98–7 Executive Order 12372 Review
AR98–9 Paperwork Reduction Act Requirements
AR98–10 Smoke-Free Workplace Requirements
AR98–11 Healthy People 2000
AR98–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317(k)(1), (2) of the Public Health Service Act [42 U.S.C. sections 241(a) and 247b(k)(1), (2)], as amended. The Catalog of Federal Domestic Assistance number is 93.185.

J. Where To Obtain Additional Information

Copies of this announcement and application forms can be downloaded by using the CDC homepage address on the Internet: http://www.cdc.gov (click on funding).

To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

To obtain additional information contact: Mattie Jackson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office Announcement 99132, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000 Atlanta, GA 30341–4146, Telephone (770) 488–2718 E-mail: mij3@cdc.gov.

For programmatic technical assistance, contact: Jane Seward, MBBS, MPH, Medical Epidemiologist, Varicella Activity, VPDB, National Immunization Program, Centers for Disease Control and Prevention (CDC), MS E–61, Atlanta, GA 30333, Telephone (404) 639–8230, E-mail: jfs2@cdc.gov.

Dated: May 5, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11773 Filed 5–10–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0319]

Determination of Regulatory Review Period for Purposes of Patent Extension; GenESA®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for GenESA® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product GenESA® (arbutamine hydrochloride). GenESA® is indicated for diagnosing the presence or absence of coronary artery disease in patients who cannot exercise adequately when used in conjunction with radionuclide myocardial perfusion imaging or echocardiography. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for GenESA® (U.S. Patent No. 5,234,404) from Gensia Sicor, Inc., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 17, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of GenESA® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for GenESA® is 2,641 days. Of this time, 1,295 days occurred during the testing phase of the regulatory review period, while 1,346 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: June 22, 1990. The applicant claims June 23, 1990, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was June 22, 1990, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: January 6, 1994. The applicant claims December 21, 1993, as the date the new drug application (NDA) for GenESA® (NDA 20–420) was initially submitted. However, FDA records indicate that NDA 20–420 was submitted on January 6, 1994.

3. *The date the application was approved*: September 12, 1997. FDA has verified the applicant's claim that NDA 20–420 was approved on September 12, 1997.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 399 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 12, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 8, 1999, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–11822 Filed 5–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98E–0842]

Determination of Regulatory Review Period for Purposes of Patent Extension; Aggrastat®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Aggrastat® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an

application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–6620.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Aggrastat® (tirofiban hydrochloride). Aggrastat® , in combination with heparin, is indicated for the treatment of acute coronary syndrome. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Aggrastat® (U.S. Patent No. 5,292,756) from Merck & Co., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated December 11, 1998, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Aggrastat® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Aggrastat® is 2,247 days. Of this time, 2,051 days occurred during the testing phase of the regulatory review period, while 196 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355) became effective*: March 21, 1992. The applicant claims March 20, 1992, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was March 21, 1992, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 505 of the act*: October 31, 1997. FDA has verified the applicant's claim that the new drug application (NDA) for Aggrastat® (NDA 20–912) was initially submitted on October 31, 1997.

3. *The date the application was approved*: May 14, 1998. FDA has verified the applicant's claim that NDA 20–912 was approved on May 14, 1998.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 433 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before July 12, 1999, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before November 11, 1999 for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 29, 1999.

Thomas J. McGinnis,

Deputy Associate Commissioner for Health Affairs.

[FR Doc. 99–11821 Filed 5–10–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[HCFA–9000–N]

RIN 0938–AJ37

Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Third Quarter, 1998

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice lists HCFA manual instructions, substantive and interpretive regulations, and other **Federal Register** notices that were published during July, August, and September of 1998, relating to the Medicare and Medicaid programs. This notice also identifies certain devices with investigational device exemption numbers approved by the Food and Drug Administration that potentially may be covered under Medicare.

Section 1871(c) of the Social Security Act requires that we publish a list of Medicare issuances in the **Federal Register** at least every 3 months. Although we are not mandated to do so by statute, for the sake of completeness of the listing, we are also including all Medicaid issuances and Medicare and Medicaid substantive and interpretive regulations (proposed and final) published during this timeframe.

FOR FURTHER INFORMATION CONTACT: It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these

items. Copies are not available through the contact persons.

Questions concerning Medicare items in Addendum III may be addressed to Bridget Wilhite, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, (410) 786–5248.

Questions concerning Medicaid items in Addendum III may be addressed to Betty Stanton, Center for Medicaid State Operations, Policy Coordination and Planning Group, Health Care Financing Administration, S2–26–13, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–3247.

Questions concerning Food and Drug Administration-approved investigational device exemptions may be addressed to Sharon Hippler, Office of Clinical Standards and Quality, Coverage and Analysis Group, Health Care Financing Administration, C4–11–04, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–4633.

Questions concerning all other information may be addressed to Kristy Nishimoto, Office of Communications and Operations Support, Division of Regulations and Issuances, Health Care Financing Administration, C5–16–03, 7500 Security Boulevard, Baltimore, MD 21244–1850, (410) 786–8517.

SUPPLEMENTARY INFORMATION:

I. Program Issuances

The Health Care Financing Administration (HCFA) is responsible for administering the Medicare and Medicaid programs. These programs pay for health care and related services for 39 million Medicare beneficiaries and 35 million Medicaid recipients. Administration of these programs involves (1) Furnishing information to Medicare beneficiaries and Medicaid recipients, health care providers, and the public and (2) effective communications with regional offices, State governments, State Medicaid Agencies, State Survey Agencies, various providers of health care, fiscal intermediaries and carriers that process claims and pay bills, and others. To implement the various statutes on which the programs are based, we issue regulations under the authority granted to the Secretary of the Department of Health and Human Services under sections 1102, 1871, 1902, and related provisions of the Social Security Act (the Act). We also issue various manuals, memoranda, and statements necessary to administer the programs efficiently.

Section 1871(c)(1) of the Act requires that we publish a list of all Medicare manual instructions, interpretive rules, and guidelines of general applicability not issued as regulations at least every 3 months in the **Federal Register**. We published our first notice June 9, 1988 (53 FR 21730). Although we are not mandated to do so by statute, for the sake of completeness of the listing of operational and policy statements, we are continuing our practice of including Medicare substantive and interpretive regulations (proposed and final) published during the 3-month time frame.

II. How To Use the Addenda

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, substantive and interpretive regulations, or Food and Drug Administration-approved investigational device exemptions published during the timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Those unfamiliar with a description of our Medicare manuals may wish to review Table I of our first three notices (53 FR 21730, 53 FR 36891, and 53 FR 50577) published in 1988, and the notice published March 31, 1993 (58 FR 16837). Those desiring information on the Medicare Coverage Issues Manual may wish to review the August 21, 1989 publication (54 FR 34555).

To aid the reader, we have organized and divided this current listing into five addenda:

- Addendum I lists the publication dates of the most recent quarterly listings of program issuances.
- Addendum II identifies previous **Federal Register** documents that contain a description of all previously published HCFA Medicare and Medicaid manuals and memoranda.
- Addendum III lists a unique HCFA transmittal number for each instruction in our manuals or Program Memoranda and its subject matter. A transmittal may consist of a single instruction or many. Often, it is necessary to use information in a transmittal in conjunction with information currently in the manuals.
- Addendum IV lists all substantive and interpretive Medicare and Medicaid regulations and general notices published in the **Federal Register** during the quarter covered by this notice. For each item we list the—
  + Date published;
  + **Federal Register** citation;
  + Parts of the Code of Federal Regulations (CFR) that have changed (if applicable);
  + Agency file code number;
  + Title of the regulation;
  + Ending date of the comment period (if applicable); and
  + Effective date (if applicable).
- Addendum V includes listings of the Food and Drug Administration-approved investigational device exemption numbers that have been approved or revised during the quarter covered by this notice. On September 19, 1995, we published a final rule (60 FR 48417) establishing in regulations at 42 CFR 405.201 *et seq.* that certain devices with an investigational device exemption approved by the Food and Drug Administration and certain services related to those devices may be covered under Medicare. It is our practice to announce all investigational device exemption categorizations, using the investigational device exemption numbers the Food and Drug Administration assigns. The listings are organized according to the categories to which the device numbers are assigned (that is, Category A or Category B, and identified by the investigational device exemption number).

III. How To Obtain Listed Material

A. Manuals

Those wishing to subscribe to program manuals should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses:

Superintendent of Documents, Government Printing Office, ATTN: New Orders, PO Box 371954, Pittsburgh, PA 15250–7954, Telephone (202) 512–1800, Fax number (202) 512–2250 (for credit card orders); or

National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161, Telephone (703) 487–4630.

In addition, individual manual transmittals and Program Memoranda listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS can give complete details on how to obtain the publications they sell. Additionally, all manuals are available at the following Internet address: http://www.hcfa.gov/pubforms/progman.htm.

B. Regulations and Notices

Regulations and notices are published in the daily **Federal Register**. Interested individuals may purchase individual copies or subscribe to the **Federal Register** by contacting the GPO at the address given above. When ordering individual copies, it is necessary to cite

either the date of publication or the volume number and page number.

The **Federal Register** is also available on 24x microfiche and as an online database through GPO Access. The online database is updated by 6 a.m. each day the **Federal Register** is published. The database includes both text and graphics from Volume 59, Number 1 (January 2, 1994) forward. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is http://www.access.gpo.gov/su—docs/, by using local WAIS client software, or by telnet to swais.access.gpo.gov, then log in as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then log in as guest (no password required).

C. Rulings

We publish rulings on an infrequent basis. Interested individuals can obtain copies from the nearest HCFA Regional Office or review them at the nearest regional depository library. We have, on occasion, published rulings in the **Federal Register**. Rulings, beginning with those released in 1995, are available online, through the HCFA Home Page. The Internet address is http://www.hcfa.gov/regs/rulings.htm.

D. HCFA's Compact Disk-Read Only Memory (CD–ROM)

Our laws, regulations, and manuals are also available on CD–ROM and may be purchased from GPO or NTIS on a subscription or single copy basis. The Superintendent of Documents list ID is HCLRM, and the stock number is 717–139–00000–3. The following material is on the CD–ROM disk:

- Titles XI, XVIII, and XIX of the Act.
- HCFA-related regulations.
- HCFA manuals and monthly revisions.
- HCFA program memoranda.

The titles of the Compilation of the Social Security Laws are current as of January 1, 1995. (Updated titles of the Social Security Laws are available on the Internet at http://www.ssa.gov/OP_Home/ssact/comp-toc.htm.) The remaining portions of CD–ROM are updated on a monthly basis.

Because of complaints about the unreadability of the Appendices (Interpretive Guidelines) in the State Operations Manual (SOM), as of March 1995, we deleted these appendices from CD–ROM. We intend to re-visit this issue in the near future and, with the aid of newer technology, we may again be able to include the appendices on CD–ROM.

Any cost report forms incorporated in the manuals are included on the CD–ROM disk as LOTUS files. LOTUS software is needed to view the reports once the files have been copied to a personal computer disk.

IV. How To Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the FDL program, government publications are sent to approximately 1,400 designated libraries throughout the United States. Some FDLs may have arrangements to transfer material to a local library not designated as an FDL. Contact any library to locate the nearest FDL.

In addition, individuals may contact regional depository libraries that receive and retain at least one copy of most Federal government publications, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the nearest regional depository library from any library. Superintendent of Documents numbers for each HCFA publication are shown in Addendum III, along with the HCFA publication and transmittal numbers.

To help FDLs locate the materials, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual, (HCFA Pub. 113–3) transmittal entitled "Electronic Data Interchange Security, Privacy, Audit and Legal Issues," use the Superintendent of Documents No. HE 22.8/6 and the HCFA transmittal number 1748.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance, Program No. 93.774, Medicare—Supplementary Medical Insurance Program, and Program No. 93.714, Medical Assistance Program)

Dated: April 23, 1999.

Elizabeth Cusick,

Acting Director, Office of Communications and Operations Support.

Addendum I

This addendum lists the publication dates of the most recent quarterly listings of program issuances.

November 21, 1997 (62 FR 62325)
June 4, 1998 (63 FR 30499)
August 11, 1998 (63 FR 42857)
September 16, 1998 (63 FR 49598)
December 9, 1998 (63 FR 67899)

Addendum II—Description of Manuals, Memoranda, and HCFA Rulings

An extensive descriptive listing of Medicare manuals and memoranda was published on June 9, 1988, at 53 FR 21730 and supplemented on September 22, 1988, at 53 FR 36891 and December 16, 1988, at 53 FR 50577. Also, a complete description of the Medicare Coverage Issues Manual was published on August 21, 1989, at 54 FR 34555. A brief description of the various Medicaid manuals and memoranda that we maintain was published on October 16, 1992, at 57 FR 47468.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS

[July 1998 Through September 1998]

Trans. No.	Manual/Subject/Publication No.
	Intermediary Manual **Part 3—Claims Process** **(HCFA Pub. 13–3)** **(Superintendent of Documents No. HE 22.8/6)**
1748	• Electronic Data Interchange Security, Privacy, Audit and Legal Issues. Contractor Data Security and Confidentially Requirements. Electronic Data Interchange Audit Trail. Security-Related Requirements for Subcontractor Arrangements With Network Services.
1749	• Completing Quarterly Report on Provider Enrollment. Checking Reports. Type of Provider. Completing Lines Twenty-Seven Through Thirty-One—Age of Applications Pending. Completing Lines Thirty-Two Through Thirty-Seven—Change of Ownership Workloads.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 1998 Through September 1998]

Trans. No.		Manual/Subject/Publication No.
1750	•	Requirements for Submission of Electronic Media Claims Data.
1751	•	Pneumococcal Pneumonia, Influenza Virus and Hepatitis B Vaccines. Mammography Screening.
1752	•	Millennium Readiness.
		Carriers Manual Part 3—Claims Process (HCFA Pub. 14–3) (Superintendent of Documents No. HE 22.8/7)
1609	•	Electronic Data Interchange Security, Privacy, Audit and Legal Issues. Contractor Data Security and Confidentiality Requirements. Audit Trails. Security-Related Requirements for Subcontractor Arrangements With Network Services.
1610	•	The System for Processing Electronic Media Claims. Electronic Media Claims Testing and Verification.
1611	•	Identifying a Screening Mammography Claim. Adjudicating the Claim.
		Program Memorandum Intermediaries (HCFA Pub. 60A) (Superintendent of Documents No. HE 22.8/6–5)
A–98–21	•	Payment to Hospitals for Direct Costs of Graduate Medical Education and Operating Indirect Medical Education Costs for Medicare+Choice Enrollees.
A–98–22	•	Hospital Encounter Data Requirements From the Balanced Budget Act of 1997.
A–98–23	•	Coding for Adequacy of Hemodialysis Dialysis on Claim Form—Additional Modifier.
A–98–24	•	Change to Reporting of Outpatient Rehabilitation Services and All Comprehensive Outpatient Rehabilitation Facilities Services Using HCFA Common Procedure Coding System.
A–98–25	•	Home Health Agency Surety Bond Requirements.
A–98–26	•	Prospective Payment System PRICER Changes for Fiscal Year 1999, Including Changes for Discharges to Post-Acute Care Providers and a Millennium Compliant Provider Specific File.
A–98–27	•	Hospice Provisions Enacted by the Balanced Budget Act of 1997.
A–98–28	•	Medicare Home Health Benefit—The Balanced Budget Act of 1997—Clarification of Part-Time or Intermittent Skilled Nursing Care.
A–98–29	•	UB–92 Claims That Are Not Millennium Compliant.
A–98–30	•	Extension of the Effective Date for Intermediary Usage of the 4A.01 Implementation of the Version 3051 Based 835 Transaction for Electronic Remittance Advice.
A–98–31	•	Discharges to Swing Bed Units and Other Post-Acute Care Providers.
		Program Memorandum Carriers (HCFA Pub. 60B) (Superintendent of Documents No. HE 22.8/6–5)
B–98–25	•	Changes to Correct Coding Edits, Version 4.1.
B–98–26	•	Durable Medical Equipment Regional Carrier Instructions to Implement Balanced Budget Act of 1997 Provisions § 4105 to Provide Expanded Coverage of Blood Glucose Monitors and Test Strips for all Diabetics—Implement July 1, 1998.
B–98–27	•	Implementation of Additional Commercial Edits Effective for Dates of Service on or after October 1, 1998.
B–98–28	•	Modifications to Form HCFA–1500 Instructions.
B–98–29	•	Private Contracts Between Beneficiaries and Physicians/Practitioners.
B–98–30	•	Millennium Changes for Forms HCFA–1491, 1490S, and 1490U.
B–98–31	•	Change to Health Insurance Claim Form HCFA–1500 Instructions for Processing Physician Claims in Global Payment Systems.
B–98–32	•	Changes to the 1998 Medicare Physician Fee Schedule Database.
B–98–33	•	Durable Medical Equipment Carrier Operating Instructions to Implement Balanced Budget Act of 1997 Provisions § 4105 to Provide Expanded Coverage of Blood Glucose Monitors and Test Strips for All Diabetes. Implement July 1, 1998. (Corrects and updates Transmittal B–98–17, dated April 1998, Change Request #485).
B–98–34	•	Elimination of Funding Toll-Free Lines for Participating Physicians and Suppliers.
B–98–35	•	Receipt of Electronic Claims That Are Not Millennium Compliant.
B–98–36	•	This document will be released in the fourth Quarter **Federal Register** Notice.
B–98–37	•	Requiring Entities Who Are Ineligible to Receive Direct Medicare Payments for Services Provided by Independent Contractors to Comply with 42 USC 1395u(b)(6), and Medicare Regulations in 42 CFR 424.80(b).
		Program Memorandum Intermediaries/Carriers (HCFA Pub. 60A/B)(Superintendent of Documents No. HE 22.8/6–5)
AB–98–32	•	Standardization of Medicare Coverage of Bone Marrow Measurements.
AB–98–33	•	Medicare Travel Allowance Fees for Collection of Specimens.
AB–98–34	•	Modifications of Medicare Policy for Erythropoietin.
AB–98–35	•	Consolidated Billing for Skilled Nursing Facilities—The Balanced Budget Act of 1997.
AB–98–36	•	Coverage of Diabetes Outpatient Self-Management Training Services, Effective: July 1, 1998.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 1998 Through September 1998]

Trans. No.		Manual/Subject/Publication No.
AB–98–37	•	Contractor Coordination of Benefits File Formats and Trading Partner Agreements.
AB–98–38	•	Distribution of 1/98 Versions of Form HCFA–855.
AB–98–39	•	FDA Approves Two Cancer Tests, the Abbott AxSYM CA 15–3 test and the Abbott Imx CA 15–3 test.
AB–98–40	•	New Interest Rate Payable on Clean Claims Not Paid Timely.
AB–98–41	•	Promoting Influenza and Pneumococcal Vaccinations.
AB–98–42	•	Revision of Troponin (CPT Code 84484 and 84512) Policy.
AB–98–43	•	New Waived Tests.
AB–98–44	•	Suspension of National Coverage Policy on Electrostimulation for Wound Healing.
AB–98–45	•	Consolidated Billing for Skilled Nursing Facilities.
AB–98–46	•	Notice of New Interest Rate for Medicare Overpayments and Underpayments.
AB–98–47	•	Health Care Financing Administration Public Awareness Activities.
AB–98–48	•	Year 2000 Contingency for Non-Millennium Compliant Electronic Transactions and Publication of Year 2000 Article in Provider Bulletins.
AB–98–49	•	New Waived Tests.
AB–98–50	•	Physician Ownership and Compensation Interest System.
AB–98–51	•	Implementation of Section 4105 of the Balanced Budget Act Regarding Coverage of Diabetes Outpatient Self-Management Training Services.
AB–98–52	•	Interim Tracking Procedures for Implementing the Medicare Fraud and Abuse Incentive Reward Program.
		State Operations Manual
		Provider Certification
		(HCFA Pub. 7)
		(Superintendent of Documents No. HE 22.8/12)
3	•	Medicare Health Care Provider/Supplier Enrollment. Prioritizing State Agency Survey Workload—Initial Surveys and Recertifications. Transmitting Materials. List of Documents in Certification Packet. Notification to Application that the Medicare General Enrollment Health Care Provider/Supplier Application has been Denied. Notification of Pending Involuntary Termination Based on Change of Home Ownership Review of the Medicare General Enrollment Health Care Provider/Supplier Application. Notification of Involuntary Termination Based on Change of Home Ownership Review of the Medicare General Enrollment Health Care Provider/Supplier Application. Medicare and Other Federal Health Care Program General Enrollment Health Care Provider/Supplier Application. Medicare and Other Federal Health Care Program Change of Information Health Care Provider/Supplier Application. Medicare and Other Federal Health Care Program Individual Reassignment of Benefits Health Care Provider/Supplier Application.
		Peer Review Organization Manual
		(HCFA Pub. 19)
		(Superintendent of Documents No. HE 22.8/8–15)
66	•	Introduction. Definition. Requirements. Disagreements.
67	•	Opportunity to Discuss. Authority. Scope of Review. Referrals. Receive Medical Records. Request for a Review. Timing of Rereview.
68	•	Interaction with Beneficiary Groups. Evaluation.
		Hospital Manual
		(HCFA Pub. 10)
		(Superintendent of Documents No. HE 22.8/2)
730	•	Billing for Mammography Screening.
		Skilled Nursing Facility Manual
		(HCFA Pub. 12)
		(Superintendent of Documents No. HE 22.8/3)
354	•	Billing for Mammography Screening.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 1998 Through September 1998]

Trans. No.	Manual/Subject/Publication No.
	End Stage Renal Disease Network Organizations Manual (HCFA Pub. 81) (Superintendent of Documents No. HE 22.9/4)
7	• Background and Responsibilities. Authority. Purpose of End Stage Renal Disease Network Organizations. Requirements for End Stage Renal Disease Network Organizations. Responsibilities of End Stage Renal Disease Network Organizations. Health Care Quality Improvement Program. Goals. Network Organization's Role in Health Care Quality Improvement Program. Organizational Structure. Network Council. Board of Directors. Medical Review Board. Other Committees. Network Staff. Required Administrative Reports. Internal Quality Control Program. Health Care Financing Administration Meetings. Cooperative Activities with State Survey Agencies and Peer Review Organizations. Annual Report Format. Statutory and Regulatory Requirements. General Requirements. Nonconfidential Information. Confidential Information. Disclosure of Network Deliberations. Disclosure of Confidential Network Information to Officials and Agencies. Disclosure of Network Information Involving Beneficiary Complaints. Disclosure of Network Information for Research Purposes. Disclosure of Network Sanction Information. Redisclosure of Network Information.
8	• Authority. End Stage Renal Disease Health Care Quality Improvement Program. Responsibilities. Quality of Care Improvement Projects. Components of Quality of Care Improvement Projects. Developing and Planning the Project. Identifying and Confirming an Opportunity to Improve Care. Developing a Network Intervention Activity. Measuring Impact and Project Evaluation. Disseminating Results. Identifying Additional Opportunities for Improvement. Project Reporting System. Improvement Plan. End Stage Renal Disease Core Clinical Indicators. Core Indicators—Network National Sample. Core Indicators—Sampling Method. Core Indicators—Data Collection. Core Indicators—Data Validation. Core Indicators—Data Reporting. Health Care Financing Administration-Compiled Data Reports. Quality Improvement Projects Versus Research Studies. Network Resources to Support the National Renal Registry. Core Indicators—Targeted Patient Population, and Clinical Measures. Annual Patient Sample Per Network for Conducting National Renal Registry Special Studies. Network Quality Improvement Project Report.
	Provider Reimbursement Manual—Part 1 (HCFA Pub. 15–1) (Superintendent of Documents No. HE 22.8/4)
405	Low Medicare Volume Prospective Payment Rates for Skilled Nursing Facilities Effective for Cost Reporting Periods Beginning on or After October 1, 1986 and Prior to Cost Reporting Periods Beginning on or After July 1, 1998. Calculation of the Low Medicare Volume Prospective Payment Rate. Methodology for Determining Per Diem Prospective Payment Rates Effective for Cost Reporting Periods Beginning on or After October 1, 1977 and Before July 1, 1998. General Provisions.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 1998 Through September 1998]

Trans. No.		Manual/Subject/Publication No.
		Methodology for Determining Per Diem Prospective Payment Rates Effective for Cost Reporting Periods Beginning on or After July 1, 1998.
		Determination of Facility Specific Per Diem Rates.
		Calculating Payment Under Skilled Nursing Facility Prospective Payment System.
		Use of Skilled Nursing Facility PRICER.
		Skilled Nursing Facility Prospective Payment System—Payment Requirements and Adjustments.
		Reporting Rehabilitative Therapy Minutes on the Minimum Data Set for Purposes of Medicare Payment.
406		Principle of Cost Apportionment.
		State Medicaid Manual—Part 2 State Organization and General Administration (HCFA Pub. 45–2) (Superintendent of Documents No. HE 22.8/10)
90		Annual Report on Home and Community-Based Services Waivers.
91		Statistical Report on Medical Care: Eligibles, Recipients, Payments and Services.
		Federal Reporting Requirements.
		Requirements for the Medicaid Statistical Information System.
		State Medicaid Manual—Part 5 Early and Periodic Screening, Diagnosis, and Treatment (HCFA Pub. 45–5) (Superintendent of Documents No. HE 22.8/10)
12		Screening Service Content.
		State Medicaid Manual—Part 6 Payment for Services (HCFA Pub. 45–6) (Superintendent of Documents No. HE 22.8/10)
35	•	Upper Limits for Prescription Drugs.
		State Medicaid Manual—Part 11 Medicaid Management Information System (HCFA Pub. 45–11) (Superintendent of Documents No. HE 22.8/10)
18	•	Background.
		Applicable Federal Approval Requirements.
		Approval Process and Documentation Submissions.
		List of Reimbursable Costs for State Systems.
		Eligibility Verification Systems, Switching Companies, Electronic Claims Capture, and Electronic Claims Management System-Overview.
		Electronic Fund Transfer and Electronic Remittance Advices.
		General (System) Requirements.
		Future Additional System Requirements.
		Claims Processing Subsystem.
		Data Requirements.
		Applicable Federal Approval Requirements.
		Acquisition of Automated Data Processing Equipment and Services.
		Implementation Advance Planning Document.
		Approval Process and Documentation Submissions.
		Cost Reimbursable at 75 Percent Federal Financial Participation.
		Cost Reimbursable at 75 Percent Federal Financial Participation for Management Administration Reporting Subsystem and Surveillance and Utilization Review Subsystem.
		List of Reimbursable Costs for State Systems.
		Definitions.
		Considerations and Options.
		Detailed Implementation Schedule.
		Projected Reporting Requirements.
		Preliminary Evaluation.
		Contractual Services.
		Required Assurances.
		Replacement Systems.
		Approval Process and Documentation Submissions.
		Approval of Eligibility Determination Systems—Required System Documentation for Onsite Review.
		General Requirements.
		List of Reimbursable Costs for State Systems.
		Approval of Eligibility Determination Systems.
		Enumeration Verification System as a Component of Medicaid Management Information System.
		Surveillance and Utilization Review Subsystem.

ADDENDUM III.—MEDICARE AND MEDICAID MANUAL INSTRUCTIONS—Continued

[July 1998 Through September 1998]

Trans. No.	Manual/Subject/Publication No.
	Program Memorandum Regional Office—General (HCFA Pub. 51) (Superintendent of Documents No. HE 22.28/5:90–1)
98–3	• Home Health Agency Surety Bond Requirements.
	Program Memorandum State Survey Agencies (HCFA Pub. 65) (Superintendent of Documents No. HE 22.8/6–5)
98–1	• Home Health Agency Parent, Branch, and Subunit Criteria.
	Medicare/Medicaid Sanction—Reinstatement Report (HCFA Pub. 69)
98–7	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—June 1998.
97–8	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—July 1998.
97–9	• Report of Physicians/Practitioners, Providers and/or Other Health Care Suppliers Excluded/Reinstated—August 1998.

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER

Publication date	FR Vol. 63 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
07/06/98	36488	422	HCFA–1030–IFC	Medicare Program; Establishment of the Medicare+Choice Program; Correction.		07/06/98
07/13/98	37498–37499	409, 410, 411, 413, 424, 483, and 489.	HCFA–1913–N	Medicare Program; Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities; Extension of Comment Period.	09/11/98	
07/29/98	40534–40536		HCFA–3009–N	Medicare Program; Peer Review Organization Contracts: Solicitation of Statements of Interest From In-State Organizations—Alaska, Delaware, the District of Columbia, Hawaii, Idaho, Illinois, Kentucky, Maine, Nebraska, Nevada, South Carolina, Vermont, and Wyoming.	08/28/98	
07/31/98	40954–41131	405, 412, and 413.	HCFA–1003–F	Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 1999 Rates		10/01/98
07/31/98	41170–41171	441 and 489	HCFA–1152–2–F	Medicare and Medicaid Programs; Surety Bond Requirements for Home Health Agencies		07/31/98
08/06/98	42055		HCFA–2030–N	Medicaid Program; Decision on Funding for the AIDS Healthcare Foundation START Program		
08/07/98	42270–42275	233	HCFA–2106–FC	Medicaid and Title IV–E Programs; Revision to the Definition of an Unemployed Parent.	10/06/98	08/07/98
08/11/98	42912–42938		HCFA–1035–NC	Medicare Program; Schedules of Per-Visit and Per-Beneficiary Limitations on Home Health Agency Costs for Cost Reporting Periods Beginning On or After October 1, 1998.	10/13/98	10/01/98
08/11/98	42797–42801413		HCFA–1883–P	Medicare Program; Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications.	10/13/98	
08/11/98	42796		HCFA–3250–N	Medicare Program; Negotiated Rulemaking; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests; Change in Meeting Time.		
08/11/98	42857–42864		HCFA–9879–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—Fourth Quarter 1997.		
08/14/98	43655	416 and 488	HCFA–1885–N	Medicare Program; Update of Rate-setting Methodology, Payment Rates, Payment Policies, and the List of Covered Procedures for Ambulatory Surgical Centers Effective October 1, 1998; Extension of Comment Period.	09/10/98	

ADDENDUM IV—REGULATION DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER—Continued

Publication date	FR Vol. 63 page	CFR part(s)	File code*	Regulation title	End of comment period	Effective date
09/08/98	47506–47513		HCFA–1045–N	Medicare Program; Request for Public Comments on Implementation of Risk Adjusted Payment for the Medicare+Choice Program and Announcement of Public Meeting.	10/06/98	
09/08/98	47513–47514		HCFA–1046–N	Medicare Program; September 23 and 24, 1998, Meeting of the Competitive Pricing Advisory Committee		
09/08/98	47552–48036	409, 410, 411, 412, 413, 419, 489, 493, and 1003.	HCFA–1005–P	Medicare Program; Prospective Payment System for Hospital Outpatient Services.	11/09/98	
09/10/98	48517		HCFA–3432–N	Medicare Program; September 25, 1998, Open Town Hall Meeting to Discuss the Medicare Coverage Process		
09/11/98	48735–48736		HCFA–2029–PN	Medicare and Medicaid Programs; Recognition of the Community Health Accreditation Program, Inc. (CHAP) and Joint Commission for Accreditation of Healthcare Organizations (JCAHO) for Hospices.	10/13/98	
09/11/98	48736–48737		HCFA–1097–N	Medicare Program; September 28, 1998, Meeting of the Practicing Physicians Advisory Council		
09/16/98	49598–49605		HCFA–9879–N	Medicare and Medicaid Programs; Quarterly Listing of Program Issuances—First Quarter, 1998		
09/22/98	50545–50547	405, 410, 413, 414, 415, 424, and 485.	HCFA–1006–CN	Medicare Program; Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 1999; Correction		
09/23/98	50919–50920		HCFA–1047–NC	Medicare and Medicaid Programs; Announcement of Additional Applications From Hospitals Requesting Waivers for Organ Procurement Service Area.	11/23/98	
09/29/98	52022–52092	400, 430, 431, 434, 435, 438, 440, and 447.	HCFA–2001–P	Medicaid Program; Medicaid Managed Care.	11/30/98	

A*N—General Notice; PN—Proposed Notice; NC—Notice with Comment Period; FN—Final Notice; P—Notice of Proposed Rulemaking (NPRM); F—Final Rule; FC—Final Rule with Comment Period; CN—Correction Notice; IFC—Interim Final Rule with Comment Period

Addendum V—Categorization of Food and Drug Administration-Allowed Investigational Device Exemptions

Under the Food, Drug, and Cosmetic Act (21 U.S.C. 360c), devices fall into one of three classes. Also, under the new categorization process to assist HCFA, the Food and Drug Administration assigns each device with a Food and Drug Administration-approved investigational device exemption to one of two categories. To obtain more information about the classes or categories, please refer to the **Federal Register** notice published on April 21, 1997 (62 FR 19328).

The following information presents the device number, category (in this case, A), and criterion code.

G980020 A1
G980150 A1
G980164 A1
G980165 A1
G980171 A1
G980175 A1
G980176 A2
G980185 A2
G980202 A1
G980207 A1
G980212 A1

The following information presents the device number, category (in this case, B), and criterion code.

G970277 B4
G980105 B2
G980108 B1
G980132 B
G980134 B1
G980135 B2
G980136 B2
G980140 B2
G980142 B2
G980144 B2
G980146 B2
G980147 B4
G980152 B2
G980156 B2
G980157 B2
G980160 B4
G980161 B4
G980162 B4
G980163 B4
G980166 B1
G980169 B1
G980174 B1
G980180 B4
G980181 B4
G980182 B4
G980184 B4
G980190 B
G980192 B4
G980194 B4
G980196 B1
G980197 B4
G980198 B3
G980200 B1
G980201 B1
G980205 B4
G980206 B4
G980208 B3
G980209 B2
G980210 B2
G980211 B2
G980213 B2
G980217 B4
G980218 B5
G980219 B4

[FR Doc. 99–11754 Filed 5–10–99; 8:45 am]

BILLING CODE 4120–10–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institute of Health

Propsoed Collection; Comment Request; Evaluation of the NIDCD Partnership Program

SUMMARY: In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Deafness and Other Communication Disorders (NIDCD), the National Institutes of Health (NIH), will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection:

Title: Evaluation of the NIDCD Partnership Program. *Type of Information Collection Request*: NEW. *Need and Use of Information Collection*: The NIDCD was established to support biomedical and behavioral research and research training in hearing, smell, balance, taste, voice, speech and language. Although minorities and women will dominate the work force within the next decade, both groups are underrepresented in the science and health professional field. Because of this concern, the NIDCD, with assistance from the Office of Research on Minority Health, established the Partnership Program in 1994 to increase the number of minority scientists and health care professionals doing research on communication and communication disorders. The proposed survey will yield data about: (1) Reasons for participation in the program; (2) satisfaction of participants with the program and (3) how participation in the program has lead to the pursuit of a career in the health field. The survey will track the Partnership Program's success at increasing the number of women and minorities who are scientists. *Frequency of Response*: One. *Affected Public*: Individuals. *Type of Respondent*: Partnership Program Participants. The annual reporting burden is as follows: *Estimated Number of Respondents*: 76; *Estimated Number of Responses per Respondent*: 1; *Average Burden Hours Per Response*: 0.5; and *Estimated Total Annual Burden Hours Requested*: 38. The annualized cost to respondents is estimated at: $380. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

(**Note**: The following table is acceptable for the Respondent and Burden Estimate Information, if appropriate, instead of the text as shown above.)

Type of respondents	Estiamted number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Initial program participant survey	16	1	0.5	8
Follow up survey of participant	60	1	0.5	30
Total	76	.....	.....	38

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Kay Johnson, EEO Officer, Office of Equal Employment Opportunity, NIDCD, NIH, Building 31, Room 3C08, 31 Center Drive, Bethesda, MD 20892, or call non-toll-free number (301) 402–6415 or E-mail your request, including your address to: johnsoka@nidcd.nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before July 12, 1999.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to provide a 60-day notice in the **Federal Register** concerning proposed collections of information before submitting the collection of OMB for approval. To comply with this requirement, NIDCD is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, NIDCD invites comments on: (1) Whether the proposed collection of information is necessary for fulfillment of the NIDCD mission, including whether the information will have practical utility; (2) the accuracy of the estimate of the burden of the proposed data collection, including the validity of the methodology; (3) ways to enhance the quality, utility, and clarity of the data collection; and (4) ways to minimize the burden of the collection of information on the respondents, including appropriate use of automated collection techniques and information technology.

The NIDCD Partnership Program was designed to maximize research and research training opportunities for undergraduates, graduate and professional students, and faculty from populations that are underrepresented in the biomedical professions. Participants are recruited from four academic institutions that developed partnerships with the NIDCD: The University of Alaska System, The Atlanta University Center, Gallaudent University, and the University of Puerto Rico.

Anecdotal feedback indicates that program participants, mentors, and liaisons find the program to provide interesting and unique opportunities. However, there is little systematic evidence evaluating the level of the Program's success or failure. The proposed surveys will attempt to assess

how participants' experiences with the Partnership Program have influenced career and educational choices; current activities of participants (e.g., courses of study, jobs); benefits and costs of program participation to the program participants, mentors, and liaisons; and suggestions for improving the Program. This information will provide concrete evidence for continued funding of the Program.

Two separate surveys are proposed. The first survey will collect baseline information from participants as they enter the program. The baseline survey will explore participants' expectations and goals on entering the program, their current career and/or educational plans, and reasons for choosing to participate. The second survey will gather Follow up and tracking information of past participants and will be administered annually. This survey will ask about current contact information, current career and/or educational activities, satisfaction with the program, and whether expectations were met.

Potential respondents of either survey will be asked to participate in a telephone survey that should take less than 30 minutes to complete. Respondents who cannot schedule 30 minutes of time or have communications disorders which make telephone conversations difficult will be given the opportunity to respond by alternate means such as fax and e-mail. All participants from the inception of the program will be included in this evaluation process. Participants for 1999 have not yet been chosen, but it is anticipated that the total number of participants since 1994 will not exceed 70.

Dated: May 4, 1999.

David Kerr,

Executive Officer, National Institutes on Deafness and Other Communication Disorders.

[FR Doc. 99–11840 Filed 5–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.

Date: May 7, 1999.

Time: 11 AM to 12:30 PM.

Agenda: To review and evaluate grant applications.

Place: 45 Natcher Bldg, Rm 5As.25u, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Tommy L. Broadwater, PHD, Chief, Grants Review Branch, National Institutes of Health NIAMS, Natcher Bldg., Room 5As25U, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 5, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–11838 Filed 5–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of Recombinant DNA Activities; Recombinant DNA Research: Action Under the Guidelines

AGENCY: National Institutes of Health (NIH), PHS, DHHS.

ACTION: Notice of action under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines).

SUMMARY: This notice sets forth an action to be taken by the Director, National Institutes of Health (NIH), under the NIH Guidelines for Research Involving Recombinant DNA Molecules (59 FR 34496, amended 59 FR 40170, 60 FR 20762, 61 FR 1482, 61 FR 10004, 62 FR 4782, 62 FR 53335, 62 FR 56196, 62 FR 59032, 63 FR 8052, 63 FR 26018).

FOR FURTHER INFORMATION CONTACT: Background documentation and additional information can be obtained from the Office of Recombinant DNA Activities (ORDA), National Institutes of Health, MSC 7010, 6000 Executive Boulevard, Suite 302, Bethesda, Maryland 20892–7010, Phone 301–496–9838, FAX 301–496–9839. The ORDA web site is located at http://www.nih.gov/od/orda/ for further information about the office.

SUPPLEMENTARY INFORMATION: Today's action is being promulgated under the NIH Guidelines for Research Involving Recombinant DNA Molecules (NIH Guidelines). The proposed action was published for comment in the **Federal Register** on February 17, 1999 (64 FR 7964), and reviewed by the NIH Recombinant DNA Advisory Committee (RAC) at its meeting on March 11, 1999.

I. Amendment to Appendix B–I, Risk Group 1 (RG1) Agents

I–A. Background Information and Decisions on Action Under the NIH Guidelines

On December 11, 1998, ORDA received a facsimile from Dr. Margarita C. Curras-Collazo, University of California at Riverside, Riverside, California, requesting to lower the containment level (from Biosafety Level (BL) 2 to 1) for recombinant adeno-associated virus (AAV) vectors produced in the absence of helper viruses. Subsequent to this request, ORDA received a telephone call from Ms. Brenda Wong, Biological Safety Officer, University of California at San Diego, La Jolla, California, asking that this request be reconsidered due to the potential of insertional mutagenesis.

In response to this request, ORDA solicited the opinion of three AAV experts and the RAC Chair. All three AAV experts and the RAC Chair concurred that the BL1 level of physical containment is appropriate for recombinant AAV vectors produced in the absence of helper viruses. The rationale for this recommendation was based on the fact that experiments involving certain recombinant retroviral vectors, which insert randomly into the genome and could potentially cause insertional mutagenesis, are designated as BL1 agents.

Appendix B–I, Risk Group 1 (RG1) Agents, currently reads:

"RG1 agents are not associated with disease in healthy adult humans. Examples of RG1 agents include asporogenic Bacillus subtilis or Bacillus licheniformis (see Appendix C–IV–A, Bacillus subtilis or Bacillus licheniformis Host-Vector Systems, Exceptions), Escherichia coli-K12 (see Appendix C–II–A, Escherichia coli K–12 Host Vector Systems, Exceptions), and

adeno-associated virus types 1 through 4.

"Those agents not listed in Risk Groups (RGs) 2, 3 and 4 are not automatically or implicitly classified in RG1; a risk assessment must be conducted based on the known and potential properties of the agents and their relationship to agents that are listed."

Appendix B–1, *Risk Group 1 (RGI) Agents*, is proposed to read:

"RGI agents are not associated with disease in healthy adult humans. Examples of RG1 agents include asporogenic *Bacillus subtilis* or *Bacillus licheniformis* (see Appendix C–IV–A, *Bacillus subtilis* or *Bacillus licheniformis* Host-Vector Systems, Exceptions), *Escherichia coli* K–12 (see Appendix C–II–A, *Escherichia coli* K–12 Host Vector Systems, Exceptions), adeno-associated virus types 1 through 4, and recombinant AAV constructs, in which the transgene does no encode either a tumor suppressor or a toxin molecule and are produced in the absence of a helper virus.

"Those agents not listed in Risk Groups (RGs) 2, 3 and 4 are not automatically or implicitly classified in RG1; a risk assessment must be conducted based on the known and potential properties of the agents and their relationship to agents that are listed."

The proposed action was published in the **Federal Register** on February 17, 1999 (64 FR 7964) for public comment.

On March 11, 1999, the RAC discussed the proposed action to Appendix B–I with the opinions of AAV experts and the RAC Chair. A motion was made to accept the proposed action that the BL1 physical containment is appropriate for recombinant AAV vectors produced in the absence of helper viruses with a minor change. In the last sentence of the first paragraph delete "tumor suppressor" and insert "potentially tumorigenic gene product." The motion passed by a vote of 11 in favor, 0 opposed, and no abstentions.

The action is detailed in Section I–B—Summary of Action. I accept the RAC recommendation, and the *NIH Guidelines* will be amended accordingly.

I–B. Summary of Action

I–B–1. Amendment of Appendix B–1, Risk Group 1 (RG1) Agents

Appendix B–1 is to be amended to read:

"RG1 agents are not associated with disease in healthy adult humans. Examples of RG1 agents include asporogenic *Bacillus subtilis* or *Bacillus licheniformis* (see Appendix C–IV–A, *Bacillus subtilis* or *Bacillus licheniformis* Host-Vector Systems, Exceptions), *Escherichia coli* K–12 (see Appendix C–II–A, *Escherichia coli* K–12 Host Vector Systems, Exceptions), adeno-associated virus (AAV) types 1 through 4, and recombinant AAV constructs, in which the transgene does not encode either a potentially tumorigenic gene product or a toxin molecule and are produced in the absence of a helper virus.

"Those agents not listed in Risk Groups (RGs) 2, 3 and 4 are not automatically or implicitly classified in RG1; a risk assessment must be conducted based on the known and potential properties of the agents and their relationship to agents that are listed."

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally, NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which recombinant DNA techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the *NIH Guidelines*. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are affected.

Dated: April 29, 1999.

Harold Varmus,

Director, National Institutes of Health.

[FR Doc. 99–11839 Filed 5–10–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice To Extend the Public Comment Period for the Draft Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of extension of public comment period.

SUMMARY: The U.S. Fish and Wildlife Service gives notice that the comment period announced in the March 8, 1999, notice of availability of the Draft Recovery Plan for Gabbro Soil Plants of the Central Sierra Nevada Foothills, California, will be extended an additional 30 days until July 7, 1999. Substantial public interest in the draft plan led the Service to distribute additional copies and to provide additional opportunities for the public to comment on the plan. This recovery plan includes six plant species, of which five are federally listed as endangered or threatened. The draft plan includes recovery criteria and measures for the plants—Stebbin's morning-glory (*Calystegia stebbinsii*), Pine Hill ceanothus (*Ceanothus roderickii*), Pine Hill flannelbush (*Fremontodendron californicum ssp. decumbens*), El Dorado bedstraw (*Galium californicum ssp. sierrae*), and Layne's butterweed (*Senecio layneae*), and an additional species, El Dorado mule-ears (*Wyethia reticulata*), that is considered to be a species of concern. The Service extends the current 90-day comment period and solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan received by July 7, 1999, will be considered by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 3310 El Camino Avenue, Suite 130, Sacramento, California (telephone (916) 979–2710); and U.S. Fish and Wildlife Service, Regional Office, Ecological Services, 911 NE 11th Ave., Eastside Federal Complex, Portland Oregon 97232–4181 (telephone (503) 231–6131). Requests for copies of the draft recovery plan and written comments and materials regarding this plan should be addressed to Wayne S. White, Field Supervisor, Ecological Services, at the above Sacramento address.

FOR FURTHER INFORMATION CONTACT: Diane Elam, Fish and Wildlife Biologist, at the above Sacramento address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's

endangered species program. To help guide recovery efforts, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for downlisting or delisting listed species, and estimate time and cost for implementing the recovery measures needed. The Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plan. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plan, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided. The six species of plants covered in the draft recovery plan are primarily restricted to gabbro soils habitat in the central Sierra Nevada foothills of California. Conversion of habitat to urban uses has extirpated the listed species and species of concern from a significant portion of their historic ranges. The remaining natural communities are highly fragmented, and many are marginal habitats in which these species may not persist during catastrophic events. The objectives of this recovery plan are two-fold: (1) to delist the plants Stebbin's morning-glory, Pine Hill ceanothus, Pine Hill flannelbush, El Dorado bedstraw, and Layne's butterweed by protecting, enhancing, restoring, and appropriately managing their habitat; and (2) to ensure the long-term conservation of the one species of concern, El Dorado mule-ears, that occurs in the same gabbro soils habitats with the listed species.

Public Comments Solicited

The Service solicits written comments on the draft recovery plan described. All comments received by the date specified above will be considered prior to approval of this plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 5, 1999.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 99–11775 Filed 5–10–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1910–00–4817]

Idaho: Filing of Plats of Survey; Idaho

The plats of the following described land were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the date the plat was accepted.

The plat representing the dependent resurvey of portions of the east boundary and of the subdivisional lines, and the subdivision of section 25, and a metes-and-bounds survey in sections 25, T. 14 N., R. 43 E., Boise Meridian, Idaho, Group 960, was accepted March 29, 1999.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 16 and 17, T. 4 S., R. 5 E., Boise Meridian, Idaho, Group 1034, was accepted March 31, 1999.

These surveys were executed to meet certain administrative needs of the U.S. Forest Service and U.S. Air Force.

All inquiries concerning the survey of the above described land must be sent to the Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 S. Vinnell Way, Boise, Idaho, 83709–1657.

Dated: March 31, 1999.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 99–11842 Filed 5–10–99; 8:45 am]

BILLING CODE 4310–66–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

(MT–924–1430–01; MTM 89001)

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 760 acres of public land and 10 acres of non-federal land, if acquired, to protect the archaeological, educational, interpretive, and recreational integrity of the Four Dances Natural Area. This notice closes the land for up to 2 years from location and entry under the mining laws. The public land has been and will remain open to surface entry and mineral leasing.

DATES: Comments and requests for a public meeting must be received by August 9, 1999.

ADDRESSES: Comments and meeting requests should be sent to the Montana State Director, BLM, P.O. Box 36800, Billings, Montana 59107.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, 406–255–2949, or June Bailey, Billings Field Office, 406–238–1543.

SUPPLEMENTARY INFORMATION: On April 21, 1999, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land and non-federal land if acquired, from location and entry under the mining laws, subject to valid existing rights:

Principal Meridian, Montana

PARCEL A: Township 1 North, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 34, S½ of lot 6.

EXCEPTING therefrom the following two tracts of land:

1. That part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded June 16, 1960, in Book 700, Page 407, under Document #643695, records of Yellowstone County, Montana, more particularly described as follows:

"938+00 to 945+63

A tract of land in the S½ of Lot 6, Section 34, Township 1 North, Range 26 East, M.P.M., Yellowstone County, Montana, more particularly described as follows:

All that land in said S½ of Lot 6 lying on the Northwesterly side of a line which is parallel to and 110 feet distant Southeasterly when measured at right angles from the following described center line:

Beginning at a point on the center line of Montana Interstate Highway Project I 90–8(5)433, which said point is South 2107.0 feet, and West 1434.7 feet, more or less, from the Northeast corner of said Section 34;

Thence from the said point of beginning North 71°09'30 East, 200.0 feet to a point;

Also all that land in said S½ of Lot 6 lying on the Northwesterly side of a line which is parallel to and 170 feet distant Southeasterly when measured at right angles from the following described center line;

Thence continuing from the last described point North 71°09'30" East, 563.0 feet, more or less, to a point on the center line of said Montana Interstate Highway Project I 90–8(5)433, which said point is South 1860.5

feet, and West 712.6 feet, more or less, from the Northeast corner of said Section 34."

2. Certificate of Survey No. 2933.

PARCEL B: Township 1 North, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 34, lots 7 and 8, and SE¼SE¼.

PARCEL C: Township 1 North, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 35, That part of the S½NW¼ lying South of the Main Canal of the Lockwood Irrigation Ditch and West of the Coburn Road as said Ditch and Coburn Road existed on September 19, 1940.

EXCEPTING therefrom the following 3 Tracts of Land:

1. That part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain And Sale Deed recorded February 25, 1964, in Book 783, Page 368, under Document #725524, records of Yellowstone County, Montana, more particularly described as follows:

"0+00.0 to 1+06.7 Connection Road to Coburn Lane

A tract of land in that particular tract of land which is described as the fractional S½NW¼ lying South of the Main Canal of the Lockwood Irrigation Ditch and West of the Coburn Road in Section 35, Township 1 North, Range 26 East, M.P.M., Yellowstone County, Montana. The tract of land to be conveyed being more particularly described as follows:

All that land in said particular tract of land lying Easterly of a line, which is increasing in distance from 40 feet distant Westerly to 70 feet distant Westerly when measured at right angles from the following described center line:

Beginning at Engineer's Station 0+00.0 on the center line of the connection road to Coburn Lane of the Montana State Highway Project I 90–8(5)433, which said Station 0+00.0 is South 1527.5 feet and West 0.2 feet, more or less, from the North Quarter corner of said Section 35;

Thence North 2°25'15" East, 84.3 feet, to Engineer's Station 0+84.3 on said center line of the connection road to Coburn Lane, which said Station 0+84.3 is South 1443.3 feet, and East 3.4 feet, more or less, from said North Quarter corner of said Section 35;

Also all that land in said particular tract of land lying Easterly of a line which is parallel to and 70 feet distant Westerly when measured at right angles from the following described center line:

Beginning at Engineer's Station 0+93.0 on said center line of the connection road to Coburn Lane, which said Station 0+93.0 is South 1518.8 feet, and East 0.2 feet, more or less, from said North Quarter corner of said Section 35;

Thence North 4°39'19" West, 75.6 feet, to Engineer's Station 1+68.6 on said center line of the connection road to Coburn Lane, which said Station 1+68.6 is South 1359.3 feet, and West 3.5 feet, more or less, from said North Quarter corner of said Section 35.

2. Certificate of Survey No. 2933.

3. Certificate of Survey No. 2932.

PARCEL D: Township 1 North, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 35, That part of the SW¼ lying West of the County Road known as the Coburn Road as said Coburn Road existed on September 19, 1940.

PARCEL E: That part of E½NW¼ of Section 1, Township 1 South, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana, described as Certificate of Survey No. 827 on file in the office of the Clerk and Recorder of said County, under Document #629995.

PARCEL F: Township 1 South, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 1, lot 4, NE¼SW¼NW¼ and S½SW¼NW¼;

EXCEPTING therefrom the following two Tracts of Land:

1. Certificate of Survey No. 2347–M.

2. Amended Tract 1, Certificate of Survey No. 2347–M.

PARCEL G: Township 1 South, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 2, lots 7, 8, 9, 10 and 11, SE¼NE¼, and NE¼SE¼.

EXCEPTING therefrom the following two Tracts of Land:

1. Certificate of Survey No. 2347–M.

2. Amended Tract 1, Certificate of Survey No. 2347–M.

PARCEL H: Township 1 South, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana.

Section 1, SW¼;

EXCEPTING therefrom the following three Tracts of Land:

1. That part conveyed to the State of Montana for the benefit and use of its State Highway Commission by Bargain and Sale Deed recorded September 22, 1950, in Book 377, Page 461, under Document #468688, records of Yellowstone County, Montana, more particularly described as follows:

"A tract of land in SE¼SE¼SW¼, Sec. 1, T. 1 S., R. 26 E., MPM, Yellowstone County, Montana, more particularly described as follows:

Beginning at a point in the said SE¼SE¼SW¼, which said Point is North 53.0 feet, and West 379.0 feet, more or less, from the South quarter corner of said Sec. 1; thence from said point of beginning N3l°12½'W., 285.9 feet; thence S 28° 47½' W., 285.9 feet; thence N 88° 47½' E., 285.9 feet to the point of beginning."

2. That part described as Certificate Of Survey No. 823 on file in the office of the Clerk and Recorder of said County, under Document #627700.

3. Certificate of Survey No. 2865.

PARCEL I: That part of the NW¼NW¼ of Section 1 and the NE¼NE¼ of Section 2, Township 1 South, Range 26 East, of the Principal Montana Meridian, in Yellowstone County, Montana, described as Tract 1, of Certificate of Survey No. 2347–M on file in the office of the Clerk and Recorder of said County, under Document #1371733.

EXCEPT Amended Tract 1, Certificate of Survey No. 2347–M.

The area described contains approximately 760 acres in Yellowstone County.

Non-Federal Land

In addition, if the following described non-federal land is acquired by the United States, the land will be subject to the terms and conditions of this withdrawal:

T. 1 S., R. 26 E.,

Sec. 1, NW¼SW¼NW¼.

The area described contains approximately 10 acres in Yellowstone County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Montana State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Montana State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are hiking, picnicking, bird watching, vegetation inventories, environmental education, and other such activities that do not result in surface disturbance, but only with the approval of unauthorized officer of the Bureau of Land Management.

Dated: April 30, 1999.

Thomas P. Lonnie,

Deputy State Director, Division of Resources.

[FR Doc. 99–11844 Filed 5–10–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf: Operations, Rescission of Certain Letters and Notices to Lessees and Operators (LTLs and NTLs)

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice.

SUMMARY: The MMS periodically issues letters and notices to lessees and operators of oil and gas or sulphur leases in the Outer Continental Shelf (OCS), commonly referred to as LTLs and NTLs. This **Federal Register** notice informs you that we are in the process of reviewing all of the regional LTLs and officially rescinding certain ones. We are also rescinding one NTL.

EFFECTIVE DATE: May 11, 1999.

ADDRESSES: You may obtain copies of NTLs (and LTLs for the Gulf of Mexico OCS Region) through our website at WWW.MMS.GOV or by contacting the National office or the OCS Region that issued the document at the following addresses:

National Office

Minerals Management Service, Engineering and Operations Division, 381 Elden Street, Herndon, VA 20170–4817, Attention: Ms. Alexis London; Telephone (703) 787–1600.

Alaska OCS Region

Minerals Management Service, 949 East 36th Avenue, Room 308, Anchorage, AK 99508–4363, Attention: Ms. Christine Huffaker; Telephone (907) 271–6621.

Gulf of Mexico OCS Region

Minerals Management Service, 1201 Elmwood Park Blvd., New Orleans, LA 70123–2394, Attention: Mr. Michael Dorner; Telephone (504) 736–2599.

Pacific OCS Region

Minerals Management Service, 770 Paseo Camarillo, Camarillo, CA 93010–6064, Attention: Ms. Freddie Mason; Telephone (805) 389–7566.

FOR FURTHER INFORMATION CONTACT: Alexis London, Engineering and Operations Division; Telephone (703) 787–1600.

SUPPLEMENTARY INFORMATION: The MMS is responsible for oil and gas or sulphur operations in the OCS to ensure operational safety and protection of the environment. In addition to our regulations, we issue NTLs to provide guidance and to further clarify, interpret, or describe regulatory requirements on a national or regional basis. In the past, our regional offices have also issued LTLs for this purpose or to communicate information to OCS lessees and operators.

Last year we reviewed all of the active NTLs to determine if they were still viable. As a result, we rescinded a number of NTLs in a **Federal Register** notice published on November 10, 1998 (63 FR 63071). We updated and reissued most of the remaining NTLs to reflect current technologies and to correct regulatory citations.

We are subjecting the regional LTLs to the same process. Our initial review has identified numerous LTLs that we can immediately rescind. Throughout the year, we will update the remaining LTLs that need to remain active. However, when we reissue them, they will be converted to NTLs. Once we complete this process, all LTLs will be eliminated. We will provide guidance and supplementary information through the use of NTLs only. This should provide a more uniform, consistent approach for the benefit of the users in keeping track of our guidance documents and informational issuances.

Effective with the publication of this notice, we are officially rescinding one NTL and a number of LTLs that are no longer current, have served their purpose, or because recently revised regulations and policies have eliminated the need for them. All other NTLs and LTLs that are currently in effect will remain in force until superseded or rescinded.

For the Gulf of Mexico OCS Region the following are rescinded or were recently superseded:

NTL 94–02, 2/24/94, Air Emissions Reporting Requirements
LTL, 5/30/96, Requirements for Submittal of Documents Under 30 CFR 250, Subpart I, Platforms and Structures (Superseded by NTL 99-G05)
LTL, 1/26/96, Transfer of Platform Records for Leases Reassigned
LTL, 12/7/95, Quality Assurance and Performance of Safety and Pollution Prevention Equipment
LTL, 10/30/95, Submittal of Logs or Charts of Electrical, Radioactive, Sonic, and Other Well-logging Operations (Superseded by NTL 97–06)
LTL, 2/13/95, Exploratory Well Requirements on 8-Year Leases
LTL, 11/17/94, Safety & Environmental Management Program (SEMP)
LTL, 4/14/94, Letter of Concurrence by Lessee of Record
LTL, 1/28/94, Policy Change Concerning the Overboard Disposal of Produced Solids Containing NORM
LTL, 1/14/94, Policy Concerning the Testing of Blowout Preventers (BOP's)
LTL, 1/14/94, Implementation of New Reporting Forms
LTL, 11/5/93, Surety Bond Requirements (Superseded by NTL 99–604)
LTL, 11/16/92, Providing Crude Oil, Condensate, and Natural Gas Liquids to Small and Independent Refiners
LTL, 12/11/91, Clarification of NORM Requirements (Superseded by NTL 96–03)
LTL, 6/13/91, Approvals to Obtain Prior to Commencing Well Operations
LTL, 4/25/91, Mail Stop Numbers for Production and Development
LTL, 11/20/90, Disposal of Solids Containing Naturally Occurring Radioactive Materials
LTL, 10/1/90, Submission of Wellbore & Directional Surveys (Superseded by NTL 97–06)
LTL, 5/14/90, Trash and Debris Washing Ashore
LTL, 5/8/90, Turtle Excluder Devices (TEDs)
LTL, 11/27/89, Release of Geological Data and Analyzed Geological Information
LTL, 6/7/89, Hydrogen Sulfide (H_2S) Information Requests

For the Pacific OCS Region the following are rescinded:

LTL, 6/5/96, Crane Operations
LTL, 9/19/95, Quality Assurance Certification Repair Parts
LTL, 11/1/94, Pressure Safety Devices Test Tolerance
LTL, 8/17/94, Helideck Conditions
LTL, 5/6/94, Supplemental Bonds
LTL, 3/19/91, Requirements for a Pressure Safety Valve (PSV) on Flare/Vent Scrubbers

Please note that the Alaska OCS Region has no LTLs or NTLs currently in effect.

Dated: April 30, 1999.

Carolita U. Kallaur,

Associate Director for Offshore Minerals Management.

[FR Doc. 99–11843 Filed 5–10–99; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Meeting of the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, WA

AGENCY: Department of the Interior.

ACTION: Notice of Meeting.

SUMMARY: As required by the Federal Advisory Committee Act, notice is hereby given that the Conservation Advisory Group, Yakima River Basin Water Enhancement Project, Yakima, Washington, established by the Secretary of the Interior, will hold a public meeting. The purpose of the Conservation Advisory Group is to provide technical advice and counsel to the Secretary and the State on the structure, implementation, and oversight of the Yakima River Basin Water Conservation Program.

DATES: Thursday, May 20, 1999, 9 a.m.–4 p.m.

ADDRESSES: Bureau of Reclamation Office, 1917 Marsh Road, Yakima, Washington.

FOR FURTHER INFORMATION CONTACT: James Esget, Manager, Yakima River Basin Water Enhancement Project, P.O. Box 1749, Yakima, Washington, 98907, (509) 575–5848, extension 267.

SUPPLEMENTARY INFORMATION: The purpose of the meeting will be to review water marketing opportunities in the Yakima River basin and develop recommendations. Progress Reports will be provided on the Basin Conservation Plan and the Yakima River Basin Wetlands and Floodplain Habitat Plan.

Dated: May 4, 1999.

Alan L. Scherzinger,

Acting YRBWEP Manager.

[FR Doc. 99–11777 Filed 5–10–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 5, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Office, Ira Mills (202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of response.

Agency: Employment and Training Administration.

Title: Employment Service Reporting System.

OMB Number: 1205–0240.

Frequency: Quarterly.

Affected Public: State, Local, or Tribal govt.

Number of Respondents: 54.

Total Burden Hours: 7,213 hours.

	Affected public	Respondents	Frequency	Average time per response
Form Number:				
ETA 9002A–c	States (ES)	54	Quarterly	3 hours.
Vets 200 A–B And 300	States (Vets)	54	Quarterly	2 hours 42 minutes.
Mgmt. Report	States (Vets)	1,600	Quarterly	50 minutes.
Recordkeeping:	States	54	As needed	12 hours.

Total Annualized capital/startup costs: $0.
Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The Employment Service Program Reporting System will provide data on State public employment service agency program activity and expenditures, for use at the Federal level by the U.S. Employment Service and the Veterans Employment and training Service in program administration and to provide reports to the President and Congress.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–11846 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy; Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: May 20, 1999, 2 p.m., U.S. Department of Labor, N–4437 C&D, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influence U.S. trade policy.

Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

For further information, contact: Jorge Perez-Lopez, Director, Office of International Economic Affairs, Phone: (202) 219–7597.

Signed at Washington, DC, this 5th day of May 1999.

Andrew James Samet,

Deputy Under Secretary, International Affairs.

[FR Doc. 99–11845 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,609]

Advanced Energy Industries, Inc., Fort Collins, Colorado; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 8, 1999 in response to a worker petition which was filed on behalf of workers at Advanced Energy Industries, Inc., Fort Collins, Colorado.

The petitioner has requested that the petition be withdrawn on April 27,1999. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, D.C. this day of 27th, April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11849 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,450]

Braeburn Alloy Steel, Incorporated Lower Burrell, Pennsylvania; Notice of Negative Determination Regarding Application for Reconsideration

By application dated April 14, 1999, the company official requested administrative reconsideration of the Department's negative determination regarding eligibility for workers and former workers of the subject firm to apply for Trade Adjustment Assistance (TAA). The denial notice applicable to workers of Braeburn Alloy Steel, Incorporated located in Lower Burrell, Pennsylvania, was signed on March 15, 1999, and published in the **Federal Register** on April 6, 1999 (64 FR 16752).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) if it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) if in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The petition, filed on behalf of workers of the subject firm in Lower Burrell, Pennsylvania, engaged in the conversion of steel was denied because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met. The "contributed importantly" test is generally demonstrated through a survey of the workers' firm's customers. The investigation revealed that none of the subject firm customers reported increased import purchases of articles like or directly competitive with those produced at the Braeburn Alloy Steel, Incorporated plant in Lower Burrell, Pennsylvania.

The company official asserts that the Department wrongfully interpreted the information submitted for the petition investigation. The investigation concluded that none of Braeburn's customers imported steel slab in 1997 and 1998. The company official explains that Braeburn Steel converts customer's steel such as ingots, slabs and bar into specified products as requested by the customers. The company states that Braeburn's customers in turn sell the steel product to their customers, who in turn will buy the imported steel that impacts Braeburn's business.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by foreign competition but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which "contributed importantly" to declines in sales or production and employment. The Department limits its investigation to the impact of imports like or directly competitive with the products produced and sold by the workers' firm in this case converted steel products.

The Department stands corrected that the survey conducted for the customer's of the subject firm requested information regarding customer import purchases of converted steel, not steel slabs as inadvertently indicated in the March 15 decision document.

The company official also included news articles about some of Braeburn's customers describing the impact of imported steel rod, bar and plate, and also cites that workers for one of the subject firm customers were certified eligible for TAA. The steel shapes, regardless of source of the raw material (steel bars, slabs or ingots) sent by customers to Braeburn for conversion cannot be considered like or directly competitive with the products produced at the petitioning workers firm. The Department has reviewed TAA petitions processed and found that there were no TAA workers group certifications issued for the specific customer location cited by the company official.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decisions. Accordingly, the application is denied.

Signed at Washington, D.C. this 28th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11859 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Acting Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the

Acting Director, Office of Trade Adjustment Assistance, as the address shown below, not later than May 24, 1999.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Acting Director, Office of Trade Adjustment Assistance, at the address shown below, not later than May 24, 1999.

The petitioners filed in this case are available for inspection at the Office of the Acting Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, D.C. this 19th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

[Petitions Instituted on 04/19/1999]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
36,051	Breed Tech/Mortion Bendix (Comp)	Maryville, TN	03/30/1999	Airbag Cushions.
36,052	R and D Manufacturing (Comp)	Haynesville, LA	03/08/1999	KSR Gloves.
36,053	Cable Systems Int'l (Wrks)	Phoenix, AZ	04/07/1999	Cables and Cords.
36,054	N.V.N. (Wrks)	Clifton, NJ	04/01/1999	Coats.
36,055	Russell Corp (Wrks)	Habersham, GA	03/01/1999	Yarn.
36,056	Cyprus Tohono Corp (Wrks)	Casa Grande, AZ	04/01/1999	Copper Cathodes.
36,057	Clark-Schwebel Corp (Comp)	Cleveland, GA	03/29/1999	Fiberglass Fabric.
36,058	Jaton Corp (Comp)	Militas, CA	03/30/1999	VGA Cards and Modems.
36,059	Kaiser Aluminum Castings (GMPPW)	Canton, OH	03/31/1999	Aluminum Castings.
36,060	Thomas C. Wilson (Wrks)	Odessa, TX	03/30/1999	Tube Cleaners, Expanders.
36,061	D.B. Riley Corp (Wrks)	Erie, PA	03/24/1999	Boilers—Panels.
36,062	Stonecutter Textiles, Inc (Wrks)	Spindale, NC	03/29/1999	Greige and Finished Fabrics.
36,063	Cobre Mining Co (Wrks)	Hanover, NM	04/01/1999	Copper Mine.
36,064	Equitable Bag Co (PACE)	Florence, KY	03/31/1999	Plastic Bags.
36,065	Funk Manufacturing, Inc (Wrks)	Coffeyville, KS	03/31/1999	Gears.
36,066	Rearch, Inc. (Comp)	Klamath Falls, OR	03/31/1999	Lumber.
36,067	Original Bradford Soap (Wrks)	West Warwick, RI	04/05/1999	Bar Soap.
36,068	BTR Sealing Systems (Wrks)	West Unity, OH	03/30/1999	Rubber Seals.
36,069	Thyssen Mining/Betty Coal (Wrks)	Coeburn, VA	03/19/1999	Metallurgical Coal.
36,070	Kaufman Footwear Corp (Wrks)	Batavia, NY	03/03/1999	Leather and Nylon Winter Boots.
36,071	Bordo Knitting Mills (Comp)	Union City, NJ	03/29/1999	Sweaters.
36,072	Excel IV Div/Miss Brenner (UNITE)	Clifton, NJ	03/29/1999	Printing Screens.
36,073	Mann Manufacturing Co (Wrks)	Walnut Grove, MS	04/08/1999	Gloves.
36,074	Karen Anne Mfg, Inc (Wrks)	Fall River, MA	04/07/1999	Soft Nylon Luggage.
36,075	Universal Welding, Inc (IABS)	Export, PA	04/05/1999	Steel Processing Equipment.
36,076	Hardinge, Inc (Wrks)	Elmira, NY	03/10/1999	Lathes and Machinery.
36,077	Gray Bee Lime (Wrks)	Pleasant Gap, PA	04/01/1999	Lime Products.
36,078	International Paper (Comp)	Mobile, AL	03/30/1999	Paper.
36,079	H.M.C. Fashions Coat, Inc (UNITE)	Brooklyn, NY	03/30/1999	Ladies' Coats and Jackets.
36,080	Mead School and Office (PACE)	Saint Joseph, MO	03/25/1999	Sales of Nylon School Notebooks.
36,081	Key Energy Drilling, Inc (Comp)	Levelland, TX	03/19/1999	Oil Drilling.
36,082	Quality Oil Service (Comp)	Jal, NM	03/29/1999	Trucking Service.
36,083	Schneider Drilling Corp (Wrks)	Tyler, TX	03/25/1999	Oil and Gas Drilling.
36,084	Grant Geophysical Corp (Comp)	Houston, TX	03/29/1999	Seismograph Services.
36,085	D.A.B. Oil Service, Inc (Comp)	Abilene, TX	03/19/1999	Crude Oil.
36,086	Maxus Energy Corp/Midgard (Comp)	Dallas, TX	03/31/1999	Oil and Gas.
36.087	National Oilwell (Wrks)	Williston, ND	03/26/1999	Oil Drilling.
36,088	Petroleum Experience, Inc. (Comp)	Williston, ND	03/29/1999	Oil Well Services.
36,089	Burlington Resources (Wrks)	Midland, TX	03/30/1999	Oil and Gas.
36,090	Cliff's Drilling Co (Wrks)	Lafayette, LA	03/22/1999	Oil and Gas Drilling.

[FR Doc. 99–11847 Filed 5–11–99; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,152]

Buster Brown Apparel, Inc. Chilhowie, Virginia; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 19, 1999, applicable to workers of Buster Brown Apparel, Inc., Chattanooga, Tennessee. The notice was published in the **Federal Register** on February 25, 1999 (64 FR 9354).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers produce children's apparel. New findings show that a certification covering the workers at Chattanooga, Tennessee, TA–W–32,260 was issued on April 24, 1996 and expired April 24,

1998. That certification was also amended on July 1, 1996 to cover the workers at Chilhowie, Virginia. To avoid an overlap in worker group coverage, the certification is being amended to change the impact date from October 19, 1997 to April 25, 1998, for Buster Brown Apparel, Inc., Chilhowie, Virginia.

The amended notice applicable to TA–W–35,152 is hereby issued as follows:

All workers of Buster Brown Apparel, Inc., Chilhowie, Virginia who became totally or partially separated from employment on or after April 25, 1998 through January 19, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11850 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,561]

Fashionland, Inc., Jersey City, New Jersey; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 1, 1999, in response to a petition filed on behalf of workers Fashionland, Inc., Jersey City, New Jersey.

Repeated attempts to contact officials of the subject firm proved unsuccessful. Consequently, further investigation in this case would serve no purpose; and the investigation has been terminated.

Signed in Washington, DC this 28th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11848 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,564]

Guilford Mills, Herkimer, New York; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on February 19, 1999, applicable to workers of Guilford Mills, Inc., Sheet Department, Herkimer, New York. The notice will soon be published in the **Federal Register**.

At the request of petitioners, the Department reviewed the certification for workers of the subject firm. Workers of Guilford Mills in Herkimer, New York produce bedding and window treatments. The original certification limited coverage to workers in the subject firm's sheet department. New information provided by the company show that worker separations have occurred in the window treatment department. The workers are interchangeable by product line at the Herkimer, New York plant.

The intent of the Department's certification is to provide coverage to all workers of the subject firm adversely affected by increased imports. Accordingly, the Department is amending the certification to expand coverage to all workers of Guilford Mills, Inc. in Herkimer, New York.

The amended notice applicable to TA–W–35,564 is hereby issued as follows:

"All workers of Guilford Mills, Inc., Herkimer, New York, who became totally or partially separated from employment on or after December 14, 1997 through February 19, 2001, are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 22nd day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11860 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–34, 736 and TA–W–34, 736A]

Lehigh Portland Cement Buffington Station Gary, Indiana; Specialty Products Division Allentown, Pennsylvania; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on August 7, 1998, applicable to workers of Lehigh Portland Cement, Buffington Station, Gary, Indiana. The notice was published in the **Federal Register** on August 28, 1998 (63 FR 46073).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred at the Specialty Products Division, Allentown, Pennsylvania location of Lehigh Portland Cement. The Allentown, Pennsylvania workers provided administrative services to support the production of calcium aluminate cement at Lehigh's manufacturing facility in Buffington Station, Gary, Indiana.

Based on these findings, the Department is amending the certification to include workers of Lehigh Portland Cement, Specialty Products Division, Allentown, Pennsylvania.

The intent of the Department's certification is to include all workers of Lehigh Portland Cement who were adversely affected by increased imports of calcium aluminate cement.

The amended notice applicable to TA–W–34, 736 is hereby issued as follows:

"All workers of Lehigh Portland Cement, Buffington Station, Gary, Indiana (TA–W–34, 736) and the Specialty Products Division, Allentown, Pennsylvania (TA–W–34, 736A) who became totally or partially separated from employment on or after June 25, 1997 through August 7, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, D.C. this 29th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11854 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35, 991]

Miller Brothers Industries, Inc., Corsicana, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 14, 1999, applicable to workers of Miller Brothers Industries, Inc., Corsicana, Texas engaged in the production of constructed caps. The notice will be published soon in the **Federal Register**.

At the request of the company, the Department reviewed the certification for workers of the subject firm. New findings shows that the Department incorrectly limited the certification to "all workers engaged in employment related to the production of constructed caps." The intent of the Department's certification is to include "all workers" of Miller Brothers Industries, Inc, Corsicana, Texas adversely affected by increased imports.

The Department is amending the certification determination to correctly identify the worker group to read "all workers."

The amended notice applicable to TA–W–35,991 is hereby issued as follows:

All workers at Miller Brothers Industries, Inc., Corsicana, Texas who became totally or partially separated from employment on after March 23, 1998 through April 14, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 29th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11851 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Emnployment and Training Administration

[TA–W–34, 896]

Paxar Woven Label Paterson, NJ; Notice of Revised Determination on Reconsideration

On March 8, 1999, the Department issued an Affirmative Determination Regarding Application on Reconsideration applicable to workers and former workers of the subject firm. The notice was published in the **Federal Register** on March 16, 1999 (64 FR 13039).

The Department initially denied TAA to workers of Paxar Woven Label, Paterson, New Jersey, because the "contributed importantly" group eligibility requirement of Section 222(3) of the Trade Act of 1974, as amended, was not met.

On reconsideration, the Department obtained additional information from the company concerning imports of woven labels such as those manufactured at the subject facility. The company provided information which reflected an increased reliance on imports of woven labels in recent years which contributed to the decline in production and closure of the subject facility.

Conclusion

After careful review of the additional facts obtained on reconsideration, I conclude that increased imports of articles like or directly competitive with woven labels contributed importantly to the declines in sales or production and to the total or partial separation of workers of Paxar Woven Label, Paterson, New Jersey. In accordance with the provisions of the Act, I make the following certification:

All workers of Paxar Woven Label, Paterson, New Jersey who became totally or partially separated from employment on or after April 3, 1998 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974;

Signed in Washington, D.C. this 27th day of April 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11857 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,156D and TA–W–35,156C]

Pluma, Inc.; Rocky Mount, VA; Alatavista, VA; Amended Notice of Revised Determination on Reopening

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Revised Determination on Reopening on February 9, 1999, applicable to workers of Pluma, Inc., Rocky Mount, Virginia. The notice was published in the **Federal Register** on February 18, 1999 (64 FR 8129).

At the request of the company, the Department reviewed the revised determination for workers of the subject firm. New information provided by the company shows that worker separations have occurred at Pluma's Altavista, Virginia facility. The workers are engaged in employment related to the production of knitted activewear for ladies', men and children. Accordingly, the Department is amending the certification to cover workers of Pluma, Inc., Altavista, Virginia.

The intent of the Department's certification is to include all workers of Pluma, Inc. adversely affected by increased imports.

The amended notice applicable to TA–W–35,156D is hereby issued as follows:

All workers of Pluma, Inc., Rocky Mount, Virginia (TA–W–35,156D) and Altavista, Virginia (TA–W–35,156C) who became totally or partially separated from employment on or after October 15, 1997 through February 9, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 29th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11853 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,612 and TA–W–35,612B]

Salant Corporation; Obion-Denton Facilities; Obion, TN; Carrizo Springs, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility To Apply for Worker Adjustment Assistance on March 15, 1999, applicable to workers of Salant Corporation, Obion-Denton located in Obion, Tennessee and Union City, Tennessee. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16754).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of children's sleepwear and provide warehouse and distribution services.

New information shows that all workers will be separated at Salant Corporation's Carrizo Springs, Texas location when it closes permanently May 21, 1999. The workers provide distribution services for Salant Corporation's production facility in Obion, Tennessee.

Accordingly, the Department is amending the certification to cover the workers of Salant Corporation, Obion-Denton, Carrizo Springs, Texas.

The intent of the Department's certification is to include all workers of Salant Corporation, Obion-Denton who were adversely affected by increased imports.

The amended notice applicable to TA–W–35,612 is hereby issued as follows:

All workers of Salant Corporation, Obion-Denton, Obion, Tennessee (TA–W–35,612) and Carrizo Springs, Texas (TA–W–35,612B) who became totally or partially separated from employment on or after January 25, 1998 through March 15, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 26th day of April, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11858 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of April, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(2) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,530; Weinman Pump and Supply Co., Pittsburgh, PA
TA–W–35,606; P and M Cedar Products, Pioneer, CA
TA–W–35,503 & A; Recmix of Pennsylvania, Inc., Canonsburg, PA & Sarver, PA
TA–W–35,563; Cutout's, Inc., Fall River, MA
TA–W–35,583; Branch Cheese, Saputo Cheese USA, Branch, WI
TA–W–35,727; Martin Marietta Magnesia Specialities, Inc, Manistee, MI
TA–W–35,604; Universal Stainless & Alloy Products, Inc., Titusville, PA
TA–W–35,648; Crown Cork and Seal Co., Inc., Walla Walla, WA
TA–W–35,710; Forrest Yarns, Inc., Newport, ME
TA–W–35,721; Newark Paperboard, Inc., Woodburn, OR
TA–W–35,865; NF & M International, Manaca, PA
TA–W–35,686; A.C. Railroad Service Co., McKees Rocks, PA
TA–W–35,616; Erie Forge and Steel, Inc., Erie, PA

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–35,798; Ryerson Tull, Inc., Thypin Steel Co., Easton, PA
TA–W–35,823; Land Management Group, Houston, TX
TA–W–35,239; Bull HN Worldwide Information Systems, Inc., Phoenix, AZ
TA–W–35,640; Kitty Hawk International (Formerly American International Airways), Oscoda, MI
TA–W–35,637; Stage II Apparel Corp., New York, NY
TA–W–35,681; Apex Machine Shop, Williston, ND
TA–W–35,671; Snap-On-Tools, Ottawa, IL
TA–W–35,643; Peak Oilfield Service Co., Anchorage, AK

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–35,904; Carhartt, Inc., McKenzie, TN
TA–W–35,835; Eaton Corp., Actuator & Sensor Div., Hamilton, IN
TA–W–35,925; Ansell Protective Products, Tarboro, NC
TA–W–35,930; Mueller Industries, Inc., Wynne, AR
TA–W–35,871; Parnell's peanuts Div. Of Morven Partners, Gorman, TX
TA–W–35,692; Rock-Tenn Co. Laminated Paperboard Products Div., Otsego, MI
TA–W–35,882; Simula, Inc., Artcraft Industries Corp., Milwaukee, WI
TA–W–35,884; Siebe Appliance Controls, Cooking and Refrigeration Div., Winterset, IA
TA–W–35,570; National Standard Co, Corbin, KY
TA–W–35,433; Sumitomo Machinery Corp of America, Chesapeake, VA and Operating at the Following Locations: A; Teterboro, NJ, B; Corona, CA, C; Glendale Heights, IL, D; Ft. Washington, PA
TA–W–35,936; Senior Flexonics, OSI Div., Allison Park, PA
TA–W–35,539; Wendt Corp., Tonawanda, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–35,276 & A; Dawson Production Services, Midland, TX and Carthage, TX

The investigation revealed that citeria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–35,656; Mead Corp., Mead Paper Div., Chillicothe, OH

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

6*TA–W–35,799; Louisiana Pacific Corp., Rogue River Veneer Plant, Rogue River, OR*

The investigation revealed that criteria (1) and criteria (2) have not been met. A significant number or proportion of the workers did not become totally or partially separated from employment as required for certification. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company

name and location of each determination references the impact date for all workers of such determination.

TA–W–35,452; C.P. Chemicals, Inc., Sewaren, NJ: December 21, 1997
TA–W–35,282; Compaq Computer Corp., Houston, TX: November 11, 1997
TA–W–35,501; Stitches, Inc., El Paso, TX: February 27, 1998
TA–W–35,581; OshKosh B'Gosh, Liberty, KY: February 7, 1999
TA–W–35,555; Lawrence Electronics, Inc., Tulsa, OK: January 2, 1998
TA–W–35,552; Mountain West Colorado Aggregate (MWCA), Kamiah Plant, Kamiah, ID: January 8, 1998
TA–W–35,537; Porcelanite, Inc., Lexington, NC: January 13, 1998
TA–W–35,445; International Paper, Lock Haven, PA: December 15, 1997
TA–W–35,451; The Pillsbury Co., Haagen-Dasz Plant, Woodbridge, NJ: December 21, 1997
TA–W–35,294, A & B; Altura Energy Ltd., Houston, TX and Operations at Various Locations in the State of TX and NM: November 10, 1997
TA–W–35,398; Koppel Steel Corp., Koppel, PA: December 10, 1997
TA–W–35,659; Buster Brown Apparel, Inc., Chattanooga, TX: January 28, 1998
TA–W–35,655; JB Sportswear, Union, MS: February 2, 1998
TA–W–35,428; Cranston Print Works, Co., Webster, ME: December 7, 1997
TA–W–35,327; Fashions International, Scranton, PA: November 24, 1997
TA–W–35,542 & A; Wilkens Industries, Inc., Athens, GA and Jefferson, GA: February 15, 1998
TA–W–35,652 & A; Dudley Kebow, Inc., Oceanside, CA and Albuquerque, NM: January 28, 1998
TA–W–35,569; Missouri Valley Perforating, Inc., Kenmare, ND: January 17, 1998
TA–W–35,595; Oxford of Vidalia, Sewing Plant, Vidalia, GA: January 15, 1998
TA–W–35,475; Watseka L.F., Inc., Watseka, IL: December 27, 1997
TA–W–35,691 A & B; Star Tool, Hobbs, NM, Odessa, TX and Brownfield, TX: February 1, 1998
TA–W–35,317; Tycom Corp., Minnesota Div., Arden Hills, MN: November 25, 1997
TA–W–35,382; Coach Leatherware Corp., Carlstadt, NJ: November 30, 1997
TA–W–35,378; Biltmore Textile Co., Inc., New York NY: December 2, 1997
TA–W–35,274; W.L. Gore & Associates, Inc., Electronic Products Div., Phoenix, AZ: November 16, 1997
TA–W–35,422; Magura USA Corp., Olney, IL: December 10, 1997
TA–W–35,404; AM Petroleum, Inc., Upton, WY: December 9, 1997
TA–W–35,466; American Energy Services, Midland, TX: December 21, 1997
TA–W–35,687; Ensign Oil and Gas, Inc., Denver, CO: January 25, 1998
TA–W–35,213; Lady Carol Dresses, A Subsidiary of Duryea Industries, Duryea, PA: October 23, 1997
TA–W–35,416; J.S. Lamy Manufacturing Co., Sedalia, MO: November 30, 1997
TA–W–35,477; Southern Container Corp., Pre-Print Dept, Dayton, NJ: December 18, 1997
TA–W–35,215; Irving Tanning Co., Hartland, ME: November 3, 1997
TA–W–35,836; Gloria Lingerie, Long Island City, NY: February 14, 1998
TA–W–35,873; Brand-S Corp., Superior Hardwoods Div., Corvallis, OR: March 4, 1998
TA–W–35,711; Sperry-Sun Drilling Services, Headquartered in Houston, TX & Operating at Other Locations in The Following States: A; AK, B; CA, C; LA, D; MI, E; OK, F; TX G; WY: February 17, 1998
TA–W–35,711AA; Baroid Drilling Fluids, Headquartered in Houston, TX & Operating at Other Locations in The Following States: AB; AK, AC; AR, AD; AZ, AE; CA, AF; CO, AG; GA, AH; IA, AI; KS, AJ; LA, AK; MO, AL; NM, AM; NV, AN; OH, AO, OK, AP; PA, AO; TX, AR; WY: February 17, 1998
TA–W–35,711BA; Security DBS, Headquartered in Dallas, TX & Operating at Other Locations in The Following States; BB; CO, BC; LA, BD; OK, BE; TX: February 17, 1998
TA–W–35,950; Komatsu America, Inc., Hillsboro, OR: March 12, 1998
TA–W–35,509; Key Energy Service Inc., Mid-Continent Div. A/k/a Well Tech, Inc., El Reno, OK & Operating In The Following States; A; OK (Except El Reno), B; KS, C; TX, D; AR: December 26, 1997
TA–W–35,443; Katzenberg Brothers, Inc., Baltimore, MD: December 9, 1997
TA–W–35,991; Miller Brothers Industries, Inc., Corsicana, TX: March 23, 1998
TA–W–35,841; North American Knitting Co., Mansfield, OH: March 3, 1998
TA–W–35,880; Henkel Corp., Chemicals Group, Los Ageles, CA: March 10, 1998
TA–W–35,916; Mitel, Inc., Ogdensburg, NY: March 8, 1998
TA–W–35,701; Ansell Edmont, d/b/a Ansell Protective Products, Haynesville, LA: April 13, 1998
TA–W–35,743; Advance Consultants Corp., Midland, TX: February 11, 1998
TA–W–35,646; The Stroh Brewery Co., Tampa, FL: January 12, 1998
TA–W–35,905; Hughes-JVC Technology Corp., Carlsbad, CA: March 5, 1998
TA–W–35,844; Seco Products Corp., Therma-Systems Div., South Plainfield, NJ: February 26, 1998
TA–W–35,802; Fleming-Potter Co., Inc., Peoria, IL: February 24, 1998
TA–W–35,843; Avery Dennison Office Products, Rochelle, IL: February 19, 1998
TA–W–35,818; Gesell's Pump Sales & Service, Inc., Whittington, IL: February 23, 1998
TA–W–35,845; Horace Small Manufacturing Co., Nashville, TN: February 26, 1998
TA–W–35,892; Martin Copeland Eyeware Corp., Bristol, RI: March 8, 1998
TA–W–35,487; Baker Atlas, Williston, ND & Operating Throughout The State of ND: January 1, 1998
TA–W–35,883; Jones Drilling Headquartered in Odessa, TX & Operating in A; TX and B; OK: March 4, 1998
TA–W–35,704; Johnson & Johnson Medical, Inc., Arlington, TX: April 19, 1999
TA–W–35,615; Shape Global, Sanford, ME: January 28, 1998
TA–W–35,729; Nabors Alaska Drilling, Inc., Anchorage, AK: February 18, 1998
TA–W–35,578; Rockwell Automation Power Systems, Mishawaka, IN: January 8, 1998
TA–W–35,716; KLH Industries, Inc., Headquartered in Clinton, MS & Operating at Various Locations in MS: February 4, 1998
TA–W–35,553; Mitchell's Oilfield Service, Inc., Sidney, MT: January 14, 1998
TA–W–35,523; Greenwood Mills Lindale Manufacturing, Lindale, GA: January 12, 1998
TA–W–35,950; Key Energy Drilling, Inc., Permain Basin Div., Headquartered in Levelland, TX & Operating at Various Locations in The State of A; TX and B; NM: January 11, 1998
TA–W–35,951; Plymouth Stitching, Ashland, NH: March 15, 1998
TA–W–35,922; Odessa Packer Service, Inc., Odessa, TX: March 2, 1998

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (P.L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents

summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of April, 1999.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–02996; Active Products Corp., Marion, IN
NAFTA–TAA–03018; Heinz Frozen Food Co., Pocatello-Weight Watchers Div., Pocatello, ID
NAFTA–TAA–03033; Morrow Snowboards, Inc., Salem, OR
NAFTA–TAA–02984; North Power Arcade, NY
NAFTA–TAA–02861; Horowitz/Rae Book Manufacturers, Inc., Fairfield, NJ
NAFTA–TAA–03030; Key Energy Services, Inc., Rocky Mountain Div., Casper, WY
NAFTA–TAA–02888; Branch Cheese/ Saputo Cheese USA, Branch, WI
NAFTA–TAA–02945; Newark Paperboard, Inc., Woodburn, OR
NAFTA–TAA–02981; Advance Consultants Corp., Midland, TX
NAFTA–TAA–02976; Simula, Inc., Artcraft Industries Corp., Milwaukee, WI
NAFTA–TAA–02902; Parkdale Mills, Inc., Mill #6. Thomasville, NC
NAFTA–TAA–02962; Eastón Corp., Actuator and Sensor Div., Hamilton, IN
NAFTA–TAA–02952; Carhartt, Inc., McKenzie, TN
NAFTA–TAA–02943; Castalia Apparel, Castalia, NC
NAFTA–TAA–02917; Allvac Latrobe Plant, AN Allegheny Teledyne Co., Latrobe, PA
NAFTA–TAA–02900 & A; Baker Hughes Inteq, Casper, WY & Cody, WY
NAFTA–TAA–02956; Hudson ICS, San Leandro, CA
NAFTA–TAA–02944; Shasta, Inc., Monaca, PA
NAFTA–TAA–02970; Ametek, Lamb Electric Div., Cambridge, OH
NAFTA–TAA–02877; Tektronix, Inc., Bend, OR
NAFTA–TAA–02986; Spartan Mills, Startex Div., Startex, SC
NAFTA–TAA–02992; Worldclass Processing, Inc., Ambridge, PA
NAFTA–TAA–02928; Autotron, Inc., Autotron Group, Danville, IL
NAFTA–TAA–02999; Senior Flexonics, Inc., OSI Div., Allison Park, PA
NAFTA–TAA–02954; Lucia, Inc., Elkin Plant, Elkin, NC
NAFTA–TAA–02881; Jasper Textiles, Inc. a/k/a Outer Banks, Jacksonville, NC
NAFTA–TAA–02930; Baker Oil Tools, Olney IL
NAFTA–TAA–02964; The West Bend Co., West Bend, WI
NAFTA–TAA–02772; International Paper Co., Printing Papers Div., Ticonderoga, NY
NAFTA–TAA–02843; Boston Precision Parts Co., Inc., Hyde Park, MA
NAFTA–TAA–02828; Illinois Glove Co., Effingham, IL
NAFTA–TAA–01975; Illinois Glove Co., Beardston, IL
NAFTA–TAA–03029; 3M West Deptford Plant, Electrical Products Div., Thorofare, NJ
NAFTA–TAA–0-3022; Schlumberg Oilfield Services, Mt Carmel, IL
NAFTA–TAA–02963; Dean Pickle & Specialty Products Co., Inc., Croswell Plant, Croswell, MI
NAFTA–TAA–02897; Connor Corp., Indianapolis, Inc.

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–02950; Ryerson Tull, Inc., Thypin Steel Co., Easton, PA
NAFTA–TAA–02926; Snap-On-Tools, Ottawa, IL
NAFTA–TAA–03078; Columbia Sportswear Co., Quality Audit Department At The Distribution Center, Portland, OR
NAFTA–TAA–03010; Romarco Minerals, Inc., Reno, NV
NAFTA–TAA–03007; Impact Equipment Company, Elko, NV
NAFTA–TAA–03006; High Desert Mineral Resources, Inc., Elko, NV

The investigation revealed that the workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–02965; Bard Access Systems, Salt Lake City, UT

The investigation revealed that criteria (1) has not been met. A significant number or proportion of the workers' firm or an appropriate subdivision (including workers in any agricultural firm or appropriate subdivision thereof) have not become totally or partially separated from employment as required for certification.

Affirmative Determinations *NAFTA–TAA*

NAFTA–TAA–02988; Columbia Controls and Panels, Portland, OR: March 9, 1998
NAFTA–TAA–02844 & A, B, D, D, E; Pluma, Inc., Rock Mount, VA, Altavista, VA, Martinsville, VA, Chatham, VA, Eden, NC and Commerce, CA: January 8, 1998
NAFTA–TAA–02788; Schneider Mills, Inc., Alexander Mills Plant, Forest City, NC; December 4, 1997
NAFTA–TAA–02974; Tultex, Mayodan, NC: March 2, 1998
NAFTA–TAA–02987; Fashion Enterprises, El Paso, TX: February 22, 1998
NAFTA–TAA–03109; Bonnell Mfg., Co., Inc., Mt. Laurel, NJ: March 8, 1998
NAFTA–TAA–02972; Foremost Drill Systems, Reno, NV: February 23, 1998
NAFTA–TAA–02993; The Well Lamont Corp., McGehee, AR: March 9, 1998
NAFTA–TAA–02948; Ansell Edmont, d/b/a Ansell Protective Products, Haynesville, LA: January 26, 1998
NAFTA–TAA–02971; North American Knitting Co., Mansfield, OH; March 3, 1998
NAFTA–TAA–03052; Augusta Sportswear, Inc., Meter Plant, Meter, GA: March 30, 1998
NAFTA–TAA–03058 & A; Hampshire Designers, Inc., Winona Knitting Mills Div., La Crescent, MN and Winona, MN: March 29, 1998
NAFTA–TAA–02980; Greenwood Mills, Lindale Manufacturing, Lindale, GA: March 12, 1998
NAFTA–TAA–02990; Siebe Appliance Controls, Cooking and Refrigeration Div., Winterset, IA: March 4, 1998
NAFTA–TAA–02942; Bailey Apparel, Bailey, NC: February 15, 1998
NAFTA–TAA–02851 & A, B; Ithaca Industries, Inc., Gastonia, NC and Cairo, GA and Vidalia, GA: January 8, 1998

NAFTA–TAA–02936 & A, B, C; VF Jeanswear, Houston, MO, Richland, MO, Springfield, MO and Lebanon, MO: February 18, 1998

NAFTA–TAA–03069; Crescent/U.S. Mat, LLC, Art Advantage Div., Hot Springs Plant, Hot Springs, SD: March 30, 1998

NAFTA–TAA–02889; AMP, Inc., Green Valley Road Plant, Seven Valleys, PA: February 1, 1998

NAFTA–TAA–02891; Columbia Forest Products, New Freedom Div., New Freedom, PA: February 1, 1998

NAFTA–TAA–02906; Boise Cascade Corp., Fisher Sawmill, Fisher, LA: February 8, 1998

NAFTA–TAA–03031; International Steel Wool Corp., Springfield, OH: March 3, 1998

NAFTA–TAA–02978; Puget Plastics Corp., Tualatin, OR: March 9, 1998

NAFTA–TAA–02871; Kinzua Resources, L.L.C., Heppner Mill, Heppner, OR: January 28, 1998

NAFTA–TAA–02961 and A; John Deere Consumer Products, Greer, SC and Gastonia, NC: February 22, 1998

NAFTA–TAA–03047; Fleming-Potter Co., Inc., Peoria, IL: February 27, 1998

NAFTA–TAA–02887; Custom Packaging Systems, Inc., Rapid City, SD: February 2, 1998

NAFTA–TAA–02769; Zenith Electronics Corp., Rauland Div., Melrose Park, IL: December 4, 1997

NAFTA–TAA–02939; KLH Industries, Inc., Headquartered in Clinton, MS & Operating at Various Locations in MS: February 4, 1998

NAFTA–TAA–02932; Westinghouse Electric Co., Energy Systems Business Unit (ESBU), Pensacola, FL: March 18, 1999

NAFTA–TAA–02967; Carolina Maid Products, Inc., Granite Quarry, NC: March 3, 1998

NAFTA–TAA–02905 & A; Chinook Group, Inc., North Branch, MN and St. Paul, MN: January 24, 1998

NAFTA–TAA–02983; Brown Jordan Co., Newport, AR: February 22, 1998

NAFTA–TAA–02940; Therm-O-Disc, Inc., El Paso, TX: February 21, 1998

I hereby certify that the aforementioned determinations were issued during the month of April, 1999. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: May 3, 1999.

Grant D. Beale,

Acting Director, Office of Trade Adjustment Assistance.

[FR Doc. 99–11852 Filed 5–10–99; 8:45 am]

BILLING CODE 4510–30–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. 97–1 CARP SD 92–95]

Distribution of 1992, 1993, 1994, and 1995 Satellite Royalty Funds

AGENCY: Copyright Office, Library of Congress.

ACTION: Announcement of the schedule for the proceeding.

SUMMARY: The Librarian of Congress is announcing the schedule for the 180-day arbitration period for the distribution of the 1992–95 satellite carrier compulsory license royalty fees.

EFFECTIVE DATE: May 11, 1999.

ADDRESSES: All hearings and meetings for the 1992–95 satellite distribution proceeding shall take place at the Library of Congress, James Madison Memorial Building, Room LM–414, First and Independence Avenue, SE., Washington, DC. 20540.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or William J. Roberts, Jr., Senior Attorney, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

Section 251.11(b) of 37 CFR provides:

> At the beginning of each proceeding, the CARP shall develop the original schedule of the proceeding which shall be published in the **Federal Register** at least seven calendar days in advance of the first meeting. Such announcement shall state the times, dates, and place of the meetings, the testimony to be heard, whether any of the meetings, or any portion of a meeting, is to be closed, and if so, which ones, and the name and telephone number of the person to contact for further information.

This notice fulfills the requirements of § 251.11(b) for Phase I of the proceeding to determine the distribution of satellite carrier compulsory license royalty fees for the years 1992–95.

On January 31, 1997, the Copyright Office published a notice in the **Federal Register** requesting comment as to the existence of Phase I and/or Phase II controversies concerning the distribution of the 1992, 1993, 1994, and 1995 satellite royalty fees, and in the event that a controversy exists, whether to consolidate the determination of the distribution of the 1992–95 royalty fees into a single proceeding, or to conduct multiple proceedings. 62 FR 4814 (January 31, 1997). The notice also requested that each interested party file a Notice of Intent to Participate, indicating the level of participation for each year, i.e., Phase I, Phase II, or both, with the Office. In response to this notice, the following parties identified the existence of controversies for distribution of the 1992–95 funds: James Cannings; [1] the American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), and SESAC, Inc. (collectively the Music Claimants); Program Suppliers; CBS, Inc.; ABC, Inc.; Public Television Claimants; Devotional Claimants; Home Shopping Network; Multimedia Entertainment, Inc.; National Broadcasting Company, Inc.; Joint Sports Claimants; and Broadcaster Claimants. All but one party favored consolidating the 1992–95 satellite funds into a single distribution proceeding.

On June 4, 1997, the Office issued an Order consolidating the determination of the distribution of the 1992–95 satellite royalty fees into a single proceeding and announcing the precontroversy discovery schedule for a Phase I proceeding. See Order in Docket No. 97–1 CARP SD 92–95 (June 4, 1997). The June 4, 1997, Order set September 8, 1997, as the beginning of the 45-day precontroversy discovery period, with the initiation of the arbitration set for December 1, 1997. This schedule, however, proved unworkable, so at the request of the parties, the Copyright Office rescheduled the start of the 45-day precontroversy discovery period. See Order in Docket No. 97–1 CARP SD 92–95 (August 20, 1997). In fact, the Office reset the schedule three times before establishing a schedule which met the needs of all the parties. See also Orders in Docket No. 97–1 CARP SD 92–95 (January 15, 1998, July 20, 1998, and October 15, 1998).

During this time, the parties continued to negotiate among themselves. As a result, all of the Phase I parties, with the exception of Joint Sports Claimants and Program Suppliers, settled their Phase I claims for 15.5% of the total aggregate amount of the satellite royalty fees for the years 1992–1995. See Order in Docket No. 97–1 CARP SD 92–95 (December 21, 1998).

[1] Mr. Cannings identified only a Phase II controversy.

Thus, the only parties who will appear before the CARP in the current Phase I proceeding are the Joint Sports Claimants and the Program Suppliers. The 45-day precontroversy discovery period for these parties began on January 8, 1999, and proceeded according to the schedule announced in the October 15, 1998, Order. However, the April 5 initiation date set in that schedule has been rescheduled for May 18, 1999, in order to accommodate conflicts in both the arbitrators' and the parties' schedules. The Office will publish the initiation of the arbitration in the **Federal Register** on May 18, 1999.

Selection of Arbitrators

In accordance with § 251.6 of the CARP rules, the arbitrators have been selected for this proceeding. They are:
The Honorable John W. Cooley (Chairperson)
The Honorable Jeffrey Gulin
The Honorable Curtis E. von Kann.

Schedule for the Proceeding

On April 20, 1999, the parties to this proceeding met with the arbitrators for the purpose of setting a schedule for this proceeding. At that meeting, the parties and the arbitrators agreed to the following schedule:

Presentation of Direct Cases:	
Opening statement: Joint Sports Claimants (JSC)	May 18, 1999.
Testimony for JSC[2]:	
Witnesses: (week 1)	
Paul Beeston, Paul Bortz, James Trautman, Gilbert Korta, Kimberly Gordon	May 18–22, 1999.
Witnesses: (week 2)	
Glen Friedman, Jeffrey Treeman, Jody Kaveney, Scott Shultz, John Hartman, Edwin Desser	June 1–5, 1999.
Opening Statement: Program Suppliers	June 7, 1999.
Testimony for Program Suppliers:	
Marsha Kessler	June 7, 1999.
Marsha Kessler, Sandra Pope	June 9, 1999.
Linda McLaughlin	June 14, 1999.
Alan Wurtzel, Leonard Kalcheim	June 15, 1999.
Paul Lindstrom	June 16, 1999.
James Von Schilling	June 17, 1999.
Additional Hearing Days (if necessary)	June 22–25, 1999.
Filing Deadline for Written Rebuttal Cases	June 28, 1999.
Presentation of Rebuttal Cases	July 26–27, 1999; August 11–20, 1999.
Filing Deadline for Proposed Findings of Fact and Conclusions of Law	September 13, 1999.
Filing Deadline for Reply Findings of Fact and Conclusions of Law	September 27, 1999.
Closing Arguments	October 14, 1999.
Closing of the 180-day period	November 15, 1999.

[2] JSC did not designate specific dates for the presentation of testimony by its witnesses.

All hearings will begin at 9:30 a.m. and end at 4:30 p.m.

At this time, the parties have not moved to close any portion of the proceeding to the public. Further refinements to the schedule will be announced in open meetings and issued as orders to the parties participating in the proceeding. All changes will be noted in the docket file of the proceeding, as required by the Copyright Office regulations governing the administration of CARP proceedings. 37 CFR 251.11(c).

Dated: May 6, 1999.

David O. Carson,

General Counsel.

[FR Doc. 99–11884 Filed 5–10–99; 9:47 am]

BILLING CODE 1410–33–P

NATIONAL CREDIT UNION ADMINISTRATION

Agency Information Collection Activities: Submission to OMB for Revision to a Currently Approved Information Collection; Comment Request

AGENCY: National Credit Union Administration (NCUA).

ACTION: Request for comment.

SUMMARY: The NCUA intends to submit the following information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). This information collection is published to obtain comments from the public.

DATES: Comments will be accepted until July 12, 1999.

ADDRESSES: Interested parties are invited to submit written comments to NCUA Clearance Officer or OMB Reviewer listed below:

Clearance Officer: Mr. James L. Baylen (703) 518–6411, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, Fax No. 703–518–6433, E-mail: jbaylen@ncua.gov

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10226, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Copies of the information collection requests, with applicable supporting documentation, may be obtained by calling the NCUA Clearance Officer, James L. Baylen, (703) 518–6411.

SUPPLEMENTARY INFORMATION: Proposal for the following collection of information:

OMB Number: 3133–0144.

Form Number: NA.

Type of Review: Revision to the currently approved collection.

Title: Examination Survey.

Description: To provide federal credit unions with an opportunity to give NCUA feedback on its examination procedures. NCUA uses the information to evaluate and improve the examination process.

Respondents: Federal credit unions.

Estimated No. of Respondents/ Recordkeepers: 6,799.

Estimated Burden Hours Per Response: 5 minutes.

Frequency of Response: Reporting and Annually.

Estimated Total Annual Burden Hours: 567.

Estimated Total Annual Cost: N/A.

By the National Credit Union Administration Board on May 5, 1999.

Becky Baker,

Secretary of the Board.

[FR Doc. 99–11738 Filed 5–10–99; 8:45 am]

BILLING CODE 7535–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8912]

Grace Estate

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for hearing concerning termination of source materials license SUA–1480 and release of the three grace sites in New Mexico for unrestricted use.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has accepted the Final Reclamation Report, submitted by the firm of Comeau, Maldegen, Templeman & Indall, LLP (CMT&I), representing the estate of Michael P. Grace, documenting the reclamation of the three Grace sites in New Mexico. Site 1 is located approximately 20 miles northeast of Gallup, New Mexico. Site 2 is located near Bibo, New Mexico. Site 3 is located approximately 20 miles northwest of Magdalena, New Mexico. An Environmental Assessment (EA) was performed by the NRC staff in support of its review of the Grace Estate's reclamation plan, in accordance with the requirements of Title 10, Code of Federal Regulations (10 CFR) part 51. The conclusion of the EA was a Finding of No Significant Impact (FONSI) for the proposed site reclamation.

The NRC staff has determined that reclamation of the sites was performed in accordance with Amendment No. 1 to Source Materials License SUA–1480, which authorized the licensee, the estate of Michael P. Grace (CMT&I), to perform radiological cleanup and surface reclamation of three non-operating uranium extraction sites in New Mexico. Based on this determination, and in accordance with the licensee's request, Source Materials License SUA–1480 is hereby terminated and the three sites are released for unrestricted use.

FOR FURTHER INFORMATION CONTACT: Ken Hooks, Uranium Recovery and Low-Level Waste Branch, Mail Stop TWFN 7–J9, Division of Waste Management, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, D.C. 20555. Telephone 301/415–7777. E-mail: KRH1@NRC.GOV

NOTICE OF OPPORTUNITY FOR HEARING: The Commission hereby provides notice that this is a proceeding on an application for a licensing action falling within the scope of Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operators Licensing Proceedings," of the Commission's Rules of Practice for Domestic Licensing Proceedings and Issuance of Orders in 10 CFR part 2. Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for a hearing must be filed within thirty (30) days from the date of publication of this **Federal Register** notice. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Rulemakings and Adjudications Staff of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Rulemakings and Adjudications Staff.

Each request for a hearing must also be served by delivering it personally, or by mail, to:

(1) The applicant, Estate of Michael P. Grace, in care of Jon J. Indall, Comeau, Maldegen, Templeman & Indall, LLP, Coronado Building, 141 E. Palace Avenue, Post Office Box 669, Santa Fe, New Mexico 87504–0669.

(2) The NRC staff, by delivery to the Executive Director of Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, between 7:30 a.m. and 4:15 p.m., Federal workdays; or

(3) By mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the Commission's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

Any hearing request that is granted will be held in accordance with the Commission's "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings' in 10 CFR part 2, subpart L.

Dated at Rockville, MD, this 5th day of May, 1999.

For the Nuclear Regulatory Commission.

N. King Stablein,

Acting Chief, Uranium Recovery and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 99–11819 Filed 5–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[EA 95–009]

Thermal Science, Inc.; Order Imposing Civil Monetary Penalty

I

Thermal Science, Inc. (TSI) is the manufacturer and vendor of fire barrier products known generally as Thermo-Lag. TSI began marketing this product in the early 1980s to licensees of the United States Nuclear Regulatory Commission (NRC) for use in nuclear power plants. TSI represented that Thermo-Lag had undergone independent testing by Industrial Testing Laboratories, Inc. (ITL). Using ITL stationery, TSI issued reports in ITL's name, making it appear that the reports were written by ITL, when in fact they were written by TSI. Many NRC licensees thereafter purchased Thermo-Lag to meet the NRC's fire protection requirements, codified in 10 CFR 50.48 and appendix R to part 50.

II

In 1989 the NRC began receiving licensee reports of problems with installed Thermo-Lag. As part of a subsequent NRC investigation, TSI was questioned in the fall of 1991 about the testing and installation of Thermo-Lag. TSI continued to represent that its product had been independently tested by ITL. However, during an NRC inspection of TSI's facility in December

1991, it was learned that TSI, not ITL, had written the test reports, and that ITL had very limited involvement in the testing process. In 1992 the United States Department of Justice began a criminal investigation of the matter, resulting in indictments and a jury trial in the United States District Court for the District of Maryland in 1995. The jury acquitted TSI and TSI's President, Ruben Feldman, on all of the criminal charges. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) in the amount of $900,000 was subsequently served upon TSI by letter dated October 1, 1996. The Notice sets forth nine violations of 10 CFR 50.5, the NRC's "Deliberate Wrongdoer" rule.

TSI delayed filing a response to the Notice while it sought a preliminary injunction of NRC's administrative process from the United States District Court for the Eastern District of Missouri. The District Court finally denied the injunction request and dismissed TSI's cause of action by opinion dated June 23, 1998, holding that TSI must exhaust its administrative remedies before seeking judicial relief. Thereafter, on July 7, 1998, TSI filed its answer to the Notice. In its answer, TSI set forth its legal objections to the Notice, and denied each of the 10 CFR 50.5 violations. TSI's appeal from the District Court's June 1998 decision is pending before the United States Court of Appeals for the Eighth Circuit. However, by order dated September 10, 1998, the appeals court denied TSI's motion to stay the NRC's administrative proceeding pending the appeal.

III

After consideration of TSI's answer, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations of 10 CFR 50.5 occurred as stated in the Notice, and that the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

TSI pay civil penalties in the amount of $900,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, TSI shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

TSI may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Materials Litigation and Enforcement at the same address, and to the Regional Administrator, NRC Region III, 801 Warrenville Road, Lisle, IL 60532–4351.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If TSI fails to request a hearing within 30 days of the date of this Order (or if written approval of an extension of time in which to request a hearing has not been granted), the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the United States Attorney General for collection.

In the event TSI requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether TSI was in violation of the Commission's requirements as set forth in the Notice referenced in Section II above; and

(b) whether, on the basis of such violations, this Order should be sustained.

Dated this 3rd day of May, 1999.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

Appendix—Evaluation and Conclusion

On October 1, 1996, the NRC issued a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) for violations of NRC requirements identified during an investigation of Thermal Science, Inc. (TSI). The Notice set forth nine violations (designated A through I) of 10 CFR 50.5. TSI's response to the Notice, filed on July 7, 1998, was devoted largely to two legal objections to the Notice: (1) NRC lacks authority to impose a civil penalty on a non-licensee like TSI; and (2) NRC's administrative proceeding is criminal rather than civil, and thus violates the Double Jeopardy Clause of the United States Constitution. These objections repeat those made in TSI's request for a preliminary injunction, filed with the United States District Court for the Eastern District of Missouri. The district court dismissed TSI's injunction request in June 1998. The NRC staff has reviewed TSI's legal objections and finds that they do not bar this administrative action for the following reasons.

The question of whether the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.* (AEA) provides the NRC with authority to impose civil penalties on non-licensees was examined at the time 10 CFR 50.5 was promulgated. See 56 FR 40664–670 (August 15, 1991). As discussed therein, 10 CFR 50.5 was issued under the general authority of AEA sections 161b and 161i, pursuant to which the Commission may issue any regulation deemed necessary to protect public health. Absent from these statutory provisions is any limitation to whom such regulations may be made applicable. Moreover, in evaluating the general powers conferred on the Commission by Congress, federal courts have uniformly found the AEA's provisions quite broad. In passing the AEA, Congress enacted a regulatory scheme which is virtually unique in the degree to which broad responsibility is reposed in the administering agency, free of close prescription in its charter as to how it shall proceed in achieving the statutory objectives.

Siegel v. *AEC*, 400 F.2d 778, 783 (D.C. Cir. 1968). *See also Power Reactor Development Co.* v. *International Union of Elec. Radio and Mach. Workers AFL–CIO*, 367 U.S. 396 (1961). In exercising its broad rulemaking authority, the Commission explicitly made 10 CFR 50.5 applicable to, among others, any "supplier" who provided to one or more NRC licensees "materials, or other goods or services," relating to licensed activities. 10 CFR 50.5(a). As detailed in the Notice, TSI qualifies as such a "supplier." Accordingly, TSI is properly subject to the regulation, even though TSI is not an NRC license.

TSI's Double Jeopardy argument is contrary to the Supreme Court's holding in *Hudson* v. *U.S.*, 118 S.Ct. 488 (1997). The Court there held that while a second "criminal prosecution" for the same conduct is prohibited, civil penalties based on the alleged criminal conduct may be lawfully imposed

unless "the clearest proof" shows that the statute authorizing the civil penalty can only be construed as a criminal sanction. *Hudson*, 118 S.Ct. at 493. In making this determination, only the "statute on its face" is to be evaluated (*Id.*, at 494), and if the statute confers sanction authority upon an administrative agency this is "prima facie evidence that Congress intended to provide for a civil sanction." *Id.*, at 495. In this regard, the Court distinguished between the "infamous punishment of imprisonment" imposed following a judicial trial, and money penalties. *Id.*, at 495–96.

Applying *Hudson* to the facts here, the October 1, 1996 Notice informed TSI that the NRC proposed to impose civil penalties pursuant to section 234 of the AEA, 42 U.S.C. 2282, and 10 CFR 2.205.[1] Reading AEA section 234, which is titled "Civil Monetary Penalties For Violations of Licensing Requirements," there can be no doubt that it provides for civil, not criminal, sanctions. Persons are subject to "civil" penalties of up to $100,000 "to be imposed by the Commission." 42 U.S.C. 2282(a). Unpaid penalties imposed by the Commission "may be collected by civil action." 42 U.S.C. 2282(b). Even when a penalty matter is referred to the United States Attorney General for collection, the Attorney General is only "authorized to institute a civil action." 42 U.S.C. 2282(c). Section 234 provides only for monetary penalties, with no provisions for imprisonment, and does not contain the word "criminal."[2] Similarly, 10 CFR 2.205 provides only for the imposition of civil penalties, and specifies the procedures by which a person charged with violations may contest those violations by requesting an administrative hearing. Accordingly, any administrative action taken by the Commission against TSI pursuant to the Notice will necessarily be civil rather than criminal in nature. In these circumstances the Double Jeopardy Clause does not bar the administrative action even though it arises from some of the same conduct for which TSI was criminally tried in 1995.

With respect to the facts upon which the staff based its proposed action, TSI's response to the Notice denied the nine violations. The NRC's evaluation and conclusion regarding TSI's factual denial are as follows:

Restatement of Violation A

A. Contrary to 10 CFR 50.5, TSI deliberately made statements in an October 5, 1991 letter to the NRC which it knew contained inaccurate and incomplete information material to the NRC, as evidenced by the following examples:

1. In its October 5, 1991 letter, TSI stated that Thermo-Lag had been ". . . extensively tested by independent testing laboratories on many occasions. . . ." *See* TSI Letter of October 5, 1991, at 1. TSI's statement was incomplete and inaccurate in that the NRC later determined during an inspection at TSI's offices that test reports bearing the logo of Industrial Testing Laboratories, Inc. (ITL) were actually drafted by TSI, typed by TSI, and issued by TSI. ITL's role was limited to having one of its representatives witness data acquisition on the date of the test, and verify furnace temperature readouts, without having had any involvement in the construction or approval of the test article. Thus, with respect to ITL, the statement that Thermo-Lag had been ". . . extensively tested by independent testing laboratories on many occasions. . . ." misrepresented the respective roles of TSI and ITL in Thermo-Lag testing.

2. In its October 5, 1991 letter, TSI stated that Thermo-Lag provides "a fire barrier of consistent performance[]" when installed "in accordance with the instruction manuals in concert with training programs of Thermal Science," and that this performance had "been proven by independent testing on multiple occasions." *See* TSI Letter of October 5, 1991, at 2. This statement was inaccurate in that most of the configurations tested by TSI, in those tests that were submitted to the NRC, were not installed in accordance with the TSI instruction manual.

3. In TSI's "Response To The United States Nuclear Regulatory Commission's Letter Dated 10 September 1991," attached to its October 5, 1991 letter, TSI provided results from 1986 tests conducted by Underwriter's Laboratory (UL) regarding ampacity derating tests of one-hour and three-hour Thermo-Lag fire barrier systems, and stated that the values obtained by the UL tests reflected "the most current and conservative results of tests . . ." and were "the most conservative information available to us."[3] *See* TSI Response at 6 and 12. These statements were inaccurate in that TSI was aware of an alternate baseline UL ampacity derating test that was more current and provided more conservative values than the test results submitted to the NRC on October 5, 1991.

These statements were material to the NRC because they were made by TSI: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the nature of the testing performed to qualify Thermo-Lag for use in nuclear power plants; and (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire barrier requirements and guidelines. (01011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation A

In denying Violation A, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation A

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation A. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation A, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation A.

Restatement of Violation B

B. Contrary to 10 CFR 50.5, during an October 17, 1991 meeting with the NRC Staff, Mr. Rubin Feldman, the President of TSI, deliberately made oral statements to the NRC that he knew

[1] 10 CFR 2.205 is the NRC regulation implementing the statutory authority of 42 U.S.C. 2282. The regulation was also issued under the authority, *inter alia*, of AEA sections 161 b, i, and o, 42 U.S.C. 2201 (b), (i), and (o). See preamble to 10 CFR Part 2.

[2] Section 234 thus stands in sharp contrast to the criminal provisions of the AEA, set forth in sections 221–223, 42 U.S.C. 2271–2273, which either refer to "criminal violations," or specify terms of imprisonment as punishment.

[3] This answer responded to NRC Question I.A.5., "What are ampacity deratings for 1-hour fire rated THERMO-LAG fire barrier systems[,]" and NRC Question I.B.5., "What are ampacity deratings for 3-hour fire rated THERMO-LAG fire barrier systems[,]." *See* NRC letter to TSI dated September 10, 1991, Enclosure at 1.

contained inaccurate information material to the NRC. With respect to the participation of ITL in the fire barrier testing of Thermo-Lag, the following exchange took place:

> Mr. West (NRC): You mentioned in your [October 5, 1991] letter—in fact, you provided us with an enclosure that identifies quite a few tests that had been sponsored, presumably, by TSI. It looks like the bulk of the tests were actually done at your facility, although there seemed to be some involvement of a testing outfit called ITL, Industrial Testing Laboratory. We are not familiar with it; it's not UL or Southwest. Could you fill us in on who ITL is and tell us what involvement they have in each test, in terms of planning, conduct and report writing and documentation base?
>
> Mr. Feldman: Industrial Test Laboratories is a St. Louis-based laboratories. . . . We needed a third part (sic) *observing the various phases* of the testing. We have asked them if they would be willing to do that. They indicated that they would, so they *officiated during the phases of the testing.* That's how the reports were published.

Tr. at 167–8 (emphasis added). The discussion about ITL continued as follows:

> Mr. West: . . . What I'm trying to find out is, I think we need to decide if their [ITL's] involvement in the test really would constitute the independence for the test.
>
> Mr. Feldman: *They were very independent. They reviewed all the data. They analyzed all the data. It was as independent as you can make it.*

Tr. at 170 (emphasis added.)

Mr. Feldman's statements were inaccurate and misrepresented the respective roles of ITL and TSI in Thermo-Lag testing. Mr. Feldman knew that ITL did not function as an independent tester of Thermo-Lag, and that ITL's role was limited to having one of its representatives witness data acquisition on the date of the test, and verify furnace temperature readouts, without having any involvement in the construction or approval of the fire barrier/raceway test article.

Mr. Feldman's statements were material to the NRC because Mr. Feldman made them, on behalf of TSI: (1) in response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the nature of the relationship between TSI and ITL regarding the testing performed to qualify Thermo-Lag as 1-hour and 3-hour fire barrier material for use in nuclear power plants; (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire protection requirements and guidelines; and (3) to persuade the NRC that, for those Thermo-Lag tests in which ITL had involvement, ITL had acted as an independent, third-party reviewer and analyzer of all the test data. (02011).

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation B

In denying Violation B, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation B

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation B. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation B, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation B.

Restatement of Violation C

C. Contrary to 10 CFR 50.5, TSI deliberately submitted inaccurate information material to the NRC on November 12, 1991, in response to NRC questions sent to TSI by letter dated October 31, 1991, as evidenced by the following examples:

1. The NRC asked TSI to "provide copies of all TSI correspondence and documents related to UL Project Report 86–NK–23826, File R–6–802, dated January 27, 1987" dealing with ampacity derating testing used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material. See NRC letter of October 31, 1991, Enclosure at 1, Question 7. In partial response, TSI submitted ITL Report 82–355–F–1 and ITL Report 84–10–5. See TSI's "Partial Response To The United States Nuclear Regulatory Commission's Letter Dated 31 October 1991" (attached to TSI's letter dated November 12, 1991), Answer 7–2 (2), at 9, and Attachment 4. This response was inaccurate in that TSI knew ITL Report 82–355–F–1 misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. This report's cover sheet carries the ITL logo, indicating that the report was written by ITL. This report is TSI Technical Note 111782, with an ITL cover sheet attached to it. TSI Technical Note 111782 had been written and issued by TSI in November 1981. ITL had no involvement in creating or issuing ITL Report 82–355–F–1, did not witness the subject ampacity test, and had no role in documenting or analyzing the test results.

2. Regarding ITL Report 84–10–5, TSI's November 12, 1991 response was further inaccurate in that TSI knew that this ITL Report also misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. The report's headings and titles indicate that the report was written by ITL. In fact, TSI wrote ITL Report 84–10–5, using ITL stationery that TSI had obtained from ITL. Section 2 of the report represents that ITL compared the test data to baseline data obtained in an October 1981 test (a reference to the test reported in ITL Report 82–355–F–1). In fact, no such data comparison was performed by ITL.

The inaccurate information TSI submitted to the NRC on November 12, 1991, in the form of the "ITL" reports, was material to the NRC because TSI's submittal was made: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the ampacity derating testing used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material for use in nuclear power plants; and (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire protection requirements. (03011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation C

In denying Violation C, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation C

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation C. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation C, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation C.

Restatement of Violation D

D. Contrary to 10 CFR 50.5, TSI deliberately submitted inaccurate information material to the NRC on December 3, 1991, in further response to NRC questions sent to TSI by letter dated October 31, 1991, as evidenced by the following examples:

1. The NRC asked TSI to "provide full copies of ITL fire test reports 82–11–80 and 82–11–81, including daily work sheets, quality assurance documentation, and thermocouple temperature records." NRC letter of October 31, 1991, Enclosure at 3, Question 19. This request was generated by Mr. Feldman's offer to provide the quality control records attached to ITL reports 82–11–80 and 82–11–81, which were needed to answer a question concerning test article construction. *See* October 17, 1991 transcript, at 89–90; 190–91. In response, TSI submitted complete copies of ITL Report 82–11–80 and ITL Report 82–11–81, which were the generic 1-hour and 3-hour test reports used to qualify Thermo-Lag as 1-hour and 3-hour fire barrier material for use in nuclear power plants. *See* TSI's "Supplemental Response To The Remaining Questions Contained In The United States Nuclear Regulatory Commission's Letter Dated 31 October 1991" (attached to TSI's letter dated December 3, 1991), Answer 19, at 9, and Enclosures 8 and 9. This response was inaccurate in that TSI knew ITL Report 82–11–80 misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. The Proprietary Rights statement of TSI, included as part of the report, stated that the report was prepared by ITL. In fact, the report was not prepared by ITL. TSI wrote ITL Report 82–11–80, using ITL stationery that TSI had obtained from ITL. Section 3 of ITL Report 82–11–80 states that the subject testing was performed "under the supervision and total control of Industrial Testing Laboratories, of St. Louis, Missouri, an independent testing laboratory." In fact, the test was conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

2. Regarding ITL Report 82–11–81, TSI's December 3, 1991 response was further inaccurate in that TSI knew that this ITL Report also misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. The Proprietary Rights statement of TSI, included as part of the report, stated that the report was prepared by ITL. In fact, the report was not prepared by ITL. TSI wrote ITL Report 82–11–81, using ITL stationery that TSI had obtained from ITL. Section 3 of ITL Report 82–11–81 stated that the subject testing was performed "under the supervision and total control of Industrial Testing Laboratories, of St. Louis, Missouri, an independent testing laboratory." In fact, the test was conducted under the supervision and control of TSI, with ITL representative Donald Storment merely witnessing the tests and verifying furnace temperature readouts, which took place between September 10 and October 12, 1982. Moreover, several daily work sheet pages from Section 7 of the report are represented as having been signed by Mr. Storment. In fact, those pages contain replicated signatures of Mr. Storment, which TSI added to the report without the knowledge or consent of either ITL or Mr. Storment. For the daily work sheets that Mr. Storment did sign, TSI instructed Mr. Storment to backdate those sheets to make it appear that he had witnessed TSI work performed in August and early September of 1982, when, in fact, Mr. Storment had not witnessed that work.

The inaccurate information TSI submitted to the NRC on December 3, 1991 was material to the NRC because TSI's submittal was made: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific questions about the test articles discussed in ITL Reports 82–11–80 and 82–11–81, which were generic tests TSI had used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material for use in nuclear power plants; and (2) to influence the NRC's investigation into whether Thermo-Lag met NRC's fire protection requirements. (04011)

This is a Severity Level I violation (Supplement VII)

Civil Penalty—$100,000

Summary of TSI's Answer to Violation D

In denying Violation D, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation D

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation D. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation D, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation D.

Restatement of Violation E

E. Contrary to 10 CFR 50.5, TSI deliberately made a statement in a May 8, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC. In this letter, TSI stated that its ongoing test program at Omega Point Laboratories was "under the total control of Omega Point." *See* TSI Letter of May 8, 1992, at 2. This statement was inaccurate in that this test program was not under the total control of Omega Point Laboratories. For example, the construction of the test articles and placement of the test thermocouples was under TSI's control.

This statement was material to the NRC because TSI submitted it: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the misleading nature of the "ITL" reports; and (2) to persuade the NRC that TSI was now subjecting Thermo-Lag to truly independent testing. (05011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation E

In denying Violation E, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation E

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the allegations made in Violation E. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation E, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation E.

Restatement of Violation F

F. Contrary to 10 CFR 50.5, TSI deliberately made statements in a June 16, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC, including but not limited to the following examples:

1. TSI stated that its continuing test program at Omega Point Laboratories was "under the total control of Omega Point." *See* TSI Letter of June 16, 1992, at 2. This statement was inaccurate in that this test program was not under the total control of Omega Point. For example, the construction of the test articles and placement of the test thermocouples was under TSI's control.

2. TSI stated that the tests were being conducted in accordance with, among other criteria, the "applicable prerequisites of" NRC Generic Letter 86–10. *See* TSI Letter of June 16, 1992, at 3. This statement was inaccurate in that these tests were not being conducted in accordance with the guidance of NRC Generic Letter 86–10.

These statements were material to the NRC because TSI submitted them: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the misleading nature of the "ITL" reports; and (2) to persuade the NRC that TSI was now subjecting Thermo-Lag to truly independent testing. (06011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation F

In denying Violation F, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation F

TSI's brief pro *forma answer* on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation F. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation F, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation F.

Restatement of Violation G

G. Contrary to 10 CFR 50.5, TSI deliberately made a statement in a June 22, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC. In this letter, TSI stated that the TSI-sponsored tests conducted at Omega Point Laboratories were "under their (Omega Point Laboratories') total control, which also included quality control during construction." *See* TSI Letter of June 22, 1992, at 2. This statement was inaccurate in that (1) TSI knew that the test program was not under the total control of Omega Point and that (2) TSI knew that quality control during construction of the test articles was not under the total control of Omega Point.

This statement was material to the NRC because TSI submitted it: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the misleading nature of the "ITL" reports; and (2) to persuade the NRC that TSI was now subjecting Thermo-Lag to truly independent testing. (07011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation G

In denying Violation G, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation G

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the allegations made in Violation G. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation G, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation G.

Restatement of Violation H

H. Contrary to 10 CFR 50.5, TSI deliberately made a statement in a July 29, 1992 letter to the NRC which it knew contained inaccurate information material to the NRC. In this letter, TSI stated that the 1986 ampacity testing "was done by Underwriters Laboratories [sic] in Chicago under its [Underwriters Laboratory's] total control." TSI Letter of July 29, 1992, at 4. This statement was inaccurate in that TSI knew that the referenced ampacity testing was not under the total control of Underwriters Laboratory.

This statement was material to the NRC because TSI submitted it: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag, including specific concerns about the ampacity derating testing used to qualify Thermo-Lag as 1-hour and 3-hour rated fire barrier material for use in nuclear power plants; and (2) to influence how the NRC disseminated information to the nuclear

industry about the performance of Thermo-Lag products. (08011)

This is a Severity Level I violation (Supplement VII) Civil Penalty—$100,000

Summary of TSI's Answer to Violation H

In denying Violation H, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation H

TSI's brief *pro forma* answer on the facts provides no rebuttal or other information regarding the allegations made in Violation H. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation H, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation H.

Restatement of Violation I

I. Contrary to 10 CFR 50.5, on or about August 31, 1992, TSI deliberately submitted to the NRC ITL Reports 85–6–283, 85–2–382, 85–5–314, 85–11–227, 86-7–472, 87–5–435, 87–6–350, 85–1–106, and 85–4–377. These reports misrepresented the respective roles of TSI and ITL in the testing of Thermo-Lag. TSI knew these reports contained inaccurate information material to the NRC, as evidenced by the following examples:

1. Regarding ITL Report 85–6–283, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Page (i) of the report represents that the ITL representative witnessing the test (Dave Siegel) was a professional engineer. However, subsequent NRC review has determined that Dave Siegel was not a professional engineer, did not have a college degree, and that TSI was aware of his lack of qualifications. Page (i) of the report also represents that Allan Siegel reviewed, approved, and signed the report on behalf of ITL. However, subsequent NRC review has determined that page (i) contains the replicated signature of Allan Siegel, which TSI added to the report without the knowledge or consent of Allan Siegel. Daily work sheets contained in Section 6 of the report were altered by TSI to make it appear that Dave Siegel witnessed TSI's construction of the test article on May 17, 1985, when in fact Dave Siegel only witnessed the test itself, which was performed on June 19, 1985. Similarly, in Section 7 of the report, TSI forged the initials of Dave Siegel on work sheets to make it appear that Dave Siegel was present on May 17, 1985, when TSI constructed the test article.

2. Regarding ITL Report 85–2–382, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

3. Regarding ITL Report 85–5–314, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Page (i) of the report represents that the ITL representative witnessing the test (Mike White) was a professional engineer. This is inaccurate in that Mr. White was not a professional engineer, and at that time TSI knew that Mr. White was not a professional engineer. Among the daily work sheets contained in Section 6 of the report are ones signed by Mike White, regarding test article work performed by TSI on May 14, 1985. These work sheets are inaccurate in that Mr. White was present only during the test itself on May 21, 1985. In fact, TSI instructed Mr. White to backdate the work sheets he signed to make it appear that he had witnessed TSI May 14 work when, in fact, he had not witnessed that work.

4. Regarding ITL Report 85–11–227, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Among the daily work sheets contained in Section 6 of the report are ones signed by Mike White, regarding test article work performed by TSI on November 8, 1985. Section 6 is inaccurate in that Mr. White was present only during the test itself on November 19, 1985. In fact, Mr. White was instructed by TSI to sign work sheets to make it appear that he had witnessed TSI's November 8 work when, in fact, he had not witnessed that work.

5. Regarding ITL Report 86–7–472, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted on August 1, 1986 "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts. Contained within this report is a "Verification of Application" document dated July 31, 1986 and signed by R. A. Lohman on behalf of TSI. This document refers to ITL Test Article No. 86–7–472. This information was inaccurate in that there were never any ITL test articles, as ITL neither built nor helped to assemble any of the articles tested by TSI.

6. Regarding ITL Report 87–5–435, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject

testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

7. Regarding ITL Report 87–6–350, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

8. Regarding ITL Report 85–1–106, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

9. Regarding ITL Report 85–4–377, the report's headings and titles indicate that the report was prepared by ITL. This information was inaccurate in that TSI wrote this report, using ITL stationery that TSI had obtained from ITL. Page (i) of the report represents that the ITL representative witnessing the test (Clarence Bester) was a professional engineer. This is inaccurate in that Mr. Bester was not a professional engineer. Section 3 of the report stated that the subject testing was conducted "under the direct supervision and total control of Industrial Testing Laboratories, Inc." In fact, the test had been conducted under the supervision and control of TSI, with an ITL representative merely witnessing the test and verifying furnace temperature readouts.

The reports TSI submitted to the NRC on or about August 31, 1992 were material to the NRC because they were submitted by TSI: (1) In response to concerns the NRC had raised about the quality and adequacy of Thermo-Lag products; (2) in the context of an ongoing NRC investigation into concerns about the quality and performance of Thermo-Lag products; and (3) to influence the NRC's investigation into whether Thermo-Lag products met the fire barrier requirements of 10 CFR 50.48 and 10 CFR part 50, appendix R. (09011)

This is a Severity Level I violation (Supplement VII)

Civil Penalty—$100,000

Summary of TSI's Answer to Violation I

In denying Violation I, TSI stated that at all times it acted and intended to act in accordance with all applicable requirements. TSI stated that no false statements were ever deliberately made by its representatives, and that its representatives "never deliberately omitted to disclose any material information to the NRC." In support of its denial, TSI referenced the fact that based on the evidence presented at the criminal trial in 1995, the jury acquitted TSI of all charges.

NRC Evaluation of TSI's Answer to Violation I

TSI's brief pro forma answer on the facts provides no rebuttal or other information regarding the detailed allegations made in Violation I. The answer makes no attempt to explain why the allegations are incorrect. In the absence of new information, the NRC staff continues to believe that violations of NRC requirements occurred as alleged in Violation I, that these violations are properly classified as Severity Level 1, and that these violations carry a high degree of regulatory significance. Accordingly, the NRC staff finds that the proposed civil penalty of $100,000 should be imposed for Violation I.

NRC Conclusion

The NRC has concluded that the violations alleged in the Notice occurred as stated. TSI did not provide any basis for reducing the severity level of the violations, and did not provide any basis for mitigation of the proposed civil penalties. Consequently, the proposed civil penalty in the amount of $900,000 should be imposed on TSI.

[FR Doc. 99–11818 Filed 5–10–99; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corporation (Wolf Creek Generating Station); Exemption

I

Wolf Creek Nuclear Operating Corporation (WCNOC or licensee) is the holder of Facility Operating License No. NPF–42, which authorizes operation of the Wolf Creek Generating Station (WCGS). The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now and hereafter in effect.

The facility is a pressurized water reactor located at the licensee's site in Coffey County, Kansas.

II

Section 50.60(a) to 10 CFR part 50 requires that except as provided in § 50.60(b), all light-water nuclear power reactors, other than reactor facilities for which the certifications required under section 50.82(a)(1) have been submitted, must meet the fracture toughness and material surveillance program requirements for the reactor coolant pressure boundary set forth in appendices G and H of 10 CFR part 50. Section 50.60(b) of 10 CFR part 50 states that proposed alternatives to the described requirements of appendices G and H of part 50 or portions thereof may be used when an exemption is granted by the Commission under 10 CFR 50.12.

III

By letter dated December 29, 1998, WCNOC requested that the NRC exempt WCGS from the application of specific requirements of 10 CFR 50.60 and appendix G to 10 CFR Part 50. Specifically, WCNOC proposes to use American Society for Mechanical Engineers (ASME) Code Case N–514 to permit setting the pressure setpoint of WCGS's cold overpressure mitigation system (COMS) such that the pressure-temperature (P–T) limits required by appendix G of 10 CFR part 50 could be exceeded by ten percent during a low temperature pressure transient.

The Commission has established requirements in 10 CFR part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, appendix G of 10 CFR part 50 requires that P–T limits be established for reactor pressure vessels (RPVs) during normal operation and vessel hydrostatic testing. As stated in appendix G, "The appropriate requirements on . . . the pressure-temperature limits . . . must be met for all conditions." In order to avoid approaching these P–T limit curves and provide pressure relief during low temperature overpressurization events, pressurized water reactor licensees have installed protection systems (COMS) as part of the reactor coolant system pressure boundary. WCNOC is required as part of the WCGS Technical Specifications (TS) to develop, update,

and submit reactor vessel P–T limits and COMS setpoints for NRC review and approval.

WCNOC determined that the exemption request from the provisions of 10 CFR 50.60 and appendix G was necessary since these regulations require, as noted above, that reactor vessel conditions not exceed the P–T limits established by appendix G. In referring to 10 CFR 50.12 on specific exemptions, WCNOC cited special circumstances regarding achievement of the underlying purpose of the regulations as their basis for requesting this exemption (10 CFR 50.12(a)(2)(ii)).

WCNOC noted in support of the 10 CFR 50.12(a)(2)(ii) criteria that the underlying purpose of the subject regulation is to establish fracture toughness requirements for ferritic materials of pressure retaining components of the reactor coolant pressure boundary. To accomplish this, appendix G of Section XI of the ASME Code requires the P–T limits be calculated: (a) Using a safety factor of 2 on the principal membrane (pressure) stresses, (b) with margin added to the reactor vessel nil ductility reference temperature (RT_{NDT}) in accordance with Regulatory Guide 1.99, Rev. 2, "Radiation Embrittlement of Reactor Vessel Materials," (c) assuming a flaw at the surface with a depth of ¼ of the vessel wall thickness and a length of 6 times its depth, and (d) using a conservative fracture toughness curve that is based on the lower bound of static, dynamic, and crack arrest fracture toughness tests on material similar to the reactor vessel material. Code Case N–514 provides for normal operation within the P–T limits determined in accordance with ASME Section XI, appendix G, but allows determination of setpoints for COMS events such that the maximum pressure in the vessel would not exceed 110 percent of the appendix G limits.

WCNOC proposed that establishing the COMS pressure setpoint in accordance with the N–514 provisions, such that the vessel pressure would not exceed 110 percent of the P–T limit allowances, would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the COMS. The safety margins provided by application of Code Case N–514 result in a safety factor of 1.8 on the principal membrane (pressure) stresses, with all other factors, including assumed flaw size and fracture toughness, remaining the same as ASME Section XI, appendix G, methodology. Due to the isothermal nature of the COMS events, the margin with respect to toughness for a COMS transient is within the range provided by ASME Section XI, appendix G, for normal heatup and cooldown in the low temperature range. Thus, applying Code Case N–514 will satisfy the intent of 10 CFR 50.60 for fracture toughness requirements. Further, application of Code Case N–514 will relieve operational restrictions for WCGS; it will reduce the potential for inadvertent RCS pressure relief events, thereby improving plant safety, and will reduce unnecessary burdens on operators during important plant evolutions.

The Commission has determined that application of 10 CFR 50.60 in these particular circumstances is not necessary to achieve the underlying purpose of that rule and that the use of Code Case N–514 would meet the underlying intent of the regulation. Based upon a consideration of the conservatisms which are explicitly defined in the appendix G methodology, it was concluded that permitting the COMS setpoint to be established such that the vessel pressure would not exceed 110 percent of the limit defined by P–T limit curves would provide an adequate margin of safety against brittle failure of the reactor vessel. This is also consistent with the determination that has been reached for other licensees under similar conditions based on the same considerations. Therefore, the exemption requested under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be acceptable. The staff also agrees that limiting the potential for inadvertent COMS actuation may improve plant safety.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants Wolf Creek Nuclear Operating Corporation an exemption from the requirements of 10 CFR 50.60 in order to apply ASME Code Case N–514 for determining the WCGS cold overpressurization mitigation system pressure setpoint.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (64 FR 23136).

This exemption is effective upon issuance.

Dated at Rockville, Md., this 30th day of April 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11817 Filed 5–10–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of May 10, 17, 24, and 31, 1999.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 10

Wednesday, May 12

9:00 a.m. Discussion of Management Issues (Closed-Ex. 2 and 6)

Week of May 17—Tentative

There are no meetings scheduled for the Week of May 17.

Week of May 24—Tentative

Thursday, May 27

11:30 a.m. Affirmation Session (Public Meeting) (if needed)

Week of May 31—Tentative

There are no meetings scheduled for the Week of May 31.

The schedule for Commission Meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or *dkw@nrc.gov.*

Dated: May 7, 1999.

William M. Hill, Jr.,

Secy Tracking Officer, Office of the Secretary.

[FR Doc 99–12003 Filed 5–7–99; 3:03 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17a–22, SEC. File No. 270–202, OMB Control No. 3235–0196

Rule 17Ab2–1 and Form CA–1, SEC File No. 270–203, OMB Control No. 3235–0195

Rule 15c2–5, SEC File No. 270–195, OMB Control No. 3235–0198

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 17a–22 under the Securities Exchange Act of 1934 ("Exchange Act")[1] requires all registered clearing agencies to file with the Commission three copies of all materials they issue or make generally available to their participants or other entities with whom they have a significant relationship. The filings with the Commission must be made within ten days after the materials are issued, and when the Commission is not the appropriate regulatory agency, the clearing agency must file one copy of the material with its appropriate regulatory agency. The Commission is responsible for overseeing clearing agencies and uses the information filed pursuant to Rule 17a–22 to determine whether a clearing agency is implementing procedural or policy changes. The information filed aides the Commission in determining whether such changes are consistent with the purposes of Section 17A of the Exchange Act. Also, the Commission uses the information to determine whether a clearing agency has changed its rules without reporting the actual or prospective change to the Commission as required under Section 19(b) of the Exchange Act.

The respondents to Rule 17a–22 generally are registered clearing agencies.[2] The frequency of filings made by clearing agencies pursuant to Rule 17a–22 varies, but on a average there are approximately 200 filings per year clearing agency. Because the filings consist of materials that have prepared for widespread distribution, the additional cost to the clearing agencies associated with submitting copies to the Commission is relatively small. The Commission staff estimates that the cost of compliance with Rule 17a–22 to all registered clearing agencies is approximately $4,930. This represents one dollar per filing in postage, or a total of $3,400. The remaining $1,530 (or approximately 31% of the total cost of compliance) is the estimated cost of additional printing, envelopes, and other administrative expenses. (The estimated total cost per response is $1.45 per page representing $1.00 per page in postage plus $0.45 for printing, envelopes, and other administrative expenses.)

Rule 17Ab2–1 and Form CA–1 require clearing agencies to register with the Commission and to meet certain requirements with regard to, among other things, a clearing agency's organization, capacities, and rules. The information is collected from the clearing agency upon the initial application for registration on Form CA–1. Therefore, information is collected by amendment to the initial Form CA–1 when material changes in circumstances necessitates modification of the information previously provided to the Commission.

The Commission uses the information disclosed on Form CA–1 to (i) Determine whether an applicant meets the standards for registration set forth in Section 17A of the Exchange Act, (ii) enforce compliance with the Exchange Act's registration requirement, and (iii) provide information about specific registered clearing agencies for compliance and investigatory purposes. Without Rule 17Ab2–1, the Commission could not perform these duties as statutorily required.

There are currently 15 registered clearing agencies, three clearing agencies that have been granted an exemption from registration, and two entities with pending applications for an exemption from clearing agency registration. The Commission staff estimates that each initial Form CA–1 requires approximately 130 hours to complete and submit for approval. Hours required for amendments to Form CA–1 that must be submitted to the Commission in connection with material changes to the initial Form CA–1 can vary, depending upon the nature, and extent of the amendment. Since the Commission only receives an average of one submission per year, the aggregate annual burden associated with compliance with Rule 17Ab2–1 and Form CA–1 is 130 hours. Based upon the staff's experience, the average cost to clearing agencies of preparing and filing the initial Form CA–1 is estimated to be $16,391.

Rule 15c2–5 prohibits a broker-dealer from arranging or extending a loan to customers not subject to Regulation T (12 CFR 220), in connection with the offer or sale of securities unless, before entering the transaction, the broker-dealer: (i) Delivers to the customer a written statement containing specific information concerning the terms, obligations, risks and charges of the loan; (ii) obtains from the customer sufficient financial information to determine that the entire transaction is suitable for the customer; and (iii) retains on file and makes available to the customer a written statement setting forth the broker-dealer's basis for determining that the transaction was suitable. The collection of information required by the Rule is necessary to execute the Commission's mandate under the Exchange Act to prevent fraudulent, manipulative, and deceptive acts and practices by broker-dealers.

There are approximately 50 respondents that require an aggregate total of 600 hours to comply with the Rule. Each of these approximately 50 registered broker-dealers makes an estimated 6 annual responses, for an aggregate total of 300 responses per year. Each response takes approximately 2 hours to complete. Thus, the total compliance burden per year is 600 burden hours. The approximate cost per hour is $25.00 (based on an annual salary of $52,000 for clerical labor), resulting in a total compliance cost of $15,000 (600 hours @ $25.00 per hour).

Written comments are invited on: (i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (ii) the accuracy of the agency's estimates of the burden of the proposed collection of information; (iii) ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) ways to minimize the burden of the

[1] 15 USC § 78a *et seq.*

[2] Respondents include temporarily registered clearing agencies. Respondents also may include clearing agencies granted exemptions from the registration requirements of Section 17A, conditioned upon compliance with Rule 17a–22.

collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549.

Dated: May 3, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11811 Filed 5–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 17Ac3–1(a) and Form TA–W, SEC File No. 270–96, OMB Control No. 3235–0151

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Subsection (c)(3)(C) of Section 17A of the Securities Exchange Act of 1934 ("Exchange Act") authorizes transfer agents registered with an appropriate regulatory agency ("ARA") to withdraw from registration by filing with the ARA a written notice of withdrawal and by agreeing to such terms and conditions are the ARA deems necessary or appropriate in the public interest, for the protection of investors, or in the furtherance of the purposes of Section 17A.

In order to implement Section 17A(c)(3)(C) of the Exchange Act the Commission, on September 1, 1977, promulgated Rule 17Ac3–1(a) and accompanying Form TA–W. Rule 17Ac3–1(a) provides that notice of withdrawal from registration as a transfer agent with the Commission shall be filed on Form TA–W. Form TA–W requires the withdrawing transfer agent to provide the Commission with certain information, including (1) The locations where transfer agent activities are or were performed; (2) the reasons for ceasing the performance of such activities; (3) disclosure of unsatisfied judgments or liens; and (4) information regarding successor transfer agents.

The Commission uses the information disclosed on Form TA–W to determine whether the registered transfer agent applying for withdrawal from registration as a transfer agent should be allowed to deregister and, if so, whether the Commission should attach to the granting of the application any terms or conditions necessary or appropriate in the public interest, for the protection of investors, or in furtherance of the purposes of Section 17A of the Exchange Act. Without Rule 17Ac3–1(a) and Form TA–W, transfer agents registered with the Commission would not have a means for voluntary deregistration when necessary or appropriate to do so.

Respondents file approximately thirty Form TA–Ws with the Commission annually. The filing of a Form TA–W occurs only once, when a transfer agent is seeking deregistration. In view of the ready availability of the information requested by Form TA–W, its short and simple presentation, and the Commission's experience with the Form, we estimate that approximately one half hour is required to complete Form TA–W, including clerical time. Thus, the total burden of fifteen hours of preparation for all transfer agents seeking deregistration in any one year is negligible.

The Commission estimates a cost of approximately $35 for each half hour required to complete a Form TA–W. Therefore, based upon a total of fifteen hours, transfer agents spend approximately $1,050 each year to complete thirty Form TA–Ws.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: April 29, 1999.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11812 Filed 5–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–40379A; File No. SR–NASD–98–58]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Elimination of the Requirement for Personal Service of Decisions in Cases Involving Bars and Expulsions; Correction

May 4, 1999.

In notice document 98–23762, beginning on page 47058, in the issue of Thursday, September 3, 1998, make the following correction:

On page 47058, in the third column, the proposed new language to Rule 9269(d) is corrected to read as set forth below.

The Association shall serve the decision on a Respondent by overnight courier, facsimile or other means reasonably likely to obtain prompt service when the sanction is a bar or an expulsion.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11815 Filed 5–10–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41359; File No. SR–NYSE–98–41]

Self-regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the New York Stock Exchange, Inc. Amending Opening Imbalance Publication Procedures for Expiration Days

May 3, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 25, 1998, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 22, 1999, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to expiration day opening imbalance publication procedures. The text of the proposed rule change is available at the Office of the Secretary, the NYSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(10.

[2] 17 CFR 240.19b-4.

[3] Letter from Donald Siemer, Director, Market Surveillance, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, dated March 18, 1999 ("Amendment No. 1"). Amendment No. 1 clarified the Exchange's opening procedures for stocks underlying derivative index related products on expiration days.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange currently has auxiliary opening procedures for expiration days.[4] These auxiliary procedures require, among other things, that market order imbalances of 50,000 shares or more in stocks on the Exchange's "special stock" list be published as soon as practicable after 9:00 a.m. on expiration days.[5] The special stock list consists of the 50 most highly capitalized stocks in the S&P 500 Stock Price Index, any stocks in the Major Market Index (XMI) that are not among the 50, and the 10 most highly capitalized stocks in the S&P 400 MidCap Index.[6]

The Exchange also required the use of the special stock list for imbalance publications at the close. In June 1998, however, the Exchange eliminated the use of special stock lists for publishing imbalances at the close and mandated that market-at-the-close ("MOC") imbalances of 50,000 shares or more be published in *all* stocks on any trading day.[7] As part of these revisions, the exchange also added a provision permitting the publication of MOC imbalances of *less than* 50,000 shares, with the approval of a Floor Official. These changes were implemented as part of a group of revisions to MOC and LOC procedures recommended by a subcommittee of the Market Performance Committee which reviewed closing procedures.[8]

The Exchange believes it would also be appropriate to revise expiration day opening procedures by terminating the use of the special stock list and requiring order imbalance publication for all stocks with imbalances of 50,000 shares or more and to permit the publication of imbalances of less than 50,000 shares with Floor Official approval. The Exchange believes the proposed changes will provide more complete information to market participants. According to the Exchange, the increase of information should attract additional liquidity which could minimize volatility and lead to more orderly openings on expiration days.[9] All other aspects of expiration day opening procedures would remain the same, *e.g.*, publication of market order imbalances at 9:00 a.m. and requirements for identification of orders relating to expiring derivatives that settle on the opening.

The exchange intends to issue an Information Memo to inform its members of the revised expiration day opening procedures.

2. Statutory Basis

The Exchange believes the basis under the Act for the proposed rule change is the requirement under Section 6(b)(5)[10] that an Exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

[4] Modified opening procedures were first used on a pilot basis for the quarterly expiration on June 19, 1987, *See* Securities Exchange Act Release No. 24596 (June 16, 1987), 52 FR 23618 (June 23, 1987)(File No. SR–NYSE–87–17). They were approved permanently in Securities Exchange Act Release No. 25804 (June 15, 1988), 53 FR 23474 (June 22, 1988)(File Nos. SR–NYSE–87–11 and SR–NYSE–88–04).

[5] Other procedures include: 1. a 9:00 a.m. deadline for the entry of orders relating to expiring derivatives for which the settlement pricing is based on the opening prices of the underlying securities; 2. the use of the identifier "OPG" to identify such orders (firms unable to use the "OPG" identifier through SuperDOT must identify such orders by other means and inform Market Surveillance in writing by the business day following the expiration trade date); and 3. the publication of a "no imbalance" status for each stock on the special stock list for which there is no market order imbalance. *See* Securities Exchange Act Release No. 37894 (October 30, 1996), 61 FR 56987 (November 5, 1996)(File No. SR–NYSE–96–31) and NYSE Information Memo No. 96–34 (November 8, 1996).

[6] *See* Securities Exchange Act Release No. 31732 (January 14, 1993), 58 FR 6036 (January 25, 1993)(File No. SR–NYSE–92–38).

[7] *See* Securities Exchange Act Release No. 40094 (June 15, 1998), 63 FR 38230 (July 15, 1998)(File No. SR–NYSE–97–36) and NYSE Information Memo No. 98–20 (June 22, 1998).

[8] *Id.*

[9] Letter from Donald Siemer, Director, Market Surveillance, NYSE to Richard Strasser, Assistant Director, Division, SEC, dated March 31, 1999. This letter clarified the Exchange's purpose for the proposed rule change.

[10] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–98–41 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11813 Filed 5–10–99; 8:45 am]

BILLING CODE 8010–01–M

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41361; File No. SR–Phlx–99–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Establishing a $200 Registration Fee and a $200 Annual fee for Off-Floor Traders for which the Exchange is the Designated Examining Authority

May 3, 1999.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange"), filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees, and charges to require all current and future off-floor traders to pay an initial $200 registration fee and an annual fee of $200 for all off-floor traders registered as of April 1 of each year. The fees would apply to all associated persons of member organizations for which the Exchange is the designated examining authority ("DEA"), but who are not themselves Exchange members, who engage in proprietary trading of equities and options, including, but not limited to, persons who execute such trades or make trading decisions with respect to such trades. The proposed rule would apply to those persons who are not Exchange members registered in a trading capacity on the floor of the Exchange.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Currently, persons who are associated with member organizations for which the Exchange is the DEA, but who are not themselves Exchange members, who engage in proprietary trading of equities and options from off the floor of the Exchange, are required under Rule 604 to register with the Exchange by filing a Form U–4 and a fingerprint card.[3] Separately, the Exchange has filed a proposed rule change to impose a Series 7 testing requirement on such traders.[4] At this time, the Exchange proposes that such traders pay an initial registration fee of $200. This initial registration fee applies to persons currently trading from off the floor and to persons who register to trade from off the floor in the future. The payment of the $200 initial registration fee will be a prerequisite to engaging in trading from off the floor of the Exchange. Secondly, all such persons who are registered with the Exchange as of April 1 of each year will be assessed an annual fee of $200.

The fees are proposed in recognition of the increased costs of administration that the Exchange has been and will be incurring. Specifically, the Exchange anticipates increased administration costs to be incurred in conducting background checks on the individuals to whom the rule applies; processing of forms; fingerprint charges; requests for disciplinary history of all current and future off-floor traders to the Central Registration Depository; and conducting on-site examinations of the main and branch offices of the various member firms with which off-floor traders associate.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with section 6 of the Act,[5] in general, and with section 6(b)(4),[6] in particular, in that it provides for the equitable allocation of reasonable

[1] 15 U.S.C. 78s(b)(1).

[2] CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36395 (October 20, 1995), 60 FR 54904 (October 26, 1995) (File No. SR-Phlx–95–58) (order approving amendment of Phlx Rule 604).

[4] *See* Securities Exchange Act Release No. 41306 (April 16, 1999), 64 FR 22665 (April 27, 1999) (File No. SR–Phlx–99–07).

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(4).

dues, fees, and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [7] and subparagraph (f) of Rule 19b-4 thereunder [8] because it establishes or changes a due, fee, or other charge. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[9] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20540–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings also will be available for inspection and copying at the principal office of the the Exchange. All submissions should refer to File No. SR–Phlx–99–08 and should be submitted by June 1, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–11814 Filed 5–10–99; 8:45 am]

BILLING CODE 8010–01–M

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b-4(f)(2).

[9] In reviewing the proposed rule change, the Commission considered its potential impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

M/OPAP; Public Notice 3047

AGENCY: Department of State.

ACTION: Notice of Information Collection Under Emergency Review: Presence Customer Satisfaction Survey.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the emergency review procedures of the Paperwork Reduction Act of 1995.

Type of Request: Public Survey Request.

Originating Office: M/OPAP.

Title of Information Collection: U.S. Presence Customer Survey.

Frequency: Once.

Form Number: n/a.

Respondents: Select people from media, NOG, private companies and government agencies with representation abroad.

Estimated Number of Respondents: 350.

Average Hours Per Response: .17 an hour (10 min).

Total Estimated Burden: n/a.

The proposed information collection is published to obtain comments from the public and affected agencies. Emergency review and approval of this collection has been requested from OMB by May 7,1999. If granted, the emergency approval is only valid for 180 days. Comments should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

During the first 60 days of this same period a regular review of this information collection is also being undertaken. Comments are encouraged and will be accepted until July 5, 1999. The agency requests written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR ADDITIONAL INFORMATION: Public comments, or requests for additional information, regarding the collection listed in this notice should be directed to Gregory Davis at the U.S. Department of State, Washington, DC 20520, 202–647–4085.

Dated: May 5, 1999.

Donald S. Hays,

Management Policy and Planning, Director.

[FR Doc. 99–11863 Filed 5–10–99; 8:45 am]

BILLING CODE 4710–10–P

DEPARTMENT OF STATE

[Public Notice 3046]

Office of Defense Trade Contols; Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Department of State has imposed statutory debarment pursuant to § 127.7(c) of the International Traffic in Arms Regulations (ITAR) (22 CFR parts 120–130) on persons convicted of violating or conspiring to violate section 38 of the Arms Export Control Act (AECA) (22 U.S.C. 2778).

EFFECTIVE DATE: Date of conviction as specified for each person.

FOR FURTHER INFORMATION CONTACT: Philip S. Rhoads, Chief, Compliance and Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: Section 38(g)(4) of the AECA prohibits licenses and other approvals for the export of defense articles and the furnishing of defense services to be issued to a person, or any party to the export, convicted of violating or conspiring to violate the AECA. Pursuant to § 127.7(c)

of the ITAR, statutory debarment is imposed upon persons convicted of violating or conspiring to violate the AECA. Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court, and as such the administrative proceedings outlined in part 128 of the ITAR are not applicable.

This notice is provided in order to make the public aware that the persons listed below are prohibited from participating directly or indirectly in any brokering activities and in any export from or temporary import into the United States of defense articles, related technical data, or defense services in all situations covered by the ITAR (name/offense/date/court):

1. Robert Cassidy, 18 U.S.C. 371 (Conspiracy to violate 22 U.S.C. 2778), 09/23/98, Eastern District of Virginia, Docket No: 2;98 CR–60.
2. George K. Cheng, 22 U.S.C. 2778, July 17, 1998, District of Oregon, Docket No: 97–CR–412–ALL.
3. Robert S. Fairchild, 22 U.S.C. 2778, March 12, 1999, Southern District of Florida, Docket No: 97–CR–6104–1.
4. Donn R. Proven, 22 U.S.C. 2778, March 8, 1999, Southern District of Florida, Docket No: 97–6104–CR.
5. Parviz Lavi, 18 U.S.C.371 (Conspiracy to violate 22 U.S.C. 2778), July 13, 1998, Eastern District of Virginia, Docket No: 2;98 CR–60.

Specific case information may be obtained from the Office of the Clerk for each respective U.S. District Court, citing the court docket number where provided.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercise of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

Dated: April 18, 1999.

William J. Lowell,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 99–11862 Filed 5–10–99; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending April 30, 1999

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. sections 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: OST–99–5608
Date Filed: April 29, 1999
Parties: Members of the International Air Transport Association
Subject:
PTC3 0331 dated 30 April 1999
Mail Vote 999 Resolution 010f
TC3 Special Passenger Amending Resolution Within SWP
Fares between Australia and Papua New Guinea; from
Solomon Islands to Papua New Guinea
Intended effective date: 12 May 1999.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–11787 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending April 30, 1999

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–99–5605.
Date Filed: April 29, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 27, 1999.
Description: Application of East Line Airlines pursuant to 49 U.S.C. section 41302 and subpart Q, applies for a foreign air carrier permit to engage in all-cargo and combination charter service between the Russian Federation and the United States.

Docket Number: OST–99–5616.
Date Filed: April 30, 1999.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: May 28, 1999.
Description: Application of New Air Corporation pursuant to 49 U.S.C. section 41102 and subpart Q, applies for a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property and mail to commence scheduled service in the winter of 1999–2000; between any point in any State of the United States or the District of Columbia, or any territory or possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 99–11786 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Advisory Circular (AC) No. 00–59, Integrating Helicopter and Tiltrotor Assets into Disaster Relief Planning

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of an advisory circular.

SUMMARY: This notice announces the availability of an AC that provides general guidance on integrating helicopters and tiltrotor aircraft into disaster relief planning efforts. This document is advisory in nature and is intended to provide a planning tool to assist State and local emergency planners. These guidelines are based on accepted planning concepts and "lessons learned" through the study of disaster case histories where helicopters were used.

During the last four decades, helicopters have proven their value to communities when disasters strike. And yet, all too often, people simply assume that these aircraft will arrive when needed. However, without careful planning, helicopters and tiltrotors may not appear, or if they do, they may not be used to their best advantage. This AC identifies issues that need to be addressed, provides general guidance on how they may be addressed, and lists various contacts and references that may be helpful during the planning and execution of disaster relief plans.

ADDRESSES: You can find this document on the Internet at either of the following addresses: http://www.faa.gov/and/andhome.htm (click on Advisory Circulars). http.//www.faa.gov/and/circulars.htm (look for AC 00–59).

To obtain a paper copy of this document, write to U.S. Department of Transportation, Subsequent Distribution Office, SVC–121.23, Ardmore East Business Center, 3341 Q 75th Avenue, Landover MD 20785 or FAX your order to (301) 386–5394. The Help Line telephone number is (301) 322–4961. In ordering the AC, please provide your name and full mailing address.

FOR FURTHER INFORMATION CONTACT: Technical questions should be addressed to Robert D. Smith, General Aviation and Vertical Flight Program Office (AND–710), Federal Aviation Administration, 800 Independence Avenue SW, Washington DC 20591, telephone (202) 493–4691.

Issued in Washington DC on May 5, 1999.

Steve Fisher,

Manager, General Aviation and Vertical Flight Program Office.

[FR Doc. 99–11874 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Charter Renewal, RTCA, Inc. (utilized as an advisory committee)

SUMMARY: Notice is hereby given of the renewal of the charter for RTCA, Inc. (utilized as an advisory committee) for 2 years, effective March 13, 1999. The Administrator is the sponsor of the committee. The objective of the advisory committee is to seek solutions to problems involving the application of technology (e.g., electronics, computers, and telecommunications) to aeronautical operations that impact the future air traffic management system. The solutions are frequently in the nature of recommended minimum operational performance standards and technical guidance documents that are acceptable to Government, industry, and users. Standards ensure equivalent performance of the same generic equipment built by different manufacturers. RTCA Standards are generally reference or used (with or without modification) in Government regulatory and procurement activities.

The Secretary of Transportation has determined that the information and use of the committee are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the committee will by open to the public except as authorized by Section 10(d) of the Federal Advisory Committee Act.

FOR FURTHER INFORMATION CONTACT: Janice Peters, Office of System Architecture and Investment Analysis (ASD–3), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: 202/358–5243.

Issued in Washington, DC, on May 6, 1999.

Janice L. Peters,

Designated Official.

[FR Doc 99–11872 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 188; Minimum Aviation System Performance Standards for High Frequency Data Link

Pursuant to section 10(A) (2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 188 meeting to be held May 24–27, 1999, starting at 9:00 a.m. each day. The meeting will be held at RTCA, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036.

The agenda will include: May 24–25, (1) Working Group 2, Minimum Operational Performance Standards; May 25–26, (2) WG–1, Minimum Aviation System Performance Standards (starting at 1:00 p.m. on May 25); May 27, Plenary Session: (3) Review summary of February 1999 Meeting; (4) Review of WG–1 status; (5) Review of WG–2 status; (6) Review activities of other Standards Groups; (7) Open Discussion; (8) Confirm dates for future meetings; (9) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC, 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on April 28, 1999.

Janice L. Peters,

Designated Official.

[FR Doc. 99–11873 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[DOCKET NO. MARAD–99–5661]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before July 12, 1999.

FOR FURTHER INFORMATION CONTACT: William W. Dean, Office of Ports and Domestic Shipping, Maritime Administration, 400 7th Street, S.W., Room 7201, Washington, D.C. 20590 telephone 202-366–5477 and FAX 202–366–6988.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Port Facilities Inventory.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0023.

Form Numbers: MA–400

Expiration Date of Approval: January 31, 2000.

Summary of Collection of Information: The collection of port facility data from terminal owners allows MARAD to maintain information, at the proper level of accuracy and currency, on those essential port facilities that are required for emergency use. The surveys would be used only in the event the data contained on these facilities fell below a level of currency deemed adequate for emergency planning purposes.

Need and Use of the Information: This information collection is necessary to fulfill the agency's responsibilities contained in Executive Order 12656 (emergency preparedness functions) relating to emergency utilization and control of U.S. port facilities during national emergencies.

Description of Respondents: Port terminal owners.

Annual Responses: 40.

Annual Burden: 40 hours.

Comments: Signed written comments should refer to the docket number that appears at the top of this document and must be submitted to the Docket Clerk,

U.S. DOT Dockets, Room PL–401, 400 7th Street, SW, Washington, D.C. 20590. Specifically, address whether this information collection is necessary for proper performance of the function of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden and ways to enhance quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m., EST., Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at *http://dms.dot.gov.*

By order of the Maritime Administrator.

Dated: May 6, 1999.

Joel C. Richard,

Secretary.

[FR Doc. 99–11861 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Safety Performance Standards Program Meeting

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice of NHTSA Rulemaking Status Meeting.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's vehicle regulatory program.

DATES: The Agency's regular, quarterly public meeting relating to its vehicle regulatory program will be held on Wednesday, June 16, 1999, beginning at 9:45 a.m. and ending at approximately 12:00 p.m., at the Clarion Hotel, Romulus, MI. Questions relating to the vehicle regulatory program must be submitted in writing with a diskette (Wordperfect) by Friday, May 28, 1999, to the address shown below or by e-mail. If sufficient time is available, questions received after May 28 may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by May 28, 1999, and the issues to be discussed, will be posted on NHTSA's web site (www.nhtsa.dot.gov) by Monday, June 11, 1999, and also will be available at the meeting. The next NHTSA vehicle regulatory program meeting will take place in Washington on Thursday, September 16, 1999. The location of the September meeting will be announced in a subsequent notice.

ADDRESSES: Questions for the June 16, NHTSA Rulemaking Status Meeting, relating to the agency's vehicle regulatory program, should be submitted to Delia Lopez, NPS–01, National Highway Traffic Safety Administration, Room 5401, 400 Seventh Street, SW, Washington, DC 20590, Fax Number 202–366–4329, e-mail dlopez@nhtsa.dot.gov. The meeting will be held at the Clarion Hotel, 9191 Wickham Road, Romulus, MI.

FOR FURTHER INFORMATION CONTACT:

Delia Lopez, (202) 366–1810.

SUPPLEMENTARY INFORMATION: NHTSA holds a regular, quarterly meeting to answer questions from the public and the regulated industries regarding the agency's vehicle regulatory program. Questions on aspects of the agency's research and development activities that relate directly to ongoing regulatory actions should be submitted, as in the past, to the agency's Safety Performance Standards Office. The purpose of this meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of these meetings will be available for public inspection in the DOT Docket in Washington, DC, within four weeks after the meeting. Copies of the transcript will then be available at ten cents a page, (length has varied from 80 to 150 pages) upon request to DOT Docket, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. The DOT Docket is open to the public from 10:00 a.m. to 5:00 p.m. The transcript may also accessed electronically at http://dms.dot.gov. at docket NHTSA–1999–5087. Questions to be answered at the quarterly meeting should be organized by categories to help us process the questions into an agenda form more efficiently. Sample format:

I. Rulemaking
  A. Crash avoidance
  B. Crashworthiness
  C. Other Rulemakings
II. Consumer Information
III. Miscellaneous

NHTSA will provide auxiliary aids to participants as necessary. Any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, brailled materials, or large print materials and/or a magnifying device), please contact Delia Lopez on (202) 366–1810, by COB June 11, 1999.

Issued: May 6, 1999.

L. Robert Shelton,

Associate Administrator for Safety Performance Standards.

[FR Doc. 99–11789 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–99–5403]

Notice of Receipt of Petition for Decision That Nonconforming 1998 and 1999 Lexus RX300 Multi-Purpose Passenger Vehicles Are Eligible for Importation; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Correction to notice of receipt of petition for decision that nonconforming 1998 and 1999 Lexus RX300 multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This document corrects a notice published, April 19, 1999 (64 FR 19212) announcing receipt by NHTSA of a petition for a decision that 1998 and 1999 Lexus RX300 MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States. The notice incorrectly identified the docket number for this petition as "Docket No. NHTSA–99–5403." The docket number should have been properly identified as "Docket No. NHTSA–99–5503." Those intending to comment on the petition should ensure that they reference the correct docket number in their comments.

Authority: 49 U.S.C. 30141(a)(1)(B) and (b)(1); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on May 6, 1999.

Marilynne Jacobs,

Director, Office of Vehicle Safety Compliance.

[FR Doc. 99–11788 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33685]

Coach USA, Inc.—Petition for Exemption—Intra-Corporate Family Merger and Consolidation Transactions

AGENCY: Surface Transportation Board, DOT.

ACTION: Request for comments.

SUMMARY: The Surface Transportation Board (Board) is seeking comments on a petition by Coach USA, Inc. (Coach) to be exempted from 49 U.S.C. 14303 and the regulations at 49 CFR part 1182 concerning the merger or consolidation of motor carriers of passengers controlled by Coach.

DATES: Comments are due on June 10, 1999.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Coach has filed a petition for exemption requesting that it be exempted from the prior approval requirements of section 14303 for mergers or consolidations of motor carriers of passengers Coach already controls. Under its proposal, Coach would file a notice similar to the one applicable for class exemptions for railroad intra-corporate family transactions that do not result in significant operational changes, adverse changes in service levels, or a change in the competitive balance with carriers outside the corporate family. *See* 49 CFR 1180.2(d)(3) and 1180.4(g).

When the petition was filed, Coach, a noncarrier holding company, stated that it controlled, inter alia, 73 motor carriers of passengers subject to federal regulation (Operating Carriers). Coach states its plans to transfer direct control of the Operating Carriers to several new, wholly owned, primarily regionally-based subsidiaries (Management Companies), which would manage closely the Operating Carriers assigned to them.[1] As relevant here, each Management Company evidently would examine the Operating Carriers it controls to determine whether consolidations, mergers or other intra-family corporate transactions involving these carriers are warranted.

Coach asserts that there are currently two procedures available for seeking Board approval for mergers/consolidations. First, Coach can file an application under 49 CFR part 1182 for merger authority. Under this procedure, an accepted application will be published in the **Federal Register** within 30 days of filing as a tentative grant of authority, with comments due within 45 days.[2] If no adverse comments are timely filed, the tentative grant becomes effective automatically. If opposing comments are filed, the applicant can reply within 60 days of the filing of the application. The Board will then determine whether to issue a decision on the record developed or to receive more evidence before issuing a decision.[3]

In the alternative, a party can file a petition for exemption under 49 U.S.C. 13541 seeking an individual exemption from the prior approval requirements of 49 U.S.C. 14303 for the merger or consolidation. Coach argues that these proceedings take 3 or 4 months from the filing of the petition to complete. We have indicated that we would normally process exemptions as we do applications: we would publish the exemption request within 30 days of filing, and, after the comment period had expired, we would issue a decision on the merits of the petition. *See Revision to Regulations Governing Finance Applications Involving Motor Passenger Carriers,* STB Ex Parte No. 559 (STB served July 8, 1997) at 6.[4]

Coach contends that, under present procedures, it takes a minimum of two and one half months to be approved or exempted: "During this hiatus, the transaction could not be consummated and the benefits that would have accrued from the merger or consolidation would not be available to the traveling public or the merged/consolidated entity." Petition at 2.

Coach proposes that the exemption for Coach intra-corporate family transactions would be similar to the rail exemption for intra-corporate family transactions. Coach and/or one of its subsidiaries would file a verified notice of exemption with the Board for the merger or consolidation of at least two Coach-controlled carriers, which could be consummated no sooner than 7 days after the filing of the notice. Included in the notice would be a summary of the transaction and the purpose of the transaction, of any contracts being entered into concerning the transaction, and of the effects, if any, on employees. A copy of the notice would be sent simultaneously to the Federal Highway Administration (FHWA)[5] and, when the carriers provide intrastate service, to the applicable state regulatory body. Coach proposes that the Board would publish the notice of exemption in the **Federal Register** within 30 days of filing. Coach also proposes that, if the notice contains false or misleading information that is brought to our attention, we could revoke the exemption and order divestiture. Coach also submits that petitions for revocation could be filed at any time pursuant to 49 U.S.C. 13541(d).[6]

Coach notes that, under 49 U.S.C. 13541(a), the Board must exempt a transaction or service from regulation when we find that: (1) Regulation is not necessary to carry out the transportation policy of 49 U.S.C. 13101; (2) either (a) regulation is not necessary to protect shippers from the abuse of market power, or (b) the transaction or service is of limited scope; and (3) exemption is in the public interest.

Transportation Policy. Coach claims that the operational and efficiency advantages of its intra-corporate merger/consolidation transactions will further the transportation policy goals of 49 U.S.C. 13101(a)(2). The benefits of these transactions "include consolidated management, streamlined operational procedures, elimination of redundancies and better coordinated planning, safety and other management services that will enable the companies to operate more economically and efficiently * * *" *Id.* at 10. Coach also maintains that granting an exemption will produce expeditious decisions, enhancing the efficiency of regulation, and is thus consistent with 49 U.S.C. 13101(a)(2)(B).

Abuse of Market Power. Coach argues that there will be no risk of an abuse of market power from the intra-corporate family transactions, because they will not reduce competition: "None of the Operating Carriers today competes to any significant degree, if at all, with any of the other Operating Carriers." *Id.* at

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[1] Tentative approval has been given to these applications. *See Coach USA, Inc., and Coach USA North Central, Inc.—Control—Nine Motor Passenger Carriers,* STB Docket No. MC-F–20931; *Coach USA, Inc., and Coach USA Northeast, Inc.—Control—30 Motor Passenger Carriers,* STB Docket No. MC-F–20932; *Coach USA, Inc., and Coach USA South Central, Inc.—Control—Eight Motor Passenger Carriers,* STB Docket No. MC-F–20933; *Coach USA, Inc., and Coach USA Southeast, Inc.—Control—Seven Motor Passenger Carriers,* STB Docket No. MC-F–20934; *Coach USA, Inc., and Coach USA West, Inc.—Control—14 Motor Passenger Carriers* STB Docket No. MC-F–20935; *Coach USA, Inc., and Yellow Cab Service Corporation—Control—Four Motor Passenger Carriers,* STB Docket No. MC-F–20936 (STB served Nov. 19, 1998); and *Coach USA, Inc. and Coach Canada, Inc.—Control and Continuance in Control—Autocar Connaisseur, Inc., Erie Coach Lines Company, and Trentway-Wagar, Inc.,* STB Docket No. MC-F-20938 (STB served Dec. 17, 1998).

[2] A tentative grant does not give the applicant the right to consummate the transaction before the end of the comment period. 49 CFR 1182.5(a).

[3] Under the statute, evidentiary proceedings are to be concluded within 240 days of publication of the application. The Board must issue a decision within 180 days after the close of the evidence. Time periods may be extended, in total, for up to 90 days. 49 U.S.C. 14303(e).

[4] This option is made possible by the ICC Termination Act of 1995, Pub. L. 104–88, 109 Stat. 803 (1995) (ICCTA). Under former 49 U.S.C. 11343(e), the Interstate Commerce Commission could only grant exemptions for finance transactions involving motor carriers of property. *Id.* at 6, n.10.

[5] Also, approval from FHWA, if needed, for any transfer of operating authorities, would be sought.

[6] This provision states that the Board "may revoke an exemption . . . on finding that the application of a provision . . . is necessary to carry out the transportation policy of section 13101."

11. These companies allegedly face significant competition from other bus carriers, private cars, and other modes of transportation. Coach contends that the Board has already approved Coach mergers in connection with control transactions.[7] Finally, Coach submits that competitive issues are more appropriately considered in a control proceeding because carriers under common control will be unlikely to compete with each other, than in a situation where the controlled carriers are seeking to merge for, according to Coach, "there should be no loss of competitive options available to the traveling public." *Id.* at 13 (citations omitted).

Limited Scope. Coach contends that the proposed exemption is of limited scope because it involves carriers already under common control. Because, allegedly, the carriers share centralized management, the merger/consolidation "transactions will accordingly be more focused on corporate form than on substantive operational changes." *Id.* at 14.

Coach submits that most of the Operating Carriers it controls are relatively small. More than half of them have annual revenues of less than $8 million, few have annual revenues of more than $20 million, and most of the Operating Carriers have fleets of less than 75 buses. Coach argues that, consistent with the standards for rail intra-corporate family transactions at 49 CFR 1180.2(d)(3), in the merger or consolidation of its Operating Carriers "there will be no adverse change in service levels, no significant operational changes that would adversely impact the traveling public and no diminution in the level of competitive service available to the public." *Id.* at 15.

Public Interest. The exemption is in the public interest, according to Coach, because it will increase regulatory efficiency by reducing potentially burdensome regulatory practices. Such efficiency, Coach alleges, would save the resources of both petitioners and the Board.

In addition to these stated regulatory benefits, Coach claims that there are also commercial reasons for determining that an exemption is in the public interest. By reducing from two and a half months to 7 days the period for consummating a transaction after a filing, the period that the two merged companies are in limbo would be significantly reduced, lowering the danger that the petitioner will miss out on commercial opportunities for improving service. Coach also claims that, under an exemption, the public and the Operating Carriers would sooner enjoy the benefits of the intra-corporate family transaction. Finally, Coach asserts that reducing the regulatory waiting period will lessen uncertainty in vendors and passengers.

Discussion

As Coach's petition raises issues of first impression, we are seeking comment on Coach's petition. Commenters should address whether an exemption for intra-corporate family transactions is warranted and, if so, whether it should be available solely to Coach.

As a preliminary matter, we do not see how a class exemption could apply only to one party. If the exemption criteria are satisfied for Coach, they would also presumably apply to other parties, if any are similarly situated. Parties should address this issue.

We also question whether the concerns raised by Coach cannot be addressed under our current rules at least in those cases where there is a demonstrated need for quick action by the Board. Under 49 U.S.C. 14303(i), pending the Board's consideration of an application, we may grant interim approval to the operation of properties sought to be acquired for not more than 180 days "when it appears that failure to do so may result in the destruction of or injury to those properties or substantially interfere with their future usefulness in providing adequate and continuous service to the public." *See also* 49 CFR 1182.7. If the interim approval request is submitted when the application is filed, the Board will issue its decision with the notice accepting the application, i.e., within 30 days. Section 1182.7(d)(1). This is quicker than the two and one half months that Coach claims is too long and only 23 days longer than the effective date under Coach's proposal.

Accordingly, commenters should address these issues, as well as the general issue of whether the exemption Coach proposes is in the public interest. Also, a copy of this request for comments will be served on the Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, NW., Washington, DC 20530.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

Decided: May 4, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11877 Filed 5–10–99; 8:45 am]

BILLING CODE 4910–00–P

[7] *See Coach USA, Inc. and Leisure Time Tours-Control and Merger Exemption-Van Nortwick Bros., Inc. et al.*, STB Docket No. 33428 (STB served Nov. 3, 1997) and *Coach U.S.A., Inc. and K–T Contract Services, Inc.—Control and Merger Exemption—Gray Line Tours of Southern Nevada*, STB Docket No. 33421 (STB served Dec. 4, 1997).

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Claim for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Kern, Regulations Division, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Title for Drawback of Tax on Cigars, Cigarettes, Cigarette Papers and Cigarette Tubes.

OMB Number: 1512–0117.

Form Number: ATF F 5620.7 (2147).

Abstract: ATF F 5620.7 (2147) documents that cigars, cigarettes, cigarette papers and tubes were shipped to a foreign country, Puerto Rico, the Virgin Islands or a possession of the United States and that the tax was already paid on these tobacco articles. AFT F 5620.7 (2147) is the claim form that a person who paid the tax on the articles uses to file for a drawback or refund for the tax that has already been paid.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 288.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 144.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11798 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Kern, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Withdrawal of Spirits, Specially Denatured Spirits, or Wines for Exportation.

OMB Number: 1512–0190.

Form Number: ATF F 5100.11.

Abstract: ATF F 5100.11 is completed by exporters to report the withdrawal of spirits, denatured spirits, and wines from internal revenue bonded premises, without payment of tax for direct exportation, transfer to a foreign trade zone, customs manufacturer's bonded warehouse or customs bonded warehouse or for use as supplies on vessels or aircraft.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 300.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 6,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11799 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Inventory—Export Warehouse Proprietor.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Shawn Hart, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Inventory—Export Warehouse Proprietor.

OMB Number: 1512–0171.

Form Number: ATF F 5220.3.

Abstract: ATF F 5220.3 is used by export warehouse proprietors to record inventories that are required by law and regulations. The form provides a uniform format for recording inventories and establishes a contingent tax liability on tobacco products.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 10.

Estimated Time Per Respondent: 5 hours.

Estimated Total Annual Burden Hours: 50.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11800 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Shawn Hart, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Application and Permit to Ship Liquors and Articles of Puerto Rican Manufacture Taxpaid to the United States.

OMB Number: 1512–0057.

Form Number: ATF F 487–B (5170.7).

Abstract: ATF F 487–B (5170.7) is used to document the shipment of taxpaid Puerto Rican articles into the U.S. The form is verified by Puerto Rican and U.S. Treasury officials to certify that products are either taxpaid or deferred under the appropriate bond and serves as a method of protection of the revenue.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 20.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 100.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11801 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Letterhead Request For Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Aquisition, Disposition and Supporting Data).

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Dottie Morales, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–7572.

SUPPLEMENTARY INFORMATION:

Title: Letterhead Request For Information in Regard to Federal Firearms Dealer's Records (Dealer's Records of Aquisition, Disposition and Supporting Data).

OMB Number: 1512–0493.

Form Number: ATF F 5300.3.

Abstract: ATF F 5300.3 gives the user a simplified format to list the required information ATF needs to perform its functions in regard to the law. The respondent saves time because the questions are simple and a return address is supplied. The form is used to maintain a current status of firearms licensees.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit, Individuals or households.

Estimated Number of Respondents: 28,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 2,380.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11802 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Marks on Wine Containers.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Nancy Kern, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Marks on Wine Containers.

OMB Number: 1512–0503.

Recordkeeping Requirement ID Number: ATF REC 5120/3.

Abstract: ATF requires that wine on wine premises be identified by statements of information on labels or contained in marks. ATF uses this information to validate the receipts of excise tax revenue by the Federal government. All of the required information is drawn from cost accounting records maintained to establish the price of each product. These records are maintained by manufacturers on all products even in the absence of marking requirements. Therefore, ATF does not impose any burden on the respondent. The record retension period is only required as long as the container is used for storing wine. There is no retension period beyond the time the wine is stored in the container.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 1,560.

Estimated Time Per Respondent: 0.

Estimated Total Annual Burden Hours: 1.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11803 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Report of Theft or Loss of Explosives.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Joe Bradley, Public Safety Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8053.

SUPPLEMENTARY INFORMATION:

Title: Report of Theft or Loss of Explosives.

OMB Number: 1512–0185.

Form Number: ATF F 5400.5.

Abstract: Losses or theft of explosives must, by statute, be reported within 24 hours of the discovery of the loss of theft. This form contains the minimum information necessary for ATF to initiate criminal investigations.

Current Actions: The only change to this information collection is an update of the Address Listing of ATF Offices.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 250.

Estimated Time Per Respondent: 1 hour and 48 minutes.

Estimated Total Annual Burden Hours: 450.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11804 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Special Tax Registration and Return (Alcohol and Tobacco) and the Special Tax Registration and Return (National Firearms Act).

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Timothy DeVanney, Revenue Operations Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8220.

SUPPLEMENTARY INFORMATION:

Title: Special Tax Registration and Return (Alcohol and Tobacco) and Special Tax Registration and Return (National Firearms Act).

OMB Number: 1512–0472.

Form Number: ATF F 5630.5 and ATF F 5630.7.

Abstract: ATF F 5630.5 and ATF F 5630.7 are completed by persons engaged in certain alcohol, tobacco and firearms related businesses, respectively. Both forms are used to register and/or pay a special occupational tax, as required by statute. Upon receipt of the tax, a special tax stamp is issued.

Current Actions: As a result of an employee suggestion, the instructions for TAXPAYER IDENTIFYING INFORMATION Section I, have been clarified on both forms. In addition, both forms have been updated to reflect current office names and phone numbers.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households, and not-for-profit institutions.

Estimated Number of Respondents: 90,700.

Estimated Time Per Respondent: 48 minutes.

Estimated Total Annual Burden Hours: 72,778.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 4, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11805 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Personnel Questionnaire—Alcohol and Tobacco Products.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to David Brokaw, Regulations Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8210.

SUPPLEMENTARY INFORMATION:

Title: Personnel Questionnaire—Alcohol and Tobacco Products.

OMB Number: 1512–0034.

Form Number: ATF F 5000.9.

Abstract: The information on ATF F 5000.9 enables ATF to determine whether or not an applicant for an alcohol or tobacco permit meets the minium qualifications. The form identifies the individual, residence, business background and financial sources for business and criminal

records. If the applicant is found not qualified, the permit may be denied.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 5,000.

Estimated Time Per Respondent: 2 hours.

Estimated Total Annual Burden Hours: 10,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11806 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Acohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Requisition For Forms or Publications, ATF F 1370.3 and Requisition For Firearms/Explosives Forms, ATF F 1370.2.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Linda Barnes, Document Services Branch, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

SUPPLEMENTARY INFORMATION:

Title: Requisition For Forms or Publications and Requisition For Firearms/Explosives Forms.

OMB Number: 1512–0001.

Form Number: ATF F 1370.3 and ATF F 1370.2.

Abstract: These forms are used by the general public to request or order forms or publications from the ATF Distribution Center. The forms notify ATF of the quantity required by the respondent and provide a guide as to annual usage of ATF forms or publications by the general public.

Current Actions: The form numbers have changed as a result of a reorganization of ATF's subject classification system.

Type of Review: Extension.

Affected Public: Business or other for-profit, individuals or households.

Estimated Number of Respondents: 30,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 1,725.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11807 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for Operating Permit Under 26 U.S.C. 5171(d).

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Shawn Hart, Regulations Division, 650 Massachusetts Avenue NW., Washington, DC 20226, (202) 927–8522.

SUPPLEMENTARY INFORMATION:

Title: Application for Operating Permit Under 26 U.S.C. 5171(d).

OMB Number: 1512–0195.

Form Number: ATF F 5110.25.

Abstract: ATF F 5110.25 is completed by proprietors of distilled spirits plants who engage in certain specified types of activities. ATF personnel use the information on the form to identify the applicant, the location of the business and the types of activities to be conducted.

Current Actions: There are no changes to this information collection and it is being submitted for extension purposes only.

Type of Review: Extension.

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80.

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11808 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Bureau of Alcohol, Tobacco and Firearms within the Department of the Treasury is soliciting comments concerning the Application for National Firearm Examiner Academy.

DATES: Written comments should be received on or before July 12, 1999 to be assured of consideration.

ADDRESSES: Direct all written comments to Linda Barnes, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 927–8930.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Thomas Cannon, Career Development Division, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202) 565–4570.

SUPPLEMENTARY INFORMATION:

Title: Application for National Firearm Examiner Academy.

OMB Number: 1512–0549.

Form Number: ATF F 6330.1.

Abstract: The Office of Training and Professional Development at ATF has developed a new training program for entry level firearm and toolmark examiners. The application form will allow ATF to process eligible candidates.

Current Actions: There are no changes to this information collection and it is being submitted for entension purposes only.

Type of Review: Extension.

Affected Public: Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 75.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 13.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 5, 1999.

William T. Earle,

Assistant Director (Management) CFO.

[FR Doc. 99–11809 Filed 5–10–99; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4V

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4V, Voluntary Withholding Request.

DATES: Written comments should be received on or before July 12, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Withholding Request.

OMB Number: 1545–1501.

Form Number: W–4V.

Abstract: If an individual receives any of the following government payments, he/she may voluntarily complete Form W–4V to request that the payer withhold Federal income tax. Those payments are unemployment compensation, social security benefits, tier I railroad retirement benefits, Commodity Credit Corporation loans, or certain crop disaster payments under the Agricultural Act of 1949 or title II of the Disaster Assistance Act of 1988.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and farms.

Estimated Number of Respondents: 19,700,000.

Estimated Time Per Respondent: 29 minutes.

Estimated Total Annual Burden Hours: 9,653,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11748 Filed 5–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 990–BL; Schedule A (Form 990–BL), Form 6069

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 990-BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

DATES: Written comments should be received on or before July 12, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the forms and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 990–BL, Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons, and Form 6069, Return of Excise Tax on Excess Contributions to Black Lung Benefit Trust Under Section 4953 and Computation of Section 192 Deduction.

OMB Number: 1545–0049.

Form Number: Form 990–BL; Schedule A (Form 990–BL), and Form 6069.

Abstract: IRS uses Form 990–BL to monitor activities of black lung benefit trusts, and to collect excise taxes on these trusts and certain related persons if they engage in proscribed activities. The tax is figured on Schedule A and attached to Form 990–BL. Form 6069 is used by coal mine operators to figure the maximum deduction to a black lung benefit trust. If excess contributions are made, IRS uses the form to figure and collect the tax on excess contributions.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals, and not-for-profit institutions.

Estimated Number of Respondents: 22.

Estimated Time Per Respondent: 26 hours, 3 minutes.

Estimated Total Annual Burden Hours: 573.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 29, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11749 Filed 5–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9620

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is

soliciting comments concerning Form 9620, Race and National Origin Identification.

DATES: Written comments should be received on or before July 12, 1999, to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5569, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification.

OMB Number: 1545–1398.

Form Number: 9620.

Abstract: Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and the Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 1999.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 99–11751 Filed 5–10–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of Citizen Advocacy Panel, Brooklyn District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Brooklyn District Citizen Advocacy Panel will be held in Brooklyn, New York.

DATES: The meeting will be held Friday, May 14, 1999.

FOR FURTHER INFORMATION CONTACT: Kevin McKeon at 1–888–912–1227 or 718–488–3555.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Friday, May 14, 1999, 6:00 p.m. to 9:00 p.m. at 10 MetroTech Center, 6th Floor, 625 Fulton Street, Brooklyn, N.Y. 11201. Due to limited conference space, notification of intent to attend the meeting must be made with Kevin McKeon. Mr. McKeon can be reached at 1–888–912–1227 or 718–488–3555. The public is invited to make oral comments from 7:00 p.m. to 8:00 p.m. on Friday, May 14, 1999. Individual comments will be limited to 5 minutes.

If you would like to have the CAP consider a written statement, please call 1–888–912–1227 or 718–488–3555, or write Kevin McKeon, CAP Office, P.O. Box R, Brooklyn, N.Y., 11202. The Agenda will include the following: reports of the sub-committees and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 3, 1999.

Jack Mannion,

Chief, Special Projects.

[FR Doc. 99–11752 Filed 5–11–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Open Meeting of the Citizen Advocacy Panel, Pacific-Northwest District

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: An open meeting of the Pacific-Northwest District Citizen Advocacy Panel will be held in Seattle, Washington.

DATES: The meeting will be held Saturday, May 22, 1999.

FOR FURTHER INFORMATION CONTACT: Deborah A. Diamond at 1–888–912–1227 or 206–220–6099.

SUPPLEMENTARY INFORMATION: Notice is hereby given pursuant to section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1988) that an operational meeting of the Citizen Advocacy Panel will be held Saturday, May 22, 1999, 9:00 a.m. to 5:00 p.m. at the Edmond Meany Hotel, Chancellor Room, 4507 Brooklyn Avenue NE, Seattle, WA. Due to limited conference space, notification of intent to attend the meeting must be made with Deborah Diamond.

Ms. Diamond can be reached at 1–888–912–1227 or 206–220–6099. The public is invited to make oral comments from 10:00 a.m. to 11:00 a.m. on Saturday, May 22, 1999. Individual comments will be limited to 5 minutes. If you would like to have the CAP consider a written statement, please call 1-888–912–1227 or 206–220–6099, or write Deborah Diamond, CAP Office, 915 2nd Avenue; M/S W-406, Seattle, WA 98174.

The Agenda will include the following: subcommittee reports and various IRS issues.

Note: Last minute changes to the agenda are possible and could prevent effective advance notice.

Dated: May 3, 1999.

Jack Mannion,

Chief, Special Projects.

[FR Doc. 99–11753 Filed 5–10–99; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0085]

Agency Information Collection Activities Under OMB Review

AGENCY: Board of Veterans' Appeals, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Board of Veterans' Appeals (BVA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0085."

SUPPLEMENTARY INFORMATION:

Titles:

a. Appeal to Board of Veterans' Appeals, VA Form 9.

b. Withdrawal of Services by a Representative.

c. Filing of Representative's Fee Agreements and Motions for Review of Such Agreements.

d. Motion for Review of Representative's Charges for Expenses.

e. Request for Changes in Hearing Date.

f. Motion for Reconsideration.

OMB Control Number: 2900–0085.

Type of Review: Extension of a currently approved collection.

Abstract

a. VA Form 9 is furnished to an appellant so that he or she has the information necessary to perfect an appeal from a denial of VA benefits.

b. When the appellant's representative withdraws from a case, information must be obtained in order to afford protection to the appellant and in order for BVA to be able to know who is providing representational services in each individual case.

c. Agreements for fees charged by individuals or organizations for representing claimants and appellants before VA are filed with, and reviewed by, the Board of Veterans' Appeals. The information is used to afford protection to VA claimants by ensuring that the VA benefits are not diverted from their intended purpose through overreaching by unscrupulous representatives and in processing payment of fees from VA benefits when provided by the agreement.

d. Expense reimbursements claimed by individuals and organizations for representing claimants and appellants before VA have been monitored for fairness for many years. The information is used to monitor representatives' fees for reasonableness and ensure that unreasonable fees are not charged by claiming such fees under the guise of "expenses."

e. VA provides hearings to appellants and their representatives, as required by basic Constitutional due-process and by Title 38 U.S.C. 7107(b). From time to time, hearing dates and/or times are changed, hearing requests withdrawn and new hearings requested after failure to appear at a scheduled hearing. The information is used to comply with the appellants' or their representatives' requests.

f. Decisions by BVA are final unless the Chairman orders reconsideration of the decision. The information provided is unique in each case and must be provided in order for BVA to be aware that reconsideration is being sought and to inform BVA of the basis of the request. Failure to obtain the information would result in depriving appellants of this potential form of relief.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on July 21, 1998 at page 39119.

Affected Public: Individuals or households, Business or other for-profit, and Not-for-profit institutions.

Estimated Total Annual Burden: 36,837 hours.

a. Appeal to Board of Veterans' Appeals " 32,500 hours.

b. Withdrawal of Services by a Representative—183 hours.

c. Filing and Motions for Review of fee Agreements—225 hours.

d. Motion for Review of Expenses—4 hours.

e. Request for Changes in Hearing Date—2,374 hours.

f. Motion for Reconsideration—1,550 hours.

Estimated Average Burden Per Respondent

a. Appeal to Board of Veterans' Appeals—1 hour.

b. Withdrawal of Services by a Representative—20 minutes.

c. Fee Agreement—30 minutes (contract modifications), 10 minutes (basic filing)—2 hours (filing motion or response).

d. Motion for Review of Expenses—2 hours (motion or response to motion).

e. Request for Changes in Hearing Date—15 minutes (basic request)—1 hour (requests requiring preparation of a motion).

f. Motion for Reconsideration—1 hour.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 41,644.

a. Appeal to Board of Veterans' Appeals—32,500.

b. Withdrawal of Services by a Representative—550.

c. Fee Agreement—875.

d. Motion for Review of Expenses—2.

e. Request for Changes in Hearing Date—6,167.

f. Motion for Reconsideration—1,550.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0390" in any correspondence.

Dated: April 29, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–11769 Filed 5–10–99; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0390]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and

Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 1999.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Ron Taylor, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8015 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0390."

SUPPLEMENTARY INFORMATION:

Title: Application of Surviving Spouse or Child for REPS Benefits (Restored Entitlement Program for Survivors), VA Form 21–8924.

OMB Control Number: 2900–0390.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Abstract: VA administers the REPS program. The program pays VA benefits to certain surviving spouses and children of veterans who died in service prior to August 13, 1981 or who died as a result of a service-connected disability incurred or aggravated prior to August 13, 1981. VA Form 21–8924 is used by survivors of deceased veterans to claim REPS benefits. The information is used by VBA to determine if the applicant meets REPS eligibility criteria.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1998 at pages 71190–71191.

Affected Public: Individuals or households.

Estimated Annual Burden: 2,500 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time for most beneficiaries.

Estimated Number of Respondents: 7,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0390" in any correspondence.

Dated: April 9, 1999.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 99–11770 Filed 5–10–99; 8:45 am]

BILLING CODE 8320–01–P

Corrections

Federal Register
Vol. 64, No. 90
Tuesday, May 11, 1999

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

AGENCY FOR INTERNATIONAL DEVELOPMENT

48 CFR Part 715

[AIDAR Notice 98–1]

Miscellaneous Amendments to Acquisition Regulations

Correction

In rule document 99–6609 beginning on page 16647 in the issue of Tuesday, April 6, 1999, make the following corrections:

PART 715 [CORRECTED]

1. On page 16648, in the third column, in amendatory instruction 5, in the 10th line, "716.613–70" should read "715.613–70".

715.305 [Corrected]

2. On the same page, in the same column, in 715.305(c), in the first line, "Office" should read "Officer"; and in the second line, "authorized" should read "authorize".

715.602 [Corrected]

3. On page 16649, in the first column, in 715.602, paragraph designation "(B)" should read "(b)".

[FR Doc. C9–6609 Filed 05–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

[DCAA Reg. 5410.8]

Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

Correction

In rule document 99–274, beginning on page 1130 in the issue of Friday, January 8, 1999, make the following correction:

Appendix B to Part 290 [Corrected]

On page 1131, in the first column, in amendatory instruction 7, in the second line, "zing" should read "amended by capitalizing".

[FR Doc. C9–274 Filed 5–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1010]

Agency Information Collection Activities: Proposed Collection; Comment Request; Investigational New Drug Regulations

Correction

In notice document 99–11310 beginning on page 24402 in the issue of Thursday, May 6, 1999, make the following correction(s):

On page 24402, in the first column, in the **DATES** section, "July 6, 1998" should read "July 6, 1999".

[FR Doc. C9–11310 Filed 5–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–182P]

21 CFR Part 1308

Schedules of Controlled Substances: Proposed Placement of Zaleplon into Schedule IV

Correction

In proposed rule document 99–11289, beginning on page 24094 in the issue of Wednesday May 5, 1999, make the following corrections:

1. On page 24094, in the third column, beginning in the eighth line from the bottom, the sentence "Zaleplon–related overdoes were also noted during the clinical trials" is removed.

2. On the same page, in the same column, in the fifth line from the bottom, "overdoes" should read "overdoses".

[FR Doc. C9–11289 Filed 5–10–99; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 16

[USCG–1998–4469]

RIN 2115–AF67

Management Information System (MIS) Requirements

Correction

In rule document 99–10553 beginning on page 22555, in the issue of Tuesday, April 27, 1999, make the following corrections:

1. On page 22557, in the first column, in the third paragraph, in the fourth line, "43" should read "+".

2. On the same page, in the same column, in the same paragraph, in the fifth line, "43" should read "+".

3. On the same page, in the second column, in the second full paragraph, in the fourth line from the bottom, "43" should read "+".

4. On the same page, in the same column, in the same paragraph, in the second line from the bottom, "43" should read "+".

[FR Doc. C9–10553 Filed 5–10–99; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday
May 11, 1999

Part II

Environmental Protection Agency

40 CFR Part 261 et al.
Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, Treatment Standards for Metal Wastes, Zinc Micronutrient Fertilizers, Carbamate Treatment Standards, and K088 Treatment Standards; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 261, 262, and 268

RIN 2050–AE05

[EPA # F–98–P3F4–FFFFF; FRL–6335–7]

Land Disposal Restrictions Phase IV: Treatment Standards for Wood Preserving Wastes, and Treatment Standards for Metal Wastes, and Zinc Micronutrient Fertilizers, and Carbamate Treatment Standards, and K088 Treatment Standards, Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: This rule corrects and clarifies five related rules the EPA published on May 12, 1997, May 26, 1998, August 31, 1998, September 4, 1998, and September 24, 1998. On May 12, 1997, EPA published regulations promulgating Land Disposal Restrictions (LDR) treatment standards for wood preserving wastes, as well as reducing the paperwork burden for complying with LDRs. On May 26, 1998, EPA published regulations promulgating LDR treatment standards for metal-bearing wastes, as well as amending the LDR treatment standards for soil contaminated with hazardous waste, and amending the definition of which secondary materials from mineral processing are considered to be wastes subject to the LDRs. On August 31, 1998, EPA published an administrative stay of the metal-bearing waste treatment standards as they apply to zinc micronutrient fertilizers. On September 4, 1998, EPA published an emergency revision of the LDR treatment standards for hazardous wastes from the production of carbamate wastes. On September 24, 1998, EPA published revised treatment standards for spent aluminum potliners from primary aluminum production. Today's rule makes technical corrections and clarifications to these final regulations.

EFFECTIVE DATE: This rule is effective on May 11, 1999.

ADDRESSES: The public may obtain a copy of this technical correction at the RCRA Information Center (RIC), located at Crystal Gateway One, 1235 Jefferson Davis Highway, First Floor, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: For general information contact the RCRA Hotline at (800) 424–9346 (toll free) or (703) 920–9810 in the Washington, DC metropolitan area. For information on this rule contact Peggy Vyas (5302W), Office of Solid Waste, 401 M Street, SW, Washington, DC 20460, (703) 308–5477, e-mail address is "vyas.peggy@epamail.epa.gov".

SUPPLEMENTARY INFORMATION:

I. Reasons and Basis for Today's Amendments

The Agency has received several comments from the regulated community requesting clarification and correction of certain aspects of five rules all promulgating and revising Phase IV of the LDRs. These are: the May 12, 1997 LDR Phase IV final rule (the so-called "Mini" Rule, 62 FR 25998), the May 26, 1998 LDR Phase IV final rule (63 FR 28556), the August 31, 1998 administrative stay of the May 26, 1998 rule's applicability to certain zinc micronutrient fertilizers (63 FR 46332), the September 4, 1998 emergency revisions to the treatment standards for carbamate production wastes (63 FR 172), and the September 24, 1998 revisions to the treatment standards for spent aluminum potliners (63 FR 51254). Today's preamble discussion amendments make clarifications and technical corrections where appropriate in light of the comments received.

II. Clarification of the May 12, 1997 LDR Phase IV "Mini Rule"

On May 12, 1997, EPA published regulations promulgating certain aspects of the original LDR Phase IV proposal (60 FR 11702, March 2, 1995), including a discussion clarifying point of generation of hazardous wastes (see 60 FR 26006–7, May 12, 1997). That discussion may have been confusing with regard to the status of sludge from high-TOC ignitable waste treated in entirely tank-based NPDES or POTW discharge systems. To clarify, EPA's position is that where wastes are managed in NPDES or POTW discharge systems that are entirely tank-based, the wastes are not destined for land disposal and, therefore, neither the LDR disposal prohibitions nor the treatment standards (or attendant dilution prohibition) apply. Conversely, where an NPDES or POTW discharge system includes a land-based unit (i.e., a surface impoundment), wastes managed in the system are considered to be destined for land disposal, and the LDR regulations do apply. See 61 FR 15566 at 15570 (April 8, 1996), 53 FR 31136 at 31149 (August 17, 1988).

Accordingly, the management of a high-TOC ignitable waste in an entirely tank-based NPDES or POTW discharge system—whether inadvertent or not—would trigger no LDR requirements. Sludge subsequently removed from the tanks would be considered newly-generated waste (for LDR purposes) regardless of any changes in treatability group, and LDR requirements would apply with respect to its management only if the sludge itself is hazardous waste when removed. If the sludge is a hazardous waste, the LDR treatment standard that would apply would depend on the hazardous waste code and treatability group (or subcategory) of the sludge itself.

III. Amendments to and Clarifications of the May 26, 1998 LDR Phase IV Final Rule

Several errors exist in the regulatory language of the LDR Phase IV final rule, which we are correcting with today's rule. We are also making several clarifications to the preamble of the LDR Phase IV final rule.

A. Corrections to the LDR Phase IV Final Rule

1. Section 261.2(e)(1)(iii)

Section 261.2(e) identifies materials that are not solid wastes when recycled. The rule added an amendment to § 261.2(e)(1)(iii), which amendment applies only to secondary materials generated and reclaimed by the primary mineral processing industry. The rule inadvertently deleted language in § 261.2(e)(1)(iii) that applies to other industrial sectors recycling secondary materials. The Agency did not intend to eliminate the long-standing regulatory exclusions for other industrial sectors, and indeed effectively stated that the provision was not being amended for other industry sectors, see 63 FR at 28583–584. We are therefore restoring the omitted text in this section.

2. Section 261.4

The Hazardous Waste Combustion Revised Standards published on June 19, 1998 (63 FR 33782) added a paragraph to § 261.4(a)(16), which inadvertently changed what was promulgated in the LDR Phase IV final rule. To avoid confusion, we are redesignating the language promulgated in § 261.4(a)(16) in the LDR Phase IV final rule as § 261.4(a)(17).

Section 261.4(a)(17) (as renumbered in this rule) identifies certain mineral processing secondary materials as subject to a conditional exclusion from subtitle C regulation as follows:

> Secondary materials * * * generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing.

As noted throughout the preamble, however, the same mineral processing secondary materials are also recovered

in beneficiation operations. See, e.g., 63 FR at 28578. EPA did not intend to restrict the scope of the conditional exclusion to recovery only in mineral processing operations. Id. Consequently, EPA is amending § 261.4(a)(17) to indicate that recovery of these secondary materials may occur in either mineral processing or beneficiation operations.

This same amendment is being made to § 261.4(b)(7)(iii), which sets out the conditions under which wastes from the co-processing of normal feedstock with mineral processing secondary materials remains exempt from subtitle C regulation under the Bevill Amendment. In relevant part, the rule states:

> A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials remains excluded under paragraph (b) * * * if the owner or operator:
>
> (A) Processes at least 50 percent by weight normal beneficiation raw materials;

The regulation inadvertently neglected to address the comparable situation when Bevill residues come from mineral processing rather than beneficiation operations. EPA clearly indicates in the preamble that the provisions of paragraph (b)(7)(ii) also apply to co-processing mineral processing secondary materials in beneficiation units. See 63 FR at 28595; see also 54 FR at 36614, 16619–620, 36629 (Sept. 1, 1989); 54 FR at 15324–325, 15341 (April 17, 1989) (prior rulemakings where EPA indicated that these conditions apply). Consequently, EPA is adding clarifying language to § 261.4(b)(7)(iii) to affirm that both beneficiation and mineral processing operations are included.

3. Section 268.7

The tables in § 268.7(a) and (b), entitled "Generator Paperwork Requirements Table" and "Treatment Facility Paperwork Requirements Table," are now erroneously missing certain checkmarks, which we are reinstating in today's rule. The LDR Phase IV final rule also added a line eight to the "Generator Paperwork Requirements Table," and a line five to the "Treatment Facility Paperwork Requirements Table," both for contaminated soil, which inadvertently erased the previous lines eight and five. We are correcting this oversight by reinstating the missing lines as nine and six, respectively.

4. Section 268.9

The language in § 268.9(d)(2) currently refers to language in § 268.7(b)(5), which has been renumbered as § 268.7(b)(4). Today's rule amends the language in § 268.9 to correct this miscitation. For more clarification of LDR certifications and how they apply to soil, see the discussion in section B.6.c. below.

5. Section 268.40

Today's rule also amends the treatment standard table found in § 268.40. The entry for P015 incorrectly describes this waste as "beryllium dust"; the proper term is "beryllium powder." Also, the entry for U408 gave the incorrect CAS number for 2,4,6-Tribromophenol. We are correcting these errors in today's rule. For other errors in the § 268.40 table, see sections V. and VI. below.

B. Clarifications to the LDR Phase IV Final Rule

1. Effective Dates

The Agency has received a number of questions about the dates when various provisions of the LDR Phase IV final rule become effective. A memorandum explaining in further detail the effective dates of the LDR Phase IV final rule is available in the RCRA docket for the rule, and is also available on the internet at: http://www.epa.gov/epaoswer/hazwaste/ldr/ldrmetal/memos/effectiv.pdf.

Part of the confusion over the compliance dates for the LDR Phase IV final rule resulted from EPA incorrectly referring to effective dates as "compliance dates". In the "Effective Dates" section in the preamble (see page 28556, middle column), the Agency lists four exceptions to the August 24, 1998 effective date for the rule. These exceptions are referred to as "compliance dates", when, in fact, they are effective dates.

Another point of clarification relates to the LDR Phase IV final rule amendments of the treatment standards for carbamate wastes, which were originally promulgated in the LDR Phase III final rule on April 8, 1996 (61 FR 15566). The LDR Phase IV amendments went into effect August 24, 1998. However, on September 4, 1998, the Agency changed the compliance dates for the LDR Phase IV carbamate treatment standards. If you have any questions related to compliance with the carbamate treatment standards, we direct you to the Emergency Revision of the Land Disposal Restrictions Treatment Standards for Listed Hazardous Wastes from Carbamate Production, which was published on September 4, 1998 (63 FR 172).

2. Waste as Fill

In the May 12, 1997 second supplemental proposed rule, EPA raised the issue of prohibiting the use of hazardous waste as fill material unless it was demonstrated to the Agency (or authorized State) that the use of the waste minimized threats to human health and the environment (see 62 FR 26061). The Agency did not finalize this issue in the LDR Phase IV final rule, but the proposal remains pending and awaiting EPA further action.

3. Cement Kiln Dust

EPA states at 63 FR at 28600/3 that:

> The Agency is aware that both cement kiln[s] and aggregate kilns may both burn hazardous wast[e] fuels and that the dusts from air pollution control devices are often blended into final products. Under existing regulations, if these dusts resulting from burning listed hazardous waste fuels are blended into products that are used on the land, the product would be subject to RCRA's 'derived from' rules. * * *"

The second sentence refers to a situation where the Bevill amendment does not apply to the residue from burning the hazardous waste derived fuel. The overall sense and intent of this section of the preamble remains that EPA wishes to consider cement kiln dust and dust from lightweight aggregate kilns (including dusts from kilns burning hazardous waste as fuels) in the same fashion because they are similar materials managed in similar manners.

4. D004 Treatment Standards

Some confusion also apparently exists as to whether the Universal Treatment Standards (UTS) apply to D004 arsenic wastes. In the preamble to the LDR Phase IV final rule, we state that the UTS apply to both wastewater and nonwastewater forms of the TC metal wastes. But a parenthetical then states that, for TC arsenic wastes, the UTS applies to the wastewater form only. The Agency unfortunately has caused confusion by this parenthetical language. The parenthetical only meant to explain that we were revising or replacing the standard solely for the nonwastewater form of arsenic in LDR Phase IV. We did not intend by the parenthetical to suggest that the wastewater form of arsenic had changed or been eliminated, or that the UTS do not apply. The existing standard for the wastewater form of arsenic was and remains the UTS. Therefore, the UTS have and will continue to apply to D004 arsenic wastes in both forms.

5. TC Metal Standards and Mixed Wastes

In the preamble to the final rule, EPA refers to characteristic metal mixed wastes that were previously stabilized to meet the then-existing LDR

requirements and that are now being stored prior to disposal. We indicate that these mixed wastes do not have to be re-treated to meet the revised treatment standards prior to disposal (63 FR 28575–28576). Mixed wastes are those that are both radioactive and hazardous. Although we believe that the preamble is clear, EPA has received a number of inquiries on this point. The Agency wishes to reiterate that, for the reasons explained in the LDR Phase IV preamble, if mixed wastes that are characteristically hazardous for metals were treated via stabilization to the old treatment standards before the effective date of the LDR Phase IV rule, these wastes do not need to be re-treated to meet the new treatment standards even if land disposal of the waste occurs after the effective date of the LDR Phase IV rule. Wastes previously treated by methods other than stabilization will have to be re-treated, as indicated clearly in the LDR Phase IV preamble, unless a site-specific variance is granted. Please note that the preamble further indicates EPA's amenability to grant such variances where, for example, there is risk of re-exposure to radiation. See 63 FR at 28576.

6. Soil Issues

EPA has received numerous questions about the alternative soil treatment standards. Two important questions and their answers appear below. Other questions will be handled through regular information channels, such as the RCRA Hotline at 1–800–424–9346. We also wish to remind readers generally that before receiving authorization for the soil treatment standards, states authorized for other portions of the LDR program may, for contaminated soil, use state waivers or other state authorities to waive the duty to comply with the LDR treatment standards for pure hazardous waste and allow, instead, compliance with the soil treatment standards. This is discussed more fully in the guidance memorandum mentioned above on LDR Phase IV rule effective dates.

a. What are the certification requirements for decharacterized soil? The certification requirements for decharacterized soil are similar to the requirements for decharacterized wastes. The certification language found in § 268.7(b)(4) is to be used if underlying hazardous constituents in decharacterized soil have been treated, either to meet the 90% reduction or the ten times UTS provisions in the soil treatment standards. If underlying hazardous constituents in decharacterized soil have not been treated and are above the 10 X UTS soil standard, the soil still requires treatment. In this case, the revised certification language found in § 268.7(b)(4)(iv) must be used instead. See 63 FR at 28620.

b. If constituents of concern in a hazardous contaminated soil have a specified method of treatment, can a facility still use the alternative soil treatment standards? In interpreting the alternative soil treatment standards found at § 268.49(c)(3), questions have arisen, particularly with respect to: (1) use of soil treatment standards where the only constituents of concern are nonanalyzable, and (2) situations in which both analyzable and non-analyzable constituents are present. The table below details the appropriate implementation of the language in § 268.49(c)(3), based on language from the preamble to the proposed and final rules with respect to contaminated soils containing both analyzable and nonanalyzable constituents. Readers should note that the following information only applies to constituents of concern present in a hazardous contaminated soil that must meet LDRs before land disposal.

If these constituents are * * *	And if these constituents * * *	Then soils contaminated with these constituents meet LDR treatment requirements when you * * *
Nonanalyzable only	Have a method of treatment specified in § 268.40	Treat all of these constituents using the treatment method[s] specified in § 268.40.
Analyzable and nonanalyzable.	Are organic compounds	Treat analyzable constituents to numerical soil treatment levels; no need to separately treat nonanalyzable constituents using method specified in § 268.40.
analyzable only	Have a method of treatment specified in § 268.40 AND ALSO a concentration-based limit in the § 268.48 UTS table.	Treat each constituent to numerical soil treatment levels.
	Have only concentration based limits in § 268.40 and § 268.48.	Treat each constituent to numerical soil treatment levels.

The preambles to both the final and proposed rules on contaminated soils make clear that EPA intended to allow treatment of analyzable constituents to serve as a surrogate for treating unanalyzable constituents only when the analyzable and unanalyzable constituents are both organics. The Phase IV preamble thus states that "[i]n situations where contaminated soil contains both analyzable and nonanalyzable organic constituents, treating the analyzable constituents to meet the soil treatment standards is also reasonably expected to provide adequate treatment of nonanalyzable constituents." 63 FR at 28609 (emphasis added). This sentence indicates that it is reasonable to expect that treatment for analyzable organic constituents will be sufficiently effective for other organic, but nonanalyzable, constituents. See also, Phase II proposal, 58 FR at 48124 (col. 2) (Sept. 14, 1993) (likewise stating that the principle of treating only analyzable constituents applies only where analyzable and nonanalyzable constituents are both organics). We are accordingly amending the language of the rule so that it matches these preamble explanations.

This leaves unaddressed in the rule situations (which may or may not actually exist) where analyzable and unanalyzable hazardous constituents are not both organics. If the situation exists, it would not be reasonable to assume in all situations that organic treatment would serve as a surrogate for inorganic or metal treatment, or vice versa. Should the situation arise, EPA believes it should be addressed on a site-specific basis. The relevant factors to be considered include the types of hazardous constituents, their concentrations (for the analyzable constituents), and their amenability to common treatment.

c. What are nonanalyzable constituents? A nonanalyzable constituent is any constituent that does not have appropriate test methods or chemical standards to properly measure compliance with LDR concentration-based standards. A constituent is nonanalyzable under LDR regulation when (1) the appropriate § 268.40 listing

specifies a treatment technology, and (2) there is no concentration-based limit in the § 268.48 UTS table. We note, simply for technical accuracy, that the Phase IV preamble (63 FR 28609, col. 2) refers in a parenthetical statement to nonanalyzable constituents as belonging only to P and U waste codes. That preamble parenthetical is not entirely correct. A limited number of organic nonanalyzable constituents are also regulated under K and F waste codes. This clarification does not affect implementation of § 268.49(c)(3) in any way.

7. Intentional Mixing of Hazardous Waste With Soil or Debris

It is illegal to add soil or debris to a hazardous waste to change the waste's treatment classification to soil or debris and thereby to falsely claim eligibility for the alternative treatment standards for soil or debris. Put another way, addition of soil or debris to a hazardous waste does not change that waste into soil or debris for purposes of LDR treatment. As the Agency stated in the May 26, 1998 preamble, "[A]ny deliberate mixing of prohibited hazardous waste with soil in order to change its treatment classification (i.e. from waste to contaminated soil) is illegal. Existing regulations concerning impermissible dilution already make this point." 63 FR at 28621. The conduct is impermissible dilution because it adds a diluting medium—the soil—that neither contributes to effective treatment nor represents a bona fide substitute for adequate treatment. Id.

EPA further made clear that this conduct subjects generators to civil and criminal penalties. 63 FR at 28621. In addition, the impermissibly diluted waste remains subject to the original treatment standard, "so no benefit in terms of reduced treatment would occur." Id.

EPA had earlier established the same principle for debris: "[a]lthough EPA is classifying mixtures that are predominantly debris as debris, this does not mean that debris can be deliberately mixed with other wastes in order to change their treatment classification. Such mixing is impermissible dilution under § 268.3 since it is a substitute for adequate treatment." 57 FR at 37224 (Aug. 18, 1992); see also 57 FR at 37243 ("if debris is intentionally mixed with contaminated soil or hazardous waste (e.g. after excavation), and the mixture is regulated as debris by the application of the mixture principle and subsequently immobilized, prohibited sham mixing has occurred").

To ensure that there is no possibility of misunderstanding current law, EPA has decided to amend the definitions in § 268.2 to reflect more directly the preamble language stating that intentional addition of soil or debris to hazardous waste is impermissible. Currently, the definitions of "soil" and "debris", respectively state that soil or debris is "made up primarily of soil" or "primarily of debris." 40 CFR § 268.2 (k) and (g). To remove any possible (albeit unfounded, given the existence of the dilution prohibition in § 268.3 and the preamble language quoted above) confusion regarding the term "primarily" in the rules, EPA is incorporating language directly into the respective definitions that states that deliberate mixing of process waste to soil or debris that changes a treatment classification is impermissible dilution. These additions merely incorporate existing preamble text into regulations and do not establish any new principles. Thus, today's correction is at most an interpretive rule because EPA's existing interpretations are being codified as clarifications to the definitions of soil and debris and to the existing dilution prohibition in § 268.3. Moreover, no new obligations are created because existing regulations—viz., the dilution prohibition in § 268.3—already make the conduct illegal. Whether the change is a technical correction or an interpretive rule, no opportunity for notice and comment is required. 5 U.S.C. § 553(b).

8. Treatment Residuals and Point of Generation of a New Hazardous Waste for LDR Purposes

The Agency has received several inquiries concerning treating TC metal wastes and the potential for finding underlying hazardous constituents at levels above the UTS in the treatment residuals that were either not present in the waste prior to treatment or may have been present but only at levels below the UTS. This would occur, for example, if the treatment process is such that certain underlying hazardous constituents (UHCs) might be more concentrated in treatment residuals than in the original waste.

Two illustrative scenarios are useful. The first involves a D007 chromium waste that is incinerated. Trace quantities of lead are present in the original waste, but at levels below the UTS (thus, lead is not a UHC under 40 CFR § 268.2(i)). The resulting ash is no longer characteristic for chromium, but lead is now present at levels above the UTS. The second involves a D008 lead wastewater that contains no underlying hazardous constituents as generated, but that is treated with dithiocarbamate, a metal precipitating agent. Dithiocarbamate is also a hazardous constituent that appears on the list of potential UHCs in § 268.48. The dithiocarbamate assists the stabilization of the lead but, after treatment, is present at levels above the UTS in the treatment residuals.

In both of these cases, the treatment residuals (ash and sludge) demonstrate that the original waste is decharacterized. Under § 268.2(i), the only UHCs that must be treated and that must meet the Universal Treatment Standards (UTS) are those determined to be present above UTS levels in the original waste—either via testing or generator knowledge. Because the treatment process results in non-hazardous residuals, the treatment facility is not responsible for additional testing to determine if any different underlying hazardous constituents are added or created during the treatment process itself. Furthermore, only the original UHCs must meet the UTS.

However, if in either case the treatment residual is also characteristic by having constituents that are not only above the UTS level but also above the TC level, then the residual is a newly-generated hazardous waste for LDR purposes. This result is consistent with the definition of generator at § 260.10: "Generator means any person, by site, whose act or process produces hazardous waste identified or listed in part 261 * * * " The result is also consistent with the key LDR principle that hazardous wastes must meet LDR treatment standards to minimize threats before the wastes are land disposed. See, e.g., *Chemical Waste Management v. EPA*, 976 F. 2d 2, 16–18 (D.C. Cir. 1992) (treatment must include treatment for both characteristic property and for underlying hazardous constituents). For these reasons, the Agency regards generation of a new characteristic treatment residual as being a new point of generation for LDR purposes. This newly-formed hazardous waste would have to be treated to below the characteristic, and any underlying hazardous constituents would have to be treated to below their UTS levels.[1]

[1] This analysis is consistent with the so-called change of treatability group principle first stated at 55 FR at 22661, col. 2 (June 1, 1990). That principle states that LDR prohibitions remain attached to the initial waste as long as the waste remains within the same treatability group (normally wastewater or nonwastewater). Thus, if a characteristic wastewater is treated and a non-wastewater sludge is generated from the treatment process, the prohibition for the wastewater does not automatically apply to the sludge. Id. The situation discussed in the text above, however, involves the

Continued

Thus, in the first scenario above regarding a decharacterized waste with lead in the ash, if the lead is present in the ash at or above TC levels (i.e., a new D008 waste has been generated), the lead must be treated to UTS levels. Furthermore, the treater has generated the new hazardous waste for LDR purposes and is responsible for a new determination of UHCs that are present and that require treatment to UTS levels. The same is true in the second example if the dithiocarbamate treatment sludge is characteristic.

EPA notes further, however, that in determining whether a treatment process has generated a new hazardous waste for LDR purposes, the Agency looks to the entire treatment process, not to each component part. In general, as explained below, the determination of whether a new hazardous waste is generated—i.e., whether a new point of generation for LDR purposes is created—is made at the completion of the treatment process. Thus:

(i) For residuals that are the end product of a one-step treatment process or the end product of a treatment train, the treater has the obligation to ensure only that the original UHCs meet UTS standards and that the treatment residuals are not themselves characteristic. If a treatment residual in this scenario does not meet the treatment standards for the original characteristic (i.e., when treatment is ineffective or incomplete) and requires further treatment, EPA does not consider the treatment residue to be newly generated for LDR purposes. Such a treatment residue, however, cannot be land disposed until it meets the treatment standard applicable to the original waste. This situation would normally involve re-treating the waste residuals on-site. Any UHCs added or created by the treatment process are not required to be treated because there is no new point of generation for LDR purposes. However, as noted above, if the treatment residuals are themselves characteristic due to a new property (for example, the formerly characteristic chromium D007 waste is now characteristic only for D008 lead), then the treater must make a new determination of the UHCs present—either through knowledge or additional testing. This is the same obligation that attaches to any generator of a hazardous waste.

(ii) For treatment residuals that appear only at intermediate steps of a treatment train, there is no obligation to determine UHCs or to determine whether the residual is itself characteristic. Intermediate-step treatment residuals are not newly generated hazardous wastes for LDR purposes. Thus, even when an intermediate treatment residual is sent off-site for further treatment (such as incinerator ash going offsite for stabilization and landfilling), our current regulations at § 268.7(b)(5) require only that the UHCs identified at the LDR point of generation be identified. There is no such requirement for any new UHCs that may be added or created during the preceding steps of the treatment process.

9. Clarification of Footnote 7 in Preamble

LDR Phase IV, as mentioned earlier, deals with the status of mineral processing materials under the RCRA definition of solid waste at § 261.2. Footnote seven of the preamble to the LDR Phase IV final rule, as printed in the **Federal Register**, reads: "EPA does note the potential anomaly that non-mineral processing secondary materials, at least for the moment, will be regulated in some cases stringently than those generated and reclaimed within the mineral processing industry." 63 FR at 28583 n. 7. This language reflects a printing error by the Office of Federal Register which erroneously omitted the word "less" before the word "stringently" in this sentence. The footnote thus should read: "EPA does note the potential anomaly that non-mineral processing secondary materials, at least for the moment, will be regulated in some cases less stringently than those generated and reclaimed within the mineral processing industry."

Of course, as EPA noted elsewhere in the rule, secondary materials within the mineral processing industry will be regulated in other instances less stringently than those from outside the industry (the principal example being characteristic spent materials being reclaimed). The main point, as expressed in the footnote, is that the new rules establish a separate solid waste classification scheme for the mineral processing industry that differs from the generic classification scheme set out in the remainder of § 261.2.

IV. Amendment to the August 31, 1998 Stay for Certain Zinc Micronutrient Fertilizers

On August 31, 1998, EPA issued an administrative stay of the Phase IV rule as it applies to zinc micronutrient fertilizers that are produced from hazardous wastes exhibiting the toxicity characteristic. 63 FR 46332. Although EPA clearly stated throughout the rule that the administrative stay applied to "zinc micronutrient fertilizers," the regulatory language codifying the stay mistakenly refers instead to "zinc-containing fertilizers." See 63 FR 46334, to be codified at 40 CFR § 268.40(i). There exists a remote possibility that there are fertilizers produced from toxicity characteristic hazardous wastes that do not utilize zinc as a micronutrient but otherwise contain zinc (possibly as a trace element without nutritive value). Since the administrative stay was not meant to apply to such (hypothetical) fertilizers, EPA is amending the regulatory language to cover only zinc micronutrient fertilizers, as intended.

V. Amendments to the September 4, 1998 Emergency Revision of the Treatment Standards for Listed Hazardous Wastes From Carbamate Production

The September 4, 1998 Emergency Revision of the LDR Treatment Standards for Listed Hazardous Wastes from Carbamate Production (63 FR 172) adds a paragraph (i) to § 268.40, which inadvertently replaced the existing paragraph (i) added by the Land Disposal Restrictions final rule published on August 31, 1998 (staying LDR metal standards for zinc micronutrient fertilizers). Today's rule redesignates the current paragraph (i) as paragraph (j), and reinserts the paragraph (i) from the August 31, 1998 rule (as additionally amended in this correction notice, see section IV above). The September 4, 1998 rule also inadvertently changes footnotes eight and 11 to the table of treatment standards found in § 268.40. The correct footnotes are reinstated in today's rule.

A more significant error in the September 4, 1998 Emergency Rule is the removal of footnote six for all constituents listed in the table of Universal Treatment Standards found in § 268.48. In doing so, the rule mistakenly changes the status of certain carbamate constituents, which should not be underlying hazardous constituents until their newly revised treatment standards go into effect on March 4, 1999. By removing the footnote, these carbamate constituents are considered underlying hazardous constituents as of September 4, 1998, the effective date of the Emergency Rule. This was and is not the Agency's intention, and we are therefore reinstating the footnote with the correct date of March 4, 1999.

status for this hypothetical sludge if it itself exhibits a characteristic of hazardous waste. EPA views such a characteristic sludge as being newly generated for LDR purposes.

The treatment standards for K159 in the Table of Treatment Standards for Hazardous Wastes in § 268.40 are currently incorrect. The standards were and should be those promulgated in the LDR Phase III final rule (61 FR 15566, April 8, 1996). However, those standards were inadvertently and mistakenly revised in a technical correction on February 19, 1997 (62 FR 7502). Today's rule reinstates the correct treatment standards for K159 in the § 268.40 table.

Finally, today's rule also corrects: (1) the nonwastewater standard for oxamyl, which was listed incorrectly in the entry for P194; and (2) the CAS numbers for acetophenone and triethylamine, which were listed incorrectly in the entries for K156 and U404, respectively.

VI. Amendment to the September 24, 1998 Revision of the Treatment Standards for Spent Potliners From Primary Aluminum Reduction (K088)

On September 24, 1998 EPA promulgated revised LDR treatment standards for waste code K088. The rule changes the nonwastewater standard for arsenic in K088 from 5.0 mg/l TCLP to 26.1 mg/kg total, and also changes the nonwastewater standard for fluoride in K088 from 48 mg/l TCLP to NA. The wastewater standard for fluoride is unaffected by the rule. (That standard also is not affected by the court's rationale in *Columbia Falls Aluminum Co.* v. *EPA*, 139 F. 3d 914, 922–23 (D.C. Cir. 1998) because the standard for fluoride wastewaters does not involve the use of the TCLP.) Unfortunately, the final rule inadvertently omitted fluoride, and its treatment standards, from the entry for K088 in the table of treatment standards in § 268.40. Because of this omission, the change to the nonwastewater standard for fluoride was not codified. Today we are restoring fluoride and its revised standards in the entry for K088 in the § 268.40 table.

VII. Analysis Under Executive Order 12866, Executive Order 12875, Executive Order 12898, Executive Order 13045, Executive Order 13084, the Unfunded Mandates Reform Act of 1995, the Regulatory Flexibility Act, and the Paperwork Reduction Act

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655, May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets E.O. 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to E.O. 13045 because it does not establish an environmental standard intended to mitigate health or safety risks. EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the May 12, 1997, the May 26, 1998, the August 31, 1998, the September 4, 1998, and the September 24, 1998 **Federal Register** notices.

VIII. Submission to Congress and the General Accounting Office

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of May 11, 1999. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

IX. Immediate Effective Date

EPA is making this rule effective immediately. The rule adopts corrections which are purely technical in that they correct outright printing errors, or are manifestly inconsistent with the Agency's stated intent. Comment on such changes is unnecessary, within the meaning of 5 U.S.C. 553(b)(3)(B). For the same reasons, there is good cause to make the rule effective immediately pursuant to 5 U.S.C. 553(d)(3).

List of Subjects

40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

40 CFR Part 262

Hazardous waste, Labeling, Manifest, Reporting and recordkeeping requirements.

40 CFR Part 268

Hazardous waste, Reporting and recordkeeping requirements.

Dated: April 20, 1999.

Timothy Fields, Jr.,

Acting Assistant Administrator.

For the reasons set forth in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Subpart A—General

1. The authority citation for Part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y), and 6938.

2. Section 261.2 is amended by revising paragraph (c)(3), in Table 1 in paragraph (c)(4) by revising the reference "261.4(a)(15)" in the heading of column 3 to read "261.4(a)(17)", and paragraph (e)(1)(iii) is revised to read as follows:

§ 261.2 Definition of solid waste.

* * * * *

(c) * * *

(3) *Reclaimed.* Materials noted with a "*" in column 3 of Table 1 are solid wastes when reclaimed (except as provided under 40 CFR 261.4(a)(17)). Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed (except as provided under 40 CFR 261.4(a)(17)).

* * * * *

(e) * * *

(1) * * *

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material must be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. In cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at § 261.4(a)(17) apply rather than this paragraph.

3. Section 261.4 is amended by redesignating the first paragraph (a)(16) as (a)(17), and by revising paragraphs (a)(17) introductory text, (a)(17)(v), and (b)(7)(iii) introductory text and (b)(7)(iii)(A) to read as follows:

§ 261.4 Exclusions.

(a) * * *

(17) Secondary materials (i.e., sludges, by-products, and spent materials as defined in § 261.1) (other than hazardous wastes listed in subpart D of this part) generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by beneficiation, provided that:

* * * * *

(v) The owner or operator provides a notice to the Regional Administrator or State Director, identifying the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in non land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

* * * * *

(b) * * *

(7) * * *

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under paragraph (b) of this section if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

* * * * *

PART 262—STANDARDS APPLICABLE TO GENERATORS OF HAZARDOUS WASTE

4. The authority citation for part 262 continues to read as follows:

Authority: 42 U.S.C. 6906, 6912, 6922–6925, 6937, and 6938.

Subpart C—Pre-Transport Requirements

5. Section 262.34 is amended by revising paragraph (d)(4) to read as follows:

§ 262.34 Accumulation time.

* * * * *

(d) * * *

(4) The generator complies with the requirements of paragraphs (a)(2) and (a)(3) of this section, the requirements of subpart C of part 265, the requirements of 40 CFR 268.7(a)(5); and

* * * * *

PART 268—LAND DISPOSAL RESTRICTIONS

6. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart A—General

7. Section 268.2 is amended by revising paragraphs (h) and (k) to read as follows:

§ 268.2 Definitions applicable in this part.

* * * * *

(h) Hazardous debris means debris that contains a hazardous waste listed in subpart D of part 261 of this chapter, or that exhibits a characteristic of hazardous waste identified in subpart C of part 261 of this chapter. Any deliberate mixing of prohibited hazardous waste with debris that changes its treatment classification (i.e., from waste to hazardous debris) is not allowed under the dilution prohibition in § 268.3.

* * * * *

(k) *Soil* means unconsolidated earth material composing the superficial geologic strata (material overlying bedrock), consisting of clay, silt, sand, or gravel size particles as classified by the U.S. Natural Resources Conservation Service, or a mixture of such materials with liquids, sludges or solids which is inseparable by simple mechanical removal processes and is made up primarily of soil by volume based on visual inspection. Any deliberate mixing of prohibited hazardous waste with soil that changes its treatment classification (i.e., from waste to contaminated soil) is not allowed under the dilution prohibition in § 268.3.

8. Section 268.7 is amended by revising entries 1, 3, and 8 to the table entitled "Generator Paperwork Requirements Table" in paragraph (a)(4), by revising entry 1 to the table entitled "Treatment Facility Paperwork Requirements Table" in paragraph (b)(3)(ii), and by revising paragraph (b)(4)(iv) to read as follows:

§ 268.7 Testing, tracking, and recordkeeping requirements for generators, treaters, and disposal facilities.

* * * * *

(a) * * *

(4) * * *

GENERATOR PAPERWORK REQUIREMENTS TABLE

Required information	§ 268.7(a)(2)	§ 268.7(a)(3)	§ 268.7(a)(4)	§ 268.7(a)(9)
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment	✔	✔	✔	✔
* * * * * * * * * * * *				
3. The waste is subject to the LDRs. The constituents of concern for F001-F005, and F039, and underlying hazardous constituents in characteristic wastes, unless the waste will be treated and monitored for all constituents. If all constituents will be treated and monitored, there is no need to put them all on the LDR notice	✔	✔		

GENERATOR PAPERWORK REQUIREMENTS TABLE—Continued

Required information	§ 268.7(a)(2)	§ 268.7(a)(3)	§ 268.7(a)(4)	§ 268.7(a)(9)
* * * * * * *				
8. For contaminated soil subject to LDRs as provided in § 268.49(a), the constituents subject to treatment as described in § 268.49(d), and the following statement: This contaminated soil [does/does not] contain listed hazardous waste and [does/does not] exhibit a characteristic of hazardous waste and [is subject to/complies with the soil treatment standards as provided by § 268.49(c) or the universal treatment standards	✔	✔		
9. A certification is needed (see applicable section for exact wording)		✔		✔

* * * * *

(b) * * *

(3) * * *

(ii) * * *

TREATMENT FACILITY PAPERWORK REQUIREMENTS TABLE

Required Information	§ 268.7(b)
1. EPA Hazardous Waste Numbers and Manifest Number of first shipment	✔
* * * * * * *	
6. A certification is needed (see applicable section for exact wording)	✔

* * * * *

(4) * * *

(iv) For characteristic wastes that are subject to the treatment standards in § 268.40 (other than those expressed as a method of treatment), or § 268.49, and that contain underlying hazardous constituents as defined in § 268.2(i); if these wastes are treated on-site to remove the hazardous characteristic; and are then sent off-site for treatment of underlying hazardous constituents, the certification must state the following:

I certify under penalty of law that the waste has been treated in accordance with the requirements of 40 CFR 268.40 or 268.49 to remove the hazardous characteristic. This decharacterized waste contains underlying hazardous constituents that require further treatment to meet treatment standards. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment.

* * * * *

9. Section 268.9 is amended by revising paragraphs (d)(2) introductory text and (d)(2)(i) to read as follows:

§ 268.9 Special rules regarding wastes that exhibit a characteristic.

* * * * *

(d) * * *

(2) The certification must be signed by an authorized representative and must state the language found in § 268.7(b)(4).

(i) If treatment removes the characteristic but does not meet standards applicable to underlying hazardous constituents, then the certification found in § 268.7(b)(4)(iv) applies.

* * * * *

10. Section 268.40 is amended by redesignating the first paragraph (i) as paragraph (j), by revising paragraph (i), and the table at the end of the section is amended by revising the entries for K088, K156, K159, P194, U404 and U408, and footnotes 8 and 11 to read as follows:

§ 268.40 Applicability of treatment standards.

* * * * *

(i) Zinc micronutrient fertilizers that are produced for the general public's use and that are produced from or contain recycled characteristic hazardous wastes (D004–D011) are subject to the applicable treatment standards in § 268.41 contained in the 40 CFR, parts 260 to 299, edition revised as of July 1, 1990.

* * * * *

TREATMENT STANDARDS FOR HAZARDOUS WASTES

[Note: NA means not applicable.]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent: Common name	Regulated hazardous constituent: CAS [2] No.	Wastewaters: Concentration in mg/l [3]; or technology code [4]	Nonwastewaters: Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
K088	Spent potliners from primary aluminum reduction.	Acenaphthene	83–32–9	0.059	3.4
		Anthracene	120–12–7	0.059	3.4
		Benz(a)anthracene	56–55–3	0.059	3.4
		Benzo(a)pyrene	50–32–8	0.061	3.4
		Benzo(b)fluoranthene	205–99–2	0.11	6.8
		Benzo(k)fluoranthene	207–08–9	0.11	6.8
		Benzo(g,h,i)perylene	191–24–2	0.0055	1.8
		Chrysene	218–01–9	0.059	3.4
		Dibenz(a,h)anthracene	53–70–3	0.055	8.2
		Fluoranthene	206–44–0	0.068	3.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable.]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
	.....	Indeno(1,2,3,-c,d)pyrene	193–39–5	0.0055	3.4
	.....	Phenanthrene	85–01–8	0.059	5.6
	.....	Pyrene	129–00–0	0.067	8.2
	.....	Antimony	7440–36–0	1.9	1.15 mg/l TCLP
	.....	Arsenic	7440–38–2	1.4	26.1 mg/l TCLP
	.....	Barium	7440–39–3	1.2	21 mg/l TCLP
	.....	Beryllium	7440–41–7	0.82	1.22 mg/l TCLP
	.....	Cadmium	7440–43–9	0.69	0.11 mg/l TCLP
	.....	Chromium (Total)	7440–47–3	2.77	0.60 mg/l TCLP
	.....	Lead	7439–92–1	0.69	0.75 mg/l TCLP
	.....	Mercury	7439–97–6	0.15	0.025 mg/l TCLP
	.....	Nickel	7440–02–0	3.98	11 mg/l TCLP
	.....	Selenium	7782–49–2	0.82	5.7 mg/l TCLP
	.....	Silver	7440–22–4	0.43	0.14 mg/l TCLP
	.....	Cyanide (Total) [7]	57–12–5	1.2	590
	.....	Cyanide (Amenable) [7]	57–12–5	0.86	30
	.....	Fluoride	16984–48–8	35	NA
K156	Organic waste (including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates) from the production of carbamates and carbamoyl oximes. [10]	Acetonitrile	75–05–8	5.6	1.8
	.....	Acetophenone	98–86–2	0.010	9.7
	.....	Aniline	62–53–3	0.81	14
	.....	Benomyl	17804–35–2	0.056	1.4
	.....	Benzene	71–43–2	0.14	10
	.....	Carbaryl	63–25–2	0.006	0.14
	.....	Carbenzadim	10605–21–7	0.056	1.4
	.....	Carbofuran	1563–66–2	0.006	0.14
	.....	Carbosulfan	55285–14–8	0.028	1.4
	.....	Chlorobenzene	108–90–7	0.057	6.0
	.....	Chloroform	67–66–3	0.046	6.0
	.....	o-Dichlorobenzene	95–50–1	0.088	6.0
	.....	Methomyl	16752–77–5	0.028	0.14
	.....	Methylene chloride	75–09–2	0.089	30
	.....	Methyl ethyl ketone	78–93–3	0.28	36
	.....	Naphthalene	91–20–3	0.059	5.6
	.....	Phenol	108–95–2	0.039	6.2
	.....	Pyridine	110–86–1	0.014	16
	.....	Toluene	108–88–3	0.080	10
	.....	Triethylamine	121–44–8	0.081	1.5
K159	Organics from the treatment of thiocarbamate wastes. [10]	Benzene	71–43–2	0.14	10
	.....	Butylate	2008–41–5	0.042	1.4
	.....	EPTC (Eptam)	759–94–4	0.042	1.4
	.....	Molinate	2212–67–1	0.042	1.4
	.....	Pebulate	1114–71–2	0.042	1.4
	.....	Vernolate	1929–77–7	0.042	1.4
P194	Oxamyl	Oxamyl	23135–22–0	0.056	0.28
U404	Triethylamine	Triethylamine	121–44–8	0.081	1.5
U408	2,4,6-Tribromophenol	2,4,6-Tribromophenol	118–79–6	0.035	7.4

TREATMENT STANDARDS FOR HAZARDOUS WASTES—Continued

[Note: NA means not applicable.]

Waste code	Waste description and treatment/regulatory subcategory [1]	Regulated hazardous constituent		Wastewaters	Nonwastewaters
		Common name	CAS [2] No.	Concentration in mg/l [3]; or technology code [4]	Concentration in mg/kg [5] unless noted as "mg/l TCLP"; or technology code
*	*	*	*	*	*	*

[1] The waste descriptions provided in this table do not replace waste descriptions in 40 CFR 261. Descriptions of Treatment/Regulatory Subcategories are provided, as needed, to distinguish between applicability of different standards.

[2] CAS means Chemical Abstract Services. When the waste code and/or regulated constituents are described as a combination of a chemical with its salts and/or esters, the CAS number is given for the parent compound only.

[3] Concentration standards for wastewaters are expressed in mg/l and are based on analysis of composite samples.

[4] All treatment standards expressed as a Technology Code or combination of Technology Codes are explained in detail in 40 CFR 268.42 Table 1—Technology Codes and Descriptions of Technology-Based Standards.

[5] Except for Metals (EP or TCLP) and Cyanides (Total and Amenable) the nonwastewater treatment standards expressed as a concentration were established, in part, based upon incineration in units operated in accordance with the technical requirements of 40 CFR Part 264 Subpart O or Part 265 Subpart O, or based upon combustion in fuel substitution units operating in accordance with applicable technical requirements. A facility may comply with these treatment standards according to provisions in 40 CFR 268.40(d). All concentration standards for nonwastewaters are based on analysis of grab samples.

* * * * * * *

[7] Both Cyanides (Total) and Cyanides (Amenable) for nonwastewaters are to be analyzed using Method 9010 or 9012, found in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW–846, as incorporated by reference in 40 CFR 260.11, with a sample size of 10 grams and a distillation time of one hour and 15 minutes.

* * * * * * *

[8] These wastes, when rendered nonhazardous and then subsequently managed in CWA, or CWA-equivalent systems, are not subject to treatment standards. (See § 268.1(c)(3) and (4)).

* * * * * * *

[10] The treatment standard for this waste may be satisfied by either meeting the constituent concentrations in this table or by treating the waste by the specified technologies: combustion, as defined by the technology code CMBST at § 268.42 Table 1 of this Part, for nonwastewaters; and, biodegradation as defined by the technology code BIODG, carbon adsorption as defined by the technology code CARBN, chemical oxidation as defined by the technology code CHOXD, or combustion as defined as technology code CMBST at § 268.42 Table 1 of this Part, for wastewaters.

[11] For these wastes, the definition of CMBST is limited to: (1) combustion units operating under 40 CFR 266, (2) combustion units permitted under 40 CFR Part 264, Subpart O, or (3) combustion units operating under 40 CFR 265, Subpart O, which have obtained a determination of equivalent treatment under 268.42 (b).

11. In § 268.48, the table in paragraph (a) is amended by adding footnote number "6" in column one, under the heading *Regulated Constituents/ Common Name,* after the following chemical names: "Aldicarb sulfone," "Barban," "Bendiocarb," "Benomyl," "Butylate," "Carbaryl," "Carbenzadim," "Carbofuran," "Carbofuran phenol," "Carbosulfan," "m-Cumenyl methylcarbamate," "Dithiocarbamates (total)," "EPTC," "Formetanate hydrochloride," "Methiocarb," "Methomyl," "Metolcarb," "Mexacarbate," "Molinate," "Oxamyl," "Pebulate," "Physostigmine," "Physostigmine salicylate," "Promecarb," "Propham," "Propoxur," "Prosulfocarb," "Thiodicarb," "Thiophanate-methyl," "Triallate," "Triethylamine," and "Vernolate;" and by adding footnote 6 to read as follows:

§ 268.48 Universal treatment standards.

(a) * * *

6. Between August 26, 1998 and March 4, 1999, these constituents are not "underlying hazardous constituents" as defined in § 268.2(i) of this part.

12. Section 268.49 is amended by revising paragraph (c)(3) as follows:

§ 268.49 Alternative LDR treatment standards for contaminated soil.

* * * * * * *

(c) * * *

(3) Soils that contain nonanalyzable constituents. In addition to the treatment requirements of paragraphs (c)(1) and (2) of this section, prior to land disposal, the following treatment is required for soils that contain nonanalyzable constituents:

(A) For soil that contains only analyzable and nonanalyzable organic constituents, treatment of the analyzable organic constituents to the levels specified in paragraphs (c)(1) and (2) of this section; or,

(B) For soil that contains only nonanalyzable constituents, treatment by the method(s) specified in § 268.42 for the waste contained in the soil.

[FR Doc. 99–11271 Filed 5–10–99; 8:45 am]

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S. 531/P.L. 106–26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

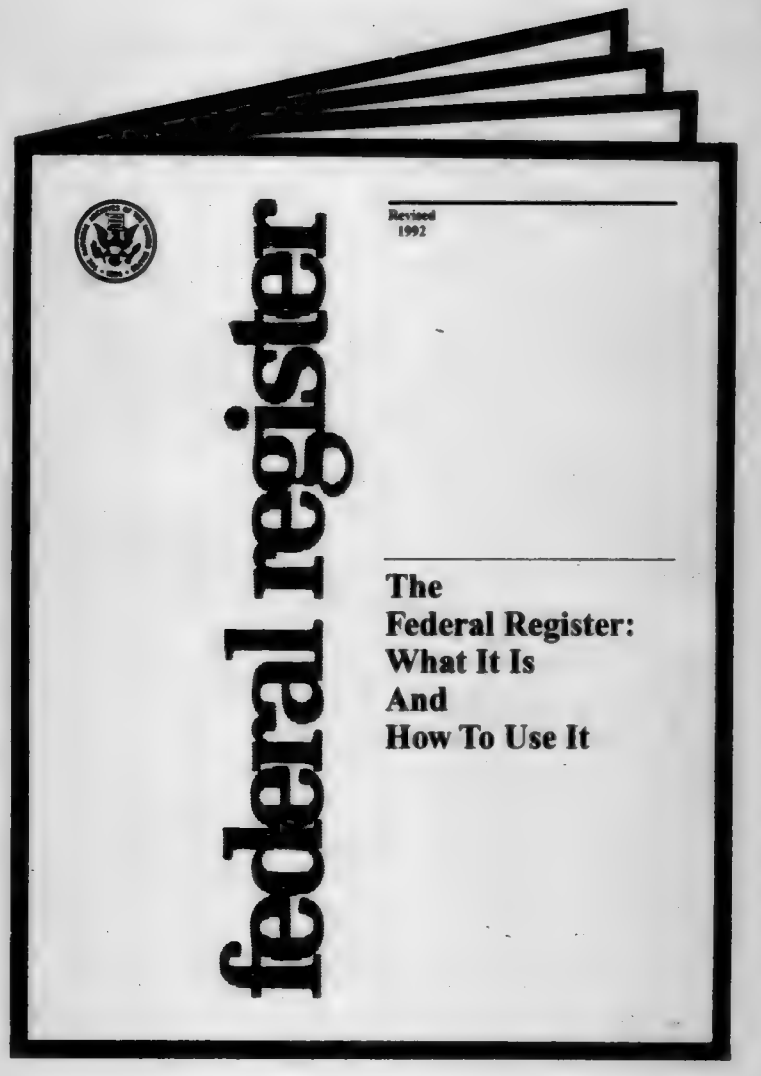
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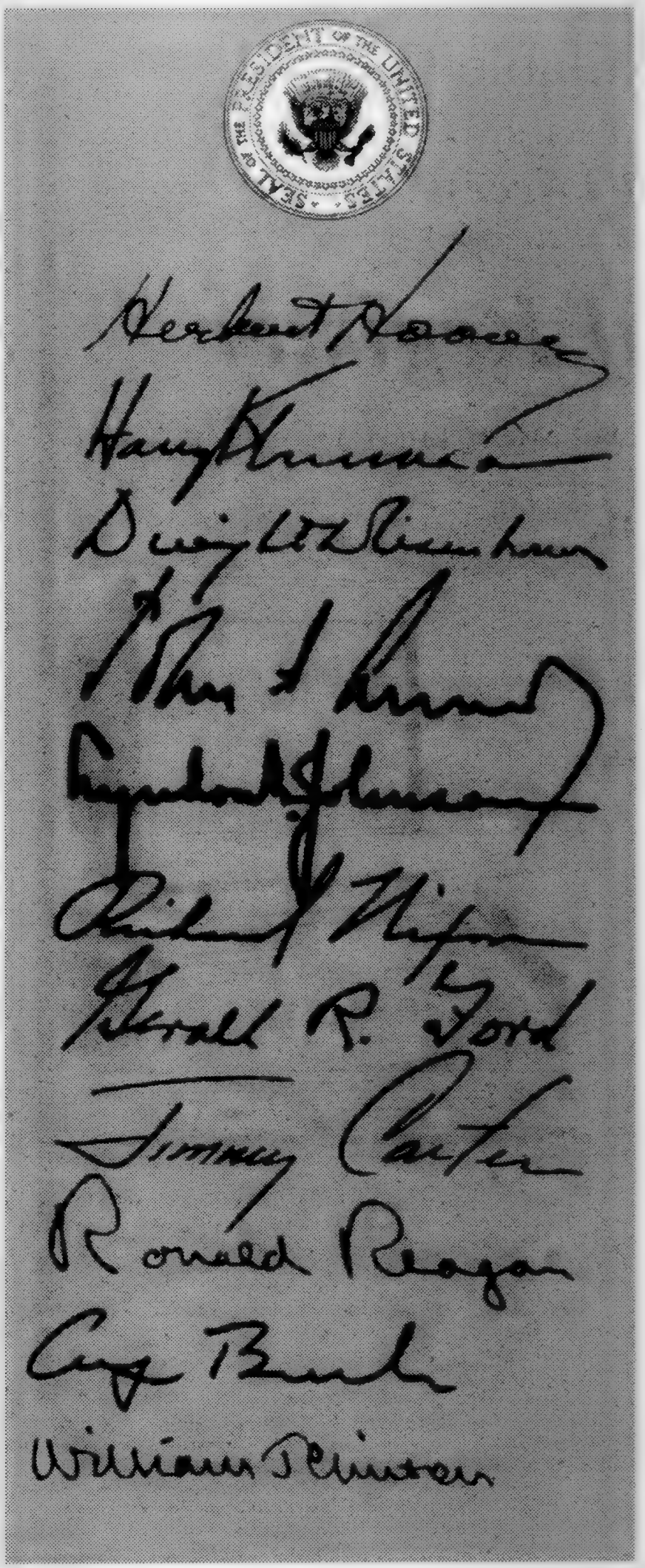
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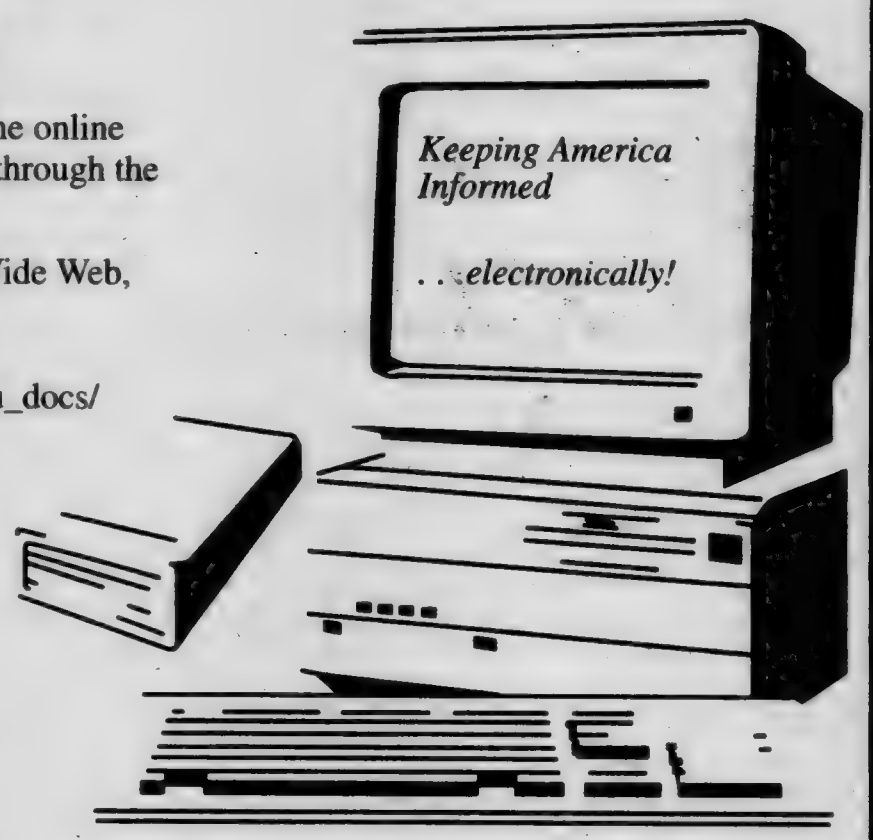
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Wednesday
May 12, 1999

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Rules and Regulations

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV99–989–2 FIR]

Raisins Produced From Grapes Grown in California; Increase in Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, without change, the provisions of an interim final rule which increased the assessment rate established under the Federal marketing order for California raisins (order) from $5.00 to $8.50 per ton for raisins acquired by handlers for the 1998–99 and subsequent crop years. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The crop year runs from August 1 through July 31. The 1998–99 crop is smaller than initially estimated. Further, for this crop year, volume regulation has only been applied to one minor varietal type of raisin. As a result, some expenses paid by assessments have increased. The $5.00 per ton assessment rate would not have generated enough revenue to cover expenses. The $8.50 per ton assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698. Small businesses may request information on complying with this regulation, or obtain a guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov. You may view the marketing agreement and order small business compliance guide at the following web site: http://www.ams.usda.gov/fv/moab.html.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, California raisin handlers are subject to assessments. It is intended that the assessment rate as issued herein will apply to all assessable raisins beginning August 1, 1998, the beginning of the 1998–99 crop year, and continue in effect until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to increase the assessment rate established under the order for the 1998–99 and subsequent crop years from $5.00 to $8.50 per ton of raisins acquired by handlers. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 crop is smaller than initially estimated. Further, for this crop year, volume regulation has been applied to only one minor varietal type of raisin. As a result, some expenses paid by assessments have increased. The $5.00 per ton rate of assessment would not have generated enough revenue to cover expenses. This action was unanimously recommended by the Committee at a meeting on January 15, 1999.

Sections 989.79 and 989.80, respectively, of the Federal order for California raisins provide authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of California raisins. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

An assessment rate of $5.00 per ton for raisins acquired by handlers had been in effect under the Federal order since the 1996–97 crop year (61 FR 52684; October 8, 1996). Regarding the 1998–99 crop year, the Committee met

on August 13, 1998, and recommended administrative expenditures of $1,655,000 for the year. Major administrative expenditures included $545,500 for export program administration and related activities; $478,000 for salaries; and $100,000 for compliance activities. These expenditures were approved by the Department on August 18, 1998. At that time, the Committee estimated the crop at about 321,400 tons, and anticipated that 333,000 tons of raisins would be acquired by handlers during the 1998–99 crop year (included about 59,800 tons of 1997 reserve raisins sold to handlers for free use). The $5.00 per ton assessment rate was expected to generate $1,665,000 in revenue which would have allowed the Committee to meet its administrative expenses.

Section 989.79 of the order also provides authority for the Committee to formulate an annual budget of expenses likely to be incurred during the crop year in connection with reserve raisins held for the account of the Committee. A certain percentage of each year's raisin crop may be held in a reserve pool during years when volume regulation is implemented to help stabilize raisin supplies and prices. The remaining "free" percentage may be sold by handlers to any market. Reserve raisins are disposed of through various programs authorized under the order. Reserve pool expenses are deducted from proceeds obtained from the sale of reserve raisins. Net proceeds are returned to the pool's equity holders, primarily producers.

At its August 1998 meeting, the Committee recommended a 1998–99 reserve pool budget of $2,941,500. Major pool expenses included $1,050,000 for insurance and repair of bins for storing reserve raisins; $545,500 for export program administration and related activities; $462,000 for salaries; and $235,000 for compliance activities.

Adverse crop conditions during the spring of 1998 created by the weather phenomenon known as El Nino, combined with scattered rain and a labor shortage during harvest contributed to a smaller 1998–99 raisin crop than initially anticipated. Also, reserve pools were initially established in October 1998 for five of the nine varietal types of raisins covered under the order—Natural (sun-dried) Seedless (Naturals), Zante Currants (Zantes), Dipped Seedless, Oleate and Related Seedless, and Other Seedless—when the Committee computed and announced preliminary free and reserve marketing percentages pursuant to § 989.54. In November 1998, the Committee determined that volume regulation was not warranted for Dipped Seedless, Oleate and Related Seedless, and Other Seedless raisins.

The Committee met on January 15, 1999, to review crop conditions, its financial situation, and various marketing order programs. The Committee reduced its production estimate from 321,000 to 276,500 tons, and reduced its estimate of assessable tonnage from 333,000 to 315,000 tons. The Committee also determined that volume regulation was not warranted for Naturals and all other varietal types, but was warranted for Zantes, for the 1998–99 crop year. This is the first time in 16 years that volume regulation for Naturals was not implemented.

With a smaller 1998 crop, reduced estimate of assessable tonnage, and volume regulation only warranted for Zantes, the Committee recommended revising its administrative and reserve pool budgets. The 1998 reserve pool budget was reduced from $2,941,500 to $25,000 which should cover operating expenses for Zante reserve raisins. In addition, $975,000 initially budgeted for 1998 reserve pool operating expenses were applied to the existing 1997 Natural and Zante reserve pool budgets. Included in the $975,000 is $683,000 which is being utilized for export program administration.

The Committee also reviewed and identified those expenses that were considered reasonable and appropriate to continue the raisin marketing order program, without a significant reserve pool. The expenses that were associated with the initial reserve pool budget were modified and adjusted as appropriate and included in the administrative budget. For example, salaries, payroll taxes, retirement contributions, insurance, rent for office space, telephone, and other administrative items are usually split between the Committee's administrative and reserve budgets. Although the 1998 crop is reduced, the Committee needs to maintain its staff to administer the order and ongoing export programs.

Many operating expenses were adjusted from the Committee's initial administrative and reserve budgets, such as for overall compliance ($335,000 to $200,000), overall auditing fees ($35,000 to $10,000), overall printing ($20,000 to $17,000), and overall Committee meetings ($24,000 to $20,000). Ultimately, the Committee recommended increasing its administrative expenses from $1,665,000 to $2,677,500, which included an additional $1,012,500 in operating expenses initially associated with the 1998 reserve budget. Major expenses to be funded through handler assessments now include $940,000 in salaries; $408,000 for export program administration; $200,000 for compliance activities; $150,000 for Committee travel; and $140,000 for membership dues and surveys.

The Committee recommended increasing its assessment rate from $5.00 to $8.50 per ton of raisins acquired by handlers. The $8.50 per ton assessment rate when applied to anticipated acquisitions of 315,000 tons will yield $2,677,500 in assessment income which will be adequate to cover anticipated administrative expenses. Authority for the Committee to recommend an increase in the assessment rate during a crop year to obtain sufficient funds to meet expenses is provided in § 989.80(c) of the order. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected, as provided in § 989.81(a) of the order.

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information. Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each crop year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 1998–99 revised budget and those for subsequent crop years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about

through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000, excluding receipts from any other sources.

This rule continues to increase the assessment rate established under the Federal order for the 1998–99 and subsequent crop years, as specified in § 989.347, from $5.00 to $8.50 per ton of raisins acquired by handlers. The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Committee. Authorization to assess raisin handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The 1998–99 crop is smaller than initially estimated due to adverse weather conditions and a labor shortage during harvest. Further, for this crop year, volume regulation has been applied to only one minor varietal type of raisin. As a result, some expenses paid by assessments have increased. The $5.00 per ton rate of assessment would not have generated enough revenue to cover expenses.

With a smaller crop, reduced estimate of assessable tonnage, and volume regulation only warranted for Zantes, the Committee recommended revising its administrative and reserve pool budgets. The 1998 reserve pool budget was reduced from $2,941,500 to $25,000 which should cover operating expenses for Zante Currant reserve raisins. In addition, $975,000 initially budgeted for 1998 reserve pool operating expenses were applied to the existing 1997 Natural and Zante reserve pool budgets. Included in the $975,000 is $683,000 which is being utilized for export program administration.

The Committee also reviewed and identified those expenses that were considered reasonable and appropriate to continue the raisin marketing order program, without a significant reserve pool. Those expenses that were associated with the initial reserve pool budget were modified and adjusted as appropriate and included in the administrative budget. For example, salaries, payroll taxes, retirement contributions, insurance, rent for office space, telephone, and other administrative items are usually split between the Committee's administrative and reserve budgets. Although the 1998 crop is reduced, the Committee needs to maintain its staff to administer the order and ongoing export programs. Many operating expenses were adjusted from the Committee's initial administrative and reserve budgets. These included adjustments for overall compliance ($335,000 to $200,000), overall auditing fees ($35,000 to $10,000), overall printing ($20,000 to $17,000), and overall Committee meetings ($24,000 to $20,000). Ultimately, the Committee recommended increasing its administrative expenses from $1,665,000 to $2,677,500, which included an additional $1,012,500 in operating expenses initially associated with the 1998 reserve budget.

The $8.50 per ton assessment rate, when applied to anticipated acquisitions of 315,000 tons, will yield $2,677,500 in revenue and allow the Committee to meet expenses, which include $940,000 for salaries; $408,000 for export program administration; $200,000 for compliance activities; $150,000 for Committee travel; and $140,000 for membership dues and surveys. Authority for the Committee to incur expenses, generate revenue by assessing raisin handlers, and increase the assessment rate during a crop year is provided in §§ 989.79 and 989.80 of the order, respectively.

Regarding the impact of this rule on handlers and producers, while assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. With the 1998–99 producer price for Naturals, the major raisin varietal type covered under the order, averaging $1,290 per ton of raisins acquired, estimated assessment revenue for the 1998–99 crop year as a percentage of total producer revenue is expected to be less than 1 percent. The increased assessment rate allows the Committee to meet its expenses and continue program operations. Any unexpended assessment funds from the crop year are required to be credited or refunded to the handlers from whom collected, as provided in § 989.81(a) of the order.

The Committee considered some alternatives to the recommended action. The Committee's Audit Subcommittee formed a working group which held a meeting on December 16, 1998, to discuss revisions to the budget. The Audit Subcommittee held a follow-up meeting on January 6, 1999. Alternatives discussed at these meetings were based on the assumption that no volume regulation would be in effect for any varietal type of California raisins for the remainder of the crop year. Accordingly, one option considered was to have the 1998 administrative budget absorb all of the operating costs that are typically split between the administrative and reserve pool budgets, and increase the assessment rate to $11.50 per ton of raisins acquired to cover these costs. However, the majority of subcommittee members determined that the increase in expenses would be funded more appropriately with 1998–99 handler assessments and proceeds from the anticipated 1998 reserve pool for Zantes, and the existing 1997 reserve pools for Naturals and Zantes, respectively.

The working group and subcommittee members also considered various scenarios regarding the itemized expenses, estimate of assessable tonnage, and necessary assessment income. Ultimately, the Committee determined that volume regulation was only warranted for Zantes, that administrative expenses should be increased to $2,677,500, that the estimate of assessable tonnage should be reduced from 333,000 to 315,000 tons, and that the assessment rate should be increased to $8.50 per ton of raisins acquired by handlers.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's working group meeting on December 16, 1998, subcommittee meeting on January 6, 1999, and the Committee meeting on January 15, 1999, where this action was deliberated were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

An interim final rule concerning this action was published in the **Federal**

Register on February 24, 1999 (64 FR 9053). Copies of the rule were mailed to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended April 26, 1999. No comments were received.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 64 FR 9053 on February 24, 1999, is adopted as a final rule without change.

Dated: May 5, 1999.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 99–11977 Filed 5–11–99; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1703

Distance Learning and Telemedicine Loan and Grant Program; Confirmation of Effective Date, Corrections, and Correcting Amendments

AGENCY: Rural Utilities Service, USDA.

ACTION: Direct final rule; Confirmation of effective date, corrections, and correcting amendments.

SUMMARY: The Rural Utilities Service (RUS) hereby gives notice that no adverse comments were received regarding the direct final rule on the Distance Learning and Telemedicine Loan and Grant Program, published in the **Federal Register**, March 25, 1999, at 64 FR 14401 and confirms the effective date of the direct final rule. In addition, this document is making corrections and correcting amendments to this rule.

DATES: The direct final rule, which published at 64 FR 14401, and the corrections and correcting amendments, are effective on May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION:

Confirmation of Effective Date

This is to confirm the effective date of the direct final rule, 7 CFR Part 1703, Distance Learning and Telemedicine Loan and Grant Program, published March 25, 1999, at 64 FR 14401, and is to advise that RUS did not receive any written adverse comments and no written notice of intent to submit adverse comments on this rule.

Need for Correction

As published, the direct final rule contains errors and information that may be misleading and is in need of modification.

List of Subjects in 7 CFR Part 1703

Community development, Grants programs-education, Grant programs-health care, Grant programs-housing and community development, Loan programs-education, Loan programs-health care. Loan programs-housing and community development, Reporting and recordkeeping requirements, Rural areas.

I. Accordingly, FR Doc. 99–6995, RUS direct final rule, published on March 25, 1999, at 64 FR 14355, is corrected as follows:

§ 1703.103 [Corrected]

1. On page 14359, in the first column, in § 1703.103, paragraph (a)(3), beginning in line 10, the words "distance learning or telemedicine grant" are corrected to read "financial assistance".

§ 1703.105 [Corrected]

2. On page 14359, in the second column, in § 1703.105, paragraph (c), line 12, the word "eminent" is corrected to read "imminent".

3. On page 14359, in the third column, in § 1703.105, paragraph (e)(6), beginning with line 2, the words "DLT borrower" are corrected to read "DLT recipient" and in line 5 the word "borrower" is corrected to read "recipient".

§ 1703.108 [Corrected]

4. On page 14360, in the second column, in § 1703.108, paragraph (a), line 4, the word "preceding" is corrected to read "following".

§ 1703.123 [Corrected]

5. On page 14361, in the second column, in § 1703.123, paragraph (a)(13), line 2, "§ 1703.105" is corrected to read "§ 1703.121".

6. On page 14361, in the second column, in § 1703.123, paragraph (a)(14), line 2, "§ 1703.105" is corrected to read "§ 1703.121".

§ 1703.126 [Corrected]

7. On page 14363, in the first column, in § 1703.126, paragraph (a), line 7, "paragraph (a)(2)" is corrected to read "paragraph (b)(2)(iv)".

§ 1703.127 [Corrected]

8. On page 14365, in the first column, in § 1703.127, paragraph (c)(1), line 4, "§ 1703.115(e)(1)" is corrected to read "§ 1703.125(e)(1)".

9. On page 14365, in the second column, in § 1703.127, paragraph (c)(3), beginning in line 4, the words "in accordance of § 1703.125(e)." are corrected to read "in accordance with § 1703.125(e).".

§ 1703.134 [Corrected]

10. On page 14368, in the second column, in § 1703.134, paragraph (l), beginning in line 2, the words "any additional RUS may" are corrected to read "any additional information RUS may".

§ 1703.144 [Corrected]

11. On page 14371, in the first column, in § 1703.144, paragraph (c)(4), beginning in line 2, the words "for both the combination loan and grant and" are corrected to read "for the loan and".

12. On page 14371, in the second column, in § 1703.144, paragraph (d)(2), line 9, remove the word "for".

13. On page 14371, in the second column, in § 1703.144, paragraph (d)(3), the second sentence is corrected to read "Those assets for which a loan is being requested should be clearly indicated."

14. On page 14371, in the third column, in § 1703.144, paragraph (f)(2), beginning in line 16, the words "fund using a combination loan and grant." are corrected to read "fund using a loan.".

15. On page 14371, in the third column, in § 1703.144, paragraph (f)(4), line 4, "§ 1703.131(h)." is corrected to read "§ 1703.141(h).".

§ 1703.145 [Corrected]

16. On page 14372, in the second column, in § 1703.145, paragraph (b), beginning in line 12, the words "total loan and grant funding available for the fiscal year." are corrected to read "total loan funding available for the fiscal year.".

II. Title 7 CFR part 1703 is corrected by making the following correcting amendments:

PART 1703—RURAL DEVELOPMENT

17. The authority citation for part 1703 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.* and 950aaa *et seq.*

18. § 1703.123 is amended by revising paragraph (a)(5) to read as follows:

§ 1703.123 Nonapproval purposes for grants.

(a) * * *

(5) To purchase equipment that will be owned by the local exchange carrier or another telecommunications service provider unless that service provider is the applicant.

* * * * *

19. § 1703.125 is amended by adding paragraph (b)(9) and by revising paragraphs (i)(1) through (i)(7) and by removing paragraphs (i)(8) through (i)(11) to read as follows:

§ 1703.125 Completed application.

* * * * *

(b) * * *

(9) A listing of the location of each end user site (city, town, village, borough, or rural areas) plus the State.

* * * * *

(i) * * *

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

* * * * *

20. § 1703.134 is amended by revising paragraphs (g)(1) through (g)(7) by removing paragraphs (g)(8) through (g)(11) to read as follows:

§ 1703.134 Completed application.

* * * * *

(g) * * *

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

* * * * *

21. § 1703.140 is amended by revising the first sentence of the introductory paragraph to read as follows:

§ 1703.140 Completed application.

A loan may be used by eligible organizations as defined in § 1703.103 for distance learning and telemedicine projects to finance 100 percent of the cost of approved purposes contained in § 1703.141 provided that no financial assistance may exceed the maximum amount for the year in which the loan is made. * * *

* * * * *

22. § 1703.141 is amended by revising the first sentence of paragraph (i) to read as follows:

§ 1703.141 Approved purposes for loans.

* * * * *

(i) Any project costs, except for salaries and administrative expenses, not included in paragraphs (a) through (h) of this section, incurred during the first two years of operation after the financial assistance has been approved. * * *

* * * * *

23. § 1703.142 is amended by revising paragraphs (a) and (b)(4), and by addding paragraph (b)(5) to read as follows:

§ 1703.142 Nonapproved purposes for loan.

(a) Loans made under this subpart will not be provided to pay the costs of recurring or operating expenses incurred after two years from approval of the project except for leases (see § 1703.141).

(b) * * *

(4) To pay for salaries, wages, or administrative expenses; or

(5) For any purpose that the Administrator has not specifically approved.

* * * * *

24. § 1703.144 is amended by revising paragraphs (g)(1) through (g)(7) and by removing paragraphs (g)(8) through (g)(10) to read as follows:

§ 1703.144 Completed application.

* * * * *

(g) * * *

(1) E.O. 11246, Equal Employment Opportunity, as amended by E.O. 11375 and as supplemented by regulations contained in 41 CFR part 60;

(2) Architectural barriers;

(3) Flood hazard area precautions;

(4) Assistance and Real Property Acquisition Policies Act of 1970;

(5) Drug-Free Workplace Act of 1998 (41 U.S.C. 701);

(6) E.O.s 12549 and 12689, Debarment and Suspension;

(7) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352).

* * * * *

Dated: May 6, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99–11855 Filed 5–11–99; 8:45 am]

BILLING CODE 3410–15–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 620

RIN 3052–AB79

Organization; Disclosure to Shareholders; FCS Board Compensation Limits; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611 and 620 on April 6, 1999 (64 FR 16617). The final rule amends the regulations Farm Credit System (FCS) bank director compensation. The amendment removes the requirement for FCS banks to obtain our prior approval before paying their directors more than the generally applicable limit. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 11, 1999.

EFFECTIVE DATE: The regulation amending 12 CFR parts 611 and 620 published on April 6, 1999 (64 FR 16617) is effective May 11, 1999.

FOR FURTHER INFORMATION CONTACT:

Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4479;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 6, 1999.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 99–11896 Filed 5–11–99; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–68–AD; Amendment 39–11165; AD 99–10–12]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that currently requires repetitive inspections to detect cracking, plating degradation, and corrosion of the main landing gear (MLG) actuator beam arms and actuator beam attach bolts; and rework or replacement, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. This amendment removes the requirement to inspect the actuator beam attach bolts, expands the applicability of the existing AD to include additional airplanes, and removes the optional terminating action. This amendment is prompted by reports of cracked MLG actuator beam arms. The actions specified in this AD are intended to detect and correct corrosion and cracking of the MLG actuator beam arm, which could result in damage to the control cables for the aileron and spoiler and consequent reduced controllability of the airplane.

DATES: Effective May 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–68–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rick Kawaguchi, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1153; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On February 13, 1991, the FAA issued AD 91–05–16, amendment 39–6913 (56 FR 7561, February 25, 1991), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes. That AD requires repetitive visual and ultrasonic inspections of the main landing gear (MLG) actuator beam arms and actuator beam attach bolts for cracking, plating degradation, and corrosion; and rework or replacement, if necessary. The existing AD also provides for optional terminating action for the repetitive inspections. That action was prompted by reports of failure of the actuator beam arm and trunnion pin due to corrosion. The actions required by that AD are intended to prevent structural damage and severing of control cables and hydraulic tubing in this area, which could result in reduced controllability of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the FAA has received reports of cracking of an actuator beam arm on the MLG on three Boeing Model 737–300 series airplanes. Two operators reported damage to the landing gear, wing structure, fluid lines, and aileron and spoiler control cables; the damage has been attributed to fractures of the MLG actuator beam arm. One of those operators subsequently conducted a fleet-wide inspection and found a cracked actuator beam arm on another airplane. The beam arm fractures originated from corrosion pits in the actuator beam arm clevis. All three fractured actuator beam arms had been reworked in accordance with AD 91–05–16. In one case, the fracture occurred 7 years (at approximately 13,500 flight cycles) after completion of the terminating action in compliance with that AD.

FAA's Conclusions

The FAA has determined that rework or replacement of the actuator beam arm, which AD 91–05–16 provides as either optional corrective action or optional terminating action for the repetitive inspections, does not adequately prevent corrosion and subsequent cracking of the clevis area. Therefore, the FAA finds that, to ensure the continued safety of the fleet, it is necessary to require that repetitive inspections to detect cracks and corrosion in the actuator beam arm clevis must be performed on all affected airplanes, including those on which the rework or replacement has been accomplished. Paragraph B. of AD 91–05–16, which provided for optional terminating action for the repetitive inspections, has not been included in this AD.

In addition, AD 91–05–16 requires a one-time inspection of the actuator beam attach bolts. However, there have been no known reports of bolt fractures since the effective date of AD 91–05–16. Therefore, the FAA has determined that further inspection of those bolts is unnecessary, and the corresponding requirement of AD 91–05–16 (paragraph A.2.) has not been included in this AD. The inspection requirements of this AD are limited to the actuator beam arm clevis.

Furthermore, the FAA finds it necessary to expand the applicability of this AD to include additional airplanes. The applicability of AD 91–05–16 currently excludes in-production Model 737 series airplanes. However, the design change for incorporation on in-production airplanes can produce the same result as that of the preventive modification (rework) specified by Boeing Alert Service Bulletin 737–32A1224, Revision 1, dated April 12, 1990 which has been shown to be ineffective in preventing the unsafe condition. (That alert service bulletin is referenced as the appropriate source of service information in AD 91–05–16 for accomplishment of the rework.) Therefore, the applicability of this AD includes all Model 737–100,–200, –300, –400, and –500 series airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 737–32A1224, Revision 2, dated April 25, 1991. The content of Revision 2 is similar to that of Revision 1, which was cited as the appropriate source of service information for accomplishment of the requirements of AD 91–05–16. Revision 2 was issued to clarify the actions and to revise the effectivity for various actions.

The FAA also has reviewed and approved Boeing Alert Service Bulletin 737–32A1314, dated April 15, 1999, which describes procedures for repetitive inspections of the clevis on certain actuator beam arm assemblies;

the inspections include a visual inspection to detect corrosion and an ultrasonic inspection to detect cracking. The alert service bulletin also describes procedures for replacement of any beam arm having a cracked or corroded clevis with a new actuator beam arm.

The note in Figure 1 of Boeing Alert Service Bulletin 737–32A1314 references Temporary Revision (TR) 04–14 to the 737 Nondestructive Test (NDT) Manual. That note states that the TR would be issued prior to May 14, 1999; in fact, the manufacturer released that TR by telegraphic release on April 26, 1999. The TR contains new information that is needed to perform ultrasonic inspections for airplanes having certain actuator beam arm assemblies. Specifically, the TR provides instructions for procuring or fabricating NDT transducers that are needed to accomplish the inspections for those certain airplanes.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of this same type design, this AD supersedes AD 91–05–16 to continue to require repetitive inspections to detect cracking of the actuator beam arm clevis of the MLG, and rework or replacement, if necessary. These actions are required to be accomplished in accordance with Boeing Alert Service Bulletin 737–32A1224, Revision 1, or Boeing Service Bulletin 737–32A1224, Revision 2.

This AD adds repetitive detailed visual inspections to detect corrosion and repetitive ultrasonic inspections to detect cracking of the actuator beam arm clevis; these actions terminate the repetitive inspections described in Boeing Alert Service bulletin 737–32A1224, Revision 1, or Boeing Service Bulletin 737–32A1224, Revision 2. These inspections are required to be accomplished in accordance with Boeing Alert Service Bulletin 737–32A1314.

For airplanes on which any corrosion or cracking is found during any of the newly added inspections, this AD requires replacement of the actuator beam arm with a new actuator beam arm in accordance with Boeing Alert Service Bulletin 737–32A1314.

Difference Between the Rule and the Relevant Service Information

Operators should note that Alert Service Bulletin 737–32A1314 specifies compliance in terms of either years or flight cycles. However, the threshold and repetitive interval required by paragraph (b) of this AD are specified in terms of calendar time only; i.e., 4 years and 90 days, respectively. The unsafe condition identified by this AD is caused by corrosion, which is a function of time rather than accumulated flight cycles.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire.

Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–68AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6913 (56 FR 7561, February 25, 1991), and by adding a new airworthiness directive (AD), amendment 39–11165, to read as follows:

99–10–12 Boeing: Amendment 39–11165. Docket 99–NM–68–AD. Supersedes AD 91–05–16, Amendment 39–6913.

Applicability: All Model 737–100, –200, –300, –400, and –500 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability

provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct corrosion and cracking of the actuator beam arm of the main landing gear (MLG), which could result in damage to the control cables of the aileron and spoiler and consequent reduced controllability of the airplane, accomplish the following:

Restatement of the Requirements of AD 91–05–16, Amendment 39–6913

(a) For airplanes listed in Boeing Alert Service Bulletin 737–32A1224, Revision 1, dated April 12, 1990: Prior to the accumulation of 10,000 landings or 4 years of service, after new or overhauled MLG installation, whichever occurs first, or within the next 600 landings after April 1, 1991 (the effective date of AD 91–05–16, amendment 39–6913), whichever occurs later, perform visual and ultrasonic inspections of the actuator beam arm clevis for evidence of cracking, in accordance with Boeing Alert Service Bulletin 737–32A1224, Revision 1, dated April 12, 1990, or Revision 2, dated April 25, 1991.

(1) If cracks are found, prior to further flight, remove and rework, or replace, the actuator beam arm in accordance with the service bulletin.

(2) If no cracks are found, repeat the ultrasonic inspections in accordance with the service bulletin, at intervals not to exceed 600 landings, until the initial inspection required by paragraph (b) of this AD has been accomplished.

New Requirements of this AD

(b) Inspect the actuator beam arm clevis, by performing a detailed visual inspection to detect corrosion and an ultrasonic inspection to detect cracking, at the latest of the times specified in paragraphs (b)(1), (b)(2), (b)(3), and (b)(4) of this AD; in accordance with Boeing Alert Service Bulletin 737–32A1314, dated April 15, 1999. Accomplishment of these inspections constitutes terminating action for the requirements of paragraph (a) of this AD. Repeat the inspections specified by paragraph (b) of this AD thereafter at intervals not to exceed 90 days.

(1) Inspect within 4 years since date of manufacture or installation of new landing gear.

(2) Inspect within 4 years since the most recent landing gear overhaul.

(3) Inspect within 4 years since accomplishment of the replacement of the actuator beam arm clevis performed in accordance with the alert service bulletin, or the rework performed in accordance with Boeing Alert Service Bulletin 737–32A1224, Revision 1, dated April 12, 1990, or Boeing Service Bulletin 737–32A1224, Revision 2, dated April 25, 1991.

(4) Inspect within 90 days after the effective date of this AD.

Note 2: The **Note** in Figure 1 of Boeing Alert Service Bulletin 737–32A1314 contains a reference to Temporary Revision (TR) 04–14 to the 737 Nondestructive Test Manual (NDT). The TR was issued April 26, 1999, by telegraphic release. The TR provides instructions for procuring or fabricating NDT transducers needed to accomplish ultrasonic inspections on airplanes having certain actuator beam arm assemblies. Incorporation of the TR into the general revisions of the NDT is acceptable, provided that the information contained in the general revisions is identical to that specified in the TR.

Corrective Actions

(c) If any corrosion or cracking is detected during any inspection required by paragraph (b) of this AD, prior to further flight, replace the actuator beam arm with a new actuator beam arm in accordance with Boeing Alert Service Bulletin 737–32A1314, dated April 15, 1999. Repeat the inspections required by paragraph (b) of this AD within 4 years after accomplishment of the replacement, and thereafter at intervals not to exceed 90 days.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Boeing Alert Service Bulletin 737–32A1224, Revision 1, dated April 12, 1990; Boeing Service Bulletin 737–32A1224, Revision 2, dated April 25, 1991; or Boeing Alert Service Bulletin 737–32A1314, dated April 15, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on May 27, 1999.

Issued in Renton, Washington, on May 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11784 Filed 5–11–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–97–AD; Amendment 39–11166; AD 99–10–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–300, –400, –500, –600, –700, and –800 Series Airplanes Equipped with Vickers Combined Stabilizer Trim Motors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Boeing Model 737 series airplanes. This action requires repetitive inspections and functional tests of a trailing edge flap limit switch to verify proper operation, and replacement of the existing limit switch with a new limit switch, if necessary. This AD also requires modification of the stabilizer control system, which constitutes terminating action for the repetitive inspections and tests. This amendment is prompted by reports of uncommanded stabilizer trim motion due to failure of the trailing edge flap limit switch. The actions specified in this AD are intended to prevent such failure, which could result in uncommanded (nose down) stabilizer trim motion and consequent reduced controllability of the airplane.

DATES: Effective May 27, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 27, 1999.

Comments for inclusion in the Rules Docket must be received on or before July 12, 1999.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–97–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: R.C. Jones, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1118; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: The FAA has received reports of several incidents of uncommanded nose down stabilizer trim motion on certain Boeing Model 737 series airplanes having Vickers type combined manual-autopilot stabilizer trim motors (STM). Investigation revealed the cause as a single point failure in the stabilizer control system, in conjunction with a design deficiency in the STM. Analysis of the S245 trailing edge flap limit switch of the stabilizer control system revealed that the switch had failed due to moisture penetration into the switch contacts, resulting in corrosion and an electrical short circuit. This short circuit caused an erroneously energized STM and subsequent uncommanded stabilizer trim motion in the airplane nose down direction. This condition, if not corrected, could result in reduced controllability of the airplane.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Alert Service Bulletins 737–27A1227 (for Model 737–300, –400, and –500 series airplanes) and 737–27A1228 (for Model 737–600, –700, and –800 series airplanes), both dated April 8, 1999, which describe procedures for repetitive inspections and functional tests of the S245 trailing edge flap limit switch to verify proper operation, and replacement of any malfunctioning limit switch with a new limit switch.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design, this AD is being issued to prevent failure of the S245 trailing edge flap limit switch, and subsequent uncommanded (nose down) stabilizer trim motion, which could result in reduced controllability of the airplane. This AD requires accomplishment of the actions specified in the alert service bulletins described previously. This AD also requires that operators submit a report of findings of malfunctioning to the FAA.

Additionally, this AD requires modification of the stabilizer control system, which constitutes terminating action for the repetitive inspections and tests required by this AD.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Differences Between This AD and Alert Service Bulletins

Operators should note that, although the alert service bulletins do not specify procedures for terminating action for the repetitive inspections and tests, this AD mandates, within 3 months, incorporation of an improved design of the stabilizer control system as terminating action for the repetitive inspections and tests.

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections and tests. Long-term inspections and tests may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. Incorporation of an improved design of the stabilizer control system requirement is in consonance with these conditions.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–97–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

99–10–13 Boeing: Amendment 39–11166. Docket 99–NM–97–AD.

Applicability: Model 737–300, –400, –500, –600, –700, and –800 series airplanes, certificated in any category; equipped with Vickers combined stabilizer trim motors.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the trailing edge flap limit switch, which could result in uncommanded (nose down) stabilizer trim motion and reduced controllability of the airplane, accomplish the following:

Inspections and Tests

(a) Perform a special detailed inspection and functional test to verify proper operation of the S245 trailing edge flap limit switch, in accordance with the applicable Boeing Alert Service Bulletin 737–27A1227 (for Model 737–300, –400, and –500 series airplanes) or 737–27A1228 (for Model 737–600, –700, and –800 series airplanes), both dated April 8, 1999; as applicable; at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable.

(1) For airplanes that have accumulated less than 1,000 total flight hours as of the effective date of this AD: Inspect and test prior to the accumulation of 1,000 total flight hours, or within 10 days after the effective date of this AD, whichever occurs later. Repeat the inspection and test thereafter at intervals not to exceed 300 flight hours, until accomplishment of paragraph (c) of this AD.

(2) For airplanes that have accumulated 1,000 or more total flight hours as of the effective date of this AD: Inspect and test within 5 days after the effective date of this AD. Repeat the inspection and test thereafter at intervals not to exceed 300 flight hours, until accomplishment of paragraph (c) of this AD.

Note 2: Any inspection and test of the S245 trailing edge flap limit switch accomplished prior to the effective date of this AD in accordance with the Accomplishment Instructions of either Boeing Alert Service Bulletin 737–27A1227 (for Model 737–300, –400, and –500 series airplanes) or 737–27A1228 (for Model 737–600, –700, and –800 series airplanes), both dated April 8, 1999, as applicable, is considered acceptable for compliance with the initial inspection and test specified in paragraph (a) of this AD.

Corrective Action

(b) If any malfunction is detected during any inspection and test required by paragraph (a) of this AD, prior to further flight, replace the existing limit switch with a new limit switch in accordance with the Boeing Alert Service Bulletin 737–27A1227 (for Model 737–300, –400, and –500 series airplanes) or 737–27A1228 (for Model 737–600, –700, and –800 series airplanes), both dated April 8, 1999, as applicable. Repeat the inspection and test thereafter at intervals not to exceed 300 flight hours, until accomplishment of paragraph (c) of this AD.

(c) Within 3 months after the effective date of this AD: Incorporate an improved design of the stabilizer control system in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Incorporation of an improved design, as required by this paragraph, constitutes terminating action for the repetitive inspection and test requirements of this AD.

Reporting Requirement

(d) Within 10 days after accomplishing the inspection and test required by paragraph (a) of this AD, submit a report of the inspection and test results (positive findings of malfunctioning only) to the Manager, Seattle ACO, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington, 98055–4056. The report must include the inspection results, the airplane serial number, and the total number of landings and flight hours on the airplane. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) Except as provided by paragraph (c) of this AD, the actions shall be done in accordance with Boeing Alert Service Bulletin 737–27A1227, dated April 8, 1999; or Boeing Alert Service Bulletin 737–27A1228, dated April 8, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on May 27, 1999.

Issued in Renton, Washington, on May 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11783 Filed 5–11–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 98F–0797]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for propylene polymers and copolymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: The regulation is effective May 12, 1999. Submit written objections and requests for a hearing by June 11, 1999.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of September 24, 1998 (63 FR 51074), FDA announced that a food additive petition (FAP 8B4625) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the expanded safe use of 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene as an antioxidant and/or stabilizer for olefin polymers intended for use in contact with food. Upon further review, FDA has determined that the petition proposed to expand the safe use of this additive for use in polypropylene polymers and copolymers only.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as an antioxidant and/or stabilizer in olefin polymers intended for use in contact with food is safe, and (2) the additive will have the intended technical effect. Therefore, the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for the petition. No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before June 11, 1999, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b), in the entry for 5,7-bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene by revising entry "2" under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * * * * * *	
5,7-Bis(1,1-dimethylethyl)-3-hydroxy-2(3H)-benzofuranone, reaction products with *o*-xylene (CAS Reg. No. 181314–48–7).	For use only: * * * 2. At levels not to exceed 0.02 percent by weight of: (a) Propylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 1.1, 1.2, 3.1a, 3.2a, 3.2b, 3.4, or 3.5. The finished polymer may only be used in contact with food of types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; or (b) Ethylene polymers and copolymers complying with § 177.1520(c) of this chapter, items 2.1, 2.2, 2.3, 3.1a, 3.1b, 3.2a, or 3.6 (where the density of each of these polymers is at least 0.94 gram per cubic centimeter), or 5. The finished polymers may only be used in contact with food of the types identified in § 176.170(c) of this chapter, Table 1, under Categories III, IV–A, V, VI–C, VII–A, and IX, and under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter; provided that the finished food-contact articles have a volume of at least 18.9 liters (5 gallons).
* * * * * * *	

Dated: May 3, 1999.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 99–11899 Filed 5–11–99; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

22 CFR Part 171

[Public Notice 3053]

Access to Information—Executive Order 12958, "Classified National Security Information," Provisions

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: The Department of State is amending its regulations on classified national security information. The rule describes how members of the public, government employees or agencies may obtain access to information in Department of State classified records and how such requests are processed. The rule also explains the appeals process available to requestors in the event a request for the declassification of information in Department of State classified records is denied.

EFFECTIVE DATE: May 12, 1999.

FOR FURTHER INFORMATION CONTACT: Questions regarding mandatory declassification review or other aspects of Executive Order 12958 may be addressed to Margaret P. Grafeld, Director, Office of IRM Programs and Services, Room 1239, Department of State, 2201 C Street, NW, Washington, DC 20520–1239. Telephone: 292/647–6620; FAX: 202/647–5159.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in 61 FR 148 July 31, 1996 p. 39927 inviting interested persons to submit comment concerning the proposed regulations implementing Executive Order 12958 of April 17, 1995. Executive Order 12958 prescribes a uniform system for classifying, safeguarding, and declassifying national security information. No comments were received. Section 5.6 (C) (2) of Executive Order 12958 requires agencies that originate or handle classified information to publish in the **Federal Register** implementing regulations that affect members of the public. Accordingly, the Department of State is revising 22 CFR, part 171 subpart C, §§ 171.20 through 171.26 to bring these rules into conformity with Executive Order 12958. Covered under this revision are definitions, access to records, processing requests and appeals. The rule is not expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, the rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. The rule is exempt from review under Executive Order 12866, but has been reviewed internally by the Department to ensure consistency with the objectives thereof.

List of Subjects in 22 CFR Part 171

Administrative practice and procedure, Appeals procedures, Classified information, Conflict of interests, Confidential business information, Freedom of Information, Privacy.

In consideration of the foregoing, amend 22 CFR part 171 as follows:

PART 171—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for Part 171 continues to read as follows:

Authority: The Freedom of Information Act, 5 U.S.C. 552; the Privacy Act, 5 U.S.C. 552a; the Administrative Procedures Act, 5 U.S.C. 551 *et seq.*; the Ethics in Government Act, 5 U.S.C. App.201; Executive Order 12958, 60 FR 19825; and Executive Order 12600, 52 FR 23781.

2. Subpart C, §§ 171.20 through 171.26, is revised to read as follows:

Subpart C—Executive Order 12958 Provisions

171.20 Definitions.
171.21 Access to records.
171.22 Determination in disputed cases.
171.23 Challenges to classification.
171.24 Access by historical researchers and former Presidential appointees.
171.25 Exemptions.

Subpart C—Executive Order 12958 Provisions

§ 171.20 Definitions.

As used in this subpart, the following definitions shall apply:

(a) *National security* means the national defense or foreign relations of the United States.

(b) *Information* means any knowledge that can be communicated or documentary material, regardless of its physical form or characteristics, that is owned by, produced by or for, or is under the control of the United States Government.

(c) *Control* means the authority of the agency that originated the information, or its successor in function, to regulate access to the information.

(d) *Classified national security information* (hereafter classified information means information that has been determined pursuant to this Executive Order 12958 or any predecessor Order to require protection against unauthorized disclosure and is marked to indicate its classified status when in documentary form.

(e) *Foreign government information* means:

(1) Information provided to the United States Government by a foreign government or governments, an international organization of governments, or any element thereof, with the expectation that the information, the source of the information, or both, are to be held in confidence;

(2) Information produced by the United States pursuant to or as a result of a joint arrangement with a foreign government or governments, or an international organization of governments, or any element thereof, requiring that the information, the arrangement, or both, are to be held in confidence; or

(3) Information received and treated as "foreign government information" under the terms of a predecessor Order.

(f) *Classification* means the act or process by which information is determined to be classified information.

(g) *Original classification* means an initial determination that information requires, in the interest of national security, protection against unauthorized disclosure.

(h) *Original classification authority* means an individual authorized in writing, either by the President, or by agency heads or other officials designated by the President, to classify information in the first instance.

(i) *Unauthorized disclosure* means a communication or physical transfer of classified information to an unauthorized recipient.

(j) *Agency* means any "executive agency" as defined in 5 U.S.C. 105, and any other entity within the executive branch that comes into the possession of classified information.

(k) *Senior agency official* means the official designated by the agency head under section 5.6(C) of this Executive Order 12958 to direct and administer the agency's program under which information is classified, safeguarded, and declassified.

(l) *Confidential source* means any individual or organization that has provided, or that may reasonably be expected to provide information to the United States on matters pertaining to the national security with the expectation that the information or relationship, or both, are to be held in confidence.

(m) *Damage to the national security* means harm to the national defense or foreign relations of the United States from the unauthorized disclosure of information, to include the sensitivity, value and utility of that information.

(n) *Presidential appointees* includes former officials of the Department of State or other U.S. Government agencies who held policy positions and were appointed by the President, by and with the advice and consent of the Senate, at the level of Ambassador, Assistant Secretary of State or above. It does not include Foreign Service Officers as a class or persons who merely received assignment commissions as Foreign Service Officers, Foreign Service Reserve Officers, Foreign Service Staff Officers and employees.

§ 171.21 Access to records.

(a) Request for mandatory classification review. For a request for classified records to be processed under section 3.6 of E.O. 12958, it must describe the record(s) with sufficient specificity to enable the agency to locate the record(s) with a reasonable amount of effort. Whenever a request does not reasonably describe the record(s), the Department shall notify the requester that no further action will be taken unless additional information is provided, or the scope of the request is narrowed.

(b) Mandatory review. A request for declassification under the Executive Order 12958 is termed a mandatory review; it is separate from and different than a request made under the Freedom of Information Act (FOIA). When a requester submits a request under both mandatory review and FOIA, the Department shall require the requester to elect one or the other. If the requester fails to elect one or the other, the request will be treated as a FOIA request unless the materials requested are subject only to mandatory review.

(c) Scope. All information classified under this or predecessor orders shall be subject to declassification review upon request by a member of the public, a government employee or agency, with the following exceptions:

(1) Information exempted from search and review under the Central Intelligence Information Act;

(2) Information which is the subject of pending litigation;

(3) Information which has been reviewed and withheld within the past two years;

(4) Information originated by the incumbent President; the incumbent President's White House staff; committees, commissions or boards appointed by the incumbent President; or other entities within the Executive Office of the President that solely advise and assist the incumbent President. If the information requested is the subject of pending litigation, or has been reviewed for declassification and withheld within the past two years, the Department will inform the requester of these facts and of the requester's appeal rights. The Archivist of the United States shall establish procedures for the declassification of Presidential or White House materials accessioned into the National Archives or maintained in the Presidential libraries.

(d) The Department may refuse to confirm or deny the existence or nonexistence of requested information whenever the fact of its existence or nonexistence is itself classified.

(e) Processing. In responding to mandatory review requests, the Department shall either make a prompt declassification determination and notify the requester accordingly, or inform the requester of the additional time needed to process the request. The Department shall ordinarily make a final determination within 180 days from the date of receipt. When information cannot be declassified in its entirety, the Department will make reasonable efforts to release those declassified portions of the requested information that constitute a coherent segment.

(f) Other agency records. When the Department receives a request for records in its possession that were originated by another agency, it shall refer the request and the pertinent records to the originating agency unless that agency has agreed that the Department may review the records in accordance with declassification guides or guidelines provided by the originating agency. The originating agency shall communicate its declassification determination to the Department.

(g) Foreign government information. When foreign government information is being considered for declassification, the declassifying agency is the agency

that originally received or classified the information. The declassifying agency shall:

(1) Determine whether the information is subject to a treaty or international agreement that would prevent its declassification;

(2) Determine whether the information is subject to section 1.6(d)(5), (6) or (8) of the Executive Order 12958;

(3) Consult with any other concerned agencies;

(4) Consult with the Department and/or the foreign government, as appropriate.

(h) Cryptologic and intelligence information. Mandatory declassification review requests for cryptologic information and information concerning intelligence activities or intelligence sources or methods shall be processed solely in accordance with special procedures established by the Secretary of Defense and the Director of Central Intelligence, respectively.

(i) Appeals. Upon denial of an initial request in whole or in part, the Department shall notify the requester of the right of an administrative appeal, which must be filed within 60 days of receipt of the denial. The Department shall normally make a determination within 60 days following receipt of an appeal. If additional time is needed to make a determination, the Department shall notify the requester of the additional time needed and provide the requester with a reason for extension. The Department shall notify the requester in writing of the final determination and of the reasons for any denial.

(j) Appeals to the Interagency Security Classification Appeals Panel. The Interagency Security Classification Appeals Panel shall publish in the **Federal Register** the rules and procedures for bringing mandatory declassification appeals before it.

§ 171.22 Determination in disputed cases.

(a) It is presumed that information that continues to meet the classification requirements under this Executive Order 12958 requires continued protection. In some exceptional cases, however, the need to protect such information may be outweighed by the public interest in disclosure of the information, and in these cases the information should be declassified. When such questions arise, they shall be referred to the Secretary of State or the Department's senior agency official. That official will determine, as an exercise of discretion, whether the public interest in disclosure outweighs the damage to national security that might reasonably be expected from disclosure.

(b) This provision does not:

(1) Amplify or modify the substantive criteria or procedures for classification; or

(2) Create any substantive or procedural rights subject to judicial review.

§ 171.23 Challenges to classification.

(a) Authorized holders of information who, in good faith, believe that its classification status is improper are encouraged and expected to challenge the classification status of the information. An authorized holder is any individual, including an individual external to the Department, who has been granted access to specific classified information in accordance with section 4.2(g) of the Executive Order 12958.

(b) Challenges shall be presented to an original classification authority with jurisdiction over the information. A formal challenge under section 1.9 of the Executive Order 12958 must be in writing, but need not be any more specific than to question why information is or is not classified, or is classified at a certain level. The classification challenge provision is not intended to prevent an authorized holder from informally questioning the classification status of particular information. Such informal inquiries are encouraged in order to limit the number of formal challenges.

(c) Whenever the Department receives a classification challenge to information that has been the subject of a challenge within the past two years, or that is the subject of pending litigation, it is not required to process the challenge beyond informing the challenger of this fact and of the challenger's appeal rights, if any.

(d) Challenges, responses and appeals shall, if possible, be unclassified. However, classified information contained in a challenge, a response from the department or an appeal shall be handled and protected in accordance with this Executive Order 12958 and its implementing directives.

(e) Information being challenged for classification shall remain classified unless and until a decision is made to declassify it.

(f) The Secretary of State or the senior agency official of the Department shall establish procedures under which authorized holders of classified information may make such challenges. These procedures shall assure that:

(1) No retribution is taken against an authorized holder bringing a challenge in good faith;

(2) An opportunity is provided for review by an impartial official or panel; and

(3) Classification challenges shall be considered separately from FOIA or other access requests.

(g) Processing an initial written response to a challenge shall be provided within 60 days. If the Department is unable to respond to the challenge within 60 days, it must acknowledge the challenge in writing and provide a date by which it will respond. The Department's acknowledgement must state that if no response is received within 120 days, the challenger has the right to forward the challenge to the Interagency Security Classification Appeals Panel. The challenger may also forward the challenge to the Interagency Security Classification Appeals Panel if the Department has not responded to an internal appeal within 90 days after receiving the appeal. Responses to challenges denied by the Department shall also include the challenger's appeal rights to the Interagency Security Classification Appeals Panel.

§ 171.24 Access by historical researchers and former Presidential appointees.

(a) Section 4.2(a)(3) of this Executive Order 12958 restricts access to classified information to individuals who have a need-to-know the information. This may be waived for persons who are engaged in historical research projects or previously occupied policy-making positions to which they were appointed by the President. Access requests made under this provision must be submitted in writing and must include a general description of the records and the time period covered by the request.

(b) Access may be granted only if the Secretary of State or the senior agency official of the Department:

(1) Determines in writing that access is consistent with the interest of national security;

(2) Takes appropriate steps to protect classified information from unauthorized disclosure or compromise; and

(3) Ensures that the information is safeguarded in a manner consistent with the Executive Order 12958.

(c) Access granted to former Presidential appointees shall be limited to items the individual originated, reviewed, signed or received while serving as a Presidential appointee.

§ 171.25 Exemptions.

The Freedom of Information and Privacy Acts exemptions and any other exemptions under applicable law may be invoked by the Department to deny

material on grounds other than classification.

Date: May 5, 1999.

Patrick F. Kennedy,

Assistant Secretary, Bureau of Administration.

[FR Doc. 99–12029 Filed 5–11–99; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066, Telephone number: (202) 685–5040

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS BARRY (DDG 52) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS BARRY (DDG 52) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS BARRY	DDG 52	X	X	X	19.8

Dated: February 3, 1999.

R.R. Pixa,

Capt, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).

[FR Doc. 99–12022 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS CURTIS WILBUR (DDG 54) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead

lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS CURTIS WILBUR (DDG 54) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS CURTIS WILBUR	DDG 54	X	X	X	19.6

Dated: February 3, 1999.

R.R. Pixa,

CAPT, JAGC, U.S. Navy,

Deputy Assistant Judge Advocate, General (Admiralty).

[FR Doc. 99–12023 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JOHN S. McCAIN (DDG 56) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with the following specific provision of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR Part 706 is amended as follows:

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Five of § 706.2 is amended by revising the entry for USS JOHN S. McCAIN (DDG 56) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS JOHN S. McCAIN	DDG 56	X	X	X	19.8

Dated: February 3, 1999.

R.R. Pixa,

Capt, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).

[FR Doc. 99–12024 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS O'KANE (DDG 77) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS O'KANE (DDG 77) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions; Annex I, paragraph 2(f)(ii) pertaining to the vertical placement of task lights; Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights; and, Annex I, paragraph 3(c) pertaining to placement of task lights not less than two meters from the fore and aft centerline of the ship in the athwartship direction. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS O'KANE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Horizontal distance from the fore and aft centerline of the vessel in the athwartship direction
* * * * *	*	* *
USS O'KANE	DDG 77	1.92 meters.
* * * * *	*	*

3. Table Four, Paragraph 16 of § 706.2 is amended by adding, in numerical order, the following entry for USS O'KANE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
* * * * *	*	*
USS O'KANE	DDG 77	102.00 thru 112.50°.
* * * * *	*	*

4. Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS O'KANE:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After mast-head light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS O'KANE	DDG 77	X	X	X	14.0
* * *	*	*	*	*	*

Dated: February 3, 1999.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 99–12025 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS OGDEN (LPD 5) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 3, 1999.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066, Telephone Number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS OGDEN (LPD 5) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special functions as a naval ship: Annex I, section 2(a)(i), pertaining to the height of the forward masthead light; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; and, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS OGDEN (LPD 5):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
* * *	*	*
USS OGDEN	LPD 5	4.15
* * *	*	*

3. Table Four, Paragraph 19 of § 706.2 is amended by adding, in numerical order, the following entry for the USS OGDEN (LPD 5):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of sidelights above maximum allowed height
* * * * * * *		
USS OGDEN	LPD 5	3.40
* * * * * * *		

4. Table Five of § 706.2 is amended by revising the entry for the USS OGDEN (LPD 5) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
* * * * * * *					
USS OGDEN	LPD 5	N/A	N/A	X	56.6
* * * * * * *					

Dated: February 3, 1999.

R.R. Pixa,

CAPT, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

[FR Doc. 99–12026 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 24, 1999.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, Washington Navy Yard, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, and Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 15 of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER, and Table Five of § 706.2 is amended by adding, in numerical order, the following entry for USS PORTER:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	No.	Obstruction angle relative ship's headings
* * *	* * *	*
USS PORTER	DDG 78	104.60 THRU 112.50°
* * *	* * *	*

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light, annex I, sec. 3(a)	Percentage horizontal separation attained
* * *	*	*	*	*	*
USS PORTER	DDG 78	X	X	X	13.5
* * *	*	*	*	*	*

Dated: February 24, 1999.

R.R. Pixa,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty).

[FR Doc. 99–12021 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–99–029]

Drawbridge Operation Regulations; Merrimack River, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations and request for comments.

SUMMARY: The Commander, First Coast Guard District has issued a temporary 90 day deviation from the existing drawbridge operation regulations governing the operation of the Newburyport US1 Bridge, mile 3.4, across the Merrimack River between Newburyport and Salsbury, Massachusetts. This deviation from the existing operating regulations is necessary in order to test an alternate drawbridge operation schedule. It is expected that scheduled bridge openings for vessels will help eliminate the traffic congestion during the summer months.

DATES: This deviation is effective from June 3, 1999 through August 31, 1999. Comments must reach the Coast Guard on or before October 30, 1999.

ADDRESSES: You may mail comments to Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350. The telephone number is (617) 223–8364.

FOR FURTHER INFORMATION CONTACT: John W. McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to submit comments, written data, views, or arguments, concerning this 90 day deviation from the drawbridge operation regulations. Persons submitting comments should include their names and addresses, identify this notice (CGD01–99–029) and give reasons for each comment. The Coast Guard requests that all comments and attachments be no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. Persons may submit comments by writing to, Commander (obr), First Coast Guard District, 408 Atlantic Avenue, Boston, Massachusetts, 02110–3350.

Background

The Newburyport US1 Bridge, mile 3.4, across the Merrimack River has a vertical clearance of 35 feet at mean high water (MHW) and 42 feet at mean low water (MLW) in the closed position. The current regulations listed at 33 CFR § 117.605 require the bridge to open on signal from May 1st through November 15th, from 6 a.m. to 10 p.m. At all other times the draw shall open on signal if at least one hour advance notice is given by calling the number posted at the bridge.

The bridge owner, the Massachusetts Highway Department (MHD), requested a temporary deviation from the operating regulations for the Newburyport US1 Bridge to test an alternate drawbridge operating schedule. The local towns, Newburyport and Salsbury, have asked MHD and the Coast Guard for relief from the significant vehicular traffic congestion in Newburyport and Salsbury during the summer months caused by the frequent and unscheduled opening of the bridge.

The Newburyport US1 Bridge will open on signal in accordance with the following schedule from June 3 through August 31, 1999:

(1) Monday through Friday, from 6 a.m. to 10 p.m., the bridge shall open only at half past the hour.

(2) Saturday and Sunday, from 11 a.m. to 3 p.m., the bridge shall open only at half past the hour and from 6 a.m. to 11 a.m. and 3 p.m. to 10 p.m., the bridge shall open on the hour and half hour.

(3) At all other times the bridge shall open on signal after at least one hour advance notice is given by calling the number posted at the bridge.

It is expected that this action will help alleviate vehicular traffic congestion during the summer months by scheduling the bridge openings.

Mariners and vehicle operators can better plan their transits according to the published schedule of operation. Vessels that can pass under the bridge without a bridge opening may do so at any time.

This deviation from the normal operating regulations is authorized under 33 CFR 117.43.

Dated: May 4, 1999.

R.M. Larrabee,

Real Admiral, Coast Guard, Commander, First Coast Guard District.

[FR Doc. 99–11926 Filed 5–11–99; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300854; FRL–6078–5]

RIN 2070–AB78

Halosulfuron; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of methyl-5-[((4,6-dimethoxy-2-pyrimidinyl) amino]carbonylaminosulfonyl-3-chloro-1–1*H*-pyrazole- 4-carboxylate in or on almond, hulls; corn, sweet, kernel + cob with husks removed; corn, sweet, forage; corn, sweet, fodder, corn, pop, grain; corn, pop, fodder; cotton, undelinted seed; cotton, gin by-products, pistachio, nutmeat; rice, grain; rice, straw; sugarcane, cane; and tree-nuts (crop group 14), nutmeat. This regulation also reduces tolerances for corn, field, grain; corn, field, forage; corn, field, fodder; sorghum, grain, grain; sorghum, grain, forage and sorghum, grain, fodder/stover. This regulation also deletes tolerances for soybean, seed soybean, forage; soybean, hay; wheat, grain; wheat, forage; and wheat, straw. Monsanto Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 12, 1999. Objections and requests for hearings must be received by EPA on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300854], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300854], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2 (CM #2), 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300854]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jim Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 23, 1997 (62 FR 33864) (FRL–5722–8) and May 29, 1998 (63 FR 29401) (FRL–5791–2), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by Monsanto Company, 700 14th St., Suite 1100, Washington, DC 20005. This notice included a summary of the petition prepared by Monsanto Company, the registrant. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.479 be amended by establishing tolerances for residues of the herbicide methyl 5-[(4,6-dimethyloxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in or on sugarcane, cane at 0.05 parts per million (ppm) (PP 6F4620) (62 FR 33864); sweet corn, (kernel plus cobs with husks removed at 0.1 ppm); sweet corn, forage at 0.5 ppm; sweet corn, fodder/stover at 1.5 ppm; popcorn, grain at 0.1 ppm; popcorn, fodder/stover at 1.5 ppm (PP 6F4661) (62 FR 33864).

PP 8F4937 (63 FR 29401) proposed the establishment of tolerances for residues of methyl-5-[(4,6-dimethyloxy-2-pyrimidinyl) amino] carbonylaminosulfonyl-3-chloro-1-methyl- 1*H*-pyrazole-4- carboxylate in or on undelinted cotton seed and cotton gin by-products at 0.05 ppm, rice grain at 0.05 ppm, rice straw at 0.20 ppm, tree nut group (Group 14) nutmeat at 0.05 ppm and hulls at 0.20 ppm, pistachio, nutmeat at 0.05 ppm; and pistachio hulls at 0.2 ppm. The petition also proposed the establishment of tolerances for this chemical on corn, field, grain at 0.05 ppm; forage at 0.2; fodder at 0.8 ppm; sorghum, grain at 0.05 ppm, sorghum, forage at 0.05 ppm, sorghum, fodder/stover at 0.1 ppm. The petition also requested the removal of indirect or inadvertent tolerance (40 CFR 180.479(b)), in or on the following raw agricultural commodities when present therein as a result of the application of halosulfuron-methyl to growing crops, soybean, forage at 0.5 ppm, soybean, hay at 0.5 ppm, soybean, seed at 0.5 ppm, wheat, forage at 0.1 ppm, wheat, grain at 0.1 ppm and wheat, straw at 0.2 ppm.

During the course of the review the Agency determined that the commodity tree nut hulls should be revised to read almond, hulls and that a tolerance for pistachio, hulls was not necessary as this commodity is not a significant livestock feed item. EPA also determined that the residue crop field data supported the establishment of tolerances for halosulfuron-methyl on corn, sweet, kernel + cob with husks removed at 0.05 ppm; corn, sweet, forage at 0.2 ppm corn, sweet, fodder at 0.8 ppm; corn, pop, grain at 0.05 ppm; and corn, pop, fodder at 0.8 ppm. This regulation is amended to reflect these revisions.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical

residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of halosulfuron-methyl and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl]-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate on sugarcane, cane at 0.05 ppm, sweet corn (kernel plus cobs with husks removed) at 0.05 ppm, sweet corn forage at 0.2 ppm, sweet corn fodder/stover at 0.8 ppm, popcorn grain at 0.05 ppm and popcorn fodder/stover at 0.8 ppm, undelinted cotton seed at 0.05 ppm, cotton gin by-products at 0.05 ppm, rice, grain at 0.05 ppm, rice, straw at 0.20 ppm, tree nut group (crop group 14), nutmeat at 0.05 ppm, almond, hulls at 0.20 ppm, and pistachio, nutmeat at 0.05 ppm. The assessment will include currently established tolerances for residues of halosulfuron in or on field corn, grain at 0.05 ppm, field corn, forage at 0.2 ppm and field corn, fodder at 0.8 ppm, sorghum, grain at 0.05 ppm, sorghum, forage at 0.05 ppm, sorghum, fodder/stover at 0.1 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by halosulfuron-methyl are discussed in this unit.

1. Acute toxicology studies place the technical-grade halosulfuron-methyl in Toxicity Category III or IV for all routes of exposure. It is not a dermal sensitizer and essentially non-irritating to the skin.

2. A 90–day feeding study in rats fed dosages of 7.4, 28.8, 116, and 497 milligrams/kilograms/day (mg/kg/day) for males and 8.9, 37.3, 147, and 640 mg/kg/day for females and resulted in a lowest observed adverse effect level (LOAEL) of 497 mg/kg/day in males and 640 mg/kg/day in females based on findings of decreased body weight gain, slight changes in several clinical chemistry parameters, and an increase in vacuolated livers and kidney tubular pigmentation, and a no observable adverse effect level (NOAEL) of 116 mg/kg/day in males and 147 mg/kg/day in females.

3. A 21–day dermal toxicity study in rats fed dosages of 0, 10, 100, or 1,000 mg/kg/day resulted in a NOAEL of 100 mg/kg/day in males and 1,000 mg/kg/day in females. The only treatment-related effect was a decrease in body weight gain of the 1,000 mg/kg/day group in males.

4. A 1–year chronic oral study in dogs fed dosages of 0, 0.25, 1.0, 10.0, and 40.0 mg/kg/day resulted in a LOAEL of 40 mg/kg/day based on decreased weight gains and changes in hematological and blood chemistry parameters in females and a NOAEL of 10 mg/kg/day for systemic toxicity.

5. A 78–week carcinogenicity study was performed on mice fed dosages of 0, 4.0, 41.1, 410.0, and 971.9 mg/kg/day (males) and 0, 5.2, 51.0, 509.1, and 1,214.6 mg/kg/day (females). Males in the 971.6 mg/kg/day group had decreased body weight gains and an increased incidence of microconcretion/mineralization in the testis and epididymis. No treatment-related effects were noted in females. Based on these results, a LOAEL of 971.9 mg/kg/day was established in males and NOAELs of 410 mg/kg/day in males and 1,214.6 mg/kg/day in females were established. The study showed no evidence of carcinogenicity.

6. A combined chronic toxicity/carcinogenicity study in rats fed dosages of 0, 0.44, 4.4, 43.8, 108.3, and 225.2 mg/kg/day (males) and 0, 0.56, 5.6, 53.6, and 138.6 mg/kg/day (females) resulted in a LOAEL of 225.2 mg/kg/day in males and 138.6 mg/kg/day in females based on decreased body weight gains, and a NOAEL of 108.3 mg/kg/day in males and 56.3 mg/kg/day in females. The study showed no evidence of carcinogenicity.

7. A developmental toxicity study in rats fed dosages of 0, 75, 250, and 750 mg/kg/day resulted in a developmental LOAEL of 750 mg/kg/day based on decreases in mean litter size, increased number of resorptions, decreased mean fetal body weight, increases in fetal litter incidences of dilation of the lateral ventricles and other anaomalities in the developmental of the fetal nervous system, and skeletal variations such as anomalities or delays in ossificationin the thoracic vertebrae, sternebrae, and ribs, and a developmental NOAEL of 250 mg/kg/day. The maternal LOAEL was 750 mg/kg/day based on increased incidence of clinical observations, reduced body weight gains, and reduced food consumption and food efficiency. The maternal NOAEL was 250 mg/kg/day.

8. A developmental toxicity study in rabbits fed dosages of 0, 15, 50, and 150 mg/kg/day resulted in a developmental LOAEL of 150 mg/kg/day, based on decreased mean litter size and increases in resorptions, and post-implantation loss, and a developmental NOAEL of 50 mg/kg/day. The maternal LOAEL was 150 mg/kg/day based on reduced body weight gain, reduced food consumption and food efficiency. The maternal NOAEL was 50 mg/kg/day.

9. A dietary 2–generation reproduction study in rats fed dosages of 6.3, 50.4, and 223.2 (males) and 7.4, 58.7, and 261.4 mg/kg/day (females) through 1 breeding and 2 breedings of the offspring from the initial generation (7.4, 61.0, and 274,2 mg/kg/day for males and 8.9, 69.7, and 319.9 mg/kg/day resulted in parental toxicity at 223.2 mg/kg/day in males and 261.4 mg/kg/day in females in the form of decreased body weights, decreased body weight gains, and reduced food consumption during the premating period. Very slight effects were noted in body weights of the offspring at this dose. This effect was considered to be developmental toxicity (developmental delay) rather than a reproductive effect based on general parental systemic toxicity. No effects were noted on reproductive or other developmental toxicity

parameters. The systemic/developmental toxicity LOAEL was 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the systemic/developmental toxicity NOAEL was 50.4 mg/kg/day in males and 58.7 mg/kg/day in females. The reproductive LOAEL was greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females; the reproductive NOAEL was equal to or greater than 223.2 mg/kg/day in males and 261.4 mg/kg/day in females.

10. Bacterial/mammalian microsomal mutagenicity assays were performed and found halosulfuron-methyl not to be mutagenic. Two mutagenicity studies were performed to test gene mutation and found to produce no chromosomal aberrations or gene mutations in cultured Chinese hamster ovary cells. An *in vivo* mouse micronucleus assay did not result in a significant increase in the frequency of micronucleated polychromatic erythrocytes in bone marrow cells. A mutagenicity study was performed on rats and unscheduled DNA synthesis was not induced in primary rat hepatocytes.

11. In the rat metabolism study, parent compound absorption was rapid but incomplete. Excretion was relatively rapid at all doses tested with a majority of radioactivity eliminated in the urine and feces by 72 hours and appeared to be independent of dose and sex. Fecal elimination of parent was apparently the result of unabsorbed parent.

12. The toxicology studies listed below were conducted with the metabolite, 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid (3-CSA). Based on the toxicological data of the 3-CSA metabolite, EPA concluded that the metabolites have lower toxicity compared to the parent compound and that it should not be included in the tolerance expression. The residue of concern is the parent compound only.

i. A 90–day rat feeding study resulted in a LOAEL in males of >20,000 ppm and a NOAEL of 20,000 ppm (1,400 mg/kg/day). In females, the lowest effect level (LEL) is 10,000 ppm (772.8 mg/kg/day) based on decreased body weight gains and a NOAEL of 1,000 ppm (75.8 mg/kg/day).

ii. A developmental toxicity resulted in a lowest observed effect level (LOEL) for maternal toxicity of >1,000 mg/kg/day based on the absence of systemic toxicity, a NOAEL of 1,000 mg/kg/day. The developmental LOEL is >1,000 mg/kg/day and the NOAEL is 1,000 mg/kg/day.

iii. The microbial reverse gene mutation did not produce any mutagenic effect while the mammalian cell gene mutation/Chinese hamster ovary cells did not show a clear evidence of mutagenic effect in the Chinese hamster ovary cells.

iv. The mouse micronucleus assay did not show any clastogenic or aneugenic effect.

B. Toxicological Endpoints

1. *Acute toxicity.* The acute dietary Reference Dose (RfD) of 0.5 mg/kg/day is based on the rabbit developmental NOAEL of 50 mg/kg/day and should be used for assessing acute dietary risks for the sub-populations, Females 13+ as well as Infants and Children. Although, the endpoint is developmental toxicity occurring in utero, and thus may not be suitable for use in risk assessment for Infants and Children, EPA determined that it is appropriate to use for this subpopulation (Infants and Children) because there is evidence of alteration to the development of the fetal nervous system in the developmental toxicity study in rats. Oral administration resulted in dilation of the lateral ventricles, dilation of the third ventricle, spinal cord agenesis, and adrenal agenesis at 750 mg/kg/day; and malformed brain cortex at 250 mg/kg/day in rats only. Thus, EPA determined that potential effects on functional development mandate the use of this endpoint for females of child bearing age (Females 13+) as well as for infants and children.

This endpoint is not applicable for adult males. A dose and endpoint was not identified for this subpopulation since no toxicological effects applicable to adult males and attributable to a single exposure (dose) were observed in oral toxicity studies including the developmental toxicity studies in rats and rabbits.

2. *Short- and intermediate-term toxicity.* No short- or intermediate-term inhalation toxicity endpoints were identified. The Agency selected a short term dermal endpoint based on the rabbit oral developmental NOAEL of 50 mg/kg/day and a 75% dermal absorption factor instead of the 21–day dermal study because:

i. There is a consistent pattern in the fetal effects (decreased mean litter size, increased number of resorptions, and increased postimplantation loss) observed in 2 species (rats and rabbits) via the oral route.

ii. The developmental effects are considered acute effects and thus are appropriate for this exposure period of concern (i.e., 1–7 days).

iii. The reproductive/fetal parameters are not evaluated in the dermal toxicity study, and thus the consequences of these effects cannot be ascertained for the dermal route of exposure.

iv. This endpoint will provide adequate protection for the subpopulation Female 13+ (i.e., pregnant workers).

Since an oral NOAEL was selected, a dermal absorption factor of 75% should be used for this dermal risk assessment. The Agency estimated a dermal absorption rate of 75% (i.e. a dermal:oral toxicity ratio of 75%) based on the results of an oral developmental toxicity study and a 21–day dermal toxicity study in the same species (rats). In the oral developmental toxicity study, the maternal NOAEL was 250 mg/kg/day and the LOAEL was 750 mg/kg/day based on decreases in body weight gains and food consumption. In the 21–day dermal toxicity study, the systemic toxicity NOAEL was 100 mg/kg/day and the LOAEL was 1,000 mg/kg/day based on decreased body weight gain in males. A ratio of the LOAELs from the oral and dermal studies, indicated an approximate dermal absorption rate of 75% (oral LOAEL of 750 mg/kg/day ÷ dermal LOAEL of 1,000 mg/kg/day x 100 = 75%). This absorption factor may overestimate dermal absorption due to sensitivity differences in toxicity between the sexes (the developmental toxicity LOAEL is in females, and the 21–day dermal toxicity LOAEL is in males).

The Agency selected the intermediate-term endpoint based on the chronic dog NOAEL of 10 mg/kg/day based on decreased body weight gains and changes in hematology and clinical chemistry parameters in females at the LOAEL of 40 mg/kg/day. At 40 mg/kg/day, decreases in body weight gain were seen during study weeks 0–13 in both sexes with the decrease being more pronounced in males (21%) than females (7%). Overall weight gain for the entire study (weeks 0–52) was not significantly affected in male dogs, but was decreased by 16% in female dogs at this dose. EPA selected this dose and endpoint for an intermediate-term risk assessment because the body weight anomalies, observed in both sexes during various phases of the study, meet the exposure period of concern (i.e., 1-week to several months). Since an oral NOAEL was selected, a dermal absorption factor of 75% should be used for this dermal risk assessment.

3. *Chronic toxicity.* EPA has established the RfD for halosulfuron-methyl at 0.1 mg/kg/day. This RfD is based on the chronic dog NOAEL of 10 mg/kg/day with decreased body weight gains and changes in clinical chemistry parameters in females at the LOAEL of 40 mg/kg/day.

4. *Carcinogenicity.* There is no evidence of carcinogenicity in the

mouse or rat. On September 23, 1993, EPA tentatively classified halosulfuron-methyl as a Group E chemical based on the lack of evidence of carcinogenicity in male and female mice and rats. On February 26, 1998, EPA classified halosulfuron-methyl as a Not Likely human carcinogen. There is an adequate mutagenicity data base that shows halosulfuron-methyl is not mutagenic.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.479) for the residues of methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4- carboxylate, and its metabolites determined as 3-chloro-1-methyl-5- sulfamoylpyrazole-4-carboxylic acid and expressed as the parent equivalents, in or on a variety of raw agricultural commodities. Tolerances are established on meat by products of cattle, goats, hogs, horses, and sheep at 0.1 ppm. Risk assessments were conducted by EPA to assess dietary exposures from halosulfuron methyl as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure.

The acute dietary RfD of 0.5 mg/kg/day is based on a developmental (rabbit) NOAEL of 50 mg/kg/day and an uncertainty factor of 100. The Agency has determined that a postnatal developmental neurotoxicity study in rats is required for halosulfuron-methyl based on the following weight-of-the-evidence considerations: In the developmental toxicity study in rats, there was evidence of alterations to the development of the fetal nervous system at 750 mg/kg/day (the highest dose tested), including dilation of the lateral ventricles (16 fetuses/5 litters), dilation of the third ventricle (1/1), spinal cord agenesis (1/1), and adrenal agenesis (1/1) at the high dose; and malformed brain cortex (1/1) at 250 mg/kg/day. There was no evaluation of perfused nervous system tissues, since acute and subchronic neurotoxicity studies in rats were not required. The primary concern is the lack of information available in the data base that would allow the determination of whether functional deficits would be observed at dose levels below those which result in frank malformations of the central nervous system. Thus, Agency criteria require that a developmental neurotoxicity study be submitted.

The 10x factor for protection of infants and children (as required by FQPA) should be removed for the following reasons: There was no indication of increased susceptibility of rats or rabbits to in utero and/or postnatal exposure to halosulfuron-methyl. In the prenatal developmental toxicity studies in rats and rabbits and the 2–generation reproduction study in rats, effects in the offspring were observed only at or above treatment levels which resulted in evidence of parental toxicity.

The requirement of a developmental neurotoxicity study in rats did not warrant application of additional safety factors because: (a) The alterations observed in the fetal fetal nervous system occurred in only one species (in rats and not in rabbits); (b) the fetal effects which will be investigated in the required developmental neurotoxicity study were seen only at a dose of 750 mg/kg/day which is close to the limit-dose (1,000 mg/kg/day); (c) there was no evidence of clinical signs of neurotoxicity, brain weight changes, or neuropathology in the subchronic or chronic studies in rats; (d) the developmental neurotoxicity study is required only as confirmatory data to understand what the effect is at a high exposure (dose) level; and (e) exposure assessments do not indicate a concern for potential risk to infants and children based on the results of the field trial studies and the very low application rate (equivalent to 0.06 lbs. active ingredient per acre). Detectable residues are not expected in human foods.

A Dietary Exposure Evaluation Model (DEEM) analysis for halosulfuron-methyl was performed which incorporated proposed permanent tolerances for sweet corn, popcorn, tree nuts, pistachio, and rice; and the revised tolerances for field corn and grain sorghum. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–91 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of halosulfuron-methyl in the commodity supply. This Tier 1 analysis assumed tolerance-level residues for all commodities having halosulfuron-methyl tolerances and 100% of the associated crops received halosulfuron-methyl treatment. The Theoretical Maximum Residue Concentrations (TMRCs) resulting from these assumptions should be considered a very conservative estimate of the exposure. The acute dietary TMRC for the United States (U.S.) population is 0.000304 mg/kg/day or 0.06% of the RfD; 0.000754 or 0.15 non-nursing infants (less than 1 year old and 0.000250 or 0.05% of the RfD for females (13–19 not pregnant/not nursing (np/nn). Refinement of the estimates through the use of percent-of-crop-treated data and anticipated residues will result in lower exposure estimates. Even with these conservative assumptions, the risks from both acute dietary (food only) exposure to halosulfuron-methyl are less than 1% for all population subgroups listed in the DEEM analysis. Therefore, the risk from acute "food only" exposure is below the Agency's level of concern (i.e. ≤ 100% of the acute RfD in the absence of additional safety factors, as is the case for halosulfuron-methyl).

ii. *Chronic exposure and risk.* The chronic dietary RfD of 0.1 mg/kg/day is based on the chronic dog study with a NOAEL of 10 mg/kg/day and an uncertainty factor of 100. As discussed above the 10x FQPA safety factor was removed.

A DEEM analysis for halosulfuron-methyl was performed which incorporated proposed permanent tolerances for sweet corn, popcorn, tree nuts, pistachio, and rice; revised tolerances for field corn and grain sorghum; and revoked tolerances for wheat and soybean. The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–91 Continuing Survey of Food Intake by Individuals (CSFII) and accumulates exposure to the chemical for each commodity. Each analysis assumes uniform distribution of halosulfuron-methyl in the commodity supply. This Tier 1 analysis assumed tolerance-level residues for all commodities having halosulfuron-methyl tolerances and 100% of the associated crops received halosulfuron-methyl treatment. The TMRCs resulting from these assumptions should be considered a very conservative estimate of the exposure. The chronic TMRC for the U.S. population is 0.000102 mg/kg/day or 0.1% of the RfD; 0.000158 mg/kg/day or 0.2 of the RfD for all infants (less than 1 year old); 0.000238 or 0.2% of the RfD for children (1–6); and 0.000100 mg/kg/day or 0.1% of the RfD for females (13–19 years not pregnant or nursing). Refinement of the estimates through the use of percent-of-crop-treated data and anticipated residues will result in lower exposure estimates. Even with these conservative assumptions, the risks from chronic dietary (food only) exposure to halosulfuron-methyl are less than 1% for all population subgroups listed in the DEEM analysis. Therefore, the risk from chronic "food only" exposure is below the Agency's level of concern (i.e.

≤ 100% of the chronic RfDs in the absence of additional safety factors, as is the case for halosulfuron-methyl).

Short- and intermediate-term exposure and risk. Margins of exposures (MOEs) can be calculated for food as well as residential exposures. The short-term NOAEL for females 13+ and infants and children is 50 mg/kg/day. Comparing the NOAEL of 50 mg/kg/day with the chronic food exposure from the DEEM analysis of 0.00025 mg/kg /day for females 13+ np/nn and 0.00075 mg/kg/day for infants/children results in food MOEs of 200,000 for females 13+ and 67,000 for infant/children.

The intermediate-term NOAEL is based on the chronic dietary NOAEL of 10 mg/kg/day. Comparison of the NOAEL of 10 mg/kg/day with the chronic food exposures from DEEM of 0.00010 for adult males and females 13+ np/nn and 0.00024 mg/kg/day for infants/children result in food MOEs of 100,000 for adult males and females 13+ and 42,000 for infants/children.

2. *From drinking water.* There are no established Maximum Contaminant Levels (MCL) for residues of halosulfuron-methyl in drinking water. It is not listed for MCL development or drinking water monitoring under the Safe Drinking Water Act nor is it a target of EPA's National Survey of Wells for Pesticides. No health advisory levels for halosulfuron-methyl in drinking water have been established. There are no information of any halosulfuron-methyl detections in any wells, ponds, lakes or streams resulting from its use in the United States. No monitoring data on residues of halosulfuron-methyl in surface and ground water are readily available. EPA used the SCI-GROW (Screening Concentration In Ground Water) to estimate residues of halosulfuron-methyl in ground water and the PRZM/EXAMS II to estimate the surface water concentrations. The SCI-GROW model is derived from a maximum 90–day average concentrations from monitoring studies conducted at sites believed to be vulnerable to, and under conditions likely to result in ground water contamination. Since variations in ground water concentrations are generally relatively minor over time periods of interest, the concentrations can be considered both acute and chronic values.

The estimated drinking water environmental concentrations (DWEC) for halosulfuron-methyl in ground water (acute and chronic) is 0.008 µgram/Liter (µg/L). The estimated acute and chronic DWECs for surface water are 4.3 µg/L and 1.1 µg/L, respectively. These estimates are based on a maximum application rate of 0.063 lbs. active ingredient/acre (ai/A) which may be applied twice per use season. Drinking water levels of comparisons (DWLOCs) for acute, short-term, intermediate-term, and chronic exposure were calculated and compared with DWECs. The Agency's default body weights and consumption values used to calculate DWLOCs are 70 kg/2L for adult males; 60 kg/2L for adult females; and 10 kg/1L for children.

i. *Acute exposure and risk.* EPA has calculated a DWLOC for acute exposure to halosulfuron-methyl in drinking water for the relevant population subgroups, females 13+ years of age and infants and children. The acute DWLOC is 15,000 µg/L for females (13+ years old) and 5,000 µg/L for infants and children, which is substantially higher than the DWECs for surface water (4.3 µg/L) and ground water (0.008 µg/L). Acute exposure to halosulfuron-methyl in drinking water is below the calculated drinking water level of concern.

ii. *Chronic exposure and risk.* EPA has calculated the DWLOCs for chronic exposure to halosulfuron-methyl in drinking water. For chronic exposure to halosulfuron-methyl in surface and ground water, the DWLOCs are 3,500 µg/L for the U.S. population (48 states), 3,000 µg/L for females 13+ years and 1,000 µg/L for infants/children, which are substantially higher than the chronic surface water DWEC of 1.1 µg/L and the ground water DWEC of 0.008 µg/L. Chronic exposure to halosulfuron-methyl in drinking water is below the calculated drinking water level of concern.

iii. *Short-term and intermediate-term exposure and risk.* The short-term DWLOCs calculated for drinking water are 10,000 µg/L for females 13+ and 3,700 µg/L for infants and children. The intermediate term DWLOCs calculated for drinking water are 590 µg/L for adult males; 57 µg/L for females (13+ np/nn) and 160 µg/L for infants and children. Intermediate-term DWLOCs are substantially higher than the DWEC for chronic surface water (1.1 µg/L). Short-term DWLOCs substantially higher than the DWEC for acute surface water (4.3 µg/L. Short- and intermediate- term exposures are below the calculated drinking water levels of concern.

3. *From non-dietary exposure.* Halosulfuron-methyl is currently registered for use on the following residential non-food sites: commercial and residential turf and on other non-crop sites including airports, cemeteries, fallow areas, golf courses, landscaped areas, public recreation areas, residential property, road sides, school grounds, sod or turf seed farms, sports fields, landscaped areas, with established woody ornamentals and other similar use sites. For residential handlers and postapplication activities, short- to intermediate-term exposures may occur. Chronic exposures (6 or more months of continuous exposure) are not expected.

i. *Acute exposure and risk.* There is a potential for exposure to halosulfuron-methyl by homeowner mixer/loaders. However, since endpoints for acute dermal or inhalation were not identified, the use on residential non-food sites is not expected to pose an unacceptable acute risk.

ii. *Chronic exposure and risk.* Chronic exposures for residential use are not expected. A chronic non-dietary endpoint was not identified, therefore the use on residential non-food sites is not expected to pose an unacceptable chronic risk.

iii. *Short- and intermediate-term exposure and risk.* There is a potential for short-term and intermediate-term dermal exposure to residential handlers. Chemical specific or site specific data are not available to assess residential exposure to residues of halosulfuron-methyl on turf, therefore, the DRAFT Standard Operating Procedures (SOP) for Residential Exposure Assessments were employed to assess the following postapplication exposure scenarios: (a) dermal exposure from pesticide residues on turf; (b) children's incidental nondietary ingestion of pesticide residues on residential lawn from hand-to-mouth transfer; and (c) children's ingestion of pesticide-treated turfgrass.

For residential handlers the default assumptions for area treated and exposure duration time were selected from the DRAFT SOP for Residential Exposure Assessments (December 18, 1997). The SOP does not list a mixer/loader/applicator scenario for dry flowable (water-dispersible granule). Therefore, the unit exposure for "garden hose end sprayer/liquid/open pour (MLAP)" was selected as a default value. Based on Pesticide Handlers Exposure Data (PHED), a liquid formulation is believed to have a higher dermal exposure potential than a dry flowable. Default assumptions were used with the maximum application rate on the label to estimate residential handler exposure to halosulfuron-methyl. According to Table A–1 of the SOPs for Residential Exposure Assessments, the method used for estimating residential applicator exposure is believed to produce a central tendency to high-end estimate of exposure.

The short-term dermal MOE for residential handlers (60 kg adult) is 4,200. This MOE is greater than 100 and therefore does not exceed EPAs level of concern.

For adult and children postapplication scenarios the default assumptions, such as dermal transfer coefficient, exposure time, hand surface area, ingestion frequency, residue dissipation, and ingestion rates, were selected from the DRAFT SOPs for Residential Exposure Assessments (December 18, 1997). The dislodgeable foliar residue value used for intermediate exposure estimates was based on the average of the first 10–days (20% for fraction of ai retained on the foliage and 10% for fraction of residue that dissipates daily). Default assumptions were used with the maximum application rate on the label to estimate postapplication exposure to children and adults from treated lawns. According to Table A–1 of the SOP's for Residential Exposure Assessments, the method used for estimating postapplication exposure is believed to produce a high-end estimate of exposure.

The short-term dermal exposure and risk from treated lawn MOEs for adult females, adult males, and children are 330, 390, and 420, respectively. The intermediate-term dermal MOEs for adult females, adult males, and children are 100, 120, and 130, respectively. Both short and intermediate-term dermal MOEs are 100 or greater, and therefore do not exceed EPA's level of concern.

The short- and intermediate-term oral exposure and risk for hand to mouth transfer MOEs for children are 4,900 and 1,500, respectively. Both short and intermediate-term oral MOEs are greater than 100, and therefore do not exceed EPA's level of concern.

The short- and intermediate-term oral exposure and risk incidental ingestion MOEs for children are 210,000 and 66,000, respectively. Both short and intermediate MOEs are greater than 100, and therefore do not exceed EPAs level of concern.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether halosulfuron-methyl has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, halosulfuron-methyl does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that halosulfuron-methyl has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* Acute aggregate risk includes exposure form food + water. The risk from acute "food only" exposure is less than 1% of the RfD for all population subgroups which is less than the Agency's level of concern (100% of the RfD). The lowest DWLOC calculated was 5,000 µg/L for infants/children. The DWLOC calculated for females (13+ np/nn) was 15,000 µg/L. Both of these levels are higher than the DWLOC for acute surface water (4.3 µg/L) and ground water (0.008 µg/L). Therefore, the risk from aggregate exposure to halosulfuron-methyl does not exceed EPAs level of concern.

2. *Chronic risk.* Using the TMRC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to halosulfuron-methyl from food will utilize 0.1% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is children (1–6) which utilizes 0.2% of the RfD as discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to halosulfuron-methyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD. EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to halosulfuron-methyl residues.

3. *Short- and intermediate-term exposure and risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus short-term and intermediate-term residential exposure. For halosulfuron-methyl, EPA has determined that it is appropriate to aggregate exposure via the oral route (from food and water) with those via oral and dermal routes from residential uses. The MOEs can be calculated for dietary as well as residential exposures. However, there are no drinking water estimates (only estimates of surface water). Assuming a minimum Aggregate MOE of 100, short-term DWLOC was calculated. MOEs for "food only" and residential exposures are 200,000 and 310 for females 13+. The short-term DWLOC for females 13+ years is 10,000 µg/L. Short-term aggregate DWLOCs are substantially higher than the DWEC for acute surface water (4.3 µg/L). The food and residential (oral and dermal) MOEs are well above the acceptable short-term aggregate MOE of 100. Therefore, short-term aggregate risk does not exceed EPA's level of concern. These estimates of food and residential exposure are considered to be somewhat conservative.

Intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus intermediate-term residential uses. The MOEs for "food only" and residential exposures are 100,000 and 120 for adult males, 100,000 and 102 for females 13+. The intermediate-term DWLOCs are 590 µg/L and 57 µg/L, respectively for adult males and females 13+ years. Intermediate-term DWLOCs are substantially higher than the DWEC for chronic surface water (1.1 µg/L). The MOEs for food only and residential exposure (dermal) are higher than 100. Therefore, intermediate-term aggregate risk does not exceed EPA's level of concern.

4. *Aggregate cancer risk for U.S. population.* EPA has classified halosulfuron-methyl as a "not likely" carcinogen (no evidence of carcinogenicity to humans) based on the lack of evidence of carcinogenicity in mice and rats and therefore has a reasonable certainty that no harm will result from exposure to residues of halosulfuron-methyl.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to halosulfuron-methyl residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children— i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of halosulfuron-methyl, EPA considered

data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre-and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Pre- and postnatal sensitivity.* Based on the developmental and reproductive toxicity studies, there is no indication of increased sensitivity of rats or rabbits to in utero and/or postnatal exposure to halosulfuron-methyl. In these studies, the effects in the fetuses/offspring was observed only at or above treatment levels which resulted in evidence of parental toxicity.

The EPA determined that a postnatal developmental neurotoxicity study in rats is required based on the following weight-of-evidence considerations: (a) In the developmental toxicity study in rats, there was evidence of alterations to the development of the fetal nervous system at 750 mg/kg/day (highest dose tested) including dilation of the lateral ventricles (16 fetuses/5 litters), dilation of the third ventricle (1/1), spinal cord agenesis (1/1) and adrenal agenesis (1/1) at the high dose; and malformed brain cortex (1/1) at 250 mg/kg/day; (b) There was no evaluation of perfused nervous system tissues, since acute and subchronic neurotoxicity studies in rats were not required. The primary concern is the lack of information in the data base that would allow the determination of whether functional deficits would be observed at dose levels below those which result in frank malformations of the central nervous system.

iii. *Conclusion.* Except for the pending requirements for a developmental neurotoxicity study, the toxicity data base is complete for halosulfuron-methyl and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. EPA concludes, based on reliable data, that use of the standard margin of safety will be safe for infants and children without the addition of another tenfold factor. The requirement of a developmental neurotoxicity study in rats did not warrant application of additional safety factor because: (a) the alterations observed in the fetal nervous system occurred in only one species (in rats and not in rabbits); (b) the fetal effects which will be investigated in the required developmental neurotoxicity study were seen only at a dose of 750 mg/kg/day which is close to the limit-dose (1,000 mg/kg/day); (c) there was no evidence of clinical signs of neurotoxicity, brain weight changes, or neuropathology in the subchronic or chronic studies in rats; (d) the developmental neurotoxicity study is required only as confirmatory data to understand what the effect is at a high exposure (dose) level; and (e) exposure assessments do not indicate a concern for potential risk to infants and children based on the results of the field trial studies and the very low application rat (0.06 lbs ai/A). Detectable residues are not expected in human foods.

2. *Acute risk.* The acute dietary RfD was determined to be 0.5 mg/kg/day based on the NOAEL from the developmental rabbit study (50 mg/kg/day) and a safety factor of 100. Based on the high-end exposures, the percent of the RfD occupied for the U.S. population was 0.06%, 0.15% for non-nursing infants (<1 year old) and 0.05% females 13+ years old. The subgroup with the highest exposure was the non-nursing infants (<1 year old). The drinking water level of comparison (DWLOC) for acute exposure to halosulfuron-methyl residues for infants/children is 5,000 µg/L. The maximum concentration of halosulfuron-methyl in drinking water (4.3 µg/L) is less than EPA's level of comparison for halosulfuron-methyl in drinking water as a contribution to acute aggregate exposure. Therefore, EPA concludes with reasonable certainty that the potential risk from aggregate acute exposure (food and water) would not exceed the Agency's level of concern.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to halosulfuron-methyl from food will utilize 0.2% of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to halosulfuron-methyl in drinking water and from non-dietary, non-occupational exposure, EPA does not expect the aggregate exposure to exceed 100% of the RfD.

4. *Short- or intermediate-term risk.* An aggregate exposure estimate and risk assessment was calculated for postapplication exposure to halosulfuron from treated lawns. Short-term MOEs for food, residential oral, and residential dermal are 67,000, 5,000, and 420 respectively, for infants and children. The intermediate-term MOEs for food, residential oral, and residential dermal are 42,000, 1,500, and 130, respectively for infants and children. The short and intermediate-term DWLOCs for infants and children were 3,700 and 160 mg/L, respectively. The short and intermediate DWLOCs are substantially higher than the DWECs for acute surface water (4.3 µg/L) and chronic surface water (1.1 µg/L). The food and residential MOEs are above the acceptable aggregate MOE of 100. Therefore, short-and intermediate-term aggregate risk does not exceed EPAs level of concerns for infants and children.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to halosulfuron-methyl residues.

III. Other Considerations

A. Metabolism In Plants and Animals

Plant metabolism studies have been submitted and reviewed for corn, sugarcane, and soybean. These studies show that the primary residue resulting from preemergence applications is 3-chlorosulfonamide acid. With postemergence application, the major residue is parent halosulfuron-methyl, except in corn, in which 3-chlorosulfonamide acid predominates. Inadvertent residues in rotational crops are also primarily 3-chlorosulfonamide acid. However, 3-chlorosulfonamide acid is not of toxicological concern and the residue to be regulated in plants is halosulfuron-methyl per se, as

determined by the HED Metabolism Committee.

Goat and hen metabolism studies on halosulfuron-methyl have been accepted by EPA. As with plants, the residue of concern in animals is halosulfuron-methyl per se. The current Agency-approved method for enforcement of tolerances for halosulfuron-methyl in animal commodities is based on analysis of the chlorosulfonamide half of the halosulfuron-methyl molecule; thus, it quantitates residues of parent halosulfuron-methyl as well as those metabolites containing the chlorosulfonamide acid moiety (i.e., it is not specific to halosulfuron-methyl per se.) The requested uses are not expected to increase the residues in animal commodities above those already regulated by 40 CFR 180.479. Animal tolerances will still be expressed as halosulfuron-methyl and its metabolites determined as 3-chlorsulfonic acid, expressed as parent equivalent.

B. Analytical Enforcement Methodology

Adequate analytical methodology (gas chromatography with electron capture detection) is available for enforcement of tolerances for halosulfuron-methyl in animal commodities. Adequate analytical methology (gas chromatography/thermionic specific is available for enforcement of tolerances for halosulfuron in plant commodities.

Adequate enforcement methodology (gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

The available crop field trial data support the establishment of tolerances for residues of the herbicide halosulfuron-methyl, [methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate] in or on the raw agricultural commodities almond, hull at 0.2 part per million (ppm); corn, field, fodder at 0.8 ppm; corn, field, forage at 0.2 ppm; corn, field, grain at 0.05 ppm; corn, pop, fodder at 0.8 ppm; corn, pop, grain at 0.05 ppm; corn, sweet, fodder, at 0.8 ppm; corn, sweet forage at 0.2 ppm; corn, sweet, kernel + cob with husks removed at 0.05 ppm; cotton, gin by products at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; pistachio, nutmeat at 0.05 ppm rice, grain at 0.05 ppm, rice, straw at 0.2 ppm; sorghum, grain, fodder/stover at 0.1 ppm sorghum, grain, forage at 0.05 ppm, sorghum, grain, grain at 0.05 ppm; sugarcane, cane at 0.05 ppm; and tree nuts (crop group 14), nutmeat at 0.05 ppm.

The available crop residue data also support the deletion of the current established tolerances for soybean, forage at 0.5 ppm; soybean, hay at 0.5 ppm; soybean, seed at 0.5 ppm wheat, forage at 0.1 ppm; wheat, grain at 0.1 ppm; and wheat, straw at 0.2 ppm.

D. International Residue Limits

There are no CODEX, Canadian, or Mexican maximum residue limits (MRLs) established for halosulfuron-methyl, therefore harmonization is not an issue.

E. Rotational Crop Restrictions

Tolerances were previously established for inadvertent residues in rotational crops. These tolerances were based on residues of 3-chlorosulfonamide acid which is not of toxicological concern and is no longer being regulated by EPA in plant commodities. Therefore, rotational crop tolerances are not necessary and are being deleted by this rule.

IV. Conclusion

Therefore, tolerances are established for residues of methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate in almond, hulls at 0.2 ppm; corn, field, fodder at 0.8 ppm; corn, field, forage at 0.2 ppm; corn, field, grain at 0.05 ppm; corn, pop, fodder at 0.8 ppm, corn, pop, grain at 0.05 ppm; corn, sweet, fodder/stover at 0.8 ppm; corn, sweet, forage at 0.2 ppm; corn, sweet, kernel + cob with husks removed at 0.05 ppm; cotton, gin by-products at 0.05 ppm; cotton, undelinted seed at 0.05 ppm; pistachio, nutmeat at 0.05 ppm; rice, grain at 0.05 ppm; rice, straw at 0.2 ppm; sorghum, grain, fodder/stover at 0.1 ppm; sorghum; grain, forage at 0.05 ppm sorghum, grain, grain at 0.05 ppm; sugarcane, cane at 0.05 and tree nuts (crop group 14), nutmeat at 0.05 ppm.

These entries for corn, field, fodder, corn, field, forage; corn, field, grain; sorghum, grain, fodder/stover; sorghum, grain, forage; and sorghum, grain, grain will replace current entries for these commodities.

Established tolerances for indirect or inadvertent residues of the herbicide halosulfuron-methyl 5-[(4,6-dimethoxy-2-pyrimidinyl)amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole- 4-carboxylate, and its metabolites determined as the 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents in on the following raw agricultural commodities when present to growing crops: soybean, forage at 0.05 ppm; soybean, hay at 0.5 ppm; soybean, seed at 0.5 ppm; wheat, forage at 0.1 ppm wheat, grain at 0.1 ppm, and wheat, straw at 0.1 ppm are being deleted.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the **ADDRESSES** section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollies, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300854] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes, modifies, and revokes tolerances under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has determined that tolerance actions, in general, are "not significant" unless the action involves the revocation of a tolerance that may result in a substatial adverse and material affect on the economy. This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (P.A.), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established, modified or revoked on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of

Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 29, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.479, is revised to read as follows:

§ 180.479 Halosulfuron; tolerances for residues.

(a) General. (1) Tolerances are established for residues of the herbicide halosulfuron, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino] carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole-4-carboxylate, and its metabolites determined as 3-chloro-1-methyl-5-sulfamoylpyrazole-4-carboxylic acid and expressed as parent equivalents, in or on the raw agricultural commodities listed below.

Commodity	Parts per million
Cattle, mybp	0.1
Goats, mbyp	0.1
Hogs, mbyp	0.1
Horses, mbyp	0.1
Sheep, mbyp	0.1

(2) Tolerances are established for residues of the herbicide halosulfuron-methyl, methyl 5-[(4,6-dimethoxy-2-pyrimidinyl) amino]carbonylaminosulfonyl-3-chloro-1-methyl-1*H*-pyrazole- 4-carboxylate, in or on the raw agricultural commodities listed below.

Commodity	Parts per million
Almond, hulls	0.2
Corn, field, fodder	0.8
Corn, field, forage	0.2
Corn, field, grain	0.05
Corn, pop, fodder	0.8
Corn, pop, grain	0.05
Corn, sweet, fodder/stover	0.8
Corn, sweet, forage	0.2
Corn, sweet, kernel + cob with husks removed	0.05
Cotton, gin by-products	0.05
Cotton, undelinted seed	0.05
Pistachio, nutmeat	0.05
Rice, grain	0.05
Rice, straw	0.2
Sorghum, grain, fodder/stover	0.1
Sorghum, grain, forage	0.05
Sorghum, grain, grain	0.05
Sugarcane, cane	0.05
Tree nuts (crop group 14), nutmeat	0.05

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 99–11835 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300840; FRL–6074–2]

RIN 2070–AB78

Azoxystrobin; Extension of Tolerance for Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation extends a time-limited tolerance for combined residues of the fungicide azoxystrobin and its metabolites in or on watercress at 1.0 part per million (ppm) for an additional 18–month period. This tolerance will expire and is revoked on October 30, 2000. This action is in response to EPA's granting of an emergency exemption under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) authorizing use of the pesticide on watercress. Section 408(l)(6) of the Federal Food, Drug, and Cosmetic Act requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18.

DATES: This regulation becomes effective May 12, 1999. Objections and requests for hearings must be received by EPA, on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300840], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300840], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall 2, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300840]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Jacqueline E. Gwaltney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 278, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–6792, Gwaltney.Jackie@epa.gov.

SUPPLEMENTARY INFORMATION: EPA issued a final rule, published in the **Federal Register** of May 12, 1998 (63 FR 26089) (FRL–5787–8), which announced that on its own initiative under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(e) and (l)(6), as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) it established a time-limited tolerance for the combined residues of azoxystrobin and its metabolites in or on watercress at 1.0 ppm, with an expiration date of June 30, 1999. EPA established the tolerance because section 408(l)(6) of the FFDCA requires EPA to establish a time-limited tolerance or exemption from the requirement for a tolerance for pesticide chemical residues in food that will result from the use of a pesticide under an emergency exemption granted by EPA under FIFRA section 18. Such tolerances can be established without providing notice or period for public comment.

EPA received a request to extend the use of azoxystrobin on watercress for this years growing season because for watercress, copper hydroxide is the only material registered for control of *Cercospora* leaf spot disease. Several applications of copper hydroxide are required per season for adequate control. Although copper hydroxide is still effective at controlling *Cercospora* leaf spot disease, due to the many required applications, levels of copper in soil and watercress plants have reached phytotoxic levels. As a consequence, in areas where watercress has been grown for several years, yield has been significantly reduced. After having reviewed the submission, EPA concurs that emergency conditions exist. EPA has authorized under FIFRA section 18 the use of azoxystrobin on watercress for control of cercospora leaf spot disease in watercress.

EPA assessed the potential risks presented by residues of azoxystrobin in or on watercress. In doing so, EPA considered the safety standard in FFDCA section 408(b)(2), and decided that the necessary tolerance under FFDCA section 408(l)(6) would be consistent with the safety standard and with FIFRA section 18. The data and other relevant material have been evaluated and discussed in the final rule of May 12, 1998 (63 FR 26089) (FRL–5787–8). Based on that data and information considered, the Agency reaffirms that extension of the time-limited tolerance will continue to meet the requirements of section 408(l)(6). Therefore, the time-limited tolerance is extended for an additional 18–month period. EPA will publish a document in the **Federal Register** to remove the revoked tolerance from the Code of Federal Regulations (CFR). Although this tolerance will expire and is revoked on October 30, 2000, under FFDCA section 408(l)(5), residues of the pesticide not in excess of the amounts specified in the tolerance remaining in or on watercress after that date will not be unlawful, provided the pesticide is applied in a manner that was lawful under FIFRA and the application occurred prior to the revocation of the tolerance. EPA will take action to revoke this tolerance earlier if any experience with, scientific data on, or other relevant information on this pesticide indicate that the residues are not safe.

I. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation issued by EPA as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not

contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

II. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300840] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Rm. 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:
opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

III. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408 of the FFDCA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established under section 408(l)(6) of FFDCA, such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

IV. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides

and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.507 [Amended]

2. In § 180.507, the table to paragraph (b) by revising the date for the commodity watercress, "6/30/99" to read "10/30/00".

[FR Doc. 99–11834 Filed 5–11–99; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300857; FRL–6079–5]

RIN 2070–AB78

Dimethomorph, (E,Z) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a permanent tolerance for the residues of dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on potatoes, wet peel and time-limited tolerances for the indirect or inadvertent residues of dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the cereal grains group for fo12er, forage, grain, hay and straw. American Cyanamid Company requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 12, 1999. Objections and requests for hearings must be received by EPA on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number [OPP–300857], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300857], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may also be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of electronic objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 or ASCII file format. All copies of electronic objections and hearing requests must be identified by the docket control number [OPP–300857]. No Confidential Business Information (CBI) should be submitted through e-mail. Copies of electronic objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Mary Waller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 249, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9354, waller.mary@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Registers** of March 26, 1997 (62 FR 14418) (FRL–5594–7) and of March 10, 1999 (64 FR 11874) (FRL–6063–3), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act of 1996 (FQPA) (Pub. L. 104–170) announcing the filing of a pesticide petition (PP) for tolerance by American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543–0400. These notices included a summary of the petition prepared by American Cyanamid Company, the registrant. There were no comments received in response to the notices of filing.

The petition requested that 40 CFR 180.493 be amended by establishing a tolerance for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on potatoes, wet peel at 0.15 parts per million (ppm) and time-limited tolerances for the indirect or inadvertent residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on cereal grains group: fodder at 0.15 ppm, forage at 0.05 ppm, grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm. These time-limited tolerances will expire on May 12, 2004.

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of dimethomorph and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a

tolerance for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on potatoes, wet peel at 0.15 ppm and time-limited tolerance for the indirect or inadvertent residues of dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the cereal grains group: fodder at 0.15 ppm, forage at 0.05 ppm, grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has previously evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The tolerance for potatoes, wet peel, toxicological profile for dimethomorph were addressed in the risk assessment published in the Federal Register final rule of October 13, 1998 (63 FR 54587) (FRL–6036–7). The risk assessment for rotational crops addressed the changes which occurred as a result of the granting of time-limited tolerances for rotational crops.

B. Toxicological Endpoints

The toxicological endpoints for dimethomorph were addressed in the risk assessment published in the **Federal Register** final rule of October 13, 1998 (63 FR 54587) (FRL–6036–7).

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.493) for the residues of dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on potatoes at 0.05 ppm and time-limited tolerances for tomatoes at 1 ppm (expires May 15, 1999) and cantaloupe, cucumber, squash and watermelon at 1 ppm (expires March 31, 2000). Anticipated residues were not generated as part of this risk assessment. In the dietary analysis, the most highly exposed subgroup, children 1–6 years, utilized only 4.3% of the reference dose (RfD)/population adjusted dose (PAD) As a result, no refinement to the analysis was needed. Risk assessments were conducted by EPA to assess dietary exposures from dimethomorph as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. EPA did not select a dose and endpoint for an acute dietary risk assessment because of the lack of toxicological effects attributable to a single exposure (dose) in either the rat or the rabbit developmental toxicity studies.

ii. *Chronic exposure and risk.* EPA's Dietary Exposure Evaluation Model (DEEM89) was used for conducting a chronic dietary (food only) exposure analysis (risk assessment). The analysis evaluates individual food consumption as reported by respondents in the USDA 1989–1991 Nationwide Continuing Surveys for Food Intake by Individuals, and accumulates exposure to the chemical for each commodity. The exposure for each subgroup is reported as a percentage of the PAD. As the 10x safety factor was removed for dimethomorph, the PAD is equivalent to the RfD.

In conducting this chronic tier 1 dietary risk assessment, EPA has made very conservative assumptions: that all commodities having dimethomorph tolerances contain residues of dimethomorph and those residues are at the level of the tolerance. These assumptions result in an overestimate of human dietary exposure. All Section 18 tolerances (i.e., cantaloupes, watermelons, cucumbers, squash, and tomatoes) are included in this dietary risk assessment. Using the assumptions and data parameters described above, the DEEM89 exposure analysis results in a theoretical maximum residue contribution (TMRC) that is equivalent to the following percentages of the PAD/RfD. The following table summarizes the estimated food exposures for the U.S. population, the population subgroups that include infants and children, the most highly exposed female subgroup, and all other population subgroups (excluding regions and seasons) with risk estimates above that of the U.S. population:

TABLE 1.— SUMMARY OF FOOD EXPOSURE TO DIMETHOMORPH

Population Subgroup	Exposure (mg/kg body wt/day)	%PAD/RfD
U.S. Population (total)	0.0020	2
Hispanics	0.0022	2
Non-Hispanic/non-white/non-black	0.0022	2

TABLE 1.— SUMMARY OF FOOD EXPOSURE TO DIMETHOMORPH—Continued

Population Subgroup	Exposure (mg/kg body wt/day)	%PAD/RfD
Nursing Infants	0.0006	0.6
Non-nursing Infants	0.0024	2
Children 1–6 years	0.0043	4
Children 7–12 years	0.0030	3
Females 13–19 (not pregnant or nursing)	0.0021	2
Males 13–19 years	0.0021	2

2. *From drinking water.* EPA used SCI-GROW (Screening Concentration In Ground Water) and GENEEC (Generic Estimated Environmental Concentration) models to determine the estimated environmental concentrations (EECs) of dimethomorph residues in ground and surface water. The EEC reported for dimethomorph residues in ground water is 0.26 parts per billion (ppb). The EEC for surface water is 28 ppb for acute and 24 ppb for chronic (56–day).

i. *Acute exposure and risk.* Because no acute dietary endpoint was determined, an acute water and dietary exposure risk assessment is not required.

ii. *Chronic exposure and risk.* EPA conducts the drinking water risk assessment by using the worst case scenario of estimated environmental concentration (EEC) found from either ground or surface water. The EEC reported for dimethomorph residues in ground water using SCI-GROW is 0.26 ppb. This is much less than the surface water EEC (24 ppb for 56 days) generated using GENEEC. Therefore, only the surface water EEC will be used in conducting the aggregate dietary (food + water) risk assessment. Based on the chronic dietary (food) exposure and using default body weights and water consumption figures, chronic drinking water levels of comparison (DWLOCs) for drinking water were calculated. To calculate the chronic DWLOC, the chronic dietary food exposure (from DEEM analysis) is subtracted from the chronic PAD/RfD. DWLOCs are then calculated using the default body weights and drinking water consumption figures. EPA's surface drinking water levels of comparison from chronic exposure to dimethomorph using modeling data are 3,400 ppb for the U.S. Population and the population subgroup non-Hispanic/non-white/non-black, 2,900 ppb for females 13–19 (not pregnant or nursing),

and 960 ppb for children 1–6 years. These levels are all greater than the GENEEC concentration level (24 ppb for 56 days). Therefore, EPA does not expect exposure to dimethomorph in drinking water to be above the level of concern.

3. *From non-dietary exposure.* There are no registered or proposed residential uses for dimethomorph. Therefore, residential or inhalation exposures were not evaluated in the risk assessment.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether dimethomorph has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dimethomorph does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dimethomorph has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* No acute dietary endpoint was identified; therefore, EPA concludes that dimethomorph poses no appreciable acute risk.

2. *Chronic risk.* EPA has concluded that aggregate exposure to dimethomorph from food will utilize 2% of the RfD for the U.S. population, 2% for females 13–19 (not pregnant or nursing), 4% for children 1 through 6 years of age, and 2% for non-Hispanic/non-white/non-black. The surface drinking water levels of comparison from chronic exposure to dimethomorph using modeling data are 3,400 ppb for the U.S. population and population subgroup non-Hispanic/non-white/non-black, 2,900 ppb for females 13–19 (not pregnant or nursing), and 960 ppb for children 1–6 years. These levels are all greater than the GENEEC chronic concentration level (24 ppb for 56 days) and the SCI-GROW ground level water of 0.26 ppb. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. There are no registered residential uses of dimethomorph.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. Although short- and intermediate-term endpoints were identified, there are no residential uses for dimethomorph.

4. *Aggregate cancer risk for U.S. population.* Dimethomorph was classified as "not likely" to be a human carcinogen. Therefore, a carcinogenic aggregate risk assessment was not required.

5. *Determination of safety:* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to residues of dimethomorph.

E. Aggregate Risks and Determination of Safety for Infants and Children

EPA assessed the potential for additional sensitivity of infants and children to residues of dimethomorph. The aggregate risks for dimethomorph were published in the **Federal Register** final rule of October 13, 1998 (63 FR 54587)(FRL–6036–7). There is a complete toxicity database for dimethomorph and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures. EPA has concluded that aggregate exposure to dimethomorph form food will utilize 4.3% of the RFD for infants and children. EPA generally has no concern for exposures below 100% of the RFD because the RFD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for exposure to dimethomorph in drinking water, EPA does not expect the aggregate exposure to exceed 100% of the RFD. Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dimethomorph residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The nature of the residue in potatoes is adequately understood. For purposes of time-limited tolerances, the residue of concern in rotational crops is the same as that in directly treated crops, i.e., dimethomorph per se. The nature of the residue in animals is adequately defined for section 3 registration on potatoes. Tolerances are not required for residues in livestock commodities at this time.

B. Analytical Enforcement Methodology

Method FAMS 002–04 high performance liquid chromatography using ultra-violet detection (HPLC, UV detection) is adequate for determining residues of dimethomorph per se in/on potatoes. A confirmatory method is also available (FAM 022–03).

The method may be requested from: Calvin Furlow, PIRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703–305–5229). Based on recovery data from the independent laboratory validation as well as concurrent recovery data from limited rotational field trials, EPA concludes that Method M 3112 gas chromatography, nitrogen phosphorus detection (GC, N-P detection) has been adequately validated and is suitable for collecting residue data on levels of dimethomorph per se in/on wheat raw agricultural commodities (RACs). The reported limit of quantitation of the method is 0.05 ppm. Prior to the establishment of permanent rotational crop tolerances, Method M 3112 must be submitted for Agency method validation. Acceptance of Method M 3112 as an enforcement method is predicated upon completion of a successful Agency method tryout. For the purpose of establishing time-limited tolerances on wheat RACs, EPA recommended using the Food and Drug Administration's (FDA's) multiresidue method Protocol D as the enforcement method for determining residues of dimethomorph per se in/on cereal grain RACs. EPA noted that Method FAMS 002–04 (HPLC, UV detection), a method submitted in conjunction with PP#2E4054, has been determined adequate as an enforcement method for determining residues of dimethomorph per se in/on potatoes. Although the extraction procedures of Method M 3112 are essentially similar to those of Method FAMS 002–04, the instrumentation and quantitation of

residues are different. Dimethomorph is recovered by Protocol D of FDA's multi-residue method protocols (PAM Vol. I).

C. Magnitude of Residues

EPA has concluded that residue data submitted in support of the tolerance for potatoes indicate that a tolerance level of 0.15 ppm is an adequate level for potatoes, wet peel. In addition, domestic field trial data supported the tolerance level of 0.15 ppm on potatoes, wet peel and indicated that dimethomorph residues do not pose an adverse health risk to humans under the use conditions. Therefore, EPA has no objection to the establishment of a tolerance of 0.15 ppm for residues of the fungicide dimethomorph in/on potatoes, wet peel under 40 CFR 180.493.

For the purpose of establishing permanent rotational crop tolerances for residues of dimethomorph in/on cereal grains, the limited wheat rotational field trial data are inadequate because of poor geographic representation of data, and because residue data are required for other crops representative of cereal grains. However, as the available data indicate that most treated wheat raw agricultural commodity (RAC) samples bore nonquantifiable (< 0.05 ppm) residues, EPA recommends in favor of the establishment of time-limited tolerances for the forage and grain of cereal grains at 0.05 ppm, for hay of cereal grains at 0.10 ppm, and for the fodder and straw of cereal grains at 0.15 ppm under 40 CFR 180.493.

D. International Residue Limits

There are no Canadian, Mexican, or Codex MRLs established for dimethomorph for the commodities associated with this request; consequently, a discussion of international harmonization is not relevant.

E. Rotational Crop Restrictions

The plant back intervals for rotational crops are: 0 days for potatoes; 1 month for barley, broccoli, cabbage, carrot, cauliflower, celery, lettuce, oats, onion, radish, spinach, sugarbeets, tobacco and wheat; 7 months for alfalfa, beans, clover, corn (field, sweet, seed, and pop), peas, rice, sorghum, and soybeans; 12 months for all other crops.

IV. Conclusion

Therefore, the tolerance for residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine, in or on potatoes, wet peel at 0.15 ppm and time-limited tolerances are established for the indirect or inadvertent residues of dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in the cereal grains group: fodder at 0.15 ppm, forage at 0.05 ppm, grain at 0.05 ppm, hay at 0.10 ppm, and straw at 0.15 ppm. These time-limited tolerances expire May 12, 2004.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300857] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies

in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Pub. L. 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1999

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a), and 371.

2. In § 180.493, by revising paragraphs (a) and (d) to read as follows:

§ 180.493 Dimethomorph, tolerances for residues.

(a) *General.* A tolerance is established for the residues of the fungicide dimethomorph, (*E,Z*) 4-[3-(4-chlorophenyl)-3-(3,4-dimethoxyphenyl)-1-oxo-2-propenyl]morpholine in or on the following commodity:

Commodity	Parts per million
Potatoes, wet peel	0.15

* * * * *

(d) *Indirect or inadvertent residues.* Time-limited tolerances are established for inadvertent or indirect residues of the fungicide dimethomorph in or on the following raw agricultural commodities when present therein as a result of the application of dimethomorph to growing crops. The tolerances will expire and are revoked on the dates specified in the following table.

Commodity	Parts per million	Expiration/revocation date
Cereal grains group, fodder	0.15	May 12, 2004
Cereal grains group, forage	0.05	May 12, 2004
Cereal grains group, grain	0.05	May 12, 2004
Cereal grains group, hay	0.10	May 12, 2004
Cereal grains group, straw	0.15	May 12, 2004

[FR Doc. 99–11565 Filed 5–11–99; 8:45 am]
BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 413, 414, 415, 424, and 485

[HCFA–1006–CN]

RIN 0938–AI52

Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999; Correction

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Correction of final rule with comment period.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 2, 1998, entitled "Medicare Program; Revisions to Payment Policies and Adjustments to the Relative Value Units Under the Physician Fee Schedule for Calendar Year 1999."

EFFECTIVE DATE: January 1, 1999.

FOR FURTHER INFORMATION CONTACT: Diane Milstead, (410) 786–3355

SUPPLEMENTARY INFORMATION:

Background

In FR Doc. 98–29181 of November 2, 1998, (63 FR 58814), there were a number of technical errors. The errors relate to the omission of background information, an incorrect reference, the qualification requirements for nonphysician practitioners, a typographical error, a correction to a CPT code modifier in Table 6, an inconsistency in the preamble and addendum, the omission of status indicator references, the omission of a facility type in the regulations text, and revisions to Addendum B.

The provisions in this correction notice are effective as if they had been included in the document published in the **Federal Register** on November 2, 1998, that is, January 1, 1999.

Discussion of Addendum B

1. We inadvertently omitted the professional and technical portions for the following CPT code. Entries on the page listed below are corrected as follows: Page 59073 for CPT codes 78020–26 and 78020–TC. These corrections are reflected in correction number 19 to follow.

2. We assigned incorrect status codes to the following CPT codes. Entries on pages listed below are corrected as follows: Page 59087 for CPT code 82251; page 59114 for CPT codes 90471 and 90472; page 59181 for CPT code R0070; and page 59182 for CPT code R0075. These corrections are reflected in correction number 20 to follow.

3. We assigned incorrect RVUs or modifiers for the following CPT codes. Entries on pages listed below are corrected as follows: Page 59109 for CPT code 88141; page 59132 for CPT codes 94014, 94014–26, and 94014–TC; 94015, 94015–26, 94015–TC; and 94016; page 59168 for CPT code G0124; and page 59169 for CPT code G0141. These corrections are reflected in correction number 21 to follow.

4. We stated that we would not provide a transition for codes representing services that are new beginning in 1999. The codes identified below are new CPT codes, but do not represent new services. These codes were previously reported with a different CPT code. We failed to apply the transition to these services. The corrected RVUs for the codes are as follows: Page 58965 for CPT codes 31623, 31624, and 31643; page 58977 for CPT codes 35682, and 35683; page 59133 for CPT codes 94621, 94621–26, and 94621–TC. These corrections are reflected in correction number 22 to follow.

5. We erroneously assigned relative value units to the following CPT codes in the facility setting. By definition the following CPT codes cannot be performed in the facility setting. Columns associated with facility relative value units should be set to NA in Addendum B. Entries on pages listed below are corrected as follows: Page 59144 for CPT codes 99321, 99322, 99323, 99331, 99332, 99333, 99341, 99342, 99343, 99344, 99345, 99347, 99348, 99349, and 99350; page 59145 for CPT codes 99374 and 99375. These corrections are reflected in correction number 23 to follow.

Correction of Errors

In FR Doc. 98–29181 of November 2, 1998, make the following corrections:

1. On page 58814, column three, "Table of Contents", after subsection "I.B", add a new subsection "C" to read as follows:

"C. Components of the Fee Schedule Payment Amounts"

2. On page 58816, column one, add a new subsection "C", to read as follows:

"C. Components of the Fee Schedule Payment Amounts"

Under the formula set forth in section 1848(b)(1) of the Act, the payment amount for each service paid for under the physician fee schedule is the product of three factors: (1) A nationally uniform relative value for the service; (2) a geographic adjustment factor (GAF) for each physician fee schedule area; and (3) a nationally uniform conversion factor (CF) for the service. The CF converts the relative values into payment amounts.

For each physician fee schedule service, there are three relative values: (1) An RVU for physician work; (2) an RVU for practice expense (NOTE: This RVU will vary on a code by code basis depending upon if the service is performed in a facility or non-facility setting); and (3) an RVU for malpractice

expense. For each of these components of the fee schedule there is a geographic practice cost index (GPCI) for each fee schedule area. The GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average for each component.

The general formula for calculating the Medicare fee schedule amount for a given service in a given fee schedule area can be expressed as:

Payment = [(RVU work * GPCI work) + (RVU practice expense * GPCI practice expense) + (RVU malpractice * GPCI malpractice)] * CF

The CF for calendar year 1999 appears in Section V. "Physician Fee Schedule Update and Conversion Factor for Calendar Year 1999." The RVUs for calendar year 1999 are in Addendum B. The GPCIs for calendar year 1999 can be found in Addendum D of the October 31, 1997, final rule (62 FR 59255).

Section 1848(e) of the Act requires the Secretary to develop GAFs for all physician fee schedule areas. The total GAF for a fee schedule area is equal to a weighted average of the individual GPCIs for each of the three components of the service. Thus, the GPCIs reflect the relative costs of practice expenses, malpractice insurance, and physician work in an area compared to the national average. In accordance with the law, however, the GAF for the physician's work reflects one-quarter of the relative cost of physician's work compared to the national average."

3. On page 58827, in column three, bullet two, line two, "REUS" is corrected to read "RVUs."

4. On page 58828, in column 1, the first full paragraph, lines 4 and 11, "REUS" is corrected to read "RVUs."

5. On page 58844, there is an inaccuracy in the discussion concerning physician direction of concurrent anesthesia services. In the discussion, we inadvertently failed to include the revisions to the policy that were made in the September 1, 1983 final rule (48 FR 39740) and currently appear in section 15018C of the Medicare Carrier Manual (MCM).

Therefore, on page 58844, column three, the second full paragraph from the top is corrected to read as follows: "If a physician is directing four concurrent surgical procedures and devotes extensive time to checking or discharging other patients in the recovery room or handling scheduling matters, this could unduly diminish physician involvement in the surgical cases. If significantly reduced, a physician's involvement in the surgical cases would become "supervision" rather than "medical direction." Also, a physician cannot personally be extensively involved in recovery room or scheduling matters of significant duration because such personal services would diminish the scope of control necessary for medical direction."

6. On page 58874, in the second column, third paragraph beginning "Result of evaluation of comments" we discuss the qualifications required for a nurse practitioner to be eligible for Medicare Part B payment. We erred in establishing the effective date for the requirements for nurse practitioners. The date should be January 1, 2000. The provisions for nurse practitioner qualifications will not be effective until January 1, 2000. In column 2, paragraph 3, line 3, insert the words "after December 31, 1999," after the comma.

7. On page 58878, in the third column, fourth full paragraph, the first bullet, the name of the national accreditation organization was published incorrectly. Therefore, remove the word "National." Also, we inadvertently omitted the word "or" after the semicolon. The word "or" was included in the proposed rule and there was no change intended in this area. Therefore, the word "or" should be added after the semicolon. The first bullet should now read as follows: "Has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or"

In the second bullet, the third line we incorrectly stated that the national certification examination is "certified" by the National Commission on Certification of Physician Assistants. This organization "administers" the examination. Therefore, the word "certified" is removed and replaced with "administered." The second bullet should now read as follows: "Has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants; and'

8. On page 58889, in Table 6, the last line, the second column, the modifier for CPT code 94014, remove "26" and leave the column blank.

9. On page 58892, in the third column, the third bullet, line 6, remove the word "National". In line 7, remove the second use of the word "on" and add the word "of", and add the word "or" after the semicolon. Line 11, the word "certified" is replaced with "administered." The third bullet should now read as follows: " Proposed § 410.74(c) is revised to state that a physician assistant is an individual who—

- Has graduated from a physician assistant educational program that is accredited by the Commission on Accreditation of Allied Health Education Programs; or
- Has passed the national certification examination that is administered by the National Commission on Certification of Physician Assistants; and
- Is licensed by the State to practice as a physician assistant."

§ 410.74 [Corrected]

10. On page 58908, in column one, in the regulations text, under § 410.74, paragraph (c)(1), remove the word "National" and add the word "or" after the semicolon. In paragraph (c)(2), line two, remove the word "of" and add the phrase "that is administered by."

§ 410.75 [Corrected]

11. On page 58908, in column one, in the regulations text, under § 410.75, paragraph (b), "For" is corrected to read, "After December 31, 1999, for".

§ 414.32 [Corrected]

12. On page 58911, in the first column, correct the amendatory language in item 5, and add paragraph (a)(6) to read as follows:

"5. In § 414.32, the heading and paragraphs (a)(6) and (b) are revised to read as follows:

(a) *Definition.* * * *

(6) Skilled nursing facilities."

§ 485.705 [Corrected]

13. On page 58913, in column one, in the regulations text, under § 485.705, paragraph (c)(8) introductory text is corrected to read as follows:

"(c) * * *

(8) After December 31, 1999, a nurse practitioner is a person who must:"

14. On page 58913, column one, § 485.705(c)(10)(i) is corrected by removing the word "National" and, after the semicolon, replacing the word "and" with "or" and paragraph (c)(10)(ii) is corrected by, removing the word "certified" and adding "administered" in its place. In paragraph (c)(10)(iii), the first use of the phrase "as a physician assistant" is removed.

Addendum B [Corrected]

15. On page 58913, in column three, add the following after the entry for status code "G":

"H = Deleted modifier (code used to have a modifier of TC and PC)

I = Code not valid for Medicare purposes. Medicare does not recognize codes assigned this status. Medicare uses another code

for reporting of, and payment for, these services. This indicator is treated in the same manner as status indicator "G." Its use allows for more efficient carrier processing of Medicare claims."

16. On page 58914, in columns two and three, in the definitions for "11" and "12", remove the words "for 1999."

Addendum B

17. In the table of Addendum B, the following CPT codes are added to read as follows:

CPT1 [1] HCPCS [2]	Mod	Status	Description	Physician work RVUs [3]	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility pratice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility Total	Transitioned facility total	Global
78020	26	A	Thyroid met uptake	0.60	0.02	0.02	0.02	0.02	0.02	0.64	0.64	0.64	0.64	ZZZ
78020	TC	A	Thyroid met uptake	0.00	0.15	0.15	0.15	0.15	0.06	0.21	0.21	0.21	0.21	ZZZ

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] Indicates RVUs are not used for Medicare payment.

18. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs [3]	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility pratice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
82251		X	Assay Bilirubin	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90471		X	Immunization admin, single	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
90472		X	Immunization admin, 2+	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0070		C	Transport portable x-ray	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
R0075		C	Transport port x-ray multipl	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX

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[2] Copyright 1994 American Dental Association. All rights reserved.
[3] + Indicates RVUs are not used for Medicare payment.

19. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs [3]	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility pratice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
88141		A	Cytpath c/vag interpret	0.42	0.18	0.56	0.18	0.31	0.03	.63	1.01	0.63	0.76	ZZZ
94014		A	Patient recorded spirometry	0.52	0.63	0.63	0.63	0.63	0.04	1.19	1.19	1.19	1.19	XXX
94014	26	H	Patient recorded spirometry	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
94014	TC	H	Patient recorded spirometry	0.00	0.43	0.43	0.43	0.43	0.02	0.45	0.45	0.45	0.45	XXX
94015		A	Patient recorded spirometry	0.00	0.43	0.00	0.43	0.00	0.02	0.45	0.00	0.45	0.00	XXX
94015	26	H	Patient recorded spirometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94015	TC	H	Patient recorded spirometry	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	XXX
94016		A	Review patient spirometry ..	0.52	0.20	0.20	0.20	0.20	0.02	0.74	0.74	0.74	0.74	XXX
G0124		A	Screen c/v thin layer by MD	0.42	0.18	0.30	0.18	0.30	0.03	0.63	0.75	0.63	0.75	XXX
G0141		A	Scr c/v cyto, autosys and md.	0.42	0.18	0.15	0.18	0.15	0.03	0.63	0.60	0.63	0.60	XXX

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[3] + Indicates RVUs are not used for Medicare payment.

20. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 [1]/ HCPCS [2]	Mod	Status	Description	Physician work RVUs [3]	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility pratice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
31623		A	Dx Bronchoscope/ brush	3.07	3.33	3.34	1.25	2.82	0.27	6.67	6.68	4.59	6.16	OOO
31624		A	Dx Bronchoscope/ lavage	3.11	3.35	3.34	1.26	2.82	0.27	6.73	6.72	4.64	6.20	OOO
31643		A	Dx Bronchoscope/ catheter	3.50	1.73	2.94	1.23	2.81	0.66	5.89	7.10	5.39	6.97	OOO

CPT1 1/ HCPCS2	Mod	Status	Description	Physician work RVUs3	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility pratice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned non-facility total	Facility total	Transitioned facility total	Global
35682		A	Composite bypass graft	7.20	2.81	7.92	2.74	7.90	2.75	12.76	17.87	12.69	17.85	ZZZ
35683		A	Composite bypass graft	8.50	3.32	8.05	3.22	8.02	2.75	14.57	19.30	14.47	19.27	ZZZ
94621		A	Plum stress/test complex	0.88	1.74	2.11	1.74	2.11	0.12	2.74	3.11	2.74	3.11	XXX
94621	26	A	Plum stress/test complex	0.88	0.27	0.64	0.27	0.64	0.04	1.19	1.56	1.19	1.56	XXX
94621	TC	A	Plum stress/test complex	0.00	1.47	1.47	1.47	1.47	0.08	1.55	1.55	1.55	1.55	XXX

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2 Copyright 1994 American Dental Association. All rights reserved.
3 +Indicates RVUs are not used for Medicare payment.

21. In the table to Addendum B, the following CPT codes are correctly revised to read as follows:

CPT1 1/ HCPCS2	Mod	Status	Description	Physician work RVUs3	Non-facility practice expense RVUs	Transitioned non-facility expense RVUs	Facility practice expense RVUs	Transitioned facility practice expense RVUs	Mal-practice RVUs	Non-facility total	Transitioned facility total	Facility total	Transitioned facility	Global
99321		A	Rest home visit, new patient.	0.71	0.38	0.40	NA	NA	0.02	1.11	1.13	NA	NA	XXX
99322		A	Rest home visit, new patient.	1.01	0.59	0.58	NA	NA	0.04	1.64	1.61	NA	NA	XXX
99323		A	Rest home visit, new patient.	1.28	0.74	0.78	NA	NA	0.05	2.07	2.11	NA	NA	XXX
99331		A	Rest home visit, estab pat.	0.60	0.38	0.32	NA	NA	0.02	1.00	0.94	NA	NA	XXX
99332		A	Rest home visit, estab pat.	0.80	0.48	0.41	NA	NA	0.02	1.30	1.23	NA	NA	XXX
99333		A	Rest home visit, estab pat.	1.00	0.58	0.51	NA	NA	0.02	1.60	1.53	NA	NA	XXX
99341		A	Home visit, new patient.	1.01	0.49	0.58	NA	NA	0.04	1.54	1.61	NA	NA	XXX
99342		A	Home visit, new patient.	1.52	0.74	0.67	NA	NA	0.04	2.30	2.23	NA	NA	XXX
99343		A	Home visit, new patient.	2.27	1.09	0.90	NA	NA	0.05	3.41	3.22	NA	NA	XXX
99344		A	Home visit, new patient.	3.03	1.35	1.03	NA	NA	0.07	4.45	4.13	NA	NA	XXX
99345		A	Home visit, new patient.	3.70	1.61	1.09	NA	NA	0.07	5.47	4.95	NA	NA	XXX
99347		A	Home visit, estab patient.	0.76	0.41	0.47	NA	NA	0.03	1.20	1.26	NA	NA	XXX
99348		A	Home visit, estab patient.	1.26	0.63	0.59	NA	NA	0.03	1.92	1.88	NA	NA	XXX
99349		A	Home visit, estab patient.	2.02	0.91	0.72	NA	NA	0.04	2.97	2.78	NA	NA	XXX
99350		A	Home visit estab patient.	3.03	1.24	0.93	NA	NA	0.06	4.32	4.01	NA	NA	XXX
99374		E	Home health care supervision.	+1.10	1.03	0.67	NA	NA	0.03	2.16	1.80	NA	NA	XXX
99375		A	Home health care supervision.	1.73	1.11	0.69	NA	NA	0.03	2.87	2.45	NA	NA	XXX

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3 + Indicates RVUs are not used for Medicare payment.

(Section 1848 of the Social Security Act (42 U.S.C. 1395w–4))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 30, 1999.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 99–11511 Filed 5–11–99; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 950427117–9123–06; I.D. 050599D]

RIN 0648–AH97

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule.

SUMMARY: NMFS is closing, for a 2-week period, all inshore waters and offshore waters out to 10 nm (18.5 km) seaward of the COLREGS demarcation line (as defined at 33 CFR Part 80), bounded by 32° N. lat. and 33° N. lat. within the Leatherback conservation zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 7, 1999 through 11:59 p.m. (local time) on May 21, 1999.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz, (727) 570–5312, or Barbara A. Schroeder (301) 713–1401. For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS Pascagoula, MS laboratory by phone (228) 762–4591 or fax (228) 769–8699.

SUPPLEMENTARY INFORMATION: The taking of sea turtles is governed by regulations implementing the Endangered Species Act (ESA) at 50 CFR parts 222 and 223 (see 64 FR 14051, March 23, 1999, final rule consolidating and reorganizing ESA regulations). Generally, the taking of sea turtles is prohibited. However, the incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713 September 14, 1995), NMFS established regulations to protect leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback conservation zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nautical miles (nm) (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

An aerial survey conducted on April 27, 1999, along the South Carolina coast documented 70 leatherback turtles over a total survey trackline of 327 nautical miles (nm) (606 km). The highest concentrations were noted in waters off the southern half of the state along two, parallel 46 nm (85.2 km) tracklines beginning at approximately 32°07' N. lat., 080°41' W. long. (offshore Hilton Head Island, SC) and ending at approximately 32°35' N. lat., 079°59' W. long. (offshore Kiawah Island, SC), where 35 leatherbacks were sighted along the trackline parallel to the coast at approximately 1.5 nm (2.8 km), and 17 leatherbacks were sighted along the trackline paralleling the coast at approximately 3.0 nm (5.6 km). A survey along the same tracklines on May 3, 1999, documented 1 leatherback on the 1.5 nm (2.8 km) and 11 leatherbacks on the 3.0 nm (5.6 km) from shore tracklines. The May 3 survey also observed 55 trawlers operating along the South Carolina coast. Of those 55 trawlers, 52 were located south of Cape Romain, within shrimp fishery statistical zone 32. Thirty-four trawlers were sighted between Hilton Head and Kiawah Islands, along the portion of trackline with the highest concentrations of leatherback. Therefore, the Assistant Administrator for Fisheries, NOAA (AA), has determined that all inshore waters and offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 33° N. lat., within the Leatherback conservation zone are closed to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B) or 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intentions to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570–5312 for updated area closure information.

Classification

This action has been determined to be not significant for purposes of E.O. 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide emergency protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zone 32. This action allows shrimp fishing to continue in the affected area and informs fishermen of the gear changes that they can make to protect leatherback sea turtles.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. It would be contrary to the public interest to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Furthermore,

notice and opportunity to comment on this action was provided through the proposed rule establishing these actions (60 FR 25663, May 12, 1995). For these reasons, good cause exists under 5 U.S.C. 553(d)(3) not to delay the effective date of this rule for 30 days. As stated above, this closure has been announced on the NOAA weather radio, in newspapers, and other media, allowing time for the shrimp fishery to comply with this rule.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 7, 1999.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 99–11985 Filed 5–7–99; 4:48 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 64, No. 91
Wednesday, May 12, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[Docket No. TB–99–02]

Tobacco Inspection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it presently appears at the marketplace. The revision would add a special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection. This would allow a distinction between lots that are opened for inspection and lots that are not opened for inspection. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses. To take into account the marketing of bales, a revision would also be necessary in the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco.

DATES: Comments are due on or before June 11, 1999.

ADDRESSES: Send comments to John P. Duncan III, Deputy Administrator, Tobacco Programs, Agricultural Marketing Service (AMS), United States Department of Agriculture (USDA), Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. Comments will be made available for public inspection at this location during regular business hours.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. Telephone (202) 205–0567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department proposes to amend regulations under subpart B, regulations; subpart C, Standards, and subpart G, Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets, pursuant to the authority contained in the Tobacco Inspection Act of 1935, as amended (49 Stat. 731; 7 U.S.C. 511 *et seq.*).

This proposal was based on a research project conducted by AMS and recommendations made by the industry to revise the regulations to better adapt flue-cured bale inspection into the current marketing system. On December 30, 1998, the Flue-Cured Tobacco Advisory Committee (FCTAC) met and reviewed recommendations from the tobacco industry on the flue-cured bale as an alternative packaging method. The recommendations made by the FCTAC have been included in this proposal for regulatory action. The proposed revision would add a special factor to the grademark to identify lots of flue-cured tobacco not opened for inspection, establish dimension and spacing requirements for marketing display of bales, and revise the poundage adjustment for a warehouse selling in excess of the sales schedule.

Flue-cured tobacco has been traditionally marketed in a sheet with a maximum weight of 275 pounds. The dimensions of the sheet is 8 feet x 8 feet and is composed of burlap or other synthetic materials. The tobacco is arranged in a circular pattern on the sheet and the corners are tied diagonally for handling purposes. The lot of sheeted tobacco is approximately 4 feet in diameter.

The tobacco industry has experimented with the bale as an alternative packaging method for marketing flue-cured tobacco during the past 3 years. This alternative package is a 42-inch wide × 42-inch high × 40-inch long bale weighing approximately 750 pounds. The bale is compressed together and bound by metal wires. The FCTAC recommended bale dimensions of 42 inches × 42 inches × 40 inches.

The current regulations under the Tobacco Inspection Act do not specifically restrict baling as a packaging method for flue-cured tobacco. However, the current regulations do require that an official grade determination be based on a thorough examination of a lot of tobacco. A minimum of three locations within a lot is required to be sampled to show the range of the entire lot. However, the buying segment of the tobacco industry has opposed opening bales citing integrity issues. Without the ability to examine the interior of the bale for such conditions as doubtful keeping order (high moisture level), damaged tobacco, or nesting (inferior quality tobacco), an accurate grade determination could not be assured.

During the 1998 flue-cured marketing season, Tobacco Programs conducted a research project on marketing flue-cured tobacco in bales. The research focused on the grade and condition of flue-cured baled tobacco from the beginning to the end of the marketing process. Research data was collected at the farm level as the tobacco was compressed into a bale, at the auction warehouse before and during the day of sale, and at the processing facility as the bale was disassembled.

The purpose of the research project was to determine if significant variations existed between the exterior and interior of the flue-cured bale that would impact the official grade standards. The findings indicated there was no significant variation in grade and condition observed. However, USDA inspectors were present at the farm to observe tobacco being placed into a bale and the potential to conceal inferior quality tobacco was eliminated. Furthermore, the practice of nesting (concealing inferior quality tobacco) has been a problem in the past and it is expected that this problem will be present in the future. Without opening a bale and examining interiors, an accurate grade determination is not assured. Since flue-cured tobacco is and will continue to be marketed in both the sheeted and bale packages, we believe that a distinction needs to be made between lots that are not opened for inspection. Making such a distinction would contribute to grading accuracy and assist in maintaining program integrity. In the event that a problem exists regarding the quality or condition of the interior of the bale, a buyer would have to resolve the matter with the producer or the commissioned warehouse operator.

Accordingly, the Department is proposing to revise the regulations for flue-cured tobacco to more accurately describe tobacco as it appears at the

marketplace. This proposal would revise the current tobacco regulations to allow the inspection of bales of flue-cured tobacco without the bale being opened for inspection. Further, this proposal also provides that the inspection of unopened bales would be distinguished from opened bales by adding the special factor "B" to the grademark.

All lots of tobacco that are subject to mandatory inspection on a designated market should be made accessible to perform grading activities. The recommendation was made that each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors be placed in rows end to end so the open side of the bales are facing the aisles. Also, a minimum space of 30 inches between the rows with the distance between lots of tobacco within the row shall be no less than 12 inches between immediately adjacent lots was recommended. These two spacing proposals would promote the orderly marketing of baled tobacco by providing a uniform marketing display in the warehouse. This would also provide accessibility for inspection of the bales.

An additional proposed revision would increase the poundage adjustment of 2,500 pounds by doubling the poundage amount for a warehouse selling in excess of the daily sales schedule. For example, 2,500 pounds would become 5,000 pounds and 5,000 pounds would become 10,000 pounds. The same would be applicable to undesignated producer tobacco, with 500 pounds becoming 1,000 pounds and 1,000 pounds becoming 2,000 pounds. This action is being proposed because the bale weight is approximately three times as much as tobacco marketed in sheets. This would give the farmers a chance to complete selling their lots of tobacco when the daily sales schedule has been depleted. This proposal should meet industry needs for marketing tobacco in bales.

This rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule has been reviewed under Executive Order 12866, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provision of this rule.

Additionally, in conformance with the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), full consideration has been given to the potential economic impact upon small business. All tobacco warehouses and producers fall within the confines of "small business" which are defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. There are approximately 190 tobacco warehouses and approximately 30,000 producers. The Agricultural Marketing Service has determined that this action would not have a significant economic impact on a substantial number of small entities. This proposal would add a special factor to the grademark to identify any lots of baled flue-cured tobacco not opened for inspection. This change would provide a distinction between lots that are opened for inspection and lots that are not opened for inspection. Accordingly, this change would more accurately describe tobacco as it appears in the marketplace and would assist in maintaining program integrity. Additional bale dimensions and space requirements would be established for uniform marketing display in the warehouses and would provide accessibility for inspection of the bales. A revision would also be made to the poundage adjustment for a warehouse selling in excess of the sales schedule and for undesignated producer tobacco in order to take into account the marketing of bales. These changes would apply equally to both small and large entities and they would take into account the marketing of flue-cured tobacco as it presently appears in the marketplace.

All persons who desire to submit written data, views, or arguments for consideration in connection with this proposal may file them with the Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, PO Box 96456, Washington, DC 20090–6456. A 30 day comment period is provided for comments. This period is deemed appropriate because the flue-cured tobacco marketing season is expected to begin in mid-July and these changes, if adopted, should be made effective as soon as possible.

List of Subjects in 7 CFR Part 29

Administrative practice and procedure, Advisory committees, Government publications, Imports, Pesticides and pests, Reporting and recordkeeping requirements, Tobacco.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 29 be amended as follows:

PART 29—TOBACCO INSPECTION

Subpart B—Regulations

1. The authority citation for part 29, subpart B continues to read as follows:

Authority: 7 U.S.C. 511m and 511r.

2. A new § 29.75b is added to read as follows:

§ 29.75 Display of baled flue-cured tobacco on auction warehouse floors in designated markets.

Each lot of baled flue-cured tobacco displayed for sale on auction warehouse floors shall have a minimum of 30 inches from side to side between the rows with open side of the bale facing the aisles. Distance between lots of baled tobacco within the row shall be no less than 12 inches between immediately adjacent lots.

Subpart C—Standards

3. The authority citation for part 29, subpart C continues to read as follows:

Authority: 7 U.S.C. 511b, 511m, and 511r.

§ 29.1059 [Amended]

4. In § 29.1059, the words "and 29.)" are removed and the words "29, and 30.)" are added in their place.

5. Section 29.1109 is revised to read as follows:

§ 29.1109 Rule 3.

In drawing an official sample from a hogshead or other package of tobacco, three or more breaks shall be made at such points and in such manner as the inspector or sampler may find necessary to determine the kinds of tobacco and the percentage of each kind contained in the lot. All breaks shall be made so that the tobacco contained in the center of the package is visible to the sampler, except for baled tobacco that is not opened for inspection (see Rule 30). Tobacco shall be drawn from at least three breaks from which a representative sample shall be selected. The sample shall include tobacco of each different group, quality, color, length, and kind found in the lot in proportion to the quantities of each contained in the lot.

6. Section 29.1129 is revised to read as follows:

§ 29.1129 Rule 23.

Tobacco shall be designated by the grademark "No-G," when it is offtype, semicured, fire-killed, smoked, oxidized over 10 percent, has an odor foreign to the type, or is packed in bales which are

not approximately 42 inches wide × 42 inches high × 40 inches long .

7. A new § 29.1136 is added to read as follows:

§ 29.1136 Rule 30.

Any lot of baled tobacco that is not opened for inspection but which otherwise meets the specifications of a grade shall be treated as a special factor grade by placing the special factor "B" after the grademark.

8. In § 29.1181, the undesignated text immediately following table "1 Grade of Scrap", is revised to read as follows:

§ 29.1181 Summary of standard grades.

* * * * *

Special factors "U" (unsound), "W" (doubtful-keeping order), "S" (strip), and "M" (mixed) may be applied to all grades. The special factors "dirt" or "sand" may be applied to any grade in the Primings group, including first quality Nondescript from the Primings group. The special factor "B" may be applied to all bales to denote tobacco not opened for inspection. Tobacco not covered by the standard grades is designated "No-G," "No-G-F," or "No-G-Nested."

Subpart G—Policy Statement and Regulations Governing Availability of Tobacco Inspection and Price Support Services to Flue-Cured Tobacco on Designated Markets

9. The authority citation for part 29, subpart G continues to read as follows:

Authority: Tobacco Inspection Act, 49 Stat. 731 (7 U.S.C. 511 *et seq.*); Commodity Credit Corporation Charter Act, 62 Stat. 1070, as amended (15 U.S.C. 714 *et seq.*); sec. 213, Pub. L. 93–180, 97 Stat. 1149 (7 U.S.C. 1421); 49 Stat. 731 (7 U.S.C. 511 *et seq.*), unless otherwise noted.

10. In § 29.9406, paragraphs (c)(1), (c)(2), (c)(3), and (d) are revised to read as follows:

§ 29.9406 Failure of warehouse to comply with opening and selling schedule.

* * * * *

(c) * * *

(1) If the excess is 5,000 pounds or less of designated producer tobacco, the adjustment in producer sales opportunity shall be one pound for each pound of excess; sales in excess of 5,000 pounds shall be a violation of the sales schedule and the adjustment for the first violation shall be 5,000 pounds plus the larger of 3 pounds for each pound in excess of 5,000 pounds or 5,000 pounds; for the second violation, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 or 10,000 pounds; and for the third and subsequent violations, the adjustment shall be 5,000 pounds plus the larger of 5 pounds for each pound in excess of 5,000 pounds or 50 percent of a schedule day's sales opportunity.

(2) If the excess is 1,000 pounds or less of undesignated producer tobacco, the adjustment in producers sales opportunity is one pound for each pound of excess; if the excess is larger than 1,000 pounds, the adjustment is 1,000 pounds plus the larger of 3 pounds for each pound in excess of 1,000 or 2,000 pounds.

(3) If the excess is designated producer tobacco that is not eligible for sales at the warehouse on the day of the sale, the adjustment in producers sales opportunity for the first violation is the larger of 3 pounds for each pound in excess or 5,000 pounds, and for the second and succeeding violations, the larger of 5 pounds for each pound in excess or 10,000 pounds.

(d) If, on any sales day, a warehouse does not sell the full quantity of designated or undesignated tobacco authorized to be sold at such warehouse, the designated or undesignated sales opportunity at such warehouse on the next immediate sales day shall automatically be increased by the unsold quantity except that no such increase in sales opportunity shall exceed 5,000 pounds for designated tobacco or 500 pounds for undesignated tobacco.

Dated: May 6, 1999.

Enrique E. Figueroa,

Administrator, Agricultural Marketing Service.

[FR Doc. 99–11976 Filed 5–11–99; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Federal Crop Insurance Corporation

7 CFR Part 400

RIN 0563–AB70

General Administrative Regulations; Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Proposed rule with request for comments.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations, to allow approved insurance providers to apply to the Federal Crop Insurance Corporation (FCIC) for authority to reduce the premium charged producers in accordance with section 508(e)(3) of the Federal Crop Insurance Act (Act), as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds, and payments to insured-owned and record-controlling entities.

DATES: Written comments and opinions on this proposed rule will be accepted until close of business July 12, 1999 and will be considered when the rule is to be made final. Comments on the information collection requirements must be received on or before July 12, 1999.

ADDRESSES: Interested persons are invited to submit written comments to the Director, Reinsurance Services Division, Risk Management Agency, Stop 0804, United States Department of Agriculture, 1400 Independence Avenue, SW, Washington, DC. 20250–0804. A copy of each response will be available for public inspection and copying from 8 a.m. to 4:30 p.m., EDT, Monday through Friday, except holidays, at the above address.

FOR FURTHER INFORMATION CONTACT: For further information and a copy of the Cost-Benefit Analysis to the General Administrative Regulations, contact E. Heyward Baker, Director, Reinsurance Services Division, Risk Management Agency, at the Washington, DC, address listed above, telephone (202) 720–4286.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget (OMB) has determined this rule to be significant and, therefore, it has been reviewed by OMB.

Cost-Benefit Analysis

A cost-benefit analysis has been completed and is available to interested parties at the Washington, DC address listed above. In summary, the analysis found that: (1) The anti-rebating and record-controlling provisions will promote actuarial soundness of the crop insurance program; (2) premium reductions are more likely to be offered to large premium policy holders than small; (3) the proposed provisions authorize FCIC/RMA management to deny permission to implement premium reductions if there would be a reduction in the overall system's ability to serve all farmers; and (4) the authority and basic requirements for premium reductions are specified in the Act. In order to avoid any adverse impact on small farmers or on the crop insurance program itself, §§ 400.755(b)(1) to (10) provide grounds for FCIC/RMA management to reject premium

reduction applications. Based on the cost benefit analysis and the requirements of the Act FCIC finds that this regulation is in the best interest of the overall crop insurance program and should be proposed in the **Federal Register** for public review and comment.

Paperwork Reduction Act of 1995

In accordance with section 3507 (j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501), the information collection or recordkeeping requirements included in the proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send your written comments to Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are soliciting comments from the public comment concerning our proposed information collection and recordkeeping requirements. We need this outside input to help us:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission responses).

Title: General Administrative Regulations; Premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities.

Abstract: A new program is being proposed that will allow approved insurance providers to apply to FCIC for authority to reduce the premium charged to producers in accordance with the Federal Crop Insurance Act (Act), as amended, and to provide the limitation and procedures established by FCIC.

Purpose: The purpose of this proposed rule is to provide guidelines to approved insurance providers and their agents, employees, and contractors regarding prohibited and permitted practices with respect to premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities.

Burden Statement: The information that FCIC collects on the requested application as defined in § 400.751 of this regulation, will be used to determine if the premium charged to producers may be reduced. The burden for this information collection assumes that approximately 18 reinsured companies will read this regulation. It is further assumed that all 18 reinsured companies will eventually complete an application to obtain written approval from RMA of premium reduction plans.

Estimate of Burden: We estimate it will take 18 reinsured companies 2 hours to read the regulation for a total of 36 hours. In addition, we also estimate it will take them 48 hours each to apply to the program twice a year.

Respondents: 18 reinsured companies.

Estimated annual number of respondents: 18.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 36.

Estimated total annual burden on respondents: The total public burden for this proposed rule is estimated at 900 hours.

Recordkeeping Requirements: FCIC requires records to be kept for three years, but all records required by FCIC are retained as part of the normal business practice. Therefore, FCIC is not estimating additional burden related to recordkeeping.

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW, Washington, DC 20250.

Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule contains no Federal mandates (under the regulatory provisions of title II of UMRA) for State, local, and tribal governments or the private sector. Therefore, this rule is not subject to the requirements of sections 202 and 205 of UMRA.

Executive Order 12612

It has been determined under section 6(a) of Executive Order 12612, Federalism, that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions or on the distribution of power and responsibilities among the various levels of government.

Regulatory Flexibility Act

This regulation will not have a significant economic impact on a substantial number of small entities. The rule provides the guidelines to be used by all approved insurance providers or any other applicant and FCIC in the application, review, and approval of plans to reduce the premiums charged producers. Any submission is entirely voluntary and the guidelines contained in this rule does not impact small entities to a greater extent than large entities. Therefore, this action is determined to be exempt from the provisions of the Regulatory Flexibility Act (5 U.S.C. 605) and no Regulatory Flexibility Analysis was prepared.

Federal Assistance Program

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which require intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115, June 24, 1983.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988 on civil justice reform. The provisions of this rule will not have a retroactive effect. The provisions of this rule will preempt State and local laws to the extent such State and local laws are inconsistent herewith. The administrative appeal provisions published at 7 CFR part 11 or action before the Board of Contract Appeals, whichever is applicable, must be exhausted before any action for judicial review of any determination made by FCIC may be brought.

Environmental Evaluation

This action is not expected to have a significant economic impact on the quality of the human environment, health, and safety. Therefore, neither an

Environmental Assessment nor an Environmental Impact Statement is needed.

Background

The Risk Management Agency (RMA) is charged with the administration of the crop insurance programs for FCIC. As such, RMA is responsible for maintaining an effective, orderly, and efficient crop insurance marketplace, including a delivery system capable of selling and servicing FCIC's crop insurance policies and other risk management products reinsured by FCIC to all producers in a manner that does not unfairly discriminate among producers or insurance companies. The delivery system must support efforts to operate in an actuarially sound manner, to assure program integrity, and to avoid and prevent waste, fraud, and abuse.

Premium reductions; payment of rebates, dividends, and patronage refunds; and payments to insured-owned and record-controlling entities, if improperly made, may have an adverse effect on FCIC's ability to devise and establish an effective and efficient crop insurance marketplace so as to best meet the risk management needs of producers and its responsibility to protect the program and its participants. Rebates are illegal in most States for those lines of insurance regulated by State Departments of Insurance for several reasons, the most important being the destructive impact that they can have on delivery systems and on competition. Use of rebates could negatively impact the smaller insurance companies because they would not be able to provide the same economic incentives that larger companies could provide and, as a result, they may unfairly lose market share. FCIC relies on a healthy and competitive delivery system to assure that all producers are afforded the best quality service, regardless of the size of the farm or the amount of premium earned on the policy. The Standard Reinsurance Agreement in effect for the 1998 reinsurance year prohibits rebates.

Dividends and patronage refunds are normal business practices for mutual, cooperative, and certain other insurance companies as well as to certain kinds of cooperatives such as insurance-buying groups and certain agricultural lenders. While the use of dividends and patronage refunds are generally benign, they can also be used to disguise rebates if they are guaranteed in advance or they are made contingent upon the continued purchase of crop insurance policies. When they are disguised rebates, they have the potential to impact negatively on the delivery system, competition, and the quality of service afforded producers. This rule in part provides procedures and limitations on providing such dividends or patronage refunds.

The use of insured-owned entities in marketing also embodies the potential for disguised rebates. There are instances where associations or cooperatives have contracted with insurance companies to provide a list of members and a product endorsement in exchange for a sum of money. In these cases, the insured may have an interest in the association or cooperative and the insured-owned entity may have the capacity to reward those producers who purchase insurance. Such inducements may be prohibited rebates. This rule is proposed to ensure that any funds paid to the insured-owned entity are used to the benefit of all members and not only those who purchase insurance.

The use of record-controlling entities presents different potential problems. Here the potential impact is not on the delivery system and competition but on FCIC's ability to achieve actuarial soundness and protect program integrity. Record-controlling entities are processors, packers, etc. that maintain the production records for the producer and also have an interest in the insurance policy as the insured or assignee of the policy. FCIC uses production records and related crop production information from storage facilities, packers, processors, and marketers to design insurance products, set premium rates, establish yield guarantees for individual producers through the actual production history program, and to determine the production to count when there is a claim. There are also cases where the record-controlling entity is recruited as an agent and paid a commission. This creates, at the least, a potential conflict of interest and may jeopardize actuarial soundness and program integrity. This rule provides the conditions under which record-controlling entities can participate in the Federal crop insurance program.

Premium reductions for FCIC-reinsured policies are specifically authorized by section 508(e)(3) of the Act, which specifically authorizes reinsured companies to reduce the amount of producer paid premiums if they can demonstrate that they can deliver the crop insurance program for less than the amount of administrative and operating expense reimbursement they receive under the Act. This rule establishes the procedures and limitations required to implement premium reductions.

List of Subjects in 7 CFR part 400

Administrative practice and procedure, Crop insurance, Disaster assistance, Fraud, Penalties, Reporting and recordkeeping requirements.

Proposed Rule

Accordingly, as set forth in the preamble, the Federal Crop Insurance Corporation proposes to amend 7 CFR part 400 by adding subpart W, effective for the 1999 and succeeding reinsurance years, to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart W—Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-controlling Entities for the 1999 and Subsequent Crop Years

Sec.

400.750 Basis, purpose, and applicability.
400.751 Definitions.
400.752 Payment of Rebates.
400.753 Dividends and Patronage Refunds.
400.754 Payments to Insured-Owned and Record-Controlling Entities.
400.755 Reductions in premiums.
400.756 Records and Review.
400.757 Sanctions.

Authority: 7 U.S.C. 1506(1), 1506(p), 1508(e)(3)

Subpart W—Premium Reductions; Payment of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-owned and Record-controlling Entities for the 1999 and Subsequent Crop Years

§ 400.750 Basis, purpose, and applicability.

(a) There is a growing trend to use marketing techniques that compensate or reward insureds who obtain crop insurance in order to increase the amount of premium written and the potential profitability of the reinsured companies. This rule is intended to regulate such conduct to protect the integrity of the crop insurance program.

(b) Section 508(e)(3) of the Act, as amended, authorizes FCIC to approve applications by approved insurance providers to reduce premiums payable by insureds when the private insurance provider is able to demonstrate that it can sell and service the crop insurance program, in accordance with the Act, the Standard Reinsurance Agreement, and the applicable regulations, directives, bulletins and procedures, for less than the amount paid by FCIC to the approved insurance provider for administrative and operating expenses. This subpart provides the timing of the application, the material to be included,

and describes FCIC's approval process for such application.

§ 400.751 Definitions.

Act. The Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*).

Application. A written request to RMA for authority to reduce producer paid premiums

Approved insurance provider. A private insurance company that has been approved by FCIC to sell and service crop insurance policies reinsured by FCIC under the Act.

Cost-accounting statement. A listing of all of the approved insurance provider's administrative and operating costs related to the delivery of the Federal crop insurance program, prepared in a manner that permits comparison with the Expense Exhibit submitted to RMA with the Plan of Operation.

Covered person. An approved insurance provider; any employee, contractor, agent, broker, or solicitor of such approved insurance provider; any agency representing the approved insurance provider; any owner, employer or controller of any such agency or contractor; any spouse or family member residing in the same household as any such, employee, contractor, agent, broker, solicitor, owner, or controller; or any affiliate of any such approved insurance provider, agency, or contractor.

Dividend. Profits or earnings divided among the owners or shareholders in proportion to their ownership share.

Efficiency. A measurable monetary savings realized by an approved insurance provider from changes to the compensation paid to its owners, agents, or employees, or from changes to the administrative and operating procedures that it employs in selling or servicing FCIC-reinsured policies in accordance with the Act, the Standard Reinsurance Agreement, and the applicable regulations, directives, bulletins and procedures. Efficiency does not include underwriting profits earned on such policies, or investment returns.

Entity. Any person, whether incorporated or not, including associations, cooperatives, mutuals, corporations, and similar business organizations that provide any good or service to insured producers.

FCIC. The Federal Crop Insurance Corporation, a wholly owned government corporation within the United States Department of Agriculture.

Insured. The named person shown on the properly completed application for insurance that has been accepted by an approved insurance provider and any person with a substantial beneficial interest in the insured.

Insured-owned entity. Any entity that is at least 25 percent owned or controlled by insureds.

Insured's premium. The portion of the FCIC-approved insurance premium for the risk of loss that the insured must pay.

Patronage refund. A payment to an entity's clients in proportion to the volume of business that each did with the entity or the amount of profit generated from that business.

Person. Any individual or legal entity.

Premium reduction. Payment of a portion of the insured's premium by the approved insurance provider in accordance with section 508(e)(3) of the Act and these regulations.

Rebate. The giving or paying, either directly or indirectly, by a covered person of anything of value to an insured or applicant, or a person affiliated with an insured or applicant, such that the gift or payment may reasonably be construed by RMA as intended to induce the insured or applicant to obtain or maintain insurance coverage with or through the covered person.

Record-controlling entity. Any entity, or its employee, agent, contractor, or affiliate, that produces or controls the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, who also has an interest in the insurance policy as the insured or assignee of the policy.

RMA. The Risk Management Agency, an agency of the United States Department of Agriculture that administers the crop insurance program for FCIC.

Sales closing date. The final date by which an FCIC-reinsured policy may be purchased.

Small Producer. The producer of an insurable crop, which if insured at 65 percent of the recorded or appraised average yield indemnified at 100 percent of the market price, or an equivalent coverage, would have earned a premium, including premium subsidy but excluding administrative and operating subsidy, of no more than $500.

§ 400.752 Prohibited practices.

(a) Rebating in any form is a prohibited practice. Any covered person who provides a rebate to any insured or applicant will be subject to the sanction provisions in § 400.757.

(b) No crop insurance policy will be eligible for FCIC reinsurance, premium subsidy, or administrative and operating subsidy if any covered person makes any of the following payments to the insured producer:

(1) Rebate;

(2) Premium reduction, except with the prior approval of RMA; and

(3) Dividend or patronage refund, if such dividend or refund is promised to the applicant or insured, or is contingent upon the insured maintaining coverage with or through the entity;

(c) No crop insurance policy will be eligible for FCIC reinsurance, premium subsidy, or administrative and operating subsidy if a covered person makes any payment to:

(1) A record-controlling entity or to any employee, agent, or contractor of such an entity, or any entity controlled by such an entity, except as specified in paragraph (d) of this section; or

(2) An insured-owned entity, except an insurance company, or to any employee, agent, or contractor of such an entity, or any entity controlled by such an entity, when the entity participates in or effects any control over the sale of policies and the establishment or verification of the yields upon which insurance guarantees are based or claims for indemnities are made, except as specified in paragraph (d) of this section.

(d) Crop insurance policies specified in paragraph (b)(1) and (2) of this section will be eligible for FCIC reinsurance, premium subsidy, and administrative and operating subsidy when the specified payments:

(1) Are approved in writing by RMA;

(2) Are not based on the amount of FCIC-reinsured crop insurance business sold through the entity; and

(3) The approved insurance provider presents a plan, accepted by RMA, that demonstrates how, in cases involving record-controlling entities, the integrity of the crop production records used to establish the amount of the insurance coverage or the amount of production to count in case of loss on an FCIC-reinsured crop insurance policy, will be protected.

§ 400.753 Dividends and patronage refunds.

(a) Dividends and patronage refunds are permitted unless:

(1) A dividend or patronage refund is promised or guaranteed to be paid to the insured or applicant;

(2) The payment of the dividend or patronage refund is contingent upon the insured or applicant obtaining or maintaining coverage with or through a specific covered person; or

(3) The payment of the dividend, crop insurance, or patronage refund is made only to insureds.

(b) Prior to paying any dividends or patronage refunds to insureds or applicants, the covered person must certify that such payments do not violate paragraph (a) of this section. The covered person making such payments will make those financial records applicable to such payments available for inspection at the request of RMA.

(c) Payment of any dividend or patronage refund in violation of this section will result in the imposition of sanctions in accordance with § 400.757.

§ 400.754 Payments to insured-owned and record-controlling entities.

(a) Covered persons may not enter into agreements with insured-owned entities to purchase a list of producers affiliated with the insured-owned entity or an endorsement of the covered person by the insured-owned entity except as specified in this section.

(1) The covered person must request approval from FCIC in writing in accordance with paragraph (d) of this section.

(2) Covered persons may not execute agreements or make any payments to insured-owned entities until receiving written approval from FCIC.

(3) The insured-owned entity must agree in writing not to make any payments or provide any benefits to any insured or applicant affiliated with the insured-owned entity that is contingent upon the insured or applicant obtaining or maintaining insurance coverage with or through a covered person.

(4) The insured-owned entity must agree in writing that all payments made by the covered person will be deposited in the general fund to be used for the benefit of all producers affiliated with the insured-owned entity equally or in proportion to the persons interest in the insured-owned entity, as applicable.

(5) The amount of the covered persons' payment to the insured-owned entity must be a fixed amount and must not be based on the number of crop insurance policies sold to producers affiliated with the insured-owned entity or the volume of premium written.

(b) For any other type of agreement between covered persons and insured-owned entities, the covered person must comply with all the requirements of this section.

(c) A covered person is prohibited from providing any crop insurance or making any payment to a record-controlling entity unless:

(1) The covered person or the record-controlling entity provides a written request for approval for the record-controlling entity to obtain insurance or receive a payment from FCIC;

(2) The covered person or the record-controlling entity obtains the written approval from FCIC; and

(3) The covered person agrees in writing to appraise any crop under the control of the record-controlling entity and insured with or through the covered person not less than 5 days prior to harvest.

(d) All requests for approval under this section must comply with the following:

(1) All requests for approval must be received not later than 60 days prior to the date an agreement between covered persons and insured-owned entities is to be effective or, for insurance or payments for record-controlling entities, the sales closing date or payment date (requests received after the deadline will be considered for the next crop year unless the request is withdrawn by the approved insurance provider or unless FCIC otherwise agrees in writing);

(2) Each request must include the following material and address each of the following items:

(i) The name of the covered person and the person who may be contacted for further information regarding the request for approval;

(ii) A detailed description of the amounts to be paid by the covered persons and the goods or services to be provided by the insured-owned entity or record-controlling entity; and

(iii) Any other information required by FCIC.

(e) Entering into any agreement, providing insurance or making any payment under this section without the prior written consent of FCIC will result in the imposition of sanctions in accordance with § 400.757.

(f) Approval under this section will only be valid for the period specified by FCIC in its written approval.

§ 400.755 Reductions in premiums.

(a) Approved insurance providers may obtain written approval of premium reduction plans by submitting an application to RMA as follows:

(1) Applications must be received not later than 120 days before the first sales closing date on any crop for which a premium reduction is requested. Applications filed less than 120 days before the sales closing date will be considered for the next crop year unless the application is withdrawn by the approved insurance provider or unless FCIC otherwise agrees in writing.

(2) The application under this section must be sent to the Director, Reinsurance Services Division, USDA/RMA/Stop 0804, 1400 Independence Avenue, SW, Washington, DC 20250–0804.

(3) Each application must include the following:

(i) The name of the approved insurance provider, the person who may be contacted for further information regarding the application, and the person who will be responsible for administration of the premium reduction;

(ii) The crops, insurance plans, the states or counties, and all other eligibility criteria used to determine which insureds will be offered the premium reduction;

(iii) An estimate of the number of producers who will be affected, the crops, counties, and states affected, and the projected total dollar amount of the reduction;

(iv) The first crop year for which the premium reduction is proposed to be offered;

(v) A detailed description of the changes in administrative and operating procedures that produce the efficiency and a detailed cost-accounting statement verifying the existence and the amount of the efficiency (Both statements must be certified by the person authorized to sign the Standard Reinsurance Agreement for the approved insurance provider. The cost-accounting statement must include historical data that permits a comparison of administrative and operating costs before and after the introduction of the new procedures. Estimates may be supplied whenever the procedures have not yet been implemented or have not been implemented long enough to permit the proper collection of cost accounting data);

(vi) A description and an example as to how the approved insurance provider will calculate the premium reduction and present it to eligible insureds;

(vii) A description of those features of the proposed premium reduction plan that will assure that it will not discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(viii) A narrative statement explaining how the application satisfies all applicable approval criteria specified in § 400.755; and

(ix) Any other information that the approved insurance provider wishes to submit or that is required by FCIC.

(b) Compliance with all the following criteria is required for FCIC's approval:

(1) All required information must be timely submitted;

(2) There must not be a reduction in service to policyholders;

(3) There must not be a reduction in training and supervising of agents, loss adjusters, or underwriting and quality assurance personnel;

(4) There must not be a reduction in program integrity or an adverse affect on actuarial soundness;

(5) There must not be a reduction in the total delivery system's ability to serve all producers, including small producers, limited resource farmers as defined in the Basic Provisions, 7 CFR 457.8, minority producers, and producers located in areas with small volumes of crop insurance business;

(6) There must not be a reduction in the total delivery system's ability to provide risk management education to all producers;

(7) The efficiency must be measurable in dollar terms;

(8) RMA must be able to verify the existence and amount of the efficiency and that it is derived from the administrative and operating subsidy and not any expected underwriting gain;

(9) The efficiency must not derive from marketing or underwriting practices that are unfairly discriminatory; such as discriminating among producers on the basis of farm size or premium amount; and

(10) The premium reduction must not jeopardize or diminish the financial condition of the approved insurance provider.

(c) Each application will be reviewed to determine if all necessary documentation is included. FCIC may require changes or adjustments to the application consistent with the Act and FCIC's regulations.

(d) An application to reduce premium will not be approved if FCIC determines that it will discriminate against small producers, limited resources farmers as defined in section 1 of the Basic Provisions, 7 CFR 457.8, or minority producers.

(1) If the insurance provider proposes to offer the premium reduction to an identifiable group of producers or in a specific geographical area, then the premium reduction must be made available to all producers in that group or area, regardless of the amount of premium to be earned on the producer's policy.

(2) No group or geographical area may be defined in such a manner as to exclude small producers, limited resource farmers, or minority producers.

(e) The Director of the Reinsurance Services Division will notify the approved insurance provider of the action taken.

(1) If the application is disapproved, the approved insurance provider:

(i) Will be notified of the reason for disapproval and will be allowed to amend the application in an effort to obtain FCIC's approval. If the approved insurance provider amends the application, the review process starts again and it may not be possible to approve the application in time to have it applicable for the crop year for which such application was submitted; and

(ii) May request reconsideration of the decision with the Deputy Administrator of Insurance Services within 30 days of disapproval. Such request must provide a detailed narrative of the basis for reconsideration.

(2) Approval is solely within the discretion of FCIC.

(3) An approved application may be implemented by the approved insurance provider by the next sales closing date for the affected crop after approval by RMA.

(4) Approved applications for premium reduction will only be valid for the period specified by RMA.

(5) FCIC may rescind any approval at any time that it determines that the requirements imposed by this rule are no longer satisfied or if a change in the Act necessitates rescission. In such case, rescission will not take effect earlier than the date of FCIC's written notice to the approved insurance provider.

(6) The approved insurance provider must report all changes causing a material impact upon a previously-approved application to the Director of the Reinsurance Services Division.

§ 400.756. Records and Review.

At any time after approval, RMA may conduct a review or audit of any action approved under this subpart and require additional information or access to records pertaining to such actions. Failure to comply with this section will result in the impositions of sanctions in accordance with § 400.757.

§ 400.757 Sanctions.

(a) No crop insurance policy in violation of this subpart will be eligible for reinsurance, premium subsidy, or administrative and operating expenses. If reinsurance, premium subsidy, or administrative and operating expenses have been paid for such policy, they must be repaid to FCIC.

(b) Approved insurance providers are responsible for the conduct of all of their covered persons. If such covered person violates any provision in this subpart, the approved insurance provider will be held strictly liable.

Signed in Washington, DC, on May 4, 1999.

Kenneth D. Ackerman,

Manager, Federal Crop Insurance Corporation.

[FR Doc. 99–11759 Filed 5–11–99; 8:45 am]

BILLING CODE 3410–08–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Chap. I

[Docket No. 99–05]

Community Bank-Focused Regulation Review

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is undertaking a review of its regulations with a view toward identifying rules that may impose disproportionate or unnecessary burden on community banks. This advance notice of proposed rulemaking (ANPR) identifies several parts of the OCC's regulations that are already under review, requests comment on changes that could be made to these regulations, and solicits suggestions for improvements in other areas that would be helpful to community banks. The intended effect of this action is to identify areas where the OCC could reduce unnecessary burden on community banks without impairing their safety and soundness.

DATES: Comments must be received by July 12, 1999.

ADDRESSES: Please direct your comments to: Docket No. 99–05, Communications Division, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC, 20219. You can inspect and photocopy all comments received at that address. In addition, you may send comments by facsimile transmission to FAX number (202) 874–5274, or by electronic mail to REGS.COMMENTS@OCC.TREAS.GOV.

FOR FURTHER INFORMATION CONTACT: Stuart Feldstein, Assistant Director, or Heidi Thomas, Senior Attorney, Legislative and Regulatory Activities, at (202) 874–5090.

SUPPLEMENTARY INFORMATION:

Background

The OCC supervises over 2,400 national banks that vary widely in size, business strategy, complexity, and

geographic diversity. The OCC has a strong commitment to ensure that our regulations encourage, rather than impede, national banks' efficiency and competitiveness, consistent with safety and soundness. Toward that end, we continually reevaluate our rules in order to identify and eliminate requirements that impose burdens on banks that are not necessary to maintain safety and soundness, promote fair access to financial services for consumers, or accomplish the OCC's other statutory responsibilities.

In 1996, the OCC completed a three-year, comprehensive effort to review and revise all of its regulations. The results of this effort, which was called the Regulation Review Program (Program), were positive. Most of the bankers, trade group representatives, banking lawyers, and consumer representatives whom the OCC asked about the effects of the Program thought that, on balance, it had been a success. While some of the regulatory changes made pursuant to the Program were designed to benefit community banks, the Program did not have the community bank charter as a particular focus.

The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. For example, many community banks have more direct "hands-on" oversight by senior management and smaller spans of operations and controls such that less complex risk-management or compliance systems may be appropriate. Differences between community banks and larger banks in operational structure and focus may result in inefficient or uneven application of regulatory requirements. Therefore, we believe that it is appropriate to take a fresh look at our regulations with the community bank perspective in mind.[1]

Specifically, the OCC is considering further changes to our regulations that would take into account the impact the rules have on community banks' resources, as well as other factors that bear on community banks' operations. For example, community banks typically have smaller, less specialized staffs than larger banks, so the burden of complying with complex regulations is proportionately higher. The purpose of our community bank-focused regulation review is to eliminate or modify regulatory requirements that impose unnecessary burden. In addition, we are seeking to identify regulations as to which it may be appropriate to develop alternative, differential regulatory approaches that will achieve the OCC's goals while minimizing burden on community banks.

This advance notice describes four areas of regulation that the OCC is already reviewing. In those areas, commenters are invited to make specific suggestions for change. Depending on the results of the OCC's own review and the suggestions made by commenters, we will then consider proposing specific revisions to our rules for comment. In addition, commenters on this advance notice are invited to suggest other regulations that could be modified in ways helpful to community banks.

A few of the OCC's regulations distinguish among banks based on asset-size categories and apply different requirements to smaller banks. For example, 12 CFR part 25, the regulation implementing the Community Reinvestment Act (CRA), provides for alternative means of compliance for banks with less than $250 million in assets. The OCC does not have a standard, generally applicable definition of "community bank," however. We invite comment on whether to adopt such a definition for purposes of this regulation review. If so, should the definition be based primarily on asset size, and what should the asset threshold be? Should the OCC consider factors other than asset size, such as whether the bank is the sole provider of banking services in a community, regardless of asset size?

Areas Currently Under Review

Part 5—Corporate Activities and Transactions

Community banks, like larger national banks, routinely seek OCC approval for different types of corporate transactions. Recent amendments to the OCC's operating subsidiary rule reduced burden by grouping procedures for OCC approval of operating subsidiary activities into different categories based upon the novelty of the activity and level of risk it presents. The required approval procedures vary depending upon the group in which the activity is placed. For example, qualifying national banks need only file a simple after-the-fact notice for certain, so-called "plain vanilla" activities (*e.g.*, providing accounting, data processing, and other business services for the bank or its affiliates). A 30-day review under an expedited filing procedure may be available for more complex operating subsidiary activities. *See* 12 CFR 5.34(e).

We invite comment on whether and how we could improve the current rule to further reduce application burden for community banks seeking to engage in certain routine bank-permissible activities. Specifically:

(1) Should the OCC expand the list of activities eligible for after-the-fact notice or expedited filing to include more activities that do not present significant safety and soundness concerns?

(2) What types of activities should the OCC include in such an expanded list?

Banks that have experience with the OCC's applications process are also invited to make suggestions about how that process could be streamlined or improved for community banks. For example, could the OCC modify the process to reduce the need for, and therefore the costs of, community bank reliance on outside expertise to help them comply with filing requirements?

Branching is an area in which community banks are especially active. In 1998, national banks with assets of less than $250 million filed approximately 358 branching applications. National banks with assets of between $250 million and $1 billion filed 213 branching applications. OCC intrastate branch application procedures generally require a 30-day public comment period and a decision no later than 15 days after the close of the public comment period or 45 days after the filing, whichever is later, for applications qualifying for expedited processing, and no later than 30 days after the close of the comment period for applications subject to standard processing. (The comment period for applications to engage in a short-distance branch relocation is 15 days.) OCC rules also require an applicant to publish notice of its filing in a newspaper of general circulation in the community in which the applicant proposes to engage in business.

We are requesting comment on whether there are alternative time frames or methods of providing public notice that would reduce burden for community banks while preserving the ability of the public to provide meaningful comment pursuant to the CRA or otherwise. For example:

(1) Would posting a conspicuous notice at the main office and all existing branches of the bank in lieu of newspaper publication reduce unnecessary burden but still provide adequately for public participation?

[1] The OCC already recognizes and incorporates into its supervisory approach the distinctions between large banks and community banks. The OCC has, for example, developed approaches to examination and supervision that are appropriate to each charter type. *See, e.g., Comptroller's Handbook*, Community Bank Supervision (August 1998), Large Bank Supervision (July 1998). *See also id.*, Community Bank Fiduciary Activities Supervision (December 1998).

(2) Are there other reasonable regulatory alternatives that would be less burdensome for community banks but that are consistent with statutory requirements and the OCC's supervisory goals?

Part 32—Lending limits

Federal law (12 U.S.C. 84) limits the amount of loans and extensions of credit a national bank can make to any one borrower to 15 percent of a national bank's unimpaired capital and surplus. A bank may lend an additional 10 percent if the credit is secured by readily marketable collateral. Section 84 also provides exceptions to these limits for various types of loans or extensions of credit, such as loans secured by certain obligations of the United States or fully guaranteed by the United States, loans secured by a segregated deposit account, and loans arising from the discount of certain types of commercial paper. The OCC is authorized to issue rules to carry out the purposes of Section 84 and to establish limits or requirements other than those specified in this section for particular classes or categories of loans or extensions of credit. The OCC's rule implementing section 84 is set forth at 12 CFR part 32.

Community banks in a number of states have represented to the OCC that disparities in the lending limits applicable to national banks impair their ability to provide effective and competitively priced services in many cases. We are interested in obtaining further information about the extent to which these limits may constrain community banks from prudently extending credit, especially as compared with other financial services providers in the markets in which they compete. Commenters are invited to provide specific information about such disparities in particular states, and to address the following questions:

(1) Does the national bank lending limit create competitive disadvantages for community banks?

(2) Are community banks operating under national charters losing significant business to competitors, as a result of the constraints imposed by the national bank lending limits? If so, which types of lending are most heavily affected?

(3) Are there factors in addition to the lending limits that could be contributing to this business loss?

Because the lending limit promotes diversification of credit risk, which is fundamental to the safe and sound operation of banks, the OCC must undertake any revisions to the national bank lending limit rules with great care. Commenters who recommend changes to the OCC's lending limit rule therefore are asked to:

(1) Identify specific categories of loans or borrowers that might be addressed;

(2) Identify prudential conditions that the OCC might impose, to ensure that any change is implemented consistent with safety and soundness; and

(3) Discuss whether any changes to the lending limits should include safeguards, such as collateralization or margin requirements, similar to those imposed by some states with lending limits that exceed those in 12 CFR part 32.

Commenters are also invited to evaluate the effect of the lending limit rules on structures, such as loan participations, that are commonly used to diversify credit risk and to recommend any changes to these provisions that would facilitate community banks' use of these structures, consistent with safety and soundness.

Part 7—Corporate Governance

The OCC recently revised some of its rules to enhance a national bank's flexibility to use the corporate governance procedures that are best suited to a particular bank's operations. For example, part 7 of our regulations now permits national banks to adopt the corporate governance provisions in the law of the state where the main office of the bank is located, the state where the holding company of the bank is incorporated, the Delaware General Corporation Law, or the Model Business Corporation Act, to the extent that these standards are not inconsistent with applicable federal banking statutes or regulations, or bank safety and soundness.

Community bank operations and management may present unique concerns from a corporate governance perspective, and we invite comment on whether there are additional ways to enhance the flexibility of existing procedures. For example, are there specific state law provisions that we should consider including in the regulation as appropriate for adoption by community banks?

Part 3—Capital Adequacy

The OCC, and the other federal banking agencies,[2] measure banks' capital adequacy according to a detailed set of uniform standards based on an international agreement, commonly referred to as the Basle Accord, which was concluded in 1988 by the Basle Committee on Banking Regulations and Supervisory Practices (the Basle Committee).[3] The 1988 Accord applies to internationally active banks.[4] The OCC's capital adequacy standards, however, apply to all national banks, and the other agencies' standards similarly apply to all of the institutions they supervise.

The OCC is interested in learning commenters' views about whether the differences in activities and levels and types of risks between large and community banks warrant a differential approach to supervising capital adequacy. Commenters addressing this issue are invited to:

(1) Suggest a different, simpler overall approach to measuring capital adequacy for community banks; and

(2) Identify specific aspects of the OCC's part 3 standards that could be revised or applied differently to community banks.

The part 3 capital adequacy standards are linked directly to the prompt corrective action (PCA) provisions in 12 CFR part 6 of the OCC's rules. The capital categories used for PCA purposes (*e.g.*, well capitalized, adequately capitalized, etc.) are defined by reference to the standards and definitions in part 3. The PCA framework, which derives from statute,[5] is a crucial component of safety and soundness supervision. Like the capital adequacy standards, it has been implemented jointly by the OCC and the other federal banking agencies. Accordingly, commenters favoring a differential approach to capital adequacy supervision for community banks are encouraged to address how such an approach could be implemented consistent with the PCA requirements.

We expect to use the information that commenters provide on this issue to inform our discussions with the other agencies about alternative approaches to

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[2] The OCC's capital adequacy standards appear at 12 CFR part 3. The Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) each have regulations containing similar standards.

[3] This Committee is now known as the Basle Committee on Banking Supervision. The Basle Committee was established in 1975 by the central bank Governors of the Group of Ten Countries. It consists of senior representatives of bank supervisory authorities and central banks from Belgium, Canada, France, Germany, Italy, Japan, Luxembourg, the Netherlands, Sweden, Switzerland, the United Kingdom, and the United States. It usually meets at the Bank for International Settlements in Basle, where its permanent Secretariat is located.

[4] The Basle Committee is currently considering revisions to the 1998 Accord. Any changes would be subject to a consultative process and are expected also to apply to internationally active banks.

[5] *See* 12 U.S.C. 1831o (PCA statute); 12 CFR part 6 (OCC PCA regulation).

evaluating capital adequacy for small institutions. After receiving comments in response to this ANPR, the OCC will consult with the other agencies to determine if modifications to the capital regulations are appropriate.

Comment Solicitation

The OCC invites comment generally on each of the areas identified in this advance notice, as well as specifically on the questions asked in each area. For each of these areas, we are interested in:

(1) Whether existing rules are requiring inefficient allocation of the bank's existing resources or imposing undue burdens on in-house staff.

(2) What community bank lines of business or community bank operations are affected by the rule and what specific requirements require the bank to obtain expertise from outside sources?

(3) Could we change or modify specific provisions to reduce burdens on community banks without compromising safety and soundness standards?

(4) Are there reasonable regulatory alternatives that would be less burdensome for community banks?

In addition, commenters on this notice are invited to suggest other regulations that could be modified in ways helpful to community banks.

Dated: May 4, 1999.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 99–12011 Filed 5–11–99; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 050399D]

New England Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a 2-day public meeting on May 26 and 27, 1999, to consider actions affecting New England fisheries in the exclusive economic zone.

DATES: The meeting will be held on Wednesday, May 26, 1999, at 9:30 a.m. and on Thursday, May 27, 1999, at 8:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Plymouth Inn, 180 Water Street, Plymouth, MA 02360; telephone (508) 747–4900. Requests for special accommodations should be addressed to the New England Fishery Management Council, 5 Broadway, Saugus, MA 01906–1036; telephone: (781) 231–0422. Copies of framework adjustment documents may be obtained from the Council.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council (781) 231–0422.

SUPPLEMENTARY INFORMATION:

Wednesday, May 26, 1999

After introductions, the Executive Director of the South Atlantic Fishery Management Council will discuss the Atlantic Coastal Cooperative Statistics Program process from a Council perspective. During the Groundfish Committee Report which follows, the committee will make recommendations to the Council regarding approval of Framework Adjustment 31 (FWA 31) to the Northeast Multispecies Fishery Management Plan (FMP). Possible management measures on FWA 31 would require vessels in the multispecies fishery to remove four 30-day blocks out of their fishing time in the fishery to achieve the FMP objectives for Georges Bank cod and minimize impacts on other regulated species. Other possible measures in this framework include eliminating the Gulf of Maine cod trip limit program running clock, raising the cod minimum size to 21 inches (0.5 m), and reducing the number of hooks and gillnets fished by fixed gear vessels on Georges Bank. The Groundfish Committee also will provide the Council with an update on the development Amendment 13 to the FMP. The discussion of groundfish issues will continue throughout the rest of the afternoon.

Thursday, May 27, 1999

The meeting will commence with reports from the Council Chairman, Executive Director, Acting NMFS Regional Administrator, Northeast Fisheries Science Center and Mid-Atlantic Fishery Management Council liaisons, and representatives of the Coast Guard and the Atlantic States Marine Fisheries Commission. During the Scallop Committee Report, the Council will identify issues to be addressed by Amendment 10 to the Atlantic Sea Scallop FMP, including rotational area management. Additionally, the Council will issue recommendations to the Acting Regional Administrator for specific research proposals utilizing the 1 percent scallop Total Allowable Catch set-aside from Closed Area II. During the Whiting Committee Report, the committee will recommend ways to modify the mesh size/possession limit enrollment program and expand the use of net strengtheners to the 2.5 inch (0.06 m) category in the whiting fishery. Any recommendations approved by the Council may be submitted to NMFS for its consideration as a public comment on Amendment 12 to the Northeast Multispecies Fishery Management Plan. The Council will discuss industry-based gear research and information collection opportunities during years 1 and 2 of plan implementation. During the afternoon session, the Interspecies Committee will report on and ask for approval of committee priorities, including vessel permit consistency and upgrading issues and recommendations for changing the start dates of the fishing years. The committee will report on their discussions about vessel capacity management. The Habitat, Enforcement, Dogfish, Herring, and Ad-hoc Vessel Buyback Committees will update the Council on their activities.

Although other issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice.

Documents pertaining to framework adjustment actions are available for public review 7 days prior to a final vote by the Council. Copies of the documents may be obtained from the Council (see **ADDRESSES**).

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting date.

Dated: May 6, 1999.

Bruce Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12031 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 64, No. 91
Wednesday, May 12, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Notice of Availability of Environmental Assessment and Finding of No Significant Impact

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of Availability of Environmental Assessment and Finding of No Significant Impact.

SUMMARY: An Environmental assessment on the Council's proposed regulatory revisions of its regulations implementing Section 106 of the National Historic Preservation Act was prepared in accordance with the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and the Advisory Council on Historic Preservation's NEPA regulations, 36 CFR Part 805. The environmental assessment made a preliminary determination that promulgation of the revised regulations would not have a significant impact on the quality of the human environment and that preparation of an environmental impact statement would not be necessary. Notice of the availability of the environmental assessment and preliminary determination of no significant impact, and of a 30-day public comment period was published in the **Federal Register** on August 12, 1997. The Council has considered the comments received and has found that the proposed action will have no significant impact on the human environment. Copies of the environmental assessment and finding of no significant impact may be obtained by contacting the person listed below.

FOR FURTHER INFORMATION CONTACT: Javier Marqués, Assistant General Counsel, Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, Suite 809, Washington, DC 20004. (202) 606–8503.

Authority: 42 U.S.C. 4321 *et seq.*; 36 CFR part 805.

Dated: May 6, 1999.

John M. Fowler,

Executive Director.

[FR Doc. 99–11906 Filed 5–11–99; 8:45 am]

BILLING CODE 4310–10–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Malaria Vaccine Development Program: Federal Advisory Committee; Notice of Meeting

Pursuant to the Federal Advisory Committee Act, notice is hereby given of a meeting of the USAID Malaria Vaccine Development Program (MVDP) Federal Advisory Committee. The meeting will be held from 8:30 AM to 5:00 PM on June 10, 1999 and from 8:30 to noon on June 11, 1999 at the Conference Room of the Environmental Health Project located in Suite 300, 1611 North Kent Street in Arlington, VA 22209–2111.

The agenda will concentrate on the activities of the MVDP over the past six months and plans for the next year. The meeting will be open to the public unless it is necessary to discuss procurement sensitive information; should this be the case, it will be announced and the meeting closed at the appropriate time. Any interested person may attend the meeting, may file written statements with the committee before or after the meeting, or present any oral statements in accordance with procedures established by the committee, to the extent that time available for the meeting permits.

Those wishing to attend the meeting or to obtain additional information about the USAID MVDP should contact Carter Diggs, the designated Federal Officer for the USAID MVDP Federal Advisory Committee at the Office of Health and Nutrition, USAID/G/PHN/HN/EH/, Room 3.07–013, 3rd floor, RRB, Washington, DC 20523–3700, telephone (202) 712–5728, Fax (202) 216–3702, cdiggs@usaid.gov.

Carter Diggs,

USAID Designated Federal Officer (Technical Advisor, Malaria Vaccine Development Program).

[FR Doc. 99–12027 Filed 5–11–99; 8:45 am]

BILLING CODE 6116–01–M

COMMODITY CREDIT CORPORATION

Sunshine Act Meeting

TIME AND DATE: 2:00 p.m., May 17, 1999.

PLACE: Room 104–A, Jamie Whitten Building, U.S. Department of Agriculture, Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the Minutes of the Open Meeting of May 11, 1998.
2. Memorandum re: Update of Commodity Credit Corporation (CCC)-Owned Inventory.
3. Memorandum re: Commodity Credit Corporation's (CCC's) Financial Condition Report.
4. Memorandum re: Settlement Actions Report.
5. Resolution re: Revisions of Bylaws of Commodity Credit Corporation.
6. Resolution re: Termination of Obsolete Commodity Credit Corporation Board Dockets.
7. Docket P–CON–99–008, re: Delegation of Authority for Commodity Credit Corporation Agreements with Federal Agencies, State and Local Governments, and Other Entities for Hazardous Waste Management.

CONTACT PERSON FOR MORE INFORMATION: Juanita B. Daniels, Acting Secretary, Commodity Credit Corporation, Stop 0571, U.S. Department of Agriculture, 1400 Independence Avenue SW, Washington, D.C. 20250–0571.

Dated: May 7, 1999.

Juanita B. Daniels,

Acting Secretary, Commodity Credit Corporation.

[FR Doc. 99–12146 Filed 5–10–99; 2:54 pm]

BILLING CODE 3410–05–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Uniform Grain and Rice Storage Agreement Fees

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of fees.

SUMMARY: The purpose of this notice is to publish a schedule of fees to be paid to Commodity Credit Corporation (CCC) by grain and rice warehouse operators requesting to enter into a storage agreement to store CCC commodities or commodities pledged as collateral for

CCC loans; increase the amount of storage covered by an existing storage agreement for storage of such commodities; or renew an existing agreement for the storage of such commodities.

EFFECTIVE DATE: April 1, 1999.

FOR FURTHER INFORMATION CONTACT: Howard Froehlich, Chief, Storage Contract Branch, Warehouse and Inventory Division, Farm Service Agency, United States Department of Agriculture, 1400 Independence Avenue, SW STOP 0553, Washington, DC 20250–0553, telephone (202) 720–7398, FAX (202) 690–3123.

Determination: In accordance with the provisions of the Commodity Credit Corporation Charter Act (15 U.S.C. 714 *et seq.*), CCC enters into storage agreements with grain and rice warehouse operators to provide for the storage of commodities owned by CCC or pledged as security to CCC for marketing assistance loans.

Specifically, 7 CFR part 1421.5558 provides that all grain and rice warehouse operators who do not have an existing agreement with CCC for storage and handling of CCC-owned commodities or commodities pledged to CCC as loan collateral, but who desire such an agreement, must pay an application and examination fee for each warehouse for which CCC approval is sought prior to CCC conducting the original warehouse examination.

A review of the revenue collected for application and examination fees indicates that the fees collected are insufficient to meet costs incurred by CCC for warehouse examinations and contract origination administrative functions. Accordingly, beginning April 1 with the start of the 1999–2000 contract year, the fees are changed by increasing by 7.5 percent those fees applicable to the 1998–99 contract year.

The fee will be computed at the rate of $16 for each 10,000 bushels of storage capacity or fraction thereof, but the fee will be not less than $160 nor more than $1,600.

Further each warehouse operator who has a non-federally licensed grain or rice warehouse in States that do not have a cooperative agreement with CCC for warehouse examinations must additionally pay an annual fee to CCC for each such warehouse which is approved by CCC or for which CCC approval is sought. The collection of the additional fee by CCC is currently suspended. CCC continues to suspend collection of the annual fee, but CCC may reinstate the annual fee by future notice to the industry.

Signed at Washington, DC, on May 5, 1999.

Keith Kelly,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 99–11993 Filed 5–11–99; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

Notice of Request for Approval of New Information With Use of a Survey

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service (RBS) has received approval for a new information collection in order to render service to associations of producers of agricultural, forestry, and fisheries products and federations and subsidiaries thereof as authorized in the Cooperative Marketing Act of 1926.

DATES: Comments on this notice must be received by July 12, 1999 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Julie A. Hogeland, Agricultural Economist, RBS, U.S. Department of Agriculture, 1400 Independence Avenue SW, Stop 3253, Washington, DC. 20250–3253, Telephone (202) 690–0409.

SUPPLEMENTARY INFORMATION:

Title: Local Cooperatives' Role in the Emerging Grain and Feed Industry.

OMB Control Number: 0570–0032.

Expiration Date of Approval: September 30, 1999.

Type of Request: New Information Collection.

Abstract: The mission of the Rural Business-Cooperative Service (RBS), formerly Agricultural Cooperative Service (ACS), is to assist farmer-owned cooperatives in improving the economic well-being of their farmer-members. This is accomplished through a comprehensive program of research on structural, operational, and policy issues affecting cooperatives; technical advisory assistance to individual cooperatives and to groups of producers who wish to organize cooperatives; and development of educational and informational material. The authority to carry out RBS's mission is defined in the Cooperative Marketing Act of 1926 (44 Stat. 802–1926).

Authority and Duties of Division (7 U.S.C. 453)

(a) The division shall render service to associations of producers of agricultural products, and federations and subsidiaries thereof, engaged in the cooperative marketing of agricultural products including processing, warehousing, manufacturing, storage, the cooperative purchasing of farm supplies, credit, financing, insurance, and other cooperative activities.

(b) The division is authorized to:

(1) Acquire, analyze and disseminate economic, statistical, and historical information regarding the progress, organization, and business methods of cooperative associations in the United States and foreign countries.

(2) Conduct studies of the economic, legal, financial, social and other phases of cooperation, and publish the results thereof. Such studies shall include the analyses of the organization, operation, financial and merchandising problems of cooperative organizations.

(3) Make surveys and analyses if deemed advisable of the accounts and business practices of representative cooperative associations upon their request; to report to the association surveyed the results thereof; and, with the consent of the association surveyed, to publish summaries of the results of such surveys, together with similar facts, for the guidance of cooperative associations and for the purpose of assisting cooperative associations in developing methods of business and market analysis.

(4) Acquire from all available sources, information concerning crop prospects, supply, demand, current receipts, exports, imports, and prices of agricultural products handled or marketed by cooperative associations, and to employ qualified commodity marketing specialists to summarize and analyze this information and disseminate the same among cooperative associations and others.

RBS also has a stated objective to monitor the structure, conduct, and performance of the grains and oilseeds marketing systems and the role and effectiveness of cooperatives within that system; analyze the impact of government programs and policies that affect grains and oilseeds cooperatives; and provide leadership and guidance to grain and oilseed cooperatives based on the results of research and technical assistance studies and on program experience.

The elimination of government storage programs during the mid-1990s removed what, for many years, was the financial backbone of most cooperative

grain elevators. At the same time, the market began a crucial transformation to more fully account for differences in the value of grain in its end use.

Export markets, the genesis of this transformation, typically blend grain lots to achieve a minimum average No. 2 quality. They usually do not pay premiums for No. 1 grain, and they discount from the No. 2 standard. The industry argues that economic gains from blending allow it to operate on a narrower per bushel price margin. This emphasis on price downplays the functional attributes that affect nutrient content or processing characteristics. Moreover, kernel characteristics which increase the harvestability and storability of grain are the opposite of those that improve the efficiency of processing operations. Although processors want softer-textured, thin pericap kernels, plant breeders have generally focused on harder-textured products.

Consequently, softer grains must be produced on a systematic and contractual basis since such varieties deteriorate when passing through the traditional commodity distribution system. These newer, often genetically-engineered grains are typically produced and marketed outside today's commodity system and purchased as "manufactured" or identity-preserved products.

Cooperatives' infrastructure—farmer linkages, elevators, distribution channels, and grain processing activities—gives them an unparalled opportunity to position themselves within the emerging identity-preserved grain sector before alternative systems have emerged. Yet, it is not clear to what degree cooperatives are cognizant of or prepared for these opportunities. The survey will reveal a baseline of cooperative resources and preferences that, at a minimum, could raise cooperative awareness of industry opportunities, and, ultimately, contribute to the standardized production and marketing grain sector desired by processors.

Because identity-preserved grains represent a new industry, data on production intentions, marketing, infrastructure requirements, and other facets of industry structure and performance are not available from alternative sources.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Local cooperatives involved in grain or feed marketing or handling.

Estimated Number of Respondents: 700.

Estimated Number of Responses per Respondent: One.

Estimated Total Annual Burden on Respondents: 175 hours.

Copies of this information collection can be obtained from Jean Mosley, Support Services Division, Regulation and Paperwork Management Branch, at (202) 690–0041.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Support Services Division, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, 1400 Independence Avenue SW, Stop 0742, Washington, D.C. 20250. All comments to this notice will be summarized. All comments will also become a matter of a public record.

Dated: April 28, 1999.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 99–11979 Filed 5–11–99; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Distance Learning and Telemedicine Loan and Grant Program

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Application filing deadline.

SUMMARY: The Rural Utilities Service (RUS) announces its Distance Learning and Telemedicine Program application window for funding during fiscal year (FY) 1999. For FY 1999, $12.5 million in grants and $150 million in loans will be made available for distance learning and telemedicine projects serving rural America. The funding will be provided in three categories: (1) $7.5 million will be available for grants; (2) $100 million will be available for loans; and (3) $55 million will be available for combination grants and loans ($5 million in grants paired with $50 million in loans).

DATES: Applications for grants must be postmarked by RUS no later than Friday, July 9, 1999. Applications for FY 1999 loans or combination loans and grants may be submitted at anytime up to September 30, 1999, and will be processed on a first-come, first-serve basis.

ADDRESSES: Applications are to be submitted to the Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW, STOP 1550, Washington, DC 20250–1550. Applications should be marked "Attention: Director, Advanced Services Division, Telecommunications Program".

FOR FURTHER INFROMATION CONTACT: Roberta D. Purcell, Assistant Administrator, Telecommunications Program, Rural Utilities Service, STOP 1590, 1400 Independence Avenue, SW., Washington, DC 20250–1590, Telephone (202)720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: For FY 1999, $7.5 million in grants, a combination of $5 million in grants paired with $50 million in loans, and $100 million in loans will be made available for distance learning and telemedicine projects. On May 10, 1999, regulations published in the **Federal Register**, March 25, 1999, at 64 FR 14401, governing this program became final. These new regulations clarify the requirements for the different types of financial assistance offered; streamline policies and procedures for obtaining loans and expand the purposes for which loan funds can be used; and award grants on a competitive basis.

Notice is hereby given that under §§ 1703.124, 1703.133, and 1703.143, RUS has determined the maximum amount of an application for a grant that will be considered for funding in FY 1999 as $350,000. The maximum amount for a loan, generally, that will be considered for funding in FY 1999 is $10,000,000. However, RUS may fund a project greater than $10,000,000 subject to the project's feasibility and the availability of loan funds.

Applications for financial assistance must be submitted in accordance with 7 CFR part 1703, which establishes the policies and procedures for submitting an application for financial assistance. This document and an application guide to assist in the preparation of applications are available on the

Internet at the following address: "http://www.usda.gov/rus/dlt/dlml.htm". Applications guides may also be requested from RUS by contacting one of the following Area Offices:

Eastern Area, USDA–RUS, Phone: (202) 690–4673

Northwest Area, USDA–RUS, Phone: (202) 720–1025

Southwest Area, USDA " RUS, Phone: (202) 720–0800

Each application will be reviewed for completeness in accordance with 7 CFR part 1703. The applicant will be notified within 15 working days of receipt of the results of this review, citing any information needed to complete the application. It is suggested that grant applications be submitted prior to the deadline to ensure they can be reviewed and considered complete by the deadline.

Dated: May 6, 1999.

Wally Beyer,

Administrator, Rural Utilities Service.

[FR Doc. 99–11856 Filed 5–11–99; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 17–99]

Foreign-Trade Zone 124—LaPlace, LA, Foreign-Trade Subzone 124H–Bollinger Shipyards Lockport, LLC; Application for Expansion (Shipbuilding)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the South Louisiana Port Commission, grantee of FTZ 124, requesting authority to expand Subzone 124H, at the Bollinger Shipyards Lockport, LLC (Bollinger) shipbuilding facility located in Lockport, Louisiana, to include four new sites in Lafourche and St. Mary Parishes. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on April 29, 1999.

Subzone 124H was approved on July 10, 1998 (Board Order 993, 63 FR 39069, 7–21–98). The subzone currently consists of one site (250 acres) is located at 8365 Louisiana Highway 308, about 4 miles south of Lockport (Lafourche Parish), Louisiana. The applicant is now requesting authority to expand the subzone to include four additional sites: proposed Site 2 (168 acres)—Bollinger Larose, LLC, 1515 Highway 24, Larose (Lafourche Parish); proposed Site 3 (67 acres)—Bollinger Marine Fabricators, LLC, 816 Bollinger Lane, Amelia (St. Mary's Parish); proposed Site 4 (101 acres)—Bollinger Morgan City, LLC, 806 Bollinger Lane, Amelia; and, proposed Site 5 (50 acres)—Bollinger Amelia Repair, LLC, 606 Ford Industrial Road, Amelia. The Bollinger Lockport facility is used for the construction and repair of commercial and government vessels under FTZ procedures for domestic and international customers.

This proposal does not request any new authority under FTZ procedures in terms of products or components, but it does involve a potential increase in the facility's level of production under FTZ procedures. Bollinger will operate the proposed sites as an integral part of Subzone 124H.

The proposed expanded manufacturing activity conducted under FTZ procedures would be subject to the "standard shipyard restriction" applicable to foreign-origin steel mill products (e.g., angles, pipe, plate), which requires that Customs duties be paid on such items.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application will be available for public inspection at the following locations:

Office of the Port Director, U.S. Customs Service, 110 North Airline Avenue, Gramercy, LA 70052

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: April 30, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–12016 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 16–99]

Foreign-Trade Subzone 59A—Lincoln, NE; Request for Removal of Board Order Condition; Kawasaki Motors Manufacturing Corp., U.S.A. (Utility Work Trucks)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ 59A, requesting removal of the time limit in Board Order 744 (60 FR 30518, 6–9–95), which authorized the manufacture of utility work trucks (Mules™) under FTZ procedures for an initial period ending July 1, 1999, subject to extension. The application was formally filed on April 29, 1999.

Subzone 59A was approved by the Board in 1980 with authority granted for the manufacture of motorcycles, jet skis, and four wheel all-terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). The subzone was subsequently expanded in 1994 (Board Order 712, 59 FR 66891, 12–28–94). The Board later approved the manufacture of off-road, utility work trucks and industrial robots with 6 or more axes of motion under FTZ procedures for the U.S. market and export (Board Orders 744 and 745, 60 FR 30517, 6–9–95) .

KMM is now requesting that the FTZ manufacturing authority for utility work trucks be extended on a permanent basis. Foreign-sourced components for the work trucks comprise approximately 53 percent of the value of finished vehicles' materials and include: engines, transmissions, calipers/brake parts, and tires (duty rate range: free–9.0%).

FTZ procedures exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company is able to choose the duty rate that applies to finished work trucks (HTSUS 8709.19.0030, duty free) for the foreign components noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their

receipt is July 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW., Washington, DC 20230–0002.

Dated: April 29, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–12015 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 18–99]

Foreign-Trade Subzone 59A—Lincoln, NE, Request for Removal of Board Order Condition; Kawasaki Motors Manufacturing Corp., U.S.A. (Industrial Robots)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Kawasaki Motors Manufacturing Corp., U.S.A. (KMM), operator of FTZ 59A, requesting removal of the time restriction on manufacturing authority for industrial robots pursuant to Board Order 745 (60 FR 30517, 6–9–95), which authorized the manufacture of industrial robots under FTZ procedures for an initial period ending July 1, 1999, subject to extension. It was formally filed on May 3, 1999.

Subzone 59A was approved by the Board in 1980 with authority granted for the manufacture of motorcycles, jet skis, and four wheel all-terrain vehicles (Board Order 163, 45 FR 58637, 9–4–80). The subzone was subsequently expanded in 1994 (Board Order 712, 59 FR 66891, 12–28–94). The Board later approved the manufacture of off-road, utility work trucks and industrial robots with 6 or more axes of motion under FTZ procedures for the U.S. market and export (Board Orders 744 and 745, 60 FR 30517, 6–9–95) . KMM is now requesting that the manufacturing authority for industrial robots be extended on a permanent basis. Foreign-sourced components comprise approximately 60 percent of the finished robots' FOB value and include: plastic parts, rubber belts, fasteners, metal fittings, air pumps/compressors, data processing equipment (controllers), optical readers, valves and switches, electric motors and transformers, transmissions/gear boxes, diodes, transistors, semiconductors, liquid crystal devices, and measuring instruments (duty rate range: free–9.0%).

FTZ procedures exempt KMM from Customs duty payments on the foreign components used in export production. On its domestic sales, the company can choose the duty rate that applies to finished industrial robots (HTSUS 8479.50.0000, 2.5%) for the foreign components noted above. The request indicates that the savings from FTZ procedures will continue to help improve the facility's international competitiveness. In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 1999. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application and the accompanying exhibits will be available for public inspection at the following location: Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230–0002.

Dated: May 3, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–12017 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 15–99]

Foreign-Trade Zone 122—Corpus Christi, TX; Application for Subzone Equistar Chemicals LP (Oil Refinery); Nueces County, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Corpus Christi Authority, grantee of FTZ 122, requesting special-purpose subzone status for the petrochemical complex of Equistar Chemicals LP, located in Nueces County, Texas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on April 27, 1999.

The petrochemical complex and connecting pipelines (1,700 acres) are located at four sites in Nueces County, Texas (Corpus Christi area): *Site 1* (1,600 acres)—main petrochemical complex, located at 1501 McKinzie Road; *Site 2* (3 leased tanks on 51.26 acres, 141,600 barrel capacity)—dock facility located adjacent to the Corpus Christi inner harbor; *Site 3* (10 leased tanks, 1.4 million barrel capacity) at the Hess storage facility and, and *Site 4* (2 leased tanks, 166,000 barrel capacity) located at the CITGO Corpus Christi refinery located at 1802 Nueces Bay Blvd. The complex (253 employees) produces a variety of petrochemical feedstocks and fuel products, including ethylene (1.7 billion lb. capacity), propylene (800 million lb. capacity), benzene (600 million lb. capacity), butadiene (200 million lb. capacity), propane, toluene, butylenes, piperylenes, resin oils, dicylcopentadiene, isoprene, methanol, and fuel oils. The complex also produces MTBE, biphenyl, hydrogen, and certain gasoline blendstocks, which will not be produced under zone procedures. Some 54 percent of the inputs, including gas oil, naphtha, condensate, and natural gasoline, are sourced abroad.

Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks by admitting incoming foreign inputs in non-privileged foreign status. The duty rates on inputs range from 5.25¢/barrel to 10.5¢/barrel. Under the FTZ Act, certain merchandise in FTZ status is exempt from ad valorem inventory-type taxes. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is July 12, 1999. Rebuttal comments in response to material

submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 26, 1999).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Office of the Port Director, U.S., Customs Service, 400 Mann St., Corpus Christi, Texas 78401

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW., Washington, DC 20230

Dated: May 3, 1999.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 99–12014 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a closed meeting of the Judges Panel of the Malcolm Baldrige National Quality Award on Tuesday, June 1, 1999. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the 1999 Baldrige Award cycle, final judging interaction, survey of applicants and judging process improvement discussions. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 1, 1999, at 11:00 a.m. and adjourn at 4:30 p.m. on June 1, 1999. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on April 26, 1999, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.

Dated: May 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11893 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on Wednesday, June 2, 1999. The Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include reviewing roles and responsibilities of Judges and Overseers; information transfer through QE XI, regional conferences, state, local and international networks; discussion of proposed program changes including three award/category cap; health care and education efforts including first year progress, fund-raising, and 2000 criteria; and 1999 Award criteria changes and future criteria evolution.

DATES: The meeting will convene June 2, 1999, at 8:30 a.m. and adjourn at 4:00 p.m. on June 2, 1999.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 4, 1999.

Karen H. Brown,

Deputy Director.

[FR Doc. 99–11894 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031899A]

Fisheries of the Exclusive Economic Zone off Alaska; Groundfish of the Gulf of Alaska; Groundfish of the Bering Sea and Aleutian Islands Area; IFQ Halibut Fisheries Off Alaska; Experimental Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of an experimental fishing permit.

SUMMARY: NMFS announces the issuance of experimental fishing permit 99–01 (EFP) to the Washington Sea Grant Program (WSGP). The EFP authorizes the WSGP to conduct an experiment in the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands Area (BSAI) that would test the effectiveness of seabird avoidance measures. NMFS could use results from the EFP to establish more effective regulatory measures to reduce incidental take of seabirds in these fisheries. This EFP is necessary to provide information not otherwise available through research or commercial fishing operations. The intended effect of this action is to promote the purposes and policies of the Magnuson-Stevens Fishery Conservation and Management Act.

ADDRESSES: Copies of the EFP are available from Lori Gravel, Sustainable Fisheries Division, Alaska Region,

NMFS, P.O. Box 21668, Juneau, AK 99802.

FOR FURTHER INFORMATION CONTACT: Kim S. Rivera, 907–586–7424.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska and the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area authorize the issuance of EFPs for fishing for groundfish in a manner that would otherwise be prohibited under existing regulations. The procedures for issuing EFPs are set out at 50 CFR 679.6 and 600.745(b).

On March 29, 1999, NMFS announced in the **Federal Register** the receipt of an application for an EFP from the WSGP (64 FR 14885). The application requested authorization for WSGP to test the effectiveness of seabird avoidance measures in two fisheries, (1) the Individual Fishing Quota (IFQ) sablefish and Pacific halibut fisheries in the GOA and the BSAI and (2) the Pacific cod and Greenland turbot hook-and-line fisheries in the BSAI. WSGP will conduct the experiment as a part of its research project funded under the NMFS Saltonstall-Kennedy program (SK Project). WGSP will compare two seabird avoidance measures to a control (no measures) in each fishery. An EFP is necessary because the SK Project's experimental procedure calls for testing seabird avoidance measures relative to a control of no seabird avoidance measure, and possibly, the testing of new seabird bycatch avoidance technologies that are not included in the current NMFS regulations. The purpose of this research is to assess the effectiveness of alternative seabird avoidance measures for hook-and-line fisheries off Alaska. The objectives of the SK Project are to: (1) Work cooperatively with the fishing industry, NMFS, and the U.S. Fish and Wildlife Service (USFWS) to select and then test the effectiveness of seabird avoidance measures in hook-and-line fisheries off Alaska; (2) characterize the species-specific behavioral interactions of seabirds with hook-and-line gear on active fishing vessels, with and without seabird avoidance measures; (3) work cooperatively with the fishing industry, NMFS, and the USFWS to develop recommendations for revisions to existing seabird avoidance regulations and performance standards based on the results of this research; and (4) recommend future research, and research protocols. Issuance of this EFP will provide information not otherwise available through research or commercial fishing operations.

WGSP designed and NMFS reviewed the experimental protocol for testing on smaller-sized vessels [less than 124 ft (37.8 meters) length overall (LOA)]. The prorocol will require a minimum of 640,000 to 1 million deployed hooks and 150 observer days over 2 years to address adequately the efficacy of seabird avoidance measures relative to a control of no measure. To achieve this sample size objective, three vessels per year in the IFQ and groundfish fisheries will be required, with seabird observer coverage for a total of 45 days per year (approximately three trips), assuming a total hook retrieval observation rate of 40 percent. WSGP has estimated that for testing on larger-sized vessels [longer than 124 ft LOA (37.8 meters)] in the BSAI, a minimum of 3 million deployed hooks and 150 observer days over 2 years will be needed to adequately address the efficacy of seabird avoidance measures relative to a control of no measure. To achieve this sample size objective two vessels per year in the Pacific cod fishery will be required, with seabird observer coverage for a total of 40 days per year (approximately 2 trips), assuming a total hook retrieval observation rate of 40 percent. The experiment is scheduled to take place in the GOA and BSAI for approximately 45 to 60 days during May 1999 through July 1999, and for approximately 45 to 60 days during April 2000 through July 2000, and in the BSAI for approximately 40 to 50 days during July 1999 through October 1999, and for approximately 40 to 50 days during July 2000 through October 2000. The effective period for the EFP may be revised for other months in 1999 and 2000, pending agreement between the permit holder and the Administrator, Alaska Region, NMFS (Regional Administrator).

WSGP established an industry advisory committee in consultation with NMFS and the USFWS. This committee will select the participating vessels and the seabird avoidance measures to be tested. The EFP authorizes three vessels per year in the GOA and BSAI groundfish fisheries and/or the Pacific halibut fishery, and two vessels per year in the BSAI groundfish fishery. The performance of seabird avoidance gear will be tested against a standard control gear. The control gear will be identical hook and-line gear, although configured without the seabird avoidance gear. Fishing with experimental and control gear will be conducted with procedures and sites similar to those used during the commercial fishery for sablefish and halibut in the GOA and for groundfish (Pacific cod and Greenland turbot) in the BSAI.

The Regional Administrator approved the EFP application and has issued EFP 99–01 to the WSGP. The EFP authorizes WSGP to conduct experimental operations without the use of otherwise required seabird avoidance measures during the course of the experiment during designated periods of 1999 and 2000. No additional harvest amounts of target or incidental catch are authorized.

Failure of the permit holder to comply with the terms and conditions of the EFP may be grounds for revocation, suspension, or modification of the EFP under 15 CFR part 904 with respect to any or all persons and vessels conducting activities under the EFP. Failure to comply with applicable laws also may result in sanctions imposed under those laws.

Classification

The Regional Administrator determined that fishing activities conducted under this action would not affect endangered and threatened species or critical habitat in any manner not considered in prior consultations on the groundfish or IFQ fisheries. The USFWS has issued a section 10 permit to WSGP under the Endangered Species Act. Such a permit authorizes the incidental take of a short-tailed albatross in the unlikely event that one were taken during the course of the experiment.

This notice is exempt from review under E.O. 12866 and the Regulatory Flexibility Act (RFA) because prior notice and opportunity for public comment are not required for this notice. The analytical requirements of the RFA are inapplicable.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 6, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12030 Filed 5–11–99; 8:45 am]

BILLING CODE 3510–22–F

COMMISSION OF FINE ARTS

Notice of Meeting

The Meeting of the Commission of the Fine Arts is scheduled for 20 May 1999 at 10:00 AM in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C., 20001. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral

statements should be addresses to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2220. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., 3 May 1999.

Charles H. Atherton,

Secretary.

[FR Doc. 99–11909 Filed 5–11–99; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: Pre-Candidate Procedures; USMA Forms 375, 723, 450, 21–12, 21–27, 381; OMB Number 0702–0060.

Type of Request: Reinstatement.

Number of Respondents: 65,100.

Responses Per Respondent: 1.

Annual Responses: 65,100.

Average Burden Per Response: 8 minutes.

Annual Burden Hours: 8,258.

Needs and Uses: Student information is obtained through the use of business reply cards on posters and in publications, permitting potential candidates to request information on the U.S. Military Academy. This initial student information received is retained in a file until an additional response is received by potential candidates. The purpose of this activity is to obtain a group of applicants who eventually may be evaluated for admission to West Point.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 6, 1999.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 99–11901 Filed 5–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Pub. L. 92–463, the Federal Advisory Committee Act, notice is hereby given that closed meetings of the Department of Defense Wage Committee will be held on June 1, 1999, June 8, 1999, June 15, 1999, June 22 , 1999 and June 29, 1999 at 10:00 a.m. in Room A105, The Nash Building, 1400 Key Boulevard, Rosslyn, Virginia.

Under the provisions of section 10(d) of Pub. L. 92–463, the Department of Defense has determined that the meetings meet the criteria to close meetings to the public because the matters to be considered are related to internal rules and practices of the Department of Defense and the detailed wage data to be considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence.

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning the meetings may be obtained by writing to the Chairman, Department of Defense Wage Committee, 4000 Defense Pentagon, Washington, DC 20301–4000.

May 6, 1999.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer Department of Defense.

[FR Doc. 99–11902 Filed 5–11–99; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of Navy

Notice of Intent to Prepare an Environmental Impact Statement for a Deep Draft Power Intensive (DDPI) Ship Berthing, Logistics, and Maintenance Pier at Naval Station, San Diego, California

AGENCY: Department of Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the effects of constructing and operating a Deep Draft Power Intensive (DDPI) ship berthing, logistics and maintenance pier at Naval Station (NAVSTA), San Diego, California.

The proposed action is to demolish two existing piers, Piers 10 and 11, at Naval Station San Diego and construct and operate a replacement berthing, logistics and maintenance pier for DDPI ships. To accommodate the DDPI ships, construction would include dredging to 37 feet below Mean Lower Low Water (MLLW) and removal of approximately 536,000 cubic yards of sediment (of which approximately 268,000 cubic yards is believed to be unsuitable for ocean disposal). The replacement pier would be approximately 120 feet wide and 1500 feet long with power intensive utilities (4000 amps or more). This pier would be similar to Pier 13, an existing pier constructed at Naval Station San Diego in 1989 to support DDPI ships.

The purpose of the proposed action is to provide for berthing, logistics, maintenance, and utility requirements of DDPI ships moored at the San Diego Naval Complex. The need for the proposed action is to address the current shortfall in pier infrastructure/capacity for DDPI ships in the San Diego Naval Complex. The range of alternatives to be considered include:

(1) The proposed action, demolition of Piers 10 and 11 at Naval Station San Diego and construction of a new DDPI pier with associated dredging; (2) demolition of Piers 11 and 12 at Naval Station San Diego and construction of a new DDPI pier with associated dredging; (3) demolition of Pier 14 at Naval Station San Diego and construction of a new DDPI pier with associated dredging; and, (4) construction of a new pier or utilization of other available piers with associated

dredging within the San Diego Naval Complex. The EIS will also consider the No-Action Alternative: no demolition, replacement or new pier construction to accommodate the DDPI ships.

The EIS will evaluate the environmental effects associated with each of the alternatives. Various options for dredged sediment disposal will also be evaluated. Issues to be addressed in the EIS include, but are not limited to: water resources; biological resources; topography/geology; air quality; health and safety; land use; noise; transportation (vessel and ground); aesthetics; cultural resources; utilities; socioeconomics; and environmental justice. Impacts analysis will include an evaluation of the direct, indirect, short-term, and cumulative impacts. No decision to implement any of the alternatives will be made until the NEPA process is complete.

A public scoping meeting to receive oral and written comments from the public will be held on June 9, 1999 at the Holiday Inn, Terrace Ballroom, 700 National City Boulevard (at 8th Street), National City. The meeting will begin at 7 p.m. A Spanish-language interpreter will be available at the meeting.

A brief presentation describing the proposed action, alternatives and the NEPA process will precede the request for public comments. It is important that federal, state, and local agencies, as well as interested organizations and individuals, take this opportunity to identify environmental concerns they feel should be addressed during preparation of the EIS. Agencies and the public are invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, comments should clearly describe specific issues or topics that the commentator believes the EIS should address.

ADDRESSES: Questions regarding the scoping process AND written comments may be sent to South Bay Area Focus Team, 2585 Callagan Highway, Bldg. 99, Naval Station, San Diego, San Diego, CA 92136–5198, postmarked no later than June 16, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Patrick McCay (Code 5SPR.PM), South Bay Area Focus Team, 2585 Callagan Highway, Bldg. 99, Naval Station, San Diego, San Diego, CA 92136–5198; telephone (619) 556–8706; fax (619) 556–8296; e-mail mccaypj@efdsw.navafac.navy.mil

Saundra K. Melancon,

Paralegal Specialist, Office of the Judge Advocate General, Alternate Federal Liaison Officer.

[FR Doc. 99–12020 Filed 5–11–99; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

AGENCY: Department of Energy.

ACTION: Notice of Open Teleconference Meeting Supplemental.

On April 21, 1999, the Department of Energy published a notice of open meeting announcing a meeting of the Secretary of Energy Advisory Board 64 FR 19522. In that notice, the teleconference meeting was scheduled for May 12, 1999. Today's notice is announcing that the teleconference meeting will take place on May 19, 1999, from 1:45 p.m. to 3:00 p.m.

Issued in Washington, D.C. on May 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11990 Filed 5–11–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Secretary of Energy Advisory Board

Notice of Open Meeting

AGENCY: Department of Energy.

SUMMARY: Consistent with the provisions of the Federal Advisory Committee Act (Pub. Law 92–463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Secretary of Energy Advisory Board—Task Force on Fusion Energy

DATES AND TIMES: Wednesday, May 26, 1999, 8:30 AM—5:00 PM and Thursday, May 27, 1999, 8:30 AM–1:00 PM.

ADDRESSES: Lawrence Livermore National Laboratory (LLNL), Conference Room A, Building 123, 7000 East Avenue, Livermore, California 94551–0808. Note: Public attendees are requested to contact Ms. Sherry Graham (LLNL) in advance of the meeting to facilitate their access to the meeting site. Ms. Graham may be reached at (925) 422–4958 or via e-mail at graham16@LLNL.gov.

FOR FURTHER INFORMATION CONTACT: Richard C. Burrow, Secretary of Energy Advisory Board (AB–1), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, D.C. 20585, (202) 586–1709 or (202) 586–6279 (fax).

SUPPLEMENTARY INFORMATION: The purpose of the Task Force on Fusion Energy is to review the Department of Energy's plans for research and development of four fusion related technologies—pulsed-power, lasers, ion drivers, and magnetic fusion—and to provide advice to the Secretary of Energy Advisory Board on how to structure the Department's fusion *energy* programs, both inertial and magnetic. The review is to focus on the scientific quality of the programs, the goals and objectives of the programs, and the energy potential of each technology. The findings and recommendation of the Task Force on Fusion Energy are to comment on the goals and objectives of the Department's fusion energy related programs, provide a critique of the current development strategies, suggest changes in the overall fusion energy roadmap, and recommended funding levels.

Tentative Agenda

Wednesday, May 26, 1999

8:30–8:45 AM—Opening Remarks, Introductions & Objectives—Dr. Richard Meserve, Task Force Chairman

8:45–9:45 AM—Briefing & Discussion: Laser Fusion Concepts and Development Strategy

9:45–10:15 AM—Briefing & Discussion: Average-Power Krypton-Fluoride Lasers

10:15–10:45 AM—Briefing & Discussion: Average-Power Diode-Pumped Solid State Lasers

10:45–11:00 AM—Break

11:00–11:30 AM—Briefing & Discussion: Common Direct Drive Physics Issues

11:30–12:00 PM—Briefing & Discussion: Target Fabrication and Injection

12:00–1:30 PM—Lunch

1:30–2:00 PM—Briefing & Discussion: Direct Drive Ignition on NIF

2:00–2:45 PM—Briefing & Discussion: Non-Proliferation Considerations & International Collaboration

2:45–3:30 PM—Briefing & Discussion: Linkages to Other Fields of Scientific Research and Technology Spin-offs

3:30–3:45 PM—Break

3:45–4:30 PM—Briefing & Discussion: Participation of Colleges and Universities in Fusion Research

4:30–4:45 PM—Public Comment Period

4:45 PM—Adjourn

Thursday, May 27, 1999

8:30–8:35 AM—Opening Remarks & Objectives—Dr. Richard Meserve, Task Force Chairman

8:35–9:15 AM—Briefing & Discussion: Introduction to the Indirect Drive Approach to Inertial Fusion Energy—Strategy and Connection to the Defense Program's Inertial Confinement Fusion Program

9:15–10:00 AM—Briefing & Discussion: Heavy Ion Drivers

10:00–10:30 AM—Briefing & Discussion: Chambers

10:30–10:45 AM—Break

10:45–11:30 AM—Briefing & Discussion: Pulsed Power

11:30–12:00 PM—Briefing & Discussion: NIF and X-Ray Driven Ignition

12:00–12:30 PM—Briefing & Discussion: Inertial Fusion Energy Development Plan Strategy

12:30–12:45 PM—Public Comment Period

12:45 PM—Adjourn

This tentative agenda is subject to change. The final agenda will be available at the meeting.

Public Participation: The Chairman of the Task Force is empowered to conduct the meeting in a fashion that will, in the Chairman's judgment, facilitate the orderly conduct of business. During its meeting in Livermore, California, the Task Force welcomes public comment. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. The Task Force will make every effort to hear the views of all interested parties. Written comments may be submitted to Skila Harris, Executive Director, Secretary of Energy Advisory Board, AB–1, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585. This notice is being published less than 15 days before the date of the meeting due to the late resolution of programmatic issues.

Minutes: Minutes and a transcript of the meeting will be available for public review and copying approximately 30 days following the meeting at the Freedom of Information Public Reading Room, 1E–190 Forrestal Building, 1000 Independence Avenue, SW, Washington, D.C., between 9:00 AM and 4:00 PM, Monday through Friday except Federal holidays. Further information on the Task Force on Fusion Energy may be found at the Secretary of Energy Advisory Board's web site, located at http://www.hr.doe.gov/seab.

Issued at Washington, D.C., on May 7, 1999.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 99–11991 Filed 5–11–99; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2640–000]

Alliant Energy Corporate Services, Inc., Notice of Filing

May 6, 1999.

Take notice that on April 28, 1999, Alliant Energy Corporate Services, Inc., tendered for filing an executed Service Agreement for Short-Term Firm Point-to-Point transmission service, establishing British Columbia Power Energy Corporate Services, Inc., transmission tariff.

Alliant Energy Corporate Services, Inc., requests an effective date of April 8, 1999, and accordingly, seeks waiver of the Commission's notice requirements.

A copy of this filing has been served upon the Illinois Commerce Commission, the Minnesota Public Utilities Commission, the Iowa Department of Commerce, and the Public Service Commission of Wisconsin.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 18, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11920 Filed 5–11–99; 8:45 am]

BILLING CODE 6117–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–298–000]

ANR Pipeline Company; Notice of Cashout Report

May 6, 1999.

Take notice that on April 30, 1999, ANR Pipeline Company (ANR) tendered for filing its annual system cashout report.

This filing represents ANR's annual report of the net revenues attributable to the operation of its cashout program, and covers the period January 1, 1998 to December 31, 1998. ANR has computed the cashout price surcharge of $0.2485 per Dth pursuant to section 15.5(b) of the General Terms and Conditions of its tariff. However, ANR proposes not to implement the charge of $0.2485, but rather seeks a waiver of its tariff in order to leave the lower existing charge of $0.1211 per Dth in place.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11966 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP 99–301–000]

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

Take notice that, on April 30, 1999, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff,

Second Revised Volume No. 1, the following tariff sheets to be effective June 1, 1999.

Eighth Revised Sheet No. 2
Fourth Revised Sheet No. 89
First Revised Sheet No. 118
Ninth Revised Sheet No. 120
Second Revised Sheet No. 161A
Third Revised Sheet No. 188
Fourth Revised Sheet No. 189
Third Revised Sheet No. 190

ANR states that the above-referenced tariff sheets are being filed in order to make changes to ANR's tariff to permit it the opportunity to charge Negotiated Rates as contemplated by the Federal Energy Regulatory Commission's Policy Statement on Alternative to Traditional Cost-of-Service Rate Making for Natural Gas Pipelines, issued January 31, 1996 in Docket No. RM95–6–000.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing my be viewed on the web at http://www.ferc.fed.us/online/rims.htm (cal 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11969 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–300–000]

Colorado Interstate Gas Company; Notice of Tariff Filing

May 6, 1999.

Take Notice that on April 30, 1999, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the tariff sheets listed in the attached Appendix A to be effective June 1, 1999.

CIG states it is proposing to make certain minor changes to its tariff and certain administrative revisions and clarifications as follows:

- Update the system gap;
- Remove Order No. 636 transition and other outdated language;
- Correct, add and make clarifications to footnotes on the rate sheets;
- Update the Payment, Notices, Nominations and Points of Contact Sheets;
- Add language consistent with the Stipulation and Agreement in Docket No. RP96–190 that allows shippers requesting service under Rate Schedule NNT–2 and TF–4 to reduce their entitlement during certain months up to a stated percentage of peak month MDQ;
- Correct certain definitions in the General Terms and Conditions;
- Modify the definition of "Spot Index Price" to make it an average price throughout the month;
- Make changes and update the Request for Service information;
- Identify transporter retained storage inventory as part of system requirements for scheduling and allocation;
- Clarify Section 7.6 of the General Terms and Conditions concerning use of storage gas;
- Clarify when payment of an invoice shall be considered timely and how interest shall be charged for late payments;
- Add a section concerning the normal commercial practice of collecting of costs and expenses incurred in litigation upon favorable outcome of such action;
- Make clarification and corrections concerning points of delivery that are available under Rate Schedule NNT–1 and Points of Delivery subject to the Hourly Flexibility Surcharge;
- Add a Memphis Clause to the form of TI–1 Service Agreement;
- Revise the complaints section of the General Terms and Conditions to conform to the requirements in Rule 206 of FERC's Rules of Practice and Procedure (18 CFR 385.206);
- Capitalize defined terms and make other minor corrections and clarifications throughout the tariff.

CIG further states that copies of this filing have been served on CIG's jurisdiction customers and public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11968 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–140–009]

Columbia Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Columbia Gas Transmission Corporation (Columbia) filed the following revised tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1 (Tariff) bearing a proposed effective date of June 1, 1999:

Second Revised Sheet No. 99O
First Revised Sheet No. 99P

Columbia states that this filing is being submitted pursuant to Article VII, Section C, Accrued-But-Not-Paid Gas Costs, of the "Customer Settlement" in Docket No. GP94–02, et al., approved by the Commission on June 15, 1995 (71 FERC 61,337 (1995)). The Customer Settlement became effective on November 28, 1995, when the Bankruptcy Court's November 1, 1995 order approving Columbia's Plan of Reorganization became final. Under the terms of Article VII, Section C, Columbia is entitled to recover amounts for Accrued-But-Not-Paid Gas Costs. As directed by Article VII, Section C, the tariff sheets contained herein are being filed in accordance with Section 39 of the General Terms and Conditions of the Tariff, to direct bill the Accrued-But-Not-Paid Gas Costs that have been paid subsequent to November 28, 1995.

Columbia states that copies of its filing are available for inspection at its offices at 12801 Fair Lakes Parkway, Fairfax, Virginia and 10 G Street, NE, Washington, DC; and have been mailed to all parties on the Commission's service list in Docket No. RP96–140, et al., and to each of Columbia's firm customers, interruptible customers, and affected state commissions. Columbia also agrees to make available for this filing the data that it was required to provide in its June 13, 1996 compliance filing in Docket No. RP96–140–002 pursuant to a protective agreement.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11949 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–295–000]

Discovery Gas Transmission L.L.C.; Notice of Cashout Report

May 6, 1999.

Take notice that on April 30, 1999, Discovery Gas Transmission L.L.C. (Discovery) tendered for filing its annual system cashout report.

Discovery reports that in Appendix A the cashout transaction volumes and net amounts purchased from or sold to each shipper during the reporting period. Discovery states that Appendix B reports the total cashout transaction volumes and amounts purchased from and paid each Shipper under each Service Agreement during the reporting period. Discovery states that Appendix C reports the costs and revenues resulting from cash-out transactions for the reporting period. In accordance with Section 9 of the General Terms and Conditions of Discovery's FERC Gas Tariff, any difference in the costs and revenues resulting from these transactions will be carried forward to the subsequent reporting period if such difference is less than $400,000.

Discovery experienced a loss from cashout transactions for this reporting period in the amount of $21,616.71. This loss will be carried forward to the subsequent reporting period.

Discovery is serving copies of the instant filing to shippers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11964 Filed 5–11–99; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–8–23–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on April 29, 1999 certain revised tariff sheets in the above captioned docket as part of its FERC Gas Tariff, Second Revised Volume No. 1, bear a proposed effective date of April 1, 1999.

The purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS and LSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS and LSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (Call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11971 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–22–000]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission an interruptible Transportation Service Agreement (TSA) between El Paso and Pemex Gas y Petroquimica Basica (Pemex) and Thirteenth Revised Sheet No. 1 to its FERC Gas Tariff, Second Revised Volume No. 1–A.

El Paso states that it is submitting the TSA for Commission approval since the TSA contains provisions which differ from El Paso's Volume No. 1–A Tariff. The tariff sheet, which references the

TSA, is proposed to become effective on May 31, 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11938 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–287–032]

El Paso Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, El Paso Natural Gas Company (El Paso) tendered for filing and acceptance by the Federal Energy Regulatory Commission (Commission) the following tariff sheets to its FERC Gas Tariff, Second Revised Volume No. 1–A, to become effective May 1, 1999:

Twenty-Fourth Revised Sheet No. 30
Fifteenth Revised Sheet No. 31

El Paso states that the above tariff sheets are being filed to implement two negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11951 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–23–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Filing

May 6, 1999.

Take notice that on April 30, 1999, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 1999:

Fourth Revised Sheet No. 3
Third Revised Sheet No. 3A
Third Revised Sheet No. 3B
Third Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to Section 154.106(c) of the Commission's regulations. The revisions to the maps reflect the addition of the Duck Creek and Solway meter stations to Great Lakes' system, additions of loop line, horsepower changes for two compressor stations, and other minor corrections.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Commission's Public Reference Room. This filing may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11939 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2613–000]

Indeck Pepperell Power Associates; Notice of Filing

May 6, 1999.

Take notice that on April 27, 1999, Indeck Pepperell Power Associates, Inc. (Indeck Pepperell), tendered for filing with the Federal Energy Regulatory Commission a Power Purchase and Sale Agreement (Service Agreement) between Indeck Pepperell and Aquila Energy Marketing Corporation (Aquila), dated February 1, 1999, for service under Rate Schedule FERC No. 1.

Indeck Pepperell requests that the Service Agreement be made effective as of April 1, 1999.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before May 17, 1999. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 99–11921 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–117–005]

K N Interstate Gas Transmission Co.; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, KN Interstate Gas Transmission Co. (KNI) filed to move into effect certain rates and revised tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1–A and First Revised Volume No. 1–C, as listed in Appendix B of its filing.

KNI states that such revised tariff sheets reflect changes in rates and tariff provisions pursuant to the Commission's order issued on March 3, 1999, in this proceeding.

KNI has served copies of this filing upon all jurisdictional customers, interested State Commissions, and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11952 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–299–000]

KN Interstate Gas Transmission Co.; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, KN Interstate Gas Transmission Co. (KNI) tendered for filing numerous Tariff Sheets, listed on Appendix A to the filing, of its FERC Gas Tariff, Third Revised Volumes No. 1–A and 1–B, as well as First Revised Volumes No. 1–C and 1–D. KNI is submitting this filing to incorporate and/or modify tariff provisions to fit the operation and administration requirements of a new computer system. Specifically, KNI's current interactive electronic system is being replaced by the Direct Access Request and Tracking System (DART).

KNI states that copies of this filing has been served upon all affected firm customers of KNI and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11967 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–288–000]

KN Wattenberg Transmission L.L.C.; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, KN Wattenberg Transmission L.L.C. (KNW) tendered for filing numerous Tariff Sheets listed on Appendix A to that filing of its FERC Gas Tariff First Revised Volume No. 1, proposed to be effective June 1, 1999. KNW is submitting this filing to incorporate and/or modify tariff provisions to fit the operation and administration requirements of a new computer system. Specifically, KNW's current interactive electronic system is being replaced by the Direct Access Request and Tracking System (DART).

KNW states that copies of this filing have been served upon all affected firm customers of KNW and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11957 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–289–000]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Twelfth Revised Sheet No. 22, to be effective June 1, 1999.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1 (Section 21), as the twelfth semiannual limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts

specifically excluded under Section 21 are not reflected in this filing.

Natural requested specific waivers of Section 21 and the Commission's Regulations, including the requirements of Section 154.63, to the extent necessary to permit Twelfth Revised Sheet No. 22 to become effective June 1, 1999.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11958 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–454–000]

Northern Natural Gas Company; Notice of Request Under Blanket Authorization

May 6, 1999.

Take notice that on May 4, 1999, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP98–454–000 a request pursuant to sections 157.205, 157.216 and 212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216, and 212) for authorization to relocate ten (10) small volume measurement meters (farm taps) located in Minnesota, all as more fully set forth in the request that is on file with the Commission and open to public inspection. This filing may be viewed on the web at http:ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Northern states that service will be provided pursuant to currently effective throughput service agreement(s) and that the peak day and annual deliveries for the small volume meter customers will remain the same as presently being delivered. To minimize service interruption, as advised by Northern, Northern will relocate these farm taps to a parallel loop line before proceeding with the replacement project. The total estimated cost to relocate the farm taps delivery points is approximately $20,000.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

David P. Boergers,

Secretary.

[FR Doc. 99–11934 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–292–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that Northern Natural Gas Company (Northern), on April 30, 1999, tendered for filing to become part of Northern's F.E.R.C. Gas Tariff, the following tariff sheets, proposed to be effective June 1, 1999:

Fifth Revised Volume No. 1

Third Revised Sheet No. 125D
Sixth Revised Sheet No. 144

The purpose of this filing is to modify Northern's FDD and IDD Rate Schedules applicable to firm and interruptible storage services by providing increased service flexibility through the addition of a Field Area point available for receipt and delivery of storage services.

Copies of the filing were served upon the company's customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11961 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. TM99–3–59–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that Northern Natural Gas Company (Northern), on April 30, 1999 tendered for filing to become part of Northern's F.E.R.C. Gas Tariff the following tariff sheets proposed to become effective on June 1, 1999:

Fifth Revised Volume No. 1

Twelfth Revised Sheet No. 54
Tenth Revised Sheet No. 61
Tenth Revised Sheet No. 62
Tenth Revised Sheet No. 63
Tenth Revised Sheet No. 64

The revised tariff sheets are being filed in accordance with Section 53 of Northern's General Terms and Conditions, which requires Northern to adjust its fuel and Unaccounted for (UAF) gas percentages each June 1, and the fuel methodology set forth in the Stipulation and Agreement of Settlement filed by Northern on April 16, 1999 in Docket Nos. RP98–203, *et al.*

Copies of the filing were served upon Northern's customers and interested State Commissions.

Copies of this filing are on file with the Commission and are available for inspection.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11970 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–24–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 1999:

Third Revised Sheet No. 3
Second Revised Sheet No. 3A
Second Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11940 Filed5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–290–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 1999:

Second Revised Sheet No. 16

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to eliminate the minimum rate for Rate Schedule GPS, Gas Parking Service.

Panhandle states that a copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or Section 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11959 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MT99–11–000 and MG99–19–000]

Pine Needle LNG Company, LLC; Notice of Filing

May 6, 1999.

Take notice that on April 29, 1999, Pine Needle LNG Company, LLC (Pine Needle) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to become effective May 29, 1999:

Substitute Original Sheet No. 40
Substitute Original Sheet No. 90
Original Sheet No. 91

In addition, Pine Needle has filed its Code of Conduct under Order Nos. 497, *et al.*

Pine Needle states that the purpose of the instant filing is to add Section 30 to the General Terms and conditions of Pine Needle's FERC Gas Tariff to set forth the procedures used by Pine Needle to address and resolve complaints by customers and potential customers, as required by Section 250.16(b)(2) of the regulations. The instant filing also places on file with the Commission Pine Needle's Code of Conduct, which sets forth procedures that will enable shippers and the Commission to determine how Pine Needle is complying with the standards of conduct set forth in Part 161 of the regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E. Washington, D.C. 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11943 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–037]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following revised tariff sheet to be effective May 1, 1999:

Original Sheet No. 70

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11950 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–282–000]

Reliant Energy Gas Transmission Company; Notice of Informal Technical Conference

May 6, 1999.

On April 12, 1999, Reliant Energy Gas Transmission Company (Reliant) filed *pro forma* tariff sheets reflecting a proposed new rate schedule providing hourly firm transportation service. This filing was noticed on April 16, 1999, and various parties filed motions to intervene containing comments on the filing. One protest was filed. In order to facilitate the resolution of the issues in this proceeding, the Commission Staff is convening an informal conference among the interested parties.

Take notice that an informal technical conference in the above-captioned proceeding will be held on Thursday, May 13, 1999, at 10:00 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Reliant and interested parties should be prepared to discuss in detail Reliant's proposed hourly firm transportation service in order to resolve the specific concerns raised by the parties in these proceedings.

For additional information, please contact Randy Adams at (202) 208–0102.

David P. Boergers,

Secretary.

[FR Doc. 99–11956 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–252–002]

Sea Robin Pipeline Company; Notice of Proposed Changes to FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, (Tariff) the following tariff sheets to become effective April 1, 1999:

Sixth Revised Sheet No. 35
First Revised Sheet No. 93
First Revised Fourth Revised Sheet No. 95

Sea Robin states that the purpose of this filing is to comply with the Commission's letter order dated March 31, 1999 in the above-referenced docket. Such letter order generally approved Sea Robin's tariff filing made in compliance with Order No. 587–H. Such letter order required Sea Robin (i) to incorporate by reference GISB Standard 1.3.2; (ii) to revise its tariff to provide shippers notice of bumping consistent with its OFO procedures; (iii) to waive certain daily penalties for interruptible shippers whose scheduled volumes are bumped; and (iv) to reference version 1.3 as the correct version applying to the GISB standards adopting by Order No. 587–H. Sea Robin has requested that these sheets be made effective as of April 1, 1999. Sea Robin states that copies of the filing will be served upon its shippers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11955 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–21–000]

Southwest Gas Storage Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Southwest Gas Storage Company (Southwest) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheets to be effective June 1, 1999:

First Revised Sheet No. 3
Original Sheet No. 3A
Original Sheet No. 3B

Southwest states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect the acquisition by transfer from Panhandle Eastern Pipe Line Company of the Howell, Waverly and North Hopeton storage fields as authorized in Docket No. CP97–237–000 (85 FERC ¶61,328).

Southwest states that a copy of this filing is available for public inspection during regular business hours at Southwest's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11937 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–293–000]

TCP Gathering Co.; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, TCP Gathering Co. (TCP) tendered for filing numerous Tariff Sheets listed in Appendix A of its FERC Gas Tariff, Original Volume No. 1. TCP is submitting this filing to incorporate and/or modify tariff provisions to fit the operation and administration requirements of a new computer system.

Specifically, TCP's current interactive electronic system is being replaced by the Direct Access Request and Tracking System (DART).

TCP states that copies of this filing has been served upon all affected firm customers of TCP and applicable state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11962 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–26–000]

Tennessee Gas Pipeline Company; Notice of Filing

May 6, 1999.

Take notice that on April 30, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, tendered for filing: (1) A copy of the transportation service agreement pursuant to Tennessee's Rate Schedule FT–A (Transportation Service Agreement) entered into by Tennessee and Caledonia Power I, L.L.C., (Caledonia), (2) a copy of the balancing agreement entered into by Tennessee and Caledonia (Balancing Agreement), (3) a copy of the Firm Transportation Discount Agreement entered into by Tennessee and Caledonia ("Discount Letter Agreement"), and (4) Third Revised Sheet No. 413 of Tennessee's FERC Gas Tariff, Fifth Revised Volume No. 1 (Volume No. 1 Tariff). Tennessee requests an effective date of June 1, 1999.

Tennessee states that the Transportation Service Agreement and the Discount Letter Agreement reflect a negotiated rate arrangement between Tennessee and Caledonia for transportation under Rate Schedule FT–A to be effective June 1, 1999 through May 31, 2009. Tennessee also states that it is submitting the Transportation Service Agreement and the Discount Letter Agreement for Commission approval because the Discount Letter Agreement contains language which modifies the provisions of the Gas Transportation Agreement contained in Tennessee's Volume No. 1 Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with §§ 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with § 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11942 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP91–203–069]

Tennessee Gas Pipeline Company; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed Twentieth Revised Sheet No. 20, Twenty-first Revised Sheet No. 21A, Twenty-seventh Revised Sheet No. 22, Twenty-first Revised Sheet No. 22A, Sixteenth Revised Sheet No. 23, Eighth Revised Sheet No. 23A, Eleventh Revised Sheet No. 23B, Sixth Revised Sheet No. 23C, Twenty-second Revised Sheet No. 24, Sixteenth Revised Sheet No. 25 and Eighth Revised Sheet No. 27 to be included in its FERC Gas Tariff.

Tennessee states that this filing is in compliance with the Commission's April 16, 1999 order in Docket Nos. RP91–203–68, *et al.* Tennessee Gas Pipeline Co., 87 FERC (61,086 (1999). Tennessee requests an effective date of May 1, 1999, for these tariff sheets. The tariff sheets will put into place rates reflecting the Commission's decision regarding the proper allocation of the New England lateral costs. Tennessee requests all waivers of the Commission's regulations that may be necessary to all this filing to become effective on May 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11948 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–294–000]

Texas Eastern Transmission Corporation; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, to become effective June 1, 1999:

First Revised Sheet No. 702
First Revised Sheet No. 717
First Revised Sheet No. 732
First Revised Sheet No. 763
First Revised Sheet No. 766J
First Revised Sheet No. 801
First Revised Sheet No. 814

Texas Eastern states that the purpose of this filing is to revise, on a prospective basis, the forms of firm service agreement for Rate Schedules CDS, FT–1, SCT, LLFT, VKFT, SS–1 and FSS–1 to provide for a reduced minimum prior written notice requirement for termination of at least one (1) year for long-term service agreements. Texas Eastern proposes these changes to its firm forms of service agreement to be effective on a prospective basis, with such changes to be available on and after the effective date of the tariff sheets filed herein, for new service agreements executed in connection with remarketing turnback capacity subsequent to the termination of existing long-term contracts as well as superseding service agreements executed in connection with the renegotiation and extension of existing service agreements.

Texas Eastern states that copies of the filing were served on all affected customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11963 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–106–003]

TransColorado Gas Transmission Company; Notice of Tariff Filing

May 6, 1999.

Take notice that on April 30, 1999, pursuant to 18 CFR 154.7 and 154.203, and in compliance with Commission letter order issued April 5, 1999, in Docket No. RP99–106–002, TransColorado Gas Transmission Company (TransColorado) tender for filing and acceptance, to be effective March 31, 1999, Substitute Second Revised Sheet No. 247 and Substitute Original Sheet No. 247A to Original Volume No. 1 of its FERC Gas Tariff.

TransColorado states that the April 5 order directed it to revise its tariff sheets to reflect that TransColorado will file with the Commission by March 1 of each year an annual fuel-reimbursement report fully detailing the operation of its fuel reimbursement mechanism for the 12-month period ending December 31 of each year.

TransColorado states that the April 5 order directed it to revise § 12.8(a) of its Fuel-Reimbursement provision to state that the monthly fuel-gas-reimbursement factor will be calculated using the most recent available actual data and is computed by adding (1) the Projected Monthly System Gas Consumption to (2) the Projected Monthly Lost and Unaccounted-For Quantities plus the Prior Month's Variance Adjustment divided by projected transportation receipts. Further, the April 5 order directed TransColorado to eliminate the first proposed sentence in § 12.8(b) and substitute a revised sentence.

TransColorado states that a copy of this filing has been served upon its customers, the official service list in Docket No. RP99–106, the New Mexico Public Utilities Commission and the Colorado Public Utilities Commission.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission,

888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11953 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–392–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

May 6, 1999.

Take notice that on April 29, 1999, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application pursuant to sections 7(c) of the Natural Gas Act and subpart A of part 157 of the Commission's regulations for a certificate of public convenience and necessity authorizing Transco to construct and operate facilities which will provide 204,099 dekatherms per day (dt per day) of new firm transportation capacity on Transco's system, all as more fully set forth in the application which is on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202 208–2222 for assistance).

Transco seeks authorization of its SouthCoast Expansion Project (SouthCoast), an incremental expansion of Transco's pipeline system in its southern market area which will provide 204,099 dt per day of new firm transportation capacity on its system, by a proposed in-service date of November 1, 2000.

Specifically, Transco proposes to construct and operate the following facilities which Transco estimates will cost $108,354,725:

1. 11.31 miles of 42-inch pipeline loop from milepost 799.95 on Transco's mainline in Choctaw County, Alabama to Transco's Compressor Station 90 at milepost 811.26 in Marengo County, Alabama, which will include installation of a pig launcher at milepost 764.66 (upstream of the loop) and installation of a pig receiver and liquid scrubber at Station 90.

2. 13.94 miles of 48-inch pipeline loop from milepost 837.52 on Transco's mainline in Marengo County, Alabama to milepost 851.46 on Transco's mainline in Dallas County, Alabama, which will include relocation of an existing pig receiver from milepost 837.52 to milepost 851.46. A pig launcher for the loop already exists at Station 90.

3. 19.01 miles of 24-inch pipeline loop from milepost 0.00 on Transco's North Georgia Extension in Walton County, Georgia to milepost 19.01 on the North Georgia Extension in Gwinnette County, Georgia, which will include installation of a pig launcher at milepost 0.00 and installation of a pig receiver at milepost 19.01.

4. A new 15,000 horsepower gas turbine-powered compressor unit at Station 105 in Coosa County, Alabama.

5. A new 16,500 horsepower electric motor-driven compressor unit at Station 115 in Coweta County, Georgia. Also, at station 115 gas coolers will be installed which will cool the total station gas flow.

6. Unit 16 will be rewheeled at Station 120.

7. Suction piping at Station 100 will be modified to allow sufficient gas flow to Unit 10.

Transco states that the facilities, for the most part, will be installed either entirely within or immediately adjacent to Transco's existing right-of-way and compressor station yards.

Transco indicates that it held an open season from July 22, 1998, to August 24, 1998, during which it accepted requests for firm service under SouthCoast. Transco states that as result of the open season, Transco executed precedent agreements with the following twelve shippers:

Atlanta Gas Light Company—61,160 dt per day
Georgia Power Company—40,000 dt per day
Santee Cooper—80,000 dt per day
Sylacaugh Utilities Board—4,000 dt per day
Visy Paper, Inc—4,500 dt per day
City of Buford, Georgia—3,105 dt per day
City of Covington, Georgia—1,294 dt per day
East Central Alabama Gas District—518 dt per day
City of Lawrenceville, Georgia—3,105 dt per day
City of Sugar Hill, Georgia—2,277 dt per day
City of Toccoa, Georgia—3,105 dt per day
City of Winder, Georgia—1,035 dt per day

Transco points out that the capacity covered by these precedent agreements totals 204,099, which is the capacity of SouthCoast.

Transco states that the firm transportation service under SouthCoast will be rendered under Transco's Rate Schedule FT and Part 284(G) of the Commission's regulations. Additionally, Transco states that the SouthCoast shippers will pay Transco's Rate Schedule FT rate and will also be charged any applicable charges and surcharges under Rate Schedule FT.

Transco requests that the Commission make a determination that the costs associated with the SouthCoast facilities may be rolled into Transco's cost of service in Transco's first Section 4 rate proceeding which becomes effective following the in-service of the project. Transco claims that a presumption to roll-in the SouthCoast costs applies because the rate impact on its existing customers under each firm rate schedule is less than five percent which is the level set forth in the Commission's Statement of Policy for a presumption of rolled-in rate treatment on the pricing of new pipeline construction. Transco also claims that the subject facilities will produce significant system benefits and will be fully integrated physically and operationally with Transco's existing system.

Transco requests that the Commission issue a preliminary determination approving all aspects of the subject application other than environmental matters by August 1, 1999, and a final order granting all certification by December 1, 1999.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before May 27, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing

therein must file a motion to intervene in accordance with the Commission's Rules.

A person obtaining intervenor status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by every one of the intervenors. An intervenor can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervenor must submit copies of comments or any other filing it makes with the Commission to every other intervenor in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and will be able to participate in meetings associated with the Commission's environmental review process. Commenters will not be required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all documents filed by other parties or issued by the Commission and will not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervenor status.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is time filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–11933 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT99–25–000]

Transcontinental Gas Pipe Line Corporation; Notice of Refund Report

May 6, 1999.

Take notice that on April 28, 1999, Trancontinental Gas Pipe Line Corporation (Transco) filed a report reflecting the flow through of refund received from CNG Transmission Corporation (CNG).

On February 12, 1999, in accordance with Section 4 of its Rate Schedule FTNT, Transco states that it refunded to its FTNT customer, New York Power Authority, $133,300 resulting from the estimated refund of CNG Transmission Corporation's Docket No. RP97–406, et al and on April 1, 1999 Transco refunded $35,334.25 to the same customer which is a true-up for this refund. The refund covers the period from January 1998 to January 1999.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11941 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–291–000]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing tariff sheets to its FERC Gas Tariff, Third Revised Volume No. 1, which tariff sheets are enumerated in Appendix A attached to the filing. Such tariff sheets are proposed to be effective November 1, 1999.

On September 25, 1998, as amended on October 5, 1998, Transco filed an application to abandon Rate Schedule LG–A service provided to PG Energy, Inc. and Philadelphia Gas Works and to provide increased service under Rate Schedule LG–A to NUI Corporation. On October 30, 1998, the Commission granted approval of the abandonment of service to PGE and PGW, but dismissed Transco's request to provide increased service to NUI. On November 6, 1998, Transco filed a petition requesting that the Commission grant authorization to provide service to NUI on a temporary basis. The Commission issued an order on November 12, 1998 granting Transco's request for a limited-term certificate. In compliance with the November 12 Order, Transco is filing to (1) implement two new Part 284 services, Rate Schedule LNG (Liquefied Natural Gas Storage Service) and Rate Schedule LNG–R (Released Liquefied Natural Gas Storage Services) and (2) modify the rate and the General Terms and Conditions tariff sheets to incorporate these new services.

In accordance with the provisions of Section 154.2(d) of the Commission's Regulations, copies of this filing are available for public inspection, during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas. In addition, Transco is serving copies of the instant filing to its affected customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, see First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the

Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11960 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–296–000]

Trunkline Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 6, 1999.

Take notice that on April 30, 1999, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 1999.

Ninth Revised Sheet No. 13

Trunkline states that the purpose of this filing, made in accordance with the provisions of Section 154.204 of the Commission's Regulations, is to eliminate the minimum rate for Rate Schedule GPS, Gas Parking Service.

Trunkline states that a copy of this filing is available for public inspection during regular business hours at Trunkline's office at 5400 Westheimer Court, Houston, Texas 77056–5310. In addition, copies of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11965 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2631–000, et al.]

Northeast Utilities Service Company, et al. Electric Rate and Corporate Regulation Filings

May 3, 1999.

Take notice that the following filings have been made with the Commission:

1. Northeast Utilities Service Company

[Docket No. ER99–2631–000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Constellation Power Source, Inc. (Constellation), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective March 31, 1999.

NUSCO states that a copy of this filing has been mailed to Constellation.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

2. Delmarva Power & Light Company

[Docket Nos. ER97–3189–022 and OA97–586–001]

Take notice that on April 28, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a revised compliance refund report for the City of Easton, Maryland (Easton), to correct a miscalculation in the original compliance refund report.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

3. Delmarva Power & Light Company

[Docket Nos. ER97–3189–023 and OA97–586–002]

Take notice that on April 28, 1999, Delmarva Power & Light Company (Delmarva), tendered for filing a revised compliance refund report for the City of Dover, Delaware (Dover) to correct a miscalculation in the original compliance refund report.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

4. FirstEnergy Corp., and Pennsylvania Power Company

[Docket No. ER99–2632–000]

Take notice that on April 28, 1999, FirstEnergy Corp. (FirstEnergy), tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with Public Service Electric and Gas Company pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is April 1, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Company of New Mexico

[Docket No. ER99–2633–000]

Take notice that on April 28, 1999, Public Service Company of New Mexico (PNM), tendered for filing two executed service agreements, dated April 21, 1999, with the Incorporated County of Los Alamos (County), under the terms of PNM's Open Access Transmission Service Tariff (OATT). One agreement is for firm point-to-point transmission service, and supersedes an existing service agreement between PNM and County, dated December 1, 1996. Under the service agreement PNM provides County with firm point-to-point transmission service from PNM's San Juan Generating Station 345 kV Switchyard (point of receipt) to PNM's Norton or ETA points of interconnection with County. The other agreement is a Control Area Service Agreement, which incorporates certain sections of PNM's OATT, and replaces Service Schedule H (SS H), of the Interconnection Agreement between PNM and County. Both agreements are to take effect on the same date that the Notice of Termination for SS H (which is being filed concurrently under separate cover) takes effect. PNM's filings are available for public inspection at PNM's offices in Albuquerque, New Mexico.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

6. Public Service Company of New Mexico

[Docket No. ER99–2634–000]

Take notice that on April 28, 1999, Public Service Company of New Mexico (PNM), tendered for filing a Notice of Termination of Service Schedule H, Area Control Services and Metering (Supplement No. 7 to PNM Rate Schedule FERC No. 60), to the Interconnection Agreement between PNM and Incorporated County of Los Alamos (County), dated November 26, 1984. Termination of the Service Schedule is to be effective on the same date as PNM's new service agreements (under PNM's Open Access Transmission Tariff) for firm point-to-point transmission and control area service with County take effect. PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

7. Northeast Utilities Service Company

[Docket No. ER99–2636–000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, and Public Service Company of New Hampshire, tendered for filing pursuant to Section 205 of the Federal Power Act and Section 35.13 of the Commission's Regulations, a rate schedule change for sales of electric energy to Town of Danvers Electric Division (Danvers).

NUSCO states that a copy of this filing has been mailed to Danvers.

NUSCO requests that the rate schedule change become effective on May 1, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

8. Central Power and Light Company West Texas Utilities Company Public Service Company of Oklahoma Southwestern Electric Power Company

[Docket No. ER99–2638–000]

Take notice that on April 28, 1999, Central and South West Services, Inc., as agent for Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, and Southwestern Electric Power Company (collectively, the CSW Operating Companies), tendered for filing a quarterly report under the CSW Operating Companies' market-based sales tariff. The report is for the period January 1, 1999 through March 31, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

9. Northeast Utilities Service Company

[Docket No. ER99–2639–000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Merchant Energy Group of the Americas, Inc. (MEGA), under the NU System Companies' Sale for Resale Tariff No. 7.

NUSCO requests that the Service Agreement become effective May 1, 1999.

NUSCO states that a copy of this filing has been mailed to MEGA.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

10. NYSEG Solutions, Inc.

[Docket No. ER99–2641–000]

Take notice that on April 28, 1999, NYSEG Solutions, Inc., tendered for filing a Summary of Quarterly Activity for the calendar year quarter ending March 31, 1999, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph J of the Federal Energy Regulatory Commission's December 14, 1998, order in Docket No. ER99–220–000.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

11. South Glens Falls Energy, LLC

[Docket No. ER99–2642–000]

Take notice that on April 28, 1999, South Glens Falls Energy, LLC, tendered for filing a Summary of Quarterly Activity for the calendar year quarter ending March 31, 1999, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d (1985), and Part 35 of the Commission's Rules of Practice and Procedure, 18 CFR 35, and in accordance with Ordering Paragraph H of the Federal Energy Regulatory Commission's March 11, 1999, order in Docket No. ER99–1261–000.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Company

[Docket No. ER99–2643–000]

Take notice that on April 28, 1999, Northeast Utilities Service Company (NUSCO), tendered for filing a Service Agreement with Morgan Stanley Capital Group, Inc. (MSCG), under the NU System Companies' System Power Sales/Exchange Tariff No. 6.

NUSCO requests that the Service Agreement become effective April 1, 1999.

NUSCO states that a copy of this filing has been mailed to MSCG.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER99–2644–000]

Take notice that on April 28, 1999, New England Power Company (NEP), tendered for filing a Notice of Cancellation of the Unit Power Contract between NEP and Holden Municipal Light Department, FERC Electric Rate Schedule No. 408.

NEP requests that cancellation be effective the April 30, 1999.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

14. American Transmission Systems, Inc.

[Docket No. ER99–2647–000]

Take notice that on April 28, 1999, American Transmission Systems, Inc., tendered for filing an application to establish initial rates charged for transmission service under the American Transmission Systems, Inc's Open Access Tariff. Included as part of the filing is an amendment to the Joint Dispatch Agreement among the FirstEnergy Operating Companies and American Transmission Systems, Inc. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

15. Mid-Continent Area Power Pool

[Docket No. ER99–2649–000]

Take notice that on April 28, 1999, the Mid-Continent Area Power Pool (MAPP), on behalf of its members that are subject to Commission jurisdiction as public utilities under Section 201(e) of the Federal Power Act, tendered for filing MAPP's amended Line Loading Relief procedure, incorporating procedures to curtail generation to load deliveries and amending procedures to curtail non-firm point-to-point transmission service.

MAPP requests an effective date of June 1, 1999, with regard to the changes to implement generation to load curtailments.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

16. Niagara Mohawk Power Corporation

[Docket No. ER99–2664–000]

Take notice that on April 28, 1999, Niagara Mohawk Power Corporation (NMPC), tendered for filing with the Federal Energy Regulatory Commission an executed Transmission Service Agreement between NMPC and the New York Power Authority to serve 2.0 MW of New York Power Authority power to Encore Paper. This Transmission Service Agreement specifies that the New York Power Authority has signed on to and has agreed to the terms and conditions of NMPC's Open Access Transmission Tariff as filed in Docket No. OA96–194–000. This Tariff, filed with FERC on July 9, 1996, will allow NMPC and the New York Power Authority to enter into separately scheduled transactions under which NMPC will provide transmission service for the New York Power Authority as the parties may mutually agree.

NMPC requests an effective date of April 1, 1999. NMPC has requested waiver of the notice requirements for good cause shown.

NMPC has served copies of the filing upon the New York State Public Service Commission and the New York Power Authority.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Electric Power Company

[Docket No. ER99–2665–000]

Take notice that on April 28, 1999, Wisconsin Electric Power Company (Wisconsin Electric), tendered for filing revisions to its market-based rate tariff (FERC Electric Tariff, Original Volume No. 8). The revisions are being made to reflect the consummation of the merger involving Wisconsin Electric and Edison Sault Electric Company (Edison Sault), to treat Wisconsin Electric and Edison Sault as operating companies, and apply the code of conduct to transactions between them and non-operating affiliates.

Copies of the filing have been served on customers under the market-based rate tariff, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

18. Excell Energy Services, Inc.

[Docket No. ER99–2666–000]

Take notice that on April 28, 1999, Excell Energy Services, Inc., tendered for filing notice that the company was dissolved in 1995 and advises that it no longer operates as a power marketer. Excell Energy Services, Inc., requests termination of Power Rate Schedule 1.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

19. Central Illinois Light Company

[Docket No. ER99–2667–000]

Take notice that on April 28, 1999, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a revised substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and a revised service agreement with one customer, Corn Belt Electric Cooperative, Inc.

CILCO requested an effective date of April 1, 1999.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: May 18, 1999, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11922 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 8083–005]

George and Arminda Briggs; Notice of Availability of Environmental Assessment

May 6, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Hydropower Licensing has reviewed the application for the proposed Surrender of Exemption for the Briggs Hydroelectric Project, located in Fremont County, Idaho, and has prepared an Environmental Assessment (EA) for the proposed action.

In the EA, the Commission's staff analyzed the potential environmental impacts of the proposed action. The staff concluded that approval of the subject surrender of exemption would not produce any adverse environmental impacts; consequently, the proposal would not constitute a major federal action significantly affecting the quality of the human environment.

The EA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA can be viewed at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. The EA also may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

David P. Boergers,

Secretary.

[FR Doc. 99–11947 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2232–364]

Duke Energy Corporation; Notice of Availability of Draft Environmental Assessment

May 6, 1999.

A draft environmental assessment (DEA) is available for public review. The DEA analyzes the environmental impacts of constructing 130 boat slips and a boat access ramp on 3.627 acres of land within the Catawba-Wateree

Hydroelectric project boundary. Duke Energy Corporation, licensee for the project, proposes to lease the land to Mt. Isle Harbor Boat Slip Association. The site of the proposed boat slips and ramp is in the Paw Creek Township on Mountain Island Lake in Mecklenburg County, North Carolina. The slips and ramp would be constructed to accommodate residents of Mt. Isle Harbor Subdivision.

The DEA was written by staff in the Office of Hydropower Licensing, Federal Energy Regulatory Commission. Copies of the EA are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The DEA may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

Please submit any comments on the DEA within 30 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports, or other working papers of substance should be supported by appropriate documentation. Comments should be addressed to: The Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Please affix Project No. 2232–364 to all comments.

David P. Boergers,

Secretary.

[FR Doc. 99–11945 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP98–150–000 and CP98–151–000]

Millennium Pipeline Company, L.P. and Columbia Gas Transmission Corporation; Notice of Change of Location for Scoping Meeting and Notice of Site Visit

May 6, 1999.

The location for the following draft environmental impact statement comment meeting for the Millennium Pipeline Project has been changed. The meeting to be held in Yonkers, New York, on Tuesday, May 18, 1999, has been changed from the Mark Twain Junior High School to the following facility: Yonkers Public Library, 1500 Central Park Avenue, Yonkers, New York 10710, (914) 337–1500.

On Thursday, May 20, 1999, the Federal Energy Regulatory Commission staff will conduct a limited site visit at a few locations between approximate mileposts 242 and 243.5 of the proposed Millennium Pipeline Project. A memorandum summarizing locations visited and issues discussed during the inspection will be filed in the public record for these dockets.

Participants on the site visit will meet at 8:30 a.m. at: Days Inn, 1000 Front Street, Binghamton, NY 13905, (607) 724–3297.

For further information, call Paul McKee, Office of External Affairs, at (202) 208–1088.

David P. Boergers,

Secretary

[FR Doc. 99–11932 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

May 6, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Applicaton Type:* Declaration of Intention.

b. *Docket No:* DI99–3–000.

c. *Date Filed:* April 2, 1999.

d. *Applicant:* City of Atka, Alaska.

e. *Name of Project:* Chuniisax Creek Hydropower Project.

f. *Location:* On Chuniisax Creek, one-half mile southwest of the old town portion of the City of Atka, 1,100 miles southwest of Anchorage on Atka Island, Alaska, T92S R176W, Seward Meridian. The proposed project does not utilize federal lands. It will be located on native corporation lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825(r).

h. *Applicant Contact:* Mrs. Julie Dirks, City Administrator, City of Atka, Post Office Box 765, Unalaska, Alaska 99685 (907) 581–6226.

i. *FERC Contact:* Any questions on this notice should be addressed to Henry Ecton at (202) 219–2678, or e-mail address: henry.ecton@ferc.fed. us.

j. *Deadline for filing comments and or motions:* June 17, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington D.C. 20426.

Please include the docket number (DI99–3–000) on any comments or motions filed.

k. *Description of Proposed Project:* The proposed run-of-river project will consist of a 13-foot-high, 80-foot-wide diversion dam; a penstock consisting of a 1,060-foot-long, 28-inch HDPE pipe; a 16-foot-by-18-foot powerhouse, containing a 271 kW cross-flow turbine; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTESTS", or "MOTION" TO INTERVENE", as

applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–11935 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Declaration of Intention and Soliciting Comments, Motions to Intervene, and Protests

May 6, 1999.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Declaration of Intention.

b. *Docket No:* DI99–4–000.

c. *Date Filed:* March 15, 1999.

d. *Applicant:* Bruce Cox.

e. *Name of Project:* Cox Lake Hydro Project.

f. *Location:* On Deep River, near Cedar Falls, in Randolph County, North Carolina. The project does not utilitize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. § 791(a)–825 (r).

h. *Applicant Contact:* Mr. Bruce Cox, 5666 Hinshaw Town Road, Ramseur, NC 27316, (336) 879–4267.

i. *FERC Contact:* Any questions on this notice should be addressed to Etta Foster at (202) 219–2679, or e-mail address: etta.foster@ferc.fed.us.

j. *Deadline for filing comments and or motions:* June 16, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426.

Please include the docket number (DI99–4–000) on any comments or motions filed.

k. *Description of Project:* The existing run-of-river project consists of a 248-acre-foot reservoir; a 24-foot-high, 280-foot-wide concrete and stone-masonry gravity dam, with 1.7-foot-high flashboards; a 35-foot-long, 45-foot-high reinforced concrete powerhouse containing two generators rated at 250 kW and 125 kW; and appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. *Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.*

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211 and .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary at the above-mentioned address. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 99–11936 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Public Meetings and Site Visit

May 6, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.: 1864.*

c. *Date Filed:* March 5, 1985.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Bond Falls Project.

f. *Location:* On the west branches of the Ontonagon River, a tributary of western Lake Superior, in Ontonagon and Gogebic Counties, Michigan, and a small portion of Vilas County in northern Wisconsin. The project is partially located on the Ottawa National Forest, which is federal land administered by the U.S. Forest Service.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Max O. Curtis, Upper Peninsula Power Company, 600 Lakeshore Drive, P.O. Box 130, Houghton, MI 49931–0130, (906) 487–5063.

i. *FERC Contact:* Frankie Green, e-mail address: frankie.green@ferc.fed.us, (202) 501–7704.

j. Parties to this relicensing proceeding recently provided Commission staff with a draft Offer of Settlement for this project. The parties anticipate finalizing the Offer of Settlement by mid-1999. Commission staff and parties to the settlement will host a site visit and two public meetings to discuss the draft Offer of Settlement for the Bond Falls Project. All interested individuals, organizations, and agencies are invited to attend the site visit and either of the meetings and discuss any issues or concerns with the draft Offer of Settlement.

The site visit by Commission staff and other interested parties is planned for May 25, 1999, to familiarize staff and other parties with elements included in the draft offer of Settlement. The visit will begin at 9:00 AM, EDT, at the Forest Service's Watersmeet, MI office parking lot. Any one wishing to accompany Commission staff as invited to attend.

Both meetings will be held on Wednesday, May 26, 1999. The first meeting will be held at the Best Western Porcupine Mountain Lodge in Silver City, MI from 1:00 PM to 4:00 PM, EDT. The second meeting will be held at the Sylvania Visitor Center in Watersmeet, MI from 8:00 PM to 11:00 PM, EDT.

The meetings will be recorded by a stenographer, and the transcripts will become part of the Commission's public record of this proceeding. Anyone wishing to receive a copy of the transcript of the meetings may contact Ace Federal Reporting Company by calling (202) 347–3700 or by writing to 1120 G Street, N.W., Washington, D.C. 20005.

Any comments on the draft Offer of Settlement or any other concerns with the Bond Falls project should be submitted to the Commission no later than June 18, 1999.

All written comments (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they also serve a copy of the document on that resource agency.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time.

l. *Description of Project:* The Bond Falls project consists of four developments on the Middle Cisco (South), and West branches of the Ontonagon River. Each project development consists of a storage reservoir or lake, a main dam or dams, and appurtenant facilities. The four project water bodies are Bond Falls flowage, Lake Gogebic (Bergland development), Cisco Chair-of-Lakes, and Victoria reservoir. The Bond Falls, Bergland, and Sisco Developments provide seasonal reservoir storage and diverson of the river flow to the Victoria development, where the flow is used to generate power.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the address in item h above and may be viewed on the web at http://WWW.ferc.fed.us/online/rims.htm (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–11944 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Scoping Meetings and Site Visit and Soliciting Scoping Comments

May 6, 1999.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2634–007.

c. *Date Filed:* April 28, 1998.

d. *Applicant:* Great Northern Paper, Inc.

e. *Name of Project:* Storage Project.

f. *Location:* The four-reservoir project is located on Ragged Stream, Caucomgomoc Stream, the West Branch, and the South Branch of the Penobscot River in Somerset and Piscataquis Counties, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. Brian R. Stetson, Manager, Environmental Affairs, Great Northern Paper, Inc., One Katahdin Avenue, Millinocket, ME 04462, (207) 723–2664.

i. *FERC Contact:* Any questions on this notice should be addressed to John Costello, E-Mail address, john.costello@ferc.fed.us, or telephone (202) 219–2914.

j. *Deadline for filing scoping comments:* August 3, 1999.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

l. *Description of the Project:* The Storage Project consists of four dams and associated storage reservoirs including Canada Falls Lake, Seboomook Lake, Caucomgomoc Lake, and Ragged Lake, located in the West Branch of the Penobscot River drainage basin. There are no hydroelectric generating facilities at the Storage Project developments.

m. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address shown in item h.

h. *Scoping Process:* The Commission intends to prepare an Environmental Assessment (EA) for the proposed relicensing of the Storage Project (FERC No. 2634) in accordance with the National Environmental Policy Act. The EA will consider both site-specific and cumulative environmental impacts and reasonable alternatives to the proposed actions.

Scoping Meetings

The Commission will hold scoping meetings for the Storage Project, one in the daytime and one in the evening, to

help us identify the scope of issues to be addressed in the EA.

The daytime scoping meeting will focus on resource agency concerns, while the evening scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Daytime Meeting

Thursday, June 3, 1999, 1:00 p.m., Trail Side Restaurant at the Leisure Life Resort, Leisure Life Resort Road, Greenville, Maine

Evening Meeting

Thursday, June 3, 1999, 7:00 p.m., Trail Side Restaurant at the Leisure Life Resort, Leisure Life Resort Road, Greenville, Maine

To help focus discussions, we will distribute a Scoping Document (SD1) outlining the subject areas to be addressed in the EA to parties on the Commission's mailing list. Copies of the SD1 also will be available at the scoping meetings.

Site Visit

The applicant and Commission staff will conduct a project site visit on Wednesday, June 2, 1999. We will meet at the public boat launch on Route 16 located approximately 2 miles west of Greenville, Maine at 7 a.m. If you would like to attend, please call Ed Speer, Great Northern Paper, Inc. at (207) 723–2698, no later than May 28, 1999.

Objectives

At the scoping meetings, the staff will: (1) summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the EA; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

The meetings will be recorded by a stenographer and will become part of the formal record of the Commission's proceeding on the project. individuals presenting statements at the meetings will be asked to sign in before the meeting starts and to identify themselves clearly for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EA.

All questions concerning the scoping process should be directed to John Costello E-mail address, john.costello@ferc.fed.us, or telephone at (202) 219–2914.

David P. Boergers,

Secretary.

[FR Doc. 99–11946 Filed 5–11–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6341–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; National Roster of Environmental Dispute Resolution and Consensus Building Professionals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: The National Roster of Environmental Dispute Resolution and Consensus Building Professionals, EPA ICR No. 1888.01, new collection. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1888.01.

SUPPLEMENTARY INFORMATION:

Title: National Roster of Environmental Dispute Resolution and Consensus Building Professionals (EPA ICR No. 1888.01.). This is a new collection.

Abstract: This ICR pertains to the application form for listing facilitators, mediators and other similar professionals on a National Roster for Environmental Dispute Resolution and Consensus-Building Professionals ("roster"). This information will be collected by the U.S. Institute for Environmental Conflict Resolution of the Morris K. Udall Foundation ("Institute"). The EPA is funding the initial development of the roster which will be managed by the Institute. Submittal of an application form is voluntary and not required for ultimate selection by the government as a neutral in any specific case.

The application form will collect information about the experience and education of professionals engaged in assisting disputants in reaching consensus, agreements or settlements of environmental and natural resource conflicts. The information needed to complete the roster application is generally what would be found on a resume or curriculum vita or provided in reply to a request for proposal. The form does not collect any confidential information.

The roster will be used by Federal agencies to identify qualified individuals with whom to contract for neutral consensus building and dispute resolution services. Other parties such as state government agencies, private companies and public interest organizations may use the Roster to identify appropriate qualified individuals for cases.

Collecting the information on a form will standardize the responses received from numerous applicants into a computer database which may then be searched on a number of fields important to potential clients of dispute resolution services. Such searchable fields would include, among other things, geographic location, specialized past experience and skill in languages. We expect that a computerized database of experienced neutrals will reduce the time necessary for Federal agencies to identify and contract with dispute resolution service providers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 11/23/98 (63 FR 64699); 6 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 0.9 hours per

respondent. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Facilitators, Mediators, including attorney-mediators; Arbitrators; Retired judges; Other consensus building professionals.

Estimated Number of Respondents: 500.

Frequency of Response: Once, with voluntary updates.

Estimated Total Annual Hour Burden: 458 hours.

Estimated Total Annualized Cost (non-labor costs) Burden: $ 0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1888.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Policy, Regulatory Information Division (2137), 401 M Street, SW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: May 6, 1999.

Richard T. Westlund,

Acting Director, Regulatory Information Division.

[FR Doc. 99–12010 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6341–3]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee (EC) will conduct a public teleconference meeting on Thursday, May 27, 1999, between the hours of 12:00 noon and 2:00 p.m., Eastern Time.

The meeting will be coordinated through a conference call connection in Room 3709 of the Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. The public is welcome to attend the meeting physically or through a telephonic link. Additional instructions about how to participate in the conference call can be obtained by calling Ms. Priscilla Tillery-Gadson at (202) 260–4126, and via e-mail at: tillery-priscilla@epa.gov by May 21, 1999.

During this meeting the Executive Committee plans to review draft reports from its Committees. Anticipated drafts include: (a) Review of Data from the Testing of Human Subjects (SAB/SAP Joint Subcommittee); (b) Review of the Cancer Risk Assessment Guidelines (EC Subcommittee); (c) Advisory on the Charter for Environmental Regulatory Monitoring (EC Subcommittee); (d) Advisory on Addressing Risks from Indoor Radon (Radiation Advisory Committee); (e) Commentary on Environmental Risks of Natural Hazards (Environmental Engineering Committee); and (f) Commentary on the Need to Address Source Reduction and Control Technology in PM2.5 Research Plans (Environmental Engineering Committee). It is possible that other draft reports may be available for review at this meeting as well. Please check with Ms. Tillery-Gadson prior to the meeting to confirm any changes in the planned review schedule.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning the meeting or wishing to submit comments should contact Dr. Donald G. Barnes, Designated Federal Officer for the Executive Committee, Science Advisory Board (1400), U.S. Environmental Protection Agency, Washington DC 20460; telephone (202) 260–4126; FAX (202) 260–9232; and via e-mail at: barnes.don@epa.gov. Copies of the draft reports are available from the same source, or from the SAB Website (http://www.epa.gov/sab) at least one week prior to the meeting.

General Information on Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation at will be limited to a total time of ten minutes. For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date (usually one week before the meeting), may be mailed to the relevant SAB committee or subcommittee; comments received too close to the meeting date will normally be provided to the committee at its meeting, or mailed soon after receipt by the Agency.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 260–4126 or via fax at (202) 260–1889.

Meeting Access

Individuals requiring special accommodation at this teleconference meeting, including wheelchair access to the conference room, should contact Dr. Barnes at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: May 5, 1999.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 99–12009 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00595; FRL–6076–3]

Ecological Committee for FIFRA Risk Assessment Methods Scientific Peer Input Workshop on Probabilistic Methods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA's Office of Pesticide Programs (OPP) will hold a public workshop to review The Ecological Committee for FIFRA Risk Assessment Methods' (ECOFRAM) proposed probabilistic tools and methods for

evaluating the impact of pesticides on aquatic and terrestrial non-target organisms.

DATES: The Aquatic workshop will be held on Tuesday, 22 June 1999, from 8:30 a.m. to 5:00 p.m. and Wednesday, 23 June 1999, from 8:00 a.m. to 12:00 p.m. The Terrestrial workshop will be held on Wednesday, 23 June 1999, from 1:00 pm to 5:00 p.m. and Thursday, 24 June 1999, from 8:00 a.m. to 4:00 p.m..

ADDRESSES: The meeting will be held at: the Old Town Holiday Inn Select, 480 King Street (corner of King and Royal Streets), Alexandria, Virginia 22314.

FOR FURTHER INFORMATION CONTACT: By mail: Ingrid Sunzenauer (7507C), or Gail Maske (7507C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Telephone numbers and e-mail addresses are as follows: Ingrid Sunzenauer (703) 305–5196, Sunzenauer.Ingrid@epamail.epa.gov; and Gail Maske (703) 305–5245, maske.gail@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Electronic Availability

Electronic Availability: Electronic copies of this document and various support documents are available from the EPA home page at the Federal Register-Environmental Documents entry for this document under "Laws and Regulations" (http://www.epa.gov/fedrgstr/).

A copy of the prepared ECOFRAM draft reports can be obtained from the information contacts or electronically from OPP's Home Page under Pesticide Science, Ecological Risk Assessment Page, (http://www.epa.gov/oppefed1/ecorisk/index.htm) after May 20, 1999.

II. Purpose and Scope of the Scientific Workshop

The purpose of the workshop is to discuss the scientific aspects of the probabilistic tools and methods for evaluating effects of pesticides to non-target species developed by the Terrestrial and Aquatic ECOFRAM Workgroups. Peer input reviews and comments will be presented by an invited group of scientists followed by a discussion session with ECOFRAM workgroup members. These participants in the workshop will include OPP's Environmental Fate and Effects Division, EPA's Office of Research and Development, members of some state governments and academia, and other stakeholders (some international interested parties). All have prepared reviews of the ECOFRAM's Draft Reports on probabilistic tools and methods for ecological risk assessment.

The workshop will focus on the technical reviews by the invited participants. Outside observers (interested parties who were not part of the technical review) will have an opportunity to comment on scientific and technical issues related to the document after the initial presentations. Additional comments may also be made at the closing discussions, after the reviewers have discussed the issues raised. OPP plans to discuss the results of this peer review workshop and related issues with the Federal Insecticide, Fungicide, and Rodenticide (FIFRA) Scientific Advisory Panel at a later date.

List of Subjects

Environmental protection.

Dated: April 19, 1999.

Elizabeth Leovey,

Acting Director, Environmental Fate and Effects Division, Office of Pesticide Programs.

[FR Doc. 99–11715 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6341–5]

Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure and IRIS Summary for Benzene

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and public comment period.

SUMMARY: The U. S. Environmental Protection Agency (EPA) is announcing a 30-day public comment period to review the draft documents entitled, Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure (NCEA–W–0517) and the IRIS [Integrated Risk Information System] Summary for Benzene. The documents were prepared by the EPA's National Center for Environmental Assessment-Washington Office (NCEA–W) of the Office of Research and Development. EPA will use comments and recommendations from the public to assist in revising the document.

DATES: The comment period begins May 12, 1999 and ends June 11, 1999.

ADDRESSES: The documents are available on the Internet at http://www.epa.gov/ncea under the What's New and Publications menus. A limited number of paper copies are available from the Technical Information Staff (8623D), NCEA–W, telephone: 202–564–3261; facsimile; 202–565–0050. If you are requesting a paper copy, please provide your name, mailing address, and the document titles, Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure (NCEA–W–0517) and IRIS Summary for Benzene.

Comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 401 M Street, S.W., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street, N.W., 5th Floor, Washington, DC 20074; telephone number 202–564–3261; facsimile: 202–565–0050. Comments should be in writing and must be postmarked by June 11, 1999. Please submit one unbound original with pages numbered consecutively, and three copies. For attachments, provide an index, number pages consecutively with the comments, and submit an unbound original and three copies. Electronic comments may be sent to benzene.new@epa.gov.

Please note that all technical comments received in response to this notice will be placed in a public record. For that reason, commentors should not submit personal information (such as medical data or home address), Confidential Business Information, or information protected by copyright. Due to limited resources, acknowledgments will not be sent.

FOR FURTHER INFORMATION CONTACT: For information on the public comment period, contact Bob Sonawane (202–564–3292) or David Bayliss, (202–564–3294); mailing address: NCEA–W (8623D), U. S. Environmental Protection Agency, 401 M. Street, S.W., Washington, DC 20460; facsimile: 202–565–0078; e-mail: benzene.new@epa.gov.

SUPPLEMENTARY INFORMATION: The National Center for Environmental Assessment-Washington Division, Office of Research and Development, prepared this document on the Extrapolation of the Benzene Inhalation Unit Risk Estimate to the Oral Route of Exposure. This document will serve as a source for updating the oral cancer unit risk estimate for benzene in the Integrated Risk Information System (IRIS).

Dated: April 29, 1999.

Arthur Payne,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 99–12004 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[42 U.S.C. Section 122(i) FRL–6340–8]

Proposed Administrative Agreement and Covenant Not To Sue

AGENCY: U.S. Environmental Protection Agency (U.S. EPA).

ACTION: Proposal of Administrative Agreement and Covenant Not to Sue Under Section 122(h) of CERCLA for the Murray Machinery, Inc. Superfund Site.

SUMMARY: U.S. EPA is proposing to execute an Administrative Agreement and Covenant Not to Sue (Agreement) under Section 122 of CERCLA for the Murray Machinery Superfund Site. Respondent has agreed to pay $24,028.58 out of total response costs of approximately $2.4 million, and in return will receive a covenant not to sue and contribution protection from U.S. EPA. U.S. EPA today is proposing to execute this Agreement because it achieves a benefit for the community where the site is located by encouraging the reuse or redevelopment of property at which the fear of Superfund liability may have been a barrier. The Murray Machinery Site would likely have remained an abandoned lot had U.S. EPA not entered into this Agreement and Covenant Not to Sue with the Prospective Purchasers. Therefore, this Agreement, although one which does not recover a significant amount of past response costs, does provide for the reuse and redevelopment of the Site.

DATES: Comments on this proposed settlement must be received by June 11, 1999.

ADDRESSES: A copy of the proposed Agreement is available for review at U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please contact Ms. Allison S. Gassner at (312) 886–2250, prior to visiting the Region 5 office.

Comments on the proposed Agreement should be addressed to Allison S. Gassner, Office of Regional Counsel, U.S. EPA, Region 5, 77 West Jackson Boulevard (Mail Code C–14J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Allison S. Gassner at (312) 886–2250, of the U.S. EPA, Region 5, Office of Regional Counsel.

SUPPLEMENTARY INFORMATION: The Murray Machinery Site is located at 901 South 60th Street and is comprised of approximately 140 acres. The Site is located in a light commercial area approximately three miles west of Wausau, Wisconsin. The site is located at the end of a semi-secluded dirt road with a locked gate across the roadway; however, the perimeter of the site is not fenced. The Site is bordered by a section of the Chicago and Northwestern Railroad and commercial property to the north. The remainder of the Site is bordered by a heavily vegetated field and wetlands areas, with the Big Rib River located approximately ¼ mile to the southwest along the property boundary. A shallow wetlands area is located approximately ⅛ mile southwest of the Site.

Murray Machinery, Inc. ("MMI") operated a foundry at the Site from 1972 through 1988, which consisted of the ferrous casting of ductile iron, nihard, and hi-chrome metals. Although never licensed as a waste disposal facility, MMI disposed of lead contaminated wastes in a surface impoundment during its years of operation. MMI is now dissolved. Hazardous substances within the definition of Section 101(14) of CERCLA, 42 U.S.C. 9601(14), were released into the environment at or from the Site, posing a risk to human health or the environment.

In July 1993, the U.S. EPA and the Technical Assistance Team ("TAT") conducted a removal site assessment on the surface impoundment at the request of the Wisconsin Department of Natural Resources ("WDNR"). Concurrently, the WDNR conducted a groundwater and area surface water investigation on and around the MMI property. On October 12, 1994, U.S. EPA and TAT mobilized to the Site to conduct a time critical removal action. As of March 11, 1995, approximately 13,000 cubic yards of sediment were excavated and 11,500 cubic yards were stabilized. On June 30, 1995, U.S. EPA requested an emergency exemption from the One Year & $2 million statutory limit and a ceiling increase to complete the time critical removal action for the Site. Additional funding was requested to complete the necessary removal activities not anticipated in the September 12, 1994 Action Memorandum. The additional funding was needed to stabilize the remaining 1500 cubic yards of lead contaminated waste and to place a clay cap over the stabilized material.

In performing response actions at the Site, U.S. EPA incurred response costs at or in connection with the Site. U.S. EPA incurred approximately $2.4 million in conducting the removal action at the Site.

The Settling Parties are purchasers of the property who intend to reuse, redevelop, and resell the property.

A 30-day period, commencing on the date of publication of this notice, is open for comments on the proposed Agreement pursuant to Section 122(i) of CERCLA, 42 U.S.C. 9622(i). Comments should be sent to the addressee identified in this notice.

William E. Muno, Director,

Superfund Division, U.S. Environmental Protection Agency, Region 5.

[FR Doc. 99–12008 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6341–1]

Proposed Settlement Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act; Tulalip Landfill Superfund Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed administrative settlement and opportunity for public comment.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") is proposing to enter into an administrative settlement to resolve claims under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"). Notice is being published to inform the public of the proposed settlement and of the opportunity to comment. The settlement is intended to resolve past and estimated future liabilities of one de minimis party for costs incurred, or to be incurred, by EPA at the Tulalip Landfill Superfund Site in Marysville, Washington.

DATES: Comments must be provided on or before June 11, 1999.

ADDRESSES: Comments should be addressed to Docket Clerk, U.S. Environmental Protection Agency, Region 10, ORC–158, 1200 Sixth Avenue, Seattle, Washington 98101, and should refer to In Re Tulalip Landfill Superfund Site, Marysville, Washington, U.S. EPA Docket No. 10–99–0002–CERCLA.

FOR FURTHER INFORMATION CONTACT: Elizabeth McKenna, Office of Regional Counsel (ORC–158), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–0016.

SUPPLEMENTARY INFORMATION:

In accordance with section 122(i)(1) of CERCLA, notice is hereby given of a proposed administrative settlement concerning the Tulalip Landfill hazardous waste site located on Ebey Island between Steamboat Slough and Ebey Slough in the Snohomish River delta system between Everett and Marysville, Washington. The Site was

listed on the National Priorities List ("NPL") on April 25, 1995. 60 FR 20350 (April 25, 1995). Subject to review by the public pursuant to this document, the agreement has been approved by the United States Department of Justice. The party who has executed the proposed Administrative Order on Consent is Fog-Tite, Inc.

The EPA is entering into this agreement under the authority of sections 122(g), 106 and 107 of CERCLA, 42 U.S.C. 9622(g), 9606 and 9607. Section 122(g) authorizes settlements with de minimis parties to allow them to resolve their liabilities at Superfund sites without incurring substantial transaction costs. Under this authority, the agreement proposes to settle with a party in the Tulalip Landfill case who is responsible for less than 0.2% of the volume of hazardous substances at the site.

In February and March 1988, EPA contractor Ecology & Environment, Inc. ("E&E") performed a site inspection of the landfill for NPL evaluation. The inspection revealed groundwater contamination with unacceptably high levels of arsenic, barium, cadmium, chromium, lead, mercury, and silver. Water samples taken in the wetlands adjacent to the site showed exceedences of marine chronic criteria for cadmium, chromium, and lead, as well as exceedences in marine acute criteria for copper, nickel, and zinc. In addition, a variety of metals were found in on-site pools and leachate. The study concluded that contamination was migrating off site. On July 29, 1991, EPA proposed adding the Tulalip Landfill to the NPL, and on April 25, 1995, with the support of the Governor of the State of Washington and the Tulalip Tribes of Washington, EPA published the final rule adding the Site to the NPL.

EPA performed a Remedial Investigation ("RI") and Feasibility Study ("FS") in two parts pursuant to an Administrative Order on Consent with several potentially responsible parties. The first part evaluated various containment alternatives for the landfill source area, which includes approximately 147 acres in which waste was deposited. The second part evaluated the off-source areas, which include the wetlands and tidal channels that surround the landfill source area.

On March 1, 1996, EPA issued a Record of Decision that selected an interim remedial action for the source area. The selected interim remedy requires installation of an engineered, low-permeability cover over the source area of the landfill, at an estimated cost of $25.1 million. On September 29, 1998, EPA issued a Record of Decision that selected the final remedial action for the source and off-source areas. The selected final remedy requires completion of the cover over the source area and placement of signs in the off-source area. The estimated cost of the signs is approximately $15,000.

The proposed settlement is based on the Final Allocation Report issued by the allocator in the allocation process conducted for the Site. Fog-Tite was the only de minimis party to actively participate in the allocation and the only de minimis party to accept a settlement based on the allocation report.

The proposed settlement requires the settling party to pay a fixed sum of money based on its volumetric share. The total amount to be recovered from the proposed settlement is $2,471. The amount paid will be deposited in the Tulalip Landfill Special Account within the EPA Hazardous Substances Superfund to be used for the cover over the source area at the landfill. Upon full payment, the settling party will receive a release from further civil or administrative liabilities for the Site and statutory contribution protection under section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

EPA will receive written comments relating to this proposed settlement for a period of thirty (30) days from the date of this publication.

The proposed agreement may be obtained from Cindy Colgate, Office of Environmental Cleanup (ECL–113), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1815. The Administrative Record for this settlement may be examined at the EPA's Region 10 office located at 1200 Sixth Avenue, Seattle, Washington 98101, by contacting Bob Phillips, Superfund Records Manager, Office of Environmental Cleanup (ECL–110), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–6699.

Authority: The Comprehensive Environmental Response, Compensation and Liability Act, as amended, 41 U.S.C. 9601–9675.

Jane Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 99–12006 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6340–9]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that a petition was received from the State of New Jersey on April 3, 1998 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Navesink River, County of Monmouth, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the Navesink Regional Environmental Council. Members of the Council include the Borough of Fair Haven, the Township of Middletown, the Borough of Red Bank, the Borough of Rumson, the Borough of Tinton Falls, the Township of Holmdel, the Township of Colts Neck, the Township of Freehold and the Township of Marlboro. The Council worked in conjunction with Clean Ocean Action, Marine Development USA, Inc.; Marine Trade Association of New Jersey, Monmouth County Health Department, Monmouth County Planning Board, New Jersey Marine Sciences Consortium, New Jersey Sea Grant Advisory Service, New Jersey State Police Marine Division, U.S. Coast Guard Auxiliary and the U.S. Coast Guard. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Navesink River in accordance with section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Navesink River, located in central New Jersey, is part of the Hudson-Raritan Bay Estuary and drains approximately 95 square miles of urban/suburban residential development and agricultural lands. The Navesink River runs easterly from Red Bank, New Jersey and then joins the Shrewsbury River and empties into Sandy Hook Bay. The tidal waters of the Navesink River extend from the Shrewsbury River, near

Sea Bright, upstream to the Swimming River Reservoir dam. The Navesink River has been identified as a waterbody of national significance and is part of the New York-New Jersey Harbor Estuary Program. The proposed No Discharge Area (NDA) would include all tidal waters of the Navesink River which extend from the Shrewsbury River, near Sea Bright, upstream to the Swimming River Reservoir dam. The eastern boundary of the NDA is a line from Lat./Long. 73°58′45″, 40°22′40″ to Lat./Long. 73°58′58″, 40°23′04″. The western boundary of the NDA is at Lat./Long. 74°06′48″, 40°19′12″.

Information submitted by the State of New Jersey and the Navesink Regional Environmental Planning Council states that there are five existing pump-out facilities available to service vessels which use the Navesink River. Sea Land Marina, located at 261 West Front Street, Red Bank, operates a portable pumpout. The pumpout is available from 7:00 a.m. to 5:00 p.m. beginning April 15 until October 15 and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Irwin's Boat Works, located at 1 Marine Park, Red Bank, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning May until October 31 and is operated by the marina staff. A fee of $5.00 is charged for the use of the pumpout. Red Bank Municipal Basin, located at Marine Park, Red Bank, operates a stationery pumpout. The pumpout is available 24 hours a day year round and is self-operated. No fee is charged for use of the pumpout. Fair Haven Yacht Works, located at 75 DeNormandie Avenue, Fair Haven, operates a portable pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Molly Pitcher Inn and Marina, located at 88 Riverside Avenue, Red Bank, operates a stationary pumpout. The pumpout is available upon request for customers of the marina. One facility, Sea Land Marina, located in Red Bank has a restriction which would exclude boats greater than 26 feet in length. This restriction impacts approximately 18% of the vessel fleet and there are three facilities available for their needs.

Vessel waste generated from the pump-out facilities within the proposed NDA is discharged into municipal sewer lines and is conveyed to the Northeast Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520) at 1 Highland Avenue in Monmouth Beach for treatment.

According to the State's petition, the maximum daily vessel population for the waters of Navesink River is approximately 1,122 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (866 vessels), (2) vessels docked at non-marina facilities (227 vessels) and (3) transient vessels (29 vessels). The vessel population based on length is 915 vessels less than 26 feet in length, 193 vessels between 26 feet and 40 feet in length and 14 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that one pumpout is needed for the Navesink River. As previously stated, five pumpout facilities are currently available to service the boating population. Additionally, four marinas have applied for pumpout grants to install a total of five new pumpouts.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Navesink River in the county of Monmouth, New Jersey. A final determination on this matter will be made following the 30-day period for public comment and will result in a New Jersey State prohibition of any sewage discharges from vessels in Navesink River.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before June 11, 1999. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York 10007–1866. Telephone: (212) 637–3880.

Dated: April 27, 1999.

William J. Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 99–12005 Filed 5–11–99; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

DATE & TIME: Tuesday, May 18, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

DATE & TIME: Thursday, May 20, 1999 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1999–9: Bill Bradley for President, Inc., by Robert F. Bauer, counsel.

Advisory Opinion 1999–11: Mary Kay Scullion, Counsel for Ms. Dianne Byrum.

Proposed Final Rules on Matching Credit Card and Debit Card Contributions in Presidential Campaigns.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 99–12148 Filed 5–10–99; 2:54 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**

Agreement No.: 202–010168–013.

Title: New Caribbean Service Rate Agreement.

Parties: Thos. & Jas. Harrison, Ltd., Compagnie Generale Maritime, Hapag-Lloyd Container Linie GmbH, P&O Nedlloyd B.V., Columbus Line.

Synopsis: The proposed amendment restates the Agreement and makes revisions consistent with the Ocean Shipping Reform Act of 1998 and applicable European Union directives. The parties request expedited review.

Agreement No.: 202–011259–017.

Title: United States/Southern Africa Conference Agreement.

Parties: A.P. Moller-Maersk Line Lykes Lines Limited, LLC

Mediterranean Shipping Company S.A. Safbank Line, Ltd. Wilhelmsen Lines A/S (associate member)

Synopsis: The proposed notification deletes any reference to loyalty contracts; reduces the notice requirement for independent action; permits members to enter into individual service contracts, to discuss and exchange service contract information and data, and to adopt voluntary service contract guidelines; and makes other administrative changes as well as restating the agreement. The parties request expedited review.

By Order of the Federal Maritime Commission

Dated: May 6, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11905 Filed 5–11–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, D.C. 20573.

Bittner Shipping, Inc., 6613 Backlick Road, Springfield, VA 22150, Officers: Claudio A. Bittner, President, (Qualifying Individual), Marta A. Bittner, Secretary/Treasurer.

Waldo's Multi-Service, 3462 Golden Gate Way, Lafayette, CA 94549, Renate H. Omania, Sole Proprietor.

Kallista Shipping Corporation, 4345 NW 97th Avenue, Miami, FL 33178, Officers: Israel Garcia, President, Irene Chizmar, (Qualifying Individual).

Stephenson International Shipping, Inc., 16110 Armistead, Odessa, FL 33556, Officer: Robert Stephenson, President, (Qualifying Individual).

Tatsumi Intermodal (U.S.A.), Inc., 19780 Pacific Gateway Drive, Torrance, CA 90502, Officers: Hideki Yoshimura, President, (Qualifying Individual), Kazuhisa Goko, Exec. Vice President.

All Freight Services International, Inc., 8240 N.W. 52nd Terrace, Suite 518, Miami, FL 33166, Officers: Murray Norkin, President, Elizabeth Garcia, Exec. Vice President, (Qualifying Individual).

Fleetwood Shipping Inc., 5990 North Belt East, Suite 601, Humble, TX 77396, Officer: Dennis Jay Summers, President, (Qualifying Individual).

Pan Star Express (Chicaog) Corporation, 228 Howard Street, Des Plaines, IL 60018, Officers: Ivy Wang, Chief Financial Officer, Ken Chen, Secretary.

J.F. Hillebrand USA, Inc., 1600 St. Georges Avenue, Suite 301, Rahway, NJ 07065, Officers: Jean-Jacques Francoulon, President, Dorothee Filbinger-Maier, Vice President, (Qualifying Individual).

Murphy International Corporation d/b/a, Murphy Overseas Corporation, International, Transport & Logistics Corporation, 249 E. Ocean Blvd., Suite 400, Long Beach, CA 90802, Officers: Robert Murphy, President, Drew Reynolds, Vice President, Joseph Velez, (Qualifying Individual).

Four Winds International Group, Inc., 1500 S. W. First Avenue, Suite 850, Portland, OR 87201, Officers: Jerome Rose, President, Kevin M. Griffin, Vice President, (Qualifying Individual).

Mid West Orient (New York) Ltd., 151 Summer Avenue, Kenilworth, NJ 07033, Officer: Mariko Semba, President, (Qualifying Individual).

First Air Express, Inc. d/b/a FAE Transportation, Bison Warehouse and Distributing, 11800 Stonehollow Drive, Suite 200, Austin, TX 78758, Officers: Allen T. Love, President, Lisa D. Counts, Vice President, James C. Savage, (Qualifying Individual).

Dated: May 7, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11929 Filed 5–11–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL MARITIME COMMISSION

[Petition P3–99]

Petition of China Ocean Shipping (Group) Company for a Partial Exemption From the Controlled Carrier Act; Extension of Time

On April 8, 1999, the Commission published notice of the filing of a petition by China Ocean Shipping Company (COSCO) seeking a partial exemption from the controlled carrier provisions of the Shipping Act of 1984, as amended. (64 FR 17181) Replies to the COSCO petition are due on May 7, 1999. Sea-Land Service, Inc. and American President Lines, Ltd., seek a 90-day extension of the comment period. COSCO opposes the requested extension.

Due to the press of other business, there will be some delay before the Commission considers the petition; thus, there appears to be no valid reason to deny a reasonable extension. Accordingly, the date set for replies to this proceeding is extended to July 6, 1999.

Replies shall consist of an original and 15 copies, be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573–0001, and be served on counsel for Petitioner, Richard D. Gluck, Esq., Garvey, Schubert & Barer, 1000 Potomac Street, N.W., Washington, D.C. 20007.

Copies of the petition are available for examination at the Washington, D.C. office of the Secretary of the Commission, 800 North Capitol Street, N.W., Room 1046.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–11992 Filed 5–11–99; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 99116]

Cooperative Agreement for Applied Research on New Vaccines; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Immunization Program in cooperation with the Office of Prevention Research, announces the availability of fiscal year (FY) 1999 funds for a cooperative agreement program for Applied Research on New Vaccines. This program addresses the "Healthy People 2000" priority area of Immunization and Infectious Diseases. The purpose of the program is to initiate an extramural applied research program focused on new vaccines.

B. Eligible Applicants

Applications may be submitted by public and private non-profit and for profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, managed care organizations, other public and private nonprofit and profit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $725,000 is available in FY 1999 to fund 2 to 3 awards. It is expected that the average award will range from $225,000 to $350,000 to begin on or about September 30, 1999, and will be made for a 12-month budget period within a project period of up to 3 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Programmatic Interests

Cooperative agreement applications for research projects that address clinical, epidemiologic, or health services delivery questions about new vaccines are being sought. The focus of the cooperative agreement is to eliminate gaps in the available information about new vaccines or their use which is impeding the fullest application of vaccines and their maximum impact on disease. Such gaps may exist for numerous reasons including the small size of populations studied in pre-licensure trials, or the lack of diversity in the populations studied. Applications which propose research studies whose findings have a high probability of being translated into new recommendations for vaccine use by national advisory bodies or whose findings are likely to lead to decreases in vaccine preventable disease morbidity or mortality are encouraged.

Applications must address a programmatic interest area as noted below. Examples of possible projects are also given below; these examples are not to be considered as an exhaustive list but include projects which NIP views as merely exemplifying the priority areas.

1. Clinical or Epidemiologic Research

a. Clinical or epidemiologic topics about new vaccines (including varicella, rotavirus).

For example, there is programmatic interest in assessing the safety and immunogenicity of varicella vaccine among asthmatic children and determining the best immunization regimen. Also, there is interest in learning more about the safety and immunogenicity of rotavirus vaccine among premature infants.

b. Clinical or epidemiologic topics about existing vaccines that have the potential to be recommended for universal use (including hepatitis A). For example, there is programmatic interest in examining the efficacy of a single dose of hepatitis A vaccine in conferring long lasting protection.

c. Clinical or epidemiologic topics about new vaccines expected to be licensed for universal use (including conjugate pneumococcal, live influenza vaccines). For example, there is interest in assessing correlates of protection for pneumococcal vaccine and determining optimal approaches to preventing pneumococcal infection among high risk groups such as those with sickle cell disease.

d. Clinical or epidemiologic topics about the diseases prevented by new vaccines (including disease burden, impact of vaccination, risk factors for disease). For example, there is interest in defining the impact of pneumococcal vaccine on health care utilization and on diagnostic and management practices for children with high fever or common respiratory infections.

2. Health Services Research

Health services delivery topics about the implementation of new vaccine policies and recommendations.

For example, there is interest in what factors influence providers' implementation of new vaccines, including the insurance coverage, parental out-of-pocket costs, and factors influencing decisions by purchasers of health care, insurers of health care, and managed care organizations about coverage for new vaccines.

E. Program Requirements

In conducting activities to achieve this program, the recipient shall be responsible for the activities listed under 1. Recipient Activities, and CDC shall be responsible for conducting activities listed under 2. CDC Activities.

1. Recipient Activities

(a) Design the study: Determine the approaches to take in addressing the questions of interest in the study and develop a study protocol.

(b) Implement the study protocol: Conduct the study according to the protocol and resolve problems in study implementation as they arise.

(c) Analyze data: Plan the analytic approach to be taken to understand and interpret the principal findings from the study.

(d) Prepare manuscripts and publish results: Prepare written manuscript describing the main study findings for publication in a peer reviewed journal.

2. CDC Activities

(a) Provide technical and programmatic information: CDC scientists will provide current scientific and programmatic information relevant to the project.

(b) Assist in executing the study: CDC scientists may collaborate as appropriate in each phase of the study including design, implementation, analysis, and publication. CDC may provide laboratory support, depending on the project funded and the availability of services.

(c) Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

Application Content

Use the information in the Program Priorities, Cooperative Activities, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

F. Submission and Deadline

Letter of Intent (LOI)

Your letter of intent should identify the announcement number, the intended submission deadline, name the principal investigator, and specify the study area addressed by the proposed project. The letter of intent must be submitted on or before June 15, 1999, to: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398) on or before July 15, 1999, to: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or (b) Sent on or before the deadline date and received in time for submission to the review process. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a

commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applications that are responsive may be subjected to a preliminary evaluation (triage) by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. Awards will be made based on priority score and programmatic priorities as determined by a secondary review panel, and the availability of funds.

The first review will be a peer review on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e. the objectives and the hypothesis to be tested.
2. The background of the proposal, e.g., the basis for the present proposal, a critical evaluation of existing knowledge, and the specific vaccine preventable disease knowledge gaps which the proposal intends to fill.
3. The significance and originality of the proposed research.
4. The progress of preliminary studies, if any, pertinent to the application.
5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures and plans for data management and statistical analyses.
6. The extent to which the research findings are likely to fill important information gaps about new vaccines and lead to new vaccine preventable disease policies and recommendations by advisory groups or feasible, cost-effective interventions.
7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.
8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).
9. The reasonableness of the proposed budget to the proposed research.
10. Adequacy of existing and proposed facilities and resources.
11. Inclusion of Women and Racial and Ethnic Minorities in Research.

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

A. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits

12. Human subjects:

The extent to which the application adequately addresses the requirements of Title 45 CFR part 46 for the protection of human subjects.

The second review will be conducted by a secondary review committee of senior Federal officials. The factors to be considered will include:

1. The results of the peer review.
2. Program balance among the two major areas of interest: (a) The clinical and epidemiologic topics surrounding new vaccines and the diseases they prevent, and (b) the health services delivery and program implementation topics.
3. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. progress reports semiannual;
2. financial status report, no more than 90 days after the end of the budget period; and
3. final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2000
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 and 307 of the Public Health Service Act, 42 U.S.C. section 241 and 242*l*. The Catalog of Federal Domestic Assistance Number is 93.185.

J. Where To Obtain Additional Information

This and other CDC announcements may be downloaded from the CDC Internet homepage—http://www.cdc.gov. Click on "funding."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the Announcement number of interest. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharron Orum, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 99116, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2716, E-mail: spo2@cdc.gov

For program technical assistance, contact: Roger Bernier, PhD, MPH, Associate Director for Science, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS–E05, Atlanta, Georgia, 30333, Telephone: (404) 639–8204, E-mail: rhb2@cdc.gov

Dated: May 6, 1999.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–11928 Filed 5–11–99; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Head Start Bureau; Advisory Committee on Head Start Research and Evaluation; Notice of Meeting

AGENCY: Administration for Children, Youth and Families, ACF, DHHS.

ACTION: Notice of meeting; Advisory Committee on Head Start Research and Evaluation.

SUMMARY: The 1998 Head Start Reauthorization (42 U.S.C. 9844(g); Section 649(g)(1) of the Head Start Act, as amended) called on the Secretary of Health and Human Services to form an independent panel of experts (i.e., an Advisory Committee) to offer advice concerning research designs that would provide a national analysis of the impact of Head Start Programs. The June 2–3, 1999 meeting will be the second of three meetings of the Advisory Committee that will culminate in a report to the Secretary due October 1, 1999.

DATE AND TIME: June 2, 1999, 9:00 a.m.–5:00 p.m. and June 3, 1999, 9:00 a.m.–5:00 p.m.

Place: Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314.

SUPPLEMENTARY INFORMATION: This meeting is open to the public and is barrier free. Meeting records will also be open to the public and will be kept at the Switzer Building located at 330 "C" Street, SW, Washington, DC 20447. The Head Start Bureau also intends to make material related to this meeting available on the Head Start web site http://www2.acf.dhhs.gov/programs/hsb. An interpreter for the deaf and hearing impaired will be available upon advance request by calling Ellsworth Associates at 703/821–3090 (Ext. 282).

FOR FURTHER INFORMATION CONTACT: Deborah Roderick Stark at 301/889–0430 for substantive information. ACF Office of Public Affairs at 202/401–9215 for press inquiries. Ellsworth Associates at 703/821–3090 (ext. 282) for logistical information.

Dated: May 6, 1999.

Patricia Montoya,

Commissioner, Administration on Children, Youth, and Families.

[FR Doc. 99–12018 Filed 5–11–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1891.

Comments Are Invited on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Fetal and Infant Mortality Review (FIMR) Program Evaluation—New

The Johns Hopkins Women's and Children's Health Policy Center, under a cooperative agreement with the Maternal and Child Health Bureau (MCHB) of the Health Resources and Services Administration (HRSA) is conducting a national evaluation of the Fetal and Infant Mortality Review Program. FIMR is community based, aimed at guiding communities to identify and solve problems contributing to poor reproductive outcomes and infant health by using the sentinel event of an infant death to systematically examine a wide array of factors that are related to infant mortality. FIMR findings are used to stimulate policy development and quality improvement efforts. The purpose of this evaluation is to look at the effect of FIMRs and other community-level perinatal systems initiatives on health systems, with an eye toward characterizing the unique contributions of the FIMR model and process.

The main objectives of the FIMR evaluation are: (1) To compare the impact of FIMR on the health and related service systems for women, infants, and families with infants with that of other perinatal systems related initiatives, and (2) to compare the implementation of public health functions related to policies, programs, and practices for women, infants, and families with infants across a number of community systems initiatives. The study will utilize three survey instruments for data collection.

The estimated response burden is as follows:

Survey	Number of respondents	Responses per respondent	Total respondents	Hours per response	Total burden hours
FIMR	100	1	100	2	200
Local Health Dept	200	1	200	1.5	300
Perinatal Initiatives	100	1	100	1.75	175
Total			400		675

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 5, 1999.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 99–11900 Filed 5–11–99; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General

Program Exclusions: April 1999

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of April 1999, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject City, State	Effective date
Program-Related Convictions	
Ackerson, Valerie Smith, Sacramento, CA	05/20/1999
Alcantara, Francisco, Miami, FL	05/20/1999
Alos, Elizabeth, Hialeah, FL	05/20/1999
Arroyo, Angelina, N Highlands, CA	05/20/1999
Augustine, Karen A, Houston, TX	05/20/1999
Benavides, Marie P, Bryan, TX	05/20/1999
Berg, Walter A, Bedford, VA	05/20/1999
Blake, Jeannette, Prescott, AR	05/20/1999
Borzouye, Amir, Old Westbury, NY	05/20/1999
Brallier, Samuel, Lake Butler, FL	05/20/1999
Burnette, John Barry, Bullhead City, AZ	05/20/1999
Cabrera, Rogelio, Miami, FL	05/20/1999
Cavazos, Anthony James, Harlingen, TX	05/20/1999
Collier, B David, Wauwatosa, WI	05/20/1999
Devera, Lorenzo V, Tarzana, CA	05/20/1999
Dorojen, Inc, Yardley, PA	05/20/1999
Dura, Narin, Norco, CA	05/20/1999
Garcia, Nestor, Coleman, FL	05/20/1999
Gleen, Paula D, Bennettsville, SC	05/20/1999
Gonzalez, Lilia Dejesus, Miami, FL	05/20/1999
Goodrow, Andrew, Biloxi, MS	05/20/1999
Gray, Floyd, Monroe, LA	05/20/1999
Guardian Angel Home Health, Bryan, TX	05/20/1999
Hayes, Terrence Robert, San Antonio, TX	05/20/1999
Hirakawa, Ricky Kunito, Pearl City, HI	05/20/1999
Hobot, Dennis Preston, Salt Lake City, UT	05/20/1999
Hoogenboom, Carol, Worth, IL	05/20/1999
Ivashenko, Alexander, Homdel, NJ	05/20/1999
Jackson, Willie Edward, Little Rock, AR	05/20/1999
Keel, Robert L, Huntingdon, PA	05/20/1999
Kelley, Varval Jean, Fresno, CA	05/20/1999
Kilburn, Julie Ann, Sheridan, AR	05/20/1999
Kim, Hack J, Lancaster, PA	05/20/1999
Kirkpatrick, Shadavia Jamese, Morganton, NC	05/20/1999
Leblanc, Frantz, Ambler, PA	05/20/1999
Lewis, Andrew Howard, Los Gatos, CA	05/20/1999
Martinez, Rafael, Texarkana, TX	05/20/1999
McCastel, Maryann, Sacramento, CA	05/20/1999
McClendon, James Eddie, Montgomery, AL	05/20/1999
McCoy, Dorothy Mae, Sacramento, CA	05/20/1999
McKinney, Laurence T, Loretto, PA	05/20/1999
Mitchell, Ginger, Pearl, MS	05/20/1999
Moore, Tamie M, St Maries, ID	05/20/1999
Murray, Opis, Markham, IL	05/20/1999
Nicholson, Michael A, Fort Mill, SC	05/20/1999
Nunez, Pete, Fresno, CA	05/20/1999
Patkoff, Ronald Lincoln, Mannford, OK	05/20/1999
Patrick, Sharon Louise, Fair Oaks, CA	05/20/1999
Perez, Emma V, Lemoore, CA	05/20/1999
Perez, Hector, Lemoore, CA	05/20/1999
Phillips, Florence, Park Ridge, IL	05/20/1999
Piwowarczyk, Anthony W, Grayslake, IL	05/20/1999
Polin, Stanton G, Skokie, IL	05/20/1999
Redmond, Geoffrey P, Cleveland, OH	05/20/1999
Reese, Tommy, Haughton, LA	05/20/1999
Riedy, Stephanie, Lebanon, MO	05/20/1999
Savage, George Jacob Jr, Cape Charles, VA	05/20/1999
Schiefelbein, Arthur J, Dearborn Hgts, MI	05/20/1999
Shaktah, Thaer, Oak Lawn, IL	05/20/1999
Shaktah, Hanan, Oak Lawn, IL	05/20/1999
Sharma, Chandra D, White Deer, PA	05/20/1999
Sharma, Subodh C, White Deer, PA	05/20/1999
Sharma, Sushil C, Montgomery, PA	05/20/1999
Smith, Virlee, Dumas, AR	05/20/1999
Smith, Evelyn Marie Henry, Magnolia, AR	05/20/1999
Stefonek, Barbara E, Elm Grove, WI	05/20/1999
Taylor, Susan C, Cranston, RI	05/20/1999
Tregubov, Alexander, Churchville, PA	05/20/1999
Tum, Wichniya, Long Beach, CA	05/20/1999
Vasisth, Vinod C, Mechanicsburg, PA	05/20/1999
Vinter, Gregory, Brooklyn, NY	05/20/1999
Wejrowski, Jeffrey A, Milwaukee, WI	05/20/1999
Williams, Cynthia, Baton Rouge, LA	05/20/1999
Williams, Linda, Bryan, TX	05/20/1999
Williams, Devin, Waupun, WI	05/20/1999
Wilson, Paul W, Vienna, WV	05/20/1999
Wilson, Sylvia Merino, Fresno, CA	05/20/1999
Felony Convictions For Health Care Fraud	
Padilla, Paul Bradley, Kalamazoo, MI	5/20/1999
Felony Control Substance Convictions	
Aram, Davar, Chino Hills, CA	05/20/1999
Cochran, Mary K, Caledonia, OH	05/20/1999
M V Medical Equipment, Inc, Miami, FL	02/02/1999
Martin, Mirey A M, Miami, FL	02/02/1999
Reinoso, Ileana, Miami, FL	12/14/1998
Patient Abuse/Neglect Convictions	
Adedapo, Abosede, Baltimore, MD	05/20/1999
Amerson, Leta Marie, Flippin, AR	05/20/1999
Anderson, Amy Rachelle, Moses Lake, WA	05/20/1999
Ansiello, Lisa, Oakland, CA	05/20/1999
Berry, Joe Morrison, Stillwater, OK	05/20/1999
Bonner, Wendy Annette, Houston, TX	05/20/1999
Brock, Kenya, Davis Station, SC	05/20/1999
Carpenter, Gene Patrick, Chestertown, MD	05/20/1999
Chaney, Barry, Benton, AR	05/20/1999
Clay, Stephen, Jackson, MS	05/20/1999
David, Bonnilyn Mae, North Rose, NY	05/20/1999
Echols, Clayton, Albuquerque, NM	05/20/1999
Fitzgerald, Diane Elaine, Enid, OK	05/20/1999
Ford, Gerrick Paul, Morrow, LA	05/20/1999
Garlock, Clark Steven, Fortuna, CA	05/20/1999
Goldberg, TINA, Westerly, RI	05/20/1999
Hicks, Shamodia P, FT Worth, TX	05/20/1999
Hodges, James Sr, Holden, LA	05/20/1999
Ikard, Sandra, Natchez, MS	05/20/1999
Johnson, Earnestine, Monticello, MS	05/20/1999
Johnson, Minnie Ola, Enid, OK	05/20/1999
Joyce, Stephanie J, Choctaw, OK	05/20/1999
Lewis, Sebastian, Philadelphia, MS	05/20/1999
Lewis, Kristin R, Mineral Ridge, OH	05/20/1999
Little, Grace Ifeoma Okafor, Universal City, TX	05/20/1999
Moore, Pearlie Mae, Heflin, LA	05/20/1999

Subject City, State	Effective date
Oybagde, Solomon, Houston, TX	05/20/1999
Pierce, Deanna, Brady, TX	05/20/1999
Prince, Edward A, Columbia, SC	05/20/1999
Pugh, Lois Jean, Honesdale, PA	05/20/1999
Salwen, Geraldine Marcia, Loveland, CO	05/20/1999
Sattiewhite, Barbara J, San Antonio, TX	05/20/1999
Schmitt, William Ryan, Salt Lake City, UT	05/20/1999
Shine, Tekisha Denise, Homer, LA	05/20/1999
Sims, Jesse Lee, Fort Worth, TX	05/20/1999
Vasser, Brack Lamont, Marksville, LA	05/20/1999
Victorian, Rachel M, Orange, TX	05/20/1999
Walker, Rosella, Starkville, MS	05/20/1999
Walker, Tonya, Temple Hills, MD	05/20/1999
Walters, Pam W, Tooele, UT	05/20/1999
Wetzel, James Elmer, Monroeville, PA	05/20/1999
Williams, Bernard Keith, Pineville, LA	05/20/1999
Conviction for Health Care Fraud	
Andrews, Cannette Mealing, Edgefield, SC	05/20/1999
La Motta, Charles, Scarsdale, NY	05/20/1999
Washington, Carolyn, N Charleston, SC	05/20/1999
Controlled Substance Convictions	
Kouns, George, Gardendale, IL	05/20/1999
Wells, Gregory Darrell, Ashland, KY	05/20/1999
License Revocation/ Suspension/Surrendered	
Afton, Carol, Brookville, PA	05/20/1999
Allen, Colleen, Branford, CT	05/20/1999
Allison, Ralph B., Los Osos, CA	05/20/1999
Anastasoff, John William, Lake Havasu City, AZ	05/20/1999
Anderson, Hilary L., New Bern, NC	05/20/1999
Anderson, Debra Jean, Columbia Hgts, MN	05/20/1999
Archambault, Nichole, Dighton, MA	05/20/1999
Ardalan, Dorothea C., Fairfax, VA	05/20/1999
Baiter, Sheri Ann, Chicago, IL	05/20/1999
Baron, Alfred Jr., Moosic, PA	05/20/1999
Barsztaitis, Renee B., Ottawa, IL	05/20/1999
Basile, Jeanne, Cheshire, CT	05/20/1999
Bazan, Pamela, Marion, IL	05/20/1999
Beualieu, Pamela, Woodbridge, VA	05/20/1999
Bobo, James, Robbins, IL	05/20/1999
Brehm, Denise Ames, Leesburg, VA	05/20/1999
Brown, Leeanna J., Pearisburg, VA	05/20/1999
Bruno, Thomas A., Troy, MI	05/20/1999
Brunskill, Judith Ann, Plymouth, MN	05/20/1999
Bryington, Gary L., Drums, PA	05/20/1999
Budden, Wendy, Brockton, MA	05/20/1999
Burton, Susan F., Palmyra, VA	05/20/1999
Calon, Antonino H., Havre De Grace, MD	05/20/1999
Carter, Lonnie D., Buffalo, NY	05/20/1999
Cervone, Jeanne, Pittsburgh, PA	05/20/1999
Chandler, Susan E., Newport News, VA	05/20/1999
Christine, Brigitte, Springfield, IL	05/20/1999
Clark, Maryellen P., Philadelphia, PA	05/20/1999
Clay, Deborah L., Greenwood, MS	05/20/1999
Cochran, Heather L., Philadelphia, PA	05/20/1999
Comolli, Mary Ellen, Westerly, RI	05/20/1999
Comparetto, Kimberly, N. Yarmouth, ME	05/20/1999
Cook, Anita Kay, Minneapolis, MN	05/20/1999
Coulter, Sonra, Hampton, VA	05/20/1999
DeForge, Deborah A., Graniteville, VT	05/20/1999
Deleon, Morena, Alexandria, VA	05/20/1999
Derboven, Paul, Springvale, ME	05/20/1999
Distelhorst, Ronald Arthur, Schaumburg, IL	05/20/1999
Donahue, David, Norfolk, VA	05/20/1999
Draper, Carmonia, Stratford, CT	05/20/1999
Dunblazier, Craig K., Clinton, TN	05/20/1999
Duncan, Phyllis A. King, Abingdon, VA	05/20/1999
Eastin, Virginia A., Burlington, IA	05/20/1999
Fisher, Robert, Frankfort, KY	05/20/1999
Flury, Rachel A., Emigsville, PA	05/20/1999
Foley, Kelly A., Brattleboro, VT	05/20/1999
Freundt, Susan Silvonek, Lehighton, PA	05/20/1999
Futterman, Steven, Gaithersburg, MD	05/20/1999
Gallagher, John J., Philadelphia, PA	05/20/1999
Garrett, Diane Smith, Kossuth, MS	05/20/1999
Gavlik, Jeffrey P., Harrisville, RI	05/20/1999
Gennuso, Kathleen W., Cecil, PA	05/20/1999
Goodman, Donald A., Bala Cynnwyd, PA	05/20/1999
Graham, Vicki D., Cheraw, SC	05/20/1999
Grant, Miranda L., Windsor, VT	05/20/1999
Gravat, James E., Alexandria, VA	05/20/1999
Green, Howard Benson, Chicago, IL	05/20/1999
Hagiwara, Edeltraud, Lomita, CA	05/20/1999
Hale, Beth, Barton, VT	05/20/1999
Hanson, Nicolette C., Fairview Park, OH	05/20/1999
Harrison, Rhonda L., Decatur, IL	05/20/1999
Hegarty, Dewitt L., Garfield, WA	05/20/1999
Helmueller, Sheila Rebecca, Red Wing, MN	05/20/1999
Herdingham, David, Berwick, ME	05/20/1999
Hicks, Willie Howard Jr., Laurel, DE	05/20/1999
Hoffman, Annette, Chicago, IL	05/20/1999
Holden, Janyce, Glastonbury, CT	05/20/1999
Homish, Jerome D, Toledo, OH	05/20/1999
Huttinger, Carol Ann, Hanover, PA	05/20/1999
Jackson, Sharena Lisette, Hampton, VA	05/20/1999
Jagnandan, Norris Rajkumar, Jackson, MS	05/20/1999
Jennison, Nicole, Johnson, VT	05/20/1999
John, Neal G Jr, W Liberty, WV	05/20/1999
Johnson, Judy Kelso, Greenback, TN	05/20/1999
Jones, William K, Williamsburg, VA	05/20/1999
Joseph, Lloyd, Berkely, CA	05/20/1999
Keiser, Celeste Marie, Minneapolis, MN	05/20/1999
Kilton, Shannon K, Enfield, NH	05/20/1999
Kuhn, Charles, Peoria, IL	05/20/1999
Lachica, Romulo F, Berrien Springs, MI	05/20/1999
Laubhan, Paul R, Chicago, IL	05/20/1999
Lezotte, James P, Philadelphia, PA	05/20/1999
Manke, Janet, Chesapeake, VA	05/20/1999
Marshall, Mary Ellen, Whitney, TX	05/20/1999
McElyea, Barry A, Roanoke, VA	05/20/1999
Mendoza, Susan M, Manchester, NH	05/20/1999
Milam, Leslie, Columbus, MS	05/20/1999
Monson, David, Brainerd, MN	05/20/1999
Moody, Christina Y, Chicago, IL	05/20/1999
Morgan, Madeline M, Chicago, IL	05/20/1999
Morrison, Nina Macklin, Richmond, VA	05/20/1999
Namey, John T Jr, Jefferson, OH	05/20/1999
Neri, Roland, Colchester, VT	05/20/1999
Olson, Richard D, New Prague, MN	05/20/1999
Oneby, Mema M Cochran, W Los Angeles, CA	05/20/1999
Owens, Sharon A, Haysi, VA	05/20/1999
Page, Mary Elizabeth, Saxtons River, VT	05/20/1999
Palacioz, Lori Jarvis, Virginia Beach, VA	05/20/1999
Paskey, Diane Kay, Fairmont, MN	05/20/1999
Pasquariello, Anthony, Washington, PA	05/20/1999
Passias, James N, Westerville, OH	05/20/1999
Peoples, Robert William, Manhattan Bch, CA	05/20/1999
Ramsey, John C, Houston, TX	05/20/1999
Rednour, Lois Ann, Marshall, MN	05/20/1999

Subject City, State	Effective date
Remy, Eddy, Providence, RI	05/20/1999
Repice, Joseph P, Winona, MN	05/20/1999
Ripley, Lisa R, Claremont, NH	05/20/1999
Robinson, Kent E, Soulsbyville, CA	05/20/1999
Rodees, Mark K, Akron, OH	05/20/1999
Roy, Samir, Albuquerque, NM	05/20/1999
Samila, Kathleen A, Washington, PA	05/20/1999
Samuel, Sherry A, Brentwood, NH	05/20/1999
Santi, Ana Maria, Forest hills, NY	05/20/1999
Sawyer, David Hamilton, St Cloud, MN	05/20/1999
Scott, Kathleen, Burlington, VT	05/20/1999
Sidler, Leonard O, High Point, NC	05/20/1999
Silvey, Louzanie Portis, Culpeper, VA	05/20/1999
Slade, Kelly Jo, Hattiesburg, MS	05/20/1999
Smith, Trina R, Butler, PA	05/20/1999
Sock, Harold P, Framingham, MA	05/20/1999
Solomon, Steven J, Virginia Beach, VA	05/20/1999
Spradlin, Jennie B, Morrisville, VT	05/20/1999
Stephenson, Howard Lynn, Picayune, MS	05/20/1999
Stevens, Ruth Illeanna, Shady Grove, PA	05/20/1999
Strobbe, Richard Dean, York, PA	05/20/1999
Terpening, Aloma Elaine Scott, Max Meadows, VA	05/20/1999
Thompson, Keith M, Pawtucket, RI	05/20/1999
Thornhill, Roy Charles, Memphis, TN	05/20/1999
Tobin, Donna Jean, Burnsville, MN	05/20/1999
Vanzant, Deborah, Clarksdale, MS	05/20/1999
Varnado, Brenda J, Natchez, MS	05/20/1999
Waltman, Loretta H, Natchez, MS	05/20/1999
Ward, David C, Willoughby, OH	05/20/1999
West, Elizabeth A, Bethlehem, NH	05/20/1999
Williams, Patricia, Worcester, MA	05/20/1999
Wolf, Diane K, Hanover, PA	05/20/1999
Woodard, Rae, Pike, NH	05/20/1999
Worley, Katherine Lynn, St Louis Park, MN	05/20/1999
Wright, Tonya Billbe, White Plains, VA	05/20/1999
Zeigler, Eunice C, Richmond, VA	05/20/1999
Zelig, Harry, Crescent City, CA	05/20/1999
Quality of Care Violations	
Ocampo, Benjamin P, Kissimmee, FL	04/20/1999
Fraud/Kickbacks	
AGL Lab Corp, Miami, FL	12/14/1998
Curbelo, Arnaldo, Miami Lakes, FL	12/02/1998
Gilbert, James P, Pocahontas, AR	02/07/1999
Holmes, James E, Benton, KY	05/20/1999
Kaplan, Joel, Chicago, IL	05/20/1999
Navazio, David, Yardley, PA	05/20/1999
Proulx, Tanya Kaye, Tucson, AZ	12/15/1998
Southern United Home Med Equip, Poplarville, MS	02/07/1999
Tomorrow Medical Center, Inc., Miami, FL	02/02/1999
Vina, Mildrey C, Miami, FL	02/02/1999
Owned/Controlled by Convicted/Excluded	
Bartlett Chiropractic Medical, Redlands, CA	05/20/1999
Cares, Inc., Miami, FL	05/20/1999
Davisson Chiropractic, Napa, CA	05/20/1999
E & D Medical Center, Corp., Miami, FL	05/20/1999
Heineken Chiropractic, San Clemente, CA	05/20/1999
Jerold R Ford Chiropractic, Modesto, CA	05/20/1999
King Chiropractic, Apache Junction, AZ	05/20/1999
Kraye Care, Inc., Texarkana, TX	05/20/1999
Lamb Chiropractic, Sebastopol, CA	05/20/1999
Main Street Dental Associates, Farmington, CT	05/20/1999
P D Nunez, D D S, Inc., Fresno, CA	05/20/1999
Sheri Lahaie Chiropractic, Menlo Park, CA	05/20/1999
Taylorsville Chiropractic, Taylorsville, UT	05/20/1999
Ultimate Urban Transport, Milwaukee, WI	05/20/1999
William T Bunting Chiropractic, Encinitas, CA	05/20/1999
Default on Heal Loan	
Beasley, Mary E, Atlanta, GA	05/20/1999
Dix, David O, Los Angeles, CA	05/20/1999
Herrera, Diego F, Long Island City, NY	05/20/1999
Jonas, Shawn G, Kent, WA	05/20/1999
Kaufman, Todd Steven, Mill Valley, CA	05/20/1999
Lazo, Julie M, Los Angeles, CA	05/20/1999
Little, Deidre J, Solana Beach, CA	05/20/1999
Lottie, Mark E, Covina, CA	05/20/1999
Marin, Rita F, Miami, FL	05/20/1999
Phillips, Joseph P, Gilbertsville, KY	05/20/1999
Smalley, Daniel R, Wellston, MI	04/13/1999
Sutliff, James F, N Syracus, NY	03/23/1999
Vitow, Barry D, Boca Raton, FL	05/20/1999
Wampler, Ward E II, Birmingham, AL	05/20/1999
Young, Candace A, Encinitas, CA	05/20/1999

Dated: May 3, 1999.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 99–11908 Filed 5–11–99; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. FR–4480–D–01]

Delegation of Authority

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This Notice delegates to the Assistant Secretary for Community Planning and Development the Secretary of Housing and Urban Development's authority to award Rural Housing and Economic Development grants, pursuant to the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2475; October 21, 1998) and succeeding appropriations.

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Michael T. Savage, Deputy Director, Office of Economic Development and Empowerment Service, Office of Community Planning and Development, Department of Housing and Urban Development, Room 7136, 451 Seventh Street, SW, Washington, DC 29410–0400, Telephone Number (202) 708–2290. Persons with hearing or speech impediments may also utilize HUD's TTY Number at (202) 708–1455 or the Federal Information Relay Service's TTY Number at (800) 877–8339. Aside from the "800" number, the telephone and TTY numbers listed are not toll-free.

SUPPLEMENTARY INFORMATION: The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2475; October 21, 1998) authorizes the Secretary of Housing and Urban Development to make grants to various entities to enhance the capacity of rural areas to implement housing and economic development programs and innovative grant programs. These grants are to be awarded by June 1, 1999.

The following three categories of funding are authorized: (1) Capacity building grants; (2) Innovative grants and (3) Seed money grants. Indian tribes, rural non-profits and Community Development Corporations are eligible to apply for all three categories of grants. State housing finance agencies and State community and/or economic development agencies are eligible to apply only for Innovative grants.

As part of the Department of Housing and Urban Development's competitive

grants process, a Notice of Funding Availability (NOFA) for the Rural Housing and Economic Development Program was published in the **Federal Register** on March 8, 1999, at 64 FR 11246. Grant awards will be made in accordance with the selection factors set forth in the NOFA.

Accordingly, the Secretary delegates authority as follows:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Community Planning and Development the authority to award Rural Housing and Economic Development grants, pursuant to the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, 112 Stat. 2475; October 21, 1998) and succeeding appropriations.

Section B. Authority Excepted

The authority delegated under Section A does not include the power to sue or be sued.

Authority: Section 7(d), Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: May 5, 1999.

Andrew Cuomo,

Secretary of Housing and Urban Development.

[FR Doc. 99–11972 Filed 5–11–99; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Between June 2, 1998, and March 10, 1999, Region 1 of the Fish and Wildlife Service issued 13 permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973, as amended. Of the 13 permits issued, 4 are associated with implementation of the regional Orange County Central/Coastal Natural Community Conservation Plan/Habitat Conservation Plan (Central/Coastal Plan). On February 2, 1998, we also signed an assumption agreement for a previously issued permit (PRT–810191) that changed the location of incorporation by the permittee. Copies of this assumption agreement, and the 13 permits and associated decision documents are available upon request.

ADDRESSES: If you would like copies of any of the above documents, please contact the Fish and Wildlife Service Reference Service, 5430 Grosvenor Lane, Suite 110, Bethesda, Maryland 20814, telephone (800) 582–3421; or the Fish and Wildlife Service, Division of Consultation and Conservation Planning, 911 NE 11th Avenue, 4th Floor East, Portland, Oregon 97232.

FOR FURTHER INFORMATION CONTACT: Jim Browning, Fish and Wildlife Biologist, at the above Portland, Oregon, address; telephone (503) 231–6241.

SUPPLEMENTARY INFORMATION: Section 9 of the Endangered Species Act and Federal regulation prohibit the take of wildlife species listed as endangered or threatened, respectively. Under the Act, the term "take" means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect listed wildlife, or to attempt to engage in any such conduct. The Service may, under limited circumstances, issue permits to authorize take that is incidental to, and not the purpose of, carrying out an otherwise lawful activity. Regulations governing permits for threatened and endangered species are found in 50 CFR 17.32 and 17.22.

Incidental Take Permits Issued Pursuant to the Central/Coastal Plan

The Central/Coastal Plan fully anticipated that jurisdictions within the plan boundaries would sign the plan's Implementing Agreement as Participating Jurisdictions following approval of the plan and subsequently be issued an Incidental Take Permit. Provided that no plan revisions or additional impacts were determined to be associated with permit issuance, no revision to the Service's permit decision documents for the Central/Coastal Plan would be necessary. The Service determined that no plan revisions or additional impacts were associated with issuance of the following permits pursuant to the Central/Coastal Plan. Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include Findings and Recommendations, a Biological Opinion, and the Record of Decision for the Central/Coastal Plan.

Name of permittee	Permit No.	Issuance date
City of Mission Viejo	TE 005092–0	11/20/98
City of Irvine	TE 005089–0	11/20/98
City of Lake Forest	TE 005791–0	12/21/98
City of Orange	TE 006661–0	01/08/99

Incidental Take Permits Not Associated With the Central/Coastal Plan

Between June 2, 1998, and March 10, 1999, Region 1 of the Service issued the following permits for incidental take of threatened and endangered species, pursuant to section 10(a)(1)(B) of the Act. Each permit was issued after the following determinations were made: the application had been submitted in good faith; all permit issuance criteria were met, including the requirement that granting the permit will not jeopardize the continued existence of the species; and the permit was consistent with the Act and applicable regulations, including a thorough review of the environmental effects of the action and alternatives, pursuant to the National Environmental Policy Act of 1969.

Copies of these permits and associated decision documents are available upon request. Decision documents for each permit include Findings and Recommendations; a Biological Opinion; and either a Finding of No Significant Impact, a Record of Decision, or an Environmental Action Statement.

Name of permittee	Permit No.	Issuance date
Granterock Co. (Wilder Quarry)	PRT–842273	06/19/98
Maxwell Irrigation District	PRT–842926	07/24/98
Los Osos Center, LLC	PRT–844723	07/31/98
Seneca-Enron	TE 000955–0	08/14/98
Granterock Co. (Quail Hollow Quarry)	PRT–830417, Amendment 08/31/98#1	8/31/98
Pacific Gas & Electric Co. (Metcalf-Edenvale)	TE 003250–0	11/24/98
		Edenvale)
U.S. Borax, Inc., 1,940-Acre Project	TE 837867–0	02/05/99
Zanker Material Processing Facility	TE 006962–0	02/23/99
University of California, Davis	TE 008810–0	03/10/99

Assumption Agreement Associated With the Central/Coastal Plan

In addition to issuing the incidental take permits listed above, we signed an assumption agreement, dated February 2, 1998, for incidental take permit PRT–810191 issued July 7, 1996. This agreement formally recognized the reincorporation of the permittee, The Irvine Company, from a Michigan corporation to a Delaware corporation. In signing the agreement, The Irvine Company-Delaware assumed the obligations of The Irvine Company-Michigan for implementation of the Central/Coastal Plan. Reincorporation did not result in a new analysis of effects or change the requirements of the original permit, habitat conservation plan, or implementing agreement. Copies of the executed assumption agreement are available upon request.

Dated: April 29, 1999.

Elizabeth H. Stevenson,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Region 1, Sacramento, California.

[FR Doc. 99–11340 Filed 5–11–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–094–03–6332–00: 4310–33]

Rescinding of the Emergency Closure of Public Lands: Lane County, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Rescind the 1993 Emergency Closure of public lands in Lane County, Oregon.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are now rescinded from the temporary closure of water activities in Lake Creek. The closure was made under the authority of 43 CFR 8364.1.

The public lands affected by this closure are specifically identified as the Lake Creek Slide, a natural bedrock feature in the bed of Lake Creek, within public lands located as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W., Sec. 19: Metes and Bounds within the SE¼SE¼

Containing approximately 2 acres.

SUPPLEMENTARY INFORMATION: The original closure was published 58 FR 39222, July 22, 1993. The rationale to rescind this temporary closure follows: The "temporary closure" is now 6 years old, BLM realizes it needs to either make this a permanent closure or resend it. During the 6 years of temporary closure, visitors have continued to ignore 2 visibly posted Danger signs and slide down the rock slab, especially when BLM personnel are not around to enforce it. This behavior demonstrates that a permanent closure would be just as ineffective without full time BLM personnel on site to enforce it. BLM does not have the manpower or funding to provide for this presence. Most visitors are aware of the hazards. The Danger signs have been revised with new verbiage to increase visitor's awareness of the many hazards present on site. The revised signs read:

DANGER UNSUPERVISED AREA

HAZARDOUS TO SLIDE ON ROCKS, SWIM IN THIS AREA, OR DIVE INTO THE WATER

BEWARE OF SLIPPERY SURFACES, SUBMERGED ROCKS, AND SHIFTING TOPOGRAPHY

PARTICIPATING IN THESE OR SIMILAR ACTIVITIES CAN RESULT IN SERIOUS INJURY OR DEATH

DATES: This rescind is effective on May12, 1999.

ADDRESSES: Copies of this action and maps showing the location of this area are available from the Eugene District Office, P.O. Box 10226 (2890 Chad Drive), Eugene, Oregon 97440.

FOR FURTHER INFORMATION CONTACT: Diane Chung, Coast Range Field Manager, Eugene District Office, at (541) 683–6600 or 1–888–442–3061.

Dated: May 4, 1999.

Dan Howells,

Acting Coast Range Field Manager.

[FR Doc. 99–11776 Filed 5–11–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–920–1990–00]

Notice of Availability of the Programmatic Environmental Assessment for Selected Actions Taken for Mining Claim Use and Occupancy in Nevada, and the Preliminary Finding of No Significant Impact

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Availability.

SUMMARY: In accordance with the National Environmental Policy Act of 1969 (NEPA), and Use and Occupancy Under the Mining Laws regulations (43 CFR 3715), the Bureau of Land Management has prepared an environmental assessment (EA) that evaluates the impacts of typical mining claim and/or millsite occupancies. This EA describes and analyzes the proposed action, consisting of seven typical occupancy scenarios, and the no action option. The actions analyzed in this EA involve operations that disturb 5 acres or less. This notice is intended to invite the public to comment on the analysis of impacts presented in the EA and the performance measures developed for the proposed action.

DATES: Written comments will be accepted on or before June 11, 1999. Any comments received by the close of the comment period will be evaluated and those letters that identify issues, where clarification or discussion is required, will be addressed in the final EA. Copies of the EA and the preliminary Finding of No Significant Impact (FONSI) will be provided to any person or agency commenting, or to other interested parties, upon written

request. Comments on the EA and FONSI should be sent to the Nevada State Office at the address listed below.

ADDRESSES: Send comments on the EA to: Bureau of Land Management, Nevada State Office, P.O. Box 12000, Reno, NV 89520–0006

FOR FURTHER INFORMATION CONTACT: Bob Gibson, Geologist, Nevada State Office. Telephone: (775) 861–6564.

Jean Rivers-Council,

Associate State Director.

[FR Doc. 99–11907 Filed 5–11–99; 8:45 am]

BILLING CODE 4310–32–P

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–TA–787 (Final); Extruded Rubber Thread From Indonesia

Determination

On the basis of the record [1] developed in the subject investigation, the United States International Trade Commission determines, [2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is threatened with material injury [3] by reason of imports from Indonesia of extruded rubber thread,[4] provided for in heading 4007.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).[5]

Background

The Commission instituted this investigation effective March 31, 1998, following receipt of a petition filed with the Commission and the Department of Commerce by North American Rubber Thread Co., Ltd., Fall River, MA. The final phase of the investigation was scheduled by the Commission following notification of a preliminary determination by the Department of Commerce that imports of extruded rubber thread from Indonesia were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 19, 1998 (63 FR 64276). The hearing was held in Washington, DC, on March 25, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on May 7, 1999. The views of the Commission are contained in USITC Publication 3191 (May 1999), entitled Extruded Rubber Thread from Indonesia: Investigation No. 731–TA–787 (Final).

Issued: May 6, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11989 Filed 5–11–99; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CAR § 207.2(f)).

[2] Commissioner Askey dissenting.

[3] Commissioner Crawford finds two like products corresponding to the scope of this investigation as defined by Commerce. She finds (1) that the industry in the United States producing food-grade extruded rubber thread is not materially injured, or threatened with material injury, by reason of LTFV imports from Indonesia, and (2) that the industry in the United States producing all other extruded rubber thread is materially injured by reason of such imports.

[4] For purposes of this investigation, Commerce has defined "extruded rubber thread" as vulcanized rubber thread obtained by extrusion of stable or concentrated natural rubber latex of any cross sectional shape, measuring from 0.18 mm, which is 0.007 inches or 140 gauge, to 1.42 mm, which is 0.056 inches or 18 gauge, in diameter.

[5] The Commission did not determine that it would have found material injury but for the suspension of liquidation of entries of the merchandise under investigation, pursuant to 19 U.S.C. § 1673d(b)(4)(B).

INTERNATIONAL TRADE COMMISSION

Investigation No. AA1921–111 (Review); Roller Chain From Japan

AGENCY: United States International Trade Commission.

ACTION: Cancellation of the hearing scheduled for full five-year review concerning the antidumping finding on roller chain from Japan.

SUMMARY: The Commission hereby gives notice that the hearing scheduled for May 6, 1999 for the five-year review concerning the antidumping finding on roller chain from Japan is cancelled.

EFFECTIVE DATE: May 5, 1999.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: On November 25, 1998 (63 FR 65221), the Commission published a notice in the **Federal Register** scheduling a full five-year review concerning the antidumping finding on roller chain from Japan. The schedule provided for a public hearing on May 6, 1999. Requests to appear at the hearing were filed with the Commission on behalf of Daido Kogyo Co., Ltd., Enuma Chain Manufacturing Co., Ltd., Oriental Chain Manufacturing Co., Ltd., Pulton Chain Co., Inc., RK Excel Co., Ltd., Kaga Industries Co., Ltd., Izumi Chain Mfg. Co., Ltd., and Sugiyama Chain Co., Ltd. A request was also filed by counsel for New Holland North America, Inc. However, each of the requests were subsequently withdrawn. Since there are no current requests by interested parties to appear, the Commission determined to cancel the public hearing on roller chain from Japan scheduled for May 6, 1999.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: May 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11987 Filed 5–11–99; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Investigations Nos. 701–TA–376, 377, and 379 (Final) and Investigations Nos. 731–TA–788–793 (Final); Certain Stainless Steel Plate From Belgium, Canada, Italy, Korea, South Africa, and Taiwan

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines: [2]

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] In these investigations, Vice Chairman Marcia E. Miller and Commissioners Carol T. Crawford, Jennifer A. Hillman, and Thelma J. Askey find two domestic like products, voting in the affirmative with respect to certain hot-rolled stainless steel

Continued

(1) Pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from Belgium, Italy, and South Africa of certain hot-rolled stainless steel plate in coils [3] that have been found by the Department of Commerce to be subsidized by the Governments of Belgium, Italy, and South Africa; [4]

(2) Pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is materially injured by reason of imports of certain hot-rolled stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan that have been found by Commerce to be sold in the United States at less than fair value (LTFV); [5]

(3) Pursuant to section 705(b) of the Act (19 U.S.C. § 1671d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium of certain cold-rolled stainless steel plate in coils that have been found by Commerce to be subsidized by the Government of Belgium; [6]

(4) Pursuant to section 735(b) of the Act (19 U.S.C. § 1673d(b)), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Belgium and Canada of certain cold-rolled stainless steel plate in coils that have been found by Commerce to be sold in the United States at LTFV; [7] and

(5) Pursuant to section 771(24)(A) of the Act (19 U.S.C. § 1677(24)(A)), that imports of certain cold-rolled stainless steel plate in coils from Italy, Korea, South Africa, and Taiwan that have been found by Commerce to be subsidized and/or sold in the United States at LTFV are negligible. [8] [9]

Background

The Commission instituted these investigations effective March 31, 1998, following receipt of a petition filed with the Commission and the Department of Commerce on behalf of Armco, Inc., Pittsburgh, PA; J&L Specialty Steel, Inc., Pittsburgh, PA; Lukens Inc., Coatesville, PA, North American Stainless, Ghent, KY; and the United Steelworkers of America, AFL-CIO/CLC. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of certain stainless steel plate in coils from Belgium, Canada, Italy, Korea, South Africa, and Taiwan were being subsidized and/or sold in the United States at LTFV within the meaning of sections 703(b) and 733(b) of the Act (19 U.S.C. 1671b(b) and 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 9, 1998 (63 FR 67918). The hearing was held in Washington, DC, on March 23, 1999, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 3, 1999. The views of the Commission are contained in USITC Publication 3188 (May 1999), entitled Certain Stainless Steel Plate from Belgium, Canada, Italy, Korea, South Africa, and Taiwan: Investigations Nos. 701–TA–376, 377, and 379 (Final) and Investigations Nos. 731–TA–788–793 (Final).

Issued: May 5, 1999.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 99–11988 Filed 5–11–99; 8:45 am]

BILLING CODE 7020–02–P

plate in coils and voting in the negative or finding imports to be negligible with respect to certain cold-rolled stainless steel plate in coils. Chairman Lynn M. Bragg and Commissioner Stephen Koplan find one domestic like product encompassing both certain hot-rolled stainless steel plate in coils and certain cold-rolled stainless steel plate in coils, and vote in the affirmative.

[3] Imports of certain stainless steel plate in coils, both hot-rolled and cold-rolled, are provided for in subheadings 7219.11.00, 7219.12.00, 7219.31.00, 7219.90.00, 7220.11.00, 7220.20.10, 7220.20.60, and 7220.90.00 of the Harmonized Tariff Schedule of the United States. For purposes of these investigations, the Commission defines certain hot-rolled stainless plate in coils as all domestic product corresponding to the scope of the investigations except for certain cold-rolled stainless steel plate in coils. The Commission defines certain cold-rolled stainless steel plate in coils as all domestic product corresponding to the scope of the investigations that has undergone a cold-reduction process that reduced the thickness of the steel by 25 percent or more, and has been annealed and pickled after cold reduction.

[4] Chairman Bragg and Commissioner Koplan made affirmative determinations on a single domestic like product encompassing both certain hot-rolled stainless steel plate in coils and certain cold-rolled stainless steel plate in coils.

[5] Ibid.

[6] Ibid.

[7] Ibid.

[8] Ibid.

[9] Investigations regarding such imports are therefore terminated.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of Information Collection under Review: Freedom of Information Privacy Act Request.

The Department of Justice, Immigration and Naturalization Service (INS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995. The information collection was previously published in the **Federal Register** February 25, 1999 at 63 FR 9350, allowing for a 60-day public comment period. No comments were received by the INS and this proposed information collection.

The purpose of this notice is to allow an additional 30 days for public comments. Comments are encouraged and will be accepted until June 12, 1999. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Stuart Shapiro, Department of Justice Desk Officer, Room 10235, Washington, DC 20530; 202–395–7316.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, ad clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this Information Collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Freedom of Information/Privacy Act Request.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form G–639. FOIA/PA Section, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is provided as a convenient means for persons to provide data necessary for identification of a particular record desired under FOIA/PA.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 100,000 responses at 15 minutes (.25) hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 25,000 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: May 5, 1999.

Steve Tarragon,

Acting Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 99–11903 Filed 5–11–99; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Island Creek Coal Company

[Docket No. M–1999–022–C]

Island Creek Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Ohio No. 11 Mine (I.D. No.15–03178) located in Union County, Kentucky. The petitioner states that due to a massive roof fall along the 2nd South Panel return in the #5 entry, including but limited to crosscut 15, the affected area cannot be traveled safely in its entirety to conduct weekly examinations. The petitioner proposes to: (i) Establish evaluation points on the side of the roof fall at crosscut 15; (ii) have a qualified person test for methane and the quantity of air at each evaluation point on a weekly basis; and (iii) have the person conducting the test record the results, date, time, and his/her initials in a record book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

2. Consolidation Coal Company

[Docket No. M–1999–023–C]

Consolidation Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Rend Lake Mine (I.D. No. 11–00601) located in Jefferson County, Illinois. The petitioner states that due to a massive roof fall in the West side return from the B shaft to the Second Main West return air course, the area cannot be traveled safely in its entirety to conduct weekly examinations. The petitioner proposes to: (i) Establish evaluation points A and B to take air and gas measurements; (ii) to maintain the evaluation points and all approaches to the evaluation points in good condition at all times; (iii) have a certified person test for methane and the quantity of air on a weekly basis and record the results, date, time, and his/her initials in a book kept on the surface and made available for inspection by interested persons. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

3. Goodin Creek Contracting, Inc.

[Docket No. M–1999–024–C]

Goodin Creek Contracting, Inc., Rt 1 Box 419–A1, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its Goodin Creek Mine (I.D. No. 15–17980) located in Knox County, Kentucky. The petitioner states that due to unsafe roof conditions in certain areas of the return air course, traveling the area to conduct examinations would be unsafe. The petitioner proposes to establish monitoring locations in each entry at crosscut 2 in the return to monitor air leaving the affected area of the air course and in each entry at crosscut 16 in the return to monitor air entering the affected area of the air course. The petitioner also proposes to: (i) Have a certified person conduct weekly evaluations at each of the monitoring locations to measure the quality and quantity of air entering and leaving the locations to determine methane and oxygen concentrations; (ii) have the examiner record the results of the examinations in a book kept on the surface with the date, time, and his/her initials and made available to all interested parties; (iii) maintain all monitoring locations and approaches to the monitoring locations in a safe condition at all times; (iv) post a sign in the main travelway showing the safe travel route to each monitoring location; (v) maintain methane gas or other harmful, noxious, or poisonous gases at legal limits for return air; (vi) instruct all personnel not to travel in the affected area prior to implementing the proposed alternate method; and (vii) only permit entry to the affected area for investigating significant problems with the air flow being detected through the monitoring process. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. Eighty-Four Mining Company

[Docket No. M–1999–025–C]

Eighty-Four Mining Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Mine 84 (I.D. No. 36–00958) located in Washington County, Pennsylvania. The petitioner proposes to increase the maximum lengths of the trailing cables to 900 feet for the mining machine, loading machine, shuttle car, roof bolter, and section ventilation fan. The petitioner has listed specific terms and conditions in this petition for use and maintenance of these trailing cables. The petitioner states that the trailing cables would not be smaller than #4 A.W.G. for the section ventilation fan, roof bolting machine, and shuttle cars, smaller than #2 A.W.G for the loading machine, or smaller than #2/0 A.W.G for the continuous mining machine. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

5. West Ridge Resources, Inc.

[Docket No. M–1999–026–C]

West Ridge Resources, Inc., P.O. Box 902, Price, Utah 84501 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its West Ridge Mine (I.D. No. 42–02233) located in Carbon County, Utah. The petitioner requests a modification of the mandatory standard to allow the use of two-entry longwall development and to use the belt entry as a return air course during longwall development, and as an intake during longwall extraction to ensure an adequate quantity of ventilation to dilute and render harmless methane or other noxious gases that may accumulate. The petitioner asserts that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Eastern Associated Coal Corporation

[Docket No. M–1999–027–C]

Eastern Associated Coal Corporation, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.360(a)(1) (preshift examination) to its Matewan Tunnel (I.D. No. 46–08610) located in Boone County, West Virginia. The petitioner proposes to use an alternative method for preshift examinations. The petitioner proposes to: (i) have a certified person examine the tunnel three hours prior to the beginning of the work week (Sunday night) and on an eight-hour interval during the work week at 8:00 a.m., 4:00 p.m., and 12:00 a.m.; (ii) have a three-man crew leave and enter the tunnel after the initial examination each week, as needed, on their shift which is 12:00 a.m., 8:00 a.m., and 4:00 p.m.; (iii) have the supervisor conduct an on-shift examination in the tunnel during his/her travels and note any problems for prompt correction; and (iv) withdraw the three-man crew from the tunnel and fireboss the tunnel in its entirety before power is restored underground prior to the crew returning underground if the fire bossing schedule is interrupted. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

7. Peabody Coal Company

[Docket No. M–1999–028–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42419 has filed a petition to modify the application of 30 CFR 75.364(b)(4) (weekly examination) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. The petitioner proposes to establish evaluation points to monitor its bleeder system due to hazardous conditions that hinder continued travel to conduct examinations. The petitioner proposes to (i) conduct daily examinations at various evaluation points; (ii) have a certified person check for methane and oxygen concentrations and the volume of air and record the results in a book maintained on the surface of the mine; and (iii) continuously monitor methane concentrations at Bleeder Fan #2, and Bleeder Fan #3 using a Conspec Mine Monitoring System that would be manned around the clock and set to activate an alarm if methane levels are greater than 2.0 percent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

8. Eastern Associated Coal Corporation

[Docket No. M–1999–029–C]

Eastern Associated Coal Corporation, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1106–2(c) (transportation of liquefied and nonliquefied compressed gas cylinders; requirements) to its Harris No. 1 Mine (I.D. No. 46–01271) located in Boone County, West Virginia. The petitioner proposes an alternative method for storage and transportation of compressed gas cylinders. The petitioner proposes to: (i) House the compressed cylinders in a specially designed compartment that is part of a specialized tool car used by the track crew; (ii) have each cylinder encased in a metal housing lined with insulating material equivalent to a Schedule 80 pipe and encapsulated within a metal box made of ¼-inch metal; (iii) design storage bays to lay 15 degrees downward from the opening to prevent the cylinders from falling out of the bays and install a strap across the openings to prevent the cylinders from being dislodged; and (iv) install fire extinguishers in the tool car. The petitioner states that the cylinder bay would be isolated from the man compartment by the material storage compartment and tool box for the outby end, and workers would be provided with necessary tools, supplies, and a vehicle readily at the worksite for transporting injured miners. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

9. Ziegler Chemical and Mineral Corporation

[Docket No. M–1999–003–M]

Ziegler Chemical and Mineral Corporation, 121 West Main Street, Vernal, Utah 84078 has filed a petition to modify the application of 30 CFR 57.19003 (driving mechanism connections) to its Bonanza Mines #3, #8, #11, and #12; Cowboy Mines #1, and #2 ; Independent Mines #3, #5, #6, and #7; Neal Mine #1; and Tom Taylor Mine #3 (I.D. No. 42–00876) all located in Uintah County, Utah. The petitioner requests that condition 7 of its previously granted petition, docket number M–81–72–M, be amended to allow a 75 horsepower electric motor with a speed of 885 RPM on the hoist instead of 50 horsepower and a motor speed of 1130 RPM. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety

and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 11, 1999. Copies of these petitions are available for inspection at that address.

Dated: May 4, 1999

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 99–12028 Filed 5–11–99; 8:45 am]

BILLING CODE 4510–43–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 99–066]

NASA Advisory Committees; Renewal of NASA's Advisory Committee Charters

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Renewal of the Charters of NASA's Advisory Committees.

SUMMARY: Pursuant to section 14(b)(1) of the Federal Advisory Committee Act, Pub. L. 92–463, and after consultation with the Committee Management Secretariat, General Services Administration, the Administrator of the National Aeronautics and Space Administration has determined that a renewal of NASA's nine advisory committees is in the public interest in connection with the performance of duties imposed upon NASA by law. The structure and duties of these committees are unchanged. However, the Aeronautics and Space Transportation Technology Advisory Committee has been renamed to be the Aero-Space Technology Advisory Committee and some administrative language has been changed in each of the charters. The charter filing date is April 29, 1999 for each of the nine charters.

NASA's nine advisory committees are:

NASA Aerospace Safety Advisory Panel
NASA Advisory Council (NAC)
NAC Technology and Commercialization Advisory Committee
NAC Minority Business Resource Advisory Committee
NAC Advisory Committee on the International Space Station
NAC Aero-Space Technology Advisory Committee
NAC Space Science Advisory Committee
NAC Life and Microgravity Sciences and Applications Advisory Committee
NAC Earth System Science and Applications Advisory Committee

FOR FURTHER INFORMATON CONTACT: Ms. Kathy Dakon, Assistant Advisory Committee Management Officer, Mail Code Z, National Aeronautics and Space Administration, Washington, DC 20546 (202) 358–0732.

SUPPLEMENTARY INFORMATION: NASA Advisory Council and its committees information is available on the world wide web at: *http://www.hq.nasa.gov/office/codeq/codeq-1.htm* and *http://www.hq.nasa.gov/office/codez/nac.htm.*

Dated: May 4, 1999.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc, 99–11895 Filed 5–11–99; 8:45 am]

BILLING CODE 7510–01–P

NEIGHBORHOOD REINVESTMENT CORPORATION

Sunshine Act Meeting

Twenty-First Annual Meeting of the Board of Directors

TIME & DATE: 2:00 p.m., Wednesday, May 24, 1999.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW, Suite 800, Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION: Jeffrey T. Bryson, General Counsel/Secretary (202) 220–2372.

AGENDA:

I. Call to Order
II. Approval of Minutes: March 3, 1999, Regular Meeting
III. Resolution of Appreciation
IV. Election of Chairman
V. Election of Vice Chairman
VI. Committee Appointments:
  a. Audit Committee
  b. Budget Committee
  c. Personnel Committee
  d. Homeownership Oversight Special Committee
VII. Election of Officers
VIII. Board Appointments:
  a. Internal Audit Director
  b. Assistant Secretary/Paralegal
IX. Audit Committee Report: May 11, 1999
X. Treasurer's Report
XI. Executive Director's Quarterly Management Report
XII. Adjourn

Jeffrey T. Bryson,

General Counsel/Secretary.

[FR Doc. 99–12166 Filed 5–10–99; 3:42 pm]

BILLING CODE 7570–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–498 and 50–499]

STP Nuclear Operating Company (South Texas Project Electric Generating Station, Units 1 and 2); Exemption

I

STP Nuclear Operating Company is the holder of Facility Operating License No. NPF–76 and Facility Operating License No. NPF–80, which authorizes operation of the South Texas Project (STP), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized-water reactors at the licensee's site located in Matagorda County, Texas.

II

Section 50.60(a) to Title 10 of the *Code of Federal Regulations* (10 CFR) Part 50 requires, in part, that except as provided in Section 50.60(b), all light-water nuclear power reactors, other than reactor facilities for which the certifications required under Section 50.82(a)(1) have been submitted, must meet the fracture toughness requirements for the reactor coolant pressure boundary set forth in Appendix G of 10 CFR Part 50. Section 50.60(b) of 10 CFR Part 50 states that proposed alternatives to the described requirements of Appendix G of Part 50 or portions thereof may be used when an exemption is granted by the Commission under 10 CFR 50.12.

III

By letter dated March 18, 1999, STP Nuclear Operating Company requested that the NRC exempt STP, Units 1 and 2, from the application of specific requirements of 10 CFR 50.60 and Appendix G to 10 CFR 50. Specifically, STP Nuclear Operating Company proposes to use American Society of Mechanical Engineers (ASME) Code Case N–514 to permit setting the pressure setpoint of STP's cold overpressure mitigation system (COMS) such that the pressure-temperature (P–T) limits required by Appendix G of 10 CFR Part 50 could be exceeded by 10 percent during a low temperature pressure transient.

The Commission has established requirements in 10 CFR Part 50 to protect the integrity of the reactor coolant system pressure boundary. As a part of these, Appendix G of 10 CFR

Part 50 requires that P–T limits be established for reactor pressure vessels during normal operation and vessel hydrostatic testing. As stated in Appendix G, "The appropriate requirements on . . . the pressure-temperature limits . . . must be met for all conditions." In order to avoid approaching these P–T limit curves and provide pressure relief during low temperature overpressurization (LTOP) events, pressurized water reactor licensees have installed protection systems (COMS/LTOP) as part of the reactor coolant system (RCS) pressure boundary. STP Nuclear Operating Company is required, as part of the STP Technical Specifications, to develop, update, and submit reactor vessel P–T limits and COMS setpoints for NRC review and approval.

STP Nuclear Operating Company determined that the exemption request from the provisions of 10 CFR 50.60 and Appendix G was necessary since these regulations require, as previously noted, that reactor vessel conditions not exceed the P–T limits established by Appendix G. In referring to 10 CFR 50.12 on specific exemptions, STP Nuclear Operating Company cited special circumstances regarding achievement of the underlying purpose of the regulation as its basis for requesting this exemption [10 CFR 50.12(a)(2)(ii)].

STP Nuclear Operating Company noted in support of the 10 CFR 50.12(a)(2)(ii) criteria that the underlying purpose of the subject regulation is to establish limits to protect the reactor vessel from brittle failure during low temperature operation and that the COMS provides a physical means of assuring that operation remains within these limits. STP Nuclear Operating Company proposed that establishing the COMS pressure setpoint in accordance with the N–514 provisions, such that the vessel pressure would not exceed 110 percent of the P–T limit allowables, would still provide an acceptable level of safety and mitigate the potential for an inadvertent actuation of the COMS. The use of N–514 was based on the conservatisms that have been explicitly incorporated into the procedure for developing the P–T limit curves. This procedure, referenced from Appendix G to Section XI of the ASME Code, includes the following conservatisms: (1) a safety factor of 2 on the pressure stresses; (2) a margin factor applied to RT_{NDT} using Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials"; (3) an assumed ¼ thickness flaw with a 6:1 aspect ratio; and (4) a limiting material toughness based on dynamic and crack arrest data.

In addition, STP Nuclear Operating Company stated that a COMS pressure setpoint must be sufficiently high to prevent the inadvertent actuation of the COMS as a result of normal operating pressure surges. STP Nuclear Operating Company requests use of Code Case N–514 to incorporate pressure instrumentation uncertainty in P–T limit calculations, while providing an operating band that permits system makeup and pressure control. Such an inadvertent actuation could lead to the unnecessary release of reactor coolant inside containment and could introduce undesirable thermal transients in the RCS.

The Commission has determined that the application of 10 CFR 50.60 in these particular circumstances is not necessary to achieve the underlying purpose of that rule and that the use of Code Case N–514 would meet the underlying intent of the regulation. Based upon a consideration of the conservatisms, which are explicitly defined in the Appendix G methodology, it was concluded that permitting the COMS setpoint to be established such that the vessel pressure would not exceed 110 percent of the limit defined by the P–T limit curves would provide an adequate margin of safety against brittle failure of the reactor vessel. This is also consistent with the determination that has been reached for other licensees under similar conditions based on the same conditions. Therefore, the exemption requested under the special circumstances of 10 CFR 50.12(a)(2)(ii) was found to be acceptable. The staff also agrees that limiting the potential for inadvertent COMS actuation may improve plant safety.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, is consistent with the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants STP Nuclear Operating Company an exemption from the requirements of 10 CFR 50.60 in order to apply ASME Code Case N–514 for determining STP's cold overpressurization mitigation system pressure setpoint.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant effect on the quality of the human environment (64 FR 23689).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11997 Filed 5–11–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company (Comanche Peak Steam Electric Station, Units 1 and 2); Exemption

I.

Texas Utilities Electric Company (the licensee/TU Electric) is the holder of Facility Operating Licenses No. NPF–87 and No. NPF–89, which authorize operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2. The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

These facilities consist of two pressurized-water reactors at the licensee's site located in Somervell County, Texas.

TU Electric seeks this exemption to the 2 percent above licensed power level assumption to allow for uncertainties specified by Title 10 of the *Code of Federal Regulations* (10 CFR), Part 50, Appendix K, "ECCS [Emergency Core Cooling System] Evaluation Models," Section I.A., to support license amendments for modest increases of up to 1 percent in the licensed power levels for both units. This will result in an exemption from the requirements of 10 CFR Part 50, Appendix K to allow ECCS evaluation model assumptions to be conducted at no less than 1.01 times licensed power level. The licensee seeks this exemption based on its proposed use of a new feedwater flow measurement system to allow more accurate measurement of thermal power (known as the Leading Edge Flowmeter (LEFM) System), manufactured by Caldon, Inc. The LEFM is described in Caldon, Inc., Topical Report ER–80P, "Improving Thermal Power Accuracy and Plant Safety While Increasing Operating Power Level Using the LEFM System." The subject topical report was approved subject to the limitations stated in a letter and Safety Evaluation (SE) dated March 8, 1999.

II.

Part 50, Appendix K, Section I. A. states, in part, that "it shall be assumed that the reactor has been operating continuously at a power level at least 1.02 times the licensed power level (to allow for such uncertainties as instrument error)." The Appendix K rule was written to ensure that adequate margin for ECCS performance would be available if a design-basis loss-of-coolant accident (LOCA) ever occurred (39 FR 1002, January 4, 1974). The margin was provided by incorporating several conservative features into the ECCS performance criteria as well as maintaining conservative requirements and recommendations for evaluation models.

The basis for the requirement is discussed in background documentation, such as the Statement of Consideration for Appendix K (39 FR 1002, January 4, 1974). The 102 percent assumption is one of several items listed as conservative factors used to model the energy available from reactor operation. The Statement of Consideration also associates the preaccident power level assumption with the modeling of the rate of heat generation after the LOCA occurs. A comparison is made between the estimated uncertainty associated with the decay heat assumption (i.e., 20 percent above the American Nuclear Society (ANS) standard) and the estimated effect on heat generation resulting from the 102 percent power assumption. This is a natural connection since the preaccident power level directly affects the decay heat generation rate after reactor shutdown.

When it was considering changes to Appendix K to accept the use of best-estimate evaluations, the staff understood that the rule incorporated substantial conservatisms (see SECY 83–472, "Emergency Core Cooling System Analysis Methods," November 17, 1983). These conservatisms were necessary when the rule was written because of limited experimental evidence. The major analysis inputs and assumptions that contribute to the conservatism in Appendix K are grouped together under Sections A through D of the rule: (A) Sources of Heat During the LOCA (the 102 percent power provision is one factor); (B) Swelling and Rupture of the Cladding and Fuel Rod Thermal Parameters; (C) Blowdown Phenomena; and (D) Post-blowdown Phenomena: Heat Removal by ECCS. In each of these areas, several assumptions are typically used to assure conservatism in the analysis results. For instance, under sources of heat during the LOCA, in addition to the 102 percent requirement, decay heat is modeled on the basis of an ANS standard with an added 20 percent penalty, and the power distribution shape and peaking factors expected during the operating cycle are chosen to yield the most conservative results. As discussed in SECY–83–472, experimental programs provided ample data, which shed light on the considerable margin provided by Appendix K, giving the staff confidence to consider alternative ECCS evaluation models.

III

Section 50.12(a), states that . . .

The Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are—

(1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security.

(2) The Commission will not consider granting an exemption unless special circumstances are present. . . .

Section 50.12(a)(2), states that special circumstances are present whenever . . .

(ii) Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule; or

(iv) The exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the grant of the exemption; or

(vi) There is present any other material circumstance not considered when the regulation was adopted for which it would be in the public interest to grant an exemption. . . .

IV

The staff has reviewed the applicable regulations and the regulatory history for Appendix K as well as for Section 50.46, and finds that those regulatory documents do not prohibit the licensee's proposal to use Caldon Inc.'s, Leading Edge Flowmeter System (Caldon LEFM System) instrument. Accordingly, the exemption is authorized by law, as required by 10 CFR 50.12(a)(1).

The staff used Regulatory Guide 1.174 and Standard Review Plan Chapter 19 to review the application for the exemption. Specifically, the staff reviewed the application considering the defense-in-depth philosophy, the maintenance of sufficient safety margin, and the fact that the increase in risk was small and consistent with the Commission safety goals. A slightly higher power level will result in a small increase in decay heat load that could affect required response time of the ECCS and the available operator response time following transients and accidents. Results of core and containment consequence analyses from higher power levels could also be affected. However, NUREG–1230, "Compendium of ECCS Research for Realistic LOCA Analysis," considered the risk impact of changes associated with the revised ECCS rules, including power increase, and considered a power increase of 5 percent or less to have little risk significance. The staff concludes that this increase of 1 percent is bounded by the NUREG–1230 considerations.

In the safety evaluation for the Caldon topical report ER–80P dated March 8, 1999, the staff accepted statistical treatment of uncertainties attributed to the LEFM and venturi-based flow measurement instruments and the uncertainty values associated with these two types of flow measurement instruments at CPSES. The use of the Caldon LEFM System and quantification of power measurement uncertainty do not raise inconsistencies with the Commission's safety goals. Further, the Commission has determined that, pursuant to 10 CFR 50.12, the requested exemption is authorized by law, will not result in an undue risk to the public health and safety, and is consistent with the common defense and security and is otherwise in the public interest.

The Commission also finds that special circumstances exist. By seeking to apply a smaller margin for power measurement uncertainty, the exemption does not violate the underlying purpose of Appendix K. The application of 1.02 times the licensed thermal power is not necessary to achieve the underlying purpose of Appendix K. Indeed, by quantifying a contributor to the uncertainty where the uncertainty was not specifically known, the exemption may better serve the underlying purpose of the requirement. The use of the Caldon LEFM System and the quantification of power measurement uncertainty appear to offer safety benefits.

By requesting this exemption, the licensee has undertaken to quantify a contributor to the uncertainty in power measurement. Although there is a small safety impact expected from the associated power increase, it is not considered significant. The use of the LEFM system and the quantification of power measurement uncertainty appear to offer safety benefits.

The Caldon LEFM System and the quantification of power measurement uncertainty associated with use of the Caldon LEFM System constitute

material circumstances that did not exist when the rule was written. The current Appendix K rule presumes that the 2 percent margin accounts for uncertainties associated with measurement of thermal power. Contributors to the uncertainty were not identified at the time the rule was written and the magnitude of the uncertainty was not demonstrated by experiment or analysis. The rule does not require quantification of actual uncertainties, nor does the regulatory history reflect any detailed technical basis for the choice of a 2 percent margin. Therefore, the Commission has determined that special circumstances as defined in 10 CFR 50.12(a)(2)(ii), (iv), and (vi) are present.

The Commission hereby grants the licensee an exemption from the requirements of 10 CFR Part 50, Appendix K to allow ECCS evaluation model assumptions to be conducted at no less than 1.01 times licensed power level when the quantification of power measurement uncertainty can be justified by the use of the Caldon LEFM System instrumentation. The granting of this exemption does not, however, provide authority to increase the licensed power of CPSES, Units 1 and 2. A separate license amendment to increase licensed power level, for each licensed unit, will be required to be submitted and approved before such authority may be provided for that unit.

Pursuant to 10 CFR 51.32, the Commission has determined that granting of this exemption will have no significant effect on the quality of the human environment (64 FR This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 6th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11996 Filed 5–11–99; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–445 and 50–446]

Texas Utilities Electric Company, et al. Comanche Peak Steam Electric Station, Units 1 and 2; Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed no Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–87 and NPF–89 issued to Texas Utilities Electric Company, et al. (the licensee), for operation of the Comanche Peak Steam Electric Station (CPSES), Units 1 and 2, respectively. The CPSES facility is located at the licensee's site in Somervell County, Texas.

The proposed amendments would revise the Technical Specifications for fuel storage to increase the spent fuel storage capacity, to add fuel pool boron concentration, and to revise the storage configurations in the spent fuel pool.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequence of an accident previously evaluated?

This proposed license amendment includes changes which are (1) editorial and (2) provide the criteria for acceptable fuel storage in high density racks. The editorial changes are purely administrative changes and have no impact on the probability or consequences of an accident. The revised criteria for acceptable fuel storage in the high density racks are discussed below.

The high density racks differ from the low density racks in that the center to center storage cell spacing is decreased from a nominal 16 inches to a nominal 9 inches and the high density racks are free standing whereas the low density racks are bolted to the pool. Administrative controls are used to maintain the specified storage patterns and to assure storage of a fuel assembly in a proper location based on initial U–235 enrichment, burnup, and decay time. The increased storage capacity results in added weight in the pools and additional heat loads.

There is no significant increase in the probability of an accident concerning the potential insertion of a fuel assembly in an incorrect location in the high density racks. TU [Texas Utilities] Electric has used administrative controls to move fuel assemblies from location to location since the initial receipt of fuel on site. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Technical Specification spent fuel rack storage configuration limitations.

There is no increase in the probability of the loss of normal cooling to the fuel storage pool water due to the presence of soluble boron in the pool water for subcriticality control because a concentration of soluble boron similar to that proposed has always been maintained in the fuel storage pool water. The amount of soluble boron required to offset the reactivity increase associated with water temperature outside the normal range was established for the proposed storage configurations.

The consequences of all of these changes have been assessed and the current acceptance criteria in the licensing basis of CPSES will continue to be met. The nuclear criticality, thermal-hydraulic, mechanical, material and structural designs will accommodate these changes. Potentially affected analyses, including a dropped spent fuel assembly, a loss of spent fuel pool cooling, a seismic event, and a fuel assembly placed in a location other than a prescribed location, continue to satisfy the CPSES licensing basis acceptance criteria. The analysis methods used by TU Electric are consistent with methods used by TU Electric in the past or methods used elsewhere in the industry and accepted by the NRC.

Based on the acceptability of the methodology used and compliance with the current CPSES licensing basis, TU Electric concludes that the full use of the high density racks and the increase in storage capacity do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

The editorial changes to the Technical Specifications have no impact on plant hardware or operations and therefore cannot create a new or different kind of an accident.

The potential for criticality in the fuel storage pool is not a new or different type of accident. The potential criticality accidents have been reanalyzed in the criticality analysis (Enclosure 1 [to the application]) to demonstrate that the pool remains subcritical.

Soluble boron has been maintained in the fuel storage pool water since its initial operation. The possibility of a fuel storage pool dilution is not affected by the proposed change to the Technical specifications. Therefore, the implementation of Technical Specification controls for the soluble boron will not create the possibility of a new or different kind of accidental pool dilution.

With credit for soluble boron now a major factor in controlling subcriticality, an evaluation of fuel storage pool dilution events was completed. The results of the evaluation concluded that an event which would result in a reduction of the criticality margin below the 5% margin recommended by the NRC is not credible. In addition, the no soluble boron 95/95 criticality analysis assures that a boron concentration of 0 ppm will not result in criticality.

The proposed changes which ensure the maintenance of the fuel storage pool boron concentration and storage configuration, do not represent new concepts. The actual boron concentration in the fuel storage pool is currently maintained at 2400 ppm for SFP [spent fuel pool]1 and SFP2 for refueling purposes. The criticality analysis (Enclosure 2 [to the application]) determined that a boron concentration of 750 ppm (non-accident) and 1800 ppm (accident) results in a $_{eff}$ [less than or equal to] 0.95.

There is no significant change in plant configuration, equipment design, or usage of plant equipment. The safety analysis for boron dilution has been performed; however, the criticality analyses assure that the pool will remain subcritical with no credit for soluble boron. Therefore, the proposed changes will not create the possibility of a new or different kind of accident.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The proposed editorial changes to the Technical Specifications have no impact on any acceptance criteria, plant operations or the actual failure of any systems, components or structure; therefore these administrative changes have no impact on the margin of safety.

The NRC guidance [Reference 4 [in the application]] has established that an evaluation of margin of safety should address the following areas: (1) Nuclear criticality considerations, (2) Thermal-Hydraulic considerations, (3) Mechanical, material and structural consideration.

Proposed Technical Specifications 3.7.16, 3.7.17, and 4.3.1.1 and the associated fuel storage pool boron concentration and storage requirements will provide adequate margin to assure that the fuel storage array will always remain subcritical by the 5% margin recommended by the NRC. Those limits are based on the criticality analysis (Enclosure 2 [to the application]) performed in accordance with the storage rack criticality analysis methodology described in Reference 8 [in the application].

While the criticality analysis utilized credit for soluble boron, the storage configurations have been defined using k_{eff} calculations to ensure that the spent fuel rack k_{eff} will be less than 1.0 with no soluble boron.

Soluble boron credit is used to offset off-normal conditions (such as a misplaced assembly) and to provide subcritical margin such that the fuel storage pool k_{eff} is maintained less than or equal to 0.95.

The loss of substantial amount of soluble boron from the spent fuel pools which could lead to exceeding a k_{eff} of 0.95 has been evaluated and shown not to be credible. These evaluations show that the dilution of the spent fuel [pool's] boron concentration from 1800 ppm to 750 ppm is not credible and that the spent fuel rack k_{eff} will remain less than 1.0 when flooded with unborated water.

The thermal-hydraulic evaluation demonstrates that the temperature margin of safety will be maintained. Evaluation of the spent fuel pool cooling system for the increased heat loads shows that the spent fuel cooling system will maintain the abnormal maximum temperature of the spent fuel pool water within the limits of the existing licensing basis (i.e., below 212° F). Additionally, it shows that the normal maximum temperature will be within the existing design basis temperatures for the high density racks, liner, structure, and cooling system and will not have any significant impact on the spent fuel pool demineralizers. Thus, the existing licensing basis remains valid, and there is no significant reduction in the margin of safety for the thermal-hydraulic design or spent fuel cooling.

The main safety function of the spent fuel pool and the high density racks is to maintain the spent fuel assemblies in a safe configuration through normal and abnormal operating conditions. The design basis floor responses of the Fuel Building were confirmed to be adequate and conservative and the floor loading will not exceed the capacity of the Fuel Building. The structural considerations of the high density racks maintain margin of safety against tilting and deflection or movement, such that the high density racks do not impact each other or the pool walls, damage spent fuel assemblies, or cause criticality concerns. Thus, the margin of safety with respect to mechanical, material or structural considerations is not significantly reduced by the full use of the high density racks.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 11, 1999, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/Maps, 702 College, P.O. Box 19497, Arlington, Texas. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the

Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendments and make them immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

The Commission hereby provides notice that this is a proceeding on an application for license amendments falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of the NWPA, the Commission, at the request of any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties."

The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, Subpart K, "Hybrid Hearing Procedures for Expansion of Spent Fuel Storage Capacity at Civilian Nuclear Power Reactors" (published at 50 FR 41662 dated October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. The presiding officer must grant a timely request for oral argument. The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application must be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding timely requests oral argument, and if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, Subpart G apply.

For further details with respect to this action, see the application for amendments dated February 11, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room located at the University of Texas at Arlington Library, Government Publications/ Maps, 702 College, P.O. Box 19497, Arlington, Texas.

Dated at Rockville, Maryland, this 4th day of May 1999.

For the Nuclear Regulatory Commission.

David H. Jaffe,

Senior Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–11998 Filed 5–11–99; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF THE TRADE REPRESENTATIVE

Notification of Locations and Times for Public Hearings

AGENCY: Office of the United States Trade Representative (USTR).

ACTION: Trade Policy Staff Committee (TPSC) notification of locations and times for public hearings.

SUMMARY: A notice was published in the **Federal Register** on April 14, 1999 (Vol. 64, No. 71, page 18469) announcing TPSC public hearings to be held in Washington, DC; Chicago, IL; Atlanta, GA; Los Angeles, CA; and Dallas, TX. That notice invited oral testimony and/or written comments of interested parties to assist the Administration in its efforts to develop proposals and positions concerning the agenda of the third Ministerial Conference of the World Trade Organization (WTO). This notice announces the specific times and locations for the hearings in each city.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments and/or public hearings contact Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative at (202) 395–3475. All other questions concerning the WTO negotiations should be addressed to the agency's Office of WTO and Multilateral Affairs at (202) 395–6843.

SUPPLEMENTARY INFORMATION: All hearings will begin at 9:30 a.m. Following receipt of requests to testify, witnesses will be notified directly of their scheduled date and time to appear. The exact locations of the hearings are as follows:

Washington, May 19–20 (and 21, if necessary): White House Conference Center, Truman Room, 726 Jackson Place, NW, Washington, DC 20502

Chicago, June 7 (and 8, if necessary): James R. Thompson Center, Room 9–040, 100 West Randolph Street, Chicago, IL 60601

Atlanta, June 10 (and 11, if necessary): Richard B. Russell Federal Building, Main Auditorium, 75 Spring Street, Southwest, Atlanta, GA 30303

Los Angeles, June 21 (and 22, if necessary): Central Library, Los Angeles Public Library, Mark Taper Auditorium, 630 West Fifth Street, Los Angeles, California 90071

Dallas, June 24 (and 25, if necessary): Federal Reserve Bank of Dallas Auditorium, 2200 North Pearl Street, Dallas, Texas 75210

All deadlines remain the same as stated in the previous notice.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 99–11931 Filed 5–11–99; 8:45 am]

BILLING CODE 3901–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Annual Report on Discrimination in Foreign Government Procurement Pursuant to Executive Order 13116 ("Title VII")

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative ("USTR") has submitted the annual report on discrimination in foreign government procurement, published herein, to the Committees on Finance and on Governmental Affairs of the United States Senate and the Committees on Ways and Means and on Government Reform and Oversight of the United States House of Representatives, pursuant to the reinstituted procedures of Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII"), as amended, as set forth in Executive Order No. 13116 of March 31, 1999.

DATES: The report was submitted on April 30, 1999.

FOR FURTHER INFORMATION CONTACT: Stephen Kho, Assistant General Counsel, Office of the US Trade Representative, 600 17th Street, NW, Washington, DC 20508, 202–395–3581.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows:

Office of the United States Trade Representative, Washington, DC

April 30, 1999

Annual Report on Discrimination in Foreign Government Procurement

I. Legal Authority

On March 31, 1999, the President signed Executive Order 13116, which largely reinstitutes the provisions of Title VII of the Omnibus Trade and Competitiveness Act of 1988 ("Title VII"), as amended. Under the Executive Order, the United States Trade Representative ("USTR") is required to submit to the Congress by April 30 of each year a report identifying foreign countries:

(1) That have failed to comply with their obligations under the WTO Agreement on Government Procurement ("GPA"), Chapter 10 of the North American Free Trade Agreement, or other agreements relating to government procurement to which that country and the United States are parties; or

(2) That maintain, in government procurement, a significant pattern or practice of discrimination against U.S. products or services which results in identifiable harm to U.S. businesses, when those countries' products or services are acquired in significant amounts by the U.S. Government.

Within 90 days of the submission of the report, USTR must initiate under section 301 of the Trade Act of 1974, as amended, an investigation with respect to any country identified in the report, unless USTR determines that a satisfactory resolution of the matter has been achieved. If the matter is not resolved during that period and USTR determines that the rights of the United States under an international procurement agreement are being violated, or that any discriminatory procurement practices exist, the Executive Order requires USTR, *inter alia*, to initiate formal dispute settlement proceedings under the international agreement in question or revoke any waivers for purchasing requirements granted to the discriminating foreign country.

Title VII has been a useful and effective tool in challenging foreign governments' procurement barriers. The reinstitution of Title VII procedures through Executive Order 13116 sends a strong signal that the President is committed to protecting U.S. interests in international procurement markets.

II. Identification of Foreign Countries and their Discriminatory Procurement Practices

From 1991 to 1996, USTR conducted six annual reviews under Title VII. During that time, six identifications were formally made, while numerous potentially discriminatory government procurement practices were noted. USTR achieved satisfactory resolution with respect to eight discriminatory or potentially discriminatory practices, including a GATT dispute settlement proceeding, with regard to the procurement of an electronic toll booth collection system in Norway, in which the panel found in favor of the United States.

Two other Title VII determinations remain outstanding: In 1992, USTR identified the European Union ("EU") as engaging in discriminatory procurement practices of government-owned telecommunications in certain member states; the United States imposed sanctions in 1993, which are still in place today. Also, in 1996, USTR identified Germany for discriminating in the heavy electrical equipment sector and for its failure to adequately implement its obligations under the 1993 U.S.-EU Memorandum of Understanding on Government Procurement. As a result, Germany agreed to seek legislative changes to end its discriminatory practices and the United States agreed to temporarily suspend sanctions (see below for an update).

After consulting with other executive agencies and U.S. businesses, USTR has determined not to identify any countries under Title VII, because the practices of concern are either being addressed under another trade dispute mechanism, do not meet the criteria for identification, or are currently under scrutiny as a result of previous identifications. The Administration will continue to carefully monitor these practices in making its determinations next year, and the United States will move forward with WTO dispute settlement proceedings to challenge Korea's government procurement practices in the construction of the Inchon International Airport.

A. Korea

As a party to the GPA, the procurement market for the Republic of Korea (ROK) was estimated at approximately $3.8 billion in 1998. Of this, about $1.3 billion was subject to international tendering procedures in accordance with GPA rules. In addition to purchases of goods and services, it is estimated that Korea awarded construction contracts valued at $6.1 billion in 1998.

Presently, Korea is constructing the Inchon International Airport ("IIA"). Valued at $6 billion, IIA is one of the largest public works projects in Asia, and the largest underway in Korea. Although the airport is about half completed, procurements over the next several years will be worth billions of dollars, including those for (1) meteorological radar, (2) Satellite Navigation System (CNS/ATM), (3) control facilities for parking, (4) a cargo x-ray system, and (5) a passenger x-ray system. It is important that U.S. firms have fair access to these contracts.

During negotiations for Korea's accession to the GPA in 1991–92, the United States obtained Korea's commitment that the entities responsible for airport construction would be subject to GPA disciplines. However, soon after negotiations were concluded, Korea created another entity—the Korea Airport Construction Authority ("KOACA")—to manage procurement for IIA construction. In February of 1999, the Korean Government made another change to its airport procuring authority by changing KOACA into the Inchon International Airport Corporation (IIAC). Korea now asserts that, because KOACA and/or IIAC are not expressly listed as a covered entity in its GPA schedule of concessions, procurement for the IIA is not covered by the GPA.

In seeking to participate in the IIA project, U.S. suppliers have repeatedly faced discriminatory tendering practices that hamper their ability to compete effectively for related procurement contracts. These Korean Government practices include the following:

- Requiring that a firm hold four Korean licenses, including a manufacturing license, in order to be eligible to bid as a prime contractor, thereby precluding foreign firms that do not have a license to manufacture in Korea from bidding as a prime contractor;
- Requiring that foreign firms participate in a bid only as consortium members or subcontractors to local firms acting as the prime contractors; and
- Failing to provide effective procedures to enable suppliers to challenge alleged breaches of the GPA arising in the context of individual procurements.

U.S. Government officials sought to resolve these matters through representations to the Korean Government in bilateral and multilateral fora. Because Korea did not confirm that procurement for airport construction is subject to the GPA, on February 16, 1999, the United States requested consultations with Korea under WTO dispute settlement procedures. Consultations were held on March 17, 1999. The U.S. Government will take further steps necessary to resolve this matter.

B. Japan

The United States and Japan have concluded bilateral Government Procurement Agreements covering six key sectors: telecommunications, computers, construction, supercomputers, medical technology, and satellites. While Japan's implementation of some of these agreements, such as the Medical Technology Agreement, has led to significant improvement in market access for U.S. firms, results to date under other agreements, such as the Computer, Construction, Telecommunications, and Supercomputer Agreements, have been highly disappointing. The Administration remains seriously concerned that the objectives of these agreements, which focus on the improvement of foreign firms' access to and expansion of sales in the Japanese public procurement market, are not being met. Further, in light of the Japanese Government's increased fiscal spending in public works and "21st century technologies," we believe that U.S. firms should have a fair opportunity to compete for these procurements in line with the obligations contained in our bilateral agreements. The United States has made clear our concerns to the Japanese Government with respect to those areas where we believe Japanese implementation could be improved. In addition, the U.S. Government has offered new proposals for generating progress in several areas, while proposing various ways in which the agreements can be made more effective. Our success to date in pursuing this agenda, however, has been limited, and further action is necessary in order to ensure that foreign firms have fair, open, and transparent access to Japanese markets. Particularly problematic are Japanese Government procurement practices related to computer goods and services and public works projects.

Japan—Market Access for Computer Products and Services: U.S. computer makers, global leaders in technology and performance, have long had a disproportionately low share of the Japanese public sector market as compared with their strong showing in the Japanese private sector. To address this fact, the United States and Japan concluded a bilateral agreement on government procurement of computers (covering computer hardware, software, and services) in 1992. Under this agreement, the Japanese Government agreed to institute changes to its procurement system based on the principles of non-discrimination, transparency, and fair and open competition, with the aim of expanding government purchases of foreign computer products and services. However, there is still much to be done in this sector to increase transparency, openness, and fairness. In addition, while there has been some sporadic increases in Japanese public procurement of foreign computer

products and services, the overall aim of the agreement has not been met on a sustained basis.

The U.S. Government continues to receive reports from U.S. industry of problems in Japanese Government procurement of computers, including unequal access to information, persistence of unreasonably low bids, and a lack of strong efforts by the Japanese Government to ensure that sole-sourcing procurements by government entities decrease significantly, as called for in our bilateral agreement. U.S. industry has also noted that even where bidding is open, Japanese purchasing agencies often evaluate bids in a way that encourages excessively low-priced bids. These factors have created an environment whereby U.S. computer companies enjoy only limited access to the Japanese Government procurement markets. An important result of these problems has been a steady, long-term decrease in the foreign share of the Japanese public sector Personal Computer ("PC") market since 1992 and a significant decline in the foreign share of the Japanese public sector mainframe and mid-range computer market in the last two years for which there is data. The next annual review of this agreement, covering 1997 data, is scheduled for May in Tokyo. Despite signs that there may have been an increase in Japanese Government purchases of foreign mainframe and mid-range computers in 1997, continuing poor performance of state-of-the-art foreign-made PCs, and the fact that foreign firms have continued to hold approximately 35 percent of Japan's overall private sector computer market over the last several years, are evidence that significant non-competitive forces are still at work in the Japanese public sector computer market. As a result, the U.S. Government remains committed to fully address discriminatory and non-transparent practices in this sector.

In light of the poor results under the agreement to date, lingering concerns over fairness and transparency, and rapid changes in technology in this sector, last August the U.S. Government presented the Japanese Government with a set of proposals devised to improve implementation of the agreement and bring its provisions into line with advances in technology. These include taking specific steps to further improve the bid evaluation process to give greater weight to technological innovation and other key non-price factors. retch

To date, the U.S. Government has been extremely disappointed with the Japanese Government's reluctance to seriously consider these proposals, particularly since the result would be a more competitive procurement system and better value for Japanese Government entities. The U.S. Government continues to urge Japan to undertake further steps to ensure that the provisions of this agreement are fully implemented and that its objectives are met.

Japan—Market Access for Construction: American firms are well-known for their top-notch expertise in design/consulting and construction projects. Despite two bilateral agreements intended to enhance access to Japan's public works market, American companies continue to fare poorly and the objectives of the agreements are not being achieved. The 1991 Major Projects Arrangement is intended to familiarize foreign firms with Japan's public works market while the main purpose of the 1994 Public Works Agreement is to make bidding and contracting procedures more transparent and objective. The U.S. Government is seriously concerned by the fact that, at the June 1998 annual review, it was recognized that U.S. firms had won only $50 million in contracts over the preceding year—less than one percent of Japan's $250 billion public works market and only half of the $100 million in contracts won the year before.

The United States has focused on two key areas that require serious attention in this sector—Japanese restrictions on the formation of joint ventures for construction projects and the very low number of design/consulting procurements open to foreign firms. Regarding joint venture formation for construction projects, the United States has pressed Japan to eliminate the "three-company rule," under which the Japanese Government limits to three the number of firms that can participate in a joint venture. In addition, the United States has asked Japan to allow companies, rather than procuring entities, to determine whether or not a supplier can bid as a solo bidder or as a member of a joint venture. To date, Japan has rejected these requests. The United States will continue to urge Japan to eliminate these restrictions, thereby promoting greater competition in this sector.

With regard to the low number of design/consulting procurements open to foreign firms, Japan's Construction Ministry recently has undertaken initiatives in response to U.S. concerns. These initiatives include allowing design/consulting firms greater freedom to partner on projects; combining design contracts in a way that would lead to greater coverage of procurements by the agreements, thereby increasing opportunities for foreign firms; and contracting out all future design work (instead of conducting design "in-house"). The United States is encouraging other ministries to follow the Construction Ministry's lead and is monitoring closely these initiatives to see if they result in progress under the agreements.

The U.S. Government continues to urge Japan to take immediate, concrete steps in both the design/consulting and construction areas that will lead to increased business opportunities for American companies. The United States has made clear our expectation that progress be made before the next annual review of the public works agreements, which is tentatively scheduled for July 1999.

C. Germany

In April 1996, USTR identified Germany in the Title VII report for its failure to comply with market access procurement requirements in the heavy electrical equipment sector. The identification was based on irregularities in the procurement process for two separate steam turbine generator projects. In particular, the Title VII Report noted a "pervasive institutional problem" with respect to Germany's implementation of a remedies system for challenging procurement decisions. The imposition of trade sanctions, however, was delayed until September 30, 1996, because consultations with Germany suggested a resolution might be possible given additional time. On October 1, 1996, then-Acting USTR Barshefsky announced that the German Government had agreed to take steps to ensure open competition in the German heavy electrical equipment market, including reform of the government procurement remedies system as well as outreach, monitoring, and consultation measures. The United States did not, however, terminate the Title VII action at that time because legislation implementing reform of the procurement remedies system needed to be enacted.

In May 1998, the German parliament passed legislation requiring significant reforms in the German procurement system, including reforms with respect to bid challenge procedures. This legislation was signed and entered into effect on January 1, 1999. The Administration has advised the German Government that it will review the status of this Title VII identification on the basis of practical experience

demonstrating the effective implementation of this legislation.

III. Transparency in Government Procurement

Active support for early conclusion of a WTO Agreement on Transparency in Government Procurement is a key element of the Administration's ongoing efforts to promote the development of transparent procurement environments throughout the world. Drawing largely on proposals made by the United States, WTO Ministers agreed at the 1996 Singapore Ministerial Conference to establish the WTO Working Group on Transparency in Government Procurement. The Working Group's mandate is to: (1) conduct a study on transparency in government procurement practices; and (2) based on this study, develop elements for a multilateral agreement on transparency in government procurement.

Conclusion of a WTO agreement on transparency in government procurement will serve a wide range of important U.S. interests. It will help to establish a more stable and predictable business environment for U.S. exporters, even in markets where governments maintain "buy national" or other purchasing restrictions. It will also build on the "good governance" reforms that a growing number of countries have adopted in response to the international financial crisis, and the deeper structural impediments to efficient long-term growth and development.

In 1997 and 1998, the Working Group's initial study of WTO Members' general procurement policies and objectives revealed broad international agreement on many key principles. Based on this work and subsequent consultations, the Working Group is poised to move forward with negotiations on the elements of a transparency agreement. Those elements will likely include:

- Information on National Legislation and Procedures;
- Information on Procurement Opportunities;
- Information on Tendering and Qualification Procedures;
- Transparency of Decisions on Qualification;
- Transparency of Decisions on Contract Awards; and
- Domestic Review Procedures.

The United States and its Quad partners have urged that the Working Group seek to conclude these negotiations by the Third WTO Ministerial Conference, in late 1999.

IV. International Government Procurement Agreements

A. The WTO Agreement on Government Procurement ("GPA")

The GPA, which entered into force on January 1, 1996, is a "plurilateral" agreement included in Annex 4 to the WTO Agreement. As such, it is not part of the WTO's single undertaking, and its membership is limited to the 26 WTO members that signed the Agreement in Marrakesh or that subsequently acceded to it. The current Members are the United States, the member states of the European Union (Austria, Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Netherlands, Portugal, Spain, Sweden, United Kingdom), Aruba, Canada, Hong Kong, Israel, Japan, Liechtenstein, Norway, the Republic of Korea, Singapore, and Switzerland. Chinese Taipei, Iceland, and Panama are in the process of negotiating accession to the GPA, although by the terms of the GPA, Chinese Taipei must become a WTO member prior to GPA accession. In their protocols of accession to the WTO, Bulgaria, the Kyrgyz Republic, Latvia, Mongolia, and Slovenia have committed to pursue GPA accession.

In its report to the 1996 Singapore Ministerial Conference, the Committee on Government Procurement, which monitors the GPA, stated its intention to undertake an "early review" of the GPA starting in 1997. The review would be aimed at the implementation of Article XXIV:7(b) and (c) of the GPA, which call for further negotiations to achieve the following objectives:

- Simplification and improvement of the GPA, including, where appropriate, adaptation to advances in the area of information technology and streamlined procurement methods;
- Expansion of coverage of the GPA; and
- Elimination of discriminatory measures and practices which distort open procurement practices.

GPA Members have agreed that one of their principal objectives for the review of the Agreement is to promote expanded membership of the GPA by making the Agreement more accessible to non-members.

In the course of the review, many Members have also noted the importance of ensuring that the GPA's rules accommodate the use by governments of new information technologies and other innovations in government procurement procedures. Many governments now use electronic forms of publication for procurement notices and other documents to improve dissemination capabilities and lower costs for both suppliers and governments. The United States believes that the GPA must accommodate such improvements in the operation of procurement systems. The United States and other Members have also recognized the potential for simplifying the Agreement's statistical reporting requirements, an issue that is of particular interest to members' sub-central procurement authorities and to other countries that may potentially be interested in acceding to the GPA.

The GPA establishes a procedure for monitoring members' implementing legislation. The United States has used this procedure to better understand and comment on procurement practices of concern to U.S. suppliers, such as the practices of Korea's airport construction authorities and the application of the EU "Utilities Directive."

B. Chapter 10 of the North American Free Trade Agreement ("NAFTA")

In Chapter 10 of the NAFTA, signatories agreed to open the majority of non-defense related federal procurement opportunities to competition from all North American suppliers. Because Mexico is not a member of the GPA, its participation in the NAFTA marked the first time that Mexico had committed to eliminate discriminatory government procurement practices. While differences exist between NAFTA Chapter 10 and the GPA (e.g., with respect to thresholds and sub-federal coverage), the principles of non-discrimination, fair and open competition, and transparency are established with equal force in both agreements.

In October 1998, agreement was reached by the delegations of Canada, Mexico, and the United States to the NAFTA Working Group on Government Procurement with respect to the subject of electronic transmission, pursuant to Article 1024(5) of the NAFTA. Particularly, the delegations agreed that the NAFTA Parties may publish invitations to participate for all procurements in either paper or electronic format, or both.

Recently, the Administration has received complaints from U.S. exporters that Mexico is not adhering to the NAFTA requirement that the time limit for the receipt of tenders must be open for a minimum time period that is consistent with Article 1012, which allows suppliers to prepare and submit meaningful tenders. Generally, the period for the receipt of tenders is to be no less than 40 days from the date of publication of a Request for Proposal. A 1997 study commissioned by Canada indicated that this problem is pervasive

in Mexican procurement procedures subject to the NAFTA. In the NAFTA Negotiating Group on Government Procurement, the United States has joined Canada in seeking clarification on this issue and in urging Mexico to ensure that its procurement authorities comply with the relevant NAFTA commitments.

C. Free Trade Area of the Americas ("FTAA")

The United States is presently involved in discussions for creating a new free trade area, the FTAA. As an active participant in the Negotiating Group on Government Procurement, and as the discussions involving government procurement is in the very early stages, the United States is generally interested in (1) concluding a text embodying the principles of transparency and due process in government procurement, leading to a recommendation for agreement at the October 1999 FTAA Ministerial meeting to implement the results of this work by December 1999; (2) achieving agreement on a set of commitments which will ensure non-discrimination in government procurement within a scope to be negotiated, to be implemented as part of the conclusion of the FTAA; and (3) achieving agreement on the basic elements of a common procurement reporting system.

V. Other Trade-Distorting Practices

A. Bribery and Corruption

Among the most consistent complaints the Administration receives from U.S. industry and labor representatives is that bribery and corruption compromise U.S. market access in many foreign markets. This is particularly true for big ticket infrastructure projects for which preparation of a bid package alone can cost millions of dollars. U.S. firms often find that they are bidding on projects with little or no certainty as to whether the offered technology and price are going to be the primary considerations in the award of contracts. Despite their concerns, however, many U.S. firms have in the past been hesitant about coming forward publicly with cases in which they have seen bribery and corruption influence contract awards, because of fears that they may experience a commercial backlash with respect to future contracts.

These circumstances call for government-to-government initiatives to root out bribery and corruption in international procurement markets. The Administration is aggressively pursuing this objective in a wide range of international fora. The recent entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which obligates its 34 parties to impose criminal sanctions on the offering and payment of bribes in procurement markets and other international commercial transactions, represents a major step forward. The United States and 33 other countries have signed the OECD Convention.

Furthermore, twenty-five members of the Organization of American States ("OAS"), including the United States, have signed the OAS Inter-American Convention Against Corruption, which obligates its parties to impose criminal sanctions, and provides for international legal cooperation in combating corrupt practices in international business transactions. The Administration looks forward to early ratification of the OAS Convention.

B. Offsets in Defense Trade

When purchasing defense systems from U.S. defense prime contractors, many U.S. trading partners require compensation in the form of offsets as a condition of purchase in either government-to-government or commercial sales of defense articles and/or defense services. Offsets include mandatory co-production, licensed production, subcontractor production, technology transfer, countertrade, and foreign investment. Offsets may be directly related to the weapon system being exported, or they may take the form of compensation unrelated to the exported item, such as foreign investment or countertrade.

Prime contractors view offset arrangements as a necessity for success in the international marketplace. However, offset requirements cause prime contractors to select subcontractors based on their being located in the country requiring the offset versus best value, thereby adversely affecting potential U.S. subcontractors. Originally designed to enhance allied national security, offsets increasingly have become economic development tools for the countries that demand them. Furthermore, there has been a recent trend to fulfill offset requirements with non-defense products versus defense products.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 99–11930 Filed 5–11–99; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Amtrak Reform Council; Notice of Meeting

AGENCY: Amtrak Reform Council.

ACTION: Notice of Meeting.

SUMMARY: As provided in Section 203 of the Amtrak Reform and Accountability Act of 1997, the Amtrak Reform Council (ARC) gives notice of a meeting of the Council. The Council will discuss its 1999 work program and schedule and consider action on a conflict of interest guidelines for non-government members of the Council. The meeting will also consider matters raised by individual Council members. The Council's business meeting will precede a one-day seminar on May 18, 1999, sponsored by the Council on Intercity Rail Passenger Services—Past, Present and Future. (FR 5/6/99).

DATES: The Council meeting is scheduled from 4:30 p.m. to 6:30 p.m. on Monday, May 17, 1999.

ADDRESSES: The meeting will be held in Room 9210, Department of Transportation, Nassif Building, 400 7th St. SW Washington, DC. Persons in need of special arrangements should contact the person listed below.

FOR FURTHER INFORMATION CONTACT: Deirdre O'Sullivan, Amtrak Reform Council, Room 7105, JM-ARC, 400 Seventh Street, SW, Washington, DC 20590, or by telephone at (202) 366–0591; FAX: 202–493–2061.

SUPPLEMENTARY INFORMATION: The ARC was created by the Amtrak Reform and Accountability Act of 1997 (ARAA), as an independent commission, to evaluate Amtrak's performance and to make recommendations to Amtrak for achieving further cost containment, productivity improvements, and financial reforms. In addition, the ARAA requires: that the ARC monitor cost savings resulting from work rules established under new agreements between Amtrak and its labor unions; that the ARC provide an annual report to Congress that includes an assessment of Amtrak's progress on the resolution of productivity issues; and that after two years the ARC has the authority to determine whether Amtrak can meet certain financial goals specified under the ARAA and, if not, to notify the President and the Congress.

The ARAA provides that the ARC consist of eleven members, including the Secretary of Transportation and ten others nominated by the President or Congressional leaders. Each member is to serve a five year term.

Issued in Washington, DC May 6, 1999.
Thomas A. Till,
Executive Director.
[FR Doc. 99–11904 Filed 5–11–99; 8:45 am]
BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD07–99–008]

Bridge of Lions; Atlantic Intracoastal Waterway, St. Augustine, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Coast Guard together with the Federal Highway Administration (FHWA) and the Florida Department of Transportation (FDOT), will hold a public hearing to receive information concerning the environmental and navigational impacts of alternate bridge designs being considered for the replacement or rehabilitation of the Bridge of Lions. The bridge is located on State Road A1A where it crosses the Atlantic Intracoastal Waterway (AIWW), mile 777.9, at St. Augustine, Florida. The hearing will allow interested parties to present comments and information concerning the bridge alternates under consideration.

DATES: The hearing will start at 7 p.m. on Monday, June 7, 1999. Comments must be received by July 7, 1999.

ADDRESSES: The hearing will be held at the St. Johns County Administration Building, 4010 Lewis Speedway Road, St. Augustine, Florida. Written comments may be submitted to, and will be available for examination between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays, at the office of the Commander (oan), Seventh Coast Guard District, Bridge Section, Brickell Plaza Federal Building, 909 SE First Avenue, Miami, Florida 33131–3050. Please submit all comments and attachments in an unbound format, no larger than 8 by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. N.E. Mpras, Chief, Office of Bridge Administration, Commandant (G–OPT), U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593 (202 267–0368); Commander Eugene Gray, U.S. Coast Guard, Chief, Aids to Navigation and Waterways Management Branch, Seventh Coast Guard District, Miami, FL (305) 536–5621; Mr. Joel Glenn, District Environmental Management Engineer, Florida Department of Transportation, Lake City, FL (904) 752–3300; or Mr. Mark Bartlett, Program Operations Engineer, Federal Highway Administration, Tallahassee, FL (850) 942–9598.

SUPPLEMENTARY INFORMATION:

Background

The Bridge of Lions is a historic, substandard two-lane structure across the AIWW. The Coast Guard is concerned about the restrictive horizontal clearance that the existing bridge and fender system now imposes on commercial tug and barge traffic on the AIWW. These navigational concerns must be addressed sufficiently to allow the Coast Guard to accept an application for a proposed bridge replacement or rehabilitation at this location on the AIWW. The Coast Guard has been involved in temporary remedial measures to insure the safety of navigation through the existing bridge structure while plans are being prepared for a new or rehabilitated bridge at the reach of the AIWW. These measures include the placement of temporary mooring dolphins upstream and downstream of the bridge to provide tugs with tows a place to moor while waiting for slack water conditions to make safe passage of the structure. These temporary mooring dolphins remain in place at the time of this public hearing but the Coast Guard does not consider them a suitable long-term solution.

The FHWA is lead federal agency for the environmental documentation for this project. The Coast Guard has been involved as a cooperating agency during the preparation of the Draft Environmental Impact Statement (DEIS). The DEIS identifies no preferred alternate for implementation. The selection of a preferred alternative will be made only after a thorough evaluation of the merits of each. The Coast Guard, in cooperation with the FDOT, owner of the bridge, and the FHWA, welcomes your comments on the Bridge of Lions project study. A U.S. Coast Guard Bridge Permit approving the location and clearances of the alternative eventually selected for construction is required before construction begins. Accordingly, it is extremely important to receive all information on the alternatives, which may present serious problems for navigation and bridge safety.

Procedural

Any person who wishes may appear and speak or present evidence at this public hearing. Persons planning to speak at the hearing should notify Mr. Joel Glenn or Mr. Bill Henderson with the Lake City office of the Florida Department of Transportation, or the Commander (oan), Seventh Coast Guard District, Bridge Administrator, at the telephone numbers listed under **FOR FURTHER INFORMATION CONTACT** any time prior to the hearing, indicating the amount of time required. Written statements and exhibits may be submitted in place of or in addition to oral statements and will be made a part of the hearing record. Written statements and exhibits may be delivered before or during the hearing, or they may be submitted for up to 30 days following the date of the hearing to the Coast Guard office listed under **ADDRESSES**. The DEIS is available in print format in FDOT offices as well as all St. Johns County, Florida public libraries. It is the official document sent to all governmental agencies for the final round of comments on whether to rehabilitate or replace the existing bridge.

Information on Services for Individuals with Disabilities

For information about facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Commander Eugene Gray, U.S. Coast Guard, Chief, Aids to Navigation and Waterways Management Branch, Seventh Coast Guard District at the number under **FOR FURTHER INFORMATION CONTACT** As soon as possible.

Authority: 33 CFR 115.60.

Dated: May 5, 1999.

Norman T. Saunders,
Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.
[FR Doc. 99–11927 Filed 5–11–99; 8:45 am]
BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Driver History Initiative Projects; Fiscal Year 1999 Funding

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of solicitation.

SUMMARY: This notice solicits proposals from States for projects to improve the timeliness, accuracy, and completeness of reporting and recording of commercial motor vehicle (CMV) traffic

convictions within a State and between States. Where safety and identification of traffic offenders can be improved, these grants would provide funding to assist States to improve the reporting and recording of traffic convictions. The FHWA, in partnership with the National Highway Traffic Safety Administration (NHTSA), will provide grant funds to the selected States to carry out the projects for driver improvements and enhancements.

DATES: Proposals must be submitted on or before August 10, 1999.

ADDRESSES: Submit all proposals to: the State Director, Department of Transportation, Federal Highway Administration, Office of Motor Carrier and Highway Safety in your State. Those desiring notification of receipt of their proposal submission must include a self-addressed, stamped envelope or postcard. If you need the name and address of the State Director in your State, you can call (202) 366–9579 between the hours of 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: For program issues: Mr. Norm Anger, Office of National and International Safety Programs, (202) 366–2170, or Mr. Phillip Forjan, Office of Motor Carrier Research and Standards, (202) 366–4001: For legal issues: Ms. Suzanne O'Malley, Office of Chief Counsel, (202) 366–1367 Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 am to 4:15 pm, e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the **Federal Register** Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: http://www.nara.gov/fedreg and the Government Printing Office's database at http://www.acesss.gpo.gov/nara.

Background

The Omnibus Consolidated and Emergency Supplemental Appropriations Act for Fiscal Year 1999, Pub. L. 105–277, 112 Stat 2681, enacted on October 21, 1998, set aside grant funds for states to carry out projects for driver improvements and enhancements.

This is the second year in which the FHWA, in cooperation with the NHTSA, is making funds available to States desiring to improve their CMV driver license adjudication and data exchange systems. While the funding is primarily intended to improve driver license adjudication reporting and information exchange for CMV drivers, it does not preclude States' non-commercial systems from benefitting from any system improvements. The agencies are seeking grant applications from States willing to undertake a systematic review of their license citation and conviction reporting systems and the development of plans to improve the accuracy, completeness and timeliness of driver license information exchange with courts, prosecutors, and law enforcement. This may include procedural changes within the State licensing agency, new or expanded communications with courts, prosecutors and police, or perhaps regulatory and/or legislative changes. The initiative is a collaborative effort of the FHWA and the NHTSA, which jointly will provide the funding, as well as the American Association of Motor Vehicle Administrators (AAMVA), which will provide technical support during all phases of the projects.

Extensive studies and research conducted over a period of years have found that driver error is a major cause of motor vehicle crashes. Driver error is a complex problem with many components including age, experience, time of day, extent of familiarity with the roadway, emotional/physical/mental state, traffic patterns, etc. Improving driver behavior is an essential component to improving highway safety. Federal, State, and local governments spend millions of dollars annually on training, education, public information and law enforcement efforts to protect the motoring public by detecting and deterring unsafe driver behavior. The enforcement component of these programs produces thousands of citations for driving violations every day. This Driver History Initiative is designed to assist States to answer the question of what happens to those convictions.

The backbone of the effort to deal with unsafe drivers is the driver control system. This is the adjudicatory framework by which law enforcement, prosecutors, courts and motor vehicle licensing agencies issue citations, adjudicate driving offenses, report those offenses for entry on the driver record, and exchange that information among the participants in that State's system and with licensing and adjudication systems outside that State. If the driver control system breaks down, or if it is not working efficiently, there is no method for identifying potential problem drivers for remediation. Without early detection and corrective action, these violators can develop into chronic offenders and become the problem drivers that cause crashes and injuries, and fatalities. The accurate and timely exchange of driver licensing information between jurisdictions can save lives, and the Federal government's implementation of these grants is designed to achieve that objective. In addition, timely, accurate and complete recording of traffic adjudications insures that the millions of dollars spent annually to fund roadside traffic enforcement achieve maximum safety benefit and that officers are not needlessly placed at risk when conducting traffic enforcement activities.

FY 1998 Awards: A Strong Beginning

The Department of Transportation and Related Agencies Appropriations Act, 1998, Pub. L. 105–66, 111 Stat. 1425, made available $1 million dollars in Information Systems funding for the FHWA for driver program improvements. The FHWA made that full amount available for grants to States for improvement of their traffic adjudication systems. The NHTSA provided $200,000 in additional funding to support this program, making $1.2 million available to the States for FY 1998. Twelve States submitted grant proposals, totaling just under $3 million dollars. Each grant proposal was reviewed based on its adherence to the grant application criteria contained in the **Federal Register** notice published on April 9, 1998 (63 FR 17474) and the extent to which it addressed driver licensing adjudication system problems in that particular State. The results of the review lead to full funding of five proposals, partial funding of four proposals, and no funding to three States, because they either failed to meet the required criteria specified in the notice or did not meet the deadline for submitting grant applications.

Some of the projects which were funded are as follows: an analysis of a current driver citation reporting process and the design of a new system to automate this process; a study on the impact of diversion and deferral programs on the accuracy and integrity of driver histories; and the reprogramming of a driver control system to accept driver crash data, a vital component of the driver control record.

Driver History Initiative Projects

The FHWA seeks to improve the timeliness, completeness, accuracy, and

clarity of State driver history files by promoting an integrated driver licensing system. Such a system will improve and enhance the driver control system by its ability to facilitate identification, prosecution, and adjudication of problem drivers. It will benefit drivers who have satisfied the penalties or conditions of a driving restriction by promptly updating their driving record. It will ensure that all drivers have complete, accurate, and up-to-date histories available as needed for employment and insurance purposes.

The Initiative will again begin with federally-funded State projects. It will once more involve States that are willing to explore and test new and proven methodologies and protocols, allowing for rapid electronic exchange of driver history information. A major component of the projects will continue to be to test procedures that facilitate citation tracking from issuance to resolution. The projects should also enhance the accuracy, speed, and completeness of driver history information exchange among the various components of the system, including law enforcement, prosecutors, the courts, and driver licensing agencies, both within the State and between States.

The scope of potential projects or plans need not to be limited to information systems development, changes, or enhancements. The State may have a system that is technically sound but hampered by State procedures, policies, laws, or legislation preventing the State from utilizing its system in the most efficient and effective manner. The FHWA will entertain proposals that may not involve the system but still would meet the project goals. One example of a procedural problem is the handling of out-of-State convictions. Some States treat paper notification of out-of-State convictions differently than electronic notification of similar convictions; several States lack the authority to assess points or penalties for convictions received electronically. Some States report there are certain out-of-State convictions which they cannot enter on drivers' records because of State-to-State statutory inconsistencies.

Project Goal

The goal of the FHWA is to ensure timely, accurate, and complete reporting and recording of traffic convictions within State courts, State licensing agencies, prosecutors; and between and among States to reliably identify potential problem drivers by enhancing existing systems, developing new systems, or revising existing procedural practices and/or procedures.

The Initiative's primary objective is to achieve enhancements in the development, exchange, retention, and reporting of driver histories of CMV operators. The FHWA believes that any enhancements to the commercial segment of the driver licensing system will also have a positive effect on processing of traffic offenses for drivers of non-commercial vehicles. While focusing primarily on improving CMV traffic adjudication systems, State proposals that also serve to improve or enhance non-commercial systems ancillary to the CMV improvements are eligible for funding. One of the results of these grants will be to broadly share information among States on methods to improve traffic adjudication and recordkeeping systems. Consequently, States submitting applications for grant funding will be required to report regularly on project activities and progress and share the results of their efforts with other jurisdictions. The FHWA, the NHTSA and the AAMVA will facilitate these efforts and provide technical assistance to all jurisdictions.

Proposal Submission

Required Content of Proposals

While providing flexibility to States, grant proposals must meet certain criteria. The grant proposal criteria are designed to ensure that project proposals will enhance traffic adjudication systems in the State and that key State agencies and organizations participate in approved grant activities. Traffic adjudication systems involve law enforcement, courts, prosecutors, and driver licensing agencies. To be effective, the FHWA and the NHTSA believe that traffic adjudication system improvement projects must be multi-disciplinary and reflect the expertise and commitment of all participants in the system. Consequently, grant applications must specify that all relevant participants in the process are involved in the project. A thorough evaluation design is another key requirement. The proposal must include the following seven items:

1. Identification of a lead Agency for the project.
2. Identification of an interdisciplinary working group within the State, including but not limited to representation from the motor vehicle licensing agency, court system, prosecutors, State law enforcement, Governor's Highway Safety Representatives, and State Motor Carrier Safety Assistance Program (MCSAP) agency.
3. An analysis of existing systems or procedures, including discussion of any driver conviction/deferral programs operating in the State, an outline of system strengths, and definition of areas requiring attention or improvement. The grant proposal should define, analyze, and document user procedures, including projected barriers to project success, such as any statutory limitations that may affect communication and recording of convictions on the system.
4. System requirements, including project scope, whether new technologies would be tested, and methods of gathering, integrating, and facilitating data exchange between various users. If the project is not system-related, describe existing procedures, the problems they generate, proposed new procedures, anticipated outcome, and the means to measure the success or impact of the project or program.
5. A plan for preparing a final report, including the evaluation findings and recommendations for other States regarding the strengths and weaknesses of this project or program. All grant recipients will be required to provide periodic progress reports on funded projects and agree to share project results with other jurisdictions.
6. A detailed plan for implementing the system or procedures, including time lines for completion, along with a detailed budget for the project. The budget must be sufficiently detailed so that it may be evaluated on the costs assigned to each proposed task, the allocation of resources to complete the tasks, the procurement of hardware and/or software (if applicable), staff hours (broken out by labor category), and other costs (e.g., travel, printing, etc.). The budget should closely correspond to the tasks outlined in the implementation plan and be broken out according to the time lines for completion.
7. A detailed description of how the success of the project will be evaluated and measured. This must include specific descriptions of the goals of the project, how progress will be monitored and the final evaluation design and due date.

Submission of Proposals

There will be no formal Request For Proposals (RFP). Proposals responding to this notice must be valid for 180 days and may be funded at any time during that period. Proposals should be submitted with an original and two copies, following the task requirements listed above, to the State Director, Federal Highway Administration, Department of Transportation, Office of Motor Carrier and Highway Safety in

your State. If you need the name and address of the State Director in your State, you can call (202) 366–9579 between the hours of 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

Sample Proposal Available

A sample proposal was developed and could be used by the States as a guideline for submitting their own proposals. The sample proposal can be obtained on-line, in portable document format, from the AAMVA web site (http://www.aamva.org) and clicking on "Must See Items." If you have any problems retrieving the document from AAMVA's web site, please call (703) 908–2822. The proposal is also available from the FHWA's web site at (http://www.mcregis.fhwa.dot/forms.htm) or from the State Director in the FHWA's Office of Motor Carrier and Highway Safety in your State.

Evaluation of Proposals and Award

A panel comprised of representatives from the NHTSA and the AAMVA will assist the FHWA in its technical review of project proposals. The AAMVA and the FHWA will also participate in project monitoring, evaluation, and information sharing with other States. Members of the panel will be available for technical assistance during all phases of the projects and will review the evaluations of each final product. The panel will evaluate each proposal based on the following factors: (1) The intrinsic merit of the proposal; (2) the technical competency of the proposal; (3) the potential for utilization of results; (4) reasonableness of the costs proposed; and (5) adequacy of proposed resources to complete the project requirements satisfactorily, and in a timely manner; and (6) the adequacy of the project evaluation design.

Proposals which most closely meet the seven content criteria and the six evaluation criteria as outlined above will be considered for funding. In addition, it is understood that States which receive funding may be visited by the FHWA representatives who will review the progress of their projects , as well as seek input and feedback on the Initiative.

Project Funding

This notice announces the FHWA's intent to provide funding in FY 1999 for a number of projects relating to driver licensing systems and State driver license procedures. States are invited to submit proposals outlining their projects to the FHWA's Office of Motor Carriers and Highway Safety. The FHWA will fund project management and implementation of State systems or revision of State procedures. This grant will not require matching funds. The FHWA has $700,000 available for this purpose in FY 1999 and contemplates making several awards from the proposals submitted. States are also encouraged to explore other funding sources in both the private and public sectors to implement integrated driver history tracking systems.

Authority: Pub. L. 105–277, 112 stat. 2681 (1998); 49 U.S.C. 31102; and 49 CFR 1.48.

Issued on: May 3, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

[FR Doc. 99–11925 Filed 5–11–99; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA–1999–5088]

Fiscal Year (FY) 2000 Implementation Guidance for Public Lands Highways Discretionary Program Funds

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; FHWA solicitation memorandum for FY 2000 funds; request for comments on selection criteria for FY 2001 and beyond.

SUMMARY: The Transportation Equity Act for the 21st Century (TEA–21) continued the public lands highways (PLH) discretionary program through FY 2003. This document provides implementation guidance on the PLH discretionary program for FY 2000 and beyond. Also, it contains information on the selection criteria used by the FHWA in evaluating candidate projects. An implementation guidance memorandum on this topic was issued to division offices soliciting candidate projects from State transportation agencies for FY 2000 public lands highways (PLH) discretionary funding. The text of that memorandum is incorporated here. This document seeks comments from all interested parties on the selection criteria and their continued use by FHWA for FY 2001 and beyond.

DATES: Comments on the selection criteria for PLH discretionary funding for FY 2001 and beyond must be received on or before July 12, 1999.

ADDRESSES: Your signed, written comments on project selection criteria for PLH discretionary funding for FY 2001 and beyond must refer to the docket number appearing at the top of this document and you must submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

Applications for candidate projects for FY 2000 funding should be submitted to the FHWA Division Office in the State of the applicant in accordance with the guidance provided in the solicitation memorandum.

FOR FURTHER INFORMATION CONTACT: Larry Beidel, Office of Program Administration, (202) 366–1564; or Wilbert Baccus, Office of the Chief Counsel, (202) 366–1396; Federal Highway Administration, 400 Seventh Street SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users can access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL):*http://www.dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara*.

The solicitation memorandum will also be available on the FHWA web site at *http://www.fhwa.dot.gov/discretionary*.

Background

TEA–21, Pub. L. 105–178, 112 Stat. 107 (1998), continued the PLH discretionary program through FY 2003 and provides $66.6 million in FY 1998 and $83.6 million in each of FY 1999 through 2003 for the program. On March 4, 1999, the FHWA issued a memorandum to its division offices, located in each State, the District of Columbia and Puerto Rico, soliciting from the State transportation agencies candidate projects for FY 2000 PLH discretionary funding. This memorandum is published here for informational purposes. The

memorandum contains information on the PLH discretionary program, eligible activities, the application process, and the selection criteria used by the FHWA in evaluating candidate projects.

Also, the purpose of this document is to invite comments on the selection criteria used by the FHWA for evaluating candidate projects for FY 2001 and beyond. The attachment to the March 4, 1999, memorandum presents the selection criteria that the FHWA will be using for FY 2000. These criteria reflect areas which are given preference when evaluating candidate projects; however, any project submitted by a State transportation agency which meets the eligibility requirements for this discretionary program can potentially be selected for funding. These are the same general selection criteria that the FHWA has used for several years to evaluate candidates for this discretionary program. Occasionally, a selection criterion may be added for an individual year that reflects a special emphasis area, but for the most part the selection criteria have remained unchanged.

The FHWA plans to continue to use these same basic selection criteria for FY 2001 and beyond for this discretionary program. However, before doing so, the FHWA is interested in the views of the States or others on these selection criteria. Accordingly, comments are invited to this docket on the selection criteria that FHWA will use for the PLH discretionary program for funding available for FY 2001 and beyond.

Publication of the implementation guidance for the public lands highways discretionary program satisfies the requirement of section 9004(a) of the TEA–21 Restoration Act, Pub. L. 105–206, 112 Stat. 685, 842 (1998).

Authority: 23 U.S.C. 202 and 315; 49 CFR 1.48.

Issued on: May 3, 1999.

Gloria J. Jeff,

Federal Highway Deputy Administrator.

The text of the FHWA solicitation and implementation guidance memorandum follows:

Action: Request for Projects for Fiscal Year (FY) 2000 Public Lands Highways (PLH) Discretionary Funds (Reply Due: July 1, 1999).

March 4, 1999.

From: Henry H. Rentz for Vincent F. Schimmoller Program Manager, Infrastructure.

To: Division Administrators Program Manager, Federal Lands Highway.

The Transportation Equity Act for the 21st Century (TEA–21) continued the PLH discretionary program through FY 2003. With this memorandum, we are requesting submission of eligible candidate projects for FY 2000 PLH discretionary funds.

TEA–21 authorized $83.64 million for the PLH discretionary program for FY 2000. Estimating the deductions for FHWA administration, Section 1102(f) of TEA–21, and administrative expenses for Federal land management agencies, and the increase due to the revenue aligned budget authority (RABA) under Section 1105 of TEA–21, it appears that approximately $70 to $75 million will be available for allocation to projects in FY 2000. Of this available funding, $10 million will be used to fund two projects selected for FY 1999 funding that were deferred in order to fund Congressional earmarking in the FY 1999 appropriations act conference report. Therefore, only $60 to $65 million will be available for projects in FY 2000.

Attached to this memorandum are the program guidelines that contain information on eligibility, selection criteria, and submission requirements. Please provide this information to your State and work with them to identify viable, quality candidate projects for this program.

We ask that you pay particular attention to the submission requirements listed in the attached guidelines. Many of the candidates submitted last year did not provide all of the necessary information. With the elimination of the region offices, we are relying on you to ensure that all of the applications from your State are completed in accordance with the appropriate submission requirements. This is important to ensure that all candidates receive a fair evaluation. Due to the shortened time frame last year because of the late passage of TEA–21, we were not able to return incomplete applications, and our evaluation was based on insufficient information in some cases. This year we will return incomplete applications, which could jeopardize consideration of the candidate projects if the applications are not resubmitted in time.

We are requesting that candidate project submissions be received in Headquarters no later than July 1, 1999. *Projects received after this date may not receive full consideration.*

Because the available funding is always far less than the demand, we ask that submissions include only candidate projects that, if funded, can be obligated in FY 2000. Any allocations in FY 2000 will be made on the assumption that the proposed projects are viable and the implementation schedules are realistic. Any unobligated balances remaining on September 15, 2000, will be withdrawn and used for funding future fiscal year requests.

If there are any questions, please contact Mr. Larry Beidel (202–366–1564) of our Office of Program Administration.

Attachment—Public Lands Highways Discretionary Program

Program Guidelines

Background

The Public Lands Highways (PLH) Program was originally established in 1930 by the Amendment Relative to Construction of Roads through Public Lands and Federal Reservations. Funding was provided from the General Funds of the Treasury. The intent of the program is to improve access to and within the Federal lands of the nation. The Federal-Aid Highway Act of 1970 changed the funding source for the program from the General Funds to the Highway Trust Fund, effective in FY 1972. The program has been continued with each highway or transportation act since then, and the latest transportation act, the Transportation Equity Act for the 21st Century (TEA–21, Public Law 105–178), has continued the program through FY 2003.

Statutory References:

23 U.S.C. 202, 203 & 204; TEA–21 Section 1101(a)(8)(B)

Funding

[In millions]

Fiscal Year	1998	1999	2000	2001	2002	2003
Authorization	$66.6	$83.6	$83.6	$83.6	$83.6	$83.6

TEA–21 provides $196 million in FY 1998 and $246 million in each of fiscal years 1999 through 2003 for Public Lands Highways. In accordance with 23 U.S.C. 202(a), 34 percent of these funds are available for the PLH discretionary program. For FY 1998, this is $66.6 million, and for fiscal years 1999 through 2003, this is $83.6 million per year.

This available funding is reduced by FHWA administration expenses, which may be up to 1.5 percent. The amount of available funding is also impacted by any obligation limitation imposed on the Federal-aid highway program under the provisions of TEA–21 Section 1102(f), Redistribution of Certain Authorized Funds. Under this provision, any funds authorized for the program for the fiscal year, which are not available for obligation due to the imposition of an obligation limitation, are not allocated for the PLH program, but are redistributed to the States by formula as STP funds. In accordance with 23 U.S.C. 204(i), these PLH funds are also available for administration expenses and transportation planning costs of Federal land management agencies.

After these reductions, it is expected that approximately $70 million will be available for candidate projects each of fiscal years 2000 through 2003. This available funding may also increase or decrease each year depending on the obligation limitation calculation and on the estimated receipts to the Highway Trust Fund.

Federal Share

In accordance with 23 U.S.C. 204(b), the Federal share of the costs for any project eligible under this program is 100 percent.

Obligation Limitation

The PLH discretionary funds are subject to obligation limitation; however, 100 percent obligation authority is provided with the allocation of funds for the selected projects. The obligation limitation reduces the available funding for the program under the provisions of TEA–21 Section 1102(f) discussed above.

Eligibility

Under the provisions of 23 U.S.C. 202(b), the funds shall be allocated "among those States having unappropriated or unreserved public lands, nontaxable Indian lands or other Federal reservations, on the basis of need in such States." Therefore, all States are eligible to apply for PLH discretionary funding.

In accordance with 23 U.S.C. 204(b), the PLH funds are available for any kind of transportation project eligible for assistance under Title 23, United States Code, that is within, adjacent to, or provides access to the areas served by the public lands highway. A "public lands highway" means a forest road under the jurisdiction of and maintained by a public authority and open to public travel or any highway through unappropriated or unreserved public lands, nontaxable Indian lands, or other Federal reservations under the jurisdiction of and maintained by a public authority and open to public travel. Federal reservations are considered to include lands owned by the Department of the Interior, Department of Agriculture, Department of Defense and other Federal agencies.

The PLH funds are available for transportation planning, research, engineering, and construction of the highways, roads, and parkways, or of transit facilities within the Federal public lands. Under 23 U.S.C. 204(h), eligible projects under the PLH program may also include the following:

1. Transportation planning for tourism and recreational travel, including the National Forest Scenic Byways Program, Bureau of Land Management Back Country Byways Program, National Trail System Program, and other similar Federal programs that benefit recreational development.
2. Adjacent vehicular parking areas.
3. Interpretive signage.
4. Acquisition of necessary scenic easements and scenic or historic sites.
5. Provision for pedestrians and bicycles.
6. Construction and reconstruction of roadside rest areas, including sanitary and water facilities.
7. Other appropriate public road facilities such as visitor centers.
8. A project to build a replacement of the federally owned bridge over the Hoover Dam in the Lake Mead National Recreation Area between Nevada and Arizona.

In addition, 23 U.S.C. 134(d)(3), as amended by TEA–21 Section 1203, provides that up to "1 percent of the funds allocated under 23 U.S.C. 202 may be used to carry out the transportation planning process for the Lake Tahoe region," and that highway projects included in these transportation plans "may be funded using funds allocated under 23 U.S.C. 202." Applications for these activities, therefore, could also be submitted requesting PLH discretionary funding.

Selection Criteria

The following criteria are used to evaluate the submitted candidates for selection.

The only statutory criterion is found in 23 U.S.C. 202(b): "The Secretary shall give preference to those projects which are significantly impacted by Federal land and resource management activities which are proposed by a State which contains at least 3 percent of the total public lands in the Nation." The following eleven States have at least 3 percent of the nation's Federal public lands: Alaska, Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, Oregon, Utah, and Wyoming.

FHWA has not established regulatory criteria for selection of PLH discretionary projects; however, in its annual solicitation, FHWA notes that the following criteria are also considered in the evaluation of candidates for this program:

- Equitable distribution of funding among the States—In applying this criterion, the PLH discretionary funding distributed over the past 20 years is considered and two factors are used to determine a State's fair share of this distribution: (1) the State's share of the Nation's Federal public lands and (2) the percentage of an individual State's area that is comprised of Federal public lands. Preference is given to those States that are "behind" in their fair share of the funding.
- Leveraging of private or other public funding—Because the annual requests for funding far exceed the available PLH discretionary funds, commitment of other funding sources to complement the requested PLH discretionary funding is an important factor.
- Expeditious completion of project—Preference is also given to requests that will expedite the completion of a viable project over requests for initial funding of a project that could require a long-term commitment of future PLH funding. For large-scale projects consideration is given to the State's total funding plan to expedite the completion of the project.
- Amount of PLH funding—The requested amount of funding is another consideration. For States that have a relatively small amount of Federal public lands, moderately sized (<$500,000) project requests are given more favorable consideration.
- State priorities—For States that submit more than one project, consideration is given to the individual State's priorities if specified.
- National geographic distribution of the funding within the PLH program—Although preference is to be given to the States with at least 3 percent of the Nation's public lands, consideration is also given to providing funding to States in the eastern part of the country to provide some geographic balance for the program.

Because the concept of equity was important in the development of TEA–21, project selection will also consider national geographic distribution among all of the discretionary programs as well as congressional direction or guidance provided on specific projects or programs.

Solicitation Procedure

Each year, usually around March, a memorandum is sent from the FHWA Headquarters Office of Program Administration to the FHWA division offices requesting the submission of candidate projects for the following fiscal year's funding. This solicitation is also published in the **Federal Register**. The FHWA division offices provide this solicitation request to the State transportation departments, who are the only agencies that can submit candidates under the provisions of 23 U.S.C. 202(b). The State transportation departments coordinate with local and Federal agencies within their respective States in order to develop viable candidate projects. The State transportation departments submit the candidate applications to the FHWA division offices, who send them in to the Office of Program Administration. Candidate projects are due in FHWA Headquarters usually around the first of July.

The specific timetable for the solicitation process for any particular fiscal year is provided in the solicitation memorandum. The most recent solicitation is provided in these Guidelines for reference.

The candidate project applications are reviewed and evaluated by the Office of Program Administration and an allocation plan is prepared for presentation of the candidate projects to the Office of the Federal Highway Administrator, where the final selection of projects for funding is made. The announcement of the selected projects and the allocation of funds is usually accomplished by the middle of November.

Submission Requirements

Only State transportation departments may submit applications for funding under this program. Although there is not a prescribed format for a project submission, the following information must be included to properly evaluate the candidate projects. With the exception of the project area map, all of the following must be included to consider the application complete. Those applications that do not include these items are considered incomplete and returned.

1. State in which the project is located.
2. County in which the project is located.
3. U.S. Congressional District No.(s) in which the project is located.
4. U.S. Congressional District Member's Name(s).
5. Project Location—Describe the specific location of the project, including route number and mileposts, if applicable.
6. Public Lands Category—Specify what Federal public lands are being served by the project and whether the project is within, adjacent to, or provides access to the public lands.
7. Proposed Work—Describe the project work to be completed under this particular request, and whether this is a complete project or part of a larger project.
8. Project Purpose—The States' submission should show how the proposed project and/or the highway route of which it is a part meet the Federal land and resource management needs in the State. This should include status and adequacy of the existing route with regard to route continuity, capacity and safety and the benefits anticipated from completion of the proposed project.
9. Planning and Coordination—For the proposed project, describe the coordination with and input from the various Federal land management, State, and metropolitan planning agencies involved. Section 204(a) of Title 23, United States Code, as amended, requires all regionally significant Federal lands highways program projects to be developed in cooperation with States and metropolitan planning organizations, and included in appropriate Federal lands highways program, State, and metropolitan plans and transportation improvement programs.
10. Current and Future Traffic—For highway projects provide the current and design year average daily traffic. For other facilities, such as visitor centers, it may be desirable to describe the number of visitors accommodated by the facility.
11. Project Administration—Indicate whether the Federal funds for this project will be administered by the State transportation agency or a Federal Lands Highway Division (FLHD) of FHWA. If the FLHD or other Federal Agencies are involved, the type of involvement, whether it is preliminary engineering or contract administration, or other, should be specified. Also, the FLHD is available to assist with Federal Agency coordination and should provide any data and information requested.
12. Amount of Federal PLH Discretionary Funds Requested—Indicate the amount of Federal PLH funds being requested for that fiscal year. Candidates should only be submitted from projects that are ready to advance in that fiscal year. If a State is willing to accept partial funding of the request, that should also be indicated. Sometimes partial funding of requests is utilized to provide funding to more projects, since the requests far exceed the funding available.
13. Commitment of Other Funds—Indicate the amounts and sources of any private or other public funding being provided as part of this project. Only indicate those amounts of funding that are firm and documented commitments. The submission must include written confirmation of these commitments from the entity controlling the committed funds.
14. Previous PLH Discretionary Funding—Indicate the amount and fiscal year of any previous PLH discretionary funds received for this project or route.
15. Future Funding Needs—Indicate the estimated future funding needs for the project, including anticipated requests for additional PLH discretionary funding, the items of work to be completed and projected scheduling.
16. Project Area Map—It is suggested that a readable map, clearly showing the proposed project and its relationship to the overall development of a highway route, as well as its relationship to the Federal public lands, be included. The map should also show any previously completed work on this highway route, if any, plus additional work being planned beyond the proposed project.
17. Talking Points Briefing—A one page talking points paper covering basic project information is also needed for use by the Office of the Secretary for the congressional notification process should a project be selected for funding. Each State's request for discretionary funds must include a talking points paper. A sample paper is included in these Guidelines.

State Transportation Agency Responsibilities

1. Coordinate with State, local, and Federal agencies within the State to develop viable candidate projects.
2. Ensure that the applications for candidate projects meet the submission requirements outlined above.
3. Establish priorities for their candidate projects if desired.
4. Submit the applications to the local FHWA division office on time so that the submission deadline can be met.

FHWA Division Office Responsibilities

1. Provide the solicitation memorandum and this program information to the State transportation agency.
2. Request candidate projects be submitted by the State to the FHWA division office to meet the submission deadline established in the solicitation.
3. Review all candidate applications submitted by the State prior to sending them to FHWA Headquarters to ensure that they are complete and meet the submission requirements.
4. Submit the candidate applications to FHWA Headquarters by the established submission deadline.

FHWA Headquarters Program Office Responsibilities

1. Solicit candidates from the States through annual solicitation memorandum.
2. Review candidate project submissions and compile program and project information for preparation of allocation plan.
3. Submit allocation plan to the Office of the Federal Highway Administrator for use in making final project selections.
4. Allocate funds for the selected projects.

FHWA Headquarters Program Office Contact

Larry Beidel, Highway Engineer, Office of Program Administration, Phone: (202) 366–1564, Fax: (202) 366–3988, E-mail: larry.beidel@fhwa.dot.gov

Sample Talking Points Briefing for Secretary

Note: These talking points will be used by the Office of the Secretary in making congressional notification contacts. Since some of the recipients of the calls may not be closely familiar with the highway program, layman's language should be used to the extent possible. Information contained in the talking points may be used by a member of Congress in issuing a press release announcing the discretionary allocation.

Public Lands Highways (PLH) Discretionary Funds

Grantee: <List full name of State Transportation Agency>
Project: <short name/description of project>

This project provides for reconstructing __.__ miles of US 1 in _____ County extending from State Route 2 intersection in Hometown to the County Road 3 in the vicinity of Smallville. Widening 2 feet on either side with improvements on horizontal alignment and installation of 1000 feet of guard rail are included in the project.

FHWA FUNDS: $xx,xxx,xxx. <requested funds>

Specify other source of funds (for ex: State, local, Forest highways, etc, if any, to supplement Federal funds.

- This project will improve access to the Navajo Indian Reservation and improve the local economy.
- This project is part of the second phase of a 5-year program to reconstruct a 30-mile section of Forest Road 11 (State Route 201) between Town A and Town B.
- The project will be advertised for construction in <month/year> and is scheduled for completion in <month/year>.

[FR Doc. 99–11924 Filed 5–11–99; 8:45 am]
BILLING CODE 4910–22–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Rehabilitation, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Pub. L. 92–463 that a meeting of the Veterans' Advisory Committee on Rehabilitation (VACOR), authorized by Pub. L. 96–466, section 1521, will be held on May 18 through

20, 1999. The meeting will be held at the Department of Veterans Affairs Central Office, Room 430, 810 Vermont Avenue NW, Washington, DC 20420. On May 18 and 19, the meeting will convene at 9:00 a.m. and adjourn at 4:00 p.m. On May 20, the meeting will convene at 9:00 a.m. and adjourn at 12:00 noon. The purpose of the meeting is to review the new case management system (WINRS) which has been introduced into Vocational Rehabilitation field office operations. In addition, the Committee will learn about the "One Step Career Center" concept currently in development at the National Center on Education and the Economy.

On May 18, the meeting will begin with opening remarks and an overview by Mr. Ronald W. Drach, Chairman. A presentation will follow which will examine the computer-based Vocational Rehabilitation Case Management System (WINRS), both at the field and Central Office reporting levels. The afternoon session will consist of a review of veteran rehabilitation issues.

On May 19, Mr. Jeffrey Green, VA Deputy Ethics Attorney, will brief the VACOR membership on the annual ethics requirements associated with membership and financial disclosure forms. Also, Mr. John Dorrer and Mr. Neil Ridley, of the National Center on Education and the Economy, along with Mr. James Hartman, of the Vets Employment Training Administration, will present information on the "One-Stop Career Center" concept being developed by the Department of Labor. The afternoon session will feature Ms. Violet Parker, Director, Foreign Countries Operations, Veterans Affairs—Canada. She will report on the status of rehabilitation services provided to American military veterans residing in Canada. Finally, Mr. Julius M. Williams, Jr., Director of the VA's Vocational Rehabilitation Service, will present an update on the vocational rehabilitation program, as well as future program goals and casework projects.

On May 20, the meeting will consist of a review of past unfinished business, recommendations for program changes, and a discussion of future meeting sites and potential agenda topics.

All meetings will be open to the general public. Oral statements will be heard at the May 20 morning meeting. If additional information is needed, please contact Frank J. Donlan, Counseling Psychologist, Department of Veterans Affairs, at (202) 273–7436.

Dated: May 5, 1999.

By Direction of the Secretary:

Heyward Bannister,

Committee Management Officer.

[FR Doc. 99–11923 Filed 5–11–99; 8:45 am]

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May 12, 1999

Part II

Department of Transportation

Federal Railroad Administration

49 CFR Part 216 et al.
Passenger Equipment Safety Standards; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 216, 223, 229, 231, 232, and 238

[FRA Docket No. PCSS–1, Notice No. 5]

RIN 2130–AA95

Passenger Equipment Safety Standards

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: FRA is issuing comprehensive Federal safety standards for railroad passenger equipment. The purpose of these safety standards is to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public; and to mitigate the consequences of any such occurrences, to the extent they cannot be prevented. The final rule promotes passenger train safety through requirements for railroad passenger equipment design and performance; fire safety; emergency systems; the inspection, testing, and maintenance of passenger equipment; and other provisions for the safe operation of railroad passenger equipment. The final rule addresses passenger train safety in an environment where technology is advancing and equipment is being designed for operation at higher speeds. The final rule amends existing regulations concerning special notice for repairs, safety glazing, locomotive safety, safety appliances, and railroad power brakes as applied to passenger equipment.

The final rule does not apply to tourist and historic railroad operations. However, after consulting with the excursion railroad associations to determine appropriate applicability in light of financial, operational, or other factors unique to such operations, FRA may prescribe requirements for these operations that are similar to or different from those affecting other types of passenger operations.

DATES: This regulation is effective July 12, 1999. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of July 12, 1999.

ADDRESSES: Any petition for reconsideration should reference FRA Docket No. PCSS–1, Notice No. 5, and be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Ronald Newman, Staff Director, Motive Power and Equipment Division, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, D.C. 20590 (telephone: 202–493–6300); Daniel Alpert, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6026); or Thomas Herrmann, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6036).

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I. Introduction

Passenger railroads offer the traveling public one of the safest forms of transportation available. In the eight-year period 1990–1997, there were 0.89 passenger fatalities for every billion miles of passenger transportation by rail. Nevertheless, collisions, derailments, and other such occurrences continue to occur, often as a result of factors beyond the control of the passenger railroad. Further, the rail passenger environment is rapidly changing. Worldwide, passenger equipment operating speeds are increasing. Passenger trainsets designed to European safety standards have been proposed for operation in the United States-and a few are in operation. Overall, these trainsets do not meet the structural standards that are common for passenger equipment operating in the United States. FRA believes that adherence to such common standards by the nation's passenger railroads has in large measure contributed to the high level of safety at which rail passenger service is currently provided in the United States. However, these standards generally do not have the force of law.

Effective Federal safety standards for freight equipment have long been in place, but equivalent Federal safety standards for passenger equipment have not existed. Further, the Association of American Railroads (AAR) currently sets industry standards for the design and maintenance of freight equipment that add materially to the safe operation of such equipment. However, over the years, the AAR has discontinued the development and maintenance of industry standards for railroad passenger equipment.

FRA must necessarily be vigilant in ensuring that passenger trains continue to be designed, built, and operated with a high level of safety. In general, the railroad operating environment in the United States requires passenger equipment to operate commingled with very heavy and long freight trains, often over track with frequent grade crossings used by heavy highway equipment. European passenger operations, on the other hand, are intermingled with freight equipment of lesser weight than in North America. In many cases, highway-rail grade crossings also pose lesser hazards to passenger trains in Europe due to lower highway vehicle weight. FRA is concerned with the level

of safety provided by passenger equipment designed to European and other international standards when such equipment is operated in the United States.

A clear set of Federal safety standards for railroad passenger equipment is needed that is tailored to the nation's operating environment in order to provide for the safety of rail operations in the United States and to facilitate sound planning for these operations. In furtherance of this safety objective, FRA is pleased by the American Public Transit Association's (APTA) initiative to continue the development and maintenance of voluntary industry standards for the safety of railroad passenger equipment. These standards will complement FRA's safety standards and, thus, will work together to provide an even higher level of safety for rail passengers, rail employees, and the public as a whole.

II. Statutory Background

In September, 1994, the Secretary of Transportation convened a meeting of representatives from all sectors of the rail industry with the goal of enhancing rail safety. As one of the initiatives arising from this Rail Safety Summit, the Secretary announced that DOT would begin developing safety standards for rail passenger equipment over a five-year period. In November, 1994, Congress adopted the Secretary's schedule for implementing rail passenger equipment regulations and included it in the Federal Railroad Safety Authorization Act of 1994 (the Act), Pub. L. No. 103–440, 108 Stat. 4619, 4623–4624 (November 2, 1994). Section 215 of the Act, as now codified at 49 U.S.C. 20133, requires:

> (a) MINIMUM STANDARDS.—The Secretary of Transportation shall prescribe regulations establishing minimum standards for the safety of cars used by railroad carriers to transport passengers. Before prescribing such regulations, the Secretary shall consider—
>
> (1) the crashworthiness of the cars;
>
> (2) interior features (including luggage restraints, seat belts, and exposed surfaces) that may affect passenger safety;
>
> (3) maintenance and inspection of the cars;
>
> (4) emergency response procedures and equipment; and
>
> (5) any operating rules and conditions that directly affect safety not otherwise governed by regulations.
>
> The Secretary may make applicable some or all of the standards established under this subsection to cars existing at the time the regulations are prescribed, as well as to new cars, and the Secretary shall explain in the rulemaking document the basis for making such standards applicable to existing cars.
>
> (b) INITIAL AND FINAL REGULATIONS.—(1) The Secretary shall prescribe initial regulations under subsection (a) within 3 years after the date of enactment of the Federal Railroad Safety Authorization Act of 1994. The initial regulations may exempt equipment used by tourist, historic, scenic, and excursion railroad carriers to transport passengers.
>
> (2) The Secretary shall prescribe final regulations under subsection
>
> (a) within 5 years after such date of enactment.
>
> (c) PERSONNEL.—The Secretary may establish within the Department of Transportation 2 additional full-time equivalent positions beyond the number permitted under existing law to assist with the drafting, prescribing, and implementation of regulations under this section.
>
> (d) CONSULTATION.—In prescribing regulations, issuing orders, and making amendments under this section, the Secretary may consult with Amtrak, public authorities operating railroad passenger service, other railroad carriers transporting passengers, organizations of passengers, and organizations of employees. A consultation is not subject to the Federal Advisory Committee Act (5 U.S.C. App.), but minutes of the consultation shall be placed in the public docket of the regulatory proceeding.

The Secretary of Transportation has delegated these rulemaking responsibilities to the Federal Railroad Administrator. 49 CFR 1.49(m).

III. Passenger Equipment Safety Standards Working Group

Consistent with the intent of Congress that FRA consult with the railroad industry in prescribing these regulations, FRA invited various organizations to participate in a working group to focus on the issues related to railroad passenger equipment safety and assist FRA in developing Federal safety standards. The Passenger Equipment Safety Standards Working Group (or the "Working Group") first met on June 7, 1995, and has assisted FRA throughout the rulemaking process. Since its initial meeting, the Working Group has evolved so that its membership includes representatives from the following organizations:

American Association of Private Railroad Car Owners, Inc. (AAPRCO)
American Association of State Highway and Transportation Officials (AASHTO)
APTA
AAR
Brotherhood of Locomotive Engineers (BLE)
Brotherhood Railway Carmen (BRC)
FRA
Federal Transit Administration (FTA) of DOT
National Railroad Passenger Corporation (Amtrak)
National Association of Railroad Passengers (NARP)
Railway Progress Institute (RPI)
Safe Travel America (STA)
Transportation Workers Union of America (TWU)
United Transportation Union (UTU), and
Washington State Department of Transportation (WDOT)

The Working Group is chaired by FRA, and supported by FRA program, legal, and research staff, including technical personnel from the Volpe National Transportation Systems Center (Volpe Center) of the Research and Special Programs Administration of DOT. FRA has included vendor representatives designated by RPI as associate members of the Working Group. FRA has also included the AAPRCO as an associate Working Group member. The National Transportation Safety Board (NTSB) has designated staff members to advise the Working Group.

In developing proposed safety standards for passenger equipment operating at speeds greater than 125 mph but not exceeding 150 mph, FRA formed a subgroup (the "Tier II Equipment Subgroup") of Working Group members representing interests associated with the provision of rail passenger service at such high speeds. The full Working Group recommended the formation of a smaller subgroup to consider Tier II passenger equipment standards, as a number of Working Group members found the operation of high-speed passenger equipment to be outside their immediate interest and expertise. FRA invited representatives from organizations including Amtrak, the BLE, BRC, RPI, and UTU to participate in developing the Tier II standards.

In accordance with 49 U.S.C. 20133(d), the evolving positions of the Working Group members—as reflected in the minutes of the group's meetings and associated documentation, together with data provided by the members during their deliberations—have been placed in the public docket of this rulemaking.

IV. Proceedings to Date

On June 17, 1996, FRA published an Advance Notice of Proposed Rulemaking (ANPRM) concerning the establishment of comprehensive safety standards for railroad passenger equipment (61 FR 30672). The ANPRM provided background information on the need for such standards, offered preliminary ideas on approaching passenger safety issues, and presented questions on various topics including: system safety programs and plans; passenger equipment crashworthiness;

inspection, testing, and maintenance requirements; training and qualification requirements for mechanical personnel and train crews; excursion, tourist, and private equipment; commuter equipment and operations; train make-up and operating speed; tiered safety standards; fire safety; and operating practices and procedures.

FRA's commitment to developing proposed regulations through the Working Group necessarily influenced the role and purpose of the ANPRM. FRA specifically asked that members of the Working Group not respond formally to the ANPRM. The issues and ideas presented in the ANPRM had already been placed before the Working Group, and the Working Group had commented on drafts of the ANPRM. As a result, FRA solicited the submission of written comments that might be of assistance in developing a proposed rule from interested persons not involved in the Working Group's deliberations.

FRA received 12 comments in response to the ANPRM. These comments were shared with the Working Group and were taken into consideration by the members of the group as they advised FRA during the development of a Notice of Proposed Rulemaking (NPRM). The Working Group worked intensively, and concluded with a meeting in Philadelphia on September 30-October 2, 1996. Working Group members agreed to the preparation of a NPRM reflecting partial consensus on a number of the issues in the rulemaking. However, the industry parties were unable to agree on any option with respect to inspection requirements for power brakes or daily inspection of equipment. Further, one labor organization later advised FRA that it could not participate in a consensus on less than the full range of issues in the rulemaking.

FRA prepared in draft an NPRM and shared it with the Working Group members on March 19, 1997. The NPRM was then enriched with discussions of issues and options reflecting concerns of Working Group members in response to the draft, and some changes were incorporated into the proposed rule.

On September 23, 1997, FRA published the NPRM (1997 NPRM) in the **Federal Register** to add a new part, 49 CFR part 238 (Passenger Equipment Safety Standards), and to amend 49 CFR parts 216 (Special Notice and Emergency Order Procedures: Railroad Track, Locomotive and Equipment), 223 (Safety Glazing Standards—Locomotives, Passenger Cars and Cabooses), 229 (Railroad Locomotive Safety Standards), 231 (Railroad Safety Appliance Standards), and 232 (Railroad Power Brakes and Drawbars). 62 FR 49728. The proposed part 238 set forth comprehensive Federal safety standards for the safety of railroad passenger equipment, including equipment design and performance standards for passenger and crew survivability in the event of a passenger train accident, as well as inspection, testing, and maintenance standards for passenger equipment.

The 1997 NPRM generated written comments from 34 separate parties, and all of these comments may be found in the public docket of the rulemaking. The written comments included a request by the New York Department of Transportation (NYDOT) to extend the comment period for 90 days. The NYDOT sought this additional time to more thoroughly review the proposed rule, and secure expert testimony and empirical data on the proposed rule's possible impact on the high-speed intercity rail passenger program in the State of New York. FRA did not grant the request, however, particularly because FRA had planned to convene the Working Group in the interim and needed to assemble the comments on the rule for discussion within the Working Group. FRA asked the NYDOT to submit its comments by the close of the comment period on November 24, 1997, and it did so. FRA did explain to the NYDOT that it would consider comments submitted after the formal close of the comment period to the extent possible without incurring additional expense or delay in issuing the final rule, and FRA has done so.

FRA held a public hearing on the proposed rule in Washington, D.C. on November 21, 1997, at which nine parties submitted oral comments. These parties consisted of: APTA; the BRC; the BLE; Amtrak; Renfe Talgo of America, Inc. (Talgo); WDOT; NARP; the Omniglow Corporation; and The Institute of Electrical and Electronics Engineers, Inc. (IEEE). A copy of the transcript of this hearing is available in the public docket of this rulemaking.

As noted earlier, FRA convened the Passenger Equipment Safety Standards Working Group following the close of the comment period to consider the comments received in response to the 1997 NPRM and help develop the final rule. This continued the consultative process FRA has used throughout the rulemaking. Notice of the Working Group meetings was available through the FRA Docket Clerk, as stated in the NPRM, *see* 62 FR 49729, and the meetings were open to the public.

The Working Group met in full in Washington, D.C., on December 15–16, 1997. A smaller body of the Working Group met again on January 6, 1998, to discuss in particular high-speed passenger equipment safety issues, as well as brake inspection, testing and maintenance issues for long-distance intercity passenger trains. Minutes of these meetings, including copies of the discussion documents circulated at the meetings, are available in the public docket of the rulemaking. *See* 63 FR 28496; May 26, 1998. FRA received one set of written comments on the minutes of the meetings, which FRA had prepared, and these comments are also available in the same docket.

V. Discussion of Specific Comments and Conclusions

A. Application of the Final Rule to Rapid Transit Operations and "Light Rail"

In the 1997 NPRM, FRA proposed applying the rule to rapid transit operations in an urban area, unless those operations are not connected with the general system of railroad transportation. In other words, FRA made clear that its rule would apply to rapid transit operations over the general system. The Utah Transit Authority (UTA), in commenting on the NPRM, expressed concern with the inclusion of rapid transit operations, including light rail transit, in the proposed rule. The UTA stated that the rule provided no definition of what is meant by the phrase "not connected with the general railroad system of transportation." As a result, the UTA requested that the final rule provide such a definition. Further, the UTA requested that any such definition take into account rail operations that are time-separated or physically separated (using derails and electric locks), or both, so that under such circumstances rapid transit systems would not be considered connected with the general railroad system of transportation and, therefore, be excluded from the rule.

In response to the 1997 NPRM, New Jersey Transit (NJT) commented that by permitting FRA to rule on whether a transit agency may operate light rail service over a freight right-of-way, FRA's jurisdiction would be expanded in conflict with FTA's mandate in 49 C.F.R. part 659. NJT explained that the Intermodal Surface Transportation Efficiency Act of 1991, Public Law 102–240, and 49 C.F.R. part 659 promulgated in its pursuance, required states to designate an agency of the state, other than a transit agency, to oversee and implement requirements concerning all fixed-guideway systems not under FRA's jurisdiction.

The safety jurisdictions of FRA and FTA are mutually exclusive. FTA's regulatory authority to issue regulations creating a state safety oversight program applies only to "rail fixed guideway mass transportation systems not subject to regulation by the Federal Railroad Administration." 49 U.S.C. 5330(a). Consistent with DOT Secretary of Transportation Rodney Slater's concept of One-DOT and the need to assure seamless application of intermodal transportation policies, FRA and FTA are jointly developing a proposed policy statement outlining the scope of FRA's jurisdiction over "light rail" operations that share the use of rights-of-way with conventional railroads. As discussed later in this document, the two agencies will be soliciting input from rail operators and other interested entities during the development of this policy statement.

FRA's safety jurisdiction is very broad and extends to all types of railroads except for urban rapid transit operations not connected to the general railroad system. The term "railroad" is defined by statute as follows:

> In this part—
> (1) "railroad"—
> (A) Means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways, including—
> (i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and
> (ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but
> (B) does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

49 U.S.C. 20102.

The statutory definition of the term "railroad" makes certain elements of FRA's safety jurisdiction quite clear:

- FRA, with one exception, has jurisdiction over all railroads regardless of the type of equipment they use, their connection to the general railroad system of transportation, or their status as a common carrier engaged in interstate commerce. FRA will, for example, assert jurisdiction over high-speed intercity rail service even if completely separated from the general railroad system that now exists and magnetic levitation systems that are not urban rapid transit.
- Commuter and other short-haul railroad passenger operations in a metropolitan or suburban area (except for one type of short-haul operation, *i.e.*, urban rapid transit) are railroads within FRA's jurisdiction whether or not they are connected to the general railroad system. For operations on or over the general system, the commuter/rapid transit distinction has no jurisdictional relevance—all general system operations are within FRA's exercise of jurisdiction. Because the only urban rapid transit operations that FRA intends to cover under this rule are those on the general system, there is no need to expand on the commuter/rapid transit distinction here.
- Rapid transit operations in an urban area that **are not connected** to the general railroad system are not within FRA's jurisdiction. This is the sole exception to FRA's jurisdiction over all railroads. There is no exception for "light rail," a term not found in the statute. Although FRA could assert jurisdiction over a rapid transit operation based on any connection it has to the general railroad system, FRA believes there are certain connections that are too minimal to warrant the exercise of its jurisdiction. For example, a rapid transit system that has a switch for receiving shipments from the general system railroad is not one over which FRA would assert jurisdiction. This assumes that the switch is used only for that purpose. In that case, any entry onto the rapid transit line by the freight railroad would be for a very short distance and solely for the purpose of dropping off or picking up cars. In this situation, the rapid transit line is in the same situation as any shipper or consignee; without this sort of connection, it cannot receive goods by rail. Absent a change in policy, FRA will not attempt to apply this rule to rapid transit systems with these sorts of connections. However, if such a system is properly considered a rail fixed guideway system, FTA's rules (49 CFR 659) will apply to it.
- Rapid transit operations in an urban area that **are connected** to the general railroad system of transportation are within FRA's jurisdiction. FRA will assert jurisdiction over a rapid transit operation that is conducted on or over the general system. It does not matter that the rapid transit operation occupies the track only at times when the freight, commuter, or intercity passenger railroad that shares the track is not operating. While such time separation could, as explained in the 1997 NPRM, provide the basis for waiver of certain of FRA's rules, it does not mean that FRA will not assert jurisdiction. However, FRA will assert jurisdiction over only the portions of the rapid transit system that are conducted on the general system. For example, a rapid transit line that operates over the general system for a portion of its length but has significant portions of street railway that are not part of the general system would be subject to FRA's rules only with respect to the general system portion. The remaining portions would not be subject to FRA's rules. If the non-general system portions of the rapid transit line are considered a "rail fixed guideway system" under 49 CFR part 659, those rules, issued by FTA, would apply to them.

As discussed above, it is the nature and location of the railroad operation, not the nature of the equipment, that determines whether FRA has jurisdiction under the safety statutes. Light rail operations that operate on the general system are always within that statutory jurisdiction. They are not within the sole statutory exception (urban rapid transit not connected to the general system) so they are railroads under the safety statutes. The greatest risk inherent in the shared use of the trackage is a collision between the light rail equipment and conventional equipment. The light rail vehicles are not designed to withstand such a collision with far heavier equipment. Were such a crash to occur with either or both equipment operating at high speeds, the consequences for passengers in the light rail vehicle(s) would likely be catastrophic.

In the past, FRA has withheld exercise of its jurisdiction with respect to light rail operations over general system trackage where there was full time separation (freight operations limited to nighttime hours). The recent proliferation of proposals for light rail operations on the general system and the issuance of this final rule establishing the first comprehensive Federal standards for railroad passenger equipment call for changing this approach. Moreover, recent developments have indicated that FRA's current approach assumes a degree of separation that is unlikely to be maintained over time. Proposals for limited overlap, deadhead movement of transit equipment, etc., have demonstrated the complexity of using common trackage for disparate purposes. Accordingly, FRA has asked that new transit starts that propose using the general rail system trackage submit appropriate waiver applications to FRA; such applications should be submitted as early as possible. As previously noted, FTA and FRA are working toward the development of a joint policy statement on the appropriate scope of FRA's jurisdiction over "light rail" that shares rights-of-way with conventional railroads. The agencies foresee an approach intended

to dovetail FRA's safety regulations with the FTA state safety oversight program where that is appropriate and FTA jurisdiction is applicable. The agencies would work together to ensure coordination of decision making. Before general implementation, the policy statement will be discussed with the affected communities of interest and may be published (together with any needed regulatory amendments) for formal comment in the **Federal Register**. At the same time this joint policy is issued, FRA plans to issue a separate proposed statement of policy that, among other things, will provide guidance on how light rail operators may seek waivers of FRA's rules. In the interim, the policy expressed in this preamble will guide FRA's actions with respect to this rule (subject to an appropriate period of consultation and adjustment with respect to the two time-separated shared use projects currently in operation).

FRA does, however, recognize that lower speed rail operations that do not operate over highway-rail grade crossings and that totally preclude the sharing of trackage between light rail equipment and conventional equipment provide an operating environment that does not require the structural standards needed for commingled passenger and freight operations. Accordingly, the final rule (in § 238.201) provides that passenger equipment, including locomotives, are not subject to the structural requirements of the rule if they are used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph. FRA will discuss with the Working Group in Phase II of the rulemaking what structural standards are appropriate for such operations.

B. Static End Sstrength Requirement: Application to Existing Equipment

In § 238.203 of the 1997 NPRM, FRA generally proposed that on or after January 1, 1998, all passenger equipment shall be required to have a minimum static end strength (or "buff" or "compressive" strength) of 800,000 pounds. As some commenters recognized, FRA intended the date of January 1, 1998, to represent the effective date of the final rule. Yet, in light of the actual publication date of the 1997 NPRM, the date of January 1, 1998, appeared anachronistic, and FRA should have modified the NPRM to make its intent more explicit. A number of commenters nonetheless raised concerns with the application of this section-whether the date were January 1, 1998, or later-since FRA proposed to apply the static end strength requirement to existing passenger equipment.

APTA recommended, in its comments on the rule, that FRA modify the proposal so that the requirement apply on or after the effective date of the final rule to passenger equipment placed in service for the first time. APTA stated that the AEM–7 locomotive and the RTG model turbo train could not meet the requirement as proposed. APTA estimated that the purchase of replacement equipment could take up to four years and would cost more than $500 million.

Amtrak commented that the proposed requirement to have buff loading apply to the existing rail fleet is not justified based on the industry's experience. Amtrak did agree that, in order to move the industry forward on crash energy management, new equipment must be built to a uniform strength standard. Amtrak stated that it currently operates AEM–7 locomotives that do not meet the proposed requirement. In addition, Amtrak was not sure it had available the appropriate technical information on whether its fleet of Heritage equipment conformed to the proposal. At the public hearing, though, Amtrak did explain that it had no evidence that its fleet of passenger cars did not comply with the proposal. (See transcript of public hearing, pages 173–174).

The Northeast Illinois Regional Commuter Railroad Corporation (Metra), in its comments on the rule, recommended that the static end strength provision apply only to new passenger equipment orders placed on or after January 1, 1998. Metra explained that it was awaiting delivery of cars under construction, that some of the cars may be built after January 1, 1998, and that a change order would cause a series of problems.

In commenting on the 1997 NPRM, Talgo expressed concern that FRA proposed applying the static end strength requirement to existing passenger equipment in service on or after January 1, 1998. Talgo stated that this proposal would render unusable its two trainsets then in service on lease to the WDOT. Additionally, Talgo explained that it was well underway in manufacturing five new trainsets—two for the WDOT, one for Amtrak, and two others for future sale in the U.S. market—that would likewise be rendered unusable in their current form. Talgo stated that neither it nor any other manufacturer of rail equipment could have anticipated the proposed regulation's immediate application of broad structural design changes. Citing discussions within the Working Group and the comments of other parties, Talgo asserted that other passenger equipment manufacturers and operators likewise assumed that modifications in basic structural standards would be applicable only to equipment purchased after January 1, 1999, or placed in service after January 1, 2001, and that much existing passenger equipment operating in the United States would be unable to comply with the structural requirements scheduled for early implementation. Talgo also stated that FRA did not properly identify the economic impact of its proposal on Talgo equipment. Talgo requested that FRA modify the rule so that the static end strength requirement and other structural requirements apply only to passenger equipment ordered on or after January 1, 1999, or placed in service for the first time on or after January 1, 2001.

The WDOT commented that FRA's proposal appeared to be directly targeted at the State of Washington and Amtrak's purchase of Talgo trains under manufacture. WDOT stated that imposition of the proposal in the middle of the construction process, without "grandfathering," appeared to reveal an effort to make its Talgo equipment non-compliant. WDOT recommended that the rule be modified so that the static end strength provision only apply to passenger equipment ordered after January 1, 1999. The NARP, in its comments on the proposed rule, shared WDOT's opposition to imposing the static end strength requirement on existing passenger equipment, and it recommended instead applying the requirement under a time-table similar to that proposed generally for structural requirements—*i.e.*, ordered on or after January 1, 1999, or placed in service for the first time on or after January 1, 2001. The NARP believed that the proposal could cancel WDOT's rail passenger program and thereby lead to countless, unnecessary highway deaths involving people that otherwise would have been on a WDOT passenger train.

In commenting on the 1997 NPRM, the State of Vermont Agency of Transportation (VAOT) explained that it was in the process of implementing new passenger rail service with used rail diesel cars manufactured by Budd. The cars were originally built to meet the AAR buff strength requirement, according to the VAOT, but it could not assure that the vehicles meet the standards today. The VAOT requested that the Budd cars be grandfathered because they were manufactured to AAR standards, built prior to April 1,

1956, and have a proven service record. The VAOT believed it fair for the rulemaking to grandfather these cars as being compliant at the time ordered by VAOT. Similarly, the NYDOT recommended in its comments on the proposed rule that the structural requirements apply only to new equipment, citing its intent to operate rebuilt turboliner equipment in the Empire Corridor through a cooperative effort with FRA and Amtrak. Further, the North Carolina Department of Transportation (NCDOT) expressed concern in its comments on the proposed rule that the rulemaking would require its fleet of rebuilt passenger, food service and specialty cars to undergo additional renovations and retrofitting to comply with the rule. NCDOT commented that its trainsets were designed to meet the passenger equipment safety standards in effect at the time of their order, and that the proposed regulation has the potential to thwart its rail passenger initiative.

In the final rule, FRA is retaining the 800,000-pound static end strength requirement for most new and existing passenger equipment. However, the final rule does provide that the static end strength standard and other structural standards do not apply to equipment used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph. See § 238.201. Furthermore, the final rule creates a presumption that passenger equipment in service in the United States as of the effective date of the final rule meets the 800,000-pound static end strength requirement, unless the railroad operating the equipment knows, or FRA can show, that the equipment was not built to this 800,000-pound strength requirement. See § 238.203(b). Under this formulation, for example, Amtrak's fleet of Heritage passenger cars are presumed to comply with the static end strength requirement on the basis of Amtrak's testimony at the public hearing on the NPRM.

FRA has decided that it is in the best interest of safety to apply the buff strength requirement to existing passenger equipment and effectively regulate the use of passenger equipment not possessing at least 800,000 pounds of buff strength as specified in this rule. As noted, the operating environment in the United States requires railroad passenger equipment to operate commingled with heavy and long freight trains, often over track with frequent grade crossings used by heavy highway equipment. FRA has serious concerns about the operation in such an environment of passenger equipment not possessing a minimum buff strength of 800,000 pounds. As a result, and in response to Talgo's and WDOT's comments on this rule, FRA cannot avoid directly addressing the current operation in the United States of the passenger trainsets manufactured by Talgo unless FRA disregards its duty to provide for the safety of rail passenger transportation. Since FRA has raised the issue of compressive strength on passenger equipment with all affected parties since well before the inception of this rulemaking, it would strain credulity to assert that a requirement for 800,000 pounds of compressive strength could truly be a matter of surprise in a rulemaking on railroad passenger equipment safety.

Making the 800,000-pound compressive strength requirement applicable to existing passenger equipment creates a bright line that will help bring needed clarity to the growing number of situations where light rail equipment is likely to be used on the general railroad system of transportation. Operation on the general system of this equipment, which is built to standards far lower than the 800,000-pound standard specified in this rule, presents enormous safety risks to the occupants of the equipment, absent imposition of strict conditions designed to virtually eliminate the risk of a light rail/conventional equipment collision. The need to address these risks as a condition of operation will be made perfectly clear by imposition of the buff strength requirement across the board. Light rail operators will have to seek a waiver of the requirement and will have to plan their operations in such a way as to maximize the likelihood of obtaining such a waiver. (A petition for grandfathering approval of the equipment could also be filed in certain cases, as discussed below.)

In regulating the use of passenger equipment not possessing a minimum buff strength of 800,000 pounds as specified in this final rule, the rule permits non-compliant passenger equipment to be continued in service for a six-month period following publication of the rule in order to permit the filing of a grandfathering petition with FRA; if a petition is filed within this six-month period, operation may continue for up to an additional six months while the petition is being processed. Grandfathering approval of non-compliant equipment is limited to usage of the equipment on a particular rail line or lines. Before grandfathered equipment can be used on another rail line, a railroad must first file and secure approval of a grandfathering petition for such usage. *See* discussion under § 238.203 for the contents of the petition and the approval process. FRA will approve a petition for "grandfathering" if it complies with the requirements of § 238.203 and the proposed usage of the equipment is in the public interest and consistent with railroad safety. Amtrak and WDOT may file petitions for grandfathering approval of their Talgo-manufactured passenger equipment, in accordance with the requirements of § 238.203.

C. United States International Treaty Obligations

The United States is a party to the General Agreement on Tarriffs and Trade (GATT). One of the GATT agreements is the Agreement on Technical Barriers to Trade (TBT), originally concluded in 1979 and approved by the United States Congress in the Trade Agreements Act of 1979, Pub. L. No. 96–39 (July 26, 1979). A new TBT Agreement was reached as a result of the 1994 Uruguay Round of GATT multinational trade negotiations, and subsequently approved by the United States Congress in the Uruguay Round Agreements Act, Pub. L. No. 103–465 (December 8, 1994). The TBT Agreement seeks to avoid creating unnecessary obstacles to trade, while recognizing the right of signatory countries to establish and maintain technical regulations for the protection of human, animal, and plant life or health. The TBT Agreement has been codified into law at 19 U.S.C. 2531 *et seq.*

In commenting on the NPRM, Talgo believed that a number of the proposed structural standards were inconsistent with the TBT Agreement in that domestic industry would be favored by adopting the *de facto* standards of North American passenger equipment. Talgo stated that many requirements in the proposed rule seem to have been developed exclusively with domestically-manufactured equipment in mind, "arbitrarily making compliance with the rules by other, non-U.S. manufactured equipment—such as Talgo equipment—extremely difficult." Talgo also asserted that domestic industry would be favored under the implementation schedule of the rule by noting FRA's statements in the NPRM that several of the proposed structural requirements chosen for early implementation reflect the current construction practice for North American passenger equipment. Talgo contended that the implementation

schedule disregards that, solely because imported equipment has been designed differently, it cannot satisfy the requirements at once.

FRA believes that this final rule is consistent with the United States' obligations under the TBT Agreement, and that Talgo's concerns arise, in part, from a misunderstanding of FRA's use of the term "North American passenger equipment." Article 2.1 of the TBT Agreement, cited by Talgo in its comments, states:

> Members shall ensure that in respect of technical regulations, products imported from the territory of any Member shall be accorded treatment no less favorable than that accorded to like products of national origin and to like products originating in any other country.

A "technical regulation" refers to mandatory product standards, and FRA agrees with Talgo that the structural standards in this rule fall under this definition. See Annex 1 to the TBT Agreement, "Terms and Their Definitions for the Purpose of this Agreement, 1." However, the impact of this rule on Talgo passenger equipment, specifically its passenger cars, has nothing to do with the fact that the equipment originates in a foreign country, Spain, as opposed to the United States.

Through this rule, FRA is not favoring rail passenger cars that are domestically manufactured over those of foreign origin since, as far as FRA is aware, there is currently no domestic manufacturer of rail passenger cars in the United States. (The General Electric Company and the General Motors Corporation manufacture locomotives in the United States—not rail passenger cars; and neither entity is being favored by FRA in this rule over foreign manufacturers of locomotives.) Of course, a significant portion of the nation's rail passenger car fleet—the oldest portion—has been manufactured in the United States. Yet, over the years, manufacturers from Japan, Canada, and other countries have exported passenger cars to the United States for service on the nation's railroads. Overall, these imported rail passenger cars have possessed the same minimum structural strength as their domestic forebearers; they have been constructed to standards that are common to North American passenger equipment, *i.e.*, passenger equipment operated in North America. The five Talgo trainsets noted earlier have not been so constructed. FRA's use of the term North American passenger equipment (or United States passenger equipment, for that matter) was not intended to refer to passenger equipment manufactured in North America in distinction to passenger equipment manufactured elsewhere.

Talgo also commented that, to a significant extent, the proposed requirements were design-based and phrased in a number of places in variables dependent on design rather than performance. In this regard, Talgo believed the proposed rule violates Article 2.8 of the TBT Agreement, which states: "Wherever appropriate, Members shall specify technical regulations based on product requirements in terms of performance rather than design or descriptive characteristics." Talgo asserted that the rule can and should be stated in terms of variables relating to the performance of the equipment rather than its design, and that the rule should accommodate different engineering designs, such as its articulated, lightweight trainsets.

The principal structural requirement of the final rule, which existing Talgo-manufactured passenger cars do not meet, is in fact a performance-based requirement. As further specified in § 238.203, the rule requires that new and existing passenger cars must possess a minimum static end strength of 800,000 pounds. The rule does not dictate how a passenger car must be constructed to meet this requirement, as long as the car can resist the specified 800,000-pound load. This formulation is consistent with the requirements of 19 U.S.C. 2532(3), which states:

> Performance Criteria.—Each Federal agency shall, if appropriate, develop standards based on performance criteria such as those relating to the intended use of a product and the level of performance that the product must achieve under defined conditions, rather than on design criteria, such as those relating to physical form of the product or the types of material of which the product is made.

(Of course, the rule does require that the body structure of a passenger car be designed, *to the maximum extent possible*, to fail by buckling or crushing, or both, of structural members when overloaded in compression rather than by fracture of structural members or failure of structural connections. *See* § 238.203(c). Yet, in any regard, FRA believes it unsafe to design a passenger car to fail first by fracture of structural members or failure of structural connections, as the ability of the car structure to absorb collision energy is negated.)

FRA recognizes that the five Talgo trainsets were designed to international standards that require lesser compressive strength. Talgo has pointed out that these trainsets will be configured in the same manner as two leased trainsets formerly operated in the State of Washington. These trains are intended to be pulled by a conventional locomotive and have unoccupied units at the front and rear of the trainsets which are available to absorb initial crash energy. Talgo contends that this configuration provides equivalent protection from loss of occupied volume in a rear-end or head-on collision when compared with conventional cars which would be occupied by passengers or crew. FRA has provided a process for WDOT and others to secure grandfathering approval regarding the compressive strength requirement for passenger equipment placed in use prior to November 8, 1999, as previously noted. However, as explained below, FRA is unable to relax the minimum compressive strength requirement for passenger equipment simply on the basis of train configuration, since to do so would diminish the safety provided for the rail travelling public as a whole.

FRA believes the minimum static end strength requirement in the final rule is not inconsistent with the TBT Agreement, in that it fulfills FRA's objective of protecting human safety and only restricts the use of equipment not meeting that objective because of the performance of the equipment—not because of the origin of the equipment. In this regard, 19 U.S.C. 2531(b) provides in part:

> No standards-related activity of any * * * Federal agency * * * shall be deemed to constitute an unnecessary obstacle to the foreign commerce of the United States if the demonstrable purpose of the standards-related activity is to achieve a legitimate domestic purpose including * * * the protection of legitimate health or safety * * * and if such activity does not operate to exclude imported products which fully meet the objectives of such activity.

Having a passenger car possess a minimum compressive strength of 800,000 pounds, along with other features, has evolved as a result of a long history of efforts by railroads and suppliers to learn the hard lessons taught by a difficult operating environment in the United States. Passenger train collisions and derailments may occur in a variety of different scenarios and implicate structural features of passenger equipment in similarly numerous ways. The rule cannot be applied in a general way to both (1) except any consist of passenger cars from the same compressive strength requirements applicable to all other passenger cars solely because the passenger car consist is buffered at each end by an unoccupied car and linked by articulated connections, and (2) provide

for the safety of the occupants of passenger cars.

Further, over the past few years, FRA has funded the most extensive and detailed research and analysis ever conducted by a public body in the United States concerning passenger car safety. That effort has included attention to international practice, particularly for high-speed equipment. However, given existing data and analysis, FRA is unable to specify an alternate performance standard for passenger car compressive strength that would meet FRA's safety objectives and be equally applicable to passenger cars of any design that might some day be proffered for use in the United States. Nor, so far as FRA is aware, has any government or international body achieved a similar feat. Certainly doing so within the time available to issue standards under the 1994 statutory mandate would not have been possible.

FRA notes that Talgo further commented that the early implementation dates proposed for certain structural requirements are inconsistent with Article 2.12 of the TBT Agreement in that a sufficient amount of time would not be provided foreign producers to modify their products' design or manufacturing processes to comply with new or significantly revised regulatory requirements. Article 2.12 provides:

> Except in those urgent circumstances referred to in [Article 2] paragraph 10 [of the TBT Agreement], Members shall allow a reasonable interval between the publication of technical regulations and their entry into force in order to allow time for producers in exporting Members * * * to adapt their products or methods of production to the requirements of the importing Member.

In the final rule, the compressive strength requirement takes effect sooner than any other principal structural requirement, and it applies to both new and existing passenger cars and locomotives. If any provision of the rule were found to be inconsistent with Article 2.12 of the TBT Agreement, then, it would most likely be the compressive strength requirement. However, the United States Congress has expressly authorized applying the requirements of the final rule to existing passenger cars, provided only that the basis for doing so is explained in the rulemaking document. *See* Section 215 of the Federal Railroad Safety Authorization Act of 1994, above, as codified at 49 U.S.C. 20133 ("The Secretary may make applicable some or all of the standards established under this subsection [, 49 U.S.C. 20133(a),] to cars existing at the time the regulations are prescribed."). FRA has made the compressive strength requirement applicable to existing passenger cars as explained in the preamble. However, through the submission of appropriate data and analysis, and approval by FRA as further specified in § 238.203, discussed below, certain passenger cars not possessing the minimum compressive strength of 800,000 pounds may operate on the general railroad system of transportation, and the rule does afford a reasonable time for that information to be gathered.

In providing the possibility that some equipment now being used which does not meet the buff strength requirement of this rule might continue to be used ("grandfathered"), FRA intends to permit only very safe operations to occur. Petitioners will need to demonstrate—through a quantitative risk assessment that incorporates design information, engineering analysis of the equipment's static end strength and of the likely performance of the equipment in derailment and collision scenarios, and risk mitigation measures to avoid the possibility of collisions or to limit the speed at which a collision might occur, or both, that will be employed in connection with the usage of the equipment on a specified rail line or lines—that use of the equipment, as utilized in the service environment for which recognition is sought, is in the public interest and is consistent with railroad safety. In this regard, FRA notes that passenger equipment not possessing the minimum static end strength specified in this rule does not have the same capacity to absorb safely within its body structure the compressive forces that develop in a collision as equipment meeting the standard. The engineering analysis submitted by the petitioner should address how these forces will be dissipated in a manner that does not jeopardize occupant safety in collision scenarios.

D. Non-Conventional Passenger Equipment

As noted above, commenters have requested that FRA specify design-neutral or performance-based requirements so that the safety of all passenger equipment may be evaluated on the same basis. In comments in this docket, Talgo has suggested substituted (and reduced) force levels that it believes are appropriate for inclusion in the final rule in lieu of those proposed for truck-to-carbody attachment and anti-climbing arrangements, for instance. As explained, FRA has specified the compressive strength requirement as fairly as we are able in consideration of the safety of the rail travelling public. FRA has also done so with respect to the other structural requirements in the rule.

FRA recognizes that the existing Talgo trainsets presents unique challenges in terms of describing appropriate force levels in several regards. FRA understands that the Talgo trainsets are articulated, low-floor trainsets with independently rotating wheels. The car bodies are made from light-weight aluminum extrusions. In contrast, the vast majority of passenger carrying equipment used on the nations's railroads is individually suspended, has automatic couplers, has a higher floor height above the rail, has wheels fixed to an axle, and is constructed with a steel underframe made up from fabricated members. FRA has conducted, and continues to conduct, research which addresses the influence of carbody construction, suspension configuration, and coupling arrangement on the crashworthiness, derailment tendency, and other safety-related aspects of Talgo and other non-conventional equipment.

Developing safety regulations requires detailed technical knowledge of the system being regulated. At the time this rule is being written, FRA is unable to specify alternative performance-based standards with respect to the structural requirements in this rule that would meet FRA's safety objectives for passenger equipment of any design. Areas of particular technical concern with regard to the Talgo trainsets, which need to be resolved by FRA through an ongoing exchange of information, include the nature of its articulated connection and its potential to allow override in a collision, and the welding of the aluminum extrusions which make up the body shell. The Talgo tilt trainsets have characteristics that are unique, or nearly unique, that may either reduce or increase vulnerability in a derailment or collision. For instance, the articulated design of the trainset may tend to keep the train in line in the case of a derailment where the decelerations are reasonably uniform throughout the length of the train, preventing secondary impacts. On the other hand, the absence of major structural members in the floor of the passenger units could be a serious problem should the train be involved in a collision with freight train cars or lading that has fouled the track on which the passenger train is travelling, as a result of the freight train having derailed. In this regard, the absence of major structural members in the floor of the Talgo passenger units increases their vulnerability to penetration by the

trainset's trucks, should the trucks separate from the train.

Historically, the United States industry requirement for a minimum compressive strength has reinforced a pattern of passenger car construction resulting in use of stiff, quite substantial underframes that have served other practical purposes in derailments and collisions, including prevention of car body buckling, prevention of harm to passengers from failure of the floor structure and entry of debris, and resistance to penetration of the car from the side where the primary impact was at the floor level. Both with respect to compressive strength and other structural requirements that the Talgo trainset may not be able to meet, it is important to ensure that alternative means of achieving crashworthiness are just as successful as the standards described in this final rule.

Creating alternative performance-based standards for a particular type of passenger equipment requires a very early dialogue and technical information exchange. In the summer of 1995, FRA convened the first meeting of equipment manufacturers (including representatives of Canadian, European and Japanese consortia) to discuss passenger safety standards. That meeting led to designation of equipment manufacturer representatives as associate members of the Passenger Equipment Safety Standards Working Group. Although notified along with a number of other manufacturers of passenger equipment, Talgo representatives did not participate in the process. (For its part, the WDOT did not formally indicate to FRA an interest in participating in the rulemaking until after the Working Group had tentatively agreed on the structural standard proposals—FRA received a letter from the WDOT commenting on the ANPRM on September 4, 1996. However, AASHTO had participated from the beginning of the rulemaking.) Talgo did not enter the discussions directly until publication of the NPRM in September of 1997, and was still in the process of providing engineering data through October of 1998. Given the timing of this latest submission of data to FRA, approximately ten-months after the close of the public comment period on the NPRM, FRA has not had the opportunity to fully evaluate the information provided by Talgo for purposes of this rule.

FRA appreciates Talgo's recent undertakings to conform any future trainsets (beyond the five trainsets noted earlier) built for North American service to the 800,000-pound static end strength requirement and any other applicable requirements in this rule. FRA will be pleased to work with Talgo and members of the Working Group in Phase II of the rulemaking to determine whether different performance-based regulations are appropriate. In the interim, FRA has provided a special approval process in § 238.201 for considering whether the new generation of Talgo equipment and any other passenger equipment of special construction provide an equivalent level of safety with the Tier I standards (other than the static end strength requirements) contained in the final rule. See the discussion in the section-by-section analysis of § 238.201 for an explanation of the special approval process.

E. System Safety

FRA believes that passenger railroads should carefully evaluate their operations with a view toward enhancing the safety of those operations. The importance of formal safety planning has been recognized in Emergency Order No. 20 (61 FR 6880; Feb. 22, 1996) and the rule on passenger train emergency preparedness (63 FR 24630; May 4, 1998). In furtherance of safety planning, the 1997 NPRM contained a set of system safety requirements to be applied to all intercity passenger and commuter rail equipment. See 62 FR 49760. FRA intended that each individual passenger railroad be required to develop a system safety plan and a system safety program tailored to its specific operation, including train speed. FRA explained, however, that the Working Group did not reach consensus on system safety requirements for Tier I equipment; whereas the Tier II Subgroup did reach full consensus on system safety program requirements for Tier II equipment. Strong support did exist among Working Group members to apply formal system safety planning to Tier I equipment, yet views differed as to whether system safety planning should be required by law.

In particular, the 1997 NPRM noted that APTA objected to FRA issuing any regulations governing system safety plans because commuter railroads have voluntarily agreed to adopt such safety plans. 62 FR 49734. FRA also explained its understanding that APTA's system safety approach will be more comprehensive than what FRA proposed and address each commuter railroad's system more as an integrated whole, not focused principally on rail equipment. See 62 FR 49734. FRA therefore invited comment on APTA's suggestion that commuter railroads be allowed to regulate themselves in this area; whether FRA should mandate the contents of system safety plans; whether the areas FRA proposed to require railroads to address were appropriate; whether additional areas should be added; and to what extent FRA should propose to enforce portions of the system safety plans. FRA further asked whether the rule should require that system safety plans be comprehensive and address the entire railroad system in which the equipment operates, as well as whether the emergency preparedness planning requirements contained in the passenger train emergency preparedness rulemaking be expressly integrated with the system safety planning requirements contained in this part. *Id.* at 49733–4.

In commenting on the rulemaking, APTA believed FRA's approach to system safety short-sighted in that it would apply only to the equipment component of the commuter railroad system and therefore ignore track, signal system, other infrastructure, and operating practices components. Further, APTA questioned FRA's general focus in the system safety plan (on fire safety; software safety; inspection, testing and maintenance; training; and new equipment) prior to having a railroad identify its major safety risks through its individual system level analysis. APTA stated that it supports a true system safety approach that allows each railroad to determine its own major safety risks and addresses all the components of the passenger rail system—not just the equipment component.

As an alternative to Federal regulation, APTA proposed a system safety program based on system safety plans—developed using MIL–STD–882C as a guide—that would be submitted by its individual member railroad properties and audited by APTA. APTA explained it would invite FRA to observe the audits and the follow-up actions taken by the commuter railroads in response to the audits. APTA requested that FRA hold Federal requirements for commuter railroad system safety plans in abeyance for a 3-year probationary period—corresponding to one complete audit cycle—while FRA observes and evaluates the program.

Amtrak commented that it supports APTA's position on system safety for both Tier I and Tier II equipment. Amtrak believed it appropriate for FRA to start with a voluntary system safety approach and then, based on actual experience, follow up with specific regulations in the future. Amtrak believed FRA needs to allow the industry the time to establish the

culture and process that allows system safety to function without creating an unwarranted bureaucratic burden.

In its comments on the 1997 NPRM, Metra agreed with the value of a system safety plan, but believed that such plans should not be regulated. Metra recommended the rule contain only a top-level system safety plan requirement for railroads to identify the most serious safety risks within their specific operations, and then allow each railroad to create its own programs to reduce those risks. Metra explained that a railroad's system safety plan should project beyond current practice to continuously improve that practice and that Federal enforcement of such a plan would continually find violations because current practice would not reflect the ideals set forth in the plan. Metra believed that FRA regulation would make a system safety plan a useless tool for improving safety, as the plan would be limited to mimicking Federal regulation and describing current practice. In addition, Metra noted that a system safety plan is distinct from a document that describes current practice for routine and regulated activities. Metra proposed that this document, a safety policy, reference all current-practice safety-related procedures and require railroads to adhere to them.

Bombardier commented that the 1997 NPRM does not provide the latitude for each railroad to tailor or customize its system safety plan to its individual operations and needs. Further, Bombardier believed that the NPRM confuses the requirements for the railroad's system safety plan with those required for equipment acquisition. If FRA insists that the rule contain a requirement for a system safety plan, according to Bombardier, it should be limited to requiring each railroad to develop its own plan based on MIL-STD–882C or APTA's Manual for the Development of a System Safety Plan for Commuter Railroads. Separately, the rule should require a system safety plan specifically addressing equipment procurement.

The BRC commented that FRA must mandate the contents of system safety plans to ensure that vital topics are included in such plans. Further, the BRC believed FRA must have the power to enforce compliance with system safety plans. Otherwise, the BRC believed the plans themselves would amount to little more than suggested operating practices. The BRC also believed that FRA must review each railroad's system safety plan and approve it only if it complies with Federal regulations. Similarly, the UTU commented that the 1997 NPRM's provisions on system safety plans is the most important section of the rule. The UTU believed FRA should continue to treat it as such and not allow it to be weakened.

The NTSB commented that it supports FRA mandating the contents of system safety plans for minimal consistency and oversight, rather than allowing the railroads to regulate themselves in this area, so that important safety elements are consistently included in each safety plan. The NTSB believed that the system safety plans should be comprehensive and address the entire railroad system in which the passenger equipment operates. The NTSB observed that if the industry does not have a comprehensive system safety plan, it may not be able to identify, track, monitor, or rectify situations that can lead to unsafe conditions. Further, the NTSB remarked that system safety should be a continuous, iterative process that has a built-in feedback mechanism and should be used throughout the program's life cycle to arrive at the best plan possible.

The NTSB noted that it has made safety recommendations urging FRA to include specific safety requirements in a system safety plan. It urged FRA to incorporate the following recommendations into FRA's general requirements for system safety plans:

> Require carriers to train employees in emergency procedures to be used after an accident, to establish priorities for emergency action, and to conduct accident simulation to test the effectiveness of the program, inviting civic emergency personnel participation. (R–76–29)
>
> Develop and validate through simulated disaster exercises a model emergency response plan for the guidance of the railroad industry in formulating individual plans to be utilized by their train crewmembers in the event of an emergency. (R–80–6)

In this regard, FRA did issue final regulations governing the preparation, adoption, and implementation of emergency preparedness plans by railroads connected with the operation of passenger trains, in the passenger train emergency preparedness rulemaking. *See* 63 FR 24630, May 4, 1998. That rule specifically requires emergency preparedness plans to address such subjects as communication, employee training and qualification, joint operations, tunnel safety, liaison with emergency responders, on-board emergency equipment, and passenger safety information. The plan adopted by each affected railroad is also subject to formal review and approval by FRA.

FRA believes the approach taken in the emergency preparedness rulemaking in requiring railroads to adopt a safety plan addressing specific topics is more appropriate than imposing a general requirement for railroads to adopt a comprehensive system safety plan. FRA believes this is consistent with the view of the commenters to mandate the contents of safety program plans for minimal consistency and oversight, so that important safety elements are included in each safety plan. At the same time, focusing the safety planning requirements and streamlining the rule will facilitate the regulated community's understanding of the rule's requirements and thereby aid in its compliance. As further specified, the final rule will require that each railroad adopt safety program plans addressing:

- Fire safety;
- Employee training and qualifications;
- Equipment inspection, testing, and maintenance;
- Pre-revenue service acceptance testing of equipment; and
- Train hardware and software safety.

In addition, more particular safety planning requirements are imposed on Tier II passenger equipment, as discussed below, reflecting both the greater risks to safety from operating the equipment at such high speeds and the importance of advanced planning in order to meet new safety challenges.

As FRA recognized in the 1997 NPRM, FRA's proposed approach to system safety focused principally on rail passenger equipment. This was not a pure system safety approach, inasmuch as FRA did not focus on safety planning for others elements of the railroad infrastructure such as the track and signal system, or for a host of items including platform safety, security and trespasser prevention.

FRA will closely monitor Tier I railroad operations in their development and adherence to voluntary, comprehensive system safety plans. FRA has already established a liaison relationship with APTA and has already begun participating in system safety plan audits on commuter railroads. FRA is using this involvement to enrich FRA's Safety Assurance and Compliance Program (SACP) efforts on these railroads—which, unlike the triennial audit process for system safety plans, is a continuous activity with frequent on-property involvement by FRA safety professionals. FRA will reconsider its decision not to impose a general requirement for system safety plans on Tier I railroad operations if the need to do so arises. FRA expects that

Tier I railroad operations will be able to integrate the specific safety planning requirements contained in this final rule into their own system safety plans, in the same way the railroads will incorporate into their plans the emergency planning requirements contained in 49 CFR part 239.

FRA is retaining more extensive safety planning requirements for Tier II railroad operations. These requirements are directed at ensuring the safety of the equipment in its operating environment and that the introduction of novel technology is thoroughly analyzed prior to procurement of the equipment. Tier II railroad operations will be operations with new characteristics that require special attention and have heightened safety risks due to the speed of the equipment. In particular, each railroad must a have safety program plan for the operation of its Tier II passenger equipment prior to placing the equipment into revenue service. In addition, each railroad must have a safety program plan for each procurement of Tier II passenger equipment or major upgrade or introduction of new technology in Tier II passenger equipment. The railroad must also receive FRA approval of a pre-revenue service acceptance testing plan, as well as FRA approval prior to placing such new or modified equipment into revenue service.

In general, however, the final rule does not require that FRA approve a railroad's safety plans required under the rule. As noted, FRA believes it best to focus its resources on Tier II passenger equipment operations due to their special circumstances. Further, FRA approval may not be necessary when, by operation of the rule, each railroad must independently comply with specific safety planning requirements or face sanction from FRA. Under 49 CFR § 238.11 of the final rule, any person who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty.

F. Side Exit Doors on Passenger Cars

In the 1997 NPRM, FRA generally proposed that new passenger cars have a minimum of four exterior side doors—or the functional equivalent of four such doors—each door permitting at least one 95th-percentile male to pass through at a single time. *See* 62 FR 49807 (§ 238.237), and 62 FR 49820 (§ 238.441). Exterior side doors are the primary means of egress from a passenger train, yet there is no Federal requirement that a passenger car be equipped with such doors. FRA does recognize that in an emergency passengers would generally be able to move through a passenger car's end doors to seek refuge in adjacent cars. In fact, it is safer for passengers to remain on a train unless doing so in itself risks their safety, because of hazards along the railroad right-of-way such as electrified rails and other trains. However, the tragic September 22, 1993 Amtrak train derailment near Mobile, Alabama, and the February 16, 1996 collision involving MARC and Amtrak passenger trains near Silver Spring, Maryland, show that in a life-threatening situation passengers have no alternative but to exit the train. All of the 42 passenger fatalities in the Mobile, Alabama train derailment resulted from asphyxia due to drowning (NTSB Railroad-Marine Accident Report 94/01), and the deaths of at least eight of the eleven persons killed in the Silver Spring, Maryland train collision resulted from the fire that ensued (NTSB Railroad Accident Report (RAR) 97/02). FRA is not suggesting that the cars involved in those accidents lacked a sufficient number of emergency exits; nevertheless, these are examples of instances where passengers have died because they could not leave the train. (However, the NTSB did note in its investigation report of the Silver Spring, Maryland train collision that "[e]xcept for those passengers who died of blunt trauma injuries, others may have survived the accident, albeit with thermal injuries, had proper and immediate egress from the car been available." *Id.* at page 63. The NTSB explained in its explicit findings on the collision that "the emergency egress of passengers was impeded because the passenger cars lacked readily accessible and identifiable quick-release mechanisms for the exterior doors, removable windows or kick panels in the side doors, and adequate emergency instruction signage." *Id.* at 73.)

So that each passenger car has sufficient doorway openings to allow passengers and crewmembers to exit quickly in a life-threatening situation, FRA proposed requiring that passenger cars be equipped with side doors. Exiting a passenger train through a functioning emergency window exit is slower than exiting a train through a functioning door, and presents a risk of non-fatal injury. FRA made clear in the 1997 NPRM that the proposed side door requirement was not a recommendation of the Working Group, although FRA believed such a requirement necessary at least as an interim measure. *See* 62 FR 49770. FRA also recognized that existing designs of passenger cars do not always provide for four side doors, and, in fact, the proposed requirement did not specifically require that passenger cars have four side doors. For instance, the requirement would have been met if a passenger car had two double-wide doors that permit two 95th-percentile males to pass through each such door at the same time—the functional equivalent of four side doors having openings of the same size in the aggregate. FRA invited comments concerning the extent to which existing designs of passenger cars could not comply with the proposed requirement, noting that modifications to the proposal may be necessary based on the information supplied. Further, as a long-term approach, FRA explained that it is investigating an emergency evacuation performance requirement similar to that used in commercial aviation where a sufficient number of emergency exits must be provided to evacuate the maximum passenger load in a specified time for various types of emergency situations.

In its comments on the 1997 NPRM, APTA stated that the proposed requirement would eliminate certain types of cars as well as certain desirable car design safety features. Specifically, Amtrak would not be able to procure Viewliner cars and NJT would not be able to increase the number of Comet IV cab cars with extra structural protection for train operators, according to APTA. APTA recommended that the rule text be modified to include passenger car end doors in the calculation of the required number of door exits. APTA believed this would encourage structural changes that involve the elimination of a side door to provide additional protection to train operators and allow Amtrak to continue its Viewliner cars in service.

Amtrak, in commenting on the proposal, expressed particular concern that the proposed requirement would prevent the future construction of its Bi-Level Superliner equipment in a configuration that maximizes the equipment's economic performance. Amtrak noted that its current policy calls for equipping every window in such equipment with at least one emergency pane, and that the proposed requirement would not take that into consideration. Amtrak supported APTA's recommended modification to the rule text.

The NARP also questioned the proposed side exterior door requirement for passenger cars. The NARP noted that the most common way to exit a car in an emergency is through the car's end doors, and it suggested that emergency window exits are probably more reliable than additional doors, believing the

doors are more likely to be rendered inoperable. The NARP stated that research should focus on the relationship between a car's seating capacity and layout and its emergency-exit capacity. The NARP opposed requiring four doors on a 44-foot Talgo car, and saw little benefit from adding additional doors to a Superliner dining car without a costly stairwell installation. The NARP asserted that a requirement for four side doors may be economically fatal for a single-level dining car, and advised instead that one side door may be provided in the hallway opposite the kitchen and a second side door placed in the kitchen.

In commenting on the proposal, WDOT believed it not appropriate to require four side doors on a 44-foot Talgo passenger car, which is approximately half the length of conventional passenger cars. WDOT stated that a Talgo passenger car has two exterior doors for a maximum of 36 people in each car, while an Amtrak Horizon coach has four exterior doors and seats 72 passengers. WDOT maintained that the rule should reflect these differences or provide clear, concise performance-based standards in the alternative. In this regard, WDOT found the term "functional equivalent" as used in the rule to be vague and in need of better definition. Further, WDOT commented that, traditionally, dining and bistro cars have not had exterior side doors; and requiring such doors in these cars would significantly decrease the amount of available dining space, decrease revenue-generating space, and add substantial costs. WDOT recommended FRA remove dining and bistro cars from any exterior side door requirement as it would decrease the amount of available dining space and thereby reduce passenger convenience, comfort and satisfaction. Talgo similarly commented that the proposed requirement should be modified to state that the functional equivalent of four side doors in a car of conventional length is two side doors in a car of half the length, and that dining and bistro cars be exempted from any requirement.

In response to the proposal in the NPRM, Bombardier recommended that the wording of the rule be changed to require that each passenger car have a minimum of two side doors. Bombardier noted that on Amtrak's high-speed trainsets (HST), the passenger cars that will be positioned next to the power cars are equipped with only two exterior side doors, both of which are located on the end nearest to the power car. In the event of an evacuation, Bombardier explained that passengers could exit through those side doors as well as through the door at the opposite end of the car. Bombardier believed the use of such end doors should be considered in determining the time needed to evacuate a passenger car, and it noted in this regard that intercity passenger cars generally carry fewer passengers than commuter cars.

Based on the comments received, FRA has decided to modify the requirement for exterior side doors on Tier I passenger cars ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, and for any Tier II passenger car placed in service. The final rule requires that each such passenger car have a minimum of two exterior side doors, and each door must have a minimum clear opening of 30 inches horizontally by 74 inches vertically. Since the minimum number of required side doors has been reduced from that proposed in the NPRM, this provision should not hinder railroads from removing the locomotive engineer's exterior side door in cab car and MU locomotive control compartments for purposes of adding to the structural integrity of the equipment. As the BLE raised in its comments on the rule, removing this side door allows for a continuous side sill structure along the control compartment, thereby enhancing the compartment's structural integrity and reducing the risk the compartment will be crushed in a corner or side impact. A dining car or other food service car is subject to the side door requirement as a passenger car under this rule, since FRA believes that all passenger cars must have exterior side doorway openings to allow for passenger and crew escape in a life-threatening situation, and also permit emergency rescue access.

Unlike the proposed rule, FRA has specified the dimensions of the doorway opening in inches rather than retain the language referencing a 95th-percentile adult male. This modification clarifies the rule for the regulated community in that what constituted a 95th-percentile adult male was originally not defined. FRA believes that a doorway with a minimum clear opening of 30 inches horizontally by 74 inches vertically will provide passage for a large, fully-clothed person and accommodate emergency response personnel equipped with fire and rescue gear. For instance, see the discussion below of § 238.113 (Emergency window exits) for detail on the sizes of adult backboards used by emergency responders to evacuate injured persons. FRA has specified the vertical dimension of 74 inches based on the height of the 95th-percentile adult male (72.8 inches) stated in Table 2 of Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults," June 1965. (A copy of this document has been placed in the public docket for this rulemaking.) The stated height of 72.8 inches was recorded for adult males not wearing shoes, and FRA has adjusted for this. FRA did not find this Public Health Service Publication that useful for purposes of specifying a horizontal dimension of the doorway as the stated body dimensions were, in effect, recorded without clothing (see page 5)—and of course did not address the size of equipment carried by emergency response personnel. FRA notes that the Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway width clearance (See 49 CFR part 38). These ADA requirements apply by their own force independent of the requirements of this rule.

Further, unlike the proposed rule, the final rule no longer provides that a passenger car may have the functional equivalent of the specified number of side doors. Each passenger car must have at least two separate, exterior side doorway openings. This will increase the likelihood that at least one of a passenger car's side doorway openings will allow passage in the event a train collision or derailment results in either, or both, structural damage to—or blockage of—the door. In this regard, railroads should consider where the passenger car side doors are located so as to facilitate passenger and crew escape in a life-threatening situation.

FRA reemphasizes that this requirement is only an interim measure that will prevent passenger cars from being introduced into service without side exterior doors. In Phase II of the rulemaking, FRA will focus on formulating a systems approach to emergency egress that provides for a sufficient number of emergency exits to evacuate the maximum passenger car load in a specified time for various types of emergency situations. FRA will evaluate with the Working Group whether APTA's recommended approach to emergency egress under development in APTA's PRESS Task Force should be incorporated into the Phase II rulemaking.

G. Fuel Tank Standards

Locomotive diesel fuel tanks are vulnerable to damage from collisions, derailments, and debris on the roadbed due to their location on the underframe and between the trucks of locomotives. Damage to the tank frequently results in spilled fuel, creating the safety problem

of an increased risk of fire and the environmental problem of cleanup and restoration of the spill site. Although 49 CFR 229.71 does require a minimum clearance of 2.5 inches between the top of the rail and the lowest point on a part or appliance of a locomotive, such as a fuel tank, FRA regulations do not address the safety of fuel tanks in particular.

In 1992, the NTSB issued a report identifying concerns regarding safety problems caused by diesel fuel spills from ruptured or punctured locomotive fuel tanks. Entitled "Locomotive Fuel Tank Integrity Safety Study," the NTSB report cited in particular a collision involving an Amtrak train and an MBTA commuter train on December 12, 1990, as both trains were entering a station in Boston, Massachusetts. (NTSB Safety Study-92/04.) Fuel spilled from a tank which had separated from an Amtrak locomotive during the collision. The fuel ignited. Smoke and fumes from the burning diesel fuel filled the tunnel, increasing the hazard level in the post-crash phase of the accident, and hindering emergency response activity. As a result of the safety study, the NTSB made several safety recommendations to FRA, including in particular that FRA:

> Conduct, in conjunction with the Association of American Railroads, General Electric, and the Electro-Motive Division of General Motors, research to determine if the locomotive fuel tank can be improved to withstand forces encountered in the more severe locomotive derailment accidents or if fuel containment can be improved to reduce the rate of fuel leakage and fuel ignition. Consideration should be given to crash or simulated testing and evaluation of recent and proposed design modifications to the locomotive fuel tank, including increasing the structural strength of end and side wall plates, raising the tank higher above the rail, and using internal tank bladders and foam inserts. [Class II, Priority Action) (R–92–10)
>
> Establish, if warranted, minimum performance standards for locomotive fuel tanks based on the research called for in recommendation R–92–10. (Class III, Longer Term Action) (R–92–11)

The NTSB reiterated Safety Recommendation R–92–10 in a letter to FRA dated August 28, 1997, conveying the NTSB's final safety recommendations arising from the February 16, 1996, collision between a MARC commuter train and an Amtrak passenger train. During the collision, the fuel tank on the lead Amtrak locomotive ruptured catastrophically. The fuel sprayed into the exposed interior of the MARC cab control car and ignited, engulfing the car. (Letter at 12.)

As explained in FRA's report to Congress on locomotive crashworthiness and working conditions, FRA believes that fuel tank design has a direct impact on safety. Minimum performance standards for locomotive fuel tanks should be included in Federal safety regulations. Accordingly, FRA proposed in the 1997 NPRM that AAR Recommended Practice No. 506 (RP–506), *Performance Requirements for Diesel-Electric Locomotive Fuel Tanks,* be incorporated into the rule as the external fuel tank requirements for Tier I passenger locomotives. FRA believes that RP–506 represents a good, interim safety standard for Tier I passenger locomotives. In the final rule, FRA has restated the requirements of RP–506 as Appendix D to part 238, as explained below, and has thereby incorporated it into the final rule.

FRA does note that further study may yield additional safety improvements for locomotive fuel tank design, and in September of 1997 FRA convened a Locomotive Crashworthiness Working Group of the Railroad Safety Advisory Committee (RSAC) to develop standards regarding a broad range of crashworthiness issues for both passenger and freight locomotives, including fuel tanks. Freight locomotive fuel tanks can cause a risk to passengers in the event of a train-to-train collision involving a passenger and a freight train. Therefore, in addition to the economy that can be achieved from standard fuel tank design requirements for the entire industry, industry-wide design requirements benefit both public and employee safety. Based on currently available information through the Locomotive Crashworthiness Working Group, it appears that locomotives built with AAR RP–506-compliant fuel tanks are performing well in derailments and highway-rail crossing collisions.

In its comments on the proposed rule, the NTSB agreed that external fuel tanks on Tier I locomotives should incorporate at a minimum, and on an interim basis, RP–506. Yet, the NTSB believed that more demanding safety standards for passenger locomotives be included in the permanent Tier I fuel tank regulations, specifically: higher ground clearance, compartmentalization, and a bottom skid plate. The NTSB noted that the advantages of higher fuel tank ground clearance were shown in Amtrak derailments in Kingman, Arizona, and Garden City, Georgia. According to the NTSB, investigation of both accidents revealed that essentially no fuel loss occurred in the involved locomotive units (GE Models P40 and P42), despite a substantial accumulation of debris beneath the fuel tanks that may have otherwise damaged current, conventional frame-suspended fuel tanks. The NTSB attributed the maintenance of fuel tank integrity to higher than typical fuel tank ground clearance, not found in conventionally designed, frame-suspended fuel tanks. Accordingly, the NTSB specifically recommended that fuel tank regulations should require higher ground clearance for both Tier I and Tier II operations. In light of the strong potential safety benefits associated with higher locomotive fuel tank ground clearance, FRA will carefully consider with the Working Group how best to implement the NTSB's recommendation in Phase II of this rulemaking.

In addition, FRA invited comments whether the proposed rule should require that locomotive fuel tanks be compartmentalized. The Working Group specifically discussed requiring whether the interior of fuel tanks be divided into a minimum of four separate compartments so that a penetration in the exterior skin of any one compartment results in loss of fuel only from that compartment. The Working Group recommended that such a requirement be addressed in the second phase of the rulemaking, to allow for additional research to remedy fuel feeding disruptions that may result from the compartmentalization of fuel tanks. Commenters were therefore requested to provide the results of specific research and operating experience showing how compartmentalization can be practically accomplished. Commenters were also asked to explain why the issue of compartmentalization should or should not be addressed in the final rule of this first phase of the rulemaking.

The NTSB commented that it supported continued research for fuel tank compartmentalization to remedy fuel loss during derailments. It stated that compartmentalization is required in aviation applications, where fuel tanks within the airframe contour must be able to resist rupture and retain fuel under inertial forces prescribed for emergency landing conditions (citing 14 CFR 25.963). Therefore, research should be conducted to determine if similar successes can be attained in railroad application, according to the NTSB. The BLE also commented that it supports requirements for compartmentalized fuel tanks on all passenger locomotives. Noting that diesel fires create devastating results in passenger train accidents, the BLE believed every effort should be made to avoid them, including using the most advanced technology possible. Further, APTA commented that it believes fuel tank compartmentalization has the potential to reduce the amount of fuel

spilled in a railroad accident; recommended that FRA consider requiring compartmentalized fuel tanks on new locomotives if the technical difficulties resulting in interruptions in fuel flow are resolved; and suggested that FRA make a priority to resolve these technical difficulties. In accordance with these comments, FRA will carefully consider with the Working Group in Phase II of the rulemaking a requirement to compartmentalize fuel tanks on new locomotives, drawing upon research conducted and experience gained in the interim through the Locomotive Crashworthiness Working Group and the APTA PRESS Task Force.

H. Train Interior Safety

Based on previous research results, the interior passenger protection requirements for Tier I and II passenger equipment rely on "compartmentalization" as a passenger protection strategy. Such a strategy has the advantages of being passive, *i.e.*, requiring no action to be taken on the part of the occupants, of being effective for a range of occupant sizes, and potentially being effective in a wide range of interior configurations. Research results indicate that during a collision the interior environment of a passenger coach car is substantially less hostile than the interiors of automobiles and aircraft. Owing to this lower hostility in a collision environment, the interior of a typical passenger coach car can provide a level of protection to passengers without active restraints at least as effective in preventing fatality as that protection afforded to automobile and transport aircraft passengers with active restraints. See the discussion on train interior safety in the NPRM for more detail. 62 FR 49745–49749.

Conclusions from the research previously conducted on passenger protection in train collisions show that lap belts and shoulder restraints, if used, provide the highest level of occupant protection of those protection strategies studied—greater than the level of protection afforded by compartmentalization. However, as noted in the NPRM, FRA believes that more research is necessary to determine the feasibility and effectiveness of these active restraints, as well as the impact on seat design and strength necessary to support the loads associated with use of the restraints. In this regard, FRA requested information and comment from interested parties whether there is any existing research or experience which would justify active seat restraints in this phase of the rulemaking. See 62 FR 49745.

In comments on the NPRM, Simula Technologies, Inc., (Simula) stated that there may be a potential for a higher level of occupant protection offered by passive or active restraints than by compartmentalization. Simula noted that cost effectiveness considerations differ when considering the application of occupant protection strategies to a train crew as compared to passengers. For instance, it believed that the relatively high expense of passive restraints may be justified for one or two crewmembers in a particularly severe environment—for instance, a locomotive cab. Simula agreed with FRA that more research is needed to determine the most cost effective means of providing occupant safety improvements.

APTA, in its comments on the NPRM, believed that FRA has taken the correct approach in not mandating active seat restraints in this stage of the rulemaking. APTA found accurate the description of the physics of passenger motion during a collision which was contained in the preamble of the NPRM. APTA noted that active seat restraints provide the most benefit in high passenger deceleration situations, such as in automobile collisions; whereas, in the case of the low decelerations of passenger train collisions, other types of protection measures such as compartmentalization to minimize the distance a passenger travels before striking an interior surface and padding of interior surfaces can be as effective as active seat restraints in protecting passengers from secondary collisions.

In its comments on the NPRM, the BRC stated that, ideally, passenger equipment should have seat belts or other restraints to keep occupants from striking seats from behind or striking other interior surfaces and occupants. The BRC believed this to be a true cause of serious injury and death during rapid decelerations in collisions and derailments. The BRC further commented that a seat must be strong enough to hold an occupant utilizing such restraints and yet resist the force(s) of other unrestrained occupants striking the seat. In addition, a member of the public commented that Amtrak should provide its passengers with lap belts and shoulder harnesses, noting that they can reduce injuries to all occupants when used.

FRA has continued to pursue research into implementing seat belts and shoulder restraints in intercity and commuter passenger equipment. The purpose of this research is to develop the information required by FRA to determine if occupant restraints should be required in future regulations. This research is being conducted in three steps: preliminary design studies; design development; and engineering modeling, construction, and testing. The first step of the research has been completed. Principal conclusions from the research to date are that an existing inter-city passenger coach seat can be modified to accept lap and shoulder belts. In particular, for Amtrak's traditional seat design, appropriate modification of the connections between the seat and floor, and between the seat pan and seat back, allow it to support the loads associated with two restrained 95th-percentile adult males occupying the seats as well as the loads associated with being struck from behind by two 95th-percentile adult males. Such seats can be designed to compartmentalize safely an unrestrained single 5th-percentile adult female striking the seat from behind.

Existing three-position commuter seat designs cannot be modified to accept lap and shoulder belts. The additional loads associated with the third restrained and the third unrestrained occupant cause multiple structural failures for existing three-position commuter seat designs—these designs simply fold up under the load. In order to meet weight requirements, advanced structural materials and fabrication techniques are likely to be required to develop a three-position commuter seat design which can support the loads associated with three restrained 95th-percentile adult males in the seats and the loads associated with being struck from behind the seats by three 95th-percentile adult males.

For the intercity passenger coach seat, FRA currently plans to complete work on the details of the necessary modifications to Amtrak's traditional seat design, modify accordingly four to six pairs of seats for testing, and then dynamically sled test these seats. For the commuter seat, a study is planned to develop an engineering model design of a three-position commuter car passenger seat which incorporates lap and shoulder belts. Composite structures and advanced manufacturing techniques will be considered in this study. Principal design considerations include the need to address secondary collision loads, as well as manufacturing and maintenance costs, weight, and durability.

In the second phase of the rulemaking, FRA and the Working Group will reevaluate the feasibility and effectiveness of requiring active restraints such as lap belts and shoulder harnesses in passenger equipment, based on the results of the ongoing research.

I. Fire Safety

In 1984, FRA published guidelines recommending test methods and performance criteria for the flammability, smoke emission, and fire endurance characteristics for categories and functions of materials to be used in the construction of new or rebuilt rail passenger equipment. *See* 49 FR 33076, Aug. 20, 1984; 49 FR 44582, Nov. 7, 1984. The guidelines were originally developed by the Volpe Center for the Urban Mass Transit Administration (UMTA now FTA) of DOT in the late 1970s, and were intended for application to rail transit vehicles. *See* 47 FR 53559, Nov. 26, 1982; 49 FR 32482, Aug. 14, 1984. FRA recommended applying the guidelines to intercity and commuter rail cars, due to the similarity of use for many of the materials in these cars.

The intent of the guidelines is to prevent fire ignition and to maximize the time available for passenger evacuation if fire does occur. FRA later reissued the guidelines in 1989 to update the recommended test methods. *See* 54 FR 1837, Jan. 17, 1989. Test methods cited in the FRA guidelines include those of the American Society for Testing and Materials (ASTM) and the Federal Aviation Administration (FAA). In particular, the ASTM and FAA testing methods provide a useful screening device to identify materials that are especially hazardous.

FRA sought comments in the ANPRM on the need for more thorough guidelines or Federal regulations concerning fire safety. *See* 61 FR 30696. FRA noted that fire resistance, detection, and suppression technologies have all advanced since the guidelines were first published. In addition, FRA explained that a trend toward a systems approach to fire safety is evident in most countries with modern rail systems. In response, the National Fire Protection Association (NFPA) commented that perhaps more thorough guidelines are needed, or at least should be evaluated. Fire Cause Analysis also responded that, at a minimum, more in depth guidelines based on current system safety procedures and available fire safety engineering techniques are needed. The commenter noted in particular that Federal maintenance standards related to fire safety are necessary to ensure that materials carefully qualified for use in rail passenger vehicles because of their fire safety characteristics are not replaced with either substandard materials or materials whose origin and fire performance cannot be determined.

The 1997 NPRM addressed fire safety by proposing to make FRA's fire safety guidelines mandatory for the construction of new passenger equipment as well as the refurbishing of existing equipment. *See* 62 FR 49803. As explained below in the discussion of this final rule, FRA has simplified and revised the table of tests and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs. In addition, FRA has clarified in the final rule the application of the required tests and performance criteria. As proposed in the NPRM, the final rule also furthers fire safety through a fire protection plan and program to be carried out by each operating railroad, which will include conducting a fire safety analysis of existing passenger equipment and taking appropriate action to reduce the risk of personal injuries.

As noted in the NPRM, the National Institute of Standards and Technology (NIST) of the United States Department of Commerce is conducting research under the direction of FRA and the Volpe Center involving the fire safety of rail passenger vehicles. The NIST project is investigating the use of alternative fire testing methods and computer hazard analysis models to identify and evaluate approaches to passenger train fire safety. The evaluation is examining the effects and tradeoffs of passenger car and system design (including materials), fire detection and suppression systems, and passenger egress time. A peer review committee has been established to provide project guidance and review interim results and reports. The committee includes representatives from FRA, the Volpe Center, the NFPA, builders of rail passenger vehicles, producers of materials, Amtrak and commuter railroads, and testing laboratories.

In the first phase of the NIST project, selected materials which satisfy the testing methods referenced in FRA's fire safety guidelines were evaluated using the ASTM E1354 Cone Calorimeter.[1] The Cone Calorimeter provides a measurement of heat release rate (the amount of energy that a material produces while burning), specimen mass loss, smoke production, and combustion gases. For a given confined space such as a rail car interior, the air temperature and risk of harm to passengers are increased as the heat release rate increases. As a result, even if passengers do not come in direct contact with a fire, they may likely be injured from the high temperatures, high heat fluxes, and large amounts of toxic gases emitted by materials involved in the fire. The results of the Phase I tests showed a strong correlation between the FRA-cited test data and the Cone Calorimeter test data.

Phase I test data were used in the second phase of the NIST project to perform a fire hazard analysis of selected passenger train fire scenarios. Also included in this analysis were data obtained from tests of larger interior components, including seat assemblies, using the ASTM E 1537 Furniture Calorimeter. The analysis employed computer modeling to assess the impact on passenger train fire safety for a range of construction materials and system design. The interim report documenting Phase II is in final preparation by NIST. In the final phase of the project, selected real-scale proof tests using an Amfleet coach rail car and interior assemblies will be performed to verify the small-scale (bench-scale) criteria and hazard analysis studies in actual end use configurations.

Overall, the NIST research effort follows upon FRA-sponsored studies by the National Bureau of Standards in 1984 and NIST in 1993 which noted, among their findings, that the performance of individual components of a rail passenger car in a real-world fire environment may be different from that experienced in bench-scale tests due to vehicle geometry and materials interaction.[2] The results of the NIST research project will help in developing a broad set of performance criteria for materials using the Cone Calorimeter and the Furniture Calorimeter in a context similar to that provided generally in the table of FRA fire safety requirements contained in Appendix B to part 238. In addition, unlike data derived from most test methods referenced in Appendix B, heat release rate and other measurements obtained from the Cone Calorimeter and the Furniture Calorimeter can be used in a fire modeling methodology to evaluate the contribution of materials to the overall fire safety of a passenger train. Although FRA has targeted for consideration in the second phase of the

[1] "Fire Safety of Passenger Trains: Phase I Material Evaluation (Cone Calorimeter)." (DOT/FRA/ORD/–98/01–DOT–VNTSC–FRA–98–2, January, 1999). A copy of the report has also been placed in the public docket of this rulemaking.

[2] "Fire Tests of Amtrak Passenger Rail Vehicle Interiors." (NBS Technical Note 1193, May 1984); "Fire Safety of Passenger Trains: A Review of U.S. and Foreign Approaches." (DOT/FRA/ORD–93/23—DOT–VNTSC–FRA–93–26, December, 1993). The 1993 report is available to the public through the National Technical Information Service, Springfield, VA 22161. A copy of both reports have been placed in the public docket for this rulemaking.

rulemaking a broad set of performance criteria employing the Cone Calorimeter and Furniture Calorimeter for materials used in passenger cars and locomotive cabs, FRA has introduced use of the Cone Calorimeter and Furniture Calorimeter in a limited manner in this final rule as explained below in the discussion of Appendix B to part 238.

FRA notes that the ASTM has developed a standard which describes how to evaluate fire hazard assessment techniques (ASTM E 1546, Guide for the Development of Fire Hazard Assessment Standards). An ASTM group, the E–5.17 Subcommittee on Transportation, is currently completing a document entitled "Standard Guide for Fire Hazard Assessment of Rail Passenger Vehicles." The proposed guide is intended to provide an alternative approach to ensuring an equivalent level of fire safety using a performance-based approach which examines fire scenarios, as well as design considerations, to evaluate the potential fire hazard of a rail transportation vehicle. One of the principal issues related to the proposed guide is that calculation methods are suggested which use models that have not been validated for application to rail cars. In this regard, the results of the NIST fire safety research will be helpful for the ASTM subcommittee, as NIST is using the Hazard I computer model to develop correlations between small-scale tests of materials and full-scale tests of rail cars.

In the NPRM, FRA explained that the NFPA publishes a standard (NFPA 130) covering fire protection requirements for fixed guideway transit systems and for life safety from fire in transit stations, trainways, vehicles, and outdoor maintenance and storage areas. *See* 62 FR 49744–5. (A copy of the 1997 edition of this standard has been placed in the public docket for this rulemaking.) However, this standard has not historically been applied to passenger railroad systems, including those that provide commuter service (NFPA 130 1–1.2). FRA noted that an APTA representative on the Working Group who is a member of the NFPA initiated an NFPA-sponsored task force to revise the scope of NFPA 130 to cover all rail passenger transportation systems, including intercity and commuter rail, and revise other provisions as necessary. The NFPA task force met several times in 1997 and 1998, and submitted recommended revisions to the NFPA 130 Committee in August, 1998. Although the NFPA 130 Committee accepted the task force recommendations in principle, the standard revision approval process will not be complete until late 1999.

In its comments on the NPRM, the NFPA urged FRA to adopt NFPA 130 upon completion of its revision. The NFPA cited the National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, and one of its provisions which requires, in general, that Federal agencies "use technical standards that are developed or adopted by voluntary consensus standards bodies" (Section 12, paragraph (d)(1)). In the second phase of this rulemaking, FRA will consider with the Working Group the incorporation of NFPA 130, as revised, into this rule.

In response to the NPRM, FRA received a number of other comments on the provisions of the rule related to fire safety. Those comments on the proposed fire protection plan and program are noted in particular, below, in the discussion of 49 C.F.R. § 238.103 in the final rule. In regard to the proposed table of tests and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs contained in Appendix B to part 238, Fire Cause Analysis commented on the advisability of making such tests and performance criteria mandatory without considerable and detailed enabling language. Fire Cause Analysis noted in particular that the table of tests and performance criteria in Appendix B contained confusing and overlapping component and function categories for materials; that application of the tests and performance criteria to "small parts" requires special consideration to provide flexibility for car builders; and that the fire performance of electrical wiring and cable was not expressly addressed in the NPRM, although addressed by NFPA 130.

A member of the public commented that he considered FRA's fire safety guidelines good in some but not all respects. The commenter stated in particular that the current acceptance levels of smoke emission are inadequate to protect passengers from toxic levels of smoke; and that permitting glazing and lighting lenses to have a flame spread index of 100 with flaming running and flaming dripping is not justified based on the location of these objects, ease of ignition, and Btu content of polycarbonate. Nonetheless, the commenter recommended adoption of the guidelines into law, noting that some vendors, car builders, and agencies operating rail equipment have not taken the guidelines seriously. Otherwise, the commenter believed that the fire safety guidelines will be discounted.

APTA, in its comments on the NPRM, supported the proposed materials selection criteria for new equipment (as well as the proposed fire safety program for new equipment discussed below). APTA also recommended that FRA consider updating the fire safety standards based on the work of the NFPA 130 task force and the research being conducted by the NIST. The BRC, in its comments on the NPRM, stated that interior materials in passenger equipment must be required to meet strict standards for flammability and smoke emission. The BRC believed that compliance with the current guidelines alone is insufficient for safety, and that additional technology, preventative measures, and fire safety standards must be considered.

In the final rule, FRA has not significantly changed the table of test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs, as contained in Appendix B to part 238. FRA has sought to maintain the current high levels of safety provided by the fire safety guidelines, while developing a more workable framework for their use as a regulation. In fact, as part of the NIST fire safety research, specific input on the 1989 FRA fire safety guidelines was solicited from rail system operators, car builders, and consultants at a workshop held at the NIST Building and Fire Research Lab (BFRL) in July, 1997. (The minutes of that workshop are contained in Follow-Up Workshop Notes.[3]) This input was used to help simplify and revise the table of tests and performance criteria contained in Appendix B. In summary, the specific changes FRA has made to the table in the final rule include:

- Reorganizing table component and function categories;
- Adding a dynamic testing requirement for cushions;
- Adding a new test method for evaluating seat assemblies;
- Providing a test exception and test alternative for small component parts;
- Adding express requirements for wire and cable testing;
- Updating test methods for elastomers;
- Providing an alternative test method for smoke generation;
- Adding express requirements for structural assemblies other than floors; and
- Renumbering and adding notes to the table to reflect the changes.

[3] "Follow-Up Notes: NIST/CFR FRA Project, Meeting/Workshop of 7/23/97." September 15, 1997. Prepared by J. Zicherman. A copy of this document has been placed in the public docket for this rulemaking.

The discussion of Appendix B to part 238, below, provides a detailed explanation of the changes made to the table of test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs.

VI. Inspection and Testing of Brake Systems and Mechanical Components

A. Background Prior to 1997 NPRM

In 1992, Congress amended the Federal rail safety laws by adding certain statutory mandates related to power brake safety. These amendments specifically address the revision of the power brake regulations and state in pertinent part:

> (r) POWER BRAKE SAFETY.—(1) The Secretary shall conduct a review of the Department of Transportation's rules with respect to railroad power brakes, and not later than December 31, 1993, shall revise such rules based on such safety data as may be presented during that review.
> * * * * *

Pub. L. No. 102–365, § 7; codified at 49 U.S.C. 20141, superseding 45 U.S.C. 431(r).

In response to the statutory mandate, various recommendations to improve power brake safety, and due to its own determination that the power brake regulations were in need of revision, FRA published an ANPRM on December 31, 1992, concerning railroad power brake safety. *See* 57 FR 62546. The ANPRM provided background information and presented questions on various subjects related to intercity passenger and commuter train operations, including: training of testing and inspection personnel; electronic braking systems; cleaning, oiling, testing, and stenciling (COT&S) requirements; performance of brake inspections; and high speed passenger train brakes. Following publication of the ANPRM, FRA conducted a series of public workshops. The ANPRM and the public workshops were intended as fact-finding tools to elicit views of those persons outside FRA charged with ensuring compliance with the power brake regulations on a day-to-day basis.

Furthermore, on July 26, 1993, the NTSB made the following recommendation to FRA: "Amend the power brake regulations, 49 Code of Federal Regulations 232.12, to provide appropriate guidelines for inspecting brake equipment on modern passenger cars." (R–93–16). The recommendation arose out of the NTSB's investigation of the December 17, 1991, derailment of an Amtrak passenger train in Palatka, Florida. The derailed equipment struck two homes and blocked a street north of the Palatka station. The derailment resulted in eleven passengers sustaining serious injuries and 41 others receiving minor injuries. In addition, five members of the operating crew and four onboard service personnel received minor injuries. By letter dated September 16, 1993, FRA told the NTSB that it was in the process of reviewing and rewriting the power brake regulations and would consider the NTSB's recommendation during the process.

Based on comments and information received, FRA published a Notice of Proposed Rulemaking in 1994 (1994 NPRM) regarding revision of the power brake regulations. The 1994 NPRM contained specific requirements related to intercity passenger and commuter train operations, including: general design requirements; movement of defective equipment; employee qualifications; inspection and testing of brake systems and mechanical components; single car testing requirements and periodic maintenance; operating requirements; and requirements for the introduction of new train brake system technology. *See* 59 FR 47676, 47722–53, September, 16, 1994. Following publication of the 1994 NPRM, FRA held a series of public hearings in 1994 to allow interested parties the opportunity to comment on specific issues addressed in the 1994 NPRM. Due to the strong objections raised by a large number of commenters, FRA announced by notice published on January 17, 1995, that it would defer action on the 1994 NPRM and permit the submission of additional comments prior to making a determination as to how it would proceed in this matter. *See* 60 FR 3375.

After review of all the comments submitted, FRA determined that in order to limit the number of issues to be examined and developed in any one proceeding it would proceed with the revision of the power brake regulations via three separate processes. In light of the testimony and comments received on the 1994 NPRM, emphasizing the differences between passenger and freight operations and the brake and mechanical equipment utilized by the two, FRA decided to separate passenger equipment power brake and mechanical standards from freight equipment power brake standards.

As passenger equipment power brake and mechanical standards are a logical subset of passenger equipment safety standards (*see* 49 U.S.C. 20133(c)), FRA requested the Passenger Equipment Safety Standards Working Group to assist FRA in developing appropriate power brake and mechanical standards for passenger equipment. The 1997 NPRM, upon which this final rule is based, was developed by FRA in consultation with this Working Group.

In addition, FRA determined that a second NPRM covering freight equipment power brake standards would be developed with the assistance of FRA's RSAC. *See* 61 FR 29164, June 7, 1996. Furthermore, in the interest of public safety and due to statutory as well as internal commitments, FRA determined that it would separate the issues related to two-way end-of-train-telemetry devices from both the passenger and freight issues. FRA convened a public regulatory conference and published a final rule on two-way end-of-train devices on January 2, 1997. *See* 62 FR 278.

Beginning in December of 1995, the Passenger Equipment Safety Standards Working Group adopted the additional task of attempting to develop power brake and mechanical inspection and maintenance standards applicable to intercity passenger and commuter train operations and equipment. The Working Group met on four separate occasions, for a total of ten days of meetings, with a good portion of these meetings being devoted to discussion of power brake and mechanical inspection and maintenance issues. From the outset, a majority of the members, as well as FRA, believed that any requirements developed by the group regarding the inspection and testing of the brake and mechanical equipment should not vary significantly from the current requirements and should be consistent with current industry practice.

FRA's accident/incident data related to intercity passenger and commuter train operations support the assumption that the current practices of these operations in the area of power brake inspection, testing, and maintenance are for the most part sufficient to ensure the safety of the public. Between January 1, 1990 and October 31, 1996, there were only five brake related accidents involving commuter and intercity passenger railroad equipment. No casualties resulted from any of these accidents and the total damage to railroad equipment totaled approximately $650,000, or $96,000 annually. In addition, between January 1, 1995 and October 31, 1996, FRA inspected approximately 13,000 commuter and intercity passenger rail units for compliance with 49 CFR part 232. The defect ratio for these units during this period was approximately 0.8 percent. Furthermore, during this same period FRA inspected approximately 6,300 locomotives for

compliance with 49 CFR part 229. The brake defect ratio for these units was approximately 4.65 percent. Consequently, the defect ratio for brake related defects on locomotives and other passenger equipment during this period was approximately 2.08 percent.

The existing regulations covering the inspection and testing of the braking systems on passenger trains are contained in 49 CFR part 232. The current regulations do provide some requirements relevant to passenger train operations, including: initial terminal inspection and testing, intermediate inspections, running tests, and general maintenance requirements. *See* 49 CFR 232.12, 232.13(a), 232.16, and 232.17. However, most of the existing regulations are written to address freight train operations and do not sufficiently address the unique operating environment of commuter and intercity passenger train operations or the equipment currently being used in those operations. Therefore, it has been necessary for FRA to provide interpretations of some of the current regulations in order to address these unique concerns.

Currently, all non-MU (multiple unit) commuter trains that do not remain connected to a source of compressed air overnight and all MU commuter trains equipped with RT–5 or similar brake systems must receive an initial terminal inspection of the brake system pursuant to § 232.12(c)–(j) prior to the train's first departure on any given calendar day. All non-MU commuter trains that remain connected to a source of compressed air over-night are permitted to receive an initial terminal inspection of the brake system sometime during each 24-hour period in which they are used. Furthermore, all intercity passenger trains must receive an initial terminal inspection of the brake system at the point where they are originally made up and must receive an intermediate inspection in accordance with § 232.12(b) every 1,000 miles.

There are currently no regulations which specifically require the inspection of the mechanical components on passenger equipment. Although the current regulations do not contain any mechanical inspection requirement of passenger equipment, virtually every passenger railroad currently performs some type of daily mechanical inspection on its passenger equipment with highly qualified personnel. For several years Amtrak has been conducting voluntary mechanical safety inspections of passenger train components.

As noted previously, most of the members of the Working Group believed that any requirements developed by the group regarding the inspection, testing, and maintenance of the brake and mechanical equipment should not vary significantly from the current requirements and should be consistent with current industry practice. However, the Working Group was unable to reach consensus on any power brake or mechanical equipment standards, despite the positing of multiple alternatives, use of a facilitator, and the foundation provided by the 1994 NPRM. The Working Group identified and discussed options with which the agency and labor can agree, and others with which FRA and the railroads can agree. However, bridging the gap between those various options proved elusive. Consequently, as the Working Group could not reach any type of consensus on the inspection and testing requirements, it was determined that FRA would address these issues unilaterally, based on the information and discussions provided by the Working Group and the information gathered from the 1994 NPRM.

B. 1997 NPRM on Passenger Safety Equipment Standards

During the Working Group discussions, labor representatives, particularly the BRC, insisted that a comprehensive power brake inspection must be performed prior to a train's first run on a given calendar day. The BRC also believed that it is necessary for the first inspection of the day to determine whether the brake shoes and the disc pads actually apply as intended. The BRC further contended that in order to perform a comprehensive inspection equivalent to an initial terminal inspection the train must be walked or otherwise inspected on a car-to-car basis and that these principal inspections should be performed only by carmen or other qualified mechanical personnel as they are the only employees sufficiently trained to perform the inspections. Rail labor representatives also advocated a daily inspection of all safety-related mechanical components with pass/fail criteria or limits written into the Federal safety standards much like the requirements contained in 49 CFR part 215 addressing freight equipment.

Representatives of intercity passenger and commuter railroads expressed the desire to have the flexibility to conduct comprehensive in-depth inspections of the brake and mechanical system sometime during the day in which the equipment is utilized. These parties argued that safety would be better served by allowing the railroads the flexibility to conduct these inspections on a daily basis as it would allow the railroads to conduct the inspections at locations that are more conducive to permitting a full inspection of the equipment than many of the outlying locations where trains are stationed overnight and where the ability to observe all the equipment may be hampered. It was further contended that, if the railroads are allowed some flexibility in conducting these type of inspections, then the equipment can be moved to a location where a fully qualified mechanical inspector can perform detailed inspections under optimum conditions.

Several parties also pointed out that, with proper maintenance, "tread brake units" and other friction brake components, commonly used in commuter train operations, are highly reliable and that the non-functioning of any individual unit would in no way compromise the overall safety of the train. Furthermore, permitting the inspection of brake components in the middle of the day, rather than at the beginning of the day, involves no greater safety risk to passengers because friction brake systems and their components degrade in performance based largely on use, and nothing short of a continuous brake inspection can guarantee 100-percent performance at all times. Railroad representatives suggested an inspection scheme that would permit an in-depth, comprehensive brake inspection to be performed sometime during the day in which the equipment is used with a brake inspection being performed prior to the first run of the day verifying the continuity of the trainline by performing a set and release on the rear car of the train.

APTA and other passenger railroad representatives strongly maintained that specific inspection criteria or limits related to the mechanical components of passenger equipment were not necessary. During the ongoing meetings of the Working Group, FRA repeatedly requested that railroad representatives provide a recommended list of mechanical components and criteria for their inspection. These representatives consistently responded with very broad requirements basically limited to inspections for obvious and visible defects. Although passenger railroad representatives did not object to the safety principle of a mechanical inspection, they did not want their operations to be bound by a rigid list of components and criteria for the inspection.

Based on consideration of all of the information outlined above, FRA published an NPRM on Passenger Equipment Safety Standards on September 23, 1997. *See* 62 FR 49728.

This NPRM contained specific proposals related to the inspection, testing, and maintenance of both the brake and mechanical components on passenger equipment. The proposal attempted to balance the concerns of rail labor representatives and representatives of intercity and commuter railroads.

1. Proposed Brake System Inspections

In the 1997 NPRM, FRA proposed to abandon the terminology related to the power brake inspection and testing requirements contained in the current regulations, and proposed to identify various classes of inspections based on the duties and type of inspection required. *See* 62 FR 49737, 49774–77, 49810–11. FRA believed that this type of classification system would avoid confusion with the power brake inspection and testing requirements applicable to freight operations and would avoid the connotations historically attached to the current terminology. FRA also believed that this approach was better suited for providing operational flexibility to commuter operations while maintaining the safety provided by the current inspection and testing requirements. Although FRA proposed a change in the terminology used to describe the various power brake inspections and tests, the requirements of the inspections and tests closely tracked the current requirements with some modifications made to address the unique operating environment of, and equipment operated in, commuter and intercity passenger train service. Members of the Working Group appeared receptive to this kind of classification system and discussed various options using some of this terminology. Consequently, FRA proposed four different types of brake inspections, "Class I," "Class IA," "Class II," and "running brake test," that were to be performed by commuter and intercity passenger railroads some time during the operation of their equipment.

In the proposal, FRA also divided passenger train operations into two distinct types for purposes of brake inspections and testing. FRA recognized that there were major differences in the operations of commuter or short-distance intercity passenger trains, and long-distance intercity passenger trains. Commuter and short-distance intercity passenger trains tend to operate for fairly short distances between passenger stations and generally operate in relatively short turn-around service between two terminals several times in any given day. In contrast, long-distance intercity passenger trains tend to operate for long distances, with trips between the beginning terminal and ending terminal taking a day or more and traversing multiple states with relatively long distances between passenger stations. Consequently, FRA proposed the terms "commuter train," "short-distance intercity passenger train," and "long-distance intercity passenger train" in order to identify the inspection and testing requirements associated with each. *See* 62 FR 49737–38, 49774–76, 49810–11. For the most part, commuter and short-distance intercity passenger trains were treated similarly, whereas long-distance intercity passenger trains had slightly different proposed inspection and testing requirements. In addition, FRA proposed slightly different requirements with regard to the movement of defective equipment in long-distance intercity passenger trains (see the discussion below on the "Movement of Equipment with Defective Brakes").

The proposed Class I brake test basically required an inspection similar to an initial terminal inspection as currently described at § 232.12(c)-(j), but was somewhat more extensive and specifically aimed at the types of equipment being used in commuter and intercity passenger train service. *See* 62 FR 49738–39, 49774–76, 49810. The proposed Class I brake test would require an inspection of the application and release of the friction brakes on each side of each car as well as an inspection of the brake shoes, pads, discs, rigging, angle cocks, piston travel, and brake indicators if the equipment is so equipped. The Class I brake test would also require testing of the communication signal system and the emergency braking control devices. In recognition of the advanced technology and various designs used in many of these operations, which make observation of the piston travel virtually impossible, FRA proposed to permit the inspection of the piston travel to be conducted either through direct observation of the clearance between the brake shoe and the wheel or by observation of a brake actuator. Furthermore, FRA proposed to require a brake pipe leakage test only when leakage will affect service performance.

As FRA proposed that Class I brake tests be comprehensive inspections of the braking system, FRA believed that commuter and short-distance intercity passenger train operations should be permitted some flexibility in conducting these inspections. Consequently, FRA proposed that commuter and short-distance intercity passenger train operations perform a Class I brake test sometime during the calendar day in which the equipment is used. FRA believed that the flexibility permitted by the proposed requirement would allow railroads to move equipment to locations that are most conducive to the inspection of the brake equipment and would allow railroads to combine the daily mechanical inspections with the brake inspection for added efficiency.

In the NPRM, FRA recognized the differences between commuter or short-distance intercity operations and long-distance intercity passenger train operations. FRA noted that long-distance intercity passenger trains do not operate in shorter turn around service over the same sections of track on a daily basis for the purpose of transporting passengers from major centers of employment. Instead, these trains tend to operate for extended periods of time, over long distances with greater distances between passenger stations and terminals. Further, these trains may operate well over 1,000 miles in any 24 hour period. Thus, FRA believed that the opportunity for conducting inspections on these trains was somewhat diminished. Therefore, FRA determined that a thorough inspection of the braking system on these types of operations must be conducted prior to the train's departure from an initial starting terminal. Consequently, FRA proposed that a Class I brake inspection be performed on long-distance intercity passenger trains prior to departure from an initial terminal. *See* 62 FR 49810. FRA did not believe there would be any significant burden placed on these operations as the current regulations require that an initial terminal inspection be performed at these locations.

FRA also recognized that these long-distance intercity passenger trains could conceivably travel significant distances if Class I inspections were required only once every 24 hours the equipment is in service as proposed for commuter and short-distance intercity passenger trains. Thus, FRA believed that some outside mileage limit had to be placed on these trains between brake inspections. Under the current regulations a passenger train is permitted to travel no farther than 1,000 miles from its initial terminal, at which point it must receive an intermediate inspection of brakes that includes an application of the brakes and the inspection of the brake rigging to ensure it is properly secured. *See* 49 CFR 232.12(b). However, in recognition of the improved technology used in passenger train brake systems combined with the comprehensive nature of the proposed Class I brake tests and mechanical safety inspections being

performed by highly qualified inspectors, FRA proposed to permit long-distance passenger trains to travel up to 1,500 miles between Class I brake tests. Under FRA's proposal a comprehensive Class I brake test would be performed once every calendar day that the equipment is used or every 1,500 miles, which ever occurred first. *See* 62 FR 49739, 49775, 49810.

FRA also proposed that the brake inspection and testing intervals proposed for long-distance passenger trains apply to all Tier II equipment (i.e., equipment operating at speeds greater than 125 mph but not exceeding 150 mph), regardless of whether it is used in short-or long-distance intercity trains. As FRA's proposal permitted operators of Tier II equipment to develop inspection and testing criteria and procedures, these operations would be required to develop a brake test that is equivalent to a Class I brake test for Tier II equipment. Due to the speeds at which this equipment will be allowed to operate, FRA believed it was a necessity that an equivalent Class I brake test be performed on Tier II equipment before it departs from its initial terminal. Similarly, FRA proposed that the equivalent Class I brake test be performed every calendar day in which Tier II equipment is used or every 1,500 miles, whichever comes first. *See* 62 FR 49739, 49784, 49821.

The proposed Class IA brake test was somewhat less comprehensive than the proposed Class I brake test but included a detailed inspection of the brake system to verify the continuity of the brake system and the proper functioning of the brake valves on each car. A Class IA brake test would be similar to the intermediate brake inspection currently required for freight trains prescribed at § 232.13(d)(1). The proposed Class IA brake test would generally require a walking inspection of the set and release of the brakes on each car; however, the proposal allowed brake indicators to be used to verify the set and release if the railroad determined that operating conditions pose a safety hazard to an inspector walking along the train. The Class IA brake test also required a leakage test if leakage affects service performance, as well as an inspection of: angle cocks; piston travel, if determinable; brake indicators; emergency brake control devices; and communication of brake pipe pressure changes at the rear of train to the controlling locomotive. *See* 62 FR 49738–39, 49776–77, 49810.

FRA proposed that a Class IA brake test would be performed prior to a commuter or short-distance intercity passenger train's first departure on any given day. FRA believed that the proposed Class IA brake was sufficiently detailed to ensure the proper functioning of the brake system yet not so intensive that it would require individuals to perform an inspection for which they are not qualified. Although FRA tended to agree with the position advanced by many labor representatives that some sort of car-to-car inspection must be made of the brake equipment prior to the first run of the day, FRA did not agree that it is necessary to perform a full Class I brake test in order to ensure the proper functioning of the brake equipment in all situations. However, contrary to the position espoused by APTA, FRA believed that something more than just a determination that the brakes on the rear car set and release is necessary.

In addition to the proposed Class I and Class IA brake tests, FRA also proposed a Class II brake test. The proposed Class II brake test would be an inspection intended to verify the continuity of the train brake system and would be similar to the intermediate terminal inspection currently prescribed at § 232.13(a). A Class II brake test basically required a set and release of the brakes on the rear car. The proposed Class II test would be required in those circumstances where minor changes to a train consist occur, such as the change of a control stand, the removal of cars from the consist, the addition of previously tested cars, and the situations in which an operator first takes control of the train. *See* 62 FR 49739, 49777, 49811.

FRA also proposed that a running brake test be conducted as soon as conditions safely permit it to be conducted after a train receives a Class I, Class IA, or Class II brake test. FRA believed that this test should be conducted in accordance with each railroad's operating rules. The proposed "running brake test" requirement was similar to the "running test" requirements currently contained at § 232.16. *See* 62 FR 49740, 49777, 49811.

2. Proposed Mechanical Inspections

In the 1997 NPRM, FRA proposed three types of mechanical inspections, these included: a calendar day exterior and interior inspection, and a periodic inspection. *See* 62 FR 49771–73, 49807–09. The proposed exterior calendar day mechanical inspection for passenger cars and unpowered vehicles used in passenger trains was patterned after a combination of the current calendar day inspection required for locomotives under the Railroad Locomotive Safety Standards and the pre-departure inspection for freight cars under the Railroad Freight Car Safety Standards. *See* 49 CFR 229.21 and 215.13, respectively. FRA proposed that the calendar day mechanical inspection apply to all passenger cars and all unpowered vehicles used in passenger trains (which includes, e.g., not only coaches, MU locomotives, and cab cars but also any other rail rolling equipment used in a passenger train), and that all exterior mechanical inspections be performed by highly qualified personnel. A mechanical safety inspection of freight cars has been a longstanding Federal safety requirement, and FRA believed that the lack of a similar requirement for passenger equipment created a serious void in the current Federal railroad safety standards.

Rail labor representatives advocated a daily inspection of all safety-related mechanical components with pass/fail criteria or limits written into the Federal safety standards much like the requirements contained in 49 CFR part 215, whereas APTA and other passenger railroad representatives on the other hand strongly maintained that specific inspection criteria or limits are not necessary. During the meetings of the Working Group, FRA repeatedly requested that railroad representatives provide a recommended list of mechanical components and criteria for their inspection. These representatives consistently responded with very broad requirements basically limited to inspections for obvious and visible defects. Although passenger railroad representatives did not object to the safety principle of a mechanical inspection, they did not want their operations to be bound by a rigid list of components and criteria for the inspection.

FRA agreed with labor representatives that a specific list of components to be inspected with enforceable inspection or pass/fail criteria needed to be included as part of the proposed Passenger Equipment Safety Standards. In the 1997 NPRM, FRA identified the components that were to be inspected as part of the exterior calendar day mechanical safety inspection and provided measurable inspection criteria for the components. The proposal required the railroad to ascertain that each passenger car, and each unpowered vehicle used in a passenger train conforms with the conditions enumerated in the proposal. The Working Group members generally agreed that the components contained in the proposal represented valid safety-related components that should be frequently inspected by railroads.

However, members of the Working Group had widely different opinions regarding the criteria to be used to inspect the components. Therefore, as FRA was not provided any clear guidance from the Working Group, FRA selected inspection criteria based on the locomotive calendar day inspection and the freight car safety pre-departure inspection required by 49 CFR parts 229 and 215, respectively. FRA believed that passenger equipment should receive an inspection which is at least equivalent to that received by locomotives and freight cars. The components and conditions identified by FRA to be included in the exterior calendar day mechanical inspection included: couplers; suspension system; trucks; side bearings; wheels; jumpers; cable connections; buffer plates; products of combustion; batteries; diaphragms; and secondary brake systems. *See* 62 FR 49807–08.

FRA also proposed that each railroad perform an interior calendar day mechanical inspection by individuals qualified by the railroad to do so. FRA originally contemplated requiring the interior inspections to be performed by highly qualified personnel to track the exterior calendar day mechanical inspection requirements. However, after several discussions with members of the Working Group and several other representatives of passenger railroads, FRA determined that the training and experience typical of a mechanical inspector is not necessary and often does not apply to inspecting interior safety components of passenger equipment. In addition, the most economical way to accomplish the mechanical inspection is to combine the exterior inspection with the Class I brake test and then have a crew member or train coach cleaner combine the interior mechanical inspection with coach cleaning. FRA listed the following components that were to be inspected as part of the interior calendar day mechanical inspection: trap doors; end and side doors; manual door releases; safety covers, doors and plates; vestibule step lighting; and safety-related signs and instructions. *See* 62 FR 49808.

Because FRA intended the daily exterior and interior mechanical inspections to serve as the time when the railroad repairs defects that occurred en route, FRA further proposed that safety components not in compliance with this part would be required to be repaired before the equipment was permitted to remain in or return to passenger service after the performance of the mechanical inspections. In other words, FRA intended for the flexibility to operate defective equipment in passenger service to end at the calendar day mechanical inspection.

Initially, FRA considered requiring a more extensive list of components to be checked at each interior calendar day mechanical inspection. However, based on discussions conducted with the Working Group, FRA determined that the daily inspection and repair of some interior items could be burdensome to the railroads without producing an offsetting safety benefit. As a result, FRA proposed a periodic mechanical inspection for passenger cars in order to reduce the frequency with which certain components require inspection. FRA proposed that the following components be inspected for proper operation and repaired, if necessary, as part of the periodic maintenance of the equipment: emergency lights; emergency exit windows; seats and seat attachments; overhead luggage racks and attachments; floor and stair surfaces; and hand-operated electrical switches. *See* 62 FR 49808–09.

FRA determined that virtually all passenger railroads have defined periodic maintenance intervals for all of the equipment they operate with intervals varying from 60 to 180 days, depending on the type of equipment and the service in which it is used. Although FRA did not intend to limit the railroad's flexibility to set periodic maintenance intervals, FRA believed that an outside limit had to be placed on the performance of the periodic mechanical inspection. Thus, FRA proposed that the periodic mechanical inspection be performed at least every 180 days, as that appeared to be the outside limit of currently established maintenance cycles.

In addition to the daily and periodic mechanical inspections, FRA also proposed extensive requirements regarding the performance of single car tests on passenger equipment. FRA believed that the proposed single car test has proven itself effective in uncovering brake system problems that are the root cause of certain wheel defects or that have been caused by repairs made to the brake system. The current regulations require that a single car test be performed on passenger cars whenever they are on a shop or repair track. As the current requirement carries the potential of permitting a railroad to avoid the performance of the test by calling a repair track something other than a repair track, FRA believed it was prudent to base the requirement to perform a single car test on the type of defect or repair involved rather than the location where the defect is repaired. Therefore, FRA proposed a list of defective conditions and the repair or replacement of certain components which would trigger the requirement to perform a single car test. *See* 62 FR 49774, 49809. In an attempt to promote the prompt repair of defective equipment, FRA proposed some flexibility in the performance of the test by permitting cars to be moved to a location where the test could be performed if repairs were made at a location that could not perform the test.

3. Proposed Qualifications of Inspection and Testing Personnel

In the 1997 NPRM, FRA proposed the terms "qualified person" and "qualified mechanical inspector" to differentiate between the type of personnel that will be permitted to perform certain brake or mechanical inspections required in the proposal. A "qualified person" was defined as a person determined by the railroad to have the knowledge and skills necessary to perform one or more functions required under this part. Whereas, a "qualified mechanical inspector" was defined as a "qualified person" who as a part of the training, qualification, and designation program required by the proposal had received instruction and training that included "hands-on" experience (under appropriate supervision or apprenticeship) in one or more of the following functions: trouble-shooting, inspection, testing, and maintenance or repair of the specific train brake and other components and systems for which the inspector is assigned responsibility. Further, the mechanical inspector was to be a person whose primary responsibility includes work generally consistent with those functions. *See* 62 FR 49754.

As FRA intended for Class I brake inspections and exterior calendar day mechanical inspections to be in-depth inspections of the entire braking system and the safety-critical mechanical components, which most likely will be performed only one time in any given day in which the equipment is used, and because of the flexibility FRA proposed in the performance of such inspections, FRA proposed that these inspections had to be performed by individuals possessing not only the knowledge to identify and detect a defective condition in all of the brake equipment required to be inspected but also the knowledge to recognize the interrelational workings of the equipment and the ability to "troubleshoot" and repair the equipment. Consequently, FRA proposed that only qualified mechanical inspectors would be permitted to

perform Class I brake tests and exterior calendar day mechanical inspections.

As the definition of qualified mechanical inspector required the person's primary responsibility to be the inspection, testing, or maintenance of passenger equipment, the definition largely ruled out the possibility of train crew members becoming qualified mechanical inspectors because the primary responsibility of a train crew member is generally the operation of the train. FRA intended the definition to allow the members of the trades associated with the testing and maintenance of equipment such as carmen, machinists, and electricians to become qualified mechanical inspectors. However, FRA made clear that membership in labor organizations or completion of apprenticeship programs associated with these crafts was not required to be designated a qualified mechanical inspector. The two primary qualifications were the possession of the knowledge required to do the job and a primary work assignment inspecting, testing, or maintaining the equipment.

FRA included a clear definition of "qualified person" to allow railroads the flexibility of having train crews perform Class IA, Class II, and running brake tests and interior calendar day mechanical inspections. A qualified person had to be trained and designated as able to perform the types of brake and mechanical inspections and tests that the railroad assigned to him or her. However, a qualified person did not need the extensive knowledge of brake systems or mechanical components or be able to trouble-shoot and repair them. The qualified person was considered to be the "checker." He or she was to possess the knowledge and experience necessary to be able to identify brake system problems.

C. Overview of Comments Relating to Proposed Inspection and Testing Requirements

Those parties filing comments, presenting testimony and participating in the Working Group meetings with regard to the proposed inspection and testing requirements have provided the agency with a wealth of facts and informed opinions, and have been extremely helpful to FRA in resolving the issues. Most commenters provided testimony or written comments on more than one issue and generally were supported by the positions of other commenters. Rather than attempt to paraphrase each commenter's response to each of the proposed regulatory sections, FRA believes it would be better, and more understandable, to provide a brief overview of the thrust of the comments received in this portion of the preamble and provide general FRA conclusions while addressing the specific comments of various parties in the section-by-section analysis. For purposes of discussion, the comments are grouped in three categories: (1) railroad management representatives; (2) railroad labor representatives; and (3) other commenters.

Railroad management representatives, APTA and its member railroads and Amtrak, generally agreed with the concept of performing the proposed comprehensive daily brake and mechanical inspections. However, these representatives raised a number of concerns with the proposed inspections. Commenters for APTA believed that the proposed requirement to perform a Class IA brake test prior to the first run of the day for commuter and short-distance intercity trains is unnecessary and adds no value to the proposed inspection scheme. APTA recommends that a Class I brake test remain valid for up to 12 hours after it is performed, if the train remains intact with compressors running, and that the performance of a Class II brake test prior to the first departure would be sufficient to ensure the proper operation of the brake system. APTA contends that the performance of a Class II brake test prior to departure would detect any brake problems caused by vandalism and that commuter railroads have been operated safely in this fashion for years.

Railroad management representatives also raised issues concerning the performance of the proposed exterior calendar day mechanical inspection. The major concern of these commenters was that the proposal was unclear as to whether trainsets had to be uncoupled or placed over a pit to perform the inspections. These commenters recommended that the rule text explicitly state that the inspection is to be performed to the extent possible without uncoupling the cars or placing the cars over an elevated pit. APTA representatives also recommended that some of the items proposed in the exterior calendar day mechanical inspection be moved to the periodic mechanical inspection as they could not reasonably be seen without uncoupling the car or placing it over an elevated pit. These included certain requirements related to the inspection of the couplers, the truck and car body assembly, and the center castings on trucks. Some commenters also recommended elimination of the requirement that all secondary braking systems be working, since that could not be known until the train is in operation and the system is attempted to be used.

APTA representatives also commented on the proposed requirements for performing single car tests. APTA recommended that FRA adopt the new single car test procedures recently developed by the PRESS brake committee rather than the outdated AAR standard. These commenters also recommended that the replacement or repair of certain proposed components not trigger the requirement to perform a single car test since most of the brake system is not disturbed by the repairs and some sort of partial test could sufficiently demonstrate proper operation of the brake system. These commenters also sought the flexibility not to perform the test if a wheel defect is known to be caused by other than a brake-related problem. APTA further recommended that railroads be permitted to perform single car tests from the locomotive control stands.

The major issue raised by railroad management representatives addressed FRA's proposal that all Class I brake tests and all exterior calendar day mechanical inspections be performed by a qualified mechanical inspector (QMI). APTA representatives objected to the use of this designation for several reasons and recommended the alternative term "qualified maintenance person." The main objection of these commenters relates to the requirement that a QMI's primary responsibility must be the inspection, testing, maintenance, troubleshooting, or maintenance of the brake system or mechanical components. These commenters also object to FRA's statement that the definition of QMI largely rules out the possibility of train crew members being designated as QMIs. These commenters contend that any person who is properly trained can perform the inspections proposed by FRA. These commenters also object to the use of the term qualified mechanical inspector based on the concern that such a title might lead employees designated as such to seek premium pay due to the title bestowed.

APTA representatives contend that the proposed definition of QMI violates the Administrative Procedure Act (APA), exceeds FRA's statutory authority, and is counter to the Railway Labor Act. These commenters contend that the Administrative record does not support a finding by FRA that only employees whose "primary responsibility" includes work in the area of troubleshooting, testing, inspecting, maintenance, or repair to train brake and other components are capable of performing Class I and

exterior mechanical inspections. These commenters also contend that FRA's proposed definition is counter to FRA's statutory mandate not to prescribe employee qualifications except where clearly necessary for safety reasons. *See* 49 U.S.C. 20110. Furthermore, it is contended that the proposed definition is counter to the Railway Labor Act because it impinges upon the exclusive jurisdiction of the National Mediation Board to make final determinations over employee classes or crafts and to interpret collective bargaining agreements. In essence, this argument contends that by limiting the employees who can perform a Class I brake test or an exterior mechanical inspection, FRA is in effect making an employee class or craft designation.

A concern raised by Metra is interrelated to the proposed QMI requirement, in that Metra seeks flexibility or relief from the QMI requirement on weekends. Metra contends that train crews perform most of the brake tests conducted by the railroad on weekends and have been for several years. Metra claims that there is no data showing a decrease in safety on Metra during weekend operations to support FRA's proposal that these brake inspections must be performed by a QMI rather than a train crew member. Metra seeks relief from the QMI requirement on weekends for railroads which have established a successful operating history of performing the tests with qualified persons rather than QMIs.

Rail labor representatives, while generally supportive of the proposed inspection and testing requirements, also raised a number of concerns related to the proposed requirements. Labor representatives objected to the proposed Class IA brake test and continued to insist that railroads should be required to conduct a full Class I brake test prior to the first run of the day. These commenters also advocated against providing any leeway for weekend operations with regard to the proposed inspections and tests, claiming that in many instances equipment used on weekends is used more rigorously than when used during the week and, therefore, quality inspections are probably more important. Labor representatives also noted that FRA failed to address what tests or inspections are to be performed on equipment added to an en route passenger train. Furthermore, these commenters supported the concept of requiring that QMIs perform all Class I brake tests and exterior mechanical inspections but recommended that FRA develop a clear and unequivocal definition of QMI which specifically excludes train crew members from the definition.

Labor representatives agreed with APTA representatives that FRA should adopt the single car testing procedures developed through the PRESS brake committee. These representatives believed that the newly developed procedures were better than the existing AAR procedures but stressed that the test must be conducted whenever any of the items listed in the NPRM occurred. Labor commenters believed a single car test should be performed prior to permitting a car to be moved and that the test should not be permitted to be performed with a locomotive.

The primary concern raised by labor representatives, particularly the BRC, involves the proposed 1,500-mile inspection interval for performing Class I brake tests on long-distance intercity passenger trains. Although the BRC agrees that the current 1,000-mile inspection should be replaced with the proposed Class I brake test, the BRC objects to extending the distance between brake tests to 1,500 miles. The BRC claims that the proposed increase is not justified by the facts. The BRC contends that an inspection at 1,000 mile intervals is necessary to ensure the safety of passenger train operations due to the numerous defective conditions being found during 1,000 mile inspections. As support for this contention, the BRC submitted information compiled by a carman stationed at Union Station in Washington, D.C. from January 1996 through February of 1997 who allegedly performed 1,000-mile inspections at this location. The BRC also cited other specific examples of defective equipment being moved in passenger trains. Based on this information and extrapolating similar conditions across the country, the BRC contends that numerous defective conditions are uncovered at 1,000 mile brake inspections and that there is no safety justification for extending the distance between brake inspections.

Amtrak responded to the information provided in the BRC's submission regarding defects found during inspections at Washington, D.C. in January 1996 through February 1997. Amtrak contends that Washington, D.C. is not a 1,000-mile inspection point and thus, should not be used to determine the appropriate interval for brake inspections. Amtrak also contends that the data presented was not sufficiently detailed to determine if the listed defects violated the railroad's standards for equipment operating en route. Amtrak contends that based upon their records 66 percent of the 609 cars identified by the BRC were in trains that terminated at Washington, DC and should not be considered in determining brake inspection intervals. Of the 204 cars alleged to be defective and that were part of trains which run through Washington, DC, Amtrak records show that only 7 of the cars were shopped at Washington, DC and that 110 additional cars were shopped within 7 days after the date of the reported defect. In almost all cases the repairs were made at a location other than Washington, DC, which was frequently the end destination for the train. Amtrak concludes that the defects reported by the BRC at Washington, DC constitute items from an in-bound inspection but were not true defects that required shopping a car from an en route train.

Amtrak provided additional information containing a summary of the set-outs which took place on the railroad during the period from March 1997 to February 1998 for safety and non-safety related causes. This information showed that 301 cars were set-out by Amtrak during this period. Of those 301 cars that were set-out, only 29 were set-out at intermediate (1,000 mile) inspection points and only 15 of those 29 were for brake-related defects. Therefore, Amtrak contends that 90 percent of the cars that were set-out were set-out en route and were not found during intermediate inspections. During this same period Amtrak conducted 1,000-mile inspections on approximately 130,000 cars. Consequently, Amtrak contends that the annual defect rate at intermediate inspection points for this period was 0.02 percent and that it was costing Amtrak approximately $175,000 per defect found to conduct 1,000-mile inspections.

The BRC submitted a response to the information provided by Amtrak. In this submission the BRC contends that Amtrak's analysis regarding the reported defects is faulty and self-serving. This commenter contends that all the defects found at Union Station must be considered when evaluating an extension of the 1,000-mile inspection regardless of whether Union Station is a 1,000-mile inspection point and regardless of the distance traveled by the cars involved. The BRC contends that any defective conditions found are indicative of what will be traveling past 1,000-mile inspection locations should the distance between brake inspections be extended to 1,500 miles. The BRC further contends that Amtrak's analysis regarding the number of cars set-out at intermediate inspections is flawed for

several reasons. The BRC claims that intermediate inspection points cited by Amtrak are not 1,000-mile inspection locations and that the same type of inspection is not performed. (FRA's review of Amtrak's submission indicates that when Amtrak referred to intermediate inspection points it was referring to 1,000 mile inspection locations.) Further, it is contended that looking solely at the number of cars set-out at these locations is improper because it does not take into account the defects that are repaired while a car remained entrained. The BRC reasserted its position that the data does not support an extension of the 1,000-mile inspection interval and, if anything, the data supports reducing the inspection requirement to 500 miles.

D. General FRA Conclusions

After consideration of all the comments submitted, both in writing and through oral testimony and discussion within the Working Group, FRA intends for the requirements regarding the inspection and testing of passenger equipment contained in the final rule to closely track the proposed requirements contained in the 1997 NPRM. In this final rule, FRA will make slight modifications to the proposed requirements in an attempt to clarify the requirements, to cover areas that were not adequately addressed, and to address the specific comments submitted. FRA generally believes that the approach taken in the NPRM to the inspection and testing of passenger equipment incorporates the current best practices of the industry, effectively balances the positions of the various parties involved, and increases the overall safety of passenger train operations.

1. Brake and Mechanical Inspections

FRA intends to modify the Class I brake test and the exterior calendar day mechanical inspection requirements to ensure the proper operation of all cars added to a train while en route. FRA is adding certain provisions to require the performance of a Class I brake test and an exterior mechanical inspection on each car added to a passenger train at the time it is added to the train unless documentation is provided to the train crew that a Class I brake test and an exterior mechanical inspection was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours. FRA is adding this requirement in order to address the concerns raised by various labor representatives that no provisions were provided in the proposal to address circumstances when cars are added to an en route train. If a car has received such inspection, the railroad will be required to perform a Class II brake test at the time the car is added to the train. FRA believes that these provisions will ensure the integrity of the brakes and mechanical components on every car added to an existing train and should not be a burden for railroads since cars are generally added to passenger trains at major terminals with the facilities and personnel available for conducting such inspections. Furthermore, these inspection requirements are very similar to what is currently required when a freight car is added to a train while en route. *See* 49 CFR §§ 215.13 and 232.13.

FRA is also modifying the requirements for when a Class IA brake test must be performed. FRA continues to believe that some type of car-by-car inspection must be performed prior to a passenger train's first run of the day if the train was used in passenger service the previous day without any brake inspection being performed after it completed service and before it laid-up for the evening. However, FRA agrees with the comments submitted by APTA representatives that the need for such an inspection is minimized if a Class I brake test is performed within a relatively short period of time prior to the first run of the day and the train has not been used in passenger service since the performance of that inspection. From a safety standpoint, it appears to be unnecessary to require the performance of a second comprehensive brake test when the equipment has not been used and has remained on a source of compressed air since the last comprehensive brake test was performed. In such circumstances, FRA believes that the performance of a Class II brake test would be sufficient to determine if there are any problems with the braking system due to vandalism or other causes since the last comprehensive Class I brake test. Furthermore, as APTA's comments point out, commuter railroads have been safely operated in a fashion similar to this for a number of years. Consequently, the final rule will require the performance of a Class II brake test prior to the first run of the day if a Class I brake test was performed within the previous twelve hours and the train has not been used in passenger service and has not been disconnected from a source of compressed air for more than four hours since the performance of the Class I brake test.

FRA will also include certain minimal recordkeeping requirements related to the performance of the interior and exterior calendar day and periodic mechanical inspection provisions. FRA believes that proper and accurate recordkeeping is a cornerstone of any inspection process and is essential to ensuring the performance and quality of the required inspections. Without such records the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes them to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties.

FRA is also making minor changes and clarifications to the proposed exterior calendar day mechanical inspection. In the final rule, FRA is explicitly stating that the exterior mechanical inspection is to be performed to the extent possible without uncoupling the trainset and without placing the equipment over a pit or on an elevated track. This explicit statement is being added in response to APTA's concerns regarding what would constitute proper performance of these inspections. FRA intended the inspection to be very similar to the freight car safety inspection currently required pursuant to Part 215. FRA also recognizes that certain items contained in the proposed exterior mechanical inspection could not have been easily inspected without proper shop facilities. Therefore, FRA is moving some of the exterior mechanical inspection requirements related to couplers and trucks to the periodic mechanical inspection requirements as these periodic inspections will likely be performed at locations with facilities available that are more conducive to inspecting the specific components. The changes made in the final rule were discussed with the Working Group at the December 15–16, 1997 meeting.

FRA is also adding various provisions related to the performance of periodic mechanical inspections. As noted above, FRA is moving certain items from the exterior calendar day mechanical inspection to the periodic mechanical inspections as they cannot be easily inspected without proper shop facilities. In the NPRM, FRA proposed that a periodic mechanical inspection be performed every 180 days. After a review of the industry's practices regarding the performance of periodic mechanical-type inspections, FRA believes that the items removed from the calendar day mechanical inspection as well as some of the items previously

proposed in the 180 day periodic mechanical inspection should be and are currently inspected on a more frequent basis by the railroads. As it is FRA's intent in this proceeding to attempt to codify the current best practices of the industry, FRA believes that the current intervals for inspecting certain components should be maintained. Therefore, FRA will require the periodic inspection of certain mechanical components, floors, passageways, and switches on a 92-day basis. Furthermore, FRA will also require a 92-day inspection of emergency lighting systems as they are critical to the safety of passengers in the event of an accident or derailment. FRA is adding an inspection of the roller bearings to the 92-day inspection. Although this component was inadvertently left out of the 1997 NPRM, they were covered in the 1994 NPRM; and FRA believes that roller bearings are an integral part of the mechanical components and must be part of any mechanical inspection scheme. Furthermore, several labor commenters recommended inspections criteria similar to that contained in 49 CFR part 215, which specifically addresses the condition of roller bearings. *See* 49 CFR § 215.115. As roller bearings are best viewed in a shop facility context, FRA is adding the inspection of this component to the 92-day periodic mechanical inspection, which is consistent with the current practices of the industry.

FRA will also retain a semi-annual periodic inspection for certain components as proposed in the 1997 NPRM. FRA proposed a 180-day periodic inspection, but in order to remain consistent with the 92-day inspection scheme, FRA will require a 184-day periodic inspection of certain components, including: seats; luggage racks; beds; and emergency windows. FRA removed the inspection of the couplers from the calendar day inspection and added them to the 184-day inspection requirement. FRA is placing the coupler inspection at this interval rather than the 92-day interval in order to reduce the amount of coupling and uncoupling that will be required. FRA is also extending the inspection interval related to manual door releases. Due to the general reliability of these devices and because they are partially inspected on a daily basis, FRA believes that an annual inspection of the releases will ensure their proper operation. Thus, FRA will require an inspection of the manual door releases every 368 days.

Although FRA has established certain periodic inspection intervals in order to establish a default interval, FRA intends to make clear that FRA will allow railroads to develop alternative intervals for performing such inspections for specific components or equipment based on a more quantitative reliability assessment completed as part of their system safety programs. FRA expects that railroads will utilize reliability-based maintenance programs as appropriate, given this opportunity to do so. As successful reliability based maintenance programs are dynamic, it is expected that, in the process of defining and documenting the reliable use of equipment or specific components, over time, continued assessments may indicate a need to increase or decrease inspection intervals. FRA will only permit lengthened inspection intervals beyond the default intervals when such changes are justified by a quantitative reliability assessment. The previously described inspection intervals are based on sound but limited information provided to FRA that FRA believes represents a combination of operating experience, analytical analyses, knowledge and intuition. FRA does expect that railroads will collect and respond to additional data throughout the operating life of the equipment. (A detailed discussion of reliability-based maintenance programs is contained in the section-by-section discussion of § 238.307.)

FRA is also modifying the proposed requirements related to the performance of single car tests. Based on the recommendations of representatives from both rail labor and rail management, FRA will reference the single car testing procedures which were developed by APTA PRESS rather than the AAR single car testing procedures referenced in the 1997 NPRM. The single car test procedures were issued by APTA on July 1, 1998 and are contained in APTA Mechanical Safety Standard SS–M–005–98. The single car test procedures issued by APTA are more comprehensive and better address passenger equipment than the older AAR recommended practices. In the 1997 NPRM, FRA proposed to require the performance of single car tests on all passenger cars and other unpowered vehicles used in passenger trains. However, the definition of passenger cars includes self-propelled vehicles such as MU locomotives, to which FRA did not intend to apply the proposed single car test requirements. Thus, FRA is modifying the language of the single car test requirements to clarify that the testing requirements apply to nonself-propelled passenger cars and unpowered vehicles used in passenger trains.

FRA is also modifying some of the circumstances under which a single car test is required to be performed. FRA agrees with several of the commenters that the 1997 NPRM may have been over-inclusive in listing the components whose repair, replacement, or removal would trigger the performance of a single car test. Thus, in accordance with the discussions conducted with the Working Group in mid-December of 1997, FRA is amending the list of brake components to include only those circumstances where a relay valve, service portion, emergency portion, or pipe bracket is removed, repaired, or replaced. Whenever any other component previously contained in the 1997 NPRM is removed, repaired, or replaced FRA will require that only that portion that is renewed or replaced be tested. FRA believes that the items removed from the previously proposed list can generally be removed, replaced, or repaired without affecting other portions of the brake system and, thus, the need to perform a single car test is reduced. FRA also will not mandate the performance of a single car test for wheel defects, other than a built-up tread, if the railroad can establish that the wheel defect is due to a cause other than a defective brake system. Thus, the burden will fall on the railroad to establish and maintain sufficient documentation that a wheel defect is due to something other than a brake-related cause. FRA intends to make it clear that if the railroad cannot establish the specific non-brake related cause for a wheel defect, it is required to perform a single car test.

2. Qualified Maintenance Person

An issue related to the inspection and testing requirements on which FRA has received extensive comment, particularly from APTA representatives, is the proposed definition of "qualified mechanical inspector (QMI)." FRA recognizes the concern raised by some commenters that the term QMI might result in employees designated as such to seek some sort of premium pay status. Although FRA is not overly swayed by this concern, FRA is changing the term in the manner suggested by these commenters to "qualified maintenance person (QMP)." FRA believes that the term used to describe the individual responsible for conducting certain brake and mechanical inspections has little bearing on the qualifications or knowledge of the individual and, thus, is not adverse to accommodating a change in the term. However, but for clarifying language, FRA is not changing

the underlying definition of what is required to be designated as a QMP.

The major concern raised by APTA representatives centered on the requirement contained in the definition of a QMI that the person's "primary responsibility" include work in the area of troubleshooting, testing, inspecting, maintenance, or repair to train brake systems and other components. These commenters believed that anyone who is properly trained can perform the required inspections regardless of the amount of time actually spent engaged in the activity.

The entire concept of QMI (or QMP) is premised on the idea that flexibility in the inspection of passenger equipment, flexibility in the movement of defective equipment and slight reductions in periodic maintenance could be provided if the mechanical components and brake system were inspected on a daily basis by highly qualified individuals. Thus, the requirement that a highly qualified person perform certain brake and mechanical inspections is part of a package which includes flexibility in the performance of brake and mechanical inspections, permits wider latitude in the movement of defective equipment, and provides reductions in the periodic maintenance that is required to be performed on certain equipment. Therefore, FRA expects the highly qualified person to be an individual who can not only identify a particular defective condition but who will have the knowledge and experience to know how the defective condition affects other mechanical components or other parts of the brake system and will have an understanding of what might have caused a particular defective condition. FRA believes that in order for a person to become highly proficient in the performance of a particular task that person must perform the task on a repeated and consistent basis. As it is almost impossible to develop and impose specific experience requirements, FRA believes that a requirement that the person's primary responsibility be in one or more of the specifically identified work areas and that the person have a basic understanding of what is required to properly repair and maintain safety-critical brake or mechanical components is necessary to ensure the high quality inspections envisioned by the rule.

FRA disagrees with the contentions raised by APTA representatives that the definition of QMI (or QMP) violates the APA and exceeds FRA's statutory authority. Contrary to the assertions made by APTA representatives, the administrative record together with FRA's independent knowledge of the passenger rail industry do support a requirement that only a QMI (or QMP) conduct Class I brake tests and exterior mechanical inspections. Except for limited weekend service operated by Metra, virtually every passenger train operation affected by this rule currently conducts daily brake and mechanical inspections utilizing employees who, except for training on the requirements of this rule, would meet the definition of a QMI (or QMP). That is, the employees who are currently responsible for conducting the major daily brake and mechanical inspections on virtually all passenger trains meet the "primary responsibility" requirement contained in the definition of QMI (or QMP). Therefore, the industry's current practice acknowledges and supports the need to conduct daily inspections with employees whose primary responsibility is the troubleshooting, inspection, testing, maintenance, or repair of train brake systems or other mechanical components. Furthermore, due to the flexibility provided in this rule for conducting brake and mechanical inspections and moving defective equipment as well as the extension of certain periodic maintenance, FRA believes that the current best practices of the railroads with regard to brake and mechanical inspections must be maintained, especially as they relate to the quality of the personnel performing the inspections and the continuity of observation provided by a dedicated work force (which is important to detection of developing hazards in the fleet).

FRA further believes that APTA's contention that the definition of QMI (or QMP) violates the Railway Labor Act is due to a misunderstanding of the definition. FRA is not attempting to make any determinations over employee classes or crafts or to interpret collective bargaining agreements. In the 1997 NPRM, FRA stated that the definition would allow the members of trades associated with testing and maintenance of equipment such as carmen, machinists, and electricians to become QMIs (or QMPs). However, FRA further stated that membership in a labor organization or completion of an apprenticeship program associated with a particular craft is not required. FRA made clear that the two overriding qualifications are possession of the knowledge required to do the job and a primary work assignment inspecting, testing, or maintaining the equipment.

FRA also intends to clarify the meaning of "primary responsibility" as used in the definition of QMP. As a rule of thumb FRA will consider a person's "primary responsibility" to be the task that the person performs at least 50 percent of the time. Therefore, a person who spends at least 50 percent of the time engaged in the duties of inspecting, testing, maintenance, troubleshooting, or repair of train brakes systems and other mechanical components could be designated as a QMP, if the person is properly trained to perform the tasks assigned and possesses a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which they are assigned responsibility. However, FRA will consider the totality of the circumstances surrounding an employee's duties in determining a person's "primary responsibility." For example, a person may not spend 50 percent of his or her day engaged in any one readily identifiable type of activity; in those situations FRA will have to look at the circumstances involved on a case-by-case basis.

The definition of QMP largely rules out the possibility of train crew members being designated as these highly qualified inspectors since the primary responsibility, as defined above, of virtually all current train crew personnel is the operation of trains and for the most part train crew personnel do not possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components that are inspected during Class I brake tests or exterior calendar day mechanical inspections. However, contrary to the contentions raised by APTA, there is nothing in the rule which prevents a railroad from utilizing employees who are not designated as QMPs from conducting brake and mechanical inspections provided those inspections are not intended to constitute the required Class I brake test or the exterior calendar day mechanical inspection. Furthermore, the rule provides that certain required brake and mechanical inspections (Class IA brake tests, Class II brake tests, running brake tests, and interior calendar day mechanical inspections) may be performed by a properly "qualified person" and do mandate the use of a QMP. FRA believes that these are the types of inspections which train crew members are currently assigned to perform and have been performing effectively for years. Consequently, FRA believes that the inspection requirements and the qualification requirements contained in this rule are merely a codification of the current best practices of the passenger

train industry and are necessary to ensure the continued safety of those operations while providing the industry some flexibility in the performance of certain inspections and in the movement of defective equipment as well as providing slight increases in periodic maintenance cycles for some equipment.

FRA does not intend to provide any special provisions for weekend operations with regard to the conducting of Class I brake tests and calendar day mechanical inspection by QMPs as suggested in the comments by some APTA representatives. The rationale for requiring daily brake and mechanical attention by highly qualified inspectors, a proposition generally accepted by Working Group members, appears to apply equally to weekend periods. In fact based on FRA's experience, equipment used on weekends is generally used more rigorously than equipment used during weekday operations. At present only one commuter operation (Metra) has raised significant concerns regarding weekend operations. Although there is no specific data suggesting that existing weekend operations on Metra, which involves having many of the brake inspections conducted by train crew members, have created a safety hazard, FRA has found it virtually impossible to draft and justify provisions providing limited flexibility for Metra that do not create potential loopholes that could be abused by other passenger train operations that have not had the apparent safety success of Metra. Moreover, based on FRA's independent investigation of Metra's operation, it is believed that the impact of this final rule on Metra's weekend operations will be significantly less than that indicated in APTA's written comments and originally perceived by Metra. FRA believes that most of the personnel needed by Metra to conduct its weekend operations in accordance with this final rule are available to Metra or its contractors and that minor adjustments could be made to its weekend operations that might avoid significant new expense.

As the concerns regarding weekend operations appear to involve just one commuter operation and because the precise impact on that operation is not known or available at this time, FRA believes that the waiver process would be the best method for evaluating any lingering concerns that may be raised by that operator. This would afford FRA an opportunity to provide any appropriate relief based on the specific needs and the safety history of the individual railroad without opening the door to potential abuses by other railroads that are not similarly situated.

3. Long-Distance Intercity Passenger Trains

FRA is also retaining the requirements proposed in the 1997 NPRM related to the performance of Class I brake tests on long-distance intercity passenger trains. FRA will require that a Class I brake test be performed on long-distance intercity passenger trains prior to the trains' departure from an originating terminal and once every 1,500 miles or every calendar day, whichever occurs first. After reviewing the information and comments submitted by labor representatives, the information and comments provided by Amtrak, and based upon the independent information developed by FRA, FRA believes that the enhanced inspection scheme contained in this final rule will ensure the continued safety of long-distance intercity passenger trains.

Contrary to the statements made in the comments submitted by some labor representatives, FRA is not merely increasing the distance between brake inspections. Rather, FRA is increasing both the quality and the content of the inspections that must be performed on long-distance intercity passenger trains and, thus, increasing the safety of such trains. Under the current regulations these passenger trains are required to receive an initial terminal brake inspection at the point where they are originally assembled; from that point the train must receive an intermediate brake inspection every 1,000 miles. The current 1,000-mile inspection merely requires the performance of a leakage test, an application of the brakes and the inspection of the brake rigging on each car to ensure it is properly secured. *See* 49 CFR 232.12(b). The current 1,000-mile brake inspection does not require 100 percent operative brakes prior to departure and does not require piston travel to be inspected. The current regulations also do not require the performance of any type of mechanical inspection on passenger equipment at 1,000-mile inspection points or at any other time in the train's journey. Thus, under the current regulations a long-distance intercity passenger train can travel from New York to Los Angeles on one initial terminal inspection, a series of 1,000-mile inspections, and no mechanical inspections.

Whereas, this rule will require the performance of a Class I brake test, which is more comprehensive than the current initial terminal inspection, at the point where the train is originally assembled and will require the performance of another Class I brake test every 1,500 miles or every calendar day thereafter, whichever comes first, by highly qualified inspectors. Thus, at least every 1,500 miles or every calendar day a long-distance passenger train will be required to receive a brake inspection which is more comprehensive than the current initial terminal inspection and which requires that the train have 100 percent operative brakes and have piston travel set within established limits. Furthermore, this rule will require the performance of an exterior and interior mechanical inspection every calendar day that the train is in service. Consequently, the inspection scheme proposed in the 1997 NPRM and retained in this final rule will, in FRA's view, increase the safety and better ensure the integrity of the brake and mechanical components of long-distance passenger trains.

FRA also believes that some recognition must be given to the various types of advanced braking system technologies used on many long-distance intercity passenger trains. Many of these advanced technologies are not found with any regularity in freight operations. Dynamic brakes are typically employed on these types of trains to limit thermal stresses on friction surfaces and to limit the wear and tear on the brake equipment. Furthermore, the brake valves and brake components used on today's long-distance passenger trains are far more reliable than was the case several decades ago. Other technological advances utilized with regularity by these passenger trains include:

- The use of brake cylinder pressure indicators which provide a reliable indication of the application and release of the brakes.
- The use of disc brakes which provide shorter stopping distances and decrease the risk of thermal damage to wheels.
- The ability to cut out brakes on a per-axle or per-truck basis rather than a per car basis, thus permitting greater use of those brakes that are operable.
- Brake ratios that are 2½ times greater than the brake ratios of loaded freight cars.

The reliability and performance of brake systems on these passenger trains enhance the safety of these trains and, when combined with other aspects of this discussion, support FRA's determination that these brake systems can be safely operated with the inspection intervals that were proposed in the 1997 NPRM. Although some of the technologies noted above have existed for several decades, most of the technologies were not in wide spread use until after 1980. Furthermore, most

of the noted technological advances just started to be integrated into one efficient and reliable braking system within the last decade. Consequently, the technology incorporated into the brake equipment used in today's long-distance intercity passenger trains has increased the reliability of the braking system and permits the safe operation of the equipment for extended distances even though a portion of the braking system may be inoperative or defective.

FRA also disagrees with the contentions raised by certain labor representatives that the facts and data do not support the 500 mile extension in the brake inspection interval even with the more comprehensive inspection scheme. These commenters recommend that the current 1,000-mile brake inspection interval be retained together with the increased inspection regiment. These commenters contend that due to the large number of defects being found at 1,000-mile inspections that the need to retain the inspection is justified. As an example and support for this position, the BRC submitted information containing numerous defective conditions compiled by carmen stationed at Union Station in Washington D.C. from January 1996 through February of 1997 that the carmen allegedly found on trains traveling through Union Station. After reviewing the documentation submitted, FRA does not believe the information supports the conclusion that 1,000-mile brake inspections must be maintained and that it would be unsafe to extend the distance between brake inspections under the inspection scheme contained in this final rule.

Due to the lack of detail contained in the information submitted by the BRC, it is impossible to determine whether the vast majority of the alleged defective conditions were defective under the Federal regulations or whether the conditions were merely in excess of Amtrak's voluntary maintenance standards or operating practices. In addition, based on the description of some of the conditions, they would not be considered defective conditions under current Federal regulations. Furthermore, the vast majority of the conditions alleged in the document were not power brake defects, and thus, under the current regulations, would not have been required to have been inspected at a 1,000-mile inspection, nor do the current regulations mandate any type of mechanical inspection on passenger equipment. Moreover, as the vast majority of the alleged conditions were mechanical and wheel defects, FRA believes that these types of defective conditions will be addressed by the exterior calendar day mechanical inspection contained in this final rule which will be required to be performed every calendar day that a piece of equipment is in service.

FRA agrees with the comments submitted by the BRC that the data and information submitted by Amtrak regarding the allegedly defective equipment found at Washington, D.C., does not fully address whether the cars identified by carmen at that location were defective and does indicate that at least many of the cars were repaired for the defective condition noted within several days after moving through Washington, D.C. However, contrary to the conclusions reached by labor representatives, the fact that a car remained in service with an alleged defective mechanical or brake condition does not necessarily mean the train involved was in an unsafe condition or that the equipment was being moved illegally. The current regulations regarding freight mechanical equipment and the existing statutory mandates regarding the movement of equipment with defective safety appliances and brakes permit the movement of a certain amount of defective equipment to certain locations provided it is determined by a qualified person that such a movement can be made safely or that a sufficient percentage of the brakes remain operative. *See* 49 U.S.C. 20303, 49 CFR 215.9. As this final rule will specifically address the inspection of the mechanical components on passenger equipment and the movement of defective mechanical components, which is not covered by existing regulations, FRA believes that the amount of defective equipment being operated will be reduced significantly and will be handled safely in revenue trains. Although FRA agrees that the information submitted by Amtrak regarding the number of cars set out at 1,000-mile inspection points does not reflect the true number of defects being found during the inspections, FRA does find it significant that a very small percentage of cars set-out by Amtrak are set-out at 1,000-mile inspection locations and that most set-outs occur en route. (In its April 17, 1998 letter, Amtrak used the term intermediate inspections which upon FRA's review of the information provided was intended to describe 1,000-mile inspection locations.)

FRA also feels it is necessary to make clear that the number of cars alleged to have been found in defective condition at Union Station in Washington D.C. is not indicative of a safety problem on long-distance intercity passenger trains. Assuming that all of the cars contained in BRC's submission were in fact defective as alleged, it appears that approximately 750 cars were defective. However, the information also reveals that approximately 1,300 trains were inspected, thus, using a conservative estimate of 10 cars per train, approximately 13,000 cars were inspected. Therefore, approximately only 6 percent of the cars inspected were found to contain either a mechanical or brake defect. Furthermore, of the approximate 750 cars alleged to have been found defective, only approximately 20 percent of those cars contained a power brake-related defect. Consequently, only about 1–2 percent of the total cars inspected contained a power brake-related defect. Moreover, from the information provided it appears that none of the trains contained in the BRC submission were involved in any type of accident or incident related to the defective conditions alleged.

FRA believes that the key to any inspection scheme developed for long-distance intercity passenger trains is the quality of the inspection which is performed at a train's point of origin. FRA is convinced that if a train is properly inspected with highly qualified inspectors and has 100 percent operative brakes at its point of origin, then the train can easily travel up to 1,500 miles between brake inspections without significant deterioration of the braking system. FRA independently monitored a few long-distance intercity passenger trains running from New York to Miami, New York to New Orleans, and New York to Chicago and found that when the trains departed from their point of origin with a brake system that was defect free they arrived at destination without any defective conditions existing on the trains' brake system. These findings are consistent with FRA's experience in inspecting long-distance intercity passenger trains over the last several years. It should be noted that during this independent monitoring, FRA did find some trains that after receiving initial terminal inspections still contained some defective conditions on the brake system. Although FRA believes that none of the defective conditions found would have prevented the safe operation of the trains, FRA recognizes that FRA as well as the railroads must be vigilant in ensuring that quality brake system inspections are performed on a train at its point of origin and at each location where a Class I brake test is required to be performed. Consequently, due to the comprehensive nature of Class I brake tests and the exterior

calendar day mechanical inspection combined with the technological advances incorporated into the braking systems utilized in these types of trains and after a review of the data and information provided and based on FRA's experience with these types of operations, FRA intends to retain the proposed 1,500 mileage interval for the performance of Class I brake tests in this final rule.

VII. Movement of Defective Equipment

A. Background

The current regulations do not contain requirements pertaining to the movement of equipment with defective power brakes. The movement of equipment with these types of defects is currently controlled by a specific statutory provision originally enacted in 1910, which states:

> (a) GENERAL.— A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure nevertheless may be moved when necessary to make repairs, without a penalty being imposed under section 21302 of this title, from the place at which the defect or insecurity was first discovered to the ***nearest available place at which the repairs can be made***—
>
> (1) on the railroad line on which the defect or insecurity was discovered; or
>
> (2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not further than the place of repair described in clause (1) of this subsection.

49 U.S.C. 20303(a) (emphasis added).

Although there is no limit contained in 49 U.S.C. 20303 as to the number of cars with defective equipment that may be hauled in a train, FRA has a longstanding interpretation which requires that, at a minimum, 85 percent of the cars in a train have operative brakes. FRA bases this interpretation on another statutory requirement which permits a railroad to use a train only if Aat least 50 percent of the vehicles in the train are equipped with power or train brakes and the engineer is using the power or train brakes on those vehicles and on all other vehicles equipped with them that are associated with those vehicles in a train." 49 U.S.C. 20302(a)(5)(B). As originally enacted in 1903, section 20302 also granted the Interstate Commerce Commission (ICC) the authority to increase this percentage, and in 1910 the ICC issued an order increasing the minimum percentage to 85 percent. *See* 49 CFR 232.1, which codified the ICC order.

As virtually all freight cars are presently equipped with power brakes and are operated on an associated trainline, the statutory requirement is in essence a requirement that 100 percent of the cars in a train have operative power brakes, unless being hauled for repairs pursuant to 49 U.S.C. 20303. Consequently, FRA currently requires that equipment with defective or inoperative air brakes make-up no more than 15 percent of the train and that, if it is necessary to move the equipment from where the railroad first discovered it to be defective, the defective equipment be moved no farther than the nearest place on the railroad's line where the necessary repairs can be made or, at the option of the receiving carrier, to a repair point that is no farther than the repair point on the delivering line.

The requirements regarding the movement of equipment with defective or insecure brakes noted above can and do create safety hazards as well as operational difficulties in the area of commuter and intercity passenger railroad operations. As the provisions regarding the movement of defective brake equipment were written almost a century ago, they do not address the realities of these types of operations in today's world. Strict application of the requirements has the potential of causing major disruptions of service and serious safety and security problems. For example, requiring repairs to be made at the nearest location where the necessary repairs can be made could result in passengers being discharged between stations where adequate facilities for their safety are not available or in the overcrowding of station platforms and trailing trains due to discharging passengers from a defective train at a location other than the passenger's destination. In addition, strict application of the statutory requirements could result in the moving of trains with defective brake equipment against the current of traffic during busy commuting hours. Irregular movements of this type increase the risk of collisions on the railroad. Furthermore, many of today's commuter train operations often utilize six cars or less in trains and in many instances operate just two-car trains. Consequently, the necessity to cut out the brakes on one car can easily result in noncompliance with the 85-percent requirement for hauling the car for repairs, thus prohibiting the train's movement and resulting in the same type of safety problems noted above.

B. Overview of 1997 NPRM

In the NPRM, FRA attempted to recognize the nature of commuter and intercity passenger operations and the importance of addressing the safety of passengers, as well as avoiding disruption of this service, when applying the requirements regarding the movement of equipment with defective brakes on a day-to-day basis. In addition, the representatives of commuter and intercity passenger train operations participating in the proceeding requested that the regulations be brought up to date, recognizing that brakes will have to be cut out en route from time to time (e.g., because of damage from debris on the track structure or because of sticking brakes), and that contemporary braking systems and established stopping distances provide a very considerable margin of safety. Representatives from APTA proposed a method of updating the existing requirements regarding the movement of commuter passenger equipment with defective brakes to bring them more in line with the realities of today's operations. FRA believed that the restrictions proposed by APTA were very conservative and effectively ensure a high level of safety in light of the reliability of braking systems currently used in commuter and intercity passenger train operations. FRA believed that affirmatively recognizing appropriate movement restrictions would actually enhance safety, since compliance with the existing restrictions is potentially unsafe.

FRA recognized that some of the restrictions proposed in the NPRM were not in accord with the requirements contained in 49 U.S.C. 20303(a). Therefore, FRA proposed the utilization of the authority granted in 49 U.S.C. 20306 to exempt passenger train operations covered by this part from the statutory requirements contained in 49 U.S.C. 20303(a) permitting the movement of equipment with defective or insecure brakes only if various requirements are met, including the requirement that the movement for repair be only to the nearest location where the necessary repairs can be made. FRA believed that the granting of this exemption was justified based on the technological advances made in the brake systems and equipment used in passenger operations, and was necessary for these operations to make efficient use of the technological advances and protect the safety of the riding public. *See* 62 FR 49740–42, 49756–58. Although FRA recognized that it could be argued that the purpose of section 20306 is too narrow to comprehend the instant application, FRA believed that the use of the provision as contemplated in this proposal was consistent with the authority granted the Secretary of Transportation. As noted previously, the

statutory requirements regarding the movement of equipment with defective brake equipment were written nearly a century ago and, in FRA's opinion, were focused generally on the operation of freight equipment and did not contemplate the types of commuter and intercity passenger train operations currently prevalent throughout the nation. Since the original enactment in 1910 of the provisions now codified at 49 U.S.C. 20303(a), there have been substantial changes both in the nature of the operations of passenger trains as well as in the technology used in those operations.

In the NPRM, FRA noted that contemporary passenger equipment incorporates various types of advanced braking systems; in some cases these include electrical activation of brakes on each car (with pneumatic application through the train line available as a backup). Dynamic brakes are also typically employed to limit thermal stresses on friction surfaces and to limit the wear and tear on the brake equipment. Furthermore, the brake valves and brake components used today are far more reliable than was the case several decades ago. In addition to these technological advances, the brake equipment used in commuter and intercity passenger train operations incorporate advanced technologies not found with any regularity in freight operations. These include:

- The use of brake cylinder pressure indicators which provide a reliable indication of the application and release of the brakes.
- The use of disc brakes which provide shorter stopping distances and decrease the risk of thermal damage to wheels.
- The ability to effectuate a graduated release of the brakes due to a design feature of the brake equipment which permits more flexibility and more forgiving train control.
- The ability to cut out brakes on a per-axle or per-truck basis rather than a per car basis, thus permitting greater use of those brakes that are operable.
- The use of a pressure-maintaining feature on each car which continuously maintains the air pressure in the brake system, thereby compensating for any leakage in the trainline and preventing a total loss of air in the brake system.
- The use of a separate trainline from the locomotive main reservoir to continuously charge supply reservoirs independent of the brake pipe train line.
- Brake ratios that are 2½ times greater than the brake ratios of loaded freight cars.

Although some of the technologies noted above have existed for several decades, most of the technologies were not in wide spread use until after 1980. Furthermore, most of the noted technological advances just started to be integrated into one efficient and reliable braking system within the last decade. In addition to the technological advances, commuter and intercity passenger train operations have experienced considerable growth in the last 15 years necessitating the need to provide more reliable and efficient service to the riding public. Since 1980, the number of commuter operations providing rail service has almost doubled and the number of daily passengers serviced by passenger operations has more than doubled over the same time period. Furthermore, commuter and intercity passenger train operations conduct more frequent single car tests, COT&S, and maintenance of the braking systems than is generally the practice in the freight industry. Consequently, FRA concluded that the technology incorporated into the brake equipment used in today's commuter and intercity passenger train operations has increased the reliability of the braking system and permits the safe operation of the equipment for extended distances even though a portion of the braking system may be inoperative or defective.

FRA also proposed an exemption for passenger train operations from a long-standing agency interpretation, based on a 1910 ICC order codified at 49 CFR 232.1, that prohibits the movement of a train for repairs under 49 U.S.C. 20303 if less than 85 percent of the train's brakes are operative. FRA found that many passenger operations utilize a small number of cars in their trains and the necessity to cut out the brakes on just one car can easily result in noncompliance. FRA believed that the proposed speed restrictions would compensate for the loss of brakes on a minority of cars. *See* 62 FR 49740–42, 49756–58.

Based on the preceding discussions, FRA proposed various restrictions on the movement of vehicles with defective brake equipment which allow commuter and intercity passenger train operations to take advantage of the efficiencies created due to the advanced braking systems these operations employ as well as the improvements made in brake equipment over the years, while ensuring if not enhancing the safety of the traveling public. *See* 62 FR 49756–58, 49796–98. FRA proposed to permit trains to be operated with up to 50 percent inoperative brakes to the next forward passenger station or terminal based on the percentage of operative brakes, which may have resulted in movements past locations where the necessary repairs could be made. However, to ensure the safety of these trains with lower percentages of operative brakes, FRA also proposed various speed restrictions and other operating restrictions, based on the percentage of operative brakes. FRA believed that the proposed speed restrictions were very conservative and ensured a high level of safety. In fact, test data established that with the proposed speed restrictions the stopping distances of those trains with lower percentages of operative brakes were shorter than if the trains were operating at normal speed and had 100 percent operative brakes. Consequently, FRA believed that the proposed approach to the movement of equipment with defective brakes not only enhanced the overall safety of train operations but benefitted both the railroads, by providing operational flexibility, and the traveling public, by permitting them to get to their destinations in a more expedient and safe fashion.

FRA also proposed various requirements to ensure that equipment being hauled for repairs is adequately identified. Currently, there is no requirement that equipment with defective power brakes be tagged or otherwise identified, although most railroads voluntarily engage in such activity. Furthermore, the current regulations regarding freight cars and locomotives contain tagging requirements for the movement of equipment not in compliance with those parts. *See* 49 CFR 215.9 and 229.9. Therefore, FRA proposed specific requirements related to the identification of equipment with defective power brakes through either the traditional tags which are placed in established locations on the equipment or by an automated tracking system developed by the railroad. *See* 62 FR 49796–98. FRA also proposed that certain information be contained whichever method was used by a railroad. FRA believed that the proposed tagging or tracking requirements add reliability, accountability, and enforceability to ensure the timely and proper repair of equipment with defective power brakes.

FRA also proposed a new method for calculating the percentage of operative power brakes (operative primary brakes) in a train. Although the statute discusses the percentage of operative brakes in terms of a percentage of vehicles, the statute was written nearly a century ago and at that time the only way to cut out the brakes on a car or locomotive was to cut out the entire unit. See 49 U.S.C. 20302(a)(5)(B).

Today, virtually every piece of equipment used in passenger service can have the brakes cut out on a per-truck or per-axle basis. Consequently, FRA merely proposed a method of calculating the percentage of operative brakes based on the design of passenger equipment used today, and thus, a means to more accurately reflect the true braking ability of the train as a whole. FRA believed that the proposed method of calculation was consistent with the intent of Congress when it drafted the statutory requirement and simply recognized the technological advancements made in braking systems over the last century. Consequently, FRA proposed that the percentage of operative brakes would be determined by dividing the number of axles in the train with operative brakes by the total number of axles in the train. Furthermore, for equipment utilizing tread brake units (TBU), FRA proposed that the percentage of operative brakes be determined by dividing the number of operative TBUs by the total number of TBUs. *See* 62 FR 49757, 49797.

The NPRM also contained proposed provisions regarding the movement of equipment with other than power brake defects. *See* 62 FR 49758–59, 49798–99. There are currently no statutory or regulatory restrictions on the movement of passenger cars with defective conditions that are not power brake or safety appliance related. The proposed provisions contained in the NPRM were similar to the provisions for moving defective locomotives and freight cars currently contained in 49 CFR 229.9 and 215.9, respectively. As these provisions have generally worked well with regard to the movement of defective locomotives and freight cars and in order to maintain consistency, FRA modeled the proposed movement requirements on those existing requirements. FRA proposed to allow passenger railroads the flexibility to continue to use equipment with non-safety-critical defects until the next scheduled calendar day exterior mechanical inspection. However, FRA intended for the calendar day mechanical inspections to be the tool used by railroads to repair all reported defects and to prevent continued use of defective equipment to carry passengers.

In the NPRM, FRA intended for 49 CFR 229.9 to continue to govern the movement of locomotives used in passenger service which develop defective conditions, not covered by part 238, that are not in compliance with part 229. FRA also did not intend to alter the current statutory requirements contained in 49 U.S.C. 20303 regarding the movement of passenger equipment with defective or insecure safety appliances. Consequently, in the NPRM, FRA required that passenger equipment that develops a defective or insecure safety appliance continue to be subject to all the statutory restrictions on its movement. It should be noted that the proposed requirements applicable to Tier I equipment merely referenced the Railroad Safety Appliance Standards (49 CFR part 231); however, FRA proposed separate safety appliance requirements for Tier II passenger equipment.

FRA proposed that passenger equipment that is found with conditions not in compliance with this part, other than power brake defects, be moved only after a QMI has determined that the equipment is safe to move and determined any restrictions necessary for the equipment's safe movement. FRA also allowed railroads to move equipment based on an assessment made by a QMI in communication with on-site personnel. FRA proposes this based on the reality that mechanical personnel are not readily available at every location on a railroad's line of road. However, FRA further proposed that if a QMI does not actually inspect the equipment to determine that it is safe to move, then, at the first forward location where a QMI is on duty, an inspector will perform a physical inspection of the equipment to confirm the initial assessment made while in communication with on-site personnel previously.

The NPRM also required the tracking of defective equipment in either of two ways. One option was to tag the equipment in a manner similar to what is currently required under § 215.9 for freight cars. The second option was to record the specified information in an automated tracking system. The latter alternative was offered to provide railroads some flexibility and was made in recognition of advances in electronic recordkeeping.

C. Discussion of Comments on the 1997 NPRM and General FRA Conclusions

1. Movement of Equipment With Defective Brakes

Labor representatives raised several concerns, both in their written comments and at the Working Group meetings, regarding the proposed provisions related to the movement of passenger equipment with defective power brakes. These commenters objected to FRA's use of the authority granted in 49 U.S.C. 20306 to exempt passenger train operations covered by this part from the statutory requirements contained in 49 U.S.C. 20303(a) permitting the movement of equipment with defective or insecure brakes only if various requirements are met, including the requirement that the movement for repair be only to the nearest location where the necessary repairs can be made. These commenters contend that the statutory provisions contained in 49 U.S.C. 20306 were not intended to permit FRA to waive the movement for repair provisions contained in the Safety Appliance Acts for an entire segment of the industry. Furthermore, these commenters contend that FRA is improperly relying on technological advances that exist on passenger trains to invoke the authority under 49 U.S.C. 20306 because many of the technological advances cited by FRA do not currently exist or are not currently used on a large portion of the passenger fleet. Labor representatives contend that passenger equipment which develops defective brake equipment should only be permitted to move to a location where the passengers can be off-loaded with appropriate speed restrictions.

Labor representatives also objected to FRA's statement that the term "power brake defect" does not include a failure to inspect such a component. These commenters claim that FRA's exclusion of the failure to properly inspect a brake component eliminates an important means of enforcement necessary to ensure that proper power brake inspections are performed. It is claimed that by excluding the failure to inspect from being a power brake defect, FRA has eliminated any incentive for railroads to ensure that trains have operative brakes because there will be little financial repercussion to continuing to use improperly inspected equipment. These commenters also objected to the proposed provision that requires the railroad operating long-distance intercity passenger trains to designate those location where power brake repairs will be conducted. It is claimed that by allowing the carriers to designate such locations the carrier is in absolute control of how far defective equipment will travel and abuse of the provision may occur. Labor representatives also objected to allowing railroads to use automated tracking systems to record information regarding defective equipment. These commenters believe that tagging the equipment must be required in order for inspectors to readily identify defective equipment. It is further contended that an automated tracking system is susceptible to manipulation, abuse and reduces accountability. One commenter recommended that FRA add further restrictions on the use and movement of

cars with defective brakes at the front or rear of the train.

Railroad representatives and APTA representatives did not provide many comments on the proposed provisions related to the movement of passenger equipment with defective brakes. These commenters did note that there was not a major benefit to the railroads with being able to haul certain defective equipment to the next forward terminal as proposed. These commenters did recommend that FRA provide the railroads at least two years to develop and implement the defect reporting and tracking system proposed in the NPRM.

After considering the written comments submitted and the information provided at the Working Group meetings, FRA has determined that some minor changes need to be made to the requirements proposed in the NPRM regarding the movement of equipment with defective power brakes. In order to avoid the legal implications involved with employing the statutory authority contained at 49 U.S.C. 20306 for exempting equipment from the statutory requirements related to safety appliances and power brakes, and because railroad representatives acknowledged that the flexibility provided through reliance on the exemption is minimal, FRA will not rely on the statutory exemption provision contained at 49 U.S.C. 20306 in this final rule and will modify the movement for repair provisions accordingly. FRA will retain the exemption for passenger train operations from a long-standing agency interpretation that prohibits the movement of a train for repairs under 49 U.S.C. 20303 if less than 85 percent of the train's brakes are operative. The interpretation is based on a 1910 ICC order codified at 49 CFR 232.1, FRA believes that this requirement is overly restrictive when applied to passenger train operations as many passenger operations utilize a small number of cars in their trains and the necessity to cut out the brakes on just one car can easily result in noncompliance. FRA believes that the retention of the speed restrictions contained in the proposal will fully compensate for the loss of brakes on a minority of cars. FRA rejects the BRC's recommendation that passenger trains with defective brakes be permitted to move no farther than the next passenger station because such a stringent requirement is unnecessary, more restrictive that the current statutory mandate regarding the movement of defective brake equipment, and is radically counter to the way passenger trains currently handle defective equipment.

FRA intends to retain those portions of the movement for repair requirements that are consistent with the existing statutory provisions regarding the movement of equipment with power brake defects and revise those that are contrary. Therefore, passenger trains operating with 75–99 percent operative brakes will not be permitted to travel to the next forward terminal as proposed, but will be permitted to travel only to the next forward location were the necessary repairs to the brake equipment can be effectuated as mandated in the existing statute. In FRA's view, all of the other proposed methods for moving defective power brake equipment are consistent with and are in accordance with the current statutory requirements and can be retained. For example, FRA will retain the provisions which permit a passenger train with 50–75 percent operative brakes to be moved at reduced speeds to the next forward passenger station. Although the percentage of operative brakes is lower than currently permitted by FRA's longstanding agency interpretation (which FRA believes is fully compensated for by the speed restrictions), FRA believes that the movement of the defective equipment to the next passenger station is in accordance with the statutory requirement as the safety of the passengers must be considered in determining the nearest location where necessary repairs can be made. In addition, permitting passenger trains to continue to the next forward location where the necessary repairs can be performed is also consistent with the statutory requirement as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic. Furthermore, retention of the movement provisions related to long-distance intercity passenger trains and long-distance Tier II equipment are consistent with the current statutory requirements as these provisions permit the movement of defective brake equipment on these trains only to the next passenger station or the next repair location, with various speed restrictions depending on the percentage of operative brakes.

FRA will also retain the requirement that operators of long-distance passenger trains designate the locations where repairs can be conducted on the equipment. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in passenger trains. Due to the unique technologies used on the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, FRA is retaining the broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor commenters, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to designate an adequate number of repair locations.

Rather than attempt to develop a standard applicable to all situations in the context of short-distance intercity and commuter trains, which FRA does not believe can be accomplished, FRA intends to approach the issue of what constitutes the next forward location where repairs can be effectuated based on a case-by-case analysis of each situation. FRA believes that its field inspectors are in the best position to determine whether a railroad exercised good faith in determining when and where to move a piece of defective equipment. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the next forward repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather

conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains.

FRA will also retain the requirement that equipment found with conditions not in compliance with this part must be appropriately tagged or recorded in an automated tracking system. Although FRA is sensitive to the concerns raised by labor representatives regarding the use of automated tracking systems, FRA believes that provisions must be provided to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Although railroad and FRA inspectors may require additional training on the use of electronic records, FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. In response to labor's concerns, the final rule contains a provision which will give FRA the ability to monitor and review a railroad's automated tracking system and will provide FRA the ability to prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, inaccessible to FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Furthermore, if the automated tracking system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad will be in violation of the movement for repair provisions and subject to civil penalty liability.

In response to one labor commenter's concerns, FRA is slightly modifying the provisions related to the operation of trains with defective brakes on the front or rear car. In the NPRM, FRA proposed that if the power brakes on the front or rear unit become inoperative then a qualified person must be stationed at the handbrake on the unit. *See* 62 FR 49797. FRA recognizes that in some instances the handbrake on a car located at the front or rear of a train may not be accessible to a member of the train crew or may be located outside the interior of the car and, thus, unsafe for a crew member to operate while the train is in motion. FRA also recognizes that in many circumstances when a car at the front or rear of the train has inoperative brakes certain speed restrictions should be placed on the train; however, FRA believes that railroads are in the best position to determine what the appropriate speed restriction should be given the circumstances involved. Consequently, FRA is modifying the requirements for the use of such cars and will add provisions requiring that appropriate speed restrictions be imposed and that equipment with inaccessible handbrakes or with handbrakes located outside the interior of a car be removed or repositioned in the train at the first possible location.

FRA believes that the concern raised by certain labor representatives regarding FRA's definition of "power brake defect" is due to a lack of understanding of the proposed rule as well as a misunderstanding of the current regulations. Under the current power brake regulations the unit of violation for failure to inspect is the train not individual cars, although FRA can take a separate violation for each car containing a defective condition upon departure after the train received or should have received an initial terminal inspection or for each car not identified as defective after the performance of an intermediate inspection. Moreover, the failure to inspect a piece of equipment cannot be cured through any of the proposed provisions regarding the movement of defective equipment. That is, if a railroad fails to inspect a piece of equipment as required, the railroad cannot avoid civil penalty liability by moving the equipment in accordance with the proposed provisions. Furthermore, the final rule contains specific civil penalties for a railroad's failure to perform inspections as required. Railroads will also continue to be subject to potential civil penalty for any car found in defective condition after it has performed or should have performed a Class I or Class IA brake test and any car not properly moved or identified as defective at other times. The final rule will also retain the proposed provision providing that passenger equipment will be considered "in use" prior to departure but after it has received or should have received an inspection required by this part. Thus, FRA inspectors will no longer have to wait until a piece of equipment departs a location before issuing a civil penalty, a practice continually criticized by both labor and railroad representatives.

In addition, the NPRM as well as this final rule provides FRA inspectors the ability to issue Special Notices for Repair, which enable an FRA inspector to remove an unsafe piece of equipment from service until appropriate action is taken by the railroad. *See* 62 FR 49790. This enforcement tool is not currently available to FRA inspectors in the area of power brakes and mechanical components on passenger equipment and could be used in circumstances where passenger equipment is not inspected prior to being placed in service. Consequently, the final rule will not only retain all of the enforcement tools available to FRA under the current regulations but will include other methods for ensuring compliance by the railroads and provide both a financial and operational incentive for railroads to properly inspect passenger equipment.

Some of the members of the Working Group, particularly those representing labor organizations, expressed concern that any alteration of the movement for repair provisions made in the context of commuter and intercity passenger train operations may have a spillover effect into the freight industry. FRA wishes to make clear that it has no intention, at this time, of providing freight operations the flexibility to handle defective brake equipment that it is providing passenger operations. As noted above, many of the advanced brake system technologies currently used in passenger service are not used in the freight context. Furthermore, even if freight operations were to make similar advances in the braking equipment they employ, this development on the freight side may not create the efficiencies created in the passenger train context since the operating environments of freight trains and passenger trains differ significantly. More importantly, the special safety considerations relative to passengers are not present in freight operations.

2. Movement of Equipment With Other Than Power Brake Defects

Railroad representatives expressed some concerns regarding the provisions related to the movement of equipment with other than a power brake defect. The primary recommendation of these commenters was that FRA should revise the proposed provisions to require the use of a "qualified maintenance person" (qualified mechanical inspector (QMI) in the NPRM) only when a potentially safety-critical running gear defect is involved. These commenters believed that the requirement to have the car inspected by a QMP whenever a nonsafety-critical running gear component becomes defective would impose unnecessary, significant delays to their operations and is counter to current operating practices. These commenters contended that a "qualified person" as defined in the proposal would be sufficient to determine the safety implications in moving many of the mechanical components covered by the rule if they were to become defective en route. For example, it was noted that

a highly qualified inspector was not necessary to determine whether a car that experiences a defective door, cracked window, or burnt out light bulbs could or should remain in service. Railroad representatives also sought additional flexibility in the movement of equipment with a nonsafety-critical running gear defect from a calendar day mechanical inspection.

Labor representatives also raised a number of concerns with the provisions related to the movement of equipment with other than power brake defects. One concern raised by these commenters indicated that FRA should not allow railroads to determine which mechanical components are "safety-critical" as such an approach would create a massive loophole and render some of the movement restrictions unenforceable. These commenters also voiced concerns over FRA's proposal that an off-site mechanical inspector could make an assessment regarding the safety of moving a certain piece of equipment based on the communication with on-site personnel. Although these commenters appeared to recognize the flexibility provided by such an approach, they raised concerns that such an approach is ripe for abuse and would require a mechanical inspector to rely on the observation of personnel lacking the necessary training and expertise. The commenters believed that further restrictions need to be placed on these communications but they failed to specify any specific restrictions that could be utilized. Labor representatives again raised concerns over FRA's allowance of an automated tracking system in lieu of direct tagging of defective equipment. These commenters reiterated their concerns that such a system can be easily manipulated and removes accountability from the system of repairing defective equipment.

After review of the comments submitted and provided orally at the Working Group meetings, FRA has made some modest changes in the final rule regarding the movement of equipment with non-power brake defects. FRA agrees with the comments of railroad representatives that the NPRM may have been over-reaching in requiring a QMP to make a determination regarding the safety of moving a piece of defective equipment for any of the mechanical components addressed in this regulation. However, FRA also agrees with the comments submitted by labor representatives that railroads should not determine what components are considered safety-critical. Therefore, FRA will require a determination regarding the safety of moving a piece of equipment by a QMP whenever a potential running gear defect is involved. FRA rejects the language proposed by APTA that the defect be a potentially "safety-critical" running gear defect as FRA believes that any defect to a running gear component is potentially safety-critical. In order to avoid confusion, FRA is providing an explicit definition of "running gear defect." FRA is defining the term to mean any defective condition which involves a truck component, the propulsion system, the draft system, a wheel or a wheel component. In the final rule, FRA will permit the use of a qualified person to determine the safety and establish appropriate movement restrictions on continued use of equipment which involves non-running gear defects.

FRA will also provide very limited flexibility to the railroads to operate defective equipment from a location where a calendar day mechanical inspection was performed in order to effectuate repairs. FRA intends for the calendar mechanical inspection to be as comprehensive as possible and to be the time when all defective components are identified and repaired. In order to ensure that these daily inspections are performed by highly qualified personnel, FRA has provided the railroads with considerable flexibility to perform these inspections at locations that are best suited to a quality and comprehensive inspection. Therefore, FRA will permit the movement of defective equipment from these inspection locations with very stringent restrictions. Equipment containing running gear defects may only be moved from such locations if it is not in passenger service and is in a non-revenue train. Equipment containing non-running gear defects may be moved in a revenue train provide the equipment is locked-out and empty. Any equipment moved must also be properly identified and moved in accordance with any movement restriction imposed. FRA believes these stringent movement restrictions will provide railroads limited flexibility to move defective equipment to a location where it can best be repaired but will limit a railroad's desire or ability to move defective equipment from these inspection locations and will encourage the performance of the calendar day mechanical inspections at locations where repairs to equipment can be conducted.

FRA has also retained the requirement that the QMP may make his or her determination regarding the continued use of equipment containing a potential running gear defect based on the description provided by on-site personnel. Although FRA recognizes the concerns raised by labor representatives, FRA believes that the rule must recognize the reality of current operations and acknowledge the fact that mechanical personnel are not readily available at every location on a railroad's line of road. Furthermore, when such off-site determinations are made the rule requires that the equipment only be moved to the next forward location where the equipment can be inspected by a QMP to verify the description of the defect provided by the on-site personnel.

FRA is also adding a provision to the requirements dealing with the movement of equipment with other than power brake defects to address the inspection of roller bearings on a car whose truck is involved in a derailment. The added requirement prohibits a railroad from continuing in service a piece of passenger equipment that has a roller bearing whose truck was involved in a derailment unless the bearing is inspected and tested in accordance with the stated provisions. The added provision is identical to the requirement currently contained in 49 CFR § 215.115(b). Although the existing provision is applicable to freight cars, virtually every passenger train operation follows the provisions contained in that section prior to returning a piece of equipment to service after it was involved in a derailment and, thus, should not result in any added burden to the industry. FRA believes that the practice is critical to ensuring the proper operation of the roller bearing after a derailment occurs and should be incorporated into this final rule.

FRA also intends to make clear that the movement of equipment with a defective safety appliance will continue to be governed by the statutory provisions contained at 49 U.S.C. 20303. As noted previously this provision permits the movement of defective equipment to the nearest location where the necessary repairs can be made. The determination of what constitutes the nearest location where the necessary repairs can be effectuated in a safety appliance context is identical to the analysis required when dealing with a power brake defect. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the nearest repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the

passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of the passengers if a move against the current of traffic is conducted; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains. Therefore, in many circumstances trains will be permitted to continue to the next forward location where the necessary repairs can be performed as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic.

VIII. FRA's Passenger Train Safety Initiatives

This final rule is part of several related and complementary efforts by FRA to improve the safety of rail passenger service. FRA has issued regulations governing emergency preparedness and emergency response procedures for rail passenger service in a separate rulemaking proceeding, designated as FRA No. PTEP–1. *See* 63 FR 24630, May 4, 1998. FRA formed a separate working group (the Passenger Train Emergency Preparedness Working Group) to assist FRA in the development of such regulations. This related proceeding has addressed some of the issues FRA originally identified in the ANPRM on passenger equipment safety. Persons wishing to receive more information regarding this other rulemaking should contact Mr. Edward R. English, Director, Office of Safety Assurance and Compliance, FRA, 1120 Vermont Avenue, Mail Stop 25, Washington, D.C. 20590 (telephone number: 202–493–6300), or David H. Kasminoff, Esq., Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue, Mail Stop 10, Washington, D.C. 20590 (telephone: 202–493–6043).

Further, in response to the separate collisions involving New Jersey Transit and MARC trains in early 1996, FRA issued Emergency Order No. 20 (Notice No. 1) on February 20, 1996, requiring prompt action to immediately enhance passenger train operating rules and emergency egress and to develop an interim system safety plan addressing the safety of operations that permit passengers to occupy the leading car in a train. 61 FR 6876, Feb. 22, 1996. Both the New Jersey Transit and MARC train collisions involved operations where a cab car occupied the lead position in a passenger train. The Emergency Order explained that in collisions involving the front of a passenger train, operating with a cab car in the forward position or a multiple unit (MU) locomotive, *i.e.*, a self-propelled locomotive with passenger seating, presents an increased risk of severe personal injury or death as compared with locomotive-hauled service when the locomotive occupies the lead position in the train and thereby acts as a buffer for the trailing passenger cars. This risk is of particular concern where operations are conducted at relatively higher speeds, where there is a mix of various types of trains, and where there are numerous highway-rail crossings over which large motor vehicles are operated. Accordingly, the Emergency Order required in particular that "railroads operating scheduled intercity or commuter rail service * * * conduct an analysis of their operations and file with FRA an interim safety plan indicating the manner in which risk of a collision involving a cab car is addressed." 61 FR 6879.

The Emergency Order also noted that there is a need to ensure that emergency exits are clearly marked and in operable condition on all passenger lines, regardless of the equipment or train control system used. Although FRA Safety Glazing Standards, 49 CFR part 223, require that passenger cars have a minimum of four emergency window exits "designed to permit rapid and easy removal during a crisis situation," the Silver Spring collision raised concerns that at least some of the occupants of the MARC train attempted unsuccessfully to exit through the windows. The Emergency Order requires "that any emergency windows that are not already legibly marked as such on the inside and outside be so marked, and that a representative sample of all such windows be examined to ensure operability." 61 FR 6880. On February 29, 1996, FRA issued Notice No. 2 to Emergency Order No. 20 to refine three aspects of the original order, including providing more detailed guidance on the emergency egress sampling provision. 61 FR 8703, Mar. 5, 1996.

In addition, FRA submitted a report to Congress on locomotive crashworthiness and working conditions on September 18, 1996, and subsequently referred the issues raised in the report to the RSAC. FRA established RSAC in March of 1996, to provide FRA with advice and recommendations on railroad safety matters. *See* 61 FR 9740, Mar. 11, 1996. RSAC consists of 48 individual representatives, drawn from 27 organizations representing various rail industry perspectives, and two associate nonvoting representatives from the agencies with railroad safety regulatory responsibility in Canada and Mexico. In September of 1997, FRA convened the Locomotive Crashworthiness Working Group through RSAC to make recommendations as to the best way to address the findings of FRA's report to Congress, including developing standards regarding a broad range of crashworthiness issues for both passenger and freight locomotives. In the context of improving railroad communications, RSAC established a working group to specifically address communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. The final rule that resulted from this effort was published on September 4, 1998, reflecting the consensus recommendations of the RSAC. 63 FR 47182.

FRA notes that, in its comments on the NPRM, Siemens Transportation Systems, Inc., (Siemens) stated that much of the safety standard changes for passenger rail cars could be scaled back if more consideration were given to the technology that is available for crash avoidance safety systems. Siemens believed the principal safety focus should be on efforts to avoid collisions in the first place, such as those at highway-rail grade crossings and with other trains.

FRA recognizes that rail passenger safety involves the safety of the railroad system as a whole. FRA does have active rulemaking and research projects in a variety of contexts, including signal and train control systems, and grade crossing safety. FRA also has existing regulations governing both railroad and grade crossing signal system safety, for example. (See 49 C.F.R. parts 233–236.) Nevertheless, this final rule is designed to address the specific statutory mandate that minimum standards be prescribed for the safety of cars used to transport railroad passengers, as noted above.

IX. Section-by-Section Analysis

This section-by-section analysis will explain the provisions of the final rule and the changes made from the 1997 NPRM. Of course, a number of the issues and provisions involving this rule have been discussed and addressed in detail in the preceding discussions. Accordingly, the preceding discussions should be considered in conjunction

with those below and will be referred to as appropriate.

Amendments to 49 CFR Part 216

Part 216 authorizes certain FRA and participating State inspectors to issue Special Notices for Repair, under specified conditions, for freight cars with defects under part 215, locomotives with defects under parts 229 or 230 or 49 U.S.C. chapter 207, and track with defects under part 213. The revisions to part 216 contained in this final rule will create a fourth category of Special Notices for Repair: for passenger equipment with defects under part 238. Consequently, if an inspector determines that noncomplying passenger equipment is "unsafe for further service" and issues a Special Notice for Repair, the railroad will be required to take the passenger equipment out of service, to make repairs to bring the equipment into compliance with part 238, and to report the repairs to FRA. The final rule also makes conforming changes to part 216 reflecting this new enforcement tool.

This final rule also includes various technical amendments to update part 216 to reflect the following: (1) Internal organizational changes within FRA; (2) the division of former part 230, Locomotive Inspection Regulations, into parts 229 and 230 and the redesignation of those portions of former part 230 related to non-steam locomotives as part 229, Railroad Locomotive Safety Standards; and (3) the repeal, reenactment without substantive change, and recodification of the Federal railroad safety laws in 1994. *See* 45 FR 21092, Mar. 31, 1980; Pub. L. 103–272, July 5, 1994.

Amendments to 49 CFR Parts 223, 229, 231, and 232

FRA is making conforming changes to the applicability sections of FRA's Railroad Locomotive Safety Standards, Railroad Safety Appliance Standards, and railroad power brakes and drawbars regulations that were necessitated by provisions contained in this new part 238. In this final rule, FRA has adjusted the application of provisions in parts 229, 231, or 232 or has deleted certain provisions in those parts to avoid duplication of provisions in part 238. FRA has not deleted the passenger train brake test and maintenance requirements from part 232, at this time, because part 238 will not cover certain operations subject to part 232, e.g., tourist, historic, scenic, and excursion railroad operations on the general system. Moreover, the requirements contained in part 232 will continue to apply to passenger operations until the requirements contained in part 238 become effective to such operations. FRA is also making a technical amendment to part 223 so as to reference the additional emergency window exit and window safety glazing requirements found in part 238.

49 CFR Part 238

Subpart A—General

Section 238.1 Purpose and Scope

Paragraph (a) states the purpose of the rule to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, and the general public; and to mitigate the consequences of such occurrences to the extent they cannot be prevented. Paragraph (b) states that the regulations in this part provide minimum standards for the subjects addressed. FRA has nonetheless specified in places throughout the regulatory text that the prescribed requirements are only minimum standards so as to reinforce this principle. Railroads and other persons subject to this part may adopt and enforce more stringent requirements, so long as they are not inconsistent with this part.

Paragraph (c) contains the dates upon which railroads covered by this part will be required to comply with the requirements contained in this final rule related to the inspection, testing, maintenance, training, and movement of defective equipment. FRA recognizes the interrelationship between the proper training of railroad personnel and the implementation of the inspection, testing, maintenance and movement of defective equipment provisions contained in the final rule. FRA realizes that in order for railroads to comply with the requirements related to the inspection, testing, and maintenance requirements and the requirements regarding the movement of defective equipment, the railroads must first be provided a sufficient amount of time to develop and implement a proper training program. Based on information received by FRA, it appears that many railroads are in the initial stages of developing training programs or modifying existing programs to meet the requirements of this final rule and that this process should be completed within a year. After the development of the training programs the railroads will need several months to a year to rotate their employees through the programs in order not to disrupt the operation of their railroads. Thus, FRA believes that 26 months is a sufficient amount of time for railroads to develop and train their employees as required by this final rule. Consequently, FRA will require compliance with the inspection, testing, and maintenance provisions as well the movement of defective equipment provisions after that same 26 month period.

FRA also recognizes that there are certain aspects of the inspection, testing, and maintenance requirements as well as the movement of defective equipment provisions that provide operational flexibility to the railroads. Due to this flexibility, FRA believes that some railroads will desire the ability to begin operations under the inspection, testing, and maintenance requirements and the movement of defective equipment provisions as soon as their employees have been properly trained. Therefore, FRA has included provisions which allow a railroad to notify FRA in writing that it is willing to begin compliance with the inspection, testing, and maintenance requirements and the movement of defective equipment provisions some time earlier than the 26 months provided. FRA wishes to make clear that it does not intend for railroads to take advantage of the flexibility provided under some of the provisions unless the railroad is willing to comply with all the requirements contained in those provisions. Thus, in order to begin operating under any of the provisions contained in subpart D, except the maintenance requirements contained in §§ 238.309 and 238.311, or to operate defective equipment under §§ 238.15 or 238.17, the railroad must be performing all of the requirements contained in those sections and that subpart.

As the maintenance requirements regarding the periodic performance of COT&S and the performance of single car tests, contained in §§ 238.309 and 238.311, are separable from the inspection requirements, FRA will permit railroads to request earlier application of those two sections. However, in order to begin operation under either of these two sections, the railroad must be willing to operate in accordance with all of the provisions in both sections. That is, the provisions contained in §§ 238.309 and 238.311 must be implemented as a package and cannot be implemented separately, except for the requirements related to the performance of COT&S on locomotives. This paragraph makes clear that the requirements related to the performance of COT&S on MU locomotives and conventional locomotives will become effective September 9, 1999. As discussed in more detail in the section-by-section analysis of § 238.309, FRA believes that the extensions of COT&S contained in

paragraphs (b) and (c) of § 238.309 are supported either by the tests conducted by Metro-North or are a practice that has been approved by waiver for several years. Furthermore, there is no corresponding single car testing requirement applicable to MU and conventional locomotives.

As a point of clarification, FRA makes clear that a railroad will be subject to compliance under the existing inspection, testing, and maintenance provisions contained in part 232 of this chapter until the railroad is required to operate under the inspection and testing provisions of this part (i.e., 26 months) or until the railroad voluntarily commits to operate under the provisions of this part.

Section 238.3 Application

As a general matter, in paragraphs (a)(1) and (a)(2), the rule applies to all railroads that operate intercity passenger train service on the general railroad system of transportation or provide commuter or other short-haul passenger train service in a metropolitan or suburban area; that is, the rule applies to commuter or other short-haul service described in paragraph (a)(2) regardless of whether that service is connected to the general railroad system. A public authority that indirectly provides passenger train service by contracting out the actual operation to another railroad or independent contractor would be regulated by FRA as a railroad under the provisions of this rule. In order to avoid confusion, FRA has omitted proposed paragraph (a)(3) regarding the rule's applicability to rapid transit operations as these types of operations, which are merely a subset of "commuter or other short-haul rail passenger train service," are sufficiently covered under paragraphs (a)(1) and (a)(2) in the final rule. Paragraph (b) makes explicit the liability imposed by statute, 49 U.S.C. 20303, on a railroad that owns track over which another railroad hauls or uses equipment with a power brake or safety appliance defect. Under paragraph (b), a railroad that permits operations over its trackage by passenger equipment subject to this part that does not comply with a power brake provision of this part or a safety appliance provision of this part is subject to the power brake and safety appliance provisions of this part with respect to such operations that it permits.

This section contains no explicit reference to private cars. Rather than addressing the scope of applicability of part 238 to private cars in this section, FRA has indicated in the particular substantive sections of the rule whether private cars are covered, according to the terms of those sections. FRA has applied certain requirements of the rule to private cars that operate on railroads subject to this part. FRA has taken into account the burden imposed by requiring private car owners and operators to conform to the requirements of this part. Further, FRA recognizes that private cars are often hauled by railroads such as Amtrak and commuter railroads which often impose their own safety requirements on the operation of the private cars. Accordingly, FRA has limited the application of the rule only to those requirements necessary to ensure the safe operation of the passenger train that is hauling the private car. For instance, private cars are subject to brake inspection, testing, and maintenance requirements.

The rule is structured to apply to intercity, commuter and other short-haul service, but not to tourist, scenic, historic, and excursion operations. The term "tourist, scenic, historic, or excursion operations" is defined in § 238.5 to mean "railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose." The term refers to the particular physical operation, not to the nature of the railroad company as a whole that conducts the operation. As a result, part 238 exempts not only a recreational train ride by a tourist railroad company that employs five people but also a recreational train ride by the Union Pacific Railroad Company, a Class I freight railroad. FRA has not yet had the opportunity to fully consult with tourist and historic railroad operators and their associations to determine the appropriate applicability of the provisions contained in this final rule to such railroad operations. The Federal Railroad Safety Authorization Act of 1994 directs FRA to examine the unique circumstances of tourist railroads when establishing safety regulations. The Act, which amended 49 U.S.C. 20103, states that:

> In prescribing regulations that pertain to railroad safety that affect tourist, historic, scenic, or excursion railroad carriers, the Secretary of Transportation shall take into consideration any financial, operational, or other factors that may be unique to such railroad carriers. The Secretary shall submit a report to Congress not later than September 30, 1995, on actions taken under this subsection.

Pub. L. 103–440, § 217, 108 Stat. 4619, 4624, November 2, 1994. In its 1996 report to Congress entitled "Regulatory Actions Affecting Tourist Railroads," FRA responded to the direction in the statutory provision and also provided additional information related to tourist railroad safety for consideration of the Congress.

Section 215 of the 1994 Act specifically permits FRA to exempt equipment used by tourist, historic, scenic, and excursion railroads to transport passengers from the initial regulations required to be prescribed by November 2, 1997. 49 U.S.C. 20133(b)(1). FRA is addressing the passenger equipment safety concerns for these unique types of operations through the Tourist and Historic Railroads Working Group formed under RSAC. Any requirements applicable to these operations will be part of a separate rulemaking proceeding.

FRA notes that the Syracuse, Binghamton and New York Railroad Corporation (SBNY) commented on the application of the rule to its passenger shuttle and excursion service on approximately ten miles of trackage shared with rail freight traffic in the city of Syracuse and county of Onondaga, New York. SBNY commented that, although it understands its excursion service would be exempt from the rule, its shuttle operations appear to fall directly within the proposed regulation. SBNY believed that applying the proposed regulations to its shuttle service would impose a significant and unbearable burden with little if any improvement in safety. SBNY asked that the rule expressly except from its application passenger train operations on track that is limited to operating speeds of 30 mph or less.

FRA believes the SBNY is properly characterized as a commuter or other short-haul railroad subject to this part. FRA has not adopted SNBY's recommendation to change the application of the final rule so as to except passenger train operations on track that is limited to operating speeds of 30 mph or less. First of all, any such operation must already comply with existing regulations affecting railroad passenger equipment safety, such as the locomotive safety standards (49 C.F.R. part 229), and standards on railroad power brakes and drawbars (49 C.F.R. part 231). Second, many provisions of the final rule itself cannot logically be distinguished in any manner on the basis of operating speed. For instance, materials in locomotives and passenger cars should be required to comply with the testing standards for flammability and smoke emissions characteristics to protect against sources of ignition—no matter the operating speed of the equipment. Finally, FRA notes that

SBNY operates conventional diesel multiple-unit passenger equipment built to AAR standards. Accordingly, the railroad should not experience burdens related to structural standards. If there are unique factors present with regard to SBNY's equipment, the waiver process may provide a way of accommodating those differences.

The requirements of this rule do not apply to circus trains. In its comments on the NPRM, Feld Entertainment, Inc., (Feld), parent company of Ringling Bros. and Barnum & Bailey circus (Ringling Bros.), supported the rule's consideration of the special circumstances of certain classes of rail carriers, such as private passenger cars and circus trains. Feld stated on behalf of Ringling Bros. that it suspended the use of rim-stamped straight-plate wheels on its tread-braked passenger cars following the 1994 derailment of a circus train in Lakeland, Florida. See 62 FR 49743. Feld also stated that Ringling Bros. takes seriously its commitment to the safety of its employees and animals. FRA anticipates deferring further consideration of applying any of the requirements in this final rule to circus trains to the Tourist and Historic Railroads Working Group.

Section 238.5 Definitions

This section contains a set of definitions to introduce the regulations. FRA intends these definitions to clarify the meaning of important terms as they are used in the text of the rule. Several of the definitions involve new or fundamental concepts which require further discussion.

"Brake indicator" means a device, actuated by brake cylinder pressure, which indicates whether brakes are applied or released on a car. The use of brake indicators in the performance of brake tests is a controversial subject. Rail labor organizations correctly maintain that brake indicators are not fully reliable indicators of brake application and release on each car in the train. Further, railroads correctly maintain that reliance on brake indicators is necessary because inspectors cannot always safely observe brake application and release. FRA believes that brake indicators serve an important role in the performance of brake tests. FRA has specified three different types of brake tests—Class I, Class IA, and Class II (described below)—that must be performed on passenger equipment. Railroads should perform Class I brake tests so that the inspector is able to actually observe brake application and release. However, FRA believes that during the performance of a Class IA brake test, railroads may rely on brake indicators if they determine that the inspector cannot safely make a direct observation of the brake application or release.

"Primary brake" and "secondary brake" are complementary definitions. "Primary brake" refers to "those components of the train brake system necessary to stop the train within the signal spacing distance without thermal damage to friction braking surfaces," while "secondary brake" refers to "those components of the train brake system which develop supplemental brake retarding force that is not needed to stop the train within signal spacing distances or to prevent thermal damage to wheels." FRA provides these definitions to help draw the line between safety and economics of brake systems. Railroads have long held that the dynamic portion of a blended brake is not a safety system. Under the provisions in this final rule, railroads must demonstrate through testing and analysis that the dynamic brake fits the definition of a secondary brake. Defective primary braking systems are a serious safety problem that railroads must address immediately. Defective secondary braking systems, as defined in § 238.5, are not a serious safety concern, because, by definition, their failure does not result in unacceptable thermal inputs into friction brake components. Accordingly, FRA intends to allow railroads more flexibility in dealing with defective secondary braking systems.

Three brake tests are fundamental to this final rule. A "Class I brake test" means a complete passenger train brake system test as further specified in § 238.313. The Class I test is the most complete test. It must be performed once each calendar day that a passenger train is in service by a qualified maintenance person. The Class I test is intended to replace the current initial terminal brake test. *See* 49 CFR 232.12(c)-(j). The Class I test is much more tailored to the specific designs of passenger equipment than the initial terminal brake test that is required now.

A "Class IA brake test" means a test and inspection (as further specified in § 238.315) of the air brake system on each car in a passenger train to ensure the air brake system functions as intended in response to the command sent through the train line. The Class IA test is a somewhat less complete test than the Class I test and is intended to be very similar to the current 1,000-mile brake test. An important difference between the Class I and Class IA tests is that the Class IA test may be performed by qualified persons as long as they have been properly trained and designated by the railroad to perform the inspection. The Class IA test allows commuter railroads the flexibility to have trains depart their first run of the day from an outlying point without having to station qualified maintenance persons at all outlying points. If railroads take advantage of the flexibility offered by the Class IA test, they must follow-up with a Class I test sometime during the day.

A "Class II train brake test" means a test (as further specified in § 238.317) of brake pipe integrity and continuity from controlling locomotive to rear car. The Class II brake test is a simple set-and-release test intended to replace the passenger train intermediate terminal air brake test. *See* 49 CFR 232.13(b). The Class II test is also tailored to the special design of the passenger equipment.

The concept of "ordered" is vital to the correct application of this final rule. As applied to the acquisition of equipment, the term means that the acquiring entity has given a notice to proceed to manufacture the equipment that represents a firm financial commitment to compensate the manufacturer for the contract price of the equipment or for damages if the order is nullified. Equipment is not ordered if future exercise of a contract option is required to place the remanufacturing process in motion. Many of the provisions of this final rule, particularly structural requirements, will apply only to newly constructed equipment. When FRA applies certain requirements only to passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, FRA intends to "grandfather" in this regard any equipment that is both ordered before September 8, 2000, and placed in service for the first time before September 9, 2002. FRA believes this approach will allow railroads to minimize, or avoid altogether, any costs associated with changes to existing orders and yet limit the delay in realizing the safety benefits of the requirements in this rule.

FRA's definition of "passenger car" goes beyond its traditional meaning. "Passenger car" means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled car designed to carry passengers, baggage, mail, or express. This term includes a cab car, an MU locomotive, and a passenger coach. A cab car and an MU locomotive are also a "locomotive" under this rule. In the context of articulated equipment, "passenger car" means that segment of the rail rolling equipment located

between two trucks. This term does not include a private car. "Passenger coach" means rail rolling equipment intended to provide transportation for members of the general public that is without propelling motors and without a control stand; therefore, passenger coaches are a subset of passenger cars. "Control stand" is defined in *The Railroad Dictionary of Car and Locomotive Terms* (Simmons-Boardman Publishing Corp. 1980), as "'[t]he upright column upon which the throttle control, reverser handle, transition lever, and dynamic braking control are mounted within convenient reach of the engineer on a locomotive. The air gauges and some switches are also included on the control stand."

"Passenger equipment" is the most inclusive definition. It means all powered and unpowered passenger cars, locomotives used to haul a passenger car, and any other rail rolling equipment used in a train with one or more passenger cars. "Passenger equipment" includes a (1) passenger coach, (2) cab car, (3) MU locomotive, (4) locomotive not intended to provide transportation for members of the general public that is used to power a passenger train, and (5) any non-self-propelled vehicle used in a train with one or more passenger cars. The term therefore covers a baggage car, express car, freight car, mail car or a private car when used in a train with one or more passenger cars. In the context of articulated equipment, "passenger equipment" means that segment of rail rolling equipment located between two trucks that is used in a train with one or more passenger cars. However, this term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

It should be noted that the definition of passenger equipment has been somewhat modified from that which was proposed in the NPRM. *See* 62 FR 49794. The change in the definition is based on comments from the AAPRCO and the American Short Line Railroad Association (ASLRA), and clarifies FRA's intent with regard to private cars. Under the final rule, FRA makes clear that a private car is considered "passenger equipment" for purposes of this rule only when it is used in a train with one or more passenger cars. Consequently, a private car will not be considered "passenger equipment" under the rule when the private car is being used alone; or used in a train consisting only of private cars or freight cars, or both. This approach is consistent with FRA's intent in drafting the NPRM, and fully incorporates the AAPRCO's and ASLRA's comments.

FRA has also modified the definition of "passenger equipment" so that the term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive. At the Working Group meeting in December, 1997, the AAR had raised the concern that the proposed rule did not provide an exclusion for a freight locomotive used to haul a passenger train for relief purposes. FRA believes that a limited exception is warranted for a freight locomotive used to haul a passenger train due to the failure of the passenger train's own motive power; FRA does not wish for the passenger train to be stranded. FRA has modified the definition of the term "locomotive" accordingly in this final rule.

In the context of articulated equipment, FRA has clarified that "passenger equipment" means that segment of rail rolling equipment located between two trucks that is used in a train with one or more passenger cars. In the NPRM, FRA had used similar language in the definition of "unit" (see 62 FR 49796). Since the definition of "unit" itself draws upon the definition of "passenger equipment," FRA has decided to insert this clarifying language here.

The terms "passenger station" and "terminal" are crucial to understanding the requirements related to the inspection of equipment and the movement of defective equipment contained in this final rule. "Passenger station" means a location designated in the railroad's timetable where passengers are regularly scheduled to get on or off any train. Under certain carefully controlled conditions, the rule permits a passenger train with defective equipment to move to the next forward passenger station. This flexibility is allowed to prevent railroads from discharging passengers in potentially unsafe locations and to minimize schedule impacts where this can safely be done. By contrast, "terminal" means a train's starting point or ending point of a single scheduled trip, where passengers may embark or disembark a train; normally, a "terminal" is a point where the train would reverse direction or change destinations.

The concepts of "qualified person" and "qualified maintenance person" are vital to understanding the required inspection, testing, and maintenance provisions of the rule. A "qualified person" is a person determined by the railroad to have the knowledge and skills necessary to perform one or more functions required under this part. With the proper training, a train crewmember could be a qualified person.

A "qualified maintenance person" is a "qualified person" who as a part of the training, qualification, and designation program required under § 238.111 has received instruction and training that includes "hands-on" experience (under appropriate supervision or apprenticeship) in one or more of the following functions: trouble-shooting, inspection, testing, maintenance or repair of the specific train brake and other components and systems for which the inspector is assigned responsibility. This person shall also possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility. Further, the qualified maintenance person shall be a person whose primary responsibility includes work generally consistent with the above-referenced functions and is designated to: (1) conduct Class I brake tests under this part; (2) conduct exterior calendar day and periodic mechanical inspections on MU locomotives or other passenger cars and unpowered vehicles under this part; or (3) determine whether equipment not in compliance with this part may be moved as required by § 238.17.

As noted in detail in the preceding general preamble discussion, FRA is slightly modifying the terminology and definition of these highly qualified inspectors from that proposed in the 1997 NPRM in order to address the concerns by some commenters and to clarify the definition as much as possible. In the 1997 NPRM, FRA proposed the term "qualified mechanical inspector" (QMI) to describe these highly qualified inspectors. FRA recognizes the concern raised by some commenters, that the term QMI might result in employees designated as such to seek some sort of premium pay status. Although FRA is not overly swayed by this concern, FRA is changing the term in the manner suggested by these commenters to "qualified maintenance person (QMP)." FRA believes that the term used to describe the individual responsible for conducting certain brake and mechanical inspections has little bearing on the qualifications or knowledge of the individual and, thus, is not adverse to accommodating a change in the term. However, but for clarifying language, FRA is not changing the underlying definition of what is required to be designated as a QMP.

The definition contained in this final rule clarifies the intent of the NPRM by specifically stating that a QMP must be properly trained and have a primary responsibility in the function of trouble-shooting, inspection, testing,

maintenance, or repair of the specific train brake and other components and systems for which the inspector is assigned responsibility. The slightly modified definition also clarifies that a QMP also possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility.

The major concern raised by APTA representatives centered on the requirement contained in the definition of a QMI that the person's "primary responsibility" include work in the area of troubleshooting, testing, inspecting, maintenance, or repair to train brake systems and other components. These commenters believed that anyone who is properly trained can perform the required inspections regardless of the amount of time actually spent engaged in the activity. The entire concept of QMP (or QMI) is premised on the idea that flexibility in the inspection of passenger equipment, flexibility in the movement of defective equipment and slight reductions in periodic maintenance could be provided if the mechanical components and brake system were inspected on a daily basis by highly qualified individuals. Thus, the requirement that a highly qualified person perform certain brake and mechanical inspections is part of a package which includes flexibility in the performance of brake and mechanical inspections, permits wider latitude in the movement of defective equipment, and provides reductions in the periodic maintenance that is required to be performed on certain equipment. Therefore, FRA expects the highly qualified person to be an individual who can not only identify a particular defective condition but who will have the knowledge and experience to know how the defective condition affects other mechanical components or other parts of the brake system and will have an understanding of what might have caused a particular defective condition. FRA believes that in order for a person to become highly proficient in the performance of a particular task that person must perform the task on a repeated and consistent basis. As it is almost impossible to develop and impose specific experience requirements, FRA believes that a requirement that the person's primary responsibility be in one or more of the specifically identified work areas and that the person have a basic understanding of what is required to properly repair and maintain safety-critical brake or mechanical components is necessary to ensure the high quality inspections envisioned by the rule. FRA notes the frequent contention of railroad representatives that mechanical forces are intimately familiar with the vehicles in the fleet for which they are responsible. FRA wishes to continue this record of careful attention to those fleets, which will tend to help ensure that developing problems are identified early and are dealt with across those fleets.

FRA disagrees with the contentions raised by APTA representatives that the definition of QMP violates the Administrative Procedure Act and exceeds FRA's statutory authority. Contrary to the assertions made by APTA representatives, the administrative record together with FRA's independent knowledge of the passenger rail industry do support a requirement that only a QMP conduct Class I brake tests and exterior mechanical inspections. Except for limited weekend service operated by Metra, virtually every passenger train operation affected by this rule currently conducts daily brake and mechanical inspections utilizing employees who, except for training on the requirements of this rule, would meet the definition of a QMP. That is, the employees who are currently responsible for conducting the major daily brake and mechanical inspections on virtually all passenger trains meet the "primary responsibility" requirement contained in the definition of QMP. Therefore, the industry's current practice acknowledges and supports the need to conduct daily inspections with employees whose primary responsibility is the troubleshooting, inspection, testing, maintenance, or repair of train brake systems or other mechanical components. Furthermore, due to the flexibility provided in this rule for conducting brake and mechanical inspections and moving defective equipment as well as the extension of certain periodic maintenance, FRA believes that the current best practices of the railroads with regard to brake and mechanical inspections must be maintained, especially as it relates to the quality of the personnel performing the inspections.

FRA further believes that APTA's contention that the definition of QMP violates the Railway Labor Act is due to a misunderstanding of the definition. FRA is not attempting to make any determinations over employee classes or crafts or to interpret collective bargaining agreements. As was made clear in the 1997 NPRM, the definition would allow the members of trades associated with testing and maintenance of equipment such as carmen, machinists, and electricians to become QMPs. However, membership in a labor organization or completion of an apprenticeship program associated with a particular craft is not required. FRA makes clear that the two overriding qualifications are possession of the knowledge required to do the job and a primary work assignment involving the troubleshooting, inspecting, testing, maintaining, or repairing the equipment.

FRA is also clarifying the meaning of "primary responsibility" as used in the definition of QMP. As a rule of thumb FRA will consider a person's "primary responsibility" to be the task that the person performs at least 50 percent of the time. Therefore, a person who spends at least 50 percent of the time engaged in the duties of inspecting, testing, maintenance, troubleshooting, or repair of train brakes systems and other mechanical components could be designated as a QMP, provided the person is properly trained to perform the tasks assigned and possesses a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility. However, FRA will consider the totality of the circumstances surrounding an employee's duties in determining a person's "primary responsibility." For example, a person may not spend 50 percent of his or her day engaged in any one readily identifiable type of activity; in those situations FRA will have to look at the circumstances involved on a case-by-case basis.

The definition of QMP largely rules out the possibility of train crew members from being designated as these highly qualified inspectors since the primary responsibility, as defined above, of virtually all current train crew personnel is the operation of trains, and for the most part, train crew personnel do not possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components that are inspected during Class I brake tests or exterior calendar day mechanical inspections. However, contrary to the contentions raised by APTA there is nothing in the rule which prevents a railroad from utilizing employees who are not designated as QMPs from conducting brake and mechanical inspections provided those inspections are not intended to constitute the required Class I brake test or the exterior calendar day mechanical inspection. Furthermore, the rule provides that certain required brake and mechanical

inspections (Class IA brake tests, Class II brake tests, running brake tests, and interior calendar day mechanical inspections) may be performed by a properly "qualified person" and do not mandate the use of a QMP. FRA believes that these are the types of inspections which train crew members are currently assigned to perform and have been performing effectively for years. Consequently, FRA believes that the inspection requirements and the qualification requirements contained in this rule are merely a codification of the current best practices of the passenger train industry and are necessary to ensure the continued safety of those operations while providing the industry some flexibility in the performance of certain inspections and in the movement of defective equipment as well as providing slight increases in periodic maintenance for some equipment.

The term "running gear defect" has been added to the final rule's list of definitions. A running gear defect is defined as any defective condition which involves a truck component, a propulsion system component, a draft system component, a wheel or a wheel component. This term is important for understanding the restrictions regarding the movement of equipment with other than power brake defects. FRA agrees with the comments of railroad representatives that the 1997 NPRM may have been over-reaching in requiring a qualified mechanical inspector to make a determination regarding the safety of moving a piece of defective equipment for any of the mechanical components addressed in this regulation. However, FRA also agrees with the comments submitted by labor representatives that railroads should not determine what components are considered safety-critical. Therefore, FRA has modified the movement of defective equipment provisions in this final rule to require a determination regarding the safety of moving a piece of equipment by a qualified maintenance person (as discussed above) whenever a potential running gear defect is involved. FRA rejects the language proposed by APTA that the defect be a potentially "safety-critical" running gear defect as FRA believes that any defect to a running gear component is potentially safety-critical. In order to avoid confusion, FRA is providing an explicit definition of running gear defect. In the final rule, FRA is permitting the use of a qualified person to determine the safety and establish appropriate movement restrictions on continued use of equipment which involves non-running gear defects.

Definitions of the various types of trains covered by this final rule are extremely important to understand how FRA intends for the rule to be applied. The most general definition is that of a "passenger train." The definition makes two points very clear. First, the final rule does not apply to tourist and excursion railroads; and, second, the provisions of the rule do apply to non-passenger carrying units included in a passenger train.

An important distinction highlighted in these definitions is the difference between a "long-distance intercity passenger train" and a "short-distance intercity passenger train." "Long-distance intercity passenger train" means a passenger train that provides service between large cities more than 125 miles apart and is not operated exclusively in the National Railroad Passenger Corporation's (Amtrak) Northeast Corridor between Washington D.C. and Boston, Massachusetts. "Short-distance intercity passenger train" means a passenger train that provides service exclusively on the Northeast Corridor or between cities that are not more than 125 miles apart. This distinction attempts to recognize the special set of operating conditions on the Northeast Corridor in light of the need to treat long-distance trains differently than short-distance trains. Additionally, APTA advised FRA that there are commuter rail systems that operate trains over 100 miles in distance on a single run, and thus recommended the use of the 125-mile distance in these definitions.

The definition of the term "in service" is modeled after the definition of that term in the Railroad Freight Car Safety Standards. *See* 49 CFR 215.5(e). Passenger equipment that is in service includes passenger equipment "in passenger service," meaning "carrying, or available to carry, fare-paying passengers," as well as all other passenger equipment unless it falls into one of the following four categories:

(a) Is being handled in accordance with §§ 238.15, 238.17, 238.305(c)(5), or 238.503(f), as applicable;

(b) Is in a repair shop or on a repair track;

(c) Is on a storage track and is not carrying passengers; or

(d) Has been delivered in interchange but has not been accepted by the receiving railroad.

The term "in service" is important because if the train or passenger equipment is not in service, it is not subject to a part 238 civil penalty.

FRA has revised the definition of "skin" to reflect more appropriately its meaning in the broad sense as the outer covering of a fuel tank and a rail vehicle as a whole, not just the forward-facing end of a locomotive. Moreover, as noted below in the discussion of § 238.209 (Forward-facing end structure of locomotives), the exclusion from the definition of "skin" originally included as part of the definition itself proposed in the NPRM has instead been incorporated into the appropriate rule text for clarity at § 238.209 and § 238.409 (Forward end structures of power car cabs).

The last definition that warrants discussion is "vestibule." FRA intends "vestibule" to mean an area of a passenger car that normally does not contain seating and that is used for passage between the seating area and the side exit doors. The definition of "vestibule" is important to determine the requirements for side door emergency-release mechanisms. For instance, a powered side door in a vestibule that is partitioned from the passenger compartment of a Tier I passenger car must have a manual override feature as specified in § 238.235 by December 31, 1999.

Section 238.7 Waivers

This section sets forth the procedures for seeking waivers of compliance with the requirements of this rule. Requests for such waivers may be filed by any interested party. In reviewing such requests, FRA conducts investigations to determine if a deviation from the general criteria can be made without compromising or diminishing rail safety. This section has been modified from that proposed in the 1997 NPRM to keep it consistent with the general waiver provisions contained in other Federal regulations issued by FRA. FRA recognizes that circumstances may arise when the operation of passenger equipment that does not meet the standards contained in this rule is appropriate and in the public interest.

Section 238.9 Responsibility for Compliance

General compliance requirements are contained in this section. Paragraph (a). Paragraphs (a)(1) and (a)(2) prohibit a railroad subject to part 238 from committing a series of specified acts with respect to a train or a piece of passenger equipment while the train or passenger equipment is in service if it has a condition that does not comply with part 238 or if it has not been inspected and tested as required by part 238. In particular, consistent with 49 U.S.C. chapter 203, paragraph (a)(1) imposes a strict liability standard with respect to violations of the safety

appliance and power brake provisions of part 238. In addition to the acts prohibited by paragraph (a)(2) (that is, the use, haul, offering in interchange, or accepting in interchange of defective or not properly inspected equipment), paragraph (a)(1) prohibits a railroad from merely permitting the use or haul on its line of such equipment if it does not conform with the safety appliance and power brake provisions. *See* § 238.3(b). By contrast, paragraph (a)(2) imposes a lower standard of liability for using, hauling, delivering in interchange, or accepting in interchange a train or passenger equipment that is defective or not properly inspected, in violation of another provision of this part; a railroad subject to this part is liable only if it knew, had notice, or should have known of the existence of either the defective condition of the equipment or the failure to inspect and test. Finally, paragraph (a)(3) establishes a strict liability standard for noncompliance with any other provision of this part.

Paragraph (b). In accordance with the "use" or "haul" language previously contained in the Safety Appliance Acts (49 U.S.C. chapter 203) and with FRA's general rulemaking authority under the Federal railroad safety laws, FRA in paragraph (b) makes clear that passenger equipment will be considered "in use" prior to departure but after it receives or should have received the necessary tests and inspections required for movement. FRA will no longer wait for a piece of equipment with a power brake defect to be hauled before issuing a violation, a practice frequently criticized by the railroads. FRA believes that this approach will increase FRA's ability to prevent the movement of defective equipment that creates a potential safety hazard to both the public and railroad employees. FRA does not feel that this approach increases the railroads' burden since equipment should not be operated if it is found in defective condition in the pre-departure tests and inspections, unless permitted by the regulations.

Paragraph (c). This paragraph clarifies FRA's position that the requirements contained in this final rule are applicable not only to any "railroad" subject to this part but also to any "person," as defined in § 238.5, that performs any function required by this final rule. Although various sections of the final rule address the duties of a railroad, FRA intends that any person who performs any action on behalf of a railroad or any person who performs any action covered by the final rule is required to perform that action in the same manner as required of a railroad or be subject to FRA enforcement action. For example, private car owners and contract shops that perform duties covered by these regulations would be required to perform those duties in the same manner as required of a railroad.

Section 238.11 Civil Penalties

This section identifies the civil penalties that FRA may impose upon any person, including a railroad or an independent contractor providing goods or services to a railroad, that violates any requirement of this part. These penalties are authorized by 49 U.S.C. 21301, 21302, and 21304. The penalty provision parallels penalty provisions included in numerous other safety regulations issued by FRA. Essentially, any person who violates any requirement of this part or causes the violation of any such requirement will be subject to a civil penalty of at least $500 and not more than $11,000 per violation. Civil penalties may be assessed against individuals only for willful violations, and where a grossly negligent violation or a pattern of repeated violations creates an imminent hazard of death or injury to persons, or causes death or injury, a penalty not to exceed $22,000 per violation may be assessed. In addition, each day a violation continues will constitute a separate offense. Furthermore, a person may be subject to criminal penalties under 49 U.S.C. 21311 for knowingly and willfully falsifying reports required by these regulations. FRA believes that the inclusion of penalty provisions for failure to comply with the regulations is important in ensuring that compliance is achieved. The final rule includes a schedule of civil penalties as appendix A to this part. Because the penalty schedule is a statement of policy, notice and comment was not required prior to its issuance. *See* 5 U.S.C. 553(b)(3)(A).

It should be noted that this section has been modified slightly from that proposed in the 1997 NPRM. The modifications were made to address the statutory requirements contained in the Federal Civil Penalties Inflation Adjustment Act of 1990, Pub. L. 101–410 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104–134, April 26, 1996, which required agencies to adjust for inflation the maximum civil monetary penalties within the agencies' jurisdiction. Consequently, the resulting $11,000 and $22,000 maximum penalties were determined by applying the criteria set forth in sections 4 and 5 of the statute to the maximum penalties otherwise provided for in the Federal railroad safety laws.

Section 238.13 Preemptive Effect

Section 238.13 informs the public as to FRA's views regarding what will be the preemptive effect of the final rule. While the presence or absence of such a section does not in itself affect the preemptive effect of a final rule, it informs the public about the statutory provision which governs the preemptive effect of the rule. Section 20106 of title 49 of the United States Code provides that all regulations prescribed by the Secretary relating to railroad safety preempt any State law, regulation, or order covering the same subject matter, except a provision necessary to eliminate or reduce an essentially local safety hazard that is not incompatible with a Federal law, regulation, or order and that does not unreasonably burden interstate commerce. With the exception of a provision directed at an essentially local safety hazard, 49 U.S.C. 20106 will preempt any State regulatory agency rule covering the same subject matter as the regulations in this final rule.

Section 238.15 Movement of Passenger Equipment With Defective Power Brakes

This section contains the requirements for movement of passenger equipment with a power brake defect without civil penalty liability under this part. (Railroads remain liable, however, "in a proceeding to recover damages for death or injury of a railroad employee arising from the movement of" the defective equipment. *See* 49 U.S.C. 20303(c).) A "power brake defect," as defined in paragraph (a), "is a condition of a power brake component, or other primary brake component, that does not conform with this" rule. The term does not include a failure to properly inspect such a component.

Labor representatives objected to FRA's determination that the term "power brake defect" does not include a failure to inspect such a component. These commenters claim that FRA's exclusion of the failure to properly inspect a brake component eliminates an important means of enforcement necessary to ensure that proper power brake inspections are performed. It is claimed that by excluding the failure to inspect from being a power brake defect, FRA has eliminated any incentive for railroads to ensure that trains have operative brakes because there will be little financial repercussion to continuing to use improperly inspected equipment.

FRA believes that the concern raised by certain labor representatives regarding FRA's definition of "power brake defect" under this section is due to a lack of understanding of the rule as

well as a misunderstanding of the existing regulations. Under the current power brake regulations the unit of violation for failure to inspect is the train not individual cars, although FRA can take a separate violation for each car containing a defective condition upon departure after the train received or should have received an initial terminal inspection or for each car not identified as defective after the performance of an intermediate inspection. Moreover, the failure to inspect a piece of equipment cannot be cured through any of the provisions contained in this final rule regarding the movement of defective equipment. Thus, if a railroad fails to inspect a piece of equipment as required, the railroad cannot avoid civil penalty liability by moving the equipment in accordance with the movement for repair provisions. Furthermore, the final rule contains specific civil penalties for a railroad's failure to perform inspections as required. Therefore, railroads will also continue to be subject to potential civil penalty for any car found in defective condition after it has performed or should have performed a Class I or Class IA brake test, and for any car not properly moved or identified as defective at other times.

The final rule also retains the provision stating that passenger equipment will be considered "in use" prior to departure but after it has received or should have received an inspection required by this part. *See* § 232.9. Thus, FRA inspectors will no longer have to wait until a piece of equipment departs a location before issuing a civil penalty, a practice continually criticized by both labor and railroad representatives. In addition, this final rule provides FRA inspectors the ability to issue Special Notices for Repair, which enable an FRA inspector to remove an unsafe piece of equipment from service until appropriate action is taken by the railroad. *See* Amendments to 49 CFR part 216. This enforcement tool is not currently available to FRA inspectors in the area of power brakes and mechanical components on passenger equipment and could be used in circumstances where passenger equipment is not inspected prior to being placed in service. Consequently, the final rule not only retains all of the enforcement tools available to FRA under the current regulations but includes other methods for ensuring compliance by the railroads and provides both a financial and operational incentive for railroads to properly inspect passenger equipment.

Paragraph (b)(1). This paragraph addresses the movement for repair of equipment with a power brake defect found during a Class I or IA brake test or, for Tier II equipment, the equivalent of a Class I or IA brake test. This paragraph allows railroads the flexibility to move passenger equipment with a power brake defect found during such a test if the following three conditions are satisfied: (1) If the train is moved for purposes of effecting repair of the defect, without passengers; (2) the applicable operating restrictions set forth in paragraph (d) are complied with; and (3) the information concerning the defect is recorded on a tag affixed to the equipment or in an automated defect tracking system as specified in paragraph (c)(2).

Paragraph (b)(2). This paragraph permits railroads to move, for purposes of scrapping or sale, passenger equipment with a power brake defect found during a Class I or IA brake test (or the Tier II equivalent) if each of the following conditions is satisfied: if the movement is without passengers, if the speed of the movement is 15 mph or less, and if the railroad's air brake or power brake instructions are followed when making the movement. This provision allows railroads to move surplus equipment without having to request permission for one-time moves from FRA, as is currently required. FRA has not had any serious safety concerns with the methods currently used by railroads to move this equipment and does not believe its limited resources should be tied up in approving these types of moves.

Paragraph (c), generally. This paragraph addresses the use of passenger equipment with a power brake defect that develops en route from a location where a Class I or IA brake test (or the Tier II equivalent) was performed on the equipment. The two basic requirements are that, at the location where the railroad first finds the defect, specified information (such as the nature of the defect and the destination where the defect will be repaired) must be placed on tags attached to the equipment or in a computer tracking system and that the railroad must observe the applicable operating restrictions in paragraph (d). A third requirement, found in paragraph (c)(4), is a special conditional requirement, applying only if the defect causes any brakes to be cut out or renders the brakes inoperative. This provision was slightly modified from what was proposed in order to prevent a railroad from avoiding the requirements contained in this subsection by simply not cutting-out an inoperative brake. Consequently, the language was modified so that the provision includes situations where a defect renders the brakes inoperative, not just situations where brakes are cut-out.

Paragraph (c)(2) requires that equipment being hauled for repairs be adequately identified. Currently, there is no requirement that equipment with defective power brakes be tagged or otherwise identified, although most railroads voluntarily engage in such activity. Furthermore, the current regulations regarding freight cars and locomotives contain tagging requirements for the movement of equipment not in compliance with those parts. *See* 49 CFR 215.9 and 229.9. Consequently, FRA is requiring the identification of equipment with defective power brakes through either the traditional tags which are placed in established locations on the equipment or by an automated tracking system developed by the railroad. Certain information must be contained whichever method is used by a railroad. FRA believes that the tagging or automated tracking requirements add reliability, accountability, and enforceability for the timely and proper repair of equipment with defective power brakes.

FRA is retaining the requirement that equipment found with conditions not in compliance with this part must be appropriately tagged or recorded in an automated tracking system. Although FRA is sensitive to the concerns raised by labor representatives regarding the use of automated tracking systems, FRA believes that provisions must be provided to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Although railroad and FRA inspectors may require additional training on the use of electronic records, FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. In response to labor's concerns, a new paragraph (c)(3) has been added which contains a provision giving FRA the ability to monitor and review a railroad's automated tracking system and provides FRA the ability to prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. urthermore, if the automated tracking

system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad will be in violation of the movement for repair provisions and subject to civil penalty liability.

In addition, under paragraph (c)(4), if the defect causes the brakes on the equipment to be cut out, then the railroad must first find out what percentage of the power brakes in the train are cut out or inoperative in some other way, using the formula in paragraph (d)(1). Next, the railroad must notify the person responsible for the movement of trains of the percentage of operative brakes and the movement restrictions imposed by paragraph (d), inform the railroad's mechanical department about the brake defect, and walk the train to confirm the percentage of operative brakes at the next point where it is safe to do so. Slight modification was made to paragraph (c)(4)(ii) and (iii) replacing the term "dispatcher" with the phrase "person responsible for the movement of trains" as some railroads do not use the term dispatcher and the term mechanical "desk" was removed as it is unnecessary and covered by the term "mechanical department."

Paragraph (d)(1). This paragraph explains the term "inoperative power brakes" and contains a new method for calculating the percentage of operative power brakes (operative primary brakes) in a train. Regarding the term itself, a cut-out power brake is an inoperative power brake, but the failure or cutting out of a secondary brake system (as defined in § 238.5) does not result in inoperative power brakes. For example, failure of dynamic brakes does not render a power brake inoperative unless the dynamic brakes are in fact primary brakes. Although the statute discusses the percentage of operative brakes in terms of a percentage of vehicles, the statute was written nearly a century ago and at that time the only way to cut out the brakes on a car or locomotive was to cut out the entire unit. *See* 49 U.S.C. 20302(a)(5)(B). Today, virtually every piece of equipment used in passenger service can have the brakes cut out on a per-truck or per-axle basis. Consequently, FRA is merely providing a method of calculating the percentage of operative brakes based on the design of passenger equipment used today, and, thus, a means to more accurately reflect the true braking ability of the train as a whole. FRA believes that the method of calculation contained in this final rule is consistent with the intent of Congress when it drafted the statutory requirement and simply recognizes the technological advancements made in braking systems over the last century. Consequently, FRA intends to require the percentage of operative brakes to be determined by dividing the number of axles in the train with operative brakes by the total number of axles in the train. Furthermore, for equipment utilizing tread brake units (TBU), FRA requires that the percentage of operative brakes be determined by dividing the number of operative TBUs by the total number of TBUs.

Paragraphs (d)(2)–(d)(4), generally. These paragraphs contain various speed and other operating restrictions based on the percentage of operative brakes in order to permit passenger railroads the flexibility to efficiently move passengers without compromising safety. FRA believes that the movement restrictions contained in these paragraphs actually enhance the safety of the riding public. The requirements retain the basic principle that a train carrying passengers shall not depart a location where major brake inspections or tests are performed on a train unless the train has 100 percent operational brakes.

As previously noted in the general discussion, FRA has determined that some minor changes need to be made to the requirements proposed in the 1997 NPRM regarding the movement of equipment with defective power brakes. In order to avoid the legal implications involved with employing the statutory authority contained at 49 U.S.C. 20306 for exempting equipment from the statutory requirements related to safety appliances and power brakes, and because railroad representatives acknowledged that the flexibility provided through reliance on the exemption is minimal, FRA will not rely on the statutory exemption provision contained at 49 U.S.C. 20306 in this final rule and has modified the movement for repair provisions accordingly.

FRA will retain the exemption proposed in the 1997 NPRM for passenger train operations from a long-standing agency interpretation that prohibits the movement of a train for repairs under 49 U.S.C. 20303 if less than 85 percent of the train's brakes are operative. This interpretation is based on a 1910 ICC order codified at 49 CFR 232.1. FRA believes that this requirement is overly restrictive when applied to passenger train operations as many passenger operations utilize a small number of cars in their trains and the necessity to cut out the brakes on just one car can easily result in noncompliance. FRA believes that the retention in this final rule of the proposed speed restrictions will fully compensate for the loss of brakes on a minority of cars. FRA rejects the BRC's recommendation that passenger trains with defective brakes be permitted to move no further than the next passenger station because such a stringent requirement is unnecessary, more restrictive than the current statutory mandate regarding the movement of defective brake equipment, and is radically counter to the way passenger trains currently handle defective equipment.

FRA is retaining those portions of the proposed movement for repair requirements that it believes are fully consistent with the existing statutory provisions regarding the movement of equipment with power brake defects and has revised those that are contrary to the statutory provisions. Therefore, passenger trains operating with 75–99 percent operative brakes will not be permitted to travel to the next forward terminal as proposed, but will be permitted to travel only to the next forward location where the necessary repairs to the brake equipment can be effectuated as mandated in the existing statute. In FRA's view, all of the other proposed methods for moving defective power brake equipment are consistent with and are in accordance with the current statutory requirements and will be retained. For example, FRA is retaining the provision which permits a passenger train with 50–75 percent operative brakes to be moved at reduced speeds to the next forward passenger station. Although the percentage of operative brakes is lower than currently permitted by FRA's longstanding agency interpretation (which FRA believes is fully compensated for by the proposed speed restrictions), FRA believes that the movement of the defective equipment to the next passenger station is in accordance with the statutory requirement as the safety of the passengers must be considered in determining the nearest location where necessary repairs can be made. In addition, permitting passenger trains to continue to the next forward location where the necessary repairs can be performed is also consistent with the statutory requirement as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic and recognizes the hazards incident to overcrowding platforms and trailing trains. Furthermore, retention of the movement provisions related to long-distance intercity passenger trains and long-distance Tier II equipment is

consistent with the current statutory requirements as these provisions permit the movement of defective brake equipment on these trains only to the next passenger station or the next repair location, with various speed restrictions depending on the percentage of operative brakes.

FRA recognizes that there are major differences in the operations of commuter or short-distance intercity passenger trains, and long-distance intercity passenger trains. Commuter and short-distance intercity passenger trains tend to operate for fairly short distances between passenger stations and generally operate in relatively short turn-around service between two terminals several times in any given day. On the other hand, long-distance intercity passenger trains tend to operate for long distances, with trips between the beginning terminal and ending terminal taking a day or more and traversing multiple States with relatively long distances between passenger stations. Consequently, the final rule contains slightly different requirements with regard to the movement of defective brake equipment in long-distance intercity passenger trains.

FRA believes that passenger railroads can safely and efficiently operate trains with en route brake failures under the strict set of conditions in this final rule. FRA has long held that the industry can safely operate trains at normal track speeds with as low as 85 percent effective brakes as long as the inoperative brakes were due to failures which occurred en route or due to defective cars being picked up en route and being moved for repairs. The only change in this final rule to current practice is the additional flexibility for certain passenger operations to move their equipment with a lower percentage of operative brakes, under strict speed restrictions, and recognition of the safety need to allow passenger trains to move to the nearest forward location capable of performing the repairs.

Paragraph (d)(2). This paragraph contains operating requirements for the movement of any passenger train that develops en route brake failures resulting in 74 to 50 percent operative brakes. In these circumstances, FRA will allow the train to proceed only to the next passenger station at a reduced speed, not to exceed 20 mph, to discharge passengers before proceeding without passengers to the nearest location where the necessary repairs can be made. This provision recognizes the dangers of unloading passenger at locations other than passenger stations by allowing railroads to move the equipment to a location with the facilities to handle the discharge of passengers. Furthermore, engineering evidence and test data demonstrate that the reduced speed more than compensates for the reduced braking force. At the reduced speed, even with only 50 percent effective brakes, a train is able to stop in a much shorter distance than the same train traveling at the maximum operating speed with 100 percent operative brakes.

Paragraphs (d)(3)(i) and (ii). FRA will also permit commuter, short-distance intercity, and short-distance Tier II passenger trains experiencing en route brake failures resulting in 99 to 75 percent operative brakes to continue in service only to the next forward location where the necessary repairs can be effectuated. FRA will permit these passenger trains to continue in service past a repair location to the next forward passenger station only if the repair location does not have the facilities to safely unload passengers. However, FRA will require the speed of the train with 84 to 75 percent operative brakes to be reduced to 50 percent of the train's maximum operating speed or 40 mph, whichever is less. Engineering evidence and test data demonstrate that the reduced speed more than compensates for the reduced braking force. At the reduced speed, even with only 75 percent effective brakes, a train is able to stop in a much shorter distance than the same train traveling at the maximum operating speed with 100 percent operative brakes. APTA also presented engineering evidence and test data that demonstrated that stopping distances remained well within signal spacing distances with a large margin of safety even for trains with as low as 85 percent effective brakes. Consequently, FRA will not impose speed restrictions on trains operating with 85 to 99 percent operative brakes.

Paragraph (d)(4). This paragraph contains the operating restrictions on moving equipment with defective brakes in long-distance intercity passenger trains. This paragraph permits the movement of defective brake equipment in these trains only to the nearest forward location designated as a repair location for this equipment by the operating railroad in the list required by § 238.19(d). FRA will also permit long-distance intercity passenger trains to continue in service past a designated repair location to the next forward passenger station only if the designated repair location does not have the facilities to safely unload passengers. Although FRA is permitting the continued operation of long-distance intercity passenger trains that develop en route brake failures resulting in 99 to 85 percent operative brakes at normal speeds, the final rule contains a speed restriction of no greater than 40 mph when the en route brake failures result in 84 to 75 percent operative brakes. Therefore, these trains gain flexibility in being permitted to move a greater percentage of defective equipment than currently allowed and are able to move that equipment to the next forward repair location rather than the "nearest" repair location as currently required. See 49 U.S.C. 20303(a). As noted previously, FRA believes that the safety of the traveling public mandates the flexibility of permitting passenger trains to continue to the next forward repair location or passenger station because requiring trains to reverse directions and perform back hauls to the nearest repair location increases the risk of collision on the railroad.

In this final rule, FRA is retaining the proposed requirement that operators of long-distance passenger trains designate the locations where repairs can be conducted on the equipment. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in passenger trains. Due to the unique technologies used on the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, FRA is retaining the broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor commenters, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to designate an adequate number of repair locations.

Furthermore, rather than attempt to develop a standard applicable to all situations in the context of short-distance intercity and commuter trains, which FRA does not believe can be accomplished, FRA will approach the issue of what constitutes the next forward location where repairs can be effectuated based on a case-by-case

analysis of each situation. FRA believes that its field inspectors are in the best position to determine whether a railroad exercised good faith in determining when and where to move a piece of defective brake equipment. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the next forward repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains.

Paragraph (e). This paragraph contains the operating restrictions on passenger trains with inoperative power brakes on the front or rear unit of the train. Similar provisions were contained in the 1997 NPRM and included in each of the various operating restriction contained in paragraph (d). In order to make the rule easier to understand, FRA has added this paragraph to the final rule and removed the repetitious language from each of the provisions contained in paragraph (d). As noted in the general preamble discussion above, FRA is slightly modifying the provisions related to the operation of trains with defective brakes on the front or rear car. In the 1997 NPRM, FRA proposed that if the power brakes on the front or rear unit become inoperative then a qualified person must be stationed at the handbrake on the unit. *See* 62 FR 49797. FRA recognizes that in some instances the handbrake on a car located at the front or rear of a train may not be accessible to a member of the train crew or may be located outside the interior of the car and, thus, unsafe for a crew member to operate while the train is in motion. FRA also recognizes that in many circumstances when a car at the front or rear of a train has inoperative brakes certain speed restrictions should be placed on the train; however, FRA believes that railroads are in the best position to determine what the appropriate speed restriction should be given the circumstances involved. Therefore, FRA is modifying the requirements for the use of such cars and paragraph (e) requires that appropriate speed restrictions be imposed with inoperative brakes on the front or rear unit and that trains containing equipment with inaccessible handbrakes or with handbrakes located outside the interior of a car be operated at restricted speed (i.e. 20 mph) and that the defective equipment be removed or repositioned in the train at the first possible location. The operating restrictions contained in this paragraph are consistent with current industry practice and should not impose any additional burden to the industry.

It should be noted that the provisions contained in 49 U.S.C. 20303(c) continue to remain applicable to a railroad when hauling equipment with defective or insecure power brakes or other safety appliances pursuant to the requirements contained in this final rule. This section of the statute contains the liability provisions attendant with the movement of equipment with defective or insecure safety appliances, including power brakes.

Section 238.17 Movement of Passenger Equipment With Other Than Power Brake Defects

This section contains the requirements for the movement of passenger equipment with a condition not in compliance with part 238, excluding a power brake defect and including a safety appliance defect, without civil penalty liability under this part. (Railroads remain liable, however, under 49 U.S.C. 20303(c), as described in the discussion of the previous section.)

As previously noted, there are currently no statutory or regulatory restrictions on the movement of passenger cars with defective conditions that are not power brake or safety appliance defects. The provisions contained in this section are similar to the provisions for moving defective locomotives and freight cars currently contained in 49 CFR 229.9 and 215.9, respectively. As these provisions have generally worked well with regard to the movement of defective locomotives and freight cars and in order to maintain consistency, FRA has modeled these movement requirements on those existing requirements. FRA is allowing passenger railroads the flexibility to continue to use equipment with non-safety-critical defects until the next scheduled calendar day exterior mechanical inspection. However, FRA intends the calendar day mechanical inspection to be the tool used by railroads to repair all reported defects and to prevent continued use of defective equipment to carry passengers. (Compare § 238.17(b) with § 238.17(c).) FRA intends for 49 CFR 229.9 to continue to govern the movement of locomotives used in passenger service which develop defective conditions, not covered by part 238, that are not in compliance with part 229. Part 229 will continue to cover (non-steam) locomotives that are used by the tourist railroads until such railroads are covered by part 238.

After review of the comments submitted and provided orally at the Working Group meetings, FRA is making some modest changes in this final rule regarding the movement of equipment with non-power brake defects. FRA agrees with the comments of railroad representatives that the 1997 NPRM may have been over-reaching in requiring a QMP to make a determination regarding the safety of moving a piece of defective equipment for any of the mechanical components addressed in this regulation. However, FRA also agrees with the comments submitted by labor representatives that railroads should not determine what components are considered safety-critical. Therefore, FRA will require a determination regarding the safety of moving a piece of equipment by a QMP (as discussed above) whenever a potential running gear defect is involved. FRA rejects the language proposed by APTA that the defect be a potentially "safety-critical" running gear defect as FRA believes that any defect to a running gear component is potentially safety-critical. In order to avoid confusion, FRA is providing an explicit definition of "running gear defect." FRA is defining the term to mean any condition not in compliance with this part which involves a truck component, a propulsion system component, a draft system component, a wheel or a wheel component. In this final rule, FRA will permit the use of a qualified person to determine the safety and establish appropriate movement restrictions on continued use of equipment which involves non-running gear defects.

In paragraph (b), FRA is providing very limited flexibility to railroads to operate defective equipment from a location where a calendar day mechanical inspection was performed in order to effectuate repairs. FRA intends for the calendar day mechanical inspection to be as comprehensive as possible and to be the time when all

defective components are identified and repaired. In order to ensure that these daily inspections are performed by highly qualified inspectors, FRA has provided the railroads with considerable flexibility to perform these inspections at locations that are best suited to a quality and comprehensive inspection. Therefore, FRA will permit the movement of defective equipment from these inspection locations only with very stringent restrictions. Equipment containing running gear defects may only be moved from such locations if it is not in passenger service and is in a non-revenue train. Equipment containing non-running gear defects may be moved in a revenue train provided the equipment is locked-out and empty, except that the equipment may be used and occupied by a member of the train crew to the extent necessary to safely operate the train. Any defective equipment moved from such locations must also be properly identified as required in paragraph (c)(4) and moved in accordance with any movement restriction imposed. FRA believes these stringent movement restrictions will provide railroads limited flexibility to move defective equipment to a location where it can best be repaired but will limit a railroad's desire or ability to move defective equipment from these inspection locations and will encourage the performance of the calendar day mechanical inspections at locations where repairs to equipment can be conducted.

Paragraph (c) contains the requirements regarding the movement of passenger equipment that develops a condition not in compliance with this part, other than a safety appliance defect, while en route to its destination after its calendar day mechanical inspection was performed. This paragraph has been slightly modified from that proposed in the 1997 NPRM in order to recognize the differing requirements for running rear defects and non-running gear defects as noted in the discussion above. Paragraph (c)(1) retains the requirement that the QMP may make the determination regarding the continued use of equipment containing a potential running gear defect based on the description provided by on-site personnel. Although FRA recognizes the concerns raised by labor representatives, FRA believes that the rule must recognize the reality of current operations and acknowledge the fact that mechanical-type personnel are not readily available at every location on a railroad's line of road. Furthermore, when such off-site determinations are made the rule requires that the equipment only be moved to the next forward location where the equipment can be inspected by a QMP to verify the description of the defect provided by the on-site personnel. Paragraph (c)(2) also permits determinations regarding the continued use of equipment containing non-running gear defects to be made by a qualified person based on a description provided by on-site personnel. In cases where non-running gear defects are involved, FRA will not require that the equipment be inspected at the next forward location by a qualified person as the safety impact of such defects should be readily identifiable based upon a description by on-site personnel and can be adequately addressed via radio communication.

Paragraph (c)(4) contains the requirements for identifying defective equipment. This paragraph permits the identification and tracking of defective equipment in either of two ways. One option is to tag the equipment in a manner similar to what is currently required under § 215.9 for freight cars. The second option is to record the specified information in an automated tracking system. Although FRA is sensitive to the concerns raised by labor representatives regarding the use of automated tracking systems, FRA believes that provision must be made to allow railroads to take advantage of existing and developing technologies regarding the electronic maintenance and retention of records. Although railroad and FRA inspectors may require additional training on the use of electronic records, FRA believes that the use of such a medium to track defective equipment can expedite the identification and repair of defective equipment and, thus, reduce the time that defective equipment is operated in passenger service. In response to labor's concerns, paragraph (c)(5) has been added to this final rule and contains a provision which gives FRA the ability to monitor and review a railroad's automated tracking system and provides FRA the ability to prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of directly tagging defective equipment if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track and monitor the movement of defective equipment. Furthermore, if the automated tracking system developed and implemented by a railroad does not accurately and adequately record the information required by this part, the railroad will be in violation of the movement for repair provisions contained in this section and subject to civil penalty liability.

Paragraph (d) contains a requirement that was inadvertently omitted from the 1997 NPRM but which is integral to the movement of equipment which has been involved in a derailment. This paragraph addresses the inspection of roller bearings on a car whose truck is involved in a derailment. As the proper operation and condition of a vehicle's roller bearing is a key element in ensuring the safe movement of the vehicle, FRA believes it is vital that this provision be included in these final regulations. The added requirement prohibits a railroad from continuing in service a piece of passenger equipment that has a roller bearing whose truck was involved in a derailment unless the bearing is inspected and tested in accordance with the provisions stated. The added provision is identical to the requirement currently contained in 49 CFR § 215.115(b). Although the existing provision is applicable to freight cars, virtually every passenger train operation follows the provisions contained in that section prior to returning a piece of equipment to service after it was involved in a derailment and, thus, should not result in any added burden to the industry. FRA believes that the practice is critical to ensuring the proper operation of the roller bearing after a derailment occurs and should be incorporated into this final rule.

Paragraph (e) contains the special statutory restrictions on the movement of passenger equipment with a safety appliance defect, other than a power brake defect. FRA does not intend to alter the current statutory requirements contained in 49 U.S.C. 20303 regarding the movement of passenger equipment with defective or insecure safety appliances. *See* §§ 238.229, 238.429, 238.431. Consequently, in paragraph (e), FRA is requiring that passenger equipment that develops a defective or insecure safety appliance continue to be subject to all the statutory restrictions on its movement. Under the current statutory language—

> A vehicle that is equipped in compliance with this chapter whose equipment becomes defective or insecure nevertheless may be moved when necessary to make repairs * * * from the place at which the defect or insecurity was first discovered to the nearest available place at which the repairs can be made—
>
> (1) on the railroad line on which the defect or insecurity was discovered; or
>
> (2) at the option of a connecting railroad carrier, on the railroad line of the connecting carrier, if not farther than the place of repair described in clause (1) of this subsection.

49 U.S.C. 20303(a). It should be noted that the safety appliance requirements applicable to Tier I equipment merely references the Railroad Safety Appliance Standards (49 CFR part 231); however, FRA has mandated separate safety appliance requirements for Tier II passenger equipment. *See* §§ 238.429 and 238.431.

As noted previously, the statutory provisions related to the movement of equipment with defective or insecure safety appliances permit the movement of such equipment to the nearest location where the necessary repairs can be made. The determination of what constitutes the nearest location where the necessary repairs can be effectuated in a safety appliance context is identical to the analysis required when dealing with a power brake defect. In making these determinations both the railroad as well as FRA's inspectors must conduct a multi-factor analysis based on the facts of each case. In determining whether a particular location is a location where necessary repairs can be made or whether a location is the nearest repair location in a passenger train context, the accessibility of the location, the ability to safely make the repairs at that location, and the safety of the passengers are the overriding factors that must be considered in any analysis. These factors have a multitude of sub-factors which must be considered, such as: the type of repair required; the safety of the passengers if a move against the current of traffic is conducted; the safety of employees responsible for conducting the repairs; the safety of employees responsible for getting the equipment to or from a particular location; the switching operations necessary to effectuate the move; the railroad's recent history and current practice of making repairs (brake and non-brake) at a particular location; relevant weather conditions; potential overcrowding of passenger platforms; and the overcrowding of trailing trains. Therefore, in many circumstances trains will be permitted to continue to the next forward location where the necessary repairs can be performed as such movement is necessary to ensure the safety of the traveling public by protecting them from the hazards incident to performing movements against the current of traffic.

Section 238.19 Reporting and Tracking Defective Equipment

This section contains the reporting and tracking requirements that passenger railroads must maintain regarding defective passenger equipment. FRA is requiring that each railroad develop and maintain a system for reporting and tracking equipment defects. Paragraph (a) of this section requires that, for each equipment defect discovered by the railroad on equipment used by the railroad, the system record the following information: the number by which the equipment is identified, type of defect, when the defect occurred, the determination made by a qualified person or a qualified maintenance person on handling the equipment, the name of such person, any operating restrictions placed on the equipment, and finally how and when the defect was corrected. FRA has not identified any specific method or means by which a railroad should gather and maintain the required information. FRA believes that each railroad is in the best position to determine the method of obtaining the required information which is most efficient and effective based on its specific operation. Thus, railroads could maintain this information either in some type of written medium or electronically in conjunction with some type of automated tracking system.

FRA believes that the reporting and tracking of defective equipment is an essential feature of any effective system safety program. Railroad managers are able to utilize such systems to ensure that the railroad complies with safety regulations, does not use unsafe equipment, makes needed repairs, and has failure data to make reliability-based decisions on maintenance intervals. Furthermore, most passenger railroads currently have some sort of reporting and tracking system in place. FRA recognizes that some railroads may have to incur additional initial costs to develop or improve defect reporting and tracking systems; however, FRA believes these costs can be recouped through the increased operating efficiency that an effective recording and tracking system provides.

Paragraph (a) makes clear that railroads have this tracking system in place within 26 months after publication of the final rule in the **Federal Register**. APTA recommended that railroads be provided a two-year phase-in period for this requirement to become effective. As the requirements for tracking defective equipment are contingent on completion of a railroad's training of its employees, FRA will provide the same time period for implementation of the reporting and tracking system. However, FRA believes that APTA's recommendation was based on a misunderstanding that the defect tracking system had to be an automated electronic system. As the previous discussion makes clear, the defect tracking system need not be an electronic automated system but could consist of a written records retention system. Thus, even if a railroad needs two or more years to develop an automated tracking system, the railroad could utilize a written tracking system while the automated system is being developed. Virtually all railroads currently track their defective equipment by some means; FRA believes that these current methods of compiling data could be slightly modified to include—or already include—all of the information required by this section.

Paragraph (b) requires that railroads maintain the required information for a period equal to one periodic maintenance interval for each specific type of equipment. FRA believes that this minimum retention period will ensure that the records remain available when they are most needed, but will not place a burdensome record storage requirement on railroads. However, FRA strongly encourages railroads to keep these records for longer periods of time because they form the basis for future reliability-driven decisions concerning test and maintenance intervals.

In paragraph (d), FRA retains the previously proposed requirement that railroads operating long-distance passenger trains and Tier II passenger equipment maintain a list of the locations where repairs can be made to the equipment's power brake components. Although FRA agrees that this provision puts the control of what locations constitute repair locations in the hands of the railroad, FRA believes that the operators of these long-distance intercity trains and Tier II passenger equipment are in the best position to determine which locations have the necessary expertise to handle the repairs of the somewhat advanced braking systems utilized in these passenger trains. Due to the unique technologies used in the brake systems of these operations and the unique operating environments, the facilities and personnel necessary to conduct proper repairs on this equipment are somewhat specialized and limited. Moreover, this final rule retains the broad performance-based requirement that railroads operating this equipment designate a sufficient number of repair locations to ensure the safe and timely repair of the equipment. Contrary to the beliefs of some labor commenters, FRA believes that this performance standard provides FRA sufficient grounds to institute civil penalty enforcement actions or take other enforcement actions if, based on its expertise and experience, FRA believes the railroad is failing to

designate an adequate number of repair locations.

Section 238.21 Special Approval Procedure

This section contains the procedures to be followed when seeking to obtain FRA approval of an alternative standard under §§ 238.103 (fire safety), 238.223 (fuel tanks), 238.309 (periodic brake equipment maintenance), 238.311 (single car test), 238.405 (longitudinal static compressive strength), or 238.427 (suspension system); for approval of alternative compliance under § 238.201 (covers structural standards other than the static end strength requirement); and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. Procedures for obtaining FRA approval of inspection, testing, and maintenance programs for Tier II equipment under § 238.503 are found at § 238.505. FRA has revised this section in the final rule from that which was proposed in the NPRM, consistent with other changes made in the final rule.

FRA intends to entertain petitions for alternative compliance under § 238.201 to allow operation of equipment that complies with the static end strength requirement (§ 238.203) but does not fully comply with the other final standards in subpart C of part 238, provided the petitioner can demonstrate "equivalent safety" in that the equipment will operate at a level of safety that is at least equivalent to that afforded by the provision(s) of subpart C for which alternate compliance is sought. Equivalent safety may be afforded by features or measures that compensate for equipment that does not meet such standard(s) on its own. Equivalent safety is met when railroad employees, passengers, and the general public are no more at risk from passenger equipment that does not specifically meet the requirement(s) for which alternative compliance is sought, but is protected by compensating features or measures, than when the equipment specifically complies with the requirement(s) itself.

FRA recommends that the risk assessment portion of a railroad's system safety program be used to demonstrate equivalent safety. The burden would be on the petitioning railroad to perform a comparative risk assessment and to prove equivalent safety. FRA has experience with two instances involving different passenger equipment operations where a comparative risk assessment has been used successfully. Amtrak commissioned a comparative risk assessment between current Northeast Corridor operations and proposed operations involving the HST at speeds up to 150 mph. The risk assessment demonstrated that proposed countermeasures such as enhancements to the train control system and the increased structural strength and the crash energy management design of the HST should compensate for the increased operating speed. The comparative risk assessment quantitatively showed that, with the safety improvements included in the Amtrak plan, passengers were no more at risk travelling on the HST at 150 mph on the Northeast Corridor than if they were travelling on an existing Amtrak passenger train at a lesser speed on the same corridor.

The second instance is the proposed Florida Overland Express (FOX) operation of a French TGV high speed rail system in Florida that was being considered until January 1999. The State of Florida has withdrawn its support for the project, and work on the project has ceased. Nonetheless, FOX had performed a comparative risk assessment of three operations: the HST on the Northeast Corridor, the TGV on high speed lines in France, and the proposed FOX operation in Florida. *See* FRA Docket: RM Pet. 97–1. The analysis showed the TGV operation in France to pose less risk to passengers than the HST on the Northeast Corridor, and the proposed FOX operation to be even safer than the TGV in France. The FOX risk assessment suggested that collision avoidance provided by a dedicated right-of-way with no grade crossings more than compensated for the increased speed and decreased structural strength of the proposed equipment.

FRA cites these two instances as examples of what is expected to demonstrate equivalent safety for proposed operations when a petition for alternative compliance is submitted in accordance with § 238.201. Any such analysis would need to be predicated on a detailed engineering analysis of the crashworthiness of the vehicles proposed to be employed, permitting FRA to assess the gap in safety between those vehicles and equipment built to the specific requirements of subpart C. FRA would also expect an analysis showing the effectiveness of clearly compensating features or measures, such as closing grade crossings, providing absolute separation of lighter rail equipment from heavy rail equipment, or using highly capable signal and train control systems that significantly reduce the probability of accidents caused by human error. FRA would provide advice and guidance to organizations wishing to demonstrate equivalent safety, but the burden of performing a comparative risk assessment and establishing that the operation provides equivalent safety is on the entity proposing to operate equipment that does not fully comply with the standards in subpart C.

Section 238.23 Information Collection

This provision shows which sections of this part have been approved by the Office of Management and Budget (OMB) for compliance with the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* A more detailed discussion of the information collection requirements in this part is provided below.

Subpart B—Safety Planning and General Requirements

Section 238.101 Scope

This subpart contains safety planning requirements and other generally applicable requirements for all passenger equipment subject to this part.

Section 238.103 Fire Safety.

This section contains the fire safety planning and analysis requirements for passenger equipment, as well as the requirements for the materials used in passenger equipment. This section is comprised of parts of proposed sections 238.105 and 238.115 in the NPRM, which FRA has combined together in this final rule as APTA had suggested in its comments.

Paragraph (a)(1) contains the fire safety requirements for materials used in constructing passenger cars and cabs of locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Such materials shall comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA's Associate Administrator for Safety under the procedures specified in section 238.21. Paragraph (a)(1) is based on proposed § 238.115(a)(1) in the NPRM. *See* 62 FR 49803.

In the final rule, paragraph (a)(1) expressly applies to materials used in constructing a passenger car or a locomotive cab, unlike the wording of proposed § 238.115(a)(1) in the NPRM, *see* 62 FR 49803, which expressly applied to all materials used in constructing the *interior* of a passenger

car or a locomotive cab. As proposed in the NPRM, of course, such materials were required to meet the test performance criteria for flammability and smoke emission characteristics contained in Appendix B to part 238, *see* 62 FR 49823–4, or alternative standards after FRA approval. FRA has removed the word "interior" from this paragraph in the final rule because its use is inconsistent with the requirements of part 238 as a whole. In the NPRM, proposed Appendix B itself provided test performance criteria for a category of materials entitled, "Exterior Plastic Components"; specifically, "End Cap" and "Roof Housings" under the function of material column in the table. Further, proposed Appendix B separately provided test methods and performance criteria for a function of material termed "Exterior Boxes" under the category entitled, "Component Box Covers." As expressed in the NPRM, FRA intended that "exterior" materials used in constructing passenger cars and locomotive cabs comply with test performance criteria for flammability and smoke emission characteristics.

In the final rule, materials used in constructing passenger cars and locomotive cabs are required to meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval. As a result, with the exception of any alternative standards approved by FRA, the terms of Appendix B govern which testing of materials is, or is not, required as a threshold inquiry. Whether materials are physically located on the exterior or in the interior of a passenger car, for example, such materials are subject to testing for flammability and smoke emission characteristics if so required by the terms of Appendix B. Overall, FRA believes that the final rule more appropriately specifies the flammability and smoke emission testing requirements for materials used in constructing passenger cars and locomotive cabs, without unnecessarily burdening railroads. In particular FRA notes that, unlike the NPRM, Appendix B in the final rule provides express exceptions from the need to test materials used in constructing passenger cars and locomotive cabs under certain conditions. (See the section-by-section analysis discussion of Appendix B to part 238, explaining the changes to Appendix B.)

In its comments on the NPRM, APTA recommended that the requirements of paragraph (a)(1) apply to passenger cars and cabs of locomotives ordered on or after one year following the effective date of the final rule. APTA's suggested rule text did not contain an outside limit on the placement in service of new passenger equipment not meeting the requirements of paragraph (a)(1), although ordered within the permitted time. However, FRA believes that an outside limit on the placement in service of new passenger equipment not meeting the requirements of this section needs to be retained so as not to delay unnecessarily the implementation of the rule.

Under paragraph (a)(2), on or after November 8, 1999 materials introduced into a passenger car or a locomotive cab, during any kind of rebuild, refurbishment, or overhaul of such passenger equipment, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval as specified in this rule. Originally, FRA proposed that the test performance criteria for flammability and smoke emission characteristics apply as of the effective date of the final rule to materials used in refurbishing passenger car and locomotive cab interiors. FRA has removed the express reference to passenger car and locomotive cab interiors for the reasons stated in the above discussion of paragraph (a)(1).

In response to the NPRM, APTA commented that it may support a rule requiring the materials selection criteria to be used when the interiors of existing passenger equipment are refurbished, if the term refurbish were carefully defined in the Working Group meetings. In either case, APTA recommended that this provision should apply as of one year following the effective date of the final rule. FRA has refined paragraph (a)(2) to address APTA's concern: Simply put, if material is introduced into passenger cars and locomotive cabs during any kind of rebuild, refurbishment, or overhaul of the equipment, the material must comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval. For example, if a seat or a section of a wall is replaced, then the materials used to replace those components (including an individual seat cushion) must comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B, or alternative standards after FRA approval. However, paragraph (a)(2) does not in itself require a railroad to remove existing materials from a vehicle that do not comply with test performance criteria for flammability and smoke emission characteristics, when such materials are found but not intended to be replaced during the railroad's rebuilding, refurbishment, or overhaul of that vehicle. Of course, such non-compliant materials may be required to be removed from the vehicle pursuant to the fire safety analyses required under paragraph (d) of this section; yet, again, the requirements of paragraph (a)(2) do not specifically require such removal. FRA believes that deferring the implementation of this provision for one year, as recommended by APTA, is therefore not necessary for railroads in light of this section's clearly defined application.

As noted above in the discussions of paragraphs (a)(1) and (a)(2), railroads can request FRA approval to utilize alternative standards issued or recognized by an expert consensus organization in lieu of complying with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B. A railroad must make such a request pursuant to the procedures in § 238.21.

Paragraph (b) requires railroads to obtain certification that a representative sample of combustible materials to be used in constructing passenger cars and locomotive cabs (pursuant to paragraph (a)(1)) or introduced into such equipment as part of any kind of rebuild, refurbishment, or overhaul of the equipment (pursuant to paragraph (a)(2)) have been tested and comply with the fire safety requirements specified in this part. Paragraph (b) is based on § 238.115(b) in the NPRM. FRA has modified the certification requirement following a comment by APTA on the NPRM that the certification be based on a representative sample of the combustible materials used. In response to another APTA comment, FRA has also clarified that the certification be based on the results at the time the materials were tested.

Paragraph (c) requires each railroad to address the fire safety of new equipment during the design stage so as to reduce the risk of harm due to fire to an acceptable level using MIL–STD–882C as a guide or another such formal methodology. (A copy of MIL–STD–882C has been placed in the public docket for this rulemaking.) To this end, the rule requires that each railroad complete a written analysis of the fire safety problem and ensure that good fire protection practice is used during the design of the equipment. This paragraph is based on proposed § 238.105(a) and (b) in the NPRM. *See* 62 FR 49800.

Booz-Allen & Hamilton, Inc. (Booz-Allen) commented that the risk

acceptance level be clarified. It stated that MIL–STD–882C does not define a risk acceptance level itself, and it believed each individual railroad should determine that level based on its own operating experience, fleet life, operating conditions, and other factors. FRA recognizes that MIL–STD–882C does not define a specific acceptance level itself. Yet, the Standard leads a railroad through the steps necessary to determine an acceptance level, and the railroad is in the best position to make that determination. FRA notes that Booz-Allen also submitted a number of other comments on the elements on the fire safety analyses required by the rule, and FRA has incorporated several of these comments in whole and in part.

Paragraph (d) requires that existing passenger equipment and operations be subjected to a fire safety analysis similar to that proposed for new equipment in paragraph (c). This paragraph is based on proposed § 238.105(d) in the NPRM. See 62 FR 49801. A preliminary fire safety analysis would be required within the first year. This effort would constitute an overview of the fleet and service environments, together with known elements of risk (e.g., tunnels). For any category of equipment and service identified as possibly presenting unacceptable risk, a full analysis and any necessary remedial action would be required within the following year. A full fire safety analysis, including review of the extent to which materials in all existing cars comply with the test performance criteria for flammability and smoke emission characteristics contained in Appendix B to this part or alternative standards approved by FRA under this part, would be required within 4 years. This overall review would closely parallel and reinforce the passenger train emergency preparedness planning effort mandated under a separate docket (*see* 63 FR 24630; May 4, 1998).

Paragraph (d) responds to NTSB concerns following its investigation of the collision involving a MARC commuter train with Amtrak's Capitol Limited at Silver Spring, Maryland, on February 16, 1996. Among 13 recommendations addressed to FRA was the following:

> Require that a comprehensive inspection of all commuter passenger cars be performed to independently verify that the interior materials in these cars meet the expected performance requirements for flammability and smoke emissions characteristics.

(R–97–20) (NTSB/RAR–97/02, "Collision and Derailment of Maryland Rail Commuter MARC Train 286 and National Railroad Passenger Corporation AMTRAK Train 29 Near Silver Spring, Maryland on February 16, 1996.") The NTSB noted that some materials taken from a MARC car not involved in the fire that resulted from the collision "failed current flammability and smoke emissions testing criteria," and that the materials in the actual cab control car involved in the collision "also most likely would have failed" to meet the testing criteria. (NTSB/RAR 97/02 at 63.) The NTSB did note, however, that had the materials met current performance criteria, the outcome would not have been any different because of the presence of diesel fuel sprayed into the cab control car. *Id.* Overall, the NTSB found that because other commuter passenger cars may also have interior materials that may not meet specified performance criteria for flammability and smoke emission characteristics, the safety of passengers in those cars could be at risk.

FRA agrees with the NTSB that steps must be taken to minimize fire safety vulnerabilities in the existing rail passenger equipment fleet. Present fire safety guidelines are advisory and were not introduced by FRA until 1984. Even in recent years, passenger railroads have been free to utilize non-compliant materials (particularly during interior refurbishment funded locally without FTA support). It is appropriate for each commuter authority and Amtrak to evaluate the mix of materials, possible sources of ignition, and potential fire environments—including tunnels, cuts and elevated structures where evacuation to the outside of the vehicle may be difficult or ineffectual in reducing the risk of injury—relevant to the risk of injury due to fire or smoke exposure.

FRA is concerned in particular with the risk arising from the operation of cab cars forward and MU locomotives. Due to their position in the lead of a passenger train, these vehicles are more greatly exposed to the risk of fire from collisions with other rail vehicles as well as highway vehicles at grade crossings. In a collision, fire may erupt from the fuel tanks of both the rail and highway vehicles, and also from tanks used by highway vehicles that transport loads of flammable material. The level of risk on each railroad corresponds to the number of highway-rail grade crossings, density of rail traffic, and opportunities for collisions.

FRA requested comments on the costs and benefits associated with the approach contained in paragraph (d). APTA commented that there would be little safety benefit to commuter railroads, and potentially great cost, in requiring the fire safety program for new passenger equipment to be applied to all categories of existing passenger equipment. APTA commented that the need for a program of this type has not been demonstrated, and that neither statistics nor other evidence has been presented to show that non fuel-fed equipment fires are a serious cause of injury or death in the passenger railroad industry. APTA added that, unlike a fire safety analysis of new equipment, where design flexibility exists to correct in an economical manner any deficiencies uncovered by the analysis, costs to modify existing equipment can be an order of magnitude higher. Overall, APTA believed the impact of the proposal to be great due to the expense of retrofitting equipment, although it was unable to quantify the exact impact without performing the fire safety analyses necessary to determine what modifications needed to be done to equipment. Booz-Allen also commented that the rule will not be cost-effective for existing passenger equipment that has less than 5 years of service life.

FRA recognizes the concern that retrofitting existing passenger equipment may impose considerable cost, and FRA neither proposed nor is requiring that materials not complying with the test performance criteria for flammability and smoke emission characteristics be removed in every instance from existing passenger equipment, if such materials are found during a fire safety analysis. Accordingly, each railroad is afforded the flexibility of reducing an unacceptable safety risk uncovered during an analysis of its equipment by the best means it sees fit. However, FRA is reluctant to withhold application of this provision to equipment with less than a specified service life. First, the practical question exists whether the service life of a vehicle can be specified in fact, considering the ability to extend a vehicle's life by rebuilding and the possibility of its sale to other railroads. Second, FRA believes that a preliminary fire safety analysis of all passenger equipment is necessary to determine whether any passenger equipment may present an unacceptable safety risk for passengers and crewmembers, regardless of the age of the vehicle. If an unacceptable risk is in fact found and the railroad had intended on retiring the equipment in the near future, the railroad can evaluate for itself whether it is more economical to retire the equipment or correct the safety deficiency. Further, considering the historical record of fires on passenger equipment, FRA does not expect railroads to find widespread fire safety

problems on the equipment it operates, and thus FRA would expect that most of the time a preliminary fire safety analysis would be all that is necessary.

In its comments on the NPRM, Booz-Allen questioned whether the fire safety analysis of existing equipment would include consideration of nonmetallic and noncombustible materials. FRA believes that such consideration is necessary because, for example, floor tiles or other non-metallic materials may have coatings that may emit gas in a fire. Booz-Allen also commented that the fire risk of equipment depends on the ignitability of the materials, and, accordingly, ignitability tests should be included as part of the performance criteria. FRA believes the ignitability of materials is sufficiently addressed by the test performance criteria for flammability and smoke emission characteristics found in Appendix B to this part.

In the end, FRA believes the concern of the commenters as to the expense of paragraph (d) is overestimated. A railroad is not required to replace non-compliant materials in every instance, if such materials are found, and that has been made clear in the rule text. Neither has FRA specified that the railroad perform a fire safety analysis equivalent to that required for new equipment under paragraph (c).

As a final point FRA notes that, following its investigation of the Silver Spring, Maryland, passenger train collision, the NTSB also found that Federal guidelines on the flammability and smoke emission characteristics and the testing of interior materials do not provide for the integrated use of passenger car interior materials and, as a result, are not useful in predicting the safety of the interior environment of a passenger car in a fire. (NTSB/RAR–97/02, at 74) FRA believes that existing fire safety guidelines have continuing value for their specific purpose. Those guidelines are being codified, as revised, in this final rule as the best currently available criteria for analysis of individual materials. As noted above, FRA is conducting research through NIST to address the interaction of materials and other aspects of fire safety from a broader, systems approach. This philosophy is embodied in part in paragraph (c) with respect to new equipment. Based on this ongoing research and industry fire safety efforts, FRA expects to propose new fire safety standards in the second phase of this rulemaking.

Section 238.105 Train Hardware and Software Safety

This section applies to train hardware and software used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and such components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002. Inclusion of these requirements in passenger equipment reflects the growing role of automated systems to control or monitor passenger train safety functions.

This section represents the merger of proposed sections 238.107 ("Software safety program") and 238.121 (" Train system software and hardware") in the NPRM. Although FRA received no particular comments on these sections in response to the NPRM, FRA determined that these sections should be combined to make the requirements of the final rule more concise and clear.

Paragraph (a) requires the railroad to develop and maintain a written hardware and software safety program to guide the design, development, testing, integration, and verification of computer software and hardware that controls or monitors passenger equipment safety functions. In preparing this paragraph of the final rule, FRA essentially combined the requirements proposed in § 238.107(a), and § 238.121(a) of the NPRM. *See* 62 FR 49801, 49803. Paragraph (b) states that the hardware and software safety program shall be based on a formal safety methodology that includes a Failure Modes, Effects, Criticality Analysis (FMECA); full verification and validation testing for all hardware and software that controls or monitors equipment safety functions, including testing for the interfaces of such hardware and software; and comprehensive hardware and software integration testing to ensure that the software functions as intended. A formal safety analysis that includes full verification testing is standard practice for safety systems that contain software components. Hardware and software integration testing ensures that the hardware and the software installed in the hardware function together as intended. This testing is common practice for safety control systems that include both software and hardware components. The requirements found in paragraph (b) arise in particular from § 238.121(a) and (b) of the NPRM. *See* 62 FR 49803.

Paragraph (c) focuses on ensuring the safety and reliability of software that controls or monitors passenger equipment safety functions. Paragraph (c) specifies that, for purposes of complying with this section, such software shall be considered safety-critical unless a completely redundant, failsafe, non-software means to provide the same function is provided. The requirements of this paragraph were principally drawn from § 238.107(a) and (b) of the NPRM. *See* 62 FR 49801. FRA notes that the final rule omits proposed § 238.107(c) in the NPRM as a separate provision in this rule. *See id.* However, in complying with paragraph (c) of the final rule, a railroad must necessarily ensure that software safety requirements are specified in its contracts for the purchase of the software. The railroad must further retain documentation to show that the software was manufactured to the design criteria specified pursuant to this section and that all required testing was performed. However, verification and validation of control systems by an independent entity is not required by this rule, nor is a fully quantitative proof of safety mandated by this rule, as neither was proposed.

Paragraph (d) specifies that hardware and software that controls or monitors safety functions shall include design features that result in a safe condition in the event of a computer hardware or software failure. Such design features are used in aircraft, as well as in weapon control systems, to ensure their safety. In the case of primary braking systems, electronic controls must either fail safely (resulting in a full service brake application) or access to full pneumatic control must be provided. As clarified, this provision was proposed in § 238.121(c) of the NPRM. *See* 62 FR 49803.

Paragraph (e) makes clear that the railroad shall comply with the elements of its hardware and software safety program that affect the safety of the passenger equipment. Failure to carry out a provision unrelated to the safety of the equipment is not implicated by this section, so as not to unnecessarily restrict the flexibility of the railroad. FRA adapted this requirement from that proposed in § 238.107(d) of the NPRM. *See* 62 FR 498901.

Overall, the requirements of this section reflect good practices that have led to reliable, safe computer hardware and software control systems in other industries. Computer hardware and software systems designed to these requirements may require a larger initial investment to develop, but experience in other industries has shown that this investment is quickly recovered by significantly reducing hardware and software integration problems and

minimizing trouble-shooting and debugging of equipment.

§ 238.107 Inspection, Testing, and Maintenance Plan

This section contains the general provisions requiring railroads to develop detailed plans for inspecting, testing, and maintaining Tier I equipment. (The inspection, testing, and maintenance plan for Tier II equipment is covered under § 238.503.) FRA's goal is for railroads to develop a set of standards to ensure that equipment remains safe and operates properly as it wears and ages, and to provide enough flexibility to allow individual railroads to adapt the maintenance standards to their own unique operating environment.

Paragraph (b) requires a railroad that operates Tier I passenger equipment subject to this part to develop and provide to FRA, if requested, particulars about its inspection, testing, and maintenance plan for that equipment, including the following:

- Inspection procedures, intervals and criteria;
- Testing procedures and intervals;
- Scheduled preventive maintenance intervals;
- Maintenance procedures; and
- Training of workers who perform the tasks.

Since FRA does not dictate the exact contents of the plan, individual railroads retain much flexibility to tailor the plan to their individual needs and experience. At the same time, FRA believes this requirement is important and will cause railroads to re-examine their inspection, testing, and maintenance procedures to determine that they are adequate to ensure that the safety-related components of their equipment are not deteriorating over time. This approach represents good business practice and in most cases merely formalizes what passenger railroads are already doing. However, FRA believes this section will provide valuable guidance to regional governments or coalitions attempting to establish new commuter rail service.

Paragraph (c) makes clear that the inspection, testing, and maintenance plan required by this section should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the plan. FRA intends for the plan required by this section to detail only those tasks required to be performed in order to conduct the inspections, tests, and maintenance necessary to ensure that the equipment is in safe and proper condition for use. In proposing the creation of these plans, FRA did not intend to enter into the area of addressing employee safety while conducting the inspections, tests, and maintenance covered by the plans. FRA is always concerned with the safety of employees while conducting their duties, but employee safety in maintenance and servicing areas generally falls within the jurisdiction of the United States Department of Labor's Occupational Safety and Health Administration (OSHA). It is not FRA's intent to oust OSHA's jurisdiction with regard to the safety of employees while performing the inspections, tests and maintenance required by this part, except where FRA has already addressed workplace safety issues, such as for blue signal protection. Therefore, in order to prevent any uncertainty as to FRA's intent, FRA has modified this section by eliminating any language or provision which could have been potentially perceived as displacing the jurisdiction of OSHA and has added a specific clarification that FRA does not intend for the plan required by this section to address employee safety issues that arise in the course of conducting the inspections and tests described. Consequently, the specific elements that FRA proposed to be included in the inspection, testing, and maintenance plan have been eliminated for the reasons noted above and because they were merely duplicative of the general requirements contained in paragraph (b) and are unnecessary.

It should also be noted that the general inspection, testing, and maintenance requirements previously proposed in the 1997 NPRM at paragraph (b) of this section (62 FR 49801–802) and the maintenance interval requirements proposed at paragraph (c) have been removed from this section in this final rule. The conditions and components previously proposed in paragraph (b) of this section have been moved to the periodic mechanical inspection contained in § 238.307(c). As the conditions previously proposed in this paragraph were intended to ensure that the railroads had an inspection scheme in place to ensure that all systems and components of the equipment are free of conditions that endanger the safety of the crew, passengers or equipment, FRA believes that a specific inspection interval would be better suited to address the general condition of the equipment and ensure the safety of railroad employees, passengers and equipment. In addition, the maintenance interval requirements have been modified and moved to the periodic mechanical inspection requirements contained in § 238.307(b). Consequently, FRA has moved the general conditions maintenance interval provisions previously addressed in this section to the specific inspection requirements contained in subpart D of this final rule.

Section 238.109 Training, Qualification, and Designation Program

This section contains the training, qualification, and designation requirements for workers (that is, both railroad employees and contractors as defined in the section) who perform inspection, testing, and maintenance tasks. FRA believes that worker training, qualification, and designation are central to a safe operation.

Paragraph (a) requires railroads to adopt and comply with a training, qualification, and designation program for employees and contractors who perform safety-related inspection, testing, or maintenance tasks under this part. "Contractor," in this context, means "a person under contract with the railroad or an employee of a person under contract with the railroad to perform any of the tasks required by this part." FRA intends for the training, qualification, and designation requirements to apply not only to railroad personnel but also to contract personnel that are responsible for performing brake system inspections, maintenance, or tests required by this part. FRA believes that railroads are in the best position to determine the precise method of training that is required for the personnel they elect to use to conduct the required brake system inspections, tests, and maintenance. Although FRA provides railroads with broad discretion to develop training programs specifically tailored to the type of equipment they operate and the personnel they employ, FRA will expect railroads to fully comply with the training and qualification plans they develop. This section has been amended slightly from that proposed in the 1997 NPRM in order to stress that a critical component of this training is ensuring that a railroad's employees are aware of the specific Federal requirements that govern their work. Currently, many railroad training programs fail to distinguish Federal requirements from company policy.

Paragraph (b) contains a series of general requirements or elements which must be part of any training and qualification plan developed and implemented by a railroad. FRA believes that the elements contained in this section are specific enough to

ensure high quality training while being sufficiently broad to permit a railroad to develop a training plan that is best suited to its particular operation. This paragraph requires each railroad to identify the specific tasks related to the inspection, testing and maintenance of the brake systems operated by that railroad, develop written procedures for performing those tasks, identify the skills and knowledge necessary to perform those tasks, and specifically identify and educate its employees on the Federal requirements contained in this part related to the performance of those tasks. FRA believes that these requirements will ensure that, at a minimum, the railroad surveys its entire operation and has identified the various activities its employees perform. FRA intends for these written procedures and the identified skills and knowledge to be used as the foundation for any training program developed by the railroad.

This paragraph also makes clear that railroads are permitted to train employees only on those tasks that they will be responsible for performing. FRA tends to agree with several railroad commenters that there is no reason for individuals who solely perform simple air brake or mechanical tests and inspections to be as highly trained as those individuals responsible for conducting comprehensive brake or mechanical inspections or those individuals responsible for trouble-shooting, maintaining, and repairing the equipment. This paragraph also makes clear that a railroad may incorporate an already existing training program, such as an apprenticeship program. Thus, railroads would likely not need to provide much additional training, except training specifically addressing the requirements contained in this part and possibly refresher training, to its mechanical forces that have completed an apprentice program for their craft.

This paragraph also contains requirements that any program developed must include "hands-on" training as well as classroom instruction. FRA believes that classroom training by itself is not sufficient to ensure that an individual has retained or grasped the concepts and duties explained in a classroom setting. In order to adequately ensure that an individual actually understands the training provided in the classroom, some sort of "hands-on" capability must be demonstrated. FRA believes that the "hands-on" portion of the training program would be an ideal place for railroads to fully involve its labor forces in the training process. Appropriately trained and skilled employees would be perfectly suited to provide much of the "hands-on" training envisioned by FRA. Consequently, FRA strongly suggests that railroads work in partnership with their employees to develop a training program which utilizes the knowledge, skills, and experience of the employees to the greatest extent possible.

This paragraph specifically requires that employees pass either a written or oral examination covering the equipment, tasks, and Federal regulatory requirements for which they are responsible as well as require that each individual deemed qualified to perform a task required by this final rule demonstrate "hands-on" capability to perform that task. This paragraph also contains requirements for conducting periodic refresher training and supervisor oversight of an employee's performance once training is provided. FRA believes both these requirements are essential to ensure that an individual continues to possess the knowledge and skills necessary to continue to perform the tasks for which the individual is assigned responsibility. Furthermore, employees must be periodically retrained in order to keep up with technological advances relating to braking systems that are constantly being made by the industry.

This paragraph also contains the requirements related to maintaining adequate records for establishing that individuals are capable of performing the tasks for which they are assigned responsibility. FRA believes that the record keeping requirements contained in this paragraph are the cornerstone of the training and qualification provisions. As FRA is not proposing specific training curriculums or specific experience thresholds, FRA believes that these record keeping provisions are vital to ensuring that proper training is being provided to railroad personnel. FRA believes these requirements provide the means by which FRA will judge the effectiveness and appropriateness of a railroad's training and qualification program. These provisions also provide FRA with the ability to independently assess whether the training provided to a specific individual adequately addresses the tasks for which the individual is deemed capable of performing, and will most likely prevent potential abuses by railroads to use insufficiently trained individuals to perform the necessary inspections, tests, and maintenance required by this rule. This paragraph makes clear that FRA intends to require that railroads maintain specific personnel qualification records for all personnel (including contract personnel) responsible for the inspection, testing, and maintenance of train brake systems. This paragraph also makes clear that the records maintained by a railroad contain sufficient detail regarding the training provided in order for FRA to ascertain the basis for the railroad's determination.

FRA believes that many benefits can be gained from this increased investment in training. Better inspections will be performed, resulting in the running of less defective equipment, which translates to a better safety record. Equipment conditions requiring maintenance attention are more likely to be found while the equipment is at a maintenance or yard site where repairs can be more easily done. Trouble-shooting of brake and mechanical problems will take less time and more maintenance will be done right the first time, resulting in cost savings due to less rework.

Section 238.111 Pre-Revenue Service Acceptance Testing Plan

This section provides requirements for pre-revenue service testing of passenger equipment and relates to subpart G, which describes requirements for the procurement of Tier II passenger equipment and for a major upgrade or introduction of new technology that could affect safety systems of Tier II passenger equipment. Pre-revenue service acceptance tests are extremely important in that they are the culmination of all the safety analysis and component tests of a railroad's system safety program or other safety planning efforts. The pre-revenue service tests are intended to prove that the equipment can be operated safely in its intended environment and demonstrate the effectiveness of the system safety program or other safety planning undertaken by the railroad.

FRA has revised and clarified this section based on comments received in response to the NPRM. APTA believed that the proposed test program was excessive for equipment that has previous successful operating experience. It believed that an extensive pre-revenue service test program is needed only when a new type of equipment is placed in revenue service for the first time. Otherwise, APTA suggested a simple compatibility check with the infrastructure of a specific railroad is all that is needed when the railroad procures new equipment that has successful operating experience on other railroads. APTA claimed that FRA does not have the in-house expertise to approve plans, and that the need for FRA approval will delay the introduction of new equipment, causing a needless expense. APTA

recommended that the rule require a full test program only for the first time equipment is introduced into revenue service, that FRA not approve the test plans, and that FRA instead be invited by railroads to witness the pre-revenue service tests.

Amtrak, in its comments on the NPRM, expressly agreed with APTA. Amtrak believed FRA does not have the resources to support the burden that would be required by the proposal. Further, Amtrak believed there is no technical justification to require the formal testing proposed by FRA when a particular equipment order is nothing more than acquiring additional equipment identical to that purchased on a previous order. Amtrak suggested that formal testing be limited to new and untried types of equipment according to a long-standing AAR practice.

Metra commented that the rule should require railroads to submit their own pre-revenue service testing plans to FRA and invite FRA to witness the testing, instead of having FRA determine when and how railroads should conduct acceptance testing on their systems. Metra explained that railroads know their own systems and are more capable of designing testing plans compatible with their systems. Metra believed waiting for FRA testing and approval would cause needless delay and expense.

In its comments on the NPRM, the BRC believed this section to be wholly necessary because of the types of equipment being brought into service that generally do not comply with the safety appliance laws or the safety glazing regulations, or both. The BRC believed that this equipment must comply with applicable laws and regulations affecting the safety of passengers and railroad workers in order to be brought into service in the United Service. The BRC also recommended that the pre-revenue service testing plan be filed with FRA so that the plan will be available under the Freedom of Information Act (FOIA).

In proposing requirements for pre-revenue service acceptance testing, FRA did distinguish between passenger equipment that has previously been used in revenue service in the United States and that which has not. In lieu of the requirements proposed in § 238.213 (a) through (e) of the NPRM, paragraph (f) provided for an abbreviated testing procedure for passenger equipment that has previously been used in revenue service. *See* 62 FR 49763, 49802–3. Accordingly, FRA agrees that when a particular equipment order is nothing more than acquiring additional equipment identical to that purchased on a previous order, there is no need for detailed testing requirements. This is reflected in § 238.111(a) of the final rule, which governs testing requirements for passenger equipment that has previously been used in revenue service in the United States. Each railroad is required to test such equipment only to ensure the compatibility of the equipment with the railroad's operating system. Although the railroad must keep a record of such testing and make it available to FRA for inspection and copying, no formal submission to FRA is required. (In this regard, FRA does not believe that the plan must be submitted to FRA for the purpose that it may be available to the public under FOIA, as that justification, in itself, would require virtually any railroad safety record to be submitted to FRA, whether or not FRA deems it necessary.) Further, no FRA approval is required prior to testing the equipment or placing it in revenue service. FRA expects the requirements of paragraph (a) to apply in the majority of situations a railroad places passenger equipment in service for the first time, and FRA has consequently placed this provision at the beginning of § 238.111 for ease of use by the regulated community.

As specified in the final rule, § 238.111(a) applies not only to the actual equipment which has previously been used in revenue service in the United States or to equipment which is manufactured identically thereto. Paragraph (a) also applies to equipment which is similarly manufactured to that equipment and has no material differences in safety-critical components or systems.

Paragraph (b) contains the requirements for a railroad placing passenger equipment in service for the first time on its system when the equipment has not previously been used in revenue service in the United States—in other words, when the equipment is not covered by paragraph (a). Each railroad must develop a pre-revenue service acceptance testing plan and submit the plan to FRA at least 30 days prior to beginning testing. Previous testing of the equipment at the Transportation Test Center, on another railroad, or elsewhere should be included in the submission.

The requirements of paragraph (b) distinguish between whether the passenger equipment intended for service is Tier I or Tier II passenger equipment, and FRA has decided to require approval of testing plans only for Tier II equipment. Although FRA disagrees with APTA's claim that FRA does not have the in-house expertise to approve the testing plans, FRA is mindful of APTA's concern that the need for FRA approval of the plans may unnecessarily delay the introduction of new equipment. Further, not having endless resources, FRA has decided to focus its resources here on Tier II passenger equipment in light of the equipment's higher operating speed and greater potential risk. As a result, a railroad intending to place in service Tier I equipment under this paragraph does not need FRA approval of its test plan for the equipment or FRA approval to place the equipment in service. Of course, paragraph (b) does provide that for Tier I equipment the railroad must notify FRA to permit the agency to witness the testing (paragraph (b)(2)); comply with the testing plan (paragraph (b)(3)); document the results of the testing and make it available for FRA inspection (paragraphs (b)(4), (6)); and correct or otherwise compensate for safety deficiencies uncovered during the testing prior to introducing the equipment in revenue service (paragraph (b)(5)). Each railroad is also under an independent duty to comply with the other requirements of Part 238 and the railroad safety laws in general. In this regard, a railroad would have to obtain a waiver of FRA safety regulations through the formal procedures of 49 C.F.R. part 211 before introducing any equipment into service that does not comply with the safety appliance regulations or the safety glazing standards, for example. However, by operation of § 238.111, a railroad is not restricted from seeking a waiver of an FRA safety regulation under 49 C.F.R. part 211, nor is FRA restricted from granting such a waiver. Part 211 contains procedures to ensure that FRA grants a waiver of a safety regulation in the interest of employee and public safety.

For Tier II passenger equipment, paragraph (b) requires the railroad to follow the additional steps of obtaining FRA approval of the testing plan under the procedures specified in § 238.21 (paragraph (b)(1)); reporting the results of the testing to FRA (paragraph (b)(4)); agreeing to comply with any operational limitations imposed by FRA on the use of the equipment (paragraph (b)(5)); and obtaining FRA approval prior to placing the equipment in revenue service (paragraph (b)(7)). Under paragraph (b)(7), a railroad is not required to follow the formal requirements set forth in § 238.21.

Paragraph (c) applies only to Tier II passenger equipment. If a railroad plans a major upgrade or introduction of new technology in Tier II passenger equipment that has been used in

revenue service in the United States and that affects a safety system on such equipment, the railroad shall follow the procedures specified in paragraph (b) prior to placing the equipment in revenue service with such a major upgrade or new technology. This requirement is based on proposed §§ 238.603 (b) and (c) in the NPRM. *See* 62 FR 49823. FRA has integrated those proposed requirements into the section for clarity, as alluded to in the NPRM. *See* 62 FR 49785.

Overall, FRA believes the set of steps and the documentation required by § 238.111 are necessary to ensure that all safety risks have been reduced to a level that permits the equipment to be used in revenue service.

Section 238.113 Emergency Window Exits

This section represents the partial merger of NPRM § 238.235, emergency window exit requirements for Tier I passenger equipment, and NPRM § 238.439, as it concerned emergency window exit requirements for Tier II passenger equipment. FRA has combined these sections principally in response to the NTSB's comment on the proposed rule that these requirements should not be differentiated on the basis of train speed.

Paragraph (a)(1) requires that a single-level passenger car, other than a sleeping car or similarly designed car, have a minimum of four emergency window exits, either in a staggered configuration where practical or with one located in each end of each side of the car. A bi-level car shall have a minimum of four emergency window exits on each main level, configured as above, so that the car has a minimum total of eight emergency window exits.

FRA received several comments relating to the quantity of emergency window exits that the rule should require. First, the NTSB commented that specifying a minimum quantity requirement for emergency window exits in passenger cars is not sufficient. The NTSB believed that the requirement should be based on the capacity of the passenger car, the number of door exits, and the scientifically-determined time needed to completely evacuate the fully-loaded passenger car. Next, Talgo commented that passenger cars half the length of conventional cars should be required to have only two emergency window exits on each main level. Further, Bombardier commented that instead of limiting the application of this section to emergency window exits, FRA should apply the requirements of this section broadly to emergency exits—whether or not those exits are windows—to permit flexibility and innovation in future passenger car designs. Bombardier added that any such requirement would be in addition to the requirement for side doors.

The final rule largely carries forward the NPRM's proposal, and the current Federal requirement in § 223.9(c) of this chapter for four emergency window exits in each passenger car. The requirement for a minimum number of window exits is important to ensure an unobstructed avenue of egress in a variety of accident scenarios, regardless of car capacity. Of course, as FRA has explained, the Volpe Center is working on an emergency evacuation performance requirement for passenger cars to determine the number of total exits necessary to evacuate the maximum passenger load in a specified time for various situations. Further, through the APTA PRESS effort, FRA understands that APTA is developing a systems approach to emergency egress similar to that which Bombardier has suggested in its comments. FRA recognizes the merit such approaches have and will consider these alternative approaches in Phase II of the rulemaking.

Paragraph (b) requires, as specified, each emergency window exit in a new passenger car, including a sleeping car, to have a minimum unobstructed opening with dimensions of 26 inches horizontally by 24 inches vertically. In the NPRM, FRA invited comments as to what size requirements for emergency window exits FRA should impose in the final rule. FRA had proposed that Tier I equipment have a minimum, unobstructed emergency window exit opening of 24 inches horizontally by 18 inches vertically, and that Tier II equipment have a minimum, unobstructed emergency window exit opening of 30 inches horizontally by 30 inches vertically. The Tier II Equipment Subgroup, including Amtrak, had recommended the latter requirement for application to Tier II equipment. However, the full Working Group advised against imposing such a requirement on Tier I equipment. FRA bad explained in the NPRM that, although it would prefer that all emergency window exits afford the larger opening, the Tier I equipment proposal provided the minimum opening needed for a fully-equipped emergency response worker to gain access to the interior of a train.

The NTSB commented that the horizontal and vertical openings of emergency window exits should be the same for both tiers of equipment, as the speed at which the equipment travels should not matter. The NTSB stated that the emergency window exit dimensions should be determined by the size dimensions needed: (1) To extricate an injured person from the passenger car; and (2) to allow an emergency responder fitted with a self-contained breathing apparatus to enter the passenger car. The NTSB noted that one of the typical adult backboards used by emergency responders to evacuate injured persons is 24 inches wide by 72 inches long, and therefore may not clear a window 24 inches wide. (The NTSB did note that the other typical adult backboards measure 16 inches wide by 72 inches long, and 12 inches wide by 84 inches long. The NTSB also stated that a typical steel basket stretcher used by emergency responders measures about 23 inches horizontally by 8 inches deep by about 81 inches vertically.) The NTSB further noted the concern that if a car derails to the extent that the normal vertical dimension becomes the horizontal dimension, the backboard must be tilted to fit through the opening. (During Working Group discussions, it was noted that for this to happen, the car must come to rest on its end.) Moreover, the NTSB stated that an emergency responder with a self-contained breathing apparatus may have difficulty entering an 18-inch vertical opening.

FRA agrees that the emergency window exit size requirements should be the same for both tiers of equipment. The final rule requires that emergency window exits have a minimum unobstructed opening with dimensions 26 inches horizontally by 24 inches vertically. This requirement only applies to new cars, however, as specified in paragraph (b). FRA recognizes that these dimensions are greater than those proposed for Tier I passenger equipment (and smaller than those proposed for Tier II passenger equipment).

A review of emergency window exit sizes on the nation's rail passenger car shows a wide variation in window size. Differences in size are not necessarily attributable to the age of the passenger cars: On certain railroads, some older passenger cars have smaller emergency window exits than do newer passenger cars; whereas, on other railroads, some newer passenger cars have smaller emergency window exits than do older passenger cars. Staff from the Boston, Massachusetts, and Los Angeles, California, fire departments recommended, upon DOT's inquiry, that emergency window exits provide at least a 26-inch horizontal opening to maneuver a 24-inch wide stretcher into and out of the window. They also expressed concern whether an 18-inch

vertical opening would be large enough to allow an emergency responder wearing a self-contained breathing apparatus to fit through the window. United States Department of Defense MIL–STD–1472E (October 31, 1996), which contains design criteria for human engineering, provides dimensions for rectangular access openings for male body passage as differentiated by the amount of clothing worn. For side access, MIL–STD–1472E, section 5.7.8.3 provides that openings shall be not less than 26 inches in depth (vertical) and 30 inches in width (horizontal) for a male wearing light clothing. Further, the standard provides that openings shall be not less than 29 inches in depth and 34 inches in width for a male wearing bulky clothing. (This section of the military standard has been placed in the public docket for this rulemaking.)

On the basis of the comments and information received following publication of the NPRM, FRA believes that an emergency window exit vertical opening of 18 inches is not sufficient for new rail cars. The emergency window exit size requirements contained in this final rule provide a more reasonable dimension for passage of large, fully-clothed persons, including emergency response personnel with fire gear. The dimensions are practicable in light of the design of many passenger cars in the United States.

FRA explained in the NPRM that safety may be advanced by staggering the configuration of emergency window exits so that the exits are located diagonally across from each other on opposite sides of a car, instead of placing them directly across from each other. FRA invited comment on this issue, as well as on the concern that the seat arrangement of passenger cars may block access to and the removal of emergency window exits. The NTSB commented that emergency window exits should be staggered rather than opposite each other, and they must also be distributed as uniformly as practical to allow for passenger distribution. The rule will require staggering where practical, but other considerations must be taken into account, including the need to provide an unobstructed exit without diminishing normal seating capacity. Railroads should be mindful that if the ends of a car are crushed in a collision, then the window exits located at the car's ends may be rendered inoperable. In this regard, FRA's use of the term "in each end" in paragraph (a)(1) refers to the forward and rear ends of a car as divided in its center—and does not literally refer to the extreme forward and rear ends of a car nor require that emergency window exits be placed at the extreme ends of a car.

FRA is requiring that each sleeping car, and any similarly designed car having a number of separate compartments intended to be occupied by passengers or train crewmembers, have at least one emergency window exit in each compartment. An example of a similarly designed car subject to this requirement is a crew dormitory car. If an emergency window exit is not provided in individual sleeping compartments, occupants of those compartments may have difficulty reaching the car's doors quickly in an emergency, especially if the car's interior passageways become blocked or obscured by smoke. An emergency window exit is necessary in each compartment to enable occupants to quickly exit the car in a life-threatening situation, as when the car is submerged. FRA notes that, for purposes of this section, a restroom is not a compartment specifically required to have an emergency window exit.

Paragraph (a)(3) requires that each emergency window exit be designed to permit rapid and easy removal during an emergency situation without requiring the use of a tool or other implement. In the NPRM, FRA had specified that the emergency window exit must be easily operable by a 5th-percentile female without requiring the use of a tool or other implement. In response to the proposal, Bombardier commented that the feasibility and practicability of making the emergency exit operable by a 5th-percentile female is not known at this time. Bombardier recommended FRA more fully examine the feasibility of designing and maintaining passenger cars to meet this requirement before it is made a rule. In the final rule, FRA believes it appropriate not to specify a requirement at this time for the ease of operability of an emergency window exit by a 5th-percentile female. In Phase II of the rulemaking, FRA will evaluate with the Working Group whether such a concept should be reintroduced. Instead, FRA has decided to incorporate into the final rule language from the definitions of "emergency window" found in 49 CFR parts 223 and 239—that is, each emergency window must be designed to permit its rapid and easy removal during an emergency situation—and specifically require that such rapid and easy removal of the window be able to be accomplished without requiring the use of a tool or other implement.

Paragraph (c) is reserved for emergency window exit marking and operating instruction requirements. These requirements are currently provided in the rule on passenger train emergency preparedness. *See* 63 FR 24630. In Phase II of the rulemaking, FRA will consider integrating into this part (part 238) the emergency window exit marking and operating instruction found in parts 223 and 239 of this chapter. Additionally, FRA will consider revising those requirements as necessary.

Section 238.115 Emergency Lighting

Experience gained during emergency response to several passenger train accidents indicates that emergency lighting systems either did not work or failed after a short time, greatly hindering rescue operations. This section requires that passengers cars ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with emergency lighting providing at least an average illumination level of 1 foot-candle at floor level adjacent to each exterior door and each interior door providing access to an exterior door (such as a door opening into a vestibule). In addition, the emergency lighting on such cars must provide an illumination level of at least an average of 1 foot-candle at floor level along the center of each aisle and passageway, and a minimum of 0.1 foot-candle at floor level at any point along the center of each aisle and passageway. The cars must also be equipped with a back-up power feature capable of operating the lighting for a minimum of 90 minutes after loss of normal power with no more than a 40% loss of the prescribed illumination levels.

In the NPRM, FRA proposed requiring for both passenger cars and locomotives a minimum emergency lighting illumination level of 5 foot-candles at floor level for all potential passenger and crew evacuation routes from the equipment. *See* 62 FR 49803. FRA explained that its proposal was not a recommendation of the Working Group, as FRA believed an illumination level higher than that suggested by members of the Working Group was necessary for passengers to locate emergency exits, read instructions for operation of the exits, and operate the exits. *See* 62 FR 49764. FRA did request comments whether the lighting intensity requirement need be 5 foot-candles at floor level for all potential evacuation routes if the rail vehicle has a combination of lower intensity floor proximity lighting, similar to that used on aircraft to mark the exit path, and higher intensity lighting at the vehicle's exits. FRA also proposed applying the emergency lighting requirements to

rebuilt passenger equipment, and noted that it was considering applying these requirements to existing passenger equipment sooner than when the equipment is rebuilt.

In response to FRA's proposal, APTA commented that requiring a minimum emergency lighting illumination level of 5 foot-candles is excessive. APTA believed that roughly a five-fold increase in battery capacity would be necessary to comply with the proposed illumination standard when combined with the two-hour minimum duration requirement proposed in the rule. APTA stated that a minimum emergency lighting illumination level of 1 foot-candle is adequate for new equipment, based on recent light level measurements taken on passenger coaches by Volpe Center personnel. APTA noted that a survey in support of its APTA PRESS efforts shows emergency lighting illumination levels to be between approximately 0.2 foot-candles and 1 foot-candle on existing passenger equipment. APTA observed that even an illumination level of less than 1 foot-candle measured at the floor can allow for an orderly evacuation of a passenger coach with well-marked exits.

In regard to applying the requirements of this section to existing passenger equipment, APTA suggested imposing an emergency lighting illumination level of less than 1 foot-candle on such equipment to avoid an expensive retrofit. APTA further recommended that the rule allow the emergency lighting illumination level to decay over the proposed two-hour duration it would be required to operate, and APTA suggested allowing the illumination level to degrade to no less than 50% of the original illumination level after two hours. In addition, APTA noted that emergency lighting systems in conventional locomotive cabs are radically different from those in passenger cars, and APTA asked FRA to reconsider how it would apply emergency lighting requirements inside locomotive cabs.

In commenting on this proposal, the BRC stated that the requirements for emergency lighting must be phased into existing passenger equipment sooner than when it is rebuilt. The BRC explained that for passengers it would be far better to have cars equipped with emergency and exit lighting to eliminate many of the hazards in getting out of the cars, and that there is no justification or analysis in the record for delaying the implementation of the requirements in existing passenger cars.

Metra, in its comments on this proposal, stated that a requirement for an emergency lighting illumination level of 5 foot-candles would be unnecessarily bright and costly. Metra recommended that the illumination level be set at 0.5 foot-candle. Further, Metra suggested that for new passenger equipment the requirement be modified to apply only to new orders placed after January 1, 1998, so as to avoid costs associated with change orders and dual standards on ongoing orders that will be delivered both before and after January 1, 1998. Finally, the Omniglow Corporation (Omniglow) commented in response to the NPRM that to effectively address an emergency situation where lives are at stake, each train exit should be equipped with emergency lighting.

In light of these comments and after further analysis, FRA has revised the requirements of this section in several ways from those originally proposed in the NPRM. First, under the final rule, the requirements of this section apply only to passenger cars—and not to passenger locomotives as proposed in the NPRM. As MU locomotives and cab cars that transport passengers are considered passenger cars under this rule, however, the practical effect of this revision is not to apply the specific emergency lighting requirements in this rule to conventional passenger locomotives. Moreover, the issue of specifying emergency lighting requirements for conventional locomotives as a whole, taking into account their unique characteristics, has been placed before the RSAC Locomotive Crashworthiness Working Group for its consideration.

Second, the requirements of the final rule do not apply to rebuilt passenger equipment. FRA is seeking a broader approach to implementing emergency lighting requirements in existing passenger cars, whether or not the cars are rebuilt. To accomplish this, FRA does not necessarily expect that existing passenger cars will be required to meet the area lighting standard specified for new equipment. However, FRA desires that achievable emergency lighting enhancements to existing passenger cars will be implemented over a reasonable period of time. In the second phase of the rulemaking, FRA will evaluate the anticipated APTA PRESS standard for implementing emergency lighting requirements in existing passenger cars with a view to incorporating the APTA standard into this Federal standard.

Third, as provided in paragraphs (b)(1)–(3) of the final rule and modified from the NPRM, this section prescribes the minimum emergency illumination level for new passenger cars as a 1 foot-candle average at floor level adjacent to each exterior door and each interior door providing access to an exterior door (such as a door opening into a vestibule), a 1 foot-candle average measured 25 inches above the floor level along the center of each aisle and passageway, and a minimum of 0.1 foot-candle measured 25 inches above the floor level at any point along the center of each aisle and passageway. These illumination levels are based on the emergency lighting illumination levels specified in Section 5–9.2.1 of the National Fire Protection Association's (NFPA) "Life Safety Code Handbook," Seventh Ed. (a copy of this section has been placed in the public docket for this rulemaking) and the Illuminating Engineering Society Lighting Handbook. Specifying the measurement of the emergency lighting illumination level at the floor for doors is intended to permit passengers and crewmembers to see and negotiate thresholds and steps typically located near doors. Specifying the measurement of the emergency lighting illumination level at 25 inches above the floor for aisles and passageways is intended to permit passenger and crewmembers to see and make their way past obstacles as they exit a train in an emergency, as demonstrated by tests conducted by the Volpe Center. At the same time, specifying that the illumination level be measured above the floor for aisles and passageways recognizes that light emitted from lighting fixtures placed on the sides of passenger cars may be obstructed, as by car seats, before the light reaches the floor, and, in this regard, the rule provides greater flexibility to railroads in the placement of lighting fixtures. FRA notes that the permanency of this area lighting standard will be dependent on successful resolution of issues related to emergency signage, exit path marking, and egress capacity that are being progressed toward resolution through the APTA PRESS Task Force and the Volpe Center, as noted below, as a predicate for completion of the standards in the second phase of this rulemaking.

FRA believes that the emergency lighting illumination levels specified in this section will enable the occupants of rail cars to discern their immediate surroundings and thereby minimize or avoid panic in an emergency. In this regard, a lighting demonstration was conducted in a SEPTA rail car in March 1998, and in the judgement of the FRA participants it showed that these illumination levels appear sufficient. These emergency lighting illumination levels are achievable for rail cars. In fact, the NFPA 101 specifications for emergency lighting illumination levels,

noted above, are recommended for use in rail transit cars through NFPA 130, Section 5–5.3.

In the second phase of the rulemaking, FRA will focus on augmenting the emergency illumination level specified in this section by including requirements for lighted signage and exit path marking, as touched on above. Through a research study conducted by the Volpe Center, FRA has been investigating emergency lighting requirements as part of a systems approach to effective passenger train evacuation. This approach takes into consideration the interrelationship between features such as the number of door and window exits in a passenger car, lighted signs that indicate and facilitate the use of the door and window exits, and floor exit path marking, in addition to the general emergency lighting level in a car. FRA will also examine the APTA PRESS standard on emergency lighting, when final, to determine whether the standard satisfactorily addresses matters related to emergency signage, exit path marking, and egress capacity so that FRA does not have to revisit the issue of area lighting with a view toward increased illumination levels. In the interim, FRA will entertain proposals to utilize alternative methods of providing at least an equivalent level of emergency illumination to that prescribed in this rule.

FRA has further revised the requirements of this section from those proposed in the NPRM by shortening the required operation time period of the emergency lighting, and by permitting the emergency lighting illumination level to degrade over time, as well. Specifically, the final rule requires a passenger car to be equipped with a back-up power feature capable of operating the lighting for a minimum of 90 minutes after loss of normal power with no more than a 40% loss of the prescribed illumination levels. As a result, illumination levels shall be permitted to decline, as appropriate, from 1 ft-candle to 0.6 foot-candle, and from 0.1 foot-candle to 0.06 foot-candle. The lighting decay permitted here is also based on that specified in Section 5–9.2.1 of the NFPA's "Life Safety Code Handbook," cited above. Operation of emergency lighting for an extended time is particularly necessary in the event of passenger train rescue operations in remote locations. Fully-equipped emergency response forces can take an hour or more to arrive at a remote accident site, and additional time would be required to deploy and reach people trapped or injured in a train. Even passenger train accidents in urban areas can pose significant rescue problems, especially in the case of tunnels, nighttime operations, and operations in inclement weather.

This section also requires the emergency lighting back-up power system to be able to operate in all orientations within 45 degrees of vertical and after experiencing a shock due to a longitudinal acceleration of 8g and vertical and lateral accelerations of 4g. The shock requirement will ensure that the back-up power system has a reasonable chance of operating after the initial shock caused by a collision or derailment. FRA originally considered that the back-up power system be capable of operation within a vehicle in any orientation. However, members of the Working Group advised that some battery technologies utilize a liquid electrolyte which can leak when the battery is tilted.

FRA invited commenters to address whether the back-up power system should be made capable of operation within a vehicle in any orientation, *see* 62 FR 49764; and, in response, the BRC commented that the back-up power system must be capable of operating in any orientation since railcars do not always remain upright when they derail. The BRC believed that the fact batteries may have a liquid electrolyte which can leak when the battery is tilted does not excuse railroads from obtaining proper batteries that will function in any orientation.

In the final rule, FRA is not requiring that the back-up power system be capable of operating in any orientation, and instead FRA is retaining the proposal in the NPRM that the system be capable of operating in all equipment orientations within 45 degrees of vertical. FRA will further examine this issue in the second phase of the rulemaking, and FRA is aware of a more costly battery technology utilizing a gel that should not leak when turned in any orientation. However, even if the back-up power system could operate when turned in any direction, FRA recognizes that a derailment of the magnitude that would cause such a situation would potentially destroy the battery box as a whole or sever the cables connecting the battery to the emergency lighting fixtures, or both. In this regard, FRA believes it more important to focus in the second phase of the rulemaking on addressing the NTSB's recommendation to require reliable emergency lighting fixtures in passenger cars, each fitted with a self-contained independent power source (R–97–17). (See NTSB/RAR–97/02) Section 238.115 does permit continued use of battery power common to all emergency lighting circuits in a particular car.

FRA notes, however, that the concept of a power source at each fixture, as a regulatory requirement, is novel. FRA findings in recent accidents support the NTSB's implied concern that placement of electrical conduits and battery packs below the floor of passenger coaches can result in damage that leads to the unavailability of emergency lights precisely at the time they are most needed. However, from initial investigation it is not certain whether current "ballast" technology provides illumination of sufficient light level quality with reliable maintainability. FRA presented the issue of placing an independent power source at each emergency lighting fixture to the Passenger Equipment Safety Standards Working Group at a meeting in December, 1997. FRA will aggressively pursue this option for more reliable emergency illumination in the second phase of the rulemaking, and FRA will also work with APTA PRESS on this issue.

Section 238.117 Protection Against Personal Injury

This section contains a general requirement to protect passengers and crewmembers from moving parts, electrical shock and hot pipes. This section extends to passenger equipment not classified as locomotives the protection against personal injury which applies to locomotives under 49 CFR 229.41. The requirements represent common-sense safety practice; reflect current industry practice; and should result in no additional cost burden to the industry. Although FRA received no specific comments on this section, FRA has modified this section to make clear that its requirements do not apply to the interior of a private car, consistent with FRA's overall approach to private cars in this rule. The protections of this section would apply, of course, to rail employees and others who may inspect or perform work on the exterior of a private car.

Section 238.119 Rim-Stamped Straight-Plate Wheels

This section addresses the NTSB's safety recommendation concerning the use of rim-stamped straight-plate wheels on tread-braked rail passenger equipment. Following its investigation of a January 13, 1994 Ringling Bros. and Barnum & Bailey Circus train derailment which killed two circus employees, the NTSB determined that the probable cause of the derailment was the fatigue failure of a thermally damaged straight-plate wheel due to

fatigue cracking that initiated at a stress raiser associated with a stamped character on the wheel rim. *See* 62 FR 49743; NTSB/RAR–95/01. Noting that tread braking is a significant source of wheel overheating and thermal damage; straight-plate wheels are vulnerable to thermal damage; and rim-stamping provides a stress concentration for crack initiation, the NTSB recommended that FRA "[p]rohibit the replacement of wheels on any tread-braked passenger railroad car with rim-stamped straight plate wheels." (Class II, Priority Action) (R–95–1).

In the NPRM, FRA stated that because a wheel having a rim-stamped straight-plate character is a sufficient safety concern in itself, FRA proposed extending the NTSB's safety recommendation to apply to all such wheels used on passenger equipment regardless whether the equipment were tread-braked or not. *See* 62 FR 49743, 49803. Further, FRA proposed addressing separately the use of such wheels on passenger equipment other than private passenger cars—for which there would be an immediate prohibition on the use of the wheels—in distinction to the use of such wheels on private cars—for which there would be a prohibition on the wheels' use as replacement wheels. *See* 62 FR 49743–4, 49803.

Based on comments received in response to the proposed rule, and after further analysis, FRA has modified the requirements of this section from those proposed in the NPRM. In the final rule, the restrictions on the use of rim-stamped straight-plate wheels apply only to such wheels use on tread-braked passenger equipment. AAPRCO, in its comments on the NPRM, stated that the proposed section was overly broad in prohibiting rim-stamped straight-plate wheels from being used as replacement wheels on private cars operated in a passenger train. Citing the above-noted NTSB report, AAPRCO explained that the only detected problem involving the use of rim-stamped straight-plate wheels occurred when such wheels were subjected to tread braking. AAPRCO believed that there is no known problem involving the use of such wheels on passenger equipment that is disc-braked and, therefore, not subject to heating. Accordingly, AAPRCO recommended limiting the prohibition against using rim-stamped straight-plate wheels as replacement wheels on private cars to those wheels that are tread-braked.

FRA notes that the stamping of manufacturers' marks on railroad wheel rims introduces stress concentrations in the wheel rims. Such stress risers can help originate cracks as the wheel is subjected to the low-cycle thermal fatigue of repeated tread-brake applications. As freight equipment operates with tread brakes, the AAR has discontinued rim stamping in order to preclude wheel failures due to cracking initiated at the stamp marks.

Disc brakes use a caliper and pad arrangement (like a bicycle brake) which operates on (squeeze) a disc which is affixed to the axle of a rail car, or to the back face of the wheel in a "cheek" mounted scheme, to provide retarding force. Disc brakes introduce no heat into the rim, since the heat is generated by the friction between the caliper pads and the disc. This condition is true only if the strategy to stop a vehicle relies solely on discs without tread-brake assistance.

Disc-braked rail cars sometimes have tread brakes which are used as parking brakes. These tread brakes may be applied periodically while the train is running, using low cylinder forces, in order to clean the wheel tread surface of oxides and debris which can interfere with the ability of the wheel to make an electrical connection with the rail for the purposes of shunting the track circuits to activate signals. This action is typically of short duration and is controlled by automatic circuitry (snow brakes) and should not pose a threat to the integrity of the wheels.

Braking strategies sometimes involve a combination of disc and tread braking to achieve desired deceleration rates. For example, Amtrak's AMFLEET I and II cars use such a combination—approximately 40% tread and 60% disc. In such a case, the wheels are tread-braked every time the vehicle comes to a stop, as opposed to the lower energy snow braking described above.

Straight plate wheels are well-known to be much more susceptible to thermal damage than curved or S-plate wheels. Plate curvature permits radial breathing of the rim as it is heated, resulting in lower rim stresses. The straight-plate wheel is much stiffer radially and stresses in these wheels are therefore greater for the same thermal input. If straight-plate wheels experience tread braking, or if tread brakes are used in the event of disc brake failure, the possibility exists for wheel thermal damage. However, the use of straight-plate, rim-stamped wheels should not pose a safety threat if the wheels are never tread-braked.

Because the use of straight-plate, rim-stamped wheels should pose no safety threat if the wheels are never tread-braked, the requirements of this section do not apply to such wheels used in such circumstances. Moreover, as provided in paragraph (c), if the wheels are in fact tread-braked but only in a limited manner to clean the wheel surface, the requirements of this section likewise do not apply. However, FRA hereby makes clear that the requirements of this section apply to the use of straight-plate, rim-stamped wheels when the wheels are subjected to tread braking in any combination with disc brakes for the purpose of slowing the passenger equipment.

The second principal change in the final rule from the NPRM provides particular consideration for the use of Class A rim-stamped, straight-plate wheels mounted on inboard-bearing axles on commuter passenger equipment. In commenting on the NPRM, APTA noted that a number of commuter railroads are currently operating—or are in the process of implementing service with—Bombardier-manufactured bi-level coaches that are equipped with Class A rim-stamped, reverse-plate wheels. APTA specified that the affected commuter railroads operate 182 passenger coaches equipped with these wheels and consist of the Southern California Regional Rail Authority (Metrolink), San Diego Northern Railway, Tri-County Commuter Rail Authority, Dallas Area Rapid Transit, and the San Joaquin Railroad Commission. APTA explained that reverse-plate wheels are considered a hybrid of the straight-plate design and therefore subject to the prohibition of this section. APTA added that these wheels have an average service life of five years. According to APTA, imposing this prohibition on the affected commuter rail operations will dramatically reduce or terminate commuter rail operations while replacement wheels are procured and installed. APTA stated that Class A reverse-plate wheels have a safe history of usage with no indication of wheel cracks caused by rim stamping, and that failures of Class B and C wheels of a true straight-plate design led to the NTSB's recommendation here. Based on these differences, APTA recommended that FRA allow Class A, rim-stamped reverse-plate wheels to continue in service.

FRA has considered APTA's comments and notes that the rim-stamped "reverse"-plate wheels in issue are indeed straight-plate wheels. The "reverse" connotation refers to the orientation (angle) of the wheel plate with respect to the axle. Passenger wheelsets have inboard bearings—that is, the bearings are located between the wheels on the axle. Freight wheelsets are outboard-bearing in that the wheels are mounted between the bearings. The

wheel plate is pitched one way or the other in either circumstance so that the wheel flanges end up being the same distance apart. In this way, either wheelset can transverse the same standard gage track.

From discussions with APTA, FRA understands that these Class A, rim-stamped straight-plate wheels are installed on rail cars weighing approximately 115,000 pounds, utilizing blended dynamic and friction braking. The friction-based portion of the braking system in turn is composed of approximately 67% tread braking, and 33% disc braking. FRA further understands that, when properly used, the extended-range dynamic brake can slow the vehicle from 90 mph—its top operating speed—to less than 10 mph with no friction (pneumatic) braking applied, and that this is the recommended method of operating these rail cars. The service brake rate is 2.0 mph/sec and the emergency rate is 2.5 mph/sec. In combination with the wheel slip/slide protection system provided for these cars, FRA believes that the wheels on these rail cars should be subjected to limited thermal input.

Further, FRA notes that wheels are generally classified as L, A, B, or C depending on the carbon content of the wheel material. The amount of carbon determines the hardness and strength of the steel. A Class A wheel has a lower carbon content, and correspondingly lower hardness and strength than a Class B or C wheel. Lower hardness means that the wheel has increased ductility or improved ability to resist cracking (fracture toughness). This is why Class L and A wheels are recommended for severe braking conditions. However, since these wheels are "softer," heavy wheel loads will result in poor wear performance, which is why they are recommended only for light to moderate wheel loads. Class B and C wheels (with more carbon and increased hardness) exhibit good wear behavior, but are more prone to cracking. Railroads choose the wheel type for a particular class of service based on its operating characteristics.

As reflected in paragraph (a)(2), FRA believes that the commuter railroads operating vehicles with Class A, rim-stamped straight-plate wheels mounted on inboard-bearing axles—i.e., reverse-plate wheels—may continue to do so provided the railroads do not modify the operation of the vehicles in any way that would result in increased thermal input to the wheels during braking. As a result, vehicles equipped with these wheels may not operate at speeds exceeding their current maximum operating speeds. Further, these wheels may not be placed on different (especially heavier) rail vehicles. Provided the conditions for continued use of the wheels are met, however, a railroad may continue to use the wheels until it exhausts its stock of replacement wheels held as of May 12, 1999, which is the date of this final rule's publication. FRA understands that the manufacturer of these wheels has already started to stamp the wheels on their hubs, instead of on their rims, and FRA believes that the railroads' inventory of such rim-stamped wheels will be exhausted within the next 18 months. Once a commuter railroad's inventory of Class A, rim-stamped straight-plate wheels is exhausted, each such wheel must be replaced at the end of the wheel's service life with a wheel that is not rim-stamped.

In commenting on the NPRM, Talgo suggested clarifying the requirements of this section to state that the stamping of characters on the rim of a wheel is prohibited due to dangers associated with stress concentration. According to Talgo, if indeed the purpose of this section is to address rim-stamping itself, then the rule should be revised to address all types of wheels and not just straight-plate wheels. FRA does recognize that the stamping of manufacturers' marks on railroad wheel rims introduces stress concentrations in the rims, and, all things being equal, manufacturers should stamp wheels on their hubs instead of on their rims. Yet, FRA is concerned in particular with rim-stamped straight-plate wheels because, as noted above, a straight-plate wheel design is more susceptible to thermal damage than a curved wheel design. The plate curvature permits radial breathing of the rim as it is heated, resulting in lower rim stresses.

Similar to the proposal in the NPRM, the final rule allows rim-stamped, straight-plate wheels on tread-braked private cars to continue in service throughout the life of each wheel. However, as provided in paragraph (b), such wheels may not be used as replacement wheels on these cars. As explained in the NPRM, FRA recognizes that private cars are generally not highly utilized in comparison to intercity or commuter passenger equipment, and Amtrak imposes its own safety requirements on the use of such cars in its trains. *See* 62 FR 49743–4.

In commenting on the NPRM, a member of the public stated that many private car owners have a substantial investment in rim-stamped straight-plate wheels, and precluding their installation would consequently place a financial burden on many private car owners. This commenter requested that a provision be added to the rule to allow private car owners to install such wheels on their cars after January 1, 1998,—which FRA proposed as the effective date for this section—provided the wheels were owned by that date. In this regard, FRA notes that Amtrak has issued a letter to private car owners dated September 19, 1995, stating that after June 30, 2000, Amtrak will decline to move any tread-braked passenger cars with rim-stamped straight-plate wheels. In addition, Amtrak stated in the same letter that it would not accept any new applications for wheel change out with rim-stamped straight-plate wheels, regardless of the brake type. Amtrak's letter referenced the NTSB's safety recommendation noted in this section.

Since Amtrak is the chief carrier of private rail cars, the ability of a private rail car owner to use rim-stamped, straight-plate wheels will be significantly affected independent of the requirements of this rule. Further, allowing such wheels to continue in use until a car owner's inventory of the wheels is depleted would prolong the use of such wheels for potentially decades. FRA believes that the rule allows due consideration for private rail car owners in allowing them to continue using tread-braked private rail cars equipped with rim-stamped, straight-plate wheels throughout the life of each wheel, while recognizing that, as a whole, the wheels are subject to greater thermal input when in use and are more susceptible to cracking than the commuter railroad wheels discussed above. Moreover, FRA notes that under the definition of "passenger equipment" in this rule, a private rail car not operated in a train with a passenger car, such as in a freight train, or in a consist of private rail cars, is not subject to the requirements of this rule. (See above discussion of passenger equipment in § 238.5.). In addition, the final rule does not apply to tourist railroads, and a private rail car may therefore operate on such railroad without complying with the requirements of this rule. See § 238.3.

Subpart C—Specific Requirements for Tier I Passenger Equipment

Section 238.201 Scope.

This subpart contains specific requirements for railroad passenger equipment operating at speeds not exceeding 125 mph. This subpart contains various structural standards (§ 238.203Bstatic end strength; § 238.205—anti-climbing mechanism; § 238.207—link between coupling mechanism and car body; § 238.209—forward-facing end structure of

locomotives; § 238.211—collision posts; § 238.213—corner posts; § 238.215—rollover strength; § 238.217—side structure; § 238.219—truck-to-car-body attachment; and § 238.223—fuel tanks). These structural standards do not apply to passenger equipment if used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph.

In general, except for the static end strength standards (' 238.203) and as otherwise provided in this subpart, the requirements of this subpart apply only to passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002. That is, where no specific date or dates are provided in the regulatory text for a particular section, such as § 238.225 (Electrical system), these dates apply to that section's requirements. Of course, certain existing Federal requirements, such as the window safety glazing standards in part 223 of this chapter that are referenced in § 238.221 (Glazing), continue to apply by their own force.

The rule does provide that passenger equipment placed in service for the first time on or after September 8, 2000, unless otherwise provided in the cited sections, must meet the minimum structural requirements specified in: § 238.205(a) (anti-climbing mechanism); § 238.207 (link between coupling mechanism and car body); and § 238.211(a) (collision posts). Further, as specified in detail below, any such equipment in use on or after November 8, 1999 must also meet the static end strength standards specified in § 238.203. These four particular requirements are virtually identical to existing Federal requirements, found in 49 CFR § 229.141(a)(1)–(4), that apply to MU locomotives built new after April 1, 1956, and operated in trains having a total empty weight of 600,000 pounds or more. These requirements reflect the common construction practices for passenger equipment currently in service in the United States, and FRA believes they are minimum safety requirements. FRA notes that the 600,000-pound consist weight threshold for purposes of 49 CFR § 229.141 is not an appropriate distinction to apply to passenger equipment operated on the general system, intermingled with equipment of more substantial strength; and, as a result, part 238 contains no such consist weight distinction. In this regard, FRA notes that through this final rule it is amending the application of 49 CFR § 229.141 so that its requirements will not apply to passenger equipment subject to part 238.

In addition to these four structural requirements, the rule also requires that passenger equipment comply with other structural requirements specified in: §§ 238.205(b) (anti-climbing mechanism for locomotives); 238.209 (forward-facing end structure of locomotives); 238.211(b) (collision posts for locomotives); 238.213 (corner posts); 238.215 (rollover strength); 238.217 (side structure); 238.219 (truck-to-car-body attachment); and 238.223 (fuel tanks). These requirements apply to passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, unless otherwise provided in the cited sections. FRA notes that, under special circumstances, it will allow the placement in service of passenger equipment not meeting these structural requirements if the equipment was in fact ordered within September 8, 2000 but not placed in service until after September 9, 2002. In such case, the railroad must provide documentation to the satisfaction of the Associate Administrator for Safety that demonstrates the special circumstances accounting for the delay in placing the equipment in service.

Structural Standards for Existing Equipment

The final rule requires that all passenger equipment (other than locomotives that comply with an alternative standard as specified, private cars, unoccupied vehicles operating at the rear of a passenger train, or equipment used in non-commingled service, as discussed below) in use on or after November 8, 1999 have a minimum static end strength of 800,000 pounds as specified in § 238.203. Static end strength is critical in protecting passenger equipment from crushing in a head-on or rear-end collision, especially in the North American railroad operating environment that includes frequent highway-rail grade crossings and the mixed operation of freight and passenger trains. FRA is confident that all but a limited number of existing passenger cars in the United States have been built to this basic compressive strength requirement. Beginning in 1939, the AAR recommended that new passenger cars operated in trains of over 600,000 pounds empty weight have a minimum static end strength of 800,000 pounds, and since 1956, Federal Regulations (49 CFR. 229.141) have required that new MU locomotives operated in such trains must meet this standard. Railroads with existing passenger cars that do not meet the minimum static end strength requirement may petition FRA for grandfathering approval to continue to use the equipment; see discussion under § 238.203.

FRA does, however, recognize that low-speed rail operations that are structured to totally preclude both operations over highway rail grade crossings and the sharing of trackage between light rail equipment and conventional equipment do not require the structural standards required for commingled operations. Accordingly, the final rule (in § 238.201) provides that passenger equipment is not subject to the structural requirements of the rule if it used exclusively on a rail line (A) with no public highway-rail grade crossings, (B) on which no freight operations occur at any time, (C) on which only passenger equipment of compatible design is utilized, and (D) on which trains operate at speeds no higher than 79 mph. FRA will discuss with the Working Group in Phase II of the rulemaking what structural standards are appropriate for such operations.

In the NPRM, FRA considered requiring that one or more of the other structural requirements for new passenger equipment, discussed above, be made applicable to existing equipment as soon as one of the following events occurs: the equipment is sold to another railroad; the equipment is rebuilt; the equipment reaches 40 years of age; or 10 years elapses after the effective date of the rule. FRA invited comments on: (1) What equipment would be affected by each of these structural requirements; (2) the feasibility and costs of retrofitting such equipment, with costs broken out for each of the different structural requirements, in the event such triggering events were adopted in the final rule; (3) whether these triggering events are reasonable, or whether some other fixed deadline should be established for making one or more of these structural requirements applicable to existing passenger equipment; and (4) the safety benefits that could accrue by making these requirements applicable to existing equipment. FRA did specifically note in the NPRM that older passenger equipment may not meet the collision post requirements in § 238.211(a) because of a change in collision post design following a collision between two Illinois Central Gulf Railroad commuter trains in Chicago, Illinois, on October 30, 1972.

In response, APTA commented that it opposed application of the rule's structural standards to existing

passenger equipment in light of the potential adverse economic impact on passenger railroads. AAPRCO, in its comments on the NPRM, believed the costs associated with rebuilding private cars to meet the new passenger equipment requirements would be extremely high with no significant benefit to the public. AAPRCO stated that Amtrak requires all cars, including private cars, that operate on their system be maintained to strict standards of inspection, including full 40-year truck teardowns with specified periodic scheduled truck roll-outs, annual inspections, and full COT&S. AAPRCO noted that nearly all private cars currently in operation are over 40 years old.

In the final rule, FRA has made the compressive strength requirement the only structural requirement applicable to existing passenger equipment. However, in general, if the need arises to apply one of the other structural requirements specified in the rule to existing passenger equipment, FRA will reconsider whether such requirements should be made applicable to existing equipment. In particular, FRA will ask its Working Group in Phase II of the rulemaking to consider applying the other structural requirements specified in the rule to existing passenger equipment when the equipment is "rebuilt" or otherwise improved such that the useful life of the equipment is materially extended. Further, FRA will not specifically limit the consideration of the Working Group in this regard to the rule's structural requirements, but will include in its consideration any of the other requirements for Tier I passenger equipment in this final rule.

Equipment of Special Construction

Comments from Talgo, discussed in general above and in more specific terms below, question the relevance or appropriateness of some of the proposed structural standards to a trainset built with articulated connections using a monocoque or space frame design. In consultations associated with the Working Group review, FRA sought information from the commenter regarding its trainset and has sought to identify requirements that might be appropriate for this configuration. However, in general, the analytical basis for alternative engineering values suggested by the commenter either was not evident or was determined not to be appropriate. Talgo did submit additional engineering information in October of 1998 but FRA could not appropriately analyze this data for purposes of the final rule without substantially delaying the rule's issuance. FRA does recognize that special attention is needed to the specifics of this design, which is unique in current service in the United States, both to avoid inappropriate requirements and to ensure sound functioning of features that may warrant exceptions from other requirements.

In the final rule, § 238.201 has been amended to permit approval of equipment of special construction. (This alternative compliance approval process does not apply to the minimum static end strength requirements set forth in § 238.203.) The basis for decision would be similar to that discussed in the NPRM with respect to waivers (62 FR 49728, 49755), but the special approval mechanism would be employed as a more appropriate means of recognizing whether the equipment provides an equivalent level of safety with the standard of safety benchmarked in the particular provisions of the subpart.

No New Safety Appliance Requirements

FRA is not imposing new safety appliance requirements for passenger equipment subject to this subpart. The safety appliance requirements referenced in § 238.229 continue to apply to such passenger equipment and are noted in this rule for clarity. Similarly, the window glazing requirements in 49 CFR part 223 continue to apply by their own force.

Section 238.203 Static End Strength

This section contains the requirements for the overall compressive strength of all Tier I rail passenger equipment, except for equipment meeting the requirements of § 238.201. This section is based on the long-standing practice of constructing passenger cars to possess a minimum static end strength of 800,000 pounds on the line of draft without permanent deformation of the body structure. This practice has proven effective in the North American railroad operating environment that includes frequent highway-rail grade crossings, mixed operation of freight and passenger trains, and less than fully-capable signal and train control systems. This section should be read with the discussion relating to static end strength earlier in the preamble.

In general, paragraph (a) requires that on or after November 8, 1999 all passenger equipment (except as otherwise provided in § 238.201) shall resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure. As specified in paragraph (a)(2), unoccupied volumes of a passenger car or a locomotive may have a lesser static end strength to allow a crash energy management design approach to be employed, if the car or locomotive resists a minimum static end load of 800,000 pounds applied on the line of draft at the ends of its occupied volume without permanent deformation of the body structure. FRA makes clear that, for purposes of paragraph (a)(2), the ability of a car or locomotive to resist a minimum static end load of 800,000 pounds applied on the line of draft at the ends of its occupied volume without permanent deformation of the body structure shall be determined on the basis of the individual car or locomotive's own strength and crash energy management design. Two or more units of passenger equipment may not be included in demonstrating the ability of the occupied volume of an individual passenger car or locomotive to resist a minimum static end load of 800,000 pounds as specified in paragraph (a)(2).

Paragraph (a)(2) is based on proposed § 238.203(b) in the NPRM, *see* 62 FR 49804. In the final rule, FRA has revised and incorporated that paragraph into paragraph (a). FRA has done so in part to make clear that a passenger car or a locomotive must first resist a minimum static end load of 800,000 pounds applied at the ends of the car or locomotive, unless the car or locomotive employs a crash energy management design in which case the load may then be resisted at the ends of the volume of the car or locomotive occupied by passengers or crewmembers.

FRA has included paragraph (a)(3) in the final rule in response to the comments on the NPRM that existing AEM–7 locomotives would not comply with the static end strength requirement proposed by FRA. As FRA understands, applying the 800,000-pound load at the buff stops of an AEM–7 locomotive apparently creates too large a moment on either the draft gear housing or on the buffer beam to side sill connection. Having analyzed the AEM–7 locomotive, FRA believes that the structure can support a 1,000,000-pound load applied at the center of the buffer beam, and provide an equivalent or greater level of safety than that proposed in the NPRM.

The requirements of paragraph (a)(3) are based on former AAR Standard 034–69, Section 6—Buffing, paragraph (f). In the final rule, FRA has doubled the load provided in the AAR Standard from 500,000 pounds to 1,000,000 pounds, to ensure safety. Further, FRA has tailored paragraph (a)(3) so that the alternative specified therein does not apply to any locomotive placed in service on or after July 12, 1999, as FRA wishes to limit

application of this alternative to existing locomotives. In addition, the alternative specified in paragraph (a)(3) may not be applied to a cab car or an MU locomotive. Use of the alternative for such a locomotive will not provide as high a level of safety as for a conventional locomotive.

As specified in paragraph (a)(4), the requirements of paragraph (a) do not apply to unoccupied passenger equipment operating at the rear of a passenger train. In the NPRM, FRA had proposed excepting from the requirements of paragraph (a) vehicles such as auto-carriers and RoadRailers operated at the rear of a passenger train and used solely to transport freight. To the extent such equipment could be excepted from the requirements of this paragraph, FRA determined that other unoccupied passenger equipment operating at the rear of a passenger train could also be excepted. In general, however, FRA would prefer that every vehicle in a passenger train have a minimum static end strength as specified in this section so that in the event of a train collision the cars in the train will crush or resist crushing with a certain degree of predictability and, thereby, further the ability of the train to remain upright and in line. As most collisions involving a passenger train occur at the train's forward end, the requirement for unoccupied passenger equipment to possess a minimum compressive strength is more significant for such equipment operated at the train's forward end and in front of the passenger car consist, than for such equipment operated at the rear. As proposed in the NPRM, private cars are also excepted from the requirements of paragraph (a). Nevertheless, FRA believes that, at a minimum, most private cars do comply with the compressive strength requirements that are specified in this paragraph for other passenger equipment.

In the final rule, FRA has included paragraph (b) to address the concern of railroads commenting on the NPRM that their existing passenger equipment may need to undergo potentially costly testing to determine whether the equipment complies with the static end strength requirements specified in this rule. Although FRA believes that only a limited number of existing passenger equipment on the nation's railroads does not comply with the static end strength requirement specified in paragraph (a)(1), FRA has included a presumption in the final rule to alleviate the burden on railroads to show that their existing equipment complies with the requirements of this paragraph. Paragraph (b) provides that any passenger equipment placed in service before November 8, 1999 is presumed to comply with paragraph (a)(1) (and thus presumed to resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure), unless the railroad operating the equipment has knowledge, or FRA makes a showing, that such passenger equipment was not built to the requirements specified in paragraph (a)(1). FRA makes clear that passenger equipment built in accordance with AAR specifications for the construction of passenger equipment operating in trains of more than 600,000 pounds total empty weight is deemed to be built to the requirements specified in paragraph (a)(1) and, thereby, compliant in this regard. Originally adopted in 1939, Section 6, paragraph (a), of AAR Standard S–034–69, "Specification for the Construction of New Passenger Equipment Cars," provides in part, "The car structure shall resist a minimum static end load of 800,000 lbs. at the rear draft stops ahead of the bolster on the center line of draft, without developing any permanent deformation in any member of the car structure." FRA also makes clear that, in a case where the railroad does not know whether its passenger equipment was built to the requirements specified in paragraph (a)(1) (or, in essence, this AAR specification), the presumption that the equipment was built to the requirements specified in paragraph (a)(1) still applies. The presumption is not applicable only in those cases where the railroad knows, or FRA can make a showing, that the equipment was not built to the requirements specified in paragraph (a)(1).

In response to the NYDOT's comment as to the effect of applying the static end strength requirement to existing passenger equipment, and thereby to the turboliner equipment planned for use in New York State, FRA believes that the RTL trainsets undergoing rebuild comply with the end strength requirement specified in paragraph (a)(1). However, these RTL trainsets need to be contrasted with the RTG trainsets which the NYDOT has also expressed an interest in rebuilding for like use. FRA believes that these RTG trainsets do not meet the end strength requirement specified in paragraph (a)(1), as FRA understands they were built in accordance with UIC (International Union of Railways) structural standards (which provide for lesser structural strength). FRA does note that no RTG trainsets are currently in service in the United States and that to rebuild the equipment would involve substantial cost while failing to meet the crashworthiness objectives of this rule. Information available to FRA indicates that the only useable remaining components of these trainsets are their shells. Further, FRA is not aware that any funding has been allocated to initiate the remanufacture of these trainsets, and any planned use of these trainsets should be considered speculative.

To prevent sudden, brittle-type failure of the passenger equipment body structure, paragraph (c) requires that the body structure be designed, to the maximum extent possible, to fail by buckling or crushing, or both, of structural members rather than by fracture of structural members or failure of structural connections.

In the final rule, FRA has added a paragraph (d) to provide a process for grandfathering approval of passenger equipment in use on a rail line or lines on November 8, 1999 that does not meet the minimum static end strength requirements. If the operator of the equipment files a petition with FRA seeking grandfathering approval to continue to use the equipment within this 180-day period after the rule is published, the equipment could continue in such usage while the petition is being processed, but such usage must stop May 8, 2000 unless the petition is approved. The section sets forth the requirements for petitions and service of the petition, and the process FRA will follow in soliciting comments on the petition and disposing of petitions.

FRA plans to "grandfather" equipment only for use in particular operating environments providing a sufficient showing is made that any incremental safety risk incurred in those environments is not of significant concern or that specific measures mitigating the risk to the traveling public and to railroad employees are utilized. Petitioners will need to demonstrate—through a quantitative risk assessment that incorporates design information, engineering analysis of the equipment's static end strength and of the likely performance of the equipment in derailment and collision scenarios, and risk mitigation measures to avoid the possibility of collisions or to limit the speed at which a collision might occur, or both, that will be employed in connection with the usage of the equipment on a specified rail line or lines—that use of the equipment, as utilized in the service environment for which recognition is sought, is in the public interest and is consistent with railroad safety. In this regard, FRA notes

that passenger equipment not possessing the minimum static end strength specified in this rule does not have the same capacity to absorb safely within its body structure the compressive forces that develop in a collision as equipment meeting the standard. The engineering analysis submitted by the petitioner should address how these forces will be dissipated in a manner that does not jeopardize occupant safety in collision scenarios.

Grandfathering approval of non-compliant equipment is limited to usage of the equipment on a particular rail line or lines. Before grandfathered equipment can be used on another rail line, a railroad must file and secure approval of a grandfathering petition for such usage.

Section 238.205 Anti-Climbing Mechanism

This section contains the vertical strength requirements for anti-climbing mechanisms on rail passenger equipment. The purpose of the anti-climbing mechanism is to prevent the override or telescoping of one passenger train unit into another in a derailment or collision. FRA is requiring that all passenger equipment placed in service for the first time on or after November 8, 1999 shall have an anti-climbing mechanism at each end capable of resisting an upward or downward vertical force of 100,000 pounds without permanent deformation. When coupled together in any combination to join two vehicles, AAR Type H and Type F tight-lock couplers satisfy this requirement. This requirement incorporates a long-standing industry practice into the final rule.

The rule further requires that the forward end of a locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with an anti-climbing mechanism capable of resisting an upward or downward vertical force of 200,000 pounds without failure. This requirement applies to locomotives or power cars of permanently coupled trains, and includes cab cars and MU locomotives. Specifying a vertical load requirement for lead vehicles (locomotives) that is greater than that for coupled vehicles is needed to address the greater tendency for override in a collision between uncoupled vehicles. AAR Standard S–580, which addresses the crashworthiness of locomotives, has included this requirement for all freight locomotives built since August 1990. FRA believes this industry practice is sound, and this requirement received endorsement by passenger railroad representatives. FRA recognizes that incorporating a separate anti-climbing arrangement in the leading structure of cab cars and MU locomotives presents a significant challenge. FRA will continue to work with the APTA PRESS Task Force to derive a suitable solution.

In its comments on the proposed rule, Talgo remarked that § 238.205(a), as drafted, seemed to consider that only couplers may properly function as anti-climbing mechanisms. Talgo recommended modifying this section to avoid this implication and ensure that anti-climbing mechanisms of varying design can be evaluated fairly. Talgo asserted that such a modification would ensure that articulated trainsets are not unfairly subject to a requirement that focuses only on conventionally coupled units. WDOT, in its comments on the NPRM, raised similar points, noting that articulated joints of semi-permanently coupled trainsets provide anti-climbing ability. As a result, FRA makes clear that the term anti-climbing mechanism is intended to be read broadly to encompass more than a conventional coupler, and that an articulated connection may serve as an anti-climbing mechanism for the purposes of this section provided it can withstand the vertical forces specified in this section.

In its comments on the NPRM, Talgo also believed that the rule should be restated to accommodate trains of different masses. Specifically, in determining the strength of the anti-climbing feature, Talgo recommended stating the operative variable as vertical acceleration, expressed in gs (units of acceleration of gravity), rather than load, expressed in pounds. Accordingly, Talgo recommended modifying this section so that the anti-climbing mechanism be capable of resisting a certain value of acceleration, instead of a vertical force of 100,000 pounds. Talgo supplemented its comments on this section following FRA's announcement that the minutes of the rulemaking's Working Group meetings had been added to the rulemaking's docket, *See* 63 FR 28496; May 26, 1998. As FRA had permitted comments for inclusion in the record as to whether the minutes accurately reflected statements made at the Working Group meetings, Talgo stated that the minutes do not mention that a representative of the Volpe Center acknowledged that this section should be modified to address lighter rail equipment. Talgo stated that, aside from the ends of its articulated trainsets which it noted are compliant with the 100,000 pound vertical force requirement, intermediate joints in the trainsets need only be equipped with anti-climbing mechanisms of 47,000 pounds strength to provide the same level of safety as required by the rule. Talgo explained that, for purposes of calculating a vertical force requirement, one should focus on the static force needed to lift a car of specified weight from one end while supported by the truck on the other end. Talgo further explained that this value should be multiplied by a safety factor—equal to 2.2., as it derived from values in the proposed rule—in order to take into account the possibilities of misalignment and similar dynamics in the event of a collision. As a result, Talgo believed specifying a 47,000-pound strength requirement for anti-climbing mechanisms on its equipment would provide the same level of safety as specifying a 100,000-pound strength requirement for anti-climbing mechanisms on conventional cars.

FRA notes that during a train collision the relatively strong underframe of a rail vehicle may ride up above the underframe of an adjacent rail vehicle, and extensively crush the weaker superstructure of the overridden vehicle. The potential for override to occur is influenced by the dynamic motions of the cars, the relative heights of the vehicles' underframes, and the changing geometry of the vehicles' structures as they crush during the collision. These factors allow the development of a vertical component of the very high longitudinal forces occurring in a train during a collision. This vertical force component, in effect, squeezes one underframe up and over the underframe of another vehicle in the train. While all three factors play a role in the occurrence of override, results of actual collisions indicate that the changing geometry of the car structures as they crush—which, in effect, creates a ramp during the collision—can overwhelm the influence of the difference in sill heights. There are numerous examples of cars with relatively low underframe heights that have overridden cars with relatively high underframe heights.

FRA has not modified the final rule in response to Talgo's comment that the rule should require the anti-climbing mechanism to be capable of resisting a certain value of acceleration instead of a specified vertical force. First, Talgo has not indicated in its comments what that value of acceleration should be, and FRA believes that formulating a performance standard in pounds of force, instead, is appropriate. Second, Talgo's subsequent comments have focused on specifying a 47,000-pound vertical force as an alternative to the

100,000-pound vertical force that an anti-climbing mechanism must resist under this section. In response to this latter suggestion by Talgo, FRA notes that the longitudinal force acting on a vehicle in a train during a collision is, in large part, a function of the vehicle's own deceleration plus the force required to decelerate all the vehicles behind it. (The longitudinal force is also dependent on the force required to crush the vehicles in the train.) When a sufficient vertical component of this total force develops, override occurs. Because the longitudinal force required to decelerate the trailing vehicles can exceed the force required to decelerate the subject vehicle, it is not possible to relate the deceleration of a single vehicle to the tendency to override in the way that Talgo has explained in arriving at its proposed 47,000-pound strength value. The Volpe Center representative cited by Talgo sought to make this point clear at the December 15, 1997 Working Group meeting. This representative also tried to make clear that he did not agree that consideration should be given to lighter rail equipment in the way that Talgo proposed at the Working Group meeting and in its comments on the rule.

Even though it may be theoretically possible to develop a formula which relates the decelerations of all the cars in a train to the tendency to override, such a formula would have to take into account the specific cars in the train and the time-phasing of the decelerations of the cars during a collision, as well as the forces required to crush each of the cars. Development of such a formula is beyond FRA's resources in issuing initial passenger equipment safety standards as mandated by Congress. However, FRA will further examine this issue in evaluating equipment of special construction.

Section 238.207 Link Between Coupling Mechanism and Car Body

This section contains the vertical strength requirements for the structure that links the coupling mechanism to the car body on passenger equipment. The purpose of this requirement is to avoid a premature failure of the draft system so that the anti-climbing mechanism will have an opportunity to engage.

FRA is requiring that all passenger equipment placed in service for the first time on or after November 8, 1999 be provided with a coupler carrier or other coupler-to-car-body linking structure that is designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds, without permanent deformation for any normal horizontal position of the coupler or coupling mechanism.

In its comments on the NPRM, Talgo stated that this section should be modified to apply only in the case where the coupler between cars itself acts as the anti-climbing mechanism—not in cases where other anti-climbing designs such as articulated unions are utilized. As a result, Talgo recommended that the requirements of this section should apply only to the couplers at the far ends of an articulated trainset, and not to the interior articulated unions which do not employ couplers. Talgo believed that this approach has been proposed in the rule with respect to Tier II passenger equipment. Talgo further commented that the load requirement should be the same as provided in § 238.205.

FRA recognizes that in an articulated trainset, the articulated joint connecting the cars in the train serves as both the coupler carrier and as the anti-climbing mechanism. Such cars do not have a coupler shank, *per se*. For practical reasons, including administration of the rule, FRA proposed separate requirements for the strength of the anti-climbing mechanism in § 238.205 and for the strength of the link between the coupling mechanism and car body in § 238.207 because the vast majority of Tier I passenger equipment possesses a conventional draft system. However, FRA intended that for passenger equipment utilizing articulated connections that comply with the requirements of § 238.205(a), such articulated connections would also comply with the requirements of this section. In the final rule, FRA has made this explicit by adding a sentence to the rule text, and FRA has therefore adopted Talgo's comment in this regard. Talgo's comment with respect to specifying an appropriate load requirement for this section is consequently addressed in the discussion of § 238.205, above.

Section 238.209 Forward-Facing End Structure of Locomotives

This section contains the requirements for the covering or skin of the forward-facing end structure of each passenger locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. The purpose of these requirements is to protect the occupied volume of the locomotive cab. This area is especially vulnerable in a highway-rail grade crossing collision if a fuel tank that is part of or being transported by the highway vehicle ruptures, or bulk hazardous materials are released.

FRA is requiring that the skin covering the forward-facing end of each passenger locomotive, including a cab car and an MU locomotive, be at a minimum equivalent to a ½-inch steel plate with a 25,000 pounds-per-square-inch yield strength. Material of a higher yield strength material may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained. The skin shall also be designed to inhibit the entry of fluids into the occupied area of the equipment, and be affixed to the collision posts or other main vertical structural members of the forward-facing end structure to add to the strength of the end structure.

AAR Standard S–580 has included these requirements for all locomotives built since August 1990. From observations of the improved performance of locomotives during collisions, FRA believes that this industry standard should be part of these safety standards. Passenger railroad representatives in the Working Group endorsed this improved safety requirement.

In its comments on the NPRM, APTA recommended that paragraph (c) be clarified so that the skin be designed to permit a train line door with a window in the forward-facing end structure of cab cars and MU locomotives. In fact, as proposed in the NPRM, the rule defined "skin" to mean the "outer covering on a fuel tank or the front of a locomotive, including a cab car and an MU locomotive, excluding the windows and forward-facing doors." *See* § 238.5; 62 FR 49795 (The skin may also be covered with another coating of a material such as fiberglass). APTA's recommendation is therefore consistent with FRA's proposal. For clarity, however, FRA has revised the final rule by removing the exclusion concerning windows and forward-facing doors from the definition of "skin" in § 238.5, and placing the exclusion instead directly in paragraph (d) of this section.

Section 238.211 Collision Posts

This section contains the structural strength requirements for collision posts. Collision posts provide protection against the crushing of occupied volumes of passenger equipment, including the telescoping of one vehicle into another, in the event of a collision or derailment.

Paragraph (a) requires that all passenger equipment placed in service for the first time on or after November 8, 1999 shall have either two full-height collision posts, each collision post having an ultimate longitudinal strength of not less than 300,000 pounds, or an equivalent end structure. The 300,000-pound strength requirement makes

mandatory the long-standing construction practice for collision posts in passenger equipment operating in the United States and has proven effective in the Nation's railroad operating environment. This requirement is similar to that contained in 49 CFR 229.141(a)(4), which applies to MU locomotives operated in trains having a total empty weight of 600,000 pounds or more, but also requires the collision posts to be full-height. As noted, FRA does not believe the 600,000-pound consist weight threshold is an appropriate distinction to retain for passenger equipment operating on the general system intermingled with equipment of more substantial strength, and, as a result, no such consist weight distinction is made in the final rule.

Full-height collision posts provide additional protection because they extend higher than posts attached only at the underframe. Little, if any, additional cost is imposed on builders by requiring full-height posts. Spacing the collision posts at approximately the one-third points laterally across the ends of the equipment will allow both posts to be engaged in many collision scenarios. An equivalent single end structure may be used in place of the two collision posts provided the structure can withstand the sum of the forces that each collision post is required to withstand. This allows for the design of monocoque, unitized or like structures. FRA notes, of course, that such a single end structure must also resist the loading requirements for corner posts as specified in § 238.213, as well as any other applicable end structure requirements as specified in this rule for Tier I passenger equipment.

Amtrak, in its comments on the NPRM, noted that its rail passenger operation is unique in the United States because it includes the use of unoccupied express and mail cars. Amtrak stated that collision posts applied to unoccupied head end cars (express cars) are unwarranted because the posts unnecessarily increase the tare weight of this equipment without any associated improvement in safety. FRA had originally proposed requiring that all passenger equipment comply with the requirements of paragraph (a), except for a vehicle of special design that operates at the rear of a passenger train and is used solely to transport freight, such as an auto-carrier or a RoadRailer. *See* 62 FR 49804. FRA sought this broader application of the collision post requirements in part because collision posts serve to repel adjacent passenger equipment in a train collision or derailment and, thereby, help prevent the uncontrolled crushing of equipment which could tend to misalign the train consist. For occupant safety, it is optimal that a train remain in line and upright in the event of a collision or derailment, and gradually come to a stop after "plowing the ballast" along the railroad track.

Nonetheless, FRA has revised the final rule to except unoccupied passenger equipment from the requirements of this section—whether operated at the rear or forward end of a passenger train. However, as noted above in the discussion of § 238.203, unoccupied passenger equipment operated at the forward end of a passenger train must comply with the static end strength requirement to maintain the integrity of the train.

Paragraph (b) requires that each locomotive, including a cab car or MU locomotive, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, have two forward collision posts, located at approximately the one-third points laterally across the end of the locomotive, each post capable of withstanding a 500,000-pound longitudinal force without exceeding the ultimate strength of the joint. In addition, each post must be capable of withstanding a 200,000-pound longitudinal force exerted 30 inches above the joint of the post to the underframe, without exceeding its ultimate strength. AAR Standard S–580 has included this requirement for all locomotives built since August 1990. From observation of the improved performance of these locomotives during collisions, including collisions with motor vehicles at highway-rail grade crossings, FRA believes this industry practice should become part of this rule's safety standards.

As an alternative, an equivalent end structure may be used in place of the two forward collision posts described in paragraph (b), to allow for the design of monocoque, unitized or like structures. The single end structure shall withstand the sum of the forces that each collision post is required to withstand, in addition to the loading requirements for corner posts as specified in § 238.213 and any other applicable end structure requirements as specified in this rule for Tier I passenger equipment.

Paragraph (c) provides that for a consist of semi-permanently coupled, articulated units, the end structure requirements in paragraphs (a) and (b) of this section apply only to the ends of the semi-permanently coupled consist of articulated units, provided that the railroad submits to the FRA Associate Administrator for Safety under the procedures specified in § 238.21—and FRA accepts as persuasive—a documented engineering analysis establishing that the articulated connection is capable of preventing disengagement and telescoping to the same extent as equipment satisfying the anti-climbing and collision post requirements contained in this subpart. In such case, the interior ends of the individual units in the consist need not be equipped with an end structure meeting the requirements of paragraphs (a) and (b). FRA notes that, in commenting on proposed § 238.211(c), both Talgo and WDOT had requested that FRA substitute the phrase "semi-permanently coupled" for "permanently joined" in describing the consist of units subject to the exception provided in paragraph (c). This recommendation has been adopted.

FRA has modified paragraph (c) from that proposed in the NPRM, *see* 62 FR 49804, by not providing an automatic exception from the collision post requirements for the interior ends of individual units in a consist of semi-permanently coupled, articulated units. Instead, a railroad must submit a documented engineering analysis supporting the capabilities of the articulated connection, as described above, and FRA must find that analysis persuasive. Articulated assemblies have a history of remaining in line during derailments and collisions and, if not designed to be uncoupled, only the outside ends of the entire assembly should be exposed to the risks of override. However, none of the relevant recent experience is on the North American continent, and the ability of articulated connections to remain intact during a collision with North American passenger equipment, freight rolling stock, or a fixed obstruction has not been demonstrated analytically. FRA noted the weakness in the proposed exception (§ 238.211(c) of the NPRM) while preparing the final rule. An approved, documented engineering analysis supporting the capabilities of the articulated connection is necessary to ensure the safety of passengers and crewmembers.

Section 238.213 Corner Posts

This section contains the requirements for corner posts on passenger cars, such as passenger coaches, cab cars and MU locomotives, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. FRA has clarified the requirements of this section, as explained below.

A corner post is the vertical structural member normally located at the intersection of the end of a rail vehicle

with a side of that vehicle. Paragraphs (a) and (b) specify the loads and orientation of the loads that a corner post in a passenger car must resist. The values specified in paragraphs (a) and (b) are the same as those proposed in the NPRM, *see* 62 FR 49804, though they have been stated in a different manner for clarity in the final rule.

This section allows flexibility so that corner posts may be located at positions other than at the extreme outside corners of a passenger car, as long as the corner posts are placed ahead of the occupied volume of the car. In this manner, corner posts may be positioned adjacent to the occupied volume of a passenger car to provide structural protection to the occupied volume. For instance, for passenger coaches equipped with end vestibules, the corner posts may be located in the side structure inboard of the vestibules' side door openings, provided that such posts are not placed inside the occupied volume, which includes any space for crew or passenger seating. FRA has fully defined "occupied volume" in § 238.5 to mean the volume of a rail vehicle or passenger train where passengers or crewmembers are normally located during service operation, such as the operating cab, and passenger seating and sleeping areas. The entire width of a vehicle's end compartment that contains a control stand is an occupied volume. Further, a vestibule is typically not considered occupied, except when it contains a control stand for use as a control cab.

FRA did not intend that the flexibility to place corner posts at locations other than at the extreme outside corners of passenger cars would permit such corner posts to be placed inside the occupied volume of the cars, and FRA recognizes that it should have made this point more explicit in the NPRM. *See* 62 FR 49766. (Of course, as a railroad is free to take safety measures beyond those required in this rule, a railroad may, therefore, operate a passenger car with corner posts inside the occupied volume of the car if another set of corner posts that do comply with the requirements of this section are placed ahead of the occupied volume.) In light of the vulnerabilities of cab cars and MU locomotives operating as the leading units in a passenger train, such passenger cars must be equipped with corner posts meeting the requirements of this section that are placed ahead of the occupied volume. Cab cars and MU locomotives will normally be occupied by a train crewmember in an end compartment, and thus must have corner posts placed near the extreme ends of the vehicles. As stated in its comments on the NPRM, the BLE does not wish the cab control compartment to be the designated section of a passenger car to crush in a collision, and FRA agrees with the BLE that the cab must be protected.

Bombardier, in its comments on the 1997 NPRM, suggested that proposed section 238.213(a) be modified so that the corner posts must resist the loads specified in this section at the point of attachment to the underframe and at the point of attachment to the roof structure, as those loads are applied individually. FRA had proposed that the corner post be able to resist these loads as applied simultaneously, not as applied individually. FRA has carried forward its proposal into the final rule, and has not adopted Bombardier's comment. Requiring the corner post to resist the specified loads as applied simultaneously at the points of attachment to the underframe and at the roof structure is a stricter requirement. In addition, the requirement is likely more representative of the conditions present in an actual collision where the corner post may be impacted at both points simultaneously, as in the case of a sideswipe with a passing rail car.

In their comments on the NPRM, Talgo and WDOT stated that the rule should provide an exception for articulated trainsets similar to that proposed for collision posts in § 238.211(c) of the NPRM. Accordingly, these commenters believed that corner posts should be required only at the far ends of an assembly of semi-permanently coupled, articulated passenger equipment—not at each end of each intermediate, semi-permanently coupled vehicle. FRA has not adopted these comments in the final rule. First, as discussed above, FRA has modified § 238.211 on collision posts so that there is no automatic exception from the collision post requirements for intermediate vehicles in an assembly of semi-permanently coupled, articulated passenger equipment. Further, corner posts, by their very definition and location, protect against hazards in a way that collision posts (positioned closer to the center of the end of a vehicle) cannot. There are many different scenarios in which a passenger car may be struck at its corner, such as in a corner-to-corner collision with another rail vehicle, or a raking collision with an object fouling the right-of-way. As noted in the NPRM, eight passengers were killed following incursion of a freight car into the side of two Amtrak coaches beginning at the corner of each car, near Lugoff, South Carolina, on July 31, 1991. Although there may be less chance of striking the corner of a semi-permanently coupled, articulated passenger car under certain circumstances, the possibility of doing so does exist. FRA, therefore, cannot grant an exclusion from the corner post requirements to such equipment operated as an intermediate unit in an assembly of semi-permanently coupled, articulated passenger cars.

In additional comments on this section, the BLE stated that the proposed corner post strength requirements for Tier I passenger equipment do not adequately address its safety concerns. The BLE noted that past cornering collisions may have resulted in fewer deaths and injuries had improved corner post structures been in place, and that Tier I passenger equipment may operate up to 125 mph in corridors with a significant number of highway-rail intersections. The BLE recommended that FRA apply the corner post requirements proposed for Tier II power cars in § 238.409 to all new and upgraded Tier I passenger equipment.

As FRA explained in the NPRM, the structural parameters for corner post strength represent the common practice for passenger cars built for North American service. They are being adopted as an interim measure to prevent the introduction of equipment not meeting such minimum requirements. FRA recognizes that current design practice has proven inadequate to protect the occupied volume in several recent side-swipe collisions involving passenger trains with cab cars leading. Crash modeling suggests that it is not feasible to modify current equipment designs to protect against collisions of the magnitude that occurred at Secaucus, New Jersey, and Silver Spring, Maryland, in February of 1996. Nevertheless, stronger corner posts are necessary to address collisions involving lower closing speeds. FRA is assisting the APTA PRESS Task Force in preparing a standard for corner post arrangements on cab cars and MU locomotives. Adoption of a suitable standard will be an immediate priority upon publication of the final rule.

Section 238.215 Rollover Strength

This section contains the structural requirements intended to prevent significant deformation of the normally occupied spaces of a passenger car in the event it rolls onto its side or roof. This section essentially requires the vehicle structure to be able to support twice the dead weight of the vehicle while the vehicle is resting on its side or roof. Analysis has shown that current passenger car design practice meets this requirement. This requirement has

proven effective in preventing massive structural deformation of cars that have rolled during collisions or derailments. For this reason, FRA believes this requirement should be incorporated into these safety standards.

In the NPRM, FRA invited comment whether this requirement should also apply to locomotives. Representatives from RPI had advised that locomotives do not roll over frequently enough to justify such requirements for conventional locomotives.

The BRC commented that this requirement should apply to locomotives to protect the locomotive's crew from the crush and deformation of the locomotive's occupied volume. While recognizing that locomotives may not roll over frequently, the BRC observed that the additional strength will protect the locomotive's crew if other equipment does land on top of the locomotive. The BRC believed that the occupied volume of the locomotive must be protected to increase the chances of survivability for crewmembers. FRA notes that a rollover strength requirement for all locomotives—freight and passenger—is being examined in the RSAC Locomotive Crashworthiness Working Group. FRA believes that the Locomotive Crashworthiness Working Group is the most appropriate forum in which to address a rollover strength requirement for locomotives overall.

In its comments on the NPRM, Talgo stated that paragraph (a) should include the clarification that local deformations are acceptable when the car rests on its side, just as paragraph (b) specifies that some deformation is permitted to the roof when the car is resting thereon. In paragraph (b), FRA has specified that deformation to the roof sheathing and framing is allowed to the extent necessary for the vehicle to be supported directly on the top chords of the side frames and end frames. This type of deformation does not impinge on the volume normally occupied by passengers. However, side wall deformations pose a safety risk to passengers since seats and other interior fittings are typically attached to the side wall, and passenger limbs are at risk of entrapment or crushing. Therefore, FRA has modified this section in response to Talgo's comment only to permit local yielding of the outer skin of a passenger car provided the resulting deformations in no way intrude upon the occupied volume of the car.

As Bombardier suggested in its comments on the NPRM, FRA has also made a minor clarification to this section by substituting the words "in the structural members of the" in place of the word "for" in the phrase which originally read in the NPRM, "the allowable stress for occupied volumes. . . ." *See* 62 FR 49804–49805.

Section 238.217 Side Structure

This section contains car body side structure requirements. These requirements are intended to prevent the side panels of a passenger car from flexing excessively while in operation, and help to resist penetration of the passenger car's side structure by an outside object. These provisions essentially codify, with minor modifications, sections 16 and 17 of AAR Standard S–034–69, Specification for the Construction of New Passenger Equipment Cars.

This section was originally entitled "Side impact strength" in the NPRM. FRA has changed the section title because the requirements in this section principally refer to the stiffness of a car's side panel, rather than the panel's strength. That is, these provisions principally focus on preventing the side panel from flexing excessively under service loads. The greatest service loads acting on the sidewalls of a passenger car probably result from the aerodynamic loads of a train entering or exiting a tunnel, and from two trains passing each other at speed. Residually, these requirements will provide some protection in the event the passenger car's side panel is struck by an outside object.

FRA believes that a side structural strength requirement is necessary because approximately 13% of the grade crossing accidents involving a passenger train result from a highway vehicle striking the side of the passenger train. Further, passenger trains may be struck in the side by other trains, individual rail cars that roll out of sidings, or freight being transported on trains sharing common rights-of-way. In addition, during a derailment or train-to-train collision, trains frequently buckle, exposing the sides of cars to potential impacts during the collision.

In its comments on this section in the NPRM, Bombardier noted that the proposed requirement was based on AAR Standard 034, Section 20, and it believed that to be consistent with the AAR Standard and to take advantage of the higher strength steels currently used in carbody construction, the rule should specify in paragraph (a) that, "Where minimum section moduli or thickness are specified, they shall be adjusted in proportion to the ratio of the yield strength of the material used, to that of mild open-hearth steel." FRA agrees that this comment is applicable to cars whose structural members are made of steel of higher strength than mild open-hearth steel. Accordingly, FRA has expressly provided that the minimum section moduli or thickness specified in paragraph (a) may be adjusted in proportion to the ratio of the yield strength of the material used to that of mild open-hearth steel only for a car whose structural members are made of a higher strength steel.

Talgo, in its comments on this section in the NPRM, believed that the requirement should be rewritten to specify the units used for each of the concepts discussed. For clarity, FRA states that the dimensional units in this paragraph are in inches, and the units for the section moduli are "in inches^3" (inches cubed) in paragraphs (a)(1) and (2).

In its comments on the NPRM, WDOT stated that it appeared FRA has continued to refuse to provide it with detailed information on the risks and true need for side impact standards. WDOT stated that it had previously asked FRA for documentation to support FRA's assertion that, as originally stated in the ANPRM, "[d]esigns of some passenger equipment have floor levels low to the rail, creating the tendency for a heavy highway vehicle striking the side of the train to climb into the occupied passenger volume rather than being driven under the underframe of the passenger rail car" (61 FR 30692). Without such detailed evidence, WDOT recommended that proposed § 238.217 be deferred until the second phase of the rulemaking.

The Volpe Center has analyzed a highway vehicle side impact into a single-level Amfleet car. The results of that analysis indicate that the Amfleet car will derail and push sideways before significant crushing of the car can occur. It is expected that rail cars having similar structures—side sill, body bolster, and center sill—at a similar height would behave in the same way in such a collision. This includes most passenger cars operating in the United States. However, other cars, such as Amtrak's bi-level cars and WDOT's single-level rail cars, have floor structures that are structurally different and positioned closer to the rail. Preliminary analysis indicates that significant crushing may occur if a highway vehicle collides into the side of one of these cars.

As a general principle in specifying a side impact strength requirement for a passenger car, the objective is to ensure that the side of the passenger car is strong enough so that the car derails and is pushed sideways—rather than collapses—when struck in the side by

another rail vehicle or a highway vehicle. FRA believes that current practice may not be adequate to meet this goal, and that cars with low floors are particularly vulnerable to penetration when struck in the side. A more meaningful side structure requirement than contained in this section is necessary to address this concern. Such a requirement will include specifying minimum shear values at the car's floor as well as at some point above the floor to protect the car's occupants. This will be a priority in the second phase of the rulemaking. The requirement in this final rule is, therefore, an interim measure. As FRA believes that this section does not address in particular the vulnerability of low-floor passenger cars to a side impact by a heavy highway vehicle, FRA has, in effect, deferred consideration of a requirement to do so.

FRA notes that WDOT also commented as to the likelihood that a highway vehicle will strike the side of a passenger train. WDOT disagreed with FRA's analysis and conclusions on this issue as stated in the NPRM. *See* 62 FR 49730–1. WDOT stated that FRA had omitted mentioning that two-thirds of all the highway vehicle side impact collisions into a passenger train involved the highway vehicle striking the side of the locomotive. From this, WDOT estimated that one-half of one percent (0.5%) of all grade crossing accidents over the 10-year period shown in the NPRM may have involved a "heavy" highway vehicle striking the side of a passenger car.

FRA has gathered more recent data since publication of the NPRM on highway vehicle side impact collisions into passenger trains. Between January 1, 1990, and December 31, 1997, 1,572 collisions occurring at public highway-rail public grade crossings between passenger trains and highway vehicles were reported to FRA. In 202 of these instances (12.8%) highway vehicles struck the side of a passenger train. In other words, a highway vehicle struck the side of a passenger train an average of approximately 25 times each year in this period. Further, in this period 137 collisions involved the highway vehicle striking the first unit of the passenger train, and 65 collisions involved the highway vehicle striking a unit behind the first unit in the train. As a result, WDOT is correct insofar as approximately two-thirds of such collisions involved the highway vehicle striking the first unit in the passenger train, which ostensibly was a locomotive but could also have been a passenger car (cab control car or MU locomotive).

Over the same 8-year period, 31 of the 202 occurrences in which a highway vehicle struck a passenger train involved a "heavy" highway vehicle. For purposes of this analysis, FRA considered heavy highway vehicles to consist of all those vehicles identified as a "Truck-Trailer" (3) and one-half of those vehicles identified as "Truck" (55), as specified according to Form FRA F6180–57—Rail-Highway Grade Crossing Accident/Incident Report. In this period, then, a heavy highway vehicle struck the side of a passenger train an average of 4 times each year—and of these occurrences a heavy highway vehicle struck other than the lead unit in the train an average of 1 to 2 times each year.

In its comments on the NPRM, the WDOT noted that FRA had not provided a record of any injuries or deaths occurring from highway vehicle collisions into passenger trains. FRA states here that in the 8-year period from 1990 through 1997, highway vehicle collisions into passenger trains resulted in 7 total injuries reported to FRA—3 injuries to railroad employees, and 4 injuries to passengers—and no reported fatalities. FRA notes that reliance on this passenger injury data in the abstract is not appropriate when considering the risks associated with operating a particular rail passenger vehicle. For example, it is possible that a highway vehicle collision into the side of an Amfleet rail car that does not injure any passengers would instead cause injuries under the same circumstances in a collision involving a rail car with a different floor structure positioned closer to the rail. As noted above, most of the passenger cars in the United States possess floor structures similar to the Amfleet rail car, positioned at a similar height above the rail. FRA maintains that the potential for a highway vehicle to strike the side of a passenger train is real, as shown by the record of the frequency of highway vehicles striking the sides of passenger trains. FRA therefore advises railroads to consider the risks and consequences of such a collision, with particular attention to the different units of passenger equipment in their operations.

As noted above, the side strength of a passenger car is also highly pertinent to its crashworthiness in a side or raking collision with other railroad rolling stock. Examples could include a freight car rolling out of a siding or industrial spur into the side of a passenger train, or a locomotive moving in a terminal area passing through a switch and into the side of a passenger train. Recognizing these concerns, the Tier II provision on side strength does attempt to address the identified need. This provision was derived from discussions with Amtrak concerning development of specifications for its high-speed trainsets for the Northeast Corridor.

Section 238.219 Truck-to-car-body attachment

This section contains the truck-to-car-body attachment strength requirement for passenger equipment. The attachment is required to resist without failure a 2g vertical force on the mass of the truck and a force of 250,000 pounds in any horizontal direction on the truck.

The intent of the requirement for the attachment to resist without failure a minimum vertical force equivalent to 2g acting on the mass of the truck is to prevent the truck from separating from the car body if it is raised or rolls over. In effect, the attachment must resist, without failure, a force equal to twice the weight of the truck and all the components attached to the truck. Many types of keepers are used to keep trucks attached to car bodies. FRA believes that the majority of them are capable of meeting this requirement. The intent of the requirement for the attachment to resist without failure a minimum force of 250,000 pounds acting in any horizontal direction on the truck is to address the forces that act upon the truck during a derailment that would tend to shear the truck from the car body. The parameter selected represents the current design practice that has proven effective in preventing horizontal shear of trucks from car bodies.

If the truck separates from the car body in a collision or derailment it may become a hazardous projectile that will intrude upon the occupied volumes of the equipment involved in the collision or derailment. Further, if the truck separates from the car body it will not be able to serve, in effect, as an anti-climbing device in a collision or derailment. With the truck attached to the car body, the truck of an overriding rail vehicle is likely to be caught by the underframe of the overridden rail vehicle, thus arresting the override.

In its comments on the NPRM, Talgo recommended that the regulation be modified so that the strength of the attachment against horizontal force is also measured in gs. Specifically, Talgo suggested that the vertical force resistance limit of 2g could be employed rather than a fixed load measure that, according to Talgo, did not take into account individual truck mass. Talgo believed that this modification would not undermine the intent of the rule, which it noted as allowing the truck to

act as an anti-climbing device during a collision, citing the NPRM at 62 FR 49767.

In addressing Talgo's comments, FRA would like to make clear that the fundamental reason for requiring the truck-to-car-body attachment to resist without failure a minimum force of 250,000 pounds acting in any horizontal direction on the truck is to prevent the truck from shearing off (separating from) the car body. (FRA believed this implicit in the preamble discussion of the NPRM, and is making it clear here to remove any doubt.) Whether the truck separates from the car body if the car rolls over, or whether the truck separates from the car body from being sheared off, the truck may become a hazardous projectile in either case. FRA did state in the NPRM, "If the truck remains attached to the car body, the truck is less likely to be struck by [or strike] other units of the train." 62 FR 49767. Having the truck remain attached to the car body also allows the truck to serve, in effect, as an anti-climbing device to prevent one vehicle from overriding another in a collision. In this regard, FRA stated in the NPRM, "*With the truck attached to the car body,* the truck of an overriding vehicle is likely to be caught by the underframe of the overridden vehicle, thus arresting the override." Id. (Emphasis added.) However, insofar as FRA's statement in the NPRM that the "Arequirement for the [truck-to-car-body] attachment to resist a horizontal force is intended to allow the truck to act as an anti-climbing device during a collision" has been understood to represent the only intent of the horizontal loading resistance requirement, FRA makes clear here that such an understanding of the requirement's intent is too narrow.

FRA believes it appropriate to specify that a passenger rail vehicle's truck-to-car-body attachment must resist without failure a minimum force of 250,000 pounds acting in any horizontal direction on the truck. This force may be possessed by one rail vehicle (Vehicle A) as it collides with the truck of another rail vehicle (Vehicle B) in a collision. Vehicle A is able to possess this force independent of the mass of Vehicle B's truck—or, for that matter, the mass of Vehicle B itself. Nonetheless, Vehicle B's truck-to-car-body attachment must resist this force so that its truck does not separate from its body. In this regard, FRA believes it inappropriate to restate the horizontal force requirement in this section so that it is dependent on the mass of an individual rail vehicle's truck. FRA does note that it has related the mass of the truck to the vertical force that the truck-to-car-body attachment must resist: In this case, the mass of the truck necessarily determines how strong the truck-to-car-body attachment must be to prevent the truck from separating from the vehicle, as the weight of the truck essentially acts to "pull" the truck away from the rail vehicle.

Talgo, in further commenting on the requirements of this section, recommended that the rule should except articulated equipment utilizing a single-axle truck positioned between two car bodies. Talgo stated that in the event a compressive force is generated by a collision, the truck attached to articulated equipment would become embedded between the two car bodies. In this case, it believed the truck is not intended to serve as an anti-climbing device, and that the train's articulated joints would instead provide protection against climbing. WDOT also raised this point in its comments on the NPRM, and recommended that FRA work with Talgo to develop an appropriate alternative to the proposed rule for non-conventional equipment.

As noted, having the truck remain attached to the car body in a collision or derailment helps to prevent one vehicle from overriding another vehicle as the truck of the vehicle attempting the override is caught on the underframe of the other vehicle. Further, the opportunity of having the truck of one vehicle caught on the underframe of another vehicle in such a scenario should be less likely to occur in a collision involving single-axle articulated passenger rail cars than in the case of non-articulated, conventional rail equipment. Yet, as FRA has made clear, the requirements of this section are principally intended to prevent a truck from separating from a rail passenger vehicle. Trucks can and have separated from articulated rail equipment in a collision; and truck separation poses a direct threat to the safety of a passenger train's occupants, especially when the cars in which those passengers ride are structurally vulnerable to penetration. As a result, the requirements of this section must apply to all passenger rail equipment-whether articulated or not.

Section 238.221 Glazing

This section contains additional requirements concerning the safety glazing of passenger equipment subject to the requirements of 49 CFR part 223. Existing safety glazing requirements for windows have largely proven effective in passenger service at speeds up to 125 mph. However, part 223 does not address the performance of the frame which attaches the window glazing to the car body. Paragraph (b)(1) requires each exterior window on a locomotive cab or a passenger car to remain in place when subjected to the forces the glazing itself is required to resist in part 223 of this chapter. In this way, the window glazing must be secured in place so that it can both resist spalling when struck by a projectile, for example, and also resist being knocked out of the window frame. Paragraph (b)(2) requires each exterior window on a locomotive cab or a passenger car to remain in place when subjected to the forces due to air pressure differences caused when two trains pass at the minimum separation for two adjacent tracks, while traveling in opposite directions, each train traveling at the maximum authorized speed. This requirement is also intended to prevent the window from being forced from the window frame, potentially injuring passengers and crewmembers. FRA believes that most existing passenger equipment subject to part 223 meets these requirements.

FRA did not receive any specific comments on this section. However, for clarity, FRA has restated the requirements proposed in § 238.221(b) and (c) in the NPRM, *see* 62 FR 49085, as § 238.221(b) in this final rule. The focus in paragraph (b) in the final rule is clearly on the ability of each exterior window to remain in place, however the window may be secured, and not have the window become a potential projectile itself.

Section 238.223 Fuel tanks

This section contains the structural requirements for external and internal fuel tanks on passenger locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002.External fuel tanks must comply with the performance requirements for locomotive fuel tanks contained in Appendix D to this part, or an industry standard providing at least an equivalent level of safety if approved by FRA's Associate Administrator for Safety under § 238.21. The requirements in Appendix D are based on AAR Recommended Practice-506, Performance Requirements for Diesel Electric Locomotive Fuel tanks, as adopted on July 1, 1995. In the NPRM, FRA proposed incorporating the requirements of AAR RP–506 directly into the rule. *See* 62 FR 49805. In preparing the final rule, however, FRA determined that restating the requirements of RP–506 in Appendix D would facilitate FRA's administration of the external fuel tank performance requirement. RP–506 itself is not specifically written as a regulatory

document, and one of its provisions on fueling does not appear to be a safety requirement. However, FRA does not intend to make any substantive change from the requirements of RP–506, except as noted in detail in the discussion of Appendix D.

FRA has included a definition of external fuel tank in the final rule to mean a fuel containment volume that extends outside the car body structure of the locomotive. An external fuel tank is distinguished from an internal fuel tank, which is defined in the rule as a fuel containment volume that does not extend outside the car body structure of the locomotive. As a result, a fuel tank that is built into the car body structure but is exposed in any way to the outside is considered an external fuel tank under the rule.

FRA has changed the title of paragraph (b) in the NPRM from *Integral fuel tanks* to *Internal fuel tanks,* reflecting the clarification in the definitions. This change is consistent with FRA's intent that, for purposes of the rule, locomotive fuel tanks must comply with one of two standards, depending upon the exposure of the fuel tank outside the car body structure. FRA has dispensed with the term "integral" fuel tank—i.e., a fuel tank that is essentially integrated with a structural member of the locomotive not designed as a fuel container—because, depending on its placement, an integral fuel tank either may or may not be exposed outside the locomotive car body structure.

In commenting on the NPRM, Bombardier noted that the requirements proposed in this section have not been applied by the industry to diesel multiple-unit locomotives (DMUs). Bombardier believed that the need and feasibility of applying these standards to DMUs must be evaluated specially because DMUs have much smaller enclosed and protected fuel tanks than those found on conventional North American locomotives. Accordingly, Bombardier recommended that FRA defer applying the requirements of this section to DMUs, until specific requirements for DMUs are developed.

Having considered Bombardier's comment, FRA does not recommend separately addressing requirements for DMU locomotives at this time. FRA has not been provided the operational or performance information necessary for an in-depth evaluation of DMU fuel tanks, and only a limited number of DMUs presently operate within the U.S. FRA will further consider formulating separate requirements for DMU fuel tanks in Phase II of the rulemaking, as operational and performance information is gained.

Section 238.225 Electrical System

FRA did not receive any specific comments on this section, and it is adopted as proposed. This section contains the requirements for the design of electrical systems on passenger equipment. In developing the proposed rule, the Working Group advised that no single, well-recognized electrical code or set of standards applied directly to the design of railroad passenger equipment. As a result, the Working Group recommended broad performance requirements which reflect common electrical safety practice and are widely recognized as good electrical design practice. FRA had offered for comment more detailed electrical system design requirements in the ANPRM, but as advocated by the Working Group the NPRM's approach was more performance-oriented and provided wide latitude in equipment design. FRA believes that this approach helps to ensure good electrical design practice without imposing unnecessary costs on the industry.

The electrical system requirements include provisions for:

- Electrical conductor sizes and properties to provide a margin of safety for the intended application;
- Battery system design to prevent the risk of overcharging or accumulation of dangerous gases that can cause an explosion;
- Design of resistor grids that dissipate energy produced by dynamic braking with sufficient electrical isolation and ventilation to minimize the risk of fires; and
- Electromagnetic compatibility within the intended operating environment to prevent electromagnetic interference with safety-critical equipment systems and to prevent interference of the rolling stock with other systems along the rail right-of-way.

Electrical standards currently under development by an APTA PRESS Task Force will help give effect to these requirements and supplement them as appropriate.

Section 238.227 Suspension System

This section contains the requirements for suspension system performance of all Tier I passenger equipment. In the ANPRM, FRA presented for comment a large set of detailed suspension system performance requirements. The Working Group advised that such an extensive set of requirements was not needed for Tier I passenger equipment, and the NPRM reflected this advice.

Overall, FRA is requiring that all passenger equipment shall exhibit freedom from hunting oscillations at all speeds. Further, FRA is requiring particular suspension system safety requirements for passenger equipment operating at speeds above 110 mph but not exceeding 125 mph, near the transition speed range from Tier I to Tier II requirements. Although FRA believes that for speeds not exceeding 110 mph existing equipment has not demonstrated serious suspension system stability problems, most of this same equipment is only operated at speeds that do not exceed 110 mph. Accordingly, when new or existing passenger equipment is intended for operation above 110 mph, this equipment must demonstrate stable operation during pre-revenue service qualification tests at all speeds up to 5 mph in excess of its maximum intended operating speed under worst-case conditions—including component wear—as determined by the operating railroad. The Working Group advised FRA that a single definition of worst-case conditions could not be applied generally to all railroads; and, as a result, the definition of worst-case conditions shall be determined by each railroad based upon its particular operating environment.

FRA has revised paragraph (a) based on a comment from Talgo by defining hunting oscillations in the rule text directly, and removing the definition of *hunting oscillations* from § 238.5. Further, FRA has clarified the intent of paragraph (a) that passenger equipment shall exhibit freedom from hunting oscillations at all "operating" speeds, by inserting the word "operating" as recommended by Bombardier in its comments on the rule. FRA has made a similar clarification in paragraph (b).

AAPRCO, in its comments on the NPRM, stated that "hunting" is a dynamic resonance phenomenon in which factors as diverse as car body characteristics, truck characteristics, suspension conditions, wheel tread contours and multiple rail alignment, profile, and lubrication conditions all interact to produce a condition in which the truck oscillates back and forth rapidly as the train moves down the track. AAPRCO recognizes that hunting may be dangerous because high forces can be generated between the wheels and the rails. However, according to AAPRCO, because complex interactions of many factors lead to hunting, there is no straightforward way for a car owner or railroad carrier to determine ahead of time whether hunting will occur

without extensive, dynamic testing at operating speed and often on the particular track in question. AAPRCO believed that all cars which exhibit hunting when in service should be fixed at the first opportunity. Yet, AAPRCO recommended deleting from the rule the requirement that passenger equipment exhibit freedom from hunting oscillations at all speeds for lack of a practical, predictive method to determine whether an individual car meets this requirement.

FRA agrees with AAPRCO's comments to the extent that the onset of truck hunting cannot always be predicted. However, railroads should not use equipment that they know has a hunting problem; and FRA is retaining the proposed requirement in the final rule. FRA has added AAPRCO's suggestion that if hunting oscillations do occur, a railroad shall take immediate action (such as a reduction in speed and subsequent attention to wheel contours) to prevent derailment. FRA does note that private rail cars are typically heavy rail cars and, therefore, less likely to hunt than lighter rail cars.

FRA has added paragraph (c) to this section to make clear that the requirements of 49 C.F.R. part 213 concerning vehicle/track interaction apply by their own force to passenger equipment, notwithstanding any provision of this section. The requirements of 49 C.F.R. § 213.345 are more detailed than those that are contained in this section, and apply as specified in that section to the qualification of the vehicle/track system for track Classes 6 through 9 for passenger equipment operating above 90 mph (and freight equipment operating above 80 mph).

Section 239.229 Safety appliances

This section references current safety appliance requirements contained in 49 U.S.C. chapter 203 and 49 CFR part 231. These existing requirements continue to apply independently to all Tier I passenger equipment, and FRA is referencing them here for clarity.

Section 238.231 Brake system

This section contains general brake system performance requirements that apply on or after September 9, 1999 to Tier I passenger equipment except as otherwise provided. Paragraph (a) contains a requirement that the primary braking system be capable of stopping the train with a service application of the brakes from its maximum authorized operating speed within the signal spacing existing on the track. FRA believes that this requirement is the most fundamental performance standard for any train brake system. This section merely codifies a requirement which is current industry practice and is the basis for safe train operation in the United States.

Paragraph (b) requires that passenger equipment ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002 be designed not to require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release. The requirement allows railroads the flexibility of using a reliable indicator in place of requiring direct observation of the brake application or piston travel, because the current designs of many passenger car brake systems make direct observation extremely difficult without the inspector placing himself or herself underneath the equipment. Brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. FRA recognizes the concerns raised by certain labor representatives regarding the use of piston travel indicators, and although such indicators do not provide 100 percent certainty that the brakes are effective, FRA believes that they have proven themselves effective enough to be preferable to requiring an inspector to assume a dangerous position.

Paragraph (c) requires that an emergency brake application feature be available at any time and that it produce an irretrievable stop. This section merely codifies current industry practice and ensures that passenger equipment will continue to be designed with an emergency brake application feature. This provision recognizes the reality that most passenger brake equipment currently provides a deceleration rate with a full service application that is close to the emergency brake rate. The current design requirement contained in 49 CFR Part 232, Appendix B, requiring the emergency application feature increase a train's deceleration rate by 15 percent, would require the lowering of full service brake rates on passenger equipment, thereby compromising safety and lowering train speeds. Consequently, FRA will not require a specific deceleration rate that must be obtained through an emergency brake application.

Paragraph (d) requires that the train brake system respond as intended to brake control signals and that the brake control system be designed so that a loss of control signal causes a redundant control to take over or cause the brakes to apply. These provisions are fundamental requirements necessary for effective brake system performance, and a codification of current industry practice. FRA intends the requirement to apply to all types of brake control signals, including pneumatic, electric, and radio signals.

Paragraph (e) prohibits the introduction of alcohol or other chemicals into the brake line. During periods of extreme cold weather, railroad employees at times resort to adding alcohol or other freezing point depressants to the brake line in an attempt to prevent accumulated moisture in the line from freezing. Virtually every railroad has a policy against this practice because alcohol and other chemicals attack the o-rings and gaskets that seal the brake system, causing them to age or fail prematurely. This practice can lead to dangerous air leaks and it increases maintenance costs.

Paragraph (f) requires that the brake system be designed and operated to prevent dangerous cracks in wheels. Passenger equipment wheels are normally heat treated so that the wheel rim is in compression. This condition forces small cracks that form in the rim to be closed. Heavy tread braking can heat wheels to the point that a stress reversal occurs and the wheel rim is in tension to a certain depth. Rim tension is a dangerous condition because it promotes surface crack growth. In the 1994 NPRM on power brakes, FRA proposed a wheel surface temperature limit to prevent this condition. *See* 59 FR 47729. Several brake manufacturers and railroads objected to this approach, claiming that the temperature limit was too conservative and did not allow for the development of new materials that can withstand higher temperatures. Based on these comments and concerns, FRA proposed in the 1997 NPRM and is retaining a more flexible performance requirement rather than a wheel tread surface temperature limit. This is an extremely important safety requirement because a cracked wheel that fails at high speed can have catastrophic consequences. In addition to the safety concerns, FRA believes that this requirement will lead to longer wheel life, and thus should provide maintenance savings to the railroads.

Paragraph (g) requires that brake discs be designed and operated so that the disc surface temperature does not exceed manufacturer recommendations. In the 1994 NPRM, FRA proposed a disc surface temperature limit. *See* 59 FR 47729. As noted above, several brake manufacturers and railroads objected to this approach, claiming that the temperature limit was too conservative and did not allow for the development

of new materials that can withstand higher temperatures. Based on these comments and concerns, FRA proposed in the 1997 NPRM and is retaining a more flexible requirement rather than a single disc surface temperature limit. FRA believes this requirement will lead to longer disc life, and thus will produce maintenance savings to railroads.

Paragraph (h) contains the requirements related to hand brakes and parking brakes on passenger equipment. A hand or parking brake is an important safety feature that prevents the rolling or runaway of parked equipment. In the 1997 NPRM, FRA proposed an all encompassing requirement that all locomotives, except those ordered and placed in service before certain dates, and all other passenger equipment be provided with a hand or parking brake that could be set and released manually and could hold the equipment on the maximum grade anticipated by the operating railroad. Based on the concerns of labor representatives, FRA recognizes that this proposed provision is somewhat at odds with the hand brake provisions currently contained in 49 CFR part 231, particularly the requirements that the hand brake be able to be operated while the equipment is in motion and that the hand brake operate in harmony with the brake system. As it is FRA's intent to remain consistent with the existing safety appliance requirements for Tier I passenger equipment, FRA has slightly modified the provisions requiring hand or parking brakes on passenger equipment.

FRA is retaining the requirement for equipping locomotives, except for MU locomotives, with either a hand brake or a parking brake that can be set and released manually and can hold the equipment on the maximum grade anticipated by the operating railroad. As there are currently no requirements for equipping locomotives with hand brakes, FRA will permit the use of a parking brake or hand brake which meets the above specifications on these vehicles. However, for all other passenger equipment and for MU locomotives, FRA is requiring that they be equipped with a hand brake or parking brake which meets the requirements contained in 49 CFR part 231 regarding hand brakes on passenger cars. Although part 231 does not currently require hand brakes on MU locomotives, FRA is requiring that the hand brake required to be installed on these locomotives under this paragraph comply with the requirements contained in part 231 for other passenger equipment. As these locomotives generally transport members of the general public, similar to passenger coaches, the necessity to apply the hand brake while the car is in motion becomes critical for passenger safety. Therefore, FRA believes that MU locomotives should be equipped with a hand brake which meets the design requirements contained in part 231 regarding passenger cars.

This paragraph contains the requirement that the hand brake or parking brake hold the loaded unit on the maximum grade anticipated by the operating railroad. FRA makes clear that the term "loaded unit" refers to the maximum weight and capacity that the unit will carry during its operation. Thus, such things as maximum fuel capacity, maximum passenger capacity, maximum train crew capacity, and the maximum weight of any lading that the locomotive or other unit will carry should be considered in determining the holding ability of any hand or parking brake utilized.

Paragraph (i) contains the requirement that passenger cars be equipped with a means for the emergency brake to be applied that is clearly identified and accessible to passengers. This is a longstanding industry practice and an important safety feature because crucial time may be lost requiring passengers sensing danger to find a member of the train crew to stop the train.

Paragraph (j) contains provisions to ensure that the dynamic brake does not become a safety-critical device. Railroads have consistently held that dynamic brakes are not safety devices because the friction brake alone is capable of safely stopping a train if the dynamic brake is not available. The provisions in this paragraph include requiring that the blending of the friction and dynamic brakes be automatic, that the friction brakes alone be able to stop the train in the allowable stopping distance, and that a failure of the dynamic brake does not cause thermal damage to wheels or discs due to the greater friction braking load. FRA believes that without these requirements the dynamic brake would most likely become a safety-critical item and railroads would not be permitted to dispatch trains unless the dynamic brake were fully operational.

Although FRA recognizes the concerns of labor representatives that dynamic brakes are safety critical and should be required to work at all times, FRA believes that in the context of blended braking labor's concerns are somewhat misplaced and are adequately addressed by various provisions contained in this final rule. In the blended brake context, unlike freight operation, there is not an independent dynamic brake: The dynamic brake and the pneumatic brake systems are automatically blended without separate action being taken by the locomotive engineer. Thus, the undue reliance on the dynamic brake is not a major concern when blended braking systems are utilized. In addition, the provisions contained in this paragraph ensure that blended brake systems are designed so that failure of the dynamic portion of the blended braking system does not impact the safe operation and stopping of the train. Furthermore, as part of the exterior calendar day mechanical inspection railroads are required to verify that all secondary braking systems are in operating mode and do not have any known defects. *See* § 238.303(e)(15). Consequently, the railroad must verify that the dynamic brakes are in operating mode and do not contain any known defects and take prescribed action whenever the dynamic brakes are found to be inoperative prior to releasing a locomotive from an exterior calendar day mechanical inspection.

Paragraph (k) requires that either computer modeling or dynamometer tests be performed to confirm that new brake designs not result in thermal damage to wheels or discs. Further, if the operating parameters of the new braking system change significantly, a new simulation must be performed. This requirement provides a means to ensure that the requirements in paragraphs (f) and (g) are being complied with by new brake designs.

Paragraph (l) requires that all locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, be equipped with effective air coolers or air dryers if equipped with air compressors. The coolers or dryers must be capable of providing air to the main reservoir with a dew point suppression at least 10 degrees F. below ambient temperature. FRA and most members in the industry agree that moisture is a major cause of brake line contamination. Consequently, reducing moisture leads to longer component life and better brake system performance. Currently, virtually all passenger railroads purchase only locomotives equipped with air dryers or coolers. Therefore, FRA is merely requiring the continuation of what it believes is good industry practice. Although labor representatives contend that a dew point suppression of 10 degrees below ambient temperature is insufficient to prevent condensation in the train line, these commenters provided no support for that contention other than the

assertion that prior specifications called for a 15 degree dew point suppression. Based on available information, FRA believes that a 10 degree dew point suppression is adequate. Without further study into the issue, FRA is reluctant to impose a more burdensome standard than that which was proposed. This issue may be further considered in the second phase of this passenger equipment rulemaking process.

Paragraph (m) requires that when a train is operated in either direct or graduated release, the railroad shall ensure that all cars in the train consist are set-up in the same operating mode. This provision was added based upon the concerns of several labor commenters regarding trains operated by Amtrak which contain a mixture of traditional passenger equipment and freight-like equipment. Most passenger trains are operated in what is known as a graduated release mode, whereby brake cylinder pressure may be reduced in steps proportional to increments of brake pipe pressure build-up; however, when passenger trains operated by Amtrak contain certain freight-like equipment the train is operated in a direct release mode, whereby brake cylinder pressure is completely exhausted as a result of an increase in brake pipe pressure. As these two different types of operating modes are now being utilized on passenger trains, FRA agrees it is necessary to require a railroad to ensure that all the cars in the train are set-up in the same operating mode in order to prevent potential train handling problems.

Section 238.233 Interior Fittings and Surfaces

This section contains the requirements concerning interior fittings and surfaces that apply, as specified in this section, to passenger cars and locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002.

FRA and NTSB investigations of passenger train accidents have revealed that luggage, seats, and other interior objects breaking or coming loose is a frequent cause of injury to passengers and crewmembers. During a collision, the greatest decelerations and thus the greatest forces to cause potential failure of interior fitting attachment points are experienced in the longitudinal direction, *i.e.*, in the direction parallel to the normal direction of train travel. Current practice is to design seats and other interior fittings to withstand the forces due to accelerations of 6g in the longitudinal direction, 3g in the vertical direction, and 3g in the lateral direction. Due to the injuries caused by broken seats and other loose fixtures, FRA believes that the current design practice is inadequate.

Paragraph (a)(1) requires that each seat in a passenger car remain firmly attached to the car body when subjected to individually applied accelerations of 4g in the lateral direction and 4g in the upward vertical direction acting on the deadweight of the seat or seats, if held in tandem. Based on a comment from Simula in response to the NPRM, FRA has clarified this requirement from that proposed in the NPRM by specifying that the vertical loading is in the "upward" direction. Paragraph (a)(2) specifies that a seat attachment shall have an ultimate strength capable of resisting the longitudinal inertial force of 8g acting on the mass of the seat plus the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds (msec). By resisting the force of an occupant striking the seat from behind, a potential domino effect of seats breaking away from their attachments is avoided. As used in this section, a 95th-percentile adult male has been defined in § 238.5 of the final rule based on the same characteristics for such a vehicle occupant specified by the National Highway Traffic Safety Administration (NHTSA) in its motor vehicle safety standards at 49 CFR § 571.208, S7.1.4. At the January 1998 Working Group meeting, the NTSB had recommended use of the NHTSA specifications for purposes of the rule's occupant protection requirements.

The requirement contained in paragraph (a)(2) represents a modification from FRA's original proposal that the seat attachment resist a longitudinal inertial force of 8g acting on the mass of the seat plus the impact force of the mass of a 95th-percentile male occupant(s) being decelerated from a relative speed of 25 mph and striking the seat from behind. *See* 62 FR 49806. The impact speed at which the occupant strikes the seatback ahead of him during a collision depends on the distance from the occupant to the seatback and the deceleration of the car (the crash pulse) during the collision. In drafting the rule, FRA has assumed a seat pitch, or distance from the occupant to the seatback ahead of him, consistent with the longest seat pitch currently used in intercity passenger train service. As a result, the final rule specifies the crash pulse and its duration, and need not specify the secondary impact velocity. This change is intended to clarify the rule by relating it more directly to how the rule is applied and allow for different seat pitches. Seat pitches are expected to reflect actual use of the seats and be less than that assumed by FRA. Consequently, secondary impact speeds of occupants striking the seatbacks ahead of them are expected to be 25 mph or less—a marginally less severe test condition than that provided for in the NPRM.

The revision to this paragraph is based in part on comments from Simula that the rule require the seat to resist a dynamic crash pulse, which it believed to be triangular with a 250 millisecond duration and an 8g peak, plus the impact of representative unrestrained occupants seated in a second row directly behind the test article. Simula noted that including a dynamic crash pulse in the longitudinal direction (parallel to the normal direction of train travel) provides a simulation of a typical train-to-train collision in which the seat would be involved. According to Simula, a dynamic crash pulse is more representative of the crash environment than the shock pulse defined by a peak acceleration only. Simula explained that the crash pulse is typically specified for seat testing in the aircraft and automotive industries. Specifying a crash pulse in essence specifies the operation of the test equipment. FRA notes that the seat testing proposed in the NPRM (and required in the final rule) is similar to such testing performed in the aircraft and automotive industries, and FRA expects that the actual testing of rail equipment will utilize the same test equipment as used in these other industries. FRA has, therefore, specified a crash pulse in this paragraph.

FRA notes that at the Working Group meeting in December 1997, APTA explained that it could not agree then to change any of the proposed seat testing requirements, and that it was conducting research in these matters. However, FRA does not believe the inclusion of a crash pulse in this paragraph and elimination of the 25 mph impact speed to significantly alter the required strength of the seats from that proposed in the NPRM. In fact, the original proposal was potentially more rigorous than that required under this final rule.

Simula additionally commented that each crash test dummy used to impact the seat back in testing the strength of the seat must be instrumented, and that the injury data gathered from each dummy then meet specified injury criteria. Simula explained that, like automotive and transport aircraft testing, rail seat design requirements

should include the use of crash test dummies to measure specified loads and accelerations for meeting specified injury criteria. FRA believes that Simula's comment is significant and wholly appropriate for consideration in the second phase of rulemaking on passenger equipment safety standards. In this regard, FRA notes that Simula references in its comments on proposed § 238.435 (the Tier II counterpart to this section) the use of a future APTA standard to specify occupant injury criteria and other parameters. Accordingly, resolution of this issue in the second phase of the rulemaking should benefit from APTA's efforts in this area.

In its comments on the NPRM, Simula also suggested modifying the rule so that the requirements of paragraph (a) apply to each seat assembly and specify that each seat assembly not separate from its mountings or have any of its parts detach. FRA believes that Simula's suggested modification restates the requirements of this section, in effect, and FRA does not find it necessary to change the explicit wording of the rule text. Simula further recommended specifying in the rule that in sled testing the strength of the seat attachment to the car, the attachment that is tested must be representative of the actual structure and attachment. FRA agrees with Simula that testing a seat and its attachment of a design or structure not representative of that actually used in a passenger car would necessarily fail to demonstrate that the actual seat and its attachment comply with the requirements of the rule. FRA has made this explicit in paragraph (g). Of course, any tests of passenger equipment or components of a design or structure not representative of an actual rail vehicle or actual components subject to the requirements of this part would necessarily fail to demonstrate that such actual vehicle or components comply with the requirements of this part—whether or not FRA has made this explicit in the rule text.

Paragraph (b) requires that overhead storage racks provide longitudinal and lateral restraint for stowed articles to minimize the potential for these objects to come loose and injure train occupants. Further, to prevent overhead storage racks from breaking away from their attachment points to the car body, these racks shall have an ultimate strength capable of resisting individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the mass of the luggage stowed. This mass shall be specified by each railroad. In commenting on the NPRM, the BRC did not believe that a railroad should be allowed to specify the mass of the luggage stowed for purposes of this requirement. However, each railroad is in the best position to determine the mass of the luggage that can be stowed in the stowage area.

Paragraph (c) requires that all other interior fittings in a passenger car be attached to the car body with sufficient strength to withstand individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the mass of the fitting. FRA believes the attachment strength requirements for seats, overhead storage racks, and other interior fittings will help reduce the number of injuries to occupants in passenger cars.

Passenger car occupants may also be injured by protruding objects, especially if the occupants fall or are thrown against such objects during a train collision or derailment. As a result, FRA is requiring in paragraph (d) that, to the extent possible, all interior fittings in a passenger car, except seats, shall be recessed or flush-mounted. Fittings that are recessed or flush-mounted do not protrude above interior surfaces and thereby would help to minimize occupant injuries.

Paragraph (e) is a general, common sense prohibition against sharp edges and corners in a locomotive cab and a passenger car. Just as FRA is concerned about protruding objects, these surfaces could also injure passenger train occupants. If sharp edges and corners cannot be avoided in the equipment design, they should be padded to mitigate the consequences of occupant impacts.

The requirements of paragraph (f) apply to each floor-mounted seat in a locomotive cab as well as to any seat provided for an employee regularly assigned to occupy the cab. FRA is requiring the seat attachment to have an ultimate strength capable of resisting the loads due to individually applied accelerations of 8g longitudinally, 4g vertically, and 4g laterally acting on the combined mass of the seat and its occupant. When turned backwards during a collision, seats with head rests that are designed to this requirement can effectively restrain crewmembers and minimize or prevent injuries.

In the NPRM, FRA had proposed that the requirements of this section apply to each floor-mounted seat provided exclusively for a crewmember assigned to occupy the cab of a locomotive. *See* 62 FR 49806. Simula, in its comments on the NPRM, recommended that the requirements of this section not be limited to floor-mounted seats and instead suggested substituting the words "car-mounted seat." Simula expressed concern that railroads may use wall-mounted seats for crewmembers that do not comply with these requirements. Yet, as noted below in the discussion of § 238.445(g) (this provision's Tier II counterpart), Bombardier observed that an additional seat—commonly a flip-up or a shelf-type seat—is in many cases provided in the cab for a train crewmember who is not normally in the cab. Bombardier believed these seats should not be subjected to the same requirements as for the train operators' seats.

FRA has revised paragraph (f) so that the requirements of this provision apply to floor-mounted seats and each seat provided for a crewmember regularly assigned to the locomotive cab. FRA recognizes that flip-down and other auxiliary seats are provided in locomotive cabs for the temporary use of employees not regularly assigned to the cab, such as a supervisor of locomotive engineers conducting an operational monitoring test of the engineer. These seats do not need to meet the requirements of this section.

In further commenting on this paragraph, Simula recommended specifying that the seat resist a triangular crash pulse of a 250 msec duration having an 8g peak. However, FRA believes that the static 8g load requirement proposed in the NPRM is a rational option, and has retained it in the final rule. As train operators' seats are not likely to be hit from behind, they are not likely to experience the impact forces that passenger seats experience. Adopting Simula's comment would result in a more expensive test without a corresponding increase in safety.

Simula additionally commented that, in conducting a test of the seat, the attachment of the seat to the sled fixture must be representative of the actual structure and attachment. FRA has adopted this comment, as noted above, in paragraph (g). Testing a seat and its attachment of a design or structure not representative of that actually used in a locomotive cab would necessarily fail to demonstrate that the actual seat and its attachment comply with the requirements of the rule.

Section 238.235 Doors

This section contains the requirements for exterior doors on passenger cars. These doors are the primary means of egress from a passenger train.

Paragraph (a) requires that by December 31, 1999, each powered, exterior side door in a vestibule that is partitioned from the passenger

compartment of a passenger car shall have a manual override device that is: capable of releasing the door to permit it to be opened without power from inside the car; located adjacent to the door which it controls; and designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement. Passenger cars subject to this requirement that are not already equipped with such manual override devices must be retrofitted accordingly. FRA notes that a vestibule is not partitioned from the passenger compartment of a passenger car solely by the presence of any windscreen which extends no more than one-quarter of the width across the car from the wall to which it is attached.

The requirements in paragraph (a) originally arose from the NTSB's emergency safety recommendations (R–96–7) as part of its investigation of the passenger train collision in Silver Spring, Maryland, on February 16, 1996. In the NPRM, FRA fully set out these emergency safety recommendations and FRA's response. *See* 62 FR 49734–5. As announced following its full investigation of the Silver Spring, Maryland passenger train collision, and stated here in particular among its final recommendations, the NTSB recommended that FRA:

> Require all passenger cars to have easily accessible interior emergency quick-release mechanisms adjacent to exterior passageway doors and take appropriate emergency action to ensure corrective action until these measures are incorporated into minimum passenger car safety standards.

(R–97–14) (See NTSB/RAR–97/02)

FRA received a number of comments as to the date by which passenger cars must be equipped with manual overrides to open exterior, side doors as specified in this section. In its comments on the NPRM, Septa asked that the date be set three years after the effective date of the final rule, citing funding reasons. Metra commented that the date be set four to six years from the effective date of the final rule. FRA notes that this comment may have been based on the assumption that the rule requires manual override devices to be installed on the exterior of existing passenger cars, which this section does not. The UTU commented that the proposal in the NPRM afforded railroads more than enough time to comply with the requirement, considering their advance notice of this issue. Finally, in its comments on the NPRM, the NTSB stated that a two-year period to accomplish the equipping of passenger cars with the manual override feature is too long.

Having considered the comments submitted, FRA has decided to require that compliance with this section be effected by December 31, 1999. FRA understands that a majority of the passenger cars are already in compliance with the rule as proposed. FRA recognizes that some entities may not be able to accomplish the total retrofit within the required time, to the extent their budget and acquisition process can only commence once the rule becomes final. However, these are self-imposed constraints that should not arrest progress in the industry as a whole. Any entity faced with such constraints should seek a waiver.

Paragraph (b) also provides that each powered, exterior side door have a manual override feature the same as that required in paragraph (a) for existing equipment, except that the manual override must also be capable of opening the door from outside the car. This requirement is intended to provide quick access to a passenger car by emergency response personnel, and represents the consensus recommendation of the Working Group. Paragraph (b) applies to each such door on a passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. Paragraph (b)'s requirements for a minimum number and dimension of side doors on a passenger car is discussed earlier in the preamble.

Paragraph (c) permits a railroad to protect a manul override device with a cover or screen to safeguard such devices from casual or inadvertent use. The rule requires that such cover and screens be capable of being removed by passengers, however.

Paragraph (d) is reserved for door marking and operating instruction requirements. These requirements are addressed in the final rule on passenger train emergency preparedness (49 CFR part 239), specifically § 239.107. *See* 63 FR 24630; May 4, 1998.

Section 238.237 Automated Monitoring

This section requires on or after November 8, 1999 an operational alerter or a deadman control in the controlling locomotive of each passenger train operating in other than cab signal, automatic train control, or automatic train stop territory. This section further requires that such locomotives ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, must be equipped with a working alerter. As a result, the use of a deadman control alone on these new locomotives would be prohibited.

An alerter will initiate a penalty brake application if it does not receive the proper response from the engineer. Likewise, a deadman control will initiate a penalty brake application if the engineer fails to maintain proper contact with the device. The Working Group discussed establishing specific setting requirements for alerters or deadman controls based on maximum train speed and the capabilities of the signal system. This discussion led to the conclusion that settings should be left to the discretion of individual railroads as long as they document the basis for the settings that they select. If the device fails en route, the rule requires a second person qualified on the signal system and brake application procedures to be stationed in the cab or the engineer must be in constant radio communication with a second crewmember until the train reaches the next terminal. This is intended to allow the train to complete its trip with the device's function of keeping the operator alert taken over by another member of the crew.

Alerters are safety devices intended to verify that the engineer remains capable and vigilant to accomplish the tasks that he or she must perform. Equipping passenger locomotives with an alerter is current industry practice. These devices have proven themselves in service, and the requirement will not impose an additional cost on the industry.

In the final rule, FRA has clarified the procedures a railroad must follow if the alerter or deadman control fails en route. In addition to the requirements of paragraph (d)(1), under paragraph (d)(2)(i) a tag shall be prominently displayed in the locomotive cab to indicate that the alerter or deadman control is defective, until such device is repaired. Further, under paragraph (d)(2)(ii), when the train reaches its next terminal or the locomotive undergoes its next calender day inspection, whichever occurs first, the alerter or deadman control shall be repaired or the locomotive shall be removed as the controlling locomotive in the train.

Subpart D—Inspection, Testing, and Maintenance Requirements of Tier I Passenger Equipment

Section 238.301 Scope

This subpart contains the requirements regarding the inspection, testing, and maintenance of all types of passenger equipment operating at speeds of 125 mph or less. This subpart is intended to address both MU locomotives and push-pull equipment.

This subpart includes the requirements for the inspection, testing, and maintenance of Tier I passenger equipment brake systems as well as the other mechanical and electrical safety components of Tier I passenger equipment.

Section 238.303 Exterior Calendar Day Mechanical Inspection of Passenger Equipment

This section contains the requirements for performing exterior calendar day mechanical inspections on passenger equipment and is patterned after a combination of the current calendar day inspection required for locomotives under the Railroad Locomotive Safety Standards and the pre-departure inspection for freight cars under the Railroad Freight Car Safety Standards. *See* 49 CFR 229.21 and 215.13, respectively. FRA intends for the exterior calendar day mechanical inspection to generally apply to all passenger cars and all unpowered vehicles used in passenger trains (which includes, e.g., not only coaches, MU locomotives, and cab cars but also any other rail rolling equipment used in a passenger train). However, paragraph (a) has been slightly modified to clarify that an inspection of secondary braking systems must be conducted on all passenger equipment, which includes all locomotives. A mechanical safety inspection of freight cars has been a longstanding Federal safety requirement, and FRA believes that the lack of a similar requirement for passenger equipment creates a serious void in the current Federal railroad safety standards.

As noted in the general preamble discussion, FRA has made minor changes and clarifications to the exterior calendar day mechanical inspection that was proposed in the 1997 NPRM. In paragraph (d) of this final rule, FRA is explicitly stating that the exterior mechanical inspection is to be performed to the extent possible without uncoupling the trainset and without placing the equipment over a pit or on an elevated track. This explicit statement has been added in response to APTA's concerns regarding what would constitute proper performance of these inspections. It was never FRA's intent to require this inspection to be conducted in such a manner. FRA intended the inspection to be very similar to the freight car safety inspection currently required pursuant to part 215.

FRA also recognizes that certain items contained in the proposed exterior mechanical inspection could not have been easily inspected without proper shop facilities. Therefore, FRA has moved some of the exterior mechanical inspection requirements related to couplers and trucks to the periodic mechanical inspection requirements as these periodic inspections will likely be performed at locations with facilities available that are more conducive to inspecting the specific components. The specific items which have been moved to the periodic mechanical inspection requirements include: all trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment; all center castings on trucks are not cracked or broken; the distance between the guard arm and the knuckle nose is not more than 5⅛ inches on standard type couplers (MCB contour 1904) or more than 5$^{5}/_{16}$ inches on D&E couplers; the free slack in the coupler or drawbar not absorbed by friction devices or draft gears is not more than ½ inch; and the draft gear is not broken. The changes made in this final rule were discussed with the Working Group at the December 15–16, 1997 meeting.

Paragraph (a) requires that each passenger car and each unpowered vehicle used in a passenger train receive an exterior mechanical safety inspection at least once each calendar day that the equipment is placed in service except under the circumstances described in paragraph (f). As noted above, this paragraph also recognizes that the requirement contained in paragraph (e)(15) that all secondary braking systems on all passenger equipment are in operating mode and do not have any known defects. FRA has amended this requirement from that proposed in the 1997 NPRM, which proposed to require that all secondary braking systems be working (62 FR 49808), in order to acknowledge that it is impossible to ascertain whether some secondary braking systems, such as dynamic brakes, are working unless the equipment is in use. Thus, FRA has modified the language of the requirement to ensure that all secondary braking systems are capable of working when released from the exterior mechanical inspection. Paragraph (a) and paragraph (e)(15) have also been modified to accurately reflect FRA's intent to ensure that all secondary braking systems are inspected. The requirements for an exterior calendar day mechanical inspection are generally applicable only to passenger cars and other unpowered vehicles used in a passenger trains. Thus, except for MU locomotives and cab cars, other locomotives would not fall within the requirements of this section. However, many locomotives contain secondary braking systems such as dynamic brakes. Thus, in order to effectuate FRA's intent that these secondary braking systems be inspected, paragraph (e)(15) has been modified to clarify that it is applicable to all passenger equipment, which includes all locomotives. Consequently, FRA intends for the secondary braking systems on all locomotives to be inspected and that it be known that those systems are in operating mode and do not contain any known defects.

Paragraph (b) is also a new provision being added to this final rule in order to address the inspections of vehicles that are added to a passenger train while en route. FRA is modifying the Class I brake test and exterior calendar day mechanical inspection requirements to ensure the proper operation of all cars added to a train while en route. In paragraph (b) FRA is requiring the performance of an exterior mechanical inspection on each car added to a passenger train at the time it is added to the train unless documentation is provided to the train crew that an exterior mechanical inspection was performed on the car within the previous calendar day. FRA is adding this requirement in order to address the concerns raised by various labor representatives that no provisions were provided in the 1997 NPRM to address circumstances when cars are added to an en route train. FRA believes that the added provision will ensure the integrity of the mechanical components on every car added to an existing train and should not be a burden for railroads since cars are generally added to passenger trains at major terminals with the facilities and personnel available for conducting such inspections. Furthermore, the inspection requirements contained in this paragraph are very similar to what is currently required when a freight car is added to a train while en route. *See* 49 CFR § 215.13.

Paragraph (c) requires that exterior calendar day mechanical inspections be performed by a qualified maintenance person. FRA believes the combination of a daily Class I brake test and a mechanical safety inspection performed by highly qualified personnel is a key to safer passenger railroad operations. Such a practice will most likely detect and correct equipment problems before they become the source of an accident or incident resulting in personal injuries or damage to property. As noted in previous discussions, FRA does not intend to provide any special provisions for weekend operations with regard to conducting calendar day mechanical inspections by QMPs as suggested in the

comments submitted by some APTA representatives. The rationale for requiring daily mechanical attention by highly qualified inspectors, a proposition generally accepted by Working Group members, appears to apply equally to weekend periods. In fact, based on FRA's experience, equipment used on weekends is generally used more rigorously than equipment used during weekday operations.

At present, only one commuter operation (Metra) has raised significant concerns regarding weekend operations. Although there is no specific data suggesting that existing weekend operations on Metra have created a safety hazard, FRA has found it virtually impossible to draft and justify provisions providing limited flexibility for Metra that do not create potential loopholes that could be abused by other passenger train operations that have not had the apparent safety success of Metra. Moreover, based on FRA's independent investigation of Metra's operation, it is believed that the impact of this final rule on Metra's weekend operations will be significantly less than that indicated in APTA's written comments and originally perceived by Metra. FRA believes that most of the personnel needed by Metra to conduct its weekend operations in accordance with this final rule are available to Metra or its contractors and that minor adjustments could be made to its weekend operations that might avoid significant new expense. As the concerns regarding weekend operations appear to involve just one commuter operation and because the precise impact on that operation is not known or available at this time, FRA believes that the waiver process would be the best method for handling the concerns raised by that operator. This would afford FRA an opportunity to provide any relief that may be warranted based on the specific needs and the safety history of the individual railroad without opening the door to potential abuses by other railroads that are not similarly situated.

Paragraph (e) identifies the components that are required to be inspected as part of the exterior daily mechanical safety inspection and provides measurable inspection criteria for the components. The railroad is required to ascertain that each passenger car, and each unpowered vehicle used in a passenger train conforms with the conditions enumerated in paragraph (e) and that all passenger equipment conforms with the requirement contained in paragraph (e)(15). Deviation from any listed condition makes the passenger car or unpowered vehicle defective if it is in service. The Working Group members generally agreed that the components contained in this section represent valid safety-related components that should be frequently inspected by railroads. However, members of the Working Group had widely differing opinions regarding the criteria to be used to inspect these components. FRA selected and has retained inspection criteria based on the locomotive calendar day inspection and the freight car safety pre-departure inspection required by 49 CFR parts 229 and 215, respectively. FRA believes that, at a minimum, passenger cars should receive an inspection which is at least equivalent to that received by locomotives and freight cars.

As discussed in the 1997 NPRM, FRA intends for the daily mechanical inspection to serve as the time when the railroad repairs defects that occur en route. Thus, this section generally requires that safety components not in compliance with this part be repaired before the equipment is permitted to remain in or return to passenger service. (*See* § 238.9 for a discussion of the prohibitions against using passenger equipment containing defects; and §§ 238.15 and 238.17 for a discussion of movement of defective equipment for purposes of repair or sale). The purpose of the defect reporting and tracking system required in § 238.19 is to have the mechanical forces make all necessary safety repairs to the equipment before it is cleared for another day of operation. In other words, FRA generally intends for the flexibility to operate defective equipment in passenger service to end at the calendar day mechanical inspection.

In paragraph (e)(15), FRA has modified the requirements regarding secondary braking systems to clarify that secondary braking systems must be in operating mode and contain no known defective conditions. FRA has also included provisions to address the handling of defective dynamic brakes in order to specifically establish restrictions on the movement of equipment containing this type of defective secondary brake and to recognize the concerns raised by several commenters regarding the importance that these secondary brakes have in the operation of passenger equipment. FRA agrees that in many circumstances it is desirable to have operative dynamic brakes in order to prevent thermal stress to the wheels, which has the potential of occurring if certain passenger trains are operated for extended periods without dynamic brakes and compensating train control practices are not used. In developing the requirements for handling defective dynamic brakes, FRA has generally incorporated the current best practices of the industry.

This paragraph draws a distinction between dynamic brakes on MU locomotives and dynamic brakes on conventional locomotives, treating each slightly differently due to the safety implications involved in each type of operation. FRA intends to require that MU locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes be handled in the same manner as a running gear defect pursuant to § 238.17. Thus, MU locomotives found with defective dynamic brakes at the exterior calendar day mechanical inspection must have the dynamic brakes repaired prior to continuing in passenger service. FRA further intends that MU locomotives which experience a dynamic brake defect while en route be handled the same as a running gear defect pursuant to § 238.17. Thus, the locomotive would have to be inspected by a QMP and be properly tagged at the location it is found to be defective.

The requirements related to conventional locomotives found with dynamic brakes not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes are somewhat less stringent than the movement requirements placed on MU locomotives. In these cases, the locomotive may remain in passenger service provided that the unit is properly tagged, each locomotive engineer taking charge of the train is informed as to the status of the locomotive, and the locomotive's dynamic brakes are repaired within three calendar days of being found defective.

FRA has treated MU and conventional locomotives slightly differently for several reasons. Past history has shown that failure to have operative dynamic brakes in MU operations increases the potential of causing thermal stress to the wheels of the vehicles to a much greater extent than inoperative dynamic brakes in conventional locomotive operations. MU locomotive operations generally tend to have a greater number of station stops, requiring the use of the brakes, than operations where conventional locomotives are utilized and, thus, the potential for thermal stress to the wheels is increased. Furthermore, operations utilizing conventional

locomotives tend to operate for extended distances across the country and, thus, are further from locations where repairs to the dynamic brakes can be properly repaired. Therefore, these operations may need extra time to get a defective locomotive to a particular location for repair. Furthermore, FRA believes that the tagging and notification requirements imposed on conventional locomotives reduce the potential of an engineer's undue reliance on a secondary brake system which is not available. Finally, the handling requirements contained in this paragraph are consistent with the current practices within the industry and should have a minimal impact on passenger operations.

Paragraph (f) contains a narrow exception which allows long-distance intercity passenger trains that miss a scheduled exterior calendar day mechanical inspection due to a delay en route to continue in passenger service to the location where the inspection was scheduled to be performed. At that point, a calendar day mechanical inspection must be performed prior to returning the equipment to service of any kind. This flexibility applies only to the mechanical safety inspections of coaches. FRA does not intend to relieve the railroad of the responsibility to perform a locomotive calendar day inspection as required by 49 CFR part 229.

Paragraph (g) contains certain minimal recordkeeping requirements related to the performance of the exterior calendar day mechanical inspection provisions. FRA believes that proper and accurate recordkeeping is the cornerstone of any inspection process and is essential to ensuring the performance and quality of the required inspections. Without such records the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes it to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties and has now been corrected. This paragraph specifically permits a railroad to maintain the required records either in writing or electronically, and the record may be part of a single master report covering an entire group of cars. Whatever format the railroad elects to use to record the information, it must contain the specific information listed in this paragraph.

Paragraph (h) specifies an additional contingent component of the calendar day exterior mechanical inspection. If a car requiring a single car test is moved in a train carrying passengers or available to carry such passengers to a place where the test can be performed, then the single car test must be performed before or during the exterior calendar day mechanical inspection. This provision has been retained from the 1997 NPRM. The comments submitted by APTA suggested that the word "next" be inserted prior to "calendar day mechanical inspection." FRA did not make this change as it would provide greater latitude than FRA intended. Paragraph (h) applies to equipment that is already in transit from the location where repairs were conducted that required the performance of a single car test. Thus, in order to remain consistent with the provisions contained in § 238.311(f) such cars must receive the single car test prior to, or as part of, the car's exterior calendar day mechanical inspection. Although FRA recognizes the concerns of labor representatives with regard to this provision, FRA believes that it is necessary to provide the railroads the flexibility to make the necessary repairs to a piece of equipment and then move it to a location which is most conducive to performing the required single car test. FRA currently permits such flexibility and is not aware of any significant safety problems that have arisen as a result of such a practice. However, in order to ensure the safe movement of such equipment, FRA has added various inspection and tagging requirements in § 238.311(f) that must be performed prior to hauling such equipment to another location for the performance of a single car test. (See section-by-section discussion of § 238.311.)

Section 238.305 Interior Calendar Day Mechanical Inspection of Passenger Cars

This section contains the requirements for the performance of interior mechanical inspections on passenger cars (which includes, e.g., passenger coaches, MU locomotives, and cab cars) each calendar day that the equipment is used in service except under the circumstances described in paragraph (d). Unlike the exterior calendar day mechanical inspection, FRA in paragraph (b) of this section permits the interior inspections of passenger cars to be performed by "qualified persons," individuals qualified by the railroad to do so. Thus, these individuals need not meet the definition of a "qualified maintenance person."

As noted in the 1997 NPRM, FRA's original position was to require the interior inspections to be performed by qualified maintenance persons. However, after several discussions with members of the Working Group and several other representatives of passenger railroads, FRA determined that the training and experience typical of qualified maintenance persons is not necessary and often does not apply to inspecting interior safety components of passenger equipment. In addition, the flexibility created by permitting someone less qualified than a qualified maintenance person can reduce the cost of performing the mechanical safety inspection since the most economical way to accomplish the mechanical inspection is to combine the exterior inspection with the Class I brake test and then have a crewmember inspect on arrival at the final terminal or have a train coach cleaner combine the interior coach inspection with coach cleaning.

Paragraph (c) lists various components that are required to be inspected as part of the interior calendar day mechanical safety inspection. As a minimum, FRA requires that the following components be inspected: trap doors; end and side doors; manual door releases; safety covers, doors and plates; vestibule step lighting; and safety-related signs and instructions. Consistent with the discussions regarding the movement of defective equipment with non-running gear defects, all en route defects and all noncomplying conditions under this section must be repaired at the time of the daily interior inspection or the equipment would be required to be locked-out and empty in order to be placed or remain in passenger service with the exception of a defect under § 238.305(c)(5). (*See* § 238.9 for a discussion of the prohibitions against using passenger equipment containing defects, and § 238.17 for a discussion of the movement of defective equipment for purposes of repair.)

It should be noted that two of the items contained in paragraph (c) have been slightly modified in order to clarify FRA's intent and to ensure the safety of the traveling public. Paragraph (c)(5), regarding the continuing use of a car with a defective door, has been modified by the addition of subparagraph (c)(5)(iii), which requires that at least one operative and accessible door be available on each side of the vehicle in order for the car to continue to be used in passenger service. FRA believes the addition of this requirement is necessary to ensure that passengers have adequate egress from the equipment should an emergency occur.

Paragraph (c)(8) has also been modified to clarify that the inspection of the manual door releases, as proposed in the 1997 NPRM, need only be made to the extent necessary to verify that all D rings, pull handles, or other means to access manual door releases are in place based on a visual inspection. FRA recognizes that inspection of the actual manual door release would be overly burdensome, costly, and unnecessary due to the relative reliability of such devices. It should also be noted that the final rule contains a new paragraph (c)(9) which requires that the interior mechanical inspection ensure that all required emergency equipment, including fire extinguishers, pry bars, auxiliary portable lighting, and first aid kits be in place. These items are required pursuant to the regulations on passenger train emergency preparedness contained at 49 CFR part 239, and FRA believes that the inspection to ensure the presence of such equipment is appropriate under this section.

Paragraphs (d) and (e) contain provisions which are identical to certain requirements pertaining to exterior calendar day mechanical inspections. Paragraph (d) allows long-distance intercity passenger trains that miss a scheduled calendar day mechanical inspection due to a delay en route to continue in passenger service to the location where the inspection was scheduled. Paragraph (e) contains the recordkeeping requirements related to the performance of interior calendar day mechanical inspections. FRA believes that proper and accurate recordkeeping is the cornerstone of any inspection process and is essential to ensuring the performance and quality of the required inspections. Without such records the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes it to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the 1997 NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties and has been corrected. This paragraph specifically permits a railroad to maintain the required records either in writing or electronically, and the record may be part of a single master report covering an entire group of cars. Whatever format the railroad elects to use to record the information, it must contain the specific information listed in this paragraph.

Section 238.307 Periodic Mechanical Inspection of Passenger Cars and Unpowered Vehicles Used in Passenger Trains

This section contains the requirements for performing periodic mechanical inspections on all passenger cars and all unpowered vehicles used in passenger trains. Paragraph (b) makes clear that the periodic mechanical inspections required under this section are to be performed by a qualified maintenance person as defined in § 238.5. In the 1997 NPRM, FRA proposed that the following components be inspected for proper operation and repaired, if necessary, as part of the periodic maintenance of the equipment: emergency lights; emergency exit windows; seats and seat attachments; overhead luggage racks and attachments; floor and stair surfaces; and hand-operated electrical switches. *See* 62 FR 49808–09. FRA further proposed that such periodic inspections be performed every 180 days. As noted above, FRA, with the intent of requiring their inspection on a periodic basis, removed certain items previously proposed in the exterior calendar day mechanical inspection as they could not be easily inspected without proper shop facilities.

After a review of the industry's practices regarding the performance of periodic mechanical-type inspections, FRA believes that some of the items removed from the exterior calendar day mechanical inspection as well as some of the items previously proposed in the 180 day periodic mechanical inspection should be and are currently inspected on a more frequent basis by the railroads. As it is FRA's intent in this proceeding to attempt to codify the current best practices of the industry, FRA believes that the current intervals for inspecting certain components should be maintained. Consequently, FRA is modifying the time interval for conducting periodic mechanical inspections to include a 92-day and a 368-day periodic inspection.

In paragraph (c), FRA requires the periodic inspection on a 92-day basis of certain mechanical components previously proposed as part of the exterior calendar day mechanical inspection, as well as an inspection of floors, passageways, and switches. The mechanical components to be inspected that were previously included as part of the calendar day mechanical inspection include verification that all trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment and that all center castings on trucks are not cracked or broken. FRA will also require a 92-day inspection of emergency lighting systems as they are critical to the safety of passengers in the event of an accident or derailment. FRA is adding an inspection of the roller bearings to the 92-day inspection. Although this component was inadvertently left out of the NPRM, FRA believes that roller bearings are an integral part of the mechanical components and must be part of any mechanical inspection scheme. Furthermore, several labor commenters recommended inspections criteria similar to that contained in 49 CFR Part 215, which specifically addresses the condition of roller bearings. *See* 49 CFR § 215.115. As roller bearings are best viewed in a shop facility context, FRA is adding the inspection of this component to the 92-day periodic mechanical inspection which is consistent with the current practices of the industry. FRA is also adding the general conditions and components previously proposed in § 238.109(b) (62 FR 49801–802) to the 92-day periodic mechanical inspection contained in this paragraph. As the conditions previously proposed in § 238.109(b) were intended to ensure that the railroads had an inspection scheme in place to ensure that all systems and components of the equipment are free of conditions that endanger the safety of the crew, FRA believes that a specific inspection interval is better suited to address the general condition of the equipment and ensure the safety of the riding public and railroad employees. This paragraph also requires that all of the components inspected as part of the exterior and interior calendar day inspection be inspected at the 92-day periodic inspection.

Paragraph (d) of this section retains a semi-annual periodic inspection for certain components as proposed in the 1997 NPRM. In the NPRM, FRA proposed a 180-day periodic inspection, but in order to remain consistent with the 92-day inspection scheme this paragraph requires a 184-day periodic inspection of certain mechanical components. These include: seats; luggage racks; beds; and emergency windows. This paragraph also contains an added requirement related to the inspection of the couplers; couplers were removed from the calendar day inspection and have been inserted in the 184-day inspection scheme. FRA is placing the coupler inspection at this interval rather than at the 92-day interval in order to reduce the amount of coupling and uncoupling of

equipment that will be required. In paragraph (e) FRA has extended the inspection interval related to manual door releases over that which was proposed in the 1997 NPRM. Due to the general reliability of these devices and because they are partially inspected on a daily basis, FRA believes that an annual inspection of the releases will ensure their proper operation. Thus, the final rule requires an inspection of the manual door releases every 368 days.

In paragraph (b) FRA has attempted to make clear that, although FRA has established certain periodic inspection intervals in order to establish a default interval, FRA will allow railroads to develop alternative intervals for performing such inspections for specific components or equipment based on a more quantitative reliability assessment completed as part of their system safety programs. FRA expects that railroads will utilize reliability-based maintenance programs as appropriate, given this opportunity to do so. As successful reliability based maintenance programs are dynamic, it is expected that, in the process of defining and documenting the reliable use of equipment or specific components, over time, continued assessments may indicate a need to increase or decrease inspection intervals. FRA will only permit lengthened inspection intervals beyond the default intervals when such changes are justified by a quantitative reliability assessment. The previously described inspection intervals are based on sound but limited information provided to FRA that FRA believes represents a combination of operating experience, analytical analyses, knowledge and intuition. FRA expects that railroads will collect and respond to additional data throughout the operating life of the equipment.

FRA believes that the approach taken to identify the stated default inspection intervals contained in this section combined both qualitative, or subjective, judgement with available quantitative information. FRA believes this approach is appropriate for the conservative default strategy defined. However, FRA recognizes that this mixed approach does not yield a quantified level of equipment reliability. The reliability of a system or component is defined as the probability that, when operating under stated environmental conditions, the system or component will perform its intended function adequately for a specified interval of time, number of cycles of operation, or number of miles. Reliability is a quantitative measure. FRA believes that quantified, high levels of reliability are desired for the continued safe operation of passenger equipment. Therefore, FRA encourages equipment owners to perform additional sensitivity analyses to determine which components or equipment has the greatest potential for introducing risk, thus requiring the most careful monitoring to increase reliability while reducing the consequences of failure. FRA believes that, in addition to component design reliability, quality assurance, as well as maintenance and inspection proficiency may be considered and evaluated by the equipment owners as a part of this process. When considering the reliable use of passenger equipment, elements such as couplers as well as suspension systems; trucks; side bearings; wheels; jumpers; cable connections; buffer plates; diaphragms; and secondary brake systems, and human factors as it relates to inspecting and maintaining these elements may be considered. Component level structural fatigue, corrosion, and wear are variables that may be considered to bound or introduce uncertainty in passenger equipment performance, effectively reducing reliability as well.

Given the limited quantitative information that is presently available regarding factors that influence the reliability of passenger equipment, the primary sources of information available for initial reliability assessments include: judgement; simulations; field, laboratory, and office experiments; operating environment and maintenance process reviews; and accident and near-miss investigations. FRA believes that in the operation of passenger equipment, where failure costs are high and casualties infrequent, accident data for informed decision making may be scarce or not fully applicable. Further, legal and punitive threats may provide significant impediments to identifying the contributing, initiating, and compounding causes of failures. Data from near-miss, or near-catastrophic incidents may be found to be instructive, but often not all of the parameters entering a quantitative analysis are recorded or communicated in these cases.

FRA believes that for the initial reliability assessments of passenger equipment and components qualified judgment will be an important source of quantitative information. Qualified judgment is based upon both the accumulation of experience and a mental synthesis of factors allowing the evaluator to assess the situation and produce results. Such judgment has a rightful place in making initial quantitative reliability assessments because current available data is often deficient for the evaluation of a particular situation. However, as adequately structured databases are developed and implemented for reliability center maintenance programs, FRA believes more reliance can be placed on objective data and reliability assessments will be based on a combination of data and judgment. FRA believes that, in the very near term, sole reliance cannot be placed on objective data sources to provide quantitative reliability assessments; instead, adequately qualified and unbiased judgment will continue to be required in conjunction with verifiable operating data for analysis purposes.

When planning the maintenance of a component or system to protect the safety and operating capability of the equipment, FRA expects that a number of items will be considered in the reliability assessment process, which include:

1. The consequences of each type of functional failure;
2. The visibility of a functional failure to the operating crew (evidence that a failure has occurred);
3. The visibility of reduced resistance to failure (evidence that a failure is imminent);
4. The life or age-reliability characteristics of each item;
5. The economic tradeoff between the cost of scheduled maintenance and the benefits to be derived from it;
6. A multiple failure, resulting from a sequence of independent failures, may have consequences that would not be caused by any one of the individual failures alone. These consequences are taken into account in the definition of the failure consequences for the first failure; and
7. A default strategy will continue to govern decision making in the absence of full information or agreement. This strategy provides for conservative initial decisions, to be revised on the basis of information derived from operating experience.

FRA believes that a variety of qualitative approaches, such as a Failure Modes, Effects, Criticality Analysis (FMECA) may be useful in evaluating the potential consequences of a functional failure. FRA believes a qualitative approach may be used in complement and combined with a quantitative approach such as Probabilistic Risk Analyses (PRA) or Quantified Risk Analyses (QRA) which may include structured probabilistic Event Tree, Fault Tree, or Influence Diagram analyses to provide additional insight to railroads regarding the reliable use of their equipment. Quantitative approaches are useful to characterize the details of a system

whereas qualitative approaches can provide characterization of the general performance quality of the system analyzed.[4] Component level reliability analysis centered around a quantitative, deterministic design approach such as Damage Tolerance Analysis (DTA) may be appropriate when information about the ability of a structural component to sustain anticipated loads in the presence of fatigue, corrosion, or accidental damage is required.[5]

FRA expects that analyses of individual components investigated as a part of the reliability assessment process may require equipment owners to collect and consider information regarding: a component's physical features and conditions; a component's actual operating use; the existence of manufacturing defects and tolerances; the effects of repairs or modifications made to the component; and capabilities of available nondestructive evaluation methods used for inspection. Management of effective reliability-based maintenance programs requires an organized information system for surveillance and analysis of the performance of each component under the known operating conditions. FRA believes that the information derived from such operating experience can provide information of failures that could affect operating safety; failures that have operational consequences; the failure modes of units removed as a result of failures; as well as the general condition of unfailed parts in units that have failed and serviceable units inspected as samples.

As stated above, at the time of the development of default maintenance intervals, FRA used the available information to determine the inspection intervals necessary to protect safety. However, FRA believes that the optimum inspection tasks, methods, and intervals as well as the applicability of age or life limits will be best obtained from reliability analyses based on additional service-based data collection, in some cases coupled with appropriate deterministic analyses to both ensure safety and maximize reliability. For further information regarding sources of reliability theory and analysis, FRA recommends that the following materials be considered:

- ANSI (American National Standards Institute)/ASQC (American Society for Quality) S2 (1995) Introduction to Attribute Sampling;
- ANSI/ASQC Z1.4 (1993) Sampling Procedures and Tables for Inspection by Attributes;
- ANSI/ASQC Z1.9 (1993) Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming;
- Handbook of Reliability Engineering and Management, W. G. Ireson, McGraw Hill, 1996;
- MIL–STD–414 (1957) Sampling Procedures and Tables for Inspection by Variables for Percent Nonconforming;
- MIL–STD–1234A (1974) Single and Multi-Level Continuous Sampling Procedures and Tables for Inspection by Attributes;
- Reliability-Centered Maintenance, F. S. Nowlan and H. F. Heap, Final Report for Contract MDA 903–75–C–0349, Office of Assistant Secretary of Defense, Washington, D.C., 1978;
- Reliability-Centered Maintenance, A. M. Smith, McGraw Hill, 1992;
- Reliability-Centered Maintenance, J. Moubray, McGraw Hill, 1997; and
- Reliability in Engineering Design, K.C. Kapur and L. R. Lamberson, John Wiley & Sons, 1977.

Paragraph (e) contains the recordkeeping requirements related to the performance of periodic mechanical inspections. FRA believes that proper and accurate recordkeeping is the cornerstone of any inspection process and is essential for ensuring the performance and quality of the required inspections. Without such records, the inspection requirements would be difficult to enforce. Although recordkeeping was discussed in the Working Group and FRA believes it to be an integral part of any inspection requirement, FRA inadvertently omitted any such requirements in the NPRM specifically related to mechanical inspections. This omission was brought to FRA's attention through verbal and written comments provided by various interested parties and has been corrected. This paragraph specifically permits a railroad to maintain the required records either in writing or electronically. Whatever format the railroad elects to use to record the information, it must contain the specific information listed in this paragraph.

Section 238.309 Periodic Brake Equipment Maintenance

This section contains the requirements related to the performance of periodic brake maintenance for various types of passenger equipment, referred to in the industry as clean, oil, test, and stencil (COT&S). Although FRA has considered the concerns raised by certain labor representatives during this rulemaking, FRA does not agree with the conclusions drawn by these commenters with regard to the testing and data submitted to FRA regarding modest extensions of the COT&S intervals for equipment utilizing certain types of brake valves. All of the COT&S intervals contained in this section are based, at least in part, on current operations under existing waivers and on data and information which FRA believes provide substantial support that the valves can be safely operated for the periods of time provided in this section. Furthermore, FRA believes that the stringent inspection and testing regiment and the single car test requirements contained in this final rule also provide sufficient additional safeguards to permit modest increases in the COT&S intervals for equipment outfitted with certain brake valves and other equipment having generally shown the ability to operate for longer periods without failure.

Paragraph (b) extends the periodic maintenance interval for MU locomotive fleets that are 100 percent equipped with air dryers and modern brake systems from 736 days to 1,104 days. The requirement remains 736 days for fleets that are not 100 percent equipped with air dryers or that are equipped with older brake systems. FRA bases this extension on tests conducted by Metro-North and monitored by FRA field inspectors. These tests revealed that after three years brake valves on MU locomotives equipped with air dryers were very clean and showed little or no signs of deterioration. Based on the results of these tests, FRA is confident that these valves can safely operate for three years between periodic maintenance. FRA believes this extension of the periodic maintenance interval will result in a cost savings to those railroads that operate MU locomotives equipped with air dryers.

Paragraph (c) extends the periodic maintenance interval on conventional locomotives equipped with 26–L or equivalent types of brakes from the current standard of 736 days to 1,104 days. The required periodic maintenance interval remains at 736 days for locomotives equipped with other types of brake systems. This requirement merely makes universal a practice that has been approved by waiver for several years. *See* H–80–7. FRA believes that locomotives equipped with 26–L brakes have demonstrated an ability to operate safely for three years between periodic maintenance.

Paragraph (d) extends the periodic maintenance interval on passenger coaches and other unpowered vehicles equipped with 26–C or equivalent brake systems from 1,104 days to 1,476 days. This extension is based on tests

[4] Evaluation Approaches & Quantification (Chapter 8), "The Role of Human Error in Design, Construction, and Reliability of Marine Structures." Robert G. Bea, Report No. SSC–378, U.S. Coast Guard, Washington, D.C. 1994, pp. 127–149.

[5] "Reliability and Risk Analysis for Design and Operations Planning of Offshore Structures." T. Moan, Sixth ICOSSAR, Innsbruck, August 1993.

performed by Amtrak. Based on these tests, FRA granted Amtrak a waiver for this extension on July 26, 1995. *See* FRA Docket No. PB 94–3. Amtrak has operated under the terms of this waiver for several years with no problems. Consequently, based on Amtrak's experience, FRA believes all passenger cars with 26–C equipment can safely be operated for four years between periodic maintenance.

Paragraph (e) recognizes that the same extensions applicable to locomotives and passenger coaches should be applied to control cab cars that use brake valves that are identical to the 26–C valves used in passenger cars or the 26–L valves used on locomotives. Consequently, based on the information and tests conducted on those valves as well as waivers currently existing, FRA is extending the periodic maintenance interval for cab cars to 1,476 days or 1,104 days for those cab cars that use brake systems identical to the 26–C and 26–L, respectively. This extension is consistent with recent requests for waivers received by FRA.

In paragraph (a)(2) FRA provides that a railroad may petition FRA, under § 238.21, to approve alternative maintenance procedures providing equivalent safety. Under this provision, railroads could propose using periodically scheduled single car tests to extend the time between required periodic maintenance on passenger coaches. FRA believes that the single car test provides a good alternative to more frequent periodic maintenance. In fact, in the 1994 NPRM on power brakes, FRA proposed the elimination of time-based COT&S and in its stead proposed time intervals for conducting single car tests, ranging from three to six months, depending on the utilization rate of the passenger equipment. *See* 59 FR 47690–91, 47710–11, and 47740–41. However, comments received and discussions with members of the Working Group revealed that many passenger railroads would rather perform periodic maintenance than more frequent single car tests. One reason for this is that some operators would rather take equipment out of service every few years and perform the overhaul of the brake system than have equipment out of service for shorter periods every few months. Therefore, FRA has retained periodic maintenance intervals but provided the alternative to railroads to propose single car testing intervals in order to reduce the frequency with which the periodic maintenance is performed. Consequently, railroads are afforded some flexibility to determine the type of maintenance approach that best suits their operations. However, in response to concerns raised by a labor commenter, it should be noted that FRA would likely not completely eliminate the need to perform COT&S on a periodic basis but might consider extending the interval between such attention depending on the frequency of the single car test intervals proposed by a railroad.

Section 238.311 Single Car Test

This section contains the requirements for performing single car tests on all nonself-propelled passenger cars and all unpowered vehicles used in passenger trains. As previously discussed in the general preamble, FRA is modifying the requirements related to the performance of single car tests from those that were proposed in the 1997 NPRM. In paragraph (a), based on the recommendations of representatives from both rail labor and rail management, FRA is referencing the single car testing procedures which were developed by APTA PRESS rather than the AAR single car testing procedures referenced in the 1997 NPRM. The single car test procedures were issued by APTA on July 1, 1998, and are contained in APTA Mechanical Safety Standard SS–M–005–98. The single car test procedures issued by APTA are more comprehensive and better address passenger equipment than the older AAR recommended practices. In paragraph (a), FRA is also slightly modifying the applicability of this section for clarity. In the 1997 NPRM, FRA proposed to require the performance of single car tests on all passenger cars and other unpowered vehicles used in passenger trains. However, the definition of passenger cars includes self-propelled vehicles such as MU locomotives, to which FRA did not intend the single car test requirements to apply. Consequently, FRA has modified the language of paragraph (a) to clarify that the testing requirements apply to nonself-propelled passenger cars and unpowered vehicles used in passenger trains.

Paragraph (b) requires that all single car tests be performed by a qualified maintenance person. A single car test is a comprehensive brake test that requires the skills and knowledge of a highly trained and skilled person with mechanical expertise. Railroads currently use personnel which would generally meet the definition of "qualified maintenance person" as defined by this part to perform single car tests, and FRA believes that this practice should continue.

FRA is also modifying some of the circumstances under which a single car test is required to be performed in paragraphs (c) through (e). FRA agrees with several of the commenters that the 1997 NPRM may have been over-inclusive in listing the components whose repair, replacement, or removal would trigger the performance of a single car test. Paragraph (c) lists the wheel defects that would trigger the requirement to perform a single car test. FRA believes that the wheel defects contained in this paragraph generally tend to indicate some type of braking equipment problem. FRA believes that merely changing a wheel to correct a wheel defect that is actually caused by a brake system problem will only lead to a continuation of the problem on the new wheel and will increase repair costs to the railroad. A test that checks for the root cause of the defect is not only a good safety practice, but is a good business practice that will lead to reduced operating costs. However, in accordance with the discussions conducted with the Working Group in mid-December of 1997, paragraph (d) makes clear that FRA will not mandate the performance of a single car test for wheel defects, other than a built-up tread, if the railroad can establish that the wheel defect is due to a cause other than a defective brake system. Thus, the burden will fall on the railroad to establish and maintain sufficient documentation that a wheel defect is due to something other than a brake-related cause. FRA makes clear that if the railroad cannot establish the specific non-brake related cause for a wheel defect, it is required to perform a single car test.

Paragraph (e) requires a railroad to conduct a single car test if one or more of the identified brake system components is removed, repaired, or replaced. This paragraph also requires that a single car test be performed if a passenger car or vehicle is placed in service after having been out of service for 30 or more days. FRA believes that these requirements will ensure that brake system repairs have been performed correctly and that the car's brake system will operate as intended after repairs are made or after the car has been in storage for extended periods. As noted above, FRA has amended the list of brake components to include only those circumstances where a relay valve, service portion, emergency portion, or pipe bracket is removed, repaired, or replaced. Whenever any other component previously contained in the 1997 NPRM is removed, repaired, or replaced, paragraph (g) requires that only that portion that is renewed or replaced be tested. FRA believes that the items

contained in paragraph (g) can generally be removed, replaced, or repaired without affecting other portions of the brake system, thus reducing the need to perform a single car test. FRA believes that the requirements contained in paragraphs (e) and (g) are more consistent with the current practices of most passenger railroads than the requirement proposed in the 1997 NPRM.

Paragraph (f) provides that if a single car test cannot be made at the point where repairs are made, the car may be moved in service to the next forward location where the test can be made. This paragraph requires that at a minimum the single car test be completed prior to, or as a part of, the car's next calendar day mechanical inspection. As noted previously, labor representatives object to permitting cars to be used in passenger service after a repair is made without the required single car test being performed. These commenters contend that the performance of a single car test is necessary prior to using the vehicle in order to determine whether any other unknown defects to the brake system exist. Although FRA recognizes the concerns of labor representatives with regard to this provision, FRA believes that it is necessary to provide railroads the flexibility to make the necessary repairs to a piece of equipment and then move it to a location which is most conducive to performing the required single car test. However, in order to address labor's concerns and to ensure the safe movement of such equipment, FRA has added a visual inspection requirement and a tagging requirement that must be met prior to the railroad being allowed to haul a car in the fashion provided in this paragraph. Consequently, this paragraph requires that prior to moving a car in passenger service for the purposes of conducting a single car test, a visual inspection verifying the application and release of the brakes on both sides of the repaired car must be conducted and the car must be appropriately tagged to indicate the need to perform a single car test.

Section 238.313 Class I Brake Test

This section contains the requirements related to the performance of Class I brake tests. The requirements in this section apply to all passenger coaches, control cab cars, MU locomotives, and all nonself-propelled vehicles that are part of a passenger train. After consideration of the comments and information submitted, FRA intends to make very minor changes to the requirements regarding Class I brake tests from those that were previously proposed in the 1997 NPRM.

Paragraph (a) of this section requires that a Class I brake test be performed at least once each calendar day that a piece of equipment is placed in service. As noted previously in the 1997 NPRM, the Working Group discussed and debated when and how a Class I brake test should be performed. Labor representatives stressed the need for a thorough brake test performed by qualified mechanical inspectors on every passenger train. These representatives strongly contended that this brake test must be performed prior to the first daily departure of each passenger train. On the other hand, representatives of passenger railroads expressed the desire to have flexibility in conducting a comprehensive brake inspection, arguing that safety would be better served if railroads were permitted to conduct these inspections on a daily basis. Although FRA agrees with the position advanced by many labor representatives that some sort of car-to-car inspection must be made of the brake equipment prior to the first run of the day in most circumstances, FRA does not agree that it is necessary to perform a full Class I brake test in order to ensure the proper functioning of the brake equipment. As FRA views a Class I brake test as a comprehensive inspection of the braking system, FRA believes that commuter and short-distance intercity passenger train operations must be permitted some flexibility in conducting these inspections. Consequently, paragraph (a) requires that commuter and short-distance intercity passenger train operations perform a Class I brake test sometime during the calendar day in which the equipment is used.

FRA also recognizes the differences between commuter or short-distance intercity operations and long-distance intercity passenger train operations. Long-distance intercity passenger trains do not operate in shorter turnaround service over the same sections of track on a daily basis for the purpose of transporting passengers from major centers of employment. Instead, these trains tend to operate for extended periods of time, over long distances with greater distances between passenger stations and terminals. Further, these trains may operate well over 1,000 miles in any 24-hour period, somewhat diminishing the opportunity for conducting inspections on these trains. Therefore, FRA believes that a thorough inspection of the braking system on these types of operations must be conducted prior to the trains' departure from an initial starting terminal. Consequently, paragraph (b) retains the proposed requirement that a Class I brake inspection be performed on long-distance intercity passenger trains prior to departure from an initial terminal. FRA does not believe there would be any significant burden placed on these operations as the current regulations require that an initial terminal inspection be performed at these locations. Furthermore, virtually all of the initial terminal inspections currently conducted on these types of trains are performed by individuals who would be considered qualified maintenance persons pursuant to § 238.5.

Paragraph (b) also retains the requirements proposed in the 1997 NPRM related to the performance of Class I brake tests on long-distance intercity passenger trains every 1,500 miles or every calendar day, whichever comes first. After reviewing the information and comments submitted by labor representatives, the information and comments provided by Amtrak, and based upon the independent information developed by FRA, FRA believes that the enhanced inspection scheme contained in this final rule will ensure the continued safety of long-distance intercity passenger trains. (See previous discussion of comments in general preamble portion of this document.)

Contrary to the statements made in the comments submitted by some labor representatives, FRA is not merely increasing the distance between brake inspections for these types of trains. Rather, FRA is increasing both the quality and the content of the inspections that must be performed on long-distance intercity passenger trains and, thus, increasing the safety of such trains. Under the current regulations these passenger trains are required to receive an initial terminal brake inspection at the point where they are originally assembled, and from that point the train must receive an intermediate brake inspection every 1,000 miles. The current 1,000-mile inspection merely requires the performance of a leakage test, an application of the brakes and the inspection of the brake rigging on each car to ensure it is properly secured. *See* 49 CFR 232.12(b). The current 1,000-mile brake inspection does not require 100 percent operative brakes prior to departure and does not require piston travel to be inspected. The current regulations also do not require the performance of any type of mechanical inspection on passenger equipment at 1,000-mile inspection points or at any other time in the train's journey. Thus,

under the current regulations a long-distance intercity passenger train can travel from New York to Los Angeles on one initial terminal inspection, a series of 1,000-mile inspections, and no mechanical inspections.

Whereas, this rule will require the performance of a Class I brake test, which is more comprehensive than the current initial terminal inspection, at the point where the train is originally assembled and will require the performance of another Class I brake test every 1,500 miles or every calendar day thereafter, whichever comes first, by highly qualified inspectors. Thus, at least every 1,500 miles or every calendar day a long-distance passenger train will be required to receive a brake inspection which is more comprehensive than the current initial terminal inspection and which requires that the train have 100 percent operative brakes and have piston travel set within established limits. Furthermore, this rule will require the performance of an exterior and interior mechanical inspection every calendar day that the train is in service. Consequently, the inspection scheme proposed in the 1997 NPRM and retained in this final rule will, in FRA's view, increase the safety and better ensure the integrity of the brake and mechanical components of long-distance passenger trains.

FRA also believes that some recognition must be given to the various types of advanced braking system technologies used on many long-distance intercity passenger trains. Many of these advanced technologies are not found with any regularity in freight operations and thus the reliability and performance of brake systems on these passenger trains enhance the safety of these trains and, when combined with other aspects of this discussion, support FRA's belief that these brake systems can safely be operated with the inspection intervals that were proposed in the 1997 NPRM. Dynamic brakes are typically employed on these types of trains to limit thermal stresses on friction surfaces and to limit the wear and tear on the brake equipment. Furthermore, the brake valves and brake components used on today's long-distance passenger trains are far more reliable than was the case several decades ago. Other technological advances utilized with regularity by these passenger trains include:

- The use of brake cylinder pressure indicators which provide a reliable indication of the application and release of the brakes.
- The use of disc brakes which provide shorter stopping distances and decrease the risk of thermal damage to wheels.
- The ability to effectuate a graduated release of the brakes due to a design feature of the brake equipment which permits more flexibility and more forgiving train control.
- The ability to cut out brakes on a per-axle or per-truck basis rather than a per car basis, thus permitting greater use of those brakes that are operable.
- Brake ratios that are 2½ times greater than the brake ratios of loaded freight cars.

Although some of the technologies noted above have existed for several decades, most of the technologies were not in wide spread use until after 1980. Furthermore, most of the noted technological advances just started to be integrated into one efficient and reliable braking system within the last decade. Consequently, the technology incorporated into the brake equipment used in today's long-distance intercity passenger trains has increased the reliability of the braking system and permits the safe operation of the equipment for extended distances even though a portion of the braking system may be inoperative or defective.

FRA also disagrees with the contentions raised by certain labor representatives that the facts and data do not support the 500 mile extension in the brake inspection interval even with the more comprehensive inspection scheme. These commenters recommend that the current 1,000-mile brake inspection interval be retained together with the increased inspection regiment. These commenters contend that due to the large number of defects being found at 1,000-mile inspections the need to retain the inspection is justified. As an example and support for this position, the BRC submitted information containing numerous defective conditions compiled by carmen stationed at Union Station in Washington D.C. from January 1996 through February of 1997 that the carmen allegedly found on trains traveling through Union Station. After reviewing the documentation submitted, FRA does not believe the information supports the conclusion that 1,000-mile brake inspections must be maintained and that it would be unsafe to extend the distance between brake inspections under the inspection scheme contained in this final rule.

Due to the lack of detail contained in the information submitted by the BRC, it is impossible to determine whether the vast majority of the alleged defective conditions were defective under the Federal regulations or whether the conditions were merely in excess of Amtrak's voluntary maintenance standards or operating practices. In addition, based on the description of some of the conditions, they would not be considered defective conditions under current Federal regulations. Furthermore, the vast majority of the conditions alleged in the document were not power brake defects, and thus, under the current regulations, would not have been required to have been inspected at a 1,000-mile inspection. Nor do the current regulations mandate any type of mechanical inspection on passenger equipment (other than on locomotives under 49 CFR part 229, of course). Moreover, as the vast majority of the alleged conditions were mechanical and wheel defects, FRA believes that these types of defective conditions will be addressed by the exterior calendar day mechanical inspection contained in this final rule which will be required to be performed every calendar day that a piece of equipment is in service.

FRA agrees with the comments submitted by the BRC that the data and information submitted by Amtrak regarding the allegedly defective equipment found at Washington, D.C., does not fully address whether the cars identified by carmen at that location were defective and does indicate that at least many of the cars were repaired for the defective condition noted within several days after moving through Washington, D.C. However, contrary to the conclusions reached by labor representatives, the fact that a car remained in service with an alleged defective mechanical or brake condition does not necessarily mean the train involved was in an unsafe condition or that the equipment was being moved illegally. The current regulations regarding freight mechanical equipment and the existing statutory mandates regarding the movement of equipment with defective safety appliances and brakes permit the movement of a certain amount of defective equipment to certain locations provided it is determined by a qualified person that such a movement can be made safely or that a sufficient percentage of the brakes remain operative. *See* 49 U.S.C. 20303, 49 CFR 215.9. As this final rule will specifically address the inspection of the mechanical components on passenger equipment and the movement of defective mechanical components, which is not covered by existing regulations, FRA believes that the amount of defective equipment being operated will be reduced significantly and/or handled safely in revenue trains. Although FRA agrees that the

information submitted by Amtrak regarding the number of cars set out at 1,000-mile inspection points does not reflect the true number of defects being found during the inspections, FRA does find it significant that a very small percentage of cars set-out by Amtrak are set-out at 1,000-mile inspection locations and that most set-outs occur en route.

FRA also finds it necessary to make clear that the number of cars alleged to have been found in defective condition at Union Station in Washington, D.C. is not indicative of a safety problem on long-distance intercity passenger trains. Assuming that all of the cars contained in BRC's submission were in fact defective as alleged, it appears that approximately 750 cars were defective. However, the information also reveals that approximately 1,300 trains were inspected; thus, using a conservative estimate of 10 cars per train, approximately 13,000 cars were inspected. As a result, approximately only 6 percent of the cars inspected were found to contain either a mechanical or brake defect. Furthermore, of the approximate 750 cars alleged to have been found defective, only approximately 20 percent of those contained a power brake-related defect. Consequently, only about 1–2 percent of the total cars inspected contained a power brake-related defect. Moreover, from the information provided it appears that none of the trains contained in the BRC submission were involved in any type of accident or incident related to the defective conditions alleged.

FRA believes that the key to any inspection scheme developed for long-distance intercity passenger trains is the quality of the inspection which is performed at a train's point of origin. FRA is convinced that if a train is properly inspected with highly qualified inspectors and has 100 percent operative brakes at its point of origin, then the train can easily travel up to 1,500 miles between brake inspections without significant deterioration of the braking system. FRA independently monitored a few long-distance intercity passenger trains running from New York to Miami, New York to New Orleans, and New York to Chicago and found that when the trains departed from their points of origin with a brake system that was defect free they arrived at destination without any defective conditions existing in their brake systems. These findings are consistent with FRA's experience in inspecting long-distance intercity passenger trains over the last several years. It should be noted that during this independent monitoring, FRA did find some trains that after receiving initial terminal inspections still contained some defective conditions in the brake system. Although FRA believes that none of the defective conditions found would have prevented the safe operation of the trains, FRA recognizes that FRA as well as the railroads must be vigilant in ensuring that quality brake system inspections are performed on a train at its point of origin and at each location where a Class I brake test is required to be performed. Consequently, due to the comprehensive nature of Class I brake tests and the exterior calendar day mechanical inspection combined with the technological advances incorporated into the braking systems utilized in these types of trains and after a review of the data and information provided and based on FRA's experience with these types of operations, FRA is retaining the proposed 1,500 mile interval for the performance of Class I brake tests in this final rule.

Paragraph (c) contains a provision that was not proposed in the 1997 NPRM to address the inspection of cars added to an en route train. FRA has modified the Class I brake test requirements to ensure the proper operation of all cars added to a train while en route. This paragraph requires the performance of a Class I brake test on each car added to a passenger train at the time it is added to the train unless documentation is provided to the train crew that a Class I brake test was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours prior to being added to the train. This requirement has been included in order to address the concerns raised by various labor representatives that no provisions were provided in the 1997 NPRM to address circumstances when cars are added to an en route train. Section 238.317 makes clear that if a car has received such inspection, the railroad will be required to perform a Class II brake test at the time the car is added to the train. FRA believes that these provisions are necessary to ensure the integrity of the brake system on every car added to an existing train and should not be a burden for railroads since cars are generally added to passenger trains at major terminals with the facilities and personnel available for conducting such inspections. Furthermore, these inspection requirements are very similar to what is currently required when a freight car is added to a train while en route. *See* 49 CFR § 232.13.

Paragraph (d) requires that the Class I brake tests be performed by qualified maintenance persons. As FRA intends for Class I brake tests to be in-depth inspections of the entire braking system, which most likely will be performed only one time in any given day in which the equipment is used, FRA believes that these inspections must be performed by individuals possessing the knowledge to not only identify and detect a defective condition in all of the brake equipment required to be inspected but also the knowledge to recognize the interrelational workings of the equipment and have a general understanding of what is necessary to repair the equipment. Furthermore, most passenger railroads currently have a daily brake test performed by highly qualified mechanically trained employees so this requirement is not really a departure from current industry practice. (For a detailed discussion of "qualified maintenance person" see the section-by-section analysis for § 238.5 and the general preamble discussion related to qualified maintenance persons.)

Paragraph (e) provides railroads with the option to perform the Class I brake test either separately or in conjunction with the calendar day mechanical inspections. FRA has retained this provision simply to clarify that the two inspections need not be done at the same time or location as long as they are both performed sometime during the calendar day that a piece of equipment is in use.

Paragraph (f) prohibits a railroad from using or hauling a passenger train in passenger service from a location where a Class I brake test has been performed, or was required to have been performed, with less than 100 percent operating brakes. (*See* section-by-section analysis of § 238.15 for a detailed discussion of movement of defective equipment for purposes of repair or sale.)

Paragraph (g) contains a list of the safety-related items that must be inspected, tested, or demonstrated as part of a Class I brake test. This list was developed based on the experience and knowledge of FRA's motive power and equipment field inspectors familiar with the operations and inspection practices of passenger operations. The Working Group extensively discussed the items contained in this paragraph. Very few comments were submitted which addressed the specific items contained in this paragraph. One commenter did recommend that a few of the provisions be clarified to specifically address tread brakes. Therefore, paragraph (g)

generally retains all of the requirements proposed in the 1997 NPRM except to the extent that a few requirements have been slightly modified for clarity. Paragraph (g)(1) requires that an inspection be conducted on each side of each car to verify the application and release of each brake. This requirement is consistent with FRA's longstanding interpretation of what the current regulations require when conducting initial terminal and 1,000 mile brake inspections pursuant to § 232.12. For clarity and consistency, FRA has explicitly incorporated the requirement into this final rule. Minor modifications have been made to paragraphs (g)(3), (g)(5), and (g)(11) in order to clarify the intent of the requirements to brake systems utilizing tread brakes. It should be noted that the requirement contained in paragraph (g)(14) would bar the use of a train that current regulations allow to be placed in service. This paragraph requires that brake indicators must function as intended. Although this provision may require railroads to make more frequent repairs than are currently required, FRA believes these added costs are necessitated by—and offset by—the ability to use brake indicators during the performance of certain brake tests in lieu of direct observation of the brakes.

Paragraph (h) requires the qualified maintenance person that performs a Class I brake test to record the date, time and location of the test as well as the number of the controlling locomotive of the train. It should be noted that a requirement to record the total number of cars inspected during the Class I brake test has been added at paragraph (h)(4). FRA believes this information is necessary to ensure that the required inspection has been performed on all the cars in a train and provides a method for the tracking of cars added to en route trains. This minimal information is required to be available in the cab of the controlling locomotive to demonstrate to the train crew and future inspectors that the train is operating under a current Class I brake test. Furthermore, the use of such records or "brake slips" as they are known in the industry is the current practice of virtually all passenger railroads. FRA believes that this recordkeeping requirement adds necessary reliability, accountability, and enforceability to the inspection requirements contained in this section.

Paragraph (i) allows long distance, intercity passenger trains that miss a scheduled Class I brake test due to a delay en route to proceed to the point where the scheduled brake test was to be performed. This flexibility prevents Amtrak or other operators of long distance trains from having to dispatch qualified maintenance persons to the location of a delayed train merely to meet the calendar day Class I brake test requirement. This is a common sense exception that will not compromise safety.

Section 28.315 Class IA Brake Test

This section contains the requirements regarding the performance of Class IA brake tests. As mentioned previously, although FRA agrees with the position advanced by many labor representatives that some sort of car-to-car inspection must be made of the brake equipment prior to the first run of the day, FRA does not agree that it is necessary to perform a full Class I brake test in order to ensure the proper functioning of the brake equipment in all situations. However, contrary to the position espoused by several railroad representatives, FRA believes that something more than just a determination that the brakes on the rear car set and release is necessary in many situations.

Currently, the quality of initial terminal tests performed by train crews is likely adequate to determine that brakes apply on each car. However, most commuter equipment utilizes "tread brake units" in lieu of cylinders and brake rigging of the kind prevalent on freight and some intercity passenger cars. It is undoubtedly the case that train crewmembers do not verify application of the brakes by tapping brake shoes while the brakes are applied—the only effective means of determining that adequate force is being applied. This is one reason why the subject railroads typically conduct redundant initial terminal tests at other times during the day. Further, train crews are not asked to inspect for wheel defects and other unsafe conditions, nor should they be asked to do so, given the conditions under which they are asked to inspect and the training they receive.

As noted previously, FRA is modifying the requirements for when a Class IA brake test must be performed from that which was proposed in the 1997 NPRM. FRA continues to believe that some type of car-by-car inspection must be performed prior to a passenger train's first run of the day if the train was used in passenger service the previous day without any brake inspection being performed after it has completed service and before it lays-up for the evening. However, FRA tends to agree with the comments submitted by APTA representatives that the need for such an inspection is minimized if a Class I brake test is performed within a relatively short period of time prior to the first run of the day and the train has not been used in passenger service since the performance of that inspection. From a safety standpoint, it appears to be overkill to require the performance of a second comprehensive brake test when the equipment has not been used in passenger service and has remained on a source of compressed air since the last comprehensive brake test was performed. In such circumstances, FRA believes that the performance of a Class II brake test would be sufficient to determine if there are any problems with the braking system due to vandalism or other causes since the last comprehensive Class I brake test. Furthermore, as APTA's comments point out, commuter railroads have been safely operated in a fashion similar to this for a number of years. Consequently, paragraph (a)(1) of this section makes clear that a Class IA brake test is to be performed prior to the first morning departure of each commuter or short-distance intercity passenger train unless a Class I brake test was performed within the previous twelve hours and the train has not been used in passenger service and has not been disconnected from a source of compressed air for more than four hours since the performance of the Class I brake test. FRA believes that this exception is consistent with the concept of performing comprehensive brake and mechanical inspections at centralized locations as this provision affords railroads the ability to conduct a Class I brake test at the end of a train's daily operating cycle at a central location and then have the ability to move the train in non-passenger service to an outlying location without being required to perform a Class IA brake test prior to departure from the outlying terminal.

Paragraph (a)(2) requires that a Class IA brake test be performed prior to placing a train in service if that train has been off a source of compressed air for more than four hours. This requirement formalizes a long-standing agency interpretation of the existing power brake regulations but increases the time limit from two to four hours. Labor representatives maintain that any number of brake system problems can develop with equipment off air for only a short time, while management representatives contend that equipment can be left off air for extended periods of time with no problems. FRA believes the requirement contained in this paragraph is a fair compromise that allows railroads some operating flexibility, but does not allow equipment to be off air without a new

brake test for extended periods of time. FRA agrees that its longstanding administrative interpretation of allowing cars to be "off air" for only two hours was established prior to the development of new equipment that has greatly reduced leakage problems. However, contrary to the contentions of some commenters, FRA does not believe that cars should be allowed to be "off air" for extended periods without being retested. The longer cars sit without a supply of compressed air attached, the greater the chances are that the integrity of the system will be compromised, either by weather conditions or vandalism.

Paragraph (b) allows a commuter or short-distance intercity passenger train that provides continuing late night service that began prior to midnight to complete its daily operating cycle after midnight without performing another Class I or Class IA brake test on the train prior to its first departure after midnight. This provision is included to make clear that a train is not required to be stopped during its operating cycle in order to receive a Class I or Class IA brake test prior to it first departure of a calendar day. FRA also makes clear that this provision does not relieve a railroad from its responsibility under § 238.313 to perform a Class I brake test on each calendar day that the train is in use. Thus, a train operating past midnight must receive a Class I brake test sometime on each of the two days it is in use.

Paragraph (c) allows a Class IA brake test to be performed at a shop or yard site without needing the test repeated at the first passenger terminal if the train remains on air and in the custody of the crew. This provision is an incentive for railroads to conduct the tests at locations where they can be performed more safely and easily. FRA believes that a shop or yard location is more conducive for conducting a proper brake test. Raised platforms and other conditions frequently found at terminals can make the performance of a brake test difficult, if not hazardous.

Paragraph (d) permits the Class IA test to be performed by either a qualified person or a qualified maintenance person. Paragraph (e) prohibits a railroad from using or hauling a passenger train from a location where a Class IA brake test has been performed, or was required to have been performed, with less than 100 percent operative brakes. (*See* section-by-section analysis of §§ 238.15–238.17 for a discussion of movement of defective equipment for purposes of repair or sale.) Paragraph (f) contains the specific tasks that must be performed when conducting a proper Class IA brake test. This paragraph makes clear that a Class IA brake test include: a check that each brake sets and releases; a test of the emergency brake application feature; a check of the deadman or other emergency control device; an observation that angle cocks and cutout cocks are properly set; an observation that brake pipe pressure changes are communicated to the rear of the train; and a test that the communicating signal system is known to be operative.

Paragraph (g) requires that the inspection of the set and release of the brakes be performed by walking the train so the inspector actually observes the set and release of each brake. Labor representatives strongly contended that this is the only way to do a proper brake test. They believe that observation of brake indicators does not give a reliable indication of effective brakes because the indicators sense brake cylinder pressure rather than the force of the brake shoe against the wheel or the pad against the disc. However, this paragraph allows an exception when railroads determine that direct observation of the set and release can place the inspector in danger. FRA acknowledges the contention of rail management representatives that conditions at certain locations where Class IA tests may be performed could place the inspector in danger if he or she is required to place himself or herself in a position to actually observe the set and release of each brake. Where railroads determine this to be the case, FRA will permit the use of brake indicators for the set and release step of the Class IA brake test as long as the inspector takes a position where an accurate observation of the indicators can be made.

Section 238.317 Class II Brake Test

This section contains the requirements regarding how a Class II brake test is to be performed and contains the conditions for when a railroad is required to perform the brake test. The Class II brake test provides passenger railroads the flexibility to continue to use train crew personnel to perform the limited brake tests required when minor changes to the train occur. Both labor and management representatives to the Working Group recognized that train crews are capable of performing the relatively simple checks required by a Class II brake test and that the operations of most commuter and passenger railroads require the flexibility of having operating personnel perform these tests.

Paragraph (a) contains the circumstances which require the performance of a Class II brake test. This paragraph has been modified from that which was proposed in the 1997 NPRM in order to clarify the requirements, to remain consistent with other provisions of this rule, and to address recent issues that have been raised with FRA regarding certain passenger train operations. Although paragraph (a)(1) retains the proposed requirement that a Class II brake test be performed whenever the control stand is changed, this paragraph has been modified in order to clarify that a Class II brake test need not be performed in circumstances where a train is being moved in non-passenger service from one track to another inside a terminal complex even though the changing of the control stand occurs during such movements. In order to effectuate such movements the control stand may be required to be changed several times. As these train movements are akin to switching movements in that they are performed over relatively short distances at very low speeds and pose minor safety hazards, FRA will not require the performance of multiple Class II brake tests in order to conduct such movements. It should be noted that § 238.319 requires the performance of a running brake test whenever the control stand is changed during these types of movements in order to ensure the operation of the brake system during these movements. This paragraph also requires the performance of a Class II brake test prior to the train's departure from the terminal complex with passengers.

Paragraph (a)(2) requires the performance of a Class II brake test prior to the first morning departure of a commuter or short-distance intercity passenger train where a Class I brake test remains valid as provided in § 238.315(a)(1). As discussed in the preceding section, FRA believes that in these limited circumstances the performance of a Class II brake test will adequately ensure the integrity of the brake system on the train since the performance of the last Class I brake test. Paragraph (a)(4) has been added in order to clarify that a Class II brake test is to be performed whenever cars or equipment are removed from a train. This provision is consistent with the concept that the proper operation of the brake system must be verified whenever an event occurs which may impact the integrity of the brake system and is consistent with current practice on virtually every railroad.

Paragraph (c) requires that passenger trains not depart from Class II brake tests which are performed at a terminal or a yard with any brakes cut-out,

inoperative, or defective unless the equipment is moved in accordance with § 238.15. The language of this requirement has been slightly modified from the language proposed in the 1997 NPRM, in order to make the provision consistent with the movement for repair provisions contained in this final rule. *See* § 238.15. Many terminals and most yards are locations where brake repairs can be effectuated. Thus, passenger equipment containing defective brake equipment would not be permitted to depart those locations capable of making the necessary repairs until repaired. If the necessary repairs cannot be effectuated at such locations the equipment must be properly tagged and moved pursuant to the requirements contained in § 238.15.

Paragraph (d) requires that a Class II brake test consist of: a check that the brakes on the rear unit of the train apply and release in response to brake control signals or a check that brake pipe pressure changes are properly communicated at the rear of the train by observation of a gauge at the end of the train or in the cab of the rear unit; a test of the emergency brake application and a test of the deadman pedal or other emergency control device on MU equipment; and a test of the communicating signal system to ensure it is operating as intended. The proposed requirements for observing a set and release of the brakes on the rear car and for ensuring that brake pipe pressure changes are properly communicated at the rear of the train have been combined and stated in the alternative in this final rule, as FRA believes that the performance of either task indicates proper trainline continuity and to perform both would be redundant and unnecessary. It should also be noted that the requirement regarding the testing of the emergency application and deadman pedal or other emergency control devices is only applicable to MU equipment due to the ease of performing such an inspection on that equipment. The requirement that the communicating signal system be tested is part of both a Class I and a Class IA brake test and has been added to this brake inspection as FRA believes the proper operation of the communicating signal system is necessary for the safe operation of a train and can be easily tested in a very short amount of time. FRA believes that if the equipment receives a full Class I brake test and a calendar day mechanical inspection at some time during each operating day, then these simple checks are adequate to confirm brake system performance at intermediate terminals or turning points. This requirement basically codifies current industry practice.

Section 238.319 Running Brake Tests

This section contains the requirements for conducting running brake tests on the brakes of passenger trains. A running brake test is merely a brake application at the first safe opportunity to confirm that the brake system works as expected by the engineer. Paragraphs (a) and (c) require that a running brake test be performed in accordance with the railroad's established operating rules after the train has received a Class I, Class IA, or Class II brake test as safety permits. FRA believes that railroads are in the best position to determine when and where running tests can be safely performed. As most passenger railroads routinely conduct running brake tests, FRA believes that the requirements contained in this section capture an important safety check without changing current operating practice to any great extent. It should be noted that paragraph (b) has been added to this section to require the performance of a running brake test whenever the control stand used to control the train is changed to facilitate the movement of a passenger train from one track to another within a terminal complex while not in passenger service. As previously discussed, due to the special nature of these moves FRA believes that a running brake test adequately ensures the proper operation of the braking system during these movements and obviates the need to perform a Class II inspection each time the control stand is changed in these circumstances.

Subpart E—Specific Requirements for Tier II Passenger Equipment

Section 238.401 Scope

This subpart contains the design and performance requirements for Tier II passenger equipment—that is, passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph. For the most part, compliance with the requirements of this section will be demonstrated by one-time analysis or initial acceptance tests.

The requirements contained in this subpart have their basis in discussions between Amtrak and FRA involving safety requirements for the operation of passenger trainsets at speeds up to 150 mph on the Northeast Corridor (NEC). Aware that FRA was considering the development of safety standards for high-speed passenger rail equipment, Amtrak asked FRA for assistance in developing a set of safety specifications for the procurement of high-speed trainsets which would address FRA's safety concerns. As a result, Amtrak's high-speed trainsets, scheduled to begin regular passenger service in 1999, will very likely comply with all of the safety standards in this subpart.

Amtrak's discussions with FRA led it to sponsor a risk assessment of high speed rail passenger systems on the north end of the NEC—from New York to Boston. The discussions also prompted FRA to sponsor computer modeling to predict the performance of various equipment structural designs and configurations in collisions. A copy of the risk assessment performed by Arthur D. Little, Inc., for Amtrak is included in the docket of this rulemaking. The risk assessment was based on existing and predicted future right-of-way configurations and traffic density patterns. The risk assessment concluded that a significant risk of collisions at speeds below 20 mph and a risk of collisions at speeds exceeding 100 mph exist over the 20-year projected operational life of the HSTs—due to heavy and increasing conventional commuter rail traffic, freight rail traffic on the NEC, highway-rail grade crossings, moveable bridges, and a history of low speed collisions in or near stations and rail yards.

Based on the risk assessment and the results of the computer modeling, Amtrak and FRA determined that full reliance on collision avoidance measures rather than crashworthiness, though the hallmark of safe high-speed rail operations in several parts of the world, could not be implemented in corridors like the north end of the NEC. Existing traffic and right-of-way configurations do not permit implementation of the same collision avoidance measures that have proven successful in Europe and Japan. To compensate for the increased risk of a collision in the North American rail operating environment, a more crashworthy trainset design is needed. (FRA does note that on June 3, 1998, near Eschede in northern Germany, an ICE (Inter City Express) passenger train derailed at a speed of approximately 125 mph into the support structure of a highway bridge carrying traffic over the railroad right-of-way, collapsing the bridge. A number of the cars in the train were crushed, and 101 fatalities resulted from the derailment.) Accordingly, the set of structural requirements for Tier II passenger equipment in this final rule is more stringent than the current design practice for North American passenger equipment or for high-speed rail equipment in other parts of the world.

Section 238.403 Crash Energy Management Requirements

This section requires that each power car and trailer car be designed with a crash energy management system to dissipate kinetic energy during a collision.

During discussions with Amtrak for the safety provisions of its high-speed trainsets, FRA proposed very challenging crash energy management requirements based on predictions using computer modeling. Amtrak believed that meeting these requirements would be well beyond the current state of the art for passenger equipment design, and that an extensive and costly research and testing program would be required. As an alternative, Amtrak proposed a crash energy management design based on the demonstrated, commercially viable design developed in France and incorporated in the most recent design of the TGV trainset. FRA believes that Federal safety standards must be capable of implementation in the design of passenger equipment without driving the cost of implementation to the point that high-speed rail systems are no longer financially viable.

Paragraph (c) requires a Tier II train to have a crash energy management system capable of absorbing a minimum of 13 megajoules (MJ) of energy at each end of the train. The ability to absorb this energy must be partitioned as follows: a minimum of 5 MJ by the front end of the power car ahead of the operator's control compartment; a minimum of 3 MJ by the power car structure behind the operator's control compartment; and a minimum of 5 MJ by the unoccupied end of the first trailer car adjacent to the power car. This requirement can be met using existing technology. However, it will effectively prevent a conventional cab car from operating as the lead vehicle in a Tier II passenger train because such equipment cannot absorb 5 MJ of collision energy ahead of the train operator's position. Recent accidents involving trains operating with a cab car forward have demonstrated the vulnerability of this type of equipment in collisions. FRA believes such equipment should not be used in the forward position of a train that travels at speeds greater than 125 mph. FRA has also encouraged Amtrak to use an alternative lead vehicle where speeds exceed 110 mph and highway-rail grade crossings are prevalent. Further, FRA is specifically requiring in paragraph (f) that passenger seating be prohibited in the leading unit of a Tier II train.

In its comments on the NPRM, Talgo observed that the standards in this section may be unattainable using current technology. However, Amtrak's high-speed trainsets have been shown to meet the requirements of this section. Specifically, testing has shown the crash energy absorbing components of the power car and in the end of the first trailer car adjacent to the power car to absorb the energy as provided in paragraph (c).

Talgo further commented that because the kinetic energy of a running train is a function of its mass and speed, paragraph (c) should not state a fixed value of energy. Rather, it believed paragraph (c) should state a value with respect to a specified speed to allow some flexibility for trains of varying mass and yet preserve the same level of safety. FRA recognizes that the kinetic energy of a running train is a function of its mass and speed, and if Tier II trains were at no risk of colliding with other trains of greater weight, then adopting Talgo's comment may be possible. However, the Tier II safety standards are intended to apply to high-speed passenger trains that, as necessitated by the United States rail operating environment, will operate commingled with heavier trains, especially heavy and long freight trains that may themselves operate at speeds up to 80 mph. In the event of a collision with a heavier train, a Tier II passenger train must confront the energy possessed by that train. FRA believes that a Tier II passenger train must have a crash energy management system capable of absorbing the minimum energy levels specified in paragraph (c) to protect the train's occupants in light of the risks of colliding with heavier trains and other objects along the railroad right of way. As a result, FRA believes it is inappropriate to adopt Talgo's comment.

Additionally, in its comments on the NPRM, Talgo believed paragraphs (c)(1)–(3) should be rewritten so that the total energy that is required to be absorbed is dissipated through all inter-car connections, not just through the first few cars. FRA notes that one of the reasons the energy absorbing structures of the leading car in a Tier II passenger train (power car) and the adjacent trailer car must themselves absorb the energy specified in this section is to reduce the risk and effects of secondary collisions throughout the train's subsequent vehicles. Secondary collisions (i.e., impacts with interior objects) can seriously harm or, in extreme cases, kill train occupants. This risk of harm to a Tier II passenger train's occupants is, therefore, minimized overall by requiring the energy absorbing structures in the first two train cars to absorb collision energy before it poses a risk to the train's occupants.

Paragraph (d) requires that for a 30-mph collision of a train on tangent, level track with an identical stationary train, the deceleration of the occupied compartments of each trailer car shall not exceed 8g; and when seated anywhere in a trailer car, the velocity at which a 50th-percentile adult male contacts the seat back ahead of him shall not exceed 25 mph. A 50th-percentile adult male has been defined in § 238.5, based on the same characteristics for such a vehicle occupant's weight and dimensions specified in a NHTSA standard at 49 CFR § 571.208, S7.1.4. FRA does note that, for purposes of this requirement, the weight of the occupant is not particularly relevant, as weight generally should not affect how fast the occupant strikes the seat back ahead of him. In this regard, an occupant of heavier of lighter weight should be neither more nor less protected by the requirements of this paragraph.

In its comments on the NPRM, Simula did not recommend defining an occupant velocity in paragraph (d), noting that it is a function of the crash pulse, the distance between two rows of seats, as well as occupant position and size. FRA has specified that occupant velocity not exceed 25 mph in a secondary collision because an occupant travelling beyond that speed is at considerable risk of harm from a secondary impact. In fact, use of an occupant restraint system would likely have to be required to protect the train occupants in such a case. FRA believes that compliance with paragraph (d)(1) can be demonstrated, and that Amtrak's HTS complies with the rule based on information presented to FRA.

Simula additionally commented that if trailer cars are built to withstand 30 mph collisions and 10g decelerations, then the seats in these cars should also be designed to withstand these same forces. Specifically, Simula did not recommend requiring that the decelerations in trailer cars be limited in a 30 mph collision to 10g while requiring seats to withstand the impact of an occupant travelling at 25 mph and a longitudinal force of 8g, noting that the seats will not be able to withstand the 10g decelerations and consequently detach from the car.

FRA notes that Simula's comment relates to the seat strength requirements found in § 238.435. In the final rule, § 238.435(a) requires that the seat back and seat attachment in a passenger car be designed to withstand, with deflection but without total failure, the load associated with the impact into the

seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. FRA agrees with Simula that it is possible that a seat in a trailer car may detach from the car when subjected to a force that is greater than that required to be withstood under proposed § 238.435(a) in the NPRM, and expressly permitted by proposed § 238.403(d). FRA has, therefore, decided to modify § 238.403(d) so as to limit the permissible decelerations in a trailer car to 8g under the conditions specified in that paragraph. FRA believes that meeting this requirement is feasible with current technology, and that Amtrak's HTS complies with § 238.403(d)(2) on the basis of information presented to FRA.

In its comments on the NPRM, Talgo believed that paragraph (d) should make allowances for the short-lived elevations in peak that may occur during a collision so that peaks exceeding 10g (as proposed) for a duration no longer than 10 milliseconds are acceptable. FRA believes that for purposes of demonstrating compliance with this paragraph through testing, deceleration measurements may be processed through a low-pass filter having a bandwidth of 50 Hz.

Paragraph (e) contains the analysis process to demonstrate that equipment meets these crash energy management performance requirements. The process allows simplifying assumptions to be made so that computer modeling techniques can be used to confirm compliance.

Section 238.405 Longitudinal Static Compressive Strength

This section contains the requirements for longitudinal compressive strength of power cars and trailer cars. Paragraph (a) requires the compressive strength of the underframe of the power car cab to be a minimum of 2,100,000 pounds without yielding. To form an effective crash refuge, this strength is needed to take advantage of the strength of the power car's two end frames. Alternate design approaches that provide equivalent protection are allowed, but the equivalent protection must be demonstrated through analysis and testing and be approved by FRA under the provisions of § 238.21.

In its comments on paragraph (a), Bombardier believed that a design requirement based on the ultimate strength of the structure, as proposed in the NPRM, makes the analysis more difficult and testing the structure impractical and potentially dangerous. According to Bombardier, the specified test load should be based on the yield strength of the structure rather than the ultimate strength, as this would also be consistent with the Amtrak high-speed trainset specifications. FRA has revised this section pursuant to Bombardier's comment. FRA notes that the effect of this revision is to require a stronger power car cab than originally proposed in the rule.

Bombardier additionally commented that clarifying text should be added to define the structural loading conditions so that the 2,100,000-pound load shall be resisted at the height of the underframe at the rear of the cab as follows: 300,000 pounds at each rear cab corner post location; and 750,000 pounds at each rear cab collision post location. FRA does not believe it necessary to incorporate Bombardier's comment into the rule, and doing so may result in confusion. As discussed in § 238.411, FRA believes that each corner post structure on the rear end of a power car cab must resist a 300,000-pound load at the structure's joint with the underframe, and each collision post structure must resist a 750,000-pound load in the same manner. These loads may not be resisted solely at the underframe as a test of the strength of the corner and collision post structures; otherwise, the actual ability of the collision and corner post structures to resist shearing would not be implicated. Further, the load testing criteria for corner and collision post structures in the rule is based on ultimate strength; whereas the longitudinal compressive strength requirement in this paragraph, as revised, is based on yield strength. In light of the separate requirements for testing corner and collision post structures, FRA believes it best not to expressly integrate those requirements with this section.

Paragraph (b) contains the requirements for the static compressive strength of the occupied volumes of trailer cars. This adopts the traditional North American design practice of a static strength of 800,000 pounds, without deformation of the underframe. Paragraph (c) makes clear that unoccupied volumes of power cars or trailer cars may have a static end strength of less than 800,000 pounds to accommodate crash energy management designs.

The crash energy management design requirement ensures that the stronger end structures and the stronger static compressive strength of the cab of a power car will not make Tier II passenger equipment incompatible with existing passenger equipment should a collision between the two different types of equipment occur. The crash energy management design causes a Tier II passenger train to appear as a softer collision surface to a conventionally designed train, owing to the collision energy absorbed by the Tier II train as its unoccupied volumes intentionally crush.

Section 238.407 Anti-Climbing Mechanism

This section contains the requirements for anti-climbing mechanisms on power and trailer cars. Paragraph (a) requires a power car to have a forward anti-climbing mechanism capable of resisting an upward or downward static vertical force of 200,000 pounds, without exceeding the ultimate strength of the material. This requirement is virtually identical to that required of locomotives by AAR S–580. However, designs are permitted that require the crash energy management controlled crushing to occur prior to the anti-climber fully engaging. FRA has revised this paragraph based on a comment from Bombardier that the rule text, as proposed, did not indicate that the 200,000-pound value is an ultimate load. Inasmuch as this requirement as stated in AAR S–580 is in fact based on an ultimate load acceptance criterion, FRA has modified the rule text accordingly.

Paragraph (b) requires that interior train coupling points between units, including between units of articulated cars or other permanently joined units of cars, have an anti-climbing device capable of resisting an upward or downward vertical force of 100,000 pounds without yielding. This is consistent with current design practice. FRA has revised this section based on a comment from Bombardier that the requirements in paragraph (b) are based on 49 CFR § 229.141(a)(2), and should thus include a yield strength acceptance criterion. FRA has modified the rule consistent with the requirements of 49 CFR § 229.141(a)(2).

Paragraph (c) requires the forward coupler of a power car to resist a vertical downward force of 100,000 pounds for any horizontal position of the coupler without yielding, and is virtually identical to that provided in 49 CFR § 229.141(a) for MU locomotives built new after April 1, 1956, and operated in trains having a total empty weight of 600,000 pounds or more.

Talgo commented on both this section and its Tier I counterpart in § 238.205. Talgo explained that it desired to avoid the implication that only couplers may properly function as anti-climbing

mechanisms. Talgo also believed that in measuring the strength of the anti-climbing device, the operative variable should be vertical acceleration, expressed in gs, rather than load, expressed in pounds, to accommodate trains of different masses. FRA has discussed these comments earlier in the preamble.

Section 238.409 Forward End Structures of Power Car Cabs.

This section contains the requirements for forward end structures of power car cabs. The forward end structure of a power car cab is vital in a collision with another object. This structure must resist override, prevent the entry of fluids into occupied spaces of the cab, and allow the crash energy management system to function. The requirements in paragraphs (a)–(c) are based on a specific end structure design that consists of a full-height center collision post, two side collision posts located at approximately the one-third points laterally, and two full-height corner posts. This section also includes loading requirements that each of these structural members must withstand. However, the rule does permit flexibility for using other equipment designs that provide equivalent structural protection.

End structures meeting these requirements will provide considerably greater protection to the train operator than that provided by existing passenger equipment designs. For example, much stronger corner posts are required here than for Tier I passenger equipment. FRA believes these end structures help provide a degree of crashworthiness to compensate for the increased risk associated with operating at higher speeds.

The front end structure design also includes in paragraph (d) a skin requirement equivalent to that required by AAR S–580 and contained in § 238.209 for Tier I locomotives. FRA has revised paragraphs (a)(3) and (b)(2) based on a comment from Bombardier. Bombardier noted that the acceptance criterion proposed by FRA in these paragraphs is based on the yield or critical buckling stress; whereas the design of the forward end structures of the Amtrak high-speed power car cab is based on an ultimate load. FRA agrees that basing the acceptance criterion on ultimate strength is consistent with the Amtrak high-speed trainset design specification, and FRA has modified the rule in this regard.

Bombardier also commented that in paragraph (c)(2) FRA proposed requiring the corner post to resist a horizontal, lateral force of 100,000 pounds applied at a point 30 inches up from the underframe. Bombardier stated that the cab on the Amtrak high-speed trainset was designed to resist the 100,000-pound load at a point 18 inches up from the underframe, and believed this consistent with all current design practices for car end structural members. FRA has not modified the rule on this point. FRA has found no conflict between the proposal and the Amtrak high-speed trainset specification.

Both Bombardier and Talgo commented that FRA appeared to have specified the wrong value in paragraph (c)(3) of the proposed rule, as compared with the values contained in Figure 1. See 62 FR 49812–3. The commenters are correct that, as proposed, the paragraph wrongly required each forward corner post to resist a horizontal, longitudinal or lateral shear load of 150,000 pounds. As Figure 1 demonstrates, FRA intended each corner post to resist a horizontal, longitudinal or lateral shear load of 80,000 pounds. FRA has revised paragraph (c)(3) accordingly in the final rule.

Talgo additionally commented that in paragraph (d)(1), although the rule makes clear that its reference to a particular thickness of material does not preclude the use of thinner materials having a higher yield strength, it would be preferable to avoid specifying a thickness altogether. Instead, Talgo suggested that the skin strength requirement could be stated in terms of a specified impact resistance, as FRA proposed in § 238.421 on safety glazing. FRA recognizes that it may be possible to specify an impact resistance requirement, yet FRA has chosen a yield strength requirement based on AAR Standard No. 580 and the collective judgment of the railroad industry behind that standard. Accordingly, although FRA would not preclude an equipment design based on impact resistance that provides equivalent safety, FRA will defer consideration of specifying such an impact resistance until Phase II of the rulemaking. FRA does note that the strength of the material, in terms of its resistance to shear, is also important to ensure occupant protection.

Section 238.411 Rear end Structures of Power Car Cabs.

The rear end structure of a power car cab provides protection to crewmembers from intrusion of locomotive machinery or trailing cars into the cab's occupied volume as a result of a collision or derailment. The requirements in this section are based on a specific end structure design that consists of two full-height corner posts (paragraph (a)) and two full-height collision posts (paragraph (b)). In addition, this section specifies loading requirements that each of these structural members must withstand. Of course, the rule does permit flexibility for using other equipment designs that provide equivalent structural protection.

The required rear end structural protection will provide considerably greater protection to the train operator than that provided by existing passenger equipment designs. Together, the front and rear end structural protection required in this rule for a power car cab make the cab a highly survivable crash refuge.

In commenting on the NPRM, Bombardier recommended that in paragraph (b) the 750,000-pound force at the rear end cab structure collision posts be applied at the height of the centerline of the underframe, and not at the collision posts' joint with the underframe. FRA disagrees, and believes it necessary to test the strength of the collision post structure at its joint with the underframe to demonstrate the actual ability of the collision post structure to resist shearing. Otherwise, if the strength of the collision post structure were tested at the height of the centerline of the underframe, the collision post connection would not be loaded and the ability of the collision post structure to resist shearing would not be tested.

Bombardier also suggested that the horizontal, shear load value of 750,000 pounds specified in paragraph (b)(1) that the collision post is required to resist be changed to 500,000 pounds. Bombardier believed this modification necessary to be consistent with the shear strength requirements for the front collision posts specified both in the rule as well as in the Amtrak high-speed trainset specifications. FRA disagrees with this comment, and has not revised the rule on this point. The 750,000 pounds that each of the two collision posts at the rear of a power car cab must individually resist—1,500,000 pounds in the aggregate—is consistent with the 500,000 pounds that each of the three collision posts at the forward end of the power car cab must individually resist—again 1,500,000 pounds in the aggregate—under § 238.409(a) and (b) of this rule. Further, FRA believes these values to be consistent with the Amtrak high-speed trainset design specification.

Section 238.413 End Structures of Trailer Cars

The requirements in paragraph (a) are based on a specific end structure design that consists of two full-height corner posts and two full-height collision

posts. The requirements include loading requirements that each of these structural members must withstand. The rule allows flexibility for other designs that provide protection structurally equivalent to the specified design.

Paragraph (b) in the final rule contains an additional requirement for trailer cars designed with an end vestibule. Such designs provide an opportunity for additional corner post structures inboard of the vestibule side doors. These corner posts can be supported by the side sill and therefore be structurally more substantial than the corner posts ahead of the side doors. This paragraph includes loading requirements that these additional full-height corner posts must withstand. Overall, the double corner post design provides significantly increased protection to passengers in trailer cars with end vestibules.

In its comments on the rule, Bombardier stated that, to be consistent with the design requirements for Amtrak's high speed trainsets, the corner post loads in paragraphs (a)(1)(ii), (b)(2), and (b)(3) (as numbered in the final rule) should be applied at 18 inches up from the underframe, rather than at 30 inches. FRA agrees that these values are consistent with Amtrak's previous undertakings for the high-speed trainsets, and has modified the final rule accordingly.

In the 1997 NPRM, FRA proposed an exception from the requirements of paragraph (a) for a trailer car (or, more appropriately, a consist of trailer cars) made up of multiple articulated units not designed for uncoupling other than in a maintenance shop. *See* 62 FR 49814, proposed § 238.413(b). FRA proposed that the end structure requirements in paragraph (a) apply only to the two ends of the entire articulated assembly (or consist) of units, and that the interior ends of the individual units of the articulated assembly need not be equipped with an end structure meeting the requirements in paragraph (a). Articulated assemblies have a history of remaining in line during derailments and collisions and, if not designed to be uncoupled, only the outside ends of the entire assembly should be exposed to the risks of override. (In this regard, FRA should have only proposed an exception for such equipment from the collision post requirements in paragraph (a) and not from the corner post requirements as well since collision posts—not corner posts—principally protect against override and telescoping of passenger equipment. Corner posts, by their very definition and location, protect against hazards along the railroad right-of-way in a way that collision posts cannot.) However, none of the relevant recent experience is on the North American continent, and the ability of articulated connections to remain intact during a high-speed collision with North American passenger equipment, freight rolling stock, or a fixed obstruction has not been demonstrated analytically. FRA noted the weakness in the proposed exception (§ 238.413(b) of the NPRM) while preparing the final rule. FRA has deleted proposed paragraph (b) in its entirety, and has not provided an exception due to the high operating speeds of Tier II passenger equipment.

Section 238.415 Rollover Strength

This section contains the requirements for the rollover strength of passenger cars and power cars. If the occupied volumes of these vehicles remain intact when they roll onto their side or roof structures, occupant injury from vehicle collapse will be avoided. This section essentially requires the vehicle structure to support twice the deadweight of the vehicle as it rests on its side or roof. Passenger equipment constructed to North American design practice performs well in rollover situations. FRA believes this requirement captures this industry practice.

FRA has revised paragraph (a) to make clear that its requirements apply to passenger cars. This revision is consistent with the section-by-section analysis of proposed § 238.415 in the NPRM, see 62 FR 49779, which explained that this section included rollover strength requirements for both power cars and trailer cars. (The term trailer car is in fact a more inclusive definition under the rule than the term passenger car.) FRA has also made clear in paragraph (a) that minor localized deformations to the outer side skin of the passenger car or power car are allowed provided such deformations in no way intrude upon the occupied volume of each car. As in the NPRM, paragraph (b) states that deformation to the roof sheathing and framing is allowed to the extent necessary for the vehicle to be supported directly on the top chords of the side frames and end frames.

As Bombardier suggested in its comments on the NPRM, FRA has also made a minor clarification to this section by substituting the words "in the structural members of the" in place of the word "for" in the phrase which originally read in the NPRM, "the allowable stress for occupied volumes .* * *." *See* 62 FR 49816.

Section 238.417 Side Loads

This section contains the requirements intended to resist penetration of the side structure of a passenger car by a highway or rail vehicle. The objective is to make the side of the passenger car strong enough so that the car derails rather than collapses when struck in the side by a highway or rail vehicle. If the passenger car can move sideways (derail), less structural damage and potential to injure train occupants will result.

In its comments on the NPRM, Bombardier stated that for practical reasons and to be consistent with the Amtrak high-speed trainset design specifications, local yielding of the side sill should be allowed in calculating the allowable stress in paragraph (c). FRA agrees that local yielding of the side skin adjacent to the side sill and belt rail, and local yielding of the side sill bend radii at the crossbearer and floor-beam connections is permissible. FRA has modified paragraph (c) accordingly, and notes that such local yielding is permissible provided the resulting deformations do not intrude upon the occupied volume of the passenger car.

Section 238.419 Truck-to-Car-Body and Truck Component Attachment

Paragraph (a) requires the truck-to-car-body attachment on Tier II passenger equipment to resist without failure a minimum vertical force equivalent to 2g acting on the mass of the truck and a minimum force of 250,000 pounds acting in any horizontal direction on the truck. The intent of the requirement to resist without failure the minimum vertical force equivalent to 2g acting on the mass of the truck is to prevent the truck from separating from the car body during a rollover. The intent of the requirement to resist without failure the minimum force of 250,000 pounds acting in any horizontal direction on the truck is to resist the forces that act upon the truck during a collision or derailment that would tend to shear the truck from the car body. If the truck separates from the car body it may become a hazardous projectile that will intrude upon the occupied volume of a passenger car or locomotive. Further, the truck will not be able to serve, in effect, as an anti-climbing device if it separates from the car body in a collision or derailment.

Paragraph (b) requires that each component of the truck must remain attached to the truck when a force equivalent to 2g acting on the mass of the component is exerted in any direction on that component. Whereas paragraph (a) is intended to keep the

truck attached to the car body, paragraph (b) is intended to keep truck components attached to the truck.

Bombardier, in its comments on the NPRM, requested that FRA modify paragraph (a) so that the truck-to-car-body attachment must resist the specified vertical and horizontal forces only as individual loads applied separately. However, FRA has retained the requirement that the truck-to-car-body attachment resist the specified vertical and horizontal forces as applied at the same time. Requiring the truck-to-car-body attachment to resist the vertical and horizontal forces applied at the same time reflects actual conditions experienced during a collision or derailment. For this reason, FRA believes it inappropriate to adopt Bombardier's comment.

Section 238.421 Glazing

This section contains the glazing requirements for Tier II passenger equipment. FRA believes that the higher speed of Tier II passenger equipment necessitates more stringent glazing standards than currently required by 49 CFR part 223. As a result, FRA proposed specific standards for end-facing exterior glazing, side-facing exterior glazing, and interior glazing (which is not addressed in part 223) on windows installed in Tier II passenger equipment. *See* 62 FR 49817. In response to the NPRM, however, FRA received a number of comments questioning the appropriateness of FRA's proposals, as well as the existing glazing standards in part 223. Having considered these comments, FRA has decided to focus the final rule principally on more stringent glazing requirements for end-facing exterior windows installed in Tier II passenger equipment. In the second phase of this rulemaking, FRA will reexamine the glazing requirements for all windows installed in Tier II passenger equipment. FRA notes that this final rule does not amend the requirements of 49 CFR part 223, although FRA had proposed to amend the application section of that part in the NPRM. *See* 62 FR 49791. Such an amendment is no longer appropriate in light of the requirements of this section (§ 238.421) in the final rule. The requirements of this section and the modifications from the proposed rule are discussed below in detail.

The requirements of paragraph (a) apply to all exterior windows on power car cabs and passenger cars. Windows on such equipment are required to meet the glazing standards contained in 49 CFR part 223, except as provided in paragraphs (b) and (c) of this section. Part 223 contains requirements for both end-facing and side-facing window glazing, and employs different testing methods than specified in this section. As recommended by Bombardier in its comments on the NPRM, instead of applying the glazing requirements in this section generally to power cars as proposed in the NPRM, FRA has decided to limit the application of the glazing requirements in this section to power car cabs. This modification is consistent with the glazing requirements in part 223, *see, e.g.*, 49 CFR § 223.9(a). Bombardier had noted that one of the side windows on the Amtrak high-speed power cars will lead to an equipment room, which FRA understands will not be occupied while the power car is in service.

Paragraph (a) relates to paragraph (b) in that paragraph (b) contains additional requirements for end-facing exterior window glazing on power car cabs and passenger cars. First, under paragraph (b)(1), end-facing exterior window glazing shall resist the impact of a 12-pound solid steel sphere traveling at the maximum speed of the vehicle in which the glazing will be installed. The test must be conducted so that the sphere strikes the window glazing at an angle of 90 degrees (perpendicular) to the window surface. To successfully pass the test, the window must neither spall nor be penetrated by the sphere. This test is similar to the requirements imposed under European glazing standards for high-speed trains, and should be much more repeatable than the cinder block test specified in 49 CFR part 223.

In the NPRM, FRA had proposed that end-facing exterior windows resist an impact with a 12-pound steel sphere at an angle equal to the angle between the window glazing surface as installed and the direction of travel of the train. *See* 62 FR 49817. In commenting on the NPRM, Automotive Glass Engineering (Automotive Glass) explained that impact angle depends upon variables such as the vector of the projectile, the vector of the train, and the angle at which the subject glazing is installed. Automotive Glass then observed that it would have no advance knowledge of the angle at which an object would strike the window glazing when installed in the train. Automotive Glass recommended that the rule require that tests be conducted at an angle perpendicular to the surface—noting this would constitute the most severe impact—unless the rule specifies the method for determining the angle of incidence. FRA has adopted the comment of Automotive Glass by revising the rule text to require that the window glazing resist the impact with the 12-pound steel sphere at an angle 90 degrees to the window surface. This should result in a requirement as strict or stricter than that proposed in the NPRM.

Under paragraph (b)(1), end-facing exterior window glazing shall demonstrate anti-spalling performance by the use of a 0.001 aluminum witness plate, placed 12 inches from the glazing surface during all impact tests. The witness plate must not contain any marks from spalled window glazing particles after any impact test. This requirement was originally proposed as § 238.421(a)(3)(ii) in the NPRM. When impacted on the exterior surface, window glazing currently used in railroad equipment tends to spall from the inside surface. Several eye injuries to crewmembers have resulted. FRA believes that the witness plates used in conducting the spalling tests to qualify current glazing are too thick and have allowed glazing that actually spalled to pass the test. The witness plate specified in this paragraph is much thinner and, therefore, more sensitive to detecting spall.

In commenting on the NPRM, Automotive Glass stated that the performance of a witness plate is critically dependent on the amount of tension in which it is held, and that a uniform tension procedure would enhance consistency. Automotive Glass therefore recommended that the test protocol specify the minimum tension of the foil in terms of some unit of measure, other than "taut," which it considered an aspiration not a specification. FRA notes that in testing required under 49 CFR part 223, the witness plate must have a "taut"surface. *See* 49 CFR part 223, Appendix A, b.(6). In the NPRM, proposed § 238.421(a)(3)(ii) is silent as to the tension of the witness plate. As "taut" has been the witness plate tension specification used in all safety glazing testing required by FRA, use of a "taut" witness plate is not inconsistent with the requirements of this section. FRA believes that this issue may be reexamined in the second phase of the rulemaking.

Automotive Glass also commented that total elimination of spalling will result in additional weight, additional cost, loss of durability, or some combination of these three. According to Automotive Glass, unessential weight above the center of gravity is detrimental because high-speed trains should have less inertia and a lower center of gravity. Automotive Glass believed FRA could sacrifice too much by averting the slight hazard created by the possibility of minor spalling in an

extremely unlikely event. Under the final rule, of course, only end-facing exterior glazing on Tier II passenger equipment is subject to the particular requirements of this paragraph. Side-facing exterior glazing is subject to the requirements contained in 49 CFR part 223. As a result, only a relatively small number of the windows on a Tier II passenger train will be required to comply with the more stringent requirements specified in this paragraph. In this regard, FRA believes that the changes made to the final rule render these comments less significant.

Automotive Glass further commented that under the proposed rule no spalling of glass is allowed, and noted that under 49 CFR part 223 spalling is permitted unless it is severe enough to penetrate the prescribed foil witness plate. Additionally, Automotive Glass stated that constructing foil witness plates requires great care to avoid creating indentations in the foil, and that microscopic examination of the surface could be required to locate indentations to determine whether they were preexisting or produced by spall. To the extent no spalling is allowed, Automotive Glass suggested replacing the witness plate with a capture box that would capture glass fragments in the box. Automotive Glass believed that use of a capture box would result in a simpler and more reliable determination whether spalling occurred. In addition, if the rule would permit minor spalling, Automotive Glass recommended use of a thinner witness plate positioned closer to the glazing material to reduce the severity of allowable spalling and permit determination based on penetration instead of indentation.

FRA desires that no spalling occur, however, and recognizes that the specified requirement is stricter than that provided in part 223. Further, FRA believes that use of a capture box is not necessarily a superior method of testing for spalling, as the integrity of the test results depend in large part on the attentiveness of the operator examining the capture box for spalled glass. FRA notes that Automotive Glass also provided several other comments regarding the testing protocols specified in this section and 49 CFR part 223. To the extent that these comments address testing protocols in part 223, they concern issues affecting glazing tests for both freight and passenger equipment. Such issues need to be addressed in a broader regulatory forum than this final rule on passenger equipment safety. FRA does make clear, nevertheless, in response to a comment from Automotive Glass, that it is not proper to certify that a segment of window glazing meets the requirements of this section or part 223, or both, unless that window segment is composed of the same material and manufactured in the same manner as the window segment that underwent the testing required by this section or part 223, or both.

Paragraph (c) contains an alternative to the glazing standards specified in paragraphs (a) and (b). The alternative standards specified in paragraph (c) represent proposed " §§ 238.421(a) and (b) in the NPRM. FRA has included this paragraph in the final rule in recognition that the safety glazing standards proposed in § 238.421 were developed in consultation with Amtrak for use on Amtrak's HTS, and FRA believed these standards would provide sufficient protection for the safety of the train occupants. However, the option to use the alternative standards in paragraph (c) only applies to exterior window glazing in passenger equipment ordered prior to May 12, 1999. Further, the option to comply with paragraph (c) is no longer available once the window needs to be replaced and the railroad has exhausted its inventory of glazed windows conforming to the requirements of paragraph (c) as held prior to May 12, 1999. In this manner, exterior window glazing complying with the requirements in this paragraph will be phased out over time.

Paragraph (d) is similar to § 238.221(b) in this final rule. FRA did not receive any specific comments on this section and, for clarity, FRA has restated the requirements proposed in §§ 238.421(c) and (d) in the NPRM, *see* 62 FR 49817, as § 238.421(d) in this final rule. The focus of paragraph (d) in the final rule is clearly on the ability of each exterior window to remain in place, however the window may be secured, and not have the window become a potential projectile itself. FRA notes that it is separately evaluating whether securement of window glazing in existing passenger equipment is sufficient to withstand pressure differences associated with passing high-speed trains.

Paragraph (e) is a stenciling requirement which FRA has revised in this final rule as proposed originally in § 238.421(f).

As noted, FRA has decided not to impose on all Tier II passenger equipment in this final rule the particular requirements for side-facing exterior window glazing on Tier II passenger equipment which FRA had proposed in the NPRM. Instead, Tier II power car cabs and passenger cars must comply with the existing side-facing exterior window glazing requirements specified in 49 CFR part 223, or comply with the alternative standards specified in paragraph (c), as appropriate. However, FRA has included the following comments received on the proposed side-facing exterior window glazing standards for purposes of advancing the discussion of these standards in the second phase of the rulemaking.

FRA had generally proposed requiring that side-facing exterior window glazing in Tier II passenger equipment resist the impact of a 12-pound solid steel sphere traveling at 15 mph and impacting at an angle of 90 degrees to the surface of the glazing, with no penetration or spall. *See* proposed § 238.421(a)(2)(i), 62 FR 49817. FRA intended this test to be more stringent than the large object impact test required for side-facing exterior glazing under 49 CFR part 223, and to demonstrate whether the side-facing glazing can protect occupants from a relatively heavy object thrown against the side of the train. In response to this proposal, GE Plastics (of the General Electrical Company) commented that, although the energy resulting from the proposed test would be greater than that required under part 223, the momentum produced would not be greater. Noting that tests have shown momentum to be as significant a factor as energy in the consequences of an impact, GE Plastics did not believe the proposed test could be considered more stringent than the current requirement in 49 CFR part 223. Instead of FRA's proposed test, GE Plastics recommended a test involving a steel sphere weighing 24 to 25 pounds travelling at 15 mph, so that energy and momentum would be greater than the current requirement.

FRA had also proposed generally requiring that side-facing exterior window glazing in all Tier II passenger equipment resist the impact of a granite ballast stone weighing a minimum of 0.5 pounds, traveling at 75 mph, at a 90-degree angle to the glazing surface, with no penetration or spall. *See* proposed § 238.421(a)(2)(ii). FRA intended this test to demonstrate whether the glazing could protect occupants against impact from a common stone found along the railroad thrown at a speed slightly faster than a human could throw such an object. In response, Automotive Glass commented that, because ballast stones are irregular geometrically and structurally, reproducible tests would not be possible unless the granite spheres used in the tests were machined and polished. Second, Automotive Glass stated that the proposed test would not impose a significantly higher kinetic energy load than that imposed by the

test involving a 12-pound steel sphere impacting the glazing surface at 15 mph, and also it would not have greater spall generation potential than the proposed test involving a 9 mm bullet. Automotive Glass added that, if a higher kinetic energy test is desired, it would be more reasonable to increase the impact velocity of the proposed test involving the 12-pound steel sphere to at least 16 mph.

FRA has also decided to defer imposing a new requirement for ballistic testing of exterior window glazing on all power car cabs and passenger cars. In the NPRM, FRA proposed requiring that all exterior glazing resist the single impact of a 9-mm, 147-grain bullet traveling at an impact velocity of 900 feet per second, with no bullet penetration or spall. See proposed § 238.421(a)(3)(i). FRA noted that this bullet is a much more common handgun round than the 22-caliber bullet specified in 49 CFR part 223. In response to the proposal, GE Plastics commented that it had seen no data indicating that people shoot at trains more frequently with 9 mm bullets, although it agreed that a 9 mm bullet is a more common handgun round than a .22 caliber bullet. Further, GE Plastics questioned why a 147 grain bullet was specified, noted that a bullet's shape and composition affect its penetrating ability, and believed that more detail is needed to determine which bullet is appropriate. Moreover, GE Plastics expressed concern about the wording of the proposed test in that it believed a bullet will rarely be travelling exactly at 900 feet per second during testing. GE Plastics recommended specifying a minimum and a maximum velocity, instead, as well as examining the wording of existing ballistic test standards.

In commenting on the proposal, Automotive Glass noted its belief that the .22 caliber projectile specified in 49 CFR part 223 represents the threat of accidental injury from young people hunting or "plinking" along a railroad right-of-way, while the proposed 9 mm projectile represents the threat of injury intentionally inflicted by vandals or terrorists. Automotive Glass believed that if FRA were to adopt a policy of requiring any level of protection against intentionally inflicted injury, it would seem to constitute a departure from previous policy. If FRA were to adopt this approach, then Automotive Glass recommended that the proposed test protocol require each subject glazing specimen to withstand three 9 mm bullets within a circle eight inches in diameter, as vandals or terrorists are more likely to fire short bursts. Further, Automotive Glass observed that any level of ballistic resistance required of glazing which exceeds that provided by the body panel construction below the glazing would contribute only to a false sense of security. In the end, Automotive Glass suggested that individual railroads be given the discretion whether to utilize glazing with greater ballistic resistance based on the threat and severity of vandalism or terrorism each faces. Again, FRA has decided to defer until the second phase of the rulemaking consideration of imposing a new requirement for ballistic testing on all exterior window glazing used on power car cabs and passenger cars. Of course, a railroad may avail itself of the alternative requirements specified in paragraph (c) at its option, to the extent paragraph (c) is applicable.

The final rule does not contain a standard covering interior window glazing, as FRA has decided to defer consideration of imposing such a standard until the second phase of this rulemaking. In the NPRM, FRA had proposed requiring that interior glazing meet the minimum requirements of AS1 type laminated glass as defined in American National Standard "Safety Code for Glazing Materials for Glazing Motor Vehicles Operating on Land Highways," ASA Standard Z26.1–1966. *See* 62 FR 49817. (Bombardier commented that it believed the latest revision to this standard occurred in 1990 rather than 1966.) FRA intended that the proposed requirement would alleviate the need for interior window glazing to meet the stringent impact resistance requirements placed on exterior glazing, while ensuring that the glazing will shatter in a safe manner like automotive glazing. In response to this proposal, GE Plastics commented that requiring the glass to meet the AS1 requirements would exclude recognized safety glazing materials for reasons unrelated to the glazing's ability to break safely, such as light transmission, light distortion, and abrasion resistance. GE plastics further commented that specifying a requirement for laminated glass would exclude many established safety glazing materials. GE Plastics recommended that, if safety glazing is desired, FRA incorporate instead the 1984 version of the ANSI Z97.1 safety glazing standard for use in buildings, which defines safety glazing as "Glazing materials so constructed, treated, or combined with other materials that, if broken by human contact, the likelihood of cutting and piercing injuries that might result from such contact is minimized."

AtoHaas Americas, Inc., (AtoHaas) similarly commented that the AS1 standard incorporated in FRA's interior glazing proposal is an external glazing standard that contains requirements which may not be needed for internal glazing, such as light stability, luminous transmittance, and abrasion resistance. Likewise, AtoHaas commented that specifying a requirement for laminated glass would exclude other materials able to meet the safety needs here for internal glazing. AtoHaas noted that there are many types of glazing that would shatter or break in a safe manner, and urged FRA to examine the American National Standard for Safety Glazing Used in Buildings for products meeting FRA's safety needs. FRA will consider these recommendations with the Working Group in the second phase of the rulemaking, and presents them here to advance discussion on potential requirements for interior window glazing in Tier II passenger equipment.

Section 238.423 Fuel Tanks

This section contains the requirements for fuel tanks for fossil-fueled Tier II passenger equipment. This section should be read with the discussion of locomotive fuel tanks in the preamble. This section contains separate requirements for external fuel tanks, which extend outside the car body structure, and for internal tanks, which do not extend outside the car body.

In commenting on the proposed rule, Bombardier recommended that the same requirements proposed for Tier I fuel tanks apply to Tier II equipment as well. Bombardier stated that early consensus was reached to do so in the Tier II working group during development of the NPRM. Bombardier maintained that this consensus was based on the fact that there are no fuel tanks on the electric trainsets being built for the NEC; the maximum speed for a fossil-fueled version of the trainsets would be 125 mph; and no data exists to support the need for different fuel tank requirements for Tier I and Tier II equipment. Further, Bombardier stated that the requirements for Tier I fuel tanks incorporate the most current industry practices for diesel electric locomotive fuel tanks.

In response to Bombardier's comment, FRA believes that different fuel tank requirements for Tier I and Tier II equipment may be appropriate based on the different maximum speeds at which the equipment can travel. However, FRA recognizes that the specific differences between the proposed Tier I and Tier II fuel tank requirements have not been tightly justified. Accordingly, the final rule requires compliance with Tier I requirements for internal fuel tanks, and includes a requirement for

FRA review and approval of any Tier II external fuel tank for safety equivalence with Tier I performance.

As Bombardier pointed out in its comments, the NPRM did contain a technical mistake in proposed § 238.223(b)(2), which had as its Tier II counterpart proposed § 238.423(b)(3). Accordingly, these paragraphs have been corrected in the final rule to reflect that the 25,000-lb yield strength described in the proposals is in fact a 25,000-lb per-square-inch yield strength.

Section 238.425 Electrical System.

FRA did not receive any specific comments on this section, and it is adopted as proposed. This section contains the requirements for the electrical system design of Tier II passenger equipment. These requirements reflect common electrical safety practice and are widely recognized as good electrical design practice. They include provisions for:

- Circuit protection against surges, overload and ground faults;
- Electrical conductor sizes and properties to provide a margin of safety for the intended application;
- Battery system design to prevent the risk of overcharging or accumulation of dangerous gases that can cause an explosion;
- Design of resistor grids that dissipate energy produced by dynamic braking with sufficient electrical isolation and ventilation to minimize the risk of fires; and
- Electromagnetic compatibility within the intended operating environment to prevent electromagnetic interference with safety-critical equipment systems and to prevent interference of the rolling stock with other systems along the right-of-way.

Section 238.427 Suspension System

In response to comments on the 1997 NPRM and for purposes of clarification, FRA has revised the requirements of this section. Changes from the NPRM are noted below in the general discussion of this section.

As explained in the NPRM, safety requirements concerning the wheel-rail interface have traditionally been addressed as part of the track safety standards. In parallel with the Tier II Equipment Subgroup's effort to develop high-speed equipment safety standards, the RSAC Track Working Group developed a final rule on track safety standards which includes high-speed track standards. *See* 63 FR 33992, June 22, 1998. In October 1996, FRA sponsored a joint meeting of the Tier II Equipment Subgroup and members of the Track Working Group focusing on the development of high-speed track standards to ensure that the two sets of standards not conflict at the wheel-rail interface, where they overlap. FRA did receive a comment on the passenger equipment NPRM that the two sets of standards do in fact conflict, and this comment is addressed in particular in the discussion of Appendix C to this part (Suspension System Safety Performance Standards).

To ensure safe, stable performance and ride quality, paragraph (a) requires suspension systems to be designed to reasonably prevent wheel climb, wheel unloading, rail rollover, rail shift, and a vehicle from overturning. These requirements must be met in all operating environments, and under all track and loading conditions as determined by the operating railroad. In addition, these requirements must be met under all track speeds and track conditions consistent with the Track Safety Standards (49 CFR part 213), up to the maximum operating speed and maximum cant deficiency of the equipment. These broad suspension system performance requirements address the operation of equipment at both high speed over well maintained track and at low speed over lower classes of track. Suspension system performance requirements are needed at both high and low speeds as exemplified by incidents where stiff, high-speed suspension systems caused passenger equipment to derail while negotiating curves in yards at low speeds.

Compliance with paragraph (a) must be demonstrated during pre-revenue service acceptance testing of the equipment and by complying with the safety performance standards for suspension systems contained in Appendix C to this part. Because better ways to demonstrate suspension system safety performance may be developed in the future, the rule allows the use of alternative standards to those contained in Appendix C if they provide at least equivalent safety and are approved by the FRA Associate Administrator for Safety under the provisions of § 238.21.

Paragraph (b) requires the steady-state lateral acceleration of passenger cars to be less than 0.1g, as measured parallel to the car floor inside the passenger compartment, under all operating conditions.

Paragraph (c) requires each truck to be equipped with a permanently installed lateral accelerometer mounted on the truck frame. If hunting oscillations are detected, the train must be slowed. FRA has revised this section to specify that hunting oscillations are considered a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4g root mean square (mean-removed) for 2 seconds. In its comments on the rule, Talgo had recommended that the permissible limits of hunting oscillations be specified in the rule text and not in the definitions section, § 238.5, as proposed in the NPRM. See definition of *hunting oscillations* in proposed § 238.5, 62 FR 49793. FRA has adopted Talgo's suggestion for clarity. However, FRA has not adopted Talgo's alternative specification. Talgo commented that, using the formulation in the NPRM in defining hunting oscillations for Tier II passenger equipment, lateral oscillations should apply on a peak basis, rather than on a peak-to-peak basis. Talgo explained that oscillations would be considered dangerous if the amplitude of six consecutive peaks exceeded 0.8g. Talgo added that this approach is followed in Europe, citing UIC–515, and believed it more reasonable than the proposed formulation. FRA has revised the definition of hunting oscillations to make it consistent with the definition of truck hunting in 49 CFR § 213.333, Note 4 to the table of Vehicle/Track Interaction Safety Limits. FRA determined that the approach using the root mean square (mean-removed) was the preferred indicator of the forces associated with truck hunting, and takes into consideration the oscillatory nature of truck hunting. FRA believes this definition of truck hunting removes the uncertainty in counting the number of sustained oscillations.

FRA has further revised the rule to specify that the accelerometer measurements shall be processed through a filter having a band pass of 0.5 to 10 Hz. Talgo also commented the rule should state that in measuring the amplitude of lateral oscillations, the signal should be filtered with a band pass of 4 to 8 Hz so that irrelevant signals are excluded. FRA has adopted Talgo's recommendation in general, yet has specified a pass band consistent with the track safety standards. *See* 49 CFR § 213.333, Note 3 to table of Vehicle/Track Interaction Safety Limits.

Paragraph (d) provides ride vibration (quality) limits for vertical accelerations, lateral accelerations, and the combination of lateral and vertical accelerations. These limits must be met while the equipment is traveling at the maximum operating speed over its intended route. In commenting on the NPRM, Bombardier noted that the values proposed in this paragraph were not fully consistent with the values found in the then-proposed track safety standards, and requested that they be

made consistent. FRA has revised the requirements of this paragraph accordingly. For clarity, as used in paragraph (d)(1)(iii), the formula $(a_L^2+a_V^2)$ can be restated as the sum of the square of both accelerations.

FRA has combined paragraph (e) of proposed § 238.427 into paragraph (d) of the final rule as paragraph (d)(2). This provision requires that compliance with the requirements of this paragraph be demonstrated during the equipment's pre-revenue service qualification tests required under § 238.111 and § 213.345 of the federal track safety standards. One of the most important objectives of pre-revenue service qualification testing is to demonstrate that suspension system performance requirements have been met. FRA makes clear that the requirements of paragraph (d)(2) need only be shown during pre-revenue service qualification testing of the equipment.

FRA has added paragraph (d)(3) to make clear that, for purposes of paragraph (d), acceleration measurements shall be processed through a filter having a band pass of 0.5 to 10 Hz. In its comments on the NPRM, Talgo observed that the signal filter to use in performing the limit calculations had not been specified in this paragraph, and suggested using a band pass filter of 0.4 to 10 Hz. FRA has effectively adopted Talgo's comment.

Paragraph (e) requires wheelset journal bearing overheat sensors to be provided either on board the equipment or at reasonable intervals along the railroad's right-of-way. FRA prefers sensors to be on board the equipment to eliminate the risk of a hotbox that develops between wayside locations. However, FRA does recognize that onboard sensors have a history of falsely detecting overheat conditions, causing significant operating difficulties for some passenger railroads.

FRA has clarified paragraph (e) based on a comment from Bombardier that this provision should apply to each wheelset journal bearing, and not to each equipment bearing as stated in § 238.427(f), *see* 62 FR 49818. This is in accord with FRA's original intent.

Section 238.429 Safety Appliances

This section contains the requirements for safety appliances for Tier II passenger equipment. FRA has attempted to simplify and clarify how the Safety Appliance Standards contained in 49 CFR part 231 and 49 U.S.C. 20302(a) will be applied to Tier II passenger equipment. The requirements contained in this section are basically a restatement of existing requirements but tailored specifically for application to this new and somewhat unconventional equipment. They represent the consensus recommendation of the Tier II Equipment Subgroup.

This final rule has retained all of the requirements proposed in the 1997 NPRM. The only modification to the safety appliance requirements is in response to one commenter's recommendation that the requirements related to sill steps be made more consistent with existing regulations. As a result, the requirement contained in paragraph (e)(7), regarding the maximum height of the lowest sill step tread, has been changed to be consistent with existing regulations and practice.

This same commenter also recommended that a specific grade of steel be designated in the requirements for the steel or other materials used for handrails, handholds, and sill steps, and that the grade of SAE (Society of Automotive Engineers) bolt to be used as mechanical fasteners be specified as well. FRA believes that steel or other materials used for handrails, handholds, and sill steps should at least be equivalent to specification ASTM A–576, Grade 1015–1020 steel. However, to the extent this need be specified as a requirement, FRA believes it would be more appropriate to consider doing so for safety appliances on all passenger equipment—not just Tier II passenger equipment. FRA had not made such a proposal in the NPRM; and this issue may be reexamined in Phase II of the rulemaking. As for the strength of mechanical fasteners, the final rule states that mechanical fasteners must have a mechanical strength at least equivalent to that of a ½ inch diameter SAE grade steel bolt, as FRA had proposed in the NPRM. FRA believes that any SAE grade of steel bolt will satisfy this requirement, and, as a result, FRA has not modified the final rule in this regard.

Paragraph (b) deserves special mention; it requires that Tier II passenger trains be provided with a parking or hand brake that can be set and released manually and can hold the equipment on a 3-percent grade. A hand brake is an important safety feature that prevents the rolling or runaway of parked equipment.

Section 238.431 Brake System

This section contains the brake system design and performance requirements for Tier II passenger equipment, and, except for one provision, represents the consensus recommendation of the Tier II Equipment Subgroup. The provisions contained in this section are virtually identical to the requirements proposed in the 1997 NPRM. Except for one commenter's recommendation that leeway be provided on the number of locations in a vehicle that must be equipped with a means to effectuate an emergency brake application on shorter equipment, no substantive adverse comments were received on the provisions contained in this section and, thus, they have been retained without change.

As noted in the 1997 NPRM, the main issue of concern among Subgroup members involved the capability of sensor technology used to monitor the application and release of brakes. Labor representatives maintained that a technology that actually measures the force of brake shoes and pads against wheels and brake discs is required for a reliable indication of brake application and release. Railroad operators contended that this technology is not commercially available and that monitoring pressure in brake cylinders does provide a reliable indication of brake application and release, particularly when those cylinders are directly adjacent to the point where brake friction surfaces are forced together. FRA agrees that the technology suggested by certain labor commenters is not currently available and that brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. Although FRA agrees that these indicators do not provide 100 percent certainty that the brakes are effective, they have proven effective enough to be preferable to requiring an inspector to assume a dangerous position while inspecting a train's brake system.

Aside from this issue, the rest of the brake system design and performance requirements contained in this section received widespread support. In fact, several of the requirements were contained in written positions provided by both rail labor and management members of the Subgroup, and virtually all of the requirements were discussed in the high-speed passenger equipment section of the 1994 NPRM on power brakes. *See* 59 FR 47693–94, 47699–47700, and 47730. Many of the requirements in this section are similar to the requirements for Tier I passenger equipment contained in § 238.231, thus the discussion related to that section should be read in conjunction with the following discussion.

Paragraph (a) of this section is virtually identical to the requirement related to the braking systems of Tier I passenger equipment in § 238.231(a).

Paragraph (b) contains a requirement similar to that in § 238.231(b) and is

intended to protect railroad employees. FRA believes that inspectors of equipment must be able to ascertain if brakes are applied or released without placing themselves in a vulnerable position. This final rule allows railroads the flexibility of using a reliable indicator in place of requiring direct observation of the brake application or piston travel because the designs of many of the brake systems used on passenger equipment make direct observation of the brakes extremely difficult. Brake system piston travel or piston cylinder pressure indicators have been used with satisfactory results for many years. Although indicators do not provide 100 percent certainty that the brakes are effective, they have proven effective enough to be preferable to requiring an inspector to assume a dangerous position.

Paragraph (c) is virtually identical to the requirement contained in § 238.231(c), and is a fundamental brake system performance requirement that an emergency brake application feature be available at any time and produce an irretrievable stop. This paragraph contains an additional requirement that a means to actuate the emergency brake be provided at two locations in each unit of the train. This additional requirement ensures the availability of the emergency brake feature and is in accordance with the current available design of high-speed passenger equipment. FRA received comments from Renfe Talgo recommending that FRA change this requirement to permit shorter equipment to provide only one location in each unit of a train with a means to actuate the emergency brake. This commenter recommends such leeway due to the fewer number of passengers in these units and due to the distance any one passenger would be to the actuation device when compared to the distance in standard length passenger train units. FRA has modified this paragraph to provide that equipment that is 45 feet or less in length (approximately one-half the length of standard passenger equipment) need provide a means to actuate the emergency brake at only one location in each such unit of the train.

Paragraph (d) requires the brake system to be designed to prevent thermal damage to wheels and brake discs.

Paragraph (e) contains requirements related to blended braking systems. These requirements are similar to those contained in § 238.231(j). The only additional requirement is that the operational status of the electric portion of the blended brake be displayed in the operator's cab. Operators of this high-speed equipment may use different train handling procedures when the electric portion of blended brake is not available. Therefore, a dangerous situation could arise when an operator of these high-speed trainsets expects the electric portion of the blended brake to be available and it is not. FRA believes that when operations exceed 125 mph either the train must not be used if the electric portion of the blended brake is not available, or the train operator must know that the electric portion of the blended brake is not available so he or she can be prepared to use compensating train handling procedures. Further, FRA believes that if the additional heat input to wheels or discs caused by lack of the electric portion of the blended brake causes thermal damage to these braking surfaces, then the electric portion of the blended brake should be considered a required safety feature and, unless it is available, the equipment should not be used.

Paragraph (f) requires the brake system to allow a disabled train's pneumatic brakes to be controlled by a conventional locomotive during rescue operations.

Paragraph (g) requires that Tier II passenger trains be equipped with an independent brake failure detection system that compares brake commands to brake system outputs to determine if a failure has occurred. This paragraph also requires that the brake failure detection system report failures to the automated monitoring system, which is contained in § 238.445, thus alerting the train operator to potential brake system degradation so that the operator can take corrective action such as slowing the train.

Paragraph (h) requires that all Tier II passenger equipment be provided with an adhesion control system designed to automatically adjust the braking force on each wheel to prevent sliding during braking. This paragraph also requires that the train operator be alerted in the event of a failure of this system with a wheel slide alarm that is visual or audible, or both. This feature ties the adhesion control system to the automated monitoring system and prevents dangerous wheel slide flat conditions that can be caused when wheels lock during braking.

Section 238.433 Draft System

FRA is requiring that leading and trailing automatic couplers of Tier II trains be compatible with standard AAR couplers with no special adapters used. FRA believes that compatibility with standard couplers is necessary in order that a conventional locomotive could assist in the rescue of disabled Tier II passenger equipment. In addition, couplers must include an automatic coupling feature as well as an uncoupling device that complies with 49 U.S.C. chapter 203, 49 CFR part 231, and 49 CFR § 232.2. FRA believes that automatic uncoupling devices are necessary in order to comply with the intent of the statute so that employees will not have to place themselves between equipment in order to perform coupling or uncoupling operations.

Section 238.435 Interior Fittings and Surfaces

This section contains the requirements for interior fittings and surfaces. Once survivable space is ensured by basic vehicle structural strength and crash energy management requirements, the design of interior features becomes an important factor in preventing or mitigating injuries resulting from collisions or derailments. Loose seats, equipment, and luggage are a significant cause of injuries in passenger train collisions and derailments.

Paragraphs (a) through (c) contain requirements for the design of passenger car seats and the strength of their attachment to the car body. These requirements are based on sled tests of passenger coach seats, seat tests conducted for other modes of transportation, and computer modeling to predict the results of passenger train collisions. These provisions include a requirement for shock absorbent material on the backs of seats to cushion the impacts of passengers with the seats ahead of them.

FRA has modified paragraph (a) based on comments received in response to the NPRM. In the NPRM, FRA proposed requiring a seat back in a passenger car to be designed to withstand, with deflection but without total failure, the load of a seat occupant who is a 95th-percentile male accelerated at 8g who impacts the seat back. *See* 62 FR 49819. Simula, in commenting on the NPRM, suggested that the seat back in a passenger car should be designed to withstand, with deflection but without total failure, the impact of unrestrained occupant(s) seated behind the test article (seat back) and subjected to the same crash pulse. Further, in its comments on the NPRM, Bombardier noted that the design of the seats in Amtrak's HTS is based on a 185-pound occupant according to Amtrak's specification, while paragraph (a) specified the occupant size as a 95th-percentile male.

In the final rule, paragraph (a) requires that the design of the seat back

and seat attachment withstand, with deflection but without total failure, the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds. (As used in this section, a 95th-percentile adult male has been defined in § 238.5.) This modification clarifies the intent of the proposal, and specifies a crash pulse. As noted by Simula, specifying a crash pulse recognizes the importance of testing seats dynamically to represent actual conditions in a train collision. Paragraph (a) has also been modified to incorporate paragraph (c)(1) of the proposed rule by stating that the seat attachment must also resist the specified load as well, and this is discussed below.

In response to Bombardier's comment on the size of the occupant seated behind the seat being tested for purposes of determining the required strength of the seat, FRA notes that the specification for Amtrak's HTS does provide for use of a smaller occupant than is specified in the rule. However, the Amtrak specification also provides that the occupant be subjected to a more severe crash pulse than that specified in the rule. As a result, FRA believes that under paragraph (a) the energy required to be absorbed by the seat being tested is not greater than that provided for in the Amtrak specification, and FRA has not modified the rule on this point.

As noted above, FRA has modified paragraph (c) in the final rule by incorporating proposed paragraph (c)(1) into paragraph (a) of the final rule and retaining, as renumbered in paragraph (c) of the final rule, proposed paragraphs (c)(2) and (c)(3) in the NPRM. See 62 FR 49819. FRA has incorporated proposed paragraph (c)(1) into paragraph (a) of the final rule based in part on a comment from Simula that the ultimate strength of a seat attachment to a passenger car body shall be sufficient to withstand a crash pulse representing a typical train accident (275 msec triangular pulse, peak acceleration 10 G) and the impact of an unrestrained occupant(s) behind the test article. Incorporating the longitudinal strength requirement proposed for the seat attachment in paragraph (c)(1) of the NPRM into paragraph (a) of the final rule rationalizes the rule and recognizes that the seat attachment requirement and the seat back requirement both take into account the force of a train occupant impacting the seat from behind. However, FRA has not adopted Simula's recommendation to increase the g loading that the seat attachment is required to withstand or specify a crash pulse as long as 275 milliseconds, triangular. Simula's recommendation appears to be based on the assumption that higher speed train collisions will result in greater decelerations of longer duration in a trailer car. Yet, FRA believes that the resulting decelerations will have only a longer duration. As the duration for which an occupant impacts an interior surface has a negligible influence on potential injury, the 8g force and 250 msec crash pulse specified in this paragraph is appropriate for Tier II passenger equipment.

The lateral and vertical loading requirements in paragraph (c) remain unchanged from the NPRM other than being renumbered.

FRA has not incorporated two other comments from Simula on this section for the reasons noted below. First, Simula suggested adding a requirement that two rows of seats should be included in the seat testing and positioned to represent the row-to-row pitch for installation. FRA has not modified the rule in this regard, because FRA believes it evident that in testing seats to show compliance with the requirements of this section the positioning of the seats must represent the actual positioning of the seats in the passenger car subject to the requirements of this section. In addition, Simula recommended that instrumented Hybrid III dummies be seated in the row behind the test article to determine occupant injury potential during a dynamic test, and that the data measured by the dummies meet specified injury criteria available in a pending APTA standard. Simula further recommended that the number and size of unrestrained occupants (crash test dummies) to be used in testing be defined in the APTA standard. Simula noted that the results of ongoing research will be used to complete the standard, and that to meet injury performance criteria the railroad may have to use some form of occupant restraint system. As evidenced by Simula's comments, specifying occupant injury criteria is an ongoing issue and, as such, is best deferred to the second phase of this rulemaking. FRA does recognize that pursuing the specification of occupant injury criteria is both sound and technically appropriate, and encourages research in this regard for use in the second phase of the rulemaking, in addition to examining the use of NHTSA occupant injury criteria.

Paragraph (d) contains the requirements for strength of attachment of interior fittings and is similar to that required in § 238.233(c). Similar to its comment noted above, Bombardier remarked that proposed paragraph (d) specified a 95th-percentile male for use in determining the required strength of certain interior fittings. *See* 62 FR 49819–20. Bombardier explained that the design of tables for Amtrak's HTS does not follow this approach, and that, based on research conducted within the rail industry, it relates to impact velocities of a 185-pound occupant. Bombardier was unsure how the proposed rule compared to the way tables were being designed and constructed for Amtrak's HTS, and requested that the practicality of the proposed approach be first considered. As FRA responded above to Bombardier's similar comment, FRA believes that specifying a larger occupant size will not in itself increase the strength that the fitting is required to withstand since the Amtrak specification provides that the 185-pound occupant must resist a more severe crash pulse than that provided in the rule. FRA believes the requirement in paragraph (d) is not greater than that required under the Amtrak specification for HTS.

Paragraph (e) contains a special requirement for the ultimate strength of seats and other fittings in the cab of a power car. Due to the extra strength of the cab, its structure is capable of resisting forces caused by accelerations that exceed 10g. As a result, benefit can be gained from a greater longitudinal strength requirement for seat and other interior fitting attachments. FRA is therefore requiring that seats and equipment in the cab be attached to the car body with sufficient strength to resist longitudinal forces caused by an acceleration of 12g. The lateral and vertical requirements remain 4g. These requirements do not apply to equipment located outside the cab.

In its comments on the NPRM, Simula also recommended that the 12g longitudinal requirement be supplemented by a 250-millisecond dynamic crash pulse. However, FRA believes that this will result in a more expensive test without a corresponding increase in safety. Simula further suggested that the 4g lateral and vertical loading requirements apply to the combined mass of the seat and the seat occupant. FRA notes that such a requirement is provided in § 238.447(f)(2).

Paragraphs (f) and (g) contain requirements representing good safety design practice for any type of vehicle.

FRA believes the luggage restraint requirement in paragraph (h) will

prevent many of the injuries caused by flying luggage that are typical of passenger train collisions and derailments.

FRA has included paragraph (i) in the final rule, consistent with its parallel requirement in § 238.233(g) for Tier I passenger equipment.

Section 238.437 Emergency Communication

This section requires an emergency communication system with back-up power within a Tier II train. This safety feature will allow the train crew to provide evacuation and other instructions to passengers, and help prevent panic that can occur during emergency situations.

FRA's principal revision to this section allows passenger cars 45 feet or less in length to have only one emergency communication transmission location. FRA had proposed that transmission locations be placed at both ends of each passenger car. In response to the proposal, Talgo commented that in considering the placement of transmission locations, the operative factor should be the distance from any point on the train to the nearest transmission unit—rather than specifying that they be placed at the ends of each passenger car. Talgo believed this necessary to accommodate cars which are half the length in size of conventional cars.

As the length of a conventional railroad passenger car is typically between 85 and 90 feet, FRA believes it appropriate to require a car not more than half that length to have only one emergency communication transmission unit. However, FRA is not prepared to specify a requirement to place such transmission units solely on the distance from any point on the train to the nearest transmission unit. By taking into account the location of transmission units on a train level, the nearest transmission unit to a passenger seated in one car may in fact be a transmission unit located in an adjoining car. However, having to pass into an adjoining car to access the transmission unit, although nearer linearly, may at a minimum be impracticable in certain situations. FRA believes that each Tier II passenger car, no matter its size, must have its own emergency communication transmission unit.

This section also requires that emergency communication transmission locations be marked with luminescent material, that clear instructions be provided for the use of the emergency communication system, and that the emergency communication system have back-up power for a minimum period of 90 minutes.

In commenting on the rule, the NTSB noted that FRA had not proposed emergency communication requirements for Tier I operations. The NTSB believed that emergency communication requirements are necessary for Tier I operations because the majority of passenger train accidents have occurred in those operations. The NTSB also stated that emergency communication requirements should not be limited to intra-train operations, but include as well the ability to communicate from the train to outside sources. In a similar comment on the NPRM, the UTU stated that passenger trains should not be dispatched without working head end radios and a reliable backup system. The UTU also commented that all conductors and crewmembers should be issued portable radios capable of communicating with each other, the head end, and the dispatcher or control center.

FRA is not applying the Tier II requirements for intra-train emergency communication to Tier I operations at this time. FRA agrees with the NTSB's comment that emergency communication requirements should not be a function of speed, but rather a function of the design and configuration of the train and the terrain in which the train operates. Yet, FRA's decision here is not based on speed. FRA initially proposed to limit this proposal to Tier II passenger trains because such trains are intended to operate as a fixed unit, unlike most Tier I passenger trains. Whereas an emergency system to communicate throughout the train may be more easily provided for in a train which remains as a fixed unit, the interchangeability of passenger cars and locomotives raises practical considerations about the compatibility of communications equipment in a Tier I passenger train. FRA believes it best to address these considerations and further examine requirements concerning emergency communication within a Tier I train in the second phase of the rulemaking, following consideration of these issues by the APTA PRESS Task Force.

As to requirements for emergency communication from a train to an outside source, FRA has addressed such requirements in the Railroad Communications final rule, designated as Docket No. RSOR–12. *See* 63 FR 47182; Sept. 4, 1998. FRA recognizes that the ability to communicate in an emergency is important for all trains—freight and passenger. In particular, because passenger trains operate commingled with freight trains, the ability of a freight train crew to notify a railroad control center of an emergency involving its train may prevent a collision with an oncoming passenger train. The railroad communications rulemaking was supported by a working group, established through RSAC, which specifically addressed communication facilities and procedures, with a strong emphasis on passenger train emergency requirements. In general, section 220.209 of the Railroad Communications final rule provides that, for each railroad having no fewer than 400,000 employee work hours, each occupied controlling locomotive in a train shall have a working radio that can communicate with the control center of the railroad, and each train shall also have communications redundancy, i.e., a working radio on another locomotive in the consist or other means of working wireless communication. *See* 49 CFR § 220.9; 63 FR 47195–6. Moreover, in addition to the requirements of the Railroad Communications rule, FRA notes that intercity passenger and commuter railroads already make extensive provision for ensuring communication capabilities during emergencies. FRA believes that other communications issues have been resolved either in the railroad communications rulemaking, the passenger train emergency preparedness rulemaking, or this final rule. However, any final issues can be addressed in the second phase of this rulemaking.

Section 238.439 Doors

This section contains the requirements for doors on Tier II passenger cars. This section should be read with the discussion of passenger car doors earlier in the preamble. As stated, FRA has modified the requirement for the number of exterior side doors per passenger car (contained in paragraph (a)) by specifying that each car shall have a minimum of two such doors.

The requirements in paragraph (b) are similar to those contained in § 238.235(b) for Tier I passenger equipment. However, the requirements of paragraph (c) have no counterpart in § 238.235. This paragraph requires the status of powered, exterior side doors to be displayed to the crew in the operating cab and, if door interlocks are used, the sensors to detect train motion must nominally be set to operate at not more than 3 mph. Such equipment is well within current technology. Paragraph (d) requires that powered, exterior side doors be connected to an emergency back-up power system.

Paragraph (e) is identical to that provided for Tier I passenger equipment in § 238.235(c).

Paragraph (f) requires passenger compartment end doors to be equipped with a kick-out panel, pop-out window, or other means of egress in the event the doors will not open, or be so designed as to pose a negligible probability of becoming inoperable in the event of carbody distortion following a collision or derailment. This paragraph does not apply to such doors providing access to the exterior of a trainset, however, as in the case of an end door in the last car of a train. In the NPRM, FRA discussed that the requirements in this paragraph originally arose out of the NTSB's emergency safety recommendations following its investigation of the February 16, 1996, collision between a MARC commuter train and an Amtrak passenger train in Silver Spring, Maryland. *See* 62 FR 49734–5. Specifically, as stated in its final railroad accident report, the NTSB recommended that FRA:

> Require all passenger cars to have either removable windows, kick panels, or other suitable means for emergency exiting through the interior and exterior passageway doors where the door could impede passengers exiting in an emergency and take appropriate emergency measures to ensure corrective action until these measures are incorporated into minimum passenger car safety standards. (NTSB/RAR–97/02) (R–97–15)

As explained in the NPRM, FRA proposed that the first practical application of the NTSB's recommendation be made with respect to Tier II passenger car end doors. *See* 62 FR 49735. FRA has been assisting APTA through its PRESS task force examine the full range of options for implementing the NTSB recommendation in Tier I passenger equipment, in addition to the Volpe Center's work on emergency egress on a systems level. These complementary efforts will be brought together in the second phase of the rulemaking.

FRA notes that it has modified paragraph (f) from the proposal in the NPRM, *see* 62 FR 49820 (proposed § 238.441(d)), to permit Tier II passenger car doors to be designed without a kick-out panel, pop-out window, or like feature, provided that the doors pose a negligible probability of becoming inoperable in the event of carbody distortion following a collision or derailment. FRA believes this modification is consistent with the NTSB's safety recommendation (R–97–15).

Paragraph (g) is reserved for door marking and operating instruction requirements. These requirements are currently provided in the rule on passenger train emergency preparedness at 49 CFR § 239.107. See 63 FR 24630, 24680. In phase II of the rulemaking, FRA will consider integrating the door marking and operating instruction requirements found in part 239 with this part. Additionally, FRA will consider revising those requirements as necessary.

Section 238.441 Emergency Roof Entrance Location

This section requires that Tier II passenger equipment either have a roof hatch or a clearly marked structural weak point in the roof to provide quick access for properly equipped emergency personnel. Such features will aid in removing passengers and crewmembers from a vehicle that is either on its side or upright.

In the NPRM, FRA proposed that each Tier II passenger car be equipped with a minimum of two such emergency roof entrance locations. *See* 62 FR 49820. Talgo, in its comments on this proposal, remarked that a passenger car half the length of a conventional passenger car should require only one roof hatch or structural weak point. Further, Bombardier commented that the high-speed trainsets it is constructing for Amtrak will have only one structural weak point located in the center of the passenger cars due to the location of roof-mounted air conditioning units at each end of the cars.

In the final rule, each Tier II passenger car and each cab of a power car is required to have at least one emergency roof entrance location to permit the evacuation of the vehicle's occupants through the roof. Beyond the issue of the sufficiency of the number of emergency roof entrance locations for Tier II passenger equipment is the larger issue of applying requirements for emergency roof entrance locations to Tier I passenger equipment. The final rule does not contain such requirements for Tier I passenger equipment, and there was no consensus within the Working Group to do so. *See* 62 FR 49750–1. However, FRA believes that work within the APTA PRESS Task Force will lead to reconciliation of Tier I and Tier II requirements on this issue. FRA intends to reexamine the requirements of this section in the second phase of the rulemaking with a view to applying emergency roof entrance locations requirements to Tier I passenger equipment. In the meantime, the public is entitled to the protection afforded by the Tier II standard. High-speed derailments may be more severe because of the total energy involved and a potentially longer "ride down" during which injuries may occur, rendering occupants incapable of exiting the train under their own power.

Paragraph (b) is reserved for marking and instruction requirements to be specified as necessary in the second phase of this rulemaking.

Section 238.443 Headlights

FRA received no comments on this provision, and it is adopted as proposed. Because of the high speeds at which Tier II passenger equipment operates, FRA is requiring that a headlight be directed farther in front of the train to illuminate a person than is currently required for existing equipment under 49 CFR § 229.125(a). A Tier II passenger train will travel distances more quickly than a Tier I passenger train, and the train operator will have less time to react, thereby necessitating earlier awareness of objects on the track.

FRA notes that, as further specified in 49 CFR § 229.125(d)–(h), locomotives operated at speeds greater than 20 miles per hour over one or more public highway-rail crossings are required to be equipped with operative auxiliary lights. The requirements contained in § 229.125(d)–(h) do apply, according to their terms, to Tier II passenger equipment. Any proposal to the contrary in the NPRM was made in error.

Section 238.445 Automated Monitoring

This section contains the requirements related to the automated monitoring of the status or performance of various safety-related systems on Tier II passenger trains. A number of passenger train accidents have been either fully or partly caused by human error. The faster operating speeds of Tier II passenger equipment will afford the train operator less time to evaluate and react to potentially dangerous situations, thereby increasing the potential for accidents. Automated monitoring systems can decrease the risk of accidents by alerting the train operator to abnormal conditions and advising the operator as to necessary corrective action. Such systems can even be designed to take corrective action automatically in certain situations.

FRA received no comments on this section as proposed, and paragraphs (a) and (c) have been adopted without substantive change. However, FRA has modified paragraph (b) to make clear when immediate corrective action must be taken in the event a system or component required to be monitored is

operating outside of its predetermined safety limits.

Paragraph (a) requires a Tier II passenger train to be equipped to monitor the performance of a minimum set of safety-related systems and components. The monitoring system can also be used to provide information for trouble-shooting and maintenance and to accumulate reliability data to form the basis for setting required periodic maintenance intervals.

Paragraph (b) requires the train operator to be alerted when any of the systems or components required to be monitored is operating outside of predetermined safety parameters. When any such system or component is operating outside of its predetermined safety parameters, immediate corrective action must be taken if the system or component defect impairs the train operator's ability to safely operate the train. Accordingly, a report of a system or component defect may not require immediate corrective action. The need to take such action would be determined by the railroad based on whether the defective system or component impairs the train operator's ability to safely operate the train. Further, in the event immediate corrective action must be taken, the rule does not require that intervention be automatic. Of course, the railroad should have a valid basis for either leaving response in the hands of the train operator or making the corrective action automatic.

Paragraph (c) requires the monitoring system to be designed with an automatic self-test feature that notifies the train operator that the monitoring capability is functioning correctly and alerts the operator that a system failure has occurred. Because train operators can become dependent on automated monitoring systems, they need to know when their vigilance must be heightened to compensate for a malfunction in such an automated safety tool.

Section 238.447 Train Operator's Controls and Power Car Cab Layout

This section contains a set of requirements for interior features in Tier II power car cabs. FRA has clarified and revised this section, based on comments received in response to the proposal, in two principal ways: The seat requirements in paragraph (f) apply to any floor-mounted seat and each seat provided for an employee regularly assigned to occupy the power car cab, instead of to each crewmember in the cab; and such seats will not require seatbelts. FRA has also combined proposed paragraphs § 238.447(a) and (b) in the NPRM, *see* 62 FR 49820–1, into paragraph (a) of this section in the final rule for economies of space. Subsequent paragraphs have been renumbered accordingly.

In its comments on the NPRM, Bombardier explained that an additional seat—commonly a flip-up or a shelf-type seat—is in many cases provided in the cab for a train crewmember who is not normally in the cab. Bombardier believed these seats should not be subjected to the same requirements as for the train operators' seats, as that was not the intent of discussions within the Working Group. Accordingly, Bombardier recommended making clear that the requirements in paragraph (f) apply only to each seat provided for the train operators.

FRA agrees with Bombardier's comment that the requirements proposed in § 238.447(g) of the NPRMBnow § 238.447(f) of the final rule—need not apply to each seat provided for a crewmember in a power car cab. FRA recognizes that flip-down and other auxiliary seats are provided in locomotive cabs for the temporary use of employees not regularly assigned to the cab. These employees may include a supervisor of locomotive engineers conducting an operational monitoring test of the engineer(s). Such seats are typically attached to an interior wall and placed behind those seats used by the train operators. FRA believes it appropriate to clarify the application of paragraph (f) in the final rule so that its requirements apply only to each seat provided for an employee regularly assigned to occupy the power car cab, and to any floor-mounted seat in the cab. Accordingly, paragraph (f) does not apply to a wall-mounted, flip-down seat occupied by an employee such as a supervisor of locomotive engineers who occasionally rides in the cab.

FRA has also modified paragraph (f) by not requiring that seats subject to that provision be equipped with a single-acting, quick-release lap belt and shoulder harness as defined in 49 CFR § 571.209. FRA had proposed such a requirement in the NPRM because the crew may experience high decelerations in a collision from the cab's high strength and forward location near the expected point of impact in many different collision scenarios. *See* § 238.447(g)(1), 62 FR 49821. In its comments on the NPRM, the BLE stated that its experience did not support the need to require a lap belt and shoulder harness, and that its member engineers were overwhelmingly against such a requirement. The BLE explained that engineers need to rapidly exit from the seat to a place of safety in the event of an impending accident or act of vandalism. In such instances, the primary defense of the engineer is to move quickly from harms way, according to the BLE, and operating at speeds of 150 mph will decrease the time a locomotive engineer has to react to such incidents. The BLE noted that it would change its position on this issue if there is overwhelming evidence that the force of deceleration on Tier II equipment would be so severe as to cause injury to engineers or interfere with their operation.

In its comments on the rule, Simula remarked that formal research is needed to determine both the feasibility of incorporating active restraints in a cab and the potential for the crew to actually use them. Simula also noted the option of exploring passive restraints such as air bags or compartmentalization, as opposed to active restraints such as lap belts and shoulder harnesses. Simula explained that cost effectiveness considerations for implementing both compartmentalization and active and passive restraints are markedly different for the crew in the cab compared to passengers. Simula asserted that the relatively high cost of passive restraints may be justified for one or two crewmembers in a extremely severe environment.

In light of the comments received, FRA has decided to defer until Phase II of the rulemaking the issue of requiring seats in a power car cab to be equipped with seat belts and shoulder harnesses. FRA will continue to explore strategies for train occupant protection—both for passengers and employees—and FRA will be able to focus on these strategies with the members of the Working Group in Phase II.

In other statements on the NPRM, commenters recommended applying the requirements in this section to Tier I passenger equipment. The NTSB stated that the minimum elements proposed in this section for operator's controls and cab layout design are sufficient and should also be included in Tier I operations for ergonomic design and to minimize the chance of human error in both types of operations. The NTSB cited safety recommendations arising out of an accident in Kelso, California, concerning the dangers posed by improperly located safety-significant controls and switches in locomotives and the need to relocate and/or protect such controls and switches so they cannot be inadvertently activated or deactivated. FRA has not fully explored extension of these concepts with the working group and will take the issue under advisement for incorporation into

Tier I standards during Phase II of the rulemaking.

The BLE commented that the proposed requirements for seating in this section also be applied to Tier I equipment. The BLE stated that existing seating on some Tier I equipment is woefully inadequate. In particular, the BLE noted that some cab car seats are not adjustable; have no suspension; are severely limited in their cushioning; have no lumbar support; and are injuring their occupants. The BLE also recommended that both Tier I and Tier II equipment be provided with a cab temperature control system which maintains a minimum temperature of 65 degrees and a maximum of 85 degrees F.

FRA in not requiring that the detailed provisions in this section be imposed in full on Tier I passenger equipment. FRA believes these provisions are more necessary for Tier II passenger equipment because the higher operating speeds will press human reaction time, and such requirements will contribute to the ability of the crew to operate the train as safely as possible. In addition, several members of the Working Group opposed applying such requirements to Tier I passenger equipment, asserting that a number of the requirements involved ergonomic issues which do not directly affect safety. FRA notes that certain requirements concerning locomotive cab interior safety are provided in § 238.233 of the final rule.

Through RSAC's working group on Locomotive Cab Working Conditions, FRA and members of the regulated community have been evaluating issues concerning locomotive cab working conditions. As a number of issues concern both passenger and freight operations, FRA believes that such issues may best be addressed in this RSAC working group. Of course, FRA does recognize that the concern involving crew seats in cab cars is more unique to passenger operations, and FRA is therefore pleased by APTA's voluntary effort to improve crew seats on cab cars.

FRA notes that, for purposes of paragraph (f)(1) in this section, it has specified the crewmember occupying the seat as a 95th-percentile adult male, consistent with the use of a 95th-percentile adult male elsewhere in this rule. In the NPRM, the characteristics of the crewmember occupying the seat had not been specified, *per se*. *See* proposed § 238.447(g)(2); 62 FR 49821.

FRA further notes that, for purposes of paragraph (f)(2), it has not specified particular measurements or a particular survey on which to base the necessary characteristics of persons ranging from a 5th-percentile adult female to a 95th-percentile adult male. Instead, these characteristics may be drawn from any recognized survey after 1958 of weight, height, and other body dimensions of U.S. adults, corrected for clothing as appropriate. Data from such a survey is presented in Public Health Service Publication No. 1000, Series 11, No. 8, "Weight, Height, and Selected Body Dimensions of Adults," June 1965. (A copy of this document has been placed in the public docket for this rulemaking.) The definition of 95th-percentile adult male used elsewhere in the rule is too narrow to apply in this context.

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment

Section 238.501 Scope

This subpart contains the inspection, testing, and maintenance requirements for passenger equipment that operates at speeds exceeding 125 mph but not exceeding 150 mph. As discussed in the 1997 NPRM, there is currently no operating history with regard to Tier II equipment, and thus there are no regulations or industry standards establishing detailed testing, inspection, or maintenance procedures, criteria, and intervals for the equipment. The railroads and the rail labor organizations differ on the approach that should be taken in establishing inspection, testing, and maintenance requirements. Railroads have long appealed to FRA to move away from detailed "command and control" regulations and instead to provide broad safety performance requirements that afford railroads wide latitude to develop the operational details. Rail labor organizations, on the other hand, believe that specific inspection, testing, and maintenance criteria that cannot be unilaterally changed by railroads are the only way that safe railroad operation can be assured.

FRA believes that the introduction of a new type of passenger equipment offers the opportunity for a fresh start, where perhaps both of these seemingly conflicting concerns can be resolved. This final rule retains the approach taken in the 1997 NPRM and contains general guidelines on the process to be used by the operating railroad, together with the system developer, to develop an inspection, testing, and maintenance program. The operating railroad and the system developer together have the best information, expertise, and resources necessary to develop the details of an effective inspection, testing, and maintenance program. The operating railroad is thereby granted some latitude to develop the operational details of the program, using the system safety process to justify the safety decisions that are made. However, FRA intends to exercise final approval of the inspection, testing, and maintenance program proposed by the operating railroad; rail labor organizations will be given an opportunity to discuss their concerns with FRA during the approval process set forth in § 238.505. Tier II equipment may not be used prior to FRA approval of an inspection, testing, and maintenance program. Further, this final rule makes clear that FRA intends to enforce the safety-critical inspection, testing, and maintenance procedures, criteria, and maintenance intervals that result from the approval process.

Labor commenters recommended that if FRA is to permit the railroads to develop inspection and testing criteria and procedures for Tier II passenger equipment, then rail labor must be involved in the process as a full partner. These commenters also believed that any procedures developed must provide an equivalent level of safety to the inspection and testing procedures provided for conventional passenger equipment. Furthermore, these commenters believed that any testing and inspection procedures developed must be fully enforceable to the same extent as federal regulations.

Although FRA recognizes and appreciates labor's desire to be a full partner in the development of any inspection and testing procedures, and FRA fully endorses and recommends collaboration with appropriate labor forces, FRA does not believe it appropriate to mandate labor's participation in the initial stages of the development of such procedures. As the equipment for which the inspection and testing programs are being developed will be new, with little operating history, FRA believes that the operating railroad and the system developer have the best information, expertise, and resources necessary to develop the details of an effective inspection, testing, and maintenance program. Moreover, FRA believes this final rule provides the industry's labor forces with an adequate avenue for raising any issues and providing input on any criteria or procedure developed by a railroad. Section 238.505 ensures that designated representatives of a railroad's employees are provided a copy of any inspection, testing, and maintenance criteria or procedures submitted by the railroad for FRA approval and provides an opportunity for these parties to present their views on the submitted plans and procedures

prior to FRA's approval or rejection of any program. Furthermore, this section addresses all of the major inspections and test provisions related to conventional passenger equipment and ensures that any program developed by a railroad regarding the inspection, testing, and maintenance of Tier II passenger equipment incorporate these major requirements. Finally, paragraph (b) of this section, as discussed in detail below, makes clear that the provisions of any program approved by FRA related to the inspection and testing of power brakes or other inspection, test, or maintenance procedure, criteria, and interval that is deemed to be safety-critical will be enforceable to the same extent as any other requirement contained in this part.

Section 238.503 Inspection, Testing, and Maintenance Requirements

This section requires the establishment by the railroad of an FRA-approved inspection, testing, and maintenance program based on a daily complete brake system test and mechanical safety inspection of the equipment performed by qualified maintenance persons, coupled with a periodic maintenance program based on a system safety analysis. Although paragraph (a) contains some basic requirements to be included in a program, FRA does not intend to prescribe every detail of what a program must contain. FRA requires the operating railroad to develop and justify the details of any program it adopts based on the specific safety needs and operating environment of the high-speed rail system being developed.

Paragraph (b) intends to make enforceable, subject to civil penalties and other enforcement action, the inspection and testing of power brakes and the other safety-critical inspection, testing, and maintenance requirements that are identified in the railroad's program and approved by FRA. "Safety-critical" requirements are those that, if not fulfilled, increase "the risk of damage to equipment or personal injury to a passenger, crewmember, or other person." *See* § 238.5. Under paragraph (l), the railroad must identify which items in its inspection, testing, and maintenance program are safety-critical. The railroad must submit the program to FRA under the procedures contained in § 238.505. Once these programs are approved by FRA, this section makes clear those items identified as safety-critical are enforceable by FRA. FRA agrees with labor representatives to the Working Group that safety standards are stronger when they contain specific provisions that can be enforced.

Paragraph (c) requires that the operating railroad develop an inspection, testing, and maintenance program to ensure that all systems and components of Tier II passenger equipment are free of general conditions that endanger the safety of the crew, passengers, or equipment. FRA has identified the various conditions enumerated in paragraph (c) that would need to be addressed in the railroad's program. Consequently, FRA has defined what the inspection, testing, and maintenance program must accomplish, but not how to accomplish it.

Paragraph (d) contains the more specific requirements that any inspection, testing, and maintenance program must incorporate. In paragraph (d)(1), FRA requires that Tier II equipment receive the equivalent of a Class I brake test, as described in § 238.313, before its departure from an originating terminal and every 1,500 miles after that or once each calendar day the equipment remains in service. The test must be performed by a qualified maintenance person. For example, a Tier II train must receive the equivalent of a Class I brake test at its originating terminal and must receive a second Class I equivalent brake test after traveling 1,500 miles from the time of the original Class I brake test, whether or not it is the same calendar day. Furthermore, a Tier II train must receive the equivalent of a Class I brake test each calendar day it is used in service even if it has not traveled 1,500 miles since the last Class I equivalent brake test. Due to the speeds at which this equipment is permitted to operate, FRA believes that a comprehensive brake test must be performed prior to the equipment being placed in service.

Paragraph (d)(2) requires that a complete exterior and interior mechanical inspection be conducted by a qualified maintenance person at least once each calendar day that the equipment is used. In order to perform a quality mechanical inspection, railroads must be provided some flexibility in determining the locations where these inspections can best be performed. FRA believes that permitting railroads to conduct these mechanical inspections at any time during the calendar day provides adequate flexibility to move equipment to appropriate locations. Trains that miss a scheduled Class I brake test or mechanical inspection due to a delay en route may proceed to the location where the Class I brake test or mechanical inspection was scheduled to be performed. FRA recognizes that, due to the specialized nature of this equipment, proper inspections can only be conducted at a limited number of locations. FRA also recognizes that trains become delayed en route due to problems which are not readily foreseeable. Thus, FRA will permit the continued use of such equipment to the location where the required inspection was scheduled to be performed.

Paragraph (e) restates § 238.15 and provides a cross-reference to that section. The paragraph provides that trains developing en route defective, inoperative, or insecure primary brake equipment be moved in accordance with the requirements of that section.

Paragraph (f) restates § 238.17 and adds a narrow exception to that section. The paragraph requires that Tier II equipment that develops a defective condition not related to the primary brake be moved and handled in accordance with the requirements contained in § 238.17, with one exception. The exception to these requirements applies to a failure of the secondary portion of the brake that occurs en route. In those circumstances, the train may proceed to the next scheduled equivalent Class I brake test at a speed no greater than the maximum safe operating speed demonstrated through analysis and testing for braking with the friction brake alone. At that location the brake system shall be restored to 100 percent operation before the train continues in service. This final rule allows extensive flexibility for the movement of equipment with defective brakes, but also contains a hard requirement that all brake components be repaired and the brake system, including secondary brakes, be restored at the location of the train's next major brake test. FRA believes that this approach recognizes the secondary role played by the electric portion of blended brakes. If the railroad has demonstrated that the friction brake alone can stop the train within signal spacing without thermal damage to braking surfaces, then the train may be used at normal maximum speed in the event of an electric brake failure. This final rule essentially limits the use of trains without available secondary braking systems to no more than 48 hours. FRA believes that § 238.17 strikes the correct balance between the need of railroads to transport passengers to their destination and the need to have equipment with defects that could lead to more serious safety problems quickly repaired. This requirement places a heavy responsibility on qualified maintenance persons to exercise their judgment on when and how equipment is safe to move.

Paragraph (g) requires that scheduled maintenance intervals be based on the analysis conducted pursuant to the railroad's safety plan, and be approved by FRA under the procedures of § 238.505. The rule allows the maintenance intervals for safety-critical components to be changed only when justified by accumulated acceptable operating data. Changes in maintenance cycles of safety-critical components must be based on verifiable data made available to all interested parties and shall be reviewed by FRA. This paragraph is another attempt to balance the needs of the operating railroad to run efficiently and the concern of rail labor organizations that railroads not have the ability to unilaterally make safety decisions. For a new system, with no operating history, a formal system safety analysis is the only justifiable way to set initial maintenance intervals. The paragraph recognizes that as time passes and an operating history is developed, a basis for changing maintenance intervals can be established. However, the decision to make these changes must have the participation of all the affected parties.

Paragraph (h) requires that the operating railroad establish a training, qualification, and designation program as defined in the training program plan under § 238.109 to qualify individuals to perform safety inspections, tests, and maintenance on the equipment. If the railroad deems it safety-critical, then only qualified individuals may perform the safety inspection, test, or maintenance of the equipment. This paragraph does not prescribe a detailed training program or qualification and designation process. Those details are left to the operating railroad, but FRA must approve the program proposed by the operating railroad under procedures contained in § 238.505.

Paragraph (i) requires the operating railroad to establish standard procedures for performing all safety-critical inspections, tests, maintenance, or repair. This paragraph also makes clear that the inspection, testing, and maintenance program required by this section should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the program. FRA intends for the program required by this section to detail only those tasks required to be performed in order to conduct the inspections, tests, and maintenance necessary to ensure that the equipment is in safe and proper condition for use. In proposing the creation of these plans, FRA did not intend to enter into the area of addressing employee safety while conducting the inspections, tests, and maintenance covered by the programs. FRA is always concerned with the safety of employees while conducting their duties, but employee safety in maintenance and servicing areas generally falls within the jurisdiction of OSHA. It is not FRA's intent to oust OSHA's jurisdiction with regard to the safety of employees while performing the inspections, tests and maintenance required by this part, except where FRA has already addressed workplace safety issues, such as blue signal protection. Therefore, in order to prevent any uncertainty as to FRAs intent, FRA has modified this paragraph by eliminating any language or provision which could have been potentially perceived as displacing the jurisdiction of OSHA and has added a specific clarification that FRA does not intend for the program required by this section to address employee safety while conducting the inspections and tests described. Consequently, the specific elements that FRA proposed to be included in the inspection, testing, and maintenance plan have been eliminated for the reasons noted above and because they were merely duplicative of the general requirements contained in paragraph (a) of this section and are unnecessary.

Paragraph (k) requires that the operating railroad establish an inspection, testing, and maintenance quality control program enforced by railroad or contractor supervisors. In essence, this creates the need for the operating railroad to perform spot checks of the work performed by its employee and contract equipment maintainers to ensure that the work is performed in accordance with established procedures and Federal requirements. FRA believes this is an important management function that has a history of being neglected in the railroad industry.

Paragraph (l) requires the operating railroad to identify each inspection and testing procedure and criterion and each maintenance interval that the railroad considers safety-critical.

Section 238.505 Program Approval Procedure

This section contains the procedures a railroad shall follow in securing FRA approval of its inspection, testing, and maintenance program for Tier II passenger equipment. As no substantive adverse comments were received on this section, FRA has retained this section as proposed in the 1997 NPRM.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

Section 238.601 Scope

This subpart contains specific requirements for Tier II passenger equipment safety planning. These safety planning requirements include requirements for the operation of Tier II passenger equipment, procurement of Tier II passenger equipment, and the introduction or major upgrade of new technology in existing Tier II passenger equipment that affects a safety system on such equipment.

The discussion of this subpart should be read in conjunction with the general discussion of safety planning earlier in the preamble. FRA is retaining more extensive safety planning requirements for Tier II railroad operations, as these will be operations with new characteristics that require special attention and have heightened safety risks due to the speed of the equipment.

Section 238.603 Safety Planning Requirements

Paragraph (a) requires that, prior to commencing revenue service operation of Tier II passenger equipment, each railroad shall prepare and execute a written plan for the safe operation of such equipment. The plan may be combined with a pre-revenue service acceptance testing plan required under § 238.111, and any other plan required under this part provided that the individual planning elements required under this part are addressed. The plan shall be updated at least every 365 days.

Paragraph (b) requires that for each procurement of Tier II passenger equipment, and for each major upgrade or introduction of new technology in existing Tier II passenger equipment that affects a safety system on such equipment, each railroad shall prepare and execute a written safety plan. The plan may also be combined with a pre-revenue service acceptance testing plan required under § 238.111, and any other plan required under this part provided that the individual planning elements required under this part are addressed.

As noted earlier in the preamble, Bombardier, in its comments on the NPRM, believed that the proposed rule confused the requirements for a railroad's system safety plan with those required for equipment acquisition. Bombardier recommended that they be separately addressed. This section in the final rule reflects these comments in that paragraph (a) addresses requirements for an overall safety plan for Tier II passenger equipment, while paragraph (b) addresses planning

requirements for equipment acquisition and upgrade.

Paragraph (c) requires that each railroad maintain sufficient documentation to demonstrate how the operation and design of its Tier II passenger equipment complies with safety requirements or, as appropriate, addresses safety requirements under paragraphs (a)(4) and (b)(7) of this section. Each railroad shall also maintain sufficient documentation to track how safety issues are raised and resolved.

Paragraph (d) requires that each railroad make available to FRA for inspection and copying upon request each safety plan required by this section and any documentation required pursuant to such plan. This section does not in itself require FRA approval of a plan. However, FRA approval would be required for those sections of a plan intended to comply with the requirements of § 238.111, for example.

Appendix A—Schedule of Civil Penalties

This appendix contains a schedule of civil penalties to be used in connection with this part. Because such penalty schedules are statements of policy, notice and comment are not required prior to their issuance. *See* 5 U.S.C. 553(b)(3)(A). Commenters were invited to submit suggestions to FRA describing the types of actions or omissions under each regulatory section that would subject a person to the assessment of a civil penalty. Commenters were also invited to recommend what penalties may be appropriate, based upon the relative seriousness of each type of violation. FRA received no specific comments in response.

Appendix B—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

The table of test methods and performance criteria contained in Appendix B has been revised to address concerns related to their adoption as a regulation. These revisions include reorganization of categories and function of materials listed in the table in Appendix B; inclusion of a note to permit the substitution of seat and mattress assembly tests for individual material tests; inclusion of a note to require dynamic tests to be performed for seat cushions prior to fire tests; revision of performance criteria for certain materials; inclusion of a note to permit a testing exception for small parts; inclusion of a note to permit the use of an alternative heat release rate and smoke generation test for small miscellaneous, discontinuous parts; and addition of a category for wire and cable insulation requirements. Three definitions which relate to heat release rate were added to those previously listed in Appendix B of the NPRM. A new category of structural components other than structural flooring which may be exposed to fire hazards and associated notes was also added. The complete list of notes has also been renumbered from that contained in the NPRM to reflect these revisions.

The revisions were selected based on the results of analysis of input from several resources. (A detailed rationale for all revisions is also contained in a supporting document prepared under contract to the Volpe Center and placed in the public docket for this rulemaking.[6]) First, the comments of the parties who responded to the NPRM were reviewed. As raised in particular by Fire Cause Analysis in its comments on the NPRM, the current classification of items listed in the categories and functions in the table contained in Appendix B in the NPRM (based on FRA's 1989 guidelines) has caused confusion and conflict as to what materials should be tested according to what test methods. Second, a document containing the rationale for the development of the original flammability and smoke emission tests and performance criteria was reviewed.[7] Third, the previous **Federal Register** notices pertaining to tests and performance criteria published as the 1989 FRA guidelines (54 FR 1837; Jan 17, 1989) and published as recommended practices by FTA (then-UMTA) for rail transit vehicles (47 FR 53559, Nov. 26, 1982; 49 FR 32482, Aug. 14, 1984) and for transit buses and vans (55 FR 27402, July 2, 1990; 57 FR 1360, Jan 13, 1992; 58 FR 54250, Oct. 20, 1993) were reviewed. Fourth, the input from railroad operators, carbuilders, and consultants who participated in a Workshop held at the NIST Building and Fire Research Laboratory in July 1997 was considered.[8] Fifth, documentation prepared by the NFPA Railroad Task Force for the NFPA 130 Committee was reviewed.[9,10] Sixth, the results of the ongoing FRA-sponsored NIST fire safety research project were reviewed; as well as the results of tests jointly funded by Amtrak and FRA using alternative seat assemblies considered for use in Amtrak's high-speed trainsets. Seventh, the results of the NTSB-sponsored fire tests conducted for MARC commuter rail cars were reviewed.[11] All of these inputs and further analysis were used as the basis to simplify the table in Appendix B of the NPRM and reduce confusion and duplication in revising the list of tests and performance criteria and related notes.

Most of the items listed under "Function of Material" in the table in Appendix B of the NPRM have identical (or nearly identical) flammability pass/fail performance criteria. For example, although they were listed separately in the NPRM under function of material in the table, "Seat and/or Mattress Frame"; "Seat and Toilet Shroud"; "Wall"; "Ceiling"; "Windscreen"; "Partition, Tables and Shelves"; "HVAC Ducting"; "Window"; "Light Diffuser"; "End Cap [and] Roof Housings"; and "Interior [and] Exterior Boxes" all were subject to the same ASTM E 162 test procedure and performance criteria for flame spread. Accordingly, in the final rule, all of these items have been combined under the single category of "Vehicle Components" in the table in Appendix B. Overall, the items listed under "Category" and "Function of Material" have been decreased from seven to six and from twenty-eight to ten, respectively, from the same table in the NPRM. The majority of entries have also been re-titled. The new "Category" and "Function of Material" titles streamline the table presentation while retaining all the actual material functions used in an intercity or commuter rail passenger car

[6] "Recommendations for Revising the Fire Safety Performance Requirements in Federal Railroad Administration Notice of Proposed Rulemaking (NPRM) For Passenger Equipment, September 23, 1997," Prepared by J. Zicherman and S. Markos. Draft Project Memorandum. December, 1998.

[7] "Rationale for Recommended Fire Safety Practices for Rail Transit Materials Section." Transportation Systems Center. Report nos: MA–06–0098–82–1, and DOT–TSC–UMTA 81–74, January, 1983. A copy of this document has been placed in the public docket for this rulemaking.

[8] "Follow-UP Notes: NIST/CFR FRA Project, Meeting/Workshop of 7/23/97," above.

[9] "Proposed Revision of NFPA 130, Table 4–2.4, Recommendations for Testing the Flammability and Smoke Emission Characteristics of Rail Transit Vehicle Materials; Review Paper—Status Update." NFPA 130 Press Working Group Meeting of 8/15/97. Prepared by J. Zicherman. A copy of this document has been placed in the public docket for this rulemaking.

[10] "Proposed Revision of NFPA 130 Table 4–2.4, Recommendations for Testing the Flammability and Smoke Emission Characteristics of Rail Transit Vehicle Materials; Review Paper—Status Update." NFPA 130 Press Working Group Meeting of 10/15/97. Prepared by J. Zicherman. A copy of this document has been placed in the public docket for this rulemaking.

[11] "Interpretive Report: Flammability and Smoke Compliance and Fire Analysis (MARC/Amtrak Collision, February 16, 1996)." Prepared for National Transportation Safety Board. Prepared by J. G. Quintiere, University of Maryland. Final Report. December 19, 1996. A copy of this document has been placed in the public for this rulemaking.

or locomotive cab. Some revisions have also been made to acknowledge that certain existing performance criteria are so close as to be indistinguishable based on the precision of the test methods used (*e.g.*, flame spread values of 25 vs. 35 using test procedure ASTM E 162). Of course, some material categories or subcategories could not be combined since they require different test methods, *e.g.*, fabrics versus cushions. In addition, other considerations (such as ballistic test requirements for plastic window glazing) have precluded the combination of (and thus identical performance criteria for) some categories and material functions.

Specific revisions to the table in Appendix B of the NPRM are summarized in the following text. In addition, the notes to the table have been revised and renumbered to reflect the table's reorganization, and the text for several new notes has been added. The notes to the table will be discussed where appropriate in the discussion of the table below, and a discussion of the complete list of notes is also provided.

"Cushions, Mattresses" is a new category in the table which was formerly listed under the function of material column and included under the previously used category "Passenger seats, Sleeping and dining car components." *See* 62 FR 49823. Note 1 to the table which concerns flaming dripping or running is virtually identical to Note 1 as proposed in the NPRM. Note 2 is virtually identical to Note 5 as proposed in the NPRM, and pertains to ASTM E 662 smoke emission limits. The note renumbering provides consecutive numbering logic within the revised categories and function of materials.

As explained, FRA has been investigating the testing of assemblies of materials for performance in a fire, rather than individually testing the materials which comprise such assemblies, to more accurately reflect the interaction of materials in a fire. As part of the FRA-sponsored fire safety research program managed by the Volpe Center, six full-scale alternative seat assemblies being considered for the Amtrak high-speed train sets were tested in March, 1997, using a furniture calorimeter (ASTM E 1537).[12] The tests, jointly funded by FRA and Amtrak, used current Amtrak upholstery and different cushion foams; fire blocking layers were used in some trials. The test results showed that fire blocking layers can significantly prevent fire ignition, and limit flame spread, fire growth, and smoke generation.

Note 3 permits the testing of seat and mattress assemblies incorporating heat release rate methods developed by consensus. Testing the performance of a seat or mattress assembly as an integrated unit, which is more representative of an actual condition, will be an alternative to individually testing the components that comprise the seat or mattress assembly. Seat assemblies and mattresses to be tested in this alternative manner shall use ASTM E 1537, "Standard Test Method for Fire Testing of Upholstered Seating Furniture," and shall use pass/fail criteria specified in California Technical Bulletin (CAL TB) 133, "Flammability Test Procedure for Seating Furniture for Use in Public Occupancies." CAL TB 133 has a successful history of use at state and municipal levels for high-hazard occupied places, such as nursing homes. Results of the March, 1997 tests using the ASTM E 1537 test procedure on seat assemblies being considered for Amtrak's high-speed trainsets showed that certain assemblies met the Cal TB 133 test criteria and exhibited a total lack of flame spread as well as low heat and smoke release. *Id.* In addition, data from Amtrak-funded tests showed that seat assemblies selected for use on Amtrak's high-speed trainsets passed both the ASTM D 3675 and FAA "oil burner" tests.

Acceptance of results using the alternative test approach in Note 3 for seat and mattress assemblies requires an accompanying fire hazard analysis for the specific application. This analysis may take the form of a specific system safety or fire protection analysis. The analysis must provide for necessary quality control of components used in these assemblies in actual day-to-day use. Quality control must be part of the daily operating plans for a system to ensure that individual substandard materials or components are not substituted within a given component assembly for parts having an identical function which are of acceptable quality. In conducting the fire hazard analysis, the operating environment within which seat and mattress assemblies qualified by assembly tests will be used must also be considered in relation to the risk of vandalism, puncture, cutting, or other acts or external forces which may expose the individual components of the assemblies. Seats and mattresses using certain types of foams must resist vandalism, puncture, cutting, and other acts and external forces. Robust blocking layer(s), resistant to both fire (as used to meet FAA fire seat regulations), as well as to cutting and puncture, may be required. If used, these blocking layers must be applied in a manner which seals the seams (*e.g.*, using bonding or ceramic thread with binding tape) and ensures that the foam does not leak or drip out and become exposed to ignition. The U.S. Coast Guard has issued a Navigation and Vessel Inspection Circular (NAVIC) for structural fire protection which permits the use of fire blockers if tested according to Cal TB 133; the NAVIC states that these materials have proven effective in protecting combustible foams from being involved in a fire.[13]

FRA notes that the ASTM E 1537 test procedure was not expressly referenced in the NPRM to allow testing of seat and mattress assemblies in this alternative manner. However, FRA did intend to permit use of alternative test procedures to demonstrate flammability and smoke emission characteristics of materials (upon special approval by FRA). *See* 62 FR 49803. FRA has, in effect, granted approval to any party to use the ASTM E 1537 test procedure to demonstrate the flammability and smoke emission characteristics of seat and mattress assemblies in accordance with the requirements of Note 3, in lieu of utilizing the testing methods otherwise required by the table in Appendix B.

Note 4 applies to seat cushion testing without upholstery and is identical to Note 9 as proposed in the NPRM. The note renumbering provides consecutive numbering logic within the revised categories and function of materials.

Note 5 requires the dynamic testing of seat cushions to address the retention of fire retardant characteristics of foams after the materials have been in service for a period of time. The precedent for the addition of Note 5 requiring the performance of an endurance test (ASTM D 3574, Test I_2 (Dynamic Fatigue Test by the Roller Shear at Constant Force) or Test I_3 (Dynamic Fatigue Test by Constant Force Pounding) both using Procedure B) for seat cushions is noted in the FTA notices relating to transit bus and van materials (58 FR 54250, 57 FR 1360). The concern that fire and smoke emission characteristics of materials may change over time will be more fully examined in the second phase of this rulemaking.

A new category title "Fabrics" includes seat upholstery, mattress ticking and covers, and curtains, as formerly included under the category

[12] "Passenger Rail Car Seat Fire Tests; ASTME E 1357/CAL TB 133." J. Zicherman and S. Markos. Draft Project Memorandum. December 1998. A copy of the report has been placed in the public docket for this rulemaking.

[13] "Navigation and Inspection Circular No. 9–97. Guide to Structural Fire Protection." US Coast Guard. COMDTPUB P16700.4, October 31, 1997.

"Passenger seats, Sleeping and dining car components" in the table in Appendix B of the NPRM. The term "All" under function of material eliminates confusion as to what must be tested; if composed of fabric, window shades, draperies and wall coverings are required to be tested. The test procedure for purposes of the burn test is an FAA test found at 14 CFR part 25, Appendix F, Part I (vertical test). FRA has referenced this test procedure directly in the table and, thereby, removed the intermediate reference to 14 CFR § 25.853(a), as stated in the NPRM. Formerly, smoke emission requirements were limited to ≤250 for "coated" and ≤100 for "uncoated" fabrics at four minutes. The latter is typically PVC vinyl-based upholstery fabric. It was determined that a uniform criteria of ≤200 at four minutes for the smoke emission rate would be appropriate for both classes of fabrics, based in part on the known performance of the range of fabrics available, and the definition of coated and uncoated used by the ASTM, rather than the terms used in the above-cited report, "Rationale for Recommended Fire Safety Practices for Rail Transit Materials Selection," prepared by the Volpe Center in the early 1980s. Moreover, allowing a higher smoke emission performance criteria for coated fabrics—more than twice that allowed for uncoated fabrics—provides an inconsistent level of safety. In addition, the NFPA 130 Committee has accepted a recommendation for the identical change in its revised table requirements.

Notes 6 and 7, which pertain to washing and dry cleaning of materials, are almost identical to Notes 2 and 3 as proposed in the NPRM. These notes were renumbered to reflect consecutive numbering logic within the revised categories and function of materials. In addition, some upholstery materials must be dry cleaned. Accordingly, Note 7 applies to upholstery materials.

Note 8 was formerly the second sentence in Note 3 as proposed in the NPRM. However, since that sentence also included the words "washed," as well as "dry cleaned," this text was separated into a new Note 8 to ensure that the labeling requirement would be clearly understood to apply whatever cleaning method is used.

The new category "Vehicle Components" includes the majority of those materials formerly listed in the NPRM under the categories of "Panels," "Flooring" (except structural), thermal and acoustical "Insulation" (see discussion below), "Elastomers," "Exterior Plastic Components," and "Component Box Covers." Note 9 specifies, as a minimum, which combustible component materials must be tested, and is based on the components listed in the table in Appendix B of the NPRM.

Note 10 provides that testing of vehicle component miscellaneous, discontinuous small parts may not be necessary if such parts do not contribute materially to fire growth and the surface area of any individual small part is not greater than or equal to 16 square inches (100 cm^2) in end use configuration. A fire hazard analysis is required that considers both the quantity of the parts (*e.g.*, limited) and the location of the parts (*e.g.*, at discontinuous, or isolated locations, or both), as well as the vulnerability of the parts to ignition and contribution to flame spread. As an example, grommets used on seats or window shades present an insignificant fire threat and could logically and safely be exempted from testing. Such small parts have been selectively exempted through the use of similar language in rail car specification documents for many years. On the other hand, other materials, such as those used to produce wire ties (of which hundreds or thousands may be included in a single car to mount power and low voltage cable bundles) shall not be exempted from testing, as specified in Note 11.

Note 11 relates to Note 10. If the surface area of any individual small part is less than 16 square inches (100 cm^2) in end use configuration, such small part must be tested using the ASTM E 1354–97 test procedure, "Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter" (e.g., Cone Calorimeter), unless such small part has been shown not to contribute materially to fire growth following an appropriate fire hazard analysis as specified in Note 10. ASTM E 1354 measures heat release rate (HRR) at a prescribed heat flux using oxygen depletion techniques and produces information including data for time of ignition and peak HRR. The quotient of these two parameters has been evaluated as part of the current FRA-funded NIST research program, as well as in other research, and has been shown to reliably predict ignitability (*see* Hirschler, 1992, 1995 [14] [15]). Ignitability is also a parameter of importance for certain small parts used in rail passenger cars. In addition, such parts, because of their small size and end uses, may be important from an ignition perspective, but not from a flame spread perspective. The pass/fail criterion:

$$t_{ig} / \dot{q}''_{max} \leq 1.5$$

is defined by the ratio of a given sample's sustained time in seconds (s) to ignition (t_{ig}) to its peak (maximum) heat release rate ($\dot{q}''_{max}$), as measured in the Cone Calorimeter under the stipulated exposure conditions. This quantity has been demonstrated to be a direct measure of a material's sensitivity to ignition, which is important since the class of parts referred to here will not, due to their small size, contribute markedly to fire growth and heat release. However, these parts may, if capable of showing sustained ignition, cause secondary ignition of surrounding materials subsequent to their own ignition. The required heat flux exposure of 50 kW/m^2 is sufficiently high to ignite materials which have a reasonable degree of intrinsic ignition resistance. The pass/fail criterion is based on relatively current research, including that conducted by NIST for passenger railroad materials cited earlier. FRA notes that the ASTM E 1354 test method was not expressly referenced in the NPRM. However, as identified by the Volpe Center during its fire safety research, this test procedure is an appropriate way to address the flammability and smoke emission characteristics of small parts and its use in this final rule complements the exemption from testing otherwise provided for small parts as specified in Note 10. Note 12 relates to Note 11. If, in accordance with Note 11, small miscellaneous, discontinuous parts are tested using ASTM E 1354 and an appropriate fire hazard analysis accompanies the test results, such small parts do not have to be tested for smoke generation using the ASTM E 662 test procedure.

Flexible cellular foam products not used for seat and mattress applications are now included in the separate "Vehicle Components" category to address the unique fire-related properties represented when used for arm rests, seatback "crash" padding, and thermal and acoustical insulation. The different armrest test requirements in Note 8 in the NPRM have been deleted. The differentiation is no longer necessary since the new Function of Material "Flexible Cellular Foams" requires that armrest foam material be tested according to ASTM D 3675. If

[14] "Tools Available to Predict Full Scale Fire Performance of Furniture," Fire and Polymers II. Hirschler, M.M. Ed. G. L. Nelson, ACS Symp. Series 599. Ch. 36, pp. 593–608.

[15] "Effect of a Single Furnishing Product on Fire Hazard in Actual Occupancies Based on Heat Release Rate." Hirschler, M.M. Proceedings, NFPRF Symposium and Fire Risk & Hazard, San Francisco, June 25–27, 1997.

hard plastic, the armrest test requirement is ASTM E 162. Tests conducted by NIST in 1983 of Amtrak interior materials showed that foam armrests assist flame spread from seat cushions to wall liners.

Thermal and acoustical insulation materials were previously included as a separate table category in the NPRM, with values identical to cushions and mattresses for flame spread (less than or equal to 25) and smoke emission (less than or equal to 100 for 1.5 minutes). (Thermal and acoustical insulation did not expressly contain a smoke emission criterion for 4 minutes in the NPRM, though intended to be less than or equal to 200.) Flexible cellular foam is sometimes used as thermal and acoustical insulation; if so used, the requirements remain unchanged (25, 100, and 200, respectively). Otherwise, the performance criteria for insulation materials are now 35, 100, and 200, respectively, to be consistent with other vehicle components.

Note 13 relates to the use of carpet on walls and ceilings and is virtually identical to Note 10 as proposed in the NPRM. Note 14 concerns floor coverings and is virtually identical to Note 7 as proposed in the NPRM.

Two items having identical test performance criteria relating to use of plastics in light transmitting assemblies under the function of material column in the table in Appendix B in the NPRM have been combined into a new "Light transmitting plastics" function of material column in the final rule. This terminology is consistent with use of the term for identical plastics in the construction industry and building codes. The test performance criteria remain unchanged from the NPRM. In addition, this category also provides for uniform acceptance criteria for transparent plastics used in windscreens, which formerly were not clearly addressed. Note 15 pertains to window glazing and is virtually identical to that in Note 4 as proposed in the NPRM. Renumbering of the note reflects consecutive numbering logic.

The separate category of "Elastomers" in the table in the NPRM has been included under the function of material column in the "Vehicle Components" category in the table in the final rule. As indicated in Note 16, the flammability test method for elastomers has been revised to reference ASTM C 1166, which has superseded ASTM C 542 as proposed in the NPRM. As specified in Note 16, only elastomeric parts with surface areas equal to or more than 16 square inches (100 cm^2) in end use configuration are required to be tested using ASTM C 1166; elastomeric parts with smaller surface areas need not be tested using ASTM C 1166. Accordingly, diaphragms, window gaskets, door nosing, and roof mats would continue to be tested; in addition, due to their size, flexible flat seat "springs" or suspension membranes are also required to be tested using ASTM C 1166. Testing requirements for miscellaneous small parts comprised of elastomeric composition having a surface area less than 16 square inches are discussed in Notes 10, 11, and 12.

The test requirement differentiation in Notes 10, 11,12, and 16 according to part size is based on several factors. Many small miscellaneous parts used in car construction may be composed of elastomeric materials. These parts include cleats, blocks, abrasion and vibration damping pads. As such, these parts are frequently molded and are not readily available for testing in sizes required for either the ASTM E 162 or ASTM C 1166 test methods without undergoing special fabrication. Moreover, as noted in the discussion concerning Note 11, ASTM E 1354 is sensitive to ignition properties rather than flame spread. The later parameter would be a critical variable if such parts were used in applications with larger exposed surface areas.

The subject of "Wire and Cable" has been addressed by the addition of a new category in the table which requires smoke and flammability emission screening for wire and cable insulation. This is especially important due to the greater quantities of wire and cable used in electrically-powered intercity and commuter rail passenger cars. Fire-related tests and performance criteria for wire and cable insulation were not expressly included in the table proposed in Appendix B of the NPRM. The test methods of the IEEE, Insulated Cable Engineers Association (ICEA), National Electrical Manufacturers Association (NEMA), and Underwriters Laboratories Inc. (UL) specified in the final rule have long and successful histories of use, and have also been specified in the existing NFPA 130 requirements. In Note 17, one set of test methods is comprised of NEMA WC 3/ ICEA S–19–1981, paragraph 6.19.6, and the second set is comprised of UL 44 and UL 83. The ICEA and NEMA jointly issued NEMA WC 3/ICEA S–19–1981, and it includes testing for both thermosetting wire insulation and for thermoplastic wire insulation. In Note 18, in addition to passing ANSI/IEEE Standard 383, section 2.5, the power cable must also demonstrate continued circuit integrity for 5 minutes to allow continued short term operation of power when exposed to ignition.

FRA notes that, in its comments on the NPRM, the IEEE (like the NFPA) referred to the National Technology Transfer and Advancement Act of 1995, above, and the provision which requires, in general, that Federal agencies "use technical standards that are developed or adopted by voluntary consensus standards bodies." The IEEE cited its own development of voluntary consensus standards and their potential for integration in this rulemaking. In the second phase of the rulemaking, FRA will consider with the Working Group the appropriate use of other IEEE standards in this and other subject areas, in addition to the IEEE standard contained in this rule for fire safety.

The new category "Structural Components" addresses the structural integrity of floor assemblies and other structural elements. In Appendix B of the NPRM, only the performance of structural flooring was expressly addressed in the table itself and in the text of former Note 6. The first sentence of text relating to penetrations as proposed in Note 6 in the NPRM has been separated and inserted as Note 19 in the final rule. Note 19 requires that penetrations be tested as part of floor assemblies and other structural elements. The text in the second sentence of Note 6 as proposed in the NPRM specifically pertained to structural flooring assemblies, and it has been separated and inserted into Note 20 in the final rule.

Note 21 addresses the structural integrity of less well defined and design dependent rail car structural elements, other than floors. These structural elements may carry significant weight loads or have important fire barrier functions in protecting train occupants, or both. Examples include extensive HVAC or power-conditioning equipment installed on roofs or electrical equipment lockers, which may become involved in fires. Such fires may result from mechanical failures, electrical insulation breakdown, or from other hazards. Accordingly, Note 21 requires that portions of the vehicle body (other than floors but including the roof) which separate major ignition sources, or sources of fuel load from the vehicle interior, demonstrate fire endurance by a fire hazard analysis acceptable to the railroad.

The following summary lists the changes to the content of the notes and their numbering from the NPRM, reflecting both the table reorganization in the final rule as well as additional requirements: Note 1 is virtually identical to that in the NPRM. Note 2 is

virtually identical to Note 5 in the NPRM. Note 3 permits the testing of seat and mattress assemblies according to ASTM E 1537 using Cal TB 133 performance criteria. Note 4 is identical to Note 9 in the NPRM. Note 5 requires dynamic testing of seat cushions. Notes 6 and 7 are virtually identical to Notes 2 and 3 in the NPRM. The text of Note 8 is virtually identical to the second sentence of Note 3 in the NPRM. Note 9 lists vehicle component materials which must be tested, at a minimum. Note 10 allows a testing exception for materials used to fabricate small, discontinuous parts that will not contribute materially to fire growth in end use configuration, provided an appropriate fire hazard analysis is conducted. Note 11 requires that if the surface area of any individual small part is less than 16 square inches (100 cm^2) in end use configuration, such small part must be tested using the ASTM E 1354 test procedure, unless such small part has been shown not to contribute materially to fire growth following an appropriate fire hazard analysis as specified in Note 10. Note 12 relates to Note 11. If, in accordance with Note 11, small parts are tested using ASTM E 1354 and an appropriate fire hazard analysis accompanies the test results, such small parts do not have to be tested for smoke generation using the ASTM E 662 test procedure. Note 13 is virtually identical to Note 10 in the NPRM. Note 14 is virtually identical to Note 7 in the NPRM. Note 15 is virtually identical to Note 4 in the NPRM. Note 16 provides test requirements for elastomeric materials greater than 16 square inches (100 cm^2) in end use configuration and requires that, at a minimum, window gaskets, door nosings, diaphragms, and roof mats be tested. Notes 17 and 18 apply to wire and cable insulation. Note 19 is based on the last sentence of text formerly in Note 6 in the NPRM. Note 20 contains the first part of text of Note 6 in the NPRM. Note 21 addresses new test requirements for other structural components, such as car roofs and electrical cabinets, in addition to the floor assembly.

The list of standards contained in Appendix B, paragraph (c), in the NPRM has been revised and updated.

Appendix C—Suspension System Safety Performance Standards

The purpose of Appendix C is to prevent the occurrence of a variety of derailments due to forces on wheels. FRA has revised and clarified the requirements of this appendix based on comments received in response to the NPRM.

First, Bombardier commented that as proposed by FRA some differences existed between Appendix C and the requirements of the then-proposed Track Safety Standards, § 213.333. Consequently, Bombardier recommended that FRA change Appendix C to resolve the discrepancies; or eliminate Appendix C and reference the track safety standards' table of vehicle/track interaction performance limits in § 213.333 and incorporate Bombardier's proposed changes submitted as part of its September 15, 1997 hearing testimony on the track safety standards.

At the Working Group meeting in January 1998, a Volpe Center representative explained that the discrepancy between proposed Appendix C and the proposed track safety standards may be justifiable because Appendix C would apply only to new passenger equipment; whereas the then-proposed standards in the track safety rule would apply to both new and existing equipment. Appendix C's standards could therefore be necessarily stricter. In this regard, FRA has retained Appendix C and not simply referenced the track safety standards' table of vehicle/track interaction performance limits in 49 CFR § 213.333. Points 4 and 6 in Appendix C are not found in the track safety standards' table of vehicle/track interaction safety limits, and thus need to be retained in this passenger equipment rule to ensure the safety of new passenger equipment. However, FRA has otherwise reconciled Appendix C with the track safety standards' table in § 213.333.

Talgo, in its comments on proposed Appendix C, suggested that FRA reword the second paragraph in the Appendix to clarify that the performance standards are meant to apply to the average values for the parameters recorded during the time the train travels six feet. FRA has not adopted Talgo's suggestion, however. FRA intended that the performance standards apply to the maximum values for the parameters recorded to ensure that the passenger equipment operates within outer safety limits. Use of average values would mask real safety concerns.

Talgo also recommended that FRA define the method for signal filtering. FRA has adopted Talgo's recommendation and specified that, for purposes of this appendix, wheel/rail force measurements shall be processed through a low pass filter having a cut-off frequency of 25 Hz.

Finally, Talgo recommended that points 4 and 5 in the appendix be revised to acknowledge that they should not be applied to single-axle trucks. FRA has not adopted Talgo's recommendation with respect to points 4 and 5, to the extent that an exemption for rail cars with single-axle trucks was sought. However, FRA provides the following clarification of points 4 and 5. Point 4 provides that the sum of the vertical wheel loads on one side of any truck shall not be less than or equal to 20 percent of the static vertical axle load, and that this shall include the effect of a crosswind allowance as specified by the railroad for the intended service of the equipment. Whether the rolling assembly is a single-axle or a double-axle truck, or whether solid or stub axles are used to configure the truck, the risk of wheel unloading is still present. If the vehicle is subjected to forces that reduce the static vertical load per truck side to 20% or less of the static axle load, an unsafe condition may exist. Point 4, therefore, requires that the sum of vertical wheel loads on any side of any truck (or any other suspension configuration per car end or between two car ends) be always greater than 20% of the static vertical axle load. For stub (non-solid) axles, an equivalent static vertical axle load may be computed by adding the static vertical wheel loads on opposite sides. If the rolling assembly has only one axle per suspension unit, as in the case of Talgo equipment, then any single wheel load is required to be always greater than 20% of its static value. As a result, point 4 of this appendix will constitute a more stringent requirement than provided in point 3. Point 5 of the appendix requires that the maximum truck side L/V ratio not exceed 0.6. If the rolling assembly has only one axle per suspension unit, as in the case of Talgo equipment, then the corresponding L/V ratio computed for each consecutive pair of axles shall be similarly limited to 0.6.

Appendix D to Part 238—Requirements for External Fuel Tanks on Tier I Locomotives

This appendix contains the performance requirements for external fuel tanks on Tier I locomotives, as adapted from AAR Recommended Practice (RP) 506, "Performance Requirements for Diesel Electric Locomotive Fuel Tanks," effective July 1, 1995. In incorporating this industry practice into Federal regulation, FRA has rephrased the text of RP–506 in part. Yet, no substantive change is intended, except as noted below. RP–506, a copy of which is available in the public docket of this rulemaking, is comprised of sections entitled "Scope," "Background," "Limitations," and "Structural Strength Requirements." Appendix D represents the section

entitled "Structural Strength Requirements," or Section 4 in RP–506.

FRA has not included Section 4.4 of RP–506 in Appendix D. Section 4.4 ("Fueling") states, "Internal structures of [the] tank must not impede the flow of fuel through the tank while fueling at a rate of 300 gpm [gallons per minute]." The rate at which a fuel tank may be fueled is only a safety concern in the broad sense that the fuel not spill from the tank while fueling. Of course, FRA recognizes that railroad fuel dispensers utilize automatic shut-off devices that will stop the flow of fuel before the fuel spills out of the tank if the fuel is dispensed too readily for the tank to process. The ability of the tank to accept fuel at a certain rate per minute therefore appears to be more of an operational concern than a safety concern for a railroad in that the process of fueling locomotives not be unnecessarily delayed.. As a result, FRA will not make Section 4.4. of RP–506 a safety requirement of this rule, even though a railroad is free to make it its own requirement in acquiring locomotives.

X. Regulatory Impact

A. Executive Order 12866 and DOT Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing policies and procedures and is considered to be significant under both Executive Order 12866 and DOT policies and procedures (44 FR 11034; Feb. 26, 1979). FRA has prepared and placed in the docket a full regulatory evaluation of the rule (only a summary is provided below). This evaluation estimates the costs and consequences of the rule as well as its anticipated economic and safety benefits. The evaluation may be inspected and photocopied during normal business hours by visiting the FRA Docket Clerk at the Office of Chief Counsel, FRA, Seventh Floor, 1120 Vermont Avenue, in Washington, D.C. Photocopies may also be obtained by submitting a written request by mail to the FRA Docket Clerk at the Office of Chief Counsel, FRA, 1120 Vermont Ave, Mail Stop 10, Washington, D.C. 20590.

Certain requirements in the rule reflect current industry practices or restate existing regulations, or both. As a result, in calculating the costs of this rule, FRA has neither included the cost of those actions that would have been performed voluntarily in the absence of this rule, nor the costs of those actions that would have been required by the existing regulations that have been restated in this rule. Further, in calculating the benefits arising from this rule, FRA has not included as a benefit any good resulting from such actions.

FRA expects that overall this rule will save the passenger rail industry approximately $20 million Net Present Value (NPV) over the next twenty years. Rail passengers are expected to benefit from reduced delays totaling approximately $11 million (twenty-year NPV). FRA expects the NPV of the total twenty-year costs incurred associated with the rule to be $68.5 million. The NPV of the total twenty-year savings expected to accrue to the industry from the rule is approximately $87 million. For some passenger rail operators, the total costs incurred will exceed the total cost savings. For others, the cost savings will outweigh the costs. Expected safety benefits coupled with reduced passenger train delays outweigh the estimated costs of compliance with this rule.

The following tables present the estimated twenty-year costs and savings (NPV) associated with the specific requirements in this final rule. To the best of FRA's ability, FRA has apportioned the total costs and savings in the following tables between Amtrak, commuter railroads, and the State of Washington to more precisely show the effects of this final rule on these different entities. In commenting on the NPRM, APTA had recommended that FRA segregate the costs and benefits to commuter railroads from those involving Amtrak—and not represent both Amtrak and commuter railroads together. FRA has separately identified the State of Washington in the tables below because of the unique concerns involving its operation of Talgo passenger equipment, discussed above in the preamble.

Ideally, FRA would separately show the costs and savings for commuter railroads from those involving Amtrak for each requirement in the rule. However, FRA cannot separate some of the twenty-year costs and savings of this rule with any degree of accuracy between Amtrak and commuter railroads, especially for passenger equipment that is not yet in service. For instance, FRA does not know how often Amtrak will order new equipment or what specific type of equipment that may be. To a certain extent, railroads will be able to control their level of expenditures in response to this rule by choosing to overhaul or rebuild equipment they own or by purchasing existing equipment from other railroads instead of ordering new equipment. Of course, FRA can more precisely apportion the costs and savings between Amtrak and commuter railroads for the inspection, testing, and maintenance requirements in this rule; those requirements will most significantly impact the existing fleet of passenger equipment, which is readily identifiable.

NPV 20-YEAR COSTS INCURRED

Requirement category	Amtrak	Commuter rail	Washington State	Total
Fire Safety—Materials	$0	$0	$0	$0
Certification	(*)			84,752
New Equipment				253,625
Existing Equipment				675,004
Inspect/Test/Maint.				142,056
Train Hardware & Software	0	0	0	0
Inspect/Test/Maint. Program:				
Existing Equipment				277,816
New Equipment				167,958
Training Program:				
Course Development				1,720,629
Exterior Mech. Inspect.				5,081,250
Interior Mech. Inspect.				3,408,940
Pre-Revenue Service Testing:				
Equip w/Prev. Op. Exp.				16,950
Equip w/Out Prev. Op. Exp.				233,373
Rim-Stamped Straight-Plate Wheels	0	0	0	0

NPV 20-YEAR COSTS INCURRED—Continued

Requirement category	Amtrak	Commuter rail	Washington State	Total
Emergency Lighting	0	0	0	0
Talgo—Risk Assessment	0	0	280,634	280,634
Anticlimber & Link to Car Body	0	129,296	0	129,296
Forward End Structures	0	8,190,145	0	8,190,145
Corner Posts	0	1,532,517	0	1,532,517
Rollover Strength				29,305
Side Structure	0	0	0	0
Truck to Car Body Attachment	0	0	0	0
Glazing				1,303,894
Fuel Tanks	0	0	0	0
Electrical System	0	0	0	0
Suspension System	0	0	0	0
Brake System—Ease of Inspection				32,179
Interior fittings and Surfaces				2,608,856
Emergency Window Exits	0	0	0	0
Doors—Manual Door Release	0	3,968,598	0	3,968,598
Automated Monitoring				30,503
Mvmt Defective Equip—Non Brakes				25,934
Mvmt Defective Equip—Brakes				735,249
Reporting and Tracking System	0	5,371,054	0	5,371,054
Daily Exterior Mech. Inspections	3,009,223	16,712,854	0	19,722,077
Qualified Maintenance Person	0	1,447,370		1,447,370
Daily Interior Mech. Inspections				10,861,361
Periodic Mechanical Inspection				201,639
Single Car_Test	0	0	0	0
Total Costs				68,532,966

NPV 20-YEAR SAVINGS

Requirement category	Amtrak	Commuter rail	Washington State	Total
COT&S Interval Extensions:				
Coaches	$0	$9,227,510	$0	$9,227,510
MU locomotives	0	33,368,421	0	33,368,421
Cab cars	0	7,191,358	0	7,191,358
1,500-mile brake inspection	31,852,373	0	0	31,852,373
Class IA brake tests	0	4,360,701	0	4,360,701
Mvmt Defect Brakes—RR				632,592
Mvmt Defect Brakes—Passengers				11,368,651
Total Savings				98,019,605
Total Twenty-Year Net Impact: $29,486,639 (Savings).				

(* In the above tables, a "—" indicates that total costs or savings, as appropriate, could not be apportioned between Amtrak, commuter railroads, and the State of Washington.)

FRA notes that as a result of the final rule's requirement to conduct fire safety analyses of existing passenger equipment, the analyses may indicate that modifications to existing equipment are necessary to reduce the level of risk of fire or smoke to an acceptable level. Although costs associated with performing the analyses are included in the calculations above, costs associated with performing any equipment modifications are not. If costs associated with equipment modifications are incurred, they will be incurred over the first four years of the rule and could total between $8.75 million and $14 million for existing equipment. If costs associated with installation of additional fire and smoke detection and suppression systems are incurred for new equipment, total twenty-year costs (NPV) could increase by up to $3.9 million. These costs are not included in the calculations presented above because FRA cannot predict with any degree of precision the results of the fire safety analyses. Should equipment modifications, and fire and smoke detection and suppression systems be required, the total net impact of the rule could be reduced from a savings of $29.5 million to a savings of $11.6 million (NPV). Rail operators would experience a minimal savings.

Intercity passenger and commuter railroads generally offer the travelling public one of the safest forms of transportation available. However, the history of passenger train accidents shows that the potential for injury and loss of life is significant. Between January 1, 1990, and December 31, 1997, there were a total of 93 passenger fatalities on intercity passenger and commuter railroads, representing a total economic loss of $251 million. Sixty-eight passenger fatalities occurred when the trains carrying the passengers were involved in derailments or collisions. FRA believes that it is reasonable to expect that the measures called for in this rule will prevent or mitigate the severity of casualties greater in value than the costs to rail carriers of implementing the requirements of this rule.

The unique circumstances surrounding each future passenger train accident will determine the ultimate effectiveness of this rule and FRA's other strategies to improve passenger rail safety. Similar accidents have unique characteristics which ultimately determine an accident's severity in terms of casualties. As a result, we cannot at this time forecast future accident scenarios with a level of precision that would allow us to predict the actual need for the particular measures in this rule. However, this rule protects railroad employees and passengers against known hazards that can be mitigated in a cost-effective manner. For each cost associated with a requirement in this rule, FRA has examined the potential safety benefits accruing from the requirement. Certain elements of the rule, such as the structural requirements, will directly improve safety by decreasing threats to life and property. Other elements of the rule will provide savings to the rail industry while maintaining or improving the industry's excellent safety record overall.

In its comments on the proposed rule, the NCDOT stated that the summary economic analysis contained in the NPRM did not include an analysis of the impact on individual States. The NCDOT believed the cost summary to be understated and not include an operator by operator analysis. The above summary does specify this rule's impact on Washington State. Further, as noted, a copy of the full regulatory evaluation of this rule is available through the FRA Docket Clerk. That evaluation does include, where appropriate, discussions of the rule's impact on particular railroads or groups of railroads. The evaluation also takes into consideration that individual States will contract with Amtrak for the provision of rail service on their behalf. In this regard, for example, a State may utilize Amtrak's inspection forces trained under the rule, and thus not have to train inspection forces on its own.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires an assessment of the impacts of proposed rules on small entities. FRA has conducted a regulatory flexibility assessment of this final rule's impact on small entities, and the assessment has been placed in the public docket for this rulemaking. FRA certifies that the final rule will not have a significant impact on a substantial number of small entities. This final rule affects intercity passenger and commuter railroads, rapid transit operations that operate on the general system of transportation, and certain private car owners. FRA notes that the standards contained in this rule were developed in consultation with a Working Group that included Amtrak, individual commuter railroads, APTA, and the AAPRCO. APTA represents the interests of commuter railroads and rapid transit systems in regulatory matters. The AAPRCO represents the interests of private car owners in regulatory matters.

Except for private car owners, the entities impacted by the final rule are governmental jurisdictions, known as transit authorities, none of which are small for purposes of the prevailing law. The statutory definition of "small governmental jurisdictions" is a governmental entity that serves a population center of 50,000 or less. *See* 5 U.S.C. 601(5). The transit authorities subject to the requirements of this rule do not fall within the class established by statute. Nevertheless, FRA considered the impacts of this final rule on the smaller entities subject to the rule. Commuter railroads and rapid transit systems are part of larger transit organizations that receive Federal funds. The level of costs incurred by each organization should generally vary in proportion to either the size of the organization or the extent to which the organization purchases newly manufactured passenger equipment. For instance, railroads with fewer employees and passenger equipment will have lower costs associated with employee training and the inspection, testing, and maintenance of passenger equipment. FRA notes that this rule offers railroads the opportunity to experience savings in the areas of inspection, testing, and maintenance of passenger equipment. The extent of these savings will generally vary proportionally with the size of the fleet of each railroad.

FRA is making only certain requirements in this rule applicable to private cars that are operated in passenger trains subject to this rule. FRA considered the potential burdens associated with applying the various requirements in this rule to private car owners and operators. FRA is limiting the application of this rule only to those requirements necessary to ensure the safe operation of the passenger train in which the private cars operate, as well as the safety of railroad personnel handling or inspecting the cars. The economic impacts to private cars owners are expected to be minimal, however. Among the provisions applicable to private cars are daily mechanical inspection requirements; brake inspection, testing, and maintenance requirements; and a prohibition concerning rim-stamped straight-plate wheels on tread-braked passenger equipment.

FRA recognizes that private cars affected by this final rule are principally hauled by Amtrak, which imposes its own safety requirements on the operation of private cars. As a result, the daily exterior mechanical inspection requirements in this final rule, though new Federal requirements, are only minimally more stringent than the mechanical inspections currently performed by Amtrak on its own. The final rule does offer the flexibility to move equipment with power brake defects, as well as the flexibility to perform daily brake tests and mechanical inspections at locations best suited for performing such tests and inspections. To the extent that all passenger equipment is subject to daily exterior mechanical inspections, private cars will not be affected disproportionately.

Generally, the final rule requires that rim-stamped straight-plate wheels not be used as replacement wheels on tread-braked private cars. Amtrak has established a private car policy which does not allow the use of rim-stamped straight-plate wheels as replacement wheels on private cars. Further, Amtrak will decline to move any tread-braked private car with a rim-stamped straight-plate wheel after June 30, 2000. Because Amtrak holds private cars to standards as high or higher than those contained in this rule, there will be no additional economic impact imposed on private cars operated in Amtrak trains from this rule's rim-stamped straight-plate wheel provision. Private cars are also subject to provisions in this final rule concerning protection against personal injury, suspension system safety, safety appliances, and brake system safety. These requirements represent either current industry practice or current Federal safety requirements (which are being restated in this final rule).

Smaller passenger rail operations such as tourist, scenic, excursion, and historic railroads are exempt from this final rule. A joint FRA/industry Working Group will be developing recommendations regarding the applicability of FRA regulations, including this one, to tourist, scenic, historic, and excursion railroads. Based on that Working Group's recommendations, portions of the final rule may apply to some or all of these railroads.

C. Paperwork Reduction Act

This rule contains information collection requirements. FRA has

submitted these information collection requirements to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The sections that contain the new or revised information collection requirements, or both, and the estimated time to fulfill each requirement are as follows:

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
216.14—Special notice for repairs—passenger equipment.	19 railroads	12 forms	5 minutes	1 hour	$39
238.1—Earlier application—rule requirements—sections 238.15, 238.17, 238.19, 238.107, 238.109.	19 railroads	15 notifications	45 minutes	11 hours	429
238.7—Waivers	19 railroads	12 waivers	2 hrs/25 hrs	70 hours	2,730
238.11—Penalties	19 railroads	1 falsified rept	15 minutes	.25 hr.	9
238.15—Movement of passenger equipment with power brake defects, and	19 railroads	1,000 cards/tags	3 minutes	50 hours	2,500
—Movement of passenger equipment with power brake defects develop en route.	19 railroads	288 cards/tags	3 minutes	14 hours	700
—Conditional requirement	19 railroads	144 notifications	3 minutes	7 hours	350
238.17—Movement of passenger equipment with other than power brake defects.	19 railroads	200 tags/cards	3 minutes	10 hours	340
—Movement of passenger equipment with safety appliance defects.	19 railroads	76 tags	3 minutes	4 hours	136
	19 railroads	38 notifications	30 seconds	19 min.	11
238.19—Reporting and tracking defective passenger equipment.	19 railroads	N/A	Usual and customary procedure.	N/A	N/A
—List of power brake repair points.	1 railroad	1 list	2 hours	2 hours	78
—Amendments to list	1 railroad	1 update	1 hour	1 hour	39
238.21/238.103/238.223(a)/238.309(2)/238.311(a)/238.405(a)/238.427(a):					
—Petitions for special approval of alternative standard.	19 railroads	1 petition	16 hours	16 hours	624
—Petitions for special approval of alternative compliance.	19 railroads	1 petition	120 hours	120 hours	4,680
—Petitions for special approval of pre-revenue service acceptance testing plan.	19 railroads	1 petition	24 hours	24 hours	936
—Comments on the petitions.	Unknown	2 comments	1 hour	2 hours	140
238.103—Fire Safety:					
—Plan	6 equipment manufacturers.	2.4 eq. design (5 yr. average).	200 hours	480 hours	33,360
—Subsequent equipment orders.	6 equipment manufacturers.	2.4 eq. design (5 yr. average).	60 years	144 hours	14,400
—Preliminary fire safety analysis.	19 railroads	19 documents	119 hours	2,264 hours	501,241
—Final fire safety analysis	18 railroads	6 documents (3 yr. average).	135 hours	811 hours	81,067
—Fire safety analysis on equipment transfer.	19 railroads	1 document	8 hours	8 hours	800
—Written procedures—fire safety system and fire safety equipment.	19 railroads	19 written procedures	80 hours	1,520 hours	106,400
238.105—Train hardware and software safety.	197 railroads	N/A	Usual and customary procedure.	N/A	N/A
238.107—Inspection, testing, and maintenance plan:					
—Plan	19 railroads	N/A	Usual and Customary procedure.	N/A	N/A
—Annual plan review by railroads.	19 railroads	19 reviews	60 hours	1,140 hours	44,460
238.109 Training, qualification, and designation program:					

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Training employees to perform brake-related inspections, tests, or maintenance.	17 railroads	N/A	Usual and customary procedure.	N/A	N/A
—Training employees to perform daily mechanical inspections.	19 railroads	6,020 trained employees/241 instructors.	2 hours	12,522 hours	421,410
—Development of training program.	19 railroads	19 programs	520 hours	9,880 hours	360,620
—Recordkeeping	19 railroads	6,020 records	3 minutes	301 hours	11,739
238.111—Pre-revenue service acceptance testing plan—equip. prev. in revenue service.	6 equipment manufacturers.	2.4 plans (5 yr. average).	16 hours	38 hours	2,641
—Pass equip. that has not been in revenue service in U.S.	6 equipment manufacturers.	2.4 plans (5 yr. average).	200 hours	480 hours	42,144
—Subsequent equipment orders.	6 equipment manufacturers.	2.4 plans (5 yr. average).	60 hours	144 hours	11,472
—Major upgrades/intro. new tech.—Tier II.	1 equipment manuf	None likely	N/A	N/A	N/A
238.201—Alternative compliance.	19 railroads	Incl. in 238.21	Inc. 238.21	Incl. 238.21	Incl. 238.21
238.203—Static end strength:					
—Grandfathering noncompliant equip.	19 railroads	1 petition	300 hours	300 hours	21,000
—Comment	Unkown	6 comments	20 hours	120 hours	8,400
238.211—Collision posts	19 railroads	Incl. in 238.21	Incl. 238.21	Incl. 238.21	Inc. 238.21
238.223—Locomotive fuel tanks—alt. std.	19 railroads	Incl. in 238.21	Incl. 238.21	Incl. 238.21	Inc 238.21
238.231—Brake system—identified & marked.	2 brake manufacturers.	N/A	N/A	Usual and cust.	N/A
238.237—Automated monitoring:					
—Alerter/Deadman control—documentation.	19 railroads	19 documents	2 hours	38 hours	1,482
—Defective alerter/Deadman control.	19 railroads	100 tags	3 minutes	5 hours	250
238.301—Scope—requirements—earlier application.	19 railroads	Incl. in 238.1	Incl. in 238.1	Incl. in 238.1	Incl. 238.1
238.303—Exterior calendar day mechanical inspection of passenger equipment—door and cover plates guarding high voltage equip.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—MU locomotives w/ inoperative dyn. brakes.	19 railroads	50 tags/cards	3 minutes	3 hours	150
—Conventional locos. w/ inoper. dyn. brakes.	19 railroads	50 tags/cards	3 minutes	3 hours	150
—Written notice—inoperative dyn. brakes.	19 railroads	25 written not	3 minutes	1 hour	34
—Records—ext. calendar day mech. insp.	19 railroads	2,022,436 recd	1 minute	33,707 hours	1,146,038
238.305—Interior calendar day mechanical inspection of passenger cars:					
—Stenciling or marking emergency brake valve.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Stenciling or marking high voltage equipment.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Tagging of defective doors.	10 railroads	600 tags	1 minute	10 hours	340
—Safety related signage	N/A	N/A	Usual and customery customery procedure.	N/A	N/A
—Records	19 railroads	1,866,904 recds	1 minute	31,115 hours	1,057,910
238.307—Periodic mechanical inspection of passenger cars:					
—Written notification—alt. periodic insp. int.	5 railroads	5 notifications	5 hours	25 hours	975
—Switches—markings	N/A	N/A	Usual and customary procedure.	N/A	N/A

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Records	6 railroads	15 records	3 minutes	.75 hours	29
—Detailed documentation—alt. insp. interval.	5 railroads	5 documents	100 hours	500 hours	19,500
238.309—Alternative maintenance proc.	19 railroads	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Inc. 238.21
—Records of periodic maintenance.	N/A	N/A	Usual and customary procedure.	N/A	N/A
238.311—Single car test—alt. procedure.	19 railroads	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Inc.—238.21
—Tagging to indicate need—single car test.	19 railroads	25 tags	3 minutes	1 hour	34
238.313—Class I brake test	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Documentation—test already performed.					
—Qualif. maint. Person.—statement in cab.					
238.315—Class IA brake test:					
—Brake pipe pressure—communications.	19 railroads	365,000 comm	3 seconds	304 hours	10,336
—Communicating signal system—tests.	19 tests	365,000 tests	15 seconds	1,521 hours	51,714
238.317—Class II Brake Test:					
—Brake pipe pressure—communications.	19 railroads	365,000 comm	3 seconds	304 hours	10,336
—Communicating signal system—tests.	19 railroads	365,000 tests	15 seconds	1,521 hours	51,714
238.403—Crash energy management requirements.	1 railroad	1 design	120 hours	120 hours	12,000
238.405—Longitudinal static compressive.	1 railroad	Incl. in 238.21	Incl.—238.21	Incl.—238.21	Inc.—238.21
238.421—Gazing:					
—Marking of glazing material.	N/A	N/A	Usual and customary procedure.	N/A	N/A
—Stenciling requirement	N/A	N/A	Usual and customary procedure.	N/A	N/A
238.423—Fuel tanks—equiv. level of safety.	N/A	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Inc.—238.21
238.427—Suspension system—alt. stds.	N/A	Incl. in 238.21	Incl. in 238.21	Incl. in 238.21	Incl.—238.445
—Hunting oscillations—alarms to train oper.	1 railroad	Incl. in 238.445	Inc.—238.445	Inc.—238.445	In.—238.445
238.431—Brake system	1 railroad	1 analysis	40 hours	40 hours	1,560
—Brake system failures	1 railroad	Incl. 238.445	Incl. 238.445	Incl. 238.445	In 238.445
—Wheel slide alarms	1 railroad	Incl. 238.445	Incl. 238.445	Incl. 238.445	In 238.445
238.437—Emergency communication.	3 car manufacturers	3 instructions	1 hour	3 hours	102
238.441—Emergency roof entrance location.	3 car manufacturers	16 cars marked	15 minutes	4 hours	136
—Markings					
238.445—Automated monitoring.	1 railroad	200 alerts	1 second	3 minutes	2
—Self test feature—notifications to train operator.	1 railroad	6,300 notifications	1 second	2 hours	68
238.447—Train operator's controls and power car cab layout.	N/A	N/A	Usual and customary procedure.	N/A	N/A
238.503—Inspection, testing, and maintenance requirements:					
238.505—Program approval procedures:					
—Submission of program	1 railroad	1 program	80 hours	80 hours	3,120
—Amendments to program.	1 railroad	1 amendment	8 hours	8 hours	312
—Comments	4 unions/individuals	4 comments	1 hour	4 hours	276
—Approval	N/A	N/A	No disapprovals expected at this time.	N/A	N/A
238.603—Safety planing requirements—Process to introduce new technology.	1 railroad	1 safety plan	100 hours	100 hours	3,900
Appendix B to Part 238—labeling requirement.	5–6 seat manufacturers.	N/A	Usual customary procedure.	N/A	N/A

CFR section	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost
—Seat/Mattress assemblies—fire haz. analysis.	5–6 manuf	Incl. 238.103	Incl. 238.103	Incl. 238.103	In 238.103
—Disc. small parts—fire hazard analysis.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103
—Surface any small part—fire haz. analysis.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103
—Small elastomers/misc. parts—fire haz. anal.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103
—Portions vehicle body—fire hazard analysis.	5–6 manuf	Incl. in 238.103	Incl. 238.103	Incl. 238.103	In238.103

All estimates include the time for reviewing instructions; searching existing data sources; gathering or maintaining the needed data; and reviewing the information. For information or a copy of the paperwork package submitted to OMB contact Mr. Robert Brogan, Office of Safety, Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 17, Washington, D.C. 20590 (telephone: (202) 498–6292) or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 35, Washington, D.C. 20590 (telephone: (202) 498–6133).

FRA cannot impose a penalty on persons for violating information collection requirements which do not display a current OMB control number, if required. The information collection requirements contained in this rule have been approved under OMB control number 2130–0544.

D. Environmental Impact

FRA has evaluated these regulations in accordance with its procedures for ensuring full consideration of the environmental impact of FRA actions, as required by the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*), other environmental statutes, Executive Orders, and DOT Order 5610.1c. This final rule meets the criteria that establish this as a non-major action for environmental purposes.

E. Federalism Implications

This rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The fundamental policy decision providing that Federal regulations should govern aspects of service provided by municipal and public benefit corporations (or agencies) of State governments is embodied in the statute quoted above (49 U.S.C. 20133). Further, FRA has consulted with commuter railroad authorities in developing this rule.

F. Compliance With the Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) each Federal agency "shall, unless otherwise prohibited by law, assess the effects of Federal Regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law)." Sec. 201. Section 202 of the Act further requires that "before promulgating any general notice of proposed rulemaking that is likely to result in promulgation of any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any 1 year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the agency shall prepare a written statement . . ." detailing the effect on State, local and tribal governments and the private sector. The final rules issued today will not result in the expenditure, in the aggregate, of $100,000,000 or more in any one year, and thus preparation of a statement was not required.

G. Effects on the Year 2000 Computer Problem

This rule does not mandate business process changes nor require modifications to computer systems that will detract from resources railroads will apply toward addressing any possible Year 2000 computer problems. Although business process changes and modifications to computer systems may occur as this rule is implemented, railroads would only voluntarily make such changes and modifications before the year 2000.

Implementation of certain inspection, testing, and maintenance requirements, as well as recordkeeping and tracking of defective equipment requirements, would require use of the same resources railroads will apply toward resolving Year 2000 computer problems. However, FRA will not require that such implementation occur before July, 2000. FRA will apply requirements for inspection, testing, and maintenance of equipment, and recordkeeping and tracking, at an earlier date only to those railroads that indicate a desire for this to occur. Because certain of the requirements for inspection, testing, and maintenance offer railroads an opportunity to achieve efficiencies and savings, some railroads may voluntarily choose to have these requirements applied to them earlier. FRA notes that its implementation schedule for inspection, testing, and maintenance requirements, as well as recordkeeping and tracking requirements, was also developed taking into consideration the time generally needed for railroads to develop maintenance programs and implement training requirements as required by this rule.

XI. List of Subjects

49 CFR Part 216

Penalties, Railroad safety, Reporting and recordkeeping requirements, Special notice for repairs.

49 CFR Part 223

Glass and glass products, Glazing, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 229

Locomotives, Penalties, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 231

Penalties, Railroad safety, Safety appliances.

49 CFR Part 232

Penalties, Power brakes, Railroad safety, Reporting and recordkeeping requirements.

49 CFR Part 238

Fire prevention, Incorporation by reference, Passenger equipment, Penalties, Railroad safety, Reporting and recordkeeping requirements.

The Rule

In consideration of the foregoing, chapter II, subtitle B of title 49, Code of Federal Regulations is amended as follows:

PART 216—[AMENDED]

1. The authority citation for part 216 is revised to read as follows:

Authority: 49 U.S.C. 20102–04, 20111, 20133, 20137–38, 20141, 20143, 20301–02, 20701–02, 21301–02, 21304; 49 CFR 1.49(c), (m).

2. Section 216.1(a) is revised to read as follows:

§ 216.1 Application.

(a) This part applies, according to its terms, to each railroad that uses or operates—

(1) A railroad freight car subject to part 215 of this chapter;

(2) A locomotive subject to 49 U.S.C. chapter 207 (49 U.S.C. 20701–03); or

(3) Railroad passenger equipment subject to part 238 of this chapter.

* * * * *

§ 216.3 [Amended]

3. Section 216.3(b) is amended by removing the phrase "section 206 of the Federal Railroad Safety Act of 1970 (45 U.S.C. 435)" and adding in its place the phrase "49 U.S.C. 20105".

§ 216.5 [Amended]

4. Section 216.5(c) is amended by adding after "216.13,": "216.14,".

§ 216.13 [Amended]

5. The first sentence of § 216.13(a) is removed and a new sentence is added in its place to read as follows: "When an FRA Motive Power and Equipment Inspector or State Equipment Inspector determines a locomotive is not safe to operate in the service to which it is put, whether by reason of nonconformity with the FRA Railroad Locomotive Safety Standards set forth in part 229 of this chapter or the FRA Railroad Locomotive Inspection Regulations set forth in part 230 of this chapter or by reason of any other condition rendering the locomotive unsafe, he or she will notify the railroad in writing that the locomotive is not in serviceable condition."

5a. The third sentence of § 216.13(a) is amended by removing the phrase "part 230" and adding in its place the phrase "parts 229 and 230".

6. Section 216.14 is added to read as follows:

§ 216.14 Special notice for repairs—passenger equipment.

(a) When an FRA Motive Power and Equipment Inspector or a State Equipment Inspector determines that railroad passenger equipment is not in conformity with one or more of the requirements of the FRA Passenger Equipment Safety Standards set forth in part 238 of this chapter and that it is unsafe for further service, he or she will issue a written Special Notice to the railroad that the equipment is not in serviceable condition. The Special Notice describes the defect or defects that cause the equipment to be in unserviceable condition. After receipt of the Special Notice, the railroad shall remove the equipment from service until it is restored to serviceable condition. The equipment may not be deemed in serviceable condition until it complies with all applicable requirements of part 238 of this chapter.

(b) The railroad shall notify in writing the FRA Regional Administrator for the FRA region in which the Special Notice was issued when the equipment is returned to service, specifying the repairs completed.

(c) Railroad passenger equipment subject to a Special Notice may be moved from the place where it was found to be unsafe for further service to the nearest available point where the equipment can be repaired, if such movement is necessary to make the repairs. However, the movement is subject to the further restrictions of §§ 238.15 and 238.17 of this chapter.

§ 216.17 [Amended]

7. Section 216.17(a) is amended as follows:

a. By adding, after "216.13", "216.14,";

b. By adding, after the word "locomotive," in the third sentence, the phrase "railroad passenger equipment,"; and

c. By revising the fifth sentence to read as follows:

"If upon reinspection, the railroad freight car, locomotive, or passenger equipment is found to be in serviceable condition, or the track is found to comply with the requirements for the class at which it was previously operated by the railroad, the FRA Regional Administrator or his or her agent will immediately notify the railroad, whereupon the restrictions of the Special Notice cease to be effective."

Subpart B—[Amended]

8. In subpart B of part 216, the phrases "the FRA Regional Director for Railroad Safety", "the FRA Regional Director of Railroad Safety", "a Regional Director" and "the Regional Director" are removed, and the phrase "the FRA Regional Administrator" is added in their place.

PART 223—[AMENDED]

9. The authority citation for part 223 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20701–20702, 21301–02, 21304; 49 CFR 1.49(c), (m).

10. Section 223.8 is added to subpart B to read as follows:

§ 223.8 Additional requirements for passenger equipment.

In addition to the requirements contained in this part, requirements for emergency window exits and window safety glazing on passenger equipment, as defined in § 238.5 of this chapter, are also found in part 238 of this chapter.

PART 229—[AMENDED]

11. The authority citation for part 229 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20137–38, 20143, 20701–03; 21301–02, 21304; 49 CFR 1.49(c), (m).

12. Section 229.3 is amended by revising paragraph (a) and adding new paragraphs (c), (d), and (e) to read as follows:

§ 229.3 Applicability.

(a) Except as provided in paragraphs (b) through (e) of this section, this part applies to all standard gage railroads.

(b) * * *

(c) Paragraphs (a) and (b) of § 229.125 do not apply to Tier II passenger equipment as defined in § 238.5 of this chapter (*i.e.*, passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph).

(d) On or after November 8, 1999, paragraphs (a)(1) and (b)(1) of § 229.141 do not apply to "passenger equipment" as defined in § 238.5 of this chapter, unless such equipment is excluded from the requirements of §§ 238.203 through 238.219, and § 238.223 of this chapter by operation of § 238.201(a)(2) of this chapter.

(e) Paragraphs (a)(2) through (a)(4), and (b)(2) through (b)(4) of § 229.141 do not apply to "passenger equipment" as defined in § 238.5 of this chapter that is placed in service for the first time on or after September 8, 2000, unless such equipment is excluded from the requirements of §§ 238.203 through

238.219, and § 238.223 of this chapter by operation of § 238.201(a)(2) of this chapter.

PART 231—[AMENDED]

13. The authority citation for part 231 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20131, 20301–03, 21301–02, 21304; 49 CFR 1.49(c), (m).

14. Section 231.0 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; by revising paragraph (a); and by adding a new paragraph (c) to read as follows:

§ 231.0 Applicability and penalties.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all standard gage railroads.

(b) * * *

(c) Except for the provisions governing uncoupling devices, this part does not apply to Tier II passenger equipment as defined in § 238.5 of this chapter (*i.e.*, passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph).

* * * * *

PART 232—[AMENDED]

15. The authority citation for part 232 is revised to read as follows:

Authority: 49 U.S.C. 20102–03, 20133, 20141, 20301–03, 20306, 21301–02, 21304; 49 CFR 1.49 (c), (m).

16. Section 232.0 is amended by redesignating paragraphs (c) through (e) as paragraphs (d) through (f), respectively; by revising paragraph (a); and by adding a new paragraph (c) to read as follows:

§ 232.0 Applicability and penalties.

(a) Except as provided in paragraphs (b) and (c) of this section, this part applies to all standard gage railroads.

(b) * * *

(c) Except for §§ 232.2 and 232.21 through 232.25, this part does not apply to a "passenger train" or "passenger equipment" as defined in § 238.5 of this chapter that is subject to the inspection and testing requirements contained in part 238 of this chapter.

* * * * *

17. Part 238 is added to read as follows:

PART 238—PASSENGER EQUIPMENT SAFETY STANDARDS

Subpart A—General

Sec.
238.1 Purpose and scope.
238.3 Applicability.
238.5 Definitions.
238.7 Waivers.
238.9 Responsibility for compliance.
238.11 Civil penalties.
238.13 Preemptive effect.
238.15 Movement of passenger equipment with power brake defects.
238.17 Movement of passenger equipment with other than power brake defects.
238.19 Reporting and tracking defective passenger equipment.
238.21 Special approval procedure.
238.23 Information collection.

Subpart B—Safety Planning and General Requirements

238.101 Scope.
238.103 Fire safety.
238.105 Train hardware and software safety.
238.107 Inspection, testing, and maintenance plan.
238.109 Training, qualification, and designation program.
238.111 Pre-revenue service acceptance testing plan.
238.113 Emergency window exits.
238.115 Emergency lighting.
238.117 Protection against personal injury.
238.119 Rim-stamped straight-plate wheels.

Subpart C—Specific Requirements for Tier I Passenger Equipment

238.201 Scope/alternative compliance.
238.203 Static end strength.
238.205 Anti-climbing mechanism.
238.207 Link between coupling mechanism and car body.
238.209 Forward-facing end structure of locomotives.
238.211 Collision posts.
238.213 Corner posts.
238.215 Rollover strength.
238.217 Side structure.
238.219 Truck-to-car-body attachment.
238.221 Glazing.
238.223 Locomotive fuel tanks.
238.225 Electrical system.
238.227 Suspension system.
238.229 Safety appliances.
238.231 Brake system.
238.233 Interior fittings and surfaces.
238.235 Doors.
238.237 Automated monitoring.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

238.301 Scope.
238.303 Exterior calendar day mechanical inspection of passenger equipment.
238.305 Interior calendar day mechanical inspection of passenger cars.
238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.
238.309 Periodic brake equipment maintenance.
238.311 Single car test.
238.313 Class I brake test.
238.315 Class IA brake test.
238.317 Class II brake test.
238.319 Running brake test.

Subpart E—Specific Requirements for Tier II Passenger Equipment

238.401 Scope.
238.403 Crash energy management.
238.405 Longitudinal static compressive strength.
238.407 Anti-climbing mechanism.
238.409 Forward end structures of power car cabs.
238.411 Rear end structures of power car cabs.
238.413 End structures of trailer cars.
238.415 Rollover strength.
238.417 Side loads.
238.419 Truck-to-car-body and truck component attachment.
238.421 Glazing.
238.423 Fuel tanks.
238.425 Electrical system.
238.427 Suspension system.
238.429 Safety appliances.
238.431 Brake system.
238.433 Draft system.
238.435 Interior fittings and surfaces.
238.437 Emergency communication.
238.439 Doors.
238.441 Emergency roof entrance location.
238.443 Headlights.
238.445 Automated monitoring.
238.447 Train operator's controls and power car cab layout.

Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment

238.501 Scope.
238.503 Inspection, testing, and maintenance requirements.
238.505 Program approval procedure.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

238.601 Scope.
238.603 Safety planning requirements.

Appendix A to Part 238—Schedule of Civil Penalties

Appendix B—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

Appendix C to Part 238—Suspension System Safety Performance Standards

Appendix D to Part 238—Requirements for External Fuel Tanks on Tier I Locomotives

Appendix E to Part 238—General Principles of Reliability-Based Maintenance Programs

Authority: 49 U.S.C. 20103, 20107, 20133, 20141, 20302–03, 20306, and 20701–02; 49 CFR 1.49.

Subpart A—General

§ 238.1 Purpose and scope.

(a) The purpose of this part is to prevent collisions, derailments, and other occurrences involving railroad passenger equipment that cause injury or death to railroad employees, railroad passengers, or the general public; and to

mitigate the consequences of such occurrences to the extent they cannot be prevented.

(b) This part prescribes minimum Federal safety standards for railroad passenger equipment. This part does not restrict a railroad from adopting and enforcing additional or more stringent requirements not inconsistent with this part.

(c) Railroads to which this part applies shall be responsible for compliance with all of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D of this part effective July 12, 2001.

(1) A railroad may request earlier application of the requirements contained in §§ 238.15, 238.17, 238.19, 238.107, 238.109, and subpart D upon written notification to FRA's Associate Administrator for Safety. Such a request shall indicate the railroad's readiness and ability to comply with all of the provisions referenced in paragraph (c) introductory text of this section.

(2) Except for paragraphs (b) and (c) of § 238.309, a railroad may specifically request earlier application of the maintenance and testing provisions contained in §§ 238.309 and 238.311 simultaneously. In order to request earlier application of these two sections, the railroad shall indicate its readiness and ability to comply with all of the provisions contained in both of those sections.

(3) Paragraphs (b) and (c) of § 238.309 shall apply beginning September 9, 1999.

§ 238.3 Applicability.

(a) Except as provided in paragraph (c) of this section, this part applies to all:

(1) Railroads that operate intercity or commuter passenger train service on standard gage track which is part of the general railroad system of transportation; and

(2) Railroads that provide commuter or other short-haul rail passenger train service in a metropolitan or suburban area as described by 49 U.S.C. 20102(1), including public authorities operating passenger train service.

(b) Railroads that permit to be used or hauled on their lines passenger equipment subject to this part, in violation of a power brake provision of this part or a safety appliance provision of this part, are subject to the power brake and safety appliance provisions of this part with respect to such operations.

(c) This part does not apply to:

(1) Rapid transit operations in an urban area that are not connected to the general railroad system of transportation;

(2) A railroad that operates only on track inside an installation that is not part of the general railroad system of transportation;

(3) Tourist, scenic, historic, or excursion operations, whether on or off the general railroad system of transportation; or

(4) Circus trains.

§ 238.5 Definitions.

As used in this part—

AAR means the Association of American Railroads.

APTA means the American Public Transit Association.

Administrator means the Administrator of the Federal Railroad Administration or the Administrator's delegate.

Alerter means a device or system installed in the locomotive cab to promote continuous, active locomotive engineer attentiveness by monitoring select locomotive engineer-induced control activities. If fluctuation of a monitored locomotive engineer-induced control activity is not detected within a predetermined time, a sequence of audible and visual alarms is activated so as to progressively prompt a response by the locomotive engineer. Failure by the locomotive engineer to institute a change of state in a monitored control, or acknowledge the alerter alarm activity through a manual reset provision, results in a penalty brake application that brings the locomotive or train to a stop.

Anti-climbing mechanism means the parts at the ends of adjoining vehicles in a train that are designed to engage when subjected to large buff loads to prevent the override of one vehicle by another.

Bind means restrict the intended movement of one or more brake system components by obstruction, increased friction, or reduced clearance.

Block of cars means one car or multiple cars in a solid unit coupled together for the purpose of being added to, or removed from, a train as a solid unit.

Brake, air or *power brake* means a combination of devices operated by compressed air, arranged in a system, and controlled manually, electrically, or pneumatically, by means of which the motion of a rail car or locomotive is retarded or arrested.

Brake, disc means a retardation system used on some rail vehicles, primarily passenger equipment, that utilizes flat metal discs as the braking surface instead of the wheel tread.

Brake, dynamic means a train braking system whereby the kinetic energy of a moving train is used to generate electric current at the locomotive traction motors, which is then dissipated through banks of resistor grids or back into the catenary or third rail system.

Brake, effective means a brake that is capable of producing its required design retarding force on the train. A rail car's air brake is not considered effective if its piston travel is in excess of the maximum prescribed limits.

Brake indicator means a device, actuated by brake cylinder pressure, which indicates whether brakes are applied or released.

Brake, inoperative means a primary brake that, for any reason, no longer applies or releases as intended or is otherwise ineffective.

Brake, on-tread friction means a braking system that uses a brake shoe that acts on the tread of the wheel to retard the vehicle.

Brake, parking or hand brake means a brake that can be applied and released by hand to prevent movement of a stationary rail car or locomotive.

Brake pipe means the system of piping (including branch pipes, angle cocks, cutout cocks, dirt collectors, hoses, and hose couplings) used for connecting locomotives and all rail cars for the passage of air to control the locomotive and car brakes.

Brake, power means "air brake" as that term is defined in this section.

Brake, primary means those components of the train brake system necessary to stop the train within the signal spacing distance without thermal damage to friction braking surfaces.

Brake, secondary means those components of the train brake system which develop supplemental brake retarding force that is not needed to stop the train within signal spacing distances or to prevent thermal damage to friction braking surfaces.

Brake shoes or pads aligned with tread or disc means that the surface of the brake shoe or pad, respectively, engages the surface of the wheel tread or disc, respectively, to prevent localized thermal stress.

Braking system, blended means a braking system where the primary brake and one or more secondary brakes are automatically combined to stop the train. If the secondary brakes are unavailable, the blended brake uses the primary brake alone to stop the train.

Calendar day means a time period running from one midnight to the next midnight on a given date.

Class I brake test means a complete passenger train brake system test and inspection (as further specified in § 238.313) performed by a qualified

maintenance person to ensure that the air brake system is 100 percent effective.

Class IA brake test means a test and inspection (as further specified in § 238.315) performed by a qualified person of the air brake system on each car in a passenger train to ensure that the brakes apply and release on each car in the train in response to train line commands.

Class II brake test means a test and inspection (as further specified in § 238.317) performed by a qualified person of brake pipe integrity and continuity from the controlling locomotive to the rear unit of a passenger train.

Collision posts means structural members of the end structures of a vehicle that extend vertically from the underframe to which they are securely attached and that provide protection to occupied compartments from an object penetrating the vehicle during a collision.

Control valves means that part of the air brake equipment on each rail car or locomotive that controls the charging, application, and release of the air brakes, in response to train line commands.

Corner posts means structural members located at the intersection of the front or rear surface with the side surface of a rail vehicle and which extend vertically from the underframe to the roof. Corner posts may be combined with collision posts to become part of the end structure.

Crack means a fracture without complete separation into parts, except that, in a casting, a shrinkage crack or hot tear that does not significantly diminish the strength of the member is not a crack.

Crash energy management means an approach to the design of rail passenger equipment which controls the dissipation of energy during a collision to protect the occupied volumes from crushing and to limit the decelerations on passengers and crewmembers in those volumes. This may be accomplished by designing energy-absorbing structures of low strength in the unoccupied volumes of a rail vehicle or passenger train to collapse in a controlled manner, while providing higher structural strength in the occupied volumes. Energy deflection can also be part of a crash energy management approach. Crash energy management can be used to help provide anti-climbing resistance and to reduce the risk of train buckling during a collision.

Crash refuge means a volume with structural strength designed to maximize the survivability of crewmembers stationed in the locomotive cab during a collision.

Crewmember means a railroad employee called to perform service covered by the Federal hours of service laws at 49 U.S.C. 21103 and subject to the railroad's operating rules and program of operational tests and inspections required in § 217.9 and § 217.11 of this chapter.

Critical buckling stress means the minimum stress necessary to initiate buckling of a structural member.

Emergency brake application means an irretrievable brake application resulting in the maximum retarding force available from the train brake system.

Emergency window means that segment of a side-facing glazing panel which has been designed to permit rapid and easy removal in an emergency situation.

End structure means the main support structure projecting upward from the underframe of a locomotive, passenger car, or other rail vehicle. The end structure is securely attached to the underframe at each end of a rail vehicle.

50th -percentile adult male means a person weighing 164 pounds (plus or minus 3 pounds) and possessing the following dimensions: erect sitting height: 35.7 inches (plus or minus 0.1 inch); hip breadth (sitting): 14.7 inches (plus or minus 0.7 inch); hip circumference (sitting): 42 inches; waist circumference (sitting): 32 inches (plus or minus 0.6 inch); chest depth: 9.3 inches (plus or minus 0.2 inch); and chest circumference: 37.4 inches (plus or minus 0.6 inch).

Foul means restrict the intended movement of one or more brake system components because the component is snagged, entangled, or twisted.

FRA means the Federal Railroad Administration.

Fuel tank, external means a fuel containment volume that extends outside the car body structure of a locomotive.

Fuel tank, internal means a fuel containment volume that does not extend outside the car body structure of a locomotive.

Full-height collision post, corner post, or side frame post means any vertical framing member in the rail car body structure that spans the distance between the underframe and the roof at the car body section where the post is located. For collision posts located at the approximate third points laterally of an end frame, the term "full-height" applies to posts that extend and connect to supporting structural members in the roof at the location of the posts, or to a beam connected to the top of the end-frame and supported by the roof rails (or anti-telescoping plate), or to both.

Full service application means a brake application which results in a brake cylinder pressure at the service limiting valve setting or equivalent.

Glazing, end-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes an angle of 50 degrees or less with the longitudinal center line of the rail vehicle in which the panel is installed. A glazing panel that curves so as to meet the definition for both side-facing and end-facing glazing is considered end-facing glazing.

Glazing, exterior means a glazing panel that is an integral part of the exterior skin of a rail vehicle and has a surface exposed to the outside environment.

Glazing, side-facing means a glazing panel located where a line perpendicular to the exterior surface of the panel makes an angle of more than 50 degrees with the longitudinal center line of the rail vehicle in which the panel is installed.

Handrails means safety appliances installed on either side of a rail vehicle's exterior doors to assist passengers and crewmembers to safely board and depart the vehicle.

Head end power means power generated on board the locomotive of a passenger train used for purposes other than propelling the train, such as cooking, heating, illumination, ventilation and air conditioning.

In passenger service/in revenue service means a train or passenger equipment that is carrying, or available to carry, passengers. Passengers need not have paid a fare in order for the equipment to be considered in passenger or in revenue service.

In service, when used in connection with passenger equipment, means:

(1) Passenger equipment subject to this part that is in passenger or revenue service; and

(2) All other passenger equipment subject to this part, unless the passenger equipment:

(i) Is being handled in accordance with §§ 238.15, 238.17, 238.305(c)(5), or 238.503(f), as applicable;

(ii) Is in a repair shop or on a repair track;

(iii) Is on a storage track and is not carrying passengers; or

(iv) Has been delivered in interchange but has not been accepted by the receiving railroad.

Interior fitting means any component in the passenger compartment which is mounted to the floor, ceiling, sidewalls, or end walls and projects into the passenger compartment more than 25

mm (1 in.) from the surface or surfaces to which it is mounted. Interior fittings do not include side and end walls, floors, door pockets, or ceiling lining materials, for example.

Lateral means the horizontal direction perpendicular to the direction of travel.

Locomotive means a piece of on-track rail equipment, other than hi-rail, specialized maintenance, or other similar equipment, which may consist of one or more units operated from a single control stand with one or more propelling motors designed for moving other passenger equipment; with one or more propelling motors designed to transport freight or passenger traffic, or both; or without propelling motors but with one or more control stands. This term does not include a locomotive propelled by steam power unless it is used to haul an intercity or commuter passenger train. Nor does this term include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Locomotive cab means the compartment or space on board a locomotive where the control stand is located and which is normally occupied by the engineer when the locomotive is operated.

Locomotive, cab car means rail rolling equipment intended to provide transportation for members of the general public that is without propelling motors but equipped with one or more control stands.

Locomotive, controlling means the locomotive from which the locomotive engineer exercises control over the train.

Locomotive, MU means rail rolling equipment self-propelled by any power source and intended to provide transportation for members of the general public; however, this term does not include an MU locomotive propelled by steam power unless it is used to haul an intercity or commuter passenger train.

Longitudinal means in a direction parallel to the normal direction of travel.

Luminescent material means material that absorbs light energy when ambient levels of light are high and emits this stored energy when ambient levels of light are low, making the material appear to glow in the dark.

L/V ratio means the ratio of the lateral force that any wheel exerts on an individual rail to the vertical force exerted by the same wheel on the rail.

MIL–STD–882C means a military standard issued by the United States Department of Defense to provide uniform requirements for developing and implementing a system safety plan and program to identify and then eliminate the hazards of a system or reduce the associated risk to an acceptable level.

Monocoque means a type of rail vehicle construction where the shell or skin acts as a single unit with the supporting frame to resist and transmit the loads acting on the rail vehicle.

Mph means miles per hour.

95th -percentile adult male means, except as used in § 238.447(f)(2), a person weighing 215 pounds and possessing the following dimensions: erect sitting height: 38 inches; hip breadth (sitting): 16.5 inches; hip circumference (sitting): 47.2 inches; waist circumference (sitting): 42.5 inches; chest depth: 10.5 inches; and chest circumference 44.5 inches.

Occupied volume means the volume of a rail vehicle or passenger train where passengers or crewmembers are normally located during service operation, such as the operating cab and passenger seating and sleeping areas. The entire width of a vehicle's end compartment that contains a control stand is an occupied volume. A vestibule is typically not considered occupied, except when it contains a control stand for use as a control cab.

Ordered, as applied to acquisition of equipment, means that the acquiring entity has given a notice to proceed to manufacture the equipment that represents a firm financial commitment to compensate the manufacturer for the contract price of the equipment or for damages if the order is nullified. Equipment is not ordered if future exercise of a contract option is required to place the remanufacturing process in motion.

Override means to climb over the normal coupling or side buffers and linking mechanism and impact the end of the adjoining rail vehicle or unit above the underframe.

Passenger car means rail rolling equipment intended to provide transportation for members of the general public and includes a self-propelled car designed to carry passengers, baggage, mail, or express. This term includes a passenger coach, cab car, and an MU locomotive. In the context of articulated equipment, "passenger car" means that segment of the rail rolling equipment located between two trucks. This term does not include a private car.

Passenger coach means rail rolling equipment intended to provide transportation for members of the general public that is without propelling motors and without a control stand.

Passenger equipment—means

(1) All powered and unpowered passenger cars, locomotives used to haul a passenger car, and any other rail rolling equipment used in a train with one or more passenger cars. Passenger equipment includes—

(i) A passenger coach,

(ii) A cab car,

(iii) A MU locomotive,

(iv) A locomotive not intended to provide transportation for a member of the general public that is used to power a passenger train, and

(v) Any non-self-propelled vehicle used in a passenger train, including an express car, baggage car, mail car, freight car, or a private car.

(2) In the context of articulated equipment, "passenger equipment" means a segment of rail rolling equipment located between two trucks that is used in a train with one or more passenger cars. This term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Passenger station means a location designated in a railroad's timetable where passengers are regularly scheduled to get on or off any train.

Permanent deformation means the undergoing of a permanent change in shape of a structural member of a rail vehicle.

Person means an entity of any type covered under 1 U.S.C. 1, including but not limited to the following: a railroad; a manager, supervisor, official, or other employee or agent of a railroad; any owner, manufacturer, lessor, or lessee of railroad equipment, track, or facilities; any independent contractor providing goods or services to a railroad; and any employee of such owner, manufacturer, lessor, lessee; or independent contractor.

Piston travel means the amount of linear movement of the air brake hollow rod (or equivalent) or piston rod when forced outward by movement of the piston in the brake cylinder or actuator and limited by the brake shoes being forced against the wheel or disc.

Power car means a rail vehicle that propels a Tier II passenger train or is the lead vehicle in a Tier II passenger train, or both.

Pre-revenue service acceptance testing plan means a document, as further specified in § 238.111, prepared by a railroad that explains in detail how pre-revenue service tests of passenger equipment demonstrate that the equipment meets Federal safety standards and the railroad's own safety requirements.

Primary responsibility means the task that a person performs at least 50 percent of the time. The totality of the circumstances will be considered on a case-by-case basis in circumstances

where an individual does not spend 50 percent of his or her day engaged in any one readily identifiable type of activity.

Private car means rail rolling equipment that is used only for excursion, recreational, or private transportation purposes. A private car is not a passenger car.

Public highway-rail grade crossing means a location where a public highway, road or street, including associated sidewalks or pathways, crosses one or more active railroad tracks at grade.

Qualified maintenance person means a qualified person who has received, as a part of the training, qualification, and designation program required under § 238.109, instruction and training that includes "hands-on" experience (under appropriate supervision or apprenticeship) in one or more of the following functions: troubleshooting, inspection, testing, maintenance, or repair of the specific train brake and other components and systems for which the person is assigned responsibility. This person shall also possess a current understanding of what is required to properly repair and maintain the safety-critical brake or mechanical components for which the person is assigned responsibility. Further, the qualified maintenance person shall be a person whose primary responsibility includes work generally consistent with the above-referenced functions and is designated to:

(1) Conduct Class I brake tests under this part;

(2) Conduct exterior calendar day mechanical inspections on MU locomotives or other passenger cars and unpowered vehicles under this part; or

(3) Determine whether equipment not in compliance with this part may be moved as required by § 238.17.

Qualified person means a person determined by a railroad to have the knowledge and skills necessary to perform one or more functions required under this part. The railroad determines the qualifications and competencies for employees designated to perform various functions in the manner set forth in this part.

Railroad means any form of nonhighway ground transportation that runs on rails or electromagnetic guideways and any entity providing such transportation, including—

(i) Commuter or other short-haul railroad passenger service in a metropolitan or suburban area and commuter railroad service that was operated by the Consolidated Rail Corporation on January 1, 1979; and

(ii) High speed ground transportation systems that connect metropolitan areas, without regard to whether those systems use new technologies not associated with traditional railroads; but does not include rapid transit operations in an urban area that are not connected to the general railroad system of transportation.

Refresher training means periodic retraining required by a railroad for employees or contractors to remain qualified to perform specific equipment inspection, testing, or maintenance functions.

Repair point means a location designated by a railroad where repairs of the type necessary occur on a regular basis. A repair point has, or should have, the facilities, tools, and personnel qualified to make the necessary repairs. A repair point need not be staffed continuously.

Respond as intended means to produce the result that a device or system is designed to produce.

Rollover strength means the strength provided to protect the structural integrity of a rail vehicle in the event the vehicle leaves the track and impacts the ground on its side or roof.

Roof rail means the longitudinal structural member at the intersection of the side wall and the roof sheathing.

Running brake test means a test (as further specified in § 238.319) performed by a qualified person of a train system or component while the train is in motion to verify that the system or component functions as intended.

Running gear defect means any condition not in compliance with this part which involves a truck component, a propulsion system component, a draft system component, a wheel, or a wheel component.

Safety appliance means an appliance required under 49 U.S.C. chapter 203, excluding power brakes. The term includes automatic couplers, hand brakes, sill steps, handholds, handrails, or ladder treads made of steel or a material of equal or greater mechanical strength used by the traveling public or railroad employees that provide a means for safely coupling, uncoupling, or ascending or descending passenger equipment.

Safety-critical means a component, system, or task that, if not available, defective, not functioning, not functioning correctly, not performed, or not performed correctly, increases the risk of damage to passenger equipment or injury to a passenger, crewmember, or other person.

Semi-permanently coupled means coupled by means of a drawbar or other coupling mechanism that requires tools to perform the uncoupling operation. Coupling and uncoupling of each semi-permanently coupled unit in a train can be performed safely only while at a maintenance or shop location where personnel can safely get under a unit or between units.

Shear strength means the ability of a structural member to resist forces or components of forces acting perpendicular to compression or tension forces, or both, in the member.

Shock absorbent material means material designed to prevent or mitigate injuries due to impact by yielding and absorbing much of the energy of impact.

Side posts means main vertical structural elements in the sides of a rail vehicle.

Side sill means that portion of the underframe or side at the bottom of the rail vehicle side wall.

Single car test means a comprehensive test (as further specified in § 238.311) of the functioning of all critical brake system components installed on an individual passenger car or unpowered vehicle, other than a self-propelled passenger car, used or allowed to be used in a passenger train.

Single car test device means a device capable of controlling the application and release of the brakes on an individual passenger car or an unpowered vehicle, other than a self-propelled passenger car, through pneumatic or electrical means.

Skin means the outer covering of a fuel tank and a rail vehicle. The skin may be covered with another coating of material such as fiberglass.

Spall, glazing means small pieces of glazing that fly off the back surface of the glazing when an object strikes the front surface.

Switching service means the classification of freight cars according to commodity or destination; assembling of cars for train movements; changing the position of cars for purposes of loading, unloading, or weighing; placing of locomotives and cars for repair or storage; or moving of rail equipment in connection with work service that does not constitute a train movement.

Telescope means override an adjoining rail vehicle or unit and penetrate into the interior of that adjoining vehicle or unit because of compressive forces.

Terminal means a starting point or ending point of a single scheduled trip for a train, where passengers may get on or off a train. Normally, this location is a point where the train would reverse direction or change destinations.

Tier I means operating at speeds not exceeding 125 mph.

Tier II means operating at speeds exceeding 125 mph but not exceeding 150 mph.

Tourist, scenic, historic, or excursion operations means railroad operations that carry passengers, often using antiquated equipment, with the conveyance of the passengers to a particular destination not being the principal purpose.

Trailer car means a rail vehicle that neither propels a Tier II passenger train nor is the leading unit in a Tier II passenger train. A trailer car is normally without a control stand and is normally occupied by passengers.

Train means a locomotive unit or locomotive units coupled, with or without cars. For the purposes of the provisions of this part related to power brakes, the term "train" does not include such equipment when being used in switching service.

Train brake communication line means the communication link between the locomotive and passenger equipment in a train by which the brake commands are transmitted. This may be a pneumatic pipe, electrical line, or radio signal.

Train, commuter means a passenger train providing commuter service within an urban, suburban, or metropolitan area. The term includes a passenger train provided by an instrumentality of a State or a political subdivision of a State.

Train, long-distance intercity passenger means a passenger train that provides service between large cities more than 125 miles apart and is not operated exclusively in the National Railroad Passenger Corporation's Northeast Corridor.

Train, passenger means a train that transports or is available to transport members of the general public. If a train is composed of a mixture of passenger and freight equipment, that train is a passenger train for purposes of this part.

Train, short-distance intercity passenger means a passenger train that provides service exclusively on the National Railroad Passenger Corporation's Northeast Corridor or between cities that are not more than 125 miles apart.

Train, Tier II passenger means a short-distance or long-distance intercity passenger train providing service at speeds that include those exceeding 125 mph but not exceeding 150 mph.

Trainset, passenger means a passenger train.

Transverse means in a direction perpendicular to the normal direction of travel.

Ultimate strength means the load at which a structural member fractures or ceases to resist any load.

Uncoupling mechanism means the arrangement for operating the coupler by any means.

Underframe means the lower horizontal support structure of a rail vehicle.

Unit means passenger equipment of any type, except a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Unoccupied volume means the volume of a rail vehicle or passenger train which does not contain seating and is not normally occupied by passengers or crewmembers.

Vehicle, rail means passenger equipment of any type and includes a car, trailer car, locomotive, power car, tender, or similar vehicle. This term does not include a freight locomotive when used to haul a passenger train due to failure of a passenger locomotive.

Vestibule means an area of a passenger car that normally does not contain seating and is used in passing from the seating area to the side exit doors.

Witness plate means a thin foil placed behind a piece of glazing undergoing an impact test. Any material spalled or broken from the back side of the glazing will dent or mark the witness plate.

Yard means a system of tracks within defined limits provided for the making up of trains, storing of cars, or other purposes.

Yard air test means a train brake system test conducted using a source of compressed air other than a locomotive.

Yield strength means the ability of a structural member to resist a change in length caused by a heavy load. Exceeding the yield strength may cause permanent deformation of the member.

§ 238.7 Waivers.

(a) A person subject to a requirement of this part may petition the Administrator for a waiver of compliance with such requirement. The filing of such a petition does not affect the person's responsibility for compliance with that requirement while the petition is being considered.

(b) Each petition for waiver under this section shall be filed in the manner and contain the information required by part 211 of this chapter.

(c) If the Administrator finds that a waiver of compliance is in the public interest and is consistent with railroad safety, the Administrator may grant the waiver subject to any conditions the Administrator deems necessary.

§ 238.9 Responsibility for compliance.

(a) A railroad subject to this part shall not—

(1) Use, haul, permit to be used or hauled on its line, offer in interchange, or accept in interchange any train or passenger equipment, while in service,

(i) That has one or more conditions not in compliance with a safety appliance or power brake provision of this part; or

(ii) That has not been inspected and tested as required by a safety appliance or power brake provision of this part; or

(2) Use, haul, offer in interchange, or accept in interchange any train or passenger equipment, while in service,

(i) That has one or more conditions not in compliance with a provision of this part, other than the safety appliance and power brake provisions of this part, if the railroad has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; or

(ii) That has not been inspected and tested as required by a provision of this part, other than the safety appliance and power brake provisions of this part, if the railroad has actual knowledge of the facts giving rise to the violation, or a reasonable person acting in the circumstances and exercising reasonable care would have that knowledge; or

(3) Violate any other provision of this part.

(b) For purposes of this part, passenger equipment will be considered in use prior to departure but after it has received, or should have received, the inspection required under this part for movement and is deemed ready for passenger service.

(c) Although the duties imposed by this part are generally stated in terms of the duty of a railroad, any person as defined in § 238.5, including a contractor for a railroad, who performs any function covered by this part must perform that function in accordance with this part.

§ 238.11 Penalties.

(a) Any person, as defined in § 238.5, who violates any requirement of this part or causes the violation of any such requirement is subject to a civil penalty of at least $500 and not more than $11,000 per violation, except that: Penalties may be assessed against individuals only for willful violations, and, where a grossly negligent violation or a pattern of repeated violations has created an imminent hazard of death or injury to persons, or has caused death or injury, a penalty not to exceed $22,000 per violation may be assessed. Each day a violation continues shall

constitute a separate offense. See Appendix A to this part for a statement of agency civil penalty policy.

(b) Any person who knowingly and willfully falsifies a record or report required by this part may be subject to criminal penalties under 49 U.S.C. 21311.

§ 238.13 Preemptive effect.

Under 49 U.S.C. 20106, issuance of the regulations in this part preempts any State law, regulation, or order covering the same subject matter, except an additional or more stringent law, regulation, or order that is necessary to eliminate or reduce an essentially local safety hazard; that is not incompatible with a law, regulation, or order of the United States Government; and that does not unreasonably burden interstate commerce.

§ 238.15 Movement of passenger equipment with power brake defects.

Beginning July 12, 2001 the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part.

(a) *General.* This section contains the requirements for moving passenger equipment with a power brake defect without liability for a civil penalty under this part. Railroads remain liable for the movement of passenger equipment under 49 U.S.C. 20303(c). For purposes of this section, § 238.17, and § 238.503, a "power brake defect" is a condition of a power brake component, or other primary brake component, that does not conform with this part. (Passenger cars and other passenger equipment classified as locomotives under part 229 of this chapter are also covered by the movement restrictions contained in § 229.9 of this chapter for those defective conditions covered by part 229 of this chapter.)

(b) *Limitations on movement of passenger equipment containing a power brake defect found during a Class I or IA brake test.* Except as provided in paragraph (c) of this section (which addresses brakes that become defective en route after a Class I or IA brake test was performed), a commuter or passenger train that has in its consist passenger equipment containing a power brake defect found during a Class I or IA brake test (or, for Tier II trains, the equivalent) may only be moved, without civil penalty liability under this part—

(1) If all of the following conditions are met:

(i) The train is moved for purposes of repair, without passengers;

(ii) The applicable operating restrictions in paragraphs (d) and (e) of this section are observed; and

(iii) The passenger equipment is tagged, or information is recorded, as prescribed in paragraph (c)(2) of this section; or

(2) If the train is moved for purposes of scrapping or sale of the passenger equipment that has the power brake defect and all of the following conditions are met:

(i) The train is moved without passengers;

(ii) The movement is at a speed of 15 mph or less; and

(iii) The movement conforms with the railroad's air brake or power brake instructions.

(c) *Limitations on movement of passenger equipment in passenger service that becomes defective en route after a Class I or IA brake test.* Passenger equipment hauled or used in service in a commuter or passenger train that develops a power brake defect while en route to another location after receiving a Class I or IA brake test (or, for Tier II trains, the equivalent) may be hauled or used by a railroad for repair, without civil penalty liability under this part, if the applicable operating restrictions set forth in paragraphs (d) and (e) of this section are complied with and all of the following requisites are satisfied:

(1) *En route defect.* At the time of the train's Class I or IA brake test, the passenger equipment in the train was properly equipped with power brakes that comply with this part. The power brakes on the passenger equipment become defective while it is en route to another location.

(2) *Record.* At the place where the railroad first discovers the defect, a tag or card is placed on both sides of the defective passenger equipment, or an automated tracking system is provided, with the following information about the defective passenger equipment:

(i) The reporting mark and car or locomotive number;

(ii) The name of the inspecting railroad;

(iii) The name of the inspector;

(iv) The inspection location and date;

(v) The nature of each defect;

(vi) The destination of the equipment where it will be repaired; and

(vii) The signature, if possible, and job title of the person reporting the defective condition.

(3) *Automated tracking system.* Automated tracking systems used to meet the tagging requirements contained in paragraph (c)(2) of this section may be reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of tagging if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track or monitor the movement of defective equipment. Such a determination will be made in writing and will state the basis for such action.

(4) *Conditional requirement.* In addition, if an en route failure causes power brakes to be cut out or renders the brake inoperative on passenger equipment, the railroad shall:

(i) Determine the percentage of operative power brakes in the train based on the number of brakes known to be cut out or otherwise inoperative, using the formula specified in paragraph (d)(1) of this section;

(ii) Notify the person responsible for the movement of trains of the percent of operative brakes and movement restrictions on the train imposed by paragraph (d) of this section;

(iii) Notify the mechanical department of the failure; and

(iv) Confirm the percentage of operative brakes by a walking inspection at the next location where the railroad reasonably judges that it is safe to do so.

(d) *Operating restrictions based on percent operative power brakes in train.*

(1) *Computation of percent operative power brakes.*

(i) Except as specified in paragraphs (d)(1)(ii) and (iii) of this section, the percentage of operative power brakes in a train shall be determined by dividing the number of axles in the train with operative power brakes by the total number of axles in the train.

(ii) For equipment with tread brake units (TBUs), the percentage of operative power brakes shall be determined by dividing the number of operative TBUs by the total number of TBUs.

(iii) Each cut-out axle on a locomotive that weighs more than 200,000 pounds shall be counted as two cut-out axles for the purposes of calculating the percentage of operative brakes. Unless otherwise specified by the railroad, the friction braking effort over all other axles shall be considered uniform.

(iv) The following brake conditions not in compliance with this part are not considered inoperative power brakes for purposes of this section:

(A) Failure or cutting out of secondary brake systems;

(B) Inoperative or otherwise defective handbrakes or parking brakes;

(C) Excessive piston travel that does not render the power brakes ineffective; and

(D) Power brakes overdue for inspection, testing, maintenance, or stenciling under this part.

(2) *All passenger trains developing 50–74 percent operative power brakes.* A passenger train that develops inoperative power brake equipment resulting in at least 50 percent but less than 75 percent operative power brakes may be used only as follows:

(i) The train may be moved in passenger service only to the next forward passenger station;

(ii) The speed of the train shall be restricted to 20 mph or less; and

(iii) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(3) *Commuter, short-distance intercity, and short-distance Tier II passenger trains developing 75–99 percent operative power brakes.*

(i) *75–84 percent operative brakes.* Commuter, short-distance intercity, and short-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 75 percent but less than 85 percent operative brakes may be used only as follows:

(A) The train may be moved in passenger service only to the next forward location where the necessary repairs can be made; however, if the next forward location where the necessary repairs can be made does not have the facilities to handle the safe unloading of passengers, the train may be moved past the repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) The speed of the train shall be restricted to 50 percent of the train's maximum allowable speed or 40 mph, whichever is less; and

(C) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(ii) *85–99 percent operative brakes.* Commuter, short-distance intercity, and short-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 85 percent but less than 100 percent operative brakes may only be used as follows:

(A) The train may be moved in passenger service only to the next forward location where the necessary repairs can be made; however, if the next forward location where the necessary repairs can be made does not have the facilities to handle the safe unloading of passengers, the train may be moved past the repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(4) *Long-distance intercity and long-distance Tier II passenger trains developing 75–99 operative power brakes.*

(i) *75–84 percent operative brakes.* Long-distance intercity and long-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 75 percent but less than 85 percent operative brakes may be used only if all of the following restrictions are observed:

(A) The train may be moved in passenger service only to the next forward repair location identified for repair of that equipment by the railroad operating the equipment in the list required by § 238.19(d); however, if the next forward repair location does not have the facilities to handle the safe unloading of passengers, the train may be moved past the designated repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) The speed of the train shall be restricted to 50 percent of the train's maximum allowable speed or 40 mph, whichever is less; and

(C) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(ii) *85–99 percent operative brakes.* Long-distance intercity and long-distance Tier II passenger trains which develop inoperative power brake equipment resulting in at least 85 percent but less than 100 percent operative brakes may be used only if all of the following restrictions are observed:

(A) The train may be moved in passenger service only to the next forward repair location identified for repair of that equipment by the railroad operating the equipment in the list required by § 238.19(d); however, if the next forward repair location does not have the facilities to handle the safe unloading of passengers, the train may be moved past the designated repair location in service only to the next forward passenger station in order to facilitate the unloading of passengers; and

(B) After all passengers are discharged, the defective equipment shall be moved to the nearest location where the necessary repairs can be made.

(e) *Operating restrictions on passenger trains with inoperative power brakes on the front or rear unit.* If the power brakes on the front or rear unit in any passenger train are completely inoperative the following shall apply:

(1) If the handbrake is located inside the interior of the car:

(i) A qualified person shall be stationed at the handbrake on the unit;

(ii) The car shall be locked-out and empty except for the railroad employee manning the handbrake; and

(iii) Appropriate speed restrictions shall be placed on the train by a qualified person;

(2) If the handbrake is located outside the interior of the car or is inaccessible to a qualified person:

(i) The car shall be locked-out and empty;

(ii) The train shall be operated at restricted speed not to exceed 20 mph; and

(iii) The car shall be removed from the train or repositioned in the train at the first location where it is possible to do so.

(f) *Special Notice for Repair.* Nothing in this section authorizes the movement of passenger equipment subject to a Special Notice for Repair under part 216 of this chapter unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 238.17 Movement of passenger equipment with other than power brake defects.

Beginning July 12, 2001 the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part.

(a) *General.* This section contains the requirements for moving passenger equipment with other than a power brake defect. (Passenger cars and other passenger equipment classified as locomotives under part 229 of this chapter are also covered by the movement restrictions contained in § 229.9 of this chapter for those defective conditions covered by part 229 of this chapter.)

(b) *Limitations on movement of passenger equipment containing defects found at time of calendar day inspection.* Except as provided in §§ 238.303(e)(15) and 238.305(c)(5), passenger equipment containing a condition not in conformity with this part at the time of its calendar day mechanical inspection may be moved from that location for repair if all of the following conditions are satisfied:

(1) If the condition involves a running gear defect, the defective equipment is not used in passenger service and is moved in a non-revenue train;

(2) If the condition involves a non-running gear defect, the defective equipment may be used in passenger service in a revenue train provided that a qualified maintenance person determines that it is safe to do so, and if so, the car is locked out and empty, and all movement restrictions are observed except that the car may be occupied by a member of the train crew or a railroad employee to the extent necessary to safely operate the train;

(3) The requirements of paragraphs (c)(3) and (c)(4) of this section are met; and

(4) The special requirements of paragraph (e) of this section, if applicable, are met.

(c) *Usual limitations on movement of passenger equipment that develops defects en route.* Except as provided in §§ 238.303(e)(15) and 238.503(f), passenger equipment that develops en route to its destination, after its calendar day inspection was performed and before its next calendar day mechanical inspection is performed, any defect not in compliance with this part, other than a power brake defect, may be moved only if the railroad complies with all of the following requirements and, if applicable, the special requirements in paragraph (e) of this section:

(1) Prior to movement of equipment with a potential running gear defect, a qualified maintenance person shall determine if it is safe to move the equipment in passenger service and, if so, the maximum speed and other restrictions necessary for safely conducting the movement. If appropriate, these determinations may be made based upon a description of the defective condition provided by a crewmember. If the determinations required by this paragraph are made by an off-site qualified maintenance person based on a description of the defective condition by on-site personnel, then a qualified maintenance person shall perform a physical inspection of the defective equipment, at the first location possible, to verify the description of the defect provided by the on-site personnel.

(2) Prior to movement of equipment with a non-running gear defect, a qualified person or a qualified maintenance person shall determine if it is safe to move the equipment in passenger service and, if so, the maximum speed and other restrictions necessary for safely conducting the movement. If appropriate, these determinations may be made based upon a description of the defective condition provided by the on-site personnel.

(3) Prior to movement of any defective equipment, the qualified person or qualified maintenance person shall notify the crewmember in charge of the movement of the defective equipment, who in turn shall inform all other crewmembers of the presence of the defective condition(s) and the maximum speed and other restrictions determined under paragraph (c)(1) or (c)(2) of this section. The movement shall be made in conformance with such restrictions.

(4) The railroad shall maintain a record of all defects reported and their subsequent repair in the defect tracking system required in § 238.19. In addition, prior to movement of the defective equipment, a tag or card placed on both sides of the defective equipment, or an automated tracking system, shall record the following information about the defective equipment:

(i) The reporting mark and car or locomotive number;

(ii) The name of the inspecting railroad;

(iii) The name of the inspector, inspection location, and date;

(iv) The nature of each defect;

(v) Movement restrictions and safety restrictions, if any;

(vi) The destination of the equipment where it will be repaired; and

(vii) The signature, if possible, as well as the job title and location of the person making the determinations required by this section.

(5) *Automated tracking system.* Automated tracking systems used to meet the tagging requirements contained in paragraph (c)(4) of this section may be reviewed and monitored by FRA at any time to ensure the integrity of the system. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an automated tracking system in lieu of tagging if FRA finds that the automated tracking system is not properly secure, is inaccessible to FRA or a railroad's employees, or fails to adequately track or monitor the movement of defective equipment. Such a determination will be made in writing and will state the basis for such action.

(6) After a qualified maintenance person or a qualified person verifies that the defective equipment is safe to remain in service as required in paragraphs (c)(1) and (c)(2) of this section, the defective equipment that develops a condition not in compliance with this part while en route may continue in passenger service not later than the next calendar day mechanical inspection, if the requirements of this paragraph are otherwise fully met.

(d) *Inspection of roller bearings on equipment involved in a derailment.*

(1) A railroad shall not continue passenger equipment in service that has a roller bearing whose truck was involved in a derailment unless the bearing has been inspected and tested by:

(i) Visual examination to determine whether it shows any sign of damage; and

(ii) Spinning freely its wheel set or manually rotating the bearing to determine whether the bearing makes any unusual noise.

(2) The roller bearing shall be disassembled from the axle and inspected internally if:

(i) It shows any external sign of damage;

(ii) It makes any unusual noise when its wheel set is spun freely or the bearing is manually rotated;

(iii) Its truck was involved in a derailment at a speed of more than 10 miles per hour; or

(iv) Its truck was dragged on the ground for more than 200 feet.

(e) *Special requisites for movement of passenger equipment with safety appliance defects.* Consistent with 49 U.S.C. 20303, passenger equipment with a safety appliance not in compliance with this part or with part 231 of this chapter, if applicable, may be moved—

(1) If necessary to effect repair of the safety appliance;

(2) From the point where the safety appliance defect was first discovered by the railroad to the nearest available location on the railroad where the necessary repairs required to bring the passenger equipment into compliance can be made or, at the option of the receiving railroad, the equipment may be received and hauled for repair to a point on the receiving railroad's line that is no farther than the point on the delivering railroad's line where the repair of the defect could have been made;

(3) If a tag placed on both sides of the passenger equipment or an automated tracking system contains the information required under paragraph (c)(4) of this section; and

(4) After notification of the crewmember in charge of the movement of the defective equipment, who in turn shall inform all other crewmembers of the presence of the defective condition(s).

(f) *Special Notice for Repair.* Nothing in this section authorizes the movement of equipment subject to a Special Notice for Repair under part 216 of this chapter unless the movement is made in accordance with the restrictions contained in the Special Notice.

§ 238.19 Reporting and tracking defective passenger equipment.

(a) *General.* Beginning July 12, 2001 each railroad shall have in place a reporting and tracking system for passenger equipment with a defect not in conformance with this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c) of this part. The reporting and tracking system shall record the following information:

(1) The identification number of the defective equipment;

(2) The date the defect occurred;

(3) The nature of the defect;

(4) The determination made by a qualified person or qualified maintenance person on whether the equipment is safe to run;

(5) The name of the qualified person or qualified maintenance person making such a determination;

(6) Any operating restrictions placed on the equipment; and

(7) Repairs made and the date that they were made.

(b) *Retention of records.* At a minimum, each railroad shall keep the records described in paragraph (a) of this section for one periodic maintenance interval for each specific type of equipment as described in the railroad's inspection, testing, and maintenance plan required by § 238.107. FRA strongly encourages railroads to keep these records for longer periods of time because they form the basis for future reliability-based decisions concerning test and maintenance intervals that may be developed pursuant to § 238.307(b).

(c) *Availability of records.* Railroads shall make defect reporting and tracking records available to FRA upon request.

(d) *List of power brake repair points.* Railroads operating long-distance intercity and long-distance Tier II passenger equipment shall designate locations, in writing, where repairs to passenger equipment with a power brake defect will be made and shall provide the list to FRA's Associate Administrator for Safety and make it available to FRA for inspection and copying upon request. Railroads operating these trains shall designate a sufficient number of repair locations to ensure the safe and timely repair of passenger equipment. These designations shall not be changed without at least 30 days' advance written notice to FRA's Associate Administrator for Safety.

§ 238.21 Special approval procedure.

(a) *General.* The following procedures govern consideration and action upon requests for special approval of alternative standards under §§ 238.103, 238.223, 238.309, 238.311, 238.405, or 238.427; for approval of alternative compliance under § 238.201; and for special approval of pre-revenue service acceptance testing plans as required by § 238.111. (Requests for approval of programs for the inspection, testing, and maintenance of Tier II passenger equipment are governed by § 238.505.)

(b) *Petitions for special approval of alternative standard.* Each petition for special approval of an alternative standard shall contain—

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition;

(2) The alternative proposed, in detail, to be substituted for the particular requirements of this part;

(3) Appropriate data or analysis, or both, establishing that the alternative will provide at least an equivalent level of safety; and

(4) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(c) *Petitions for special approval of alternative compliance.* Each petition for special approval of alternative compliance shall contain—

(1) The name, title, address, and telephone number of the primary person to be contacted with regard to the petition;

(2) The elements prescribed in § 238.201(b); and

(3) A statement affirming that the railroad has served a copy of the petition on designated representatives of its employees, together with a list of the names and addresses of the persons served.

(d) *Petitions for special approval of pre-revenue service acceptance testing plan.*

(1) Each petition for special approval of a pre-revenue service acceptance testing plan shall contain—

(i) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the petition; and

(ii) The elements prescribed in § 238.111.

(2) Three copies of each petition for special approval of the pre-revenue service acceptance testing plan shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., N.W., Mail Stop 25, Washington, D.C. 20590.

(e) **Federal Register** *notice.* FRA will publish a notice in the **Federal Register** concerning each petition under paragraphs (b) and (c) of this section.

(f) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraphs (b) or (c) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Three copies of each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D. C. 20590.

(3) The commenter shall certify that a copy of the comment was served on each petitioner.

(g) *Disposition of petitions.*

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter.

(2) If FRA finds that the petition complies with the requirements of this section or that the proposed plan is acceptable or changes are justified, or both, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(3) If FRA finds that the petition does not comply with the requirements of this section, or that the proposed plan is not acceptable or that the proposed changes are not justified, or both, the petition will be denied, normally within 90 days of its receipt.

(4) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

§ 238.23 Information collection.

(a) The information collection requirements of this part were reviewed by the Office of Management and Budget pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et. seq.*) and are assigned OMB control number 2130–0544.

(b) The information collection requirements are found in the following sections: §§ 238.1, 238.7, 238.11, 238.15, 238.17, 238.19, 238.21, 238.103, 238.105, 238.107, 238.109, 238.111, 238.201, 238.203, 238.211, 238.223, 238.231, 238.237, 238.301, 238.303, 238.305, 238.307, 238.309, 238.311, 238.313, 238.315, 238.317, 238.403, 238.405, 238.421, 238.423, 238.427, 238.431, 238.437, 238.441, 238.445, 238.447, 238.503, 238.505, and 238.603.

Subpart B—Safety Planning and General Requirements

§ 238.101 Scope.

This subpart contains safety planning and general safety requirements for all railroad passenger equipment subject to this part.

§ 238.103 Fire safety.

(a) *Materials.* (1) Materials used in constructing a passenger car or a cab of a locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA under § 238.21.

(2) On or after November 8, 1999, materials introduced in a passenger car or a locomotive cab, as part of any kind of rebuild, refurbishment, or overhaul of the car or cab, shall meet the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part, or alternative standards issued or recognized by an expert consensus organization after special approval of FRA under § 238.21.

(b) *Certification.* A railroad shall require certification that a representative sample of combustible materials to be—

(1) Used in constructing a passenger car or a locomotive cab, or

(2) Introduced in a passenger car or a locomotive cab, as part of any kind of rebuild, refurbishment, or overhaul of the car or cab, has been tested by a recognized independent testing laboratory and that the results show the representative sample complies with the requirements of paragraph (a) of this section at the time it was tested.

(c) *Fire safety analysis for procuring new passenger equipment.* In procuring new passenger equipment, each railroad shall ensure that fire safety considerations and features in the design of the equipment reduce the risk of personal injury and equipment damage caused by fire to an acceptable level using MIL–STD–882C as a guide or an alternative, formal safety methodology. To this end, each railroad shall complete a written fire safety analysis for the passenger equipment being procured. In conducting the analysis, the railroad shall—

(1) Take effective steps to design the equipment to be sufficiently fire resistant so that fire detection devices permit evacuation of all passengers and crewmembers before fire, smoke, or toxic fumes cause injury to any passenger or crewmember.

(2) Identify, analyze, and prioritize the fire hazards inherent in the design of the equipment.

(3) Reasonably ensure that a ventilation system in the equipment does not contribute to the lethality of a fire.

(4) Identify in writing any train component that is a risk of initiating fire and which requires overheat protection. An overheat detector shall be installed in any component when the analysis determines that an overheat detector is necessary.

(5) Identify in writing any unoccupied train compartment that contains equipment or material that poses a fire hazard, and analyze the benefit provided by including a fire or smoke detection system in each compartment so identified. A fire or smoke detector shall be installed in any unoccupied compartment when the analysis determines that such equipment is necessary to ensure sufficient time for the safe evacuation of passengers and crewmembers from the train. For purposes of this section, an unoccupied train compartment means any part of the equipment structure that is not normally occupied during operation of the train, including a closet, baggage compartment, food pantry, etc.

(6) Determine whether any occupied or unoccupied space requires a portable fire extinguisher and, if so, the proper type and size of the fire extinguisher for each location. As required by § 239.101 of this chapter, each passenger car is required to have a minimum of one portable fire extinguisher. If the analysis performed indicates that one or more additional portable fire extinguishers are needed, such shall be installed.

(7) On a case-by-case basis, the railroad shall analyze the benefit provided by including a fixed, automatic fire-suppression system in any unoccupied train compartment that contains equipment or material that poses a fire hazard, and determine the proper type and size of the automatic fire-suppression system for each location. A fixed, automatic fire suppression system shall be installed in any unoccupied compartment when the analysis determines that such equipment is practical and necessary to ensure sufficient time for the safe evacuation of passengers and crewmembers from the train.

(8) Describe the analysis and testing necessary to—

(i) Demonstrate that the fire protection approach taken in the design of the equipment will meet the fire protection requirements of this part, and

(ii) Select materials which help provide sufficient fire resistance to reasonably ensure adequate time to detect a fire and safely evacuate the passengers and crewmembers.

(9) Explain how safety issues are resolved in relation to cost and performance issues in the design of the equipment to reduce the risk of each fire hazard.

(d) *Fire safety analysis for existing passenger equipment.* (1) Not later than July 10, 2000, each passenger railroad shall complete a preliminary fire safety analysis for each category of existing rail equipment and current rail service.

(2) Not later than July 10, 2001, each such railroad shall—

(i) Complete a final fire safety analysis for any category of existing passenger equipment and service evaluated during the preliminary fire safety analysis as likely presenting an unacceptable risk of personal injury. In conducting the analysis, the railroad shall consider the extent to which materials comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part or alternative standards approved by FRA under this part.

(ii) Take remedial action to reduce the risk of personal injuries to an acceptable level in any such category, if the railroad finds the risk to be unacceptable. In considering remedial action, a railroad is not required to replace material found not to comply with the test performance criteria for flammability and smoke emission characteristics required by this part, if:

(A) The risk of personal injuries from the material is negligible based on the railroad's operating environment and the material's size, or location, or both; or

(B) The railroad takes alternative action which reduces the risk of personal injuries to an acceptable level.

(3) Not later than July 10, 2003, each such railroad shall—

(i) Complete a fire safety analysis for all categories of equipment and service. In completing this analysis, the railroad shall, as far as practicable, determine the extent to which remaining materials comply with the test performance criteria for flammability and smoke emission characteristics as specified in Appendix B to this part or alternative standards approved by FRA under this part.

(ii) Take remedial action to reduce the risk of personal injuries to an acceptable level in any such category, if the railroad finds the risk to be unacceptable. In considering remedial action, a railroad is not required to replace material found not to comply with the test performance criteria for flammability and smoke emission characteristics required by this part, if:

(A) The risk of personal injuries from the material is negligible based on the railroad's operating environment and the material's size, or location, or both; or

(B) The railroad takes alternative action which reduces the risk of personal injuries to an acceptable level.

(4) Where possible prior to transferring existing equipment to a new category of service, but in no case more than 90 days following such a transfer, the passenger railroad shall complete a new fire safety analysis taking into consideration the change in railroad operations and shall effect prompt action to reduce any identified risk to an acceptable level.

(5) As used in this paragraph, "category of rail equipment and current rail service" shall be determined by the railroad based on relevant fire safety risks, including available ignition sources, presence or absence of heat/smoke detection systems, known variations from the required material test performance criteria or alternative standards approved by FRA, and availability of rapid and safe egress to the exterior of the vehicle under conditions secure from fire, smoke, and other hazards.

(e) *Inspection, testing, and maintenance.* Each railroad shall develop and adopt written procedures for the inspection, testing, and maintenance of all fire safety systems and fire safety equipment on the passenger equipment it operates. The railroad shall comply with those procedures that it designates as mandatory for the safety of the equipment and its occupants.

§ 238.105 Train hardware and software safety.

These requirements of this section apply to hardware and software used to control or monitor safety functions in passenger equipment ordered on or after September 8, 2000, and such components implemented or materially modified in new or existing passenger equipment on or after September 9, 2002.

(a) The railroad shall develop and maintain a written hardware and software safety program to guide the design, development, testing, integration, and verification of computer software and hardware that controls or monitors equipment safety functions.

(b) The hardware and software safety program shall be based on a formal safety methodology that includes a Failure Modes, Effects, Criticality Analysis (FMECA); verification and validation testing for all hardware and software components and their interfaces; and comprehensive hardware and software integration testing to ensure that the software functions as intended.

(c) Under the hardware and software safety program, software that controls or monitors safety functions shall be considered safety-critical unless a completely redundant, failsafe, non-software means ensuring the same function is provided. The hardware and software safety program shall include a description of how the following will be accomplished, achieved, carried out, or implemented to ensure software safety and reliability:

(1) The software design process;

(2) The software design documentation;

(3) The software hazard analysis;

(4) Software safety reviews;

(5) Software hazard monitoring and tracking;

(6) Hardware and software integration safety tests; and

(7) Demonstration of overall software safety as part of the pre-revenue service tests of equipment.

(d) Hardware and software that controls or monitors passenger equipment safety functions shall include design feature(s) that result in a safe condition in the event of a computer hardware or software failure.

(e) The railroad shall comply with the elements of its hardware and software safety program that affect the safety of the passenger equipment.

§ 238.107 Inspection, testing, and maintenance plan.

(a) *General.* Beginning July 12, 2001 the following provisions of this section apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c).

(b) Each railroad shall develop, and provide to FRA upon request, a detailed inspection, testing, and maintenance plan consistent with the requirements of this part. This plan shall include a detailed description of the following:

(1) Inspection procedures, intervals, and criteria;

(2) Test procedures and intervals;

(3) Scheduled preventive maintenance intervals;

(4) Maintenance procedures; and

(5) Special testing equipment or measuring devices required to perform inspections and tests.

(c) The inspection, testing, and maintenance plan required by this section is not intended to address and should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the plan. When requesting a copy of the railroad's plan, FRA does not intend to review any portion of the plan that relates to employee working conditions.

(d) The inspection, testing, and maintenance plan required by this section shall be reviewed by the railroad annually.

§ 238.109 Training, qualification, and designation program.

(a) Beginning July 12, 2001 each railroad shall have adopted a training, qualification, and designation program for employees and contractors that perform safety-related inspections, tests, or maintenance of passenger equipment, and trained such employees and contractors in accordance with the program. A railroad may request earlier application of these requirements upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c). For purposes of this section, a "contractor" is defined as a person under contract with the railroad or an employee of a person under contract with the railroad to perform any of the tasks required by this part.

(b) As part of this program, the railroad shall, at a minimum:

(1) Identify the tasks related to the inspection, testing, and maintenance that must be performed on each type of equipment that the railroad operates;

(2) Develop written procedures for the performance of the tasks identified;

(3) Identify the skills and knowledge necessary to perform each task;

(4) Develop or incorporate a training curriculum that includes classroom and

"hands-on" lessons designed to impart the skills and knowledge identified as necessary to perform each task. The developed or incorporated training curriculum shall specifically address the Federal regulatory requirements contained in this part that are related to the performance of the tasks identified;

(5) Require all employees and contractors to successfully complete the training course that covers the equipment and tasks for which they are responsible as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(6) Require all employees and contractors to pass a written examination covering the equipment and tasks for which they are responsible as well as the specific Federal regulatory requirements contained in this part related to equipment and tasks for which they are responsible;

(7) Require all employees and contractors to individually demonstrate "hands-on" capability to successfully perform the tasks required to be performed as part of their duties on the type equipment to which they are assigned;

(8) Require supervisors to complete the program that covers the employees whom they supervise, including refresher training;

(9) Require supervisors to exercise oversight to ensure that all the identified tasks are performed in accordance with the railroad's written procedures;

(10) Designate in writing that each employee and contractor has the knowledge and skills necessary to perform the safety-related tasks that are part of his or her job;

(11) Require periodic refresher training at an interval not to exceed three years that includes classroom and "hands-on" training, as well as testing;

(12) Add new equipment to the qualification and designation program prior to its introduction to revenue service; and

(13) Maintain records adequate to demonstrate that each employee and contractor performing safety-related tasks on passenger equipment is currently qualified to do so. These records shall be adequate to distinguish the qualifications of the employee or contractor as a qualified person or as a qualified maintenance person.

§ 238.111 Pre-revenue service acceptance testing plan.

(a) *Passenger equipment that has previously been used in revenue service in the United States.* For passenger equipment that has previously been used in revenue service in the United States, each railroad shall test the equipment on its system prior to placing such equipment in revenue service for the first time on its railroad to ensure the compatibility of the equipment with the railroad's operating system (including the track, and signal system). A description of such testing shall be retained by the railroad and made available to FRA for inspection and copying upon request. For purposes of this paragraph, passenger equipment that has previously been used in revenue service in the United States means:

(1) The actual equipment used in such service;

(2) Equipment manufactured identically to that actual equipment; and

(3) Equipment manufactured similarly to that actual equipment with no material differences in safety-critical components or systems.

(b) *Passenger equipment that has not been used in revenue service in the United States.* Before using passenger equipment for the first time on its system that has not been used in revenue service in the United States, each railroad shall:

(1) Prepare a pre-revenue service acceptance testing plan for the equipment which contains the following elements:

(i) An identification of any waivers of FRA or other Federal safety regulations required for the testing or for revenue service operation of the equipment;

(ii) A clear statement of the test objectives. One of the principal test objectives shall be to demonstrate that the equipment meets the safety requirements specified in this part when operated in the environment in which it is to be used;

(iii) A planned schedule for conducting the testing;

(iv) A description of the railroad property or facilities to be used to conduct the testing;

(v) A detailed description of how the testing is to be conducted, including a description of the criteria to be used to evaluate the equipment's performance;

(vi) A description of how the test results are to be recorded;

(vii) A description of any special instrumentation to be used during the tests;

(viii) A description of the information or data to be obtained;

(ix) A description of how the information or data obtained is to be analyzed or used;

(x) A description of any criteria to be used as safety limits during the testing;

(xi) A description of the criteria to be used to measure or determine the success or failure of the tests. If acceptance is to be based on extrapolation of less than full-level testing results, the analysis to be done to justify the validity of the extrapolation shall be described;

(xii) Quality control procedures to ensure that the inspection, testing, and maintenance procedures are followed;

(xiii) Criteria to be used for the revenue service operation of the equipment; and

(xiv) A description of any testing of the equipment that has previously been performed.

(2) Submit a copy of the plan to FRA at least 30 days prior to testing the equipment and include with that submission notification of the times and places of the pre-revenue service tests to permit FRA observation of such tests. For Tier II passenger equipment, the railroad shall obtain FRA approval of the plan under the procedures specified in § 238.21.

(3) Comply with the plan, including fully executing the tests required by the plan.

(4) Document in writing the results of the tests. For Tier II passenger equipment, the railroad shall report the results of the tests to the FRA Associate Administrator for Safety at least 90 days prior to its intended operation of the equipment in revenue service.

(5) Correct any safety deficiencies identified in the design of the equipment or in the inspection, testing, and maintenance procedures, uncovered during the testing. If safety deficiencies cannot be corrected by design changes, the railroad shall impose operational limitations on the revenue service operation of the equipment that are designed to ensure that the equipment can operate safely. For Tier II passenger equipment, the railroad shall comply with any operational limitations imposed by the FRA Associate Administrator for Safety on the revenue service operation of the equipment for cause stated following FRA review of the results of the test program. This section does not restrict a railroad from petitioning FRA for a waiver of a safety regulation under the procedures specified in part 211 of this chapter.

(6) Make the plan and documentation kept pursuant to that plan available for inspection and copying by FRA upon request.

(7) For Tier II passenger equipment, obtain approval from the FRA Associate Administrator for Safety prior to placing the equipment in revenue service. The Associate Administrator grants such approval upon a showing of the

railroad's compliance with the applicable requirements of this part.

(c) If a railroad plans a major upgrade or introduction of new technology on Tier II passenger equipment that has been used in revenue service in the United States and that affects a safety system on such equipment, the railroad shall follow the procedures specified in paragraph (b) of this section prior to placing the equipment in revenue service with such a major upgrade or introduction of new technology.

§ 238.113 Emergency window exits.

(a) The following requirements apply on or after Novermber 8, 1999—

(1) Each passenger car shall have a minimum of four emergency window exits, either in a staggered configuration where practical or with one exit located in each end of each side of the passenger car. If the passenger car has multiple levels, each main level shall have a minimum of four emergency window exits, either in a staggered configuration where practical or with one exit located in each end of each side on each level.

(2) Each sleeping car, and any similarly designed car having a number of separate compartments intended to be occupied by passengers or train crewmembers, shall have at least one emergency window exit in each compartment.

(3) Each emergency window exit shall be designed to permit rapid and easy removal during an emergency situation without requiring the use of a tool or other implement.

(b) Each emergency window exit in a passenger car, including a sleeper car, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have a minimum unobstructed opening with dimensions of 26 inches horizontally by 24 inches vertically.

(c) *Marking and instructions.* [Reserved]

§ 238.115 Emergency lighting.

(a) This section applies to each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002. This section applies to each level of a multi-level passenger car.

(b) Emergency lighting shall be provided in each passenger car and shall include the following:

(1) A minimum, average illumination level of 1 foot-candle measured at floor level adjacent to each exterior door and each interior door providing access to an exterior door (such as a door opening into a vestibule);

(2) A minimum, average illumination level of 1 foot-candle measured 25 inches above floor level along the center of each aisle and passageway;

(3) A minimum illumination level of 0.1 foot-candle measured 25 inches above floor level at any point along the center of each aisle and passageway; and

(4) A back-up power system capable of:

(i) Operating in all equipment orientations within 45 degrees of vertical;

(ii) Operating after the initial shock of a collision or derailment resulting in the following individually applied accelerations:

(A) Longitudinal: 8g;

(B) Lateral: 4g; and

(C) Vertical: 4g; and

(iii) Operating all emergency lighting for a period of at least 90 minutes without a loss of more than 40% of the minimum illumination levels specified in this paragraph (b).

§ 238.117 Protection against personal injury.

On or after November 8, 1999, all moving parts, high voltage equipment, electrical conductors and switches, and pipes carrying hot fluids or gases on all passenger equipment shall be appropriately equipped with interlocks or guards to minimize the risk of personal injury. This section does not apply to the interior of a private car.

§ 238.119 Rim-stamped straight-plate wheels.

(a)(1) Except as provided in paragraph (a)(2) of this section, on or after November 8, 1999, no railroad shall place or continue in service any vehicle, other than a private car, that is equipped with a rim-stamped straight-plate wheel if a brake shoe acts on the tread of the wheel for the purpose of slowing the vehicle.

(2) A commuter railroad may continue in service a vehicle equipped with a Class A, rim-stamped straight-plate wheel mounted on an inboard-bearing axle until the railroad exhausts its replacement stock of wheels held as of May 12, 1999, provided the railroad does not modify the operation of the vehicle in any way that would result in increased thermal input to the wheel during braking.

(b) A rim-stamped straight-plate wheel shall not be used as a replacement wheel on a private car that operates in a passenger train if a brake shoe acts on the tread of the wheel for the purpose of slowing the car.

(c) The requirements of this section do not apply to a wheel that is periodically tread-braked for a short duration by automatic circuitry for the sole purpose of cleaning the wheel tread surface.

Subpart C—Specific Requirements for Tier I Passenger Equipment

§ 238.201 Scope/alternative compliance.

(a) *Scope.* (1) This subpart contains requirements for railroad passenger equipment operating at speeds not exceeding 125 miles per hour. As stated in § 238.229, all such passenger equipment remains subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in FRA regulations at part 231 and § 232.2 of this chapter. Unless otherwise specified, these requirements only apply to passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002.

(2) The structural standards of this subpart (§ 238.203B-static end strength; § 238.205—anti-climbing mechanism; § 238.207—link between coupling mechanism and car body; § 238.209—forward-facing end structure of locomotives; § 238.211—collision posts; § 238.213—corner posts; § 238.215—rollover strength; § 238.217—side structure; § 238.219—truck-to-car-body attachment; and § 238.223—locomotive fuel tanks) do not apply to passenger equipment if used exclusively on a rail line:

(i) With no public highway-rail grade crossings;

(ii) On which no freight operations occur at any time;

(iii) On which only passenger equipment of compatible design is utilized; and

(iv) On which trains operate at speeds not exceeding 79 mph.

(b) *Alternative compliance.* Passenger equipment of special design shall be deemed to comply with this subpart, other than § 238.203, for the service environment in which the petitioner proposes to operate the equipment if the FRA Associate Administrator for Safety determines under paragraph (c) of this section that the equipment provides at least an equivalent level of safety in such environment with respect to the protection of its occupants from serious injury in the case of a derailment or collision. In making a determination under paragraph (c) the Associate Administrator shall consider, as a whole, all of those elements of casualty prevention or mitigation relevant to the integrity of the equipment that are addressed by the requirements of this subpart.

(c)(1) The Associate Administrator may only make a finding of equivalent safety and compliance with this subpart,

other than § 238.203, based upon a submission of data and analysis sufficient to support that determination. The petition shall include:

(i) The information required by § 238.21(c);

(ii) Information, including detailed drawings and materials specifications, sufficient to describe the actual construction of the equipment of special design;

(iii) Engineering analysis sufficient to describe the likely performance of the equipment in derailment and collision scenarios pertinent to the safety requirements for which compliance is required and for which the equipment does not conform to the specific requirements of this subpart; and

(iv) A quantitative risk assessment, incorporating the design information and engineering analysis described in this paragraph, demonstrating that the equipment, as utilized in the service environment for which recognition is sought, presents no greater hazard of serious personal injury than equipment that conforms to the specific requirements of this subpart.

(2) Any petition made under this paragraph is subject to the procedures set forth in § 238.21, and will be disposed of in accordance with § 238.21(g).

§ 238.203 Static end strength.

(a)(1) Except as further specified in this paragraph or in paragraph (d), on or after November 8, 1999 all passenger equipment shall resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure.

(2) For a passenger car or a locomotive, the static end strength of unoccupied volumes may be less than 800,000 pounds if:

(i) Energy absorbing structures are used as part of a crash energy management design of the passenger car or locomotive, and

(ii) The passenger car or locomotive resists a minimum static end load of 800,000 pounds applied on the line of draft at the ends of its occupied volume without permanent deformation of the body structure.

(3) For a locomotive placed in service prior to November 8, 1999, as an alternative to resisting a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure, the locomotive shall resist a horizontal load of 1,000,000 pounds applied along the longitudinal center line of the locomotive at a point on the buffer beam construction 12 inches above the center line of draft without permanent deformation of the body structure. The application of this load shall not be distributed over an area greater than 6 inches by 24 inches. The alternative specified in this paragraph is not applicable to a cab car or an MU locomotive.

(4) The requirements of this paragraph do not apply to:

(i) A private car; or

(ii) Unoccupied passenger equipment operating at the rear of a passenger train.

(b) Passenger equipment placed in service before November 8, 1999 is presumed to comply with the requirements of paragraph (a)(1) of this section, unless the railroad operating the equipment has knowledge, or FRA makes a showing, that such passenger equipment was not built to the requirements specified in paragraph (a)(1).

(c) When overloaded in compression, the body structure of passenger equipment shall be designed, to the maximum extent possible, to fail by buckling or crushing, or both, of structural members rather than by fracture of structural members or failure of structural connections.

(d) *Grandfathering of non-compliant equipment for use on a specified rail line or lines.*

(1) *Grandfathering approval is equipment and line specific.* Grandfathering approval of non-compliant equipment under this paragraph is limited to usage of the equipment on a particular rail line or lines. Before grandfathered equipment can be used on another rail line, a railroad must file and secure approval of a grandfathering petition under paragraph (d)(3) of this section.

(2) *Temporary usage of non-compliant equipment.* Any passenger equipment placed in service on a rail line or lines before November 8, 1999 that does not comply with the requirements of paragraph (a)(1) may continue to be operated on that particular line or (those particular lines) if the operator of the equipment files a petition seeking grandfathering approval under paragraph (d)(3) before November 8, 1999. Such usage may continue while the petition is being processed, but in no event later than May 8, 2000, unless the petition is approved.

(3) *Petitions for grandfathering.* Petitions for grandfathering shall include:

(i) The name, title, address, and telephone number of the primary person to be contacted with respect to the petition;

(ii) Information, including detailed drawings and material specifications, sufficient to describe the actual construction of the equipment;

(iii) Engineering analysis sufficient to describe the likely performance of the static end strength of the equipment and the likely performance of the equipment in derailment and collision scenarios pertinent to the equipment's static end strength;

(iv) A description of risk mitigation measures that will be employed in connection with the usage of the equipment on a specified rail line or lines to decrease the likelihood of accidents involving the use of the equipment; and

(v) A quantitative risk assessment, incorporating the design information, engineering analysis, and risk mitigation measures described in this paragraph, demonstrating that the use of the equipment, as utilized in the service environment for which recognition is sought, is in the public interest and is consistent with railroad safety.

(e) *Service.* Three copies of each petition shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D.C. 20590.

(f) **Federal Register** *notice.* FRA will publish a notice in the **Federal Register** concerning each petition under paragraph (d) of this section.

(g) *Comment.* Not later than 30 days from the date of publication of the notice in the **Federal Register** concerning a petition under paragraph (d) of this section, any person may comment on the petition.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Three copies of each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D. C. 20590.

(3) The commenter shall certify that a copy of the comment was served on each petitioner.

(h) *Disposition of petitions.*

(1) FRA will conduct a hearing on a petition in accordance with the procedures provided in § 211.25 of this chapter.

(2) If FRA finds that the petition complies with the requirements of this section and that the proposed usage is in the public interest and consistent with railroad safety, the petition will be granted, normally within 90 days of its receipt. If the petition is neither granted nor denied within 90 days, the petition remains pending for decision. FRA may

attach special conditions to the approval of the petition. Following the approval of a petition, FRA may reopen consideration of the petition for cause stated.

(3) If FRA finds that the petition does not comply with the requirements of this section or that the proposed usage is not in the public interest and consistent with railroad safety, the petition will be denied, normally within 90 days of its receipt.

(4) When FRA grants or denies a petition, or reopens consideration of the petition, written notice is sent to the petitioner and other interested parties.

§ 238.205 Anti-climbing mechanism.

(a) Except as provided in paragraph (b) of this section, all passenger equipment placed in service for the first time on or after September 8, 2000 shall have at both the forward and rear ends an anti-climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without failure. When coupled together in any combination to join two vehicles, AAR Type H and Type F tight-lock couplers satisfy this requirement.

(b) Each locomotive ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have an anti-climbing mechanism at its forward end capable of resisting an upward or downward vertical force of 200,000 pounds without failure, in lieu of the forward end anti-climbing mechanism requirements described in paragraph (a) of this section.

§ 238.207 Link between coupling mechanism and car body.

All passenger equipment placed in service for the first time on or after September 8, 2000 shall have a coupler carrier at each end designed to resist a vertical downward thrust from the coupler shank of 100,000 pounds for any normal horizontal position of the coupler, without permanent deformation. For passenger equipment that is connected by articulated joints that comply with the requirements of § 238.205(a), such passenger equipment also complies with the requirements of this section.

§ 238.209 Forward-facing end structure of locomotives.

The skin covering the forward-facing end of each locomotive shall be:

(a) Equivalent to a ½ inch steel plate with a 25,000 pounds-per-square-inch yield strength—material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained;

(b) Designed to inhibit the entry of fluids into the occupied cab area of the equipment; and

(c) Affixed to the collision posts or other main vertical structural members of the forward end structure so as to add to the strength of the end structure.

(d) As used in this section, the term "skin" does not include forward-facing windows and doors.

§ 238.211 Collision posts.

(a) Except as further specified in this paragraph and paragraphs (b) and (c) of this section—

(1) All passenger equipment placed in service for the first time on or after September 8, 2000 shall have either:

(i) Two full-height collision posts, located at approximately the one-third points laterally. Each collision post shall have an ultimate longitudinal shear strength of not less than 300,000 pounds at a point even with the top of the underframe member to which it is attached. If reinforcement is used to provide the shear value, the reinforcement shall have full value for a distance of 18 inches up from the underframe connection and then taper to a point approximately 30 inches above the underframe connection; or

(ii) An equivalent end structure that can withstand the sum of forces that each collision post in paragraph (a)(1)(i) of this section is required to withstand. For analysis purposes, the required forces may be assumed to be evenly distributed at the end structure at the underframe joint.

(2) The requirements of this paragraph do not apply to unoccupied passenger equipment operating in a passenger train.

(b) Each locomotive, including a cab car and an MU locomotive, ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002, shall have at its forward end, in lieu of the structural protection described in paragraph (a) of this section, either:

(1) Two forward collision posts, located at approximately the one-third points laterally, each capable of withstanding:

(i) A 500,000-pound longitudinal force at the point even with the top of the underframe, without exceeding the ultimate strength of the joint; and

(ii) A 200,000-pound longitudinal force exerted 30 inches above the joint of the post to the underframe, without exceeding the ultimate strength; or

(2) An equivalent end structure that can withstand the sum of the forces that each collision post in paragraph (b)(1)(i) of this section is required to withstand.

(c) The end structure requirements in paragraphs (a) and (b) of this section apply only to the ends of a semi-permanently coupled consist of articulated units, provided that:

(1) The railroad submits to the FRA Associate Administrator for Safety under the procedures specified in § 238.21 a documented engineering analysis establishing that the articulated connection is capable of preventing disengagement and telescoping to the same extent as equipment satisfying the anti-climbing and collision post requirements contained in this subpart; and

(2) FRA finds the analysis persuasive.

§ 238.213 Corner posts.

(a) Each passenger car shall have at each end of the car, placed ahead of the occupied volume, two full-height corner posts capable of resisting:

(1) A horizontal load of 150,000 pounds at the point of attachment to the underframe without failure;

(2) A horizontal load of 20,000 pounds at the point of attachment to the roof structure without failure; and

(3) A horizontal load of 30,000 pounds applied 18 inches above the top of the floor without permanent deformation.

(b) For purposes of this section, the orientation of the applied horizontal loads shall range from longitudinal inward to transverse inward.

§ 238.215 Rollover strength.

(a) Each passenger car shall be designed to rest on its side and be uniformly supported at the top ("roof rail"), the bottom cords ("side sill") of the side frame, and, if bi-level, the intermediate floor rail. The allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Local yielding to the outer skin of the passenger car is allowed provided that the resulting deformations in no way intrude upon the occupied volume of the car.

(b) Each passenger car shall also be designed to rest on its roof so that any damage in occupied areas is limited to roof sheathing and framing. Other than roof sheathing and framing, the allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Deformation to the roof sheathing and framing is allowed to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames.

§ 238.217 Side structure.

Each passenger car shall comply with the following:

(a) *Side posts and corner braces.*

(1) For modified girder, semi-monocoque, or truss construction, the sum of the section moduli in inches ^{3}—about a longitudinal axis, taken at the weakest horizontal section between the side sill and side plate—of all posts and braces on each side of the car located between the body corner posts shall be not less than 0.30 multiplied by the distance in feet between the centers of end panels.

(2) For modified girder or semi-monocoque construction only, the sum of the section moduli in inches ^{3}—about a transverse axis, taken at the weakest horizontal section between the side sill and side plate—of all posts, braces and pier panels, to the extent available, on each side of the car located between body corner posts shall be not less than 0.20 multiplied by the distance in feet between the centers of end panels.

(3) The center of an end panel is the point midway between the center of the body corner post and the center of the adjacent side post.

(4) The minimum section moduli or thicknesses specified in paragraph (a) of this section may be adjusted in proportion to the ratio of the yield strength of the material used to that of mild open-hearth steel for a car whose structural members are made of a higher strength steel.

(b) *Sheathing.*

(1) Outside sheathing of mild, open-hearth steel when used flat, without reinforcement (other than side posts) in a side frame of modified girder or semi-monocoque construction shall not be less than 1/8 inch nominal thickness. Other metals may be used of a thickness in inverse proportion to their yield strengths.

(2) Outside metal sheathing of less than ⅛ inch thickness may be used only if it is reinforced so as to produce at least an equivalent sectional area at a right angle to reinforcements as that of the flat sheathing specified in paragraph (b)(1) of this section.

(3) When the sheathing used for truss construction serves no load-carrying function, the minimum thickness of that sheathing shall be not less than 40 percent of that specified in paragraph (b)(1) of this section.

§ 238.219 Truck-to-car-body attachment.

Passenger equipment shall have a truck-to-car-body attachment with an ultimate strength sufficient to resist without failure a force of 2g vertical on the mass of the truck and a force of 250,000 pounds in any horizontal direction on the truck. For purposes of this section, the mass of the truck includes axles, wheels, bearings, the truck-mounted brake system, suspension system components, and any other components attached to the truck by design.

§ 238.221 Glazing.

(a) Passenger equipment shall comply with the applicable Safety Glazing Standards contained in part 223 of this chapter, if required by that part.

(b) Each exterior window on a locomotive cab and a passenger car shall remain in place when subjected to:

(1) The forces described in part 223 of this chapter; and

(2) The forces due to air pressure differences caused when two trains pass at the minimum separation for two adjacent tracks, while traveling in opposite directions, each train traveling at the maximum authorized speed.

§ 238.223 Locomotive fuel tanks.

(a) *External fuel tanks.* External locomotive fuel tanks shall comply with the requirements contained in Appendix D to this part, or an industry standard providing at least an equivalent level of safety if approved by FRA under § 238.21.

(b) *Internal fuel tanks.*

(1) Internal locomotive fuel tanks shall be positioned in a manner to reduce the likelihood of accidental penetration from roadway debris or collision.

(2) Internal fuel tank vent systems shall be designed so they do not become a path of fuel loss in any tank orientation due to a locomotive overturning.

(3) Internal fuel tank bulkheads and skin shall at a minimum be equivalent to a ⅜-inch thick steel plate with a 25,000 pounds-per-square-inch yield strength. Material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained. Skid plates are not required.

§ 238.225 Electrical system.

All passenger equipment shall comply with the following:

(a) *Conductors.* Conductor sizes shall be selected on the basis of current-carrying capacity, mechanical strength, temperature, flexibility requirements, and maximum allowable voltage drop. Current-carrying capacity shall be derated for grouping and for operating temperature.

(b) *Main battery system.*

(1) The main battery compartment shall be isolated from the cab and passenger seating areas by a non-combustible barrier.

(2) Battery chargers shall be designed to protect against overcharging.

(3) If batteries are of the type to potentially vent explosive gases, the battery compartment shall be adequately ventilated to prevent the accumulation of explosive concentrations of these gases.

(c) *Power dissipation resistors.*

(1) Power dissipating resistors shall be adequately ventilated to prevent overheating under worst-case operating conditions as determined by the railroad.

(2) Power dissipation grids shall be designed and installed with sufficient isolation to prevent combustion.

(3) Resistor elements shall be electrically insulated from resistor frames, and the frames shall be electrically insulated from the supports that hold them.

(d) *Electromagnetic interference and compatibility.*

(1) The operating railroad shall ensure electromagnetic compatibility of the safety-critical equipment systems with their environment. Electromagnetic compatibility may be achieved through equipment design or changes to the operating environment.

(2) The electronic equipment shall not produce electrical noise that affects the safe performance of train line control and communications or wayside signaling systems.

(3) To contain electromagnetic interference emissions, suppression of transients shall be at the source wherever possible.

(4) All electronic equipment shall be self-protected from damage or improper operation, or both, due to high voltage transients and long-term over-voltage or under-voltage conditions. This includes protection from both power frequency and harmonic effects as well as protection from radio frequency signals into the microwave frequency range.

§ 238.227 Suspension system.

On or after November 8, 1999—

(a) All passenger equipment shall exhibit freedom from hunting oscillations at all operating speeds. If hunting oscillations do occur, a railroad shall immediately take appropriate action to prevent derailment. For purposes of this paragraph, hunting oscillations shall be considered lateral oscillations of trucks that could lead to a dangerous instability.

(b) All passenger equipment intended for service above 110 mph shall demonstrate stable operation during pre-revenue service qualification tests at all operating speeds up to 5 mph in

excess of the maximum intended operating speed under worst-case conditions—including component wear—as determined by the operating railroad.

(c) Nothing in this section shall affect the requirements of part 213 of this chapter as they apply to passenger equipment as provided in that part.

§ 238.229 Safety appliances.

Except as provided in this part, all passenger equipment continues to be subject to the safety appliance requirements contained in Federal statute at 49 U.S.C. chapter 203 and in Federal regulations at part 231 and § 232.2 of this chapter.

§ 238.231 Brake system.

Except as otherwise provided in this section, on or after September 9, 1999 the following requirements apply to all passenger equipment and passenger trains.

(a) A passenger train's primary brake system shall be capable of stopping the train with a service application from its maximum authorized operating speed within the signal spacing existing on the track over which the train is operating.

(b) The brake system design of passenger equipment ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, shall not require an inspector to place himself or herself on, under, or between components of the equipment to observe brake actuation or release.

(c) Passenger equipment shall be provided with an emergency brake application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. An emergency brake application shall be available at any time, and shall be initiated by an unintentional parting of the train.

(d) A passenger train brake system shall respond as intended to signals from a train brake control line or lines. Control lines shall be designed so that failure or breakage of a control line will cause the brakes to apply or will result in a default to control lines that meet this requirement.

(e) Introduction of alcohol or other chemicals into the air brake system of passenger equipment is prohibited.

(f) The operating railroad shall require that the design and operation of the brake system results in wheels that are free of condemnable cracks.

(g) Disc brakes shall be designed and operated to produce a surface temperature no greater than the safe operating temperature recommended by the disc manufacturer and verified by testing or previous service.

(h) *Hand brakes and parking brakes.*

(1) Except for a locomotive that is ordered before September 8, 2000 or placed in service for the first time before Sepbember 9, 2002, and except for MU locomotives, all locomotives shall be equipped with a hand or parking brake that can:

(i) Be applied or activated by hand;

(ii) Be released by hand; and

(iii) Hold the loaded unit on the maximum grade anticipated by the operating railroad.

(2) Except for a private car and locomotives addressed in paragraph (h)(1) of this section, all other passenger equipment, including MU locomotives, shall be equipped with a hand brake that meets the requirements for hand brakes contained in part 231 of this chapter and that can:

(i) Be applied or activated by hand;

(ii) Be released by hand; and

(iii) Hold the loaded unit on the maximum grade anticipated by the operating railroad.

(i) Passenger cars shall be equipped with a means to apply the emergency brake that is accessible to passengers and located in the vestibule or passenger compartment. The emergency brake shall be clearly identified and marked.

(j) Locomotives equipped with blended brakes shall be designed so that:

(1) The blending of friction and dynamic brake to obtain the correct retarding force is automatic;

(2) Loss of power or failure of the dynamic brake does not result in exceeding the allowable stopping distance;

(3) The friction brake alone is adequate to safely stop the train under all operating conditions; and

(4) Operation of the friction brake alone does not result in thermal damage to wheels or disc rotor surface temperatures exceeding the manufacturer's recommendation.

(k) For new designs of braking systems, the design process shall include computer modeling or dynamometer simulation of train braking that shows compliance with paragraphs (f) and (g) of this section over the range of equipment operating speeds. A new simulation is required prior to implementing a change in operating parameters.

(l) Locomotives ordered on or after September 8, 2000 or placed in service for the first time on or after September 9, 2002, shall be equipped with effective air coolers or dryers that provide air to the main reservoir with a dew point at least 10 degrees F. below ambient temperature.

(m) When a passenger train is operated in either direct or graduated release, the railroad shall ensure that all the cars in the train consist are set up in the same operating mode.

§ 238.233 Interior fittings and surfaces.

(a) Each seat in a passenger car shall—

(1) Be securely fastened to the car body so as to withstand an individually applied acceleration of 4g acting in the lateral direction and 4g acting in the upward vertical direction on the deadweight of the seat or seats, if held in tandem; and

(2) Have an attachment to the car body of an ultimate strength capable of resisting simultaneously:

(i) The longitudinal inertial force of 8g acting on the mass of the seat; and

(ii) The load associated with the impact into the seatback of an unrestrained 95th-percentile adult male initially seated behind the seat, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.

(b) Overhead storage racks in a passenger car shall provide longitudinal and lateral restraint for stowed articles. Overhead storage racks shall be attached to the car body with sufficient strength to resist loads due to the following individually applied accelerations acting on the mass of the luggage stowed as determined by the railroad:

(1) Longitudinal: 8g;

(2) Vertical: 4g; and

(3) Lateral: 4g.

(c) Other interior fittings within a passenger car shall be attached to the car body with sufficient strength to withstand the following individually applied accelerations acting on the mass of the fitting:

(1) Longitudinal: 8g;

(2) Vertical: 4g; and

(3) Lateral: 4g.

(d) To the extent possible, all interior fittings in a passenger car, except seats, shall be recessed or flush-mounted.

(e) Sharp edges and corners in a locomotive cab and a passenger car shall be either avoided or padded to mitigate the consequences of an impact with such surfaces.

(f) Each seat provided for a crewmember regularly assigned to occupy the cab of a locomotive and each floor-mounted seat in the cab shall be secured to the car body with an attachment having an ultimate strength capable of withstanding the loads due to the following individually applied accelerations acting on the combined mass of the seat and a 95th-percentile adult male occupying it:

(1) Longitudinal: 8g;
(2) Lateral: 4g; and
(3) Vertical: 4g.

(g) If, for purposes of showing compliance with the requirements of this section, the strength of a seat attachment is to be demonstrated through sled testing, the seat structure and seat attachment to the sled that is used in such testing must be representative of the actual seat structure in, and seat attachment to, the rail vehicle subject to the requirements of this section. If the attachment strength of any other interior fitting is to be demonstrated through sled testing, for purposes of showing compliance with the requirements of this section, such testing shall be conducted in a similar manner.

§ 238.235 Doors.

(a) By December 31, 1999, each powered, exterior side door in a vestibule that is partitioned from the passenger compartment of a passenger car shall have a manual override device that is:

(1) Capable of releasing the door to permit it to be opened without power from inside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may readily access and operate the override device from inside the car without requiring the use of a tool or other implement.

(b) Each passenger car ordered on or after September 8, 2000, or placed in service for the first time on or after September 9, 2002 shall have a minimum of two exterior side doors, each door providing a minimum clear opening with dimensions of 30 inches horizontally by 74 inches vertically.

Note: The Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway clearance (See 49 CFR part 38).

Each powered, exterior side door on each such passenger car shall have a manual override device that is:

(1) Capable of releasing the door to permit it to be opened without power from both inside and outside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may access the override device from both inside and outside the car without requiring the use of a tool or other implement.

(c) A railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal without requiring the use of a tool or other implement.

(d) *Marking and instructions.* [Reserved]

§ 238.237 Automated monitoring.

(a) Except as further specified in this paragraph, on or after November 8, 1999 a working alerter or deadman control shall be provided in the controlling locomotive of each passenger train operating in other than cab signal, automatic train control, or automatic train stop territory. If the controlling locomotive is ordered on or after September 8, 2000, or placed into service for the first time on or after September 9, 2002, a working alerter shall be provided.

(b) Alerter or deadman control timing shall be set by the operating railroad taking into consideration maximum train speed and capabilities of the signal system. The railroad shall document the basis for setting alerter or deadman control timing and make this documentation available to FRA upon request.

(c) If the train operator does not respond to the alerter or maintain proper contact with the deadman control, it shall initiate a penalty brake application.

(d) The following procedures apply if the alerter or deadman control fails en route:

(1)(i) A second person qualified on the signal system and brake application procedures shall be stationed in the locomotive cab; or

(ii) The engineer shall be in constant communication with a second crewmember until the train reaches the next terminal.

(2)(i) A tag shall be prominently displayed in the locomotive cab to indicate that the alerter or deadman control is defective, until such device is repaired; and

(ii) When the train reaches its next terminal or the locomotive undergoes its next calender day inspection, whichever occurs first, the alerter or deadman control shall be repaired or the locomotive shall be removed as the controlling locomotive in the train.

Subpart D—Inspection, Testing, and Maintenance Requirements for Tier I Passenger Equipment

§ 238.301 Scope.

(a) This subpart contains requirements pertaining to the inspection, testing, and maintenance of passenger equipment operating at speeds not exceeding 125 miles per hour. The requirements in this subpart address the inspection, testing, and maintenance of the brake system as well as other mechanical and electrical components covered by this part.

(b) Beginning July 12, 2001 the requirements contained in this subpart shall apply to railroads operating Tier I passenger equipment covered by this part. A railroad may request earlier application of the requirements contained in this subpart upon written notification to FRA's Associate Administrator for Safety as provided in § 238.1(c).

(c) Paragraphs (b) and (c) of § 238.309 shall apply beginning September 9, 1999.

§ 238.303 Exterior calendar day mechanical inspection of passenger equipment.

(a) *General.*

(1) Except as provided in paragraph (f) of this section, each passenger car and each unpowered vehicle used in a passenger train shall receive an exterior mechanical inspection at least once each calendar day that the equipment is placed in service.

(2) Except as provided in paragraph (f) of this section, all passenger equipment shall be inspected as required in this section at least once each calendar day that the equipment is placed in service to ensure that the equipment conforms with the requirement contained in paragraph (e)(15) of this section.

(3) If a passenger care is also classified as a locomotive under part 229 of this chapter, the passenger car shall also receive a daily inspection pursuant to the requirements of § 229.21 of this chapter.

(b) Each passenger car and each unpowered vehicle added to a passenger train shall receive an exterior calendar day mechanical inspection at the time it is added to the train unless documentation is provided to the train crew that an exterior mechanical inspection was performed on the car the previous calendar day.

(c) The exterior calendar day mechanical inspection shall be performed by a qualified maintenance person.

(d) The exterior calendar day mechanical inspection required by this section shall be conducted to the extent possible without uncoupling the trainset and without placing the equipment over a pit or on an elevated track.

(e) As part of the exterior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the passenger car or unpowered vehicle used in a passenger train defective whenever discovered in service:

(1) Products of combustion are released entirely outside the cab and other compartments.

(2) Each battery container is vented and each battery is kept from gassing excessively.

(3) Each coupler is in the following condition:

(i) Sidewall or pin bearing bosses and the pulling face of the knuckles are not broken or cracked;

(ii) The coupler assembly is equipped with anti-creep protection;

(iii) The coupler carrier is not broken or cracked; and

(iv) The yoke is not broken or cracked.

(4) A device is provided under the lower end of all drawbar pins and articulated connection pins to prevent the pin from falling out of place in case of breakage.

(5) The suspension system, including the spring rigging, is in the following condition:

(i) Protective construction or safety hangers are provided to prevent spring planks, spring seats, or bolsters from dropping to the track structure in event of a hanger or spring failure;

(ii) The top (long) leaf or any of the other three leaves of the elliptical spring is not broken, except when a spring is part of a nest of three or more springs and none of the other springs in the nest has its top leaf or any of the other three leaves broken;

(iii) The outer coil spring or saddle is not broken;

(iv) The equalizers, hangers, bolts, gibs, or pins are not cracked or broken;

(v) The coil spring is not fully compressed when the car is at rest;

(vi) The shock absorber is not broken or leaking oil or other fluid; and

(vii) Each air bag or other pneumatic suspension system component inflates or deflates, as applicable, correctly and otherwise operates as intended.

(6) Each truck is in the following condition:

(i) Each tie bar is not loose;

(ii) Each motor suspension lug, equalizer, hanger, gib, or pin is not cracked or broken; and

(iii) The truck frame is not broken and is not cracked in a stress area that may affect its structural integrity.

(7) Each side bearing is in the following condition:

(i) Each friction side bearing with springs designed to carry weight does not have more than 25 percent of the springs in any one nest broken;

(ii) Each friction side bearing does not run in contact unless designed to carry weight; and

(iii) The maximum clearance of each side bearing does not exceed the manufacturer's recommendation.

(8) Each wheel does not have any of the following conditions:

(i) A single flat spot that is 2½ inches or more in length, or two adjoining spots that are each two or more inches in length;

(ii) A gouge or chip in the flange that is more than 1½ inches in length and ½ inch in width;

(iii) A broken rim, if the tread, measured from the flange at a point 5/8 of an inch above the tread, is less than 3¾ inches in width;

(iv) A shelled-out spot 2½ inches or more in length, or two adjoining spots that are each two or more inches in length;

(v) A seam running lengthwise that is within 3¾ inches of the flange;

(vi) A flange worn to a 7/8 inch thickness or less, gauged at a point 3/8 of an inch above the tread;

(vii) A tread worn hollow 5/16 of an inch or more;

(viii) A flange height of 1½ inches or more measured from the tread to the top of the flange;

(ix) A rim less than 1 inch thick;

(x) A crack or break in the flange, tread, rim, plate, or hub;

(xi) A loose wheel; or

(xii) A weld.

(9) No part or appliance of a passenger coach, except the wheels, is less than 2½ inches above the top of the rail.

(10) Each unguarded, noncurrent-carrying metal part subject to becoming charged is grounded or thoroughly insulated.

(11) Each jumper and cable connection is in the following condition:

(i) Each jumpers and cable connection between coaches, between locomotives, or between a locomotive and a coach is located and guarded in a manner that provides sufficient vertical clearance. Jumpers and cable connections may not hang with one end free;

(ii) The insulation is not broken or badly chafed;

(iii) No plug, receptacle, or terminal is broken; and

(iv) No strand of wire is broken or protruding.

(12) Each door and cover plate guarding high voltage equipment is marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

(13) Each buffer plate is in place.

(14) Each diaphragm, if any, is in place and properly aligned.

(15) Each secondary braking system is in operating mode and does not have any known defective condition which prevents its proper operation. If the dynamic brakes on a locomotive are found not to be in operating mode or are known to have a defective condition which prevents their proper operation at the time that the exterior mechanical inspection is performed or at any other time while the locomotive is in service, the following requirements shall be met in order to continue the locomotive in service:

(i) MU locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes shall be handled in the same manner as a running gear defect pursuant to § 238.17.

(ii) Conventional locomotives equipped with dynamic brakes found not to be in operating mode or containing a defective condition which prevents the proper operation of the dynamic brakes shall be handled in accordance with the following:

(A) A tag bearing the words "inoperative dynamic brakes" shall be securely displayed in a conspicuous location in the cab of the locomotive and contain the locomotive number, the date and location where the condition was discovered, and the signature of the person discovering the condition;

(B) The locomotive engineer shall be informed in writing that the dynamic brakes on the locomotive are inoperative at the location where the locomotive engineer first takes charge of the train; and

(C) The inoperative or defective dynamic brakes shall be repaired within 3 calendar days of being found in defective condition or at the locomotive's next periodic inspection pursuant to § 229.23 of this chapter, whichever occurs first.

(f) *Exception.* A long-distance intercity passenger train that misses a scheduled exterior calendar day mechanical inspection due to a delay en route may continue in service to the location where the inspection was scheduled to be performed. At that point, an exterior calendar day mechanical inspection shall be performed prior to returning the equipment to service. This flexibility applies only to the exterior mechanical safety inspections required by this section, and does not relieve the railroad of the responsibility to perform a calendar day inspection on a unit classified as a "locomotive" under part 229 of this chapter as required by § 229.21 of this chapter.

(g) *Records.* A record shall be maintained of each exterior calendar day mechanical inspection performed.

(1) This record may be maintained in writing or electronically provided FRA has access to the record upon request.

(2) The written or electronic record must contain the following information:

(i) The identification number of the unit;

(ii) The place, date, and time of the inspection;

(iii) Any non-complying conditions found; and

(iv) The signature of the inspector.

(3) This record may be part of a single master report covering an entire group of cars and equipment.

(4) This record shall be maintained at the place where the inspection is conducted or at one central location and shall be retained for at least 92 days.

(h) Cars requiring a single car test in accordance with § 238.311 that are being moved in service to a location where the single car test can be performed shall have the single car test completed prior to, or as a part of, the exterior calendar day mechanical inspection.

§ 238.305 Interior calendar day mechanical inspection of passenger cars.

(a) Except as provided in paragraph (d) of this section, each passenger car shall receive an interior mechanical inspection at least once each calendar day that it is placed in service.

(b) The interior calendar day mechanical inspection shall be performed by a qualified person or a qualified maintenance person.

(c) As part of the interior calendar day mechanical inspection, the railroad shall verify conformity with the following conditions, and nonconformity with any such condition renders the car defective whenever discovered in service, except as provided in paragraph (c)(5) of this section:

(1) All fan openings, exposed gears and pinions, exposed moving parts of mechanisms, pipes carrying hot gases and high-voltage equipment, switches, circuit breakers, contactors, relays, grid resistors, and fuses are installed in non-hazardous locations or equipped with guards to prevent personal injury.

(2) The words "Emergency Brake Valve" are legibly stenciled or marked near each brake pipe valve or shown on an adjacent badge plate.

(3) All doors and cover plates guarding high voltage equipment are marked "Danger—High Voltage" or with the word "Danger" and the normal voltage carried by the parts so protected.

(4) All trap doors safely operate and securely latch in place in both the up and down position.

(5) All end doors and side doors operate safely and as intended. If a door is defective and all of the following conditions are satisfied, the car may remain in passenger service until the next interior calendar day mechanical inspection is due at which time the appropriate repairs shall be made:

(i) A qualified person or a qualified maintenance person determines that the repairs necessary to bring a door into compliance cannot be performed at the time the interior mechanical inspection is conducted;

(ii) A qualified person or a qualified maintenance person determines that it is safe to move the equipment in passenger service;

(iii) At least one operative and accessible door is available on each side of the car; and

(iv) A notice is prominently displayed directly on the defective door indicating that the door is defective.

(6) All safety-related signage is in place and legible.

(7) All vestibule steps are illuminated.

(8) All D rings, pull handles, or other means to access manual door releases are in place based on a visual inspection.

(9) All emergency equipment, including a fire extinguisher, pry bar, auxiliary portable lighting, and first aid kits, as applicable, are in place.

(d) A long-distance intercity passenger train that misses a scheduled calendar day interior mechanical inspection due to a delay en route may continue in service to the location where the inspection was scheduled to be performed. At that point, an interior calendar day mechanical inspection shall be performed prior to returning the equipment to service.

(e) *Records.* A record shall be maintained of each interior calendar day mechanical inspection performed.

(1) This record may be maintained in writing or electronically provided FRA has access to the record upon request.

(2) The written or electronic record must contain the following information:

(i) The identification number of the unit;

(ii) The place, date, and time of the inspection;

(iii) Any non-complying conditions found; and

(iv) The signature of the inspector.

(3) This record may be part of a single master report covering an entire group of cars and equipment.

(4) This record shall be maintained at the place where the inspection is conducted or at one central location and shall be retained for at least 92 days.

§ 238.307 Periodic mechanical inspection of passenger cars and unpowered vehicles used in passenger trains.

(a) *General.*

(1) Railroads shall conduct periodic mechanical inspections of all passenger cars and all unpowered vehicles used in a passenger train as required by this section or as warranted and justified by data developed pursuant to paragraph (a)(2) of this section. A periodic inspection conducted under part 229 of this chapter satisfies the requirement of this section with respect to the features inspected.

(2) A railroad may, upon written notification to FRA's Associate Administrator for Safety, adopt and comply with alternative periodic mechanical inspection intervals for specific components or equipment in lieu of the requirements of this section. Any alternative interval must be based upon a documented reliability assessment conducted under a system safety plan subject to periodic peer audit. (See Appendix E to this part for a discussion of the general principles of reliability-based maintenance programs.) The periodic inspection intervals provided in this section may be changed only when justified by accumulated, verifiable data that provides a high level of confidence that the component(s) will not fail in a manner resulting in harm to persons. FRA may monitor and review a railroad's implementation and compliance with any alternative interval adopted. FRA's Associate Administrator for Safety may prohibit or revoke a railroad's ability to utilize an alternative inspection interval if FRA determines that the adopted interval is not supported by credible data or does not provide adequate safety assurances. Such a determination will be made in writing and will state the basis for such action.

(b) Each periodic mechanical inspection required by this section shall be performed by a qualified maintenance person.

(c) As part of the periodic mechanical inspection the railroad shall verify the condition of the following interior and exterior mechanical components, which shall be inspected not less frequently than every 92 days. At a minimum, this inspection shall determine that:

(1) Floors of passageways and compartments are free from oil, water, waste, or any obstruction that creates a slipping, tripping, or fire hazard, and floors are properly treated to provide secure footing.

(2) Emergency lighting systems are operational.

(3) With regard to switches:

(i) All hand-operated switches carrying currents with a potential of more than 150 volts that may be operated while under load are covered and are operative from the outside of the cover;

(ii) A means is provided to display whether the switches are open or closed; and

(iii) Switches not designed to be operated safely while under load are legibly marked with the voltage carried and the words "must not be operated under load".

(4) All trucks are equipped with a device or securing arrangement to prevent the truck and car body from separating in case of derailment.

(5) All center castings on trucks are not cracked or broken.

(6) All roller bearings do not have any of the following conditions:

(i) A sign of having been overheated as evidenced by discoloration or other telltale sign of overheating such as damage to the seal or distortion of any bearing component;

(ii) A loose or missing cap screw;

(iii) A broken, missing, or improperly applied cap screw lock; or

(iv) A seal that is loose or damaged or permits leakage of lubricant in clearly formed droplets.

(7) All mechanical systems and components of the equipment are free of all the following general conditions that endanger the safety of the crew, passengers, or equipment:

(i) A continuous accumulation of oil or grease;

(ii) Improper functioning of a component;

(iii) A crack, break, excessive wear, structural defect, or weakness of a component;

(iv) A leak;

(v) Use of a component or system under a condition that exceeds that for which the component or system is designed to operate; and

(vi) Insecure attachment of a component.

(8) All of the items identified in the exterior calendar day mechanical inspection contained at § 238.303 are in conformity with the conditions prescribed in that section.

(9) All of the items identified in the interior calendar day mechanical inspection contained at § 238.305 are in conformity with the conditions prescribed in that section.

(d) The periodic mechanical inspection shall specifically include the following interior and exterior mechanical components, which shall be inspected not less frequently than every 184 days. At a minimum, this inspection shall determine that:

(1) Seats and seat attachments are not broken or loose.

(2) Luggage racks are not broken or loose.

(3) All beds and bunks are not broken or loose, and all restraints or safety latches and straps are in place and function as intended.

(4) A representative sample of emergency window exits on the railroad's passenger cars properly operate, in accordance with the requirements of § 239.107 of this chapter.

(5) Each coupler is in the following condition:

(i) The distance between the guard arm and the knuckle nose is not more than 5½ inches on standard type couplers (MCB contour 1904), or not more than 5$^{5}/_{16}$ inches on D&E couplers;

(ii) The free slack in the coupler or drawbar not absorbed by friction devices or draft gears is not more than ½ inch; and

(iii) The draft gear is not broken.

(e) The periodic mechanical inspection shall specifically include the manual door releases, which shall be inspected not less frequently than every 368 days. At a minimum, this inspection shall determine that all manual door releases operate as intended.

(f) *Records.* (1) A record shall be maintained of each periodic mechanical inspection required to be performed by this section. This record may be maintained in writing or electronically provided FRA has access to the record upon request. The date and place of the periodic inspection shall be recorded and the person performing the inspection and that person's supervisor shall sign the form, if possible. This record shall be kept in the railroad's files, the cab of the locomotive, or a designated location in the passenger car until the next periodic mechanical inspection of the same type is performed.

(2) Detailed documentation of any reliability assessments depended upon for implementing an alternative inspection interval under paragraph (a)(2) of this section, including underlying data, shall be retained during the period that the alternative inspection interval is in effect. Data documenting inspections, tests, component replacement and renewals, and failures shall be retained for not less than three (3) inspection intervals.

(g) Nonconformity with any of the conditions set forth in this section renders the car or vehicle defective whenever discovered in service.

§ 238.309 Periodic brake equipment maintenance.

(a) *General.*

(1) This section contains the minimum intervals at which the brake equipment on various types of passenger equipment shall be periodically cleaned, repaired, and tested. This maintenance procedure requires that all of the equipment's brake system pneumatic components that contain moving parts and are sealed against air leaks be removed from the equipment, disassembled, cleaned, and lubricated and that the parts that can deteriorate with age be replaced.

(2) A railroad may petition FRA's Associate Administrator for Safety to approve alternative maintenance procedures providing equivalent safety, in lieu of the requirements of this section. The petition shall be filed as provided in § 238.21.

(b) *MU locomotives.* The brake equipment of each MU locomotive shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 736 days if the MU locomotive is part of a fleet that is not 100 percent equipped with air dryers;

(2) Every 1,104 days if the MU locomotive is part of a fleet that is 100 percent equipped with air dryers and is equipped with PS–68, 26–C, 26–L, PS–90, CS–1, RT–2, RT–5A, GRB–1, CS–2, or 26–R brake systems. (This listing of brake system types is intended to subsume all brake systems using 26 type, ABD, or ABDW control valves and PS68, PS–90, 26B–1, 26C, 26CE, 26–B1, 30CDW, or 30ECDW engineer's brake valves.); and

(3) Every 736 days for all other MU locomotives.

(c) *Conventional locomotives.* The brake equipment of each conventional locomotive shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 1,104 days for a locomotive equipped with a 26–L or equivalent brake system; and

(2) Every 736 days for a locomotive equipped with other than a 26–L or equivalent brake system.

(d) *Passenger coaches and other unpowered vehicles.* The brake equipment on each passenger coach and each unpowered vehicle used in a passenger train shall be cleaned, repaired, and tested at intervals in accordance with following schedule:

(1) Every 1,476 days for a coach or vehicle equipped with a 26–C or equivalent brake system; and

(2) Every 1,104 days for a coach or vehicle equipped with other than a 26–C or equivalent brake system.

(e) *Cab cars.* The brake equipment of each cab car shall be cleaned, repaired, and tested at intervals in accordance with the following schedule:

(1) Every 1,476 days for that portion of the cab car brake system using brake

valves that are identical to the passenger coach 26–C brake system;

(2) Every 1,104 days for that portion of the cab car brake system using brake valves that are identical to the locomotive 26–L brake system; and

(3) Every 736 days for all other types of cab car brake valves.

(f) *Records of periodic maintenance.*

(1) The date and place of the cleaning, repairing, and testing required by this section shall be recorded on Form FRA 6180–49A or a similar form developed by the railroad containing the same information, and the person performing the work and that person's supervisor shall sign the form, if possible. Alternatively, the railroad may stencil the vehicle with the date and place of the cleaning, repairing, and testing and maintain an electronic record of the person performing the work and that person's supervisor.

(2) A record of the parts of the air brake system that are cleaned, repaired, and tested shall be kept in the railroad's files, the cab of the locomotive, or a designated location in the passenger car until the next such periodic test is performed.

§ 238.311 Single car test.

(a) Except for self-propelled passenger cars, single car tests of all passenger cars and all unpowered vehicles used in passenger trains shall be performed in accordance with either APTA Standard SS–M–005–98, "Code of Tests for Passenger Car Equipment Using Single Car Testing Device," published March, 1998; or an alternative procedure approved by FRA pursuant to § 238.21. The incorporation by reference of this APTA standard was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may obtain a copy of the incorporated document from the American Public Transit Association, 1201 New York Avenue, N.W., Washington, D.C. 20005. You may inspect a copy of the document at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Avenue, N.W., Suite 7000, Washington, D.C. or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C.

(b) Each single car test required by this section shall be performed by a qualified maintenance person.

(c) A railroad shall perform a single car test of the brake system of a car or vehicle described in paragraph (a) of this section if the car or vehicle is found with one or more of the following wheel defects:

(1) Built-up tread;

(2) Slid flat wheel;

(3) Thermal crack;

(4) Overheated wheel; or

(5) Shelling.

(d) A railroad need not perform the single car test required in paragraph (c) of this section, if the railroad can establish that the wheel defect is other than built-up tread and is due to a cause other than a defective brake system on the car.

(e) Except as provided in paragraph (f) of this section, a railroad shall perform a single car test of the brake system of a car or vehicle described in paragraph (a) of this section when:

(1) The car or vehicle is placed in service after having been out of service for 30 days or more; or

(2) One or more of the following conventional air brake equipment items is removed, repaired, or replaced:

(i) Relay valve;

(ii) Service portion;

(iii) Emergency portion; or

(iv) Pipe bracket.

(f) *Exception.* If the single car test cannot be made at the point where repairs are made, the car may be moved in passenger service to the next forward location where the test can be made. A railroad may move a car in this fashion only after visually verifying an application and release of the brakes on both sides of the car that was repaired, and provided that the car is appropriately tagged to indicate the need to perform a single car test. The single car test shall be completed prior to, or as a part of, the car's next calendar day mechanical inspection.

(g) If one or more of the following conventional air brake equipment items is removed, repaired, or replaced only that portion which is renewed or replaced must be tested to satisfy the provisions of this section:

(1) Brake reservoir;

(2) Brake cylinder;

(3) Piston assembly;

(4) Vent valve;

(5) Quick service valve;

(6) Brake cylinder release valve;

(7) Modulating valve or slack adjuster; or

(8) Angle cock or cutout cock.

§ 238.313 Class I brake test.

(a) Each commuter and short-distance intercity passenger train shall receive a Class I brake test once each calendar day that the train is placed or continues in passenger service.

(b) Except as provided in paragraph (i) of this section, each long-distance intercity passenger train shall receive a Class I brake test:

(1) Prior to the train's departure from an originating terminal; and

(2) Every 1,500 miles or once each additional calendar day, whichever occurs first, that the train remains in continuous passenger service.

(c) Each car added to a passenger train shall receive a Class I brake test at the time it is added to the train unless documentation is provided to the train crew that a Class I brake test was performed on the car within the previous calendar day and the car has not been disconnected from a source of compressed air for more than four hours prior to being added to the train.

(d) Each Class I brake test shall be performed by a qualified maintenance person.

(e) Each Class I brake test may be performed either separately or in conjunction with the exterior calendar day mechanical inspection required under § 238.303.

(f) Except as provided in § 238.15(b), a railroad shall not use or haul a passenger train in passenger service from a location where a Class I brake test has been performed, or was required by this part to have been performed, with less than 100 percent operative brakes.

(g) A Class I brake test shall determine and ensure that:

(1) The friction brakes apply and remain applied on each car in the train until a release of the brakes has been initiated on each car in response to train line electric, pneumatic, or other signals. This test shall include a verification that each side of each car's brake system responds properly to application and release signals;

(2) The brake shoes or pads are firmly seated against the wheel or disc with the brakes applied;

(3) Piston travel is within prescribed limits, either by direct observation, observation of an actuator, or by observation of the clearance between the brake shoe and the wheel or between the brake pad and the brake disc with the brakes released;

(4) The communicating signal system is tested and known to be operating as intended;

(5) Each brake shoe or pad is securely fastened and correctly aligned in relation to the wheel or to the disc;

(6) The engineer's brake valve or controller will cause the proper train line commands for each position or brake level setting;

(7) Brake pipe leakage does not exceed 5 pounds per square inch per minute if leakage will affect service performance;

(8) The emergency brake application and deadman pedal or other emergency control devices function as intended;

(9) Each brake shoe or pad is not below the minimum thickness established by the railroad. This

thickness shall not be less than the minimum thickness necessary to safely travel the maximum distance allowed between Class I brake tests;

(10) Each angle cock and cutout cock is properly positioned;

(11) The brake rigging or the system mounted on the car for the transmission of the braking force does not bind or foul so as to impede the force delivered to a brake shoe, impede the release of a brake shoe, or otherwise adversely affect the operation of the brake system;

(12) If the train is equipped with electropneumatic brakes, an electropneumatic application of the brakes is made and the train is walked to determine that the brakes on each car in the train properly apply;

(13) Each brake disc is free of any crack in accordance with the manufacturer's specifications or, if no specifications exist, free of any crack to the extent that the design permits;

(14) If the equipment is provided with a brake indicator, the brake indicator operates as intended; and

(15) The communication of brake pipe pressure changes at the rear of the train is verified.

(h) A qualified maintenance person that performs a Class I brake test on a train shall place in the cab of the controlling locomotive of the train a written statement, which shall be retained in the cab until the next Class I brake test is performed and which shall contain the following information:

(1) The date and time the Class I brake test was performed;

(2) The location where the test was performed;

(3) The identification number of the controlling locomotive of the train; and

(4) The total number of cars inspected during the Class I brake test.

(i) A long-distance, intercity passenger train that misses a scheduled calendar day Class I brake test due to a delay en route may proceed to the point where the Class I brake test was scheduled to be performed. A Class I brake test shall be completed at that point prior to placing the train back in service.

§ 238.315 Class IA brake test.

(a) Except as provided in paragraph (b) of this section, either a Class I or a Class IA brake test shall be performed:

(1) Prior to the first morning departure of each commuter or short-distance intercity passenger train, unless all of the following conditions are satisfied:

(i) A Class I brake test was performed within the previous twelve (12) hours;

(ii) The train has not been used in passenger service since the performance of the Class I brake test; and

(iii) The train has not been disconnected from a source of compressed air for more than four hours since the performance of the Class I brake test; and

(2) Prior to placing a train in service that has been off a source of compressed air for more than four hours.

(b) A commuter or short-distance intercity passenger train that provides continuing late night service that began prior to midnight may complete its daily operating cycle after midnight without performing another Class I or Class IA brake test. A Class I or Class IA brake test shall be performed on such a train before it starts a new daily operating cycle.

(c) A Class I or Class IA brake test may be performed at a shop or yard site and need not be repeated at the first passenger terminal if the train remains on a source of compressed air and in the custody of the train crew.

(d) The Class IA brake test shall be performed by either a qualified person or a qualified maintenance person.

(e) Except as provided in § 238.15(b), a railroad shall not use or haul a passenger train in passenger service from a location where a Class IA brake test has been performed, or was required by this part to have been performed, with less than 100 percent operative brakes.

(f) In performing a Class IA brake test, it shall be determined that:

(1) Brake pipe leakage does not exceed 5 pounds per square inch per minute if brake pipe leakage will affect service performance;

(2) Each brake sets and releases by inspecting in the manner described in paragraph (g) of this section;

(3) On MU equipment, the emergency brake application and the deadman pedal or other emergency control devices function as intended;

(4) Each angle cock and cutout cock is properly set;

(5) Brake pipe pressure changes at the rear of the train are properly communicated to the controlling locomotive; and

(6) The communicating signal system is tested and known to be operating as intended;

(g) In determining whether each brake sets and releases—

(1) The inspection of the set and release of the brakes shall be completed by walking the train to directly observe the set and release of each brake, if the railroad determines that such a procedure is safe.

(2) If the railroad determines that operating conditions pose a safety hazard to an inspector walking the brakes, brake indicators may be used to verify the set and release on cars so equipped. However, the observation of the brake indicators shall not be made from the cab of the locomotive. The inspector shall walk the train in order to position himself or herself to accurately observe each indicator.

§ 238.317 Class II brake test.

(a) A Class II brake test shall be performed on a passenger train when any of the following events occurs:

(1) Whenever the control stand used to control the train is changed; except if the control stand is changed to facilitate the movement of a passenger train from one track to another within a terminal complex while not in passenger service. In these circumstances, a Class II brake test shall be performed prior to the train's departure from the terminal complex with passengers;

(2) Prior to the first morning departure of each commuter or short-distance intercity passenger train where a Class I brake test remains valid as provided in § 238.315(a)(1);

(3) When previously tested units (i.e., cars that received a Class I brake test within the previous calendar day and have not been disconnected from a source of compressed air for more than four hours) are added to the train;

(4) When cars or equipment are removed from the train; and

(5) When an operator first takes charge of the train, except for face-to-face relief.

(b) A Class II brake test shall be performed by a qualified person or a qualified maintenance person.

(c) Except as provided in § 238.15, a railroad shall not use or haul a passenger train in passenger service from a terminal or yard where a Class II brake test has been performed, or was required by this part to have been performed, with any of the brakes cut-out, inoperative, or defective.

(d) In performing a Class II brake test on a train, a railroad shall determine that:

(1) The brakes on the rear unit of the train apply and release in response to a signal from the engineer's brake valve or controller of the leading or controlling unit, or a gauge located at the rear of the train or in the cab of the rear unit indicates that brake pipe pressure changes are properly communicated at the rear of the train;

(2) On MU equipment, the emergency brake application and deadman pedal or other emergency control devices function as intended; and

(3) The communicating signal system is tested and known to be operating as intended.

§ 238.319 Running brake test.

(a) As soon as conditions safely permit, a running brake test shall be performed on each passenger train after the train has received, or was required under this part to have received, either a Class I, Class IA, or Class II brake test.

(b) A running brake test shall be performed whenever the control stand used to control the train is changed to facilitate the movement of a passenger train from one track to another within a terminal complex while not in passenger service.

(c) The running brake test shall be conducted in accordance with the railroad's established operating rules, and shall be made by applying brakes in a manner that allows the engineer to ascertain whether the brakes are operating properly.

(d) If the engineer determines that the brakes are not operating properly, the engineer shall stop the train and follow the procedures provided in § 238.15.

Subpart E—Specific Requirements for Tier II Passenger Equipment

§ 238.401 Scope.

This subpart contains specific requirements for railroad passenger equipment operating at speeds exceeding 125 mph but not exceeding 150 mph. The requirements of this subpart apply beginning on September 9, 1999. As stated in § 238.433(b), all such passenger equipment remains subject to the requirements concerning couplers and uncoupling devices contained in Federal statute at 49 U.S.C. chapter 203 and in FRA regulations at part 231 and § 232.2 of this chapter.

§ 238.403 Crash energy management.

(a) Each power car and trailer car shall be designed with a crash energy management system to dissipate kinetic energy during a collision. The crash energy management system shall provide a controlled deformation and collapse of designated sections within the unoccupied volumes to absorb collision energy and to reduce the decelerations on passengers and crewmembers resulting from dynamic forces transmitted to occupied volumes.

(b) The design of each unit shall consist of an occupied volume located between two normally unoccupied volumes. Where practical, sections within the unoccupied volumes shall be designed to be structurally weaker than the occupied volume. During a collision, the designated sections within the unoccupied volumes shall start to deform and eventually collapse in a controlled fashion to dissipate energy before any structural damage occurs to the occupied volume.

(c) At a minimum, each Tier II passenger train shall be designed to meet the following requirements:

(1) Thirteen megajoules (MJ) shall be absorbed at each end of the train through the controlled crushing of unoccupied volumes, and of this amount a minimum of 5 MJ shall be absorbed ahead of the operator's cab in each power car;

(2) A minimum of an additional 3 MJ shall be absorbed by the power car structure between the operator's cab and the first trailer car; and

(3) The end of the first trailer car adjacent to each power car shall absorb a minimum of 5 MJ through controlled crushing.

(d) For a 30-mph collision of a Tier II passenger train on tangent, level track with an identical stationary train:

(1) When seated anywhere in a trailer car, the velocity at which a 50th-percentile adult male contacts the seat back ahead of him shall not exceed 25 mph; and

(2) The deceleration of the occupied volumes of each trailer car shall not exceed 8g. For the purpose of demonstrating compliance with this paragraph, deceleration measurements may be processed through a low-pass filter having a bandwidth of 50 Hz.

(e) Compliance with paragraphs (a) through (d) of this section shall be demonstrated by analysis using a dynamic collision computer model. For the purpose of demonstrating compliance, the following assumptions shall be made:

(1) The train remains upright, in line, and with all wheels on the track throughout the collision; and

(2) Resistance to structural crushing follows the force-versus-displacement relationship determined during the structural analysis required as part of the design of the train.

(f) Passenger seating shall not be permitted in the leading unit of a Tier II passenger train.

§ 238.405 Longitudinal static compressive strength.

(a) To form an effective crash refuge for crewmembers occupying the cab of a power car, the underframe of the cab of a power car shall resist a minimum longitudinal static compressive force of 2,100,000 pounds without permanent deformation to the cab, unless equivalent protection to crewmembers is provided under an alternate design approach, validated through analysis and testing, and approved by FRA under the provisions of § 238.21.

(b) The underframe of the occupied volume of each trailer car shall resist a minimum longitudinal static compressive force of 800,000 pounds without permanent deformation to the car. To demonstrate compliance with this requirement, the 800,000-pound load shall be applied to the underframe of the occupied volume as it would be transmitted to the underframe by the full structure of the vehicle.

(c) Unoccupied volumes of a power car or a trailer car designed to crush as part of the crash energy management design are not subject to the requirements of this section.

§ 238.407 Anti-climbing mechanism.

(a) Each power car shall have an anti-climbing mechanism at its forward end capable of resisting an ultimate upward or downward static vertical force of 200,000 pounds. A power car constructed with a crash energy management design is permitted to crush in a controlled manner before the anti-climbing mechanism fully engages.

(b) Interior train coupling points between units, including between units of articulated cars or other permanently joined units of cars, shall have an anti-climbing mechanism capable of resisting an upward or downward vertical force of 100,000 pounds without yielding.

(c) The forward coupler of a power car shall be attached to the car body to resist a vertical downward force of 100,000 pounds for any horizontal position of the coupler without yielding.

§ 238.409 Forward end structures of power car cabs.

This section contains requirements for the forward end structure of the cab of a power car. (A conceptual implementation of this end structure is provided in Figure 1 to this subpart.)

(a) *Center collision post.* The forward end structure shall have a full-height center collision post, or its structural equivalent, capable of withstanding the following:

(1) A shear load of 500,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint;

(2) A shear load of 150,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint; and

(3) A horizontal, longitudinal force of 300,000 pounds, applied at a point on level with the bottom of the windshield, without exceeding its ultimate strength.

(b) *Side collision posts.* The forward end structure shall have two side collision posts, or their structural equivalent, located at approximately the one-third points laterally, each capable of withstanding the following:

(1) A shear load of 500,000 pounds at its joint with the underframe without

exceeding the ultimate strength of the joint; and

(2) A horizontal, longitudinal force of 300,000 pounds, applied at a point on level with the bottom of the windshield, without exceeding its ultimate strength.

(c) *Corner posts.* The forward end structure shall have two full-height corner posts, or their structural equivalent, each capable of withstanding the following:

(1) A horizontal, longitudinal or lateral shear load of 300,000 pounds at its joint with the underframe, without exceeding the ultimate strength of the joint;

(2) A horizontal, lateral force of 100,000 pounds applied at a point 30 inches up from the underframe attachment, without exceeding the yield or the critical buckling stress; and

(3) A horizontal, longitudinal or lateral shear load of 80,000 pounds at its joint with the roof, without exceeding the ultimate strength of the joint.

(d) *Skin.* The skin covering the forward-facing end of each power car shall be:

(1) Equivalent to a ½-inch steel plate with a 25,000 pounds-per-square-inch yield strength—material of a higher yield strength may be used to decrease the required thickness of the material provided at least an equivalent level of strength is maintained;

(2) Securely attached to the end structure; and

(3) Sealed to prevent the entry of fluids into the occupied cab area of the equipment. As used in paragraph (d), the term "skin" does not include forward-facing windows and doors.

§ 238.411 Rear end structures of power car cabs.

The rear end structure of the cab of a power car shall be designed to include the following elements, or their structural equivalent. (A conceptual implementation of this end structure is provided in Figure 2 to this subpart.)

(a) *Corner posts.* The rear end structure shall have two full-height corner posts, or their structural equivalent, each capable of withstanding the following:

(1) A horizontal, longitudinal or lateral shear load of 300,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

(2) A horizontal, longitudinal or lateral shear load of 80,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

(b) *Collision posts.* The rear end structure shall have two full-height collision posts, or their structural equivalent, each capable of withstanding the following:

(1) A horizontal, longitudinal shear load of 750,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

(2) A horizontal, longitudinal shear load of 75,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

§ 238.413 End structures of trailer cars.

(a) Except as provided in paragraph (b) of this section, the end structure of a trailer car shall be designed to include the following elements, or their structural equivalent. (A conceptual implementation of this end structure is provided in Figure 3 to this subpart.)

(1) *Corner posts.* Two full-height corner posts, each capable of withstanding the following:

(i) A horizontal, longitudinal shear load of 150,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint;

(ii) A horizontal, longitudinal or lateral force of 30,000 pounds applied at a point 18 inches up from the underframe attachment without exceeding the yield or the critical buckling stress; and

(iii) A horizontal, longitudinal or lateral shear load of 20,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

(2) *Collision posts.* Two full-height collision posts each capable of withstanding the following:

(i) A horizontal, longitudinal shear load of 300,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint; and

(ii) A horizontal, longitudinal shear load of 60,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

(b) If the trailer car is designed with an end vestibule, the end structure inboard of the vestibule shall have two full-height corner posts, or their structural equivalent, each capable of withstanding the following (A conceptual implementation of this end structure is provided in Figure 4 to this subpart):

(1) A horizontal, longitudinal shear load of 200,000 pounds at its joint with the underframe without exceeding the ultimate strength of the joint;

(2) A horizontal, lateral force of 30,000 pounds applied at a point 18 inches up from the underframe attachment without exceeding the yield or the critical buckling stress;

(3) A horizontal, longitudinal force of 50,000 pounds applied at a point 18 inches up from the underframe attachment without exceeding the yield or the critical buckling stress; and

(4) A horizontal, longitudinal or lateral shear load of 20,000 pounds at its joint with the roof without exceeding the ultimate strength of the joint.

§ 238.415 Rollover strength.

(a) Each passenger car and power car shall be designed to rest on its side and be uniformly supported at the top ("roof rail") and the bottom chords ("side sill") of the side frame. The allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Minor localized deformations to the outer side skin of the passenger car or power car is allowed provided such deformations in no way intrude upon the occupied volume of each car.

(b) Each passenger car and power car shall also be designed to rest on its roof so that any damage in occupied areas is limited to roof sheathing and framing. The allowable stress in the structural members of the occupied volumes for this condition shall be one-half yield or one-half the critical buckling stress, whichever is less. Deformation to the roof sheathing and framing is allowed to the extent necessary to permit the vehicle to be supported directly on the top chords of the side frames and end frames.

§ 238.417 Side loads.

(a) Each passenger car body structure shall be designed to resist an inward transverse load of 80,000 pounds of force applied to the side sill and 10,000 pounds of force applied to the belt rail (horizontal members at the bottom of the window opening in the side frame).

(b) These loads shall be considered to be applied separately over the full vertical dimension of the specified member for any distance of 8 feet in the direction of the length of the car.

(c) The allowable stress shall be the lesser of the yield stress, except as otherwise allowed by this paragraph, or the critical buckling stress. In calculating the stress to show compliance with this requirement, local yielding of the side skin adjacent to the side sill and belt rail, and local yielding of the side sill bend radii at the crossbearer and floor-beam connections is allowed. For purposes of this paragraph, local yielding is allowed provided the resulting deformations in no way intrude upon the occupied volume of the car.

(d) The connections of the side frame to the roof and underframe shall support the loads specified in this section.

§ 238.419 Truck-to-car-body and truck component attachment.

(a) The ultimate strength of the truck-to-car-body attachment for each unit in

a train shall be sufficient to resist without failure a vertical force equivalent to 2g acting on the mass of the truck and a force of 250,000 pounds acting in any horizontal direction on the truck.

(b) Each component of a truck (which include axles, wheels, bearings, the truck-mounted brake system, suspension system components, and any other components attached to the truck by design) shall remain attached to the truck when a force equivalent to 2g acting on the mass of the component is exerted in any direction on that component.

§ 238.421 Glazing.

(a) *General.* Except as provided in paragraphs (b) and (c) of this section, each exterior window on a passenger car and a power car cab shall comply with the requirements contained in part 223 of this chapter.

(b) *Particular end-facing exterior glazing requirements.* Each end-facing exterior window on a passenger car and a power car cab shall also:

(1) Resist the impact of a 12-pound solid steel sphere at the maximum speed at which the vehicle will operate, at an angle of 90 degrees to the window's surface, with no penetration or spall; and

(2) Demonstrate anti-spalling performance by the use of a 0.001 aluminum witness plate, placed 12 inches from the window's surface during all impact tests. The witness plate shall contain no marks from spalled glazing particles after any impact test.

(3) Be permanently marked, prior to installation, in such a manner that the marking is clearly visible after the material has been installed. The marking shall include:

(i) The words "FRA TYPE IHP" to indicate that the material has successfully passed the testing requirements specified in this paragraph;

(ii) The name of the manufacturer; and

(iii) The type or brand identification of the material.

(c) *Passenger equipment ordered prior to May 12, 1999.* Each exterior window in passenger equipment ordered prior to May 12, 1999 may comply with the following glazing requirements in the alternative of the requirements specified in paragraphs (a) and (b) of this section, until the window is replaced and the railroad has exhausted its inventory of replacement windows conforming to the requirements of this paragraph that it held as of May 12, 1999.

(1) Each end-facing exterior window shall resist the impact of a 12-pound solid steel sphere at the maximum speed at which the vehicle will operate, at an angle equal to the angle between the window's surface as installed and the direction of travel, with no penetration or spall.

(2) Each side-facing exterior window shall resist the impact of a:

(i) 12-pound solid steel sphere at 15 mph, at an angle of 90 degrees to the window's surface, with no penetration or spall; and

(ii) A granite ballast stone weighing a minimum of 0.5 pounds, traveling at 75 mph and impacting at a 90-degree angle to the window's surface, with no penetration or spall.

(3) All exterior windows shall:

(i) Resist a single impact of a 9-mm, 147-grain bullet traveling at an impact velocity of 900 feet per second, with no bullet penetration or spall; and

(ii) Demonstrate anti-spalling performance by the use of a 0.001 aluminum witness plate, placed 12 inches from the window's surface during all impact tests. The witness plate shall contain no marks from spalled glazing particles after any impact test.

(iii) Be permanently marked, prior to installation, in such a manner that the marking is clearly visible after the material has been installed. The marking shall include:

(A) The words "FRA TYPE IH" for end-facing glazing or "FRA TYPE IIH" for side-facing glazing, to indicate that the material has successfully passed the testing requirements of this section;

(B) The name of the manufacturer; and

(C) The type or brand identification of the material.

(d) *Glazing securement.* Each exterior window on a passenger car and a power car cab shall remain in place when subjected to:

(1) The forces due to air pressure differences caused when two trains pass at the minimum separation for two adjacent tracks, while traveling in opposite directions, each train traveling at the maximum authorized speed; and

(2) The impact forces that the glazed window is required to resist as specified in this section.

(e) *Stenciling.* Each car that is fully equipped with glazing materials that meet the requirements of this section shall be stenciled on an interior wall as follows: "Fully Equipped with FRA Part 238 Glazing" or similar words conveying that meaning, in letters at least 3/8 of an inch high.

§ 238.423 Fuel tanks.

(a) *External fuel tanks.* Each type of external fuel tank must be approved by FRA's Associate Administrator for Safety upon a showing that the fuel tank provides a level of safety at least equivalent to a fuel tank that complies with the external fuel tank requirements in § 238.223(a).

(b) *Internal fuel tanks.* Internal fuel tanks shall comply with the requirements specified in § 238.223(b).

§ 238.425 Electrical system.

(a) *Circuit protection.*

(1) The main propulsion power line shall be protected with a lightning arrestor, automatic circuit breaker, and overload relay. The lightning arrestor shall be run by the most direct path possible to ground with a connection to ground of not less than No. 6 AWG. These overload protection devices shall be housed in an enclosure designed specifically for that purpose with the arc chute vented directly to outside air.

(2) Head end power, including trainline power distribution, shall be provided with both overload and ground fault protection.

(3) Circuits used for purposes other than propelling the equipment shall be connected to their power source through circuit breakers or equivalent current-limiting devices.

(4) Each auxiliary circuit shall be provided with a circuit breaker located as near as practical to the point of connection to the source of power for that circuit; however, such protection may be omitted from circuits controlling safety-critical devices.

(b) *Main battery system.*

(1) The main batteries shall be isolated from the cab and passenger seating areas by a non-combustible barrier.

(2) Battery chargers shall be designed to protect against overcharging.

(3) Battery circuits shall include an emergency battery cut-off switch to completely disconnect the energy stored in the batteries from the load.

(4) If batteries are of the type to potentially vent explosive gases, the batteries shall be adequately ventilated to prevent accumulation of explosive concentrations of these gases.

(c) *Power dissipation resistors.*

(1) Power dissipating resistors shall be adequately ventilated to prevent overheating under worst-case operating conditions.

(2) Power dissipation grids shall be designed and installed with sufficient isolation to prevent combustion between resistor elements and combustible material.

(3) Power dissipation resistor circuits shall incorporate warning or protective

devices for low ventilation air flow, over-temperature, and short circuit failures.

(4) Resistor elements shall be electrically insulated from resistor frames, and the frames shall be electrically insulated from the supports that hold them.

(d) *Electromagnetic interference and compatibility.*

(1) The operating railroad shall ensure electromagnetic compatibility of the safety-critical equipment systems with their environment. Electromagnetic compatibility can be achieved through equipment design or changes to the operating environment.

(2) The electronic equipment shall not produce electrical noise that interferes with trainline control and communications or with wayside signaling systems.

(3) To contain electromagnetic interference emissions, suppression of transients shall be at the source wherever possible.

(4) Electrical and electronic systems of equipment shall be capable of operation in the presence of external electromagnetic noise sources.

(5) All electronic equipment shall be self-protected from damage or improper operation, or both, due to high voltage transients and long-term over-voltage or under-voltage conditions.

§ 238.427 Suspension system

(a) *General requirements.*

(1) Suspension systems shall be designed to reasonably prevent wheel climb, wheel unloading, rail rollover, rail shift, and a vehicle from overturning to ensure safe, stable performance and ride quality. These requirements shall be met:

(i) In all operating environments, and under all track conditions and loading conditions as determined by the operating railroad; and

(ii) At all track speeds and over all track qualities consistent with the Track Safety Standards in part 213 of this chapter, up to the maximum operating speed and maximum cant deficiency of the equipment.

(2) Passenger equipment shall meet the safety performance standards for suspension systems contained in Appendix C to this part, or alternative standards providing at least equivalent safety if approved by FRA under the provisions of § 238.21.

(b) *Lateral accelerations.* Passenger cars shall not operate under conditions that result in a steady-state lateral acceleration of 0.1g (measured parallel to the car floor inside the passenger compartment) or greater.

(c) *Hunting oscillations.* Each truck shall be equipped with a permanently installed lateral accelerometer mounted on the truck frame. The accelerometer output signals shall be processed through a filter having a band pass of 0.5 to 10 Hz to determine if hunting oscillations of the truck are occurring. If hunting oscillations are detected, the train monitoring system shall provide an alarm to the operator, and the train shall be slowed to a speed at least 5 mph less than the speed at which the hunting oscillations stopped. For purposes of this paragraph, hunting oscillations are considered a sustained cyclic oscillation of the truck which is evidenced by lateral accelerations in excess of 0.4g root mean square (mean-removed) for 2 seconds.

(d) *Ride vibration (quality).* (1) While traveling at the maximum operating speed over the intended route, the train suspension system shall be designed to:

(i) Limit the vertical acceleration, as measured by a vertical accelerometer mounted on the car floor, to no greater than 0.55g single event, peak-to-peak over a one second period;

(ii) Limit lateral acceleration, as measured by a lateral accelerometer mounted on the car floor, to no greater than 0.3g single event, peak-to-peak over a one second period; and

(iii) Limit the combination of lateral acceleration (a_L) and vertical acceleration (a_V) occurring over a 1 second period as expressed by the square root of ($a_L^2 + a_V^2$) to no greater than 0.6g, where a_L may not exceed 0.3g and (a_V) may not exceed 0.55g.

(2) *Compliance.* Compliance with the requirements contained in this paragraph shall be demonstrated during the equipment pre-revenue service acceptance tests required under § 238.111, and § 213.345 of this chapter.

(3) For purposes of this paragraph, acceleration measurements shall be processed through a filter having a band pass of 0.5 to 10 Hz.

(e) *Overheat sensors.* Overheat sensors for each wheelset journal bearing shall be provided. The sensors may be placed either on-board the equipment or at reasonable intervals along the railroad's right-of-way.

§ 238.429 Safety appliances.

(a) *Couplers.*

(1) The leading and the trailing ends of a semi-permanently coupled trainset shall each be equipped with an automatic coupler that couples on impact and uncouples by either activation of a traditional uncoupling lever or some other type of uncoupling mechanism that does not require a person to go between the equipment units.

(2) The automatic coupler and uncoupling device on the leading and trailing ends of a semi-permanently coupled trainset may be stored within a removable shrouded housing.

(3) If the units in a train are not semi-permanently coupled, both ends of each unit shall be equipped with an automatic coupler that couples on impact and uncouples by either activation of a traditional uncoupling lever or some other type of uncoupling mechanism that does not require a person to go between the equipment units.

(b) *Hand brakes.* Except as provided in paragraph (f) of this section, Tier II trains shall be equipped with a parking or hand brake that can be applied and released manually and that is capable of holding the train on a 3-percent grade.

(c) *Safety appliance mechanical strength and fasteners.*

(1) All handrails, handholds, and sill steps shall be made of 1-inch diameter steel pipe, ⅝-inch thickness steel, or a material of equal or greater mechanical strength.

(2) All safety appliances shall be securely fastened to the car body structure with mechanical fasteners that have mechanical strength greater than or equal to that of a ½-inch diameter SAE grade steel bolt mechanical fastener.

(i) Safety appliance mechanical fasteners shall have mechanical strength and fatigue resistance equal to or greater than a ½-inch diameter SAE steel bolt.

(ii) Mechanical fasteners shall be installed with a positive means to prevent unauthorized removal. Self-locking threaded fasteners do not meet this requirement.

(iii) Mechanical fasteners shall be installed to facilitate inspection.

(d) *Handrails and handholds.* Except as provided in paragraph (f) of this section:

(1) Handrails shall be provided for passengers on both sides of all steps used to board or depart the train.

(2) Exits on a power vehicle shall be equipped with handrails and handholds so that crewmembers can get on and off the vehicle safely.

(3) Throughout their entire length, handrails and handholds shall be a color that contrasts with the color of the vehicle body to which they are fastened.

(4) The maximum distance above the top of the rail to the bottom of vertical handrails and handholds shall be 51 inches, and the minimum distance shall be 21 inches.

(5) Vertical handrails and handholds shall be installed to continue to a point at least equal to the height of the top edge of the control cab door.

(6) The minimum hand clearance distance between a vertical handrail or handhold and the vehicle body shall be 2½ inches for the entire length.

(7) All vertical handrails and handholds shall be securely fastened to the vehicle body.

(8) If the length of the handrail exceeds 60 inches, it shall be securely fastened to the power vehicle body with two fasteners at each end.

(e) *Sill steps.* Except as provided in paragraph (f) of this section, each power vehicle shall be equipped with a sill step below each exterior door as follows:

(1) The sill step shall have a minimum cross-sectional area of ½ by 3 inches;

(2) The sill step shall be made of steel or a material of equal or greater strength and fatigue resistance;

(3) The minimum tread length of the sill step shall be 10 inches;

(4) The minimum clear depth of the sill step shall be 8 inches;

(5) The outside edge of the tread of the sill step shall be flush with the side of the car body structure;

(6) Sill steps shall not have a vertical rise between treads exceeding 18 inches;

(7) The lowest sill step tread shall be not more than 24, preferably not more than 22, inches above the top of the track rail;

(8) Sill steps shall be a color that contrasts with the color of the power vehicle body to which they are fastened;

(9) Sill steps shall be securely fastened;

(10) At least 50 percent of the tread surface area of each sill step shall be open space; and

(11) The portion of the tread surface area of each sill step which is not open space and is normally contacted by the foot shall be treated with an anti-skid material.

(f) *Exceptions.*

(1) If the units of the equipment are semi-permanently coupled, with uncoupling done only at maintenance facilities, the equipment units that are not required by paragraph (a) of this section to be equipped with automatic couplers need not be equipped with sill steps or end or side handholds that would normally be used to safely perform coupling and uncoupling operations.

(2) If the units of the equipment are not semi-permanently coupled, the units shall be equipped with hand brakes, sill steps, end handholds, and side handholds that meet the requirements contained in § 231.14 of this chapter.

(3) If two trainsets are coupled to form a single train that is not semi-permanently coupled (i.e., that is coupled by an automatic coupler), the automatically coupled ends shall be equipped with hand brakes, sill steps, end handholds, and side handholds that meet the requirements contained in § 231.14 of this chapter. If the trainsets are semi-permanently coupled, these safety appliances are not required.

(g) *Optional safety appliances.* Safety appliances installed at the option of the railroad shall be firmly attached with mechanical fasteners and shall meet the design and installation requirements provided in this section.

§ 238.431 Brake system.

(a) A passenger train's brake system shall be capable of stopping the train from its maximum operating speed within the signal spacing existing on the track over which the train is operating under worst-case adhesion conditions.

(b) The brake system shall be designed to allow an inspector to determine that the brake system is functioning properly without having to place himself or herself in a dangerous position on, under, or between the equipment.

(c) Passenger equipment shall be provided with an emergency brake application feature that produces an irretrievable stop, using a brake rate consistent with prevailing adhesion, passenger safety, and brake system thermal capacity. An emergency brake application shall be available at any time, and shall be initiated by an unintentional parting of the train. A means to initiate an emergency brake application shall be provided at two locations in each unit of the train; however, where a unit of the train is 45 feet or less in length a means to initiate an emergency brake application need only be provided at one location in the unit.

(d) The brake system shall be designed to prevent thermal damage to wheels and brake discs. The operating railroad shall demonstrate through analysis and testing that no thermal damage results to the wheels or brake discs under conditions resulting in maximum braking effort being exerted on the wheels or discs.

(e) The following requirements apply to blended braking systems:

(1) Loss of power or failure of the dynamic brake does not result in exceeding the allowable stopping distance;

(2) The friction brake alone is adequate to safely stop the train under all operating conditions;

(3) The operational status of the electric portion of the brake system shall be displayed for the train operator in the control cab; and

(4) The operating railroad shall demonstrate through analysis and testing the maximum operating speed for safe operation of the train using only the friction brake portion of the blended brake with no thermal damage to wheels or discs.

(f) The brake system design shall allow a disabled train's pneumatic brakes to be controlled by a conventional locomotive, during a rescue operation, through brake pipe control alone.

(g) An independent failure-detection system shall compare brake commands with brake system output to determine if a failure has occurred. The failure detection system shall report brake system failures to the automated train monitoring system.

(h) Passenger equipment shall be equipped with an adhesion control system designed to automatically adjust the braking force on each wheel to prevent sliding during braking. In the event of a failure of this system to prevent wheel slide within preset parameters, a wheel slide alarm that is visual or audible, or both, shall alert the train operator in the cab of the controlling power car to wheel-slide conditions on any axle of the train.

§ 238.433 Draft system.

(a) Leading and trailing automatic couplers of trains shall be compatible with standard AAR couplers with no special adapters used.

(b) All passenger equipment continues to be subject to the requirements concerning couplers and uncoupling devices contained in Federal Statute at 49 U.S.C. chapter 203 and in FRA regulations at part 231 and § 232.2 of this chapter.

§ 238.435 Interior fittings and surfaces.

(a) Each seat back and seat attachment in a passenger car shall be designed to withstand, with deflection but without total failure, the load associated with the impact into the seat back of an unrestrained 95th-percentile adult male initially seated behind the seat back, when the floor to which the seat is attached decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.

(b) Each seat back in a passenger car shall include shock-absorbent material to cushion the impact of occupants with the seat ahead of them.

(c) The ultimate strength of each seat attachment to a passenger car body shall be sufficient to withstand the following individually applied accelerations acting on the mass of the seat plus the

mass of a seat occupant who is a 95th-percentile adult male:

(1) Lateral: 4g; and

(2) Vertical: 4g.

(d)(1) Other interior fittings shall be attached to the passenger car body with sufficient strength to withstand the following individually applied accelerations acting on the mass of the fitting:

(i) Longitudinal: 8g;

(ii) Lateral: 4g; and

(iii) Vertical: 4g.

(2) Fittings that can be expected to be impacted by a person during a collision, such as tables between facing seats, shall be designed for the mass of the fitting plus the mass of the number of occupants who are 95th-percentile adult males that could be expected to strike the fitting, when the floor of the passenger car decelerates with a triangular crash pulse having a peak of 8g and a duration of 250 milliseconds.

(e) The ultimate strength of the interior fittings and equipment in power car control cabs shall be sufficient to resist without failure loads due to the following individually applied accelerations acting on the mass of the fitting or equipment:

(1) Longitudinal: 12g;

(2) Lateral: 4g; and

(3) Vertical: 4g.

(f) To the extent possible, interior fittings, except seats, shall be recessed or flush-mounted. Corners and sharp edges shall be avoided or otherwise padded.

(g) Energy-absorbent material shall be used to pad surfaces likely to be impacted by occupants during collisions or derailments.

(h) Luggage stowage compartments shall be enclosed, and have an ultimate strength sufficient to resist loads due to the following individually applied accelerations acting on the mass of the luggage that the compartments are designed to accommodate:

(1) Longitudinal: 8g;

(2) Lateral: 4g; and

(3) Vertical: 4g.

(i) If, for purposes of showing compliance with the requirements of this section, the strength of a seat attachment is to be demonstrated through sled testing, the seat structure and seat attachment to the sled that is used in such testing must be representative of the actual seat structure in, and seat attachment to, the rail vehicle subject to the requirements of this section. If the attachment strength of any other interior fitting is to be demonstrated through sled testing, for purposes of showing compliance with the requirements of this section, such testing shall be conducted in a similar manner.

§ 238.437 Emergency communication.

A means of emergency communication throughout a train shall be provided and shall include the following:

(a) Except as further specified, transmission locations at each end of each passenger car, adjacent to the car's end doors, and accessible to both passengers and crewmembers without requiring the use of a tool or other implement. If the passenger car does not exceed 45 feet in length, only one transmission location is required;

(b) Transmission locations that are clearly marked with luminescent material;

(c) Clear and understandable operating instructions at or near each transmission location; and

(d) Back-up power for a minimum period of 90 minutes.

§ 238.439 Doors.

(a) Each passenger car shall have a minimum of two exterior side doors, each door providing a minimum clear opening with dimensions of 30 inches horizontally by 74 inches vertically.

Note: The Americans with Disabilities Act (ADA) Accessibility Specifications for Transportation Vehicles also contain requirements for doorway clearance (See 49 CFR part 38).

(b) Each passenger car shall be equipped with a manual override feature for each powered, exterior side door. Each manual override must be:

(1) Capable of releasing the door to permit it to be opened, without power, from both inside and outside the car;

(2) Located adjacent to the door which it controls; and

(3) Designed and maintained so that a person may readily access and operate the override device from both inside and outside the car without the use of any tool or other implement.

(c) The status of each powered, exterior side door in a passenger car shall be displayed to the crew in the operating cab. If door interlocks are used, the sensors used to detect train motion shall be nominally set to operate at 3 mph.

(d) Each powered, exterior side door in a passenger car shall be connected to an emergency back-up power system.

(e) A railroad may protect a manual override device used to open a powered, exterior door with a cover or a screen capable of removal without requiring the use of a tool or other implement.

(f) A passenger compartment end door (other than a door providing access to the exterior of the trainset) shall be equipped with a kick-out panel, pop-out window, or other similar means of egress in the event the door will not open, or shall be so designed as to pose a negligible probability of becoming inoperable in the event of car body distortion following a collision or derailment.

(g) *Marking and instructions.* [Reserved]

§ 238.441 Emergency roof entrance location.

(a) Each passenger car and power car cab shall have a minimum of one roof hatch emergency entrance location with a minimum opening of 18 inches by 24 inches, or at least one clearly marked structural weak point in the roof having a minimum opening of the same dimensions to provide quick access for properly equipped emergency response personnel.

(b) *Marking and instructions.* [Reserved]

§ 238.443 Headlights.

Each power car shall be equipped with at least two headlights. Each headlight shall produce no less than 200,000 candela. One headlight shall be focused to illuminate a person standing between the rails 800 feet ahead of the power car under clear weather conditions. The other headlight shall be focused to illuminate a person standing between the rails 1500 feet ahead of the power car under clear weather conditions.

§ 238.445 Automated monitoring.

(a) Each passenger train shall be equipped to monitor the performance of the following systems or components:

(1) Reception of cab signals and train control signals;

(2) Truck hunting;

(3) Dynamic brake status;

(4) Friction brake status;

(5) Fire detection systems;

(6) Head end power status;

(7) Alerter or deadman control;

(8) Horn and bell;

(9) Wheel slide;

(10) Tilt system, if so equipped; and

(11) On-board bearing-temperature sensors, if so equipped.

(b) When any such system or component is operating outside of its predetermined safety parameters:

(1) The train operator shall be alerted; and

(2) Immediate corrective action shall be taken, if the system or component defect impairs the train operator's ability to safely operate the train. Immediate corrective action includes limiting the speed of the train.

(c) The monitoring system shall be designed with an automatic self-test feature that notifies the train operator

that the monitoring capability is functioning correctly and alerts the train operator when a system failure occurs.

§ 238.447 Train operator's controls and power car cab layout.

(a) Train operator controls in the power car cab shall be arranged so as to minimize the chance of human error, and be comfortably within view and within easy reach when the operator is seated in the normal train control position.

(b) The train operator's control panel buttons, switches, levers, knobs, and the like shall be distinguishable by sight and by touch.

(c) An alerter shall be provided in the power car cab. If not acknowledged, the alerter shall cause a brake application to stop the train.

(d) Power car cab information displays shall be designed with the following characteristics:

(1) Simplicity and standardization shall be the driving criteria for design of formats for the display of information in the cab;

(2) Essential, safety-critical information shall be displayed as a default condition;

(3) Operator selection shall be required to display other than default information;

(4) Cab or train control signals shall be displayed for the operator; and

(5) Displays shall be readable from the operators's normal position under all lighting conditions.

(e) The power car cab shall be designed so at to permit the crew to have an effective field of view in the forward direction, as well as to the right and left of the direction of travel to observe objects approaching the train from either side. Field-of-view obstructions due to required structural members shall be minimized.

(f) Each seat provided for an employee regularly assigned to occupy a power car cab and any floor-mounted seat in the cab shall be:

(1) Secured to the car body with an attachment having an ultimate strength capable of withstanding the loads due to the following individually applied accelerations acting on the combined mass of the seat and the mass of a seat occupant who is a 95th-percentile adult male:

(i) Longitudinal: 12g;

(ii) Lateral: 4g; and

(iii) Vertical: 4g;

(2) Designed so that all adjustments have the range necessary to accommodate a person ranging from a 5th-percentile adult female to a 95th-percentile adult male, as persons possessing such characteristics are specified, correcting for clothing as appropriate, in any recognized survey after 1958 of weight, height, and other body dimensions of U.S. adults;

(3) Equipped with lumbar support that is adjustable from the seated position;

(4) Equipped with force-assisted, vertical-height adjustment, operated from the seated position;

(5) Equipped with a manually reclining seat back, adjustable from the seated position;

(6) Equipped with an adjustable headrest; and

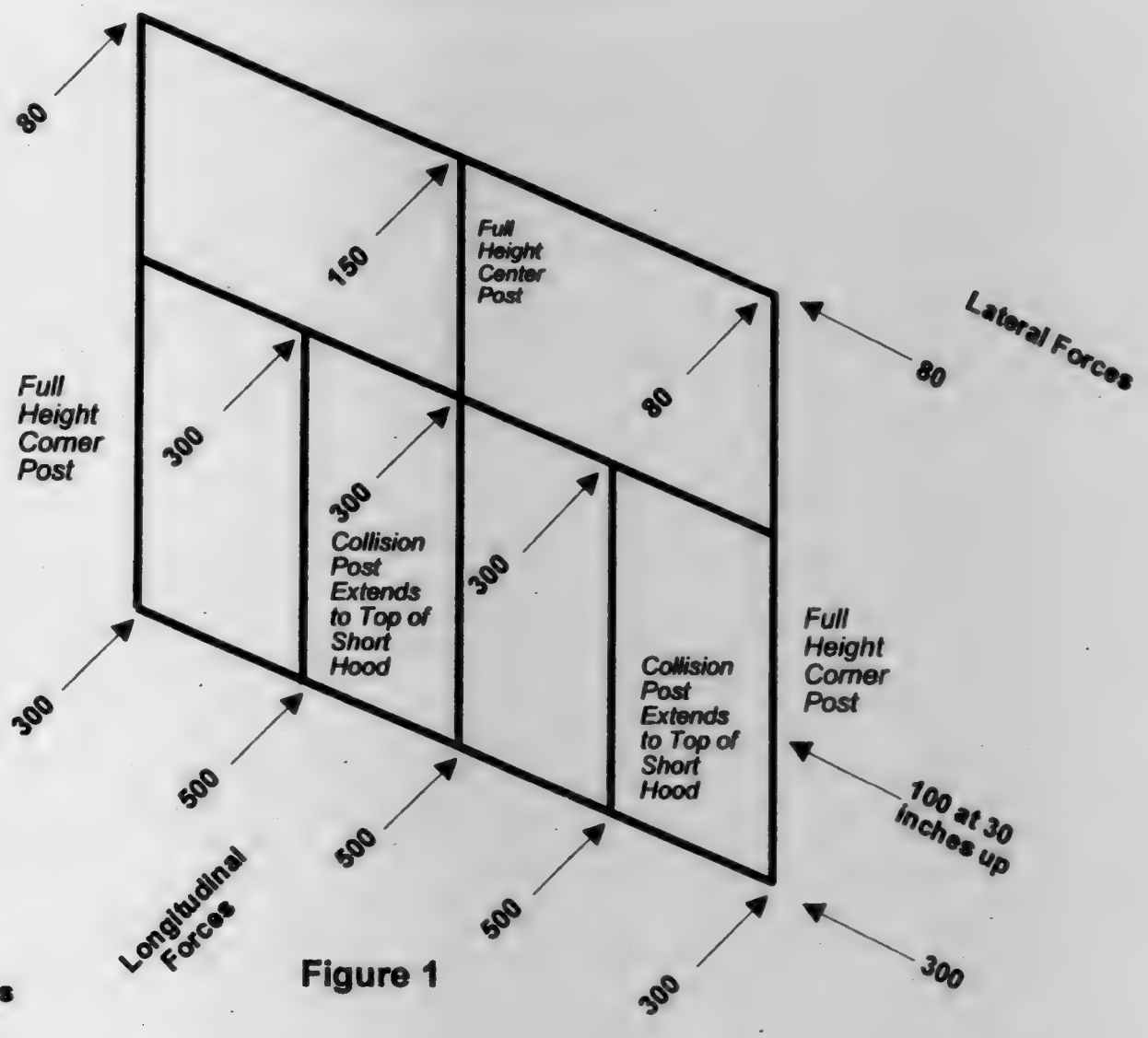
(7) Equipped with folding, padded armrests.

(g) Sharp edges and corners shall be eliminated from the interior of the power car cab, and interior surfaces of the cab likely to be impacted by an employee during a collision or derailment shall be padded with shock-absorbent material.

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Figure 1—to Subpart E

Power Car Cab Forward End Structure Conceptual Implementation



All Forces in Kips

Figure 1

Figure 2—to Subpart E

Power Car Cab Rear End Structure Conceptual Implementation

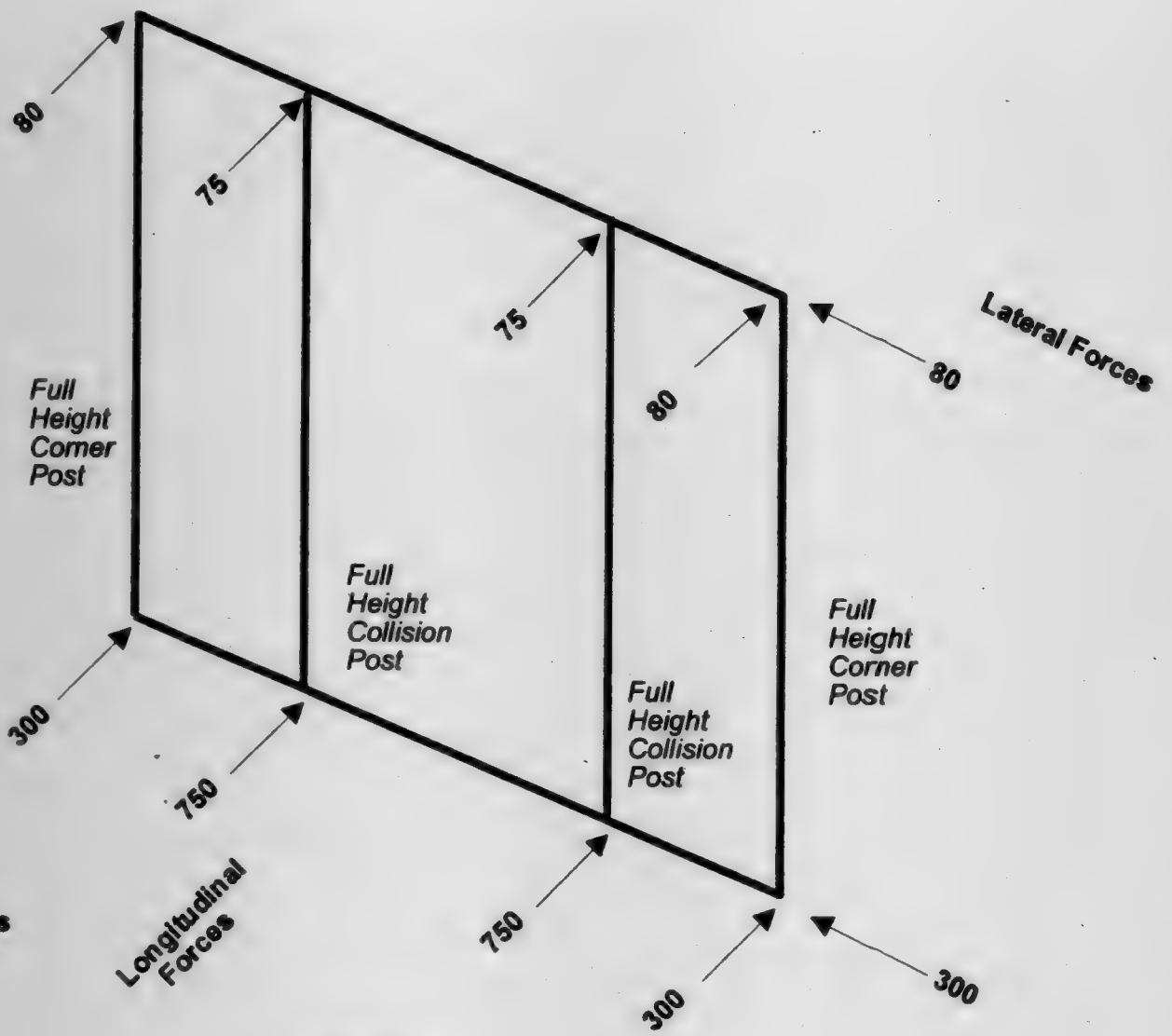


Figure 2

Figure 3—to Subpart E

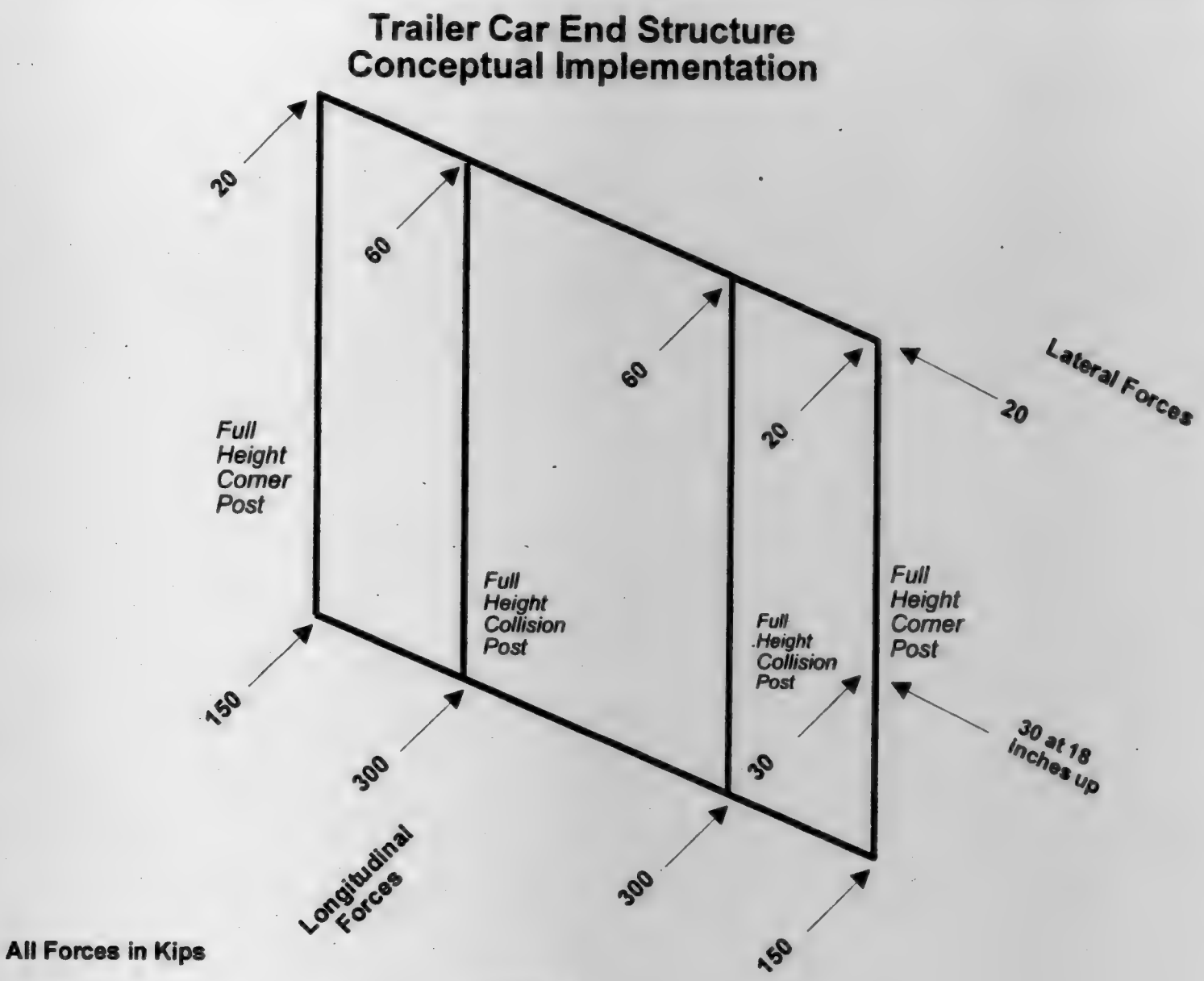


Figure 3

Figure 4—to Subpart E

Trailer Car In-Board Vestibule End Structure Conceptual Implementation

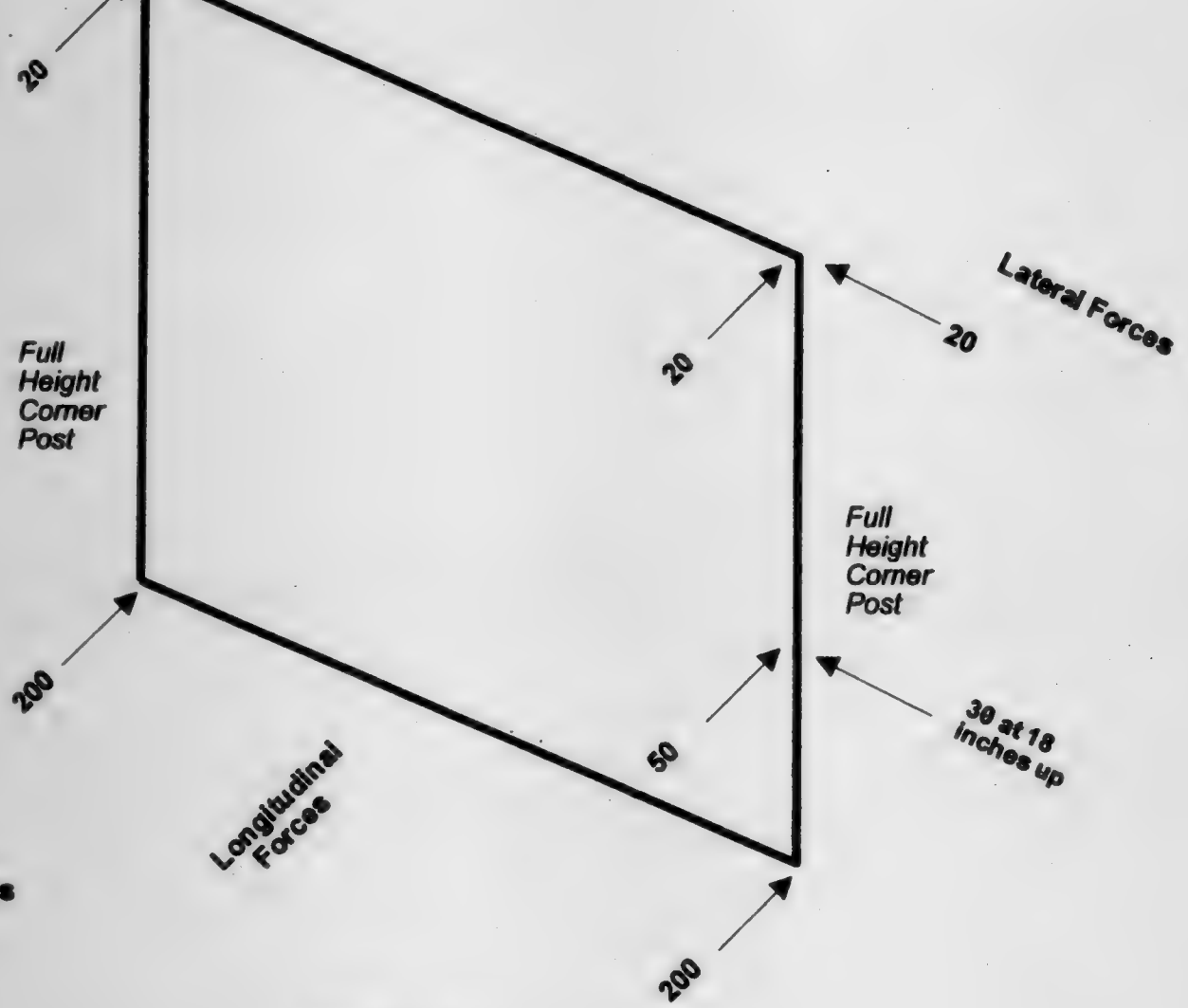


Figure 4

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Subpart F—Inspection, Testing, and Maintenance Requirements for Tier II Passenger Equipment.

§ 238.501 Scope.

This subpart contains inspection, testing, and maintenance requirements for railroad passenger equipment that operates at speeds exceeding 125 mph but not exceeding 150 mph.

§ 238.503 Inspection, testing, and maintenance requirements.

(a) *General.* Under the procedures provided in § 238.505, each railroad shall obtain FRA approval of a written inspection, testing, and maintenance program for Tier II passenger equipment prior to implementation of that program and prior to commencing passenger operations using that equipment. As further specified in this section, the program shall describe in detail the procedures, equipment, and other means necessary for the safe operation of the passenger equipment, including:

(1) Inspection procedures, intervals, and criteria;

(2) Testing procedures and intervals;

(3) Scheduled preventive-maintenance intervals;

(4) Maintenance procedures;

(5) Special testing equipment or measuring devices required to perform inspections, tests, and maintenance; and

(6) The training, qualification, and designation of employees and contractors to perform inspections, tests, and maintenance.

(b) *Compliance.* After the railroad's inspection, testing, and maintenance program is approved by FRA under § 238.505, the railroad shall adopt the program and shall perform—

(1) The inspections and tests of power brakes and other primary brakes as described in the program;

(2) The other inspections and tests described in the program in accordance with the procedures and criteria that the railroad identified as safety-critical; and

(3) The maintenance tasks described in the program in accordance with the procedures and intervals that the railroad identified as safety-critical.

(c) *General safety inspection, testing, and maintenance procedures.* The inspection, testing, and maintenance program under paragraph (a) of this section shall contain the railroad's written procedures to ensure that all systems and components of in service passenger equipment are free of any general condition that endangers the safety of the crew, passengers, or equipment. These procedures shall protect against:

(1) A continuous accumulation of oil or grease;

(2) Improper functioning of a component;

(3) A crack, break, excessive wear, structural defect, or weakness of a component;

(4) A leak;

(5) Use of a component or system under a condition that exceeds that for which the component or system is designed to operate; and

(6) Insecure attachment of a component.

(d) *Specific inspections.* The program under paragraph (a) of this section shall specify that all Tier II passenger equipment shall receive thorough inspections in accordance with the following standards:

(1) Except as provided in paragraph (d)(3) of this section, the equivalent of a Class I brake test contained in § 238.313 shall be conducted prior to a train's departure from an originating terminal and every 1,500 miles or once each calendar day, whichever comes first, that the train remains in continuous service.

(i) Class I equivalent brake tests shall be performed by a qualified maintenance person.

(ii) Except as provided in § 238.15(b), a railroad shall not use or haul a Tier II passenger train in passenger service from a location where a Class I equivalent brake test has been performed, or was required by this part to have been performed, with less than 100 percent operative brakes.

(2) Except as provided in paragraph (d)(3) of this section, a complete exterior and interior mechanical inspection, in accordance with the railroad's inspection program, shall be conducted by a qualified maintenance person at least once during each calendar day the equipment is used in service.

(3) Trains that miss a scheduled Class I brake test or mechanical inspection due to a delay en route may proceed to the point where the Class I brake test or mechanical inspection was scheduled to be performed.

(e) *Movement of trains with power brake defects.* Movement of trains with a power brake defect as defined in § 238.15 (any primary brake defect) shall be governed by § 238.15.

(f) *Movement of trains with other defects.* Movement of a train with a defect other than a power brake defect shall be conducted in accordance with § 238.17, with the following exception: When a failure of the secondary brake on a Tier II passenger train occurs en route, that train may remain in service until its next scheduled calendar day Class I brake test equivalent at a speed no greater than the maximum safe operating speed demonstrated through analysis and testing for braking with the friction brake alone. The brake system shall be restored to 100 percent operation before the train departs that inspection location.

(g) *Maintenance intervals.* The program under paragraph (a) of this section shall include the railroad's initial scheduled maintenance intervals for Tier II equipment based on an analysis completed pursuant to the railroad's safety plan. The maintenance interval of a safety-critical component shall be changed only when justified by accumulated, verifiable operating data and approved by FRA under § 238.505 before the change takes effect.

(h) *Training, qualification, and designation program.* The program under paragraph (a) of this section shall describe the training, qualification, and designation program, as defined in the training program plan under § 238.109, established by the railroad to qualify individuals to inspect, test, and maintain the equipment.

(1) If the railroad deems it safety-critical, then only qualified individuals shall inspect, test, and maintain the equipment.

(2) Knowledge of the procedures described in paragraph (a) of this section shall be required to qualify an employee or contractor to perform an inspection, testing, or maintenance task under this part.

(i) *Standard procedures.* The program under paragraph (a) of this section shall include the railroad's written standard procedures for performing all safety-critical equipment inspection, testing, maintenance, and repair tasks necessary to ensure the safe and proper operation of the equipment. The inspection, testing, and maintenance program required by this section is not intended to address and should not include procedures to address employee working conditions that arise in the course of conducting the inspections, tests, and maintenance set forth in the program. When reviewing the railroad's program, FRA does not intend to review any portion of the program that relates to employee working conditions.

(j) *Annual review.* The inspection, testing, and maintenance program required by this section shall be reviewed by the railroad annually.

(k) *Quality control program.* Each railroad shall establish an inspection, testing, and maintenance quality control program enforced by railroad or contractor supervisors to reasonably ensure that inspections, tests, and maintenance are performed in accordance with Federal safety standards and the procedures established by the railroad.

(l) *Identification of safety-critical items.* In the program under paragraph (a) of this section, the railroad shall identify all inspection and testing procedures and criteria as well as all maintenance intervals that the railroad deems to be safety-critical.

§ 238.505 Program approval procedure.

(a) *Submission.* Not less than 90 days prior to commencing passenger operations using Tier II passenger equipment, each railroad to which this subpart applies shall submit for approval an inspection, testing, and maintenance program for that equipment meeting the requirements of this subpart with the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave, Mail Stop 25, Washington, D.C. 20590. If a railroad seeks to amend an approved program, the railroad shall file with FRA's Associate Administrator for Safety a petition for approval of such amendment not less than 60 days prior to the proposed effective date of the amendment. A program responsive to the requirements of this subpart or any amendment to the program shall not be implemented prior to FRA approval.

(1) Each program or amendment under § 238.503 shall contain:

(i) The information prescribed in § 238.503 for such program or amendment;

(ii) The name, title, address, and telephone number of the primary person to be contacted with regard to review of the program or amendment; and

(iii) A statement affirming that the railroad has served a copy of the program or amendment on designated representatives of railroad employees, together with a list of the names and addresses of persons served.

(2) Each railroad shall serve a copy of each submission to FRA on designated representatives of railroad employees responsible for the equipment's operation, inspection, testing, and maintenance under this subpart.

(b) *Comment.* Not later than 45 days from the date of filing the program or amendment, any person may comment on the program or amendment.

(1) Each comment shall set forth specifically the basis upon which it is made, and contain a concise statement of the interest of the commenter in the proceeding.

(2) Three copies of each comment shall be submitted to the Associate Administrator for Safety, Federal Railroad Administration, 1120 Vermont Ave., Mail Stop 25, Washington, D.C. 20590.

(3) The commenter shall certify that a copy of the comment was served on the railroad.

(c) *Approval.*

(1) Within 60 days of receipt of each initial inspection, testing, and maintenance program, FRA will conduct a formal review of the program. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the inspection, testing, and maintenance program is approved and, if not approved, the specific points in which the program is deficient. If a program is not approved by FRA, the railroad shall amend its program to correct all deficiencies and resubmit its program with the required revisions not later than 45 days prior to commencing passenger operations.

(2) FRA will review each proposed amendment to the program within 45 days of receipt. FRA will then notify the primary railroad contact person and the designated employee representatives in writing whether the proposed amendment has been approved by FRA and, if not approved, the specific points in which the proposed amendment is deficient. The railroad shall correct any deficiencies and file the corrected amendment prior to implementing the amendment.

(3) Following initial approval of a program or amendment, FRA may reopen consideration of the program or amendment for cause stated.

Subpart G—Specific Safety Planning Requirements for Tier II Passenger Equipment

§ 238.601 Scope.

This subpart contains specific safety planning requirements for the operation of Tier II passenger equipment, procurement of Tier II passenger equipment, and the introduction or major upgrade of new technology in existing Tier II passenger equipment that affects a safety system on such equipment.

§ 238.603 Safety planning requirements

(a) Prior to commencing revenue service operation of Tier II passenger equipment, each railroad shall prepare and execute a written plan for the safe operation of such equipment. The plan may be combined with any other plan required under this part. The plan shall be updated at least every 365 days. At a minimum, the plan shall describe the approaches and processes to:

(1) Identify all requirements necessary for the safe operation of the equipment in its operating environment;

(2) Identify all known or potential hazards to the safe operation of the equipment;

(3) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using MIL–STD–882C as a guide or an alternative formal, safety methodology; and

(4) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(b) For the procurement of Tier II passenger equipment, and for each major upgrade or introduction of new technology in existing Tier II passenger equipment that affects a safety system on such equipment, each railroad shall prepare and execute a written safety plan. The plan may be combined with any other plan required under this part. The plan shall describe the approaches and processes to:

(1) Identify all safety requirements governing the design of the passenger equipment and its supporting systems;

(2) Evaluate the total system, including hardware, software, testing, and support activities, to identify known or potential safety hazards over the life cycle of the equipment;

(3) Identify safety issues during design reviews;

(4) Eliminate or reduce the risk posed by each hazard identified to an acceptable level using MIL–STD–882C as a guide or an alternative, formal safety methodology;

(5) Monitor the progress in resolving safety issues, reducing hazards, and meeting safety requirements;

(6) Develop a program of testing or analysis, or both, to demonstrate that safety requirements have been met; and

(7) Impose operational limitations, as necessary, on the operation of the equipment if the equipment cannot meet safety requirements.

(c) Each railroad shall maintain sufficient documentation to demonstrate how the operation and design of its Tier II passenger equipment complies with safety requirements or, as appropriate, addresses safety requirements under paragraphs (a)(4) and (b)(7) of this section. Each railroad shall maintain sufficient documentation to track how safety issues are raised and resolved.

(d) Each railroad shall make available to FRA for inspection and copying upon request each safety plan required by this section and any documentation required pursuant to such plan.

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES[1]

Section	Violation	Willful violation
SUBPART A—GENERAL		
238.15 Movement of power brake defects:		
(b) Improper movement from Class I or IA brake test	5,000	7,500
(c) Improper movement of en route defect	2,500	5,000
(2), (3) Insufficient tag or record	1,000	2,000
(4) Failure to determine percent operative brake	2,500	5,000
(d) Failure to follow operating restrictions	5,000	7,500
(e) Failure to follow restrictions for inoperative front or rear unit	2,500	5,000
238.17 Movement of other than power brake defects: [1]		
(c)(4), (5) Insufficient tag or record	1,000	2,000
(d) Failure to inspect or improper use of roller bearings	2,500	5,000
(e) Improper movement of defective safety appliances	(1)	
238.19 Reporting and tracking defective equipment:		
(a) Failure to have reporting or tracking system	7,500	11,000
(b) Failure to retain records	2,000	4,000
(c) Failure to make records available	1,000	2,000
(d) Failure to list power brake repair points	2,000	4,000
SUBPART B—SAFETY PLANNING AND GENERAL REQUIREMENTS		
238.103 Fire protection plan/fire safety:		
(a) Failure to use proper materials	5,000	7,500
(b) Improper certification	1,000	2,000
(c) Failure to consider fire safety on new equipment	5,000	7,500
(d) Failure to perform fire safety analysis	5,000	7,500
(e) Failure to develop, adopt or comply with procedures	5,000	7,500
238.105 Train hardware and software safety:		
(a), (b), (c) Failure to develop and maintain hardware and software safety program	7,500	11,000
(d) Failure to include required design features in hardware and software	5,000	7,500
(e) Failure to comply with hardware and software safety program	5,000	7,500
238.107 Inspection, testing, and maintenance plan:		
(b) Failure to develop plan	7,500	11,000
(b)(1)–(5) Failure of plan to address specific item	3,000	6,000
(d) Failure to conduct annual review	5,000	7,500
238.109 Training, qualification, and designation program:		
(a) Failure to develop or adopt program	7,500	11,000
(b)(1)–(4) Failure of plan to address specific item	3,000	6,000
(b)(5)–(12) Failure to comply with specific required provision of the program	5,000	7,500
(b)(13) Failure to maintain adequate records	2,500	5,000
238.111 Pre-revenue service acceptance testing plan:		
(a) Failure to properly test previously used equipment	7,500	11,000
(b)(1) Failure to develop plan	7,500	11,000
(b)(2) Failure to submit plan to FRA	5,000	7,500
(b)(3) Failure to comply with plan	5,000	7,500
(b)(4) Failure to document results of testing	5,000	7,500
(b)(5) Failure to correct safety deficiencies or impose operating limits	5,000	7,500
(b)(6) Failure to maintain records	3,000	6,000
(b)(7) Failure to obtain FRA approval	5,000	7,500
238.113 Emergency window exits	2,500	5,000
238.115 Emergency lighting	2,500	5,000
238.117 Protection against personal injury	2,500	5,000
238.119 Rim-stamped straight plate wheels	2,500	5,000
SUBPART C—SPECIFIC REQUIREMENTS FOR TIER I EQUIPMENT		
238.203 Static end strength	2,500	5,000
238.205 Anti-climbing mechanism	2,500	5,000
238.207 Link between coupling mechanism and car body	2,500	5,000
238.209 Forward-facing end structure of locomotives	2,500	5,000
238.211 Collision posts	2,500	5,000
238.213 Corner posts	2,500	5,000
238.215 Rollover strength	2,500	5,000
238.217 Side structure	2,500	5,000
238.219 Truck-to-car-body attachment	2,500	5,000
238.221 Glazing	2,500	5,000
238.223 Fuel tanks	2,500	5,000
238.225 Electrical System	2,500	5,000
238.227 Suspension system	2,500	5,000
238.231 Brake system: (a)–(g), (i)–(m)	2,500	5,000
(h) Hand or parking brake missing or inoperative	5,000	5,000
238.233 Interior fittings and surfaces	2,500	7,500
238.235 Doors	2,500	5,000
238.237 Automated monitoring	2,500	5,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section		Violation	Willful violation
SUBPART D—INSPECTION, TESTING, AND MAINTENANCE REQUIREMENTS FOR TIER I EQUIPMENT			
238.303	Exterior mechanical inspection of passenger equipment:		
	(a)(1) Failure to perform mechanical inspection	[1]2,000	4,000
	(a)(2) Failure to inspect secondary brake system	2,500	5,000
	(b) Failure to perform inspection on car added to train	[1]2,000	4,000
	(c) Failure to utilize properly qualified personnel	2,000	4,000
	(e)(1) Products of combustion not released outside cab	2,500	5,000
	(e)(2) Battery not vented or gassing excessively	2,500	5,000
	(e)(3) Coupler not in proper condition	2,500	5,000
	(e)(4) No device under drawbar pins or connection pins	2,500	5,000
	(e)(5) Suspension system and spring rigging not in proper condition	2,500	5,000
	(e)(6) Truck not in proper condition	2,500	5,000
	(e)(7) Side bearing not in proper condition	2,500	5,000
	(e)(8) Wheel not in proper condition:		
	(i), (iv) Flat spot(s) and shelled spot(s):		
	(A) One spot 2½″ or more but less than 3″ in length	2,500	5,000
	(B) One spot 3″ or more in length	5,000	7,500
	(C) Two adjoining spots each of which is 2″ or more in length but less than 2½″ in length	2,500	5,000
	(D) Two adjoining spots each of which are at least 2″ in length, if either spot is 2½″ or more in length	5,000	7,500
	(ii) Gouge or chip in flange:		
	(A) More than 1½″ but less than 1⅝″ in length; and more than ½″ but less than ⅝″ in width	2,500	5,000
	(B) 1⅝″ or more in length and ⅝″ or more in width	5,000	7,500
	(iii) Broken rim	5,000	7,500
	(v) Seam in tread	2,500	5,000
	(vi) Flange thickness of:	2,500	5,000
	(A) ⅞″ or less but more than 13⁄16″.		
	(B) 13⁄16″ or less	5,000	7,500
	(vii) Tread worn hollow	2,500	5,000
	(viii) Flange height of:		
	(A) 1½″ or greater but less than 1⅝″	2,500	5,000
	(B) 1⅝″ or more	5,000	7,500
	(ix) Rim thickness:		
	(A) Less than 1″	2,500	5,000
	(B) 15⁄16″ or less	5,000	7,500
	(x) Crack or break in flange, tread, rim, plate, or hub:		
	(A) Crack of less than 1″	2,500	5,000
	(B) Crack of 1″ or more	5,000	7,500
	(C) Break	5,000	7,500
	(xi) Loose wheel	5,000	7,500
	(xii) Welded wheel	5,000	7,500
	(e)(10) Improper grounding or insulation	5,000	7,500
	(e)(11) Jumpers or cable connections not in proper condition	2,500	5,000
	(e)(12) Door or cover plate not properly marked	2,500	5,000
	(e)(13) Buffer plate not properly placed	2,500	5,000
	(e)(14) Diaphragm not properly placed or aligned	2,500	5,000
	(e)(15) Secondary braking system not in operating mode or contains known defect	2,500	5,000
	(g) Record of inspection:		
	(1), (4) Failure to maintain record of inspection	5,000	4,000
	(2) Record contains insufficient information	1,000	2,000
238.305	Interior mechanical inspection of passenger cars:		
	(a) Failure to perform inspection	[1]1,000	2,000
	(b) Failure to utilize properly qualified personnel	1,000	2,000
	(c)(1) Failure to protect against personal injury	2,500	5,000
	(c)(2) Emergency brake valve not stenciled or marked	2,500	5,000
	(c)(3) Door or cover plates not properly marked	2,500	5,000
	(c)(4) Trap door unsafe or improperly secured	2,500	5,000
	(c)(5) Doors not safely operate as intended	2,500	5,000
	(i)–(iv) Condition for operating defective door not satisfied	2,000	4,000
	(c)(6) Safety signage not in place or legible	1,000	2,000
	(c)(7) Vestibule steps not illuminated	2,000	4,000
	(c)(8) Access to manual door release not in place	2,000	4,000
	(c)(9) Emergency equipment not in place	1,000	2,000
	(e) Record of inspection:		
	(1), (4) Failure to maintain record of inspection	2,000	4,000
	(2) Record contains insufficient information	1,000	1,000
238.307	Periodic mechanical inspection of passenger cars and unpowered vehicles:		
	(a) Failure to perform periodic mechanical inspection	[1]2,500	5,000
	(b) Failure to utilize properly qualified personnel	2,500	5,000
	(c)(1) Floors not free of condition that creates hazard	2,500	5,000
	(c)(2) Emergency lighting not operational	2,500	5,000
	(c)(3) Switches not in proper condition	2,500	5,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
(c)(4) Truck not equipped with securing arrangement	2,500	5,000
(c)(5) Truck center casting cracked or broken	5,000	7,500
(c)(6) Roller bearings:		
(i) Overheated	5,000	7,500
(ii) Cap screw loose or missing	2,500	5,000
(iii) Cap screw lock broken or missing	1,000	2,000
(iv) Seal loose, damaged, or leaks lubricant	2,500	5,000
(c)(7) General conditions endangering crew, passengers	2,500	5,000
(d)(1) Seat or seat attachment broken or loose	2,500	5,000
(d)(2) Luggage rack broken or loose	2,500	5,000
(d)(3) Bed, bunks, or restraints broken or loose	2,500	5,000
(d)(4) Emergency window exit not properly operate	2,500	5,000
(d)(5) Coupler not in proper condition	2,500	5,000
(f)(1) Record of inspection:		
(i) Failure to maintain record of inspection	2,000	4,000
(ii) Record contains insufficient information	1,000	2,000
238.309 Periodic brake equipment maintenance:		
(b) Failure to perform on MU locomotive	2,500	5,000
(c) Failure to perform on conventional locomotive	2,500	5,000
(d) Failure to perform on passenger coaches or other unpowered vehicle	2,500	5,000
(e) Failure to perform on cab car	2,500	5,000
(f) Record of periodic maintenance:		
(1), (2) Failure to maintain record or stencil	2,000	4,000
238.311 Single car tests:		
(a) Failure to test in accord with required procedure	2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c), (e) Failure to perform single car test	2,500	5,000
(f) Improper movement of car for testing	2,000	4,000
(g) Failure to test after repair or replacement of component	2,000	4,000
238.313 Class I brake test:		
(a) Failure to perform on commuter or short distance intercity passenger train	[1] 10,000	15,000
(b) Failure to perform on long-distance intercity passenger train	[1] 10,000	15,000
(c) Failure to perform on cars added to passenger train	[1] 5,000	7,500
(d) Failure to utilized properly qualified personnel	5,000	7,500
(f) Passenger train used from Class I brake test with less than 100% operative brakes	5,000	7,500
(g) Partial failure to perform inspection on a passenger train	5,000	7,500
(h) Failure to maintain record	2,000	4,000
238.315 Class IA brake test:		
(a) Failure to perform inspection	[1] 5,000	7,500
(d) Failure to utilize properly qualified personnel	2,500	5,000
(e) Passenger train used from Class IA brake test with improper percentage of operative brakes	5,000	7,500
(f) Partial failure to perform inspection on passenger train	2,500	5,000
238.317 Class II brake test:		
(a) Failure to perform inspection	[1] 2,500	5,000
(b) Failure to utilize properly qualified personnel	2,500	5,000
(c) Improper use of defective equipment from Class II brake test	2,500	5,000
238.319 Running brake tests:		
(a), (b) Failure to perform test	2,000	4,000
SUBPART E—SPECIFIC REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.403 Crash energy management	2,500	5,000
238.405 Longitudinal static compressive strength	2,500	5,000
238.407 Anti-climbing mechanism	2,500	5,000
238.409 Forward end structures of power car cabs:		
(a) Center collision post	2,500	5,000
(b) Side collision posts	2,500	5,000
(c) Corner posts	2,500	5,000
(d) Skin	2,500	5,000
238.411 Rear end structures of power car cabs:		
(a) Corner posts	2,500	5,000
(b) Collision posts	2,500	5,000
238.413 End structures of trailer cars	2,500	5,000
238.415 Rollover strength	2,500	5,000
238.417 Side loads	2,500	5,000
238.419 Truck-to-car-body and truck component attachment	2,500	5,000
238.421 Glazing:		
(b) End-facing exterior glazing	2,500	5,000
(c) Alternate glazing requirements	2,500	5,000
(d) Glazing securement	1,000	2,000
(e) Stenciling	2,500	5,000
238.423 Fuel tanks:		

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
(a) External fuel tanks	2,500	5,000
(b) Internal fuel tanks	2,500	5,000
238.425 Electrical system:		
(a) Circuit protection	2,500	5,000
(b) Main battery system	2,500	5,000
(c) Power dissipation resistors	2,500	5,000
(d) Electromagnetic interference and compatibility	2,500	5,000
238.427 Suspension system:		
(a) General design	2,500	5,000
(b) Lateral accelerations	2,500	5,000
(c) Hunting Oscillations	2,500	5,000
(d) Ride vibrations	2,500	5,000
(e) Overheat sensors	2,500	5,000
238.429 Safety Appliances:		
(a) Couplers	5,000	7,500
(b) Hand/parking brakes	5,000	7,500
(d) Handrail and handhold missing	2,500	5,000
(d)(1)–(8) Handrail or handhold improper design	2,500	5,000
(e) Sill step missing	5,000	7,500
(e)(1)–(11) Sill step improper design	2,500	5,000
(g) Optional safety appliances	2,500	5,000
238.431 Brake system	2,500	5,000
238.433 Draft System	2,500	5,000
238.435 Interior fittings and surfaces	2,500	5,000
238.437 Emergency communication	2,500	5,000
238.439 Doors:		
(a) Exterior side doors	2,500	5,000
(b) Manual override feature	2,500	5,000
(c) Notification to crew of door status	2,500	5,000
(d) Emergency back-up power	2,500	5,000
(f) End door kick-out panel or pop-out window	2,500	5,000
(g) Marking and instructions	[Reserved]	
238.441 Emergency roof hatch entrance location	2,500	5,000
238.443 Headlights	2,500	5,000
238.445 Automated monitoring	2,500	5,000
238.447 Train operator's controls and power car cab layout	2,500	5,000
SUBPART F—INSPECTION, TESTING, AND MAINTENANCE REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.503 Inspection, testing, and maintenance requirements:		
(a) Failure to develop inspection, testing, and maintenance program or obtain FRA approval	10,000	15,000
(b) Failure to comply with provisions of the program	5,000	7,500
(c) Failure to ensure equipment free of conditions which endanger safety of crew, passengers, or equipment	2,500	5,000
(d) Specific safety inspections:		
(1)(i) Failure to perform Class I brake test or equivalent	10,000	15,000
(1)(ii) Partial failure to perform Class I brake test or equivalent	5,000	7,500
(2)(i) Failure to perform exterior mechanical inspection	[1]2,000	4,000
(2)(ii) Failure to perform interior mechanical inspection	[1]1,000	2,000
(g) Failure to perform scheduled maintenance as required in program	2,500	5,000
(h) Failure to comply with training, qualification and designation program	5,000	7,500
(i) Failure to develop or comply with standard procedures for performing inspection, tests, and maintenance	2,500	5,000
(j) Failure to conduct annual review	5,000	7,500
(k) Failure to establish or utilize quality control program	5,000	7,500
SUBPART G—SPECIFIC SAFETY PLANNING REQUIREMENTS FOR TIER II PASSENGER EQUIPMENT		
238.603 Safety plan:		
(a) Failure to develop safety operating plan	7,500	11,000
(b) Failure to develop procurement plan	7,500	11,000
(1)–(7) Failure to develop portion of plan	2,500	5,000

APPENDIX A TO PART 238—SCHEDULE OF CIVIL PENALTIES[1]—Continued

Section	Violation	Willful violation
(c) Failure to maintain documentation	2,500	5,000

[1] A penalty may be assessed against an individual only for a willful violation Generally when two or more violations of these regulations are discovered with respect to a single unit of passenger equipment that is placed or continued in service by a railroad, the appropriate penalties set forth above are aggregated up to a maximum of $10,000 per day. However, failure to perform, with respect to a particular unit of passenger equipment, any of the inspections and tests required under subparts D and F of this part will be treated as a violation separate and distinct from, and in addition to, any substantive violative conditions found on that unit of passenger equipment. Moreover, the Administrator reserves the right to assess a penalty of up to $22,000 for any violation where circumstances warrant. *See* 49 CFR part 209, appendix A. Failure to observe any condition for movement of defective equipment set forth in § 238.17 will deprive the railroad of the benefit of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) concerning the substantive defect(s) present on the unit of passenger equipment at the time of movement Failure to observe any condition for the movement of passenger equipment containing defective safety appliances, other than power brakes, set forth in § 238.17(e) will deprive the railroad of the movement-for-repair provision and make the railroad and any responsible individuals liable for penalty under the particular regulatory section(s) contained in part 231 of this chapter or § 238.429 concerning the substantive defective condition. The penalties listed for failure to perform the exterior and interior mechanical inspections and tests required under § 238.303 and § 238.305 may be assessed for each unit of passenger equipment contained in a train that is not properly inspected Whereas, the penalties listed for failure to perform the brake inspections and tests under § 238.313 through § 238.319 may be assessed for each train that is not properly inspected.

Appendix B to Part 238—Test Methods and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

This appendix provides the test methods and performance criteria for the flammability and smoke emission characteristics of materials used in passenger cars and locomotive cabs, in accordance with the requirements of § 238.103.

(a) *Incorporation by reference.* Certain documents are incorporated by reference into this appendix with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. You may inspect a copy of each document during normal business hours at the Federal Railroad Administration, Docket Clerk, 1120 Vermont Ave., N.W., Suite 7000 or at the Office of the Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, D.C. The documents incorporated by reference into this appendix and the sources from which you may obtain these documents are listed below:

(1) American Society for Testing and Materials (ASTM), 100 Barr Harbor Dr., West Conshohocken, PA 19428–2959.

(i) ASTM C 1166–91, Standard Test Method for Flame Propagation of Dense and Cellular Elastomeric Gaskets and Accessories.

(ii) ASTM D 2724–87, Standard Test Methods for Bonded, Fused, and Laminated Apparel Fabrics.

(iii) ASTM D 3574–95, Standard Test Methods for Flexible Cellular Materials—Slab, Bonded, and Molded Urethane Foams.

(iv) ASTM D 3675–95, Standard Test Method for Surface Flammability of Flexible Cellular Materials Using a Radiant Heat Energy Source.

(v) ASTM E 119–98, Standard Test Methods for Fire Tests of Building Construction and Materials.

(vi) ASTM E 162–98, Standard Test Method for Surface Flammability of Materials Using a Radiant Heat Energy Source.

(vii) ASTM E 648–97, Standard Test Method for Critical Radiant Flux of Floor-Covering Systems Using a Radiant Heat Energy Source.

(viii) ASTM E 662–97, Standard Test Method for Specific Optical Density of Smoke Generated by Solid Materials.

(ix) ASTM E 1354–97, Standard Test Method for Heat and Visible Smoke Release Rates for Materials and Products Using an Oxygen Consumption Calorimeter.

(x) ASTM E 1537–98, Standard Test Method for Fire Testing of Upholstered Seating Furniture.

(2) General Services Administration, Federal Supply Service, Specification Section, 470 E. L'Enfant Plaza, S.W., Suite 8100, Washington, D.C., 20407. FED–STD–191A—Textile Test Method 5830, Leaching Resistance of Cloth; Standard Method (July 20, 1978).

(3) National Electrical Manufacturers Association (NEMA), 1300 North 17th St, Suite 1847, Rosslyn, VA 22209. NEMA WC 3/ICEA S–19–1981, Rubber Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy (part 6, section 19, paragraph 6), Revision 1, Sixth Edition (February, 1994).

(4) State of California, Department of Consumer Affairs, Bureau of Home Furnishings and Thermal Insulation, 3485 Orange Grove Avenue, North Highlands, CA 95660. California Technical Bulletin 133, Flammability Test Procedure for Seating Furniture for Use in Public Occupancies (January, 1991).

(5) The Institute of Electrical and Electronics Engineers, Inc. (IEEE), 345 East 47th Street, New York, New York 10017. ANSI/IEEE Std. 383–1974, IEEE Standard for Type Test of Class 1E Electric Cables, Field Splices, and Connections for Nuclear Power Generating Stations (1974).

(6) Underwriters Laboratories, Inc. (UL), 333 Pfingsten Road, Northbrook, IL 60062–2096.

(i) UL 44, Standard for Safety for Thermoset-Insulated Wires and Cables, 14th edition (January 27, 1997).

(ii) UL 83, Standard for Safety for Thermoplastic-Insulated Wires and Cables, 12th edition (September 29, 1998).

(b) *Definitions.* As used in this appendix—

Critical radiant flux (C.R.F.) means, as defined in ASTM E 648, a measure of the behavior of horizontally-mounted floor covering systems exposed to a flaming ignition source in a graded radiant heat energy environment in a test chamber.

Flame spread Index (I_s) means, as defined in ASTM E 162, a factor derived from the rate of progress of the flame front (F_s) and the rate of heat liberation by the material under test (Q), such that $I_s = F_s \times Q$.

Flaming dripping means periodic dripping of flaming material from the site of material burning or material installation.

Flaming running means continuous flaming material leaving the site of material burning or material installation.

Peak heat release rate ($\dot{q}''_{max}$) means, as defined in ASTM E 1354, the maximum heat release rate per unit (kW/m^2).

Specific optical density (D_s) means, as defined in ASTM E 662, the optical density measured over unit path length within a chamber of unit volume, produced from a specimen of unit surface area, that is irradiated by a heat flux of 2.5 watts/cm^2 for a specified period of time.

Surface flammability means the rate at which flames will travel along surfaces.

Time to ignition (t_{ig}) means, as defined in ASTM E 1354, the time in seconds (s) to sustained flaming.

Time to ignition/Peak heat release rate ($t_{ig}/\dot{q}''_{max}$) means the ratio of a given material's time to ignition to its peak (maximum) heat release rate as measured in the Cone Calorimeter (ASTM E 1354) under the stipulated exposure conditions.

(c) *Required test methods and performance criteria.* The materials used in locomotive cabs and passenger cars shall be tested according to the methods and meet the performance criteria set forth in the following table and notes:

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Test Procedures and Performance Criteria for the Flammability and Smoke Emission Characteristics of Materials Used in Passenger Cars and Locomotive Cabs

CATEGORY	FUNCTION OF MATERIAL	TEST METHOD	PERFORMANCE CRITERIA
Cushions, Mattresses	All [1, 2, 3, 4, 5, 6, 7, 8]	ASTM D 3675-95	$I_s \leq 25$
		ASTM E 662-97	D_s (1.5) $\leq$ 100 D_s (4.0) $\leq$ 175
Fabrics	All [1, 2, 3, 6, 7, 8]	14 CFR 25, Appendix F, Part I, (vertical test)	Flame time $\leq$ 10 seconds Burn length $\leq$ 6 inches
		ASTM E 662-97	D_s (4.0) $\leq$ 200
Vehicle Components [9, 10, 11, 12]	All except flexible cellular foams, floor coverings, light transmitting plastics, and items addressed under other specific categories [1, 2]	ASTM E 162-98	$I_s \leq 35$
		ASTM E 662-97	D_s (1.5) $\leq$ 100 D_s (4.0) $\leq$ 200
	Flexible cellular foams [1, 2]	ASTM D 3675-95	$I_s \leq 25$
		ASTM E 662-97	D_s (1.5) $\leq$ 100 D_s (4.0) $\leq$ 175
	Floor covering [13, 14]	ASTM E 648-97	C.R.F. $\geq$ 5 kW/m^2
		ASTM E 662-97	D_s (1.5) $\leq$ 100 D_s (4.0) $\leq$ 200
	Light transmitting plastics [2, 15]	ASTM E 162-98	$I_s \leq 100$
		ASTM E 662-97	D_s (1.5) $\leq$ 100 D_s (4.0) $\leq$ 200
	Elastomers [16]	ASTM C 1166-91	Pass
		ASTM E 662-97	D_s (1.5) $\leq$ 100 D_s (4.0) $\leq$ 200
Wire and Cable	Low voltage wire and cable	NEMA WC 3/ ICEA S-19-1981, paragraph 6.19.6; or UL 44 and UL 83 [17]	Pass
		ASTM E 662-97	D_s (4.0) $\leq$ 200 (flaming) D_s (4.0) $\leq$ 75 (non-flaming)
	Power cable	ANSI/IEEE Std 383-1974 [18]	Pass
		ASTM E 662-97	D_s (4.0) $\leq$ 200 (flaming) D_s (4.0) $\leq$ 75 (non-flaming)
Structural Components [19]	Flooring [20], Other [21]	ASTM E 119-98	Pass

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[1] Materials tested for surface flammability shall not exhibit any flaming running or dripping.

[2] The ASTM E 662–97 maximum test limits for smoke emission (specific optical density) shall be measured in either the flaming or non-flaming mode, utilizing the mode which generates the most smoke.

[3] Testing of a complete seat or mattress assembly (including cushions, fabric layers, upholstery) according to ASTM E 1537–98 with application of pass/fail criteria of California Technical Bulletin 133 shall be permitted in lieu of the test methods prescribed herein, provided the assembly component units remain unchanged or new (replacement) assembly components possess equivalent fire performance properties to the original components tested. A fire hazard analysis must also be conducted that considers the operating environment within which the seat or mattress assemblies will be used in relation to the risk of vandalism, puncture, cutting, or other acts which may expose the individual components of the assemblies.

[4] Testing is performed without upholstery.

[5] The surface flammability and smoke emission characteristics shall be demonstrated to be permanent after dynamic testing according to ASTM D 3574–95, Test I_2 (Dynamic Fatigue Test by the Roller Shear at Constant Force) or Test I_3 (Dynamic Fatigue Test by Constant Force Pounding) both using Procedure B.

[6] The surface flammability and smoke emission characteristics shall be demonstrated to be permanent by washing, if appropriate, according to FED–STD–191A Textile Test Method 5830.

[7] The surface flammability and smoke emission characteristics shall be demonstrated to be permanent by dry-cleaning, if appropriate, according to ASTM D 2724–87.

[8] Materials that cannot be washed or dry-cleaned shall be so labeled and shall meet the applicable performance criteria after being cleaned as recommended by the manufacturer.

[9] As a minimum, combustible component materials required to be tested include seat and mattress frames, wall and ceiling panels, seat and toilet shrouds, tray and other tables, partitions, shelves, windscreens, HVAC ducting, thermal and acoustic insulation, exterior plastic components, and interior and exterior box covers.

[10] Materials used to fabricate miscellaneous, discontinuous small parts (such as knobs, rollers, fasteners, clips, grommets, and small electrical parts) that will not contribute materially to fire growth in end use configuration may be exempted from fire and smoke emission performance requirements, provided that the surface area of any individual small part is not ≥16 square inches (100 cm^2) in end use configuration and an appropriate fire hazard analysis is conducted which addresses the location and quantity of the materials used, and the vulnerability of the materials to ignition and contribution of flame spread.

[11] If the surface area of any individual small part is less than 16 square inches (100 cm^2) in end use configuration, materials used to fabricate such small part shall be tested in accordance with ASTM E 1354–97, unless such small part has been shown not to contribute materially to fire growth following an appropriate fire hazard analysis as specified in Note 10. Materials tested in accordance with ASTM E 1354–97 shall meet the performance criteria of $t_{ig}/q_{max} \leq 1.5$. Testing shall be at 50 kW/m^2 applied heat flux.

[12] Assessment of smoke generation by small miscellaneous, discontinuous parts may be made by utilizing the results from the ASTM E1354–97 test procedure conducted in accordance with Note 11, rather than the ASTM E 662–97 test procedure, if an appropriate fire hazard analysis is provided which addresses the location and quantity of the materials used, and the vulnerability of the materials to ignition and contribution of smoke spread.

[13] Carpeting used as a wall or ceiling covering shall be tested as a vehicle component.

[14] Floor covering shall be tested with padding in accordance with ASTM E 648–97, if the padding is used in the actual installation.

[15] For double window glazing, only the interior glazing is required to meet the materials requirements specified herein. (The exterior glazing need not meet these requirements.)

[16] Elastomeric materials used for parts having a surface area ≥16 square inches (100 cm^2) shall be tested in accordance with ASTM C 1166–91. As a minimum, parts required to be tested include window gaskets, door nosing, diaphragms, and roof mats.

[17] Testing shall be conducted in accordance with NEMA WC 3/ICEA S–19–1981, paragraph 6.19.6; or UL 44 for thermosetting wire insulation and UL 83 for thermoplastic wire insulation.

[18] Testing shall be conducted in accordance with ANSI/IEEE Standard 383–1974, section 2.5, with the additional requirement that circuit integrity shall continue for 5 minutes after the start of the test.

[19] Penetrations (ducts, etc.) shall be designed to prevent fire and smoke from entering a vehicle, and representative penetrations shall be included as part of test assemblies.

[20] Structural flooring assemblies shall meet the performance criteria during a nominal test period as determined by the railroad. The nominal test period must be twice the maximum expected time period under normal circumstances for a vehicle to stop completely and safely from its maximum operating speed, plus the time necessary to evacuate all the vehicle's occupants to a safe area. The nominal test period must not be less than 15 minutes. Only one specimen need be tested. A proportional reduction may be made in the dimensions of the specimen, provided the specimen represents a true test of the ability of the structural flooring assembly to perform as a barrier against under-vehicle fires. The fire resistance period required shall be consistent with the safe evacuation of a full load of passengers from the vehicle under worst-case conditions.

[21] Portions of the vehicle body (including equipment carrying portions of a vehicle's roof but not including floors) which separate major ignition sources, energy sources, or sources of fuel-load from vehicle interiors, shall have sufficient fire endurance as determined by a fire hazard analysis acceptable to the railroad which addresses the location and quantity of the materials used, as well as vulnerability of the materials to ignition, flame spread, and smoke generation.

Appendix C to Part 238—Suspension System Safety Performance Standards

This appendix contains the minimum suspension system safety performance standards for Tier II passenger equipment as required by § 238.427. These requirements shall be the basis for evaluating suspension system safety performance until an industry standard acceptable to FRA is developed and approved under the procedures provided in § 238.21.

(a) Passenger equipment suspension systems shall be designed to limit the lateral and vertical forces and lateral to vertical (L/V) ratios, for the time duration required to travel five feet at any operating speed or over any class of track, under all operating conditions as determined by the railroad, as follows:

(1) The maximum single wheel lateral to vertical force (L/V) ratio shall not exceed Nadal's limit as follows:

$$\text{Wheel } L/V \leq \frac{\tan(\delta) - \mu}{1 + \mu \tan(\delta)}$$

where: δ=flange angle (deg).
μ=coefficient of friction of 0.5.

(2) The net axle lateral force shall not exceed 0.5 times the static vertical axle load.

(3) The vertical wheel/rail force shall not be less than or equal to 10 percent of the static vertical wheel load.

(4) The sum of the vertical wheel loads on one side of any truck shall not be less than or equal to 20 percent of the static vertical axle load. This shall include the effect of a crosswind allowance as specified by the railroad for the intended service.

(5) The maximum truck side L/V ratio shall not exceed 0.6.

(6) When stopped on track with a uniform 6-inch superelevation, vertical wheel loads, at all wheels, shall not be less than or equal to 60 percent of the nominal vertical wheel load on level track.

(b) For purposes of this appendix, wheel/rail force measurements shall be processed through a low pass filter having a cut-off frequency of 25 Hz.

Appendix D to Part 238—Requirements for External Fuel Tanks on Tier I Locomotives

The requirements contained in this appendix are intended to address the structural and puncture resistance properties of the locomotive fuel tank to reduce the risk of fuel spillage to acceptable levels under derailment and minor collision conditions.

(a) *Structural strength.*

(1) *Load case 1—minor derailment.* The end plate of the fuel tank shall support a

sudden loading of one-half the weight of the car body at a vertical acceleration of 2g, without exceeding the ultimate strength of the material. The load is assumed to be supported on one rail, within an eight inch band (plus or minus) at a point nominally above the head of the rail, on tangent track. Consideration should be given in the design of the fuel tank to maximize the vertical clearance between the top of the rail and the bottom of the fuel tank.

(2) *Load case 2—jackknifed locomotive.* The fuel tank shall support transversely at the center a sudden loading equivalent to one half the weight of the locomotive at a vertical acceleration of 2g, without exceeding the ultimate strength of the material. The load is assumed to be supported on one rail, distributed between the longitudinal center line and the edge of the tank bottom, with a rail head surface of two inches.

(3) *Load case 3—side impact.* In a side impact collision by an 80,000 pound Gross Vehicle Weight tractor/trailer at the longitudinal center of the fuel tank, the fuel tank shall withstand, without exceeding the ultimate strength, a 200,000 pound load (2.5g) distributed over an area of six inches by forty-eight inches (half the bumper area) at a height of thirty inches above the rail (standard DOT bumper height).

(4) *Load case 4—penetration resistance.* The minimum thickness of the sides, bottom sheet and end plates of the fuel tank shall be equivalent to a 5/16-inch steel plate with a 25,000 pounds-per-square-inch yield strength (where the thickness varies inversely with the square root of yield strength). The lower one third of the end plates shall have the equivalent penetration resistance by the above method of a 3/4-inch steel plate with a 25,000 pounds-per-square-inch yield strength. This may be accomplished by any combination of materials or other mechanical protection.

(b) *Sideswipe.* To minimize fuel tank damage during sideswipes (railroad vehicles and grade crossings), all drain plugs, clean-out ports, inspection covers, sight glasses, gauge openings, etc., must be flush with the tank surface or adequately protected to avoid catching foreign objects or breakage. All seams must be protected or flush to avoid catching foreign objects.

(c) *Spill controls.* Vents and fills shall be designed to avert spillage of fuel in the event of a roll over.

Appendix E to Part 238—General Principles of Reliability-Based Maintenance Programs

(a) Any maintenance program has the following four basic objectives:

(1) To ensure realization of the design level of safety and reliability of the equipment;

(2) To restore safety and reliability to their design levels when deterioration has occurred;

(3) To obtain the information necessary for design improvements of those items whose design reliability proves inadequate; and

(4) To accomplish these goals at a minimum total cost, including maintenance costs and the costs of residual failures.

(b) Reliability-based maintenance programs are based on the following general principles. A failure is an unsatisfactory condition. There are two types of failures: functional and potential. Functional failures are usually reported by operating crews. Conversely, maintenance crews usually discover potential failures. A potential failure is an identifiable physical condition, which indicates that a functional failure is imminent. The consequences of a functional failure determine the priority of a maintenance effort. These consequences fall into the following general categories:

(1) Safety consequences, involving possible loss of the equipment and its occupants;

(2) Operational consequences, which involve an indirect economic loss as well as the direct cost of repair;

(3) Non-operational consequences, which involve only the direct cost of repair; or

(4) Hidden failure consequences, which involve exposure to a possible multiple failure as a result of the undetected failure of a hidden function.

(c) In a reliability-based maintenance program, scheduled maintenance is required for any item whose loss of function or mode of failure could have safety consequences. If preventative tasks cannot reduce the risk of such failures to an acceptable level, the item requires redesign to alter its failure consequences. Scheduled maintenance is also required for any item whose functional failure will not be evident to the operating crew, and therefore reported for corrective action. In all other cases the consequences of failure are economic, and maintenance tasks directed at preventing such failures must be justified on economic grounds. All failure consequences, including economic consequences, are established by the design characteristics of the equipment and can be altered only by basic changes in the design. Safety consequences can, in nearly all cases, be reduced to economic consequences by the use of redundancy. Hidden functions can usually be made evident by instrumentation or other design features. The feasibility and cost effectiveness of scheduled maintenance depend on the inspectablility of the component, and the cost of corrective maintenance depends on its failure modes and design reliability.

(d) The design reliability of equipment or components will only be achieved with an effective maintenance program. This level of reliability is established by the design of each component and the manufacturing processes that produced it. Scheduled maintenance can ensure that design reliability of each component is achieved, but maintenance alone cannot yield a level of reliability beyond the design reliability.

(e) When a maintenance program is developed, it includes tasks that satisfy the criteria for both applicability and effectiveness. The applicability of a task is determined by the characteristics of the component or equipment to be maintained. The effectiveness is stated in terms of the consequences that the task is designed to prevent. The basics types of tasks that are performed by maintenance personnel are each applicable under a unique set of conditions. Tasks may be directed at preventing functional failures or preventing a failure event consisting of the sequential occurrence of two or more independent failures which may have consequences that would not be produced by any of the failures occurring separately. The task types include:

(1) Inspections of an item to find and correct any potential failures;

(2) Rework/remanufacture/overhaul of an item at or before some specified time or age limit;

(3) Discard of an item (or parts of it) at or before some specified life limit; and

(4) Failure finding inspections of a hidden-function item to find and correct functional failures that have already occurred but were not evident to the operating crew.

(b) Components or systems in a reliability-based maintenance program may be defined as simple or complex. A simple component or system is one that is subject to only one or a very few failure modes. This type of component or system frequently shows decreasing reliability with increasing operating age. An age/time limit may be used to reduce the overall failure rate of simple components or systems. Here, safe-life limits, fail-safe designs, or damage tolerance-based residual life calculations may be imposed on a single component or system to play a crucial role in controlling critical failures. Complex components or systems are ones whose functional failure may result from many different failure modes and show little or no decrease in overall reliability with increasing age unless there is a dominant failure mode. Therefore, age limits imposed on complex components or systems have little or no effect on their overall failure rates.

(g) When planning the maintenance of a component or system to protect the safety and operating capability of the equipment, a number of items must be considered in the reliability assessment process:

(1) The consequences of each type of functional failure;

(2) The visibility of a functional failure to the operating crew (evidence that a failure has occurred);

(3) The visibility of reduced resistance to failure (evidence that a failure is imminent);

(4) The age-reliability characteristics of each item;

(5) The economic tradeoff between the cost of scheduled maintenance and the benefits to be derived from it;

(6) A multiple failure, resulting from a sequence of independent failures, may have consequences that would not be caused by any one of the individual failures alone. These consequences are taken into account in the definition of the failure consequences for the first failure; and

(7) A default strategy governs decision making in the absence of full information or agreement. This strategy provides for conservative initial decisions, to be revised on the basis of information derived from operating experience.

(h) A successful reliability-based maintenance program must be dynamic. Any prior-to-service program is based on limited information. As such, the operating organization must be prepared to collect and respond to real data throughout the operating life of the equipment. Management of the

ongoing maintenance program requires an organized information system for surveillance and analysis of the performance of each item under actual operating conditions. This information is needed to determine the refinements and modifications to be made in the initial maintenance program (including the adjustment of task intervals) and to determine the need for product improvement. The information derived from operating experience may be considered to have the following hierarchy of importance in the reliability-based maintenance program:

(1) Failures that could affect operating safety;

(2) Failures that have operational consequences;

(3) The failure modes of units removed as a result of failures;

(4) The general condition of unfailed parts in units that have failed; and

(5) The general condition of serviceable units inspected as samples.

(i) At the time an initial maintenance program is developed, information is usually available to determine the tasks necessary to protect safety and operating capability. However, the information required to determine optimum task intervals and the applicability of age or life limits can be obtained only from age or life exploration after the equipment enters service. With any new equipment there is always the possibility of unanticipated failure modes. The first occurrence of any serious unanticipated failure should immediately set into motion the following improvement cycle:

(1) An inspection task is developed to prevent recurrences while the item is being redesigned;

(2) The operating fleet is modified to incorporate the redesigned part; and

(3) After the modification has proved successful, the special inspection task is eliminated from the maintenance program.

(j) Component improvements based on identification of the actual reliability characteristics of each item through age or life exploration, is part of the normal development cycle of all complex equipment.

Issued in Washington, D.C., on April 30, 1999.

Jolene M. Molitoris,

Federal Railroad Administrator.

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Part III

Department of the Interior

National Park Service

36 CFR Part 62
National Natural Landmarks Program; Final Rule

DERARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 62

RIN 1024–AB96

National Natural Landmarks Program

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: This final rule revises the current regulations for the National Natural Landmarks (NNL) Program. These revisions ensure that owners of Potential National Natural Landmarks (PNNL) under consideration for possible national natural landmark designation are notified well in advance of such consideration and have the opportunity to comment on the proposals; that the National Park System Advisory Board reviews all future national natural landmark nominations and provides recommendations to the Secretary of the Interior about their qualifications for designation; and land is not included within an area designated by the Secretary if a private property owner objects to such a designation for his or her portion.

EFFECTIVE DATE: This rule becomes effective on June 11, 1999.

FOR FURTHER INFORMATION CONTACT: Natural Landmarks Program, under Mike Soukup, Associate Director, Natural Resources, Stewardship and Science, National Park Service, 1849 C Street, NW, Washington, DC, 20240–0001. Telephone: 202–208–3884.

SUPPLEMENTARY INFORMATION:

Background

To identify the full range of geological and ecological features of nationally significant examples of the nation's natural heritage and to encourage their preservation, the Secretary of the Interior established the NNL Program under the authority of the Historic Sites Act of 1935 (16 U.S.C. 461 *et seq.*). Potential natural landmarks are identified in studies by the National Park Service (NPS) and from other sources, evaluated by expert natural scientists, and, if determined nationally significant, designated as landmarks by the Secretary of the Interior. When designated, a landmark is included in the National Registry of Natural Landmarks, which currently lists 587 national natural landmarks nationwide.

The registry includes nationally significant geological and ecological features in 48 States, American Samoa, Guam, Puerto Rico and the Virgin Islands. Of the 587 listed landmarks, half are administered solely by public agencies; i.e., Federal, State, county or municipal governments. Nearly one-third are owned solely by private parties. The remaining natural landmarks are owned or administered by a mixture of public and private owners. Because many natural landmarks are privately owned or not managed for public access, owner permission must be obtained to visit them. Designation does not infer a right of public access.

National natural landmark designation is not a land withdrawal, does not change the ownership of an area and does not dictate activity. However, Federal agencies should consider impacts to the unique properties of these nationally significant areas in carrying out their responsibilities under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Designation could result in State or local planning or land use implications. The Secretary is required to provide an annual report to the Congress on damaged or threatened NNLs (Section 8 of the National Park System General Authorities Act of 1970 (90 Stat. 1940), as amended (16 U.S.C. 1a-5)).

Natural landmark preservation is made possible by the long-term, voluntary commitments of public and private owners to protect the outstanding values of the areas. In revising the regulations for the program, the NPS seeks to balance two fundamental goals: identification and preservation of nationally significant examples of the nation's natural heritage and the full acknowledgment and respect of owners' interests at all times.

Since 1989, significant interest in the regulations and operation of the NNL Program centered on three major issues: (1) Notification of owners and other concerned individuals and organizations that PNNL were under consideration for national natural landmark designation, (2) owner consent or objection to designation of property as a national natural landmark, and (3) the effects of national natural landmark designation on private property. In response to these concerns, proposed revisions to the program regulations were published by the NPS as a proposed rule in the **Federal Register** on November 21, 1991 (56 FR 58790), for a 90-day comment period. On February 6, 1992 (57 FR 4592), the comment period was extended to March 2, 1992. In addition, during the comment period, the NPS held public hearings on the proposed revised regulations at nine locations around the country. Date, time and exact location of each hearing was announced in the **Federal Register** on December 16, 1991 (56 FR 65203).

The revision of the program regulations is part of an improvement of the operation of the NNL Program by the NPS. On November 28, 1989, the Director of the NPS instituted a moratorium on the NNL Program, during which the NPS did not consider new areas for NNL designation. Because the improvements have been completed, the moratorium will be lifted upon the effective date of the regulations.

Summary of Comments

To date, copies of the proposed revised regulations were sent to over 500 individuals or organizations on an NPS NNL mailing list that was made part of the rulemaking. In addition, the proposed regulations were sent to the State Park Directors and State Historic Preservation Officers of all 50 States. As part of NPS's ongoing corroboration and contact with current owners of the 587 designated NNLs, the proposed regulations were also sent to approximately 8,000 NNL owners whose names and addresses were confirmed.

Comments were received from 236 sources, which included government entities, private organizations, and private individuals. In addition, 894 standardized, completed questionnaires were submitted as comments, and 70 respondents presented oral or written comments at the public hearings. Several respondents stated that the proposed revisions of the program regulations would not resolve the three primary issues. However, other respondents expressed support of the objectives of the program or of the proposed revisions. Some respondents recommended the abolishment of the program. Other respondents stated that the proposed revisions were too extreme for resolution of the issues and were therefore detrimental to the objectives of the program.

Analysis of Comments

Issue 1: Comment Procedure

Comments: Several respondents suggested that the final rule not be issued until the NPS provided owners of all the designated NNLs, as well as owners of PNNL that had been evaluated but not designated, with the opportunity to comment on the proposed rule. Some respondents noted that the proposed rule was so insufficient that the NPS should make the needed changes and issue another proposed rule for comment prior to issuing any final rule. Some respondents suggested that the proposed

rule be reissued for comment and that the preamble should include a reference to the Department of the Interior Inspector General's report on the NNL Program (December 1991).

Service response: To date, the NPS has taken the following steps to advise and inform owners of the 587 existing NNLs about the NNL Program and the rulemaking process. To confirm the names and addresses of the nationwide owners of the 587 designated NNLs, the NPS wrote to approximately 8,000 owners and provided them with a copy of the proposed revised regulations. Almost all of the owners who submitted comments on the proposed regulations supported the continuation of the NNL Program and endorsed the value of the NNL designation.

The NPS believes that NNL owners and other interested organizations and individuals have had sufficient opportunities to participate in the rulemaking. Additionally, all of the comments on the proposed rule were fully considered in developing changes in the final rule. Therefore, the revised rule is being issued as final.

Comments (major rule): Some respondents disagreed with the Department of the Interior's determinations, as stated in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, of the rulemaking as a non-major rule within the meaning of Executive Order 12291 (46 FR 13193); with the rulemaking as a categorical exclusion from the procedural requirements of the National Environmental Policy Act under Departmental regulations in 516 DM 6 (49 FR 21438); and with the proposed rule as implying a taking of private property as defined under Executive Order 12630. Some respondents questioned whether an assessment of implied taking of private property by the proposed rule had been completed.

Service response: The NPS completed a takings impact assessment. The Department determined that the proposed rule did not imply taking of private property. Executive Order 12291 was revoked by Executive Order 12866, which is addressed in this final rule.

Comments (legislative authority): Several respondents suggested that the legislative authority for the NNL Program was insufficient or non-existent and that the program should be abolished. Several other respondents noted that the NNL Program served a valuable purpose in recognizing nationally significant natural features and therefore should be retained.

Service Response: The NNL Program is based on direction given to the Secretary of the Interior to identify objects of national significance contained in Section 1 of the 1935 Historic Sites Act (49 Stat. 666; 16 U.S.C. 461 *et seq.*). In addition, since 1962, the Congress has recognized the NNL Program by including specific references to national natural landmarks in several acts. For example, Section 8 of the National Park System General Authorities Act of 1970, (90 Stat. 1940) as amended (16 U.S.C. 1a–5) directs the Secretary of the Interior to prepare an annual report to the Congress which identifies all landmarks which exhibit known or anticipated damage or threats to the integrity of their resources. Section 9 of the 1976 Mining in the National Parks Act (90 Stat. 1342; 16 U.S.C. 1908) mandates that whenever the Secretary determines that a landmark may be irreparably lost or destroyed in whole or in part by any surface mining activity, the Secretary shall notify the person conducting the activity and prepare a report to be submitted to the Advisory Council on Historic Preservation with a request for advice. Finally, the National Parks and Recreation Act of 1978 authorizes appropriations for monitoring the welfare and integrity of landmarks. Thus, the 1935 Act, and subsequent Congressional action provide authority for administering the NNL Program.

Other Issues

The comments received focused on three major areas of the proposed revision of the regulations: (1) Requiring consent of owners for the evaluations and designations of properties, (2) providing owners of designated NNLs with a mechanism for the removal of the designation and (3) determining the effects of NNL designation on private property.

Issue 2: Definitions

Comments (definition of prejudicial procedural error): Some respondents requested that the term "prejudicial procedural error," as a criterion for removal of the NNL designation, be defined in the regulations.

Service response: This term is already defined in § 62.2 and § 62.8(a).

Comments (glossary): One respondent suggested that the regulations include a glossary.

Service Response: Definitions of key terms are already included in § 62.2.

Comments (definition of owner): Several respondents suggested that the definition of owner in § 62.2 include owners of partial interests in land and owners of inholdings and that these owners should receive the same notifications and have the same opportunity to comment and agree with the proposed NNL designation of a PNNL. One respondent noted that owner should specifically be defined by title search. One respondent noted that the definition of owner should specifically reference Native American owners.

Service Response: The definition of owner in § 62.2 in the final rule was clarified to mean holding fee simple title. A change of the final rule was made to include in this definition Native American beneficial owners of land held in trust by the United States. Other persons or organizations are welcome to comment during the designation a PNNL. Procedures for identifying owners during the second notification stage of the designation process are specified in § 62.4(d)(1).

Comments (definition of national significance): Some respondents questioned the definition of national significance in § 62.2 and the criteria in § 62.5 as too broad and subjective. Some respondents noted that a definition and determination of national significance by natural region as opposed to by nation is inappropriate. One respondent felt that no standards or guidelines were provided to determine national significance.

Service Response: As noted in § 62.5, the natural diversity of the nation is comprised of distinct regional patterns, correlated to broad physiographic patterns. Therefore, the recognition of distinct regional ecological and geological features often found in only one of the country's natural regions, and their comparative assessment primarily to determine a PNNL relative illustrativeness and condition, is the approach used by the NNL Program. No change was made in the final rule.

Comments (other definitions): Some respondents noted that the terms scientist and evaluator had not been defined in the proposed rule.

Service Response: A definition of scientist has been added to § 62.2 in the final rule. Section 62.4(c) has been revised to clarify that evaluators are qualified scientists.

Issue 3: Consent of Owners

Comments (written consent): Several respondents stated that the requirement in § 62.4(d)(4) for written consent from all owners for the designation of an area was unnecessary because designation imposes no regulatory restrictions on owners, was unreasonable because obtaining the required written consent from all owners of most multiple-owner properties would be difficult, and would invalidate or damage the scientific credibility of the program. Some respondents suggested modifying

the requirement for affirmative responses from all owners to two-thirds or the majority of owners. Other respondents felt that an affirmative response was not necessary and that lack of landowner objection was sufficient. One respondent noted that, if landowner consent was required, provisions for protection of designated NNLs must be stronger, such as requiring Federal agencies to avoid or mitigate adverse impacts to NNLs.

Service Response: In response to these concerns, § 62.4(e)(2),(f), and (g)(1) were changed and a new paragraph (d)(5) was added to show that land owned by a private property owner cannot be designated when the private property owner involved has stated, in writing, objection to designation. The NPS believes these changes appropriately achieve the objectives.

Comments (owner consent for evaluation of PNNL): The proposed rule included a provision (§ 62.4(b)(3)) to allow for the use of other information sources by the NPS to evaluate a PNNL without entering onto lands where landowner permission has not been granted. Several respondents stated that a requirement for written landowner consent for designation was not sufficient protection of landowner interests and that the regulations should require written consent, in addition to written notifications of owners, prior to evaluation of the property by the NPS for NNL designation. One respondent noted that, if the NPS elected to complete an evaluation without entering onto lands to which landowners denied access, owners should be notified of the evaluation. One respondent noted that, if the NPS elected to use other information sources for an evaluation without entering lands to which landowners denied access, the information should originally have been obtained with owner consent.

Service Response: The NPS believes that the ability to comparatively evaluate similar or related areas to determine the best examples of certain ecological or geological features is an essential part of the NNL Program. Restricting the ability of the NPS to use existing information sources in completing these evaluations would significantly impair the program. Therefore, this provision was retained in the final rule. Section 62.4(b)(3) of the final rule was changed to show that, when the NPS chooses to complete an evaluation using only existing information, it informs the owners of the decision.

Comments (consent of entire region): Several respondents suggested that the regulations require consent from every landowner in the entire natural region containing the areas under consideration for designation prior to PNNL evaluations. Some respondents suggested that the consent of owners of properties adjacent to a PNNL also be required for evaluation.

Service Response: These suggestions were not adopted in the final rule. NNL evaluation and designation apply to specific areas, not to adjacent properties or to entire natural regions.

Comments (notification of existing NNL owners): Several respondents suggested that the regulations provide a mechanism to request the removal of NNL designations by property owners. Some respondents suggested the suspension of all 587 existing NNL designations until owners consent. One respondent suggested the retention of only existing NNL designations with which all owners and the appropriate State and local governments concurred. One respondent suggested that no public purpose would be served by allowing owners of NNLs the opportunity to request the removal of designations and that this procedure may lead to the destruction of some NNL's nationally significant values. One respondent suggested the review of NPS records of all NNLs to determine if written owner consent was obtained, whether information about the areas was gathered by entering land without owner permission, and to verify the removal from NPS files and destruction of information about PNNL for which owners did not give consent for designation.

Service Response: Many of the 587 NNLs were designated before 1980, when program regulations were first issued. Furthermore, program funding levels during the decade prior to FY 1992 precluded the comprehensive maintenance of updated documentation of NNL ownership. Therefore, except as indicated below, the NPS will contact the known owners of the existing NNLs in writing. This notice advises owners that they can, within 90 days of this notice, inform in writing the Director of NPS of their wish to have the NNL designations removed from their properties. If owners do not respond within 90 days of the NPS notification, the NNL designations of their properties will be retained. Under these revised regulations, the properties from which the designations are removed may be reconsidered for designation if future changes in ownership or other circumstances warrant such action. These provisions are reflected in a new section, § 62.8(f), which the NPS considers to be an appropriate balance between the competing points of the described views.

For NNLs with more than 50 owners, the NPS may choose to provide a general notice to owners in one or more newspapers in the area. In addition, in updating its information on names and addresses of owners of NNLs, the NPS has learned that six of the 587 NNLs have a substantially larger and more complex ownership profile than the remaining 581. Given this, the NPS also reserves the right to consider boundary modifications of one or more of the six areas (Mobile-Tensaw River Bottomlands, AL; Anza-Borrego Desert State Park, CA; Ancient River Warren Channel, MN/SD; Nags Head Woods and Jockey Ridge, NC; Canaan Valley, WV; and Baraboo Range, WI) as specified in § 62.7 of the regulations.

Comments (written permission): Some respondents noted that the requirements in § 62.4(a)(1) and (a)(2)(ii) for owner permission for entry onto land should specify that this permission should be in writing.

Service Response: This change has been made in the final rule. Sections 62.4(a)(1), (a)(2)(ii), and (b)(3) were changed in the final rule to clarify that the requirement for landowner permission to enter onto land for PNNL evaluation does not apply to publicly owned lands that are otherwise open to public visitation. Sections 62.6(c)(1) and (c)(2) clarified the situation for monitoring landmarks.

Comment (pending designation following evaluation): Some respondents suggested that the regulations require the NPS to notify owners of PNNL for which an evaluation was completed, and owners of PNNL identified in studies of natural regions but were not designated, and give such owners the right to withdraw from the program.

Service Response: Any future evaluation of PNNL for NNL designation will be done consistent with the program regulations, which include specific requirements for the notification of owners and objections by owners to ensure that owners are fully informed and that private property owners have the option to withdraw their properties from consideration. Therefore, no further change is necessary in the final rule.

Comments (removal of designation): Several respondents recommended a fourth criterion in § 62.8(a) for the removal of future NNL designations: request of the landowner to remove the designation. Other respondents stated their opposition to granting requests for removal of designations by owners. Several respondents suggested an

opportunity for owners to request the removal of the NNL designations of their properties prior to any revision in NNL Program regulations that affect any possible regulatory obligations of the designations on owners. Several respondents suggested that, after ownerships changes, new owners of designated NNLs should be able to request the removal of designations of their properties.

Service Response: Designation of a PNNL by the Secretary as an NNL reflects a determination that the site meets the criteria for national significance and the landowner(s) do not object to the designation. Provisions in the final rule about landowner notification and objection are intended to offer owners full opportunity to participate in the designation process. A program in which an NNL was subject to de-designation whenever an owner so wished or whenever ownership changed would be purely honorific and of little value in achieving the program objectives. Some of these suggestions were therefore not incorporated into the final rule.

Comments (release of information): One respondent noted that information on areas, as described under § 62.9(b), should not be released without private owners' consent. One respondent suggested that § 62.9(b) also include other reasons for restricted dissemination of NNL site information, for example, when an owner does not wish dissemination of information on an area because of concerns over liability or lack of suitable visitor facilities. Some respondents noted that the restriction on dissemination of information for certain ecologically or geologically sensitive areas, as described in § 62.9(b), would be in violation of the Freedom of Information Act. One respondent questioned the need for this provision because of the assumption that owners are voluntarily preserving their NNL property.

Service Response: The NPS considers that § 62.9(b) as proposed represents an appropriate balance between the policy of availability of government information, the need to restrict access to information in certain circumstances, and the requirements of the Freedom of Information Act and related authorities. No change has been made in the final rule.

Issue 3: Effects of NNL Designation

Comments (restrictions on use of property): Several respondents stated that descriptions of the possible effects of NNL designation on property in § 62.3 of the proposed rule were inaccurate and incomplete. Several respondents stated that the mere consideration of PNNL for NNL designation led to restrictions on the use of property in local, State or Federal regulatory actions; and that, in agreeing to voluntarily help conserve the area, the landowner was giving up interests and rights to the property, which constitutes a restriction on the use of the property.

Service Response: The NPS believes that § 62.3(a) appropriately describes the possible effects of designation. NNL designation does not restrict the use and enjoyment of property by Federal action. The NNL Program provides information on the location and status of important natural features so that they can be considered in regional planning for the use and development of a variety of resources. The NPS encourages owners to protect the nationally significant values of their property, but this voluntary cooperation does not restrict the owner's use of his or her land. The voluntary involvement in the program carries the hope that the owner will not lower the integrity of the resource being recognized. Landmark designation seeks to assist regional development planning and decision making by indicating which resources are relatively significant, and which resources are of lesser importance.

Comments (other regulations/future restrictions): Some respondents suggested that the regulations more specifically describe the possible State and local land use or planning implications of NNL designation on an area referred to in § 62.3(a); some respondents noted that the word restrictions be used in place of implications. Other respondents suggested that the regulations require the NPS to identify and advise owners of Federal, State, or local legal or regulatory restrictions that may apply as a result of NNL designation, including possible future effects of such laws or regulations. Some respondents suggested the revision of § 62.3(a) to state that there will never be any future restrictions on the use of an NNL. Several respondents suggested that the regulations also state that, in addition to possible implications of Federal, State, or local laws and regulations, in some cases non-governmental third parties may use the NNL designation to attempt to influence use or protection of the area. Other respondents suggested that the descriptions in the regulations of effects also clarify the benefits of designation. Other respondents stated that the consideration of areas for NNL designation was a mechanism by the NPS to identify new areas for addition to the National Park System. One respondent suggested that the regulations also describe the possible effects of designation on owners who own property near or adjacent to the PNNL, such as being required to provide a scenic easement to allow viewing of the landmark.

Service Response: As noted above, designation of a PNNL as an NNL reflects the meeting of criteria for national significance and no landowner objection. One of the objectives of the NNL Program is that owners and Federal, State and local government agencies will take this fact into account when making planning or other future land use decisions. Although this may mean that the decisions may take into account the national significance of the area, the NPS cannot describe or predict the extent to which decisions may be influenced by such designation on lands within or adjacent to areas receiving the NNL designation. Language was added to § 62.3(a) to clarify that, although recognition as an NNL may be used to support certain State or local planning or land use, such State and local actions are not required or mandated by the Department of the Interior as a consequence of the NNL designation. Additional language on the beneficial effects of designation, including possible Federal income-tax benefits from qualified conservation easement donations, was added to § 62.3(b). The title, Implications of Designation, was revised in § 62.3 to "Effects of NNL Designation."

Designation of a PNNL as a national natural landmark is one method used by the Department for recognizing and encouraging the preservation of nationally significant areas as an alternative to Federal acquisition of them for inclusion in the National Park System. Although national natural landmarks have occasionally been subsumed in subsequently created units of the National Park System, and national natural landmarks can be designated in existing national park units, natural landmark designation is not necessarily a first step that ends in adding the area to the National Park System. In considering a possible new addition to the National Park System, the NPS must first determine that an area is nationally significant. While prior designation as an NNL is one indication of national significance, there are several other criteria that must be met before the NPS can support a proposal for a new national park. An area must meet criteria for suitability and feasibility to qualify as a potential addition to the National Park System. To be suitable for inclusion in the System an area must represent a natural

or cultural theme or type of recreational resource that is not already adequately represented in the National Park System or is not comparably represented and protected for public enjoyment by another land-managing entity. To be feasible as a new unit of the National Park System an area's natural landscape and or historic settings must be of sufficient size and appropriate configuration to ensure long-term protection of the resources and to accommodate public use. It must also have potential for efficient administration at a reasonable cost. Other important feasibility factors include land ownership, acquisition costs, access, threats to the resource, and staff or development requirements. Lastly, in all but exceptional circumstances, the Congress must authorize by statute and then appropriate funds for the acquisition of any new unit of the National Park System, or for the significant expansion of existing units.

Comments (effects of designation): One respondent suggested that, as part of the first notification in § 62.4(b), the NPS specify to the owners what consent to NNL designation entails and that a copy of the potential owner consent agreement be provided to the owner as part of the first notification.

Service Response: Information provided to owners as part of first notification under § 62.4(b)(1) and (2) includes an explanation of the effects of NNL designation, as described in § 62.3. A change was also made in § 62.4(b)(1) and (2) in the final rule to clarify that the information provided at this stage also includes an explanation of the designation process.

Issue 5: Area Information

Comments (obtaining area information): Several respondents suggested that the NPS not retain information on PNNL at any stage in the designation process if owners were not informed of this consideration and had not given their consent to having their property considered for designation. One respondent suggested that § 62.4(a)(2)(ii) be changed to specify that the NPS will not consider information recommending a PNNL for possible NNL consideration, when such information was obtained by entering onto land without landowner permission, regardless of whether such information came from NPS or non-NPS sources. Several respondents suggested that the NPS be required to provide positive proof that all information used in the designation process was legally obtained and that any information when such proof did not exist be destroyed. Some respondents suggested that the NPS retain all properly acquired information on designated and non-designated areas.

Service Response: The NPS believes that the management and analysis of information on NNL areas, and PNNL under consideration in the NNL process, are important objectives of the NNL Program. This information adds to the comparative national-level resource information base used in identifying and comparing nationally significant resources and also furthers informed planning and environmental review. The NPS is also interested in ensuring that information used in the NNL Program is obtained with the knowledge of the landowner and without entering onto private property without permission of the owners. The NPS believes that the final rule establishes an appropriate balance between these property owner concerns and the information required to achieve program objectives.

Comments (retention of area information): Several respondents suggested that as stated in § 62.4(f) the NPS not retain any information on areas that meet the criteria of national significance but were not designated because of owner objection. Some respondents suggested that the NPS publish the list of PNNL that meet the criteria for national significance but were not designated.

Service Response: A change was made in § 62.4(f) of the final rule to show that the NPS will notify owners and others of the decision to retain information on PNNL that meet the criteria for national significance but were not designated because of owner objection.

Comment (authority for area information retention): One respondent requested that the NPS cite the authority for the statement made in the **SUPPLEMENTARY INFORMATION** section of the proposed rule that NPS has an affirmative responsibility to maintain information on nationally significant resources and to make this information available for planning and environmental review.

Service Response: General authorities for these actions are described in the legal authorities response above. In addition Section 102(2)C of the National Environmental Policy Act (83 Stat. 852; 42 U.S.C. 4321) directs Federal agencies to consider the effects of agency action on the environment. Information on unique resources such as those contained in the NNL Program facilitates such planning and evaluation. Section 9 of the Mining in National Parks Act of 1976 (90 Stat. 1342, 16 U.S.C. 1908) mandates that whenever the Secretary of the Interior determines that an NNL may be irreparably lost or destroyed by any surface mining activity, the Secretary shall notify the person conducting the activity, submit a report to the Advisory Council on Historic Preservation, and request the Council's advice concerning means to mitigate or abate such activity. This mandate presupposes the collection and retention of information concerning such potentially impacted NNLs. Additionally, Section 8 of the National Park System General Authorities Act of 1970 (90 Stat. 1970), as amended (16 U.S.C. 1a–5), specifically requires the Secretary to investigate, study and continually monitor the welfare of areas whose resources exhibit qualities of national significance.

Comments (area information access): One respondent suggested that the NPS provide reasonable access to all NPS information on PNNL at any point in the designation process, not just during specified notification or comment periods. One respondent suggested that the regulations require the NPS to maintain current information on owners and to maintain complete records of all communications with owners and proof that all notification and consent requirements were met.

Service Response: With this program, the NPS maintains records on PNNL and NNL areas, notifications of and communications with owners, and other program activities. This information is available to the public, subject to requirements of the Freedom of Information Act and other applicable statutes. No change was therefore made in the final rule.

Issue 6: Designation Process—Suggestion

Comments: Several respondents suggested the revision of § 62.4(a)(2) to allow other (non-NPS) entities the ability to make suggestions of only publicly owned areas for NNL consideration. Some respondents suggested that suggestions of privately owned areas for consideration be accepted only from owners of proposed properties and that the appropriate government entity propose publicly owned areas after an open public review of the suggestion. Some respondents suggested only owners who owned all of the property could suggest an area for consideration. Some respondents noted that areas owned by State or local governments could be suggested by private advocacy groups, but only in a public political process. Several respondents suggested that all information used to suggest PNNL for possible NNL consideration should be

accompanied by proof of landowner permission to enter private property.

Service Response: A fundamental aspect of the NNL Program is the open process for suggesting areas for NNL designation by any interested agencies, organizations or individuals. The NPS believes the provisions for landowner notification and objection in the final rule ensure that owners are fully informed of and involved in the consideration of their property in the NNL process and give other interested groups and individuals the opportunity for input into this process without restricting the interests of the owners. Therefore, no change is made in § 62.4(a)(2) of the final rule that restricts the sources of PNNL suggestions.

The NPS believes the requirements for the NPS or its representatives not to enter onto private property without owner permission as stated in these regulations are sufficient to protect owner interests. Additional requirements for the NPS to ascertain the origins of PNNL information in this regard would not be a prudent means to achieve program objectives and would put the NPS in the position of having to determine whether particular conduct constitutes trespass under applicable law. When trespass occurs, property owners may exercise legal remedies under State and local law. Therefore, § 62.4(a)(2)(ii) and (a)(3) were changed in the final rule to eliminate the requirement that the NPS ascertain whether information on PNNL under consideration was acquired by entering onto private property without landowner permission. These changes take into account the ability of property owners to object to designation and the inappropriateness of a government agency ignoring factual resource information simply because of the information's origins.

Comments (source of suggestion): Several respondents suggested that, as part of the first notification stage described in § 62.4(b)(1), the NPS inform the owners of the source of the suggestion of their property for NNL consideration.

Service Response: This change has been made in § 62.4(b)(1) and (2) of the final rule.

Issue 7: Designation Process—Notification

Comment (notification process): One respondent suggested that the regulations specify that first notification of owners be by certified mail.

Service Response: Although the NPS may elect to complete the required notification of owners by certified mail, specification of the type of mail for notification in the regulations is not necessary. No change is made in the final rule.

Comment (second notification): Some respondents suggested that the information provided to owners and others as part of the second notification under § 62.4(d) should specifically reference the required monitoring and reporting for designated areas as specified in § 62.6.

Service Response: Section 62.4(d) includes a reference to § 62.3. As § 62.3 already includes specific references to § 62.6 and the required monitoring and reporting, no change was necessary in the final rule.

Comments (areas with 50 or more owners): Some respondents noted that the requirement in § 62.4(b)(2) for individual notifications of owners for areas with 50 or more owners, in addition to a public notice and possible public meeting, was excessive and that this would add unnecessarily to the cost and time of the designation process. One respondent misinterpreted § 62.4(b)(2) to mean that the NPS would not be providing written notifications to owners of areas with less than 50 owners.

Service Response: First notification requirements for areas with less than 50 owners are specified in § 62.4(b)(1). A change was made in § 62.4 (b)(2) of the final rule. The NPS publishes a general notice in one or more local newspapers. Written notice to all owners of areas with more than 50 owners is not provided.

Comment (response time): One respondent suggested that a time period be specified for receiving responses from owners after first notification.

Service Response: As specified in § 62.4(b)(3), the NPS or its representative does not enter onto private property to evaluate a PNNL without receiving permission from the owner(s) of that property. No time limit is being set for receiving this landowner permission. No change is made in the final rule.

Comments (comment period following second notification): Some respondents noted that the extension of the comment period from 60 to 120 days after the second notification, as specified in § 62.4(d)(3) and (4), was excessive.

Service Response: In response to these comments, § 62.4(d)(4) and (5) were changed in the final rule to specify a 60-day comment period. In addition, the comment period relating to designation removal also was changed to 60 days in § 62.8(c). In both cases, 60 days are considered an adequate period that may be extended when warranted.

Comments (notification of local government): One respondent suggested that the first notification specified in § 62.4(b) be given to the appropriate local government agency and to owners. Some respondents suggested that the NPS hold a local public meeting or hearing on every PNNL being considered for NNL designation.

Service Response: As part of the first notification process, notice is provided to owners, as specified in § 62.4(b)(1) and (2), informing them that the NPS is considering their properties for designation and requesting owner permission to conduct an on-site evaluation. After the evaluation, when the NPS determines that an area seems to meet the criteria for national significance, written notice of the proposal is provided under § 62.4(d)(3)(i) to the local government executive at the second notification stage. Section 62.4(d)(2) was changed in the final rule to provide as part of the second notification an opportunity for the NPS to hold a public information meeting for areas with 50 or more owners if public interest warrants or it is requested by the local governmental jurisdiction. This provision was therefore deleted from first notification in § 62.4(b)(2).

Comment (notification of Native Americans): One respondent suggested that the requirements for notification of local, State, and Federal government officials and other interested parties provided under § 62.4(d)(3), § 62.4(j), § 62.7(b) and § 62.8(e) specifically include Native American tribal governments and communities and native villages and corporations.

Service Response: This change has been made in the final rule.

Comments (notification mailing list): One respondent suggested that the regulations include a provision that allows interested individuals and organizations to request placement on a general NPS notification mailing list to be notified of pending evaluations under § 62.4(d)(3)(vi) and of other public comment periods. This respondent also suggested that the list of individuals and organizations be available for public review. One respondent suggested that the regulations require the NPS to notify all organizations interested in protecting private property rights of all future evaluations.

Service Response: Any individual or organization may request placement on a mailing list to receive future notifications or other program documents about consideration of areas for NNL designation or of other program actions and NPS will respond if needed.

Issue 8: Designation Process—Area Evaluation

Comments (evaluation report): One respondent suggested that the evaluation report, as described in § 62.4(d)(1), include a proposed boundary for the site. One respondent suggested that first, second, and third notifications provided to owners under § 62.4(b), (d) and (j) include a full description of the area, including the size and a detailed map of the area. One respondent suggested that the draft evaluation report be distributed to all owners for comment within a specified time period or the evaluation becomes null and void and must be re-done in the future.

Service Response: Section 62.4(c)(1) was changed in the final rule to specifically include a proposed boundary map as part of the evaluation report. § 62.4(d)(1) and (2) were changed in the final rule to specify that, as part of the second notification process, owners are provided a copy of the area evaluation report.

Comments (peer review): Some respondents expressed support for the requirement in § 62.4(c)(2) for three peer reviews of completed evaluation reports. One respondent suggested that this provision be deleted, stating that outside peer reviewers should have no role in the NNL designation process.

Service Response: The NPS believes peer reviews can substantially add to the objectivity of the consideration process; therefore, this provision is retained in the final rule. One respondent suggested that the regulations should state that peer reviewers must be qualified scientists and not just preferably be scientists. This change has been made in § 62.4(c)(2) of the final rule.

Issue 9: Designation Process—Advisory Board

Comments (Advisory Board role and composition): Some respondents suggested that the National Park System Advisory Board not be involved in the consideration and recommendation of PNNL for NNL designation, as required under § 62.4(g)(1), unless the board consists of individuals with appropriate scientific backgrounds who are qualified to make such recommendations. Some respondents noted that the designation process, as described particularly in § 62.4(g) and (h), included too many review levels, including the Director, Assistant Secretary, Advisory Board and Secretary, to be effective.

Service Response: As noted in the proposed rule, section 1211 of Public Law 101–628 (16 U.S.C. 463) requires the National Park System Advisory Board to provide recommendations to the Secretary on NNL designations. This law also indicates the composition of the board include members who are competent in biology or geology. No change was made in the final rule about the role of the Advisory Board. Sections 62.4(g), (h), and (i), and 62.7(d) were changed in the final rule to eliminate the requirement for the Director to provide NNL materials through the Assistant Secretary.

Comment (procedural requirements): One respondent suggested that the Advisory Board, in addition to reviewing whether PNNL qualified for NNL designation, also review whether procedural requirements had been met.

Service Response: Section 62.4(g)(1) specifies that the Director submits to the Advisory Board only areas that meet the criteria for national significance and for areas where all procedural requirements were met. Therefore, no change was needed in the final rule.

Comment (Advisory Board meetings): One respondent suggested the notice of Advisory Board meetings, specified in § 62.4(g)(2), in addition to being published in the **Federal Register**, be mailed to the owners of PNNL that will be considered at these meetings in addition to being published in the **Federal Register**.

Service Response: This change has been made in the final rule.

Issue 10: Designation Process—Recommendation to Advisory Board

Comments (national significance): One respondent suggested a standard of impracticality due to a large number of owners be added to § 62.5 in addition to the standard of impracticality due to physical size of the feature. One respondent suggested that the national significance criteria include objective standards for area boundaries.

Service Response: Considerations about area ownership are distinct from the criteria for determining national significance; ownership considerations are in § 62.4. Area boundaries are discussed in § 62.4(c)(1).

Issue 11: Designation Process—Other Environmental Regulations

Comment (environmental and economic impact statements): One respondent suggested that the NPS should be required to complete an environmental impact statement and an economic impact statement for each area considered for NNL designation.

Service Response: The development of standards for the identification, nomination, or designation of national natural landmarks or national historic landmarks is categorically excluded from the National Environmental Policy Act process under the implementation guidelines developed by the NPS under the Act. Additionally, an economic impact statement is not required for activities related to listing. No change was made in the final rule.

Comments (mining): Some respondents suggested that the possible implications of the Mining in National Parks Act, as described in § 62.6(e), be more fully explained in the regulations. Some respondents noted that the definition of surface mining under this act was not clear. One respondent questioned whether the definition of surface mining may include owner-authorized scientific, archeological or paleontological excavations at the area. Some respondents noted that what types of actions the Federal government could take to mitigate or abate surface mining that may cause irreparable loss or destruction of an NNL were unclear. Some respondents noted that actions to mitigate or abate surface mining may constitute a taking of private property and that this would be a contradiction of § 62.3(b).

Service Response: The Mining in the National Park System Act (16 U.S.C. 1908) applies to mining and mineral extraction activities, not to paleontological or archeological excavations. The act does not directly authorize the Secretary or the Advisory Council on Historic Preservation to take any action to mitigate or abate surface mining activities that are found to be damaging national historic or natural landmarks. No change was made in the final rule.

Comment (NEPA): One respondent suggested that § 62.6(f), which provides for Federal agencies to consider NNL existence and location as part of their compliance with NEPA, be deleted.

Service Response: Federal agencies are required under NEPA to assess the effects of their actions on the environment which include potential impacts to exceptional natural areas like national natural landmarks. No change was made in the final rule.

Issue 12: Designation Process—Designation

Comments (county records): Some respondents suggested that existence of the designation be recorded as part of the county lands records; other respondents suggested that the designation should be recorded on the deed.

Service Response: Because the NPS has no regulatory authority over owners regarding the NNL designation, the NPS cannot mandate that the NNL

designation be recorded with property deeds or other lands records; neither is there anything in these regulations to prevent interested owners from recording the fact of the designation in such a fashion. Therefore, no change was made in the final rule.

Comment (acceptance of designation implies contractual arrangement): One respondent suggested that by accepting a certificate or plaque from the NPS recognizing the NNL designation, as specified in § 62.4(k)(1), the landowner enters into a contractual arrangement with the NPS that would somehow obligate the landowner to protect the NNL.

Service Response: As suggested above, no contractual or otherwise binding obligation is involved in a landowner's voluntary consent to having his or her properties considered for NNL designation. Neither is there any legal obligation on the part of the landowners to protect NNL after having accepted a certificate or plaque. A change was made in § 62.4(k)(1) of the final rule to clarify this point.

Issue 13: Monitoring

Comment (periodic contacts): One respondent suggested that the regulations clarify the meaning of NPS making periodic contacts with NNL owners by defining the frequency and nature of these contacts.

Service Response: NPS contacts with owners are generally informal letters or telephone calls to exchange information about the NNL, provide technical assistance, update ownership name and address information, and so on. The NPS also conducts periodic visits to an NNL, with the permission of owner(s), for example, to inspect site condition or meet with owner(s) in person. The exact frequencies of the contacts cannot be specified because they depend on circumstances and events. No change was made in the final rule.

Comment (protection guidelines): One respondent suggested that the NPS be required to give owners guidelines or recommendations for protecting NNLs.

Service Response: As suggested above, the NPS does not dictate or direct landowner actions with regard to use or conservation of an NNL. In some cases, the NPS may be able to provide technical advice about the NNL resources and their conservation. This is done at the request of the landowner and is subject to availability of necessary expertise by NPS.

Comment (permission for monitoring visits): Some respondents suggested that § 62.6(c)(2) specify that written permission of owners is required before the NPS or its representatives enter onto land for monitoring NNL condition.

Service Response: The NPS does not believe that development of a formal written landowner permission process is necessary for monitoring visits. Non-written permission (e.g., via telephone) is obtained for each visit. Section 62.6(c)(2) has been changed in the final rule to specify that landowner permission is not required for monitoring visits of public lands that are otherwise open to the public.

Comment (participation in monitoring visits): One respondent suggested that owners should be allowed to participate in any NNL monitoring visits and contribute information to the monitoring report.

Service Response: The NPS encourages owners to accompany the individual making the monitoring visit. Contributions of information by owners to the monitoring report are also welcomed and encouraged.

Comments (monitoring report): One respondent suggested that owners be notified of who completed monitoring reports of their properties and be given copies of the reports. One respondent suggested that the NPS give copies of the entire final Section 8 report, not only pertinent portions of the report, to owners and to other parties who requested them.

Service Response: The respective changes were made in § 62.6(c)(2) and (d)(2). In addition, as suggested in § 62.6(d)(1), owners of NNLs listed as damaged or threatened in the draft Section 8 Report are provided opportunities to review and comment on the draft report.

Comments (comment period): Some respondents suggested that § 62.6(d)(1) be revised to allow a 60-day or 90-day comment period, instead of a 30-day comment period, on the draft Section 8 report each year.

Service Response: Because this report is prepared annually, a 60-day or 90-day review of the draft report is impractical. No change was made in the final rule.

Comment (transmitting comments to Congress): One respondent suggested the Secretary transmit to the Congress any comments by owners on the Section 8 report.

Service Response: The Secretary is required, under the National Park System General Authorities Act (90 Stat. 1940) as amended (16 U.S.C. 1a–5), to transmit this report to the Congress. Transmission of the landowners' comments on the report is not required. Individuals or organizations are, of course, free to submit any materials on this or any other issue to the Congress. No change was made in the final rule.

Comments (effect of monitoring report): One respondent suggested the regulations clarify that a probable consequence of having an NNL listed in the Section 8 report is condemnation of private land for government acquisition. One respondent suggested that the regulations explain that, as part of the Section 8 report, the Secretary is also required to recommend NNLs listed in this report for study for addition to the National Park System.

Service Response: Condemnation of private land for government acquisition is not a probable consequence of listing an NNL in the Section 8 report. The fact that the Secretary is required by 16 U.S.C. 1a–5 to provide a report of damaged or threatened NNLs to the Congress and to recommend qualified NNLs for consideration for possible addition to the National Park System does not require subsequent action by the Congress or the Department. A change has been made in § 62.6(b) of the final rule to clarify this point.

Comments (third parties): Several respondents suggested that the regulations eliminate or restrict the involvement of third party organizations or individuals (non-landowner, non-governmental) in the designation and monitoring process. Other respondents suggested that the NPS must ensure the objectivity of these processes and develop procedures to avoid possible conflicts of interest where third parties are suggesting PNNL for consideration, completing or reviewing site evaluations, or monitoring the conditions of designated NNLs. Several respondents suggested the NPS not be allowed to enter into any agreements or contracts with any other agencies, organizations, groups or individuals as specified in § 62.9(a), except when these agencies, groups or individuals are consenting NNL owners. Other respondents suggested that the reference in § 62.6(b) to the use of outside individuals, agencies or organizations to monitor the status of selected NNLs be deleted. One respondent suggested that the regulations prohibit owners from developing or having any substantive contributions of information to the evaluations of their properties for NNL designation because of conflict of interest.

Service Response: In administering the NNL Program, the NPS ensures that any agreements or arrangements with non-NPS organizations or individuals do not have possible conflict of interest implications. Owner consent to such administrative actions is not appropriate, nor would it be appropriate to exclude owners from the designation

process. No change is made in the final rule.

Issue 14: Boundary Adjustments

Comment (boundary modifications): One respondent suggested that the provision in § 62.7(a) for modifying NNL boundaries allows the NPS to take over private land and should therefore be deleted.

Service Response: The NPS does not "take over" private land by landmark designation. As noted above, the NNL Program provides information on the location and status of important natural features. The voluntary cooperation of private property owners does not restrict the owner's use of his or her land. No change is made in the final rule based on this comment.

Comment (modification of nationally-significant values): One respondent questioned the need for a provision, as described in § 62.7(a), to allow for modifications in the description of an NNL's nationally significant values if scientists had correctly identified all nationally significant values during the original designation process.

Service Response: This section is retained in the final rule because new information may be discovered or conditions of an NNL may change.

Comment (procedure reference): One respondent suggested that § 62.7(b) be revised to reference § 62.4(b) through § 62.4(j) when referring to the expansion of the boundaries of an NNL.

Service Response: This change was made in the final rule.

Comments (minor boundary adjustments): Some respondents suggested that what constituted a minor boundary correction under § 62.8(e) was unclear. One respondent suggested that minor be defined to mean that boundary corrections involve only properties owned by existing, willing NNL owners. Another respondent suggested that § 62.7(e) specify that such minor technical corrections only can be made with owner consent. One respondent suggested that the NPS should notify owners of any minor technical boundary corrections under § 62.7(e).

Service Response: Section 62.7(e) was changed in the final rule to include a provision for notifying owners in advance of any proposed minor technical boundary corrections or other administrative changes in documentation. Dependent on owner response to this notification, the NPS will determine whether the proposed changes constitute such minor technical corrections or whether the procedures outlined under § 62.4(d) through (j) should be followed. In addition, § 62.7(e) was changed in the final rule to define a minor boundary correction as one that represents a change in less than five percent of the original total land area of the NNL.

Comment (boundary delineation): One respondent suggested the addition of a section to the regulations to provide for completion of previously incomplete delineations of boundaries of NNLs.

Service Response: Section 62.7 provides for adjustment of NNL boundaries, including completion of previously incomplete boundary delineations. No change was therefore needed in the final rule.

Issue 15: Removal of Designation

Comment (peer review): One respondent suggested that, when the removal of an NNL designation is considered under § 62.8(b), one of the three peer reviewers of any evaluation removal process be from the NPS to eliminate bias.

Service Response: When possible, the NPS uses non-NPS evaluators and peer reviewers to obtain objective, scientific advice for particular areas and types of resources. In general, NPS representatives do not serve as peer reviewers. The NPS reviews all information available, as described in § 62.8(b), before determining that an area no longer seems to merit designation as an NNL.

Comments (area information retention): Some respondents suggested that information on areas from which NNL designations were removed under § 62.8 not be retained by the NPS.

Service Response: The NPS maintains information as required under Federal records management regulations. Information on areas from which the designations were removed is also maintained to provide a documented record of the actions, decisions, notifications and other pertinent information for the NNL Program. No change was made in the final rule.

Issue 16: Miscellaneous Comments

Comment (American Indians): One respondent suggested that the types of agencies and organizations with which NPS may enter into agreements, as described in § 62.9(a), specifically include Native American tribal governments and native villages, corporations and communities.

Service Response: This change was made in the final rule.

Comments (area information dissemination): One respondent suggested that the dissemination of information on NNLs associated with Native American religious or other traditional uses may reveal such sensitive information. One respondent suggested that, although it was acceptable for the NPS to limit information dissemination on ecologically or geologically fragile NNLs, the NPS also make a greater effort to disseminate educational information on other NNLs and on the NNL Program.

Service Response: The NPS considers that its general programs and policies about education, protection of sensitive information and culturally significant properties are sufficient. Therefore, no change was made in the final rule.

Comment (procedures handbook): One respondent suggested that the NPS make the program procedures handbook, described in the **SUPPLEMENTARY INFORMATION** section to the proposed rule, available for public comment.

Service Response: The program handbook is an internal NPS administrative manual for which public comment is not required. Copies of the completed handbook will be available to the interested public on request. No change was made in the final rule.

Comment (program documents): One respondent suggested that the NPS be required to maintain and publish an updated list of all NNL Program procedural documents.

Service Response: The already mentioned program handbook will reference and describe other program procedural documents. No change was made in the final rule.

Comments (lawsuits/penalties): Some respondents suggested that the regulations include provisions for civil lawsuits to recover costs, damages and attorney fees if their properties had been evaluated or designated without their consents. Several respondents suggested that the regulations provide for penalties for NPS employees who violate the regulations or otherwise violate landowner rights.

Service Response: The NPS does not believe these measures are necessary, or within its legal authority, and therefore no change was made in the final rule.

Other minor editorial changes were made in the final rule. These changes were to improve readability or clarity.

Drafting information

Authors participating in this rulemaking came from the National Park Service, the Office of the Assistant Secretary for Fish and Wildlife and Parks and the Office of the Solicitor.

Paperwork Reduction Act

This rule does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The notification letter which NPS sends

to landowners requesting their views about NNL designation is specifically exempted from Paperwork Reduction considerations according to Departmental guidelines (381 DM Chapter 2, Appendix 1) under A certifications, consents or acknowledgments. The status form used by NPS to monitor condition of designated NNLs for the annual Section 8 report is primarily filled out by NPS personnel. In some cases, it is completed by NNL patrons, i.e. scientists and others who volunteer to monitor the condition of selected NNLs on behalf of NPS. In other cases, it is filled out by area managers of other Federal or State agencies who own NNLs. It is NPS opinion that completion of the form is not solicited from private individual owners of NNLs and therefore not applicable under the Paperwork Reduction Act.

Compliance With Other Laws

This rule was reviewed by the Office of Management and Budget review under Executive Order 12866. The Department of the Interior has determined that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) or require the preparation of a regulatory analysis. The effect of the revisions made herein ensures that owners, including but not limited to local governments, small businesses, and other small organizations, are fully notified in advance and have the opportunity to comment on the proposed National natural landmark designation and that property is not included in a designation where an owner objects to designation. The total estimated economic effects of this rule on small entities are therefore negligible.

The revisions ensure that all owners are fully notified in advance of the agency's consideration of their properties as potential national natural landmarks, that private properties are not entered for purposes of evaluation without owner permission, and that property is not designated where private property owners have indicated their objection to the designation in a manner specified.

The NPS has determined and certifies pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rule will not impose a cost of $100 million or more in any given year on local, state or tribal governments or private entities.

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988.

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)).

The NPS has determined that this rulemaking will not have a significant effect on the quality of the human environment, health and safety because it is not expected to:

(a) Increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) Introduce incompatible uses that may compromise the nature and characteristics of the area, or cause physical damage to it;

(c) Conflict with adjacent ownerships or land uses; or

(d) Cause a nuisance to adjacent owners or occupants. Based on this determination, this rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6 (49 FR 21438). As such, neither an Environmental Assessment (EA) nor an Environmental Impact Statement (EIS) has been prepared.

The Department of the Interior has reviewed this rule as directed by Executive Order 12630, *Governmental Actions and Interference with Constitutionally Protected Property Rights,* to determine whether this rule includes policies that imply the taking of private properties. The Department determined that this rule does not imply the taking of private properties because it does not deny economically viable use of any distinct, legally protected property interest to its owner or to have the effect of, or result in, a permanent or temporary physical occupation, invasion or deprivation. National natural landmark designation does not change ownership of property and does not dictate use of designated property. The effects of the revisions are the strengthening and clarification of notification of owners that properties are being considered, the explicit preclusion of entry onto private property for purposes of program area evaluation without owner permission, and the preclusion of designations of areas where the majority of the private property owners indicated their objection as specified.

List of Subjects in 36 CFR Part 62

Natural resources.

In consideration of the foregoing, 36 CFR Chapter I is amended as follows:

1. 36 CFR Part 62 is revised to read as follows:

PART 62—NATIONAL NATURAL LANDMARKS PROGRAM

Sec.

62.1 Purpose.
62.2 Definitions.
62.3 Effects of designation.
62.4 Natural landmark designation and recognition process.
62.5 Natural landmark criteria.
62.6 Natural landmark monitoring.
62.7 Natural landmark modifications.
62.8 Natural landmark designation removal.
62.9 General provisions.

Authority: 16 U.S.C. 1a–5, 461 *et seq.*, 463, 1908.

§ 62.1 Purpose

The procedures in this part set forth the processes and criteria for the identification, evaluation, designation and monitoring of national natural landmarks.

(a) The National Natural Landmarks Program focuses attention on areas of exceptional natural value to the nation as a whole rather than to one particular State or locality. The program recognizes areas preserved by Federal, State and local agencies as well as private organizations and individuals and encourages the owners of national natural landmarks to voluntarily observe preservation precepts.

(b) The National Natural Landmarks Program identifies and preserves natural areas that best illustrate the biological and geological character of the United States, enhances the scientific and educational values of preserved areas, strengthens public appreciation of natural history, and fosters a greater concern for the conservation of the nation's natural heritage.

§ 62.2 Definitions.

The following definitions apply to this part:

National Natural Landmark is an area designated by the Secretary of the Interior as being of national significance to the United States because it is an outstanding example(s) of major biological and geological features found within the boundaries of the United States or its Territories or on the Outer Continental Shelf.

National Registry of Natural Landmarks is the official listing of all designated national natural landmarks.

National significance describes an area that is one of the best examples of a biological community or geological feature within a natural region of the United States, including terrestrial communities, landforms, geological features and processes, habitats of native plant and animal species, or fossil evidence of the development of life.

Natural region is a distinct physiographic province having similar geologic history, structures, and landforms. The basic physiographic characteristics of a natural region influence its vegetation, climate, soils, and animal life. Examples include the Atlantic Coastal Plain, Great Basin, and Brooks Range natural regions.

Owner means the individual(s), corporation(s), or partnership(s) holding fee simple title to property, or the head of the public agency or subordinate employee of the public agency to whom such authority was delegated and who is responsible for administering publicly owned land. Owner does not include individuals, partnerships, corporations, or public agencies holding easements or less than fee interests (including leaseholds) of any form. A Native American tribe that is the beneficial fee simple owner of lands, with the United States as trustee, will be considered as owner of private property for the purposes of this part. Similarly, individual member(s) of a Native American tribe who are beneficial owner(s) of property, allottee(s) held in trust by the United States, will be considered as owner(s) of private property for the purposes of this part.

Potential national natural landmark means an area that, based on recommendation or initial comparison with other areas in the same natural region, seems to merit further study of its merits for possible national natural landmark designation.

Prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

Representative refers to any public or private individual, agency, or organization that is performing actions related to the identification, evaluation, designation or monitoring of national natural landmarks on behalf of or in cooperation with the National Park Service (NPS), either under a contractual agreement or as a volunteer.

Scientist refers to an individual whose combination of academic training and professional field experience in the natural region qualifies him/her to identify and comparatively evaluate natural areas at the regional or national level.

§ 62.3 Effects of designation.

(a) Designation of an area by the Secretary as a national natural landmark is not a land withdrawal, does not change the ownership of an area, and does not dictate activity. However, Federal agencies consider the unique properties of designated national natural landmarks and of areas that meet the criteria for national significance in their planning and impact analysis (see § 62.6(f)), and there may be State or local planning or land use implications. Designation as a national natural landmark does not require or mandate under Federal law any further State or local planning, zoning or other land-use action or decision. Owners who agree to have their lands designated as a national natural landmark do not give up under Federal law any legal rights and privileges of ownership or use of the area. The Department does not gain any property interests in these lands.

(b) Benefits of national natural landmark designation include the positive recognition and appreciation of nationally significant resources and the ability of public agencies and private individuals and organizations to make more informed development and planning decisions early in regional planning processes. In addition, some private owners of commercially operated national natural landmarks that are open to public visitation may choose to recognize and emphasize the national significance of the areas by providing descriptive information to the public. Under section 170(h) of the United States Internal Revenue Code, some owners of national natural landmarks may be eligible to claim a charitable contribution deduction on their Federal income tax for qualified interests in their natural landmark property donated for a qualified conservation purpose to a qualified conservation organization.

(c) The Secretary will provide an annual report to the Congress on damaged or threatened designated national natural landmarks (see § 62.6(b)). The Secretary will also report to the Advisory Council on Historic Preservation any designated national natural landmarks that may be irreparably lost or destroyed by surface mining activity (see § 62.6(e)).

§ 62.4 Natural landmark designation and recognition process.

(a) *Identification.* Potential national natural landmarks are identified in the following manner.

(1) *Natural region studies.* The NPS conducts inventories of the characteristic biological and geological features in each natural region to provide a scientific basis for identifying potential national natural landmarks. The NPS is responsible for the completion of these studies, which are generally done by qualified scientists under contract. A study provides a classification and description of biological and geological features in that natural region and an annotated list of areas that illustrate those features. During a study, the NPS or any representative of the NPS may enter onto land only after receiving written permission from the owner(s) of that land, except when the land is publicly owned land and otherwise open to the public.

(2) *Other entities.* (i) Any public or private entity may suggest an area for study and possible national natural landmark designation. The entities include:

(A) Federal agency programs that conduct inventories in order to identify areas of special interest, for example, essential wildlife habitat, research natural areas, and areas of critical environmental concern; and

(B) State natural area programs that systematically and comprehensively classify, identify, locate and assess the protective status of the biological and geological features located in a State.

(ii) If an individual, agency or organization that suggests an area for national natural landmark consideration is not the owner of the area, written permission of the owner(s) is required to enter onto the PNNL to gather information, except when the land is publicly owned and otherwise open to the public.

(3) After receiving the suggestions from a natural region study and suggestions from other sources, the NPS determines which PNNL merit further study for possible national natural landmark designation. This determination is based on comparison with existing national natural landmarks in the natural region, the national natural landmark criteria (see § 62.5) and other information.

(b) *First Notification.* (1) Before a potential national natural landmark is evaluated by scientists as described in paragraph (c) of this section, the NPS notifies the owner(s) in writing, except as specified in paragraph (b)(2) of this section.

(i) This notice advises the owner(s) that the PNNL is being considered for study for possible national natural landmark designation and provides information on the National Natural Landmarks Program, including an explanation of the effects of national natural landmark designation as described in § 62.3.

(ii) The notice also provides the owner with available information on the area and its tentatively identified significance, solicits the owner's comments on the area, including any information on current or anticipated land use or activities that may affect the area's natural values, integrity, or other matters of concern, and informs the

owner of the source of the suggestion for consideration.

(iii) The notice also requests owner permission to enter the property, unless the area is otherwise open to the public, so the NPS or its representative can conduct an on-site evaluation of the PNNL as described under paragraph (c) of this section, and advises the owner of the procedures the NPS will follow in considering the PNNL for possible designation.

(2) Before a potential national natural landmark having 50 or more owners is evaluated by scientists as described in paragraph (c) of this section, the NPS provides general notice to property owners. This general notice is published in one or more local newspapers of general circulation in the area in which the potential national natural landmark is located. The notice provides the same information listed under paragraph (b)(1) of this section.

(3) During an on-site evaluation as described in paragraph (c) of this section, the NPS or any representative of the NPS will not enter onto land without permission from the owner(s), except when the land is publicly owned and otherwise open to the public. The NPS may complete evaluations of PNNL by using other information, including information that was previously gathered by other Federal or State agencies or gained from other scientific studies. The NPS notifies owners if areas are evaluated from existing information not requiring land entry.

(4) The described procedures for providing written notification to owners and receiving responses from owners about the first notification are the responsibility of the NPS and cannot be delegated to any representative of the NPS.

(c) *Evaluation.* (1) The NPS uses the national natural landmark criteria in § 62.5 to evaluate the potential natural landmark. Potential national natural landmarks are evaluated on a natural region basis; i.e., similar areas that represent a particular type of feature located in the same natural region are compared to identify examples that are most illustrative and have the most intact, undisturbed integrity.

(2) Evaluations are done by qualified scientists who are familiar with the natural region and its types of biological and geological features. Evaluators make a detailed description of the area, including a proposed boundary map, and assess its regional standing using the national natural landmark criteria (see § 62.5) and any additional information provided by the NPS. Evaluation reports must have been completed or updated within the previous 2 years in order to be considered by the NPS.

(3) Completed evaluation reports are reviewed by no fewer than three peer reviewers, who are scientists familiar with the biological or geological features of the area or natural region. These reviewers provide the NPS with information on the scientific merit and strength of supportive documentation in the evaluation report. On the basis of evaluation report(s) and the findings of the peer reviewers, the NPS makes a determination that:

(i) The PNNL does or does not appear to qualify for national natural landmark designation; or

(ii) Additional information is required before a decision can be made about the status of the PNNL.

(4) When a PNNL does not seem to qualify for national natural landmark designation, the NPS notifies the owner(s) as prescribed in paragraphs (b)(1) and (2) of this section.

(d) *Second Notification.* (1) When the Director determines that an area meets the criteria for national significance, the NPS notifies the owner(s) in writing, except as specified in paragraph (d)(2) of this section.

(i) The notice references the rules in this part, advises the owners of the procedures the NPS follows and of the effects of national natural landmark designation as described in § 62.3, provides the owner(s) with a copy of the evaluation report, and provides the owner(s) with the opportunity to comment. The list of owners must be obtained from official land or tax records, whichever is most appropriate, within 90 days before issuing the second notification.

(ii) If in any State the land or tax records are not helpful, the NPS can seek alternative sources to identify the owners.

(iii) The NPS is responsible for notifying only owners whose names appear on the list.

(2) If an area has more than 50 owners, the NPS provides a general notice to the property owners. NPS will publish a general notice in one or more local newspapers of general circulation in the region in which the area is located. A copy of the evaluation report is made available on request. In addition, the NPS may conduct a public information meeting, if widespread local public interest warrants it or if requested by the executive of the local governmental jurisdiction in which the area is located.

(3) In addition, NPS notifies appropriate authorities, organizations and individuals. The notices reference these rules and advise the recipient of the proposed action, of the procedures the NPS follows, and of the effects of national natural landmark designation as described in § 62.3. Notice of the proposed action is published also in the **Federal Register**. NPS will notify:

(i) The executive of the local governmental jurisdiction in which the area (PNNL) is located;

(ii) The governor of the State;

(iii) Other appropriate State officials;

(iv) Senators and members of Congress who represent the district in which the area is located;

(v) Native American tribal governments and native villages and corporations in the region; and

(vi) Other interested authorities, organizations and individuals as deemed appropriate.

(4) All notified entities, including non-owners, have 60 days to provide comments before NPS decides whether the area meets the criteria for national significance. To assist in the evaluation of a area, comments should, among other factors, discuss the area's features and integrity. Information is also welcome on current or anticipated land use or threats that could effect the area. Any party may request a reasonable extension of the comment period when additional time is required to study and comment on a landmark proposal. The Director may grant these requests if he or she determines they are in the public interest. All comments received are considered in the national natural landmark designation process.

(5) Upon individual or general notification, any owner of private property within a PNNL who wishes to object to national natural landmark designation must submit a notarized statement to the Director to certify that he or she is the sole or partial owner of record and he or she objects to the designation. These statements will be submitted during the 60-day comment period. Upon receipt of objections to the designation of a PNNL consisting of multiple parcels of land, the NPS must determine how much of it consists of owners who object to designation. If an owner whose name is not on the ownership list developed by the NPS certifies in a notarized statement that he or she is the sole or partial owner of the area, NPS will take into account his or her views about designation. In circumstances where a single parcel of land within a PNNL has more than one fee simple owner, an objection to designation of that property must be submitted by a majority of the owners.

(6) All described procedures for the notification of owners and receiving responses from owners in the second notification process are the

responsibility of the NPS and cannot be delegated to any representative of the NPS.

(e) *Significance determination.* (1) NPS will review all documentation including, but not limited to, evaluation reports, peer reviews, and received comments. If NPS determines that a PNNL does not meet the criteria for national significance (see § 62.5), the NPS will notify the owner(s) in writing that their land is no longer under consideration for national natural landmark designation. If PNNL are owned by 50 or more parties, the NPS will publish a general notice as described in paragraph (d)(2) of this section. In addition, the NPS will notify in writing officials, individuals and organizations notified under paragraph (d)(3) of this section.

(2) When the NPS determines that a PNNL meets the criteria for national significance, the NPS determines whether any private property owners submitted valid written objection to designation.

(f) *Areas meeting criteria.* When the Director of NPS determines by all available information that a PNNL meets the criteria for national significance, but some private property owners submitted written objections to the proposed national natural landmark designation, the NPS maintains all this information about the area and which shall be available as part of the environmental analysis for any major federal action for purposes of NEPA which impacts the NNL or these other lands. Notice of this action is provided by the NPS to the owners as specified in paragraphs (d)(1) and (2) of this section and to officials, individuals and organizations notified under paragraph (d)(3) of this section. If some but not all of the property owners within a PNNL object to designation, the NPS will exclude the objecting properties and proceed with the process only if enough area remains of non-objecting properties to allow sufficient representation of the significant natural features.

(g) *National Park System Advisory Board.* (1) The Director of the NPS reviews the documentation of each area that meets the criteria for national significance. When the Director determines that the requirements of this part were met and that enough non-objecting valid private property owners exist to encompass an adequate portion of the nationally significant features, the Director submits the information on the area (PNNL) to the National Park System Advisory Board. The board reviews the information and recommends whether or not the land with consenting owners qualifies for national natural landmark designation.

(2) Notice of Advisory Board meetings to review national natural landmark nominations and meeting agendas are provided at least 60 days in advance of the meeting by publication in the **Federal Register**. The NPS also mails copies of the notice directly to consenting owners of areas that are to be considered at each meeting. Interested parties are encouraged to submit written comments and recommendations that will be presented to the board. Interested parties may also attend the board meeting and upon request may address the board concerning an area's national significance.

(h) *Submission to the Secretary.* The Director submits the recommendation of the Advisory Board and materials that the Director developed to the Secretary for consideration of the nominated area for national natural landmark designation.

(i) *Designation.* The Secretary reviews the materials that the Director submitted and any other documentation and makes a decision on national natural landmark designation. Areas that the Secretary designates as national natural landmarks are added to the National Registry of Natural Landmarks.

(j) *Third notification.* When the Secretary designates an area as a national natural landmark, the Secretary notifies in writing the landmark owner(s) of areas with fewer than 50 owners. A general notice of designated areas with 50 or more owners is published in one or more local newspapers of general circulation in the area. The Secretary also notifies the executive of the local governmental jurisdiction in which the landmark is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, the congressional members who represent the district and State in which the landmark is located, and other interested authorities, organizations and individuals as deemed appropriate. The NPS prepares the notifications and is responsible for their distribution. Notices of new designations are also published in the **Federal Register**.

(k) *Presentation of plaque and certificate.* (1) After the Secretary designates an area as a national natural landmark, the NPS may provide each owner who so requests with a certificate signed by the Secretary of the Interior and the Director of the NPS at no cost to the owner(s). This certificate recognizes the owner's interest in protecting and managing the area in a manner that prevents the loss or deterioration of the natural values on which landmark designation is based.

(2) If appropriate, NPS may also provide without charge a bronze plaque for display in or near the national natural landmark. Upon request, and to the extent NPS resources permit, the NPS may help arrange and participate in a presentation ceremony. In accepting a plaque or certificate, owners give up none of the rights and privileges of ownership or use of the landmark and the Department of the Interior does not acquire any interest in the designated property. After a presentation, the plaque remains the property of NPS. If the landmark designation is removed in accordance with the procedures in § 62.8, NPS may reclaim the plaque.

§ 62.5 Natural landmark criteria.

(a) *Introduction.* (1) *National significance* describes an area that is one of the best examples of a biological or geological feature known to be characteristic of a given natural region. Such features include terrestrial and aquatic ecosystems; geologic structures, exposures and landforms that record active geologic processes or portions of earth history; and fossil evidence of biological evolution. Because the general character of natural diversity is regionally distinct and correlated with broad patterns of physiography, many types of natural features are entirely inside one of the 33 physiographic provinces of the nation, as defined by Fenneman (Physiographic Divisions of the United States, 1928) and modified as needed by the NPS.

(2) Because no uniform, nationally applicable classification scheme for biological communities or geological features is accepted and used by the majority of organizations involved in natural-area inventories, a classification system for each inventory of a natural region was developed to identify the types of regionally characteristic natural features sought for representation on the National Registry of Natural Landmarks. Most types represent the scale of distinct biological communities or individual geological, paleontological, or physiographic features, most of which can be mapped at the Earth's surface at 1:24,000 scale or are traceable in the subsurface. In some cases, the NPS may further evaluate only a significant segment of a given natural feature, where the segment is biologically or geologically representative and where the entire feature is so large as to be impracticable for natural landmark consideration (e.g., a mountain range). Almost two-thirds of all national natural landmarks range from about 10 to 5,000 acres, but some

are larger or smaller because of the wide variety of natural features recognized by the National Natural Landmarks Program.

(b) *Criteria.* NPS uses the following criteria to evaluate the relative quality of areas as examples of regionally characteristic natural features:

(1) *Primary criteria.* Primary criteria for a specific type of natural feature are the main basis for selection and are described in the following table:

Criterion	Description	Example
Illustrative character	Area exhibits a combination of well-developed components that are recognized in the appropriate scientific literature as characteristic of a particular type of natural feature. Should be unusually illustrative, rather than merely statistically representative.	Alpine glacier with classic shape, unusual number of glaciological structures like crevasses, and well-developed bordering moraine sequences.
Present condition	Area has been less disturbed by humans than other areas	Large beech maple forest, only a small portion of which has been logged.

(2) *Secondary criteria.* Secondary criteria are provided for additional consideration, if two or more similar area cannot be ranked using the primary criteria. Secondary criteria are described in the following table:

Criterion	Description	Example
Diversity	In addition to its primary natural feature, area contains high quality examples of other biological and/or geological features or processes.	Composite volcano that also illustrates geothermal phenomena.
Rarity	In addition to its primary natural feature, area contains rare geological or paleontological feature or biological community or provides high quality habitat for one or more rare, threatened, or endangered species.	Badlands, including strata that contain rare fossils.
Value for Science and Education.	Area contains known or potential information as a result of its association with significant scientific discovery, concept, or exceptionally extensive and long term record of on-site research and therefore offers unusual opportunities for public interpretation of the natural history of the United States.	Dunes landscape where process of ecological succession was noted for first time.

§ 62.6 Natural landmark monitoring.

(a) *Owner contact.* The Field Offices of the NPS maintain periodic contacts with the owners of designated national natural landmarks to determine whether the landmarks retain the values that qualified them for landmark designation and to update administrative records on the areas.

(b) *Section 8 Report.* (1) The Secretary, through the NPS, prepares an annual report to the Congress on all designated national natural landmarks with known or anticipated damage or threats to one or more of the resources that made them nationally significant. This report is mandated by Section 8 of the National Park System General Authorities Act of 1970, as amended, (16 U.S.C. 1a–5).

(2) A landmark is included in this report if it has lost or is in imminent danger of losing all or part of its natural character to such a degree that one or more of the values that made it nationally significant are or will be irreversibly damaged or destroyed. In assessing the status of a landmark, NPS considers the condition of the landmark at the time of designation, including any changes that have occurred and any threats that could impact it in the future.

(3) Section 8 also requires the Secretary to make recommendations to the Congress on qualified areas for consideration as additions to the National Park System. No legal mandate requires that the Congress take further action about national natural landmarks listed as damaged or threatened or about areas that are recommended for possible future additions to the National Park System.

(4) NPS Regional Offices are responsible for monitoring the condition of, and for completing status reports on, all designated national natural landmarks in their regions. In some cases, the NPS may arrange with outside individuals, agencies or organizations to monitor the status of selected national natural landmarks. NPS or its representative usually monitors national natural landmark condition and status during a visit.

(c) *Monitoring.* (1) The NPS or its representative notifies the owner(s) of a national natural landmark of his or her pending visit to the area to determine its status and condition, and informs the owner(s) of the purposes of monitoring and its relation to the Secretary's annual report on threatened or damaged landmarks.

(2) While monitoring conditions of designated national natural landmarks, neither NPS nor its representative will enter onto private property or onto public lands that are not otherwise open to the public without first obtaining permission from the owner(s) or administrator(s). The NPS may monitor landmark condition without entering onto lands where required permission has not been granted by using other existing information, including telephone conversations with the owner(s) or manager(s) of the area, written materials provided by the owner or manager, or information previously developed by other Federal or State agencies or other scientific studies. The NPS provides owners with copies of monitoring reports on their property, which will include the name and affiliation of the individual(s) who completed the report.

(d) *Section 8 report preparation.* (1) After completion of landmark monitoring, the NPS Regional Offices forward their findings and recommendations to the NPS Washington Office. The NPS Washington Office reviews the Regional Office findings and recommendations and prepares a draft report listing only the national natural landmarks with significant known or anticipated damage or threats to the integrity of one or more of the resources that made the area nationally significant.

(2) Pertinent portions of this draft report, including any executive summary, are provided to the owner(s) or administrator(s) of national natural landmarks listed as is feasible, as well as to other interested authorities,

organizations and individuals. All individuals have 30 days to provide written comments to the NPS on the draft report. Comments may include additional information on the condition of landmarks or on the nature or imminence of reported damage or threats to these landmarks. Owners are also asked to indicate whether they would like to receive a copy of the final report, as described in paragraph (d)(3) of this section.

(3) The NPS reviews all comments on the draft report and prepares a final report, which the Director transmits to the Secretary for submission to the Congress. Upon release of the final report, the NPS will provide a copy of the report to the owner(s) of landmarks who are listed in the report and have requested copies and to other interested authorities, organizations and individuals.

(e) *Mining in the Parks Act.* If the NPS determines that an entire or partial national natural landmark may be irreparably lost or destroyed by surface mining activity, including exploration for or removal or production of minerals or materials, NPS notifies the person that is conducting the activity and prepares a report that identifies the basis for the finding that the activity may cause irreparable loss or destruction. The NPS also notifies the owner(s) of the national natural landmark in writing of its finding. The NPS submits to the Advisory Council on Historic Preservation the report and a request for advice about alternative measures that may be taken by the United States to mitigate or abate the activity. The authority for this action is contained in Section 9 of the Mining in the Parks Act of 1976 (16 U.S.C. 1908).

(f) *National Environmental Policy Act.* Federal agencies should consider the existence and location of designated national natural landmarks, and of areas found to meet the criteria for national significance, in assessing the effects of their activities on the environment under section 102(2)(c) of the National Environmental Policy Act (42 U.S.C. 4321). The NPS is responsible for providing requested information about the National Natural Landmarks Program for these assessments.

§ 62.7 Natural landmark modifications.

(a) *Determination of need for modifications.* After designation, the modification of the boundaries of a natural landmark, and/or revision of information about it, may be appropriate. For example, because of new information or changes in the condition of an NNL, the boundary may have to be reduced or expanded or information about the NNL may have to be revised. Additional study may reveal that the area has nationally significant values that had not been previously documented. The NPS determines that landmark modifications are necessary through administration of the program. In addition, the NPS may receive suggestions for landmark modifications from other Federal agencies, State natural area programs, and other public and private organizations or individuals. The NPS determines the validity of these suggestions by applying the natural landmark criteria or by conducting additional study.

(b) *Boundary expansion.* (1) Three justifications exist for enlarging the boundary of a national natural landmark: better documentation of the extent of nationally significant features, professional error in the original designation, or additional landowners with nationally significant features on their property desiring the designation.

(2) If the NPS determines that an expansion of the boundary of the national natural landmark is appropriate, it will use the designation process outlined in § 62.4(b) through (j). If a boundary is expanded, only the owners in the newly considered but as yet not designated portion of the area are notified and asked if they object to designation.

(c) *Boundary reduction.* Two justifications exist for reducing the boundary of a national natural landmark: Loss of integrity of the natural features or professional error in the original designation. If the NPS determines that a reduction in the national natural landmark boundary is indicated, the designation removal process outlined in § 62.8 is used.

(d) *Change in description of values.* If the NPS determines that a change in the description of the national natural landmark's nationally significant values is warranted, the NPS prepares the recommended changes and the Director submits the changes and all supportive documentation to the National Park System Advisory Board. The Advisory Board reviews the information submitted by the Director and makes recommendations to the Secretary. The Secretary reviews the supportive documentation and the recommendations of the board, and may approve changes in the description of a landmark's nationally significant values.

(e) *Minor technical corrections.* Minor technical corrections to a national natural landmark boundary and other administrative changes in landmark documentation not covered under paragraphs (a) through (d) of this section may be approved by the Director without a review by the Advisory Board or the approval by the Secretary. Minor technical boundary corrections are defined as those that involve a change in less than five percent of the total area of the national natural landmark. The NPS notifies owners of proposed minor technical boundary corrections or other administrative changes in documentation, as described in this paragraph (e). Based upon owner response to this notification, the NPS determines whether the proposed change is a minor technical correction to landmark documentation that can be made administratively or whether the procedures outlined in § 62.4(d) through (j) must be followed.

§ 62.8 Natural landmark designation removal.

(a) *Criteria for removal.* (1) Except as provided in paragraph (f) of this section, national natural landmark designation is removed from an area:

(i) When it can be shown that an error in professional judgment was made such that the site did not meet the criteria for national significance at the time of designation;

(ii) When the values which originally qualified it for designation have been lost or destroyed; or

(iii) When applicable designation procedures were not followed because of prejudicial failure.

(2) Any affected owner of a designated national natural landmark may initiate the removal by submitting to the Director a request for removal of designation, stating the grounds for this removal and specifying the error in professional judgment, loss of natural values or prejudicial procedural error. A prejudicial procedural error is one that reasonably may be considered to have affected the outcome of the designation process.

(3) Within 60 days of receiving a removal request, the NPS notifies the party submitting the request of whether the NPS considers the documentation sufficient to consider removal of the natural landmark designation.

(b) *Review of removal information.* The NPS reviews the information outlining the grounds for removal. When necessary, an on-site evaluation of the area may be made, as outlined in § 62.4(c). Based on all available information, the NPS determines whether the area no longer merits designation as a national natural landmark.

(c) *Notifications.* When NPS has determined that area no longer merits designation as a national natural landmark, the NPS notifies the owner(s) and other interested parties as specified

in § 62.4(d)(1)–(3). Notice of the proposed removal is also published in the **Federal Register**. The notified individuals may comment within 60 days of the date of the notice before a recommendation for removal is submitted to the Secretary. All comments received will be considered in the review and in the decision to remove the national natural landmark designation.

(d) *Removal from the registry.* (1) The Director reviews the information about a recommended removal from the Registry and determines whether the procedural requirements in this section have been met. If the Director confirms the findings, he or she submits a recommendation for removal to the National Park System Advisory Board. The Advisory Board reviews the submitted information and recommends the removal from or retention of the area in the registry.

(2) The recommendations of the Advisory Board and the Director are submitted by the Director to the Secretary for his or her consideration. If the Secretary concurs, he or she directs the removal of the landmark from the National Registry of Natural Landmarks. Any area from which designation is withdrawn solely because of procedural error as described in paragraph (a)(1)(iii) of this section continues to meet the criteria for national significance.

(e) *Notification of removal from the registry.* When the Secretary removes a landmark from the National Registry of Natural Landmarks, the Secretary will notify the national natural landmark owner(s), the executive of the local government jurisdiction in which the area is located, Native American tribal governments and native villages and corporations in the area, the governor of the State, Congressional members who represent the Congressional District and State in which the area is located, and other interested authorities, organizations, and individuals, as outlined in § 62.4(d)(1), (2) and (3). The NPS is responsible for preparing and distributing the written notices. The NPS periodically publishes notice(s) of removal in the **Federal Register**. The NPS may reclaim the natural landmark plaque when a landmark is removed from the National Registry of Natural Landmarks.

(f) *Previously designated landmarks.* (1) NPS will notify owners of national natural landmarks designated before the effective date of these regulations to give them an opportunity within 90 days of the notice to request the removal of a national natural landmark designation from their property by writing to the Director. If owners do not respond within 90 days of the notification, the national natural landmark designations of their properties will be retained.

(2) When only some owners of a national natural landmark in multiple ownership request the removal of a national natural landmark designation from their portions, the NPS determines whether, after removal of these portions, a sufficient acreage of the national natural landmark remains to demonstrate the original nationally significant features without undue compromise. If so, the boundaries of the national natural landmark are adjusted to remove the properties of owners who object to the designation. If not, the entire national natural landmark designation is removed and the area is removed from the National Registry of Natural Landmarks.

(3) Any removals of existing national natural landmark designations and related recommended boundary adjustments, must be presented by the Director to the National Park System Advisory Board for review before being presented to the Secretary who formally removes a national natural landmark from the national registry or approves changes in the national natural landmark boundary. Areas from which the designation has been removed may be reconsidered for designation under these regulations if ownership or other circumstances change.

§ 62.9 General provisions.

(a) *Agreements.* The NPS may enter into contracts, memoranda of agreement, cooperative agreements, or other types of agreements with other Federal agencies, States, counties, local communities, private organizations, owners, Native American tribal governments, or other interested individuals or groups to assist in administering the National Natural Landmarks Program. The agreements may include but are not limited to provisions about identification, evaluation, monitoring or protecting national natural landmarks.

(b) *Information dissemination.* The NPS may conduct educational and scientific activities to disseminate information on national natural landmarks, the National Natural Landmarks Program, and the benefits derived from systematic surveys of significant natural features to the general public and to interested local, State and Federal agencies and private groups. Dissemination of information on ecologically or geologically fragile or sensitive areas may be restricted when release of the information may endanger or harm the sensitive resources.

(c) *Procedural requirements.* Any individual, agency, or organization acting as a representative of the NPS in the identification, evaluation, monitoring or protection of national natural landmarks is required to follow this part.

(d) *Additional program information.* Further guidance on the operation of the National Natural Landmarks Program, as based on this part, may be found in other program documents that are available from the NPS.

(e) *Administrative recourse.* Any person has the right to insist that NPS take into account all the provisions in this part for national natural landmark designation or removal.

Note: This document was received at the Office of the Federal Register on April 14, 1999.

Dated: June 10, 1998.

William Leary,

Acting Assistant Secretary for Fish and Wildlife and Parks.

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Part IV

Department of Housing and Urban Development

24 CFR Part 5

Revised Restrictions on Assistance to Noncitizens; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 5

[Docket No. FR–4154–F–03]

RIN 2501–AC36

Revised Restrictions on Assistance to Noncitizens

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule updates HUD's noncitizens regulations to incorporate the amendments made to section 214 of the Housing and Community Development Act of 1980 by section 592 of the Quality Housing and Work Responsibility Act of 1998 (the "1998 Act"). Specifically, section 592 of the 1998 Act provides that PHAs, notwithstanding the requirements of Section 214, may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family. Before this amendment, statutory authority allowed PHAs to opt-out of compliance with the Section 214 immigration verification requirements in their entirety. This final rule also makes final a November 29, 1996 interim rule and takes into consideration the public comments submitted on the interim rule.

EFFECTIVE DATE: June 11, 1999.

FOR FURTHER INFORMATION CONTACT: For the covered programs, the following persons should be contacted:

1. *For the Public Housing, Section 8 Rental Certificate, Rental Voucher and Moderate Rehabilitation (except Single Room Occupancy-"SRO") programs:* Patricia Arnaudo, Office of Public and Indian Housing, Room 4222, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 619–8201;

2. *For the Section 8 Moderate Rehabilitation SRO program:* John Garrity, Office of Community Planning and Development, Room 7262, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–4300;

3. *For the other Section 8 programs, the Section 236 programs, and Housing Development Grants and Rent Supplement:* Helene DeVous, Office of Housing, Room 6146, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–2866.

4. *For the Section 235 homeownership program:* Phillip Murray, Office of Lender Activities and Program Compliance, Office of Housing, Room B133, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC, 20410, telephone (202) 708–1515.

Persons with hearing or speech impairments may access the above telephone numbers via TTY by calling the Federal Information Relay Service at 1–800–877–8339. With the exception of the "800" number, none of the foregoing telephone numbers are toll-free.

SUPPLEMENTARY INFORMATION:

I. HUD's Implementation of Section 214 of the Housing and Community Development Act of 1980

On March 20, 1995 (60 FR 14816), HUD issued its final rule implementing Section 214 of the Housing and Community Development Act of 1980 (42 U.S.C. 1436a) ("Section 214") and that rule became effective on June 19, 1995. Section 214 prohibits HUD from making certain financial assistance available to persons other than United States citizens, nationals, or specified categories of eligible noncitizens.

HUD's March 20, 1995 final rule promulgated virtually identical "noncitizens" regulations for the various HUD programs covered by Section 214. On March 27, 1996 (61 FR 13614), HUD published a final rule eliminating the repetitiveness of these duplicative regulations by consolidating the noncitizens requirements in a new subpart E to 24 CFR part 5. HUD established part 5 (entitled "General HUD Program Requirements; Waivers") to describe those requirements which are applicable to one or more program regulations.

II. The November 29, 1996 Interim Rule

On November 29, 1996 (61 FR 60535), HUD published an interim rule amending its noncitizens regulations to incorporate the amendments made to Section 214 by the Use of Assisted Housing by Aliens Act of 1996 (title V, Subtitle E of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, approved September 30, 1996; 110 Stat. 3009–546) (the "1996 Immigration Act"). Section 577 of the 1996 Immigration Act directed that HUD's implementing regulations "be issued in the form of an interim final rule, which shall take effect upon issuance." Accordingly, the amendments made by the November 29, 1996 interim rule were effective upon publication, but also provided members of the public with a 60-day period to submit their comments on the interim rule.

The most significant changes made to Section 214 by the 1996 Immigration Act, and consequently to HUD's Section 214 regulations by the November 29, 1996 interim rule, are as follows:

1. HUD's interim noncitizens regulations provide that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.

2. The interim regulations require that continued financial assistance be provided to an eligible mixed family after November 29, 1996 (the effective date of the interim rule) be prorated based on the percentage of family members that are eligible for assistance. An eligible mixed family is a family containing members with eligible immigration status, as well as members without such status, and that meets the criteria for eligibility for continued assistance as described in Section 214.

3. The interim regulations require that HUD suspend financial assistance to a family upon determining that the family has knowingly permitted an ineligible individual to reside on a permanent basis in the family's unit. The suspension shall be for a period of at least 24 months. This provision does not apply if the ineligible individual has already been considered in calculating any proration of assistance for the family.

4. The interim regulations allow responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens verify the declaration through appropriate documentation (e.g., United States passport, resident alien card, registration card, social security card, or other appropriate documentation). Before this amendment, only individuals who were not U.S. citizens or nationals were required to present documentation of their eligible immigration status.

5. The November 29, 1998 interim rule revised the maximum period for deferral of termination of assistance provided after November 29, 1996 from an aggregate of 3 years to an aggregate of 18 months. The 18-month maximum deferral period does not apply to refugees under section 207 of the Immigration and Nationality Act or to individuals seeking asylum under section 208 of that Act. The maximum deferral period for deferrals granted

prior to November 29, 1996 continues to be 3 years.

6. The interim regulations provide that an individual has a maximum period of 30-days, starting from the date of receipt of the notice of denial or termination of assistance, to request a fair hearing. HUD believes that due process requires that assistance already being provided to a tenant may not be delayed, denied, reduced or terminated until completion of the fair hearing.

7. The interim regulations provide that a Public Housing Agency (PHA) may elect not to comply with the requirements of 24 CFR part 5, subpart E. This amendment was based on the language of subsection 214(h)(2), which was added by section 575 of the 1996 Immigration Act. Subsection 214(h)(2) provided that "[a] Public Housing Agency . . . may elect not to comply with this section." The use of the word "section" (as opposed to "subsection") in this provision, in a strict statutory construction, referred to Section 214 in its entirety.

III. Section 592 of the Quality Housing and Work Responsibility Act of 1998

On October 21, 1998, President Clinton signed into law HUD's fiscal year (FY) 1999 Appropriations Act, which includes the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act; Public Law 105–276; 112 Stat. 2461) (the "1998 Act"). The 1998 Act constitutes a substantial overhaul of HUD's public housing and Section 8 assistance programs. The 1998 Act enacts many of the reforms originally proposed in Secretary Andrew Cuomo's HUD 2020 Management Reform Plan, HUD's public housing bill and Congressional bills that are directed at revitalizing and improving HUD's public housing and Section 8 tenant-based programs.

Section 592 of the 1998 Act (entitled "Use of Assisted Housing by Aliens") removed the option of PHAs to elect not to comply with Section 214. In its place, the 1998 Act provides that PHAs, notwithstanding the requirements of Section 214, may elect not to affirmatively establish and verify eligibility before providing financial assistance to an individual or family (as discussed above, Section 214, and HUD's noncitizens regulations, provide that no individual or family applying for financial assistance may receive such financial assistance prior to the affirmative establishment and verification of eligibility of at least the individual or one family member). Section 592 of the 1998 Act was effective upon enactment (October 21, 1998).

On February 18, 1999 (64 FR 8192), HUD published a Notice of Initial Guidance in the **Federal Register**. The notice advises the public of those provisions of the 1998 Act that are effective immediately and of action that may or should be taken immediately by affected public and assisted housing providers. The February 18, 1999 notice advises the public that section 592 of the 1998 Act removed the option of PHAs to elect not to comply with Section 214. Further, the notice provides that in the event a PHA elected to "opt-out" of compliance with Section 214, the PHA may, but is not required to, immediately commence verification of eligibility of families for whom eligibility status under Section 214 has not yet been undertaken. A PHA must, however, verify eligibility status in accordance with the requirements of Section 214 and HUD's implementing regulations at 24 CFR part 5, subpart E, no later than the date of the family's annual reexamination.

IV. This Final Rule

This rule makes final the amendments in the November 29, 1996 interim rule, and takes into consideration the public comments submitted on the interim rule. After careful consideration of all the comments received on the November 29, 1996 interim rule, HUD has made one change as a result of public comment. Specifically, HUD has revised the list of documentation that may constitute acceptable evidence of U.S. citizenship or U.S. nationality (see discussion of public comment captioned "Rule Should Specify Acceptable Evidence of Citizenship" in section V.B of this preamble).

This final rule updates HUD's noncitizens regulations to incorporate the amendments made by section 592 of the 1998 Act. Specifically, the final rule removes § 5.501 (which granted PHAs the ability to opt-out of compliance with Section 214) and revises § 5.512 (entitled "Verification of eligible immigration status") to state that PHAs may elect to provide financial assistance to an individual or family before verifying the eligibility of the individual or one family member.

This final rule also makes a correction to § 5.508 of the November 29, 1996 interim rule. The 1996 Immigration Act permits responsible entities to verify the eligibility of individuals who declare themselves to be U.S. citizens or nationals. Although the preamble to the November 29, 1996 interim rule correctly referred to both U.S. citizens and nationals, § 5.508 of the interim rule, which implemented this statutory provision, inadvertently failed to refer to U.S. nationals. This final rule makes the necessary correction to § 5.508.

This final rule does not implement the provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Public Law 104–193, approved August 22, 1996; 110 Stat. 2105) which concern immigration. The changes required by that Act will be the subject of future rulemaking.

Readers should note that the regulatory text of this final rule is identical to that of the November 29, 1996 interim rule, with the exception of the changes implementing section 592 of 1998 Act and the changes to § 5.508.

V. Discussion of Public Comments on the November 29, 1996 Interim Rule

The public comment period on the November 29, 1996 interim rule closed on January 28, 1997. HUD received twenty-two comments, including comments from nonprofit organizations, PHAs, and PHA interest organizations. This section of the preamble presents a summary of the significant issues raised by the public commenters on the November 29, 1996 interim rule, and HUD's responses to these comments.

A. Comments on the Statutory PHA "Opt Out" Provision (Section 5.501)

Many of the comments received regarding the PHA "opt-out" provision were submitted before publication of the November 29, 1996 interim rule. The vast majority of these comments urged that HUD interpret section 575 of the 1996 Immigration Act to permit PHAs to opt-out of compliance with Section 214 in its entirety. As noted above, the recommended interpretation of section 575 was in fact the position adopted by HUD in the November 29, 1996 interim rule and this interpretation was based on the statutory language itself.

Many of these commenters noted that in some cities, such as New York City, most ineligible noncitizens are part of families that include citizens, nationals, or other eligible persons, and are "deeply woven into the fabric of everyday life." The commenters wrote that it would be a great hardship to such families to penalize these ineligible persons. Other commenters wrote that the recommended interpretation of the opt-out provision would further HUD's policy of "vest[ing] in local public housing agencies the maximum amount of responsibility in the administration of their housing programs."

HUD Response. As noted above, section 592 of the 1998 Act amended the scope of the PHA opt-out provision.

This final rule updates 24 CFR part 5, subpart E to incorporate the amendments made by section 592 of the 1998 Act. Specifically, the final rule removes § 5.501 (entitled "PHA election whether to comply with this subpart"), which allowed PHAs to opt-out of compliance with the Section 214 requirements. The final rule also amends § 5.512 (entitled "Verification of eligible immigration status") to state that PHAs may elect to provide financial assistance to an individual or family before verifying the eligibility of the individual or one family member.

B. Comments on the Submission of Evidence of Eligible Status (Section 5.508)

Comment: Nondiscrimination Requirements Should be Codified. Two commenters suggested that HUD amend the interim rule to explicitly provide that an entity administering a program covered by Section 214 may not request verification of citizenship based on race, national origin, or personal characteristics, such as accent, language spoken, or familial association with a noncitizen.

HUD Response. As § 5.524 makes clear, all regulatory procedures in the implementation of Section 214 must be administered in accordance with all applicable nondiscrimination and equal opportunity requirements, including, but not limited to, title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d–2000d–5) and the implementing regulations in 24 CFR part 1, section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and the implementing regulations in 24 CFR part 8, the Fair Housing Act (42 U.S.C. 42 U.S.C. 3601–3619) and the implementing regulations in 24 CFR part 100. Further, section VI of this preamble reminds the public that the Section 214 prohibitions on assistance to noncitizens must be implemented in the uniform manner prescribed, without regard to race, national origin, or personal characteristics (e.g., accent language spoken, or familial association with a noncitizen). The individual regulations for the HUD programs subject to Section 214 specify the fair housing and civil rights requirements applicable to each program.

Comment: Senior Noncitizens Should be Subject to Stricter Verification Procedures. Section 214 provides that certain senior noncitizens (those 62 years of age or older) need only submit a signed declaration of eligible immigration status and a proof of age document for purposes of verifying their eligibility to receive assistance. All other noncitizens, however, must submit their documentation of eligible immigration status for verification by the Immigration and Naturalization Service (INS). Before the amendments made by the 1996 Immigration Act, Section 214 limited this more lenient treatment to senior noncitizens receiving assistance on June 19, 1995 (the effective date of HUD's original March 20, 1995 noncitizens rule). The November 29, 1996 interim rule expanded the exemption to include senior noncitizens receiving assistance on September 30, 1996 (the date of enactment of the 1996 Immigration Act) or applying for assistance on or after that date. Two commenters objected to this amendment, and wrote that the higher standard of documentation should continue to be required of senior noncitizens who apply after September 30, 1996.

HUD Response. This regulatory amendment merely tracks the revision made to section 214(d)(4) by the 1996 Immigration Act. Accordingly, HUD does not have the discretion to modify this provision in the manner suggested by the commenters.

Comment: Rule Should Specify Acceptable Evidence of Citizenship or Nationality. The 1996 Immigration Act allows responsible entities administering financial assistance under a Section 214 covered program to require that individuals who declare themselves to be U.S. citizens or nationals to verify the declaration through appropriate documentation. Before this amendment, only individuals who were not U.S. citizens or nationals were required to present documentation of their eligible immigration status.

Three commenters recommended that HUD provide greater specificity regarding what documentation constitutes acceptable evidence of citizenship and nationality. One of the commenters noted that two of the documents listed as examples in § 5.508 (a resident alien card and a Social Security Card) do not constitute adequate evidence of citizenship or nationality. The commenter wrote that several of the other listed examples, such as a "registration card" or "other appropriate documentation," were too vague. One commenter suggested that acceptable proof of citizenship should include a signed declaration of citizenship accompanied by proof that a timely request for supporting documentation has been made. According to the commenter, this would ease the situation encountered by applicants who have difficulty obtaining original birth certificates from distant jurisdictions.

HUD Response. The commenters are correct that neither a resident alien card nor a Social Security Card is evidence of U.S. citizenship or U.S. nationality. Therefore, HUD has removed the references to these documents, as well as the reference to a "registration card", from § 5.508(b)(1). If HUD determines that additional examples are necessary, HUD will more appropriately provide them through notice, handbook, or other non-regulatory guidance.

C. Comments on Verification of Eligible Status: Timing of Procedure and Proration of Assistance (Section 5.512)

Comment: Verification of All Household Members Should be Required Before Admission. HUD's noncitizens regulations provide that responsible entities may not make assistance available to a family applying for assistance until at least the eligibility of one family member has been established, and assistance must be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established.

Several commenters indicated that proration of rent for newly admitted families due to an inability to complete the verification of eligibility of all family members before admission is a problem, both to the applicant and to the housing provider. They wrote that families who have not yet moved in will choose not to pay a prorated rent. If families are admitted with full subsidy after verification of eligibility of only one family member, the family and housing provider will both suffer losses if proration becomes required, since it is unlikely that the family will be able to pay the higher rent and eviction will follow.

Three commenters suggested that this perceived difficulty might be resolved by requiring verification of all household members before admission. The commenters wrote that this would not constitute an undue delay in the provision of assistance. According to two of these commenters, housing providers usually receive verification within one to two weeks after submission of the appropriate documentation. The commenters noted that the regulations grant individuals and families up to 30 days to submit the required documentation—a longer time period than what the commenters' experience indicates it takes to complete the entire verification process.

HUD Response. Subsection 214(d)(4)(B)(ii), as amended by the 1996 Immigration Act, prohibits the delay, denial, reduction, or termination of assistance to an applicant or tenant

pending the completion of the verification process. Assistance to newly admitted families may not be prorated based on the inability of the responsible entity to complete verification for all family members.

The commenters are correct in noting that assistance may need to be prorated if the verification process determines that one or more family members is not eligible. HUD acknowledges that families may be unable to pay the higher rent resulting from proration. Nevertheless, the requirement that assistance be prorated based on the number of individuals in the family for whom eligibility has been affirmatively established is statutorily mandated by the 1996 Immigration Act.

Comment: Rent Should be Retroactively Reduced Following Verification of Status for All Family Members. Another commenter suggested that, where assistance was initially prorated because the status of all the family members had not been established, the rent should be reduced retroactively to the date of admission following verification of the eligible status of all the family members.

HUD Response. As noted in the response the preceding comment, responsible entities may not prorate assistance to a family before the completion of the verification process.

D. Comments on Delay, Denial, Reduction, or Termination of Assistance (Section 5.514)

Comment: Verification Should be Completed Before Admission. One commenter praised HUD's interpretation that assistance to a tenant not be delayed, denied, reduced, or terminated until the completion of an informal hearing when a timely request for such a hearing is made. This contrasted with the opinion of another commenter, who stated that, although it was the intent of the Congress to not delay assistance to current program participants, no such authority exists regarding applicants. Accordingly, this commenter wrote all aspects of eligibility need to be verified before a family is admitted.

HUD Response. HUD's noncitizens regulations track the statutory language of the 1996 Immigration Act. Specifically, subsection 214(d)(4)(B)(ii), as amended by the 1996 Immigration Act, prohibits the delay, denial, reduction, or termination of assistance to an applicant or tenant pending the completion of the verification process.

Comment: What Constitutes "Knowingly" Permitting an Ineligible Person to Reside in an Assisted Housing Unit? Several commenters wrote to express uncertainty regarding § 5.514(c)(1)(iii), which provides that assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, if—

> (iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months * * *

Several commenters asked for greater clarity regarding what constitutes "knowingly" permitting an ineligible person to reside in an assisted unit on a permanent basis. One of the commenters suggested that a deliberate intention to deceive the housing provider (i.e., knowledge about the ineligible status and intentionally permitting permanent residence in the unit), should be the basis for the imposition of sanctions.

HUD Response. HUD believes that "knowingly" has the everyday meaning normally associated with the term. Specifically, the word "knowingly," as used in this provision of the 1996 Immigration Act, means that a tenant possesses knowledge that an ineligible individual is residing (on a permanent basis) in the unit.

Comment: What Constitutes "Termination" of Assistance Under Section 5.514(c)(1)(iii)? As noted above, HUD's noncitizens regulations at 24 CFR 5.514(c)(1)(iii) provide that, if a family member knowingly permits an ineligible individual to reside in an assisted housing unit, the family member's assistance must be "terminated" for a period of not less than 24 months. Several commenters questioned whether the effect of this termination is that the formerly assisted family is required to reapply for assistance after the expiration of the prescribed period (or immediately upon termination, with a required wait of the prescribed period), or whether assistance is to be automatically reinstated after the prescribed period.

HUD Response. Termination of assistance under § 5.514(c)(1)(iii) would be no different than termination of assistance for any other reason under the individual program requirements for each of the HUD programs covered by Section 214. For example, recipients of Section 8 tenant-based assistance who violate § 5.514(c)(1)(iii) are subject to the termination procedures described in 24 CFR part 982, subpart L ("Family Obligations; Denial and Termination of Assistance").

Comment: Maximum Period or Termination Should Exceed 24 Months. One commenter wrote that HUD should establish conditions for imposing a termination period longer than the statutory minimum 24 month sanction. Subsection 214(d)(6), and HUD's implementing regulation at § 5.514(c)(1)(iii), provides that HUD shall terminate assistance for a period of "not less than 24 months."

HUD Response. At this time, HUD is not amending 24 CFR part 5, subpart E to incorporate the recommendations made by the commenter. The establishment of regulatory criteria for the imposition of termination periods greater than 24 months would constitute a substantive revision of HUD's noncitizens regulations. Accordingly, HUD would implement such changes only after providing the public with notice and the opportunity to comment. HUD would not include the revisions suggested by the commenter in a final rule issued for effect. Should HUD decide to provide for termination periods of greater than 24 months, it will issue a future rulemaking accompanied by a request for public comment.

Comment: Time Period for Requesting Hearing Should Conform to Hearing Procedures Established by Responsible Entity. One commenter recommended that the time period for requesting a hearing on a negative determination be consistent with the amount of time established by the responsible entity for all terminations of assistance (such as 10 days).

HUD Response. The regulatory language of § 5.514 conforms to the language of the 1996 Immigration Act, which provides that the Secretary of HUD shall provide a "reasonable period, not to exceed 30 days" to appeal an INS eligibility determination. At this time, HUD is not revising its noncitizens regulations to permit the establishment of less than a 30-day period for requesting an informal hearing. Such a change would constitute a substantive revision to the November 29, 1996 interim rule, and could not be implemented through a rule issued for effect. In the event HUD determines that responsible entities should be provided with the flexibility to modify the 30-day period for requesting a hearing, it will implement the change using notice and comment rulemaking procedures.

E. Comments on Deferral of Termination of Assistance for Ineligible Families (Section 5.518)

Comment: Requested Clarifications Regarding Eligibility and Timing for Temporary Deferral of Termination of Assistance. One commenter asked under what circumstances anyone would now receive a deferral of termination of

assistance. According to the commenter, deferrals were only given to those families living and receiving assistance in Section 214 covered properties on or before June 19, 1995. Another question raised was whether a family that chose proration of assistance before November 29, 1996 and that chooses deferral of termination after that date is limited to a deferral of 18 months.

HUD Response. HUD believes that it would be the exceptional case in which a family would be eligible for deferral of termination of assistance in 1999. As the commenter notes the statute provides deferral of termination of assistance for families living and receiving assistance in Section 214 covered properties on or before June 19, 1995. It is conceivable that the verification process or appeals process may have significantly delayed a final eligibility determination such that a family receiving assistance on or before June 19, 1995 would now find themselves faced with termination of assistance (due to lack of eligibility), and would therefore be eligible for deferral of termination of assistance. Again, however, HUD believes that this would be the exception.

With respect to a family that is eligible for deferral of termination and chooses deferral of termination of assistance after November 29, 1996, the period of deferral of termination is limited to 18 months.

F. Comments on Continued Full Assistance to Ineligible Family Members (Section 5.518)

Comment: Rule Should be Clarified Regarding Continued Assistance Provided Before November 29, 1996. One commenter wrote that it was not completely clear that "continued assistance," for purposes of families receiving housing assistance before November 29, 1996, means non-prorated assistance. The commenter requested that § 5.518(a)(2) be revised to clarify this provision of the 1996 Immigration Act. In addition, this commenter wrote that the aggregate deferral period for a tenant who was granted a temporary deferral before November 29, 1996, is three years from the date the first deferral was granted.

HUD Response. Section 5.518(a)(2) provides, a family granted continued assistance before November 29, 1996 is entitled to receive non-prorated assistance. A family granted continued assistance after November 29, 1996 must receive prorated assistance. In response to the commenter's second comment, § 5.518(b)(3) provides that the "aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years."

Comment: Reference to Refugees and Asylees is Confusing. One commenter wrote that the reference to refugees and asylees in § 5.518(b)(3) was confusing, since these individuals have eligible status under the statute and their presence in a family would not be cause for terminating assistance or deferring termination any more than the presence of a citizen would be.

HUD Response. The language of § 5.518(b)(3) exempting certain categories of noncitizens from the 18-month maximum deferral period tracks the statutory language of the 1996 Immigration Act. The language serves to remind responsible entities of the statutory exemption. Accordingly, the language has been retained.

VI. Nondiscrimination in the Implementation of Section 214

HUD reiterates the statement made in the March 20, 1995 final rule and the November 29, 1996 interim rule that all regulatory procedures in implementation of Section 214 must be administered in the uniform manner prescribed without regard to race, national origin, or personal characteristics (e.g., accent, language spoken, or familial association with a noncitizen).

VII. Findings and Certifications

Executive Order 12866, Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review.* OMB determined that this interim rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Public Law 104–4; approved March 22, 1995) (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed this final rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. As explained in the preamble to the November 29, 1996 interim rule, the implementation of HUD's noncitizen requirements have only a minimal impact on small housing project owners, small mortgagees, and small housing agencies. The amendments made final by this rule do not alter that previous determination. This final rule does not require the creation of new procedures or impose significant additional costs on responsible entities. Rather, the requirements of the final rule can be satisfied through the use of existing procedures. For example, the final rule prohibits responsible entities from making assistance available to a noncitizen until the necessary documentation establishing eligible immigration status is verified. This requirement can be fulfilled by utilizing the existing verification procedures. Likewise, current methods may be used to prorate the assistance provided to an eligible mixed family receiving continued assistance.

Environmental Impact

A Finding of No Significant Impact with respect to the environment was made at the interim rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). That finding continues to be applicable to this final rule and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism,* has determined that the policies contained in this final have no federalism implications, and that the policies are not subject to review under the Order. This interim rule addresses immigration, a topic exclusively the province of the Federal government, and the effect is the direct result of the statute that imposes the restriction against assistance to noncitizens, rather than a result of HUD's exercise of

discretion in promulgating a rule to implement the statute.

List of Subjects in 24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Individuals with disabilities, Intergovernmental relations, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Penalties, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

Accordingly, for the reasons stated in the preamble, 24 CFR part 5 is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

Subpart E—Restrictions on Assistance to Noncitizens

2. The authority citation for subpart E continues to read as follows:

Authority: 42 U.S.C. 1436a and 3535(d).

§ 5.501 [Removed]

3. Remove § 5.501.

4. Section 5.508 is amended by revising paragraphs (b)(1), (b)(2), (h)(2) and (h)(3) to read as follows:

§ 5.508 Submission of evidence of citizenship, or eligible immigration status.

* * * * *

(b) * * *

(1) For U.S. citizens or U.S. nationals, the evidence consists of a signed declaration of U.S. citizenship or U.S. nationality. The responsible entity may request verification of the declaration by requiring presentation of a United States passport or other appropriate documentation, as specified in HUD guidance.

(2) For noncitizens who are 62 years of age or older or who will be 62 years of age or older and receiving assistance under a Section 214 covered program on September 30, 1996 or applying for assistance on or after that date, the evidence consists of:

(i) A signed declaration of eligible immigration status; and

(ii) Proof of age document.

* * * * *

(h) * * *

(2) *Thirty-day extension period.* Any extension of time, if granted, shall not exceed thirty (30) days. The additional time provided should be sufficient to allow the individual the time to obtain the evidence needed. The responsible entity's determination of the length of the extension needed shall be based on the circumstances of the individual case.

(3) *Grant or denial of extension to be in writing.* The responsible entity's decision to grant or deny an extension as provided in paragraph (h)(1) of this section shall be issued to the family by written notice. If the extension is granted, the notice shall specify the extension period granted (which shall not exceed thirty (30) days). If the extension is denied, the notice shall explain the reasons for denial of the extension.

* * * * *

5. Section 5.510 is amended by revising paragraph (b) to read as follows:

§ 5.510 Documents of eligible immigration status.

* * * * *

(b) *Acceptable evidence of eligible immigration status.* Acceptable evidence of eligible immigration status shall be the original of a document designated by INS as acceptable evidence of immigration status in one of the six categories mentioned in § 5.506(a) for the specific immigration status claimed by the individual.

6. Section 5.512 is amended by:

a. Revising paragraph (a);

b. Adding new paragraph (b); and

c. Redesignating existing paragraphs (b) through (d) as paragraphs (c) through (e), respectively to read as follows:

§ 5.512 Verification of eligible immigration status.

(a) *General.* Except as described in paragraph (b) of this section and § 5.514, no individual or family applying for assistance may receive such assistance prior to the verification of the eligibility of at least the individual or one family member. Verification of eligibility consistent with § 5.514 occurs when the individual or family members have submitted documentation to the responsible entity in accordance with § 5.508.

(b) *PHA election to provide assistance before verification.* A PHA that is a responsible entity under this subpart may elect to provide assistance to a family before the verification of the eligibility of the individual or one family member.

* * * * *

7. Section 5.514 is amended by:

a. Revising paragraph (b);

b. Revising paragraph (c)(1);

c. Revising paragraph (e)(1); and

d. Revising paragraph (f)(1), to read as follows:

§ 5.514 Delay, denial, reduction or termination of assistance.

* * * * *

(b) *Restrictions on delay, denial, reduction or termination of assistance.* (1) *Restrictions on reduction, denial or termination of assistance for applicants and tenants.* Assistance to an applicant or tenant shall not be delayed, denied, reduced, or terminated, on the basis of ineligible immigration status of a family member if:

(i) The primary and secondary verification of any immigration documents that were timely submitted has not been completed;

(ii) The family member for whom required evidence has not been submitted has moved from the assisted dwelling unit;

(iii) The family member who is determined not to be in an eligible immigration status following INS verification has moved from the assisted dwelling unit;

(iv) The INS appeals process under § 5.514(e) has not been concluded;

(v) Assistance is prorated in accordance with § 5.520; or

(vi) Assistance for a mixed family is continued in accordance with §§ 5.516 and 5.518; or

(vii) Deferral of termination of assistance is granted in accordance with §§ 5.516 and 5.518.

(2) *Restrictions on delay, denial, reduction or termination of assistance pending fair hearing for tenants.* In addition to the factors listed in paragraph (b)(1) of this section, assistance to a tenant cannot be delayed, denied, reduced or terminated until the completion of the informal hearing described in paragraph (f) of this section.

(c) *Events causing denial or termination of assistance.* (1) *General.* Assistance to an applicant shall be denied, and a tenant's assistance shall be terminated, in accordance with the procedures of this section, upon the occurrence of any of the following events:

(i) Evidence of citizenship (i.e., the declaration) and eligible immigration status is not submitted by the date specified in § 5.508(g) or by the expiration of any extension granted in accordance with § 5.508(h);

(ii) Evidence of citizenship and eligible immigration status is timely submitted, but INS primary and secondary verification does not verify eligible immigration status of a family member; and

(A) The family does not pursue INS appeal or informal hearing rights as provided in this section; or

(B) INS appeal and informal hearing rights are pursued, but the final appeal or hearing decisions are decided against the family member; or

(iii) The responsible entity determines that a family member has knowingly permitted another individual who is not eligible for assistance to reside (on a permanent basis) in the public or assisted housing unit of the family member. Such termination shall be for a period of not less than 24 months. This provision does not apply to a family if the ineligibility of the ineligible individual was considered in calculating any proration of assistance provided for the family.

* * * * *

(e) *Appeal to the INS.* (1) *Submission of request for appeal.* Upon receipt of notification by the responsible entity that INS secondary verification failed to confirm eligible immigration status, the responsible entity shall notify the family of the results of the INS verification, and the family shall have 30 days from the date of the responsible entity's notification, to request an appeal of the INS results. The request for appeal shall be made by the family communicating that request in writing directly to the INS. The family must provide the responsible entity with a copy of the written request for appeal and proof of mailing.

* * * * *

(f) *Informal hearing.* (1) *When request for hearing is to be made.* After notification of the INS decision on appeal, or in lieu of request of appeal to the INS, the family may request that the responsible entity provide a hearing. This request must be made either within 30 days of receipt of the notice described in paragraph (d) of this section, or within 30 days of receipt of the INS appeal decision issued in accordance with paragraph (e) of this section.

* * * * *

8. Section 5.516 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 5.516 Availability of preservation assistance to mixed families and other families.

* * * * *

(c) *Assistance available to other families in occupancy.* Temporary deferral of termination of assistance may be available to families receiving assistance under a Section 214 covered program on June 19, 1995, and who have no members with eligible immigration status, as set forth in paragraphs (c)(1) and (2) of this section.

* * * * *

9. Section 5.518 is amended by revising paragraphs (a), (b)(3) and (b)(5) to read as follows:

§ 5.518 Types of preservation assistance available to mixed families and other families.

(a) *Continued assistance.* (1) *General.* A mixed family may receive continued housing assistance if all of the following conditions are met (a mixed family assisted under a Housing covered program must be provided continued assistance if the family meets the following conditions):

(i) The family was receiving assistance under a Section 214 covered program on June 19, 1995;

(ii) The family's head of household or spouse has eligible immigration status as described in § 5.506; and

(iii) The family does not include any person (who does not have eligible immigration status) other than the head of household, any spouse of the head of household, any parents of the head of household, any parents of the spouse, or any children of the head of household or spouse.

(2) *Proration of continued assistance.* A family entitled to continued assistance before November 29, 1996 is entitled to continued assistance as described in paragraph (a) of this section. A family entitled to continued assistance after November 29, 1996 shall receive prorated assistance as described in § 5.520.

(b) * * *

(3) *Time limit on deferral period.* If temporary deferral of termination of assistance is granted, the deferral period shall be for an initial period not to exceed six months. The initial period may be renewed for additional periods of six months, but the aggregate deferral period for deferrals provided after November 29, 1996 shall not exceed a period of eighteen months. The aggregate deferral period for deferrals granted prior to November 29, 1996 shall not exceed 3 years. These time periods do not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act.

* * * * *

(5) *Determination of availability of affordable housing at end of each deferral period.* (i) Before the end of each deferral period, the responsible entity must satisfy the applicable requirements of either paragraph (b)(5)(i)(A) or (B) of this section. Specifically, the responsible entity must:

(A) *For Housing covered programs:* Make a determination that one of the two conditions specified in paragraph (b)(2) of this section continues to be met (note: affordable housing will be determined to be available if the vacancy rate is five percent or greater), the owner's knowledge and the tenant's evidence indicate that other affordable housing is available; or

(B) *For Section 8 or Public Housing covered programs:* Make a determination of the availability of affordable housing of appropriate size based on evidence of conditions which when taken together will demonstrate an inadequate supply of affordable housing for the area in which the project is located, the consolidated plan (if applicable, as described in 24 CFR part 91), the responsible entity's own knowledge of the availability of affordable housing, and on evidence of the tenant family's efforts to locate such housing.

(ii) The responsible entity must also:

(A) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination will be deferred again (provided that the granting of another deferral will not result in aggregate deferral periods that exceeds the maximum deferral period). This time period does not apply to a family which includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act, and a determination was made that other affordable housing is not available; *or*

(B) Notify the tenant family in writing, at least 60 days in advance of the expiration of the deferral period, that termination of financial assistance will not be deferred because either granting another deferral will result in aggregate deferral periods that exceed the maximum deferral period (unless the family includes a refugee under section 207 of the Immigration and Nationality Act or an individual seeking asylum under section 208 of that Act), or a determination has been made that other affordable housing is available.

* * * * *

10. Section 5.526 is revised to read as follows:

§ 5.526 Protection From liability for responsible entities and State and local government agencies and officials.

(a) *Protection from liability for responsible entities.* Responsible entities are protected from liability as set forth in Section 214(e) (42 U.S.C 1436a(e)).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in § 5.512, as long as the implementation by the State and local government agency or official is in accordance with prescribed HUD rules and requirements.

Dated: April 30, 1999.

Andrew Cuomo,

Secretary.

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Part V

Department of Housing and Urban Development

24 CFR Part 761

Public Housing Drug Elimination: Program Formula Allocation; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 761

[Docket No. FR–4451–P–02]

RIN 2577–AB95

Public Housing Drug Elimination Program Formula Allocation

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend HUD regulations to replace the competitive distribution of HUD's Public and Indian Housing Drug Elimination Program (PHDEP) funds with a formula allocation funding system. The purpose of this amendment is to provide a more timely, predictable and equitable allocation of PHDEP funds. The competitive distribution of funding through the Assisted Housing component of the Drug Elimination Program would not be affected by this rule.

DATES: Comment Due Date: July 12, 1999.

ADDRESSES: Interested persons are invited to submit comments to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) responses are not acceptable. A copy of each response will be available for public inspection and copying during regular business hours (7:30 a.m. to 5:30 p.m. Eastern Time at the above address).

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339. Also, please see HUD's website at http://www.hud.gov/pih/legis/titlev.html for additional PHDEP information.

SUPPLEMENTARY INFORMATION:

I. Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) makes certain amendments to the Public and Assisted Housing Drug Elimination Act of 1990, including authorizing HUD to make renewable grants to public housing agencies (PHAs). HUD is to provide preference in funding to these public housing agencies, but this preference does not preclude selection by the Secretary of other meritorious public housing agencies that need funding to address urgent or serious crime problems.

On February 18, 1998 (64 FR 8210), HUD published an Advance Notice of Proposed Rulemaking (ANPR) to solicit comments on possible methods and elements of a need based formula and performance criteria. Further, HUD welcomed any formula methods for consideration that housing agencies or other interested members of the public may have devised. Public comments received in response to this notice were considered in the development of this proposed rule on formula funding for PHDEP, and are discussed in the following section.

II. Public Comment on the ANPR

HUD received 60 comments on the ANPR. The commenters addressed the options for PHDEP funding, and offered several recommendations on how funding may be allocated. This proposed rule takes into consideration the comments received on the ANPR, as discussed below.

Opposition to Formula Funding

Several commenters opposed the change to formula allocation. Their concern was that providing funding to a somewhat greater number of applicants under a formula would reduce the amount that was previously made available to individual applicants who successfully competed for funding.

HUD remains convinced that formula allocation for this program is the better method for allocating PHDEP funds. First, formula allocation of funding for a period of years eliminates the uncertainty of competitive funding and permits the development and implementation of long range plans. Second, as many commenters pointed out, success in funding competitions is often related to the "creative writing" ability of an applicant, an applicant's capacity to hire a professional grants writer, and the subjective preferences of reviewers. These unfavorable characteristics would be avoided under a formula system of funding. Third, the timing of funding availability under a formula process will be more consistent and regular than under a competitive process. Fourth, a formula will relieve the administrative burden on PHAs and HUD, by eliminating the competitive NOFA process. For these reasons, HUD has determined that a formula approach to PHDEP funding will provide a more timely, predictable and equitable allocation of PHDEP funds.

Criticisms of Funding Formula

Although many of the commenters supported the idea of formula funding, the formula itself was criticized on several points. Among the criticisms was that the formula was difficult to understand; that it used incomplete or invalid data; that the same bedroom mix factor was used more than once; that the weights assigned to the formula's components were not justified, and that the results were not replicable.

This rule proposes to address these criticisms by using a greatly simplified formula for the allocation of PHDEP funding. The amount that will be made available to an applicant qualifying for funding will be based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of $35 million and a minimum award of $25,000.

Minimum Amount of Funding

Several commenters addressed the issue of the minimum amount of formula funding. Some favored maintaining the $50,000 minimum available under the competitive system; some favored the suggested $25,000 minimum; and others supported a minimum without specifying an amount.

This rule proposes to go forward with the $25,000 minimum amount of funding. The certainty of funding over five years is proposed to compensate for any problems resulting from the drop in minimum funding. The great majority of beneficiaries of the minimum funding amount is expected to be small applicants that were not previously funded and that would be able to undertake meaningful activities with the minimum amount.

Establish Two Pools of PHDEP Funding

Several commenters suggested that PHDEP funding be divided into two pools, one to be allocated according to a formula, and the other awarded on the basis of a competition.

HUD does not support such a system because it would substantially

compromise the savings in administrative burden to PHAs and HUD that would be available under a formula system.

III. Changes in This Proposed Rule

This rule proposes to amend the Drug Elimination Program (DEP) regulations at 24 CFR part 761 to implement Public Housing Reform Act section 586. In particular, it would amend the way that public housing drug elimination funds are distributed, as explained in the following discussion.

Statutory Changes to DEP Funding and Eligibility

Section 586(e) of the Public Housing Reform Act amends section 5125 of the Anti-Drug Abuse Act of 1988 (ADAA) (the Public and Assisted Housing Drug Elimination Program is authorized under sections 5121 through 5130 of ADAA). Before being amended by section 586(e), section 5125(b) provided that HUD "shall approve applications under this chapter based exclusively on" a list of four factors. This language placed strict limitations on the manner in which HUD could distribute drug elimination funds. Section 586(e) redesignates paragraphs (b) through (d) of section 5125 as paragraphs (c) through (e), respectively, and amends the limiting language in redesignated paragraph (c) to provide that HUD "shall approve applications under subsection (b) that are not subject to a preference under subsection (b)(2)(A) on the basis of thresholds or criteria such as" followed by the same four factors.

Section 586 adds both structure and flexibility to the funding process of the drug elimination program. By replacing the tightly controlling parameters of "based exclusively on" with the expansive "on the basis of thresholds or criteria such as", section 586 provides HUD with greater flexibility in the way DEP funds are distributed. Section 586 also introduces non-competitive, renewable grants as a way of distributing drug elimination funds. The new subsection (b) added to ADAA section 5125 by Public Housing Reform Act section 586 reads as follows:

(b) One-Year Renewable Grants—

(1) In General—An eligible applicant that is a public housing agency may apply for a 1-year grant under this chapter that, subject to the availability of appropriated amounts, shall be renewed annually for a period of not more than 4 additional years, except that such renewal shall be contingent upon the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe. The Secretary may adjust the amount of any grant received or renewed under this paragraph to take into account increases or decreases in amounts appropriated for these purposes or such other factors as the Secretary determines to be appropriate.

(2) Eligibility and Preference—The Secretary may not provide assistance under this chapter to an applicant that is a public housing agency unless—

(A) the agency will use the grants to continue or expand activities eligible for assistance under this chapter, as in effect immediately before the effective date under section 503(a) of the Quality Housing and Work Responsibility Act of 1998, in which case the Secretary shall provide preference to such applicant; except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems nor be construed to require continuation of activities determined by the Secretary to be unworthy of continuation; or

(B) the agency is in the class established under paragraph (3).

(3) PHA's Having Urgent or Serious Crime Problems—The Secretary shall, by regulations issued after notice and opportunity for public comment, set forth criteria for establishing a class of public housing agencies that have urgent or serious crime problems. The Secretary may reserve a portion of the amount appropriated to carry out this chapter in each fiscal year only for grants for public housing agencies in such class, except that any amounts from such portion reserved that are not obligated to agencies in the class shall be made available only for agencies that are subject to a preference under paragraph (2)(A).

(4) INAPPLICABILITY TO FEDERALLY ASSISTED LOW-INCOME HOUSING—The provisions of this subsection shall not apply to federally assisted low-income housing.

In Senate colloquy before passage of the Public Housing Reform Act, Senator Mack noted that the amendments made to the Public and Assisted Housing Drug Elimination Act of 1990 represent a significant improvement in the program. The Senator stated:

The amendments will provide renewable grants for agencies that meet performance standards established by HUD. In addition, housing authorities with urgent or serious crime needs are protected and will be assured an equitable amount of funding.

* * * [T]he intent of these provisions is to provide more certain funding for agencies with clear needs for funds and to assure that both current funding recipients and other agencies with more urgent or serious crime problems are appropriately assisted by the program. The provisions will also reduce the administrative costs of the current application process which entails a substantial paperwork burden for agencies and HUD. Under the terms of the amendments, HUD can establish a fixed funding mechanism in which the relative needs of housing authorities are addressed with a greater amount of certainty.

(Congressional Record of October 8, 1998, S.11842)

The new language of ADAA section 5125(b), as revised by Public Housing Reform Act section 586(e)(6), addresses the manner in which the categories of eligible DEP applicants (PHAs, RMCs, NAHASDA recipients, consortia, and owners of federally assisted low income housing) are to be funded. PHAs are divided into two categories for funding purposes. The first category consists of PHAs that will "use the grants to continue or expand activities eligible for assistance" under the drug elimination program. The requirement that funds must be used to "continue or expand" activities indicates that PHAs in this category must have previously received DEP funding, or they would not have any activities that could be continued or expanded. HUD has determined that PHAs that successfully competed for PHDEP funding under at least one of the Notices of Funding Availability for Federal Fiscal Years (FFYs) 1996, 1997 and 1998 would have activities to continue or expand and would constitute the first category of PHAs that qualify for funding. Further, revised section 5125(b)(2)(A) states that PHAs in this category are to be provided a preference for funding. How HUD will fund these "preference PHAs" is explained below in the discussion of the funding formula proposed by this rule.

The second category of PHAs that qualify for funding is covered by an exception to the preference. This exception is also found in section 5125(b)(2)(A), in the language which states, "except that preference under this subparagraph shall not preclude selection by the Secretary of other meritorious applications that address urgent or serious crime problems". The funding formula discussed below would define what PHAs fall into this "needs" category and the amount of funding each would qualify to receive.

RMCs and NAHASDA recipients would also qualify for "needs" funding under the exception language of section 5125(b)(2)(A), on the basis of "meritorious applications that address urgent or serious crime problems". The determination of how NAHASDA recipients and RMCs qualify for needs funding and the amounts they would receive are explained under the formula funding discussion, below.

A consortium of eligible applicants would qualify for at least the amount of funding for which its individual members would qualify on a preference or a needs basis. Consortia are more fully discussed under a separate heading in this preamble, below.

HUD is seeking comment in particular on methods and the desirability of providing more of a financial incentive for consortia.

Federally assisted low-income housing is specifically excluded from the provisions of revised section 5125(b) of ADAA, by section 5125(b)(4). Assisted housing DEP funding will continue to be made available on a competitive basis under periodic NOFAs published in the **Federal Register**.

Proposed PHDEP Formula Funding

This rule proposes to distribute all PHDEP funding in a noncompetitive manner through the use of a funding formula. The new language in revised ADAA section 5125(c), discussed above, provides HUD with the flexibility to follow this formula approach. The funding formula process satisfies the section 5125(c) requirement that HUD "approve applications under subsection (b) that are not subject to a preference under subsection (b)(2)(A) on the basis of thresholds or criteria such as" the four listed factors. The manner in which eligible applicants qualify for funding through the formula process is sufficient to satisfy the new, more expansive "such as" requirement which replaced the exclusive reliance upon the four listed ADAA factors.

The application of a funding cut-off point, or threshold, to the ranking of eligible applicants derived through the formula process also satisfies the requirement of the "needs" exception in section 5125(b)(2)(A), that the selection "of other meritorious applications that address urgent or serious crime problems" not be precluded. This rule provides that non-preference PHAs, NAHASDA recipients, and RMCs in the top 50% (the cut-off point or threshold) of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community have needs that qualify for funding. Needs in the top 50% are above average needs, and this broad approach to addressing "urgent or serious crime problems" will assure the broad distribution of PHDEP funding. Needs in the bottom 50% are below average and, therefore, difficult to characterize as "urgent or serious".

The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of the same or a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used.

The use of a funding cut-off point in the ranking also addresses the preference requirement for previously funded (in FFYs 1996, 1997 or 1998) PHAs. These PHAs will be funded regardless of any ranking, providing them with the preference of assured funding. Renewal of funding under section 5125(b)(1) of ADAA for preference PHAs is contingent only upon "the Secretary finding, upon an annual or more frequent review, that the grantee agency is performing under the terms of the grant and applicable laws in a satisfactory manner and meets such other requirements as the Secretary may prescribe." Of course, as section 5125(b)(2)(A) of ADAA also provides, the preference shall not be "construed to require continuation of activities determined by the Secretary to be unworthy of continuation".

In addition to addressing the preference requirement and determining what "needs" applicants will qualify for funding, a formula would determine the amount each applicant that qualifies for funding would receive. The proposed formula at § 761.13 would distribute PHDEP funding based upon a qualified applicant's (an applicant that qualifies on the basis of preference or need) share of the total number of units of all eligible applicants that qualify for funding, with a maximum award of $35 million and a minimum award of $25,000. The amount an applicant that qualifies for funding would receive in any given FFY would vary in proportion to the amounts appropriated annually for the DEP, but would not exceed the established maximum or minimum amounts.

The Department specifically requests comment on whether the proposed formula funding is appropriate for NAHASDA recipients, and will consider implementing alternative methods of funding this category of eligible applicants. Also, please see the discussion under the heading, "Funding of NAHASDA Recipients," below in this preamble.

DEP Application and Plan Requirement

To qualify for funding, an eligible applicant must still meet the ADAA section 5125(a) requirement of submitting a plan for addressing the problem of drug-related or violent crime in and around the recipient's housing. This rule addresses the plan requirement by providing, at § 761.15, that a PHA must include a DEP plan with its PHA Plan, submitted pursuant to 24 CFR part 903, as a qualification for DEP funding. Similarly, as a qualification for DEP funding, a NAHASDA recipient must include a DEP plan with its Indian Housing Plan (IHP), submitted pursuant to subpart C of 24 CFR part 1000. As for RMCs, a qualification for funding is that an RMC must submit a PHDEP plan to its PHA. The PHA must then submit, with its PHA Plan, the RMC's PHDEP plan. The minimum requirements for the contents of a PHDEP plan are contained in a new § 761.21. The PHDEP plan serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded.

HUD specifically solicits comments on ways to further streamline the PHDEP plan and performance reporting. HUD is continuing to develop model outcome measures with specific, measurable goals for PHDEP-funded activities, including the overall reduction of violent crime and drug use.

AHDEP applicants will continue to apply in accordance with the requirements of NOFAs published in the **Federal Register**.

Recipients who qualify and receive funding will be reviewed at least annually as grantees to determine if they meet the performance requirements proposed in a new § 761.23. A grantee that fails to satisfy the performance requirements of this section may be subject to the sanctions listed in § 761.30(f)(2).

Consortia

This rule would also establish the requirements for the eligibility and funding of consortia. The rule permits eligible applicants to join together and form a consortium to apply under PHDEP, whether or not each member would individually qualify for funding as a preference PHA or a needs recipient in the top 50% of the formula ranking. To qualify for funding, the consortium members must prepare and submit a consortium DEP plan that meets the requirements of a DEP plan contained in § 761.21. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding to the extent the individual applicants qualify. The consortium's DEP plan must include a written agreement, signed by an authorized representative of each consortium member, that designates a lead applicant for purposes of grant funding and administration, and as a

central point of contact, and describes the activities and responsibilities that each consortium member is bound to undertake. Each member must submit the consortium plan with its PHA plan or IHP, as appropriate.

HUD will make the determination of the amount of funding the consortium as a whole will receive upon first receipt and favorable review of a consortium's plan. The amount of funding made available to the consortium will be the total of the amounts that each individual member would otherwise qualify to receive, on either a preference or needs basis, under the funding formula. The Department specifically requests comment on methods and the desirability of providing more of a financial incentive for consortia.

Funding of NAHASDA Recipients

An option HUD wishes to present for comment is whether to establish a separate pool to fund NAHASDA recipients. The lack of full FBI data on Indian Country and the difficulty of formulating appropriate comparable data make it difficult to fund NAHASDA recipients on the same basis as PHAs. Rather than including NAHASDA recipients in the same funding pool with PHAs, HUD would make separate DEP funding available for NAHASDA recipients. The amount of funding available would be set at a level that is significantly greater percentage of the total amounts made available than the average of the amounts received by Indian tribes, IHAs, or tribally designated housing entities (TDHEs) in FFYs 1996, 1997 and 1998. The increase under such a formulation would be in keeping with the overall increase in HUD funding that took place when Native American housing assistance was consolidated under NAHASDA.

HUD welcomes suggestions on the basis on which additional NAHASDA recipients may be permitted to qualify, short of requiring the submission and verification of extensive data, because it is HUD's goal to streamline the funding process for all categories of PHDEP applicants.

IV. Findings and Certifications

Paperwork Reduction Act Statement

The proposed information collection requirements contained in this rule, and the additional PHDEP requirements at 24 CFR part 761 not affected by this rule, including the changeover in the reporting requirements under § 761.35 from a hardcopy format to an electronic format, have been submitted to the Office of Management and Budget (OMB) for review under section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Estimate of the total reporting and recordkeeping burden that will result from the collection of information:

REPORTING AND RECORDKEEPING BURDEN

Section reference	Number of parties	Annual freq. of requirement	Est. avg. time for requirement (hours)	Est. annual burden (hrs.)
761.17	600	1	16	9,600
761.21	1100	1	25	27,500
761.23	1100	1	8	8,800
761.25	7000	1	1	7,000
761.30	1100	1	16	17,600
761.35	1100	7	22	169,400
Total Reporting and Recordkeeping Burden (Hours)				239,900

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4451) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;
and

Mildred Hamman, Reports Liaison Officer, Office of the Assistant Secretary for Public and Indian Housing, Department of Housing & Urban Development, 451—7th Street, SW, Room 4244, Washington, DC 20410.

Additional information on these information collection requirements may be obtained from the Reports Liaison Officer or from the HUD web site at http://www.hud.gov/pih/programs/ph/de/cscd.html.

Executive Order 12866

The Office of Management and Budget (OMB) has reviewed this advanced notice of proposed rulemaking (ANPR) under Executive Order 12866, *Regulatory Planning and Review*, issued by the President on September 30, 1993. Any changes made in this ANPR subsequent to its submission to OMB are identified in the docket file, which is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Room 10276, U.S. Department of Housing and Urban

Development, 451 Seventh Street, SW, Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this proposed rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. The proposed rule begins the rulemaking process to implement changes for the distribution of Public Housing Drug Elimination Program funds under the Quality Housing and Work Responsibility Act of 1998. A significant economic impact on a substantial number of small entities is not expected because under this proposal, all small entities previously funded will continue to be funded at comparable levels. Although HUD has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities, HUD welcomes comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble. The rule will have no adverse or disproportionate economic impact on small businesses.

Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.19(c)(2) of the HUD regulations, this rule amends an existing document, the regulations at 24 CFR part 761, which as a whole would not fall within an exclusion, but the amendment by itself would do so. Therefore, the actions proposed in this document are determined not to have the potential of having a significant impact on the quality of the human environment and further review under the National Environmental Policy Act is not necessary and no FONSI is needed.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule will not have substantial direct effects on States or their political subdivisions, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government. No programmatic or policy changes will result from this rule that would affect the relationship between the Federal Government and State and local governments.

List of Subjects in 24 CFR Part 761

Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Grant programs—low and moderate income housing, Indians, Public housing, Reporting and recordkeeping requirements.

Catalog of Domestic Assistance Numbers

The Catalog of Domestic Assistance numbers for the Public Housing Drug Elimination Program is 14.854.

Accordingly, for the reasons stated in the preamble, part 761 of title 24 of the Code of Federal Regulations is amended as follows:

PART 761—DRUG ELIMINATION PROGRAMS

1. The authority citation for 24 CFR part 761 continues to read as follows:

Authority: 42 U.S.C. 3535(d) and 11901 *et seq.*

2. In part 761, all references to "drug-related crime" are revised to read "drug-related and violent crime" and all references to "Indian housing authorities (IHAs)" are revised to read "NAHASDA recipients".

3. In § 761.1, the introductory text is revised to read as follows:

§ 761.1 Purpose and scope.

This part 761 contains the regulatory requirements for the Assisted Housing Drug Elimination Program (AHDEP) and the Public Housing Drug Elimination Program (PHDEP). The purposes of these programs are to:

* * * * *

4. Section 761.5, is revised to read as follows:

§ 761.5 Public housing; encouragement of resident participation.

For the purposes of the Public Housing Drug Elimination Program, the elimination of drug-related and violent crime within public housing developments requires the active involvement and commitment of public housing residents and their organizations. To enhance the ability of PHAs to combat drug-related and violent crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) will be permitted to undertake management functions specified in this part, notwithstanding the otherwise applicable requirements of 24 CFR part 964.

5. In § 761.10, the introductory text is revised, the definition of *Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient)* is added in alphabetical order, and the definition of *Resident Management Corporation (RMC)* is revised, to read as follows:

§ 761.10 Definitions.

The definitions *Department, HUD,* and *Public Housing Agency (PHA)* are defined in 24 CFR part 5.

* * * * *

Recipient of assistance under the Native American Housing Assistance and Self-Determination Act of 1996 (NAHASDA recipient) shall have the same meaning as recipient provided in section 4 of the Native American Housing Assistance and Self-Determination Act of 1996 (25 U.S.C. 4101 *et seq.*).

* * * * *

Resident Management Corporation (RMC), for purposes of the Public Housing Program, means the entity that proposes to enter into, or that enters into, a management contract with a PHA under 24 CFR part 964 in accordance with the requirements of that part.

* * * * *

6. The heading of subpart B is revised to read as follows:

Subpart B—Grant Funding

7. A new § 761.13 is added to read as follows:

§ 761.13 Amount of funding.

(a) *PHDEP formula funding.* (1) *Funding share formula.* The amount of funding made available each FFY to an applicant that qualifies for funding in accordance with § 761.15(a) is based upon the applicant's share of the total number of units of all applicants that qualify for funding, with a maximum award of $35 million and a minimum award of $25,000.

(2) *Consortium funding.* The amount of funding made available to a consortium will be the total of the amounts that each individual member would otherwise qualify to receive under the PHDEP funding formula in accordance with paragraph (a)(1) of this section.

(3) *Adjustments to funding.* The amount of funding made available each FFY to an applicant in accordance with paragraphs (a)(1) and (a)(2) of this section may be adjusted as follows:

(i) An applicant must submit a PHDEP plan that meets the requirements of § 761.21, as required by § 761.15(a)(5), each FFY year to receive that FFY's funding. An applicant that does not submit a PHDEP plan for a FFY as

required will not receive that FFY's funding.

(ii) Ineligible activities, described at § 761.17(b), are not eligible for funding. Activities proposed for funding in an applicant's PHDEP plan that are determined to be ineligible will not be funded, and the applicant's funding for that FFY may be reduced accordingly.

(iii) In accordance with § 761.15(a)(6), an applicant that does not meet the performance requirements of § 761.23 may not be funded, in whole or in part.

(iv) Any amounts that become available because of adjustments to an applicant's funding will be distributed to every other applicant that qualifies for funding in accordance with paragraphs (a)(1) and (a)(2) of this section.

(b) *AHDEP funding.* Information concerning funding made available under AHDEP for a given FFY will be contained in Notices of Funding Availability (NOFAs) published in the **Federal Register**.

8. Section 761.15 is revised to read as follows:

§ 761.15 Qualifying for funding.

(a) *Qualifications for PHDEP funding.* (1) *Eligible applicants.* The following are eligible applicants for PHDEP funding:

(i) A PHA;

(ii) A NAHASDA recipient;

(iii) An RMC; and

(iv) A consortium of PHAs.

(2) *Preference PHAs.* A PHA that successfully competed for PHDEP funding under at least one of the PHDEP NOFAs for FFY 1996, FFY 1997 or FFY 1998 qualifies to receive PHDEP funding.

(3) *Needs qualification for funding.* A PHA that does not qualify to receive PHDEP funding under paragraph (a)(2) of this section, a NAHASDA recipient, or an RMC must be in the top 50% of the unit-weighted distribution of an index of a rolling average rate of violent crimes of the community, as computed for each Federal Fiscal Year (FFY) to qualify for funding. The crime rate used in this needs determination formula is the rate, from the most recent years feasible, of FBI violent crimes per 10,000 residents of the community (or communities). If this information is not available for a particular applicant's community, HUD will use the average of data from recipients of a comparable State and size category of PHA (less than 500 units, 500 to 1249 units, and more than 1250 units). If fewer than five PHAs have data for a given size category within a State, then the average of PHAs for a given size category within the census region will be used.

(4) *Consortium of eligible applicants.* Eligible applicants may join together and form a consortium to apply for funding, whether or not each member would individually qualify for PHDEP funding under paragraphs (a)(2) or (a)(3) of this section. The act of two or more eligible applicants joining together to form a consortium, and identifying related crime problems and eligible activities to address those problems pursuant to a consortium PHDEP plan, qualifies the consortium for PHDEP funding of an amount as determined under § 761.13(a)(2).

(5) *PHDEP plan requirement.* (i) *PHAs.* To receive PHDEP funding, a PHA that qualifies to receive PHDEP funding must include a PHDEP plan that meets the requirements of § 761.21 with its PHA Plan submitted pursuant to 24 CFR part 903.

(ii) *NAHASDA recipients.* To receive PHDEP funding, a NAHASDA recipient that qualifies to receive PHDEP funding must include a PHDEP plan that meets the requirements of § 761.21 with its Indian Housing Plan (IHP) submitted pursuant to subpart C of 24 CFR part 1000.

(iii) *RMCs.* To receive PHDEP funding, an RMC that qualifies to receive PHDEP funding must submit a PHDEP plan that meets the requirements of § 761.21 to its PHA. That PHA may submit, with its PHA Plan submitted pursuant to 24 CFR part 903, the RMC's PHDEP plan.

(iv) *Consortia.* To receive PHDEP funding, the consortium members must prepare and submit a consortium PHDEP plan that meets the requirements of § 761.21, including the additional requirements that apply to consortia. Each member must submit the consortium plan with its PHA plan, submitted pursuant to 24 CFR part 903, or IHP, submitted pursuant to subpart C of 24 CFR part 1000, as appropriate.

(6) An otherwise qualified recipient PHA, NAHASDA recipient, RMC or consortium may not be funded if HUD determines, on a case-by-case basis, that it does not meet the performance requirements of § 761.23.

(b) *Qualifications for AHDEP funding.* Under AHDEP, eligible applicants are owners of federally assisted low-income housing, as the term Federally *assisted low-income housing* is defined in § 761.10. Notices of Funding Availability (NOFAs) published in the **Federal Register** will contain specific information concerning funding requirements and eligible and ineligible applicants and activities.

9. A new § 761.17 is added to read as follows:

§ 761.17 Eligible and ineligible activities for funding.

(a) *Eligible activities.* One or more of the eligible activities described in 42 U.S.C. 11903 and in this § 761.17(a) are eligible for funding under PHDEP or AHDEP, as further explained or limited in paragraph (b) of this section and, for AHDEP, in separate annual Notices of Funding Availability (NOFAs). All personnel funded by these programs in accordance with an eligible activity must meet, and demonstrate compliance with, all relevant Federal, State, tribal, or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(1) *Employment of security personnel,* as provided in 42 U.S.C. 11903(a)(1), with the following additional requirements:

(i) *Security guard personnel.* (A) Contract security personnel funded by this program must perform services not usually performed by local law enforcement agencies on a routine basis.

(B) The applicant, the cooperating local law enforcement agency, and the provider (contractor) of the security personnel are required, as a part of the security personnel contract, to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the security personnel, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the security personnel are expressly prohibited from undertaking.

(ii) *Employment of HA police.* (A) If additional HA police are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of HA police is more cost efficient than obtaining the service from the local law enforcement agency.

(B) Additional HA police services to be funded under this program must be over and above those that the existing HA police, if any, provides, and the tribal, State or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An applicant seeking funding for this activity must first establish a baseline by describing the current level of services provided by both the local law enforcement agency and the HA police, if any (in terms of the kinds of services provided, the number of officers and equipment and the actual percent of their time assigned to the developments

proposed for funding), and then demonstrate that the funded activity will represent an increase over this baseline.

(C) The applicant and the cooperating local law enforcement agency are required to enter into and execute a written agreement that describes the following:

(*1*) The activities to be performed by the HA police, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(*2*) The types of activities that the HA police are expressly prohibited from undertaking.

(2) *Reimbursement of local law enforcement agencies for additional security and protective services,* as provided in 42 U.S.C. 11903(a)(2), with the following additional requirements:

(i) Additional security and protective services to be funded must be over and above those that the tribal, State, or local government is contractually obligated to provide under its Cooperation Agreement with the applying HA (as required by the HA's Annual Contributions Contract). An application seeking funding for this activity must first establish a baseline by describing the current level of services (in terms of the kinds of services provided, the number of officers and equipment, and the actual percent of their time assigned to the developments proposed for funding) and then demonstrate that the funded activity will represent an increase over this baseline.

(ii) Communications and security equipment to improve the collection, analysis, and use of information about drug-related or violent criminal activities in a public housing community may be eligible items if used exclusively in connection with the establishment of a law enforcement substation on the funded premises or scattered site developments of the applicant. Funds for activities under this section may not be drawn until the grantee has executed a contract for the additional law enforcement services.

(3) *Physical improvements to enhance security,* as provided in 42 U.S.C. 11903(a)(3). For purposes of PHDEP, the following provisions in paragraphs (a)(3)(i) through (a)(3)(iv) of this section apply:

(i) An activity that is funded under any other HUD program shall not also be funded by this program.

(ii) Funding is not permitted for physical improvements that involve the demolition of any units in a development.

(iii) Funding is not permitted for any physical improvements that would result in the displacement of persons.

(iv) Funding is not permitted for the acquisition of real property.

(4) *Employment of investigating individuals,* as provided in 42 U.S.C. 11903(a)(4). For purposes of PHDEP, the following provisions in paragraphs (a)(4)(i) and (a)(4)(ii) of this section apply:

(i) If one or more investigators are to be employed for a service that is also provided by a local law enforcement agency, the applicant must provide a cost analysis that demonstrates the employment of investigators is more cost efficient than obtaining the service from the local law enforcement agency.

(ii) The applicant, the cooperating local law enforcement agency, and the investigator(s) are required, before any investigators are employed, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the investigators, their scope of authority, and how they will coordinate their activities with the local law enforcement agency;

(B) The types of activities that the investigators are expressly prohibited from undertaking.

(5) *Voluntary tenant patrols,* as provided in 42 U.S.C. 11903(a)(5). For purposes of PHDEP, the following provisions in paragraphs (a)(5)(i) through (a)(5)(iv) of this section apply:

(i) The provision of training, communications equipment, and other related equipment (including uniforms), for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. Grantees are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol. The cost of this insurance will be considered an eligible program expense.

(ii) The applicant, the cooperating local law enforcement agency, and the members of the tenant patrol are required, before putting the tenant patrol into effect, to enter into and execute a written agreement that describes the following:

(A) The nature of the activities to be performed by the tenant patrol, the patrol's scope of authority, and how the patrol will coordinate its activities with the local law enforcement agency;

(B) The types of activities that a tenant patrol is expressly prohibited from undertaking, to include but not limited to, the carrying or use of firearms or other weapons, nightsticks, clubs, handcuffs, or mace in the course of their duties under this program;

(C) The type of initial tenant patrol training and continuing training the members receive from the local law enforcement agency (training by the local law enforcement agency is required before putting the tenant patrol into effect).

(iii) Tenant patrol members must be advised that they may be subject to individual or collective liability for any actions undertaken outside the scope of their authority and that such acts are not covered under a HA's or RMC's liability insurance.

(iv) Grant funds may not be used for any type of financial compensation for voluntary tenant patrol participants. However, the use of program funds for a grant coordinator for volunteer tenant foot patrols is permitted.

(6) *Drug prevention, intervention, and treatment programs,* as provided in 42 U.S.C. 11903(a)(6).

(7) *Funding resident management corporations (RMCs), resident councils (RCs), and resident organizations (ROs).* For purposes of the Public Housing Program, funding may be provided for PHAs that receive grants to contract with RMCs and incorporated RCs and ROs to develop security and drug abuse prevention programs involving site residents, as provided in 42 U.S.C. 11903(a)(7).

(8) *Youth sports.* Sports programs and sports activities that serve primarily youths from public or other federally assisted low-income housing projects and are operated in conjunction with, or in furtherance of, an organized program or plan designed to reduce or eliminate drugs and drug-related problems in and around such projects, as provided in 42 U.S.C. 11903(a)(8).

(9) *Eliminating drug-related and violent crime in PHA-owned housing,* under the Public Housing Program, as provided in 42 U.S.C. 11903(b).

(b) *Ineligible activities.* For purposes of PHDEP, funding is not permitted:

(1) For activities not included under paragraph (a) of this section;

(2) For costs incurred before the effective date of the grant agreement;

(3) For the costs related to screening or evicting residents for drug-related crime. However, investigators funded under this program may participate in judicial and administrative proceedings;

(4) For previously funded activities determined by HUD on a case-by-case basis to be unworthy of continuation.

10. Section 761.20 is revised to read as follows:

§ 761.20 Selection requirements.

(a) *PHDEP selection.* Every PHA, NAHASDA recipient, RMC and

consortium that meets the requirements of § 761.15 in a FFY will be selected for funding in that FFY and, subject to meeting the performance requirements of § 761.23, for four additional FFYs.

(b) *AHDEP selection.* HUD will publish specific Notices of Funding Availability (NOFAs) in the **Federal Register** to inform the public of the availability of AHDEP grant amounts under this part 761. The NOFAs will provide specific guidance with respect to the grant process, including identifying the eligible applicants; deadlines for the submission of grant applications; the limits (if any) on maximum grant amounts; the information that must be submitted to permit HUD to score each of the selection criteria; the maximum number of points to be awarded for each selection criterion; the contents of the plan for addressing drug-related and violent crime that must be included with the application; the listing of any certifications and assurances that must be submitted with the application; and the process for ranking and selecting applicants. NOFAs will also include any additional information, factors, and requirements that HUD has determined to be necessary and appropriate to provide for the implementation and administration of AHDEP under this part 761.

10. A new § 761.21 is added to read as follows:

§ 761.21 Plan requirement.

(a) *General requirement.* To receive funding under this part, each PHDEP qualified recipient or AHDEP applicant must submit to HUD a plan for addressing the problem of drug-related and violent crime in and around the housing covered by the plan. If the plan covers more than one development, it does not have to address each development separately if the same activities will apply to each development. The plan must address each development separately only where program activities will differ from one development to another. The plan must include a description of the planned activity or activities, a description of the role of plan partners and their contributions to carrying out the plan, a budget and timetable for implementation of the activities, and the funding source for each activity, identifying in particular all activities to be funded under this part. In addition, the plan must set measurable performance goals and interim milestones for the PHDEP-supported activities and describe the system for monitoring and evaluating these activities. Measurable goals must be established for each category of funded activities, including drug prevention, drug intervention, drug treatment, tenant patrols, and physical improvements. The plan under this section serves as the application for PHDEP funding, and an otherwise qualified recipient that does not submit a PHDEP plan as required will not be funded. For AHDEP funding, NOFAs published in the **Federal Register** may provide additional information on plan requirements for purposes of this section. Plans must meet the requirements of this section before grant funds are distributed. HUD will review the submitted plans for a determination of whether they meet the requirements of this section.

(b) *Additional requirements for consortia.* In addition to meeting the requirements of paragraph (a) of this section, to receive funding under this part, a consortium's plan must include a written agreement, signed by an authorized representative of each consortium member, that designates a lead applicant for purposes of grant funding and administration, and as a central point of contact, and describes the activities and responsibilities that each consortium member is bound to undertake.

11. A new § 761.23 is added to read as follows:

§ 761.23 Grantee performance requirements.

(a) *Basic grantee requirements.* (1) *Compliance with civil rights requirements.* Grantees must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). Federally recognized Indian tribes must comply with the Age Discrimination Act of 1975 and the Indian Civil Rights Act.

(2) *Adherence to the grant agreement.* The grant agreement between HUD and the grantee incorporates the grantee's application and plan for the implementation of grant-funded activities.

(3) *Compliance with "baseline" funding requirement.* Grantees may not use grant funds to reimburse law enforcement agencies for "baseline" community safety services. Grantees must adhere to 24 CFR 761.17(a)(2)(i), reimbursement of local law enforcement agencies for additional security and protective services. In addition, grantees must provide to HUD a description of the baseline of services for the unit of general local government in which the jurisdiction of the agency is located.

(4) *Partnerships.* Grantees must provide HUD with evidence of partnerships—in particular, firm commitments by organizations providing funding, services, or other in-kind resources for PHDEP-funded activities (e.g., memorandum of agreement, letter of firm commitment). The partnership agreement must cover the applicable funding period.

(5) *MTCS reporting.* Grantees must maintain a level of compliance with MTCS reporting requirements that is satisfactory to HUD.

(b) *Planning and reporting requirements.* (1) *Planning consistency.* PHDEP funded activities must be consistent with the most recent HUD-approved PHA Plan or Indian Housing Plan, as appropriate. AHDEP funded activities must be consistent with the most recent Consolidated Plan under 24 CFR part 91 for the community.

(2) *Demonstration of coordination with other law enforcement efforts.* Each grantee must demonstrate to HUD that it consulted with local law enforcement authorities and other local entities in the preparation of its plan for addressing the problem of drug-related and violent crime under § 761.21. Furthermore, a grantee must demonstrate to HUD that its grant-funded activities are coordinated with other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program operating in the community, if applicable.

(3) *Compliance with reporting requirements.* Grantees must provide periodic reports consistent with this part at such times and in such form as is required by HUD.

(4) *Reporting on drug-related and violent crime.* Grantees must report any change or lack of change in crime statistics—especially drug-related crime and violent crime—or other relevant indicators drawn from the applicant's or grantee's evaluation and monitoring plan, IHP or PHA Plan. The grantee must also indicate, if applicable, how it is adequately addressing any recommendations emanating from other anti-crime and anti-drug programs, such as Operation Safe Home, Operation Weed and Seed, and the Safe Neighborhoods Action Program, operating in the community and is taking appropriate actions, in view of available resources, such as post-enforcement measures, to take full advantage of these programs.

(c) *Performance requirements.* (1) *Timely obligation and expenditure of grant funds.* The HA must obligate and expend funds in compliance with all funding notifications, regulations, notices, and grant agreements. In

addition, the HA must obligate at least 50 percent of funds under a particular grant within 12 months of the execution of the grant agreement, and must expend at least 25 percent of funds under a particular grant within 12 months of the execution of the grant agreement.

(2) *Operational monitoring and evaluation system.* The grantee must demonstrate that it has a fully operational system for monitoring and evaluating its grant-funded activities. A monitoring and evaluation system must collect quantitative evidence of the number of persons and units served, including youth served as a separate category, types of services provided, and the impact of such services on the persons served. Also, the monitoring and evaluation system must collect quantitative and qualitative evidence of the impact of grant-funded activities on the public housing or other housing, the community and the surrounding neighborhood.

(3) *Reduction of violent crime and drug use.* The grantee must demonstrate that it has established, and is attaining, measurable goals for PHDEP-funded activities with respect to the overall reduction of violent crime and drug use.

(d) *Other requirements.* HUD reserves the right to add additional performance factors consistent with this rule and other related statutes and regulations on a case-by-case basis.

(e) *Sanctions.* A grantee that fails to satisfy the performance requirements of this section may be subject to the sanctions listed in § 761.30(f)(2).

12. In § 761.40, paragraphs (e), (f) and (g) are revised to read as follows:

§ 761.40 Other Federal requirements.

* * * * *

(e) *Indian preference.* For purposes of PHDEP, NAHASDA recipients are subject to the Indian Civil Rights Act (24 U.S.C. 1301), and the provisions of section 7(b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)). These provisions require that, to the greatest extent feasible, preference and opportunities for training and employment be given to Indians, and that preference in the award of subcontracts and subgrants be given to Indian Organizations and Indian Owned Economic Enterprises.

(f) *Intergovernmental Review.* The requirements of Executive Order 12372 (3 CFR, 1982 Comp., p. 197) and the regulations issued under the Order in 24 CFR part 52, to the extent provided by **Federal Register** notice in accordance with 24 CFR 52.3, apply to these programs.

(g) *Environmental review.* Grants under this part 761 are categorically excluded from review under the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321), in accordance with 24 CFR 50.19(b)(4), (b)(12), or (b)(13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review to the extent required by 24 CFR part 50, prior to grant awards.

Dated: April 21, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–11918 Filed 5–11–99; 8:45 am]

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federal register

Wednesday
May 12, 1999

Part VI

Department of Housing and Urban Development

Withdrawing and Reissuing FY 1999 Notice of Funding Availability for the Public Housing Drug Elimination Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4451–N–03]

Notice Withdrawing and Reissuing FY 1999 Notice of Funding Availability for the Public Housing Drug Elimination Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice Withdrawing and Reissuing FY 1999 Notice of Funding Availability (NOFA) for the FY 1999 Public Housing Drug Elimination Program (PHDEP).

SUMMARY: The Department of Housing and Urban Development (HUD) is withdrawing the FY 1999 NOFA for the Public Housing Drug Elimination Program (PHDEP) published in the **Federal Register** of February 26, 1999 (64 FR 9745) and reissuing a NOFA that requests less information. Elsewhere in this issue of the **Federal Register** is HUD's proposed rule to implement the distribution of PHDEP funding under a non-competitive formula. The information requested by this notice will be used by HUD whether or not funds are distributed competitively, and will reduce the current reporting burden on applicants. This action is intended to prevent an interruption in the funding process while issues related to the proposed rule are resolved.

DATES: Requested information should be submitted by June 16, 1999.

ADDRESSES: Submit an original and two copies of the information requested to the local Field Office with delegated public housing responsibilities: Attention: Director, Office of Public Housing, or, in the case of the Tribes or Tribally Designated Housing Entities (TDHEs), to the local HUD Administrator, Area Office of Native American Programs (AONAP), as appropriate. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

FOR FURTHER INFORMATION CONTACT: Bertha M. Jones, Program Analyst, Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1197 x.4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600 (these are not toll-free numbers). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

Background

Section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act) made important changes to PHDEP, including authorizing the Secretary to make renewable grants. An Advance Notice of Proposed Rulemaking published in the **Federal Register** of February 18, 1999 (64 FR 8210) announced HUD's intention to develop, through proposed rulemaking, a formula allocation funding for PHDEP. Elsewhere in this issue of the **Federal Register** HUD has published a proposed rule on PHDEP formula allocation.

Depending on the outcome of the proposed rulemaking on a formula allocation of PHDEP funds, HUD may award FY 1999 funds by a noncompetitive formula. However, at this time, in order to reduce the reporting burden required of applicants, expedite processing of FY 1999 funding awards and avoid an interruption in the funding process, HUD is withdrawing the FY 1999 Notice of Funding Availability (NOFA) for the FY 1999 Public Housing Drug Elimination Program (PHDEP). Instead, HUD is requesting the information described below to be submitted by June 16, 1999. The information solicited under this Notice will not be a part of the rulemaking record.

Withdrawal of FY 1999 Notice of Funding Availability (NOFA) for the HUD Public and Indian Housing Drug Elimination Program

Accordingly, the FY 1999 Public and Indian Housing Drug Elimination Program NOFA, published in the **Federal Register** of February 26, 1999 (64 FR 9745), is hereby withdrawn.

Reissuance of FY 1999 Notice of Funding Availability (NOFA) for the HUD Public and Indian Housing Drug Elimination Program

Accordingly, the FY 1999 Public and Indian Housing Drug Elimination Program NOFA is hereby reissued as follows:

I. Program Overview

Purpose of the Program. To provide grants to eliminate drugs and drug-related crime in public housing and Indian communities.

Available Funds. Approximately $242,750,000 is available during FY 99 for PHDEP grants.

Eligible Applicants. Public Housing Authorities (PHAs), Tribes, or Tribally Designated Housing Entities (TDHEs) on behalf of the Tribe.

Application Deadline. June 16, 1999.

Match. None

II. Application Due Date, Application Kits, Address for Submitting Applications, Further Information and Technical Assistance

Application Due Date. Applications (an original and two copies) are due on or before 6:00 pm local time on June 16, 1999 at the address shown below.

For Application Kits. To receive a copy of the Public Housing Drug Elimination Program (PHDEP) application kit please call the SuperNOFA Information Center at 1–800–HUD–8929. Persons with hearing or speech impairments may call the Center's TTY number at 1–800–483–2209. When requesting an application kit, please refer to the Public Housing Drug Elimination Program (PHDEP). Please provide your name, address (including zip code, and telephone number (including area code). Although this Notice is the governing document for FY 1999 PHDEP funding, the information in the application kit is helpful to the extent the application kit is consistent with this Notice, and the blank forms contained in Section I of the application kit, beginning on page I–19, should still be used.

Address For Submitting Applications. Submit an original and two identical copies of the application by the application due date at the local Field Office with delegated public housing responsibilities: Attention: Director, Office of Public Housing, or, in the case of the Tribes or TDHEs, to the local HUD Administrator, Area Office of Native American Programs (AONAP), as appropriate. For a listing of Field Offices, please see the application kit, or the Appendix published in the February 26, 1999 SuperNOFA at 64 FR 9767.

For Further Information and Technical Assistance. Please call the local HUD Field Office HUB with delegated housing responsibilities for your housing agency, the Area Office of Native American Programs (AONAPs) with jurisdiction over your Tribe or Tribally Designated Housing Entity (TDHE), HUD's Drug Information and Strategy Clearinghouse (DISC) at 1–800–952–2232; or Bertha M. Jones, Program Analyst, in the Community Safety and Conservation Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451

Seventh Street, SW, Room 4206, Washington, DC 20410, telephone (202) 708–1197, extension 4237; or Tracy C. Outlaw, National Office of Native American Programs, Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80202, telephone (303) 675–1600. (With the exception of the "1–800" telephone number, these are not toll-free numbers.)

III. Submission Requirements

In order to expedite its process for awarding FY 1999 funding, HUD is requesting that applicants submit the following information. The blank forms contained in Section I of the application kit, beginning on page I–19, should still be used. Applicants who do not submit the information in response to this notice will not be disadvantaged in the funding process for FY 1999. HUD will publish another notice this Fiscal Year with additional information on the funding process.

(A) The locations and unit counts of the developments that are targeted for FY 1999 PHDEP assistance.

(B) A plan for addressing the problem of drug-related crime and the problems associated with drug-related crime in the developments targeted for funding, that describes each of the activities to be implemented at each of the targeted developments and the particular problem that each activity is intended to address (see sections IV.(D) and (E) of this Notice, below, for a description of eligible and ineligible activities). The applicant should describe how each activity fits in with the goals and objectives that the applicant could achieve over a five-year period. The applicant should also set goals for each year for each activity. There should also be a description of the quantitative and/or qualitative measures that the applicant will use to assess its progress toward achieving its goals for each activity. Where quantitative measures will be used, the applicant must provide baseline data that describes current conditions and that will be compared to conditions over the grant term as a measure of the applicant's performance. Where only qualitative measures are used, the applicant must describe why no quantitative data could be applied to the activity in question. See also specific plan requirements in section IV of this Notice, below, regarding Housing Authority Police Departments.

(C) A budget for each fiscal year of the grant period (may not exceed 24 months) which estimates amounts to be expended for the activities set forth in their submission. The budget shall assume funding of the greater of $25,000, the minimum award amount, or $220 per unit for the applicant's total unit count computed in accordance with section IV.(H) of this Notice, below, with a maximum award amount of $35 million.

(D) A timetable that shows the start and end date for each activity with intermediate achievement milestones for each activity.

(E) A description of the role of each partner, if any, who will be working with the applicant during the grant period to implement the activities identified in the submission, including a description of subgrantees, if applicable. The description must include the names of subgrantees, as well as the relative roles and contributions of each subgrantee in implementing the PHDEP grant activities.

(F) A summary of the proposed program activities in five (5) sentences or less.

IV. Program Requirements

(A) *General Requirements.* Sections II and VII of the General Section of the SuperNOFA published on February 26, 1999 (64 FR 9618), continue to apply to this Notice.

(B) *Program Description.* Funds are available for Public Housing Authorities (PHAs), Tribes or Tribally Designated Housing Entities (TDHEs) to develop and finance drug and drug-related crime elimination efforts in their developments. You may use funds for enhancing security within your developments, making physical improvements to enhance security; and/or developing and implementing prevention, intervention and treatment programs to stop drug use in public and Indian housing communities.

In FY 1999, HUD is requiring all applicants to establish measurable baseline information and realistic goals for drug-related crime in Public Housing and for all major PHDEP activities being proposed. In addition, HUD is developing a formula based system for use in awarding PHDEP grants.

(C) *Eligible Applicants.* Eligible applicants include PHAs, Tribes or TDHEs. (A Tribe can apply either in its own name or through its TDHE. A TDHE cannot apply on behalf of a Tribe that is applying on its own behalf.) Resident Management Corporations (RMCs); and incorporated Resident Councils (RCs) are eligible for funding from PHAs as sub-grantees. RMCs and ROs that were operating pursuant to 24 CFR part 950 are eligible for funding from Tribes or TDHEs as subgrantees to develop security and substance abuse prevention programs. Eligible applicants with substantial drug-related crime in and around their premises are strongly encouraged to apply.

(D) *Eligible/Ineligible Activities.* Under statute, PHDEP grants may be used for seven types of activities including: Physical improvement specifically designed to enhance security; Programs designed to reduce use of drugs in and around public or Indian housing developments including drug-abuse prevention, intervention, referral, and treatment; Funding for non-profit public housing resident management corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs) to develop security and drug abuse prevention programs involving site residents; Employment of security personnel; Employment of personnel to investigate and provide evidence in administrative or judicial proceeding; Reimbursement of local law enforcement agencies for additional security and protective services; and Training, communications equipment, and related equipment for use by voluntary tenant patrols. Applicants may choose eligible activities that best fit their communities' needs.

Following is a discussion by activity type of: what is fundable; what is not fundable; and specific requirements.

(1) *Physical Improvements to Enhance Security.* (a) Physical improvements specifically designed to enhance security may include: installing barriers, speed bumps, lighting systems, fences, surveillance equipment (e.g., Closed Circuit Television (CCTV), computers and software, fax machines, cameras, monitors, and supporting equipment), bolts, locks, and landscaping or reconfiguring common areas to discourage drug-related crime.

(i) All physical improvements must be accessible to persons with disabilities. For example, locks or buzzer systems that are not accessible to persons with restricted or impaired strength, mobility, or hearing may not be funded by PHDEP. Defensible space improvements must comply with civil rights requirements and cannot exclude or segregate people because of their race, color, or national origin from benefits, services, or other terms or conditions of housing. All physical improvements must meet the accessibility requirements of 24 CFR part 8.

(ii) Funding is permitted for the purchase or lease of house trailers of any type that are not designated as a building if they are used for eligible community policing, educational, employment, and youth activities. A justification of purchase versus lease

must be supported by a cost-benefit analysis prior to purchase or lease.

(b) *Ineligible Improvements.* The following are ineligible for funding:

(i) Physical improvements that involve demolishing any units in a development;

(ii) Physical improvements that would displace persons;

(iii) Acquiring real property.

(2) *Programs to Reduce Drug Use (Prevention, Intervention, Treatment, Structured Aftercare and Support Systems).* (a) *General Requirements and Strategies.* Any substance abuse prevention, intervention, treatment, and aftercare program should use a "continuum of care" approach. A "continuum of care" approach includes not just treating the addiction or dependency but providing aftercare, mentoring, and support services such as day care, family counseling, education, training, employment development opportunities, and other activities.

You should develop a substance abuse/sobriety (remission)/treatment (dependency) strategy to adequately plan your substance abuse prevention, intervention, treatment, and structured aftercare efforts. In many cases, you may want to include education, training, and employment opportunities for residents; and support Welfare to Work initiatives. When undertaking these activities, you should be leveraging your PHDEP resources with other Federal, State, local and Tribal resources. For example, your program may include providing space and other infrastructure for these efforts with several public agencies providing staff and other resources at limited or no cost. Your strategy must incorporate existing community resources and you must document how they will be used in your program. The strategy should also document how community resources will be provided on-site, or how participants will be referred and transported to treatment programs that are not on-site.

A community-based approach also requires you to develop a culturally appropriate strategy. Curricula, activities, and staff should address the cultural issues of the local community, which requires your application to indicate your familiarity and facility with the language and cultural norms of the community. As applicable, your strategy should address cultural competencies associated with Hispanic, African-American, Asian, Native American or other racial or ethnic communities.

Your activities should focus resources directly to housing authority residents and families.

For all activities involving education, training and employment, you should document efforts to coordinate with Federal, Tribal, State and local employment training and development services, "welfare to work" efforts, or other new "welfare reform" efforts.

The current Diagnostic and Statistical Manual (DSM) of Mental Disorders of the American Psychiatric Association dated May 1994, contains information on substance abuse, dependency and structured aftercare. For more information about this reference, contact: APPI, 1400 K. Street, NW, Suite 1100, Washington, DC 20005 on 1(800) 368–5777 or World Wide Web site at http://www.appi.org.

Eligible activities may include:

(i) Substance abuse prevention, intervention, and referral programs;

(ii) Programs of local social, faith-based and/or other organizations that provide treatment services (contractual or otherwise) for dependency/remission; and

(iii) Structured aftercare/support system programs.

(b) *Activities must be "in and around".* PHDEP funding is permitted for programs that reduce/eliminate drug-related crime "in and around" the premises of the housing authority/development(s). HUD has defined the term "in and around" to mean within, or adjacent to, the physical boundaries of a public or Indian housing development. This ensures that program funds and activities are targeted to benefit, as directly as possible, public and Indian housing developments and their residents.

(c) *Eligible cost.* (i) Funding is permitted for reasonable, necessary, and justified purchasing or leasing (whichever is documented as the most cost effective) of vehicles for transporting adult and youth residents for education, job training, and off-site treatment programs directly related to reducing drugs and drug-related crime. The cost reasonableness can be determined by a comparison of the number of participants in and anticipated costs of these programs compared to the purchase or lease cost of the vehicles. If these costs are included in your program, your plan must include a description of why the expenses are necessary. The primary use of such vehicles must correspond with their intended purposes under your grant.

(ii) Funding is permitted for reasonable, necessary and justified program costs, such as meals and beverages incurred only for training, education and employment activities, and youth services directly related to reducing drugs and drug-related crime. Refer to Office of Management and Budget (OMB) Circular A–87, Cost Principles for State, Local and Indian Tribal Governments.

(d) *Prevention.* Prevention programs should provide directly, or otherwise make available, services designed to distribute substance/drug education information, to foster effective parenting skills, and to provide referrals for treatment and other available support services in the housing development or the community for housing authority families.

Prevention programs should provide an effective prevention approach for residents that address the individual resident and his or her relationship to family, peers, and the community. Your prevention programs activities should identify and change the causal factors present in housing authorities that lead to drug-related crime thereby lowering the risk of drug usage. Components of an effective approach may include, but are not limited to, wellness and educational training; substance abuse sobriety, refusal and restraint skills training programs; or drug, substance abuse/dependency and family counseling. These may already be available in the community of your housing developments and should be included to the maximum extent possible in your proposed program of activities.

The following eligible activities under a prevention program are discussed in more detail below: educational opportunities; family and other support services; youth services; and economic and educational opportunities for resident adult and youth activities.

(i) *Educational Opportunities.* The causes and effects of illegal drug/substance abuse must be taught in a culturally appropriate and structured setting. You may contract (in accordance with 24 CFR 85.36) to provide such knowledge and skills through training programs. The professionals contracted to provide these services are required to base their services on your needs assessment and program plan. These educational opportunities may be a part of resident meetings, youth activities, or other gatherings of public and Indian housing residents.

(ii) *Family and Other Support Services.* "Supportive services" are services that allow housing authority families to have access to prevention, educational and employment opportunities. Supportive services may include: child care; employment training; computer skills training; remedial education; substance abuse

counseling; help in getting a high school equivalency certificate; and other services to reduce drug-related crime.

(iii) *Youth Services.* "Educating and enabling America's youth to reject illegal drugs" is Goal #1 of the Office of National Drug Control Policy (ONDCP) top five goals in the Nation's Drug Control Strategy. Activities that target youth further this goal. Youth drug and crime prevention programs must include, but are not limited to, groups composed of young people ages 16 through 18. Your youth drug and crime prevention activities should be coordinated by adults but have housing authority youth actively involved in organizing youth leadership, sports, recreational, cultural and other activities. Eligible youth services may include: youth sports; youth leadership skills training; cultural and recreational activities. These youth services provide an alternative to drugs and drug-related criminal activity for public housing and Native American youth. Youth leadership skills training may include training in leadership, peer pressure reversal, resistance or refusal skills, life skills, goal planning, parenting skills, and other relevant topics. Youth leadership training should be designed to place youth in leadership roles including: mentors to younger program participants, assistant coaches, managers, and team captains. Cultural and recreational activities may include ethnic heritage classes, art, dance, drama and music appreciation.

The following are eligible youth services activities:

(*1*) Salaries and expenses for staff for youth sports programs and cultural activities and leadership training;

(*2*) Sports and recreation equipment to be used by participants;

(*3*) Non-profit subgrantees that provide scheduled organized sports competitions, cultural, educational, recreational or other activities, including: Boys and Girls Clubs, YMCAs, YWCAs, the Inner City Games, Association of Midnight Basketball Leagues.

(*4*) Liability insurance costs for youth sports activities.

(iv) *Economic and Educational Opportunities for Resident Adult and Youth.* Any economic and educational activities should provide residents opportunities for interaction with, or referral to, established higher education, vocational institutions and/or private sector businesses in the immediate surrounding communities with the goal of developing or building on the residents' skills to pursue educational, vocational and economic goals and become self-sufficient.

Any economic and educational opportunities for residents and youth activities should be consistent with "welfare to work" and related Federal, Tribal, State and local government efforts for employment training, education and employment opportunities related to "welfare to work" goals. Establishing or referring adults and youth to computer learning centers, employment service centers (coordinated with Federal, Tribal, State and local employment offices), and micro-business centers are eligible.

Limited educational scholarships are permitted under this section. No one individual award may exceed $500.00, and there is a total maximum scholarship program cap of $10,000. Educational scholarship FY 1999 PHDEP funds must be obligated and expended during the term of your grant. You should develop and document a scholarship strategy; the financial and management controls that will be used; and projected outcomes.

(e) *Intervention.* The aim of intervention is to identify or detect residents with substance abuse issues, assist them in modifying their behavior, and in getting early treatment, and structured aftercare.

(f) Substance Abuse/Dependency Treatment. (i) Treatment funded under this program should be "in and around" the premises of the housing authority/development(s) you proposed for funding. In undertaking substance abuse/dependency treatment programs, you must establish a confidentiality policy regarding medical and disability related information.

(ii) Funds awarded for substance abuse/dependency treatment must be targeted towards developing and implementing, or expanding and improving sobriety maintenance, substance-free maintenance support groups, substance abuse counseling, referral treatment services, and short or long range structured aftercare for residents.

(iii) Any drug program should address the following goals for residents:

(*1*) Increasing accessibility of treatment services;

(*2*) Decreasing drug-related crime "in and around" your housing authority/development(s) by reducing and/or eliminating drug use.; and

(*3*) Providing services designed for youth and/or adult drug abusers and recovering addicts (e.g., prenatal and postpartum care, specialized family and parental counseling, parenting classes, domestic or youth violence counseling).

(iv) Approaches that have proven effective with similar populations have included, but are not limited to, the following:

(*1*) Formal referral arrangements to other treatment programs in cases where the resident is able to obtain treatment costs from sources other than this program.

(*2*) Family/youth counseling.

(*3*) Linkages to educational and vocational training and employment counseling.

(*4*) Coordination of services from and to appropriate local substance abuse/treatment agencies, HIV-related service agencies, mental health and public health programs.

(v) As applicable, you must develop a working partnership with the Single State Agency or local, Tribal or State license provider or authority with substance abuse program(s) coordination responsibilities to coordinate, develop and implement your substance dependency treatment program.

(vi) You must use counselors (contractual or otherwise) that meet any applicable Federal, State, Tribal, and local government licensing, bonding, training, certification and continuing training re-certification requirements.

(vii) You must get certification from the Single State Agency or authority with substance abuse and dependency programs coordination responsibilities that your proposed program is consistent with the State plan; and that the service(s) meets all Federal, State, Tribal and local government medical licensing, training, bonding, and certification requirements.

(viii) Funding is permitted for drug treatment of housing authority residents at local in-patient medical treatment programs and facilities. PHDEP funding for structured in-patient drug treatment under PHDEP funds is limited to 60 days, and structured drug out-patient treatment, which includes individual/family aftercare, is limited to 6 months. If you are undertaking drug treatment programs, your program should provide, directly or indirectly, employment training, education and employment opportunities related to "welfare to work."

(ix) Funding is permitted for detoxification procedures designed to reduce or eliminate the short-term presence of toxic substances in the body tissues of a patient.

(x) Funding is not permitted for maintenance drug programs. Maintenance drugs are medications that are prescribed regularly for a short/long period of supportive therapy (e.g. methadone maintenance), rather than for immediate control of a disorder.

(3) *Resident Management Corporations (RMCs), Resident Councils (RCs), and Resident Organizations (ROs).* RMCs, and incorporated RCs and ROs, may be a subcontractor to their housing authorities, or Tribe/TDHE, to develop security and substance abuse prevention programs for residents. Such programs may include voluntary tenant patrol activities, substance abuse education, intervention, and referral programs, youth programs, and outreach efforts. The elimination of drug-related crime within housing authorities/developments must have the active involvement and commitment of public and Indian housing residents and their organizations. Active involvement requires that residents be involved in the planning process and implementation.

To enhance the ability of housing authorities, and Tribes/TDHEs, to combat drug-related crime within their developments, Resident Councils (RCs), Resident Management Corporations (RMCs), and Resident Organizations (ROs) may undertake program management functions, notwithstanding the otherwise applicable requirements of 24 CFR part 964. Sub-contracts with the RMC/RC/RO must include the amount of funding, applicable terms, conditions, financial controls, payment mechanism schedule, performance and financial report requirements, special conditions, including sanctions for violating the agreement, and monitoring requirements. Costs must not be incurred until a written contract is executed.

(4) *Employment of HA Security Personnel.* You may employ HA security personnel. Employment of security personnel is divided into two categories: security personnel services, and housing authority police departments. You are encouraged to involve police officials residing in public housing to partake in PHDEP security-related programs. The following specific requirements apply to all employment of security personnel activities funded under PHDEP:

(a) *Compliance.* Security guard personnel and public housing authority police departments must be in compliance with, all relevant Federal, State, Tribal or local government insurance, licensing, certification, training, bonding, or other law enforcement requirements.

(b) *Law Enforcement Service Agreement.* You must enter into a law enforcement service agreement with the local law enforcement agency and if applicable, the contract provider of security. Your service agreement must include:

(i) The activities security guard personnel or the public housing authority police department (HAPD) will perform; the scope of authority; written policies, procedures, and practices that will govern security personnel or HAPD performance (i.e., a policy manual and how security guard personnel or the HAPD shall coordinate activities with your local law enforcement agency);

(ii) The types of activities that your approved security guard personnel or the HAPD are expressly prohibited from undertaking.

(c) *Policy Manual.* Security guard personnel services and PHPDs must be guided by a policy manual that directs the activities of its personnel and contains the policies, procedures, and general orders that regulate conduct and describes in detail how jobs are to be performed. The policy manual must exist before incurring personnel costs for security services. To comply with State police department standards and/or Commission on Accreditation Law Enforcement Agencies (CALEA), you must also ensure all security guard personnel and housing authority police officers are trained in the following areas. These areas must also be covered in your policy manual:

(i) Use of force;
(ii) Resident contacts;
(iii) Enforcement of HA rules;
(iv) Response criteria to calls;
(v) Pursuits;
(vi) Arrest procedures;
(vii) Reporting of crimes and workload;
(viii) Feedback procedures to victims;
(ix) Citizens' complaint procedures;
(x) Internal affairs investigations;
(xi) Towing of vehicles;
(xii) Authorized weapons and other equipment;
(xiii) Radio procedures internally and with local police;
(xiv) Training requirements;
(xv) Patrol procedures;
(xvi) Scheduling of meetings with residents;
(xvii) Reports to be completed;
(xviii) Record keeping and position descriptions on all personnel;
(xix) Post assignments;
(xx) Monitoring;
(xxi) Self-evaluation program requirements; and
(xxii) First aid training.

(d) *Data Management.* A daily activity and incident complaint form approved by the housing authority must be used by security personnel and officers for the collection and analysis of criminal incidents and responses to service calls. Security guard personnel and HAPDs must establish and maintain a system of records management for the daily activity and incident complaint forms that appropriately ensures the confidentially of personal criminal information.

(e) *Management Informational Systems (MIS) (computers, software, and associated equipment) and management personnel.* Costs in support of these activities are eligible for funding.

(5) *Security Personnel Services.* Contracting for, or direct housing authority employment of, security personnel services in and around housing development(s) is permitted under this program. However, contracts for security personnel services must be awarded on a competitive basis.

(a) *Eligible Services—Over and Above.* Security guard personnel funded by this program must perform services that are over and above those usually performed by local municipal law enforcement agencies on a routine basis. Eligible services may include patrolling inside buildings, providing personnel services at building entrances to check for proper identification, or patrolling and checking car parking lots for appropriate parking decals.

(b) *Employment of Residents.* HUD encourages you to employ qualified resident(s) as security guard personnel, and/or to contract with security guard personnel firms that demonstrate a program to employ qualified residents as security guard personnel. Since your program of eliminating drug-related crime should promote "welfare to work" an excellent way to implement this is to employ residents.

(6) *Employment of Personnel and Equipment for HUD Authorized Housing Authority Police Departments.* Funding equipment and employment of housing authority police department (HAPD) personnel is permitted for housing authorities that already have HAPDs. The following 12 housing authorities are approved by HUD as being eligible under the FY 1999 PHDEP for these activities:

Baltimore Housing Authority and Community Development, Baltimore, MD
Boston Housing Authority, Boston, MA
Buffalo Housing Authority, Buffalo, NY
Chicago Housing Authority, Chicago, IL
Cuyahoga Metropolitan Housing Authority, Cleveland, OH
Housing Authority of the City of Los Angeles, Los Angeles, CA
Housing Authority of the City of Oakland, Oakland, CA
Philadelphia Housing Authority, Philadelphia, PA
Housing Authority of the City of Pittsburgh, Pittsburgh, PA

Waterbury Housing Authority, Waterbury, CT
Virgin Islands Housing Authority, Virgin Islands
District of Columbia Housing Authority, Washington, DC

(a) Notice PIH 98–16, issued March 11, 1998, reinstated PIH 95–58 (PHA) "Guidelines for Creating, Implementing and Managing Public Housing Authority Police Departments in Public Housing Authorities)." This Notice identifies prerequisites for creating HAPDs and provides guidance to assist housing authorities in making decisions about public housing security, analysis of security needs, and performance measures and outcomes.

(b) Housing authorities with their own HAPDs, but that are not included in the list above, shall request (in writing) to be recognized by HUD as a HAPD. The written request must be sent to the Office of the Deputy Assistant Secretary for Public and Assisted Housing Delivery, Public and Indian Housing, Department of Housing and Urban Development, Room 4204, 451 Seventh Street, SW, Washington, DC 20410. This request must be approved by HUD before you submit your FY 1999 PHDEP application.

(c)(i) HAPDs funded under this program that are not nationally or state accredited must submit a plan and timetable for such accreditation. Housing authorities may use either their State accreditation program, if one exists, or the Commission on Accreditation for Law Enforcement Agencies (CALEA) for this purpose. Use of grant funds for HAPD accreditation activities is permitted.

(ii) Housing authorities receiving grants for funding HAPDs are required to hire an HAPD accreditation specialist to manage the accreditation program. If you have a public housing police department funded under the FY 1996, 1997, or 1998 PHDEP you must include in your plan what progress you made in implementing your accreditation program and the projected date of accreditation. HUD will monitor results of your plan and timetable. HAPDs not meeting their timetables will be ineligible for funding in FY 2000.

(d) If you are allocating funds for this activity, you must describe the current level of local law enforcement agency baseline services being provided to the housing authority/development(s) proposed for assistance. Local law enforcement baseline services are defined as ordinary and routine services provided to the residents as part of the overall city and/or county-wide deployment of police resources to respond to crime and other public safety incidents including: 911 communications, processing calls for service, routine patrol officer responses to calls for service, and investigative follow-up of criminal activity.

(e) If you are allocating funds for housing authority public housing authority police department officers, you must have car-to-car (or other vehicles) and portable-to-portable radio communications links between public housing authority police officers and local law enforcement officers to assure a coordinated and safe response to crimes or calls for services. The use of scanners (radio monitors) is not sufficient to meet the requirements of this section. If you do not have such links you must include in your plan a timetable for the implementation of such communications links. This activity is eligible for funding. If you were a housing authority funded under the FY 1994, 1995, 1996, 1997, and/or 1998 PHDEP for public housing police departments, you must include in your plan what progress has been made in implementing its planned communications links.

(f) HAPDs funded under this program that are not employing a community policing concept must incorporate a community policing concept in the implementation of their policing activities. Community policing under PHDEP is defined as a method of providing law enforcement services partnership among residents, police, schools, churches, government services, the private sector, and other local, State, Tribal, and Federal law enforcement agencies to prevent crime and improve the quality of life by addressing the conditions and problems that lead to crime and fear of crime. Community policing uses proactive measures including foot patrols, bicycle patrols, and motor scooters patrols. It also includes KOBAN activities where police officers operate out of police mini-stations, and other community-based facilities in housing authorities providing human resource activities with youth), and citizen contacts. This concept empowers police officers at the beat and zone level and residents in neighborhoods to:

(i) Reduce crime and fear of crime;

(ii) Ensure the maintenance of order;

(iii) Provide referrals of residents, victims, and homeless persons to social services and government agencies;

(iv) Ensure feedback of police actions to victims of crime; and (v) Promote a law enforcement value system based on the needs and rights of residents.

For additional information regarding KOBAN community policing contact Cedric Brown, (202) 708–1197, extension 4057.

(g) Authorized PHPDs can purchase or lease law enforcement clothing or equipment. Eligible law enforcement clothing or equipment may include uniforms and protective vests; firearms/weapons and ammunition; police vehicles including cars, vans, buses; or other equipment supporting PHPDs crime prevention and security mission. If you have not been identified by HUD as having an authorized PHPD, you are not permitted to use PHDEP funds to purchase any clothing or equipment for use by local municipal police departments and/or other law enforcement agencies.

(7) *Reimbursement of Local Law Enforcement Agencies for Additional (Supplemental—Over and Above Local Law Enforcement Baseline Services) Security and Protective Services.* Additional security and protective services are permitted if services are over and above the local police department's current level of baseline services. Housing authorities, Tribes, and TDHEs are required to identify the level of local law enforcement services received and the increased level of services to be received in their local Cooperation Agreement.

(8) *Employment of Investigators.* Employment of, and equipment for, one or more individuals to investigate drug-related crime "in and around" the real property comprising your development(s) and providing evidence relating to such crime in any administrative or judicial proceedings is permitted. Under this section, reimbursable costs associated with the investigation of drug-related crimes (e.g., travel directly related to the investigator's activities, or costs associated with the investigator's testimony at judicial or administrative proceedings) may only be those directly incurred by the investigator.

(a) If you are a housing authority that employs investigators funded by this program, you must demonstrate compliance with all relevant Federal, Tribal, State or local government insurance, licensing, certification, training, bonding, or other similar law enforcement requirements.

(b) Both you and the provider of the investigative services are required to execute a written agreement that describes the following:

(i) The activities that your investigators will perform, their scope of authority, reports to be completed, established investigative policies, procedures, and practices that will govern their performance (i.e., a Policy Manual; and how your investigators will

coordinate their activities with local, State, Tribal, and Federal law enforcement agencies); and prohibited activities.

(ii) The activities the housing authority/Tribal investigators are expressly prohibited from undertaking.

(c) Your investigator(s) may use PHDEP funds to purchase or lease any law enforcement clothing or equipment, such as vehicles, uniforms, ammunition, firearms/weapons, or vehicles; including cars, vans, buses, protective vests, and any other supportive equipment.

(d) Your investigator(s) shall report on drug-related crime in your developments. You must establish, implement and maintain a system of records management that ensures confidentiality of criminal records and information. Housing authority-approved activity forms must be used for collection, analysis and reporting of activities by your investigators. You are encouraged to develop and use Management Information Systems (MIS) (Computers, software, hardware, and associated equipment) and hire management personnel for crime and workload reporting in support of your crime prevention and security activities.

(e) You may not expend funds and funds will not be released by the local HUD Field Office/AONAP until you have met the requirements of section IV.(6)(d) of this Notice.

(9) *Voluntary Tenant Patrols.* HUD believes the elimination of drug-related crime within and around the housing authority/development(s) requires the active involvement and commitment of residents and their organizations. Members of tenant patrols must be volunteers and must be residents of the housing authority's development(s). Voluntary tenant patrols are expected to patrol in your development(s) proposed for assistance, and to report illegal activities to appropriate housing authority staff, and local, State, Tribal, and Federal law enforcement agencies, as appropriate.

(a) Training equipment, uniforms for use by voluntary tenant patrols acting in cooperation with officials of local law enforcement agencies is permitted. All costs must be reasonable, necessary and justified. Bicycles, motor scooters, all season uniforms and associated equipment to be used, exclusively, by the members of your voluntary tenant patrol are eligible items. Voluntary tenant patrol uniforms and equipment must be identified with your specific housing authority/development(s) identification and markings.

(b) Housing authorities are required to obtain liability insurance to protect themselves and the members of the voluntary tenant patrol against potential liability for the activities of the patrol under this program. The cost of this insurance is negligible.

(c) If you are funding voluntary tenant patrol activities, you, your local law enforcement agency, and the tenant patrol, before expending grant funds, are required to execute a written agreement that includes:

(i) The nature of the activities to be performed by your voluntary tenant patrol, the patrol's scope of authority, assignment, policies, procedures, and practices that will govern the voluntary tenant patrol's performance and how the patrol will coordinate its activities with the law enforcement agency;

(ii) The activities the voluntary tenant patrol is expressly prohibited from undertaking and that the carrying or use of firearms, weapons, nightsticks, clubs, handcuffs, or mace is prohibited;

(iii) Required initial and on-going voluntary tenant patrol training members will receive from the local law enforcement agency; (Please note that training by HUD-approved trainers and/or the local law enforcement agency is required before putting a voluntary tenant patrol into effect); and

(iv) Voluntary tenant patrol members will be subject to individual or collective liability for any actions undertaken outside the scope of their authority (described in paragraph (ii) above) and that such acts are not covered under your housing authority liability insurance.

(d) PHDEP grant funds must not be used for any type of financial compensation, such as full-time wages or salaries for voluntary tenant and/or patrol participants. Funding for housing authority personnel or resident(s) to be hired to coordinate this activity is permitted. Excessive staffing is not permitted.

(10) *Evaluation of PHDEP Activities.* Funding is permitted to contractually hire organizations and/or consultant(s) to conduct an independent assessment and evaluation of the effectiveness of your PHDEP program. You should include in your plan and budget contracting with an independent survey organization to conduct an annual resident survey in your targeted developments/areas. The amount of funding proposed for conducting assessments or evaluations should be necessary, reasonable, and justified. However, even if adequately justified, HUD would not expect that this cost should exceed ten (10) percent of the total grant amount requested.

(11) *High Intensity Drug Trafficking Areas (HIDTAs).* Funding may be used for activities to eliminate drug-related crime in housing owned by a public housing agency that is not public housing assisted under the United States Housing Act of 1937 and is not otherwise federally assisted. For example, housing that receives tenant subsidies under Section 8 is federally assisted and would not qualify, but housing that receives only State, Tribal, or local assistance would qualify if it meets the following two requirements:

(a) The housing is located in a high intensity drug trafficking area designated pursuant to Section 1005 of the Anti-Drug Abuse Act of 1988 (see Appendix A); and

(b) The PHA owning the housing demonstrates, on the basis of information submitted, that the drug-related crime at the housing authority project has a detrimental affect in or around the housing.

The High Intensity Drug Trafficking Areas (HIDTAs) are areas identified as having problems that adversely impact the rest of the country.

(E) *Ineligible Activities.* PHDEP funding *is not permitted* for any of the activities listed below.

(1) Costs incurred before the effective date of your grant agreement (Form HUD–1044), including, but not limited to, consultant fees related to the development of your application or the actual writing of your application.

(2) The purchase of controlled substances for any purpose. Controlled substance shall have the meaning provided in section 102 of the Controlled Substance Act (21 U.S.C. 802).

(3) Compensation of informants, including confidential informants. These should be part of the baseline services provided and budgeted by local law enforcement agencies.

(4) Direct purchase or lease of clothing or equipment, vehicles (including cars, vans, and buses), uniforms, ammunition, firearms/weapons, protective vests, and any other supportive equipment for use in law enforcement or military enforcement except for HAPDs and investigator activities listed in this program requirements section.

(5) Construction of facility space in a building or unit, and the costs of retrofitting/modifying existing buildings owned by the housing authorities and TDHEs for purposes other than: community policing mini-station operations, adult/youth education, employment training facilities, and drug abuse treatment activities.

(6) Organized fund raising, advertising, financial campaigns, endowment drives, solicitation of gifts

and bequests, rallies, marches, community celebrations, stipends and similar expenses.

(7) Court costs and attorneys fees related to screening or evicting residents for drug-related crime are not allowable.

(8) PHDEP grant funds cannot be transferred to any Federal agency.

(9) Costs to establish councils, resident associations, resident organizations, and resident corporations are not allowable.

(10) Indirect costs are not allowable.

(11) Supplant existing positions/activities. For purposes of the PHDEP, supplanting is defined as "taking the place of or to supersede".

(12) Alcohol-exclusive activities and programs *are not eligible* for funding under this program, although activities and programs may address situations of multiple abuse involving controlled substances and alcohol. PHDEP is limited to only controlled substances.

(F) *Commingling of Funds.* Housing authorities must not co-mingle funds of multiple HUD programs including: Comprehensive Improvement Assistance Program (CIAP); Comprehensive Grant Program (CGP); Economic Development and Supportive Services (EDSS); Tenant Opportunity Program (TOP); Indian Housing Block Grant (IHBG); Housing Opportunity for People Everywhere (HOPE) projects; Family Investment; Elderly Service Coordinator; and Operating Subsidy.

(G) *Reports and Closeout.* In accordance with 24 CFR 761.35, grantees are required to submit a PHDEP Semi-Annual Performance Report and the Semi-Annual Financial Status Report (SF–269A) to the appropriate HUD Field Office. HUD will require grantees to transmit reports electronically to facilitate providing more meaningful performance information to comply with the requirements of the Government Performance and Results Act (GPRA) and to provide greater assurance that the program activities undertaken are effective in reducing drugs and drug-related crime in areas targeted by PHDEP. HUD will require grantees to report the number of grant-funded, full-time equivalent positions for law enforcement and security services, and PHDEP-supported activities for residents broken out by youth, adults, families, and communities. For each category of PHDEP-supported activities, other than law enforcement, grantees will report the results achieved using program or activity goals that are specific and measurable to the extent practicable.

In addition, all grantees shall be required, as indicated by written notice from HUD, to participate in HUD-sponsored training activities. HUD will issue a separate notice containing the details for meeting performance reporting requirements.

(H) *Computing Unit Counts.* Unit counts are to be computed as follows:

(1) *PHAs.* (a) The unit count includes rental, Turnkey III Homeownership, and Section 23 leased housing bond-financed projects. Eligible units are those that are under management and fully developed, and must be covered by an Annual Contributions Contract (ACC) during the period of grant award. In determining unit count for PHA-Owned Rental Housing, a long-term vacancy unit as defined in 24 CFR 990.102 is included in the count.

(b) PHAs preparing PHDEP applications are required to confirm/validate the unit count with the local Field Office (Office of Public Housing) before they submit their applications. Confirmation/Validation may be given if the unit count to be used is the same as the unit count reflected on a PHA's most recently approved Operating Budget (Form HUD–52564) and/or subsidy calculation (Form HUD–52723) submitted for that program. Field Offices that have PHAs that are not required to submit either of these forms may confirm/validate the PHDEP unit count if it is the same as the most recently submitted Form HUD–51234. Field Offices in validating the unit count shall not include Non-Federally Assisted Housing units located in High Intensity Drug-Trafficking Areas.

(2) *Tribes and TDHEs.* (a) The unit count includes rental, Turnkey III and Mutual Help Homeownership units which have not been conveyed to a homebuyer, and Section 23 lease housing bond-financed projects. Such units must be counted as Current Assisted Stock under the Indian Housing Block Grant Program.

(b) Eligible units are those units which are under management and fully developed. However, you should note that in determining the unit count for PHA-owned or Native American rental housing, a long-term vacanoy unit, as defined in 990.102 or 24 CFR 950.102 (as revised May 1, 1996), is still included in the count. If you are an applicant for Native American housing developments, you must certify that the targeted units were covered by an ACC on September 30, 1997.

(c) Use the number of units counted as Formula Current Assisted Stock for Fiscal Year 1999 as defined in 24 CFR 1000.316.

(I) *MTCS Compliance.* PHAs, to receive funding, must be in compliance with HUD Notice PIH 99–2, Reporting Requirements for Multifamily Tenant Characteristics System (MTCS) (Form HUD–50058).

Authority

Chapter 2, Subtitle C, Title V of the Anti-Drug Abuse Act of 1988 (42 U.S.C. 11901 et. seq), as amended by section 581 of the National Affordable Housing Act of 1990 (Pub.L. 101–625, approved November 28, 1990) (NAHA), section 161 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (HCDA 1992), and section 586 of the Quality Housing and Work Responsibility Act of 1998 (Pub.L. 105–276, 112 Stat. 2461, approved October 21, 1998) (Public Housing Reform Act).

Paperwork Reduction Act Statement

The information collection requirements contained in this Notice have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), and assigned OMB control number 2577–0124. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Catalog of Federal Domestic Assistance. The Catalog of Federal Domestic Assistance number for the Public and Indian Housing Drug Elimination Program is 14.854.

Dated: May 6, 1999.

Deborah Vincent,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 99–11919 Filed 5–11–99; 8:45 am]

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May 12, 1999

Part VII

Department of Justice

Immigration and Naturalization Service

8 CFR Part 3 et al.

Adjustment of Status for Certain Nationals of Haiti; Interim Final Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a, and 299

[INS No. 1963–98; AG Order No. 2221–99]

RIN 1115–AF33

Adjustment of Status for Certain Nationals of Haiti

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule implements section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) by establishing procedures for certain nationals of Haiti who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad, and waives many of the usual requirements for this benefit.

DATES: *Effective date:* This interim rule is effective June 11, 1999.

Comment date: Comments must be submitted on or before July 12, 1999.

ADDRESSES: Please submit written comments, original and two copies, to Richard A. Sloan, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1963–98 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014; *For matters relating to the Executive Office for Immigration Review*—Margaret M. Philbin, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

Background

On October 21, 1998, the President signed a Fiscal Year 1999 Omnibus Appropriations Act, Pub. L. 105–277 (112 Stat. 2681), into law. Division A, Title IX of that statute, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), contained a provision in section 902 which allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. Many aspects of section 902 of HRIFA are similar to corresponding aspects of section 202 of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Pub. L. 105–100 (111 Stat. 2160, 2193). In drafting both the supplementary information and the regulatory text contained in this implementing regulation, the Department of Justice (Department) has intentionally replicated much of the rule which implemented NACARA, taking into consideration the Department's experience in administering that statute. Wherever beneficial for purposes of clarity, the Department has endeavored to point out those aspects of HRIFA which differ from corresponding aspects of NACARA.

How Does Section 902 of HRIFA Affect Haitian Nationals?

Section 902 of HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not counting any absence or absences totaling 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (the Act), other than those provisions specifically excepted by HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of HRIFA.

The five classes described in section 902(b)(1) are:

(1) Haitian nationals who filed for asylum before December 31, 1995;

(2) Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

For the last three ((3)–(5)) of these classes, the applicant must have been a child at the time of his or her arrival in the United States, and on December 31, 1995, but not necessarily at the time of his or her adjustment of status. In addition, certain family members of HRIFA beneficiaries are also eligible for adjustment of status under HRIFA.

What Are the Benefits of HRIFA?

An alien seeking adjustment of status under HRIFA is not subject to a number of the limitations on adjustment of status that would otherwise be applicable under section 245 of the Act.

First, a HRIFA applicant is not required to have been inspected and admitted or paroled into the United States.

Second, a HRIFA applicant is not subject to any of the barriers to adjustment contained in section 245(c) of the Act (e.g., the bars against aliens who have accepted or continued in unauthorized employment, aliens who remained in the United States longer than authorized, and aliens admitted as crewmen, in transit without visa, or under the visa waiver pilot program). Consequently, an alien who would otherwise be ineligible under section 245(c) may apply for adjustment under HRIFA.

Third, HRIFA applicants are not subject to the immigrant visa preference system requirements contained in sections 201 and 202 of the Act. Hence, neither the worldwide quota restrictions nor the per-country quota restrictions apply.

Fourth, applicants need not demonstrate that they are not inadmissible under paragraphs (4), (5), (6)(A), (7)(A), and (9)(B) of section 212(a) of the Act in order to adjust status under section 902 of Public Law 105–277. Accordingly, HRIFA allows an otherwise-qualified applicant to adjust status under HRIFA notwithstanding inadmissibility for likelihood of becoming a public charge, for failure to obtain a labor certification, for failure to meet certain requirements applicable to foreign-trained physicians, for failure to meet certain standards for foreign health-care workers, for entering or remaining in the country illegally, for violating documentary requirements relating to entry as an immigrant, or for

accruing more than 180 days of unlawful presence prior to the alien's last departure or removal.

Fifth, unlike those seeking to adjust status under other provisions of law, a HRIFA applicant who has been paroled into the United States and is now in exclusion or removal proceedings before an Immigration Court is not barred from filing an application for adjustment of status under the provisions of HRIFA while in such proceedings.

What Are the HRIFA Requirements Regarding Presence in the United States?

Under the terms of HRIFA, an eligible principal applicant must have been present in the United States on December 31, 1995. The physical presence requirement contained in HRIFA differs from the one contained in section 202 of NACARA in two key aspects. First, the date from which presence is required is December 31, 1995, instead of December 1, 1995. Second, HRIFA requires that an alien seeking adjustment as a principal applicant have been physically present in the United States on the specific date of December 31, 1995, while NACARA allowed the applicant to have commenced physical presence at any time on or prior to December 1, 1995.

HRIFA also requires that eligible applicants must have maintained continuous physical presence in the United States since December 31, 1995. However, HRIFA provides for an exception to the requirement of continuous physical presence under which an eligible alien who was present in the United States on December 31, 1995, is permitted to have been outside the United States for a total of up to 180 days in the aggregate since that date, and prior to the date of his or her adjustment of status to lawful permanent resident, without risk of interrupting his or her continuous physical presence. Except as otherwise provided, however, if an alien has been outside the United States for more than 180 days since December 31, 1995, the alien is not eligible for adjustment under HRIFA.

Furthermore, the Department is providing, by regulation, for three additional circumstances under which an alien may be outside the United States without that time affecting his or her eligibility for adjustment of status under HRIFA:

(1) If the Immigration and Naturalization Service (Service) has granted an alien an Authorization for Parole of an Alien into the United States (Form I–512), then the periods of time during which an alien is absent from the United States pursuant to such an authorization is not counted toward the 180-day cumulative period.

(2) If the Service has granted parole authorization under the provisions of 8 CFR 245.15(t)(2) to an alien for the purpose of traveling to the United States in order to apply for adjustment of status under HRIFA, then the period of time from the date the alien's request for parole authorization is filed at the Nebraska Service Center until the alien is paroled into the United States pursuant to that authorization in not counted toward the 180-day cumulative period.

(3) If the Service has granted parole authorization under the provisions of 8 CFR 245.15(t)(2) to an alien for the purpose of traveling to the United States in order to apply for adjustment of status under HRIFA, then the period of time from the date on which HRIFA was enacted (October 21, 1998) until 30 days from the effective date of this regulation is not counted toward the 180-day cumulative period. The Department is making this provision in order to allow an applicant for such parole authorization time to file the application with the Nebraska Service Center.

How Can a HRIFA Applicant Prove Physical Presence in the United States?

Section 902(b)(1) of HRIFA requires that an applicant must prove presence in the United States on December 31, 1995, but the statute is silent as to the methods by which an applicant may demonstrate his or her presence in the United States on that date. In this rule, the Department is providing that a HRIFA applicant may prove such presence in the United States through submission of evidence demonstrating that on or before December 31, 1995, he or she:

(1) was admitted to the United States in an immigrant or nonimmigrant classification;

(2) was paroled into the United States;

(3) was placed in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(4) was placed in deportation proceedings under section 242 or 242A of such Act (as in effect prior to April 1, 1997);

(5) applied for any benefit under the Act by means of an application establishing his or her presence in the United States;

(6) was issued other documentation by State and local authorities (such as school, hospital, police, and public assistance records), demonstrating the alien's presence in the United States on or prior to December 31, 1995; or

(7) in the case of an applicant seeking classification as a child under section 902(b)(1)(C) of HRIFA, a transcript from a qualified private or religious school.

Normally, an alien may make such a demonstration by submitting a photocopy of a Government-issued document. If the alien is not in possession of such document, but believes that a copy of the document is already contained in the Service file relating to him or her, he or she may submit a statement as to name and location of the issuing Government agency, the type of document and the date on which it was issued.

Because the applicant is required to establish presence in the United States on December 31, 1995, if the documentation submitted relates to a date prior to December 31, 1995, the applicant bears the additional burden of establishing either that he or she did not depart after the date on which presence has been established, or that (if he or she did depart) he or she returned to the United States on or prior to December 31, 1995. Doing so is analogous to proving continuity of presence, and if required, the applicant can meet this initial burden by using the methods described below for proving continuity of presence. While there are no particular criteria for establishing "non-departure," or departure and return, the applicant should be prepared to resolve any doubts that may arise in this regard. The Department solicits comments from interested parties on issues related to this matter.

The Department believes that the evidentiary alternatives for establishing continuity of presence will also provide sufficient opportunities for qualified applicants to establish physical presence in the United States on December 31, 1995, without encouraging fraudulent applications. However, in order to ensure that no group of eligible aliens is precluded from establishing eligibility for HRIFA benefits, the Department is soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be. Commenters are encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process.

A HRIFA applicant also must demonstrate that he or she was continuously physically present in the United States since December 31, 1995. *See* HRIFA section 9021(b)(2). As in the case of the physical presence requirement just discussed, however, the HRIFA statute is silent as to the methods by which an applicant can demonstrate that presence. This interim

rule provides that a HRIFA applicant may demonstrate continuity of physical presence in the United States through the submission of one or more documents issued by any governmental or non-governmental authority. Such documentation must bear the name of the applicant, have been dated at the time it was issued, and bear the seal or signature of the issuing authority (if the documentation is normally signed or sealed), issued on letterhead stationery, or otherwise authenticated. In some cases, a single document may suffice to establish continuity for the entire post-December 31, 1995, period. In other cases, the alien may need to submit a number of documents. For example, a college transcript or an employment record may show that an applicant attended school or worked in the United States throughout the entire post-December 31, 1995, period. On the other hand, an applicant would need to submit a number of monthly rent receipts or electric bills to establish the same continuity of presence. While the Department neither requires nor wants the applicant to submit documentation to show presence on every single day since December 31, 1995, there should be no significant chronological gaps in the documentation either. Generally, a gap of 3 months or less in documentation is not considered significant. However, if the adjudicating officer or immigration judge is satisfied as to the continuity of the applicant's presence in the United States, he or she may accept considerably larger gaps in documentation. Conversely, if the adjudicating officer or immigration judge has reason to doubt the applicant's claim, he or she may require additional documentation. Furthermore, if the applicant is aware of documents already contained in his or her Service file that establish physical presence, he or she may merely list those documents, giving the type and date of the documents. Examples of such documents might include a written copy of a sworn statement given to a Service officer, the transcript of a formal hearing, or a Record of Deportable/Inadmissible Alien (Form I–213).

How Will the Department Evaluate the Evidence Submitted?

In all cases, any doubts as to the existence, authenticity, veracity, or accuracy of the documentation shall be resolved by the official government record, with Service and EOIR records having precedence over the records of other agencies. Furthermore, determinations as to the weight to be given any particular document or item of evidence shall be solely within the purview of the adjudicating authority (i.e., the Service or EOIR). It shall be the responsibility of the applicant to obtain and submit copies of the records of any other government agency which the applicant desires to be considered in support of his or her application.

How Does an Applicant Establish Eligibility As an Alien Who Applied for Asylum or Was Paroled into the United States Prior to December 31, 1995?

Section 902(b)(1)(A) of HRIFA pertains to applicants who filed for asylum before December 31, 1995, and section 902(b)(1)(B) of HRIFA pertains to applicants who were paroled into the United States prior to December 31, 1995, either after having been identified as having a credible fear of persecution, or for emergent reasons or reasons deemed strictly in the public interest. The universe of persons falling into these two categories is both narrowly defined in scope and fully identifiable in Service records. The issue is one of locating the Service record that pertains to the particular applicant. In order to facilitate locating his or her record, an applicant who applied for asylum prior to December 31, 1995, should submit a copy of the first page of the Form I–589, Application for Asylum and Withholding of Deportation, filed at that time, or a copy of the receipt for such filing issued by the Service. In the case of an alien who was included as a dependent in the asylum application filed by a spouse or parent, a copy of the first page of that spouse or parent's application, or a copy of the filing receipt, will be sufficient, even if the relationship has since been altered through death, divorce, or the individual attaining the age of 21 years. If the applicant has lost both the receipt and his or her copy of the application which was filed, he or she may submit a statement giving as much information as possible about the date on which the application was filed and the location of the Service office to which it was submitted.

Likewise, if the applicant was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, he or she should submit a photocopy of the parole document (Form I–94, Arrival-Departure Record) issued at the time. If the parole document was lost or is otherwise not available, the applicant may submit a statement explaining what happened to the document and giving as much information as possible about the date of parole and location of the Service office which issued the parole.

What Provisions of the Statute Pertain Exclusively to Haitian Children in the United States?

Section 902(b)(1)(C) of HRIFA describes three groups of children who may adjust status to that of lawful permanent resident. Membership in all three groups is limited to those persons who were children both at the time of arrival in the United States and on December 31, 1995. Furthermore, all three groups require the occurrence of some qualifying event or events: for subsection (C)(i), the qualifying events are the arrival in the United States without parents and the continuation of such situation since arrival; for subsection (C)(ii), it is becoming an orphan subsequent to arrival; and for subsection (C)(iii), it is the abandonment by parents or guardians prior to April 1, 1998, and the continuation of such abandonment.

What Is Meant by the Terms "Child" and "Parent?"

HRIFA mandates that, as used in HRIFA, the term "child" shall have the same meaning as that provided in the text above subparagraph (A) of section 101(b)(1) of the Act. That text defines a child as "an unmarried person under twenty-one years of age." HRIFA, however, does not provide a definition of the term "parent." In determining how this term should be defined for purposes of HRIFA, the Department looked at the statutory definition of that term contained in section 101(b)(2) of the Act, which states:

(2) The term "parent", "father", or "mother" means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in (1) above, except that, for purposes of paragraph (1)(F) (other than the second proviso therein) in the case of a child born out of wedlock described in paragraph (1)(D) (and not described in paragraph (1)(C)), the term "parent" does not include the natural father of the child if the father has disappeared or abandoned or deserted the child or if the father has in writing irrevocably released the child for emigration and adoption.

The circumstances giving rise to a parental relationship set forth in section 101(b)(1) are as follows:

(A) A child born in wedlock;

(B) A stepchild, whether or not born out of wedlock, provided the child had not reached the age of eighteen years at the time the marriage creating the status of stepchild occurred;

(C) A child legitimated under the law of the child's residence or domicile, or under the law of the father's residence

or domicile, whether in or outside the United States, if such legitimation takes place before the child reaches the age of eighteen years and the child is in the legal custody of the legitimating parent or parents at the time of such legitimation;

(D) A child born out of wedlock, by, through whom, or on whose behalf a status, privilege, or benefit is sought by virtue of the relationship of the child to its natural mother or to its natural father if the father has or had a bona fide parent-child relationship with the person;

(E) A child adopted while under the age of sixteen years if the child has been in the legal custody of, and has resided with, the adopting parent or parents for at least two years: Provided, That no natural parent of any such adopted child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act; or

(F) A child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption; who has been adopted abroad by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who personally saw and observed the child prior to or during the adoption proceedings; or who is coming to the United States for adoption by a United States citizen and spouse jointly, or by an unmarried United States citizen at least twenty-five years of age, who have or has complied with the preadoption requirements, if any, of the child's proposed residence: Provided, That the Attorney General is satisfied that proper care will be furnished the child if admitted to the United States: Provided further, That no natural parent or prior adoptive parent of any such child shall thereafter, by virtue of such parentage, be accorded any right, privilege, or status under this Act.

In promulgating these regulations, the Department follows these definitions, with two notable exceptions. The first exception is that the discussion in section 101(b)(1)(F) pertaining to the qualifications of the petitioning United States citizen prospective parents is clearly irrelevant to HRIFA adjustment cases. The second is that the discussion of a child becoming an orphan through abandonment does not pertain to HRIFA adjustment cases because HRIFA mandates a separate standard for consideration as an abandoned child.

As previously noted, HRIFA provides that the term child is limited to persons who are both under age 21 and unmarried. Individuals who met the definition of child at the time of their arrival in the United States must also have met the definition on December 31, 1995. Any such persons who attained the age of 21 years or married prior to December 31, 1995, are not eligible for classification as a child under any of the three subcategories of section 902(b)(1)(C) of HRIFA. However, if otherwise eligible, they may seek classification as an asylum applicant under section 902(b)(1)(A) of HRIFA, as parolee under section 902(b)(1)(B) of HRIFA, or as a dependent under section 902(d)(1) of HRIFA.

An applicant who met the eligibility standard for adjustment of status as a child under section 902(b)(1)(C) of HRIFA would still be eligible for adjustment even if the individual has attained the age of 21 years or married after December 31, 1995. Furthermore, if an applicant described in section 902(b)(1)(C) acquired a spouse or stepchild through a marriage occurring after December 31, 1995, such spouse or stepchild may adjust status under section 902(d)(1) of HRIFA, if otherwise eligible, as a dependent of a principal applicant.

In general, it does not matter whether a principal applicant under section 902(b)(1)(C) was born in or out of wedlock, has been legitimated, or is an adopted child or a stepchild.

If a stepparent-stepchild relationship was created after the child turned 18, that relationship is not recognized under the Act. Therefore, for purposes of adjustment of status under HRIFA, any "qualifying event" involving such stepparent is immaterial. Likewise, if an adoption took place after a child reached the age of 16 years, no parent-child relationship exists under immigration law and any "qualifying event" involving such adoptive parent is also immaterial.

Where an applicant acquired a stepparent through the marriage of his or her parent, the applicant would have to establish a qualifying event relating to each of the parents and stepparents. For example, the deaths of a father and stepmother, while tragic, do not make a child an orphan if his or her mother and stepfather are still alive.

On the other hand, if a child was adopted prior to age 16, only a qualifying event which involved the adopting parent or parents is relevant. A qualifying event which pertained to a parent whose relationship to the child had been severed by the adoption process is immaterial.

In Haiti, a child who was born out of wedlock and not acknowledged by the father or otherwise legitimated is illegitimate. Such child is deemed under the Act to have only one parent, the mother. However, under the Civil Code of Haiti, all children born out of wedlock and acknowledged by the father are legitimate. Such children are deemed under the Act to have two parents.

Finally, it should be noted that the term "parent" does not include foster parents or guardians.

How Does an Applicant Establish Eligibility as a Child Without Parents in the United States or As an Orphaned or Abandoned Child?

Children Without Parents in the United States

With regard to the specific subcategories of section 902(b)(1)(C) of HRIFA, the first pertains to children who arrived in the United States without parents and have remained without parents in the United States. Since the term "without parents in the United States" is not defined in the Act, the common meaning of the words will prevail. If the applicant had any parents, as discussed above, in the United States at the time of his or her arrival, or at any time since arrival, he or she is not eligible for classification under this subcategory. If even one of the applicant's parents was living in the United States during this period, the applicant is ineligible for classification under this subcategory, regardless of whether the applicant lived with or received any support from such parent.

In order to establish eligibility under this subcategory, an applicant should establish that his or her parents were either deceased or physically outside the United States both at the time of the applicant's arrival in the United States and at all times since then. If the location of the applicant's parents was unknown at the time of arrival and at all times since, the applicant must establish such facts through court records or other pertinent documents.

Children Who Became Orphans Subsequent to Arrival

Section 902(b)(1)(C)(ii) of HRIFA pertains to persons who became orphaned after their arrival in the United States. We recognize that section 101(b)(1)(F) of the Act describes orphans as children who became orphaned through the death or disappearance of, abandonment or

desertion by, or separation or loss from, both parents, or the irrevocable release by the sole or surviving parent who is unable to provide support. However, the Department believes that section 902(b)(1)(C)(ii) relates to a narrower definition of the term orphan, pertaining only to those children who were orphaned through the death or disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent). The Department reached this conclusion based on the fact that Congress chose to include children who arrived in the United States without parents and children who had been abandoned by parents or guardians in the other two subcategories, an action which would have been meaningless had Congress intended to use the broader definition of the term orphan for purposes of section 902(b)(1)(C)(ii). In order for an applicant to be classified as an orphaned child under this subcategory, the application must be supported by:

- The death certificates of both of his or her parents, or the death certificate of the sole parent, showing that the death occurred after the date of the applicant's arrival in the United States and prior to his or her 21st birthday, or
- Evidence from a competent authority (such as a court or government agency having jurisdiction and authority to make decisions involving child welfare) establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent) after the applicant's arrival in the United States and prior to his or her 21st birthday.

Children Who Have Been Abandoned

Section 902(b)(1)(C)(iii) of HRIFA pertains to children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned. The four key elements that an applicant must establish are: that the abandonment occurred prior to April 1, 1998; that the applicant was under 21 years of age and unmarried at the time of such abandonment; that the parents or guardians were the parties who took the action to abandon the applicant; and that the relationship has not been re-established since such abandonment. A child who voluntarily left the home of his or her parents would not fall within this category. An applicant seeking consideration as an abandoned child should submit evidence from court records or child welfare agencies to establish such abandonment.

The Department assumes that in most cases an abandoned child would be brought to the attention of local child welfare agencies who would then assure that the child is declared a ward of the court. The relating agency and court records would establish such. However, the regulations do not rule out the possibility of the applicant using other documentation in support of his or her claim. The Department solicits comments from interested parties on this assumption.

What Weight is Given to Existing Service Records?

In general, as with all applications and petitions under immigration law, the burden of proof is on the applicant to prove eligibility for adjustment of status under section 902 of HRIFA. In the case of many persons who arrived in the United States as children, evidence pertaining to the applicant's eligibility is already contained in Service records. If Service records show the applicant arrived without parents, as an orphan, or was brought to the Service as a subsequently abandoned child and placed into (and remains in) some sort of custody arrangement, there is a rebuttable presumption that the alien falls within the eligible class. The Department feels that such individuals are entitled to this rebuttable presumption due to the verifiability of the information in Service records.

Other potential applicants for classification under section 902(b)(1)(C) of HRIFA may not have been placed into a custody situation through the Service program. For example, persons who were already over the age of 18 at the time of their arrival in the United States, persons who entered without inspection and were never brought to the attention of the Service, and children who were abandoned subsequent to their arrival without such abandonment being reported to the Service, could all fall within the purview of section 902(b)(1)(C) of HRIFA. Such persons may still be able to qualify for adjustment of status, but must meet the burden of proof without the benefit of any presumption of eligibility. An applicant for benefits under this provision must provide all reasonably available evidence of eligibility, including pertinent death certificates, police reports, child welfare agency reports, etc. Such documents must have been created at the time of the event in question, or within a reasonable time thereafter, and must bear any appropriate signatures, seals, or other authenticating instruments.

How Does Admissibility to the United States Affect Eligibility for Adjustment of Status Under HRIFA?

The grounds of inadmissibility specified in paragraphs (4) (public charge), (5) (lack of labor certification), (6)(A) (illegal entry), (7)(A) (immigrant not in possession of an immigrant visa or other valid entry document), and (9)(B) (unlawful presence) of section 212(a) of the Act do not apply to HRIFA applicants.

An applicant who is inadmissible under any of the other grounds of inadmissibility listed in section 212 of the Act is ineligible for adjustment of status under HRIFA, unless he or she receives a waiver of that ground of inadmissibility.

A HRIFA applicant who is eligible for an individual waiver of a ground of inadmissibility not exempted by HRIFA may file an application for the waiver concurrently with his or her application for adjustment of status. Adjustment of status may not be granted unless the waiver has first been approved. For the purpose of adjudicating applications for benefits under HRIFA, the Director of the Nebraska Service Center has been given the authority to adjudicate applications for waivers under sections 212(e), 212(g), 212(h), and 212(i) of the Act, as well as applications for permission to reapply for admission after deportation or removal, including those filed in conjunction with requests for parole from outside the United States.

How Do the Provisions of HRIFA Affect Dependents of Haitian Nationals?

The provisions of HRIFA at section 902(d) address the eligibility requirements for certain dependents of principal HRIFA beneficiaries. To receive HRIFA benefits as a dependent of a HRIFA beneficiary, an alien must be: a national of Haiti; the spouse, child (i.e., under 21 years of age and unmarried), or unmarried son or daughter (i.e., 21 years of age or older) of a HRIFA principal beneficiary at the time of the principal beneficiary's adjustment of status to that of permanent resident; and admissible to the United States under section 212(a) of the Act, not including those provisions specifically excepted by HRIFA. The dependent's relationship to the HRIFA beneficiary must continue to exist at least through the time that the dependent is granted adjustment of status.

HRIFA dependents must be physically present in the United States in order to apply. A spouse or child need not have been present on

December 31, 1995, or during any particular period since that date. Although an unmarried son or daughter need not have been present in the United States on December 31, 1995, he or she must establish that he or she has been physically present in the United States for a continuous period commencing not later than December 31, 1995, not counting absences aggregating 180 days or fewer. Unlike section 202 of NACARA, section 902 of HRIFA does not specify a deadline by which the dependent's application for adjustment of status must be filed.

Many qualifying dependents of HRIFA principal applicants may be able to receive HRIFA benefits in their own right. However, some persons who do not meet the HRIFA standards will only be able to qualify as a dependent of a HRIFA beneficiary. Examples of otherwise eligible persons who can only qualify as dependents include: a spouse or child who arrived in the United States after December 31, 1995; a spouse or child who arrived before December 31, 1995, but has been absent for an aggregate of more than 180 days since that date; and an unmarried son or daughter who came to the United States prior to December 31, 1995, but neither entered as a parolee nor filed for asylum before that date.

How Are Dependents Who Do Not Meet HRIFA Requirements Affected?

A family member who is unable to qualify for HRIFA adjustment of status on his or her own, or as a dependent, may eventually become eligible for lawful permanent resident status under other provisions of the Act. Examples of such individuals would include a dependent who is not a national of Haiti, a spouse or child whose relationship to the principal applicant is established after the principal applicant is granted permanent resident status, and an unmarried son or daughter over the age of 21 who entered the United States after December 31, 1995. After becoming a permanent resident, a HRIFA beneficiary could file a visa petition to accord such a dependent immigrant classification under section 203(a)(2) of the Act, thereby enabling the dependent who is not eligible for HRIFA benefits to seek immigration to the United States through the normal family-based immigration process.

Can a Haitian Who Is, or Has Been, Covered Under the Deferred Enforced Departure (DED) Program Established by Order of the President on December 23, 1997, Apply for Adjustment of Status Under HRIFA?

Yes, if he or she is otherwise eligible for adjustment of status under section 902 of HRIFA.

What Happens If an Applicant Is Already in Exclusion, Deportation, or Removal Proceedings, or Has a Motion To Reopen or Motion to Reconsider Pending Before the Immigration Court or the Board of Immigration Appeals (Board)?

Persons who have proceedings pending before the Immigration Court or the Board, or persons who have a pending motion to reopen or reconsider filed on or before May 12, 1999, may apply for adjustment of status under section 902 of HRIFA, but these cases shall remain with the court holding jurisdiction over the pending proceedings.

Proceedings Pending Before the Immigration Court

If an alien (other than an arriving alien who has not been paroled into the United States) is in exclusion, deportation, or removal proceedings before the Immigration Court, or if an alien has a motion to reopen or motion to reconsider filed on or before May 12, 1999, pending before the Immigration Court, jurisdiction over an application for adjustment of status under section 902 of HRIFA shall lie with the Immigration Court. The procedure for filing an application for adjustment under HRIFA is described below. If an alien who is not clearly ineligible for adjustment of status under section 902 of HRIFA, and who has a pending motion to reopen or motion to reconsider, files an application for adjustment of status under section 902 of HRIFA, the Immigration Court shall reopen the alien's proceedings for consideration of the adjustment application. Applications shall be subject to the filing requirements of 8 CFR 3.11 and 3.31. A person would be "clearly ineligible" if, for example, he was not a national of Haiti or he was not a child on December 31, 1995, and had not filed for asylum or been paroled into the United States prior to that date.

Proceedings Pending Before the Board

In the case of an alien who is not clearly ineligible for adjustment of status under section 902 of HRIFA, and whose case is on appeal with the Board, the Board shall remand the proceedings to the Immigration Court for the sole purpose of adjudicating the application for adjustment. The Board shall so remand the case regardless of whether the alien has already filed an application for adjustment of status under HRIFA. Further, if an alien has a pending motion to reopen or motion to reconsider filed with the Board on or before May 12, 1999, the Board shall reopen and remand the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 902 of HRIFA.

If upon remand the Immigration Court denies the application, or the alien fails to file an application for adjustment under section 902 of HRIFA, the Immigration Court shall return the case to the Board by certification. This will allow the Board to consider the denial of the HRIFA application as well as all other outstanding issues from the previously pending appeal or motion. Neither the alien nor the Service shall be required to file another Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26), or to pay an appeal filing fee, because the Immigration Court's certification of the denial to the Board will automatically transfer the Immigration Court's decision to the Board.

May an Alien Who Is in Proceedings Before an Immigration Court or the Board of Immigration Appeals Apply for Adjustment of Status Before the Service?

Yes, under certain circumstances. An alien who is in exclusion, deportation, or removal proceedings before the Immigration Court or the Board may move to have the proceeding administratively closed for the purpose of filing an application for adjustment under HRIFA. Such administrative closure requires the consent of the Service, which will issue field guidance shortly regarding the circumstances under which it will consent to such a request. If the Service concurs in such motion, the Immigration Court or the Board, as appropriate, will administratively close the proceedings. Such closure will permit recalendaring or reinstating of the closed proceedings if, for example, the alien fails to file an application for adjustment of status under HRIFA before April 1, 2000, or the Service denies any application for adjustment of status filed by the alien under HRIFA. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar or reinstate the exclusion, deportation, or removal proceedings. The Immigration

Court or the Board, as appropriate, will then recalendar or reinstate the proceedings. In the case of a HRIFA adjustment application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared or reinstated proceedings.

What Happens If the Alien's Exclusion, Deportation, or Removal Proceedings Have Already Been Administratively Closed for Reasons Unrelated to HRIFA?

Aliens who have had their cases administratively closed or continued indefinitely with the consent of the Service after December 22, 1997, shall apply for adjustment of status under HRIFA with the Service. Such aliens may not seek reinstatement of their proceedings for the purpose of applying for adjustment of status under HRIFA with EOIR until the Service has adjudicated the adjustment application. Should the Service deny the application, or the alien fail to file the application before April 1, 2000, the Service will move to recalendar or reinstate the proceedings and the proceedings will be recalendared or reinstated by the Immigration Court or the Board, as appropriate. In the case of an application denied by the Service, the alien could seek reconsideration of the denied adjustment application in such recalendared or reinstated proceedings. This procedure simplifies the application process by directing all applications to one location and obviating the need to file motions to recalendar or reinstate proceedings.

What Happens If an Applicant Is the Subject of a Final Order of Exclusion, Deportation, or Removal?

An alien who is the subject of a final order of exclusion, deportation, or removal, and who has never filed an application for adjustment of status under section 902 of HRIFA with the Immigration Court, must file such application with the Service. However, if such alien has a motion to reopen or a motion to reconsider filed on or before May 12, 1999, pending before an Immigration Court or the Board, then the application for adjustment must be filed with the Immigration Court or with the Board, as appropriate. The mere filing of an application for adjustment of status under section 902 of HRIFA with the Service or the referral of a denied application to an Immigration Court does not stay the execution of the final order of removal. To request that execution of the final order be stayed by the Service, the alien must file an Application for Stay of Removal (Form I–246), following the procedures set forth in 8 CFR 241.6. If the application is referred to the Immigration Court, and the Service does not grant a stay of execution of the final order, the alien must request that the Immigration Court or Board specifically grant a stay of execution of the final order of removal.

When Can an Application Be Filed?

For principal applicants, the application period for HRIFA benefits begins June 11, 1999, and ends on March 31, 2000.

For dependent applicants, the application period for HRIFA benefits begins June 11, 1999, and remains open indefinitely. As previously noted, the requisite familial relationship between the dependent applicant and the principal applicant must exist at the time the principal applicant becomes a permanent resident, and must continue at least until the dependent is granted adjustment of status.

What Forms and Other Documents Should Be Filed?

Each applicant for HRIFA adjustment of status benefits must file a separate Application to Register Permanent Residence or Adjust Status (Form I–485), accompanied by the required application fee and supporting documents described below. HRIFA applicants should complete Part 2 (Application Type) of that form by checking box "h—other" and writing "HRIFA—Principal" or "HRIFA—Dependent" next to that block. Each application must be accompanied by the required initial evidence, as follows:

(1) A birth certificate or other record of birth;

(2) A completed Biographic Information Sheet (Form G–325A) if the applicant is between 14 and 79 years of age;

(3) A report of medical examination;

(4) Two photographs as described in the Form I–485 instructions;

(5) A copy of the applicant's Arrival-Departure Record (Form I–94) or other evidence of inspection and admission or parole into the United States, if applicable;

(6) If the applicant is at least 14 years of age, a local police clearance from each jurisdiction where the alien has resided for 6 months or longer since arriving in the United States (although the regulation does allow this particular requirement to be waived under certain circumstances);

(7) If the applicant is a principal applicant, one or more of the documents described in 8 CFR 245.15(f)(9) to establish presence in the United States on December 31, 1995;

(8) If the applicant is a principal applicant or the unmarried son or daughter of a principal applicant, one or more of the documents described in 8 CFR 245.15(f)(10) to establish continuity of physical presence in the United States since December 31, 1995;

(9) If the applicant is a principal applicant or the unmarried son or daughter of a principal applicant, a statement showing all departures from and arrivals in the United States since December 31, 1995;

(10) If the applicant is a principal applicant, evidence that he or she falls within one of the five groups of persons eligible for HRIFA adjustment as described in 8 CFR 245.15(f)(12);

(11) If the alien is applying as the spouse, child, or unmarried son or daughter of another HRIFA beneficiary, evidence of the relationship (for example, a marriage certificate); and

(12) If the applicant acquired Haitian nationality through naturalization in that country, a copy of his or her Haitian naturalization certificate.

Must the Applicant Be Fingerprinted?

Yes, if the applicant is 14 years of age or older. Upon receipt of the application, the Service will instruct the applicant regarding procedures for obtaining fingerprints through one of the Service's Application Support Centers (ASCs) or authorized Designated Law Enforcement Agencies (DLEAs) chosen specifically for that purpose. Those instructions will direct the applicant to the ASC or DLEA nearest the applicant's home and advise the applicant of the date(s) and time(s) fingerprinting services may be obtained. Applicants should not submit fingerprint cards as part of the initial filing.

Is There a Fee for Filing This Application?

HRIFA adjustment of status applications must be submitted with the fee required by 8 CFR 103.7(b)(1) for Form I–485 (currently $220 for applicants 14 years of age or older, and $160 for applicants under age 14). In addition, if the applicant is 14 years of age or older, he or she must submit the fee of $25 to cover fingerprinting costs. If the application is submitted to the Nebraska Service Center, this $25 fee must accompany the application being submitted to that Center. If the application is submitted to an Immigration Court or the Board of Immigration Appeals, the fees must be submitted to the appropriate local office of the Service in accordance with 8 CFR 3.31. An applicant who is deserving of the benefits of section 902 of HRIFA and

is unable to pay the filing fee may request a fee waiver in accordance with 8 CFR 103.7(c).

How and Where Should the Application Be Filed?

If the applicant is not in exclusion, deportation, or removal proceedings before an Immigration Court or the Board of Immigration Appeals, or if the applicant has had his or her case administratively closed or continued indefinitely, the application and attachments must be submitted by mail to: USINS Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501–7245.

If the applicant is in proceedings pending before an Immigration Court or the Board of Immigration Appeals, or if the applicant has a motion to reopen or motion to reconsider filed on or before May 12, 1999, pending before an Immigration Court or the Board, the application and attachments must be submitted to the Immigration Court with jurisdiction over the case or to the Board if the Board has jurisdiction. In cases before the Immigration Court or the Board, the application fee should be submitted to the Service pursuant to 8 CFR 3.31, as provided above. (If the motion to reopen or motion to reconsider is filed after May 12, 1999, jurisdiction over the application for adjustment of status under HRIFA lies with the Service, not with EOIR.)

Applications for adjustment of status under HRIFA may not be submitted to any other Service location or to any consular post.

Can Someone Else Sign the Application if the Applicant Is a Child or a Person Who Is Mentally Incompetent?

In accordance with 8 CFR 103.2(a)(2), an application may be signed by a parent or legal guardian if the applicant is under 14 years of age, and by a legal guardian if the applicant is mentally incompetent. However, a person who is under age 14 is not precluded from signing the application if he or she is capable of understanding the significance of the attestation.

Will an Applicant Filing an Application for Adjustment of Status With the Service Under HRIFA Be Required To Appear Before the Service for an Interview?

The decision whether to require an interview is solely within the discretion of the Service, which may elect to waive the interview of the applicant. The interim regulations provide that the Service may waive the interview if the application and supporting evidence, including Service records, verify that the alien is either clearly eligible or clearly ineligible for adjustment of status. If the application is adjudicated without interview, a notice of the decision will be mailed to the applicant. When an interview is required, the application will be forwarded to the local Service office having jurisdiction over the applicant's place of residence. The applicant will be notified of the date and time to appear for the interview. If an applicant fails to appear for an interview, the application may be denied in accordance with existing regulations.

Can an Applicant Be Authorized To Work While the Application is Pending?

If the alien has already received work authorization under any other provision of the Act, that work authorization will not be affected by the filing of an application for adjustment of status under HRIFA or by the administrative closure of the exclusion, deportation, or removal proceeding to pursue relief pursuant to HRIFA. Furthermore, an applicant for adjustment under HRIFA is able to apply for, and be granted, an extension of any such employment authorization for which he or she remains eligible.

On December 14, 1998, the Service published a notice in the **Federal Register** at 63 FR 68799 which provided for an automatic extension until December 22, 1999, of the validity of certain Employment Authorization Documents (EADs) issued to Haitian nationals pursuant to the Deferred Enforced Departure (DED) program. This was done as a transitional measure to afford Haitian beneficiaries of DED the opportunity to apply for a HRIFA-based EAD. In accordance with that notice and subsequent guidance to Service field offices, the EADs covered by the automatic extension include those bearing an expiration date of December 22, 1998, or later, and either the notation "274a.12(A)(11)" under "provision of law" or the notation "A–11" under "category."

Any applicant for adjustment of status under HRIFA who wishes to obtain initial employment authorization, or continued employment authorization when his or her prior authorization expires, during the pendency of the adjustment of status application, may file an Application for Employment Authorization (Form I–765) with the Service.

For those applicants whose cases are supported by evidence which can be verified through Service records, this interim rule provides that employment authorization may be granted upon filing of the application for adjustment and an application for employment authorization.

In all other cases, the Service will not grant applications for work authorization filed by HRIFA applicants until the application for adjustment is approved or has been pending for 180 days, whichever comes first. This approach is in keeping with section 902(c)(3) of HRIFA, which mandates approval of employment authorization if the adjustment application "is pending for a period exceeding 180 days," and has not been denied, and which authorizes, but does not mandate, approval of employment authorization if the application has been pending for fewer than 180 days.

The Service will emphasize the potential benefits of filing for adjustment of status and employment authorization concurrently during public information sessions that the Service will hold with local community groups. The Department believes that limiting employment authorization to these circumstances and to circumstances in which 180 days have elapsed since the filing of the application will both: (1) Discourage fraudulent applications filed simply as a way to gain work authorization, and (2) permit employment more promptly for those whose applications appear likely to be granted. However, in publishing this interim rule, the Department solicits the views of interested parties on this topic.

Can an Alien Submit an Application for Adjustment of Status If He or She Is Outside the United States?

No. The statute and regulations require that an alien must be physically present in the United States in order to properly file an application. However, a special provision at 8 CFR 245.15(t)(2) allows an otherwise-eligible alien who is outside the United States to submit a request for parole authorization. This special provision is similar to the one contained in the implementing regulations for NACARA. Because of the similarity in the two statutes, the Department has decided to treat the beneficiaries of NACARA and HRIFA in the same manner. These provisions, however, cannot and do not create any additional parole authority, because a parole can only be issued under the Attorney General's discretionary authority contained in section 212(d)(5) of the Act. The provisions merely specify that the requests be filed with, and adjudicated by, the director of the designated service center. For NACARA applications, the designated service center is the Texas Service Center; for HRIFA applications, it is the Nebraska

Service Center. The regulatory authority of the Director of the Nebraska Service Center to adjudicate such requests will expire on March 31, 2000.

An alien requesting parole under this special provision should attach photocopies of the documents the alien intends to file in support of his or her claim for eligibility for adjustment of status under HRIFA if the parole authorization is granted. Parole authorization may be granted, as a matter of discretion, if, upon review of the application for parole authorization and related documents, it is determined that the application for adjustment of status is likely to be approved once it has been properly filed. The alien would be allowed to file the application after being paroled into the country. Accordingly, an alien who is otherwise inadmissible must remain outside the United States until the request for parole authorization is approved. If the alien attempts to enter the United States without the parole authorization, he or she could be found inadmissible to, and removed from, the United States.

Can an Applicant Travel Outside the United States While the Application Is Pending?

Nothing in HRIFA authorizes the Service to allow an applicant to re-enter the United States without proper documents. If an applicant plans to leave the United States to go to any other country before a decision is made on his or her HRIFA adjustment application, he or she should contact the Service to request advance authorization for parole. If an applicant leaves the United States without such advance authorization, action on his or her HRIFA adjustment application may be terminated and the application may be denied. An applicant may also experience difficulty when returning to the United States if he or she does not have such advance authorization. Furthermore, any absence from the United States without an advance parole authorization issued prior to the alien's departure counts toward the 180-day aggregate time period that the applicant is allowed to be outside the United States.

What Is the Status of an Alien Who Is Under a Final Order of Exclusion, Deportation, or Removal and Who Departs From the United States?

Such alien would be a "self-deport" and would be subject to the inadmissibility provisions of section 212(a)(9) of the Act. This is true regardless of whether the alien obtained an Authorization for Parole of an Alien Into the United States (Form I–512) prior to departure. While being inadmissible would not preclude the alien from being *paroled* into the United States, it would preclude the alien from being *admitted* to the United States or being granted an adjustment of status, unless the alien first applied for and was granted permission to reapply for admission into the United States.

How Can Such an Alien Apply for Permission to Reapply for Admission into the United States?

An alien needing such permission may file an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212), in accordance with the instructions on that form. Form I–212 may be filed prior to the alien's departure. Persons needing such forms may obtain them through the Service's Forms Center at 1–800–870–3676.

What Documentation Will Be Issued If the Adjustment Application Is Approved?

After processing is completed, a notice of the decision will be mailed to the HRIFA applicant. Applicants should keep this notice for their records. If the application has been approved, a permanent resident card will be mailed separately to the applicant. To obtain temporary evidence of lawful permanent resident status, the applicant may present the original approval notice and his or her passport or other photo identification at his or her local Service office. The local Service office will issue temporary evidence of lawful permanent resident status after verifying the approval of the HRIFA adjustment of status application. If the applicant is not in possession of a passport in which such temporary evidence may be endorsed, he or she should also submit two photographs meeting Alien Documentation, Identification, and Telecommunication System (ADIT) specifications so that the Service may prepare and issue temporary evidence of lawful permanent residence status.

Is There Any Special Action That an Applicant Who Had Been in Exclusion, Deportation, or Removal Proceedings Must Take Once the Application Has Been Approved?

No. If the alien previously had been issued a final order of exclusion, deportation, or removal, such order shall automatically be deemed canceled as of the date of the approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall automatically be deemed terminated as of the date of approval of the application for adjustment of status.

What Happens if an Application is Denied by the Service?

If the Service finds that an applicant is ineligible for adjustment of status under HRIFA, the Service will advise him or her of its determination and of the applicant's right to seek, and the procedures for seeking, consideration of the application by an immigration judge. Depending on the individual case circumstances, those procedures could take one of three different routes as follows:

(1) If exclusion, deportation, or removal proceedings had never been commenced, the Service will issue a Notice to Appear, thereby initiating removal proceedings during which the applicant may renew his or her application for adjustment under HRIFA before the Immigration Court. In such proceedings, an immigration judge shall adjudicate the renewed application.

(2) If exclusion, deportation, or removal proceedings had been initiated and later administratively closed, the Service will advise the alien of the Service's denial of the HRIFA adjustment application and will move the Immigration Court, or the Board if at the time of administrative closure the Board had jurisdiction over the case, to recalendar or reinstate the proceeding. The previously closed removal proceedings will then be recalendared by the Immigration Court, or reinstated by the Board, as appropriate.

(3) If a final order of exclusion, deportation, or removal had been issued, the Service, using Form I–290C, Notice of Certification, will refer its decision to deny the HRIFA adjustment application to the Immigration Court, which will adjudicate the application in proceedings designed solely for the purpose of such adjudication.

What Happens If an Application Is Denied by the Immigration Court?

If the Immigration Court denies the HRIFA adjustment application of an alien in exclusion, deportation, or removal proceedings before the Immigration Court, the decision may be appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings.

If the Immigration Court denies the HRIFA adjustment application of an alien whose case was remanded to the Immigration Court by the Board, the Immigration Court shall certify the decision to the Board for review.

If the Immigration Court denies the HRIFA adjustment application of an alien whose case was referred by the Service for a HRIFA-only inquiry, the alien shall have the right to appeal the decision to the Board, subject to the requirements in 8 CFR parts 3 and 240 governing appeals from Immigration Courts to the Board, including the requirements of filing a Notice of Appeal to the Board of Immigration Appeals of Decision of Immigration Judge (Form EOIR–26) and paying the filing fee.

What Happens If an Alien Fails To Appear for a Hearing Before the Immigration Court on a HRIFA Adjustment Application?

An alien must appear for all scheduled hearings before an Immigration Court, unless his or her appearance is waived by the Immigration Court. An alien who is in exclusion, deportation, or removal proceedings before the Immigration Court, and who fails to appear for a hearing regarding a HRIFA adjustment application, will be subject to the applicable statutory and regulatory *in absentia* procedures (i.e., section 242B of the Act as it existed prior to the amendments of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) on September 30, 1996, for deportation proceedings, and section 240 of the Act as amended by IIRIRA for removal proceedings).

What Rules of Procedure Apply in HRIFA-Only Hearings Conducted on Cases Referred by the Service to the Immigration Court?

Although an alien who is placed before the Immigration Court for a HRIFA-only hearing after referral on a Notice of Certification (Form I–290) to the Immigration Court by the Service is not specifically subject to the statutory and regulatory provisions governing exclusion, deportation, and removal proceedings, the Department has inserted language in this interim rule reflecting the standards in section 240 of the Act for removal proceedings, including the *in absentia* procedures. Absent specific statutory direction in this area, the procedures of section 240 of the Act were chosen because such procedures are similar to those from the pre-IIRIRA section 242B of the Act and indicate Congress' most recent preference to have procedures dealing with failures to appear for immigration proceedings. Use of the language from section 240 of the Act also ensures that the *in absentia* procedures used for those in HRIFA-only proceedings are consistent with the *in absentia* procedures applicable to aliens who file HRIFA adjustment applications in ongoing removal and deportation proceedings.

As for those aliens who, upon reopening and remand by the Board to the Immigration Court, fail to file a HRIFA adjustment application with the Immigration Court, the immigration judge will certify the case back to the Board for consideration of the previously pending appeal or motion. If, prior to receiving a final order from the Board, the alien subsequently requests a remand to file a HRIFA adjustment application, the Board shall remand the case to the Immigration Court, unless the alien is clearly ineligible for such relief.

May an Applicant Who Receives a Final Determination by the Service, the Immigration Court, or the Board Denying His or Her Application of HRIFA Adjustment Appeal That Decision to a Federal Court?

No. While the regulations provide for various avenues for administrative review of negative HRIFA determinations, section 902(f) of HRIFA provides that "[a] determination by the Attorney General as to whether the status of any alien should be adjusted under [HRIFA] is final and shall not be subject to review by any court."

Good Cause Exception

The Department's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B). Section 902 of HRIFA became effective immediately upon enactment on October 21, 1998. Publication of this rule as an interim rule will expedite implementation of that section and allow Haitian nationals to apply for and obtain the benefits available to applicants for adjustment of status under HRIFA as soon as possible in light of the statutory application deadline of March 31, 2000.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Haitian nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 12612

The regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–485, Supplement C) was submitted to the Office of Management and Budget (OMB) for emergency review and approval under 5 CFR 1320.13(a)(1)(i) and (a)(2)(iii). In a notice published in the **Federal Register** on April 2, 1999 at 64 FR 15990, the Immigration and Naturalization Service notified the public of the proposed

information collection contained in Form I–485 Supplement C. The information collection requirement in this application will be used to determine whether an alien applying for adjustment of status under the provisions of section 902 of Division A, Title IX of Public Law 105–277 is eligible to become a permanent resident of the United States. The estimated total number of respondents is 50,000 and the amount of time estimated for an average respondent to respond is 30 minutes for a total public burden of 25,000 hours.

This information collection request has been approved by OMB and has an OMB Number of 1115–0229. The emergency approval is only valid for 180 days. Comments and suggestions concerning the information collection are encouraged and will be accepted until June 1, 1999. To obtain a copy of the collection instrument or to make comments on this information collection you may contact Mr. Richard A. Sloan, (202) 514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1324b, 1362, 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100.

2. Section 3.1 is amended by revising paragraph (b)(12) to read as follows:

§ 3.1 General authorities.

* * * * *

(b) * * *

(12) Decisions of Immigration Judges on applications for adjustment of status referred on a Notice of Certification (Form I–290C) to the Immigration Court in accordance with §§ 245.13(n)(2) and 245.15(n)(3) of this chapter or remanded to the Immigration Court in accordance with §§ 245.13(d)(2) and 245.15(e)(2) of this chapter.

* * * * *

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

3. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

4. Section 212.2 is amended by:

a. Removing the words "An applicant" and adding in their place the words "Except as provided in paragraph (g)(3) of this section, an applicant" in the first sentence in paragraph (d);

b. Removing the words "If the applicant" and adding in their place the words "Except as provided in paragraph (g)(3) of this section, if the applicant" in the second sentence in paragraph (d); and by

c. Adding a new paragraph (g)(3), to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal, or departure at Government expense.

* * * * *

(g) * * *

(3) If an alien who is an applicant for parole authorization under § 245.15(l) of this chapter requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may file the requisite Form I–212 or Form I–601 at the Nebraska Service Center concurrently with the Form I–131, Application for Travel Document.

* * * * *

5. Section 212.7 is amended by:

a. Adding a new paragraph (a)(1)(iii);

b. Removing the word "or" at the end of paragraph (b)(2)(ii);

c. Removing the period at the end of paragraph (b)(2)(iii) and inserting in its place a "; or"; and by

d. Adding a new paragraph (b)(2)(iv), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) * * *

(1) * * *

(iii) *Parole authorization applicant under § 245.15(l).* An applicant for parole authorization under § 245.15(l) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I–601 with the Director of the Nebraska Service Center considering the Form I–131.

* * * * *

(b) * * *

(2) * * *

(iv) The Nebraska Service Center, if the alien is outside the United States and seeking parole authorization under § 245.15(l)(2) of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

6. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1251, 1252 note, 1252a, 1252b, 1362; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

§ 240.1 [Amended]

7. In § 240.1, paragraph (a)(1)(ii) is amended in the first sentence by removing the words "and section 202 of Pub. L. 105–100" and adding in their place the words ", section 202 of Pub. L. 105–100, and section 902 of Pub. L. 105–277".

§ 240.11 [Amended]

8. In § 240.11, paragraph (a)(1) is amended in the first sentence by removing the words "or section 202 of Pub. L. 105–100," and adding in their place the words "section 202 of Pub. L. 105–100, or section 902 of Pub. L. 105–277,".

§ 240.31 [Amended]

9. Section 240.31 is amended in the first sentence by adding the phrase ", or section 902 of Pub. L. 105–277" immediately after the phrase "section 202 of Pub. L. 105–100".

§ 240.41 [Amended]

10. In § 240.41, paragraph (a) is amended in the first sentence by removing the words "and section 202 of Pub. L. 105–100" and adding in their place the words "section 202 of Pub. L. 105–100, and section 902 of Pub. L. 105–277".

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

11. The authority citation for part 245 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

12. Section 245.15 is added to read as follows:

§ 245.15 Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

(a) *Definitions.* As used in this section, the terms:

Abandoned and *abandonment* mean that prior to a child's 21st birthday both parents have willfully forsaken all parental rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer these rights to any specific person(s).

Guardian means a person lawfully invested (by order of a competent Federal, State, or local authority) with the power, and charged with the duty, of taking care of, including managing the property, rights, and affairs of, a child.

Orphan and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents prior to the child's 21st birthday due to any of the following:

(1) The death of both parents;

(2) The death of one parent and the irrevocable and written release of all parental rights by the sole surviving parent based upon the inability of that parent to provide proper care for the child;

(3) The desertion by both parents, as that phrase is defined in § 204.3(b) of this chapter, or by the sole or surviving parent;

(4) The disappearance of both parents, as that phrase is defined in § 204.3(b) of this chapter, or of the sole or surviving parent;

(5 The loss from both parents, as that phrase is defined in § 204.3(b) of this chapter, or from the sole or surviving parent; or

(6) The separation from both parents, as that phrase is defined in § 204.3(b) of this chapter, or from the sole or surviving parent.

Parent, father, or *mother* means a parent, father, or mother only where the relationship exists by reason of any of the circumstances set forth in paragraphs (A) through (E) of section 101(b)(1) of the Act.

(b) *Applicability of provisions of section 902 of HRIFA in general.* Section 902 of Division A of Pub. L. 105–277, the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA), provides special rules for adjustment of status for certain nationals of Haiti, if they meet the other requirements of HRIFA.

(1) *Principal applicants.* Section 902(b)(1) of HRIFA defines five categories of principal applicants who may apply for adjustment of status, if the alien was physically present in the United States on December 31, 1995:

(i) An alien who filed for asylum before December 31, 1995;

(ii) An alien who was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest; or

(iii) An alien who at the time of arrival in the United States and on December 31, 1995, was unmarried and under 21 years of age and who:

(A) Arrived in the United States without parents in the United States and has remained without parents in the United States since his or her arrival;

(B) Became orphaned subsequent to arrival in the United States; or

(C) Was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment.

(2) *Dependents.* Section 902(d) of HRIFA provides for certain Haitian nationals to apply for adjustment of status as the spouse, child, or unmarried son or daughter of a principal HRIFA beneficiary, even if the individual would not otherwise be eligible for adjustment under section 902. The eligibility requirements for dependents are described further in paragraph (d) of this section.

(c) *Eligibility of principal HRIFA applicants.* A Haitian national who is described in paragraph (b)(1) of this section is eligible to apply for adjustment of status under the provisions of section 902 of HRIFA if the alien meets the following requirements:

(1) *Physical presence.* The alien is physically present in the United States at the time the application is filed;

(2) *Proper application.* The alien properly files an application for adjustment of status in accordance with this section, including the evidence described in paragraphs (h), (i), (j) and (k) of this section;

(3) *Admissibility.* The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section; and

(4) *Continuous physical presence.* The alien has been physically present in the United States for a continuous period beginning on December 31, 1995, and ending on the date the application for adjustment is granted, except for the following periods of time:

(i) Any period or periods of absence from the United States not exceeding 180 days in the aggregate; and

(ii) Any periods of absence for which the applicant received an Advance Authorization for Parole (Form I–512) prior to his or her departure from the United States, provided the applicant returned to the United States in accordance with the conditions of such Advance Authorization for Parole.

(iii) Any periods of absence from the United States occurring after October 21, 1998, and before July 12, 1999, provided the applicant departed the United States prior to December 31, 1998.

(d) *Eligibility of dependents of a principal HRIFA beneficiary.* A Haitian national who is the spouse, child, or unmarried son or daughter of a principal beneficiary eligible for adjustment of status under the provisions of HRIFA is eligible to apply for benefits as a dependent, if the dependent alien meets the following requirements:

(1) *Physical presence.* The alien is physically present in the United States at the time the application is filed;

(2) *Proper application.* The alien properly files an application for adjustment of status as a dependent in accordance with this section, including the evidence described in paragraphs (h) and (l) of this section;

(3) *Admissibility.* The alien is not inadmissible to the United States for permanent residence under any provisions of section 212(a) of the Act, except as provided in paragraph (e) of this section;

(4) *Existence of relationship at time of adjustment.* The alien's qualifying relationship to the principal beneficiary existed at the time the principal beneficiary was granted adjustment of status and continues to exist at the time the dependent alien is granted adjustment of status; and

(5) *Continuous physical presence.* If the alien is applying as the unmarried son or unmarried daughter of a principal HRIFA beneficiary, he or she

must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending on the date the application for adjustment is granted, as provided in paragraphs (c)(4) and (j) of this section.

(e) *Applicability of grounds of inadmissibility contained in section 212(a).* (1) *Certain grounds of inadmissibility inapplicable to HRIFA applicants.* Paragraphs (4), (5), (6)(A), (7)(A) and (9)(B) of section 212(a) of the Act are inapplicable to HRIFA principal applicants and their dependents. Accordingly, an applicant for adjustment of status under section 902 of HRIFA need not establish admissibility under those provisions in order to be able to adjust his or her status to that of permanent resident.

(2) *Availability of individual waivers.* If a HRIFA applicant is inadmissible under any of the other provisions of section 212(a) of the Act for which an immigrant waiver is available, the applicant may apply for one or more of the immigrant waivers of inadmissibility under section 212 of the Act, in accordance with § 212.7 of this chapter.

(f) *Time for filing of applications.* (1) *Applications for HRIFA benefits by a principal HRIFA applicant.* The application period begins on June 11, 1999. To benefit from the provisions of section 902 of HRIFA, an alien who is applying for adjustment as a principal applicant must properly file an application for adjustment of status before April 1, 2000.

(2) *Applications by dependent aliens.* The spouse, minor child, or unmarried son or daughter of an alien who is eligible for adjustment of status as a principal beneficiary under HRIFA may file an application for adjustment of status under this section concurrently with or subsequent to the filing of the application of the principal HRIFA beneficiary. An application filed by a dependent may not be approved prior to approval of the principal's application.

(g) *Jurisdiction for filing of applications.* (1) *Filing of applications with the Service.* The Service has jurisdiction over all applications for the benefits of section 902 of HRIFA as a principal applicant or as a dependent under this section, except for applications filed by aliens who are in pending immigration proceedings as provided in paragraph (g)(2) of this section. All applications filed with the Service for the benefits of section 902 of HRIFA must be submitted by mail to: USINS Nebraska Service Center, PO Box 87245, Lincoln, NE 68501–7245. After proper filing of the application, the Service will instruct the applicant to appear for fingerprinting as prescribed in § 103.2(e) of this chapter. The Director of the Nebraska Service Center shall have jurisdiction over all applications filed with the Service for adjustment of status under section 902 of HRIFA, unless the Director refers the applicant for a personal interview at a local Service office as provided in paragraph (o)(1) of this section.

(2) *Filing of applications by aliens in pending exclusion, deportation, or removal proceedings.* An alien who is in exclusion, deportation, or removal proceedings pending before the Immigration Court or the Board, or who has a pending motion to reopen or motion to reconsider filed with the Immigration Court or the Board on or before May 12, 1999, must apply for HRIFA benefits to the Immigration Court or the Board, as provided in paragraph (p)(1) of this section, rather than to the Service. However, an alien whose proceeding has been administratively closed (see paragraph (p)(4) of this section) may only apply for HRIFA benefits with the Service as provided in paragraph (g)(1) of this section.

(3) *Filing of applications with the Service by aliens who are subject to a final order of exclusion, deportation, or removal.* An alien who is subject to a final order of exclusion, deportation, or removal, and who has not been denied adjustment of status under section 902 of HRIFA by the Immigration Court or the Board, may only apply for HRIFA benefits with the Service as provided in paragraph (g)(1) of this section. This includes applications for HRIFA benefits filed by aliens who have filed a motion to reopen or motion to reconsider a final order after May 12, 1999.

(i) *Stay of final order of exclusion, deportation, or removal.* The filing of an application for adjustment under section 902 of HRIFA with the Service shall not stay the execution of such final order unless the applicant has requested and been granted a stay in connection with the HRIFA application. An alien who has filed a HRIFA application with the Service may file an Application for Stay of Removal (Form I–246) in accordance with section 241(c)(2) of the Act and § 241.6 of this chapter.

(ii) *Grant of stay.* Absent evidence of the applicant's statutory ineligibility for adjustment of status under section 902 of HRIFA or significant negative discretionary factors, a Form I–246 filed by a bona fide applicant for adjustment under section 902 of HRIFA shall be approved and the removal of the applicant shall be stayed until such time as the Service has adjudicated the application for adjustment in accordance with this section.

(h) *Application and supporting documents.* Each applicant for adjustment of status must file an Application to Register Permanent Residence or Adjust Status (Form I–485). An applicant should complete Part 2 of Form I–485 by checking box "h—other" and writing "HRIFA—Principal" or "HRIFA—Dependent" next to that block. Each application must be accompanied by:

(1) *Application fee.* The fee for Form I–485 prescribed in § 103.7(b)(1) of this chapter;

(2) *Fingerprinting fee.* If the applicant is 14 years of age or older, the fee for fingerprinting prescribed in § 103.7(b)(1) of this chapter;

(3) *Identifying information.*

(i) A copy of the applicant's birth certificate or other record of birth as provided in paragraph (m) of this section;

(ii) A completed Biographic Information Sheet (Form G–325A), if the applicant is between 14 and 79 years of age;

(iii) A report of medical examination, as specified in § 245.5 of this chapter; and

(iv) Two photographs, as described in the instructions to Form I–485;

(4) *Arrival-Departure Record.* A copy of the Form I–94, Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled;

(5) *Police clearances.* If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance;

(6) *Proof of Haitian nationality.* If the applicant acquired Haitian nationality other than through birth in Haiti, a copy of the certificate of naturalization or

certificate of citizenship issued by the Haitian government; and

(7) *Additional supporting evidence.* Additional supporting evidence pertaining to the applicant as provided in paragraphs (i) through (l) of this section.

(i) *Evidence of presence in the United States on December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing the alien's presence in the United States on December 31, 1995. Such evidence may consist of one of the following kinds of documentation:

(1) *Form I–94.* A photocopy of the Form I–94, Arrival-Departure Record, issued upon the alien's arrival in the United States;

(2) *Form I–122.* A photocopy of the Form I–122, Notice to Applicant for Admission Detained for Hearing before Immigration Judge, issued by the Service on or prior to December 31, 1995, placing the applicant in exclusion proceedings under section 236 of such Act (as in effect prior to April 1, 1997);

(3) *Form I–221.* A photocopy of the Form I–221, Order to Show Cause, issued by the Service on or prior to December 31, 1995, placing the applicant in deportation proceedings under section 242 or 242A of such Act (as in effect prior to April 1, 1997);

(4) *Other Service document.* A photocopy of any application or petition for a benefit under the Immigration and Nationality Act filed by or on behalf of the applicant on or prior to December 31, 1995, which establishes his or her presence in the United States, or a fee receipt issue by the Service for such application or petition;

(5) *Other government documentation.* Other documentation issued by a Federal, State, or local authority provided such other documentation bears the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), was dated at the time of issuance, and bears a date of issuance not later than December 31, 1995. For this purpose, the term *Federal, State,* or *local authority* includes any governmental, educational, or administrative function operated by Federal, State, county, or municipal officials. Examples of such other documentation include, but are not limited to:

(i) A State driver's license;

(ii) A State identification card issued in lieu of a driver's license to a non-driver;

(iii) A county or municipal hospital record;

(iv) A public college or public school transcript;

(v) Income tax records;

(vi) A copy of a petition on behalf of the applicant which was submitted to the Service on or before December 31, 1995, and which lists the applicant as being physically present in the United States;

(vii) A certified copy of a Federal, State, or local governmental record which was created on or prior to December 31, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought in his or her own behalf, or some other party sought in the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record; and

(viii) A certified copy of a Federal, State, or local governmental record which was created on or prior to December 31, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(6) *Private or religious school transcripts.* In the case of an applicant seeking classification as a child under section 902(b)(1)(C) of HRIFA, a transcript from a private or religious school which:

(i) Is registered with, or approved or licensed by, appropriate State or local authorities;

(ii) Is accredited by the State or regional accrediting body, or by the appropriate private school association; or

(iii) Maintains enrollment records in accordance with State or local requirements or standards.

(j) *Evidence of continuity of presence in the United States since December 31, 1995.* An alien seeking HRIFA benefits as a principal applicant, or as the unmarried son or daughter of a principal applicant, must provide with the application evidence establishing continuity of the alien's physical presence in the United States since December 31, 1995. (This requirement does not apply to a dependent seeking HRIFA benefits as the spouse or minor child of a principal applicant.)

(1) *Evidence establishing presence.* Evidence establishing the continuity of the alien's physical presence in the United States since December 31, 1995, may consist of any documentation issued by any governmental or non-governmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument. In general, there should be no chronological gaps in such documentation exceeding 90 days in length, excluding periods when the applicant states that he or she was not physically present in the United States. Such documentation need not bear the seal of the issuing authority.

(2) *Examples.* Documentation establishing continuity of physical presence may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the Federal or State government, such as public utilities, accredited private and religious schools, and banks;

(ix) If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing presence of another member of that same family unit; and

(x) For applicants who have had ongoing correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records.

(3) *Evidence relating to absences from the United States since December 31, 1995.* If the alien is applying as a principal applicant, or as the unmarried son or daughter of a principal applicant, and has departed from and returned to the United States since December 31, 1995, the alien must provide with the application an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before December 31, 1995;

(ii) The date of each departure (if any) from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

(k) *Evidence establishing the alien's eligibility under section 902(b) of*

HRIFA. An alien seeking HRIFA benefits as a principal applicant must provide with the application evidence establishing that the alien satisfies one of the eligibility standards described in paragraph (b)(1) of this section.

(1) *Applicant for asylum.* If the alien is a principal applicant who filed for asylum before December 31, 1995, the applicant must provide with the application either:

(i) A photocopy of the first page of the Application for Asylum and Withholding of Removal (Form I–589); or

(ii) If the alien is not in possession of a photocopy of the first page of the Form I–589, a statement to that effect giving the date of filing and the location of the Service office or Immigration Court at which it was filed;

(2) *Parolee.* If the alien is a principal applicant who was paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest, the applicant must provide with the application either:

(i) A photocopy of the Arrival-Departure Record (Form I–94) issued when he or she was granted parole; or

(ii) If the alien is not in possession of the original Form I–94, a statement to that effect giving the date of parole and the location of the Service port-of-entry at which parole was authorized.

(3) *Child without parents.* If the alien is a principal applicant who arrived in the United States as a child without parents in the United States, the applicant must provide with the application:

(i) Evidence, such as Form I–94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Evidence establishing the absence of the child's parents, which may include either:

(A) Evidence showing the deaths of, or disappearance or desertion by, the applicant's parents; or

(B) Evidence showing that the applicant's parents did not arrive in the United States with or before the applicant and that neither of the applicant's parents subsequently arrived in the United States. Such evidence may include, but is not limited to, documentation showing that the applicant's parents have been continuously employed outside the United States, are deceased, disappeared or abandoned the applicant prior to the applicant's arrival, or were otherwise engaged in activities showing that they were not in the United States.

(4) *Orphaned child.* If the alien is a principal applicant who is or was a child who became orphaned subsequent to arrival in the United States, the applicant must provide with the application:

(i) Evidence, such as Form I–94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Either:

(A) The death certificates of both parents (or in the case of a child having only one parent, the death certificate of the sole parent) showing that the death or deaths occurred after the date of the applicant's arrival in the United States, or

(B) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent).

(5) *Abandoned child.* If the alien is a principal applicant who was abandoned by parents or guardians prior to April 1, 1998, and has remained abandoned since such abandonment, the applicant must provide with the application:

(i) Evidence, such as Form I–94, showing the date, location, and manner of his or her arrival in the United States; and

(ii) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing such abandonment.

(l) *Evidence relating to applications by dependents under section 902(d) of HRIFA.* (1) *Evidence of spousal relationship.* If the alien is applying as the spouse of a principal HRIFA beneficiary, the applicant must provide with the application a copy of their certificate of marriage and copies of documents showing the legal termination of all other marriages by the applicant or the other beneficiary.

(2) *Evidence of parent-child relationship.* If the applicant is applying as the child, unmarried son, or unmarried daughter of a principal HRIFA beneficiary, and the principal beneficiary is not the applicant's biological mother, the applicant must provide with the application evidence to demonstrate the parent-child relationship between the principal beneficiary and the applicant. Such evidence may include copies of the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an adoption decree, or other relevant evidence.

(m) *Secondary evidence.* If the primary evidence required in paragraph (h)(3)(i), (l)(1) or (l)(2) of this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish birth, marriage, or other relevant event. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. In adjudicating the application for adjustment of status under section 902 of HRIFA, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (i) and (j) of this section. However, subject to verification by the Service, if the documentation specified in paragraphs (i) and (j) is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.

(n) *Authorization to be employed in the United States while the application is pending.* (1) *Application for employment authorization.* An applicant for adjustment of status under section 902 of HRIFA who wishes to obtain initial or continued employment authorization during the pendency of the adjustment application must file an Application for Employment Authorization (Form I–765) with the Service, including the fee as set forth in § 103.7(b)(1) of this chapter. The applicant may submit Form I–765 either concurrently with or subsequent to the filing of the application for HRIFA benefits on Form I–485.

(2) *Adjudication and issuance.* Employment authorization may not be issued to an applicant for adjustment of status under section 902 of HRIFA until the adjustment application has been pending for 180 days, unless the Director of the Nebraska Service Center verifies that Service records contain evidence that the applicant meets the criteria set forth in section 902(b) or 902(d) of HRIFA, and determines that there is no indication that the applicant is clearly ineligible for adjustment of status under section 902 of HRIFA, in which case the Director may approve the application for employment authorization, and issue the resulting document, immediately upon such verification. If the Service fails to

adjudicate the application for employment authorization upon expiration of the 180-day waiting period, or within 90 days of the filing of application for employment authorization, whichever comes later, the alien shall be eligible for interim employment authorization in accordance with § 274a.13(d) of this chapter. Nothing in this section shall preclude an applicant for adjustment of status under HRIFA from being granted an initial employment authorization or an extension of employment authorization under any other provision of law or regulation for which the alien may be eligible.

(o) *Adjudication of HRIFA applications filed with the Service.* (1) *Referral for interview.* Except as provided in paragraphs (o)(2) and (o)(3) of this section, all aliens filing applications for adjustment of status with the Service under this section must be personally interviewed by an immigration officer at a local office of the Service. If the Director of the Nebraska Service Center determines that an interview of the applicant is necessary, the Director shall forward the case to the appropriate local Service office for interview and adjudication.

(2) *Approval without interview.* Upon examination of the application, including all other evidence submitted in support of the application, all relevant Service records and all other relevant law enforcement indices, the Director may approve the application without an interview if the Director determines that:

(i) The alien's claim to eligibility for adjustment of status under section 902 of HRIFA is verified through existing Service records; and

(ii) The alien is clearly eligible for adjustment of status.

(3) *Denial without interview.* If, upon examination of the application, all supporting documentation, all relevant Service records, and all other relevant law enforcement indices, the Director determines that the alien is clearly ineligible for adjustment of status under HRIFA and that an interview of the applicant is not necessary, the Director may deny the application.

(p) *Adjudication of HRIFA applications filed in pending exclusion, deportation, or removal proceedings.* (1) *Proceedings pending before an Immigration Court.* Except as provided in paragraph (p)(4) of this section, the Immigration Court shall have sole jurisdiction over an application for adjustment of status under this section filed by an alien who is in exclusion, deportation, or removal proceedings pending before an immigration judge or the Board, or who has a pending motion to reopen or motion to reconsider filed with an immigration judge or the Board on or before May 12, 1999. The immigration judge having jurisdiction over the exclusion, deportation, or removal proceedings shall have jurisdiction to accept and adjudicate any application for adjustment of status under section 902 of HRIFA during the course of such proceedings. All applications for adjustment of status under section 902 of HRIFA filed with an Immigration Court shall be subject to the requirements of §§ 3.11 and 3.31 of this chapter.

(2) *Motion to reopen or motion to reconsider.* If an alien who has a pending motion to reopen or motion to reconsider timely filed with an immigration judge on or before May 12, 1999, files an application for adjustment of status under section 902 of HRIFA, the immigration judge shall reopen the alien's proceedings for consideration of the adjustment application, unless the alien is clearly ineligible for adjustment of status under section 902 of HRIFA.

(3) *Proceedings pending before the Board.* Except as provided in paragraph (d)(4) of this section, in the case of an alien who either has a pending appeal with the Board or has a pending motion to reopen or motion to reconsider timely filed with the Board on or before May 12, 1999, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 902 of HRIFA, unless the alien is clearly ineligible for adjustment of status under section 902 of HRIFA. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 902 of HRIFA, the immigration judge shall certify the decision to the Board for consideration in conjunction with the applicant's previously pending appeal or motion.

(4) *Administrative closure of exclusion, deportation, or removal proceedings.* (i) An alien who is in exclusion, deportation, or removal proceedings, or who has a pending motion to reopen or a motion to reconsider such proceedings filed on or before May 12, 1999, may request that the proceedings be administratively closed, or that the motion be indefinitely continued, in order to allow the alien to file such application with the Service as prescribed in paragraph (g) of this section. If the alien appears to be eligible to file an application for adjustment of status under this section, the Immigration Court or the Board (whichever has jurisdiction) shall, with the concurrence of the Service, administratively close the proceedings or continue indefinitely the motion.

(ii) In the case of an otherwise-eligible alien whose exclusion, deportation, or removal proceedings have been administratively closed for reasons not specified in this section, the alien may only apply before the Service for adjustment of status under this section.

(q) *Approval of HRIFA applications.* (1) *Applications approved by the Service.* If the Service approves the application for adjustment of status under the provisions of section 902 of HRIFA, the director shall record the alien's lawful admission for permanent residence as of the date of such approval and notify the applicant accordingly. The director shall also advise the alien regarding the delivery of his or her Permanent Resident Card and of the process for obtaining temporary evidence of alien registration. If the alien had previously been issued a final order of exclusion, deportation, or removal, such order shall be deemed canceled as of the date of the director's approval of the application for adjustment of status. If the alien had been in exclusion, deportation, or removal proceedings that were administratively closed, such proceedings shall be deemed terminated as of the date of approval of the application for adjustment of status by the director.

(2) *Applications approved by an immigration judge or the Board.* If an immigration judge or (upon appeal) the Board grants an application for adjustment under the provisions of section 902 of HRIFA, the date of the alien's lawful admission for permanent residence shall be the date of such grant.

(r) *Review of decisions by the Service denying HRIFA applications.* (1) *Denial notification.* If the Service denies the application for adjustment of status under the provisions of section 902 of HRIFA, the director shall notify the applicant of the decision and of any right to renew the application in proceedings before the Immigration Court.

(2) *Renewal of application for HRIFA benefits in removal, deportation, or exclusion proceedings.* An alien who is not the subject of a final order of removal, deportation, or exclusion may renew his or her application for adjustment under section 902 of HRIFA during the course of such removal, deportation, or exclusion proceedings.

(i) *Initiation of removal proceedings.* In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation, or

removal proceedings, the director shall initiate removal proceedings in accordance with § 239.1 of this chapter.

(ii) *Recalendaring or reinstatement of prior proceedings.* In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (p)(4) of this section, the director shall make a request for recalendaring or reinstatement to the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, when the application has been denied. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding.

(iii) *Filing of renewed application.* A principal alien may file a renewed application for HRIFA benefits with the Immigration Court either before or after March 31, 2000, if he or she had filed his or her initial application for such benefits with the Service on or before March 31, 2000. A dependent of a principal applicant may file such renewed application with the Immigration Court either before or after March 31, 2000, regardless of when he or she filed his or her initial application for HRIFA benefits with the Service.

(3) *Aliens with final orders.* In the case of an alien who is the subject of an outstanding final order of exclusion, deportation, or removal, the Service shall refer the decision to deny the application by filing a Notice of Certification (Form I–290C) with the Immigration Court that issued the final order for consideration in accordance with paragraph (s) of this section.

(s) *Action on decisions referred to the Immigration Court by a Notice of Certification (Form I–290C).* (1) *General.* Upon the referral by a Notice of Certification (Form I–290C) of a decision to deny the application, in accordance with paragraph (r)(3) of this section, the immigration judge shall conduct a hearing, under the authority contained in § 3.10 of this chapter, to determine whether the alien is eligible for adjustment of status under section 902 of HRIFA. Such hearing shall be conducted under the same rules of procedure as proceedings conducted under part 240 of this chapter, except the scope of review shall be limited to a determination of the alien's eligibility for adjustment of status under section 902 of HRIFA. During such proceedings, all parties are prohibited from raising or considering any unrelated issues, including, but not limited to, issues of admissibility, deportability, removability, and eligibility for any remedy other than adjustment of status under section 902 of HRIFA. Should the alien fail to appear for such hearing, the immigration judge shall deny the application for adjustment under section 902 of HRIFA.

(2) *Stay pending review.* When the Service refers a decision to the Immigration Court on a Notice of Certification (Form I–290C) in accordance with paragraph (r)(3) of this section, the referral shall not stay the execution of the final order. Execution of such final order shall proceed unless a stay of execution is specifically granted by the immigration judge, the Board, or an authorized Service officer.

(3) *Appeal of Immigration Court decision.* Once the immigration judge issues his or her decision on the application, either the alien or the Service may appeal the decision to the Board. Such appeal must be filed pursuant to the requirements for appeals to the Board from an Immigration Court decision set forth in §§ 3.3 and 3.8 of this chapter.

(4) *Rescission or reopening of the decision of an Immigration Court.* The decision of an Immigration Court under paragraph (s)(1) of this section denying an application for adjustment under section 902 of HRIFA for failure to appear may be rescinded or reopened only:

(i) Upon a motion to reopen filed within 180 days after the date of the denial if the alien demonstrates that the failure to appear was because of exceptional circumstances as defined in section 240(e)(1) of the Act; or

(ii) Upon a motion to reopen filed at any time if the alien demonstrates that he or she did not receive notice of the hearing in person (or, if personal service was not practicable, through service by mail to the alien or to the alien's counsel of record, if any) or the alien demonstrates that he or she was in Federal or State custody and the failure to appear was through no fault of the alien.

(t) *Parole authorization for purposes of travel.* (1) *Travel from and return to the United States while the application for adjustment of status is pending.* If an applicant for benefits under section 902 of HRIFA desires to travel outside, and return to, the United States while the application for adjustment of status is pending, he or she must file a request for advance parole authorization on an Application for Travel Document (Form I–131), with fee as set forth in § 103.7(b)(1) of this chapter and in accordance with the instructions on the form. If the alien is either in deportation or removal proceedings, or subject to a final order of deportation or removal, the Form I–131 must be submitted to the Director, Office of International Affairs; otherwise the Form I–131 must be submitted to the Director of the Nebraska Service Center, who shall have jurisdiction over such applications. Unless the applicant files an advance parole request prior to departing from the United States, and the Service approves such request, his or her application for adjustment of status under section 902 of HRIFA is deemed to be abandoned as of the moment of his or her departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 902 of HRIFA.*

(i) An otherwise eligible applicant who is outside the United States and wishes to come to the United States in order to apply for benefits under section 902 of HRIFA may request parole authorization for such purpose by filing an Application for Travel Document (Form I–131) with the Nebraska Service Center, at P.O. Box 87245, Lincoln, NE 68501–7245. Such application must be supported by a photocopy of the Form I–485 that the alien will file once he or she has been paroled into the United States. The applicant must include photocopies of all the supporting documentation listed in paragraph (f) of this section, except the filing fee, the medical report, the fingerprint card, and the local police clearances.

(ii) If the Director of the Nebraska Service Center is satisfied that the alien will be eligible for adjustment of status once the alien has been paroled into the United States and files the application, he or she may issue an Authorization for Parole of an Alien into the United States (Form I–512) to allow the alien to travel to, and be paroled into, the United States for a period of 60 days.

(iii) The applicant shall have 60 days from the date of parole to file the application for adjustment of status. If the alien files the application for adjustment of status within that 60-day period, the Service may re-parole the alien for such time as is necessary for adjudication of the application. Failure to file such application for adjustment of status within 60 days shall result in the alien being returned to the custody of the Service and being examined as an arriving alien applying for admission. Such examination will be conducted in accordance with the provisions of section 235(b)(1) of the Act if the alien is inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act, or section 240 of the Act if the alien is inadmissible under any other grounds.

(iv) Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act. The authority of the Director of the Nebraska Service Center to authorize parole from outside the United States under this provision shall expire on March 31, 2000.

(3) *Effect of departure on an outstanding warrant of exclusion, deportation, or removal.* If an alien who is the subject of an outstanding final order of exclusion, deportation, or removal departs from the United States, with or without an advance parole authorization, such final order shall be executed by the alien's departure. The execution of such final order shall not preclude the applicant from filing an Application for Permission to Reapply for Admission Into the United States After Deportation or Removal (Form I–212) in accordance with § 212.2 of this chapter.

(u) *Tolling the physical presence in the United States provision for certain individuals.* (1) Departure with advance authorization for parole. In the case of an alien who departed the United States after having been issued an Authorization for Parole of an Alien into the United States (Form I–512), and who returns to the United States in accordance with the conditions of that document, the physical presence in the United States requirement of section 902(b)(1) of HRIFA is tolled while the alien is outside the United States pursuant to the issuance of the Form I–512.

(2) *Request for parole authorization from outside the United States.* In the case of an alien who is outside the United States and submits an application for parole authorization in accordance with paragraph (l)(2) of this section, and such application for parole authorization is granted by the Service, the physical presence requirement contained in section 902(b)(1) of HRIFA is tolled from the date the application is received at the Nebraska Service Center until the alien is paroled into the United States pursuant to the issuance of the Form I–512.

(3) *Departure without advance authorization for parole.* In the case of an otherwise-eligible applicant who departed the United States on or before December 31, 1998, the physical presence in the United States provision of section 902(b)(1) of HRIFA is tolled as of October 21, 1998, and until July 12, 1999.

(v) *Judicial review of HRIFA adjustment of status determinations.* Pursuant to the provisions of section 902(f) of HRIFA, there shall be no judicial appeal or review of any administrative determination as to whether the status of an alien should be adjusted under the provisions of section 902 of HRIFA.

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

13. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2.

§ 274a.12 [Amended]

14. In § 274a.12, paragraph (c)(9) is amended in the second sentence by removing the words "§ 245.13(j) of this chapter" and adding in their place the words "§§ 245.13(j) and 245.15(k) of this chapter".

§ 274a.13 [Amended]

15. In § 274a.13, paragraph (d) is amended in the first sentence by removing the words "in so far as it is governed by § 245.13(j) of this chapter" and adding in their place the words "insofar as it is governed by §§ 245.13(j) and 245.15(k) of this chapter".

PART 299—IMMIGRATION FORMS

16. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

17. Section 299.1 is amended in the table by:

a. Revising the entry for Form "I–290C", and by

b. Adding the entry for Form "I–485 Supplement C" in proper numerical sequence, to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
* * * * *	*	*
I–290C	02–01–99	Notice of Certification.
* * * * *	*	*
I–485 Supplement C	04–01–99	HRIFA Supplement to Supplement C Form I–485 Instructions.
* * * * *	*	*

18. Section 299.5 is amended in the table by adding the entry for Form "I–485 Supplement C" in proper numerical sequence, to read as follows:

§ 299.5 Display of control numbers.

* * * * * * *

INS form No.	INS form title	Currently assigned OBM Control No.
* * * * * * *		
I–485 Supplement C	HRIFA Supplement to Form I–485 Instructions	1115–0229
* * * * * * *		

Dated: May 6, 1999.

Janet Reno,

Attorney General.

[FR Doc. 99–11954 Filed 5–11–99; 8:45 am]

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Wednesday
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Part VIII

Department of Health and Human Services

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Population Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for *care, prevention* and *combination care/prevention* grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These Title XX grants are for community-based and community-supported demonstration projects to: (1) find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexually and decision-making skills, and (2) establish comprehensive and integrated approaches to the delivery of services to pregnant adolescents, adolescent parents and their children.

The Title XX statute contains a provision limiting the amount of AFL funding which may be used for prevention projects to not more than one-third of the overall monies available for demonstration projects. In the Fiscal Year (FY) 1997 and 1998 appropriations for Title XX, as amended, Congress waived this limitation by enacting legislation which earmarked the majority of AFL demonstration funding for prevention grants, specifically abstinence education projects as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Although the Senate Committee report accompanying the FY 1999 appropriations act indicates that continued funding of more prevention projects is the intent of Congress, the FY 1999 appropriation for Title XX does not contain a similar provision waiving the statutory limit. In order to continue to fund a larger number of prevention projects than is allowable under the statute, the Department has asked Congress to amend the FY 1999 appropriation for Title XX to include a waiver of the "not more than one-third for prevention" restriction. The Department expects that such a waiver will be enacted.

Thus, new care, prevention and combination care/prevention projects under this announcement will only be funded if the amendment to the FY 1999 appropriations act does *not* pass. If this amendment is enacted before the end of the fiscal year, funds will not be available to support new projects under this announcement. In the event FY 1999 funds are not available for new care, prevention and combination care/prevention projects, applications will be held for review and consideration in the following fiscal year, although the availability of funding in FY 2000 is uncertain.

To ensure that there are adequate applications which could be funded in the event the amendment is enacted, the Department is also publishing a separate notice in the **Federal Register** announcing the availability of funds for prevention demonstration projects. Such applications would be considered for funding in the event the amendment described above is enacted.

If the amendment to the FY 1999 appropriation for Title XX is not enacted, funds will be available for approximately 40 projects (25 care projects and 15 prevention projects), which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federated States of Micronesia.

DATES: The closing date for this grant announcement is June 28, 1999. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 a.m. and 5:00 p.m. on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following Internet address: *www.hhs.gov/progorg/opa/titlexx/oapp.html*. If you do not have access to the Internet, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants Management Office at the above mailing address. In preparing the application, it is important to follow ALL instructions contained in the application kit.*

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004. Staff is available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. *et seq.*, authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) Title XX authorizes grants for three types of demonstration projects: (1) projects which provide "care services" only (*i.e.*, services for the provisions of care to pregnant adolescents, adolescent parents and their families); (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

Under this program announcement, OAPP intends to make available approximately $12 million to support an estimated 40 new demonstration projects (25 care projects and 15 prevention projects). An applicant may submit a proposal for a *local* care, prevention or combination care/prevention project. The awards for care projects will range fro $250,000 to $350,000. The awards for prevention projects will range from $150,000 to $250,000. Funding for combination care/prevention projects may be higher if in proportion to the effort proposed.

Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent for the fourth year and 40 percent for the fifty year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

We encourage application from experienced organizations which are currently operating programs and which

have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific services which may be funded under Title XX are listed below under Care Programs and Prevention Programs. Applicants who propose to provide a Combination of Care and Prevention Services Program must meet the requirements for each type of program.

The following application requirements contain information collections subject to OMB approval under the Paperwork Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0189.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

Care Programs

Under this announcement, funds are available for local care demonstrations only. The project site must be identified in the application rather than selected after the grant is awarded.

Under the statute the purpose of care programs is to establish innovative, comprehensive, and integrated approaches to the delivery of care services for pregnant adolescents and adolescent parents under 19 years of age at program entry, with primary emphasis on unmarried adolescents who are 17 years old or younger and for their families. This includes young fathers and their families.

The OAPP encourages the submission of care applications which propose to do the following: (1) Add care services to supplement existing adolescent health services in school, hospital or other community settings, (2) provide care services to minority or other disadvantaged population, (3) continue services to clients after the delivery of the baby to enable them to acquire good parenting skills and to ensure that their children are developing normally physically, intellectually and emotionally, (4) stress self-sufficiency skills, such as school completion (in mainstream or alternative schools and GED programs) and/or job training preparation and placement, and (5) involve males and promote male responsibility. Applicants should base their approaches upon an assessment of existing programs and, where appropriate, upon efforts to establish better coordination, integration and linkages among such existing programs.

Applicants for care projects are required to provide, either directly or by referral, the following 10 core services:

(1) Pregnancy testing and maternity counseling;

(2) Adoption counseling and referral services which present adoption as an option for pregnant adolescents, including referral to licensed adoption agencies in the community if the eligible grant recipient is not a licensed adoption agency;

(3) Primary and preventive health services, including prenatal and postnatal care;

(4) Nutrition information and counseling;

(5) Referral for screening and treatment of STDs;

(6) Referral to appropriate pediatric care;

(7) Educational services relating to family life problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting.

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(8) Appropriate educational and vocational services;

(9) Mental health services and referral to mental health services and to other appropriate physical health services; and

(10) Counseling and referral for family planning services.

Note: Funds provided under Title XX may not be used for the provision of family planning services other than counseling and referral services unless appropriate family planning services are not otherwise available in the community. In accordance with sec. 3006(a)(17) of Title XX (42 U.S.C. 300z–5(a)(17)), applicants must make maximum use of services available under the Title X Family Planning Program in providing this required core service.

In addition to the 10 required core services listed above, applicants for care projects may provide any of the following supplemental services:

(1) Referral to licensed residential care or maternity home services;

(2) Child care sufficient to enable the adolescent parent to continue education or to enter into employment;

(3) Consumer education and homemaking;

(4) Counseling for the immediate and extended family members of the eligible person;

(5) Transportation; and

(6) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors.

Prevention Programs

Under this announcement, funds are available for local prevention projects only. The project site must be identified in the application rather than selected after the grant is awarded.

The primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection from sexually transmitted diseases (STDs), including HIV. Accordingly, applicants must provide services that help pre-adolescents and young adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support the postponement of early sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the best choice and is what the project recommends.

Under this announcement, applicants may propose to develop and test new and/or innovative approaches aimed at promoting and fostering abstinence among adolescents. These approaches may consist of a variety of activities such as health, social, cultural, educational, economic and recreational activities, or combinations of all of these. Applicants may also propose to develop and test new prevention curricula and materials, update existing curricula, use existing educational materials/curricula, or use any combination of these materials, to implement their prevention demonstration projects. However, all materials and activities must be within the scope of the Title XX services listed below.

OAPP encourages the submission of prevention applications which propose to do the following: (1) Add prevention services to supplement existing adolescent health education programs or health service programs in school or

other community settings, (2) provide prevention services to minority or other disadvantaged populations, (3) include medically accurate information on sexuality, contraception, sexually transmitted diseases (STDs) and HIV/AIDS, (4) offer educational services to parents to assist them in communicating with their children about sexuality, contraception, STDs and HIV/AIDS, and (5) involve males and promote male responsibility.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services; a proposal may include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors;

(6) Referral for screening and treatment of STDs;

(7) Pregnancy testing and maternity counseling; and

(8) Nutrition information and counseling.

Combination Care and Prevention Services Programs

Applicants proposing to provide both care and prevention services must meet the requirements for both categories as described above. They must also propose to make a substantial effort in each of the two areas and indicate clearly in the application and budget the proportion of effort to be expanded in each component.

It should be noted that, in all Title XX programs, including care, prevention and combination care/prevention programs, grantees may not teach or promote religion in their AFL projects. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation. All programming activities and program curriculum materials must contain medically accurate information, and must remain neutral on abortion. Upon approval for funding, all curricula and related educational materials must be submitted to OAPP for review and approval prior to use in AFL project.

In addition, Under sec. 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral either directly or through sub-contract and may not advocate, promote or encourage abortion. However, if both the adolescent and her parents request abortion counseling, a project may provide referral for such counseling.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes. Waivers of the five percent limit on evaluation may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)).

Section 2006(b)(2) of Title XX requires that the evaluations required by sec. 2006(b)(1) be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of services. The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the evaluation hypothesis(es), identification of the variables to be measured and a timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. In the preparation of the application for Title XX funds, OAPP encourages applicants to work with the proposed evaluator to ensure that the evaluation plan is detailed and. consistent with the project's proposed goals and objectives.

Application Requirements

Applications must be submitted on the forms supplied (PHS 516 1–1, Revised 5/96) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Applicants must be familier with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the appplicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West

Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the reqirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) The community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: April 26, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–11981 Filed 5–11–99; 8:45 am]

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Wednesday
May 12, 1999

Part IX

Department of Health and Human Services

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Public Health and Science; Announcement of Availability of Grants for Adolescent Family Life Demonstration Projects

AGENCY: Office of Adolescent Pregnancy Programs, Office of Populations Affairs, OPHS, HHS.

ACTION: Notice.

SUMMARY: The Office of Adolescent Pregnancy Programs (OAPP) requests applications for *prevention* grants under the Adolescent Family Life (AFL) Demonstration Projects Program. These Title XX grants are for community-based and community-supported demonstration projects to find effective means of preventing pregnancy by encouraging adolescents to abstain from sexual activity through provision of age-appropriate education on sexuality and decision-making skills. *Although adolescents under age 19 are eligible for services, the OAPP is particularly interested in projects which target youth ages 9 to 14.*

The Title XX statute contains a provision limiting the amount of AFL funding which may be used for prevention projects to not more than one-third of the overall monies available for demonstration projects. In the Fiscal Year (FY) 1997 and 1998 appropriations for Title XX, as amended, Congress waived this limitation by enacting legislation which earmarked the majority of AFL demonstration funding for prevention grants, specifically abstinence education projects as defined in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Although the Senate Committee report accompanying the FY 1999 appropriations act indicates that continued funding of more prevention projects is the intent of Congress, the FY 1999 appropriation for Title XX does not contain a similar provision waiving the statutory limit. In order to continue to fund a larger number of prevention projects than is allowable under the statute, the Department has asked Congress to amend the FY 1999 appropriation for Title XX to include a waiver of the "not more than one-third for prevention" restrictions. The Department expects that such a waiver will be enacted.

Thus, funding for new abstinence education prevention projects under this announcement is contingent upon the enactment of an amendment to the FY 1999 appropriations act. If this amendment does not pass before the end of the fiscal year, funds will not be available to support new projects under this announcement. In the event FY 1999 funds are not available for new abstinence education prevention projects, applications will be held for review and consideration in the following year, although the availability of funding in FY 2000 is uncertain.

To ensure that there are adequate applications which could be funded in the event the amendment is not enacted, the Department is also publishing a separate notice in the **Federal Register** announcing the availability of funds for care, prevention and combination care/prevention demonstration projects. Such applications would be considered for funding in the event the amendment described above is not enacted.

If the amendment to the FY 1999 appropriation for Title XX is enacted, funds will be available for approximately 15–20 projects, which may be located in any State, the District of Columbia, the territories of Puerto Rico, the U.S. Virgin Island, Guam, American Samoa, Commonwealth of the Northern Mariana Islands, Republic of Palau, Republic of the Marshall Islands and the Federal States of Micronesia.

DATES: The closing date for this grant announcement is June 28, 1999. Applications will be considered as meeting the deadline if they are postmarked on or before the closing date. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be accepted as proof of timely mailing. All hand delivered applications must be received between the hours of 8:30 am and 5:00 pm on or before the above closing date. Applications which do not meet the deadline will be considered late applications and will be returned to the applicant. *Applications will not be accepted by fax or e-mail. The submission deadline will not be extended.*

ADDRESSES: Application kits consisting of the appropriate forms, a copy of the Title XX legislation, and guidance on the preparation of the application may be downloaded from the following Internet address: *www.hhs.gov/progorg/opa/titlexx/oapp.html*. If you do not have access to the Internet, you may obtain a kit from the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. Written requests for application kits may be faxed to (301) 594–5981. *All completed applications must be submitted to the Grants management Office at the above mailing address. In preparing the applications, it is important to follow ALL instructions contained in the application kit.*

FOR FURTHER INFORMATION CONTACT: The OAPP Program Office at (301) 594–4004. Staff is available to answer questions and provide limited technical assistance in the preparation of grant applications.

SUPPLEMENTARY INFORMATION: Title XX of the Public Health Service Act, 42 U.S.C. 300z. et seq., authorizes the Secretary of Health and Human Services to award grants for demonstration projects to provide services to pregnant and nonpregnant adolescents, adolescent parents and their families. (Catalog of Federal Domestic Assistance Number 93.995) title XX authorizes grants for three types of demonstration projects: (1) Projects which provide "care services" only (*i.e.*, services for the provisions of care to pregnant adolescents, adolescent parents and their family); (2) projects which provide "prevention services" only (*i.e.*, services to prevent adolescent sexual relations); and (3) projects which provide a combination of care and prevention services.

Under this program announcement, OAPP intends to make available approximately $3 million to support an estimated 15–20 new *prevention* demonstration projects only. The awards will range from $150,000 to $250,000. Grants may be approved for project periods of up to five years. Grants are funded in annual increments (budget periods). Funding for all approved budget periods beyond the first year of the grant is contingent upon the availability of funds, satisfactory progress of the project, and adequate stewardship of Federal funds. A grant award may not exceed 70 percent of the total costs of the project for the first and second years, 60 percent of the total costs for the third year, 50 percent of the fourth year and 40 percent for the fifth year. The non-Federal share of the project costs may be provided in cash expenditures or fairly evaluated in-kind contributions, including facilities, equipment and services.

An applicant may submit a proposal for a *local or state-wide* prevention project. We encourage applications from experienced organizations which are currently operating programs and which have the capability of expanding and enhancing these services to serve significant numbers of adolescents according to the guidelines specified in this announcement.

The specific prevention services which may be funded under Title XX are listed below under Prevention Programs.

The following application requirements contain information collections subject to OMB approval under the Paperwork. Reduction Act of 1995 (Pub. L. 104–13). These information collections have been approved by OMB under control number 0937–0189.

Eligible Applicants

Any public or private nonprofit organization or agency is eligible to apply for a grant. Grants are awarded only to those organizations or agencies which are determined to demonstrate the capability of providing the proposed services and meet the statutory requirements.

Prevention Programs

Under this announcement, funds are available for local or state-wide projects. The primary purpose of prevention programs is to find effective means of reaching adolescents, both male and female, before they become sexually active to encourage them to abstain from sexual activity. There is general agreement that early initiation of sexual activity brings not only the risk of unintended pregnancy but also substantial health risks to adolescents, primarily infection with sexually transmitted diseases (STDs), including HIV. Accordingly, applicants must provide services that help pre-adolescents and young adolescents acquire knowledge and skills that will instill healthy attitudes and encourage and support abstinence from sexual activity. Any information provided for adolescents who may be or become sexually active, which relates to reducing the risk of unintended pregnancy and disease, must be medically accurate and must be presented within the context that abstinence is the best choice and is what the project recommends.

Programs must not be inconsistent with abstinence educational as defined in the "Personal Responsibility and Work Opportunity Reconciliation Act of 1996," Pub. L. No. 104–193. Accordingly, under this announcement the term "abstinence education" means an education or motivational program which:

A. Has as its exclusive purpose, teaching the social, psychological, and health gains to be realized by abstaining from sexual activity;

B. Teaches abstinence from sexual activity outside marriage as the expected standard for all school age children;

C. Teaches that abstinence from sexual activity is the only certain way to avoid out-of-wedlock pregnancy, sexually transmitted diseases, and other associated with problems;

D. Teaches that a mutually faithful monogamous relationship in context of marriage is the expected standard of human sexual activity;

E. Teaches that sexual activity outside of the context of marriage is likely to have harmful psychological and physical effects;

F. Teaches that bearing children out-of-wedlock is likely to have harmful consequences for the child, the child's parents, and society;

G. Teaches young people how to reject sexual advances and how alcohol and drug use increases vulnerability to sexual advances; and,

H. Teaches the importance of attaining self-sufficiency before engaging in sexual activity.

Under the statutory requirements of Title XX, applicants for prevention programs are not required to provide any specific array of services. OAPP encourages the submission of applications which focus on educational services relating to family life and which teach the social, psychological and health gains to be realized by abstaining from sexual-activity.

The legislation also permits a proposal to include any one or more of the following services as appropriate:

(1) Educational services relating to family life and problems associated with adolescent premarital sexual relations including:

(a) Information about adoption,

(b) Education on the responsibilities of sexuality and parenting,

(c) The development of material to support the role of parents as the providers of sex education, and

(d) Assistance to parents, schools, youth agencies and health providers to educate adolescents and preadolescents concerning self-discipline and responsibility in human sexuality;

(2) Appropriate educational and vocational services;

(3) Counseling for the immediate and extended family members of the eligible person;

(4) Transportation;

(5) Outreach services to families of adolescents to discourage sexual relations among unemancipated minors; and

(6) Nutrition information and counseling.

Under this announcement, applicants may propose to develop and test new and/or innovative approaches to abstinence education aimed at promoting and fostering abstinence among adolescents. These approaches may consist of a variety of activities such as health, social, cultural, economic and recreational activities, or combinations of all of these, as long as they contain an educational component. Applicants may also propose to develop and test new prevention curricula and materials, update existing curricula, use existing educational materials/curricula, or use any combinations of these materials, to implement their prevention demonstration projects. However, all materials and activities must not be inconsistent with "abstinence education," and must be within the scope of the Title XX services listed above.

It should be noted that grantees may not teach or promote religion in their AFL project. Each grant project must be accessible to the public generally, not just to those of a particular religious affiliation. All programming activities and program curriculum materials must contain medically accurate information, and must remain neutral on abortion. Upon approval for funding, all curricula and related educational materials must be submitted to OAPP for review and approval prior to use in the AFL project.

In addition, under sec. 2011(a) of the Act, AFL projects may not provide abortions or abortion counseling or referral either directly or through sub-contract and may not advocate, promote or encourage abortion. However, if both the adolescent and her parents request abortion counseling, a project may provide referral for such counseling.

Evaluation

Section 2006(b)(1) of Title XX requires each grantee to expend at least one percent but not more than five percent of the Federal funds received under Title XX on evaluation of the project. As this is a demonstration program, all applications are required to have an evaluation component of high quality consistent with the scope of the proposed project and the funding level. All project evaluations should monitor program processes to determine whether the program has been carried out as planned and measure the program's outcomes. Waivers of the five percent limit on evaluation may be granted in cases where a more rigorous or comprehensive evaluation effort is proposed (*see* sec. 2006(b)(1)).

Section 2006(b)(2) of Title XX requires that the evaluations required by sec. 2006(b)(1) be conducted by an organization or entity independent of the grantee providing services. To assist in conducting the evaluations, each grantee shall develop a working relationship with a college or university located in the grantee's state which will provide or assist in providing monitoring and evaluation of services.

The OAPP strongly recommends extensive collaboration between the applicant organization and the proposed evaluator in the development of the intervention, development of the evaluation hypothesis(es), identification of the variables to be measured and a timetable for initiation of the intervention, baseline measurement, and ongoing evaluation data collection and analysis. In the preparation of the application for Title XX funds, OAPP encourages applicants to work with the proposed evaluator to ensure that the evaluation plan is detailed and consistent with the project's proposed goals and objectives.

Application Requirements

Applications must be submitted on the forms supplied (PHS 5161–1, Revised 5/96) and in the manner prescribed in the application kits provided by the OAPP. Applicants are required to submit an application signed by an individual authorized to act for the applicant agency or organization and to assume for the organization the obligations imposed by the terms and conditions of the grant award.

Applicants must be familiar with Title XX in its entirety to ensure that they have complied with all applicable requirements. A copy of the legislation is included in the application kit.

Additional Requirements

Applicants for grants must also meet *both* of the following requirements (each year):

(1) *Requirements for Review of an Application by the Governor.* Section 2006(e) of Title XX requires that each applicant shall provide the Governor of the State in which the applicant is located a copy of each application submitted to OAPP for a grant for a demonstration project for services under this Title. The Governor has 60 days from the receipt date in which to provide comments to the applicant.

An applicant may comply with this requirement by submitting a copy of the application to the Governor of the State in which the applicant is located at the same time the application is submitted to OAPP. To inform the Governor's office of the reason for the submission, a copy of this notice should be attached to the application.

(2) *Requirements for Review of an Application Pursuant to Executive Order 12372 (SPOC Requirements).* Applications under this announcement are subject to the review requirements of E.O. 12372, "Intergovernmental Review of Federal Programs," as implemented by 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." E.O. 12372 sets up a system for state and local government review of proposed Federal assistance applications. As soon as possible, the applicant (other than Federally-recognized Indian tribal governments) should contact the State Single Point of Contact (SPOC) for each state in the area to be served. The application kit contains the currently available listing of the SPOCs which have elected to be informed of the submission of applications. For those states not represented on the listing, further inquiries should be made by the applicant regarding submission to the relevant SPOC. The SPOC's comment(s) should be forwarded to the Grants Management Office, Office of Population Affairs, 4350 East-West Highway, Suite 200, Bethesda, MD 20814. The SPOC has 60 days from the closing date of this announcement to submit any comments.

Application Consideration and Assessment

Applications which are judged to be late or which do not conform to the requirements of this program announcement will not be accepted for review. Applicants will be so notified, and the applications will be returned. All other applications will be reviewed by a multi-disciplinary panel of independent reviewers and assessed according to the following criteria:

(1) The capacity of the proposed applicant organization to provide rapid and effective use of resources needed to conduct the project, collect data and evaluate it. This includes personnel, time and facilities. (30 points)

(2) The applicant's rationale for use of the proposed approach and its worth for testing and/or replication based upon its previous demonstration, review of the literature and/or evaluation findings. (20 points)

(3) The applicant's presentation of an appropriate project design, consistent with the requirements of Title XX, including a clear statement of goals and objectives, reasonable methods for achieving the objectives, a reasonable workplan and timetable and a clear statement of results or benefits expected. (30 points)

(4) The applicant's presentation of a detailed evaluation plan, indicating an understanding of program evaluation methods and reflecting a practical, technically sound approach to assessing the project's achievement of program objectives. (20 points)

Final grant award decisions will be made by the Deputy Assistant Secretary for Population Affairs. In making these decisions, the Deputy Assistant Secretary for Population Affairs will take into account the extent to which grants recommended for approval will provide an appropriate geographic distribution of resources, the priorities in sec. 2005(a), and the other factors in sec. 2005, including consideration of:

(1) The applicant's capacity to administer funds responsibly;

(2) The incidence of adolescent pregnancy and the availability of services in the geographic area to be served;

(3) The population to be served;

(4) The community commitment to and involvement in planning and implementation of the demonstration project;

(5) The organizational model(s) for delivery of service;

(6) The usefulness for policymakers and service providers of the proposed project and its potential for complementing existing adolescent health models;

(7) The reasonableness of the estimated cost to the government considering the anticipated results.

OAPP does not release information about individual applications during the review process until final funding decisions have been made. When these decisions have been made, applicants will be notified by letter of the outcome of their applications. The official document notifying an applicant that an application has been approved for funding is the Notice of Grant Award, which specifies to the grantee the amount of money awarded, the purpose of the grant, the terms and conditions of the grant award, and the amount of funding to be contributed by the grantee to project costs.

Dated: April 26, 1999.

Denese O. Shervington,

Deputy Assistant Secretary for Population Affairs.

[FR Doc. 99–11982 Filed 5–11–99; 8:45 am]

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federal register

Wednesday
May 12, 1999

Part X

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4378–N–04]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from October 1, 1998 through December 31, 1998.

SUMMARY: Under the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), HUD is required to make public all approval actions taken on waivers of regulations. This notice is the thirty-second in a series, being published on a quarterly basis, providing notification of waivers granted during the preceding reporting period. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This is the thirty-second notice of its kind to be published under section 106 of the HUD Reform Act. This notice updates HUD's waiver-grant activity from October 1, 1998 through December 31, 1998.

For ease of reference, waiver requests granted by departmental officials authorized to grant waivers are listed in a sequence keyed to the section number of the HUD regulation involved in the waiver action. For example, a waiver-grant action involving exercise of authority under 24 CFR 58.73 (involving the waiver of a provision in 24 CFR part 58) would come early in the sequence, while waivers of 24 CFR part 990 would be among the last matters listed.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. (For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.)

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between January 1, 1999 through March 31, 1999.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: May 5, 1999.

Andrew Cuomo,

Secretary.

Appendix—Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development October 1, 1998 through December 31, 1998

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

For Items 1 Through 15, Waivers Granted for 24 CFR Parts 91, 92, 511, 570, and 576, Contact: Cornelia Robertson Terry, Field Management Division, Office of Executive Services, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7184, Washington, DC, 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8391.

1. Regulation: 24 CFR 91.402(a).

Project/Activity: The City of Kettering, Ohio requested that HUD waive 24 CFR 91.402(a) to permit the City to continue to operate its program year on a calendar year that starts January 1 and ends December 31. This cycle differs from the program year for the Montgomery County/Kettering Home Consortium, which starts October 1 and ends September 30.

Nature of Requirement: The consolidated planning regulations at 24 CFR 91.402 require that all units of general local government that are members of a HOME consortium must be on the same program year for purposes of the CDBG, HOME, ESG, and HOPWA programs.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: October 28, 1998.

Reasons Waived: HUD determined that there was no need to require an administrative realignment for FY 1999 because the consortium's programs were well underway. If Montgomery County and Kettering wish to renew their Consortium Agreement for the next three year period beginning October 1, 1999, however, they must demonstrate that the program years of all members have been aligned.

2. Regulation: 24 CFR 91.520(a).

Project/Activity: The City of Dallas, Texas requested a waiver of the submission date for the City's Consolidated Annual Performance and Evaluation Report (CAPER).

Nature of Requirement: HUD's Consolidated Plan regulations at 24 CFR 91.520(a) requires each recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 1998.

Reasons Waived: HUD determined that a waiver was justified based on the documentation and justification provided by the City explaining why it failed to meet its CAPER deadline.

3. Regulation: 24 CFR 91.520(a).

Project/Activity: The City of Washington, District of Columbia requested a waiver of its submission date for the City's Consolidated Annual CDBG Performance and Evaluation Report (CAPER).

Nature of Requirement: HUD's Consolidated Plan regulations at 24 CFR 92.520(a) require each recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 1998.

Reasons Waived: HUD determined that there was good cause for the waiver, due to the City's downsizing and staff realignment, which delayed submission of the City's CAPER.

4. Regulation: 24 CFR 92.205(e) and 92.503(b)(2).

Project/Activity: The Kentucky Housing Corporation requested a waiver of the HOME program regulations relating to the repayment requirements governing uncompleted housing projects funded with HOME dollars.

Nature of Requirement:: Under most circumstances, the cancellation of a HOME-assisted project before completion triggers repayment of HOME funds under 24 CFR 92.205(e) and 92.503(b)(2).

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: October 20, 1998.

Reasons Waived: The intended beneficiary of the rehabilitation assistance was murdered before the project could be completed. Due to the tragic and unusual circumstances, the Kentucky Housing Authority was released from the regulatory requirement to repay HOME funds.

5. Regulation: 24 CFR 92.251.

Project/Activity: The City of Ponce, Puerto Rico requested a waiver of the HOME property standards.

Nature of Requirement: The HOME program regulations at 24 CFR 92.251 set forth property standards that housing units assisted with HOME funds must meet. These standards vary according to the activity being undertaken.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 15, 1998.

Reasons Waived: This waiver was needed in order to use HOME funds as part of the Municipality's disaster recovery efforts.

6. Regulation: 24 CFR 92.254(a)(2)(iii).

Project/Activity: The Town of Brookline, Massachusetts and the Brookline Newton Waltham Watertown (BNWW) Consortium requested a waiver to permit the Town of Brookline to base its calculation of the 95 percent median area purchase price on the median purchase price of housing sales within the Town, rather than the median purchase price of sales within the entire Consortium.

Nature of Requirement: The HOME program regulations at 24 CFR 92.254(a)(2)(iii) require that an increase in the maximum allowable housing purchase price to 95 percent of the median area purchase price, must include all areas that are part of the BNWW Consortium.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: October 20, 1998.

Reasons Waived: This waiver was requested because of the extreme range in median values among the four members of the consortium. HUD determined that the waiver was needed in order to continue to offer a homebuyer's assistance program that will reach large-sized, income eligible families.

7. Regulation: 24 CFR 92.257.

Project/Activity: The City of Stamford, Connecticut requested a waiver of 24 CFR 92.257 to permit Metcalf House, Inc., a secular non-profit corporation, to use HOME funds to rehabilitate a church-owned property for ten units of special needs housing.

Nature of Requirement: The HOME program regulations at 24 CFR 92.257 preclude the use of HOME funds to rehabilitate or construct housing owned by a primarily religious organization. The regulation, therefore, prohibits the rehabilitation of this property because it is church-owned.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 2, 1998.

Reasons Waived: The project would not have been feasible without the waiver. The waiver enabled the City to use HOME funds to rehabilitate a church-owned property to provide ten units of special needs housing. The City structured the HOME funds in the project as a loan rather than a grant.

8. Regulation: 24 CFR 92.500(d)(1)(C).

Project/Activity: The State of Nebraska requested an extension of the five-year deadline for the expenditure of HOME disaster grant funds.

Nature of Requirement: The HOME program regulations at 24 CFR 92.500(d)(1)(C) require HUD to recapture any HOME funds not expended within five years after the last day of the month in which HUD notified the grantee of its execution of the HUD partnership agreement.

Granted by: Saul N. Ramirez, Jr., Assistant Secretary for Community Planning and Development.

Date Granted: October 6, 1998.

Reasons Waived: HUD determined that the circumstances that caused the delay in expenditure of HOME funds provided good cause to extend the five year expenditure deadline.

9. Regulation: 24 CFR 92.500(d)(1)(C).

Project/Activity: The State of Kansas requested an extension of the five-year deadline for the expenditure of HOME disaster grant funds.

Nature of Requirement: The HOME program regulations at 24 CFR 92.500(d)(1)(C) requires HUD to recapture any HOME funds not expended within five years after the last day of the month in which HUD notified the grantee of its execution of the HUD partnership agreement.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 22, 1998.

Reasons Waived: HUD determined that the circumstances that caused the delay in expenditure of HOME funds provided good cause to extend the five year expenditure deadline.

10. Regulation: 24 CFR 511.76(c).

Project/Activity: The City of Fort Worth, Texas requested a waiver to permit the City to use program income from its Rental Rehabilitation Program, for homeownership activities.

Nature of Requirement: The Rental Rehabilitation Program (RRP)

regulations at 24 CFR 511.76(c) limits the use of program income generated by the RRP that have not been closed out to: (1) the rehabilitation of RRP-eligible rental housing units; and (2) the provision of rental assistance to lower-income tenants occupying RRP-assisted properties at the time that the rehabilitation occurs.

Granted by: Joseph A. D'Agosta, Acting General Deputy Assistant Secretary for Community Planning and Development.

Date Granted: November 2, 1998.

Reasons Waived: HUD determined that the RRP regulatory provisions relating to the eligible uses and timing of the use of program income, were limiting the City's flexibility in meeting its affordable housing needs.

11. Regulation: 24 CFR 570.200(h)(1).

Project/Activity: The City of Missoula, Montana requested a waiver of 24 CFR 570.200(h)(1) to allow the City to use CDBG funds to reimburse costs incurred for staff training and preparation of its first Consolidated Plan as a new Entitlement community.

Nature of Requirement: The CDBG regulations at 24 CFR 570.200(h)(1) state that a grantee may only use CDBG funds to pay pre-award costs if, among other things, the activity for which the costs are being incurred, is included in a Consolidated Plan or an amended Consolidated Plan prior to the costs being incurred. The City is a new Entitlement grantee and will have to incur planning and administrative costs in the preparation of its first Consolidated Plan.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: November 9, 1998.

Reasons Waived: It was never HUD's intent to put the financial burden for project start-up costs on local resources by prohibiting reimbursement from program funds. The November 1995 revision to the CDBG pre-award regulations was intended to broaden grantees' authority to use CDBG funds to pay reasonable pre-award costs. In making that revision, however, the authorization for new grantees to pay planning and administrative start-up costs with CDBG funds was inadvertently omitted. HUD determined that a waiver was needed to permit the City of Missoula to use CDBG funds to reimburse reasonable planning and administrative program start-up costs, including hiring staff and preparing the Consolidated Plan.

12. Regulation: 24 CFR 570.208(b)(1)(ii).

Project/Activity: The County of Los Angeles, California requested a waiver of the criteria that activities must meet to qualify under the national objective of addressing slums and blight on an area basis. The County's waiver request will allow the participating City of Santa Fe Springs to use Section 108 funds to improve an area to support a large scale commercial and industrial development project.

Nature of Requirement: The CDBG regulations at 24 CFR 570.208(b)(1)(ii) state that an area delineated as slum, blighted, deteriorated or deteriorating under State or local law must have, throughout the area, a substantial number of deteriorated or deteriorating buildings or that the public improvement are in a general state of deterioration.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 21, 1998.

Reasons Waived: HUD determined that the County demonstrated good cause for a waiver by citing the fact that the area is a Brownfield. The FY 1999 HUD Appropriations Act (Pub. L. 105–276, approved October 21, 1998; 112 Stat. 2461), includes a legislative change that makes it clear that Brownfields redevelopment is an eligible CDBG activity. HUD has long recognized Brownfields as blighting influences.

13. Regulation: 24 CFR 576.21.

Project/Activity: Onondaga County requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21. Specifically, the County requested that the thirty percent limitation on essential services be waived.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Fred Karnas Jr., Deputy Assistant Secretary for Economic Development.

Date Granted: October 20, 1998.

Reasons Waived: The County provided HUD the necessary documentation that other eligible ESG program activities are being carried out in the County with other resources.

14. Regulation: 24 CFR 576.21.

Project/Activity: The Commonwealth of Puerto Rico requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21. Specifically, the Commonwealth requested that the thirty percent limitation on essential services in the ESG program be waived.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)).

Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 15, 1998.

Reasons Waived: The Commonwealth of Puerto Rico provided HUD the necessary documentation that other eligible ESG program activities are being carried out in the jurisdiction with other resources.

15. Regulation: 24 CFR 576.21.

Project/Activity: The City of New York, NY requested a waiver of the Emergency Shelter Grants (ESG) program regulations at 24 CFR 576.21. Specifically, the City requested that the thirty percent limitation on essential services be waived.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 15, 1998.

Reasons Waived: The City of New York provided HUD the necessary documentation that other eligible ESG program activities are being carried out in the City with other resources.

For Item 16, Waiver Granted for 24 CFR Part 811, Contact: James B. Mitchell, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3730 x2612 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8391.

16. Regulation: 24 CFR 811.104.
Project/Activity: The refunding of bonds that financed a HoDAG assisted project in Palm Beach County, Florida (Caribbean Villas Apartments, Project No. FL001–HG401).
Nature of Requirement: HUD regulations at 24 CFR part 811 prohibit payment of a fee to a Housing Authority, other than for actual expenses of a bond refunding transaction.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 29, 1998.
Reasons Waived: The refunding bonds are being issued on terms that will reduce debt service in order to strengthen the financial condition of the project, and to redeem outstanding 1989 Bonds. The low-income rent restrictions of sections 103 and 141–150 of the Internal Revenue Code (26 U.S.C. 103, 141–105) will apply during the new financing term to the year 2028. The Palm Beach County Housing Authority will receive a fee of $32,500 for its participation in this transaction. This fee will be paid by the project owner and will not be paid from refunding bond proceeds or from debt service reserve residual balances.

For Items 17 Through 27, Waivers Granted for 24 CFR Part 891, Contact: Willie Spearmon, Director, Business Products, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–7000; telephone (202) 708–3000 (this is not a toll-free number). Hearing- or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8391.

17. Regulation: 24 CFR 891.100(d).
Project/Activity: The amendment of an approved capital advance for projects located in Nebraska (New Beginnings Plaza, Project No. 103–HDO18, Prairie Haven, Project No. 103–EE016, Park Plaza, Project No. 103–EE017) before initial closings had occurred.
Nature of Requirement: The amendment of an approved capital advance is prohibited before the initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: October 22, 1998.
Reasons Waived: The waiver is based on the fact that the sponsors, architects, contractors, and consultant explored every avenue to save money on design, labor, and materials. In addition, construction costs in rural areas of Nebraska are more expensive.

18. Regulation: 24 CFR 891.100(d).
Project/Activity: The amendment of an approved capital advance for a project located in Crossville, Tennessee (Micki Thompson Apartments, Project No. 087–HDO30) before the initial closing had occurred.
Nature of Requirement: The amendment of an approved capital advance is prohibited before the initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 7, 1998.
Reasons Waived: The waiver is based on the project's development cost being comparable in cost and design to similar projects in the area, and because the owner was unable to obtain additional funding from other sources.

19. Regulation: 24 CFR 891.100(d).
Project/Activity: The amendment of an approved capital advance for projects located in Warren, Michigan (Presbyterian Villages of Michigan (Warren Glenn), Project No. 044–EE044/MI28–S961–010) before the initial closing had occurred.
Nature of Requirement: The amendment of an approved capital advance is prohibited before the initial closing has occurred.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 7, 1998.
Reasons Waived: The waiver is based on the fact that the sponsor incurred higher costs due to the shortage of skilled tradespeople, and design changes required for the project to blend into the neighborhood.

20. Regulation: 24 CFR 891.165.
Project/Activity: The duration of the fund reservation was extended for a project located in Berkeley, California (Maggie Kuhn Apartments, Project No. 131–EE093/CA39–S961–006).
Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 17, 1998.
Reasons Waived: The duration of the fund reservation was extended because additional time was required for HUD to review and approve secondary financing documents.

21. Regulation: 24 CFR 891.165.
Project/Activity: The duration of the fund reservation was extended for a project located in New York (Msgr. Joseph F. Stedman Residence, Project No. 012–EE198/NY36–S961–016).
Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 17, 1998.
Reasons Waived: The duration of the fund reservation was extended because the processing of some of the initial closing documents was delayed.

22. Regulation: 24 CFR 891.165.
Project/Activity: The duration of the fund reservation was extended for a project located in Richmond, California (North Richmond Senior Housing, Project No. 131–EE–098/CA39–S961–011).
Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Date Granted: December 22, 1998.
Reasons Waived: The duration of the fund reservation was extended because the sponsor/owner was forced to change sites.

23. Regulation: 24 CFR 891.165.
Project/Activity: The duration of fund reservations was extended for four projects located in Kentucky (Bivins Place, Project No. 083–HDO40–NP–CNU, Cedar Lake Project No. 083–HDO38–NP–WDD, Marian Manor Project No. 083–EE050–NP–WAH, Rall Place Project No. 083–HDO43–NP–CMI).
Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.
Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.
Dates Granted: December 29, 1998.
Reasons Waived: The duration of the fund reservations was extended because the projects experienced delays due to owners trying to identify other funding resources. These other funding sources were necessary because the funds reserved were not sufficient to construct the projects.

24. Regulation: 24 CFR 891.165.
Project/Activity: The duration of the fund reservation was extended for a project located in Capitola, California (Capitola Supportive Housing, Project

No. 131–HD051–WPD/CA39–Q961–005).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservation was extended because the processing was delayed due to a redesign of the development to reduce cost. The project also had to seek secondary financing from other sources for the cost overruns.

25. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Gilroy, California (Villa Esperanza, Project No. 121–HD053–WDD/CA39–Q961–007).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservation was extended because the project's original site was rejected due to environmental concerns.

26. Regulation: 24 CFR 891.165.

Project/Activity: The duration of the fund reservation was extended for a project located in Berkeley, California (Rosevine Supported Living Project, Project No. 131–HD050–WDD/CA39–Q961–004).

Nature of Requirement: The duration of the fund reservation for a capital advance is 18 months with limited exceptions up to 24 months, as approved by HUD on a case-by-case basis.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: December 29, 1998.

Reasons Waived: The duration of the fund reservation was extended because the process of seeking and obtaining approval of the secondary financing from the City of Berkeley delayed the initial closing. In addition, the project had to be redesigned to reduce costs.

27. Regulation: 24 CFR 891.310(b)(1).

Project/Activity: A project in Boston, Massachusetts (Supportive Living Program, Project No. 023–HD066) requested a waiver of additional accessibility requirements.

Nature of Requirement: All entrances, common areas, units to be occupied by resident staff, and amenities must be readily accessible to and usable by persons with disabilities.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Dates Granted: October 23, 1998.

Reasons Waived: The project consists of two existing condominium units for 3 persons with developmental disabilities. The waiver was based on the fact that these units are condominiums and HUD funds were not available to make the hallways, entrances, and common areas accessible.

For Items 28 Through 31, Waivers Granted for 24 CFR Part 891, Contact: Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6168, Washington, DC 20410; telephone (202) 708–3730 x2485 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8391.

28. Regulation: 24 CFR 891.410(c).

Project/Activity: The Fort Worth Multifamily Hub and the Houston Program Center requested a waiver of the age requirement for 22 non-elderly people with disabilities residing in a project located in Beaumont, Texas (Metro YMCA of Beaumont, Project No. 113–EE019/TX24–S931–003).

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at time of initial occupancy).

Granted by: Ira G. Peppercorn, General Deputy Assistant Secretary for Housing.

Date Granted: October 13, 1998.

Reasons Waived: The waiver is based on the special circumstances of this case, which relate to the unusual rent-up process utilized, reliance by the owner on erroneous advice from the Houston Multifamily Program Center and FH&EO, and potential hardship for both the project and occupants themselves.

29. Regulation: 24 CFR 891.410(c).

Project/Activity: Kansas City Hub requested an age waiver because of a continual vacancy problem for a project located in Appleton City, California (Appleton Estates, Project No. 084–EH068).

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 6, 1998.

Reasons Waived: The waiver is based on the area's "soft" housing market and the difficulty in renting efficiency units. The waiver would allow project management additional flexibility in attempting to rent-up these units.

30. Regulation: 24 CFR 891.410(c).

Project/Activity: The Philadelphia Multifamily Hub requested a waiver of the age requirement for five non-elderly disabled families residing in a project located in Romney, West Virginia (Romney Unity, Project No. 045–EE019), and 17 non-elderly families residing in a project located in West Hamlin, West Virginia (Lincoln Unity, Project No. 045–EE098) who are under age 62.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at time of initial occupancy).

Granted By: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 17, 1998.

Reasons Waived: The waiver is based on the circumstances of this case, which involves reliance by the owner resulting from erroneous advice from the Charleston Multifamily Program Center (MPC), and may result in potential hardship to both the project and tenants, if immediately displaced.

31. Regulation: 24 CFR 891.410(c).

Project/Activity: Greensboro Multifamily Hub requested a waiver of income and age requirements for 10 non-elderly people residing in a project located at James Island, South Carolina (St. James Place, Project No. 054–EE019).

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to very low income (VLI) elderly persons (i.e., households composed of one or more persons, at least one of whom is 62 years of age at the time of initial occupancy).

Granted By: William C. Apgar,

Date Granted: November 17, 1998.

Reasons Waived: The waiver is based on the special circumstances of this case, which concerns 8 non-elderly disabled residents who are VLI and 2 elderly residents who are low income but not VLI. The potential hardship posed for both tenants and the project necessitates this waiver.

For Items 32 Through 34 Waivers Granted for 24 CFR Parts 982 and 984, Contact: Gloria J. Cousar, Deputy Assistant Secretary for Public and Assisted Housing Delivery, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4204, Washington, DC 20410; telephone (202) 619–8201 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8391.

32. Regulation: 24 CFR 982.303(b).

Project/Activity: Oakland Housing Authority, California; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 21, 1998.

Reason Waived: The waiver was granted to reunite the family and to give the family (one adult and two children) the opportunity to break its cycle of homelessness.

33. Regulation: 24 CFR 982.303(b).

Project/Activity: Housing Authority of the County of Santa Clara (HACSA), San Jose, CA; Section 8 Rental Certificate Program.

Nature of Requirement: The regulation provides for a maximum rental certificate/voucher term of 120 days during which a certificate holder may seek housing to be leased under the program.

Granted By: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 23, 1998.

Reason Waived: The waiver was granted to prevent further hardship for a family (consisting of one adult and three teenage children) and to prevent the possible separation of the family due to the lack of adequate housing.

34. Regulation: 24 CFR 984.306(b).

Project/Activity: Housing Authority of Jackson County, Oregon; Section 8 Family Self-Sufficiency (FSS) Program.

Nature of Requirement: The regulation provides that a Section 8 rental certificate or voucher program participant must lease a unit in the jurisdiction of the public housing agency that selected the family for the FSS program for a minimum of 12 months after the effective date of the FSS contract.

Granted By: Deborah Vincent, General Deputy Assistant Secretary Office of Public and Indian Housing.

Date Granted: October 16, 1998.

Reason Waived: Approval of the waiver permitted the Section 8 certificate program participant to complete her education and become self-sufficient.

For Items 35 and 36, Waivers Granted for 24 CFR Part 990, Contact: Joan DeWitt, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Operations, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4216, Washington, DC 20410; telephone (202) 619–1872 (this is not a toll-free number). Hearing-or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8391.

35. Regulation: 24 CFR 990.107(b) and 990.110(c)(2)(ii).

Project/Activity: Dover Housing Authority, Dover, NH. A request was made for a waiver of the Performance Funding System (PFS) regulations regarding the execution of an energy performance contract.

Nature of Requirement: HUD's PFS regulations at 24 CFR 990 specifically refer to savings from *decreased* consumption which must be waived to permit conversion from one utility source to another to qualify for the "freeze of the rolling base" energy incentive.

Granted by: Deborah L. Vincent, General Deputy Assistant Secretary for Public and Indian Housing.

Date Granted: November 3, 1998.

Reason Waived: The Dover Housing Authority was granted a regulatory waiver to permit it to use the "freeze of the rolling base" methodology for a conversion from one energy source to another in an energy performance contract under the PFS energy cost savings incentives. Conversion from one utility source to another may result in significant cost avoidance, even though comprising a *shift* in consumption, rather than a reduction.

36. Regulation: 24 CFR 990.107(b) and 990.110(c)(2)(ii).

Project/Activity: New Bedford Housing Authority, New Bedford, MA. A request was made for a waiver of the Performance Funding System (PFS) regulations regarding the execution of an energy performance contract.

Nature of Requirement: HUD's PFS regulations at 24 CFR 990 specifically refers to savings from *decreased* consumption which must be waived to permit conversion from one utility source to another to qualify for the "freeze of the rolling base" energy incentive.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 13, 1998.

Reason Waived: The New Bedford Housing Authority was granted a regulatory waiver to permit it to use the "freeze of the rolling base" methodology for a conversion from one energy source to another in an energy performance contract under the PFS energy cost savings incentives. Conversion from one utility source to another may result in significant cost avoidance, even though comprising a *shift* in consumption, rather than a reduction.

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Wednesday
May 12, 1999

Part XI

Department of Justice

Bureau of Prisons

28 CFR Part 540
Visiting: Notification to Visitors; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 540

[BOP 1071–F]

RIN 1120–AA67

Visiting: Notification to Visitors

AGENCY: Bureau of Prisons, Justice.

ACTION: Final Rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on visiting to make the inmate responsible for having a release authorization form mailed to the inmate's proposed visitor in instances where a background investigation is necessary before the visitor can be approved. This amendment is intended to increase consistency in Bureau operations and to reduce the cost to the government in processing additions to an inmate's visitor's list.

EFFECTIVE DATE: June 11, 1999.

ADDRESSES: Rules Unit, Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on visiting (28 CFR part 540, subpart D). A proposed rule on this subject was published in the **Federal Register** September 11, 1997 (62 FR 47894) which requested comment by November 10, 1997. The Bureau received seven identical comments on the proposed rule. A summary of these comments and the Bureau's response follow.

The commenters all identified themselves as inmates at one particular Federal correctional facility. The commenters stated that they had been informed that all of their visitors (including immediate family members) needed to complete and return a release authorization form before being allowed to visit. The commenters stated that to the best of their knowledge all visitors had to complete and submit the form. This statement presumably rebuts the assertion in the proposed rule that the authorization form is necessary when background information is necessary (for example, when the proposed visitor is not a member of the immediate family).

The commenters stated that they did not want the responsibility of sending the forms and then receiving and transmitting the forms to institution staff. The commenters further stated that they disapproved of the forms as being intrusive in the lives of other people and that they believed their sending the form to potential visitors constituted their personal stamp of approval to the form. The commenters stated that they wanted the Bureau to have total responsibility for sending and receiving the forms.

The commenters also objected to the proposal on the grounds that it constituted an imposition on indigent inmates. The commenters noted that under Bureau policy inmates without funds were eligible to receive a certain amount of stamps for their legal and social mail (see 28 CFR 540.21(d) and (e)). The commenters maintained that sending the authorization forms constituted a business or information gathering use and consequently was an unwarranted imposition upon such inmates.

Finally, the commenters complained about implementation of existing procedures, stating that they were aware of instances in which visitors came to Bureau institutions and were refused admittance presumably because the returned forms were not properly filed.

In response, the Bureau notes that the regulations in 28 CFR 540.51(b)(3) state that if a background investigation is necessary before approving a visitor, the inmate may be held responsible for having a release authorization form forwarded to the proposed visitor. Ordinarily background information is obtained from potential visitors who are not members of the inmate's immediate family. Exception to this procedure may be made when warranted. However, the expectation is that immediate family members generally do not have to provide background information. If an inmate believes that the practice at an institution is not in conformance with Bureau policy, the inmate may bring the matter to the attention of the appropriate Bureau officials through the Administrative Remedy Program (see 28 CFR part 242).

As for the regulatory revision proper, former § 540.51(b)(3) already provided that the inmate could be held responsible for forwarding the authorization form to the potential visitor. As noted in the proposed rule, paragraph (b)(3) was being revised in the interest of reducing costs to the government and for the sake of consistency. There is no change in the regulations with respect to the return of completed forms. Completed forms will continue to be returned to Bureau staff for processing.

Regarding the release authorization form itself, the form is in compliance with information collection standards. Sending the form to a potential visitor therefore need not represent the personal views of the individual sender.

Regarding the impact on inmates without funds, the Bureau believes that the amendment does not unduly burden the inmate because correspondence which conveys the release authorization form to a potential visitor can also serve broader social contact purposes.

Upon due consideration, the Bureau is adopting the proposed revision to § 540.51(b)(3) as final without change. Members of the public may submit further comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no comment in the **Federal Register**.

Executive Order 12866

This rule falls within a category of actions that the Office of Management and Budget (OMB) has determined not to constitute "significant regulatory actions" under section 3(f) of Executive Order 12866 and, accordingly, it was not reviewed by OMB.

Executive Order 12612

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Director of the Bureau of Prisons, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and by approving it certifies that this regulation will not have a significant economic impact upon a substantial number of small entities for the following reasons: This rule pertains to the correctional management of offenders committed to the custody of the Attorney General or the Director of the Bureau of Prisons, and its economic impact is limited to the Bureau's appropriated funds.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and it will not

significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by § 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Plain Language Instructions

We try to write clearly. If you can suggest how to improve the clarity of these regulations, call or write Roy Nanovic, Rules Unit, Office of General Counsel, Bureau of Prisons, 320 First St., Washington, DC 20534; telephone (202) 514–6655.

List of Subjects in 28 CFR Part 540

Prisoners.

Kathleen Hawk Sawyer,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), part 540 in subchapter C of 28 CFR, chapter V is amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 540—CONTACT WITH PERSONS IN THE COMMUNITY

1. The authority citation for 28 CFR part 540 continues to read as follows:

Authority: 5 U.S.C. 301, 551, 552a; 18 U.S.C. 1791, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. In § 540.51, paragraph (b)(3) is amended by revising the first sentence to read as follows:

§ 540.51 Procedures.

* * * * *

(b) * * *

(3) If a background investigation is necessary before approving a visitor, the inmate shall be held responsible for mailing a release authorization form to the proposed visitor.

* * * * *

[FR Doc. 99–11980 Filed 5–11–99; 8:45 am]

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S. 531/P.L. 106–26

To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

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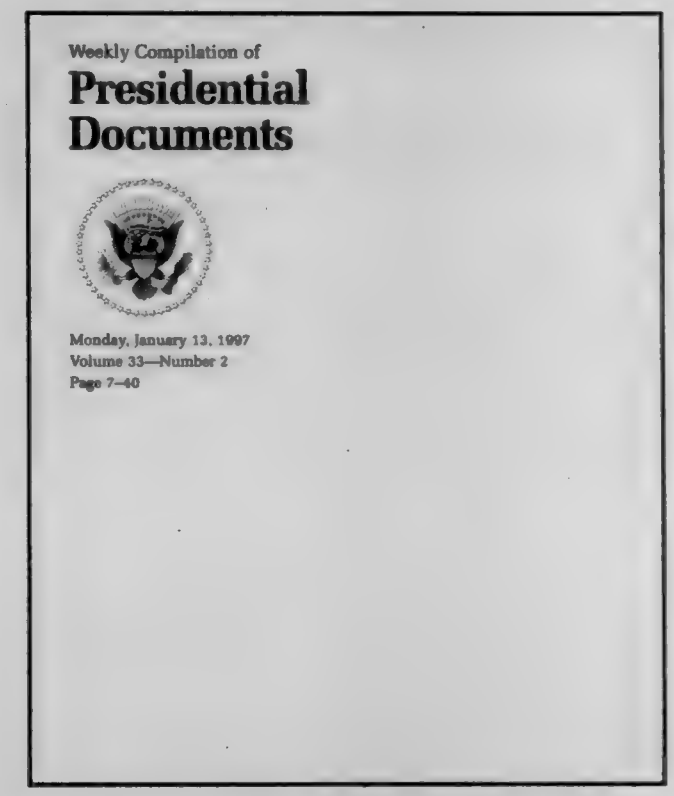
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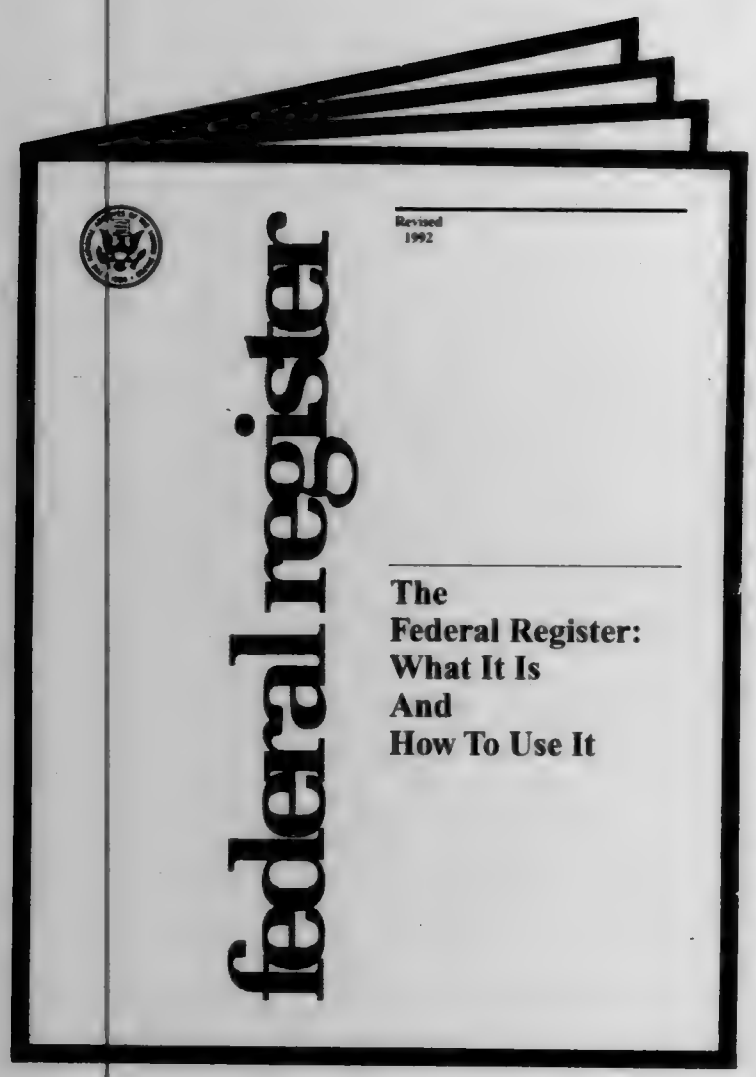
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Presidential Documents

Title 3—

The President

Proclamation 7195 of May 10, 1999

Peace Officers Memorial Day and Police Week, 1999

By the President of the United States of America

A Proclamation

Whether working in big cities, suburban communities, or small rural towns, America's law enforcement officers serve each day as a defense against the forces of crime and brutality. These courageous men and women defend our lives with their own. All too often they pay the ultimate price for their dedication, as America saw again this past year when an armed intruder invaded the United States Capitol and gunned down Officer Jacob J. Chestnut and Detective John M. Gibson. These brave men were husbands, fathers, neighbors, and friends. We must honor and remember their sacrifice and the loss of the loved ones they left behind.

We must also remember that the heroes who died defending the U.S. Capitol were just 2 of the 61 law enforcement officers killed in the line of duty last year. Firearms took all but 3 of these lives. In addition, 78 officers died in tragic accidents. All of their memories live on, not only with their friends and families, but also in the hearts of all of us who enjoy safer, more peaceful lives because of their dedicated service.

This week we honor with special gratitude the nearly 600,000 highly trained law enforcement personnel who serve our Nation each day. Whether working undercover against drug pushers, gang leaders, and terrorists; apprehending fugitives; responding to domestic violence calls; or arresting drunk drivers, these courageous men and women uphold their pledge to preserve the peace and promote the public's safety. In large part because of their skill and determination, crime rates in our Nation have fallen to the lowest point in 25 years, with the murder rate at its lowest level in 30 years. But the war on crime is a constant and dangerous struggle, and during Police Week—and especially on Peace Officers Memorial Day—we honor those who serve on the front lines of that battle.

By a joint resolution approved October 1, 1962 (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103–322 (36 U.S.C. 167), has requested that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim May 15, 1999, as Peace Officers Memorial Day and May 9 through 15, 1999, as Police Week. I call upon the people of the United States to observe these occasions with appropriate ceremonies, programs, and activities. I also request the Governors of the States and of the Commonwealth of Puerto Rico, as well as the appropriate officials of all units of government, to direct that the flag of the United States be flown at half-staff on Peace Officers Memorial Day on all buildings, grounds, and naval vessels throughout the United States and all areas under its jurisdiction and control. I also invite all Americans to display the flag at half-staff from their homes on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord nineteen hundred and ninety-nine, and of the Independence of the United States of America the two hundred and twenty-third.

William J. Clinton

[FR Doc. 99–12269
Filed 5–12–99; 8:45 am]
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Rules and Regulations

Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 99–022–1]

Commuted Traveltime Periods: Overtime Services Relating to Imports and Exports

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine by adding commuted traveltime allowances for travel between various locations in Iowa. Commuted traveltime allowances are the periods of time required for Plant Protection and Quarantine employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by Plant Protection and Quarantine employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime for these locations.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Smith, Senior Operations Officer, Port Operations, PPQ, APHIS, 4700 River Road Unit 60, Riverdale, MD 20737–1236; (301) 734–8415; or e-mail: jim.f.smith@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals, animal products, or other commodities intended for importation into, or exportation from, the United States.

When these services must be provided by an employee of Plant Protection and Quarantine (PPQ) on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time require for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between various locations in Iowa. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking procedure would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provision of 5 U.S.C. 553, we find upon good cause that prior notice and other public procedures with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provision or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provision of this rule or the application of its provisions.

Paperwork Reduction Act

The rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant disease and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, we are amending 7 CFR part 354 as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS, AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260; 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.22, 2.80, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, under Iowa, the following entries to read as follows:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from	Metropolitan area	
		Within	Outside
[Add]			
* * * * *			
Iowa:			
Davenport	Des Moines		6
* * * * *			
Sioux City	Des Moines		6
Undesignated ports	Des Moines		6
* * * * *			

Done in Washington, DC, this 6th day of May 1999.

Joan M. Arnold,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–12147 Filed 5–12–99; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM154, Special Conditions No. 25–99–273–SC]

Special Conditions: Dornier Model 328–300 Airplane; High Intensity Radiated Fields (HIRF).

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Dornier Model 328–300 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

DATES: The effective date of these special conditions is April 15, 1999. Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket (ANM–7), Docket No. NM154, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM154. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA has determined that good cause exists for making these special conditions effective upon issuance; however, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the docket and special conditions number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. These special conditions may be changed in light of the comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this request must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM154." The postcard will be date stamped and returned to the commenter.

Background

On November 14, 1996, the Luftfahrt-Bundesamt (LBA) applied on behalf of Dornier Luftfahrt GmbH for an amendment to U.S. Type Certificate No. A45NM to include the new Dornier Model 328–300. The Model 328–300, which is a modification of the Dornier Model 328–100 approved under Type Certificate No. A45NM, will be a 32–34 passenger airplane with a pressurized cabin and a maximum takeoff weight of 33,510 pounds (15200 kg). The Model 328–300 is of a high-wing configuration, with twin turbofan engines mounted underneath the wings, and a horizontal tail mounted at the top of the vertical fin. The FAA subsequently determined that this airplane would require a new type certificate because the type of propulsion on this airplane is being changed from turboprop to turbofan.

The Dornier Model 328–300 incorporates an electronic flight instrument system (EFIS) for display of critical flight parameters (altitude, airspeed, and attitude) to the crew. These displays can be susceptible to disruption to both command/response signals as a result of electrical and magnetic interference. This disruption of signals could result in loss of all critical flight displays and annunciations or present misleading information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Dornier Luftfahrt GmbH must show that the Model 328–300 airplane meets the applicable provisions of part 25 as amended by Amendments 1 through 87 thereto.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25, as amended) do not contain adequate or appropriate safety standards for the Dornier Model 328–300 airplane because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Dornier 328–300 will incorporate an electronic flight instrument system (EFIS) that performs critical functions. This system may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the applicable regulations, special conditions are needed for the Dornier 328–300, which require that new electrical and electronic systems, such as the EFIS, that perform critical functions be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1, or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)					
	US		UK/European		Consolidated	
	Peak	Average	Peak	Average	Peak	Average
10 kHz–100 kHz	30	30	50	50	50	50
100 kHz–500 kHz	40	30	60	60	60	60
500 kHz–2 MHz	30	30	70	70	70	70
2 MHz–30 MHz	190	190	200	200	200	200
30 MHz–70 MHz	20	20	30	30	30	30
70 MHz–100 MHz	20	20	30	30	30	30
100 MHz–200 MHz	30	30	150	30	150	30
200 MHz–400 MHz	30	30	70	70	70	70
400 MHz–700 MHz	80	80	700	40	700	80
700 MHz–1 GHz	690	240	1700	80	1700	240
1 GHz–2 GHz	970	70	5000	360	5000	360
2 GHz–4 GHz	1570	350	4500	360	4500	360
4 GHz–6 GHz	7200	300	5200	300	7200	300
6 GHz–8 GHz	130	80	2000	330	2000	330
8 GHz–12 GHz	2100	80	3500	270	3500	270
12 GHz–18 GHz	500	330	3500	180	3500	330
18 GHz–40 GHz	780	20	NA	NA	780	20

The field strengths are expressed in terms of peak root-mean-square (rms) values.

Applicability

As discussed above, these special conditions are applicable to Dornier 328–300 Model airplane. Should Dornier Luftfahrt GmbH apply any other model included on the same type certificate to incorporate the same noval or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only Dornier Model 328–300 airplanes. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the airplane.

The substance of the special conditions for this airplane has been subjected to the notice and comment procedure in several prior instances and has been derived without substantive change from those previously issued. It is unlikely that prior public comment would result in a significant change from the substance contained herein. For this reason, and because a delay

would significantly affect the certification of the airplane, which is imminent, the FAA has determined that prior public notice and comment are unnecessary and impracticable, and good cause exists for adopting these special conditions immediately. Therefore, these special conditions are being made effective upon issuance. The FAA is requesting comments to allow interested persons to submit views that may not have been submitted in response to the prior opportunities for comment described above.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Dornier Model 328–300 airplane.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields external to the airplane.

For the purpose of these special conditions, the following definition applies:

Critical Functions. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on April 15, 1999.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–12143 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–02; Amendment 39–11164; AD 99–10–11]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney JT8D–200 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Pratt & Whitney JT8D–200 series turbofan engines, that currently requires periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, and dimensional restoration of the fan blade leading edge. In addition, that AD requires installation of improved design fan blades as terminating action for the inspections. This AD will reduce the lubrication interval, and require removal of rotors that experience repeat lockups within 225 cycles in service. This supersedure is prompted by reports of twenty-five fan blade failures to date. The actions specified by the AD are intended to prevent fan blade failure, which can result in damage to the aircraft.

DATES: Effective June 14, 1999. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 14, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–6600, fax (860) 565-4503. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter White, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7128, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding airworthiness directive (AD) 96–23–15, Amendment 39–9821 (61 FR 63706, December 2, 1996), applicable to certain Pratt & Whitney (PW) JT8D–200 series turbofan engines, was published in the **Federal Register** on December 2, 1998 (63 FR 66500). That action proposed to require periodic inspection of fan blades for locked rotors and foreign object damage (FOD), unlocking of shrouds if necessary, lubrication of fan blade shrouds, removal from service of fan rotors which experience repeat lockup events within 225 cycles in service, and dimensional restoration of the fan blade leading edge. In addition, that AD requires installation of improved design fan blades as terminating action for the inspections.

Since the issuance of that AD, the FAA has received reports of 7 additional fan blade failures on engines that had been inspected in accordance with the current AD, bringing the total of reported failures to 25. The fan blades are failing as a result of high cycle fatigue. Contributing factors are foreign object damage (FOD), leading edge erosion, manufacturing discrepancies, and locked fan shrouds. These fan blade failures indicate that the currently mandated fleet management plan is insufficient.

The FAA has reviewed and approved the technical contents of PW Alert Service Bulletin (ASB) No. A6241, Revision 2, dated June 29, 1998, that reduces the lubrication interval, and requires removal of rotors that experience repeat lockups within 225 cycles in service (CIS).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters concur with the rule as proposed. Two of these are already in compliance with the rule as proposed.

One commenter suggests that alternate method of compliance (AMOC) approvals for ADs 95–12–19 and 96–23–15 should be applicable to this AD, without requiring additional approval. The proposal only references AMOC approvals to 95–12–19. The FAA does not agree. This AD represents the third AD in a line of ADs addressing the fan blade shroud locking problem on PW JT8D–200 engines. Normally when an AD supersedes a previously issued AD, all AMOC approvals to the superseded AD cease on the effective date of the superseding AD, and operators must either comply with the requirements of the new AD or reapply for a new AMOC approval. On further review of the issue

of whether previous AMOC approvals should be allowed to continue in force, the FAA has determined that AMOC approvals for neither of the previous ADs should be allowed to continue in force after the effective date of this AD. The inspection requirements for ASB 6241, Rev. 2, dated June 29, 1998, incorporated in this AD, differ significantly from those of the current AD in that blades that experience repeat lockups within 225 cycles must be removed. Therefore, the FAA has determined to remove proposed paragraph (e) from the final rule. All AMOC approvals issued for either AD 95–12–19 or AD 96–23–15 will cease on the effective date of this AD.

One commenter believes that it is unnecessary to track repeat lockups and remove from service rotors that experience repeat lockups within 225 cycles, because the foreign object damage (FOD) checks and lubrication of the shrouds address the root cause of the problem. The FAA does not concur. Analysis of fan blade fracture events revealed a strong correlation between repeat lockup histories and subsequent fractures. The requirement to track lockup events and remove rotors which experience repeat lockups within 225 cycles is a key part of the fleet management proposal, and is required to provide the full safety benefit of this proposal. A statement clarifying the requirement to remove rotors from service per Part 3 of ASB6241 rev. 2 was added to paragraph (a) of this AD. Previously this was stated directly only in the Summary and Supplementary Information sections of the AD. Since comments indicate that operators implied that to be the case, this addition to paragraph (a) does not expand the scope of the AD or add any additional burden to operators.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 2,650 engines of the affected design in the worldwide fleet. The FAA estimates that 960 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take no additional work hours to perform these inspections except at a shorter lubrication interval. Rework costs for the fan blades are $275 per blade, of which approximately $140 per blade is attributable to this AD action. With the manufacturer's rebate of $50 per blade, the total cost to industry of reworking these blades is $2,750 per engine.

The manufacturer estimates that it will take 19 work hours per engine to remove and reinstall the blades. Using labor costs of $60 per work hour, the labor costs to remove and reinstall the blades are $1,140 per engine. Hence, the increased costs generated by this proposed AD on U.S. operators is estimated to be $3,890 per engine, or $3,734,400 to retrofit the remaining 960 engines.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–9821 (61 FR 63706, December 2, 1996) and by adding a new airworthiness directive, Amendment 39–11164, to read as follows:

99–10–11

Pratt & Whitney: Amendment 39–11164. Docket 96–ANE–02. Supersedes AD 96–23–15, Amendment 39–9821.

Applicability: Pratt & Whitney (PW) Models JT8D–209, –217, –217A, –217C, and –219 turbofan engines that have not incorporated PW Service Bulletin (SB) No. 6193, dated October 31, 1994, or with fan blades, Part Numbers (P/N's) 798821, 798821–001, 808121, 808121–001, 809221, 811821, 851121, 851121–001, 5000021–02, 5000021–022, and 5000021–032 installed. These engines are installed on but not limited to McDonnell Douglas MD–80 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fan blade failure, which can result in damage to the aircraft, accomplish the following:

(a) Inspect fan blades and shrouds, unlock fan blade shrouds, lubricate fan blade shrouds, restore leading edge dimensions, remove from service those fan rotors which experience repeat lockup events within 225 cycles, and modify or install improved design fan blades in accordance with the schedule and procedures described in Parts 1, 2, and 3 of the Accomplishment Instructions of PW Alert Service Bulletin (ASB) No. A6241, Revision 2, dated June 29, 1998.

(b) Modification of fan blades to the improved design configuration or installation of improved design fan blades in accordance with Part 3 of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998, constitutes terminating action to the inspections and maintenance actions described in paragraph (a) of this AD.

(c) For the purpose of this AD, the accomplishment effective date to be used for determination of compliance intervals, as required by Section 2 of PW ASB No. A6241, Revision 2, dated June 29, 1998, is defined as the effective date of this AD.

(d) For the purpose of this AD, "repair" as specified in Part 3, Paragraph A. (1)(b) of the Accomplishment Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998 is defined as the modification of fan blades to incorporate the revised shroud angle, cutback the leading edge, and restore leading edge dimensions in accordance with Part 3, Paragraph C of the Accomplishment

Instructions of PW ASB No. A6241, Revision 2, dated June 29, 1998.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative method of compliance with this AD, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The actions required by this AD shall be accomplished in accordance with the following Pratt & Whitney ASB:

Document No.	Pages	Revision	Date
A6241	1–14	Rev. 2	June 29, 1998.
Total pages: 14.			

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Pratt & Whitney, Publication Department, Supervisor Technical Publications Distribution, M/S 132–30, 400 Main St., East Hartford, CT 06108; telephone (860) 565–7700, fax (860) 565–4503. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 14, 1999.

Issued in Burlington, Massachusetts, on May 4, 1999.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate,

Aircraft Certification Service.

[FR Doc. 99–11635 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–232–AD; Amendment 39–11167; AD 99–10–14]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747–400, 757, 767, and 777 Series Airplanes Equipped With AlliedSignal RIA–35B Instrument Landing System (ILS) Receivers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 747–400, 757, 767, and 777 series airplanes, that currently requires a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches. That action also requires repetitive inspections to detect certain faults of all RIA–35B ILS receivers, and replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. That AD was prompted by a report of errors in the glide slope deviation provided by an ILS receiver. This amendment requires accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent erroneous localizer deviation provided by faulty ILS receivers, which could result in a landing outside the lateral boundary of the runway.

DATES: Effective June 17, 1999.

The incorporation by reference of AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998, was approved previously by the Director of the Federal Register as of July 22, 1998 (63 FR 36549, July 7, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jay Yi, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1013; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–14–10, amendment 39–10643 (63 FR 36549, July 7, 1998), which is applicable to certain Boeing Model 747–400, 757, 767, and 777 series airplanes, was published in the **Federal Register** on October 26, 1998 (63 FR 57078). The action proposed to require a revision to the Airplane Flight Manual (AFM) to prohibit certain types of approaches, and repetitive inspections to detect certain faults of all RIA–35B ILS receivers. The action also proposed to require replacement of discrepant ILS receivers with new, serviceable, or modified units; or, alternatively, an additional revision to the AFM and installation of a placard to prohibit certain operations. In addition, the action proposed to require accomplishment of the previously optional terminating action.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule. Two commenters indicate that they are not affected by the proposed rule. Another commenter states that it has already accomplished the proposed terminating action.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 74 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry will be affected by this AD.

The AFM revision to prohibit certain types of approaches that currently is required by AD 98–14–10, and retained in this AD, takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required AFM revision on U.S. operators is estimated to be $4,440, or $60 per airplane.

In lieu of the AFM revision and placard installation to prohibit certain types of operations, the visual inspection that currently is provided in AD 98–14–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection on U.S. operators is estimated to be $4,440, or $60 per airplane, per inspection cycle.

In lieu of the visual inspection, the AFM revision and placard installation that currently is provided in AD 98–14–10 takes approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision and placard installation on U.S. operators is estimated to be $4,440, or $60 per airplane.

The new replacement that is required in this AD action will take approximately 3 work hours per airplane (1 work hour per receiver, 3 receivers per airplane) to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $235 per airplane ($78.33 per receiver). Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $30,710, or $415 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10643 (63 FR 36549, July 7, 1998), and by adding a new airworthiness directive (AD), amendment 39–11167, to read as follows:

99–10–14 Boeing: Amendment 39–11167. Docket 98–NM–232–AD. Supersedes AD 98–14–10, Amendment 39–10643.

Applicability: Model 747–400, 757, 767, and 777 series airplanes; equipped with AlliedSignal RIA–35B Instrument Landing System (ILS) receivers, part number (P/N) 066–50006–0101, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent erroneous localizer deviation provided by faulty ILS receivers, which could result in a landing outside the lateral boundary of the runway, accomplish the following:

Restatement of the Requirements of AD 98–14–10

(a) Within 10 days after July 22, 1998 (the effective date of AD 98–14–10, amendment 39–10643), revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Any Instrument Landing System (ILS) or Localizer approach with only one operative AlliedSignal ILS receiver, P/N 066–50006–0101, installed is prohibited."

Note 2: On Model 747–400 and 777 series airplanes, the existence of only one operative ILS receiver is indicated by the Engine Indication and Crew Alerting System advisory message, "SNGL SOURCE ILS." On Model 757 and 767 series airplanes, failure of an ILS receiver is indicated by an ILS flag on the display of the Electronic Flight Instrument System when approach mode is selected.

(b) Within 30 days after July 22, 1998, accomplish the requirements of either paragraph (b)(1) or (b)(2) of this AD.

(1) Perform a visual inspection of the 64 flight legs of the internal fault memory of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0101, for fault codes "Nl" (glide slope antialias fault) or "Nm" (localizer antialias fault). Repeat the inspection thereafter at intervals not to exceed 64 flight cycles. If any fault code "Nl" or "Nm" is found, prior to further flight, replace the existing ILS receiver with a new or serviceable ILS receiver having the same P/N; or with an ILS receiver that has been modified to P/N 066–50006–1101 in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998. Installation of an ILS receiver that has been modified (and the P/N converted) in accordance with the service bulletin constitutes terminating action for the inspection requirement of paragraph (b)(1) of this AD for that part.

(2) Accomplish the actions required by paragraphs (b)(2)(i) and (b)(2)(ii) of this AD.

(i) Revise the Limitations Section of the FAA-approved AFM to include the following statement. This may be accomplished by inserting a copy of this AD into the AFM.

"Category II and III operations are prohibited with AlliedSignal ILS receiver P/N 066–50006–0101 installed."

(ii) Install a placard on the forward instrument panel of the cockpit in clear view of the pilots, which states:

"Category II and III operations are prohibited."

(c) As of July 22, 1998, no person shall install on any airplane an RIA–35B ILS receiver, P/N 066–50006–0101, that has been found to be discrepant (that is, on which fault codes "Nl" or "Nm" were found during an inspection of the internal fault memory) unless the discrepancy has been corrected by modifying the ILS receiver in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998.

New Requirements of This AD

(d) Within 6 months after the effective date of this AD, replace all existing RIA–35B ILS receivers, P/N 066–50006–0101, with RIA–35B ILS receivers that have been modified in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998; and that have had their P/N's

converted to 066–50006–1101. Such replacement constitutes terminating action for the requirements of this AD. After the replacement has been accomplished, the AFM limitations required by paragraphs (a) and (b)(2)(i) of this AD may be removed from the AFM, and the placard required by (b)(2)(ii) may be removed from the cockpit.

Note 3: Modification of all AlliedSignal RIA–35B ILS receivers, P/N 066–50006–0101, prior to July 22, 1998, in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), dated December 1997; Revision 1, dated January 1998; or Revision 2, dated April 1998; is considered acceptable for compliance with the applicable action specified in this amendment.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(g) The modification shall be done in accordance with AlliedSignal Electronic and Avionics Systems Service Bulletin M–4426 (RIA–35B–34–6), Revision 3, dated May 1998. The incorporation by reference of this document was approved previously by the Director of the Federal Register as of July 22, 1998 (63 FR 36549, July 7, 1998). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 17, 1999.

Issued in Renton, Washington, on May 4, 1999.

D.L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–11782 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–02]

Amendment of Class E Airspace; Colstrip, MT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Colstrip, MT, Class E airspace by providing additional controlled airspace to accommodate the development of a new Standard Instrument Approach Procedure (SIAP) utilizing the Global Positioning System (GPS) at the Colstrip Airport.

EFFECTIVE DATE: 0901 UTC, July 15, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–2, 1601 Lind Avenue S.W., Renton, Washington, 98055–4056; telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On Monday 11, 1999, the FAA proposed to amend Title 14, Code of Federal Regulations, part 71 (14 CFR part 71) by revising the Colstrip, MT, Class E airspace area (64 FR 12126). This revision provides the additional airspace necessary to encompass the new GPS Runway 6 and the GPS Runway 24 SIAP's to the Colstrip Airport, Colstrip, MT. This amendment provides a lower Class E airspace area to the west in order to meet current criteria standards associated with SIAP holding patterns. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9F, dated September 10, 1998, and effective September 16, 1998, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Colstrip, MT, by providing the additional airspace necessary to fully contain new flight procedures at Colstrip Airport. The intended effect of this rule is designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under Instrument Flight Rules (IFR) at the Colstrip Airport and between the terminal and en route transition stages.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp. p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM MT E5 Colstrip, MT [Revised]

Colstrip Airport, Colstrip, MT
(Lat. 45°51′10″N, long. 106°42′34″W)

That airspace extending upward from 700 feet above the surface within a 13.5-mile radius of Colstrip Airport; that airspace

extending upward from 1,200 feet above the surface bounded on the north along V–2, on the east along V–254; on the south along lat. 45°30′00″N., to long. 107°40′00″W., on the west along long. 107°40′00″W., to V–2; excluding that airspace within Federal airways, the Billings, the Forsyth and the Miles City, MT, Class E airspace areas.

* * * * *

Issued in Seattle, Washington, on April 30, 1999.

Daniel A. Boyle,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 99–12059 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 746

[Docket No. 990427108–9108–01]

RIN 0694–AB93

Exports to Cuba

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Department of Commerce, Bureau of Export Administration is amending the Export Administration Regulations to implement a part of the January 5, 1999, Presidential initiative to enhance the United States' support of the Cuban people to promote a transition to democracy. This final rule authorizes the issuance of licenses for exports of food and certain agricultural commodities sold to individuals and independent non-governmental entities in Cuba. This rule will increase the number of license applications submitted to the Department of Commerce for exports to Cuba.

DATES: This rule is effective May 10, 1999.

FOR FURTHER INFORMATION CONTACT: James Lewis, Director, Office of Strategic Trade and Foreign Policy, Bureau of Export Administration, Telephone: (202) 482–0092.

SUPPLEMENTARY INFORMATION:

Background

On January 5, 1999, the President announced that the United States will initiate certain actions to enhance support of the Cuban people to promote transition to democracy. In doing this, the U.S. seeks to assist and support the Cuban people without strengthening the current Cuban government. The objective is to promote the development and evolution of an independent civil society to help promote a transition to a free, independent, and prosperous nation.

These measures are consistent with the Cuban Democracy Act of 1992, as amended, and the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996. The President is authorized to furnish assistance and provide other support for individuals and independent non-governmental organizations in Cuba.

Under the President's initiative, the Department of Commerce, Bureau of Export Administration (BXA) may approve, on a case-by-case basis, applications for exports of food (both solids and liquids) and certain agricultural commodities for sale to independent non-governmental entities (i.e., individuals and other entities that are not controlled, owned or operated by the Cuban government) in Cuba. For purposes of the new initiative, "independent non-governmental entities" is defined to include religious groups, private farmers, and private sector undertakings such as family restaurants. When submitting applications, applicants must demonstrate on the license application that the prospective end-user or class of end-users is independent from the Cuban government. Include such information in Block 24, Additional Information, on Form BXA–748P. The U.S. Government will review this information within 30 days. Agricultural commodities that may be authorized for sale under the new policy include, but are not limited to, insecticides, pesticides, herbicides, seeds and fertilizer. Agricultural equipment is not eligible for consideration under this policy.

Consistent with existing practice, the Department of Treasury, Office of Foreign Assets Control (OFAC) will generally authorize financial transactions (e.g., purchase price, shipping and handling charges) related to export sales of food or agricultural commodities specifically authorized by BXA. Therefore, an export sale of food authorized by Commerce will not require additional specific authorization from OFAC for shipping, obtaining payments or other financial transactions. Licenses may be authorized to pay for local warehousing and transportation services provided that charges and fees levied for delivery are customary and reasonable.

Exporters are advised to indicate on their license applications for the export of food and agricultural commodities whether they plan to deliver such commodities to Cuba by vessel or aircraft. An export license must be obtained from BXA for vessels to transport licensed commodities to Cuba. Authorization for the vessel and for necessary ship stores may be requested at the time of application for the export of food or agricultural commodities for sale in Cuba under the new policy. However, note that authorization must be obtained from OFAC for the return of such vessels to the United States within 180 days of leaving Cuba. OFAC is publishing elsewhere in this issue of the **Federal Register** a separate regulation that allows the return of such vessels under a General License, provided that all items have been authorized via applicable Federal regulations. Aircraft flying to Cuba to deliver commodities licensed under this policy must be eligible for License Exception AVS (see § 740.15 of the EAR) or must be specifically licensed by BXA.

The President also called for expansion of people-to-people contacts between the United States and Cuba by facilitating travel of persons from the United States to Cuba and from Cuba to the United States, and streamlining licensing procedures for authorizing such travel. Pursuant to the President's initiative, BXA will also review, on a case-by-case basis, license applications requesting authorization to use private aircraft for temporary sojourn for travel to Cuba involving educational, cultural, journalistic, religious, or athletic exchanges and other people-to-people contacts. This policy furthers the President's March 1998 initiative, under which BXA is already reviewing, with a presumption of approval, applications for temporary exports of private aircraft involving humanitarian aid and assistance programs. This policy is applicable to temporary sojourn flights from the U.S. to Cuba of aircraft not eligible for BXA License Exception AVS (see § 740.15 of the EAR), and that require specific authorization from BXA. Note that aircraft may fly on regularly scheduled charter flights to Cuba generally under License Exception AVS. OFAC must authorize travel by U.S. persons associated with such flights. Any commodities included on the aircraft that do not qualify for License Exception BAG (see § 740.14 of the EAR) or License Exception TMP (see § 740.9 of the EAR) require a specific Commerce license authorizing the export of such items to Cuba.

As another part of this initiative, other agencies will authorize direct charter flights to Cuba departing from U.S. cities other than Miami by separate notice. The United States is also seeking to reestablish direct mail between the United States and Cuba. This measure requires the agreement of the Cuban

government. BXA reminds exporters that the mailing of gift packages through U.S. mail still constitutes an export and must meet the content, frequency and dollar value requirements of §§ 746.2(a)(1)(viii) and 740.12 of the EAR, or be specifically licensed by BXA.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, extended by Presidential notice of August 13, 1998 (63 FR 44121, August 17, 1998).

Rulemaking Requirements

1. This interim rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the Paperwork Reduction Act (PRA), unless that collection of information displays a currently valid OMB Control Number. This rule involves a collection of information previously approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 45 minutes per manual submission and 40 minutes per electronic submission. In addition, miscellaneous and recordkeeping activities account for 12 minutes per submission. As a result of this rule, the paper work burden on the public is increased by 22 hours on an annual basis.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under E.O. 12612.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (Sec. 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. or by any other law, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

List of Subjects in 15 CFR Part 746

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, 15 CFR chapter VII, subchapter C, is amended as follows:

PART 746—[AMENDED]

1. The authority citation for 15 CFR part 746 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 287c, 6004; E.O. 12918, 59 FR 28205, 3 CFR, 1994 Comp., p. 899; E.O. 12924, 3 CFR, 1994 Comp., p. 917; Notice of August 13, 1997 (62 FR 43629, August 15, 1997); Notice of August 13, 1998 (63 FR 44121, August 13, 1998).

2. Section 746.2 is amended by adding a new paragraph (b)(4)(iii) to read as follows:

§ 746.2 Cuba.

* * * * *

(b) * * *

(4) * * *

(iii) Exports of food (both solids and liquids) and agricultural commodities may be approved, on case-by-case basis, for use by independent non-government entities in Cuba. Such entities may not be controlled, owned or operated by the Cuban government. Applicants must demonstrate on the license application in Block 24, Additional Information, that the prospective class or classes of end-users are independent from the Cuban government.

(A) Agricultural commodities that will be considered for approval include, but are not limited to, insecticides, herbicides, pesticides, seeds and fertilizer. Agricultural equipment is not eligible under this paragraph (b)(4)(iii) for sale to Cuba.

(B) For purposes of this paragraph (b), independent non-government entities include, but are not limited to, religious groups, private farmers, and private sector undertakings such as family restaurants.

* * * * *

Dated: May 10, 1999.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 99–12132 Filed 5–10–99; 3:39 pm]

BILLING CODE 3510–33–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 515

Cuban Assets Control Regulations: Sales of Food and Agricultural Inputs; Remittances; Educational, Religious, and Other Activities; Travel–Related Transactions; U.S. Intellectual Property

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: Pursuant to the President's announcement of January 5, 1999, the Treasury Department is amending the Cuban Assets Control Regulations to modify certain provisions with respect to remittances and travel–related transactions and to make other clarifying and conforming amendments to the regulations. The regulations also implement a statutory provision excluding from an existing general license transactions involving certain intellectual property used in connection with a business or assets that were confiscated.

EFFECTIVE DATE: May 10, 1999.

FOR FURTHER INFORMATION CONTACT: Dennis P. Wood, Chief, Compliance Programs Division (tel.: 202/622–2490); Steven I. Pinter, Chief of Licensing (tel.: 202/622–2480); Charles L. Bishop, OFAC–Miami Sanctions Coordinator (tel.: 305/810–5140); or William B. Hoffman, Chief Counsel (tel.: 202/622–2410); Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability:

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Page) = http://www.fedworld.gov; FTP = ftp.fedworld.gov (192.239.92.205). Additional information concerning the programs of the Office of Foreign Assets Control is available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24–hour fax–on–demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch–tone telephone.

Background

On January 5, 1999, President Clinton announced that the United States is taking additional steps to expand the flow of humanitarian assistance to Cuba and strengthen independent civil society in that country. Among the initiatives the President announced were an expansion of remittances to support Cuban families and organizations independent of the Cuban government; expansion of people–to–people contact through two–way exchanges among academics, athletes, scientists, and others and streamlining the approval process for their visits; and the sale of food and agricultural commodities to independent nongovernmental entities.

The U.S. Treasury Department's Office of Foreign Assets Control ("OFAC") is implementing these steps through amendments to the Cuban Assets Control Regulations, 31 CFR Part 515 (the "CACR"), and reorganizing the CACR to place related provisions together. In addition, OFAC is implementing section 211 of Division A, Title II, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277 [H.R. 4328]), excluding from the scope of the general license contained in § 515.527 any transaction or payment with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, unless the original owner of the mark, trade name, or commercial name or the bona fide successor–in–interest has expressly consented.

Remittances

In implementation of the President's policy statement, these amendments include a new general license allowing any person subject to U.S. jurisdiction who is 18 years of age or older to make remittances of up to $300 in any consecutive 3–month period to the household of any individual in Cuba or the authorized trade territory (defined in § 515.322 of the CACR to mean all countries not subject to economic sanctions administered by OFAC pursuant to chapter V, 31 CFR) who is not a senior government or senior communist party official of Cuba. Persons subject to U.S. jurisdiction may also be specifically licensed to send remittances to organizations independent of the Cuban government. Descriptions of specific amendments concerning remittances follow.

Old § 515.521 previously contained a general license authorizing remittances, including those from blocked accounts in the name of the payee or members of his or her household, not to exceed $100 per calendar month to Cuban nationals in the authorized trade territory. Old § 515.556 stated that remittances from blocked accounts sent to Cuban nationals located in the authorized trade territory pursuant to § 515.521 could be increased on a case–by–case basis upon a showing that such increase was reasonable and necessary. These sections have been largely superseded by the new policy contained in new § 515.570 on remittances to Cuban nationals. The previous authorization for limited remittances from blocked accounts in § 515.521, and the reference to it in § 515.566, however, are now incorporated in § 515.570(a)(2), (b)(3) and (d)(3), respectively.

The general license contained in old § 515.563 permitting certain remittances to close relatives in Cuba is also incorporated in new § 515.570. In addition to the family remittance and the two existing $500 emigration remittances, a new individual–to–household remittance, not to exceed $300 per quarter, is now authorized by general license to any household of a Cuban national in Cuba or the authorized trade territory whose household does not include a senior Cuban government or communist party official. A remitter may not send both a family remittance and an individual–to–household remittance to the same household within the same 3–month period. New § 515.570 also provides for specific licenses authorizing remittances to independent nongovernmental entities in Cuba.

Travel–Related Transactions

Travel–related transactions are now generally authorized in connection with specified news support, professional research, and athletic activities, and are authorized in connection with broad classes of educational and religious activities in Cuba conducted under the auspices of U.S. academic institutions or U.S. religious organizations that receive long–term specific licenses. In addition, specific licenses may be issued for travel–related transactions in connection with cultural activities, humanitarian projects, and certain trade transactions found consistent with relevant export licensing policies. Authorization of travel–related transactions related to exportations, however, does not extend to the authorization of the exportation itself. Descriptions of specific amendments concerning travel–related transactions follow.

Section 515.420 is added to set forth OFAC's interpretation of fully–hosted travel involving Cuba, previously contained in old § 515.560(g).

Old § 515.518 contained a general license permitting debits to blocked accounts held in the name of Cuban nationals for their living, traveling, and similar personal expenses in the United States, not to exceed $250 per calendar month. This provision has now been consolidated with old § 515.564 (authorizing the same transactions on behalf of Cuban nationals in the United States from non–blocked sources) in new § 515.571.

Section 515.533, authorizing transactions incident to exportations of goods directly from the United States to Cuba that are authorized by the Department of Commerce, is amended to add a statement that specific licenses may be issued authorizing travel–related transactions for purposes related to the marketing, sales negotiation, accompanied delivery, or servicing of exports. Exportations themselves must be specifically licensed by the Department of Commerce. Section 511.533 is also amended to state that financing for exportations to Cuba of food and agricultural commodities authorized by the Department of Commerce is not authorized.

The authorization in old § 515.540 for the importation of Cuban–origin goods (other than alcohol and tobacco) contained in personal baggage carried by foreign nationals entering the United States has been moved to new § 515.569.

The authorization in § 515.545 for transactions directly incident to the importation or exportation of information and informational materials is amended to note that specific licenses may be issued authorizing travel–related transactions for purposes related to such activities.

Section 515.559, governing licensing policy with respect to transactions by U.S.–owned or controlled foreign firms with Cuba, is amended to add a statement that specific licenses may be issued authorizing travel–related transactions for purposes related to marketing, sales negotiation, accompanied delivery, or servicing of

exports found consistent with relevant OFAC export licensing policy; for example, exports of medicine and medical supplies.

Old § 515.560 authorized by general or specific license travel–related transactions to and within Cuba incident to specified activities set forth in that section. New § 515.560 continues to set forth the types of transactions that may be authorized incident to travel to Cuba, but the underlying activities for which such transactions may be authorized are now described in separate, self–contained sections, referenced in paragraph (a) of § 515.560. Paragraph (b) of § 515.560 is amended to cite OFAC's general licensing authority referred to in § 515.801 to license travel–related transactions for activities not specifically covered in part 515. Paragraph (c) of § 515.560 continues to list the travel–related transactions that may be authorized for generally and specifically licensed travelers to Cuba. Paragraph (c)(2) of § 515.560 increases the per diem for expenses in Cuba from $100 to the amount authorized for civilian employees of the United States Government in Havana, Cuba, currently set at $183. Changes in the per diem rate are published as required in the monthly State Department publication "Maximum Travel Per Diem Allowances for Foreign Areas," available from the Government Printing Office or on the Internet at http://www.state.gov/www/perdiems/index.html. New § 515.560 also incorporates old § 515.569, governing currency carried to Cuba by authorized travelers.

Section 515.561, previously reserved, now contains the general license authorizing travel–related transactions for the purpose of visiting close relatives in Cuba, previously contained in old § 515.560(a)(1)(iii). This general license, available once in any 12–month period, is only available in cases involving "humanitarian need." Any additional visits within a 12–month period require specific licensing under § 515.561(b), based on "humanitarian need."

Old § 515.562, authorizing U.S.–owned or controlled foreign firms to bunker vessels or fuel aircraft owned or controlled by, or chartered to, Cuba or nationals thereof, is moved to § 515.558. New § 515.562 now contains the general license authorizing travel–related and other transactions directly incident to official government travel to, from, and within Cuba, previously contained in § 515.560(a)(1)(i).

New § 515.563 now contains the general license for travel–related and other transactions directly incident to journalism, previously contained in old § 515.560(a)(1)(ii) and now expanded to include travel–related transactions on the part of persons regularly employed as supporting broadcast or technical personnel. New § 515.563 also incorporates the specific licensing criteria for free–lance journalism previously set forth as an interpretive provision in old § 515.417 and now expanded to allow for specific licenses authorizing transactions for multiple trips to Cuba in certain cases.

Old § 515.564, authorizing transactions incident to travel to, from, and within the United States by certain Cuban nationals, is incorporated in new § 515.571. New § 515.564 consolidates old §§ 515.416, 515.419(a)(1), and 515.560(b), setting forth a general license for travel–related and other transactions directly incident to professional research and attendance at professional meetings in Cuba hosted by international organizations; these activities were previously authorized only by specific license.

Old § 515.565, authorizing transactions for public exhibitions and performances by specific license, is incorporated in new § 515.567. New § 515.565 consolidates old §§ 515.419, 515.560(b), and 515.573 to authorize travel–related and other transactions directly incident to a wide range of educational activities, including those undertaken by secondary school students, where the traveler carries a letter from his or her academic institution located in the United States confirming that he or she is affiliated with that institution. Use of this authorization requires that the accredited U.S. academic institution under whose auspices the educational activities are undertaken first obtain a specific license from OFAC authorizing the institution and its students and employees to engage in travel–related and other transactions directly incident to the generally–licensed educational activities set forth in § 515.565(a)(2)(i) to (a)(2)(vii). Such activities include teaching at a Cuban academic institution by persons employed in a teaching capacity in the United States, as well as sponsoring Cuban scholars to teach or engage in other scholarly activity in the United States, including the payment of a stipend or salary to the sponsored scholars. In addition, specific licenses pursuant to § 515.565(b) may be issued authorizing transactions incident to certain educational activities not covered by a specific license issued pursuant to § 515.565(a) to a U.S. academic institution or incident to certain educational exchanges not involving academic study pursuant to a degree program.

Old § 515.566, previously setting forth the criteria pursuant to which persons may be authorized to engage in transactions involving Cuba as travel or carrier service providers or family remittance forwarders, is moved to new § 515.572. New § 515.566(a) authorizes travel–related and other transactions directly incident to religious activities in Cuba, where the traveler carries a letter from his or her religious organization located in the United States confirming that he or she is affiliated with that organization and is traveling to Cuba to undertake religious activities under the organization's auspices. Use of this authorization requires that the U.S. religious organization itself obtain a specific license from OFAC authorizing the religious organization and affiliated individuals and groups to engage in travel–related and other transactions that are directly incident to religious activities in Cuba under the auspices of the licensed religious organization. Pursuant to § 515.566(b), specific licenses may also be issued for other religious activities in Cuba.

Old § 515.567, setting forth specific licensing criteria for unblocking certain corporate assets, is now contained in § 515.521. New § 515.567(a) sets forth a general license authorizing travel–related and other transactions directly incident to certain amateur and semi–professional athletic competitions by athletes or teams. Paragraph (b) of § 515.567 incorporates old § 515.565, setting forth the specific licensing criteria for travel–related and other transactions directly incident to participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba, or for transactions on behalf of a Cuban national in the United States for the purpose of participation in such activities. Specific licenses authorizing transactions for multiple trips to Cuba for these purposes may also be issued.

Old § 515.568, setting forth specific licensing criteria for unblocking certain decedent estate assets, is moved to § 515.522.

Old § 515.569, governing the carriage of currency by travelers to Cuba, has been incorporated into new § 515.560. New § 515.569 now contains old § 515.540, generally authorizing foreign persons to import Cuban–origin goods (except for tobacco and alcohol) as accompanied baggage when entering the United States.

Old § 515.572, setting forth specific licensing criteria for the operation of news bureaus in Cuba, is moved to new § 515.573.

Section 515.574, setting forth specific licensing criteria for authorizing transactions in support of the Cuban people, is amended to add a statement that specific licenses may be issued authorizing travel–related transactions for such activities.

Section 515.575 is added to set forth specific licensing criteria for authorizing travel–related and other transactions for certain humanitarian projects designed to directly benefit the Cuban people, including medical and health–related, environmental, small–scale enterprise, and agricultural and rural development projects. Specific licenses authorizing transactions for multiple trips to Cuba for these purposes may also be issued.

Section 515.576 is added to set forth specific licensing criteria for authorizing travel–related and other transactions for activities of private foundations or research or educational institutes with an established interest in international relations. Specific licenses authorizing transactions for multiple trips to Cuba for these purposes may also be issued.

Miscellaneous Provisions

Section 515.206 of the CACR is amended to conform the scope of exempt transactions to include the statutory exemption for the donation of food to nongovernmental organizations or individuals in Cuba contained in section 1705(b) of the Cuban Democracy Act (22 U.S.C. 6001–6010, 6004(b)).

Section 515.527 of the CACR is amended to conform the scope of authorized transactions pertaining to intellectual property rights to the statutory restriction contained in section 211 of Division A, Title II, of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277 [H.R. 4328]), excluding from the scope of the general license contained in § 515.527 any transaction or payment with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, unless the original owner of the mark, trade name, or commercial name or the bona fide successor–in–interest has expressly consented.

Old § 515.571, waiving under certain circumstances the prohibition contained in § 515.207 (prohibiting certain vessels that have engaged in trade with Cuba from entering U.S. ports), is moved to § 515.550 and amended to expand the waiver to cover vessels involved in any trade transactions authorized pursuant to § 515.533.

The following two charts provide easy reference to the regulatory changes that have been made: the first lists the new section designations, their subjects, and from what former sections they are derived; the second lists the former section designations and indicates where the content of the old sections now appears.

Derivation of New Sections

New Section	Subject	Source
§ 515.420	Fully–hosted travel	§ 515.560(g)
§ 515.521	Blocked corporate assets	§ 515.567
§ 515.522	Blocked estate assets	§ 515.568
§ 515.550	Vessel waiver	§ 515.571
§ 515.558	Cuban carriers	§ 515.562
§ 515.561	Family visits	§ 515.560(a)
§ 515.562	Official travel	§ 515.560(a)
§ 515.563	Journalism	§§ 515.417, 515.560(a)
§ 515.564	Professional research	§§ 515.416, 515.419(a)(1), 515.560(b), CDA
§ 515.565	Educational activities	§§ 515.419, 515.560(b), 515.573
§ 515.566	Religious activities	§ 515.560(b)
§ 515.567	Athletic/cultural activities	§ 515.565
§ 515.568	Reserved	
§ 515.569	Foreign persons' baggage	§ 515.540
§ 515.570	Remittances	§§ 515.521, 515.556, 515.563
§ 515.571	Cubans in United States	§§ 515.518, 515.564
§ 515.572	Travel and carrier service	§ 515.566
§ 515.573	News organizations	§ 515.572
§ 515.575	Humanitarian projects	§ 515.560(b); new
§ 515.576	Foundation projects	§ 515.416(a)(1), (ii); new

Distribution of Former Sections

Former Section	Subject	New Location
§ 515.416	Professional research	§ 515.564
§ 515.417	Free–lance journalism	§ 515.563(b)
§ 515.419	Educational activities	§ 515.565
§ 515.518	Cubans in United States	§ 515.571(b)
§ 515.521	Remittances to Cubans	§ 515.570
§ 515.540	Foreign persons' baggage	§ 515.569
§ 515.556	Remittances to Cubans	§ 515.570
§ 515.558	Sole proprietors	§ 515.546
§ 515.562	Cuban carriers	§ 515.558
§ 515.563	Family remittances	§ 515.570
§ 515.564	Cubans in United States	§ 515.571(a)
§ 515.565	Public exhibitions	§ 515.567(b)
§ 515.566	Travel and carrier service	§ 515.572
§ 515.567	Blocked corporate assets	§ 515.521
§ 515.568	Blocked estate assets	§ 515.522
§ 515.569	Currency	§ 515.560
§ 515.571	Vessel waiver	§ 515.550
§ 515.572	News organizations	§ 515.573
§ 515.573	Educational activities	§ 515.565

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553)(the "APA") requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

Paperwork Reduction Act

The Regulations are being issued without prior notice and public comment procedure pursuant to the APA. The collections of information related to the Regulations are contained in 31 CFR part 501 (the "Reporting and Procedures Regulations"). Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), those collections of information have been approved by the Office of Management and Budget under control number 1505–0164. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the

collection of information displays a valid control number.

List of Subjects in 31 CFR Part 515

Administrative practice and procedure, Air carriers, Banks, banking, Blocking of assets, Cuba, Currency, Estates, Exports, Foreign investment in the United States, Foreign trade, Imports, Informational materials, Intellectual property, Penalties, Publications, Reporting and recordkeeping requirements, Securities, Shipping, Specially designated nationals, Terrorism, Travel restrictions, Trusts and trustees, Vessels.

For the reasons set forth in the preamble, 31 CFR part 515 is amended as set forth below:

PART 515—CUBAN ASSETS CONTROL REGULATIONS

1. The authority citation for part 515 continues to read as follows:

Authority: 18 U.S.C. 2332d; 22 U.S.C. 2370(a), 6001–6010, 6021–6091; 31 U.S.C. 321(b); 50 U.S.C. App. 1–44; Pub. L. 101–410, 104 Stat. 890 (28 U.S.C. 2461 note); Pub. L. 105–277; E.O. 9193, 7 FR 5205, 3 CFR, 1938–1943 Comp., p. 1147; E.O. 9989, 13 FR 4891, 3 CFR, 1943–48 Comp., p. 748; Proc. 3447, 27 FR 1085, 3 CFR 1959–1963 Comp., p. 157; E.O. 12854, 58 FR 36587, 3 CFR, 1993 Comp., p. 614.

Subpart D—Prohibitions

2. Section 515.206 is amended as follows:

A. The section heading is revised to read as set forth below.

B. Paragraphs (a) through (d) are redesignated as paragraphs (a)(1) through (a)(4).

C. A heading for paragraph (a) is added as set forth below.

D. Redesignated paragraph (a)(3) is amended by removing the words "section 779 of the Export Administration Regulations, 15 CFR parts 768–799," and adding in their place the words "the Export Administration Regulations, 15 CFR parts 730–774,".

E. Redesignated paragraph (a)(4) is amended by removing the words "§ 515.560 or by specific license." and adding in their place "§ 515.545.".

F. New paragraph (b) is added to read as follows:

§ 515.206 Exempt transactions.

(a) *Information and informational materials.* (1) * * *

* * * * *

(b) *Donation of food.* The prohibitions contained in this part do not apply to transactions incident to the donation of food to nongovernmental organizations or individuals in Cuba.

Subpart C—General Definitions

3. Section 515.302 is amended as follows:

A. Paragraph (b) is redesignated as new paragraph (c).

B. New paragraph (b) is added to read as follows:

§ 515.302 National.

* * * * *

(b) Persons who travel in Cuba do not become nationals of Cuba solely because of such travel.

* * * * *

Subpart D—Interpretations

§ 515.407 [Amended]

4. Section 515.407 is amended by revising "§ 515.568" to read "§ 515.522".

§ 515.415 [Amended]

5. Section 515.415 is amended as follows:

A. Paragraph (b) is amended by revising "§ 515.564" to read "§ 515.571".

B. Paragraph (c) is amended by removing the words "within the general license of § 515.560" and adding in their place "as set forth in § 515.560(c)".

§ 515.416 [Removed and reserved]

6. Section 515.416 is removed and reserved.

§ 515.417 [Removed and reserved]

7. Section 515.417 is removed and reserved.

§ 515.418 [Amended]

8. Paragraph (b) of § 515.418 is amended by revising "515.560(b)", wherever it appears, to read "515.545".

§ 515.419 [Removed and reserved]

9. Section 515.419 is removed and reserved.

10. Section 515.420 is added to Subpart D to read as follows:

§ 515.420 Fully–hosted travel to Cuba.

(a) A person subject to the jurisdiction of the United States who is not authorized to engage in travel–related transactions in which Cuba has an interest will not be considered to violate the prohibitions of this part when a person not subject to the jurisdiction of the United States covers the cost of all transactions related to the travel of the person subject to the jurisdiction of the United States (the "fully–hosted" traveler), provided that:

(1) No person subject to the jurisdiction of the United States has made any payments or transferred any property or provided any service to Cuba or a Cuban national in connection with such fully–hosted travel or has prepaid or reimbursed any person for travel expenses, except as authorized in paragraph (b) of this section; and

(2) The travel is not aboard a direct flight between the United States and Cuba authorized pursuant to § 515.572.

(b) Travel will be considered fully hosted notwithstanding a payment by a person subject to the jurisdiction of the United States for transportation to and from Cuba, provided that the carrier furnishing the transportation is not a Cuban national. Persons authorized as travel service providers pursuant to § 515.572 may book passage on behalf of fully–hosted travelers through to Cuba, provided that such travel is not on a direct flight from the United States and that the carrier furnishing the transportation is not a Cuban national.

(c) Unless otherwise authorized pursuant to this part, any person subject to the jurisdiction of the United States who has traveled to Cuba shall be presumed to have engaged in travel–related transactions prohibited by § 515.201. This presumption may be rebutted by a statement signed by the traveler providing specific supporting documentation showing that no transactions were engaged in by the traveler or on the traveler's behalf by other persons subject to U.S. jurisdiction or showing that the traveler was fully hosted by a third party not subject to the jurisdiction of the United States and that payments made on the traveler's behalf were not in exchange for services provided to Cuba or any national thereof. The statement should address the circumstances of the travel and explain how it was possible for the traveler to avoid entering into travel–related transactions such as payments for meals, lodging, transportation, bunkering of vessels, visas, entry or exit fees, and gratuities. If applicable, the statement should state what party hosted the travel and why. The statement must provide a day–to–day account of financial transactions waived or entered into on behalf of the traveler by the host, including but not limited to visa fees, room and board, local or international transportation costs, and Cuban airport departure taxes. In the case of pleasure craft calling at Cuban marinas, the statement must also address related refueling costs, mooring fees, club membership fees, provisions, cruising permits, local land transportation, and departure fees. Travelers fully hosted by a person or persons not subject to the jurisdiction of the United States must also provide an

original signed statement from their sponsor or host, specific to that traveler, confirming that the travel was fully hosted and the reasons for the travel.

Note to paragraph (c): Travelers should be aware that fully–hosted travelers are not travelers whose travel–related transactions are licensed pursuant to this part and therefore such fully–hosted travelers may not engage in the travel–related transactions set forth in § 515.560(c), including the purchase and importation of up to $100 of Cuban merchandise for personal use. All documentation described in paragraph (c) of this section is subject to the recordkeeping requirements, including the record retention period, in § 501.601 of this chapter.

(d) Persons planning to travel to Cuba may access the Office of Foreign Assets Control's information resources over the Internet at http://www.treas.gov/ofac, through the office's fax–on–demand service at 202/622–0077, or by calling the office's Compliance Programs Division at 202/622–2490, prior to their departure to familiarize themselves with the requirements for fully–hosted travel. Other inquiries concerning travel–related transactions should be addressed to the Licensing Division, Office of Foreign Assets Control, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, NW—Annex, Washington, DC 20220.

Subpart E—Licenses, Authorizations, and Statements of Licensing Policy

§ 515.518 [Removed and reserved]

11. Section 515.518 is removed and reserved.

§§ 515.521, 515.563, 515.564, 515.565, 515.569, 515.573 [Removed]

12. Sections 515.521, 515.563, 515.564, 515.565, 515.569, and 515.573 are removed.

13. The sections listed in the first column below are redesignated as shown in the second column:

Old Section	New Section
§ 515.540	§ 515.569
§ 515.558	§ 515.546
§ 515.562	§ 515.558
§ 515.566	§ 515.572
§ 515.567	§ 515.521
§ 515.568	§ 515.522
§ 515.571	§ 515.550
§ 515.572	§ 515.573

§ 515.523 [Amended]

14. Paragraph (b)(3) of § 515.523 is amended by revising "§ 515.568" to read "§ 515.522".

§ 515.525 [Amended]

15. Paragraph (b) of § 515.525 is amended by revising "§ 515.523, § 515.568" to read "§ 515.522, § 515.523".

16. Section 515.527 is amended by designating the existing text as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 515.527 Certain transactions with respect to United States intellectual property.

(a)(1) * * *

(2) No transaction or payment is authorized or approved pursuant to paragraph (a)(1) of this section with respect to a mark, trade name, or commercial name that is the same as or substantially similar to a mark, trade name, or commercial name that was used in connection with a business or assets that were confiscated, as that term is defined in § 515.336, unless the original owner of the mark, trade name, or commercial name, or the bona fide successor–in–interest has expressly consented.

* * * * *

17. In § 515.533, the section heading is revised; the introductory text of paragraph (a) and paragraphs (a)(1) and (d) are revised; and paragraphs (e) and (f) and a note to the section are added to read as follows:

§ 515.533 Transactions incident to exportations from the United States to Cuba.

(a) All transactions ordinarily incident to the exportation of goods, wares, and merchandise from the United States to any person within Cuba are hereby authorized, provided the following terms and conditions are complied with:

(1) The exportation is licensed or otherwise authorized by the Department of Commerce under the provisions of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2401–2420) (see the Export Administration Regulations, 15 CFR 730–774); and

* * * * *

(d) This section does not authorize any exportation under License Exception GFT, 15 CFR 740.12, except gift parcels that contain only food, vitamins, seeds, medicines, medical supplies and devices, hospital supplies and equipment, equipment for the handicapped, clothing, personal hygiene items, veterinary medicines and supplies, fishing equipment and supplies, soap–making equipment, or certain radio equipment and batteries for such equipment, as specifically set forth in 15 CFR 740.12, and that otherwise comply with the requirements of that section.

(e) Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are directly incident to the marketing, sales negotiation, accompanied delivery, or servicing of exports that appear consistent with the export licensing policy of the Department of Commerce.

(f) This section does not authorize trade financing with respect to the commercial sale of food or agricultural commodities.

Note to § 515.533: For the waiver of the prohibition contained in § 515.207 on certain vessel transactions for vessels transporting shipments of goods, wares, or merchandise between the United States and Cuba pursuant to this section, see § 515.550.

§ 515.540 [Removed and reserved]

18. Section 515.540 is removed and reserved.

19. Section 515.545 is amended as follows:

A. Paragraph (b) is amended by revising "§ 515.206(c)" to read "§ 515.206(a)(3)".

B. Paragraph (c) is added to read as follows:

§ 515.545 Transactions related to information and informational materials.

* * * * *

(c) Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) for purposes related to the exportation, importation, or transmission of information or informational materials as defined in § 515.332.

20. Newly redesignated § 515.550 is revised to read as follows:

§ 515.550 Certain vessel transactions authorized.

Unless a vessel has otherwise engaged in transactions that would prohibit entry pursuant to § 515.207, § 515.207 shall not apply to a vessel that is:

(a) Engaging in trade with Cuba authorized by licenses issued pursuant to § 515.533 or § 515.559; or

(b) Engaging in trade with Cuba that is exempt from the prohibitions of this part (see § 515.206).

§ 515.551 [Amended]

21. Paragraph (a)(3) of § 515.551 is amended by revising "§ 515.568" to read "§ 515.522".

§ 515.556 [Removed and reserved]

22. Section 515.556 is removed and reserved.

23. Section 515.559 is amended by adding paragraph (b)(2) and a note to the section to read as follows:

§ 515.559 Transactions by U.S.–owned or controlled foreign firms with Cuba.

* * * * *

(b) * * *

(2) Travel–related transactions set forth in § 515.560(c) and other transactions that are directly incident to marketing, sales negotiation, accompanied delivery, or servicing of exports that are consistent with the licensing policy under this section.

* * * * *

Note to § 515.559: Transactions by U.S.–owned or controlled foreign firms in connection with the exportation of information or informational materials or the donation of food to nongovernmental entities or individuals in Cuba are exempt from the prohibitions of this part. See § 515.206. For the waiver of the prohibition contained in § 515.207 on certain vessel transactions for vessels transporting shipments of goods, wares, or merchandise pursuant to this section, see § 515.550.

24. Section 515.560 is revised to read as follows:

§ 515.560 Travel–related transactions to, from, and within Cuba by persons subject to U.S. jurisdiction.

(a) The travel–related transactions listed in paragraph (c) of this section may be authorized either by a general license or on a case–by–case basis by a specific license for travel related to the following activities (see the referenced sections for general and specific licensing criteria):

(1) Family visits (general and specific licenses) (see § 515.561);

(2) Official business of the U.S. government, foreign governments, and certain intergovernmental organizations (general license) (see § 515.562);

(3) Journalistic activity (general and specific licenses) (see § 515.563);

(4) Professional research (general and specific licenses) (see § 515.564);

(5) Educational activities (specific licenses) (see § 515.565);

(6) Religious activities (specific licenses) (see § 515.566);

(7) Public performances, clinics, workshops, athletic and other competitions, and exhibitions (general and specific licenses) (see § 515.567);

(8) Support for the Cuban people (specific licenses) (see § 515.574);

(9) Humanitarian projects (specific licenses) (see § 515.575);

(10) Activities of private foundations or research or educational institutes (specific licenses) (see § 515.576);

(11) Exportation, importation, or transmission of information or informational materials (specific licenses) (see § 515.545); and

(12) Certain export transactions that may be considered for authorization under existing Department of Commerce regulations and guidelines with respect to Cuba or engaged in by U.S.–owned or controlled foreign firms (specific licenses) (see §§ 515.533 and 515.559).

(b) Travel–related transactions in connection with activities other than those referenced in paragraph (a) of this section may be authorized on a case–by–case basis by a specific license issued pursuant to § 515.801.

(c) Persons generally or specifically licensed under this part to engage in transactions in connection with travel to, from, and within Cuba may engage in the following transactions:

(1) *Transportation to and from Cuba.* All transportation–related transactions ordinarily incident to travel to and from (not within) Cuba, provided no more than $500 may be remitted to Cuba directly or indirectly in any consecutive 12-month period for fees imposed by the Government of Cuba in conjunction with such travel unless otherwise authorized.

(2) *Living expenses in Cuba.* All transactions ordinarily incident to travel anywhere within Cuba, including payment of living expenses and the acquisition in Cuba of goods for personal consumption there, provided that, unless otherwise authorized, the total for such expenses does not exceed the "maximum per diem rate" for Havana, Cuba in effect during the period that the travel takes place. The per diem rate is published in the State Department's "Maximum Travel Per Diem Allowances for Foreign Areas," a supplement to section 925, Department of State Standardized Regulations (Government Civilians, Foreign Areas), available from the Government Printing Office, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954, or on the Internet at http://www.state.gov/www/perdiems/index.html.

(3) *Purchase in Cuba and importation into the United States of merchandise.* The purchase in Cuba and importation as accompanied baggage into the United States of merchandise with a foreign market value not to exceed $100 per person, provided the merchandise is imported for personal use only. Such merchandise may not be resold. This authorization may be used only once every six consecutive months. As provided in § 515.206(a), the purchase and importation of information or informational materials are exempt from all restrictions contained in this part.

(4) *Carrying remittances to Cuba.* The carrying to Cuba of any remittances that the licensed traveler is authorized to remit pursuant to § 515.570, provided that no more than $300 of remittances authorized by § 515.570(a) or (b) is carried in any one trip, unless otherwise authorized. Those licensed travelers carrying either of the emigration remittances authorized pursuant to § 515.570(c) must be able to produce the visa recipient's full name and date of birth and the number and date of issuance of the visa or other travel authorization issued. A licensed traveler to Cuba is only authorized to carry remittances that he or she is authorized to remit and may not carry remittances being made by other persons.

(5) *Processing certain financial instruments.* All transactions incident to the processing and payment of checks, drafts, travelers' checks, and similar instruments negotiated in Cuba by any person authorized pursuant to this part to engage in financial transactions in Cuba. For purposes of this section, the authorized transactions may be conducted using currency, which is defined as money, cash, drafts, notes, travelers' checks, negotiable instruments, or scrip having a specified or readily determinable face value or worth, but which does not include gold or other precious metals in any form.

Note to paragraph (c): The authorizations in paragraph (c) of this section do not apply to fully–hosted travelers because their travel–related transactions are not licensed or authorized pursuant to this part. See § 515.420.

(d) A Cuban national departing the United States may carry currency, as that term is defined in paragraph (c)(5) of this section, as follows:

(1) The amount of any currency brought into the United States by the Cuban national and registered with the U.S. Customs Service upon entry;

(2) Up to $300 in funds received as remittances by the Cuban national during his or her stay in the United States; and

(3) Compensation earned by a Cuban national from a U.S. academic institution up to any amount that can be substantiated through payment receipts from such institution as authorized pursuant to § 515.565(a)(2)(v).

(e) The following transactions by persons generally or specifically licensed to engage in travel–related transactions to, from, and within Cuba are prohibited by § 515.201 unless specifically authorized:

(1) All transactions by persons subject to U.S. jurisdiction related to the utilization of charge cards, including but not limited to debit or credit cards, for expenditures in Cuba.

(2) All transactions related to the processing and payment by persons subject to U.S. jurisdiction, such as charge card issuers or intermediary banks, of charge card instruments (e.g.,

vouchers, drafts, or sales receipts) for expenditures in Cuba. The issuer of a charge card, or a foreign charge card firm owned or controlled by persons subject to U.S. jurisdiction, is not authorized to deal with a Cuban enterprise, a Cuban national, or a third-country person, such as a franchisee, in connection with the extension of charge card services to any person in Cuba.

(f) Persons traveling to Cuba fully hosted as described in § 515.420 may not carry currency to pay for living expenses or the purchase of goods in Cuba except as specifically licensed pursuant to or exempted from the application of this part.

(g) Nothing in this section authorizes transactions in connection with tourist travel to Cuba, nor does it authorize transactions in relation to any business travel, including making or agreeing to make any investment in Cuba, establishing or agreeing to establish any branch or agency in Cuba, or transferring or agreeing to transfer any property to Cuba, except transfers by or on behalf of individual or group travelers authorized pursuant to this part.

25. Section 515.561 is added to read as follows:

§ 515.561 Persons visiting family members in Cuba.

(a) *General license.* The travel–related transactions set forth in § 515.560(c) are authorized in connection with travel to Cuba by persons and persons traveling with them who share a common dwelling as a family with them who are traveling to visit close relatives in Cuba in circumstances that demonstrate humanitarian need, provided that the authorization contained in this paragraph may be used only once in any 12–month period. See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Any additional transactions must be specifically licensed pursuant to paragraph (b) of this section.

(b) *Specific licenses.* Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) in connection with travel to Cuba by persons, and persons traveling with them who share a common dwelling as a family with them, who seek to travel to visit close relatives in Cuba more than once in any consecutive 12–month period in cases involving humanitarian need.

(c) For purposes of this section, the term *close relative* used with respect to any person means such person's spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother–in–law, father–in–law, son–in–law, daughter–in–law, sister–in–law, brother–in–law, or spouse, widow, or widower of any of the foregoing.

26. New § 515.562 is added to read as follows:

§ 515.562 Officials of the U.S. government, foreign governments, and certain intergovernmental organizations traveling to, from, and within Cuba on official business.

The travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities in their official capacities by persons who are officials of the United States Government, any foreign government, or any intergovernmental organization of which the United States is a member and who are traveling on the official business of their government or international organization are authorized.

27. New § 515.563 is added to read as follows:

§ 515.563 Journalistic activities in Cuba.

(a) *General license.* The travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to journalistic activities in Cuba by persons regularly employed as journalists by a news reporting organization or by persons regularly employed as supporting broadcast or technical personnel are authorized.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. The exportation of equipment and other items to be used in journalistic activities may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* (1) Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are directly incident to doing research in Cuba for a free-lance article upon submission of an adequate written application including the following documentation:

(i) A detailed itinerary and a detailed description of the proposed research; and

(ii) A resume or similar document showing a record of publications.

(2) To qualify for a specific license pursuant to this section, the itinerary for the proposed research in Cuba for a free-lance article must demonstrate that the research constitutes a full work schedule that could not be accomplished in a shorter period of time.

(3) Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of free–lance journalism.

28. New § 515.564 is added to read as follows:

§ 515.564 Professional research and professional meetings in Cuba.

(a) *General license.* (1) The travel–related transactions set forth in § 515.560(c) and such additional transactions that are directly incident to professional research by full–time professionals who travel to Cuba to conduct professional research in their professional areas are authorized, provided that:

(i) The research is of a noncommercial, academic nature;

(ii) The research comprises a full work schedule in Cuba;

(iii) The research has a substantial likelihood of public dissemination; and

(iv) The research does not fall within the categories of activities described in paragraph (c), (d), or (e) of this section.

(2) The travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to travel to Cuba by full–time professionals to attend professional meetings or conferences in Cuba organized by an international professional organization, institution, or association that regularly sponsors meetings or conferences in other countries are authorized, provided that:

(i) The international professional organization, institution, or association is not headquartered in the United States unless that organization, institution, or association has been specifically licensed to sponsor the meeting in Cuba;

(ii) The purpose of the meeting or conference is not the promotion of tourism in Cuba or other commercial activities involving Cuba that are inconsistent with this part; and

(iii) The meeting or conference is not intended primarily for the purpose of fostering production of any biotechnological products.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons ("deemed exportation") and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate authorization by the Department of Commerce.

(b) *Specific licensing.* Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are directly

incident to professional research and professional meetings that do not qualify for the general license in paragraph (a) of this section. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba over an extended period of time by applicants demonstrating a significant record of research. Specific licenses will not be issued for travel–related transactions for purposes of attendance at meetings or conferences in Cuba organized by the Cuban government where such meetings or conferences could be intended primarily for the purpose of fostering the production of any biotechnological products.

(c) Categories of activities that do not qualify for the general license in paragraph (a) of this section and for which the specific licenses described in paragraph (b) of this section will not be issued include recreational travel; tourist travel; travel in pursuit of a hobby; research for personal satisfaction only; and any travel for an authorized professional research purpose if the schedule of activities includes free time, travel, or recreation in excess of that consistent with a full work schedule of professional research or attendance at professional meetings or conferences.

(d) An entire group does not qualify for the general license in paragraph (a) of this section and will not be issued a specific license under paragraph (b) of this section merely because some members of the group could qualify individually for such licenses.

Example 1 to paragraph (d): A musicologist travels to Cuba to do research on Cuban music pursuant to the general license for professional researchers set forth in paragraph (a) of this section. Others who are simply interested in music but who do not research music as part of their careers may not engage in travel–related transactions with the musicologist in reliance on this general license. For example, an art historian who plays in the same band with the musicologist would not qualify as a professional researcher of Cuban music for purposes of this general license.

Example 2 to paragraph (d): A specific license issued pursuant to paragraph (b) of this section authorizing travel-related transactions by a fish biologist who travels to Cuba to engage in professional research does not authorize transactions by other persons who might travel with the fish biologist but whose principal purpose in travel is to engage in recreational or trophy fishing. The fact that such persons may engage in certain activities with or under the direction of the professional fish biologist, such as measuring or recording facts about their catch, does not bring these individuals' activities within the scope of professional research and similar activities.

(e) A person will not qualify as engaging in professional research merely because that person is a professional who plans to travel to Cuba.

Example 1 to paragraph (e): A professor of history interested in traveling to Cuba for the principal purpose of learning or practicing Spanish or attending general purpose lectures devoted to Cuban culture and contemporary life does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

Example 2 to paragraph (e): A professional photographer who wishes to take photographs in Cuba that will become the basis for creating post cards, paintings, and other secondary products or that merely document the photographer's travel does not qualify for the general license in paragraph (a) of this section or for a specific license issued pursuant to paragraph (b) of this section.

29. New § 515.565 is added to read as follows:

§ 515.565 Educational activities.

(a) *Specific license for U.S. academic institutions*—(1) *Issuance; renewal.* A specific license may be issued to an accredited U.S. academic institution authorizing the institution and its students and employees to engage, under the auspices of the institution, in educational activities involving transactions in which Cuba or a Cuban national has an interest. The application for the specific license must establish that the U.S. academic institution is accredited by an appropriate national or regional educational accrediting association. The specific license may be renewed after a period of two years to authorize the accredited U.S. academic institution and its students and employees to continue to engage in the transactions authorized under the institution's license.

(2) *Scope of transactions authorized under U.S. academic institution's specific license; documentation.* Upon receipt of a specific license pursuant to paragraph (a)(1) of this section by the accredited U.S. academic institution, the institution and its students and employees are authorized to engage in the travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to any of the categories of educational activities set forth in paragraphs (a)(2)(i) through (a)(2)(vii) of this section undertaken under the auspices of the specifically–licensed institution. Activities covered by this authorization are limited to the following:

(i) Participation in a structured educational program by an undergraduate or graduate student or undergraduate or graduate student group as part of a course offered at an accredited U.S. college or university. A student planning to engage in such transactions in Cuba must carry a letter from the U.S. academic institution stating that the student is currently enrolled in an undergraduate or graduate degree program there and that the Cuba travel is part of a structured educational program of that institution and citing the number of the relevant U.S. academic institution's specific license.

(ii) Noncommercial academic research in Cuba specifically related to Cuba by a person working to qualify academically as a professional (for example, research toward a graduate degree). A student planning to engage in such transactions in Cuba must carry a letter from the student's accredited U.S. academic institution stating that the individual is currently enrolled in a graduate degree program and that the Cuba research will be accepted for credit toward that degree and citing the number of the relevant U.S. academic institution's specific license.

(iii) Participation in a formal course of study at a Cuban academic institution by an undergraduate or graduate student currently enrolled in a degree program at an accredited U.S. college or university, provided the formal course of study in Cuba will be accepted for credit toward the student's undergraduate or graduate degree at that U.S. college or university. A student planning to engage in such transactions in Cuba must carry with him or her a letter from the student's U.S. academic institution stating that the student is currently enrolled in an undergraduate or graduate degree program and that the Cuban study will be accepted for credit toward that degree and citing the number of the relevant U.S. academic institution's specific license.

(iv) Teaching at a Cuban academic institution by an individual regularly employed in a teaching capacity at an accredited U.S. college or university, provided the teaching activities are related to an academic program at the Cuban institution. An individual planning to teach at a Cuban academic institution must obtain and carry a written letter from the individual's U.S. academic institution, citing the number of that institution's specific license and stating that the individual is regularly employed there in a teaching capacity.

(v) Sponsorship, including the payment of a stipend or salary, of a Cuban scholar to teach or engage in other scholarly activity at a college or university in the United States (in addition to those transactions authorized by the general license contained in § 515.571). Such earnings may be remitted to Cuba as provided in

§ 515.570, or carried on the person of the Cuban scholar returning to Cuba as provided in § 515.560(d)(3).

(vi) Educational exchanges sponsored by Cuban or U.S. secondary schools involving secondary school students' participation in a formal course of study or in a structured educational program offered by a secondary school or other academic institution and led by a teacher or other secondary school official. This authorization includes participation by a reasonable number of adult chaperones to accompany the secondary school student(s) to Cuba. A secondary school group planning to engage in such transactions in Cuba must carry a letter from the secondary school sponsoring the trip, citing the number of the school's specific license and listing the names of all persons traveling with the group.

(vii) The organization of and preparation for transactions and activities described in paragraphs (a)(2)(i) through (a)(2)(vi) of this section by a full–time employee of a U.S. academic institution. An individual engaging in such transactions must carry a written letter from the individual's U.S. academic institution, citing the number of that institution's specific license and stating that the individual is regularly employed there.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of equipment and other items, including the transfer of technology or software to foreign persons ("deemed exportation"), and items not eligible for Department of Commerce GFT or BAG License Exceptions, 15 CFR 740.12 and 740.14, may require separate licensing from the Department of Commerce.

(b) *Specific license.* Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are directly incident to:

(1) Educational activities described in paragraphs (a)(2)(i) through (a)(2)(iii) of this section not covered by a specific license issued pursuant to paragraph (a) of this section to an accredited U.S. academic institution; or

(2) Educational exchanges not involving academic study pursuant to a degree program when those exchanges take place under the auspices of an organization that sponsors and organizes such programs to promote people–to–people contact.

(c) Transactions related to activities that are primarily tourist–oriented, including self-directed educational activities that are intended only for personal enrichment, are not authorized by this section.

30. New § 515.566 is added to read as follows:

§ 515.566 Religious activities in Cuba.

(a) *Specific license for U.S. religious organizations*—(1) *Issuance; renewal.* A specific license may be issued to a religious organization located in the United States authorizing the organization and individuals and groups affiliated with the organization to engage, under the auspices of the organization, in religious activities involving transactions (including travel–related transactions) in which Cuba or a Cuban national has an interest. The application for the specific license must set forth examples of religious activities to be undertaken in Cuba. The religious organization's specific license may be renewed after a period of two years to authorize the organization and individuals and groups affiliated with the organization to continue to engage in the transactions authorized under the organization's license.

(2) *Scope of transactions authorized under U.S. religious organization's specific license; documentation.* Upon receipt by the religious organization located in the United States of a specific license pursuant to paragraph (a)(1) of this section, the organization and individuals or groups affiliated with the organization are authorized to engage in the travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to religious activities in Cuba under the auspices of the organization. Travel–related transactions pursuant to this authorization must be for the purpose of engaging, while in Cuba, in a full–time program of religious activities. Financial and material donations to Cuba or Cuban nationals are not authorized by this paragraph (a)(2). All individuals who engage in transactions in which Cuba or Cuban nationals have an interest (including travel–related transactions) pursuant to this paragraph (a)(2) must carry with them a letter from the specifically–licensed U.S. religious organization, citing the number of the organization's specific license and confirming that they are affiliated with the organization and are traveling to Cuba to engage in religious activities under the auspices of the organization.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are directly incident to religious activities not covered by a specific license issued pursuant to paragraph (a) of this section to a U.S. religious organization. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips over an extended period of time to engage in a full–time program of religious activities in Cuba.

31. New § 515.567 is added to read as follows:

§ 515.567 Public performances, clinics, workshops, athletic and other competitions, and exhibitions.

(a) *General license.* The travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to athletic competition by amateur or semi–professional athletes or amateur or semi–professional athletic teams traveling to participate in athletic competition held in Cuba are authorized, provided that:

(1) The athletic competition in Cuba is held under the auspices of the international sports federation for the relevant sport;

(2) The United States participants in the athletic competition are selected by the United States federation for the relevant sport; and

(3) The competition is open for attendance, and in relevant situations participation, by the Cuban public.

Note to paragraph (a): See §§ 501.601 and 501.602 of this chapter for applicable recordkeeping and reporting requirements. Exportation of items to be used in Cuba may require separate licensing by the Department of Commerce.

(b) *Specific licenses.* (1) Specific licenses, including for multiple trips to Cuba over an extended period of time, may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are directly incident to participation in a public performance, clinic, workshop, athletic or other competition, or exhibition in Cuba by participants in such activities, provided that:

(i) The event is open for attendance, and in relevant situations participation, by the Cuban public;

(ii) All profits from the event after costs are donated to an independent nongovernmental organization in Cuba or a U.S.–based charity, with the objective, to the extent possible, of promoting people–to–people contacts or otherwise benefitting the Cuban people.

(2) In addition to those transactions authorized by § 515.571, specific licenses may be issued on a case–by–case basis authorizing transactions incident to participation in a public

exhibition, performance, clinic, workshop, or competition in the United States by a Cuban national who enters the United States for the purpose of such participation on a visa or other travel authorization issued by the Department of State.

(c) Specific licenses will not be issued pursuant to this section authorizing any:

(1) Payment to Cuba or any national thereof for appearance fees or other such payments in connection with or resulting from any public exhibition, performance, clinic, workshop, or competition in the United States or in Cuba; or

(2) Debit to a blocked account.

§ 515.568 [Reserved]

32. Section 515.568 is added and reserved.

33. Newly redesignated § 515.569 is revised to read as follows:

§ 515.569 Foreign passengers' baggage.

The importation of Cuban-origin goods, otherwise prohibited by this part, brought into the United States as baggage by any person arriving in the United States other than a citizen or resident of the United States is hereby authorized, notwithstanding the provisions of § 515.803, provided that such goods are not in commercial quantities and are not imported for resale. This authorization does not apply to the importation of Cuban-origin alcohol or tobacco products.

34. Section 515.570 is added to read as follows:

§ 515.570 Remittances to nationals of Cuba.

(a) *Family remittances authorized.* (1) Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to a national of Cuba resident in Cuba or in the authorized trade territory (including any member of his or her household) who is a close relative of the remitter or of the remitter's spouse, for the support of the close relative provided that:

(i) The remitter's total remittances pursuant to paragraphs (a) and (b) of this section to any one Cuban household, regardless of the number of close relatives comprising the household, do not exceed $300 in any consecutive 3-month period; and

(ii) The remittances are not made from a blocked source, except that remittances to Cuban households located in the authorized trade territory may come from a blocked account in a banking institution within the United States held in the name of, or in which the beneficial interest is held by, the payee or members of the payee's household.

(2) A person authorized to make remittances under this paragraph (a) and who is authorized to engage in travel-related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry no more than $300 in total remittances authorized in this paragraph (a), and only if the remittances will not exceed the maximum amount set forth in paragraph (a) of this section for any payee within the past 3 months. See § 515.560(c)(4).

(3) For purposes of this paragraph (a), the term *close relative* used with respect to any person means such person's spouse, child, grandchild, parent, grandparent, great grandparent, uncle, aunt, brother, sister, nephew, niece, first cousin, mother-in-law, father-in-law, son-in-law, daughter-in-law, sister-in-law, brother-in-law, or the spouse, widow, or widower of any of the foregoing.

Note to paragraph (a): The maximum amount set forth in paragraph (a) of this section does not apply to remittances to a Cuban individual who has been specifically licensed as an unblocked national pursuant to § 515.505(b), as remittances to unblocked persons do not require separate authorization.

(b) *Individual-to-household remittances authorized.* (1) Persons subject to the jurisdiction of the United States who are 18 years of age or older are authorized to make remittances to any Cuban household (including to any Cuban individual living alone) located in Cuba or in the authorized trade territory, provided that:

(i) The remitter's total remittances pursuant to paragraphs (a) and (b) of this section to any one Cuban household do not exceed $300 in any consecutive 3-month period;

(ii) No member of the payee's household is a senior-level Cuban government official or senior-level Cuban communist party official; and

(iii) The remittances are not made from a blocked source, except that remittances to Cuban households located in the authorized trade territory may come from a blocked account in a banking institution within the United States held in the name of, or in which the beneficial interest is held by, the payee or members of the payee's household.

(2) A person authorized to make remittances under this paragraph (b) and who is authorized to engage in travel-related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry no more than $300 in total remittances authorized in paragraphs (a) and (b) of this section, and only if the remittances will not exceed the maximum amount set forth in paragraph (a) or (b) of this section for any payee within the past 3 months. See § 515.560(c)(4).

Note to paragraph (b): The maximum amount set forth in paragraph (b) of this section does not apply to remittances to a Cuban individual who has been specifically licensed as an unblocked national pursuant to § 515.505(b), as remittances to unblocked persons do not require separate authorization.

(c) *Emigration-related remittances authorized.* Persons subject to the jurisdiction of the United States are authorized to remit the following amounts:

(1) Up to $500 on a one-time basis to any Cuban national for the purpose of covering the payee's preliminary expenses associated with emigrating from Cuba to the United States. This remittance may be sent through a licensed remittance forwarding service before the payee has received a valid visa issued by the State Department or other approved U.S.-immigration document, but may not be carried to Cuba by the remitter during this period. A person who is authorized to engage in travel-related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry remittances pursuant to this paragraph (c)(1), provided the traveler can demonstrate each visa recipient's full name and date of birth and the number and date of issuance of the U.S. visa or other travel authorization issued. See § 515.560(c)(4). Any amount remitted or carried to Cuba directly or indirectly in conjunction with the processing of a letter of invitation or similar document must be applied against the $500 limit; and

(2) Up to an additional $500 on a one-time basis to any Cuban national for the purpose of enabling the payee to emigrate from Cuba to the United States, including for the purchase of airline tickets and payment of exit or third-country visa fees or other travel-related fees. Such remittances may be transferred only after the Cuban individual has received a valid visa issued by the State Department or other approved U.S. immigration documentation. Persons remitting amounts pursuant to this paragraph (c)(2) must provide to the remittance forwarder the visa recipient's full name and date of birth and the number and date of issuance of the U.S. visa or other travel authorization issued. A person who is authorized to engage in travel-

related transactions relating to Cuba pursuant to a general license contained in or specific license issued pursuant to this part may carry remittances pursuant to this paragraph (c)(2), provided the traveler can demonstrate each visa recipient's full name and date of birth and the number and date of issuance of the U.S. visa or other travel authorization issued. See § 515.560(c)(4).

(d) *Specific licenses.* Specific licenses may be issued on a case–by–case basis authorizing the following:

(1) Remittances by persons subject to U.S. jurisdiction to independent nongovernmental entities in Cuba;

(2) Repatriation of earnings by a Cuban scholar pursuant to § 515.565(a)(2)(v) in excess of the amount specified in paragraph (a) of this section;

(3) Remittances by persons subject to U.S. jurisdiction from blocked accounts to Cuban households in the authorized trade territory in excess of the amount specified in paragraphs (a) and (b) of this section; or

(4) Remittances by persons subject to U.S. jurisdiction to a person in Cuba, directly or indirectly, for transactions to facilitate non-immigrant travel by an individual in Cuba to the United States under circumstances where humanitarian need is demonstrated, including illness or medical emergency.

35. New § 515.571 is added to read as follows:

§ 515.571 Certain transactions incident to travel to, from, and within the United States by Cuban nationals.

(a) Except as provided in paragraph (c) of this section, the following transactions by or on behalf of a Cuban national who enters the United States from Cuba on a visa or other travel authorization issued by the State Department are authorized:

(1) All transactions ordinarily incident to travel between the United States and Cuba, including the importation into the United States of accompanied baggage for personal use;

(2) All transactions ordinarily incident to travel and maintenance within the United States, including the payment of living expenses and the acquisition of goods for personal consumption in the United States;

(3) All transactions on behalf of aircraft or vessels incident to non–scheduled flights or voyages between the United States and Cuba, provided that the carrier used has a carrier service provider license issued pursuant to § 515.572. This paragraph does not authorize the carriage of any merchandise into the United States except accompanied baggage; and

(4) Normal banking transactions involving foreign currency drafts, travelers' checks, or other instruments negotiated incident to travel in the United States by any person under the authority of this section.

(b) Payments and transfers of credit in the United States from blocked accounts in domestic banking institutions held in the name of a Cuban national who enters the United States on a visa or other travel authorization issued by the State Department to or upon the order of such Cuban national are authorized provided that:

(1) Such payments and transfers of credit are made only for the living, traveling, and similar personal expenses in the United States of such Cuban national or his or her family;

(2) The total of all such payments and transfers of credit made under this section from the accounts of such Cuban national do not exceed $250 in any one calendar month; and

(3) No payment or transfer is made from a blocked account in which a specially designated national has an interest.

(c) This section does not authorize any transfer of property to Cuba, or, except as otherwise authorized in paragraph (b) of this section, any debit to a blocked account.

36. Newly redesignated § 515.572 is amended as follows:

A. The section heading is revised as set forth below.

B. The word "family" is removed wherever it appears.

C. Paragraph (c)(4)(ii) is amended by removing the words "other than close relatives as defined in § 515.563(b)" and adding in their place the words "ineligible to receive them under § 515.570".

D. Paragraph (d)(2) is amended by removing "§ 515.601" and adding in its place "§ 501.601 of this chapter" and by removing "§ 515.602" and adding in its place § 501.602 of this chapter".

E. Paragraph (e)(2)(ii)(A) is amended by removing "§ 515.566(e)(3)" and adding in its place "paragraph (e)(3) of this section".

F. Paragraph (e)(2)(ii)(D) is amended by removing "§ 515.566(b)" and adding in its place "paragraph (b) of this section".

G. Paragraph (e)(3)(iii) introductory text is amended by removing "§ 515.566," and adding in its place "this section,".

H. Paragraph (c)(4)(i) is revised to read as follows:

§ 515.572 Authorization of transactions incident to the provision of travel services, carrier services, and remittance forwarding services.

* * * * *

(c) * * *

(4)(i) In the case of applications for authorization to serve as travel or carrier service providers, a report on the forms and other procedures used to establish that each customer is in full compliance with U.S. law implementing the Cuban embargo and either qualifies for one of the general licenses contained in this part authorizing travel–related transactions in connection with travel to Cuba, has received a specific license from the Office of Foreign Assets Control issued pursuant to this part, or is a fully–hosted traveler as described in § 515.420. In the case of a customer traveling pursuant to a general license or claiming to be traveling fully hosted, the applicant must demonstrate that it requires each customer to attest, in a signed statement, to his or her qualification for the particular general license or fully–hosted status claimed. The statement must provide facts supporting the customer's belief that he or she qualifies for the general license or fully–hosted status claimed. In the case of a customer traveling under a specific license, the applicant must demonstrate that it requires the customer to furnish it with a copy of the license. The copy of the signed statement or the specific license must be maintained on file with the applicant.

* * * * *

37. The introductory text of paragraph (a) of § 515.574 is revised to read as follows:

§ 515.574 Support for the Cuban people.

(a) Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and other transactions that are intended to provide support for the Cuban people including, but not limited to, the following:

* * * * *

38. New § 515.575 is added to subpart E to read as follows:

§ 515.575 Humanitarian projects.

Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to certain humanitarian projects in or related to Cuba not otherwise covered by this part that are designed to directly benefit the Cuban people. Such projects may include, but are not limited to, medical and health–related projects, environmental projects, projects

involving non–formal educational training including adult literacy and vocational skills, community–based grass roots projects, projects suitable to the development of small–scale private enterprise, projects that are related to agricultural and rural development which promote independent activity, and projects involving the donation of goods to meet basic human needs as provided in 15 CFR 740.12(b) of the Export Administration Regulations, 15 CFR parts 730–774. Specific licenses may be issued authorizing transactions for multiple visits for the same project over an extended period of time by applicants demonstrating a significant record of overseas humanitarian projects.

39. New § 515.576 is added to subpart E to read as follows:

§ 515.576 Activities of private foundations or research or educational institutes.

Specific licenses may be issued on a case–by–case basis authorizing the travel–related transactions set forth in § 515.560(c) and such additional transactions as are directly incident to activities by private foundations or research or educational institutes that have an established interest in international relations to collect information related to Cuba for noncommercial purposes, not otherwise covered by the general license for professional research contained in § 515.564 or more properly issued under § 515.575, relating to humanitarian projects. Specific licenses may be issued pursuant to this section authorizing transactions for multiple trips to Cuba for the same project over an extended period of time.

Dated: April 30, 1999.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: May 5, 1999.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 99–12083 Filed 5–10–99; 3:39 pm]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972 Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy has determined that USS JUNEAU (LPD 10) is a vessel of the Navy which, due to it special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special functions as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: April 16, 1999.

FOR FURTHER INFORMATION CONTACT: Captain Rand R. Pixa, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General (Admiralty) of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS JUNEAU (LPD) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special functions as a naval ship: Annex I, section 2(a)(i), pertaining to the height of the forward masthead light; Annex I, section 2(g), pertaining to the distance of the sidelights above the hull; and, Annex I, section 3(a), pertaining to the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General (Admiralty) of the Navy has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table One of § 706.2 is amended by adding, in numerical order, the following entry for the USS JUNEAU (LPD 10):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
*	*	*
USS JUNEAU	LPD 10	4.27
*	*	*

3. Table Four, Paragraph 19 of § 706.2 is amended by adding, in numerical order, the following entry for the USS JUNEAU (LPD 10):

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Distance in meters of sidelights above maximum allowed height.
*	*	*
USS JUNEAU	LPD 10	1.6
*	*	*

4. Table Five of § 706.2 is amended by revising the entry for the USS JUNEAU (LPD 10) to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	No.	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
*	*	*	*	*	*
USS JUNEAU	LPD 10	N/A	N/A	X	54.8
*	*	*	*	*	*

Dated: April 16, 1999.
Approved:

R.R. PIXA,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty).

Dated: May 3, 1999.

Pamela A. Holden,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Certifying Officer.

[FR Doc. 99–12105 Filed 5–12–99; 8:45 am]
BILLING CODE 3810–FF–M

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 254

Landownership Adjustment; Land Exchanges

AGENCY: Forest Service, USDA.

ACTION: Final rule; technical amendment.

SUMMARY: This technical amendment corrects an oversight that occurred when regulations pertaining to land exchanges were adopted in 1994. The final land exchange rule failed to correctly conform the citations for administrative appeal regulations applicable to appealing land exchange decisions. This technical amendment corrects that oversight, making it clear that the appeal procedures to be followed are those in 36 CFR part 215, not part 217.

EFFECTIVE DATE: This rule is effective May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Greg Smith, Lands Staff, MAIL STOP 1124, Forest Service, USDA, PO Box 96090, Washington, DC 20090–6090, 202–205–1769.

SUPPLEMENTARY INFORMATION: On March 8, 1994, the Department adopted a final rule (59 FR 10854) at 36 CFR part 254 revising procedures for Forest Service land exchange activities as authorized by the Federal Land Exchange Facilitation Act of August 20, 1988. When the Forest Service published the proposed land exchange rule in 1991, the applicable appeal regulations were at 36 CFR parts 251 and 217. At that time, part 217 covered appeals of both plan and project level decisions. However in 1993, the Department adopted new appeal regulations at 36 CFR part 215 (58 FR 58904) and simultaneously revised the appeal rules at 36 CFR part 217 to apply solely to National Forest Land and Resource Management Plan decisions. When the Department proceeded to the final land exchange rule, the citations to the appeal regulation inadvertently was not changed to conform to the 1993 appeal rules.

Decisions pertaining to specific land exchanges are not National Forest Land and Resource Management Plan decisions and, therefore, have not been appealable under 36 CFR part 217 since 1993 pursuant to section 322 of the Department of the Interior and Related Agencies Appropriations Act of 1993 (16 U.S.C. 1612 note). Instead, these land exchange decision concern projects or activities that implement land and resource management plans and therefore are subject to appeal under CFR part 215. This rule corrects the citations in 36 CFR part 254 at § 254.4(g), § 254.13(b), and § 254.14(b)(6).

This oversight was discovered only recently, and the agency is moving to correct this citation error as quickly as possible to avoid any further confusion.

Compliance With Administrative Procedure Act

Pursuant to 5 U.S.C. 553(b) of the Administrative Procedure Act, the Forest Service had determined that good cause exists for adopting this final rule without prior notice and comment opportunity. This rule is a technical amendment. The need for this rule arises from the agency's inadvertent failure to conform cross references in land exchange regulations at 36 CFR part 254 in a 1994 final rule to changes in administrative appeal regulations at 36 CFR parts 215 and 217 adopted in 1993. This conforming amendment does not alter the agency's practice with regard to administrative appeals of land exchange decisions. The agency has been routinely processing appeals of land exchange decisions under 36 CFR part 215, since land exchange decisions are project-level decisions, not land and resource management plan decisions. Because this rulemaking does not make any substantive changes to regulations for land exchanges, does not limit appeal rights for decision related to land exchange activities, and merely conforms a cross reference to the appeal regulations that are actually in use, notice and comment on this rule prior to adoption is unnecessary.

Regulatory Impact

This rule is a technical amendment to correct a reference to another rule. As such, it has no substantive effect, since by the terms of the appeal rules at 36 CFR part 217, only land and resource management plan decision are subject to that rule. Additionally, despite the cross-reference error in part 254, the agency has been processing land exchange appeals under part 215 since 1993. As noted in the preamble, land exchange decisions are not plan decisions. For these reasons, this technical amendment is not subject toreview under USDA procedures and Exchange Order 12866 on Regulatory Planning and Review. Accordingly, this rule is not subject to Office of Management and Budget review under Executive Order 12866. Furthermore, this rule is exempt from further analysis under the Unfunded Mandates Reform Act of 1995; Executive Order 12778, Civil Justice Reform; Executive Order 12530, Takings Implications; the Regulatory Flexibility Act; or the Paperwork Reduction Act of 1995.

List of Subjects in 36 CFR Part 254

Community facilities and national forests.

Therefore, for the reasons set forth in the preamble, part 254 of Title 36 of the Code of Federal Regulations is amended as follows:

PART 254—[Amended]

1. The authority citation for part 254 continues to read:

Authority: 7 U.S.C. 428a(a) and 1011; 16 U.S.C. 484a, 486, 516, 551, and 555a; 43 U.S.C. 1701, 1715, and 1740; and other applicable laws.

2. Revise paragraph (g) of § 254.4 to read as follows:

§ 254.4 Agreement to initiate an exchange.

* * * * *

(g) The withdrawal from an exchange proposal by an authorized officer at any time prior to the notice of decision, pursuant to § 254.13 of this subpart, is not appealable under 36 CFR part 215 or 36 CFR part 251, subpart C.

3. Revise paragraph (b) of § 254.13 to read as follows:

§ 254.13 Approval of exchanges; notice of decision.

* * * * *

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, the decision shall be subject to appeal as provided under 36 CFR part 215 or, for eligible parties, under 36 CFR part 251, subpart C.

4. Revise paragraph (b)(6) of § 254.14 to read as follows:

§ 254.14 Exchange agreement.

* * * * *

(b) * * *

(6) In the event of an appeal under 36 CFR part 215 or 36 CFR part 251, subpart C, a decision to approve an exchange proposal pursuant to § 254.13 of this subpart is upheld; and

* * * * *

Dated: April 2, 1999.

Sandra Key,

Acting Associate Chief.

[FR Doc. 99–12048 Filed 5–12–99; 8:45 am]

BILLING CODE 3410–11–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0132a; FRL–6334–5]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revisions, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the California State Implementation Plan (SIP) which concern the recision of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 12, 1999 without further notice, unless EPA receives relevant adverse comments by June 14, 1999. If EPA receives such comments then it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383

-Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for recision from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District (SBCAPCD) Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for

Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules were previously submitted by the California Air Resources Board (CARB) to EPA on June 30, 1972 and approved on September 22, 1972, 37 FR 19812, for incorporation into the SIP. These rule recisions were adopted by the MDAQMD on June 24, 1996 and submitted by CARB to EPA on March 3, 1997.

The rule being proposed for recision from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment. This rule was previously submitted by CARB to EPA on February 21, 1972 and approved on May 31, 1972, 37 FR 10856, for incorporation into the SIP. This rule recision was adopted by the TCAPCD on September 10, 1985 and submitted by CARB to EPA on February 10, 1986.

II. Background

On September 22, 1972, the EPA approved SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137, Orchard, Field or Citrus Grove Heaters, for incorporation into the SIP. The SBCAPCD rescinded Regulation VI from its rulebook prior to 1977. The recision of SBCAPCD Regulation VI was disapproved by EPA (43 FR 40018, September 8, 1978) as a SIP relaxation. On July 1, 1993, the SBCAPCD became the Mojave Desert Air Quality Management District (MDAQMD) by act of the California Legislature. In 1994, MDAQMD added portions of Riverside County, the Palo Verde Valley, and Blythe. The SBCAPCD rules remain in effect after July 1, 1993 until the MDAQMD rescinds or supersedes them. The rules being proposed for recision by MDAQMD were originally adopted by SBCAPCD for the purpose of controlling emissions from orchard heaters. In the spring of 1995, the MDAQMD conducted a survey of affected industry to determine if Class I and Class II orchard heaters were still in use. The survey determined that no known facility within the MDAQMD uses this antiquated technology. Wind machines are currently used to protect crops from frost. Therefore, the recision of SBCAPCD Regulation VI by MDAQMD does not relax the SIP control strategy.

On July 12, 1990, EPA approved TCAPCD Rule 4.9, Specific Contaminants, and Rule 4.14, Fuel Burning Equipment (Operational), for incorporation into the SIP. Rule 4.13, Fuel Burning Equipment, is submitted for recision, since Rules 4.9 and 4.14 provide regulation of the same pollutant emissions. Rule 4.9 regulates SOX and combustion contaminant (particulate matter) emissions by limiting the respective concentrations in the gas, instead of by absolute quantities of emissions. Rule 4.14 regulates NOX emissions by limiting the concentration in the gas, instead of by absolute quantity of emissions. SIP-approved Rules 4.9 and 4.14 strengthen the SIP relative to Rule 4.13, except for large fuel burning equipment with a capacity in excess of about 500 million British Thermal Units per hour. The TCAPCD does not have larger capacity sources; therefore, the recision of TCAPCD rule 4.13 does not relax the SIP control strategy.

In response to section 110(a) and Part D of the Act, the State of California submitted many PM–10 rules for incorporation into the California SIP, including the rule recisions being acted on in this document. This document addresses EPA's direct-final action for approving the recision of SBCAPCD Regulation VI, which includes Rules 100–104, 109, 110, 120, and 130–137. The recision was adopted June 24, 1996 by MDAQMD. This submittal was found to be complete on August 12, 1997, pursuant to EPA's completeness criteria that are set forth in 40 CFR Part 51 Appendix V.[1] These rules are being proposed for recision from the SIP. This document also addresses EPA's proposed action approving the recision of TCAPCD Rule 4.13. The recision was adopted by TCAPCD September 10, 1985. This rule is being proposed for recision from the SIP. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Proposed Action

In determining the approvability of a PM–10 rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and Part D of the CAA and 40 CFR Part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). EPA must also ensure that rules strengthen the SIP or maintain the SIP's control strategy.

EPA has evaluated the submitted rule recisions and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, the recision of SBCAPCD Regulation VI, Rules 100–104, 109, 110, 120, and 130–137 and TCAPCD Rule 4.13 are being approved under section 110(k)3 of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should relevant adverse comments be filed. This rule will be effective July 12, 1999 without further notice unless the Agency receives relevant adverse comments by June 14, 1999.

If the EPA receives such comments, then EPA will publish a timely withdrawal informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 12, 1999 and no further action will be taken on the proposed recisions.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Particulate matter.

Note: Incorporation by reference of the State Implementation Plan for the State of California was approved by the Director of the **Federal Register** on July 1, 1982.

Dated: April 9, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (b)(3)(ii) and (c)(6)(xv)(B) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(b) * * *

(3) * * *

(ii) Previously approved on May 31, 1972 and now deleted without replacement Rule 4.13.

* * * * *

(c) * * *

(6) * * *

(xv) * * *

(B) Previously approved on September 22, 1972 and now deleted without replacement Rules 100 to 104, 109, 110, 120, and 130 to 137.

* * * * *

[FR Doc. 99–11825 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 069–1069a; FRL–6340–3]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking final action to approve two State Implementation Plan (SIP) revisions submitted by the state of Iowa. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to hazardous air pollutants (HAP). The effect of this action is to ensure Federal enforceability of the state's air program rule revisions.

DATES: This direct final rule is effective on July 12, 1999 without further notice, unless EPA receives adverse comment by June 14, 1999. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Comments may be addressed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of the state submittal are available at the following addresses for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101; and the Environmental Protection Agency, Air and Radiation Docket and Information Center, Air Docket (6102), 401 M Street, SW, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: This section provides additional information by addressing the following questions:

What is a SIP?

What is the Federal approval process for a SIP?

What does Federal approval of a state regulation mean to me?

What is approval under section 112(l)?

What is being addressed in this notice?

What action is EPA taking?

What is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgations of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Approval Under Section 112(l)?

Section 112(l) of the CAA provides authority for EPA to implement a program to regulate HAPs, and to subsequently delegate authority for this program to the states. EPA has delegated authority for this program to Iowa and has approved relevant state HAP rules under this authority. In this action, EPA is approving revisions to the section 112(l) approved state rules.

What Is Being addressed in This Notice?

The Iowa Department of Natural Resources (IDNR) revised a number of its rules in order to maintain equivalency with Federal requirements and to adopt hospital/medical/infectious waste incinerator regulations. The revisions include an update to the definitions rule, to the permitting rules, and to the testing and monitoring rule. The state also adopted by reference the revised Federal National Ambient Air Quality Standards promulgated on July 15, 1997.

The revised rule chapters are: Chapter 20, "Scope of Title-Definitions-Forms-Rules of Practice"; Chapter 22, "Controlling Pollution"; Chapter 23,

"Emissions Standards for Contaminants"; Chapter 25, "Measurement of Emissions"; and Chapter 28, "Ambient Air Quality Standards," 567 Iowa Administrative Code. Specific Chapter paragraphs and subparagraphs which were revised are: 20.2, 22.1(1), 22.1(2), 22.1(3), *22.203(1), 22.203(2), 22.300(8),* 23.1(1), 25.1(10), and 28.1. All of these rules are being approved under the authority of section 110, and the underlined rules are also being approved under the authority of section 112(l).

These revisions to the Iowa SIP were submitted by Larry Wilson, IDNR Director, on December 11, 1998, and January 29, 1999. The state effective date for these revisions are October 14, 1998, except for rules 22.1(2) and 25.1(10), which were effective December 23, 1998.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittals have met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittals also satisfied the completeness criteria of 40 CFR part 51, appendix V. In addition, as explained above and in more detail in the technical support documents which are part of this notice, the revisions meet the substantive SIP requirements of the CAA, including section 110 and implementing regulations.

What Action Is EPA Taking?

EPA is processing this action as a direct final action because this amendment to the Iowa SIP makes routine revisions to the existing rules which are noncontroversial. Therefore, we do not anticipate any adverse comments.

Conclusion

Final Action

EPA is taking final action to approve, as an amendment to the Iowa SIP, rule revisions submitted by the state of Iowa as discussed above. These rules are being approved under the authority of section 110, and, for certain rules, the authority of section 112(l).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 12, 1999 without further notice unless the Agency receives adverse comments by June 14, 1999.

If EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 12, 1999, and no further action will be taken on the proposed rule.

Administrative Requirements

A. Executive Order (E.O.) 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866, entitled "Regulatory Planning and Review."

B. E.O. 12875

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal Government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 12875 requires EPA to provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments; a summary of the nature of their concerns; copies of any written communications from the governments; and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a mandate on state, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. E.O. 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by E.O. 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. E.O. 13084

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, E.O. 13084 requires EPA to provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act (RFA)

The RFA generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit

enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and Subchapter I, Part D of the CAA do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act") signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to state, local, or tribal governments in the aggregate, or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either state, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under state or local law and imposes no new requirements. Accordingly, no additional costs to state, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the United States Comptroller General prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: April 28, 1999

William Rice,

Regional Administrator, Region VII.

Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart Q—Iowa

2. In section 52.820 the following entries for paragraph (c), EPA-approved regulations, are revised to read as follows:

§ 52.820 Identification of plan.

* * * * *

(c) EPA-approved regulations.

EPA-APPROVED IOWA REGULATIONS

Iowa citation	Title	State effective date	EPA approval date	Comments
	Iowa Department of Natural Resources Environmental Protection Commission [567]			
	Chapter 20 Scope of Title-Definitions-Forms-Rule of Practice			
*	* *	*	*	* *
567–20.2	Definitions	10/14/98	5/13/99 64 FR 25827.	
*	* *	*	*	* *
	Chapter 22 Controlling Pollution			
*	* *	*	*	* *
567–22.1	Permits Required for New or Existing Stationary Sources.	12/23/98	5/13/99 64 FR 25827	Subrule 22.1(3) "b"(9) has not been approved.
*	* *	*	*	* *
567–22.203	Voluntary Operating Permit Applications	10/14/98	5/13/99 64 FR 25827.	

EPA-APPROVED IOWA REGULATIONS—Continued

Iowa citation	Title	State effective date	EPA approval date	Comments
* * * * * * *				
567–22.300	Operating Permit by Rule for Small Sources.	10/14/98	5/13/99 64 FR 25828.	
* * * * * * *				
	Chapter 23 Emission Standards for Contaminants			
* * * * * * *				
567–23.1	Emission Standards	10/14/98	5/13/99 64 FR 25828	Sections 23.1(2)–(5) are not approved in the SIP.
* * * * * * *				
	Chapter 25 Measurement of Emissions			
* * * * * * *				
567–25.1	Testing and Sampling of New and Existing Equipment.	12/23/98	5/13/99 64 FR 25828	Subrule 25.1(12) has not been approved.
* * * * * * *				
	Chapter 28 Ambient Air Quality Standards			
* * * * * * *				
567–28.1	Statewide Standards	10/14/98	5/13/99 64 FR 25828.	
* * * * * * *				

[FR Doc. 99–11823 Filed 5–12–99; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA012–0144a, FRL–6335–3]

Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is taking direct final action to approve revisions to a number of South Coast Air Quality Management District (District) rules contained in the District Regulation II. The District submitted these rules for the purpose of meeting the requirements of the Clean Air Act (CAA), as amended in 1990 with regard to new source review (NSR) in areas that have not attained the national ambient air quality standards (NAAQS). This approval action will incorporate these rules into the federally approved State Implementation Plan (SIP) for California. The rules were submitted during 1991 and 1994 by the State to satisfy certain Federal requirements for an approvable NSR SIP. Thus, EPA is finalizing the approval of these rules into the California SIP under provisions of the CAA regarding EPA action on SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on July 12, 1999 without further notice, unless EPA receives adverse comments by June 14, 1999. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Nahid Zoueshtiagh (Air-3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address:

Permits Office (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105. Copies of the submitted rules are also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh, (Air-3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1261.

SUPPLEMENTARY INFORMATION: The air quality planning requirements for nonattainment NSR are set out in part

D of title I of the CAA. EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIPs and SIP revisions submitted under part D, including those State submittals containing nonattainment NSR SIP requirements [see 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)]. Because EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion. EPA has also proposed regulations to implement the changes under the 1990 Amendments in the NSR provisions in parts C and D of Title I of the Act. [See 61 FR 38249 (July 23, 1996)]. Upon final promulgation of those regulations, EPA will review those NSR SIP submittals on which it has already taken final action to determine whether additional SIP revisions are necessary.

Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) and section 110(l) of the Act provide that each implementation plan or revision to an implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 172(c)(7) of the Act provides that plan provisions for nonattainment areas shall meet the applicable provisions of Section 110(a)(2).

The District held public hearings on its actions on these rules. The dates for public hearing, adoption or rescission and submission to EPA are as follows:

Rules 201, 203, 205, 209, 214, 215, 216 and 217 (revised): Public hearing on December 1, 1989; adoption on January 5, 1990; and submission to EPA on May 13, 1991.

Rule 201.1 (new): Public hearing December 1, 1989; adoption on January 5, 1990; and submission to EPA on May 13, 1991.

Rules 204, 206 and 210 (revised): Public hearing and adoption on October 8, 1993; and submission to EPA on February 28, 1994.

Rules 203.1, 203.2, 204.1, 213, 213.1, and 213.2 (rescinded): Public hearing and rescission on June 28, 1990; and submission to EPA on April 5, 1991.

Rule 211 (rescinded): Public hearing on December 1, 1989; rescission on January 5, 1990; and submission to EPA on May 13, 1991.

Three of the rescinded rules (Rules 203.1, 203.2, 204.1) were not a part of the federally-approved SIP. Therefore EPA is not taking any action on them.

Summary of Rule Contents

The District submitted the above rules to EPA for adoption into the applicable NSR SIP Rules.

The rules subject to this action are in District Regulation II and apply to all sources requiring Permits to Construct or Permits to Operate. The rules describe applicability and procedures for applying for a Permit to Construct or a Permit to Operate, and provide procedures and timetables for issuance, denial and appeal of permits. These rules are separate from the federal operating permit program under Regulation XXX of the District. The revisions made to the rules subject to this action are mainly to provide: (1) An administrative change to reflect District's current organizational authority such as replacing the term Air Pollution Control Officer (APCO) with the term Executive Officer (EO) in Rules 201 and 217; (2) editorial clarifications in Rules 203 and 209; (3) amendment and improvement of the rule language in Rules 204, 206 and 210 to refer to the Title V (federal operating permit program); (4) additional rule (Rule 201.1) to enforce permit conditions contained in federally issued permits; and (5) detailed procedures and timetables for permit issuance, denial and appeals procedures in Rules 214, 215, and 216. For a description of how these rules meet the CAA's applicable requirements, please refer to EPA's technical support document (TSD) contained in the Docket.

EPA Evaluation and Action

EPA has evaluated amended Rules 201, 203, 204, 205, 206, 209, 210, 214, 215, 216, 217, and new Rule 201.1. EPA has determined that the rules are consistent with the CAA, EPA regulations and EPA policy. Therefore, District Rules 201, 201.1, 203, 204, 205, 206, 209, 210, 214, 215, 216 and 217 are approved into SIP.

Although initially part of the submittal, the District has rescinded Rules 203.1, 203.2, 204.1, 211, 213, 213.1, and 213.2. The EPA is not taking any action on Rules 203.1, 203.2 and 204.1 which were not a part of the SIP. However, the EPA is approving deletion of Rules 211, 213, 213.1 and 213.2 from the SIP. The District has incorporated the requirements of Rule 211 in its Rule 210. EPA has also determined that the requirements of Rules 213, 213.1 and 213.2 are now in Rule 212 and Regulation XIII which the EPA approved them into the SIP in December 1996. These rules which contain the requirements of the rescinded rules were also subject to the District's public review process.

The EPA is taking this action under section 110(k)(3) of the CAA for these rules which meet the requirements of Section 110(a), and part D of Title I of the Act.

Administrative Review

The EPA is publishing this action without prior proposal in part because the District has provided public workshops in the development of the submitted rules, and provided the opportunity for public comment prior to adoption of the submitted rules. At that time, no significant comments were received by the District. The Agency therefore views this as a non-controversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This rule is effective on July 12, 1999 without further notice, unless EPA receives adverse comments by June 14, 1999. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective July 12, 1999.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their

concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments.

The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compound.

Note: Incorporation by reference of the State Implementation Plan for the State of

California was approved by the Director of the **Federal Register** on July 1, 1982.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(31)(vi)(D), (c)(36)(i)(B), (c)(184)(i)(B)(*7*), and (c)(217)(i)(C) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(31) * * *

(vi) * * *

(D) Previously approved on November 9, 1978 and now deleted without replacement Rule 211.

* * * * *

(36) * * *

(i) * * *

(B) Previously approved on November 9, 1978 and now deleted without replacement Rule 213, 213.1, and 213.2.

* * * * *

(184)* * *

(i) * * *

(B) * * *

(*7*) Rules 201, 203, 205, 209, 214 to 217 amended on January 5, 1990 and Rule 201.1 adopted on January 5, 1990.

* * * * *

(217) * * *

(i)* * *

(C) South Coast Air Quality Management District.

(*1*) Rules 204, 206, and 210 amended on October 8, 1993.

* * * * *

[FR Doc. 99–11999 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–6340–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hazardous/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving the section 111(d) Plan submitted by the North Dakota Department of Health on October 6, 1998, to implement and enforce the Emissions Guidelines (EG) for existing Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The EG require States to develop plans to reduce toxic air emissions from all HMIWIs.

DATES: This direct final rule is effective on July 12, 1999, without further notice, unless we receive adverse comments by June 14, 1999. If we receive adverse comments, we will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: You should address comments on this action to Richard R. Long, EPA Region 8, Office of Air and Radiation (8P–AR), 999 18th Street, Suite 500, Denver, Colorado 80202. Copies of all materials considered in this rulemaking may be examined during normal business hours at the following locations: EPA Region 8 offices, 999 18th Street, Suite 500, Denver, Colorado 80202, and at the North Dakota Department of Health offices, 1200 Missouri Avenue, Bismarck, North Dakota 58504–5264.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser at 303–312–6526.

SUPPLEMENTARY INFORMATION:

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I. What action is being taken by EPA today?
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III. What is a State Plan?
IV. What does the North Dakota State Plan contain?
V. Is my HMIWI subject to these regulations?
VI. What steps do I need to take?
VII. Administrative Requirements

I. What Action Is Being Taken by EPA Today?

We are approving North Dakota's State Plan, as submitted on October 6, 1998 for the control of air emissions from HMIWIs, except for those HMIWIs located in Indian Country. When we developed our New Source Performance Standard (NSPS) for HMIWIs, we also developed Emissions Guidelines (EG) to control air emissions from older HMIWIs. (See 62 FR 48348–48391, September 15, 1997). North Dakota developed a State Plan, as required by section 111(d) of the Clean Air Act (the Act), to adopt the EG into their body of regulations, and we are acting today to approve it.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in a separate document in this **Federal Register** publication, we are proposing to approve the revision should significant, material, and adverse comments be filed. This action is effective July 12, 1999, unless by June 14, 1999, adverse or critical comments are received. If we receive such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will be addressed in a subsequent final rule based on this action serving as a proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, this action is effective July 12, 1999.

II. Why Do We Need To Regulate HMIWI Emissions?

When burned, hospital waste and medical/infectious waste emit various air pollutants, including hydrochloric acid, dioxin/furan, and toxic metals (lead, cadmium, and mercury). Mercury is highly hazardous and is of particular concern because it persists in the environment and bioaccumulates through the food web. Serious developmental and adult effects in humans, primarily damage to the nervous system, have been associated with exposures to mercury. Harmful effects in wildlife have also been reported; these include nervous system damage and behavioral and reproductive deficits. Human and wildlife exposure to mercury occur mainly through the ingestion of fish. When inhaled, mercury vapor attacks also the lung tissue and is a cumulative poison. Short-term exposure to mercury in certain forms can cause hallucinations and impair consciousness. Long-term exposure to mercury in certain forms can affect the central nervous system and cause kidney damage.

Exposure to particulate matter has been linked with adverse health effects, including aggravation of existing respiratory and cardiovascular disease and increased risk of premature death. Hydrochloric acid is a clear colorless gas. Chronic exposure to hydrochloric acid has been reported to cause gastritis, chronic bronchitis, dermatitis, and photosensitization. Acute exposure to high levels of chlorine in humans may result in chest pain, vomiting, toxic pneumonitis, pulmonary edema, and death. At lower levels, chlorine is a potent irritant to the eyes, the upper respiratory tract, and lungs.

Exposure to dioxin and furan can cause skin disorders, cancer, and reproductive effects such as endometriosis. These pollutants can also affect the immune system.

III. What Is a State Plan?

Section 111(d) of the Act requires that pollutants, controlled under the NSPS must also be controlled at older sources in the same source category. Once an NSPS is promulgated, we then publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into their body of regulations. States must also include in this State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate the ability to and enforce.

IV. What Does the North Dakota State Plan Contain?

North Dakota adopted the Federal NSPS and EG by reference into its State regulations at NDAC 33–15–12–02. The North Dakota State Plan contains:

1. A demonstration of the State's legal authority to implement the section 111(d) State Plan;

2. State rules adopted into NDAC 33–15–12 as the mechanism for implementing the emission guidelines. The North Dakota 23–25–10 gives the North Dakota Department of Health the authority to enforce any properly adopted rule.

3. An inventory of approximately 76 known designated facilities, along with estimates of their toxic air emissions;

4. Emission limits that are as protective as the EG;

5. A compliance date of 3 years after environmental protection agency approval of the state plan but not later than September 16, 2002.

6. Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

7. Records from the public hearing; and,

8. Provisions for progress reports to EPA.

The North Dakota State Plan was reviewed for approval with respect to the following criteria: 40 CFR 60.23 through 60.26, *Subpart B—Adoption and Submittal of State Plans for Designated Facilities;* and, 40 CFR 60.30e through 60.39e, *Subpart Ce—Emission Guidelines and Compliance Times for Hospital/Medical/Infectious Waste Incinerators.* A detailed discussion of our evaluation of the North Dakota State Plan is included in our technical support document, located in the official file for this action.

V. Is My HMIWI Subject to These Regulations?

The EG for existing HMIWIs affect any HMIWI built on or before June 20, 1996. If your facility meets this criterion, you are subject to these regulations.

VI. What Steps Do I Need To Take?

You must meet the requirements listed in NDAC 33–15–12–02 Subpart Ce, summarized as follows:

1. Determine the size of your incinerator by establishing its maximum design capacity.

2. Each size category of HMIWI has certain emission limits established which your incinerator must meet. See Table 1 of 40 CFR part 60, subpart Ce to determine the specific emission limits which apply to you. The emission limits apply at all times, except during startup, shutdown, or malfunctions, provided that no waste has been charged during these events. (40 CFR 60.33e, as listed at 62 FR 48382, September 15, 1997).

3. There are provisions to address small rural incinerators 40 CFR 60.33e(b), 60.36e, 60.37e(c)(d), and 60.38e(b), as listed at 62 FR 48380, September 15, 1997).

4. You must meet a 10% opacity limit on your discharge, averaged over a six-minute block (40 CFR 60.33e(c), as listed at 62 FR 48380, September 15, 1997).

5. You must have a qualified HMIWI operator available to supervise the operation of your incinerator. This operator must be trained and qualified through a State-approved program, or a training program that meets the requirements listed under 40 CFR part 60.53c(c) (40 CFR 60.34e, as listed at 62 FR 48380).

6. Your operator must be certified, as discussed in paragraph 5 above, no later than one year after we approve this North Dakota State Plan (40 CFR 60.39e(e), as listed at 62 FR 48382).

7. You must develop and submit to the North Dakota Department of Health a waste management plan. This plan must be developed under guidance provided by the American Hospital Association publication, An Ounce of Prevention: Waste Reduction Strategies for Health Care Facilities, 1993, and must be submitted to the Department of Health no later than one year after we approve this State Plan (40 CFR 60.35e, as listed at 62 FR 48380).

8. You must conduct an initial performance test to determine your incinerator's compliance with these emission limits. This performance test must be completed within 36 months of North Dakota's State Plan approval (40 CFR 60.37e and 60.8, as listed at 62 FR 48380).

9. You must install and maintain devices to monitor the parameters listed under Table 3 to Subpart Ec (40 CFR 60.37e(c), as listed at 62 FR 48381).

10. You must document and maintain information concerning pollutant concentrations, opacity measurements, charge rates, and other operational data. This information must be maintained for a period of five years (40 CFR 60.38e, as listed at 62 FR 48381).

11. You must report to the North Dakota Health Department the results of your initial performance test, the values for your site-specific operating parameters, and your waste management plan. This information must be reported within 60 days following your initial performance test, and must be signed by the facilities manager (40 CFR 60.38e, as listed at 62 FR 48381).

12. In general, you must comply with all the requirements of this State Plan within one year after we approve it; however, there are provisions to extend your compliance date (40 CFR 60.39e, as listed at 62 FR 48381).

VII. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from review under Executive Order 12866, entitled Regulatory Planning and Review.

B. Executive Order 12875

Executive Order 12875: Enhancing the Intergovernmental Partnership

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local, or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local, and tribal

governments to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates.

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be economically significant as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it is not an economically significant action under Executive Order 12866.

D. Executive Order 13084

Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule implements requirements specifically set forth by the Congress in sections 111 and 129 of the Clean Air Act, as amended in 1990, without the exercise of any discretion by EPA.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. Pursuant to section 605(b) of the RFA, I certify that this rule will not have a significant economic impact on a substantial number of small entities. This Federal action approves pre-existing requirements under, State, law and imposes no new requirements on any entity affected by this rule, including small entities. Therefore, these amendments will not have a significant impact on a substantial number of small entities.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a major rule as defined by 5 U.S.C. 804(2).

H. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 1999. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

Patricia D. Hull,

Acting Administrator, Region VIII.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart JJ—North Dakota

2. Add a new undesignated center heading and §§ 62.8610, 62.8611, and 62.8612 to subpart JJ to read as follows:

AIR EMISSIONS FROM HAZARDOUS/MEDICAL/INFECTIOUS WASTE INCINERATORS

§ 62.8610 Identification of Plan.

Section 111(d) Plan for Hazardous/Medical/Infectious Waste Incinerators and the associated State regulation in section 33–15–12–02 of the North Dakota Administrative Code submitted by the State on October 6, 1998.

§ 62.8611 Identification of Sources.

The plan applies to all existing hazardous/medical/infectious waste incinerators for which construction was commenced on or before June 20, 1996, as described in 40 CFR Part 60, Subpart Ce.

§ 62.8612 Effective Date.

The effective date for the portion of the plan applicable to existing hazardous/medical/infectious waste incinerators is July 12, 1999.

[FR Doc. 99–12001 Filed 5–12–99; 8:45 am]
BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–6341–2]

RIN 2060–A127

Revisions to the Permits and Sulfur Dioxide Allowance System Regulations Under Title IV of the Clean Air Act: Compliance Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Title IV of the Clean Air Act (the Act), as amended by the Clean Air Act Amendments of 1990, authorized the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program. The program sets emissions limitations to reduce acidic particles and deposition and their serious, adverse effects on natural resources, ecosystems, materials, visibility, and public health.

The allowance trading component of the Acid Rain Program allows utilities to achieve sulfur dioxide emissions reductions in the most cost-effective way. Utilities trade allowances and EPA records ownership and trades of allowances in the Allowance Tracking System for use in determining compliance at the end of each year. On January 11, 1993, EPA initially promulgated the regulations governing Acid Rain Program permitting and allowance trading. Today's action revises certain provisions in the regulations concerning the deduction of allowances for determining compliance. The revisions will improve the operation of the Allowance Tracking System and the allowance market generally, while still preserving the Act's environmental goals.

EFFECTIVE DATE: June 14, 1999.

ADDRESSES: *Docket.* Docket No. A–98–15, containing supporting information used in developing the proposed rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street, S.W., Washington, DC 20460. EPA may charge a reasonable fee for copying.

FOR FURTHER INFORMATION CONTACT: Donna Deneen, Permits and Allowance Market Branch, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street S.W., Washington, DC 20460 (202–564–9089).

SUPPLEMENTARY INFORMATION: This preamble contains all of the responses to public comments received on the revisions finalized in today's action.

The information in this preamble is organized as follows:

I. Affected Entities
II. Background
III. Public Participation
IV. Summary of Comments and Responses
A. Allowance Deductions From Other Units at the Same Source
B. Role of Authorized Account Representative
C. Effective Date of Rule Revisions
D. Impacts of Rule Revisions on Acid Rain Permits
V. Administrative Requirements
A. Docket
B. Executive Order 12866: Regulatory Planning and Review
C. Executive Order 12875: Enhancing Intergovernmental Partnerships
D. Executive Order 13084: Consultation and Coordination with Indian Tribal Governments
E. Unfunded Mandates Act
F. Paperwork Reduction Act
G. Regulatory Flexibility
H. Applicability of Executive Order 13045: Children's Health Protection
I. National Technology Transfer and Advancement Act
J. Congressional Review Act

I. Affected Entities

Entities potentially affected by this action are fossil-fuel fired boilers or turbines that serve generators producing electricity, generating steam, or cogenerating electricity and steam. Regulated categories and entities include:

Category	Examples of regulated entities
Industry: SIC 49—Electric, Gas and Sanitary Services.	Electric service providers, boilers from a wide range of industries.

EPA does not intend this table to be exhaustive, but rather to provide a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be affected by this action. This action could also affect other types of entities not listed in the table. To determine whether this action affects your facility, you should carefully examine the applicability criteria in § 72.6 and § 74.2 and the exemptions in §§ 72.7, 72.8, and 72.14 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

II. Background

On January 11, 1993, EPA promulgated the regulations that implemented the major provisions of title IV of the Clean Air Act (CAA or the Act), including the Permits rule (40 CFR part 72) and the Sulfur Dioxide Allowance System rule (40 CFR part 73). Since promulgation, these rules have applied to three compliance years, 1995, 1996, and 1997, for which the rules required affected units to meet annual allowance holding requirements. During this time, the Agency has gained experience in implementing the requirements and also discovered ways it could improve the operation of the Allowance Tracking System and allowance market. On August 3, 1998, EPA proposed changes to certain provisions in 40 CFR parts 72 and 73 to make these improvements. 63 FR 41358 (1998). These proposed changes related to the allowance transfer deadline, compliance determinations, and the signature requirements for allowance transfer requests. EPA finalized the proposed changes to the allowance transfer deadline and signature requirements for allowance transfer requests on December 11, 1998. 63 FR 68401 (1998). Today's action finalizes changes related to the deduction of allowances for compliance determinations.

III. Public Participation

EPA proposed revisions to 40 CFR parts 72 and 73 in the **Federal Register** on August 3, 1998. 63 FR 41358. The notice invited public comments. EPA

received and granted a request to extend the comment period by 15 days from September 2, 1998 to September 17, 1998.

EPA offered to hold a public hearing upon request, but no one made such a request and EPA did not hold a hearing. However, after the close of the comment period, EPA held several meetings with all parties that submitted comments, in order to clarify the parties' comments and positions on the issues raised on the notice of proposed rule-making. The parties subsequently submitted late comments further explaining their positions. Copies of memoranda describing the new information received by EPA at the post-comment period meetings are in the rulemaking docket.

IV. Summary of Comments and Responses

During the comment period, EPA received seven letters (or "initial comments") regarding the proposed revisions to the compliance determination provisions in the regulations.[1] Several months after the comment period, EPA received three additional letters (or "late comments") from the same commenters concerning the provisions. All of the commenters were representatives of utility companies or groups of utility companies. A copy of each comment received is in the rulemaking docket.

EPA carefully considered all of the comments and, where appropriate, made changes reflected in the final regulations. The following sections contain a summary of the comments received and the Agency's responses.

A. Allowance Deductions From Other Units at the Same Source

After the allowance transfer deadline, EPA determines whether each affected unit is in compliance with the requirement to hold allowances at least equal to the unit's sulfur dioxide emissions for the previous year. *See* 40 CFR 72.9(c)(1)(i). Units that do not meet the requirement are subject to the excess emissions and offset plan requirements in 40 CFR part 77.

On August 3, 1998, EPA proposed revisions that would change how it deducts allowances and determines the amount of excess emissions at a unit at the end of a compliance year. Under the proposed revisions, EPA would allow reduction (but not complete avoidance) of excess emissions that a unit would otherwise have after deductions for compliance under § 73.35(b)(2). EPA would allow excess emissions to be reduced at a unit by allowing deductions of up to a certain number of allowances for that unit from the allowance accounts of other units at the same source that had unused allowances. The proposed revisions included a formula for calculating the allowance deductions allowed from other units' accounts. The formula would result in the unit making an excess emissions penalty payment equal to about three times the allowance price of the allowances needed to offset the unit's excess emissions in the absence of allowance deductions from other units' accounts. The Agency proposed these changes because EPA was concerned that a utility could become subject to an enormous penalty payment for making inadvertent, minor errors when accounting for allowances at the end of the year even if the utility had enough allowances among the units at the source.

All the commenters expressed general support of EPA's decision to propose rule changes that would allow utilities to reduce the effects of inadvertent, minor errors in accounting for allowances. The specific approach proposed by EPA for doing this, however, generated a variety of comments. The following discussion addresses these comments.

Comment: Several commenters stated in their initial comments that the proposed provision limiting the use of unused allowances to those held by other units at the same source was inconsistent with section 403(d)(2) of the Act.[2] The commenters argued that section 403(d)(2) authorizes "aggregation of allowances among units with the same designated representative" for purposes of determining compliance with the requirement to hold allowances covering a unit's annual SO_2 emissions. Comments of UARG at 7 (September 16, 1998). While section 403(d)(1) requires the Administrator to promulgate regulations establishing a system for issuing, recording, and tracking allowances, section 403(d)(2) provides:

> In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems, power pools, or utilities entering into allowance pool agreements, that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. The owners or operators of such units shall act through a designated representative. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from all units in such a utility system, power pool, or allowance pool agreements shall not exceed the total allowances for such units for the calendar year concerned. 42 U.S.C. 7651b(d)(2).

Commenters claimed that the last sentence of this section requires EPA to allow units with a common designated representative and included in the same utility system, power pool, or allowance pool to aggregate their allowances for use in determining whether these units hold allowances at least equal to their annual SO_2 emissions. The commenters noted that EPA acknowledges that title IV requires allowances to be held for a unit but does not specify the account in which the allowances must be held. According to these commenters, EPA should revise § 73.34 to allow a designated representative to cover a unit's emissions with allowances from any accounts for which he or she is the designated representative. The commenters argued that EPA should allow this regardless of whether the accounts are for units at the same source.

One of the commenters added that EPA's position that plant owners must fill thousands of unit compliance subaccounts with an exact or an excess number of allowances in order to avoid a penalty is unproductive both for EPA and plant owners. The commenter stated that EPA should give the designated representative the option of naming the unit's compliance subaccount as the primary allowance source and general accounts as secondary and tertiary accounts from which EPA could deduct allowances at year end.

Response: EPA disagrees with the commenters who asserted that the provision limiting the use of unused allowances to those held by other units at the same source is inconsistent with section 403(d)(2) of the Act. As discussed below, EPA maintains that the same-source limitation—coupled with the limit on the number of allowances a unit can use from another unit—are consistent with the pervasive unit-by-unit orientation of title IV (including section 403(d)(2)).[3] *See also*

[1] Although EPA received five of the seven comment letters one to five days after the close of the comment period, EPA is responding to all seven comment letters.

[2] These commenters subsequently stated, in late comments, that the Agency would satisfy all their concerns if, among other things, EPA increased the amount of allowances potentially deducted from other units at the same source beyond the amount provided in the proposed revisions. Because regulations implementing the Acid Rain Program must be consistent with title IV, EPA is addressing here the issue of statutory consistency.

[3] To the extent some commenters asserted section 403(d)(2) authorizes, rather than requires, the Agency to allow the use of allowances from units

Continued

63 FR 41362 (consistency with section 403(g), 411, and 414). Further, to the extent allowing a unit to use any allowances from another unit is a departure from a strict unit-by-unit approach, the same-source limitation closely restricts any such departure by allowing a unit to use only allowances held for units that are at the same geographic location, i.e., the same plant.

As explained in the preamble of the proposed rule, title IV incorporates a pervasive unit-by-unit orientation, particularly with regard to SO_2 emissions. Title IV requires: determination of applicability of the Acid Rain Program unit-by-unit; allocation of allowances and setting of SO_2 emissions limitations generally unit-by-unit; determination of excess emissions and penalties unit-by-unit; and monitoring of emissions generally unit-by-unit. *See* 63 FR 41360.

Maintaining that section 403(d)(2) similarly reflects this unit-by-unit orientation, EPA rejects the commenters' interpretation that section 403(d)(2) requires the Agency to allow designated representatives to use allowances from units at other sources. The last sentence of section 403(d)(2) is ambiguous, but EPA maintains that a reasonable interpretation is that this section requires a unit-by-unit orientation in compliance. The first sentence of the section states that the allowance system regulations shall not prohibit temporary changes in emissions by units included in utility systems, power pools, or allowance pools and that such changes will not require allowance transfers. The second sentence requires that all owners or operators of such units act through a designated representative. The third sentence states that total annual emissions from "all" such units cannot "exceed the total allowances for such units" for the year involved. *Id.*

This reference in the third sentence to "all" units either could mean each and every unit in a particular utility system, power pool, or allowance pool or could mean all units in the aggregate in such a system or pool. Thus, the statutory language could arguably support either of two possible interpretations: (1) Total annual emissions for each unit in a particular utility system, power pool, or allowance pool must not exceed the unit's total allowances; or (2) the aggregate annual emissions of all the units in the utility system, power pool, or allowance pool must not exceed the aggregate allowances for all these units.

at other sources, EPA interprets the provision to mean that the Agency is neither required nor authorized to allow the use of such allowances.

While the commenters support the second interpretation, EPA has consistently followed the first interpretation. *See* 56 FR 63002, 63049–50 (1991) (explaining that section 403(d)(2) does not "require or authorize" pool-wide compliance). For the following reasons, EPA continues to adopt the first interpretation.

First, as discussed above, title IV incorporates a unit-by-unit orientation. While these other provisions of title IV may not be determinative of the proper interpretation of section 403(d)(2), EPA maintains it is reasonable to interpret section 403(d)(2) to reflect the same unit-by-unit orientation that Congress adopted in the major statutory provisions governing the Acid Rain Program. The commenters' interpretation would represent a significant departure from the other provisions of title IV.

Second, contrary to the commenters' claim, the legislative history of title IV supports EPA's interpretation, rather than the commenters' interpretation, of section 403(d)(2). The most authoritative document in the legislative history, the Conference Report that accompanied the Clean Air Act Amendments of 1990, states that section 403(d):

> Makes it clear that allowances are annual; temporary increases and decreases in emissions within utility systems or power pools do not require allowance transfers or recordation so long as the total tonnage emitted in any year matches allowances held for that year. Thus, *utilities must "true up" at year end to ensure that allowances match emissions for each unit.* Conference Report, House Rep. No. 101–952, 101st Cong. 2d Sess. at 343 (October 26, 1990) (emphasis added).

In short, the Conference Report indicates that, at the end of each year, allowances must cover emissions *for each unit* in a utility system or pool, not for all units in the system or pool on an aggregate basis.

Ignoring the Conference Report, the commenters instead focused on comparing the enacted provisions of title IV with provisions of an earlier House version (H.R. 3030) of title IV. The House bill (in section 503(d)(4) of H.R. 3030) required promulgation of regulations for a system of issuing, recording, and tracking allowances and stated that:

> In order to insure electric reliability, such regulations shall not prohibit or affect temporary increases and decreases in emissions within utility systems or power pools that result from their operations, including emergencies and central dispatch, and such temporary emissions increases and decreases shall not require transfer of allowances among units nor shall it require recordation. Notwithstanding the preceding sentence, the total tonnage of emissions in any calendar year (calculated at the end thereof) from each unit involved shall not exceed the allowances allocated to the unit for the calendar year concerned and issued to the owner or operator of the unit for that year, plus or minus allowances transferred to or from the unit for such calendar year or carried forward to that year from prior years. House Rep. No. 101–490, 101st Cong. 2d Sess. at 629–30 (May 17, 1990).

In the House Committee Report accompanying the House bill, the House Committee on Commerce and Energy explained this House bill provision using language subsequently adopted word-for-word in the Conference Report (quoted above) to explain section 403(d)(2) of the final version of title IV. *See* House Rep. No. 101–490 at 373–74. In particular, the House Report explained that utilities must ensure at the end of each year that "allowances match emissions for each unit." *Id.* at 374. The fact that the Conference Committee explained section 403(d)(2) using, word-for-word, the House Committee's explanation of unit-by-unit compliance provided under the House bill indicates that Congress intended to continue to require unit-by-unit compliance in section 403(d)(2). This also shows that Congress did not intend the language differences between section 403(d)(2) and the comparable House bill provision to alter the requirement for unit-by-unit compliance. Thus, the Conference Report and House Committee Report belie the importance the commenters place on the difference between the reference in section 403(d)(2) to total emissions and total allowances for "all units" in a utility system, power pool, or allowance pool agreements and the reference in the House bill to emissions and allowances of "each unit."

Rather than addressing the Conference Report or the House Committee Report, the commenters based their argument on a floor statement of one member of the House of Representatives. The Courts do not generally consider Congressmen's floor statements alone as providing authoritative explanations of Congressional intent. *See, e.g., Garcia* v. *U.S,* 469 U.S. 70, 76 and 78 (1984); *Brock* v. *Pierce,* 476 U.S. 253, 263 (1986); and *U.S.* v. *McGoff,* 831 F.2d 1071, 1090–91 (D.C. Cir. 1987).

Moreover, the floor statement on which the commenters rely does not support their interpretation of section 403(d)(2). In the statement cited by the commenters, Congressman Oxley stated:

Barriers to allowance transactions may take any number of forms, and the Administrator must use great care to avoid doing anything to help erect those barriers. That is why the conference committee has streamlined the process whereby a utility or utilities can pool allowances so as to operate within the confines of the law. Under provisions of the allowance tracking system, we have provided for the creating of allowance pools. Owners or operators need only record with the Administrator that they intend to enter into such agreements. Once in place, these voluntary pooling agreements can operate to reduce the number of actual transfers of allowances and, thus, the overall compliance burden. For example, utilities or operating companies can keep and share one set of allowance books to accommodate their emission allowance requirements. Here, as elsewhere, it is necessary to keep the volume of information that buyers and sellers are required to provide to a minimum, lest the system breakdown in the face of heavy trading. *A Legislative History of the Clean Air Act Amendments of 1990,* Vol. 1 at 1418 (1990) (quoting from House debate on the Conference Report and bill on October 26, 1990).

The Congressman's statement addresses the use of allowance pools to reduce "[b]arriers to allowance transactions," *not* the use of allowance pools to show compliance with the requirement to hold allowances at least equal to each unit's annual SO_2 emissions. *Id.* The ability to hold allowances in a single account for all units in a utility system, power pool, or allowance pool reduces the number of allowance transfers submitted to the Administrator for recordation in the Allowance Tracking System. Once such an allowance account is established, a utility system, power pool, or allowance pool can, for internal bookkeeping purposes, move allowances among any of the units in the utility system, power pool, or allowance pool throughout the year and, for purposes of the Allowance Tracking System, hold the allowances in the same account (i.e., a general account for the utility system, power pool, or allowance pool). *See* 40 CFR 73.31(c) (providing for the establishing of "general accounts" by "any person"). However, this does not negate the requirement that, for compliance purposes, the designated representative must ultimately transfer the allowances to each unit's individual allowance account by the allowance transfer deadline. In fact, this is just the sort of annual "true up" for each unit that Congress described in the Conference Report.

In short, EPA concludes that its long-standing interpretation of the ambiguous language in section 403(d)(2) is a reasonable reading of the statutory language and is consistent with other provisions of title IV and with the legislative history.

Today's final rule is consistent with the requirement, reflected in section 403(d)(2), that each unit have allowances covering its emissions. The rule restricts the number of allowances that can be held for a unit by other units and requires that these other units must be at the same source. As a result, EPA believes that there is still strong incentive for owners and operators to hold sufficient allowances in an affected unit's account and that owners and operators will routinely comply on a unit-by-unit basis and only use allowances from other units at the source in unusual circumstances, e.g., to correct an inadvertent error. Of course, the allowances that a unit uses from other units must be from the same geographic location, i.e., the same plant. *See* 63 FR 41362–41363 (explaining that, in effect, common stack units can already use allowances from other units, but only at the same plant, under § 73.35(e)). EPA therefore maintains that today's final rule is consistent with section 403(d)(2) and strikes a reasonable balance between the unit-by-unit orientation of title IV and compliance flexibility to reduce excess emission penalty payments where units fail to hold enough allowances because of inadvertent, minor errors.

The same-source restriction in the final rule is not only consistent with title IV, but also is practical to implement. The restriction ensures that only one designated representative is involved in the deduction of allowances from other units' compliance subaccounts. The limitation thereby minimizes the changes necessary to existing contracts involving allowance agreements among different owners of units.

Finally, in response to the commenter that supported allowing a designated representative the option of naming a unit's primary, secondary, and tertiary accounts from which EPA would deduct allowances, EPA notes that the allowance account tracking necessary to implement the approach would be far too complicated and unwieldy. Such a time and resource intensive approach would likely cause significant and unacceptable delays in EPA's ability to perform timely end of year accounting and unfreeze allowance accounts. After the allowance transfer deadline, allowances that are useable for the compliance year must be frozen until EPA completes the process of deducting allowances to cover each unit's emissions.

Comment: Several commenters stated in initial comments that units should be able to use available allowances from other unit accounts after the allowance transfer deadline to avoid all excess emissions. They argued that the language in section 403(d)(2), quoted and discussed above, reflects Congress' intent that EPA allow full offsetting. One of these commenters argued that allowing the use of allowances from other unit accounts to avoid excess emissions completely would not compromise the Acid Rain Program's unit-by-unit orientation because EPA would deduct allowances from the affected unit's compliance subaccount first, before allowing deductions from other units at the same source. The commenter also pointed out that under the proposed rule, the consequences of making an inadvertent error (such as transposing figures in allowance serial numbers in an allowance transfer form so the transaction transfers an insufficient number of allowances to a unit) could widely vary, depending on the exact error made. Suggesting that the penalties should not differ for the same type of error, the commenter argued that allowing units to avoid excess emissions with all available allowances at other unit accounts would address this concern.

Response: EPA rejects the commenters' views that EPA must allow the full use, instead of the limited use, of allowances in other units' compliance subaccounts. As discussed above, the Act has a pervasive unit-by-unit orientation and, therefore, the final rule allows the designated representative to use, for a unit that would otherwise have excess emissions, a large portion (but not all) of the needed allowances from the compliance subaccounts of other units at the same source. Further, for the reasons detailed above, EPA rejects the commenters' interpretation of section 403(d)(2).

In response to the commenter who claimed that allowing the complete avoidance of excess emissions would not compromise the unit-by-unit orientation of title IV, EPA does not agree. Allowing units to use allowances from other unit compliance subaccounts to avoid completely excess emissions and the resulting excess emissions penalty payment provides owners and operators with little or no incentive to ensure that the individual account for each of their units holds sufficient allowances at the end of each year. While the flexibility to deduct allowances from other units is aimed at minor, inadvertent errors, owners and operators can use this flexibility when any errors occur. 63 FR 41363. Providing this flexibility without any significant, excess emissions penalty

payment would likely discourage efforts to ensure unit-by-unit compliance and encourage routine use of allowances from other units at the same source.

In response to the same commenter's concerns that under EPA's proposal the amount of a unit's allowance deficiency and the resulting penalty payment resulting from an inadvertent error could vary widely depending on the specific error, EPA notes that this potential variance already exists under the current rule. The proposed rule—and to a greater extent, today's final rule—actually reduces the potential variance by reducing the penalty payment for minor, inadvertent errors. By reducing the potential penalties, the final rule helps to alleviate the problem of widely divergent penalties. As discussed above, EPA believes that the final rule thus balances the unit-by-unit orientation of title IV with increased compliance flexibility.

Comment: EPA received several initial and late comments on the formula, in proposed § 73.35(b)(3)(i), for calculation of the maximum allowances available for a unit for deduction from other unit accounts. The proposed formula would use a ratio of three times the average allowance price for the year to the excess emissions penalty per ton in order to limit deductions from other unit accounts. Notwithstanding the ratio, the proposed formula also would not allow deductions from other unit accounts that would bring excess emissions below 10 tons. This would establish a minimum penalty where the formula is used.

In their initial comments, several commenters raised objections to the formula. After objecting to any limitation being placed on the number of allowances that could be deducted, one commenter stated that if EPA adopted such a limitation, the Agency should revise the formula to allow use of more allowances from other unit accounts. Specifically, this commenter recommended revising the formula to change the ratio of three times the allowance price to the excess emissions penalty to a ratio of one times the allowance price to the excess emissions penalty. The commenter also recommended, notwithstanding the formula, imposing a 10 percent cap as the maximum amount of allowances that a unit could not use from other units' accounts to offset a unit's emissions. The commenter claimed that this approach would result in utilities planning to comply under the existing unit-by-unit approach to avoid the financial penalty represented by even a limited discount factor.

A second commenter argued in initial comments that, because minor accounting mistakes would typically result in less than 10 tons of excess emissions, EPA's proposed formula and 10-ton minimum penalty was arbitrary and capricious. This commenter further claimed that if EPA did not revise the proposal to allow the use of unlimited allowances from other unit accounts, EPA should at least revise the formula to penalize the first excess emission ton much less than the eleventh excess emission ton. In a third set of initial comments, another commenter stated that EPA should revise the formula to allow deduction of any needed allowances from other unit accounts without penalty if less than 10 tons of excess emissions occurred. A fourth commenter characterized the formula as too complicated.

As noted above, EPA held several post-comment period meetings with all parties that submitted initial comments. During these meetings, the parties and EPA discussed the initial comments and their views concerning issues, raised in the preamble of the proposed rule, about the proposed formula. In particular, the participants addressed reducing or removing the allowance-price-to-excess-emissions-penalty ratio, retaining the 10-ton minimum, and adding a percentage cap on the amount of allowances that a unit could not use from other units' accounts to offset a unit's emissions. The participants discussed these issues in the context of alternative scenarios for the formula, all of which were logical outgrowths of the proposed rule. As a result of these discussions, the commenters submitted late comments to the Agency on these issues to supplement their views. EPA has taken these late comments into consideration in developing the final rule.

Response: The proposed formula generally would make it four times as expensive to not hold enough allowances in a unit account than to hold enough allowances in the unit's account, as of the allowance transfer deadline.[4] EPA agrees that, in light of the kinds of errors the revisions are meant to address (i.e., inadvertent, minor ones), the penalty payment, after application of the proposed formula, could still be excessive. Therefore, EPA believes that it should modify the proposed formula to allow the deduction of more allowances from other units at the same source.

EPA considered the suggestion, in initial comments, of increasing the allowances allowed to be deducted from other unit accounts by changing the proposed formula so that it contains a ratio of one times the average allowance price to the excess emissions penalty, instead of three times the average allowance price to the excess emissions penalty. EPA agrees that such a change would result in a total penalty payment that is more in line with the gravity of making an inadvertent, minor error. Nevertheless, EPA is concerned that making only this change would fail to address comments that the deduction formula is overly complicated. EPA maintains that the penalty formula will be more effective if it is simpler and easier to apply.

EPA and the commenters discussed a simplified formula for calculation of penalties in the post-comment meeting on December 3, 1998. In late comments, commenters stated that if EPA adopted this simplified formula, the Agency would satisfy their concerns about the proposed formula. Under the simplified formula, the owner or operator of a unit may use from the compliance subaccounts of other units at the same source up to 95 percent of the allowances needed after using all the allowances in the unit's own compliance subaccount. However, the simplified formula retains the 10-ton minimum on the amount of excess emissions remaining after using allowances from other units' accounts.

The simplified formula has a result comparable to that of the formula suggested in initial comments that would reduce the ratio in the proposal from three to one times the average allowance price to the excess emissions penalty. Under 1998 market conditions, both the commenter's suggested formula and the simplified formula would result in allowing deduction of 95 percent of the allowances needed by a unit from other unit accounts (i.e., using the 1998 average allowance price of $117 and an excess emissions penalty of $2581 per ton of excess emissions). While the average allowance price and excess emissions penalty may change each year, resulting in a disparity in the allowances calculated under the commenter's suggested formula and the

[4] Under the proposed revisions, a unit that simply complied with the allowance holding requirement would use one allowance for each ton of emissions (e.g., 100 allowances for 100 tons of SO_2). However, if the unit failed to comply with the allowance holding requirement using its own allowances, the unit would use one allowance (i.e., from either another unit account or a future year account under the offset provisions in § 77.3) for each ton of emissions (e.g., 100 allowances for 100 tons of SO_2), plus its owners and operators would be subject to an excess emissions penalty payment approximately equal to the cost of three allowances for each ton of emissions (e.g., the cost of 300 allowances).

formula in the final rule,[5] EPA believes this is not a significant concern. EPA sees no overwhelming reason to ensure the penalty payment increases as average allowance price increases, as long as the penalty payment for excess emissions remains significant and provides owners and operators with a strong incentive to comply with the allowance holding requirements on a unit-by-unit basis.

Under both the proposed formula and the simplified formula, the excess emissions remaining after deductions from other unit accounts are subject to the excess emissions penalty of $2000 per ton, as adjusted by the Consumer Price Index.

In light of the late comments unanimously supporting the simplified formula discussed in the December 3, 1998 post-comment period meeting, EPA has decided to modify the proposal and adopt the simplified formula. Use of the simplified formula will increase, by an amount comparable to the amount suggested in initial comments, the number of allowances that can be deducted from other unit accounts. EPA believes that the simplified formula will achieve the objectives intended by the proposed formula, but will be far easier for both the utilities and EPA to use to calculate the amount of excess emissions.

As noted above, the simplified formula retains the 10-ton minimum on the amount of excess emissions that remains after deducting allowances from other units' accounts. EPA believes the restriction is necessary to ensure that, for units with 10 or more tons of emissions exceeding the allowances in their unit accounts (before deducting from other unit accounts), the penalty remains significant. This will provide owners and operators with a strong incentive to meet their allowance holding requirements on a unit-by-unit basis. EPA also notes that, under the final rule, a unit having the minimum 10 tons of excess emissions (after the formula is applied) for 1998 will be subject to a penalty payment of $25,810, about the same maximum penalty that can be assessed per day of violation under sections 113(b) and (d) in the Clean Air Act.

B. Role of Authorized Account Representative

Comment: EPA received several comments on two options, presented in the proposal, concerning the role of the authorized account representative (who also is, for any affected unit, the designated representative) in deducting allowances from other unit accounts. Option 1 would prescribe the unit accounts for, and order of, such deductions but allow the authorized account representative, before the allowance transfer deadline, to tell EPA not to make any deductions from other unit accounts. Option 2 would allow the authorized account representative to specify, within 15 days of receiving notice from the Agency of a unit's failure to hold sufficient allowances, the serial numbers of the allowances to deduct and the compliance subaccounts from which to deduct those allowances. All of the commenters supported Option 2. One commenter argued that Option 2 is consistent with section 403(d)(2) in the Act which states that owners and operators must "act through a designated representative" and language in Parts 72 and 73 of the current regulations that authorize designated representatives to specify by serial number the allowances deducted from compliance. Several commenters also noted Option 2 was preferable because it would avoid potential allowance surrender issues that could arise where units at a source are jointly owned.

Response: In light of the comments received, the Agency has chosen Option 2 over Option 1 for the final rule. As pointed out in the comments, Option 2 will provide owners and operators with more flexibility because the authorized account representative can specify any unused allowance for deduction, as long as a unit at the same source holds the allowance. This flexibility makes it unnecessary for owners and operators to renegotiate their allowance agreements in order to take into account the Agency-mandated pattern in Option 1 for allowance deduction from other unit accounts. EPA recognizes that Option 2 may delay its end-of-year compliance determinations and the unfreezing of allowance accounts. 63 FR 41362. However, EPA believes the benefits of Option 2, highlighted by the commenters, outweigh the drawbacks of such a delay. In adopting Option 2, EPA made a few, minor word changes to the proposed revisions of §§ 72.2 and 73.35 in order to make the rule easier to understand.

C. Effective Date of Rule Revisions

Comment: One commenter, in a late comment, urged the Agency to finalize the rule in a manner that would allow the compliance determination revisions to apply to the 1998 compliance year.

Response: Today's rule will apply to all compliance years for which the excess emissions penalty payment deadline under § 77.6(a)(3) (i.e., July 1) is on or after the effective date of today's rule. Section 77.6(a)(3) requires submission of the payment within 30 days of notice by the Administrator of completion of its process for determining end-of-year compliance, but not later than July 1. EPA anticipates that July 1 will be the applicable deadline for the 1998 compliance year. EPA believes that the penalty payment deadline should be the cut-off date because that deadline is the date on which the designated representative must determine, and notify EPA of, the specific number of tons of excess emissions at a unit. Today's rule can change the amount of a unit's excess emissions and so should apply only if it is effective before the July 1 deadline for determining excess emissions for the compliance year.

EPA considered applying today's rule revisions only to those compliance years for which the annual compliance certification and excess emissions offset plan deadline (60 days after the end of the year) is on or after the effective date of the revisions. This approach, however, would prevent use of the new provisions for the 1998 compliance year and would serve no useful purpose. Neither the annual compliance certification nor the excess emissions offset plan requires the designated representative to state the specific number of tons of excess emissions at a unit. Instead, the designated representative must indicate whether a unit held enough allowances in its compliance subaccount and, if not, whether EPA should deduct immediately (i.e., as soon as EPA completes its determination of end-of-year compliance) allowances to offset the unit's excess emissions. EPA must deduct offsetting allowances immediately unless the designated representative makes the unusual showing that the deduction would jeopardize electric reliability. *See* 40 CFR 72.90(c)(1) and 77.3(d). Since any unit having excess emissions under the current rule will still have excess emissions under today's rule, the required information in the annual compliance certification and offset plan is the same under either rule. Therefore, it is unnecessary to limit the application of the revisions to only compliance years for which the annual compliance certification and excess emissions offset plan deadline (60 days after the end of the year) is on or after the effective date of the revisions. Today's rule will

[5] As of December 1998, the market price of an allowance was about $190, an amount which, if it had been the average allowance price for 1998, would have resulted in 93 percent of a unit's needed allowances to be deducted from other unit accounts.

instead apply to all compliance years for which the July 1 excess emissions penalty payment deadline is on or after the effective date of the revisions. The 1998 compliance year will therefore be the first year to which the rule will apply.

D. Impacts of Rule Revisions on Acid Rain Permits

EPA designed today's revisions to become effective without changing the contents of existing acid rain permits and the State regulations for issuing acid rain permits. With the exception of changes in the definitions of "compliance subaccount" and "current year subaccount," all of today's revisions are in 40 CFR part 73. As explained in the preamble to the proposed rule (63 FR 41364), it is unnecessary for State permitting authorities to revise the acid rain permits they have issued or regulations they have adopted to reflect today's final revisions to 40 CFR part 73.

Similarly, the revisions can go into effect without State permitting authorities revising acid rain permits or regulations to reflect the revised definitions of "compliance subaccount" and "current year subaccount" in 40 CFR part 72. Even if a State issued an acid rain permit before today's revision of the definitions become effective, the Agency will apply the final revised definitions, along with the revisions in 40 CFR part 73, to the units covered by the permit. The Agency will use the revised definitions in determining end-of-year compliance for all calendar years for which the July 1 excess emissions penalty payment deadline is on or after the effective date of the revised definitions.

Moreover, the revised definitions will not affect the permitting activities of State permitting authorities under 40 CFR part 72. Instead, the revised definitions affect EPA's operation of the Allowance Tracking System under 40 CFR part 73.

While EPA will apply the revised definitions in § 72.2, State permitting authorities should revise their own regulations to reflect the new definitions. This will avoid any potential confusion on the part of regulated entities and the public as to how EPA determines end-of-year compliance.

V. Administrative Requirements

A. Docket

A docket is an organized and complete file of all the information considered by EPA in the development of this rulemaking. The docket is a dynamic file since EPA and participants add material throughout the rulemaking development. The docketing system allows members of the public and industries involved to identify and locate documents readily so that they can effectively participate in the rulemaking process. Along with the preambles of the proposed and final rule (which include EPA responses to significant comments), the contents of the docket will serve as the record in case of judicial review to the extent provided in section 307(d)(7)(A) of the Act.

B. Executive Order 12866: Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has determined that today's rule is not a "significant regulatory action."

C. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or unless EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create a new mandate on State, local or tribal governments. It modifies an existing mandate in a way that imposes no additional duties and no additional costs on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

D. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments or unless EPA consults with those governments. If EPA complies by consulting, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect, or impose any substantial direct compliance costs on, the communities of Indian tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Unfunded Mandates Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for

federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, before promulgating a proposed or final rule that includes a federal mandate that may result in expenditure by State, local, and tribal governments, in aggregate, or by the private sector, of $100 million or more in any one year. Section 205 generally requires that, before promulgating a rule for which a written statement must be prepared, EPA must identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator explains why that alternative was not adopted. Finally, section 203 requires that, before establishing any regulatory requirements that may significantly or uniquely affect small governments, EPA must have developed a small government agency plan. The plan must provide for notifying any potentially affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Because today's rule is estimated to result in the expenditure by State, local, and tribal governments or the private sector of less than $100 million in any one year, the Agency has not prepared a budgetary impact statement or specifically addressed the selection of the least costly, most cost-effective, or least burdensome alternative. Because small governments will not be significantly or uniquely affected by this rule, the Agency is not required to develop a plan with regard to small governments.

Today's final revisions to parts 72 and 73 will potentially reduce the burden on regulated entities by providing more flexible allowance holding requirements. The revisions will not otherwise have any significant impact on State, local, and tribal governments.

F. Paperwork Reduction Act

Today's final revisions to parts 72 and 73 will not impose any new information collection burden subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). OMB has previously approved the relevant information collection requirements contained in parts 72 and 73 under the provisions of the Paperwork Reduction Act and has assigned OMB control number 2060–0258. 58 FR 3590, 3650 (1993).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Copies of the previously approved ICR may be obtained from the Director, Regulatory Information Division; EPA; 401 M St. SW (mail code 2137); Washington, DC 20460 or by calling (202) 564–2740. Include the ICR and/or OMB number in any correspondence.

G. Regulatory Flexibility

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small government jurisdictions.

As discussed above, today's final revisions will reduce the burden on regulated entities by adding flexibility to the regulations. For this reason, EPA has determined that this rule will not have a significant economic impact on a substantial number of small entities.

H. Applicability of Executive Order 13045: Children's Health Protection

Executive Order 13045 (62 FR 19885, April 29, 1997) applies to any rule if EPA determines (1) that the rule is economically significant as defined under Executive Order 12866, and (2) that the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final action is not subject to Executive Order 13045, because the action is not economically significant as defined by Executive Order 12866 and does not address an environmental health or safety risk having a disproportionate effect on children.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note), directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, or business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA requires EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

Today's final rule does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the NTTAA.

J. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective 30 days after publication in the **Federal Register**.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Acid rain, Administrative practice and procedure,

Air pollution control, Compliance plans, Electric utilities, Penalties, Reporting and recordkeeping requirements, Sulfur dioxide.

Dated: May 5, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

2. Section 72.2 is amended by:

a. Removing from the definition of "Compliance subaccount" the words "by the unit" whenever they appear and the word "unit's" after the words "meeting the"; and

b. Removing from the definition of "Current year subaccount" the words "by the unit" and replacing the word "its" with the word "the".

3. Section 72.40 is amended by adding to paragraph (a)(1) the words ", or in the compliance subaccount of another affected unit at the same source to the extent provided in § 73.35(b)(3)," after the words "under § 73.34(c) of this chapter)".

PART 73—[AMENDED]

4. The authority citation for part 73 continues to read as follows:

Authority: 42 U.S.C. 7601 and 7651, *et seq.*

5. Section 73.35 is amended by revising paragraph (a)(2) and adding paragraph (b)(3) to read as follows:

§ 73.35 Compliance.

(a) * * *

(2) Such allowance is:

(i) Recorded in the unit's compliance subaccount; or

(ii) Transferred to the unit's compliance subaccount, with the transfer submitted correctly pursuant to subpart D of this part for recordation in the compliance subaccount for the unit by not later than the allowance transfer deadline in the calendar year following the year for which compliance is being established; or

(iii) Held in the compliance subaccount of another affected unit at the same source in accordance with paragraph (b)(3) of this section.

(b) * * *

(3)(i) If, after the Administrator completes the deductions under paragraph (b)(2) of this section for all affected units at the same source, a unit would otherwise have excess emissions and one or more other affected units at the source would otherwise have unused allowances in their compliance subaccounts and available for such other units under paragraph (a)(1) and (a)(2)(i) and (ii) of this section for the year for which compliance is being established, the Administrator will notify in writing the authorized account representative. The Administrator will state that the authorized account representative may specify in writing which of such allowances to deduct up to the amount calculated as follows, in order to reduce the tons of excess emissions otherwise at the unit:

Maximum deduction from other units = 0.95 × Excess emissions if no deduction from other units

Where:

"Maximum deduction from other units" is the maximum number of allowances that may be deducted for the year for which compliance is being established, for the unit otherwise having excess emissions, from the compliance subaccounts of other units at the same source, rounded to the nearest allowance.

"Excess emissions if no deduction from other units" is the tons of excess emissions that the unit would otherwise have if no allowances were deducted for the unit from other units under this paragraph (b)(3)(i) or paragraph (b)(3)(ii) of this section.

(ii) Notwithstanding paragraph (b)(3)(i) of this section, if the amount calculated results in less than 10 tons of excess emissions, the maximum deduction from other units shall be adjusted so that 10 tons of excess emissions, or the tons of excess emissions that would result if no allowances could be deducted from other units, whichever is less, remain for the unit.

(iii) If the authorized account representative submits within 15 days of receipt of a notification under paragraph (b)(3)(i) of this section a written request specifying allowances to deduct in accordance with paragraphs (b)(3)(i) and (ii) of this section, the Administrator will deduct such allowances, and reduce the tons of excess emissions otherwise at the unit by an equal amount, up to the amount calculated under paragraphs (b)(3)(i) and (ii) of this section.

* * * * *

[FR Doc. 99–12007 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300773A; FRL–6077–3]

RIN 2070–AB78

Diphenylamine; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes a tolerance for residues of diphenylamine in or on pears. IR-4 requested this tolerance under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996.

DATES: This regulation is effective May 13, 1999. Objections and requests for hearings must be received by EPA on or before July 12, 1999.

ADDRESSES: Written objections and hearing requests, identified by the docket control number, [OPP–300773A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. Fees accompanying objections and hearing requests shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251. A copy of any objections and hearing requests filed with the Hearing Clerk identified by the docket control number, [OPP–300773A], must also be submitted to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring a copy of objections and hearing requests to Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

A copy of objections and hearing requests filed with the Hearing Clerk may be submitted electronically by sending electronic mail (e-mail) to: opp-docket@epa.gov. Copies of objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Copies of objections and hearing requests will also be accepted on disks in WordPerfect 5.1/6.1 file format or ASCII file format. All copies of objections and hearing requests in electronic form must be identified by the docket control number [OPP–300773A]. No Confidential Business Information (CBI) should be submitted through e-mail. Electronic copies of

objections and hearing requests on this rule may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: By mail: Pat Cimino, Office of the Director, (7501C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 1119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 703–308–9357, cimino.pat@epa.gov.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 19, 1999 (64 FR 8273) (FRL–6052–2), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing a proposed regulation to establish a time-limited tolerance for residues of diphenylamine on pears. This notice was initiated by the Agency and included a summary of the toxicological profile and safety findings of the Agency. There were no comments received in response to the notice of filing.

The proposed rule requested that 40 CFR 180.190 be amended by establishing a tolerance for residues of the plant growth regulator diphenylamine, in or on pears at 10 part per million (ppm).

I. Background and Statutory Findings

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

II. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of diphenylamine and to make a determination on aggregate exposure, consistent with section 408(b)(2), for a tolerance for residues of diphenylamine on pears at 10 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerance follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by diphenylamine are discussed in this unit.

B. Toxicological Endpoints

1. *Acute toxicity.* For acute dietary exposure (1 day) a risk assessment is not required since no appropriate toxicity endpoint or no-observed adverse effect level (NOAEL) could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 milligrams/kilogram/day (mg/kg/day) in rats and 300 (mg/kg/day) in rabbits.

2. *Short- and intermediate-term toxicity.* Short- and intermediate-term risk assessments take into account exposure from indoor and outdoor residential exposure plus chronic dietary food and water (considered to be a background exposure level). This risk assessment is not required because there are no indoor or residential uses for this pesticide. Risk from chronic dietary food and water toxicity endpoints and exposure is taken into account under the chronic exposure and risk section below.

3. *Chronic toxicity.* EPA has established the RfD for diphenylamine at 0.03 (mg/kg/day). This Reference Dose (RfD) is based on a chronic dog study with a lowest observed adverse effect level (LOAEL) of 10 mg/kg/day. An Uncertainty Factor (UF) of 100 was used to account for both the interspecies extrapolation and the intraspecies variability. An additional UF of three was recommended to account for the lack of a NOAEL and the Committee's concern with respect to potential methemoglobinemia which was not tested in this study.

It should be noted that although the LOAEL was established at 10 mg/kg/day, in both males and females (based on hematological and clinical chemistry changes, and clinical signs of toxicity), because of the lack of information on methemoglobinemia the LOAEL could not be verified and was considered tentative until this issue is addressed. The Agency has required that a subchronic study of sufficient duration be conducted in dogs to investigate this possible methemoglobinemic effect to accurately define the NOAEL in the critical study. This study has been initiated by the registrant.

This chemical has been reviewed by the FAO/WHO joint committee meeting on pesticide residue (JMPR) and an acceptable daily intake (ADI) of 0.02 mg/kg/day has been established by that Committee.

4. *Carcinogenicity.* The Agency classified diphenylamine as "not likely" in reference to carcinogenicity in April, 1997. This classification was based on the lack of evidence for carcinogenicity in the two acceptable carcinogenicity studies in either male or female CD-1 mice or Sprague-Dawley rats.

A nitrosamine impurity, diphenylnitrosamine, occurs in diphenylamine technical product. Diphenylnitrosamine is a quantified carcinogen. The technical product producer, Elf Atochem, has submitted nitrosamine data which confirms that the maximum total nitrosamine contamination expected for the diphenylamine technical would be 10 ppm. The Agency concluded that residue data depicting nitrosamine levels in pome fruits (apples and pears) would not be required, but that a nitrosamine level of 0.0001 ppm in apples and pears should be used in dietary risk assessments for diphenylamine.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.190) for the residues of diphenylamine, in or on a variety of raw agricultural commodities. These include apples, and cattle, goat, horse and sheep meat. Risk assessments were conducted by EPA to assess dietary exposures from diphenylamine as follows:

Section 408(b)(2)(E) authorizes EPA to use available data and information on

the anticipated residue levels of pesticide residues in food and the actual levels of pesticide chemicals that have been measured in food. If EPA relies on such information, EPA must require that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. Following the initial data submission, EPA is authorized to require similar data on a time frame it deems appropriate. As required by section 408(b)(2)(E), EPA will issue a data call-in for information relating to anticipated residues to be submitted no later than 5 years from the date of issuance of this tolerance

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. An acute risk assessment is not required since no appropriate endpoint or NOAEL could be identified from the available data. No developmental toxicity was seen at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

ii. *Chronic exposure and risk.* A Dietary Exposure Evaluation Model (DEEM) chronic exposure analysis was performed by the Agency using Anticipated Residue Concentration (ARC) for apples and Theoretical Maximum Residue Concentration (TMRC) for pears, meat and milk. Percent crop treated estimates were not used for the chronic risk assessment. Tolerances are currently established for apples at 10 ppm and for meat and milk at 0 ppm. The Agency has recommended that the following tolerances be established in the 1998 Registration Eligibility Document (RED) for diphenylamine: wet apple pomace (an animal feed item) at 30.0 ppm, milk at 0.01 ppm, meat except liver at 0.01 ppm, and meat liver at 0.10 ppm. The recommended tolerances are supported by data and the Agency, on its own initiative, is in the process of establishing these tolerances.

The Agency determined that 10 ppm is appropriate for diphenylamine residues in pears for a time-limited tolerance based on bridging data from the apple residue studies to pears. The use patterns are identical for apples and pears and the fruit are substantially similar. The TMRC level for apples, 10 ppm, was determined from field testing at maximum label rates and sampling immediately after treatment. The wet apple pomace residue value, 30 ppm, was derived from apple processing data using the highest average field trial residue value, 5.86 ppm, multiplied by the average concentration factor, 4.7x, observed in wet apple pomace. The meat and milk TMRC values recommended in the 1998 RED for diphenylamine were obtained from a ruminant feeding study which indicates that at 1x, 3x and 10x feeding rates (30 ppm, 90 ppm and 300 ppm diphenylamine) diphenylamine was detected in one or more meat, meat by-product or milk fractions.

The ARC for apples used in the DEEM chronic exposure analysis is 0.562 ppm and was obtained from USDA's Pesticide Data Program (PDP). The PDP program was designed by EPA and USDA to provide EPA with market basket type residue values for refined risk assessments. The PDP samples crop commodities from grocery store distribution centers for pesticide residue analysis in order to better determine the residues which occur in foods at the time consumers purchase them. The eighteenfold drop in tolerance values between the TMRC derived apple tolerance of 10 ppm compared to the ARC/PDP derived tolerance of 0.562 ppm represents the difference in tolerance levels at the "farm gate" (worst case tolerance levels measured immediately after harvest or in the case of diphenylamine, immediately after treatment) versus the tolerance level which occurs close to actual purchase time.

The proposed pear tolerance at the TMRC of 10 ppm, was used in the DEEM chronic exposure analysis to calculate the dietary contribution from pears. The addition of pears to the apple ARC and RED recommended tolerances for meat, milk and wet apple pomace represents 3.9% of the RfD for the general U.S. population, and 31.3% of the RfD for the most sensitive sub-population, non-nursing infants (< 1 year old). Diphenylamine is classified as "not likely" to be carcinogenic to humans via the relevant routes of exposure.

A dietary risk assessment for diphenylnitrosamine, an impurity in technical product diphenylamine, was calculated using the nitrosamine residue level of 0.0002 ppm (0.0001 ppm each for apples and pears). The Q* for diphenylnitrosamine is 4.9×10^{-3} as reported on IRIS. The DEEM chronic exposure analysis calculated an ARC for the total U.S. Population of 0.001155 mg/kg/day.

To calculate the cancer risk for the diphenylnitrosamine, multiply the ARC (0.001155 mg/kg/day) by 2.0×10^{-5} (because diphenylnitrosamine dietary contribution from apples and pears is 20 ppm or 20/1,000,000). Divide this result by 70 years to correct the average daily dose to a lifetime average daily dose. Finally, multiply this result by the Q* of 0.0049 mg/kg/day and the cancer risk is calculated to be 1.6×10^{-12}.

$0.001155 \text{ mg/kg/day} \times 2.0 \times 10^{-5} = 2.3 \times 10^{-8}$

$2.3 \times 10^{-8}/70 \text{ years} = 3.3 \times 10^{-10}$

$3.3 \times 10^{-10} \times 4.9 \times 10^{-3} = 1.6 \times 10^{-12} \text{ mg/kg/day}$

This value is well below the Agency's level of concern for nitrosamine in the diet.

2. *From drinking water.* Dietary risk from drinking water is assumed to be negligible because negligible exposure results from the pesticidal uses. The use pattern is limited to pome fruit drenches in fruit packing houses and there are no detections in the Agency's Pesticides in Ground water Database or the U.S. EPA's "STORET" database.

3. *From non-dietary exposure.* Diphenylamine is not currently registered for use on residential non-food sites.

4. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether diphenylamine has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, diphenylamine does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that diphenylamine has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* An acute dietary risk assessment was not conducted since no appropriate endpoint or NOAEL could be identified from the available data. No developmental toxicity was observed at

any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

2. *Chronic risk.* Using the ARC exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diphenylamine from food will utilize 3.9% of the RfD for the U.S. population. The major identifiable subgroup with the highest aggregate exposure is non-nursing infants and is discussed below. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account indoor and outdoor residential exposure plus chronic dietary food and water (considered to be a background exposure level). A short- and intermediate-term risk assessment is not required as there are no indoor or outdoor residential uses for this pesticide and chronic exposure is accounted for above.

4. *Aggregate cancer risk for U.S. population.* Diphenylamine is classified as "not likely" to be carcinogenic to humans via the relevant routes of exposure.

A dietary risk assessment for diphenylnitrosamine, the impurity in diphenylamine, was calculated using the nitrosamine residue level of 0.0001 ppm each for apples and pears. The Q* for diphenylnitrosamine is 4.9×10^{-3} as reported on IRIS. The chronic DEEM analysis calculated an ARC for the total U.S. population of 0.001155 mg/kg/day. Using these values, the cancer risk is calculated to be 1.6×10^{-12}. This value is well below the Agency's level of concern for nitrosamine in the diet.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to diphenylamine residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of diphenylamine, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* In a developmental toxicity study, pregnant female Sprague-Dawley rats (25/group) received diphenylamine (99.9%) in corn oil by oral gavage at dose levels of 0, 10, 50, or 100 mg/kg/day from gestation day 6 through gestation day 15 inclusive; dams were sacrificed on gestation day 20. None of the rats died during the study. Maternal toxicity was evidenced by increased splenic weights, enlarged spleens and blackish-purple colored spleen in the dams at 100 mg/kg/day. The maternal toxicity NOAEL was 50 mg/kg/day and the LOAEL was 100 mg/kg/day. No developmental toxicity was seen at any dose level. The developmental toxicity NOAEL was equal to or greater than 100 mg/kg/day the highest dose tested (HDT); a LOAEL was not established.

In a developmental toxicity study, pregnant New Zealand White rabbits received either 0, 33, 100, or 300 mg/kg/day diphenylamine (99.9%) suspended in 1% methyl cellulose by oral gavage from gestation day 7 through 19, inclusive. Animals came from 3 sources (vendors). Maternal toxicity was noted at 300 mg/kg as decreases in food consumption and associated initial reductions in body weight gain. The maternal toxicity NOAEL was 100 mg/kg/day and the LOAEL was 300 mg/kg/day based on decreased body weight gains and food consumption early during the treatment period. No developmental toxicity was noted at any dose level. The developmental toxicity NOAEL was equal to or greater than 300 mg/kg/day (HDT); a LOAEL was not established.

iii. *Reproductive toxicity study.* In a 2-generation reproductive toxicity study, Sprague-Dawley rats (28 per sex/group) received diphenylamine (99.8%) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 115, or 399 mg/kg/day for F_0 males and 0, 46, 131, or 448 mg/kg/day for F_0 females, respectively, during premating). Compound-related systemic toxicity was observed in a dose related manner among both sexes and generations at all dose levels. The systemic toxicity NOAEL was less than 500 ppm (40 mg/kg/day in males and 46 mg/kg/day in females) and the LOAEL was less than or equal to 500 ppm based on gross pathological findings in the kidney, liver, and spleen. Developmental toxicity was observed at 1,500 and 5,000 ppm, as evidenced by significantly decreased body weight for F_1 pups at 5,000 ppm throughout lactation (11% to 25 % less than control), for F_2 pups at 5,000 ppm from lactation day (LD) 4 through LD 21 (10% to 29% less than control), and for F_2 pups at 1,500 ppm on LD 14 (10%) and LD 21 (12%). The developmental toxicity NOAEL was 500 ppm (46 mg/kg/day for maternal animals) and the LOAEL was 1,500 ppm (131 mg/kg/day for maternal animals) based on decreased F_2 pup body weight in late lactation. In a two-generation reproductive toxicity study, Sprague-Dawley rats (28 per sex/group) received diphenylamine (99.8%) in the diet at dose levels of 0, 500, 1,500, or 5,000 ppm (0, 40, 115, or 399 mg/kg/day for F_0 males and 0, 46, 131, or 448 mg/kg/day for F_0 females, respectively, during premating). Compound-related systemic toxicity was observed in a dose related manner among both sexes and generations at all dose levels. The systemic toxicity NOAEL was less than 500 ppm (40 mg/kg/day in males and 46 mg/kg/day in females) and the LOAEL was less than or equal to 500 ppm based on gross pathological findings in the kidney, liver, and spleen. Developmental toxicity was observed at 1,500 and 5,000 ppm, as evidenced by significantly decreased body weight for F_1 pups at 5,000 ppm throughout lactation (11% to 25 % less than control), for F_2 pups at 5,000 ppm from lactation day (LD) 4 through LD 21 (10% to 29% less than control), and for F_2 pups at 1,500 ppm on LD 14 (10%) and LD 21 (12%). The developmental toxicity NOAEL was 500 ppm (46 mg/kg/day for maternal animals) and the LOAEL was 1,500 ppm (131 mg/kg/day

for maternal animals) based on decreased F_2 pup body weight in late lactation. Reproductive toxicity was noted as smaller litter sizes at birth (significant for the F_2 litters) in both generations at 5,000 ppm. The reproductive toxicity NOAEL was 1,500 ppm (131 mg/kg/day for maternal animals) and the LOAEL was 5,000 ppm (448 mg/kg/day for maternal animals), based upon decreased litter size in both generations.

iv. *Pre- and post-natal sensitivity.* For purposes of assessing the pre- and post-natal toxicity of diphenylamine, EPA has evaluated two developmental and one reproduction study. Based on current toxicological data requirements, the data base for diphenylamine, relative to pre- and post-natal toxicity is complete. However, as EPA fully implements the requirements of FQPA, additional data related to the special sensitivity of infants and children may be required.

The data provided no indication of increased sensitivity of rats or rabbits to *in utero* and/or postnatal exposure to diphenylamine. The reproduction study demonstrated that the offspring were less sensitive than the adults and there was no developmental toxicity observed in either the rat or rabbit developmental studies at any dose tested.

v. *Conclusion.* There is a complete toxicity data base for diphenylamine and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* An acute dietary risk assessment was not conducted since no appropriate endpoint or NOAEL could be identified from the available data. No developmental toxicity was observed at any dose level in the test animals. The highest doses tested were 100 mg/kg/day in rats and 300 mg/kg/day in rabbits.

3. *Chronic risk.* Using the exposure assumptions described in this unit, EPA has concluded that aggregate exposure to diphenylamine from food will utilize 31.3 percent of the RfD for infants and children. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Exposure is from food only as drinking water exposure is considered negligible and there are no residential uses and consequently no exposure from non-dietary, non-occupational uses of this pesticide.

4. *Short- or intermediate-term risk.* Short- or intermediate-term non-dietary, non-occupational exposure scenarios do not exist for diphenylamine and a short- or intermediate-term aggregate risk assessment is not required.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to diphenylamine residues.

III. Other Considerations

A. Metabolism In Plants and Animals

The qualitative nature of the residue in plants and livestock is adequately understood based on acceptable apple, ruminant and poultry metabolism studies. The Agency has concluded that the residue of concern in plants and livestock is diphenylamine per se.

B. Analytical Enforcement Methodology

The Food and Drug Administration (FDA) PESTDATA database dated 1/94 (Pam Vol. I, Appendix I) indicates that diphenylamine is completely recovered using FDA Multiresidue Protocol D (PAM I Section 232.4). In addition, a gas chromatography (GC)/mass selective detection (MSD) method is available for the quantitation of diphenylamine residues in apples which should be bridgeable to pears.

Adequate enforcement methodology (example - gas chromatography) is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm 101FF, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5229.

C. Magnitude of Residues

For the purposes of this time-limited tolerance, apple data have been used to estimate the magnitude of residues on pears. The use patterns for apples and pears are identical and the fruit types are substantially similar. Adequate magnitude of the residue data are available to support the use on apples. Acceptable residue data depicting diphenylamine residues in apples following a single posttreatment application at the maximum use rate have been submitted, and indicate that the existing 10 ppm tolerance for diphenylamine residues in apples is also appropriate for pears.

D. International Residue Limits

There are no international residue limits established for diphenylamine on pears.

E. Rotational Crop Restrictions

Rotational crop restrictions do not apply for two reasons: (1) Diphenylamine is used indoors only in fruit packing houses as a postharvest drench treatment to control scald; and (2) pears are a perennial crop and are not subject to rotational crop restrictions.

IV. Conclusion

Numerous residues of diphenylamine have been detected on pears, a use which is not registered and does not have an established tolerance, by the United States Department of Agriculture's (USDA) Pesticide Data Program (PDP) in both domestic and foreign pears due to inadvertent transfer of diphenylamine residues from apples to pears during packing. Public reporting of PDP food residue monitoring occurred earlier this year and in order to prevent public concern regarding residues of diphenylamine in pears the Agency assessed the aggregate risk from exposure on pears, found it acceptable, and proposed to establish a time-limited tolerance for this use on February 19, 1999. No comments were received during the 15–day comment period.

The U.S. pear industry has asked the IR-4 program and pesticide registrants to generate the reports and data required to support the establishment of a tolerance and registration of diphenylamine on pears. The data generation have been initiated and the Agency expects these data to be submitted in 2 years. In the meantime, the Agency has assessed the risk from this use on pears based on bridging data from apples to pears and found that a reasonable certainty of no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information. Therefore, a time-limited tolerance is established for residues of diphenylamine in pears at 10 ppm, the same level as currently established on apples, which will expire on December 1, 2001.

V. Objections and Hearing Requests

The new FFDCA section 408(g) provides essentially the same process for persons to "object" to a tolerance regulation as was provided in the old section 408 and in section 409. However, the period for filing objections is 60 days, rather than 30 days. EPA currently has procedural regulations which govern the submission of objections and hearing requests. These regulations will require some

modification to reflect the new law. However, until those modifications can be made, EPA will continue to use those procedural regulations with appropriate adjustments to reflect the new law.

Any person may, by July 12, 1999, file written objections to any aspect of this regulation and may also request a hearing on those objections. Objections and hearing requests must be filed with the Hearing Clerk, at the address given under the "ADDRESSES" section (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this regulation. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(I). EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding tolerance objection fee waivers, contact James Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location, telephone number, and e-mail address: Rm. 239, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, (703) 305–5697, tompkins.jim@epa.gov. Requests for waiver of tolerance objection fees should be sent to James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If a hearing is requested, the objections must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the requestor (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

VI. Public Record and Electronic Submissions

EPA has established a record for this regulation under docket control number [OPP–300773A] (including any comments and data submitted electronically). A public version of this record, including printed, paper versions of electronic comments, which does not include any information claimed as CBI, is available for inspection from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The public record is located in Room 119 of the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Crystal Mall # 2, 1921 Jefferson Davis Hwy., Arlington, VA.

Objections and hearing requests may be sent by e-mail directly to EPA at:

opp-docket@epa.gov.

E-mailed objections and hearing requests must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

The official record for this regulation, as well as the public version, as described in this unit will be kept in paper form. Accordingly, EPA will transfer any copies of objections and hearing requests received electronically into printed, paper form as they are received and will place the paper copies in the official record which will also include all comments submitted directly in writing. The official record is the paper record maintained at the Virginia address in "ADDRESSES" at the beginning of this document.

VII. Regulatory Assessment Requirements

A. Certain Acts and Executive Orders

This final rule establishes a tolerance under section 408(d) of the FFDCA in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), or special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994), or require OMB review in accordance with Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

In addition, since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. Nevertheless, the Agency previously assessed whether establishing tolerances, exemptions from tolerances, raising tolerance levels or expanding exemptions might adversely impact small entities and concluded, as a generic matter, that there is no adverse economic impact. The factual basis for the Agency's generic certification for tolerance actions published on May 4, 1981 (46 FR 24950), and was provided to the Chief Counsel for Advocacy of the Small Business Administration.

B. Executive Order 12875

Under Executive Order 12875, entitled *Enhancing the Intergovernmental Partnership* (58 FR 58093, October 28, 1993), EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to OMB a description of the extent of EPA's prior consultation with representatives of affected State, local, and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local, and tribal

governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's rule does not create an unfunded Federal mandate on State, local, or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

C. Executive Order 13084

Under Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998), EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the Agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 30, 1999.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. Section 180.190 is revised to read as follows:

§ 180.190 Diphenylamine; tolerances for residues.

(a) *General.* Tolerances for the residues of the plant growth regulator diphenylamine are established as follows:

Commodity	Parts per million
Apple, preharvest or postharvest, including wraps	10
Cattle, meat	0
Goat, meat	0
Horse, meat	0
Sheep, meat	0

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* A time-limited tolerance is established for the indirect or inadvertent residues of diphenylamine in or on the following commodity:

Commodity	Parts per million	Expiration/ Revocation Date
Pears	10	12/1/01

[FR Doc. 99–12135 Filed 5–12–99; 8:45 am]
BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 64, No. 92
Thursday, May 13, 1999

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Proposed Revisions to the Public Financial Disclosure Gifts Waiver Provision

AGENCY: Office of Government Ethics.

ACTION: Proposed rule amendments.

SUMMARY: The Office of Government Ethics (OGE) is proposing to amend the regulation which authorizes the Director of OGE to grant a waiver of certain gift disclosure requirements for filers of the public financial disclosure report form, SF 278. The proposed amendments would permit the grant of a waiver, in appropriate cases, if the basis of the relationship between the grantor and grantee of a gift and the motivation behind a gift are personal. The proposed changes also would clarify that the cover letter requesting a waiver will be publicly available if the Director of OGE approves the waiver request, either in whole or in part. Additionally, the proposed amendments would expressly require that a description of the gift and its value be included in a waiver request. Finally, the proposed changes would explicitly require that when a gift has multiple donors, the information required to be in a waiver request pertaining to the donor must include the necessary information for each donor.

DATES: Comments are invited and must be received on or before July 12, 1999.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Attention: Judy H. Mann. Comments may also be sent electronically to OGE's Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference—"Proposed revisions to the public financial disclosure gifts waiver provision."

FOR FURTHER INFORMATION CONTACT: Judy H. Mann, Attorney-Advisor, or Norman B. Smith, Senior Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037.

SUPPLEMENTARY INFORMATION: The Office of Government Ethics is proposing to amend the executive branch regulation which requires the disclosure of certain gifts received by the filers of the Standard Form (SF) 278 Public Financial Disclosure Report forms, their spouses, and their dependent children. Title I of the Ethics in Government Act of 1978 (the Ethics Act), 5 U.S.C. appendix, title I, sets forth the requirements which govern the reporting of gifts on the public financial disclosure reports (SF 278). Specifically, 5 U.S.C. app., section 102(a)(2) requires the reporting of gifts on public financial disclosure report forms but also includes, at paragraph (a)(2)(C), authority for granting a waiver which permits the nondisclosure of certain gifts on the SF 278. The Office of Government Ethics has issued regulations at 5 CFR 2634.304 that establish guidelines clarifying the gift reporting requirements set forth in the Ethics Act. Section 2634.304(f) includes the procedures for requesting a waiver of reporting for executive branch filers and the factors which the Director of OGE considers in determining whether to issue a waiver.

Under 5 CFR 2634.304, a person who files an SF 278 is required to report certain gifts that he, his spouse, or his dependent child receives. Section 2634.304 permits a filer not to disclose certain gifts if the filer receives a waiver. The filer must submit a written request for a waiver through his agency to the Director of the Office of Government Ethics, who determines whether to issue the waiver. If the OGE Director issues the waiver, the filer is not required to disclose the gift or gifts for which he receives the waiver on his SF 278, nor is he required to aggregate those gifts for reporting purposes. However, the request cover letter is publicly available.

Currently, in order to grant a waiver under § 2634.304(f)(1), the Director must determine that both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are entirely personal and that no countervailing public purpose requires public disclosure of the nature, source, and value of the gift. One of the proposed amendments would address the requirement that the basis of the relationship between the grantor and the grantee and the motivation behind the gift be "entirely personal." The experience of OGE over the years has demonstrated that in some situations, a filer has a predominantly social relationship with a grantor of a gift, but has met the grantor through a business relationship, often in connection with a spouse's business activities. Requests for waivers in these circumstances most often occur when the filer receives a gift for a wedding or other similar social occasion. However, these circumstances might be construed as not "entirely personal" under § 2634.304(f)(1)(i). The proposed rule would permit the Director to grant a waiver of reporting if he determines that the basis of the relationship between the grantor and the grantee and the motivation behind the gift are "personal," rather than "entirely personal," provided that no countervailing public purpose requires public reporting. Thus, in the situation described above, the Director could grant a waiver because the relationship between the grantor and grantee and the motivation behind the gift may be construed as personal. The proposed rule would give OGE some flexibility in granting waivers in such appropriate cases.

In the legislative history of the Ethics Act, the Senate Committee on Governmental Affairs described its intention that waivers be used infrequently. S. Rep. No. 95–170 at 116 (1977). The proposed rule would remain consistent with the Committee's intent. The Office of Government Ethics has received a small number of waiver requests each year and does not expect that there will be an overall increase in the number of requests received, or much of an increase in waivers granted, as a result of the proposed rule.

Under § 2634.304(f)(2), members of the public can access the cover letter requesting a waiver if the Director of OGE approves the waiver request. Public availability of the cover letter is subject to the public disclosure requirements in 5 CFR 2634.603. The Office of Government Ethics proposes to amend § 2634.304(f)(2) by adding language to clarify that the cover letter of a waiver request will be publicly available when the Director of OGE has granted either a partial or complete approval of the waiver request. In such

cases, an item or items contained in the waiver request for which the waiver was granted will not appear on the SF 278. Any item or items contained in the request for which the Director of OGE did not grant a waiver will be listed on the SF 278. If the Director of OGE denies the complete request, the item or items for which the waiver was requested will be contained in the SF 278, and the cover letter requesting the waiver will not be publicly available. This proposed amendment does not alter OGE's current practice regarding the disclosure of the cover letter requesting a waiver; it simply will clarify that the public can access the cover letter of waiver requests for which the Director of OGE has granted either full or partial approval.

The proposed rule would also amend § 2634.304(f)(3) to expressly require a filer to describe the gift for which he is seeking a waiver. Section 2634.304(f)(3) sets forth specific requirements for the contents of a waiver request by the filer, as submitted through his agency to OGE. The filer must include in a waiver request the identity and occupation of the donor, in addition to a statement concerning the relationship between the donor and the filer, as described above. The request also must contain a statement concerning any involvement of the donor with the filer's agency. The current regulation does not expressly require the filer to describe the gift or list its value in the waiver request. Although most filers do include a description of the gift and its value in their waiver requests, in order to eliminate any ambiguity concerning whether this basic information is required, we are proposing to add a new paragraph (f)(3)(ii)(D) to explicitly require that the filer include both a description of the gift and its value in the waiver request. The proposed rule would be consistent with the general requirement under § 2634.304 that an SF 278 filer report a description, as well as the value, of certain gifts. Moreover, knowing the nature and value of the gift will assist OGE in determining whether there is a countervailing public purpose requiring public disclosure.

Under § 2634.304(f)(3), a filer who requests a waiver of reporting certain gifts must provide specified information about the donor of each gift for which a waiver is requested. Included in the proposed revisions to § 2634.304(f)(3) is a new paragraph (f)(3)(iii), which would explicitly require that when a gift for which a waiver is requested has more than one donor, a filer must provide the required information with respect to each donor of the gift. This is not a new requirement. The proposed rule merely serves as a technical clarification of an existing requirement under the current rule.

The proposed revisions to § 2634.304(f)(3) also include a restructuring of that provision and the correction of a typographical error.

Matters of Regulatory Procedure

Administrative Procedure Act

Interested persons are invited to submit written comments to OGE on this proposed regulation, to be received on or before July 12, 1999. The Office of Government Ethics will review all comments received and consider any modifications to this rule as proposed which appear warranted before adopting the final rule on this matter.

Executive Order 12866

In promulgating this proposed rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. These proposed amendments have not been reviewed by the Office of Management and Budget under that Executive order, since they are not deemed "significant" thereunder.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this rulemaking will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch departments and agencies and certain of their employees who file SF 278 reports.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply to these proposed amendments because they do not contain information collection requirements that require approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Certificates of divestiture, Conflict of interests, Government employees, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: May 6, 1999.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics proposes to amend part 2634 of subchapter B of chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

2. Section 2634.304 is amended by:

a. Revising paragraph (f)(1)(i);

b. Adding an Example after paragraph (f)(1)(ii);

c. Revising paragraph (f)(2); and

d. Revising paragraph (f)(3).

The revisions and addition read as follows:

§ 2634.304 Gifts and reimbursements.

* * * * *

(f) * * * (1) * * *

(i) Both the basis of the relationship between the grantor and the grantee and the motivation behind the gift are personal; and

(ii) * * *

Example to paragraph (f)(1). i. The Secretary of Education and her spouse receive the following two wedding gifts:

A. Gift 1—A crystal decanter valued at $285 from the Secretary's former college roommate and lifelong friend, who is a real estate broker in Wyoming.

B. Gift 2—A gift of a print valued at $300 from a business partner of the spouse, who owns a catering company.

ii. Under these circumstances, the Director of OGE will consider a request for a waiver of reporting for each of these gifts.

(2) *Public disclosure of waiver request.* If approved in whole or in part, the cover letter requesting the waiver shall be subject to the public disclosure requirements in § 2634.603 of this part.

(3) *Procedure.* (i) A public filer seeking a waiver under this paragraph (f) shall submit a request to the Office of Government Ethics, through his agency. The request shall be made by a cover letter which identifies the filer and his position and which states that a waiver is requested under this section.

(ii) On an enclosure to the cover letter, the filer shall set forth:

(A) The identity and occupation of the donor;

(B) A statement that the relationship between the donor and the filer is personal in nature;

(C) A statement that neither the donor nor any person or organization who employs the donor or whom the donor represents, conducts or seeks business with, engages in activities regulated by, or is directly affected by action taken by, the agency employing the filer. If the preceding statement cannot be made without qualification, the filer shall indicate those qualifications, along with

a statement demonstrating that he plays no role in any official action which might directly affect the donor or any organization for which the donor works or serves as a representative; and

(D) A brief description of the gift and the value of the gift.

(iii) With respect to the information required in paragraph (f)(3)(ii) of this section, if a gift has more than one donor, the filer shall provide the necessary information for each donor.

[FR Doc. 99–12047 Filed 5–12–99; 8:45 am]
BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1079

[DA–99–02]

Milk in the Iowa Marketing Area; Notice of Reopening and Extension of Time for Filing Comments

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Reopening and Extension of Time for Filing Comments.

SUMMARY: This document reopens and extends the time for filing comments on a proposed revision to reduce the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order.

DATES: Comments are now due on or before June 14, 1999.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456. Advance, unofficial copies may be faxed to (202) 690–0552 or e-mailed to OFB__FMMO__Comments@usda.gov. Reference should be made to the title of action and docket number. All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Programs offices during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Programs, Order Formulation Branch, Room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–2357, e-mail address connie.brenner@usda.gov.

SUPPLEMENTARY INFORMATION:

Prior documents in this proceeding: Proposed Rule: Issued April 14, 1999; published April 19, 1999 (64 FR 19071).

Notice is hereby given that the time for filing comments on the proposed revision of the percentage of a supply plant's receipts that must be delivered to fluid milk plants to qualify a supply plant for pooling under the Iowa Federal milk order is hereby reopened and extended. The comment period closed on April 26, 1999. Comments concerning the months of June, July, and August will now be accepted through June 14, 1999.

On the basis of the original request for revision and one comment filed in partial support of the proposed revision, USDA is reducing the supply plant shipping percentages by 10 percentage points for the months of April and May, and by 5 percentage points for the month of June. These revisions concerning supply plant shipping percentages are published separately in the **Federal Register**. A reduction of 10 percentage points for the months of April through August 1999 was requested by Beatrice Cheese, Inc. A comment, filed on behalf of Anderson-Erickson Dairy Company, argued that the milk supply situation in the Iowa market is too volatile at present to be able to determine whether the requested reduction in the pool supply plant shipping percentage for the months of June, July, and August is appropriate. Therefore, a decision on whether to revise the shipping percentage for the months of July and August and to further revise the shipping percentage for the month of June will be made after the close of the reopened comment period.

This notice is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

List of Subjects in 7 CFR Part 1079

Milk marketing orders.

Dated: May 7, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–12145 Filed 5–12–99; 8:45 am]
BILLING CODE 3410–02–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM155; Notice No. 25–99–03–SC]

Special Conditions: Boeing Model 767–300 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for Boeing Model 767–300 series airplanes. These airplanes as modified by Am-Safe, Inc. will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. The proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before June 28, 1999.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attention: Rules Docket (ANM–7), Docket No. NM155, 1601 Lind Avenue SW., Renton, Washington, 98055–4506; or delivered in duplicate to the Office of the Regional Counsel at the above address. Comments must be marked: Docket No. NM155. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications

received on or before the closing date for comments will be considered by the Administrator. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM155." The postcard will be date stamped and returned to the commenter.

Background

On March 8, 1999, Am-Safe Inc. applied for a supplemental type certificate to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 767–300 series airplanes. The Model 767–300 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and deploys away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) 25.785 requires that occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35″ from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, a new standard that quantifies required head injury protection was created.

Title 14 CFR 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1,000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

While Amendment 25–64 is not part of the Model 767–300 certification basis, it is recognized that the installation of inflatable lapbelts will eventually be proposed for airplanes that do include this requirement. In addition HIC is the only available quantifiable measure of head injury protection. Therefore, the FAA will require that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because § 25.562 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide essentially equivalent protection for occupants of all stature, and second, it can provide significantly greater protection than would be expected with energy absorbing pads, for example. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems, and must be relied upon to activate properly when needed, as opposed to an energy absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential problems in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. Am-Safe, Inc. must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–18 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts, this could render the airbag useless if a larger impact follows the initial impact. This situation does

not exist with energy absorbing pads or upper torso restraints, which tend to provide protection proportional to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are buckled.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the 5th percentile female to the 95th percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a larger range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. The installation needs to address the use of the inflatable lapbelt by children, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Type Certification Basis

Under the provisions of 14 CFR 21.101, Am-Safe, Inc. must show that the Model 767–300 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A1NM or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. A1NM are as follows: Amendments 25–1 through 25–45 with exceptions. The U.S. type certification basis for the Model 767–300 is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. A1NM.

If the Administrator finds that the applicable airworthiness regulations (i.e., 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 767–300 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of 14 CFR 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 767–300 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49 after public notice, as required by 14 CFR 11.28 and 11.29(b), and become part of the type certification basis in accordance with 14 CFR 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 767–300 series airplanes will incorporate the following novel or unusual design features: Am-Safe, Inc. is proposing to install an inflatable lapbelt on certain seats of Boeing Model 767–300 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The FAR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of 14 CFR part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in 14 CFR 25.785, these special conditions are proposed for the Boeing Model 767–300 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure

to high intensity electromagnetic fields could affect the activation system.

The following proposed special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Applicability

As discussed above, these special conditions are applicable to the Model 767–300 series airplanes. Should Am-Safe, Inc. apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A1NM to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 767–300 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Boeing Model 767–300 series airplanes equipped with inflatable lapbelts modified by Am-Safe, Inc.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-nine percentile male. The inflatable lapbelt must provide a consistent level of energy absorption throughout that range. The following situations must be considered:

a. The seat occupant is holding an infant,

b. The seat occupant is a child in a child restraint device,

c. The seat occupant is a child not using a child restraint device.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have buckled (thereby active) seatbelts.

3. The design must prevent the inflatable lapbelt from being incorrectly buckled and/or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. The seated occupant must not be injured as a result of the inflatable lapbelt deployment.

6. It must be shown that the inflatable lapbelt will not be a hazard to an occupant who is in the brace position when it deploys.

7. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

8. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

9. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

10. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–18 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise it is considered an "essential" system.

11. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location.

12. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

13. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

14. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on May 3, 1999.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 99–12057 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 192–0132b; FRL–6334–6]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revisions, Mojave Desert Air Quality Management District and Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the recision of rules for the Mojave Desert Air Quality Management District (MDAQMD) and Tehama County Air Pollution Control District (TCAPCD). These rules concern emissions from orchard heaters and fuel burning equipment. The intended effect of this action is to bring the MDAQMD and TCAPCD SIPs up to date in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no relevant adverse comments are received, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will not take effect and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period

on this rule. Any parties interested in commenting on this rule should do so at this time.

DATES: Comments must be received in writing by June 14, 1999.

ADDRESSES: Written comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report for the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Mojave Desert Air Quality Management District, 15428 Civic Drive, Suite 200, Victorville, CA 92392–2383.

Tehama County Air Pollution Control District, 1760 Walnut Street, Red Bluff, CA 96080.

FOR FURTHER INFORMATION CONTACT: Al Petersen, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1135.

SUPPLEMENTARY INFORMATION: The rules being proposed for recision from the MDAQMD portion of the California SIP are included in San Bernardino County Air Pollution Control District Regulation VI, Orchard, Field or Citrus Grove Heaters, consisting of Rule 100, Definitions; Rule 101, Exceptions; Rule 102, Permits Required; Rule 103, Transfer; Rule 104, Standards for Granting Permits; Rule 109, Denial of Application; Rule 110, Appeals; Rule 120, Fees; Rule 130, Classification of Orchard Heaters; Rule 131, Class I Heaters Designated; Rule 132, Class II Heaters Designated; Rule 133, Identification of Heaters; Rule 134, Use of Incomplete Heaters Prohibited; Rule 135, Cleaning, Repairs; Rule 136, Authority to Classify Orchard Heaters; and Rule 137, Enforcement. These rules recisions were adopted by the MDAQMD on June 24, 1996 and submitted by the California Air Resources Board to EPA on March 3, 1997.

The rule being proposed for recision from the TCAPCD portion of the California SIP is TCAPCD Rule 4.13, Fuel Burning Equipment . This rule recision was adopted by the TCAPCD on September 10, 1985 and submitted by the California Air Resources Board to EPA on February 10, 1986.

For further information, please see the information provided in the Direct Final action that is located in the Rules Section of this **Federal Register**.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 9, 1999.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 99–11826 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IA 069–1069b; FRL–6340–4]

Approval and Promulgation of Implementation Plans and Approval Under Section 112(l); State of Iowa

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revisions submitted by the state of Iowa on December 11, 1998, and January 29, 1999. These revisions consist of updates to Iowa Administrative Code, Chapters 20, 22, 23, 25, and 28. These revisions will strengthen the SIP with respect to attainment and maintenance of established air quality standards and with respect to control of hazardous air pollutants. Approval of this SIP revision will make these rule revisions Federally enforceable.

In the final rules section of the **Federal Register**, EPA is approving the state's SIP revisions as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision amendment and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives relevant adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 14, 1999.

ADDRESSES: Comments may be mailed to Wayne A. Kaiser, Environmental Protection Agency, Air Planning and Development Branch, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final rule which is located in the rules section of the **Federal Register**.

Dated: April 28, 1999.

William Rice,

Acting Regional Administrator, Region VII.

[FR Doc. 99–11824 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN58–01–7283; FRL–6342–6]

Approval and Promulgation of State Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) proposes to approve a revision to the Minnesota State Implementation Plan (SIP) for attainment and maintenance for the National Ambient Air Quality Standard (NAAQS) for Carbon Monoxide (CO). The revision pertains to the Minneapolis/St. Paul CO nonattainment area which includes the following counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, and Wright. The revision proposed for approval is the maintenance plan required pursuant to section 175A of the Clean Air Act (Act) for areas redesignated from nonattainment to attainment. Correspondingly, EPA is also proposing to approve the redesignation of the Minneapolis/St. Paul CO Area to attainment. EPA will not finalize this approval until the EPA approves the vehicle Inspection/Maintenance program for the Minneapolis/St. Paul area.

DATES: Comments on this proposed action must be received by June 14, 1999.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. (It is recommended that you telephone

Michael Leslie at (312) 353–6680 before visiting the Region 5 Office.)

A copy of these SIP revisions are available for inspection at the following location: Office of Air and Radiation (OAR) Docket and Information Center (Air Docket 6102), room M1500, United States Environmental Protection Agency, 401 M Street S.W., Washington, D.C. 20460, (202) 260–7548.

FOR FURTHER INFORMATION CONTACT: Michael G. Leslie, Regulation Development Section (AR–18J), Air Programs Branch, Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–6680.

SUPPLEMENTARY INFORMATION:

I. Background

A. Minneapolis/St. Paul CO Nonattainment Area

On March 3, 1978 (43 FR 8902), pursuant to section 107 of the Act, EPA designated the Minneapolis/St. Paul area as nonattainment with respect to the CO NAAQS. The 1990 amendments to the Act authorized EPA to designate nonattainment areas and to classify them according to degree of severity. Therefore, on November 16, 1991 (56 FR 56694), the EPA designated the Minneapolis/St. Paul area moderate CO nonattainment with a design value of 11.4 parts per million (ppm). The Act defines the design value as the second highest ambient CO concentration averaged over two years. The Act establishes regulatory requirements for CO nonattainment areas based on the area's design value.

B. Redesignation Request

Under the Act, nonattainment areas can be redesignated to attainment if sufficient data are available to satisfy five criteria contained in section 107(d)(3) of the Act. These criteria include the requirements that the area has attained and can maintain the applicable NAAQS standards.

For the period from 1995 to 1996, the Minneapolis/St. Paul area ambient monitoring data shows no violations of the CO NAAQS. Therefore, pursuant to section 107(d) of the Act, the area became eligible for redesignation from nonattainment to attainment. On March 23, 1998, pursuant to section 107(d)(3) of the Act, the State of Minnesota requested the redesignation of the Minneapolis/St. Paul area to attainment with respect to the CO NAAQS. In order to ensure continued attainment of the CO standard, Minnesota also submitted a maintenance plan as required by section 175A of the Act. If the redesignation is approved, the section 175A maintenance plan would become a federally enforceable part of the SIP for the Minneapolis/St. Paul area. On February 23, 1998, the State's 30 day public comment period closed on the maintenance plan component of the redesignation request. The State included responses to all public comments in the submittal.

II. Redesignation Under Section 107(d)(3)(E) Criteria

Section 107(d)(3)(E) of the Act provides five specific requirements that an area must meet to be redesignated from nonattainment to attainment:

1. The area has attained the applicable NAAQS;
2. The area has met all relevant requirements under section 110 and part D of the Act;
3. The area has a fully approved SIP under section 110(k) of the Act;
4. The air quality improvement is permanent and enforceable;
5. The area has a fully approved maintenance plan pursuant to section 175A of the Act.

III. Review of State Submittal

The Minnesota redesignation request for the Minneapolis/St. Paul area meets the five requirements of section 107(d)(3)(E). EPA's Technical Support Document, dated May 3, 1999, from Michael Leslie to the Docket, entitled "*Technical Review of Minnesota's State Implementation Plan Revision for the Minneapolis/St. Paul Nonattainment Area Carbon Monoxide Redesignation,*" contains a detailed analysis of the Minnesota redesignation request and the Section 175A maintenance plan for the Minneapolis/St. Paul area. An abbreviated analysis of the Minnesota redesignation request is set forth below.

A. Attainment of the CO NAAQS

The Minnesota request is based on ambient air CO monitoring data for calendar year 1995 through calendar year 1996. The data, which has been reviewed for technical precision and accuracy, shows no violations of the CO NAAQS in the Minneapolis/St. Paul area. Further, EPA has reviewed 1997 and 1998 CO monitoring data which also indicate no violations of the CO NAAQS. Because the Minneapolis/St. Paul area has quality-assured data which indicate no violations of the standard over the two most recent and consecutive calendar year periods, the Minneapolis/St. Paul area has met the first statutory criterion for redesignation to attainment of the CO NAAQS. The State will continue to monitor the area in accordance with 40 CFR part 58. (If complete quality assured data show violations of the CO NAAQS before the final EPA action on this redesignation, the EPA proposes that it disapprove the redesignation request.)

B. Meeting Applicable Requirements of Section 110 and Part D

Minnesota is required to have a fully adopted SIP before the Minneapolis/St. Paul area can be redesignated to attainment for CO. On June 16, 1980 (45 FR 40581), EPA gave final approval to Minnesota's SIP for the Minneapolis/St. Paul area as meeting the requirements of section 110(a)(2) and part D of the Act. For the purpose of fulfilling the Part D requirements for all nonattainment areas in the State, Minnesota Pollution Control Agency (MPCA) submitted, and EPA approved on May 2, 1995, and April 28, 1994, respectively, the State's operating permit program (60 FR 21451) and the New Source Review program (59 FR 21941). Specific requirements under section 110 and additional sections under part D of the Act are discussed below, including those requirements arising under the 1990 amendments to the Act.

1. Section 110 Requirements

The Minneapolis/St. Paul area SIP meets the requirements of section 110(a)(2) of the Act as amended by the 1990 amendments. As noted above, on June 16, 1980 (45 FR 40581) EPA approved Minnesota's SIP for the Minneapolis/St. Paul area for meeting, among other things, the requirements of section 110. Although the 1990 amendments amended certain provisions of section 110 of the Act (57 FR 27936 and 57 FR 23939, June 23, 1993), the EPA analyzed the SIP and has determined that it is consistent with the requirements of amended section 110(a)(2).

2. Part D Requirements

The Minneapolis/St. Paul CO nonattainment area must fulfill the applicable requirements of part D before it can be redesignated to attainment. Under part D, applicable requirements are based upon an area's severity classification. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, classified as well as nonclassifiable. Subpart 3 of part D sets forth additional requirements for CO nonattainment areas classified pursuant to table 1 of section 186(a). Because the Minneapolis/St. Paul area has a design value of 12.7 ppm CO, it is classified as moderate CO nonattainment pursuant to table 1 of section 186(a). Therefore, prior to

redesignation, the Minneapolis/St. Paul CO nonattainment area must meet all of the applicable requirements of subpart 1 of part D (including the requirements set forth at sections 172(c) and 176 of the Act) and subpart 3 of part D.

a. Subpart 1 of Part D—Section 172(c) Provisions. Section 172(c) sets forth general requirements applicable to all nonattainment area SIPs, including provisions which implement reasonably available control technology (RACT) for existing sources, a new source review (NSR) program which meets the requirements of section 173, reasonable further progress (RFP) toward attainment of the applicable standard, an emission inventory of sources of the relevant pollutant, and a demonstration of attainment by the applicable attainment date. Under 172(b), a schedule of plan submissions to fulfill the section 172(c) requirements must be submitted to EPA no later than three years after an area has been designated as nonattainment.

Minnesota has satisfied all of the section 172(c) requirements necessary for redesignation of the Minneapolis/St. Paul area. Further, because the Minneapolis/St. Paul area was subject to the nonattainment plan requirements in effect prior to the enactment of the 1990 Amendments, many of the subpart 1 requirements had been met prior to the enactment of the amendments.

The Minnesota SIP provides for the implementation of RACT for existing CO sources, as required by section 172(c)(1). The Minnesota SIP meets the requirements for RFP. Further, because the Minneapolis/St. Paul area has attained the CO NAAQS, no new RFP requirements under section 172(c)(2) apply. The Section 172(c)(3) emissions inventory requirements were met when EPA approved the 1990 base year inventory on September 19, 1994 (59 FR 47807).

Section 172(c)(4) requires states to demonstrate that emissions quantified based upon growth will be consistent with the achievement of RFP, and will not interfere with attainment of the applicable NAAQS. The proposed maintenance plan demonstrates continued attainment through the year 2009. Further, the State will maintain an ambient monitoring network to ensure that the NAAQS continue to be met.

Section 172(c)(5) requires states to implement NSR permitting requirements that meet the requirements of section 173 of the Act. Minnesota's operating permit program and New Source Review program, which EPA approved on May 2, 1995 (60 FR 21451) and April 28, 1994 (59 FR 21941), respectively, meet section 173 requirements.

Section 172(c)(9) of the Act requires contingency plans in the event that the nonattainment fails to make RFP or the standard. Here, however, the area has met its RFP requirements and has attained the standard. Further, Minnesota has provided contingency measures in the proposed 175A maintenance plan. Therefore, it is unnecessary to apply the requirement for contingency measures for this nonattainment area under the de minimis approach.

b. Subpart 1 of Part D—Section 176 Conformity Provisions. Section 176(c) of the Act requires States to revise their SIPs to establish criteria and procedures to ensure that Federal actions, before they are taken, conform to the air quality planning goals in the applicable State SIP. The requirement to determine conformity applies to transportation plans, programs and projects developed, funded or approved under title 23 U.S.C. or the Federal Transit Act ("transportation conformity"), as well as to all other Federal actions ("general conformity"). Section 176 of the Act further provides that the conformity revisions to be submitted by States must be consistent with Federal conformity regulations that the Act required the EPA to promulgate. EPA approved Minnesota's general conformity rule on April 23, 1997 (62 FR 19674).

The EPA believes the conformity requirements are not applicable requirements for evaluating the redesignation request under section 107(d). This is based on two related factors. First, redesignated areas are required by their section 175A maintenance plans to submit SIP revisions to comply with the conformity provisions of the Act. Second, EPA's Federal conformity rules require conformity analyses for areas that lack federally approved State rules. Therefore, areas are subject to the conformity requirements when designated to attainment or when not subject to federally approved State rules. Therefore, conformity requirements are not required for purposes of evaluating a redesignation request. Consequently, the CO redesignation request for the Minneapolis/St. Paul area may be approved notwithstanding the lack of a fully approved conformity SIP.

Included in the submittal is a commitment by the State to satisfy the applicable requirements of the final transportation conformity rules. This is acceptable because the transportation conformity rule applies to maintenance areas.

For purposes of transportation conformity, the control measures in the maintenance plan establish an emissions budget. The State has defined this budget for year 2009 as 993 tons per day of CO for onroad mobile sources. This level of emissions provides for continued maintenance of the CO standard.

c. Subpart 3 of Part D Requirements. The Minneapolis/St. Paul area is classified as moderate nonattainment (less than 12.7 ppm CO). Hence, part D, Subpart 3, section 187(a) requirements apply. Section 187(a) requirements that were in effect prior to the submission of the request to redesignate the Minneapolis/St. Paul area must be fully approved into the SIP prior to redesignating the area to attainment. EPA's approval of these provisions are discussed below:

(1) 1990 Base Year Emission Inventory

On September 19, 1994 (59 FR 47807), EPA approved the 1990 base year emission inventory for the Minneapolis/St. Paul area.

(2) Oxygenated Fuel Program

On October 4, 1994 (59 FR 50493), EPA approved the Oxygenated fuel program for the Minneapolis/St. Paul area.

(3) 1993 Periodic CO Emissions Inventory

On October 27, 1997 (62 FR 55203), EPA approved the 1993 Periodic CO emissions inventory for the Minneapolis/St. Paul area.

(4) Inspection/Maintenance (I/M)

Section 187(a)(4) of the Act requires states with areas designed moderate nonattainment for CO to improve existing I/M programs or implement new ones. Because the Minneapolis/St. Paul area is classified as a moderate CO nonattainment area, Section 187 required the State to develop a SIP for I/M that met the basic I/M requirements contained in the Act and in the corresponding regulations codified at 40 CFR part 51, subpart S.

On November 10, 1992, the State submitted its initial I/M plan to the EPA, which it supplemented by submittals made on November 12, 1993, and December 15, 1993. On October 13, 1994, the EPA published a rulemaking action approving, and conditionally approving, portions of Minnesota's I/M plan. A detailed discussion of EPA's rulemaking action can be found in the final rule at 59 FR 51860. As part of the rulemaking action the EPA identified a number of deficiencies in the State's plan and issued a conditional approval,

requiring Minnesota to submit a revised plan within one year of the conditional approval date. Although the State timely responded to the deficiencies by submittals dated July 8, 1996, and September 24, 1996, the State legislature is currently modifying the existing I/M legislation to finalize corrections to the deficiencies. EPA has not yet acted on these submittals. EPA will not finalize its approval of the redesignation until such time that EPA approves the State's I/M SIP for the Minneapolis/St. Paul area.

As described above, the State has presented an adequate demonstration that it has met the requirements applicable to the area under section 110 and part D.

C. Fully Approved SIP Under Section 110(k) of the Act.

The third redesignation requirement set forth in section 107(d)(3)(E) is that the area have a fully approved SIP under section 110(k) of the Act. Upon EPA's approval of the Minneapolis/St. Paul I/M program and of this maintenance plan submittal, the State will have a fully approved SIP under section 110(k). As discussed above, these approvals will also satisfy the section 107(d)(3)(E) requirement that the area meet all requirements under section 110 and part D of the Act.

D. Improvement in Air Quality Due to Permanent and Enforceable Measures

The fourth redesignation requirement set forth in section 107(d)(3)(E) requires the State to demonstrate that the actual enforceable emission reductions are responsible for the recent improvement in air quality. This demonstration may be accomplished through an estimate of the percent reduction (from the year that was used to determine the design value for designation and classification) achieved through Federal measures, such as the Federal Motor Vehicle Control Program (FMVCP) or the fuel volatility rules, or through control measures that the State has adopted and implemented.

The State established the emission reductions for the period from 1990 to 1996 based on the FMVCP and fuels programs, which the State determined are responsible for the improvement in air quality. All emission projections are based on the 1990 base year emission inventory, which EPA approved on September 19, 1994 (59 FR 47807).

Consistent with emission inventory guidance, the 1990 base year emission inventory represents 1990 average winter day actual emissions for the Minneapolis/St. Paul Arbor area. The State projected the 1990 base year emissions forward to 1996, in order to determine the emission reductions during this time period. The State developed the growth factors for the projections.

Based on available actual emission data from 1995, Minnesota estimated the 1996 point source emissions as equivalent to the 1995 actual emissions. Minnesota estimated future years (1998 and beyond) point source emissions by using the maximum potential to emit, which included current controls.

Minnesota developed area source growth factors from the Twin Cities Metropolitan Council and the State Planning Office projections of employment, housing, and population data. Minnesota applied the growth factors to the 1990 base year inventory for the Minneapolis/St. Paul area. The State also utilized growth factors for railroad emissions developed from the United States Bureau of Public Analysis projections.

The State used the MOBILE5a model to develop the mobile source emission estimates. The significant input parameters for the MOBILE5a model are presented in Chapter 3 of the State's TSD. The State employed methodologies to develop the on-highway mobile source emissions, which included the Federal highway administration (FHWA) highway performance monitoring system (HPMS) traffic count for 1990 vehicle miles traveled (VMT), supplemental traffic count data meeting HPMS standards for 1990, projection of VMT to projection years using a transportation model calibrated with HPMS VMT data, and MOBILE5a emission factors and estimating emissions with modeled VMT and MOBILE5a. Mobile source methodologies are described in detail in Chapter 3 of the State's TSD.

The following tables present the CO emissions for 1990 and 1996 and emission reductions from 1990 to 1996. The State claimed credit for emission reductions achieved as a result of implementation of the federally enforceable FMVCP, oxygenated fuel, and I/M control measures. The emission reductions claimed are conservative since they do not account for emission reductions resulting from other control measures and programs implemented during this time period.

As illustrated by the tables and discussed in the State's submittal, the total reductions achieved from 1990 to 1996 are 931 tons of CO per day.

TABLE 1.—CO EMISSION INVENTORY SUMMARY FOR DEMONSTRATION OF EMISSION REDUCTIONS FROM 1990–1996

[Tons per day]

Category	1990	1996	Net change 1988–1993
Point	274	169	−105
Area	283	303	+20
Non-Road Mobile	173	189	+16
On-Road Mobile	1976	1114	−862
Total	2706	1775	−931
Net Reduction			−931

The State has demonstrated that the improvement in air quality is due to permanent and enforceable emission reductions of 931 tons of CO per day as a result of implementing the federally enforceable FMVCP, Oxygenated Fuel, and Inspection/Maintenance reductions.

E. Fully Approved Maintenance Plan Under Section 175A

The final requirement for redesignation under section 107(d)(3)(e) is that the area has a fully approved maintenance plan pursuant to section 175A of the Act. Section 175A of the Act sets forth the elements for maintenance plans for areas seeking redesignation. Such plans must demonstrate continued attainment of the applicable NAAQS for at least 10 years after the EPA approves a redesignation to attainment. Eight years after the redesignation, States must submit revised maintenance plans which demonstrate attainment for the 10 years following the initial 10-year

period. To address potential future NAAQS violations, maintenance plans must contain contingency measures, with schedules to assure prompt correction of any air quality problems. Section 175A(d) requires that the contingency provisions include a requirement that States implement all control measures contained in the SIP prior to redesignation.

In this action, EPA is proposing approval of the State of Minnesota's 175A maintenance plan for the Minneapolis/St. Paul area. EPA finds that Minnesota's submittal meets the requirements of section 175A, provided that the State continues to implement all the control measures contained in the SIP prior to redesignation as an attainment area. If, after notice and comment, EPA determines that it should give final approval to the maintenance plan, the Minneapolis/St. Paul nonattainment area will have a fully approved maintenance plan in accordance with section 175A. The following is a discussion of the basis for proposing approval of Minnesota's 175A maintenance plan.

1. Emissions Inventory—Attainment Inventory

The State has developed an attainment emission inventory for 1996 that identifies 1775 tons of CO per day as the level of emissions in the area sufficient to attain the CO NAAQS.

All inventories in the maintenance plan were derived from the 1990 base year emission inventory. The methodologies used in developing these inventories are discussed in section (3) of EPA's TSD and in further detail in sections 4.0 and 6.0 of the State's TSD. EPA approved the 1990 base year emission inventory on September 19, 1994 (59 FR 47806). The State has adequately developed an attainment emissions inventory for 1996 that identifies the levels of emissions as 1775 tons of CO per days the level of emissions in the area sufficient to attain the NAAQS.

2. Demonstration of Maintenance—Projected Inventories

To demonstrate continued attainment the State projected CO emissions through the maintenance period to the year 2009 and for interim years 1998 and 2008. These emissions are presented in Table 2 of the submittal and summarized below in Table 2. These projected emission inventories demonstrate that the CO emissions will remain below the attainment year, 1996, emission levels. The emissions projections through the year 2009 show an emissions reduction of 1026 tons of CO per day by 2009. These emission reductions are primarily the result of continued implementation of the federally enforceable FMVCP.

The methodologies used in developing the projection inventories are the same as those employed for the other inventories contained in the submittal and are discussed in EPA's TSD and in further detail in sections 4.0 and 6.0 of the State's TSD.

TABLE 2.—CO MAINTENANCE EMISSION INVENTORY PROJECTION SUMMARY THROUGH 2009

[Tons per day]

Category	1990	1996	1998	2008	2009	Net change 1993–2009
Point	274	169	229	229	229	−45
Area	283	303	311	338	340	57
Non-Road Mobile	173	189	195	212	213	40
On-Road Mobile	1976	1114	1032	882	898	−1078
Total	2706	1775	1767	1661	1680	−1026
Net Reduction						−1026

The State has adequately demonstrated continued attainment of the CO NAAQS through the projection of CO emissions through the 10 year maintenance period to 2009 and for the interim years 1998 and 2008. These projections indicate that CO emissions throughout the maintenance period will remain well below the 1996 attainment inventory.

The performed microscale CO modeling to predict maximum CO concentrations for ten "hot-spot" intersections. The State used the procedures outlined in EPA's guidance entitled, "Guideline for Modeling Carbon Monoxide from Roadway Intersections," to select the appropriate intersections for the modeling analysis. The intersections in Table 3 were selected based traffic volumes and Level of Service (LOS), which are indicators of potential hot-spots.

TABLE 3.—INTERSECTIONS USED FOR MICROSCALE CO MODELING

Intersection	Area type
T.H. 169 at CSAH 81	Developing.
T.H. 101 at T.H. 7	Developing.
T.H. 100 at CSAH 81	Developing.
T.H. 10 at University	Developing.
T.H. 252 at 85th Ave.	Developing.
T.H. 252 at 66th Ave.	Developing/ Developing.
T.H. 252 at Brookdale Dr.	Developing.
University at Lexington Ave.	St. Paul.
Snelling at University	St. Paul.
Hennepin Ave. at Lake St.	Minneapolis.

Information on the approach volumes, intersection signal timing, intersection geometries, meteorological condition are necessary to perform the analysis. The State obtained this traffic data from the Minnesota Department of Transportation, the city of Minneapolis, the city of St. Paul, various consultants. Growth factors for the intersections future year volumes were developed by the Metropolitan Council, the Metropolitan Planning Organization for the Minneapolis/St. Paul area.

Two scenario's were modeled as part of the analysis. First, CO concentrations were modeled with the current I/M program and oxygenated fuel program in place. Second, CO concentrations were modeled with only oxygenated fuel program in place, assuming that the I/M program is discontinued in 1998.

The State used EPA approved models CAL3QHC and CAL3QHCR to generate CO concentrations for the microscale analysis. The MOBILE5a model was used to generate idle and free flow emission factors for the analysis. The submittal provides detailed information on the I/M program (with the associated anti-tampering program), parameters for the oxygenated fuel program, ambient temperature, and Reid Vapor Pressure. MOBILE model defaults were used for the vehicle population mix and vehicle mileage accumulation. Results of the modeling analysis are shown in Tables 4 and 5.

TABLE 4.—CO CONCENTRATIONS FOR YEAR 1998

Intersection	Current I/M Program	
	1 hour concentration	8 hour concentration
T.H. 169 at CSAH 81	11.8	8.5
T.H. 101 at T.H. 7	11.2	8.1
T.H. 100 at CSAH 81	11.1	8.0
T.H. 10 at University	10.9	7.8
T.H. 252 at 85th Ave	12.5	9.0
T.H. 252 at 66th Ave	10.8	7.8
T.H. 252 at Brookdale Dr	10.2	7.3
University at Lexington Ave	9.3	6.8
Snelling at University	9.9	7.2
Hennepin Ave. at Lake St	9.2	6.6

TABLE 5.—CO CONCENTRATIONS FOR YEAR 2008

Intersection	Current I/M Program		Without current I/M program	
	1 hour concentration	8 hour concentration	1 hour concentration	8 hour concentration
T.H. 169 at CSAH 81	9.7	7.0	10.7	7.7
T.H. 101 at T.H. 7	9.0	6.5	10.0	7.2
T.H. 100 at CSAH 81	8.2	5.9	9.1	6.5
T.H. 10 at University	8.1	5.8	9.0	6.5
T.H. 252 at 85th Ave	9.9	7.1	10.7	7.7
T.H. 252 at 66th Ave	8.4	6.0	9.4	6.8
T.H. 252 at Brookdale Dr	8.5	6.1	9.2	6.6
University at Lexington Ave	7.7	5.6	8.4	6.1
Snelling at University	8.0	5.8	8.8	6.4
Hennepin Ave. at Lake St	6.9	5.0	8.7	5.5

These modeled values are below the NAAQS for both the 1 hour (35 ppm) and the 8 hour (9 ppm) standard through the maintenance period.

3. Verification of Continued Attainment

Section 175A requires States to set up a process to assess the area's continued maintenance of the applicable NAAQS. This process must include operation of the area's monitoring network, tracking of emissions through modeling or emissions inventories, and setting up triggers for implementing the contingency plan. The following is a discussion of Minnesota's fulfillment of these requirements.

a. Ambient Air Quality Monitoring Network. In its submittal and TSD, the State commits to continue to operate and maintain the network of ambient CO monitoring stations in accordance with provisions of 40 CFR part 58, in order to demonstrate ongoing compliance with the CO NAAQS.

b. Tracking of Attainment. The State's submittal presents a tracking plan for the maintenance period which consists of two components: continued CO monitoring and inventory or modeling updates. The State will continue to monitor CO levels throughout the area to demonstrate ongoing compliance with the CO NAAQS. The State also commits to conduct periodic inventories for the redesignated area every three years using the most recent emission factors, models and methodologies. The inventories will begin in 2002, with reviews conducted every 3 years. The State will submit to EPA a review of the assumptions and data used for the development of the attainment inventory in 2002. The periodic inventory will consist of reviewing the assumptions of the maintenance demonstration such as VMT, population, and employment.

The modeling demonstrations will be reevaluated every three years. The State will determine the validity of the modeling assumptions and the input data as part of this analysis.

c. Triggers. The contingency plan contains one trigger, a monitored air quality violation of the CO NAAQS, as defined in 40 CFR 50.8. The trigger date will be the date that the State certifies to the U.S. EPA that the air quality data are quality assured, which will be no later than 30 days after an ambient air quality violation is monitored. The justification for providing only one trigger is that section 175A(d) explicitly stipulates that a contingency measure must ensure prompt correction of any violation of the NAAQS once the area is redesignated.

4. Contingency Plan

The level of CO emissions in the Minneapolis/St. Paul area will largely determine its ability to stay in compliance with the CO NAAQS in the future. Despite best efforts to demonstrate continued compliance with the NAAQS, the ambient air pollutant concentrations may exceed or violate the NAAQS. Therefore, as required by section 175A of the Act, Minnesota has provided contingency measures with a schedule for implementation in the event of a future CO air quality problem. Contingency measures contained in the plan include basic I/M, Transportation Control Measures (TCM), and expansion of the Oxygenated fuels program. Once the triggering event, a violation of the CO NAAQS, is confirmed, the State will implement one or more appropriate contingency measures. Minnesota will select the contingency measures within 6 months of a triggering event. The EPA understands, on the basis of the State's submission, that the adoption and implementation schedules specified in the Act and any corresponding regulations will be used. Therefore, the following schedules are applicable for the contingency measures specified in the contingency plan. Section 175A of the Act requires that a maintenance plan

contain a contingency plan that will promptly correct a violation of the CO NAAQS that occurs after the area is redesignated to attainment.

a. Inspection and Maintenance. The State will implement a basic I/M program in the seven county Minneapolis/St. Paul metropolitan area to meet 40 CFR 51.352 basic I/M requirements. The enabling legislation was adopted in June 1, 1996 and authorizes the State to use these I/M upgrades as a contingency measure in areas redesignated to attainment. I/M will be implemented within two years of the selection of this contingency measure. This time is necessary to develop the Request for Proposal, solicit and assess bids, select a contractor, negotiate a contract, and start up the program. The schedule for adoption and implementation of basic I/M as a contingency measure, will be consistent with that provided for in the Act and the I/M regulation.

b. Transportation Control Measures. The State will require the implementation of the appropriate transportation control Measures (TCMs) to correct local CO hot spot problems. The type of TCMs will be selected by best engineering practice to address the problem. TCMs will be implemented within one year of the selection of this contingency measure. This time would be necessary to coordinate with local and/or state governments to assure that these entities complete any appropriate processes such as form policy, change local ordinances, etc.

c. Oxygenated Fuel Program. The State of Minnesota is currently implementing an oxygenated fuel programs for CO control. The State will propose amending existing legislation to change the oxygen content of fuel from the current level of 2.7 percent to 3.5 percent in the control area. Implementation of this measure would occur within one year of selection. This time line is necessary to amend existing legislation.

The EPA finds that the three contingency measures provided in the State submittal meet the requirements of section 175A(d) of the Act since they would promptly correct any violation of the CO NAAQS.

5. Commitment To Submit Subsequent Maintenance Plan Revisions

The State has committed to submit a new maintenance plan within eight years of the redesignation of the Minneapolis/St. Paul area as required by section 175(A)(b). This subsequent maintenance plan must constitute a SIP revision and provide for the maintenance of the CO NAAQS for a period of 10 years after the expiration of the initial 10 year maintenance period.

IV. Proposed Action

The EPA proposes to approve the Minneapolis/St. Paul CO maintenance plan as a SIP revision meeting the requirements of section 175A. In addition, the EPA is proposing approval of the redesignation request for the Minneapolis/St. Paul area, subject to final approval of the maintenance plan, because the State has demonstrated compliance with the requirements of section 107(d)(3)(E) for redesignation pending full approval of the SIP element listed above. (In the alternative, if ambient air quality violations occur before EPA takes final action on the proposed redesignation or if the EPA does not fully approve any of the SIP revisions listed above, the EPA proposes to disapprove this redesignation request.) EPA will not finalize the approval of the maintenance plan and redesignation request until the Minneapolis/St. Paul I/M program is approved by EPA.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

CO SIPs are designed to satisfy the requirements of part D of the Act and to provide for attainment and maintenance of the CO NAAQS. This proposed redesignation should not be interpreted as authorizing the State to delete, alter, or rescind any of the CO emission limitations and restrictions contained in the approved CO SIP. Changes to CO SIP regulations rendering them less stringent than those contained in the EPA approved plan cannot be made unless a revised plan for attainment and maintenance is submitted to and approved by EPA. Unauthorized relaxations, deletions, and changes could result in both a finding of nonimplementation (section 173(b) of the Act) and in a SIP deficiency call made pursuant to section 110(a)(2)(H) of the Act.

V. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, entitled "Regulatory Planning and Review."

B. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under E.O. 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments. If the mandate is unfunded, EPA must provide to the OMB a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, E.O. 12875 requires EPA to develop an effective process permitting elective officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." This rule does not create a mandate on state, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of E.O. 12875 do not apply to this rule.

C. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under E.O. 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on these communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, E.O. 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." This rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the

requirements of section 3(b) of E.O. 13084 do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to E.O. 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

E. Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This direct final rule will not have a significant impact on a substantial number of small entities because plan approvals under section 111(d) do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act (Act) preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of a State action. The Act forbids EPA to base its actions on such grounds. Union Electric Co., v. U.S. EPA, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Carbon monoxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: May 5, 1999.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 99–12161 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–60–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA012–0144b, FRL–6335–4]

Approval and Promulgation of Implementation Plan for South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: EPA is approving revisions to the California State Implementation Plan (SIP) which concern the new source review (NSR) program. The purpose of this action is to meet requirements of the Clean Air Act, as amended in 1990 (CAA or Act) with regard to NSR in areas that have not attained the national ambient air quality standards (NAAQS). This approval action will incorporate the approved rules into the federally approved SIP for California, and will delete a number of the existing rules from the SIP. The rules were submitted by the State to satisfy certain Federal requirements for an approvable NSR SIP.

In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. The District has provided public workshops in the development of the submitted rules, and provided the opportunity for public comment prior to changes to its rules. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated in relation to these rules. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on these proposed rules. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this action should do so at this time.

DATES: Comments must be received in writing by June 14, 1999.

ADDRESSES: Written comments should be addressed to: Nahid Zoueshtiagh (Air–3), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours at the following address: Air–3, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95814.

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Nahid Zoueshtiagh (Air–3), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1261.

SUPPLEMENTARY INFORMATION: This document concerns the above listed rules submitted to the EPA on April 5, 1991 (Rules 203.1, 203.2, 204.1, 213.2, 213.3), May 13, 1991 (Rules 201, 201.1, 203, 205, 209, 211, 214, 215, 216, 217), and February 28, 1994 (Rules 204, 206, 210) by the California Air Resources Board. Since submittal to EPA, the

District has rescinded Rules 203.1, 203.2, 204.1, 211, 213, 213.1, and 213.2. EPA is not taking any action on the rescinded Rules 203.1, 203.2 and 204.1 because they were not a part of the SIP. However, EPA is approving rescission of Rules 211, 213, 213.1 and 213.2, because the requirements of these rules are now contained in Rules 212 and Regulation XIII. For further information, please see the information provided in the Direct Final action which is located in the Rules Section of this **Federal Register**.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 99–12000 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL–6340–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; North Dakota; Control of Emissions From Existing Hazardous/Medical/Infectious Waste Incinerators

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: In this action, EPA proposes to approve the North Dakota State Plan for control of air emissions from existing Hazardous/Medical/Infectious Waste Incinerators (HMIWI). The plan provides for implementation and enforcement of the Emissions Guidelines applicable to each existing HMIWI for which construction was commenced on or before June 20, 1996. In the final rules section of this **Federal Register**, EPA is approving the State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn, and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. Please see the direct final notice of this action located elsewhere in today's **Federal Register** for a detailed description of the North Dakota State Plan.

DATES: Comments must be postmarked by June 14, 1999.

ADDRESSES: Written comments on this action should be addressed to Mr. Richard R. Long, Director, Air and Radiation Program (8P–AR), at the EPA Regional Office listed below. Copies of the documents relevant to this proposed rule are available for public inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

Environmental Protection Agency, Region 8, Office of Air and Radiation, 999 18th Street, Suite 500, Denver, Colorado 80202, telephone (303) 312–6470.

North Dakota Health Department, Environmental Health Section, 1200 Missouri Avenue, P.O. Box 5520, Bismark, North Dakota 58506–5520, telephone (701) 328–5188.

FOR FURTHER INFORMATION CONTACT: Kathleen Paser, Region 8, Office of Air and Radiation, at the above address, telephone (303) 312–6526.

SUPPLEMENTARY INFORMATION: See the information provided in the direct final action of the same title which is published in the Rules and Regulations section of this **Federal Register**.

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 30, 1999.

Patricia D. Hull,

Acting Administrator, Region VIII.

[FR Doc. 99–12002 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 194

[FRL–63423]

RIN 2060–AG85

Inspection Date at Idaho National Engineering and Environmental Laboratory and Availability of Waste Characterization and Quality Assurance Program Documents Applicable to Transuranic Radioactive Waste at the Nevada Test Site Proposed for Disposal at the Waste Isolation Pilot Plant

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability; opening of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing the date for an upcoming inspection of the Idaho National Engineering and Environmental Laboratory (INEEL). The inspection will be conducted the week of May 17, 1999. Additional information on the INEEL inspection, including the announcement of a public comment period on relevant site documents, was previously published on April 16, 1999, at 64 FR 18870.

EPA is also announcing the availability of, and soliciting public comments for 30 days on, Department of Energy (DOE) documents on waste characterization and quality assurance programs applicable to transuranic (TRU) radioactive waste at the Nevada Test Site (NTS) proposed for disposal at the Waste Isolation Pilot Plant (WIPP). The documents are: "Bechtel Nevada Transuranic Waste Characterization Quality Assurance Project Plan, L–E10.301.LWC, May 1998" (hereafter NTS TRU QAPjP); "Nevada Test Site Transuranic Waste Certification and Quality Assurance Plan, B–A20/97.03, Revision 0, 2/4/98" (hereafter NTS Certification Plan); "Mobile Characterization Services (MCS) Transuranic Waste Characterization Program Quality Assurance Project Plan, MCS–102, Rev. B, 10/21/98" (hereafter MCS TRU QAPjP); and "TRUtech Team Mobile Systems Program Transuranic Waste Characterization Quality Assurance Project Plan, TT–DOC–001, August 17, 1998" (hereafter TRUtech TRU QAPjP). These documents are available for review in the public dockets listed in **ADDRESSES.** The EPA will use these documents to evaluate waste characterization systems and processes and the quality assurance program at NTS. In accordance with

EPA's WIPP Compliance Criteria at 40 CFR 194.8, EPA will conduct an inspection of waste characterization systems and processes and an audit of the quality assurance program at NTS the week of June 7, 1999, to verify that these programs can properly control the characterization of transuranic waste at issue, consistent with the Compliance Criteria. This notice of the inspection and comment period accords with 40 CFR 194.8.

DATES: The EPA is requesting public comment on the Nevada Test Site documents as they apply to the scope of the inspection announced in this notice. Comments must be received by EPA's official Air Docket on or before June 14, 1999.

ADDRESSES: Comments should be submitted to: Docket No. A–98–49, Air Docket, Room M–1500 (LE–131), U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC, 20460.

The DOE documents (NTS TRU QAPjP, NTS Certification Plan, MCS TRU QAPjP, and TRUtech TRU QAPjP) are available for review in the official EPA Air Docket in Washington, D.C., Docket No. A–98–49, Category II–A–2, and at the following three EPA WIPP informational docket locations in New Mexico: in Carlsbad at the Municipal Library, Hours: Monday-Thursday, 10am–9pm, Friday-Saturday, 10am–6pm, and Sunday, 1pm–5pm; in Albuquerque at the Government Publications Department, Zimmerman Library, University of New Mexico, Hours: Monday-Thursday, 8am–9pm, Friday, 8am–5pm, Saturday-Sunday, 1pm–5pm; and in Santa Fe at the Fogelson Library, College of Santa Fe, Hours: Monday-Thursday, 8am–12pm, Friday, 8am–5pm, Saturday, 9am–5pm, and Sunday, 1pm–9pm.

Copies of items in the docket may be requested by writing Docket A–98–49 at the address provided above, or by calling (202) 260–7548. As provided in EPA's regulations at 40 CFR Part 2, and in accordance with normal EPA docket procedures, a reasonable fee may be charged for photocopying.

FOR FURTHER INFORMATION CONTACT: Jim Oliver, Office of Radiation and Indoor Air, (202) 564–9732, or call EPA's 24-hour, toll-free WIPP Information Line, 1–800–331–WIPP, or visit our website at http://www.epa.gov/radiation/wipp/announce.html.

SUPPLEMENTARY INFORMATION: General background for this notice is identical to that provided in previous **Federal Register** notices. (See 64 FR 18870, 14418)

The Nevada Test Site (NTS) documents submitted by DOE to EPA are: NTS TRU QAPjP, NTS Certification Plan, MCS TRU QAPjP, and TRUtech TRU QAPjP (see SUMMARY for full titles). The NTS TRU QAPjP, MCS TRU QAPjP, and TRUtech TRU QAPjP set forth the quality assurance program applied to TRU waste characterization at NTS. The NTS Certification Plan sets forth the waste characterization procedures for TRU wastes at NTS. After EPA reviews these documents, EPA will conduct an inspection of NTS the week of June 7, 1999, to determine whether the requirements set forth in these documents are being adequately implemented in accordance with Conditions 2 and 3 of the EPA's WIPP certification decision (Appendix A to 40 CFR Part 194). In accordance with § 194.8 of the WIPP compliance criteria, EPA is providing the public 30 days to comment on the documents placed in EPA's docket relevant to the site approval process.

If EPA determines that the provisions in the documents are adequately implemented, EPA will notify the DOE by letter and place the letter in the official Air Docket in Washington, D.C., and in the informational docket locations in New Mexico. A positive approval letter will allow DOE to ship TRU waste from NTS to the WIPP. The EPA will not make a determination of compliance prior to the inspection or before the 30-day comment period has closed.

Information on the EPA's radioactive waste disposal standards (40 CFR Part 191), the compliance criteria (40 CFR Part 194), and the EPA's certification decision is filed in the official EPA Air Docket, Dockets No. R–89–01, A–92–56, and A–93–02, respectively, and is available for review in Washington, D.C., and at the three EPA WIPP informational docket locations in New Mexico. The dockets in New Mexico contain only major items from the official Air Docket in Washington, D.C., plus those documents added to the official Air Docket after the October 1992 enactment of the WIPP LWA.

Dated: May 7, 1999.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 99–12159 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

49 CFR Part 611

[Docket No. 99–5474]

RIN 2132–AA63

Major Capital Investment Projects

AGENCY: Federal Transit Administration (FTA), DOT.

ACTION: Proposed rule; notice of meeting.

SUMMARY: On April 7, 1999, the Federal Transit Administration (FTA) published a Notice of Proposed Rulemaking (NPRM) describing the procedures that FTA proposes to use to evaluate and rate candidate projects for capital investment grants and loans for new fixed guideway systems and extensions to existing systems ("new starts") (64 FR 17062–71). The Transportation Equity Act for the 21st Century (TEA–21) requires FTA to issue regulations covering the evaluation and rating of such projects. The docket for this NPRM is open for public comment until July 6, 1999; FTA invites public comment, and included a number of questions in the NPRM soliciting specific comment. In order to encourage public comment, FTA intends to host three workshops on the NPRM. This notice announces the dates, times, locations and procedures for those workshops.

DATES: The three workshops are scheduled as follows:

1. May 24, 1999, 2:00 p.m. to 5:00 p.m. (local time); Toronto, Ontario.
2. June 3, 1999, 9:00 a.m. to 12:30 p.m. (local time); San Francisco, CA.
3. June 8, 1999, 9:00 a.m. to 12:30 p.m. (local time); Washington, DC.

ADDRESSES: The Toronto, Ontario workshop will be held in the Essex Ballroom at the Sheraton Centre Toronto Hotel, 123 Queen St. West, Toronto, Ontario, MSH 2M9, in conjunction with the 1999 APTA Commuter Rail/Rapid Transit Conference. The San Francisco, CA workshop will be held at: Joseph P. Bort MetroCenter Auditorium, 101 Eighth Street, Oakland, California (adjacent to the Lake Merritt BART station). The Washington, DC workshop will be held at: U.S. Department of Transportation, room 3200–3204, 400 7th Street SW, Washington, DC 20590. Written material submitted at the workshops will be placed in the rulemaking docket. Interpreters and alternative-format information are available upon request; requests should be made by May 17 for any of the workshops.

FOR FURTHER INFORMATION CONTACT: John Day, Office of Policy Development, FTA, (202) 366–4060.

SUPPLEMENTARY INFORMATION: On April 7, 1999, FTA issued a Notice of Proposed Rulemaking (NPRM) to carry out the requirements of Section 3009(e)(5) of TEA–21 (64 FR 17062–71). This statute directs FTA to issue regulations that define the process that FTA will use to evaluate candidate new starts under the criteria contained in 49 U.S.C. 5309. When issued, the Final Rule will set forth the approach FTA will use to evaluate candidate projects in terms of their justification and local financial commitment, as required under 49 U.S.C. 5309(e). Consistent with 49 U.S.C. 5309(e)(6), as amended by Section 3009(e) of TEA–21, these procedures will also be used to approve candidate projects for entry into preliminary engineering and final design. These procedures will also be used to evaluate projects in order to make recommendations for funding in the annual report to Congress required by 49 U.S.C. 5309(o)(1).

Notice of Meeting and Meeting Procedures

FTA believes that the public will benefit from an opportunity for dialog concerning the NPRM on evaluation of major capital investment projects, or new starts. Therefore, FTA is holding three public workshops, as follows: May 24, 1999; Toronto, Ontario, in conjunction with the 1999 APTA Commuter Rail/Rapid Transit Conference; June 3, 1999; San Francisco, CA; June 8, 1999; Washington, DC. Information gathered at the workshops will be included in the rulemaking docket and evaluated in conjunction with the development of the Final Rule. This notice establishes the general procedures set forth below to facilitate the workshops.

The workshops are intended to solicit public views and information on the proposed rule. Therefore, they will be conducted in an informal and nonadversarial manner.

The San Francisco, CA and Washington, DC workshops will last 3½ hours, beginning at 9:00 a.m.; the Toronto, Ontario workshop will last 3 hours, beginning at 2:00 p.m. The format will consist of an overview of the NPRM, including relevant background information, by FTA officials. A general question-and-answer session will follow.

Seating will be limited by available room size and will be made available on a first-come, first-served basis, with some seats reserved as necessary for speakers, interpreters and persons requiring their services, and others requiring specific accommodations. For those who cannot attend, a tape recording, transcript, or other record of the workshops will be available in the rulemaking docket after the workshops.

We will try to accommodate all attendees who wish to speak during the question-and-answer period. Speakers will be accommodated on a first-come, first-served basis; however, FTA reserves the right to exclude some speakers or limit their time in order to provide equal opportunity to all who wish to speak.

All statements and materials received at the workshop will become part of the rulemaking docket.

Issued: May 7, 1999.

Gordon J. Linton,

Administrator.

[FR Doc. 99–12034 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–57–P

Notices

Federal Register
Vol. 64, No. 92
Thursday, May 13, 1999

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 99–029–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of the genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significantly impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room, 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Assistant Director, Scientific Services, PPQ, APHIS, Suite 5B05, 4700 River Road Unit 147, Riverdale, MD 20737–1237; (301) 734–7710. For copies of the environmental assessments and findings of no significant impact, contact Ms. Linda Lightle at (301) 734–8231; e-mail: linda.lightle@usda.gov. Please refer to the permit numbers listed below when ordering documents

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained or a notification acknowledged before a regulated article may be introduced into the United States. The regulations set forth the permit application requirements and the notification procedures for the importation, interstate movement, and release into the environment of a regulated article.

In the curse of reviewing the permit applications, the Animal and Plant Health Inspection Service (APHIS) assessed the impact on the environment that releasing the organisms under the conditions described in the permit applications would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicant and on our review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit number	Permittee	Date issued	Organisms	Field test location
98–355–01r	USDA/ARS	3–17–99	*Fusarium moniliforme* fungus genetically engineered to express reduced virulence and antibiotic resistance tested in corn..	Illinois, Iowa
98–032–03r	USDA/ARS	3–17–99	Citrus viroid III genetically engineered to produce dwarfing in citrus trees..	Florida

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321 *et. seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Done in Washington, DC, this 6th day of May, 1999.

Joan M. Arnoldi,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 99–12149 Filed 5–12–99; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Designation Amendment for North Dakota (ND) to Provide Official Services in the Southern Illinois (IL) Area

AGENCY: Grain Inspection, Packers and Stockyards Administration (GIPSA).

ACTION: Notice.

SUMMARY: Under the United States Grain Standards Act (Act), GIPSA has amended the designation of North Dakota Grain Inspection Service, Inc. (North Dakota), to include the former Southern Illinois area.

DATE: Effective on April 26, 1999.

ADDRESSES: USDA, GIPSA, Janet M. Hart, Chief, Review Branch, Compliance Division, STOP 3604, Room 1647-S, 1400 Independence Ave., S.W., Washington, DC 20250–3604.

FOR FURTHER INFORMATION CONTACT: Janet M. Hart, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the March 3, 1999, **Federal Register** (64 FR 10270), GIPSA announced the designation of North Dakota to provide official inspection services under the Act effective July 1, 1999, and ending March 31, 2002. North Dakota asked GIPSA to amend their geographic area to include the former Southern Illinois area, due to the purchase of the designated corporation, Southern Illinois Grain Inspection Services, Inc. (Southern Illinois).

Section 7A(c)(2) of the Act authorizes GIPSA's Administrator to designate an agency to provide official services within a specified geographic area, if such agency is qualified under section 7(f)(1)(A) of the Act. GIPSA evaluated all available information regarding the designation criteria in Section 7(f)(1)(A) of the Act, and determined that North Dakota is qualified.

GIPSA announces designation of North Dakota to provide official inspection services under the Act, in the former Southern Illinois, area effective April 26, 1999, and ending March 31, 2002, concurrently with the end of North Dakota's current designation.

Pursuant to section 7(f)(2) of the Act, the following additional geographic area, in the State of Illinois, is assigned to North Dakota.

Bounded on the East by the eastern Cumberland County line; the eastern Jasper County line south to State Route 33; State Route 33 east-southeast to the Indiana-Illinois State line; the Indiana-Illinois State line south to the southern Gallatin County line;

Bounded on the South by the southern Gallatin, Saline, and Williamson County lines; the southern Jackson County line west to U.S. Route 51; U.S. Route 51 north to State Route 13; State Route 13 northwest to State Route 149; State Route 149 west to State Route 3; State Route 3 northwest to State Route 51; State Route 51 south to the Mississippi River; and

Bounded on the West by the Mississippi River north to the northern Calhoun County line;

Bounded on the North by the northern and eastern Calhoun County lines; the northern and eastern Jersey County lines; the northern Madison County line; the western Montgomery County line north to a point on this line that intersects with a straight line, from the junction of State Route 111 and the northern Macoupin County line to the junction of Interstate 55 and State Route 16 (in Montgomery County); from this point southeast along the straight line to the junction of Interstate 55 and State Route 16; State Route 16 east-northeast to a point approximately 1 mile northeast of Irving; a straight line from this point to the northern Fayette County line; the northern Fayette, Effingham, and Cumberland County lines.

Effective April 26, 1999, North Dakota's present geographic area is amended to include the area formerly assigned to Southern Illinois as described above. North Dakota's designation to provide official inspection services ends March 31, 2002. Official services in Illinois may be obtained by contacting North Dakota d.b.a. Illinois Official Grain Inspection at 618–632–1921.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: May 4, 1999.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 99–11978 Filed 5–12–99; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–802]

Procedures for Delivery of HEU Natural Uranium Component in the United States

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Request for Comments.

SUMMARY: The Department of Commerce is hereby providing interested parties an opportunity to comment on the latest draft Revision of the Procedures for Delivery of HEU Natural Uranium Component in the United States. All comments are due, by close of business, to the Department of Commerce seven (7) days from the date of publication of this notice.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: James C. Doyle, Karla Whalen, or Juanita H. Chen, Enforcement Group III, Office VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230, at telephone: 202–482–3793.

Background

As set forth in the USEC Privatization Act, the Department of Commerce ("the Department") has the responsibility for the administration and enforcement of the HEU Agreement. Pursuant to this Act, the Department established the Procedures for Delivery of HEU Natural Uranium Component in the United States ("HEU Procedures") (63 FR 36391, July 6, 1998) to enforce the USEC Privatization Act mandate. After requesting comments from parties on necessary or desirable changes to the HEU Procedures (63 FR 54108, October 8, 1998), the Department determined that revision and clarification of the HEU Procedures were warranted. Revised HEU Procedures were published on March 26, 1999, and parties were again invited to comment on necessary or desirable changes (64 FR 14697, March 26, 1999). As the Department has made substantive changes, in part as a result of parties' comments, the Department has determined that comments on this latest revision of the HEU Procedures are again appropriate.

Opportunity to Submit Comments

Parties wishing to comment on this latest revision of the HEU Procedures have the opportunity to participate on the record. Parties may submit comments with respect to these revised HEU Procedures by close of business seven (7) days from publication of this notice. Seven copies of the comments should be submitted to: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, Attention: Roland L. MacDonald.

All comments provided to the Department in response to this notice will be subject to release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, *et seq.* (1998).

Dated: May 7, 1999.

Joseph A. Spetrini,

Deputy Assistant Secretary, Enforcement Group III.

Draft Revised Procedures for Delivery of HEU Natural Uranium Component in the United States

The United States Enrichment Corporation Privatization Legislation, 42 U.S.C. 2297h, *et seq.* ("USEC Privatization Act"), directs the Secretary of Commerce to administer and enforce Russian origin uranium delivery limitations set forth in 42 U.S.C. 2297h-10(b)(5). Accordingly, the U.S.

Department of Commerce ("Department") is implementing § 2297h-10 of the USEC Privatization Act by issuing these revised HEU Procedures. The authority to implement the HEU Procedures does not derive from the Tariff Act of 1930, as amended. Therefore, these revised HEU Procedures are not subject to the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation ("Russian Suspension Agreement"), 57 FR 79235 (October 30, 1992), as amended.

A. Coverage

The uranium covered by these revised HEU Procedures is the $U_3 0_8$ or UF_6 component of the low-enriched uranium derived from the highly enriched uranium ("HEU") taken from dismantled nuclear warheads, deemed under United States law for all purposes to be of Russian origin, and delivered to the Russian Executive Agent pursuant to the USEC Privatization Act ("HEU Natural Uranium Component").

B. Definitions

1. Account Administrator—means the party that administers an account into which the Russian Executive Agent or a Designated Agent takes delivery of, and provides account balance information for, the HEU Natural Uranium Component prior to its sale pursuant to the USEC Privatization Act.

2. Annual Maximum Deliveries—means the delivery limitations to End-Users as set forth at 42 U.S.C. 2297h—10(b)(5):

ANNUAL MAXIMUM DELIVERIES TO END-USERS

Year:	(Millions lbs. U_3O_8 equivalent)
1998	2
1999	4
2000	6
2001	8
2002	10
2003	12
2004	14
2005	16
2006	17
2007	18
2008	19
2009 and each year thereafter	20

3. Consumption—means for use as nuclear fuel.

4. Designated Agent—means any party that has been authorized by the Ministry of Atomic Energy of the Russian Federation ("MINATOM") to sell the HEU Natural Uranium Component.

5. Designated Agent's Account—means the account held in the name of the Designated Agent, into which only the HEU Natural Uranium Component is delivered prior to its transfer pursuant to the USEC Privatization Act.

6. End-User—means an entity that purchases natural uranium for consumption in a nuclear reactor in the United States, owned or operated by itself or a parent, subsidiary, or other entity under common ownership or control.

7. Executive Agent—means either the United States or Russian Federation executive agent with the authority to implement the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons, dated February 19, 1993.

8. Secretary—means the Secretary of Commerce or a designee. The Secretary has responsibility for the administration and enforcement of the limitations set forth in 42 U.S.C. 2297h–10(b)(5).

9. $U_3 O_8$ to (UF_6 Conversion—1 KgU in UF_6 2.61283 lbs. $U_3 0_8$

10. Verification—The process by which the Department examines the records of the party that provided the information being examined, and interviews company personnel who prepared such information and who are familiar with the sources of the data in the information, in order to establish the adequacy and accuracy of submitted information.

11. Importer of Record—means the person by whom, or for whose account, subject merchandise is imported.

C. Record Procedures and Commercial Confidentiality

1. Public Record and Access

a. HEU Record: A separate record for documents and information generated under the HEU Procedures shall be created under the identifying title "HEU File" and maintained in the Central Records Unit.

b. Central Records Unit: Import Administration's Central Records Unit is located at B–099, U.S. Department of Commerce, Pennsylvania Avenue and 14th Street, NW, Washington, DC 20230. The office hours of the Central Records Unit are between 8:30 A.M. and 5:00 P.M. on business days.

c. The Central Records Unit is responsible for maintaining a public and an official record for the HEU File. The public record will consist of all material contained in the official record that the Secretary determines is subject to release under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, et seq. (1998), and disclosed to the general public in the Central Records Unit. The Secretary will charge an appropriate fee for providing copies of documents. The official record will contain the foregoing information and information for which the submitter has claimed an exemption to release under FOIA. Such official record will be accessible only to authorized Commerce Department employees.

d. FOIA Release and Treatment of Commercial and Financial Information: Documents submitted to the Department are fully releasable under FOIA, unless a party claims protection from release under a FOIA exemption. A party making a submission may not claim its own identity as protected from release under FOIA. In order to claim protection from release, a party must specify the appropriate exemption applicable to the information which the party seeks to protect from release, and bracket such information. See § 4.7 of the Department's FOIA regulations, set forth in 15 C.F.R. part 4 (1998). If the information in the submission is protected from release under an exemption to FOIA, the party submitting such documentation may provide a releasable public version along with the non-releasable version. Further information on FOIA may be accessed at *http://www.usdoj.gov/foia.*

e. Interim Record: The Department will create the public record of the HEU File. Within 90 days from publication of the final revised HEU Procedures, the Department will provide to parties that have already submitted information to the Department, pursuant to the January 7, 1998 HEU Procedures, the opportunity to claim that documents are exempt from release under FOIA and to create releasable versions of said documents. The Department will also transfer any documentation relating to the HEU Procedures from the record for the Russian Suspension Agreement (A–821–802) to the HEU File, or will return such documentation to the submitter, as appropriate.

2. Record Submission Instructions

a. Where to file: For the Department to consider a submission to the record, persons must address and submit all documents to: The Secretary of Commerce, Attention: Import Administration, Central Records Unit, Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Submissions may be made between 8:30 AM and 5:00 PM on business days. Courtesy copies addressed to the appropriate employee, and designating

the employee's mail stop room number, may be delivered to Room 1874 (Courier Delivery Entrance).

b. Required Header Information: Any submission made to the HEU File must contain the following information in the upper right hand corner of the document in the order presented below:

HEU File
Number of Pages
Fully Releasable under FOIA, or, Not Fully Releasable under FOIA
Attn: Uranium Program, Room 7866

c. Number of Copies: Each submission to the Department must be accompanied by three copies of the submission. Where claim of exemption from release under FOIA is made, the specific portion(s) of the submission for which exemption is claimed must be clearly identified when the submission is made. Upon receipt, the Central Records Unit will stamp the official date of filing on the submission.

D. Allocation of Annual Maximum Deliveries to End-Users

The Department recognizes that MINATOM may allocate the Annual Maximum Deliveries of HEU Natural Uranium Component among any Designated Agent(s) which it authorizes to sell the HEU Natural Uranium Component. For each Designated Agent receiving a delivery allocation, MINATOM will issue a certificate identifying such Designated Agent, the duration of time for which the allocation is valid, and the maximum annual amount to be delivered under that certificate. The certificate(s) will also contain a statement that the material to be delivered to the Designated Agent may be sold in the United States in accordance with 42 U.S. C. 2297h-10. No such certificate shall be valid and effective until such time as the Department receives a copy of such certificate. The cumulative quantities authorized by all such certificates for each year may not exceed the Annual Maximum Deliveries for such year.

E. Re-allocation

Annual deliveries allocated to a Designated Agent may be re-allocated to any other Designated Agent or to MINATOM within the same annual period subject to the Annual Maximum Deliveries, provided that MINATOM submits to the Department a copy of the amended and/or terminated certificate(s) from which annual delivery allocation is to be withdrawn and a copy of the new certificate(s) re-allocating annual delivery allocation.

F. Delivery Forfeit and Flexibility

On December 31 of each year, any portion of the Annual Maximum Deliveries not delivered in that year will be forfeited. In the unlikely event that there are transfer, transportation, or other difficulties beyond the control of the Designated Agent, the Department may provide for a 30 day grace period to complete the delivery. The Department must be notified in writing of a request for a 30 day grace period, detailing the reasons for the delivery delay.

G. Swaps, Exchanges, Loans, or Resales of Material

1. Swaps, Exchanges or Loans: Swaps, exchanges or loans of HEU Natural Uranium Component may be conducted solely for the purpose of facilitating delivery, further processing, and end-use as nuclear fuel. Notification of such permitted swaps, exchanges, or loans is required to be provided to the Department at the time of the transactions, in the format set forth in Attachment One; however, no prior approval by the Department is required to proceed. Examples of such permitted swaps, exchanges, or loans are those designed to avoid transportation costs. The Department considers swaps, exchanges, or loans that will result in sales for Consumption in the United States, directly or indirectly, in excess of the Annual Maximum Deliveries to be circumvention. Swaps, exchanges or loans are subject to verification by the Department at any time and at its discretion.

2. Resale.

a. The Department will permit End-Users to resell the HEU Natural Uranium Component. If the HEU Natural Uranium Component is resold, the End-User (or any other entity) making the resale must notify the Department of the date of the resale, the entity to whom it was sold, and the volume resold, in the format provided in Attachment One; however, no prior approval by the Department is required to proceed.

b. If an End-User resells the HEU Natural Uranium Component to any party other than another End-User, the material must be held in a separate account and quarterly reports on the account balance, in the format provided in Attachment Two, are required from the purchaser of the resold material. The material must be tracked in a separate account, and quarterly reports on the account balance must be provided for all subsequent resales except those to an End-User.

c. An End-User may purchase HEU Natural Uranium Component on re-sale only from another End-User or an entity utilizing a separate account and providing quarterly reports to the Department as noted in Paragraph H.2.b. above.

d. Resales remain subject to the requirements of § 2297h-10 of the USEC Privatization Act, these HEU Procedures, and are also subject to verification by the Department at any time and at its discretion.

H. Post-Delivery Notification

For all deliveries of HEU Natural Uranium Component, Designated Agents must submit to the Department, within ten (10) days of receipt, copies of all delivery confirmations provided to the Designated Agents from the appropriate Account Administrator. Such confirmations must contain the identity of the account holders from and to which the material was transferred, the quantity transferred, the contract number pursuant to which such delivery is made, and the date of delivery.

I. Quarterly Reports

1. Designated Agents

Designated Agents must submit for the HEU File quarterly reports and certifications detailing all activity relating to the movement of HEU Natural Uranium Component into and out of their respective accounts, in the format set forth in Attachment Two. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31, respectively.

2. Account Administrators

Account Administrators must submit quarterly reports regarding the accounts holding the HEU Natural Uranium Component, in the format set forth in Attachment Three. These reports must be submitted on May 1, August 1, November 1, and February 1 of each year for the quarters ending March 31, June 30, September 30, and December 31, respectively.

J. Verification

The Department reserves the right to verify any information submitted to the Department relating to deliveries under the USEC Privatization Act. Furthermore, the Department may restrict future deliveries from any account in which the reported activity is found to be in violation of these revised HEU Procedures and/or the Annual Maximum Deliveries if such violations are not rectified to the satisfaction of the Department and MINATOM.

K. Consultations

Upon request, MINATOM and the Department will hold consultations subsequent to the filing of the quarterly reports due February 1 of each year for the purpose of exchanging/reviewing all data pertaining to deliveries of HEU Natural Uranium Component under these revised HEU Procedures during the previous year. Consultations may be held at other times as necessary.

L. Re-Importation Requirements [1]

1. HEU Natural Uranium Component previously sold to an End-User, exported from the United States for further processing, and subsequently re-imported:

The End-user or its agent must submit a notification letter and certifications as set forth in Attachment Four.

2. HEU Natural Uranium Component sold for delivery outside the territory of the United States to an End-User and subsequently imported to be consumed by an End-User in accordance with Annual Maximum Delivery Limitations:

The End-User or its agent must submit a notification letter and certifications as set forth in Attachment Four.

3. HEU Natural Uranium Component sold for consumption outside the United States to be imported into the United States for further processing and exportation:

The entity or importer of record must provide the information set forth in Attachment Five. In addition, the owner of this material must certify to the Department that the material will not be swapped, exchanged, or loaned while in the United States and that it will not (and has not) circumvented the Annual Maximum Delivery Limitations. The owner must also provide the Department with the expected quantity (U_3O_8 equivalent, less any processing losses) that will be exported from the United States. There shall be no time or quantity limitations on the import of HEU Natural Uranium Component under this provision.

4. In all cases noted above, the owner of the HEU Natural Uranium Component or its agent must provide the Department with the required information ten (10) days prior to its expected entry into the United States. Within ten (10) days of receipt of the required information, the Department shall provide the United States Customs Service with the appropriate instructions to clear this shipment. The Department will notify the importer of record of the issuance of such instructions.

M. Enforcement

If the Department finds that a Designated Agent has directly or indirectly exceeded its delivery allocation, the Department will require the Account Administrator or the appropriate entity to withhold any further release of HEU Natural Uranium Component from the Designated Agent's Account, until the issue has been satisfactorily resolved among the Department, MINATOM, and the relevant Designated Agent. The Department will notify both the Account Administrator and the affected Designated Agent in writing of its enforcement action.

N. Future Revisions

Any future revisions to these HEU Procedures will be made only after public notice in the **Federal Register** and an opportunity for interested party comment.

Attachment One—Swaps, Exchanges, Loans, and Resales Notification Format

For each swap, exchange, loan, or resale under a provision of the HEU Procedures, provide the following information to the Department:

1. The quantity and origin(s) of the material.
2. The location(s) of the transaction.
3. The parties involved in the transaction.
4. The purpose of the transaction.

Attachment Two [2] **Designated Agent Quarterly Report Form**

Quarterly Delivery Report for (INSERT DATES AND DESIGNATED AGENT) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): ____

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent): _____

(DESIGNATED AGENT) certifies that it holds an HEU Natural Uranium Component account at (STATE NAME OF ENTITY(IES)) and that all HEU Natural Uranium Component transferred from or into this (these) account(s) during calendar quarter (INDICATE DATES) has been transferred for one of the following reasons: (1) for use under an approved matched sale under 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act and Article IV of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended; (2) for use in overfeeding in U.S. enrichment facilities pursuant to 42 U.S.C. § 2297h-10(b)(7); (3) for delivery to a United States End-User for Consumption, within the Annual Maximum Deliveries set forth in the USEC Privatization Act, at 42 U.S.C. § 2297h-10(b)(5); (4) for export out of the United States; or (5) for further processing on behalf of (NAME OF ENTITY).

(DESIGNATED AGENT) further certifies that, for the time period in which the material was in its possession or control, none of the HEU Natural Uranium Component transferred from or into the account(s) during the calendar quarter (INDICATE DATES) has been loaned, swapped, exchanged or used in any arrangement that directly or indirectly circumvents the limitations set forth in 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act, the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation, as amended, or the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature: _____

Printed Name: _____

Title: _____

Attachment Three—Account Administrator Quarterly Report Form

Quarterly Report for (INSERT DATES AND ACCOUNT ADMINISTRATOR) HEU Natural Uranium Component

Beginning Balance (in U_3O_8 equivalent): ____

[1] The certifications required under this Paragraph are independent of the general importer certification requirements of the Agreements Suspending the Antidumping Duty Investigations on Uranium, as amended ("the Agreements"). Certification number 3 on Attachment Four (page two) and certification numbers 2 and 4 on Attachment Five (page two) will continue to be required only to the extent they are applicable. At such a time when the Agreements are no longer in existence, the certifications required under this Paragraph will be amended to reflect the absence of the Agreements.

[2] The Department will amend this certification to reflect changes, if any, in the existence of the Agreement Suspending the Antidumping Investigation on Uranium from the Russian Federation.

Transaction date	Delivered from	Delivered to	Quantity (in UF_6 and U_3O_8 equivalent)	Transaction description	Comments

Ending Balance (in U_3O_8 equivalent): _____

(ACCOUNT ADMINISTRATOR) certifies that to the best of its knowledge, the foregoing information is true and correct.

Signature: _____

Printed Name: _____

Title: _____

Attachment Four (Page One)—Re-importation Notification Form and Certifications

TOPIC: Re-importation of Uranium under 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act.

Pursuant to Paragraph L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing the re-importation of Russian origin uranium subject to the delivery limitations set forth in the USEC Privatization Act, at 42 U.S.C. § 2297h-10(b)(5):

Export:

2. Quantity of HEU Natural Uranium Component (U_3O_8 equivalent) exported out of U.S.:

3. Date of Export out of U.S. (if available):

Re-Importation:

1. (NUMBER) lbs. of U_3O_8 equivalent contained in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt %, as applicable:

2. Port of Re-Importation:

3. Importer of Record:

4. Planned Date of Re-Importation:

5. End User:

6. Vessel/Airline Name:

Also, please find attached the importer of record declaration regarding country of origin, anti-circumvention and qualification of this material under 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Attachment Four (Page Two)—Importation Notification Form and Certifications

Certifications To U.S. Customs Service

1. (END-USER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), and/or enriched in (INSERT COUNTRY) and/or fabricated in (INSERT COUNTRY)

2. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the delivery limitations set forth in 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act, 42 U.S.C. § 2297h, *et seq.*, and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

3. (END-USER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

4. (END-USER or IMPORTER OF RECORD) hereby certifies that the uranium being imported into the United States is for consumption in the United States and is in compliance with 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act, 42 U.S.C. § 2297h, *et seq.* The material being imported represents (NUMBER) lbs. U_3O_8 equivalent of (NUMBER) lbs. U_3O_8 equivalent exported for further processing on (DATE) or delivered to an End-User outside the United States.

Signature: _____

Printed Name: _____

Title: _____

Attachment Five (Page One)—Importation Notification Form and Certifications

TOPIC: Importation of Uranium under 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act—Consumption Outside the United States.

Pursuant to Paragraph L of the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised, we hereby submit information describing our scheduled importation of Russian origin uranium into the United States for subsequent export:

1. Scheduled Date of Re-importation:

2. (NUMBER) lbs. Of U_3O_8 in (NUMBER) KgU with enrichment assay (NUMBER) wt % and tails assay (NUMBER) wt % (if applicable):

3. Port of Re-importation:

4. Importer of Record:

5. Vessel/Airline:

6. Parties Providing Further Processing and/or storage:

7. Anticipated Date of Export out of U.S. (if available):

8. End-User:

Also, please find attached the importer of record declaration regarding country of origin, anticircumvention, and qualification of the material under 42 U.S.C. § 2297h-10(b) of the USEC Privatization Act. We also agree to verification of this information if requested.

Attachment Five (Page Two)—Importation Notification Form and Certifications

Certifications To U.S. Customs Service

1. (OWNER or IMPORTER OF RECORD) hereby certifies that the HEU Natural Uranium Component of the uranium being imported into the United States is derived from Russian highly enriched uranium pursuant to the Agreement Between the Government of the United States of America and the Government of the Russian Federation Concerning the Disposition of Highly Enriched Uranium Extracted from Nuclear Weapons. The uranium being imported was converted in (INSERT COUNTRY), and/or enriched in (INSERT COUNTRY), and/or fabricated in (INSERT COUNTRY) and is not intended for consumption in the United States.

2. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended

3. (OWNER or IMPORTER OF RECORD) hereby certifies that the material being imported was not obtained under any arrangement, swap, exchange, or other transaction designed to circumvent the delivery limitations set forth in 42 U.S.C. § 2297h-10(b)(5) of the USEC Privatization Act, 42 U.S.C. § 2297H, et seq., and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Further, the material being imported will not be swapped, exchanged, or loaned or otherwise used in any other transaction designed to circumvent any of the agreements suspending the antidumping investigations on uranium, as amended.

Further, the material being imported will not be swapped, exchanged, or loaned or otherwise used in any other transaction designed to circumvent or the delivery limitations set forth in 42 U.S.C.§ 2297h-10(b)(5) of the USEC Privatization Act, 42 U.S.C. § 2297h, et seq. and the Procedures for Delivery of HEU Natural Uranium Component in the United States, as revised.

Signature: _____

Printed Name: _____

Title: _____

[FR Doc. 99–12155 Filed 5–12–99; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050799C]

Proposed Agency Information Collection; Certified Observer Contractors of the North Pacific

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 12, 1999.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue, NW, Washington DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Patsy A. Bearden, F/AK01, NOAA National Marine Fisheries Service (NMFS), Sustainable Fisheries Division, P.O. Box 21668, Juneau, Alaska 99802, telephone (907) 586–7228.

SUPPLEMENTARY INFORMATION:

I. Abstract

NMFS is requesting renewal of OMB approval of the information collection to support the Certified Observer Contractor Program. Information must be submitted by persons wishing to become certified observers or contractors who can then provide observer services to the groundfish fisheries in the Gulf of Alaska and the Bering Sea-Aleutian Islands management areas. Certified contractors and observers must submit additional information as part of the on-going observer process.

II. Method of Collection

Respondents would comply with requirements set forth in 50 CFR part 679.

III. Data

OMB Number: 0648–0318.

Form Number: None.

Type of Review: Regular submission.

Affected Public: Contractor business.

Estimated Number of Respondents: 540.

Estimated Time Per Response: The response times for this proposed information collection are 60 hours per application to be certified as a contractor; 3 minutes to supply a certificate of insurance; 7 minutes to register for training, briefing, or debriefing; 2 minutes submit a notification of an observer's physical examination; 2 hours for an observer's actual physical examination; 7 minutes for observer assignment information; 7 minutes for weekly deployment/logistics reports; 15 minutes to provide copies of contracts; 2 hours to provide reports on observer harassment, observer safety concerns, or observer performance problems; 40 hours for appeals of suspension or decertification of a contractor; and 4 hours for appeals of suspension of decertification of an observer.

Estimated Total Annual Burden Hours: 2,106.

Estimated Total Annual Cost to Public: $38,904.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 5, 1999.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 99–12115 Filed 5–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050599C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Salmon Technical Team (STT) will meet in a work session which is open to the public.

DATES: The meeting will begin at 1 p.m. on Wednesday, June 2, 1999 and continue on Thursday, June 3, 1999 from approximately 8 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at the Council office in Portland, OR.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. John Coon, Salmon Management Coordinator; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to review and clarify the STT's internal administrative procedures, plan and begin work on an overfishing review assignment from the Council, review the problems encountered in the 1999 preseason salmon management process and make recommendations for improvements to the Council, assess STT work products and responsibilities with regard to meeting new requirements resulting from the Sustainable Fisheries Act and Amendment 14 to the salmon fishery management plan, and discuss other pertinent issues with regard to fulfilling STT technical and analytical responsibilities.

Although other issues not contained in this agenda may come before this Team for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 6, 1999.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 99–12116 Filed 5–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050699C]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of applications to modify permits (1094, 1144, 1136); issuance of permits (1122, 1173); and modifications to existing permits (899, 901, 902, 903, 998, 1141).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received applications for modifications to existing permits from: Washington Department of Fish and Wildlife in Olympia, WA (WDFW) (1094), Mr. Bruce D. Peery (BDP) (1144), and Oregon Cooperative Fish and Wildlife Research Unit in Corvallis, OR (OCFWRU) (1136); NMFS has issued permits to Mr. Cary Osterhaus, U.S. Bureau of Land Management (BLM) (1122), and Dr. Douglas DeHart, Oregon Department of Fish and Wildlife (ODFW) (1173); and NMFS has issued modifications to scientific research permits to: Oregon Department of Fish and Wildlife at Portland, OR (ODFW) (899), WDFW (901, 902), Idaho Department of Fish and Game at Boise, ID (IDFG) (903), the Shoshone-Bannock Tribes at Fort Hall, ID (SBT) (998), and Public Utility District Number 2 of Grant County in Ephrata, WA (PUD GC) (1141).

DATES: Written comments or requests for a public hearing on any of the new applications or modification requests must be received on or before June 14, 1999.

ADDRESSES: The applications and related documents are available for review in the following offices, by appointment:

For permits 899, 901, 902, 903, 998, 1094, 1122, 1136, 1141, 1173: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–4169 (503–230–5400).

For permit 1144: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (301–713–1401).

All documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permit 1144: Terri Jordan, Silver Spring, MD (301–713–1401).

For permits 998, 1094, 1136: Leslie Schaeffer, Portland, OR (503–230–5433).

For permits 899, 901, 902, 903: Robert Koch, Portland, OR (503–230–5424).

For permits 1122, 1141, 1173: Tom Lichatowich, Portland, OR (503–230–5438).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Green turtle (*Chelonia mydas*), Loggerhead turtle (*Caretta caretta*).

Fish

Chinook salmon (*Oncorhynchus tshawytscha*): Snake River (SnR) fall, SnR spring/summer, upper Columbia River (UCR) spring.

Coho salmon (*Oncorhynchus kisutch*): Southern Oregon/Northern California Coast (SONCC).

Cutthroat trout (*Oncorhynchus clarki clarki*): Umpqua River (UmR).

Sockeye salmon (*Oncorhynchus nerka*): SnR.

Steelhead trout (*Oncorhynchus mykiss*): UCR.

Modification Requests Received

WDFW requests a modification to scientific research/enhancement permit 1094. Permit 1094 authorizes WDFW an annual take of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a hatchery supplementation program in the mid- to upper Columbia River Basin. Incidental takes of ESA-listed species resulting from WDFW hatchery operations and hatchery produced fish releases are also authorized by the permit. WDFW believes the artificial propagation of ESA-listed steelhead will benefit the species by enhancing the population, which is not currently able to naturally replace itself. For the modification, WDFW requests an increase in the annual take of adult, endangered, naturally produced and artificially propagated, UCR steelhead associated with scientific research designed to determine if hatchery fish survival is increased with the incorporation of wild brood stock at Wells Hatchery. Adult, endangered, naturally produced and artificially propagated, UCR steelhead are proposed to be captured, examined for marks, and released. ESA-listed adult fish indirect mortalities are also requested. The modification is requested to be valid for the duration of the permit, which expires on May 31, 2003.

BDP possesses a 1-year permit (1144) to sample for and collect green and loggerhead sea turtles in the Ft. Pierce Inlet for the purposes of stock assessment to characterize the sea turtles that utilize the southern Indian River Lagoon System, Florida. Captured turtles will be weighed, photographed, measured, tagged, and released. BDP is requesting an increase in the authorized take of green sea turtles from 75 to 100 animals. This increase in take is necessitated by the collection of of more green turtles than expected during the previous permit period.

On April 26, 1999, notice was published (64 FR 20266) that NMFS had received a modification request for permit 1136. Permit 1136 authorizes OCFWRU annual direct takes of juvenile, endangered, SnR sockeye

salmon; juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; juvenile, threatened, SnR fall chinook salmon; and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with research designed to compare biological and physiological indices of wild and hatchery fish exposed to stress from bypass, collection, and transportation activities at dams on the Snake and Columbia Rivers in the Pacific Northwest. For the modification, OCFWRU is requesting annual takes of juvenile, endangered, naturally produced and artificially propagated, UCR spring chinook salmon associated with the research. NMFS has received an amended modification request seeking an increase in the annual take of juvenile, threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon and juvenile, endangered, naturally produced, UCR steelhead associated with the research. The additional take is requested because annual take estimates were not recalculated using the expected increased abundance of some species in 1999. The modification is requested to be valid for the duration of the permit, which expires on December 31, 2000.

Permits and Modifications Issued

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by ODFW for a modification to incidental take permit 899. Permit 899 authorizes ODFW annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Oregon. Modification 1 to permit 899 was issued to on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. Modification 1 is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on October 15, 1997 (62 FR 53596), that an applications had been filed by WDFW for modifications to incidental take permit 901. Permit 901 authorizes WDFW annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Washington. Modification 1 to permit 901 was issued on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. The modification is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by WDFW for modifications to incidental take permit 902. Permit 902 authorizes WDFW annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Washington. Modification 1 to permit 902 was issued to WDFW on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. The modification is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on June 10, 1998 (63 FR 31739), that an application had been filed by IDFG for modifications to incidental take permit 903. Permit 903 authorizes IDFG annual incidental takes of endangered SnR sockeye salmon; threatened, naturally produced and artificially propagated, SnR spring/summer chinook salmon; and threatened SnR fall chinook salmon associated with the operation of and releases from the non-listed anadromous fish hatchery programs in the state of Idaho. Modification 1 to permit 903 was issued to IDFG on April 8, 1999, and authorizes annual incidental takes of endangered, naturally produced and artificially propagated, UCR steelhead associated with the operation of and releases from the non-listed anadromous fish hatchery programs. Modification 1 is valid for the duration of the permit, which expires on December 31, 1999.

Notice was published on February 11, 1999 (64 FR 6880), that an application had been filed by the SBT for modifications to scientific research permit 998. Permit 998 authorizes the SBT annual direct takes of juvenile, endangered, SnR sockeye salmon and juvenile, threatened, naturally produced, SnR spring/summer chinook salmon associated with a study designed to evaluate smolt outmigration from Pettit and Alturas Lakes in ID. Modification 2 to permit 998 was issued to the SBT on April April 28, 1999, and authorizes an increase in the annual direct take of juvenile, endangered, SnR sockeye salmon associated with a mark/recapture study. An associated increase in juvenile sockeye salmon indirect mortalities is also authorized. Modification 2 is valid for the duration of the permit, which expires on December 31, 2000.

Notice was published on March 6, 1998 (63 FR 11220), and December 21, 1998 (63 FR 70393), that BLM had applied for a scientific research permit. Permit 1122 was issued on April 30, 1999, authorizing take of listed species. Permit 1122 expires December 31, 2002, and authorizes annual direct takes of adult and juvenile, endangered, UmR cutthroat trout and juvenile, threatened, SONCC coho salmon associated with scientific research. The purpose of the research is to determine the sub-basin contributions to the migratory population of UmR cutthroat trout and to determine the survival and abundance of juvenile SONCC coho salmon. This information will benefit wild populations by identifying important habitat areas where restoration efforts have had the most beneficial impact. BLM will use screw traps to estimate fish abundance in selected sub-basins and will apply radiotransmitters to juvenile UmR cutthroat trout in tributaries of the UmR. The U.S. Forest Service of Tiller, OR (USFS) is authorized to act as an agent of BLM and participate in the research activities. ODFW is authorized to act as an agent to receive and store UmR cutthroat trout and SONCC coho salmon indirect mortalities recovered by BLM and USFS.

Notice was published on March 25, 1999 (64 FR 14432), that an application had been filed by PUD GC for modifications to permit 1141. Permit 1141 authorizes annual direct takes of adult and juvenile, endangered, naturally produced and artificially propagated, UCR steelhead associated with a fish salvage operation and two scientific research studies at Wanapum and Priest Rapids Dams located on the Columbia River. Modification 1 to permit 1141 was issued on May 5, 1999, and authorizes annual takes of adult and juvenile UCR spring chinook salmon associated with PUD GC's previous activities. Modification 1 also authorizes takes of adult and juvenile, endangered,

naturally produced and artificially propagated, UCR steelhead and adult and juvenile UCR spring chinook salmon associated with two additional research studies. Modification 1 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on August 3, 1998 (63 FR 41230), that ODFW had applied for a scientific research permit. Permit 1173 was issued on April 30, 1999, and authorizes annual direct takes of adult and juvenile, endangered, UmR cutthroat trout associated with a broad-base sampling program. ESA-listed fish will be captured, examined, marked, and released. Traps, electrofishing, and hook/line techniques will be used to capture the fish. Fin clips as well as passive integrated transponders (PIT) will be used to mark and monitor their migrations. Fish will also be observed by snorkeling and routine stream surveys. Data will be used to expand current knowledge about cutthroat trout distribution, migration patterns and population densities. Permit 1173 expires on December 31, 2003.

Dated: May 7, 1999.

Margaret Lorenz,

Acting Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–12117 Filed 5–12–99; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043099A]

Marine Mammals; File No. 731–1509–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application.

SUMMARY: Notice is hereby given that Robin W. Baird, Ph.D., C201–2747 S. Kihei Road, Kihei, Hawaii 96753, has applied in due form for a permit to take several species of marine mammals for purposes of scientific research.

DATES: Written or telefaxed comments must be received on or before June 14, 1999.

Written comments or requests for a public hearing on this application should be mailed to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or by other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR 222.23).

The applicant is requesting to harass the species of cetaceans listed here during the course of photo-identification, behavioral research, and tagging (using suction-cup attached tags) of several species of cetaceans in U.S. waters of the Pacific Ocean (including Hawaii, California, Oregon, Washington, and Alaska) as well as international waters (particularly the Mediterranean). Incidental harassment of all species of cetaceans may occur through vessel approach, photographic identification and behavioral research. The research will be carried out over a 5-year period. The research will focus primarily on diving and night-time behavior, as well as population estimation, social organization and inter-specific interactions.

The following species may be taken by harassment during the course of the research: Northern right whale (*Eubalaena glacialis*), Minke whale (*Balaenoptera acutorostrata*), Sei whale (*Balaenoptera borealis*), Bryde's whale (*Balaenoptera edeni*), Blue whale (*Balaenoptera musculus*), Finback whale (*Balaenoptera physalus*), Humpback whale (*Megaptera novaeangliae*), Gray whale (*Eschrichtius robustus*), Short-beaked common dolphin (*Delphinus delphis*), Long-beaked common dolphin (*Delphinus capensis*), Pygmy killer whale (*Feresa attenuata*), Short-finned pilot whale (*Globicephala macrorhynchus*), Risso's dolphin (*Grumpus griseus*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), Northern right whale dolphin (*Lissodelphis borealis*), Killer whale (*Orcinus orca*), Melon-headed whale (*Peponocephala electra*), False killer whale (*Pseudorca crassidens*), Pantropical spotted dolphin (*Stenella attenuata*), Striped dolphin (*Stenella coeruleoalba*), Spinner dolphin (*Stenella longirostris*), Rough-toothed dolphin (*Steno bredanensis*), Bottlenose dolphin (*Tursiops truncatus*), Harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Pygmy sperm whale (*Kogia breviceps*), Dwarf sperm whale (*Kogia simus*), Sperm whale (*Physeter macrocephalus*), Baird's beaked whale (*Berardius bairdii*), Bottlenose whale (*Hyperoodon sp.*), Hubbs' beaked whale (*Mesoplodon carlhubbsi*), Blainville's beaked whale (*Mesoplodon densirostris*), Ginkgo-toothed whale (*Mesoplodon ginkgodens*), Hector's beaked whale (*Mesoplodon hectori*), Stejneger's beaked whale (*Mesoplodon stejnegeri*), Cuvier's beaked whale (*Ziphius cavirostris*).

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Documents may be reviewed in the following locations:

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13130, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way, NE, BIN C15700, Bldg. 1, Seattle, WA 98115–0070 (206/526–6426);

Regional Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213 (562/980–4027);

Protected Species Program Manager, Pacific Islands Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2941 (808/973–2987); and

Regional Administrator, Alaska Region, NMFS, 709 W. 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907/586–7235).

Dated: May 6, 1999.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 99–12118 Filed 5–12–99; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

May 6, 1999.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota reopenings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for swing and special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 63 FR 71096, published on December 23, 1998). Also see 63 FR 63297, published on November 12, 1998.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 6, 1999.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 5, 1998, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1999 and extends through December 31, 1999.

Effective on May 13, 1999, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	908,151 dozen.
339/639	1,272,761 dozen.
340/640	1,054,856 dozen.
342/642	475,053 dozen
347/348/647/648	2,508,276 dozen of which not more than 1,238,434 dozen shall be in Categories 647/648.
433	23,631 dozen.
442	80,129 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1998.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 99–12102 Filed 5–12–99; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Acting Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 14, 1999.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV. Requests for copies of the proposed information collection requests should be addressed to Patrick J. Sherrill, Department of Education, 400 Maryland Avenue, S.W., Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651, or should be electronically mailed to the internet address *Pat—Sherrill@ed.gov*, or should be faxed to 202–708–9346.

FOR FURTHER INFORMATION CONTACT: Patrick J. Sherrill (202) 708–8196. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment at the address specified above. Copies of the requests are available from Patrick J. Sherrill at the address specified above.

Dated: May 10, 1999.

William E. Burrow,

Acting Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Graduate Assistance in Areas of National Need (GAANN) Program Assessment Instrument.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Burden:

Responses: 225

Burden Hours: 2,250

Abstract: This data collection is the basis of the GAANN Program Assessment, which will report on the status and accomplishments of the GAANN program as a whole. Results will be reported to the GAANN community and program staff and to the Secretary in order to respond to Government Performance and Results Act (GPRA) requirements.

The GPRA requires the Department to measure the outcomes of its programs, compare them to what was planned, and report on the results attained.

[FR Doc. 99–12156 Filed 5–12–99; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. MG99–000 and MT99–19–11–000]

Pine Needle LNG Company, L.L.C.; Notice of Filing

May 7, 1999.

Take notice that on April 29, 1999, Pine Needle LNG Company, L.L.C. (Pine Needle) filed standards of conduct under Order Nos. 497 *et seq.*[1] Order Nos. 566 *et seq.*,[2] and Order No. 599.[3]

Pine Needle also submitted the following revised tariff sheets to Original Volume No. 1 of Pine Needle's FERC Gas Tariff to become effective May 29, 1999:

Substitute Original Sheet No. 40
Substitute Original Sheet No. 90
Original Sheet No. 91

Pine Needle states that it has served copies of this filing to its affected customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 C.F.R. 385.211 or 385.214). All such motions to intervene or protest should be filed on or before May 24, 1999. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 99–12110 Filed 5–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP99–449–000]

Tennessee Gas Pipeline Company; Notice of Application to Abandon

May 7, 1999.

Take notice that on May 3, 1999, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed under Section 7(b) of the Natural Gas Act, for authority to abandon, ownership interests in a segment of offshore pipeline designated as Line 823X–1000 along with associated riser and platform piping located in West Cameron Block 609B, Offshore Louisiana. This application is on file with the Commission and open to public inspection. The application may also be viewed on the web at www.ferc.fed.us. Call (202) 208–2222 for assistance.

Specifically, Tennessee proposes to abandon its 16.66% ownership interest in 1,200 feet of 12-inch pipeline connecting Platform B of West Cameron Block 609 to an underwater tap in W.C. Block 617. Natural gas was transported through this pipeline for ultimate delivery onshore. Newfield Exploration (Newfield), the producer who owns the platform to which Line 823X–100 is connected, has advised Tennessee and Columbia Gulf Transmission Company (Columbia Gulf), the other holder of interest in the facilities, that it intends to abandon and remove the platform sometime before June 1999. Both Tennessee and Columbia Gulf have agreed to transfer their interest in the measuring equipment and risers located on the platform to Newfield. Newfield will than remove these facilities with the platform.

Any person desiring to be heard or make any protest with reference to said application should on or before May 14, 1999, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required, or if the Commission on its own review of the matter finds that permission and approval of the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be

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[1] Order No. 497, 53FR 22139 (June 14, 1988), FERC Stats. & Regs. 1986–1990 ¶ 30,820 (1988); Order No. 497–A, *order on rehearing*, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. 1986–1990 ¶ 30,868 (1989); Order No. 497–B, *order extending sunset date*, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. 1986–1990 ¶ 30,908 (1990); Order No. 497–C, *order extending sunset date*, 57 FR 9 (January 2, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,934 (1991), *rehearing denied*, 57 FR 5815 (February 18, 1992), 58 FERC ¶ 61,139 (1992); *Tenneco Gas* v. *FERC* (affirmed in part and remanded in part), 969 F. 2d 1187 (D.C. Cir. 1992); Order No. 497–D, *order on remand and extending sunset date*, 57 FR 58978 (December 14, 1992), FERC Stats. & Regs. 1991–1996 ¶ 30,958 (December 4, 1992); Order No. 497–E, *order on rehearing and extending sunset date*, 59 FR 243 (January 4, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,987 (December 23, 1993); Order No. 497–F, *order denying rehearing and granting clarification*, 59 FR 15336 (April 1, 1994), 66 FERC ¶ 61,347 (March 24, 1994); and Order No. 497–G, *order extending sunset date*, 59 FR 32884 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,996 (June 17, 1994).

[2] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions, Order No. 566, 59 FR 32885 (June 27, 1994), FERC Stats. & Regs. 1991–1996 ¶ 30,997 (June 17, 1994); Order No. 566–A, *order on rehearing*, 59 FR 52896 (October 20, 1994), 69 FERC ¶ 61,044 (October 14, 1994); Order No. 566–B, *order on rehearing*, 59 FR 65707, (December 21, 1994), 69 FERC ¶ 61,334 (December 14, 1994).

[3] Reporting Interstate Natural Gas Pipeline Marketing Affiliates on the Internet, Order No. 599, 63 FR 43075 (August 12, 1998), FERC Stats. & Regs. 31064 (1998).

unnecessary for Tennessee to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 99–12109 Filed 5–12–99; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2385–002 New York]

Finch, Pruyn and Company; Notice of Availability of Draft Environmental Assessment

May 7, 1999.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 F.R. 47897), the Office of Hydropower Licensing has reviewed the application for relicensing of the Glens Falls Hydroelectric Project, located on the Hudson River in Warren and Saratoga Counties, New York, and has prepared a draft Environmental Assessment (DEA) for the project. In the DEA, the Commission's staff has analyzed the potential environmental impacts of the existing project and has concluded that approval of the project, with appropriate environmental protection measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, DC 20426. The DEA may also be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Room 1–A, Washington, DC 20426. Please affix "Glens Falls Project No. 2385–002" to all comments. For further information, please contact Charles T. Raabe at (202) 219–2811.

David P. Boergers,

Secretary.

[FR Doc. 99–12108 Filed 5–12–99; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6342–2]

Proposed Settlement Agreement, Clean Air Act Petition for Review

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement; request for public comment.

SUMMARY: In accordance with section 113(g) of the Clean Air Act, as amended, (the "Act"), this is a notice of a proposed settlement agreement, which the United States Environmental Protection Agency ("EPA") lodged with the United States Court of Appeals for the District of Columbia Circuit on April 28, 1999, in consolidated lawsuits filed by the Chemical Manufacturers Association, the Environmental Technology Council and the Hazardous Waste Management Association under section 307(b) the Act, 42 U.S.C. 7607(b) (*Chemical Manufacturers Association* v *Environmental Protection Agency*, Case No. 96–1305, Consolidated with Nos. 96–1306 and 96–1308). The consolidated lawsuit concerns requests for judicial review of the final rule entitled "National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations," 61FR 34,140 (July 1, 1996) ("OSWRO NESHAP"), promulgated by EPA. The Petitioners' primary contention is that there is significant overlap in terms of the facilities subject to the rule between the OSWRO NESHAP and subpart CC of the Resource Conservation and Recovery Act rules governing the operation of treatment, storage and disposal facilities and that, therefore, the two rules need to be consistent with one another. The proposed settlement agreement provides that EPA shall propose to amend the OSWRO NESHAP so as to substantially conform its requirements to those of subpart CC.

For a period of thirty (30) days following the date of publication of this document, you may submit written comments relating to the proposed settlement agreement if you were not named as a party to the litigation in question. EPA or the Department of Justice may withhold or withdraw consent to the proposed settlement agreement for the comments disclose facts of circumstances that indicate that sush consent is approrat the Act.

EPA lodged a copy of the proposed settlement agreement with the Clerk of the United States Court of Appeals for the District of Columbia Circuit on April 28, 1999. You may also obtain a copy from Hylilis Cocharan, Air and Radiation Law office (2344), Office of General Counsel, U.S. Environmental Protection Agency, 401 M street, S.W., Washington, D.C. 20460. Send written comments to Richard H. Vetter, Office of General Counsel, U.S. Environmental Protection Agency, MD–13, Research Triangle Park, North Carolina 27711. Comments must arrive no later than June 14, 1999.

Dated: May 7, 1946

Lisa K. Friedman,

Acting General Counsel.

[FR Doc. 99–12165 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–M.

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6341–8]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et. seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Call Sandy Farmer at (202) 260–2740, or E-mail at "farmer.sandy@epa.gov", and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1601.04; Air Pollution Regulations for Outer Continental Shelf Activities: Reporting, Recordkeeping, and Testing Requirements; in 40 CFR part 55; was approved 03/02/99; OMB No. 2060–0249; expires 03/31/2002.

EPA ICR No. 0277.11; Application for New or Amended Pesticide Registration; in 40 CFR parts 152, 156 and 158; was approved 04/06/99; OMB No. 2070–0060; expires 04/30/2002.

EPA ICR No. 1602.03; Maximum Achievable Control Technology Standards Development under Title III (section 112) of the Clean Air Act Regulatory Development Program; was approved 04/26/99; OMB No. 2060–0239; expires 04/30/2002.

OMB's Comments Filed

EPA ICR No. 1893.01; Federal Emission Guidelines for Existing Municipal Solid Waste Landfills; in 40 CFR part 60, subpart WWW; OMB filed comments 03/12/99.

Extensions of Expiration Dates

EPA ICR No. 1292.04; Aftermarket Catalytic Converter Policy; OMB No. 2060–0135; on 02/08/99 OMB extended the expiration date through 05/31/99.

EPA ICR No. 0160.05; Application for Registration of Pesticide-Producing Establishments; Notification of Registration of Pesticide-Producing Establishments; Pesticide Report for Pesticide-Producing Establishments; OMB No. 2070–0078; in 40 CFR part 167; on 03/09/99 OMB extended the expiration date through 05/31/99.

EPA ICR No. 1054.06; Standard of Performance for Petroleum Refineries; OMB No. 2060–0022; in 40 CFR part 60, subpart J; on 03/17/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0969.04; Final Authorization for Hazardous Waste Management; OMB No. 2050–0041; in 40 CFR part 271, subpart A; on 03/17/99 OMB extended the expiration date through 06/30/99

EPA ICR No. 0152.05; Notice of Arrival of Pesticides and Devices; OMB No. 2070–0020; in 19 CFR 12.112; on 03/24/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 0940.15; Ambient Air Quality Surveillance Revision; OMB No. 2060–0084; in 40 CFR part 58; on 03/24/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0746.03; NSPS for Calciners and Dryers in Mineral Industries; OMB No. 2060–0251; in 40 CFR part 60, subpart UUU; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 1069.05; NSPS for Iron and Steel Plants: Basic Oxygen Process Furnaces; OMB No. 2060–0029; in 40 CFR part 60, subparts N and Na; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0982.05; NSPS for Metallic Mineral Processing Plants; OMB No. 2060–0016; in 40 CFR part 60, subpart LL; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 1500.03; National Estuary Program; OMB No. 2040–0138; in 40 CFR part 35; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0988.06; Water Quality Standards Regulation; OMB No. 2040–0049; in 40 CFR part 131; on 03/25/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0138.05; Modification of Secondary Treatment Requirement for Discharges into Marine Waters; OMB No. 2040–0088; in 40 CFR part 125, subpart G; on 03/25/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 0226.14; National Pollutant Elimination System Permit Application Requirements—Forms 2A and 2S (Final Rule); OMB No. 2040–0086; in 40 CFR parts 122 and 501; on 03/26/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 1842.01; Notice of Intent of Storm Water Discharges Associated with Construction Activity under an NPDES General Permit; OMB No. 2040–0188; in 40 CFR part 122; on 03/26/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0161.07; Purchaser Acknowledgement Statement for Unregistered Pesticides, Export Policy, OMB No. 2070–0027; in 40 CFR part 168; on 03/31/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0595.06; Notice of Pesticide Registration by States to Meet a Special Local Need (SLN) under FIFRA section 24(c); OMB No. 2070–0055; in 40 CFR part 162; on 03/31/99 OMB extended the expiration date through 06/30/99.

EPA ICR No. 0922.05; Data Call-In for Special Review Chemicals; OMB No. 2070–0057; in 40 CFR part 158; on 03/31/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 0662.05; NSPS for VOC Equipment Leaks in the Synthetic Organic Chemical Manufacturing Industry (SOCMI); at 40 CFR part 60, subpart W; OMB No. 2060–0012; on 04/14/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 1710.02; Residential Lead-Based Paint Hazard Disclosure Requirements ; OMB No. 2070–0151; in 40 CFR part 745; on 04/14/99 OMB extended the expiration date through 10/31/99.

EPA ICR No. 0649.06; NSPS for Mental Furniture Coating; OMB No. 2060–0106; in 40 CFR Part 60, subpart EE; on 04/19/99 OMB extended the expiration date through 08/31/99.

EPA ICR No. 1557.03; NSPS for Municipal Solid Waste Landfills; OMB No. 2060–0220; in 340 CFR Part 60, subpart WWW; on 04/19/99 OMB extended the expiration date through 08/31/99.

EPA ICR No. 1606.02; Information Requirements for Petitions to Modify the List of Regulated Substances under Section 112(r) of the Clean Air Act, as Amended; OMB No. 2050–0127; in 40 CFR part 68, subpart F; on 04/26/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 1772.01; Information Collection Activities Associated with EPA's Energy Star Buildings Program; OMB No. 2060–0347; on 04/26/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1614.02; Reporting and Record Keeping Requirements under EPA's Green Lights Program; OMB No. 2060–0255; on 04/26/99 OMB extended the expiration date through 09/30/99.

EPA ICR No. 1031.05; Allegations of Significant Adverse Reactions to Human Health or the Environment—TSCA section 8(c); OMB No. 2070–0017; in 40 CFR part 717; on 04/27/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 1188.05; Significant New Use Rules for Existing Chemicals—TSCA section 5(a)(2); OMB No. 2070–0038; in 40 CFR part 721; on 04/27/99 OMB extended the expiration date through 07/31/99.

EPA ICR No. 0575.07; Health and Safety Date Reporting, Submission of Lists and copies of Health and Safety Studies; OMB No. 2070–0004; in 40 CFR part 716; on 04/27/99 OMB extended the expiration at through 07/31/99.

Dated: May 7, 1999.

Joseph Retzer,

Director, Regulatory Information Division.

[FR Doc. 99–12164 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6342–4]

Performance Evaluation Reports for Fiscal Year 1998 Section 105 Grants; Missouri, Kansas, Iowa, Nebraska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to conduct yearly performance evaluations on the progress of the approved state/EPA agreements. EPA's regulations (40 CFR 56.7) require that the Agency make available to the public the evaluation reports. EPA has conducted evaluations on the Missouri Department of Natural Resources, Nebraska Department of Environmental Quality, Iowa Department of Natural Resources, and Kansas Department of Health and Environment. These evaluations were conducted to assess the agencies' performance under the grants made to

them by EPA pursuant to section 105 of the Clean Air Act.

EFFECTIVE DATE: May 13, 1999.

ADDRESSES: Copies of the evaluation reports are available for public inspection at EPA's Region VII Air, RCRA, and Toxics Division, 726 Minnesota Avenue, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Ed West at (913) 551–7330.

Dated: May 3, 1999.

Dennis Grams,

Regional Administrator, Region VII.

[FR Doc. 99–12160 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6341–6]

Microbial and Disinfectants/ Disinfection Byproducts Advisory Committee; Notice of Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: Under Section 10(a)(2) of Pub. L. 920423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Microbial and Disinfectants/Disinfection Byproducts Advisory Committee established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on May 20 and 21, 1999, from 9:00 a.m. to 5:00 p.m. eastern time at RESOLVE, Inc., 1255 23rd Street, NW, Suite 275 Washington DC 20037. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting will be to discuss how to characterize cancer risk from DBPs; review elements of cancer health effect risk assessment; and review ongoing studies related to DBP cancer health effects.

Statements from the public will be taken if time permits.

For more information, please contact Martha M. Kucera, Designated Federal Officer, Microbial Disinfectants/ Disinfection Byproducts Advisory Committee, U.S. EPA, Office of Ground Water and Drinking Water, Mailcode 4607, 401 M Street, SW, Washington, DC 20460. The telephone number is 202–260–7773 or E-mail kucera.martha@epamail.epa.gov.

Dated: May 6, 1999.

Robert W. Barles,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–11984 Filed 5–12–99; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6334–9]

Public Notification Handbook—Draft for Comment

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency is making available for review and comment a draft Public Notification Handbook (EPA 816–R–99–004). The Handbook will assist public water systems in implementing the revised public notification regulations, which are being proposed today in the **Federal Register**. The proposed regulations and Handbook will implement the revised public notification provisions enacted under the 1996 Safe Drinking Water Act (SDWA) amendments. The public notification regulations apply to owners and operators of public water systems which fail to comply with the drinking water standards and related regulations under the SDWA.

DATES: Written comments on the draft Public Notification Handbook are requested by July 31, 1999. EPA is also soliciting comment on the Handbook at the two public meetings on the proposed regulations and other public meetings to be scheduled during summer, 1999.

ADDRESSES: Please submit written comments on the draft Public Notification Handbook to Carl B. Reeverts, Manager, Public Notification Handbook, Drinking Water Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), U.S. EPA, 401 M Street, SW, Washington, DC 20460. You may also submit comments to Carl Reeverts via E-mail at reeverts.carl@epa.gov.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline at 1–800–426–4791. Copies of the proposed regulation and the draft Handbook may be obtained by calling the Safe Drinking Water Hotline at 1–800–426–4791 or by downloading the documents from Office of Ground Water and Drinking Water's web site at *http://www.epa.gov/safewater.*

SUPPLEMENTARY INFORMATION: The Public Notification Handbook is intended to make public water system owners' and operators' jobs easier and public notices more effective. The Handbook provides templates for notices appropriate for different violation situations and other aids to help water systems develop an effective public notification program. EPA and the Association of State Drinking Water Administrators (ASDWA) developed the draft Handbook under a Steering Committee comprised of representatives from the American Water Works Association, Association of Metropolitan Water Agencies, National Association of Water Companies, National Rural Water Association, and League of Women Voters. Two public meetings were held in June and September, 1998 to review and test the effectiveness of early drafts of the handbook. The draft Handbook is the result of that collaboration.

EPA welcomes comment on all aspects of the Handbook. In addition to soliciting written comments, EPA encourages stakeholder input on the draft Handbook at the two public meetings already scheduled to take comment on the proposed regulation, May 26, 1999 in Madison, Wisconsin and June 3, 1999 in Washington, DC. EPA is also planning two stakeholder meetings in summer, 1999 to discuss steps to improve the effectiveness of the Handbook before it is released in final form. Comment period on the proposed rule closes 60 days after publication in the **Federal Register**. Comments on the Handbook will be accepted through July 31, 1999. The final rule and Handbook are expected to be published in December 1999. For information on the status of the Handbook or the schedule of meetings, please contact the EPA Safe Drinking Water Hotline at (800) 426–4791.

Dated: April 27, 1999.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 99–11163 Filed 5–6–99; 9:42 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 4, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden

invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1-A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0863.

Title: Satellite Delivery of Network Signals to Unserved Households for Purposes of the Satellite Home Viewer Act.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents: 848.

Estimated Time per Response: 0.5 hours (muliple responses annually).

Frequency of Response: On occasion recordkeeping requirement.

Total Annual Burden: 125,000 hours.

Total Annual Costs: $12,500.

Needs and Uses: The information gathered as part of Grade B signal strength tests will be used to indicate whether consumers are "unserved" by over-the-air network signals. The written records of test results will be made after testing and predicting the strength of a television station's signal. Parties impacted by the test results will be consumers; parties using the written test results will primarily be the satellite and broadcasting industries.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12043 Filed 5–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 3, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0600.

Title: Application to Participate in an FCC Auction.

Form Numbers: FCC 175 and FCC 175-S.

Type of Review: Extension of an existing collection.

Respondents: Business or other for profit; Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 12,400.

Estimate Time per Response: 0.75 hours (Form 175); 0.25 hours (Form 175-S).

Frequency of Response: On occasion reporting requirements.

Total Annual Burden: 15,600 hours.

Total Annual Costs: $3,120,00.

Needs and Uses: The information will be used by the Commission to determine if the applicant is legally, technically, and financially qualified to participate in an FCC auction. The rules and requirements are designed to ensure that the competitive bidding process is limited to serious qualified applicants and deter possible abuses of the bidding and licensing process. The Commission plans to use this form for all upcoming auctions and reauctions.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12044 Filed 5–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Submitted to OMB for Review and Approval

May 4, 1999.

SUMMARY: The Federal Communications Commissions, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork

Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 1999. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commission, Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0174.

Title: Section 73.1212, Sponsorship Identification, List Retention, and Related Requirements.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households; Business or other for-profit entities.

Number of Respondents: 13,956.

Estimate Time Per Response: 6 mins. (40 Broadcasts/year); 5 secs. (2 Political ads/year).

Frequency of Response: Recordkeeping; Third party disclosure.

Total Annual Burden: 55,862 hours.

Total Annual Costs: None.

Needs and Uses: Section 73.1212 requires a broadcast station to identify the sponsor(s) of any matter for which consideration is provided. For matters advertizing commercial products or services, generally the mention of the name of the product or service constitutes sponsorship identification. In addition, when an entity rather than an individual sponsors the broadcast of matters that are of a political or controversial nature, the licensee is required to retain a list of the executive officers, or board of directors, or executive committee, etc., of the organization paying for such matters. Sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual, but the licensee shall maintain a list showing the name, address, and telephone number of each such advertiser. These lists shall be made available for public inspection. The data are used by the public so that they may know by whom they are being persuaded.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 99–12045 Filed 5–12–99; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as Ocean Freight Forwarder—Ocean Transportation Intermediaries pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarder, Federal Maritime Commission, Washington, DC 20573.

Global Management Distribution Corp., 6308 Wood Lake Road, Jupiter, FL 33458, Officers: George M. Donaldson, Jr., President (Qualifying Individual), Mary Beth Donaldson, Vice President

Cosmo Ocean Freight, Ltd., 146–22 Guy R. Brewer Blvd., Jamaica, NY 11434, Officers: Michael NG, President (Qualifying Individual), Patrick Chu, Vice President

Frontier Freight Forwarders, Inc., 706 Mission Street, Suite 900, San Francisco, CA 94103, Officers: Lynn C. Fritz, President, Linda K. Ellis, Asst. Vice President (Qualifying Individual)

Interworld Services, Inc., 17047 Erin Way Ct., Houston, TX 77095, Officers: Irene Sadkowski Cosme, President (Qualifying Individual), Armando Miralles, Vice President

Dated: May 7, 1999.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 99–12052 Filed 5–12–99; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 27, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Mr. John A. R. Grimaldi, and Mr. Anthony Julio Grimaldi, both of Tampa, Florida, to collectively retain the voting shares of Columbia Bank, Tampa, Florida.

Board of Governors of the Federal Reserve System, May 7, 1999.

Robert dev. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12041 Filed 5–12–99; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested

persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act. Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 1999.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303-2713:

1. Cherokee Banking Company, Canton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Cherokee Bank, N.A. (in organization), Canton, Georgia.

2. United Americas Bancshares, Inc., Atlanta, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of United Americas Bank, N.A. (in organization), Atlanta, Georgia.

Board of Governors of the Federal Reserve System, May 7, 1999.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 99–12042 Filed 5–12–99; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments Are Invested on

(a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

1. Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (45 CFR Part 92)—0990–0169—Extension No Change—Pre-award, post-award, and subsequent reporting and recordkeeping requirements are necessary to award, monitor, close out and manage grant programs, ensure minimum fiscal control and accountability for Federal funds and deter fraud, waste and abuse. Respondents: State and Local Governments; Number of Respondents: 4000; Average Burden per Respondent: 70 hours; Total Burden: 280,000 hours.

Send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: May 1, 1999.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 99–12053 Filed 5–12–99; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[INFO–99–17]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention (CDC) is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received with 60 days of this notice.

Proposed Projects

1. National Program of Cancer Registries—Cancer Surveillance System—NEW-National Center for Chronic Disease Prevention and Health Promotion (NCCDPHP). The American Cancer Society estimates that 8.2 million Americans have a history of cancer and that in 1999, about 1.2 million new cases will be diagnosed. At the national level, cancer incidence data are available for only 14% of the population of the United States. While this is appropriate for analyses of major cancers in large population subgroups, it is not always adequate for minority populations and rare cancer analyses. Further, to plan and evaluate state and national cancer control and prevention efforts, national data are needed. Therefore, the Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Control, Division of Cancer Prevention and Control, proposes to aggregate existing cancer incidence data from states funded by the National Program of Cancer Registries into a national surveillance system.

These data are already collected and aggregated at the state level. Thus the additional burden on the states would be small. Program implementation would require funded states to report data to the CDC on an annual basis twelve months after the close of a diagnosis year and again at twenty-four months to obtain more complete incidence data and vital status from mortality data. The estimated total cost to respondents is $885,000 per year.

Respondents	Number pf respondents	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
State, territorial, and District of Columbia cancer registries	63	1	2	126

2. Sentinel Network for Public Health Practice—NEW—The Division of Public Health Systems, Public Health Practice Program Office (PHPPO) proposes to establish a sentinel network of 160 local health departments to provide ongoing public health system infrastructure and capacity data. As the nation's prevention agency, the CDC is working to support the US public health mission of rapidly detecting disease and health risks, rapidly communicating, and strengthening the capacity to respond. Towards that goal, CDC proposes to assess and strengthen the nation's public health infrastructure by developing a network of local health departments that will provide ongoing information to public health leaders, policy makers, program managers and others to identify needs, target resources, and assist in overall preparedness. Data gathered by survey from the sentinel network will also lead to improvement of the public health communications systems and reinforced training and credentialing for core workforce skills, and will help in developing standards for improved organizational performance.

The purpose of this Sentinel System and its related surveys are to: (1) Assess data and information systems, public health workforce, effective public health organization, relationships and resources that enable the performance of the ten essential services of public health for every community, and use these data in developing strategies to strengthen the infrastructure of public health; (2) rapidly detect changes in the health care environment as they affect the nation's health; (3) evaluate the usefulness, readability, and impact of CDC publications and documentation such as the Guide to Community Preventive Services, and (4) provide the CDC and collaborators with data to assist in measuring performance of local health departments. Results from this research will be used to help the CDC in several ways. These systematic, longitudinal data will allow CDC and the public health community to improve infrastructure quality and capacity. Examples of crosscutting infrastructure issues that may be identified by these data include the extent of under-funding for public health, the need for effective local leadership and for integrated electronic information systems, and the emerging role of measurable standards for local health departments. CDC publications evaluation data will allow the CDC to assess how useful and linked to local need are its resources, and to plan revisions and future products. The health performance information will help direct the development of measurable standards. The cost to the respondent is $0.00.

Form	Number of respondents*	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Assessing and Strengthening public health infrastructure	80	2	8	1,280
Year 2				
Evaluating CDC Publications	80	2	4	640
Assessing and strengthening public health infrastructure	160	2	8	2,560
Evaluating CDC Publications	160	2	4	1,280
Year 3				
Assessing and strengthening public health infrastructure	160	2	8	2,560
Evaluating CDC Publications	160	2	4	1,280
Total	.....	.....	.....	9,600

*Respondents are local health departments.

Dated: May 6, 1999.

Nancy Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 99–12092 Filed 5–12–99; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Project:

Title: Head Start Fellows Program.

OMB No.: 0970–1040.

Description: Public Law 103–252, the Human Services Amendments of 1994, amended the Head Start Act (the Act) to authorize the creation of a Head Start Fellows Program to support the professional development of individuals working in the field of child development and family services. The Act was most recently reauthorized through fiscal year 2003, by the Coats Human Services Amendments of 1998, Public Law 105–285.

Head Start Fellowships are awarded on a competitive basis to individuals (other than Federal employees) selected from among applicants who are working, on the date of application, in local Head Start programs or otherwise working in the fields of child development and children and family services. The information collected from the applications is used to ensure that individuals selected to be Head Start

Fellows have the appropriate experience/skills, and that the training developed for them and the work assigned to them will enhance their ability to make significant contributions to the fields of child development and family services. The information collected is used by program staff and policy makers at the Federal level to make judgements on the progress and needs of the program.

Respondents: Individuals or households.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Head Start Fellows	200	1	2	400

Estimated Total Annual Burden Hours: 400.

In compliance with the requirements of Section 3506(c)(2)(A) the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: May 7, 1999.

Bob Sargis,

Acting Reports Clearance Officer.

[FR Doc. 99–12106 Filed 5–12–99; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Community Services

[Program Announcement No. OCS–99–07]

Request for Applications Under the Office of Community Services' Fiscal Year 1999 Community Services Block Grant Training, Technical Assistance, and Capacity-Building Program

AGENCY: Office of Community Services, ACF, DHHS.

ACTION: Announcement of availability of funds and request for applications under the Office of Community Services' Community Services Block Grant Training, Technical Assistance and Capacity-Building (CSBG–T&TA) Discretionary Program.

SUMMARY: The Office of Community Services (OCS) invites eligible entities to submit applications for FY 1999 funding of competitive grants under the CSBG–T&TA discretionary grants program.

Applications received in response to this notice will be screened and evaluated as indicated in this document. Awards will be contingent on the outcome of the competition and the availability of funds.

ADDRESSES: Prior to submitting an application, potential applicants must obtain a copy of the CSBG–T&TA Application Kit, containing additional program information, forms, and instructions. Application Kits are available by writing or calling the Office of Community Services at 5th Floor West, Aerospace Building, 370 L'Enfant Promenade, S.W. Washington DC 20447. To obtain a copy of the CSBG–T&TA Application Kit, call: (202) 401–4787.

FOR FURTHER INFORMATION CONTACT: Margaret Washnitzer, Director, Division of State Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade, S.W. Washington, DC 20447. Telephone: (202) 401–9343.

A copy of the **Federal Register** containing the CSBG–T&TA program announcement is available for reproduction at most local libraries and Congressional District Offices. It is also available on the Internet through GPO Access at the following web address:

http://www.access.gpo.gov/su_docs/aces/aces140.html

If the announcement is not available at these sources, it may be obtained by writing to the office listed under **ADDRESSES** above.

APPLICATION DEADLINES: The closing dates for submission of applications is July 13, 1999. Further details regarding application submission are provided in the Supplementary Information section of this program announcement. Mailed applications postmarked after the closing date will be classified as late. Refer to APPLICATION SUBMISSION below for other details.

SUPPLEMENTARY INFORMATION:

A. Program Announcement

The Application Kit for the FY 1999 CSBG–T&TA program will not be published in the **Federal Register**. Rather, OCS is publishing FY 1999 Program Announcement OCS–99–07 in the **Federal Register**. Program Announcement OCS–99–07 contains the following information for the CSBG–T&TA program: Date of Application Kit; Application Deadline; Program Contact Person; Legislative Authority; Eligible Applicants and Availability of Funds; Program Priority Areas; Project Periods and Budget Periods; Matching Requirement; Type of Awards; and Review Criteria.

B. General Instructions

In order to be considered for a grant under the FY 1999 OCS CSBG–T&TA program announcement, an application must be submitted on the forms supplied and in the manner prescribed by OCS in the 1999 CSBG–T&TA Application Kit. When requesting an Application Kit, the applicant must specify the Community Services Block

Grant Training, Technical Assistance and Capacity Building Application Kit. This is to ensure receipt of all necessary forms and information, including any program-specific evaluation criteria. Application Kits, including all of the necessary forms and instructions, will be available for reading and downloading from the Internet at the OCS Website at:
http://www.acf.dhhs.gov/programs/ocs/kits1.htm

C. Application Submission

Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or postmarked on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor Aerospace, 370 L'Enfant Promenade, S.W., Washington, D.C. 20447; with the note: Attention: Application for CSBG/T&TA Program or CFDA No. 93–570.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated, machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, S.W., Washington, D.C. 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: Attention: CSBG/T&TA Program or CFDA No. 93–570.

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Applications, once submitted, are considered final and no additional materials will be accepted.

Late applications: Applications, which do not meet the criteria above, are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of the mail service. Determinations to extend or waive deadline requirements rest with ACF's Chief Grants Management Officer.

D. Details for This Program Announcement

Pertinent information of concern for potential applicants for the CSBG/Training, Technical Assistance and Capacity Building Program is set forth below:

(CFDA No. 93.570) Deadline Date: July 13, 1999

(1) *Program Contact Persons:* Margaret Washnitzer (202) 401–9343.

(2) *Date of Application Kit:* May 14, 1999.

(3) *Application Deadline:* Applications must be *POSTMARKED* by July 13, 1999. Detailed application submission instructions are included in the Application Kit.

(4) *Legislative Authority:* Section 674(b)(2) of the Community Services Block Grant (CSBG) Act of 1981, (P.L. 97–35) as amended by the Coats Human Services Reauthorization Act of 1998, (P.L. Law 105–285).

(5) *Eligible Applicants and Availability of Funds:* The OCS is authorized to make grants and award contracts to eligible entities, organizations whose membership is composed of CSBG-eligible entities or agencies that administer programs for CSBG-eligible entities. Funds available: Approximately $2,700,000, of which $400,000 is committed for a continuation grant.

(6) *Priority Areas:* A description of the Program Priority Areas is given below. Refer to Application Kit for complete details.

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

Sub-Priority Areas:

1.1 National Training and Technical Assistance to Enhance Community Action;
1.2 Statewide Partnership Grants to Implement Results-Oriented Management and Accountability;
1.3 Training and Technical Assistance to Develop Special Initiatives Between CAAs and Other Organizations that Address Urban Problems; and
1.4 TA to Measure Civic/Social Capital Development.

Priority Area 2.0: CAA Capacity Building

Sub-Priority Areas

2.1 Collection, Analysis, and Dissemination of Information on the CSBG Activities;
2.2 Local Capacity Building Projects;
2.3 Peer-to-Peer Intervention;
2.4 Strengthening of CAA Capacity on Legal Issues.

Priority Area 1.0: Training and Technical Assistance for the Community Services Network

This Priority Area addresses the development and implementation of coordinated, comprehensive nationwide or, where appropriate, statewide training and/or technical assistance programs to assist State CSBG staff, staff of State and regional organizations representing eligible entities, and staff of local service providers which receive funding under the CSBG Act, to acquire the skills and knowledge needed to plan, administer, implement, monitor, and evaluate programs designed to ameliorate the causes of poverty in local communities. Programs should include the provision of training and/or technical assistance to State staff, CAA associations, and/or staff of local service providers statewide or nationwide and a description of collaboration with State CSBG staff and local service providers.

Sub-Priority Area 1.1: Training and Technical Assistance to Enhance Community Action Agencies (CAAs) and Other Local Service Providers to support program and management improvements. All organizations in the Community Services Network need to be strengthened to perform their respective roles as identified in the Community Services Block Grant Act, as Amended by the Coats Human Services Reauthorization Act of 1998 (P.L. 97–35, and P.L. 105–285). The new CSBG Reauthorization Act includes the

following: (1) Additional requirements and responsibilities for local CAA Boards of Directors; (2) increased focus on monitoring, training and technical assistance of the CSBG (especially with regard to termination and reduction of funding to eligible entities); and (3) mandates that the Community Services Network participate in the ROMA Performance Measurement system or another system approved by the Department of Health and Human Services. The purpose of this Sub-Priority Area is to provide funding for the development and implementation of a comprehensive nationwide training and/or technical assistance program to assist boards and staff of local service providers which receive funding under CSBG to acquire skills and knowledge needed to plan, administer and evaluate effective anti-poverty programs. This may include national dialogues and workshops, seminars and conferences, the development and dissemination of newsletters and position papers, educational materials and other activities. Any activities undertaken must be consistent with the national goals of the ROMA process as developed by the OCS National Task Force on Monitoring and Assessment. This comprehensive nationwide training and technical assistance program should be designed as a 3-year program. Future funding will be contingent on the availability of funds and planning should be done in collaboration with State CSBG Directors and/or their national association's local service providers.

Sub-Priority Area 1.2: Statewide Partnership Grants to Implement ROMA. The purpose of this Sub-Priority Area is to provide training and technical assistance to CAAs and States in the implementation of ROMA. State CAA Associations, in partnership with State CSBG Administrators, are eligible to apply for grants under this Sub-Priority. An applicant will be considered under this priority, only if 90 percent of the CAAs in the State have begun some phases of the ROMA implementation at the time the applicant's proposal is written. All eligible entities must provide evidence that there has been coordination with the State CSBG Office in developing applications under this sub-priority. Data yielded will be used at the local, State and national levels by policy-makers. These Statewide grants are awarded to one entity per State to provide technical support to State CAA Associations, CAAs and States.

Sub-Priority Area 1.3: Technical Assistance to Develop Special Initiatives Between CAAs and Organizations that Address Urban Problems of Low-Income People. Issues of crime, violence, drug abuse, unemployment, poverty, family breakdown, and inadequate education and training of many young people to attain productive employment in an increasingly technological labor market, threaten the safety and viability of many urban communities. This project will provide technical assistance to assist CAAs in developing and implementing collaborative community-wide strategies, effective organizational working relationships, and special initiatives among CAAs and other organization(s) focusing on issues of crime, violence, family breakdowns, drug abuse and poverty. Emphasis will be on assisting CAAs to bring together the various community, business, labor, voluntary, educational, civil rights, and governmental sectors required to develop model local strategies to improve conditions in low-income, urban communities. Applicants are encouraged to develop applications in collaboration with at least one other national private, non-profit organization, which has a substantial track record in formulating strategies to improve conditions in low-income urban communities.

Sub-Priority Area 1.4: Technical Assistance to Support the Use of Scales to Measure Civic/Social Capital Development. The OCS is interested in developing the community action network's capacity to apply the use of scales to measure civic/social capital development. The purpose of this sub-priority is to provide funding to explore and to apply the most current body of knowledge regarding the development of civic/social capital to meet the needs of low-income neighborhoods. Further, the project will advance the capacity of community action agencies to measure and evaluate civic social capital development research and best practices with the implementation of ROMA in the areas of community scaling, neighborhood assessment, resident participation, surveying and/or strategic planning. OCS is interested in funding innovative strategies that motivate CAAs to focus on using civic/social capital to develop and strengthen neighborhood assets while building opportunities for participation by residents. Applicant CAAs should have a demonstrated ability to bring multiple stakeholders together in order to address common issues or problems and experience in the use of scales to measure community-level outcomes. Applicant should include a plan, which describes how results will be shared with the larger community action network.

Priority Area 2.0: CAA Capacity Building

This Priority Area addresses activities to assist community action agencies (CAAs) to enhance their ability to plan, manage, deliver and evaluate programs to achieve results. This includes: support for the continuation and improvement of (a) CSBG voluntary data collection, analysis, dissemination and utilization; (b) Program and management techniques; (c) Computer skills and electronic networking; (d) Peer-to-peer intervention to avert CAA crisis management; and (e) Legal assistance to assist community action agencies to further the understanding (i.e., special initiatives) of legal frameworks.

Priority Area 2.1. Collection, Analysis and Dissemination of Information on the CSBG Activities Nationwide. Technical assistance under this priority is being supported as a continuation grant in 1999. This grant will be continued without competition.

Priority Area 2.2. Local Capacity Building. The purpose of this Sub-Priority is to promote management efficiency and program productivity. It is essential that local CAAs and other partners in the Community Services Network share effective program/management techniques and information systems technology being used and/or developed by eligible entities to address various aspects of poverty and the implementation of ROMA by the Community Services Network. This sub-priority area is to fund grants to community action agencies to promote local CAA capacity building. Activities may include: sharing of model needs assessment tools; sharing of effective computer techniques; the development of effective community organizing techniques; demonstration of scaling techniques; and use of tracking systems; internal and external communication networks; effective integration of information systems; successful leveraging strategies, etc. Applicants must include a plan which describes how the results will be shared with the larger Community Services Network.

Priority Area 2.3: Peer-to-Peer Crisis Intervention. The purpose of this Sub-Priority Area is to strengthen the fiscal and management capacity of eligible entities. OCS will fund several organizations to develop and implement strategies to provide coordinated, timely peer-to-peer technical assistance and crisis aversion intervention strategies for CAAs which have identified themselves as experiencing programmatic, administrative, board, and/or fiscal

management problems. Such technical assistance should be designed to prevent fiscal and management problems from deteriorating into crisis situations that could threaten the capacity of CAAs to provide quality services to their communities or give rise to possible termination. In a written agreement with chosen CAAs, the applicant will coordinate and deploy the technical assistance resources of experienced individuals within the Community Services Network or other agencies which administer similar programs to assist low-income individuals in the identification and resolution of programs, through necessary actions, including training, to ensure that relevant and timely assistance is provided. Such assistance may be requested to assist the agency in resolving adverse program monitoring or audit findings, improve or upgrade financial management systems, prevent losses of funds, avert serious deterioration of the board of directors, or other immediate assistance to CAAs as requested. To the extent feasible, the applicant may be expected to develop an expert technical assistance resource bank of experienced individuals from the Community Services Network who may be deployed to provide peer technical assistance.

Priority Area 2.4: Strengthening CAA Capacity on Legal Issues Toward Problem Solving. The purpose of this Sub-Priority Area is to fund a national organization with legal expertise whose membership is composed of eligible entities to further the capacity of community action agencies to better prepare themselves and their customers on the legal problems and solutions which are commonly faced in the delivery of human services. This national organization applicant should assist community action agencies or their associations in establishing legal frameworks for problem solving and management strategies when appropriate. Working in collaboration with at least one national organization whose membership is composed of eligible entities, the applicant would be expected to propose and conduct high-quality legal training or technical assistance tailored to the CAA network at national conferences or training workshops. The applicant would also be expected to contribute specialized articles, which further the network's legal understanding to newsletters or other dissemination devices within the CAA network. Additionally, the applicant would be expected to establish and maintain a revolving loan fund or some mechanism to further the resources of eligible entities in the procurement of specialized legal assistance. Legal expertise funded by this Sub-Priority Area is not proposed as a substitute for the local agency's own legal counsel nor for local administrative matters or other situations unrelated to the CSBG legislation. Instead, training and technical assistance for this project should serve as an additional resource for local counsel faced with community action issues which might require specialized knowledge and skills, including those of competent persuasion and negotiation. Anticipated results are: (1) legal capability at the CAA level will be enhanced; (2) Legal opinions will be prepared in a timely manner to increase their effectiveness; (3) Negotiated strategies which involve legal opinions can serve as a framework for solving problems to avert major crises. Applicant should design a 3-year program. Future funding will be contingent on the availability of funds.

(7) *Project Periods and Budget Periods:* For projects included in the FY 1999 announcement, the project and budget periods are 12 months, with the exception of Sub-Priority 2.1—Collection, Analysis, and Dissemination of Information on CSBG Activities Nationwide. The project under Sub-Priority 2.1 will have a project period up to three (3) years through FY 1999. The application for a continuation grant funded under these awards beyond the initial 12-month budget period, but within the three-year project period, will be entertained in subsequent years, on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee and determination that continued funding would be in the best interest of the government. Budget periods are for 12 months, unless the applicant presents a justification for a longer period of time; in which case, a grant may be made for a period of up to 17 months.

(8) *Matching Requirements:* None.

(9) *Type of Awards:* Grants.

(10) Review Criteria:

Criteria for Review and Evaluation of Applications Submitted Under the FY 1999 CSBG–T&TA Program Announcement

1. *Criterion I: Need for Assistance* (Maximum: 20 points)

(a) The application documents that the project addresses vital needs related to the purposes stated under Sub-Priority Areas discussed in Part B of the CSBG-T&TA Application Kit and provides statistics and other data and information in support of its contention. (0–10 points).

(b) The application provides current supporting documentation or other testimonies regarding needs from *State* CSBG Directors, *local* service providers and/or State and Regional organizations of local service providers. (0–10 points)

2. *Criterion II: Work Program* (Maximum: 30 points).

The work program must be results-oriented, appropriately related to the legislative mandate and specifically related to the proposed Sub-Priority Area. Applicant must address specific outcomes to be achieved; performance targets which the project is committed to achieving, including specifications for not setting lower or higher target levels and how the project will verify the achievement of these targets; critical milestones which must be achieved if results are to be gained; organizational support including priority this project has for the agency, past performance in similar work and specific resources contributed to the project which are critical to success. Applicants must define the comprehensive nature of the project and methods which will be used to ensure that the results can be used to address a statewide or nationwide project as defined by the priority area.

3. *Criterion III: Significant and Beneficial Impact* (Maximum 15 points).

Applicant adequately describes how the project will assure long-term program and management improvements and have advantages over other products offered to achieve the same outcomes for State CSBG offices, CAA State associations, and/or local providers of CSBG services and activities.

The applicant must provide the types and amounts of public and/or private resources it will mobilize and how those resources will directly benefit the project, and how the project will ultimately benefit low-income individuals and families.

An applicant proposing a project with a training and technical assistance focus also must indicate the number of organizations and/or staff it will impact. An applicant proposing a project with a data collection focus also must provide a description of the mechanism the applicant will use to collect data, how it can assure collections from a significant number of States, and how many States will be willing to submit data to the applicant. An applicant proposing to develop the symposium series or other policy-related projects must identify the number and types of beneficiaries. Methods of securing participant feedback and evaluations of activities must be described for all Priority Areas.

4. *Criterion IV: Evidence of Significant Collaborations* (Maximum 10 Points)

A new performance-based paradigm is replacing a compliance-based approach to managing CSBG programs. Under this new approach, development and strengthening of collaborative working relationships among all eligible entities in the Community Services Network and with other related organizations is emphasized. OCS does not believe that the Priority Areas in this Program Announcement can be effectively carried out without collaboration and cooperation. Thus, applicants must describe how they will involve partners in the Community Services Network in their activities. Where appropriate, applicants must describe how they will interface with other related organizations. If subcontracts are proposed, documentation of the willingness and capacity for the subcontracting organization(s) to participate must be described.

5. *Criterion V: Ability of Applicant to Perform* (Maximum: 20 points).

(a) The applicant demonstrates experience and a successful track record relevant to the specific activities and program area that it proposes to undertake; therefore, organizations which propose providing training and technical assistance must detail their competence in the specific program Priority Area and as a deliverer with expertise in the specific fields of training and technical assistance on a nationwide basis. If applicable, information provided by these applicants must also address related achievements and competence of each cooperating or sponsoring organization. (0–10 points)

(b) The application must fully describe (e.g. a resume) the experience and skills of the proposed project director and primary staff showing specific qualifications and professional experiences relevant to the successful implementation of the proposed project. (0–10 points)

6. *Criterion VI: Adequacy of Budget* (Maximum: 5 points).

(a) The resources requested are reasonable and adequate to accomplish the project. (0–3 points)

(b) Total costs are reasonable and consistent with anticipated results. (0–2 points)

Additional Requirements:

Applicants for grants must also meet the following requirements:

A. Paperwork Reduction Act of 1995 #0970–0062

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to OMB for review and approval any reporting and record keeping requirements in regulations, including Program Announcements. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. This Program Announcement does not contain information collection requirements beyond those approved for ACF grant announcements/applications under OMB Control Number 0970–0062.

B. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. NOTE: State/Territory participation in the Intergovernmental Review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

As of September 1998, a number of jurisdictions have elected not to participate in the Executive Order process. Applicants from these jurisdictions or for projects administered by federally recognized Indian Tribes need take no action in regard to E.O. 12372. A list of these non-participating jurisdictions can be found in the Application Kit for the CSBG/Training, Technical Assistance and Capacity Building Program.

Although the non-participating jurisdictions no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor, 370 L'Enfant Promenade, S.W., Washington, DC 20447.

Dated: May 6, 1999.

Donald Sykes,

Director, Office of Community Services.

[FR Doc. 99–12134 Filed 5–12–99; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–1174]

Dietary Supplements; Center for Food Safety and Applied Nutrition Strategy; Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public meeting to solicit comments that will assist the Center for Food Safety and Applied Nutrition (CFSAN) to develop an overall strategy for achieving effective regulation of dietary supplements under the Dietary Supplement Health and Education Act (DSHEA). This meeting is intended to give the public an opportunity to comment on the development of the strategy.

DATES: The meeting will be held on June 8, 1999, from 10 a.m. to 4 p.m. Submit written comments by May 28, 1999.

ADDRESSES: The meeting will be held at the Cohen Bldg., auditorium, 330 Independence Ave. SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Naomi Kulakow, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW.

Washington, DC 20204, 202–205–8682, FAX 202–260–8957, e-mail nkulakow@bangate.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

This meeting is the first of two meetings to seek stakeholder comments on the development of an overall strategy for achieving effective regulation of dietary supplements under the Federal Food, Drug, and Cosmetic Act, as amended by DSHEA. The meetings will build upon themes that emerged from a broader stakeholder meeting sponsored by CFSAN in June 1998. That meeting addressed the nonfood safety initiative programs that are managed by CFSAN and identified some basic themes including: (1) The need to maintain a credible FDA program, including compliance, enforcement, and consumer outreach activities that will help ensure consumer confidence in FDA regulated products; (2) the need to maintain a solid, science based program staffed with highly qualified scientists; and (3) the recognition that FDA's assistance to consumers and the regulated industry is important.

II. Registration and Requests for Oral Presentations

If you would like to attend the meeting, you must register with the contact person (address above) by May 28, 1999, by providing your: Name, title, business affiliation, address, telephone, and fax number. To expedite processing, registration information may also be faxed to 202–260–8957. If you need special accommodations due to disability, please inform the contact person when you register.

If you wish to make an oral presentation during the meeting, you must inform the contact person of that desire when you register to attend and submit: (1) A brief written statement of the general nature of the evidence or arguments that you wish to present, (2) the names and addresses of the persons who will give the presentation, and (3) the approximate length of time that you are requesting for your presentation. Depending on the number of people who register to make presentations, we may have to limit the time allotted for each presentation.

III. CFSAN's 1999 Program Priorities Document

The meeting announced in this notice, as well as a meeting to be announced later on the west coast, are in response to CFSAN's 1999 Program Priorities document that calls for the development of an overall dietary supplement strategy in conjunction with other agency units and stakeholders. A copy of the priorities document is available on the Internet on FDA's Website at "http://vm.cfsan.fda.gov/~dms/cfsan199.html".

The priorities document states that the overall strategy should address all elements of the dietary supplement program including: (1) Boundaries between dietary supplements and conventional foods, between dietary supplements and drugs, and between dietary supplements and cosmetic products; (2) claims; (3) good manufacturing practices; (4) adverse event reporting; (5) laboratory capability; (6) research needs; (7) enforcement; and (8) resource needs. FDA's objective in developing this strategy is to ensure consumer access to safe dietary supplements that are truthfully and not misleadingly labeled. FDA intends to develop this strategy by following a process of openness, flexibility, efficiency, and commitment to public health.

FDA has identified four criteria for priority ranking the tasks encompassed in the strategy. These criteria are: (1) Enhancement of consumer safety, (2) development of health-related product labeling regulation, (3) improvement in efficiency of operation, and (4) closure on unresolved regulatory issues.

This meeting also addresses activity undertaken by the agency to solicit comments in accordance with section 406(b) of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105–115) (21 U.S.C. 393(b)).

IV. Agenda and Goals

To help focus comments for the June 8, 1999, meeting, FDA requests that oral and written input regarding an overall strategy for achieving effective regulation of dietary supplements address the following questions:

1. In addition to ensuring consumer access to safe dietary supplements that are truthfully and not misleadingly labeled, are there other objectives that an overall dietary supplement strategy should include?

2. Are the criteria for prioritizing the tasks within the supplement strategy appropriate? Which specific tasks should FDA undertake first?

3. What factors should FDA consider in determining how best to implement a task (i.e., use of regulations, guidance, etc.)?

4. What tasks should be included under the various dietary supplement program elements in the CFSAN 1999 Program Priorities document?

5. Are there current safety, labeling, or other marketplace issues that FDA should address quickly through enforcement actions to ensure, for example, that consumers have confidence that the products on the market are safe and truthfully and not misleadingly labeled?

6. Toward what type or area of research on dietary supplements should FDA allocate its research resources?

7. Given FDA's limited resources, what mechanisms are available, or should be developed, to leverage FDA's resources to meet effectively the objective of the strategy?

V. Comments

Interested persons may, on or before May 28, 1999, submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch via e-mail to "FDA Dockets@bangate.fda.gov" or via the FDA Website "http://www.fda.gov". You should annotate and organize your comments to identify the specific issues to which they refer. You must submit two copies of comments, identified with the docket number found in brackets in the heading of this document, except that you may submit one copy if you are an individual. You may review received comments in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Transcripts

You may request transcripts of the meeting in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. You may also examine the transcript of the meeting at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday, as well as on the FDA Website "http://www.fda.gov".

Dated: May 6, 1999.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 99–12039 Filed 5–10–99; 1:52 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–264, A–G]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Medicare DMEPOS Competitive Bidding Demonstration;

Form No.: HCFA–R–0264, A–G;

Use: Section 4319 of the Balanced Budget Act (BBA) mandates HCFA to implement demonstration projects under which competitive acquisition areas are established for contract award purposes for the furnishing of Part B items and services, except for physician's services. The first of these demonstration projects implements competitive bidding of categories of durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS). Under the law, suppliers can receive payments from Medicare for items and services covered by the demonstration only if their bids are competitive in terms of quality and price. Each demonstration project may be conducted in up to three metropolitan areas for a three year period. Authority for the demonstration expires on December 31, 2002. The schedule for the demonstration anticipates about a six month period required between mailing the bidding forms to potential bidders and the start of payments for DMEPOS under the demonstration. HCFA intends to operate the demonstration in two rounds, the first of two years, and the second of one year. HCFA has announced that it intends to operate its first demonstration in Polk County, Florida, which is the Lakeland-Winter Haven Metropolitan Area.

There are seven forms that are required for the demonstration. Form HCFA–R–0264A, will be filled out by suppliers to describe the attributes of their organization, including quality of services and financial data. Form HCFA–R–0264B will be filled out by suppliers for each of the categories of DMEPOS for which they bid, and includes information about their supply of that category of equipment or supplies, and the prices that they bid for each item in that category. Form HCFA–R–0264C will be used by site inspectors who gather information at the facilities of bidders. Form HCFA–R–0264D is used to gather data from bank or financial references for the bidding suppliers. Form HCFA–R–0264E is used to gather data from business referral sources for the bidding suppliers. HCFA–R–0264F is used by suppliers whose bids are in the competitive range to report financial data. Form HCFA–R–0264G has been added to meet public comments so that nursing homes that wish to continue to use their existing suppliers for the demonstration product categories may report that information.

The competitive bidding demonstration for DMEPOS has the following objectives:

- Test the policies and implementation methods of competitive bidding to determine whether or not is should be expanded as a Medicare Program.
- Reduce the price that Medicare pays for medical equipment and supplies.
- Limit beneficiary out-of-pocket expenditures for copayments.
- Improve beneficiary access to high quality medical equipment and supplies.
- Prevent business transactions with suppliers who engage in fraudulent practices.

HCFA plans to mail the bidding package, including the referenced forms A and B, to potential bidders at the first demonstration sites in Polk County, Florida on February 12, 1999, and to request bidder submissions by March 29, 1999. Forms C, D, E and F will be used for inspections, reference checking, and financial information gathering in the three months following the bid submissions. These forms will be used by HCFA or its agents to gather information regarding bidders who have made financially attractive bids and are being evaluated for quality, financial stability, and other attributes for consideration as demonstration suppliers.

Frequency: Two times at each demonstration site;

Affected Public: Business or other for-profit, and not-for-profit institutions;

Number of Respondents: 2,060;

Total Annual Responses: 2,060;

Total Annual Hours: 24,795.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–12120 Filed 5–12–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–243]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity

of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Medicare Agreement Application, Health Care Prepayment Plan and Supporting Regulations in 42 CFR, Section 417.800—.840.

Form No.: HCFA-R–243.

Use: An organization must meet certain requirements to be a Health Care Prepayment Plan that is eligible for a Medicare 1833 agreement. The application is the collection form used to obtain information from an organization that would allow HCFA staff to determine compliance with the regulations. This form includes requests for information about: the management of the applicant organization; arrangements for providing health care to beneficiaries; meeting Medicare requirements for appeals, hearings, advance directives, health benefits; risk sharing with other entities; the fiscal soundness of the applicant; the cost budget, which forms the basis for HCFA payment; prevention of duplicate payment; and the applicant's marketing strategy.

Frequency: Other (One time).

Affected Public: Business or other for-profit institutions, Not-for-profit institutions, and State, Local or Tribal Governments.

Number of Respondents: 15.

Total Annual Responses: 15.

Total Annual Hours: 1,125.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 7, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–12121 Filed 5–12–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–270]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Request: Extension of a currently approved collection.

Title of Information Collection: Managed Care organization Year 2000 Continuity and Contingency Planning (BCCP) Status Report.

Form Number: HCFA–R–0270.

Use: This information is needed to determine the status of HCFA's business partners millennium readiness.

Frequency: Monthly.

Affected Public: Federal Government, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 350.

Total Annual Responses: 4,200.

Total Annual Hours Requested: 44,450.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: April 26, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–12122 Filed 5–12–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–191]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Granting and Withdrawal of Deeming Authority to National Accreditation Organizations and Supporting Regulations in 42 CFR Sections 488.4–9 and 488.201.

Form No.: HCFA–R–191 (OMB# 0938–0690).

Use: The information collected is used by HCFA to determine whether a private accreditation organization's criteria for granting accreditation is equal to or more stringent than the criteria used by Medicare to determine provider and supplier eligibility for participation in the Medicare Program.

Frequency: Quarterly and On occasion.

Affected Public: Not-for-profit institutions, and Business or other for-profit.

Number of Respondents: 5.

Total Annual Responses: 28.

Total Annual Hours: 451.2.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: March 8, 1999,

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–12123 Filed 5–12–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–0381]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Identification of Extension Units of Outpatient Physical Therapy (OPT) and Outpatient Speech Pathology (OSP) Providers and Supporting Regulations in 42 CFR 485.701–785.729.

Form No.: HCFA–381 (OMB# 0938–0273).

Use: Medicare requires OPT/OSP providers to be surveyed to determine compliance with Federal requirements. When an OPT/OSP provider furnishes services to locations other than their already certified premises (extension locations), those premises are considered to be part of the OPT/OSP provider and are subject to the same Medicare regulations as the primary location. This form is used by the State survey agencies and by the HCFA regional offices to identify and monitor extension locations to ensure their compliance with Federal requirements. The HCFA–381 form requests information such as: facility name, provider number, where services are rendered, and the number of OPT/OSP services rendered.

Frequency: Annually.

Affected Public: Business or other for-profit

Number of Respondents: 2,300.

Total Annual Responses: 2,300.

Total Annual Hours: 575.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: May 6, 1999.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 99–12124 Filed 5–12–99; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Notice of Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, June 3, 1999, Conference Room 10, Building 31, National Institutes of Health, Bethesda, Maryland 20892.

The entire meeting will be open to the public from 8:30 a.m. to adjournment. The topics proposed for discussion include but are not limited to (1) the NIH Graduate Program; (2) Biomedical Computing; (3) the Council of Public Representatives; (4) the Office of Medical Applications of Research; and (5) the Office of Protection from Research Risks. Attendance by the public will be limited to space available.

Ms. Janice Ramsden, Special Assistant to the Deputy Director, National Institutes of Health, 1 Center Drive MSC 0159, Bethesda, Maryland 20892–0159, telephone (301) 496–0959, fax (301) 496–7451, will furnish the meeting agenda, roster of committee members, and available substantive program information upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Ramsden no later than May 28, 1999.

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–12076 Filed 5–12–99; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant

applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group Subcommittee F—Manpower & Training.

Date: June 13–15, 1999.

Time: 3:30 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: St. James Hotel, 950 24th St., NW., Washington, DC 20037.

Contact Person: Mary Bell, PHD, Scientific Review Administrator, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6130 Executive Boulevard, Rockville, MD 20892, (301) 496–7978.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12078 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 8–9, 1999.

Time: June 8, 1999, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: The MidTown Hotel, 220 Huntington Avenue, Boston, MA 02115.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel, Genetics and Molecular Biology of Parkinsonism.

Date: June 22–23, 1999.

Time: June 22, 1999, 7:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Sawgrass Marriott Hotel, 1000 PGA Tour Boulevard, Ponte Vedra Beach, FL 32082.

Contact Person: James P. Harwood, PhD, Deputy Chief, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: June 23–24, 1999.

Time: June 23, 1999, 7:00 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Hilton Pearl River, 500 Veterans Memorial Drive, Orangeburg, NY 10965.

Contact Person: Louise L. Hsu, PhD, Scientific Review Administrator, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–12070 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Diabetes and Digestive and Kidney Diseases Advisory Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Kidney, Urologic and Hematologic Diseases Subcommittee.

Date: June 1–2, 1999.

Open: June 1, 1999, 2:30 pm to 3:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference 9A51.

Closed: June 1, 1999, 3:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference 9A51.

Closed: June 2, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31C, Conference 9A51.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Digestive Diseases and Nutrition Subcommittee.

Date: June 1–2, 1999.

Open: June 1, 1999, 2:30 pm to 3:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 7.

Closed: June 1, 1999, 3:30 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 7.

Closed: June 2, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31A, Conference Room 7.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council, Endocrine and Metabolic Diseases Subcommittee.

Date: June 1–2, 1999.

Open: June 1, 1999, 2:30 pm to 3:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 1, 1999, 3:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 2, 1999, 8:00 am to 9:30 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

Name of Committee: National Diabetes and Digestive and Kidney Diseases Advisory Council.

Date: June 1–2, 1999.

Open: June 1, 1999, 12:30 pm to 2:30 pm.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 1, 1999, 3:30 pm to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Closed: June 2, 1999, 9:45 am to 10:15 am.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Open: June 2, 1999, 10:15 am to Adjournment.

Agenda: Grant applications.

Place: National Institutes of Health, Building 31, Conference Room 10, Bethesda, MD 20892.

Contact Person: Walter S. Stolz, Director for Extramural Activities, National Institute of Diabetes and Digestive and Kidney Diseases, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes,, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 99–12071 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Arthritis and Musculoskeletal and Skin Diseases Advisory Council.

Date: June 17, 1999.

Open: 8:30 am to 12:00 pm.

Agenda: The meeting will be open to the public to discuss administrative details relating to Council business and special reports.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Closed: 1:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications and/or proposals.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Steven J. Hausman, Deputy Director, NIAMS/NIH, Bldg. 31, Room 4C–32,, 31 Center Dr. MSC 2350, Bethesda, MD 20892–2350.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12072 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, MBRS Special Emphasis Panel.

Date: May 20, 1999.

Time: 4:00 pm to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIGMS, Office of Scientific Review, Natcher Building, Room 1AS19, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Rebecca Hackett, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS19J, Bethesda, MD 20892, (301) 594–2771.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Programs Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12073 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Minority Programs Review Committee, Marc Subcommittee A.

Date: June 14–15, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Richard I. Martinez, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS–19G, Bethesda, MD 20892–6200, (301) 594–2849.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12074 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Nursing Research Initial Review Group.

Date: June 24–25, 1999.

Time: 8:30 AM to 5:00 PM.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Mary J. Stephens-Frazier, PHD, Scientific Review Administrator, National Institute of Nursing Research, National Institutes of Health, Natcher Building, Room 3AN32, 45 Center Drive, Bethesda, MD 20892, (301) 594–5971.

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12077 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Council on Alcohol Abuse and Alcoholism.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C. as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Date: June 2–3, 1999.

Closed: June 2, 1999, 7:00 PM to 9:00 PM.

Agenda: To review and evaluate grant applications and/or proposals.

Place: Bethesda Hyatt Regency, One Bethesda Metro, Bethesda, MD 20814.

Open: June 3, 1999, 8:30 AM to 3:25 PM.

Agenda: Program Developments and Priorities.

Place: Natcher Building, Conference Room E1/E2, 45 Center Drive, Bethesda, MD 20892.

Contact Person: James F. Vaughan, Executive Secretary, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, PHS, DHHS, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–12079 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Microbiology and Infectious Diseases Research Committee.

Date: June 10–11, 1999.

Open: June 10, 1999, 9:00 am to 10:00 am

Agenda: The meeting will be open for discussion of administrative details relating to committee business and program review, and for a report from the Director, Division

of Extramural Activities, which will include a discussion of budgetary matters.

Place: Georgetown Holiday Inn, Mirage 1 Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Closed: June 10, 1999, 10:00 am to adjournment.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Mirage 1 Room, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Gary S. Madonna, PhD, Scientific Review Administrator, Room 4C12, Solar Bldg., 6003 Executive Blvd., Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: May 6, 1999.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy, NIH.

[FR Doc. 99–12080 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Peer Review Oversight Group.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Peer Review Oversight Group.

Date: June 21, 1999.

Time: 8:30 am to 5:00 pm.

Agenda: Agenda items for discussion will include: Electronic Research Administration, the Customer Satisfaction Survey, the accessibility of research data, and the possibility of shorter page limits for grant applications (PHS 398).

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Barbara Nolte, Program Analyst, Office of Extramural Research, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 252, Bethesda, MD 20892, 301–402–1058.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: May 7, 1999.

LaVerne Y. Stringfield,

Committee Management Officer, NIH.

[FR Doc. 99–12075 Filed 5–12–99; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part C (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–76, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 64 FR 17614–17675, dated April 22, 1999) is amended to reflect the transfer of meeting management support responsibilities from the Public Health Program Office to Management Analysis and Services Office, Office of Program Support, Centers for Disease Control and Prevention.

Section C–B, Organization and Functions, is hereby amended as follows:

Revise the mission statement for the *Management Analysis and Services Office (CA59), Office of Program Support (CA5),* as follows:

In item (1) of the mission statement, insert the words "classroom and meeting management support" after "correspondence," and before "forms design".

Revise the mission statement for the *Division of Media and Training Services (CH7), Public Health Practice Program Office (CH),* as follows:

Delete item (9) in its entirety and renumber the items accordingly.

Revise the statement for the *Meeting and Training Support Branch (CH73)* as follows:

Delete item (4) in its entirety and renumber the items accordingly.

Dated: May 4, 1999.

Claire Broome,

Acting Director.

[FR Doc. 99–12144 Filed 5–12–99; 8:45 am]

BILLING CODE 4160–16–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Assessment of the National Leadership Institute Program and Services—New

The Substance Abuse and Mental Health Administration's (SAMHSA) Center for Substance Abuse Treatment (CSAT) intends to conduct an assessment of its National Leadership Institute (NLI). The goal underlying the technical assistance and training opportunities provided through the NLI is to strengthen the competitive position and power of nonprofit community-based organizations (CBOs) which are essential components of local substance abuse services for the uninsured and under-insured.

The NLI gathers, adapts, and disseminates the best available knowledge about business management for nonprofit agencies, including competitive bidding, strategic development and business planning, cultural competency, team building and change management, and Management Information Systems. Participants in the NLI technical assistance programs are self-identified and participate in either short- or long-term technical assistance (TA). Short-term TA includes two on-site TA visits, one training event, one group technical assistance activity, and up to five resource packages. Long-term TA includes up to four on-site TA visits, up to three training events, two group TA activities, and up to 10 resource packages. Training efforts are also conducted by the NLI, using curricula developed by and administered by the NLI.

Both a process and an impact assessment will be conducted. The process assessment will describe the needs faced by CBOs, the types of training and technical assistance that CBOs receive through the NLI, and CBO satisfaction with services. The impact assessment will focus on specific changes made by CBOs in response to NLI recommendations, and

improvements in self-rated organizational performance and several organization status measures.

Analysis of this information will assist CSAT in documenting the numbers and types of participants accessing these services, and describing the extent to which participants improve in their knowledge, skill, and ability to manage their organizations in this changing business environment. This type of information is crucial to support CSAT in complying with GPRA reporting requirements and will inform future development of technical assistance activities.

The assessment design for technical assistance participants will be a pre-post design that collects identical information at initiation of NLI contact and again after 12 months. This time frame is necessary to allow CBOs the opportunity to address NLI technical assistance recommendations and to plan and implement their changes. In addition, the assessment will collect satisfaction measures after each technical assistance event, and both a comprehensive satisfaction summary and an activity summary at 6 and 12 months after initial NLI contact. A formal comparison group is not available, but comparisons of changes in key organization status measures can be made with similar data on changes collected from other CSAT KDA-funded grantees. These key status indicators include organization revenues, revenue per client, revenue sources, client flow, staff level, staff turnover, services provided, and major growth/expansion or contraction. In addition, these same indicators will be collected, in one interview, for several prior years to establish a pattern of change within specific CBOs.

A feature of the data collected in this evaluation is the inclusion of pre- and post-service perceptions of organizational functioning across 14 business and financial management domains. This information constitutes a self-assessment that is used in planning NLI services, and comprises the baseline against which follow-up measures of functioning will be assessed.

NLI anticipates receiving requests for assistance from 79 CBOs per year over the next 3 years, for a total of 237 programs. This includes up to 54 CBOs requiring long-term TA, and up to 25 CBOs requiring short-term TA. Data collection burden will be borne primarily by directors of the CBOs who will provide initial contact information (30 minutes), pre- and post-test versions of organizational self assessments (60 minutes), satisfaction forms (5 minutes each for 2 types of questionnaire), and activity summaries (10 minutes). Moreover, up to 10 focus groups will be held with staff representatives from 3 to 6 CBOs per focus group. Discussions will be held with staff representatives from CBOs receiving NLI services. An estimated 54 staff representatives will be contacted each year. Each focus group will have approximately 18 attendees. Finally, an estimated 475 attendees at training events per year will also receive a brief satisfaction questionnaire. The chart below summarizes the total three-year and annualized burden for this project.

Form	Estimated number of respondents	Responses per respondent	Hours per response	Total hours
Technical Assistance Recipients				
Initial Contact Form	237	1	.25	59
Organization Self-Assessment	237	2	.75	356
Technical Assistance Event Satisfaction	237	1	.08	19
Activity Summary	237	2	.33	156
Comprehensive NLI Satisfaction	237	1	.16	40
Focus Groups	180	1	180	180
Training Participants				
Training Participant Information Form	1,425	2	.08	228
Training Participant 30 day follow-up	1,425	1	.08	114
Total	1,842			1152
Annual average	614			384

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Daniel Chenok, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: May 7, 1999.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 99–12093 Filed 5–12–99; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

PRT–011449

Applicant: James David Williams, Plainview, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–011448

Applicant: Dean W. Halverson, Lincoln, MT

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–011639

Applicant: Tarzan Zerbini, Webb City, MO

The applicant requests a permit to export, re-export and re-import tigers (*Panthera tigris*), and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–011575

Applicant: Dale Norman Bigger, Humble, TX

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–814588

Applicant: Brian McMillian, Canyon Country, CA

The applicant requests a permit to export, re-export and re-import tigers (*Panthera tigris*) and leopards (*Panthera pardus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

PRT–011646

Applicant: Kootenai Tribe of Idaho, Bonners Ferry, ID

The applicant requests a permit to export white sturgeon (*Acipenser transmontanus*) fertilized eggs from a spawning and rearing facility in Bonners Ferry, Idaho to the Kootenary Trout Hatchery in Fort Steele, British Columbia as advised in the USFWS White Sturgeon Recovery Team Plan and would enhance the survival of the species through conservation and propagation. This notification covers activities conducted by the applicant over a five year period.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR part 18).

PRT–011452

Applicant: Steven Tyrholm, Klamath Falls, OR

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–011451

Applicant: Kevin S. Small, Bakersfield, CA

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Lancaster Sound polar bear population, Northwest Territories, Canada for personal use.

PRT–011326

Applicant: Edward A. Peterson, Eatontown, NJ

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the McClintock Channel polar bear population, Northwest Territories, Canada for personal use.

PRT–011393

Applicant: Joseph Zbylski, Englewood, CO

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Southern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–011394

Applicant: John Conti, Grosse Pointe Farms, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–011392

Applicant: John Gall, Chesterfield, MI

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Northern Beaufort Sea polar bear population, Northwest Territories, Canada for personal use.

PRT–838026

Applicant: Ferris State University, MI

The applicant requests a permit to import one taxidermied and mounted donated polar bear (*Ursus maritimus*) for the purpose of public display.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: May 10, 1999.

MaryEllen Amtower,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 99–12140 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Revise the Comprehensive Conservation Plan and To Prepare an Environmental Impact Statement for Togiak National Wildlife Refuge, Alaska

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and solicitation of comments.

SUMMARY: The U.S. Fish and Wildlife Service (Service) intends to revise the comprehensive conservation plan (comprehensive plan) for the Togiak National Wildlife Refuge, Alaska. The Service furnishes this notice to advise agencies and the public of its intentions, and to gather information needed to revise the plan in compliance with the Alaska National Interest Lands Conservation Act, as amended (16 U.S.C. 3100 *et seq.*), the National Wildlife Refuge System Administration Act, as amended (16 U.S.C. 668dd-668ee), the National Environmental Policy Act, as amended (42 U.S.C. 4321–4347) and its implementing regulations. Specifically, we would like suggestions on the scope of issues which should be addressed in the plan. We will also evaluate the wilderness review and wild and scenic rivers study that were completed previously for refuge lands and waters.

DATES: Comments should be received no later than November 1, 1999.

ADDRESSES: Address comments to Margaret Arend, Refuge Planning Office, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, telephone (907) 786–3393; fax (907) 786–3965.

FOR FURTHER INFORMATION: For additional information, contact Margaret

Arend, Refuge Planning, at (907)786–3393, fax (907) 786–3965.

SUPPLEMENTARY INFORMATION: The Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 3101 *et seq.*) was signed into law on December 2, 1980. The broad purpose of this law is to provide for the disposition and use of a variety of federally owned lands in Alaska. Section 303 of ANILCA established Togiak National Wildlife Refuge which includes the Cape Newenham National Wildlife Refuge. ANILCA lists the purposes for which Togiak Refuge was established and is managed, which are to conserve fish and wildlife populations and habitats in their natural diversity; to fulfill the international treaty obligations of the United States with respect to fish and wildlife and their habitats; to provide the opportunity for continued subsistence uses by local residents; and to ensure water quality and necessary water quantity within the refuge. Section 304(g) of ANILCA directs the Service to prepare comprehensive plans for all refuges and to revise them "from time to time."

The National Wildlife Refuge System Improvement Act of 1997, which amended the Refuge Administration Act, also includes requirements for system wide refuge planning. Should any provisions of the Refuge Administration Act conflict with the provisions of ANILCA, the provisions of ANILCA shall prevail for refuges in Alaska. Plans identify and describe: the populations and habitats of the fish and wildlife resources of the refuge; the special values of the refuge, as well as any other archeological, cultural, ecological, geological, historical, paleontological, scenic, or wilderness value of the refuge; areas of the refuge that are suitable for use as administrative sites or visitor facilities, or for visitor services; present and potential requirements for access; and significant problems which may adversely affect the populations and habitats of fish and wildlife. The plans designate areas within the Refuge according to their respective resources and values; specify programs for conserving fish and wildlife and maintaining the special values of the Refuge; specify uses which may be compatible with the major purposes of the Refuge; and identify opportunities to be provided for fish and wildlife-oriented recreation, ecological research, environmental education and interpretation of Refuge resources and values, if they are compatible with the purposes of the Refuge.

The Togiak comprehensive plan was completed in 1987. Much of the management direction in the comprehensive plan is now out of date due to changes in laws, regulations, and circumstances. In 1991 the Service completed a public use management plan which provided additional guidance for management of public use along popular sport fishing rivers. In 1997 the Refuge began to revise the public use management plan to address increasing public use of the Refuge. The Service has decided to combine the comprehensive plan and the public use management plan and prepare one revised comprehensive conservation plan and environmental impact statement for the Refuge.

This notice formally begins the revision of the comprehensive plan for the Togiak National Wildlife Refuge. In addition to soliciting public comments through this notice, public comments on issues to be addressed in the revision will be solicited through newsletters and other mailings. The comprehensive plan revision will be discussed during community meetings in Togiak, Quinhagak, Goodnews, Platinum, Manokotak, Alegnigik, Clark's Point, Dillingham and Anchorage, AK between April and November 1999. Once issues are identified, the Service will identify options to address the issues and prepare a draft comprehensive plan and draft environmental impact statement. This document is scheduled to be released for public review in the fall of 2000. After public review and comment on the draft plan and environmental impact statement, including public meetings, a final plan and environmental impact statement will be prepared and released.

In preparing and revising the plan, the Service will consult with appropriate State agencies and Native corporations and will hold public meetings to ensure that residents of local villages and political subdivisions of the State which are most affected by administration of the Refuge have the opportunity to present their views on the plan revisions. Before adopting a plan, The Service will publish a notice in the **Federal Register** and will provide an opportunity for public views and comment.

Electronic Access: Interested persons may submit comments and data by electronic mail (E-mail) to: Maggi__Arend@fws.gov. Submit electronic comments as an ASCII file avoiding the use of special characters and any form of encryption. WordPerfect Version 8 or compatible file formats are acceptable.

David B. Allen,
Regional Director.

[FR Doc. 99–12050 Filed 5–12–99; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–09–1060–00]

Pony Express Resource Management Plan, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a plan amendment to the Pony Express Resource Management Plan (RMP).

SUMMARY: The Bureau of Land Management (BLM), Salt Lake Field Office, Utah is preparing an Environmental Assessment (EA) to consider a proposed amendment to the Pony Express RMP which would establish the appropriate management level (AML) and forage allocation for two wild horse herd areas (HA), Cedar Mountain and Onaqui Mountain. Forage allocation adjustments shall take into consideration the needs of wildlife and livestock.

DATES: The comment period for identification of issues for the proposed plan amendment will commence with the date of publication of this notice. Comments must be submitted on or before June 14, 1999.

ADDRESSES: Comments on the proposed plan amendment should be sent to Bureau of Land Management, Salt Lake Field Office, 2370 South 2300 West, Salt Lake City, Utah 84119.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Land Use Planner, Bureau of Land Management, telephone (801) 977–4317. Existing planning documents and information are available at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The Pony Express RMP, approved January 12, 1990, Wild Horse Decision No. 1 set the herd sizes at: Cedar Mountain HA at 85 animals (1,020 AUMs) and Onaqui Mountain HA at 45 animals (540 AUMs). Since then, the HAs have been evaluated to determine the potential carrying capacity for wild horses. Preliminary issues include livestock grazing, wilderness study areas, off-highway vehicles, vegetation, water, and riparian. Public participation is being sought at this initial stage in the planning process to ensure the RMP

amendment addresses all issues, problems and concerns from those interested in the management of these public lands.

Linda Colville,

Acting State Director, Utah.

[FR Doc. 99–12095 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1220–00]

Front Range Resource Advisory Council (Colorado) Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972 (FACA),5 U.S.C. Appendix, notice is hereby given that the next meeting of the Front Range Resource Advisory Council (Colorado) will be held on May 20, 1999 in Canon City, Colorado.

The meeting is scheduled to begin at 9:15 a.m. at the Holycross Abbey Community Center, 2951 E. Highway 50, Canon City, Colorado. Topics discuss at the meeting will include current issues within the district including a discussion on public involvement with the Recreation Guidelines for Colorado BLM and an update on the Texas Creek OHV Area. All Resource Advisory Council meetings are open to the public. Interested persons may make oral statements to the Council at 9:30 a.m. or written statements may be submitted for the Council's consideration. The District Manager may limit the length of oral presentations depending on the number of people wishing to speak.

DATES: The meeting is scheduled for Thursday, May 20, 1999 from 9:15 a.m. to 4 p.m.

ADDRESSES: Bureau of Land Management (BLM), Canon City District Office, 3170 East Main Street, Canon City Colorado 81212; Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: Ken Smith at 719–269–8553.

SUPPLEMENTARY INFORMATION: Summary minutes for the Council meeting will be maintained in the Canon City District Office and will be available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Kenneth Smith,

Acting District Manager.

[FR Doc. 99–12051 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–910–0777–29–241A]

State of Arizona Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Arizona Resource Advisory Council Meeting notice of meeting and tour.

SUMMARY: This notice announces a meeting and tour of the Arizona Resource Advisory Council. The meeting and tour will be held June 11–12, 1999 in the Arizona Strip, north of the Grand Canyon. On June 11, the RAC will conduct a one-day meeting from 8:30 a.m. until approximately 3:00 p.m. The meeting will be held at the BLM Arizona Strip Field Office located at 345 East Riverside Drive in St. George, Utah. The agenda items to be covered at the meeting include review of previous meeting minutes; BLM State Director's Update on legislation, regulations and statewide planning efforts; Updates on Wild Horse and Burro Program and Barry M. Goldwater Range Withdrawal and LEIS; Report on Interagency Meeting with Forest Service and Natural Resource Conservation Service on Noxious Weed Issue; Updates on Secretarial Initiatives, regarding Proposed Arizona National Monument and Empire Cienege National Conservation Area; Presentation on BLM Land Acquisition/Exchange Program, Proposed Field Office Rangeland Resource Teams; Reports from BLM Field Office Managers; Reports by the Standards and Guidelines, Recreation and Public Relations, Wild Horse and Burro Working Groups; Reports from RAC members; and Discussion on future meetings. A public comment period will be provided at 11:30 a.m. on June 11, 1999, for any interested publics who wish to address the Council. On June 12, the RAC and BLM staff will tour the Shivwitts Plateau and discuss the proposed Arizona National Monument. The tour will depart from the Arizona Strip Field Office at 7:00 a.m., and conclude approximately at 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Deborah Stevens, Bureau of Land Management, Arizona State Office, 222 North Central Avenue, Phoenix, Arizona 85004–2203, (602) 417–9215.

Gary D. Bauer,

Acting Arizona Associate State Director.

[FR Doc. 99–12094 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–130–1020–00; GP9–0184]

Eastern Washington Resource Advisory Council

AGENCY: Bureau of Land Management, Spokane District.

NOTICE: Notice of Field Tour of the Eastern Washington Resource Advisory Council.

ACTION: Field tour of the Eastern Washington Resource Advisory Council; June 3, 1999, in Spokane, Washington.

SUMMARY: The Eastern Washington Resource Advisory Council will take a field tour on June 3, 1999. The tour will start at 8:30 a.m., at the Spokane District Office of the Bureau of Land Management (BLM), 1103 N. Fancher, Spokane, Washington 99212–1275. The Council will visit BLM administered lands in Spokane and Lincoln Counties, Washington. Topics to be addressed include recreation activities and revegetation issues. The tour will conclude no later than 4:00 p.m. The tour is open to the public but transportation will not be provided.

FOR FURTHER INFORMATION CONTACT: Joseph Buesing, Bureau of Land Management, Spokane District Office, 1103 N. Fancher Road, Spokane, Washington 99212–1275; or call 509–536–1200.

Dated: May 7, 1999.

Joseph K. Buesing,

District Manager.

[FR Doc. 99–12096 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–1430–01, COC–58098, COC–62304]

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale of public lands in Conejos and Lake Counties, CO.

SUMMARY: The following described land has been examined and found suitable for disposal by direct sale under Section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value:

COC–58098

T.36N., R.6E., N.M.P.M., Section 24: Lot 13, comprising approximately 3.21 acres.

COC–62304

T.9S., R.91W., Sixth P.M., Section 36: that portion of the E2E2 lying easterly of the Lake Placer (MS 2358) and the Law Placer (MS 4752) containing 1 acre, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this notice, whichever occurs first.

The land in parcel COC–58098 will be offered to Hal and Mindy Wilson. This sale will be made to resolve an inadvertent trespass situation. The land in COC–62304 will be offered to Scott Peregoy. The parcel is a small irregular parcel interfering with use of adjacent residential property. It has been determined that the subject parcels contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the direct sale offer will qualify the purchaser to make application for conveyance of those mineral interests. The patents, when issued, will contain certain reservations to the United States. Detailed information concerning this sale, including the prices, patent reservations, etc. will be available upon request.

DATES: Interested parties may submit comments to the District Manager until June 20, 1999.

ADDRESSES: Bureau of Land Management, Canon City District, 3170 E. Main St., Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Bill Miller, Realty Specialist, (719) 274–6308 in LaJara, or Stu Parker, (719) 269–8546 in Canon City.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the Colorado State Director, who may vacate, modify, or continue this realty action.

Kenneth L. Smith,

Acting District Manager.

[FR Doc. 99–12126 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–057–1430–01) COC–49757]

Notice of Realty Action—Fremont and Chaffee Counties

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action COC–49757, Recreation and Public Purpose Classification, Application to Amend Lease, and Opening Order, for the Arkansas Headwaters Recreation Area Recreation and Public Purposes Act Lease, Chaffee, and Fremont Counties, Colorado.

SUMMARY: After completing an environmental assessment the following public lands are classified as suitable for lease under the Recreation and Public Purposes Act (R&PP) of July 14, 1926, as amended, 43 U.S.C. 869 et. seq., and the regulations thereunder 43 CFR 2740 and 2912. The public lands involved are segregated from the public lands including the general mining laws, except for the R&PP Act.

Sixth Principal Meridian, Colorado

T. 14 S., R. 78 W., section 23 that portion of the NE¼NW¼SW¼ and S½SE¼SW¼SW¼MW¼ west of Chaffee County Road 102 consisting of approximately 12 acres known as the Collegiate Peaks Gateway, Chaffee County.

T. 15 S., R. 78 W., section 12 SW¼SE¼SW¼ consisting of approximately 10 acres known as Ruby Mountain, Chaffee County.

New Mexico Principal Meridian, Colorado

T. 49 N., R. 10 E., section 28, that portion of lots 6, 7, 10, and 11 lying north of U.S. Highway 50 right of way and south of the Union Pacific Railroad right of way consisting of approximately 35 acres known as Point Bar, Fremont County.

T. 48 N., R. 11 E, section 35, that portion of lots 17, 18, 19, and 20 lying south of the Arkansas River and north of the U.S. Highway 50 right of way consisting of approximately 5 acres known as Canyon Trading Post, Fremont County.

These four properties will be leased as part of the Arkansas Headwaters Recreation Area administered jointly between the BLM and the Colorado State Division of Parks and Outdoor Recreation. Normal terms, conditions, and standard stipulations will apply. In addition, the lease will be subject to valid existing rights, and a program of monitoring stream banks, riparian and wetland vegetation, soil erosion, runoff sediment, upland vegetation, and the success of any rehabilitation projects. The following public lands have been leased under the Recreation and Public Purposes Act. The environmental assessment also determined that these parcels should be removed from the lease. The lease is now amended and the lease of these parcels is terminated to that extent and the associated classifications are hereby terminated as authorized under 43 CFR 2741.5(h)(2):

Sixth Principal Meridian, Colorado

T. 18 S., R. 72 W., section 21, a portion of the S½SW¼NW¼ and N½NW¼SW¼ containing approximately 2 acres known as Bootlegger, Fremont County, T. 18 S., R. 72 W, section 14, a portion of lot 2 containing approximately 2 acres known as Parkdale, Fremont County.

The following lands were classified but never leased as planned under the Recreation and Public Purposes Act. The classification is hereby terminated as authorized by 43 CFR 2741.5(h)(2):

Sixth Principal Meridian, Colorado

T. 18 S., R. 71 W., section 18, SE¼NW¼, NE¼SW¼, and portions of the W½SW¼NE¼, SW¼NW¼SE¼, NW¼SW¼SE¼, N½SE¼SW¼, and SW¼SE¼SW¼ lying west of the threat of the Arkansas River containing approximately 140 acres known as the Parkdale South parcel.

At 10 a.m. on July 1, 1999, the three parcels described above known as Bootlegger Parkdale, and Parkdale South shall be opened to the operation of public land laws, including the United States mining laws, subject top valid existing rights, to the extent that the existing R&PP classification segregated the sites.

DATES: Interested parties may submit comments on this action on or before June 15, 1999. Objections will be reviewed and this realty action may be sustained, vacated, or modified. Except as vacated or modified, this realty action will become final effective July 1, 1999.

ADDRESSES: District Manager, Canon City District Office, or Area Manager, Royal Gorge Resource Area, 3170 E. Main St., Canon City, CO 81212. Telephone (719) 269–8500; TDD (719) 269–8597.

FOR FURTHER INFORMATION CONTACT: David Hallock, Realty Specialist Phone: (719) 269–8536.

SUPPLEMENTARY INFORMATION: Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use if consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper

administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

This action is in response to applications by the Colorado State Division of Parks and Outdoor Recreations. Lease of the lands will not be authorized until after the classification becomes effective. Lease of the lands for recreational use would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease issuance.

3. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Adrian Neisius,

Acting District Manager.

[FR Doc 99–12127 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

National Park Service

General Management Plan, Final Environmental Impact Statement, Lyndon B. Johnson National Historical Park, Texas

AGENCY: National Park Service, Interior.

ACTION: Availability of final environmental impact statement and general management plan for Lyndon B. Johnson National Historical Park.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Imapct Statement and General Management Plan (FEIS/GMP) for Lyndon B. Johnson National Historical Park, Texas.

DATES: A 30 day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP.

ADDRESSES: Public reading copies of the FEIS/GMP will be available for review at the following locations:

Office of the Superintendent, Lyndon B. Johnson National Historical Park, 100 Ladybird Lane, Johnson City, Texas 78636; Telephone: (830) 868–7128.

Planning and Environmental Quality, Intermountain Support Office-Denver, National Park Service, P.O. Box 25287, Denver, Co. 80225–0287; Telephone: (303) 969–2851 or (303) 969–2832.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW, Washington, DC 20240; Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The FEIS/GMP analyzes three alternatives for management, use, and with special concern for the historic character, structures, and landscape. The alternatives were formulated to address problems and management concerns related to the future operation of the LBJ Ranch district following Mrs. Johnson's passing, as well as concerns related to visitor use, resource management, and facility development.

Alternative 1, the no action alternative, is a continuation of the present management course, maintaining historic structures but not upgrading interpretation or increasing staff. Alternative 2, reflects a modest increase in the level of park maintenance, interpretation, and administration with limited visitation of the Texas White House, some additional staffing, and expanded educational outreach into the local community. Alternative 3, the National Park Service's proposed action, envisions a comprehensive change to the overall visitor experience with the Texas White House open on a regularly scheduled basis, increased educational outreach, new facilities for visitor contact, maintenance, ranching, and park interpretive staff, and a new emphasis on the Johnson City unit.

The FEIS/GMP in particular evaluates the environmental consequences of the proposed action and the other alternatives on archeological and historic resources, soils, water resources and water quality, floodplains, economy and social environment, and visitor use/experience and interpretation.

FOR FURTHER INFORMATION: Contact Superintendent, Lyndon B. Johnson National Historical Park, at the above address and telephone number.

Dated: May 5, 1999.

John E. Cook,

Director, Intermountain Region, National Park Service.

[FR Doc. 99–12086 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

Intent to Prepare a Draft Environmental Impact Statement on the General Management Plan for Carl Sandburg Home National Historic Site, North Carolina

AGENCY: National Park Service, Interior.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement on the General Management Plan for Carl Sandburg Home National Historic Site, North Carolina.

SUMMARY: The National Park Service will prepare an Environmental Impact Statement (EIS) to accompany its General Management Plan (GMP) for Carl Sandburg Home National Historic Site. The Service will conduct public scoping meetings in the local area to receive input from interested parties on issues, concerns, and suggestions pertinent to the management of Carl Sandburg Home National Historic Site. Suggestions and ideas for managing cultural and natural resource conditions and visitor experiences at the national historic site are encouraged. The comment period for each of these meetings will be announced at the meetings and will be published on the General Management Plan web site for Carl Sandburg National Historic Site at *http://www.nps.gov/carl.*

DATES: Locations, dates, and times of public scoping meetings will be published in local newspapers and may also be obtained by calling Carl Sandburg Home National Historic Site. This information will also be published on the General Management Plan web site for Carl Sandburg Home National Historic Site.

ADDRESSES: Scoping suggestions should be submitted to the following address to ensure adequate consideration by the Service. Superintendent, Carl Sandburg Home National Historic Site, 1928 Little River Rd., Flat Rock, North Carolina 28731; Telephone: 828–693–4178.

SUPPLEMENTARY INFORMATION: The National Park Service has announced that an EIS on GMPs will be prepared for all park units. To comply with this policy, a formal scoping period is announced.

Comments are invited on any issue believed to be relevant to the management of Carl Sandburg Home National Historic Site and should be submitted to the Superintendent whose address is given above. Public scoping meetings will be held in the local area and the dates and times may be obtained from local newspapers or by

calling Carl Sandburg Home National Historic Site. We urge that comments and suggestions be made in writing.

Issues currently being considered include determining the most appropriate use of existing temporary structures, management of increased recreational use, coping with tremendous residential development around the park, and how to best fulfill the park's interpretive mission. Central to these issues is the determination of the national historic site's mission, purpose, and significance. The plan will identify desired future conditions for cultural and natural resources and visitor experiences for various management units within Carl Sandburg Home National Historic Site. A draft GMP/EIS will be prepared and presented to the public for review and comment, followed by preparation and availability of the final GMP/EIS.

Dated: May 9, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 99–12085 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Wilson's Creek National Battlefield, General Management Plan and Environmental Impact Statement

AGENCY: National Park Service, Interior.

ACTION: Notice of Intent to prepare a General Management Plan and Environmental Impact Statement for Wilson's Creek National Battlefield, Missouri.

SUMMARY: The National Park Service (NPS) will prepare a General Management Plan (GMP) and an associated Environmental Impact Statement (EIS) for Wilson's Creek National Battlefield, Missouri, in accordance with section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA). This notice is being furnished as required by NEPA Regulations 40 CFR 1501.7.

To facilitate sound planning and environmental assessment, the NPS intends to gather information necessary for the preparation of the EIS, and to obtain suggestions and information from other agencies and the public on the scope of issues to be addressed in the EIS. Comments and participation in this scoping process are invited.

Participation in the planning process will be encouraged and facilitated by various means, including a newsletter and open houses. The NPS will conduct a series of public scoping meetings to explain the planning process and to solicit opinion about issues to address in the GMP/EIS. Notification of all such meetings will be announced in the local press and in NPS newsletters.

DATES: Public scoping meetings will be held on May 25 and 26. On Tuesday, May 25 the meeting will be held from 7 p.m. to 9 p.m. at the Wilson's Creek National Battlefield Visitor Center, 6424 West Farm Road 182 (intersection of Farm Road 182 and ZZ Highway) Republic, Missouri. On Wednesday, May 26 the meeting will be held from 7 p.m. to 9 p.m. at the Busch Municipal Building, 840 Boonville, Springfield, Missouri.

ADDRESSES: Written comments and information concerning the scope of the EIS and other matters should be directed to: Superintendent, Wilson's Creek National Battlefield, 6424 West Farm Road 182, Republic, Missouri 65738.

FOR FURTHER INFORMATION CONTACT: Mr. Gary Sullivan, Wilson's Creek National Battlefield, 6424 West Farm Road 182, Republic, Missouri 65738, 417–882–9144, gary__sullivan@nps.gov.

SUPPLEMENTARY INFORMATION: Wilson's Creek National Battlefield was established to preserve one of the first major Civil War Battlefields and the site of the first Union General killed in the War. The public's enjoyment of the Battlefield is facilitated by providing a safe and accessible visitors center, museum, research library, roads, and trails; preserving and restoring the 1861 rural, agricultural setting, and encouraging its preservation around the park. The park also provides habitat for endangered species, and recreational opportunities that do not impair resource preservation, and the commemoration and interpretation of the Battle. Management of the Battlefield currently is guided by a 1977 master plan, which has become outdated.

In accordance with NPS Park Planning policy, the GMP will ensure the Battlefield has a clearly defined direction for resource preservation and visitor use. It will be developed in consultation with servicewide program managers, interested parties, and the general public. It will be based on an adequate analysis of existing and potential resource conditions and visitor experiences, environmental impacts, and costs of alternative courses of action.

The environmental review of the GMP/EIS for the Battlefield will be conducted in accordance with requirements of the NEPA (42 U.S.C. 4371 *et seq.*), NEPA regulations (40 CFR part 1500–1508), other appropriate Federal regulations, and National Park Service procedures and policies for compliance with those regulations.

The National Park Service estimates the draft GMP and draft EIS will be available to the public by September 2000.

Dated: May 6, 1999.

David N. Given,

Deputy Regional Director, Midwest Region.

[FR Doc. 99–12088 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–10–P

DEPARTMENT OF THE INTERIOR

National Park Service

Public Meeting and Request for Comments on Development of a Wilderness Management Plan for Gulf Islands National Seashore, Mississippi

AGENCY: National Park Service, Interior.

ACTION: Notice of public meetings and request for comments on development of a wilderness management plan for Gulf Islands National Seashore, Mississippi.

SUMMARY: The National Park Service will hold a series of meetings to gather information to be used in the development of a Wilderness Management Plan for Gulf Islands National Seashore. The seashore was established by Congress on January 8, 1971, and consists of several barrier islands along the coast of Mississippi and Florida. On November 10, 1978, Congress designated the Mississippi islands of Horn and Petit Bois to be included in national Wilderness. The information gathered will be used in developing a management plan for the wilderness. Public comments will be accepted at the meetings and in written and electronic form until June 6, 1999.

DATES: The meeting dates are:

1. April 26, 1999, 7 p.m. to 10 p.m., Washington High School (Cafeteria), 6000 College Parkway, Pensacola, FL 32504
2. April 28, 1999, 7 p.m. to 10 p.m., Mississippi Gulf Coast Community College, Jackson County Campus (Fine Arts Auditorium), 2300 U.S. Highway 90, Gautier, MS 39553
3. April 29, 1999, 7 p.m. to 10 p.m., J.L. Scott Marine Education Center and Aquarium (Auditorium), 115 Beach Boulevard, U.S. Highway 90, Biloxi, MS 39530
4. May 3, 1999, 3 p.m. to 6 p.m. and 7 p.m. to 10 p.m., Jackson State University (3 p.m.—Recital hall, 7

p.m.—Choir room), 1400 J.R. Lynch Street, Jackson, MS 39217

5. May 4, 1999, 3 p.m. to 6 p.m. and 7 p.m. to 10 p.m. University of New Orleans-University Center (Room #242-Cabildo), Alumni Drive, New Orleans, LA 70148
6. May 6, 1999, 3 p.m. to 6 p.m. and 7 p.m. to 10 p.m., Martin Luther King, Jr. National Historic Site (Visitor Center), 522 Auburn Avenue, NE, Atlanta, GA 30312

FOR FURTHER INFORMATION CONTACT: Riley Hoggard, (850) 934–2617.

SUPPLEMENTARY INFORMATION: Written comments should be mailed to Gulf Island National Seashore, Attention: Wilderness Coordinator, 1801 Gulf Breeze Parkway, Gulf Breeze, Florida 32561. Comments must be received on or before June 6, 1999. Comments may also be hand-delivered to the same address.

Electronic comments and other data may be submitted by sending electronic mail (e-mail) to guis__wilderness__comments@nps.gov. Electronic comments should be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Dated: May 5, 1999.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 99–12084 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council's Ecosystem Roundtable Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council's (BDAC) Ecosystem Roundtable will meet on May 18, 1999, to discuss several issues including: a discussion of the Battle Creek project MOU, a decision for funding of a 1998 proposal for Butte Creek, an implementation and tracking system update, and other issues. Additionally, a workshop to discuss the Battle Creek MOU will occur on May 11, 1999. These meetings are open to the public. Interested persons may make oral statements to the Ecosystem Roundtable or may file written statements for consideration.

DATES: The Bay-Delta Advisory Council's Ecosystem Roundtable meeting will be held from 9:00 a.m. to 11:30 p.m. on Tuesday, May 18, 1999. The Battle Creek MOU workshop will occur on May 11, 1999, from 9:00 a.m. to 11:00 a.m.

ADDRESSES: The Ecosystem Roundtable will meet at the Resources Building, Room 1131, 1416 Ninth Street, Sacramento, CA 95814. The Battle Creek MOU workshop will meet at Pacific Gas and Electric Company's office, 2740 Gateway Oaks, Sacramento, CA.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal Government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and miminize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been charted under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff. BDAC has established a subcommittee called the Ecosystem Roundtable to provide input on annual workplans to implement ecosystem restoration projects and programs.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: May 3, 1999.

Kirk Rodgers,

Acting Regional Director, Mid-Pacific Region.

[FR Doc 99–12097 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Dam Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of public meetings.

SUMMARY: The Glen Canyon Technical Work Group was formed as an official subcommittee of the Glen Canyon Dam Adaptive Management Work Group. The TWG members were named by members of the AMWG and provide advice and information for the AMWG to act upon. The AMWG uses this information to form recommendations to the Secretary of the Interior for guidance of the Grand Canyon Monitoring and Research Center (GCMRC) science program, and other direction as requested by the Secretary.

DATES AND LOCATIONS: The Glen Canyon Technical Work Group will conduct three (3) open public meetings as follows:

Phoenix, Arizona—June 8–9, 1999. The meeting will begin at 10:00 a.m. and conclude a 5:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 3:00 p.m. on the second day. The meeting will be held at the Bureau of Indian Affairs—Phoenix Area Office, 2 Arizona Center, Conference Room A (12th Floor), 400 North 5th Street, Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues, discuss the agenda for the AMWG meeting to be held on July 21–22, 1999,

and discuss the process to review management objectives and information needs. In addition, the following items will be discussed: Adaptive Management Program guiding document, tribal participation update, Kanab ambersnail workshop, GCMRC Request for Proposal status, Lake Powell plan, fiscal year 2001 budget, fiscal year 2000 annual plan, experimental flows ad-hoc report, status of pit tag data files, temperature control device, programmatic compliance, and basin hydrology.

Phoenix, Arizona—July 20, 1999. The meeting will begin at 1:00 p.m. and conclude at 4:00 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

Agenda: The purpose of the meeting is to address any outstanding issues and discuss the items on the AMWG agenda for the meeting the following day.

Phoenix, Arizona—July 22, 1999. The meeting will begin at 1:00 p.m. and conclude at 3:00 p.m. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

Agenda: The purpose of the meeting is to review the action items for the TWG from the previous days AMWG meetings.

DATES AND LOCATION: The Glen Canyon Dam Adaptive Management Work Group will conduct an open public meeting as follows:

Phoenix, Arizona—July 21–22, 1999. The meeting will begin at 9:30 a.m. and conclude at 5:00 p.m. on the first day and begin at 8:00 a.m. and conclude at 12 noon on the second day. The meeting will be held in the Turquoise Room at the Embassy Suites Hotel located at 1515 North 44th Street in Phoenix, Arizona.

Agenda: The purpose of the meeting is to address administrative issues and discuss the process to review management objectives and information needs. The following items will also be discussed: Adaptive Management Program guiding document, Adaptive Management Program strategic plan, organization location of the GCMRC, status of filling the GCMRC director position, tribal participation update, report on flood avoidance ad-hoc activities, programmatic agreement five-year budget, National Research Council report, Kanab ambersnail workshop, GCMRC report on activities, fiscal year 2001 budget, fiscal year 2000 annual plan, experimental flows ad-hoc report, temperature control device, programmatic environmental compliance, and basin hydrology.

Time will be allowed on each agenda for any individual or organization wishing to make formal oral comments (limited to 10 minutes) at the meetings. To allow full consideration of information by the TWG and AMWG members, written notice must be provided to Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3715; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov at least FIVE (5) days prior to the meetings. Any written comments received will be provided to the TWG and AMWG members at the meetings.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, telephone (801) 524–3715; faxogram (801) 524–3858; E-mail at: rpeterson@uc.usbr.gov.

Dated: May 6, 1999.

Eluid L. Martinez,

Commissioner, Bureau of Reclamation.

[FR Doc. 99–12046 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–31]

Bonds Discount Pharmacy; Revocation of Registration

On April 17, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Bonds Discount Pharmacy (Respondent) of Golden, Mississippi notifying it of an opportunity to show cause as to why DEA should not revoke the pharmacy's DEA Certificate of Registration BBB4240723 pursuant to 21 U.S.C. 824(a)(2) and (a)(4) and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that the pharmacy's owner was convicted of a felony related to controlled substances and that the pharmacy's continued registration would be inconsistent with the public interest.

By letter dated May 20, 1998, Respondent, through counsel, filed a request for a hearing and the matter was docketed before Administrative Law Judge Gail A. Randall. In the midst of prehearing proceedings, the Government filed a Request for Stay of Proceedings and a Motion for Summary Disposition on September 22, 1998. The Government alleged that on July 23, 1998, the Mississippi Board of Pharmacy (Board) issued an order suspending the pharmacist's license of Michael Bonds, Respondent's owner and pharmacist; indicating that Respondent's pharmacy permit was considered null and void; and placing Respondent in a "closed pharmacy" status. The Government argued that as a result, Respondent is not authorized to handle controlled substances in Mississippi and therefore DEA cannot maintain its registration.

Respondent was given until October 13, 1998 to file its response to the Government's motion. On October 16, 1998, Respondent filed several documents, including an Order issued by the Supreme Court of Mississippi granting Mr. Bonds' Petition for Consideration by the Full Court relating to his criminal conviction. On October 19, 1998, Respondent filed its Response to Motion for Summary Disposition, asking that the Government's motion be denied and all proceedings stayed in light of Mr. Bonds' pending challenge to his criminal conviction. Respondent argued that because all matters relating to Mr. Bonds' conviction are not yet concluded, DEA should not revoke Respondent's registration.

Apparently at the same time Respondent was filing its response to the Government's motion, Judge Randall issued an Order on October 19, 1998, giving Respondent until October 27, 1998, to file a response.

On October 27, 1998, Judge Randall issued her Opinion and Recommended Decision, finding that Respondent lacked authorization to handle controlled substances in Mississippi; granting the Government's Motion for Summary Disposition; and recommending that Respondent's DEA Certificate of Registration be revoked. On the same day as Judge Randall issued her Opinion and Recommended Ruling, Respondent filed an Amended Response to Motion for Summary Disposition, essentially arguing that Mr. Bonds is "in the posture of regaining his license to practice pharmacy."

Neither party filed exceptions to Judge Randall's Opinion and Recommended Decision, and on December 1, 1998, she transmitted the record of these proceedings to the Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts, in full, the Opinion and Recommended Decision of the Administrative Law Judge.

As a preliminary matter, the Deputy Administrator must determine whether or not to consider Respondent's Amended Response to Motion for Summary Disposition filed on October 30, 1998. Given Judge Randall's October 19, 1998 Order, there could arguably be some confusion as to whether Respondent was permitted to file a second response. Therefore, the Deputy Administrator has considered this filing in rendering his decision in this matter.

The Deputy Administrator finds that by order issued July 23, 1998, the Board indicated that it considered Respondent's Mississippi pharmacy permit null and void and placed it in a "closed pharmacy" status. In its responses to the Government's motion, Respondent argued that because Mr. Bonds has a motion pending before the Supreme Court of Mississippi regarding his criminal conviction, DEA should not take action at this time. However, Respondent did not dispute that it was not currently authorized to handle controlled substances.

The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without authority to handle controlled substances in the state in which it conducts business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite has been consistently upheld. *See, Andrew Mobley, Inc., d/b/a Medicine Shoppe*, 54 FR 16,421 (1989); *Wingfield Drugs, Inc.*, 52 FR 27,070 (1987); *Tony's Discount Store, Anthony Sekul, Proprietor*, 51 FR 12,578 (1986).

Here it is clear that Respondent's pharmacy permit is considered null and void. Consequently, it is reasonable to infer that it is not authorized to handle controlled substances in Mississippi, where it is registered with DEA. Since Respondent lacks this state authority, it is not entitled to a DEA registration in that state.

In light of the above, Judge Randall properly granted the Government's Motion for Summary Disposition. It is well-settled that where there is no material question of fact involved, or when the facts are agreed upon, there is no need for a plenary, administrative hearing. Congress did not intend for administrative agencies to perform meaningless tasks. *See Gilbert Ross, MD.*, 61 FR 8664 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993); *Philip E. Kirk, M.D.*, 48 FR 32,887 (1983), *aff'd sub nom Kirk v. Mullen*, 749 F.2d 297 (6th Cir. 1984). Here, there is no dispute concerning the material fact that Respondent is not currently authorized to handle controlled substances in Mississippi.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB4240723, previously issued to Bonds Discount Pharmacy, be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for renewal of such registration, be, and they hereby are, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–12035 Filed 5–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Joseph M. Burt, M.D.; Revocation of Registration

On July 29, 1998, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Joseph M. Burt, M.D., of Murrels Inlet, South Carolina, notifying him of an opportunity to show cause as to why DEA should not revoke his DEA Certificate of Registration BB0955774 pursuant to 21 U.S.C. 824(a)(3), and deny any pending applications for renewal of such registration pursuant to 21 U.S.C. 823(f), for reason that he is not currently authorized to handle controlled substances in the State of South Carolina. The order has notified Dr. Burt that should no request for a hearing be filed within 30 days, his hearing right would be deemed waived.

The Order to Show Cause was sent to Dr. Burt by registered mail to his DEA registered address, but was returned to DEA unclaimed. Attempts by DEA to locate a current address for Dr. Burt were unsuccessful.

The Deputy Administrator finds that DEA has made numerous attempts to locate Dr. Burt and has determined that his whereabouts are unknown. It is evident that Dr. Burt is no longer practicing medicine at the address listed on his DEA Certificate of Registration. The Deputy Administrator concludes that considerable effort has been made to serve Dr. Burt with the Order to Show Cause without success. Dr. Burt is therefore deemed to have waived his opportunity for a hearing. The Deputy Administrator now enters his final order in this matter without a hearing and based on the investigative file pursuant to 21 CFR 1301.43(d) and (e) and 1301.46.

The Deputy Administrator finds that on June 10, 1997, the State Board of Medical Examiners of South Carolina (Board) suspended Dr. Burt's license to practice medicine. As a result, on July 2, 1997 the South Carolina Department of Health, Bureau of Drug Control terminated Dr. Burt's state controlled substance registration. Thereafter, on July 20, 1998, the Board issued a Final Order revoking Dr. Burt's license to practice medicine in South Carolina.

The Deputy Administrator finds that Dr. Burt is not currently authorized to handle controlled substances in South Carolina, the state where he is registered with DEA. The DEA does not have the statutory authority under the Controlled Substances Act to issue or maintain a registration if the applicant or registrant is without state authority to handle controlled substances in the state in which he conducts his business. 21 U.S.C. 802(21), 823(f) and 824(a)(3). This prerequisite had been consistently upheld. *See Romeo J. Perez, M.D.*, 62 FR 16,193 (1997); *Demetris A. Green, M.D.*, 61 FR 60,728 (1996); *Dominick A. Ricci, M.D.*, 58 FR 51,104 (1993).

Here it is clear that Dr. Burt is not currently authorized to handle controlled substances in the State of South Carolina. Therefore, Dr. Burt is not entitled to a DEA registration in that state.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that DEA Certificate of Registration BB0955774, previously issued to Joseph M. Burt, M.D., be, and it hereby is, revoked. The Deputy Administrator further orders that any pending applications for the renewal of such registration, be, and they hereby are, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–12036 Filed 5–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 98–9]

Robert A. Leslie, M.D.; Denial of Application

On December 23, 1997, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA) issued an Order to Show Cause to Robert A. Leslie, M.D., (Respondent) of Irvine, California, notifying him of an opportunity to show cause as to why DEA should not deny his application for registration as a practitioner under 21 U.S.C. 823(f), for reason that such registration would be inconsistent with the public interest.

By letter dated January 12, 1998, Respondent, acting pro se, requested a hearing on the issues raised by the order to show cause. Following prehearing procedures, a hearing was held in Los Angeles, California on April 22, 1998, before Administrative Law Judge Gail A. Randall. At the hearing the Government called a witness to testify and Respondent testified on his own behalf. Both parties introduced documentary evidence. After the hearing, the Government submitted proposed findings of fact, conclusions of law and argument and Respondent submitted a document entitled "Legal Issues". On October 9, 1998, Judge Randall issued her Recommended Rulings, Findings of Fact, Conclusions of Law, and Decision, recommending that Respondent's application for a DEA Certificate of Registration be granted subject to the requirement that he maintain a log of his controlled substance handling for three years. Both the Government and Respondent timely filed exceptions to Judge Randall's Recommended Rulings, Findings of Fact, Conclusions of Law and Decision. Thereafter, on November 24, 1998, Judge Randall transmitted the record of these proceedings to the then-Acting Deputy Administrator.

The Deputy Administrator has considered the record in its entirety, and pursuant to 21 CFR 1316.67, hereby issues his final order based upon findings of fact and conclusions of law as hereinafter set forth. The Deputy Administrator adopts the findings of fact and conclusions of law of the Administrative Law Judge, but does not adopt Judge Randall's recommended ruling.

The Deputy Administrator finds that Respondent previously possessed DEA Certificate of Registration AL0033136. On June 21, 1989, an Order to Show Cause was issued proposing to revoke that Certificate of Registration. Initially Respondent requested a hearing, but subsequently withdrew the request and a final order was issued by the then-Acting Administrator revoking Respondent's registration, effective August 17, 1990. See 55 FR 29,278 (July 18, 1990).

In February 1992, Respondent submitted an application for a new DEA Certificate of Registration. An Order to Show Cause was issued on May 13, 1993, proposing to deny this application. Following a hearing before Administrative Law Judge Mary Ellen Bittner, the then-Deputy Administrator adopted Judge Bittner's recommended ruling and denied Respondent's application for registration effective March 15, 1995. See 60 FR 14,004 (March 15, 1995).

In the prior proceeding, the then-Deputy Administrator found that on October 9, 1986, Respondent was found guilty, following a jury trial, of eight counts of unlawfully prescribing, administering, furnishing or dispensing controlled substances between July 1985 and January 1986. These convictions were affirmed by the Superior Court of the State of California for the County of Los Angeles. Thereafter, effective March 23, 1990, the California Board of Medical Quality Assurance (Board) revoked Respondent's medical license, stayed the revocation, suspended his license to practice medicine for 90 days, and placed him on probation for five years. The Board's decision was subsequently affirmed by the California Court of Appeals with the Court finding that Respondent's appeal was frivolous because it was merely a collateral attack on his convictions and fining Respondent $10,000. The Court stated that Respondent must "accept responsibility for his actions."

The then-Deputy Administrator found that at the prior hearing, Respondent attacked his criminal convictions. Judge Bittner and then-Deputy Administrator found that Respondent's convictions were *res judiciata* and therefore Respondent was precluded from relitigating the matter. In his final order, the then-Deputy Administrator noted that:

> The administrative law judge found that during the administrative hearing, although Respondent was free to offer new evidence that he would never again engage in the type of conduct that resulted in his conviction, he failed to do so. The administrative law judge also found that while Respondent offered evidence and expended time arguing the invalidity of his criminal convictions, he offered no evidence of remorse for his prior conduct, that he has taken rehabilitative steps, or that he recognized the severity of his actions. The administrative law judge concluded that Respondent is either unwilling or unable to discharge the responsibilities inherent in a DEA registration, and therefore, recommended that his application for DEA registration be denied. *Id.*

Respondent filed a Petition for Review of this final order with the United States Court of Appeals for the Ninth Circuit. On August 5, 1996, the court denied Respondent's petition.

On December 13, 1996, Respondent submitted an application for a new DEA registration. That application is the subject of these proceedings. The Deputy Administrator concluded that the then-Deputy Administrator's final order published on March 15, 1995, regarding Respondent is *res judicata* for purposes of this proceeding. *See Stanley Alan Azen, M.D.*, 61 FR 57,893 (1996) (where the findings in a previous revocation proceeding were held to be *res judicata* in a subsequent administrative proceeding.) The then-Deputy Administrator's determination of the facts relating to the previous denial of Respondent's application for registration is conclusive. Accordingly, the Deputy Administrator adopts the March 15, 1995 final order in its entirety. The Deputy Administrator concluded that the critical consideration in this proceeding is whether the circumstances, which existed at the time of the prior proceeding, have changed sufficiently to support a conclusion that Respondent's registration would be in the public interest.

The Deputy Administrator finds that as of the date of the hearing, Respondent was practicing medicine at three different clinics in California, and there were no restrictions on his medical license. In 1998, Respondent was awarded a fellowship in the American Contemporary Society of Medicine and Surgery. In the three years preceding the hearing, Respondent had been nominated for "Who's Who," "Who's Who in the West," "Who's Who in Europe," and "Who's Who in the Midwest," for outstanding achievement.

Respondent testified that he only needs to use controlled substances in his practice on rare occasions. Respondent further testified that he is "very conservative in [his] approach to (prescribing)" and "he ha(s) a dislike for controlled substances." However, he also testified that it is difficult for him to find employment without a DEA registration.

When given the opportunity to explain his past behavior, Respondent continued to blame others for his criminal convictions. Specifically Respondent alleged that his then-employer ran "a crooked operation,"

and Respondent's name had been forged on prescriptions. He contended that his convictions were affirmed on appeal due to ineffective counsel, and a Government witness "perjured" himself during DEA's 1993 administrative hearing.

The Government argued that Respondent's application should be denied based upon the prior Board action, the underlying facts that led to Respondent's conviction, Respondent's conviction, and Respondent's continued denial of any wrongdoing which demonstrates a potential threat to the public health and safety. The Government asserted that there has been no change in Respondent's attitude since the 1993 hearing; that he fails to recognize the severity of his past conduct or to express remorse or plans for rehabilitation; that he continues to argue the errors of his prior judicial proceedings; and as a result, he continues to avoid taking responsibility for his own culpable behavior.

Respondent argued that he should be granted a DEA registration because his criminal convictions should not be relied upon since they were defective. He further asserted that a narcotics registration in California is a vested right. Respondent contended that if granted a DEA registration, he would be more conservative in his prescribing practices.

Pursuant to 21 U.S.C. 823(f), the Deputy Administrator may deny an application for a DEA Certificate of Registration if he determines that the granting of a registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered in determining the public interest:

(1) The recommendation of the appropriate State licensing board or professional disciplinary authority.

(2) The applicant's experience in dispensing, or conducting research with respect to controlled substances.

(3) The applicant's conviction record under federal or state laws relating to the manufacture, distribution, or dispensing of controlled substances.

(4) Compliance with applicable state, federal, or local laws relating to controlled substances.

(5) Such other conduct which may threaten the public health and safety.

These factors are to be considered in the disjunctive; the Deputy Administrator may rely on any or a combination of factors and may give each factor the weight he deems appropriate in determining whether a registration should be revoked or an application for registration denied. *See Henry J. Schwartz, Jr., M.D.*, 54 FR 16,422 (1989).

Regarding factor one, in 1990 the Board revoked Respondent's medical license, stayed the revocation, but suspended his license for 90 days and then placed it on probation for five years. However, it is undisputed that Respondent's California medical license is currently unrestricted. But state licensure is a necessary but not sufficient condition for registration, and therefore this factor is not dispositive.

Factors two and four, Respondent's experience in dispensing controlled substances and compliance with applicable controlled substance laws are relevant in determining whether Respondent's registration would be inconsistent with the public interest. Between July 1985 and January 1986, Respondent prescribed or dispensed controlled substances to undercover operatives who were not under treatment for a pathology or condition other than addiction to a controlled substance. Although Respondent has continued to argue that he has done nothing wrong, a jury convicted him of eight counts of unlawfully prescribing controlled substances, and this judgment was affirmed on appeal. Therefore, the Deputy Administrator concludes that Respondent clearly improperly handled controlled substances in the past and failed to comply with laws relating to controlled substances.

Respondent has not handled controlled substances since his DEA registration was revoked in 1990. He now uses the non-controlled substance Nubain for the treatment of pain.

As to factor three, Respondent was convicted of eight misdemeanor counts of illegally prescribing or dispensing controlled substances. These convictions were affirmed on appeal. While Respondent continues to profess his innocence and to try to introduce evidence to challenge the validity of the convictions, the convictions cannot be relitigated in this forum. Therefore, this factor is relevant in determining the public interest since Respondent has been convicted of controlled substance related offenses.

Regarding factor five, the Deputy Administrator concurs with Judge Randall's finding that it is "disturbing that the Respondent continues to argue about his prior criminal convictions, despite Judge Bittner's and a prior Acting (sic) Deputy Administrator's previous comments concerning the importance of rehabilitation evidence. The Respondent continues to blame others for his misconduct and refuses to accept responsibility for his actions."

After reviewing the record, Judge Randall concluded that this is a difficult case however she recommended that Respondent's application be granted subject to the requirement that he maintain a log of his controlled substance handling for three years. In making this recommendation, Judge Randall found it significant that Respondent was forthcoming on his application for registration regarding his convictions and the prior DEA action; that he has continued to make valuable contributions to the medical profession; that he has continued to participate in continuing medical education; that there are no restrictions on his California medical license; that Respondent has become more conservative in this approach to prescribing controlled substances; that Respondent's convictions were 12 years ago and there are no new allegations of Respondent improperly handling controlled substances; and that Respondent has been actively practicing medicine at three different clinics and there have been no complaints or adverse actions taken against his medical license. Judge Randall recommended that Respondent be granted a restricted registration in order to give him the opportunity to demonstrate his ability to effectively handle controlled substances while providing a measure of protection to the public.

Respondent filed exceptions to Judge Randall's recommended ruling. Instead of challenging aspects of the judge's decision, Respondent continued to challenge the validity of his convictions and the previous denial of his application for a DEA Certificate of Registration. As previously stated these decisions are *res judicata* and as a result, the Deputy Administrator finds no merit to Respondent's exceptions.

In its exceptions, the Government disagreed with several mitigating factors considered by Judge Randall. First, the Government argued that the fact that Respondent disclosed his convictions and the prior DEA actions on his application should not be considered a mitigating factor. The Government pointed out that Respondent answered truthfully on his previous application and that application was nonetheless denied. The Deputy Administrator agrees with the Government. An applicant is required to fully disclose any convictions and/or prior action by DEA or the state on applications for registration. The fact that Respondent did so does not demonstrate that he can now be trusted to responsibly handle controlled substances.

Second, the Government took exception to Judge Randall's finding that Respondent has continued to make valuable contributions to the medical profession. The Government argued "that a factor is not material in deciding whether a DEA registration application should be granted." The Deputy Administrator concludes that it is appropriate to consider what a registrant/applicant has done professionally since his/her misconduct. However in this case, the Deputy Administrator finds it significant that Respondent has continued to make valuable contributions to the medical profession despite not being able to handle controlled substances. The Deputy Administrator concludes that this factor does not support granting Respondent a DEA registration, since it appears that Respondent can make such contributions without a DEA registration.

Next the Government disagreed with Judge Randall's reliance on Respondent's assertion that he has become more conservative in his handling of controlled substances as a mitigating factor. The Government contended that Respondent's assertion is "not necessarily credible in light of Respondent's adamant denial of the conduct underlying his criminal convictions." The Government further contended that Respondent has not handled controlled substances since his DEA registration was revoked. The Deputy Administrator agrees with the Government. Since Respondent has not handled controlled substances since 1990, there is no evidence that Respondent is more conservative in his handling of such substances, and in light of his failure to accept responsibility for his past actions, the Deputy Administrator is not convinced that Respondent will be more conservative in the future.

Further the Government took exception to Judge Randall's reliance on the fact that Respondent's convictions occurred 12 years ago and no new allegations of improper handling of controlled substances or adverse actions against Respondent's medical license were introduced in this matter. The Government argued that no such allegations were made in the previous proceeding regarding Respondent's last application for registration and that application was denied. The Deputy Administrator notes that Respondent has not been authorized to handle controlled substances since 1990 so presumably he has not had the opportunity to mishandle controlled substances.

The Deputy Administrator agrees with Judge Randall that passage of time alone is not dispositive, however it is a factor to be considered. *See Norman Alpert, M.D.*, 58 FR 67,420. But, the Deputy Administrator also notes that DEA has previously held that "(t)he paramount issue is not how much time has elapsed since (the Respondent's) unlawful conduct, but rather, whether during that time (the) Respondent has learned from past mistakes and has demonstrated that he would handle controlled substances properly if entrusted with DEA registration." *See John Porter Richard, D.O.*, 61 FR 13,878 (1996), *Leonardo* v. *Lopez, M.D.*, 54 FR 36,915 (1989). In this case, it is clear from Respondent's continued denials of wrongdoing that he has not learned from his past mistakes and other than saying that he is more conservative now, he has not demonstrated that he would handle controlled substances properly in the future.

The Deputy Administrator disagrees with Judge Randall's recommended ruling that granting Respondent a restricted registration would be appropriate. Other than the passage of time, the circumstances which existed at the time of the prior proceeding have not changed sufficient to warrant issuing Respondent a DEA registration. Respondent continues to fail to acknowledge wrongdoing or accept responsibility for his actions. Therefore, the Deputy Administrator is not convinced that Respondent has been rehabilitated and would properly handle controlled substances in the future, even on a restricted basis. As a result, the Deputy Administrator concludes that Respondent's registration with DEA would be inconsistent with the public interest at this time.

Accordingly, the Deputy Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b) and 0.104, hereby orders that the application for registration, executed by Robert A. Leslie, M.D., be, and it hereby is, denied. This order is effective June 14, 1999.

Dated: May 6, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–12038 Filed 5–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[DEA–172N]

Special Surveillance List of Chemicals, Products, Materials and Equipment Used in the Clandestine Production of Controlled Substances or Listed Chemicals

AGENCY: Drug Enforcement Administration (DEA), Justice.

ACTION: Final notice.

SUMMARY: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. The MCA makes it unlawful for any person to distribute a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, with reckless disregard for the illegal uses to which such laboratory supply will be put. Individuals who violate this provision are subject to a civil penalty of not more than $25,000; businesses which violate this provision are subject to a civil penalty of not more than $250,000. The term "laboratory supply" is defined as "a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General, which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." This final notice contains the list of "laboratory supplies" which constitutes the Special Surveillance List that was required to be published by the Attorney General pursuant to Title 21, United States Code, Section 842(a).

EFFECTIVE DATE: May 13, 1999.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Office of Diversion Control, Drug Enforcement Administration, Washington, D.C. 20537, Telephone (202) 307–7183.

SUPPLEMENTARY INFORMATION: On October 3, 1996, the Comprehensive Methamphetamine Control Act of 1996 (MCA) was signed into law. The MCA broadens controls on listed chemicals used in the production of methamphetamine and other controlled substances, increases penalties for the trafficking and manufacturing of methamphetamine and listed chemicals, and expands regulatory controls to include the distribution of lawfully marketed drug products which contain the listed chemicals ephedrine, pseudoephedrine and phenylpropanolamine. The MCA also

provides for the publication of a Special Surveillance List by the Attorney General. 21 U.S.C. 842(a). The Special Surveillance List identifies laboratory supplies which are used in the manufacture of controlled substances or listed chemicals. The MCA defines "laboratory supply" as "a listed chemical or any chemical, substance, or item on a special surveillance list published by the Attorney General which contains chemicals, products, materials, or equipment used in the manufacture of controlled substances and listed chemicals." 21 U.S.C. 842(a).

The Deputy Administrator of the DEA, in a December 1, 1998, **Federal Register** notice (63 FR 66201), published a proposed Special Surveillance List. The notice provided an opportunity for all interested parties to submit their comments and objections in writing on the proposed Special Surveillance List until December 31, 1998, DEA received one comment regarding the proposal. The comment was a joint response from the Agricultural Retailers Association (ARA) and The Fertilizer Institute (TFI). Both organizations fully supported the DEA's implementation of the Methamphetamine Control Act of 1996 and specifically the publication of the "Special Surveillance List" of laboratory supplies used in methamphetamine production. The ARA/TFI, however, asked if its members would be subject to the $250,000 civil penalty provisions of the MCA for thefts of anhydrous ammonia, a Special Surveillance List chemical, from portable tanks stored on their properties. In response to the ARA/TFI question, the civil penalty provision of the MCA applies to a "distribution" or "sale" of a laboratory supply by a business or firm to a customer for the unlawful production of controlled substances or listed chemicals. A theft by definition is not a distribution or a sale and thus individuals would not be subject to the civil penalty provisions of the MCA for thefts of a laboratory supply.

The MCA provides for a civil penalty of not more than $250,000 for the distribution by a business of a laboratory supply to a person who uses, or attempts to use, that laboratory supply to manufacture a controlled substance or a listed chemical, if that distribution was made with "reckless disregard" for the illegal uses to which such a laboratory supply would be put. 21 U.S.C. 842(a)(11), 842(c)(2)(C). Individuals who violate 21 U.S.C. 84(a)(11) are subject to a civil penalty of not more than $25,000. 21 U.S.C 842(c)(1)(A). For purposes of this provision, the term "distribution" includes the exportation of a laboratory supply.

The MCA further states that, for purposes of 21 U.S.C. 842(a)(11), there is a "rebuttable presumption of reckless disregard at trial if the Attorney General notifies a firm in writing that a laboratory supply sold by the firm, or any other person or firm, has been used by a customer of the notified firm, or distributed further by that customer, for the unlawful production of controlled substances or listed chemicals a firm distributes and 2 weeks or more after the notification the notified firm distributes a laboratory supply to the customer."

The CSA contains other sections relating to the illegal manufacture of controlled substances. Section 841(d)(2) of Title 21 provides that any person who knowingly or intentionally distributes a listed chemical knowing, or having reasonable cause to believe, that it will be used in the illegal manufacture of a controlled substance, is subject to criminal prosecution. Section 843(a)(7) of Title 21 provides that any person who knowingly or intentionally distributes any chemical, product, equipment or material which may be used to manufacture a controlled substance or listed chemical, knowing, intending, or having reasonable cause to believe, that it will be used to mauufacture a controlled substance or listed chemical, is subject to criminal prosecution.

In developing the Special Surveillance List, the DEA consulted with both DEA and State/Local law enforcement and forensic laboratory authorities. The DEA examined clandestine laboratory seizure reports for information regarding: (1) Illicit drug production methods; (2) chemicals actually used in clandestine production of controlled substances and listed chemicals; and (3) the role and importance of chemicals used in the syntheses. In addition, the DEA considered the legitimate uses and market for these chemicals.

The Special Surveillance List focuses on chemicals used in the domestic production of controlled substances and listed chemicals. Therefore the list includes those chemicals used not only in the production of methamphetamine, but also of other controlled substances such as PCP, LSD, methcathinone and amphetamine. The list does not focus on chemicals used in the production of heroin or cocaine since these drugs are seldom produced domestically. However, the Special Surveillance List includes all listed chemicals as specified in 21 CFR 1310.02 (a) or (b). The phrase "all listed chemicals" includes all chemical mixtures and all over-the-counter (OTC) pharmaceutical products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

The following is the Special Surveillance List for laboratory supplies used in the manufacture of controlled substances and listed chemicals:

Special Surveillance List Published Pursuant to Title 21, United States Code, Section 842(a)(11)

Chemicals

All listed chemicals as specified in 21 CFR 1310.02 (a) or (b). This includes all chemical mixtures and all over-the-counter (OTC) products and dietary supplements which contain a listed chemical, regardless of their dosage form or packaging and regardless of whether the chemical mixture, drug product or dietary supplement is exempt from regulatory controls.

Ammonia Gas
Ammonium Formate
Bromobenzene
1,1-Carbonyldiimidazole
Cyclohexanone
1,1-Dichloro-1-fluoroethane (e.g. Freon 141B)
Diethylamine and its salts
2,5-Dimethoxyphenethylamine and its salts
Formamide
Formic Acid
Hypophosphorous Acid
Lithium Metal
Lithium Aluminum Hydride
Magnesium Metal (Turnings)
Mercuric Chloride
N-Methylformamide
Organomagnesium Halides (Grignard Reagents) (e.g. ethylmagnesium bromide and phenylmagnesium bromide)
Phenylethanolamine and its salts
Phosphorus Pentachloride
Potassium Dichromate
Pyridine and its salts
Red Phosphorus
Sodium Dichromate
Sodium Metal
Thionyl Chloride
ortho-Toluidine
Trichloromonofluoromethane (e.g. Freon-11, Carrene-2)
Trichlorotrifluoroethane (e.g. Freon 113)

Equipment

Hydrogenators
Tableting Machines
Encapsulating Machines
22 Liter Heating Mantels

Individuals and firms which distribute listed chemicals and chemicals, products, materials, or equipment on the above list, are hereby officially notified that these materials may be used in the illicit production of certain controlled substances or listed chemicals.

The Attorney General has delegated authority under the CSA and all subsequent amendments to the CSA to

the Administrator of the DEA pursuant to 28 CFR 0.100. The Administrator, in turn, has redelegated this authority to the Deputy Administrator pursuant to 28 CFR 0.104.

This surveillance list may be revised as appropriate. Notice of proposed changes will be published as they occur. While publication in the Federal Register satisfies the notification requirements for the Special Surveillance List, DEA is attempting to disseminate the list as widely as possible. Therefore, copies of the list will be sent to appropriate industry associations and trade journals, and to the extent practical, to individual manufacturers and distributors of "laboratory supplies." In addition, a current surveillance list will be available on the DEA homepage at http://www.usdoj.gov/dea/.

Small Business Impact and Regulatory Flexibility Concerns

The Special Surveillance List applies to all individuals and firms which distribute the listed chemicals and laboratory supplies (chemicals, products, materials, or equipment) on the list. The notice does not impose any record-keeping or reporting requirements for any of the laboratory supplies which are not listed chemicals. Thus the surveillance list will have a negligible impact on affected parties.

The notice serves two purposes. First, it informs individuals and firms of the potential use of the items on the list for the production of listed chemicals and illicit drugs. Second, it advises individuals and firms that civil penalties may be imposed on them if they distribute a laboratory supply to a person anytime after the two week period following receipt of written notification by the Attorney General that the person has used, attempted to use, or distributed the laboratory supply further for the unlawful production of controlled substances or listed chemicals.

DEA chose to limit the number of chemicals, products, materials, and equipment on the Special Surveillance List to those most frequently used in the clandestine production of controlled substances or listed chemicals. Limiting the number of such items on the list minimizes the impact on wholesalers and retailers of the chemicals.

The Deputy Administrator hereby certifies that this notice has been drafted in a manner consistent with the principles of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). This notice will provide an increased level of law enforcement control to prevent the diversion of laboratory supplies used for the production of listed chemicals and controlled substances. It will not however impose any new regulatory burden on the public. This notice fulfills the requirement imposed by Section 205 of the Methamphetamine Control Act (MCA) of 1996 that the Attorney General shall publish a special surveillance list which contains chemicals, products, materials, or equipment used in the manufacture of listed chemicals and controlled substances. A copy of this notice has been provided to the Chief Counsel for Advocacy at the Small Business Administration.

This notice has been drafted and reviewed in accordance with Executive Order 12866. This notice has not been determined to be a significant action. Therefore, this notice has not been reviewed and approved by the Office of Management and Budget.

This action has been analyzed in accordance with the principles and criteria in Executive Order 12612, and it has been determined that this notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

This notice will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

This notice is not a major rule as defined by Section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This notice will not result in an annual effect on the economy of $100,000,000 or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Dated: May 3, 1999.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 99–12037 Filed 5–12–99; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Privacy Act of 1974; New System of Records Notice; Iran Claims Program

AGENCY: Foreign Claims Settlement Commission; Justice.

ACTION: Notice of new system of records.

SUMMARY: The Foreign Claims Settlement Commission (FCSC) hereby publishes notice of the establishment of an additional records system to be effective as of June 22, 1999, and designated "FCSC–29, Iran, Claims of less than $250,000 Against." These records originated as duplicates of records included within the system of records "State-54, U.S./IRAN Claims Records," established October 26, 1982 (47 FR 47510), and were used by the FCSC between 1990 and 1995 to determine the validity and amount of claims of U.S. nationals of less than $250,000 each against the Islamic Republic of Iran that were covered by a lump-sum claims settlement agreement between the United States and Iran effective June 22, 1990. This system was renamed "Records of the Office of the Assistant Legal Adviser for International Claims and Investment Disputes" on October 28, 1993 (58 FR 58032). As part of the review mandated by the President's Memorandum on Privacy and Personal Information in Federal Records of May 14, 1998, the FCSC has concluded that it should publish this system of records notice to more accurately reflect the existence and nature of the records in question as a separately identifiable system of records.

Any person interested in commenting on this system may do so by submitting comments in writing to the Administrative Office of the Foreign Claims Settlement Commission, 600 E Street, NW, Washington, DC 20579. Comments must be submitted on or before June 22, 1999. This records system will be added to the Commission's current Privacy Act Systems of Records.

EFFECTIVE DATE: The system of records designated "JUSTICE/FCSC–29, Iran, Claims of less than $250,000 Against" shall be established and become effective on June 22, 1999, as published herein unless amended by notice published prior to that date. The existing systems of records continue in effect.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission,

600 E Street NW, Room 6002, Washington, DC 20579, telephone (202) 616–6975, fax (202) 616–6993.

JUSTICE/FCSC–29

SYSTEM NAME:

Iran, Claims of less than $250,000 Against.

SYSTEM LOCATION:

Washington National Records Center, 4205 Suitland Road, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

United States nationals, including private individuals, partnerships, corporations, and other legal entities, with claims against the Government of the Islamic Republic of Iran valued at less than $250,000 each for nationalization, expropriation, or other taking of property by that government.

CATEGORIES OF RECORDS IN THE SYSTEM:

Claim information, including name and address of claimant and representative, if any; date and place of birth or naturalization; nature and valuation of claim, including description of property; and other evidence establishing entitlement to compensation for claim.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub.L. 99–93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note), and the U.S.-Iranian *Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38, Award No. 483,* effective June 22, 1990.

Purpose: To enable the Commission to carry out its statutory responsibility to determine the validity and amount of the claims before it.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF THE USES:

Records were used for the purpose of determining the validity and amount of claims; issuance of decisions concerning eligibility to receive compensation under the statute and Agreement; notifications to claimants of rights to appeal; preparation of decisions for certification to the Secretary of Treasury for payment. Names and other information furnished by claimants was for verifying citizenship status with the Immigration and Naturalization Service. As required by the authorizing statute, the information contained in this system of records, other than the names of claimants and the text of the Commission's decisions on their claims, is maintained as confidential information which is exempt from disclosure to the public.

Law Enforcement: In the event that a system of records maintained by the FCSC to carry out its functions indicates a violation or potential violation of law, whether civil or criminal or regulatory in nature and whether arising by general statute or particular program statute or order issued pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with enforcing or implementing the statute, rule, regulation or order issued pursuant thereto.

A record, or any facts derived therefrom, may be disclosed in a proceeding before a court or adjudicative body before which the FCSC is authorized to appear or to the Department of Justice for use in such proceeding when:

i. The FCSC, or any subdivision thereof, or

ii. Any employee of the FCSC in his or her official capacity, or

iii. Any employee of the FCSC in his or her official capacity where the Department of Justice has agreed to represent the employee, or

iv. The United States, where the FCSC determines that the litigation is likely to affect it or any of its subdivisions, is a party to litigation or has an interest in litigation and such records are determined by the FCSC to be arguably relevant and necessary to the litigation and such disclosure is determined by the FCSC to be a use compatible with the purpose for which the records were collected.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records maintained in file folders.

RETRIEVABILITY:

Filed numerically by claim number. Alphabetical index used for identification of claim (system "Justice-FCSC 1"). File folders retrieved from Records Center by claim number.

SAFEGUARDS:

Under security safeguards at Washington National Records Center.

RETENTION AND DISPOSAL:

Records are maintained in accordance with 5 U.S.C. 301. Disposal of records will be in accordance with 44 U.S.C. 3301–3314 when such records are determined no longer useful.

SYSTEM MANAGERS AND ADDRESS:

Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW, Room 6002, Washington, DC 20579; telephone 202–616–6975, fax 202–616–6993.

NOTIFICATION PROCEDURE:

Set forth in part 504 of title 45, Code of Federal Regulations.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Claimant on whom the record is maintained.

Judith H. Lock,

Administrative Officer.

[FR Doc. 99–12103 Filed 5–12–99; 8:45 am]

BILLING CODE 4410–BA–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 5, 1999.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor, Departmental Clearance Officer, Ira Mills ((202) 219–5096 ext. 143) or by E-Mail to Mills-Ira@dol.gov.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), on or before June 14, 1999.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Agency: Bureau of Labor Statistics.

Title: Report on Occupational Employment.

OMB Number: 1220–0042.

Affected Public: Business or other for profit; not-for-profit institutions; State and Local governments.

Number of Respondents: 336,841 (3 year average).

Estimated Time Per Respondent: 30 minutes to 4 hours per response.

Total Burden Hours: 251,252 total hours (3 year average).

Total Annualized capital/startup costs: $0.

Total annual costs (operating/maintaining systems or purchasing services): $0.

Description: The OES Survey is a Federal/State sample survey of employment and wages by occupation of non-farm establishments that is used to produce data on current occupational employment and wages. The survey is a component in the development of employment and training programs, and occupational information systems.

In response to comments on the Preclearance Consultation notice published in the Friday, January 29, 1999 **Federal Register**, Vol. 64, No. 19, BLS changed the proposal to survey all large establishments (i.e., those with 250 workers or more) in FY 2000 to phasing-in all such establishments in the sample over a 4-year period.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 99–12091 Filed 5–12–99; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration is soliciting comments concerning the following proposed extension collections: (1) Regulations, 29 CFR Part 801, Application of the Employee Polygraph Protection Act of 1988; (2) Certificate of Medical Necessity (CM–893); (3) Representative Payee Report (CM–623), Representative Payee Report (CM–623S), and Physician's/Medical Officer's Report (CM–787); (4) Housing Terms and Conditions (WH–521); and (5) FECA Medical Report Forms and Claim for Compensation (CA–16b, CA–17b, CA–20, CA–1090, CA–1303, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, A–1332, CA–1336, OWCP–5a, OWCP–5b, OWC–5c, and CA–7). A copy of the proposed information collection requests can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 14, 1999. The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., N.W., Room S–3201, Washington, D.C. 20210, telephone (202) 693–0339 (this is not a toll-free number), fax (202) 693–1451.

SUPPLEMENTARY INFORMATION:

Regulations, 29 CFR Part 801, Application of the Employee Polygraph Protection Act of 1988

I. Background: The Employee Polygraph Protection Act of 1988 (EPPA) prohibits most private employers from using any lie detector tests whether for preemployment screening or during the course of employment. The law contains several limited exemptions which authorize polygraph tests under certain conditions. Section 5 of the Act requires the Secretary of Labor to promulgate such rules and regulations as may be necessary to carry out the Act and require the keeping of records necessary or appropriate for the administration of the Act.

II. Current Actions: The Department of Labor seeks an extension of approval of the recordkeeping and third party disclosure requirements of the regulations in order to insure that polygraph examinees receive the rights and protections mandated by the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: 29 CFR Part 801, Application of the Employee Polygraph Protection Act.

OMB Number: 1215–0170.

Agency Number: None.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Total Respondents: 328,000.

Frequency: Recordkeeping; Reporting on occasion; Third party disclosure.

Total Responses: 328,000.

Time per Response: 1 minute to ½ hour.

Estimated Total Burden Hours: 82,406.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Certificate of Medical Necessity, CM–893

I. Background: 30 USC 932 of Public Law 803, as amended, stipulates that coal miners eligible for black lung benefits will be furnished medical treatment, including services and apparatus, for such period as the nature of the illness (pneumoconiosis) or process of recovery will require.

II. Current Actions: The Department of Labor seeks the extension of approval to collect this information in order to determine if the miner meets the specific impairment standards to qualify for durable medical equipment, home nursing care and/or pulmonary rehabilitation.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Certificate of Medical Necessity.

OMB Number: 1215–0113.

Agency Number: CM–893.

Affected Public: Businesses or other for-profit; Individuals or households.

Total Respondents: 9,000.

Frequency: On occasion.

Total Responses: 9,000.

Average Time per Response: 20 to 40 minutes.

Estimated Total Burden Hours: 3,600.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

Representative Payee Report (CM–623), Representative Payee Report (CM–623S), Physician's/Medical Officer's Report (CM–787)

I. Background: Benefits due to a black lung beneficiary under the Federal Mine Safety and Health Act (30 USC 901) may be paid to a representative payee on behalf of the beneficiary when the beneficiary is unable to manage his/her benefits due to incapability, incompetence or minority. The CM–623 is sent to representative payees who are not relatives of the beneficiary. The CM–623S, which is a shortened version of the CM–623, is sent to representative payees who are relatives of, and live with, the beneficiary. In a small number of cases, it is necessary to determine the incapability or incompetence of a beneficiary to manage his/her monthly benefits. The CM–787 is a form used to collect certain medical information from a physician regarding a beneficiary's competency.

II. Current Actions: The Department of Labor seeks extension of approval to collect this information in order to determine the beneficiary' capability to manage their monthly black lung benefits, and to ensure that benefits paid to a representative payee are used for the beneficiary's well-being.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Representative Payee Report, Physician/Medical Officer's Report.

OMB Number: 1215–0173.

Agency Number(s): CM–623, CM–623S, CM–787.

Affected Public: Individuals or households; Businesses or other for-profit; Not-for-profit institutions.

Form	Number of respondents	Frequency	Average time per response (minutes)	Burden hours
CM–623	2,275	Annually	90	3,413
CM–623S	600	Annually	10	100
CM–787	223	Once	15	56

Total Responses: 3,098.

Estimated Total Burden Hours: 3,569.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $1,035.

Housing Terms and Conditions (WH–521)

I. Background: Section 201(c) of the Migrant and Seasonal Agricultural Worker Protection Act (MSPA) requires that any farm labor contractor, agricultural employer, or agricultural association that provides housing to any migrant agricultural worker, post in a conspicuous place or present to such worker a statement of the terms and conditions, if any, of occupancy of such housing. Form WH–521 is an optional form which may be used to post or present to a migrant agricultural worker a listing of the terms and conditions for occupancy of housing.

II. Current Actions: The Department of Labor seeks extension of approval of this information collection in order to carry out it's statutory responsibility to ensure that farm labor contractors, agricultural employers, and agricultural associations have disclosed to migrant workers the terms and conditions of occupancy at each site where housing is provided by such employers.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title: Housing Terms and Conditions.

OMB Number: 1215–0146.

Agency Number: WH–521.

Affected Public: Farms; Individuals or households; Businesses or other for-profit.

Total Respondents: 1,300.

Frequency: On occasion; Third party disclosure.

Total Responses: 1,300.

Time per Response: 30 min.

Estimated Total Burden Hours: 650.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $0.

FECA Medical Report Forms (CA–16b, CA–17b, CA–20, CA–1090, CA–1303, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, CA–1332, CA–1336, OWCP–5a, OWCP–5b, OWCP–5c), and Claim for Compensation (CA–7)

I. Background: The Federal Employees' Compensation Act (FECA) provides for the payment of benefits for wage loss and/or for permanent impairment to a scheduled member, arising out of a work related injury or disease. Form CA–7, Claim for Compensation, requests information from the injured worker regarding pay rate, dependents, earnings, dual benefits, and third-party information. The medical report forms collect medical information necessary to determine entitlement to benefits.

II. Current Actions: The Department of Labor seeks an extension of approval for this information collection request in order to carry out its statutory responsibility to compensate injured employees under the provisions of the Act.

Type of Review: Extension.

Agency: Employment Standards Administration.

Title(s): Claim for Compensation, FECA Medical Reports.

OMB Number: 1215–0103.

Agency Number(s): CA–7, CA–16b, CA–17b, CA–20, CA–1090, CA–1303, CA–1305, CA–1306, CA–1314, CA–1316, CA–1331, CA–1332, CA–1336, OWCP–5a, OWCP–5b, OWCP–5c.

Affected Public: Individuals or households; Businesses or other for-profit; Federal government.

Frequency: As needed.

Form	Number of respondents	Average minutes per response	Burden hours
CA–7	400	13	87
CA–16b	130,000	5	10,833
CA–17b	60,000	5	5,000
CA–20	80,000	5	6,667
CA–1090	325	5	27
CA–1303	3,000	20	1,000
CA–1305	10	20	3
CA–1306	3	10	.5
CA–1314	125	20	42
CA–1316	15	10	2.5
CA–1331	250	5	21
CA–1332	500	30	250
CA–1336	1,000	5	83
OWCP–5a	7,000	15	1,750
OWCP–5b	5,000	15	1,250
OWCP–5c	15,000	15	3,750

Total Responses: 302,628.

Estimated Total Burden Hours: 30,766.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintenance): $109.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 1999.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 99–12089 Filed 5–12–99; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10504, et al.]

Proposed Exemptions; Aetna Inc.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

Unless otherwise stated in the Notice of Proposed Exemption, all interested persons are invited to submit written comments, and with respect to exemptions involving the fiduciary prohibitions of section 406(b) of the Act, requests for hearing within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) the name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Aetna Inc. (Aetna), Located In Hartford, Connecticut

Application No. D–10504

Proposed Exemption

The Department of Labor is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[1]

I. Transactions

If the exemption is granted, the restrictions of section 406(a)(1)(A) through (D) and 406(b) of the Act and

[1] For purposes of this exemption, references to specific provisions of Title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code shall not apply to the following transactions, if the conditions set forth in Section II and Section III, below, are satisfied:

(a) The receipt, directly or indirectly, by a sales agent (Sales Agent or Sales Agents), as defined in Section IV(l) below, of a sales commission from Aetna in connection with the purchase, with plan assets of an insurance contract (the Insurance Contract or Insurance Contracts), as defined in Section IV(h) below;

(b) The receipt of a sales commission by Aetna, as principal underwriter for a mutual fund registered under the Investment Company Act of 1940, in connection with the purchase, with plan assets, of securities issued by such mutual fund (the Aetna Fund or Aetna Funds), as defined in Section IV(c) below;

(c) The effecting by Aetna, as a principal underwriter, of a transaction for the purchase, with plan assets, of securities issued by an Aetna Fund, and the effecting by a Sales Agent of a transaction for the purchase, with plan assets, of an Insurance Contract; and

(d) The purchase, with plan assets, of an Insurance Contract from Aetna.

II. General Conditions

(a) The transactions are effected by Aetna in the ordinary course of Aetna's business as an insurance company, or as a principal underwriter to an Aetna Fund, or in the case of a Sales Agent, in the ordinary course of the Sales Agent's business as a Sales Agent.

(b) The transactions are on terms at least as favorable to the plan as an arm's length transaction with an unrelated party would be.

(c) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent: (1) for the provision of services to the plan, and (2) in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code. If such total is in excess of "reasonable compensation" the "amount involved" for purposes of the civil penalties of section 502(i) of the Act and excise taxes imposed by section 4975(a) and (b) of the Code is the amount of compensation in excess of "reasonable compensation."

III. Specific Conditions

(a) Aetna or the Sales Agent is not—

(1) A trustee of the plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan, or a trustee to an investment trust (the Investment Trust), as defined in Section IV(g) below, which will not purchase Insurance Contracts or securities issued by an Aetna Fund pursuant to this proposed exemption);

(2) A plan administrator (within the meaning of section 3(16)(A) of the Act and section 414(g) of the Code);

(3) A fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or

(4) An employer any of whose employees are covered by the plan.

(b)(1) Prior to the execution of a transaction involving the receipt of sales commissions by a Sales Agent in connection with the plan's purchase of an Insurance Contract, Aetna or the Sales Agent provides to an independent plan fiduciary (the Independent Plan Fiduciary), as defined in Section IV(f) below, disclosures of the following information concerning the Insurance Contract in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) An explanation of: (i) the nature of the affiliation or relationship between Aetna and the Sales Agent recommending the Insurance Contract; and, (ii) the nature of any limitations that such affiliation or relationship, or any agreement between the Sales Agent and Aetna places on the Sales Agent's ability to recommend Insurance Contracts;

(B) The sales commission, expressed as a percentage of gross annual premium payments for the first year and for each of the succeeding renewal years, that will be paid by Aetna to the Sales Agent in connection with the purchase of the recommended Insurance Contract, together with a description of any factors that may affect the commission; and

(C) A full and detailed description of any charges, fees, discounts, penalties, or adjustments which may be paid by the plan under the recommended Insurance Contract in connection with the plan's purchase, holding, exchange, termination, or sale of the Insurance Contract, including a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(b)(1) above, and before the execution of the transaction, the Independent Plan Fiduciary acknowledges in writing receipt of such information and approves the transaction on behalf of the plan. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be a Sales Agent involved in the transaction. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Insurance Contracts, the written disclosure required under Section III(b)(1) need not be repeated, unless—

(A) More than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or

(B) The Insurance Contract being recommended for purchase or the commission with respect thereto is materially different from that for which the approval described under Section III(b)(2) was obtained.

(c)(1) With respect to purchases with plan assets of securities issued by an Aetna Fund, or the receipt of sales commissions by Aetna in connection with such purchases, Aetna provides to an Independent Plan Fiduciary prior to the execution of the transaction the following information concerning the Aetna Fund in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters:

(A) A description of: (i) the investment objectives and policies of the Aetna Fund, (ii) the principal investment strategies that the Aetna Fund may use to obtain its investment objectives, (iii) the principal risk factors associated with investing in the Aetna Fund, (iv) historical investment return information for the Aetna Fund, (v) fees and expenses of the Aetna Fund, including annual operating expenses (*e.g.*, management fees, distribution fees, service fees, and other expenses) and fees paid by shareholders (*e.g.*, sales charges and redemption fees), (vi) the identity of the Aetna Fund adviser, and (vii) the procedures for purchases of securities issued by the Aetna Fund (including any applicable minimum investment requirements and sales charges);

(B) A description of: (i) the expenses of the recommended Aetna Fund, including investment management,

investment advisory, or similar services, any fees for secondary services (*e.g.*, for services other than investment management, investment advisory, or similar services, including but not limited to custodial, administrative, or other services), and (ii) any charges, fees, discounts, penalties, or adjustments that may be paid by the plan in connection with the purchase, holding, exchange, termination, or sale of shares of the recommended Aetna Fund securities, together with a description of any factors that may affect the level of charges, fees, discounts, or penalties paid by the plan or the Aetna Fund;

(C) An explanation of (i) the nature of the affiliation or relationship between Aetna and the Aetna Fund, and (ii) the limitation, if any, that such affiliation, relationship, or any agreement between Aetna and the Aetna Fund places on Aetna's ability to recommend securities issued by other investment companies;

(D) The sales commission, if any, that Aetna will receive in connection with the purchase of securities of the recommended Aetna Fund, expressed as a percentage of the dollar amount of the plan's gross payments and the amount actually invested, together with a description of any factors that may affect the commission; and

(E) A description of the procedure or procedures for redeeming the Aetna Fund securities.

The disclosures required under Section III(c)(1) above shall be deemed to be completed only if, with respect to fees and expenses of an Aetna Fund, the type of each fee or expense (*e.g.* management fees, administrative fees, fund operating expenses, and other fees, including but not limited to fees payable for marketing and distribution services pursuant to Rule 12b–1 under the Investment Company Act of 1940 (the 12b–1 Fees)) and the rate or amount charged for a specified period (*e.g.* annually) is provided in a written document separate from the prospectus of such Aetna Fund.

(2) Following receipt of the information required to be provided to the Independent Plan Fiduciary, as described in Section III(c)(1) above, and before execution of the transaction, the Independent Plan Fiduciary approves the specific transaction on behalf of the plan. Unless facts and circumstances would indicate the contrary, such approval may be presumed if the Independent Plan Fiduciary directs the transaction to proceed after Aetna has delivered the written disclosures to the Independent Plan Fiduciary. The Independent Plan Fiduciary may be an employer of employees covered by the plan but may not be Aetna. The Independent Plan Fiduciary may not receive, directly or indirectly (*e.g.* through an affiliate), any compensation or other consideration for his or her own personal account from any party dealing with the plan in connection with the transaction.

(3) With respect to additional purchases of Aetna Fund securities, Aetna: (A) provides reasonable advance notice of any material change with respect to the Aetna Fund securities being purchased or the commission with respect thereto, and (B) repeats the written disclosure required under Section III(c)(1) (A), (C), (D) and (E) once every three years.

(d)(1) Aetna shall retain or cause to be retained for a period of six (6) years from the date of any transaction covered by this exemption the following:

(A) The information disclosed with respect to such transaction pursuant to Sections III (b), and (c);

(B) Any additional information or documents provided to the Independent Plan Fiduciary with respect to the transaction; and

(C) Written acknowledgments, as described in Section III(b)(2) above.

(2) A prohibited transaction shall not be deemed to have occurred if, due to circumstances beyond the control of Aetna, such records are lost or destroyed before the end of such six-year period.

(3) Notwithstanding anything to the contrary in sections 504(a)(2) and (b) of the Act, such records shall be unconditionally available for examination during normal business hours by duly authorized employees or representatives of the Department of Labor, the Internal Revenue Service, plan participants and beneficiaries, any employer of plan participants and beneficiaries, and any employee organization any of whose members are covered by the plan.

IV. Definitions

For purposes of this exemption—

(a) *Aeltus* means the Aeltus Trust Company.

(b) *Aetna* means the Aetna Life Insurance Company, the Aetna Life Insurance and Annuity Company, and any of their affiliates, including but not limited to Aeltus;

(c) *Aetna Fund* means any investment company registered under the Investment Company Act of 1940 for which Aetna serves as investment adviser and as principal underwriter (as that term is defined in section 2(a)(29) of the Investment Company Act of 1940, 15 U.S.C. § 80a–2(a)(29)).

(d) *an affiliate* of a person means (1) any person directly or indirectly controlling, controlled by, or under common control with such person, (2) any officer, director, employee, or relative of any such person, or any partner in such person, and (3) any corporation or partnership of which such person is an officer, director, or employee, or in which such person is a partner. For purposes of this definition, an "employee" includes (A) any registered representative of Aetna, where Aetna or an affiliate is principal underwriter, and (B) any insurance agent or broker or pension consultant acting under a written agreement as Aetna's agent in connection with the sale of an Insurance Contract, whether or not such registered representative or insurance agent or broker or pension consultant is a common law employee of Aetna.

(e) The term, *control*, means the power to exercise a controlling influence over the management or policies of a person other than an individual;

(f) *Independent Plan Fiduciary* means a fiduciary with respect to a plan, which fiduciary has no relationship to, or interest in, Aetna that might affect the exercise of such fiduciary's best judgment as a fiduciary.

(g) *Investment Trust* means (1) any collective investment fund or group trust qualifying for tax-exempt status under the provisions of the Internal Revenue Code of 1986 and regulations and rulings thereunder, of which Aeltus, as defined in Section IV(a) above, or its successor or affiliate serves as trustee, or (2) any single-customer trust account for which Aeltus serves as trustee, provided that Aeltus has no discretionary authority or responsibility with respect to the management or administration of, and does not provide any investment advice with respect to, any plan assets not invested in such single-customer trust account or another Investment Trust.

(h) *Insurance Contract* or *Insurance Contacts* means an insurance or annuity contract issued by Aetna.[2]

[2] The Department expresses no opinion as to whether any so called "synthetic guaranteed insurance contracts" offered by Aetna constitutes an Insurance Contract within the meaning of this proposed exemption. The Department further notes that Prohibited Transaction Class Exemption 84–24, upon which this individual proposal is modeled, provides relief from the self-dealing and conflict of interest provisions of the Act in connection with the sale of insurance contracts to plans by fiduciaries. It does not provide relief from any acts of self-dealing that do not arise directly in connection with the purchase of specific insurance products. Thus, for example, no relief is provided under this proposal for any act of self-dealing that

(i) *A nondiscretionary trustee* of a plan is a trustee whose powers and duties with respect to any assets of the plan are limited to: (1) the provision of nondiscretionary trust services, as defined in Section IV(j) below, to such plan, and (2) the duties imposed on the trustee by any provision or provisions of the Act or the Code.

(j) *Nondiscretionary trust services* means custodial services and services ancillary to custodial services, none of which services are discretionary.

(k) *A relative means a relative* as that term is defined in section 3(15) of the Act (or a "member of the family" as that term is defined in Code section 4975(e)(6)), or a brother, a sister, or a spouse of a brother or a sister;

(l) *Sales Agent* means any insurance agent, broker, or pension consultant or any affiliate thereof that is affiliated with Aetna either through ownership or by contractual arrangement.

(m) *Principal underwriter* is defined in the same manner as that term is defined in section 2(a)(29) of the Investment Company Act of 1940 (15 U.S.C. 8a–2(a)(29)).

EFFECTIVE DATE: If granted, this proposed exemption will be effective as of August 28, 1997, the date of the filing of the application for exemption.

Summary of Facts and Representations

1. It is anticipated that the plans which participate in the transactions which are the subject of this proposed exemption are employee benefit plans subject to the Act, including defined benefit and defined contribution retirement plans (the Plan or Plans). Due to the nature of the requested exemption, the applicants, Aetna and its affiliates, maintain that they are unable to provide any of the following specific identifying information about the Plans that may engage in the proposed transactions: (A) the number of participants; (B) an estimate of the percentage of assets of each Plan affected by the requested exemption or transactions; or (C) the approximate aggregate fair market value of the total assets of each affected Plan. However, the applicants generally do not anticipate that Plans covered by the requested exemption will be participant-directed plans, pursuant to section 404(c) of the Act. In addition, the applicants have not requested an exemption, and no relief is provided, herein, for any plan covering employees of Aetna or its affiliates.

2. Aetna, is a publicly-traded Connecticut company with its principal place of business in Hartford, Connecticut. Aetna indirectly owns all of the outstanding shares of Aetna Life Insurance and Annuity Company (ALIAC) and the Aetna Life Insurance Company (ALIC). ALIC and ALIAC are Connecticut stock life insurance companies licensed to transact life, accident, and health insurance business in all fifty states of the United States and the District of Columbia. ALIAC is also registered as an investment adviser and a broker-dealer with the Securities and Exchange Commission (SEC). As of December 31, 1996, the total consolidated assets of ALIC was approximately $43.9 billion, and the total consolidated assets of ALIAC was approximately $28.8 billion.

3. ALIC and ALIAC offer a variety of insurance and annuity products to Plans some of which may serve as funding vehicles for retirement plan benefits. It is represented that all such insurance contracts are reviewed and approved under the laws of one or more states. In addition to providing insurance products, ALIC and ALIAC offer other services to Plans, including actuarial, record-keeping, and other plan administration services.

4. It is represented that the Insurance Contracts which are the subject of this proposed exemption are sold by Sales Agents. Sales Agents include insurance agents, brokers, or pension consultants or any affiliate thereof that is affiliated with Aetna either through ownership or by contractual arrangement. In connection with sales of Insurance Contracts, Sales Agents may receive commissions or other compensation.

5. The Aetna Funds referred to in this proposed exemption include the Aetna Variable Funds, the Aetna Series Funds, and Portfolio Partners, Inc. It is represented that all such funds are open-end investment companies registered with the SEC under the Investment Company Act of 1940. Each such investment company offers a number of different investment portfolios with different investment objectives and guidelines. The Aetna Funds are offered to Plans directly and through variable annuity contracts issued in connection with ALIAC's separate accounts.

6. Aetna Investment Services, Inc. (AISI), Aetna Financial Services, Inc. (AFSI), Aeltus Capital, Inc. (Aeltus Capital), and Financial Network Investment Corporation (FNIC) are each registered broker-dealers with the SEC and are wholly-owned affiliates of ALIC and ALIAC. ALIC, ALIAC, AISI, AFSI, Aeltus Capital, and FNIC and their successors (the Aetna Companies) have provided and will provide a variety of services to the Aetna Funds.

7. In this regard, as disclosed in the prospectus materials for each of the Aetna Funds, ALIAC is the investment adviser to all of the Aetna Funds. In addition, ALIAC provides other services (the Secondary Services) to Aetna Funds, including accounting, shareholder administration, sub-accounting, and other administrative services. Further ALIAC is the principal underwriter to the Aetna Variable Funds and Portfolio Partners, Inc., and AISI is the principal underwriter to the Aetna Series Funds. In this regard, it is represented that as principal underwriters, ALIAC and AISI distribute Aetna Fund shares on an agency basis.[3] It is further represented that ALIAC may engage affiliated or unaffiliated sub-advisers to the Aetna Funds from time to time.

Under the terms of services agreements between ALIAC and an Aetna Fund, ALIAC may receive management fees and fees for Secondary Services. In addition, ALIAC or AISI may receive sales commissions and distribution fees, including for some classes of shares issued by certain Aetna Funds 12b–1 Fees.[4] It is represented that the prospectus materials for each of the Aetna Funds disclose whether such fees are paid and the basis under which such fees are paid.

8. Aeltus is a wholly-owned subsidiary of Aeltus Investment Management, Inc., an affiliate of the Aetna Companies. Aeltus is a limited purpose trust company chartered in the state of Connecticut and subject to the regulation and control of the Connecticut Commissioner of Banking. Aeltus may from time to time serve as a nondiscretionary trustee to Plans.

As of August 1, 1997, Aeltus maintains one or more collective investment funds that qualify for tax-exempt status under the provisions of the Code which are offered to Plans.[5] In

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may arise in connection with the ongoing operation or administration of the insurance contract.

[3] As it is represented that ALIAC and AISI distribute shares in Aetna Funds on an agency basis, and as generally an Aetna Fund would not be a party in interest to a Plan, the applicant maintains that a Plan's purchase of shares in an Aetna Fund, in and of itself, should not involve any prohibitions under section 406(a) of the Act.

[4] The Department notes that the relief provided by this exemption does not preclude the receipt of 12b–1 Fees by Aetna or its affiliates to the extent that the payment of such 12b–1 Fees cannot be functionally distinguished from the payment of a sales commission in connection with the purchase, with plan assets, of securities issued by an Aetna Fund.

[5] It is represented that no relief is requested or required for the investment by Plans in the Investment Trust. The applicants represent that in all cases, the decision to invest in the Investment

Continued

addition, Aeltus may maintain custody of, and provide investment management services for, a portion of the assets of a Plan in a single customer investment trust. As trustee to an Investment Trust (either a collective investment fund or a single customer investment fund), Aeltus has discretionary authority to manage and invest the assets of the Plan invested in the Investment Trust.[6] However, it is represented that Aeltus does not provide and will not provide investment advice (as described by section 3(21)(A)(ii) of the Act and the regulations thereunder) or otherwise have any discretionary authority, responsibility, or control with respect to any plan assets not invested in an Investment Trust, or in connection with the decision by a Plan to invest plan assets in an Investment Trust, in an Insurance Contract, or in shares of an Aetna Fund.

9. With respect to any Plan that participates in an Investment Trust, Aeltus will be a service provider and a fiduciary, pursuant to section 3(14)(A) and (B) of the Act. The Aetna Companies, as service providers to Plans, may also be parties in interest with respect to such Plans, pursuant to section 3(14)(B) of the Act. In addition, in some cases, one or more of the Aetna Companies could be deemed to be a party in interest with respect to a Plan by virtue of an ownership relationship of such Aetna Companies to Aeltus, pursuant to section 3(14)(G), (H), and (I) of the Act. Further, under circumstances where a Sales Agent could be deemed to provide investment advice, as described in section 3(21)(A)(ii) of the Act, to a Plan in connection with the purchase by such Plan of an Insurance Contract or the purchase of shares of an Aetna Fund, the Sales Agent may be deemed to be a fiduciary to such Plan, pursuant to section 3(14)(A) of the Act.

Where one of the Aetna Companies is a party in interest to a Plan, then purchases by such Plan of Insurance Contracts or purchases by such Plan of shares of Aetna Funds may be prohibited under section 406(a) of the Act. In addition in the event that a Sales Agent is deemed to be providing investment advice (as described in section 3(21)(A)(ii) of the Act and the regulations thereunder) to a Plan in connection with such Plan's purchases of Insurance Contracts or purchases of shares of Aetna Funds, the receipt of commissions by such Sales Agents may be prohibited under section 406(b) of the Act.

10. The applicants request relief from these transactions because of the uncertainty of the applicability of Class Exemption 84–24 (PTCE 84–24) to the transactions. In this regard, PTCE 84–24 provides relief from the prohibitions of sections 406(a)(1)(A) through (D) and 406(b) of the Act, and from the taxes imposed by section 4975 of the Code for certain classes of transactions involving purchases by plans of insurance or annuity contracts and purchases by plans of securities issued by registered investment companies, and the receipt of sales commissions in connection therewith by an insurance agent, broker, pension consultant, or investment company principal underwriter. However, no relief is available under PTCE 84–24, if the insurance agent, broker, pension consultant, or the investment company principal underwriter or its affiliate is a plan trustee, other than a non-discretionary trustee who does not render investment advice with respect to any assets of the plan. Even though, Aeltus has represented, that it does not and will not provide investment advice or exercise or have any discretionary authority over whether a Plan purchases Insurance Contracts or shares of an Aetna Fund, the exemption provided under PTCE 84–24 may not be available for such purchases where the assets of such Plan are under management with Aeltus, as trustee of an Investment Trust.

Aeltus has represented that as of the date the application for exemption was filed with the Department, that the transactions that are the subject of this proposed exemption had not occurred. However, it is anticipated that Plans participating in the Investment Trust may begin to purchase Insurance Contracts or to purchase shares of Aetna Funds at any time. Because the applicant believes that PTCE 84–24 may not cover a transaction between a plan and a party in interest whose affiliate provides trustee services, other than nondiscretionary trustee services to the Plan, Aetna has requested an exemption from section 406(a) and (b) of the Act with respect to the proposed transactions and the corresponding provisions of section 4975(c)(1) of the Code retroactively to August 28, 1997, the date of the filing of the application for exemption.

11. In support of their request for individual exemption, Aetna represents that the transactions are on terms which are at least as favorable to the Plan as those negotiated at arm's length with an unrelated party, and such transactions are effected by Aetna or a Sales Agent in the ordinary course of the respective business of such parties. With respect to the receipt of sales commissions by Aetna or a Sales Agent for the provision of services to a Plan, and in connection with a purchase of an Insurance Contract or securities issued by an Aetna Fund, the combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent will not be in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code.

12. The applicants maintain that the requested exemption is administratively feasible. In this regard, compliance with the terms of the exemption is monitored by an Independent Plan Fiduciary, so that the level of oversight required by the Department is minimal. In this regard, an Independent Plan Fiduciary of each Plan that participates in the Investment Trust will receive notice regarding this proposed exemption. Further, the Aetna Companies will maintain records necessary to verify compliance with the conditions of this exemption.

13. The applicants maintain that the proposed exemption is in the interest of the Plans which participate in the subject transactions, because Plans will be able to take advantage of the full range of insurance and investment products offered by the Aetna Companies. For example, an Independent Plan Fiduciary of a defined benefit plan investing some or all of the assets of such Plan in an Investment Trust will also be able to purchase annuities or other insurance products for the Plan from Aetna.

14. The applicants maintain that the proposed exemption is designed to protect the rights and interests of the participants and beneficiaries of the Plans. In this regard, Aetna is required to make certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or in

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Trust and, thereby, to engage Aeltus to provide investment management services to the Plan would be made by an independent plan fiduciary. Further, the applicants maintain that where the Investment Trust is a collective investment fund (a Collective Trust), any potential violations of section 406(a) or (b) of the Act in connection with a plan's investment in such Collective Trust would be exempt provided that certain conditions are satisfied, pursuant to section 408(b)(8) of the Act. In this regard, the applicants represent that any investments in the Collective Trust by Plans will comply with the conditions of section 408(b)(8) of the Act. The Department expresses no opinion, herein, as to whether any of the relevant provisions of part 4, subpart B, of Title I have been violated, regarding investment by Plans in the Investment Trust, nor as to whether the conditions of section 408(b)(8) have been or will be satisfied.

[6] The Department notes that, pursuant to Section III(a)(1) of this proposed exemption, relief would not be available for the purchase by Aeltus for such Investment Trust of Insurance Contracts, as defined in Section IV(h) below; or of securities issued by an Aetna Fund.

investment matters. Specifically, before a Plan purchases an Insurance Contract, the Independent Plan Fiduciary must receive and acknowledge the written disclosures, described in Section III(b) above and must approve the transaction on behalf of the Plan. Similarly, before a Plan purchases shares of an Aetna Fund, the Independent Plan Fiduciary must receive the disclosures, described in Section III(c) above. Approval with respect to a Plan's purchase of shares of an Aetna Fund will be presumed, unless facts and circumstances indicate the contrary, if the Independent Plan Fiduciary directs the transaction to proceed after receiving the written disclosures from Aetna. Further, prior to a purchase of shares of an Aetna Fund, Aetna must disclosure in a written document separate from the prospectus information with respect to specific types of fees or expenses paid from the assets of an Aetna Fund, including information about the rate or amount of each fee or expense charged for a specified period,.

If a Plan purchases additional Insurance Contracts, Aetna does not have to repeat the written disclosure required under Section III(b)(1), unless more than three years have passed since such disclosure was made with respect to the same kind of Insurance Contract, or unless the Insurance Contract being recommended for purchase or the commission thereto is materially different from that for which the approval was obtained. With respect to additional purchases of Aetna Fund securities, Aetna has represented that it will provide reasonable advance notice of any material change to the Aetna Fund securities being purchased or the commission thereto, and will repeat the written disclosure required under Section III(c)(1)(A), (C), (D), and (E) at least once every three (3) years.

Where Aeltus is a trustee other than a nondiscretionary trustee to a Plan, solely because it serves as a trustee to an Investment Trust in which such Plan participates, the applicants maintain that the proposed transactions do not appear to involve the types of abuse that the Department intended to address by limiting the availability of PTCE 84–24 where a party in interest or its affiliate is a trustee to a plan. Specifically, notwithstanding the fact that Aeltus is trustee to an Investment Trust, Aeltus is not acting as a fiduciary with discretion over whether a Plan purchases Insurance Contracts or shares of Aetna Funds, nor is Aeltus in a position to improperly influence or control such decision made by the Independent Plan Fiduciaries.

15. In summary, the applicant represents that the proposed transactions meet the statutory criteria for an exemption under section 408(a) of the Act and 4975(c)(2) of the Code because:

(a) Plans can take advantage of the full range of insurance and investment products offered by the Aetna Companies;

(b) The transactions are effected by Aetna or by a Sales Agent in the ordinary course of business;

(c) The transactions are on terms at least as favorable to the Plan as an arm's length transaction with an unrelated party would be;

(d) The combined total of all fees, sales commissions, and other consideration received by Aetna or a Sales Agent for the provision of services to a Plan, and in connection with the proposed transactions is not in excess of "reasonable compensation" within the contemplation of section 408(b)(2) and (c)(2) of the Act and section 4975(d)(2) and (d)(10) of the Code;

(e) Neither Aetna nor the Sales Agent is a trustee of the Plan (other than a non-discretionary trustee who does not render investment advice with respect to any assets of the Plan or a trustee to an Investment Trust which will not purchase Insurance Contracts or securities issued by an Aetna Fund); a plan administrator; a fiduciary who is expressly authorized in writing to manage, acquire, or dispose of, on a discretionary basis, those assets of the Plan that are or could be invested in Insurance Contracts, securities issued by an Aetna Fund, or an Investment Trust; or an employer any of whose employees are covered by the Plan;

(f) With respect to the proposed transactions, Aetna provides the Independent Plan Fiduciary with certain disclosures in writing and in a form calculated to be understood by a plan fiduciary who has no special expertise in insurance or investment matters; and provides disclosure in a written document separate from the prospectus of information regarding specific types of fees or expenses paid from the assets of an Aetna Fund and the rate or amount of each fee or expense charged for a specified period;

(g) Following receipt of the required disclosures and prior to entering the transaction, the Independent Plan Fiduciary approves the transaction on behalf of the Plan; and

(h) Aetna shall retain or cause to be retained certain records for a period of six (6) years from the date of any transaction covered by this exemption.

Notice to Interested Persons

Because of the large number of potentially interested persons, the applicants maintain that it is not possible to provide a separate copy of the Notice of Proposed Exemption (the Notice) to each Plan eligible to engage in the transactions covered by the requested exemption. In this regard however, Aetna intends to provide in writing by first-class mail to the Independent Plan Fiduciary of each Plan that participates in an Investment Trust within fifteen (15) days of the date of publication of the Notice in the **Federal Register**, a copy of the Notice, as published in the **Federal Register**, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2). The notification will inform such interested persons of their right to comment and/or request a hearing within thirty (30) days of receipt of a copy of the Notice.

Apart from the notification described in the paragraph above, the applicants represent that the only practical form of providing notice to interested persons is by means of publication of the Notice in the **Federal Register**.

FURTHER INFORMATION CONTACT: Angelena C. Le Blanc of the Department, telephone (202) 219–8883 (This is not a toll-free number.)

UNOVA, Inc. (UNOVA), Located in Beverly Hills, California

(Application Nos. D–10663 and D–10664)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply, as of December 17, 1998, to: (1) the acquisition by the UNOVA, Inc. Pension Plan and the Landis Tool Pension Plan (collectively, the Plans) of certain improved real property (the Property) from an unrelated party for a sales price of $15,250,000 (the Purchase); and (2) the leasing of a portion of the Property (the Lease) by the Plans to UNOVA, a party in interest with respect to the Plans, provided that the following conditions are satisfied:

(a) The Plans paid an amount for the Property which was no more than the

fair market value of the Property at the time of the transaction;

(b) The interest in the Property owned by each Plan represented no more than 15% of the value of either Plan's total assets at the time of the Purchase;

(c) The Property, and the amount of space in the Property leased to UNOVA under the Lease (the Leased Space), represents no more than 15% of the value of either Plan's total assets throughout the duration of the Lease;

(d) The terms and conditions of the Lease are at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(e) The fair market rental value of the Leased Space has been, and every three years during the Lease will continue to be, determined by a qualified, independent appraiser;

(f) The amount of rent paid by UNOVA to the Plans for the Leased Space throughout the duration of the Lease will be no less than the greater of the initial rent paid by UNOVA or the current fair market rental value of the Leased Space as determined every three years by a qualified independent appraiser;

(g) The Plans' independent fiduciary has determined that the Purchase and Lease are appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and

(h) The Plans' independent fiduciary will monitor the Lease, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plans throughout the duration of the Lease.

EFFECTIVE DATE: This proposed exemption, if granted, will be effective as of December 17, 1998.

Summary of Facts and Representations

1. UNOVA is an industrial automation, automated data collection, and mobile computing company located in Beverly Hills, California. The Plans consist of the UNOVA, Inc. Pension Plan and the Landis Tool Pension Plan. The UNOVA, Inc. Pension Plan is a defined benefit plan which had 7,425 participants and approximately $263,299,725 in total assets, as of September 30, 1998. The Landis Tool Pension Plan, which covers the employees of the Landis Tool and Gardner Machine divisions of UNOVA, is a defined benefit plan which had 1,328 participants and approximately $61,067,477 in total assets, as of September 30, 1998.

2. The Property is located at 21900 Burbank Boulevard in Los Angeles, California. The Property consists of a 2.15 acre lot improved by a three-story multi-tenant office building having 89,203 square feet of rental space. The Plans purchased the Property from the Variable Annuity Life Insurance Company, a party unrelated to the Plans, for $15,250,000 on December 17, 1998.

After the Purchase, a portion of the Property's $15,250,000 total asset value (the Property's Value) was allocated to each of the Plans (the Allocation). The Allocation apportioned approximately 81% of the Property's Value, or approximately $12,378,936, to the UNOVA, Inc. Pension Plan, and approximately 19% of the Property's Value, or approximately $2,871,064, to the Landis Tool Pension Plan. The Allocation was made for the purpose of ensuring that the interest in the Property owned by each Plan represented the exact same percentage of each Plan's overall assets at the time of the Allocation. As a result, at the time the Allocation was made, the Property comprised approximately 4.7% of the Landis Tool Pension Plan's assets and approximately 4.7% of the UNOVA, Inc. Pension Plan's assets.

3. After the Purchase, the Plans leased a portion of the Property to UNOVA, effective as of December 17, 1998 (i.e. the Lease). The leased portion of the Property comprises the entire third floor of the Property or 32,314 square feet (i.e. the Leased Space). Thus, the Leased Space represents approximately 36.2% of the Property's total square feet of rental space.

According to the terms of the Lease, the base rent paid by UNOVA is $17.32 per square foot annually. Under the Lease, UNOVA is required to reimburse the Plans for all of the expenses the Plans incur through UNOVA's leasing of the Property. The expenses to be paid to the Plans by UNOVA, as lessee, are $7.88 per square foot annually, subject to future adjustments each year based on the Plans' actual annual expenses.[7] As a result, the total amount of rental income that the Plans are entitled to receive from UNOVA in the first year of the Lease is $814,312.80, or $25.20 per square foot annually. The applicant states that this amount represents the fair market value for the Leased Space, in accordance with rents currently being charged for similar properties in the local real estate market (see discussion in Paragraphs 7 and 8 below).

4. The Lease is for an initial term of ten years. The Lease requires the Plans to reimburse UNOVA $20.00 per square foot for UNOVA's expenses relating to UNOVA's installation as a tenant (the Reimbursement).[8] In this regard, the applicant represents that leases for properties similar to the Leased Space typically contain reimbursement provisions similar to the Reimbursement. The duration of the Lease may be extended upon written notice by UNOVA to the Plans at least three months prior to the expiration of the Lease's initial term or the Lease's three renewal terms (the Renewals). In each instance, the Renewal will be for an additional five years and will be subject to the approval of an independent qualified fiduciary (see Paragraphs 8, 9, and 10 below). As part of such approval, the independent fiduciary must determine that the Lease payments will equal the current fair market rental value of the Leased Space and that all of the other conditions of the Lease will remain in the best interest and protective of the Plans.

5. The applicant states that an independent qualified real estate appraiser will determine the fair market rental value of the Leased Space every three years. If the independent appraiser determines that the fair market value of the Leased Space is greater than the $25.20 per square foot per year as specified in the Lease, UNOVA will be required to pay a new rental rate equal to the fair market rental value of the Leased Space. However, under no circumstances will a new rental rate be reduced below the initial rental rate. Thus, in accordance with this procedure, all rents paid by UNOVA will be no less than the greater of $814,312.80 per year, as provided for in the Lease, or the fair market rental value of the Leased Space as determined every three years by the independent qualified appraiser.

Additionally, the amount of rent the Plans receive from UNOVA will periodically be adjusted (the Adjustments) to reflect increases in the

[7] In the event that UNOVA incurs an actual annual expense in excess of $7.88 per square foot, UNOVA will reimburse the Plans the full amount of the excess expense. After a year in which UNOVA incurs an excess expense, the following year's annual expense amount will be adjusted upward to reflect the actual amount paid in the previous year. This formula will be continued in subsequent years.

[8] The Department expresses no opinion in this proposed exemption as to whether the expenses incurred by the Plans relating to the tenant improvements made to the Leased Space on behalf of UNOVA would violate any provision of Part 4 of Title I of the Act. In this regard, the Department notes that section 404(a) of the Act requires, among other things, that plan fiduciaries act prudently and solely in the interest of the plan's participants and beneficiaries when making investment decisions on behalf of a plan. In addition, section 404(a) of the Act requires that plan fiduciaries act for the exclusive purpose of providing benefits to participants and beneficiaries and defraying the reasonable expenses of administering the plan.

Consumer Price Index (CPI). The first Adjustment will occur after the Lease has been in effect for five years. At that time, the actual rental rate for the Leased Space will be increased by a percentage equal to 90% of the percentage increase in the CPI during that period. Thereafter, additional Adjustments, which will be calculated in the same manner as the first Adjustment, will occur at five year intervals upon any Renewal.

6. The Property has been appraised (the Appraisal) by Eric Stucky, MAI (the Appraiser), a certified appraiser for CB Richard Ellis, Inc. Appraisal Services, an independent real estate appraisal company located in Los Angeles, California. The Appraiser considered both the sales comparison approach and the income capitalization approach to value the Property. However, the Appraiser's conclusions were based on the income capitalization approach. The Appraiser concluded that the Property had a fair market value of $15,600,000, as of August 13, 1998.

The Appraiser additionally analyzed the fair market rental rate of the Leased Space and the Reimbursement provision of the Lease. The Appraiser's analysis involved reviewing recent leases in the Property, analyzing rental rates of recently leased properties similar to the Leased Space, and interviewing market participants. After this analysis, the Appraiser concluded that the Leased Space's initial rental rate of $25.20 per square foot annually represented the current fair market value of the Leased Space. The Appraiser additionally concluded that the Reimbursement was within the range of allowances for tenant reimbursement found in leases involving properties similar to the Leased Space.

7. The Appraisal was reviewed by Andrew Minstein and Phil Gottfried (the Reviewers), each a certified real estate appraiser for AGM and Associates (AGM), an independent appraisal company. The Reviewers represent that they have no financial interest in the Property. Upon their review of the Appraisal, the Reviewers concluded that the Appraiser's valuation of the Property was reasonable. In addition, the Reviewers represent that the rental rate to be paid by UNOVA for the Leased Space during the first year of the Lease is at the high end of the range of rents currently being paid for similar properties in the local real estate market.

8. UNOVA represents that Harvey A. Bookstein of Roth Bookstein & Zaslow, LLP (Roth Bookstein & Zaslow) located in Los Angeles, California, was appointed on August 21, 1998, to serve as the Plans' independent fiduciary with respect to the Purchase and Lease. Mr. Bookstein has been a Certified Public Accountant for over 25 years. Mr. Bookstein states that he is experienced and knowledgeable in matters concerning real estate and qualified retirement plans.

Mr. Bookstein states further that he is unrelated to both the Plans and UNOVA. In this regard, Mr. Bookstein represents that throughout the duration of the Lease and any of the Renewals thereof, Roth Bookstein and Zaslow will receive less than one percent of its annual gross income from any of the parties involved in the proposed transaction. Mr. Bookstein has acknowledged his duties, liabilities and responsibilities as a fiduciary for the Plans for purposes of the subject transactions.

9. In order to ensure that the Purchase and Lease were in the best interest of the Plans, Mr. Bookstein:

(a) Reviewed the terms of the Purchase and Lease to determine whether the transactions would be at least as favorable to the Plans as those terms and conditions which would exist in similar transactions between unrelated parties;

(b) Confirmed that the Purchase and Lease conformed to the diversification and investment objectives of the Plans;

(c) Reviewed the terms of the Lease, including the provisions relating to the initial rental rate, the Reimbursement, the Renewals, and the Adjustments, to confirm that the terms and conditions of the Lease would be in the best interests of the Plans and their participants and beneficiaries;

(d) Compared the terms and conditions of the Lease, including the provisions relating to the initial rental rate, the Reimbursement, the Renewals, and the Adjustments, to the terms and conditions of arm's-length leases involving similar properties, to ensure that the overall investment return that the Plans will receive from the Lease will be comparable to the overall investment return for similar leases involving unrelated parties;

(e) Confirmed that the Lease reflected the current fair market rental rate for the Leased Space at the time of the transaction, as determined by an independent qualified appraiser; and

(f) Confirmed that the Purchase and Lease would be in the best interests of the Plans' participants and beneficiaries.

10. Mr. Bookstein represents that he completed an analysis of the Purchase and Lease (the Analysis) prior to the date in which the Plans and UNOVA entered into the transactions.

Mr. Bookstein states that after conducting the Analysis, he determined that such transactions were in the best interests of the Plans' participants and beneficiaries. In addition, Mr. Bookstein determined that the terms and conditions of the Lease would be at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party.

Mr. Bookstein additionally analyzed the overall investment portfolio of the Plans (the Investment Analysis) prior to the transactions. Upon completion of the Investment Analysis, Mr. Bookstein determined that the Purchase and Lease would be consistent with the Plans' investment objectives and policies.

Mr. Bookstein also prepared a net present value (NPV) analysis (the NPV Analysis) of the Lease.[9] Mr. Bookstein represents that his analysis involved comparing the NPV of the Lease to the NPV of leases that pre-dated the Plan's purchase of the Property. Mr. Bookstein represents that this comparison included using a discount rate of 10 percent (which operates as the rate of return objective) and deducting from the income stream all expenses related to such leases and their proportionate share of the Property's expenses to the extent that these expenses exceeded those of their base year. Mr. Bookstein represents that the results of the NPV Analysis is consistent with his conclusion that the terms and conditions of the Lease are in the best. interests of the Plan.[10]

Mr. Bookstein represents that he will monitor the Lease throughout its duration, as well as the conditions of this proposed exemption (if granted), and will take whatever action is necessary to protect the Plans' rights under the Lease and safeguard the interests of the Plans. Additionally, Mr. Bookstein represents that he will ensure that the Plans' rental income from the Lease, or upon any Renewal, reflects the Leased Space's fair market rental value at the time. Mr. Bookstein further represents that the Plans will not enter into any Renewals without his approval.

11. The Applicant represents that in the event of a termination of Mr.

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[9] The NPV is the difference between the present value of all expected investment benefits (or positive cash flows), and the present value of capital outlays (or negative cash flows), over the entire period of the investment.

[10] In this regard, the Mr. Bookstein's conclusions with respect to the NPV Analysis depends on the fact that the current rental rate being charged to UNOVA represents the fair market value of the Leased Space, and that there will be appropriate readjustments to the rent to reflect any increases in the fair market rental value of the Leased Space at least once every three years by an independent appraiser.

Bookstein's appointment as independent fiduciary to the Plans with respect to the Lease, any successor to Mr. Bookstein will have responsibilities, independence and experience similar to those described in Paragraphs 8, 9, and 10 above. In this regard, the Applicant states that if it becomes necessary to appoint a successor independent fiduciary (the Successor) to replace Mr. Bookstein, a letter will be sent to the Department at least thirty (30) days prior to the appointment. The letter will specify that the Successor has responsibilities, experience and independence similar to those of Mr. Bookstein. If the Department does not object to the Successor, the new appointment will become effective on the 30th day after the Department receives such letter.

12. In summary, UNOVA represents that the subject transactions satisfy the statutory criteria contained in section 408(a) of the Act for the following reasons:

(a) The Plans paid an amount for the Property which was no more than the fair market value of the Property at the time of the Purchase;

(b) The interest in the Property owned by each Plan represented no more than 15% of the value of either Plan's total assets at the time of the Purchase;

(c) The Property and the Leased Space represented no more than 15% of the value of either Plan's total assets at the time of the transactions and will remain less than that percentage throughout the duration of the Lease;

(d) The terms and conditions of the Lease are, and will remain, at least as favorable to the Plans as those obtainable in an arm's-length transaction with an unrelated party;

(e) The fair market rental value of the Leased Space has been, and every three years during the Lease will continue to be, determined by a qualified, independent appraiser;

(f) The amount of rent paid by UNOVA to the Plans for the Leased Space throughout the duration of the Lease will be no less than the greater of the initial rent paid by UNOVA or the fair market rental value of the Leased Space as determined every three years by a qualified independent appraiser;

(g) Mr. Bookstein, as the Plans' independent fiduciary, has determined that the transactions are appropriate for the Plans and in the best interests of the Plans' participants and beneficiaries; and

(h) Mr. Bookstein, as the Plans' independent fiduciary, will monitor the Lease, as well as the conditions of this proposed exemption (if granted), and will take whatever actions are necessary to safeguard the interests of the Plans under the Lease.

FOR FURTHER INFORMATION CONTACT: Christopher J. Motta of the Department, telephone (202) 219–8883 (this is not a toll free number).

Daniel N. Cunningham IRA (the Cunningham IRA); Sidney B. Cox IRA (the Cox IRA) (collectively, the IRAs), Located in Fresno, California

[Exemption Application Numbers: D–10723 and D–10724]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchase (the Purchase) by each IRA [11] of certain shares of Clovis Community Bank common stock (the Stock) from Mr. Daniel N. Cunningham and Mr. Sidney B. Cox (the Account Holders), disqualified persons with respect to the IRAs, provided that the following conditions are met:

(a) The Purchase of the Stock by each IRA is a one-time transaction for cash;

(b) Each IRA purchases the Stock for a price not exceeding the fair market value of the Stock at the time of each Purchase;

(c) The terms and conditions of each Purchase are at least as favorable as those available in an arm's length transaction with an unrelated third party;

(d) Each IRA does not pay any commissions or other expenses in connection with each Purchase;

(e) The IRA assets invested in the Stock do not exceed 25% of the total assets of each IRA at the time of the transaction; and

(f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

Effective Date: If this proposed exemption is granted, the exemption will be effective as of April X, 1999.

Summary of Facts and Representations

1. The applicants describe the Account Holders, their holdings of the Stock, and the IRAs as follows:

(a) Daniel N. Cunningham currently serves on the Board of Directors of Clovis Community Bank (Clovis).* As of December 31, 1998, he held 96,494 shares (48,851 directly and 47,643 indirectly) in his individual capacity. The Cunningham IRA is an individual retirement account, trusteed by Wheat First Union, established under Code section 408(e). As of September 30, 1998, the IRA held assets valued at $1,483,007.

(b) Sidney B. Cox currently serves on the Board of Directors at Clovis. As of December 22, 1998, he held 12,522 shares in his individual capacity. The Cox IRA is an individual retirement account, trusteed by Smith Barney, established under Code section 408(e). As of September 30, 1998, the IRA held assets valued at $195,819.37.

2. The Stock consists of shares issued by Clovis. Clovis is a California state-licensed bank with deposit accounts insured by the Federal Deposit Insurance Corporation (the FDIC). Clovis is subject to the regulation, supervision and periodic examination by the California Department of Financial Institutions and the FDIC. Clovis is not a member of the Federal Reserve system, but is nevertheless subject to certain regulations relating thereto.

3. The Stock is common stock with no par value and the only class authorized in the Clovis articles of incorporation. Currently, there are 1,069,067 shares outstanding. The Stock is not listed on any exchange, nor is it listed with NASDAQ. Trading of the Stock is limited in volume with transactions coordinated between buyers and sellers utilizing brokers. Bid and asked prices for the Stock are quoted weekly in "The Fresno Bee" and the National Daily Quotation Service's "pink sheets." [12]

4. The applicants request an exemption for the Purchase of the Stock by each individual IRA from its respective participant. Each Account Holder serves on the Board of Directors of Clovis [13] and has, in the past, been granted options to purchase shares of the Stock. Each Account Holder has exercised such options and proposes selling these newly acquired shares to his respective IRA. Sidney Cox proposes selling to the Cox IRA the lesser of (1) 2,530 shares or (2) an amount not exceeding 25% of the total assets of the

[11] Because each IRA has only one participant, there is no jurisdiction under 29 CFR § 2510.3–3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[12] As of April 2, 1999, the Bid price was $21½ and the Ask price was $23.

[13] The applicants state that Mr. Cunningham's and Mr. Cox's appointments to the Board of Directors of Clovis and their continuing service thereon is not in any way related to the acquisition and holding of the Stock by their IRAs. In addition, the applicants represent that the purchase of the Stock by the IRAs will not enable Mr. Cunningham or Mr. Cox to achieve any personal financial objectives unrelated to the interests of the IRAs.

Cox IRA. Daniel Cunningham proposes selling 9,000 shares to the Cunningham IRA.

5. The applicants represent that each IRA will pay no commissions or other expenses in connection with the Purchase. The Purchase will involve a one-time transaction for cash. Each IRA will pay a share price based on the average of the highest current independent bid and lowest current independent offer as of the close of the business day preceding the proposed Purchase, on the basis of a reasonable inquiry from at least three broker-dealers or pricing services independent of Clovis. The applicants further represent that the Stock will not exceed 25% of the value of the assets of each IRA at the time of the proposed transaction. Finally, the applicants state that each IRA at all times will hold less than one percent (1%) of the outstanding number of Clovis shares.

6. The applicants represent that the proposed transactions are feasible in that each transaction will involve a one-time transaction for cash. Furthermore, the applicants state the proposed transactions will be in the best interests of each IRA in that the Purchases will enable each IRA to invest in a promising security at fair market value without incurring any commissions. Finally, the applicants represent that the transactions will be protective of the rights of each participant because, at the time of the transaction, the investment will not exceed 25% of the assets of each IRA.

7. In summary, the applicants represent that the proposed transactions satisfy the statutory criteria of section 4975(c)(2) of the Code because: (a) The Purchase of the Stock by each IRA will be a one-time transaction for cash; (b) Each IRA will purchase the Stock for a price not exceeding the fair market value of the Stock at the time of Purchase; (c) The terms and conditions of each Purchase will be at least as favorable as those available in an arm's length transaction with an unrelated third party; (d) Each IRA will not pay any commissions or other expenses in connection with each Purchase; (e) The IRA assets invested in the Stock will not exceed 25% of the total assets of each IRA at the time of the transaction; and (f) Each IRA, at all times, will hold less than one percent (1%) of the outstanding shares of the Stock.

NOTICE TO INTERESTED PERSONS: Because the applicants are the only participants in the IRAs, it has been determined that there is no need to distribute the notice of proposed exemption (the Notice) to interested persons. Comments and requests for a hearing are due thirty (30) days after publication of the Notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mr. James Scott Frazier, telephone (202) 219–8881. (This is not a toll-free number).

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 7th day of May, 1999.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 99–12101 Filed 5–12–99; 8:45 am]

BILLING CODE 4510–22–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Preservation; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on Preservation.

DATES: June 8, 1999, from 9 a.m. to 4 p.m.

ADDRESSES: The National Archives at College Park, 8601 Adelphi Rd., College Park, MD 20740–6001, lecture rooms B and C.

FOR FURTHER INFORMATION CONTACT: Alan Calmes, 301–713–7403.

The agenda for the meeting will be Preserving the Zapruder Film: A Technical Discussion.

1. Current physical condition of the original as baseline
2. Storage and preservation of the original
3. Reproduction options

This meeting will be open to the public. However, seating may be limited.

Dated: May 7, 1999.

Mary Ann Hadyka,

Committee Management Officer.

[FR Doc. 99–12104 Filed 5–12–99; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Cooperative Agreement for Administration of Site Visit Activities

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Notification of availability.

SUMMARY: The National Endowment for the Arts is requesting proposals leading to the award of a Cooperative Agreement to assist its Theater and

Musical Theater discipline in the administration and coordination of artistic and administration evaluations of grant applicants. These evaluations are prepared by consultants as the result of site visits, and serve to provide current information about theater and musical theater grant applicants. Responsibilities of the recipient of the Cooperative Agreement will include coordinating schedules and assignments, disbursing payments to consultants, maintaining records, and preparing and submitting administrative reports. Applicants for this Cooperative Agreement must be knowledgeable of the theater and musical theater fields and demonstrate planning and organizational skills and experience. Those interested in receiving the solicitation package should reference Program Solicitation PS 99–03 in their written request and include two (2) self-addressed labels. Verbal requests for the Solicitation will not be honored.

DATES: Program Solicitation PS 99–03 is scheduled for release approximately May 25, 1999 with proposals due on June 28, 1999.

ADDRESSES: Requests for the Solicitation should be addressed to the National Endowment for the Arts, Grants & Contracts Office, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: William Hummel, Grants & Contracts Office, National Endowment for the Arts, Room 618, 1100 Pennsylvania Ave., NW, Washington, DC 20506 (202/682–5482).

William I. Hummel,

Coordinator, Cooperative Agreements and Contracts.

[FR Doc. 99–12128 Filed 5–12–99; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Leadership Initiatives Advisory panel

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Panel (ArtsREACH category) the National Council on the Arts will be held on June 15–18, 1999. The panel will meet from 9:00 a.m. to 5:30 p.m. on June 15, from 9:00 a.m. to 6:00 p.m. on June 16 and 17, and from 9:30 a.m. to 12:00 p.m. on June 18, in Room 708 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506. A portion of this meeting, from 9:00 a.m. to 12:00 p.m. on June 18, will be open to the public for a policy discussion.

The remaining portions of this meeting, from 9:00 a.m. to 5:30 p.m. on June 15th and from 9:00 a.m. to 6:00 p.m. on January 16th and 17th, are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 14, 1998, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 6, 1999.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 99–12081 Filed 5–12–99; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR 31, General Domestic Licenses for Byproduct Material.

3. How often the collection is required: Reports are submitted as events occur. Registration certificates may be submitted at any time. Changes to the information on the registration certificate are submitted as they occur.

4. Who will be required or asked to report: Persons receiving, possessing, using, or transferring byproduct material in certain items.

5. The number of annual respondents: Approximately 10,126 NRC general licensees and 20,252 Agreement State general licensees (total: 30,378).

6. The number of hours needed annually to complete the requirement or request: 2,634 hours for NRC licensees and 5,265 hours for Agreement State licensees (total: 7,899).

7. An indication of whether section 3507(d), Pub. L. 104–13 applies: Not applicable.

8. *Abstract:* 10 CFR part 31 establishes general licenses for the possession and use of byproduct material in certain items and a general license for ownership of byproduct material. General licensees are required to keep records and submit reports identified in part 31 in order for NRC to determine with reasonable assurance that devices are operated safely and without radiological hazard to users or the public.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov) under the FedWorld collection link on the home page tool bar. The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by June 14, 1999.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0016), NEOB–10202, Office of Management and Budget, Washington, DC 20503

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Md., this 7th day of May 1999.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 99–12136 Filed 5–12–99; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–250 and 50–251]

Florida Power and Light Company, Turkey Point Units 3 and 4); Exemption

I

Florida Power and Light Company (the licensee) is the holder of Facility Operating Licenses Nos. DPR–31 and DPR–41, which authorize operation of Turkey Point Units 3 and 4 (the facility), respectively, at a steady-state reactor power level not in excess of 2300 megawatts thermal. The facility is a pressurized-water reactor located at the licensee's site in Dade County, Florida. The licenses require among other things that the facility comply with all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

In exemptions dated March 27, 1984, and August 12, 1987, concerning the requirements of Section III.G, Appendix R to 10 CFR part 50, the staff approved the use of 1-hour-rated fire barriers in lieu of 3-hour barriers in certain outdoor areas at Turkey Point Units 3 and 4. In addition, the staff found that, for certain outdoor areas not protected by automatic fire detection and suppression systems, separation of cables and equipment and associated non-safety-related circuits of redundant trains by a horizontal distance of 20 feet free of intervening combustibles provided an acceptable level of fire safety.

On the basis of the results of the industry's Thermo-Lag fire endurance testing program, the licensee concluded that the outdoor Thermo-Lag fire barrier designs cannot achieve a 1-hour fire-resistive rating but can achieve a 30-minute fire-resistive rating when exposed to a test fire that follows the American Society for Testing and Materials E–119 standard time-temperature curve. Because of these test results, the licensee in a letter dated June 15, 1994, requested an exemption to use 30-minute fire barriers for outdoor applications in lieu of the 1-hour fire barriers previously approved; however, the exemption request was withdrawn by letter dated June 28, 1996.

In a letter dated December 12, 1996, the licensee requested an exemption from the requirements pertaining to the 3-hour fire barriers required by Section III.G.2.a, Appendix R to 10 CFR part 50, for the outdoor areas, excluding the turbine building area. The licensee requested that the NRC approve the use of 25-minute raceway fire barriers for these outdoor applications in lieu of the 1-hour fire barriers that were previously approved (refer to safety evaluations dated March 27, 1984, and August 12, 1987).

By letter dated February 24, 1998, the NRC staff denied the licensee's request for exemption for fire zone 106R, the control building roof, based on the uncertainty of the roof's combustibility and fire classification. During a site visit, on September 14, 1998, the licensee informed the NRC staff that it had obtained additional information to support that the control building roofing composite was an equivalent Class A construction per American National Standard/Underwriters Laboratories, Inc. No. 790, "Tests for Fire Resistance of Roof Covering Materials, Seventh Edition." Subsequently, by letters dated November 2, 1998, and February 11, 1999, the licensee submitted additional information for staff review regarding the classification of the fire zone 106R roof construction.

III

The underlying purpose of Section III.G.2.a, Appendix R to 10 CFR Part 50, is to provide reasonable assurance that at least one means of achieving and maintaining safe shutdown conditions will remain available during and after any postulated fire in the plant.

On the basis of the staff's supporting safety evaluation of the licensee's submittals, the staff concludes that the exemption from the requirements of Section III.G.2.a of Appendix R, for fire zone 106R as requested by the licensee, provides an adequate level of fire safety, and presents no undue risk to public health and safety. In addition, the staff concludes the underlying purpose of the rule is achieved.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not present an undue risk to public health and safety, and is consistent with the common defense and security. In addition, the Commission has determined that special circumstances are present in that application of the regulation in the particular circumstances here is not necessary to achieve the underlying purpose of the rule. Therefore, the Commission hereby grants Florida Power and Light Company an exemption from the requirements of Section III.G.2.a of Appendix R to 10 CFR part 50, as requested in its above-referenced submittals, for fire zone 106R.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption for fire zone 106R will not have a significant effect on the quality of the human environment (64 FR 14276).

This exemption is effective upon issuance.

Dated at Rockville, Md., this 4th day of May 1999.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 99–12137 Filed 5–12–99; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* RUIA Claims Notification system.

(2) *Form(s) submitted:* ID–4k.

(3) *OMB Number:* 3220–0171.

(4) *Expiration date of current OMB clearance:* 7/31/1999.

(5) *Type of request:* Revision of a currently approved collection.

(6) *Respondents:* Business or other for profit.

(7) *Estimated annual number of respondents:* 669.

(8) *Total annual responses:* 18,600.

(9) *Total annual reporting hours:* 460.

(10) *Collection description:* Section 5(b) of the RUIA requires that effective January 1, 1990, "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim".

Additional Information or Comments: Copies of the form and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and the OMB reviewer, Laurie Schack 202–395–7316), Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 99–12131 Filed 5–12–99; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Meeting

Notice is hereby given that the Railroad Retirement Board will hold a meeting on May 20, 1999, 9:00 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois 60611. The agenda for this meeting follows:

(1) Continued Payment of Vested Dual Benefit Project
(2) Occupational Disability (FCE Protocols)
(3) SES Position for Planning, Procedures & Systems
(4) Year 2000 Issues

The entire meeting will be open to the public. The person to contact for more information is Beatrice Ezerski, Secretary to the Board, Phone No. 312–751–4920.

Dated: May 10, 1999.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 99–12200 Filed 5–12–99; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41362; File No. 10–100]

Exempted Exchanges; AZX, Inc.; Order Amendment Exemption Order Under Section 5 of the Securities Exchange Act of 1934; Final Order

May 3, 1999.

I. Introduction

AZX, Inc. has requested that the Securities and Exchange Commission ("Commission") amend the Exemption Order pursuant to which AZX, Inc. operates the Arizona Stock Exchange ("AZX") without registration as a national securities exchange.[1] The amended Exemption Order would permit AZX to trade exchange-listed securities during regular trading hours, conduct two additional regular hours auctions, and consolidate its evening auctions. The proposal was published for comment in the **Federal Register** on February 1, 1999.[2] No comment letters were received. After evaluating the proposal, the Commission concludes that AZX will continue to meet the statutory standard for an exchange operating pursuant to the limited volume exemption from registration under Section 5 of the Securities Exchange Act of 1934 ("Act").[3] Accordingly, the Commission hereby amends AZX's Exemption Order as requested by AZX, Inc., subject to the terms and conditions described below.

II. AZX

AZX, Inc. operates AZX, a computerized, single-price auction system that facilitates trading of registered equity securities by broker-dealers and institutions. AZX operates three off-hours auctions in Nasdaq National Market ("NNM") and exchange-listed securities, at 9:15 a.m., 4:20 p.m., and 5:00 p.m. (ET), each trading day. AZX also operates one auction during regular trading hours,[4] at 10:30 a.m. (ET). As described in its Exemption Order, AZX trades only NNM securities during the 10:30 a.m. auction.

III. The Proposal

On July 30, 1998, AZX, Inc. filed with the Commission pursuant to Rule 6a–1 under the Act,[5] an amendment to its application for exemption from registration as a national securities exchange. In its amendment, AZX proposes to operate two additional auctions during regular trading hours, at 12:30 p.m. and 2:30 p.m. (ET) each trading day. AZX also proposes to trade exchange-listed and NNM securities during all three regular hours auctions. In addition. AZX proposes to consolidate its two evening after-hours actions into one after-hours auction ending at 4:30 p.m. (ET). Under the proposal, there would be five AZX auctions—two off-hours and three regulator hours. All five auctions would be permitted to trade both exchange-listed and NNM securities, and will be subject to real-time transaction reporting under National Association of Securities Dealers, Inc. ("NASD") rules.

IV. Discussion

A. Volume Level

The Commission believes that the changes proposed by AZX should not change AZX's status as an exempted exchange. The limited volume exemption continues to be premised on AZX's average daily volume (including both regular and after-hours auctions) remaining below the average daily volume of the lowest volume national securities exchange.[6] AZX's current average daily volume is well below that of the lowest volume national securities exchange.[7] Moreover, given the wide range of alternatives available to investors during regular trading hours, AZX's proposal to trade listed securities during its regular hours auctions (including two additional auctions) does not seem likely to result in AZX's volume exceeding the volume of any national securities exchange. Should AZX's volume exceed the limited volume threshold, however, the Commission may rescind the exemption.[8]

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[1] Securities Exchange Act Release No. 28899 (February 20, 1991), 56 FR 8377 (February 28, 1991), amended by Securities Exchange Act Release No. 37272 (June 3, 1996), 61 FR 29145 (June 7, 1996) (collectively "Exemption Order"). AZX also operates without registering as a broker-dealer, clearing agency, transfer agent, or exclusive securities information processor pursuant to a staff no-action letter. Letter from Richard G. Ketchum, Director, Commission, to Daniel T. Brooks, Esq., Cadwalader, Wickersham & Taft, regarding Wunsch Auction Systems, Inc., dated February 28, 1991.

[2] Securities Exchange Act Release No. 40961 (January 22, 1999), 64 FR 4908.

[3] 15 U.S.C. 78e.

[4] "Regular trading hours" refers to the time period in which the New York Stock Exchange, Inc. permits trading, which is 9:30 a.m. to 4:00 p.m. (ET) each trading day.

[5] 17 CFR 240.6a–1.

[6] The Exemption Order states that the Commission would be concerned if the volume of an exempted exchange "exceeded that of any of the fully regulated national securities exchanges." Securities Exchange Act Release No. 28899, *supra* note 1 at 8380.

[7] The Philadelphia Stock Exchange ("Phlx") is currently the lowest volume national securities exchange. For calendar year 1998, the average daily volume of the Phlx was approximately 6,262,127 shares. For calendar year 1998, the average daily volume of AZX was approximately 95,168 shares—less than 2% of the volume of the Phlx.

[8] The Exemption Order states that "[s]hould the Commission learn that any of the conditions set forth in this Order or otherwise imposed upon the granting of this exemption have been breached * * * the Commission will commence a review to determine whether to rescind the exemption." Securities Exchange Act Release No. 28899, *supra* note 1 at 8383. In the event the Commission rescinds the exemption because AZX's volume exceeds the limited volume threshold, AZX would have the option to continue operating by registering as a national securities exchange, or registering as a broker-dealer and complying with Regulation ATS. *See* Securities Exchange Act Release No. 40760 (December 8, 1998), 63 FR 70844 (December 22, 1998).

B. Other Conditions

All of the original and conditions of the Exemption Order remain in effect. In addition, this Order imposes an additional conditions—that AZX conduct surveillance of trading of listed securities during regular trading hours to detect, among other things, potential insider trading and market manipulation. As a condition of the original Exemption Order in 1991, AZX undertook to conduct surveillance of its after-hours trading. When it began trading NNM securities during regular trading hours in 1996, AZX implemented additional surveillance procedures tailored to regular hours trading in NNM stocks. AZX has now agreed to adapt those procedures to trading in listed securities. Specifically, AZX will compare AZX auction prices and bids and offers entered into AZX with trading activity on the registered exchanges, and will monitor the effects of an order cancellation or order revision on the price of the stock on the primary exchange.

V. Conclusion

The Commission has determined that AZX will continue to qualify for a limited volume exemption from exchange registration under the Act even if it implements the changes described in this order. Subject to the conditions described above, the Commission finds that, by reason of the limited volume of transactions effected on AZX, it is not practicable and not necessary or appropriate in the public interest or for the protection of investors to require AZX's registration as a national securities exchange. The Commission reserves the right to apply further conditions or rescind the exemption if circumstances change or if AZX does not operate as represented.

It is therefore ordered that AZX's Exemption Order be amended to grant AZX's amended application for exemption from registration as a national securities exchange, subject to the terms and conditions described above.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12061 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 23828; 812–11548]

Bankers Trust Company, et al.; Notice of Application

May 7, 1999.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Extension of temporary order and notice of application for a permanent order under section 9(c) of the Investment Company Act of 1940 ("Act").

SUMMARY OF THE APPLICATION: Applicants have received an extension of a temporary order exempting them and other entities of which Bankers Trust Company ("BT") is or becomes an affiliated person from section 9(a) of the Act, with respect to a March 11, 1999 cooperation and plea agreement between BT and the U.S. Attorney for the Southern District of New York, until the Commission takes final action on an application for a permanent order or, if earlier, November 8, 1999. Applicants also have requested a permanent order.

APPLICANTS: BT, Investment Company Capital Corporation ("ICCC"), BT Funds Management (International) Limited ("FMIL"), and Alex. Brown Investment Management ("ABIM").

FILING DATES: The application was filed on March 25, 1999 and amended on April 28, 1999.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing or further extends the temporary exemption. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 1, 1999 and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, N.Y., Washington, D.C. 20549–0609. Applicants: BT, One Bankers Trust Plaza, 31st Floor, New York, NY 10006; ICCC, One South Street, Baltimore, MD 21202–3220; FMIL, The Chifley Tower, 2 Chifley Square, Sydney, NSW 2000, Australia; and ABIM, 217 E. Redwood Street, Baltimore, MD 21202.

FOR FURTHER INFORMATION, CONTACT: Rachel H. Graham, Senor Counsel at (202) 942–0583, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is an extension of a temporary order and a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. BT, a New York banking corporation, is the principal bank subsidiary of Bankers Trust Corporation ("BT Corp"), a New York corporation that, together with its affiliates and subsidiaries, performs a wide range of banking and financial services worldwide. BT, which is exempt from registration under the Investment Advisers Act of 1940 ("Advisers Act"), serves as investment adviser or subadviser to numerous investment companies registered under the Act ("funds").

2. ICCC, a Maryland corporation, and FMIL, an Australian corporation, are indirect wholly-owned subsidiaries of BT Corp. BT Corp indirectly owns approximately 50% of ABIM, a Maryland limited partnership. Accordingly, BT may be deemed to be under common control with ICCC, FMIL, and ABIM (each an "Affiliated Adviser" and, collectively, the "Affiliated Advisers"). Each Affiliated Adviser is registered under the Advisers Act and serves as investment adviser or subadviser to various funds.

3. BT acts as administrator, custodian, transfer agent, and shareholder servicing agent for certain funds advised by it or the Affiliated Advisers. BT also acts as custodian for certain other funds. ICCC acts as transfer agent for funds advised by it or other Affiliated Advisers. BT and ICCC are registered as transfer agents under the Securities Exchange Act of 1934.

4. On March 11, 1999, the U.S. Attorney for the Southern District of New York filed a three-count felony information ("Information") in the United States District Court for the Southern District of New York ("Court") alleging violations of 18 U.S.C. section 1005. The Information charges BT with making false entries on its books and records as a result of the conduct of certain employees in BT's processing services businesses in 1994–1996. The conduct involved the transfer to reserve accounts and to income of aged credit

items that should have been paid to customers, other third parties, or state abandoned property authorities.

5. On March 11, 1999, BT pleaded guilty to the charges in the Information pursuant to a written cooperation and plea agreement ("Cooperation and Plea Agreement"). As part of the Cooperation and Plea Agreement, BT agreed to pay a $60 million fine and to place that amount in escrow pending sentencing.[1] The Cooperation and Plea Agreement provides that sentencing will be adjourned to on or before May 12, 1999.[2]

Applicants' Legal Analysis

1. Section 9(a) of the Act, in relevant part, prohibits a person and any company of which the person is an affiliated person from serving or acting as an investment adviser, principal underwriter, or depositor for any registered investment company if the person has been convicted of any felony arising out of the person's conduct as, among other things, an underwriter, broker, dealer, investment adviser, or transfer agent. Applicants do not concede that the Cooperation and Plea Agreement would disqualify BT, the Affiliated Advisers, and all other entities of which BT is or becomes an affiliated person (together with Applicants, the "Covered Entities") under section 9(a) of the Act. In order to resolve any uncertainty, however, Applicants seek a permanent order exempting them and all other Covered Entities from section 9(a) of the Act with respect to the Cooperation and Plea Agreement.

2. Section 9(c) of the Act provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a) if it is established that these provisions, so applied to the applicant, are unduly or disproportionately severe or that the applicant's conduct has been such as not to make it against the public interest or the protection of investors to grant the application.

3. On March 12, 1999, the Covered Entities received a temporary conditional order from the Commission exempting them from section 9(a) of the Act with respect to the Cooperation and Plea Agreement ("Temporary Order") (Investment Company Act Release No. 23737). The Temporary Order stated that it would expire when the Commission took final action on an application for a permanent order or, if earlier, May 11, 1999.

4. As noted above, Applicants seek a permanent order exempting the Covered Entities from section 9(a) with respect to the Cooperation and Plea Agreement.[3] Applicants also seek an extension of the Temporary Order if the requested permanent order is not granted before the Temporary Order expires.

5. Applicants assert that the prohibitions of section 9(a) as applied to the Covered Entities would be unduly and disproportionately severe. Applicants contend that, if the requested exemption is not granted, the section 9(a) prohibition would have a devastating impact on their investment advisory businesses. Applicants assert that those businesses were not involved in the matters underlying the Cooperation and Plea Agreement.[4]

6. Applicants believe that their inability to provide investment advisory services could impair significantly the financial interests of the funds they advise or subadvise and of the funds' shareholders. Applicants state that they have distributed or will distribute, to the boards of directors of the funds they advise and to the advisers of the funds they subadvise, written materials regarding the Cooperation and Plea Agreement and the reasons applicants believe relief from section 9(a) is appropriate. Applicants also state that they have offered, or will offer, to meet in person with the boards and advisers to discuss those materials. Further, Applicants will undertake to provide the funds with all information concerning the Cooperation and Plea Agreement and this application necessary for the funds to fulfill their disclosure and other obligations under the federal securities laws.

7. Applicants assert that their conduct has been such as not to make it against the public interest or the protection of investors to grant this application. Applicants contend that the Cooperation and Plea Agreement relates to books and records violations involving payments by BT in performing various processing services. Applicants state that BT has not been able to identify any fund client of its custody services or any fund shareholder affected by its transfer agent services who has been affected by the matters giving rise to the Cooperation and Plea Agreement. Applicants also state that, although BT has been unable to identify all persons to whom it improperly failed to make payments, none of the identified persons are funds. Applicants acknowledge that approximately $78,000 in aged credits from BT's unit investment trust business that likely should have been escheated to one or more states was improperly transferred to BT's reserve accounts. Applicants state, however, that none of the other payments by BT as paying agent were on behalf of fund issuers.

8. Applicants state that the persons identified as having been responsible for the matters underlying the Cooperation and Plea Agreement ("Identified Former Employees") no longer are employed by BT or any other Covered Entity. Applicants also state that, since 1996, BT has taken steps to prevent future violations of applicable laws and regulations relating to its handling of payments in its capacity as custodian, paying agent, benefit plan agent and similar roles. In particular, Applicants note that: a new senior management team has assumed responsibility for the business out of which the Cooperation and Plea Agreement arose; BT has implemented a formal "Abandoned Property and Escheatment Policy" and appointed an Abandoned Property Officer; BT has hired better qualified personnel to replace the Identified Former Employees; and BT has engaged in an extensive effort to redistribute the improperly transferred moneys to their rightful owners (or, if applicable, to the proper abandoned property authority).

Applicants' Conditions

Applicants agree that any order issued on this application will be subject to the following conditions:

1. The application and any exemption issued shall be without prejudice to, and shall not limit the Commission's rights in any manner with respect to, any commission investigations or enforcement actions pursuant to the federal securities laws, or the consideration by the Commission of any application for exemption from statutory requirements including, without limitation, the revocation, removal, or further extension of any temporary exemption granted under the Act in connection with the application.

2. Neither applicants nor any of the other Covered Persons will employ any of the Identified Former Employees, or any persons who subsequently are identified as having been responsible for

[1] As a result of the matters underlying the Cooperation and Plea Agreement, BT also has agreed to pay a $3.5 million fine to the State of New York.

[2] Applicants have informed the staff of the Commission that the Court has rescheduled the sentencing to June 21, 1999.

[3] Applicants currently are the only Covered Entities that intend to rely upon the requested relief. Applicants note that, upon consummation of the pending merger between BT Corp and Deutsche Bank AG, Covered Entities would also include entities of which, as a result of the merger, BT becomes an affiliated person.

[4] Applicants acknowledge that, in 1976, Alex. Brown & Sons, Inc. applied for and received an exemption from section 9(a). *Alex. Brown & Sons*, Investment Company Act Rel. Nos. 9246 (Apr. 13, 1976) (notice) and 9377 (July 29, 1976) (order).

the matters underlying the Cooperation and Plea Agreement, in any capacity without first making further application to the Commission pursuant to section 9(c).

Extension of Temporary Order

The Commission has determined that it requires additional time to consider the issuance of a permanent order under section 9(c) of the Act. Accordingly,

It is ordered, under section 9(c) of the Act, that the temporary conditional order is extended until the date on which the Commission takes final action on the application for a permanent order exempting applicants and all other Covered Entities from section 9(a) of the Act or, if earlier, November 8, 1999.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12060 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41370; File No. SR–Amex–99–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change by the American Stock Exchange LLC, Decreasing Options Transaction Fees

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 30, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On April 22, 1999, the Exchange filed Amendment No. 1[3] with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Scott G. Van Hatten, Legal Counsel, Derivative Securities, Nasdaq-Amex, to Richard Strasser, Assistant Director, Division of Market Regulations, SEC, dated April 21, 1999. In Amendment No. 1, the Exchange corrected the statutory basis of the original filing to refer to Section 6(b)(4) of the Act.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to reduce options transaction fees. The text of the proposed rule change is available at the Exchange, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Amex currently imposes a transaction charge on options trades executed on the Exchange. These charges vary depending on whether the transaction involves an equity or index option, and whether the transaction is executed for a specialist or market marker account, a member firm's proprietary account, or a customer account. The Amex also imposes a charge for clearance of options trades and an options floor brokerage charge, which also depend upon the type of account for which the trade is executed. In addition, all three types of charges (transaction, options clearance, and options floor brokerage) are subject to caps on the number of options contracts subject to the charges on a given day.[4]

Currently, a transaction fee in an amount equal to either $.15, $.20, $.30, or $.40 per contract side is assessed for each customer option transaction, depending on the size of the premium involved (greater than or equal to $1, or less than $1) and the type of option (equity or index).[5] For example, a charge is incurred in an amount equal to $.30 for equity and $.40 for index option customer transactions (per contract side) when the premium is greater than or equal to $1. When the premium is less than $1, the transaction charge incurred is equal to $.15 for equity and $.20 for index option transactions (per contract side). These customer transaction charges also apply to both Long Term Equity Anticipation Securities ("LEAPS")[6] and FLEX[7] options.

Under the revised fee schedule, these transaction charges will be determined by the number of contracts in the order. As a result, for customer market and marketable limit orders of 30 or fewer contracts, no transaction charge will apply. For customer limit orders for 30 or fewer contracts, a charge of $.10 per contract side will be assessed for both equity and index options. For all customer orders in excess of 30 contracts, a transaction charge equal to $.10 per contract side will be assessed.

The Exchange believes this reduction in transaction charges will result in an overall 50% reduction of customer transaction charges during 1999. The Exchange believes that this will provide an actual cost savings to customers of approximately $15–16 million (based on 1998 option contract volume) or approximately $12–13 million (based on 1999 budget option contract volume). The Exchange also believes that the reductions are necessary to make the Exchange's options transaction charges more competitive with other options exchanges' fees and with the cost of trading other financial instruments, and to increase the number of options orders that are routed to the Exchange. While the Exchange anticipates that other options exchanges may also cut costs to customers, it believes that the proposed reductions will increase options usage among all investors and stimulate industry-wide growth in the options business.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act[8] in general, and furthers the objectives of Section 6(b)(4) of the Act[9] in particular in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

[4] The current caps are set at 2000 contracts for customer trades, and 3000 contracts for member firm proprietary, specialist, and market maker traders.

[5] *See* Securities Exchange Act Release No. 38859 (July 22, 1997), 62 FR 40561 (July 29, 1997) (File No. SR–Amex–97–22).

[6] LEAPS are long-term index option series that expire from 12 to 36 months from their date of issuance. *See* Amex Rule 903C.

[7] FLEX options are customized options with individually specified terms such as strike price, expiration date and exercise style. *See* Amex Rules 900G–909G.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other change imposed by the Exchange, it has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b–4 thereunder. [11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. [12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be avaiable for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file number SR–Amex–99–12, and should be submitted by June 3, 1999.

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12062 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41368; File No. SR–CBOE–98–50]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated Relating to the Trading of Differential Index Options

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] notice is hereby given that on November 21, 1998, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1 [3] to the proposed rule change on April 27, 1999. The Commission is publishing this notice to solicit comments on the proposed rule change as amended from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to trade Differential Index Options, a new type of standardized index option whose value at expiration is based on the relative performance of either a designated index versus a benchmark index, a designated stock versus a benchmark index, or a designated stock versus a benchmark stock. The text of the proposed rule change is available at the Office of the Secretary, the CBOE and at the Commission.

[13] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19B–4.

[3] *See* Letter to Michael A. Walinskas, Division of Market Regulation, Commission, from Timothy Thompson, CBOE, dated April 26, 1999 ("Amendment No. 1"). Amendment No. 1 makes certain technical changes to the proposed rule change.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to trade a new type of standardized index option, the Differential Index Option, which will offer new investment and hedging opportunities. Differential Index Options will have a value at expiration based on an index, called the "differential index," of the relative performance of a designated index versus a benchmark index over a specific time period ("Index Differential Option"); of a designated stock versus a benchmark index over a specific time period ("Equity Differential Option"); or of a designated stock versus a benchmark stock over a specific time period ("Paired Stock Differential Option"). If the percent gain in the level of the designated index or stock during the period is greater than the percent gain in the underlying benchmark index or stock, then a Differential Call Option originally struck at the money will have a positive value at expiration and a Differential Put Option originally struck at the money will expire worthless. If the percentage gain in the level of the designated index or stock during the period is less than the percent gain in the underlying benchmark, then a Differential Put Option originally struck at the money will have a positive value at expiration and a Differential Call Option originally struck at the money will expire worthless. Thus, a Differential Index Option affords an investor the opportunity, through a single investment, to participate in the relative outperformance of a designated index or stock versus a benchmark index or stock (a Differential Call Option) or the relative underperformance of a designated index or stock versus a benchmark index or stock (a Differential Put Option) over the life of the option, regardless of the

absolute performance of the designated index or stock.

For example, an investor may feel that software companies will outperform the broader market over the next several months, but is unsure whether the overall market will move higher or lower. If the investor were to buy an at-the-money standardized CBOE Computer Software Index ("CWX") call option and the Index declined, the option would expire worthless even if the Index declined by a much smaller percentage than the overall market. On the other hand, if the investor were to purchase an at-the-money Index Differential Call Option on the relative performance of the CBOE Computer Software Index versus the Standard & Poor's 100 Stock Index ("S&P 100"), a benchmark measure of large capitalization stock market performance, and CWX declined by a smaller percentage than the S&P 100, the Index Differential Call Option would have a positive value at expiration. Conversely, an investor who believes that CWX will underperform the S&P 100 may purchase at-the-money Index Differential Put Options perhaps to hedge a portfolio of software company stocks against such market underperformance. If CWX underperforms the S&P 100, the Index Differential Put Options will have a positive value at expiration, regardless of whether the CWX index level itself has increased or decreased on an absolute basis. In effect, the Differential Option structure removes the overall market risk component from the CBOE Computer Software Index performance.

Differential Calculation. The underlying security for a Differential Index Option is an index (called the "differential index") of the performance of the designated stock or index relative to the benchmark stock or index. The differential index is calculated as follows: on the base date of each year, prior to the listing of a Differential Index Option series, base reference prices are established for the designated index or stock and the benchmark index or stock (typically, the closing levels on a designated business day). Thereafter, percent changes from the base values of both the designated index or stock and the benchmark index or stock are continuously calculated and the percent change in the benchmark is subtracted from the percent change in the designated index or stock, providing a positive number if the designated index or stock has either out-gained or suffered a lesser percentage decline than the benchmark, and a negative number if the benchmark has out-gained the designated index or stock or suffered a lesser percent loss.

The percentage differential in the relative gain or loss is then multiplied by 100 and added to a fixed base index value (typically 100) to yield the differential index which will underlie the Differential Index Options:

$$D_t=((I_t/I_o)-(B_t/B_o))\times 100 + F$$

Where:

D = differential index;
I = designated index or security;
B = benchmark index or security;
t = current or settlement value of index or security;
o = base reference value of index or security;
F=a fixed base index value, typically 100.

Thus, if the designated index or security has outperformed the benchmark by 7%, and the fixed value, F, is set at 100, the differential index value will be 107; if it has underperformed by 7%, the differential index value would be 93. The base reference values will remain in effect for a predetermined, fixed period (expected to be between six months and two years). Similar to other index values published by the Exchange, the value of each differential index will be calculated continuously and disseminated every 15 seconds[4] under separate symbol by the Option Price Reporting Authority.

Adjustments. For Differential Index Options whose benchmark and designated securities are both indexes, adjustments will be made to the Differential Index Options whenever significant action has been taken by the publisher of the index. Such actions may include the splitting of the value of the designated or benchmark index or a change in the method of calculation. For example, if the publisher of an index were to split the index two-for-one, the Exchange would halve the base reference value of the index in the differential calculation. If an index ceases to be published, the Exchange (1) may replace it with a substitute index (*i.e.*, one that correlates highly with the index being replaced) or a successor index (*i.e.*, an index intended by the publisher as a replacement to the original index); or (2) may undertake to publish the index using the same procedures last used to calculate the index prior to its discontinuance.

The stock component of an Equity Differential and a Paired Stock Differential will be adjusted as follows: (1) for a stock dividend, stock distribution, or stock split, whereby a number of shares (whether a whole number or other than a whole number) of the security are issued with respect to each outstanding share, the base price will be adjusted by the split factor in the Differential Index calculation; (2) for a reverse stock split or combination of shares whereby a number of shares (whether a whole number or other than a whole number) of the security are replaced by or combined into a single share, the base price will be adjusted by the split factor in the Differential Index calculation; (3) generally, there will be no adjustments to reflect ordinary cash dividends or distributions, or ordinary stock dividends or distributions made by the issuer of the benchmark or designated stock (The terms "ordinary cash dividends or distributions" shall have the meanings as set forth in Article VI, Section 11 of the By-Laws of The Options Clearing Corporation.); (4) when a security is converted into a right to receive a fixed amount of cash, such as in a merger, the Exchange will replace that security with the cash value and may accelerate the expiration and settlement of the European-style Differential Index option of which the security was a part or allow the option to continue to trade until its original expiration using the cash value as the current security price in the Differential Index calculation; and (5) in the case of a corporate reorganization, re-incorporation or similar occurrence by the issuer of a security which results in an automatic share-for-share exchange of shares of the issuer for shares in the resulting company, the Exchange will substitute the new security for the original security in the Differential Index calculation in the appropriate ratio.

In addition, contract adjustment will be made to differential Indexes to limit the likelihood of negative index values. In the event that the level of a Differential Index settles below 20, the contract will be adjusted by: (1) Adding 100 to the Differential Index level, and (2) adding 100 to the exercise price of the options.

Designated Indexes, Designated Stocks, Benchmark Indexes and Benchmark Stocks. Only stocks which meet the current Exchange Rules for listing standardize equity options will be eligible designated stocks in Equity Differential Options. Only stocks which meet the current Exchange Rules for listing standardized equity options will be eligible designated stocks or benchmark stocks in Paired Stock Differential Options. In this way, only

[4] Telephone call between Sonia Patton, Attorney, Division of Market Regulation, Commission, and William Speth, Research and Planning, CBOE, on April 23, 1999.

the most liquid, actively traded stocks will be considered.

Similarly, only indexes that meet the current Exchange Rules for listing index options or that have been approved for options or warrant trading by the Commission will be eligible for designation either as designated indexes or benchmark indexes in Equity and Index Differential Options. In this way, only those indexes already deemed by the Commission to be suitable for options trading will be considered.

Expiration and Settlement. The proposed Differential Index Options will be European style (*i.e.*, exercises permitted at expiration only), and cash settled. Index Differential Options in which both the designated or benchmark indexes are broad-based will trade between the hours of 8:30 a.m. and 3:15 p.m. Central time. All other Differential Index Options will trade between 8:30 a.m. and 3:02 p.m. Central time. Differential Index Options will expire on the Sunday following the third Friday of the expiration month ("Expiration Friday"). The last trading day in an expiring options series will normally be the second to last business day preceding the Saturday following the third Friday of the expiration month (normally a Thursday). Trading in expiring options will cease at the close of trading on the last trading day.

While the Exchange seeks approval to list series of Differential Index Options as set forth in Rule 28.4(a)(i), (ii), (iii) and (iv), it is anticipated that the Exchange will initially list only five series with expirations corresponding to the four calendar months in the March cycle in the current calendar year, and a fifth series expiring in March of the following calendar year.

The exercise settlement value for Index Differential Options will be calculated based on the respective exercise settlement values for standardized options on each of the designated and benchmark indexes expiring on the same day. The exercise settlement value for Equity Differential Options will be calculated based on (i) the primary exchange regular-way opening sale price of the designated stock, or, in the case of a stock traded through the NASDAQ system, the first reported regular way sale that occurs when the markets are unlocked and uncrossed, provided that such sale price is within the current best bid or offer, and (ii) the exercise settlement value for standardized options on the benchmark index expiring on the same day. The exercise settlement value for Paired Stock Differential Options will be calculated based on the primary exchange regular way opening sale prices of the designated and benchmark stocks, or, in the case of a stock trade through the NASDAQ system, the first reported regular way sale that occurs when the markets are unlocked and uncrossed, provided that such sale price is within the current best bid or offer. To ensure that the settlement price used satisfies these factors, the Exchange reserves the right to exclude a price from the settlement calculation for a Differential Index Option if it believes, in its best judgment, that such price is not indicative of the true price at that time.

Applicable Exchange Rules. CBOE Rules 28.1 through 28.12 will apply to the trading of Differential Index Option contracts. These Rules cover issues such as exercise prices and positions limits. Surveillance procedures currently used to monitor trading in each of the Exchange's options will also be used to monitor trading in Differential Index Options. In addition, Differential Index Options will be subject to the Exchange's sales practice and suitability rules applicable to standardized options.

Differential Index Options are "securities" under Section 3(a)(10) of the Act, and therefore are exempt pursuant to Section 28(a) of the Act from any state law that prohibits or regulates the making or promoting of wagering or gaming contracts, or the operation of "bucket shops" or other similar or related activities. Differential Index Options will be traded pursuant to the Exchange's rules and rule amendments discussed herein, which are subject to prior approval by the Commission.

Position Limits. The Exchange proposes that the position limits for Index Differential Options be set at the lower of the separate position limits for standardized index options trading on the designated index and the benchmark index. In the event that one or both of the indexes is not currently the subject of standardized index options trading, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the indexes if such options were trading. In the event neither the designated index nor the benchmark index is subject to position limits the Index Differential Options shall not be subject to position limits. The Index Differential Options shall be subject to any reporting requirements applicable to the underlying indexes.

For Equity Differential Options, the Exchange proposes that the position limits be set at the position limit of standardized equity options trading on the designated stock. In the event that standardized options currently do not trade on the designated stock, then the Exchange will establish a position limit at the level that would be in effect if standardized options did trade on such stock. For Paired Stock Differential Options, the Exchange proposes that the position limits be set at the lower of the separate position limits of standardized equity options trading on the designated and benchmark stocks. In the event that one or both of the stocks is not currently the subject of standardized options trading, then the Exchange will establish position limits as the lesser of those that would be in effect for standardized options on the stocks if such options were trading.

The Exchange also proposes, for position and exercise limit purposes, to require that positions in Differential options with the same designated or benchmark stock or narrow-based index be aggregated. For example, if a Paired Stock Differential option has been created using General Motors Corporation stock as the benchmark and Ford Motor Company as the designated stock, positions in that differential option will be aggregated with position in other Paired Stock Differentials and Equity Differentials using narrow-based indexes created using either General Motors or Ford as the benchmark or designated stocks to determine whether the account is in compliance with the position and exercise limit rules. However, with respect to the use of broad-based indexes as either the benchmark or designated index in an Equity or Index Differential, no aggregation of positions will be required. For example, if Equity Differentials are created using the S&P 100 as the benchmark index and AT&T Corp., Dow Chemical Company, and International Business Machines as designated stocks, members will not be required to aggregate positions in those Differential Options to determine whether an account is in compliance with position and exercise limit rules.

In consultation with the Commission, the Exchange will establish the appropriate option position limit for a Differential Index option, where the Exchange chooses as either a designated or benchmark index, a broad-based index that has been approved by the Commission for index warrant trading only. The position limit for a Differential Option using a narrow-based index warrant will be established using the Exchange's narrow-based index option rules.

The Exchange further proposes that Differential Index Options not be aggregated with other standardized options on the underlying designated

stock or index or on the underlying benchmark stock or index for purposes of determining whether an account is in compliance with position and exercise limit rules. The Exchange believes this policy is appropriate for the following reasons. First foremost, the value of Differential Index Options will be calculated in a different manner from the value of other currently traded standardized equity and index options. In fact, because of the subtraction of the performance of the benchmark from the designated stock or index, the value of a Differential Index Option may appreciate (depreciate) even as the value of the corresponding standardized option on the designated stock or index decreases (increases). Further, the value of a Differential Index Options is in part a function of the correlation between the designated stock or index and the benchmark (*i.e.*, the tendency of the designated stock or index and the benchmark to move concurrently). This correlation component of the Differential Index Option price is not considered in determining the value of other standardized options on either the designated or benchmark stock or index. As a result, the Differential Index Option is likely to be more or less sensitive to movements in the designated stock or index than the other standardized options on that stock or index, and changes in the Differential Index Option's price may be in the opposite direction from changes in other standardized options prices. Therefore, any attempt to aggregate Differential Index Options with other standardized options for determination of position limits would be combining contracts which, by nature, can change in value quite differently.

Differential Index Options also have certain terms not found in many other standard equity and index options. Each Differential Index Option contract changes in value as a function of the differential performance of a $10,000 long position in the designated stock or index and a $10,000 short position in the benchmark. Many standardized equity options are settled by physical delivery of 100 shares of the underlying stock, worth $5,000 per contract for a $50 stock, and feature American exercise. Standardized index options typically feature European-style exercise, cash settlement, and represent approximately $25,000 worth of a basket of stocks (with the index at the 250 level). Any meaningful aggregation of positions in contracts with different terms would be difficult to establish as a simple rule, and would require a case-by-case analysis of the terms for each Differential Index Option contract compared to other standardized contracts on the designated and/or benchmark stock or index.

The Exchange also believes that the aggregation of position limits hinders the probability of success of any new product. The aggregation of positions in Differential Options with positions in standardized options will result in the new product competing with the established product for a limited amount of potential volume. Thus, with aggregated position limits, new products cannot "grow the pie" and increase overall liquidity in all of the products; they start at a disadvantage which may be impossible to overcome.

FLEX Options. The Exchange is modifying its FLEX rules to provide for trading of FLEX options on Differential Index Options. In addition, the Exchange is deleting the list of index options on which it may trade FLEX options set forth in Rule 24A.4(b)(1) and is replacing it with a statement that the Exchange may trade FLEX options on any index or differential index (as defined in Chapter XXVIII) for which the Exchange has been approved to trade options or warrants. This change is consistent with American Stock Exchange Rule 903G(a)(1).

Customer Margin. The Exchange proposes to apply standard index options margin treatment to Differential Index Options. Index Differential Options on the relative performance of one broad-based index versus another will be margined as broad-based index options and short positions therein will require margin equal to the current market value of the Differential Index Option plus an amount equal to 15% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market value of the option plus 10% of the Index. All other Index Differential Options, Equity Differential Options and Paired Stock Differential Options will be margined as narrow-based index options and short positions therein will require an amount equal to the current market value of the Differential Index Option plus an amount equal to 20% of the market value of the Differential Index reduced by any out of the money amount to a minimum of the current market price of the option plus 10% of the Index. The Exchange believes that this method of determining customer margin is appropriate because the range of volatilities expected for Differential Indexes should not be significantly different than the expected range for other indexes and equities. This is because the volatility of a Differential Index is based upon the volatilities of the designated and benchmark indexes or stock and the correlation of these components.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b)(5),[6] in particular, in that it will permit the trading of Differential Index Options pursuant to Exchange Rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities; and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect the public interest.

B. Self-Regulatory Organizations Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W.,

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for insepction and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–98–50 and should be submitted by June 3, 1999.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12066 Filed 5–12–99; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41374; File No. SR–CBOE–99–16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing and Trading of Generic Narrow-Based Index Options Under Rule 19b–4(e)

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The filing was amended on April 28, 1999.[3] The proposed rule change has been filed by the CBOE as a "non-controversial" rule change under Rule 19b–4(f)(6)[4] under the Act. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE is proposing to amend Rule 24.2, *Designation of the Index,* to provide for the listing and trading of narrow-based stock index options pursuant to new Rule 19b–4(e) under the Act.[5] The text of the proposed rule change follows. Proposed new language is in *italics;* proposed deletions are in brackets:

* * * * *

CHAPTER XXIV

Index Options

* * * * *

Designation of the Index

Rule 24.2 *(a)* The component securities of an index underlying an index option contract need not meet the requirements of Rule 5.3. *Except as set forth in subparagraph (b) below,* [T]the listing of a class of index options on a new underlying index will be treated by the Exchange as a proposed rule change subject to filing with and approval by the Securities and Exchange Commission ("Commission") under Section 19(b) of the Exchange Act.

(b) [A rule change proposing the listing of a class of index options on a new underlying narrow-based index may be designated by the Exchange as constituting a stated policy, practice or interpretation with respect to the administration of this Rule 24.2 within the meaning of subparagraph (3)(A) of subsection 19(b) of the Exchange Act, thereby qualifying the rule change for effectiveness upon filing with the Commission, if the Exchange prefiles with the Commission a draft copy of the rule change not less than one week before it is filed, and if the Exchange proposes to commence trading in the subject class of index options not earlier than 30 days after the date of filing, and] *Notwithstanding paragraph (a) above, the Exchange may trade options on narrow-based index options pursuant to Rule 19b–4(e) of the Securities Exchange Act of 1934,* if each of the following conditions is satisfied:

(1)–(12) No change.

(c) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CBOE is proposing to amend Rule 24.2, *Designation of the Index,* to provide for the listing and trading of narrow-based stock index options pursuant to new Rule 19b–4(e) under the Act. Certainly, CBOE Rule 24.2 permits the Exchange to list and trade options on narrow-based indexes thirty days after a filing describing the index option is made under Section 19(b)(3)(A) of the Act, provided that the index meets the generic listing criteria set forth in Rule 24.2(b). The recent Commission release adopting new Rule 19b–4(e) ("New Products Release"),[6] however, no longer requires a Section 19(b)(3)(A) filing and subsequent waiting period so long as the exchange relying on the new Rule has generic listing criteria approved by the Commission and meets certain other requirements.

The New Products Release indicated that products meeting the listing criteria approved by the Commission in its 1994 Generic Narrow-Based Index Options approval order[7] (as set forth in CBOE Rule 24.2) qualified for filing under new Rule 19b–4(e), so long as an exchange eliminated the Section 19(b)(3)(A) rule filing requirement from its existing rules.[8] The Exchange is, therefore, proposing to eliminate the Section 19(b)(3)(A) rule filing requirement in Rule 24.2 and instead incorporate the provisions of new Rule 19b–4(e). The Exchange represents that it will use new Rule 19b–4(e) in accordance with the

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[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Timothy H. Thompson, Director, Regulatory Affairs, CBOE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated April 20, 1999.

[4] 17 CFR 240.19b–4(f)(6).

[5] 17 CFR 240.19b–4(e).

[6] *See Amendment to Rule Filing Requirements for Self-Regulatory Organizations Regarding New Derivative Securities Products,* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[7] *See,* Securities Exchange Act Release No. 34157 (June 3, 1994), 59 FR 30062 (June 10, 1994).

[8] *See,* New Products Release at note 89.

terms and conditions set forth in the order approving that rule.

2. Statutory Basis

The Exchange believes that this proposed rule change is consistent with and furthers the objectives of Section 6(b)(5) of the Act [9] in that it would remove impediments to and perfect the mechanism of a free and open market in a manner consistent with the protection of investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder [11] because the proposed rule change (1) does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; (3) by its terms, does not become operative for 30 days from the date of filing, or such shorter time that the Commission may designate if consistent with the protection of investors and the public interest; and (4) CBOE provided the Commission with written notice of its intent to file the proposed rule change at least five days prior to the filing date. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the rule change be accelerated to become operative immediately to ensure that the Exchange not be disadvantaged in the listing of new index option products vis-a-vis the American Stock Exchange ("Amex"). Amex filed a similar rule change with the Commission that became operative as of March 11, 1999. Additionally, the Exchange notes that the public has had ample notice of the Commission's New Products Release, which describes the kind of rule change effected by the Exchange in the instant proposal. The Commission finds that accelerating the operative date of the rule change as proposed furthers the aims of the New Products Release and is consistent with the protection of investors and the public interest, and thus designated the date hereof as the operative date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent wit the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–16, and should be submitted by June 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12067 Filed 5–12–99; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6). In reviewing this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41376; File No. SR–CBOE–99–14]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Criteria for Warrants

May 6, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 6, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its Rule 31.5.E to add an alternative set of distribution criteria for broad-based stock index warrants. The text of the proposed rule change follows. *Italics* indicate material to be added.

* * * * *

Chicago Board Options Exchange, Inc. Rules

* * *

CHAPTER XXXI
Criteria for Original Listing

* * *

Rule 31.5 Criteria for Eligibility of Securities

* * *

E. Currency, Currency Index and Stock Index Warrants

* * *

(2) Public Distribution. *The Exchange may list warrants that meet either of the two alternative sets of criteria below.*

(i) Alternative 1	
Warrants outstanding ..	1,000,000
Principal amount/aggregate market value	$4,000,000
Number of public holders	400
(ii) Alternative 2	
Warrants outstanding ..	*2,000,000*
Principal amount/aggregate market value	*$12,000,000*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Number of public holders	*case by case*
Initial price	*$6/warrant*

* * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend CBOE Rule 31.5.E, which sets forth the listing criteria for "Currency, Currency Index and Stock Index Warrants." Currently, the listing criteria for warrants under Exchange Rule 31.5.E require that the following public distribution requirements be met before a warrant may be listed for trading on the Exchange: (1) Warrants outstanding: 1,000,000; (2) principal amount/aggregate market value: $4,000,000; and (3) number of public holders: 400. Other marketplaces have similar listing criteria for warrants. Although not specifically included in Rule 31.5, the Exchange represents that industry practice has been to discourage the listing of instruments of this kind that are priced below $4 per unit—a practice that the CBOE finds appropriate.

CBOE member firms have advised staff of the Exchange that the existing 400-holder requirement for broad-based stock index warrants frequently poses a significant barrier to seeking a listing on the CBOE. Unlike offerings of common stock and common stock warrants, offerings of stock index warrants are limited to options-approved accounts and are primarily directed to institutional and high net worth clients. The Exchange argues that member firms often find it considerably more cost effective to offer stock index warrants either offshore or in the over-the-counter (OTC) derivatives market. This is because achieving the existing 400-holder requirement usually entails an extensive and drawn out marketing effort—an effort that, in the Exchange's view, does not provide any additional market or investor benefits. At the same time, CBOE believes that stock index warrant investors would be generally better served by having these securities listed and traded on the Exchange, where transaction size and prices are broadly disseminated.

To be more competitive with the OTC and overseas marketplaces in the listing of stock index warrants, the Exchange is proposing to establish an alternative set of distribution criteria without a minimum public holder requirement. Under this alternative, the minimum number of public holders required for a stock index warrant to be listed would not be defined, but would be determined on a case by case basis. Other criteria would include: (1) Minimum warrants outstanding: 2,000,000, which is double the existing requirement; (2) minimum principal amount/aggregate market value: $12,000,000, which is three times the existing requirement; and (3) minimum price: $6 per warrant, which is one and one-half times the minimum based on existing informal guidelines. Adoption of these criteria would, in the opinion of the Exchange, enhance listing competition for these products while accommodating the transaction size normally attractive to institutional and high net worth investors, who the Exchange believes to be major users of these types of instruments.

The Exchange does not believe that the minimum holder requirement has the importance for stock index warrants that it may have for common stock or common stock warrant listings. Stock index warrants, it argues, are economically equivalent to standardized options, which are routinely introduced without any immediate "open interest." While investor interest may ultimately develop for these products, there is no distribution whatsoever when the contract is first listed. When interest develops subsequently, market-makers are expected to provide liquidity and produce quotes based on market variables even without customer order flow.[3] The Exchange believes that this is equally true for broad-based stock index warrant contracts. A minimum original distribution should not impair the ability of market-makers to maintain fair and orderly markets.[4]

The Exchange asserts that neither CBOE nor any of the other registered exchanges require a minimum number of holders as a precondition to listing and trading stock index options, because investor interest and liquidity in these instruments—as in the case of standard options and LEAPS—are derived from the availability of other products. The Exchange believes that stock index warrants—being economically equivalent to index options and available only to customers with options-approved accounts—can be expected to be an equally attractive and liquid security.

2. Statutory Basis

The proposed rule changes are designed to enable the CBOE to compete effectively with the overseas and OTC markets for these types of securities. As such, the Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5),[5] in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

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[3] The Exchange argues that the underlying cash price as well as any related futures contracts are of prime importance.

[4] For example, on most broad-based stock indexes, such as the S&P 500, Dow Jones Industrial Average, Nikkei 225 and FT–SE 100, there are a number of domestic, as well as international derivative instruments, including options, futures, options on futures, and a variety of other structured products.

[5] 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–99–14, and should be submitted by June 3, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12068 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41366; File No. SR–CSE–99–04]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Amending the Minor Rule Violation Program To Include Violations of Limit Order Display Obligations

May 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 1999, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the CSE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CSE proposes to amend Exchange Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules, to include Rule 12.10 and Interpretation .01 under that rule, which requires Members to display customer limit orders by complying with Rule 11Ac1–4 under the Act. The text of the proposed rule change is available at the Office of the Secretary, the CSE, and at the Commission.

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CSE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The CSE has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposal would amend CSE Rule 8.15, Imposition of Fines for Minor Violation(s) of Rules ("Minor Rule Violation Program" or "Program"), which provides for an alternative disciplinary regimen involving violations of Exchange rules that the Exchange determines are minor in nature. In lieu of commencing a disciplinary proceeding pursuant to Rule 8.1 through 8.14, the Minor Rule Violation Program permits the Exchange to impose a fine, not to exceed $2500, on any member, member organization, or registered or non-registered employee of a member or member organization ("Member") that the Exchange determines has violated a rule included in the Program. Adding a particular rule violation to the Minor Rule Violation Program does not circumscribe the Exchange's ability to treat violations of those rules through more formal disciplinary measures or deprive a Member of the procedural rights embedded in the disciplinary rules. The Minor Rule Violation Program simply provides the Exchange with greater flexibility in addressing rule violations that warrant a stronger regulatory response after the issuance of cautionary letters and yet, given the nature of the violations, do not rise to the level of requiring formal disciplinary proceedings.

The Exchange is now proposing to add the failure to properly display customer limit orders contained in Interpretation .01 to Rule 12.10 to the list of rule violations and fines included in the Minor Rule Violation Program. The Exchange believes that limit order display violations often are technical in nature and, in most cases, are best addressed in a summary fashion. However, because Interpretation .01 to Rule 12.10 is predicated on compliance with SEC Rule 11Ac1–4, which provides important customer protections, violations of this Interpretation require sanctions more rigorous than a series of cautionary letters prior to formal proceedings.

Therefore, the Exchange is proposing to use a recommended fine schedule of $100 per violation of the Interpretation. Exchange regulatory staff will review the facts and circumstances related to a purported violation and determine the appropriateness of a fine or other sanction. The Exchange notes that the minor violation fine schedule is merely a recommended fine schedule and that fines of more or less than the recommended fines can be imposed (up to $2,500 maximum) in appropriate circumstances. Also, as indicated above the Exchange retains the ability to proceed with formal disciplinary action if the violations, in the Exchange's view, involve circumstances where more severe sanctions would be warranted.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act[3] in general, and furthers the objectives of Sections 6(b)(5),[4] 6(b)(6),[5] 6(b)(7),[6] and 6(d)(1)[7] in particular. The proposed rule change is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest. Specifically, the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor violations of Exchange rules.

The proposal also is consistent with the Section 6(b)(6) requirement that the rules of an exchange provide appropriate discipline for violations of SEC and Exchange rules. The proposed rule change will provide a procedure to appropriately discipline those Members whose violations are minor in nature. In addition, because Rule 8.15 provides procedural safeguards to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of Members consistent with Sections 6(b)(7) and 6(d)(1) of the Act.

[3] 15 U.S.C. 78f(b).

[4] 15 U.S.C. 78f(b)(5).

[5] 15 U.S.C. 78f(b)(6).

[6] 15 U.S.C. 78f(b)(7).

[7] 15 U.S.C. 78f(b)(1).

B. Self-Regulatory Organization's Statement on Burden on Competition

The CSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not solicit or receive written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CSE. All submissions should refer to File No. SR–CSE–99–04 and should be submitted by June 3, 1999.

IV. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act [8] and the rules and regulations thereunder.[9] Section 6(b)(5) of the Act [10] states that the rules of an exchange must be designed to a facilitate securities transactions and to remove implements to and perfect the mechanism of a free and open market. The Commission believes that the proposed rule change will augment the Exchange's ability to police its market and will increase the Exchange's flexibility in responding to minor violations of limit order display obligations.

Pursuant to Section 19(b)(2) of the Act,[11] the Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of filing of the proposal in the **Federal Register** in that the proposed rule change will further the Exchange's ability to provide effective oversight of SEC and Exchange rules in an expeditious manner. The Commission also believes the proposed rule change will provide the Exchange greater flexibility in punishing violations of these rules.

It is therefore ordered, pursuant to Section 19(b)(2) [12] of the Act, that the proposed rule change (file No. SR–CSE–99–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12065 Filed 5–12–99; 8:45 am]

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[8] 15 U.S.C. 78f.

[9] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f)

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 7 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41378; File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; National Association of Securities Dealers, Inc.; and New York Stock Exchange, Inc.; Order Approving Proposed Rule Changes Regarding the Confirmation and Affirmation of Securities Transactions

May 7, 1999.

The Municipal Securities Rulemaking Board ("MSRB"), the National Association of Securities Dealers, Inc. ("NASD"), and the New York Stock Exchange, Inc. ("NYSE") have filed with the Securities and Exchange Commission ("Commission") proposed rule changes pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] proposing amendments to their confirmation/affirmation rules.[2] Notices of the proposals were published in the **Federal Register** on April 13, 1998.[3] The Commission received two comment letters.[4] For the reasons discussed below, the Commission is approving the proposed rule changes.

I. Description

Currently, the confirmation/affirmation rules of the MSRB, NASD, and NYSE (collectively referred to as self-regulatory organizations or "SROs") [5] require the SROs' broker-dealer members to use the facilities of a securities depository [6] for the electronic confirmation and affirmation of transactions in which the broker-dealer provides either delivery-versus-payment ("DVP") or receive-versus-payment ("RVP") [7] privileges to its customer. Broker-dealers generally extend DVP and RVP privileges only to their institutional customers.

Certain vendors of electronic trade confirmation ("ETC") services have requested that they be allowed to provide confirmation/affirmation services for DVP and RVP trades even though they are not registered clearing agencies. Under the rule changes, the SROs' broker-dealer members will be able to comply with the confirmation/affirmation rules by using the facilities of either a registered clearing agency or a "qualified vendor" for the confirmation and affirmation of DVP and RVP transactions.[8]

[1] 15 U.S.C. 78s(b)(1).

[2] On February 18, 1998, the NYSE filed and on March 26, 1999, amended its proposed rule change (File No. SR–NYSE–98–07). On March 5, 1998, the NASD filed and on December 22, 1998, and February 17, 1999, amended its proposed rule change (File No. SR–NASD–98–20). On April 3, 1998, the MSRB filed and on April 16, 1999, amended its proposed rule change (File No. SR–MSRB–98–06). The amendments filed by the MSRB, NASD, and NYSE represent technical amendments to the proposed rule changes and as such do not require republication of notice.

[3] Securities Exchange Act Release Nos. 39830 (April 6, 1998), 63 FR 18060 (NYSE); 39831 (April 6, 1998), 63 FR 18057 (NASD); 39833 (April 6, 1998), 63 FR 18055 (MSRB). On May 1, 1998, the Commission extended the comment period for the proposals for thirty days. Securities Exchange Act Release No. 39944 (May 1, 1998), 63 FR 25531.

[4] Letters from Mari-Anne Pisarri, Esq., Pickard and Djinis, on behalf of Thomson Financial Services ("Thomson") (May 12, 1998) and Ronald J. Kessler, Chairman, Operations Committee, Securities Industry Association ("SIA") (June 1, 1998).

[5] The confirmation/affirmation rules are MSRB Rule G–15(d)(ii), NASD Rule 11860(a)(5), and NYSE Rule 387(a)(5).

[6] The term "securities depository" is defined in the SROs' confirmation/affirmation rules as a clearing agency that is registered under Section 17A of the Act, 15 U.S.C. 78q–1.

[7] DVP privileges allow an institutional seller to require cash payment before delivering its securities at settlement. RVP privileges allow an institutional buyer to pay for its purchased securities only when the securities are delivered.

[8] Just being a qualified vendor will not entitle an ETC vendor to provide "matching" services (in which broker-dealer confirmations are matched with institutional allocation instructions to produce affirmed confirmations) as part of its confirmation/affirmation system. The Commission has concluded

In order to become a qualified vendor under the rule changes, an ETC vendor will be required to certify to its customers that:

(1) With respect to its electronic trade confirmation/affirmation system, it has a capacity requirements, evaluation, and monitoring process that allows the vendor to formulate current and anticipated estimated capacity requirements;

(2) Its electronic trade confirmation/affirmation system has sufficient capacity to process the specified volume of data that it reasonably anticipates to be entered into its electronic trade confirmation/affirmation service during the upcoming year;

(3) Its electronic trade confirmation/affirmation system has formal contingency procedures, that the entity has followed a formal process of reviewing the likelihood of contingency occurrences, and that the contingency protocols are reviewed and updated on a regular basis;

(4) Its electronic trade confirmation/affirmation system has a process for preventing, detecting, and controlling any potential or actual systems integrity failures, and its procedures designed to protect against security breaches are followed; and

(5) Its current assets exceed its current liabilities by at least $500,000.

In addition, a qualified vendor will be required initially and annually to submit to the SROs and to the Commission staff a report prepared by independent audit personnel (referred to in the rule changes as "Auditor's Report"). Each Auditor's Report must: (1) verify the certifications described above; (2) contain a risk analysis of all of the entity's information technology systems; and (3) contain the written response of the entity's management to the Auditor's Report's verifications and risk analysis. The Auditor's Report must be deemed not unacceptable by Commission staff.[9]

Qualified vendors will be subject to ongoing requirements under the rule changes. For each transaction in which it provides confirmation/affirmation services, a qualified vendor will be required to: (1) deliver a trade record to a registered clearing agency in the clearing agency's format; (2) obtain a control number for the trade record from the clearing agency; (3) cross reference the control number to the confirmation and subsequent affirmation of the trade; and (4) include the control number when delivering the affirmation of the trade to the clearing agency. A qualified vendor will be required to notify the SROs and the Commission staff in writing of any changes to its systems that significantly affect or have the potential to significantly affect its electronic trade confirmation/affirmation system. In addition, a qualified vendor will be required to supply supplemental information regarding its confirmation/affirmation system as requested by the SROs or by the Commission staff. If a qualified vendor intends to cease providing confirmation/affirmation services, it must notify the SROs and the Commission staff in writing.

II. Comment Letters

The Commission received two comment letters in response to the notices of the SROs' proposed rule changes.[10] The SIA Operations Committee stated that it supports the proposed rule changes. The Operations Committee expressed its belief that the proposed criteria should address the regulatory concerns associated with allowing new entrants into the clearance and settlement system while providing to the system the innovations and cost reductions that competition can produce.

Thomson stated that it was delighted that the SROs are amending their rules to allow commercial vendors to process institutional trade confirmations and affirmations.[11] However, as discussed below, Thomson believes that the SROs' proposals should be changed (1) to make the initial and ongoing process of designating qualified vendors objective and self-executing and (2) to limit the audit requirements to the areas that pose the most risk to post-trade information processing systems.

Thomson stated that it supports the fundamental approach of the Auditor's Reports. However, Thomson believes that the scope of the Auditor's Reports is too broad. Thomson particularly objected to the requirement that the Auditor's Report contain an audit of all of the entity's information technology systems. Thomson stated that it believes that auditing the certification that the entity would be required to provide under the proposed rule changes is sufficient to address the risk factors related to allowing unregulated entities to provide confirmation/affirmation services.

The Commission believes that the scope of the Auditor's Reports under the rule changes is reasonable. In particular, the Commission believes that the risk analysis component of the Auditor's Report is necessary to determine whether an entity should be a qualified vendor.

Because electronic confirmation/affirmation services are critical to the settlement of institutional securities trades, a breakdown in the confirmation/affirmation system could have a significant negative impact on the entire clearance and settlement system. Moreover, problems or insufficiencies in any aspect of a qualified vendor's information technology system could adversely affect the qualified vendor's confirmation/affirmation system. As a result, the Commission believes that it is appropriate for the Auditor's Reports to contain a risk analysis of the entity's information technology systems.

In addition, registered clearing agencies that provide confirmation/affirmation systems are already subject to extensive regulatory requirements. Among other things, registered clearing agencies must submit rule changes to the Commission for approval and are subject to inspections, including systems reviews, by the Commission staff. As a result, the Commission has continuous oversight and authority over registered clearing agencies' operations, including any confirmation/affirmation services they provide. Under the SROs' rule changes, qualified vendors will not be subject to such continuous oversight and authority. The Commission believes that the requirements under the rule changes with respect to the Auditor's Reports are reasonably intended to assure that the Commission and the SROs will be able to prevent an entity from becoming a qualified vendor if its confirmation/affirmation system poses a risk of compromising the safety and soundness of the national clearance and settlement system.

Thomson objected to the idea that the Commission staff would issue a no-action letter to indicate that an entity's initial Auditor's Report is not unacceptable. Thomson stated that the process of becoming a qualified vendor should be largely self-executing in that an entity should become a qualified vendor automatically as long as its initial Auditor's Report does not contain any findings by the auditor of material

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that matching services may be provided only by a registered clearing agency or by an entity that has received an exemption from clearing agency registration. Securities Exchange Act Release No. 39829 (April 6, 1998), 63 FR 17943.

[9] At this time, the Commission staff intends to indicate that an entity's initial Auditor's Report is not unacceptable by issuing a letter to the entity stating that it will not recommend enforcement action against any of the SROs' member organizations that elect to use the confirmation/affirmation systems of the entity. Subsequent Auditor's Reports submitted to the Commission staff by the qualified vendor will be considered acceptable unless the Commission staff otherwise informs the qualified vendor.

[10] *Supra* note 4.

[11] Thomson's comment letter refers to differences in the proposed rule changes from a statement of principles agreed to between the SIA and Thomson. The NASD noted in the first amendment to its rule filing that it "does not believe that the statement of principles is relevant, much less controlling, with respect to whether there is a statutory basis for the proposed rule change."

weakness. Thomson stated that under the self-executing process it supports, the Commission and the SROs "would function more as report depositories than traditional application examiners."

The Commission believes that in order for Commission staff to adequately review an Auditor's Report to determine whether it is not unacceptable, the staff must do more than simply read the report to determine whether it contains a finding of material weakness. Under the rule changes, the Commission staff may deem an Auditor's Report unacceptable for any reason if it believes that the report demonstrates that an entity would not be capable of providing confirmation/affirmation services in a manner that would not compromise the integrity of the national clearance and settlement system.

Thomson also contended that there is no legal context in which the Commission staff may issue no action letters to qualified vendors. Thomson stated that the only party to which the Commission staff is authorized to recommend or not recommend enforcement action is the Commission itself and that any such recommendation or decision to not make a recommendation must be related to the federal securities laws or Commission rules promulgated thereunder. Thomson expressed concern that the proposed rule changes do not provide objective standards that the Commission staff will use when considering whether to grant the initial no-action letter.

The Commission believes that the use of a no-action letter to indicate that an entity's initial Auditor's Report is not unacceptable is a reasonable method for indicating that an entity is a qualified vendor under the SROs' rules. Section 21 of the Act, which authorizes the Commission to investigate and to bring enforcement action with respect to violations of the rules of a self-regulatory organization by any person, provides a legal context for the issuance of a no-action letter to qualified vendors.[12] The Commission also believes that the rule changes are reasonably designed to provide objective guidance to the Commission in its review of the Auditor's Reports and to the SROs to deny "qualified" status to and to terminate the "qualified" status of ETC vendors whose confirmation/affirmation services fall below acceptable standards.

Thomson stated that it agrees with the requirement that a qualified vendor notify the SROs and the Commission staff if it decides to stop providing confirmation/affirmation services. Thomson objected to a provision in the NASD's proposed rule change that states a qualified vendor may cease to be qualified if the Commission staff (1) deems an Auditor's Report unacceptable either because it contains any finding of material weakness or for any other identified reasons or (2) notifies the qualified vendor that it is no longer qualified.

As noted above, the Commission staff may deem an Auditor's Report unacceptable for any reason if it believes that the report demonstrates that an entity would not be capable of providing confirmation/affirmation services in a manner that would not compromise the integrity of the national clearance and settlement system. In addition, the Commission staff may revoke a no-action position if it determines that a revocation is consistent with the public interest or the protection of investors.

III. Discussion

Under Section 19(b)(2) of the Act, the Commission is directed to approve the SROs' proposed rule changes if it finds that they are consistent with the requirements of the Act and the rules and the rules and regulations thereunder applicable to the SROs.[13] Sections 6(b)(5), 15A(b)(6), and 15B(b)(2)(C) of the Act[14] require, among other things, that the SROs' rules be designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities. Sections 6(b)(8), 15A(b)(9), and 15B(b)(2)(C) of the Act[15] also require that the SROs' rules not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. For the reasons discussed below, the Commission believes that the SROs' proposed rule changes are consistent with their obligations under the Act.

The Commission believes that the changes to the SROs' confirmation rules are consistent with the SROs' obligations under the Act because they will require unregulated entities that wish to provide confirmation/affirmation services to establish links and interfaces with a registered clearing agency. This requirement should increase cooperation and coordination among the SROs' members, registered clearing agencies, and entities that become qualified vendors under the rule changes.

In addition, in reviewing the proposed rule changes the Commission has considered whether the proposed rule changes would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Commission believes that the rule changes have been carefully designed to allow unregistered ETC vendors to provide confirmation/affirmation services for institutional trades in a manner which is not unduly burdensome for ETC vendors and which preserves the safety and soundness of the national system for the clearance and settlement of securities transactions. Therefore, the Commission believes that the SROs' proposed rule changes should not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposals are consistent with the requirements of the Act and in particular with the requirements of Section 17A of the Act and the rules and regulations thereunder.

It is therefore *ordered*, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–MSRB–98–06, SR–NASD–98–20, SR–NYSE–98–07) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12139 Filed 5–12–99; 8:45 am]

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[12] 15 U.S.C. 78u.

[13] 15 U.S.C. 78s(b)(2).

[14] 15 U.S.C. 78f(b)(5), 78o–3(b)(6), and 78o–4(b)(2)(C).

[15] 15 U.S.C. 78f(b)(8), 78o–3(b)(9), and 78o–4(b)(2)(C).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41367; File No. SR–NASD–98–88]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Listing and Continued Listing Determinations

May 4, 1999.

On November 27, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to

Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder concerning the procedures followed by the Association in listing and delisting an issuer.[2] The NASD amended the proposal on December 15, 1998.[3] Notice of the proposal, as amended, was published in the **Federal Register** on January 8, 1999 ("Notice").[4] The Commission did not receive any comment letters on the fling.

I. Introduction and Background

The NASD is proposing to replace its existing rules setting forth the procedures by which issuers may be denied listing on, or delisted from, the Nasdaq Stock Market. The proposed revised code of listings procedures ("Revised Listings Code") codifies procedures that are already used by the Association in practice. In addition, the Revised Listing Code contains greater detail about the review process and adds a number of provisions, including those for the maintenance of the record on review, fees for reviews, and prohibitions on communications outside of the official proceeding.[5] This proposal is designed to address shortfalls in the NASD's listings procedures identified in the Commission's 21(a) Report and a previous report on the NASD's governance structure.[6]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert E. Aber, Senior Vice President and General Counsel, Nasdaq, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated December 15, 1998.

[4] *See* Securities Exchange Act Release No. 40874 (December 31, 1998), 64 FR 1258.

[5] The Association is also proposing to temporarily move the existing Rule 4800 Series relating to other grievances concerning the Association's automated systems to the Rule 9700 Series, and reference to the delisting procedures in the current Rule 4800 Series will be removed prior to this relocation. The NASD and NASD Regulation, Inc. plan to file changes to the Rule 9500 Series in the near future and, upon approval of those changes, the Rule 9700 Series will be deleted and non-listing related grievances and denials of access involving Nasdaq's automated systems will be reviewed through Rule 9500 Series procedures.

[6] *See* Commission's Report and Appendix to Report Pursuant to Section 21(a) of the Securities Exchange Act of 1934 Regarding the NASD and The Nasdaq Stock Market dated August 8, 1996; Securities Exchange Act Release No. 37538 (August 8, 1996) (SEC Order Instituting Public Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, *In the Matter of National Association of Securities Dealers, Inc.*, Administrative Proceeding File No. 3–9056); and *Report of the NASD Select Committee on Structure and Governance to the NASD Board of Governors* (1995).

II. Description of the Proposal

The revised Rule 4800 Series applies only to decisions to deny, limit, or prohibit the listing of an issuer's securities on the Nasdaq Stock Market. The substantive criteria for listing on the Nasdaq Stock Market are contained in other portions of the Rule 4000 Series. Rule 4810 of the Revised Listings Code describes the limited purpose of the new Rule 4800 Series as well as certain general provisions.

Rule 4810 also provides that an issuer may request an extension of time to comply with any of the standards contained in the Rule 4000 Series or an exception to those standards. It is solely within the NASD's discretion whether to grant such an extension. In determining whether to grant an extension or exception, the NASD reviewing body at each level of review will consider the original issue cited, but may also consider any additional issues, regardless of whether they were considered earlier in the proceeding.[7] The Revised Listings Code provides that the NASD will notify the issuer if additional issues are being considered in determining whether to grant a request for an exception or exemption, and the issue will be given an opportunity to respond to such issues.

Rule 4810 particularly notes that "the issuer may be subject to additional or more stringent criteria for the initial or continued inclusion of particular securities based on any event, condition, or circumstance that exists or occurs that makes initial or continued inclusion of the securities inadvisable or unwarranted in the opinion of the Association, even though the securities meet all enumerated criteria for initial or continued inclusion in the Nasdaq Stock Market."[8]

Revised Rule 4815 through 4860 provide the general procedures that the Association and an issuer must follow with respect to any determination by the NASD to deny initial or continued listing to an issuer, including retention of records for the various Association adjudicators.[9] Under revised Rule 4815, Nasdaq staff in the Listing Qualifications Department or Listing Investigation Department will notify an issuer in writing of any decision to limit or prohibit the initial or continued listing of its securities. This notification will describe the specific grounds for the determination.

Revised Rule 4820 provides that within 7 calendar days of receipt of this notification, the issuer may request a hearing for review of the determination.[10] If an issuer requests a review, the staff determination will generally be stayed pending the outcome of the review.[11] If no request for review is made, the determination will take effect after the time to request review has expired.

Revised Rule 4830 provides that all requests for review will be considered by an independent panel ("Listing Panel") composed of at least two persons who are not employees of the NASD or its subsidiaries. The Nasdaq Board of Directors will designate potential panelists. Panelists may include both securities and non-securities professionals, such as NASD members, issuers, attorneys, or accountants. The Listing Panel hearing will, to the extent practicable, be scheduled within 45 days of the date that the request for hearing is filed. After the hearing, the Listing Panel will issue a written decision that is effective immediately (unless the decision itself provides otherwise).

Under revised Rule 4840, an issuer may request review of the Listing Panel's decision by the Nasdaq Listing and Hearing Review Council ("Review Council") within 15 days.[12] In addition, any member of the Review Council may decide to review a decision of the Listing Panel within 45 days of the date of the issuance of that decision. Review Council review of a matter generally

[7] The levels of review are described in the following paragraphs.

[8] *See* revised Rule 4810, *Purpose and General Provisions*.

[9] *See* revised Rule 4830(b) (the record for a proceeding before a Listing Qualification Panel is kept by the Nasdaq Hearings Department); revised Rule 4840(d) (the record for a proceeding before the Review Council is kept by the Nasdaq Office of General Counsel); and revised Rule 4850(b) (the record for a proceeding before the NASD Board is kept by the Nasdaq Office of General Counsel).

[10] The fee for such a review remains at its existing level of $1,400 for a review based on written submission and $2,300 for a review based on an oral presentation. The NASD is proposing to relocate the fee provisions from Rule 4530 to revised Rule 4820(c).

[11] The Association is permitted, however, to suspend a security's inclusion in Nasdaq if the securities are not in compliance with the qualification requirements of Rule 4310 or Rule 4320, or those requirements imposed by the NASD under Rule 4330(a). In that event, Nasdaq will notify the issuer prior to the suspension or as soon as practicable thereafter. *See* Rule 4330(b). Furthermore, Nasdaq may halt trading in a security pending the dissemination of material news or when Nasdaq requests information from an issuer relating to material news, qualification matters, or other information necessary to protect the public interest. *See* Rule 4120(a)(5).

[12] The Review Council is a compositionally balanced panel of no fewer than eight and no more than 18 members. Of these members, at least five must be Non-Industry, and not more than 50 percent may be engaged in market-making activity or employed by a member whose revenues from market-making activity exceed ten percent of its total revenues. *See* Nasdaq By-Laws Article 5.2(a).

does not stay the Listing Panel decision (unless the call for review specifies otherwise). The NASD is proposing to impose a $1,400 fee for a Review Council review. This fee is in addition to the current $1,400 fee for the Listing Panel's review of the Nasdaq staff's initial determination.[13]

Under the Revised Listing Code, the Review Council will review matters based on the written record and will issue a decision to affirm, modify, or reverse the Listing Panel's decision. Alternatively, the Review Council can choose to hold additional hearings, or remand the matter to Nasdaq staff or to the Listing Panel.[14] This decision, although subject to a call for review by the NASD Board of Governors ("NASD Board"), will be effective immediately, unless it specifies to the contrary.

Any member of the NASD Board may choose to review a Review Council decision for review at its next meeting that is at least 15 calendar days or more following the date of the Review Council decision. An issuer may not request that the NASD Board review the Review Council decision. If the NASD Board does not determine to review a Review Council decision, the issuer will be notified that the Review Council decision represents the final action of the NASD. If the NASD Board does call a Review Council decision for review, the NASD Board will generally review the matter based on the record before the Review Council. Ordinarily, the issuer will not be permitted to supplement the record on review.[15] The NASD Board may affirm, modify, or reverse the Review Council decision and may remand the matter to the Review Council, the Listing Panel, or Nasdaq staff.

Revised Rule 4870 defines what is included in the record on review at each level of a Rule 4800 proceeding. At each level of review, the issuer will be provided a list of documents included in the record on review. In addition, any subsequent public filings made by the issuer and any subsequent information released to the public by the issuer may be added to the record on review, as well as any subsequent correspondence between the Association and the issuer. Furthermore, at any level of review, the deciding body may take note of the issuer's current Nasdaq Stock Market bid price and number of market makers at the time of consideration. The written record, as well as any documents excluded from the written record, will be maintained until the date upon which the decision becomes final, including, if applicable, upon conclusion of any review by the Commission or a federal court.[16]

The Revised Listings Code prohibits any communication relevant to the merits of a proceeding amongst anyone participating in or advising in the consideration of a listing or delisting matter (including members of the Listing Panel, Review Council, or NASD Board and NASD employees), unless the issuer and the appropriate Nasdaq staff have been provided notice and an opportunity to participate in the communication.[17] This proposed limitation is designed to prevent information outside of the record from being considered in rendering a decision in a matter. The NASD indicates that they currently expect Nasdaq staff to waive participation in such communications. The Revised Listings Code also specifies that if an issuer submits a proposal to resolve matters at issue in a Rule 4800 Series proceeding, communications about that submission will be excluded from the prohibitions discussed above.[18]

III. Discussion

The Commission finds that the proposal is consistent with the Act and in particular with those provisions applicable to a national securities association. Specifically, the Commission believes that the proposal is consistent with the requirements of Section 15A(b)(6) of the Act[19] because it is designed to promote just and equitable principles of trade and, in general, to protect investors and the public interest. The Commission believes that the amendments, by codifying, expanding, and clarifying existing procedures, strike a reasonable balance between the Association's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The amendments provide fair procedures for issuers, while giving Nasdaq the ability to deny, limit, or delist an issuer that has failed to meet the substantive standards outlined in the Rule 4000 Series.

For the most part, the Revised Listings Code codifies present Association procedures. The general system of review remains basically the same. In the past, many of these procedures were not codified, and instead were explained through correspondence during the course of a listing or delisting proceeding. As a result, it was often unclear how certain of the practices or procedures were applied in particular cases. The Revised Listings Code clearly sets forth the procedures applicable to all issuers.

One of the most important clarifications addresses an issuer's ability to request an extension of time to comply with any of the standards set forth in the Rule 4000 Series or an exception to those standards at any time during the pendency of a Rule 4800 Series proceeding. While extensions and exceptions have always been granted, their availability was not readily apparent. The Commission believes it is essential for issuers to understand that they may request an extension of, or exception to, the NASD's codified procedures. Although the decision to grant such extensions and exceptions is within the discretion of the Association, the Commission notes that the NASD must exercise that discretion in a manner consistent with the Act generally and, in particular, with Section 15A(b)(6).[20]

The impact of decisions at each level of review is also clarified in the Revised Listings Code. Review of a Listing Panel determination by the Review Council, and review of a Review Council decision by the NASD Board does not stay the previous determination. The ability to issue immediately a decision will allow the Association to act swiftly to delist a non-compliant issuer that is still trading on the Nasdaq Stock Market, or to permit an issuer that was wrongly delisted by the Nasdaq staff to return to the Nasdaq Stock Market more quickly.

Another important clarification is that each adjudicator, from the Nasdaq staff

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[13] The new fee is designed to recoup the costs of processing the request for review, including preparing and copying the record on review for the Review Council, covering staff resources within the Nasdaq Office of General Counsel for reviewing the record, advising the Review Council, preparing the decision, and covering a proportionate part of the expense of Review Council meetings. The fee is designed to be revenue neutral, to directly offset the costs associated with the Review Council's review.

[14] The Review Council may, at its sole discretion, also hold additional hearings.

[15] The NASD Board may, at its sole discretion, request additional information from the issuer or from Nasdaq staff and may, at its sole discretion, hold additional hearings.

[16] Time is computed within the Revised Listings Code based on calendar days. In computing any period of time, the day of the act, event, or default from which the period of time begins is not included. The last day of the period is included, unless it is a Saturday, Sunday, federal holiday, or NASD holiday. An NASD holiday is any day on which the Nasdaq Stock Market or the executive offices of the NASD are closed for the entire day.

[17] *See* revised Rule 4890, *Prohibited Communications.*

[18] The NASD is also proposing to make conforming changes to Rules 4330 and 4480, and Rule 4530 will be removed because the substance of that Rule has been relocated to Rule 4820(c).

[19] 15 U.S.C. 78*o*–3(b)(6).

[20] *Id.* No Association rule may unreasonably discriminate against one group of issuers versus another.

through the NASD Board, has the discretion to supplement the record. Thus, at each level of a proceeding under the Rule 4800 Series, the Listing Panel, Review Council, or the NASD Board, as part of its respective review, may:

1. Request additional information from the issuer;
2. Consider the issuer's bid price, market makers or any information that the issuer releases to the public, including any additional quantitative deficiencies reflected in the released information; and
3. Consider any failure to meet any quantitative standard or qualitative consideration set forth in the Rule 4000 Series, including failures previously not considered in the proceeding.

The issuer will be afforded notice of such consideration and given an opportunity to respond to actions taken by the adjudicator. The Commission believes that the ability to supplement the record with the most up-to-date information regarding the issuer will help to ensure that the reviewing body's decision is informed and appropriate under the circumstances.

There are also several new features in the Revised Listings Code. One of the most important restricts communication between Association adjudicators and parties to a listing determination.[21] For example, the revised rules restrict communication between adjudicators and either the Nasdaq staff or the issuer, unless both are given the opportunity to participate. In addition, any prohibited communication must be entered in the record of the proceeding. The Commission believes that these safeguards will help to ensure greater fairness and openness in Association listings proceedings.

The Revised Listings Code also adds a comprehensive explanation of the content of the official record of a listing proceeding,[22] as well as how the record is maintained through various levels of review.[23] This provision is another important improvement that should help to ensure that issuers are made aware of those factors that are considered in a listing or delisting decision, which in turn should assist them in challenging a decision that is adverse to them.

Finally, the Revised Listings Code imposes fees for Association review.[24] The Commission believes that these fees are consistent with Section 15A(b)(5) of the Act, which permits the allocation of fees on issuers using any facility or system that the Association operates or controls. Specifically, the Commission believes that the proposal provides for the equitable allocation of reasonable fees among issuers using the resources of the Association. The Commission also believes that these fees are reasonable under the circumstances in that they are designed to recoup the costs of processing requests for review and holding the subsequent hearings.

The renumbering of the existing Rule 4800 Series to the Rule 9700 Series, as revised, will be effective immediately upon approval of this revised rule change.[25] The revised Rule 4800 Series will be made effective immediately upon approval for matters where the issuer has not yet received a Staff Determination, as defined in Rule 4815 of the Revised Listings Code. For issuers that have received notification from the staff that they will be delisted or denied initial inclusion prior to the date of approval, or that otherwise have matters pending before the Listing Panel or the Review Council prior to the date of approval of these rule changes, the existing Rule 4800 Series will continue to apply for 180 days. The Commission believes that this staggered schedule is appropriate because it will allow the Association to make an orderly transition from the existing rules to the Revised Listings Code.

IV. Conclusion

The Commission believes that the proposed rule change is consistent with Act, and, particularly, with Section 15A.[26] in approving the proposal, the Commission has considered its impact on efficiency, competition, and capital formation.[27]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–NASD–98–88) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12064 Filed 5–12–99; 8:45 am]

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[21] *See* revised Rule 4890, *Prohibited Communications.*

[22] *See* revised Rule 4870, *Record on Review.*

[23] *See* revised Rule 4830(b).

[24] *See* revised Rules 4820(c) and 4840(b).

[25] *See supra* note 5, discussing relocation of the current Rule 4800 Series, *Grievances Concerning The Automated Systems,* to the Rule 9700 Series.

[26] 15 U.S.C. § 78*o*–3.

[27] 15 U.S.C. § 78c(f).

[28] 15 U.S.C. 78s(b)(2).

[29] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41371; File No. SR–NASD–98–96; Amendment No. 4]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Amendments to Forms U–4 and U–5

May 5, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 28, 1998, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary NASD Regulation, Inc. ("NASD Regulation" or "NASDR"), filed with the Securities and Exchange Commission ("SEC" or "Commission") Amendment No. 4 to the proposed rule change[3] as described in Items I, II and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change as further amended by Amendment No. 4 from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amendment No. 4 provides additional detail on how NASDR will process the Proposed Forms U–4 and U–5.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NASDR included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NASDR has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission previously published notice of the proposed rule change on April 22, 1999. *See* Securities Exchange Act Release No. 41326 (April 22, 1999), 64 FR 23366 (April 30, 1999) (File No. SR–NASD–98–96).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amendment No. 4 clarifies two aspects of the proposal [4] and processing of the Proposed Forms U–4 and U–5 on the new World Wide Web–based Central Registration Depository ("Web CRD"). When a firm initiates a Form U–4 filing on Web CRD for the first time for an individual with disclosure information, a blank Page 3 of the Proposed Form U–4 will appear on the screen. Just as with the current paper filing system, a firm will be required to fill out the entire Page 3 to reflect all currently reportable disclosure information, some or all of which may already have been reported to CRD. Thereafter, as a convenience, a member will be able to retrieve the most recently filed electronic Page 3 of the Form U–4 and edit it for submission, rather than filling out the blank Page 3 for each subsequent filing.

There also will be paper processing available for one part of one Disclosure Reporting Page ("DRP") associated with the Proposed Form U–5. The 1996 Form U–5 DRP for internal reviews contains a Part II, which allows a terminated registered representative to provide a summary of the circumstances relating to an internal review disclosure submitted by the individual's former employer on the Form U–5. This Part II also appears on the Proposed Form U–5 Internal Review DRP. NASDR has informed the Commission staff that it is prepared to accept paper submissions of this Part II information by a terminated registered representative and that NASDR staff will enter the information on to The Web CRD system on behalf of the terminated registered representative.

2. Statutory Basis

NASDR believes that Amendment No. 4 is consistent with the provisions of Section 15A(b)(6) of the Act, which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASDR believes that Amendment No. 4 is consistent with the NASD's authority to adopt appropriate qualification and registration requirements for persons associated with NASD members or applicants for NASD membership. Article V, Section 2 of the NASD By-Laws authorizes the Board to prescribe the form used by any person who wishes to make application for registration with the NASD. NASDR believes that Amendment No. 4 will make the filing of information with CRD easier and more efficient while continuing to provide complete information for use by regulators, SROs, and firms conducting pre-hire checks.

B. Self-Regulatory Organization's Statement on Burden on Competition

NASD Regulation does not believe that the proposed rule change, as amended, will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File No. SR–NASD–98–96 and should be submitted by May 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12069 Filed 5–12–99; 8:45 am]

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[4] *See supra* note 3.

[5] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41365; International Series Release No. 1195; File No. SR–Phlx–99–12]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Proposing To Set Temporarily the Add-On Margin Levels for Non-Customized Cross-Rate Foreign Currency Options

May 4, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis for a period of six months until November 4, 1999.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to codify the margin levels set forth in Phlx Rule 722(d) for non-customized cross-rate foreign currency options ("Cross-Rate FCOs") for a three month period or until it develops an updated method of calculating those margin levels. Specifically, the Exchange proposes to continue to require that the initial and maintenance margin requirement for customers' short positions in Cross-Rate FCOs equal an "add-on margin" of four percent of the current market value of the underlying FCO contract, plus 100 percent of the current market value of the option's premium, adjusted for "out-

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

of-the-money-amounts," [3] However, the overall initial and maintenance margin may not be reduced below the "minimum margin requirement." [4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In 1991, the Commission approved the Exchange's proposal to list and trade three non-customized cross rate currency options—German mark/Japanese yen, British pound/German mark and British pound/Japanese yen options.[5] The Commission's order approved the proposed margin system for these products for a one-year period only, because the Cross-Rate FCOs were new products and the Commission was concerned that the volatility in the underlying currencies could change significantly. Accordingly, the Commission stated that the Exchange should further analyze the add-on margin adequacy, and, within nine months, submit the analysis along with a proposed rule change to retain the margin level or establish a new level.

As approved by the Commission in 1991, the Exchange's customer margin requirements for short positions for each Cross-Rate FCO applied a four percent add-on margin. The Exchange represented at the time that this add-on margin level was sufficient to cover each cross-rate product's historical volatility over seven-day intervals (for the July 30, 1990 to July 30, 1991 time period) with a confidence level of greater than 96 percent.

Due to an oversight, the Exchange did not file the required analysis and the proposed rule change with the Commission within nine months of the 1991 order. The Exchange now proposes to codify the four percent add-on margin level for three months or until it develops an updated method of calculating those margin levels. During this time, the Exchange will examine the add-on margin level to determine if it continues to cover the same confidence level or whether a different add-on margin level will be more appropriate. The Exchange anticipates filing a new proposed rule change within three months from the date that this order has been approved by the Commission. Applying the same reasoning as in 1991, the Exchange believes that the four percent add-on margin level currently provides an adequate level of customer's add-on margin coverage for the German mark/Japanese yen and British pound/German mark cross-rate products.[6]

2. Statutory Basis

The Exchange believes that the four percent level is an adequate add-on margin level for each German mark/Japanese yen and British pound/German mark FCO on a temporary basis, pending further analysis. For this reason, the Exchange believes that the proposed rule change is consistent with Section 6 of the Act [7] in general, and in particular, with Section 6(b)(5),[8] in that it is designed to promote just and equitable principles of trade, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Phlx's proposed rule change and believes, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission believes that the proposal is consistent with Section 6(b)(5) of the Act [9] because it will facilitate transactions in securities, promote just and equitable principles of trade, and protect investors and the public interest by allowing the Exchange to continue to trade Cross-Rate FCOs on an interim basis, while using a margin requirement that the Commission believes is justifiable.

The Commission's 1991 order approved the four percent add-on margin for Cross-Rate FCOs for a one-year period. The Exchange now proposes to use a four percent add-on margin level for each non-customized cross-rate product for "a three-month period or until an updated method for calculating such margins * * * is developed." The Exchange will further examine the adequacy of the four percent add-on margin level during that period.

The Exchange represents that for the period of January 16, 1998 to January 15, 1999, the four percent add-on margin level covered non-customized German mark/Japanese yen FCOs at a 94.49 percent confidence level, and covered non-customized British pound/German mark FCOs at a 100 percent confidence level. Based on those confidence levels, the lower of which is close to the 96 percent confidence level that was contained in the Commission's 1991 approval order, the Commission believes it is reasonable to permit the

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[3] For foreign currency put options, "out-of-the-money-amounts" equal the aggregate exercise price of the option minus the product of units per foreign currency contract and the closing spot price. *See* Phlx Rule 722(d).

For foreign currency call options, "out-of-the-money-amounts" equal the product of units per foreign currency contract and the closing spot price minus the aggregate exercise price of the option. *See id.*

[4] The minimum margin on any put or call carried "short" in a customer's account may be reduced by any "out-of-the-money-amount" but shall not be less than 100% of the current market value of the option plus ¾% of the current market value of the underlying FCO contract, with the exception that the minimum margin on each such put option contract shall not be less than 100% of the current market value of the option plus ¾% of the option's aggregate exercise price amount. *See id.*

[5] *See* Securities Exchange Act Release No. 29919 (November 7, 1991), 56 FR 58109 (November 15, 1991). Although the Exchange received approval for the British pound/Japanese yen cross-rate FCO, the Exchange has not listed such a contract. Non-customized options carry specific contract terms for features such as contract size, strike price intervals, expiration date, price quoting and premium settlement.

[6] For the British pound/German mark FCOs, the 4% add-on margin level covers the historical price volatility of all seven-day price movements at a 100% confidence level for the period January 16, 1998 to January 15, 1999.

For the German mark/Japanese yen FCOs, the 4% add-on margin level covers the historical price volatility of all seven-day price movements at a 94.49% confidence level for the period of January 16, 1998 to January 15, 1999. To attain a 96% confidence level for German mark/Japanese yen FCOs, the Exchange would have to apply a 4.5% add-on margin level.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f(b)(5).

Exchange to use a four percent add-on margin level for all Cross-Rate FCOs for a six-month period until November 4, 1999.[10]

The Exchange has requested that the Commission approve the proposed rule change prior to the thirtieth day after the publication of the proposal in the **Federal Register**, so that the Exchange may immediately codify the four percent add-on margin until it can complete further analysis. The Commission finds good cause for approving the proposed rule change, on a pilot basis, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**, so that the Exchange may continue to use the four percent add-on margin for Cross-Rate FCOs during this six-month period, while it is reviewing the adequacy of margin levels for these products on a permanent basis.

The Commission requires that the Exchange file a proposed rule change to permanently codify the margin system for non-customized Cross-Rate FCOs by August 4, 1999, which is three months from the date of this order. That requirement will provide the Commission with sufficient time to review that proposed rule change before this order's approval of the four percent add-on margin expires on November 4, 1999.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–99–12 and should be submitted by June 3, 1999.

V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change is hereby approved on an accelerated basis for a period of six months until November 4, 1999.[12]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12063 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

[10] The Commission believes that the Exchange should consider requiring a sufficient add-on margin level for all German mark/Japanese yen FCOs to achieve at least a 96% confidence level.

[11] 15 U.S.C. 78s(b)(2).

[12] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–41377; File No. 600–31]

Self-Regulatory Organizations; Thomson Financial Technology Services, Inc.; Order Approving Application for Exemption From Registration as a Clearing Agency

May 7, 1999.

I. Introduction

On January 11, 1999, Thomson Financial Technology Services, Inc. (TFTS)[1] filed with the Securities and Exchange Commission (Commission) an application on Form CA–1[2] for exemption from registration as a clearing agency pursuant to Section 17A of the Securities Exchange Act of 1934 (Exchange Act)[3] and Rule 17Ab2–1 thereunder.[4] Notice of TFTS's application was published in the Federal Register on February 4, 1999.[5] The Commission received one comment letter in response to the notice of TFTS's exemption request.[6] This order grants TFTS an exemption from registration as a clearing agency to offer an electronic trade confirmation (ETC) service and a central matching service subject to the conditions and limitations described below.

II. Description of TFTS's Services

TFTS will be permitted to offer two types of services under this order: (1) an ETC service where TFTS will transmit messages among broker-dealers, customers, and custodian banks regarding the terms of a trade executed for the customer and (2) a central matching service where TFTS will act as an intermediary in the confirmation/affirmation process by comparing a broker-dealer's trade data with a customer's allocation instructions to produce an affirmed confirmation.

The parties to institutional trades use ETC services to transmit electronically the messages (*e.g.*, the institution's allocation instructions to the broker-dealer and the broker-dealer's submission of trade data to the institutional customer) necessary to confirm and affirm the trades. TFTS's ETC service is designed to be used by institutional customers, broker-dealers, and custodian banks to communicate the terms and acknowledgment of their securities trades.[7]

Matching services are a recent development in institutional trade processing. A matching service produces an affirmed confirmation of the trade by independently performing some of the steps in confirming and affirming an institutional trade. It thereby reduces the number of messages that have to be sent among the parties to the trade. TFTS's matching service will compare the broker-dealer's trade data submission to the institution's allocation instructions and will produce an affirmed confirmation of the trade if the two descriptions match.[8]

[1] TFTS is a wholly owned subsidiary of Thomson Information Services, Inc., which is indirectly owned by the Thomson Corporation. The Thomson Corporation is a public company incorporated under the laws of Ontario, Canada.

[2] Copies of TFTS's application are available for inspection and copying at the Commission's Public Reference Room in File No. 600–31. TFTS submitted a document entitled "Application for Exemptive Order" with its Form CA–1. That document was not considered in the evaluation of TFTS's application.

[3] 15 U.S.C. 78q–1.

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 41003 (January 29, 1999), 64 FR 5691 (notice of filing of application for exemption from registration as a clearing agency).

[6] Letter from Frank Denaro, Senior Vice President, Salomon Smith Barney (March 5, 1999). The letter is available for inspection and copying in the Commission's Public Reference Room in File No. 600–31.

[7] The Commission has approved proposed rule changes by the Municipal Securities Rulemaking Board (MSRB), the National Association of Securities Dealers (NASD), and the New York Stock Exchange (NYSE) under which their broker-dealer members are permitted to use ETC services provided by an entity that has received an exemption from clearing agency registration to provide confirmation and affirmation services. Securities Exchange Act Release No. 41378 (May 7, 1999) [File Nos. SR–MSRB–98–06, SR–NASD–98–20, and SR–NYSE–98–07]. Previously, those rules required broker-dealers to use ETC services provided by a registered clearing agency.

[8] The notice of TFTS's application contains a detailed description of both the confirmation/affirmation process for institutional trades and

III. Comment Letter

We received one comment letter in response to the notice of filing of TFTS's application.[9] The commenter generally supported TFTS's application.

The Commenter expressed concern with the scope of TFTS's undertakeing to develop fair and reasonable linkages between its matching service and The Depository Trust Company (DTC). Specifically, the commenter stated that vendors may require direct linkages for matching and confirmation services and that it did not want to incur charges to connect with each new vendor. The commenter stated that it believes that broker-dealers and banks that have links to DTC should be able to use those links to communicate with matching and confirmation service providers.

The commenter also noted TFTS's undertaking that it will give us 20 business days' advance notice of any material changes to its matching service. The commenter stated that TFTS, like DTC, should be required to give participants a comment period before making changes to its matching system.

IV. Discussion

A. Statutory Standards

Section 17A(b)(1) of the Exchange Act requires all clearing agencies to register with us.[10] On April 6, 1998, we issued an interpretive release in which we conclude that an entity that provides matching services as an intermediary between broker-dealers and institutional customers is a clearing agency [11] and is subject to the registration requirements of Section 17A(b)(1) (Matching Release).[12] However, Section 17A(b)(1) also states that upon our own motion or upon a clearing agency's application we may conditionally or unconditionally exempt a clearing agency from any provisions of Section 17A or the rules or regulations thereunder if we find that such exemption is consistent with the public interest, the protection of investors, and the purposes of Section 17A, including the prompt and accurate clearance and settlement of securities transactions and the safeguarding of securities and funds. For the reasons set forth below, we believe that an exemption for TFTS from full clearing agency registration is consistent with Section 17A

B. Evaluation of TFTS's Application for Exemption

We have previously granted three conditional exemptions from clearing agency registration.[13] In those cases, we reviewed the applicants' risk management procedures, operational capacity and safeguards, corporate structure, and ability to comply with the requirements of Section 17A in order to assure that the fundamental goals of that section (*i.e.*, the safety and soundness of the national clearance and settlement system) were furthers.[14]

In our consideration of TFTS's application, we noted that the matching service would be the only clearing agency function that TFTS would perform under an exemptive order. In addition, we recognized that while TFTS's matching service could have a significant impact on the national clearance and settlement system, all of the concerns raised by an entity that performs a wider range of clearing agency functions are not raised in TFTS's situation.[15] Also in our review, we took into account that TFTS had represented in its Form CA–1 that it would comply with certain conditions that we would impose under an exemptive order. Therefore, we have decided not to require TFTS to satisfy all of the standards normally required of registrants under Section 17A.[16] As a result, in addition to considering the public interest and the protection of investors, the primary factor in our consideration of TFTS's application was whether TFTS is so organized and has the capacity to be able to facilitate prompt and accurate matching services.[17]

C. Terms of TFTS's Exemption

1. Scope of Exemption

This order grants TFTS an exemption from registration as a clearing agency under Section 17A of the Exchange Act to provide a matching service where it will act as an intermediary in the confirmation/affirmation process to compare a broker-dealer's trade data with a customer's allocation instructions to produce an affirmed confirmation. The exemption is granted subject to conditions that we believe are necessary and appropriate in light of the statutory requirements of the Section 17A objective of promoting a safe and efficient national clearance and settlement system and in light of TFTS's structure and operation. This exemptive order and the conditions and limitations contained in it are consistent with our statement in the Matching Release that an entity that limits its clearing agency functions to providing matching services does not have to be subject to the full range of clearing agency regulation.

2. Conditioning of Exemption

We are including specific conditions in our order exempting TFTS from clearing agency registration. As noted above, these conditions are designed to promote a safe and efficient national clearance and settlement system and to

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TFTS's matching service. Securities Exchange Act Release No. 41003, *supra* note 5.

[9] Letter from Salomon Smith Barney, *supra* note 6.

[10] 15 U.S.C. 78q–1(b)(1).

[11] Section 3(a)(23) of the Exchange Act, 15 U.S.C. 78c(a)(23), defines the term clearing agency as, among other things:

[A]ny person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation securities settlement responsibilities.

[12] Securities Exchange Act Release No. 39829 (April 6, 1998), 64 FR 17943. Specifically the Meeting Release concluded that matching constitutes "comparison of data respecting the term of settlement of securities transactions."

[13] Securities Exchange Act Release Nos. 36573 (December 12, 1995), 60 FR 65076 (order approving applications for exemption from clearing agency registration for the Clearing Corporation for Options and Securities); 38328 (February 24, 1997), 62 JR 9225 (order approving application for exemption from clearing agency registration for Cedel Bank); and 39643 (February 11, 1998) 63 FR 8232 (order approving application for exemption from clearing agency registration by Moran Guaranty Trust Company of New York, Brussels Office, as operator of the Euroclear System).

[14] Specifically, the applications were considered against standards that the Commission's Division of Market Regulation has published for the evaluation of applications for clearing agency registration. Securities Exchange Act Release No. 16900 (June 17, 1980), FR 45 49102.

[15] TFTS specifically represented that it will not perform other functions of a clearing agency such as net settlement, maintaining a balance of open positions between buyers and sellers, or marking securities to the market. In addition, in its Form CA–1 TFTS (1) represents that it will not handle funds or securities and (2) states that it will not impose prohibitions or limit access to its service by potential customers but that it might terminate a subscription for failure to pay fees.

[16] Accordingly, TFTS will not be subject to the requirements of Section 17A which require a registered clearing agency to:

(1) Fairly represent the clearing agency's shareholders in the selection of the clearing agency's directors. Section 17A(b)(3)(C), 15 U.S.C. 78q–1(b)(3)(C).

(2) Limit the categories of persons that are potentially eligible for clearing agency services. Section 17A(b)(3)(B), 15 U.S.C. 78q–1(b)(3)(B).

(3) Equitably allocate reasonable dues, fees, and other charges among clearing agency participants. Sections 17A(b)(3)(D) and (E), 15 U.S.C. 78q–1(b)(3)(D) and (E).

(4) Enforce compliance by its participants with its rules. Sections 17A(b)(3)(A), (G) and (H), 15 U.S.C. 78q–1(b)(3)(A), (G) and (H). Because we are granting TFTS an exemption from clearing agency registration, TFTS will not be a self-regulatory organization and therefore will not be required to file rule changes in accordance with Section 19(b) of the Exchange Act, 15 U.S.C. 78s(b). Furthermore, we are not requiring TFTS to comply with the rule change filing requirements of section 19(b) as a condition of its exemption.

[17] *See* Section 17A(b)(3)(A) of the Exchange Act, 15 U.S.C. 78q–1(b)(3)(A).

enable us to monitor the operation of TFTS's matching service.

1. Before beginning the commercial operation of its central matching service, TFTS must provide us with an audit report that addresses all the areas discussed in our Automation Review Policies (ARPs).[18] In order to verify that TFTS is organized and has the capacity to be able to facilitate prompt and accurate matching services, the exemption contained in this order will take effect thirty days after our staff has received an acceptable audit report pursuant to this condition.

2. TFTS must provide the Commission (beginning in the central matching service's second year of operation) with annual reports and any associated field work prepared by competent, independent audit personnel that are generated in accordance with the annual risk assessment of the areas set forth in the ARPs.

3. TFTS must provide the Commission with twenty business days' advance notice of any material changes that TFTS makes to its matching service. These changes will not require our approval before they are implemented.[19]

4. TFTS must provide the Commission with prompt notification of systems outages lasting more than thirty minutes.

5. TFTS must respond to requests from the Commission for additional information relating to its matching service and provide access to the Commission to conduct on-site inspections of all facilities (including automated systems and systems environment), records, and personnel related to the matching service. The requests for information shall be made and the inspections shall be conducted solely for the purpose of reviewing the matching service's operations and compliance with the federal securities laws and the terms and conditions of TFTS's exemptive order.

6. TFTS must supply the Commission or its designee with periodic reports regarding the affirmation rates for depository-eligible transactions that settle in the United States effected by institutions that utilize TFTS's matching service.[20]

7. TFTS must preserve a copy or record of all trade details, allocation instructions, central trade matching results, reports and notices sent to customers, reports regarding affirmation rates that are sent to the Commission or its designee, and any compliant received from a customer, all of which pertain to the operation of TFTS's matching service.[21] TFTS must retain these records for a period of not less than five years, the first two years in an easily accessible place.

8. TFTS must develop fair and reasonable linkages between the matching service and DTC and other central matching services that are regulated by the Commission or that receive an exemption from clearing agency registration from the Commission. At this time, we are not specifying the type of linkages that TFTS must develop. Our staff will consult with TFTS and industry participants to ensure that appropriate linkages are developed in a timely fashion. However, we believe that at a minimum the linkages should allow parties to trades that are processed through one or more matching services to communicate through one or more appropriate and effective interfaces with clearing agencies and other matching services. For example, a broker-dealer that has a link to DTC should be able to transmit trade data through that link to an institutional customer that uses TFTS's services without having to establish a separate link with TFTS.

3. Modification of Exemption

The Commission may modify by order the terms, scope, or conditions of TFTS's exemption from registration as a clearing agency if we determine that such modification is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furthernace of the purposes of the Exchange Act. Furthermore, we may limit, suspend, or revoke this exemption if we find that TFTS has violated or is unable to comply with any of the provisions set forth in this order if such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Exchange Act

V. Conclusion

Pending the receipt of TFTS's initial audit report, we believe that TFTS will have sufficient operational and processing capability to facilitate prompt and accurate matching services. In particular, we note that TFTS's exemption will be subject to conditions that are designed to enable us to monitor TFTS's operational and processing capability with respect to its matching service. Therefore, the Commission finds that TFTS's application for exemption from registration as a clearing agency meets the standards and requirements deemed appropriate for such an exemption.

It is therefore ordered, pursuant to Section 19(a)(1) of the Exchange Act, that the request for exemption from registration as a clearing agency filed by Thomson Financial Technology Services, Inc. (File No. 600–31) be, and hereby is, granted subject to the conditions contained in this order.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99–12138 Filed 5–12–99; 8:45 am]

BILLING CODE 8010–01–M

[18] Securities Exchange Act Release Nos. 27445 (November 16, 1989), 54 FR 48703; and 29185 (May 9, 1991), 56 FR 22490. In addition, Form CA–1 requires applicants to attach its most recent balance sheet and statement of income and expenses. TFTS did not include this information with its Form CA–1 but represented in its Form CA–1 that it will provide us with a current balance sheet and income statement before beginning operations.

[19] While the commenter expressed concern with this condition, we believe that receiving advance notice of material changes to TFTS's matching service is sufficient for the purposes of this exemption. TFTS must file with the Commission a request to modify this order if it makes any changes in its operations as summarized in this order, in its Form CA–1, dated January 11, 1999, or in any subsequently filed amended Form CA–1, that would change the fundamental nature of its matching service.

[20] For purposes of this condition, we designate DTC as agent for receipt of the periodic reports.

[21] All electronic messages that are sent through TFTS's systems will originate at the sender's (*i.e.*, the broker-dealer's or the customer's) computer terminal and will be routed through TFTS's data center. TFTS's data center will copy and store the data that passes through it.

SELECTIVE SERVICE SYSTEM

Forms Submitted to the Office of Management and Budget for Extension of Clearance

The following forms have been submitted to the Office of Management and Budget (OMB) for extension of clearance in compliance with the Paperwork Reduction Act (44 U.S. Chapter 35):

SSS—1

Title: The Selective Service System Registration Form.

Need and/or Use: Is used to register men and establish a data base for use in identifying manpower to the military services during a national emergency..

Respondents: All 18-year-old males who are United States citizens and those male immigrants residing in the United States at the time of their 18th birthday are required to register with the Selective Service System.

Frequency: Registration with the Selective Service System is a one-time occurrence.

Burden: A burden of 2 minutes or less on the individual respondent.

Copies of the above identified forms can be obtained upon written request to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

Written comments and recommendations for the proposed extension of clearance of the forms should be sent within 30 days of publication of this notice, to: Selective Service System, Reports Clearance Officer, 1515 Wilson Boulevard, Arlington, Virginia 22209–2425.

A copy of the comments should be sent to: Office of Information and Regulatory Affairs, Attention: Desk Officer, Selective Service System, Office of Management and Budget, New Executive Office Building, Room 3235, Washington, DC 20503.

Dated: May 7, 1999.

Gil Coronado,

Director.

[FR Doc. 99–12130 Filed 5–12–99; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice # 3035]

Advisory Committee on Religious Freedom Abroad Final Meeting; Public Meeting Notice

Pursuant to the Federal Advisory Committee Act, the Department of State announces a meeting of the Secretary of State's Advisory Committee on Religious Freedom Abroad on Monday, May 17, 1999, at 2:30 p.m., in room 1107 at the U.S. Department of State, 2201 C Street, NW, Washington, DC. We apologize for the unavoidable short notice due to scheduling conflicts of key participants.

The purpose of the meeting will be to adopt the final report, present it to the Secretary of State, and conclude the work of the Committee.

This meeting is open to members of the public up to the seating capacity of the room (directions available upon lobby check-in). Admittance to the State Department building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, organization, social security number, date of birth, and citizenship to Ms. Kim Mallory by fax at (202) 647–4501 or by telephone at (202) 647–1422.

All attendees must use the "C" Street entrance. One of the following valid ID's will be required for admittance: Any U.S. driver's license with photo, a passport, or a U.S. Government agency ID.

For further information contact Ms. Alexandra Arriaga, Executive Secretary of the Advisory Committee by fax at (202) 647–4501 or by telephone at (202) 647–1422.

Dated: May 10, 1999.

Alexandra Arriaga,

Executive Secretary, Advisory Committee on Religious Freedom Abroad.

[FR Doc. 99–12133 Filed 5–10–99; 2:24 pm]

BILLING CODE 4710–07–M

TENNESSEE VALLEY AUTHORITY

Meeting of the Land Between The Lakes Advisory Committee

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Notice of meeting.

SUMMARY: The Land Between The Lakes Advisory Committee (LBLAC) will hold its first meeting to consider various matters. Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

The meeting agenda includes the following:

(1) Welcome and Introductions
(2) Federal Advisory Committee Guidelines
(3) Committee Charter, Bylaws and Operating Procedures
(4) Land Between The Lakes Overview
(5) 1999 Meeting Issues and Dates
(6) Committee Travel Reimbursement Guidelines

The meeting is open to the public; however, due to the length of the scheduled agenda, there will not be an opportunity for oral statements from the public at the meeting. Written comments are invited and may be mailed to Ann W. Wright, General Manager, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211. Future meetings will provide opportunities for oral comment.

DATES: The meeting will be held on June 2, 1999, from 8:30 a.m to 3:30 p.m., CDT.

ADDRESSES: The meeting will be held at Kenlake State Park Lodge, Meeting Room A, Aurora, Kentucky, and will be open to the public.

FOR FURTHER INFORMATION CONTACT: Kathy.Coursey, LBLAC Administrative Officer, Land Between The Lakes, 100 Van Morgan Drive, Golden Pond, Kentucky 42211, 270/924–2272.

SUPPLEMENTARY INFORMATION: Members of the LBLAC and their appointing agencies are:

Mr. Lee Anderson, TVA
Dr. Cem Basman, TVA (Committee Chairperson)
Mr. Tom Bennett, Kentucky Department of Fish and Wildlife Resources
Dr. Edward Clebsch, TVA
Mr. Reed Conder, Governor of Kentucky
Mr. Ron Fox, Tennessee Wildlife Resources Agency
Mr. Ben Hall, TVA
Mr. Donnie Holland, Trigg County, Kentucky, Judge Executive
Mr. J.D. Lee, Lyon County, Kentucky, Judge Executive
Ms. Dortha Lyons, Governor of Kentucky
Mr. Jesse Mayo, Governor of Tennessee
Ms. Della Oliver, Lyon County, Kentucky, Judge Executive
Dr. Phillip Rea, TVA
Mr. Jesse Thomas, Trigg County, Kentucky, Judge Executive
Mr. David Wallace, Stewart County, Tennessee, Executive
Mr. Nick Watson, Stewart County, Tennessee, Executive
Ms. Ramay Winchester, Governor of Tennessee

Dated: May 7, 1999.

Ann W. Wright,

General Manager, TVA's Land Between The Lakes.

[FR Doc. 99–12119 Filed 5–12–99; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 20–XX–31, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed Advisory Circular (AC) 20–XX–31, and request for comments.

SUMMARY: This notice announces the availability of and request for comments on proposed AC 20–XX–31, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines.This AC presents information regarding the inspection, maintenance, and installation of engine controls with emphasis on the airframe portion of these systems. It provides guidance to design and maintenance personnel to reduce the number of airplane accidents and incidents related to the loss of engine power control. This AC provides a supplement, but does not replace the procedures in the manufacturers' maintenance manuals. This material is neither mandatory nor regulatory in nature and does not constitute regulation.

DATES: Comments must be received on or before July 12, 1999.

ADDRESSES: Send all comments on the proposed AC to Federal Aviation Administration, Small Airplane Directorate, Regulations and Policy Branch (ACE–111), 601 East 12th Street, Kansas City, MO 64106. You may also submit comments on the internet to: terre.flynn@faa.gov.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Standards Office (ACE–110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration; telephone (781) 238–7164.

SUPPLEMENTARY INFORMATION:

Comments Invited

Any person may obtain a copy of this proposed AC by either contacting the person named above under the **FOR FURTHER INFORMATION CONTACT** section or on the internet at: http://www.faa.gov/avr/air/airhome.htm. We invite interested parties to submit your comments by electronic mail to the **ADDRESSES** section specified above. Commenters must identify the AC title and number when submitting any comments. The FAA will consider all communication received on or before the closing date for comments before issuing the final AC. The proposed AC and comments received may be inspected at the Standards Office (ACE–110), Suite 900, 1201 Walnut, Kansas City, Missouri, between the hours of 7:30 a.m. and 4:00 p.m. weekdays, except Federal holidays.

Background

A review of service history on engine control installations indicates that 75 percent of the problems with these systems result from lack of proper maintenance of airplane manufacturer installed engine controls. The other 25 percent of the service problems originate from a lack of maintenance of the engine manufacturers' throttle, mixture, and propeller governor levers/linkages. Most airplane or engine maintenance manuals lack detailed information on inspection and installation of engine controls.

Issued in Kansas City, Missouri, on May 4, 1999.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 99–12058 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (99–02–U–00–CBE) To Use the Revenue From a Passenger Facility Charge (PFC) at Greater Cumberland Regional Airport, Wiley Ford, WV

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Greater Cumberland Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 14, 1999.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington Airports District Office, PO Box 15780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to James G. Stahl, Chairman, of the Potomac Highlands Airport Authority at the following address: Greater Cumberland Regional Airport, Route 1, Post Office Box 99, Wiley Ford, WV 26767.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Potomac Highlands Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airport District Office, PO Box 16780, Washington, DC (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to use the revenue from a PFC at Greater Cumberland Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 4, 1999, the FAA determined that the application to use the revenue from a PFC submitted by Potomac Highlands Airport Authority was substantially complete within the requirements of § 158.25 part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 19, 1999.

The following is a brief overview of the application.

PFC Application No: 99–02–U–00–CBE.

Level of the proposed PFC: $3.00.

Proposed charge effective date: July 1, 1994.

Proposed charge expiration date: July 1, 1994.

Total estimated PFC revenue: $150,000.

Brief description of proposed project(s): Rehabilitate runway 5–23—Phase I (Preliminary Design Only).

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Fitzgerald Federal Building, #111, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Greater Cumberland Regional Airport.

Issued in Washington, DC 20041–6780, May 4, 1999.

Terry J. Pager,

Manager, Washington Airports District Office.

[FR Doc. 99–12142 Filed 5–12–99; 8:45 am]

BILLING CODE 4310–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Agency Information Collection Activities: Proposed Collection; Comment Request—FRA F 6180.71, U.S. DOT AAR Crossing Inventory Form

AGENCY: Federal Railroad Administration, DOT.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 and its implementing regulations, this notice invites the general public, railroads, and other public agencies to comment on the proposed information collection of FRA F 6180.71, U.S. DOT–AAR Crossing Inventory Form.

DATES: Comments must be received no later than July 12, 1999.

ADDRESSES: Comments are invited on: (a) Whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (b) the accuracy of FRA's estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (c) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (d) ways for FRA to minimize the burden of information collection activities on the public by automated, electronic, mechanical, or other technological collection techniques or other forms of information technology (*e.g.*, permitting electronic submission of responses). Comments may be sent to: Mr. Robert Brogan, Office of Planning and Evaluation Division, RRS–21, Federal Railroad Administration, 1120 Vermont Ave., NW, Mail Stop 17, Washington, DC 20590, or Ms. Dian Deal, Office of Information Technology and Productivity Improvement, RAD–20, Federal Railroad Administration, 1120 Vermont Ave., NW, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB control number 2130–0017. Alternatively, comments may be transmitted via facsimile to (202) 493–6265 or (202) 493–6170, or E-mail to Mr. Brogan at robert.brogan@fra.dot.gov, or to Ms. Deal at dian.deal@fra.dot.gov. Please refer to the assigned OMB control number in any correspondence submitted. All responses to this notice will be included in the request for OMB's approval. All comments will also become a matter of public record.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection form and instruction should be directed to Mr. Robert Brogan, (202) 493–6292 or Dian Deal, (202) 493–6292. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1995 (PRA), Pub. L. No. 104–13, § 2, 109 Stat. 163 (1995) (codified as revised at 44 U.S.C. 3501–3520), and its implementing regulations, 5 CFR Part 1320, require Federal agencies to provide 60-days notice to the public for comment on information collection activities before seeking approval for reinstatement or renewal by OMB. 44 U.S.C. 3506(c)(2)(A); 5 CFR §§ 1320.8(d)(1), 1320.10(e)(1), 1320.12(a).

Below is a brief summary of the currently approved information collection activity that FRA will submit for clearance by OMB as required under the PRA:

Title: U.S. DOT—AAR Crossing Inventory Form.

OMB Control Number: 2130–0017.

Form Number: FRA F 6180.71.

Expiration: March 31, 2000.

Type of Request: Revision of a currently approved collection.

Abstract: Form FRA 6180.71 is a voluntary form and is being revised to include additional data elements at the request of states and railroads. The form is also being revised to fulfill National Transportation Safety Board (NTSB) recommendations and to take advantage of recent advances in information technology. The form is used by States and railroads to periodically update certain cite specific highway-rail crossing information which is then transmitted to FRA for input into the National Inventory File. This information has been collected on the U.S. DOT–AAR Crossing Inventory Form since 1974 and maintained in the National Inventory File database since 1975. The primary purpose of the National Inventory is to provide for the existence of a uniform database which can be merged with accident data and used to analyze information for planning and implementation of crossing safety improvement programs by public, private, and governmental agencies responsible for highway-rail crossing safety. Following the official establishment of the National Inventory in 1975, the Federal Railroad Administration (FRA) assumed the principal responsibility as custodian for the maintenance and continued development of the U.S. DOT/AAR National Highway-Rail Crossing Inventory Program. The major goal of the Program is to provide federal, state, and local governments, as well as the railroad industry, information for the improvement of safety at highway-rail crossings. Good management practices necessitate maintaining the database with current information. The data will continue to be useful only if maintained and updated as inventory changes occur. FRA previously cleared the reporting and recordkeeping burden for this form under Office of Management and Budget (OMB) clearance number 2130–0017. OMB approved the burden in the original form through March 31, 2000. Based on the most recent information available, FRA estimates 62,000 updates per year. This is a substantial reduction in updates from the previous estimate of responses and represents a corresponding reduction of 1,473 hours in the reporting and recordkeeping burden. The reduction in responses is due to a lower response rate from states and railroads over the past few years and the expected continuation of this trend. FRA is requesting a three-year approval from OMB for this information collection.

Affected Public: Railroads and State governments.

Estimated Total Number of Responses Per Year: 62,000 updates.

Estimated Response Time per Form: .25 hr. (8,000 form updates); .50 hr. per mass update list (337 mass update lists containing 24,000 updates); .03333 hr. per GX computer update (30,000 updates on 36 GX computer disks).

Total Annual Burden: 3,169 hours

Pursuant to 44 U.S.C. 3507(a) and 5 CFR 1320.5(b), 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501–3520.

Issued in Washington, D.C. on May 6, 1999.

M. Johnson,

Information Technology Manager, Office of Information Technology and Support Systems, Federal Railroad Administration.

[FR Doc. 99–12049 Filed 5–12–99; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33716]

Georgia & Florida RailNet, Inc.—Acquisition and Operation Exemption—Lines of Gulf & Ohio Railways, Inc.

Georgia & Florida RailNet, Inc. (GFRN), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to acquire (by purchase or acquisition of a lease interest) and operate approximately 256.37 miles of rail lines operated by and either owned by, or under the control of, Gulf & Ohio Railways, Inc. (GOR).[1] The lines to be acquired through purchase by GFRN are as follows: (1) The Albany Bridge, a line of railroad approximately 3,470 feet in length, extending across a bridge in Albany, GA, from track chaining station 5473+20 to track chaining station 5438+50; (2) the Adel-Foley Line, from milepost GB–1.0 at Adel, GA, to

[1] GFRN indicates that some rail lines are owned and operated by GOR, while GOR operates and possesses a leasehold interest in other rail lines.

milepost GB–77.3 at Perry, FL, and from milepost GB–77.3/LO–45.75 at Perry, FL, to milepost LO–39.0 at Foley, FL; (3) the Valdosta-Nashville Line, from milepost 30.65 at Valdosta, GA, to milepost 57.2 at Nashville, GA; (4) the Moultrie-Schley Junction Line, from milepost 27.1 at Moultrie, GA, to milepost 33.6 at Schley Junction, GA; (5) the Norman Junction Line, from milepost 29.52 at Norman Junction, GA, to milepost 33.52 at Moultrie, GA; and (6) the Thomasville-Camilla Line, from milepost ANC–692.08 at Thomasville, GA, to milepost ANC–728.0 at Camilla, GA.[2]

In addition, GFRN will also acquire GOR's lease interest in, and operate, the following rail lines: (1) The Albany-Sparks Line, (owned by and leased from the Norfolk Southern Railway (NSR)) from milepost GN–0.7 at Albany, GA, to milepost GN–58.9 at Sparks, GA; (2) the Camilla-Albany Line (owned by and leased from CSX Transportation, Inc. (CSX)) from milepost ANC–728.0 at Camilla, GA, to milepost ANC–748.03 at Albany, GA; and (3) the Albany-Sylvester Line (owned by and leased from CSX) from milepost AP–699.12 at Albany, GA, to milepost AP–677.67 at Sylvester, GA.

GFRN will also acquire incidental overhead trackage rights over approximately 29.8 miles of rail line owned by the Georgia Southern and Florida Railway Company (a subsidiary of NSR) from milepost 125.2–G at Sparks, GA, to milepost 155.0–G (at a connection into NS' Valdosta yard facilities) at Valdosta, GA.

The transaction was scheduled to be consummated on or shortly after April 30, 1999.

This transaction is related to STB Finance Docket No. 33717, *North American RailNet, Inc.—Continuance in Control Exemption—Georgia & Florida RailNet, Inc.*, wherein North American RailNet, Inc., is seeking an exemption to continue in control of GFRN upon its becoming a Class III rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[2] GFRN states that its projected revenues will not exceed those that would qualify it as a Class III rail carrier.

Because its projected revenues will exceed $5 million, however, GFRN certified to the Board, on February 12, 1999, that it had served a copy of the notice on the national offices of the labor unions with employees on the affected lines, and that the required notice of its acquisition has been posted at the workplace of the employees on the affected lines. See 49 CFR 1150.32(e).

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33717, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross, & Auchincloss, 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 5, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11995 Filed 5–12–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33717]

North American RailNet, Inc.—Continuance in Control Exemption—Georgia & Florida RailNet, Inc.

North American RailNet, Inc. (NARN), has filed a notice of exemption to continue in control of Georgia & Florida RailNet, Inc. (GFRN), upon GFRN's becoming a Class III railroad.

The transaction was scheduled to be consummated on or shortly after April 30, 1999.

This transaction is related to STB Finance Docket No. 33716, *Georgia & Florida RailNet, Inc.—Acquisition and Operation Exemption—Lines of the Gulf & Ohio Railways Inc.*, wherein GFRN is seeking an exemption to acquire and operate certain rail lines currently operated by and owned by, or under the control of, Gulf & Ohio Railways, Inc.

NARN controls four existing Class III railroads: Nebraska, Kansas & Colorado RailNet, Inc., operating in Nebraska, Kansas, and Colorado; Illinois RailNet, Inc., operating in Illinois; Camas Prairie RailNet, Inc., operating in Washington and Idaho; and Mississippi & Tennessee RailNet, Inc.. operating in Mississippi and Tennessee.

NARN states that: (i) The rail lines operated by GFRN do not connect with any railroad in the corporate family; (ii) the transaction is not part of a series of anticipated transactions that would connect GFRN's lines with any railroad in the corporate family; and (iii) the transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the verified notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33717, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Robert A. Wimbish, Esq., Rea, Cross, & Auchincloss, 1707 L Street, NW, Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 5, 1999.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 99–11994 Filed 5–12–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33729 (Sub-No. 1)]

Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company

AGENCY: Surface Transportation Board.

ACTION: Notice of exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 33729[1] to permit the trackage rights to

[1] On March 19, 1999, Union Pacific Railroad Company (UP) filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the agreement by The Burlington Northern and Santa Fe Railway

expire on July 31, 1999, in accordance with the agreement of the parties.

DATES: This exemption will be effective on June 12, 1999. Petitions to reopen must be filed by June 2, 1999.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 33729 (Sub-No. 1) must be filed with the Office of the Secretary, Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423-0001. In addition, a copy of all pleadings must be served on petitioner's representative Joseph D. Anthofer, Esq., 1416 Dodge Street, #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 565–1600. [TDD for the hearing impaired (202) 565–1695.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DC NEWS & DATA, INC., Suite 210, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: May 6, 1999.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 99–12113 Filed 5–12–99; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 5, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1381.

Regulation Project Number: CO–49–88 Final.

Type of Review: Extension.

Title: Limitations on Corporate Net Operating Loss.

Description: This regulation provides rules for the allocation of a loss corporation's taxable income or net operating loss between the periods before and after an ownership change under section 382 of the Code, including an election to make the allocation based on a closing of the books as of the change date.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 2,000.

Estimated Burden Hours Per Respondent: 6 minutes.

Frequency of Response: On occasion, Other (when needed).

Estimated Total Reporting Burden: 200 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–12111 Filed 5–12–99; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

May 7, 1999.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before June 14, 1999, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1005.

Regulation Project Number: PS–62–87 Final.

Type of Review: Extension.

Title: Low-Income Housing Credit for Federally-Assisted Buildings.

Description: The rule requires the taxpayer (low-income building owner) to seek a waiver in writing from the IRS concerning low-income building acquired during a special 10-year period in order to avert a claim against a Federal mortgage insurance fund.

Respondents: Business or other for-profit, individuals or households, not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 3 hours.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 3,000 hours.

OMB Number: 1545–1385.

Regulation Project Number: GL–238–88 Final.

Type of Review: Extension.

Title: Preparer Penalties—Manual Signature Requirement.

Description: The reporting requirements affect returns preparers of fiduciary returns. They will be required to submit a list of the names and identifying numbers of all fiduciary returns which are being filed with a facsimile signature of the returns preparer.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 20,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 17 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 25,825 hours.

OMB Number: 1545–1486.

Regulation Project Number: REG–209793–95 Final.

Type of Review: Extension.

Title: Simplification of Entity Classification Rules.

Company (BNSF) to grant temporary overhead trackage rights to UP over 350.4 miles of BNSF's rail line between (1) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and Jonesboro, AR, BNSF milepost 420.0 (Thayer South Subdivision), via Turrell, AR, BNSF milepost 282.3 (River Subdivision), and (2) Rockview Junction, MO, BNSF milepost 141.7 (River Subdivision), and KC Junction, TN, BNSF milepost 486.0 (Thayer South Subdivision). *See Union Pacific Railroad Company—Trackage Rights Exemption—The Burlington Northern and Santa Fe Railway Company,* STB Finance Docket No. 33729 (STB served Apr. 8, 1999). The trackage rights agreement is scheduled to expire July 31, 1999. The trackage rights operations under the exemption became effective on April 1, 1999, and are subject to standard labor protective conditions.

Description: These rules allow certain unincorporated business organizations to elect to be treated as corporations or partnerships for federal tax purposes. The information collected on the election will be used to verify the classification of electing organizations.

Respondents: Business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 1.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1 hour.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 99–12112 Filed 5–12–99; 8:45 am]

BILLING CODE 4830–01–U

UNITED STATES INFORMATION AGENCY

Secondary School Civic Education Curriculum Development Project for Azerbaijan; Request for Proposals.

SUMMARY: The Advising, Teaching, and Specialized Programs Division of the Office of Academic Programs of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for a Secondary School Civic Education Curriculum Development Project for Azerbaijan. Public and private non-profit organizations meeting the provisions described in IRS regulation 26 CFR 1.501(c) may submit proposals to cooperate with USIA in the administration of a two-year project to support the development and utilization of new curriculum units for a civic education course entitled "Man and Society" for students in the tenth and eleventh grades in Azerbaijan. The grant will award up to $250,000 to facilitate the project.

The grantee will work with the Azerbaijani Ministry of Education, Department of Curriculum Development and Educational Reform, which is the office of the Government of Azerbaijan directly responsible for national education and teacher training issues. The program will comprise three phases: (1) Preliminary consultations in Baku with a curriculum development team of Azerbaijani educators; (2) a three-month U.S.-based curriculum development workshop in which the team will produce draft curriculum units; (3) follow-up consultations in Azerbaijan to assist with the training of a larger group of Azerbaijani practitioners in the review and field-testing of the draft curriculum units. Upon the successful completion of Phases I–III, additional funds may be available to the grantee organization for a fourth phase of activity to cooperate with the Ministry of Education of Azerbaijan, Department of Curriculum Development and Educational Reform, and the Azerbaijani curriculum development team to further review and revise the draft materials as needed and to provide broader training of Azerbaijani teachers and administrators for utilization of the revised curriculum units in Azerbaijani classrooms.

USIA solicits detailed proposals from U.S. educational institutions and public and private non-profit organizations to develop and administer this project. Grantee organizations will consult regularly with USIA and with USIA's office in Azerbaijan (the U.S. Information Service in Baku) with regard to participant selection, program implementation, direction, and assessment. Proposals should demonstrate an understanding of the issues confronting education in Azerbaijan as well as expertise in civic education and curriculum development.

The funding authority for the program cited above is provided through the Freedom Support Act as well as USIA's base budget. Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Program Information

Overview: The goal of the project is to assist the Ministry of Education, Department of Curriculum Development and Educational Reform in Baku, Azerbaijan, to develop up-to-date curriculum units to be taught at the tenth and eleventh grade levels and to assist in training teachers for the utilization of these units. The rationale for this project is that improving citizenship education at the secondary school level will better prepare Azerbaijani students to participate actively in building a pluralistic, democratic society, and will promote democratic relations among members of the school community, including students, teachers, school administrators, and parents. Applicants may suggest topics to be developed by the Azerbaijani curriculum team in their proposals; however, final determination of appropriate topics will be made by the curriculum development team and the Ministry in cooperation with the grantee organization during the first phase of the project.

Guidelines

Program Planning and Implementation

Grants should begin on or around September 1, 1999, with Phase I of the project, in which a curriculum development team of six practitioners (e.g., classroom teachers, curriculum specialists, and a Ministry official who will serve as the project director) will be selected by a Ministry-led selection committee in Azerbaijan in consultation with the U.S. grantee organization and the U.S. Information Service (USIS) in Baku. In Phase I, the team will undertake preliminary work in Baku over a period of 3-6 months. Members of the curriculum development team, in consultation with a specialist from the grantee organization and the Azerbaijani Project Director, will familiarize themselves with civics curricula and teaching materials used in the U.S. and will select the topics to be explored in the draft curriculum units.

In Phase II, members of the curriculum development team will spend approximately three months in a highly structured U.S.-based workshop to be sponsored and organized by the U.S. grantee organization, and will attend focused curriculum seminars, observe relevant aspects of the U.S. educational system, and draft teacher and student materials for the curriculum units in consultation with U.S. specialists. The grantee organization will be responsible for introducing the Azerbaijani team to leading U.S. civic educators with expertise that is pertinent to the topics to be explored, and to a broad range of relevant resources. The workshop schedule should incorporate time for both individual and group work on materials as well as intensive training on specific approaches to the teaching of civic education topics. In addition, the workshop should include field experiences which are relevant to the materials being produced (such as visits to schools and professional association meetings).

In Phase III, the curriculum development team will work in Azerbaijan with Azerbaijani teacher trainers, Ministry of Education officials and U.S. specialists from the grantee organization and other U.S. organizations to provide introductory training for a larger group of practitioners in methods for testing and

utilizing the draft curriculum units in the civics classroom. During this phase the Ministry of Education (MOE) will provide the following assistance to the U.S. grantee:

(1) Facilitate the logistics of in-service training sessions for teachers by providing appropriate space;

(2) Assist in the selection of pilot schools and teachers;

(3) provide leave time/leaves of absence for the curriculum development team and Project Director during their stays in the U.S. and the subsequent in-service training work;

(4) Provide appropriate office space and facilities to house both the civic education reference collection and the materials produced by the curriculum development team.

Visa/Insurance/Tax Requirements

U.S. lecturers and consultants participating in the project must be U.S. citizens. Programs must comply with J–1 visa regulations. Please refer to Program Specific Guidelines (POGI) in the Solicitation Package for further information. Administration of the program must be in compliance with reporting and withhold regulations for federal, state, and local taxes as applicable. Recipient organizations should demonstrate tax regulation adherence in the proposal narrative and budget.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international exchange programs will be limited to $60,000.

Applicants must submit a comprehensive budget for the entire program. Awards may not exceed $250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program year, component, phase, location, or activity to provide clarification. The total administrative costs funded by USIA must be limited and reasonable

Alllowable costs for the program include the following:

(1) Administrative Costs, including salaries and benefits, of grantee organization.

(2) Program Costs, including general program costs and program costs for each Azerbaijani participant in the U.S.-based curriculum development seminar. Also included are program costs associated with the field-testing of materials in Azerbaijan and with the initial training of Azerbaijani teachers.

Please refer to the Solicitation Package (POGI and PSI) for complete budget guidelines and formatting instructions.

ANNOUNCEMENT TITLE AND NUMBER: All correspondence with USIA concerning this RFP should reference the above title and number E/ASU–99–16.

FOR FURTHER INFORMATION, CONTACT: The Office of Academic Programs, Advising, Teaching and Specialized Programs Division, Specialized Programs Branch, E/ASU, Room 349, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone number 202–619–4568 and fax number 202–401–1433, e-mail address jceriale@usia.gov to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify USIA Program Officer Jennifer K. Ceriale on all other inquiries and correspondence.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via Fax on Demand

The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals

All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on Monday, July 19, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 10 copies of the application should be sent to: U.S. Information Agency, Ref.: *E/ASU–99–16*, Office of Grants Management, E/X., Room 326, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these file electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the "Support for Diversity" section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K compliant systems including hardware, software, and firmware. Systems must accurately

process data and dates (calculating, comparing and sequency) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as by the USIA Office of East European and NIS Affairs and the USIA post overseas. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, relevance to the Agency's mission, and responsiveness to the objectives and guidelines states in this solicitation. Proposals should demonstrate substantive expertise in civic education.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity and Record/ Ability:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. Proposals should demonstrate an institutional record of successful exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

7. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without USIA support) to ensure ongoing involvement with Azerbaijani curriculum development projects.

8. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. The progress is the grant should be monitored closely. The USIA Program Officer should be kept informed of the implementation of each phase of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit intermediate reports after each project component is concluded or quarterly, whichever is less frequent.

9. *Cost-effectiveness/Cost-sharing:* The overhead and administrative components of the proposals, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate. Proposals should minimize cost-sharing through other private sector support as well as institutional direct funding contributions.

10. *Value to U.S.-Partner Country Relations:* Proposed projects should demonstrate the need, potential impact, and significance of the project in the partner country.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through the Freedom for Russia and Emerging Eurasian Democracies and Open Markets Support Act of 1993 (Freedom Support Act). Programs and projects must conform with Agency requirements and guidelines outlined in the Solicitation Package. USIA projects and programs are subject to the availability of funds.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 5, 1999.

Judith Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

[FR Doc. 99–11974 Filed 5–12–99; 8:45 am]

BILLING CODE 8230–01–M

UNITED STATES INFORMATION AGENCY

Teaching Excellence Awards Program

NOTICE: Request for proposals.

SUMMARY: The Division for the NIS Secondary School Initiative, Office of Citizen Exchanges, of the United States Information Agency's Bureau of Educational and Cultural Affairs announces an open competition for the Teaching Excellence Awards (TEA) program. Public and private non-profit organizations meeting the provisions

described in IRS regulation 26 CFR 1.501(c) may submit proposals for the fourth year of a program of recognition for excellence in the fields of English and American studies at the primary and secondary levels of education in Russia, Ukraine, Kazakhstan, Kyrgyzstan, and Uzbekistan. The total amount of funding available for this program is $2,250,000.

Program Information

Overview: The objective of the program is to select exemplary teachers in the five target countries through a merit-based competition and provide modest awards to them and their schools. The top national winners participate in a summer enrichment program in the U.S. The goals are to: give recognition to excellence in the teaching of English and American studies; promote innovation in teaching methodology in the New Independent States (NIS) of the former Soviet Union; and promote mutual understanding about the societies and educational systems of the U.S. and the five target NIS countries.

Background: The program was established in 1996 and has been administered for the past three years by the American Councils for International Education (ACIE). For the 1996–1997 program year, the teacher competition was conducted in Russia and Ukraine, and 900 educators were nominated, for which their schools received plaques. The competition culminated in the selection of 225 Russian and 75 Ukrainian regional winners of awards—$200 worth of education materials for the teachers and $2,000 worth of education equipment for the schools. Thirty Russian and 15 Ukrainian educators were selected as national winners and participated in a seven-week enrichment program in the U.S. Twenty American teachers were also selected from national excellence competitions who interacted with the NIS teachers and traveled to their countries for two-week programs. The program was repeated in 1997–1998 and expanded in 1998–1999 to include Kazakhstan, Kyrgyzstan, and Uzbekistan.

Guidelines: The organization that is awarded the grant to administer this program must have an infrastructure of offices in the five countries with staff in place year-round under the direct supervision of an American national. The organization must have the ability to work closely with ministries of education and local educational and governmental authorities. The competition must be conducted as a high-profile, merit-based process that encompasses all oblasts (regions) where it is feasible to elicit nominations. The competition should be broadly advertised to ensure that the maximum number possible of teachers and schools are made aware of it. In Russia nominations will be made primarily by committees of oblast ministry of education officials operating under detailed instructions from the grantee organization in conjunction with USIS Moscow. In the other four countries, applications will be submitted directly to the grantee, which will assemble screening committees of specialists. The awards for regional winners should include a range of educational materials and equipment such as copiers, fax machines and computers, which will be for use by the winner's school. The grantee should arrange for a six-to-seven week enrichment program in the U.S. for the national winners designed to enhance teaching methodologies in English as a foreign language and American studies. The grantee must recruit American educators from state and national teaching excellence competitions to participate in aspects of the summer enrichment program and travel to the NIS for two-to-three week programs based in the schools of the NIS national winners. Close collaboration with USIS and American Embassy officers and American English teaching specialists is required. The competition should be conducted in the fall of 1999; awards should be made in the spring of 2000; the enrichment program should take place in the summer of 2000; the American participants should travel to the NIS in the fall of 2000. Grant activities may begin on August 1, 1999. The grantee is responsible for conducting all activities directly or under sub-contracts. Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

One grant will be awarded for the whole program. Organizations with less than four years of experience in conducting international exchange and/or training programs with the NIS are not eligible for this competition.

Applicants must submit a comprehensive budget for the entire program. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. The itemized budget should clearly show costs for each program component, phase, location, or activity.

Proposals should obey these specific maximum limits for each country: Kazakhstan, $300,000; Kyrgyzstan, $150,000; Russia, $1,000,000; Ukraine, $500,000; Uzbekistan, $300,000.

Allowable costs for the program include the following: the competition itself, awards of material or equipment (valued at $200 per regional winner, $2,000 per school), the summer enrichment program, the US teachers to the NIS, and reasonable administrative costs. Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Announcement Title and Number. All correspondence with USIA concerning this RFP should reference the above title and number E/PY–99–48.

FOR FURTHER INFORMATION CONTACT: Robert Persiko, the NIS Secondary School Initiative (E/PY), Room 568, U.S. Information Agency, 301 4th Street, SW., Washington, DC 20547, telephone 202–619–6299, fax 202–619–5311—rpersiko@usia.gov—to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation.

Please read the complete **Federal Register** announcement before sending inquiries or submitting proposals. Once the RFP deadline has passed, Agency staff may not discuss this competition with applicants until the proposal review process has been completed.

To Download a Solicitation Package Via Internet

The entire Solicitation Package may be downloaded from USIA's website at http://e.usia.gov/education/rfps. Please read all information before downloading.

To Receive a Solicitation Package Via FAX on Demand

The entire Solicitation Package may be requested from the Bureau's Grants Information Fax on Demand System, which is accessed by calling 202/401–7616. The Table of Contents listing available documents and order numbers should be the first order when entering the system.

Deadline for Proposals: All proposal copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on June 14, 1999. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and ten copies of the application should be sent to: U.S.

Information Agency, Ref.: *E/PY–99–48,* Office of Grants Management, E/XE, Room 568, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. USIA will transmit these files electronically to USIS posts overseas for their review, with the goal of reducing the time it takes to get posts' comments for the Agency's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs mut maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Pub. L. 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," USIA "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Proposals should reflect advancement of this goal in their program contents, to the full extent deemed feasible.

Year 2000 Compliance Requirement (Y2K Requirement)

The Year 2000 (Y2K) issue is a broad operational and accounting problem that could potentially prohibit organizations from processing information in accordance with Federal management and program specific requirements including data exchange with USIA. The inability to process information in accordance with Federal requirements could result in grantees' being required to return funds that have not been accounted for properly.

USIA therefore requires all organizations use Y2K complaint systems including hardware, software, and firmware. Systems must accurately process data and dates (calculating, comparing and sequencing) both before and after the beginning of the year 2000 and correctly adjust for leap years.

Additional information addressing the Y2K issue may be found at the General Services Administration's Office of Information Technology website at http://www.itpolicy.gsa.gov.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. All eligible proposals will be reviewed by the program office, as well as the USIA Office of East European and NIS Affairs and the USIS posts in the five countries. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of the General Counsel or by other Agency elements. Final funding decisions are at the discretion of USIA's Associate Director for Educational and Cultural Affairs. Final technical authority for assistance awards (grants or cooperative agreements) resides with the USIA Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. Quality of the program idea: Proposals should exhibit originality, substance, precision, and relevance to the Agency's goals as outlined above.

2. Program planning: Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. Ability to achieve program objectives: Objectives should be expressed in terms that are quantifiable, measurable, and achievable. Proposals should clearly demonstrate how the institution will meet the program's stated objectives.

4. Multiplier effect/impact: The proposed program should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. Support of Diversity: Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program activities, resources materials and follow-up activities).

6. Institutional Capacity: Proposed personnel and institutional resources should be adequate and appropriate to implement the program efficiently and effectively.

7. Institution's Record/Ability: Proposal should demonstrate an institutional record of relevant successful exchange activities with the NIS, as well as responsible fiscal management and full compliance with all reporting requirements for past Agency grants as determined by USIA's Office of Contracts. The Agency will consider the past performance of prior recipients and the demonstrated potential of new applicants.

8. Follow-on Activities: Proposal should provide a plan for maintaining contact with program alumni, as well as facilitating their ongoing interaction with each other.

9. Project Evaluation: Proposals should include a plan to evaluate the activity's success in terms of achieving the stated objectives, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives is recommended. Successful applicants will be expected to submit quarterly program and financial reports.

10. Cost-effectiveness: The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. Cost-sharing: Proposals should maximize cost-sharing through other private sector support, as well as institutional direct funding contributions.

12. Value to U.S.-Partner Country Relations: Proposals will be assessed by USIA's geographic area office and officers and USIS missions in the five countries in terms of the adequacy of program plan and the organization's NIS infrastructure to achieve TEA's objectives.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Pub. L. 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between

the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through legislation. Funds for this program are made available under the Foreign Operations appropriation for fiscal year 1999.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by the Agency that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the Government. The Agency reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal USIA procedures.

Dated: May 3, 1999.

Judith S. Siegel,

Deputy Associate Director for Educational and Cultural Affairs.

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Part II

Environmental Protection Agency

40 CFR Parts 141, 142, and 143
National Primary Drinking Water Regulations: Public Notification Rule; Proposed Rule
Public Notification Handbook—Draft for Comment; Notice

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141, 142, and 143

[FRL–6334–8]

RIN 2040–AD06

National Primary Drinking Water Regulations: Public Notification Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revise the general public notification regulations for public water systems to implement the public notification requirements of the 1996 Safe Drinking Water Act (SDWA) amendments. The regulations set the requirements that public water systems must follow regarding the form, manner, frequency, and content of the public notice. Public notice of violations is an integral part of the public health protection and consumer right-to-know provisions of the 1996 SDWA amendments. The public notification requirements apply to owners and operators of public water systems which: fail to comply with the requirements of the National Primary Drinking Water Regulations (NPDWR); have a variance or exemption from the drinking water regulations; or are facing other situations posing risk to public health.

In addition, EPA is proposing to revise the State implementation regulations allowing a State, by rule, to establish alternative public notification requirements with respect to the form and content of the notice. Finally, EPA is proposing to consolidate in a single subpart of the Code of Federal Regulations (CFR) all the public notification requirements for public water systems.

DATES: Written comments on this proposed rule must be received by EPA on or before July 12, 1999. EPA will hold two public meetings on the proposal:

1. May 26, 1999, 9:00 a.m., Madison, Wisconsin.
2. June 3, 1999, 10:00 a.m., Washington, D.C.

ADDRESSES: Please send written comments on this proposed rule to the Public Notification Rule Comment Clerk (docket #W–98–19), Water Docket (MC–4101); U.S. Environmental Protection Agency; 401 M Street, S.W., Washington, DC, 20460. Comments may be hand-delivered to the Water Docket, U.S. Environmental Protection Agency; 401 M Street, S.W., Room EB 57; Washington, D.C., 20460.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to ow-docket@epamail.epa.gov. Electronic comments must be submitted as a WP 5/6/7/8 file or an ASCII file, avoiding the use of special characters and form and encryption. Electronic comments must be identified by the docket number (W–98–19). Comments and data will also be accepted on disks in WP 5/6/7/8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The public meetings will take place in the following locations: Madison, Wisconsin—Best Western Inn at the Park; 22 S. Carroll Street; Madison, Wisconsin 53703. Washington, D.C.—U.S. EPA Waterside Mall; North Conference Center Room 1; 401 M Street, S.W.; Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791 for general information about the public notification regulations and to register for the public meetings and request copies of this document. For technical inquiries, contact Carl B. Reeverts at (202) 260–7273.

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Regulated Entities. Entities potentially regulated by this action are public water systems (PWS). The following table provides examples of the regulated entities under this rule. A public water system, as defined by section 1401 of SDWA, is "a system for the provision of

water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals." EPA defines "regularly served" as sixty or more days per year. EPA has an inventory totaling over 170,000 public water systems nationwide.

TABLE OF REGULATED ENTITIES

Category	Examples of regulated entities
State/Local/Tribal governments	Publicly-owned PWSs, such as municipalities; county governments, water districts, water and sewer authorities, state governments, and other publicly-owned entities that deliver drinking water as an adjunct to their primary business (e.g., schools, State parks, roadside rest stops).
Industry	Privately-owned PWSs, such as private utilities, homeowner associations, and other privately-owned entities that deliver drinking water as an adjunct to their primary business (e.g., trailer parks, factories, retirement homes, day care centers).
Federal government	Federally-owned PWSs, such as water systems on military bases.

The table is not intended to be exhaustive but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in this table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 141.201 of the rule. If you have questions regarding the applicability of this section to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Additional Information for Commenters. Please send an original and three copies of your comments and enclosures (including references) to Public Notification Rule (docket #W–98–19) Comment Clerk, Water Docket (MC 4101), U.S. EPA, 401 M Street, S.W.; Washington, D.C. 20460. Comments must be received or postmarked by midnight July 12, 1999.

To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that comments cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Comments should use a separate paragraph for each issue discussed. The record for this rulemaking has been established under docket number W–98–19, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, at the Water Docket, EB 57, U.S. EPA Headquarters, 401 M Street, S.W., Washington, D.C. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Consumer Right-to-Know Provisions in the Safe Drinking Water Act. The 1996 amendments to the Safe Drinking Water Act (SDWA) contain extensive provisions for consumer involvement and right-to-know that herald a new era of public participation in drinking water protection. These provisions are founded on the principle that consumers have a right to know what is in their drinking water and where it comes from before they turn on the tap. With the information provided in these provisions, consumers will be better able to make health decisions for themselves and their families.

The public notification requirement is one of six interrelated provisions now included in the SDWA. The purpose of public notification is to alert persons served by public water systems that a drinking water standard has been violated and to provide information quickly to enable consumers to take precautions to protect their health. The public notification provision was included in the original SDWA, enacted in 1974. The existing regulations are being revised here to address revisions in the 1996 SDWA amendments.

Five other right-to-know provisions were added to the SDWA through the 1996 SDWA amendments.

- Community water systems are now required to prepare and provide to their customers annual Consumer Confidence Reports (CCR) on the quality of the water delivered by the systems. The CCR is the centerpiece of the public right-to-know provisions in the SDWA. The information contained in these reports can raise consumers' awareness of where their water comes from, show them the steps that are necessary to deliver safe drinking water to their homes, and educate them about the importance of source water protection for assuring safe drinking water. The CCR and the public notification rule are interrelated: an annual summary of violations occurring during the year is one of the elements of the CCR. EPA's regulation requiring the annual CCR was promulgated on August 19, 1998 (40 CFR part 141, Subpart O; 63 *FR* 44511). All community water systems must complete the first CCR by October, 1999.
- Primacy agencies are required to prepare and release an annual report listing violations of national primary drinking water regulations (NPDWR) which occurred in the last year in the public water systems within their jurisdictions. EPA is also required to issue an annual report which summarizes and evaluates the State reports and makes recommendations concerning the resources needed to improve compliance with the SDWA. The first State violation reports were released on January 1, 1998. EPA's first report was released in July, 1998.
- Primacy States are required to make completed source water assessments available to the public. States are required under the 1996 SDWA amendments to assess the condition of every public water supply within the State, including the boundaries of the source of that water supply and contamination threats within those boundaries. The source water assessments are to be completed by the States for all public water systems by 2003.
- EPA is required to develop and make available a national contaminant occurrence database that will provide information on the occurrence of both regulated and unregulated contaminants in public water systems. This information will be made available to the public through the Internet. The initial version of the national contaminant occurrence database is scheduled for release in August, 1999.
- Primacy agencies are required to notify the public of proposed decisions to allow a variance to the federal drinking water standards involving their public water system. Public water systems serving 10,000 or fewer persons that cannot meet the requirements of EPA national primary drinking water regulations (NPDWRs), using technology identified in the NPDWR, may apply for a variance to use an alternate technology

to meet the regulation. Consumers served by that water system will be provided an opportunity to comment on or object to the variance.

All of these public right-to-know provisions are based on the belief that accountability to the public and the understanding and support of the public will be vital to address threats to drinking water quality in the years ahead. The provisions provide unprecedented opportunities for the public to participate in decisions related to the protection of their water supplies. If the public uses the opportunities, it can ensure that the choices made—particularly by EPA and the States, but also by water systems—respond to the public's needs and concerns within the constraints of the SDWA.

I. Statutory Authority

Section 114 of the Safe Drinking Water Act Amendments of 1996 (Public Law 104–182), enacted August 6, 1996, amended Section 1414(c) of the Act (42 U.S.C. 300g–3(c)). Sections 1414 (c)(1) and (c)(2) were significantly revised and require EPA to amend the existing public notification regulations. The amended rules are intended to give consumers more accurate and timely information on violations, taking into account the seriousness of any potential adverse health effects that may be involved. There is no deadline for promulgating the revised public notification rule, but EPA intends to complete this rulemaking by the end of 1999 to allow States and the regulated community to coordinate public notification implementation with implementation of the Consumer Confidence Report.

The public notification (PN) provisions were part of the original SDWA in 1974 and were subsequently modified in the 1986 SDWA amendments. The public notification regulations currently in place were promulgated in 1987 and became effective in 1989 (40 CFR 141.32). The existing rule remains in place until the new rule is promulgated.

SDWA Section 1414(c)(1) establishes who must give public notice, under what circumstances a notice must be given, and who must receive the notice. Section 1414(c)(1)(A) requires that all public water systems give notice to all persons served of any failure to comply with any national primary drinking water regulations (NPDWR), including any required monitoring. Section 1414(c)(1)(B) further requires a public water system to provide a notice when it is operating under a variance or exemption, and when a water system fails to comply with the requirements of a variance or exemption. Section 1414(c)(1)(C) authorizes EPA, at the Administrator's discretion, to require public water systems to provide notice of the concentration level of any unregulated contaminant monitored under EPA regulations. Except for the addition of paragraph (C) of Section 1414(c)(1), these requirements are unchanged from the previous SDWA.

Section 1414(c)(2) sets the specific requirements for the form, manner, and frequency of the notice. Section 1414(c)(2)(A) requires EPA to issue regulations, after consultation with the States, that prescribe the detailed public notification requirements. The regulations must provide for different frequencies of notices based on the persistence of the violations and the seriousness of any potential adverse health effects that may be involved. Except for now requiring EPA to consult with the States prior to promulgating the revised regulations, the general directions to EPA for issuing regulations are unchanged from the previous SDWA.

Section 1414(c)(2)(B) enables States, at their option, to establish alternate requirements with respect to the form and content of the public notice, as long as the alternative State program provides the same type and amount of information as required under the EPA regulations. This Section was added with the 1996 amendments.

Section 1414(c)(2)(C) directs EPA to issue regulations which require public water systems to distribute a notice within 24 hours to all persons served for violations with potential to have serious adverse effects on human health from short-term exposure. The public water system is also required to send the same notice to the primacy agency and to consult with the primacy agency within the same 24-hour period on any additional public notice requirements. This section is a new statutory requirement.

Section 1414(c)(2)(D) directs that EPA's regulations require public water systems to provide written notice to each person served for each violation not covered under Section 1414(c)(2)(C). The Section specifies that the notice may be: (1) in the first bill, if any, after the violation; (2) in an annual report issued no later than one year after the violation; or (3) by mail or direct delivery as soon as practicable, but no later than one year after the violation. This section significantly revises and simplifies the previous statutory requirements on the form, manner, and timing of the notice.

Section 1414(c)(2)(E) allows the Administrator the option to require the public water system to give notice to persons served of the results of unregulated contaminant monitoring required by EPA under 1445(a). EPA will soon propose a revised unregulated contaminant monitoring regulation (UCMR) This section is new under the 1996 SDWA amendments.

This rule, when issued in final form, is intended to fulfill the rulemaking requirements outlined in amended sections 1414(c)(1) and 1414(c)(2).

II. GAO Report Findings and Recommendations Regarding Public Notification

In June, 1992, the General Accounting Office (GAO) issued a report entitled: "Drinking Water Consumers Often Not Well Informed of Potentially Serious Violations" (GAO/RCED–92–135). GAO found:

- Low compliance with the existing public notification requirements on the part of public water systems and limited compliance tracking and enforcement on the part of EPA and the States;
- Aspects of the requirements may be a complicating factor, especially for small systems, making it difficult to effectively communicate important information to consumers; and
- Notices tended to be too technical, provide little guidance on actions to take in response to violations, and not focus enough attention on the most serious violations.

GAO made several recommendations to improve the public notification process, including:

- Changing the regulations to focus notification on more serious violations by allowing water systems to consolidate notices for less serious violations;
- Revising the health effects language to be less technical; and
- Better oversight by EPA and the States.

EPA used the GAO findings and recommendations from this audit as one of the principal starting points in developing the proposed rule.

III. Consultation With Public Water Systems, State and Local Governments, Environmental Groups, and Public Interest Groups

Today's proposal is based on input from a broad range of stakeholders from the public and private sectors. The Agency has actively involved the States as partners in the rule development and has held a series of stakeholder meetings throughout the country to gain input and information from other groups and individuals.

First, Section 1414 (c)(2)(A) requires that EPA consult with the States before

revising the public notification regulation. Accordingly, EPA met very early in the regulatory development process with a group of States, as part of the early involvement meetings set up by the Association of State Drinking Water Administrators (ASDWA), to develop the scope of the process and identify significant issues under the new statute. States participated throughout the development process as members of the EPA regulation workgroup. EPA provided briefings to ASDWA on request several times during the past year as the development of the rule moved forward.

Second, in addition to the active involvement and consultation with the States, EPA held a series of well-attended stakeholder meetings early in the process to solicit input on the scope of the rule, issues with the current rule and how they could be corrected, and how the statutory changes should be covered in the regulation. Over a period of four months in late summer and fall of 1997, EPA held stakeholder meetings in Indianapolis, Indiana, Washington, D.C., and Seattle, Washington. The participants at these meetings ranged from State and local government officials (including water utilities) to risk communication experts and representatives of public interest groups. During this same period, meetings were also held with the Washington Drinking Water Advisory Committee, a statewide group of managers from various public and private entities, and a group of utility and State managers from several Midwestern States. Several recurring themes surfaced during these meetings:

- Public notices are extremely important to consumers; they must reach the appropriate audiences in a timely fashion to protect public health and allow consumers to make choices.
- It appears that the public notification process has not been effective (i.e., based on the results of the 1992 GAO audit and stakeholder experiences); a new regulation has to be less complex and better targeted to the seriousness of the violation to be effective.
- Public notices and their follow-up must be tailored carefully to the specific situation to be effective: it depends on the specific violation; the type and size of the water system; the affected population; and the availability of communication outlets. Therefore, any EPA regulation must be flexible enough to accommodate local situations.
- The timing and content of the public notices should be differentiated based on the severity of the violations.
- Public notices of violations should never be the centerpiece of a public water system's consumer awareness approach. EPA should actively encourage water systems to closely coordinate the public notice requirements with the Consumer Confidence Report and other longer term education strategies.

Third, EPA has begun a new initiative outside the rulemaking process, in collaboration with the States, utilities, and public interest groups, to develop a public notification handbook. The handbook will provide public notification "templates" for public water systems to help them respond quickly to the many different violation circumstances they may encounter. This initiative, which involves a series of focus group meetings with the public and others to assess effectiveness, provides "real world" experience in advance of the final rulemaking. The Handbook is not intended as an additional set of regulatory requirements, but rather as a resource that public water systems may use at their discretion to craft effective and timely notices. The draft handbook is being issued concurrently with the proposed rule. It will be announced through the **Federal Register** and copies will be mailed to stakeholders and made available through EPA's Internet home page.

Finally, EPA continues to provide information to our stakeholders on the status of the rulemaking. EPA periodically provides updates to the National Drinking Water Advisory Council and informational briefings, upon request, to other stakeholder groups.

IV. Discussion of Proposed Rule

A. Purpose and Applicability

The rule being proposed today revises the minimum requirements public water systems must meet regarding the form, manner, frequency, and content of the public notification. Public water systems must give notice to all persons served for all violations of National Primary Drinking Water Regulations (NPDWR) and for other situations posing a risk to public health from the drinking water. The term *NPDWR Violations* is used in the public notification regulations to include violations of Maximum Contaminant Level (MCL), Maximum Residual Disinfectant Level (MRDL), treatment technique (TT), monitoring, and testing procedure requirements. Public notice is not required, for example, for violation of the new Consumer Confidence Report regulation. See Table 1 and Appendix A of the proposed rule for the NPDWR violations and other situations requiring a public notice. Violations not listed in Appendix A do not require a public notice under Subpart Q.

The rule would apply to existing and new public water systems that violate a NPDWR or have other situations that pose a risk to health from the drinking water. A "public water system," as defined in 40 CFR 141.2 , is "a system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen service connections or regularly serves at least twenty-five individuals daily at least 60 days out of the year."

A public water system is either a community water system (CWS) or non-community water system (NCWS). A CWS, as defined in § 141.2, means "a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." A NCWS means "a public water system that is not a community water system."

Non-community water systems are further broken out in the drinking water regulations into transient non-community water systems (TWS) and non-transient noncommunity water systems (NTNCWS). A NTNCWS is defined by EPA under § 141.2 as "a public water system that is not a community water system and that regularly serves 25 of the same people over six months of the year." An example is a school or business that has its own water well. A TWS is defined by EPA under § 141.2 as "a noncommunity water system that does not regularly serve 25 of the same persons over six months of the year." An example is a roadside rest stop with its own water well.

For illustration purposes, Table A provides a summary of the number of public water systems, broken out by type of system, the number of these systems with violations during FY 1996, and the total number of violations during the same period. Table A shows that 46,572 of the 172,248 public water systems had one or more violations in FY 1996. Overall, the 46,572 public water systems with violations committed 243,604 violations in FY 1996. The overwhelming majority of these violations were failure to monitor according to the regulations. Although not all violations require a separate public notice, each violation requires the public water system to comply with the public notification requirements.

TABLE A.—NUMBER OF WATER SYSTEMS REGULATED UNDER PUBLIC NOTIFICATION RULE IN FY 1996

Type of water system	Number of systems	Systems with violations	Violations
1. Community Water Systems (CWS)	55,427	14,620	126,853
2. Nontransient Noncommunity Water Systems (NTNCWS)	20,237	6,227	51,796
3. Transient Noncommunity Water Systems (TWS)	96,584	25,725	57,565
Public Water Systems (PWS)	172,248	46,572	236,214

Source: PWS Inventory and Compliance Statistics: FY 1992–FY 1996.

As shown in Table A, 55,427 of the regulated public water systems are CWSs. CWSs must comply with all the NPDWRs in effect, currently covering 80 separate contaminants. CWSs serve residential populations and range from large municipal systems that serve millions of persons to small systems, which serve fewer than 100 persons. CWSs can be further categorized as publicly-owned systems, privately-owned systems, and systems which provide water as an ancillary function of their principal purpose. In FY 1996, 14,620 CWSs committed 126,853 violations. Approximately 80 percent of community water systems serve fewer than 3,300 people.

Of the regulated public water systems, 20,237 are NTNCWS. Virtually all NTNCWSs provide water as an ancillary function of their principal purpose (for example, schools, day-care facilities, factories). NTNCWSs must comply with the same national primary drinking water regulations as community water systems. During FY 1996, 6,227 NTNCWSs committed 51,796 violations. Approximately 99 percent of NTNCWSs serve fewer than 3,300 people.

The balance of the regulated public water systems (96,584) are TWS. Virtually all TWSs provide water as an ancillary function of their principal purpose (for example, highway rest stops, gas stations, state parks). TWSs must comply only with existing national primary drinking water regulations where short-term violations may pose a health threat—total coliform, nitrate, nitrite, combined nitrate+nitrite, and the surface water treatment rule. In FY 1996, 25,725 TWSs committed 57,565 violations. Over 99 percent of TWSs serve fewer than 3,300 people.

B. Effective Dates and Rationale

EPA is proposing that the revised public notification rule become effective no later than two years after the final rule is published in the **Federal Register** or on the date the primacy agency's revised regulation becomes effective, whichever comes first. Setting the two-year effective date matches the time period allowed for States under the primacy regulations (40 CFR Part 142, Subpart B) to adopt new or revised National Primary Drinking Water Regulations (NPDWRs). As the public notification rule is not an NPDWR, EPA has discretion to set an effective date for the revised rule. EPA believes it is appropriate to set the effective date consistent with the basic two-year time period allowed States to adopt the revised regulation. This coordinated phase-in of the new public notification requirements in each State will be more efficient and will avoid the potential confusion of having different State and EPA requirements in effect at the same time.

EPA is proposing to make the rule effective in a State as soon as the State's revised regulation is effective under its primacy program. In practical terms, this will mean that the new requirements will go into effect at different times nation-wide based on the speed of the State adoption of the new requirements. Where EPA directly implements the program (such as in Wyoming and Washington, D.C., and on Indian lands), the revised rule will go into effect 90 days after EPA publication of the final rule. Regardless of the primacy situation, the rule would go into effect after two years for all water systems, even in those States that request and are granted an extension to adopt the revised regulation beyond the basic two-year time period.

The revised public notification rule will apply to new and existing violations of NPDWRs, variances or exemptions granted by a primacy agency, and violations of conditions of an existing variance or exemption after the effective date of this rule. However, EPA does not intend to require that public water systems provide initial public notices under the new rule for violations and situations where the initial public notice has already been given under the regulations in place at the time. Unless the primacy agency makes a different determination on a case-by-case basis, the revised rule will apply to repeat notices for existing violations or any public notice requirements applying subsequent to the public notices given under the old rule.

EPA considered a number of options on the effective date of the rule before settling on the two-year time frame. EPA believes that the new regulation, consistent with the revised statute, will make the public notification process simpler, more efficient, and better targeted than the current regulation. In this respect, the sooner the new rule goes into effect, the more effective the public notification process will be. However, because the proposed rule replaces a State program already in operation, applying the new rule to public water systems well in advance of the change in the State program would be confusing to the regulated community and the public. It could result in two sets of public notice requirements (i.e., the current State rule and the new EPA rule) being in effect for the public water systems during this transition period. Because the intent is still to replace the current regulation with the new streamlined rule as soon as possible, comments are requested on the proposed effective date. Suggestions on other options to put the new regulations into effect sooner are welcome.

C. Summary of Changes to Current Public Notification Requirements

The proposed rule is substantially different from the public notification regulation currently in effect. Table B is a summary of the major differences between the current regulation and the proposed rule.

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN PROPOSED RULE AND EXISTING RULE

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Proposed rule (part 141, subpart Q)
1414(c)(1) Each owner or operator of a PWS shall give notice of NPDWR violations, levels of unregulated contaminants, and existence of a variance or exemption.	(§ 141.32(a) and (b)) Owner or operators of PWSs must notify for the following violations/situations: Maximum contaminant levels (MCL) Treatment technique Testing procedure Monitoring Operation under a variance or exemption Noncompliance with variance or exemption schedule	(§§ 141.201(a) and 141.202(a)) Includes violations from current rule and adds broader definition of waterborne disease outbreak, adds new IESWTR and DBP standards, moves fluoride SMCL and unregulated contaminant monitoring public notices from other parts of the regulations. Adds a new Appendix A to the rule listing all violations and situations where public notification is required.
1414(c)(2)(A) Manner, frequency, and form are prescribed based on seriousness and frequency of violations.	(§§ 141.32 (a)(1)(iii) and 141.32(a) and (b)) There is a three-tier system, although tiers are not named. Public notices are divided into three tiers: violations of MCLs that may pose an acute risk to human health; MCLs, treatment technique, and variance or exemption schedule violations; and other violations (including monitoring) and operation under a variance or exemption.	(§ 141.201(b)) Tiers are defined based on seriousness of the violation or situation and of potential health effects, and all violations or situations are assigned to a tier (Appendix A) *Tier 1* notice for violations or situations with significant potential to have serious adverse effects on human health as a result of short-term exposure; *Tier 2* notice for all other violations or situations with potential to have serious adverse effects on human health; and *Tier 3* notice for all other violations and situations not included in Tier 1 and Tier 2.
1414(c)(2)(C)(iii) Notice must be provided to Administrator or primacy agency	(§ 141.31(d)) System must provide a copy of the notice to the State within 10 days.	(§ 141.31(d)) Revised to require PWS to submit a certification and a copy of the notice to the primacy agency within 10 days. (§§ 141.202(b) and 141.201(c)) New section added to require consultation with primacy agency within 24 hours for violations or situations requiring a Tier 1 notice.
1414(c)(2)(C)(1) For violations with potential to have serious adverse effects on human health as a result of short-term exposure, notice must be distributed as soon as practicable but no later than 24 hours after the occurrence of the violation	(§ 141.32(a)(1)(iii)(A)–(D) *Acute violations* include (1) Any violations specified by State (2) Nitrate/nitrite MCLs (3) Fecal coliform/ E. coli (4) Waterborne disease outbreak in unfiltered systems subject to Surface Water Treatment Rule	(§ 141.202) *Tier 1 notice*— Violations and situations include those defined as acute in the current rule, plus: an expanded definition of waterborne disease outbreak to include all water systems; chlorine dioxide MRDL violation under new DBP rule where samples taken in the distribution system exceed the standard or where samples are not taken in the distribution system; and violation of the testing procedures to determine if fecal coliform is present after the presence of total coliform in the distribution system is confirmed.
	Provide copy of notice to radio and TV stations within 72 hours, or by posting or hand delivery within 72 hours. Posting must continue as long as the violation exists.	Timing revised to require notice within 24 hours; must be by electronic media, posting, or hand delivery, plus any additional methods necessary to reach all persons served.
	Additional notices: by newspaper within 14 days or posting or hand delivery if no newspaper is available; by mail within 45 days (may be waived if state determines violation has been corrected); and repeat notice every three months thereafter.	Revised to not require additional notices for same violation, deferring instead to the primacy agency to set additional requirements (including additional notices) on a case-by-case basis.
1414(c)(2)(D)(1) Regulations shall specify notification procedures for violations other than Tier 1; notice shall be in written form	(§ 141.32)(a)) For MCL, treatment technique, and variance or exemption schedule violations.	(§ 141.203) *Tier 2 notice* includes those described in § 141.32(a) of the current rule, plus the new standards under the IESWTR and DBP rules, and serious and persistent monitoring and testing procedure violations, as determined by the primacy agency .

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN PROPOSED RULE AND EXISTING RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Proposed rule (part 141, subpart Q)
	By newspaper within 14 days or by posting or hand delivery if no newspaper is available.	Revised to require notice within 30 days unless the primacy agency allows an extension of up to three months for specific circumstances. Unless primacy agency directs otherwise, CWS must use mail or direct delivery, and other methods reasonably calculated to reach persons served. NCWS must use posting, direct delivery, or mail, and other methods reasonably calculated to reach persons served.
	Additional notices: by mail within 45 days (may be waived if state determines violation has been corrected), and repeat notice every three months thereafter by mail or hand delivery.	The initial notice does not require multiple methods of delivery unless it is needed to reach persons served. Repeat notice required every three months where violation persists, unless the primacy agency determines less frequent repeat notice (no less frequent than annually) is warranted because of specific circumstances. Method of delivery for repeat notice is not specified.
	(§ 141.32(b) For monitoring and testing procedure violations, and operation under variance or exemption.	(§ 141.204) The violations and situations requiring a *Tier 3 notice* are the same as those described in § 141.32(b) of current rule, with the addition of a notice requirement for "other violations" determined by the primacy agency to require a Tier 3 notice.
	By newspaper within three months of the violation or the granting of variance or exemption, or by hand delivery or posting if no newspaper is available. State may allow less frequent public notice (up to 1 year) for minor monitoring violations.	Revised to require notice within one year. Unless primacy agency directs otherwise, CWS must use mail or direct delivery, and other methods reasonably calculated to reach persons served. NCWS must use posting, direct delivery, or mail, and other methods reasonably calculated to reach persons served. CCR or other annual reports may be used, as long as notice in CCR meets PN requirements.
	Repeat notice every three months thereafter by mail or hand delivery.	Repeat notice annually; no method specified.
Notice to new billing units (not in statute)	(§ 141.32(c)) Community water system must give a copy of the most recent public notice for any outstanding violation of any MCL, any treatment technique requirement, or any V&E schedule.	(§ 141.206) Revised to require notice for any outstanding violation, including monitoring and testing procedure violations. Revised to require non-community systems to keep notice posted for as long as violation exists, even if notice was initially hand-delivered or otherwise distributed.
1414(c)(2)(C)(ii) and 1414(c)(2)(D)(ii). Content of notices	(§ 141.32(d)) Each notice must provide a clear explanation of the violation, potential health effects, population at risk, steps being taken to correct violation, telephone number of the owner, operator, or designee of the public water system, necessity for seeking alternative water supplies, if any, and any preventive measures consumers should take until the violation is corrected.	(§ 141.205) Adds "when violation was found" and "when system expects to return to compliance" to content elements. New requirement to include "contaminant level". Adds new element requiring standard language asking bill paying customers to provide copies of notice to other persons served who may not have received the notice directly from the PWS. Also, adds minimum content elements for notices of operation under variance or exemption, which parallels CCR requirements. No longer requires health effects language for operation under a variance or exemption.
	(141.32(e)) Systems must include standard health effects language for MCL, treatment technique, variance or exemption schedule violations, and operation under a variance or exemption.	(New Appendix B) Revises standard health effects language. Adds standard language for monitoring and testing procedure violations.
Special notice for exceedance of Fluoride Secondary Maximum Contaminant Level (SMCL) (not in statute)	(§ 141.32(f)) Notice of SMCL exceedances required within 12 mos.; shall contain language in § 143.5(b).	(§ 141.208) Moved to new Subpart Q, mandatory language is simplified

TABLE B.—SUMMARY OF DIFFERENCES BETWEEN PROPOSED RULE AND EXISTING RULE—Continued

Statutory authority (SDWA, as amended in 1996)	Current rule (§ 141.32)	Proposed rule (part 141, subpart Q)
Public notice by primacy agency (not in statute)	(§ 141.32(g)) The State may give notice to the public on behalf the public water system if the State complies with the requirements of § 141.32. However, the owner or operator of the public water system remains legally responsible.	(§ 141.209) No change.
1414(c)(2)(E) Administrator may require notice of levels of unregulated contaminants monitored under section 1445(a)	(§ 141.35(d)) Written notice of availability of results within three months after system receives results (surface water systems only need to notify after the first quarter of monitoring).	(§ 141.207) Revised to require notice of availability of results within 12 months, following Tier 3 delivery requirements; deletes § 141.35(d).
1414(c)(2)(B) States may establish alternative notification requirements	(§ 142.10(a)) Authority to require public water systems to give public notice that is no less stringent than the EPA requirements in §§ 141.32 and 142.16(a).	(§ 142.10(a)) No change.
	(§ 142.16(a)) If the state chooses to decrease notice frequency for minor monitoring violations it must submit to EPA the criteria used to decide the decreased frequency and which violations are minor, and it must submit the new notice requirements.	(§ 142.16(a)) Deletes current requirement. Reaffirms under § 142.16(a)(1) the two year deadline (with possible 2-year extension) for State primacy program revision. New 142.16(a)(2) added to require State to include in primacy program enforceable requirements and procedures when State opts to use its discretion to deviate from EPA rule. New 142.16(a)(3) added to allow primacy agencies to establish alternative public notification requirements with respect to form and content of notice, consistent with 1414(c)(2) (B) of 1996 SDWA amendments.

D. Rationale for Format of Proposed Rule

EPA is proposing a new "plain language" format for the revised public notification regulation, consistent with the requirements outlined in the June 1, 1998 memorandum sent by President Clinton to all Federal agencies and the ongoing Agency initiative to take steps to improve both the clarity and comprehension of regulatory language. The difficulty in understanding federal regulations has been a longstanding criticism of federal agencies, including EPA. The current public notification rule, in particular, has been criticized by GAO and others as being too complex and confusing to implement. This criticism was viewed by GAO in its 1992 report as one of the reasons the public notification process is ineffective.

The proposed rule is structured in a question and answer format. Where possible, tables were inserted in the rule to make the various requirements easier to understand. In addition, EPA is proposing that an appendix be added to list the acronyms used in the public notification regulation. (See Appendix C to 40 CFR Part 141, Subpart Q.)

EPA welcomes comments on the new format and is soliciting ideas on ways to make the public notification regulation more readable by the regulated community:

- Have we organized the material to suit your needs?
- Are the requirements in the rule clearly stated?
- Does the rule contain technical language or jargon that isn't clear?
- Would a different format (grouping and ordering of sections, use of headings, paraphrasing) make the rule easier to understand?
- Would more (or shorter) sections be better?
- Could we improve clarity by adding tables, lists, or diagrams?
- What else could we do to make the rule easier to understand?

E. General Provisions of Proposed Rule (§ 141.201)

Today's proposal would replace the existing public notification regulation with an entirely new subpart (40 CFR Part 141, Subpart Q), which incorporates the new provisions under sections 1414(c)(1) and (c)(2) of the SDWA, as amended in 1996, and would streamline the requirements to more effectively meet the objectives of the public notification process. Informing consumers of violations has been a key feature of the SDWA since the statute was first enacted in 1974.

The primary purpose of public notification is to inform consumers of any potential adverse health effects related to the drinking water provided to them and of the steps they can take to minimize the impact. Public notification also addresses the fundamental issue of consumer-right-to-know, providing information on a timely basis that allows consumers to make informed choices about use of their drinking water. The statute requires EPA to issue regulations prescribing the manner, frequency, form, and content for giving public notice. The proposed rule would revise the existing public notification requirements:

- To focus the public notification on the violations posing the greatest potential risk to public health,
- To give greater latitude to States to develop alternative programs to meet their unique needs;
- To provide greater flexibility to public water systems to tailor distribution of the notice to best reach the affected population; and
- To encourage water systems to use the annual Consumer Confidence Report or other annual reporting mechanism to give the initial public notice for less serious violations.

These changes to the regulation are intended to better meet the purposes of the public notification process to better

inform consumers about drinking water issues affecting their health.

1. *Who must give public notice?* EPA is proposing to amend the current regulatory language to explicitly require public notice for "other situations determined by the primacy agency to have potential of serious adverse effects on human health." (See Table 1 of 40 CFR 141.201 of the proposed rule.) Other than this addition, EPA is proposing to maintain the current regulatory requirements defining who must give public notice and in what situations it must be given. Public water systems are required under the proposed rule, as now, to give public notice to persons served by the system for any failure to comply with a National Primary Drinking Water Regulation (NPDWR), including any monitoring and testing procedure requirements, and where the water system is operating under a variance or exemption to the NPDWR. The proposal will include the public notification provisions for the new Disinfection Byproduct (DBP) and Interim Enhanced Surface Water Treatment Rule (IESWTR) regulations which were published on December 16, 1998 (63 FR 69389 and 69477).

The proposed new language to this section enables the primacy agency to require public notice for other situations not explicitly listed under Sections 1414(c)(1) and (c)(2) of the SDWA. EPA recognizes that Sections 1414(c)(1) and (c)(2) limits public notification requirements to violations of NPDWRs or required monitoring, variances and exemptions, and unregulated contaminant monitoring results. Thus, the situations identified for public notice in Sections 1414(c)(1) and (2) are limited to violations or notification concerning existing drinking water regulations. However, in some cases, such as in the Milwaukee cryptosporidium outbreak, dangerous situations may occur without a violation of existing drinking water requirements. In these cases as well, public notification may be critical to informing the public of the need to take immediate steps to avoid health risks. EPA is proposing to add such situations to the list of required public notices in this rule. The Agency believes that Section 1445(a) of the SDWA provides ample additional authority for requiring public notification of situations other than those listed in Section 1414(c)(1) and (c)(2) that are deemed by EPA in its regulations or by the primacy agency on a case-by-case basis to present a potential danger to drinking water consumers.

To improve the clarity and understanding of when a public notice is required, the proposed rule also consolidates into a new subpart (Part 141, Subpart Q) other special public notice requirements (i.e., exceedance of the fluoride secondary MCL; the notice of the availability of the results of unregulated contaminant monitoring data). A list of all violations and situations requiring a public notice, including the specific regulatory citation, is presented in a detailed Appendix A attached to the rule. Appendix A is intended to be updated as new NPDWRs are promulgated or when other situations arise where a public notice is required. A public notice is only required for the violations or other situations listed in Appendix A (unless the primacy agency requires notice for other situations.).

EPA is asking for comment on the proposed addition of explicit regulatory language enabling the primacy agency (including EPA in its regulations) to require public notification for other situations it believes have the potential for serious health risk. EPA is also asking for comment on its proposal to present in tabular form all the situations requiring a public notice and its plans to update Appendix A as new rules are promulgated.

2. What type of public notice is required for each situation? EPA is proposing to divide the public notice requirements into three tiers:

- *Tier 1 Public Notice,* for violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure;
- *Tier 2 Public Notice,* for other violations and situations with potential to have serious adverse effects on human health; and
- *Tier 3 Public Notice,* for all other violations and situations requiring a public notice not included in Tier 1 and Tier 2.

The form, manner, and frequency of the public notice is determined by the tier the violation or situation is assigned. Appendix A assigns each violation and situation to one of the three tiers. The specific requirements for the public notice in each tier are defined under §§ 141.202, 141.203, and 141.204 of this proposed rule.

The proposed three-tier approach to public notification will be consistent with the intent of the new public notification provisions in the 1996 SDWA amendments. Section 1414(c)(2)(A) directs the Administrator to issue regulations that provide for different frequencies of notice based on the differences between intermittent and persistent violations and the seriousness of any potential adverse health effects. Section 1414(c)(2)(C) sets very specific requirements for violations with potential to have serious adverse effects on human health from short-term exposure. This includes a new requirement that such notices be distributed to all persons served no later than 24 hours after the occurrence of the violation. Section 1414(c)(2)(D) requires EPA to define in its regulations the notification procedures for all violations not included under subparagraph (C). This section requires that such procedures specify that the water system provide written notice to each person served in either: (1) the first bill prepared, if any, after the violation; (2) in an annual report issued no later than one year after the violation; or (3) by mail or direct delivery as soon as practicable, but no later than one year after the violation.

EPA was guided by several objectives in developing and evaluating options to meet the provisions under Sections 1414(c)(1) and (c)(2) of the 1996 SDWA amendments. The proposed regulation reflects these baseline objectives:

- First, to be effective in meeting the statutory mandate under 1414(c)(2)(C) to get the notice out no later than 24 hours for the most serious violations affecting health from short-term exposure, the public notice regulations had to focus sharply on a very limited set of violations. EPA believes that requiring the 24-hour notice for too many violations would be confusing, complex, and more difficult to implement. It might also dilute the effectiveness of the 24-hour notices if customers receive too many of them. Therefore, EPA decided in its proposal to limit the requirements for 24-hour notices to those violations with very strong evidence of serious short-term health risks. Other violations and situations that may require a 24-hour notice on a case-by-case basis would be handled by the primacy agency. EPA recognizes that there are other violations with possible short-term health effects which have not been included in Tier 1. But EPA believes these violations do not routinely require the same urgency as those violations where the evidence of serious short-term risk to health is strong. Examples of such violations include Total Coliform Rule (TCR) violations where no fecal coliform is present and surface water treatment rule treatment technique violations.
- Second, to address the notice requirements for all the other violations, the public notice regulation has to take into account the differences in risk between the different types of

violations. A sharp separation is clear between the violations that may pose a direct risk due to exposure to harmful contaminants (either from short-term or chronic exposure) and the vast majority of violations which pose no known health risk in themselves. Examples that may pose a direct health risk are:

—Violations of the maximum contaminant levels (MCLs) and maximum residual disinfectant levels (MRDLs), because the contaminant was actually found in the drinking water at harmful levels; and

—Violations of treatment technique (TT) requirements, because such a violation indicates a deficiency in water system treatment or operations that increases the likelihood that contaminants may be in the drinking water.

Violations that are not directly related to health risks include the majority of the monitoring and testing procedure violations, which are onetime violations resolved during the next monitoring period. The purposes of the public notice for the two groups are different. Notices for MCL, MRDL, and TT violations are necessary to inform consumers where the probability of direct exposure to harmful contaminants is elevated, to give them an opportunity to take action to avoid continued exposure. Timing of the notice is important. Notices for monitoring violations in most cases are necessary to meet a consumer right-to-know objective, separate from the known or potential health risks from the drinking water. An annual summary for these violations is adequate.

• Third, to be effective, the public notice regulation has to be easy to understand, be simple to implement in practice, and must provide States and water systems enough flexibility to tailor their public notices to the specific local situation. EPA is well aware that the complexity of the current public notification regulations is a contributing factor in the inability of public water systems to meet the legislative objectives.

EPA considered a number of options for meeting these objectives. Other than the proposed three-tier option, the option most seriously considered was to define a two-tier public notice structure, separating violations with potential short-term health effects from all other violations. The first tier would incorporate the provisions under 1414(c)(2)(C). The regulations for the second tier would either prescribe the form, manner, and frequency of the notice or simply incorporate the statutory language under 1414(c)(2)(D). This option would allow the primacy agencies to define additional notice requirements to separate the violations posing potential health risks from other administrative and technical violations. Where primacy agencies had no alternative program, the discretion on the notice requirements for these other violations would be left to the individual water systems. The advantages of such a two-tier public notice structure are that it would make the federal requirement simple for water systems to understand, would leave greater flexibility to the States to tailor the public notice requirements to their specific needs, and would probably result in fewer separate notices for violations in the lower tier. This might lead customers to take notices for violations in the upper tier more seriously.

However, EPA is not proposing this two-tier structure. EPA and most of the stakeholders EPA consulted believe there are compelling reasons for the EPA regulation to differentiate among the lower tier violations based on the seriousness and urgency of the risk. These violations span a wide range of potential health risks. A "middle-tier" public notice requirement between the 24-hour notice and the annual notice is appropriate for those lower-tier violations and situations that may have the potential for serious adverse effects on human health, but are not significant or urgent enough to require an emergency notice. EPA believes a three-tier system of public notification would:

• Effectively separates the form, manner, content, and frequency of public notice based on the seriousness of any potential adverse health effects (as mandated under 1414(c)(2)(A));

• Meets the clear objectives and purposes of public notification;

• Be simple and straightforward to implement; and

• Meets the requirements of the statute.

EPA requests comment on whether the two- or three-tiered structure would be more appropriate for the final EPA regulation and what the advantages and disadvantages of the preferred tier structure would be.

3. Who must be notified? The SDWA requires that public notice be provided to "the persons served by the system." (SDWA, Section 1414(c)(1)). Reaching the persons served may pose a challenge to some water systems. Some consumers (such as apartment dwellers, other renters, and condominium residents) may not be the persons paying the water bill. Thus, the form and manner of the public notice necessary to reach the persons served is unique to the local situation. The proposed rule will require water systems to provide the notice in a form and manner that is reasonably calculated to get the information to all persons served in the required time period. The minimum methods to satisfy this requirement are specified in the proposal for each public notification tier. The proposed rule would also retain the requirement that copies of the public notice be sent to the primacy agency within 10 days, in accordance with the requirements proposed in 40 CFR 141.31(d).

F. Form, Manner, and Frequency of the Tier 1 Public Notice: Violations With Significant Potential To Have Serious Adverse Effects on Human Health as a Result of Short-Term Exposure (§ 141.202)

Today's rule proposes to define the form, manner, and frequency of a Tier 1 public notice and to require that public water systems use a Tier 1 public notice.

1. Tier 1 Violations and Situations

The proposed rule would require a Tier 1 public notice for the following violation categories and other situations:

• Violation of the MCL for total coliform, when fecal coliform or *E. coli* are present in the water distribution system; or failure to test for fecal coliforms or *E. coli* after the presence of coliform bacteria is confirmed in the water distribution system;

• Violation of the MCL for nitrate, nitrite, or combined nitrate+nitrite;

• Violation of the MRDL for chlorine dioxide, where one or more required repeat samples taken in the distribution system the following day exceed the MRDL, or when repeat samples are not taken in the distribution system;

• Occurrence of a waterborne disease outbreak, as defined in § 141.2; and

• Other violations or situations with significant potential to cause serious adverse health effects from short-term exposure, as determined by the primacy agency.

The violations and situations listed here as requiring a Tier 1 public notice all have significant potential to cause serious adverse health effects from short-term exposure to the drinking water. The list of violations requiring a Tier 1 public notice include all those defined as posing acute health effects in the current rule. In addition, three new violations and situations are being proposed today for Tier 1 public notice:

• First, a Tier 1 notice would be required for violations of the new chlorine dioxide standard when the violation is based on monitoring results in the distribution system. This was

added to the list of violations requiring a Tier 1 notice to be consistent with the public notification requirements included with the disinfection byproducts regulation published on December 16, 1998 (63 FR 69389). Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposure. Systems that do not monitor for chlorine dioxide in the distribution system after exceeding the MRDL in entry point monitoring also must issue a Tier 1 notice, to remain in effect until they are able to demonstrate that chlorine dioxide is not present at these harmful levels in the distribution system.

• Second, the Tier 1 coverage for waterborne disease outbreaks would expand the definition in the current rule beyond violations of the SWTR for unfiltered systems. The proposed rule broadens this definition to include waterborne disease outbreaks from all public water systems that meet the definition in § 141.2:

Waterborne disease outbreak means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system which is deficient in treatment, as determined by the appropriate local or State agency.

Expanding the coverage to require a Tier 1 notice from any public water system linked to a waterborne disease outbreak meets the public health objectives of the public notification provision. The Agency believes that Section 1445(a) of the SDWA provides ample additional authority for requiring public notification in such situations, even where the situation is not explicitly listed as requiring public notification in Section 1414(c)(1) and (2) of the SDWA. [See discussion of this in Section IV.E.1 above.] This expansion of the Tier 1 public notification requirements was recommended and broadly supported by the stakeholders consulted during the development of the proposed rule.

• Finally, failure to test for fecal coliform once the presence of total coliform in the water distribution system is confirmed would trigger a Tier 1 public notice, to remain in effect until the system was able to demonstrate that fecal coliform or *E. coli* bacteria is no longer present. The current rule does not specifically address the public notice requirements when a PWS fails to test for fecal coliform after confirming the presence of total coliforms. EPA believes strongly that such violations pose great potential for short-term adverse health risks to consumers, because a system's failure to test for fecal coliforms in such situations may disguise a very serious drinking water quality situation. Requiring a Tier 1 public notice in such situations was widely supported by stakeholders consulted during this rulemaking.

EPA considered several options that would add or subtract from the list of violations requiring this emergency public notice. A number of violations that may have the potential to pose health risks from short-term exposure are not included in the proposed list. Specifically, violations of the Total Coliform Rule (TCR) MCL (without the presence of fecal coliform) and the Surface Water Treatment Rule (SWTR) treatment techniques are not listed in Tier 1, although they may be associated with potential health risks from short-term exposure. The vast majority of the MCL and TT violations in FY 1996 were violations of the TCR and SWTR. EPA does not believe these violations routinely require the same urgency as those violations included in Tier 1, where the potential for serious short-term risk to health is significant whenever it occurs.

EPA is proposing to limit the violations routinely requiring a Tier 1 notice to those with a significant potential for serious adverse health effects from short-term exposure. Other violations which may have a potential for adverse health risk from short-term exposure, but where such risk is not routinely significant, would be included in the Tier 2 list. EPA believes focusing the proposed 24-hour notice requirement on the more limited set of violations will increase the effectiveness of the Tier 1 notices and lead to greater health protection. EPA recognizes that in certain situations a TCR or SWTR violation may create a significant and immediate health risk. In those situations, a 24-hour notice is necessary to immediately alert consumers to the potential risk. Because such situations are best determined on a case-by-case basis, EPA is proposing to enable primacy agencies to determine when special circumstances require 24-hour notices for situations not listed in § 141.202 of the rule.

2. Timing of the Tier 1 Public Notice (and Consultation Requirement)

The proposed rule will require that a Tier 1 public notice be provided by the public water system as soon as practicable but no later than 24 hours after the system learns of the violation. Under the proposal, the public water system would also be required to initiate consultation with the primacy agency within that same 24-hour period and comply with whatever subsequent public notification requirements are established during that consultation.

The requirement that the public water system consult with the primacy agency within the first 24 hours of discovering the violation is new in the proposed rule. The 1996 SDWA amendments, under 1414(c)(2)(C)(iii), require that a copy of the initial Tier 1 notice also be sent to the primacy agency within the same 24 hour period after the occurrence of the violation. Under 1414(c)(2)(C)(iv), the statute requires that a public water system facing a Tier 1 notice situation distribute a notice when required by the primacy agency after consultation. EPA is interpreting the statutory requirements under clause C(iii) and clause C(iv) to require that the public water system consult with the primacy agency within the first 24 hours after the violation becomes known to the water system to determine subsequent public notice requirements. EPA further interprets the statute to require the initial public notice required within the first 24 hours under 1414(c)(2)(I) to apply regardless of when the consultation with the primacy agency takes place. In contrast, the current rule sets the subsequent public notice requirements (e.g., repeat notice frequencies, form and manner of subsequent notice, etc.) in the rule itself, rather than as a result of consultation on a case-by-case basis.

The proposed rule would identify a number of elements which may be covered during the consultation, including the timing, form, manner, frequency, and content of subsequent notices and other actions reasonably calculated to ensure the notice is provided to all persons served. Additional notices may be necessary to reach other persons served who may not have seen the initial notice and to reaffirm the seriousness of the public health risk from drinking the water. EPA also believes that a supplemental notice to announce that the violation has been resolved and the risk from the drinking water has been abated is an effective way to bring closure to the emergency situation. When to require subsequent notices can best be handled by the primacy agency on a case-by-case basis in consultation with the public water system.

In summary, the timing and process established for the Tier 1 public notice in the proposed rule would be significantly different from the current rule. First, the public water system would be required to distribute the notice within 24 hours (as required under 1414(c)(2)(C)), rather than 72 hours. This is a statutory obligation for such violations under the 1996 SDWA

amendments. Second, the proposed rule would set a new requirement that the water system consult with the primacy agency to determine subsequent public notification requirements. As described earlier, EPA interprets the statute as requiring this consultation with the primacy agency.

3. Form and Manner of the Delivery of the Tier 1 Notice

The proposed rule would allow water systems some flexibility in choosing the form and manner used to distribute the notice, but it reaffirms the enforceable requirement that the form and manner of notice delivery selected by the public water system be reasonably calculated to reach all persons served within the 24 hour period. To satisfy this requirement, the proposed rule would require water systems to use, as a minimum, appropriate broadcast media, posting of the notice in conspicuous locations, and/or hand delivery to residences or businesses served by the system. In contrast, the current rule requires that the initial notice be by electronic media and subsequent notices be first in the newspaper and later on by mail. The changes in the public notification process for these emergency-type situations are expected to ensure faster public communication that is better tailored to the specific situation.

EPA is requesting comment on the Tier 1 public notification requirements, in particular the list of violations requiring such a notice, the new consultation process now proposed in lieu of more prescriptive EPA requirements, EPA's interpretation of the statute under 1414(c)(2)(C) which allows EPA to require public water systems to consult with the primacy agency, and the revised requirements for the form and manner of the Tier 1 notices.

G. Form, Manner, and Frequency of the Tier 2 Public Notice: Other Violations With Potential to Have Serious Adverse Effects on Human Health (§ 141.203)

Today's rule proposes to define the form, manner, and frequency of a Tier 2 public notice.

1. Tier 2 Violations and Situations

The proposed rule would require a Tier 2 public notice for the following violation categories and other situations:

- All violations of the MCL, MRDL, and treatment technique requirements not included in the Tier 1 notice category;
- Violations of the monitoring and testing procedure requirements where the primacy agency determines that a Tier 2 public notice is required; and
- Failure to comply with the terms and conditions of any existing variance or exemption in place.

The above list is similar to the list in the comparable section of the current rule, with two exceptions. First, the proposed rule would set the new public notice requirements for the recently published Disinfection Byproducts Rule and the Interim Enhanced Surface Water Treatment Rule (63 FR 69389 and 69477). Second, the proposed rule would allow the primacy agency, at its option, to require a Tier 2 public notice for a specific monitoring or testing procedure violation. Unless the primacy agency determines otherwise, monitoring and testing procedure violations would be reported in the annual Tier 3 notice.

EPA considered two other options that would add or subtract from the list of violations requiring a Tier 2 notice:

- The first option was to move some of the MCL or treatment technique violations into Tier 3 rather than Tier 2, with the leading candidates for Tier 3 notice being MCL violations posing chronic health risk and the Lead and Copper Rule (LCR) treatment technique violations. EPA also considered separating the LCR treatment technique violations further, putting some of the lesser violations unlikely to pose a direct risk to public health (e.g., public education) into Tier 3. However, this could make the requirements too complex and too difficult to communicate simply. Simplicity in understanding and implementing the requirements was one of the main recommendations of the GAO report. EPA is further concerned that delaying the initial notice for MCL violations, even if levels barely exceed the standard, beyond 30 days (or three months at the primacy agency's discretion) may not be consistent with the Agency's consumer right-to-know objective.
- The second option was to move the notice for the monitoring violations from Tier 3 to Tier 2, recognizing that persistent monitoring violations could disguise potentially serious drinking water quality violations. EPA did not select this option. Instead, the proposal enables the primacy agency to require on a case-by-case basis that serious monitoring and testing procedure follow the Tier 2 public notice requirements where necessary. EPA developed an alternative approach to the proposal that is discussed in Section VI(A) of the Preamble. Comments are requested on both the proposal and the option discussed in Section VI(A).

2. Timing of the Tier 2 Public Notice

The proposed rule, under § 141.203(b), would require the public water system to provide a Tier 2 public notice to persons served as soon as practicable, but no later than 30 days after the system learns of the violation. The public water system would be obligated to get the notice out as soon as practicable, particularly where the situation requires an earlier notice. The proposal also would require the public water system to repeat the notice every three months for as long as the violation exists. Under the proposal, the primacy agency may opt to define specific violation circumstances that warrant an extension of the initial Tier 2 notice or a different repeat notice frequency for continuing violations. The proposal allows the primacy agency to define specific circumstances where the initial notice may be extended beyond 30 days (up to three months) and where the repeat notice may be set less frequently than every three months (but no less frequently than once a year).

In contrast, the current rule requires a newspaper notice within 14 days, a notice mailed to all bill-payers within forty-five days, and a repeat notice mailed every three months thereafter until the violation is resolved. The shift from 14 days to 30 days for the initial notice, with a possible extension for up to three months, is being proposed to help consumers distinguish between those violations posing significant short-term health risks requiring immediate action (Tier 1) from violations potentially posing health risks but where no urgent action by the consumer is necessary (Tier 2). The 30-day (or three month) period also would give the water system more time to initiate steps to resolve the violation before notifying the consumers.

EPA believes that giving the primacy agency flexibility to adapt the timing requirements to fit specific circumstances is clearly warranted. The violation situations under Tier 2 are very diverse, ranging from violations potentially posing a health risk from short-term exposure to violations posing a chronic risk only from long-term exposure. One size does not fit all. An extension beyond 30 days may be especially appropriate for contaminants posing a chronic rather than acute health risk (e.g., fluoride, arsenic, radium). EPA standards for such contaminants are designed to protect against long-term exposure. An extension may also be appropriate for violations that were quickly resolved and no longer pose any risk to persons served (e.g., some Total Coliform Rule

or Surface Water Treatment Rule violations). Finally, an extension to three months may allow the water system to include the initial notice in the same mailing as the quarterly bill, with no loss in effectiveness.

An alternative option to the approach proposed in today's rule would be to require a three month deadline (rather than 30 days) for delivery of the initial Tier 2 notice, and/or a one-year frequency for repeat notices rather than three months. Under this alternative, the primacy agency would retain the discretion to require the notice sooner on a case-by-case basis or across the board for all Tier 2 violations. EPA requests comment on this alternative approach to the proposal.

3. Form and Manner of the Delivery of the Tier 2 Notice

The proposed rule would retain the public water system obligation to provide the Tier 2 notice to persons served by the water system. This is a statutory obligation. The proposed rule, however, would significantly change the specific method of delivery required to meet this obligation. The proposed rule would first set a performance standard: that the notice be provided in a form and manner reasonably calculated to reach persons regularly served by the system. It would also require a specified minimum method of delivery, but then would provide much greater flexibility in what the water system must do to reach other persons regularly served if they are not reached by the minimum method. In contrast, the current rule (for community water systems) first requires a newspaper notice, followed by a notice either mailed or directly delivered to customers. The proposed rule would require that community water systems:

- Mail or otherwise directly deliver the notice to each customer receiving a bill (or other service connections); and
- Use any other method reasonably calculated to reach other persons regularly served by the system if they would not normally be reached by the mail or direct delivery requirement (e.g., newspaper, posting in public places, delivery to community organizations, etc.).

For non-community water systems, the current rule requires posting for as long as the violation exists. The proposed rule would require that non-community systems:

- Post or mail or directly deliver to each customer; and
- Use any other method reasonably calculated to reach other persons served by the system if they would not normally be reached by the posting, mail, or direct delivery requirement (e.g., organization newsletter, delivery of multiple copies to a central location, etc.).

In every case, the proposal would give the primacy agency the option to prescribe a different method of delivery for the water system, based on policies and procedures established as part of their approved primacy program.

EPA believes that in practice, the proposed requirements for method of delivery for the Tier 2 (and Tier 3) notices will ensure that notices announcing violation of drinking water requirements are communicated sooner and more effectively than under the current rule to a wider range of the people served by the water system. At a minimum, those people reached by mail or direct delivery would receive the notice early enough to make informed choices about their drinking water. The notice would also reach other consumers who do not pay water bills and who are not routinely informed of the risk from the drinking water when violations occur.

EPA discussed this provision at length with the States and at various stakeholder meetings. A number of options emerged for delivery of both Tier 2 and Tier 3 notices, ranging from setting a "performance standard" with no minimum method prescribed to retaining the current very prescriptive requirements. The proposal selected was to require a minimum method to deliver the notice, but to broaden the options a water system may select in its efforts to reach other persons served. The option was proposed because it sets a clear and easily understandable minimum for all water systems to follow and requires water systems to follow a deliberate process to determine what else needs to be done to reach other persons served. Compliance requirements under the proposed option would be clear and enforceable.

EPA developed an alternative approach to the proposal that is discussed in Section VI(B) of the Preamble. Comments are requested on both the proposal and the option discussed in Section VI(B).

EPA is requesting comment on the Tier 2 public notification requirements, in particular the list of violations included under Tier 2, the 30-day time period for the initial notice, the requirement for a repeat notice of ongoing violations every three months, the discretion given to the primacy agency to extend the initial notice to three months or the repeat notice frequency to one year (either on a case-by-case basis or by rule), and the revised requirements for the method of delivery of the Tier 2 public notice. Comments are also requested on the two specific options discussed in Section VI as alternatives to the proposed language.

H. Form, Manner, and Frequency of the Tier 3 Public Notice: All Other Violations and Situations Requiring Public Notice (§ 141.204)

Today's rule proposes to define the form, manner, and frequency of a Tier 3 public notice and to require that public water systems use a Tier 3 public notice.

1. Tier 3 Violations and Situations

The proposed rule would require a Tier 3 public notice for the following violation categories and other situations:

- Monitoring violations, unless the primacy agency determines that the violation requires a Tier 2 or Tier 1 notice;
- Failure to comply with a required testing procedure;
- Operation under a variance granted under Section 1415 or exemption granted under Section 1416 of the SDWA; and
- Any other violations and situations determined by the primacy agency to require a Tier 3 public notice.

The list of violations requiring a Tier 3 notice is similar to the list in § 141.32(b), the comparable section of the current public notification rule. The language in the proposed rule, however, notes explicitly that the primacy agency may require that public water systems provide a Tier 2 (rather than a Tier 3) notice for specific monitoring or testing procedure violations. This is discussed in Section V(G) above and in Section VI(A).

2. Timing of the Tier 3 Public Notice

The proposed rule would require that public water systems provide a Tier 3 public notice to persons served no later than one year after the system learns of the violation or begins operating under a variance or exemption. The proposal would also require the public water system to repeat the notice annually for as long as the violation or situation exists. In contrast, the current rule requires the notice to be mailed within three months (with possible extension to one year at the State's option) and a repeat notice every three months thereafter until the violation is resolved. EPA believes that the annual notice for Tier 3-type situations is appropriate, given the nature of the violation (e.g., for failure to monitor) and the great number of violations requiring such a notice (i.e., 216,522 of the 235,214 violations reported to EPA in FY 1996).

3. Form and Manner of the Delivery of the Tier 3 Notice

The proposed rule would require that public water systems provide the Tier 3 notice to all persons served by the water system. This is a statutory obligation that applies for all notices required under the public notification rule. The method of delivery requirements for Tier 3 public notices would be the same as those prescribed for the Tier 2 public notice. A summary of the requirements and a rationale are included in Section V(G) above and in Section VI(B).

Water systems have the option under the proposed rule to provide an annual notice summarizing all Tier 3 violations occurring during the previous year in lieu of individual Tier 3 public notices. For community water systems, the proposal would allow the Consumer Confidence Report (CCR) to be used as the vehicle for notifying persons served of violations occurring during the previous year. The CCR is the appropriate vehicle for initial public notices as long as the public notification timing and distribution requirements are met. In particular, the CCR must be mailed or hand-delivered to persons served and it may only include those violations occurring within 12 months of publication. The advantages to using an annual notice instead of individual notices for every violation are compelling, both in terms of reduced cost and in terms of effective communication with the consumers. Since the vast majority of violations require a Tier 3 public notice, the burden on public water systems would be dramatically reduced through use of an annual notice. EPA strongly recommends that public water systems make use of the annual notice option.

EPA is requesting comment on the proposed Tier 3 public notice requirements, in particular on the option to allow public water systems to provide an annual report of violations in lieu of individual notices twelve months after each violation. Comments are also requested on the use of the Consumer Confidence Report to meet the Tier 3 public notification requirements. Finally, comments are requested on the revised requirements for the method of delivery of the Tier 3 notices. See Section VI(B) for a discussion of an alternative to the proposed method of delivery for Tier 3 public notices.

I. Content of the Public Notice (§ 141.205)

Today's proposal specifies a list of elements that must be included in a public notice both for water systems with violations of National Primary Drinking Water Regulations and for water systems operating under a variance or exemption. The proposed rule would carry forward from the current rule the requirement that water systems use standard health effects language for MCL, MRDL, and treatment technique violations. The health effects language in the proposed rule would be simplified in response to concerns raised by various stakeholders and the GAO report that the current mandatory health language is too lengthy and not focused on the core health effects information consumers need to know. The proposed rule also would add new standard language for monitoring violations. Finally, it would add new standard language to encourage the recipients of the public notice to distribute the public notice to others served by the water system.

Note that the States may establish alternative public notification requirements related to the content of the public notice (as part of their primacy program revision under 40 CFR 142.16(a)(3)), as long as these alternative requirements provide the same type and amount of information and are designed to achieve an equivalent level of public notice as EPA's regulation. This would allow the States, for example, to submit to EPA for approval a primacy program revision that includes alternatives to the required language on health effects, monitoring violations, or distribution of the notice to others.

1. Standard Elements of the Public Notice (§ 141.205(a)–(c))

The proposed rule would revise and edit the list of standard elements required in public notices.

- Ten elements would be required (under § 141.205(a)) for public notices for violations of the NPDWR: a description of the violation that occurred (including the contaminant level); when the violation occurred; any potential adverse health effects; the population at risk; whether alternative water supplies should be used; what actions consumers should take; what the system is doing to correct the violation; when the water system expects to return to compliance; the phone number of the water system owner or operator; and a statement appended to the notice to encourage notice recipients to distribute the notice to other consumers who might not have received their own copy of the notice.
- Four elements would be required (under § 141.205(b)) for public notices for water systems operating under a variance or exemption: an explanation for the reasons for the variance or exemption; the date the primacy agency granted the variance or exemption; a brief status report on compliance with the variance or exemption conditions; and a notice of any opportunity for public input into the review of the variance or exemption. Note that this information is identical to that already required to be included in the CCR. Community water systems that use the CCR as the vehicle for the initial public notices would not need to add any additional information to meet the content requirements for the variance and exemption notices required under this proposal.
- Four performance standards will be listed (under § 141.205(c)) defining the adequacy of the notice: the notice must be displayed in a conspicuous way (where applicable); must not contain overly technical language or very small print; must not be formatted in a way that defeats the purpose of the notice; and must not contain language that nullifies the purpose of the notice.
- For public water systems serving a large proportion of non-English speaking consumers (as determined by the primacy agency), the public notice would be required to contain information in the appropriate language regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

The proposed rule (under § 141.205(a)) would edit and rearrange the list of required elements from the current rule. The most significant change to § 141.205(a) is to require that the notice for MCL and MRDL violations include the contaminant level. The proposed rule also would add a new section § 141.205(b) setting the required elements for a variance or exemption notice. This would be added to cover the specific notice requirements unique to water systems operating under a variance or exemption.

The proposed rule would modify the current rule by requiring public water systems serving a large non-English speaking population (as determined by the primacy agency) to either include information regarding the importance of the notice in the appropriate language, or provide a water system contact to assist the non-English speaking consumers. The current rule under § 141.32 (d) sets a similar requirement, but in much more general terms, requiring simply that the notice shall be multi-lingual where appropriate. The proposed public notification requirement is identical to the provision contained in the Consumer Confidence

Report (CCR) regulation, 40 CFR Part 141, Subpart O [63 FR 44511 (August 19, 1998)]. Under the proposed rule, public water systems serving a large non-English speaking population would be required at a minimum to take concrete steps to communicate the importance of the notice in the appropriate language so that non-English speakers could get assistance in understanding it. EPA encourages water systems to go beyond this minimum and provide a translated copy of the notice on request or offer telephone assistance in the appropriate language. The draft Public Notification Handbook issued with the proposed rule for comment contains sample language regarding the importance of the notice in various languages as well as complete sample Tier 1 public notices in Spanish.

EPA modified the list of elements to be required in the public notice in response to stakeholder requests to provide clearer national minimum standards for notice content and consistency. Comments are requested on the list of elements in the proposal, the four performance standards identified for how the notices must be presented, and the more specific requirement for public water systems to communicate with large non-English speaking populations about the importance of the public notice when violations occur.

2. Standard Health Effects Language (§ 141.205(d)(1))

The proposed rule would retain the requirement that all public notices for MCL and treatment technique violations use mandatory health effects language to explain the health risks posed by the violation. The language being proposed today in Subpart Q, Appendix B is identical to the language promulgated in the Consumer Confidence Report (CCR) regulation, 40 CFR Part 141, Subpart O, Appendix C. The proposal would replace language in the current rule that was added when each NPDWR was promulgated. The proposed language is shorter, simpler, and consistent with the language EPA uses in similar outreach forums and documents.

EPA is proposing to use the language for the public notification rule that is identical to health effects language from the CCR regulation because it does not make sense to draft different language to meet such a similar requirement, unless there is a compelling reason that is specific to the intent of the public notification provision. Although EPA recognizes that the CCR and public notice may be given at different times and may be intended to meet different objectives, EPA believes that the benefits of having identical language to communicate the same health effects from violations outweighs the value of tailoring the language to the unique objectives of the public notice. EPA expects that public water systems will supplement the mandatory health effects language or otherwise put the language in the context of the overall notice to meet the unique purposes of the specific public notice. Examples of public notices applicable to different situations are included in the draft Public Notification Handbook which is being issued concurrently with this proposed rule for comment.

EPA is requesting comment on the proposal to use the CCR standard health effects language to meet the public notification requirement. In particular, EPA is soliciting comment on specific situations or violations where the CCR language is believed to be inappropriate or incomplete. Recommendations for alternative language for such situations would also be helpful.

3. Standard Language for Monitoring and Testing Procedure Violations (§ 141.205(d)(2))

The proposed rule would add a new section requiring that all public notices contain standard language for monitoring and testing procedure violations. The proposed standard language informs consumers that because the water system did not monitor or follow the required testing procedure during the compliance period, the presence or absence of the contaminant during that time could not be determined and the water system is unable to tell whether there was a risk to health during that time. This new mandatory language is being proposed because of stakeholder concerns that consumers may presume that because there is no reported MCL, MRDL, or treatment technique violation that the drinking water provided by their water system is safe. This may not always be an appropriate presumption. The mandatory language as proposed is intended to be included in all public notices for monitoring and testing procedure violations.

The proposed standard language was developed after the EPA workgroup (in consultation with a number of States) considered alternative approaches. EPA is soliciting comment on the proposed standard language and welcomes recommendations on alternative language that would effectively inform consumers of the significance of the monitoring violation. In particular, EPA will consider alternatives to the phrase "* * * and we are unable to tell whether your health was at risk during that time." The phrase is included in the proposal to clearly and simply alert consumers that lack of monitoring may disguise a potential risk to health. It is intended to raise questions about the significance of the specific monitoring violation, not to alarm consumers unnecessarily. EPA recognizes that many monitoring violations pose no risk to health and that most water systems resume monitoring quickly after a single violation. The proposed standard language will be most effective where the water system supplements the standard language with a clear explanation of what the violation meant and how it was rectified. EPA will consider options to this standard language in its final rule.

Another option would be not to require that any specific language be included for all monitoring violations, but to set a performance standard instead. The performance standard might be that all monitoring violations be explained in a way that appropriately communicates the public health significance of the violation. EPA also requests comment on this alternative approach.

4. Standard Language to Encourage Customers Receiving the Public Notice To Distribute the Notice to Other Persons Served (§ 141.205(d)(3))

The proposed rule would add a new section requiring that public notices contain standard language encouraging the customers receiving the public notice to distribute the notice to other persons served by the water system (such as tenants, residents, patients, etc.). Mailed notices, in particular, are routinely sent to only the bill-paying customers, and therefore may not reach some consumers at risk unless actions are taken to notify them of the violations. EPA believes that this standard language is appropriate as a safety net and necessary to encourage those receiving the public notice to take steps to alert others of the violations and potential risk from drinking water. Compliance with this requirement is one of the "reasonably-calculated steps" a public water system must take to reach other persons not expected to receive the initial notice. EPA requests comment on the proposed standard language and would welcome alternative language that aids the water system in reaching all persons served.

J. Other Public Notification Requirements

1. Notice to New Billing Units or New Customers (§ 141.206)

EPA is proposing to modify the current regulatory provision requiring

that community water systems send a copy of the most recent public notice to all new billing units for ongoing MCL and TT violations or existing variances and exemptions. The proposed rule would broaden the requirement to include notice for on-going monitoring and testing procedure violations and adds a new provision requiring non-community water systems to continuously post the notice or otherwise take steps to inform new customers of any ongoing violations. EPA is proposing this change to the existing requirement to better ensure that new customers served by all public water systems are made aware of any continuing violations of drinking water standards. The initial notice, if posted in a location where new consumers pass by, will meet this new requirement. However, water systems that deliver the initial notice by hand delivery or otherwise have the notice out of sight of new consumers would have an additional responsibility under this new provision. EPA believes this new provision will make notices more readily available to new consumers not receiving the notice under the current regulation. EPA requests comment on the change to the current regulation extending the requirement to cover on-going monitoring and testing procedure violations and to require that the notice be provided to new customers by both community and non-community water systems.

2. Special Notice To Announce the Availability of the Results of Unregulated Contaminant Monitoring (§§ 141.207 and 141.35)

Section 1414(c)(2)(E) of the SDWA, as amended in 1996 gives EPA the authority, at its option, to require public water systems to give notice to persons served of the concentration levels of unregulated contaminants, where such monitoring is required by EPA. The authority for EPA to require such notice was part of the SDWA prior to the 1996 amendments. However, the 1996 SDWA amendments, under Section 1445(a)(2)(E), now require public water systems to give notice of the results of the unregulated contaminant monitoring required by EPA to persons served by the system. EPA believes that the intent of these statutory provisions is met by the existing public notification provision under § 141.35, as amended under this proposal. Section 141.35 requires water systems to announce the availability of the results of required unregulated contaminant monitoring through the public notice process. Further, the CCR regulation requires the results of such monitoring to be included in the annual CCR. Together, the two existing requirements meet the public-right-to-know objective and are protective of public health.

EPA is proposing to amend the current provision under § 141.35 and move the amended provision to the new Subpart Q. The current provision requires that the water systems give notice of the availability of unregulated contaminant monitoring results within three months of receiving the results. The amended requirement under § 141.207 retains the same reporting requirement but changes the timing from three months to twelve months after the results are known. The proposed change in the timing of the public notice is to allow water systems, at their option, to report the availability of all the results just once during the year, reducing the number of notices from four to one. For community water systems, the annual reporting requirement can also be met through the CCR, which already must include the actual results of the unregulated contaminant monitoring. EPA believes close coordination between the public notification requirement and the CCR reporting requirement for this information will be both more efficient and less confusing to the regulated community and the public.

EPA requests comment on the proposed approach to meet the requirements under Sections 1414(c)(2)(E) and 1445(a)(2)(E). EPA also requests comment on its proposal to shift the reporting frequency announcing the results of unregulated contaminant monitoring from three months to twelve months.

3. Special Notice for Exceedance of the Fluoride Secondary Maximum Contaminant Level (SMCL) (§ 141.208)

EPA is proposing to modify the standard language and to make other minor changes to the existing special notice currently required under § 143.5 for community water systems that exceed the SMCL for fluoride. The proposal would move the revised special fluoride notice requirement into the new Subpart Q public notification provision. The special public notice for exceedances of the SMCL is to alert persons served that the fluoride levels in the drinking water may pose a cosmetic dental risk to children under nine years old. The SMCL is 2 mg/l. The annual public notice would continue to be required whenever drinking water monitoring shows fluoride levels above 2 mg/l but below the MCL violation level of 4 mg/liter. The public notice requirements for violations of the fluoride MCL would be addressed separately from the special fluoride SMCL public notice required under § 141.208.

The proposed regulation under § 141.208 will make two changes to the current public notice requirements for exceedance of the fluoride SMCL:

- To require that the form and manner of the special notice follow the Tier 3 requirements in §§ 141.204(c) and 141.204(d) of the proposed rule; and
- To revise and simplify the mandatory language, consistent with the format used to develop the revised standard health effects language for MCL, MRDL, and TT violations.

The proposed requirement that the notice be provided within 12 months from the day the water system learns of the exceedance, is unchanged from the existing requirement.

EPA believes it is important to retain the existing fluoride SMCL notice requirement with only minor conforming changes. Consumers have a right to know about the cosmetic effects from dental fluorosis that may occur in children from prolonged exposure to drinking water exceeding the fluoride SMCL. The notice requirement for exceedance of the fluoride SMCL at 40 CFR 143.5 was put in place when the fluoride national primary drinking water regulation (NPDWR) was published in April 2, 1986 [50 *FR* 11396]. The fluoride NPDWR replaced the more stringent MCL in place as an interim standard since the original SDWA in 1974. The interim MCL of 2 mg/l became the SMCL when the final primary standard was published on April 2, 1986. Part of the justification for reducing the stringency of the MCL from 2 mg/l to 4 mg/l was that the public would be notified of the potential for developing dental fluorosis from exposure to their drinking water when the levels exceeded 2 mg/l.

EPA considered a number of options changing the current fluoride SMCL notice requirements, ranging from eliminating the notice altogether to requiring the notice every three months rather than 12. EPA also discussed extending the SMCL notice requirement to NTNCWS, as the risk to children from drinking water exceeding the SMCL from schools and day-care centers (e.g., NTNCWS) may be as great as drinking such water from their primary residences (e.g., CWS). Although NTNCWS are not currently required to monitor for fluoride under EPA's current regulations, and therefore the EPA SMCL notice requirement does not apply, EPA recommends that both CWS and NTNCWS known to be providing drinking water with fluoride levels

exceeding 2 mg/l provide the special SMCL notice to persons served. After reviewing the various options, EPA sees no reason to re-open the decision made at that time to require the notice only when CWSs exceed the SMCL of 2 mg/l.

EPA requests comment on whether EPA should retain the special public notice for exceedance of the fluoride SMCL and, if retained, whether retaining the requirement allowing the public notice to be given 12 months after the exceedance is known is sufficient. EPA also requests comment on whether the revised mandatory language better communicates the purpose of the notice and the cosmetic risks from drinking the water.

4. Conditions Under Which the Primacy Agency May Give Notice on Behalf of Public Water System (§ 141.209)

EPA is proposing to retain the provision in the current rule specifying under what conditions the primacy agency may give notice on behalf of a public water system. Under this provision, the primacy agency may give a public notice for the public water system if all public notification requirements are met. The responsibility to comply, however, would always remain with the public water system. EPA requests comment on the proposal to retain this provision.

K. Reporting to the Primacy Agency and Retention of Records (§§ 141.31 and 141.33)

Under the current § 141.31, public water systems are required to submit copies of all public notices to the primacy agency within 10 days of completing each public notice. EPA is proposing to amend the existing reporting requirement under § 141.31 by also requiring public water systems to submit a certification to the primacy agency that all public notification requirements have been met. EPA considered a number of options to the proposal to require that public water systems certify after each violation that all public notification requirements were met:

- One option was to broaden the proposed certification provision to require a public water system to not only certify that it met the public notice requirements but also to explain how the requirements were met. EPA decided not to propose this broader requirement because such additional reporting is resource intensive and unnecessary in most cases. The requirement for water systems to send copies of all notices with a simple certification of compliance provides sufficient information for primacy agencies to identify non-compliers.
- A second option was to leave the existing reporting provision unchanged, with no certification required. EPA believes that a self certification of compliance to the primacy agency (with copies of the notices) saves primacy agency resources and allows better targeting of non-compliers.
- A third option was to shift the 10-day requirement to submit the certification and copies of notices to the primacy agency to 30 days, three months, or even a year after the public notice. EPA is proposing to maintain the existing 10-day requirement to give primacy agencies enough information to immediately target non-complying water systems. The potential for such immediate feedback where a certification is not received will increase voluntary compliance.

The proposal would also amend § 141.33 to require that public water systems retain public notification records for three years. The current regulation has no provision for retention of public notification records. A record retention requirement for public notices conforms with the requirements already in place for other EPA regulatory requirements (e.g., sampling results, CCRs, variances and exemptions). The record retention period of no more than three years is consistent with the limits set in the Office of Management and Budget regulations at 5 CFR 1320.5 implementing the Paperwork Reduction Act.

Regulations at 5 CFR 1320.5, governing the imposition of reporting and record keeping requirements by Federal agencies on the public, specify that those reporting information should not be required to retain records (other than health, medical, government contract, grant-in-aid, or tax records) for more than three years, unless the agency demonstrates that a longer retention period is necessary to satisfy statutory requirements or other substantial need. These regulations were published by the Office of Management and Budget to implement the Paperwork Reduction Act goal of minimizing the paperwork burden for individuals, small businesses, education, and non-profit institutions, Federal contractors, state, local, and tribal governments, and other persons resulting from the allocation of information by or for the Federal government. In accordance with these regulations, EPA is proposing a 3-year record retention requirement for public notification records.

EPA is also asking for comment on an alternative to the proposal that would extend the record retention period from three years to five years for public notification records. EPA believes that the public notification regulation is important to public health because of the important health information provided to the public upon finding a violation. Because of the public health protection provided by this regulation, all enforcement options should be maintained by the Agency and citizens using the citizen provisions of the SDWA. Record retention will ensure speedy and less costly enforcement. This alternative to the proposal would ensure that records are available to EPA and citizens to support penalty enforcement actions for the full five year federal statute of limitations. A five-year retention period for public notification records would also be consistent with the retention period for the related CCR regulation.

EPA requests comment on the reporting and record-keeping proposal, including the alternative to the proposal to set the retention period for records under the public notification regulations to five years. EPA also requests comment on whether the record retention periods required under the related CCR regulation should be adjusted to three years, if necessary to be consistent with the final public notification retention requirement and Paperwork Reduction Act regulations.

L. Special State/Tribal Primacy Requirements and Rationale (40 CFR Part 142, Subpart B)

The rule being proposed today would amend §§ 142.16 and 142.10 of the primacy regulations (40 CFR Part 142, Subpart B) to define the requirements that States (including eligible Indian Tribes) must follow to incorporate the revised public notification regulations into their approved primacy program. The proposed rule also revises § 142.14 to require that the State retain, for three years, the certifications and public notices received from the public water systems and any determinations establishing alternative public notification requirements. Finally, the proposal revises § 142.15 to reaffirm the requirement that the State report violations of the public notification regulations on a quarterly basis to EPA.

The proposed changes to the primacy requirements for the revised public notification rule would amend both §§ 142.10 and 142.16(a). Under the primacy regulations, a State is required to adopt, as a condition of primacy, a State rule that is no less stringent than the regulation being proposed today. The requirements States must meet to receive primary enforcement responsibility ("primacy") are listed in

§ 142.10 and requirements to revise an approved primacy program are in § 142.12. Under § 142.10(b)(6)(v), each State with primary enforcement responsibility must adopt and implement adequate procedures to require public water systems to give public notice that is no less stringent than the EPA public notification requirements. Special primacy requirements unique to specific regulations are in § 142.16. The special primacy requirements for the public notification regulation are in § 142.16(a).

EPA is proposing to amend § 142.10(b)(6)(v) to replace the existing citation with the new public notification citation (40 CFR Part 141, Subpart Q). The proposed change to § 142.16(a) would delete the existing language and replace it with a new section comprised of three elements.

First, § 142.16(a)(1) would require primacy States to submit requests for approval of a revised primacy program adopting the new public notification requirements under 40 CFR Part 141, Subpart Q. States will have two years after the final rule is published in the **Federal Register** to submit a complete and final primacy program revision package to EPA, unless the State requests and EPA approves an extension of up to two additional years.

Second, § 142.16(a)(2) would require that States establish, as part of their revised primacy program, enforceable requirements and procedures when the State opts to use the authority under:

- *§ 141.201(a)*—To require public water systems to give a public notice for situations other than those listed in Appendix A, where the State determines that the situation has significant potential for serious adverse effects on human health;
- *§ 141.202(a)*—To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations other than those listed in Appendix A;
- *§ 141.202(b)(3)*—To require public water systems to comply with additional Tier 1 public notification requirements set by the State subsequent to the initial 24-hour notice, as a result of their consultation with the State required under § 141.202(b)(2);
- *§ 141.203(a)*—To require the public water systems to provide a Tier 2 public notice (rather than Tier 3) for monitoring or testing procedure violations specified by the State;
- *§ 141.203(b)*—To grant public water systems an extension of time (up to three months) for distributing the Tier 2 public notice, for specific circumstances defined in the State's primacy program;
- *§ 141.203(b)*—To require a different repeat notice frequency for the Tier 2 public notice (to be no less frequent than once per year), for specific circumstances defined in the State's primacy program; and
- *§§ 141.203(c) and 141.204(c)—To require a different form and manner of delivery for Tier 2 and 3 public notices.*

Third, § 142.16(a)(3) would allow the State to establish, by rule, alternative public notification requirements from those established in the rule being proposed today. Section 142.16(a)(3) incorporates language in § 1414(c)(2)(B) of the SDWA, as amended in 1996, defining the alternative program. Under this section, a State may develop an alternative program with respect to the form and content of the notice, as long as the program contains the same amount and type of information. EPA is proposing to interpret the "no less stringent" standard of EPA's primacy regulations as requiring States to maintain the same type and amount of information as EPA's rule. The State alternative public notification program would have to be approved by EPA as part of the process established under the primacy rule to review revisions to approved primacy programs.

EPA is requesting comment on the proposed requirements States would have to follow to develop the approved primacy program revision and on other changes to the State record keeping and reporting requirements related to the public notification rule. EPA is also requesting comment on the proposed interpretation of the primacy standard to be applied for review of State alternative programs.

V. Relationship of Public Notification Regulation to Consumer Confidence Report (CCR) Regulation

The rule being proposed today would be closely related to the Consumer Confidence Report (CCR) regulation promulgated in August, 1998 [63 *FR* 44511 (August 19, 1998)]. In developing the proposal for the public notification rule, EPA identified provisions of both rules that either overlap or need to be consistent. The proposed rule has used identical language from the CCR rule where there was an overlap, deferred to the CCR process where the public notification objectives could be effectively accomplished through the CCR, and otherwise used language consistent with the CCR when it was appropriate.

- *Health Effects Language (§ 141.205(d)(1), Appendix B).* Language on health effects of violations is required both for the CCR and public notification. EPA is proposing that the health effects language for the public notice would be identical to the language in the CCR (§ 141.153(d)(6), Appendix C).
- *Use of CCR for Some Public Notices (§ 141.204(d)).* The annual CCR requires an annual summary of all violations that have occurred in the last year (§ 141.153(f)). EPA is proposing today that community water systems, at their option, use the Consumer Confidence Report as the mechanism to notify their customers of any or all Tier 3 violations as long as those violations occurred within the last 12 months (see discussion in part IV(H) above). EPA is also proposing that public water systems not required to distribute a CCR consider an annual report of all their Tier 3 violations or variance or exemptions, in lieu of individual public notices. In all cases, the CCR or other annual report would have to follow the requirements of the public notice rule to be used for this purpose.
- *State Primacy Requirements (§ 142.216(a)).* Both the CCR and the public notice regulations must be adopted by the State as a condition of primacy. EPA is proposing today that the standards and process for primacy approval for the public notification rule would follow the same requirements contained in the CCR rule (§ 142.16(f)).
- *Notice of the Availability of the Results of Unregulated Contaminant Monitoring § 141.207).* The 1996 SDWA amendments for both the CCR and public notification contained provisions related to giving notice of the results of unregulated contaminant monitoring required by EPA. The CCR provision makes such reporting mandatory (§ 141.153(d) and (e)). The public notice provision (§ 1414(c)(2)(E)) requires such reporting at the option of the EPA Administrator. EPA is proposing today to defer to the requirement that such information be included in the annual CCR for community water systems. EPA is also proposing today to continue (with some revisions) to require that community water systems give notice of the availability of the results of the unregulated contaminant monitoring now required under § 141.35.
- *Certification by PWS That Public Notification Requirements Are Met (§ 141.31(d)).* The proposed rule would add a new requirement that public water systems submit a letter to the primacy agency certifying that all requirements have been met. This would be consistent with the certification requirement in the CCR regulation (§ 141.155(c)).
- *Use of Multilingual Notices (§ 141.205(c)(2)).* The CCR regulation requires that in communities with a

large population of non-English speaking residents, as determined by the primacy agency, the report must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language. The proposed public notification would be identical to the provision in the CCR rule (§ 141.153(h)(3)).

EPA is requesting comment on the approach in the proposed rule to align the public notification requirements with the parallel requirements in the CCR rule for the six areas identified above and for any other areas that would make compliance with the two rules more effective and efficient.

VI. Request for Public Comment on Alternatives to Proposal

EPA has requested comment throughout this preamble on the various elements of the regulation proposed today. EPA is requesting here comments on two specific options that are alternative approaches to what is being proposed. EPA will consider comment on these two alternative options to determine the final rule requirements.

A. Requiring Tier 2 Public Notice for Monitoring and Testing Procedure Violations

During the development of the proposed public notice requirements for specific violations, several options emerged for the proper placement of monitoring and testing procedure violations. Over 90 percent of all violations of National Primary Drinking Water Regulations are monitoring and testing procedure violations. These violations range in severity from an administrative error quickly corrected to failure to monitor over the whole year. EPA is proposing that the public notice for all monitoring and testing procedure violations follow the Tier 3 annual notice requirements, unless the primacy agency determines on a case-by-case basis that the more stringent Tier 2 notice is necessary. EPA believes that Tier 3 notices are appropriate for the vast majority of monitoring violations because they are unlikely to result in significant health threats. Recognizing, however, that in some cases they may disguise such a threat, EPA is providing flexibility to the primacy agency to place monitoring violations in Tier 2 (or even in Tier 1) on a case-by-case basis. EPA is concerned that requiring more frequent notices for monitoring and testing procedure violations on a routine basis may dilute the effectiveness of the public notification process.

Some stakeholders have expressed concern that this proposal was not sufficiently protective of public health and the consumer's right-to-know. They argue that placing all monitoring and testing procedure violations in Tier 3, even though the primacy agency has the option to place them in a higher tier when warranted, may in some cases increase the possibility that timely public notices for serious violations would not be made. In cases where inadequate monitoring disguises MCL or TT violations, the lack of timely notice may pose a risk to public health.

EPA is, therefore, requesting comment on an alternative to the proposal that would require public water systems to use Tier 2 (rather than Tier 3) public notice for monitoring and testing procedure violations. Under this alternative proposal, primacy agencies would be allowed, by rule, to designate some or all monitoring and testing procedure violations as Tier 3 rather than Tier 2. The presumption under this alternative is that the violation would require a Tier 2 notice unless the primacy agency decided otherwise (as part of its approved primacy program). Another option would be to allow the primacy agency to classify monitoring and testing procedure violations as Tier 3 on a case-by-case basis. Both the proposed language and these alternatives give the primacy agency flexibility to tailor the public notice to the seriousness of the violation. The difference lies in what the default would be in the absence of action by the primacy agency. Because EPA believes that Tier 3 is appropriate for the vast majority of monitoring and testing procedure violations, the proposed rule makes Tier 3 the default.

Comments are requested on these alternative proposals for determining the proper public notice tier for monitoring and testing procedure violations.

B. Giving PWS Flexibility in Method of Delivery of Tier 2 and 3 Notices

The proposed rule would require that community water systems mail or directly deliver notices to bill-paying customers (or service connections) and use any other method reasonably calculated to reach other persons if they would not normally be reached by the mail or direct delivery requirement. The proposed rule has a parallel provision for non-community water systems, allowing posting in lieu of mail or hand delivery.

EPA discussed this provision at length with the various stakeholder groups. EPA is asking for comment on an alternative to the proposed language that would allow the public water system to choose from a longer list of possible delivery methods. Unlike the proposal, the alternative would not require a specific method to be used by all the water systems (e.g., mail or direct delivery by all community water systems). In both the proposed language and this alternative, the water system's obligation under the rule would be the same: to take steps reasonably calculated to reach all persons served.

The advantage of this alternative is that it gives the water system a menu of methods to choose from to reach all persons served, which encourages creative and more efficient solutions than possible under the proposal. It recognizes the need to tailor the methods of delivery used to the specific situation. The disadvantage is that it sets a less precise regulatory obligation that may lead to inadequate compliance with the intent of the public notice provision. It may also be more difficult for EPA and the States to enforce this less precise requirement.

EPA is requesting comment on this alternative to the language in the proposal for delivering Tier 2 and Tier 3 notices. If the alternative is chosen in the final rule, what optional methods should EPA include in the regulatory list of acceptable delivery methods?

VII. Cost of Rule

EPA has estimated the costs for both public water systems, which must comply with the requirements of the proposed public notification rule, and the State primacy agencies, which must implement the new requirements on behalf of EPA.

For *public water systems*, the estimated costs of complying with the new regulation are divided into three component activities: notice preparation costs, notice distribution costs, and costs of repeat notices. Only public water systems with a violation or other situation requiring a public notice incur costs under this rule. Notice preparation costs include those costs that a public water system must incur to comply with the requirements regardless of how many copies of the notice it must deliver. These costs include the labor hour costs associated with becoming familiar with the requirements for the notice, collecting data regarding monitoring results and the violation, consulting with the primacy agency (when necessary), preparing the technical content of the public notification in a format suitable for distribution, identifying the recipients of the notice, and providing instructions

about production of the notice. Notice distribution costs are costs that increase or decrease along with the number of public notices to be delivered. These costs include costs of producing the reports (costs of paper, photocopying or printing, and labels), postage costs when the notice is mailed, costs of a notice in a newspaper when necessary, costs of posting notices in specified locations, and other labor hour costs of producing and delivering the notices. Repeat notice costs involve only the costs of delivering a second copy of the notice, if the violation is not corrected within the specified time period.

For *primacy agencies*, the estimated incremental costs of implementing the new requirements are also divided into three components: costs of consulting with public water systems to clarify notice requirements on a case-by-case basis; costs of receiving and reviewing the public water system compliance certification and copies of the notices; and costs of filing and maintaining the public notification records.

Table C provides a summary of the estimated total dollar and hour costs to public water systems and to the State primacy agencies. The public water system costs are broken out by size of the system. The combined total cost per year to both the PWS and the primacy agencies is $17,956,117. The combined total burden hours are 972,107.

TABLE C.—AVERAGE ANNUAL COST AND LABOR HOURS FOR PUBLIC WATER SYSTEMS AND PRIMACY AGENCIES

Summary table	Total cost per year [1] (1)	Total labor hours (2)	Number of systems in violation [2] (3)	Labor hours per system (2)/(3) (4)	Cost per system (1)/(3) (5)
Public Water Systems (PWS):					
PWS serving 25–500	$6,867,175	686,718	40,467	16.97	$169.70
PWS serving 501–3,300	1,804,545	146,732	4,473	32.80	403.43
PWS serving 3,301–10,000	1,266,782	36,718	912	40.26	1,389.02
PWS serv. 10,001–100,000	2,614,813	36,186	667	54.25	3,920.26
PWS serving over 100,000	3,837,948	4,634	53	87.42	72,414.11
Totals for PWS:	16,391,263	910,987	46,572	19.56	351.96
State Primacy Agencies	1,564,854	61,120	56 primacy agencies.	1,091.0 hours per primacy agency.	$27,944.00 per primacy agency.
Totals	17,956,117	972,107			

[1] Costs include both labor hour costs and O&M costs.
[2] Table C–4, PWS (and Pop.) in Violation by System Size, National Public Water System Supervision Program, Draft Compliance Report, FY 1996, data for FY 1996.

The Agency estimates that the annual cost to all public water systems with one or more violations during the year is $16,391,263, including the costs for 910,987 labor hours and the costs for postage and other related O&M costs. This is an average annual cost of $351.96 for the 46,572 public water systems required to comply with the public notice requirements because they had one or more violations during the year. As shown in Table C, per system costs and labor hours vary most significantly by size of the water system:

- The dollar costs include both labor hour costs and non-labor costs. The non-labor costs incurred are principally to cover costs of the postage to mail the notice. Because the cost of distribution varies directly with the number of persons served, the cost per water system for the large and very large water systems is many times higher than the cost per water system for small and very small systems (e.g., $169.70 per system serving less than 500 people vs. $72,414.11 per system serving over 100,000).
- The labor hours vary by both the type and size of the water system. For example, a non-community water system may post the notice, a significantly lower labor hour burden than preparing a mailing or hand delivering the notice. System size also makes a significant difference in total labor costs. The labor estimated to prepare and distribute the notice for a very small system is 14.7 hours. For very large systems, the labor hour estimate is 90.8 hours, more than six times the rate estimated for the very small systems.

The Agency estimates the annual primacy agency costs and labor hours to be $1,564,854, and 61,120 hours. The average annual cost per primacy agency is estimated at $27,944 per primacy agency ($1,564,854 divided by 56) and the annual labor hours per primacy agency are estimated at 1,091 hours per primacy agency (61,120 divided by 56). This does not include the costs to EPA of implementing this regulation where EPA directly implements the regulatory program on Indian lands.

The paperwork burden associated with the existing public notification requirements in 40 CFR Part 141.32 is currently included in the baseline drinking water ICR (OMB Control No. 2040–0090, EPA ICR #270.39). The estimated burden under ICR #270.39 is 955,191 hours, and the costs are $21,969,393. This is the estimated cost to public water systems only, as the approved ICR did not include any incremental costs to the primacy agencies.

To estimate the *change* in the burden under the proposed rule to public water systems, EPA re-calculated the burden numbers under the current rule to provide a common basis for comparing the existing rule with the proposed rule. The existing ICR estimate could not be used as the basis of comparison because it used different lower external cost and workload assumptions. First, the cost assumptions in the current ICR used different postage and labor rates. Second, the current ICR assumes different violation levels than the proposed ICR. Third, some activities, such as repeat notices, were omitted from the current estimate.

The combined changes in burden and cost to both primacy agencies and PWSs, based on comparing the proposed rule estimate to the adjusted current rule estimate, are shown in the table below:

BURDEN AND COST ESTIMATES UNDER THE CURRENT AND PROPOSED RULES (FOR PWSS AND PRIMACY AGENCIES)

[Rounded to Nearest 10,000 for Burden Hours and Nearest $100,000 for Cost]

	Current rule (Re-calculated) [1]	Proposed rule ICR	Decrease	Percent change
Burden	1,200,000	970,000	230,000	19.2
Cost	$27,000,000	$17,900,000	$9,100,000	33.7

[1] To make the current rule estimate and proposed rule estimate comparable, the current rule estimate is adjusted to be the sum of the costs under the proposed rule plus the estimated cost savings that will be realized under the proposed rule.

Two programmatic changes associated with the proposed rule account for the bulk of the reduction in burden and cost estimates from the current rule.

• The proposed rule changes both the timing and method of delivery options for Tier 3 violations—

—The proposed rule would require notice within one year after the occurrence of the violation rather than within three months, as required by the current rule. Systems with monitoring and testing procedure violations occurring several times throughout the year are able under the proposed rule to consolidate their notices into one annual notice. The current rule limits the PWS's ability to combine multiple violations into a single notice to those occurring within the prior three months. For estimating the burden reduction from this change, EPA assumes that, under the current rule, systems with violations send out an average of 1.5 notices per year.

—The proposed rule allows community water systems to meet the public notice requirements for Tier 3 through the existing Consumer Confidence Report (CCR). Tier 3 violations are primarily monitoring or testing procedure violations. Systems that would otherwise incur a large labor burden and postage burden for distributing a mail notice and paying for a newspaper notice will be able to insert the text of the notice into the CCR and incur no additional costs. EPA estimates that half of all community water systems serving less than 10,000 and all community systems serving more than 10,000 will use the CCR for Tier 3 notices.

—The estimated burden reduction for the proposed changes to the timing and method of delivery for Tier 3 notices is approximately 210,000 hours (17.5 percent) and the cost reduction is approximately $6,500,000 (24.1 percent).

• The proposed rule changes the required methods of delivery for Tiers 1 and 2 notices. The existing rule requires both newspaper and mail delivery for all tiers, although the primacy agency may waive the mail requirement if it determines the violation has been resolved within a given time. Those systems for whom no newspaper outlet is available are allowed to hand deliver or post instead of mailing and using the newspaper. Under the current rule, systems with Tier 1 violations must also issue a notice via television or radio. The proposed rule requires only one method of delivery for Tier 2—mail or hand delivery (or posting for non-community systems). The burden reduction for Tier 2 is small, because it eliminates only newspaper notices, which are estimated to take only 1 hour of labor. For Tier 1, however, systems will have the option of issuing the notice via electronic media, hand delivery, or posting. The burden reduction resulting from the change in the Tier 1 and Tier 2 method of delivery requirements in the proposed rule would be approximately 20,000 hours (1.7 percent), and the cost reduction would be $2,600,000 (9.6 percent).

The estimated total savings resulting from the above changes to the requirements in the proposed rule are approximately 230,000 hours (19.2 percent) and $9,100,000 (33.7 percent).

Several caveats should be borne in mind in interpreting these cost estimates. A number of costs have been omitted from the estimates. These include costs for Tier 1 notices for waterborne disease outbreaks or other situations determined by the primacy agency to have the potential for serious adverse health impacts as a result of short-term exposure, costs for repeat notices for fecal coliform violations, costs for notices on the availability of unregulated contaminant monitoring results for systems that would not otherwise have to prepare an annual notice, costs for stuffing notices into bills, costs for air time on broadcast media if they refuse to run adequate notices as public service announcements, costs for notices that cannot be included in CCRs or customer bills because the required time frames preclude it, costs for notices associated with the recently promulgated Stage 1 Disinfectants/Disinfection Byproducts (D/DBP) rule and the Interim Enhanced Surface Water Treatment Rule (IESWTR), and costs to States associated with adopting primacy regulations to implement the new public notification requirements. EPA is continuing to refine its cost estimates and will incorporate as many of these costs as possible into its economic analysis for the final rule.

Most of these costs have been omitted from the analysis for the proposed rule because they are not expected to be large and would not significantly change the bottom line cost and burden estimates. However, the public notification costs associated with violations of the D/DBP rule and the IESWTR may be significant. These rules contain a number of new standards as well as significant new monitoring requirements, and will require a significant capital investment from some systems. Because these two rules have not yet gone into effect, EPA has omitted the cost estimates for the proposed public notification rule. EPA does not currently have any basis on which to project the annual number of violations requiring a public notice. However, EPA recognizes that meeting the public notification requirements for these new rules could raise the costs of the current and proposed public notification rule significantly.

In considering the burden and cost reduction for the proposed rule relative to the current requirements, it is important to keep in mind that this comparison is based on assuming full compliance with both rules. In fact, as documented in the GAO report, there has been widespread non-compliance with the current requirements. EPA expects that by clarifying and streamlining these requirements, the proposed rule will result in a significantly higher level of compliance. To the extent that this occurs, there will also be an increase in State and water system resources devoted to public notification, despite the savings estimated here because of the streamlined rule that is being proposed. On the other hand, for those systems that have been complying with public

notice requirements all along, the proposed rule may result in genuine cost and burden savings.

For more information about the costs of the rule and how EPA developed the estimates, see the Supporting Statement for the EPA Information Collection Request (ICR #1898.01) and the Regulatory Flexibility Screening Analysis that EPA submitted for OMB approval. EPA is requesting comment on its cost estimates and methodology.

VIII. Other Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact or entitlement, grants, user fees, or loan programs or the rights and obligations of the recipients thereof; or

(4) Raise novel legal or policy issues arising out of the legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), EPA generally is required to conduct a regulatory flexibility analysis describing the impact of the regulatory action on small entities as part of rulemaking. However, under section 605(b) of the RFA, if EPA certifies that the rule will not have a significant economic impact on a substantial number of small entities, EPA is not required to prepare a regulatory flexibility analysis. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

There are three types of small entities under the RFA:

- A "small business" is any small business concern that is independently owned and operated and not dominant in its field as defined by the Small Business Act (15 U.S.C. 632). Public water systems within this category include privately owned community water systems, mobile home parks, and day care centers.
- A "small organization" is any not-for-profit enterprise that is independently owned and operated and not dominant in its field. Examples of water systems that are small organizations are churches, schools, and homeowners associations.
- A "small governmental jurisdiction" includes cities, counties, towns, school districts or special districts with populations of less than 50,000 (5 U.S.C. 601).

For this analysis, EPA selected systems serving 10,000 or fewer persons as the criterion for small water systems and therefore as the definition of small entity for the purposes of the RFA as amended by SBREFA. This is the cut-off level specified by Congress in the 1996 Amendments to the Safe Drinking Water Act for small system flexibility provisions. Because this definition does not correspond to the definitions of "small" for small businesses, governments, and non-profit organizations previously established under the RFA, EPA requested comment on an alternative definition of "small entity" in the Preamble to the proposed Consumer Confidence Report (CCR) regulation (63 *FR* 7620, February 13, 1998). Comments showed that stakeholders support the proposed alternative definition. EPA also consulted with the SBA Office of Advocacy on the definition as it relates to small businesses. In the preamble to the final CCR regulation (63 FR 44511, August 19, 1998), EPA stated its intent to establish this alternative definition for regulatory flexibility assessments under the RFA for all drinking water regulations and has thus used it for this public notification rulemaking. Further information supporting this certification is available in the public docket for this rule.

The basis for the Administrator's certification is as follows: the annualized compliance costs of the rule represent less than one percent of annual sales for small businesses and less than one percent of annual operating revenues for small government entities. The analyses supporting this certification are contained in the "Regulatory Flexibility Screening Analysis" prepared for this proposed rule. Each analysis compared the average estimated per-system compliance costs associated with the proposed regulation with the average estimated per-system revenues or expenditures.

The first analysis, using existing data, categorized systems as small businesses, small governments, and small organizations. Within these categories, EPA subdivided the entity categories into three size range categories: those systems serving 25–500 people; those systems serving 501–3,300 people; and those serving 3,301–10,000 people. The analysis was completed for each of the small entity types and sizes. The existing data included only CWSs and NTNCWSs. TWSs were excluded because no data were available for them on entity type. The resulting ratios ranged from less than 0.01 percent for small organization water systems serving 500 or more persons to 0.20 percent for small government systems serving 25 to 500 persons.

The second analysis categorized systems by system type (i.e., CWS, NTNCWS, and TWS), using the same three size categories as the first analysis. The resulting ratios ranged from less than 0.01 percent for non-transient non-community water systems serving less than 500 persons to 0.36 percent for transient non-community water systems serving 3,301–10,000 persons.

All system types and system size categories are well below a 1 percent impact on average. This methodology obscures to some extent the potential for impact on individual systems. For example, the average revenue for a CWS in the 25–500 size range is estimated at $93,743 while the average compliance cost is estimated at $183, or 0.20 percent of average revenue. Many systems in this size range have lower revenues, however, and if they had several violations in one year could have higher compliance costs. Thus, many individual systems may experience compliance costs higher than 0.20 percent of revenue.

Even so, EPA believes these potential costs are unlikely to represent a significant adverse economic impact for more than a handful of systems. The proposed rule would reduce the costs of implementation currently required for all public water systems under the existing public notification rule, even though (as discussed in Part VII) as a practical matter the actual costs

incurred will likely increase for water systems not complying with the current public notification regulations.

Since the Administrator is certifying this rule, the Agency did not prepare an RFA. Nevertheless, the Agency has conducted outreach to address the small-entity impacts that do exist and to gather information. The Agency also has structured the rule to avoid significant impacts on a substantial number of small entities by providing flexibility to public water systems on the method of delivery of the public notice and by offering all public water systems the opportunity to use an annual report of violations in lieu of individual Tier 3 notices. In addition, all community water systems are encouraged to use the CCR to meet the requirements of the public notice rule wherever appropriate. (Note that to use the CCR, many small systems would have to distribute their CCR more widely to meet the public notification distribution requirements.) Finally, small community water systems and all non-community water systems may hand deliver or post the notice in lieu of mailing, reducing substantially their overall cost of compliance with this rule.

C. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1898.01) and a copy may be obtained from Sandy Farmer, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, DC 20460, by E-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. The supporting statement for the ICR is available for review from the EPA Docket for this rule, titled: "Supporting Statement for EPA Information Collection Request Number #1898.01, Public Water System Supervision Program Public Notification Requirements." A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

This information is being collected in order to fulfill the statutory requirements of section 114(c)(4) of the Safe Drinking Water Act Amendments (SDWA) of 1996 (Public Law 104–182) enacted August 6, 1996. Public notice of violations is an integral part of a number of public health protection and consumer right-to-know provisions of the 1996 SDWA amendments. The public notification requirement is one of six interrelated provisions now included in the SDWA related to providing information to the public. Responses are mandatory. None of the information submitted under the proposed rule is confidential business information.

The burden to public water systems is based on the cost of the rule discussed under Section VII of the Preamble. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal Agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing way to comply with any previous applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

The total annual burden to both public water systems and primacy agencies is 972,107 hours at an annual cost of $17,956,117. The cost estimate includes both the labor hour costs and the O&M costs of implementing the rule.

The annual burden to public water systems of meeting the requirements of the revised public notification rule is 910,987 hours at an annual cost of $16,391,263. The burden estimate is the sum of the costs of three component activities: notice preparation costs; notice distribution costs; and costs of repeat notices. The costs to the public water systems include labor and non-labor costs, such as the costs of postage to mail the public notices where required. Public water systems are required to comply with the public notification rule if they have one or more violations of National Primary Drinking Water Regulations (NPDWR) or have other situations requiring a public notice. The number of public water systems estimated to have violations on an annual basis is 46,572. The annual average burden per public water system violating one or more drinking water standards is $351.96 and 19.6 hours.

The annual burden to primacy agencies of implementing the new public notification regulations is 61,120 hours at an annual cost of $1,564,854. The burden estimate is also the sum of three component activities: costs of consulting with public water systems; costs of receiving and reviewing the compliance certification and notice copies received from the public water system; and the costs of filing and maintaining the public water system notification records. The costs to the primacy agency include labor costs only. Primacy agencies are required to adopt and implement the new public notification regulation as a condition of maintaining primacy. (Note that the burden to the state for adopting the regulation has not been included in the draft ICR but will be included in the ICR for the final rule.) Fifty-six States and Territories currently have primacy under the Safe Drinking Water Act. EPA directly implements the regulatory program in Wyoming, Washington, D.C., and the Indian Lands. The average annual burden for each of the 56 States and Territories with primacy to implement the proposed public notification rule is $27,944 and 1,091 hours per primacy agency.

The paperwork burden associated with the existing public notification requirements in 40 CFR 141.32 is currently included in the baseline drinking water ICR (OMB Control No. 2040–0090, EPA ICR #270.39). The estimated burden under ICR #270.39 is 955,191 hours, and $21,969,393. This is the estimated cost to public water systems only, as the approved ICR did not include any incremental costs to the primacy agencies.

To estimate the change in the burden under the proposed rule to public water systems, EPA re-calculated the burden numbers under the current rule to provide a common basis to compare the existing rule with the proposed rule. The existing ICR estimate could not be used as the basis of comparison because it used different lower external cost and workload assumptions.

The adjusted burden of the current rule was calculated to be approximately 1,200,000 hours and the adjusted cost was calculated at approximately $27,000,000. The burden reduction, therefore, under the proposed rule would be approximately 230,000 hours (or 19.2 percent) and the cost reduction approximately $9,100,000 (or 33.7 percent). Two programmatic changes associated with the proposed rule account for the bulk of the reduction in burden and cost estimates from the current rule.

- The proposed rule changes both the timing and method of delivery options for Tier 3 violations. The proposed rule would require notice within one year after the occurrence of the violation rather than within three months, as required by the current rule. Systems with monitoring and testing procedure

violations occurring several times throughout the year are able under the proposed rule to consolidate their notices into one annual notice. The proposed rule would also allow community water systems to meet the public notice requirements for Tier 3 through the existing Consumer Confidence Report (CCR). Tier 3 violations are primarily monitoring or testing procedure violations. EPA estimates that half of all community water systems serving less than 10,000 and all community systems serving more than 10,000 will use the CCR for Tier 3 notices. The estimated burden reduction for the proposed changes to the timing and method of delivery for Tier 3 notices is approximately 210,000 hours (17.5 percent) and the cost reduction is approximately $6,500,000 (24.1 percent).

- The proposed rule changes the required methods of delivery for Tiers 1 and 2 notices. The current rule requires both newspaper and mail delivery for all tiers. Those systems for whom no newspaper outlet is available are allowed to hand deliver or post instead of mailing and using the newspaper. Under the current rule, systems with Tier 1 violations must also issue a notice via television or radio. The proposed rule requires only one method of delivery for Tier 2—mail or hand delivery (or posting for non-community systems). The burden reduction for resulting from the change in the Tier 1 and Tier 2 method of delivery requirements in the proposed rule would be approximately 20,000 hours (1.7 percent), and the cost reduction would be $2,600,000 (9.6 percent).

Section VII of the preamble presents more detailed information on the cost of the rule. Section VII also discusses several caveats that should be borne in mind when considering these cost and burden estimates.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, OP Regulatory Information Division, U.S. Environmental Protection Agency (2137), 401 M Street SW, Washington, D.C. 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW, Washington, D.C. 20503, marked "Attention: Desk Officer for EPA." Include ICR number 1898.01 in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 13, 1999, a comment to OMB is best assured of having its full effect if OMB receives it by June 14, 1999. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or Tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and Tribal governments, the nature of their concerns, any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

EPA has concluded that this rule will create a mandate on State, local and Tribal governments that own or operate PWSs, and that the Federal government will not provide the funds necessary to pay the direct costs incurred by the State, local and Tribal governments in complying with the mandate. In developing this rule, EPA consulted with State, local and Tribal governments to enable them to provide meaningful and timely input in the development of this rule. As described in section III of the Supplementary Information above, EPA held a series of stakeholder meetings with a wide variety of State, local, and Tribal representatives, who provided meaningful and timely input in the development of the proposed rule. The principal concerns raised by the State, local, and Tribal governments were the potential drain on their resources and the potential complexity of the Federal rule, which would make it difficult to implement effectively. EPA believes it has addressed these concerns in the proposed regulation, which provides considerable flexibility in how the public notice is developed and what delivery mechanisms are available. The costs of the proposed regulation are less than those required for full compliance with the existing public notification rule. Summaries of the meetings have been included in the public docket for this rulemaking.

E. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the Tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected Tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian Tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's proposed rule does not significantly or uniquely affect the communities of Indian Tribal governments, nor does it impose substantial direct compliance costs on such communities. Further, the impact on Tribal governments is not unique in that this rule applies equally to all public water systems, including those owned and operated by Federal, State, and local governments. Public water systems on Indian lands incur costs under the public notification rule only if they violate a national primary drinking water regulation or have a variance or exemption from EPA. The public notification requirements will in most cases be met either through hand delivery of a single notice to all persons served or by posting the notice in conspicuous locations. Costs of meeting these requirements will be minimal. In

fact, the public notification costs resulting from this rule are less than those required for full compliance with the existing regulation. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this proposed rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under Section 202 of the UMRA, EPA generally must prepare a written statement (including a cost-benefit analysis) for any proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that this rule would not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. The estimated cost of the proposed rule is $34,771,019. (See section VII of the Supplementary Information.) Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. This rule will establish requirements that affect small community water systems. However, EPA has determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments because the regulation requires minimal expenditure of resources. In fact, the public notification costs resulting from this rule are less than those required for full compliance with the existing regulation. Thus, today's rule is not subject to the requirements of section 203 of UMRA.

G. Environmental Justice

Pursuant to Executive Order 12898 (59 *FR* 7629, February 16, 1994), the Agency has considered environmental justice related issues with regard to the potential impacts of this action on the environmental and health conditions in low-income and minority communities. The Agency believes that several of today's proposed requirements will be particularly beneficial to these communities:

- Public water systems would be required to distribute the notice to all persons served, both through the use of required delivery methods and through the use of additional measures reasonably calculated to reach other persons served, if they would not normally be reached by the required method. In addition, the notice to bill-paying customers must include standard language encouraging those receiving the public notice to make the notice available to other consumers who are not bill paying customers (e.g., renters, transients, students).
- Public notices would include information on what the consumers should do to minimize the health risk from drinking water in violation of EPA standards and on when to seek further medical advice. All notices would be required to include the name and phone number of the water system official who can provide further information.
- Public water systems would include information on the importance of the notice in a language other than English if a large proportion of the population does not speak English (as determined by the primacy agency).

H. Risk to Children Analysis

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 *FR* 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate affect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The proposed rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. The purpose of the proposed rule is to provide a public notice to all persons served when a violation of EPA drinking water standards occurs, to enable consumers to avoid health and safety risks from potential exposure to harmful contaminants in the drinking water. The regulation addresses the particular risks that certain contaminants may pose by considering such risks in assigning contaminants to the appropriate tier and by identifying such risks in the required health effects language, with specific reference to risks to children, where appropriate. The public notice requirements, however, apply to potential health and safety risks to all consumers and all vulnerable populations, and are not targeted specifically to address a disproportionate risk to children.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), 15 U.S.C. 272, the Agency is required to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices, etc.) that are developed or adopted by voluntary consensus standards bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the Act requires the Agency to provide Congress, through the Office of Management and Budget, an explanation of the reasons for not using such standards. The Agency does not believe that this proposed rule addresses any technical standards subject to the NTTAA. A commenter who disagrees with this conclusion should indicate how the rule is subject to the Act and identify any potentially applicable voluntary consensus standards.

List of Subjects

40 CFR Part 141

Environmental protection, Chemicals, Indians—lands, Intergovernmental relations, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 142

Environmental protection, Administrative practice and procedure, Chemicals, Indians—lands, Radiation protection, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 143

Chemicals, Indians-lands, Water supply.

Dated: April 27, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, the Environmental Protection Agency proposes to amend 40 CFR parts 141, 142, and 143 as follows:

PART 141—NATIONAL PRIMARY DRINKING WATER REGULATIONS

1. The authority citation for part 141 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300 g–3, 300g–4, 300 g–5, 300 g–6, 300 j–4, 300 j–9, and 300 j–11.

2. In part 141, the heading for subpart D is revised to read as follows:

Subpart D—Reporting and Record Keeping

3. Section 141.31 is amended by revising paragraph (d), to read as follows:

§ 141.31 Reporting requirements.

* * * * *

(d) The public water system, within 10 days of completion of each public notice required pursuant to subpart Q of this part, must submit to the primacy agency a certification that all public notification requirements have been met and must include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

* * * * *

4. Section 141.32 is amended by revising the introductory paragraph, to read as follows:

§ 141.32 Public notification.

The requirements in this section apply until the requirements of Subpart Q of this part become effective. For public water systems where EPA directly implements the public water system supervision program, the requirements in Subpart Q of this part will become effective on [date 90 days after publication of the final rule in the **Federal Register**]. For all other public water systems, the requirements in Subpart Q of this part will become effective on [date two years after publication of the final rule in the **Federal Register**] or the date the State-adopted rule becomes effective, whichever comes first.

* * * * *

5. Section 141.33 is amended by adding paragraph (e), to read as follows:

§ 141.33 Record maintenance.

* * * * *

(e) Copies of public notices issued pursuant to subpart Q of this part and certifications made to the primacy agency pursuant to § 141.31 must be kept for three years after issuance.

§ 141.35 [Amended]

6. Section 141.35 is amended by removing paragraph (d).

7. Part 141 is amended by adding subpart Q, to read as follows:

Subpart Q—Public Notification of Drinking Water Violations

Sec.

141.201 General public notification requirements.
141.202 *Tier 1 Public Notice*—Form, manner, and frequency of notice.
141.203 *Tier 2 Public Notice*—Form, manner, and frequency of notice.
141.204 *Tier 3 Public Notice*—Form, manner, and frequency of notice.
141.205 Content of the public notice.
141.206 Notice to new billing units or new customers.
141.207 Special notice of the availability of unregulated contaminant monitoring results.
141.208 Special notice for exceedance of the SMCL for fluoride.
141.209 Notice by primacy agency on behalf of the public water system.
Appendix A to Subpart Q of Part 141—NPDWR Violations and Situations Requiring Public Notice
Appendix B to Subpart Q of Part 141—Standard Health Effects Language for Public Notification
Appendix C to Subpart Q of Part 141—List of Acronyms Used in Public Notification Regulation

Subpart Q—Public Notification of Drinking Water Violations

§ 141.201 General public notification requirements.

The requirements in this subpart are effective no later than [date two years after publication of the final rule in the **Federal Register**] or on the date the State-adopted rule becomes effective, whichever comes first. For public water systems where EPA directly implements the public water system supervision (PWSS) program (i.e., Indian lands, Wyoming, Washington, D.C.), the requirements in this section are effective 90 days after publication of the final rule in the **Federal Register**.

(a) *Who must give public notice?* Each owner or operator of a public water system (community water systems, non-transient non-community water systems, and transient non-community water systems) must give notice for all violations of national primary drinking water regulations (NPDWR) and for other situations, as listed in Table 1 of this section. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.201.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A PUBLIC NOTICE

(1) NPDWR violations (MCL, MRDL, treatment technique, monitoring and testing procedure)
(i) Failure to comply with an applicable maximum contaminant level (MCL) or maximum residual disinfectant level (MRDL).
(ii) Failure to comply with a prescribed treatment technique (TT).
(iii) Failure to perform water quality monitoring, as required by the regulations.
(iv) Failure to comply with testing procedures as prescribed by a drinking water regulation.
(2) Variance and exemptions under sections 1415 and 1416 of SDWA
(i) Operation under a variance or an exemption.
(ii) Failure to comply with the requirements of any schedule that has been set under a variance or exemption.
(3) Special public notices
(i) Occurrence of a waterborne disease outbreak. Exceedance of the secondary maximum contaminant level (SMCL) for fluoride. Availability of unregulated contaminant monitoring data. Other situations determined by the primacy agency to have a potential for serious adverse effects on human health.

(b) *What type of public notice is required for each violation or situation?* Public notice requirements are divided into three tiers, to take into account the seriousness of the violation or situation and of any potential adverse health effects that may be involved. The public notice requirements for each violation or situation listed in Table 1 of this section are determined by the tier to which it is assigned. Table 2 of this section provides the definition of each tier. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 2 TO § 141.201—DEFINITION OF PUBLIC NOTICE TIERS

(1) *Tier 1 public notice*—required for NPDWR violations and situations with significant potential to have serious adverse effects on human health as a result of short-term exposure.
(2) *Tier 2 public notice*—required for all other NPDWR violations and situations with potential to have serious adverse effects on human health.
(3) *Tier 3 public notice*—required for all other NPDWR violations and situations not included in Tier 1 and Tier 2.

(c) *Who must be notified?* Each public water system must provide public notice to persons served by the water system, in accordance with this subpart. A copy of the notice must also be sent to the primacy agency, in accordance with the requirements under § 141.31(d).

§ 141.202 Tier 1 Public Notice—Form, manner, and frequency of notice.

(a) *Which violations or situations require a Tier 1 public notice?* Table 1 of this section lists the violation categories and other situations requiring a Tier 1 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.202.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 1 PUBLIC NOTICE

(1) Violation of the MCL for total coliforms, when fecal coliform or *E. coli* are present in the water distribution system (as specified in § 141.63(b)), or failure to test for fecal coliforms or *E. coli* after the presence of coliform bacteria in the water distribution system is confirmed (as specified in § 141.21(e));
(2) Violation of the MCL for nitrate, nitrite, or combined nitrate+nitrite, as defined in § 141.62;
(3) Violation of the MRDL for chlorine dioxide, when one or more repeat samples taken in the distribution system exceed the MRDL, or when required repeat samples are not taken in the distribution system, as defined in § 141.65(a);
(4) Occurrence of a waterborne disease outbreak, as defined in § 141.2; and
(5) Other violations or situations with potential to have serious adverse effects on human health as a result of short-term exposure, as determined by the primacy agency either in its regulations or on a case-by-case basis.

(b) *When is the Tier 1 public notice to be provided? What additional steps are required?*

Public water systems must:

(1) Provide a public notice as soon as practicable but no later than 24 hours after the system learns of the violation;

(2) Initiate consultation with the primacy agency as soon as practicable, but no later than 24 hours after the public water system learns of the violation or situation, to determine additional public notice requirements; and

(3) Comply with any additional public notification requirements (including any repeat notices) that are established as a result of the consultation with the primacy agency. Such requirements may include the timing, form, manner, frequency, and content of repeat notices (if any) and other actions designed to reach all persons served.

(c) *What is the form and manner of the public notice?* Public water systems must provide the notice in a form and manner reasonably calculated to reach all persons served within 24-hours. The form and manner used by the public water system are to fit the specific situation, but must be designed to reach residential, transient, and non-transient users of the water system. In order to reach all persons served, water systems are to use, at a minimum, one or more of the following forms of delivery:

(1) Appropriate broadcast media (such as radio and television);

(2) Posting of the notice in conspicuous locations; or

(3) Hand delivery of the notice to persons served by the water system.

§ 141.203 Tier 2 Public Notice—Form, manner, and frequency of notice.

(a) *Which violations or situations require a Tier 2 public notice?* Table 1 of this section lists the violation categories and other situations requiring a Tier 2 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.203.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE

(1) All violations of the MCL, MRDL, and treatment technique requirements not included in the Tier 1 notice category;
(2) Violations of the monitoring and testing procedure requirements, where the primacy agency determines that a Tier 2 rather than a Tier 3 public notice is required, taking into account potential health impacts and persistence of the violation; and

TABLE 1 TO § 141.203.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 2 PUBLIC NOTICE—Continued

(3) Failure to comply with the terms and conditions of any variance or exemption in place.

(b) *When is the Tier 2 public notice to be provided?* Public water systems must provide the public notice as soon as practicable, but no later than 30 days after the system learns of the violation. The primacy agency may allow additional time in specific circumstances of up to three months from the date the system learns of the violation. The public water system must repeat the notice every three months, unless the primacy agency determines that specific circumstances warrant a different repeat notice frequency. In no circumstance will the repeat notice be less frequent than once per year. If the public notice is posted, the notice must remain in place for as long as the violation or situation exists.

(c) *What is the form and manner of the Tier 2 public notice?* Public water systems must provide the notice in a form and manner that is reasonably calculated to reach persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Unless directed otherwise by the primacy agency, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill or other service connections; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such methods may include: publication in a local newspaper; delivery of multiple copies for distribution by single-biller customers (e.g., apartment buildings or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(2) Unless directed otherwise by the primacy agency, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations frequented by persons served by the system, or by mail or direct delivery to each customer (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system if they would not

normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

§ 141.204 Tier 3 Public Notice—Form, manner, and frequency of notice.

(a) *Which violations or situations require a Tier 3 public notice?* Table 1 of this section lists the violation categories and other situations requiring a Tier 3 public notice. Appendix A to this subpart identifies the tier assignment for each specific violation or situation.

TABLE 1 TO § 141.204.—VIOLATION CATEGORIES AND OTHER SITUATIONS REQUIRING A TIER 3 PUBLIC NOTICE

(1) Monitoring violations under 40 CFR part 141, unless the primacy agency determines that the violation requires a Tier 2 notice;
(2) Failure to comply with a testing procedure established in 40 CFR part 141;
(3) Operation under a variance granted under section 1415 or exemption granted under section 1416 of the Act; and
(4) Any other violations and situations determined by the primacy agency to require a Tier 3 public notice.

(b) *When is the Tier 3 public notice to be provided?* (1) Public water systems must provide the public notice not later than one year after the public water system learns of the violation or begins operating under a variance or exemption. Following the initial notice, the public water system must repeat the notice annually for as long as the violation, variance, exemption, or other situation exists. If the public notice is posted, the notice must remain in place for as long as the violation, variance, exemption, or other situation exists.

(2) Instead of individual public notices, a public water system may use an annual report summarizing all violations occurring during the previous twelve months to meet the requirements of paragraph (b)(1) of this section.

(c) *What is the form and manner of the Tier 3 public notice?* Public water systems must provide the notice in a form and manner that is reasonably calculated to reach all persons served in the required time period. The form and manner of the public notice may vary based on the specific situation and type of water system, but it must at a minimum meet the following requirements:

(1) Unless directed otherwise by the primacy agency, community water systems must provide notice by:

(i) Mail or other direct delivery to each customer receiving a bill or other service connections; and

(ii) Any other method reasonably calculated to reach other persons regularly served by the system, if they would not normally be reached by the notice required in paragraph (c)(1)(i) of this section. Such methods may include: publication in a local newspaper; delivery of multiple copies for distribution by single-biller customers (e.g., apartment buildings or large private employers); posting in public places or on the Internet; or delivery to community organizations.

(2) Unless directed otherwise by the primacy agency, non-community water systems must provide notice by:

(i) Posting the notice in conspicuous locations frequented by persons served by the system, or by mail or direct delivery to each customer (where known); and

(ii) Any other method reasonably calculated to reach other persons served by the system, if they would not normally be reached by the notice required in paragraph (c)(2)(i) of this section. Such methods may include: publication in a local newspaper or newsletter distributed to customers; use of E-mail to notify employees or students; or, delivery of multiple copies in central locations (e.g., community centers).

(d) *In what situations may the Consumer Confidence Report be used to meet the Tier 3 public notice requirements?* For community water systems, the Consumer Confidence Report (CCR) required under subpart O of this part may be used as a vehicle for the initial Tier 3 public notice and all required repeat notices, as long as the CCR is provided to all persons served no later than 12 months after the system learns of the violation and as long as the CCR follows the form, manner, and content requirements of this section.

§ 141.205 Content of the public notice.

(a) *What elements must be included in the public notice for violations of National Primary Drinking Water Regulations (NPDWR), including the monitoring and testing procedure requirements?* When a public water system violates an NPDWR, each public notice must include the following elements:

(1) A description of the violation, including the contaminant of concern, and (as applicable) the contaminant level ;

(2) When the violation occurred;

(3) Any potential adverse health effects from the violation, including the standard language under paragraph (d)(1) or (d)(2) of this section, whichever is applicable;

(4) The population at risk, including subpopulations particularly vulnerable if exposed to the contaminant in their drinking water;

(5) Whether alternative water supplies should be used;

(6) What actions consumers should take, including when they should seek medical help, if known;

(7) What the system is doing to correct the violation;

(8) When the water system expects to return to compliance;

(9) The phone number of the water system owner, operator, or designee of the public water system as a source of additional information concerning the notice; and

(10) A statement to encourage the notice recipient to distribute the public notice to other persons served, using the standard language under paragraph (d)(3) of this section.

(b) *What elements must be included in the public notice for public water systems operating under a variance or exemption?* (1) If a public water system has been granted a variance or an exemption, the public notice must contain:

(i) An explanation of the reasons for the variance or exemption;

(ii) The date on which the variance or exemption was issued;

(iii) A brief status report on the steps the system is taking to install treatment, find alternative sources of water, or otherwise comply with the terms and schedules of the variance or exemption; and

(iv) A notice of any opportunity for public input in the review of the variance or exemption.

(2) If a public water system violates the conditions of a variance or exemption, the public notice must contain the ten elements listed in paragraph (a) of this section.

(c) *How is the public notice to be presented?* (1) Each public notice required by this section:

(i) Must be displayed in a conspicuous way (where applicable);

(ii) Must not contain overly technical language or very small print;

(iii) Must not be formatted in a way that defeats the purpose of the notice;

(iv) Must not contain language which nullifies the purpose of the notice.

(2) For public water systems serving a large proportion of non-English

speaking consumers, as determined by the primacy agency, the public notice must contain information in the appropriate language(s) regarding the importance of the notice or contain a telephone number or address where persons served may contact the water system to obtain a translated copy of the notice or to request assistance in the appropriate language.

(d) *What standard language must public water systems include in their public notice?* Public water systems are required to include the following standard language in their public notice:

(1) *Standard health effects language for MCL or MRDL violations, treatment technique violations, and violations of the condition of a variance or exemption.* Public water systems must include in each public notice the health effects language specified in Appendix B to this subpart corresponding to each MCL, MRDL, and treatment technique violation listed in Appendix A to this subpart, and for each violation of a condition of a variance or exemption.

(2) *Standard language for monitoring and testing procedure violations.* Public water systems must include the following language in their notice for all monitoring and testing procedure violations listed in Appendix A to this subpart:

Because we ["did not monitor or test" or "failed to monitor or test completely"] during [compliance period], we do not know whether the contaminant was present in your drinking water during that time period, and we are unable to tell whether your health was at risk during that time.

(3) *Standard language to encourage the distribution of the public notice to all persons served.* Public water systems must include in or attach to their notice the following language:

If other people receive water from you, such as tenants, residents, patients, students, or employees, it is important that you provide this notice to them by posting it in a conspicuous location or by direct hand or mail delivery.

§ 141.206 Notice to new billing units or new customers.

(a) *What is the requirement for community water systems?* Community water systems must give a copy of the most recent public notice for any continuing violation or the existence of a variance or exemption to all new billing units or new hookups prior to or at the time service begins.

(b) *What is the requirement for non-community water systems?* Non-community water systems must continuously post the public notice in a conspicuous place in order to inform new consumers of any continuing violation, variance, or exemption for as long as the violation exists.

§ 141.207 Special notice of the availability of unregulated contaminant monitoring results.

(a) *When is the special notice to be given?* The owner or operator of a community water system or non-transient, non-community water system required to monitor under § 141.40 must notify persons served by the system of the availability of the results of such sampling no later than 12 months after the monitoring results are known.

(b) *What is the form and manner of the special notice?* The form and manner of the public notice must follow the requirements for a Tier 3 public notice prescribed in §§ 141.204(c) and (d). The notice must also identify a person and provide the telephone number to contact for information on the monitoring results.

§ 141.208 Special notice for exceedance of the SMCL for fluoride.

(a) *When is the special notice to be given?* Community water systems that exceed the secondary maximum contaminant level (SMCL) for fluoride as determined by the last single sample taken in accordance with § 141.23, but do not exceed the maximum contaminant level for fluoride as specified in § 141.62, must provide the public notice in paragraph (c) of this section to all persons served. Public notice must be provided as soon as practicable but no later than 12 months from the day the water system learns of the exceedance.

(b) *What is the form and manner of the special notice?* The form and manner of the public notice (including repeat notices) must follow the requirements for a Tier 3 public notice in §§ 141.204(c) and (d).

(c) *What mandatory language must be contained in the special notice?* The notice must contain the following language, including the language necessary to fill in the blanks:

The drinking water provided by [name of community water system] has a fluoride concentration of [*insert value*] milligrams per liter (mg/l). Although your drinking water does not violate the drinking water standard of 4 mg/l for fluoride, the U.S. Environmental Protection Agency requires us to notify you when we discover that the fluoride levels in your drinking water exceed 2 mg/l. This is to alert you about a cosmetic dental problem that might affect children under nine years old.

Fluoride at lower levels helps prevent cavities. However, children drinking water containing fluoride at the levels present in your drinking water may develop dental fluorosis. Dental fluorosis, in its moderate or severe forms, may result in a brown staining and/or pitting of the permanent teeth. This problem occurs only in developing teeth, before they erupt from the gums.

Children under nine should be provided with alternative sources of drinking water to avoid the possibility of staining and pitting of their permanent teeth. Older children and adults may safely drink the water.

For more information and to learn about available water treatment systems, please call [name of water system contact] of [name of community water system] at [phone number].

§ 141.209 Notice by primacy agency on behalf of the public water system.

(a) *When may the primacy agency give the notice on behalf of the public water system?* The primacy agency may give the notice required by this subpart on behalf of the owner and operator of the public water system if the primacy agency complies with the requirements of this subpart.

(b) *What is the responsibility of the public water system when notice is given by the primacy agency?* The owner or operator of the public water system remains legally responsible for ensuring that the requirements of this subpart are met.

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1] (INCLUDING D/DBP AND IESWTR VIOLATIONS)

Contaminant	MCL/MRDL/TT violations[2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
I. Violations of National Primary Drinking Water Regulations (NPDWR):[3]				
Microbiological Contaminants				
Total coliform	2	141.63(a)	3	141.21(a–d)
Fecal coliform/*E. coli*	1	141.63(b)	1	141.21(e)
Turbidity	2	141.13, 141.71(c)	3	141.22
Surface Water Treatment Rule violations	2	141.70–141.73	3	141.74
Interim Enhanced Surface Water Treatment Rule violations	2	141.170–141.173[4]	3	141.172, 141.174
Inorganics				
Antimony	2	141.62(b)	3	141.23(a, c)
Arsenic	2	141.11(b), 141.23(n)	3	141.23(a, l, m)
Asbestos (fibers >10 μm)	2	141.62(b)	3	141.23(a–b)
Barium	2	141.62(b)	3	141.23(a, c)
Beryllium	2	141.62(b)	3	141.23(a, c)
Cadmium	2	141.62(b)	3	141.23(a, c)
Chromium (total)	2	141.62(b)	3	141.23(a, c)
Cyanide	2	141.62(b)	3	141.23(a, c)
Fluoride	2	141.62(b)	3	141.23(a, c)
Mercury (inorganic)	2	141.62(b)	3	141.23(a, c)
Nitrate	1	141.62(b)	3	141.23(a, d), 141.23(f)(2)
Nitrite	1	141.62(b)	3	141.23(a, e), 141.23(f)(2)
Nitrate+Nitrite	1	141.62(b)	3	141.23(a)
Selenium	2	141.62(b)	3	141.23(a, c)
Thallium	2	141.62(b)	3	141.23(a, c)
Lead and Copper Rule (Action Level for lead is 0.015 mg/L, for copper is 1.3 mg/L)				
Lead and Copper Rule	2	141.80–141.85	3	141.86–141.89
Synthetic Organic Chemicals (VOCS)				
2,4-D	2	141.61(c)	3	141.24(h)
2,4,5-TP (Silvex)	2	141.61(c)	3	141.24(h)
Alachlor	2	141.61(c)	3	141.24(h)
Atrazine	2	141.61(c)	3	141.24(h)
Benzo(a)pyrene (PAHs)	2	141.61(c)	3	141.24(h)
Carbofuran	2	141.61(c)	3	141.24(h)
Chlordane	2	141.61(c)	3	141.24(h)
Dalapon	2	141.61(c)	3	141.24(h)
Di (2-ethylhexyl) adipate	2	141.61(c)	3	141.24(h)
Di (2-ethylhexyl) phthalate	2	141.61(c)	3	141.24(h)
Dibromochloropropane	2	141.61(c)	3	141.24(h)
Dinoseb	2	141.61(c)	3	141.24(h)
Dioxin (2,3,7,8-TCDD)	2	141.61(c)	3	141.24(h)
Diquat	2	141.61(c)	3	141.24(h)
Endothall	2	141.61(c)	3	141.24(h)
Endrin	2	141.61(c)	3	141.24(h)
Ethylene dibromide	2	141.61(c)	3	141.24(h)
Glyphosate	2	141.61(c)	3	141.24(h)
Heptachlor	2	141.61(c)	3	141.24(h)
Heptachlor epoxide	2	141.61(c)	3	141.24(h)
Hexachlorobenzene	2	141.61(c)	3	141.24(h)
Hexachlorocyclopentadiene	2	141.61(c)	3	141.24(h)
Lindane	2	141.61(c)	3	141.24(h)
Methoxychlor	2	141.61(c)	3	141.24(h)
Oxamyl (Vydate)	2	141.61(c)	3	141.24(h)
Pentachlorophenol	2	141.61(c)	3	141.24(h)
Picloram	2	141.61(c)	3	141.24(h)
Polychlorinated biphenyls (PCBs)	2	141.61(c)	3	141.24(h)
Simazine	2	141.61(c)	3	141.24(h)
Toxaphene	2	141.61(c)	3	141.24(h)

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1] (INCLUDING D/DBP AND IESWTR VIOLATIONS)—Continued

Contaminant	MCL/MRDL/TT violations[2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Volatile Organic Chemicals (VOCs)				
Benzene	2	141.61(a)	3	141.24(f)
Carbon tetrachloride	2	141.61(a)	3	141.24(f)
Chlorobenzene (monochlorobenzene)	2	141.61(a)	3	141.24(f)
o-Dichlorobenzene	2	141.61(a)	3	141.24(f)
p-Dichlorobenzene	2	141.61(a)	3	141.24(f)
1,2-Dichloroethane	2	141.61(a)	3	141.24(f)
1,1-Dichloroethylene	2	141.61(a)	3	141.24(f)
cis-1,2-Dichloroethylene	2	141.61(a)	3	141.24(f)
trans-1,2-Dichloroethylene	2	141.61(a)	3	141.24(f)
Dichloromethane	2	141.61(a)	3	141.24(f)
1,2-Dichloropropane	2	141.61(a)	3	141.24(f)
Ethylbenzene	2	141.61(a)	3	141.24(f)
Styrene	2	141.61(a)	3	141.24(f)
Tetrachloroethylene	2	141.61(a)	3	141.24(f)
Toluene	2	141.61(a)	3	141.24(f)
1,2,4-Trichlorobenzene	2	141.61(a)	3	141.24(f)
1,1,1-Trichloroethane	2	141.61(a)	3	141.24(f)
1,1,2-Trichloroethane	2	141.61(a)	3	141.24(f)
Trichloroethylene	2	141.61(a)	3	141.24(f)
Vinyl chloride	2	141.61(a)	3	141.24(f)
Xylenes (total)	2	141.61(a)	3	141.24(f)
Radioactive Contaminants				
Beta/photon emitters [4]	2	141.16	3	141.25(a), 141.26(b)
Alpha emitters	2	141.15(b)	3	141.25(a), 141.26(a)
Combined radium (226 & 228)	2	141.15(a)	3	141.25(a), 141.26(a)
Disinfection Byproducts (DBPs), Byproduct Precursors, Disinfectant Residuals. Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA also sets standards for controlling the levels of disinfectants and DBPs in drinking water, which includes trihalomethanes (THMs) and haloacetic acids (HAAs).[5]				
Total trihalomethanes (TTHMs) —Chloroform —Bromodichloromethane —Dibromochloromethane —Bromoform	2	141.12,[6] 141.64(a)	3	141.30, 141.132(a–b)
Haloacetic Acids (HAA5) —Monochloroacetic acid —Dichloroacetic acid —Trichloroacetic acid —Monobromoacetic acid	2	141.64(a)	3	141.132(a–b)
Bromate	2	141.64(a)	3	141.132(a–b)
Chlorite	2	141.64(a)	3	141.132(a–b)
Chlorine (MRDL)	2	141.65(a)	3	141.132(a, c)
Chloramine (MRDL)	2	141.65(a)	3	141.132(a, c)
Chlorine dioxide (MRDL), ≥2 consecutive samples at entry point only are above MRDL.	2	141.65(a), 141.133(c)(2).	3	141.132(a, c), 141.133(c)(2)
Chlorine dioxide (MRDL), sample(s) in distribution system above MRDL.	1	141.65(a), 141.133(c)(2).	1	141.132(a, c), 141.133(c)(2)
Control of DBP precursors—TOC (TT)	2	141.135(a–b)	3	141.132(a, d)
Bench marking and disinfection profiling	N/A	N/A	3	141.172
Development of monitoring plan	N/A	N/A	3	141.132(f)
Other Treatment Techniques				
Acrylamide (TT)	2	141.111	N/A	N/A
Epichlorohydrin (TT)	2	141.111	N/A	N/A
II. Unregulated Contaminant Monitoring Results[7]				
Unregulated contaminants	N/A	N/A	3	141.40

APPENDIX A TO SUBPART Q OF PART 141.—NPDWR VIOLATIONS AND OTHER SITUATIONS REQUIRING PUBLIC NOTICE[1] (INCLUDING D/DBP AND IESWTR VIOLATIONS)—Continued

Contaminant	MCL/MRDL/TT violations[2]		Monitoring and testing procedure violations	
	Tier of public notice required	Citation	Tier of public notice required	Citation
Nickel	N/A	N/A	3	141.23(c, k)
III. Public Notification for Variances and Exemptions				
Operation under a variance or exemption	3	1415, 1416[8]	N/A	N/A
Violation of conditions of a variance or exemption	2	1415, 1416	N/A	N/A
IV. Other Situations Requiring Public Notification				
Fluoride secondary maximum contaminant level (SMCL) exceedance.	3	143.3	N/A	N/A
Availability of unregulated contaminant monitoring data	3	141.40	N/A	N/A
Waterborne disease outbreak	1	141.2, 141.71(c)(2)(ii)	N/A	N/A
Other situations as determined by primacy agency	(9)	N/A	N/A	N/A

Appendix A Endnotes

1. Violations and other situations not listed in this table do not require notice, unless otherwise determined by the primacy agency. Primacy agencies may move violations requiring public notice to a higher tier as well (e.g., Tier 3 to Tier 2).

2. MCL—Maximum contaminant level, MRDL—Maximum residual disinfectant level, TT—Treatment technique.

3. The term *Violations of National Primary Drinking Water Regulations (NPDWR)* is used here to include violations of MCL, MRDL, treatment technique, monitoring, and testing procedure requirements.

4. Most of the requirements of the Interim Enhanced Surface Water Treatment Rule (63 *FR* 69477) (§§ 141.170–141.171, 141.73–141.174) become effective December 16, 2001 for Subpart H systems (surface water systems and ground water systems under the direct influence of surface water) serving more than 10,000. The Surface Water Treatment Rule (§§ 141.70–141.73, 141.74) remains in effect for these systems until that time. However, § 141.172 has some requirements that become effective as soon as April 16, 1999.

5. Subpart H community and non-transient non-community systems serving ≥10,000 must comply with new DBP MCLs, disinfectant MRDLs, and related monitoring requirements beginning December 16, 2001. All other community and non-transient non-community systems must meet the MCLs and MRDLs beginning December 16, 2003.

6. § 141.12 will no longer apply after December 16, 2003.

7. Monitoring is currently required for 34 unregulated contaminants listed in § 141.40. These include aldicarb, aldicarb sulfone, and aldicarb sulfoxide.

8. This citation refers to sections 1415 and 1416 of the Safe Drinking Water Act. There are no regulations requiring water systems to comply with the conditions of a variance or exemption. However, sections 1415 and 1416 require that "a schedule prescribed * * * for a public water system granted a variance [or exemption] shall require compliance by the system * * *"

9. Primacy agencies may place other situations in any tier they believe appropriate, based on threat to public health.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard health effects language for public notification
National Primary Drinking Water Regulations (NPDWR)			
Microbiological Contaminants			
1a. Total coliform	Zero	Presence[3]	Coliforms are bacteria that are naturally present in the environment and are used as an indicator that other, potentially-harmful, bacteria may be present. Coliforms were found in more samples than allowed and this was a warning of potential problems.
1b. Fecal coliform/*E. coli*	Zero	Presence	Fecal coliforms and *E. coli* are bacteria whose presence indicates that the water may be contaminated with human or animal wastes. Microbes in these wastes can cause short-term effects, such as diarrhea, cramps, nausea, headaches, or other symptoms. They may pose a special health risk for infants, young children, and people with severely compromised immune systems.
2. Turbidity	None	1 NTU[4/5] NTU[5]	Turbidity has no health effects. However, turbidity can interfere with disinfection and provide a medium for microbial growth. Turbidity may indicate the presence of disease-causing organisms. These organisms include bacteria, viruses, and parasites that can cause symptoms such as nausea, cramps, diarrhea and associated headaches.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
Interim Enhanced Surface Water Treatment Rule (IESWTR) violations: 3. Giardia lamblia 4. Viruses 5. Heterotrophic plate count (HPC) bacteria [6] 6. Legionella 7. Cryptosporidium	Zero	TT [7]	Inadequately treated water may contain disease-causing organisms. These organisms include bacteria, viruses, and parasites which can cause symptoms such as nausea, cramps, diarrhea, and associated headaches.[8]
Inorganics			
8. Antimony	0.006	0.006	Some people who drink water containing antimony well in excess of the MCL over many years could experience increases in blood cholesterol and decreases in blood sugar.
9. Arsenic	None	0.05	Some people who drink water containing arsenic in excess of the MCL over many years could experience skin damage or problems with their circulatory system, and may have an increased risk of getting cancer.
10. Asbestos (>10 μm)	7 MFL [9]	7 MFL	Some people who drink water containing asbestos in excess of the MCL over many years may have an increased risk of developing benign intestinal polyps.
11. Barium	2	2	Some people who drink water containing barium in excess of the MCL over many years could experience an increase in their blood pressure.
12. Beryllium	0.004	0.004	Some people who drink water containing beryllium well in excess of the MCL over many years could develop intestinal lesions.
13. Cadmium	0.005	0.005	Some people who drink water containing cadmium in excess of the MCL over many years could experience kidney damage.
14. Chromium (total)	0.1	0.1	Some people who use water containing chromium well in excess of the MCL over many years could experience allergic dermatitis.
15. Cyanide	0.2	0.2	Some people who drink water containing cyanide well in excess of the MCL over many years could experience nerve damage or problems with their thyroid.
16. Fluoride	4.0	4.0	Some people who drink water containing fluoride in excess of the MCL over many years could get bone disease, including pain and tenderness of the bones. Children may get mottled teeth.
17. Mercury (inorganic)	0.002	0.002	Some people who drink water containing inorganic mercury well in excess of the MCL over many years could experience kidney damage.
18. Nitrate	10	10	Infants below the age of six months who drink water containing nitrate in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.
19. Nitrite	1	1	Infants below the age of six months who drink water containing nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue-baby syndrome.
20. Nitrate+Nitrite	10	10	Infants below the age of six months who drink water containing nitrate and nitrite in excess of the MCL could become seriously ill and, if untreated, may die. Symptoms include shortness of breath and blue baby syndrome.
21. Selenium	0.05	0.05	Selenium is an essential nutrient. However, some people who drink water containing selenium in excess of the MCL over many years could experience hair or fingernail losses, numbness in fingers or toes, or problems with their circulation.
22. Thallium	0.0005	0.002	Some people who drink water containing thallium in excess of the MCL over many years could experience hair loss, changes in their blood, or problems with their kidneys, intestines, or liver.
Lead and Copper Rule			
23. Lead	Zero	TT [10]	Infants and children who drink water containing lead in excess of the action level could experience delays in their physical or mental development. Children could show slight deficits in attention span and learning abilities. Adults who drink this water over many years could develop kidney problems or high blood pressure.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
24. Copper	1.3	TT [11]	Copper is an essential nutrient, but some people who drink water containing copper in excess of the action level over a relatively short amount of time could experience gastrointestinal distress. Some people who drink water containing copper in excess of the action level over many years could suffer liver or kidney damage. People with Wilson's Disease should consult their personal doctor.
Synthetic Organic Compounds			
25. 2,4-D	0.07	0.07	Some people who drink water containing the weed killer 2,4-D well in excess of the MCL over many years could experience problems with their kidneys, liver, or adrenal glands.
26. 2,4,5-TP (Silvex)	0.05	0.05	Some people who drink water containing silvex in excess of the MCL over many years could experience liver problems.
27. Alachlor	Zero	0.002	Some people who drink water containing alachlor in excess of the MCL over many years could have problems with their eyes, liver, kidneys, or spleen, experience anemia, or may have an increased risk of getting cancer.
28. Atrazine	0.003	0.003	Some people who drink water containing atrazine well in excess of the MCL over many years could experience problems with their cardiovascular system or reproductive difficulties.
29. Benzo(a)pyrene (PAHs)	Zero	0.0002	Some people who drink water containing benzo(a)pyrene in excess of the MCL over many years may experience reproductive difficulties or may have an increased risk of getting cancer.
30. Carbofuran	0.04	0.04	Some people who drink water containing carbofuran in excess of the MCL over many years could experience problems with their blood, or nervous or reproductive systems.
31. Chlordane	Zero	0.002	Some people who drink water containing chlordane in excess of the MCL over many years could experience problems with their liver, or nervous system, and may have an increased risk of getting cancer.
32. Dalapon	0.2	0.2	Some people who drink water containing dalapon well in excess of the MCL over many years could experience minor kidney changes.
33. Di (2-ethylhexyl) adipate	0.4	0.4	Some people who drink water containing di (2-ethylhexyl) adipate well in excess of the MCL over many years could experience general toxic effects or reproductive difficulties.
34. Di(2-ethylhexyl) phthalate	Zero	0.006	Some people who drink water containing di (2-ethylhexyl) phthalate in excess of the MCL over many years may have problems with their liver, or experience reproductive difficulties, and may have an increased risk of getting cancer.
35. Dibromochloropropane (DBCP)	Zero	0.0002	Some people who drink water containing DBCP in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
36. Dinoseb	0.007	0.007	Some people who drink water containing dinoseb well in excess of the MCL over many years could experience reproductive difficulties.
37. Dioxin (2,3,7,8-TCDD)	Zero	3×10^{-8}	Some people who drink water containing dioxin in excess of the MCL over many years could experience reproductive difficulties and may have an increased risk of getting cancer.
38. Diquat	0.02	0.02	Some people who drink water containing diquat in excess of the MCL over many years could get cataracts.
39. Endothall	0.1	0.1	Some people who drink water containing endothall in excess of the MCL over many years could experience problems with their stomach or intestines.
40. Endrin	0.002	0.002	Some people who drink water containing endrin in excess of the MCL over many years could experience liver problems.
41. Ethylene dibromide	Zero	0.00005	Some people who drink water containing ethylene dibromide in excess of the MCL over many years could experience problems with their liver, stomach, reproductive system, or kidneys, and may have an increased risk of getting cancer.
42. Glyphosate	0.7	0.7	Some people who drink water containing glyphosate in excess of the MCL over many years could experience problems with their kidneys or reproductive difficulties.
43. Heptachlor	Zero	0.0004	Some people who drink water containing heptachlor in excess of the MCL over many years could experience liver damage and may have an increased risk of getting cancer.
44. Heptachlor epoxide	Zero	0.0002	Some people who drink water containing heptachlor epoxide in excess of the MCL over many years could experience liver damage, and may have an increased risk of getting cancer.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
45. Hexachlorobenzene	Zero	0.001	Some people who drink water containing hexachlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys, or adverse reproductive effects, and may have an increased risk of getting cancer.
46. Hexachlorocyclo pentadiene	0.05	0.05	Some people who drink water containing hexachlorocyclopentadiene well in excess of the MCL over many years could experience problems with their kidneys or stomach .
47. Lindane	0.0002	0.0002	Some people who drink water containing lindane in excess of the MCL over many years could experience problems with their kidneys or liver.
48. Methoxychlor	0.04	0.04	Some people who drink water containing methoxychlor in excess of the MCL over many years could experience reproductive difficulties.
49. Oxamyl (Vydate)	0.2	0.2	Some people who drink water containing oxamyl in excess of the MCL over many years could experience slight nervous system effects.
50. Pentachlorophenol	Zero	0.001	Some people who drink water containing pentachlorophenol in excess of the MCL over many years could experience problems with their liver or kidneys, and may have an increased risk of getting cancer.
51. Picloram	0.5	0.5	Some people who drink water containing picloram in excess of the MCL over many years could experience problems with their liver.
52. Polychlorinated biphenyls (PCBs).	Zero	0.0005	Some people who drink water containing PCBs in excess of the MCL over many years could experience changes in their skin, problems with their thymus gland, immune deficiencies, or reproductive or nervous system difficulties, and may have an increased risk of getting cancer.
53. Simazine	0.004	0.004	Some people who drink water containing simazine in excess of the MCL over many years could experience problems with their blood.
54. Toxaphene	Zero	0.003	Some people who drink water containing toxaphene in excess of the MCL over many years could have problems with their kidneys, liver, or thyroid, and may have an increased risk of getting cancer.
Volatile Organic Chemicals			
55. Benzene	Zero	0.005	Some people who drink water containing benzene in excess of the MCL over many years could experience anemia or a decrease in blood platelets, and may have an increased risk of getting cancer.
56. Carbon tetrachloride	Zero	0.005	Some people who drink water containing carbon tetrachloride in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
57. Chlorobenzene (monochlorobenzene).	0.1	0.1	Some people who drink water containing chlorobenzene in excess of the MCL over many years could experience problems with their liver or kidneys.
58. *o*-Dichlorobenzene	0.6	0.6	Some people who drink water containing o-dichlorobenzene well in excess of the MCL over many years could experience problems with their liver, kidneys, or circulatory systems.
59. *p*-Dichlorobenzene	0.075	0.075	Some people who drink water containing p-dichlorobenzene in excess of the MCL over many years could experience anemia, damage to their liver, kidneys, or spleen, or changes in their blood.
60. 1,2-Dichloroethane	Zero	0.005	Some people who drink water containing 1,2-dichloroethane in excess of the MCL over many years may have an increased risk of getting cancer.
61. 1,1-Dichloroethylene	0.007	0.007	Some people who drink water containing 1,1-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
62. *cis*-1,2-Dichloroethylene	0.07	0.07	Some people who drink water containing cis-1,2-dichloroethylene in excess of the MCL over many years could experience problems with their liver.
63. *trans*-1,2-Dichloroethylene	0.1	0.1	Some people who drink water containing trans-1,2-dichloroethylene well in excess of the MCL over many years could experience problems with their liver.
64. Dichloromethane	Zero	0.005	Some people who drink water containing dichloromethane in excess of the MCL over many years could have liver problems and may have an increased risk of getting cancer.
65. 1,2-Dichloropropane	Zero	0.005	Some people who drink water containing 1,2-dichloropropane in excess of the MCL over many years may have an increased risk of getting cancer.
66. Ethylbenzene	0.7	0.7	Some people who drink water containing ethylbenzene well in excess of the MCL over many years could experience problems with their liver or kidneys.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

Contaminant	MCLG[1] mg/L	MCL[2] mg/L	Standard health effects language for public notification
67. Styrene	0.1	0.1	Some people who drink water containing styrene well in excess of the MCL over many years could have problems with their liver, kidneys, or circulatory system.
68. Tetrachloroethylene	Zero	0.005	Some people who drink water containing tetrachloroethylene in excess of the MCL over many years could have problems with their liver, and may have an increased risk of getting cancer.
69. Toluene	1	1	Some people who drink water containing toluene well in excess of the MCL over many years could have problems with their nervous system, kidneys, or liver.
70. 1,2,4-Trichlorobenzene	0.07	0.07	Some people who drink water containing 1,2,4-trichlorobenzene well in excess of the MCL over many years could experience changes in their adrenal glands.
71. 1,1,1-Trichloroethane	0.2	0.2	Some people who drink water containing 1,1,1-trichloroethane in excess of the MCL over many years could experience problems with their liver, nervous system, or circulatory system.
72. 1,1,2-Trichloroethane	0.003	0.005	Some people who drink water containing 1,1,2-trichloroethane well in excess of the MCL over many years could have problems with their liver, kidneys, or immune systems.
73. Trichloroethylene	Zero	0.005	Some people who drink water containing trichloroethylene in excess of the MCL over many years could experience problems with their liver and may have an increased risk of getting cancer.
74. Vinyl chloride	Zero	0.002	Some people who drink water containing vinyl chloride in excess of the MCL over many years may have an increased risk of getting cancer.
75. Xylenes (total)	10	10	Some people who drink water containing xylenes in excess of the MCL over many years could experience damage to their nervous system.
Radioactive Contaminants			
76. Beta/photon emitters	Zero	4 mrem/yr[12]	Certain minerals are radioactive and may emit forms of radiation known as photons and beta radiation. Some people who drink water containing beta and photon emitters in excess of the MCL over many years may have an increased risk of getting cancer.
77. Alpha emitters	Zero	15 pCi/L[13]	Certain minerals are radioactive and may emit a form of radiation known as alpha radiation. Some people who drink water containing alpha emitters in excess of the MCL over many years may have an increased risk of getting cancer.
78. Combined radium (226 & 228)	Zero	5 pCi/L	Some people who drink water containing radium 226 or 228 in excess of the MCL over many years may have an increased risk of getting cancer.
Disinfection Byproducts (DBPs), Byproduct Precursors, and Disinfectant Residuals: Where disinfection is used in the treatment of drinking water, disinfectants combine with organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA also sets standards for controlling the levels of disinfectants and DBPs in drinking water, which include trihalomethanes (THMs) and haloacetic acids (HAAs).[14]			
79. Total trihalomethanes (TTHMs)		0.10/	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.
—Chloroform	Zero[15]	0.080[16 17]	
—Bromodichloromethane	Zero		
—Dibromochloromethane	0.06		
—Bromoform	Zero		
80. Haloacetic Acids (HAA5)		0.060[18]	Some people who drink water containing HAAs in excess of the MCL over many years may have an increased risk of developing cancer.
—Monochloroacetic acid	None		
—Dichloroacetic acid	Zero		
—Trichloroacetic acid	0.3		
—Monobromoacetic acid	None		
—Dibromoacetic acid	None		
81. Bromate	Zero	0.010	Some people who drink water containing bromate in excess of the MCL over many years may have an increased risk of developing cancer.
82. Chlorite	0.08	1.0	Some infants and young children who drink water containing chlorite in excess of the MCL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorite in excess of the MCL. Some people may experience anemia.
83. Chlorine	4 (MRDLG)[19]	4.0 (MRDL)[20]	Some people who contact drinking water containing chlorine well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chlorine well in excess of the MRDL could experience stomach discomfort.

APPENDIX B TO SUBPART Q OF PART 141.—STANDARD HEALTH EFFECTS LANGUAGE FOR PUBLIC NOTIFICATION—Continued

Contaminant	MCLG [1] mg/L	MCL [2] mg/L	Standard health effects language for public notification
84. Chloramines	4 (MRDLG)	4.0 (MRDL)	Some people who contact drinking water containing chloramines well in excess of the MRDL could experience irritating effects to their eyes and nose. Some people who drink water containing chloramines well in excess of the MRDL could experience stomach discomfort or anemia.
85a. Chlorine dioxide, >2 consecutive samples at entry point only are above MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, not within the distribution system which delivers water to consumers. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to consumers.
85b. Chlorine dioxide, sample(s) in distribution system are above MRDL.	0.8 (MRDLG)	0.8 (MRDL)	Some infants and young children who drink water containing chlorine dioxide in excess of the MRDL could experience nervous system effects. Similar effects may occur in fetuses of pregnant mothers who drink water containing chlorine dioxide in excess of the MRDL. Some people may experience anemia. The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system which delivers water to consumers. Violations of the chlorine dioxide standard within the distribution system may harm human health based on short-term exposures. Certain groups, including fetuses, infants, and young children, may be especially susceptible to nervous system effects from excessive chlorine dioxide exposure.
86. Control of DBP precursors (TOC).	None	TT	Total organic carbon (TOC) has no health effects. However, total organic carbon provides a medium for the formation of disinfection by products. These byproducts include trihalomethanes (THMs) and haloacetic acids (HAAs), which may lead to adverse health effects, liver or kidney problems, or nervous system effects.
Other Treatment Techniques			
87. Acrylamide	Zero	TT	Some people who drink water containing high levels of acrylamide over a long period of time could have problems with their nervous system or blood, and may have an increased risk of getting cancer.
88. Epichlorohydrin	Zero	TT	Some people who drink water containing high levels of epichlorohydrin over a long period of time could experience stomach problems, and may have an increased risk of getting cancer.

Appendix B Endnotes

1. MCLG—Maximum contaminant level goal.

2. MCL—Maximum contaminant level.

3. For water systems analyzing at least 40 samples per month, no more than 5.0 percent of the monthly samples may be positive for total coliforms. For systems analyzing fewer than 40 samples per month, no more than one sample per month may be positive for total coliforms.

4. NTU—Nephelometric turbidity unit.

5. The MCL for the monthly turbidity average is 1 NTU; the MCL for the 2-day average is 5 NTU. The standard language for turbidity may also be used where a turbidity exceedance is the reason for a treatment technique violation.

6. The bacteria detected by HPC are not necessarily harmful. HPC is simply an alternative method of determining disinfectant residual levels. The number of such bacteria is an indicator of whether there is enough disinfectant in the distribution system.

7. TT—Treatment technique.

8. This language may be used for both SWTR and IESWTR violations.

9. Millions of fibers per liter.

10. Action Level=0.015 mg/L.

11. Action Level=1.3 mg/L.

12. Millirems per year.

13. Picocuries per liter.

14. Surface water systems and ground water systems under the direct influence of surface water are regulated under Subpart H of 40 CFR part 141. Subpart H community and non-transient non-community systems serving ≥10,000 must comply with DBP MCLs and disinfectant maximum residual disinfectant levels (MRDLs) beginning December 16, 2001. All other community and non-transient noncommunity systems must meet the MCLs and MRDLs beginning December 16, 2003.

15. The MCLG for chloroform may change if the final DBP rule changes.

16. The MCL of 0.10 mg/l for TTHMs is in effect until December 16, 2001 for Subpart H community water systems larger than 10,000. This MCL is in effect until December 16, 2003 for community water systems with a population larger than 10,000 using only ground water not under the direct influence of surface water. After these deadlines, the MCL will be 0.080 mg/l. On December 16, 2003, all systems serving less than 10,000 will have to comply with the new MCL as well.

17. The MCL for total trihalomethanes is the sum of the concentrations of the individual trihalomethanes.

18. The MCL for haloacetic acids is the sum of the concentrations of the individual haloacetic acids.

19. MRDLG—Maximum residual disinfectant level goal.

20. MRDL—Maximum residual disinfectant level.

Appendix C to Subpart Q of Part 141, List of Acronyms Used in Public Notification Regulation

CCR Consumer Confidence Report
CWS Community Water System
DBP Disinfection Byproduct
EPA Environmental Protection Agency
IESWTR Interim Enhanced Surface Water Treatment Rule
IOC Inorganic Chemical

LCR Lead and Copper Rule
MCL Maximum Contaminant Level
MCLG Maximum Contaminant Level Goal
MRDL Maximum Residual Disinfectant Level
NCWS Non-Community Water System
NPDWR National Primary Drinking Water Regulation
NTNCWS Non-Transient Non-Community Water System
OGWDW Office of Ground Water and Drinking Water
OW Office of Water
PN Public Notification
PWS Public Water System
SDWA Safe Drinking Water Act
SMCL Secondary Maximum Contaminant Level
SOC Synthetic Organic Chemical
SWTR Surface Water Treatment Rule
TCR Total Coliform Rule
TT Treatment Technique
TWS Transient Non-Community Water System
VOC Volatile Organic Chemical

PART 142—[AMENDED]

1. The authority citation for part 142 continues to read as follows:

Authority: 42 U.S.C. 300f, 300g–1, 300g–2, 300 g–3, 300g–4, 300 g–5, 300 g–6, 300 j–4, 300 j–9, and 300 j–11.

2. Section 142.14 is amended by redesignating paragraph (f) as (g) and adding a new (f), to read as follows:

§ 142.14 Records kept by States.

* * * * *

(f) Public notification records under subpart Q of part 141 of this chapter received from public water systems (including the certifications of compliance and copies of the public notices) and any state determinations establishing alternative public notification requirements for the water systems must be retained for three years.

* * * * *

3. Section 142.15 is amended by revising paragraph (a)(1), to read as follows:

§ 142.15 Reports by States.

(a) * * *

(1) New violations by public water systems in the State during the previous quarter of State regulations adopted to incorporate the requirements of national primary drinking water regulations, including violations of the public notification requirements under subpart Q of part 141 of this chapter;

* * * * *

4. Section 142.16 is amended by revising paragraph (a), to read as follows:

§ 142.16 Special primacy requirements.

(a) *State public notification requirements.* (1) Each State that has primary enforcement authority under this part must submit complete and final requests for approval of program revisions to adopt the requirements of subpart Q of part 141 of this chapter, using the procedures in § 142.12(b) through (d).

(2) As part of the revised primacy program, a State must also establish enforceable requirements and procedures when the State opts to add to or change the minimum requirements under:

(i) *40 CFR 141.201(a)*—To require public water systems to give a public notice for situations other than those listed in appendix A of subpart Q of part 141 of this chapter, where the State determines that the situation has the potential for serious adverse effects on human health;

(ii) *40 CFR 141.202(a)*—To require public water systems to give a Tier 1 public notice (rather than a Tier 2 or Tier 3 notice) for violations or situations other than those listed in appendix A of subpart Q of part 141 of this chapter;

(iii) *40 CFR 141.202(b)(3)*—To require public water systems to comply with additional Tier 1 public notification requirements set by the State subsequent to the initial 24-hour notice, as a result of their consultation with the State required under § 141.202(b)(2) of this chapter;

(iv) *40 CFR 141.203(a)*—To require the public water systems to provide a Tier 2 public notice (rather than Tier 3) for monitoring or testing procedure violations specified by the State;

(v) *40 CFR 141.203(b)*—To grant public water systems an extension of time (up to three months) for distributing the Tier 2 public notice, under specific circumstances defined in the State's primacy program;

(vi) *40 CFR 141.203(b)*—To require a different repeat notice frequency for the Tier 2 public notice (to be no less frequent than once per year), under specific circumstances defined in the States's primacy program; and

(vii) *40 CFR 141.203(c)* and 141.204(c)—To require a different form and manner of delivery for Tier 2 and 3 public notices.

(3) At its option, a State may, by rule, and after notice and comment, establish alternative public notification requirements with respect to the form and content of the public notice required under subpart Q of part 141 of this chapter. The alternative requirements must provide the same type and amount of information required under subpart Q and must be designed to achieve an equivalent level of public notice of violations as would be achieved under subpart Q of part 141 of this chapter.

* * * * *

PART 143—[AMENDED]

1. The authority citation for part 143 continues to read as follows:

Authority: 42 U.S.C. 300f *et seq.*

§ 143.5 [Amended]

2. Part 143 is amended by removing § 143.5.

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May 13, 1999

Part III

Environmental Protection Agency

40 CFR Parts 80, 85 and 86
Air Pollution; Tier 2 Motor Vehicle Emission Standards and Gasoline Sulphur Control Requirements; Diesel Fuel Quality Controls; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80, 85 and 86

[AMS–FRL–6337–3]

RIN 2060–AI23

Control of Air Pollution From New Motor Vehicles: Proposed Tier 2 Motor Vehicle Emissions Standards and Gasoline Sulfur Control Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: Today's document proposes a major program designed to significantly reduce the emissions from new passenger cars and light trucks, including pickup trucks, minivans, and sport-utility vehicles. These reductions would provide for cleaner air and greater public health protection, by reducing ozone and PM pollution. The proposed program is a comprehensive regulatory initiative that treats vehicles and fuels as a system, combining requirements for much cleaner vehicles with requirements for much lower levels of sulfur in gasoline. A list of major highlights of the proposed program appears at the beginning of **SUPPLEMENTARY INFORMATION**.

For the first time, through a phase-in, we propose to apply a single average exhaust emission standard that would cover both passenger cars and all light trucks operated on any fuel. The proposed emission levels ("Tier 2 standards") are feasible for both types of vehicles and are appropriate since the miles traveled in light trucks are increasing and the emissions from these vehicles are thus an increasing problem. This approach will build on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program and improve the performance of these vehicles through lower sulfur gasoline.

To enable the vehicle technology and generate emission reductions from current vehicles we propose to significantly reduce average gasoline sulfur levels nationwide. Refiners would generally install refining equipment to remove sulfur in their refining processes, while importers would be required to market only gasoline meeting the proposed sulfur standards. The proposal outlines an averaging, banking, and trading program to provide flexibility for refiners and ease implementation.

This program focuses on reducing the passenger car and light truck emissions most responsible for causing ozone and particulate matter problems. Without today's action, we project that emissions from these vehicles will represent 30–40 percent of nitrogen oxides and volatile organic compound emissions in some cities, and almost 20 percent nationwide, by the year 2020.

Our proposal would bring about major reductions in annual emissions of these pollutants and also reduce the emissions of sulfur compounds coming from the sulfur in gasoline. For example, we project a reduction in oxides of nitrogen emissions of nearly 800,000 tons per year by 2007 and 1,200,000 by 2010, the time frame when many states will have to demonstrate compliance with air quality standards. Emission reductions would continue increasing for many years, reaching almost 2,200,000 tons per year in 2020. In addition, the proposed program would reduce the contribution of vehicles to other serious public health and environmental problems, including regional visibility problems, toxic air pollutants, acid rain, and nitrogen loading of estuaries.

Furthermore, we project that these reductions, and their resulting environmental benefits, would come at an average cost increase of less than $100 per passenger car, less than $200 per light truck, and an increase of less than 2 cents per gallon of gasoline (or about $100 over the life of an average vehicle).

DATES: *Comments:* We must receive your comments by August 2, 1999.

Hearings: We will hold four public hearings, on June 9–10, June 11, June 15, and June 17, 1999. EPA requests that parties who want to testify notify the contact person listed in the **ADDRESSES** section of this document two weeks before the date of the hearing.

ADDRESSES: *Comments:* You may send written comments in paper form or by E-mail. We must receive them by the date indicated under "DATES" above (August 2, 1999). Send paper copies of written comments (in duplicate if possible) to Public Docket No. A–97–10 at the following address: U.S. Environmental Protection Agency (EPA), Air Docket (6102), Room M–1500, 401 M Street, SW, Washington, DC 20460. If possible, we also encourage you to send an electronic copy of your comments (in ASCII format) to the docket by e-mail to A-and-R-Docket@epa.gov or on a 3.5 inch diskette accompanying your paper copy. If you wish, you may send your comments by E-mail to the docket at the address listed above without the submission of a paper copy, but a paper copy will ensure the clarity of your comments.

Please also send a separate paper copy to the contact person listed below. If you send comments by E-mail alone, we ask that you send a copy of the E-mail message that contains the comments to the contact person listed below.

EPA's Air Docket makes materials related to this rulemaking available for review at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. You can reach the Air Docket by telephone at (202) 260–7548 and by facsimile at (202) 260–4400. We may charge a reasonable fee for copying docket materials, as provided in 40 CFR part 2.

Hearings: We will hold four public hearings at the following locations:

June 9–10, 1999, Top of the Tower, 1717 Arch Street, 51st Floor, Philadelphia, PA 19103, telephone: 215–567–8787, fax: 215–557–5171

June 11, 1999, Renaissance Atlanta Hotel, 590 West Peachtree Street, Atlanta, GA, 30308, telephone: 404–881–6000, fax: 404–815–5010

June 15, 1999, Doubletree Hotel, 3203 Quebec Street, Denver, CO, 80207, telephone: 303–321–3333, fax: 303–329–5233

June 17, 1999, Holiday Inn Lakeside City Center, 1111 Lakeside Avenue, Cleveland, OH 44144, telephone: 216–241–5100, fax: 216–241–7437

Additional information on the comment procedure and public hearings can be found in **SUPPLEMENTARY INFORMATION** under Section VII, "Public Participation."

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor MI 48105; Telephone (734) 214–4349, FAX (734) 214–4816, E-mail connell.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

Highlights of the Tier 2/ Gasoline Sulfur Proposal

For cars and light trucks, the proposed program would:

- Through a phase-in, apply for the first time a single average exhaust emission standard that would cover both passenger cars and all light trucks. The proposed emission levels ("Tier 2 standards") are feasible for both types of vehicles and are appropriate since the miles traveled in light trucks is increasing and the emissions from these vehicles are thus an increasing problem.
- During the phase-in, apply interim standards that match or are more

stringent than current federal and California "LEV I" (Low-Emission Vehicle, Phase I) standards.

- Apply the same standards to vehicles operated on any fuel.
- Allow auto manufacturers to comply with the very stringent proposed new standards in a flexible way while ensuring that the expected environmental benefits occur.
- Build on the recent technology improvements resulting from the successful National Low-Emission Vehicles (NLEV) program and improve the performance of these vehicles through lower sulfur gasoline.
- Set more stringent particulate matter standards, primarily affecting diesel powered vehicles.
- Set more stringent evaporative emission standards.

For commercial gasoline, the proposed program would:

- Significantly reduce average gasoline sulfur levels nationwide. Refiners would generally install refining equipment to remove sulfur in their refining processes. Importers of gasoline would be required to import and market only gasoline meeting the proposed sulfur limits.
- Provide for flexible implementation by refiners through an averaging, banking, and trading program.
- Apply temporary, less stringent gasoline sulfur standards to certain small refiners.
- Enable the new Tier 2 vehicles to meet the proposed emission standards, since sulfur in gasoline degrades a vehicle's emission control performance. Lower sulfur gasoline is also important in order to enable the introduction of advanced technologies that promise higher fuel economy but are very susceptible to sulfur poisoning (for example, gasoline direct injection engines).
- Reduce emissions from NLEV vehicles and other vehicles already on the road.

Regulated Entities

This proposed action would affect you if you produce new motor vehicles, alter individual imported motor vehicles to address U.S. regulation, or convert motor vehicles to use alternative fuels. It would also affect you if you produce, distribute, or sell gasoline motor fuel.

The table below gives some examples of entities that may have to follow the proposed regulations. But because these are only examples, you should carefully examine the proposed and existing regulations in 40 CFR parts 80, 85 and 86. If you have questions, call the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

Category	NAICS Codes[a]	SIC Codes[b]	Examples of potentially regulated entities
Industry	336111	3711	Motor Vehicle Manufacturers.
	336112		
	336120		
Industry	336311	3592	Alternative fuel vehicle converters.
	336312	3714	
	422720	5172	
	454312	5984	
	811198	7549	
	541514	8742	
	541690	8931	
Industry	811112	7533	Commercial Importers of Vehicles and Vehicle Components.
	811198	7549	
	541514	8742	
Industry	324110	2911	Petroleum Refiners.
Industry	422710	5171	Gasoline Marketers and Distributors.
	422720	5172	
Industry	484220	4212	Gasoline Carriers.
	484230	4213	

[a] North American Industry Classification System (NAICS).
[b] Standard Industrial Classification (SIC) system code.

Access to Rulemaking Documents Through the Internet

Today's document is available electronically on the day of publication from the Environmental Protection Agency Internet Web site listed below. Electronic copies of the preamble, regulatory language, Draft Regulatory Impact Analysis, and other documents associated with today's proposal are available from the EPA Office of Mobile Sources Web site listed below shortly after the rule is signed by the Administrator. This service is free of charge, except any cost that you already incur for connecting to the Internet.

Environomental Protection Agency Web Site:

http://www.epa.gov/docs/fedrgstr/epa-air/

(Either select a desired date or use the Search feature.)

Office of Mobile Sources (OMS) Web Site:

http://www.epa.gov/omswww/

(Look in "What's New" or under the "Automobiles" topic.)

Please note that due to differences between the software used to develop the document and the software into which the document may be downloaded, changes in format, page length, etc. may occur.

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I. Introduction

Since the passage of the 1990 Clean Air Act Amendments significant progress has been made in reducing emissions from passenger cars and light trucks. The National Low-Emission Vehicle (NLEV) and Reformulated Gasoline (RFG) programs are important examples of control programs that will continue to help reduce car and truck emissions into the near future.

Nonetheless, due to increasing vehicle population and vehicle miles traveled, passenger cars and light trucks will be significant contributors to air pollution inventories into the indefinite future. In fact, the emission contribution of light trucks and sport utility vehicles will likely surpass that of passenger cars within the next year. (This is occurring because of the combination of growth in miles traveled by light trucks and their less stringent emission standards compared to passenger cars). The program we describe below builds on the NLEV and RFG Phase II programs to develop a strong national program to protect public health and the environment well into the next century. The program while reducing VOC emissions focuses especially on NO_X because that is where the largest air quality gains can be achieved.

We have followed several overarching principles in developing this proposal:

- Design a strong national program to assist states in every region of the country in meeting their air quality objectives.
- View vehicles and fuels as an integrated system. Define a program that continues to ensure that car and truck emission reductions are part of the solution to our nation's air quality problems.
- Establish a single set of emission standards that apply regardless of the fuel used and regardless of whether the vehicle is a car or a light truck.
- Provide compliance flexibilities that allow vehicle manufacturers and oil refiners to adjust to future market trends and honor consumer preferences.
- Encourage the development of advanced low emission, fuel efficient technologies such as lean-burn engines.
- Ensure sufficient leadtime for phase-in of the Tier 2 and gasoline sulfur program.

With these principles as background, we turn now to an overview of the vehicle and fuel aspects of the proposal. Sections I and II of this preamble will give you a brief overview of our proposal and the basics of our rationale for proposing it. Subsequent sections will expand on the air quality need, the economic impacts, and provide a more detailed description of the specifics of the proposal. The final sections deal with several subjects, including opportunities for public participation that you may wish to take advantage of. You may also want to review our Draft Regulatory Impact Analysis (RIA), found in the docket and on the Internet, where we present more detailed analyses and discussions of many topics raised in this preamble.

A. What Are the Basic Components of Today's Proposal?

The nation's air quality, while certainly better than in the past, will continue to expose tens of millions of Americans to unhealthy levels of air pollution well into the future in the absence of significant new controls on emissions from motor vehicles. EPA is therefore proposing a major, comprehensive program designed to significantly reduce emissions from passenger cars and light trucks (including sport-utility vehicles, minivans, and pickup trucks) and reduce sulfur in gasoline. Under the proposed program, automakers would produce vehicles designed to have very low emissions when operated on low-sulfur gasoline, and oil refiners would

provide that cleaner gasoline nationwide. In this preamble, we refer to the proposed comprehensive program as the "Tier 2/Gasoline Sulfur Control Program" or simply as the "Tier 2 Program."

1. Vehicle Emission Standards

Today's action proposes new federal emission standards ("Tier 2 standards") for passenger cars and light trucks. The program is designed to focus on reducing the emissions most responsible for the ozone and particulate matter (PM) impact from these vehicles—nitrogen oxides (NO_X) and non-methane organic gases (NMOG), consisting primarily of hydrocarbons (HC) and contributing to ambient volatile organic compounds (VOC). The program would also, for the first time, apply the same federal standards to passenger cars and all light trucks ("light light-duty trucks" (or LLDTs), rated at less than 6000 pounds gross vehicle weight and "heavy light-duty trucks" (HLDTs), rated at more than 6000 pounds gross vehicle weight).

The proposed Tier 2 standards would reduce new vehicle NO_X levels to an average of 0.07 grams per mile (g/mi). For new passenger cars and light LDTs, these standards would phase in beginning in 2004, with the standards to be fully phased in by 2007.[1] For heavy LDTs, the proposed Tier 2 standards would be phased in beginning in 2008, with full compliance in 2009. During the phase-in period from 2004–2007, all passenger cars and light LDTs not certified to Tier 2 standards would have to meet an interim average standard of 0.30 g/mi NO_X, equivalent to the current NLEV standards for LDVs.[2] During the period 2004–2008, heavy LDTs not certified to Tier 2 standards would phase in an average standard of 0.20 g/mi NO_X. Those not covered by the phase-in would be required to meet a traditional (non-averaging) standard of 0.60 g/mi NO_X.

Manufacturers would be allowed to comply with the very stringent proposed new standards in a flexible way, assuring that the average emissions of a company's production met the target emission levels while allowing the manufacturer to choose from several more- and less-stringent emission categories for certification. The proposed requirements also include more stringent PM standards, which primarily affect diesel vehicles, and more stringent hydrocarbon controls (exhaust NMOG and evaporative emissions standards).

We are also proposing stringent particulate matter standards that would be especially important if there were substantial future growth in diesel sales. Even under an assumed scenario where diesel sales grew to represent 50 percent of all light-duty trucks by 2010, the PM standards being proposed today would result in a steady decrease in total direct $PM_{2.5}$ from cars and light trucks. For this scenario of a 50 percent share for diesel light trucks, direct PM emissions in 2020 with today's proposal would be less than they are at present. Therefore, we believe that today's proposal accommodates environmental concerns about such vehicles in a way that insures positive environmental results.

2. Gasoline Sulfur Standards

The other major part of today's proposal would significantly reduce average gasoline sulfur levels nationwide. These reductions could begin to phase in as early as 2000, with full compliance by 2006. Refiners would generally install advanced refining equipment to remove sulfur during the production of gasoline. Importers of gasoline would be required to import and market only gasoline meeting the proposed sulfur limits. Temporary, less stringent standards would apply to a few small refiners.

EPA is proposing that gasoline produced by refiners and sold by gasoline importers generally meet an average sulfur standard of 30 ppm and a cap of 80 ppm in 2004. The proposed program builds upon the existing regulations covering gasoline content as it relates to emissions performance. It includes provisions for trading of sulfur credits, increasing the flexibility available to refiners for complying with the new requirements. We intend the proposed credit program to ease compliance uncertainties by providing refiners the flexibility to phase in early controls in 2000–2003 and use credits gained in these years to delay some control to as late as 2006. As proposed, the program would achieve expected environmental benefits while providing substantial flexibility to refiners. The effect of the credit program is that those refiners that participate would have the opportunity for more overall leadtime to reach the final sulfur levels.

B. What Is EPA's Statutory Authority for Proposing Today's Action?

1. Light-Duty Vehicles and Trucks

We are proposing the motor vehicle emission standards under the authority of section 202 of the Clean Air Act. Sections 202(a) and (b) of the Act provide EPA with general authority to prescribe vehicle standards, subject to any specific limitations otherwise included in the Act. Sections 202(g) and (h) specify the current standards for LDVs and LDTs, which became effective beginning in model year 1994 ("Tier 1 standards").

Section 202(i) of the Act provides specific procedures that EPA must follow to determine whether standards more stringent than Tier 1 standards for LDVs and certain LDTs[3] are appropriate beginning in the 2004 model year.[4] Specifically, we are required to first issue a study regarding "whether or not further reductions in emissions from light-duty vehicles and light-duty trucks should be required * * *" (the "Tier 2 study"). This study "shall examine the need for further reductions in emissions in order to attain or maintain the national ambient air quality standards." It is also to consider (1) the availability of technology to meet more stringent standards, taking cost, lead time, safety, and energy impacts into consideration, and, (2) the need for, and cost effectiveness of, such standards, including consideration of alternative methods of attaining or maintaining the national ambient air quality standards. A certain set of "default" emission standards for these vehicle classes is among those options for new standards that EPA is to consider.

After the study is completed and the results are reported to Congress, EPA is required to determine by rulemaking whether (1) there is a need for further emission reductions; (2) the technology for more stringent emission standards from the affected classes is available; and (3) such standards are needed and cost-effective, taking into account alternatives. If EPA answers "yes" to these questions, then the Agency is to promulgate new, more stringent motor vehicle standards ("Tier 2 standards").

EPA submitted its report to Congress on July 31, 1998. Today's proposal considers and proposes affirmative responses to the three questions above (see section II below) and sets forth new proposed standards that are more

[1] By comparison, the NO_X standards for the National Low Emission Vehicle (NLEV) program, which will be in place nationally in 2001, range from 0.30 g/mi for passenger cars to 0.50 g/mi for medium-sized light trucks. For further comparison, the standards met by today's Tier 1 vehicles range from 0.60 g/mi to 1.53 g/mi.

[2] There are also NMOG standards associated with both the interim and Tier 2 standards. The NMOG standards vary depending on which of various individual sets of emission standards manufacturers choose to use in complying with the average NO_X standard. This "bin" approach is described more fully in section IV.B.

[3] LDTs with a loaded vehicle weight less than or equal to 3750 pounds.

[4] Section 202(b)(1)(C) forbids EPA from promulgating mandatory standards more stringent than Tier 1 standards until the 2004 model year.

stringent than the default standards in the Act.

EPA is also proposing standards for larger light-duty trucks under the general authority of section 202(a)(1) and under section 202(a)(3) of the Act, which requires that standards applicable to emissions of hydrocarbons, NO_X, CO and PM from heavy-duty vehicles [5] reflect the greatest degree of emission reduction available for the model year to which such standards apply, giving appropriate consideration to cost, energy, and safety.

2. Gasoline Sulfur Controls

We are proposing gasoline sulfur controls pursuant to our authority under section 211(c)(1) of the Clean Air Act.[6] Under section 211(c)(1), EPA may adopt a fuel control if at least one of the following two criteria is met: (1) the emission products of the fuel cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare, or (2) the emission products of the fuel will significantly impair emissions control systems in general use or which would be in general use were the fuel control to be adopted.

We are proposing to control sulfur levels in gasoline based on both of these criteria. Under the first criterion, we believe that emissions products of sulfur in gasoline used in Tier 1 and LEV technology vehicles contribute to ozone pollution, air toxics, and PM. Under the second criterion, we believe that gasoline sulfur in fuel that will be used in Tier 2 technology vehicles will significantly impair the emissions control systems expected to be used in such vehicles. Please refer to section IV.C. below and to the Draft Regulatory Impact Analysis (RIA) for more details of our analysis and findings. The Draft RIA includes a more detailed discussion of EPA's authority to set gasoline sulfur standards, including a discussion of our proposed conclusions relating to the factors required to be considered under section 211(c).

[5] LDTs that have gross vehicle weight ratings above 6000 pounds are considered heavy-duty vehicles under the Act. See section 202(b)(3). For regulatory purposes, we refer to these LDTs as "heavy light-duty trucks" made up of LDT3s and LDT4s.

[6] We currently have regulatory requirements for conventional and reformulated gasoline adopted under sections 211(c) and 211(k) of the Act, in addition to the "substantially similar" requirements for fuel additives of section 211(f). These requirements directly or indirectly control sulfur levels in gasoline. See the Draft RIA for more details.

C. The Tier 2 Study and the Sulfur Staff Paper

On July 31, 1998, EPA submitted its report to Congress containing the results of the Tier 2 study.[7] The study indicated that in the 2004 and later time frame, there will be a need for emission reductions to aid in meeting and maintaining the National Ambient Air Quality Standards (NAAQS) for both ozone and PM. Air quality modeling showed that in the 2007–2010 time frame, when Tier 2 standards would become fully effective, a number of areas would still be in nonattainment for ozone and PM even after the implementation of existing emission controls. EPA also found ample evidence that technologies would be available to meet more stringent Tier 2 standards. In addition, the study provided evidence that such standards could be implemented at a similar cost per ton of reduced pollutants as other programs aimed at similar air quality problems. Finally, the study identified several additional issues in need of further examination, including the relative stringency of car and light truck emission standards, the appropriateness of identical versus separate standards for gasoline and diesel vehicles, and the effects of sulfur in gasoline on catalyst efficiency.

In addition, on May 1, 1998, EPA released a staff paper presenting EPA's understanding of the impact of gasoline sulfur on emissions from motor vehicles and exploring what gasoline producers and automobile manufacturers could do to reduce sulfur's impact on emissions. The staff paper noted that gasoline sulfur is a catalyst poison and that high sulfur levels in commercial gasoline could affect the ability of future automobiles to meet more stringent standards in use. It also pointed out that sulfur control would provide additional benefits by lowering emissions from the current fleet of vehicles.

II. Proposed Tier 2 Determination

Based on the statutory requirements described above and the evidence provided in the Tier 2 Study, as updated in this document, EPA proposes its determination that new, more stringent emission standards are indeed needed, technologically feasible, and cost effective.

[7] On April 28, 1998, EPA published a notice of availability announcing the release of a draft of the Tier 2 study and requesting comments on the draft. The final report to Congress included a summary and analysis of the comments EPA received.

A. There Is a Substantial Need for Further Emission Reductions in Order To Attain and Maintain National Ambient Air Quality Standards

We believe that there is a clear air quality need for new emission standards, based on the continuing air quality problems predicted to exist in future years. As the discussion in section III.B. illustrates, our modeling shows that in 2007 approximately 80 million Americans will be living in areas that are in nonattainment for the 8-hour ozone NAAQS, even with all other expected controls in place. Another 49 million people will live in attainment areas that are within 15% of being reclassified as nonattainment areas. This is a total of nearly 130 million people, which represents about 48 percent of the population of the United States.

In addition to these ozone concerns, our models indicate that by 2010, 45 areas, with 18 million people, will be in nonattainment for the original PM_{10} NAAQS and 11 areas with 10 million people will be in nonattainment for the revised PM_{10} NAAQS. While not a specific driving factor in today's findings, our models also project that 102 areas with about 55 million people will be in nonattainment with the new $PM_{2.5}$ NAAQS by 2010. We also must recognize that nonattainment areas remain for other criteria pollutants (e.g., CO) and that non-criteria pollution (e.g., air toxics and regional haze) also contributes to environmental and health concerns.

Clearly there is a critical need for reductions in the emissions being projected for future years. Furthermore, mobile sources are important contributors to the emission problem. As we will explain more fully later in this preamble, in the year 2007, the cars and light trucks that are the subject of today's proposal are projected to contribute nearly 40 percent of the total NO_X and VOC inventory in some cities, and 20 percent of nationwide NO_X and VOC emissions. This situation would have been considerably worse without the NLEV program created by vehicle manufacturers, EPA, the Northeastern states, and others. We therefore believe that reductions in these source categories are an essential part of the reductions needed to attain and maintain the NAAQS. As we explain below, we propose to find that major reductions in future emissions from light-duty vehicles and trucks are both feasible and cost effective compared to available alternatives.

B. More Stringent Standards for Light-Duty Vehicles and Trucks Are Technologically Feasible

We believe that emission standards more stringent than current Tier 1 and National Low Emission Vehicle (NLEV) levels are technologically feasible. We believe this to be true both for the LDVs and LDTs specifically covered in section 202(i) and for the heavier LDTs also included in today's proposal. Manufacturers are currently producing NLEV vehicles that meet more stringent standards than similar Tier 1 models. Our analysis shows that mainly through improvements in engine control software and catalytic converter technology, manufacturers can and are building durable vehicles and trucks, including heavy light-duty trucks, which have very low emission levels.[8]

For light duty vehicles, certified NO_X levels for 1999 reveal that NO_X levels representing full-life, deteriorated emissions in the 0.01 to 0.10 g/mi range are already being seen on some production vehicles. Similarly, light-duty trucks up to 8500 lbs. GVWR, also included in today's proposal, have some very low 1999 certification levels for NO_X, with NO_X levels of as low as 0.04 g/mi for some of the largest LDTs. These levels are well below Tier 1 and NLEV standards. Manufacturers have also certified LDVs and LDTs to NMOG and CO levels as much as 80 percent below Tier 1 standards.

As discussed in more detail below and in the Draft RIA, we believe that, by the 2004–2009 time frame proposed for the Tier 2 standards, manufacturers would be fully able to comply with the proposed new standard levels. In addition, to facilitate manufacturers' efforts to meet these new standards, the Tier 2 regulations would include a corporate fleet average, which would allow manufacturers to optimize the deployment of technology across their product lines. Our analysis of the available technology improvements and the very low emission levels already being realized on these vehicles leads us to propose a finding that today's proposed standards are fully feasible for LDVs and LDTs.

C. More Stringent Standards for Light-Duty Vehicles and Trucks Are Needed and Cost Effective Compared to Available Alternatives

In this document, we propose that Tier 2 motor vehicle standards are both necessary and cost effective. We have already described our belief that substantial further reductions in emissions are needed to help reduce the levels of unhealthy air pollution that millions of people are being exposed to. (We describe this further below and in the Draft RIA.) In its analyses supporting the new ozone and PM NAAQS, the Agency identified those methods that were reasonably cost effective, and showed that substantial progress toward attainment could be made. However, we also concluded that methods beyond those that could be identified as cost effective at the time were needed and we assumed they would be identified in the future.

We believe that the Tier 2/gasoline sulfur proposal is one of those methods. This proposal would reduce annual NO_X emissions by about 2.2 million tons per year in 2020 and 2.8 million tons per year in 2030 after the program is fully implemented. By way of comparison, if all of the controls identified for the NAAQS analysis costing less than $10,000/ton (the limit on cost effectiveness used in that analysis) were implemented nationwide, they would produce NO_X emission reductions of about 2.9 million tons per year. That is, to achieve significant further reductions using control approaches other than the proposed Tier 2/Gasoline Sulfur program could mean adopting measures costing well beyond $10,000 per ton.

Further emission reductions are needed. Without Tier 2 and gasoline sulfur controls, we project that in 2007 at least 8 metropolitan areas and 2 rural counties with a combined population of 39 million will exceed the 1-hour ozone NAAQS and 28 metropolitan areas and 4 rural counties with a combined population of 80 million will exceed the 8-hour ozone NAAQS. We project that cars and light trucks will contribute 17 percent of the nationwide NO_X inventory by 2007 and 20 to 40 percent in some cities with air quality problems. The NO_X reductions from today's proposal range from 19 to 48 percent of the reductions we estimate are needed for areas to achieve attainment. We believe that the proposed program, as well as the technologies assumed for the NAAQS analysis mentioned above, are clearly cost effective approaches for attaining and maintaining the NAAQS.

The magnitude of emission reductions that can be achieved by a comprehensive national Tier 2/gasoline sulfur program would be difficult to achieve from any other source category. Given the contribution that light-duty mobile source emissions make to the national emissions inventory and the range of control programs ozone-affected areas already have in place or would be expected to implement, we believe it will be very difficult, if not impossible, to attain and maintain the ozone NAAQS in a cost-effective manner without reducing emissions from LDVs and LDTs. In addition, we project that the Tier 2/gasoline sulfur program would reduce direct and secondary particulate matter coming from LDVs and LDTs by over 70 percent, providing reductions of almost 240,000 tons annually by 2010.

We believe, then, that today's proposal is a major and attractive source of ozone and PM precursor emission reductions when compared to other available options. It would represent a degree of emission reduction beyond those programs identified in the NAAQS analysis that we believe is currently unavailable from any other reasonable program. We also believe that it would be a cost effective program, costing approximately $2,000 per ton of NO_X plus hydrocarbon reduced according to our estimates, which is quite attractive compared to other alternatives. The discussion of cost and cost effectiveness later in this preamble explains the derivation of these numbers and compares them to other alternatives. That discussion indicates that today's proposal would be as cost effective as both the Tier 1 and NLEV standards and cost effective when compared to non-mobile source programs as well.

III. Air Quality Need for and Impact of Today's Proposal

In the absence of significant new controls on emissions, tens of millions of Americans would continue to be exposed to unhealthy levels of air pollution. Emissions from passenger cars and light trucks are a significant contributor to a number of air pollution problems. Today's proposal would significantly reduce emissions from cars and light trucks and hence would significantly reduce the health risks posed by air pollution. This section summarizes the results of the analyses we performed to arrive at our proposed determination that continuing air quality problems are likely to exist, that these air quality problems would be in part due to emissions from cars and light trucks, and that the new standards being proposed today would improve air quality and mitigate other environmental problems.

[8] The Draft RIA contains an extended analysis. Section IV.A. below has more discussion of the technological feasibility of our proposed standards including detailed discussions of the various technology options that we believe manufacturers may use to meet these standards.

A. Americans Face Serious Air Quality Problems That Require Further Emission Reductions

Air quality in the United States continues to improve. Nationally, the 1997 air quality levels were the best on record for all six criteria pollutants.[9] In fact, the 1990s have shown a steady trend of improvement, due to reductions in emissions from most sources of air pollution, from factories to motor vehicles. Despite these continued improvements in air quality, however, tens of millions of Americans are still exposed to unhealthy levels of ozone and PM. Moreover, unless there are reductions in overall emissions beyond those that are scheduled to be achieved by already committed controls, many of these Americans will continue to be so exposed.

Ambient ozone is formed in the atmosphere through a complex interaction of VOC and NO_X emissions. Cars and light trucks emit a substantial fraction of these emissions. Ambient PM is emitted directly from cars and light trucks; it also forms in the atmosphere from NO_X, sulfur oxides (SO_X) and VOC, all of which are emitted by motor vehicles. When ozone exceeds the air quality standards, otherwise healthy people often have reduced lung function and chest pain, and hospital admissions for people with respiratory ailments like asthma increase; for longer exposures, permanent lung damage can occur. Similarly, particles can penetrate deep into the lungs and are linked with premature death, increased hospital admissions, increased respiratory symptoms, and changes in lung tissue. When either ozone or PM air quality problems are present, those hardest hit tend to be children, the elderly, and people who already have health problems.

The health effects of high ozone and PM levels are not the only reason for concern about continuing air pollution. Ozone and PM also harm plants and damage materials. PM reduces visibility and contributes to significant visibility impairment in our national parks and monuments and in many urban areas. In addition, air pollution from motor vehicles contributes to cancer and other health risks, acidification of lakes and streams, eutrophication of coastal and inland waters, and elevated drinking water nitrate levels. These problems impose a substantial burden on public health, our economy, and our ecosystems.

In recognition of this burden, Congress has passed and subsequently amended the Clean Air Act. The Clean Air Act requires each state to have an approved State Implementation Plan (SIP) that shows how an area plans to meet its air quality obligations, including achieving and then maintaining attainment of all of the National Ambient Air Quality Standards (NAAQS), such as those for ozone and PM.

Under EPA's proposed policy for implementing the new 8-hour ozone, revised PM_{10}, and new $PM_{2.5}$ ambient standards (63 FR 65593, November 27, 1998), states must prepare and submit SIP revisions to demonstrate attainment of the 8-hour ozone standard between 2000 and 2003, depending on ozone classification under the 8-hour standard. The earlier submittal date applies to "transitional" areas, which are areas that are in attainment with the 1-hour standard and can attain the 8-hour standard through local measures adopted prior to classification (under the 8-hour standard) and the regional emission reductions to be achieved under the Regional Ozone Transport Rule (63 FR 57356, October 27, 1998). In general, EPA expects these areas to demonstrate attainment by 2007. Other 8-hour nonattainment areas will be classified as "traditional" under the 8-hour standard, and we believe that these areas will have attainment dates of 2007, 2009, or 2010 depending on their 1-hour classification status and 1-hour attainment date.

Because it takes three "clean" years to qualify an area to be redesignated as attainment for the ozone standard, the deadline for each area to achieve the VOC and NO_X emission reductions needed to meet the ozone standard generally should be two years earlier than its attainment date. For example, 8-hour ozone nonattainment areas for which we would establish an attainment date of 2009 would need to implement emission reductions by the start of the 2007 ozone season in order to have three "clean" years by their 8-hour attainment deadline of 2009.

The SIP revisions to demonstrate attainment with the revised PM_{10} standard must be prepared by 2002, with attainment by 2006, unless this date is not practicable. As discussed below, EPA has also finalized regulations that regions and states implement plans for protecting and improving visibility in the 156 mandatory Federal Class I areas as defined in section 162(a) of the Clean Air Act. These areas are primarily national parks and wilderness areas.

To accomplish the goal of full attainment in all areas according to the schedules for the various NAAQS and the visibility program, the federal government must assist the states by reducing emissions from sources that are not as practical to control at the state level as at the federal level. Vehicles and fuels move freely among the states, and they are produced by national or global scale industries. Most individual states are not in a position to regulate these industries effectively and efficiently. The Clean Air Act therefore gives EPA primary authority to regulate emissions from the various types of highway vehicles and their fuels. Our actions to reduce emissions from these and other national sources are a crucial and essential complement to actions by states to reduce emissions from more localized sources.

If we do not adopt new standards to reduce emissions from cars and light trucks, emissions from these vehicles would remain a large portion of the emissions burden that causes elevated ozone and continued nonattainment with the ozone NAAQS, which in turn affects tens of millions of Americans. Without new standards, steady annual increases in fleet size and miles of travel will outstrip the benefits of current emission controls, and will cause ozone-forming emissions from cars and trucks to grow each year starting about 2014. The contribution of these vehicles to PM exposure and PM nonattainment would also remain significant, and could increase considerably if diesel engines are used in more cars or light trucks. For ozone in particular, the contribution of cars and light trucks—in terms of both local emissions and transported pollution—will be so significant to those areas expected to be in nonattainment in the 2007 to 2010 time frame, and the expected emission reduction shortfall in these areas will be so large, that further reductions from cars and light trucks are an inescapable element of any attainment strategy.

The standards we are proposing would cut the contribution of ozone and PM precursors from cars and light trucks greatly. Even with this cut, many areas will likely still find it necessary to obtain additional reductions from other sources in order to fully attain the ozone and PM NAAQS. However, their task would be easier and the economic impact on their industries and citizens would be lighter as a result of the actions proposed today. This would be a critical benefit of today's proposal. Following implementation of the Regional Ozone Transport Rule, states

[9] National Air Quality and Emissions Trend Report, 1997, Air Quality Trends Analysis Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, N.C., December 1998 (available on the World Wide Web at http://www.epa.gov/oar/aqtrnd97/).

will have already adopted emission reduction requirements for nearly all large sources of VOC and NO_X for which cost-effective control technologies are known. Those that remain in nonattainment will therefore have to consider their other alternatives. In fact, however, many of the alternatives states will have to consider are very costly, with a small impact from each additional category subjected to new emission controls. The emission reductions from today's proposed standards for gasoline, cars, and light trucks would ease the need for states to find first-time reductions from the mostly smaller sources that have not yet been controlled, including area sources that are closely connected with individual and small business activities. They would also reduce the need for states to seek even deeper reductions from large and small sources already subject to emission controls.

In our meetings and correspondence with state and local officials, they asked us to reduce the emissions from cars and trucks, so that their charge of protecting the public against air pollution is one they can accomplish on schedule and without adverse economic impacts. We heard from the Northeast States for Coordinated Air Use Management, the Ozone Transport Commission, the State and Territorial Air Program Administrators, and the Association of Local Air Pollution Control Officers. They consistently told us that it would be very difficult and costly for the states to obtain comparable reductions from other sources as substitutes for reductions from cars and light trucks, especially on top of the additional reductions needed to reach ozone attainment even with the reductions from today's proposal.

We project that today's proposal would also have important benefits for regional visibility, acid rain, and coastal water quality.

For these and other reasons discussed in this document, we are proposing to determine that significant emission reductions will still be needed by the middle of the next decade and beyond to achieve and maintain further improvements in air quality in many, geographically dispersed areas. We also believe that a significant portion of these emission reductions can be obtained by reducing emissions from cars and light trucks. We believe that such reductions are in fact necessary (since cars and light trucks are such large contributors to current and projected ozone problems) and reasonable (since these reductions could be achieved at a reasonable cost compared to other alternative reductions).

The remainder of this section describes the health and environmental problems that today's proposal would help mitigate and the expected health and environmental benefits of this proposal. Ozone is discussed first, followed by PM, other criteria pollutants, visibility, air toxics, and other environmental impacts. The emission inventories and air quality analyses are explained more fully in the Draft Regulatory Impact Analysis for today's proposal.

B. Ozone

1. Ozone Levels Have Declined, but Unhealthy Levels of Ozone Persist

Ground-level ozone is the main harmful ingredient in smog.[10] It is produced by complex chemical reactions when its precursors, VOC and NO_X, react in the presence of sunlight. The chemical reactions that create ozone take place while the wind is carrying the pollutants, which means that ozone can be more severe many miles away from the source of ozone-forming emissions than it is at the source. The movement of ozone and its precursors is called "ozone transport" and suggests two complementary approaches to reduce ozone levels in areas affected by ozone transport:

(1) Reduce ozone precursor emissions in the area itself.

(2) Reduce ozone precursor emissions in upwind areas to reduce incoming ozone and ozone precursor levels.

Within a nonattainment area itself, both VOC and NO_X reductions are generally beneficial. Especially in the eastern portion of the U.S., the second approach of controlling upwind emissions can play an important part in efforts to reduce ozone levels in nonattainment areas. Because individual states cannot control upwind sources of air pollution that lie outside their borders, EPA has a special role in managing transport impacts. Vehicle and fuel standards should play a part in doing so.

Since NO_X affects downwind ozone levels in the eastern U.S. over greater distances than VOC does, reductions in upwind NO_X emissions are particularly important in reducing ozone levels downwind. Modeling conducted by the Ozone Transport Assessment Group, discussed below, indicates that VOC reductions substantially upwind from nonattainment areas have little benefit in those nonattainment areas across the eastern region of the U.S. By contrast, VOC reductions in or near nonattainment areas do provide air quality benefits. Since cars and light trucks meeting today's proposed standards would operate everywhere, today's proposal would reduce VOC and NO_X emissions in both nonattainment areas and in upwind areas.

The new standards being proposed today would have their largest effect on NO_X emissions. Sulfur in gasoline has been found to increase NO_X emissions more than VOC emissions, and reducing sulfur would therefore yield larger NO_X reductions than VOC reductions. Similarly, the vehicle standards proposed today represent a greater reduction from current NO_X standards than is the case for VOC. We have taken this approach because air quality modeling conducted for OTAG, and subsequent modeling we have conducted, indicates that NO_X reductions would have larger ozone benefits than would VOC reductions. In addition, we believe that individual nonattainment areas have a wider range of alternative control opportunities for VOC than they have for NO_X.

Ozone levels have decreased significantly over the past 20 years as VOC and NO_X emissions have been reduced. However, ozone levels in much of the country remain a major concern. Outside of California, the 1990 census showed 72 million people living in areas that were formally designated as non-attainment for the 1-hour standard as of August 10, 1998. Measured ozone design values from 1995 to 1997 in the region analyzed by the Ozone Transport Assessment Group (OTAG)[11] indicate that in this region alone, 26 metropolitan areas and 8 rural counties together containing 75 million people experienced ozone levels in excess of the 1-hour ozone standard.

The 8-hour ozone standard is more stringent and protective than the 1-hour standard, and more areas have exceeded it in the recent past. In 1995 to 1997, at least one county in each of 81 metropolitan areas and an additional 30 rural counties together containing 110 million people had ozone values in excess of the 8-hour ozone standard. Additional areas in the OTAG region had ozone levels within 15 percent of the 8-hour standard and hence faced potentially significant maintenance challenges: 52 metropolitan areas and 44 rural counties together containing 26 million people.

For several reasons, we expect to see substantial additional progress in

[10] Ozone also occurs naturally in the stratosphere and provides a protective layer high above the earth.

[11] OTAG evaluated a region that included all or part of the easternmost 37 states.

reducing ozone levels over the next ten years despite continued growth in electric power generation, industrial output, nonroad activity levels, and vehicle miles traveled. NO_X and VOC emissions from mobile sources will continue to decline as older, higher-emitting vehicles and nonroad engines are retired from service and replaced with newer vehicles and nonroad engines that must meet more stringent federal emission standards. Other federal regulations that will reduce ozone precursor emissions will take effect, such as regulations that will reduce VOC emissions from paints and other architectural coatings. Beginning in 2000, areas of the country participating in the federal reformulated gasoline program will receive lower-emitting Phase 2 reformulated gasoline. States are expected to implement additional measures to reduce NO_X and VOC emissions in 1-hour ozone nonattainment areas. In addition, the final Regional Ozone Transport Rule (ROTR) (63 FR 57356, October 27, 1998) requires the District of Columbia and 22 states in the eastern U.S. to reduce their NO_X emissions substantially by 2003 to reduce ozone levels in downwind states.

Using the most recent improvements to the OTAG emission inventories and the OTAG ozone model, we project that in the OTAG region, these combined emission reductions will bring 18 of the aforementioned 26 metropolitan areas and 6 of the 8 rural counties, with 36 million residents, into attainment with the 1-hour ozone standard by 2007. The same emission reductions are projected to bring ozone design values below the 8-hour standard in 53 out of 81 metropolitan areas and 26 out of 30 rural counties, with a combined 1990 population of 30 million people.[12]

However, we still project many areas in the OTAG region to have ozone design values in 2007 in excess of the 1-hour and 8-hour standards. Eight metropolitan areas and two counties with a combined 1990 population of 39 million are projected to experience ozone design values in excess of the 1-hour ozone standard in 2007.[13] Twenty-eight areas and 4 rural counties, with a combined 1990 population of 80 million, are projected to experience ozone design values at levels in excess of the 8-hour standard in 2007.

Additional areas outside the OTAG modeling region may also experience high ozone levels, even with the additional emission controls that will be implemented by 2007. The most recent assessment for these areas was made in the Regulatory Impact Analysis for the revised NAAQS (NAAQS RIA).[14] That assessment predicted that many areas in California will require substantial additional reductions to attain the 1-hour and 8-hour ozone standards. Although the vehicle and fuel standards being proposed today would not apply to vehicles and fuel sold in California, we project that today's proposals would lead to emission reductions within California. According to the State of California, about 7 to 10 percent of all car and light truck travel in California takes place in vehicles originally sold outside California. These vehicles operate in California during visits and after relocation of households from other states. Today's proposal would cause those vehicles to be cleaner, assisting California's nonattainment areas to meet the ozone standards. In addition, this proposal requires that gasoline in all states (except California, which has its own low-sulfur gasoline program) have a low sulfur content, in order to maintain catalyst effectiveness. This would ensure that vehicles belonging to California residents get clean gasoline when they travel outside of California, so that they return to California with fully functioning catalysts.

Outside of California and the OTAG region, the NAAQS RIA modeling indicated that all areas would attain the 1-hour standard by 2010. One area (Phoenix, AZ) was projected not to attain the 8-hour standard. Eleven other areas were projected to have ozone levels within 15 percent of the 8-hour standard and hence face potential challenges in maintaining their attainment status.

Furthermore, even an area now in attainment or that reaches attainment by 2007 can be at risk of becoming nonattainment in the face of continued growth in its population, economy, vehicle traffic, and nonroad equipment activity levels. Also, an area that we have estimated will reach attainment in 2007 may fail to do so if growth is higher than we project, if emission controls are less effective, or if the modeling is otherwise in error. Our modeling for the OTAG region has estimated that of the 1-hour nonattainment areas projected to reach attainment by 2007 with the benefits of the Regional Ozone Transport Rule (ROTR) and other already committed measures, 17 metropolitan areas and 5 rural counties, with a combined 1990 population of 35 million people, will remain within 15 percent of the 1-hour standard. These areas would benefit from additional reductions to help ensure that they will attain.

With respect to the 8-hour standard, we estimate that 80 metropolitan areas and 39 rural counties with a 1990 population of 49 million people will have design values within 15 percent of the 8-hour standard. These areas have some risk of not actually being in attainment in 2007, and will face potentially significant challenges maintaining their attainment status in future years. Today's proposed standards would help ensure these areas do attain, and help these areas accommodate continued population and economic growth while staying in attainment with the 8-hour ozone standard by further reducing levels of ozone precursors.

EPA's best ozone projections at the current time for the OTAG region are summarized in Tables III–1 and III–2, where "ROTR" refers to the Regional Ozone Transport Rule. It should be noted that the results for the OTAG regions discussed above and summarized in the following tables apply to only a portion of the area that would benefit from today's proposal.

TABLE III–1.—EXTENT OF POTENTIAL 1-HOUR OZONE PROBLEM AREAS IN 2007 IN THE OTAG REGION.[a]

	2007 projections with ROTR
Design values in excess of the 1-Hour NAAQS (≥125 ppb)	
Number of Metropolitan Areas	8
Number of Rural Counties	2
1990 Population of Metropolitan Areas and Rural Counties (millions)	39

[a] Additional potential problem areas in California.

[12] The design value is the calculated ozone level, based on ozone measurements in the area, that is compared to the NAAQS to determine compliance with the standard.

[13] Various states have submitted SIPs to meet a requirement that they demonstrate attainment with the 1-hour ozone standard by 2005 or 2007 (the exact date is state-specific, depending on the severity of their violation of the 1-hour standard). These plans were submitted to EPA in the first half of 1998, and we are still reviewing them for their completeness and approvability. We have not fully evaluated the impact of the measures contained in these plans on future ozone levels. As a result, they are not included in the baseline emission inventory.

[14] "Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule," Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

TABLE III–2.—EXTENT OF POTENTIAL 8-HOUR OZONE PROBLEM AREAS IN 2007 IN THE OTAG REGION [a]

	2007 projections with ROTR
Design values in excess of the 8-Hour NAAQS (≥85 ppb)	
Number of Metropolitan Areas	28
Number of Rural Counties	4
1990 Population of Metropolitan Areas and Rural Counties (millions)	80
Design values within 15 percent of the 8-Hour NAAQS (72–84 ppb)	
Number of Metropolitan Areas	80
Number of Rural Counties	39
1990 Population of Metropolitan Areas and Rural Counties (millions)	49

[a] Phoenix, Arizona and multiple areas in California are also potential problem areas.

It should be noted that the areas included in Table III–2 have not been designated to be in nonattainment with the 8-hour ozone NAAQS. Such designations will not be made by EPA until 2000, and these designations will be based on the data that are most recently available at that time.[15] Instead, the areas included in Table III–2 have been projected to have design values that would place them in nonattainment in 2007, using an approach described in the Draft RIA.[16] This approach enabled EPA to estimate the extent of the 8-hour nonattainment problem after implementing the reductions set forth in the Regional Ozone Transport Rule and the measures states have adopted or are specifically required by the Clean Air Act to adopt for their existing 1-hour nonattainment areas. (The modeling did not consider the impact of additional measures that may appear in the SIP revisions submitted by some states in the first half of 1998.)

We believe the large reductions called for in today's action would substantially reduce ozone levels nationwide and would therefore reduce ozone levels and design values in the areas projected to otherwise exceed the 8-hour standard as well as in those areas facing potentially significant maintenance challenges.

2. Cars and Light-Duty Trucks Are a Big Part of the NO_X and VOC Inventory, and Today's Proposal Would Reduce This Contribution Substantially

Emissions of VOCs and NO_X come from a variety of sources, both natural and from human activity. Natural sources, including emissions that have been traced to vegetation, account for a substantial portion of total VOC emissions in rural areas. The remainder of this section focuses on the contribution of motor vehicles to emissions from human sources. Human-caused VOCs are released as byproducts of incomplete combustion as well as evaporation of solvents and fuels. For gasoline-fueled cars and light trucks, approximately half of the VOC emissions come from the vehicle exhaust and half come from the evaporation of gasoline from the fuel system. NO_X emissions are dominated by human sources, most notably high-temperature combustion processes such as those occurring in automobiles and power plants. Emissions from cars and light trucks are currently, and will remain, a major part of nationwide VOC and NO_X emissions. In 1996, cars and light trucks comprised 25 percent of the VOC emissions and 21 percent of the NO_X emissions from human sources in the U.S.[17] The contribution in metropolitan areas was generally larger.

Motor vehicle emission controls have led to significant improvements in emission levels in the air (the "emission inventory") and will continue to do so in the near term. As a result of the introduction of cleaner reformulated gasoline in 2000, the introduction of National Low Emission Vehicles (NLEVs) and vehicles complying with the Enhanced Evaporative Test Procedure and Supplemental Federal Test Procedures, and the continuing removal of older, higher-emitting vehicles from the in-use vehicle fleet, total emissions from the car and light truck fleet are projected to continue to decline through the next decade, reaching a low point for NO_X in 2013 (Figure III–1) and for VOC in 2015.[18] On a per mile basis, average VOC and NO_X emissions from cars and light trucks combined will continue to decline well beyond 2015, reflecting the continuing effect of existing emission control programs. However, projected increases in vehicle miles traveled (VMT) will cause total emissions from these vehicles to increase. With this increase in travel and without additional controls, we project that combined NO_X and VOC emissions for cars and light trucks will increase starting in 2013 and 2015, respectively, so that by 2030 they will have returned to levels nearly the same as they will be in 2000. In cities experiencing rapid growth, such as Charlotte, North Carolina, the near-term trend toward lower emissions tends to reverse sooner.

Figure III–1 illustrates this expected trend in car and light truck NO_X emissions in the absence of today's proposed standards for vehicles and gasoline. The figure also allows the contribution of cars to be distinguished from that of light trucks. The figure clearly shows the impact of steady growth in light truck sales and travel on overall light-duty NO_X emissions; the decrease in overall light-duty emission levels is due solely to reductions in LDV emissions. In 2000, we project that trucks will produce about 50 percent of combined car and light truck NO_X emissions. We project that truck emissions will actually increase after 2000, and over the next 30 years, trucks will grow to dominate light-duty NO_X emissions. By 2007, we project trucks will make up two-thirds of light-duty NO_X emissions; by 2020, nearly three-quarters of all light-duty NO_X emissions will be produced by trucks.

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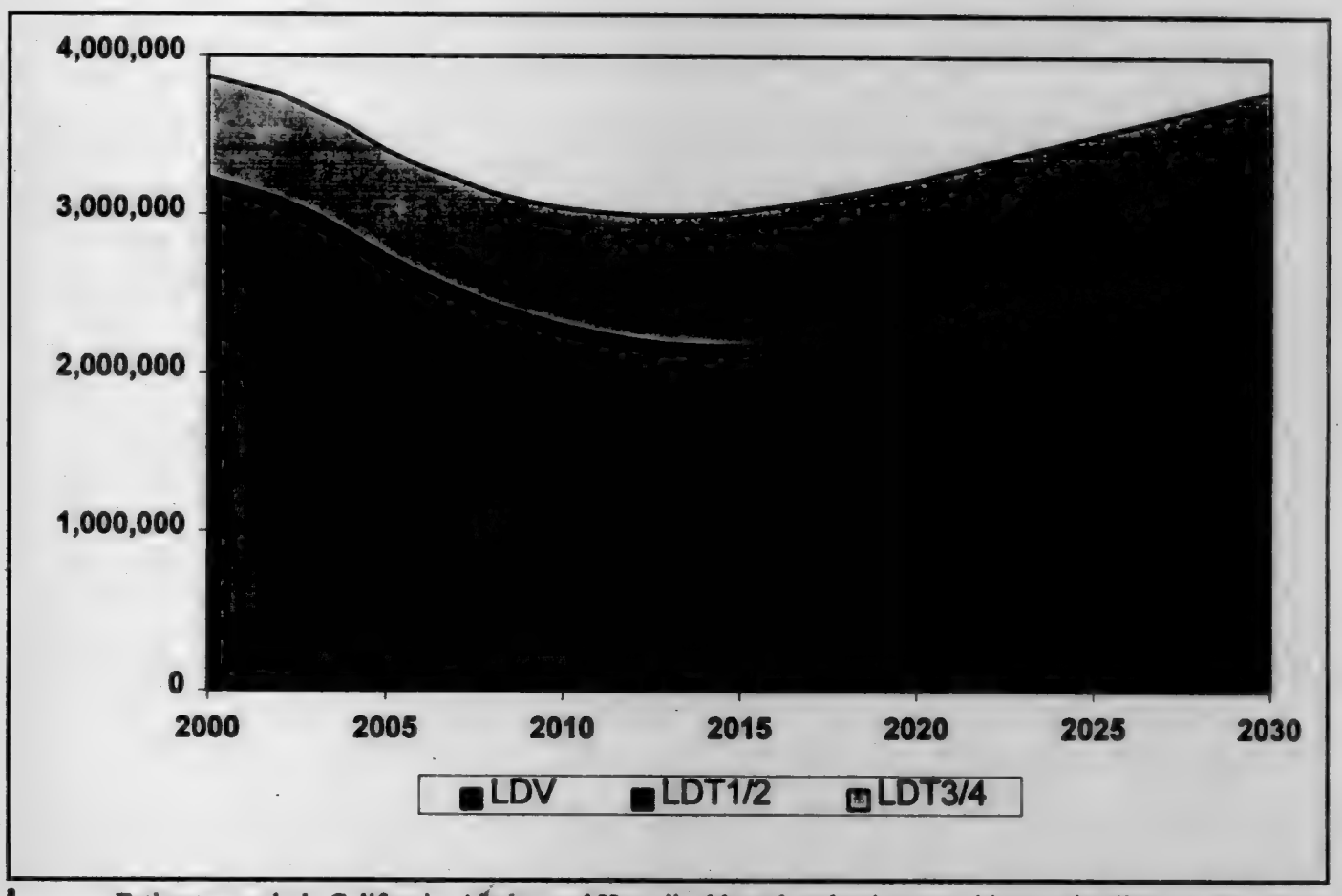
[15] It should also be noted that the number and 1990 population of metropolitan areas projected to be near or above the 8-hour ozone standard in Table III–2 are based on the boundaries of ozone nonattainment areas as currently defined under the 1-hour ozone standard. These boundaries will be reevaluated as 8-hour ozone nonattainment areas are designated and may change from those used above, affecting the count and population of the potential problem areas.

[16] The approach uses a combination of ambient monitoring data and regional ozone photochemical grid modeling for specific ozone episodes to develop statistical correlations between modeled ozone levels and projected future monitoring results. The approach does not reflect any further emission reductions that may have been included in revisions to State Implementation Plans (SIPs) for ozone that EPA received from some states in the first half of 1998. These SIP revisions are still under review by EPA for completeness and approvability.

[17] Emission Trend Report, 1997.

[18] The auto manufacturer and northeastern state commitments to the NLEV program are scheduled to end in 2004 without further EPA action on Tier 2 standards, although continued voluntary compliance by automobile manufacturers and the affected states is a possibility. Our analysis of emission trends and the emission benefits expected from today's proposal assumes for the base scenario a continuation of the NLEV program past 2004. It also includes all other control measures assumed to be implemented for the purposes of the proposed state-level NO_X budgets in the Regional Ozone Transport Rule, such as reformulated gasoline in all required and opt-in areas and enhanced I/M where required.

Figure III-1.
Light-duty NOx emissions without Tier 2 (annual tons)[a]



[a] Estimates exclude California, Alaska, and Hawaii, although reductions would occur in all three. For all cases, this figure reflects implementation of ROTR and other measures assumed in the ROTR. The estimates reflect continuation of NLEV beyond 2004.

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Today's action would significantly decrease NO_X and VOC emissions from cars and light trucks, and would delay the date by which NO_X and VOC emissions would begin to increase due to continued VMT growth. With Tier 2/Sulfur control, light-duty vehicle NO_X and VOC emissions are projected to continue their downward trend past 2020. Table III–3 shows the annual tons of NO_X that we project would be reduced if today's proposal were adopted.[19] These projections include the benefits of low sulfur fuel and the introduction of Tier 2 car and light truck standards.

TABLE III–3.—NO_X EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL[a]

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2 (percent)	Light-duty tons reduced by tier 2[b]
2007	3,218,530	17	795,734
2010	3,041,639	17	1,182,323
2015	3,020,806	17	1,778,881
2020	3,221,151	18	2,198,113

[a] Estimates exclude California, Alaska, and Hawaii, although reductions would occur in all three. For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. For the "Without Tier 2" case, the estimates reflect continuation of NLEV beyond 2004.

[b] Does not include emission reductions from heavy-duty gasoline vehicles.

The lower sulfur levels proposed today would produce large emission reductions on pre-Tier 2 vehicles as soon as low-sulfur gasoline is introduced, in addition to enabling Tier 2 vehicles to achieve lower emission levels. Among the pre-Tier 2 vehicles, the largest per vehicle emission reductions from lower sulfur in gasoline would be achieved from vehicles that automobile manufacturers will have sold under the voluntary National Low Emission Vehicle program. These vehicles are capable of substantially lower emissions when operated on low sulfur fuel. Older technology vehicles experience a smaller but significant effect.

In 2007, when all gasoline would meet the new sulfur limit and when large numbers of 2004 and newer vehicles meeting the proposed standards would be in use, the combined NO_X emission reduction from vehicles and fuels would be nearly 800,000 tons per year. After 2007, emissions would be reduced further as the fleet turned over to Tier 2 vehicles operating on low sulfur fuel. By 2020, NO_X emissions would be reduced by two-thirds from the levels that would occur if today's proposal were not adopted. This reduction equals the NO_X emissions from over 166 million pre-Tier 2/Sulfur cars and light trucks. This reduction would represent a 12 percent NO_X reduction in emissions from all manmade sources.

VOC emissions would also be reduced by today's proposal, with reductions increasing as the fleet turns over. The reductions as a percent of emissions from cars and light trucks would be 5 percent in 2007 and grow to 16 percent in 2020.

As discussed earlier, in California, smaller but still substantial reductions in both NO_X and VOC would be achieved because vehicles visiting and relocating to California would be designed to meet today's proposed standards. Also, vehicles from California visiting other states would not be exposed to high sulfur fuel.

These estimates of emission reductions reflect a mixture of urban, suburban, and rural areas. As we noted in the Tier 2 Study, however, cars and light trucks generally make up a larger fraction of the emission inventory for urban and suburban areas, where human population and personal vehicle travel is more concentrated than emissions from other sources such as heavy-duty highway vehicles, power plants, and industrial boilers. We have estimated emission inventories for three cities using the same methods as were used to project the nationwide inventories, and we present the results for 2007 below in Table III–4. Inventory shares in 2010 are about the same.

These results confirm that light-duty vehicles make up a greater share of the NO_X emission inventories in urban areas than they do in the nationwide inventory. While these vehicles' share of national NO_X emissions in 2007 is about 17 percent, it is estimated to be about 38 percent in the Atlanta area. There is also a range in VOC contributions, with Atlanta again being the area with the largest car and light truck contribution at 33 percent. In metropolitan areas with high car and light truck contributions, today's proposal would represent a larger step toward attainment since it would have a larger effect on total emissions.

TABLE III–4.—PROPORTION OF THE TOTAL URBAN AREA NO_X AND VOC INVENTORY IN 2007 ATTRIBUTABLE TO LIGHT-DUTY VEHICLES[a]

Region	NO_X (percent)	VOC (percent)
Nationwide[a]	17	18
New York urban area	29	15
Atlanta urban area	38	33
Charlotte urban area	18	15

[a] For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. The estimates reflect continuation of NLEV beyond 2004.

Another useful perspective from which to view the magnitude of the emission reductions from today's proposal is in terms of the additional emission reductions from all human sources that areas will need to attain the 8-hour ozone standard. For this analysis, we included the implementation of the Regional Ozone Transport Rule but assumed that today's proposal was not implemented. In the previously referenced NAAQS RIA we estimated additional NO_X emission reductions that, along with specific accompanying VOC reductions, would bring each residual nonattainment area into attainment with the 8-hour ozone

[19] Today's proposed standards for both vehicles and fuels would apply in 49 states and the U.S. territories, excluding only California. If today's proposal is adopted, there would also be emissions reductions in California from vehicles that relocate or visit from other states. However, much of the emissions inventory analysis for this proposal was made for a 47-state region that excludes California, Alaska, and Hawaii, since these states were not included in the scope of ozone modeling.

standard by 2010. We have used these estimated reductions as the basis for Table III–5, which shows the NO_X reductions needed to reach attainment in 2007 for six metropolitan areas.[20] These are areas for which both the NAAQS RIA and the ozone modeling for this proposal forecasted continued 8-hour nonattainment in that year, even with the emission reductions from the Regional Ozone Transport Rule.

Table III–5 also shows the NO_X emission reductions in those same six areas that we project would result if today's proposal were implemented. Although the two analyses differ in some emission modeling estimates, the comparison is valid as a general indication of the contribution today's proposal can make to attainment. Cars and light trucks contribute about 20 to 40 percent of the NO_X inventory in these six areas. The NO_X reductions estimated for today's proposal range from 19 to 50 percent of the reductions that are estimated to be needed for attainment. These figures show that today's proposal would make a very substantial contribution to these cities' attainment programs, but that there will still be a need for additional reductions from other sources. The emission reductions from today's proposal would clearly not exceed the reductions needed from an air quality perspective for these areas; as described in the next section, we project that about 20 other areas in the eastern U.S. would also need reductions beyond those of today's proposed program to attain the NAAQS for NO_X.

TABLE III–5.—COMPARISON OF TIER 2/SULFUR NO_X REDUCTIONS TO NO_X REDUCTIONS ESTIMATED TO PRODUCE 8-HOUR OZONE ATTAINMENT IN 2007

Metro area	NO_X reductions estimated to produce attainment (tons/year)	NO_X reductions from proposed tier 2/sulfur standards (tons/year)	Tier 2/sulfur NO_X reductions as percent of reductions to produce attainment
Atlanta	69,802	17,271	25
Dallas	41,283	14,761	36
Memphis	7,343	3,683	50
NY–NJ–CT	186,880	35,906	19
Philadelphia	63,456	19,942	31
Washington, DC-Baltimore	62,519	22,673	36

3. Tier 2/Sulfur Ozone Benefits and the Post-Tier 2/Sulfur Ozone Problem

By reducing ozone precursor emissions from cars and light trucks in areas where ozone levels are near or above the ozone standard, today's proposal would reduce local ozone levels. And by reducing ozone precursor emissions in upwind areas, today's proposal would reduce ozone and ozone precursor levels in the air flowing into areas where ozone levels are high. EPA's analysis of the ozone impact of today's proposal suggests that it would yield large reductions in ozone, particularly in areas where ozone transport plays a significant role in local nonattainment problems. There are uncertainties associated with the modeling we have used to estimate these reductions, but we are certain that the emission reductions would be large.

Ozone levels in a few locations in the centers of large metropolitan areas are VOC-limited; that is, the atmospheric chemistry is such that ozone levels tend to respond to VOC reductions rather than to NO_X reductions. Some of these areas may experience essentially no change or a slight ozone increase on some days, if one considers only the isolated effect of the emission reductions due to today's proposal. However, it has long been recognized that metropolitan areas containing such locations will need to implement additional VOC reductions from local sources to reach attainment. If these reductions and the reductions from today's proposal were combined, the net effect would be a progressive drop in ozone levels until attainment is reached.

To examine the impact of today's proposal on ozone levels, we estimated the ozone effects of the emission reductions that would occur in 2007 and 2010 for the area covered by the OTAG ozone model. The 1-hour ozone reductions in 2007 are relevant to the several 1-hour nonattainment areas required to reach attainment in that year. The 8-hour reductions in 2007 and 2010 are of great relevance to the efforts of states to achieve attainment with the 8-hour ozone standard, since for many areas these dates bracket the three "clean" years required to show attainment by their actual deadline.

The estimated emission reductions from our proposal in 2007 and 2010 would be substantial due to the effect of low sulfur fuel on the entire in-use fleet of gasoline vehicles and trucks of all sizes, especially those designed to meet NLEV standards, and due to the fact that many cleaner 2004 and newer vehicles would be on the road. Table III–6 provides a summary of the 1-hour ozone results for the OTAG modeling area for 2007. Table III–7 provides a summary of the 2007 and 2010 results for the 8-hour standard. According to our best modeling, the reductions in 2007 would make the difference between nonattainment and attainment for four metropolitan areas with a combined 1990 population of 15 million people. In 2010, we estimate that the Tier2/Sulfur reductions would be enough by themselves to bring eight metropolitan areas with 13 million people into attainment with the 8-hour standard.

Tables III–6 and III–7 indicate that we project that some areas would not attain with only the emission reductions from the Tier 2/Sulfur proposal. However, we do project that those areas would experience reductions in ozone levels. These reductions would mean that even the areas that are not brought all the way to attainment would not need to reduce emissions from other sources as much as would be required without today's proposal, as previously explained. Of the 18 areas that we projected would not be brought to attainment with the 8-hour standard in 2010, we project that 10 areas would

[20] We calculated the estimated reductions needed for attainment in 2007 by adding the reductions due to NLEV vehicles entering the fleet between 2007 and 2010 to the estimated reductions needed for attainment in 2010.

have design values within 5 percent of the standard.

Today's proposal would also benefit ozone nonattainment areas outside of the OTAG modeling region, including the one area (Phoenix, Arizona) projected to be in nonattainment for ozone in 2010 in the absence of Tier 2/Sulfur controls. The Tier 2/Sulfur controls being proposed today would help Phoenix attain the ozone standard, particularly since cars and light trucks are a relatively large part of the Phoenix emission inventory. These controls also would help the 11 areas projected to face potential maintenance challenges stay in attainment as their economies and populations grow. And as already mentioned, because about 7 to 10 percent of travel in California is by non-California vehicles, there would be a substantial benefit in that state also.

TABLE III–6.—PROJECTED TIER 2/SULFUR IMPACT ON POTENTIAL 1-HOUR OZONE PROBLEM AREAS IN THE OTAG REGION IN 2007 [a]

	2007 without tier 2/sulfur	2007 with tier 2/sulfur	Change due to tier 2/sulfur
Design values projected to be in excess of the 1-Hour NAAQS (≥125 ppb)			
Number of Metropolitan Areas	8	4	−4
Number of Rural Counties	2	2	0
1990 Population of Metropolitan Areas and Rural Counties (millions)	39	24	−15

[a] For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. For the "Without Tier 2/Sulfur" case, the estimates reflect continuation of NLEV beyond 2004.

TABLE III–7.—PROJECTED TIER 2/SULFUR IMPACT ON POTENTIAL 8-HOUR OZONE PROBLEM AREAS IN THE OTAG REGION IN 2007 AND 2010 [a]

	Without tier 2/sulfur	With tier 2/sulfur	Change due to tier 2/sulfur
Design values projected to be in excess of the 8-Hour NAAQS (≥85 ppb) in 2007			
Number of Metropolitan Areas	28	25	−3
Number of Rural Counties	4	3	−1
1990 Population of Metropolitan Areas and Rural Counties (millions)	80	72	−8
Design values projected to be in excess of the 8-Hour NAAQS (≥85 ppb) in 2010			
Number of Metropolitan Areas	26	[b] 18	−8
Number of Rural Counties	3	3	0
1990 Population of Metropolitan Areas and Rural Counties (millions)	78	65	−13

[a] For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR. For the "Without Tier 2/Sulfur" case, the estimates reflect continuation of NLEV beyond 2004.
[b] Of these 18 areas predicted to remain nonattainment, 10 would be within 5 percent of the 8-hour ozone standard.

Much larger VOC and NO_X emission reductions would occur in 2020, when the vehicle fleet would be almost fully turned over to Tier 2 vehicles. The 2020 scenario is designed to help evaluate the long-term impact of today's proposal on ozone levels, when the majority of the vehicle fleet would consist of vehicles that meet the standards being proposed today.

We present three indicators of the benefits of today's proposed program in 2020. First, as shown in Table III–3, that today's proposal would reduce NO_X emissions in 2020 by over 2,000,000 tons per year, not counting reductions in California, Hawaii, and Alaska. The reduction in each nonattainment area would also be very substantial. Second, we have estimated how much design values in 2020 would change due to today's proposal. For all counties projected to need emission reductions beyond the ROTR, the average reduction in 2020 design value was 6 ppb, or almost 8 percent of the 8-hour standard itself. The range of design value reductions was 3 to 12 ppb. These results included only the region covered by the OTAG ozone model. Third, when we analyzed the 2020 scenario to take into account the duration, severity, and geographic extent of high ozone levels, we found that projected excessive 8-hour ozone levels, defined as grid cell-days above 85 ppm ozone, were reduced by 43 percent.

The baseline scenario against which the ozone effects of today's proposed standards in 2020 were compared assumes that no emission control efforts beyond those assumed in the ROTR are implemented. We believe this approximation is reasonable because our inventory modeling shows that in 2020, total human-caused emissions in the absence of today's proposed program change very little from their 2007 levels. We subtracted the emission benefits of today's proposed program in 2020 from those baseline emissions to approximate the emissions that would result in 2020.

We expect the requirement to achieve attainment with the 8-hour standard will cause states with residual nonattainment areas to adopt additional controls in pursuit of their attainment obligations. The increasingly large emission reductions from today's proposal that would occur over time would be of great value to those areas since these areas would not need to implement as extensive or stringent additional controls as would otherwise be the case. Furthermore, once an area reaches attainment, it must adopt a SIP revision containing a strategy to maintain the standard thereafter. The reductions from today's proposal would help such areas overcome any loss of reductions due to less-than-expected effectiveness from other controls, provide a safety margin against the chance of new ozone violations, provide room for population and economic growth to cause increases in emissions

from other sources with less need for the maintenance plan to increase the stringency of controls on those other sources, and possibly even allow selective relaxation of other control programs.

Because the ozone modeling for 2020 did not account for the additional measures that states will adopt to attain and maintain the ozone standard, an attainment vs. nonattainment distinction does not apply in 2020. Instead, the changes that today's proposal would achieve in 2020 precursor emissions and in predicted ozone concentrations are more appropriate indicators of the benefits of the Tier2/Sulfur program than would be a count of the areas that have design values move from above to below the ozone standard.

These ozone results for 2007, 2010, and 2020 represent the best modeling currently available to us, but should be considered approximate. The Regulatory Impact Analysis documents all the methods and assumptions used. The results presented are estimates of the future that only apply to the OTAG region rather than the entire area that would be subject to today's proposal. As previously mentioned, there would also be ozone benefits outside this region, particularly for nonattainment areas in California and for Phoenix, Arizona. We expect to revise our ozone effects estimates prior to the final rule to reflect further improvements in estimates of emissions from both mobile and stationary sources.

In addition to the emission-reduction and ozone-reduction benefits discussed above that we expect will result from the proposed rule, we have done a separate analysis of economic benefits (and costs) associated with the expected ozone reductions from today's proposed program (see Section IV.D.5. below and the RIA).

C. Particulate Matter

1. Particulate Matter Presents Substantial Public Health Risks

Particulate matter (PM) is produced as a direct result of human activity and natural processes, and it is also formed through chemical and physical processes in the atmosphere. Natural sources include windblown dust, salt from dried sea spray, fires, and volcanoes, as well as so-called secondary particles formed from the transformation of natural emissions of SO_X, NO_X, and VOCs. Human sources include industrial activities, agriculture, road dust, and soot, as well as secondary particles produced from gases such as SO_X, NO_X, and VOCs that are emitted primarily from combustion processes. PM includes fine particles with a diameter smaller than 2.5 microns (also called $PM_{2.5}$) and coarse particles with larger diameters. Coarse particles are predominantly from non-combustion sources and are dominated by soil dust and sea salt. They remain in the atmosphere a relatively short period of time. Fine particulate includes carbon-based particles emitted directly from combustion processes but consists predominantly of secondary particles, such as sulfate-based particles (produced from SO_X), nitrate-based particles (produced from NO_X), and carbon-based particles created through transformation of VOC emissions. Mobile sources can reasonably be estimated to contribute to ambient secondary nitrate, sulfate and carbonaceous PM in proportion to their contribution to total NO_X, SO, and VOC emissions.

In 1997, 8 million Americans were living in 13 counties that exceeded the recently revised PM_{10} standard, and PM_{10} problems are projected to persist in the absence of further actions to control PM_{10} levels. Table III–8 presents estimates of the extent of PM_{10} and $PM_{2.5}$ nonattainment in the future. In the NAAQS RIA, we projected that in 2010, eleven counties with a combined 1990 population of about 10 million people would not be in attainment with the revised PM_{10} standards.[21] About half of the affected population lives outside of California. In the same analysis, 102 counties were projected to violate the new $PM_{2.5}$ NAAQS, with a combined 1990 population of about 55 million people. About 75 percent of the affected population lives outside of California. (More information about this analysis and its uncertainties may be found in the NAAQS RIA and the Tier 2 Report to Congress.) Ambient PM reductions from more stringent motor vehicle or fuel standards would primarily affect areas outside of California, because California has its own motor vehicle emission control program. California areas would also benefit, however, through the temporary travel and permanent migration of out-of-state vehicles into California, as discussed above.

TABLE III–8.—PROJECTED 2010 PM_{10}/$PM_{2.5}$ NONATTAINMENT COUNTIES AND POPULATIONS

	Outside California	California
Violating Original PM_{10} NAAQS		
Number of Counties	33	12
1990 Population (millions)	11	7
Violating Revised PM_{10} NAAQS		
Number of Counties	5	6
1990 Population (millions)	5	5
Violating New $PM_{2.5}$ NAAQS		
Number of Counties	92	10
1990 Population (millions)	42	13

A significant number of areas are projected to exceed the PM_{10} NAAQS in 2010 with existing emission controls, indicating that further PM and PM-precursor emission reductions will be needed. Because the bulk of PM emissions from motor vehicles are fine particles, any reduction in particulate emissions from motor vehicles aimed at reducing PM_{10} levels would also reduce ambient levels of $PM_{2.5}$. As mentioned above, the number of counties projected to violate the new $PM_{2.5}$ NAAQS is much larger than that for the revised PM_{10} standards. Tier 2/Sulfur standards that reduce particulate emissions for the purposes of facilitating attainment with the PM_{10} NAAQS could also benefit areas with elevated $PM_{2.5}$ levels.

2. Reducing Emissions From Cars and Light Trucks Would Reduce Ambient Levels

Today's proposal would reduce PM levels by reducing direct PM emissions from cars and light trucks, and by reducing emissions of sulfur and nitrogen oxides that are converted to PM in the atmosphere. Direct PM emissions would be reduced in two ways. First, reductions in gasoline sulfur levels would reduce PM emissions from gasoline vehicles. Second, the more stringent PM standard included in today's proposal would reduce PM emissions from cars and light trucks equipped with diesel engines. Diesel engines are used in a small fraction of current cars and light trucks, but this

[21] The methods used to project PM concentrations in 2010 from 1990 emissions and ambient concentration data introduce several sources of uncertainty. Also, the $PM_{2.5}$ values are predicted from a regression model and hence are subject to the uncertainty associated with this model. Other uncertainties exist regarding emission inventory estimates from human and natural sources, monitoring data, and the models used to account for physical and chemical processes in the atmosphere. Even with the anticipated delivery of more comprehensive modeling techniques, the scarcity of speciated ambient PM data in both urban and rural areas to evaluate model behavior will continue to compromise the certainty of the best model-derived conclusions.

fraction could grow as discussed in III.C.3. below.

With no growth in diesel sales, we project today's action would reduce direct PM emissions from cars and light trucks mainly due to the introduction of low-sulfur gasoline. Sulfur-based particles account for a substantial portion of the particulate matter emitted by gasoline-powered vehicles. More stringent PM emission standards are not anticipated to alter PM emissions from gasoline vehicles but would result in reductions in diesel PM emissions. The overall effect of today's proposal under this assumption would be to reduce direct exhaust PM emissions from cars and light trucks by 60 percent in 2007 and by 62–63 percent in 2015 and beyond. Tables III–9 and III–10 show the contribution of cars and light trucks to total PM_{10} and $PM_{2.5}$ emissions, and the reductions that would be obtained from today's proposal. The contribution of cars and light trucks to either PM inventory will generally be higher in urban areas than on a nationwide basis, and will vary from area to area. In 2007, for example, cars and light trucks contribute 1.3 percent to the nationwide PM_{10} inventory (excluding natural sources and fugitive dust). For comparison, this percentage is estimated to be 4.4 percent in Atlanta and 1.9 percent in the New York City metropolitan area.

Later in this section we discuss the possibility that sales of diesel-powered vehicles might increase from current levels, making the effect of the more stringent PM standard in this proposal larger.

TABLE III–9.—DIRECT EXHAUST PM_{10} EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL[a,b]

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2
2007	39,209	1.3	23,379
2010	41,412	1.4	25,239
2015	46,064	1.4	28,674
2020	51,102	1.5	32,031

[a] For all cases, this table reflects continuation of current diesel engine usage in the light truck fleet and implementation of ROTR and other measures assumed in the ROTR.

[b] The emission estimates shown exclude natural sources of PM and fugitive dust. They also do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

TABLE III–10.—DIRECT EXHAUST $PM_{2.5}$ EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL[a,b]

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2
2007	36,365	1.7	21,687
2010	38,409	1.8	23,410
2015	42,724	1.9	26,595
2020	47,397	2.0	29,707

[a] For all cases, this table reflects continuation of current diesel engine usage in the light truck fleet and implementation of ROTR and other measures assumed in the ROTR.

[b] The emission estimates shown exclude natural sources of PM and fugitive dust. They also do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

Even larger PM reductions would result from the reductions in the sulfur oxides (SO_X), NO_X, and VOC emissions that give rise to secondary PM that would result from today's proposal. The reduction in ambient PM levels that would come from the proposed reductions in these precursor emissions is about 6 to 7 times as large as the reduction from lower emissions of direct PM. Essentially all secondary PM is fine PM and hence is included in estimates of both PM_{10} and $PM_{2.5}$.

We described the effect of today's proposal on VOC and NO_X emissions above in Section III.B. Today's proposal also would reduce SO_X emissions from cars and light trucks by dramatically lowering the level of sulfur in gasoline, since gaseous SO_X emissions are dependent entirely on fuel sulfur level. In the absence of today's proposal, we project that SO_X emissions from cars and light trucks will increase steadily in conjunction with VMT growth, from approximately 216,000 tons in 2005 to 300,000 tons in 2020—an increase of almost 40 percent (total nationwide SO_X emissions from all sources was 20,000,000 tons in 1997). Today's proposal would reduce SO_X emissions from all gasoline-powered engines, including cars, light trucks, heavy-duty gasoline vehicles, and gasoline-powered nonroad engines, in any year by 90 percent, once all gasoline meets the proposed sulfur limit. The same percentage reductions in SO_X emissions would occur in subsequent years. The absolute emission reduction increases with time, however, due to growth in VMT and nonroad engine use. Table III–11 shows the impact of today's proposal on SO_X emissions.

TABLE III–11.—SO_x EMISSIONS FROM CARS AND LIGHT TRUCKS AS PERCENT OF TOTAL EMISSIONS, AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL [a]

Year	Light-duty tons without tier 2	Light-duty percent of total without tier 2	Light-duty tons reduced by tier 2
2007	225,673	1.2	202,748
2010	240,694	1.3	216,437
2015	270,174	1.4	242,964
2020	299,959	1.6	269,756

[a] The emission estimates shown do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

3. Today's Proposal Would Limit the Potential Health Risks From Increased Diesel Engine Use in Cars and Light Trucks

Of particular concern from a PM perspective is the possibility that diesels will become more prevalent in the light-duty truck fleet. This development is a reasonable possibility since vehicle and engine manufacturers have indicated their intent to sell more diesel-powered light-duty trucks and in some cases have made capital investments to implement these plans. The Partnership for a New Generation of Vehicles (PNGV), a public-private research and development effort that has been pursuing several promising technologies for greatly improved vehicle fuel economy combined with low emissions, has identified improved diesel engines as a technology likely to be able to deliver large fuel economy improvements in the near future, by about 2004. In order to assess the potential impact of increased diesel sales penetration on $PM_{2.5}$ emissions, we analyzed benefits from our proposed Tier 2 PM standards under a scenario in which the use of diesel engines in light trucks increases rapidly, by five percentage points per year from 2001 through 2010, when diesels would account for 50 percent of light-duty truck sales; beyond 2010, diesel sales were assumed to be stable at 50 percent of the light-truck market. Table III–12 presents the results of our analysis of this scenario.

This scenario of increased diesels would result in dramatic increases in direct $PM_{2.5}$ emissions from cars and light trucks, if there is no change in the PM standards for light trucks. The increase in diesel exhaust $PM_{2.5}$ emissions would more than overcome the reduction in direct $PM_{2.5}$ attributable to the sulfur reduction in gasoline. Assuming no change in the existing PM standards for light trucks, our analysis of this scenario shows that direct $PM_{2.5}$ emissions in 2020 would be approximately 140,000 tons, nearly three times the 47,000 tons projected in the base diesel sales case from Table III–10. The portion of the $PM_{2.5}$ inventory attributable to cars and light trucks would climb steadily, reaching almost 6 percent in 2020 instead of the 2 percent shown in Table III–10 for a scenario where diesel engines do not increase their presence in the light truck fleet. In some cities with relatively high vehicle use and lower industrial emissions, the car and truck contribution would be even higher.

This increase would be accompanied by increases in the mortality and morbidity associated with $PM_{2.5}$ exposure. Fortunately, the standards being proposed today would result in a steady decrease in total direct $PM_{2.5}$ from cars and light trucks despite a possible increase in diesel engines in light trucks. Direct PM emissions in 2020 with today's proposal would be about 25,000 tons per year, less than at present.

If this scenario for increased diesel engines in light trucks were to occur, today's proposal would reduce diesel $PM_{2.5}$ by over 90 percent in 2020. Stated differently, by 2020 today's proposal would reduce over 113,000 tons of the potential increase in PM emissions from passenger cars and light trucks. The result would be less direct $PM_{2.5}$ than is emitted today, because the increase in diesel PM would be more than offset by the reduction in gasoline PM.

TABLE III–12.—DIRECT EXHAUST $PM_{2.5}$ EMISSIONS FROM LIGHT DUTY VEHICLES AND REDUCTIONS DUE TO TIER 2/SULFUR CONTROL, WITH GREATER DIESEL ENGINE SALES [a,b]

Year	Light-duty exhaust tons without tier 2	Light-duty exhaust tons with tier 2	Light-duty tons reduced
2007	52,907	22,478	30,429
2010	72,626	22,542	50,084
2015	109,622	23,275	86,347
2020	138,177	24,754	113,424

[a] For all cases, this table reflects implementation of ROTR and other measures assumed in the ROTR and an increase in diesel-powered light truck market share from 5 percent of light truck sales in 2001 to 50 percent in 2010 and beyond.

[b] The emission estimates shown exclude natural sources of PM and fugitive dust. They also do not include California (which has its own vehicle and fuel standards), Alaska, or Hawaii. Today's proposal would have additional emission benefits in these states.

4. Today's Proposal Would Have Substantial PM Benefits

In general, we project that today's proposal would reduce both direct and secondary PM from cars and light trucks substantially, regardless of the future market share for diesel engines in the light-duty fleet. The larger part of the reduction is due to large reductions in VOC, NO_x, and SO_x emissions, with corresponding reductions in secondary PM formation.

Low sulfur fuel would greatly reduce direct PM emissions and sulfate-based secondary PM formation from SO_x emissions from gasoline vehicles, while tailpipe PM standards are projected to mitigate excess PM emissions from diesel vehicles, even at very aggressive rates of diesel vehicle sales growth. Substantial reductions in NO_x

emissions would carry over to reductions in indirect PM. These reductions would help reduce the number of areas with PM_{10} and $PM_{2.5}$ levels in excess of national standards, reduce the severity of PM nonattainment in other areas, and help areas facing PM maintenance challenges stay in attainment.

The magnitude of the PM reductions from today's proposal in a given area depends on conditions such as the contribution of light-duty vehicles to the local PM, SO_X, NO_X, and VOC inventory; the contribution of light-duty vehicles to the PM, SO_X, NO_X, and VOC inventories in upwind areas; local and upwind ammonia inventories (involved in secondary PM formation); control measures being implemented on both local and upwind sources of PM and its precursors, and local meteorology. We have incorporated these factors into the air quality modeling used to develop the benefit/cost analysis presented in Section IV.D.5., which includes the economic benefits of the direct and secondary PM reductions expected to result from today's proposal.

The PM modeling results from that analysis suggest that if all cars and trucks used in 2010 met the emission standards being proposed today, significant PM reductions would result in urban and substantial PM reductions would result in much of the continental U.S. The annual average level of both PM_{10} and $PM_{2.5}$ was projected to decline by 0.25 to 0.64 micrograms per cubic meter (μ/m^3) in many cities; average levels were projected to decline by 0.1 to 0.25 μ/m^3 throughout most of the country east of the Great Plains, Nebraska, and parts of Colorado, Arizona, and other western states. Similarly, daily maximum PM levels [22] were projected to decline substantially, with many cities projected to see declines of 0.75 to 4.5 μ/m^3 and over half the continental U.S. projected to experience declines of 0.25 to 0.75 μ/m^3. Note that this analysis assumed no growth in sales of diesel-powered light trucks. It also did not account for the direct PM reductions that would be achieved when the small number of diesel-powered trucks already being sold now will reduce their PM emissions to meet the lower proposed PM standard.

[22] Daily maximum PM levels are the PM levels (averaged over 24 hours) for days that are projected to be in the 98th or 99th percentile when ranked by their $PM_{2.5}$ and PM_{10} levels, respectively.

D. Other Criteria Pollutants: Carbon Monoxide, Nitrogen Dioxide, Sulfur Dioxide

This proposal would help reduce levels of three other pollutants for which NAAQS have been established: carbon monoxide (CO), nitrogen dioxide (NO_2), and sulfur dioxide (SO_2). The extent of nonattainment for these three pollutants is small, so the primary effect of today's proposal would be to provide areas concerned with maintaining their attainment status a greater margin of safety. As of 1998, every area in the United States has been designated to be in attainment with the NO_2 NAAQS. As of 1997, only one area (Buchanan County, Missouri) did not meet the primary SO_2 short-term standard, due to emissions from the local power plant. In 1997, only 6 of 537 monitoring sites reported ambient CO levels in excess of the CO NAAQS; all six sites were located in California, which has established its own vehicle and fuel emission standards.

The reductions in SO_2 precursor emissions from today's proposal are essentially equal to the SO_X reductions described in Section III.B. and III.C., respectively. The impact of today's proposal on NO_2 emissions depends on the specific emission control technologies used to meet the standards being proposed today. However, essentially all of the NO_X emitted by cars and light trucks converts to NO_2 in the atmosphere; therefore, it is reasonable to assume that today's proposal would substantially reduce ambient NO_2 levels by the same proportion. Today's proposal also would require light trucks to meet more stringent CO standards; we will evaluate the impact of these standards more fully before publishing our final rule. The analysis of economic benefits and costs found in Section IV.D.–5. does not account for the economic benefits of the CO reductions expected to result from today's proposal.

E. Visibility

Visibility impairment occurs as a result of the scattering and absorption of light by particles and gases in the atmosphere. It is most simply described as the haze that obscures the clarity, color, texture, and form of what we see. The principal cause of visibility reduction is fine particles between 0.1 and 1 μm in size. Of the pollutant gases, only NO_2 absorbs significant amounts of light; it is partly responsible for the brownish cast of polluted skies. While the contribution of NO_2 to visibility impairment varies from area to area, it is generally responsible for less than ten percent of visibility reduction.

The CAA requires EPA to protect visibility, or visual air quality, through a number of programs. These programs include the national visibility program under Sections 169a and 169b of the Act, the Prevention of Significant Deterioration program for the review of potential impacts from new and modified sources, and the secondary NAAQS for PM_{10} and $PM_{2.5}$. The national visibility program established in 1980 requires the protection of visibility in 156 mandatory federal Class I areas across the country (primarily national parks and wilderness areas). More than 65 million visitors travel each year to these parks and wilderness areas. The CAA established as a national visibility goal, "the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory federal Class I areas in which impairment results from manmade air pollution." The Act also calls for state programs to make "reasonable progress" toward the national goal. In addition, a recent national opinion poll on the state of the national parks found that more than 80 percent of Americans believe air pollution affecting these parks should be cleaned up for the benefit of future generations.[23]

There has been improvement in visibility in the western part of the country over the last ten years. However, visibility impairment remains a serious problem in Class I areas. Visibility in the East does not seem to have improved. As one part of addressing this national problem, EPA has proposed that states be required to adopt and implement effective plans for protecting and improving visibility in Class I federal areas (including 156 major national parks and wilderness areas), integrated with plans to achieve the revised ozone and PM standards.

Today's proposal should result in visibility improvements due to the reduction in local and upwind PM and PM precursor emissions. Since mobile source emissions contribute to the formation of visibility-reducing PM, control programs that reduce the mobile source emissions of direct and secondary PM would have the effect of improving visibility. The Grand Canyon Visibility Transport Commission's final recommendations report [24] found that

[23] "National Parks and the American Public: A National Pubic Opinion Survey on the National Park System," Summary Report, National Parks and Conservation Association, June 1998.

[24] "Recommendations for Improving Western Vistas," Report of the Grand Canyon Visibility Transport Commission to the United States Environmental Protection Agency, June 10, 1996.

reducing total mobile source emissions is an essential part of any program to protect visibility in the Western U.S. The Commission found that motor vehicle exhaust is responsible for about 14 percent of human-caused visibility reduction (excluding road dust). A substantial portion of motor vehicle exhaust comes from cars and light trucks. In light of that impact, the Commission's recommendations in 1996 supported federal Tier 2/Sulfur standards, as EPA is proposing today. More recently, a number of Western Governors noted the importance of controlling mobile sources as part of efforts to improve visibility in their comments on the Regional Haze Rule and on the need to protect the 16 Class I areas on the Colorado Plateau. In their joint letter dated June 29, 1998, they stated that, "* * * the federal government must do its part in regulating emissions from mobile sources that contribute to regional haze in these areas. * * *" and called on EPA to make a "binding commitment * * * to fully consider the Commission's recommendations related to the * * * federal national mobile source emission control strategies." These recommendations included Tier 2 vehicle standards and reductions in gasoline sulfur levels.

As an indication of how important car and light truck emissions can be to fine PM and visibility, the recent Northern Front Range Air Quality Study has reported findings that indicate that cars and light trucks are responsible for 39 percent of fine PM at a site within the metropolitan Denver area, and for 40 percent at a downwind rural site. This contribution includes both direct PM and indirect PM formed from sulfur dioxide and NO_x from these vehicles.

The analysis of economic benefits and costs found in Section IV.D.5. accounts for the economic benefits of the visibility improvements expected to result from today's proposal.

F. Air Toxics

Emissions from cars and light trucks include a number of air pollutants that are known or suspected human or animal carcinogens such as benzene, formaldehyde, acetaldehyde, 1,3-butadiene, and diesel particulate matter, or that are known or suspected to have other, non-cancer health impacts. For several of these pollutants, motor vehicle emissions are believed to account for a significant proportion of total nation-wide emissions. All of these compounds are present in exhaust emissions; benzene is also found in evaporative emissions from gasoline-fueled vehicles.

The health effects of diesel particulate are of particular relevance to this rulemaking, because of the possibility for increased diesel-powered truck sales and our proposal for a more stringent PM standard that would apply to these trucks. While we have not finalized our decision about the carcinogenicity of diesel exhaust particulate, we are in the process of addressing this question. Several other agencies and international organizations have already made such a determination, including the California Air Resources Board (ARB). Our own quantitative risk assessment for diesel particulate is still in draft form,[25] and is presently being revised to address the comments of a peer review panel of the Clean Air Science Advisory Committee.

Because our assessment for diesel particulate is not complete, we are not presenting absolute estimates of how potential cancer risks from diesel particular could be affected by today's proposal. However, we can give a qualitative or relative discussion. Diesel engines are used in a very small portion of the cars and light-duty trucks in service today. By far, heavy duty highway and nonroad diesel engines are the larger source of diesel PM. Engine and vehicle manufacturers have projected that diesel engines are likely to be used in an increasing share of light trucks, and some manufacturers have announced capital investments to build such engines.

If these projections are valid and the proportion of light-duty trucks powered by diesel engines increases, the potential health risks from diesel PM could increase substantially. Light trucks could become a larger source of diesel PM than heavy-duty diesel trucks. We estimate that if the percentage of light duty diesel truck sales were to increase to 50 percent of light-duty truck sales by 2010, the increased presence of light duty diesel trucks on the nation's roads could increase the potential cancer risks associated with PM emissions from all diesel-powered highway vehicles (including heavy-duty diesel trucks, diesel buses, and light-duty diesel vehicles) by approximately 130 percent as of 2020, under the current light-duty diesel PM standards. Though the actual levels of diesel engine use may be considerably different than the projections used in both analyses, the analyses are useful in illustrating the potential impact of increased diesel engine use in light trucks.

Today's proposal would limit the increase in the potential cancer risks from cars and light trucks associated with any potential increase in light-duty diesel sales. We have estimated that in 2020, today's proposal would limit the increase in total highway diesel PM emissions due to growth in light truck diesels to 24 percent, in contrast to the more than doubling that would occur without our proposal for a tighter PM standard for light trucks. The comparison in terms of potential cancer risk from car and light truck diesel PM likely would closely follow this emissions comparison.

The VOC emission reductions resulting from today's proposal would further reduce the potential cancer risk posed by air pollutants other than diesel PM emitted by cars and light trucks, since many of these pollutants are themselves VOCs. The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of the reduction in cancer risk from air toxics that could result from today's proposal, because we have not yet completed our study of this issue or engaged in a peer-reviewed assessment of the baseline air toxics risks (including a final quantitative risk assessment of the diesel particulate risks) or of the reductions that would be achieved by today's proposal. Therefore, the estimates included in the Draft RIA should be considered preliminary. A peer-reviewed assessment is planned and may be completed in time to be available for incorporation into the impact analysis for the final rule. EPA will place this document in the docket as soon as it is available for public review.

Section 202(l)(2) of the Clean Air Act requires EPA to establish regulations for the control of hazardous air pollutants, or air toxics, from motor vehicles. The regulations may address vehicle emissions or fuel properties that influence emissions, or both. We will issue a proposal to address this requirement in September of this year, and a final rule in July 2000.

G. Acid Deposition[26]

Acid deposition, or acid rain as it is commonly known, occurs when SO_2

[25] EPA's diesel health assessment (Health Assessment Document for Diesel Emissions, SAB Review Draft, U.S. Environmental Protection Agency, Washington, DC. EPA/600/8–90/057C, February 1998.) can be found at the following EPA website: *http://www.epa.gov/ncea/diesel.htm*. The Clean Air Science Advisory Committee's review of that assessment (CASAC Review of the Draft Diesel Health Assessment Document, U.S. Environmental Protection Agency Science Advisory Board, Washington, DC EPA–SAB–CASC–99–001.) can be found at the following SAB website: http://www.epa.gov/sab/.

[26] Much of the information in this section was excerpted from the EPA document, Human Health Benefits from Sulfate Reduction, written under Title IV of the 1990 Clean Air Act. Amendments, U.S. EPA, Office of Air and Radiation, Acid Rain Division, Washington, DC 20460, November 1995.

and NO_X react in the atmosphere with water, oxygen, and oxidants to form various acidic compounds that later fall to earth in the form of precipitation or dry deposition of acidic particles. It contributes to damage of trees at high elevations and in extreme cases may cause lakes and streams to become so acidic that they cannot support aquatic life. In addition, acid deposition accelerates the decay of building materials and paints, including irreplaceable buildings, statues, and sculptures that are part of our nation's cultural heritage. To reduce damage to automotive paint caused by acid rain and acidic dry deposition, some manufacturers use acid-resistant paints, at an average cost of $5 per vehicle—a total of $61 million per year if applied to all new cars and trucks sold in the U.S. The general economic and environmental effects of acid rain are discussed at length in the Draft RIA.

Acid deposition primarily affects bodies of water that rest atop soil with a limited ability to neutralize acidic compounds. The National Surface Water Survey (NSWS) investigated the effects of acidic deposition in over 1,000 lakes larger than 10 acres and in thousands of miles of streams. It found that acid deposition was the primary cause of acidity in 75 percent of the acidic lakes and about 50 percent of the acidic streams, and that the areas most sensitive to acid rain were the Adirondacks, the mid-Appalachian highlands, the upper Midwest and the high elevation West. The NSWS found that approximately 580 streams in the Mid-Atlantic Coastal Plain are acidic primarily due to acidic deposition. Hundreds of the lakes in the Adirondacks surveyed in the NSWS have acidity levels incompatible with the survival of sensitive fish species. Many of the over 1,350 acidic streams in the Mid-Atlantic Highlands (mid-Appalachia) region have already experienced trout losses due to increased stream acidity. Emissions from U.S. sources contribute to acidic deposition in eastern Canada, where the Canadian government has estimated that 14,000 lakes are acidic. Acid deposition also has been implicated in contributing to degradation of high-elevation spruce forests that populate the ridges of the Appalachian Mountains from Maine to Georgia. This area includes national parks such as the Shenandoah and Great Smoky Mountain National Parks.

The SO_X and NO_X reductions from today's proposal would help reduce acid rain and acid deposition, thereby helping to reduce acidity levels in lakes and streams throughout the U.S. These reductions would help accelerate the recovery of acidified lakes and streams and the revival of ecosystems adversely affected by acid deposition. Reduced acid deposition levels would also help reduce stress on forests, thereby accelerating reforestation efforts and improving timber production. Deterioration of our historic buildings and monuments, and of buildings, vehicles, and other structures exposed to acid rain and dry acid deposition, also would be reduced, and the costs borne to prevent acid-related damage may also decline.

While the reduction in sulfur and nitrogen acid deposition would be roughly proportional to the reduction in SO_X and NO_X emissions, respectively, the precise impact of today's proposal would differ across different areas. Each area is affected by emissions from different source regions, and the mobile source contribution to the total SO_X and NO_X emission inventory will differ across different source regions. Nonetheless, the projected impact of today's proposal on SO_X and NO_X emission inventories provides a rough indicator of the likely effect of today's proposal on acid deposition. As discussed in Section III.D. above, today's proposal would reduce SOx emissions by 1.6 percent and NO_X emissions by 12.5 percent in 2020.

The analysis of economic benefits and costs found in Section IV.D.5. was not able to account for the economic benefits of the reduction in acid deposition expected to result from today's proposal.

H. Eutrophication/Nitrification

Nitrogen deposition into bodies of water can cause problems beyond those associated with acid rain. Elevated levels of nitrate in drinking water pose significant health risks, especially to infants. The Ecological Society of America has included discussion of the contribution of air emissions to increasing nitrogen levels in surface waters in a recent major review of causes and consequences of human alteration of the global nitrogen cycle in its *Issues in Ecology* series.[27] Long-term monitoring in the United States, Europe, and other developed regions of the world shows a substantial rise of nitrogen levels in surface waters, which are highly correlated with human-generated inputs of nitrogen to their watersheds. These nitrogen inputs are dominated by fertilizers and atmospheric deposition.

Human activity can increase the flow of nutrients into those waters and result in excess algae and plant growth. This increased growth can cause numerous adverse ecological effects and economic impacts, including nuisance algal blooms, dieback of underwater plants due to reduced light penetration, and toxic plankton blooms. Algal and plankton blooms can also reduce the level of dissolved oxygen, which can also adversely affect fish and shellfish populations. This problem is of particular concern in coastal areas with poor or stratified circulation patterns, such as the Chesapeake Bay, Long Island Sound, or the Gulf of Mexico. In such areas, the "overproduced" algae tends to sink to the bottom and decay, using all or most of the available oxygen and thereby reducing or eliminating populations of bottom-feeder fish and shellfish, distorting the normal population balance between different aquatic organisms, and in extreme cases causing dramatic fish kills.

Collectively, these effects are referred to as eutrophication, which the National Research Council recently identified as the most serious pollution problem facing the estuarine waters of the United States (NRC, 1993). Nitrogen is the primary cause of eutrophication in most coastal waters and estuaries.[28] On the New England coast, for example, the number of red and brown tides and shellfish problems from nuisance and toxic plankton blooms have increased over the past two decades, a development thought to be linked to increased nitrogen loadings in coastal waters. Airborne NO_X contributes from 12 to 44 percent of the total nitrogen loadings to United States coastal water bodies. For example, approximately one-quarter of the nitrogen in the Chesapeake Bay comes from atmospheric deposition.

Excessive fertilization with nitrogen-containing compounds can also affect terrestrial ecosystems.[29] Research suggests that nitrogen fertilization can alter growth patterns and change the balance of species in an ecosystem. In

[27] Vitousek, Peter M., John Aber, Robert W. Howarth, Gene E. Likens, et al. 1997. Human Alteration of Global Nitrogen Cycle: Causes and Consequences. *Issues in Ecology*. Published by Ecological Society of America, Number 1, Spring 1997.

[28] Much of this information was taken from the following EPA document: *Deposition of Air Pollutants to the Great Waters-Second Report to Congress*, Office of Air Quality Planning and Standards, June 1997, EPA–453/R–97–011.

[29] Terrestrial nitrogen deposition can act as a fertilizer. In some agricultural area, this effect can be beneficial.

extreme cases, this process can result in nitrogen saturation when additions of nitrogen to soil over time exceed the capacity of the plants and microorganisms to utilize and retain the nitrogen. This phenomenon has already occurred in some areas of the U.S.

Deposition of nitrogen from cars and light trucks contributes to these problems. As discussed in Section III.B. above, today's proposal would reduce total NO_X emissions by 12.5 percent in 2020. These reductions should reduce drinking water nitrate levels by reducing the amount of nitrate deposited from the atmosphere onto drinking water sources or onto the watersheds of drinking water sources by similar amounts. The NO_X reductions would also reduce the eutrophication problems associated with atmospheric deposition of nitrogen into watersheds and onto bodies of water, particularly in aquatic systems where atmospheric deposition of nitrogen represents a significant portion of total nitrogen loadings. Since air deposition accounts for 12–44 percent of total nitrogen loadings in coastal waters, the 12.5 percent reduction in NO_X from today's proposal are projected to reduce nitrogen loadings by 1.5–5.5 percent. To put these reductions in perspective, the reductions expected in the Chesapeake Bay area would amount to about 6 percent of the total reduction in nitrogen loading needed to maintain the reduction in nutrient loads agreed to by the signatory states in the Chesapeake Bay Agreement (40 percent of "controllable by the year 2000).

The analysis of economic benefits and costs found in Section IV.D.5. does not account for the economic benefits of reduced drinking water nitrate levels and reduced terrestrial nitrogen deposition expected to result from today's proposal, if implemented. The analysis does, however, account for the economic benefits of reduced eutrophication.

I. Conclusion: Cleaner Cars and Light Trucks Are Critically Important to Improving Air Quality

Despite continued progress in reducing emissions from cars and light trucks, these vehicles will continue to contribute a substantial share of the ozone and PM precursors in current and projected nonattainment areas, and in upwind areas whose emissions contribute to downwind nonattainment, unless additional measures are taken to reduce their emissions. These vehicles will also continue to contribute to the ambient PM that affects visibility in Class I federal areas and some urban areas. Emissions from cars and light trucks also play a significant role in a wide range of health and environmental problems, including known and potential cancer risks from inhalation of air pollutants (a problem that could become more significant if sales of diesel-powered cars and light trucks were to increase), health risks from elevated drinking water nitrate levels, acidification of lakes and streams, and eutrophication of inland and coastal waters.

Today's proposal would reduce NO_X, VOC, CO, PM, and SO_X emissions from these vehicles substantially. These reductions would help reduce ozone levels nationwide and reduce the extent and severity of violations of both the 1-hour and 8-hour ozone standards. These reductions would also help reduce PM levels, both by reducing direct PM emissions and by reducing emissions that give rise to secondary PM. The NO_X and SO_X reductions would help reduce acidification problems, and the NO_X reductions would help reduce eutrophication problems and drinking water nitrate levels. The PM standards proposed today would help improve visibility and would help mitigate the adverse health effects due to possible increases in light-duty diesel engine sales.

Section IV.D.5. of this preamble describes the comprehensive analysis EPA has made of the net economic benefit of the requirements we are proposing today. In that analysis, we have quantified many of the public health and environmental benefits of the actions on an annual, national scale. Estimates of the economic value of these effects have been made for as many of the effects as possible, and compared to the cost of compliance. This rulemaking is the first instance in which EPA has conducted such a cost-benefit analysis for a set of proposed vehicle emission standards.

IV. What Are We Proposing and Why?

In the previous section, we showed why many states need as much emission reduction as is reasonably possible from LDVs and LDTs—plus reductions from other sources—if they are to reach and maintain compliance with the 1-hour and 8-hour ozone NAAQS. We also pointed out that these reductions would also be important in addressing PM and other air quality and environmental problems in every major region of the country.

In this section, we describe the comprehensive vehicle/fuel program we are proposing to respond to these serious air quality needs. Specifically, we discuss:

- Our reasons for proposing a comprehensive vehicle and fuel program, including why stringent LDV and LDT standards are feasible in conjunction with low sulfur gasoline.
- Our proposed vehicle-related requirements and our rationales for proposing them.
- Our proposed fuel-related requirements and our rationales.
- Our projections of the economic impacts, cost effectiveness, and monetized environmental and health benefits of the proposed program.
- Other program design options we have considered.

A. Why Are We Proposing Vehicle and Fuel Standards Together?

1. Feasibility of Stringent Standards for Light-Duty Vehicles and Light-Duty Trucks.

a. *Gasoline Fueled Vehicles.* We believe that the standards being proposed today for gasoline-fueled vehicles are well within the reach of existing control technology. Our proposed determination of feasibility is based on the use of catalyst-based strategies that are already in use and are well proven on the existing fleet of vehicles. In fact, as you will see below, many current engine families are already certified to levels at or below the proposed new Tier 2 requirements. All of the certification and research testing discussed below was performed on low-sulfur test fuel (nominally 30 ppm).

Certainly, larger vehicles and trucks, which are heavier and have larger frontal areas, will face the biggest challenges. However, conventional technology will be sufficient for even these vehicles, especially in light of the extra leadtime we have provided before LDT3s and LDT4s have to meet Tier 2 levels. We are also proposing to change the test conditions for these trucks from "adjusted loaded vehicle weight" to "loaded vehicle weight." Adjusted loaded vehicle weight, suitable for commercial truck operation, loads the truck to half of its full payload. Loaded vehicle weight, on the other hand, represents curb weight plus 300 pounds. The proposed change more accurately reflects how these vehicles are used and makes heavy LDT testing consistent with passenger car and light LDT testing. This change will make it substantially easier for the heavier trucks to meet our proposed standards.

Emission control technology has evolved rapidly in recent years. Emission standards applicable to 1990 model year vehicles required roughly 90% reductions in exhaust HC and CO

emissions and a 75% reduction in NO_X emissions compared to uncontrolled emissions. Today, some vehicles currently in production are well below these levels, showing overall emissions reductions of all three of these pollutants. These vehicles' emissions are well below those necessary to meet the current federal Tier 1 and even California Low-Emission Vehicle (LEV) standards. The reductions have been brought about by ongoing improvements in engine air-fuel management hardware and software plus improvements in catalyst designs, all of which are described fully in the Draft RIA.

The types of changes being seen on current vehicles have not yet reached their technological limits and continuing improvement will allow both LDVs and LDTs to meet the proposed standards. The Draft RIA describes a range of specific techniques that we believe could be used. These range from improved computer software and engine air-fuel controls to increases in precious metal loading and other exhaust system/catalyst system improvements. All of these technologies are currently used on one or more production vehicle models. There is no need to invent new approaches or technologies. The focus of the effort is primarily development, application, and optimization of these existing technologies.

We can gain significant insight into the difficulty of meeting the proposed new standards by looking at current full-life certification data. There are at least 48 engine family-control systems combinations certified in 1999 at levels below the Tier 2 NO_X standard of 0.07 g/mi. Of these, 35 also have hydrocarbon levels of 0.09 g/mi or below. Looking at a somewhat higher threshold to identify vehicles certified near the proposed standard, there are an additional 113 car and light truck families certified at levels between 0.07 g/mi and 0.10 g/mi NO_X.

All of the above vehicles are already able, or close to being able, to certify to our proposed standards. The further reductions needed are those to provide an ample safety margin, or cushion, between the certified level and the emission standard. The degree of compliance margin required is a function of a variety of factors designed to provide the manufacturer a high confidence that production vehicles will meet the standards in-use over their useful life. Historically, these determinations are manufacturer specific, with cushions generally growing smaller as standards decline (reflecting more precision and repeatability in vehicle performance as more sophisticated controls are developed). The 1999 certification data reflects compliance cushions from as little as 20 percent below the standard to as high as 80 percent below the standard.

The cushion to be expected for Tier 2 vehicles is difficult to establish, although some manufacturers claim a cushion of 50 percent below the standard would be needed. We believe that manufacturers would strive to use the smallest cushions possible in order to minimize the impacts of the standards on their vehicles. Looking at 1999 certification data from this perspective and using a threshold of 0.04 g/mi NO_X, there are fully 22 engine family-control system configurations at or below the 0.04 g/mi level (one of which is a LDT4). Thus, even at such low levels, current technology is already demonstrating the performance that would be necessary to meet the proposed standards.

Since the most difficult compliance effort would be faced by the larger LDTs, we have undertaken a technology demonstration program aimed at lowering the emissions of a large 1999 LDT3 vehicle. This vehicle has a high horsepower engine, four wheel drive, and a curb weight of 4,500 pounds (GVWR [30] of 6,100 lbs). The exhaust system of the vehicle was modified to incorporate two close-coupled and two underfloor catalytic converters. The catalytic converters were aged to full useful life conditions using the accelerated aging methods described by Theiss.[31] For further details of the modifications to this vehicle, please refer to the draft RIA.

In our initial work we made no attempts to alter the calibration of the electronic engine controls. In this configuration, the vehicle achieved emissions levels of 0.060 ± 0.002 g/mi NO_X and 0.09 ± 0.01 g/mi NMHC. Thus, by these straightforward modifications to the catalyst system based upon existing catalyst hardware, this vehicle was able to reach the proposed Tier 2 levels. In order to achieve additional reductions in the test vehicle's emissions, we are planning further work consisting largely of elimination of fuel cut-offs during decelerations, slight increases in EGR, and a minor degree of air injection during cold-start. However, given the amount of leadtime before any of the proposed Tier 2 standards would begin, we believe that the work already done clearly shows the feasibility of our proposal, even for large light-duty trucks.

Figure IV.A.–1 shows the results of our testing in comparison to the California LEV–1 standards applicable to this vehicle, and the proposed Tier 2 standards.

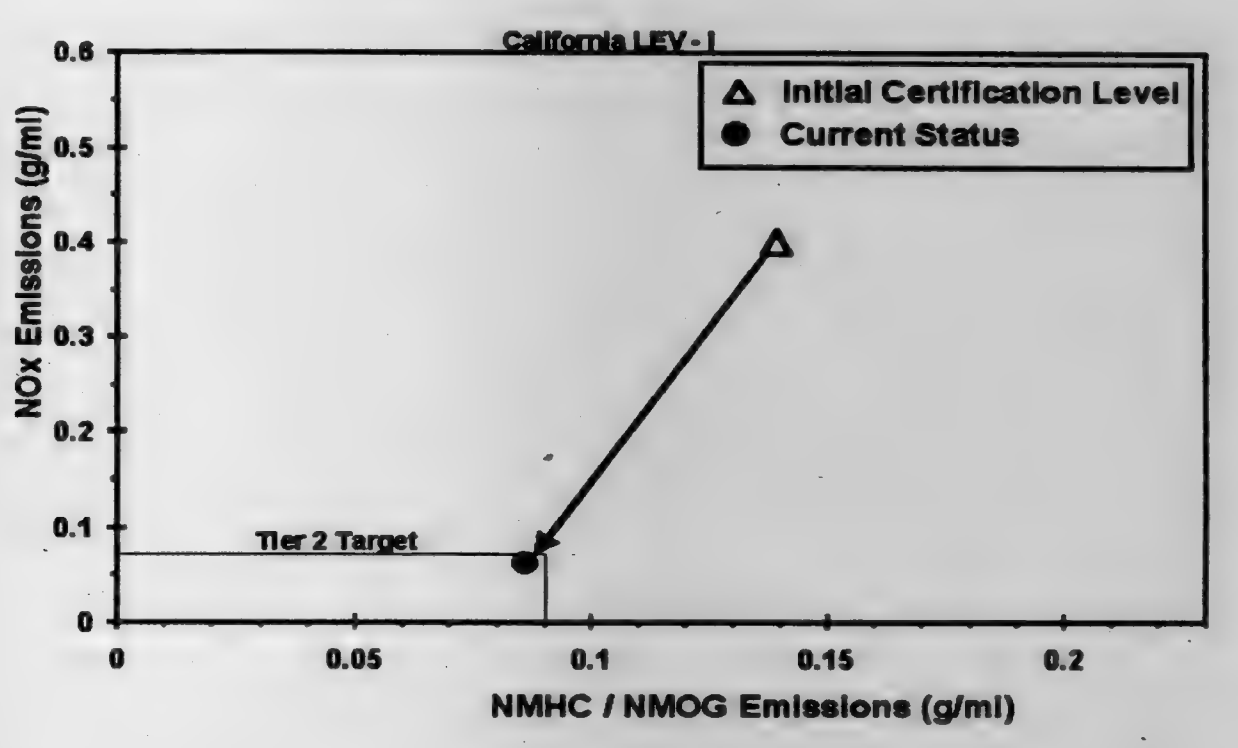
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[30] Gross Vehicle Weight Rating. The curb weight of the vehicle plus its maximum recommended load of passengers and cargo.

[31] Theiss, J.R., "Catalytic Converter Diagnosis Using the Catalyst Exotherm," SAE Technical Paper Series, Paper No. 942058, SAE Fuels and Lubricants Meeting and Exposition, Baltimore, MD, October 17–20, 1994.

Figure IV.A.-1

Emission Results - 1999 Light-Duty Truck as Modified by EPA



BILLING CODE 6560–50–C

One of the challenges facing larger truck catalyst systems is overtemperature protection. Because of this, our work on this vehicle included temperature evaluation of the catalyst under maximum load conditions. We found that the original fuel calibration for the truck provided sufficient enrichment under wide-open-throttle conditions to prevent exceeding the catalyst bed temperature limits (~950 to 1000°C) specified by the manufacturer of the catalytic converters. We conducted chassis dynamometer testing over the aggressive US06 cycle with the dynamometer inertia greatly increased to simulate full GVWR load conditions (6,100 lbs) for the pickup. Catalyst bed temperatures did not exceed 850°C at any point during the testing.

In addition to the EPA work, others have conducted several test programs recently that help demonstrate the feasibility of our proposed levels. The Coordinating Research Council (CRC), automobile manufacturers, and the American Petroleum Institute (API) all tested a number of light-duty vehicles capable of complying with the California LEV or ULEV standards as part of an evaluation of the effects of sulfur levels on emissions. Of the vehicles tested, seven met or nearly met the Tier 2 design targets, and all were below the proposed 0.07 g/mi NO_X and 0.09 g/mi NMOG standards.

Another program sponsored by MECA took two LDVs (a Crown Victoria and a Buick LeSabre) and one LDT2 (a Toyota T100) certified to the federal Tier 1 standards and replaced the original catalytic converters with more advanced catalytic converters, thermally aged to roughly 50,000 miles. With these systems and some related emission control modifications, all three vehicles' emissions were well below our proposed 50,000 mile standards (0.05 g/mi NO_X, 0.075 g/mi NMOG), and the Buick and the Toyota LDT2 met our estimated design targets for those standards.

Finally, the California Air Resources Board (ARB) tested six different production LEV light-duty vehicle models. Two of the six models met the proposed Tier 2 design targets for NMOG and NO_X. After installing low mileage advanced catalytic converters and making some minor adjustments, all of the vehicles had emission levels well below the proposed Tier 2 NMOG and NO_X design targets. ARB also tested several Ford Expeditions (LDT4) equipped with advanced catalytic converters. By adjusting several parameters, they were able to reduce NO_X emissions to 0.06 g/mi and NMOG to 0.07 g/mi with a catalyst aged to 50,000 miles of use.

Neither the MECA nor the ARB test programs modified the basic engine calibrations of the vehicles tested. It is very likely that such recalibration could reduce emissions even further. Therefore, we consider these actual test results to be a conservative estimate of the capability of these advanced catalytic converters. This is especially true for the Ford Expedition testing by ARB, where the engine software appeared to modify its own calibration with the new catalyst, counteracting some of the advantages of the new catalyst.

A more expanded analysis of the feasibility of the proposed standards for gasoline fueled vehicles can be found in the Draft RIA, considering the types of changes that will allow manufacturers to extend effective new controls to the entire fleet of affected vehicles. That analysis includes discussion of gasoline direct-injection engines, as well as the feasibility of the proposed CO, formaldehyde and evaporative emission standards. The conclusion of all of our analyses is that the proposed standards would be feasible for gasoline-fueled vehicles operated on low-sulfur gasoline. As gasoline-fueled vehicles represent the overwhelming majority of the light-duty vehicle and truck population, EPA proposes to find that the proposed standards would be feasible overall for LDVs and LDTs.

b. *Diesel Vehicles.* As outlined above, we have decided to propose standards that are intended to be "fuel neutral." In today's document, we propose to find that the Tier 2 standards are technologically feasible and cost-effective for light-duty vehicles and light-duty trucks overall, based on the discussion in Section IV.A.1.a. above. Under the principal of fuel neutrality, all cars and light trucks, including those using diesel engines, would be required to meet the proposed Tier 2 standards. EPA believes that the proposed program, including the phase-in periods, would facilitate the advancement of clean diesel engine technologies. EPA further believes that in the long term the standards would be within reach for diesel-fueled vehicles in combination with appropriate changes to diesel fuel to facilitate aftertreatment technologies.

As with gasoline engines, manufacturers of diesels have made abundant progress over the past 10 years in reducing engine-out emissions from diesel engines. In heavy trucks and buses, PM emission standards, which were projected to require the use of exhaust aftertreatment devices, were actually met with only engine modifications. NO_X emissions from heavy trucks and buses sold starting in 2002 will also reflect deep reductions from emission levels typical of engines produced in the mid-1980's. Indeed, emissions and performance of lighter diesel engines are rapidly approaching the characteristics of gasoline engines, while retaining the durability and fuel economy advantages that diesels enjoy. Against this background of continuing progress, we believe that the technological improvements that would be needed could be made in the time that would be available before diesels would have to meet the new Tier 2 standards.[32]

While reductions in "engine-out" emissions, including incorporation of EGR strategies, will continue to be made, increasing emphasis is being placed on various aftertreatment devices for diesels. This is because further reductions in engine-out emissions will be unlikely, by themselves, to allow diesels to comply with the proposed Tier 2 standards for NO_X and PM. Rather, diesels would require the use of highly effective aftertreatment devices.

For NO_X emissions, potential aftertreatment technologies include lean NO_X catalysts, NO_X adsorbers and selective catalytic reduction (SCR). Lean NO_X catalysts are still under development, but generally appear capable of reducing NO_X emissions by about 15–30%. This efficiency is not likely to be sufficient to enable compliance with the proposed Tier 2 standards, but it could be used to meet the interim standards that would begin in 2004.

NO_X adsorbers appear to be up to 90% efficient at removing NO_X from the exhaust. Efficiency in this range is likely to be sufficient to enable compliance with the proposed Tier 2 standards. NO_X adsorbers temporarily store the NO_X and thus the engine must be run periodically for a brief time with excess fuel, so that the stored NO_X can be released and converted to nitrogen and oxygen using a conventional three-way

[32] We generally expect that manufacturers would take advantage of the flexibilities in today's proposal to delay the need for diesel vehicles to meet the final Tier 2 levels until late in the phase-in period. Because diesel vehicles represent a very small percentage of the LDV/LDT market, diesels would not fall under the final Tier 2 standards until 2009, giving manufacturers a relatively large amount of leadtime. As discussed below, we are issuing an Advance Notice of Proposed Rulemaking intended to solicit comment on the need for reduced sulfur in diesel fuel in order to meet these standards. We also believe that the proposed interim standards would be feasible for diesels by 2004, with or without the fuel change, given the flexibilities associated with those standards.

catalyst, like that used on current gasoline vehicles.

There is currently a substantial amount of development work being directed at NO_X adsorber technology. While there are technical hurdles to be overcome, progress is continuing and it is our judgement that the technology should still be available by the time it would be needed for the proposed Tier 2 standards.

One serious concern with current NO_X adsorbers is that they are quickly poisoned by sulfur in the fuel. Some manufacturers have strongly emphasized their belief that, in order to meet the Tier 2 levels, low sulfur diesel fuel would also be required to mitigate or prevent this poisoning problem. One solution would be to reduce sulfur to very low levels. Another solution would be to reduce sulfur somewhere below current levels and develop a way to periodically remove the sulfur from the adsorber. In any event, this technique, if used, would also require low sulfur diesel fuel.

SCR has been demonstrated commercially on stationary diesel engines and can reduce NO_X emissions by 80–90%. This efficiency would be sufficient to enable compliance with the proposed Tier 2 standards. However, SCR requires that the chemical urea be injected into the exhaust before the catalyst to assist in the destruction of NO_X. The urea must be injected at very precise rates, which is difficult to achieve with an on-highway engine, because of widely varying engine operating conditions. Otherwise, emissions of ammonia, which have a very objectionable odor, can occur. Substantial amounts of urea are required, meaning that vehicle owners would have to replenish their vehicles' supply of urea frequently. As the engine and vehicle will operate satisfactorily without the urea (only NO_X emissions would be affected), some mechanism would be needed to ensure that vehicle owners maintained their supply of urea. Otherwise, little NO_X emission reduction would be expected in-use.

Regarding PM, applicable aftertreatment devices tend to fall into two categories: oxidation catalysts and traps. Diesel oxidation catalysts can reduce total PM emissions by roughly 15–30%. They would need to be used in conjunction with further reductions in PM engine-out emissions in order to meet the proposed Tier 2 standards. Diesel particulate traps, on the other hand, can eliminate up to 90% of diesel PM emissions. However, some of the means of accomplishing the regeneration of particulate traps involve catalytic processes that also convert sulfur dioxide in the exhaust to sulfate. These techniques, if used, would also require a low sulfur fuel.

Since we have noted that some of the options for diesel aftertreatment may require lower sulfur diesel fuel than is currently available, the question of diesel fuel quality improvement arises. Manufacturers have argued that low sulfur diesel fuel will be required to permit diesels to meet the proposed new standards. While we believe that low sulfur diesel fuel would likely be required to enable diesel engines to meet the proposed Tier 2 standards, this proposal does not include provisions for such fuel. We need additional information about the specific aftertreatment solutions that could be used to meet the standards, the effectiveness of these approaches in reducing PM and NO_X emissions and their sensitivity to diesel sulfur, and improvements or alternatives that might reduce the impacts of fuel sulfur.

To deal more thoroughly with this matter, we are issuing an Advanced Notice of Proposed Rulemaking on a parallel path with today's Tier 2 proposal. As a part of that process, EPA will assess the effect of low-sulfur fuel on the ability of diesels to meet Tier 2 standards for LDVs and LDTs. It will also consider the issue of the relation of diesel fuel quality to future standards for heavy-duty on-highway diesel engines and nonroad diesel engines. Our plans for this Advanced Notice are discussed further in section IV.C. below. In any case, we believe that the standards proposed today are appropriate and feasible overall for LDVs and LDTs.

2. Gasoline Sulfur Control Is Needed To Support the Proposed Vehicle Standards

As we discussed in the previous section, we believe that the stringent standards we propose are needed to meet air quality goals are feasible for LDVs and LDTs. At the same time, we believe that for these standards to be feasible for gasoline LDVs and LDTs, low sulfur gasoline must be made available. The following paragraphs explain why we think gasoline sulfur control must accompany Tier 2 vehicle standards.

Catalyst manufacturers generally use low sulfur gasoline in the development of their catalyst designs. Vehicle manufacturers then equip their vehicles with these catalysts and EPA certifies them to the exhaust emission standards, usually based on testing the manufacturer does using low sulfur gasoline. However, fundamental chemical and physical characteristics of exhaust catalytic converter technology generally result in a significant degradation of emission performance when these vehicles use gasoline with sulfur levels common in most of the country today. This sensitivity of catalytic converters to gasoline sulfur varies somewhat depending on a number of factors, some better understood than others. Clearly, however, as we discuss in the following paragraphs, gasoline sulfur's impact is large, especially in vehicles designed to meet very low emission standards like those proposed today.

This is the reason EPA has decided to propose a comprehensive approach to addressing emissions from cars and light trucks, including provisions to get low sulfur gasoline into the field in the same time frame needed for Tier 2 vehicles. (We discuss the related fact that the sulfur impact on catalyst performance is not fully reversible in Section IV.C. below, in the context of EPA's preference for a nationwide versus a regional gasoline sulfur control program, and in the Draft RIA.)

a. *How Does Gasoline Sulfur Affect Vehicle Emission Performance?* We know that gasoline sulfur has a negative impact on vehicle emission controls. Vehicles depend on the catalytic converter to reduce emissions of HC, CO, and NO_X. Sulfur and sulfur compounds attach or "adsorb" to the precious metal catalysts that are required to convert these emissions. Sulfur also blocks sites on the catalyst designed to store oxygen that are necessary to optimize NO_X emissions conversions. While the amount of sulfur contamination can vary depending on the metals used in the catalyst and other aspects of the design and operation of the vehicle, some level of sulfur contamination will occur in any catalyst.

Sulfur sensitivity is impacted not only by the catalyst formulation (the types and amounts of precious metals used in the catalyst) but also by factors including the following:

- the materials used to provide oxygen storage capacity in the catalyst, as well as the general design of the catalyst,
- the location of the catalyst relative to the engine, which impacts the temperatures inside the catalyst,
- the mix of air and fuel entering the engine over the course of operation, which is varied by the engine's computer in response to the driving situation and affects the mix of gases entering the catalyst from the engine, and
- the speeds the car is driven at and the load the vehicle is carrying, which

also impact the temperatures experienced by the catalyst.

Since these factors vary for every vehicle, the sulfur impact varies for every vehicle to some degree. There is no single factor that guarantees that a vehicle will be very sensitive or very insensitive to sulfur. We now believe that there are not (and will not be in the foreseeable future) emission control devices available for gasoline-powered vehicles that can meet the proposed Tier 2 emission standards that would not be significantly impaired by gasoline with sulfur levels common today.

b. How Large Is Gasoline Sulfur's Effect on Emissions? High sulfur levels have been shown to significantly impair the emission control systems of cleaner, later technology vehicles. The California LEV standards and Federal NLEV standards, as well as California's new LEV–II standards and our proposed Tier 2 standards, require catalysts to be extremely efficient to adequately reduce emissions over the full useful life of the vehicle. Recent test programs conducted by the automotive and oil industries show that LEV and ULEV vehicles can experience, on average, a 40% increase in NMHC and 134% increase in NO_X emissions when operated on 330 ppm sulfur fuel (approximately the current national average sulfur level) compared to 30 ppm sulfur fuel.

This level of emissions increase is significant enough on its own to potentially cause a vehicle to exceed the proposed full useful life emission standards when operated on sulfur levels that are substantially higher than the levels proposed today, even with the margin of safety that auto manufacturers generally include. Average sulfur levels in the U.S. are currently high enough to significantly impair the emissions control systems in new technology vehicles, and to potentially cause these vehicles to fail emission standards required for vehicles up through 100,000 miles (or more) of operation.

For older vehicles designed to meet Tier 0 and Tier 1 emission standards, the effect of sulfur contamination is somewhat less. Still, testing shows that gasoline sulfur increases emissions of NMHC and NO_X by almost 17% when one of these vehicles is operated on gasoline containing 330 ppm sulfur compared to operation on gasoline with 30 ppm sulfur. Thus, Tier 0 and Tier 1 vehicles can also have higher emissions when they are exposed to sulfur levels substantially higher than the proposed sulfur standard. This increase is generally not enough to cause a vehicle to exceed the full useful life emission standards in practice, but it can result in in-use emissions increases since the vehicle could emit at levels higher than it would if it operated consistently on 30 ppm sulfur gasoline.

Gasoline sulfur control to 30 ppm would achieve about 700,000 tons of NO_X reductions per year from LDVs and LDTs by 2020. This represents about a third of the national NO_X emission reductions otherwise available from these vehicles. Without these potential emission reductions, many states would face the potentially unmeetable challenge of finding enough other cost-effective sources of NO_X emission reductions to address their ozone nonattainment and maintenance problems.

Other implications of continued use of high-sulfur gasoline include the following:

- Other important potential air quality benefits would not be realized throughout the country, including reduction in direct emissions of sulfur dioxide, secondary formation of nitrate PM from NO_X emissions, reductions in regional haze, reductions in air toxics emissions and other pollution problems described in Section III above.
- The immediate and very significant improvements that lower sulfur gasoline would bring in the emissions performance of vehicles already on the road would not occur.
- Advanced emission control technologies now being developed, all of which appear equally or even more sensitive to gasoline sulfur levels than current technologies, would not be available to the U.S. vehicle market (for example, very fuel efficient technologies like gasoline direct injection technology and fuel cells).
- Finally, any interference with onboard emission control system diagnostic (OBD) systems that high-sulfur gasoline causes would remain in the absence of a low-sulfur gasoline program.

3. A Comprehensive Vehicle/Fuel Approach Is Therefore Necessary

Based on this information, we have concluded that sulfur levels in gasoline must be reduced to enable these catalysts to operate properly and for the needed air quality benefits of this program to be achieved. In today's action, therefore, we are proposing a comprehensive, integrated program of stringent vehicle emission standards in combination with stringent gasoline sulfur standards. The proposal is carefully designed to address the need for refiners to make low-sulfur gasoline available at very nearly the same time as auto makers begin selling large numbers of Tier 2 vehicles. We have tried to take into account all potential areas of interaction between the vehicle and gasoline sulfur parts of the proposal, and as a result we believe that the overall proposed program would achieve the expected environmental goals while minimizing the economic and administrative burdens on the affected industries. We encourage all commenters to consider and discuss the interrelationships among the elements of the program when they comment on individual provisions.

B. Our Proposed Program for Vehicles

We have held a series of meetings with the various stakeholders impacted by this action. We have seriously considered their input in developing our proposal and believe the program laid out below and the areas upon which we are seeking comment are responsive to their concerns. One part of this input was provided by a broad representation of the LDV/LDT manufacturing industry, represented by the Alliance of Automobile Manufacturers, and offered constructive recommendations on a number of elements of a vehicle emission control program. We have considered many of their ideas and issues in the design of the proposed program and we are seeking comment on a number of others. The "Alliance" proposal is documented in the docket in a letter to EPA dated March 26, 1999.

The next sections of the preamble describe our proposal in detail.

1. Overview of the Proposed Vehicle Program

The vehicle-related part of today's proposal covers a wide range of standards, concepts, and provisions that affect how vehicle manufacturers would develop, certify, produce, and market Tier 2 vehicles. This Overview subsection provides readers with a broad summary of the major vehicle-related aspects of the proposal. Readers for whom this Overview is sufficient may want to move on to the discussion of the key gasoline sulfur control provisions (Section IV.C.). Readers wishing a more detailed understanding of the proposed vehicle provisions can continue beyond the Overview to deeper discussions of key issues and provisions (Sections IV.B.–2, 3, and 4) as well as discussions of additional provisions (Section V.A.). Readers should refer to the regulatory language found at the end of this preamble for a complete compilation of the proposed requirements.

a. *Introduction.* Today's proposal for Tier 2 vehicle standards incorporates concepts from the federal NLEV program. The program takes the

corporate averaging concept and other provisions from NLEV but changes the focus from NMOG to NO_X. The emission standard "bins" used for this average calculation are different in several respects from those of the California LEV II program, yet we have designed them to allow harmonization of federal and California vehicle technology. As discussed below, the Tier 2 corporate average NO_X level to be met through these requirements ultimately applies to all of a manufacturer's LDVs and LDTs (subject to two different phase-in schedules) regardless of what fuel is used.

In the discussions below, we propose different Tier 2 phase-in schedules for two different groups of vehicles as well as two different sets of interim standards for 2004 and later model year vehicles not yet phased-in to the Tier 2 standards. To understand how the program would work, it is necessary first to understand EPA's classification system for light-duty vehicles and trucks.

The light duty category of motor vehicles includes all vehicles and trucks under 8500 pounds gross vehicle weight rating, or GVWR (i.e., vehicle weight plus rated cargo capacity). Table IV.B.–1 shows the various light duty categories. In the discussion below, we make frequent reference to two separate groups of light vehicles: (1) LDV/LLDTs, which include all LDVs and all LDT1s and LDT2s; and (2) HLDTs, which include LDT3s and LDT4s.

TABLE IV.B.–1.—Light Duty Vehicles and Trucks; Category Characteristics

	Characteristics
LDV	A passenger car or passenger car derivative seating 12 passengers or less.
Light LDT (LLDT).	Any LDT rated at up through 6,000 lbs GVWR. Includes LDT1 and LDT2.
Heavy LDT (HLDT).	Any LDT rated at greater than 6,000 lbs GVWR, but not more than 8,500 lbs GVWR. Includes LDT3 and LDT4.

As discussed below, the Tier 2 program would take effect in 2004, with full phase in occurring by 2007 for LDV/LLDTs and 2009 for HLDTs. During the phase-in years of 2004–2008, vehicles not certified to Tier 2 requirements would meet interim requirements that would also employ a bins system, but with less stringent corporate average NO_X standards.

References to California LEV II Program

Throughout this preamble, we make reference to California's LEV II program and its requirements. The LEV II program was approved by the California ARB at a hearing of November 5, 1998. Numerous draft documents were prepared by ARB staff in advance of that hearing and made available to the public. Some of those documents have now been modified as a result of changes to the proposed program made at the hearing and due to comments received after the hearing.

However, when this NPRM was assembled for signature, the documents related to the LEV II program had still not been finalized. In fact, a 15 day public review of the program was scheduled for April 15–30, 1999. After that review, ARB expected to be able to formally adopt the program and issue final documents without significant change.

We have placed copies of the latest available documents, some of which we used in the preparation of this NPRM, in the docket. You may also obtain these documents and other information about California's LEV II program from ARB's web site: (www.arb.ca.gov/regact/levii/levii.htm).

In the regulatory text that follows this preamble, we propose to incorporate by reference a number of documents related to LEVII and California test procedures under LEVII. ARB expects to finalize the LEV II program without significant changes before we issue a final rule. We will review any changes to the final version of the LEV II program and its supporting documents and consider them for inclusion in the federal program when we prepare our final rule.

b. *Corporate Average NO_X Standard.* The program we are proposing today would ultimately require each manufacturer's average NO_X emissions over all of its Tier 2 vehicles each model year to meet a NO_X standard of 0.07 g/mi. Manufacturers would have the flexibility to certify Tier 2 vehicles to different sets of exhaust standards that we refer to as "bins," but would have to choose the bins so that their corporate sales weighted average NO_X level for their Tier 2 vehicles was no more than the 0.07 g/mi. (We discuss the bins in the next subsection.)

The value of a corporate average standard is that the program's air quality goals would be met while allowing manufacturers the flexibility to certify some models above and some models below the standard. Each manufacturer would determine its year-end corporate average NO_X level by computing a sales-weighted average of the NO_X standards from the various bins to which it certified any Tier 2 vehicles. The manufacturer would be in compliance with the standard if its corporate average NO_X emissions for its Tier 2 vehicles met the 0.07 g/mi level.

c. *Tier 2 Emission Standard "Bins".* We are proposing seven emission standard bins, each one a set of standards to which manufacturers could certify their vehicles. (Table IV.B.–2. in Section IV.B.–4.a. below shows all the standards associated with each bin.) Several bins have the same values as the California LEV II program. Further, we added three bins that are not a part of the California program to increase the flexibility of the program for manufacturers. As further discussed in Section IV.B.4. below, we believe these extra bins would help provide incentives for manufacturers to produce vehicles with emissions below 0.07 g/mi NO_X.

The corporate average concept using the seven bins would provide a program that gets the same emission reductions we would expect from a straight 0.07 g/mi standard for all vehicles because all NO_X emissions from Tier 2 vehicles in bins above 0.07 g/mi would need to be offset by NO_X emissions from Tier 2 vehicles in bins below 0.07 g/mile. This focus on NO_X allows NMOG emissions to "float" in that the fleet NMOG emission rate depends on the mix of bins used to meet the NO_X standard. However, you can see by examining the bins we are proposing, that any combination of vehicles meeting the 0.07 g/mi average NO_X standard would have average NMOG levels at or below 0.09 g/mi. In addition, there will be overall improvements in NMOG since Tier 2 incorporates HLDTs, which are not covered by the NLEV program.

d. *Schedules for Implementation.* We recognize that the Tier 2 standards pose greater technological challenges for larger light duty trucks than for LDVs and smaller trucks. We believe that additional leadtime is appropriate for HLDTs. HLDTs have historically been subject to the least stringent vehicle-based standards. Also, HLDTs were not subject to the voluntary emission reductions implemented for LDVs, LDT1s and LDT2s in the NLEV program. Consequently we have designed separate phase-in programs for the two groups. Our phase-in approach would provide HLDTs with extra time before they would need to begin phase-in to the Tier 2 standards and also provide two additional years for them to fully comply. Figure IV.B–1 provides a graphical representation of how the phase-in of the Tier 2 program would work for all vehicles. This figure shows several aspects of the proposed program:

- Phase-in/phase-out requirements of the interim programs;

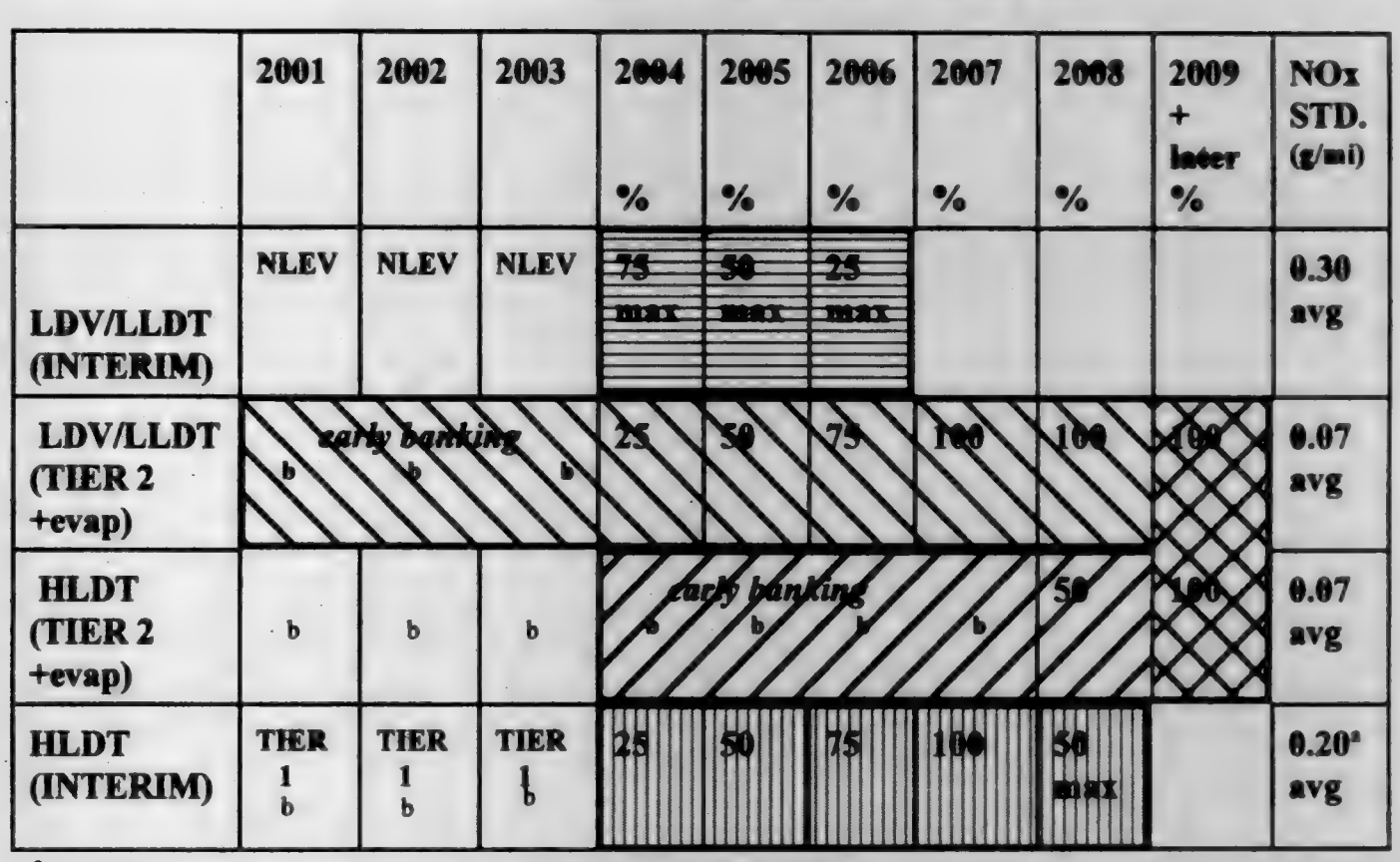
- Phase-in requirements of new evaporative standards;
- Years that could be included in alternative phase-in schedules;
- Years in which manufacturers could bank NO_x credits through "early banking"; and
- "Boundaries" on averaging sets in the Tier 2 and interim programs.

We discuss each of these topics in detail below and make numerous references to Figure IV.B–1.

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Figure IV.B-1

TIER 2 AND INTERIM NON-TIER 2 PHASE-IN AND EXHAUST AVERAGING SETS
(Bold lines around shaded areas indicate averaging sets)



[a] 0.60 NOx cap applies to balance of vehicles during the 2004-2006 phase-in years

[b] Alternative phase-in provisions permit manufacturers to deviate from the 25/50/75% 2004-2006 and 50% 2008 phase-in requirements and provide credit for phasing in some vehicles during one or more of these model years.

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i. Implementation Schedule for LDVs and LLDTs

We are proposing that the Tier 2 standards take effect beginning with the 2004 model year for light duty vehicles and trucks at or below 6000 pounds GVWR (LDV/LLDTs). We are proposing that manufacturers would phase their vehicles into the Tier 2 program beginning with 25 percent of LDV/LLDT sales that year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. Manufacturers would be free to choose which vehicles were phased-in each year. However, in each year during (and after) the phase-in, the manufacturer's average NO_X for its Tier 2 vehicles would have to meet the 0.07 g/mi corporate average standard. This phase-in schedule would provide between five and eight years of leadtime for the manufacturers to bring all of their LDV/LLDT production into compliance. These vehicles constitute nearly 90 percent of the light duty fleet.

To increase manufacturer flexibility and provide incentives for early introduction of Tier 2 vehicles, we are proposing that manufacturers could use alternative phase-in schedules that would require 100 percent phase-in by 2007, but would recognize the benefits of early introduction of Tier 2 vehicles, and allow manufacturers to adjust their phase-in to better fit their own production plans.

ii. Implementation Schedule for HLDTs

To provide greater leadtime for HLDTs we are proposing that the Tier 2 phase-in schedule would start later and end later than that for LDVs and LLDTs. In our proposal 50 percent of each manufacturer's HLDTs would be required to meet Tier 2 standards in 2008, and 100 percent would have to meet Tier 2 standards in 2009. As with the LDV/LLDTs, the Tier 2 HLDTs would have to meet a corporate average NO_X standard of 0.07 g/mi. This delayed phase-in schedule would provide manufacturers with nine years of lead time before they would need to bring any HLDTs into compliance with Tier 2 standards. As for the LDV/LLDTs above, to encourage early introduction of Tier 2 HLDTs and to provide manufacturers with greater flexibility, we are proposing that manufacturers could use alternative phase-in schedules that would still result in 100% phase-in by 2009.

We request comment on the appropriateness of this separate schedule for HLDTs.

e. *LDVs and LDTs Not Covered by Tier 2.* The two groups of vehicles (LDV/LLDTs and HLDTs) will be approaching the Tier 2 standards from quite different emission "backgrounds." LDV/LLDTs will be at NLEV levels, which require NO_X emissions of either 0.3 or 0.5g/mi on average[33], while HLDTs will be at Tier 1 levels facing NO_X standards of either 0.98 or 1.53 g/mi, depending on truck size. These Tier 1 NO_X levels for HLDTs are very high relative to our 0.07 g/mi Tier 2 NO_X average. To address the disparity in emission "backgrounds" while gaining air quality benefits from vehicles during the phase-in period, we are proposing separate sets of interim standards for the two vehicle groups during the phase-in period. The provisions described below would apply in 2004 for all LDVs and LDTs not certified to Tier 2 standards. The relationship of the interim programs to the final Tier 2 standards is shown in Figure IV.B–1.

i. Interim Standards for LDV/LLDTs

Beginning with the 2004 model year, all new LDVs and LLDTs not incorporated under the Tier 2 phase-in would be subject to an interim corporate average NO_X standard of 0.30 g/mi. This is the nominal LEV NO_X emission standard for LDVs and LDT1s under the NLEV program. This interim program would hold LDVs and LLDTs not covered by the Tier 2 standards during the phase-in to NLEV levels and bring about NO_X emission reductions from LDT2s . By implementing these interim standards for LDVs and LLDTs we will ensure that the accomplishments of the NLEV programs are continued. Because the Tier 2 standards are phased-in beginning in the 2004 model year, the interim standards for LDVs and LLDTs apply to fewer vehicles each year, i.e., they are "phase-out" standards. Figure IV.B–1 shows the maximum percentage of LDVs and LLDTs that would normally be subject to the interim standards each year.

As the interim program for LDV/LLDTs is designed to hold these vehicles to NLEV levels, it employs bins derived from the NLEV program. These bins are shown in Tables IV.B.–6 and –7.

ii. Interim Standards for HLDTs.

Our interim standards for HLDTs would begin in 2004. The Interim Program for HLDTs would set a corporate average NO_X standard of 0.20 g/mi that would be phased in between 2004 and 2007. The interim HLDT standards, like those for LDV/LLDTs would be built around a set of bins (See Tables IV.B.–8 and –9).

As shown in Figure IV.B.–1, the phase-in would be 25 percent in the 2004 model year, 50 percent in 2005, 75 percent in 2006, and 100 percent in 2007. The program would remain in effect through 2008 to cover those HLDTs not yet phased into the Tier 2 standards (a maximum of 50%). Vehicles not subject to the interim corporate average NO_X standard during the 2004–2006 phase-in years would be subject to the least stringent bin (Bin 5) so their NO_X emissions would be effectively capped at 0.60 g/mi. These vehicles would be excluded from the calculation to determine compliance with the interim 0.20 g/mi average NO_X standard.

This proposed approach would implement standards significantly lower than the Tier 1 NO_X standards currently applicable to these vehicles. While manufacturers already certify many HLDTs at or below these levels, we believe these interim standards represent a reasonable step toward the Tier 2 standards and would provide meaningful control in the near term relative to current levels and Tier 1. This approach would allow more time for manufacturers to bring the more difficult HLDTs to Tier 2 levels while achieving real reductions from those HLDTs that may present less of a challenge.

iii. Interim Programs Would Provide Reductions over Previous Standards

As was the case with the primary Tier 2 bin structure, the bin structure for the interim programs would focus on NO_X and yet should provide further reductions in NMOG beyond the NLEV program (See Tables IV.B.–6,7,8 and 9). This is because the interim programs would reduce emissions from LDT2s and HLDTs compared to their previous standards. Without the interim standards, HLDTs could be certified as high as 0.46 g/mi or 0.56 g/mi, the Tier 1 NMHC levels. With the interim standards, however, exhaust NMOG should average approximately 0.09 g/mi for all non-Tier 2 LDV/LLDTs. and 0.25 g/mi or less for HLDTs.

iv. Alternative Approach for Interim Standards

An alternative flexible approach for reducing the emissions from vehicles and trucks prior to their phase-in to Tier 2 standards would be to employ a declining NO_X average, or perhaps separate declining NO_X averages for LDV/LLDTs and HLDTs. In this approach, manufacturers would certify vehicles to their choice of bins, but

[33] The NLEV program imposes NMOG average standards that would lead to full useful life NO_X levels of about 0.3 g/mi for LDV/LDT1s and 0.5 g/mi for LDT2s.

would have to meet an average NO_X standard (or standards) that became lower each year. Manufacturers could bank NO_X credits in early years of such a program for use in later years when the standard tightened. We request comment on the benefits, implications and drawbacks of such an approach. Commenters should address the issues of (1) what added flexibility does this approach provide beyond that provided by the bins and phase-in approach proposed above, (2) how to handle potential windfall credits that could arise in the early years under such an approach, (3) how a standard that changes each year would impact technology phase-in and phase-out, and (4) whether such an approach would require the implementation of declining average standards for the other exhaust pollutants.

f. *Generating, Banking, and Trading NO_X Credits.* As described above, we are proposing that manufacturers average the NO_X emissions of their Tier 2 vehicles and comply with a corporate average NO_X standard. In addition, we are proposing that when a manufacturer's average NO_X emissions fall below the corporate average NO_X standard, it could generate NO_X credits that it could save for later use (banking) or sell to another manufacturer (trading). NO_X credits would be available under the Tier 2 standards, the interim standards for LDVs and LLDTs, and the interim standards for HLDTs. These NO_X credit provisions would facilitate compliance with the fleet average NO_X standards and would be very similar to those currently in place for NMOG emissions under California and federal NLEV regulations.

A manufacturer with an average NO_X level for its Tier 2 vehicles in a given model year below the 0.07 gram per mile corporate average standard would generate Tier 2 NO_X credits that it could use in a future model year when its average NO_X might exceed the 0.07 standard. Manufacturers would calculate their corporate average NO_X emissions and then compute credits based on how far below 0.07 g/mi the corporate average fell.

Manufacturers would be free to retain any credits they generate for future use or to trade (sell) those credits to other manufacturers. Credits retained or purchased could be used by manufacturers with corporate average Tier 2 NO_X levels above 0.07 g/mi. Manufacturers could certify LDVs and LLDTs to Tier 2 standards as early as the 2001 model year and receive NO_X credits for their efforts. They could use credits generated under these "early banking" provisions after the Tier 2 phase-in begins in 2004 (2008 for HLDTs).

Banking and trading of NO_X credits under the interim non-Tier 2 standards would be similar, except that a manufacturer would determine its credits based upon the 0.30 or 0.20 gram per mile corporate average NO_X standard applicable to vehicles in the interim programs. There would be no provisions for early banking under the interim standards and manufacturers would not be allowed to use interim credits to address the Tier 2 NO_X average standard. Interim credits from LDVs/LLDTs and interim credits from HLDTs could not be used interchangeably due to the differences in the interim corporate average NO_X standards. We seek comment on allowing exchanges of credits between the LDV/LLDT interim program and the HLDT interim program.

Banking and trading of NO_X credits and related issues are discussed in greater detail in Section IV.B.–4.d. below.

2. Why Are We Proposing the Same Set of Standards for Tier 2 LDVs and LDTs?

Before we provide a more detailed description of the proposed vehicle program, two overarching principles of today's proposal are worth explaining in some detail. The first of these is our proposal to bring all LDVs and LDTs under the same set of emission standards. Historically, LDTs—and especially the heavier trucks in the LDT3 and LDT4 categories—have been subject to less stringent emission standards than LDVs (passenger cars). In recent years the proportion of light truck sales has grown to approximately 50 percent. Many of these LDTs are minivans, passenger vans, sport utility vehicles and pick-up trucks that are used primarily or solely for personal transportation; i.e., they are used like passenger cars and there are more annual vehicle miles of travel as a result.

As vehicle preferences have increasingly shifted from passenger cars to light trucks there has been an accompanying increase in emissions over what otherwise would have occurred, because of the increase in miles traveled and the less stringent standards for LDTs as compared to LDVs. As Section III. above makes clear, reductions in these excess emissions (and in other mobile and stationary source emissions) are seriously needed. Since both LDVs and LDTs are within technological reach of the standards in the proposed Tier 2 bin structure, we are proposing to equalize the regulatory useful life periods for LDVs and LDTs and to apply the same Tier 2 exhaust emission standard bins to all of them.

Once the phase in periods end for all vehicles in 2009, manufacturers would include all LDVs and LDTs together in calculating their corporate average NO_X levels.[34] As mentioned above and described in more detail in Section IV.B.–4. below, manufacturers could choose the emission bin for any test group of vehicles provided that on a sales weighted average basis, the manufacturer met the average NO_X standard of 0.07 g/mi for its Tier 2 vehicles that year.

Some have suggested that a program with different requirements would be needed for heavy LDTs. Recognizing that compliance will be most challenging for HLDTs, the delay in the start of the phase-in and the additional phase-in years for those vehicles would allow manufacturers to delay the initial impact of the Tier 2 standards until the 2008 model year. This represents four additional model years of leadtime beyond the time when passenger cars and LDT1s and LDT2s would have achieved Tier 2 standards in substantial numbers. We believe this phase-in and other provisions of this proposal respond to these concerns. However, we request comments on the need for different standards for these vehicles. Specifically, we request comment on different levels for NMOG standards for these vehicles, including how NMOG standards less stringent than our proposed standards might affect the technological challenges presented by the proposed NO_X standards.

Considerations for a 2004 Technology Review

EPA is seeking comment on whether it should conduct a technology review of the Tier 2 standards in the future. As part of the input received from stakeholders while developing this proposal, the Alliance of Automobile Manufacturers suggested that the proposal include consideration of a technology review, principally designed to assess the status of Tier 2 technology development. As discussed above, we recognize that HLDTs will face the greatest technological challenge in complying with our proposed standards. Some manufacturers have suggested that the approach of applying the same standard to cars and light-duty trucks presents sufficient challenge as to raise serious uncertainty about compliance for the larger vehicles, even in the 2008

[34] Because of the different phase-in percentages and phase in schedules for the two groups, we are proposing that during the duration of the phase-in (through 2008) manufacturers would average Tier 2 LDV/LLDTs separately from HLDTs.

time frame. In addition to the concerns expressed regarding the time frame for implementation of the more stringent standards for HLDTs in 2008, manufacturers have indicated that there are questions of feasibility for introduction of advanced technologies for improved fuel economy, such as lean burn, fuel cell, and hybrid electric technology.

The review could assess the feasibility of the standards relative to the state of technology development for HLDTs. Further, the review could consider gasoline and diesel fuel quality and its impact on the effectiveness of aftertreatment, and whether lower sulfur levels are necessary for HLDTs to meet the Tier 2 standards. We may also examine the feasibility of the standards for vehicles using technologies to advance fuel economy. In addition, the review could consider whether additional air quality improvements are necessary and the feasibility of additional reductions of vehicle emissions to achieve such air quality improvements. EPA believes that serious consideration of this concept is warranted and if it determines such a review to be appropriate, the best time to conduct such a review may be in the 2004 time frame, before the final Tier 2 standards go into effect for HLDTs.

EPA could conduct such a review to assess the feasibility, timing and stringency of the standards relative to the state of technology development. In doing so, EPA would determine whether or not there was a need to formally consider a change in the final Tier 2 standards. If such a change were determined to be necessary, EPA would conduct a formal rulemaking, including conducting public hearings.

As part of the technology review, EPA would seek advice from all appropriate stakeholders and could engage a peer review process. In addition, such a process, if undertaken, could include public notice and opportunity for comment on the review, including the holding of public hearings by EPA. One way to structure the process would include the establishment of an advisory panel under the Clean Air Act Advisory Committee to provide assessment of the state of technology and the feasibility of the standards. The Committee could recommend appropriate action for the Administrator based on their findings. The Administrator would then determine if any changes were needed to adjust the Tier 2 standards for HLDTs, advanced technologies, or the fuel parameters. We request comment on the need for a technology review, scope of the review and on the design of the process and its timing.

3. Why Are We Proposing the Same Standards for Both Gasoline and Diesel Vehicles?

The second overarching principle of our vehicle proposal is to apply the same Tier 2 standards to all light vehicles, regardless of the fuel they are designed to use. The same exhaust emission standards and useful life periods we are proposing today would apply whether the vehicle is built to operate on gasoline or diesel fuel or on an alternative fuel such as methanol or natural gas. Diesel engines used in LDVs and LDTs tend to be used in the same applications as their gasoline counterparts, and thus we believe they should meet the same or very similar standards.

Manufacturers have expressed concerns that diesel-fueled vehicles would have difficulty meeting NO_X and particulate matter levels like those contained in today's proposal. Clearly, these standards would be challenging. As discussed in Section IV.A.–1. above, we expect that the proposed Tier 2 NO_X and NMOG standards would be challenging for gasoline vehicles, but that major technological innovations would not be required. For diesels, however, the proposed NO_X and PM standards would likely require applications of new types of aftertreatment with, perhaps, changes in diesel fuel. We anticipate that manufacturers that chose to build diesel vehicles would adopt aftertreatment technologies such as NO_X storage catalysts and continuously regenerating particulate traps to meet Tier 2 requirements.

Today, diesels comprise less than one-half of one percent of all LDV/LDT sales. While this is a small fraction, the potential exists for diesels to gain a considerable market share in the future. All one need do is review the dramatic increase in recent years of diesel engine use in the lightest category of heavy duty vehicles (8500–10,000 pounds GVWR) to see the potential for significant diesel engine use in LDTs, and perhaps LDVs, in the future. Just ten ago years diesels made up less than 10 percent of this class of vehicles. In 1998, this fraction approached 50 percent.

The potential impact of large-scale diesel use in the light-duty fleet underscores the need for the same standards to apply to diesels as for other vehicles. Given the health concerns associated with diesel PM emissions (see Section III. above), we believe that it is prudent to address PM emissions from diesel LDVs and LDTs while their numbers are relatively small. In this way the program can minimize the PM impact that would accompany significant growth in this market segment while allowing manufacturers to incorporate low-emission technology into new light-duty diesel engine designs.

4. Key Elements of the Proposed Vehicle Program

The previous subsections IV.B.–1., 2., and 3. provided an overview of today's proposed vehicle program and the two overarching principles that it is built on. This subsection elaborates on the major vehicle-related elements of today's proposal. Later in this preamble, Section V.A. discusses the rest of the proposed vehicle provisions.

a. *Basic Exhaust Emission Standards and "Bin" Structure.* The program we are proposing today contains a basic requirement that each manufacturer meet, on average, a full useful life NO_X standard of 0.07 g/mi for all its Tier 2 LDVs and LDTs. Manufacturers would have the flexibility to choose the set of standards that a particular test group [35] of vehicles must meet. For a given test group of LDVs or LDTs, manufacturers would select a set of full useful life [36] standards from the same row ("emission bin" or simply "bin") in Table IV.B.–1. below. Each bin contains a set of individual NMOG, CO, HCHO, NO_X, and PM standards. The vehicles would have to comply with each of those standards and would also be subject to the corresponding bin of intermediate useful life standards, if applicable, found in Table IV.B–2. For technology harmonization purposes, our proposed

[35] A "test group" is the basic classification unit proposed for certification of light-duty vehicles and trucks under EPA certification procedures for the CAP2000 program. This preamble assumes that manufacturers will be certifying under the provisions of the CAP2000 program. "Test group" is a broader classification unit than "engine family" used prior to the implementation of the CAP2000 program. We discuss the CAP2000 program in more detail in section V.A.9. of this preamble.

[36] The regulatory "useful life" value for Tier 2 vehicles is specifically addressed in Section V.A.2. of this preamble. Full useful life is proposed to be 10 years or 120,000 miles for all vehicles except LDT3s and LDT4s, for which it is 11 years or 120,000 miles. Intermediate useful life, where standards are applicable, is 5 years or 50,000 miles.

[37] EPA's current standards for Clean Fuel Vehicles are less stringent than the proposed Tier 2 standards. See 40 CFR 88.104–94. The Tier 2 standards would supercede the current CFV standards, and, if EPA adopts the standards proposed today, the Agency intends to undertake a rulemaking to revise the CFV standards accordingly.

emission bins include all of those adopted in California's LEV II program.[37]

adopted in California's LEV II program.[37]

TABLE IV.B.–2.—TIER 2 LIGHT-DUTY FULL USEFUL LIFE (120,000 MILE) EXHAUST EMISSION STANDARDS
[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
7	0.20	0.125	4.2	0.018	0.02
6	0.15	0.090	4.2	0.018	0.02
5	0.07	0.090	4.2	0.018	0.01
4	0.07	0.055	2.1	0.011	0.01
3	0.04	0.070	2.1	0.011	0.01
2	0.02	0.010	2.1	0.004	0.01
1	0.00	0.000	0.0	0.000	0.00

TABLE IV.B.–3.—LIGHT-DUTY INTERMEDIATE USEFUL LIFE (50,000 MILE) EXHAUST EMISSION STANDARDS
[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
7	0.14	0.100	3.4	0.015	
6	0.11	0.075	3.4	0.015	
5	0.05	0.075	3.4	0.015	
4	0.05	0.040	1.7	0.008	

Under a "bins" approach, a manufacturer may select a set of emission standards (a bin) to comply with, and a test group must meet all standards within that bin. Ultimately, the manufacturer must also ensure that the emissions of a targeted pollutant—NO_X in this case—from all of its vehicles taken together meet a "corporate average" emission standard. This corporate average emission standard ensures that a manufacturer's production yields the required overall emission reductions. (See Section IV.B.–4.c. below for more discussion of the corporate average NO_X standard.)

In addition to the Tier 2 standards described above, we are also proposing interim standards derived from the LDV/LDT1 NLEV standards to cover all non-Tier 2 LDVs and LLDTs during the Tier 2 phase-in. We are proposing separate interim standards for HLDTs. (We describe the interim standards in detail in Section IV.B.4.e. below.)

i. Why Are We Proposing Extra Bins?

Compared to the CalLEV II program, our Tier 2 proposal includes additional bins. The California program contains no bins that would allow NO_X levels above the 0.07 g/mi level of LEVs. Therefore, under the California program, no engine family can be certified above LEV levels, even with the application of offsetting credits. We propose to add two bins above the LEV bin (Bins 6 and 7) and another below the LEV bin (Bin 3) to provide manufacturers with additional flexibility to reduce costs and to account for greater technological challenges faced in getting certain vehicles to levels of 0.07 g/mi NO_X or less.

During the Tier 2 phase-in years (through 2006 for LDV/LLDTs and 2008 for HLDTs), we are also proposing that the bins from the applicable interim program would be available. Vehicles certified to these levels could, at the manufacturer's option, be included in calculating the Tier 2 corporate average NO_X level. This would enhance the flexibility of the program by providing manufacturers with three additional bins having NO_X standards above 0.07 g/mi. Since a manufacturer could elect these bins under the interim program anyway, there would be no impact on air quality. The interim program and the interim bins for non-Tier 2 vehicles are described in detail in section IV.B.4.e.

The additional bins would also provide an incentive for manufacturers to produce vehicles below 0.07 g/mi of NO_X. We believe this incentive would exist because manufacturers would have some vehicles (especially larger LDTs) that they might find more cost effective to certify to levels above the 0.07 g/mi average standard. However, to do this they would have to offset those vehicles in our NO_X averaging system with vehicles certified below 0.07 g/mi, and the 0.04 g/mi bin would provide greater opportunity to do this. Thus, the extra bins would serve two purposes; they would provide additional flexibility to manufacturers to address technological differences and costs, and they would provide those manufacturers with incentives to produce cleaner vehicles and thus advance emission control technology.

We are proposing a bins approach and the proposed bins because we believe they would provide adequate and appropriate emission reductions and manufacturer flexibility. In addition, this structure will help to accelerate technological innovation. We request comment on the appropriateness of the proposed bin structure and whether the levels proposed are appropriate. Also, we request comment on whether we should include up to two additional bins between bin 5 (NO_X = 0.07) and bin 6 (NO_X = 0.15). Our proposed bin structure is intended to assure that nearly all vehicles comply with a NO_X standard of 0.07 g/mi. These additional bins would provide greater flexibility for manufacturers who may find it more cost-effective to produce some vehicles slightly above 0.07 but would have difficulties meeting a 0.07 g/mi average NO_X standard if they had to certify them to a NO_X level of 0.15 g/mi. We request specific comment on whether we should

[35] A "test group" is the basic classification unit proposed for certification of light-duty vehicles and trucks under EPA certification procedures for the CAP2000 program. This preamble assumes that manufacturers will be certifying under the provisions of the CAP2000 program. "Test group" is a broader classification unit than "engine family" used prior to the implementation of the CAP2000 program. We discuss the CAP2000 program in more detail in section V.A.9. of this preamble.

establish these bins and if so what standards for each pollutant we should include. As we indicated above, we believe that the existence of bins above 0.07 g/mi NO_X provide an incentive for technological advancement. We request comment as to whether these additional bins would limit this incentive in any way.

On the other hand, Bin 7 is intended primarily to aid manufacturers during the transition to Tier 2 standards. We request comment on whether this bin should be eliminated when the Tier 2 phase-in is completed (after 2007 for LDV/LLDTs and after 2009 for HLDTs).

b. *The Proposed Program Would Phase in the Tier 2 Vehicle Standards over Several Years*

i. Primary Phase-In Schedule

We are proposing to phase in the Tier 2 standards for LDVs/LLDTs over a four year period beginning in 2004 and we are proposing a delayed two year phase-in beginning in 2008 for HLDTs. These phase-in schedules are shown in Tables IV.B.–2 and are also shown separately in Tables IV.B.–4 and 5. We believe the flexibility of this dual phase-in approach is appropriate because the proposed Tier 2 program would encompass all light-duty vehicles and trucks and would result in widespread applications of upgraded and improved technology across the fleet. The program would require research, development, proveout, and certification of all light-duty models, and manufacturers would need longer lead time for some vehicles, especially HLDTs. Also, manufacturers might wish to time compliance with the Tier 2 standards to coincide with other changes such as the roll out of new engines or new models. In order to begin the introduction of very clean vehicles as soon as possible while avoiding imposing unnecessary inefficiencies on vehicle manufacturers, we believe a practical but aggressive phase-in schedule like the one we are proposing effectively balances air quality, technology, and cost considerations.

In each year, manufacturers would have to ensure that the specified fraction of their U.S. sales [38] met Tier 2 standards for evaporative emissions (discussed in Section IV.B.–4.f. below) and exhaust emissions, including Supplemental Federal Test Procedure (SFTP) standards (discussed in Section V.A.–3. below), as well as the corporate average Tier 2 NO_X standard. Manufacturers would have to meet the Tier 2 exhaust requirements (i.e., all the standards of a particular bin plus the SFTP standards) using the same vehicles. Vehicles not covered by the Tier 2 standards during the phase-in years (2004–2008) would have to meet interim standards described in Section IV.B.–.4.e. below and the existing evaporative emission as well as the applicable SFTP standards.

Manufacturers could elect to meet the percentage phase-in requirements for evaporative and exhaust emissions using two different sets of vehicles. We believe that because of interactions between evaporative and exhaust control strategies, manufacturers would generally address the Tier 2 evaporative phase-in with the same vehicles that they used to meet the exhaust phase-in. However, the primary focus of today's proposal is on exhaust emissions, and the flexibility for manufacturers to use different sets of vehicles in complying with the phase-in schedule for evaporative standards and for the exhaust standards would have no environmental down side that we are aware of. It is possible that some exhaust emission improvements might even occur sooner than they otherwise would if a manufacturer were able to move ahead with the roll-out of a model with cleaner exhaust emissions without having to wait for the development of suitable evaporative controls to be completed for that model.

TABLE IV.B.–4.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 LDVS AND LLDTS

Model year	Required percentage of light-duty vehicles and light light-duty trucks
2004	25
2005	50
2006	75
2007	100

TABLE IV.B.–5.—PRIMARY PHASE-IN SCHEDULE FOR SALES OF TIER 2 HLDTS

Model year	Required percentage of heavy light-duty trucks
2008	50
2009	100

According to the proposed phase-in approach, vehicle sales would be determined according to the "point of first sale" method outlined in the NLEV rule. Vehicles with points of first sale in California or a state that had adopted the California LEV II program would be excluded from the calculation. The "point of first sale" method recognizes that most vehicle sales will be to dealers and that the dealers' sales will generally be to customers in the same geographic area. While some sales to California residents (or residents of states that adopt California standards) may occur from other states and vice-versa, we believe these sales will be far too small to have any significant impact on the air quality benefits of the Tier 2 program.

ii. Alternative Phase-In Schedule

While our primary proposal is based upon a phase-in of 25%, 50%, 75% and 100% of sales over the 2004, 2005, 2006 and 2007 model years, respectively (or 50% and 100% in 2008 and 2009 for HLDTs), we are proposing to permit alternative phase-in schedules as an option to provide additional flexibility to manufacturers. The alternative phase-in schedule provisions are structured to provide incentive to manufacturers to introduce Tier 2 vehicles before 2004 (or 2008 for HLDTs).

Under this alternative, manufacturers that introduced vehicles earlier than required could earn the flexibility to make offsetting adjustments, on a one-for-one basis, to the phase-in percentages in later years. However, they would still need to reach 100% of sales in the 2007 model year (2009 for HLDTs). Manufacturers would have the option to use this alternative to meet phase-in requirements for LDV/LLDTs and/or HLDTs. They could use separate alternative phase-in schedules for exhaust and evaporative emissions, or an alternative phase-in schedule for one set of standards and the primary (25/50/75/100%) schedule for the other.

An alternative phase-in schedule would be acceptable if it passed a specific mathematical test. We have designed the test to provide manufacturers benefit from certifying to the Tier 2 standards early while ensuring that significant numbers of Tier 2 vehicles would be introduced during each year of the alternative phase-in schedule. To test an alternative schedule, a manufacturer would sum its yearly percentages of Tier 2 vehicles beginning with model year 2001 and compare the resulting sum to the sum that results from the primary phase-in schedule. If an alternative schedule scored as high or higher than the base

[36] The regulatory "useful life" value for Tier 2 vehicles is specifically addressed in Section V.A.2. of this preamble. Full useful life is proposed to be 10 years or 120,000 miles for all vehicles except LDT3s and LDT4s, for which it is 11 years or 120,000 miles. Intermediate useful life, where standards are applicable, is 5 years or 50,000 miles.

option, then the alternative schedule would be acceptable.

For LDV/LLDTs, the final sum of percentages would have to equal or exceed 250—the sum that results from a 25/50/75/100 percent phase-in. For example, a 10/25/50/65/100 percent phase-in that began in 2003 would have a sum of 250 percent and would be acceptable. In this example, each Tier 2 vehicle sold early (i.e. in 2003) would permit the manufacturer to sell one less Tier 2 vehicle in the last phase-in year (2006). A 10/20/40/70/100 percent phase-in that began the same year would have a sum of 240 percent and would not be acceptable. For HLDTs, the sum would have to equal or exceed 150 percent.

To ensure that significant numbers of Tier 2 vehicles are introduced in the 2004 time frame, manufacturers would not be permitted to use alternative phase-in schedules that delayed the implementation of the Tier 2 LDV/LLDT requirements, even if the sum of the phase-in percentages met or exceeded 250. Such a situation could occur if a manufacturer delayed implementation of its Tier 2 production until 2005 and began a 75/85/100 percent phase-in that year. To protect against this possibility, we are proposing that in any alternate phase-in schedule, a manufacturer's phase-in percentages from the 2004 and earlier model years sum to at least 25%.

The mathematical technique to evaluate alternative phase-in schemes is somewhat similar to that used in our NLEV rule and in California rules. We request comment on its appropriateness for this application. We also request comment on other approaches that might serve to provide incentive to manufacturers to introduce Tier 2 vehicles early, and to provide additional flexibility, while at the same time assuring that environmental gains equivalent to or greater than those of the primary phase-in option are produced. We have considered whether it would be appropriate to provide a "multiplier" that would serve to increase the value of the percentage of vehicles introduced before 2004 (2008 for HLDTs) in the mathematical test described above. Such a multiplier might start at 1 for 2004–2007 vehicles and increase for each year prior to 2004 (2008 for HLDTs). We request comment as to whether such a multiplier would be appropriate and whether it would produce real environmental gains by speeding the introduction of Tier 2 vehicles into the fleet.

All of the discussion on alternative phase-in schedules to this point has been premised on 100% compliance in 2007 (2009 for HLDTs). We request comment as to whether alternative phase-in schedules should be structured in such a way that, if a manufacturer introduced Tier 2 vehicles in excess of the minimum required during the phase-in years, that manufacturer could extend its phase-in beyond 2007 or 2009. Commenters should address the time period beyond 2007 or 2009 that would be appropriate as well as how EPA would determine the fraction of vehicles that could be delayed until that time.

Phase-in schedules, in general, add little flexibility for manufacturers with limited product offerings. A manufacturer with only one or two test groups can not take full advantage of a 25/50/75/100 percent or similar phase-in. However for manufacturers that meet EPA's definition of "small volume manufacturer," we are proposing elsewhere in this preamble that those manufacturers be exempt from the phase-in schedules and would simply have to comply with the final 100% compliance requirement. Still, we request comment on how alternative phase-in schedules might be structured to provide flexibility and incentive for early introduction to smaller manufacturers.

Later in this preamble (in Section V) we request specific comment on whether we should include a scheme to provide extra NO_X credits for manufacturers that introduce Tier 2 vehicles early. Commenters to the above discussion on alternate phase-in schedules should address whether a provision for extra NO_X credits might be a more appropriate way to provide inducements to smaller manufacturers to introduce Tier 2 vehicles early. Commenters should consider the interactions such extra credits might have with alternate phase-in schedules, particularly in situations where a "multiplier," as described above, might be applied.

c. *Manufacturers Would Meet a "Corporate Average" NO_X Standard.* While the manufacturer would be free to certify a test group to any bin of standards in Table IV.B.–2, it would have to ensure that the sales-weighted average of NO_X standards from all of its test groups of Tier 2 vehicles met a full useful life standard of 0.07 g/mi. Using a calculation similar to that for the NMOG corporate average standard in the California and NLEV programs, manufacturers would determine their compliance with the corporate average NO_X standard at the end of the model year by computing a sales weighted average of the full useful life NO_X standards from each bin. Manufacturers would use the following formula:

Corporate Average NO_X = Σ(Tier 2 NO_X std for each bin) ×(sales for each bin) total Tier 2 sales

Manufacturers would exclude vehicles sold in California or states adopting California LEV II standards from the calculation. As indicated above, manufacturers would compute separate NO_X averages for LDV/LLDTs and HLDTs through the year 2008.

The corporate average NO_X standards of the primary Tier 2 program and the interim programs for LDVs/LLDTs and HLDTs would ensure that expected fleet-wide emission reductions are achieved. At the same time, the corporate average standards allow us to permit the sale of some vehicles above the levels of the average standards to address the greater technological challenges some vehicles face and to reduce the overall costs of the program. We discuss how manufacturers could generate, use, and buy or sell NO_X credits under the proposed program in the next subsection.

Given the corporate average NO_X standards, we do not believe a corporate average NMOG standard as used by California is essential because meeting the corporate average NO_X standard would automatically bring the NMOG fleet average to approximately LEV levels. However, we request comment on the need for such a corporate average NMOG standard, as well as suggestions and rationales for what that standard, if any, should be. Commenters are encouraged to address any interactions with the bin structure, if appropriate.

d. *Manufacturers Could Generate, Bank, and Trade NO_X Credits.*

i. General Provisions

As mentioned in the Overview above, we are proposing that manufacturers with year-end corporate average NO_X emissions for their Tier 2 vehicles below 0.07 g/mi could generate Tier 2 NO_X credits. Credits could be saved (banked) for use in a future model year or for trading (sale) to another manufacturer. Manufacturers would consume credits if their corporate average NO_X emissions were above 0.07 g/mi.

We are proposing the Tier 2 standards to apply regardless of the fuel the vehicle is designed for, and there would be no restrictions on averaging, banking or trading of credits across vehicles of different fuel types. Consequently, a gasoline fueled LDV might help a manufacturer generate NO_X credits in one year that could be banked for the next year when they could be used to average against NO_X emissions of a diesel fueled LDT.

Because of the split phase-in and the different interim programs we are

proposing for the two different groups of vehicles (LDV/LLDTs and HLDTs), we are also proposing to require that manufacturers compute their corporate Tier 2 NO_X averages separately for LDV/LLDTs and HLDTs through 2008. Credit exchanges between LDVs/LLDTs and HLDTs would not be allowed nor would credit exchanges across the interim program and Tier 2 program be allowed. These restrictions would end with the 2009 model year at which time both phase-ins and all interim standards will have ended and the program would permit free averaging across all Tier 2 vehicles. In the context of the whole program we are proposing, we are concerned that allowing cross-trading between interim and Tier 2 vehicles would reduce the expected benefits of the program and delay fleet turnover to Tier 2 emission levels. For this reason we are not proposing to allow such exchanges. We seek comment on this issue.

ii. Averaging, Banking, and Trading of NO_X Credits Would Fulfill Several Goals

There are several reasons why we believe the proposed provisions for averaging, banking, and trading of NO_X credits (ABT) would be valuable.

- ABT allows us to consider a more stringent emission standard than might otherwise be appropriate under the CAA, since ABT reduces the cost and improves the technological feasibility of achieving the standard.
- ABT enhances the technological feasibility and cost effectiveness of the proposed standard, helping to ensure that the standard would be attainable earlier than would otherwise be possible.
- ABT would provide manufacturers with additional product planning flexibility and the opportunity for a more cost effective introduction of product lines meeting the new standard.
- ABT would create an incentive for early introduction of new technology, allowing certain engine families to act as trail blazers for new technology. This could help provide valuable information to manufacturers on the technology prior to manufacturers needing to apply the technology throughout their product line. The early introduction of new technology would also further improve the feasibility of achieving the standard and could also provide valuable information for use in other regulatory programs that may benefit from similar technologies (e.g., heavy-duty vehicle standards).

EPA views the proposed ABT provisions as environmentally neutral because the use of credits by some vehicles would be offset by the generation of an equal number of credits generated by other vehicles. However, when coupled with the new standards, ABT could have environmental benefits because it could allow the new standards to be implemented earlier than would otherwise be appropriate under the Act.

iii. How Manufacturers Would Generate and Use NO_X Credits

As described in the previous subsection, and subject to the phase-in restrictions described in that subsection, manufacturers would determine their year-end corporate average NO_X emission level by computing a sales-weighted average of the NO_X standard from each bin to which the manufacturer certified any LDVs or LDTs. The manufacturer would round this average to one more decimal place than in the corporate average NO_X standard. Tier 2 NO_X credits would be generated when a manufacturer's average was below the 0.07 gram per mile corporate average NO_X standard, according to this formula:

NO_X Credits = (0.07 g/mi—Corporate Average NO_X) × Sales

The manufacturer could then use these NO_X credits in future years when its corporate NO_X average was above 0.07, or it could trade (sell) the credits to other manufacturers. The use of NO_X credits would not be permitted to address Selective Enforcement Auditing or in-use testing failures.

The enforcement of the NO_X averaging standard would occur through the vehicle's certificate of conformity. A manufacturer's certificate of conformity would be conditioned upon compliance with the averaging provisions. The certificate would be void *ab initio* if a manufacturer failed to meet the corporate average NO_X standard and did not obtain appropriate credits to cover their shortfalls in that model year or in the subsequent model year (see proposed deficit carryforward provision below). Manufacturers would need to track their certification levels and sales unless they produced only vehicles certified to bins containing NO_X levels of 0.07 g/mi or below and did not plan to bank NO_X credits.

iv. Manufacturers Could Earn and Bank Credits for Early NO_X Reductions

To provide manufacturers with greater flexibility and with incentives to certify, produce and sell Tier 2 vehicles as early as possible, we are proposing that manufacturers could utilize alternative phase in schedules. (See IV.B.4.b.ii above.) Under such schedules, a manufacturer could certify vehicles to bins having NO_X standards of 0.07 g/mi or below in years prior to the first required phase-in year and then phase its remaining vehicles in over a more gradual phase-in schedule that would still lead to 100% compliance by 2007 (2009 for HLDTs). To the extent that a manufacturer's corporate average NO_X level of its "early Tier 2" vehicles was below 0.07 g/mi, the manufacturer could bank NO_X credits for later use. Manufacturers would compute these early credits by calculating a sales-weighted corporate average NO_X emission level of their Tier 2 vehicles, as in the basic Tier 2 program described above.

These credits would have all the same properties as credits generated by vehicles subject to the primary phase-in schedule. These credits could not be used in the NLEV, Tier 1 or interim program for non-Tier 2 vehicles in any way. However, the NMOG emissions of these vehicles (LDVs and LLDTs only) could be used in the calculation of the manufacturer's corporate average NMOG emissions under NLEV through 2003.

To provide manufacturers with maximum flexibility in the period prior to 2004, when LDV/LLDT useful lives will still be at 100,000 miles, we are proposing that manufacturers could choose between the Tier 2 120,000 mile useful life or the current 100,000 mile useful life requirement for early Tier 2 LDV/LLDTs. (HLDTs already have a 120,000 mile useful life.) Early LDV/LLDT NO_X credits for 100,000 mile useful life vehicles would have to be prorated by 100,000/120,000 (5/6) so that they could be properly applied to 120,000 mile Tier 2 vehicles in 2004 or later.

We are proposing that early banking of HLDT NO_X credits could not begin until the 2004 model year. This provides a four year period during which early credits could be generated for use in the 2008/2009 HLDT Tier 2 phase-in. We are concerned that allowing generation of early HLDT credits in years prior to 2004 could result in credits that are largely windfall credits. Still, we recognize that vehicles that meet the Tier 2 standards early represent an environmental benefit and we request comment on the need for and appropriateness of allowing early banking of HLDT credits before the 2004 model year.

We recognize that vehicles generating early NO_X credits may be doing so without the emissions benefit of low sulfur fuel, and thus these vehicles may not achieve the full in-use emission reduction for which they received credit. When these credits are used to

permit the sale of higher-emitting vehicles, there may be a net increase in emissions. We believe that the benefits of early introduction of Tier 2 technology described above are significant enough that they are worth the risk of some emission losses that might occur if and when the early credits are used. Also, we believe that some fuel sulfur reductions will occur prior to 2004 as refiners upgrade their refineries or bring new refining capacity on stream in anticipation of the 2004 requirements and take advantage of the phase-in proposed in the gasoline sulfur ABT program (described in Section IV.C. below). We request comment on all aspects of early introduction of Tier 2 vehicles and the proposed provisions for early NO_X credits.

v. NO_X Credits Would Have Unlimited Life

We are not proposing to apply the California schedule of discounting unused credits that was adopted for NMOG credits in the NLEV program. This schedule serves to limit credit life throughout the program by reducing unused credits to 50, 25 and 0 percent of their original number at the end of the second, third and fourth year, respectively, following the year in which they were generated. Because of the declining corporate average NMOG standards in that program, California has decided, and we agree, that it is prudent to limit the lives of credits to prevent manufacturers from being able to accumulate credits and then apply them in such a way as to delay the impact of declining standards. But in this proposed federal program, once the proposed phase-in period ends in model year 2009, all light duty vehicles and trucks would comply on average with a fixed Tier 2 NO_X standard.

Credits would allow manufacturers a way to address unexpected shifts in their sales mix and yet would prevent the program from being abused to allow emission increases by design, since emissions would be capped by the levels in the least stringent bin. The NO_X emission standards in the Tier 2 and interim programs are quite stringent and do not present easy opportunities to generate credits. The degree to which manufacturers invest the resources to achieve extra NO_X reductions provides true value to the manufacturer and the environment. We do not want to take measures to reduce the incentive for manufacturers to bank credits nor do we want to take measures to encourage unnecessary credit use. Consequently we are proposing that Tier 2 NO_X credits would have unlimited lives. We request comment on the need for discounting of credits or limits on credit life and what those discount rates or limits, if any, should be.

vi. NO_X Deficits Could Be Carried Forward

When a manufacturer has a NO_X deficit at the end of a model year—that is, its corporate average NO_X level is above the required corporate average NO_X standard—we are proposing that the manufacturer be allowed to carry that deficit forward into the next model year. Such a carry-forward could only occur after the manufacturer used any banked credits. If the deficit still existed and the manufacturer chose not to or was unable to purchase credits, the deficit could be carried over. At the end of that next model year, the deficit would need to be covered with an appropriate number of NO_X credits that the manufacturer generated or purchased. Any remaining deficit would be subject to an enforcement action.

To prevent deficits from being carried forward indefinitely, the manufacturer would not be permitted to run a deficit for two years in a row.[39] We believe that it is reasonable to provide this flexibility to carry a deficit for one year given the uncertainties that light duty vehicle and truck manufacturers face with changing market forces and consumer preferences, especially during the introduction of new technologies. These uncertainties can make it hard for manufacturers to accurately predict sales trends of different vehicle models. We request comment on this provision.

e. *Interim Standards.*

i. Interim Standards for LDV/LLDTs

The NLEV program referenced throughout this discussion is a voluntary program in which all major manufacturers have opted to produce LDVs and LLDTs to tighter standards than those required by EPA's Tier 1 regulations. Under the NLEV program, manufacturers must meet an NMOG average outside of California that is equivalent to California's current intermediate-life LEV requirement—0.075 g/mi for LDVs and LDT1s (0.10 g/mi for LDT2s). Currently, NLEV requirements apply only to LDVs and LLDTs, not to HLDTs.

The NLEV program is effective beginning in the northeastern states in 1999 and in the remaining states in 2001, except that the program does not apply to vehicles sold in California or in states that adopted California's LEV program. The program runs at least through 2003 and can run through model year 2005.

Given the Tier 2 phase-in we are proposing, not all LDV/LLDTs covered under NLEV will be subject to Tier II standards in the 2004 to 2006 period. Unless EPA adopts a program for full Tier 2 compliance in 2004 (i.e., without a phase-in), these vehicles could revert to Tier 1 standards. The NLEV program, moreover, is a voluntary program that contains several provisions that restrict EPA's flexibility and that could lead to a manufacturer or a covered Northeastern state leaving the program in or prior to 2004. To resolve these concerns we are proposing interim standards for all non-Tier 2 LDV/LLDTs for the 2004–2006 model years. Our interim standards would replace the NLEV program, which would then terminate at the end of 2003. The transition from NLEV to Tier 2 should be smooth because the interim standards are derived from the NLEV standards for LDVs and LDT1s and would ensure that all LDVs, LDT1s and LDT2s that are not certified to Tier 2 levels during the 2004–2006 phase-in period remain at levels at least as stringent as NLEV levels. The standards would also arguments prebring the emission standards for LDT2s into line with those for the LDVs and LDT1s. We propose to align the useful life periods for interim standards with those of the Tier 2 standards (full useful life of 120,000 miles, intermediate useful life of 50,000 miles, as discussed in Section V.A.-2 below)

Tables IV.B.-6 and IV.B.-7 below present interim standards we are proposing for LDVs and LLDTs not covered by Tier 2 standards during the phase in period.

[39] Because of the limited duration of the interim programs, we are proposing that a manufacturer could carry a credit deficit in the interim program forward until the 2006 model year (2008 for HLDTs). The interim program, in its entirety, lasts only five years and therefore we see little risk of prolonged deficits.

TABLE IV.B.–6.—FULL USEFUL LIFE (120,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR LDV/LLDTS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
5	0.60	0.156	4.2	0.018	0.06
4	0.30	0.090	4.2	0.018	0.06
3	0.30	0.055	2.1	0.011	0.04
2	0.07	0.090	4.2	0.018	0.01
1	0.00	0.00	0.0	0.000	0.0

TABLE IV.B.–7.—INTERMEDIATE USEFUL LIFE (50,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR LDV/LLDTS

[Grams per mile]

Bin No.	NO_X	NMOG	CO	HCHO	PM
5	0.40	0.125	3.4	0.015	.....
4	0.20	0.075	3.4	0.015	.....
3	0.20	0.040	1.7	0.008	.....
2	0.05	0.075	3.4	0.015	.....

We are proposing a corporate average full useful life NO_X standard of 0.30 g/mi for this interim program. LDV/LLDTs, which will already be at NLEV levels, should readily be able to meet this average NO_X standard. Although we have not shown it in the tables of interim standards above, we are also proposing that all of the bins shown for the Tier 2 program (see Tables IV.B.–2 and –3) could be used in the interim program. Thus if a manufacturer had vehicles certified to Tier 2 bins that it did not need to comply with the Tier 2 NO_X average standard and phase in percentage, it would have the additional option to use them in the interim program. We request comment as to whether the number of bins provided in the interim program and their emission levels are appropriate.

The 0.30 g/mi corporate average NO_X standard (and the bins of standards in the above two tables) would apply only to non-Tier 2 LDV/LLDTs and only for the 2004–2006 model years. Manufacturers would compute, bank, average, trade, account for, and report NO_X credits via the same processes and equations described in this preamble for Tier 2 vehicles, substituting the 0.30 g/mi corporate average standard for the 0.07 g/mi corporate average standard in the basic program. Also, EPA would condition the certificates of conformity on compliance with the corporate average standard, as described for Tier 2 vehicles. These NO_X credits would be good only for the 2004–2006 model years and would only apply to the interim non-Tier 2 LDV/LLDTs. Credits would not be subject to any discounts, and credit deficits from the 2004 and 2005 model year could be carried forward, provided they were covered with appropriate credits by the end of the 2006 model year. NMOG credits from the NLEV program could not be used in this interim program in any way. Credits generated under this interim program would not be applicable to the Tier 2 NO_X average standard of 0.07 g/mi because of our concern that a windfall credit situation could occur. This could happen because credits are relatively easy to generate under a 0.30 g/mi standard compared to generating credits under a 0.07 g/mi standard. The application of credits earned under the interim standard to the Tier 2 standards could significantly delay the fleet turnover to Tier 2 vehicles. The requirements of the interim program would be monitored and enforced in the same fashion as for Tier 2 vehicles.

For the reasons cited above, we believe it is appropriate to extend interim, NLEV-like standards beyond 2003 as a mandatory program and to bring all LDVs and LLDTs within its scope. Manufacturers have already demonstrated their ability to make LDVs and LLDTs that comply at levels well below these standards, and, as the interim standards for LDV/LLDTs are essentially "phase-out" standards, we are not proposing any alternative phase-in schedules or early banking provisions for NO_X credits from the interim LDV/LLDTs.

We request comment on all aspects of the interim standards for LDVs and LLDTs.

ii. *Interim Standards for HLDTs.*

We are also proposing interim standards to begin in 2004 for HLDTs. These vehicles are not included in the NLEV program and will be subject only to the Tier 1 standards prior to model year 2004. Tier 1 standards permit NO_X emissions of 0.98 g/mi for LDT3s and 1.53 g/mi for LDT4s.

The interim standards for HLDTs would apply beginning in the 2004 model year and would phase-in through the 2007 model year, as shown in Figure IV.B.–1. The proposed interim program is based on a corporate average full-life NO_X standard of 0.20 g/mi. Manufacturers would comply with the corporate average HLDT NO_X standard by certifying their interim HLDTs to any of the full useful life bins shown in Table IV.B.–8. Where applicable, manufacturers would also comply with the intermediate useful life standards shown in Table IV.B.–9. Interim HLDTs not needed to meet the phase-in percentages during model years 2004–2006 would have to be certified to the standards of one of the bins in Table IV.B.–8 (and –9), but would not be included in the calculation to demonstrate compliance with the 0.20 g/mi average. Thus, the emissions of all interim HLDTs would be capped at a NO_X value of 0.60 g/mi.

As with LDV/LLDTs, manufacturers would also have the flexibility to use any of the Tier 2 bins shown in Tables IV.B.–2 and IV.B.–3 as additional bins for interim HLDTs. At the end of each model year, manufacturers would determine their compliance with the 0.20 NO_X standard by calculating a sales weighted average of all the bins to which they certified any interim HLDTs, excluding those not needed to meet the phase-in requirements during 2004–2006.

We believe these interim standards are necessary and reasonable for HLDTs. While these trucks make up a fairly small portion of the light-duty fleet (about 11%), their current standards under Tier 1 are far less stringent than the NLEV standards that apply to current model year LDVs and LLDTs.

Given the delayed phase-in we are proposing for HLDTs, we believe it is appropriate to bring about some interim reductions from these vehicles. Further, manufacturers have already demonstrated their ability to meet these interim standards with HLDTs. These standards are a reasonable first step toward the Tier 2 program and would provide meaningful reductions in the near term relative to current certification levels under the Tier 1 emission standards.

TABLE IV.B.–8.—FULL USEFUL LIFE (120,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTS

[Grams per mile]

Bin No.	NO_x	NMOG	CO	HCHO	PM
5	0.60	0.230	4.2	0.018	0.06
4	0.30	0.180	4.2	0.018	0.06
3	0.20	0.156	4.2	0.018	0.02
2	0.07	0.090	4.2	0.018	0.01
1	0.0	0.0	00.0	0.000	0.0

TABLE IV.B.–9.—INTERMEDIATE USEFUL LIFE (50,000 MILE) INTERIM EXHAUST EMISSION STANDARDS FOR HLDTS

[Grams per mile]

Bin No.	NO_x	NMOG	CO	HCHO	PM
5	0.40	0.160	3.4	0.015	
4	0.20	0.140	3.4	0.015	
3	0.14	0.125	3.4	0.015	
2	0.05	0.075	3.4	0.015	

Given that the interim HLDT standards are "phase-in" standards through 2007 (as opposed to the interim LDV/LLDT standards, which are "phase-out" standards), we are proposing that manufacturers could employ alternative phase-in schedules as proposed for the Tier 2 standards and described in detail in section IV.B.4.b.ii. of this preamble. These schedules provide manufacturers with greater flexibility and we believe they also provide incentive for manufacturers to introduce advanced emission control technology at an earlier date. Alternative phase-in schedules would have to provide 100% phase-in by the same year as the primary phase-in schedule (2007). Because we are concerned about the possibility of windfall credits from some vehicles that might easily meet the 0.20 corporate average NO_x standard, we are not proposing to permit the generation of credits from interim HLDTs prior to the 2004 model year, although we request comment on this issue.

f. *More Stringent Proposed Light-Duty Evaporative Emission Standards.* We are proposing to adopt a set of more stringent evaporative emission standards for all Tier 2 light-duty vehicles and light-duty trucks. The standards we are proposing in Table IV.B.–10 represent, for most vehicles, more than a 50% reduction in diurnal plus hot soak standards from those that will be in effect in the years immediately preceding Tier 2 implementation. The higher standards for HLDTs provide allowance for greater non-fuel emissions related to larger vehicle size.

TABLE IV.B.–10.—PROPOSED EVAPORATIVE EMISSION STANDARDS [GRAMS PER TEST]

Vehicle class	3 day diurnal + hot soak	Supplemental 2 day diurnal + hot soak
LDVs and LLDTs	0.95	1.2
HLDTs	1.2	1.5

Evaporative emissions from light-duty vehicles and trucks represent nearly half of the light duty VOC inventory projected for the 2007–2010 time frame, according to MOBILE5 projections. We are proposing today to reduce the light-duty evaporative emission standards applicable to diurnal and hot soak emissions by more than 50 percent for most vehicles. Manufacturers are currently certifying to levels that are, on average, about half of the current standards, and in many cases, much less than half the standards. Thus, meeting these proposed standards appears readily feasible. Even though manufacturers are already certifying at levels much below the current standard, we believe that reducing the standards will result in emission reductions as all manufacturers seek to certify with adequate margins to allow for in-use deterioration. Further, we believe that tighter standards will prevent "backsliding" toward the current standards as manufacturers pursue cost reductions.

As mentioned in section IV.B.–4.b above, we are proposing to phase in the Tier 2 evaporative standards by the same mechanism as the Tier 2 exhaust standards; e.g., 25/50/75/100 percent beginning in 2004 for LDV/LLDTs and 50/100 percent beginning in 2008 for HLDTs. (as shown in Figure IV.B.–1) As for the proposed exhaust standards, alternative phase-in plans would also be available.

The evaporative emissions standards we are proposing are the same as those that manufacturers' associations proposed during the development of California's LEV II proposal; California ultimately did not adopt these standards. We request comment on all aspects of these proposed evaporative standards and their likely impact on in-use evaporative emission levels. We also request comment on adopting the evaporative emissions standards and phase-in schedule that California adopted (representing about a 75 percent reduction from the standards that will otherwise be in place).

C. Our Proposed Program for Controlling Gasoline Sulfur

When we discussed gasoline sulfur control with the American Petroleum Institute, the National Petrochemical and Refiners Association, and other representatives of the oil industry, they laid out several major points for us to consider in development of our proposal:

• A regional approach to gasoline sulfur control would be more appropriate than a nationwide program. Gasoline sulfur control should be targeted primarily at the areas of greatest environmental need.

• Within the regions, gasoline sulfur standards should be uniform. State fuel initiatives different from any federal regional standards could result in supply disruption and price volatility and should be avoided.

• Adequate lead time would be critical to a successful implementation. Implementing gasoline sulfur control over the next few years involves a number of demands and uncertainties. For example, the technology that is the lowest cost and more cost effective requires sufficient time to develop.

• Permitting and construction of all of these refineries in just four years would be a major challenge. Therefore, streamlining of the permitting process could help address lead time concerns.

• If sulfur levels in diesel fuel were also going to be reduced (or any other changes to gasoline or diesel fuel required) industry would need to know soon so investment discussions could be coordinated.

We have seriously considered the oil industry's input in developing our proposal. While we are not proposing a regionally-based program, as discussed below, we believe the nationwide program we are proposing would provide flexibility in response to many of these concerns about uncertainty and would provide uniformity on a national basis.

The next section of the preamble describes in more detail the industry proposal and our response to their approach, including the concepts of national versus regional scope and the level of the standard. We recognize that refineries face many uncertainties and constraints, including potential future regulation of diesel sulfur that would affect the timing of their ability to meet the proposed gasoline sulfur levels. Consequently, also in this section we propose and request comment on two provisions, a sulfur averaging, banking and trading program and permit streamlining, designed to provide flexibility, to increase lead time, and to ease concern about how other uncertainties would affect decision making concerning gasoline sulfur control.

[40] The industry representatives offered to meet these standards earlier if Tier 2 vehicles were introduced before 2004.

1. Oil Industry Proposal

During the development of this proposal, a large part of the oil refining industry, represented by the American Petroleum Institute (API) and the National Petrochemical and Refiners Association (NPRA), offered a series of constructive recommendations for the design of a gasoline sulfur control program. These proposals, which have progressively addressed more and more of the concerns we had raised about such a program, have a key element in common—the suggestion that different levels of gasoline sulfur control be applied to different regions of the country. These industry representatives observe that some areas of the country need the emission reductions to be achieved from Tier 2 LDVs and LDTs more than others, and that the gasoline distribution system can supply different gasolines to different geographical regions.

The most recent proposal from these members of the oil industry would provide gasoline meeting an average sulfur level of 150 ppm (capped at 300 ppm) to a large region of the U.S. This proposal would cover all states east of the Mississippi river, plus Missouri, Louisiana, and the eastern half of Texas (and any RFG areas in the West), and would begin in 2004.[40, 41] The remainder of the country (excluding California) would receive gasoline meeting a 300 ppm average (450 ppm cap). Further reductions in sulfur levels in eastern states, to a 30 ppm average/80 ppm cap, would be required starting in 2010, unless a study performed in 2004–06 demonstrated no air quality need for further sulfur reductions. If this study found an air quality need for additional reductions, EPA would make recommendations about the appropriate sulfur levels (if different from the proposed 30/80 ppm levels) and the area to receive this lower sulfur gasoline (if different from the region receiving the 150 ppm average in 2004). The industry representatives thus characterized the 2010 standards as "rebuttable," standards because EPA could have to initiate additional regulatory actions to implement the final 2010 standards.

The arguments presented by the members of the oil industry for why this regional program would be reasonable include a consideration of the technical needs of the vehicles and the ability of refining industry to meet the requirements. Based on testing and analyses performed by oil companies and their trade associations, they concluded:

• Automakers can select from a range of design factors to reduce sulfur sensitivity, including engine design, catalyst size, catalyst location, control of air/fuel mixtures, the types and amounts of precious metals used in the catalyst;

• Vehicles can be designed to fully reverse the sulfur effect while meeting both Tier 2 and SFTP emission standards, even if operated for a long time (1,000 miles) on high sulfur fuel;

• This division of the country into two sulfur regions "matches cost to consumers with benefits," since the areas with the greatest air quality need would get the lower sulfur gasoline, while consumers and refiners located in areas without substantial air quality need would not have to pay the higher costs resulting from the lower levels; and

• The regions, as defined, would optimize gasoline distribution based on the existing distribution system, thus reducing the potential for supply shortfalls or other difficulties.

Following the same methodology we used to estimate the future emissions and emissions reductions that would result from our combined Tier 2/gasoline sulfur proposal (presented above in Section III), we estimated the emissions that would occur from a program that combined our proposed Tier 2 vehicle standards with the gasoline sulfur program proposed by the oil industry.[42] As explained below, we believe vehicles meeting the proposed Tier 2 standards that consistently use the higher sulfur gasoline would emit at higher levels than those that consistently use 30 ppm sulfur gasoline, and that vehicles that travel between the East and West (as defined by the oil industry proposal) would experience an irreversible (permanent) loss in as much as 50 percent of the emissions performance after being exposed to high sulfur levels. As a result, our analysis shows somewhat higher total emissions for the program incorporating the oil industry's proposal than would occur if this sulfur effect did not occur. Since the "rebuttable standard" leaves open the possibility that the eastern region will not receive 30 ppm sulfur levels in 2010 and beyond (upon a finding of no air quality need for further reductions), we analyzed that scenario as well. Table IV.C.–1 shows the NO_X emissions we

[41] While a majority of oil companies have approved this proposal, not every U.S. refiner supports all of the provisions summarized here.

[42] As explained in this section, because of sulfur's effect on emissions, we do not believe we could finalize the proposed Tier 2 vehicle standards with sulfur levels averaging significantly above 30 ppm. However, for the purposes of this analysis we did not change the modeled Tier 2 vehicle standards.

calculated for select years for these two scenarios, compared to our proposal.

TABLE IV.C.–1.—NATIONWIDE NO_X Emissions from Tier 2 Standards and Oil Industry Proposed Gasoline Sulfur Program

Year	Total NO_X tons		
	EPA proposal	Oil industry proposal 2004: 150/300 [a] 2010: 30/300	Oil industry proposal, 2010 standard re-butted 2004: 150/300 [a] 2010: 150/300
2007	2,423,000	2,821,000	2,821,000
2010	1,859,000	2,021,000	2,292,000
2015	1,242,000	1,424,000	1,701,000
2020	1,023,000	1,221,000	1,508,000

[a] Sulfur average in East/sulfur average in West.

The industry's proposals have been valuable in helping EPA and all the major stakeholders focus on key issues of the design of gasoline sulfur control options. We have seriously considered these proposals as well as the responses of others to the proposals. We have paid particularly close attention to the issue of the reversibility of gasoline sulfur's emissions impacts, since the environmental benefits to be gained from a regional sulfur program in combination with national Tier 2 vehicle standards hinge on the degree to which the negative impact of high sulfur levels can be reversed when a vehicle is operated later on low sulfur gasoline. We encourage comments on the appropriateness and feasibility of a regional gasoline sulfur program such as the one recommended by the oil industry (in combination with national Tier 2 vehicle standards as proposed today). We are particularly interested in analyses of the environmental and economic consequences of such a proposal.

In addition, others have raised the idea of an alternative temporary regional gasoline sulfur control program. Under this program, which would last from 2004 through 2008, gasoline refined in PADD IV (generally covering the Rocky Mountain states and representing about 5 percent of U.S. gasoline production) would meet an average sulfur standard of 150 ppm with a 300 ppm cap while the remainder of the country would meet a 30 ppm average beginning in 2004. Gasoline refined in PADD IV would have to comply with the 30 ppm average/80 ppm cap beginning in 2009.

This approach would provide the smaller refineries in this region with additional time to make the significant capital investments to desulfurize gasoline. In part because of the smaller scale of the PADD IV refineries, we estimate that the cost of desulfurization would be larger for these refineries than the estimated average cost of meeting a 30 ppm standard.

While the Rocky Mountain region's air quality problems are generally less severe than those in many other parts of the country, we believe that the emission reductions provided by today's proposed program would still be important, for several reasons.

- The Denver and Salt Lake City areas will have ozone levels in the 2007 time frame within 15 percent of the national ambient standards and would benefit from the lowest possible gasoline sulfur levels to assist their efforts to maintain their ozone attainment status.
- Other benefits of the proposed program would also be forgone during the interim period, as discussed above, including the lower secondary PM emissions, improved visibility, and reduced toxic emissions.
- Irreversible damage to vehicle emission control systems in those vehicles that have been fueled in this region at any time during their life would occur.
- PADD IV gasoline is marketed outside the borders of PADD IV.
- The vehicle emission standards would be more difficult to enforce if there were an extended period when vehicles were exposed to gasolines of more than one sulfur level.

We seek comment on the appropriateness of this approach, including consideration of the cost, air quality, and public health impacts as compared to our proposal.

As discussed below, however, we are not proposing a gasoline sulfur control program that incorporates a regional element. We have not been able to satisfy our concerns with the irreversibility of the sulfur effect, since it is not clear that vehicle or catalyst design changes will solve the problem and since we do not believe that the effect is negligible. Without a national low sulfur gasoline program, the air quality benefits of our program would be reduced, particularly in the initial years when the emissions reductions will be most required to help many states achieve attainment with the National Ambient Air Quality Standards. A national program providing low sulfur gasoline everywhere could ensure that the vehicles designed to meet the proposed Tier 2 standards achieved the desired emissions performance, that the investments made by car buyers in cleaner technology would be justified, and that the needed emissions reductions occurred beginning as early as 2004.

2. Why EPA Believes Gasoline Sulfur Program Must be Nationwide

As explained in Section IV.C.3. below, we are proposing that our gasoline sulfur control program apply throughout the country, rather than in a more limited geographic area along the lines of what the oil industry has proposed. In determining the appropriate geographic scope for our proposed program, we considered the implications for the emission control hardware of Tier 2 vehicles, based on the degree to which the sulfur impact on catalysts may be reversible. We considered the degree to which sulfur will impact advanced technology engines and aftertreatment systems. We weighed the impact that sulfur has on onboard diagnostic systems, and what that may mean for state inspection and maintenance programs. We evaluated the environmental implications beyond the ozone benefits to be realized. We also considered the ability of the entire refining industry to control gasoline

sulfur at essentially the same time. After review of all of these issues, it is our judgement that a national program is appropriate and reasonable. The following sections explore these issues in more detail.

a. *Sulfur's Negative Impact on Tier 2 Catalysts Is Irreversible.* We have reviewed data from several test programs designed to characterize both the effect of high sulfur levels on vehicle emissions and the ease and completeness with which this effect was eliminated or "reversed" once the vehicle was operated on low sulfur gasoline. These test programs were performed by auto manufacturers, oil companies, emission control equipment manufacturers and their various associations. All of the vehicles included in these test programs met either EPA Tier 1 or California LEV emission standards and were not designed to comply with either EPA or California supplemental federal test procedure (SFTP) standards. The SFTP standards are intended to better address and control emissions under driving conditions not captured when compliance with our FTP-based exhaust emissions standards is demonstrated, such as operation with the air conditioning turned on or driving at very high rates of acceleration and vehicle speeds (hereafter referred to simply as aggressive driving). This is an important factor in assessing sulfur reversibility, because in contrast to the vehicles that have been tested to date, Tier 2 vehicles would have to meet more stringent exhaust emission standards and would have to meet these standards over the wider variety of operating conditions included in the SFTP provisions. Hence, they would have to be designed to meet the emission standards under all such operating conditions; these design changes may influence the ease with which the sulfur effect is reversed, as explained below.

The vehicles tested exhibited a wide range of reversibility, for reasons that are not fully understood. The LEVs tested in these programs showed, on average, that the effect of operation on high sulfur fuel was reversed after operation on low sulfur fuel if aggressive driving conditions occurred once the vehicle was switched to low sulfur fuel. Roughly 85% of the increase in NMOG and NO_X emissions resulting from high sulfur levels was reversible after operation on low sulfur fuel coupled with more moderate urban driving. (CO emissions were somewhat less reversible under these conditions.) Individual vehicles showed a wide range of responses, however. For example, many vehicles showed substantial irreversibility for one pollutant (NO_X or NMOG) while very high reversibility for the other. In some cases, only half of the initial emission increase due to high sulfur could be removed by driving on low sulfur fuel. Catalyst temperature, the mixture of air and fuel in the engine and the design of the catalyst are all believed to be important factors that affect the reversibility of the sulfur impact. However, to date, no one has been able to demonstrate the specific contributions of these various factors. Also, no one has been able to design a catalyst with both high conversion efficiencies and no or very low sensitivity to sulfur.

These data indicate that the effect of high sulfur levels on emissions from current LEV models driven over a wide variety of operating conditions appears to be partially reversible, particularly if the vehicle is periodically driven aggressively. However, were these vehicles required to meet the SFTP standards, we believe that the degree of reversibility would have been substantially worse.

Studies of the adsorption and removal of sulfur on catalysts have demonstrated that wide variations in the mixture of air and fuel entering the engine (alternating between having a shortage to having an excess of oxygen) directionally help to remove sulfur from the catalytic surface. When driven aggressively, the mixture of air and fuel in the engines of most current vehicles (those not certified to SFTP standards) is quite variable, because precise control of the mixture of air and fuel is primarily done to control emissions. Meeting the SFTP standards will ensure that manufacturers carefully control the mixture of air and fuel over essentially all in-use driving conditions. This absence of widely varying mixtures of air and fuel could therefore inhibit the removal of sulfur from the catalyst once operation on high sulfur fuel ceased. Thus, we project that the sulfur effect on vehicles meeting both the LEV and SFTP standards (vehicles sold after 2000) and vehicles meeting the Tier 2 standards (which will include low exhaust emissions and low SFTP emission standards, too) will be less reversible than the effect shown on the vehicles included in the test programs discussed here.

Another factor that may substantially influence sulfur reversibility is the amount of time the catalyst is exposed to high sulfur fuel. With only a few exceptions, the vehicles in the test programs mentioned above were only driven on high sulfur fuel for a few miles (well under 100) before low sulfur fuel was reintroduced. This appears to limit the extent to which sulfur could permanently disable the effectiveness of the catalyst. However, one vehicle was tested with an aged catalyst system (to simulate a vehicle near the end of the useful life of 100,000+ miles) and driven for extended mileage (more than 1,000 miles) on high sulfur fuel before being retested on low sulfur fuel. (As with the other vehicles, this test vehicle was not designed to be SFTP-compliant; SFTP compliance could further complicate the ability of a vehicle to reverse the sulfur effect.) For this vehicle, only 50% of the NO_X emission effect of high sulfur fuel was reversed upon operation on low sulfur fuel. This is much less than the 85–100% reversibility found with short term exposure to sulfur. Thus, we project that in-use emissions performance of Tier 2 vehicles operated for some time on high sulfur fuel (as would occur if a regional sulfur control program permitted high sulfur levels in a large geographic area) might be substantially compromised. For example, in-use emissions of passenger cars designed to meet the 0.07 g/mi NO_X standard and operate on 30 ppm gasoline would actually be increased by about 50 percent if they were operated on 300 ppm gasoline at any point in their life. Such vehicles might only recover half of the emissions performance otherwise expected, perhaps even less once SFTP compliant designs are incorporated. Furthermore, we believe this effect would be essentially permanent; continued operation with low sulfur gasoline would be unlikely to improve the emissions performance.

The Draft RIA presents our complete evaluation of sulfur irreversibility, based on the data we have obtained to date. We encourage comments on this analysis. Furthermore, we are seeking comment on and will be considering the studies described in Appendix B of the Draft RIA, plus any new information developed or received before a final decision. We welcome any additional data characterizing the irreversibility of the sulfur effect, including what vehicle or catalyst design factors may make exposure to sulfur more or less reversible.

The preceding discussion focused on the irreversibility of the sulfur impact on emissions from current gasoline engine technologies. There are new technologies under development, which could be sold in the U.S. in the middle of the next decade (the same time that Tier 2 vehicles are being introduced), which also appear to be very sensitive to sulfur and largely unable to reverse this sulfur impact. One of these

technologies is the direct injection gasoline (GDI) engine. These engines utilize much more air than is needed to burn the fuel, unlike conventional gasoline engines that operate under conditions where only just enough air to completely burn the fuel is introduced into the engine. This GDI technology allows these engines to be up to 25% more fuel efficient than current gasoline engines and to emit up to 20% less carbon dioxide. GDI engines are currently being introduced in both Japan and Europe (which have or will soon require low sulfur gasolines). Because of the significant operating differences with GDI engines, these vehicles will likely require emission control technology substantially different from that used on conventional gasoline engines. For example, a GDI engine may require a NO_X adsorber to meet the proposed Tier 2 NO_X standard. High fuel sulfur levels quickly and permanently degrade the performance of these NO_X adsorbers. Thus, to enable the sale of advanced, high efficiency GDI engines in the U.S. under the Tier 2 standards, it appears that low sulfur gasoline would have to be available nationwide by the time this technology becomes available.

The fuel cell is another promising propulsion system that is being developed for possible introduction to consumers early in the next century. Fuel cells are being designed to operate on a variety of fuels, including gasoline and diesel fuel. The basic fuel cell technology is highly sensitive to sulfur. Almost any level of sulfur in the fuel will disable the fuel cell. One possible solution is to install a technology that essentially filters out the sulfur before it enters the fuel cell. However, such sulfur "guards" are costly and could not practically be used like a disposable filter (requiring the vehicle owner to change the sulfur guard frequently, much like changing an oil filter) in situations where constant exposure to high sulfur levels occurs. (Even exposure to relatively low sulfur levels will likely require periodic replacement of the sulfur guard to ensure adequate protection for the fuel cell.) Therefore, the amount of sulfur in the fuel must be limited to that which can be removed by one or at most two sulfur guards over the life of the vehicle. Thus, in order for fuel cells operating on gasoline to be feasible in the U.S., low sulfur fuels would have to be available nationwide by the time this technology becomes available.

b. *Sulfur Has Negative Impacts on OBD Systems and I/M Programs.* As discussed in more detail in the RIA, EPA believes that sulfur in gasoline can adversely impact the onboard diagnostic (OBD) systems of current vehicles as well as vehicles meeting the proposed Tier 2 standards. This is an important factor supporting the need for a national sulfur control program. EPA's onboard diagnostics (OBD) regulations require that all vehicles be equipped with a system that monitors, among other things, the performance of the catalyst and warns the owner if the catalyst is not functioning properly. The OBD catalyst monitor is designed to identify those catalysts with pollutant conversion efficiencies that have been reduced to the extent that tailpipe emissions would exceed a specified multiple of the applicable hydrocarbon emissions standard. For California LEV and federal NLEV vehicles, that multiple is 1.75 times the applicable hydrocarbon emissions standard; for federal Tier 1 vehicles, that multiple is 1.5 times the applicable hydrocarbon standard added to the 4,000 mile emission level.

We want to ensure that OBD systems operate correctly, and thus the possibility that gasoline sulfur may interfere with these systems was another consideration when evaluating the need for a national sulfur program. Our evaluation of sulfur's effect on OBD systems was summarized in a staff paper in 1997.[43] We concluded that sulfur can affect the decisions made by the OBD systems. Sulfur appears to affect the oxygen sensor downstream of the catalyst, which is used in the OBD systems, and it is not clear that the conditions that seem to reverse sulfur's effect on the catalyst will also reverse any sulfur impact on the downstream oxygen sensors. Indirectly, sulfur impacts OBD systems because it can impair a catalyst that would otherwise be operating satisfactorily, thereby triggering the OBD warning lights. While this would be indicate a properly operating OBD system, auto manufacturers have expressed the concern that consumers using high sulfur fuel may experience OBD warnings much more frequently than they would if operating on low sulfur gasoline, and that this could lead to a loss of consumer confidence in or support for OBD systems. Consumers may then ignore the OBD warning system and drive a potentially high emitting vehicle (which may have nothing to do with exposure to sulfur), contributing even more to air quality problems. Another possible scenario is that the OBD system may be impaired by sulfur in such a way that it does not register an improperly functioning catalyst, even if the catalyst is impaired for reasons unrelated to exposure to sulfur. This would defeat the purpose of OBD systems.

The NLEV program provides manufacturers the opportunity to request extra preconditioning of vehicles that they believe may be negatively impacted by high sulfur levels, when such vehicles may be included in in-use testing by EPA. We consider such requests on a case-by-case basis. One manufacturer has already requested, and received approval for, a special preconditioning cycle to remove any sulfur from the catalyst of a specific vehicle model, should that vehicle model be included in any in-use testing. We are concerned that a regional gasoline sulfur program would increase the likelihood that manufacturers would be compelled to request special preconditioning cycles for test programs, and believe that the one request we have granted already is indicative of the potential problems that would arise under a regional gasoline sulfur program. While the use of a special preconditioning cycle can protect the manufacturer from liability for high in-use emissions resulting purely from exposure to high sulfur, the in-use emissions from these vehicles would still be higher than expected based on the certified design.

To the extent that future catalysts are more sensitive to sulfur as emission standards become more stringent, the impact of sulfur on catalysts and catalyst monitors becomes proportionately more critical. The more stringent the Tier 2 vehicle emission standards are, the more stringent the OBD malfunction thresholds will be, because those thresholds are expressed as multiples of the applicable hydrocarbon emission standard. Therefore, even if the sulfur effect on future technology vehicles were equivalent in absolute terms to the effect on current technology vehicles, would become more significant in relative terms on those future technology vehicles. Because of this (and our concern about how reversible the effect of sulfur may be), we are concerned that a regional sulfur program could create widespread problems with OBD catalyst monitors for vehicles traveling outside of the low sulfur region. A regional sulfur program would likely result in higher emissions from Tier 2 vehicles in high sulfur regions, and may also result in more OBD-identified catalyst failures in those areas. We are not aware of a technical solution to this problem.

[43] U.S. EPA, "OBD & Sulfur Status Report: Sulfur's Effect on the OBD Catalyst Monitor on Low Emission Vehicles," March 1997, updated September 1997.

The geographic scope of a sulfur control program also has implications for inspection and maintenance (I/M) programs. A regional sulfur control program could affect I/M programs located outside of the sulfur control region. The emissions measured in these I/M programs would likely be higher than those measured in the low sulfur region, possibly necessitating the use of unique emission cut points for Tier 2 vehicles registered in the higher sulfur region. I/M programs located outside of the sulfur control area would need to consider the possibility that the presence of OBD failure codes may be caused primarily by the use of high sulfur fuels, and may have to provide for a catalyst regeneration procedure to try to reverse the sulfur buildup to get a reading of how the catalyst is operating. This could lead to unequal treatment of vehicles located in different regions of the country based solely on their exposure to sulfur, unnecessarily complicating I/M programs. Furthermore, many I/M areas intend to rely heavily on OBD checks rather than emission checks in the future, making the correlation of OBD checks to the emissions from the vehicles very important. Therefore, the potential scenario of increased emissions without OBD detections (due to sulfur-fouled catalyst monitors) would make OBD a less attractive I/M tool in areas with high sulfur fuel. A national program, even one providing limited, temporary exemptions for small refiners, would avoid many of these concerns.

c. *Sulfur Reductions Would Ensure Lower Emissions of Many Pollutants.* One of the major arguments supporting a regional program is that such a program could be targeted at the majority of areas needing ozone controls by getting the NO_X and VOC reductions in the areas with the greatest ozone pollution problems. However, as our estimates of the total emission reductions to be achieved through the combined Tier 2/gasoline sulfur program show (presented above in Section III), there are substantial NO_X and VOC reductions to be attained nationwide with our proposal. In Table IV.C.–1 above, we estimated that our national sulfur control proposal would result in 9–22% fewer NO_X emissions compared to the regional sulfur program proposed by the oil industry, presuming that we implemented Tier 2 vehicle standards consistent with today's proposal and depending on the year in which the emissions reduction is evaluated. The higher emissions from a regional program would be due to the reduced emissions performance of vehicles (Tier 2 and others) located in the West where higher sulfur levels would be permitted and the loss of emissions performance for vehicles located in the East that travel to the West (or are relocated from the West) and are expected to suffer irreversible catalyst damage due to the higher sulfur levels in the West. Even in 2010 and beyond, when the oil industry's proposed program would result in sulfur levels consistent with our proposal in the East, Tier 2 vehicles located in the West or traveling from West to East would see substantial reductions in emissions performance. Furthermore, if the oil industry's proposed 2010 standard were not implemented (on the basis of the findings of the study they propose for 2004–06), the difference in emissions reductions between our proposal and the oil industry proposal climbs to 16–47% fewer NO_X emissions. Hence, the ozone benefits of this proposal would be somewhat smaller if a regional gasoline sulfur program were adopted.[44]

While the benefits of reducing ozone precursors through gasoline sulfur reductions are generally limited to a nonattainment area (as well as areas trying to maintain their attainment status, including those within 15% of the NAAQS standard and upwind locations that contribute transported ozone precursors into those areas), reductions in emissions of other pollutants have broader geographic benefits, as discussed in Section III. For example, sulfur reductions would help reduce emissions of particulate matter, providing some benefit to PM nonattainment areas (which may or may not coincide with ozone nonattainment areas) as well as areas with visibility problems. Sulfur reductions will also have benefits for areas across the country with acid deposition problems. Furthermore, sulfur reduction, by enabling tighter Tier 2 standards and by improving the emissions performance of the vehicles already on the road, will lead to fewer NMOG emissions, since, as explained in the Draft RIA, NMOG emissions are also impacted by gasoline sulfur (although to a lesser extent than NO_X emissions). Some of the NMOG emissions reduced are air toxics. As described in Section III above, air toxics, also known as hazardous air pollutants, or HAPs, contribute to a variety of human health problems. Thus, a national sulfur reduction program would achieve larger benefits than a regional program, and people living in the region with higher-sulfur gasoline would not get the full benefits of reduced air toxics emissions and could suffer adverse health consequences.

d. *The Refining Industry Can Control Gasoline Sulfur.* While evaluating the merits of a national gasoline sulfur program, in addition to considering the technical requirements for vehicles to meet the proposed Tier 2 standards and the potential air quality benefits that could be realized, we also considered the ability of refiners to reduce gasoline sulfur in essentially every gallon of gasoline by 2004. Based on this evaluation, we believe it is technically feasible for refiners to meet the proposed standards and that it is possible for them to do so in the proposed time frame. A summary of our analysis is presented here; we refer the reader to the Draft RIA for more details.

Technologies that enable refiners to significantly reduce the level of sulfur in gasoline have been available for many years. California began requiring low sulfur gasoline (30 ppm average/80 ppm cap) in 1996.[45] Refiners in California are currently producing gasoline that averages around 20 ppm sulfur. In addition, low sulfur gasoline standards similar to our proposal are, or soon will be, implemented by countries in Asia and Europe, and by Canada. These programs provide additional evidence that desulfurization technologies are available to meet a low sulfur gasoline standard, and that the majority of refiners in the industry can reasonably be expected to install and operate these technologies if given a reasonable amount of lead time.

When considering the implications of a sulfur standard, U.S. refiners can be grouped into two major groups: those already producing gasoline that meets, or nearly meets, the proposed requirements, and those that would have to make processing changes to comply. The majority of refiners currently producing relatively low sulfur gasoline today (roughly 15 percent of domestic production) could meet the proposed gasoline sulfur standard with no or very little additional capital investment, and at most a small increase in operating cost. These refiners have achieved their current sulfur levels using traditional sulfur removal technologies, or, in some cases, with refinery configurations that can accommodate very low sulfur crude oils.

Two examples of these traditional technologies are hydrotreating or hydrocracking the feed to the fluidized catalytic cracker unit (FCC), the unit in

[44] See the Draft RIA for information on the evaluation of this and other alternatives.

[45] Prior to that date, gasoline in California was capped at 300 ppm sulfur.

the refinery that produces the largest fraction of gasoline blendstock. These processes are capital intensive and demand large amounts of hydrogen and other utilities, resulting in high operating expenses. Another example is desulfurization of the gasoline stream coming from the FCC unit. Treating the FCC gasoline stream has the advantage of lower capital and operating costs than treating the FCC feed. The major concern with this approach is that the octane value of this gasoline blendstock is reduced at the same time that sulfur is reduced, particularly when the sulfur is being reduced to low levels. This lost octane must be made up by increasing the production of high-octane blendstocks from other units of the refinery, or by the addition of oxygenates. Making up this octane loss adds significantly to the cost of desulfurizing FCC gasoline. We seek comment on any implications of this proposal of recent activities in California relating to the oxygenate MTBE, and of refiners' possible use of oxygenates other than MTBE to make up any octane loss.

Based on current sulfur levels, we believe the majority of U.S. refiners would have to install at least one desulfurization processing unit to lower gasoline sulfur to the proposed levels. Since installation of traditional desulfurization technologies could be quite costly for most refiners, we have been very encouraged to see the recent development of several improved desulfurization processes that are now available at reduced capital investment and operating costs (and which avoid the octane loss that increases the costs of traditional technologies). Examples of these technologies are CDHydro and CDHDS (licensed by the company CDTECH) and OCTGAIN 220 (licensed by Mobil Oil).[46] These technologies use conventional refining processes combined in new ways, with improved catalysts and other design changes that minimize the undesirable impacts (such as the substantial loss in octane) and maximize the effectiveness of the desulfurization approach. Since these processes provide less costly ways to reduce gasoline sulfur, we presume that they would be used by most refiners to meet the proposed gasoline sulfur standard, and have based our economic assessment (summarized in Section IV.D. below) on that presumption.

Some in the refining industry have told us that since there have not been long-term commercial demonstrations of these newer technologies, they would not consider these technologies to be viable and, if faced with our proposed requirements in 2004, they might select the more traditional sulfur reduction processes, resulting in a higher cost to produce low sulfur gasoline. While we understand the hesitation on the part of some in the oil industry to invest in these improved sulfur reduction technologies, we believe many, if not all, of their concerns would be addressed in the next few years. The industry would have four years to prepare to meet our proposed gasoline sulfur requirements. Refiners have been provided a similar amount of time to comply with fuel programs in the past (highway diesel fuel sulfur control, reformulated gasoline under the complex model) and some have told us that three to four years is adequate to allow them to meet gasoline sulfur standards similar to those proposed today. Refiners would have time to grow more comfortable with the improved processes after they have obtained additional data and information from the vendors that license these technologies. Refiners would be able to have their FCC gasolines tested in vendors' pilot plant facilities, which would provide each refiner with more specific information on how the process would function in their particular refineries. Furthermore, we have been informed that there will soon be demonstrations of at least two of the improved desulfurization technologies in existing refineries; the entire industry will benefit from these efforts.

We have heard concerns that small refiners, particularly those in the Rocky Mountain region, would bear proportionately higher economic burdens if they were required to produce gasoline meeting the same sulfur levels as larger refineries located in the Gulf Coast and East. The severity of these economic impacts could result in unreasonably high gasoline prices, potential refinery closures, and supply shortages, according to those raising the concerns. Our analysis, presented here and in the Draft RIA, leads us to conclude that these severe events would not occur. Furthermore, we have recently received a study that suggests that, in fact, small refiners in the Rocky Mountain region will incur costs only slightly higher than the national average.[47] This study concludes that the potential for refinery closures in this region in response to a gasoline sulfur regulation is small, and that even if ten percent of gasoline were negatively impacted there would not be a significant supply shortfall in the region. We have not yet reviewed this study in detail, and we encourage comments on the analysis presented in it. However, having considered the concerns raised about small refiners in general, including those in the Rocky Mountain region, we are proposing special provisions for small refiners to address their unique challenges.

The advent of the improved desulfurization technologies creates an opportunity for a stringent, nationwide, and yet relatively low-cost, sulfur control program. Such a program would still likely be challenging for many if not most refiners. In the program proposed today, we have built in a number of flexibilities that would ease the task of compliance for refiners while maintaining the level of air quality improvements of a less flexible program. In particular, Section IV.C.–3 below presents a sulfur averaging, banking, and trading program that effectively extends the final compliance date by two years. In consideration of all these factors, we believe that under the proposed program, all refiners nationwide should be able to produce very low sulfur gasoline without suffering severe financial consequences.

e. *Other Stakeholders Support National Gasoline Sulfur Control.* In addition to our technical arguments for concluding that gasoline sulfur should be controlled nationwide, we have considered the positions of other parties. Many stakeholders to our decision have expressed to us their support for a national sulfur control program. Automakers, represented by the American Automobile Manufacturers Association (AAMA) and the Association of International Automotive Manufacturers (AIAM), have petitioned the Agency to implement a national, low sulfur gasoline program "as soon as possible." State organizations such as STAPPA/ALAPCO and the Ozone Transport Commission (OTC) have made similar resolutions, and many individual states have also voiced support for a national program. Environmental organizations, such as the American Lung Association

[46] In addition to these technologies, other companies have told us that they are working on developing their own desulfurization technologies. Furthermore, there have been recent advances in an approach called biodesulfurization, which employs bacteria that selectively desulfurizes petroleum. We believe refiners will have an increasing number of technology options to meet our proposed standards.

[47] MathPro, Inc., "Likely Effects on Gasoline Supply in PADD 4 of a National Standard for Gasoline Sulfur Content," Prepared for Association of International Automobile Manufacturers, DaimlerChrysler Corporation, Ford Motor Company, and General Motors Corporation, March 19, 1999.

and the American Council for an Energy Efficient Economy, favor a national sulfur control program, as well. The arguments for a national program presented by these parties include:

- High sulfur levels significantly impair the performance of today's emission control technologies, reducing the emissions benefits of current and advanced vehicles,
- Gasoline sulfur contributes to air quality problems not directly benefitted by vehicle emission standards (PM, SO_X, hazardous air pollutants),
- The sulfur impact on emission controls is largely irreversible, and
- If sulfur levels are not controlled, new, more fuel-efficient vehicle technologies that are as or more sulfur-sensitive than today's vehicles will not be introduced in the U.S.

3. Proposed Gasoline Sulfur Standards

We are proposing to require substantial reductions in gasoline sulfur levels nationwide. Not only would these standards enable the stringent tailpipe emission standards we're proposing for Tier 2 vehicles and ensure that these low emission levels would be realized throughout the life of the vehicle, but they would also help to reduce emissions of pollutants that endanger public health and welfare from vehicles already on the road, including NLEV vehicles. The following sections summarize the proposed requirements for gasoline refiners and importers, special provisions for small refiners, and possible changes to construction permitting requirements that would enable refiners to install gasoline desulfurization technology in a timely manner. We also raise the potential need for changes to diesel fuel to enable diesel technologies to meet the proposed Tier 2 standards. Section VI. provides additional information about the compliance and enforcement provisions that would accompany these proposed requirements. More detailed information in support of the conclusions presented in this section of the proposal is found in the draft Regulatory Impact Analysis.

a. *Standards for Refiners and Importers.* Our proposed gasoline sulfur program balances the goal of enabling Tier 2 emission control technologies with the goal of lowering sulfur as early as the refining industry can practically achieve the required levels. To accomplish both of these goals, we are proposing a set of standards combined with a sulfur averaging, banking, and trading (ABT) program. This proposed overall program would achieve the desired sulfur levels, on average, beginning in 2004—the first year Tier 2 vehicles will be sold—while proposing to allow the use of credits towards compliance with refinery average standards indefinitely (within the limits of per-gallon caps). These requirements would apply to all gasoline sold in the U.S.,[48] based on our belief that emissions must be reduced nationwide to adequately protect public health and the environment and that Tier 2 vehicles operated everywhere in the U.S. require protection from the harmful impacts of gasoline sulfur.

Table IV.C.–2. presents the proposed standards for gasoline refiners and importers. The proposal would require all gasoline refiners and importers to produce gasoline that meets an average standard of 30 ppm sulfur at the refinery gate on an annual basis, beginning in 2004. These requirements would apply to all gasoline, reformulated as well as conventional. In 2004 and beyond this standard could be met through the use of credits generated as early as 2000 by refiners who substantially reduce sulfur levels from current (1997–1998) levels, under the provisions of the proposed sulfur ABT program discussed below in Section IV.C.3.c. Hence, the actual average sulfur levels for gasoline in use could be somewhat higher than 30 ppm. However, to ensure that sulfur levels are being reduced significantly (for the benefit of Tier 2 vehicles and to achieve the other emissions benefits of reducing gasoline sulfur), these in-use sulfur levels would be constrained by maximum corporate pool average standards of 120 ppm in 2004 and 90 ppm in 2005. These standards would represent the maximum allowable average sulfur levels for each refiner, measured across all refineries owned and operated by that refiner, rather than at each refinery. In 2006 and beyond, there would be no corporate pool average standard. Every refinery would have to meet the 30 ppm average refinery gate standard, although refiners could use any banked/purchased credits to meet this standard (as explained in the ABT discussion below). Thus, in 2006 and beyond, the majority of gasoline would average 30 ppm, although some individual refineries could average slightly more or less.

TABLE IV.C.–2.—PROPOSED GASOLINE SULFUR STANDARDS FOR REFINERS AND IMPORTERS [EXCLUDING SMALL REFINERS]

Compliance as of:	January 1, 2004	January 1, 2005	January 1, 2006+
Refinery Average, ppm	[a]30	[a]30	[a]30
Corporate Pool Average, ppm	120	90	not applicable
Per-Gallon Cap, ppm	[b]300	180	80

a This standard can be met through the use of credits as long as the applicable corporate pool average and per-gallon caps are not exceeded, as explained in the text.
b This initial per-gallon cap standard begins October 1, 2003.

To ensure that, even as average sulfur levels are reduced in 2004–2006, gasoline sulfur levels do not exceed a maximum level that we believe is particularly harmful to Tier 2 vehicles, we are also proposing "caps" on the sulfur content of every batch of gasoline produced or imported into the country. As shown in Table IV.C.–2, these caps decline over time, ultimately resulting in a per-gallon limit of 80 ppm in 2006 and beyond. Since Tier 2 vehicles would be sold prior to the start of calendar year 2004, the actual date when the initial sulfur cap standard would take effect at the refinery is October 1, 2003. We are also proposing caps on the sulfur content of gasoline sold at the retail level or otherwise distributed downstream of the refinery, as explained in Section VI.B.

For purposes of compliance, we propose that a joint venture, in which two or more refiners own and operate one or more refineries, be treated as separate refining corporations under the proposed gasoline sulfur requirements.

[48] Gasoline sold in California that meets California's standards would be exempt from meeting the proposed standards, due to our belief that California gasoline already meets or exceeds these requirements. See Section VI.B.

Hence, a refinery owned by a joint venture would be included in the corporate pool calculations of the joint venture, and would not be allowed to be included with other refineries owned by one of the parties to the joint venture in the corporate pool calculations for that party. Given the large number of joint ventures that have been announced recently in the oil industry, we believe this would be an equitable way to handle compliance for joint venture refineries. Furthermore, this approach would increase the number of companies that can generate and trade sulfur credits; a more limited number of multi-refinery companies would tend to bank and trade credits within rather than across corporations. We welcome comments on alternatives to this approach, such as requiring the majority owner in a joint venture to include the jointly owned refinery in his compliance calculations. If you recommend such an approach, please discuss how joint ventures that have (nearly) equal ownership among the parties should be treated for compliance and aggregation purposes.

i. *Why Begin the Program In 2004?*

The primary reason for our proposal to begin the gasoline sulfur standards in 2004 is that this is the first year that Tier 2 vehicles would be required to be sold, and these lower sulfur levels would be needed to avoid significant impairment of the Tier 2 emissions control technology. Furthermore, vehicles already in the fleet would benefit and we would like to maximize that benefit by starting the program as soon as is reasonable. States need the emission reductions that sulfur control would bring as soon as possible due to their SIP requirements in 2007 and 2010. This is reinforced by the fact that several states have already taken the initiative to develop state gasoline sulfur standards. In fact, since model year 2004 vehicles will likely be on the market in the fall of 2003, we are proposing to implement the caps on sulfur levels beginning October 1, 2003. This would help to ensure that sulfur levels are reduced coincidentally with the sale of Tier 2 vehicles, and would also ensure that sulfur levels throughout the gasoline distribution system have been reduced by the start of 2004.

We request comment on the feasibility of the compliance dates summarized in Table IV.C.–2. If these dates are not feasible, what date(s) would be more appropriate, given that Tier 2 vehicles will be introduced no later than model year 2004 and our conclusion that gasoline sulfur reductions must coincide with the introduction of these vehicles? For example, we request comment on the implications of implementing the 30 ppm average standard beginning later than 2004, including potential implication on cost, air quality, and implementation of the proposed Tier 2 vehicle standards. What other factors should we consider if you believe that the proposed implementation dates are not feasible and should be postponed?

We also seek comment on the implications of implementing an average sulfur standard different than the proposed 30 ppm average standard, including levels higher and lower than 30 ppm. Specifically, commenters should address the feasibility of different standards they support, the time frame in which different average standards could be implemented (i.e., in 2003, 2004, or 2005), the potential air quality impacts of such standards, and how such standards would affect the implementation of the proposed Tier 2 vehicle standards.

ii. *How Did We Arrive At the 80 ppm Cap and 30 ppm Average Standards?*

We believe a 30 ppm averaging standard is important and necessary to enable the emission reductions needed from Tier 2 vehicles. The test data we have reviewed, referenced in previous sections of this notice and in the Draft RIA, show that even very low levels of sulfur have some negative impact on catalyst performance. Most of the data available to us were generated through testing with minimum sulfur levels near 30 ppm. We have used this data to conclude that sulfur levels need to be reduced, and to assess, as part of our analysis, the technical feasibility of the proposed Tier 2 vehicle standards. The non-linear relationship between sulfur level and emissions impact (the lower the sulfur level, the greater the incremental increase in emissions) suggests that emission reductions would be ensured by sulfur levels at or near 30 ppm. We believe that requiring the 30 ppm average standard would be necessary to ensure that vehicles regularly use gasoline containing very low amounts of sulfur, regardless of where the vehicles were driven, what time of year it was, or how gasoline production varied from batch-to-batch in a given refinery.

We also believe that an 80 ppm cap standard would be required to provide appropriate insurance for maintaining Tier 2 standards in use and to give automakers an indication of the maximum sulfur levels for which they would need to design their vehicles. The test data we have reviewed show that the greatest increase in emissions comes as the sulfur level is increased from the lowest levels (i.e., 30 ppm). At higher sulfur levels (i.e., above 100 ppm), the catalyst performance is impaired to the extent that an additional increase in sulfur content has a smaller additional impact on emissions. Since the factors that influence sulfur sensitivity vary from vehicle to vehicle, different vehicles will experience different impacts from exposure to specific sulfur levels. None of the data that we have reviewed indicates that a vehicle can be designed to be completely insensitive to sulfur for all types of emissions. Furthermore, as discussed in Section IV.C.2., our concern that roughly half of the sulfur impact on the catalyst would be irreversible for Tier 2 vehicles (with other vehicles being negatively affected as well) provides additional arguments for trying to keep the sulfur cap as close to the average as possible. Hence, to ensure that Tier 2 vehicles maintain the designed emission performance over the life of the vehicle, we believe a cap on gasoline sulfur levels would be necessary, and that 80 ppm would be the appropriate level for this cap.

Setting a cap also would enhance enforcement of sulfur standards by setting a maximum level of sulfur that could be checked at all points in the gasoline distribution process. A sulfur cap significantly lower than 80 ppm could have the unintended consequence of forcing a sulfur average lower than the 30 ppm standard, increasing the overall costs of the program. The proposed level of 80 ppm sulfur for the cap reflects our balancing of several factors, including the potential air quality benefits, economic impacts, compliance flexibility, and the irreversibility of the effects of gasoline sulfur on vehicle emission controls.

As explained in Section IV.D. below, we believe that the combination of our proposed gasoline sulfur standards and the proposed Tier 2 standards would be cost-effective. This judgement about cost-effectiveness reflects what we believe would be an appropriate balance between the costs to be borne by the affected industries and the emissions reductions to be gained. Even though few refiners currently produce gasoline at or near these levels, as explained in Section IV.C.2 above there appear to be no significant obstacles to refiners achieving this level of sulfur control by 2004 (or 2006 if they were to take advantage of the sulfur ABT program). Unless a substantially higher average sulfur standard were set or a substantially smaller fraction of gasoline were affected by our regulations, refiners would have to make a significant investment in technology to desulfurize gasoline. Hence the cost to

refiners would not be substantially reduced if we selected a less stringent average standard. Furthermore, we believe that a lesser reduction in gasoline sulfur levels could require us to reduce the stringency of the proposed Tier 2 standards. A higher average sulfur level would require less stringent standards or more vehicle hardware costs; either would reduce the effectiveness of our proposed combined program.

At the same time, we recognize the need to provide some flexibilities to refiners in meeting our proposed standards, to ensure that the program is implemented in an orderly manner, without severe consequences in the initial months (for example, supply shortages or substantial spikes). Hence, we have proposed to allow less stringent caps in 2004 and 2005 (through 2007 under the small refiner provisions discussed below) to balance the needs of the technology with the regulatory burden, economic impact, and ability of the refining industry to reduce sulfur levels in this time frame. Given that Tier 2 vehicles would be phased in over several years and that the vast majority of gasoline would be capped at 80 ppm by 2006 (when 75% of new LDV, LDT1, and LDT2 sales would be required to meet the proposed Tier 2 standards), we believe that the potential damage to Tier 2 catalysts would be minimized. Furthermore, since the gasoline distribution system is fungible (i.e., gasoline from multiple refiners may be mixed together, and gasoline produced at one company's refinery may be sold at another company's retail station), any gasoline that approached the higher caps in 2004 and 2005 would be highly likely to be diluted by lower sulfur gasoline, further limiting the potential negative impact on Tier 2 vehicles.

We have also proposed to permit compliance with the 30 ppm refinery average with the use of credits indefinitely, not just in the years during which the corporate average is reduced, as long as the applicable per-gallon caps are not exceeded. We would like comments on whether this provision should end, and if so, what date would be appropriate to require every refinery to meet the 30 ppm standard with actual production. We also encourage comments on whether corporate averaging (aggregation of refineries owned by a single entity) should be allowed for compliance with the 30 ppm standard, in 2004 and 2005 (in addition to corporate averaging to the pool standard) and/or beginning in 2006.

In light of our technical conclusions about the need for these standards, and our concerns about the irreversibility of the sulfur effect, we believe the 30 ppm average/80 ppm cap is the appropriate sulfur level to enable vehicles to meet the proposed Tier 2 standards and to maximize the emissions reductions to be achieved from this program in a cost-effective way. We welcome comments on these conclusions. We are also interested in any information on the reversibility of the sulfur impact on NLEV and Tier 2 catalysts that may supplement our understanding of how reversibility may differ with exposure to different sulfur levels and how this difference would impact our selection of the 30/80 standards. We also solicit information about what, if any engine or catalyst design modifications could minimize the irreversibility of the sulfur impact and about how compliance with the SFTP standards could impact irreversibility (for either NLEV or Tier 2 vehicles).

iii. *Should a Near-Zero Gasoline Sulfur Standard Be Considered?*

The auto industry, represented by the Alliance of Automobile Manufacturers, have supported a gasoline sulfur control program that would require 30 ppm gasoline in 2004 with a further reduction to "near-zero" levels (less than 5 ppm) by 2007. They believe that near-zero sulfur levels would enable the emission control technology that would ultimately be necessary to meet standards similar to those we are proposing today. They also believe that very low sulfur gasoline would significantly increase the emission reductions of the program as compared to a 30 ppm sulfur program.

We are also aware of concerns that advanced emission control and fuel efficient technologies, such as gasoline direct injection engines and automotive fuel cells, may require zero or near-zero sulfur levels to achieve Tier 2 emission levels over their full useful life (or in some cases, even to operate for a significant length of time). At the same time, we're aware that there may be technological solutions to these problems that may allow these technologies to operate on gasoline averaging 30 ppm sulfur. For example, it may be possible to regenerate (remove the sulfur from) the emission control technologies used by gasoline direct injection engines on an ongoing basis. Similarly, it may be possible to prevent sulfur from entering a fuel cell through the use of a sulfur "guard" made, for example, of zinc oxide, that might need to be replaced periodically.

We believe at this time that our proposed Tier 2 standards could be met with conventional technology if gasoline averaging 30 ppm is available. Nonetheless, for the reasons put forward by the auto industry and others, we also believe that it may be desirable in the long term for all gasoline in the U.S. to average substantially below 30 ppm sulfur. We encourage you to comment on the question of requiring gasoline sulfur levels under 5 ppm in the 2007 and later time frame. If you are commenting on this issue, we encourage you to take a broad view and to discuss all of the following questions in your comments:

- What technological options would be opened to manufacturers of vehicles and emission control hardware if near-zero sulfur fuel were available?
- What additional air quality benefits would be achieved?
- What changes in vehicle engines and emission control technology would be needed to achieve these emission benefits, absent reductions in gasoline sulfur levels beyond our proposed 30 ppm standard? What would these changes cost?
- What is the maximum sulfur level that advanced technologies, including gasoline direct injection and automotive fuel cells, could be designed to withstand if they are to be commercialized under the proposed Tier 2 standards? In what time frame might substantial commercialization of these technologies occur?
- How feasible is production of near-zero sulfur gasoline for the refining industry? What technologies would be required? How would this vary from refinery to refinery? What additional costs, beyond those expected for a 30 ppm sulfur program, would be incurred? How would the timing of a near-zero sulfur requirement affect refining costs?
- Would equipment used to make 30 ppm have to be modified or replaced to make near-zero sulfur gasoline? If so, how would this affect the time frame in which a near-zero sulfur level in gasoline could be achieved? Would the time frame for achieving these levels be different if refiners were not required to meet a 30 ppm standard? Is there another sulfur concentration that could be easily achieved as an intermediate level before achieving near-zero levels?
- What other issues should we consider in evaluation of further reductions in gasoline sulfur levels?

iv. *Why Are We Proposing Less Stringent Standards for 2004 and 2005?*

We are proposing to permit corporate average sulfur levels to be somewhat higher than 30 ppm, and maximum sulfur levels to be higher than 80 ppm, under the ABT program in 2004 and 2005. This proposal is meant to provide greater flexibility for refiners to meet

our ultimate goal of the 30 ppm standard in an orderly fashion, while limiting the negative environmental consequences. The temporary nature of the ABT program would ensure that any negative consequences for Tier 2 vehicles of these higher sulfur levels (120 ppm average in 2004, 90 ppm in 2005) would be minimal. By the time that the majority of new vehicles sales would be required to meet the Tier 2 standards (2006 and beyond), average sulfur levels in gasoline would meet the 30 ppm annual average standard.

We are interested in comment on the corporate pool average values, and their associated caps. A higher pool average would obviously ease implementation (e.g., 150 ppm average with an appropriate cap in 2004, for example), but we have not proposed a higher average because of our concerns that higher in-use sulfur levels after 2004 are undesirable for emissions from Tier 2 vehicles. We request that commenters supporting higher corporate pool average values discuss how such higher values would affect in-use emission levels of Tier 2 vehicles, as well as NLEV and Tier 1 vehicles.

We also ask for comment on an alternative approach that would implement the corporate average requirement for 2004 (120 ppm) but not require compliance with the 30 ppm standard (with or without credit use) until 2005. The 120 ppm corporate pool average would continue in 2005 and the 90 ppm corporate pool average would be implemented in 2006, with the requirement to meet the 30 ppm standard (with or without credits) beginning in 2005 and extending indefinitely, consistent with the proposed program.

Finally, we request comment on whether refiners should be allowed to comply with the corporate average standards through the use of sulfur credits generated under the ABT program (within the limits of the proposed caps). This would likely render the refinery-specific standards in 2004 and 2005 unnecessary, and thus refiners would only have to comply with the per-gallon caps and corporate averages in 2004 and 2005. However, in 2006 and beyond refiners would have to meet the 30 ppm average at every refinery (with limited use of sulfur credits, to the extent that the 80 ppm cap permits).

We have proposed per-gallon caps of 300 ppm in 2004 and 180 ppm in 2005 at the refinery gate, with slightly higher caps imposed downstream (as explained in Section VI.B below). We believe that downstream caps would be necessary to ensure compliance and protect Tier 2 vehicles. At the same time, we believe caps at the refinery gate would be necessary to guarantee that the environmental goals of this program were met; the corporate and refinery averages alone wouldn't provide the full emissions reductions and environmental benefits we have estimated because, by themselves, they could allow gasoline with high sulfur levels in the system as long as the refiner offset any such high sulfur batches with very low sulfur gasoline. However, there are some arguments for eliminating the per-gallon standard at the refinery gate and simply enforcing a per-gallon cap at the retail level (or some intermediate point downstream). This approach would give refiners and blenders greater flexibility in blending occasional batches of gasoline that exceed the proposed cap standards. These refiners/blenders could sell and transport these high sulfur batches to another party who would blend down the sulfur level to make gasoline meeting the downstream caps. One shortcoming of such an approach (removing the per-gallon cap at the refinery) is that not all gasoline passes through multiple parties before ending up at the retail level; some refiners ship part or all of their production directly from refinery to retail outlet. We welcome comment on whether caps at both the refinery gate and downstream are appropriate. We also encourage your input on whether the caps we have proposed to coincide with the corporate average standards are appropriate. Keep in mind that we need some limitation on sulfur levels to protect the first Tier 2 vehicles that would begin entering the marketplace as early as the fall of 2003.

b. *Proposed Standards for Small Refiners.* As explained in the regulatory flexibility analysis discussion in Section VIII.B. of this document, we have considered the impacts of these proposed regulations on small businesses. As part of this process, we convened a Small Business Advocacy Review Panel for this proposed rulemaking, as required under the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA). The Panel was charged with reporting on the comments of small business representatives regarding the likely implications of possible control programs, and to make findings on a number of issues, including:

- A description and estimate of the number of small entities to which the proposed rule would apply;
- A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule;
- An identification of other relevant federal rules that may duplicate, overlap, or conflict with the proposed rule; and
- A description of any significant alternatives to the proposed rule that accomplish the objectives of the proposal and that may minimize any significant economic impact of the proposed rule on small entities.

The final report of the Panel is available in the docket. The Panel concluded that small refiners were the group most likely to be negatively impacted by the proposed program. (The Panel noted that small gasoline marketers would also have to comply with some portions of a gasoline sulfur program, but did not recommend any regulatory relief for this group of small businesses.) Many of the small refiners the Panel met with indicated their belief that their businesses may close if relief were not considered due to the substantial capital and other costs required to reduce sulfur levels to the 30/80 standard. The Panel recommended that EPA solicit comments on a number of options to provide relief to small refiners, which include some or all of these provisions:

- Providing small refiners a four-to six-year period during which less stringent gasoline sulfur requirements would apply; comment was also recommended on extending this period for up to a total of 10 years.
- Basing each small refinery's gasoline sulfur limit on its individual average sulfur level based on the most recent report(s) to EPA; and
- Granting temporary hardship relief on a case-by-case basis, following the four-to six-year period of relief common to all small refiners, based on a showing of economic need.

The Panel stated its belief that additional time would allow sulfur-reduction technologies to be proven out by larger refiners, thereby reducing the risks to be incurred by small refiners who choose to incorporate these technologies. The added time would likely allow for costs of these desulfurization units to drop, thereby limiting the economic consequences for small refiners. Nationally, giving small refiners more time to comply would help ensure that cross-industry engineering and construction resources would be available. Finally, extending the compliance deadlines would provide small refiners with additional time to raise capital for infrastructure changes.

i. *What Standards Would Small Refiners Have to Meet Under Today's Proposal?*

Upon evaluating the impacts of our proposed gasoline sulfur requirements on small refiners and careful review of the Panel's recommendations, we have determined that regulatory relief in the form of delayed compliance dates is appropriate to allow small refiners to comply without disproportionate burdens. We propose that, for a period of four years after other refiners must start meeting the standards proposed in Table IV.C–2, refiners meeting clearly defined company size criteria be allowed to comply with somewhat less stringent requirements than those just described for refiners and gasoline importers. We propose to define a small refiner as any company employing no more than 1,500 employees throughout the corporation, including any subsidiaries, regardless of the number of individual gasoline-producing refineries owned by the company or the number of employees at any one refinery. This number is based on the Small Business Administration definition of a small refiner for the purposes of regulation.[49] The proposed annual average small refiner standards beginning with 2004 are shown in Table IV.C–3 below, although the cap standards begin October 1, 2003.

TABLE IV.C–3.—PROPOSED TEMPORARY GASOLINE SULFUR REQUIREMENTS FOR SMALL REFINERS IN 2004–2007

Refinery baseline sulfur level (ppm)	Temporary sulfur standards (ppm)
0 to 30	Average: 30. Cap: 80.[a]
31 to 80	Average: no requirement. Cap: 80.[a]
81 to 200.	Average: baseline level. Cap: Factor of 2 above the baseline.[a]
201 and above	Average: 200 ppm minimum, or 50% of baseline, whichever is higher, but in no event greater than 300 ppm. Cap: Factor of 1.5 above baseline level.[a]

[a] The cap standard takes effect at the refinery gate October 1, 2003.

We also propose to apply these provisions to any foreign refiner that can establish that they meet this same definition of small. Since few if any foreign refiners send all of their gasoline production to the U.S., allowing eligible small foreign refiners to meet these less restrictive standards, even on a temporary basis, would be a less restrictive requirement than it will be for small domestic gasoline producers since they may be able to send lower sulfur gasoline to the U.S. without having to incur capital expenses. Furthermore, in many cases foreign refiners are not subject to the same stringent permitting and other regulatory requirements that domestic refiners face. At the same time, we believe many foreign refiners will be installing gasoline desulfurization equipment because of the various international requirements that have been proposed and/or finalized (for example, in Europe, Canada, Japan) that require gasoline sulfur levels to be reduced to levels similar to our proposed standards and thus these companies will not avoid all of these costs. In addition, in most cases we expect importers to be the party responsible for the sulfur level of imported gasoline, and importers are not eligible for the less stringent standards applied to small refiners. Hence, the number of foreign refiners who could benefit (financially and otherwise) from gaining small refiner status is likely to be very small. However, we welcome comments on the competitive and other marketplace implications of this proposal.

We believe that these proposed small refiner standards are reasonable and that they would not conflict with our overall goals of reducing gasoline sulfur levels. nationwide as soon as possible and of reducing gasoline sulfur levels sufficiently to enable and protect the emissions performance of Tier 2 vehicles. Our conclusions are based in part on the fact that only a very small volume of gasoline will be eligible for these lesser standards. We have estimated that small refiners produce approximately 2.5 percent of all gasoline in the U.S. Furthermore, of the 17 refineries that we have identified as meeting SBA's definition of small business, nine already have gasoline sulfur levels less than 90 ppm. Hence, only a very small fraction of the gasoline sold in the U.S. would take advantage of the higher small refiner standards through 2007. By the time that a large number of Tier 2 vehicles could have been impacted by residing in or traveling to areas where higher sulfur fuel is sold, the temporary exemptions for small refiners would have expired. Furthermore, in most cases, gasoline produced by small refiners is mixed with substantial amounts of other gasoline prior to retail distribution (due to the functioning of the gasoline distribution system), likely resulting in only marginal increases in overall sulfur levels. Thus, the sulfur level of gasoline actually used by Tier 2 vehicles should generally be much lower than that produced by individual small refineries who receive unique compliance standards through 2007.

As explained above, we are proposing that compliance under the proposed standards be based on a refiner's being able to show that it meets specific criteria. If a refiner were able to qualify as a small refiner under our definition, it would need to then establish a sulfur baseline for each participating refinery. For small refiners, compliance with the proposed sulfur regulations would be determined on the basis of the sulfur baseline for each refinery owned by that company. The following sections explain these proposed requirements in more detail, to supplement the information be presented above. We also explain how small refiners could obtain an additional two-year exemption upon establishing a hardship case, as well as how small foreign refiners could establish eligibility for compliance under the small refiner provisions.

ii. *Application for Small Refiner Status.*

We are proposing that refiners seeking small refiner status under our gasoline sulfur program would have to apply to us in writing no later than June 1, 2002, requesting this status. In this application, the refiner must demonstrate that as of January 1, 1999, the business and any subsidiaries, including all refining, distribution, and marketing activities, as well as any other activities worldwide, employed 1,500 or fewer employees. We are proposing that in the case of refineries owned by joint ventures, the total employment of both (all) companies would be considered in determining whether the 1,500 employee limit is reached. If a refiner that is not small as of January 1, 1999 subsequently sells part of its business and as a result has fewer than 1500 employees, it would not be eligible for a small refiner status. These provisions would provide stability to the regulated and regulatory parties and ensure that no "gaming" of the program occurs. However, we are also proposing that any new refinery built between January 1, 1999 and January 1, 2001, or a refinery that was not operational as of January 1, 1999, owned by a refiner that meets our proposed definition, could apply for small refiner status no later than June 1, 2002. In this case, we would consider carefully the history of the refinery and

[49] SBA uses a different definition of small refiner for the purposes of federal procurements of petroleum products, and EPA in the past has used criteria based on the processing capacity of the individual refinery and of all refineries owned by one company.

the company in determining whether it is appropriate to grant this refiner small refiner status.

We are also proposing that if a refiner with approved small refiner status later exceeds the 1,500 employee threshold without merger or acquisition, its refineries could keep their individual refinery standards. This is to avoid stifling normal company growth and is subject to our finding that the refiner did not apply for and receive the small refiner status in bad faith. An example of an inappropriate application for small refiner status would be a refiner that temporarily reduced its workforce from 1,600 employees to 1,495 employees prior to January 1, 1999, and then rehired employees after the cutoff date. This would be a bad faith attempt to avoid the intent of the rule. We are requesting comment on this provision.

At any time after June 1, 2002, a refiner with approved small refiner status could elect to cease complying with the small refiner standards and, in the next calendar year, begin complying with the standards specified in Table IV.C–2 and related provisions. However, this decision would apply to all refineries owned by that refiner and once a refiner dropped its small refiner status, it would not be eligible to be reinstated as a small refiner at some later date.

iii. *Application for a Small Refiner Sulfur Baseline.*

A qualifying small refiner could apply for an individual sulfur baseline by June 1, 2002 for any refinery owned by the company by providing a calculation of its sulfur baseline using its average gasoline sulfur level based on 1997 and 1998 production data, and the average volume of gasoline produced in these two years. The proposed regulations specify the information to be submitted to support the baseline application. The baseline calculations should include any oxygen added to the gasoline at the refinery. This application would be submitted at the same time that the refiner applied for small business status; confirmation of small business status would not be required to apply to EPA for an individual sulfur baseline. If the baseline were approved, we would assign standards to each of the company's refineries in accordance with Table IV.C.–2.

Blenders would not be eligible for the small refiner individual baselines and standards because they would not have the burden of capital costs to install desulfurization equipment, which is the primary reason for allowing small refiners to have a relaxed compliance schedule.

iv. *Volume Limitation on Use of a Small Refinery Standard.*

We are proposing that the volume of gasoline subject to the small refinery's individual standards would be limited to the volume of gasoline the refinery produced from crude oil, excluding the volume of gasoline produced using blendstocks produced at another refinery.[50]

Under this approach, the baseline volume for a small refinery would reflect only the volume of gasoline produced from crude oil during the baseline years. In addition, use of the refinery's individual baseline sulfur level during each calendar year averaging period (beginning with 2004) would be limited to the volume of gasoline that is the lesser of: (1) 105% of the baseline volume, or (2) the volume of gasoline produced during the year from crude oil. Any volume of gasoline produced during an averaging period in excess of this limitation would be subject to the standards applicable to refiners not subject to a small refiner standard. In this case, the small refiner's annual average standard would be adjusted based on the excess volume in a manner similar to the compliance baseline equation for conventional gasoline under Section 80.101(f) of Part 40 of the Code of Federal Regulations. However, the small refiner's per-gallon cap standard would not be adjusted.

This limitation would assure that small refiners receive relief only for gasoline produced from crude oil, the portion of the refinery operation requiring capital investment to meet lower sulfur standards. We are requesting comment on this provision and whether an alternative approach may be more appropriate for the stated purpose.

v. *Hardship Extensions Beyond 2007 for Small Refiners:*

Beginning January 1, 2008, all small companies' refineries would have to meet the permanent national sulfur standard of 30 ppm on average and the 80 ppm cap, except small refineries that apply for and receive a hardship extension. A hardship extension would provide the small refiner an additional two years to comply with these national standards. A hardship extension would need to be requested in writing and would specify the factors that qualify the refiner for such an extension. Factors considered for a hardship extension could include, but would not be limited to, the refiner's financial position; its efforts to procure necessary equipment and to obtain design and engineering services and construction contractors; the availability of desulfurization equipment, and any other relevant factors.

By January 1, 2010 all refiners would be required to meet the permanent national average standard and cap. We are requesting comment on the proposed hardship extension, including the factors to be considered in petitions for extension, and the proposed time periods.

vi. *What Alternative Provisions for Small Refiners Are Possible?*

We have proposed one type of program to address the needs of small refiners. We solicit comment on other options so that we can consider these options as we finalize this rule. We encourage comments. We request comment on a range of alternatives, including those listed below, which could be considered when developing unique regulatory requirements for small refiners. We specifically request that the comments address not only the economic but also the environmental implications of the alternative, relative to the program we've proposed.

- Are there alternative or additional criteria that could/should be used to define a small refiner, such as the volume of crude oil processed or the volume of gasoline produced (since the gasoline sulfur standard applies specifically to gasoline)? Other criteria may also be acceptable, such as a different employee number for qualification as a small entity, or basing the count on employees employed in gasoline production only. We welcome your recommendations. Our desire is to limit the number of companies meeting the small refiner definition in order to provide regulatory relief only to those companies that have the economic concerns unique to small businesses. If you recommend criteria other than number of employees, please comment on how those criteria can be shown to limit the number of refineries that will be eligible for the proposed relief.
- Are the caps and averages of the proposed interim standards for small refiners (see Table IV.C.–3) appropriate for the corresponding individual sulfur baseline levels?
- What is an appropriate and sufficient time period for the proposed small refiner interim standards? Would most qualifying small refiners be able to meet the 30/80 standards within four years (six if a hardship extension is granted, which is dependent on the case made by the individual refiner), as proposed? The Panel report suggested that a period of six to ten years could

[50] In addition to gasoline produced from crude oil, a small refinery's baseline volume would include gasoline produced from purchased blendstocks where the blendstocks are substantially transformed using a refinery processing unit.

be desirable to provide sufficient time for small refiners to comply with the proposed standards. What are the arguments for granting more than four years of additional time and what are the environmental implications (and implications for Tier 2 vehicles) of such an extension?

• Should small refineries of multi-refinery companies (companies too large to meet the proposed small refiner criteria) be eligible for small refiner interim standards? Should refineries not producing gasoline as a major product (for example, refineries engaged primarily in the production of lubricants where gasoline is a small volume by-product) be eligible for small refiner interim standards regardless of corporate size/employment?

• If a small refiner operates more than one refinery (while still meeting our proposed small refiner criteria), should that refiner be permitted to aggregate the sulfur baselines and comply with the small refiner standards applicable to that aggregate baseline? Under the sulfur ABT program described below, we are proposing to require refiners to aggregate data from all of their refineries when determining compliance with the 2004 and 2005 corporate average standards (Table IV.C.–2) (but not the refinery gate standards, although we seek comment on that alternative).

• Rather than providing unique standards for qualifying small refiners, would the need for separate small refiner provisions be addressed if we were to adopt a regional sulfur program? In Section IV.C.1. above, we explained our concerns that a regional sulfur program would not achieve the same emission reductions we project for our Tier 2/gasoline sulfur program. However, some have suggested to us that a regional program would address the need for small refiner provisions since the majority of small refiners are thought to sell gasoline in the West. We know of several refiners that appear to meet our proposed criteria for being small that sell at least some of their gasoline production in the eastern U.S. (as defined by the oil industry's proposed program) and thus a regional program would not cover all small refiners. We encourage comments on this alternative, particularly from refiners who could be impacted by such a decision.

• Would a more general hardship provision that would be based on a showing of substantial economic hardship, such a discussed in Section IV.C.4.c., provide sufficient compliance flexibility to address the needs of small refiners?

4. Compliance Flexibilities

In addition to the basic standards applicable to refiners that were explained above, we are proposing two additional programs that will provide flexibility for refiners when complying with the proposed standards. The first is the sulfur ABT program mentioned previously. The second is a program to streamline the construction permitting process so that refiners can make the required process modifications by 2004.

a. *Sulfur Averaging, Banking, and Trading (ABT) Program.* We are proposing that any refiner or importer be allowed to generate, bank, and trade sulfur credits. A sulfur ABT program would accelerate the reduction of sulfur in gasoline and provide refiners with additional flexibility in achieving compliance with the 30 ppm standard in 2004 and beyond. The following paragraphs provide additional information about our proposed sulfur ABT program, to supplement that presented in Section IV.C.–3.a above. We encourage comments on the design elements we have proposed for the sulfur ABT program. If you believe alternative approaches would make the program more useful to the refining industry, please share your specific recommendations with us.

i. *Why Are We Proposing a Sulfur Averaging, Banking, and Trading Program?*

A sulfur ABT program, if properly implemented, would provide the opportunity for a win for both the refining industry and the environment. The flexibility provided by an ABT program could provide refiners more lead time to bring all of their refineries into compliance with the 30 ppm standard, by allowing them to use credits generated at one refinery to delay having to desulfurize gasoline from another refinery. ABT would provide the opportunity for reduced costs by allowing the industry the flexibility to average sulfur levels among different refineries, between companies, and across time. Since, under banking, early reductions have a value during program implementation, ABT provides an incentive for technological innovation and the early implementation of refining technology.

The ABT program could provide meaningful early benefits for the environment because it would allow the Tier 2 standards to be implemented earlier than might otherwise have been possible, and because it would provide direct environmental benefits. The first direct benefit relates to atmospheric sulfur loads. This benefit is largely independent of when credits are generated and used. However, atmospheric deposition and transformation rates of sulfur compounds tend to vary geographically and seasonally and thus we must consider whether a broad averaging program would have different pollutant effects when compared to a more constrained averaging program or a program without averaging. Any potential negative effects of a broad ABT program should be mitigated by the geographic distribution of refineries, the widespread distribution pipelines, and the fungible nature of gasoline. All of these factors, taken together, lead us to believe that any negative effect on atmospheric sulfur levels from ABT (relative to a single 30 ppm average/80 ppm cap in 2004) would be negligible. It should be noted that this situation is further moderated by the pool averages and caps proposed for 2004 and 2005, since these averages and caps would reduce actual gasoline sulfur levels as the ABT program phases in.

Another environmental benefit is related to the effect of gasoline sulfur on catalyst performance, as discussed in the draft RIA. Since catalyst performance depends in part on gasoline sulfur levels, we must consider whether the emissions benefits (measured in g/mi-per-ppm) of early sulfur reductions when credits are generated are essentially the same as the g/mi-per-ppm benefits when the credits are used. The effect of sulfur on emissions from Tier 0 and Tier 1 vehicles, which will dominate the fleet in 2000–2005, is approximately the same when sulfur levels increase from 30 to 150 ppm as it is when sulfur levels increase from 150 ppm to 330 ppm. In other words, for each ppm increase in sulfur levels, approximately the same effect on emissions results regardless of whether the increase is from low levels (e.g., from 30 ppm up to 150 ppm) or from higher levels (e.g., from 150 ppm up to current average levels). Therefore, the emissions benefits from credits generated before 2004 would essentially offset the emissions effects of those credits being used in 2004 and beyond, especially since corporate pool average sulfur levels could not exceed 120 ppm in 2004 and 90 ppm in 2005, and sulfur levels will be capped at 80 ppm in 2006 and beyond.

Nonetheless, there remains concern about the sensitivity of later models (NLEV and Tier 2) to sulfur and about the reversibility of the effect of higher sulfur levels on catalyst efficiency. More explicitly, the relatively few Tier 2 vehicles that would see somewhat higher sulfur levels than 30 ppm in 2004 and 2005 (about three-quarters of

a model year of production) would not be able to fully recover the loss in emissions performance due to the higher sulfur levels. Hence, the corporate averages and caps would be necessary in these interim years. In 2006 and beyond, the 80 ppm cap and the 30 ppm average refinery standard, even with the ongoing use of credits to comply with the 30 ppm standard, would keep in-use sulfur levels very close to 30 ppm. Thus, Tier 2 vehicles sold in 2006 and beyond would receive appropriate protection from gasoline sulfur.

ABT programs must be designed and implemented carefully to be certain that they are sensitive to equity and competitive issues in the industry and do not create the potential for inadvertent emission increases. In the context of gasoline sulfur control, concerns about different baseline sulfur levels and different technological capabilities among refiners must be considered. Even with the proposed lead time, some refiners would find it easier to achieve reductions than would others. This is due to a number of factors, including refinery configuration, product mix (gasoline versus distillates), crude oil sulfur levels, and the ability to generate capital to fund the investment. At the same time the program must be designed to eliminate the possibility of windfall credits and to be sure that the environmental benefits associated with early sulfur reductions offset the potential forgone benefits when the credits are used.

The program we are proposing today attempts to strike a balance among all of these factors. Some of the elements and design features (such as the eligibility trigger and the baseline requirement) were included to address concerns such as timing, disparate capabilities among refineries, and the potential for excessive ("windfall") credits. We are seeking comment on options for dealing with all of the issues we have identified.

The ABT program is voluntary. No refiner or importer qualifying for credits is required to generate them, use them, or make them available to others (except as discussed in Section IV.C.4.a.vi. below). The process for establishing a sulfur baseline and generating and using credits is outlined below.

ii. *How Would Refiners Establish a Sulfur Baseline?*

To establish a sulfur baseline against which credits would be calculated, we propose that by July 1, 2000, each refiner or importer that wants to generate credits submit two pieces of information to the Agency. One would be the volume-weighted average sulfur content for conventional gasoline (CG) for each refinery (or imported by that importer) for 1997 and 1998. The second would be the annual average volume of CG produced by that refinery (or imported by the importer) in those years.[51] [52]

Since we expect summer RFG sulfur levels to decrease in 2000 to approximately 150 ppm (due to the actions refiners will take to meet the Phase II NO_X standards for RFG), we are proposing to set the individual refinery sulfur baseline for summer RFG at 150 ppm, regardless of volume produced in 1997 and 1998. Winter RFG production would be assigned the same sulfur baseline as the refinery's conventional gasoline, without regard to the volume of winter RFG produced in 1997–98. Hence, no reporting of RFG sulfur levels or volumes would be required in setting a sulfur baseline. We encourage comments on the use of different sulfur baselines for summer and winter RFG, particularly regarding whether this could create a disincentive to produce RFG in the summer months. We do not want to jeopardize our RFG program, but at the same time, we want sulfur credits to reflect actions taken by refiners above and beyond their current operations and/or regulatory obligations.

Conventional gasoline produced in 2000 and beyond that exceeded 105% of the CG baseline volume produced at that refinery would be assigned a sulfur baseline (from which credits would be generated) of 150 ppm. This provision is intended to prevent increases in average sulfur levels resulting from increases in CG production. A refiner/importer of conventional gasoline to which oxygenate is added downstream during 1997–1998 could include the downstream oxygenate volume in that refinery's CG baseline, if the refiner can substantiate that oxygenate was added to that gasoline.

A refinery/importer that did not produce/import gasoline during 1997–1998 would be assigned a baseline of 150 ppm each for CG and RFG for the purposes of sulfur credit generation in 2000 and beyond. This provision would also apply to blenders of natural gasoline, butane, or similar non-oxygenated blending components. Such parties would be considered refiners and would need to meet all requirements, such as analyzing each batch of the blending component for sulfur prior to its addition to gasoline. Credits would be based only on the volume of the blending components. We encourage comments on alternative provisions for establishing baselines for refiners/importers that could not establish a 1997–98 sulfur baseline as described above. In particular would 150 ppm be appropriate, or would a greater or lesser sulfur content be most equitable and most environmentally neutral? Should this baseline be tied in some way to the trigger for credit generation in (as discussed below) 2000–2003?

We request comment on several aspects of this baseline provision. The 1997–1998 years for the baseline represent the latest available data and thus best reflects the present state of each refinery's gasoline sulfur levels. However, we already have established baseline sulfur levels for 1990 for most refineries. Except for changes related to RFG, average gasoline sulfur levels have changed little since 1990. Hence, we request comment on whether that 1990 baseline would be a suitable substitute. Alternately, we request comment on whether 1997 and 1998 are the appropriate years to average when establishing a sulfur baseline, given that mandatory use of the Complex Model starting in 1998 could have led to changes in sulfur levels between 1997 and 1998. Since our purpose in proposing to establish sulfur baselines is to try to capture current sulfur levels (within a reasonable date of the 2000 start date for credits to be generated), the sulfur baseline could be based on a single year's data (for example, 1998) rather than a two-year average. We proposed a two-year average to try to capture and accommodate operational fluctuations and changes. However, a single year's data may adequately capture current sulfur levels.

We are not proposing a formal baseline review and/or approval process since the proposal envisions a self-certifying process. Refiners would submit their 1997 and 1998 sulfur baseline data for each refinery to us, and then would generate credits from that baseline in 2000–2003. If we determined, through a refinery audit or other action, that the sulfur baseline was calculated with incorrect data, we would establish a new sulfur baseline and the refinery would subject to that baseline, even if it meant recalculating

[51] Since participation in the sulfur ABT program is voluntary, refines opting not to generate or use sulfur credits do not have to establish a sulfur baseline for this program.

[52] We believe that variations in specific gravity, which could affect the sulfur content of gasoline as determined on a mass basis, will average out over the year and need not be included in the calculations. However, we request comment on whether specific gravity should be considered in the calculation of sulfur baselines (including whether such data exists for 1997–98) and subsequently, in calculating credits generated relative to this baseline.

the number of credits generated in subsequent years. We have used this baseline review process in other mobile source programs and believe it works well, but we request comment this approach.

We considered the possibility that, since refiners report annual production information to EPA, we could issue baselines for each refinery rather than refiners having to submit them to us. However, we do not think this is a possible solution because many refiners comply with our RFG and CG requirements by aggregating the data from all of their refineries. Thus, the data we currently receive from refiners would not allow us to establish an individual baseline for every refinery in the U.S. (unless we went back to 1990 data). However, we would like comment on whether a more formal sulfur baseline approval process (say, a letter from the Agency or a date by which approval can be assumed unless the refiner hears otherwise) would be desirable. Keep in mind that even with a more formal baseline approval process, the baseline could be changed at a later date if we found, during an audit of refinery records, errors in compliance with the proposed baseline requirements. Hence, any up-front approval would only provide certainty that, based on the data reported to us, we believe the refiner had correctly applied the mathematical equations proposed today for establishing a sulfur baseline.

Some have raised the concern that if imported gasoline were allowed to be used for credit generation, as we propose today, foreign refiners might be able to gain an unfair advantage. For example, it is possible that foreign refiners could simply re-blend their gasoline (without installing new capital equipment) and send their lowest-sulfur refinery streams to the U.S. at a lower cost than gasoline produced by domestic refiners that had to reduce overall sulfur levels through desulfurization. Since importers, not foreign refiners, would be the parties assigned a sulfur baseline and eligible for generating credits, we do not believe foreign refiners would have a strong incentive to send lower sulfur gasolines to the U.S. We believe that the benefits of allowing importers to participate in the sulfur ABT program (more players in the credit trading field, more chance for early reductions in gasoline sulfur levels) outweigh the potential detriments. However, we encourage comment on the implications of the decision to allow imported gasoline to be used for credit generation.

Oxygenate blenders would not be able to participate in this proposed credit program because they would not be subject to the sulfur standard. Special provisions would exempt them from having to measure the sulfur content of the oxygenate they blend and from the recordkeeping and reporting requirements of the sulfur program, other than the requirements that apply to all parties that handle gasoline and gasoline blendstocks downstream of the refinery.

iii. *How Would Refiners Generate Credits?*

During the period 2000–2003, credits could be generated annually by any refinery that produced conventional gasoline averaging 150 ppm sulfur or less on an annual, volume-weighted basis. Credits would be calculated based on the amount of reduction from the refinery's CG sulfur baseline.[53] Credits could also be generated from winter RFG based on reductions from the sulfur baseline, if the winter RFG sulfur level averaged 150 ppm or less (on a seasonal volume-weighted basis). Similarly, summer RFG would need to have a seasonal volume-weighted average sulfur level below 150 ppm to be eligible for credit generation, although credits would only be created based on the difference between 150 ppm and the summer RFG sulfur average. Thus, credits would need to be generated separately for conventional gasoline and RFG. Conventional gasoline produced in excess of 105% of the baseline volume could only generate credits for sulfur reductions below 150 ppm, not for the cumulative reduction from the baseline sulfur level. Winter RFG would not be subject to any volume limitations, and thus refineries could generate credits for any volume of winter RFG that contains 150 ppm sulfur or less.

For example, if in 2002 a refinery reduced its annual average sulfur level for conventional gasoline from a baseline of 450 ppm to 150 ppm, its sulfur credits would be determined based on the difference in annual sulfur level (450–150=300 ppm) multiplied by the volume of conventional gasoline produced (up to 105% of the baseline CG volume). If this refinery produced more CG than 105% of the baseline volume, it would only generate credits from that incremental volume if the incremental gasoline were below 150 ppm. (For example, if the refinery's 2002 average CG sulfur level were 100 ppm, it would get 150–100=50 ppm sulfur credits on any volume in excess of 105% of its baseline CG volume, as well as 450–100=350 ppm for the baseline volume up to 105%.)

If this same refinery also produced RFG with an annual average sulfur content of 90 ppm in 2002, it could also receive sulfur credits calculated based on the difference between 150 ppm and 90 ppm (60 ppm) times the volume of summer RFG produced plus 360 ppm (450–90) times the volume of winter RFG produced. A refinery with a sulfur baseline lower than 150 ppm sulfur would only generate credits relative to reductions from its baseline, for either CG or winter RFG. Credits from summer RFG would be based on reductions from 150 ppm.

Several states have implemented or are considering gasoline sulfur control programs. To avoid double-counting of emission benefits, lower sulfur gasoline produced to comply with these state programs would not be eligible for early banking credits under this program.

In 2004 and beyond we propose that credits could only be generated for actual annual sulfur averages below the 30 ppm standard (combining conventional and reformulated gasolines), and only for the difference between the standard and the actual annual sulfur average. (For example, a refinery producing gasoline in 2004 that averaged 25 ppm could generate 30 − 25=5 ppm, while a refinery producing gasoline that averaged 40 ppm would not be eligible for any credits.)

We encourage comments on this credit generation concept. In particular, would these formulas permit sufficient credits to be generated industry-wide to provide adequate credits for use in compliance in 2004 and beyond? If not, what are the limitations on credits and what changes could be made to improve the likelihood that sufficient credits would be generated?

Our proposal to cap volumes on which credits could be generated at 105 percent of baseline levels is intended to preclude the possibility of closely-located refineries generating credits by moving blendstocks. This could occur if a refinery with a relatively low baseline level moved blendstocks to a refinery with relatively higher levels, thus allowing the somewhat artificial generation of credits. We request comment on whether such a provision is necessary and whether the 5 percent cap should be increased to as high as 10 percent to reasonably accommodate normal growth in volume. We raise some potential alternatives to these provisions in Section IC.C.4.a.vi. below, and encourage your consideration of all of these issues in your comments.

[53] If a refinery's baseline average were 150 ppm or less, credits could only be generated for annual average reduction's below the baseline level.

iv. *How Would Refiners Use Credits?*

Credits generated prior to 2004 would have to be used or transferred by 2007. Credits generated in 2004 and beyond would have to be used or transferred within five years of the year in which they were generated. If these credits were traded to another party, they would have to be used by the new owner within five years of the year of transfer. Since the transfer could occur any time within five years of generation, some credits could have a life of up to ten years.

Our proposed ABT program is designed to ease implementation of the new standards and credits would be of their greatest value during phase-in periods. ABT is not necessarily intended to permit a refinery to operate above the standard for a protracted time period. While limiting credit life might reduce the incentive to generate credits and could create a "use or lose" mentality, the credit program would seem to be of relatively small value to any refiner/importer that held credits for five years and did not need to use them. We believe that limiting credit life is appropriate since we must also consider the basic reason for ABT and address concerns about our ability and the ability of the refiners to maintain the integrity of the credit system over many years. EPA requests comment on credit life including options such as limiting life by depreciating their value over a period of years as well as longer or shorter periods of fixed credit value.

We propose that credits could be withdrawn from a refinery's/importer's credit bank or purchased from another refinery/importer to bring the annual sulfur average for each refinery down to the 30 ppm standard beginning in 2004. There would be no geographic constraints on credit trades. However, as explained in Section IV.C.3.a above, in 2004 no batch of domestically produced or imported gasoline could exceed 300 ppm, and a refinery's/importer's actual annual corporate pool average sulfur level could not exceed 120 ppm. (A refiner owning more than one refinery would have to aggregate the respective sulfur levels of gasoline produced at those refineries for determining compliance with the 120 ppm standard.) In 2005, gasoline sulfur would be capped at 180 ppm and the corporate pool average could not exceed 90 ppm. The aggregation requirement would also apply in 2005. As described above, credits would apply only to compliance with the 30 ppm refinery standard, not to the corporate pool average or the cap.

A refiner or importer choosing to participate in the ABT program would be required to file annual reports with the Agency indicating the applicable baselines or standard(s) in ppm sulfur, the annual average(s) in ppm sulfur, and the annual volume(s) in gallons (for each refinery). These calculations would be reported, along with an accounting of credits banked, transferred (sold), or acquired (bought). (For 2000–2003, the reports would only cover credits banked and traded.) The credits would be in units of ppm-gallons.

Thus, for each purchase of credits, as reported on the buyer's annual report, there should be a corresponding entry on the seller's annual report. Through the report, refiners would have to demonstrate that their average sulfur levels (with the use of credits, if necessary) comply with the 30 ppm standard at each refinery. Refiners would also have to demonstrate that the combined production from all refineries meets the corporate average standard. As mentioned above, the actual corporate averages could not exceed 120 ppm in 2004 and 90 ppm in 2005. The identity of refiners/refineries and importers involved in these transactions would be reported, along with the registration numbers assigned to them by the Agency under the RFG/CG program (40 CFR part 80, Subparts D, E, and F).

In addition, we are concerned that the potential exists for credits to be generated by one party and subsequently purchased or used in good faith by another, and later found to have been calculated or created improperly or otherwise determined to be invalid. In this case, both the seller and purchaser would have to adjust their sulfur calculations to reflect the proper credits and either party (or both) could be deemed in violation of the standards and other requirements if the adjusted calculations demonstrate noncompliance with an applicable standard. We have taken this approach in our other fuels enforcement programs. We welcome comments on this provision. In particular, we request comment on whether our program should be designed such that only the seller should be deemed in violation if that party sold invalid credits and, upon correction for this error, was found to have violated one or more standards. In general, mobile source ABT programs hold both parties liable.

For the duration of the credit program, each participating refinery and importer could make deposits to and withdrawals from its "bank account". All transactions would have to be concluded by the last day of February after the close of the annual compliance period (2004, 2005, etc.). It would be up to the industry to establish any mechanisms for linking buyers and sellers. The Agency does not intend to become involved in this marketplace activity.

We are also proposing to allow refiners to miss the 30 ppm standard for an individual refinery and to carry forward the credit debt that would have brought that refinery into compliance in the year the deficit occurred. This is very similar to provisions proposed today for auto manufacturers in complying with the averaging provisions Tier 2 standards. Under this provision, the refiner would have to make up the credit deficit and bring that refinery into compliance with the 30 ppm standard the next calendar year, or face penalties. This program would in no way absolve the refiner from having to meet the applicable per-gallon cap standard. This provision would provide some relief for refiners faced with an unexpected shutdown or that otherwise were unable to obtain sufficient credits to meet the 30 ppm standard. We welcome comment on this provision.

The following Table IV.C.–4 summarizes the compliance dates and program requirements of this proposed sulfur ABT program. See Section VI for more specific information, particularly about the dates that the sulfur caps would apply and the standards that would apply downstream of the refinery.

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Table IV.C.-4
Gasoline Sulfur Program Duration and Effective Dates

<table>
<tr><th>2000</th><th>2000 - 2003</th><th>2004</th><th>2005</th><th>2006</th><th>2007+</th></tr>
<tr><td rowspan="5">Application for Credit Program Baseline due by July 1</td><td>Early Credit Generation for Gasoline with ≤150 ppm Sulfur</td><td colspan="4"></td></tr>
<tr><td></td><td colspan="4">Credit Generation for ≤30 ppm Sulfur</td></tr>
<tr><td>Banking & Trading of Credits</td><td colspan="4">Banking & Trading of Credits</td></tr>
<tr><td></td><td colspan="2">Corporate Average Standards Apply</td><td colspan="2"></td></tr>
<tr><td></td><td colspan="4">Compliance with 30 ppm Average Standard at the Refinery and Importer Level</td></tr>
<tr><td></td><td colspan="4">Phase-in of Downstream Cap Standards</td></tr>
</table>

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v. *Could Small Refiners Participate in the ABT Program?*

We believe that refiners complying under the small refiner provisions outlined in the previous section should not be permitted to use sulfur credits to meet the average standard applicable to their refineries. We are proposing to exclude small refiners from using credits to meet the small refiner standards because the small refiner standards are generally more lenient than the 30 ppm standard and thus these refiners should have less need for a credit trading program than the rest of the industry. Furthermore, small refiners, even those currently producing gasoline near the 30 ppm average, are given an additional two years (until 2008) to meet the 30 ppm standard compared to refiners complying under the sulfur ABT program. We want to ensure that the sulfur levels of the majority of gasoline are reduced on average, and overall, in 2004 and 2005; permitting small refiners to meet the more lenient standards through the purchase of credits could jeopardize that goal by resulting in in-use sulfur levels that are even greater than the maximum small refiner standard (300 ppm average). If a small refiner believed it could generate sufficient sulfur credits in 2000–2003, or obtain such credits through purchases from other refiners, to be able to meet the 30 ppm average and the corporate averages of 120 ppm in 2004 and 90 ppm in 2005, it should choose not to participate in the small refiner program and take full advantage of the sulfur ABT program.

However, small refiners would be permitted to generate and trade sulfur credits if they reduced sulfur levels early in 2000–2003, per the requirements outlined above. Furthermore, a small refiner could sell credits that were generated in 2000–2003 in 2004 and 2005 while at the same time meeting the small refinery standards. A small refiner wishing to generate and sell credits would have to establish the individual refinery sulfur baseline by the deadline specified above for the ABT program (July 1, 2000) but could wait until June 1, 2002 to apply for small refiner status. However, the standards assigned to that refinery (as presented in Table IV.C–3) would be based on the sulfur level from which credits were generated, not the 1997–98 baseline sulfur level, since the refiner would have already demonstrated the ability to meet the lower sulfur level (in this case, 150 ppm or lower on an annual average basis).

At any time, a small refiner could "opt out" of the small refiner program and, beginning the next calendar year, comply with the standards in Table IV.C–2. The refiner would have to notify us of this change in compliance program. Once a small refiner left the small refiner program, however, we propose that it would not be eligible to re-enter the small refiner program. We encourage comments on this provision.

The sulfur ABT program could provide an alternative to offering any small refiner standards, if small refiners were capable of complying with the proposed pool average standards and caps in 2004 and 2005 just as larger refiners could. In this case, all refiners, large or small, could obtain credits necessary to meet the 30 ppm average standard for the two intervening years. However, EPA recognizes that this may not be the best response to the needs of small refiners, and has proposed, as a result of the SBREFA Panel process, alternate standards in section IV.C.3.b of this document. Indeed many small refiners expressed concern during the Panel process that an ABT program would not address their needs. However, we welcome comments on the pros and cons of using the sulfur ABT program to provide regulatory relief for small refiners in lieu of additional regulatory standards unique to small refiners.

vi. *What Alternative Implementation Approaches Are Possible?*

As we were developing this proposal, members of the oil industry and others expressed concern that the ABT program as described above may not be of great value in providing flexibility in complying with the 30 ppm standard in 2004. Several different concerns have been expressed.

Industry representatives have asserted that the opportunity to generate early credits is limited because the proposed lead time would be too short to implement enough of the refinery operational changes and capital investments needed to achieve sulfur reductions before 2004. Additionally, the industry is concerned that relying on early credits generated with what is perhaps the best long-term technology(ies) is problematic because the preferred technology(ies) is new and

does not yet have a proven performance record. Their concern is further exacerbated by the uncertainty in the diesel fuel sulfur picture, the MTBE /oxygenates situation developing in California, and the DI petition discussed below, as well as ongoing state initiatives to reduce sulfur in gasoline before this action is decided upon.

When credits are generated, there is a fear that those that generate them will hoard them, particularly refiners that operate several refineries. And when credits are made available for trade, they may not become publicly available in enough time for them to be considered by others in their capital investment planning, so essentially all refineries would have to take steps to implement 30 ppm technology by 2004. These issues may be of special concern to those moderate sized refiners that are too large to qualify as small entities but do not have enough refineries or refineries of the right gasoline production volume to internally optimize their operations under the ABT program.

Given these uncertainties about credit availability, the refiners may need additional flexibility as a means to provide relief to those that make a good faith effort to comply but are precluded by circumstances beyond their control. These may include unanticipated technological and commercial concerns, credit availability problems, or *force majeure* type events.

We have examined this issue of credit availability and our analysis, which is presented in the Draft RIA, indicates that credits should be available by 2004 for the 2004/5 phase-in. This is based on the fact that the 300 ppm cap in 2004 would require that all refineries with a baseline above 300 ppm reduce sulfur by 2004. And, while they could choose to just achieve 300 ppm, some would need greater reductions to comply with the 120 ppm corporate pool average standard and all would be facing increasingly more stringent requirements in 2005 and beyond. Quite simply, we believe that good business sense would dictate that once a hardware investment is made the refinery would shoot for 30 ppm or less. As the analysis shows, this approach implemented over just three years would yield compliance with the 120 ppm corporate pool average and would generate ample credits. We requested comment on our analysis in the Draft RIA and the underlying analytical approach.

EPA is proposing the ABT program described above in order to increase the refiners'/importers' confidence that they could comply in 2004. And, while our analysis indicates that credits would be available for 2004/2005 compliance, we realize that the ABT program might not meet its objective if the industry did not have confidence that credits would be available in enough time and in sufficient quantities to enable them to make economically efficient investment decisions. It is our desire to provide the industry as much flexibility as possible to ease implementation and phase-in while still meeting the objectives of the program as described above. Toward that end we are asking for comment on several variations on the above proposal that might increase its overall value as a means to provide flexibility in meeting the proposed standards. These can be divided into four categories: (1) Modifications to the design elements of the proposed ABT program, (2) a compliance supplement pool, (3) an allowance-based system, and (4) reserved credits. As constructed below, the compliance supplement pool, an allowance-based system, and reserved credits could be implemented in varying ways to complement the early ABT program. EPA asks comments on the cost and air quality impact implications of these concepts, which are described in more detail below.

Potential Modifications to Proposed ABT Program

Modifications to the base program to increase the potential availability of credits and the time over which these credits could be used might increase the effectiveness of the proposed ABT program. These changes could potentially affect both the near-term when the program was phasing-in and the long term when the 30 ppm standard was fully implemented.

The 150 ppm trigger value is designed to "level the playing field" between companies with relatively low baselines and those with relatively high baselines. Those with high baselines could potentially generate more credits than those with lower baselines, but at a somewhat greater cost since achieving 150 ppm or less becomes increasing more difficult with higher sulfur gasoline. Those with baselines closer to 150 ppm may be able to generate fewer credits, but generate them more easily.

However, requiring that gasoline be below 150 ppm before credits could be generated might preclude credit generation from higher sulfur gasolines that could achieve large, real reductions in sulfur. The size of the potential credit pool could be increased, perhaps dramatically, if the trigger were relaxed or eliminated. We would like comment on trigger values higher than 150 ppm for CG and winter RFG. We would also request comment on expressing the trigger as a percent reduction from baseline levels (e.g., 10–25%) rather than as an absolute value. In addition, we request comment on a hybrid concept under which credits would be generated for CG and winter RFG depending on initial 1997/1998 baseline sulfur levels (gasoline less than 150 ppm sulfur would qualify, gasoline between 150 ppm and 350 ppm sulfur would need a 10–15 percent reduction, and gasoline greater than 350 ppm sulfur would need a 15–20 percent reduction to qualify.) It would be helpful for those suggesting the "no-trigger" approach to also address the issue of equity among refiners with different baselines.

In combination with comments on the trigger, we also ask for comment on the proposed phase-in approach. The 300 ppm cap effective October 1, 2003 and the timing for the 30 ppm average standard would both be important factors affecting the transition to low-sulfur gasoline. Our analysis of the potential availability of credits (discussed above and presented in the Draft RIA) indicates that most of the credits needed to smooth out the transition would be generated by low-sulfur winter RFG. Our analysis also assumes that a substantial number of credits would be generated by refiners investing in technology capable of producing 30 ppm gasoline prior to 2004 to ensure compliance with the 300 ppm cap. If refiners take another approach to meeting the 300 ppm cap (i.e., one that does not result in significant credit generation), fewer excess credits would be available. However, as long as some refiners invest in 30 ppm technology before 2004, we believe sufficient credits would be available. We encourage comment on our proposed phase-in approach.

Specifically, should the interim phase-in program be extended by an additional year to provide an even smoother transition to the 30 ppm standard (e.g., 120/300, 105/210, 90/180 for 2004, 2005, and 2006)? Should the time frame for the 30 ppm average standard be shifted to 2005, for example, while retaining the 120/300 ppm caps for 2004, to provide more time for transition to the 30 ppm standard? Should credits expire after 2007 (as proposed) or would a shorter (or longer) credit life be appropriate?

We are also seeking comment on a concept that would provide an incentive to introduce clean technology early. Under this concept, any sulfur credits generated before 2004 would be banked at a rate of 1.5 to 2.0 times the amount generated, if the annual average for that

refinery were equal to or less than 30 ppm and if the credits resulted from the implementation of gasoline sulfur reduction technology (hardware) not previously used at that refinery. This multiplier would not be available for credits generated from modest operational changes or product separation at the refinery or downstream. Calculation of the un-multiplied credits would be at the refinery level. Neither domestic refiners nor importers could qualify by segregating product or product streams either from their refinery(ies) or in the case of importers from one or more offshore refineries. Also, while refiners/importers could get sulfur credits under ABT through the use of allowable oxygenates, these could not be used as part of the basis for achieving the 30 ppm average. EPA seeks comment on the need for and utility of such an approach and on whether it is appropriate to encourage implementation of sulfur control technology in this manner.

Compliance Supplement Pool

To address concerns about credit supply and the timeliness of the availability of credits, and as a way of providing additional flexibility, particularly to refiners that encounter unexpected problems in complying, we are considering the concept of a government-created and -operated compliance supplement pool for the sulfur ABT program. Under this concept, the government would create a pool of additional credits that could be provided to refiners/importers. This pool would build refiner confidence that a supply of credits would be available in the market and that credits could in fact be considered as part of the business plan for 2004–2005 compliance. Credits from this pool could first be made available in the 2000–2001 time frame and perhaps in subsequent years and could only be used in 2004–2005. This program would supplement the 2000–2003 early credit approach under ABT.

There are a number of issues related to implementing such a program. The size of the pool potentially available for use in 2004 and 2005 would be a critical issue. A larger pool would lower the chance that a refiner/importer could not get credits, but would reduce the environmental benefits of the overall program. Clear rules on the availability of credits would need to be established at the outset so that refiners/importers could make correct investment decisions. In addition, EPA would not want a compliance supplement pool to supplant the need for each refiner to make aggressive efforts to comply in the appropriate time or for a pool to create a disincentive for refiners to generate early credits. If credits from early reductions were available at a reasonable price, EPA would prefer that refiners/importers purchase such credits rather than looking to a compliance supplement pool. EPA seeks comment on the appropriate size of a compliance supplement pool in light of these factors.

The conditions under which a refiner/importer would be eligible for credits are important. For example, the pool could be made available only to refiners that had demonstrated that they had made a good faith effort to comply with the 2004 requirements, but, due to circumstances beyond their control could not do so. Providing credits to a refiner that failed to make good faith efforts to procure and install the technology would create the wrong incentives and could be unfair to competitors that had invested resources to comply.

Options for distributing credits in the pool might include granting credits as rewards to those that generated some early reductions, distribution based primarily or solely on need, equal distribution to all, pro-rata distribution based on volume, making credits available at a fixed price, or a credit auction. These approaches could be considered singly or in combination. For example, the majority of the compliance supplement pool could be distributed based on need, with due consideration of the effect of lack of credits on gasoline supply in a given area. In this case, the remaining portion might be set aside and auctioned off to provide a price signal and a certain source of credits.

It would seem that any such compliance pool should be administered by the government or its agent, but decisions on credit applications would include a public process. As part of our deliberations on this concept we need to decide whether credits could be used to meet the interim corporate pool averages (120/90 ppm) or just the 30 ppm standard or both. Unlike credits generated by refiners/importers reducing actual sulfur levels, any credits under this program would expire after 2005.

Credits from the compliance supplement pool would be government-created and not derived from actual reductions in gasoline sulfur. If credits from the compliance supplement pool were distributed at little or no cost to the receiver, such an approach might create an inequity between those using credits and those who invested in technology to reduce sulfur. As a means to address the potential environmental effects of these government credits and to correct financial inequities among refiners/importers, we seek comment on a provision that would require those awarded these credits from the compliance supplement pool to repay them. The credits to be used for repayment could be generated internally in 2004–2006, purchased surplus credits from other refiners/importers, or simply unused credits originally distributed from the compliance supplement pool. These credits would have to be repaid by the expiration of the period to close credit balances under the interim program (2006, taking into account the one-year credit debt carry-forward provision).

If, as mentioned above, credits were sold at a fixed price or auction, several issues would arise. Should payment be through monetary means? If so, what is EPA's authority to engage in such monetary transactions, and what would be done with any proceeds? There is also an issue with regard to a requirement to both buy credits for cash and then also repay with credits. Alternatively, credits could be allocated based on a determination that a refiner/importer needs the credits, in conjunction with a determination regarding the refiner's/importer's ability and willingness to repay the credits to the pool in the future at a rate greater than 1:1. A credit auction could be held in a similar way, that being the willingness of the bidder to repay the credits in the future at a rate greater than 1:1. In these approaches, a refiner/importer seeking credits might be willing to repay them at a rate of say 1.2:1, thus essentially offering or bidding a 20 percent premium. This could be done as a one-time premium or perhaps as a discount at the time the credits are issued from the pools. Under this system no money exchange would be required. This would simplify set-up of the compliance supplement pool, allow refiners to conserve capital for purposes of capital investment, and create an environmental return for the compliance supplement pool. In addition, it would result in credits being provided to refiners/importers that need them, and that are expected to achieve additional environmental benefits in the future by generating or purchasing excess credits.

The "reasonableness" of the price of credits is critical to any approach requiring repayment from those entities using these credits. We request comment and suggestions on ways to establish reasonable credit prices. For example, as an upper bound, EPA might

set a credit price based on information received during the rulemaking on the cost of sulfur removal for different technologies.

EPA also seeks comment on whether refiners/importers that used credits from the compliance supplement pool should be excused from the repayment of some or all of the credits if they could demonstrate that it was not feasible for them to generate credits themselves and insufficient credits were available at a reasonable price. Finally, EPA seeks comment on how to ensure that refiners/importers that used credits from the compliance supplement pool would in fact repay those credits. One option would be to hold such refiners/importers liable for failure to meet the sulfur standards over the averaging period during which they relied on credits from the compliance supplement pool, if such credits were not repaid in time. EPA seeks comment on this option, as well as other alternatives that would ensure that compliance supplement pool credits were repaid.

EPA has some experience with the compliance supplement pool approach as part of the NO_X SIP Call (ROTR) discussed in Section III above. In this process, a compliance supplement pool was created to address concerns raised by industry about how the requirements might affect the reliability of the supply of electric power. The size of the NO_X compliance supplement pool was created based on an EPA projection of what compliance shortfalls might result if problems developed in implementing the control technology. The NO_X SIP Call pool may be allocated through direct distribution based on need or as a reward for early reductions.

Allowance-Based System

In the context of gasoline sulfur, a traditional allowance program would provide more confidence in the availability of "credits" (surplus allowances) by creating sulfur budgets that the industry (refiners and importers) would be required to meet during the 2004–5 phase-in and perhaps beyond. This budget would be created on a mass basis using gasoline volume and the applicable regulatory standard. This budget would then have to be allocated to individual refiners and importers. If an individual refinery or importer had sulfur levels below its allocation this would create surplus allowances that could be traded. Allowances for 2004 and later would be made available in 2001. This would facilitate the development of a market in allowances, since those planning to beat the requirements for 2004/5 could market their allowances early. This could significantly contribute to the certainty that surplus allowances would be available in time for consideration by others in their 2004 business planning.

While there are other possibilities, it would seem reasonable to allocate the budgets to individual refiners/importers in the 2004 and later time period based upon their individual percentages of the gasoline market. To be consistent with other aspects of this proposal this could be done at the corporate level in 2004/5 and at the individual refinery/importer level in 2006 and later.

One major benefit of such an approach is that refiners/importers could trade part or all of their 2004 and later allowances for future use without EPA involvement and those purchasing these allowances could do so early enough to allow a more orderly and reasoned set of capital investment decisions. Also, since it would be allowances, not credits, that would be traded, the seller could be held solely responsible for failure to meet its budget without involving the buyer. The trading of allowances would be relatively unencumbered. Allowances could be used to meet the budgets allocated under the regulatory standard.

This approach would provide increased flexibility and certainty, it is not clear that a large number of surplus allowances would be created, since surplus allowances would only exist relative to a budget based on the 30 ppm standard. Obviously the number of allowances created in 2004 and 2005 could be increased if the budget were based on a value higher than the 30 ppm regulatory standard, but this would require a fundamental change in overall program design. Alternatively, the number of surplus allowances might be increased if the allowances program were started earlier. For example, refiners/importers could be allocated budgets beginning in 2001 based on the product of their 1997/1998 sulfur baselines in ppm (with appropriate adjustments for RFG Phase II) and their gasoline volume. Any reductions in the average sulfur levels or volume from the baseline level during that 2001–2003 time period would result in surplus allowances.

While the idea of pre-2004 allowances has merit, it requires the *de facto* implementation of a standard before 2004 (since each refiner's/importer's budget would in effect be a standard), in order to establish allowances. And, in contrast to the ABT program where participation is voluntary and no requirements exist before 2004, an allowance system would require refiners subject to the allowance program to hold sufficient allowances to cover their calculated mass emissions starting in 2001.

In principle, an allowance system could be designed to incorporate all of the features of an ABT credit system as described above. We are interested in comment on the viability of such an allowance program as an alternative to the traditional ABT program and whether such a program would have to be mandatory for all refiners/importers in order to be effective. For example, could we structure an allowance program such that the refiner opts into if it intends to generate or use allowances or opts out of if it does not? We are also interested in comment on the parameters of such a program, including the appropriate budget levels, methods for distributing the budgets to refiners/importers, and whether allowances could be used to meet the corporate pool averages, the regulatory standard, or both. As with the ABT program, we would like to hear your views on the years over which such a program should apply (e.g., should it start in 2001?, should it extend beyond 2005?), as well as the other regulatory requirements that should apply in each year.

We also request comment on whether the allowance program could be established as a supplement to the credit program. If an allowance program is implemented along with a compliance supplement pool and/or early ABT we are interested in comments on how to make credits fully exchangeable among the programs. We are also interested in comments on how the programs could/should be integrated. For example, could we let a refiner/importer generate early ABT credits and at the same time sell 2004–2005 allowances?

Reserved Credits

EPA is also aware of concerns regarding whether refiners that earned or received credits would make them available in a timely manner to those that needed them, particularly to small- to mid-sized refiners/importers. If an adequate number of credits were not available in a timely manner and for a reasonable price, small- to mid-size refiners would have no choice but to pursue near term capital investment to comply in 2004. This might be the appropriate course for many of these refineries, but we do not think it is appropriate for them to be precluded from the same flexibility as larger refineries.

We are seeking comment on whether we should require that a set percentage (e.g., 1015%) of all credits generated in early ABT (2000–2003), awarded

through the compliance supplement pool, or earned through the allowance-based approach either must be retired or offered for trade outside of the refining company that originally generated or was granted them. Under such a provision, refiners/importers would be required to set aside a percentage of credits/allowances they generate, but could choose whether to retire them or offer them for sale at a fair market price to another refiner/importer. Regardless of which option the refiner/importer chose, the results would be beneficial—the environment would benefit if credits are retired, and credit availability would improve if the refiner chose to sell credits. We are also interested in your views as to how this objective might be accomplished.

EPA also asks comment on the disposition of credits that were put up for trade one or more times during the period 2004–2006 but did not sell during that period. This could be the case if a credit owner offered credits for sale at a price in excess of fair market value and thus they were not purchased by another party or if credit supply significantly exceed demand. In this kind of situation, should the credits be retired or revert to the generator at a full or reduced rate (e.g., 50%) for future use in compliance determinations? We request comment on whether such a provision for reserved credits would be needed by small- to mid-sized refiners and whether the reservation of 10–15 percent of credits would be sufficient to address the concerns. We also seek comment on whether such a pool should be supplemented by the government through an auction to ensure that the pool size is adequate and whether such a pool could be useful in helping to establish a market price for company owned credits.

b. *Refinery Air Pollution Permitting Requirements.* As discussed previously in this document, this proposed program would result in significant emission reductions from reducing sulfur in gasoline nationally, through the emission reductions from the current fleet of vehicles and ensuring the efficacy of new technologies in future vehicles. In order to achieve this environmental benefit as soon as possible, we want to be sure the public is aware of the full range of available methods for expediting permits required for refinery process changes to reduce gasoline sulfur. Expedited permitting also will facilitate refiners' ability to generate sulfur credits, under today's proposed sulfur Averaging, Banking and Trading program, described in the previous section.

There are two key Clean Air Act permitting programs that refiners must comply with when making changes at their existing facilities to implement gasoline sulfur control—the New Source Review (NSR) program and the Title V operating permit program. Typically, both of these programs are administered by state/local permitting agencies, with EPA oversight. While the basic requirements of these programs are dictated by the Clean Air Act and EPA regulations, the specific requirements of each state/local permitting program may vary.

We recognize that compliance with these air permitting requirements is an integral component in any plan to implement the gasoline sulfur control program under the schedule proposed today. To help refiners meet the permit requirements, below we discuss the possible mechanisms to address the substantive requirements of the major NSR and Title V programs, including possible opportunities to streamline and expedite the processing of permit applications. Finally, we conclude this section by discussing possible tools that we are currently testing in the experimental Pollution Prevention in Permitting Program (P4), which promotes permit streamlining and flexibility for Title V operating permits, along with increased pollution prevention activities. We encourage commenters to provide suggestions for additional opportunities to streamline the permitting process to accommodate the implementation of the proposed gasoline desulfurization requirements for the refining industry sector.

The American Petroleum Institute (API) has sent a letter to EPA outlining its concerns about the potential impact of various permitting requirements on the industry's ability to meet future gasoline sulfur standards, as well as their suggested options for permit streamlining.[54] This letter is included in the docket for this rulemaking. We are aware that individual refineries are in different situations regarding the modification to current operation that would be needed to meet the proposed sulfur standard and the regulatory requirements applicable to those modifications. Based on the limited information available at present, some refineries may not increase emissions significantly, and others may find it most economical to make on-site emission reductions at the plant to avoid emission increases. Accordingly, we request comment on the extent to which the various mechanisms to streamline the permitting process discussed in this section are in fact needed or useful. We request that commenters supporting such streamlining describe the specific refiner situations in which they believe streamlining is needed, and encourage them to provide any suggestions for additional opportunities to streamline the permit process to expedite refineries' preparation to meet the proposed sulfur standards.

i. *New Source Review Program.*

The New Source Review (NSR) program,[55] as it applies to existing major sources of air pollution, requires that a preconstruction permit be issued before a source begins construction of any project that would result in a significant net emissions increase. With respect to NSR, we anticipate that refineries will fall into one of two categories if the proposed sulfur standards are implemented. The first category consists of those refineries that would be able to avoid major NSR by demonstrating that the physical and operational changes needed to reduce gasoline sulfur do not result in a net emission increase of the quantity that would require a major NSR permit. Major NSR would not apply where: (1) The proposed changes would not result in an emissions increase at the refinery; (2) the increase is, in and of itself, less than "significant" [56]; or (3) the refinery "nets" the project out of review. In most cases, even where a refinery change to accommodate the production of lower sulfur gasoline does not trigger the major source NSR program, the project still will be subject to a state's general, or "minor," NSR program.[57] The second category consists of those refineries that would experience a significant net emissions increase as a result of process changes necessary to accommodate gasoline sulfur control and, therefore, will trigger major NSR applicability and the attendant permit process (e.g., nonattainment NSR or Prevention of Significant Deterioration). Accordingly, such facilities must obtain a major source preconstruction permit prior to making these process changes.

As described previously in today's document, there are several types of process changes refineries could make to meet the proposed gasoline sulfur

[54] Letter from William F. O'Keefe, Executive Vice President, American Petroleum Institute, to Bruce Jordan, U.S. EPA, Office of Air Quality Planning and Standards, dated February 12, 1999 (Docket item IIG–304).

[55] See 40 CFR 51.165, 40 CFR 51.166, 40 CFR 52.21, 42 U.S.C. 7475, and 42 U.S.C. 7503.

[56] EPA's and state/local regulations for major NSR define "significance" levels for various pollutants.

[57] This permitting program applies to the construction or modification of any stationary source. See 40 CFR 51.160 and 42 U.S.C. 7410(a)(2)(C).

levels. Traditional sulfur removal technologies include installing a hydrocracker upstream, or a hydrotreater upstream or downstream, of the fluidized catalytic cracker (FCC) unit, the unit that produces the largest fraction of gasoline. There also are improved desulfurization technologies, CDHydro and CDHDS (licensed by the company CDTECH) and OCTGAIN 220 (licensed by Mobil Oil). These technologies use conventional refining processes combined in new ways, with either improved catalysts or other design changes to maximize gasoline desulfurization effectiveness with minimal negative effects, such as octane loss. To different degrees, all these technologies involve the use of a furnace and, thus, have the potential to increase pollutants associated with combustion, such as NO_X, VOCs, PM, CO, and SO_2. The addition of these technologies also could result in equipment leaks of petroleum compounds, which could increase emissions of VOCs and other pollutants. It also is possible that the increased removal of sulfur from the gasoline stream might require increased capacity of a number of refinery processes, such as the sulfur recovery unit (SRU), which converts hydrogen sulfide into elemental sulfur and is associated with SO_2 emissions. The emission increase associated with a desulfurization project will vary from refinery to refinery, depending on a number of source-specific factors, such as the specific refinery configuration, choice of desulfurization technology, amount of gasoline production, and type of fuel used to fire the furnace.

While we do not have sufficient information at this time to estimate the number of refineries nationwide that will trigger major NSR, we believe it could be substantial, given that over 100 refineries in the country would be required to make desulfurization process changes under today's proposal. Estimates from one vendor indicate that its desulfurization process could result in emission increases that are considered "significant" in severe ozone nonattainment areas (i.e., greater than 25 tons/year of NO_X and VOC), which would trigger major source nonattainment NSR review. Since the significance threshold generally is lower in certain nonattainment areas (i.e., those nonattainment areas classified as serious and above for ozone), refineries located in those nonattainment areas may be the most likely to trigger major NSR review. There are many refineries located in ozone nonattainment areas (e.g., parts of the Gulf Coast).

NSR Applicability Principles

A refiner's ability to avoid triggering major NSR by keeping emission increases below the major NSR applicability cutoffs will depend primarily on the case-by-case circumstances of each refinery. Nevertheless, numerous means by which a source can otherwise legally avoid major NSR permitting are available to all refineries for consideration and possible use. In addition, as discussed below, the Agency is prepared to work with refineries to explore the use of certain NSR applicability mechanisms (i.e., plant wide applicability limits or "PALs"), where appropriate.

To the extent needed, we intend to work with state/local permitting authorities to provide assistance with the proper application of the NSR rules on an expedited basis for permits involving refinery desulfurization projects. We want to ensure that applicability decisions are made at the earliest possible opportunity and consider the full spectrum of options available so that a refiner can adjust, or possibly reconfigure, planned desulfurization projects so as to prevent significant emission increases and thereby avoid major NSR within the framework of the current regulations. In addition, timely applicability decisions will provide added certainty as to the applicable NSR requirements and, where a major NSR permit is needed, how to best to expedite the issuance of a permit.

Depending on the nature of the physical or operational changes necessary to accommodate desulfurization projects, the NSR applicability process for major modifications can be a complex and time consuming exercise. The NSR regulatory provisions require that a proposed physical change result in a significant net emissions increase in order for the change to be considered a modification and therefore subject to NSR. We expect that there likely will be questions regarding which, and how, existing emission units are affected by the change, including how to calculate the magnitude of the emissions change for major NSR applicability purposes. We are committed to working with refiners and state/local air pollution control agencies to clarify and ensure that, in applicability analyses for gasoline desulfurization projects, only those emissions increases resulting from the physical or operational changes necessary to comply with gasoline desulfurization requirements are included in the applicability analysis.

In doing an applicability analysis for major NSR, refineries should analyze their past, current, and future operations and emissions to determine whether it is possible to avoid major NSR based upon their facility-specific circumstances, including the use of previous emission reductions at the facility to "net" out of NSR. Similarly, sources might avoid NSR by using Plantwide Applicability Limits (PALs) to cap emissions. Emissions netting is a term that refers to the process of considering certain previous and prospective emission changes at an existing major source to determine if a net emissions increase will result from the proposed new project. Where the sum total of creditable increases and decreases across the refinery is less than significant, major NSR would not apply. In addition, if the proposed emissions increase from a proposed project (in this case, a project undertaken to reduce gasoline sulfur levels) is by itself, without considering any decreases, less than significant, major NSR would also not apply.

PALs may provide another opportunity for refineries to avoid triggering major NSR applicability. The voluntary, source-specific PAL is a straightforward, flexible approach to determine whether changes at an existing major source of air pollution result in a significant net emissions increase. By restricting (or "capping") a facility's emissions to a level representative of current actual emissions, a PAL allows a source to change operations and equipment without having to undergo major NSR permitting. For example, as long as refinery activities do not result in emissions above the PAL cap level, the refinery would not be subject to major NSR, regardless of the nature of the activity. Under a PAL, instead of a case-by-case assessment of whether a proposed change is subject to or excluded from major NSR, the refinery manager knows that as long as the refinery stays within its emissions cap, major NSR will not be triggered. Production units may be started and stopped, production lines reconfigured, and products changed and revamped without delay from major NSR permitting.

Because of these advantages, the Agency previously has proposed to incorporate PALs in all of its NSR regulations (see 61 FR 38250, 38264, July 23, 1996), and has worked with state permitting authorities to develop PALs for individual sources. Likewise, the Agency is committed to exploring the propriety of authorizing PALs for refineries subject to the final gasoline

sulfur control rules. We are examining our authorities to assure they support these approaches. Should it be necessary, EPA stands prepared to issue final regulations to make PALs available to sources making changes to comply with these gasoline sulfur control requirements.

We are further committed to investigating with affected refineries whether a PAL might be a valuable tool for managing a number of other Clean Air Act requirements. For instance, depending on the relevant state rules, a PAL also could include terms that allow facility changes to be made without triggering minor NSR. It is our experience that, in the cases where PALs have been applied, both industry and air pollution regulators have benefitted from the regulatory certainty and simplicity a PAL provides. The use of a PAL can enhance a refinery's ability to make appropriately designated changes quickly, without having to evaluate a baseline for each modification, determine the contemporaneous increases and decreases, and engage in other time-consuming netting procedures required under the major NSR program on a case-by-case basis. A PAL also can encourage a source to reduce emissions voluntarily (e.g., from pollution prevention or other emission reduction efforts), so that it has sufficient room for growth (under the PAL) to accommodate increased emissions from future process changes.

Approaches to Expedite the Processing of NSR Permit Applications

Notwithstanding the availability of the major NSR applicability principles and mechanisms discussed above, we anticipate that it will not be possible for all refineries subject to the gasoline desulfurization requirements to prevent significant emission increases and avoid major NSR. Additionally, even those facilities that are able to avoid major NSR likely will be required to obtain a state minor NSR permit. For facilities subject to major NSR, the timing of permit issuance could vary depending on many factors, including the complexity of process changes, the type of permit required, air quality impact, control technology reviews, and the state's overall permit workload. It is not uncommon for issuance of a major source preconstruction permit to take six to 12 months from the receipt of a source's complete permit application. In addition, determining the applicable permitting requirements for refineries is often complex, due to the wide array of emission points and processes.

To help expedite the NSR permitting process, we suggest the following streamlining approaches. Since state/local governments typically are the lead permitting agencies, we will work closely with them on any of these efforts. We solicit comments on the efficacy of these approaches and opportunities for additional streamlining. We are particularly interested in understanding whether these permit streamlining approaches could enable refineries to begin voluntarily producing lower-sulfur gasoline earlier than the compliance dates proposed today, so that the environmental benefits may be realized sooner than 2004 and ABT credits (see previous Section) could be generated.

- *Federal guidance on streamlining certain major NSR permitting requirements, such as control technology and compliance parameters.* Although the major NSR permit is a case- and source-specific evaluation, we could provide guidance on certain aspects of refinery projects designed to reduce fuel sulfur that share a common requirement or circumstance. For example, for refinery projects permitted in the same time frame, the Lowest Achievable Emission Rate (LAER) requirement should be the same for identical emissions units regardless of the location of the individual refinery. In this case, we could define for the industry what emissions levels would be expected to meet LAER and provide model permit conditions, including appropriate monitoring, record keeping, and reporting. Although Best Available Control Technology (BACT) determinations require case-by-case considerations, we also could issue guidance setting out a level of emissions that, in our view, satisfies BACT for the class or category of emission units associated with refinery desulfurization. We expect that providing BACT and LAER guidance would help to expedite major source permitting and add more certainty to the permit process. Consequently, for any applications processed within a discrete time frame, a presumptive federal LAER and/or BACT could be established.
- *Availability of offsets.* The major NSR permitting provisions require that a significant emissions increase of nonattainment pollutants must be offset by emission reductions from other sources. We solicit comment on the need for offsets by refineries making modifications to meet the proposed sulfur standards, and the expected size or volume of any offsets that may be necessary. In addition, to the extent offsets may be useful or necessary, EPA requests comment on whether on-site emissions reductions at the refinery could be used to avoid the expected emissions increases that would otherwise occur. We will work with refiners and state/local air pollution control agencies to explore options and possible new approaches that would help ensure the availability of offsets. For example, it may be possible to establish pre-funded offset pools, designed specifically for offsetting emissions increases resulting from gasoline desulfurization projects. We believe that the establishment of preapproved offset banks or pools could greatly expedite permitting in nonattainment areas.

To help give certainty that offsets will be available, we seek comment on how and whether emission reductions resulting from vehicles operated on low sulfur gasoline could be used as offsets by refineries implementing gasoline sulfur controls. For example, it may be possible for a state, within a given nonattainment area, to set aside a portion of the emission reductions expected from vehicles operating on low sulfur gasoline and dedicate those reductions for use as offsets by refineries. These offsets would have to meet all the criteria currently established for being creditable, and could not be "double-counted" by the state for other SIP planning purposes. We request comment on the ability of emission reductions from the use of low sulfur gasoline to meet the Clean Air Act's criteria for creditable offsets for NSR purposes. Since securing offsets can be a significant challenge to sources undergoing major NSR permitting in nonattainment areas, we believe this approach could substantially speed up, and add certainty to, the permitting process. We believe this approach is worth evaluating, given the enormous emission reductions resulting from the use of low sulfur gasoline, and given that some refineries will trigger major NSR solely as a result of the process changes needed to produce this new gasoline. Finally, EPA seeks comment on whether providing the ability to use the emissions reductions resulting from the use of low sulfur gasoline in vehicles as offsets for refineries producing low sulfur gasoline can be limited to this specific situation. Specifically, EPA requests comment on the concern that providing this option to refineries would allow the use of such emissions reductions as offsets for other stationary sources.

As discussed above, we believe that refineries in ozone nonattainment areas could be the most likely to trigger major NSR review, based on net emission increases of NO_X and/or VOCs. The proposed Tier 2/gasoline sulfur control program is expected to result in over

500,000 tons of NO_X reductions and over 100,000 tons of VOC reductions nationwide in 2004 (the first year of implementation), as well as substantial reductions in particulate matter and sulfur dioxide, as described elsewhere in this document and the draft Regulatory Impact Analysis.[58] In a given nonattainment area, the program could result in hundreds to thousands of tons of NO_X and VOC reductions, depending on the inventory of cars and light-trucks in the area. For example, for the New York metropolitan area, EPA projects NO_X emission reductions of 7,344 tons and VOC emission reductions of 1,285 tons in 2004 resulting from the proposed Tier 2/gasoline sulfur control program.[59] We anticipate that only a small fraction of these total emission reductions in a given area would be needed for use as offsets for refineries implementing gasoline sulfur control projects.

• *Model permits and permit applications.* It may be possible to develop an individual, or series of, model permits or permit applications for gasoline desulfurization projects. Rather than each individual refinery having to develop its own permit application from scratch, a generic permit application form could be developed to address common issues. To file a major source application, a refinery would only need to fill in the blanks as they may relate to case-specific assessments, such as air quality impacts. Similarly, a model permit could contain all necessary compliance measures avoiding the time spent in developing individual permit conditions. Model permits or permit applications would serve as templates, thereby eliminating much of the time and uncertainty associated with processing each application.

• *EPA refinery permitting teams.* We could establish a team of experts to be available as a resource, as needed, to refineries and state/local agencies to troubleshoot permitting issues that may develop with individual applications. The team could be made up of EPA permitting experts empowered to make decisions and resolve issues quickly.

In addition to the above opportunities to streamline the permitting process, we encourage states to process a refinery's request to implement changes at a facility to meet gasoline desulfurization requirements as a priority and on an expedited basis. Priority treatment, in combination with the above opportunities to streamline the process, would ensure that permit applications associated with gasoline desulfurization changes are processed as expeditiously as possible. Given the enormous environmental benefits that we estimate would be achieved as a result of the proposed gasoline sulfur control requirements, we believe such expedited and special processing is appropriate.

ii. *Title V Operating Permit Program.* We recognize that the changes to be made by refiners to implement gasoline sulfur controls typically would involve not only NSR preconstruction permitting requirements but also those of the title V operating permit program. Title V requires owners or operators of "major" and certain other sources to obtain an operating permit—a document that identifies all emissions units, their applicable requirements as developed in accordance with the Clean Air Act, and monitoring and other permit conditions to provide a reasonable assurance of compliance with each of the applicable requirements on an ongoing basis. Most of the refiners likely are "major" sources subject to title V, due to their plant-wide level of emissions. As with other process changes, prior to implementing gasoline sulfur controls, refiners would need to work with their state, local, or tribal permitting agency to determine what requirements apply and what changes might be required to the source's title V permit application or permit (if one has been issued).

A critical element of any successful title V permitting strategy to accomplish the necessary desulfurization is how best to integrate the procedural and substantive requirements of the title V and NSR permit programs. We believe the title V permitting process provides an excellent opportunity to accomplish this integration and to impart greater certainty into the ultimate approvability of a gasoline desulfurization project under both permit programs. Depending on a specific permitting authority's program and when the desulfurization activity would occur relative to the issuance of the refinery's initial title V permit, the NSR preconstruction permit and the title V permit processes might be done in parallel or in sequence.

Where the title V permit is issued before the desulfurization activity commences, this permit must be updated before operation of the changes that would also be subject to NSR. In this case, we suggest that the preconstruction permit review process, managed by the permitting authority, be merged with the title V permit revision process so as to satisfy the procedural safeguards and the same substantive requirements of the NSR and title V programs at the same time.[60] If this is done, the title V permit may be administratively amended to incorporate the contents of the NSR permit prior to operation of the desulfurization process changes. Where the appropriate NSR action (major or minor) approving the desulfurization changes precedes the issuance of a source's initial title V permit, the applicable NSR process can still be "enhanced" to address title V obligations. Here, in order to determine approvability under both title V and NSR, the permitting authority can issue a separate title V permit specifically for the desulfurization project in advance of the title V permit that will be issued subsequently for the rest of the site. Finally, if issuance of the title V permit issuance for the entire source would precede the NSR construction, depending on several factors, the permitting authority could conduct simultaneous permit processes to accomplish preconstruction approval of the desulfurization project and title V approval for the operation of the project in conjunction with the entire refinery source.

Beyond synchronizing when the two permit programs would be implemented, we recommend that permitting authorities take approaches in the substantive permitting of the desulfurization projects that will both assure compliance with all applicable air requirements and result in a more flexible and efficient permit design. We encourage that the approaches in the

[58] Although these emission reduction estimates are for the combined Tier 2 emission standards/gasoline sulfur control program, in 2004, nearly all these emission reductions would be attributed solely to vehicles fueled by low sulfur gasoline, since vehicles meeting the Tier 2 emission standards would comprise only a small fraction of the vehicle fleet.

[59] See draft Regulatory Impact Analysis, Chapter III.

[60] The concept of a merged NSR/title V process refers to the combination of the title V review process with any otherwise applicable state preconstruction review process, where such process satisfies the procedural requirements of the title V's permit revision, permit review, and public participation provisions. Example state review processes that may be eligible for merger include, but are not limited to, preconstruction review of major or minor NSR, source-specialized State Implementation Plan revisions, and procedures implementing section 112(g) of the Clean Air Act. Under a merged process, activities are only presented in a public forum once, rather than in sequence, to avoid duplication of process. Upon completion of the merged process, a successful project would have met all federal permitting requirements, including review by the public, EPA and affected States, and opportunities for EPA objection and public petition, and can implement both processes without delay. Qualifying activities that have received preconstruction review permits meeting the requirements of 40 CFR 70.7(d)(1)(v) may be incorporated into title V permits as administrative permit amendments.

title V "White Papers"[61] be considered to focus both the content of title V applications and permits. In particular, we recommend that permitting authorities and owners or operators of refineries consider the "streamlining" of multiple applicable requirements applying to the same project. Under the streamlining concept, where multiple applicable requirements apply to the same emission unit(s), the permitting authority may develop one emission limit (with associated monitoring, recordkeeping, and reporting) that assures compliance with all applicable requirements. For example, several aspects of the control requirements necessary to implement our maximum available control technology (MACT) and new source performance standards (NSPS) requirements, State Implementation Plan (SIP), and NSR programs (including both major and minor NSR, as applicable) could be considered for streamlining per White Paper Number 2. Where successful, this streamlining will result in a single control requirement (or emission limit), coupled with appropriate monitoring, recordkeeping, reporting, and testing requirements that yield a reasonable assurance of compliance for all subsumed requirements.[62]

We also are willing to explore applying to the varying situations of sulfur removal at refineries certain permit design approaches that have previously been limited to some permitting pilot projects. In particular, in partnership with permitting authorities, we have been working with selected industries at specific sites to conduct Pollution Prevention in Permitting Project (P4) pilots. These projects respond to the Administration's goals for reinvention in order to implement environmental permit programs in a more streamlined fashion, while assuring required levels of environmental protection. Based on our prior experience with these regulatory reinvention projects, permit design options for refiners implementing gasoline desulfurization projects might include, but are not limited to, any of the following approaches:

- Advance approvals of certain types of changes in title V, including those subject to minor NSR.[63]
- Provisions that where met would prevent another requirement from applying (e.g., plant wide applicability limits (as noted above) to address potential major NSR applicability).
- Model permit conditions, such as a presumptive, streamlined approach to meet all applicable control technology requirements to expedite permitting decisions, where applicable.
- Adding terms to a title V permit so as to preauthorize a faster permit revision process where one is necessary to add further details within an approved approach (e.g., the minor instead of significant permit modification process).
- Permitting the worst-case emissions scenario to address all applicable requirements applying in a range of possible operating scenarios or to prevent certain requirements from applying.
- Permitting alternative compliance options where an owner or operator of a source needs the flexibility to vary the compliance approach with changing refinery conditions.
- Using pollution prevention approaches to facilitate compliance with applicable requirements and/or required permit terms.

We recognize that the situations for refineries affected by the proposed gasoline sulfur control program can vary widely (e.g., sulfur level in the gasoline, size of the stream, air quality status of the area, etc.), and that the actual permit approach for an individual refinery may be a combination of certain options outlined above and previously for streamlining NSR. Any title V approach must, however, assure compliance with all applicable requirements linked to the necessary construction and provide a meaningful opportunity for all affected parties to review the appropriateness of a proposed approach as it would apply to a particular site. For example, where new desulfurization units would be required and would be well controlled so as to result in emissions below the threshold for triggering major NSR, then an advance approval of minor NSR requirements in combination with certain operationally limiting conditions might be an appropriate strategy. Where the addition of such a unit would trigger major NSR, then the strategies that combine the reviews and streamline the requirements of both title V and major NSR offer promise. In a few cases, reblending of high sulfur gasoline blend stocks, blending in low sulfur oxygenates, or using sweeter crude oil might be sufficient to achieve the necessary sulfur reductions and require few, if any, additional title V permit terms to implement.

iii. *EPA Assistance to Explore Permit Streamlining Options and Solicitation of Comment.*

We are committed to exploring the possible approaches described above. Accordingly, if there is sufficient interest and need, as expressed in comments on this proposed rule, within the refining industry and among state permitting authorities, we will hold a P4/flexible permit workshop focused on the permitting of the refining industry arising from the gasoline desulfurization program. Additionally, should a permitting authority and owners or operators of affected facilities within a common jurisdiction express a desire for a specific flexible permit project aimed at the development of permit language to facilitate refinery activities to reduce gasoline sulfur, then in accordance with already established principles for initiating similar permit projects, we would be willing to work with a designated refinery. We intend that the approaches derived from such efforts could then serve as a template as needed for use by other refineries and state permitting authorities, provided the approaches are modified to conform with all applicable state title V and NSR requirements.

We believe that application of one or more of the approaches described in today's document would reduce any burden of meeting NSR permit requirements and revisions to title V permit applications or permits to incorporate the gasoline desulfurization requirements adopted in the final rule. However, the use of one or more of these approaches would have accompanying resource requirements. For example, it is possible that the initial resources required to establish a PAL, and the attendant monitoring, recordkeeping and reporting requirements, could involve as much time and resources as associated with a typical NSR permit. However, once established, a PAL could provide more flexibility and minimize future resource demands than more traditional permit approaches. Accordingly, we request that permitting authorities, owners or operators of affected facilities, and the public comment on whether use of the

[61] *White Paper for Streamlined Development of Part 70 Permit Applications*, Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA, July 10, 1995 and *White Paper Number 2 for Improved Implementation of the Part 70 Operating Permits Program*, Lydia N. Wegman, Deputy Director, Office of Air Quality Planning and Standards, U.S. EPA, March 5, 1996.

[62] See Section II.A. of White Paper Number 2.

[63] Advance approval means that a particular project (or class of projects) like one to accomplish gasoline desulfurization and its support activities would be preapproved for title V purposes before its actual construction, provided that the terms of the title V permit governing the advance approval are met. The Agency has a possible non-binding interpretation of the Title V regulations that would provide for the advance approval of certain new emission units and control devices. See 63 FR 50279, 50315–20 (Sept. 21, 1998) (Section IV.L., Permitting and Compliance Options/Change Management Strategy, in National Emission Standards for Hazardous Air Pollutants for Source Categories: Pharmaceuticals Production).

approaches described in today's document will achieve appropriate streamlining of controls and requirements arising out of this rule and meet the objectives of the NSR and title V permitting programs.

c. *Should Hardship Relief Be Available?* Elsewhere in this document (Section IV.C.3.b.), we propose a hardship provision that would apply to small refiners. EPA seeks additional comment on whether it should adopt a hardship provision allowing for compliance with standards less stringent than those proposed today during the early years of the program. While EPA believes that it is feasible for most refiners to meet the proposed standard by 2004, the Agency is seeking comment on whether it may be appropriate to allow refiners with substantial economic hardship circumstances to apply for relief from compliance with the sulfur standard for a limited time period.

Such a hardship provision would need to contain appropriate criteria to limit the provision to a narrowly drawn set of circumstances. This might include criteria such as ability to raise capital to make necessary refinery investments in time for 2004, given the current size and ownership of the refinery, the physical characteristics of the refinery, the volume of gasoline at issue, ability to purchase credits to comply, and any efforts by the refiner to limit sulfur that are already underway or have been attempted. The provision would also need to contain criteria to ensure that it would not undermine the emissions reduction goals of the Tier 2/sulfur program and would not allow large amounts of gasoline with sulfur levels significantly above 30 ppm into the market. For example, this might include a volume limit on the use of less stringent standards in hardship circumstances. It would also need to include an endpoint, so that the relief is short-term and the refinery would then have to meet the same standard as all other refineries. For example, EPA would not expect that hardship relief will be needed beyond 2009.

Under such a provision, we expect that refiners would be subject to a reasonable level of control, albeit less stringent than the proposed standards. At a minimum, sulfur levels at a particular refinery should not be permitted to be higher than 1997–1998 baseline levels and in no event should the average sulfur level be greater than 300 ppm. EPA also seeks comment on the appropriate time frame for allowing relief in hardship circumstances. EPA solicits comments on whether any refiners would encounter significant hardship in meeting the proposed standard. EPA solicits comment on the implications of any such hardship provision on small refiners and its relationship to the small refiner provisions proposed in this document. Finally, EPA seeks comment on the implications of a hardship provision on the proposed ABT program.

5. Consideration of Diesel Fuel Control

As explained in Section IV.B. above, the proposed Tier 2 standards would apply to both gasoline- and diesel fuel-fueled vehicles. Currently very few light-duty vehicles operate on diesel fuel. Given what we know about gasoline vehicles, we believe it is reasonable to anticipate that the use of exhaust aftertreatment devices may be required, and that these technologies may have similar sensitivities to sulfur that the catalysts used on gasoline engines have. However, we do not yet have enough information to be able to conclude that diesel sulfur levels need to be reduced in the same time frame that Tier 2 vehicles are introduced. A decision to require reductions in diesel sulfur levels could have significant implications for the refining industry, both because it would likely require capital expenditures over and above the significant costs that would be incurred in controlling gasoline sulfur, and because for some refiners concurrent control of gasoline and diesel sulfur may be the most economical solution. Hence, due to the implications for automotive manufacturers and for diesel fuel producers, a decision on whether to require diesel fuel sulfur reductions needs to be made as soon as possible.

Automobile and diesel engine manufacturers and state air quality agencies have recently asked us to set new fuel quality requirements for diesel fuel used in highway vehicles.[64] The manufacturers believe that such requirements, especially controlling diesel fuel sulfur content to very low levels, could produce large environmental benefits by enabling dramatically lower-emitting diesel engines equipped with exhaust aftertreatment devices. The viability of such technologies would, of course, affect the feasibility of the proposed Tier 2 emission standards for diesel vehicles. Currently, highway diesel fuel is regulated under standards we set in 1990. These standards, which became effective in 1993, limit the concentration of sulfur in diesel fuel to a maximum of 500 ppm; they also control the amount of aromatic compounds in the fuel (55 FR 34120, August 21, 1990).

Diesel engine manufacturers have argued that implementing Tier 2 standards without concurrent diesel fuel changes would be unfair to diesels because diesel fuel quality is worse than gasoline fuel quality, especially considering that the Tier 2 rulemaking includes proposed improvements in gasoline quality to enable advanced three-way catalytic converters. Some argue that, beyond fuel-neutrality considerations, diesel fuel quality improvement is needed to combat global warming because it will facilitate the marketing of more diesel vehicles and, in their opinion, thereby reduce emissions of global warming gases. Others counter that such benefits are illusory and that diesel vehicles should be discouraged because diesel exhaust is a serious health hazard, a hazard that improvements in fuel quality would do little to mitigate.

To address the issue of diesel fuel changes, we will issue an Advance Notice of Proposed Rulemaking (ANPRM) in the near future. We encourage interested parties to review and comment on the issues raised in the ANPRM. On the basis of this information, if appropriate, we plan to publish a proposal on standards for diesel fuel in the next several months. This would provide some degree of clarity regarding our plans in this area in time to help affected industries to then make their own plans without undue disruption. This is especially important for the petroleum refining industry in planning capital outlays to accomplish sulfur reduction in gasoline, and potentially diesel fuel, at the most economical point in the refining process.

Several diesel vehicle manufacturers have raised the concern that unless or until lower sulfur diesel fuel is available, the sulfate component of diesel PM may be particularly difficult to control to very low emission levels. They have encouraged us to express the proposed PM standards in terms of non-sulfate PM to provide manufacturers flexibility in how they balance the control of sulfate and non-sulfate PM components.

[64] See the following contained in the docket for this rulemaking: Letter from Robert J. Eaton, Chrysler Corporation, Alex Trotman, Ford Motor Company and John F. Smith, Jr., General Motors Corporation, to Vice President Al Gore, July 16, 1998; "STAPPA/ALAPCO Resolution on Sulfur in Diesel Fuel," October 13, 1998; Letter from S. William Becker, Executive Director of STAPPA/ALAPCO, to Carol Browner, Administrator of U.S. EPA, October 16, 1998; Letter from Jed R. Mandel, Engine Manufacturers Association, to Margo T. Oge, Director, Office of Mobile Sources, EPA, November 6, 1998.

We request comment on such an approach, including specific comments on the following:

- Whether or not such an approach could be justified on an air quality basis, given the potential for very high sulfate PM emissions due to unrestrained sulfate production in diesel catalytic converters;
- Whether such an approach should be limited to the interim PM standards and be discontinued when the Tier 2 standards are fully phased in;
- How this approach should be phased out if low-sulfur diesel fuel were to be phased in; and
- Whether a cap on sulfate PM should accompany such an approach and what value (in grams per mile) would be appropriate for a cap.

D. What Are the Economic Impacts, Cost Effectiveness and Monetized Benefits of the Proposal?

Consideration of the economic impacts of new standards for vehicles and fuels has been an important part of our decision making process for this proposal. The following sections describe first the costs associated with meeting the new vehicle standards and the new fuel standards. This will be followed with a discussion of the cost effectiveness of the proposal. Lastly, we will discuss the results of a preliminary benefit-cost assessment that we have prepared.

Full details of our cost analyses, including information not presented here, can be found in the Draft RIA associated with this rule. We invite comments on all aspects of these analyses.

1. What Are the Estimated Costs of the Proposed Vehicle Standards?

To perform a cost analysis for the proposed standards, we first determined a package of likely technologies that manufacturers could use to meet the proposed standards and then determined the costs of those technologies. In making our estimates we have relied both on publicly available information, such as that developed by California, and confidential information supplied by individual manufacturers.

In general, we expect that the Tier 2 standards will be met through refinements of current emissions control components and systems rather than through the widespread use of new technology. Furthermore, lighter vehicles will generally require less extensive improvements than larger vehicles and trucks. More specifically, we anticipate a combination of technology upgrades such as the following:

- Improvements to the catalyst system design, structure, and formulation plus some increase in average catalyst size and loading.
- Air and fuel system modifications including changes such as improved microprocessors, improved oxygen sensors, leak free exhaust systems, air assisted fuel injection, and calibration changes including improved precision fuel control and individual cylinder fuel control.
- Engine modifications, possibly including an additional spark plug per cylinder, an additional swirl control valve, or other hardware changes needed to achieve cold combustion stability.
- Increased use of fully electronic exhaust gas recirculation (EGR).
- Increased use of secondary air injection for 6 cylinder and larger engines.
- Heat optimized exhaust pipes and low thermal capacity manifolds.

Using a typical mix of changes for each group, we projected costs separately for LDVs, the different LDT classes, and for different engine sizes (4, 6, 8-cylinder) within each class. For each group we developed estimates of both variable costs (for hardware and assembly time) and fixed costs (for R&D, retooling, and certification).

Cost estimates based on the current projected costs for our estimated technology packages represent an expected incremental cost of vehicles in the near-term. For the longer term, we have identified factors that would cause cost impacts to decrease over time. First, since fixed costs are assumed to be recovered over a five-year period, these costs disappear from the analysis after the fifth model year of production. Second, the analysis incorporates the expectation that manufacturers and suppliers will apply ongoing research and manufacturing innovation to making emission controls more effective and less costly over time. Research in the costs of manufacturing has consistently shown that as manufacturers gain experience in production, they are able to apply innovations to simplify machining and assembly operations, use lower cost materials, and reduce the number or complexity of component parts.[65] These reductions in production costs are typically associated with every doubling of production volume. Our analysis incorporates the effects of this "learning curve" by projecting that the variable costs of producing the Tier 2 vehicles decreases by 20 percent starting with the third year of production. We applied the learning curve reduction only once since, with existing technologies, there would be less opportunity for lowering production costs than would be the case with the adoption of new technology.

We have prepared our cost estimates for meeting the Tier 2 standards using a baseline of NLEV technologies for LDVs, LDT1s, and LDT2s, and Tier 1 technologies for LDT3s and LDT4s. These are the standards that vehicles would be meeting in 2003.[66] We have not specifically analyzed smaller incremental changes to technologies that might occur due to the interim standards between the baseline and Tier 2. In many cases, we believe these changes will not be significant based on current certification levels. For others, manufacturers can use averaging and other program flexibilities to avoid redesigning vehicles twice within a relatively short period of time. We believe this is likely to be an attractive approach for manufacturers due to the savings in R&D and other resources.

For the total annual cost estimates, we projected that manufacturers will start the phase-in of Tier 2 vehicles with LDVs in 2004 and progress to heavier vehicles until all LDT2s meet Tier 2 standards in 2007. For LDT3s and LDT4s, we projected some sales of Tier 2 LDT3s prior to 2008 for purposes of averaging in the interim program and that the phase-in of Tier 2 vehicles would end with LDT4s in 2009.

Finally, we have incorporated what we believe to be a high level of R&D spending at $5,000,000 per vehicle line (with annual sales of 100,000 units per line). We have included this large R&D effort because calibration and system optimization is likely to be a critical part of the effort to meet Tier 2 standards. However, we believe that the R&D costs may be overstated because the projection ignores the carryover of knowledge from the first vehicle lines designed to meet the standard to others phased-in later.

The evaporative emissions standards we are proposing today for LDVs and LDTs are feasible with relatively small cost impacts. We estimate the cost of system improvements to be about $4 per vehicle, for all vehicle classes. This incremental cost reflects the cost of moving to low permeability materials, improved designs or low-loss

[65] "Learning Curves in Manufacturing," Linda Argote and Dennis Epple, Science, February 23, 1990, Vol. 247, pp. 920–924.

[66] Even though the NLEV program ends in the Tier 2 time frame, we have not included the NLEV program costs or benefits in our analysis, since EPA analyzed and adopted NLEV previously.

connectors. R&D for the evaporative emissions standard is included in the R&D estimates given above for the tailpipe standards. We have made no projections of learning curve reductions for the evaporative standard.

Table IV.D.–1 provides our estimates of the per vehicle increase in purchase price for LDVs and LDTs. The near-term cost estimates in Table IV.D.–1 are for the first years that vehicles meeting the standards are sold, prior to cost reductions due to lower productions costs and the retirement of fixed costs. The long-term projections take these cost reductions into account. We have sales weighted the cost differences for the various engine sizes (4-, 6-, 8-cylinder) within each category.

TABLE IV.D.–1.—ESTIMATED PURCHASE PRICE INCREASES DUE TO PROPOSED TIER 2 STANDARDS

	LDV	LDT1	LDT2	LDT3	LDT4
Tailpipe standards:					
Near-term (year 1)	$76	$69	$132	$270	$266
Long-term (year 6 and beyond)	46	43	99	214	209
Evaporative Standard	4	4	4	4	4

2. What Are the Estimated Costs of the Proposed Gasoline Sulfur Standards?

As explained in Section IV.C., most refiners will have to install capital equipment to meet the proposed gasoline sulfur standard. Presuming that refiners will want to minimize the cost involved, refiners are expected to desulfurize the gasoline blendstock produced by the fluidized catalytic cracker (FCC) unit. Recent advances have led to significant improvements in hydrotreating technology by CDTECH and Mobil Oil (OCTGAIN) that lower the cost of desulfurizing FCC gasoline; we understand that similar technologies are being developed by other parties. Since these improved desulfurization technologies represent the lowest cost options and are expected to be used by most refiners needing to install desulfurization equipment, we estimated the cost of desulfurization based on their use.

For our analysis, we estimated the cost of lowering gasoline sulfur levels in five different regions of the country (Petroleum Administration Districts for Defense, or PADD), starting from the current regional average in each PADD down to 30 ppm. We then converted the regional cost to a national average per-refinery cost, and calculated a national aggregate cost and cents-per-gallon cost.

Based on this analysis we estimate that, on average, refiners in the year 2004 would be expected to invest about $45 million for capital equipment and spend about $16 million per year for each refinery to cover the operating costs associated with these desulfurization units. Since this average represents many refineries diverse in size and gasoline sulfur level, some refineries would pay more and others less than the average costs. When the average per-refinery cost is aggregated for all the gasoline expected to be produced in this country in 2004, the total investment for desulfurization processing units is estimated to be about $4.7 billion dollars, and operating costs for these units is expected to be about $1.5 billion per year. We believe that the $4.7 billion in capital costs would be spread over several years by the refiners' participation in the proposed averaging, banking, and trading program.

These capital and operating costs represent our estimates for domestic costs. While we think that many foreign refiners might incur capital costs to meet the requirements of our gasoline sulfur program, particularly in light of similar programs being enacted internationally, others will argue that most foreign refiners would not incur new costs as a result of our program because they can simply send the lowest-sulfur fraction of their current production to the U.S. Furthermore, some will argue that most foreign refiners do not face the same permitting limitation and environmental and other regulatory costs that domestic refiners face, and thus that their costs of producing low sulfur gasoline will be minimal even if some investment is required. While we have developed cost estimates with and without consideration of possible costs attributed to imported gasoline, our estimates of national and average costs do not include any costs attributed to foreign refiners.

Using our estimated capital and operating costs we calculated the average per-gallon cost of reducing gasoline sulfur down to 30 ppm. Using a capital cost amortization factor based on a seven percent rate of return on investment, and including no taxes, we estimated the average national cost for desulfurizing gasoline to initially be about 1.7 cents per gallon. This cost is the cost to society of reducing gasoline sulfur down to 30 ppm that we used for estimating cost effectiveness. If we amortize the costs based on a rate of return on investment of six to ten percent and a tax rate of 39 percent, which may more closely represent the actual economic situation facing refiners today, the average national cost for desulfurizing gasoline down to 30 ppm would be 1.7–1.9 cents per gallon.

We anticipate that these costs will decrease in future years due to improvements in technology, similar to the learning curve improvements discussed above for vehicle cost. This improvement is estimated to result in a 20 percent reduction in operating costs after the second complete year of use. This estimated rate of improvement is similar to previous cost reductions observed with desulfurization technologies as they were being developed.

Additional cost reduction is expected as refiners increase the throughput (debottleneck) of their refineries to lower their per-gallon fixed costs. This increase in throughput for the industry as a whole is termed capacity creep and it is has allowed a shrinking number of U.S. refineries to handle the increasing demand for refined products. Our analysis presumes that as an industry, refiners will debottleneck their refineries at a rate consistent with the forecasted increase in gasoline demand, which is about 2 percent per year. Thus, the fixed operating cost, and a portion of the capital costs for these desulfurization technologies, would decrease over time on a per gallon basis as the volume of gasoline processed at each refinery increased.

Table IV.D.–2 below summarizes our estimates of per-gallon gasoline cost increases for the years 2004, 2010 and 2015.

TABLE IV.D.–2.—ESTIMATED PER-GALLON COST FOR DESULFURIZING GASOLINE IN FUTURE YEARS

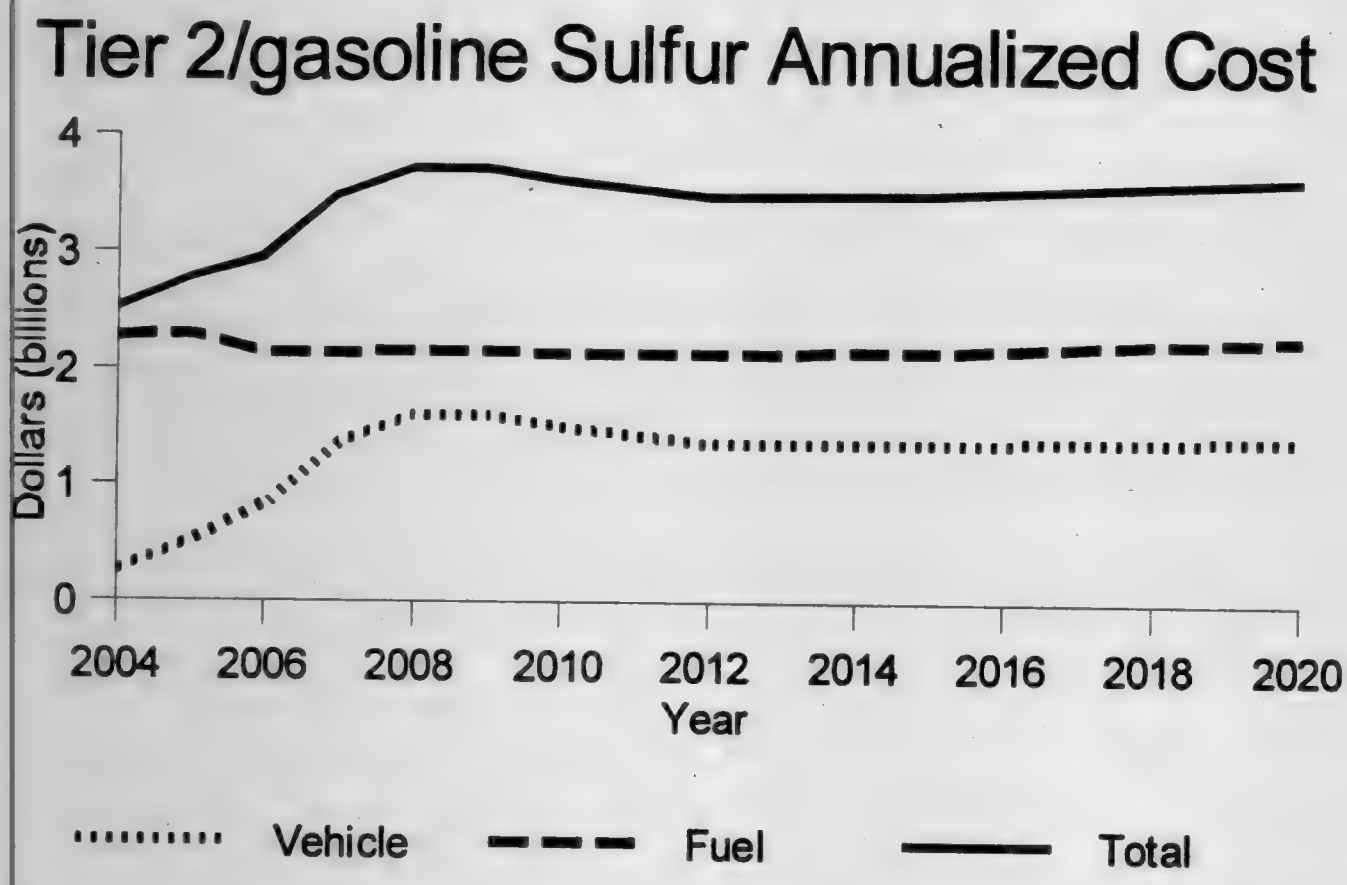
Year	Cost (cents/gallon)
2004	1.7
2010	1.5
2015	1.4

3. What Are the Aggregate Costs of the Tier 2/Gasoline Sulfur Proposal?

Using current data for the size and characteristics of the vehicle fleet and making projections for the future, the per-vehicle and per-gallon fuel costs described above can be used to estimate the total cost to the nation for the proposed emission standards in any year. Figure IV.D.–1 portrays the results of these projections.[67]

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Figure IV.D. -1



BILLING CODE 6560–50–C

As can be seen from the figure, the annual cost starts out at just over $2.5 billion per year and increases over the phase-in period to a maximum of $3.7 billion in 2008. Thereafter, the annual cost declines to a level of about $3.5 billion. The effect of projected growth in vehicle sales and fuel consumption causes a slow, gradual rise in annual cost to set in after about 2012.

4. How Does the Cost Effectiveness of This Program Compare to Other Programs?

This section summarizes the cost effectiveness analysis done by EPA and its results. The purpose of this assessment is to determine whether reductions from the vehicle and fuel controls are cost effective, taking into consideration alternative means of attaining or maintaining the national primary ambient air quality standards. This involves a comparison of our proposed program not only with past measures, but with other new measures that might be employed to attain and maintain the NAAQS. Both EPA and states have already adopted numerous control measures, and remaining measures tend to be more expensive than those previously employed. Therefore, there is no single cost effectiveness level that defines what is acceptable. Rather, as we employ the most cost effective available measures first, more expensive ones tend to become necessary over time.

[67] Figure IV.D.–1 is based on the amortized costs from Tables IV.D.–1 and IV.D.–2. Actual capital investments, particularly important for fuels, would occur prior to and during the initial years of the program, as described above in section IV.D.2.

a. *What Is the Cost Effectiveness of This Program?* We have calculated the per-vehicle cost effectiveness of the exhaust/gasoline sulfur standards and the evaporative emission standards, based on the net present value of all costs and emission reductions over the life of an average Tier 2 vehicle subject to today's proposal. As described earlier in the discussion of the cost of this proposal, the cost of complying with the new standards will decline over time as manufacturing costs are reduced and amortized capital investments are recovered. To show the effect of declining cost on the cost effectiveness, we have developed both near term and long term cost effectiveness values. More specifically, these correspond to

vehicles sold in years one and six of the vehicle and fuel programs. Vehicle cost is constant from year six onward. Fuel costs per gallon continue to decline slowly in the years past year six; however, the overall impact of this decline is small and we have decided to use year six results for our long term cost effectiveness. Chapter V of the draft RIA contains a full description of this analysis, and you should look in that document for more details on the results summarized here.

Table IV.D.–3 summarizes the net present value lifetime cost, NMHC + NO_X emission reduction and cost effectiveness results for the Tier 2/gasoline sulfur proposal using sales weighted averages of the costs (both near term and long term) and emission reductions of the various vehicle classes affected.

Table IV.D.–3 also displays cost effectiveness values based on two approaches to account for the small reductions in SO_2 and tailpipe emitted sulfate particulate matter (PM) associated with the reduction in gasoline sulfur. While these reductions are not central to the proposal and are therefore not displayed with their own cost effectiveness, they do represent real emission reductions due to the proposed rule. The first set of cost effectiveness numbers in Table IV.D.–3 simply ignores these reductions and bases the cost effectiveness on only the NMHC + NO_X reductions from Tier 2/gasoline sulfur. The second set accounts for these reductions by crediting some of the cost of the program to SO_2 and PM reduction. The amount of cost allocated to SO_2 and PM is based on the cost effectiveness of SO_2 and PM emission reductions from other EPA actions. You may refer to the RIA for details about these actions and how the specific allocations were developed.

TABLE IV.D.–3.—COST EFFECTIVENESS OF THE PROPOSED STANDARDS (1997 DOLLARS)

Cost basis	Discounted lifetime vehicle and fuel costs	Discounted lifetime NMHC + NO_X reduction (tons)	Discounted lifetime cost effectiveness per ton	Discounted lifetime cost effectiveness per ton with SO_2 and direct PM credit[a]
Near term cost (production year 1)	$230	0.108	$2,134	$1,599
Long term cost (production year 6)	188	0.109	1,748	1,213

[a] $54 credited to SO_2 ($4800/ton), $4 to direct PM ($10,000/ton).

b. *How Does the Cost Effectiveness of this Program Compare with Other Means of Obtaining Mobile Source NO_X + NMHC Reductions?* In comparison with other mobile source control programs, we believe that today's proposal represents the most cost effective new mobile source control strategy currently available that is capable of generating substantial NO_X + NMHC reductions. This can be seen by comparing the cost effectiveness of today's program with a number of new mobile source standards that EPA has adopted in recent years. Table IV.D.-4 summarizes the cost effectiveness of several recent EPA actions.

TABLE IV.D.-4.—C/E OF PREVIOUSLY IMPLEMENTED MOBILE SOURCE PROGRAMS

Program	$/ton NO_X+NMHC
2004 Highway HD Diesel stds	300
Nonroad Diesel engine stds	410–650
Tier 1 vehicle controls	1,980–2,690
NLEV	1,859
Marine SI engines	1,128–1,778
On-board diagnostics	2,228

(Costs adjusted to 1997 dollars.)

We can see from the table that the cost effectiveness of the Tier 2/gasoline sulfur standards falls within the range of these other programs. Engine-based standards (the 2004 highway heavy-duty diesel standards, the nonroad diesel engine standards and the marine spark-ignited engine standards) have generally been less costly than Tier 2/gasoline sulfur. Vehicle standards, most similar to today's proposal, have values comparable to or higher than Tier 2/gasoline sulfur.

It is tempting to look at the engine standards and conclude that more reductions at a similar low cost effectiveness should still be available. This is especially true for the two largest categories (highway and nonroad diesel engines) where new standards have been adopted that were highly cost effective. However, cost effectiveness was not a limiting consideration in either case. Rather, the level of the standards selected was based primarily on technical feasibility in the time available. That is, the maximum level of control that we found to be feasible in these actions was driven more by what technology we believed would be available than by cost. It will be important to consider the potential for further control in these categories as we move forward.

We do not believe that significant further control is available from highway or nonroad diesel engines through more stringent standards at the same cost effectiveness that these standards realized, in the time frame proposed. Based on current knowledge, the next generation of controls for these diesel engines would require advanced after-treatment devices, still in the research and development phase. Such controls have not yet been employed and when they become available will be more costly and will have difficulty functioning without changes to diesel fuel. We fully expect that, as the development of new technology progresses and cost declines, future new standards for both of these source categories will be developed. But we also expect that the cost effectiveness of future standards will be higher and is not likely to be significantly less than the cost effectiveness of today's proposal.

On the light duty vehicle side, the last two sets of standards were Tier 1 and NLEV, which had cost effectiveness comparable to or higher than Tier 2/gasoline sulfur. Compared to engines, these levels reflect the advanced (and more expensive) state of vehicle control technology, where standards have been in effect for a much longer period than for engines. In fact, considering the increased stringency of the Tier 2 standards,[68] it is remarkable that the cost effectiveness of Tier 2/gasoline sulfur is in the same range as these actions. Based on these results, Tier 2/gasoline sulfur appears to be a logical and consistent next step in vehicle control.

In conclusion, we believe that the Tier 2/gasoline sulfur proposal is a cost effective program for mobile source NO_X + NMHC control. We are unable to

[68] Tier 2/gasoline sulfur will yield about a 75% reduction in NO_X emissions compared to NLEV vehicles.

identify another mobile source control program that would be more cost effective than Tier 2/gasoline sulfur for making substantial further progress in reducing NO_X + NMHC emissions.

c. *How Does the Cost Effectiveness of this Proposed Program Compare with Other Known Non-Mobile Source Technologies for Reducing NO_X + NMHC?* In evaluating the cost effectiveness of the Tier 2/gasoline sulfur proposal, we also considered whether our proposal is cost effective in comparison with alternative means of attaining or maintaining the NAAQS other than mobile source programs. As described below, we have concluded that Tier 2/gasoline sulfur is cost effective considering the anticipated cost of other technologies that will be needed to help attain and maintain the NAAQS.

For purposes of estimating the cost of implementing the new ozone and PM NAAQS, the Agency assumed certain baseline controls and compiled a list of additional known technologies that could be considered in devising emission reductions strategies.[69] Through this broad review, over 50 technologies were identified as reducing NO_X or VOC. The average cost effectiveness of these technologies varied from hundreds of dollars a ton to tens of thousands of dollars a ton. The Agency selected from this list all those technologies that could be applied with an average cost effectiveness of $10,000/ton or less, and showed that substantial progress toward attainment could be made when operating within that limit.

While many areas still remained in nonattainment under the NAAQS analysis, we assumed that other methods would be identified in the future that on average could help achieve the NAAQS at $10,000 per ton or less. We believe that Tier 2/gasoline sulfur is one of those methods. In fact, it will deliver critical further reductions that are not readily obtainable by any other means known to the Agency. By way of comparison, if all of the technologies identified for the NAAQS analysis costing less than $10,000/ton were implemented nationwide, they would produce NO_X emission reductions of about 2.9 million tons per year. The Tier 2/gasoline sulfur proposal by itself will generate about 2.8 million tons per year once fully implemented. To obtain significant further reductions using the other technologies identified in the NAAQS analysis rather than Tier 2/gasoline sulfur could mean adopting measures costing well beyond $10,000/ton. Given the continuing need for further emission reductions, we believe that Tier 2/gasoline sulfur control is clearly a cost effective approach, in addition to those technologies assumed for the NAAQS analysis, for attaining and maintaining the NAAQS.

We recognize that the cost effectiveness calculated for Tier 2/gasoline sulfur is not strictly comparable to a figure for measures targeted at nonattainment areas, since Tier 2/gasoline sulfur is a nationwide program. However, there are several additional considerations that have led us to conclude that Tier2/gasoline sulfur is cost effective considering alternative means of attaining and maintaining the NAAQS.

First, given the fact that Tier 2/gasoline sulfur is at most only 20 percent as costly per ton as the NAAQS figure for additional control measures, we believe that there can be little doubt that the cost effectiveness of Tier 2/gasoline sulfur is well within the cost effectiveness range that the NAAQS cost analysis anticipated for unspecified additional technologies that will be needed to attain the NAAQS—technologies that the analysis noted might be applied in limited areas or nationwide. Furthermore, as a national program, Tier 2/gasoline sulfur can be implemented as a single unified rule without the need for individual action by each of the states. Moreover, as noted above, for states to obtain further substantial emission reductions beyond those identified in the NAAQS could mean adopting measures costing well beyond $10,000/ton, something that few areas of the country to date have done.

In dealing with the question of comparing local and national programs, it is also relevant to point out that, because of air transport, the need for NO_X control is a broad regional issue not confined to non-attainment areas only. To reach attainment, future controls will need to be applied over widespread areas of the country. In the analyses supporting the recent NO_X standards for highway diesel engines,[70] we looked at this question in some detail and concluded that the regions expected to impact ozone levels in ozone nonattainment areas accounted for over 85% of total NO_X emissions from a national heavy-duty engine control program. Similarly, NO_X emissions in attainment areas also contribute to particulate matter nonattainment problems in downwind areas. Thus, the distinction between local and national control programs for NO_X is less important than it might appear.

Finally, the statute indicates that in considering the cost effectiveness of Tier 2/gasoline sulfur EPA should consider not only attainment, but also maintenance of the standards. Tier 2/gasoline sulfur—unlike nonattainment area measures—will achieve attainment area reductions that, among other effects, will help to maintain air quality that meets the NAAQS. These reductions relate not only to the ozone and PM NAAQS, but also to SO_2 and NO_2, and to CO.

In summary, given the array of controls that will have to be implemented to make progress toward attaining and maintaining the NAAQS, we believe that the weight of the evidence from alternative means of providing substantial NO_X + NMHC emission reductions indicates that the Tier 2/gasoline sulfur proposal is cost effective. This is true from the perspective of other mobile source control programs or from the perspective of other stationary source technologies that might be considered.

5. Does the Value of the Benefits Outweigh the Cost of the Proposed Standards?

While relative cost effectiveness is the principal economic policy criterion established for these standards in the Clean Air Act (see CAA 202(i)), further insight regarding the merits of the proposed standards can be provided by benefit-cost analysis. The purpose of this section is to summarize the methods we used and results we obtained in conducting a preliminary analysis of the economic benefits of the proposed standards, and to compare these economic benefits with the estimated costs of the proposal. In summary, the results of our analysis indicate that the economic benefits of the proposed standards will likely exceed the costs of meeting the standards by a substantial margin, and the significant uncertainties underlying the analysis are unlikely to alter this outcome of positive net benefits.

a. *What Is the Purpose of this Benefit-Cost Comparison?* Benefit-cost analysis (BCA) is a useful tool for evaluating the economic merits of proposed changes in environmental programs and policies. In its traditional application, BCA

[69] "Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule," Appendix B. "Summary of control measures in the PM, regional haze, and ozone partial attainment analyses," Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC, July 17, 1997.

[70] Final Regulatory Impact Analysis: Control of Emissions of Air Pollution from Highway Heavy-Duty Engines, September 16, 1997.

estimates the economic "efficiency" of proposed changes in public policy by organizing the various expected consequences and representing those changes in terms of dollars. Expressing the effects of these policy changes in dollar terms provides a common basis for measuring and comparing these various effects. Because improvement in economic efficiency is typically defined to mean maximization of total wealth spread among all members of society, traditional BCA must be supplemented with other analyses in order to gain a full appreciation of the potential merits of new policies and programs. These other analyses may include such things as examinations of legal and institutional constraints and effects; engineering analyses of technology feasibility, performance and cost; or assessment of the air quality need.

In addition to the narrow, economic efficiency focus of most BCAs, the technique is also limited in its ability to project future economic consequences of alternative policies in a definitive way. Critical limitations on the availability, validity, or reliability of data; limitations in the scope and capabilities of environmental and economic effect models; and controversies and uncertainties surrounding key underlying scientific and economic literature all contribute to an inability to estimate the economic effects of environmental policy changes in exact and unambiguous terms. Under these circumstances, we consider it most appropriate to view BCA as a tool to inform, but not dictate, regulatory decisions such as the ones reflected in today's proposal.

Despite the limitations inherent in BCA of environmental programs, we considered it useful to estimate the potential benefits of today's proposed standards both in terms of physical changes in human health and welfare and environmental change, and in terms of the estimated economic value of those physical changes. The BCA presented herein should be considered preliminary, however, due to limitations in the data and models available for analysis in advance of today's proposal. Additional, more refined analysis will be conducted prior to issuance of final standards. This post-proposal analysis will take account of public comments on the proposed standards and this BCA and will also make use of more extensive and refined data and models currently being developed. Our expectation is that the more extended and refined economic analysis conducted prior to final rulemaking will further help inform and guide decisions on the appropriateness of the final rules. Toward this end, we are presenting this preliminary BCA and requesting public comments on the assumptions, data, and modeling efforts supporting the analysis and its results, and the appropriate interpretations and uses of those results.

b. *What Was Our Overall Approach to the Benefit-Cost Analysis?* The basic question we sought to answer in the preliminary BCA was: "What are the net yearly economic benefits to society of the reduction in mobile source emissions likely to be achieved by today's proposed standards?" In designing an analysis to answer this question, we adopted an analytical structure and sequence similar to that used in the so-called "section 812 studies" [71] to estimate the total benefits and costs of the entire Clean Air Act. Moreover, we used many of the same data sets, models, and assumptions actually used in the Section 812 studies and/or the recent Regulatory Impact Analyses (RIAs) for the Particulate Matter and Ozone National Ambient Air Quality Standards and for the NO_X SIP Call (also known as the Regional Ozone Transport Rule, as discussed in Section III above).[72] By adopting the major design elements, data sets, models, and assumptions developed for the recent RIAs, we have largely relied on methods that have already received extensive review by the public and by other federal agencies. Furthermore, the data sets adopted from the Section 812 studies have received extensive review by the independent Science Advisory Board and by the public.

As described in more detail in the Draft RIA for today's proposal, this overall analytical design involves the following sequential steps:

1. Identify the *technologies* likely to be used to comply with the proposed standards
2. Estimate the *costs* society would incur to employ the technologies
3. Estimate the *emissions reductions* achieved by application of the technologies
4. Estimate the change in *air quality* conditions resulting from the estimated emissions reductions
5. Estimate the changes in *human health and well-being and environmental quality* associated with the estimated changes in air quality
6. Estimate the *economic value* of the estimated changes in human health, human welfare, and environmental outcomes
7. Compare the resulting estimate of economic benefits with the estimated costs, and calculate the *net monetized benefits* of the proposed standards
8. Evaluate the *uncertainty* surrounding the estimate of net monetized benefit by developing ranges of results that reflect the key underlying scientific, economic, data, and modeling uncertainties

c. *What Are the Significant Limitations of the Benefit-Cost Analysis?* Every BCA examining the potential effects of a change in environmental protection requirements is limited to some extent by data gaps, limitations in model capabilities (such as geographic coverage), and uncertainties in the underlying scientific and economic studies used to configure the benefit and cost models. Deficiencies in the scientific literature often result in the inability to estimate changes in health and environmental effects, such as potential increases in premature mortality associated with increased exposure to carbon models. Deficiencies in the economics literature often result in the inability to assign economic values even to those health and environmental outcomes that can be quantified, such as changes in lung function caused by increased exposure to ozone. While these general uncertainties in the underlying scientific and economics literatures are discussed in detail in the RIA and its supporting documents and references, the key uncertainties that have a bearing on the results of the preliminary BCA of today's proposed standards are:

1. The exclusion of potentially significant benefit categories (e.g., health and ecological benefits of incidentally controlled hazardous air pollutants)
2. Scientific uncertainties regarding whether the observed statistical relationship between exposure to elevated particulate matter and incidences of adverse health effects reflects a causal relationship (especially premature mortality and chronic bronchitis)
3. Scientific uncertainty regarding the potential existence of a concentration threshold below which adverse health effects of exposure to particulate matter might not occur
4. Scientific uncertainty regarding whether tropospheric ozone exposure contributes to premature mortality

In addition to these uncertainties and shortcomings that pervade all analyses of criteria air pollutant control

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[71] The "section 812 studies" refers to (1) USEPA, Report to Congress: The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997 (also known as the "section 812 Retrospective); and (2) the first in the ongoing series of prospective studies estimating the total costs and benefits of the Clean Air Act, expected to be published later in 1999.

[72] Regulatory Impact Analysis for the NO_X SIP Call, FIP, and Section 126 Petitions" September 1998, EPA–452/R–98–003.

programs, a number of limitations apply specifically to the preliminary BCA of today's proposed rules. Though we used the best data and models currently available, we were required to adopt a number of simplifying assumptions and to use data sets that, while reasonably close, did not match precisely the conditions and effects expected to result from implementation of the standards proposed today. For example, the year 2010 emissions data sets available for use in this analysis do not fully reflect the emissions reductions expected to be achieved by other recently-enacted standards and by expected near-future control programs, such as additional measures aimed at full attainment of the new fine particulate matter National Ambient Air Quality Standards. In addition, we have used the year 2010 as a proxy for the time (actually circa 2040) when all non-complying vehicles would be fully retired from the fleet and full implementation of today's proposed standards would be finally achieved, requiring adjustments described more fully in the next section. The key limitations and uncertainties unique to the preliminary BCA of today's proposed rules, therefore, include:

1. A mismatch between the 2010 air quality base year adopted for the BCA and the eventual timing of fleet turnover
2. Potential mis-estimation of future year emissions inventories, such as those associated with nonroad vehicle emissions and with measures aimed at attaining and maintaining compliance with newly revised ambient air quality standards
3. Uncertainties associated with the extrapolation of air quality monitoring data to distant sites required to capture the effects of the proposed standards on all affected populations

Despite these additional important uncertainties, which are discussed in more detail or referenced in the Draft RIA, we believe the preliminary BCA does provide a reasonable indication of the potential range of net economic benefits of the standards proposed today. This is because the analysis focuses on estimating the economic effects of the *changes* in air quality conditions expected to result from today's proposed rules, rather than focusing on developing a precise prediction of the *absolute* levels of air quality likely to prevail at some particular time in the future. An analysis focusing on the changes in air quality can give useful insights into the likely economic effects of emission reductions of the magnitude expected to result from today's proposed rule.

d. *How Did We Perform the Benefit-Cost Analysis?* As summarized above, the analytical sequence begins with a projection of the mix of technologies likely to be deployed to comply with the new standards, and the costs incurred and emissions reductions achieved by these changes in technology. The program proposed today has various cost and emission related components, as described earlier in this section. These components would begin at various times and in some cases would phase in over time. This means that during the early years of the program there would not be a consistent match between cost and benefits. This is especially true for the vehicle control portions of the proposal, where the full vehicle cost would be incurred at the time of vehicle purchase, while the fuel cost along with the emission reductions and benefits would occur throughout the lifetime of the vehicle. To deal with this question, we might have wished to perform a per-vehicle analysis corresponding to the cost effectiveness analysis described above. However, the modeling used for benefits estimates cannot be done on a per-vehicle basis, so we have instead used an annual cost and annual benefit approach.

To develop a representative benefit-cost number, we need to have a stable set of cost and emission reductions to use. This means using a future year where the fleet is fully turned over and there is a consistent annual cost and annual emission reduction. For today's proposal this stability wouldn't occur until well into the future. However, for the purpose of the benefit calculations, we have no available baseline data set beyond the year 2010. We have therefore made adjustments to allow use of 2010 as a surrogate for a future year in which the fleet consists entirely of Tier 2 vehicles.

For emissions, we calculated reductions by treating 2010 as if the fleet had already turned over. We did this by applying the control case emission factor from a fully turned over fleet year (from the year 2040) to the fleet mileages for this year. Clearly, this approach does not, nor is it intended to, predict actual expected emission reductions for 2010. This is not its purpose. It is intended to portray the characteristics of the vehicle fleet after it is fully turned over, within the constraint that 2010 was the latest year for which we could perform an analysis.

The resulting analysis represents a snapshot of benefits and costs in a future year in which the light-duty fleet consists entirely of Tier 2 vehicles. As such, it depicts the maximum emission reductions (and resultant benefits) and among the lowest costs that would be achieved in any one year by the program on a "per mile" basis. (Note, however, that net benefits would continue to grow over time beyond those resulting from this analysis, but only because of growth in vehicle miles traveled.) Thus, based on the long-term costs for a fully turned over fleet, the resulting benefit-cost ratio will be close to its maximum point (for those benefits that we have been able to value).

Costs to be compared to the monetized value of the benefits were also developed for a fleet the size of the year 2010 fleet. For this purpose we used the long term cost once the capital costs have been recovered and the manufacturing learning curve reductions have been realized, since this most closely represents the makeup of a fully turned over fleet.

We also made adjustments in the costs to account for the fact that there is a time difference between when some of the costs are expended and when the benefits are realized. The vehicle costs are expended when the vehicle is sold, while the fuel related costs and the benefits are distributed over the life of the vehicle. We resolved this difference by using costs distributed over time such that there is a constant cost per ton of emissions reduction and such that the net present value of these distributed costs corresponds to the net present value of the actual costs.

The resulting adjusted costs are somewhat greater than the expected actual annual cost of the program, reflecting the time value adjustment. Thus, both because of the assumption of a fully turned over fleet and because of the time value adjustment, the costs presented in this section do not represent expected actual annual costs for 2010. Rather, they represent an approximation of the steady-state cost per ton that would likely prevail in 2015 and beyond. The benefit cost ratio for the earlier years of the program would be expected to be lower than that based on these costs, since the fleet-adjusted costs are larger in the early years of the program while the benefits are smaller.

Finally, at the time that we undertook the development of the benefit estimates for this rule, we did not have quantitative estimates of the VOC emission reductions that would result from the evaporative emission standards in the proposal. Therefore, the benefit estimates do not include the value of the evaporative emission standard. Consistent with this, the program cost estimates also exclude the evaporative emission control cost. Since the evaporative emission reductions and costs are both relatively small compared to the rest of the program, they are not

expected to significantly affect the overall cost-benefit ratio.

In order to estimate the changes in air quality conditions that would result from these emissions reductions, we developed two separate, year 2010 emissions inventories to be used as inputs to the air quality models. The first, baseline inventory reflects the best available approximation of the county-by-county emissions for NO_X, NMHC, and SO_2 expected to prevail in the year 2010 in the absence of the standards proposed today. To generate the second, control case inventory, we first estimated the change in vehicle emissions, by pollutant and by county, expected to be achieved by the 2010 control scenario described above. We then took the baseline emissions inventory and subtracted the estimated reduction for each county-pollutant combination to generate the second, control case emissions inventory. Taken together, the two resulting emissions inventories reflect two alternative states of the world and the differences between them represent our best estimate of the reductions in emissions that would result from our control scenario.

With these two emissions inventories in hand, the next step was to "map" the county-by-county and pollutant-by-pollutant emission estimates to the input grid cells of two air quality models and one deposition model. The first model, called the Urban Airshed Model (UAM), is designed to estimate the tropospheric ozone concentrations resulting from a specific inventory of emissions of ozone precursor pollutants, particularly NO_X and NMHC. The second model, called the Climatological Regional Dispersion Model Source-Receptor Matrix model (S–R Matrix), is designed to estimate the changes in ambient particulate matter and visibility that would result from a specific set of changes in emissions of primary particulate matter and secondary particulate matter precursors, such as SO_2, NO_X, and NMHC. Also, separate factors relating nitrogen emissions to watershed deposition were developed using the Regional Acid Deposition Model (RADM). By running both the baseline and control case emissions inventories through these models, we were able to estimate the expected 2010 air quality conditions and the changes in air quality conditions that would result from the emissions reductions expected to be achieved by the standards proposed today.

After developing these two sets of year 2010 air quality profiles, we used the same health and environmental effect models used in the 812 studies to calculate the differences in human health and environmental outcomes projected to occur with and without the proposed standards. Specifically, we used the Criteria Air Pollutant Modeling System (CAPMS) to estimate changes in human health outcomes, the Agricultural Simulation Model (AGSIM) to estimate changes in yields of a selected few agricultural crops, and a Household Soiling Damage function to estimate the value of reduced household soiling due to particulate matter. In addition, the benefits of reduced visibility impairment were estimated using the same overall methodology used in the 812 studies, updated to reflect recent advancements in the literature. Finally, we developed estimates of the effect of changes in nitrogen deposition to sensitive estuaries using methodologies applied in the PM/Ozone NAAQS RIA (1997) and in the recent NO_X SIP Call rulemaking. (These benefits models and methodologies are described in detail in the RIAs associated with these actions.) Several air quality-related health and environmental benefits, however, could not be calculated for the preliminary BCA of today's proposed standards. Changes in human health and environmental effects due to changes in ambient concentrations of carbon monoxide (CO), gaseous sulfur dioxide (SO_2), gaseous nitrogen dioxide (NO_2), and hazardous air pollutants could not be included, though some of these may be included in the extended analysis to be conducted for the final rule.

To characterize the total economic value of the reductions in adverse effects achieved across the lower 48 states,[73] we used the same set of economic valuation coefficients and models used in the section 812 studies and the recent NO_X SIP Call RIA to convert each type of adverse effect into a dollar value equivalent. The net monetary benefits of today's proposed standards were then calculated by subtracting the estimated costs of compliance from the estimated monetary benefits of the reductions in adverse health and environmental effects.

In the final step of the analysis, we estimated the range of net benefit estimates that might occur if important but uncertain underlying factors were allowed to vary. By conducting this "uncertainty analysis," we sought to demonstrate how much the overall net benefit estimate might vary based on the particular uncertainties underlying the estimates for human health and environmental effect incidence and the economic valuation of those effects. To accomplish this, we calculated a range of possible monetized benefit estimates using two sets of assumptions surrounding the modeling techniques.

The method for presenting uncertainty, referred to here as the sensitivity approach, identifies the uncertain variables that appear to most strongly influence the overall uncertainty in the monetized benefit estimate. These included, among others, (1) The potential that a concentration threshold exists below that adverse PM-related health effects may not occur, (2) alternative methods for valuing mortality, (3) the potential contribution of tropospheric ozone to premature mortality, (4) alternative methods for valuing reduced cases of chronic bronchitis, (5) the extent to which agricultural crops included in our benefits model are resistant to damage from tropospheric ozone, (6) alternative approaches for valuing visibility. After identifying these key variables, we defined lower bound and upper bound values for each variable and combined these into a Low Case and a High Case. This approach allowed us to demonstrate the sensitivity of the total benefits to uncertainties in important variables. For example, there is no compelling scientific evidence that a PM concentration threshold exists below that adverse health effects do not occur. However, there is also no scientific evidence ruling out the potential existence of a threshold. As a result, there are no data available that would support estimating the probability that a threshold exists at any particular PM concentration. Under these circumstances, using the sensitivity approach allows us to demonstrate the effect of assuming different levels for a PM threshold.

This uncertainty calculation method does not provide a definitive or complete picture of the true range of monetized benefits estimates. This approach, as implemented in this preliminary BCA, does not reflect important uncertainties in earlier steps of the analysis, including estimation of compliance technologies and strategies, emissions reductions and costs associated with those technologies and strategies, and air quality and deposition changes achieved by those emissions reductions. Nor does this approach provide a full accounting of all potential benefits (or disbenefits) associated with the Tier 2 standards, due to data or methodological

[73] Though California is included based on the expectation that reductions in surrounding states will achieve some benefits in California, this analysis does not assume additional reductions in California emissions beyond those already achieved by prevailing standards.

limitations. Therefore, the uncertainty range is only representative of those benefits that we were able to quantify and monetize.

e. *What Were the Results of the Benefit-Cost Analysis?* The preliminary BCA for the proposed standards reflects a single year "snapshot" indicative of the relative yearly benefits and costs expected to be realized once the proposed standards have been fully implemented and non-compliant vehicles have all been retired. By necessity, we chose to model the year 2010 because essential data on emissions and air quality were available for this year, but not for later years, even though the complete turnover of the fleet to Tier 2 compliant vehicles will not occur until well after 2010. Consequently, these results are best viewed as a representation of yearly benefits and costs over the long-term and should not be interpreted as reflecting actual benefits and costs likely to be realized for the year 2010 itself. Benefits of the amounts shown here are likely to be realized in the 2015–2020 time frame. In reality, near-term costs will be higher than long-run costs as vehicle manufacturers and oil companies invest in new capital equipment and develop and implement new technologies. In addition, near-term benefits will be lower than long-run benefits because it will take a number of years for Tier 2-compliant vehicles to fully displace older, more polluting vehicles. However, as described earlier, we have adjusted the cost estimates upward to compensate for this discrepancy in the timing of benefits and costs and to ensure that the benefits and costs are calculated on a consistent basis. Because of this adjustment, the cost estimates also should not be interpreted as reflecting the actual costs expected to be incurred in the year 2010. Actual program costs can be found in Section IV.D.3.

Earlier in this section, we described in more detail our approach to estimating and adjusting our cost estimates, based upon the long-run costs expected to be incurred in future years after the initial capital and technology investments have been made. The resulting adjusted cost values are given in Table IV.D.–5. Since the long term costs are not representative of the per vehicle costs in the early phases of the program, we also estimated an adjusted cost based on the near term cost effectiveness value. Using the near term cost effectiveness value of $2134/per ton, the adjusted cost would be $4.3 billion. While no actual in-use fleet could consist entirely of vehicles experiencing this near term cost, this value does present an upper bound on the cost figure.

TABLE IV.D.–5.—ADJUSTED COST FOR COMPARISON TO BENEFITS

Cost basis	Adjusted cost (billions of dollars)
Long term	3.5

With respect to the benefits, several different measures of benefits can be useful to compare and contrast to the estimated compliance costs. These benefit measures include: (a) The tons of emissions reductions achieved, (b) the reductions in incidences of adverse health and environmental effects, and (c) the estimated economic value of those reduced adverse effects. Calculating the cost per ton of pollutant reduced is particularly useful for comparing the cost effectiveness of proposed new standards or programs against existing programs or alternative new programs achieving reductions in the same pollutant or combination of pollutants. The cost-effectiveness analysis presented earlier in this preamble provides such calculations on a per-vehicle basis. Considering the absolute numbers of avoided adverse health and environmental effects can also provide valuable insights into the nature of the health and environmental problem being addressed by the rule as well as the magnitude of the total public health and environmental gains potentially achieved by the proposed rule. Finally, when considered along with other important economic dimensions—including environmental justice, small business financial effects, and other outcomes related to the distribution of benefits and costs among particular groups—the direct comparison of quantified economic benefits and economic costs can provide useful insights into the overall estimated net economic effect of the proposed standards.

Table IV.D.–6 presents our range of estimates of both the estimated reductions in adverse effect incidences and the estimated economic value of those incidence reductions. Specifically, the table lists the avoided incidences of individual health and environmental effects, the pollutant associated with each of these endpoints, and the range of estimated economic value of those avoided incidences. For several effects, particularly environmental effects, direct calculation of economic value in response to air quality conditions is performed, eliminating the intermediate step of calculating incidences. Table IV.D.–7 supplements Table IV.D.–6 by listing those additional health and environmental benefits that could not be expressed in quantitative incidence and/or economic value terms. A full appreciation of the overall economic consequences of today's proposed standards requires consideration of all benefits and costs expected to result from the new standards, not just those benefits and costs that could be expressed here in dollar terms.

TABLE IV.D.–6.—AVOIDED INCIDENCE AND MONETIZED BENEFITS ASSOCIATED WITH THE TIER 2 RULE FOR A RANGE OF ASSUMPTION SETS

Endpoint	Avoided incidence (cases/year)		Monetary benefits (millions 1997$)	
	Low[a]	High[b]	Low	High
PM:				
Mortality (long-term exp.—ages 30+)	832	2,416	2,275	14,256
Mortality (long-term exp.—infants)	.....	10	.....	56
Chronic bronchitis	3,885	3,914	281	1,354
Hosp. Admissions—all respiratory (all ages)	504	836	4.6	7.6
Hosp. Admissions—congestive heart failure	127	138	1.5	1.7
Hosp. Admissions—ischemic heart disease	146	159	2.2	2.4
Acute bronchitis	984	4,072	0.1	0.2
Lower respiratory symptoms (LRS)	19,782	37,437	0.3	0.5
Upper respiratory symptoms (URS)	3,093	3,387	0.1	0.1
Work loss days (WLD)	233,000	415,000	23.8	42.3
Minor restricted activity days (MRAD)	1,856,000	3,370,000	87.7	159.3

TABLE IV.D.–6.—AVOIDED INCIDENCE AND MONETIZED BENEFITS ASSOCIATED WITH THE TIER 2 RULE FOR A RANGE OF ASSUMPTION SETS—Continued

Endpoint	Avoided incidence (cases/year)		Monetary benefits (millions 1997$)	
	Low[a]	High[b]	Low	High
Household soiling damage	.....	.....	60.1	60.1
Ozone:				
Mortality (short-term; four U.S. studies)	.....	388	.....	2,312
Hospital admissions—all respiratory (all ages)	549	736	5.3	7.1
Any of 19 acute symptoms	54,101	71,545	1.3	1.7
Decreased worker productivity	.....	.....	43.0	60.4
Agricultural crop damage	.....	.....	–1	301
Visibility	.....	.....	165	701
Nitrogen Deposition	.....	.....	200	200
Total (PM + ozone + visibility + N deposition)	.....	.....	3,150	19,525

[a] The low assumption set assumes effects from PM do not occur below concentrations of 15 μg/m^3, that all mortality and chornic bronchitis effects occur within the same year of the PM reduction (see Section 7.a. of the Draft RIA for a discussion of this uncertainty), utilizes the value of statistical life year lost approach, ozone-related mortality and PM-related infant mortality are not included in the benefits estimate, chronic bronchitis valued with the cost of illness approach, plantings of commodity crop cultivars are assumed to be insensitive to ozone, does not value residential visibility benefits, and uses the lower-bound estimate of "willingness to pay" for recreational visibility to reflect variation.

[b] The high assumption set assumes a PM threshold of background, utilizes the value of a statistical life approach, both ozone-related mortality and PM-related mortality are included in the estimation of benefits, chronic bronchitis valued with a willingness-to-pay approach, plantings of commodity crop cultivars are assumed to be sensitive to ozone, and full accounting for recreational and residential visibility benefits.

TABLE IV.D.–7.—ADDITIONAL, NON-MONETIZED BENEFITS OF PROPOSED TIER 2 STANDARDS

Pollutant	Nonmonetized adverse effects
Particulate Matter	Large Changes in Pulmonary Function. Other Chronic Respiratory Diseases. Inflammation of the Lung. Chronic Asthma and Bronchitis.
Ozone	Changes in Pulmonary Function. Increased Airway Responsiveness to Stimuli. Centroacinar Fibrosis. Immunological Changes. Chronic Respiratory Diseases. Extrapulmonary Effects (i.e., other organ systems). Forest and other Ecological Effects. Materials Damage.
Carbon Monoxide	Premature Mortality. Decreased Time to Onset of Angina. Behavioral Effects. Other Cardiovascular Effects. Developmental Effects.
Sulfur Dioxide	Respiratory Symptoms in Non-Asthmatics. Hospital Admissions. Agricultural Effects. Materials Damage.
Nitrogen Oxides	Increased Airway Responsiveness to Stimuli. Decreased Pulmonary Function. Inflammation of the Lung. Immunological Changes. Eye Irritation. Materials Damage. Acid Deposition.
Hazardous Air Pollutants	All Human Health Effects. Ecological Effects.

These results indicate that, based on the particular assumptions, models, and data used in this preliminary BCA, the range of monetary benefits realized after full turnover of the fleet to Tier 2 vehicles would be approximately 3.2 billion to 19.5 billion dollars per year. Comparing this estimate of the economic benefits with the adjusted cost estimate indicates that the net economic benefit of the proposed standards to society could be from a net cost of 0.4 billion to a net benefit of 16.0 billion dollars per year.

The breadth of the ranges of net economic benefit estimates presented in this preliminary BCA reinforces our conclusion that these BCA results may be indicative of potential overall economic effects, but they should by no means dictate whether or not the standards proposed today should be promulgated.

f. *What Additional Efforts Will Be Made Following Proposal?* While we believe that the preliminary BCA provides a strong indication that the standards proposed today will yield positive overall economic benefits, we

believe it is important to do additional analysis prior to the final decision regarding these standards. In particular, we plan to develop an updated and extended set of emissions inventories, and to expand the range of pollutant-specific effects to include the benefits of reductions in carbon monoxide (CO), sulfur dioxide (SO_2), nitrogen dioxide (NO_2), and perhaps hazardous air pollutants. We will also carefully review the public comments submitted on the preliminary BCA and review each of the assumptions and methods used in light these public comments and the advice of the Science Advisory Board charged with reviewing these and other methods being used in the pending section 812 Prospective Study Report to Congress.

E. Other Program Design Options We Have Considered

In addition to the proposed program combining Tier 2 vehicle standards and gasoline sulfur controls, we have considered two other major alternatives to a comprehensive vehicle/fuel program. This section identifies these two alternatives and seeks comment on specific aspects of each.

1. Corporate Average Standards Based on NMOG or NMOG+NO_X

We have described in great detail in previous sections of this preamble why NO_X is our main pollutant of concern for this rulemaking. Based on this conclusion, we are proposing a Tier 2 program that is centered around a full useful life corporate average NO_X standard (0.07 g/mi). Our proposed interim program for non-Tier 2 vehicles is also centered around a corporate average NO_X standard (0.30 or 0.20 g/mi, depending on vehicle type).

California's program, by contrast, is centered on corporate average NMOG standards. We recognize that for Tier 2 vehicles we could also set up the bins of emission standards and impose an average NMOG standard in a similar fashion. A program centered on corporate average NMOG standards could even be defined in such a way that NO_X emissions would be indirectly driven down to the levels we have defined with our proposed Tier 2 standards. Such an approach would provide more consistency with California's program, and would be consistent with our own NLEV program. However, we believe it is best, for the federal program, to use a NO_X average standard.

With a NO_X average standard we can better tailor the various aspects of the program to reduce the pollutant with which we are most concerned. Thus, our averaging, banking and trading program has been set up to provide NO_X credits for early compliance with the Tier 2 NO_X average standard and to provide additional NO_X credits for manufacturers certifying to extended useful lives. Also, the NO_X average standard allows us to set up bins in such a way as to provide manufacturers with incentives to strive for additional NO_X reductions.

Although the use of an average NO_X requirement conflicts with California's requirements, we do not believe any additional burden is imposed on manufacturers. Under an NMOG averaging requirement, manufacturers would still have to compute separate NMOG averages for their California and Federal vehicles. This would be no smaller burden than computing an NMOG average for California vehicles and a NO_X average for Federal vehicles. We request comment on the appropriateness and burden of our NO_X averaging standards and on what benefits, if any, might be afforded by an NMOG standard for the federal program in lieu of the proposed NO_X average.

2. More Stringent Tier 2 NO_X and Gasoline Sulfur Standards

We considered whether average NO_X levels even lower than 0.07 g/mi (which would likely result in lower NO_X standards for all of the Tier 2 certification bins and substantially limit the number of vehicles certified at NO_X emissions levels significantly higher than 0.07 g/mi) might be possible and cost effective in a scenario where sulfur levels in gasoline would be reduced to an average level on the order of 10 ppm (with perhaps a 20 ppm cap). Manufacturers have requested that California consider such a "near zero" sulfur limit to help them to meet the mandatory bins in the CAL LEV II program, which are more stringent than what would be required in the proposed Tier 2 program. We believe our proposed Tier 2 standards can be met with the proposed gasoline sulfur standards. However, tighter Tier 2 standards could require even lower gasoline sulfur limits.

We selected our proposed Tier 2 standards and gasoline sulfur levels based on air quality need, technical feasibility, and cost effectiveness. Hence, we believe the proposed requirements are reasonable and are as stringent as is warranted. However, in consideration of the alternative discussed here, we request comment on the ability of manufacturers to produce vehicles meeting a corporate average NO_X emission level substantially lower than 0.07 g/mi. How would the cost of producing such a vehicle differ from the costs estimated for the proposed Tier 2 vehicles? How sensitive would such a vehicle be to the sulfur level of gasoline, and what sulfur level would be required? How soon could manufacturers be expected to be able to comply with a lower NO_X standard, given that they will be producing LEVII vehicles for California beginning in 2004?

We also request comment on the magnitude of additional sulfur reduction that would be necessary to reduce average full useful life NO_X to levels significantly below 0.07 g/mi, and whether such low levels of sulfur can be met with the technology EPA expects refiners to use to meet the requirements we are proposing today. We request comment on the costs of such sulfur reductions and the timing needed to acquire and implement any additional refinery controls. If refiners invest today to achieve 30 ppm average sulfur levels, will those investments be rendered obsolete by a future sulfur requirement of a near-zero average, or would the technologies complement one another? How much time would refiners need to comply with a near-zero sulfur standard following compliance with a 30 ppm standard?

V. Additional Elements of the Proposed Vehicle Program and Areas for Comment

The section describes several additional provisions of the vehicle proposal and issues on which we are requesting comment that were not previously discussed in this preamble.

A. Other Vehicle-Related Elements of the Proposal

1. Proposed Tier 2 CO, HCHO and PM Standards

Table IV.B.–1 in Section IV.B.4.a. above presented the proposed Tier 2 standards for carbon monoxide (CO), formaldehyde (HCHO), and particulate matter (PM). The following paragraphs discuss our selection of these specific standards for proposal.

a. *Carbon Monoxide (CO) Standards.* Beyond aligning carbon monoxide (CO) standards for all LDVs and LDTs, and allowing harmonizing with California vehicle technology, reduction in CO emissions is not a primary goal of the Tier 2 program. Thus the CO standards we are proposing for all Tier 2 LDVs and LDTs are essentially the same as those from the NLEV program for LDVs and LDT1s. These standards would harmonize with CalLEV II CO standards except at California's SULEV level (EPA Bin 2). This lone divergence would not pose additional burden to

manufacturers because the proposed federal Tier 2 CO standards for these vehicles would be less stringent than California's. Our proposed interim standards during the phase-in of Tier 2 standards would apply these same CO standards.

As we indicated in the Tier 2 Report to Congress, the number and severity of CO NAAQS violations have decreased greatly in recent years. Presently, CO exceedances occur primarily during cold weather. The need for more stringent cold CO standards is a subject of a separate EPA study that is now underway. Consequently, in this rulemaking we propose to simply align CO standards for all categories with those applicable to LDVs and LDT1s under NLEV. This alignment is consistent with our goal of bringing all LDVs and all categories of LDTs under common standards that allow for technology to be harmonized to the extent possible with California.

We believe that technological changes to bring LDT2s and HLDTs [74] under tighter NMOG standards should easily ensure compliance with the CO standards at no additional cost. In fact, certification data on current model year LDTs indicate that there are LDTs in all categories that can already meet the LDV/LDT1 NLEV CO standard.

We recognize that the vast majority of CO emissions are from motor vehicles and that increases in population in some areas combined with increases in vehicle miles traveled could lead to additional incidences of CO nonattainment. Consequently, we request comment on the need for and implications of tighter CO standards for any category of vehicles affected by today's document.

b. *Formaldehyde (HCHO) Standards.* Similar to our approach to the proposed CO standards, we are proposing to align all Tier 2 LDVs and LDTs under the formaldehyde standards for LDVs and LDT1s from the NLEV program. For new bins below Bin No. 4, we propose to adopt the CalLEV II standards for formaldehyde. HLDTs, which are not subject to the NLEV program, would become subject to HCHO standards for the first time under the provisions of this rulemaking. The Tier 2 formaldehyde standards would be essentially replicated in the interim standards we are proposing for LDVs and LDTs.

Formaldehyde is a component of NMOG but is primarily of concern for methanol-fueled vehicles, because it is chemically similar to methanol and is likely to occur when methanol is not completely burned in the engine. HLDTs are not included under the NLEV program and will therefore not face formaldehyde standards as LDVs and LLDTs will in 2001 (1999 in the northeast states). We believe it is appropriate to bring HLDTs under HCHO standards in this rulemaking. Applying formaldehyde standards to HLDTs would be consistent with our goals of aligning standards for all LDVs and LDTs regardless of fuel type and harmonizing technologically with California standards wherever possible and reasonable and the burden would be minimal.

Consequently, we are proposing to include formaldehyde standards for HLDTs under the Tier 2 program as well as under the interim programs. We note that HCHO is actually a component of NMOG, and as with CO, we expect that all vehicles able to meet the Tier 2 or interim NMOG standards (including methanol-fueled vehicles) would readily comply with the HCHO standards.

c. *Particulate Matter (PM) Standards.* We are proposing to adopt tighter PM standards, although in this case only full useful-life standards. For Tier 2 vehicles, we are proposing a 0.01 g/mi standard for all categories at the Tier 2 (Bin 5) level or below (except ZEV which, of course, is 0.0). To provide manufacturers with additional flexibility, we are proposing a 0.02 g/mi PM standard for vehicles that certify to Bins 6 or 7 standards.

For non-Tier 2 LDV/LLDTs during the phase-in period, we are proposing a PM standard of 0.06 g/mi for Bins 4 and 5. The other standards would be 0.04 for Bin 3 and 0.01 for Bin 2. For non-Tier 2 HLDTs, similar standards would apply except that the highest bin would have a PM standard of 0.06 g/mi, gradually decreasing in the other bins to 0.01 g/mi (Bin 2).

PM standards are primarily a concern for diesel-cycle vehicles, but they also apply to gasoline and other otto-cycle vehicles. We propose to continue to permit otto-cycle vehicles to certify to PM standards based on representative test data from similar technology vehicles. We request comment on the degree to which these standards would affect the certification of diesel-fueled vehicles.

2. Useful Life

The "useful life" of a vehicle is the period of time, in terms of years and miles, during which a manufacturer is formally responsible for the vehicle's emissions performance. For LDVs and LDTs, there have historically been both "full useful life" values, approximating the average life of the vehicle on the road, and "intermediate useful life" values, representing about half of the vehicle's life. We are proposing several changes to the current useful life provisions for LDVs and LDTs.

a. *Mandatory 120,000 Mile Useful Life.* We are today proposing to equalize full useful life values for all 2004 and later model year LDVs and LDTs at 120,000 miles. This value would apply to Tier 2 and interim non-Tier 2 vehicles. California, in its LEV II program, has adopted full useful life standards for all LDVs and LDTs of 10 years or 120,000 miles, whichever occurs first. We are proposing that the time period for federal LDV/LLDTs would be 10 years, but it would remain at 11 years for HLDTs consistent with the Clean Air Act.[75] Intermediate useful life values, where applicable, would remain at 5 years or 50,000 miles, whichever occurs first. Where manufacturers elect to certify Tier 2 vehicles for 150,000 miles to gain additional NO_X credits, as discussed below, the useful life of those vehicles would be 15 years and 150,000 miles. We are not proposing to harmonize with California on the mandatory useful life for evaporative emissions of 15 years and 150,000 miles, but rather we are proposing that this useful life be mandatory for evaporative emissions only when a manufacturer elects optional 150,000 mile exhaust emission certification.

b. *150,000 Mile Useful Life Certification Option.* We are proposing to adopt a provision to provide additional NO_X credit in the fleet average calculation for vehicles certified to a useful life of 150,000 miles. In our proposal, a manufacturer certifying an engine family to a 150,000 mile useful life would incorporate those vehicles into its corporate NO_X average as if they were certified to a full useful life standard 0.85 times the applicable 120,000 mile NO_X standard. To use this option, the manufacturer would have to agree to (1) certify the engine family to the applicable 120,000 mile exhaust and evaporative standards at 150,000 miles for all pollutants; and (2) increase the mileage on the single extra-high mileage in-use test vehicle from a minimum of

[74] As defined earlier, the category called HLDT, or heavy light-duty truck, includes all LDTs greater than 6000 pounds GVWR. This term includes the categories LDT3 and LDT4.

[75] Section 202(h) of the Clean Air Act specifies a useful life of 11 years/120,000 miles for HLDTs. California is able to use a 10 year figure because it has a waiver under section 209 of the Act to implement its own emission control program when such program is found to be at least as protective of public health and welfare "in the aggregate" as the federal program.

90,000 miles to a minimum of 105,000 miles.

Congress, in directing EPA to perform the Tier 2 study, also directed EPA to consider changing the useful lives of LDVs and LDTs. Manufacturers have made numerous advances in quality, materials and engineering that have led to longer actual vehicle lives and data show that each year of a vehicle's life, people are driving more miles. Current data indicate that passenger cars are driven approximately 120,000 miles in their first ten years of life. Trucks are driven approximately 150,000 miles. Current regulatory useful lives are 10 years/100,000 miles for LDV/LLDTs and 11 years/120,000 miles for HLDTs. We project based on our Tier 2 model that approximately 13 percent of light-duty NO_X and 11 percent of light-duty VOCs is produced between 100,000 and 120,000 miles. Given the trend toward longer actual vehicle lives and increases in annual mileage, we believe that it is reasonable to propose extension to the regulatory useful life requirements.

Additionally, 41 percent of light-duty NO_X and 59 percent of light-duty VOC is produced beyond 120,000 miles. Based on this data, we believe it is also appropriate to propose incentives to manufacturers to certify their vehicles to extended useful lives beyond 120,000 miles. This is why we are proposing, as discussed above, to provide additional NO_X credits for Tier 2 vehicles certified to a useful life of 150,000 miles.

3. Light Duty Supplemental Federal Test Procedure (SFTP) Standards

Supplemental Federal Test Procedure (SFTP) standards require manufacturers to control emissions from vehicles when operated at high rates of speed and acceleration (the US06 test cycle) and when operated under high ambient temperatures with air conditioning loads (the SC03 test cycle). The existing light duty SFTP requirements begin a three year phase-in in model year 2000 for Tier 1 LDV/LLDTs . For HLDTs, SFTP requirements begin a similar phase-in in 2002. Intermediate and full useful life standards exist for all categories. SFTP standards do not apply to diesel fueled Tier 1 LDT2s and HLDTs. Table V.A.–1 shows the full useful life federal SFTP requirements applicable to Tier 1 vehicles.

TABLE V.A.–1.—FULL USEFUL LIFE FEDERAL SFTP STANDARDS APPLICABLE TO TIER 1 VEHICLES

Vehicle category	NMHC + NO_X (weighted g/mi) [a]	CO (g/mi) [b]		
		US06	SC03	Weighted
LDV/LDT1 (gasoline)	0.91	11.1	3.7	4.2
LDV/LDT1 (diesel)	2.07	11.1	.....	4.2
LDT2	1.37	14.6	5.6	5.5
LDT3	1.44	16.9	6.4	6.4
LDT4	2.09	19.3	7.3	7.3

[a] Weighting for NMHC+NO_X and optional weighting for CO is 0.35×(FTP)+0.28×(US06)+0.37×(SC03).
[b] CO standards are stand alone for US06 and SC03 with option for a weighted standard.

The NLEV program includes SFTP requirements for LDVs, LDT1s and LDT2s. These requirements impose the Tier 1 intermediate and full useful life SFTP standards on Tier 1 and TLEV vehicles, but impose only 4000 mile standards on LEVs and ULEVs.[76] NLEV SFTP standards for LEVs and ULEVs are shown in Table V.A.–2. These standards do not provide for a weighted standard for NMHC+NO_X or for CO, but rather employ separate sets of standards for the US06 and SC03 tests. Also, while the NLEV SFTP standards apply to gasoline and diesel vehicles, they do not include a standard for diesel particulates (PM).

TABLE V.A.–2.—SFTP STANDARDS FOR LEVS AND ULEVS IN THE NLEV PROGRAM

	US06		SC03	
	NMHC+NO_X (g/mi)	CO (g/mi)	NMHC+NO_X (g/mi)	CO (g/mi)
LDV/LDT1	0.14	8.0	0.20	2.7
LDT2	0.25	10.5	0.27	3.5

Since no significant numbers of vehicles certified to SFTP standards below TLEV levels will enter the fleet until 2001, manufacturers have raised concerns regarding significant changes to the SFTP program before its implementation. At this point, it seems reasonable not to increase SFTP stringency for the Tier 2 program, but we are proposing to substitute SFTP standards adjusted for intermediate and full useful life deterioration where there are currently only 4000 mile standards.

Full useful life standards for Tier 2 vehicles are consistent with our mandate under the Clean Air Act. The 4000 mile standards exist in the federal program only because they were adopted in the NLEV program—a voluntary program under which California requirements were adopted nationwide. We derived the full and intermediate useful life standards by applying deterioration allowances proposed for our MOBILE 6 model to the existing 4000 mile standards for LDVs and LLDTs. For HLDTs we applied similarly derived deterioration allowances to California's LEV I SFTP standards for MDV2s and MDV3s, which are the corresponding categories to LDT3s and LDT4s in the California program. The full and intermediate useful life SFTP standards we are proposing are shown in Tables V.A.–3

[76] This disparity in useful lives arose because neither EPA nor CARB had full useful life SFTP standards for LEVs or ULEVs when the NLEV program was adopted. Since a major requirement of the NLEV program was harmony with California standards, EPA adopted the California SFTP standards in place for the NLEV time frame (2001 and later).

and V.A.–4. These standards would apply to all Tier 2 vehicles including Tier 2 LDT3s and LDT4s.

TABLE V.A.–3.—PROPOSED FULL USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS
[(SFTP Standards (grams/mile)]

	US06 NMHC+NO_X	US06 CO	SC03 NMHC+NO_X	SC03 CO
LDV/LDT1	0.2	11.1	0.26	4.2
LDT2	0.37	14.6	0.39	5.5
LDT3	0.53	16.9	0.44	6.4
LDT4	0.78	19.3	0.62	7.3

TABLE V.A.–4.—PROPOSED INTERMEDIATE USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS
[(SFTP Standards)(grams/mile)]

	US06 NMHC+NO_X	US06 CO	SC03 NMHC+NO_X	SC03 CO
LDV/LDT1	0.16	9.0	0.22	3.0
LDT2	0.30	11.6	0.32	3.9
LDT3	0.45	11.6	0.36	3.9
LDT4	0.67	13.2	0.51	4.4

Because our proposed interim standards for LDV/LLDTs (see section VI.A.3.d. above) are derived from NLEV standards, we believe that the SFTP standards we are proposing for Tier 2 vehicles should also apply to the interim non-Tier 2 LDV/LLDTs. However, we propose that TLEV vehicles (EPA interim Bin 5 in Table IV.B.–6), which are not subject to new SFTP standards under NLEV, could continue to meet Tier 1 SFTP standards, and HLDTs under the interim programs could continue to meet Tier 1 SFTP standards that do not fully phase in until the 2004 model year.

LDT3 and LDT4 SFTP standards do not currently apply to diesels. Further, the standards applicable to Tier 1 diesel LDVs and LDT1s are less stringent than gasoline standards and do not apply to the SC03 cycle. We are proposing to apply the approach we are using with other standards in this document to the Tier 2 and interim SFTP standards. Consequently, we are proposing that Tier 2 and interim LDVs and LDTs with diesel or gasoline engines comply with the same NMHC+NO_X and CO SFTP limits. We are also requesting comment on the appropriate SFTP PM standards for diesel vehicles. We believe it would be appropriate to establish a margin between 10% and 50% above the applicable FTP PM standard to serve as the SFTP standard. As an example of how EPA has recently used such a margin, in recent consent decrees, heavy-duty engine manufacturers have agreed not to exceed emission levels 1.25 times the applicable exhaust standards (including PM standards) when engines are operated over a wide range of operating conditions. We request comment on the appropriate standard for PM in the SFTP.

4. LDT Test Weight

Historically, HLDTs (LDT3s and LDT4s) have been emission tested at their adjusted loaded vehicle weight (ALVW), while LDVs, LDT1s, and LDT2s have been tested at their loaded vehicle weight (LVW). ALVW is equivalent to the curb weight of the truck plus half its maximum payload, while LVW is equivalent to the curb weight of the truck plus a driver and one adult passenger (300 pounds). As we are proposing in this document to equalize standards and useful lives across LDVs and all categories of LDTs, we believe it is appropriate to test all the vehicles under the same conditions. Therefore, consistent with the CalLEV II program, we are proposing to test HLDTs at their loaded vehicle weight. We recognize that removing all but 300 pounds of load from these trucks during the test provides them with a somewhat "easier" test cycle than they currently have. However, the standards we are proposing for HLDTs under Tier 2, are considerably more stringent than the Tier 1 standards. Further, one of our reasons for bringing HLDTs under the same standards as passenger cars is that these trucks include many vans and sport utility vehicles that are often used as passenger cars with just one or two passengers. Consequently, we believe it is appropriate to test them at LVW.

5. Test Fuels

As discussed elsewhere in this preamble, the NLEV program was adopted virtually in its entirety from California's program. Because California's standards were developed around the use of California Phase II reformulated gasoline (RFG) as the exhaust emission test fuel, we adopted California Phase II test fuel as the exhaust emission test fuel for gasoline-fueled vehicles in the federal NLEV program, although we recognized at the time that vehicles outside of California would be unlikely to operate on that fuel in use.

We believe that it is best to establish compliance with standards based on the fuel that the vehicles will operate upon. However, we also believe that the major exhaust emission related issues between California Phase II fuel and federal test fuel are related to sulfur and we do not believe the other differences between the two fuels will significantly impact NMOG, CO or NO_X exhaust emissions in Tier 2 (or interim) gasoline fueled vehicles.

In this document, we are proposing to reduce the sulfur in federal test fuel to reflect the reductions in sulfur we are proposing for commercial gasoline. Currently, federal test gasoline is subject to a limit of 0.10 percent by weight. We are proposing to amend that to an allowable range of 30 to 80 ppm (0.003 to 0.008 percent by weight). We also propose that vehicles be certified and in-use tested using federal test fuel. However, where vehicles are certified for 50 state sale, and where other testing issues do not arise, we are proposing to accept the results of testing done for California certification on California Phase II fuel. We would reserve the right to perform or require in-use testing on

federal fuel. Where vehicles are only certified for non-California sale, we propose to require certification and in-use testing on federal fuel. We request comments with supporting emission data on all aspects of these two possible test fuels.

Because differences exist between the California and federal evaporative emission testing procedures, we propose to continue to require the use of federal certification fuel as the test fuel in evaporative emission testing. Under current programs, where California and federal evaporative emission standards are nearly identical, California accepts evaporative results generated on the federal procedure (using federal test fuel), because available data indicates the federal procedure to be a "worst case" procedure. The evaporative standards California has adopted for their LEV II program are more stringent than those we are proposing in this document. We request comment and supporting emission test data on whether vehicles certified to CalLEV II evaporative standards using California fuels will necessarily comply with the federal Tier 2 evaporative standards, including ORVR standards, when tested with federal test fuel.

6. Changes to Evaporative Certification Procedures to Address Impacts of Alcohol Fuels

Current certification procedures, including regulations under the CAP2000 program,[77] allow manufacturers to develop their own durability process for calculating deterioration factors for evaporative emissions. The regulations (§ 86.1824–01) permit manufacturers to develop service accumulation (aging) methods based on "good engineering judgement", subject to review and approval by EPA. The manufacturer's durability process must be designed to predict the expected evaporative emission deterioration of in-use vehicles over their full useful lives. We are proposing to require that these aging methods include the use of alcohol fuels to address concerns that alcohol fuels increase the permeability and thus the evaporative losses from hoses and other evaporative components.

We have reviewed data indicating that the permeability, and therefore the evaporative losses, of hoses and other evaporative components can be greatly increased by exposure to fuels containing alcohols.[78] Alcohols have been shown to promote the passage of hydrocarbons through a variety of different materials commonly used in evaporative emission systems. Data from component and fuel line suppliers indicate that alcohols cause many elastomeric materials to swell, which opens up pathways for hydrocarbon permeation and also can lead to distortion and tearing of components like "O" ring seals. Ethers such as MTBE and ETBE have a much smaller effect. Alcohol-resistant materials such as fluoroelastomers are available and are currently used by manufacturers to varying extents.

Alcohols do not impact evaporative components and hoses immediately, but rather it may take as long as one year of exposure to alcohol fuels for permeation rates to stabilize. The end result in higher permeation and increased in-use evaporative emissions.[79]

Today, roughly 10% of fuel sold in the U.S. contains alcohol, mainly in the form of ethanol, and such fuels are often offered in ozone nonattainment areas. We believe it is appropriate to ensure that evaporative certification processes expose evaporative components to alcohols and do so long enough to stabilize their permeability. Therefore, we are proposing to amend evaporative certification requirements to require manufacturers to develop their deterioration factors using a fuel that contains the highest legal quantity of ethanol available in the U.S.

To implement this change, we are proposing to modify the Durability Demonstration Procedures for Evaporative Emissions found at § 86.1824–01. Our proposal would require manufacturers to age their systems using a fuel containing the maximum concentration of alcohols allowed by EPA in the fuel on which the vehicle is intended to operate, i.e., a "worst case" test fuel. (Under current requirements, this fuel would be about 10% ethanol, by volume.) We are also proposing to modify the Durability Demonstration Procedures to require manufacturers to ensure that their aging procedures are of sufficient duration to stabilize the permeability of the fuel and evaporative system materials.

It is our desire to find an alternative way by which a manufacturer could document or demonstrate that its tanks, hoses, connectors and other evaporative components are made of materials whose permeability is not significantly affected by alcohols. Successful manufacturers would not have to use alcohol fuel in certification. There are a variety of test methods to evaluate permeation losses from materials, components or subassemblies described in the literature.[80] However, from our discussions with component and materials suppliers, we conclude that there is currently no consensus test procedure or standard available that we could rely on to establish whether a fuel/evaporative system is likely to be sufficiently impermeable to alcohol fuels. We request comment on the availability and appropriateness of such procedures and standards and we request comment on the need for and benefits of certification enhancements to account for the effects of alcohols in fuels. We also seek comment on whether certification test fuel for evaporative emissions should include 10% ethanol.

7. Other Test Procedure Issues

California's LEV II program implements a number of minor changes to exhaust emissions test procedures. We have evaluated these changes and found that, for tailpipe emissions, the California test procedures fall within ranges and specifications permitted under the Federal Test Procedure.

With regard to HEVs and ZEVs, we believe that these vehicles will be predominantly available in California, or that they will typically be first offered for sale in California, because of California's ZEV requirement, which promotes the sale of HEVs and ZEVs. Where manufacturers market HEVs or ZEVs outside of California, it is likely that they will market the same vehicles in California. Consequently, we intend to incorporate by reference California's exhaust emission test procedures for HEVs and ZEVs.[81] We request comment on the appropriateness of this proposed incorporation and an emission allowance for HEVs.

In the NLEV program, we provided a specific formula used by California that could be used to compute an HEV contribution factor to NMOG emissions. This formula took into consideration the

[77] The Compliance Assurance Program, CAP2000, was proposed in an NPRM (63 FR 39654, July 23, 1998). The final rule was signed on March 15, 1998. As today's NPRM went forward for signature, the CAP2000 final rule had not been published, so no citation for the final rule is available. You should check our web site (http://www.epa.gov/omswww/) for the most current information on publication of the CAP2000 rule takes effect in the 2000 model year.

[78] Numerous SAE papers examine the permeability of fuel and evaporative system materials as well as the influence of alcohols on permeability. See, for example SAE Paper #s 910104, 920163, 930992, 970307, 970309, 930992, and 981360, copies of which are in the docket for this rulemaking.

[79] *Ibid.*

[80] *Ibid.*

[81] California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-Duty Vehicles. September 18, 1998 for the Board Hearing of November 5, 1998.

range without engine operation of various types of HEVs and had the effect of reducing the NMOG emission standard for a given emission bin (for HEV vehicles only). This would have obvious beneficial effects on a manufacturer's calculation of its corporate NMOG average.

The technology of HEVs is under rapid change and we do not believe that we can design a formula now that will accurately predict the impact of HEVs on corporate average NO_X emissions in the Tier 2 time frame. Consequently, we are including a provision by which manufacturers could propose HEV contribution factors for NO_X to EPA. If approved, these factors could be used in the calculation of a manufacturer's fleet average NO_X emissions and would provide a mechanism to credit an HEV for operating with no emissions over some portion of its life.

These factors would be based on good engineering judgement and would consider such vehicle parameters as vehicle weight, the portion of the time during the test procedure that the vehicle operates with zero emissions, the zero emission range of the vehicle, NO_X emissions from fuel-fired heaters and any measurable NO_X emissions from on-board electricity production and storage.

The final NLEV rule (*See* 62 FR pg 31219, June 6, 1997) incorporates by reference California's NMOG measurement procedure and adopts California's approach of using Reactivity Adjustment Factors (RAFs) to adjust vehicle emission test results to reflect differences in the impact on ozone formation between an alternative-fueled vehicle and a vehicle fueled with conventional gasoline. While we intend to bring all LDVs and LDTs under NMOG standards beginning in 2004 and while we desire to harmonize with California when practical and reasonable, we are not proposing to allow the use of RAFs for Tier 2 vehicles and interim non-Tier 2 vehicles. As has been discussed elsewhere in this preamble, the NLEV program is a special case in which California standards and provisions were adopted virtually in their entirety. In the preamble to the final NLEV rule (*See* 62 FR 31203), we expressed our reservations about the use of RAFs. We also addressed our reservations about the use of reactivity factors developed in California in a program that spans a range of climate and geographic locations across the United States in the final rule on reformulated gasoline (RFG) (see 59 FR 7220). We are concerned about the validity of RAFs to predict ozone formation nationwide and have asked the National Academy of Sciences to look at the scientific evidence in support of the use of these factors nationwide. We expect to receive their report prior to making our final decisions about the Tier 2 standards.

Recognizing that we are not proposing a corporate average NMOG standard, and that RAFs impact only the calculation of NMOG emissions, we request comment on all aspects of RAFs including the impact of not using them on the severity of our proposed standards, their validity to predict ozone formation nationwide, and any impact the lack of RAFs may have on alternative fueled vehicles.

In its LEV II program, California is also implementing a number of changes to evaporative emission test procedures.[82] Many of these changes address the evaporative emission testing of hybrid electric vehicles. We are generally not proposing to adopt California's changes, because California uses different test temperatures and different test fuel in its evaporative emission testing of gasoline vehicles than we use in the federal program. The preamble to the final NLEV rule (*See* 62 FR 31227) explains that California and EPA are reviewing an industry proposal to streamline and reconcile the California and federal procedures. That work has not been completed. However, where California proposes procedures specific to HEVs and ZEVs, we do intend to adopt those procedures, except that our testing would occur at lower temperatures, and use a fuel determined by EPA to be representative of federal usage (for HEVs only). Given the small number of HEVs and ZEVs likely to be sold in states other than California early in the Tier 2 program, and given the small quantities of fuel likely to be used by HEVs in any event, we request comment on the appropriateness of simply accepting California evaporative results for HEVs and ZEVs to show compliance with the less stringent federal evaporative standards. We also request comment on whether any or all of the changes California has adopted for evaporative emission testing should be adopted into federal testing requirements.

8. Small Volume Manufacturers

Our proposal includes the following flexibilities intended to assist all manufacturers in complying with the stringent proposed standards without harm to the program's environmental goals: (1) A four year phase-in of the standards for LDV/LLDTs; (2) a delayed phase-in for HLDTs; (3) the freedom to select from specific bins of standards; (4) a standard that can be met through averaging, banking and trading of NO_X credits; (5) provisions for NO_X credit deficit carryover; and (6) provisions by which a manufacturer may generate additional NO_X credits.

These flexibilities would apply to all manufacturers, regardless of size, and in general we believe they eliminate the need for more specific provisions for small volume manufacturers. However, we are proposing one additional flexibility for small volume manufacturers.[83] Our proposal would exempt small volume manufacturers from the 25%, 50% and 75% Tier 2 phase-in requirements applicable to the 2004, 2005 and 2006 LDV/LLDTs and the 50% phase-in requirement applicable to 2008 HLDTs. Instead, small volume manufacturers would simply comply with the appropriate 100% requirement in the 2007 or 2009 model year. Our proposal would also exempt small volume manufacturers from the 25%, 50% and 75% phase-in requirements applicable to interim HLDTs in 2004–2006. Instead, small volume HLDT manufacturers would simply comply with the interim standards, including the corporate average NO_X standard, in 2007 for 100% of their vehicles. During model years 2004–2006, these same small volume manufacturers would comply with any of the interim bins of HLDT standards for 100% of their HLDTs.[84]

Also, we will continue to apply the federal small volume manufacturer provisions, which provide relief from emission data and durability showing and reduce the amount of information required to be submitted to obtain a certificate of conformity. In addition, the CAP2000 program contains reduced in-use testing requirements for small volume manufacturers. Under section V.B.1. below, we describe and request comment on possible additional special provisions for certifiers that qualify as small businesses.

Our proposal to exempt small volume manufacturers from the Tier 2 phase-in requirements eliminates a dilemma that the phase-in percentages might pose to a manufacturer that has a limited product line, i.e., how to address percentage phase-in requirements if the

[82] California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles; September 18, 1998. Prepared for the November 5, 1998 Hearing of the California Air Resources Board.

[83] We define small volume manufacturers to be those with total U.S. sales of less than 15,000 highway units per year. Independent commercial importers (ICIs) with sales under 15,000 per year would be included under this term.

[84] For a graphical illustration of the phase-ins through time, see Figure IV.B.–1.

manufacturer makes vehicles in only one or two test groups. We have proposed similar provisions for small entities in other rulemakings. Approximately 15–20 manufacturers that currently certify vehicles, many of which are independent commercial importers (ICIs), would qualify. These manufacturers represent just a fraction of one percent of LDVs and LDTs produced. We do not believe that this provision would have any measurable impact on air quality.

9. Compliance Monitoring and Enforcement

a. *Application of EPA's Compliance Assurance Program, CAP2000.* The CAP2000 program (final rule signed March 15, 1998; **Federal Register** cite not yet available) streamlines and simplifies the procedures for certification of new vehicles and would also require manufacturers to test in-use vehicles to monitor compliance with emission standards. The CAP2000 program was developed jointly with the State of California and involved considerable input and support from manufacturers. As the name implies, it can be implemented as early as the 2000 model year.

In today's document, we are proposing that the Tier 2 and the interim requirements would be implemented subject to the requirements of the CAP2000 program. Certain CAP2000 requirements would be slightly modified to reflect changes to useful lives, standard structure and other aspects of the Tier 2 program, but we are proposing no major changes to fundamental principles of the CAP2000 program.

Although we are proposing changes to useful lives in this document, we are not proposing to amend the 50,000 mile minimum mileage used in manufacturer in-use verification testing or in-use confirmatory testing under the CAP2000 program at this time. The CAP2000 in-use program is not yet implemented and we believe it is appropriate to allow manufacturers to gain experience with procuring and testing vehicles at the 50,000 mile level before making significant changes. However, where one vehicle from each in-use test group would have a minimum mileage of 75,000 miles under the CAP2000 program, we are proposing, consistent with California, to change that figure to 90,000 miles for Tier 2 vehicles.

We may, in our own in-use program, procure and test vehicles at mileages higher than 50,000 and pursue remedial actions (e.g. recalls) based on that data. We may also use that data as the basis to initiate a rulemaking to make changes in theCAP2000 in-use requirements, if the data indicate significant non-conformity at higher mileages.

b. *Compliance Monitoring.* We plan no new compliance monitoring activities or programs for Tier 2 vehicles. These vehicles would be subject to the certification and manufacturer in-use testing provisions of the CAP2000 rule. Also, we expect to continue our own in-use testing program for exhaust and evaporative emissions. We will pursue remedial actions when substantial numbers of properly maintained and used vehicles fail any standard in either in-use testing program.

We retain the right to conduct Selective Enforcement Auditing of new vehicles at manufacturer's facilities. In recent years, we have discontinued SEA testing of new light-duty vehicles and trucks, because compliance rates were routinely at 100%. We recognize that the need for SEA testing may be reduced by the low mileage in-use testing requirements of the CAP2000 program. However, we expect to re-examine the need for SEA testing as standards tighten under the NLEV and Tier 2 programs.

We have established a data base to record and track manufacturers' compliance with NLEV requirements including the corporate average NMOG standards. We expect to monitor manufacturers' compliance with the Tier 2 and interim corporate average NO_X standards in a similar fashion and also to monitor manufacturers' phase-in percentages for Tier 2 vehicles.

c. *Relaxed In-Use Standards for Tier 2 Vehicles Produced During the Phase-in Period.* As we have indicated numerous times in this preamble, the Tier 2 standards we are proposing would be challenging for manufacturers to achieve, and some vehicles would pose more of a challenge than others. Not only would manufacturers be responsible for assuring that vehicles can meet the standards at the time of certification, they would also have to ensure that the vehicles could comply when tested in-use by themselves under the provisions of the CAP2000 program, and by EPA under its in-use ("Recall") test program.

With any new technology, or even with new calibrations of existing technology, there are risks of in-use compliance problems that may not appear in the certification process. In-use compliance concerns may discourage manufacturers from applying new technologies or new calibrations. Thus, it may be appropriate for the first few years, for those bins most likely to require the greatest applications of effort, to provide assurance to the manufacturers that they will not face recall if they exceed standards by a specified amount.

We are proposing, for Tier 2 vehicles only, that for the first two years after a test group meeting a new standard is introduced, that test group be subject to more lenient in-use standards. These "in-use standards" would apply only to Tier 2 Bins 5 and below, only for the pollutants indicated, and only for the first two model years that a test group was certified under that bin. The in-use standards would not be applicable to any test group first certified to a new standard after 2007 for LDV/LLDTs or after 2009 for HLDTs.

The in-use standards we are proposing are shown in Table V.A.–5 below.

TABLE V.A.–5.—IN-USE COMPLIANCE STANDARDS FOR TIER 2 VEHICLES (G/MI)

[Certification standards shown for reference purposes]

Bin No.	Durability period (miles)	NO_X In-use	NO_X certification	NMOG in-use	NMOG certification
5, 4	50,000	0.07	0.05	N/a	0.075, 0.04.
5, 4	120,000	0.10	0.07	N/a	0.090, 0.055.
3	120,000	0.06	0.04	N/a	0.070.
2	120,000	0.03	0.02	0.02	0.010.

We believe manufacturers should and will strive to meet the Tier 2 certification standards for the full useful lives of the vehicles, but we recognize that the existence of such in-use standards poses some risk that

manufacturer might aim for the in-use standard in its design efforts rather than the certification standard, and thus market less durable designs. We do not believe that risk to be significant. We believe that such risks are more than balanced by the gains that could result from earlier application of new technology or new calibration techniques that might occur in a scenario where in-use liability is slightly reduced. Further, we believe that the in-use standards will be of short enough duration that any risks are minimal.

We note that the in-use provisions proposed above are similar to those included in California's LEV II program. We request comment on all aspects of the proposed in-use standards including the appropriateness of and need for separate in-use compliance standards for the early years of the Tier 2 program.

d. *Enforcement of the Tier 2 and Interim Corporate Average NO_X Standards.* Under the proposed programs, manufacturers could either report that they met the relevant corporate average NO_X standard in their annual reports to the Agency or they could show via the use of NO_X credits that they have offset any exceedence of the corporate average NO_X standard. Manufacturers would also report their NO_X credit balances or deficits.

The averaging, banking and trading program would be enforced through the certificate of conformity that the manufacturer would need to obtain in order to introduce any regulated vehicles into commerce. The certificate for each test group would require all vehicles to meet the applicable Tier 2 emission standards from the applicable bin of the Tier 2 program, and would be conditioned upon the manufacturer meeting the corporate average NO_X standard within the required time frame. If a manufacturer failed to meet this condition, the vehicles causing the corporate average NO_X exceedence will be considered to be not covered by the certificate of conformity for that engine family. A manufacturer would be subject to penalties on an individual vehicle basis for sale of vehicles not covered by a certificate. These provisions would also apply to the interim corporate average standards.

As outlined in detail in the preamble to the final NLEV rule, EPA would review the manufacturer's sales to designate the vehicles that caused the exceedence of the corporate average NO_X standard. We would designate as nonconforming those vehicles in those test groups with the highest certification emission values first, continuing until a number of vehicles equal to the calculated number of noncomplying vehicles as determined above is reached. In a test group where only a portion of vehicles would be deemed nonconforming, we would determine the actual nonconforming vehicles by counting backwards from the last vehicle produced in that test group. Manufacturers would be liable for penalties for each vehicle sold that is not covered by a certificate.

We are proposing in today's action to condition certificates to enforce the requirements that manufacturers not sell NO_X credits that they have not generated. A manufacturer that transferred NO_X credits it did not have would create an equivalent number of debits that it would be required to offset by the reporting deadline for the same model year. Failure to cover these debits with NO_X credits by the reporting deadline would be a violation of the conditions under which EPA issued the certificate of conformity, and nonconforming vehicles would not be covered by the certificate. EPA would identify the nonconforming vehicles in the same manner described above.

In the case of a trade that resulted in a negative credit balance that a manufacturer could not cover by the reporting deadline for the model year in which the trade occurred, we propose to hold both the buyer and the seller liable. This is consistent with other mobile source rules, except for the NLEV rule as discussed below. We believe that holding both parties liable will induce the buyer to exercise diligence in assuring that the seller has or will be able to generate appropriate credits and will help to ensure that inappropriate trades do not occur.

In the NLEV program we implemented a system in which only the seller of credits would be liable. In the preamble to the final NLEV rule (*See* 62 FR 31216), we explained that a multiple liability approach would be unnecessary in the context of the NLEV program given that the main benefit to a multi-party liability approach would be to "protect against a situation where one party sells invalid credits and then goes bankrupt, leaving no one liable for either penalties or compensation for the environmental harm." Our preamble stated further that EPA would not necessarily take the same approach for "other differently situated trading programs."

The NLEV program was implemented to be a relatively short duration program, during which time we could expect relative stability in the industry. Also, given that NLEV is a voluntary program of lower than mandated standards, we did not expect that the smallest manufacturers would opt in. These are the companies whose stability is most in jeopardy in a dynamic and very competitive worldwide business.

We currently believe that the Tier 2 program and its framework will remain for many years. We note that the program is not scheduled for complete phase-in for almost nine years after the publication of this proposal. All manufacturers, large and small, will ultimately have to meet the Tier 2 standards. We cannot predict that in the Tier 2 time frame there will not be companies that leave the market or are divided between other companies in mergers and acquisitions. Thus we believe it is prudent to implement a program to provide inducements to the seller to assure the validity of any credits that it purchases or contracts for. However, we request comment on whether we should implement a program that would only deem the seller to be in violation if it sold credits it could not supply.

10. Miscellaneous Provisions

We are proposing to continue existing emission standards from Tier 1 and NLEV that apply to cold CO, certification short testing, refueling, running loss, idle CO for LDTs, and highway NO_X. We are not proposing to continue the 50 degree (F) standards and testing included in the NLEV program. The 50 degree standards are a part of the NLEV program because that national program adopted California requirements virtually in their entirety. These standards had not previously been part of any federal program. We request comment on the need and the associated burden for any of the standards mentioned in this paragraph.

B. Other Areas on Which We are Seeking Comment

1. LDV/LDT Program Options

The alternatives for which we seek comment would have impacts on the level of emission reductions achieved by the program as well as on the cost and technological impacts of the program. Any decision to adopt an alternative would have to consider those factors. We welcome comments on all of the options described below. Commenters should address cost, technological feasibility and emission impact whenever possible.

a. *Alternatives to Address Stringency of the Standards.*

i. *Alternative Standards and Implementation Schedules.*

We believe that the Tier 2 standards and phase-in schedule contained in this proposal provide appropriate lead time and flexibility for manufacturers to

achieve cost-effective emission reductions in a reasonable time period. Further, our standards and phase-in schedules are reasonably harmonized with California's LEV II program to facilitate the sale of 50-state vehicles and to minimize the administrative burdens involved with having to meet the requirements of both California and EPA simultaneously. We believe our proposed fuels provisions will ensure that appropriate fuels are available to enable Tier 2 vehicles to provide substantive in-use emission reductions. Some have suggested delays in the program to 2007 and later. However, many states need reductions as soon as possible for 2007 NAAQS compliance, so there is a need for an aggressive but achievable implementation schedule.

Nevertheless, we are interested in reviewing alternative standards, implementation schedules and averaging schemes. Therefore we request comment on all aspects of the standards and schedules we are proposing today, including the interim standards and schedules, and we request comment on what alternative standards and implementation approaches might provide comparable emission reductions that are cost-effective in the same time frame as our proposal.

We recognize that the Tier 2 program as proposed today does not provide for further reductions in average certification levels after 2008 as California's LEV II program does. We request comment on the technological feasibility, necessity, cost and likely benefits of further reductions in corporate average standards after 2009, including comments on the reduction of the corporate average NO_X standard to a level of approximately 0.05 g/mi in the 2011–2012 time frame. We also request comment on a traditional, non-averaging standard of 0.07 g/mi NO_X with related standards for NMOG, CO, HCHO, and PM in the 2011–2012 time frame, applicable to all LDVs and LDTs.

ii. *Use of Family Emission Limits (FELs) Rather than Bins.*

A bins-based program with an overarching corporate average standard has worked well in California for many years and is being implemented nationwide beginning in 1999 under the NLEV program. We believe that a phased in, bins-based program is the best way to implement the Tier 2 exhaust emission standards and, at the same time, encourage the development of advanced emission control technology. We believe that manufacturers of light duty vehicles and trucks are accustomed to such programs and will appreciate the flexibility and opportunities for 50-state certification that a bins-based program affords.

We are aware, of course, that in other EPA mobile source emission programs, we have implemented averaging standards that were not based upon bins. In these programs, manufacturers declare a family emission limit (FEL) either above or below the averaging standard set by EPA. The FEL becomes the standard for that family. Similar to the bins approach, manufacturers compute a sales weighted average for the subject pollutant at the end of the model year and then determine credits generated or needed based on the distance of that average above or below the standard.

In an FEL based program, every test group can have a different FEL—essentially there is an unlimited continuum of bins to choose from (although there is usually an upper limit or cap on the FELs). The FEL approach adds flexibility and could increase the incentive for cost-effective improvements in vehicle emissions performance. Under a bins approach, a manufacturer is limited to step-wise improvements. An FEL approach could provide incentive for manufacturers to realize smaller, low cost emissions improvements that could be achieved, for example, through engine re-calibration.

However, FEL-based programs create other concerns. One concern with an FEL approach is that it may be viewed as providing too much flexibility since a manufacturer could request a change in an FEL based on a change in desired compliance margin above the certification level or based on concern about its credit balance rather than a change in technology. In EPA's FEL-based programs, it is not uncommon for a manufacturer to declare an FEL that is identical to its certification level. It is also not uncommon for a manufacturer to change its FEL several times during a model year, based, among other reasons, on the availability of or need for credits. In a bins approach, such changes are unlikely, since a change in bins involves more of an increment in emissions and involves compliance with all pollutants in that bin. Consequently, a bins approach eases EPA's compliance monitoring burden. It provides additional assurance that expected emission reductions will occur in use because some vehicles may "over-qualify" for their bin resulting in greater than expected reductions than if they exactly met the standard for that bin. Of course, an FEL approach could be modified to restrict or prohibit changes in certification levels during a model year.

Also, in an FEL-based program, it may be necessary to establish corporate average standards for other pollutants besides NO_X. These standards would then require manufacturers to establish FELs for additional pollutants. In a bins-based program, the standards for the other pollutants are simply set by the different bins.

An FEL approach could also lead to additional complexity in manufacturer in-use testing under the CAP2000 program and in EPA in-use testing because if FEL changes are made, the issue of which standard to measure compliance against arises as does the issue of how many vehicles to test for each different FEL. If we were to adopt an FEL approach, we would have to consider significant changes to the in-use provisions of the CAP2000 program to assure that all variations of a test group were adequately covered by manufacturer in-use testing.

We request comment on the appropriateness and need for an FEL-based program for the Tier 2 and/or interim standards. Commenters supporting the use of an FEL-based program should also provide comment as to how EPA can best manage the issues related to in-use testing and how EPA can best assure that FEL changes are closely linked to real changes in vehicle emissions.

iii. *Use of Different Averaging Sets.*

We chose for our proposal the broadest possible—and therefore most flexible—averaging set for the Tier 2 vehicles. We are proposing that, beginning in 2009 when phase-in of all vehicles is complete, all LDVs and LDTs could be averaged together to meet the corporate average NO_X standard. We believe this approach is appropriate because it treats LDTs like LDVs, considering that LDTs are used as passenger cars much of the time. Also, by permitting this broad averaging, a manufacturer of larger LDTs that might have difficulty meeting a 0.07 g/mi NO_X level can certify the LDTs to Bin 6 or 7 and offset the emissions of these trucks with cars or smaller trucks that it certifies to levels below 0.07 g/mi.

While we believe our proposed averaging program is appropriate, we recognize that most manufacturers do not produce larger LDTs and may be able to meet the corporate average NO_X standard of 0.07 g/mi with less overall effort. Therefore, we request comment as to whether another approach to averaging might be more appropriate such as a segregated approach where LDTs are averaged separately from LDVs or where HLDTs (LDT3s and 4s) are averaged separately from LDV/LLDTs.

iv. *Different Standards for Different Categories of Vehicles.*

We have explained several times in this preamble that we believe the same standards should apply to all LDVs and LDTs because LDTs are so often used as passenger vehicles, and because the standards are feasible for all LDVs and LDTs. The technological challenge may be greater for larger trucks, so our proposal provides additional leadtime and a later start date for HLDTs to provide more opportunity to resolve potential problems. However, we recognize that other approaches exist that could yield comparable environmental benefit. Therefore, we request comment on other approaches such as one that would employ a lower corporate average NO_X standard for LDV/LLDTs, with a higher corporate average standard for HLDTs.

v. *Consideration of Special Provisions for the Largest LDTs and Advanced Technology.*

California has adopted a provision in its LEV II program, under which a manufacturer could certify up to 4 percent of its larger LDTs to a higher NO_X standard. These trucks could meet a 0.10 g/mi NO_X standard rather than a 0.07 g/mi NO_X standard, provided they have a payload of at least 2500 pounds. California chose the figure of 4% because it approximates the fraction of such trucks in the largest volume manufacturer's fleet.

We have not proposed such an option in the federal program because we are providing additional lead time and compliance on average for all cars and trucks beginning in 2009. Nevertheless, we do recognize that the largest trucks will likely require the greatest application of emission control technology to comply with Tier 2 standards and we expect that larger trucks will likely be the last, and the most difficult, vehicles to phase into the Tier 2 program.

In the context of the flexibilities already proposed for the federal program, we request comment on the need for and environmental impact of additional program flexibility for the largest trucks. One option we have considered would allow manufacturers to exclude a small fraction (perhaps 4 percent) of their largest Tier 2 trucks (HLDTs) from the corporate average NO_X calculation beginning in 2009 and lasting through approximately model year 2011. These trucks would still be subject to a NO_X standard of 0.20 g/mi and all other standards and provisions of the Tier 2 program, including the requirement to fit within a Tier 2 bin for other emission standards.

This provision would provide a less stringent standard for the heaviest LDTs. We believe these LDTs are the most likely to be used primarily for work and commercial purposes, while at the same time having the most difficulty complying with Tier 2 requirements. We request comment on all aspects of this provision, including whether the allowable sales fraction (4%) and payload minimum (2500 pounds) set by California would be appropriate for the federal provision, and whether such a concept should also be applied to only LDT4s or both LDT3s and 4s. Supporters of such an approach should comment on the appropriate allowable sales fraction for the interim vehicles.

Some have suggested that a potential way of providing flexibility for advanced technology vehicles would be to provide bins with less stringent standards while retaining the stringency of the 0.07 NO_X average. These additional bins would augment the current flexibilities offered to manufacturers. We request comment on this idea, specifically on including additional bins with NO_X standards up to 0.60 g/mi, with any other modifications that are appropriate. We also ask comment on whether such bins should be a temporary part of the Tier 2 program.

vi. *Measures to Prevent LDT Migration to Heavy-Duty Vehicle Category.*

Existing regulations define a light-duty truck to be any motor vehicle rated at 8500 pounds gross vehicle weight rating (GVWR) or less that has a curb weight of 6000 pounds or less and that has a basic frontal area of 45 square feet or less, which is:

- Designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or
- Designed primarily for transportation of persons and has a capacity of more than 12 persons, or
- Available with special features enabling off-street or off-highway operation and use.

For the heaviest LDTs, we are concerned that manufacturers may, in some cases, find it attractive to add GVWR capacity, curb weight or frontal area to their vehicles such that they would no longer meet one or more of the criteria to be considered an LDT. The vehicles would then fall into the heavy-duty category and would be subject to less technologically challenging standards.

We would like to develop reasonable restrictions to prevent this "gaming" of the LDT definition. The ideal restrictions would prevent migration of LDTs above the limiting criteria, but would not impact vehicles with legitimate needs to be outside, but close to, the LDT definition. Our objective is complicated by the fact that many LDTs currently have derivatives or corresponding models that are over 8500 pounds GVWR.

We have considered various approaches to restrictions on LDTs. Some of the ideas we have considered are as follows:

- Require all complete trucks in the 8500–10,000 pound GVWR range to meet light-duty standards.
- Raise the GVWR cutoff from 8500 pounds to some other number such as 8750, 9000 or 9500 pounds.
- Require manufacturers of vehicles that are above but close to any of the three size criteria to provide justification that they cannot accomplish their intended function if built to a lower size criterion.
- Require manufacturers to provide supporting data, surveys, etc., that vehicles above, but close to, any of the LDT cutoffs are primarily used for commercial purposes.

We request comment on all aspects of this vehicle migration issue, including specific comment on the ideas presented above and on other approaches that might be appropriate. This discussion serves as notice that we are very likely to finalize a provision to address this vehicle migration issue. You are encouraged to consider the approaches we have outlined above and provide specific suggestions on other approaches as well as comments as to the need for such controls, their feasibility and their cost.

In the longer term, the best way to address the vehicle migration issue is to implement standards for complete heavy-duty vehicles that have a stringency comparable to their HLDT counterparts. In the near future, we expect to publish an NPRM addressing emissions from gasoline-fueled heavy-duty engines and vehicles for 2004 and later model years. As part of that effort we are considering chassis-based standards for gasoline-fueled complete vehicles between 8,500 and 14,000 lbs GVWR. The degree to which such standards discourage migration depends upon the relative stringency of the standards. EPA requests comment on the potential effectiveness of such a strategy in addressing migration concerns and the timing and level of emission standards necessary to do so.

vii. *Use of Non-conformance Penalties (NCPs).*

NCPs are monetary payments that manufacturers can pay to meet an adjusted standard in lieu of complying with a prescribed emission standard or set of emission standards. *See* CAA

section 206(g). Current regulations at 40 CFR part 86 Subpart L provide for NCPs for HLDTs, and for heavy-duty engines. However, in order to establish NCPs for a specific standard or set of standards for these vehicles and engines, EPA must first determine that (1) substantial work will be required to meet the standard for which the NCP is offered; and (2) that there will be a manufacturer that is a technological laggard in complying with that standard. EPA must also, through rulemaking, determine compliance costs so that the penalty rates can be established appropriately.

NCPs were used extensively by manufacturers of on-highway heavy-duty engines in the late 1980s, prior to the implementation of our heavy-duty averaging, banking and trading program. Since that time, their use has been rare. We believe manufacturers have used the flexibility of an averaging, banking and trading scheme as a preferred alternative to incurring the monetary losses associated with NCPs.

We are not proposing NCPs for HLDTs in the primary Tier 2 program or in the interim programs. This is because we believe that the NO_X averaging program we are proposing makes it unlikely that the criteria for NCPs mentioned above will be met, as NO_X credits from other vehicles may be used to enable HLDTs to meet the 0.07 g/mi average NO_X standard.

We have considered whether NCPs might be appropriate for the Tier 2 diesel particulate standards, for which our proposal contains no averaging provisions. We are not proposing PM NCPs for those diesel powered trucks, but we request comment on whether such NCPs would be appropriate. We believe that appropriate technologies will be available from component vendors and diesel engine suppliers. We request comment on the need for and appropriateness of NCPs for any Tier 2 standard for HLDTs.

viii. *Additional NO_X Credits for Vehicles Certifying to Low NO_X Levels.*

There is currently substantial work underway to develop vehicles with extremely low emissions. We believe that it is appropriate to encourage such technology by providing incentives for its use. Consequently, we are requesting comment as to whether we should implement a provision by which manufacturers can earn additional NO_X credits for certifying to levels below 0.07 g/mi. As we envision such a provision, manufacturers would be allowed, in the calculation of their year end corporate average NO_X level, to multiply the number of vehicles sold which are certified to bins below 0.07 g/mi NO_X by some preset multiplier, or set of multipliers. For example, the number of vehicles certified to the 0.04 bin might be multiplied by 1.5, those in the 0.02 bin might be multiplied by 2.0 and those in the 0.0 bin (ZEVs) might be multiplied by 3.0.

We recognize that such a program would enable manufacturers to use more credits than actually generated in use, and that the use of these credits would likely result in some additional NO_X emissions. However, we believe that it may be appropriate to provide inducements to manufacturers to strive for ever lower NO_X emissions and that these inducements may help pave the way for greater and/or more cost effective emission reductions from future vehicles. We request comment on all aspects of such incentive credits. Issues related to these credits include the value of a multiplier or multipliers, whether early credits should be subject to the multipliers, and whether there should be a "sunset" provision to limit the time period in which manufacturers could obtain and/or use these extra credits. We request comment on a sunset year of 2009, since it is the end of the proposed Tier 2 program phase-in.

ix. *Incentives for Manufacturers to Bank Additional Early NO_X credits.*

We are interested in exploring any reasonable approaches that would provide incentives to manufacturers to produce vehicles meeting the 0.07 g/mi NO_X standard earlier than required. We believe that early certification to this level will help manufacturers gain experience with new or enhanced technologies on a limited scale before they must be applied to the entire fleet, and that such experience would have a positive, although hard to quantify, environmental benefit.

We have proposed an approach elsewhere in this preamble that permits manufacturers to utilize alternative phase-in schedules. Manufacturers that introduce Tier 2 vehicles before the first required year in the primary phase-in schedule could follow a more flexible phase-in path to 100% compliance than required under the primary option. Manufacturers would also be able to generate NO_X credits if these "early" vehicles met a corporate average NO_X level of less than 0.07 g/mi.

We have considered whether a mechanism that provided additional NO_X credits could induce manufacturers to introduce more Tier 2 vehicles sooner than required. Such a mechanism might substitute a number higher than the 0.07 g/mi NO_X standard in the credit calculation so that the manufacturer would subtract its corporate average NO_X level from, say, 0.10 and then multiply the difference by the number of Tier 2 vehicles to determine credits earned. While we believe such a scheme might induce manufacturers to accelerate the introduction of Tier 2 vehicles, we have concerns about whether this approach would lead to windfall credits and whether we would need to employ a discount to compensate for them. Should the resulting credits have finite or infinite life? Should we apply such a scheme to LDV/LLDTs only; or should we also apply it to HLDTs; and should we apply such a scheme to the interim standards for HLDTs? We request comment on these and all other aspects of permitting additional NO_X credits for Tier 2 and interim vehicles.

x. *Flexibilities for Small Volume Manufacturers and Small Businesses.*

In section V.A.8. above, we propose to waive the Tier 2 phase-in requirements for small volume manufacturers.[85] These manufacturers, which each produce 15,000 or fewer vehicles per year, would simply comply with the 100 % requirement in 2007 (2009 for HLDTs).

Some very small volume manufacturers of LDVs and LDT1s and LDT2s elected not to opt into NLEV and thus will produce Tier 1 vehicles during the NLEV program. We are seeking comment about the burden that our interim standards might impose on very small manufacturers in 2004 given that they will have to meet the Tier 2 standards no later than 2007 under today's proposal. Similarly we are concerned about the burden that the interim standards might impose on any small volume HLDT manufacturers. We request comment on the need for and appropriateness of a provision that would waive the interim standards for very small volume manufacturers who produce, say, less than 1,000 vehicles per year, or who qualify as small businesses (see below).

The panel convened under the Small Business Regulatory Enforcement Fairness Act (SBREFA),[86] recommended that we seek comment on five provisions outlined below to ease our

[85] A "small volume manufacturer" is not necessarily a "small business". Rather, "small volume manufacturer" is an EPA term that refers to entities whose annual on-highway sales are 15,000 or fewer vehicles per year. However, most if not all small businesses covered under this discussion are also "small volume manufacturers," though most small volume manufacturers are not small businesses.

[86] This panel was convened, consistent with SBREFA, by EPA, the Small Business Administration, and the Office of Management and Budget to review of the likely impact of Tier 2 requirements on small businesses.

proposal's impact on small businesses. These provisions, if adopted, would apply to "small businesses" as defined by Small Business Administration. The size of a "small business" varies by industry type as represented by SIC codes. Tables V.B.–2 and V.B.–3 contain the SIC codes that could potentially be impacted by the Tier 2 rule and the maximum number of employees or maximum revenue a business can have to be considered a small business.

TABLE V.B.–2.—SBA SMALL BUSINESS CATEGORIES FOR SMALL INDEPENDENT COMMERCIAL IMPORTERS

SIC code	Description	Size standard (annual revenues in millions)
7533	Auto Exhaust System Repair Shops	$5
7549	Automotive Services	5
8742	Management Consulting Services	5

TABLE V.B.–3.—SBA SMALL BUSINESS CATEGORIES FOR ALTERNATIVE FUEL VEHICLE CONVERTERS

SIC code	Description	Size standard ($ =annual revenues)
3592	Carburetors, Pistons, Rings and Valves	500 employees.
3714	Motor Vehicle Parts and Accessories	750 employees.
5172	Petroleum Products	100 employees.
5984	Liquefied Petroleum Gas Dealers	$5 million.
7549	Automotive Services	$5 million.
8742	Management Consulting Services	$5 million.
8931	Commercial Physical Research	500 employees.

The vast majority of businesses in these categories are not subject to these EPA requirements. However, some businesses in these categories may in fact manufacture LDVs and LDTs or may modify vehicles produced by others in a manner that will subject them to the requirements applicable to manufacturers under EPA regulations. For example, Independent Commercial Importers (ICIs) modify imported motor vehicles into configurations that they certify to meet federal emission requirements. Approximately 15–20 small businesses qualified as manufacturers and received certificates of conformity each year over the last five years.

For simplicity, and consistency with the report of the SBREFA panel, we refer to these small businesses as small certifiers in the following discussion. The requirements to certify continue to apply only to parties that meet the definition of "manufacturer."

Consistent with the recommendations of the SBREFA panel, we request comment on the following ideas:

For small certifiers that convert imported vehicles to U.S. standards (independent commercial importers or ICIs) and for small certifiers that convert vehicles to operate on alternative fuels, provide a delay in required compliance of two years after the particular model vehicle is certified to Tier 2 standards by the original equipment manufacturer.

This provision would provide time for development of appropriate emission control systems and test data for small businesses who may need to first obtain a regular production vehicle certified by the OEM before they can begin work.

Although it was not a specific recommendation of the SBREFA panel, we are also requesting comment on whether ICIs should be exempted from the Tier 2 and interim fleet average NO_x standards. ICIs may not be able to predict their sales of vehicles and control their fleet average emissions because they may be dependant upon vehicles brought to them by individuals attempting to import uncertified vehicles. Presently, the NLEV requirements are optional for ICIs and ICIs are specifically exempted from complying with the fleet average NMOG standard under the NLEV program. (*See* 40 CFR 85.1515(c)). Further, a prohibition in the current ICI regulations specifically bars ICIs from participating in any emission related averaging, banking or trading program. (*See* 40 CFR 85.1515(d)). If we do not amend this prohibition, the likely outcome would be that ICIs could choose any bin to certify their vehicles and would pick the least stringent standards.

Given the historically very low sales of ICIs and the probable challenges that even the least stringent Tier 2 and interim non-Tier 2 bins will impose upon ICIs, we do not expect ICIs to grow significantly in number or size. Therefore, we do not expect that provisions exempting or prohibiting ICIs from the fleet average NO_x standard would have any air quality impact. However, we request comment on all aspects of the applicability of the fleet average NO_x standards to ICIs.

Establish a credit program and provide incentives for large manufacturers so that they would make credits available to small certifiers.

This provision would address the problem inherent with any emission credit trading program that manufacturers holding credits don't have to trade them. While the panel proposed this option, it did not provide any thoughts on what type of incentives might be appropriate and necessary to induce larger manufacturers to supply credits at reasonable prices to small businesses.

Develop a program to provide credits to small certifiers for taking older vehicles off of the road (i.e., a scrappage program).

Because older vehicles often have very high emissions, removing one from use could more than offset the emissions of a new vehicle produced by a small certifier that was unable to fully comply with the Tier 2 standards. Scrappage programs must be designed so that they remove vehicles from the fleet that see significant annual mileage. They must be adequately funded and managed. They must have controls and oversight to ensure that they don't remove vehicles that would have been scrapped anyway.

Design a case-by-case hardship relief provision that would delay required

compliance for small certifiers that demonstrate that they would face a severe economic impact from meeting the Tier 2 standards.

We have implemented case-by-case hardship provisions in some rules subject to specific limiting constraints. Typically, these would provide that small businesses that have tried all other regulatory options and apply in writing before they experience nonconformity, could obtain a 1 year delay in the implementation of the standards. The small business would have to show that failure to comply was the fault of external and extenuating circumstances and that inability to sell the subject vehicles would have a major impact on the company's solvency.

If the Tier 2 program involves a phase-in of standards, allow small certifiers to comply at the end of such a phase-in.

As indicated at the beginning of this section, we are proposing this option for all phase-ins associated with the Tier 2 program including the phase-in of the Interim standards for HLDTs (see Section V.A.8. above).

We request comment on the need for, appropriateness and environmental impact of all of the items proposed by the SBREFA panel. Also, we request comment on whether any such provisions would be necessary and appropriate for the interim standards for non-Tier 2 vehicles.

xi. *Adverse Effects of System Leaks.*

For the emission control system to operate as designed, the air-fuel (A/F) ratio must stay within strictly prescribed limits that vary with vehicle/engine operating conditions and engine controls must respond quickly to the slightest changes in this ratio. Even the smallest air leak in either the exhaust manifold or exhaust pipe or any related connection can provide the oxygen sensor incorrect information on the oxygen content of the exhaust gas it uses to calibrate the engine A/F ratio.

Some manufacturers have taken steps to address this concern as part of their overall design process by incorporating features such as corrosion-free flexible couplings, corrosion-free steel, and improved welding of catalyst assemblies. EPA is concerned that either as a result of manufacturing or installation errors or errors in a repair action, there will be an unintentional and unobserved increase in emissions and perhaps a failure to meet FTP and a SFTP emission standards in-use.

EPA seeks comment on design or onboard monitoring requirements that might be useful to address this concern. EPA would also seek comment on a provision that would require a manufacturer to demonstrate through engineering analysis or design that such possibilities have been taken into account.

xii. *Consideration of Other Corporate Averaging Approaches.*

We welcome comments on the pros and cons, including regulatory burden, of establishing a combined NMOG plus NO_X corporate average standard in lieu of either the proposed NO_X average or a California-like NMOG average. We also request comments, if not provided in response to Section IV.B. above, on the concept of requiring a declining corporate average NO_X standard or a declining corporate average NMOG standard at the federal level. For example, we would consider a declining average approach that reduces NMOG/NO_X corporate average emissions by 20–25% over the period 2008–2012, or nominally to 0.07 NMOG/0.05 NO_X. Such a reduction might involve a reduction in gasoline sulfur levels as discussed in Section IV.E.2. above. We also seek comment on the idea of eliminating the averaging concept in 2011 or 2012 and setting the LDV/LDT standards at the levels of Bin No. 5 in Table IV.B.-2 (0.07 g/mi NO_X plus the other standards). Commenters should address the cost and feasibility of these approaches.

2. Tighter Evaporative Emission Standards

We considered proposing tighter evaporative emission standards, including California's LEV II standards for evaporative emissions, shown in Table V.B.-4 below.

TABLE V.B.–4.—CALIFORNIA'S LEV II EVAPORATIVE HYDROCARBON STANDARDS

[Grams per test]

Vehicle class	Three day diurnal + hot soak standard	Supplemental two day diurnal + hot soak standard
LDV	0.50	0.65
LDT1 AND LDT2	0.65	0.85
LDT3 AND LDT4	0.90	1.15

These standards are based on an evaporative emission test procedure that is conducted at different temperatures using fuel with lower vapor pressure than the corresponding federal evaporative test procedure. Under current evaporative standards, California accepts the results of federal evaporative testing, because it represents a worst case test. We do not know whether California's standards are feasible under the federal test conditions.

We are concerned about evaporative hydrocarbons and we recognize that they constitute a portion of the mobile source VOC inventory that will be similar in size to the light duty exhaust contribution when NLEV exhaust standards are in place. Our proposed standards, which are found in section IV.B.4.a. above, are roughly in line with current average certification levels but will nonetheless yield real in-use evaporative reductions as manufacturers reduce certification levels to gain safety margins under the new standards. These standards will also prevent manufacturers from "backsliding" from their current low certification levels upward toward the existing standards as they seek cost reductions. Our proposed standards will require manufacturers to capture the abilities of available fuel system materials to minimize evaporative emissions. Further, we are proposing certification enhancements to address the impact of alcohol fuels on evaporative emissions, and we expect that these measures will lead to more uniform use of lower permeability materials that will result in in-use reductions in non-attainment areas where alcohol fuels are the most prevalent.

We request comment on the appropriateness and cost effectiveness of applying tighter evaporative standards in the federal program.

3. Credits for Innovative VOC, NO_X and Ozone Reduction Technologies Not Appropriately Credited by EPA's Emission Test Procedures

Compliance with the current and proposed EPA motor vehicle emission standards is based on the emission performance of a vehicle over EPA's prescribed test procedure. While this test procedure addresses many of the aspects of a vehicle's impact on air quality, it does not address all such impacts. Two developing technologies have been brought to EPA's attention that have shown significant potential to improve ozone-related air quality, but that would not do so over the current EPA test procedure.

The first example is a device that removes ozone from the air as the vehicle is driven. A major producer of automotive catalysts, Englehard, has approached both California and EPA with a proposal for a technology (called Premair) in which vehicle radiators would be coated with a catalyst that converts ambient ozone to oxygen. In its CalLEVII program, California has adopted some basic ground rules concerning the types of information that

would have to be submitted in order to certify such ozone reduction technologies and determine the amount of allowable NMOG credits.[87] This determination would be made on a case-by-case basis. The manufacturer would have to provide an evaluation of the system's performance and durability, as well as a description of the on-board diagnostic strategy to monitor the performance of the device in use. The NMOG credit would be based upon the running of an approved airshed model, which would determine the amount of NMOG emission reductions that would produce the same change in one-hour peak ozone as the use of the ozone reduction device being evaluated.

Englehard has asked EPA to develop a similar procedure to that adopted by ARB and to consider granting their technology a NO_X credit, as well as an NMOG credit. The manufacturer of the vehicle employing Premair would then have the option of which credit to use.

There are a number of issues that would have to be resolved before such credits could be granted, including:

- The methods to be used to certify in-use performance over the useful life of the vehicle,
- The requirement for, and the design and certification of, an onboard diagnostic system to monitor in-use performance, and
- Which airshed model to use, including what cities and episodes to use in modeling the 8-hour peak ozone reduction, and
- The methods for determining either the NMOG or NO_X credit, or both.

EPA has placed information provided to date by Englehard in the docket to this rule, and requests comments on the appropriateness of such credits, and on the procedures that should be used to determine those credits, should we proceed.

The second example is an insulated catalyst. The insulation retains heat for extended periods of time, increasing the catalyst temperature when the engine is started and reducing the time required for the catalyst to reach an operational temperature. This technology can reduce cold start emissions for engine off times (called soaks) of 24 hours or less. The vast majority of engine soaks in-use are less than 24 hours. However, EPA's test procedure only tests emissions at two fairly extreme soak times: 10 minutes and 12–36 hours. The 10 minute soak is so short that even an uninsulated catalyst is warm enough to quickly begin working upon restart. The 36 hour soak is beyond the practical limit of cost-effective insulating techniques.

In 1994, as part of its proposed SFTP standards, EPA proposed adding an intermediate soak of 1 hour to the test procedure, due both to the large number of in-use soaks falling between the current 10 minute and 12–36 hour soaks and to the desire to encourage catalyst technology that reduced cold start emissions for such intermediate soaks. EPA did not promulgate this aspect of its SFTP standards, due in part to concerns about the cost effectiveness of mandating such controls. However, the efficacy of such technology was not questioned. Thus, there appears to be little reason to prohibit a manufacturer from using such technology to reduce in-use emissions in lieu of other technology needed to meet the proposed Tier 2 standards.

As mentioned above concerning Premair, a methodology would need to be developed to estimate the impact of an insulated catalyst, or other any other similar technology, on in-use emissions so that equivalent NMOG and NO_X emission credits could be determined. Also, procedures for certifying in-use performance and durability and onboard diagnostics would also have to be addressed. EPA requests comments on the appropriateness of allowing emission credits for insulated catalysts and other technologies not appropriately assessed under current test procedures. EPA also requests comments on the procedures to be used to develop such credits.

EPA also requests comments on whether the credits granted for either ozone or emission reduction technologies should be restricted to the proposed Tier 2 standards, or whether they should also be granted under the current NLEV standards and the proposed interim standards for non-Tier 2 vehicles, as well.

4. Need for Intermediate Useful Life Tier 2 Standards

For our Tier 2 and interim standards we have generally proposed both full useful life and intermediate useful life FTP exhaust emission standards. (See Tables IV.B.–2, –3, –6,–7,–10 and –11.) We have also proposed full and intermediate life SFTP standards. (See Tables V.A.–3 and –4.) Intermediate useful life standards are more stringent than full useful life standards and reflect our experience that better emission performance can be expected at lower mileages.

We are not proposing intermediate useful life standards for the three lowest Tier 2 FTP bins, and we are not proposing intermediate standards for the lowest FTP bin (the Zero Emission Vehicle or ZEV bin) in any case. This is because the full life standards in those bins are already so low as to allow little deterioration between a new vehicle and a vehicle at full useful life.

We request comment on the appropriateness of and need for intermediate useful life and what the environmental consequences might be from deleting intermediate useful life standards for all Tier 2 vehicles and from the interim standards bins that match those of the Tier 2 program.

VI. Additional Proposed Elements and Areas for Comment: Gasoline Program

Section VI.A. presents two additional issues that have some impact on our proposed program: whetherstates are preempted from requiring gasoline sulfur reductions as a result of today's action, and whether other gasoline properties may also need to be controlled in the future. We encourage your comment on all of these issues. Section VI.B. provides additional detailed information about our proposed requirements for establishing compliance with the gasoline sulfur standards, as well as how we will enforce these standards. The major details of our proposed gasoline sulfur control program were explained in Section IV.C.; the information presented here is supplementary.

A. Other Areas for Comment

The following sections raise additional issues that are relevant to our decisions regarding gasoline sulfur control and the design of our gasoline sulfur program. We encourage you to comment on these issues if they are of interest to you.

1. Would States Be Preempted From Adopting Their Own Sulfur Control Programs?

When we adopt federal fuel standards, states are preempted from adopting similar state-level controls. Section 211(c)(4)(A) of the CAAA prohibits states from prescribing or attempting to enforce controls or prohibitions respecting any fuel characteristic or component if EPA has prescribed a control or prohibition applicable to such fuel characteristic or component under section 211(c)(1). This preemption applies to all states except California, as explained in section

[87] See page II–28 of the following California document for a full discussion: Proposed Amendments to California Exhaust and Evaporative Emission Standards and Test Procedures for passenger Cars, Light-Duty Trucks and Medium Duty Vehicles ("LEV II") and Proposed Amendments to California Motor Vehicle Certification, Assembly-Line and In-Use Test Requirements ("CAP2000"). Released September 18, 1998 for the Air Resources Board Hearing of November 5, 1998.

211(c)(4)(B). For these states other than California, the Act provides two mechanisms for avoiding preemption. First, section 211(c)(4)(A)(ii) creates an exception to preemption for state prohibitions or controls that are identical to the prohibition or control adopted by EPA. Second, states may seek EPA approval of SIP revisions containing fuel control measures, as described in section 211(c)(4)(C). EPA may approve such SIP revisions, and thereby "waive" preemption, only if it finds the state control or prohibition "is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements."

We are proposing to adopt the sulfur standards pursuant to our authority under section 211(c)(1). Thus, we believe final promulgation of the sulfur standards would result in the clear preemption of future state actions to adopt fuel sulfur controls.[88] States would therefore need to obtain a waiver from us under the provisions described in section 211(c)(4)(C) for all state fuel sulfur control measures adopted following promulgation, unless the state standard were identical to our final sulfur standard. We welcome your comments on our interpretation of the source and effect of federal preemption.

Section 211(c)(4)(A) preempts state fuel controls if EPA has "prescribed" federal controls. We read this language to preempt non-identical state standards on the effective date of the standards, as opposed to the date the standards become enforceable. Thus, if the proposed standards are finalized according to our expected schedule, this rulemaking would preempt state actions upon promulgation at the end of 1999, even though the standards would not require sulfur reductions until 2004. This interpretation is consistent with EPA actions applying other federal fuel measures. *See* 54 FR 19173 (May 4, 1989) (noting preemption of Massachusetts state RVP measure before start of first control period for federal RVP). We also believe this interpretation is consistent with the intent behind section 211(c)(4)(A). Though the standards are not immediately enforceable, they will have an immediate impact on refiners' investment decisions. We believe, by adopting 211(c)(4)(A), Congress intended to provide security for these investment decisions by preventing unnecessary conflict between state and federal fuel controls.

2. Potential Changes in Gasoline Distillation Properties

During the last several years, representatives of the automotive industry have presented information to us suggesting that control of certain gasoline distillation properties can provide reductions in both exhaust hydrocarbon emissions as well as the frequency of performance problems such as hesitation, cold startability, and impeded acceleration. Automotive industry representatives contend that the source of most performance problems—slower atomization and vaporization due to fuels with higher boiling points—also leads to less efficient combustion, and thus higher levels of hydrocarbons in the exhaust.

With regard to Tier 2 vehicles, some automakers have claimed that in-use fuels with high boiling points would impact their ability to control the mixture of air and fuel entering the engine, and thus could result in in-use emissions that are higher than expected based on certification levels. Thus, automakers argue, controls on the distillation properties of gasoline would not only produce emission benefits for the in-use fleet, but would also ensure the viability and benefits of Tier 2 vehicles.

On January 27, 1999, we received a petition[89] from a group of automakers in which they provided a more detailed analysis of the costs and benefits of controlling gasoline distillation properties. In this petition, they specifically requested that the Distillation Index (DI) be capped at 1200 for all summer-grade gasolines nationwide. They have defined the distillation index by the equation 1.5xT10 + 3xT50 + T90 +20xOxy, where T10 represents the temperature at which 10% of the fuel has evaporated in a standard distillation test, and likewise for T50 and T90, and Oxy is the oxygen content contributed by ethanol. This petition includes a study conducted by MathPro Inc.[90] to estimate the feasibility and cost to the refining industry of capping all summer grade gasoline at a DI level of 1200. MathPro concluded that the cost of such control would be approximately 0.4 ¢/gal on average for all summer grade gasoline.

We believe that the analyses presented by this petition have merit. However, we do not believe that they are sufficient to justify capping DI at 1200 at this time, since there are a number of issues that it does not address. Before we could formally propose a DI cap, we would need to have a justification for the cap based on air quality need, peer-reviewed estimates of the cost to the refining industry and to consumers, and comparisons of the cost effectiveness of this strategy to that for other potential hydrocarbon control strategies. Therefore, we are not today proposing controls on gasoline distillation properties. However, we request comment on the automakers' DI petition and the included MathPro report in terms of their sufficiency in demonstrating that a DI cap of 1200 is appropriate.

B. Gasoline Sulfur Program Compliance and Enforcement Provisions

1. Overview

We are proposing enforcement mechanisms that track those of the reformulated gasoline/conventional gasoline (RFG/CG) rule, because of significant similarities between the two programs, including refinery average standards, refinery level and downstream level caps, and the generation and use of credits. These features raise similar compliance issues for both programs. Because of the importance of assuring that all gasoline meets the sulfur standards, measures are needed to assure the accuracy of refiner and importer testing, and to assure that the quality of gasoline is not adversely affected downstream of the refinery. Downstream enforcement would be based primarily on EPA sampling and testing, and examination of product transfer documents (PTDs) and other evidence.

More specifically, we are proposing:

- That refiners and importers test each batch of RFG and CG produced or imported for sulfur content and maintain testing records and retain test samples.
- That refiners and importers of gasoline submit reports regarding compliance with averaging and credits provisions.
- That the current attest procedures of the RFG/CG rule[91] be applied to sulfur rule compliance.

[88] Even in the absence of final promulgation of federal sulfur standards, existing federal fuel controls for RFG and conventional gasoline have raised issues of preemption of state fuel sulfur measures. In any case, it is clear that state sulfur standards would be preempted as of the date of promulgation of the proposed federal sulfur standard.

[89] "Petition to regulate gasoline distillation properties". Submitted by DaimlerChrysler Corporation, Ford Motor Company, General Motors Corporation, and the Association of International Automobile Manufacturers. Submitted to EPA Administrator Carol Browner on January 27, 1999. EPA Air Docket A–97–10, Document No. II–G–286.

[90] "Technical and economic implications of controlling the distillation index of gasoline." MathPro Inc., October 21, 1998. EPA docket A–97–10, document II–G–268.

[91] 40 CFR part 80 subpart F.

• Enforcement provisions regarding the credit program, to prevent the use, sale or purchase of invalid credits, and to require adjustments to compliance calculations based on use of invalid credits.

• Requirements to ensure compliance by small foreign refiners subject to individual refinery sulfur standards and to ensure the separation of such foreign gasoline from all other gasoline to the U.S. port of entry.

• Downstream maximum sulfur caps, which would apply to all persons in the chain of distribution of gasoline, including distributors, resellers, carriers, retailers and wholesale purchaser-consumers of gasoline.

• Voluntary downstream quality assurance testing by distributors and refiners to help assure compliance.

The sulfur standards proposed today would apply, as in other fuels programs, to all motor vehicle fuel that meets the definition of gasoline. See 40 CFR 80.2. This definition typically includes all the gasoline that is produced and distributed through the gasoline distribution system, including gasoline, such as marina gas, that is ultimately used in nonroad equipment. Such fuel meets the definition of gasoline and is subject to the standards proposed today. For example, where gasoline makes up only a small portion of what a refinery produces, and is perhaps a byproduct of other processing, the refiner could not avoid the sulfur standard by designating the product as marina gasoline or nonroad gasoline. EPA would apply the sulfur standard to the same broad group of products that meets the definition of gasoline for its other gasoline fuel programs.

We are aware that there are certain fuels, such as aviation fuel and racing fuel, that are generally segregated from gasoline throughout the distribution system. Where such fuels are segregated from motor vehicle gasoline and not made available for use in motor vehicles, the fuel would not be subject to sulfur rule standards.[92] We propose that such fuel become subject to the sulfur standards and other regulatory requirements and prohibitions if its segregation from gasoline at any point in the distribution system is compromised. Offering such fuel for motor vehicle use or dispensing such fuel for motor vehicle use would be prohibited. We are also proposing specific PTD requirements and labeling requirements to prevent introduction of high sulfur fuels into motor vehicles. EPA invites comment on whether such fuel should also be subject to refinery level sulfur standards, or whether it should be subject to the standards from the point at which it is made available for use in motor vehicles.

The proposal would clarify the definition of refinery at 40 CFR 80.2(h). Specifically, we are proposing to clarify that "refinery" means any facility, including a plant, tanker truck or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.[93]

We propose that any oxygenate blender that only adds oxygenate to gasoline or to "reformulated blendstocks for oxygenate blending" (RBOB), be exempt from sulfur standards and would not be required to conduct any new testing, or perform any new recordkeeping or reporting, because we believe the sulfur level of EPA-allowed oxygenates added downstream from the refinery is very low. We believe it is an appropriate assumption, barring special circumstances, that the sulfur content of the gasoline will be diluted in proportion to the addition of the oxygenate.

In the remainder of this section we address enforcement issues regarding today's proposed rule that are not discussed in section IV.C.3., above.

2. What Requirements is EPA Proposing for Foreign Refiners and Importers?

As discussed in section IV.C, under today's proposal, standards for gasoline produced by foreign refineries that are not subject to small refiner individual refinery standards would be met by the importer. Standards for gasoline produced by a foreign refinery subject to an individual sulfur rule standard would be met by the foreign refinery, with certain limited exceptions. The provisions would be very similar to the foreign refinery provisions of the RFG/CG rule, under 40 CFR 80.94.

a. What Are the Proposed Requirements for Small Foreign Refiners with Individual Refinery Sulfur Standards?

Under the RFG/CG rule, EPA has promulgated regulations[94] addressing establishment and implementation of individual baselines for CG produced by certain foreign refiners. The purpose of these regulations is to assure the compliance of gasoline supplied from foreign refineries with individual compliance baselines. It includes comprehensive controls, requirements and enforcement mechanisms to monitor the movement of gasoline from the foreign refinery to the U.S., to monitor gasoline quality and to provide for compliance and enforcement as necessary.

Today we are proposing similar requirements that would apply to any foreign refiner that can demonstrate that it meets the small refiner criteria. Foreign refinery baselines would be based on average sulfur levels and the volume of gasoline imported to the U.S. in 1997–98. Any foreign refiners that obtain a foreign refinery sulfur rule baseline would be subject to the same requirements as domestic small refiners with individual refinery sulfur rule standards. Additionally, provisions similar to the provisions at 40 CFR 89.94 would apply, that include:

1. Segregating gasoline produced at the small refinery until it reaches the U.S.;
2. Refinery registration;
3. Controls on product designation;
4. Load port and port of entry testing;
5. Attest requirements; and
6. Requirements regarding bonds and sovereign immunity.

The rationale for these enforcement provisions is discussed more fully in the Agency's August 28, 1997 preamble to the final RFG/CG foreign refineries rule. (See 62 FR 45533 (Aug. 28, 1997)).

By no later than January 1, 2010,[95] all gasoline would be subject to a single national averaged standard and one national refinery level cap. Thus, EPA is proposing that, beginning on that date, the use of foreign small refinery baselines would sunset and standards for all imported gasoline would be met by U.S. importers. With a single national standard and cap, gasoline sulfur content could most readily be monitored at the U.S. importer level, since there would no longer be a special class of gasoline with different standards that would need to be monitored.

b. *What Are the Proposed Requirements for Truck Importers?* The proposed sampling and testing requirements for importers require sampling and testing of each batch of gasoline. For parties that import gasoline into the U.S. by truck, the every-batch testing requirement would include testing the gasoline in each

[92] If a fuel is not segregated throughout the gasoline distribution system, but is fungibly mixed with gasoline, then it becomes a gasoline that is subject to the standard.

[93] This is consistent with all current EPA fuels rules, interpretations, policies and question and answer documents, and is only a clarification.

[94] 40 CFR 80.94.

[95] As stated in section IV.C. of the preamble, small refiner individual refinery standards would sunset January 1, 2008, except for any small refineries that receive a hardship extension not to exceed two years.

truck compartment, or if the gasoline is homogeneous, testing the gasoline in the truck. However, EPA is concerned that this testing requirement may not be feasible for truckers hauling many small loads of gasoline. Since some northern U.S. communities rely, in large part, on gasoline transported into the U.S. by truck from Canadian terminals, these communities could suffer gasoline shortages if this requirement proves too burdensome for truck importers. We therefore propose to allow alternative requirements for truck-imported gasoline only.

i. *Truck Transports of Gasoline (Excluding Gasoline Subject to Small Foreign Refiner Individual Refinery Standards).*

EPA is proposing a limited alternative approach for truck importers in lieu of every-batch testing. This proposal would be based on the importer meeting the 30 ppm sulfur average standard on a per-gallon basis. Under this proposal, the importer would be allowed to rely on the sulfur results of sampling and testing conducted by the operator of the truck loading terminal in Canada. The environmental consequences of this proposal would be neutral, because by meeting the 30 ppm sulfur standard on an every-gallon basis the standard also is being met on average.

The importer would be required to demonstrate the gasoline meets the 30 ppm sulfur standards on an every-gallon basis. The gasoline in the storage tank from which the importer's trucks are loaded would have to be sampled and tested subsequent to each receipt of gasoline into the terminal tank, and these tests would have to show the gasoline meets the 30 ppm sulfur standard. For each truck load of gasoline, the importer would have to obtain documents that accurately state the sulfur content of the gasoline. The importer then would treat each truck load of imported gasoline as a separate batch for purposes of the recordkeeping and reporting requirements.

The terminal operator in most cases would not be subject to United States laws, so the proposal contains safeguards that are intended to ensure the gasoline in fact meets the applicable standard. First, the importer would be required to conduct an independent program of quality assurance sampling and testing of the gasoline dispensed to the importer. This sampling and testing would have to be at a rate specified in the proposed regulations, and the sampling would have to be unannounced to the terminal operator. In addition, EPA inspectors would have to be given access to conduct inspections at the truck loading terminal and at any laboratory where samples collected pursuant to this proposed approach are analyzed. These inspections could be unannounced, and would include gasoline sampling and testing, and record reviews.

EPA requests comment on this proposal for parties that import gasoline by truck. Specifically, EPA requests comment on the provisions that apply to persons located outside the United States, and the need for EPA inspectors to conduct inspections at terminals located outside the United States. In addition, EPA recognizes that the proposed per-gallon standard of 30 ppm is more restrictive than an annual average standard with per-gallon caps, although it provides assurance that gasoline imported by truck will meet the requirements of the sulfur control program. However, establishing an averaged standard with per-gallon caps for truck-imported gasoline would require more substantial recordkeeping, reporting and auditing by the importers and more compliance monitoring by the EPA. EPA requests comments on the alternative of allowing an annual average standard with per-gallon caps for truck importers and the appropriate sulfur standards that should apply under such an approach.

ii. Truck-Imported Gasoline Subject to Small Foreign Refiner Individual Refinery Standards

There are additional compliance concerns related to the gasoline produced by small foreign refiners whose gasoline is imported into the U.S. by truck. The proposed requirements for gasoline produced at a small foreign refinery with an individual baseline, and certified as subject to the individual standard (S–FRGAS), include the necessity of segregating the gasoline from all other gasoline, from the refinery gate to the U.S., so that compliance with standards can be tracked. Under our proposed certified S–FRGAS provisions applicable to other importers, each batch of gasoline must be tested at the load port and port of entry. However, in the case of gasoline imported by truck, each truckload of such gasoline would constitute a batch. Given the small batch volumes for truck imports, the testing and other procedures proposed for certified S–FRGAS may not be feasible. The issue is further complicated because the load port, in effect, stretches from the refinery, through a pipeline and to a terminal in Canada. Therefore, EPA is proposing an alternative to the requirement for testing every truckload of imported certified S–FRGAS.

EPA is proposing that small foreign refiners whose gasoline is exported to the U.S. by truck would, as part of their petition for an individual baseline, submit a plan designed to ensure that certified S–FRGAS remains segregated from all other gasoline from the refinery to the U.S. The proposed plan would be reviewed for approval in conjunction with the baseline petition.

Rather than specifying the precise requirements of such a plan in the regulations, EPA would allow the refiner to develop its own procedures for ensuring that S–FRGAS remains segregated until it reaches the U.S. However, EPA believes that any plan would have to include certain elements. For example, PTDs would have to accompany each transfer of certified S–FRGAS through the distribution system, clearly identifying the origin of the gasoline and prohibiting its commingling with any product other than certified S–FRGAS from that refinery. The refiner may need to enter into contracts with pipelines and terminals, if the gasoline is shipped in this manner, that ensure segregation and prohibit commingling. This certified product could then only be loaded into trucks if they were importing the gasoline into the U.S.

The refiner of such gasoline would have to receive and maintain all such product shipment documents, including U.S. import documents, for five years and review these on an ongoing basis to ensure segregation is maintained until reaching the U.S. To further ensure that this review occurs, EPA is proposing that the refiner's plan would include attest audit procedures to be conducted annually by an independent third party that would review the refiner's procedures and records to ensure that the certified S–FRGAS is segregated at all times. For example, these procedures would likely include volume reconciliation to confirm that product is transferred without commingling. However, additional procedures may be needed to accomplish the goal of ensuring that certified-S–FRGAS remains segregated from all other gasoline.

3. What Standards Would Apply Downstream?

EPA is proposing downstream per-gallon cap standards that would apply to all parties in the distribution system downstream of the refinery-level, including pipelines, terminals, distributors, carriers, retailers and wholesale purchaser-consumers. Downstream standards would help ensure the sulfur level of gasoline remains below the cap level when dispensed for use in motor vehicles, thereby avoiding the adverse emissions

consequences of using gasoline with a sulfur content above the cap level.

EPA is proposing that downstream standards would be more lenient than the refinery-level cap standards so that refiners and importers can produce gasoline that equals the refinery-level cap standard. It has been EPA's experience that if a refiner produces gasoline that equals, or almost equals a standard, that gasoline may be shown to violate the standard when subsequently tested at a location downstream of the refinery due to testing variability. As a result, parties downstream of the refinery (primarily pipelines) set commercial specifications for the quality of the gasoline they will accept that are more stringent than the standard that applies to the downstream party. This, in effect, forces refiners to produce gasoline that is "cleaner" than the refinery-level standard.

In other fuels programs (for example, the benzene per-gallon standard for RFG) EPA has resolved this concern by announcing enforcement tolerances for fuels standards that apply downstream of the refinery-level, thereby reducing the need for pipelines to set specifications more stringent than the refinery level standards. EPA believes the approach proposed for the gasoline sulfur cap standards—more lenient downstream standards—would have the same effect as announced enforcement tolerances.

EPA is proposing that the values of the downstream cap standards would reflect the testing variability that could reasonably be expected when different laboratories test gasoline for sulfur content, that is, lab-to-lab variability, or reproducibility. For gasoline subject to the 80 ppm refinery-level sulfur cap the proposed downstream standard would be 95 ppm. This difference reflects the lab-to-lab variability established by the American Society for Testing and Materials (ASTM).[96] For gasoline subject to refinery-level sulfur caps higher than 80 ppm, which would be the case for gasoline produced before 2006 and by certain small refiners, the proposed downstream cap would be similarly established by using the most recent available ASTM reproducibility data.

As described in section IV.C.3, EPA is proposing that the cap standards that apply to some small refiners would be higher than the cap standards that apply to refiners generally. The downstream standards that apply to this small refiner gasoline would be correspondingly higher, based on ASTM reproducibility for each refinery's assigned cap. If gasoline produced by a small refiner with a higher cap standard is mixed in the distribution system with other gasoline with a lower cap standard, the entire mixture then would be subject to the higher cap standard. For this reason, EPA is concerned that the small volume of small refinery gasoline could drive up the downstream standard for all gasoline, most of which would have been subject to the much lower national cap standard.

Therefore, EPA is proposing that during the period small refinery individual standards are in effect, PTDs must identify whether gasoline is comprised, in whole or in part, of gasoline produced at a small refinery with a higher sulfur cap standard than the national cap standard, and the level of the downstream cap applicable to the gasoline. A downstream party could rely on the information contained in the PTDs for gasoline received by that party as the basis for whether gasoline contains any small refinery gasoline.

However, as gasoline is mixed, and re-mixed, in downstream pipelines and tanks, the percentage of a particular gasoline that is small refinery gasoline normally will progressively diminish. For this reason EPA also is proposing that a downstream party must classify gasoline as containing no small refinery gasoline if a test result for the gasoline shows a sulfur content below the applicable national downstream cap.

Under these proposed requirements, downstream parties and EPA would know the downstream standard that applies to any particular gasoline. If the gasoline contains no small refiner gasoline, the downstream standard would be based on the national cap. If the gasoline is comprised in whole or in part of small refiner gasoline subject to a higher cap standard, the downstream standard would be based on this higher cap standard. This approach would require regulated parties and EPA to review and rely on the information contained in PTDs.

Following are two examples of how gasoline from small refineries with individual standards (S–RGAS) would be identified downstream of the refinery and how the downstream cap would apply:

(1) In 2005 the national refinery cap standard is 180 ppm. If a small refinery with an individual sulfur cap standard produces a batch of gasoline that contains 175 ppm sulfur, the transfer document that accompanies that batch of gasoline into a pipeline may not indicate the batch contains S–RGAS.

(2) In 2006, when the national downstream cap is 95 ppm, a terminal receives three shipments of gasoline that are identified in the PTD's as S–RGAS subject to downstream per-gallon cap standards of 205, 325 and 410 ppm. The terminal operator combines these shipments in a storage tank. That gasoline mixture is subject to a downstream cap standard of 410 ppm and any PTD subsequently provided to transferees must identify the gasoline as containing S–RGAS and state the gasoline is subject to a downstream cap standard of 410 ppm.

After several additional receipts of gasoline into the storage tank, the terminal operator obtains a test result indicating the sulfur level of the mixture is 90 ppm. Based on this test result, the gasoline mixture becomes subject to the national cap standard of 95 ppm and any PTD subsequently provided to transferees may not state the gasoline contains S–RGAS.

EPA requests comment on these proposed downstream standards. Specifically, we request comment on an alternative whereby gasoline would be presumed to be subject to the national cap downstream standard, unless the responsible regulated party were able to demonstrate through PTDs the presence of small refinery gasoline. EPA also requests comment on any alternatives that would allow enforcement of the national downstream cap standards during the period small refiner individual refinery standards were in effect.

4. What Are the Proposed Testing and Sampling Methods and Requirements?

a. *What Is the Primary Test Method for Gasoline?* We propose that the ASTM standard method D 2622–98 be the primary test method for testing for sulfur in gasoline by refiners and importers. This is the regulatory method under the RFG/CG rule.[97] However, we are requesting comment on whether ASTM method D 5453–93, entitled "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence," should be the primary method. We are specifically concerned about the suitability of these test methods for sulfur levels between 0–10 ppm, and invite comment on other appropriate test methods, including ASTM D 4045, which is used under the California fuels program for sulfur levels below 10 ppm. We are also requesting

[96] ASTM standard method D–2622–98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry." The California Air Resources Board found nearly identical reproducibility under ASTM D–2622–94, according to a round robin study conducted by ARB and received by EPA Feb. 11, 1999.

[97] See 40 CFR 80.46(a). The proposed rule would update the current method, ASTM D 2622–94.

comment on relative costs of the methods. We believe that ASTM D 5453 would significantly reduce capital costs for test equipment and that operational costs would be similar to ASTM D 2622. A description of these ASTM test methods, as well as other methods discussed later in this section, can be found in Table VI–1, below.

TABLE VI.–1.—ASTM STANDARD TEST METHODS AND PRACTICES DESCRIBED IN THIS SECTION

ASTM No	Title
D 2622	Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry.
D 4045	Standard Test Method for Sulfur in Petroleum Products by Hydrogenolysis and Rateometric Colorimetry.
D 4057	Standard Practice for Manual Sampling of Petroleum and Petroleum Products.
D 4177	Standard Practice for Automatic Sampling of Petroleum and Petroleum Products.
D 5453	Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor Fuels and Oils by Ultraviolet Fluorescence.
D 5842	Standard Practice for Sampling and Handling of Fuels for Volatility Measurement.

b. *What Is the Proposed Test Method for Sulfur in Butane?* We are proposing that ASTM D 5623 would be the regulatory method for testing the sulfur content of butane. This is the sulfur test method for butane that the Agency proposed under the RFG/CG rule (proposal published at 62 FR 37338 (July 11, 1997)). However, we received several negative comments regarding this test method in response to our proposal. We are requesting comments on other methods and correlation of those methods to ASTM D 5623. We are also requesting comment on appropriate correlation procedures and other issues such as bias, accuracy, and precision.

c. *Is EPA Proposing a Requirement To Test Every Batch of Gasoline Produced or Imported?* Under today's proposal, all refiners and importers [98] would be required to sample and test the sulfur content of each batch of gasoline produced or imported. Test results would be used to calculate a refiner's or importer's annual average sulfur level. Any batch of gasoline that exceeded the applicable sulfur cap could not be distributed or sold in the U.S., unless it was exempted from this rule, as described later in this section. This "every-batch" testing requirement is not a new requirement for RFG refiners and importers. However, it would be a new requirement for refiners and importers of CG.

In the past, CG refiners and importers have been allowed to prepare composite samples of gasoline from multiple gasoline batches and test the composite sample. However, we believe that every-batch sulfur testing by refiners and importers is necessary to ensure compliance with upstream and downstream sulfur caps contained in the proposed rule. We have proposed the use of alternative test methods to reduce the cost of testing. We are requesting comment on this proposed requirement.

i. Butane Blenders' Every-Batch Testing Requirement

Under the RFG rule, refiners that blend butane to previously certified gasoline (PCG) must determine the volume and parameter values of the butane, including sulfur content, by testing the gasoline, before and after blending, and calculating the properties of the butane by subtracting the volume and parameter values of the PCG. For CG only, under certain conditions, we have allowed butane blenders to use the parameter specifications of butane as tested by the butane producer. This includes an assumed sulfur content of 140 ppm. We have allowed this alternative to every-batch testing because of the costs of testing each load of butane.[99]

We are proposing a similar alternative to every-batch testing for butane blenders under today's sulfur program. We propose that butane blenders could use the actual sulfur test result of their suppliers, if the butane contained less than 30 ppm sulfur and if the butane blender undertook a quality assurance program to ensure that the supplier's sampling and testing was accurate. If the butane were tested and found to violate the 30 ppm cap, the butane blender would be in violation for the volume of product that exceeded the 30 ppm cap that was added to gasoline and for any violations of the national downstream cap resulting from the butane sulfur content. We believe this is a fair alternative to every batch testing and the only alternative that gives EPA reasonable ability to monitor compliance. We request comment on this proposal.

ii. Refiners Blending Other Blendstocks into Previously Certified Gasoline

Refiners that blend blendstock into PCG would be required to sample and test each batch of gasoline produced. This would normally include sampling and testing the PCG to determine its sulfur content and volume; then sampling and testing the combined product subsequent to blending; and calculating the sulfur content and volume of the blendstock (which is the blender's batch for annual average compliance and reporting purposes), by subtracting the volume and sulfur content of the PCG from the volume and sulfur content of the combined product. We are proposing to allow such refiners to meet an alternative testing requirement in lieu of testing every batch of gasoline. Provided that the refiner's test result for the sulfur content of each of the blendstocks is less than the national refinery level per-gallon cap standard, a refiner could sample and test each blendstock when received at the refinery, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard.

d. *What Sampling Methods Are Proposed?* Sampling methods apply to all parties that conduct sampling and testing under the rule. We are proposing requiring the use of sampling methods that were proposed in the July 11, 1997 **Federal Register** notice (62 FR 37338, at 37341–37342, 37375–37376), which proposes modifications to the RFG/CG rule. These sampling methods include ASTM D 4057–95 (manual sampling), D 4177–95 (automatic sampling from pipelines/in-line blending), and ASTM D 5842 (this sampling method is primarily concerned with sampling where gasoline volatility is going to be tested, but it would also be an appropriate sampling method to use when testing for sulfur). We are proposing requiring use of these ASTM methods instead of the methods provided in 40 CFR part 80, Appendix D. That is because the proposed methods have been updated by ASTM, the updates have provided clarification and they have eliminated certain requirements, such as storage tank tap extensions, that are not necessary for sampling light petroleum products such as gasoline.

e. *What Are the Proposed Gasoline Sample Retention Requirements?*

We are proposing a refiner and importer sampling and testing program to establish the sulfur compliance of each batch of gasoline produced or

[98] Except for certain truck importers, as noted above.

[99] In addition, commercial grade butane easily meets conventional gasoline standards, but that is not the case with regard to the proposed gasoline sulfur standards.

imported. However, we are aware of the inherent drawbacks to a self-testing scheme. There is the possibility that a party might sample or test gasoline in a manner not consistent with the required procedures, or that employees might inaccurately record the test results, by mistake or otherwise. Under such a scheme, parties might also attempt to conceal a discovered violation or to save money by not correcting a violation.

In an attempt to address these concerns about self-testing, we considered the option of requiring independent sampling and testing for all gasoline, including conventional gasoline. Under current regulations, only refiners or importers of reformulated gasoline are obligated to do this. However, because of the costs of independent sampling and testing [100] EPA is instead proposing an alternative strategy to help ensure refinery and importer sulfur compliance. Refiners and importers would be required to retain for thirty days a representative sample from each batch of gasoline produced, and to provide such samples to the Agency upon request. By means of this option, EPA could verify the refiner test results.

This limited duration sample retention would be useful to address many of the potential problems concerning a refiner self-testing program. Through this requirement, parties would be faced with the knowledge that EPA could easily and randomly confirm the accuracy of the refiner's test results and could discover unrecorded violations. We believe that this would create an incentive for refiners to sample, test, and record their sulfur results in an accurate and truthful manner.

The Agency also is proposing that refiners be required to certify annually that the samples have been collected in the manner required under the sulfur rule. This requirement is intended to assure that refinery officials insist on accurate and honest sampling and retention of samples at their refineries. We are also proposing that specific procedures be followed by refiners to properly collect retain, and ship the samples in a manner consistent with requirements already imposed or proposed under the RFG program. Under today's proposal, a minimum representative sample of 330 ml of each gasoline batch would need to be retained.[101]

The Agency does not believe that the proposed sulfur rule sample retention requirements would impose an undue financial burden on regulated parties. Many refineries already engage in some sample retention for their own purposes, and the retention procedures proposed in today's proposal would merely require that typical industry retention standards be applied. Shipping samples to us would entail some expense, but this shipping would only occur periodically, and would certainly cost less than hiring an independent laboratory to regularly sample and test gasoline.

The Agency requests comments on the costs and effectiveness of the proposed sample retention requirements, and invites comments on any alternative plan to promote accuracy of refiner self-testing of gasoline for sulfur compliance. In particular, we are interested in information on the cost and effectiveness of a nationwide, independent sampling and testing program

5. What Federal Enforcement Provisions Would Exist for California Gasoline and When Could California Test Methods Be Used to Determine Compliance?

a. *Requirement to Segregate Gasoline and To Use Product Transfer Document Requirements.* Today's proposal would generally exempt California gasoline from regulation under the sulfur rule for the reasons previously described in this preamble. However, today's NPRM does propose two requirements that would apply to some California gasoline. The first would require that gasoline produced outside of California, that is intended for California use, be segregated from all other gasoline at all points in the distribution system. Second, the Agency is proposing that out-of-state producers of gasoline intended for sale in California be required to create PTDs identifying the product as California gasoline, and that such PTDs be provided to all transferees of this gasoline in the distribution system. Such documentation is intended to facilitate our enforcement of the proposed sulfur control program through identifying the gasoline not covered by the federal regulation, even though it is produced in areas otherwise subject to this proposed regulation. This documentation would also assist regulated parties in identifying the gasoline as non-federally regulated to facilitate segregation of California gasoline from federal gasoline.

The sulfur program PTD requirements for California gasoline produced out-of-state should not create any new burdens on regulated parties, since the same requirements currently apply under the RFG program.[102] Today's proposal would incorporate and restate the RFG rule's PTD requirements for this California gasoline. The Agency does not believe that it is necessary to impose additional PTD requirements under the sulfur program, since the California gasoline identification requirements under the RFG rule would also satisfy the identification needs of this rule. Having the same requirements in both rules means that regulated parties that fail to produce and transfer the necessary PTD identification would be in violation of both programs.

b. *Use of California Test Methods for 49 State Gasoline.* As stated previously, we are proposing to exclude gasoline produced in California for California use from federal sulfur standards. However, refineries or importers located in California would have to meet the standards and other requirements with regard to "federal" gasoline used outside of California. Nevertheless, EPA is proposing that gasoline produced in California for sale outside of California could be tested for compliance under the federal sulfur rule using the methodologies approved by the ARB, provided that the producer complies with the procedures for such testing as already required under 40 CFR 80.81(h), which permits California test methods not identical to federal test methods to be used for conventional gasoline only.

6. What Are the Proposed Recordkeeping and Reporting Requirements?

a. *What Are the Proposed Product Transfer Document Requirements?* We are proposing that the PTDs that accompany each transfer of custody or title of gasoline that includes gasoline produced by any small refiner subject to sulfur rule individual refinery standards be required to identify the gasoline as such, including the applicable downstream cap, as an aid to enforcing the national downstream cap. Other PTD information is currently required under the RFG/conventional gasoline regulations. We believe that the additional PTD information regarding sulfur compliance required under today's proposal would impose little additional burden on industry. We request comment on this proposed requirement.

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[100] See the discussion on this subject in the preamble to the reformulated gasoline program's final rule, 59 FR 7765 (Feb. 16, 1994).

[101] See 40 CFR 80.65(f)(3)(F)(ii), and the Proposed Rule for Modifications to Standards and Requirements for Reformulated and Conventional Gasoline, 62 FR 37337 *et seq*, proposed 40 CFR 80.101(i)(l)(i)(C)(iii).

[102] See CFR 80.81(g).

b. *What Are the Proposed Recordkeeping Requirements?* We are proposing to require that refiners and importers keep and make available to EPA certain records that demonstrate compliance with the sulfur program standards and requirements. The RFG/CG regulations currently require refiners and importers to retain records that include much of the information proposed to be required under today's rule. As a result, we believe that the proposed reporting requirements would impose very little additional burden on these regulated parties.

We are proposing to require all parties in the gasoline distribution system, including refiners, importers, retailers, and all types of distributors to retain PTDs and records of quality assurance programs that parties conduct to establish a defense to downstream violations. All parties in the gasoline distribution system currently are required to keep PTDs for RFG. However, since there are no downstream CG standards, only refiners and importers are required to retain PTDs for conventional gasoline. Because today's proposed sulfur rule, like the RFG rule, includes downstream standards, we believe that a requirement to retain PTDs for all parties in the gasoline distribution system would be appropriate under the sulfur rule. The PTD information would help us identify the source of any gasoline found to be in violation of the sulfur standards. The PTDs would also provide downstream parties with information regarding the applicable downstream standard.

Today's proposal would require parties to keep records for a period of five years, with additional requirements for records pertaining to credits. Records pertaining to credits that were banked and never transferred to another party would need to be retained for five years after the credits are used for compliance purposes. Records pertaining to credits that were transferred would need to be retained by both parties (transferee and transferor) for ten years after the date the credits were generated (which would ensure the records are retained at least years after they are used, since use would have to occur within five years of generation even if the credits were transferred).

Most of the records that would be required to be kept for five years already are subject to that requirement by the RFG/CG rule. Five years is the applicable statute of limitations for the RFG and other fuels programs. See 28 U.S.C. 2462. We request comment on these proposed recordkeeping requirements for refiners, importers and downstream regulated parties. In particular, we request comment on the record retention provisions specific to credits that were transferred. While we recognize that retaining records for ten years could be problematic for both parties, we believe that both parties would need to retain records so that we could be reasonably sure that credits used for compliance were appropriate. An alternative, raised earlier in this proposal, would be to give a more finite life to credits or to require, beginning in 2006, credits to be used in the same year they were generated or transferred. We welcome comments on this solution or any other way in which we can be assured that adequate records would be available should a credit transaction come into question at some date longer than five years after the transaction.

c. *What Are the Proposed Reporting Requirements?* Today's proposed rule would require refiners and importers to submit to us, on an annual basis, a report that demonstrated compliance with the applicable sulfur standards and data on individual batches of gasoline, including batch volume and sulfur content. The RFG/CG programs contain similar reporting requirements. Based on our experience with these programs, we believe that requiring an annual sulfur report and batch information would provide an appropriate and effective means of monitoring compliance with the average standards under the sulfur program. The batch data also would serve to verify that each batch of gasoline met the applicable sulfur cap standard when it left the refinery. In addition, the annual report would provide a vehicle for accounting for any sulfur credits created, sold or used to achieve compliance during the averaging period.

d. *What Are the Proposed Attest Requirements?* We are also proposing to require refiners and importers to arrange for a certified public accountant or certified internal auditor to conduct an annual review of the company's records that form the basis of the annual sulfur compliance report (called an "attest engagement"). The purpose of the attest engagement is to determine whether representations by the company are supported by the company's internal records. Attest engagements are required under the RFG/CG regulations. We believe that an attestation for sulfur could be included in a refiner's current attest engagement with little additional burden.

We believe that the proposed reporting requirements under today's rule would impose minimal additional reporting burdens on industry while providing us with information necessary to monitor compliance with the sulfur standards. We request comment on these proposed reporting requirements.

7. What Are the Proposed Exemptions for Research, Development, and Testing?

We are proposing to exempt from the sulfur requirements gasoline used for research, development and testing purposes. We recognize that there may be legitimate research programs that require the use of gasoline with higher sulfur levels than those allowed under today's proposed rule. As a result, today's rule contains proposed provisions for obtaining an exemption from the prohibitions for persons distributing, transporting, storing, selling or dispensing gasoline that exceeded the standards, where such gasoline is necessary to conduct a research, development or testing program.

Under the proposal, parties would be required to submit to EPA an application for exemption that would describe the purpose and scope of the program and the reasons why use of the higher sulfur gasoline is necessary. In approving any application, EPA would impose reasonable conditions such as recordkeeping, reporting and volume limitations. We believe that the proposal includes the least onerous requirements for industry that also would ensure that higher sulfur gasoline is used only for legitimate research purposes. We request comment on these proposed provisions. We also request comment on whether in lieu of an approval process, parties should be required to submit the required information to EPA at the start of the program, and annually thereafter, with the condition that EPA could provide a party with written notification in the event the Agency determines the exemption is not justified. We also request comment on whether the regulations should impose a volume limit on the amount of gasoline that could be used in a research program, as a way of minimizing any adverse environmental effects that could result from allowing such an exemption from the sulfur requirements.

8. What Are the Proposed Liability and Penalty Provisions for Noncompliance?

Today's proposed rule contains provisions for liability and penalties that are similar to the liability and penalty provisions of the RFG and other fuels regulations.[103] Under the proposed

[103] See section 80.5 (penalties for fuels violations); section 80.23 (liability for lead violations); section 80.28 (liability for volatility violations); section 80.30 (liability for diesel violations); section 80.79 (liability for violation of

rule, regulated parties would be liable for committing certain prohibited acts, such as selling or distributing gasoline that does not meet the sulfur standards, or causing others to commit prohibited acts. In addition, parties would be liable for a failure to meet certain affirmative requirements, or causing others to fail to meet affirmative requirements. For example, persons who produce or import gasoline would be liable for a failure to fulfill any of the requirements for refiners and importers, including the sampling and testing requirements, the reporting and attest audit requirements, the averaging requirements, the small refinery requirements, and the credit creation and trading requirements. In such cases the regulated party would also be liable for any violation of the sulfur standard based on corrected information. All parties in the gasoline distribution system, including refiners, importers, distributors, carriers, retailers, and wholesale purchaser-consumers, would be liable for a failure to fulfill the recordkeeping requirements and the PTD requirements.

a. *Presumptive Liability Scheme of Current EPA Fuels Programs.* Current EPA fuels programs include a presumptive liability scheme for violations of prohibited acts. Under this approach, presumptive liability is imposed on two types of parties: (1) That party in the gasoline distribution system that controls the facility where the violation was found or had occurred; and (2) those parties, typically upstream in the gasoline distribution system from the initially listed party, (such as the refiner, reseller, and any distributor of the gasoline), whose prohibited activities could have caused the program non-conformity to exist.[104] This presumptive liability scheme has worked well in enabling us to enforce our fuels programs, since it creates comprehensive liability for substantially all the potentially responsible parties. The presumptions of liability may be rebutted by establishing an affirmative defense.

To clarify the inclusive nature of these presumptive liability schemes, today's proposed rule would explicitly include causing another person to commit a prohibited act and causing the presence of non-conforming gasoline to be in the distribution system as prohibitions. This is consistent with the provisions and implementation of other fuels programs.

Today's proposed rule, therefore, provides that most parties involved in the chain of distribution would be subject to a presumption of liability for actions prohibited, including causing non-conforming gasoline to be in the distribution system and causing violations by other parties. Like the other fuels regulations, a refiner also would be subject to a presumption of vicarious liability for violations by any downstream facility that displays the refiner's brand name, based on the refiner's ability to exercise control at these facilities. Carriers, however, would be presumed liable only for violations arising from product under their control or custody, and not for causing non-conforming gasoline to be in the distribution system, except where we have specific evidence of causation.

b. *Affirmative Defenses for Each Presumptively Liable Party.* The proposal includes affirmative defenses for each party that is deemed presumptively liable for a violation, and all presumptions of liability are refutable. The proposed defenses are similar to the defenses available to parties for violations of the RFG regulations. We believe that these defense elements set forth reasonably attainable criteria to rebut a presumption of liability. The defenses include a demonstration that: (1) the party did not cause the violation; and (2) except for retailers and wholesale purchaser-consumers, the party conducted a quality assurance program. For parties other than tank truck carriers, the quality assurance program would be required to include periodic sampling and testing of the gasoline. For tank truck carriers, the quality assurance program would not need to include periodic sampling and testing, but in lieu of sampling and testing, the carrier would be required to demonstrate evidence of an oversight program for monitoring compliance, such as appropriate guidance to drivers on compliance with applicable requirements and the periodic review of records concerning gasoline quality and delivery.

As in the other fuels regulations, branded refiners would be subject to more stringent standards for establishing a defense because of the control such refiners have over branded downstream parties. Under today's rule, in addition to the other defense elements, branded refiners would be required to show that the violation was caused by an action by another person in violation of law, an action by another person in violation of a contractual agreement with the refiner, or the action of a distributor not subject to a contract with the refiner but engaged by the refiner for the transportation of the gasoline.

Based on experience with other fuels programs, we believe that a presumptive liability approach would increase the likelihood of identifying persons who cause violations of the sulfur standards. We normally do not have the information necessary to establish the cause of a violation found at a facility downstream of the refiner or importer. We believe that those persons who actually handle the gasoline are in the best position to identify the cause of the violation, and that a refutable presumption of liability would provide an incentive for parties to be forthcoming with information regarding the cause of the violation. In addition to identifying the party that caused the violation, providing evidence to rebut a presumption of liability would serve to establish a defense for the parties who are not responsible. Presumptive liability is familiar to both industry and to us, and we believe that this approach would make the most efficient use of EPA's enforcement resources. For these reasons, we are proposing a liability scheme for the sulfur program based on a presumption of liability. We request comment on the proposed liability provisions.

c. *Penalties for Violations.* Section 211(d)(1) of the CAA provides for penalties for violations of the fuels regulations.[105] Today's rule proposes penalty provisions that would apply this CAA penalty provision to the sulfur rule. The proposed provisions would subject any person who violates any requirement or prohibition of the sulfur rule to a civil penalty of up to $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from the violation. A violation of the applicable average sulfur standard would constitute a separate day of violation for each day in the averaging period. A violation of a sulfur cap standard would constitute a

RFG prohibited acts); section 80.80 (penalties for RFG/conventional gasoline violations).

[104] Additional type of liability, vicarious liability, is also imposed on branded refiners under these fuels programs.

[105] Section 211(d)(1) reads, in pertinent part:

(d)(1) Civil Penalties.—Any person who violates * * * the regulations prescribed under subsection (c) * * * of this section * * * shall be liable to the United States for a civil penalty of not more than the sum of $25,000 for every day of such violation and the amount of economic benefit or saving resulting from the violation. * * * Any violation with respect to a regulation prescribed under subsection (c) * * * of this section which establishes a regulatory standard based upon a multi-day averaging period shall constitute a separate day of violation for each and every day in the averaging period. * * *

Pursuant to the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note), the maximum penalty amount prescribed in section 211(d)(1) of the CAA was increased to $27,500. (See 40 CFR part 19.)

separate day of violation for each day the gasoline giving rise to the violation remained in the gasoline distribution system. The length of time the gasoline in question remained in the distribution system would be deemed to be twenty-five days unless there is evidence that the gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days. The penalty provisions proposed in today's rule are similar to the penalty provisions for violations of the RFG regulations. EPA requests comment on these provisions.

9. How Would Compliance With the Sulfur Standards Be Determined?

We have often used a variety of evidence to establish non-compliance with requirements imposed under our current fuels regulations. Test results of the content of gasoline have been used to establish violations, both in situations where the sample has been taken from the facility at which the violation is found, and where the sample has been obtained from other parties' facilities when such test results have had probative value of the gasoline's characteristics at points upstream or downstream. The Agency has also commonly used documentary evidence to establish non-compliance or a party's liability for non-compliance. Typical documentary evidence has included transfer documents identifying the gasoline as inappropriate for the facility it is being delivered to, or identifying parties having connection with the non-complying gasoline.

a. *What Evidence Could Be Used to Establish Sulfur Rule Violations and Liability for these Violations?* A recent EPA Environmental Appeals Board decision, (In re: Commercial Cartage Company, Docket No. CAA–93–H–002, CAA Appeal No. 97–9) (the "Cartage" decision), interpreted the regulatory language of one of EPA's fuels programs as restricting the evidence that the Agency may use in establishing a violation of a standard under that program. Under the Cartage decision, in order to establish the existence of a violation of the gasoline volatility standards [106] at a particular carrier or retail outlet facility, we would have to produce non-compliant test results obtained only by using the regulatory method and only from a sample taken from the facility itself. Other potentially persuasive evidence establishing volatility standard violations would not be permitted under the Cartage decision's interpretation of the volatility rule.[107]

We believe that it would best serve the purposes of the proposed sulfur rule to not limit the evidence that may be used to show whether a violation occurred or liability for that violation. Our enforcement experience in other programs has shown that the Cartage-permitted evidence (test results from samples taken only from a particular facility, and using only the regulatory test methods) often does not exist, while other persuasive evidence of the existence of the violations does exist. If we are not able to use other forms of persuasive evidence to establish violations or other necessary facts short of test results such as those permitted by the volatility regulations under the Cartage interpretation, violators will continue to avoid liability for their actions.

To ensure that evidence with probative value could be used under the sulfur rule, the Agency is making explicit in today's proposal that any probative evidence could be used to establish compliance or non-compliance with the sulfur standards and requirements and liability for non-compliance. This would not remove or change the obligation on refiners and importers to perform testing on each batch of gasoline using the procedures authorized under these regulations. Compliance or non-compliance with sulfur standards would continue to be based on regulatory test methods. However, other probative evidence could be used to determine compliance with sulfur standards if the evidence is relevant to whether the sulfur content would have been in compliance if the appropriate sampling and testing methodologies had been performed.

Under today's proposal, the permitted probative evidence specifically includes information obtained from any source or any location, since Agency enforcement experience has proven the value of such widely-obtained material. Respondents in EPA enforcement actions would have the same right to present other evidence of compliance with the sulfur rule as the Agency would have to establish non-compliance.

VII. Public Participation

We received many comments from a range of interested parties on our Tier 2 Report to Congress. We have also received comments as part of the our outreach to small entities (see section V.B.). These comments have been very valuable in developing this proposal, and we look forward to additional comment during the rulemaking process. You can find comments on the issuance of Tier 2 standards and gasoline sulfur control we received prior to this proposed action in the rulemaking docket, and many of them are discussed in the context of various issues in this preamble. We have considered comments received during the development of the proposal and have addressed a number of them in today's document.

A. Comments and the Public Docket

Publication of this document opens a formal comment period on this proposal. You may submit comments during the period indicated under **DATES** above. The Agency encourages all parties that have an interest in the program described in this document to offer comment on all aspects of the action. Throughout this proposal you will find requests for specific comment on various topics.

The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. We also encourage commenters who disagree with the proposed program to suggest and analyze alternate approaches to meeting the air quality goals of this proposed program. You should send all comments, except those containing proprietary information, to the EPA's Air Docket (see **ADDRESSES**) before the date specified above for the end of the comment period.

Commenters who wish to submit proprietary information for consideration should clearly separate such information from other comments. Such submissions should be labeled as "Confidential Business Information" and be sent directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**), not to the public docket. This will help ensure that proprietary information is not placed in the public docket. If a commenter wants EPA to use a submission of confidential information as part of the basis for the final rule, then a nonconfidential version of the document that summarizes the key data or information must be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed by the procedures set forth in 40 CFR Part 2. If no claim of confidentiality accompanies a submission when we receive it, we will make it available to the public without further notice to the commenter.

B. Public Hearings

We will hold four public hearings as noted under "DATES" above. If you would like to present testimony at the

[106] EPA's gasoline volatility regulations are found at 40 CFR 80.27 and 80.28.

[107] See 40 CFR 80.27(b) and 80.28(b) and (e).

public hearings, we ask that you notify the contact person listed above two weeks before the date of the hearing at which you plan to testify. You should include in this notification the date of the hearing at which the testimony will be presented, an estimate of the time required for the presentation, and any need for audio/visual equipment. We also suggest that sufficient copies of the statement or material to be presented be made available to the audience. In addition, it is helpful if the contact person receives a copy of the testimony or material before the hearing.

The hearings will be conducted informally, and technical rules of evidence will not apply. A sign-up sheet will be available at the hearings for scheduling the order of testimony. At the scheduled two day hearing, we suggest that testimony that primarily pertains to the proposed fuel requirements be presented on the first day of the hearings and that testimony that primarily pertains to the proposed vehicle standards (and/or other aspects of this proposal) be presented on the second day of the hearings. Written transcripts of the hearings will be prepared. The official record of the hearings will be kept open for 30 days after the hearing dates to allow submittal of supplementary information.

VIII. Administrative Requirements

A. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency is required to determine whether this regulatory action would be "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The order defines a "significant regulatory action" as any regulatory action that is likely to result in a rule that may:

Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, EPA has determined that this proposal is a "significant regulatory action" because the proposed vehicle standards, gasoline sulfur standards, and other proposed regulatory provisions, if implemented, would have an annual effect on the economy in excess of $100 million. Accordingly, a Draft Regulatory Impact Analysis (RIA) has been prepared and is available in the docket for this rulemaking. This action was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12866. Written comments from OMB on today's action and responses from EPA to OMB comments are in the public docket for this rulemaking.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, was amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, to ensure that concerns regarding small entities are adequately considered during the development of new regulations that affect them. In response to the provisions of this statute, EPA has identified industries subject to this proposed rule and has provided information to, and received comment from, small entities and representatives of small entities in these industries. An Initial Regulatory Flexibility Analysis (RFA) has been prepared by the Agency to evaluate the economic impacts of today's proposal on small entities.[108] The key elements of the Initial RFA include:

- The number of affected small entities;
- The projected reporting, record keeping, and other compliance requirements of the proposed rule, including the classes of small entities that would be affected and the type of professional skills necessary for preparation of the report or record;
- Other federal rules that may duplicate, overlap, or conflict with the proposed rule; and,
- Any significant alternatives to the proposed rule that accomplish the stated objectives of applicable statutes and that minimize significant economic impacts of the proposed rule on small entities.

The Agency convened a Small Business Advocacy Review Panel (the Panel) under section 609(b) of the Regulatory Flexibility Act as added by SBREFA. The purpose of the Panel was to collect the advice and recommendations of representatives of small entities that could be affected by today's proposed rule and to report on those comments and the Panel's findings as to issues related to the key elements of the Initial Regulatory Flexibility Analysis under section 603 of the Regulatory Flexibility Act. The report of the Panel has been placed in the rulemaking record.[109]

The contents of today's proposal and the Initial Regulatory Flexibility Analysis reflect the recommendations in the Panel's report. We summarize our outreach to small entities and our responses to the recommendations of the Panel below. The Agency continues to be interested in the potential impacts of the proposed rule on small entities and welcomes additional comments during the rulemaking process on issues related to such impacts.

1. Potentially Affected Small Businesses

The Initial Regulatory Flexibility Analysis identified small businesses from the industries in the following table as subject to the provisions of today's proposed rule:

TABLE VIII.1.—INDUSTRIES CONTAINING SMALL BUSINESSES POTENTIALLY AFFECTED BY TODAY'S PROPOSED RULE

Industry	NAICS[a] codes	SIC[b] codes	Defined by SBA as a small business if:[c]
Motor Vehicle Manufacturers	336111 336112 336120	3711	<1000 employees.
Alternative Fuel Vehicle Converters	336311 541690	3592 8931	<500 employees.
	336312	3714	<750 employees.

[108] The Initial RFA is contained in Chapter 8 of the Regulatory Impact Analysis.

[109] Report of the Small Business Advocacy Panel on Tier 2 Light-Duty Vehicle and Light-Duty Truck Emission Standards, Heavy-Duty Gasoline Engine Standards, and Gasoline Sulfur Standards, October 1998.

TABLE VIII.1.—INDUSTRIES CONTAINING SMALL BUSINESSES POTENTIALLY AFFECTED BY TODAY'S PROPOSED RULE—Continued

Industry	NAICS[a] codes	SIC[b] codes	Defined by SBA as a small business if:[c]
	422720	5172	<100 employees.
	454312	5984	<$5 million annual sales.
	811198	7549	
	541514	8742	
Independent Commercial Importers of Vehicles and Vehicle Components	811112	7533	<$5 million annual sales.
	811198	7549	
	541514	8742	
Petroleum Refiners	324110	2911	<1500 employees.
Petroleum Marketers and Distributors	422710	5171	<100 employees.
	422720	5172	

[a] North American Industry Classification System.
[b] Standard Industrial Classification system.
[c] According to SBA's regulations (13 CFR 121), businesses with no more than the listed number of employees or dollars in annual receipts are considered "small entities" for purposes of a regulatory flexibility analysis.

The Initial RFA identified about 15 small petroleum refiners, several hundred small petroleum marketers, and about 15 small certifiers of covered vehicles (belonging to the other categories in the above table) that would be subject to the proposed rule.

2. Small Business Advocacy Review Panel and the Evaluation of Regulatory Alternatives

The Small Business Advocacy Review Panel was convened by EPA on August 27, 1998. The Panel consisted of representatives of the Small Business Administration (SBA), the Office of Management and Budget (OMB), and EPA. During the development of today's proposal, EPA and the Panel were in contact with representatives from the small businesses that would be subject to the provisions in today's proposal. In addition to verbal comments from industry noted by the Panel at meetings and teleconferences, written comments were received from each of the affected industry segments or their representatives. These comments, alternatives suggested by the Panel to mitigate adverse impacts on small businesses, and issues the Panel requested EPA take additional comment on are contained in the report of the Panel and are summarized below. Today's proposal incorporates or requests comment on the alternatives and issues suggested by the Panel.

Fuel-Related Small Business Issues

Most of the small refiners stated that if they were required to achieve 30 ppm sulfur levels on average with an 80 ppm per-gallon cap without some regulatory relief, they would be forced out of business. Thus, the Panel devoted much attention to regulatory alternatives to address this concern. Most small refiners strongly supported delaying mandatory compliance for their facilities. On the other hand, most small refiners stated that a phase-in of gasoline sulfur standards would not be helpful because it would be more cost-effective for them to install the maximum technology required for the most stringent sulfur levels that would ultimately be imposed.

The Society of Independent Gasoline Marketers of America (SIGMA) commented that EPA should consider giving relief not only to refiners that meet the SBA definition of small refiner but also to refineries with relatively small production capacity that are owned by large refining companies. This was because a refinery with a small production capacity would operate essentially as an SBA-defined small refiner would. SIGMA also noted that small gasoline marketers would be affected by the closure of any refinery with small production capacity, whether it was owned by a large company or an SBA-defined small refining company.

The Panel recommended that small refiners be given a four to six year period of relief during which less stringent gasoline sulfur requirements would apply. The Panel also advised that EPA specifically request comment on an alternative duration of ten years for the relief period. Small refiners would be assigned interim sulfur standards during this relief period based on their current individual refinery sulfur levels. Following this relief period, small refiners would be required to meet the industry-wide standard, although temporary hardship relief would be available on a case-by-case basis. The additional time provided to small refiners before compliance with the industry-wide standard was required would allow (1) new sulfur-reduction technologies to be proven-out by larger refiners, (2) the costs of advanced technology units to drop as the volume of their sales increases, (3) industry engineering and construction resources to be freed-up, and (4) the acquisition of the necessary capital by small refiners. The provisions that EPA is proposing for small refiners and our requests for specific comments are found in Section IV.C.3.b.above. The Panel concluded that adding gasoline sulfur to the fuel parameters already being sampled and tested by gasoline marketers would likely result in little, if any, additional burden. Therefore, the Panel did not recommend any special provision for gasoline marketers.

Vehicle-Related Small Business Issues

Independent commercial importers of vehicles (ICIs) suggested that the new emissions standards be phased-in with the phase-in schedule based on the small vehicle manufacturer's annual production volume. Secondly, the ICIs requested that small testing laboratories be permitted to use older technology dynamometers than proposed for use by the Agency. Finally, the ICIs commented that the certification process should be waived for certain foreign vehicles. Small-volume vehicle manufacturers (SVMs) stated that a phase-in of Tier-2 emissions standards is essential. They further stated that SVMs should not be required to comply until the end of the phase-in period, which should not be before model year 2007. The SVMs also stated that a case-by-case hardship relief provision should be provided for their members. SVMs requested that a credit program be established with incentives for larger manufacturers to make credits available to SVMs in meeting their compliance goals.

Based on the above comments, the Panel advised that EPA consider several

alternatives, individually or in combination, for the potential relief that they might provide to small certifiers of vehicles. Our requests for comments on these alternatives are found in Section V.A.8 above.

The Initial Regulatory Flexibility Analysis evaluates the financial impacts of the proposed vehicle standards and fuel controls on small entities. EPA believes that the regulatory alternatives considered in today's document will provide substantial relief to small business from the potential adverse economic impacts of complying with today's proposed rule.

C. Paperwork Reduction Act

The information collection requirements (ICR) in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the *Paperwork Reduction Act*, 44 U.S.C. 3501 *et seq.* The Agency may not conduct or sponsor an information collection, and a person is not required to respond to a request for information unless the information collection request displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

The information collection requirements associated with today's proposed rule belong to two distinct categories: (1) Those that pertain to the proposed amendments to the vehicle certification requirements, and (2) those that pertain to the proposed requirements for the control of gasoline sulfur content. The information collection requirements are contained in two separate ICR documents according to the category to which they belong.[110]

The *Paperwork Reduction Act* stipulates that ICR documents estimate the burden of activities that would be required of regulated parties within a three year time period. Consequently, the ICR documents that accompany today's proposed rule provide burden estimates for the activities that would be required under the first three years of the proposed program.

ICRs Pertaining to the Proposed Amendments to Vehicle Certification Requirements

The information collection burden to vehicle certifiers associated with the proposed amendments to the vehicle certification requirements in today's document pertain to the proposed fleet-average NO_X standard and emission credits provisions. These proposed requirements are very similar to those under the voluntary National Low Emission Vehicle (NLEV) program, which includes a fleet-average standard for nonmethane hydrocarbon organic gases (NMOG) and associated emission credits provisions. The hours spent annually by a given vehicle certifier on the information collection activities associated with the proposed recordkeeping and reporting requirements depends upon certifier-specific variables, including: the scope/variety of their product line as reflected in the number of test groups and strategy used to comply with the proposed fleet-average NO_X standard, the extent they utilize the proposed emissions credits provisions, and whether they opted into the NLEV program. Vehicle certifiers that use the proposed provisions for early banking of emission credits would be subject to the associated information collection requirements as early as September 1, 2000.[111] All vehicle certifiers would be required to comply with the information collection requirements associated with the amendments to the vehicle certification program beginning September 1, 2003.[112] The ICR document for the proposed amendments to the vehicle certification program provides burden estimates for all of the associated information collection requirements. The total information collection burden associated with the proposed amendments to the vehicle certification requirements is estimated at 8,361 hours and $564,172 annually for the certifiers of light-duty vehicles and light-duty trucks.

ICRs Pertaining to the Proposed Requirements for Gasoline Sulfur Control

The information collection burden to gasoline refiners, importers, marketers, distributors, retailers and wholesale purchaser-consumers (WPCs), and users of research and development (R&D) gasoline pertain to the proposed gasoline sulfur control requirements. The scope of the recordkeeping and reporting requirements for each regulated party, and therefore the cost to that party, reflects the party's opportunity to create, control, or alter the sulfur content of gasoline. As a result, refiners and importers would have significant requirements, which are necessary both for their own tracking, and that of downstream parties, and for EPA enforcement. Parties downstream from the gasoline production or import point, such as retailers, would have minimal burdens that are primarily associated with the transfer and retention of product transfer documents. Many of the reporting and recordkeeping requirements for refiners and importers regarding the sulfur content of gasoline on which the proposed rule would rely currently exist under EPA's Reformulated Gasoline (RFG) and Anti-Dumping programs. The ICR for the RFG program covered start up costs associated with reporting gasoline sulfur content under the RFG program. Consequently, much of the cost of the information collection requirements under the proposed gasoline sulfur control program has already been accounted for under the RFG program ICR.

The information collection requirements under the proposed sulfur control program would evolve over time as the program is phased-in. Beginning July 1, 2000, certain requirements would apply to parties that voluntarily opt to generate credits for early sulfur reduction under the proposed average banking and trading (ABT) provisions. Many of the requirements would not become applicable until the beginning of the sulfur control program on October 1, 2003, when all refiners would be required to meet the proposed standards. The information collection requirements under the proposed program would become stable after January 1, 2008, when the optional small refiner provisions would expire.[113]

The ICR document for the proposed gasoline sulfur control program provides burden estimates for the activities that would be required under the first three years of the sulfur control program, from July 1, 2000 through June 30, 2003. The burden associated with activities that would be required after June 30, 2003 will be estimated in later ICRs. The initial ICR for the gasoline sulfur control program, however, does

[110] The information collection requirements associated with the proposed amendments to the requirements for vehicle certification are contained in the Information Collection Request entitled "Amendments to the Reporting and Recordkeeping Requirements for Motor Vehicle Certification Under the Proposed Tier 2 Rule". The information collection requirements associated with the proposed gasoline sulfur control program are contained in the Information Collection Request entitled "Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule".

[111] These ICRs would become effective on the date that model year 2001 vehicles are introduced into commerce. EPA assumes that September 1, 2000 is the earliest date that model year 2001 vehicles will be marketed.

[112] Assuming model year 2004 vehicles are introduced into commerce on this date.

[113] A refiner could petition EPA for an extension of the small refiner provisions beyond January 1, 2008, based on hardship.

provide a qualitative characterization of all of the required activities and associated burdens for the various regulated parties as they develop, and until they become stable after January 1, 2008.

We estimate that the total burden of the information collection requirements that would be applicable during the first three years of the proposed gasoline sulfur control program would be 42,479 hours and $2,149,865 annually. The estimated annual burden for the various regulated entities under the initial three year period of the proposed gasoline sulfur control program are as follows:

—Refiners: 31,231 hours, $1,879,822
—Importers: 40 hours, $2,067
—Pipelines: 85 hours, $2,785
—Terminals: 1,700 hours, $55,700
—Truckers: 3,333 hours, $118,000
—Retailers/WPCs: 6,087 hours, $ 91,298
—R&D Gasoline Users: 3 hours, $193

Total Burden of the Proposed ICRs

We estimate that the total burden of the recordkeeping and reporting requirements associated with the proposed vehicle certification and gasoline sulfur control requirements would be at 50,840 hours and $2,714,087 annually over the first three years that these requirements would be in effect.

Comments on EPA's Burden Estimates

We request comments on the Agency's need for the information proposed to be collected, the accuracy of our estimates of the associated burdens, and any suggested methods for minimizing the burden, including the use of automated techniques for the collection of information. Comments on the ICR should be sent to: the Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2136), 401 M Street, SW., Washington, DC 20460, marked "Attention: Director of OP;" and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any such correspondence. OMB is required to make a decision concerning the ICR between 30 and 60 days after publication of a proposed rule. Therefore, comments to OMB on the ICR are most useful if received within 30 days of the publication date of today's document. Any comments from OMB and from the public on the information collection requirements in today's proposal will be placed in the docket and addressed by EPA in the final rule.

Copies of the ICR documents can be obtained from Sandy Farmer, Office of Policy, Regulatory Information Division, U.S. Environmental Protection Agency (Mail Code 2137), 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740. Insert the ICR title and/or OMB control number in any correspondence. Copies may also be downloaded from the internet at http://www.epa.gov.icr.

D. Intergovernmental Relations

1. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more for any single year. Before promulgating a rule, for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative that is not the least costly, most cost-effective, or least burdensome alternative if EPA provides an explanation in the final rule of why such an alternative was adopted.

Before we establish any regulatory requirement that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government plan pursuant to section 203 of the UMRA. Such a plan must provide for notifying potentially affected small governments, and enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant federal intergovernmental mandates. The plan must also provide for informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no federal mandates for state, local, or tribal governments as defined by the provisions of Title II of the UMRA. The rule imposes no enforceable duties on any of these governmental entities. Nothing in the proposed rule would significantly or uniquely affect small governments.

EPA has determined that this rule contains federal mandates that may result in expenditures of more than $100 million to the private sector in any single year. EPA believes that the proposed program represents the least costly, most cost-effective approach to achieve the air quality goals of the proposed rule. The cost-benefit analysis required by the UMRA is discussed in Section IV.D. above and in the Draft RIA. See the "Administrative Designation and Regulatory Analysis" section in today's preamble (VIII.A.) for further information regarding these analyses.

2. Executive Order 12875: Enhancing Intergovernmental Partnerships

Under Executive Order 12875, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a state, local or Tribal government, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected state, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of state, local and Tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates."

Today's proposed rule would not create a mandate on state, local or Tribal governments. The proposed rule would not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 do not apply to this rule.

3. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian Tribal governments, and that imposes substantial direct compliance

costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian Tribal governments. The proposed motor vehicle emissions, motor vehicle fuel, and other related requirements for private businesses in today's document would have national applicability, and thus would not uniquely affect the communities of Indian Tribal Governments. Further, no circumstances specific to such communities exist that would cause an impact on these communities beyond those discussed in the other sections of today's document. Thus, EPA's conclusions regarding the impacts from the implementation of today's proposed rule discussed in the other sections of today's document are equally applicable to the communities of Indian Tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Section 12(d) of Public Law 104–113, directs EPA to use voluntary consensus standards in its regulatory activities unless it would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This proposed rule references technical standards adopted by the Agency through previous rulemakings. No new technical standards are proposed in today's document. The standards referenced in today's proposed rule involve the measurement of gasoline fuel parameters and motor vehicle emissions. The measurement standards for gasoline fuel parameters referenced in today's proposal are all voluntary consensus standards. The motor vehicle emissions measurement standards referenced in today's proposed rule are government-unique standards that were developed by the Agency through previous rulemakings. These standards have served the Agency's emissions control goals well since their implementation and have been well accepted by industry. EPA is not aware of any voluntary consensus standards for the measurement of motor vehicle emissions. Therefore, the Agency proposes to use the existing EPA-developed standards found in 40 CFR part 86 for the measurement of motor vehicle emissions.

EPA welcomes comments on this aspect of the proposed rulemaking and, specifically, invites the public to identify potentially-applicable voluntary consensus standards and to explain why such standards should be used in this regulation.

F. Executive Order 13045: Children's Health Protection

Executive Order (E.O.) 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, section 5–501 of the Order directs the Agency to evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This proposed rule is subject to the Executive Order because it is an economically significant regulatory action as defined by E.O. 12866 and it concerns in part an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

This rulemaking will achieve significant reductions of various emissions from passenger cars and light trucks, primarily NO_x, but also NMOG and PM. These pollutants raise concerns regarding environmental health or safety risks that EPA has reason to believe may have a disproportionate effect on children, such as impacts from ozone, PM and certain toxic air pollutants. See Section III of this proposal and the RIA for a further discussion of these issues.

The effects of ozone and PM on children's health were addressed in detail in EPA's rulemaking to establish the NAAQS for these pollutants, and EPA is not revisiting those issues here. EPA believes, however, that the emission reductions from the strategies proposed in this rulemaking will further reduce air toxics and the related adverse impacts on children's health. EPA will be addressing the issues raised by air toxics from motor vehicles and their fuels in a separate rulemaking that EPA will initiate in the near future under section 202(l) of the Act. That rulemaking will address the emissions of hazardous air pollutants from vehicles and fuels, and the appropriate level of control of HAPs from these sources.

In this proposal, EPA has evaluated several regulatory strategies for reductions in emissions from passenger cars and light trucks. (See sections IV, V, and VI of this proposal as well as the RIA.) For the reasons described there, EPA believes that the strategies proposed are preferable under the Clean Air Act to other potentially effective and reasonably feasible alternatives considered by the Agency, for purposes of reducing emissions from these sources as a way of helping areas achieve and maintain the NAAQS for ozone and PM. Moreover, EPA believes that it has selected for proposal the most stringent and effective control reasonably feasible at this time, in light of the technology and cost requirements of the Act.

IX. Statutory Provisions and Legal Authority

Statutory authority for the vehicle controls proposed in today's document can be found in sections 202, 206, 207, 208, and 301 of the Clean Air Act (CAA), as amended, 42 U.S.C. sections 7521, 7525, 7541, and 7601.

Statutory authority for the fuel controls proposed in today's document comes from section 211(c) of the CAA, which allows EPA to regulate fuels that either contribute to air pollution which endangers public health or welfare or which impair emission control equipment. Both criteria are satisfied for

the proposed gasoline sulfur controls. Additional support for the procedural and enforcement-related aspects of the fuel's controls in today's proposal, including the proposed record keeping requirements, comes from sections 114(a) and 301(a) of the CAA.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Fuel Additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 85

Environmental protection, Confidential business information, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements, Research, Warranties.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 1, 1999.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, we propose to amend parts 80, 85 and 86 of title 40, of the Code of Federal Regulations as follows:

PART 80—REGULATION OF FUELS AND FUEL ADDITIVES

1. The authority citation for part 80 continues to read as follows:

Authority: Secs. 114, 211, and 301(a) of the Clean Air Act, as amended (42 U.S.C. 7414, 7545 and 7601(a)).

2. Section 80.2 is amended by removing and reserving paragraph (aa) and revising paragraphs (h), (s), (w) and (gg) to read as follows:

§ 80.2 Definitions.

* * * * *

(h) *Refinery* means any facility, including but not limited to, a plant, tanker truck, or vessel where gasoline or diesel fuel is produced, including any facility at which blendstocks are combined to produce gasoline or diesel fuel, or at which blendstock is added to gasoline or diesel fuel.

* * * * *

(s) *Gasoline blending stock, blendstock, or component* means any liquid compound which is blended with other liquid compounds to produce gasoline.

* * * * *

(w) *Previously certified gasoline* means gasoline or RBOB that previously has been included in a batch for purposes of complying with the standards for reformulated gasoline, conventional gasoline or gasoline sulfur, as appropriate.

* * * * *

(aa) [Reserved]

* * * * *

(gg) *Batch of gasoline* means a quantity of gasoline that is homogeneous with regard to those properties that are specified for conventional or reformulated gasoline.

* * * * *

3. Section 80.46 is amended by revising paragraphs (a) and (h) to read as follows:

§ 80.46 Measurement of reformulated gasoline fuel parameters.

(a) *Sulfur.* Sulfur content must be determined by using one of the following methods:

(1) *Primary method.* American Society for Testing and Materials (ASTM) standard method D–2622–98, entitled "Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-ray Fluorescence Spectrometry."

(2) *Alternative method.* ASTM D–5453–93, entitled "Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Motor fuels and Oils by Ultraviolet Fluorescence."

* * * * *

(h) *Incorporations by reference.* ASTM standard methods D–2622–98, D–5453–93, D–3606–92, D–1319–93, D–4815–93, and D–86–90 with the exception of the degrees Fahrenheit figures in Table 9 of D–86–90, are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC.

4. Subpart H is added to read as follows:

Subpart H—Gasoline Sulfur

General Information

Sec.
80.180 What are the implementation dates for the gasoline sulfur program?
80.185 [Reserved]
80.190 Am I required to register with EPA under the sulfur program?

Gasoline Sulfur Standards

80.195 What are the gasoline sulfur standards for refiners and importers?
80.200 What gasoline is subject to the sulfur standards?
80.205 How is compliance with the annual average sulfur level determined?
80.210 What sulfur standards apply to gasoline downstream from refineries and importers?
80.215 What requirements apply to oxygenate blenders?
80.220 [Reserved]

Small Refiner Provisions

80.225 What is the definition of a small refiner?
80.230 Who is not eligible for the small refiner provisions?
80.235 How does a refiner obtain approval as a small refiner?
80.240 What are the small refiner gasoline sulfur standards?
80.245 How does small refiner apply for a sulfur baseline?
80.250 How is the small refiner sulfur baseline determined?
80.255 [Reserved]
80.260 What are the procedures and requirements for obtaining a hardship extension?
80.265 How will the EPA approve or disapprove of my hardship extension application?
80.270–80.275 [Reserved]

Sulfur Averaging, Banking, Trading—General Information

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80.285 Who may participate in the sulfur ABT program?

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Subpart H—Gasoline Sulfur

General Information

§ 80.180 What are the implementation dates for the gasoline sulfur program?

(a) *July 1, 2000.* Deadline for submittal of sulfur baseline determinations for averaging, banking and trading program per § 80.290.

(b) *June 1, 2002.* Deadline for small refiner applications per § 80.235.

(c) *October 1, 2003.* Per-gallon caps apply, per § 80.195 or § 80.240, as applicable.

(d) *January 1, 2004.* Refinery and importer average standards apply and corporate pool average gasoline standards apply, per § 80.195. Small refinery average standards apply per § 80.240.

(e) *February 1, 2004.* Downstream caps apply, per § 80.210.

(f) *January 1, 2005.* Corporate pool average standards and per-gallon caps are made more stringent per § 80.195.

(g) *January 1, 2006.* Corporate pool average gasoline standards no longer apply. Per-gallon caps are made more stringent per § 80.195.

(h) *June 30, 2007.* Deadline for small refiner hardship extension applications per § 80.260.

(i) *January 1, 2008.* With the exception of gasoline produced by small refiners with approved hardship extensions, every batch of gasoline is subject to the 80 ppm cap. With the exception of small refiners with approved hardship extensions, refinery and importer average gasoline sulfur standards apply, per § 80.195.

(j) *January 1, 2010.* Every batch of gasoline is subject to the 80 ppm cap. Refinery and importer average gasoline sulfur standards apply, per § 80.195.

§ 80.185 [Reserved]

§ 80.190 Am I required to register with EPA under the sulfur program?

(a) Each refiner and importer must register with EPA according to the procedures specified in this section.

(b) Refiners and importers subject to the standards in § 80.195 who are registered by EPA under § 80.76(a) are deemed to be registered for purposes of this subpart. Refiners and importers subject to the standards in § 80.195 who are not registered by EPA under § 80.76(a) must provide to EPA the information required by § 80.76 by November 1, 2003 or not later than three months in advance of the first date that such person produces or imports gasoline, whichever is later.

(c) Refiners and individual refineries that are registered by EPA under § 80.76(a) and have established small refiner individual refinery standards status under § 80.235(f) are deemed to be registered for purposes of this subpart. Refiners having any refinery subject to the standards in § 80.240 who are not registered by EPA under § 80.76(a) must provide to EPA the information required by § 80.76 by June 1, 2002.

(d) Any refiner or importer who plans to generate credits in any year prior to 2004 must register with us no later than November 1 of the year prior to the first year of credit generation.

Gasoline Sulfur Standards

§ 80.195 What are the gasoline sulfur standards for refiners and importers?

(a)(1) The gasoline sulfur standards for refiners and importers, excluding small refiners subject to the standards at § 80.240, are shown in Table 1 of this section.

(2) The averaging period is January 1 through December 31 of each year. For each averaging period, a refiner's or importer's average sulfur level must be no greater than the levels specified in Table 1 of this section, as follows:

TABLE 1.—GASOLINE SULFUR STANDARDS

	For the averaging period beginning		
	January 1, 2004	January 1, 2005	January 1, 2006+
Refinery or Importer Average, ppm	30	30	30
Corporate Pool Average, ppm	120	90	[b]
Per-Gallon Cap, ppm	[a]300	180	80

[a] This per-gallon cap standard must be met beginning October 1, 2003.
[b] Not applicable.

(b) The refinery or importer average gasoline sulfur standard.

(1) The refinery or importer average gasoline sulfur standard is the maximum average sulfur level, measured in parts per million (ppm), allowed for the combined reformulated and conventional gasoline produced at a refinery or imported by an importer

during each calendar year starting January 1, 2004.

(2) The annual average sulfur level is calculated as specified in section § 80.205.

(3) The refinery or importer average gasoline sulfur standard may be met using credits according to § 80.315, or any other potential sources of credits or allowances, if applicable.

(c) The corporate pool average gasoline sulfur standard applicable in 2004 and 2005 is the maximum average sulfur level, in ppm, allowed for a refiner's or importer's combined reformulated and conventional gasoline production from all of a refiner's refineries and all gasoline imported by an importer in a calendar year. The corporate pool average is determined by volume-weighting each refinery's and importer's actual annual average sulfur levels by their respective production or import volumes, as specified in § 80.205.

(d) The per-gallon cap standard specified in Table 1 of this section for the averaging period beginning January 1, 2004, must be met beginning October 1, 2003.

§ 80.200 What gasoline is subject to the sulfur standards?

All gasoline is subject to the standards in this subpart, with the following exceptions:

(a) Gasoline that is used to fuel aircraft, racing vehicles or racing boats that are used only in sanctioned racing events, provided that:

(1) Product transfer documents associated with such gasoline, and any pump stand from which such gasoline is dispensed, identify the gasoline either as gasoline that is restricted for use in aircraft, or as gasoline that is restricted for use in racing motor vehicles or racing boats that are used only in sanctioned racing events;

(2) The gasoline is completely segregated from all other gasoline throughout production, distribution and sale to the ultimate consumer; and

(3) The gasoline is not made available for use as motor vehicle gasoline, or dispensed for use in motor vehicles.

(b) California gasoline as defined in § 80.81(a)(2).

(c) Gasoline that is exported for sale outside the U.S.

§ 80.205 How is compliance with the annual average sulfur level determined?

(a) The refinery or importer average gasoline sulfur level is calculated as follows:

$$S_a = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

S_a = The refinery or importer annual average sulfur value.

V_i = The volume of gasoline produced or imported in batch i.

S_i = The sulfur content of batch i as determined in accordance with the requirements of § 80.330.

n = The number of batches of gasoline produced or imported during the averaging period.

i = Individual batch of gasoline produced or imported during the averaging period.

(b) A refiner or importer may include oxygenate added downstream from the refinery or import facility when calculating the sulfur content, provided the following requirements are met:

(1) For oxygenate added to conventional gasoline, the refiner or importer must comply with the requirements of § 80.101(d)(4)(ii).

(2) For oxygenate added to RBOB, the refiner or importer must comply with the requirements of § 80.69(a).

(c) Refiners and importers must exclude from compliance calculations all of the following:

(1) Gasoline that was not produced at the refinery or was not imported by the importer (or that was imported as Certified Sulfur-FRGAS).

(2) Blending stocks or gasoline that have been included in another refiner's compliance calculations.

(3) Gasoline exempted from standards under § 80.200.

(d) Compliance deficit. A refinery or importer may exceed the refinery or importer annual average sulfur standard specified in § 80.195 under the following conditions:

(1) In the calendar year following the year the standard is not met, the refinery or importer achieves compliance with the refinery or importer annual average sulfur standard specified in § 80.195; and

(2) In the calendar year following the year the standard is not met, and after achieving compliance with the refinery or importer annual average sulfur standard specified in § 80.195, the refinery or importer must have sufficient additional credits and/or actual reduction in sulfur levels to equal the compliance deficit of the previous year.

§ 80.210 What sulfur standards apply to gasoline downstream from refineries and importers?

(a) *Definition. S–RGAS* means gasoline produced by a domestic refinery that is subject to the standards in § 80.240, and to Certified Sulfur-FRGAS, as defined in § 80.410, except that no batch of gasoline may be classified as S–RGAS if the actual sulfur content is less than the national refinery cap standard specified in § 80.195.

(b) The sulfur cap standard for gasoline at any point in the gasoline distribution system downstream from refineries and import facilities, including gasoline at facilities of distributors, carriers, retailers and wholesale purchaser-consumers, is as follows:

(1) The following standards apply to gasoline except where product transfer documents indicate the presence of any S–RGAS:

During the Period	National Downstream Sulfur Cap Standard (ppm)
February 1, 2004, through January 31, 2005	≤326
February 1, 2005, through January 31, 2006	≤201
February 1, 2006, and thereafter	≤95

(2) For gasoline, including a mixture of gasoline batches from different refineries, where product transfer documents indicate the presence of any S–RGAS, the downstream cap standard for the gasoline is the highest downstream cap standard applicable to any gasoline in the mixture, except that if a test result indicates the sulfur content of the mixture is less than or equal to the applicable national downstream cap standard, the gasoline is subject to the national downstream cap standard.

§ 80.215 What requirements apply to oxygenate blenders?

Oxygenate blenders, as defined by § 80.2(mm), are subject to the requirements of this subpart except for the reporting requirements of § 80.370 and the requirements under § 80.330 to sample and test each batch of gasoline produced.

§ 80.220 [Reserved]

Small Refiner Provisions

§ 80.225 What is the definition of a small refiner?

(a) A *small refiner* is defined as any person, as defined by 42 U.S.C. 7602(e), which, as of January 1, 1999:

(1) Produced gasoline at a refinery by processing crude oil through refinery processing units; and

(2)(i) Employed no more than 1500 people, including subsidiaries, and in the case of a refiner who operates a refinery as a joint venture with other refiners, including the total number of employees of all corporate entities in the venture; or

(ii) Is a subsidiary, in which case the employees of the parent company and any wholly-owned subsidiaries of the parent company must be included in determining if the 1,500 employee limit is exceeded.

(b) This definition applies to domestic and foreign refiners.

(c) If, without merger with or acquisition of another business unit, a company with approved small refiner status exceeds 1500 employees after January 1, 1999, it will be considered a small refiner for the duration of the small refiner program.

(d) A refiner that was not in operation as of January 1, 1999, that begins operation before January 1, 2001, and meets all other criteria of this subpart, may apply for small refiner status according to § 80.235.

§ 80.230 Who is not eligible for the small refiner provisions?

(a) The following are not eligible for the small refiner provisions:

(1) Refineries built or started up after January 1, 1999, unless the criteria of § 80.225(d) are met; or

(2) Persons that employ more than 1500 people on January 1, 1999, but employ fewer than 1500 people after that date; or

(3) Importers; or

(4) Refiners employing 1500 or fewer people which were part of a larger corporation as of January 1, 1999 but subsequently were sold to form a new company.

(b) *Disqualification as a small refiner.* (1) Refiners who qualify as small under § 80.225, and subsequently employ more than 1500 people as a result of merger with or acquisition of another entity, are disqualified as small refiners and must meet the standards in § 80.195 beginning on January 1 of the first calendar year following such merger or acquisition.

(2) If a small refiner is no longer eligible for small refiner status or elects to change the status of any refinery operating under a small refiner individual refinery standard to subject the refinery to the standards in § 80.195, the refiner must notify EPA in writing within 20 days of the disqualifying event or, in the case of a voluntary election, no later than November 15 prior to the year that the change will occur. Each refinery of the small refiner no longer eligible for small refiner status must meet the standards in § 80.195 for the next averaging period.

§ 80.235 How does a refiner obtain approval as a small refiner?

(a) A refiner must apply to EPA for small refiner status by June 1, 2002.

(b) Applications for small refiner status must be sent to: U.S. EPA—FED, Gasoline Sulfur Small Refiner Status, 2000 Traverwood, Ann Arbor, MI 48105.

(c) The small refiner status application must contain the following information:

(1) A listing of the name and address of each location where any employee of the refiner worked on January 1, 1999, the total number of employees at each location, and the type of business activities carried out at each location.

(2) A letter signed by the president, chief operating or chief executive officer of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

(3) Name, address, phone number, facsimile number and E-mail address of a corporate contact person.

(d) For joint ventures, the total employee count includes the combined employee count of all corporate entities in the venture.

(e) For government-owned refiners, the total employee count includes all government employees.

(f) Refiners who apply for small refiner status based on the number of employees after January 1, 1999 but before January 1, 2001, as permitted under § 80.225(d), must comply with paragraphs (a) through (c) of this section.

(g) EPA will notify a refiner of approval or disapproval of small refiner status by letter.

(1) If approved, EPA will notify the refiner of each refinery's approved baseline, refinery per-gallon cap, and downstream per-gallon cap standard under § 80.210.

(2) If disapproved, the refiner must comply with the standards in § 80.195.

§ 80.240 What are the small refiner gasoline sulfur standards?

(a) The gasoline sulfur standards for an approved small refiner depend on the refinery baseline sulfur level, and are shown in Table 1 of this section, as follows:

TABLE 1.—GASOLINE SULFUR STANDARDS FOR APPROVED SMALL REFINERS

Refinery baseline sulfur level (ppm)	Refinery annual average and per-gallon ("cap") sulfur standards (ppm) that apply during 2004–2007
0 to 30	Refinery average: 30. Cap: 80.
31 to 80	Refinery average: no requirement. Cap: 80.
81 to 200	Refinery average: baseline level. Cap: Factor of 2 above the baseline.
201 and above.	Refinery average: 200 ppm or 50% of baseline, whichever is higher, but in no event greater than 300 ppm. Cap: Factor of 1.5 above baseline level.

(b) The average standards specified in Table 1 of this section apply to the combined reformulated and conventional gasoline produced at a refinery.

(c) The refinery average sulfur standards specified in Table 1 of this section must be met on an annual calendar year basis for each refinery owned by a small refiner.

(d) The per-gallon cap standards specified in Table 1 of this section for the averaging period beginning January 1, 2004 must be met beginning October 1, 2003.

(e) *Volume limitation.* (1) The refinery average standards specified in Table 1 of this section apply to the volume of gasoline produced by a small refiner's refinery up to the lesser of:

(i) 105% of the baseline gasoline volume; or

(ii) The volume of gasoline produced at that refinery during the average period by processing crude oil.

(2) If a refiner exceeds the volume limitation in paragraph (e)(1) of this section during the calendar year, the annual average sulfur standard is calculated as follows:

$$S_{sr} = \frac{(V_b \times S_b) + (30 \times V_a \times V_b)}{V_a}$$

Where:

S_{sr} = Small refiner annual average sulfur standard.

V_b = Applicable volume under paragraph (e)(1) of this section.

V_a = Averaging period gasoline volume.

S_b = Small refiner sulfur baseline.

(3) The applicable volume from paragraph (e)(1) of this section excludes volumes of gasoline blending stocks used in the small refinery's gasoline

production that were received from external sources, unless such blending stocks are substantially transformed through the refinery's processing operations and have not been included in any other refiner's or importer's compliance determination.

(4) The applicable per-gallon cap standards in Table 1 of this section apply to all gasoline produced by small refiners.

(f) Withdrawal of small refiner status. Refiners that receive notification from EPA under § 80.235(f) of their qualification as small refiners will have that status withdrawn if EPA finds that the refiner provided false or inaccurate information on its application for small refiner status. Such refiners will be subject to the standards in § 80.195 beginning on January 1, 2004.

§ 80.245 How does a small refiner apply for a sulfur baseline?

(a) A refiner seeking small refiner status must establish an individual sulfur baseline for every refinery covered by the small refiner status application by June 1, 2002

(1) If a sulfur baseline was submitted for the refinery under § 80.290, the refiner does not need to resubmit that information.

(2) If no sulfur baseline was previously submitted, the refiner must submit a sulfur baseline for every refinery according to § 80.250.

(b) The sulfur baselines must be submitted to the address specified in § 80.235(b).

§ 80.250 How is the small refiner sulfur baseline determined?

(a) The small refiner sulfur baseline is determined as follows:

$$S_b = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

S_b = Sulfur baseline value.
V_i = Volume of gasoline batch i.
S_i = Sulfur content of batch i.
n = Total number of batches of conventional gasoline produced from January 1, 1997 through December 31, 1998.
i = Individual batch of conventional gasoline produced from January 1, 1997 through December 31, 1998.

(b) Foreign small refiners must also comply with the baseline establishment requirements in § 80.410(b).

(c) An approved small refiner may not aggregate the gasoline volumes and sulfur levels of its refineries for compliance with the applicable standards specified in § 80.240.

(d) If at any time a small refinery baseline is determined to be incorrect, the corrected baseline applies ab initio and the annual average standards and cap standards are deemed to be those applicable under the corrected information.

(e) If a small refiner does not have the data specified in paragraph (a) of this section to generate a sulfur baseline, or if any refineries owned by that refiner were not operating in 1997–1998, EPA will assign each refinery a baseline average sulfur level of 150 ppm sulfur and a baseline CG volume equivalent to the annual gasoline volume capability of the refinery at the time it applies for small refiner status.

§ 80.255 [Reserved].

§ 80.260 What are the procedures and requirements for obtaining a hardship extension?

(a) An approved small refiner may apply to EPA for a hardship extension of the small refiner standards for calendar years 2008 and 2009. The application must be submitted no later than June 30, 2007 to U.S. EPA–FED, Small Refiner Hardship Extension, 2000 Traverwood, Ann Arbor, MI 48105.

(b) The application must provide a detailed discussion regarding the inability of the refinery to produce gasoline meeting the requirements of § 80.195. Such an application must include, at a minimum, the following information:

(1) A detailed analysis of the reasons the refinery is unable to produce gasoline meeting the requirements of § 80.195 in 2008, including costs, specification of equipment still needed, potential equipment suppliers, and efforts already completed to obtain the necessary equipment;

(2) If unavailability of equipment is part of the reason for the inability to comply, a discussion of other options considered, and the reasons these other options are not feasible;

(3) If relevant, a demonstration that a needed or lower cost technology is immediately unavailable, but will be available in the near future, and full information regarding when and from what sources it will be available;

(4) Schematic drawings of the refinery configuration as of January 1, 1997 and as of the date of the hardship extension application, and any planned future additions or changes;

(5) If relevant, a demonstration that a temporary unavailability exists of engineering or construction resources necessary for design or installation of the needed equipment;

(6) If sources of crude oil lower in sulfur than what the refiner is currently using are available, full information regarding the availability of these different crude sources, the sulfur content of those crude sources, the cost of the different crude sources over the past five years, and an estimate of gasoline sulfur levels achievable by your refinery if the lower sulfur crude sources were used;

(7) A discussion of any sulfur reductions that can be achieved from current levels;

(8) The date the refiner anticipates compliance with the standards in § 80.195 can be achieved at its refinery;

(9) An analysis of the economic impact of compliance on the refiner's business (including financial statements from the last 5 years, or for any time period up to 10 years, at EPA's request); and

(10) Any other information regarding other strategies considered, including strategies, or components of strategies, that do not involve installation of equipment, and why meeting the standards in § 80.195 beginning in 2008 is infeasible.

(c) The hardship extension application must contain a letter signed by the president, chief operating or chief executive officer, of the company, or his/her designee, stating that the information contained in the application is true to the best of his/her knowledge.

§ 80.265 How will the EPA approve or disapprove of my hardship extension application?

(a) EPA will evaluate each application for hardship extension on a case-by-case basis. An extension will be granted for a refinery if the small refiner who owns the refinery adequately demonstrates that severe economic hardship would result if compliance with the standards in § 80.195 is required in 2008 and/or 2009.

(b) EPA may request more information, if necessary, for evaluation of the application. If requested information is not submitted within the time specified in EPA's request, or any extensions granted, the application may be denied.

(c) EPA will notify the refiner of approval or disapproval of hardship extension by letter.

(1) If approved, EPA will also notify the refiner of the date that full compliance with the standards specified at § 80.195 must be achieved or what interim sulfur levels or schedules apply, if any.

(2) If disapproved, beginning January 1, 2008, the refinery is subject to the requirements in § 80.195.

§ 80.270–80.275 [Reserved]

Sulfur Averaging, Banking, Trading-General Information

§ 80.280 What is the sulfur Averaging, Banking and Trading (ABT) program?

(a) The sulfur averaging, banking and trading program is a voluntary program which allows eligible, participating refiners and importers to generate, bank, trade and use credits.

(b) Beginning in 2000, refiners and importers may generate credits by producing or importing gasoline with sulfur levels below the applicable baseline as calculated under § 80.295.

(c) Beginning in 2004, sulfur credits may be:

(1) Used by the refiner or importer who generated the credits;

(2) Banked for later use or transfer; or

(3) Traded or sold to another refiner or importer.

(d) This subpart contains specific requirements for the following:

(1) Using, generating, selling and trading credits; and

(2) The duration of the ABT program.

(e) The gasoline sulfur ABT program is summarized in Table 1 of this section as follows:

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Table 1. Sulfur ABT Program Summary

<table>
<tr><th>2000</th><th>2000 - 2003</th><th>2004</th><th>2005</th><th>2006</th><th>2007+</th></tr>
<tr><td rowspan="6">Application for Credit Program Baseline due by July 1</td><td colspan="5">Early Credit Generation for Gasoline with ≤150 ppm Sulfur</td></tr>
<tr><td colspan="5">Credit Generation for ≤30 ppm Sulfur</td></tr>
<tr><td>Banking and Trading of Credits</td><td colspan="4">Banking & Trading of Credits</td></tr>
<tr><td rowspan="3"></td><td colspan="2">Corporate Average Standards Apply</td><td colspan="2"></td></tr>
<tr><td colspan="4">Compliance with 30 ppm Average Standard at the Refinery and Importer Level</td></tr>
<tr><td colspan="4">Phase-in of Downstream Cap Standards</td></tr>
</table>

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§ 80.285 Who may participate in the sulfur ABT program?

(a) Any refiner or importer of gasoline, may participate in the program, except that participation by small refiners is limited under paragraph (d) of this section.

(b) Refiners and importers who choose to generate credits in the ABT program must establish a sulfur baseline under § 80.290.

(c) Oxygenate blenders may not participate in the program.

(d) Small refiners with any refinery subject to the standards specified in § 80.240:

(1) May not use sulfur credits to meet the average standard applicable to the refinery.

(2) May generate early credits under § 80.305 and bank and trade such sulfur credits throughout the duration of the sulfur ABT program.

Sulfur ABT Program—Baseline

§ 80.290 How do I apply for a sulfur baseline?

(a) Each refiner or importer who wishes to generate ABT program credits during 2000–2003 must submit a sulfur baseline notification to EPA by July 1, 2000.

(b) The sulfur baseline notification must be sent to: U.S. EPA-FED, ABT Sulfur Baseline, 2000 Traverwood, Ann Arbor, MI 48105.

(c) The sulfur baseline notification must include the following information:

(1) A listing of the names and addresses of all refineries and/or import facilities owned by the corporation;

(2) The conventional gasoline sulfur baseline value, calculated as specified in § 80.295(a), for each refinery and import facility of the corporation.

(3) The conventional gasoline baseline volume, calculated as specified in § 80.295(c), for each refinery and import facility of the corporation.

(4) A letter signed by the president, chief operating or chief executive officer, of the company, or his/her delegate, stating that the information contained in the sulfur baseline determination is true to the best of his/her knowledge.

(5) Name, address, phone number, facsimile number and E-mail address of a corporate contact person.

(d)(1) A refiner or importer may generate credits as specified in § 80.305, beginning in calendar year 2000, based on the sulfur baseline submitted to EPA according to paragraph (c) of this section.

(2) If at any time the baseline submitted in accordance with the requirements of this section is determined to be incorrect, the corrected baseline applies. Credits

generated, banked, used or traded will be adjusted to reflect the correction.

§ 80.295 How is a refinery or importer sulfur baseline determined?

(a) A refinery's or importer's conventional gasoline sulfur baseline is calculated using the following equation:

$$S_{BCG} = \frac{\sum_{i=1}^{n}(V_i \times S_i)}{\sum_{i=1}^{n} V_i}$$

Where:

S_{BCG} = Conventional gasoline sulfur baseline value.
V_i = Volume of conventional gasoline batch i.
S_i = Sulfur content of conventional gasoline batch i.
n = Total number of batches of conventional gasoline produced or imported during January 1, 1997 through December 31, 1998.
i = Individual batch of conventional gasoline produced or imported during January 1, 1997 through December 31, 1998.

(b) The individual sulfur baseline for summer reformulated gasoline is 150 ppm.

(c) The individual sulfur baseline for winter reformulated gasoline is equivalent to the conventional gasoline sulfur baseline calculated under paragraph (a) of this section.

(d) The baseline volumes are as follows:

(1) The conventional gasoline baseline volume is one half of the total 1997 and 1998 volume of conventional gasoline produced or imported.

(2) There is no baseline volume for either summer or winter RFG produced or imported.

(e) Any refiner or importer who, under § 80.65 or § 80.101(d)(4), included oxygenate blended downstream in conventional gasoline compliance calculations for 1997–1998 must include this oxygenate in the baseline calculations for sulfur content and volume under paragraphs (a) and (d) of this section.

(f) The baseline calculations for sulfur content and volume under paragraphs (a) and (d) of this section for non-oxygenated blendstock, such as natural gasoline or butane, that is blended into gasoline must be calculated using the sulfur content and volume of the blendstock only.

§ 80.300 What if I did not produce or import gasoline during 1997 or 1998?

A refiner or importer who did not produce or import gasoline during 1997 or 1998 is assigned a baseline sulfur level of 150 ppm for conventional gasoline and RFG (winter and summer).

Sulfur ABT Program—Credit Generation

§ 80.305 How are credits generated during the time period 2000 through 2003?

(a) *General.* (1) Sulfur credits may be generated annually during calendar years 2000–2003.

(2) Credits must be calculated separately for Conventional gasoline and RFG. Credits must be calculated by multiplying the volume of gasoline for which credits are generated under paragraphs (b) and (c) of this section by the amount of sulfur reduction in ppm below the refiner's or importer's applicable sulfur baseline. The refiner or importer may include any oxygenates included in its RFG or Conventional gasoline volume under §§ 80.65 and 80.101(d)(4), respectively, for the purpose of generating credits.

(3) A refiner's or importer's total credit generation is the sum of the separate credit calculations for Conventional gasoline and RFG.

(4) Credits under this program are in units of "ppm-gallons".

(5) Credits must be identified by the year of creation, the year of transfer (if any), and the year of use (as specified in § 80.315). Records relating to credit generation, use, and transfer, including the applicable years, must be maintained pursuant to § 80.365.

(b) *Calculation of credits for conventional gasoline.* (1) Refiners and importers may generate credits for conventional gasoline produced or imported during an averaging period only if the annual average sulfur level for the conventional gasoline produced during the averaging period is less than 150 ppm.

(2) Refiners and importers whose conventional gasoline volume for the averaging period is less than or equal to 105% of its baseline volume for conventional gasoline, must calculate credits as follows:

$$CR_{CG} = (V_{CG}) \times S_{BCG} - S_{ACG})$$

Where:

CR_{CG} = Credits generated for conventional gasoline.
V_{CG} = Volume of conventional gasoline produced or imported during the averaging period.
S_{BCG} = Sulfur baseline value for conventional gasoline or 150, whichever is greater .
S_{ACG} = Annual average sulfur level for conventional gasoline produced or imported during the averaging period.

(3) Refiners and importers whose conventional gasoline volume for the averaging period is greater than 105% of the baseline volume for conventional gasoline, must calculate credits as follows:

$$CR_{CG} = (V_{BCG} \times 1.05) \times (S_{BCG} - S_{ACG}) + (V_{CG} - (1.05 \times V_{BCG})) \times (150 - S_{ACG})$$

Where:

CR_{CG} = Credits generated for conventional gasoline.
V_{BCG} = Baseline volume of conventional gasoline.
S_{BCG} = Sulfur baseline value for conventional gasoline or 150, whichever is greater.
S_{ACG} = Annual average sulfur level for conventional gasoline produced or imported during the averaging period.
V_{CG} = Volume of conventional gasoline produced or imported during the averaging period.

(c) *Calculation of credits for RFG.* (1) Refiners and importers may generate credits for summer RFG produced or imported during an averaging period only if the average sulfur level for the summer RFG produced or imported during the averaging period is less than 150 ppm. Summer RFG credits are calculated as follows:

$$CR_{SRFG} = (V_{SRFG}) \times (150 - S_{SRFG})$$

Where:

CR_{SRFG} = Credits generated for summer reformulated gasoline.
V_{SRFG} = Volume of summer RFG produced or imported during the averaging period.
S_{SRFG} = Average sulfur level for summer RFG produced or imported during the averaging period.

(2) Refiners and importers may generate credits for winter RFG produced or imported during an averaging period only if the average sulfur level for the winter RFG produced or imported during the averaging period is less than 150 ppm. Winter RFG credits calculated as follows:

$$CR_{WRFG} = (V_{WRFG}) \times (S_{BCG} - S_{WRFG})$$

Where:

CR_{WRFG} = Credits generated for winter reformulated gasoline.
V_{WRFG} = Volume of winter RFG produced or imported during the averaging period.
S_{BCG} = Sulfur baseline value for conventional gasoline or 150, whichever is greater.
S_{WRFG} = Average sulfur level for winter RFG produced or imported during the averaging period.

§ 80.310 How are credits generated beginning in 2004?

(a) A refiner, for any refinery owned by it, or an importer may generate credits for annual average sulfur reductions if the annual average sulfur level for the combined RFG and conventional gasoline produced by any refinery owned by the refiner or imported by the importer for the averaging period is less than 30 ppm.

(b) Credits calculated as follows:

$CR_A = (V_A) \times (30 - S_A)$

Where:

CR_A = Credits generated for the averaging period.

V_A = Total annual combined volume of RFG and conventional gasoline produced in a refinery or imported during the averaging period.

S_A = Annual average sulfur level of RFG and conventional gasoline produced in a refinery or imported during the averaging period.

(c) Credits must be identified by the year of creation, the year of transfer (if any), and the year of use (as specified in § 80.315). Records relating to credit generation, use, and transfer, including the applicable years, must be maintained pursuant to § 80.365.

Sulfur ABT Program-Credit Use

§ 80.315 How are credits used?

(a) Credits may be used, beginning with the 2004 averaging period, to meet the applicable annual average sulfur standard of 30 ppm, provided that:

(1) Sulfur credits used were generated pursuant to the requirements of this subpart; and

(2) The requirements of paragraphs (b) and (e) of this section are met.

(b) Credits may not be used to meet the applicable corporate pool average under § 80.195.

(c) *Credit transfers.* (1) Credits obtained from other persons may be used to meet the annual averaged 30 ppm standard specified in § 80.195 if all the following conditions are met:

(i) The credits are generated and reported according to the requirements of this subpart.

(ii) The credits are used in compliance with the limitations regarding the appropriate periods for credit use in this subpart.

(iii) Any credit transfer takes place no later than the last day of February following the calendar year averaging period when the credits are used.

(iv) Only the refiner or importer who generates the credits transfers them, and only a refiner or importer who uses the credits to achieve its compliance with the averaged standards obtains them from the transferor refiner or importer.

(v) The credit transferor must apply any credits necessary to meet the transferor's applicable average standard, including credits generated during 2000, 2001, 2002 and 2003, before transferring credits to any other refiner or importer. No credits may be transferred that would result in the transferor having a negative credit balance.

(vi) The transferor must supply to the transferee records indicating the year(s) the credits were generated.

(2) In the case of credits that have been calculated or created improperly, or are otherwise determined to be invalid in violation of the requirements of this subpart, the following provisions apply:

(i) Invalid credits cannot be used to achieve compliance with the transferee's averaging standard, regardless of the transferee's good faith belief that the credits were valid.

(ii) The refiner or importer who used the credits, and any transferor of the credits, must adjust its sulfur calculations to reflect the proper credits.

(iii) Any properly created credits existing in the transferor's credit balance after correcting the credit balance, and after the transferor applies credits as needed to meet the average standard at the end of the compliance year, must first be applied to correct the invalid transfers before the transferor trades or banks the credits.

(d) *Limitations on credit use.* (1) Credits generated prior to 2004 must be used or transferred no later than 2007.

(2) Credits generated in 2004 or later must be used or transferred within five years of generation.

(3) Credits transferred must be used by the transferee within five years of transfer, or no more than ten years of the year of generation, whichever is less.

(4) A refiner possessing credits must use all credits prior to falling into compliance deficit, as defined under § 80.205(d) (2).

(e) If the recordkeeping requirements of § 80.365(d) are not met, credits used under this subpart are invalid.

§ 80.320 What are the reporting requirements for the sulfur ABT program?

(a) A refiner or importer who generates, uses, or transfers credits under the sulfur ABT program must file an annual report with EPA which must be submitted with the refiner's or importer's annual compliance report under § 80.370.

(b) The report must include the following information:

(1) For credits generated in 2000, 2001, 2002 and 2003, the applicable Conventional gasoline sulfur content baseline, in ppm, and Conventional gasoline baseline;

(2) The actual annual average sulfur content, in ppm, before the application of credits, separately for Conventional gasoline and separately, the average sulfur content, in ppm, for winter RFG and for summer RFG;

(3) For refiners, the annual volume of conventional gasoline produced, and for importers, the annual volume of Non-Certified S-FRGAS imported, in gallons;

(4) The number of credits used in ppm-gallons, in the averaging period;

(5) The number of credits banked, credits transferred and credits acquired, in ppm-gallons;

(6) The identity of the refiners and importers involved in these transactions, including their registration numbers, under § 80.190, and the number of credits in ppm-gallons in each transaction; and

(7) The number of credits, if any, for which the refiner is deficient, as defined under § 80.205 (d), and the use of credits in the following year to cure the deficiency under § 80.205(d)(2).

§ 80.325 [Reserved].

Sampling, Testing and Retention Requirements for Refiners and Importers

§ 80.330 What are the sampling and testing requirements for refiners and importers?

(a) *Sample and test each batch of gasoline.* (1) Refiners and importers of gasoline must collect a representative sample from each batch of gasoline produced or imported and test each sample to determine its sulfur content for compliance with requirements under this subpart prior to the gasoline leaving the refinery or import facility, using the sampling and testing methods provided in this section.

(2) The requirements of this section apply beginning October 1, 2003, or January 1 of the first year of credit generation for refiners and importers generating early credits under § 80.305.

(b) *Sampling methods.* Refiners and importers must sample each batch of gasoline by using one of the following methods:

(1) Manual sampling of tanks and pipelines must be performed according to the applicable procedures specified in one of the two following methods:

(i) American Society for Testing and Materials (ASTM) method D 4057–95, entitled "Standard Practice for Manual Sampling of Petroleum and Petroleum Products."

(ii) Samples collected under the applicable procedures in ASTM D 5842–95, entitled "Standard Practice for Sampling and Handling of Fuels for Volatility Measurement," may be used

for measuring sulfur content if you assure that there is no contamination present that could affect the sulfur test result.

(2) Automatic sampling of petroleum products in pipelines must be performed according to the applicable procedures specified in ASTM method D 4177–95, entitled "Standard Practice for Automatic Sampling of Petroleum and Petroleum Products."

(c) *Test method for measuring the sulfur content of gasoline.* Refiners and importers must use the method provided in § 80.46(a) to measure the sulfur content of gasoline they produce or import.

(d) *Test method for sulfur in Butane.* The sulfur content of butane must be determined by ASTM D–5623–94, entitled "Standard Test Method for Sulfur Compounds in Light Petroleum Liquids by Gas Chromatography and Sulfur Selective Detection."

(e) *Incorporations by reference.* ASTM standard practices D 4057–95, D 4177–95 and D 5842–95, and ASTM standard method D 5623–94 are incorporated by reference. These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Dr., West Conshohocken, PA 19428. Copies may be inspected at the Air Docket Section (LE–131), room M–1500, U.S. Environmental Protection Agency, Docket No. A–97–03, 401 M Street, SW., Washington, DC 20460, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

§ 80.335 What gasoline sample retention requirements apply to refiners and importers?

(a) For each batch of gasoline produced or imported, refiners and importers must:

(1) Retain a representative sample of at least 330 ml, collected from the batch and keep the sample for a period not less than 30 days from the date the batch was collected.

(2) Comply with the gasoline sample handling and storage procedures found in the sampling procedures specified in § 80.330 for each sample retained.

(3) Provide the sample retained under paragraph (a) of this section to the Administrator's authorized representative upon request by EPA, and if requested by EPA, ship the sample to EPA within two working days by an overnight shipping service or comparable means, following the procedures specified by EPA when the request is made.

(4) Include with each annual report filed under § 80.370, the following statement, signed and dated by the same person who signs the annual report:

> I certify that I have made inquiries that are sufficient to give me knowledge of the procedures to collect and store gasoline samples, and I further certify that the procedures meet the requirements of the ASTM procedures required under § 80.330.

(b) The requirements of this section apply beginning October 1, 2003, or January 1 of the first year of credit generation for refiners and importers generating early credits under § 80.305.

§ 80.340 What alternative standards, sampling and testing requirements apply to refiners producing gasoline by blending blendstocks into previously certified gasoline (PCG)?

(a) Any refiner who produces gasoline by blending blendstock into PCG must meet the requirement of § 80.330 to sample and test every batch of gasoline as follows:

(1)(i) Sample and test to determine the volume and sulfur content of the PCG prior to blendstock blending;

(ii) Sample and test to determine the volume and sulfur content of the gasoline subsequent to blendstock blending;

(iii) Calculate the volume and sulfur content of the blendstock, which is a batch for purposes of compliance calculations and reporting, by subtracting the volume and sulfur content of the PCG from the volume and sulfur content of the gasoline subsequent to blendstock blending.

(2) In the alternative, and provided every batch of blendstock used at a refinery during an averaging period has a sulfur content that is equal to or less than the applicable per-gallon cap standard under § 80.195, a refiner may sample and test each batch of blendstock when received at the refinery to determine the volume and sulfur content, and treat each blendstock receipt as a separate batch for purposes of compliance calculations for the annual average sulfur standard and for reporting.

(b) Refiners that blend only butane into PCG may meet the sampling and testing requirements by using sulfur test results of the butane supplier, provided that the following requirements are also met:

(1) The sulfur content of the butane received from the butane supplier must not exceed 30 ppm on a per-gallon basis.

(2) The butane supplier must demonstrate that the sulfur content of each load of butane supplied does not exceed the per-gallon sulfur standard of 30 ppm through test results of samples of the butane contained in the storage tank from which the butane blender is supplied.

(i) Testing for the sulfur content of the butane by the supplier must be subsequent to each time butane is supplied to the supplier's storage tank, or the testing must be immediately before transfer of butane to the butane blender.

(ii) The testing must be performed by the method specified in § 80.330(d).

(iii) The butane blender must obtain a copy of the butane supplier's test results, at the time of each transfer of butane to the butane blender, that reflect the sulfur content of each load of butane supplied to the butane blender.

(3) The sulfur content and volume of each batch of gasoline produced must be that of the butane the refiner blends into gasoline for purposes of calculating compliance with the standards in § 80.195.

(4) The refiner must conduct a quality assurance program of sampling and testing for each butane supplier that demonstrates the butane sulfur content does not exceed 30 ppm. The frequency of butane sampling and testing, for each butane supplier, must be one sample for every 500,000 gallons of butane received, or one sample every 3 months, whichever results in more frequent sampling.

(5) If any of the requirements of this section are not met, in whole or in part, for any butane blended into gasoline, that butane is deemed in violation of the gasoline sulfur standards in § 80.195.

§ 80.345 [Reserved]

§ 80.350 What alternative sulfur standards, sampling and testing requirements apply to importers who transport gasoline by truck?

Importers who import gasoline into the United States by truck, as an alternative to the requirements to sample and test every batch of gasoline under § 80.330(a), and the annual sulfur average and per-gallon cap standards otherwise applicable to importers under § 80.195, may instead comply with the following requirements:

(a) *Per-gallon standard.* The imported gasoline must meet a sulfur standard of 30 ppm on a per-gallon basis.

(b) *Terminal testing.* The terminal operator must demonstrate the gasoline does not exceed 30 ppm sulfur on a per-gallon basis, through testing of the gasoline contained in the storage tank from which the trucks used to transport gasoline into the United States are loaded.

(1) This sampling and testing must be performed after each receipt of gasoline into the storage tank, or immediately before each transfer of gasoline to the importer's truck.

(2) The sampling and testing must be performed using the methods specified in § 80.330.

(3) At the time of each transfer of gasoline to the importer's truck, the importer must obtain a copy of the terminal test result that indicates the sulfur content of each truck load of gasoline that is imported into the United States.

(c) *Quality assurance program.* The importer must conduct a quality assurance program, as specified in this paragraph, for each truck loading terminal.

(1) Quality assurance samples must be obtained from the truck-loading terminal and tested by the importer, or by an independent laboratory, and the terminal operator must not know in advance when samples are to be collected.

(2) The sampling and testing must be performed using the methods specified in § 80.330.

(3) The quality assurance test results for sulfur must be within 12 ppm of the terminal's test results.

(4) The frequency of the quality assurance sampling and testing must be at least one sample for each fifty of an importer's trucks that are loaded at a terminal, or one sample per month, whichever is more frequent.

(d) Instead of conducting the quality assurance program specified in paragraph (c) of this section an importer may meet the quality assurance program requirement if the sampling and testing requirements of paragraph (b) of this section are conducted by an independent laboratory that meets the requirements in § 80.65(f)(2)(iii).

(e) The importer must treat each truck load of imported gasoline as a separate batch for purposes of assigning batch numbers and maintaining records under § 80.365, and reporting under § 80.370.

(f) EPA inspectors or auditors, and auditors conducting attest engagements under § 80.415, must be given full and immediate access to the truck-loading terminal and any laboratory at which samples of gasoline collected at the terminal are analyzed, and must be allowed to conduct inspections, review records, collect gasoline samples, and perform audits. These inspections or audits may be either announced or unannounced.

(g) This section does not apply to Certified Sulfur-FRGAS.

(h) If any of the requirements of this section are not met, all gasoline imported by the truck importer during the time any requirements are not met is deemed in violation of the gasoline sulfur average and per-gallon cap standards in § 80.195. In addition, the truck importer may not in the future use the sampling and testing provisions in this section in lieu of the provisions in § 80.330.

§ 80.355 [Reserved]

Recordkeeping and Reporting Requirements

§ 80.360 What are the product transfer document requirements?

(a) On each occasion that any person transfers custody of or title to S–RGAS, as defined in § 80.210, other than when S–RGAS is sold or dispensed for use in motor vehicles at a retail outlet or wholesale purchaser-consumer facility, the product transfer documents must include a statement identifying the gasoline as S–RGAS and the applicable downstream cap under § 80.210(b).

(b) Except for transfers to truck carriers, retailers and wholesale purchaser-consumers, product codes may be used to convey the information required by this section if such codes are clearly understood by each transferee.

§ 80.365 What records must be kept?

(a) *Records that must be kept.* Beginning January 1, 2004, any person who sells, offers for sale, dispenses, distributes, supplies, offers for supply, stores, or transports gasoline, must keep the following records:

(1) The product transfer documents required under §§ 80.106, 80.77 and 80.360;

(2) For any sampling and testing for sulfur content conducted:

(i) The location, date, time and storage tank or truck identification for each sample collected;

(ii) The name and title of the person who collected the sample and the person who performed the testing;

(iii) The results of the tests for sulfur content and the test volume; and

(3) Reasonable business records documenting the actions you took to stop the sale or distribution of any gasoline found not to be in compliance with the sulfur standards specified in this subpart, and the actions you took to identify the cause of any noncompliance and prevent future instances of noncompliance.

(b) *Additional records that refiners and importers must keep.* Beginning October 1, 2003, or January 1 of the first year of early credit generation for refiners and importers generating credits under § 80.305, refiners and importers must keep records that include the following information:

(1) The volume of each batch of gasoline produced or imported;

(2) For credit generation, the information required by paragraph (a)(2) of this section as well as the information required under § 80.305(a)(5) and § 80.310(c);

(3) The batch number assigned to each batch of gasoline under § 80.65(d)(3); however, if composite samples that represent multiple batches of conventional gasoline for anti-dumping purposes are used, a separate batch number must be assigned to each batch for purposes of this subpart;

(4) The date of production or importation of each batch of gasoline produced or imported;

(5) The calculations and records used in making the calculations to determine compliance with the applicable sulfur standard on average, including compliance with the debit provision of this subpart and records regarding the generation, use, transfer, and banking of credits under §§ 80.195, 80.305, 80.310 and 80.315; and

(6) A copy of all reports and other documents submitted to the EPA pursuant to the requirements of this subpart.

(c) *Additional records importers must keep.* Importers must maintain documentation which verifies the source of each batch of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported.

(d) *Length of time records must be kept.* The records required in paragraphs (a), (b) and (c) of this section must be maintained for five years from the date they were created, except for the following:

(1) For any person who generates credits, and/or uses the credits so generated, the records required by paragraphs (a), (b) and (c) of this section must be retained for five years from the date the credits were used, and in no case must the records be retained for more than ten years from the year they were generated.

(2) In the case of credits that were transferred between two parties, both parties must retain records of those credits for ten years from the date the credits were generated.

(e) *Make records available to EPA.* The records required in paragraphs (a), (b) and (c) of this section must be made available to the Administrator or the Administrator's authorized representative upon request.

§ 80.370 What are the annual reporting requirements?

Beginning with the 2004 averaging period, or the first year of credit

generation for refiners and importers generating early credits under § 80.305, and continuing for each averaging period thereafter, refiners and importers must submit to the Administrator a report that contains the information required in this section and such other information as EPA may require. A refiner's annual reports for 2004 and 2005 must include the refiner's RFG and conventional gasoline production for all refineries during the averaging period. Beginning in 2006 and thereafter, a refiner must submit a separate annual report for each refinery that produced gasoline during the averaging period. An importer must submit a report for all of the gasoline imported during the averaging period no later than the last day of February following the previous year's averaging period.

(a) *Information required in a refiner's report.* For refiners, the annual sulfur averaging report must include the following information:

(1) The EPA refiner and refinery facility registration numbers;

(2) The total gallons of gasoline (winter reformulated, summer reformulated, and conventional) produced at the refinery or aggregation of refineries;

(3) The annual average sulfur content of the gasoline (winter reformulated, summer reformulated, and conventional) produced at the refinery, or aggregation of refineries, in parts per million;

(4) For each batch of gasoline produced during the averaging period:

(i) The batch number assigned under § 80.65(d)(3); however, if composite samples that represent multiple batches of conventional gasoline are tested for conventional gasoline, a separate batch number must be assigned to each batch, using the batch numbering procedures specified in § 80.65(d)(3);

(ii) The date the batch was produced;

(iii) The volume of the batch;

(iv) The sulfur content of the batch as determined under § 80.330;

(v) The information on individual batches submitted to EPA under § 80.75(a)(2) and 80.105(a)(5) satisfies the requirements of this paragraph (a)(4) unless compositing of samples is used for anti-dumping rule batch reporting under § 80.105(a)(5);

(5) A refiner's annual report for 2004 and 2005 must include the refiner's winter reformulated RFG, summer RFG, and conventional gasoline for all refineries during the averaging period;

(6) Beginning in 2006 and thereafter, a refiner must submit a separate annual report for each of its refineries that produced gasoline during the averaging period.

(b) *Information required in an importer's report.* An importer must submit a report for all the gasoline it imported during the averaging period. The report must include the following information:

(1) The EPA importer registration number;

(2) The total gallons of gasoline (reformulated and conventional) imported during the averaging period, excluding certified Sulfur-FRGAS;

(3) The annual average sulfur content of the gasoline (reformulated and conventional) imported during the averaging period, excluding certified Sulfur-FRGAS, in parts per million;

(4) For gasoline imported during the averaging period from any small foreign refiner who has an EPA approved individual baseline under the small refiner provisions at § 80.410, include the following information:

(i) The EPA refiner and refinery registration numbers of each such small foreign refiner and refinery facility; and

(ii) The total gallons of certified Sulfur-FRGAS and non-certified Sulfur-FRGAS imported from each such small foreign refiner;

(5) The batch information required in paragraph (a)(4) of this section.

(c) *Sulfur credit program activity.* Refiners and importers who generate, bank, transfer, or use sulfur credits must submit to EPA an annual report in accordance with the provisions of § 80.320.

(d) The report must state the debit for the current year, as applicable, and credits applied to the previous compliance year's debit, as applicable.

(e) *Report submission.* Each annual report required under this section must be:

(1) Signed and certified as meeting all of the applicable requirements of this subpart H by the owner or a responsible corporate officer of the refiner or importer; and

(2) Submitted to EPA no later than the last day of February for the prior calendar year averaging period.

(f) *Attest reports.* Attest reports for refiner and importer attest engagements must be submitted to the Administrator by May 30 of each year under § 80.415.

Exemptions

§ 80.375 What requirements apply to California gasoline?

(a) *Definition.* For purposes of this subpart, *California gasoline* is defined under § 80.81(a)(2).

(b) *California gasoline exemptions.* California gasoline is exempt from all requirements of this subpart with the exception of the segregation requirement described in paragraph (c) of this section and the product transfer document requirements described in paragraph (d) of this section.

(c) *Segregation requirement.* California gasoline produced at a refinery located outside of the state of California must be kept segregated from all gasoline that is not California gasoline at all points in the distribution system.

(d) *Product transfer documents.* For California gasoline produced at a refinery located outside the state of California, the transferors and transferees must comply with the product transfer document requirements in § 80.81(g).

(e) *Use of California test methods and off site sampling procedures.* Any refiner of gasoline produced in California or importer of gasoline imported into California whose gasoline is used outside of California may:

(1) Use the sampling and testing methods approved in Title 13 of the California Code of Regulations, as permitted under § 80.81(h)(1) as an alternative to the sampling and testing methods required by § 80.330; and

(2) Determine the sulfur content of gasoline at off site tankage as permitted in § 80.81(h)(2).

§ 80.380 What are the requirements for obtaining an exemption for gasoline used for research, development or testing purposes?

(a) *R&D application.* Any person may request an exemption from the provisions of this subpart for gasoline used for research, development or testing ("R&D") purposes by submitting an application that includes all the information listed in paragraph (c) of this section to:

Director (6406J), Fuels and Energy Division, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; and

Director (2242A), Air Enforcement Division, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460.

(b) *Criteria for an R&D exemption.* For an R&D exemption to be granted, the proposed test program must:

(1) Have a purpose that constitutes an appropriate basis for exemption;

(2) Necessitate the granting of an exemption;

(3) Be reasonable in scope; and

(4) Have a degree of control consistent with the purpose of the program and EPA's monitoring requirements.

(c) *Information required to be submitted.* To demonstrate each of the four elements in paragraphs (b)(1) through (4) of this section, the

application required under paragraph (a) of this section must include the following information:

(1) A concise statement of the purpose of the program demonstrating that the program has an appropriate R&D purpose.

(2) An explanation of why the stated purpose of the program cannot be achieved in a practicable manner without performing one or more of the prohibited acts under § 80.385.

(3) To demonstrate the reasonableness of the scope of the program:

(i) An estimate of the program's duration;

(ii) An estimate of the maximum number of vehicles or engines involved in the program;

(iii) The time or mileage duration of the program;

(iv) The range of sulfur content of the gasoline expected to be used in the program, in ppm; and

(v) The quantity of gasoline which exceeds the applicable sulfur standard that is expected to be used in the program.

(4) With regard to control, a demonstration that the program affords EPA a monitoring capability, including at a minimum:

(i) The technical nature of the program;

(ii) The site(s) of the program (including street address, city, county, State, and zip code);

(iii) The manner in which information on vehicles and engines used in the program will be recorded and made available to the Administrator;

(iv) The manner in which results of the program will be recorded and made available to the Administrator;

(v) The manner in which information on the gasoline used in the program (including quantity, sulfur content, name, address, telephone number and contact person of the supplier, and the date received from the supplier), will be recorded and made available to the Administrator;

(vi) The manner in which distribution pumps will be labeled to insure proper use of the gasoline;

(vii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption from whom further information on the application may be obtained; and

(viii) The name, address, telephone number and title of the person(s) in the organization requesting an exemption who is responsible for recording and making available the information specified in paragraphs (b)(4)(iii), (iv) and (v) of this section, and the location in which such information will be maintained.

(d) *Additional requirements.* (1) The product transfer documents associated with R&D gasoline must identify the gasoline as such, and must state that the gasoline is to be used only for research, development, or testing purposes.

(2) The R&D gasoline must be kept segregated from non-exempt gasoline at all points in distribution of the gasoline.

(3) The R&D gasoline must not be sold, distributed, offered for sale or distribution, dispensed, supplied, offered for supply, transported to or from, or stored by a gasoline retail outlet, or by a wholesale purchaser-consumer facility, unless the wholesale purchaser-consumer facility is associated with the R&D program that uses the gasoline.

(e) *Memorandum of exemption.* The Administrator will grant an R&D exemption upon a demonstration that the requirements of this section have been met. The R&D exemption will be granted in the form of a memorandum of exemption signed by the applicant and the Administrator (or delegate), which will include such terms and conditions as the Administrator determines necessary to monitor the exemption and to carry out the purposes of this section. Any violation of such a term or condition of the exemption or any requirement under this section will cause the exemption to be void *ab initio.*

Violation Provisions

§ 80.385 What acts are prohibited under the gasoline sulfur program?

No person may:

(a) Produce or import gasoline that does not comply with the applicable sulfur average standards at § 80.195 or § 80.240.

(b) Produce, import, sell, offer for sale, dispense, supply, offer for supply, store or transport gasoline that does not comply with the applicable sulfur cap standards at § 80.195, § 80.210 or § 80.240.

(c) Cause another person to commit an act in violation of paragraph (b) of this section.

(d) Cause gasoline that does not comply with an applicable refiner/importer or downstream cap standard under § 80.195, § 80.210 or § 80.240 to be in the gasoline distribution system.

§ 80.390 What evidence may be used to determine compliance with the prohibitions and requirements of this subpart and liability for violations of this subpart?

(a) Compliance with the sulfur standards of this subpart must be determined based on the sulfur level of the gasoline, measured using the methodologies specified in § 80.330. Any evidence or information, including the exclusive use of such evidence or information, may be used to establish the sulfur level of gasoline if the evidence or information is relevant to whether the sulfur level of gasoline would have been in compliance with the standards if the appropriate sampling and testing methodology had been correctly performed. Such evidence may be obtained from any source or location and may include, but is not limited to, test results using methods other than those specified in § 80.330, business records, and commercial documents.

(b) Determination of compliance with the requirements of this subpart other than the sulfur standards, and determination of liability for any violation of this subpart, are based on probative evidence or information obtained from any source or location. Such evidence may include, but is not limited to, business records and commercial documents.

§ 80.395 Who is liable for violations under the gasoline sulfur program?

(a) *Persons liable for violations of prohibited acts.* (1) Any refiner or importer who violates § 80.385(a) is liable for the violation.

(2) Any refiner, importer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer who owned, leased, operated, controlled or supervised a facility where a violation of § 80.385(b) occurred, is deemed in violation of § 80.385(b).

(3) Any refiner, importer, distributor, reseller, retailer, or wholesale purchaser-consumer who produced, imported, sold, offered for sale, dispensed, supplied, offered for supply, stored, transported, or caused the transportation or storage of gasoline that is the subject of a violation of § 80.385(b), is deemed in violation of § 80.385(c).

(4) Any refiner or importer whose corporate, trade, or brand name, or whose marketing subsidiary's corporate, trade, or brand name appeared at a facility where a violation of § 80.385(b) occurred, is deemed in violation of § 80.385(b).

(5) Any carrier who dispensed, supplied, stored, or transported gasoline which is the subject of a violation of § 80.385(b), is deemed in violation of § 80.385(c) provided that EPA demonstrates, by reasonably specific showing by direct or circumstantial evidence, that any such carrier caused the violation.

(6) Any refiner, importer, distributor, reseller, or carrier who owned, leased, operated, controlled or supervised a facility from which gasoline that does

not comply with an applicable refiner/importer or downstream sulfur cap standard at § 80.195, § 80.210 or § 80.240 was released into the distribution system, is deemed in violation of § 80.385(d).

(7) Any person who caused another party to violate § 80.385(a), is liable for causing a violation of § 80.385(a).

(b) *Persons liable for failure to meet other requirements of this subpart.* (1) Any person who failed to meet a requirement of this subpart not addressed in paragraph (a) of this section is liable for a violation of that requirement.

(2) Any person who caused another person to fail to meet a requirement of this subpart not addressed in paragraph (a) of this section is liable for causing a violation of that requirement.

§ 80.400 What defenses apply to persons deemed liable for a violation of a prohibited act?

(a) Any person deemed liable for a violation of a prohibition under § 80.395(a), will not be deemed in violation if the person demonstrates:

(1) That the violation was not caused by the person or the person's employee or agent; and

(2) That the person conducted a quality assurance sampling and testing program, as described in paragraph (d) of this section. A carrier may rely on the quality assurance program carried out by another party, including the party who owns the gasoline in question, provided that the quality assurance program is carried out properly. Retailers and wholesale purchaser-consumers are not required to conduct quality assurance programs.

(b) In the case of a violation found at a facility operating under the corporate, trade or brand name of a refiner or importer, or a refiner's or importer's marketing subsidiary, the refiner or importer must show, in addition to the defense elements required by paragraph (a) of this section, that the violation was caused by:

(1) An act in violation of law (other than the Clean Air Act or this Part 80), or an act of sabotage or vandalism;

(2) The action of any refiner, importer, retailer, distributor, reseller, carrier, retailer or wholesale purchaser-consumer in violation of a contractual agreement between the branded refiner or importer and the person designed to prevent such action, and despite periodic sampling and testing by the branded refiner or importer to ensure compliance with such contractual obligation; or

(3) The action of any carrier or other distributor not subject to a contract with the refiner or importer, but engaged for transportation of gasoline, despite specifications or inspections of procedures and equipment which are reasonably calculated to prevent such action.

(c) Under paragraph (a) of this section, for any person to show that the violation was not caused by it, or under paragraph (b) of this section, to show that the violation was caused by any of the specified actions, the person must demonstrate by reasonably specific showing, by direct or circumstantial evidence, that the violation was caused or must have been caused by another person and that the person asserting the defense did not contribute to that other person's causation.

(d) *Quality assurance program.* To demonstrate an acceptable quality assurance program under paragraph (a)(2) of this section, a person must present evidence of the following:

(1) A periodic sampling and testing program to ensure the gasoline the person sold, dispensed, supplied, stored, or transported, meets the applicable sulfur standard;

(2) On each occasion when gasoline is found not in compliance with the applicable sulfur standard:

(i) The person immediately ceases selling, offering for sale, dispensing, supplying, offering for supply, storing or transporting the non-complying product; and

(ii) The person promptly remedies the violation and the factors that caused the violation (for example, by removing the non-complying product from the distribution system until the applicable standard is achieved and taking steps to prevent future violations of a similar nature from occurring); and

(3) Any carrier who transports gasoline in a tank truck, the quality assurance program required under this paragraph (d) of this section is not required to include periodic sampling and testing of gasoline in the tank truck, but instead of such sampling and testing, the carrier must present evidence of an oversight program relating to the transport or storage of gasoline by tank truck, such as appropriate guidance to drivers regarding compliance with the applicable sulfur standard and product transfer document requirements, and the periodic review of records received in the ordinary course of business concerning gasoline quality and delivery.

§ 80.405 What Penalties Am I Subject To?

(a) Any person liable for a violation under § 80.395, is subject to a civil penalty of not more than $27,500 for every day of each such violation and the amount of economic benefit or savings resulting from each violation.

(b) Any person liable under § 80.395(a) for a violation of the applicable sulfur average standard or causing another party to violate that standard during any averaging period, is subject to a separate day of violation for each and every day in the averaging period. Any person liable under § 80.395(b) for a failure to fulfill any credit creation or transfer requirement, is subject to a separate day of violation for each and every day in the averaging period.

(c)(1) Any person liable under § 80.395(a) for causing gasoline that does not comply with an applicable refiner/importer or downstream sulfur cap standard to be in the gasoline distribution system in violation of § 80.385(d), is subject to a separate day of violation for each and every day that the non-complying gasoline remains any place in the gasoline distribution system.

(2) For purposes of paragraph (c) of this section, the length of time the gasoline in question remained in the gasoline distribution system is deemed to be twenty-five days, unless a person subject to liability or EPA demonstrates by reasonably specific showings, by direct or circumstantial evidence, that the non-complying gasoline remained in the gasoline distribution system for fewer than or more than twenty-five days.

(d) Any person liable under § 80.395(b) for failure to meet, or causing a failure to meet, a requirement of this subpart is liable for a separate day of violation for each and every day such requirement remains unfulfilled.

Provisions for Foreign Refiners With Individual Sulfur Baselines

§ 80.410 What are the additional requirements for gasoline produced at foreign refineries having individual small refiner sulfur baselines?

(a) *Definitions.* (1) A foreign refinery is a refinery that is located outside the United States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (collectively referred to in this section as "the United States").

(2) A foreign refiner is a person who meets the definition of refiner under § 80.2(i) for foreign refinery.

(3) A small foreign refiner is a refiner that meets the definition of a small refiner under § 80.225.

(4) "Sulfur-FRGAS" means gasoline produced at a foreign refinery that has been assigned an individual refinery

sulfur baseline and that is imported into the United States.

(5) "Non-Sulfur-FRGAS" means gasoline that is produced at a foreign refinery that has not been assigned an individual refinery sulfur baseline, gasoline produced at a foreign refinery with an individual refinery sulfur baseline that is not imported into the United States, and gasoline produced at a foreign refinery with an individual sulfur baseline during a year when the foreign refiner has opted to not participate in the Sulfur-FRGAS program under paragraph (c)(3) of this section.

(6) "Certified Sulfur-FRGAS" means Sulfur-FRGAS the foreign refiner intends to include in the foreign refinery's sulfur compliance calculations under § 80.205, and does include in these compliance calculations when reported to EPA.

(7) "Non-Certified Sulfur-FRGAS" means Sulfur-FRGAS that is not Certified Sulfur-FRGAS.

(b) *Baseline establishment.* Any foreign refiner that meets the definition of small under § 80.225, may submit to a petition to the Administrator for an individual refinery sulfur baseline, under § 80.235 by June 1, 2002.

(1) The baseline for a foreign refinery must reflect only the volume and properties of gasoline produced in 1997 and 1998 that was imported into the United States.

(2) In making determinations for foreign refinery baselines EPA will consider all information supplied by a foreign refiner, and in addition may rely on any and all appropriate assumptions necessary to make such a determination.

(3) Where a foreign refiner submits a petition that is incomplete or inadequate to establish an accurate baseline, and the refiner fails to cure this defect after a request for more information, then EPA will not assign an individual refinery sulfur baseline.

(c) *General requirements for foreign refiners with individual refinery sulfur baselines.* A foreign refiner of a refinery that has been assigned an individual sulfur baseline under paragraph (b) of this section must designate all gasoline produced at the foreign refinery that is exported to the United States as either Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS, except as provided in paragraph (c)(3) of this section.

(1) In the case of Certified Sulfur-FRGAS, the foreign refiner must meet all requirements that apply to refiners under this subpart.

(2) In the case of Non-Certified Sulfur-FRGAS, the foreign refiner must meet all the following requirements:

(i) The designation requirements in this section.

(ii) The recordkeeping requirements in §§ 80.360 and 80.365.

(iii) The reporting requirements in § 80.370 and this section.

(iv) The product transfer document requirements in this section.

(v) The prohibitions in this section and § 80.385.

(vi) The independent audit requirements in § 80.415 and paragraph (h) of this section.

(3)(i) Any foreign refiner that has been assigned an individual sulfur baseline for a foreign refinery under paragraph (b) of this section may elect to classify no gasoline imported into the United States as Sulfur-FRGAS, provided the foreign refiner notifies EPA of the election no later than November 1 of the prior calendar year.

(ii) An election under paragraph (c)(3)(i) of this section must:

(A) Be for an entire calendar year averaging period and apply to all gasoline produced during the calendar year at the foreign refinery that is used in the United States; and

(B) Remain in effect for each succeeding calendar year averaging period, unless and until the foreign refiner notifies EPA of a termination of the election. The change in election takes effect at the beginning of the next calendar year.

(d) *Designation, product transfer documents, and foreign refiner certification.* (1) Any foreign refiner of a foreign refinery that has been assigned an individual sulfur baseline must designate each batch of Sulfur-FRGAS as such at the time the gasoline is produced, unless the refiner has elected to classify no gasoline exported to the United States as Sulfur-FRGAS under paragraph (c)(3)(i) of this section.

(2) On each occasion when any person transfers custody or title to any Sulfur-FRGAS prior to its being imported into the United States, they must include the following information as part of the product transfer document information in this section:

(i) Identification of the gasoline as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS; and

(ii) The name and EPA refinery registration number of the refinery where the Sulfur-FRGAS was produced.

(3) On each occasion when Sulfur-FRGAS is loaded onto a vessel or other transportation mode for transport to the United States, the foreign refiner must prepare a certification for each batch of the Sulfur-FRGAS that meets the following requirements:

(i) The certification must include the report of the independent third party under paragraph (f) of this section, and the following additional information:

(A) The name and EPA registration number of the refinery that produced the Sulfur-FRGAS;

(B) The identification of the gasoline as Certified Sulfur-FRGAS or Non-Certified Sulfur-FRGAS, and for Certified Sulfur-FRGAS the information required by § 80.360;

(C) The volume of Sulfur-FRGAS being transported, in gallons;

(D) A declaration that the Sulfur-FRGAS is being included in the compliance baseline calculations under § 80.250 for the refinery that produced the Sulfur-FRGAS; and

(E) In the case of Certified Sulfur-FRGAS:

(*1*) The sulfur content as determined under paragraph (f) of this section; and

(*2*) A declaration that the Sulfur-FRGAS is being included in the compliance calculations under § 80.205 for the refinery that produced the Sulfur-FRGAS.

(ii) The certification must be made part of the product transfer documents for the Sulfur-FRGAS.

(e) *Transfers of Sulfur-FRGAS to non-United States markets.* The foreign refiner is responsible to ensure that all gasoline classified as Sulfur-FRGAS is imported into the United States. A foreign refiner may remove the Sulfur-FRGAS classification, and the gasoline need not be imported into the United States, but only if:

(1)(i) The foreign refiner excludes:

(A) The volume of gasoline from the refinery's compliance baseline calculations under § 80.250; and

(B) In the case of Certified Sulfur-FRGAS, the volume and sulfur content of the gasoline from the compliance calculations under § 80.205;

(ii) The exclusions under paragraph (e)(1)(i) of this section must be on the basis of the parameter and volumes determined under paragraph (f) of this section; and

(2) The foreign refiner obtains sufficient evidence in the form of documentation that the gasoline was not imported into the United States.

(f) *Load port independent sampling, testing and refinery identification.* (1) On each occasion Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner must have an independent third party:

(i) Inspect the vessel prior to loading and determine the volume of any tank bottoms;

(ii) Determine the volume of Sulfur-FRGAS loaded onto the vessel (exclusive of any tank bottoms present before vessel loading);

(iii) Obtain the EPA-assigned registration number of the foreign refinery;

(iv) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(v) Determine the date and time the vessel departs the port serving the foreign refinery.

(2) On each occasion Certified Sulfur-FRGAS is loaded onto a vessel for transport to the United States a foreign refiner must have an independent third party:

(i) Collecf a representative sample of the Certified Sulfur-FRGAS from each vessel compartment subsequent to loading on the vessel and prior to departure of the vessel from the port serving the foreign refinery;

(ii) Prepare a volume-weighted vessel composite sample from the compartment samples, and determine the value for sulfur using the methodology specified in § 80.330 by:

(A) The third party analyzing the sample; or

(B) The third party observing the foreign refiner analyze the sample;

(iii) Review original documents that reflect movement and storage of the certified Sulfur-FRGAS from the refinery to the load port, and from this review determine:

(A) The refinery at which the Sulfur-FRGAS was produced; and

(B) That the Sulfur-FRGAS remained segregated from:

(*1*) Non-Sulfur-FRGAS and Non-Certified Sulfur-FRGAS; and

(*2*) Other Certified Sulfur-FRGAS produced at a different refinery.

(3) The independent third party must submit a report:

(i) To the foreign refiner containing the information required under paragraphs (f)(1) and (2) of this section, to accompany the product transfer documents for the vessel; and

(ii) To the Administrator containing the information required under paragraphs (f)(1) and (2) of this section, within thirty days following the date of the independent third party's inspection. This report must include a description of the method used to determine the identity of the refinery at which the gasoline was produced, assurance that the gasoline remained segregated as specified in paragraph (n)(1) of this section, and a description of the gasoline's movement and storage between production at the source refinery and vessel loading.

(4) The independent third party must:

(i) Be approved in advance by EPA, based on a demonstration of ability to perform the procedures required in this paragraph (f);

(ii) Be independent under the criteria specified in § 80.65(f)(2)(iii); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities, facilities and documents relevant to compliance with the requirements of this paragraph (f).

(g) *Comparison of load port and port of entry testing.* (1)(i) Any foreign refiner and any United States importer of Certified Sulfur-FRGAS must compare the results from the load port testing under paragraph (f) of this section, with the port of entry testing as reported under paragraph (o) of this section, for the volume of gasoline and the sulfur value; except that

(ii) Where a vessel transporting Certified Sulfur-FRGAS off loads this gasoline at more than one United States port of entry, and the conditions of paragraph (g)(2)(i) of this section are met at the first United States port of entry, the requirements of paragraph (g)(2) of this section do not apply at subsequent ports of entry if the United States importer obtains a certification from the vessel owner, that meets the requirements of paragraph(s) of this section, that the vessel has not loaded any gasoline or blendstock between the first United States port of entry and the subsequent port of entry.

(2)(i) The requirements of this paragraph (g)(2) apply if:

(A) The temperature-corrected volumes determined at the port of entry and at the load port differ by more than one percent; or

(B) The sulfur value determined at the port of entry is higher than the sulfur value determined at the load port, and the amount of this difference is greater than the reproducibility amount specified for the port of entry test result by the American Society of Testing and Materials (ASTM).

(ii) The United States importer and the foreign refiner must treat the gasoline as Non-Certified Sulfur-FRGAS, and the foreign refiner must:

(A) Exclude the gasoline volume and properties from its gasoline sulfur compliance calculations under § 80.205; and

(B) Include the gasoline volume in its compliance baseline calculation under § 80.250.

(h) *Attest requirements.* The following additional procedures must be carried out by any foreign refiner of Sulfur-FRGAS as part of the attest engagement for each foreign refinery under § 80.415:

(1) The inventory reconciliation analysis under § 80.128(b) and the tender analysis under § 80.128(c) must include Non-Sulfur-FRGAS in addition to the gasoline types listed in § 80.128(b) and (c).

(2) Obtain separate listings of all tenders of Certified Sulfur-FRGAS, and of Non-Certified Sulfur-FRGAS. Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b), and to the volumes determined by the third party under paragraph (f)(1) of this section.

(3) For each tender under paragraph (h)(2) of this section where the gasoline is loaded onto a marine vessel, report as a finding the name and country of registration of each vessel, and the volumes of Sulfur-FRGAS loaded onto each vessel.

(4) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain the report of the independent third party, under paragraph (f) of this section, and of the United States importer under paragraph (o) of this section.

(A) Agree the information in these reports with regard to vessel identification, gasoline volumes and test results.

(B) Identify, and report as a finding, each occasion the load port and port of entry parameter and volume results differ by more than the amounts allowed in paragraph (g) of this section, and determine whether the foreign refiner adjusted its refinery calculations as required in paragraph (g) of this section.

(ii) Obtain the documents used by the independent third party to determine transportation and storage of the Certified Sulfur-FRGAS from the refinery to the load port, under paragraph (f) of this section. Obtain tank activity records for any storage tank where the Certified Sulfur-FRGAS is stored, and pipeline activity records for any pipeline used to transport the Certified Sulfur-FRGAS, prior to being loaded onto the vessel. Use these records to determine whether the Certified Sulfur-FRGAS was produced at the refinery that is the subject of the attest engagement, and whether the Certified Sulfur-FRGAS was mixed with any Non-Certified Sulfur-FRGAS, Non-Sulfur-FRGAS, or any Certified Sulfur-FRGAS produced at a different refinery.

(5) Select a sample from the list of vessels identified in paragraph (h)(3) of this section used to transport certified and Non-Certified Sulfur-FRGAS, in accordance with the guidelines in § 80.127, and for each vessel selected perform the following:

(i) Obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure of the vessel, and the port of entry and date of arrival of the vessel.

(ii) Agree the vessel's departure and arrival locations and dates from the independent third party and United States importer reports to the information contained in the commercial document.

(6) Obtain separate listings of all tenders of Non-Sulfur-FRGAS, and perform the following:

(i) Agree the total volume of tenders from the listings to the gasoline inventory reconciliation analysis in § 80.128(b).

(ii) Obtain a separate listing of the tenders under this paragraph (h)(6) where the gasoline is loaded onto a marine vessel. Select a sample from this listing in accordance with the guidelines in § 80.127, and obtain a commercial document of general circulation that lists vessel arrivals and departures, and that includes the port and date of departure and the ports and dates where the gasoline was off loaded for the selected vessels. Determine and report as a finding the country where the gasoline was off loaded for each vessel selected.

(7) In order to complete the requirements of this paragraph (h) an auditor must:

(i) Be independent of the foreign refiner;

(ii) Be licensed as a Certified Public Accountant in the United States and a citizen of the United States, or be approved in advance by EPA based on a demonstration of ability to perform the procedures required in § 80.125 through 130 and this paragraph (h); and

(iii) Sign a commitment that contains the provisions specified in paragraph (i) of this section with regard to activities and documents relevant to compliance with the requirements of § 80.125 through 80.130 and this paragraph (h).

(i) *Foreign refiner commitments.* Any foreign refiner must commit to and comply with the provisions contained in this paragraph (i) as a condition to being assigned an individual refinery sulfur baseline.

(1) Any United States Environmental Protection Agency inspector or auditor must be given full, complete and immediate access to conduct inspections and audits of the foreign refinery.

(i) Inspections and audits may be either announced in advance by EPA, or unannounced.

(ii) Access must be provided to any location where:

(A) Gasoline is produced;

(B) Documents related to refinery operations are kept;

(C) Gasoline or blendstock samples are tested or stored; and

(D) Sulfur-FRGAS is stored or transported between the foreign refinery and the United States, including storage tanks, vessels and pipelines.

(iii) Inspections and audits may be by EPA employees or contractors to EPA.

(iv) Any documents requested that are related to matters covered by inspections and audits must be provided to an EPA inspector or auditor on request.

(v) Inspections and audits by EPA may include review and copying of any documents related to:

(A) Refinery baseline establishment, including the volume and sulfur content, and transfers of title or custody, of any gasoline or blendstocks, whether Sulfur-FRGAS or Non-Sulfur-FRGAS, produced at the foreign refinery during the period January 1, 1997 through the date of the refinery baseline petition or through the date of the inspection or audit if a baseline petition has not been approved, and any work papers related to refinery baseline establishment;

(B) The volume and sulfur content of Sulfur-FRGAS;

(C) The proper classification of gasoline as being Sulfur-FRGAS or as not being Sulfur-FRGAS, or as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS;

(D) Transfers of title or custody to Sulfur-FRGAS;

(E) Sampling and testing of Sulfur-FRGAS;

(F) Worked performed and reports prepared by independent third parties and by independent auditors under the requirements of this section and § 80.415, including work papers; and

(G) Reports prepared for submission to EPA, and any work papers related to such reports.

(vi) Inspections and audits by EPA may include taking samples of gasoline or blendstock, and interviewing employees.

(vii) Any employee of the foreign refiner must be made available for interview by the EPA inspector or auditor, on request, within a reasonable time period.

(viii) English language translations of any documents must be provided to an EPA inspector or auditor, on request, within 10 working days.

(ix) English language interpreters must be provided to accompany EPA inspectors and auditors, on request.

(2) An agent for service of process located in the District of Columbia must be named, and service on this agent constitutes service on the foreign refiner or any employee of the foreign refiner for any action by EPA or otherwise by the United States related to the requirements of this subpart.

(3) The forum for any civil or criminal enforcement action related to the provisions of this section for violations of the Clean Air Act or regulations promulgated thereunder are governed by the Clean Air Act, including the EPA administrative forum where allowed under the Clean Air Act.

(4) United States substantive and procedural laws apply to any civil or criminal enforcement action against the foreign refiner or any employee of the foreign refiner related to the provisions of this section.

(5) Submitting a petition for an individual refinery sulfur baseline, producing and exporting gasoline under an individual refinery sulfur baseline, and all other actions to comply with the requirements of this subpart relating to the establishment and use of an individual refinery sulfur baseline constitute actions or activities that satisfy the provisions of 28 U.S.C. 1605(a)(2), but solely with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(6) The foreign refiner, or its agents or employees, must not detain or impose civil or criminal remedies against EPA inspectors or auditors, whether EPA employees or EPA contractors, for actions performed within the scope of EPA employment related to the provisions of this section.

(7) The commitment required by this paragraph (i) must be signed by the owner or president of the foreign refiner business.

(8) In any case where Sulfur-FRGAS produced at a foreign refinery is stored or transported by another company between the refinery and the vessel that transports the Sulfur-FRGAS to the United States, the foreign refiner must obtain from each such other company a commitment that meets the requirements specified in paragraphs (i)(1) through (7) of this section, and these commitments must be included in the foreign refiner's baseline petition.

(j) *Sovereign immunity.* By submitting a petition for an individual foreign refinery baseline under this section, or by producing and exporting gasoline to the United States under an individual refinery sulfur baseline under this section, the foreign refiner, its agents

and employees, without exception, become subject to the full operation of the administrative and judicial enforcement powers and provisions of the United States without limitation based on sovereign immunity, with respect to actions instituted against the foreign refiner, its agents and employees in any court or other tribunal in the United States for conduct that violates the requirements applicable to the foreign refiner under this subpart, including conduct that violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(k) *Bond posting.* Any foreign refiner must meet the requirements of this paragraph (k) as a condition to being assigned an individual refinery sulfur baseline.

(1) The foreign refiner must post a bond of the amount calculated using the following equation:

Bond = G × $0.01

Where:

Bond = Amount of the bond in U. S. dollars.

G = The largest volume of gasoline produced at the foreign refinery and exported to the United States, in gallons, during a single calendar year among the most recent of the following calendar years, up to a maximum of five calendar years: the calendar year immediately preceding the date the baseline petition is submitted, the calendar year the baseline petition is submitted, and each succeeding calendar year.

(2) Bonds must be posted by:

(i) Paying the amount of the bond to the Treasurer of the United States;

(ii) Obtaining a bond in the proper amount from a third party surety agent that is payable to satisfy United States administrative or judicial judgments against the foreign refiner, provided EPA agrees in advance as to the third party and the nature of the surety agreement; or

(iii) An alternative commitment that results in assets of an appropriate liquidity and value being readily available to the United States, provided EPA agrees in advance as to the alternative commitment.

(3) If the bond amount for a foreign refinery increases the foreign refiner must increase the bond to cover the shortfall within 90 days of the date the bond amount changes. If the bond amount decreases, the foreign refiner may reduce the amount of the bond beginning 90 days after the date the bond amount changes.

(4) Bonds posted under this paragraph (k) must be used to satisfy any judicial judgment that results from an administrative or judicial enforcement action for conduct in violation of this subpart, including where such conduct violates 18 U.S.C. 1001 and Clean Air Act section 113(c)(2).

(5) On any occasion a foreign refiner bond is used to satisfy any judgment, the foreign refiner must increase the bond to cover the amount used within 90 days of the date the bond is used.

(l) [Reserved]

(m) *English language reports.* Any report or other document submitted to EPA by an foreign refiner must be in English language, or must include an English language translation.

(n) *Prohibitions.* (1) No person may combine Certified Sulfur-FRGAS with any Non-Certified Sulfur-FRGAS or Non-Sulfur-FRGAS, and no person may combine Certified Sulfur-FRGAS with any Certified Sulfur-FRGAS produced at a different refinery, except as provided in paragraph (e) of this section.

(2) No foreign refiner or other person may cause another person to commit an action prohibited in paragraph (n)(1) of this section, or that otherwise violates the requirements of this section.

(o) *United States importer requirements.* Any United States importer must meet the following requirements:

(1) Each batch of imported gasoline must be classified by the importer as being Sulfur-FRGAS or as Non-Sulfur-FRGAS, and each batch classified as Sulfur-FRGAS must be further classified as Certified Sulfur-FRGAS or as Non-certified Sulfur-FRGAS.

(2) Gasoline must be classified as Certified Sulfur-FRGAS or as Non-Certified Sulfur-FRGAS according to the designation by the foreign refiner if this designation is supported by product transfer documents prepared by the foreign refiner as required in paragraph (d) of this section, unless the gasoline is classified as Non-Certified Sulfur-FRGAS under paragraph (g) of this section.

(3) For each gasoline batch classified as Sulfur-FRGAS, any United States importer must perform the following procedures:

(i) In the case of both Certified and Non-Certified Sulfur-FRGAS, have an independent third party:

(A) Determine the volume of gasoline in the vessel;

(B) Use the foreign refiner's Sulfur-FRGAS certification to determine the name and EPA-assigned registration number of the foreign refinery that produced the Sulfur-FRGAS;

(C) Determine the name and country of registration of the vessel used to transport the Sulfur-FRGAS to the United States; and

(D) Determine the date and time the vessel arrives at the United States port of entry.

(ii) In the case of Certified Sulfur-FRGAS, have an independent third party:

(A) Collect a representative sample from each vessel compartment subsequent to the vessel's arrival at the United States port of entry and prior to off loading any gasoline from the vessel;

(B) Prepare a volume-weighted vessel composite sample from the compartment samples; and

(C) Determine the sulfur value using the methodologies specified in § 80.330, by:

(*1*) The third party analyzing the sample; or

(*2*) The third party observing the importer analyze the sample.

(4) Any importer must submit reports within thirty days following the date any vessel transporting Sulfur-FRGAS arrives at the United States port of entry:

(i) To the Administrator containing the information determined under paragraph (o)(3) of this section; and

(ii) To the foreign refiner containing the information determined under paragraph (o)(3)(ii) of this section.

(5) Any United States importer must meet the requirements specified in § 80.195 for any imported gasoline that is not classified as Certified Sulfur-FRGAS under paragraph (o)(2) of this section.

(p) [Reserved]

(q) *Withdrawal or suspension of a foreign refinery's baseline* EPA may withdraw or suspend a baseline that has been assigned to a foreign refinery where:

(1) A foreign refiner fails to meet any requirement of this section;

(2) A foreign government fails to allow EPA inspections as provided in paragraph (i)(1) of this section;

(3) A foreign refiner asserts a claim of, or a right to claim, sovereign immunity in an action to enforce the requirements in this subpart; or

(4) A foreign refiner fails to pay a civil or criminal penalty that is not satisfied using the foreign refiner bond specified in paragraph (k) of this section.

(r) Any refiner whose Sulfur-FRGAS is transported into the United States by truck may petition EPA to use alternative procedures to meet the requirements for certification under paragraph (d)(5) of this section, load port and port of entry sampling and testing under paragraphs (f) and (g) of this section, attest under paragraph (h) of this section and importer testing under paragraph (o)(3) of this section.

These alternative procedures must ensure Certified Sulfur-FRGAS remains segregated from Non-Certified Sulfur-FRGAS and from Non-Sulfur-FRGAS until it is imported into the United States. The petition will be evaluated based on whether it adequately addresses the following:

(1) Provisions for monitoring pipeline shipments, if applicable, from the refinery, that ensure segregation of Certified Sulfur-FRGAS from that refinery from all other gasoline.

(2) Contracts with any terminals and/or pipelines that receive and/or transport Certified Sulfur-FRGAS, that prohibit the commingling of Certified Sulfur-FRGAS with any of the following:

(i) Other Certified Sulfur-FRGAS from other refineries.

(ii) All Non-Certified Sulfur-FRGAS.

(iii) All Non-Sulfur-FRGAS.

(3) Procedures for obtaining and reviewing truck loading records and United States import documents for Certified Sulfur-FRGAS to ensure that such gasoline is only loaded into trucks making deliveries to the United States.

(4) Attest procedures to be conducted annually by an independent third party that review loading records and import documents based on volume reconciliation, or other criteria, to confirm that all Certified Sulfur-FRGAS remains segregated throughout the distribution system and is only loaded into trucks for import into the United States.

(5) The petition required by this section must be submitted to EPA along with the application for small refiner status and individual refinery sulfur baseline and standards under § 80.235 and this section.

(s) *Additional requirements for petitions, reports and certificates.* Any petition for a refinery baseline under paragraph (b) of this section, any alternative procedures under paragraph (r) of this section, any report or other submission required by paragraphs (c), (f)(2), or (i) of this section, and any certification under paragraph (d)(3) of this section must be:

(1) Submitted in accordance with procedures specified by the Administrator, including use of any forms that may specified by the Administrator.

(2) Be signed by the president or owner of the foreign refiner company, or by that person's immediate designee, and must contain the following declaration:

I hereby certify: (1) that I have actual authority to sign on behalf of and to bind [insert name of foreign refiner] with regard to all statements contained herein; (2) that I am aware that the information contained herein is being certified, or submitted to the United States Environmental Protection Agency, under the requirements of 40 CFR Part 80, subpart H and that the information is material for determining compliance under these regulations; and (3) that I have read and understand the information being certified or submitted, and this information is true, complete and correct to the best of my knowledge and belief after I have taken reasonable and appropriate steps to verify the accuracy thereof.

I affirm that I have read and understand the provisions of 40 CFR Part 80, subpart H, including 40 CFR § 80.410 [insert name of foreign refiner]. Pursuant to Clean Air Act section 113(c) and Title 18, United States Code, section 1001, the penalty for furnishing false, incomplete or misleading information in this certification or submission is a fine of up to $10,000, and/or imprisonment for up to five years.

Attest Engagements

§ 80.415 What are the attest engagement requirements for gasoline sulfur compliance?

Refiners and importers, for each annual averaging period, must arrange to have an attest engagement performed of the underlying documentation that forms the basis of any report required under this section. The attest engagement must comply with the procedures and requirements that apply to refiners and importers under §§ 80.125 through 80.130, and must be submitted to the Administrator of EPA by May 30 of each year.

PART 85—CONTROL OF AIR POLLUTION FROM MOBILE SOURCES

5. The authority citation for part 85 continues to read as follows:

Authority: 42 U.S.C. 7521, 7522, 7524, 7525, 7541, 7542, 7601(a).

6. Section 85.1515 is amended by redesignating the existing paragraph (c) as paragraph (c)(1) and adding new paragraphs (c)(2), (c)(3), (c)(4) and (c)(5) to read as follows:

§ 85.1515 Emission standards and test procedures applicable to imported nonconforming motor vehicles and motor vehicle engines.

* * * * *

(c)(1) * * *

(2) The provisions of paragraph (c)(1) of this section notwithstanding, nonconforming light duty vehicles or light light-duty trucks (LDV/LLDTs) modified in model years 2004, 2005 or 2006 must meet the interim FTP exhaust and evaporative emission standards for light duty vehicles and light light-duty trucks specified in 40 CFR 86.1811–04(l) and 86.1811–04(e)(5). Nonconforming LDT3s and LDT4s (HLDTs) modified in model years 2004 through 2008 must meet the interim non-Tier 2 FTP exhaust and evaporative standards for HLDTs specified in 40 CFR 86.1811–04(l) and 86.1811–04(e)(5). Optionally, independent commercial importers may elect to meet the Tier 2 FTP exhaust and evaporative emission standards set forth in 40 CFR 86.1811–04(c) and (e) during those years. ICIs are exempt from the Tier 2 and the interim non-Tier 2 phase-in percentage requirements described in 40 CFR 86.1811–04.

(3) Nonconforming light duty vehicles and light light-duty trucks (LDV/LLDTs) modified in model years 2007 or later must meet the exhaust and evaporative emission requirements set forth for all 2007 and later model year LDV/LLDTs in 40 CFR 86.1811–04.

(4) Nonconforming heavy light-duty trucks (HLDTs) modified in model years 2009 or later must meet the exhaust and evaporative emission requirements set forth for all 2009 and later model year HLDTs in 40 CFR 86.1811–04.

(5) The requirements of 40 CFR 86.1811–04 related to fleet average NO_x standards and requirements to comply with such standards do not apply to vehicles modified under this subpart.

* * * * *

PART 86—CONTROL OF EMISSIONS FROM NEW AND IN-USE HIGHWAY VEHICLES AND ENGINES

7. The authority citation for part 86 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

8. Section 86.1 is amended by revising the entry for "California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October, 1996", and by adding an entry in alphabetical order in the table in paragraph (b)(4) to read as follows:

§ 86.1 Reference materials.

* * * * *

(b) * * *

(4) * * *

Document No. and name	40 CFR part 86 reference
* * * * * * *	
California Regulatory Requirements Applicable to the "LEV II" Program, including	86.1830–01; 86.1806–01; 86.1810–01; 86.1811–04; 86.1844–01.
1. Amendments to California Exhaust and Evaporative Emission Standards and Test Procedures for Passenger Cars, Light-duty Trucks and Medium-duty Vehicles and Amendments to California Motor Vehicle Certification, Assembly-line and In-use Test Requirements "CAP 2000".	
2. California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles.	
3. California Exhaust Emission Standards and Test Procedures for 2001 and Subsequent Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles.	
4. California Non-Methane Organic Gas Test Procedures.	
5. California Evaporative Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles.	
6. California Refueling Emission Standards and Test Procedures for 2001 and Subsequent Model Motor Vehicles.	
California Regulatory Requirements Applicable to the National Low Emission Vehicle Program, October 1996.	86.113–004; 86.612–97; 86.1012–97; 86.1702–99; 86.1708–99; 86.1709–99; 86.1717–99; 86.1735–99; 86.1771–99; 86.1775–99; 86.1776–99; 86.1777–99; Appendix XVI; Appendix XVII.

* * * * *

Subpart B—Emission Regulations for 1997 and Later Model Year New Light-duty Vehicles and New Light-duty Trucks; Test Procedures

9. Section 86.113–04 is added to read as follows:

§ 86.113–04 Fuel Specifications.

This section includes text that specifies requirements that differ from § 86.113–94. Where a paragraph in § 86.113–94 is identical and applicable to this section, this will be indicated by specifying the corresponding paragraph and the statement "[Reserved]. For guidance see § 86.113–94."

(a) *Gasoline fuel.* (1) Gasoline having the following specifications will be used by the Administrator in exhaust and evaporative emission testing of petroleum-fueled Otto-cycle vehicles. Gasoline having the following specification or substantially equivalent specifications Approved by the Administrator, must be used by the manufacturer in exhaust and evaporative testing except that octane specifications do not apply:

Item	ASTM test method No.	Value
Octane, Research, Min.	D2699	93.
Sensitivity, Min		.7.5
Lead (organic), maximum: g/U.S. gal. (g/liter)	D3237	0.050 (0.013).
Distillation Range	D86	
IBP [1] deg. F (deg. C)		75–95 (23.9–35).
10 pct. point: deg.F (deg.C)		120–135 (48.9–57.2).
50 pct. point: deg.F. (deg.C)		200–230 (93.3–110).
90 pct. point: deg.F (deg.C)		300–325 (148.9–162.8).
EP, max: deg.F (deg.C)D86		415 (212.8).
Sulfur, weight pct.	D1266	0.003–0.008.
Phosphorous, max. g/U.S. gal (g/liter)	D3231	0.005 (0.0013).
RVP [2 3]	D3231	8.7–9.2 (60.0–63.4).
Hydrocarbon composition	D1319	
Olefins, max. pct.		10.
Aromatics, max, pct.		35.
Saturates		Remainder.

[1] For testing at altitudes above 1,219 m (4000 feet), the specified range is 75–105 deg. F (23.9–40.6 deg. C).
[2] For testing which is unrelated to evaporative emission control, the specified range is 8.0-9.2 psi (55.2–63.4 kPa).
[3] For testing at altitudes above 1,219 m (4000 feet), the specified range is 7.6–8.0 psi (52-55 kPa).

(2) For light-duty vehicles and light-duty trucks certified for 50 state sale, "California Phase 2" gasoline having the specifications listed in the table in this section may be used in exhaust emission testing as an option to the specifications in paragraph (a)(1) of this section. If a manufacturer elects to utilize this option, exhaust emission testing must be conducted by the manufacturer with gasoline having the specifications listed in the table in this paragraph (a)(2) and the Administrator must also conduct exhaust emission testing with gasoline having the specifications listed in the table in this paragraph (a)(2), except that the Administrator may use or require the use of test fuel meeting the specifications in paragraph (a)(1) of this section for selective enforcement auditing and in-use testing. All fuel property test methods for this fuel are contained in Chapter 4 of the California

Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These requirements are incorporated by reference (see § 86.1). The table follows:

Fuel property	Limit
Octane, (R+M)/2 (min)	91.
Sensitivity (min)	7.5.
Lead, g/gal (max) (No lead added)	0–0.01.
Distillation Range, °F	
10 pct. point,	130–150.
50 pct. point,	200–210.
90 pct. point,	290–300.
EP, maximum	390.
Residue, vol% (max)	2.0.
Sulfur, ppm by wt.	30–40.
Phosphorous, g/gal (max)	0.005.
RVP, psi	6.7–7.0.
Olefins, vol %	4.0–6.0.
Total Aromatic Hydrocarbons (vol%)	22–25.
Benzene, vol %	0.8–1.0.
Multi-Substituted Alkyl Aromatic Hydrocarbons, vol%	12–14.
MTBE, vol%	10.8–11.2.
Additives	See Chapter 4 of the California Regulatory Requirements Applicable to the National Low Emission Vehicle Program (October, 1996). These procedures are incorporated by reference (see § 86.1).
Copper Corrosion	No. 1.
Gum, Washed, mg/100 ml (max)	3.0.
Oxidation Stability, minutes (min)	1000.
Specific Gravity	No limit; report to purchaser required.
Heat of Combustion	No limit; report to purchaser required.
Carbon, wt%	No limit; report to purchaser required.
Hydrogen, wt%	No limit; report to purchaser required.

(3)(i) Unless otherwise approved by the Administrator, unleaded gasoline representative of commercial gasoline that will be generally available through retail outlets must be used in service accumulation. Unless otherwise approved by the Administrator, where the vehicle is to be used for evaporative emission durability demonstration, such fuel must contain ethanol as required by § 86.1824–01(a)(2)(iii). Leaded gasoline must not be used in service accumulation.

(ii) The octane rating of the gasoline used must be no higher than 1.0 Research octane number above the minimum recommended by the manufacturer and have a minimum sensitivity of 7.5 octane numbers, where sensitivity is defined as the Research octane number minus the Motor octane number.

(iii) The Reid Vapor Pressure of the gasoline used must be characteristic of the motor fuel used during the season in which the service accumulation takes place.

(4) The specification range of the gasoline to be used under paragraph (a) of this section must be reported in accordance with §§ 86.094–21(b)(3) and 86.1844–01.

(b) through (g) "[Reserved]. For guidance see § 86.113–94."

6. Section 86.129–00 is amended by adding a new paragraph (f)(1)(ii)(C) to read as follows:

§ 86.129–00 Road load power, test weight, and inertia weight class determination.

* * * * *

(f) * * *

(1) * * *

(ii) * * *

(C) Regardless of other requirements in this section relating to the testing of heavy light duty trucks, for Tier 2 heavy light duty trucks, the test weight basis for FTP and SFTP testing (both US06 and SC03) is the vehicle curb weight plus 300 pounds.

* * * * *

Subpart C—Emission Regulations for 1994 and Later Model Year Gasoline-Fueled New Light-duty Vehicles and New Light-duty Trucks; Cold Temperature Test Procedures

10. Section 86.213–04 is added to read as follows:

§ 86.213–04 Fuel specifications.

Gasoline having the following specifications will be used by the Administrator. Gasoline having the specifications set forth in the table in this section may be used by the manufacturer except that the octane specification does not apply. In lieu of using gasoline having these specifications, the manufacturer may, for certification testing, use gasoline having the specifications specified in § 86.113–04 provided the cold CO emissions are not decreased. Documentation showing that cold CO emissions are not decreased must be maintained by the manufacturer and must be made available to the Administrator upon request. The table listing the cold CO fuel specifications described in the text in this section follows:

TABLE—COLD CO FUEL SPECIFICATIONS

Item	Cold CO low octane value or		Cold CO high octane [1] value or range
	ASTM test	Range	
(RON+MON)/2, min	D2699	87.8<plus-minus>.3	92.3<plus-minus>0.5.
Sensitivity, min	D2699	7.5	7.5.
Distillation range:			
IBP, deg.F	D86	76–96	76–96.
10% point, deg.F	D86	98–118	105–125.
50% point, deg.F	D86	179–214	195–225.
90% point, deg.F	D86	316–346	316–346.
EP, max, deg.F	D86	413	413.
Sulfur, wt. %	D3120	0.003–0.008	0.003–0.008.
Phosphorous, g/U.S gal, max	D3231	0.005	0.005.
Lead, g/gal, max		0.01	0.01.
RVP, psi	D4953	11.5<plus-minus>.3	11.5<plus-minus>.3.
Hydrocarbon composition	D1319		
Olefins, vol. pct		12.5<plus-minus>5.0	10.0<plus-minus>5.0.
Aromatics, vol. pct		26.4<plus-minus>4.0	32.0<plus-minus>4.0.
Saturates		Remainder	Remainder.

[1] Gasoline having these specifications may be used for vehicles which are designed for the use of high-octane premium fuel.

Subpart R—General Provisions for the Voluntary National Low Emission Vehicle Program for Light-duty Vehicles and Light-duty Trucks

11. Section 86.1701–99 is amended by adding paragraph (f) to read as follows:

§ 86.1701–99 General applicability.

* * * * *

(f) The provisions of this subpart are not applicable to 2004 or later model year vehicles, except where specific references to provisions of this subpart are made in conjunction with provisions applicable to such vehicles.

Subpart S—General Compliance Provisions for Control of Air Pollution From New and In-use Light-duty Vehicles and Light-duty Trucks

12. Section 86.1801–01 is amended by revising the first sentence of paragraph (a) and the first sentence of paragraph (e) and adding paragraphs (f) and (g) to read as follows:

§ 86.1801–01 Applicability.

(a) Except as otherwise indicated, the provisions of this subpart apply to new 2001 and later model year Otto-cycle and diesel cycle light duty vehicles and light duty trucks, including alternative fueled, hybrid electric, and zero emission vehicles.* * *

* * * * *

(e) *National Low Emission Vehicle Program for light-duty vehicles and light light-duty trucks.* A manufacturer may elect to certify 2001–2003 model year light duty vehicles and light light-duty trucks (LDV/LLDTs) to the provisions of the National Low Emission Vehicle Program contained in Subpart R of this part. * * *

(f) *"Early" Tier 2 LDV/Ts.* Any LDV/LLDT which is certified to Tier 2 FTP exhaust standards prior to the 2004 model year, or any HLDT which is certified to the Tier 2 FTP exhaust standards prior to the 2008 model year, to utilize alternate phase-in schedules and/or for purposes of generating and banking NO_X credits, must comply with all the exhaust emission requirements applicable to Tier 2 LDV/Ts under this subpart.

(g) *Interim non-Tier 2 LDV/Ts.* Model year 2004–2008 LDV/Ts, that do not comply with the Tier 2 FTP exhaust emission requirements (interim non-Tier 2 LDV/Ts) as permitted under the phase-in requirements of § 86.1811–04(k) must comply with all interim non-Tier 2 exhaust emission requirements contained in this subpart, including FTP exhaust emission requirements for all interim non-Tier 2 LDV/Ts found at § 86.1811–04(l). Separate emission requirements are provided for interim non-Tier 2 LDV/LLDTs and interim non-Tier 2 HLDTs.

13. Section 86.1803–01 is amended by adding the following definitions in alphabetical order to read as follows:

§ 86.1803–01 Definitions.

* * * * *

Bin or *emission bin* means a set of emission standards applicable to exhaust pollutants measured on the Federal Test Procedure (FTP). A *bin* is equivalent to a horizontal row of FTP standards in the various charts shown in this subpart. Manufacturers are generally free to choose the bin of standards that will apply to a certain test group of vehicles, provided that on a sales weighted average of those bins, all of their vehicles meet a specified fleet average standard for a particular pollutant.

* * * * *

CalLEV II or *California LEV II* refers to California's second phase of its low emission vehicle (LEV) program. This program was adopted at the hearing of the California Air Resources Board held on November 5, 1998.

* * * * *

Fleet average NO_X standard means, for light-duty vehicles and light-duty trucks, a NO_X standard imposed over an individual manufacturer's total U.S. sales (or a fraction of total U.S. sales during phase-in years), as "U.S. sales" is defined in this subpart, of light duty vehicles and trucks of a given model year. Manufacturers determine their compliance with such a standard by averaging, on a sales weighted basis, the individual NO_X standards they choose for the fleet of light duty vehicles and trucks they sell of that model year.

* * * * *

Interim non-Tier 2 vehicle or *interim non-Tier 2 LDV/T* or *interim vehicle* means any 2004 or later model year light duty vehicle or light duty truck not certified to Tier 2 FTP exhaust emission standards during the Tier 2 phase-in period.

* * * * *

LDV/T means light duty vehicles and light duty trucks collectively, without regard to category.

* * * * *

Non-methane organic gases (NMOG) means the sum of oxygenated and non-oxygenated hydrocarbons contained in a gas sample as measured in accordance with the California Non-Methane Organic Gas Test Procedures. These

requirements are incorporated by reference (see § 86.1).

* * * * *

Periodically regenerating trap oxidizer system means a trap oxidizer that utilizes, during normal driving conditions, an automated regeneration mode for cleaning the trap, the operation of which can be easily detected.

* * * * *

Point of first sale means the location where the completed light duty vehicle or light duty truck is first purchased. This term is synonymous with final product purchase location. The point of first sale may be a retail customer, dealer, distributor, fleet operator, broker, secondary manufacturer, or any other entity which purchases a vehicle from a manufacturer. In cases where the end user purchases the completed vehicle directly from the manufacturer, the end user is the point of first sale.

* * * * *

Round, rounded or *rounding* means, unless otherwise specified, that numbers will be rounded according to ASTM–E29–93a, which is incorporated by reference in this part pursuant to § 86.1.

* * * * *

Tier 2 standards means those FTP exhaust emission standards applicable to new light-duty vehicles and light light duty trucks and that begin a phase-in in the 2004 model year, and those exhaust emission standards applicable to heavy light duty trucks that begin a phase-in in the 2008 model year. These standards are found in § 86.1811–04.

Tier 2 vehicle or *Tier 2 LDV/T* means any light duty vehicle or light duty truck, including HEVs and ZEVs, of the 2004 or later model year certified to comply with the Tier 2 FTP exhaust standards contained in § 86.1811–04. The term Tier 2 vehicle also includes any light duty vehicle or truck, of any model year, which is certified to Tier 2 FTP exhaust standards for purposes of generating or banking early NO_X credits for averaging under Tier 2 requirements as allowed in this subpart.

* * * * *

U.S. sales means, unless otherwise specified, sales in any state of the United States except for California or a state that has adopted California motor vehicle standards for that model year pursuant to section 177 of the Clean Air Act. This definition applies only to those regulatory requirements addressing Tier 2 and interim non-Tier 2 LDV/Ts.

* * * * *

14. Section 86.1804–01 is amended by adding the following acronyms and abbreviations, in alphabetical order, to read as follows:

§ 86.1804–01 Acronyms and abbreviations.

* * * * *

HCHO—Formaldehyde.

* * * * *

HEV—Hybrid electric vehicle.

* * * * *

HLDT—Heavy light duty truck. Includes only those trucks over 6000 pounds GVWR (LDT3s and LDT4s).

* * * * *

LDV/LLDT—Light duty vehicles and light light-duty trucks. Includes only those trucks rated at 6000 pounds GVWR or less (LDT1s and LDT2s).

LDV/T—Light duty vehicles and light duty trucks. This term is used collectively to include, or to show that a provision applies to, all light duty vehicles and all categories of light duty trucks, i.e.

LDT1, LDT2, LDT3 and LDT4.

LEV—Low Emission Vehicle.

* * * * *

NLEV—Refers to the National Low Emission Vehicle Program. Regulations governing this program are found at subpart R of this part.

* * * * *

NMOG—Non-methane organic gases.

* * * * *

RAF—Reactivity adjustment factor.

* * * * *

SULEV—Super Ultra Low Emission Vehicle.

* * * * *

TLEV—Transitional Low Emission Vehicle.

* * * * *

ULEV—Ultra Low Emission Vehicle.

* * * * *

ZEV—Zero Emission Vehicle.

* * * * *

15. Section 86.1805–04 is added to read as follows:

§ 86.1805–04 Useful life.

(a) Except as required under paragraph (b) of this section or permitted under paragraphs (d) and (e) of this section, the full useful life for all LDVs, LDT1s and LDT2s is a period of use of 10 years or 120,000 miles, whichever occurs first. For all HLDTs, full useful life is a period of 11 years or 120,000 miles, whichever occurs first. This full useful life applies to exhaust, evaporative and refueling emission requirements except for standards which are specified to only be applicable at the time of certification.

(b) Manufacturers may elect to optionally certify a test group to the Tier 2 exhaust emission standards for 150,000 miles to gain additional NO_X credits, as permitted in § 86.1860–04(g). In such cases, useful life is a period of use of 15 years or 150,000 miles, whichever occurs first, for all exhaust, evaporative and refueling emission requirements except for cold CO standards and standards which are applicable only at the time of certification.

(c) Where intermediate useful life exhaust emission standards are applicable, such standards are applicable for five years or 50,000 miles, whichever occurs first.

(d)(1) Manufacturers may petition the Administrator to provide alternative useful life periods for idle CO requirements for light duty trucks when they believe that the useful life period described in this section is significantly unrepresentative for one or more test groups (either too long or too short). This petition must include the full rationale behind the request, together with any supporting data and other evidence. Based on this or other information, the Administrator may assign an alternative useful life period. Any petition should be submitted in a timely manner to allow adequate time for a thorough evaluation.

(2) Where cold CO standards are applicable, the useful life requirement for compliance with the cold CO standard only, is 5 years or 50,000 miles whichever occurs first.

(e) Where LDVs, LDT1s and LDT2s of the 2003 or earlier model years are certified to Tier 2 exhaust emission standards for purposes of generating early NO_X credits, manufacturers may certify those vehicles to full useful lives of 100,000 miles in lieu of the otherwise required 120,000 mile full useful lives, as provided under § 86.1861–04(c)(4).

16. Section 86.1806–01 is amended by adding paragraph (b)(8) to read as follows:

§ 86.1806–01 On-board diagnostics.

* * * * *

(b)* * *

(8) *For Tier 2 and interim non-Tier 2 hybrid electric vehicles (HEVs) only.* Unless added to HEVs in compliance with other requirements of this section, or unless otherwise approved by the Administrator:

(i) The manufacturer must equip each HEV with a maintenance indicator consisting of a light that must activate automatically by illuminating the first time the minimum performance level is observed for each battery system component. Possible battery system components requiring monitoring are: battery water level, temperature control, pressure control, and other parameters critical for determining battery condition.

(ii) The manufacturer must equip "off-vehicle charge capable HEVs" with a useful life indicator for the battery

system consisting of a light that must illuminate the first time the battery system is unable to achieve an all-electric operating range (starting from a full state-of-charge) which is at least 75 percent of the range determined for the vehicle in the Urban Driving Schedule portion of the All-Electric Range Test (see the California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium Duty Vehicles. These requirements are incorporated by reference (see § 86.1)

(iii) The manufacturer must equip each HEV with a separate odometer or other device subject to the approval of the Administrator that can accurately measure the mileage accumulation on the engines used in these vehicles.

* * * * *

17. Section 86.1807–01 is amended by revising paragraph (a)(3)(vi) to read as follows:

§ 86.1807–01 Vehicle labeling.

(a) * * *

(3) * * *

(vi) The exhaust emission standards to which the test group is certified, and for test groups having different in-use standards, the corresponding exhaust emission standards that the test group must meet in use. In lieu of this requirement, manufacturers may use the standardized test group name designated by EPA;

* * * * *

18. Section 86.1809–01 is amended by adding paragraph (e) to read as follows:

§ 86.1809–01 Prohibition of defeat devices.

* * * * *

(e) For each test group of Tier 2 and interim non-Tier 2 LDV/Ts, the manufacturer must submit, with the Part II certification application, an engineering evaluation demonstrating to the satisfaction of the Administrator that a discontinuity in emissions of non-methane organic gases, carbon monoxide, oxides of nitrogen and formaldehyde measured on the Federal Test Procedure (subpart B of this part) does not occur in the temperature range of 20 to 86 degrees F. For diesel vehicles, the engineering evaluation must also include particulate emissions.

19. Section 86.1810–01 is amended by adding two new sentences to the end of the introductory text; by adding a new sentence to the end of paragraph (i)(6); and by adding new paragraphs (i)(13), (i)(14), (o) and (p) to read as follows:

§ 86.1810–01 General standards; increase in emissions; unsafe conditions; waivers.

* * * For Tier 2 and interim non-Tier 2 LDV/Ts, this section also applies to hybrid electric vehicles and zero emission vehicles. Unless otherwise specified, requirements and provisions of this subpart applicable to methanol fueled vehicles are also applicable to Tier 2 and interim non-Tier 2 ethanol fueled LDV/Ts.

* * * * *

(i) * * *

(6) * * * For Tier 2 and interim non-Tier 2 LDV/Ts, this provision does not apply to enrichment that occurs upon cold start, warm-up conditions and rapid-throttle motion conditions ("tip-in" or "tip-out" conditions).

* * * * *

(13) *A/C-on specific calibrations.* (i) For Tier 2 and interim non-Tier 2 LDV/Ts, A/C-on specific calibrations (e.g. air to fuel ratio, spark timing, and exhaust gas recirculation), may be used which differ from A/C-off calibrations for given engine operating conditions (e.g., engine speed, manifold pressure, coolant temperature, air charge temperature, and any other parameters).

(ii) Such calibrations must not unnecessarily reduce the NMHC+NO_X emission control effectiveness during A/C-on operation when the vehicle is operated under conditions which may reasonably be expected to be encountered during normal operation and use.

(iii) If reductions in control system NMHC+NO_X effectiveness do occur as a result of such calibrations, the manufacturer must, in the Application for Certification, specify the circumstances under which such reductions do occur, and the reason for the use of such calibrations resulting in such reductions in control system effectiveness.

(iv) A/C-on specific "open-loop" or "commanded enrichment" air-fuel enrichment strategies (as defined below), which differ from A/C-off "open-loop" or "commanded enrichment" air-fuel enrichment strategies, may not be used, with the following exceptions: Cold-start and warm-up conditions, or, subject to Administrator approval, conditions requiring the protection of the vehicle, occupants, engine, or emission control hardware. Other than these exceptions, such strategies which are invoked based on manifold pressure, engine speed, throttle position, or other engine parameters must use the same engine parameter criteria for the invoking of this air-fuel enrichment strategy and the same degree of enrichment regardless of whether the A/C is on or off. "Open-loop" or "commanded" air-fuel enrichment strategy is defined as enrichment of the air to fuel ratio beyond stoichiometry for the purposes of increasing engine power output and the protection of engine or emissions control hardware. However, "closed-loop biasing," defined as small changes in the air-fuel ratio for the purposes of optimizing vehicle emissions or driveability, must not be considered an "open-loop" or "commanded" air-fuel enrichment strategy. In addition, "transient" air-fuel enrichment strategy (or "tip-in" and "tip-out" enrichment), defined as the temporary use of an air-fuel ratio rich of stoichiometry at the beginning or duration of rapid throttle motion, must not be considered an "open-loop" or "commanded" air-fuel enrichment strategy.

(14) "*Lean-on-cruise*" calibration strategies. (i) For Tier 2 and interim non-Tier 2 LDV/Ts, the manufacturer must state in the Application for Certification whether any "lean-on-cruise" strategies are incorporated into the vehicle design. A "lean-on-cruise" air-fuel calibration strategy is defined as the use of an air-fuel ratio significantly greater than stoichiometry, during non-deceleration conditions at speeds above 40 mph. "Lean-on-cruise" air-fuel calibration strategies must not be employed during vehicle operation in normal driving conditions, including A/C usage, unless at least one of the following conditions is met:

(A) Such strategies are substantially employed during the FTP or SFTP;

(B) Such strategies are demonstrated not to significantly reduce vehicle NMHC+NO_X emission control effectiveness over the operating conditions in which they are employed; or

(C) Such strategies are demonstrated to be necessary to protect the vehicle occupants, engine, or emission control hardware.

(ii) If the manufacturer proposes to use a "lean-on-cruise" calibration strategy, the manufacturer must specify the circumstances under which such a calibration would be used, and the reason or reasons for the proposed use of such a calibration.

* * * * *

(o) Unless otherwise approved by the Administrator, manufacturers must measure NMOG emissions in accordance with the California Non-Methane Organic Gas Test Procedures. These procedures are incorporated by reference (see § 86.1).

(p) For diesel vehicles, manufacturers may measure non-methane hydrocarbons in lieu of NMOG.

20. Section 86.1811–01 is amended by adding a sentence to the end of the introductory text to read as follows:

§ 86.1811–01 Emission standards for light-duty vehicles.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

21. Section 86.1811–04 is added to read as follows:

§ 86.1811–04 Emission standards for light duty vehicles and light duty trucks.

(a) *Applicability.* (1) This section contains regulations implementing emission standards for all light duty vehicles and light duty trucks (LDV/Ts). This section applies to 2004 and later model year LDV/Ts fueled by gasoline, diesel, methanol, ethanol, natural gas and liquefied petroleum gas fuels, except as noted. Additionally, this section contains provisions applicable to hybrid electric vehicles (HEVs) and zero emission vehicles (ZEVs). Multi-fueled vehicles must comply with all requirements established for each consumed fuel.

(2)(i) This section also applies to LDV/LLDTs of model years prior to 2004, when manufacturers certify such vehicles to Tier 2 exhaust emission requirements to utilize alternate phase-in schedules, as allowed under paragraph (k)(6) of this section, and/or to earn NO_X credits for use in complying with the Tier 2 fleet average NO_X standard which takes effect in the 2004 model year for LDV/LLDTs.

(ii) This section also applies to HLDTs of model years prior to 2004, when manufacturers certify such vehicles to Tier 2 exhaust emission requirements to utilize alternate phase-in schedules as allowed under paragraph (k)(6) of this section.

(3) Except where otherwise specified, this section applies instead of §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–01, 86.1814–02, 86.1815–01, and 86.1815–02.

(4) Except where otherwise specified, the provisions of this section apply equally to LDVs and all categories of LDTs, as reflected by the use of the term LDV/T.

(5) The exhaust emission standards and evaporative emission standards of this section apply equally to certification and in-use LDV/Ts unless otherwise specified.

(b) *Test weight.* (1) Except as required in paragraph (b)(2) of this section, emission testing of all LDV/Ts to determine compliance with any exhaust or evaporative emission standard set forth in this part must be on a loaded vehicle weight (LVW) basis, as that term is defined in this subpart.

(2) Interim non-Tier 2 HLDTs tested to Tier 1 SFTP standards, must be tested on an adjusted loaded vehicle weight (ALVW) basis, as that term is defined in this subpart, during the SC03 element of the SFTP.

(c) *Tier 2 FTP exhaust emission standards.* Exhaust emissions from Tier 2 LDV/Ts must not exceed the standards in Table S04–1 of this section at full useful life when tested over the Federal Test Procedure (FTP) described in subpart B of this part. Exhaust emissions from Tier 2 LDV/Ts must not exceed the standards in Table S04–2 of this section at intermediate useful life, if applicable, when tested over the FTP. Manufacturers of LDV/Ts must meet these standards according to the phase-in schedules shown in Tables S04–6 and S04–7 of this section.

(1) For a given test group a manufacturer desires to certify to operate only on one fuel, the manufacturer must select a set of standards from the same bin (line or row) in Table S04–1 of this section for non-methane organic gases (NMOG), carbon monoxide (CO), oxides of nitrogen (NO_X), formaldehyde (HCHO) and particulate matter (PM). The manufacturer must certify the test group to meet those standards, subject to all the applicable provisions of this subpart. The manufacturer must also certify the test group to meet the intermediate useful life standards (if any) in Table S04–2 of this section having the same EPA bin reference number as the chosen full useful life standards.

(2) For a given test group of flexible-fueled, bi-fuel or dual fuel vehicles when operated on the alcohol or gaseous fuel they are designed to use, manufacturers must select a bin of standards from Table S04–1 of this section and the corresponding bin in Table S04–2, if any. When these flexible-fueled, bi-fuel or dual fuel vehicles are certified to operate on gasoline or diesel fuel, the manufacturer may choose to comply with the next numerically higher NMOG standard above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(3) The bin 7 NMOG value may be used by alternative fueled vehicles when operated on gasoline or diesel fuel when such vehicles are certified to bin 6 standards on the gaseous or alcohol fuel on which they are designed to operate.

(4) In addition to the bins shown in Tables S04–1 and 2 of this section, manufacturers may also use the applicable interim non-Tier 2 bins for Tier 2 vehicles. These bins are shown in Tables S04–8 and 9 of this section for LDV/LLDTs and Tables S04–10 and 11 of this section for HLDTs. These bins may only be used through the last model year of the duration of the applicable interim program, i.e. 2006 for LDV/LLDTs and 2008 for HLDTs. In a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program.

(5) Tables S04–1 and S04–2 follow:

TABLE S04–1.—TIER 2 LIGHT DUTY FULL USEFUL LIFE EXHAUST MASS EMISSION STANDARDS

[Grams per mile]

EPA bin No.	NMOG	CO	HCHO	NO_X	PM
7	*0.156				
7	0.125	4.2	.018	0.20	0.02
6	0.090	4.2	0.018	0.15	0.02
5	0.090	4.2	0.018	0.07	0.01
4	0.055	2.1	0.011	0.07	0.01
3	0.070	2.1	0.011	0.04	0.01
2	0.010	2.1	0.004	0.02	0.01
1	0.000	0.0	0.000	0.00	0.0

*Applicable only to flexible-fueled and dual-fuel bin 7 vehicles when certifying for operation on gasoline.

TABLE S04–2.—TIER 2 LIGHT DUTY INTERMEDIATE USEFUL LIFE EXHAUST MASS EMISSION STANDARDS

[Grams per mile]

EPA bin No.	NMOG	CO	HCHO	NO_x	PM[b]
7	[a]0.125				
7	0.100	3.4	0.015	0.14	
6	0.075	3.4	0.015	0.11	
5	0.075	3.4	0.015	0.05	
4	0.040	1.7	0.008	0.05	

[a] Applicable only to flexible-fueled and dual-fuel bin 7 vehicles when certifying for operation on gasoline.
[b] The full useful life PM standards from Table S04–1 also apply at intermediate useful life.

(d) *Fleet average NO_x Standards.* (1) For a given individual model year's sales of Tier 2 LDV/Ts, including model years during the phase-in years of the Tier 2 standards, manufacturers must comply with a fleet average oxides of nitrogen (NO_x) standard of 0.07 grams per mile. The manufacturer must calculate its fleet average NO_x emission level(s) as described in § 86.1860–04. Up through and including model year 2008, manufacturers must calculate separate fleet average NO_x emission levels for LDV/LLDTs and HLDTs as described in § 86.1860–04.

(2) *For Early Tier 2 LDV/LLDTs.* For model years prior to 2004, where the manufacturer desires to bank early Tier 2 NO_x credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 LDV/LLDTs. Manufacturers must determine compliance with the NO_x fleet average standard according to regulations in § 86.1860–04.

(3) *For Early Tier 2 HLDTs.* For model years prior to 2008, where the manufacturer desires to bank early Tier 2 NO_x credits as permitted under § 86.1861(c), the manufacturer must comply with a fleet average standard of 0.07 grams per mile for its Tier 2 HLDTs. Manufacturers must determine compliance with the NO_x fleet average standard according to regulations in § 86.1860–04.

(e) *Evaporative emission standards.* Consistent with the phase-in requirements in paragraph (k) of this section, evaporative emissions from gasoline-fueled, natural gas-fueled, liquefied petroleum gas-fueled, ethanol-fueled and methanol-fueled LDV/Ts must not exceed the standards in this paragraph. The standards apply equally to certification and in-use LDV/Ts, except that the spitback standard applies only to newly assembled LDV/Ts.

(1) *Diurnal-plus-hot soak evaporative hydrocarbon standards.* Hydrocarbons for LDV/Ts must not exceed the diurnal plus hot soak standards shown in Table S04–3 for the full three diurnal test sequence and for the supplemental two diurnal test sequence. Table S04–3 follows:

TABLE S04–3.—LIGHT-DUTY DIURNAL PLUS HOT SOAK EVAPORATIVE EMISSION STANDARDS

[Grams per test]

Vehicle category	3 day diurnal + hot Soak	Supplemental 2 day diurnal + hot soak
LDVs, LDT1s and LDT2s	0.95	1.2
LDT3s and LDT4s	1.2	1.5

(2) *Running loss standard.* Hydrocarbons for LDV/Ts measured on the running loss test must not exceed 0.05 grams per mile.

(3) *Refueling emission standards.* Refueling emissions must not exceed the following standards:

(i) For gasoline-fueled, diesel-fueled and methanol-fueled LDV/Ts: 0.20 grams hydrocarbon per gallon (0.053 grams per liter) of fuel dispensed.

(ii) For liquefied petroleum gas-fueled LDV/Ts: 0.15 grams hydrocarbon per gallon (0.04 grams per liter) of fuel dispensed.

(iii) Refueling standards for LDT3s and LDT4s are subject to the phase-in requirements found in § 86.1810–01(k).

(4) *Spitback standards.* For gasoline and methanol fueled LDV/Ts, hydrocarbons measured on the fuel dispensing spitback test must not exceed 1.0 grams hydrocarbon (carbon if methanol-fueled) per test.

(5) Vehicles not certified to meet the evaporative emission standards in this paragraph (e) as permitted under the phase-in schedule of paragraph (k) of this section, must meet applicable evaporative emission standards in §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–02 or 86.1815–02 except that all LDV/Ts must meet the refueling emission standards in paragraph (e)(3) of this section.

(f) *Supplemental exhaust emission standards for LDV/Ts.* (1) Supplemental exhaust emissions from gasoline-fueled and diesel fueled LDV/Ts must not exceed the standards in Table S04–4 at full useful life. Supplemental exhaust emission standards are not applicable to alternative fueled LDV/Ts, or flexible fueled LDV/Ts when operated on a fuel other than gasoline or diesel. Table S04–4 follows:

TABLE S04–4.— FULL USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS (SFTP STANDARDS) FOR LDV/TS

[Grams/mile]

Vehicle category	US06 $NMHC+NO_x$	US06 CO	SC03 $NMHC+NO_x$	SC03 CO
LDV/LDT1	0.20	11.1	0.26	4.2
LDT2	0.37	14.6	0.39	5.5
LDT3	0.53	16.9	0.44	6.4
LDT4	0.78	19.3	0.62	7.3

(2) Gasoline-fueled LDV/Ts, diesel-fueled LDV/Ts and flexible fueled LDV/Ts when operated on gasoline or diesel fuel, and subject to intermediate useful life FTP standards, must not exceed the intermediate useful life supplemental emission standards in Table S04–5, as follows:

TABLE S04–5.—INTERMEDIATE USEFUL LIFE SUPPLEMENTAL EMISSION STANDARDS (SFTP STANDARDS) FOR LDV/TS

[Grams/mile]

Vehicle category	US06 NMHC+NO_X	US06 CO	SC03 NMHC+NO_X	SC03 CO
LDV/LDT1	0.16	9.0	0.22	3.0
LDT2	0.30	11.6	0.32	3.9
LDT3	0.45	11.6	0.36	3.9
LDT4	0.67	13.2	0.51	4.4

(3) For interim non-Tier 2 gasoline, diesel and flexible-fueled LDT3s and LDT4s, manufacturers may, at their option, meet the gasoline SFTP standards found in §§ 86.1814–02 and 86.1815–02, respectively.

(4) Interim non-Tier 2 gasoline, diesel and flexible-fueled LDV/LLDTs certified to bin 5 FTP exhaust emission standards from Table S04–8 in this section may meet the gasoline Tier 1 SFTP requirements found at § 86.1811–01(b).

(g) *Cold temperature exhaust emission standards for LDV/Ts.* These standards are applicable only to gasoline fueled LDV/Ts. For cold temperature exhaust emission standards, a useful life of 50,000 miles applies.

(1) For LDVs and LDT1s, the standard is 10.0 grams per mile CO.

(2) For LDT2s, LDT3s and LDT4s, the standard is 12.5 grams per mile CO.

(h) *Certification short test exhaust emission standards for LDV/Ts.* Certification short test emissions from all gasoline-fueled otto cycle LDV/Ts must not exceed the following standards:

(1) Hydrocarbons: 100 ppm as hexane, for certification and SEA testing; 220 ppm as hexane, for in-use testing.

(2) Carbon monoxide: 0.5% for certification and SEA testing; 1.2% for in-use testing.

(i) *Idle exhaust emission standards for light duty trucks.* Exhaust emissions of carbon monoxide from gasoline, methanol, natural gas, and liquefied petroleum gas-fueled light duty trucks must not exceed 0.5% of exhaust gas flow at curb idle for the useful life of the trucks as defined in this part. This standard does not apply to light duty vehicles.

(j) *Highway NO_X exhaust emission standard for LDV/Ts.* The maximum projected NO_X emissions measured on the federal Highway Fuel Economy Test in 40 CFR part 600, subpart B, must not be greater than 1.33 times the applicable FTP NO_X standard to which the manufacturer certifies the test group. Both the projected emissions and the product of the NO_X standard and 1.33 must be rounded to the nearest 0.01 g/mi before being compared.

(k) *Phase-in of the Tier 2 FTP exhaust and evaporative requirements; small volume manufacturer flexibilities.* (1) Manufacturers must comply with the phase-in requirements in Tables S04–6 and S04–7 of this section for the Tier 2 FTP exhaust emission requirements specified in paragraph (c) of this section. Separate phase-in schedules are provided for LDV/LLDTs and HLDTs. These requirements specify the minimum percentage of the manufacturer's LDV/LLDT and HLDT U.S. sales, by model year, that must meet the Tier 2 requirements for their full useful lives. Tables S04–6 and S04–7 follow:

TABLE S04–6.—PHASE-IN PERCENTAGES FOR LDV/LLDT TIER 2 REQUIREMENTS

Model year	Percentage of LDV/LLDTs that must meet tier 2 requirements
2004	25
2005	50
2006	75
2007 and subsequent	100

TABLE S04–7.—PHASE-IN PERCENTAGES FOR HLDT TIER 2 REQUIREMENTS

Model year	Percentage of HLDTs that must meet tier 2 requirements
2008	50
2009 and subsequent	100

(2) Manufacturers must also comply with the phase-in requirements in Tables S04–6 and S04–7 of this section for the evaporative emission requirements contained in paragraph (e) of this section.

(3) Manufacturers may opt to use different LDV/LLDTs and HLDTs to meet the phase-in requirements for evaporative emissions and FTP exhaust emissions, provided that the manufacturer meets the minimum phase-in requirements in Table S04–6 and Table S04–7 of this section for both FTP exhaust and evaporative emissions. A LDV or LDT counted toward compliance with any phase-in requirement for FTP exhaust or evaporative standards, must comply with all applicable Tier 2 exhaust requirements or all evaporative requirements, as applicable, described in this section.

(4) LDVs and LDTs not certified to meet the Tier 2 FTP exhaust requirements during model years 2004–2008, as allowed under this subpart, are subject to the provisions of paragraph (l) of this section. LDVs and LDTs not certified to meet the evaporative requirements in paragraph (e) of this section during model years 2004–2008, as allowed under this subpart, must meet all evaporative requirements found in §§ 86.1811–01, 86.1812–01, 86.1813–01, 86.1814–02 and 86.1815–02 as applicable, and the refueling requirements found in paragraph (e)(3) of this section.

(5)(i) Small volume manufacturers, as defined in this part, are exempt from the LDV/LLDT phase-in requirements for model years 2004, 2005 and 2006 in Table S04–6, but must comply with the 100% requirement for the 2007 and later model years.

(ii) Small volume manufacturers, as defined in this part, are exempt from the HLDT phase-in requirement for model year 2008 in Table S04–7 of this section and the interim fleet average NO_X standard and the phase-in of the HLDT interim non-Tier 2 FTP exhaust standards for the 2004, 2005 and 2006 model years.

(iii) Small volume manufacturers must comply with the interim non-Tier 2 FTP exhaust emission standards of bin 5 or lower from Tables S04–10 and 11 of this section for HLDTs of model years 2004, 2005 and 2006; the interim non-Tier 2 FTP exhaust standards from Tables S04–10 and 11 and the 0.20 g/mi fleet average NO_X standard for the 2007 and 2008 model year; and the Tier 2 FTP exhaust standards, evaporative standards, and the 0.07 g/mi fleet average NO_X standard for the 2009 and later model years.

(6)(i) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for LDV/LLDTs by 2007 . Alternate phase-in schedules must produce a sum of at least 250% when the percentages of LDV/LLDTs certified to Tier 2 requirements for each model year from 2001 through 2007 are summed. As an example, a 10/25/50/65/100 percent phase-in that began in 2003 would have a sum of 250 percent would be acceptable. However, a 10/25/40/70/100 percent phase-in that began the same year would have a sum of 245 percent and would not be acceptable.

(ii) A manufacturer electing this option for LDV/LLDTs may calculate its compliance with the evaporative standards in paragraph (e)(1) of this section separately from its compliance with Tier 2 exhaust standards, provided that the phase-in schedules for each separately produce a sum of at least 250 percent when calculated as described in paragraph (k)(6)(i) of this section. A vehicle counted towards compliance with any phase-in requirement for the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section, must comply with all applicable Tier 2 exhaust standards or all evaporative standards, as applicable, described in this section.

(iii) In addition to the requirements of paragraph (k)(6)(i) and (ii) of this section, a manufacturer of LDV/LLDTs electing to use an alternate phase-in schedule for compliance with the Tier 2 exhaust standards or the evaporative standards in paragraph (e)(1) of this section must ensure that the sum of the percentages of vehicles from model years 2001 through 2004, meeting such exhaust or evaporative standards, as applicable, is at least 25%.

(iv) A manufacturer may elect an alternate phase-in schedule that results in 100% phase-in for HLDTs by 2009. The requirements of paragraph (k)(6)(i) through (k)(6)(iii) of this section apply, except that for HLDTs, the calculation described in paragraph (k)(6)(i) of this section may cover model years 2001 through 2009 and must produce a sum of at least 150%.

(7)(i) Sales percentages for the purpose of determining compliance with the phase-in of the Tier 2 requirements and the phase-in of the evaporative standards in paragraph (e)(1) of this section, must be based upon projected U.S. sales of LDV/LLDTs and HLDTs of the applicable model year by the manufacturer to the point of first sale. Such sales percentages must be rounded to the nearest one tenth of a percent, and must not include vehicles and trucks projected to be sold to points of first sale in California or a state that has adopted California requirements for that model year as permitted under section 177 of the Act.

(ii) Alternatively, the manufacturer may petition the Administrator to allow actual volume produced for U.S. sales to be used in lieu of projected U.S. sales for purposes of determining compliance with the phase-in percentage requirements under this section. The manufacturer must submit its petition within 30 days of the end of the model year to the Vehicle Programs and Compliance Division. For EPA to approve the use of actual volume produced for U.S. sales, the manufacturer must establish to the satisfaction of the Administrator, that actual production volume is functionally equivalent to actual sales volume of LDV/LLDTs and HLDTs sold in states other than California and states that have adopted California standards.

(iii) Manufacturers must submit information showing compliance with all phase-in requirements of this section with its Part I application as required by § 86.1844(d)(13).

(l) *FTP exhaust standards for interim non-Tier 2 LDV/LLDTs and HLDTs. (1) FTP exhaust emission standards for interim non-Tier 2 LDV/LLDTs.* (i) LDV/LLDTs that are not certified to meet Tier 2 FTP exhaust emission requirements during the Tier 2 phase-in period (model years 2004–2006) must comply with the full useful life FTP exhaust emission standards listed in Table S04–8 of this section and, the corresponding intermediate useful life standards, if any, in Table S04–9 of this section. Manufacturers may choose the bin of full useful life standards to which they certify a test group of vehicles, subject to the requirements in paragraph (l)(3)(i) of this section. In addition to the bins shown in Tables S04–8 and S04–9 of this section, manufacturers may also use the Tier 2 bins shown in Tables S04–1 and S04–2 of this section. Manufacturers may include LDV/LLDTs in the interim program that are not used to meet the Tier 2 corporate average NO_x standard or the phase-in percentage requirements in the Tier 2 program or to generate Tier 2 NO_x credits. More simply, a manufacturer may use the Tier 2 bins for interim non-Tier 2 vehicles; but, in a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program. Tables S04–8 and S04–9 follow:

TABLE S04–8.—FULL USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR LDV/LLDTS

[Grams per mile]

EPA Bin No.	NMOG	CO	NO_x	HCHO	PM
5	0.156	4.2	0.60	0.018	0.06
4	0.090	4.2	0.30	0.018	0.06
3	0.055	2.1	0.30	0.011	0.04
2	0.090	4.2	0.07	0.018	0.01
1	0.000	0.0	0.00	0.000	0.0

TABLE S04–9.—INTERMEDIATE USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR LDV/LLDTS

[Grams per mile]

EPA Bin No.	NMOG	CO	NO_x	HCHO	PM
5	0.125	3.4	0.40	0.015	
4	0.075	3.4	0.20	0.015	
3	0.040	1.7	0.20	0.008	
2	0.075	3.4	0.05	0.015	

(ii) Manufacturers must select a set of standards from the same bin in Table S04–8 of this section and the corresponding bin in Table S04–9, if any, for a given test group of flexible-fueled, dual fuel or multi-fuel LDV/LLDTs, when operated

on the alcohol or gaseous fuel they are designed to use. When these flexible-fueled, dual fuel or multi fuel LDV/Ts are certified to operate on gasoline, the manufacturer may choose to comply with the next numerically higher NMOG standard (if there is one) above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(2) *FTP exhaust emission standards for interim non-Tier 2 HLDTs.* (i) HLDTs of model years 2004–2008 that are not certified to meet the Tier 2 FTP exhaust standards in paragraph (c) of this section must comply with the interim non-Tier 2 FTP exhaust emission standards in Tables S04–10 and S04–11 of this section.

(ii) HLDTs of model years 2004–2008 that are not certified to meet the Tier 2 FTP exhaust standards in paragraph (c) of this section must also comply with the fleet average NO_X standard described in paragraph (l)(3)(ii) of this section subject to the phase-in schedule in paragraph (l)(2)(iv) of this section, i.e. 25 percent of the HLDTs must meet the fleet average standard of 0.20 g/mi in 2004, 50 percent in 2005, and so on.

(iii) Manufacturers may choose the bin of full useful life standards to which they certify a test group of HLDTs, subject to the requirements in paragraph (l)(3)(ii) of this section. In addition to the bins shown in Tables S04–10 and S04–11 of this section, manufacturers may also use the Tier 2 bins shown in Tables S04–1 and S04–2 of this section. Therefore, manufacturers may include HLDTs in the interim program that are not used to meet the Tier 2 corporate average NO_X standard or the phase-in percentage requirements in the Tier 2 program or to generate Tier 2 NO_X credits. More simply, a manufacturer may use the Tier 2 bins for interim non-Tier 2 vehicles; but, in a given model year, an individual vehicle may not be included in both the Tier 2 program and an interim program. Tables S04–10 and S04–11 follow:

TABLE S04–10.—FULL USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR HLDTS

[Grams/mile]

EPA Bin No.	NMOG	CO	NO_X	HCHO	PM
5	0.230	4.2	0.60	0.018	0.06
4	0.180	4.2	0.30	0.018	0.06
3	0.156	4.2	0.20	0.018	0.02
2	0.090	4.2	0.07	0.018	0.01
1	0.000	0.0	0.00	0.000	0.0

TABLE S04–11.—INTERMEDIATE USEFUL LIFE INTERIM EXHAUST MASS EMISSION STANDARDS FOR HLDTS

[Grams per mile]

EPA Bin No.	NMOG	CO	NO_X	HCHO	PM
5	0.160	3.4	0.40	0.015	.....
4	0.140	3.4	0.20	0.015	.....
3	0.125	3.4	0.14	0.015	.....
2	0.075	3.4	0.05	0.015	.....

(iv) *Phase-in schedule for interim non-Tier 2 HLDT standards.* Table S04–12 of this section specifies the minimum percentage of the manufacturer's non-Tier 2 HLDT U.S. sales, by model year, that must comply with the fleet average NO_X standard described in paragraph (l)(3)(ii) of this section. Table S04–12 follows:

TABLE S04–12.—PHASE-IN PERCENTAGES FOR INTERIM NON-TIER 2 FLEET AVERAGE NO_X STANDARD FOR HLDTS

Model year	Percentage of non-tier 2 HLDTs that must meet interim non-tier 2 fleet average NO_X standard
2004	25
2005	50
2006	75
2007 and 2008	100

(v) A manufacturer may elect an alternate phase-in schedule, beginning as early as the 2001 model year, that results in 100% compliance by 2007 with the fleet average NO_X standard for HLDTs described in paragraph (1)(3)(ii) of this section. The requirements of paragraph (k)(6)(i) of this section apply to the selection of an alternate phase-in schedule.

(vi) Manufacturers must select a set of standards from the same bin in Table S04–10 of this section and the corresponding bin in Table S04–11, if any (or Tables S04–1 and S04–2 of this section), for a given test group of flexible-fueled, dual fuel or multi-fuel HLDTs, when operated on the alcohol or gaseous fuel they are designed to use. When these flexible-fueled, dual fuel or multi fuel HLDTs are certified to operate on gasoline, the manufacturer may choose to comply with the next numerically higher NMOG standard (if there is one) above the bin which contains the standards selected for certification on the gaseous or alcohol fuel.

(3) *Fleet average NO_X standards for interim non-Tier 2 LDV/Ts.* (i) Manufacturers must comply with a fleet average full useful life NO_X standard for their interim non-Tier 2 LDV/LLDTs, on an annual basis, of 0.30 grams per mile.

(ii) Manufacturers must comply with a fleet average full useful life NO_X standard for their interim non-Tier 2 HLDTs, excluding those HLDTs not yet covered by the phase-in requirement described in paragraph (l)(2)(ii) of this section, on an annual basis, of 0.20 grams per mile.

(iii) Manufacturers must determine their compliance with these interim fleet average NO_X standards for each model year by separately computing the sales weighted average NO_X level of all interim non-Tier 2 LDV/LLDTs and all interim non-Tier 2 HLDTs (excluding those not yet phased in as described in paragraph (l)(2)(ii) of this section), using the methodology in § 86.1860.

(iv) Manufacturers may generate, bank, average, trade and use interim non-Tier 2 NO_X credits based on their NO_X fleet average as determined under paragraph (l)(3)(iii) of this section. Unless waived or modified by the Administrator, the provisions of § 86.1861 apply to the generation, banking, averaging, trading and use of credits generated by interim non-Tier 2 LDV/Ts. NO_X credits generated by interim non-Tier 2 LDV/Ts are not subject to any discount.

(m) *NMOG standards for diesel, flexible fueled and dual-fueled LDV/Ts.* (1) For diesel fueled LDV/Ts, the term "NMOG" in both the Tier 2 and interim non-Tier 2 standards means non-methane hydrocarbons.

(2) Flexible-fueled and dual-fuel Tier 2 LDV/Ts and interim non-Tier 2 LDV/Ts must be certified to NMOG exhaust emission standards both for operation on gasoline and on any alternate fuel they are designed to use.

(n) *Hybrid electric vehicle (HEV) and Zero Emission Vehicle (ZEV) requirements.* For FTP and SFTP exhaust emissions, and unless otherwise approved by the Administrator, manufacturers must measure emissions from all HEVs and ZEVs according to the requirements and test procedures found in the document entitled California Zero-Emission and Hybrid Electric Vehicle Exhaust Emission Standards and Test Procedures for 2003 and Subsequent Model Passenger Cars, Light-duty Trucks and Medium-duty Vehicles. This document is incorporated by reference (see § 86.1) . Requirements and procedures in this document that are relevant only to complying with the California ZEV mandate, computing partial and full ZEV allowance credits, or generating and using ZEV credits, are not relevant to the federal program and may be disregarded. Discussion in that document relevant to fleet average NMOG standards and NMOG credits may also be disregarded.

(o) *NMOG measurement.* (1) Manufacturers must measure NMOG emissions in accordance with Part G of the California Non-Methane Organic Gas Test Procedures. These requirements are incorporated by reference (see § 86.1).

(2) Manufacturers must not apply reactivity adjustment factors (RAFs) to NMOG measurements. See § 86.1841.

(p) *In-use standards for Tier 2 LDV/Ts.* (1) Table S04–13 of this section contains in-use emission standards applicable only to Tier 2 LDV/Ts certified to the bins shown in the table. These standards apply to in-use testing performed by the manufacturer pursuant to regulations at §§ 1845–01, 1845–04 and 1846–01 and to in-use testing performed by EPA. These standards do not apply to certification or Selective Enforcement Auditing.

(2) These standards apply only to Tier 2 LDV/LLDTs produced up through the 2008 model year, and Tier 2 HLDTs produced up through the 2010 model year. These standards are subject to other limitations described in paragraph (p)(3) of this section.

(3) For the first model year and also for the next model year after that, in which a test group of Tier 2 vehicles is certified to a bin of standards to which it has not previously been certified, the standards in Table S04–13 of this section apply for purposes of in-use testing only. The standards apply equally to Tier 2 LDV/Ts produced before, during and after the applicable Tier 2 phase-in period, subject to the model year limitation in paragraph (p)(2) of this section. Table S04–13 follows:

TABLE S04–13.—IN-USE COMPLIANCE STANDARDS FOR TIER 2 VEHICLES (G/MI)

[Certification standards shown for reference purposes]

Bin No.	Durability period (miles)	NO_X in-use	NO_X certification	NMOG in-use	NMOG certification
5,4	50,000	0.07	0.05	n/a	0.075, 0.04
5,4	120,000	0.10	0.07	n/a	0.090, 0.055
3	120,000	0.06	0.04	n/a	0.070
2	120,000	0.03	0.02	0.02	0.010

22. Section 86.1812–01 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1812–01 Emission standards for light-duty trucks 1.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

23. Section 86.1813–01 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1813–01 Emission standards for light-duty trucks 2.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

24. Section 86.1814–02 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1814–02 Emission standards for light-duty trucks 3.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

§ 86.1814–04 [Removed]

25. Section 86.1814–04 is removed.

26. Section 86.1815–02 is amended by adding the following sentence to the end of the introductory text to read as follows:

§ 86.1815–02 Emission standards for light-duty trucks 4.

* * * This section does not apply to 2004 and later model year vehicles, except as specifically referenced by § 86.1811–04.

* * * * *

§ 86.1815–04 [Removed]

27. Section 86.1815–04 is removed.

28. Section 86.1824–01 is amended by adding paragraphs (a)(2)(iii) and (a)(2)(iv) to read as follows:

§ 86.1824–01 Durability demonstration procedures for evaporative emissions.

* * * * *

(a) * * *

(2) * * *

(iii) For gasoline fueled LDV/Ts certified to meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any service accumulation method for evaporative emissions must employ gasoline fuel for the entire service accumulation period which contains ethanol in, at least, the highest concentration permissible in gasoline under federal law and that is

commercially available in any state in the United States. Unless otherwise approved by the Administrator, the manufacturer must determine the appropriate ethanol concentration by selecting the highest legal concentration commercially available during the calendar year before the one in which the manufacturer begins its service accumulation. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to the service accumulation fuel constituents.

(iv) For flexible-fueled, dual-fueled, multi-fueled, ethanol-fueled and methanol-fueled LDV/Ts certified to meet the evaporative emission standards set forth in § 86.1811–04(e)(1), any service accumulation method must employ fuel for the entire service accumulation period which the vehicle is designed to use and which the Administrator determines will have the greatest impact upon the permeability of evaporative and fuel system components. The manufacturer must also provide information acceptable to the Administrator to indicate that the service accumulation method is of sufficient design, duration and severity to stabilize the permeability of all non-metallic fuel and evaporative system components to service accumulation fuel constituents.

* * * * *

29. Section 86.1827–01 is amended by adding paragraph (e) to read as follows:

§ 86.1827–01 Test group determination.

* * * * *

(e) Unless otherwise approved by the Administrator, a manufacturer of hybrid electric vehicles must create separate test groups based on both the type of battery technology employed by the HEV and upon features most related to their exhaust emission characteristics.

30. Section 86.1829–01 is amended by adding paragraph (d) to read as follows:

§ 86.1829–01 Durability and emission testing requirements; waivers.

* * * * *

(d)(1) Beginning in the 2004 model year, the exhaust emissions must be measured from all exhaust emission data vehicles tested in accordance with the federal Highway Fuel Economy Test (HWFET; 40 CFR part 600, subpart B). The oxides of nitrogen emissions measured during such tests must be multiplied by the oxides of nitrogen deterioration factor computed in accordance with § 86.1824–01 and subsequent model year provisions, and then rounded and compared with the applicable emission standard in § 86.1811–04. All data obtained from the testing required under this paragraph (d) must be reported in accordance with the procedures for reporting other exhaust emission data required under this subpart.

(2) In the event that one or more emission data vehicles fail the applicable HWFET standard in § 86.1811–04, the manufacturer may submit to the Administrator engineering data or other evidence showing that the system is capable of complying with the standard. If the Administrator finds, on the basis of an engineering evaluation, that the system can comply with the HWFET standard, he or she may accept the information supplied by the manufacturer in lieu of the test data.

31. Section 86.1837–01 is amended by designating the existing text as paragraph (a) and by adding paragraph (b) to read as follows:

§ 86.1837–01 Rounding of emission measurements.

* * * * *

(b) Fleet average NO_X value calculations, where applicable, must be rounded to one more decimal place than that of the applicable fleet average standard before comparing with the applicable fleet average NO_X standard to determine credit generation or credit needs.

32. Section 86.1838–01 is amended by revising paragraph (c)(2)(iii) to read as follows:

§ 86.1838–01 Small volume manufacturer certification procedures.

* * * * *

(c) * * *

(2) * * *

(iii) The provisions of § 86.1845–01(c)(2) and § 86.1845–04(c)(2) that require one vehicle of each test group during high mileage in-use verification testing to have a minimum odometer mileage of 75 percent of the full useful life mileage for Tier 1 and NLEV LDV/Ts, or 90,000 (or 105,000) miles for Tier 2 and interim non-Tier 2 LDV/Ts, do not apply.

* * * * *

33. Section 86.1840–01 is amended by adding paragraph (c) to read as follows:

§ 86.1840–01 Special test procedures.

* * * * *

(c) Manufacturers of LDV/Ts equipped with periodically regenerating trap oxidizer systems must propose a procedure for testing and certifying such LDV/Ts including SFTP testing for the review and approval of the Administrator. The manufacturer must submit its proposal before it begins any service accumulation or emission testing. The manufacturer must provide with its submittal, sufficient documentation and data for the Administrator to fully evaluate the operation of the trap oxidizer system and the proposed certification and testing procedure.

34. Section 86.1841–01 is amended by revising paragraph (a)(1)(iii) and adding paragraph (e) to read as follows:

§ 86.1841–01 Compliance with emission standards for the purpose of certification.

(a) * * *

(1) * * *

(iii) For the SFTP composite standard of NMHC+NO_X, the measured results of NMHC and NO_X must each be adjusted by their corresponding deterioration factors before the composite NMHC+NO_X certification level is calculated. Where the applicable FTP exhaust hydrocarbon emission standard is an NMOG standard, the applicable NMOG deterioration factor must be used in place of the NMHC deterioration factor, unless otherwise approved by the Administrator.

* * * * *

(e) Unless otherwise approved by the Administrator, manufacturers must not use Reactivity Adjustment Factors (RAFs) in their calculation of the certification levels of any pollutant, regardless of the fuel used in the test vehicle.

35. Section 86.1844–01 is amended by adding a new paragraph (d)(15), a new paragraph (e)(6) and a new paragraph (i) to read as follows:

§ 86.1844–01 Information requirements: Application for certification and submittal of information upon request.

* * * * *

(d) * * *

(15) For HEVs, unless otherwise approved by the Administrator, the information required by the "California Zero-Emission and Hybrid Electric Vehicle Standards and Test Procedures for 2003 and Subsequent Model Year Passenger Cars, Light-Duty Trucks and Medium-duty Vehicles" must be supplied. These procedures are incorporated by reference (see § 86.1).

(e) * * *

(6) The NMOG/NMHC and formaldehyde to NMHC ratios established according to § 86.1845–04.

* * * * *

(i) For exhaust emission testing for Tier 2 and interim non-Tier 2 LDV/Ts, if approved by the Administrator in advance, manufacturers may submit exhaust emission test data generated

under California test procedures to comply with any certification and in-use testing requirements under this subpart. The Administrator may require supporting information to establish that differences between California and Federal exhaust testing procedures and fuels will not produce significant differences in emission results. The Administrator may require that in-use testing be performed using Federal test fuels as specified in § 86.113–04(a)(1).

36. Section 86.1845–04 is amended by redesignating the text of paragraph (a) after the paragraph heading as paragraph (a)(1), adding paragraph (a)(2), revising paragraph (c)(2) and adding paragraph (f) to read as follows:

§ 86.1845–04 Manufacturer in-use verification testing requirements.

(a) *General requirements.* (1) * * *

(2) Unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

* * * * *

(c) * * *

(2) Vehicle mileage:

(i) All test vehicles must have a minimum odometer mileage of 50,000 miles. At least one vehicle of each test group must have a minimum odometer mileage of 75 percent of the full useful life mileage. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements; or

(ii) For engine families certified for a useful life of 150,000 miles, at least one vehicle must have a minimum odometer mileage of 105,000 miles. See § 86.1838–01(c)(2) for small volume manufacturer mileage requirements.

* * * * *

(f)(1) As an alternative to measuring the NMOG content, the Administrator may approve, upon submission of supporting data by a manufacturer, the use of NMOG to NMHC ratios. To request the use of NMOG to NMHC ratios, a manufacturer must establish during certification testing the ratio of measured NMOG exhaust emissions to measured NMHC exhaust emissions for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator in the Part II application for certification. A manufacturer may conduct in-use testing on the test group by measuring NMHC exhaust emissions rather than NMOG exhaust emissions. After approval by the Administrator, the measured NMHC exhaust emissions must be multiplied by the NMOG to NMHC ratio submitted in the application for certification for the test group to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the emission bin to which the test group was certified.

(2) For flexible-fueled LDV/Ts certified to NMOG standards, the manufacturer may request from the Administrator the use of a methanol (M85) or ethanol (E85) NMOG exhaust emission to gasoline NMHC exhaust emission ratio which must be established during certification for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator in the Part II application for certification. After approval by the Administrator, the measured gasoline NMHC exhaust emissions must be multiplied by the M85 or E85 NMOG to gasoline NMHC ratio submitted in the application for certification for the test group to determine the equivalent NMOG exhaust emission values for the test vehicle. The equivalent NMOG exhaust emission value must be used in place of the measured NMOG exhaust emission value in determining the exhaust NMOG results. The equivalent NMOG exhaust emission values must be compared to the NMOG exhaust emission standard from the vehicle emission standard bin to which the test group was certified.

(3) As an alternative to measuring the HCHO content, the Administrator may approve, upon submission of supporting data by a manufacturer, the use of HCHO to NMHC ratios. To request the use of HCHO to NMHC ratios, the manufacturer must establish during certification testing the ratio of measured HCHO exhaust emissions to measured NMHC exhaust emissions for each emission data vehicle for the applicable test group. The results must be submitted to the Administrator with the Part II application for certification. Following approval of the application for certification, the manufacturer may conduct in-use testing on the test group by measuring NMHC exhaust emissions rather than HCHO exhaust emissions. The measured NMHC exhaust emissions must be multiplied by the HCHO to NMHC ratio submitted in the application for certification for the test group to determine the equivalent HCHO exhaust emission values for the test vehicle. The equivalent HCHO exhaust emission values must be compared to the HCHO exhaust emission standard applicable to the test group.

37. Section 86.1846–01 is amended by redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to read as follows:

§ 86.1846–01 Manufacturer in-use confirmatory testing requirements.

(a)(1) * * *

(2) Except for vehicles certified under the NLEV provisions of subpart R of this part or unless otherwise approved by the Administrator, no emission measurements made under the requirements of this section may be adjusted by Reactivity Adjustment Factors (RAFs).

* * * * *

38. Section 86.1848–01 is amended by adding paragraph (c)(7) to read as follows:

§ 86.1848–01 Certification.

* * * * *

(c) * * *

(7) For Tier 2 LDV/Ts and interim non-Tier 2 LDV/Ts, all certificates of conformity issued are conditional upon compliance with all provisions of §§ 86.1811–04, 86.1860–04, 86.1861–04 and 86.1862–04 both during and after model year production.

(i) Failure to meet the fleet average NO_X requirements of 0.07g/mi, 0.30 g/mi or 0.20 g/mi, as applicable, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the LDV/Ts sold in violation of the fleet average NO_X standard will not be covered by the certificate(s).

(ii) Failure to comply fully with the prohibition against selling credits that it has not generated or that are not available, as specified in § 86.1861–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the LDV/Ts sold in violation of this prohibition will not be covered by the certificate(s).

(iii) Failure to comply fully with the phase-in requirements of § 86.1811–04, will be considered to be a failure to satisfy the terms and conditions upon which the certificate(s) was (were) issued and the LDV/Ts sold which do not comply with Tier 2 or interim non-Tier 2 requirements, up to the number needed to comply, will not be covered by the certificate(s).

(iv) For paragraphs (c)(7) (i) through (iii) of this section:

(A) The manufacturer must bear the burden of establishing to the satisfaction of the Administrator that the terms and conditions upon which the certificate(s) was (were) issued were satisfied.

(B) For recall and warranty purposes, LDV/Ts not covered by a certificate of conformity will continue to be held to the standards stated or referenced in the certificate that otherwise would have applied to the LDV/Ts

* * * * *

§§ 86.1854 through 86.1859 [Reserved]

39. Sections 86.1854 through 86.1859 are added and reserved.

40. Section 86.1860–04 is added to read as follows:

§ 86.1860–04 How to comply with the Tier 2 and interim non-Tier 2 fleet average NO_X standards.

(a) The fleet average standards referred to in this section are the corporate fleet average standards for FTP exhaust NO_X emissions set forth in: § 86.1811–04(d) for Tier 2 LDV/Ts (0.07 g/mi); § 86.1811–04(l)(3) for interim non-Tier 2 LDV/LLDTs (0.30 g/mi); and, § 86.1811–04(l)(3) for interim non-Tier 2 HLDTs (0.20 g/mi). Unless otherwise indicated in this section, the provisions of this section apply to all three corporate fleet average standards, except that the interim non-Tier 2 fleet average NO_X standards do not apply to a manufacturer whose U.S. LDV/T sales are 100% Tier 2 LDV/Ts.

(b) Each manufacturer must comply with the applicable fleet average NO_X standard, or standards, on a sales weighted average basis, at the end of each model year, using the procedure described in this section.

(c)(1)(i) Each manufacturer must separately compute the sales weighted averages of the individual NO_X emission standards to which it certified all its Tier 2 LDV/Ts, interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 HLDTs of a given model year as described in § 86.1804(l)(2). The averages must be rounded to the same number of decimal places as those of the standard plus one additional decimal place.

(ii) For model years up to and including 2008, manufacturers must compute separate NO_X fleet averages for Tier 2 LDV/LLDTs and Tier 2 HLDTs.

(2)(i) For model years up to and including 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 or interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDTs, to full useful life bins having NO_X standards at or below the applicable fleet average NO_X standard, that manufacturer may elect not to compute a fleet average NO_X level for that category of vehicles. A manufacturer making such an election must not generate NO_X credits for that category of vehicles for that model year.

(ii) For model years after 2008, if a manufacturer certifies its entire U.S. sales of Tier 2 vehicles to full useful life bins having NO_X standards at or below 0.07 gpm, that manufacturer may elect not to compute a fleet average NO_X level for its Tier 2 vehicles. A manufacturer making such an election must not generate NO_X credits for that model year.

(d) The sales weighted NO_X fleet averages determined pursuant to paragraph (c) of this section must be compared with the applicable fleet average standard; 0.07 g/mi for NO_X for Tier 2 LDV/Ts, 0.30 g/mi for NO_X for interim non-Tier 2 LDV/LLDTs, and 0.20 g/mi for NO_X for interim non-Tier 2 HLDTs. Each manufacturer must comply on an annual basis with the fleet average standards by:

(1) showing that its sales weighted average NO_X emissions of its LDV/LLDTs, HLDTs or LDV/Ts, as applicable, are at or below the applicable fleet average standard; or

(2) if the sales weighted average is not at or below the applicable fleet average standard, obtaining and applying sufficient Tier 2 NO_X credits, interim non-Tier 2 LDV/LLDT NO_X credits or interim non-Tier 2 HLDT NO_X credits as permitted under § 86.1861–04 of this part. Manufacturers may not use NMOG credits generated under the NLEV program in subpart R of this part to meet any Tier 2 or interim non-Tier 2 NO_X fleet average standard. Tier 2 NO_X credits may not be used to meet any fleet average interim non-Tier 2 NO_X standard. Interim non-Tier 2 NO_X credits may not be used to meet the Tier 2 corporate average NO_X standard. Interim non-Tier 2 NO_X credits from HLDTs may not be used to meet the fleet average NO_X standard for interim non-Tier 2 LDV/LLDTs, and interim non-Tier 2 credits from LDV/LLDTs may not be used to meet the fleet average NO_X standard for interim non-Tier 2 HLDTs.

(e) Manufacturers that can not meet the requirements of paragraph (d) of this section, may carry forward a credit deficit for one model year, but may not carry a deficit forward in two consecutive model years, except that manufacturers may carry forward a credit deficit for interim non-Tier 2 LDV/LLDTs or interim non-Tier 2 HLDTs for more than one year but must cover the LDV/LLDT credit deficit with interim non-Tier 2 LDV/LLDT NO_X credits by the end of model year 2006, and any interim non-Tier 2 HLDT deficit with interim non-Tier 2 HLDT NO_X credits by the end of model year 2008. No deficit from interim non-Tier 2 LDV/LLDTs of any model year may be carried forward into the 2007 model year. No deficit from interim non-Tier 2 HLDTs may be carried forward into the 2009 model year.

(f) *Computing fleet average NO_X emissions.* (1) Manufacturers must separately compute these fleet NO_X averages using the equation contained in paragraph (f)(2) of this section:

(i) Their Tier 2 LDV/LLDT and Tier 2 HLDT fleet average NO_X emissions for each model year through 2008;

(ii) Their Tier 2 LDV/T fleet average NO_X emissions for each model year after 2008;

(iii) Their interim non-Tier 2 LDV/LDT fleet average NO_X emissions for each model year through 2006; and

(iv) Their interim non-Tier 2 HLDT fleet average NO_X emissions for each model year through 2008.

(2) The equation for computing fleet average NO_X emissions is as follows:

$$\frac{\sum(N \times NO_X \text{ emission standard})}{\text{Total number of LDV/Ts sold including HEVs and ZEVs}}$$

Where:

N = The number of LDV/Ts sold in the applicable category that were certified for each corresponding NO_X emission bin. N must be based on LDV/Ts counted to the point of first sale.

Emission standard = The individual full useful life NO_X emission standard for each bin for which the manufacturer had sales.

(3) The results of the calculation in paragraph (f)(2) of this section must be rounded to one more decimal place than the number of decimal places of the fleet average NO_X standard.

(4) When approved in advance by the Administrator, the numerator in the equation in paragraph (f)(2) of this section may be adjusted downward by the product of the number of HEVs from each NO_X emission bin times a HEV NO_X contribution factor determined through mathematical estimation of the reduction in NO_X emissions over the

test procedure used to certify the HEVs. The reduction in NO_X emissions must be determined using good engineering judgement and reflect the relation in actual full useful life NO_X emissions to the full useful life NO_X standards for the certification bin applicable to the LDV/Ts. The Administrator may require that calculation of the HEV NO_X contribution factor include vehicle parameters such as vehicle weight, portion of time during the test procedure that the HEV operates with zero exhaust emissions, zero emission range, NO_X emissions from fuel-fired heaters and NO_X emissions from electricity production and storage.

(g) Additional credits for LDV/Ts certified to 150,000 mile useful lives. A manufacturer may certify any Tier 2 test group to an optional useful life of 150,000 miles. For any test group certified to the optional 150,000 mile useful life, the manufacturer, when calculating its fleet average by the procedure in paragraph (f) of this section, may substitute an adjusted NO_X standard for the applicable NO_X standards from the full useful life certification bin. The adjusted standard must be equal to the applicable full useful life NO_X standard multiplied by 0.85 and rounded to the same number of decimal places as the applicable full useful life NO_X standard.

41. Section 86.1861–04 is added to read as follows:

§ 86.1861–04 How do the Tier 2 and interim non-Tier 2 NO_X averaging, banking and trading programs work?

(a) *General provisions for Tier 2 credits and debits.* (1) A manufacturer whose Tier 2 fleet average NO_X emissions exceeds the 0.07 g/mile standard must complete the calculation at paragraph (b) of this section to determine the size of its NO_X credit deficit. A manufacturer whose Tier 2 fleet average NO_X emissions is less than or equal to the 0.07 g/mile standard must complete the calculation in paragraph (b) of this section if it desires to generate NO_X credits. In either case, the number of credits or debits determined in the calculation at paragraph (b) of this section must be rounded to the nearest whole number.

(2) Credits generated according to the calculation in paragraph (b)(1) of this section may be banked for future use or traded to another manufacturer.

(3) NO_X credits are not subject to any discount or expiration date.

(4) If a manufacturer calculates that it has negative credits (debits or a credit deficit) for a given model year, it must obtain sufficient credits from LDV/Ts produced by itself or another manufacturer in a model year no later than the one following the model year for which it calculated the credit deficit. (*Example:* if a manufacturer calculates that it has a NO_X credit deficit for the 2008 model year, it must obtain sufficient NO_X credits to offset that deficit from its own production or that of other manufacturers' 2009 or earlier model year LDV/Ts.)

(5) A manufacturer must not have a NO_X credit deficit for any two consecutive model years. (*Example:* A manufacturer that has a NO_X credit deficit at the end of the 2008 model year from its 2008 production that it can not offset with NO_X credits from 2008 or earlier model year LDV/Ts as allowed under this subpart, must not also have a NO_X credit deficit at the end of the 2009 model year.)

(6) Manufacturers may not use NO_X credits generated in the Tier 2 program to comply with the NLEV requirements of subpart R of this part. Manufacturers may not use NMOG credits generated by vehicles certified to the NLEV requirements of subpart R of this part to comply with any NO_X requirements of this subpart. Manufacturers may not use NO_X credits generated by interim non-Tier 2 LDV/Ts to comply with the corporate average NO_X standard for Tier 2 LDV/Ts. Manufacturers may not use NO_X credits generated by Tier 2 LDV/Ts to comply with any corporate average NO_X standard for interim non-Tier 2 LDV/Ts. Manufacturers may not use NO_X credits generated by interim non-Tier 2 LDV/LLDTs to comply with the corporate average NO_X standard for interim non-Tier 2 HLDTs. Manufacturers may not use NO_X credits generated by interim non-Tier 2 HLDTs to comply with the corporate average NO_X standard for interim non-Tier 2 LDV/LLDTs.

(7) Manufacturers may bank Tier 2 NO_X credits for later use to meet the Tier 2 corporate average NO_X standard or trade them to another manufacturer. Credits are earned on the last day of the model year. Before trading or carrying over credits to the next model year, a manufacturer must apply available credits to offset any credit deficit, where the deadline to offset that credit deficit has not yet passed.

(8) There are no property rights associated with NO_X credits generated under this subpart. Credits are a limited authorization to emit the designated amount of emissions. Nothing in this part or any other provision of law should be construed to limit EPA's authority to terminate or limit this authorization through a rulemaking.

(b) *Calculating Tier 2 credits and debits.* (1) Manufacturers that achieve fleet average NO_X values from the calculation in § 86.1860–04(f), lower than the applicable fleet average NO_X standard, may generate credits for a given model year, in units of vehicle-g/mi NO_X, determined in this equation:

[(Fleet Average NO_X Standard) – (Manufacturer's Fleet Average NO_X Value)] × (Total number of Tier 2 LDV/Ts Sold, Including ZEVs and HEVs)

Where: The number of Tier 2 LDV/Ts sold is based on the point of first sale and does not include vehicles sold in California or a state that adopts, and has in effect for that model year, California emission requirements.

(2) Where the result of the calculation in paragraph (b)(1) of this section is a negative number, the manufacturer must generate negative NO_X credits (debits).

(c) *Early banking.* (1)(i) Manufacturers may certify LDV/LLDTs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2001–2003 in order to bank credits for use in the 2004 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811–04.

(ii) Manufacturers may certify HLDTs to the Tier 2 FTP exhaust standards in § 86.1811–04 for model years 2004–2007 in order to bank credits for use in the 2008 and later model years. Such vehicles must also meet SFTP exhaust emission standards specified in § 86.1811–04.

(iii) This process is referred to as "early banking" and the resultant credits are referred to as "early credits". In order to bank early credits, a manufacturer must comply with all exhaust emission standards and requirements applicable to Tier 2 LDV/LLDTs and/or HLDTs, as applicable, except as allowed under paragraph (c)(4) of this section.

(2) To generate early credits, a manufacturer must separately compute the sales weighted NO_X average of the LDV/LLDTs and HLDTs it certifies to the Tier 2 exhaust requirements and separately compute credits using the calculations in this section and in § 86.1860–04.

(3) Early HLDT credits may not be applied to LDV/LLDTs before the 2009 model year. Early LDV/LLDT credits may not be applied to HLDTs before the 2009 model year.

(4) Manufacturers may generate early Tier 2 credits from LDVs, LDT1s and LDT2s that are certified to a full useful life of 100,000 miles, provided that the credits are prorated by a multiplicative factor of 0.833 (the quotient of 100,000/120,000). Where a manufacturer has

both 100,000 and 120,000 mile full useful life vehicles for which it desires to bank early credits, it must compute the credits from each group of vehicles separately and then add them together.

(5) Manufacturers may bank early credits for later use to meet the Tier 2 corporate average NO_X standard or trade them to another manufacturer subject to the restriction in paragraph (c)(3) of this section.

(6) Early credits may not be used to comply with the corporate average NO_X standards for interim non-Tier 2 LDV/Ts.

(d) *Reporting and recordkeeping for Tier 2 NO_X credits* including early credits. Each manufacturer must comply with the reporting and recordkeeping requirements of § 86.1862–04.

(e) *Fleet average NO_X debits.* (1) Manufacturers must offset any debits for a given model year by the fleet average NO_X reporting deadline for the model year following the model year in which the debits were generated. Manufacturers may offset debits by generating credits or acquiring credits generated by another manufacturer.

(2)(i) Failure to meet the requirements of paragraphs (a) through (d) of this section within the required timeframe for offsetting debits will be considered to be a failure to satisfy the conditions upon which the certificate(s) was issued and the individual noncomplying LDV/Ts not covered by the certificate must be determined according to this section.

(ii) If debits are not offset within the specified time period, the number of LDV/Ts not meeting the fleet average NO_X standards and not covered by the certificate must be calculated by dividing the total amount of debits for the model year by the fleet average NO_X standard applicable for the model year in which the debits were first incurred.

(iii) EPA will determine the LDV/Ts for which the condition on the certificate was not satisfied by designating LDV/Ts in those engine families with the highest certification NO_X emission values first and continuing until a number of LDV/Ts equal to the calculated number of noncomplying LDV/Ts as determined above is reached. If this calculation determines that only a portion of LDV/Ts in an engine family contribute to the debit situation, then EPA will designate actual LDV/Ts in that engine family as not covered by the certificate, starting with the last vehicle produced and counting backwards.

(3) If a manufacturer ceases production of LDV/Ts or is purchased by, merges with or otherwise combines with another manufacturer, the manufacturer continues to be responsible for offsetting any debits outstanding within the required time period. Any failure to offset the debits will be considered to be a violation of paragraph (e)(1) of this section and may subject the manufacturer to an enforcement action for sale of LDV/Ts not covered by a certificate, pursuant to paragraph (e)(2) of this section.

(4) For purposes of calculating the statute of limitations, a violation of the requirements of paragraph (e)(1) of this section, a failure to satisfy the conditions upon which a certificate(s) was issued and hence a sale of LDV/Ts not covered by the certificate, all occur upon the expiration of the deadline for offsetting debits specified in paragraph (e)(1) of this section.

(f) *NO_X* credit transfers. (1) EPA may reject NO_X credit transfers if the involved manufacturers fail to submit the credit transfer notification in the annual report.

(2) A manufacturer may not sell credits that are not available for sale pursuant to the provisions in paragraphs (a)(2) and (a)(7) of this section.

(3) In the event of a negative credit balance resulting from a transaction, both the buyer and seller are liable, except in cases involving fraud. EPA may void *ab initio* the certificates of conformity of all engine families participating in such a trade.

(4)(i) If a manufacturer transfers a credit that it has not generated pursuant to paragraph (b) of this section or acquired from another party, the manufacturer will be considered to have generated a debit in the model year that the manufacturer transferred the credit. The manufacturer must offset such debits by the deadline for the annual report for that same model year.

(ii) Failure to offset the debits within the required time period will be considered a failure to satisfy the conditions upon which the certificate(s) was issued and will be addressed pursuant to paragraph (e) of this section.

(g) *Interim non-Tier 2 NO_X* credits and debits; Interim non-Tier 2 averaging, banking and trading. Interim non-Tier 2 NO_X credits must be generated, calculated, tracked, averaged, banked, traded, accounted for and reported upon separately from Tier 2 credits. The provisions of this section applicable to Tier 2 NO_X credits and debits and Tier 2 averaging banking and trading are applicable to interim non-Tier 2 LDV/Ts with the following exceptions:

(1) Provisions for early banking under paragraph (c) of this section do not apply.

(2) The fleet average NO_X standard used for calculating credits is 0.30 grams per mile for interim non-Tier 2 LDV/LLDTs and 0.20 g/mi for interim non-Tier 2 HLDTs. (The interim non-Tier 2 NO_X standard of 0.30 (or 0.20) g/mi replaces 0.07 in the text and calculation in this section.)

(3) Interim non-Tier 2 NO_X credit deficits may be carried forward for more than one year, except that all credit deficits must be reduced to zero for interim non-Tier 2 LDV/LLDTs by the end of the 2006 model year, and by the end of the 2008 model year for interim non-Tier 2 HLDTs.

42. Section 86.1862–04 is added to read as follows:

§ 86.1862–04 Maintenance of records and submittal of information relevant to compliance with fleet average NO_X standards.

(a) *Maintenance of records.* (1) The manufacturer producing any light-duty vehicles and/or light-duty trucks subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each model year:

(i) Model year;

(ii) Applicable fleet average NO_X standard: 0.07g/mi for Tier 2 LDV/Ts; 0.30 g/mi for interim non-Tier 2 LDV/LLDTs; or 0.20 g/mi for interim non-Tier 2 HLDTs;

(iii) Fleet average NO_X value achieved; and

(iv) All values used in calculating the fleet average NO_X value achieved.

(2) The manufacturer producing any LDV/Ts subject to the provisions in this subpart must establish, maintain, and retain the following information in adequately organized and indexed records for each LDV/T subject to this subpart:

(i) Model year;

(ii) Applicable fleet average NO_X standard;

(iii) EPA test group;

(iv) Assembly plant;

(v) Vehicle identification number;

(vi) NO_X standard to which the LDV/T is certified; and

(vii) Information on the point of first sale, including the purchaser, city, and state.

(3) The manufacturer must retain all records required to be maintained under this section for a period of eight years from the due date for the annual report. Records may be retained as hard copy or reduced to microfilm, ADP diskettes, and so forth, depending on the manufacturer's record retention procedure; provided, that in every case all information contained in the hard copy is retained.

(4) Nothing in this section limits the Administrator's discretion to require the

manufacturer to retain additional records or submit information not specifically required by this section.

(5) Pursuant to a request made by the Administrator, the manufacturer must submit to the Administrator the information that the manufacturer is required to retain.

(6) EPA may void *ab initio* a certificate of conformity for a LDV/T certified to emission standards as set forth or otherwise referenced in this subpart for which the manufacturer fails to retain the records required in this section or to provide such information to the Administrator upon request.

(b) *Reporting.* (1) Each covered manufacturer must submit an annual report. Except as provided in paragraph (b)(2) of this section, the annual report must contain, for each applicable fleet average NO_X standard, the fleet average NO_X value achieved, all values required to calculate the NO_X value, the number of credits generated or debits incurred, and all the values required to calculate the credits or debits. The annual report must contain the resulting balance of credits or debits.

(2) When a manufacturer calculates compliance with the fleet average NO_X standard using the provisions in § 86.1860–04(c)(2), then the annual report must state that the manufacturer has elected to use such provision and must contain the fleet average NO_X standard as the fleet average NO_X value for that model year.

(3) For each applicable fleet average NO_X standard, the annual report must also include documentation on all credit transactions the manufacturer has engaged in since those included in the last report. Information for each transaction must include:

(i) Name of credit provider;

(ii) Name of credit recipient;

(iii) Date the transfer occurred;

(iv) Quantity of credits transferred; and

(v) Model year in which the credits were earned.

(4) Unless a manufacturer reports the data required by this section in the annual production report required under § 86.1844–01(e) and subsequent model year provisions, a manufacturer must submit an annual report for each model year after production ends for all affected vehicles and trucks produced by the manufacturer subject to the provisions of this subpart and no later than May 1 of the calendar year following the given model year. Annual reports must be submitted to: Director, Vehicle Programs and Compliance Division, U.S. Environmental Protection Agency, 2000 Traverwood, Ann Arbor, Michigan 48105.

(5) Failure by a manufacturer to submit the annual report in the specified time period for all vehicles and trucks subject to the provisions in this section is a violation of section 203(a)(1) of the Clean Air Act for each subject vehicle and truck produced by that manufacturer.

(6) If EPA or the manufacturer determines that a reporting error occurred on an annual report previously submitted to EPA, the manufacturer's credit or debit calculations will be recalculated. EPA may void erroneous credits, unless transferred, and must adjust erroneous debits. In the case of transferred erroneous credits, EPA must adjust the manufacturer's credit or debit balance to reflect the sale of such credits and any resulting generation of debits.

(c) *Notice of opportunity for hearing.* Any voiding of the certificate under paragraph (a)(6) of this section will be made only after EPA has offered the manufacturer concerned an opportunity for a hearing conducted in accordance with § 86.614 for light-duty vehicles or § 86.1014 for light-duty trucks and, if a manufacturer requests such a hearing, will be made only after an initial decision by the Presiding Officer.

[FR Doc. 99–11384 Filed 5–6–99; 11:03 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 80 and 86

[AMS–FRL–6337–4]

RIN 2060–AI32

Control of Diesel Fuel Quality

AGENCY: Environmental Protection Agency.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: Diesel engines used in motor vehicles and nonroad equipment are a major source of nitrogen oxides and particulate matter, both of which contribute to serious health problems in the United States. We are considering setting new quality requirements for fuel used in diesel engines, in order to bring about large environmental benefits through the enabling of a new generation of diesel emission control technologies.

Because the pursuit of diesel fuel quality changes would be a major undertaking for the Agency and affected industries, and because of the many unresolved issues involved, we are publishing this advance notice to summarize the issues, with the goal of helping you to better inform us as we consider how to proceed. To aid this process, we have grouped key questions under issue topic headings that are numbered sequentially throughout this notice.

Although this advance notice solicits comment on all potentially beneficial diesel fuel quality changes, we believe that the most promising change would be fuel desulfurization for the purpose of enabling new engine and aftertreatment technologies that, although highly effective, are sensitive to sulfur.

DATES: You should submit written comments on this advance notice by June 28, 1999.

ADDRESSES: You may submit written comments in paper form and/or by E-mail. To ensure their consideration, all comments must be submitted to us by the date indicated under **DATES** above. Paper copies of comments should be submitted (in duplicate if possible) to Public Docket No. A–99–06 at the following address: U.S. Environmental Protection Agency, Air Docket Section, Room M–1500, 401 M Street, SW, Washington, DC 20460. We request that you also send a separate copy to the contact person listed below. Those submitting a paper copy of their comments are also encouraged to submit an electronic copy (in ASCII format) by E-mail to "A-and-R-Docket@epa.gov", or on a 3.5 inch diskette. You may also submit comments by E-mail to the docket at the address listed above (with a copy to the contact person listed below) without the submission of a paper copy. However, we encourage you to send a paper copy as well to ensure the clarity of your submission.

Materials related to this rulemaking are available for review at EPA's Air Docket at the above address (on the ground floor in Waterside Mall) from 8:00 a.m. to 5:30 p.m., Monday through Friday, except on government holidays. The telephone number for EPA's Air Docket is (202) 260–7548, and the facsimile number is (202) 260–4400. A reasonable fee may be charged by EPA for copying docket materials, as provided in 40 CFR part 2.

FOR FURTHER INFORMATION CONTACT: Carol Connell, U.S. EPA, National Vehicle and Fuels Emission Laboratory, 2000 Traverwood, Ann Arbor, MI 48105; Telephone (734) 214–4349, FAX (734) 214–4050, E-mail connell.carol@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Why Is EPA Considering Diesel Fuel Changes?

II. Diesel Engines and Air Quality

III. Diesel Emissions Control: Progress and Prospects
IV. What Fuel Changes Might Help?
V. Diesel Fuel Quality in the U.S. and Other Countries
VI. Potential Benefits of Reducing Sulfur
VII. Diesel Sulfur Control and Tier 2
VIII. Heavy-Duty Highway Engines
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X. Refinery Impacts and Costs
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I. Why Is EPA Considering Diesel Fuel Changes?

Diesel engines contribute greatly to a number of serious air pollution problems, especially the health and welfare effects of ozone and particulate matter (PM).[1] Millions of Americans live in areas that exceed the national air quality standards for ozone or PM. As discussed in detail in the following section, diesel emissions account for a large portion of the country's PM and nitrogen oxides (NO_X), a key precursor to ozone formation. By 2010, we estimate that diesel engines will account for more than one-half of mobile source NO_X emissions, and nearly 70% of mobile source PM emissions (not taking into account emission reductions from proposed Tier 2 emission standards for light-duty vehicles and trucks, discussed below).

Diesel emissions in this country come mostly from heavy-duty trucks and nonroad equipment, but a potentially large additional source may grow out of auto manufacturers' plans to greatly increase the sales of diesel-powered light-duty vehicles (LDVs) and especially of light-duty trucks (LDTs), a category that includes the fast-selling sport-utility vehicles, minivans, and pickup trucks. These plans will be greatly affected by our own plans to adopt stringent new emission standards for these light-duty highway vehicles (referred to as "Tier 2" standards) that we have proposed to phase in between 2004 and 2009. A key approach taken in developing the Tier 2 standards has been "fuel-neutrality"—applying standards equally to diesel- and gasoline-powered vehicles. As a result, the proposed Tier 2 NO_X and PM standards are far more challenging for diesel engine designers than the most stringent heavy-duty engine standards promulgated to date.

We have proposed Tier 2 standards concurrent with a proposal to reduce the sulfur content of gasoline, in part because gasoline sulfur reduction will enable advanced catalyst technologies needed to achieve the new standards. With this advance notice, we are seeking comment on the merits of improving the quality of diesel fuel as well, as an enabler of advanced technologies for diesel emission control, without which diesel vehicles may not be able to meet Tier 2 standards. These advanced sulfur-sensitive technologies have the potential to reduce diesel engine NO_X emissions by up to 75% and PM emissions by 80% or more.

Thus this potential action on diesel fuel is, like gasoline sulfur control, closely tied to our Tier 2 standard-setting activity. Decisions on diesel fuel quality need to be made quickly so that the Tier 2 program may be implemented in the most coordinated and cost-effective manner. We therefore plan to pursue this action on an accelerated schedule. If, following this advance notice, we decide that a proposal is warranted, we plan to publish a notice of proposed rulemaking later this year, and a final rule as soon as possible after that.

Although the impetus for near-term action on diesel fuel quality comes from our efforts to set fuel-neutral Tier 2 standards for the light-duty market, any emissions control technologies that prove effective in light-duty diesel applications are likely to be effective with heavy-duty highway engines as well. Thus higher quality diesel fuel for heavy-duty applications, combined with more stringent heavy-duty engine emission standards that effectively introduce the new technologies, could provide large environmental benefits, though perhaps on a different implementation schedule than that required for the light-duty program. This might take the form of a phased in program, involving a regulated grade of premium fuel that is initially focused on servicing the light-duty diesel fleet, but that gradually widens its market penetration to fulfill the expanding need created by sales of new heavy-duty vehicles that also employ the advanced technologies. Various possibilities and issues associated with such an approach are discussed in detail below in this notice. In addition to enabling new control technologies, the use of higher quality diesel fuel is likely to improve the emissions performance of the existing fleet of diesel engines as well, as explained below.

Eventually these advanced technologies could also find application in nonroad equipment, although implementation timing would have to consider a number of special challenges in controlling nonroad engine emissions, including the fact that current nonroad diesel fuel is unregulated and has much higher sulfur levels than highway fuel. It may also be necessary to regulate nonroad diesel fuel in an earlier time frame, to a quality level similar to that of current highway fuel (which has sulfur levels capped at 500 parts per million (ppm)), in order to provide for the transfer of advanced highway engine technologies already under development for use with that fuel. This technology transfer is expected to play an important role in the implementation of the recently promulgated Tier 3 nonroad diesel engine emission standards, and of the stringent PM standards planned for promulgation in 2001. (The 2001 rulemaking will also review the feasibility of the recently promulgated Tier 3 standards, and may amend them if appropriate.)

II. Diesel Engines and Air Quality

The diesel engine is increasingly becoming a vital workhorse in the United States, moving much of the nation's freight, and carrying out much of its farm, construction, and other labor. Every year, about a million new diesel engines are put to work in the U.S., and as their utility continues to grow, so too does their annual fuel consumption, now over 40 billion gallons. However, the societal benefits provided by the diesel engine have come at a price—diesels emit millions of tons of harmful exhaust pollutants annually.

Compounding our concerns over emissions from applications in which diesels are currently prevalent, we are aware that manufacturers are considering the introduction of a new generation of diesel engines for use in light-duty highway vehicles. Even at modest projected sales ramp-up rates, this introduction could greatly increase the number of diesel engines in operation over the next several years.

Although in the past much of our attention in addressing the diesel pollution problem has focused on engine design, the role of fuel formulation has been recognized from the beginning. A number of fuel properties and constituents can be varied in the refinery process with varying effects on emissions. Furthermore, some advanced emission control technologies may be degraded by constituents in diesel fuel, even to

[1] In this notice, the term "diesel engine" generally refers to diesel-fueled engines, rather than to engines operating on the diesel combustion cycle, some of which use alternative fuels, such as methanol or natural gas, instead of diesel fuel.

the extent of precluding the use of these technologies.

Diesel engines are large contributors to a number of serious air pollution problems, particularly the health and welfare effects caused by ozone and particulate matter. The particulate from diesel exhaust also is thought to pose a potential cancer risk. These concerns for cancer risk and other adverse health effects are discussed in detail below, followed by a discussion of diesel contributions to emissions inventories.

A. Ozone and Particulate Matter

Ground-level ozone, the main ingredient in smog, is formed when volatile organic compounds (VOC) and NO_X react in the presence of sunlight, usually during hot summer weather. Motor vehicles are significant sources of both VOC and NO_X. Diesel engines, in particular, are significant sources of NO_X emissions. Power plants and other combustion sources also are large emitters of NO_X. VOCs are emitted from a variety of sources, including chemical plants, refineries and other industries, consumer and commercial products, and natural sources such as vegetation.

Particulate matter is the term for a mixture of solid particles and liquid droplets found in the air. Particulate matter is distinguished between "coarse" particles (larger than 2.5 microns) and "fine" particles (smaller than 2.5 microns). Coarse particles generally come from vehicles driven on unpaved roads, materials handling, windblown dust, and crushing and grinding operations. Fine particles result from sources such as fuel combustion (from motor vehicles, power plants and industrial facilities), wood stoves and fireplaces. Fine particles also are formed in the atmosphere from gases such as sulfur dioxide, NO_X and VOC. Particles directly emitted from motor vehicles, including diesel engines, and those formed by motor vehicle gaseous emissions, are in the fine particle range.

Ozone can cause acute respiratory problems, aggravate asthma, cause inflammation in lung tissue, and impair the body's immune system defenses. Particulate matter, especially fine particles, has been linked with a series of significant health problems, including premature death, aggravated asthma, acute respiratory symptoms, chronic bronchitis, and shortness of breath. Furthermore, the particulate matter from diesel engines is thought to pose a potential cancer risk, as discussed in the next section. Fine particles can easily reach the deepest recesses of the lungs. Inhalation of ozone and particulate matter has been associated with increased hospital admissions and emergency room visits. With both ozone and particulate matter, those most at risk are children and people with preexisting health problems, especially asthmatics. Because children's respiratory systems are still developing, they are more susceptible to environmental threats than healthy adults. The elderly also are more at risk from exposure to fine particles, especially those already suffering from heart or lung disease.

In addition to serious public health problems, ozone and particulate matter cause a number of environmental and welfare effects. Fine particles are a major cause of visibility impairment in many of our most treasured national parks and wilderness areas, and many urban areas.[2] Particulate matter also can damage plants and materials such as monuments and statues. Ozone adversely affects crop yield, vegetation and forest growth, and the durability of materials. By weakening sensitive vegetation, ozone makes plants more susceptible to disease, insect attack, harsh weather and other environmental stresses. NO_X itself, one of the key precursors to ozone, contributes to fish kills and algae blooms in the Chesapeake Bay and other sensitive watersheds.

Despite continued improvements in recent years, ozone remains a serious air pollution problem in much of the country. Approximately 48 million people live in the 77 counties where ozone levels exceeded the 1-hour National Ambient Air Quality Standard (NAAQS) in 1997. Moreover, EPA has established a new and more stringent 8-hour ozone standard to better protect Americans from the health and welfare effects associated with longer term exposures to ozone. Ozone and its precursors can be transported into an area from pollution sources found hundreds of miles upwind, resulting in high ozone levels even in areas with relatively low NO_X and VOC emissions. In one of the most significant actions underway to help ensure that many areas of the country are able to attain the new 8-hour ozone standard, EPA is requiring 22 eastern states and the District of Columbia to significantly reduce NO_X emissions from power plants.[3] Yet, even after these significant NO_X emission reductions are achieved, we project that by 2007 approximately 28 metropolitan areas and four rural counties, with a combined population of 80 million people, still will not meet the 8-hour ozone standard, and at least eight metropolitan areas and two rural counties with a combined population of 39 million will exceed the 1-hour ozone standard.[4] The extent of remaining projected ozone nonattainment emphasizes the persistent nature of the ozone air quality problem across much of the country and demonstrates the need for further substantial reductions in ozone's precursors, NO_X and VOC.

In addition to widespread ozone nonattainment, particulate matter continues to be a significant air quality problem. In 1997, 8 million Americans lived in 13 counties that exceeded the air quality standard for particulate matter less than 10 microns in size (PM_{10}). We project that by 2010, 11 counties, with a combined population of about 10 million people, will be in nonattainment for the revised PM_{10} standard.[5] We also have established a new air quality standard for fine particles ($PM_{2.5}$). Monitoring data to determine nonattainment of the new $PM_{2.5}$ standard is not yet available. However, we project that by 2010, 102 counties, with a combined population of 55 million people, will violate the $PM_{2.5}$ air quality standard.[6]

With the significant number of areas projected to exceed the PM_{10} NAAQS in 2010, further particulate emission reductions appear to be needed. Because most of the particulate matter emissions from diesel engines are fine particles, any particulate emission reduction aimed at reducing PM_{10} levels would also reduce ambient $PM_{2.5}$ levels.

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[2] The relative contribution of different particle constituents to visibility impairment varies geographically. For example, in most areas of the eastern U.S., sulfates account for more than 60 percent of annual average light extinction, and nitrates, organic carbon, and elemental carbon account for between 10–15 percent of light extinction. In the rural West, sulfates typically account for about 25–40 percent of light extinction, except in certain areas such as the Cascades of Oregon, where sulfates account for over 50 percent of light extinction. For further discussion of the contribution of different particle constituents to visibility impairment, see EPA's "National Air Quality and Emissions Trends Report, 1997," Chapter 6 (http://www.epa.gov/oar/aqtrnd97).

[3] See 63 FR 57356, October 27, 1998, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone". This action is known as the "NO_X SIP Call'.

[4] For a full description of this analysis, see "Draft Regulatory Impact Analysis—Control of Air Pollution from New Motor Vehicles: Tier 2 Motor Vehicle Emission Standards and Gasoline Sulfur Control Requirements;" Chapter III.B.; (EPA420–R–99–002); hereafter referred to as "Tier 2/Gasoline Sulfur Draft RIA" (EPA Docket A–97–10).

[5] Regulatory Impact Analyses for the Particulate Matter and Ozone National Ambient Air Quality Standards and Proposed Regional Haze Rule, Innovative Strategies and Economics Group, Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, N.C., July 16, 1997.

[6] More information about this analysis may be found in the Tier 2 Notice of Proposed Rulemaking preamble and the Tier 2/Gasoline Sulfur Draft RIA.

B. Air Toxics

Diesel exhaust PM typically consists of a solid core, composed mainly of elemental carbon, which has a coating of various organic and inorganic compounds. The diameter of diesel particles is very small with typically 75–95 percent of the particle mass having a diameter smaller than 1.0 μm. The characteristically small particle size increases the likelihood that the particles and the attached compounds will reach and lodge in the deepest and more sensitive areas of the human lung. Both the diesel particle and the attached compounds may be influential in contributing to a potential for human health hazard from long term exposure.

EPA's draft Diesel Health Assessment identifies lung cancer as well as several other adverse respiratory health effects, including respiratory tract irritation, immunological changes, and changes in lung function, as possible concerns for long term exposure to diesel exhaust. The evidence in both cases comes from the studies involving occupational exposures and/or high exposure animal studies; the Health Assessment, when completed, will recommend how the data should be interpreted for lower environmental levels of exposure. The draft Health Assessment is currently being revised to address comments from a peer review panel of the Clean Air Science Advisory Committee.

The California Air Resources Board has identified diesel exhaust PM as a "toxic air contaminant" under the state's air toxics program, based on the information available on cancer and non-cancer health effects.[7] California is in the process of determining the need for, and appropriate degree of, control measures for diesel exhaust PM. Note that California limited its finding to diesel PM, as opposed to diesel exhaust. EPA's assessment activities of diesel exhaust PM are coincident with, but independent from, California's evaluation.

The concerns for cancer risk and other adverse health effects from exposure to diesel PM are heightened by the potential expansion of diesels in the light-duty vehicle fleet. Diesel engines are used in a relatively small number of cars and light-duty trucks today. By far, heavy-duty highway and nonroad diesel engines are the larger sources of diesel PM. However, vehicle and engine manufacturers project that diesel engines likely will be used in an increasing share of the light-duty fleet, particularly light-duty trucks. If these projections prove accurate, the potential health risks from diesel PM could increase substantially. EPA's proposed emission standard for PM under the Tier 2 program would limit any increase in potential cancer risks associated with the potential increase in light-duty diesel sales.

C. Diesel Contribution to Emission Inventories

The diesel engine pollutants of most concern are NO_X and PM. Nitrogen and oxygen in the engine's intake air react together in the combustion chamber at high temperatures to form NO_X. Particulate emissions result from incomplete evaporation and burning of the fine fuel droplets which are injected into the combustion chamber, as well as small amounts of lubricating oil that enter the combustion chamber. The VOC emissions from diesel engines are inherently low, because the fuel burns in the presence of excess oxygen which tends to completely burn hydrocarbons.[8] Evaporative emissions also are insignificant due to the low evaporative rate of diesel fuel.

Diesel engines make up a significant portion of the NO_X and PM from mobile sources. Moreover, the contribution of diesel engines to air pollutant emission inventories is expected to grow as more light-duty diesel vehicles and trucks enter the market. The emission inventory discussed below is the same as the "base case" prepared for the Tier 2 proposed rulemaking.[9] This inventory accounts for emission standards that have been promulgated already for each of the vehicle categories (e.g., light-duty, heavy-duty highway and nonroad), but does not include the impact of proposed light-duty Tier 2 standards. The Tier 2 standards would tend to decrease the relative contribution of light-duty emissions in the inventory, and thus increase the heavy-duty and nonroad relative contributions. On the other hand, substantial growth in light-duty diesel sales would tend to substantially increase the light-duty vehicle PM inventory, because diesels emit more PM than the gasoline vehicles they replace. Although the fuel-neutral Tier 2 standards would tend to mitigate this impact, growth in diesel sales, especially before and during the phase-in years of the proposed Tier 2 program, would still tend to increase the light-duty PM inventories. These considerations are important in assessing how the focus for diesel fuel control may shift in the future, beyond the 2007–2010 base case view. The inventory is reported in the 2007–2010 time frame because those dates are important for State Implementation Plan purposes in attaining the ozone and PM NAAQS.[10]

Mobile source emissions account for almost one-half of all NO_X emissions nationwide. By 2010, mobile source NO_X emissions will total more than 7.8 million tons. As shown in Figure 1, by 2010, we project that all diesel engines combined will account for 53% (4.1 million tons) of mobile source NO_X emissions. Heavy-duty diesels account for 15% of the mobile source contribution, and nonroad diesels account for 38%.[11] Light-duty vehicles and trucks account for 40% of mobile source NO_X emissions. Currently, almost all of the light-duty fleet is fueled by gasoline, and less than 1% of the NO_X emissions come from light-duty diesels. In the 2007 inventory, the proportion of NO_X emissions from these various vehicle categories is similar.

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[7] State of California, Air Resources Board, Resolution 98–35, August 27, 1998.

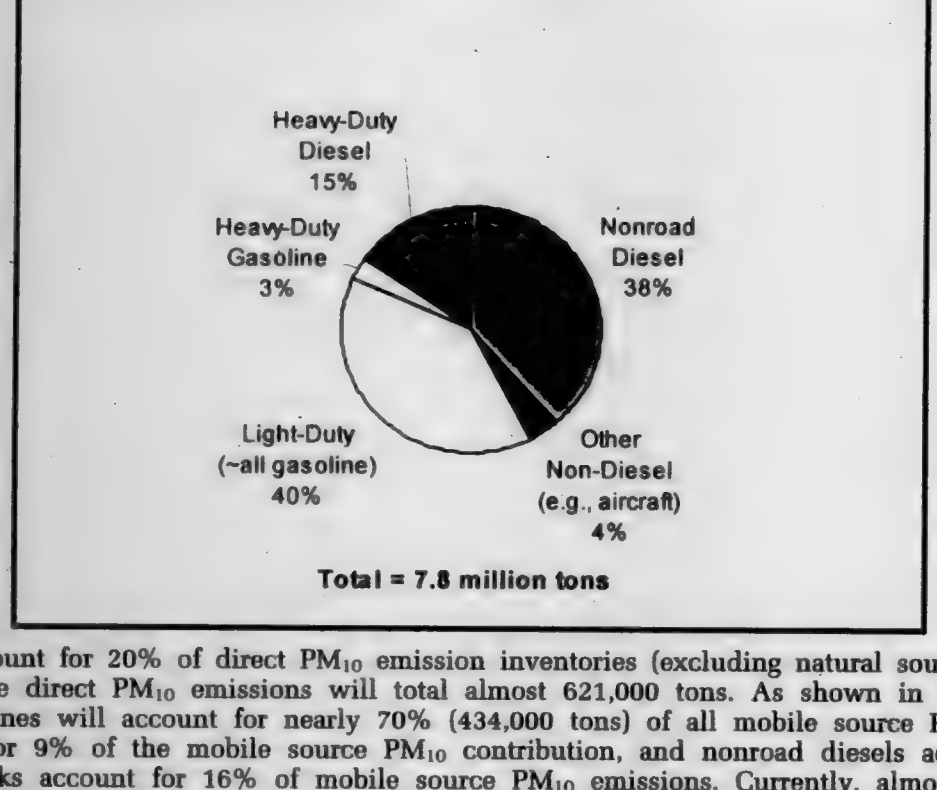
[8] Motor vehicles' contribution to the VOC inventory typically consists of unburned fuel hydrocarbons in the exhaust and evaporative emissions from vehicle fuel systems.

[9] For a further description of the emissions inventory, see Tier 2/Gasoline Sulfur Draft RIA; Chapter III.A. (EPA Docket A–97–10). Note that this is a 47-state emissions inventory, which excludes California, Alaska, and Hawaii.

[10] For further discussion on key ozone/PM State Implementation Plan timelines and attainment dates, see Section III.A. of the preamble to the Tier 2/Gasoline Sulfur proposed rule.

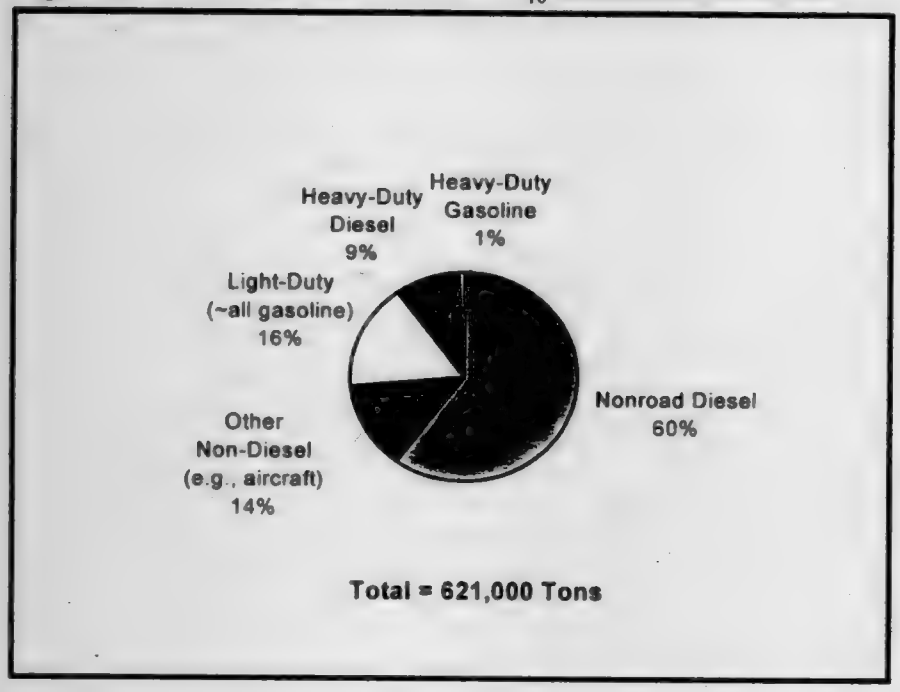
[11] In Figures 1 and 2, the "Nonroad Diesel" category includes nonroad equipment, locomotives, and commercial marine. The "Other Non-Diesel" category includes aircraft and non-road equipment powered by fuels other than diesel.

Figure 1. Mobile Source NOx Emissions in 2010.



Mobile sources account for 20% of direct PM_{10} emission inventories (excluding natural sources and fugitive dust). By 2010, mobile source direct PM_{10} emissions will total almost 621,000 tons. As shown in Figure 2, by 2010, we project that diesel engines will account for nearly 70% (434,000 tons) of all mobile source PM_{10} emissions. Heavy-duty diesels account for 9% of the mobile source PM_{10} contribution, and nonroad diesels account for 60%. Light-duty vehicles and trucks account for 16% of mobile source PM_{10} emissions. Currently, almost all of the light-duty fleet is fueled by gasoline. However, as more diesels enter the light-duty market, light-duty diesels could become a significant portion of mobile source PM emissions, as discussed above. The proportion of PM_{10} emissions from these various vehicle categories in the 2007 inventory is similar.

Figure 2. Mobile Source Direct PM_{10} Emissions in 2010.



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It is also important to note that mobile source emissions generally make up a larger fraction of the emission inventory for urban areas, where human population and light-duty vehicle travel is more concentrated than in rural areas. We recently conducted a study to compare the level and sources of emissions in four U.S. cities (Atlanta, New York, Chicago, and Charlotte) versus the nationwide inventory.[12] For example, in Atlanta by 2010, mobile sources are expected to account for 81% of all NO_X emissions, while nationally they account for 44%. Similarly, in Atlanta by 2010, mobile sources will account for nearly 60% of all direct PM_{10} emissions[13], while nationally they account for 20%. Highway emissions of

[12] For purposes of this study, the national inventory excludes California, Hawaii and Alaska. For a further description of this study of four cities, see Tier 2/Gasoline Sulfur Draft RIA, Chapter III.A.

[13] This is the portion of the PM_{10} inventory that excludes natural sources and fugitive dust.

NO_X, PM_{10} and PM2.5 in Atlanta are more than double the national inventory. Nonroad PM_{10} and $PM_{2.5}$ emissions in Atlanta also are more than double the national inventory. In the other cities studied, mobile source NO_X and PM_{10} emissions also were generally considerably higher than the national inventory.

At this stage, we have not yet evaluated the emission reductions that could be achieved by introducing higher quality diesel fuel and the technologies it may enable, since the effectiveness of these technologies remains uncertain. However, as discussed in Section VI.A., some people involved in the development of these technologies project per vehicle emission reductions of up to 75% for NO_X and over 80% for PM, and so large inventory reductions may be possible.

III. Diesel Emissions Control: Progress and Prospects

Since the 1970's, highway diesel engine designers have employed numerous strategies to meet the challenge presented by our emissions standards, beginning with smoke controls, and focusing in this decade on increasingly stringent NO_X, hydrocarbon, and PM standards. More recently, standards for various categories of nonroad diesel engines, such as those used in farm and construction machines, locomotives, and marine vessels, have also been pursued by the Agency. Our most recent round of standard setting for heavy-duty highway diesels occurred in 1997 (62 FR 54693, October 21, 1997), effective with the 2004 model year. This action, combined with previous standard-setting actions, will result in engines that emit only a fraction of the NO_X, hydrocarbons, and PM produced by their higher-emitting counterparts manufactured just a decade ago.

Nevertheless, certain characteristics inherent in the way diesel fuel combustion occurs have prevented achievement of emission levels comparable to today's gasoline-fueled vehicles. While diesel engines provide advantages in terms of fuel efficiency, durability, and evaporative emissions, controlling NO_X emissions is a greater challenge for diesel engines than for gasoline engines, primarily because of the ineffectiveness of three-way catalysis in the oxygen-rich diesel exhaust environment. Similarly, PM emissions, which are inherently low for gasoline engines, are more difficult to control in diesel engines, because the diesel combustion process tends to form soot and other particles. The challenge is compounded by the fact that most diesel NO_X control approaches tend to increase PM, and vice versa.

Considering the air quality impacts of diesel engines and the plans of manufacturers to increase the market penetration of light-duty diesel vehicles, it is imperative that progress in diesel emissions control continue. Fortunately, encouraging progress is now being made in the design of exhaust aftertreatment devices for diesel applications. Aftertreatment devices, such as catalytic converters, which have been employed successfully on gasoline engines for decades, have had only limited use with diesel engines. This is primarily due to the difficulty of making such devices perform well in the diesel's oxygen-rich exhaust stream, and to the great success that diesel engine designers have had up to now in meeting challenging emission standards without aftertreatment. The combination of encouraging progress in effective aftertreatment design and the challenge presented by the proposed stringent Tier 2 standards is changing this situation. As discussed in detail below, promising new technologies may allow a step change in diesel emissions control, of a magnitude comparable to that ushered in by the automotive catalytic converter in the 1970's. However, it appears that changes in diesel fuel quality may be needed to bring this step change about.

IV. What Fuel Changes Might Help?

Debate and research on changing diesel fuel to lower emissions has focused on several fuel specifications: cetane level, aromatics content, fuel density, distillation characteristics (T90 and T95), oxygenates content, and sulfur content. Control of these parameters may have the potential to provide direct benefits by incrementally lowering emissions when the fuel is burned, although the benefit may vary depending on the sophistication of the engine technology involved.

Much of the available data on the effects of fuel parameter changes is for heavy-duty engines. In preparation for the 1999 technology review to assess the ability of heavy-duty diesel engines to meet the combined NO_X and nonmethane hydrocarbon (NMHC) standard in 2004, an industry/EPA workgroup was tasked with evaluating the incremental impact of changes in diesel fuel properties on NO_X and hydrocarbon emissions. This study employed advanced technology heavy-duty diesel engines expected to be used to meet the 2004 standard. These engines depend on exhaust gas recirculation (EGR) and optimization of engine design, but not on advanced aftertreatment. The study focused on separately identifying the emissions impacts of changes in fuel density, aromatics content (both total and polycyclic aromatics), and cetane number (both natural and additive-enhanced).[14]

The results of this study showed that state-of-the-art heavy-duty engines are mostly insensitive to changes in these parameters. Changes in diesel fuel density and aromatics were found to have the greatest beneficial effect on emissions. Yet large concurrent changes in these fuel parameters reduced NO_X emissions by only 10%. Of the total effect, approximately 5% was attributed to the reduction in fuel density, and 5% to the reduction in aromatics content. Increasing the cetane number was found to have no observable emissions benefit, although previous studies on older-technology engines showed a benefit. Changing other fuel parameters was also found to have either no effect, or only a small effect on emissions. Effects on PM emissions were not included in this study.

Another study, documented as the "EPEFE Report", examined the effects of fuel parameter changes on NO_X, PM, hydrocarbon, and carbon monoxide emissions in both light- and heavy-duty diesel engines.[15] This study also found only small effects on NOx emissions from changes in density, polycyclic aromatics content, cetane, and T95 (less than 5% for any one parameter change, less than 10% overall). Although the magnitude and even the direction of the emissions changes were different for light- and heavy-duty vehicles, the small magnitude of the impacts was consistent. The largest impacts on PM emissions were from lowering T95 (7% in light-duty testing, no effect in heavy-duty testing) and density (19% in light-duty, 2% in heavy-duty), although the benefit of the density change was determined to be confounded by a physical effect—lower density fuel decreased the fueling rate and engine power which in turn affected emissions. Thus the need for additional data on how fuel changes affect PM emissions appears to be especially pronounced, especially considering the possible need for diesel PM reductions in the existing fleet to address potential air toxics concerns.

A lack of emissions sensitivity to changes in diesel fuel cetane and

[14] "EPA HDEWG Program Phase 2", Presentation of the Heavy-Duty Engine Work Group at January 13, 1999 meeting of Clean Air Act Advisory Committee, Mobile Sources Technical Review Subcommittee, Washington, DC.

[15] "EPEFE Report", European Programme On Emissions, Fuels, and Engine Technologies, ACEA/Europia Auto/Oil Programme.

aromatics content was observed in another recently-published paper, which reported on testing conducted with an advanced technology heavy-duty engine (designed to achieve a 2.5 grams/horsepower-hour (g/hp-hr) NO_X emissions level).[16] A recent literature review of diesel emissions studies sought to decouple the incremental impact on emissions of changes in one fuel parameter from the impacts of changes in other fuel parameters.[17] This review also found that the incremental effects on emissions (NO_X, PM, hydrocarbons, and carbon monoxide) of changes in diesel fuel composition are small or nonexistent for more advanced engine technologies. However, the review noted that any conclusion regarding the effect on emissions of adding oxygenates to diesel fuel must be considered tentative pending further investigative work. Of particular interest may be the impact on PM emissions of the use of oxygenates that contain a large fraction of oxygen per unit volume.

Reducing the sulfur content of diesel fuel has the potential to provide large indirect technology-enabling benefits in addition to some amount of direct emission benefits. In fact, sulfur reduction appears to be the only fuel change with potential to enable new technologies needed to meet Tier 2 light-duty or anticipated future heavy-duty standards. Therefore, although other specifications changes are under consideration, at this point we believe that sulfur control is the most likely means of achieving cost-effective diesel fuel emission reductions, as discussed in detail in the remainder of this notice.

Because we have more complete information on the effects that diesel fuel changes have on emissions from heavy-duty engines than from light-duty engines, we believe that any preliminary conclusions one might draw regarding changes other than sulfur are more tentative for light-duty applications. We welcome any information that would help us to assess the potential benefits and costs of changes other than sulfur in light-duty diesel fuel. Such information may become especially relevant if we pursue an implementation plan that treats this fuel separately, as discussed in Section XI.

Issue 1: Fuel Changes Other Than Sulfur.— *Should EPA pursue diesel fuel changes other than sulfur control? What costs and emission reductions would be involved? Are there additional data on emissions impacts of fuel changes, especially for light-duty applications? Should a diesel fuel quality program be structured to encourage gas-to-liquid or other non-petroleum blends?*

V. Diesel Fuel Quality in the U.S. and Other Countries

A. Current Diesel Fuel Requirements in the U.S.

EPA set standards for diesel fuel quality in 1990 (55 FR 34120, August 21, 1990). These standards, effective since 1993, apply only to fuel used in highway diesel engines. The standards limit the sulfur concentration in fuel to a maximum of 500 ppm, compared to a pre-regulation average of 2500 ppm. They also protect against a rise in the fuel's aromatics level from the then-existing levels by setting a minimum cetane index of 40 (or, alternatively, a maximum aromatics level of 35%). Aromatics tend to increase the emissions of harmful pollutants. These regulations were established in response to a joint proposal from members of the diesel engine manufacturing and petroleum refining industries to reduce emissions and enable the use of catalysts and particulate traps in meeting EPA's PM standards for diesel engines. As a result of our diesel fuel regulation, highway diesel fuel sulfur levels average about 340 ppm outside of California.[18] Alaska has an exemption from our existing 500 ppm limitation (permanent in some areas, temporary in others) and is currently seeking a permanent exemption for all areas of the state, because of special difficulties in supplying lower sulfur diesel fuel for that market (63 FR 49459, September 16, 1998). Similarly, American Samoa and Guam also have permanent exemptions from our existing 500 ppm limitation (July 20, 1992, 57 FR 32010 and September 21, 1993, 58 FR 48968). We currently do not regulate diesel fuels that are not intended for use in highway engines. Diesel fuel sold for use in most nonroad applications such as construction and farm equipment has sulfur levels on the order of 3300 ppm.[19]

California set more stringent standards in 1988 for motor vehicle diesel fuels for the South Coast air basin. These standards took effect statewide in 1993. They apply to both highway and nonroad fuels (excluding marine and locomotive use), and limit sulfur levels to 500 ppm and aromatics levels to 10%, with some flexibility provisions to accommodate small refiners and alternative formulations.

B. Diesel Sulfur Changes in Other Countries

Progress toward diesel fuel with very low sulfur levels has advanced rapidly in some parts of the world. The European Union's "Auto Oil Package" was adopted recently in an effort to improve air quality, by establishing an integrated approach to setting requirements for fuels in such a way that vehicles can produce their best environmental performance.[20] As part of the Auto Oil Package, the European Union adopted new fuel specifications for diesel fuel.[21] These specifications contain a diesel fuel sulfur limit of 50 ppm by 2005, with an interim limit of 350 ppm by 2000. The Member States will be required to monitor fuel quality to ensure compliance with the specifications.

In the United Kingdom, the entire diesel fuel supply soon will be at sulfur levels of 50 ppm, based on recent announcements by major refiners.[22] The United Kingdom currently offers a two-penny tax break for diesel fuel. Finland and Sweden also have tax incentives encouraging low sulfur diesel fuel. Finland's tax incentive applies to diesel with sulfur levels below 50 ppm, which accounts for 90% of the Finnish market.[23] Sweden's tax incentive applies to diesel with sulfur levels below 10 ppm.[24]

Japan recently proposed to limit sulfur in diesel fuel to 50 ppm.[25] The proposal allows a phase-in of about 10 years, to give refineries time to invest in new facilities. Japan's Environment

[16] "The Effects of Fuel Properties on Emissions from a 2.5 gm NO_X Heavy-Duty Engine", Thomas Ryan III, Janet Buckingham, Lee Dodge, and Cherian Olikara, Society of Automotive Engineers Technical Paper No. 982491.

[17] Fuel Quality Impact on Heavy-Duty Diesel Emissions: A Literature Review, Rob Lee, Joanna Pedley, and Christene Hobbs, Society of Automotive Engineers Technical Paper No. 982649.

[18] "A Review of Current and Historical Nonroad Diesel Fuel Sulfur Levels", Memorandum from David J. Korotney, Fuels and Energy Division, March 3, 1998, EPA Air Docket A–97–10, Docket Item II–B–01.

[19] "A Review of Current and Historical Nonroad Diesel Fuel Sulfur Levels", Memorandum from David J. Korotney, Fuels and Energy Division, March 3, 1998, EPA Air Docket A–97–10, Docket Item II–B–01.

[20] "Newsletter from Ritt Bjerregaard, the EU's Commissioner for the Environment," European Commission, September 1998.

[21] European Union Directive 98/69/EC published on December 28, 1998 (OJ L350, Volume 41, page 1).

[22] Hart's European Fuels News, "All Change! Standard diesel dropped by UK as majors announce phase-out within weeks", February 10, 1999.

[23] "International Activities Directed at Reducing Sulphur in Gasoline and Diesel, A Discussion Paper," Dr. Mark Tushingham, Environment Canada, 1997.

[24] CONCAWE, Report No. 6/97, "Motor Vehicle Emission Regulations and Fuel Specifications—Part 2—Detailed Information and Historic Review (1970–1996)."

[25] "Sulfur Limit for Diesel Fuel May Be Lowered", *Japan Times Online*, June 2, 1998.

Agency is expected to decide on the new diesel sulfur limit after holding hearings and consulting with the Central Environment Council, an advisory panel to the prime minister.

In North America, Mexico and Canada have regulated diesel sulfur levels to a maximum of 500 ppm, as in the U.S. Canada recently announced a proposal to lower gasoline sulfur, but the proposal does not address diesel fuel at this time. However, Canada recognized that a lower diesel sulfur level may be necessary to protect public health and to support future diesel engine technologies. The Canadian Government Working Group recommended that emissions from on-road diesel fuels be examined further to determine their impact on public health.[26]

Issue 2: Experience Outside the U.S.—*What lessons can we learn from the experience of other countries in planning for and producing low sulfur diesel fuel?*

VI. Potential Benefits of Reducing Sulfur

We believe that diesel fuel desulfurization should be evaluated primarily for its potential to enable new engine and aftertreatment technologies with large air quality benefits. However, there may be other effects as well, as discussed further below.

A. Technology Enablement

Sulfur-sensitive technology enablements can be further grouped into two categories: those that can be achieved with some success using current fuel but which have significantly improved emissions performance with low sulfur fuel, and those that must have low sulfur fuel. The following discussion provides our current understanding of prospective technologies in both categories, built from a review of the technical literature and from numerous discussions with the people who are developing these concepts.

Note that we believe the viability and sulfur-sensitivity of these technologies are, to varying degrees, still open issues; also, there may be other promising technologies not included here. A major goal of this advance notice is to establish the degree of confidence warranted in claims that robust, cost-effective emission control technologies will be made viable or greatly enhanced by fuel desulfurization. Another major goal is to ascertain what sulfur levels may be needed. Manufacturers have suggested that sulfur should be capped at 30 ppm, although the need for even lower levels has also been discussed. Even for those technologies that require low-sulfur fuel to function, there may be a range of operation in which the technologies may be able to tolerate higher sulfur levels but emissions performance may be further enhanced by additional reductions in fuel sulfur. We are interested in information that will help us understand both the range of sulfur levels over which operation of the relevant control technologies is possible, and the relationship between emissions performance and fuel sulfur levels within this range.

Issue 3: Sulfur-Tolerant Technologies.—*What full useful life NO_X and PM emission levels may be achievable for diesel passenger cars and light-duty trucks, and for heavy-duty engines, without a change in diesel fuel? At what costs? When could these levels be achieved in production vehicles and engines?*

Issue 4: Sulfur-Sensitive Technologies.—*How feasible are the sulfur-sensitive technologies (discussed below) for light-duty and heavy-duty applications? Are there others? What full useful life PM and NO_X emission levels could they achieve and when? What sulfur levels do they require? Are any of them substantially enhanced by additional sulfur reductions beyond the sulfur levels required just for proper functioning? What is the relationship between fuel sulfur levels and emissions performance associated with these technologies? How durable are they? What maintenance is required? What is the potential that they could eventually be made sulfur-tolerant? What are the cost implications? What is their fuel economy impact, if any? What problems might occur due to sulfur derived from lube oil being introduced into the combustion chamber, either through intentional mixing of used oil with fuel or from vaporization off of the cylinder wall?*

Issue 5: In-Use Emissions.—*How well will sulfur-sensitive emission control technologies perform over the complete range of operating cycles and environmental conditions encountered by vehicles in use? For example, will there be functional problems or high emissions during periods of sustained high loads or idling, or at extremes of ambient temperature and humidity?*

1. Technologies Improved By Sulfur Reduction

Technologies that may derive benefit from diesel fuel desulfurization include cooled EGR, lean-NO_X catalysts, PM filters, oxidation catalysts, and selective catalytic reduction (SCR). None of these technologies appear to have a threshold low sulfur level, above which the technology is simply not viable. Rather, every degree of sulfur reduction would provide correspondingly greater latitude for engine or aftertreatment designers to target their designs for aggressive emission reductions. Thus, we need to be able to quantify the expected emission reductions in order to assess the effectiveness, including incremental cost-effectiveness analysis where appropriate, of various levels of control.

The application of electronically controlled EGR to diesel engines is an effective means of controlling NO_X emissions. Cooling the recirculated exhaust gas before it reenters the combustion chamber can greatly increase EGR efficiency. NO_X emissions reductions of up to 90% are believed possible with cooled EGR systems for heavy-duty diesel applications.[27] However, manufacturers have claimed that one of the primary limiters on how extensively cooled EGR can be used is the potential for condensation of sulfuric acid and associated corrosion-related durability problems. We have not yet received any durability data to support these claims using realistic in-use operating conditions and corrosion-resistant materials. Acid aerosol formation may also increase the frequency of oil changes due to increased acidification of engine lubricating oil. It is not clear at this time that removing sulfur from fuel is the only solution to these problems, if they indeed exist. Any actual oil acidification problem may be addressable by increasing alkaline oil additives, and corrosion-resistant materials are available for durable EGR cooler construction.

Various types of lean-NO_X catalysts are either in production or under investigation for reduction of NO_X emissions in lean exhaust environments such as those present in diesel exhaust. These catalysts include two types: (1) Active catalysts require a post-combustion fuel injection event and (2) passive catalysts require no post-injection. Although some active catalyst systems have higher NO_X removal efficiencies than similar passive catalyst systems, NO_X removal efficiencies are still only in the range of 15 to 35% on average. It is more likely that these systems will be used for incremental NO_X reduction for light-duty applications in combination with other

[26] "Final Report of the Government Working Group on Sulphur in Gasoline and Diesel Fuel—Setting a Level for Sulphur in Gasoline and Diesel Fuel," July 14, 1998.

[27] Dickey, D.W., et al., NO_X Control in Heavy-Duty Diesel Engines—What is the Limit? SAE Technical Paper Series, No. 980174, 1998.

technologies, such as cooled EGR. Lean-NO_X catalysts are prone to long-term efficiency loss due to sulfur-induced deactivation or "poisoning". They may also produce unwanted sulfate PM. Both of these problems can be mitigated by reducing fuel sulfur, though higher sulfur fuel can be accommodated by using less effective catalyst formulations.

One method of exhaust aftertreatment for controlling diesel PM emissions is to pass diesel exhaust through a ceramic or metallic filter (sometimes called a "soot filter" or "PM trap") to collect the PM, and to use some means of burning the collected PM so that the filter can be either periodically or continuously regenerated. Filter designs have used catalyzed coatings, catalytic fuel additives, electrical heating, and fuel burners to assist trap regeneration. Failure to consistently regenerate the filter can lead to plugging, excessive exhaust back-pressure, and eventually overheating and permanent damage to the filter. Inconsistent regeneration due to the low frequency of adequately high temperature exhaust transients has been a particular problem in applying PM filters to light-duty diesel vehicles. Although PM filters have been used with current fuels, some designs, especially those that use catalyst materials susceptible to sulfate generation, can be made more effective with lower sulfur fuel. In addition, some PM filter system concepts may *require* low sulfur fuel, as discussed below.

Oxidation catalysts are a proven technology already in widespread use on diesel engines. They reduce exhaust PM by removing volatile organics, some of which are adsorbed onto soot particles. They also reduce emissions of gaseous hydrocarbons. Oxidation catalysts have utility not only for direct reduction of PM and hydrocarbons, but also as a potential clean-up device to preclude hydrocarbon slip downstream of NO_X catalysts or PM filters that inject diesel fuel. In the relatively low-temperature environments characteristic of diesel engine exhaust streams, catalyst formulations containing precious metals such as platinum are particularly useful, because they function at fairly low temperatures. Unfortunately, these metals also promote the conversion of SO_X to sulfate PM, thus potentially *increasing* PM emissions, so oxidation catalyst designers must work a careful balance to succeed with current fuel. Sulfur reduction can obviously mitigate this problem and enable more aggressive oxidation catalyst formulations.

SCR for NO_X control is currently used on stationary diesel engines, and has been proposed for mobile applications. SCR uses ammonia as a NO_X reducing agent. The ammonia is typically supplied by introducing a urea/water mixture into the exhaust upstream of the catalyst. The urea/water mixture is stored in a separate tank that must be periodically replenished. These systems can be very effective, with NO_X reductions of 70 to 90%, and appear to be tolerant of current U.S. on-highway diesel fuel sulfur levels. However, there is concern that applying current SCR technology to highway vehicles will require use of catalyst formulations that are sensitive to sulfur, such as those employing platinum, to deal with the broad range of operating temperatures typical of highway diesel engines in use. There is also potential for formation of ammonia sulfate, which is undesirable because it is a component of fine PM.[28] In addition, SCR systems bring some unique concerns. First, precise control of the quantity of urea injection into the exhaust, particularly during transient operation, is very critical. Injection of too large of a quantity of urea leads to a condition of "ammonia slip", whereby excess ammonia formation can lead to both direct ammonia emissions (with accompanying health and odor concerns) and oxidation of ammonia to produce (rather than reduce) NO_X. Second, there are potential hurdles to overcome with respect to the need for frequent replenishment of the urea supply. This raises issues related to supply infrastructure, tampering, and the possibility of operating with the urea tank dry. Third, there may be modes of engine operation with substantial NO_X generation in which SCR does not function well. Finally, there is concern that SCR systems may produce N_2O, a gas that has been associated with greenhouse-effect emissions.

Issue 6: Selective Catalytic Reduction—*How could the discussed difficulties with SCR ammonia slip, infrastructure, reductant maintenance, robustness, and N_2O production be resolved?*

2. Technologies Likely To Require Low Sulfur Fuel

Technologies that are not currently considered feasible with current fuel, but which might become feasible if the sulfur content of diesel fuel were lowered, include NO_X storage catalyst systems and continuously regenerable PM filter systems.

Although still in early stages of development, NO_X storage catalyst technology shows promise for NO_X reductions of 50 to 75% in use. Some projections of ultimate efficiency range as high as 90%.[29] However, these catalysts are also very prone to sulfur poisoning due to sulfate buildup. Diesel engines employing NO_X storage catalyst systems will probably be limited to the use of diesel fuels with less than 30 to 50 ppm sulfur. Even at such fairly low sulfur levels, frequent sulfate purging cycles may be needed to restore catalyst function. Alternatively, even lower fuel sulfur levels, on the order of 5 to 10 ppm, may be needed to manage the frequency of purging cycles. Manufacturers have suggested that further development of NO_X catalyst systems could eventually enable diesel engines to reach the fuel-neutral Tier 2 fleet average NO_X standard of 0.07 grams/mile (see discussion below on Diesel Sulfur Control and Tier 2).

The recently developed continuously regenerating PM filter has shown considerable promise for light-duty diesel applications due to its ability to regenerate even at fairly low exhaust temperatures. This filter technology is capable of a large step change in PM emissions, with typical PM reductions exceeding 80%.[30] However, these systems are also fairly intolerant of fuel sulfur, and are effectively limited to use with diesel fuel with sulfur levels below 50 ppm. Given that these filter designs appear to have similar efficiencies to less sulfur-sensitive PM filter concepts, it is important for us to better understand potential advantages and disadvantages of the various trap concepts in determining whether or not low sulfur fuel is needed for effective PM control.

B. Other Effects

In addition to the primary benefits associated with the enablement or improved utilization of technologies discussed above, desulfurization could have other effects that should be assessed as well. Desulfurization will reduce the direct emissions of sulfate PM and SO_X, both of which are harmful pollutants. Sulfate PM emissions contribute to the overall inventory of PM_{10} and $PM_{2.5}$, both pollutants for which EPA has set National Ambient Air Quality Standards. SO_2 (one component of SO_X) is also a criteria pollutant, and some portion of emitted

[28] "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology", Manufacturers of Emission Controls Association, March 15, 1999.

[29] "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology", Manufacturers of Emission Controls Association, March 15, 1999.

[30] Hawker, P., et al., SAE Technical Papers 980189 and 970182.

SO_X is chemically transformed in the atmosphere to sulfate PM, and is therefore considered a secondary PM source. Although we do not directly regulate the emissions of SO_X from diesel engines, because the overwhelming majority of these emissions are from stationary sources like powerplants, diesel SO_X reductions would nevertheless be of some benefit to the environment.

The introduction of desulfurized highway diesel fuel would provide immediate SO_X and PM emission reductions from the large and growing population of heavy-duty diesel engines in the United States. These emission reductions would even extend to some portion of the nonroad equipment fleet because some significant, though undetermined, portion of this fleet is fueled with highway diesel fuel rather than the generally less expensive nonroad diesel fuel, for reasons of convenience. In contrast to technology-enabling benefits, these direct emission reductions derive added air quality value from the fact that they are realized immediately as existing vehicles are refueled with the new fuel, rather than gradually over many years as new technology vehicles replace older models in the fleet.

On the other hand, although this secondary benefit from sulfate and SO_X reductions in the existing fleet would result whether or not we set new engine emission standards, it would not be expected to carry over to engines built after new sulfur controls take effect. This is because testing of these engines to verify compliance with motor vehicle emission standards would be expected to be conducted using a low sulfur test fuel, reflective of the in-use fuel. A low sulfur test fuel, with no change in emission standards, allows the engine manufacturer to back off on emissions controls to optimize engine cost, performance, or fuel economy. Thus earlier model year engines designed for higher sulfur fuel could actually run cleaner than later engines designed to the same standards, once sulfur controls take effect.

Issue 7: Direct Benefits of Sulfur Reduction—*How much direct incremental environmental benefit can be achieved by diesel fuel sulfur reduction?*

Manufacturers have claimed that lower sulfur fuel will improve the durability of engines and emissions controls, and will reduce the need for maintenance, including oil changes. These benefits would produce a cost savings to vehicle owners. They may also produce an indirect emissions benefit because, although manufacturers must take steps to ensure durable emissions controls (such as providing warranties and assuming liability over a set useful life), many engines may have high emissions because they last well beyond the regulatory useful life or because they are poorly maintained. Therefore, provisions that inherently extend emission controls' life or reduce the need for emissions-affecting maintenance can be beneficial. Some manufacturers have claimed that this is especially relevant for engines employing an extensive degree of cooled EGR, although this is yet to be proven. As discussed above, we have not yet received any durability data to support these claims using realistic in-use operating conditions and corrosive resistant materials. On the other hand, because reduced sulfur appears to enhance the durability of the engines, and not just that of the emission controls, environmental disbenefits may result from diesel fuel sulfur reduction, due to the potential that higher-quality fuel will make older, higher-emitting engines last longer in the field. Furthermore, fuel changes may inadvertently and detrimentally alter fuel system components such as o-ring seals, and may also reduce the helpful lubricating effect that some sulfur compounds have on fuel system components, although it also appears that steps can be taken to preclude these effects, such as the use of lubricity additives.

Issue 8: Durability and Maintenance Impacts—*Are there quantifiable environmental benefits or disbenefits from such secondary effects as more durable controls, reduced maintenance needs, or longer-lived high-emitting trucks? What steps, if any, need to be taken to ensure that fuel changes would not degrade fuel system components in the existing fleet? Would lubricity additives be required to restore any loss in fuel lubricity characteristics compared to current fuel? If so, what would the environmental and cost impacts of these additives be?*

VII. Diesel Sulfur Control and Tier 2

Although almost all highway diesel engines used in the United States today are in heavy-duty trucks and buses, the impetus for near-term action on diesel fuel quality arises from our efforts to set stringent new Tier 2 emission standards for passenger cars and light trucks. These standards will apply to vehicles powered by any fuel—including both gasoline and diesel. As part of the Tier 2 rulemaking, we also are proposing to lower gasoline sulfur levels, in part to enable the use of advanced catalytic converters. Manufacturers of diesel engines and vehicles have argued that setting Tier 2 standards without concurrent diesel fuel changes will be unfair to diesels, because diesel fuel quality would be worse than gasoline fuel quality. Some argue that, beyond fuel-neutrality considerations, diesel fuel quality improvement is needed to combat global warming because it will facilitate the marketing of more diesel vehicles and, in their opinion, thereby reduce emissions of global warming gases. Others counter that diesel vehicles should be discouraged because diesel exhaust is a serious health hazard that improvements in diesel fuel quality will do little to mitigate. Some also believe that any fuel economy improvements from diesels will be offset by manufacturers' sale of more large vehicles, resulting in no net improvement in fleetwide fuel economy, and thus no net reduction in global warming emissions.[31]

In establishing the Tier 1 light-duty vehicle standards currently in place, the Clean Air Act made special, explicit provision for diesel vehicles. However, the framework it provided us for the setting of Tier 2 standards made no special reference to diesel engines. In our July 1998 Tier 2 Report to Congress, we therefore concluded that Congress did not intend special treatment for diesel engines after 2003.

Under the Tier 2 proposal's fuel-neutral approach, there are not separate emission standards for diesels. However, the proposed Tier 2 program allows manufacturers to sell some engines with higher emissions—in the range achievable by both gasoline and diesel vehicles with current fuel quality—during the early phase-in years of the program. Table 1 summarizes the proposed Tier 2 emission standards. Manufacturers would have to meet a corporate average NO_X standard for the entire fleet of vehicles sold, but would have the flexibility to certify different vehicle models to different sets of emission standards (referred to as "bins"). Some bins have a NO_X emission standard that is higher, and some lower, than the corporate average NO_X standard. The proposed Tier 2 standards would be phased in over time, allowing a portion of a manufacturer's vehicle sales to meet the less stringent "interim" standards. During the phase-in years, the program would establish

[31] Fleetwide fuel economy (for light-duty vehicles and light-duty trucks) is constrained by the Corporate Average Fuel Economy (CAFE) standards established by the government.

separate interim standards for the following vehicle categories:

- LDVs and light light-duty trucks (LLDTs), less than 6000 pounds GVWR.
- Heavy light-duty trucks (HLDTs), 6000 pounds GVWR or greater.

Table 2 shows when the interim and Tier 2 standards would be phased in, by indicating the percentage of manufacturers' vehicle sales required to meet the respective standards each year. Even when the Tier 2 standards are fully phased in, manufacturers still would be able to certify vehicles in the higher-emitting bins. However, sales of vehicles in the higher-emitting bins would be limited by a manufacturer's ability to comply with the proposed corporate average NO_X standard.

TABLE 1.—PROPOSED TIER 2 EXHAUST EMISSION STANDARDS [32]

	Corporate average NO_X (grams/mile)	Highest-emitting certification bin (grams/mile)	
		NO_X	PM
LDV/LLDT			
Interim	0.30	0.60	0.06
Tier 2	0.07	0.20	0.02
HLDT			
Interim	0.20	0.60	0.06
Tier 2	0.07	0.20	0.02

[32] This table does not reflect all proposed Tier 2 standards; it shows full useful life standards for categories and pollutants relevant to the discussion in this notice.

TABLE 2.—PROPOSED PHASE-IN FOR TIER 2 STANDARDS

	Model year (percent)					
	2004	2005	2006	2007	2008	2009 & later
LDV/LLDT						
Interim	75	50	25	.....	.....	.....
Tier 2	25	50	75	100	100	100
HLDT						
Interim*	25	50	75	100	50	.....
Tier 2	.....	.....	.....	.....	50	100

*0.60 grams/mile NO_X cap applies to balance of these vehicles during the 2004–2006 phase-in years.

As shown in Tables 1 and 2, some diesel and gasoline LDV/LLDTs could be certified to emission standards of 0.60 grams/mile NO_X and 0.06 grams/mile PM through the 2006 model year. HLDTs, where diesels are most likely to find a large market, could be certified to these same emission standards through 2008. We expect that these "highest bin" emission standards, although challenging, could be met by diesel vehicles without fuel changes. In model year 2007 and beyond for LDV/LLDTs, and in model year 2009 and beyond for HLDTs, the highest emission standards available for vehicle certification would be 0.20 grams/mile for NO_X and 0.02 grams/mile for PM. It is likely that diesel fuel sulfur control would be needed to enable diesels to achieve these more stringent emission standards.[33]

Furthermore, even though some HLDTs can be marketed in the highest bin (0.60 NO_X/0.06 PM) through model year 2008, by model year 2007, or perhaps even 2006, the phase-in percentage of the more stringent interim corporate average NO_X standard (0.20 grams/mile) becomes great enough that it may start to curtail sales of vehicles in the highest bin. Thus, diesel fuel changes may be critical for continued sales of diesel-powered HLDTs in these earlier model years.

In summary, it appears most likely that the need for diesel vehicles to employ technologies dependent on low sulfur diesel fuel under the Tier 2 program will occur by the 2006 or 2007 model year, implying that low sulfur fuel should be available for these vehicles sometime in 2005 or 2006. This presumes of course that the development of robust, sulfur-sensitive diesel technologies achieving the Tier 2 emission levels will be successful. There may also be merit in providing for an early introduction of the low sulfur fuel, at least perhaps on a limited basis, to allow proveout of technologies that require this fuel.

Issue 9: Diesels In Tier 2—*If diesel fuel changes were not adopted, when and to what extent would the anticipated diesel market growth be curtailed under the proposed phased in approach to Tier 2? What is the likelihood that diesels will not be able to meet proposed Tier 2 standards even with fuel changes? What is the likelihood that advances in sulfur-tolerant control technologies would negate the need for low sulfur fuel after a few years? Would an early introduction phase of low sulfur fuel to demonstrate technologies be of value? How soon and on what scale might this be implemented?*

[33] It should be noted that the Tier 2 proposal also includes elimination of the highest bin after 2007 for LDV/LLDTs and 2009 for HLDTs, thus requiring compliance with a NO_X standard of 0.15 grams/mile. This would further reinforce the need for advanced technologies.

VIII. Heavy-Duty Highway Engines

The sulfur-sensitive technologies discussed above show promise in a wide range of diesel applications, including light- and heavy-duty vehicles and nonroad equipment. Heavy-duty engines typically have different operating characteristics than light-duty engines, most notably more frequent occurrences of higher temperature exhaust stream flows that can facilitate catalysis. These differences may affect design decisions, such as what catalyst formulations and devices to use, but do not appear to be so great as to rule out technology-enabling sulfur control for any class of diesel applications. Particularly if sulfur-sensitive technologies work well on light-duty vehicles, we would expect them also to find application with heavy-duty engines.

Engine designers are now developing engines to meet the 2004 heavy-duty highway engine NO_X + NMHC emission standard that we set in 1997. We are currently conducting a technology review, to be completed later this year, to re-evaluate the appropriateness of this standard. Although low-sulfur fuel would add to the control options available for engines designed for this standard, we do not expect it to provide corresponding new-engine emissions benefits without changes in the engine emissions standards. Manufacturers would be likely to design engines to emit at roughly the same NO_X levels either way—low enough to meet the standards with some compliance margin—and take advantage of the higher quality fuel to improve fuel economy or other performance parameters. Engine changes that improve fuel economy, such as timing advance, may incidentally decrease PM emissions as well, but the degree to which this would happen without a change in standards is uncertain.

Although we have not yet performed an assessment of the feasibility of more stringent NO_X and PM standards for heavy-duty highway engines in model years after 2004, the technologies discussed above show great promise for large further reductions in these emissions. The concurrent need for diesel fuel changes to enable these technologies would, of course, be an important part of any Agency activity directed toward setting more stringent standards, as would an evaluation of the air quality need for further diesel engine emission reductions and of the need for adequate leadtime for engine manufacturers to implement new standards. The earliest that EPA could implement more stringent than current NO_X standards that might be enabled by low sulfur diesel fuel is the 2007 model year. More stringent PM standards based on such fuel could be evaluated for implementation as early as model year 2004. The Agency would address these issues further in a separate regulatory action.

Issue 10: Future Heavy-Duty Highway Engine Standards—*How do emission control challenges and solutions differ for light-and heavy-duty diesel engines? How might these differences affect fuel quality requirements? What heavy-duty NO_X and PM emission standards may be feasible with low sulfur fuel? When could they be implemented? What would be the cost of such heavy-duty emission standards?*

Low sulfur fuel may also bring about a potentially very large environmental benefit in the existing fleet of diesel engines. There are programs under consideration by some states through which older diesel engines would be retrofitted with emission-reducing technologies. Some of the sulfur-sensitive technologies discussed above may be useful for this purpose. Aftertreatment devices have proven especially adaptable to retrofit situations, although some of the more sophisticated systems that require careful control of engine parameters may not be as suitable. Thus sulfur reduction could potentially enable not just incremental emission reductions from the existing fleet, but large, step-change reductions in PM and NO_X as well, in areas where incentives for retrofitting are provided. Note that this benefit could be extended to nonroad diesel engines, provided the retrofit program ensures fueling with low sulfur fuel as well.

Issue 11: Retrofit Potential—*Can the sulfur-sensitive emission control technologies be retrofit to existing engines? At what cost? What environmental benefits might be achieved?*

IX. Nonroad Engines

We are interested in improvements in the quality of fuel consumed in nonroad diesel engines for several reasons:

- Nonroad diesel engines are a major contributor to air quality problems.
- Many of the technologies under development to meet the 2004 heavy-duty highway NO_X + NMHC emission standard are transferable to these engines.
- Many of the advanced aftertreatment technologies discussed above could be applied to them as well.
- Nonroad diesel fuel currently is unregulated and typically has high sulfur levels.[34]
- Refiners may make different plant changes to meet highway fuel regulations if action is taken on nonroad fuel quality as well.

The diesel engine dominates the nonroad equipment market above 50 horsepower (hp). These engines are used in such applications as farming and construction. A large and growing market for diesel engines below 50 hp also exists. Consistent with the less advanced state of nonroad engine emission regulations, we currently do not regulate nonroad diesel fuels. However, some sizeable but unknown portion of nonroad equipment uses lower sulfur highway fuel for reasons of user convenience, and in California nonroad diesel fuel is regulated to the same specifications as highway fuel. Locomotives and marine vessels use separate diesel fuel stocks, which are unregulated as well.

Our recent rulemaking setting new nonroad diesel engine standards established the feasibility of these standards without requiring changes to nonroad diesel fuel (see 63 FR 56968, October 23, 1998). That rule set multiple tiers of standards with increasing stringency: Tiers 1 and 2 for smaller engines (below 50 hp) and Tiers 2 and 3 for larger engines. (Tier 1 standards for larger engines were set in a previous rule.) However, due to a lack of available information on PM emissions during transient operation, the rule deferred action on Tier 3 PM standards until another rulemaking, planned for completion in 2001. That rule will also review the feasibility of the Tier 3 NO_X + NMHC standards and the smaller engine Tier 2 standards, and will consider moving the Tier 3 standards for engines at or above 300 hp forward in time, as discussed in the October 1998 final rule. These standards are currently set to be implemented in 2006.

Our ability to set stringent Tier 3 PM standards while maintaining an effective program of NO_X control may be limited by the high sulfur levels in nonroad diesel fuel. The intended transfer of technology developed to meet the heavy-duty highway 2004 standard for NO_X + NMHC, such as cooled EGR, may be jeopardized, unless nonroad fuel sulfur levels, and also perhaps cetane/aromatics levels, are controlled to levels similar to those available on-highway—maximum 500 ppm sulfur and minimum 40 cetane

[34] Diesel fuel sold in most nonroad applications has sulfur levels on the order of 3300 ppm, as discussed in Section V.A.

index (or, alternatively, maximum 35% aromatics content). Of course, we are concerned about the ability of refiners to provide higher quality nonroad fuel in Tier 3, which begins in roughly the same time frame in which large sulfur reductions for gasoline and highway diesel fuel may be implemented. This concern and the potential benefits of a coordinated, phased approach, are discussed further in the section on refinery impacts below.

Beyond fuel changes needed for Tier 3 nonroad engines, it is reasonable to expect that advanced aftertreatment technologies, should they prove effective in highway engines, could be used in many nonroad applications as well. If, in the future, we determine that more stringent nonroad diesel engine emission standards beyond Tier 3 are appropriate, further desulfurization of nonroad diesel fuel would also therefore need to be considered. The timing of such standards and fuel requirements would need to provide adequate leadtime after the implementation of Tier 3 nonroad diesel engine emission standards in 2006–2008. Retrofit opportunities similar to those discussed above for highway engines may also exist, perhaps on an earlier time frame than post-Tier 3 nonroad emission standards, making use of highway fuel.

Issue 12: Future Nonroad Diesel Engine Standards—*If EPA were to adopt Tier 3 PM standards on the order of the current highway PM standard (0.10 g/hp-hr measured over a transient test), would nonroad fuel sulfur regulation to 500 ppm or less be needed? Would the highway fuel cetane/aromatics specification need to be adopted as well? Are there differences between highway and nonroad applications that would affect fuel specifications? What nonroad NO_X and PM emission standards beyond Tier 3 may be feasible with very low sulfur fuel? When could they be implemented? What would the cost of these standards be? What sulfur levels would be needed? What information is available about the relationship between nonroad fuel sulfur levels and nonroad engine emissions?*

Even if we do not adopt regulations in the near term to improve the quality of nonroad diesel fuel, it may be necessary at least to consider capping nonroad diesel fuel sulfur levels as part of any highway fuel sulfur reduction program, in order to preclude a shift of unwanted sulfur to nonroad fuel in the petroleum refining process. This shift could occur either through sulfur dumping or through redirection of higher sulfur blendstock streams to nonroad fuel production.

Issue 13: A Cap On Nonroad Diesel Fuel Sulfur Levels—*Will there be a tendency for nonroad diesel fuel sulfur levels to increase if highway fuel sulfur is reduced? Would we need to cap nonroad fuel sulfur levels?*

X. Refinery Impacts and Costs

A. Investments and Costs

Desulfurization of diesel fuel to very low levels is expected to involve substantial capital investments and added operating expenses by petroleum refiners. Improvements in nonroad fuel to a quality level similar to that of current highway diesel fuel would also be a major undertaking for refiners. We are interested in any information that would help us to assess these costs, both on an industry-wide scale and for segments of the industry that might experience special challenges, such as small refiners and small refineries. We also welcome suggestions on means by which such impacts can be softened, while still achieving the intended environmental benefit, such as by delaying requirements for small refiners. The following discussion outlines some of the issues we are aware of.

Some refineries, especially those with modern hydrotreating plants, may be able to accomplish the needed sulfur removal by upgrading existing units. Such upgrades could be accomplished by such means as increasing catalyst density, employing more active catalysts, operating at higher temperatures, and reducing the level of hydrogen sulfide in the recycled hydrogen gas. Other refineries may need to build new hydrodesulfurization units and require time for planning, permitting, and construction. The degree to which new plants must be built will, of course, depend on how much of the diesel fuel pool must be desulfurized and to what levels. Both retrofits and new units will require additional hydrogen and energy supply, as well as additional processing of the sulfur removed in the hydrotreater. The prospect of widescale gasoline and diesel fuel desulfurization activity is spurring research and development in innovative hydrotreating technologies, such as countercurrent processing employed in the SynSat process and catalytic distillation being developed by CDTech. Such developments are expected to lower the cost of desulfurization.

One novel technology that shows promise involves the use of enhanced biological agents to convert sulfur compounds in the fuel to removable and marketable byproducts. This method, though still unproven on a large scale, has experienced rapid progress over the last several years. Even if it does not prove cost-effective as a primary desulfurization solution, it may find utility in partially desulfurizing selected blendstocks to an intermediate sulfur level before hydrotreating, or in small refineries unable to afford large capital outlays. We are interested in information that would help us to assess the feasibility and costs of this technology and, considering that it appears to be much less energy-intensive than traditional methods, its potential for reducing global warming gas emissions.

Issue 14: Sulfur Reduction Methods—*How would refiners accomplish diesel fuel sulfur reduction to various maximum sulfur specifications, for examples, 5, 10, 30 and 50 ppm? What capital investments would be required and how would they be financed? How soon could it be accomplished? How would a shift in the relative demand for diesel fuel and gasoline affect these decisions? How much additional energy would be needed to produce the fuel? What other operating costs would be incurred? What would be done with the removed sulfur? How would these answers change if only the sulfur levels in light-duty diesel fuel were further controlled? Is there value in regulating average sulfur levels in a refinery's diesel fuel production, in addition to or instead of maximum fuel sulfur levels?*

In addition to requiring changes at the refinery, diesel fuel quality improvement may affect the fuel distribution system as well. All phases of the distribution process would likely need to maintain the quality of the fuel leaving the refinery. This may be particularly challenging if a very low sulfur level is required, considering that other refinery products carried in the same transportation network may continue to have very high sulfur levels. Additional storage tanks might also be required.

Issue 15: Distribution System Quality Control—*What if any problems (beyond those already experienced in handling multiple fuels in the distribution system) arise in ensuring that low sulfur fuel supplies leaving the refinery remain low in sulfur in a distribution system that may also carry fuels with much higher sulfur levels? Will complete separation of supply infrastructures be necessary? Is there a minimum practical sulfur level that distributors can comply with, considering limitations of available measurement and segregation methods?*

One element in the assessment of refinery impacts is our recently proposed gasoline sulfur reduction program, associated with proposed Tier 2 vehicle standards. The proposed gasoline sulfur control requirements would cause refiners to undertake substantial investments to upgrade their processing facilities in roughly the same time frame as that envisioned under a diesel desulfurization program. Gasoline and diesel fuel production operations are not independent, and a refiner's choice of desulfurization methods or of specific equipment configurations may be affected by how desulfurization requirements for the two fuels are implemented. Even more significantly, any shift toward more diesel fuel demand due to the introduction of new diesels into the light-duty market will have a major effect on refiners' capital investment plans.

Sulfur exists naturally in crude oil. The extent to which sulfur ends up in gasoline and diesel fuel is dependent on the amount of sulfur in the crude and on the refinery processes used. One option to reduce sulfur in both gasoline and diesel is to use crude oil with a lower sulfur content. However, the availability and cost of low sulfur crude substantially limit the ability of refiners to use such an approach.

Regarding refinery processes, refiners would need to decide where in the process to perform desulfurization steps. Absent more stringent diesel sulfur control, many refiners may choose to add (or upgrade) process units that remove sulfur selectively from blendstocks used to manufacture gasoline to meet the proposed reduction in gasoline sulfur. If a reduction in diesel sulfur is also required, some refiners may choose to add (or upgrade) process units that selectively remove sulfur from the blendstocks used to manufacture diesel fuel. Although such blendstock processing units have no functional overlap, refiners could benefit from knowing whether reductions in both diesel and gasoline sulfur would be needed before investing in new facilities to remove sulfur from gasoline blendstocks. Upgrades in hydrogen production facilities, basic utilities, and waste treatment facilities are needed to support the addition or expansion of gasoline and diesel fuel blendstock desulfurization units. If a refiner knew that reducing diesel fuel sulfur was to be required in addition to reducing gasoline sulfur, it might save money by building a single support facility to supply the hydrogen and other needs of both the diesel and gasoline blendstock desulfurization units rather than building separate support facilities.

Other refiners may choose to add (or upgrade existing) process units that remove sulfur from the crude oil fractions used to manufacture both gasoline and diesel fuel blendstocks. Such units could be useful in meeting a refiner's desulfurization needs either in addition to, or in place of, units that remove sulfur from-diesel or gasoline blendstocks. If a reduction in diesel sulfur is required, refiners might choose to invest more heavily in processing units that remove sulfur upstream in the refinery process rather than in "end of pipe" units that remove sulfur from diesel or gasoline blendstocks separately. It should be noted that, although both gasoline and diesel fuel desulfurization may involve large capital investments, aggressive desulfurization of diesel fuel tends to improve the cetane of the final product by removing aromatics, whereas it tends to lower the octane of gasoline, requiring additional steps to restore gasoline fuel quality.

Issue 16: Impact On Gasoline Sulfur Control and Other Refinery Changes—*How would the imposition of more stringent controls on diesel fuel sulfur affect a refiner's strategies to meet the proposed gasoline sulfur requirements? What are the advantages to refiners in being able to plan facility changes to meet more stringent gasoline and diesel sulfur controls at the same time? How would other planned or likely refinery changes relate to diesel fuel sulfur control?*

Issue 17: Costs—*What are the total and per-gallon incremental costs to produce highway diesel fuel meeting various maximum sulfur specifications, for example, 5, 10, 30, and 50 ppm? What are the costs to produce nonroad diesel fuel: (1) Meeting a maximum sulfur specification of 500 ppm, and (2) meeting all of the current EPA highway fuel specifications? How do these costs vary if the sulfur reduction projects for diesel and gasoline are implemented together compared to if the diesel sulfur reduction is implemented some time after gasoline sulfur reduction without regard to economies of coordinated planning?*

Issue 18: Small Refiners and Small Refineries—*How might desulfurization requirements uniquely affect a small refiner? How might they affect smaller refinery operations within larger companies? Are special provisions, such as a delayed requirement, appropriate?*

Issue 19: Flexible Strategies—*Are there program strategies that could reduce costs or increase flexibility for refiners? (for example: phase-in of requirements, streamlining of the permitting process, banking and trading of credits for early or excess compliance, refinery averaging with upper limit cap). What limits would need to be placed on these flexibilities to ensure that sulfur-sensitive vehicle technologies are not degraded?*

Issue 20: Petroleum Imports—*Would a requirement for low sulfur fuel affect our degree of reliance on foreign sources of petroleum and diesel fuel?*

Issue 21: Impacts On Other Refinery Products—*How would diesel fuel sulfur reductions impact the quality, cost, and availability of other products such as jet fuel, kerosene, and heating oil, and how would these impacts vary by region?*

Issue 22: Uncertainties—*How will major uncertainties facing diesel engine use, such as health effects concerns and growing interest in nontraditional fuels, affect the demand for diesel fuel? How can these issues be factored into Agency action to preclude expensive short-lived refinery investments?*

B. Refinery Emissions

The technologies used for diesel desulfurization have the potential to increase air pollutants at the refinery. To different degrees, desulfurization technologies involve the use of a furnace and, thus, potentially could increase pollutants associated with combustion, such as NO_X, PM, SO_2, and carbon monoxide. The addition of these technologies also could result in increased process vent emissions and equipment leaks of petroleum compounds, which could increase emissions of VOCs and hazardous air pollutants (HAPs). Increased removal of sulfur from the diesel stream likely will require increased throughput for a number of refinery processes, such as the sulfur recovery unit, which converts hydrogen sulfide into elemental sulfur and is associated with SO_2 emissions. Relative to gasoline desulfurization, we expect that diesel desulfurization would result in higher emissions on a per gallon basis, because of the increased temperatures and hydrogen needed to remove sulfur in diesel fuel. Any emission increases associated with diesel desulfurization will vary from refinery to refinery, depending on a number of source-specific factors, such as the specific refinery configuration, choice of desulfurization technology, amount of diesel production, and type of fuel used to fire the furnace.

From a climate change perspective, we also want to better understand the impact on greenhouse gas emissions at the refinery. We are interested in how

diesel desulfurization process changes would affect greenhouse gas emissions at refineries.

Issue 23: Refinery Emissions—*What emissions impacts at the refinery would be expected from producing low sulfur diesel fuel (assuming gasoline sulfur reduction is already taken into account)? What are the potential emission increases (or decreases) of regulated air pollutants and greenhouse gases?*

XI. Prospects for a Phased Approach

It is possible that higher quality diesel fuel will be needed for the light-duty Tier 2 program, but would only be needed to meet future heavy-duty engine standards at a later date. This would create a dilemma because currently both light- and heavy-duty applications use the same fuel, sharing a common fueling infrastructure that is vastly dominated by heavy-duty usage. Creation of a separate light-duty diesel fuel pool and infrastructure for an interim period would be the obvious solution. However, requiring a separate high quality grade of diesel fuel for use in vehicles subject to the Tier 2 emissions standards may involve investment by refiners, distributors, and retailers in the new tankage and other facilities necessary to keep such fuel segregated from other on-highway diesel fuel. It also could lead to loss of environmental benefits and even engine or aftertreatment device damage due to misfueling, although fueling nozzle interface requirements could help to mitigate this. Furthermore, the temporary nature of this separate fuel pool would depend on a determination that the same ultimate fuel specifications are appropriate for both light- and heavy-duty applications. As discussed in Section IV, more information is needed in order to assess this.

Despite the issues involved in creating a light-duty fuel infrastructure, we are interested in evaluating this approach for several reasons. First, we would expect it to allow for the introduction of low sulfur fuel for the light-duty vehicle market at an earlier date. Second, such a limited fuel pool may allow for other fuel quality improvements, besides reduced sulfur, if deemed appropriate. Third, the availability of this fuel would facilitate the early introduction of low-emitting heavy-duty technologies in demonstration, credit banking, or retrofit fleets. Finally, the production costs would be reduced because refiners could focus desulfurization activities on those diesel blendstock streams easiest to desulfurize. This would save on operational costs for hydrogen, energy, and byproduct treatment, and, more importantly, would allow refiners to phase in major capital outlays, if needed, for future heavy-duty fuel programs.

A phased approach could be carried still further by introducing the low sulfur fuel into the heavy-duty fuel pool gradually, as needed to support new trucks and buses employing the sulfur-sensitive technologies. Eventually, as the fleet turned over, so would the fuel pool, in a fashion similar to the turnover to unleaded gasoline. The benefit of such phased approaches would be offset somewhat by the need for a separate refueling interface, for additional tankage and plumbing to segregate product streams, and perhaps by additional dyeing requirements.

A parallel approach could be used to introduce nonroad diesel fuel regulated to similar quality levels as current highway fuel, to support the nonroad Tier 3 emission standards program, if such fuel is found to be needed for this program. With the adoption of a refueling interface to avoid misfueling, new Tier 3 engines could use the higher quality fuel, while pre-Tier 3 engines could continue to use the unregulated fuel, thus allowing a gradual phase-in of the Tier 3 fuel to match the growing population of these engines in the fleet. Again, the benefit of this approach would need to be evaluated against the disadvantage of added complexity.

Distributors and retailers clearly would take on an additional burden to support a light-duty fuel. If light-duty diesel fuel were not easily available to consumers, people would be unlikely to buy diesel cars and light-trucks. However, we would expect that many urban/suburban service stations that currently provide diesel fuel would simply switch to the low sulfur fuel and not install additional pumps because their heavy-duty diesel fuel volume is not large. Some highway truck stops already have separate pumps for the convenience of drivers of smaller diesel vehicles, though owners of these stations may need to make changes in tankage utilization to segregate fuels. Vehicle and fuel pump nozzle manufacturers would need to create a new fueling interface to preclude misfueling, similar to what was done when unleaded gasoline was introduced.

Issue 24: Phased Approach—*What would the challenges be to refiners and distributors associated with introducing a separate "light-duty low-sulfur grade" of diesel? How soon could it be done? How much would it cost? How large would the fleet of vehicles using this fuel have to be to make it cost-effective? Would the relatively small fraction of a refiner's total diesel output needed for this market make it possible for refiners to produce it without significant additional facility investments? To what extent would additional storage tanks and fuel pumps need to be installed to accommodate a separate grade of fuel? What pump/vehicle refueling interface changes (or other measures) are needed to preclude misfueling? What fuel dyeing requirements would need to be adopted? What are the merits of a program in which the sulfur level is reduced in two or more steps, especially if very low sulfur levels are determined to be needed eventually?*

Issue 25: Coverage—*Would widespread geographic coverage have to be mandated to ensure success? Based on current light-duty diesel experience, are there segments of the retail diesel fuel market that could be exempted from providing this fuel without discouraging vehicle sales? Could the phased concept be extended to accommodate a gradual turnover of the heavy-duty fuel pool? Should requirements during a phase-in be focused on sales at retail outlets (thus providing the opportunity for smaller businesses to defer implementation), or on refiner production?*

Although a phased approach covering all of the diesel fuel pools could take many forms, it may be helpful to consider an example of such an approach to better understand how it might work. For example, fuel desulfurized to technology-enabling levels (30 ppm for the sake of this example) might be provided in 2004 at a small number of urban and rural locations, to support the limited production and sale of advanced technology diesel light-duty (and perhaps heavy-duty) vehicles. This would comprise an early introduction program to prove and perfect these technologies. In 2005 this offering would expand to supply the light-duty diesel vehicles requiring it under the Tier 2 program. More stations and fuel would be involved to ensure that the fuel is widely available to consumers buying these vehicles. Also in 2005, 500 ppm nonroad fuel would begin phasing in, with broad nationwide coverage but only in quantities needed to meet the demand created by the sales of new Tier 3 equipment. Unregulated nonroad diesel fuel also would continue to be sold, but would gradually be phased out as demand for it declined. In 2006 and 2007, the supply of 30 ppm sulfur fuel

would continue to expand to support the introduction of heavy-duty vehicles equipped with advanced technologies needed to meet new heavy-duty emission standards. This expansion would increasingly focus on truck stops that had not already transitioned to supplying the 30 ppm sulfur fuel in the earlier years of the programs. At some point over the following years, the demand for higher sulfur highway fuel would decline to a point at which it would no longer be cost-effective to maintain two highway fuel pools, and its production would cease. Throughout the phase-in period, separate high and low sulfur refueling interfaces, and perhaps other measures, would need to be maintained to avoid misfueling.

Issue 26: Example Phase In Scenario—*Would a comprehensive need-based phase-in such as the one in the example work? What measures could be taken to facilitate it?*

XII. Vehicle Operation With Higher Sulfur Fuel

Many line-haul diesel trucks regularly or occasionally cross our borders with Canada and Mexico. Canada recently adopted the 500 ppm sulfur limit that has been in effect in the U.S. since 1993. Further fuel quality regulation is under consideration but may not take effect until well after a desulfurization program begins here, if at all. Mexico also has regulations intended to control diesel fuel sulfur to the 500 ppm level, but we are not aware of activity there aimed at achieving further reductions. In addition to potential cross-border differences, Alaska, American Samoa and Guam currently have exemptions from our existing 500 ppm limitation because of special difficulties in supplying low-sulfur diesel fuel for those markets. A long-term decision whether Alaska, American Samoa and Guam should continue to have exemptions will need to be made in this rulemaking once a decision is made on the appropriate diesel fuel sulfur level.

Cross border traffic will impact prospects for effective emissions control based on low sulfur diesel fuel. If a truck with sulfur-sensitive emission controls is fueled in Canada or Mexico with higher sulfur fuel, the emission controls may be reversibly or irreversibly degraded by catalyst poisoning, sulfate PM production, or some other mechanism. If the degradation is severe or irreversible enough, that truck may actually pollute for long periods at levels higher than earlier generation trucks, thus contributing to the air quality problems of our neighbors, and to our own problems after the truck's return to the U.S. In addition, trucks with sulfur-sensitive emission controls that are permanently operated in a state exempt from fuel sulfur controls might likewise emit at very high levels, thus either resulting in a disbenefit to the local environment or forcing adoption of a program that requires the continued marketing of earlier generation, non-sulfur sensitive truck engines in that state. A similar issue arises in considering whether or not there is a need for a complete turnover of the diesel fuel inventory to low sulfur formulations before any introduction of low-sulfur technologies can occur, thus precluding any economy derived from a gradual phase-in or from any sort of regional flexibility in implementing the program.

These concerns would be greatly mitigated by evidence that sulfur-sensitive technologies will be robust enough to quickly recover from episodes of operation with higher sulfur fuel, and that their continuous operation on higher sulfur fuel will not result in more emissions than those from comparable engines not equipped sulfur-sensitive technologies.

Issue 27: Ability To Accommodate Some Higher Sulfur Fuel—*What is the potential for irreversible damage to sulfur-sensitive emission control hardware due to fueling with higher sulfur fuel? How might this vary with the length of exposure and the age of this equipment? What is the potential for high sulfate PM production while burning this fuel?*

Issue 28: Alaska Exemption—*Should Alaska be exempted from any future low sulfur fuel requirements? Why or why not? What provisions could be made to ensure that such an exemption does not cause unacceptable emissions in and outside Alaska? What about the U.S. territories that also currently have an exemption (Guam and American Samoa)?*

Issue 29: Cross-Border Traffic—*What percentage of U.S. trucks refuel in Canada or Mexico and how often? How will this change in the future? What are the prospects for diesel fuel desulfurization in these countries? Are there reasonable measures that can be taken to avoid damage to sulfur-sensitive emissions controls?*

XIII. Stakeholder Positions

Over the past year or so, various interested groups have expressed their positions on sulfur levels in diesel fuel. Here, we summarize only those positions that have been communicated formally (either to EPA or other governmental entities). One goal of this notice is to generate discussion that will help us better understand the positions of these and other stakeholders.

Together, the (then existing) American Automobile Manufacturers Association, the European Automobile Manufacturers Association, and the Japan Automobile Manufacturers Association proposed a World-Wide Fuel Charter in June 1998.[35] The goal of this global fuels harmonization effort is to develop common, worldwide recommendations for "quality fuels", considering customer requirements and vehicle emissions technologies. Three categories of fuel quality are proposed for diesel fuel, based on the extent of emission control requirements. Category 3 fuel quality is for markets with advanced requirements for emission controls (such as California Low and Ultra-Low Emission Vehicles). The sulfur content recommended for Category 3 diesel is 30 ppm.

The Ford Motor Company, Chrysler Corporation (now DaimlerChrysler) and General Motors Corporation further urged the Administration to make significant progress in bringing about low sulfur diesel and gasoline fuels. These companies stressed the importance of low sulfur diesel and gasoline fuels in reducing vehicle emissions and enabling the successful introduction of advanced engine and emission control technologies.[36]

The State and Territorial Air Pollution Program Administrators (STAPPA) and the Association of Local Air Pollution Control Officials (ALAPCO) adopted a resolution urging us to pursue the most stringent highway and nonroad diesel fuel sulfur standards that are technologically and economically feasible.[37] These associations believe that stringent national standards for diesel sulfur, combined with stringent standards for low sulfur gasoline and vehicle emissions, are essential to address the full range of the country's air pollution problems— including ozone, particulate matter, regional haze and toxics. STAPPA/ALAPCO recommended that such diesel sulfur standards take effect by 2003. They

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[35] "Proposed World-Wide Fuel Charter", issued by the American Automobile Manufacturers Association, the European Automobile Manufacturers Association, and the Japan Automobile Manufacturers Association, June 1998.

[36] Letter from Robert J. Eaton, Chrysler Corporation, Alex Trotman, Ford Motor Company and John F. Smith, Jr., General Motors Corporation, to Vice President Al Gore, July 16, 1998.

[37] "STAPPA/ALAPCO Resolution on Sulfur in Diesel Fuel," October 13, 1998. Letter from S. William Becker, Executive Director of STAPPA/ALAPCO, to Carol Browner, Administrator of U.S. EPA, October 16, 1998.

urged us to announce our intention to adopt such standards as soon as possible, so that petroleum refiners could consider the least-cost ways of complying with both gasoline and diesel sulfur controls. They also urged us to consider nonroad diesel fuel changes and to adopt the most stringent sulfur standards feasible to enable emerging control technologies.

The Engine Manufacturers Association (EMA) also urged us to reduce the sulfur content of diesel fuel.[38] EMA cited the need for low sulfur diesel fuel to enable the introduction of new catalytic aftertreatment devices, reduce fine particulate emissions, and improve engine emissions durability. EMA is involved in a number of activities with other organizations to support low sulfur diesel fuel requirements. EMA offered to share the data from each of these projects with us as they become available. These activities include:

- Requesting the Manufacturers of Emission Control Association (MECA) to draft a "White Paper" addressing the technical need for low sulfur diesel fuel from an aftertreatment perspective.[39]
- Conducting a joint test program with the U.S. Department of Energy to evaluate four levels of diesel sulfur (350 ppm, 150 ppm, 30 ppm and 10 ppm) with five different aftertreatment technologies and four different diesel engines.
- Examining the impact of fuel sulfur on engine life, particularly the corrosive effects.
- Analyzing the environmental impact of reduced sulfate conversion and effects on the particulate matter emissions inventory from diesel engines.
- Preparing an economic analysis of the refining costs associated with lowering diesel sulfur levels, considering proposed changes to gasoline sulfur and potential synergies from reducing sulfur in the input stream rather than individual distillate streams.

[38] Letter from Jed R. Mandel, Engine Manufacturers Association, to Margo T. Oge, Director, Office of Mobile Sources, EPA, November 6, 1998.

[39] This paper is available in Docket A–99–06: "The Impact of Sulfur in Diesel Fuel on Catalyst Emission Control Technology", Manufacturers of Emission Controls Association, March 15, 1999.

XIV. Public Participation

We are committed to a full and open regulatory process with input from a wide range of interested parties. If we proceed with a proposed rule, opportunities for input will include a formal public comment period and a public hearing.

With today's action, we open a comment period for this advance notice (see **DATES**). We encourage comment on all issues raised here, and on any other issues you consider relevant. The most useful comments are those supported by appropriate and detailed rationales, data, and analyses. All comments, with the exception of proprietary information, should be directed to the docket (see **ADDRESSES**). If you wish to submit proprietary information for consideration, you should clearly separate such information from other comments by (1) labeling proprietary information "Confidential Business Information" and (2) sending proprietary information directly to the contact person listed (see **FOR FURTHER INFORMATION CONTACT**) and not to the public docket. This will help ensure that proprietary information is not inadvertently placed in the docket. If you want us to use a submission of confidential information as part of the basis for a proposal, then a nonconfidential version of the document that summarizes the key data or information should be sent to the docket.

We will disclose information covered by a claim of confidentiality only to the extent allowed and in accordance with the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies the submission, it will be made available to the public without further notice to the commenter.

XV. Administrative Designation and Regulatory Analysis

Under Executive Order 12866 (58 FR 51735 (Oct. 4, 1993)), the Agency must determine whether this regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The order defines "significant regulatory action" as any regulatory action (including an advanced notice of proposed rulemaking) that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or,

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This Advance Notice was submitted to OMB for review as required by Executive Order 12866. Any written comments from OMB and any EPA response to OMB comments are in the public docket for this Notice.

XVI. Statutory Provisions and Legal Authority

Statutory authority for the fuel controls discussed in this notice comes from section 211(c) of the Clean Air Act. Section 211(c) allows EPA to regulate fuels where emission products of the fuel cause or contribute to air pollution which reasonably may be anticipated to endanger public health or welfare or where emission products of the fuel will impair to a significant degree emission control equipment.

List of Subjects

40 CFR Part 80

Environmental protection, Administrative practice and procedure, Fuel additives, Gasoline, Imports, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

40 CFR Part 86

Environmental protection, Administrative practice and procedure, Confidential business information, Labeling, Motor vehicle pollution, Penalties, Reporting and recordkeeping requirements.

Dated: May 1, 1999.

Carol M. Browner,

Administrator.

[FR Doc. 99–11383 Filed 5–6–99; 11:03 am]

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federal register

Thursday
May 13, 1999

Part IV

Department of Housing and Urban Development

Public Housing Assessment System (PHAS) Information About PHAS Scoring: Introduction; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4509–N–01]

Public Housing Assessment System (PHAS) Information About PHAS Scoring: Introduction

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: HUD's Public Housing Assessment System (PHAS), established by final rule published on September 1, 1998, provides for a new system for the assessment of America's public housing. Under the PHAS, HUD evaluates a public housing agency (PHA) based on four key indicators: (1) The physical condition of the PHA's properties; (2) the PHA's financial condition; (3) the PHA's management operations; and (4) the resident's assessment (through a resident survey) of the PHA's performance. This notice, together with five other notices published in today's **Federal Register**, provide additional information about the PHAS scoring process under each of the four indicators and other relevant information about PHAS scoring.

FOR FURTHER INFORMATION CONTACT: For further information contact, Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background—The Public Housing Assessment System (PHAS)

A. Overview of the PHAS

On September 1, 1998 (63 FR 46596), HUD published a final rule, codified at 24 CFR part 902, that established a new system for the assessment of America's public housing. The PHAS is designed to enhance public trust by creating a comprehensive oversight tool that effectively and fairly measures a PHA based on standards that are objective and uniform. The PHAS becomes effective for all PHAs with fiscal years ending on and after September 30, 1999. HUD's Real Estate Assessment Center (REAC) is charged with the responsibility for assessing and scoring the performance of PHAs under the PHAS.

This notice provides an overview of the PHAS. The information provided in this notice is based largely on the preamble to the PHAS final rule published on September 1, 1998. Although the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD Appropriations Act, Pub. L. 105–276, 112 Stat. 2461, approved October 21, 1998) (QHWRA) makes changes to the U.S. Housing Act of 1937 (1937 Act) that affect the PHAS, these changes will be the subject of future proposed rulemaking.

Under the PHAS, HUD examines four essential areas of public housing operations to determine a PHA's performance in delivering HUD programs and services. These areas of operations (or indicators of a PHA's performance) are:

(1) The physical condition of a PHA's public housing properties;

(2) The PHA's financial condition;

(3) The PHA's management operations; and

(4) The resident's satisfaction (through a resident survey) with the PHA's services.

1. PHAS Indicator #1—Physical Condition of PHA Properties

The Physical Condition Indicator, PHAS Indicator #1, provides for the assessment of the physical condition of the PHA's properties. A PHA must maintain its public housing in a manner that meets HUD's Uniform Physical Condition Standards, established in a September 1, 1998 final rule of the same name (63 FR 46566) and incorporated in the PHAS final rule. These standards are intended to ensure that public housing (as well as other HUD assisted housing) are maintained in a condition that is decent, safe, sanitary and in good repair. The standards address six major areas of the housing to be evaluated:

(1) Site;
(2) Building exterior;
(3) Building systems;
(4) Dwelling units;
(5) Common areas; and
(6) Health and safety.

In establishing uniform physical condition standards, HUD believed that housing assisted under its programs should be subject to uniform standards, and that the source of the HUD subsidy should not determine the standards to which the housing is subject. Additionally, HUD believes that the physical inspection procedures by which the standards will be assessed should be uniform and consistent. To provide for uniformity in inspection, HUD developed and has implemented a new computer-driven physical inspection protocol. The computer program guides an inspector through the inspection prompting the necessary observations to be made regarding the condition of the property. The computer program is based on substantially objective observations, which significantly minimize the possibility for subjective interpretation of the physical condition standards. The results of the inspection are electronically transferred to HUD.

To ensure the independence of the physical inspection, HUD has entered into contracts with private inspection firms to perform the inspection. All inspectors are trained under HUD auspices in the use of the inspection protocol. Upon becoming certified, inspectors obtain their PHA inspection assignment from the REAC. The inspector downloads the property profile information on the selected PHA's development via the internet from the HUD Home page. The inspector then completes the inspection using a hand-held computer that uses the HUD software. After the inspection is completed, the inspector will upload the inspection results to HUD's central information data repository (CIDR) where it will be verified for accuracy and then scored.

Total Points for PHAS Indicator #1. The total point value of the Physical Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Physical Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

2. PHAS Indicator #2—Financial Condition

The Financial Condition Indicator, PHAS Indicator #2, provides for the assessment of the PHA's financial condition. Specifically, this indicator measures whether a PHA has sufficient financial resources and is managing those financial resources effectively to support the provision of decent, safe, and sanitary housing to its residents. A PHA's financial condition is measured on the basis of uniform financial reporting standards.

In a final rule published on September 1, 1998 (63 FR 46582), HUD issued uniform financial reporting standards for HUD housing programs. This final rule requires PHAs and owners of multifamily properties to prepare the financial information that these entities already submit to HUD annually, in accordance with generally accepted accounting principles (GAAP) and to submit these reports electronically. While the September 1, 1998 final rule titled "Uniform

Financial Reporting Standards for HUD Housing Programs" applies to PHAs, the September 1, 1998 PHAS final rule incorporates these standards and requirements.

The key indicators used to determine a PHA's financial condition include:

(1) *Current Ratio*—current assets divided by current liabilities;

(2) *Number of Months Expendable Fund Balance*—number of months a PHA can operate on the Expendable Fund Balance without additional resources; Expendable Fund Balance is the portion of the fund balance representing expendable available financial resources; unreserved and undesignated fund balance;

(3) *Days Receivable Outstanding*—average number of days tenant receivables are outstanding;

(4) *Vacancy Loss*—loss of potential rent due to vacancy;

(5) *Expense Management/Energy Consumption*—expense per unit for key expenses, including energy consumption, and other expenses such as utilities, maintenance, security; and

(6) *Net Income or Loss divided by the Expendable Fund Balance*—measures how the year's operations have affected the PHA's viability.

Additional components may be used to identify circumstances in which there exists the possibility of higher risk of waste, fraud and abuse. These components will be used to detect fraud and will be used to generate "flags" that will signal field staff, Enforcement Center staff, or fraud investigators to take appropriate action. These components will primarily relate to financial management, but may also be used to provide a PHA with benchmarking information to allow the PHA to measure its own performance against its peers. For example, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores.

Total Points for PHAS Indicator #2. The total point value of the Financial Condition Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Financial Condition Indicator, a PHA must receive a score of at least 60 percent of the 30 points available.

3. PHAS Indicator #3—Management Operations.

The Management Operations Indicator, PHAS Indicator #3, provides for the assessment of a PHA's management operations. This indicator basically reflects the requirements of the Public Housing Management Assessment Program (PHMAP), the predecessor to the PHAS.

The PHAS preserves the statutory indicators found in section 6(j) of the U.S. Housing Act of 1937 Act (1937 Act), with some minor reorganization (from that in the PHMAP) which is designed to reflect their integration into the broader PHAS assessment and to establish their new point values within the PHAS. The statutory indicators are:

(1) Vacancy rate;
(2) Unexpended Section 14 (of the 1937 Act) funds; [1]
(3) Rents uncollected;
(4) Energy consumption; [2]
(5) Unit turn-around time;
(6) Outstanding work orders; and
(7) Annual inspection of units.

The Management Operations Indicator of the PHAS incorporates the seven statutory indicators of section 6(j) of the 1937 Act. As is the case under PHMAP, statutory indicators (1) and (5) are combined under the new PHAS. The statutory energy consumption indicator is part of PHAS Indicator #2 (Financial Condition). Under PHMAP, the energy consumption indicator is part of the financial management indicator. The energy/utility consumption expenses faced by a PHA on an annual basis will be part of the PHA's annual financial report to HUD.

With respect to PHMAP non-statutory indicators, the security indicator remains part of the Management Operations assessment under the PHAS. The resident services and community building indicator is now replaced by a separate indicator (PHAS Indicator #4—Resident Service and Satisfaction). Similarly, the financial condition indicator is now replaced by a separate indicator (PHAS Indicator #2, Financial Condition).

The analysis of the individual statutory management indicators will not deviate significantly from the existing assessment system. Scores will continue to be based on a PHA's certification to the various management operations indicators. As under PHMAP, for the Management Operations Indicator of the PHAS, a PHA will submit certifications as to its performance under each of the management indicators, and a PHA's certifications will be subject to independent verification. Appropriate sanctions for intentional false certification will be imposed, including civil penalties, suspension or debarment of the signatories.

Total Points for PHAS Indicator #3. The total point value of the Management Operations Indicator is 30 of the 100 points available under the PHAS. In order to receive a passing score on the Indicator #3 (Management Operations), a PHA must receive a score of at least 60 percent of the 30 points available.

4. PHAS Indicator #4—Resident Service and Satisfaction.

The Resident Service and Satisfaction Indicator, PHAS Indicator #4, assesses the level of resident satisfaction with PHA housing and services. This PHAS Indicator consists of existing PHMAP Indicator #7, resident services and community building, revised to (1) be consistent with the framework of the new PHAS, and (2) provide a separate resident services satisfaction survey. The objective of PHAS Indicator #4 is to measure the level of resident satisfaction with living conditions at the PHA's properties.

To achieve an acceptable score under this indicator, a PHA must obtain a response from a statistically significant sample of public housing residents. The PHA will be responsible for developing a follow-up plan to address issues resulting from the survey. The resident service and satisfaction assessment score will include two components of the survey process, plus a threshold requirement.

(1) The first component will be the score of the survey results. The survey content will focus on resident evaluation of overall living conditions to include topics such as: (i) maintenance and repair (i.e., work order response); (ii) communications (i.e. perceived effectiveness); (iii) safety (i.e., perceived perception of personal security; (iv) services (i.e., recreation and personal programs); and (v) neighborhood appearance.

(2) The second component will be a score based on the PHA's level of implementation and its follow-up or corrective actions based on the results of the survey.

(3) The third component, the threshold requirement, which is not scored, is verification that the survey process was managed in a manner consistent with guidance provided by HUD, or if the survey results are determined to be altered by the PHA.

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[1] Note that although unexpended section 14 funds was a statutory indicator at the time of issuance of the PHAS final rule, section 522 of QHWRA repeals section 14 of the 1937 Act. QHWRA replaces the unexpended section 14 funds indicator with amount and percentage of funds provided to the PHA from the Capital Fund which remains unobligated by the PHA after 3 years. HUD is currently undergoing negotiated rulemaking to develop a proposed rule for the Capital Fund. The change in indicators will be addressed by the proposed rule, to be published later, that will make changes to the PHAS.

[2] The QHWRA replaces energy consumption with utility consumption. Again this change will be made in the upcoming PHAS proposed rule.

Total Points for PHAS Indicator #4. The total point value of the Resident Service and Satisfaction Indicator is 10 of the 100 points available under the PHAS. A PHA will not receive any points if the survey is not conducted in accordance with HUD prescribed methodology or if the survey results are determined to be altered by the PHA.

B. PHAS Assessment Periods and Reporting Dates

The September 1, 1998 PHAS final rule provides for the new PHAS to become effective for PHAs with fiscal years ending September 1999 and later. Financial reports due for PHAs with fiscal years ending in September 1999 and later must be prepared on a GAAP basis.

The first scores under PHAS will be issued not later than December 1999 for PHAS with fiscal years ending September 1999. From the date of the September 1, 1998 PHAS final rule, PHAs are provided one year before the new PHAS scores are issued. Until September 30, 1999, PHAs will continue to be scored under the current PHMAP. The implementation schedule for PHAS reporting by PHAs is described on the following table:

REAL ESTATE ASSESSMENT CENTER (REAC) ASSESSMENT PERIODS AND REPORTING DATES

REAC assessment results		Financial reporting	Physical inspection	Management operations	Resident survey
Score issued	Period covered Fiscal Year End [1]	Due date [2]	Inspection dates [3]	Submission due date [4]	Survey dates [5]
12/1999	9–30–99	11–30–99	7/99–9/99	11–30–99	4/99–9/99
03/2000	12–31–99	2–28–2000	10/99–12/99	2–28–2000	10/99 12/99
06/2000	3–31–2000	5–31–2000	1/2000–3/2000	5–31–2000	1/2000–3/2000
09/2000	6–30–2000	8–31–2000	4/2000–6/2000	8–31–2000	4/2000–6/2000
12/2000	9–30–2000	11–30–2000	7/2000–9/2000	11–30–2000	7/2000–9/2000

Notes:

[1] The period covered for each indicator will be the PHA's entire fiscal year ending on dates shown above. Once the new PHAS is effective, a PHA cannot change its fiscal year for a period of 3 years.

[2] PHAs with fiscal years ending 9–30–99 and later must provide GAAP financial reports. These reports must be provided by electronic submission not later than 60 days after the end of the PHA's FY. Audited GAAP reports (due 9 months after the close of the FY in accordance with the Single Audit Act and OMB Circular A–133) will be used to update and confirm unaudited financial results. If significant differences are noted between unaudited and audited results, scoring penalties will apply. For those PHAs that spend less than $300,000 of Federal funds, HUD cannot require or pay for an audit in accordance with the Single Audit Act. HUD, however, can require and pay for an "Agreed-Upon Procedures" report that could be specifically directed at verifying calculations.

[3] Physical inspections will be scheduled to approximate the new PHAS calculation dates; i.e. within the final quarter of the PHA's fiscal year.

[4] The certifications and supporting documentation required for the Management Operations Indicator will be due 60 days after the end of the PHA's fiscal year.

[5] Resident surveys will be required to be conducted during the course of a PHA's fiscal year and will be required to be submitted by a PHA at the time that the PHA submits the certifications required under the Management Operations Indicator.

C. PHAS Advisory Scores

During this one year transition period, the September 1, 1998 final rule advised that advisory scores for physical condition and financial management may be issued to provide guidance to PHAs. On December 31, 1998 (63 FR 72319), HUD published a notice that advised of REAC's intent to issue advisory scores. The notice provided in relevant part as follows:

> The REAC intends to provide every PHA with an advisory score before the PHA receives its official PHAS score. The REAC, however, will issue advisory PHAS scores only after it has a complete set of data for all four indicators. With respect to Indicator #1 (Physical Condition), the REAC is responsible for assessing the physical condition of PHA properties and therefore receives this indicator information firsthand. Information regarding the other indicators is provided to the REAC by the PHAs (as for example, the PHA annual financial reports). If the PHA fails to timely submit this information to the REAC, then issuance of the PHAS advisory score will be delayed until the REAC receives the necessary information. (63 FR 72319)

The December 31, 1998 Notice also presented the schedule for providing advisory scores to PHAs.

D. Scoring Performance Under the PHAS and Consequences of the Score

In order to determine a composite score for each PHA, the four PHAS Indicators will be individually scored and then combined to present a composite score that reflects the overall performance of PHAS for a total of 100 possible points. Again, the 100 points are distributed among the four PHAS Indicators as follows:

(1) Physical Condition—Maximum 30 Points: The PHA's score is based on the results of physical inspections of PHA properties performed by REAC contractors. The results are electronically transmitted to the REAC.

(2) Financial Condition—Maximum 30 Points: The PHA's score is based on unaudited generally accepted accounting principles (GAAP) electronically submitted by the PHA to the REAC. The PHA's submission is audited by an Independent Public Accountant (IPA), as required under the Office of Management and Budget Circular A–133, and the audit results electronically transmitted to the REAC.

(3) Management Operations—Maximum 30 Points: The PHA's score is based on an electronic certification made by the PHA and verified by an IPA. This performance indicator uses six of the same indicators as the current Public Housing Management Assessment Program.

(4) Resident Service and Satisfaction—Maximum 10 Points: The PHA's score is based, in part, on responses to a resident survey managed by the PHA and collected by the REAC. The PHA's score is also based on the PHA's implementation of the resident survey and the PHA's follow-up actions on survey results. This part of the score is an electronic certification made by the PHA and verified by an IPA.

On the basis of these four indicators, HUD's REAC calculates a composite score for each PHA. The PHAS composite score represents a single score for a PHA's entire operation under the four indicators. The PHAS composite score will determine whether a PHA is performing well or is not performing well. The PHAS composite

score is derived from the scores calculated for each of the four indicators. The composite PHAS score will be issued by the REAC for each PHA 60 to 90 calendar days after the end of a PHA's fiscal year. Adjustments to the PHAS score may be made after a PHA's audit report for the year being assessed is transmitted to the REAC. If significant differences (as defined in GAAP guidance materials provided to PHAs) are noted between the unaudited and audited results, a PHA's PHAS score will be raised or lowered, as applicable, in accordance with the audited results.

Based on its overall PHAS score, a PHA will fall into one of three categories:

High Performer. A PHA that achieves a score of at least 60 percent of the points available under each of the four PHAS Indicators, and achieves an overall PHAS score of 90 percent or greater shall be designated a high performer. A PHA shall not be designated a high performer if it scores below the threshold established for any indicator. High performers will be afforded incentives that include relief from reporting and other requirements.

Standard Performer. A PHA that achieves a total score of less than 90% but not less than 60% shall be designated as a standard performer. All standard performers must correct reported deficiencies. A standard performer PHA that receives a score of less than 70% but not less than 60% will be referred to the appropriate HUD area HUB/Program Center and will be required to submit an improvement plan to correct and eliminate deficiencies in the PHA's performance. Standard performers that receive a score over 70% may also be required to submit an improvement plan to correct or eliminate any deficiency. A PHA that achieves a score of less than 60 percent of the total points available under PHAS Indicators #1, #2, or #3 shall not be designated a standard performer, but shall be designated a troubled performer.

Troubled Performer. A PHA that achieves a total PHAS score of less than 60 percent, or achieves a score of less than 60 percent of the total points available under PHAS Indicators #1, #2, or #3, shall be designated as troubled, and referred to HUD's Troubled Agency Recovery Center (TARC) for oversight and remedial action. A PHA that does not correct identified deficiencies within a maximum of two years will be referred to HUD's Departmental Enforcement Center for further action. In accordance with section 6(j)(2) of the 1937 Act, a PHA that receives less than 60 percent of the maximum calculation for the modernization indicator under the PHAS Management Indicator (Indicator #3) may be subject to certain sanctions as provided in 24 CFR 902.67.

II. Information About the PHAS Scoring Process

Section I of this notice provided an overview of the new PHAS. More detailed information about the PHAS is available in the preamble to the PHAS final rule published on September 1, 1998, and in the PHAS regulations, codified in 24 CFR part 902. In the preamble to the September 1, 1998 PHAS final rule, HUD stated that before the PHAS became fully operational in October 1999, HUD would make available additional documents, guidance, and assistance about the processes of the new PHAS (63 FR 46598). HUD's December 31, 1998 notice provided information about the advisory score process. The notices that follow this introductory notice are specifically directed to providing further information about the PHAS scoring process for each of the four indicators. The notices, published in today's **Federal Register**, and that immediately follow this introductory notice are:

- Notice of PHAS Physical Condition Scoring
- Notice of PHAS Appeals and Technical Review of Physical Inspection Results
- Notice of PHAS Financial Condition Scoring
- Notice of Management Operations Scoring
- Notice of Resident Service and Satisfaction Scoring

As the notices describing the processes will show, the PHAS is designed to provide relevant and verifiable measures that directly relate to PHA performance.

Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99–11911 Filed 5–12–99; 8:45 am]

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Part V

Department of Housing and Urban Development

Public Housing Assessment System Physical Condition Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4509–N–02]

Public Housing Assessment System Physical Condition Scoring Process

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about HUD's process for issuing scores under the Physical Condition Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #1, Physical Condition. The purpose of the Physical Condition assessment is to ensure that public housing units are safe, decent, sanitary and in good repair, using HUD's uniform physical condition standards for the assessment. The physical condition assessment under the PHAS utilizes uniform physical inspection procedures to determine compliance with the uniform standards and is an important indicator of a PHA's performance.

Of the total 100 points available for a PHAS score, a PHA may receive up to 30 points under PHAS Indicator #1. The physical condition score is included in the aggregate PHAS score.

The PHAS/REAC Physical Inspection and the HQS Inspection

The PHAS physical inspection is performed by HUD's Real Estate Assessment Center (REAC), and is also referred to as the REAC physical inspection. The REAC physical inspection encompasses virtually everything covered by the Housing Quality Standards (HQS) inspection. The REAC physical inspection, however, is more objective and more defined in identifying and classifying deficiencies. While the HQS inspection generates a reasonably subjective "pass/fail" designation, the REAC inspection generates much more comprehensive results, such as:

- Physical scores reported at the property level;
- Area level scores for each of the five REAC physical inspection areas; and
- Observations of deficiencies recorded by the inspector electronically at the time of the inspection.

The Physical Inspection Scoring Process

1. Definitions

The following are the important definitions of terms used in the physical condition scoring process:

Score means a number between 0 and 100 that reflects the physical condition of a property, inspectable area, or sub-area:

- To record a health or safety problem, a letter is added to the property score (a, b, or c); and
- To note that smoke detectors are inoperable or missing, an asterisk (*) is added to the property score.

Inspectable area means any of the five major components of the property, which are:

- Site.
- Building exteriors.
- Building systems.
- Common areas.
- Dwelling units.

Sub-area means an inspectable area for one building. For example, if a property has more than one building, each inspectable area for each building in the property is treated as a sub-area.

Inspectable items refer to walls, kitchens, bathrooms, and other things to be inspected in an inspectable area. The number of inspectable items may vary from 8 to 17 items for each area. Weights are assigned to each item as shown in Appendix 1 (Item Weights and Criticality Levels).

Deficiencies refer to specific problems, comparable to HQS, that can be recorded for the inspectable items, such as a hole in a wall or a damaged refrigerator in the kitchen.

Criticality means one of five levels that reflect the relative importance of the deficiencies for an inspectable item. Appendix 1 also lists all deficiencies with their designated levels, which vary from 1 to 5, with 5 as the most critical. The deficiencies also have assigned values used in scoring as follows:

Criticality	Level	Value
Critical	5	5.00
Very important	4	3.00
Important	3	2.25
Contributes	2	1.25
Slight contribution	1	0.50

Based on the importance of the deficiency, reflected in its criticality value, points are deducted from the property score. For example, a clogged drain in the kitchen is more critical than a damaged surface on a counter top. Therefore, more points will be deducted for a clogged drain than for a damaged surface.

Severity means one of three levels that reflect the extent of damage associated with each deficiency, with values assigned as follows:

Severity	Value
Severe	1.00
Major	0.50
Minor	0.25

Appendix 1 shows the severity levels that are possible for each deficiency. Based on the severity of each deficiency, the score is reduced. Points deducted are calculated as the product of the item weight and the values for criticality and severity, as described below. For specific definitions of each severity level, see the REAC's "Dictionary of Deficiency Definitions," which is available from REAC's Internet Site, http://www.hud.gov/reac and is reproduced in this Notice as Appendix 2 (Dictionary of Deficiency Definitions).

Normalized area weights mean weights used with area scores to create property level scores. The weights are adjusted to reflect the inspectable items that are present.

2. Scoring Process Input

To generate accurate scores, it is crucial to determine the appropriate relative weights of the various components of the inspection; that is, which components are the most important, the next most important, and so on. To develop the scoring methodology for the PHAS physical inspection, HUD utilized information provided by several knowledgeable parties, including:

- Professionals experienced in assessing the physical condition of properties;
- Representatives from the housing and public housing industries; and
- HUD professionals.

In an extensive series of meetings, these parties gave HUD valuable advice and comments on the relative weights and values for inspectable areas, items,

criticality of deficiencies, and severity levels of deficiencies.

3. Equity Principles

In addition to determining the appropriate relative weights, HUD also took into consideration several issues concerning equity between properties:

Proportionality. The scoring methodology includes an important control, which does not allow any sub-area scores to be negative. If a sub-area, such as the building exterior for a given building, has so many deficiencies that the sub-area score is negative, the score is set to zero. This control mechanism ensures that no single building or dwelling unit can affect the overall score more than its proportionate share of the whole.

Configuration of property. The scoring methodology takes into account that properties have different numbers of units in buildings. To fairly score properties with different numbers of units in buildings, the area scores are calculated for building exteriors and systems by using weighted averages of the sub-area scores, where the weights are based on the number of units in each building.

Differences between properties. The scoring methodology also takes into account that properties have different features and amenities. To ensure that the overall score reflects only items are present to be inspected, weights to calculate area and property scores are adjusted depending on how many items are there to be inspected.

4. Deficiency Definitions

During a physical inspection of a property, the inspector looks for deficiencies for each inspectable item within the inspectable areas, such as the walls (item) of a dwelling unit (area). A specific criticality level is assigned to each deficiency. The criticality level reflects the importance of the deficiency relative to all deficiencies for the item. One of three severity levels is also assigned based on the observed condition.

The REAC's "Dictionary of Deficiency Definitions" specifically defines the three levels of severity: severe, major, and minor. As noted earlier, this dictionary is found in Appendix 2 to this notice, and is also available on the REAC Internet Site.

5. Health and Safety Deficiencies

The REAC physical inspection emphasizes health and safety (H&S) deficiencies because of their crucial importance to the well-being of residents. H&S deficiencies can substantially reduce the overall property score. As noted earlier, the H&S deficiencies are highlighted by adding a letter to the numeric score. Letters to the numeric score are added as follows:

- If there are no H&S deficiencies, add a;
- If there are H&S deficiencies that are not life-threatening (NLT), add b; and
- If there are exigent H&S deficiencies that are life threatening(LT), i.e., calling for immediate attention or remedy—or fire safety H&S deficiencies, add c.

Appendix 1 lists all H&S deficiencies with an "LT" designation for exigent/fire safety and "NLT" for non-life threatening deficiencies.

To ensure prompt correction of H&S deficiencies, the inspector gives the property representative the list of every observed exigent/fire safety H&S deficiency before leaving the site. The property representative acknowledges receipt of the deficiency report by signature. The inspector also transmits the deficiency report to HUD not later than the morning after completing the inspection. HUD sends to all PHAs inspection reports that summarize the H&S deficiencies recorded by the inspector. These reports clearly show:

- The number of H&S deficiencies (exigent/fire safety and non-life threatening) that the inspector observed;
- All observed smoke detector deficiencies; and
- A projection of the total number of H&S problems that the inspector potentially would see in an inspection of all buildings and all units.

If there are smoke detector deficiencies, the physical condition score will include an asterisk. However, problems with smoke detectors do not currently affect the overall score. When there is an asterisk indicating the property has at least one smoke detector deficiency, that part of the score may be identified as "risk." For example, "93a, risk" for 93a* and "71c, risk" for 71c*.

There are six distinct letter grade combinations: a, a*, b, b*, c and c*. For example:

- A score of 90c* means that the property contains at least one exigent/fire safety H&S deficiency to be corrected, including some smoke detector; deficiencies, but is otherwise in excellent condition.
- A score of 55a means that the property is in poor condition, even though there are no H&S deficiencies; and
- A property in excellent physical condition with no H&S deficiencies would have a score of 90a to 100a.

6. Scoring Process Elements

The physical condition scoring process is based on three elements within a property:

- Inspectable areas;
- Inspectable items; and
- Observed deficiencies.

7. Scoring as Weighted Averages

The score for a property is the weighted average of area scores, with the area weights adjusted to take into account how many of an area's inspectable items are actually present to be inspected.

The area scores are calculated by deriving weighted averages of sub-area scores over buildings or dwelling units as appropriate.

The sub-area scores are calculated by deducting points for deficiencies, based on criticality and severity levels. (Sub-area scores may not be less than zero.) Points are also deducted for H&S deficiencies.

8. Essential Weights and Levels

The process of scoring a property's physical condition depends on the weights, levels, and associated values of several quantities:

- Weights for inspectable areas (5 areas);
- Weights for inspectable items within areas (8 to 17 per area);
- Criticality levels and their associated values for the possible deficiencies within items inspected;
- Severity levels and their associated values for deficiencies; and
- Health and safety deductions (exigent/fire safety and non-life threatening) for site, buildings, and dwelling units.

9. Normalized Area Weights

A property's overall physical condition score is a weighted average of area scores. Approximate relative weights appeared in the PHAS final rule, published on September 1, 1998 (see 63 FR 46596, pages 46598–46599):

Area	Weight (percent)
Site	15
Building exterior	15
Building systems	20
Common areas	15
Dwelling units	35

These weights are assigned if all inspectable items are present for each area for each building and unit. Typically, some areas are missing a number of inspectable items for some or all buildings or units. For example, common areas may be missing in some buildings. When items are missing for

an area, the area weight is reduced to reflect the missing item weights and then all area weights are "normalized" so that they again add up to 100%. As an example, if there were no common areas, the weights of the other four areas would be reduced to a total of 85%. Each area's weight then would be divided by 0.85, resulting in normalized weights of 17.6%, 17.6%, 23.5%, 0% and 41.2% for site, building exterior, building systems, common areas and units, respectively. These new weights add to 100%.

10. Site, Unit and Sub-Area Scores

These are the steps to arrive at site, unit and sub-area scores for a site, building, or unit:

Step 1: calculate an "initial proportionate score"—the difference between the possible points for the site, a building sub-area, or a unit and the deductions associated with the deficiencies recorded. The number of possible points is the total of the inspectable item weights, ignoring the H&S item, for the site, or a building sub-area, or unit.

Step 2: calculate the deduction for an observed deficiency by multiplying the relevant item weight by the criticality value and by the severity value.

Step 3: in a similar manner, reduce the scores for any health and safety (H&S) deficiencies observed, including those in the H&S item and those in other non-H&S items. (The item weight for deficiencies included in the H&S item is equal to the largest weight among the items present.) At this point, the control to prevent negative scores is applied. Thus, no one building or unit may affect an area score more than its proportionate share would justify.

Step 4: normalize the resulting proportionate scores to scores based on 100 points by dividing by the total of weights of items present to be inspected, other than the H&S item.

11. Area Scores

Within each area involving either multiple buildings or units, the area score is a weighted average of the building sub-area scores or unit scores. To calculate these weighted averages, follow these guidelines:

Dwelling units: the area score is the weighted average of sub-area scores for each unit, weighted by the total of item weights present to be inspected in each unit.

Common areas: like the dwelling unit score, the area score for common areas is the weighted average of sub-area common area scores weighted by the total weights for items inspected in the common areas for each building.

Building exteriors or building systems: the area scores for building exteriors and building systems are weighted averages of sub-area scores. The weights are the product of the total weights for items, ignoring the H&S item, inspected for each building exterior or systems times the total number of units for each building. (Note: the total number of units is all units, not just units inspected.)

12. Overall Property Score

To calculate the overall property score, the normalized area weights are applied to the area scores.

13. Possible Points

Normalized area weights reflect both the initial weights and the relative weights between areas of inspectable items actually present. For reporting purposes, normalized weights are presented as the maximum point contributions for each of the five inspectable areas. In the Physical Inspection Report, sent to all PHAs, the following items are listed:

- Normalized weights as the "possible points" by area;
- The area scores, taking into account the points deducted for observed deficiencies;
- The deductions for H&S for site, buildings and units, where H&S deductions for buildings are combined for exteriors, systems and common areas; and
- The overall property score.

The Physical Inspection Report allows the PHA to see the magnitude of the points lost by inspectable area, and the impact on the score of the H&S deficiencies.

14. Examples of Physical Condition Score Calculations

To illustrate how physical condition scores are calculated, three examples are provided below.

Example #1: Example #1 illustrates how the score for a sub-area is calculated based on the following features:

#1a. Ignoring the H&S item, the other seven items have a total weight of 100%, as shown in Appendix 1. If the building had no fire escapes, an item with a nominal weight of 16.7%, then the total item weight for the remaining non-H&S items would be 83.3%, which is then the base (83.3 points) from which deductions are made to create the "initial proportionate score" as described, above, under *Sub-Area Scores.*

#1b. Assume damaged vents were found in the roof. The criticality level for this deficiency is provided in Appendix 1 as a 4, which has a value of 3.00 as given, above, under *Definitions.* If, based on the Dictionary of Deficiency Definitions (Appendix 2), it is determined that the damaged vents seen are minor deficiencies, then the amount of points deducted is the item weight (16.7) times the criticality value (3.00), times the severity value (0.25), which equals 12.5 points.

#1c. If this is the only deficiency observed, then the initial proportionate score for this sub-area would be 83.3 − 12.5 or 70.8 points.

#1d. Additional deficiencies or H&S deficiencies (calculated in the same manner) would further decrease the sub-area score and if the score dropped below zero, then it would be changed to zero.

#1e. The initial proportionate sub-area score is then normalized to a 100 point basis by dividing by the total of the non-H&S item weights (0.833), which would create the final score of (70.8)/(0.833) = 85.0

Example #2: Example #2 illustrates how the score for an area is calculated based on the following features:

#2a. Consider a property with 2 buildings with the following characteristics:

- Building #1 (from Example #1, above):

—10 units
—83.3% of the weight for the items that were present in building exterior
—Building exterior score is 85 points

- Building #2:

—20 units
—100% of the weight for the items that were present in building exterior
—Building exterior score is 70 points

#2b. The building exterior score for the building exterior area is the weighted average of the individual scores. Each building exterior score is weighted by the number of units and the percent of the weight for items present in the building exterior.

#2c. The scores for buildings #1 and #2, above, are calculated using the following formula: Building Exterior Score = sum of [(Building score) times (Building weight divided by the sum of Building weights)]

- Building #1 weight: [(10 units)*(83.3% weight)] = 8.33.
- Building #2 weight: [(20 units)*(100% weight)] = 20.
- Total weight = 8.33 + 20, or 28.33.
- Building exterior score

= (85 points)*(8.33/28.33) + (70 points)*(20/28.33)
= 25.0 + 49.4
= 74.4

Example #3: Example #3 illustrates how the score for a property is calculated based on the following:

#3a. Consider a property with the following characteristics:

- Site:

—Score: 90 points
—100% of weight of items present
—Nominal weight: 15%

- Building Exteriors (from example #2, above):

Score: 74 points
—92% of weight of items present
—Nominal weight: 15%

- Building Systems:

—Score: 70 points
—80% of weight of items present
—Nominal weight: 20%

- Common Areas:

—Score: 60 points
—30% of weight of items present
—Nominal weight: 15%

- Dwelling Units:

—Score: 80 points
—80% of weight of items present
—Nominal weight: 35%

#3b. First, adjust the area weights for each area. Multiply the weight of items present by the nominal weight for each area and add the total:

- Site: 15*100% = 15.
- Building Exteriors: 15*92% = 13.8.
- Building Systems: 20*80% = 16.0.
- Common Areas: 15*30% = 4.5
- Dwelling Units: 35*80% = 28.0.
- Total: = 77.3.

#3c. Adjust the area weights to "normalize" so that they add to 100. Divide each adjusted area weight by the total and multiply by 100 (this also results in the maximum possible points reported for each area):

- Site: (15/77.3)*100 = 19.4.
- Building Exteriors: (13.8/77.3)*100 = 17.9.
- Building Systems: (16/77.3)*100 = 20.7.
- Common Areas: (4.5/77.3)*100 = 5.8.
- Dwelling Units: (28/77.3)*100 = 36.2.

#3d. Multiply the new "normalized" weights by the area scores, above, divide by 100, and add the results:

- Site: 19.4*90/100 = 17.5 points.
- Building Exteriors: 17.9*74/100 = 13.2 points.
- Building Systems: 20.7*70/100 = 14.5 points.
- Common Areas: 5.8*60/100 = 3.5 points.
- Dwelling Units: 36.2*80/100 = 29.0 points.
- Total Property Score: = 77.6 points .

15. Computing the PHAS Overall Physical Inspection Score

The physical inspection score for the PHAS for a PHA is the weighted average of the PHA's individual project physical inspection scores, where the weights are the number of units in each project divided by the total number of units in all projects for the PHA.

Example:

Project 1 has a score of 60 and has 100 units

Project 2 has a score of 80 and has 900 units.

The overall PHAS score is computed as follows:

Score

= [60 x 100/(100+900)] + [80 x 900/(100+900)]

= 6 + 72

= 78

16. Inspection Summary Report

Appendix 3 includes an inspection summary report which provides an example of the content and structure of the information sent to PHAs.

Dated: May 6, 1999

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

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Appendix1 - Item Weights and Criticality Levels
Area:Site

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Fencing and Retaining Walls	12.5%	Damaged or Missing Gates	4		X	X	NLT
	12.5%	Damaged/Falling/Leaning	2		X	X	NLT
	12.5%	Holes	3	X		X	NLT
	12.5%	Missing Sections	3	X		X	NLT
Grounds	12.5%	Erosion Areas	4		X	X	NLT
	12.5%	Overgrown/Penetrating Vegetation	3		X	X	
	12.5%	Ponding/Site Drainage	4	X	X	X	
	12.5%	Rutting	2		X	X	
Health & Safety	12.5%	Air Quality - Sewer Odor Detected	3			X	NLT
	12.5%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	12.5%	Flammable Materials - Improperly Stored	3			X	NLT
	12.5%	Garbarge and Debris - Outdoors	3			X	NLT
	12.5%	Hazards - Other	3			X	NLT
	12.5%	Hazards - Sharp Edges	3			X	NLT
	12.5%	Hazards - Tripping	3			X	NLT
	12.5%	Infestation - Insects	3			X	NLT
	12.5%	Infestation - Rats/Mice/Vermin	3			X	NLT
Lighting	8.0%	Broken Fixtures	4		X	X	
	8.0%	Missing/Broken Bulbs	4		X	X	
Mailboxes/Project Signs	1.0%	Mailbox Missing/Damaged	2	X		X	
	1.0%	Signs Missing/Damaged	2	X		X	
Market Appeal	8.0%	Graffiti	4	X	X	X	
	8.0%	Litter	4		X		
Parking Lots/Driveways/Roads	8.0%	Cracks	3		X	X	
	8.0%	Ponding	4	X	X	X	
	8.0%	Potholes/Loose Material	4	X	X	X	
	8.0%	Settlement/Heaving	4	X	X	X	
Play Areas and Equipment	12.5%	Damaged/Broken Equipment	3	X	X	X	NLT
	12.5%	Deteriorated Play Area Surface	3	X	X	X	
Refuse Disposal	12.5%	Broken/Damaged Enclosure	3		X	X	
	12.5%	Inadequate Outside Storage Space	3	X		X	
Storm Drainage	12.5%	Damaged/Broken/Cracked	4		X	X	
	12.5%	Debris/Obstruction/Sediment	5		X	X	
Walkways/Stairs	12.5%	Broken/Missing Hand Railing	3			X	NLT
	12.5%	Broken/Missing Steps	3			X	NLT
	12.5%	Cracks/Settlement/Heaving	3		X	X	
	12.5%	Spalling	3	X		X	

Note: 1.) Nominal item weight assumes that all items for the Site are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 12.5%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Building Exterior

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Doors	16.0%	Broken/Missing Glazing/Glass	4	X		X	NLT
	16.0%	Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	16.0%	Damaged Hardware/Locks	3	X	X	X	
	16.0%	Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	16.0%	Damaged/Missing Screen/Storm/Security Door	3	X	X	X	NLT
	16.0%	Deteriorated/Missing Caulking/Seals	4	X	X	X	
	16.0%	Missing Door	5			X	
Fire Escapes	16.0%	Blocked Egress/Ladders	5			X	LT
	16.0%	Visibly Missing Components	5			X	LT
Foundations	16.0%	Cracks/Gaps	5	X	X	X	
	16.0%	Spalling/Exposed Rebar	4	X	X	X	
Health and Safety	16.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	16.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	16.0%	Emergency Fire Exits - Emergency/Fire Exits Blocked/Unusable	5			X	LT
	16.0%	Emergency Fire Exits - Missing Exit Signs	3			X	NLT
	16.0%	Flammable Materials - Improperly Stored	3			X	NLT
	16.0%	Garbage and Debris - Indoors	3			X	NLT
	16.0%	Garbage and Debris - Outdoors	3			X	NLT
	16.0%	Hazards - Other	3			X	NLT
	16.0%	Hazards - Sharp Edges	3			X	NLT
	16.0%	Hazards - Tripping	3			X	NLT
	16.0%	Infestation - Insects	3			X	NLT
	16.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Lighting	10.0%	Broken Fixtures	4		X	X	
	10.0%	Missing/Broken Bulbs	4		X	X	
Roofs	16.0%	Damaged Soffits/Fascia	4	X		X	
	16.0%	Damaged Vents	4	X		X	
	16.0%	Damaged/Clogged Drains	5		X	X	
	16.0%	Damaged/Torn Membrane/Missing Ballast	5		X	X	
	16.0%	Missing/Damaged Components from Downspout/Gutter	3	X		X	
	16.0%	Missing/Damaged Shingles	5		X	X	
	16.0%	Ponding	4			X	
Walls	13.0%	Cracks/Gaps	5	X	X	X	
	13.0%	Damaged Chimneys	4		X	X	NLT
	13.0%	Missing/Damaged Caulking/Mortar	4	X	X		
	13.0%	Missing Pieces/Holes/Spalling	4		X	X	
	13.0%	Stained/Peeling/Needs Paint	3	X	X		
Windows	13.0%	Broken/Missing/Cracked Panes	3	X		X	NLT
	13.0%	Damaged Sills/Frames/Lintels/Trim	5		X	X	
	13.0%	Damaged/Missing Screens	2	X			
	13.0%	Missing/Deteriorated Caulking/Glazing Compound	5	X	X	X	
	13.0%	Peeling/Needs Paint	2	X			
	13.0%	Security Bars Prevent Ingress/Egress	5			X	LT

Note: 1.) Nominal item weight assumes that all items for the Building Exterior are present. Item weights would be adjusted accordingly when items are not applicable (N/A)

2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 16.0%.

3.) "X" in the severity column indicates which severity levels are applicable.

4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.

5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Building Systems

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Domestic Water	15.5%	Central Hot Water Supply Inoperable	5			X	NLT
	15.5%	Leaking Central Water Supply	4			X	
	15.5%	Misaligned Ventilation System	5			X	LT
	15.5%	Missing Pressure Relief Valve	5			X	NLT
	15.5%	Rust/Corrosion on Heater Chimney	2			X	NLT
	15.5%	Rust/Corrosion-Central Water Components	3		X	X	
	15.5%	Water Supply Inoperable	5			X	NLT
Electrical System	15.5%	Blocked Access/Improper Storage	3			X	NLT
	15.5%	Burnt Breakers	4			X	NLT
	15.5%	Evidence of Leaks/Corrosion	5			X	NLT
	15.5%	Frayed Wiring	5			X	
	15.5%	Missing Breakers	5			X	LT
	15.5%	Missing Covers	5			X	LT
Elevators	5.0%	Not Operable	5			X	NLT
Emergency Power	2.0%	Auxiliary Lighting Inoperable	5			X	
	2.0%	Run-Up Records/Documentation Not Available	4		X	X	
Exhaust System	15.5%	Roof Exhaust Fan Inoperable	3			X	
Fire Protection	15.5%	Missing (Sprinkler Head)	5			X	NLT
	15.5%	Missing/Damaged/Expired Extinguishers	5			X	LT
Health & Safety	15.5%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	15.5%	Air Quality - Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	15.5%	Air Quality - Sewer Odor Detected	3			X	NLT
	15.5%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	15.5%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	15.5%	Elevator - Tripping	3			X	NLT
	15.5%	Flammable Materials - Improperly Stored	3			X	NLT
	15.5%	Garbage and Debris - Indoors	3			X	NLT
	15.5%	Garbage and Debris - Outdoors	3			X	NLT
	15.5%	Hazards - Other	3			X	NLT
	15.5%	Hazards - Sharp Edges	3			X	NLT
	15.5%	Hazards - Tripping	3			X	NLT
	15.5%	Infestation - Insects	3			X	NLT
	15.5%	Infestation - Rats/Mice/Vermin	3			X	NLT
HVAC	15.5%	Boiler/Pump Leaks	4			X	
	15.5%	Fuel Supply Leaks	4			X	NLT
	15.5%	Gas Fired Unit-Missing/Misaligned Chimney	5			X	LT
	15.5%	General Rust/Corrosion	2		X	X	NLT
Sanitary System	15.5%	Broken/Leaking/Clogged Pipes or Drains	5			X	NLT
	15.5%	Missing Drain/Cleanout/Manhole Covers	3		X	X	

Note: 1.) Nominal item weight assumes that all items for the Building System are present. Item weights would be adjusted accordingly when items are not applicable (N/A)
2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 15.5%
3.) "X" in the severity column indicates which severity levels are applicable.
4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.
5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Basement/Garage/Carport	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	3	X	X	X	
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	4	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	5			X	
	5.0%	Doors - Missing Door	4	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Closet/Utility/Mechanical	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	NLT
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Community Room	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	NLT
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Day Care	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Halls/Corridors/Stairs	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	Graffiti	4	X	X	X	
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Mailbox Missing/Damaged	2	X		X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Health & Safety	10.0%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	10.0%	Air Quality - Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	10.0%	Air Quality - Sewer Odor Detected	3			X	NLT
	10.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT
	10.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	10.0%	Flammable Materials - Improperly Stored	3			X	NLT
	10.0%	Garbage and Debris - Indoors	3			X	NLT
	10.0%	Garbage and Debris - Outdoors	3			X	NLT
	10.0%	Hazards - Other	3			X	NLT
	10.0%	Hazards - Sharp Edges	3			X	NLT
	10.0%	Hazards - Tripping	3			X	NLT
	10.0%	Infestation - Insects	3			X	NLT
	10.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Kitchen	10.0%	Cabinets - Missing/Damaged	2	X	X	X	
	10.0%	Call for Aid - Inoperable	3			X	NLT
	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Countertops - Missing/Damaged	2	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Dishwasher/Garbage Disposal - Inoperable	2		X		
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Exhaust Sys.-Excessive Grease/Inoperable	2	X		X	NLT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	10.0%	Plumbing - Clogged Drains	4	X		X	NLT
	10.0%	Plumbing - Leaking Faucet/Pipes	3	X		X	NLT
	10.0%	Range/Stove - Missing/Damaged/Inoperable	3	X		X	
	10.0%	Range Hood /Exhaust Fans - Excessive Grease/Inoperable	2	X		X	
	10.0%	Refrigerator - Missing/Damaged/Inoperable	3	X		X	
	10.0%	Sink - Damaged/Missing	5	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Laundry Room	10.0%	Ceiling - Bulging/Buckling	4			X	
	10.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	10.0%	Ceiling - Needs Paint	1	X	X		
	10.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	10.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	10.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	10.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	10.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	10.0%	Doors - Deteriorated/Missing Seals	4			X	
	10.0%	Doors - Missing Door	5	X	X	X	
	10.0%	Dryer Vent Missing/Damaged/Inoperable	3			X	
	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Electrical - Burnt Breakers	4			X	NLT
	10.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Electrical - Frayed Wiring	5			X	
	10.0%	Electrical - Missing Breakers	5			X	LT
	10.0%	Electrical - Missing Covers	5			X	LT
	10.0%	Floors - Bulging/Buckling	4			X	
	10.0%	Floors - Floor Covering Damage	4	X	X	X	
	10.0%	Floors - Missing Flooring	4	X	X	X	
	10.0%	Floors - Needs Paint	1	X	X		
	10.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	10.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	10.0%	HVAC - Inoperable	5			X	
	10.0%	HVAC - Noisy/Vibrating/Leaking	4		X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	10.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	10.0%	HVAC - Rusted/Corroded	2		X		
	10.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	10.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	10.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	10.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	10.0%	Walls - Bulging/Buckling	4			X	
	10.0%	Walls - Damaged	3	X	X	X	
	10.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	10.0%	Walls - Needs Paint	1	X	X		
	10.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	10.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	10.0%	Windows - Damaged Window Sill	4	X	X		
	10.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	10.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	10.0%	Windows - Peeling/Needs Paint	1	X			
	10.0%	Windows - Security Bars Prevent Egress	5			X	LT
Lobby	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5				LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Office	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Other Community Spaces	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Patio/Porch/Balcony	5.0%	Baluster/Side Railing Damaged	3			X	
	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Pools and Related Structure	5.0%	Fencing - Damaged/Not Intact	5			X	
	5.0%	Pool - Not Operational	2			X	
Restrooms/Pool Structures	5.0%	Call for Aid - Inoperable	3			X	NLT
	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	GFI - Inoperable	5			X	NLT
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lavatory Sink - Damaged/Missing	3	X		X	NLT
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	5.0%	Plumbing - Clogged Drains	5	X		X	NLT
	5.0%	Plumbing - Leaking Faucet/Pipes	4	X		X	NLT
	5.0%	Restroom Cabinet - Damaged/Missing	2	X		X	
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Shower/Tub - Damaged/Missing	4		X	X	
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Ventilation/Exhaust System - Inoperable	4			X	
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Water Closet - Damaged/Clogged/Missing	5		X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Storage	5.0%	Ceiling - Bulging/Buckling	4			X	
	5.0%	Ceiling - Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	5.0%	Ceiling - Needs Paint	1	X	X		
	5.0%	Ceiling - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Doors - Broken/Missing Glazing/Glass	4	X		X	NLT
	5.0%	Doors - Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	5.0%	Doors - Damaged Hardware/Locks	3	X	X	X	
	5.0%	Doors - Damaged Surface (Holes/Paint/Rusting)	3	X	X	X	
	5.0%	Doors - Damaged/Missing Screen/Strom/Security Door	3	X		X	NLT
	5.0%	Doors - Deteriorated/Missing Seals	4			X	
	5.0%	Doors - Missing Door	5	X	X	X	
	5.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	5.0%	Electrical - Burnt Breakers	4			X	NLT
	5.0%	Electrical - Evidence of Leaks/Corrosion	5			X	NLT
	5.0%	Electrical - Frayed Wiring	5			X	
	5.0%	Electrical - Missing Breakers	5			X	LT
	5.0%	Electrical - Missing Covers	5			X	LT
	5.0%	Floors - Bulging/Buckling	4			X	
	5.0%	Floors - Floor Covering Damage	4	X	X	X	
	5.0%	Floors - Missing Flooring	4	X	X	X	
	5.0%	Floors - Needs Paint	1	X	X		
	5.0%	Floors - Rot/Deteriorated Subfloor	4		X	X	
	5.0%	Floors - Water Stains/Water Damage/Mold/Mildew	2		X	X	
	5.0%	HVAC - Gas Fired Unit - Missing/Misaligned Chimney	5			X	LT
	5.0%	HVAC - Inoperable	5			X	
	5.0%	HVAC - Noisy/Vibrating/Leaking	4		X		
	5.0%	HVAC - Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	5.0%	HVAC - Rusted/Corroded	2		X		
	5.0%	Lighting - Missing/Inoperable Fixture	4	X	X	X	

Appendix 1 - Item Weights and Criticality Levels
Area: Common Area

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	5.0%	Outlets/Switches/Cover Plates - Missing/Broken	3	X		X	NLT
	0.0%	Smoke Detector - Missing/Inoperable	5			X	LT
	5.0%	Stairs - Broken/Missing Hand Railing	3			X	NLT
	5.0%	Stairs- Broken/Damaged/Missing Steps	3			X	NLT
	5.0%	Walls - Bulging/Buckling	4			X	
	5.0%	Walls - Damaged	3	X	X	X	
	5.0%	Walls - Damaged/Deteriorated Trim	1	X	X	X	
	5.0%	Walls - Needs Paint	1	X	X		
	5.0%	Walls - Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
	5.0%	Windows - Cracked/Broken/Missing Panes	3	X		X	NLT
	5.0%	Windows - Damaged Window Sill	4	X	X		
	5.0%	Windows - Deteriorated/Missing Caulking/Seals	5	X	X	X	
	5.0%	Windows - Inoperable/Not Lockable	3	X		X	NLT
	5.0%	Windows - Peeling/Needs Paint	1	X			
	5.0%	Windows - Security Bars Prevent Egress	5			X	LT
Trash Collection Areas	5.0%	Chutes Damaged/Missing Components	3		X	X	

Note: 1.) Nominal item weight assumes that all items for the Common Area are present. Item weights would be adjusted accordingly when items are not applicable (N/A)

2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 10.0%

3.) "X" in the severity column indicates which severity levels are applicable.

4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.

5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

Appendix 1 - Item Weights and Criticality Levels
Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
Bathroom	15.0%	Bathroom Cabinets - Damaged/Missing	2	X		X	
	15.0%	Lavatory Sink - Damaged/Missing	3	X		X	NLT
	15.0%	Plumbing - Clogged Drains	5	X		X	NLT
	15.0%	Plumbing - Leaking Faucet/Pipes	4	X		X	NLT
	15.0%	Shower/Tub - Damaged/Missing	4		X	X	NLT
	15.0%	Ventilation/Exhaust System - Inoperable	4			X	
	15.0%	Water Closet/Toilet - Damaged/Clogged/Missing	5		X	X	NLT
Call-for-Aid	2.0%	Inoperable	3			X	NLT
Ceiling	4.5%	Bulging/Buckling	4			X	
	4.5%	Holes/Missing Tiles/Panels/Cracks	4	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
Doors	4.5%	Broken/Missing Glazing/Glass	4	X		X	NLT
	4.5%	Damaged Frames/Threshold/Lintels/Trim	2	X	X	X	NLT
	4.5%	Damaged Hardware/Locks	3	X	X	X	
	4.5%	Damaged Surface - Holes/Paint/Rusting	3	X	X	X	
	4.5%	Damaged/Missing Screen/Storm/Security Door	3	X	X	X	NLT
	4.5%	Deteriorated/Missing Seals (Entry Only)	4			X	
	4.5%	Missing Door	5	X	X	X	NLT
Electrical System	10.0%	Electrical - Blocked Access to Electrical Panel	3			X	NLT
	10.0%	Burnt Breakers	4			X	NLT
	10.0%	Evidence of Leaks/Corrosion	5			X	NLT
	10.0%	Frayed Wiring	5			X	
	10.0%	GFI - Inoperable	5			X	NLT
	10.0%	Missing Breakers	5			X	LT
	10.0%	Missing Covers	5			X	LT
Floors	4.5%	Bulging/Buckling	4			X	
	4.5%	Floor Covering Damage	4	X	X	X	
	4.5%	Missing Flooring	4	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Rot/Deteriorated Subfloor	4		X	X	
	4.5%	Water Stains/Water Damage/Mold/Mildew	2		X	X	
Health & Safety	15.0%	Air Quality - Mold and/or Mildew Observed	3			X	NLT
	15.0%	Air Quality - Sewer Odor Detected	3			X	NLT
	15.0%	Air Quality- Propane/Nat'l Gas/Methane Gas Detected	5			X	LT
	15.0%	Electrical Hazards - Exposed Wires/Open Panels	5			X	LT

Appendix 1 - Item Weights and Criticality Levels
Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	15.0%	Electrical Hazards - Water Leaks on/near Electrical Equipment	5			X	LT
	15.0%	Flammable Materials - Improperly Stored	3			X	NLT
	15.0%	Garbage and Debris - Indoors	3			X	NLT
	15.0%	Garbage and Debris - Outdoors	3			X	NLT
	15.0%	Hazards - Other	3			X	NLT
	15.0%	Hazards - Sharp Edges	3			X	NLT
	15.0%	Hazards - Tripping	3			X	NLT
	15.0%	Infestation - Insects	3			X	NLT
	15.0%	Infestation - Rats/Mice/Vermin	3			X	NLT
Hot Water Heater	10.0%	Gas Fired Unit-Missing/Misaligned Chimney	5			X	LT
	10.0%	Inoperable Unit/Components	5			X	NLT
	10.0%	Leaking Valves/Tanks/Pipes	4			X	
	10.0%	Pressure Relief Valve Missing	5			X	NLT
	10.0%	Rust/Corrosion	3	X	X	X	NLT
HVAC System	15.0%	Convection/Radiant Heat System Covers Missing/Damaged	2		X	X	
	15.0%	Gas Fired Unit - Missing/Misalign Chimney	5			X	LT
	15.0%	Inoperable	5			X	
	15.0%	Noisy/Vibrating/Leaking	4		X		
	15.0%	Rust/Corrosion	2		X	X	
Kitchen	15.0%	Cabinets Missing/Damaged	2	X	X	X	NLT
	15.0%	Countertops Missing/Damaged	2	X	X	X	NLT
	15.0%	Dishwasher/Garbage Disposal - Inoperable	2		X		
	15.0%	Plumbing - Clogged Drains	4	X		X	NLT
	15.0%	Plumbing - Leaking Faucet/Pipes	3	X		X	NLT
	15.0%	Range Hood/Exhaust Fans - Excessive Grease/Inoperable	2	X		X	
	15.0%	Range/Stove - Missing/Damaged/Inoperable	3	X		X	
	15.0%	Refrigerator- Missing/Damaged/Inoperable	3	X		X	NLT
	15.0%	Sink - Damaged/Missing	5	X		X	NLT
Lighting	2.0%	Missing/Inoperable Fixture	4	X	X	X	NLT
Outlets/Switches	4.5%	Missing	3			X	
	4.5%	Missing/Broken Cover Plates	3	X		X	
Patio/Porch/Balcony	2.0%	Baluster/Side Railings Damaged	3			X	
Smoke Detector	0.0%	Missing/Inoperable	5			X	LT
Stairs	2.0%	Broken/Damaged/Missing Steps	3			X	NLT
	2.0%	Broken/Missing Hand Railing	3			X	NLT
Walls	4.5%	Bulging/Buckling	4			X	

Appendix 1 - Item Weights and Criticality Levels
Area: Unit

Inspectable Item	Nominal Item Weight	Observable Deficiency	Criticality Level	Severity MI	MA	SE	H&S
	4.5%	Damaged	3	X	X	X	
	4.5%	Damaged/Deteriorated Trim	1	X	X	X	
	4.5%	Needs Paint	1	X	X		
	4.5%	Water Stains/Water Damage/Mold/Mildew	2	X	X	X	
Windows	4.5%	Cracked/Broken/Missing Panes	3	X		X	NLT
	4.5%	Damaged Window Sill	4	X	X		
	4.5%	Deteriorated/Missing Caulking/Seals	5	X	X	X	
	4.5%	Inoperable/Not Lockable	3	X		X	NLT
	4.5%	Peeling/Needs Paint	1	X			
	4.5%	Security Bars Prevent Egress	5			X	LT

Note:1.) Nominal item weight assumes that all items for the Unit are present. Item weights would be adjusted accordingly when items are not applicable (N/A)

2.) The Health & Safety item assumes the highest item weight for a particular inspection. Nominally it is equal to 15.0%

3.) "X" in the severity column indicates which severity levels are applicable.

4.) In the severity column, MI is minor, MA major and SE severe. Only severe is applied to H&S deficiencies.

5.) In the H&S column, NLT is non-life threatening H&S and LT (life threatening) is exigent/fire safety (calling for immediate attention or remedy.)

BILLING CODE 4210–32–C

Appendix 2—Dictionary of Deficiency Definitions

Site Inspectable Items

Items to inspect for "Site" are as follows:

Fencing and Retaining Walls
Grounds
Lighting
Mailboxes/Project Signs
Market Appeal
Parking Lots/Driveways/Roads
Play Areas and Equipment
Refuse Disposal
Storm Drainage
Walkways/Stairs

Fencing and Retaining Walls (Site)

A structure functioning as a boundary or barrier. An upright structure serving to enclose, divide or protect an area.

Note: This does not include swimming pool fences. Swimming Pool Fences are covered under Common Areas—Pools and Related Structures.

This inspectable item can have the following deficiencies:

Damaged or Missing Gates
Holes
Damaged/Falling/Leaning
Missing Sections

Grounds (Site)

The improved land adjacent to or surrounding the housing and related structures. This does not include land not owned or under the control of the housing provider.

This inspectable item can have the following deficiencies:

Erosion Areas
Ponding/Site Drainage
Overgrown/Penetrating Vegetation
Rutting

Lighting (Site)

System to provide illumination of the community grounds. Includes fixtures, lamps, stanchions, poles, supports, and electrical supply.

This inspectable item can have the following deficiencies:

Broken Fixtures
Missing/Broken Bulbs

Mailboxes/Project Signs (Site)

Mailbox is a public container where mail is deposited for distribution and collection. This does not include mailboxes owned and maintained by the US Postal Service, such as the "Blue Boxes."

Project signs are boards, posters, or placards displayed in a public place to advertise, impart information, or give directions. This does not include signs owned and maintained by the city.

This inspectable item can have the following deficiencies:

Mailbox Missing/Damaged
Signs Missing/Damaged

Market Appeal (Site)

Evaluate only those areas or structures that are under the control of the housing provider.

This inspectable item can have the following deficiencies:

Graffiti
Litter

Parking Lots/Driveways/Roads (Site)

An area for parking motorized vehicles begins at the curbside and includes all parking lots, driveways or roads within the property lines that are under the control of the housing provider.

This inspectable item can have the following deficiencies:

Cracks
Potholes/Loose Material
Ponding
Settlement/Heaving

Play Areas and Equipment (Site)

An outdoor area set aside for recreation or play, especially one containing equipment such as seesaws and swings.

This inspectable item can have the following deficiencies:

Damaged/Broken Equipment
Deteriorated Play Area Surface

Refuse Disposal (Site)

Collection areas for trash/garbage common pick-up.

This inspectable item can have the following deficiencies:

Broken/Damaged Enclosure
Inadequate Outside Storage Space

Storm Drainage (Site)

System used to collect and dispose of surface runoff water through the use of culverts, underground structures, or natural drainage features, e.g., swales, ditches, etc.

This inspectable item can have the following deficiencies:

Damaged/Broken/Cracked
Debris/Obstruction/Sediment

Walkways/Stairs (Site)

Passages for walking and the structures that allow for changes in vertical orientation.

This inspectable item can have the following deficiencies:

Cracks/Settlement/Heaving
Spalling
Broken/Missing Hand Railing

Damaged or Missing Gates (Fencing and Retaining Walls)

Gate structure is damaged or missing and does not prevent passage.

This does not include gates for swimming pool fences. Gates for swimming pool fences are covered under Common Areas—Pools and Related Structures.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security Fences

are assessed at a higher level than interior fences.

Severity Defined

Minor: N/A.

Major: Absence or damage to an interior fence gate which renders a gate inoperable/ineffective.

OR

Damage to a perimeter or a security fence gate that is still operational.

Severe: Absence or damage to a perimeter or security gate which renders the gate inoperable/ineffective and potentially compromises safety and/or security.

Damaged/Falling/Leaning (Fencing and Retaining Walls)

Structure is rusted, deteriorated, uprooted presents threat to security and/or health and safety.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security Fences are assessed at a higher level than interior fences.

Severity Defined

Minor: N/A.

Major: An interior fence is damaged so that it does not satisfy its designed purpose.

OR

A perimeter/security fence and/or a retaining wall shows signs of deterioration, but still serves its designed purpose and presents no security/safety risk.

Severe: A perimeter/security fence and/or a retaining wall is damaged to the point that it does not satisfy its designed purpose.

Holes (Fencing and Retaining Walls)

An opening or penetration.

Note: Some fences are not designed to keep intruders out or children in such as rail fences, and these type of fences should not be evaluated for holes.

Severity Defined

Minor: Hole is smaller than 6″ x 6″ piece of paper.

Major: N/A.

Severe: Hole is larger than 6″ x 6″ which allows passage of animals and can pose a threat to the safety of children.

Missing Sections (Fencing and Retaining Walls)

Structure does not present an obstacle against intrusion or egress—damaged by the destruction or removal of section.

Note: Deficiency level depends on the fence's purpose. Perimeter/Security fences are assessed at a higher level than interior fences.

Severity Defined

Minor: An interior fence has section missing.

Major: N/A.

Severe: A perimeter/security fence has a section missing which compromises safety/security.

Erosion Areas (Grounds)

An area subjected to natural processes, such as weathering or gravity, by which material is moved on the earth's surface.

Note: This does not include erosion from a defined storm drainage system or in a play area. This type of erosion would be covered under Site—Storm Drainage and/or Site—Play Areas and Equipment.

Severity Defined

Minor: N/A.

Major: Visible collection of surface material indicated by visible erosion deposits leading to a degraded surface condition that would likely cause water to pool in a confined area, especially next to structures, paved areas or walkways.

Severe: Extensive displacement of soil caused by runoff. Condition is responsible for visible damage or the potential failure of adjoining structures or systems, e.g., pipes, pavements, foundations, building, etc.

OR

Advanced erosion in an area which creates an unsafe pedestrian condition and/or renders an area of the grounds unusable.

Overgrown/Penetrating Vegetation (Grounds)

Plant life that has infiltrated unacceptable areas and/or has grown beyond established parameters.

Severity Defined

Minor: N/A.

Major: Vegetation is of such size or density as to make the visibility of hazards, such as broken glass, holes, etc., difficult.

OR

Plant life is in contact with an unintended surface, such as, buildings, gutters, walkways, roads, fences/walls, roofs, HVAC units, etc.

OR

Vegetation is of such size or density that it obstructs intended walkways.

Severe: Plants have rendered visible damage to a component, area, or system of the property or have made them unusable.

Ponding/Site Drainage (Grounds)

An accumulation of water and/or ice is observed to be collecting in a depressed area or has collected on the grounds for which ponding was not intended.

Note: This does not include detention/retention basins NOR ponding on paved areas. Detention/retention basins are covered under Site—Storm Drainage and ponding on paved areas is covered under Roads, Walkways, and Parking Lots/Driveways.

Severity Defined

Minor: Shallow accumulation of water (less than 3 inches).

Major: An accumulation of water (from 3 to 5 inches in depth) that affects the use of a section of the grounds; however, the grounds are generally usable.

Severe: An accumulation of more than 5 inches in depth.

OR

An accumulation that has rendered a section of the grounds unusable.

Rutting (Grounds)

A man made sunken track or groove/depression.

Note: These are typically made by a car, bike or other machine.

Severity Defined

Minor: N/A.

Major: Condition that is 6–8″ wide x 3–5″ deep.

Severe: Condition larger than 6–8″ wide x 3–5″ deep and has the potential to cause serious injury.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards").

Broken Fixtures (Lighting)

All or a portion of the site lighting system has damaged fixtures. This does not include exterior lighting, associated with the building.

Note: If a damaged fixture or fixtures presents a safety hazard, rate it as severe, and recorded manually as a health and safety concern. This includes, but is not limited to, broken fixtures that have the potential to fall on pedestrians, or fixtures that could lead to electrocution.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the lighting fixtures surveyed are visibly broken. The broken portion of the system does not constitute an obvious safety hazard.

Severe: Over 50% of the lighting fixtures surveyed are visibly broken; or the broken portion of the system constitutes an obvious safety hazard.

Comments

Severe: If condition is a health and safety concern, it must be recorded. (Includes but not limited to "Electrical Hazards" or "Hazards").

Missing/Broken Bulbs (Lighting)

Lamps are missing or are broken from fixtures. May include incandescent, fluorescent, mercury vapor, or others.

Note: This does not include building exterior lighting. Building exterior lighting is covered under Building Exterior—Lighting.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the fixtures surveyed have at least a single bulb missing or broken.

Severe: Over 50% of the fixtures surveyed have at least a single bulb missing or broken.

Comment

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Mailbox Missing/Damaged (Mailbox/Project Signs)

Mailbox does not function properly due to deterioration, damage, or is absent.

Severity Defined

Minor: Mailbox is damaged, vandalized, or deteriorated, but functional.

Major: N/A.

Severe: Mailbox is damaged, vandalized, or deteriorated, and as a result, is not functional.

OR

Mailbox is missing.

Signs Missing/Damaged (Mailbox/Project Signs)

Project sign is not readable due to deterioration, damage, or is absent. This does

not include locations that do not require a project sign.

Severity Defined

Minor: Sign is damaged, vandalized, or deteriorated, but readable.

Major: N/A.

Severe: Sign is damaged, vandalized, or deteriorated, and as a result, is not readable.

OR

Sign is missing.

Comments

Severe: Missing signs should only be recorded where a sign is required. This would follow from evidence that a sign has been removed through vandalism and/or neglect, etc.

Graffiti (Market Appeal)

Visual observation of a crude, (not recognizable as an art form), inscription or drawing scratched, painted or sprayed on a building surface, retaining wall, or fence so as to be seen by the public.

Note: Do not count full wall murals and similar art forms as graffiti.

Severity Defined

Minor: Visual graffiti observed in at least one location/area.

Major: Graffiti observed in 2–5 locations/areas.

Severe: Graffiti observed in 6 or more locations/areas.

Litter (Market Appeal)

Subject to disorderly accumulation of objects, especially carelessly discarded trash located on the property.

Note: *Excessive* litter should be judged as you would view a city park in America.

Severity Defined

Minor: N/A.

Major: Excessive litter is observed on the property.

Severe: N/A

Cracks (Parking Lots/Driveways/Roads)

Visible faults in the pavement, including longitudinal, lateral, alligator, etc. This does not include cracks from settlement/heaving.

Severity Defined

Minor: N/A.

Major: A crack which is up to ½" wide.

Severe: A crack larger than ½" or multiple cracks accompanied by surface deterioration.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Ponding (Parking Lots/Driveways/Roads)

A visible accumulation of water and/or ice collecting in a depression on an otherwise flat plane.

Severity Defined

Minor: Shallow accumulation of water (less than 3").

Major: An accumulation of water that affects the use of a section of a parking lot/driveway more than 3" in depth. Parking lot/driveway is passable.

Severe: An accumulation of water that has rendered a parking lot/driveway unusable.

Potholes/Loose Material (Parking Lots/Driveways/Roads)

A hole resulting from road surface failure; or loose, freestanding aggregate material is observed resulting from deterioration.

Severity Defined

Minor: Failure of pavement due to potholes or loose material that has not penetrated to or exposed the subsurface.

Major: Failure of pavement due to potholes or loose material that has penetrated to or exposed the subsurface.

Severe: Loose material and/or potholes that render a parking lot/driveway unusable/unpassable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Settlement/Heaving (Parking Lots/Driveways/Roads)

Pavement that sinks and/or rises due to failure of subbase materials.

Note: If there is a visible accumulation of water and/or ice collecting in the depression, record the observation under ponding.

Severity Defined

Minor: Visual indication of settlement/heaving with no visible surface cracks.

Major: Visual indication of settlement/heaving evidenced by cracks and deteriorated surface material.

Severe: Settlement/Heaving that renders a parking lot/driveway unusable/unpassable and/or creates unsafe pedestrian conditions.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged/Broken Equipment (Play Areas and Equipment)

Forcibly fractured into pieces or shattered, incomplete, inoperable, or missing.

Severity Defined

Minor: Visual estimate indicates some equipment (less than 50%) does not operate correctly or is missing but pose no safety risk.

Major: Visual estimate indicates most of the equipment (more than 50%) does not operate correctly or is missing but pose no safety risk.

Severe: Equipment poses a threat to safety capable of causing injury.

Deteriorated Play Area Surface (Play Areas and Equipment)

Damage to play area caused by cracking, heaving, settling, ponding, potholes, loose materials, erosion, rutting, etc.

Severity Defined

Minor: Up to 10% of total surveyed play area surface shows signs of deterioration.

Major: Deterioration of 10 to 50% of total surveyed play area surface.

Severe: Deterioration of more than 50% of the surveyed play area surface.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Broken/Damaged Enclosure (Refuse Disposal)

The outdoor enclosed area which serves as a trash/refuse site is broken or damaged including its walls.

Note: This does not include areas not designed as trash/refuse enclosures such as curb pick-up. Address condition of slab at parking lots/driveways/roads.

Severity Defined

Minor: N/A.

Major: A single wall or gate has holes or missing components.

Severe: A single wall or gate of the enclosure has collapsed or is leaning and in danger of falling.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Inadequate Outside Storage Space (Refuse Disposal)

Insufficient capacity for the proper storage of refuse until disposal.

Note: This does not include curb side pick-up areas.

Severity Defined

Minor: Appearance of storage area is unsightly and needs improvement, or the area surrounding the refuse storage area is impacted by the presence of unpleasant odors.

Major: N/A.

Severe: Trash cannot be stored in the designated area due to under-capacity of refuse storage.

Damaged/Broken/Cracked (Storm Drainage)

Separated into pieces. Broken, but not into parts (fractured).

Severity Defined

Minor: N/A.

Major: Visible structural damage/failure impacting the system's effectiveness. Significant visible fracture evidence by large, visible cracks.

Severe: Visible deterioration or failure of a large section yielding an inoperable system.

Debris/Obstruction/Sediment (Storm Drainage)

Partial or complete blockage by broken or collapsed pipe, infiltration of tree roots, accumulation of sediment, or other obstructions.

Severity Defined

Minor: N/A.

Major: Accumulation of debris or sediment which causes or has the estimated potential of significantly reducing the flow of storm water.

Severe: Complete blockage of the system due to accumulation of a large quantity of debris causing backups into adjacent area(s).

Broken/Missing Hand Railing (Walkways/Steps)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Cracks/Settlement/Heaving (Walkways/Steps)

Visible faults in the pavement, including longitudinal, lateral, alligator, etc. Pavement that sinks and/or rises due to failure of subbase materials.

Note: This does not include cracks on parking lots/driveways or roads.

Severity Defined

Minor: N/A.
Major: Evidence of cracks or other defects which do not affect traffic ability.
Severe: Cracks/hinging/tilting and/or missing sections that affect traffic ability.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Spalling (Walkways/Steps)

A concrete or masonry walkway that is flaking, chipping or crumbling, possible exposing underlying reinforcing material.

Severity Defined

Minor: Small areas, (4" × 4" or less), of walkway/stairs are affected.
Major: N/A.
Severe: Large areas, (greater than 4" × 4"), of walkway/stairs are impacted and affects traffic ability.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Building Exterior Inspectable Items

Items to inspect for "Building Exterior" are as follows:

Doors
Foundations
Roofs
Windows
Fire Escapes
Lighting
Walls

Doors (Building Exterior)

Means of access to the interior of a building or structure. Doors provide privacy, control passage, maintain security, provide fire and weather resistance. Includes entry to maintenance areas, boiler and mechanical rooms, electrical vaults, storage areas, etc.

Note: This does not include unit doors.

This inspectable item can have the following deficiencies:

Broken/Missing Glazing/Glass
Damaged Hardware/Locks
Deteriorated/Missing Caulking Seals
Damaged/Missing Screen/Storm/Security Door
Damaged Frames/Threshold/Lintels/Trim
Damaged Surface (Holes/Paint/Rusting)
Missing Door

Fire Escapes (Building Exterior)

All buildings must have acceptable fire exits. This includes both stairway access doors & external exits. These can include external fire escapes, fire towers, operable windows on the lower floors with easy access to the ground or a back door opening onto a porch with a stairway leading to the ground.

This inspectable item can have the following deficiencies:

Blocked Egress/Ladders
Visibly Missing Components

Foundations (Building Exterior)

Lowest level structural wall or floor responsible for transferring the building's load to the appropriate footings and soil. Materials may include concrete, stone, masonry and wood.

This inspectable item can have the following deficiencies:

Cracks/Gaps
Spalling/Exposed Rebar

Lighting (Building Exterior)

System to provide illumination of building exteriors and surrounding grounds. Includes fixtures, lamps, stanchions, poles, supports, and electrical supply that are associated with the building itself.

Note: This does not include site lighting.

This inspectable item can have the following deficiencies:

Broken Fixtures
Missing/Broken Bulbs

Roofs (Building Exterior)

Roof system consists of the structural deck, weathering surface, flashing, parapet, and drainage system. They may be flat or pitched.

This inspectable item can have the following deficiencies:

Damaged/Clogged Drains
Damaged Vents
Missing/Damaged Shingles
Missing/Damaged Components from Downspout/Gutter
Damaged Soffits/Fascia
Damaged/Torn Membrane/Missing Ballast
Ponding (Roofs)

Walls (Building Exterior)

The exterior enclosure of the building or structure. Materials for construction include concrete, masonry block, brick, stone, wood, glass block. Surface finish materials include metal, wood, vinyl, stucco.

Note: This does not include foundation walls.

This inspectable item can have the following deficiencies:

Cracks/Gaps
Missing Pieces/Holes/Spalling
Missing/Damaged Caulking/Mortar
Damaged Chimneys
Stained/Peeling/Needs Paint

Windows (Building Exterior)

Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, vinyl, etc.

Note: This does not include windows that have defects noted from inspection from inside the unit.

This inspectable item can have the following deficiencies:

Broken/Missing/Cracked Panes
Damaged Sills/Frames/Lintels/Trim
Missing/Deteriorated Caulking/Glazing Compound
Damaged/Missing Screens
Security Bars Prevent Egress
Peeling/Needs Paint

Broken/Missing Glazing/Glass (Doors)

The glass and/or compound/structure to support and hold glass or other materials within a frame are missing or broken.

Severity Defined

Minor: For one or more doors, glazing is inadequate to secure glass, but door is usable and presents no immediate security risk.
Major: N/A.
Severe: For at least one door, the operation, function, or security of the door is destroyed by the missing or broken glazing and/or glass. One door in this condition is sufficient to classify the door system as severe.

Damaged Frames/Threshold/Lintels/Trim (Doors)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.
Major: More than one door has the minor damage defined above.
Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

Damaged Hardware/Locks (Doors)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.
Major: More than one building exterior door has minor damaged hardware as defined above.
Severe: A single door is rendered inoperable and/or unlockable (if locking is required) due to damage to the door's hardware.
OR
A single building exterior door's panic hardware is not operable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged Surface (Holes/Paint/Rusting) (Doors)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security. Includes holes, peeling/cracking/no paint, or significant rust.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one building exterior door has minor surface damage as defined above.

OR

Any single door that has a hole or holes ranging in size from ¼ inch up to 1 inch in diameter.

Severe: Any single door has a hole or holes larger than 1 inch in diameter, or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

Deteriorated/Missing Caulking/Seals (Doors)

Sealant and stripping designed to provide weather resistance or caulking is missing or deteriorated.

Severity Defined

Minor: For a single door, missing or deteriorated caulk is confined to small areas with no evidence of damage to the door and/or surrounding structure.

Major: For a single door, missing or deteriorated caulk is consistently evident for the majority of the door with no evidence of damage to the door and/or surrounding structure.

OR

2 or more of the doors surveyed have minor deficiencies.

Severe: For at least one door, missing or deteriorated caulking is evident along with evidence of leaks or damage to the door or surrounding structure; or more than half the total doors surveyed have minor caulking deficiencies.

OR

The seal is missing.

Missing Door (Doors)

Door is absent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing building exterior door constitutes a severe condition.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Blocked Egress/Ladders (Fire Escapes)

Any part of the fire escape, including ladders, is visibly blocked in a way that limits or restricts clear egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Items are stored or barriers are present such that clear egress is restricted or blocked.

Visibly Missing Components (Fire Escapes)

Any components that affect functionality of the fire escape are visibly missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Functional components are visibly missing (such as one section of a ladder is not present or a railing is missing).

Cracks/Gaps (Foundations)

Visible split in the exterior of the lowest structural wall.

Note: Cracks that show evidence of water penetration should be evaluated here.

Severity Defined

Minor: Visible hairline cracks that do not appear to provide opportunity for water penetration.

OR

Minor broken pieces from settlement (e.g., a single brick).

Major: Cracks that exceed ⅛" in width or depth. May also provide opportunities for water penetration.

OR

Large pieces, such as numerous bricks, that are separated from the wall/floor.

Severe: Large cracks or gaps visibly estimated to exceed ⅜" in width or depth possibly indicating a serious structural problem.

OR

Cracks that are the full depth of the wall and/or provide opportunity for water penetration.

OR

Wall/floor sections that are broken apart.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Spalling/Exposed Rebar (Foundations)

The concrete or masonry wall that is flaking, chipping, or crumbling possibly exposing underlying reinforcing material (rebar).

Severity Defined

Minor: Spalling is confined to areas affecting less than 10% of the foundation wall area inspected.

Major: Obvious large spalled area(s) affecting 10% to 50% of any individual foundation wall.

Severe: Obvious significant spalled area(s) affecting 50% or more of any individual foundation wall.

OR

Spalling which causes any reinforcing material (rebar or other) to be exposed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Broken Fixtures (Lighting)

All or a portion of the lighting that is associated with the building itself. This does not include lighting attached to the building utilized for purposes such as lighting the site.

Note: If a damaged fixture or fixtures presents a safety hazard, rate it as severe, and recorded manually as a health and safety concern. This includes, but is not limited to, broken fixtures that have the potential to fall on pedestrians, or fixtures that could lead to electrocution.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the lighting fixtures surveyed are visibly broken. The broken portion of the system does not constitute an obvious safety hazard.

Severe: Over 50% of the lighting fixtures surveyed are visibly broken; or the broken portion of the system constitutes an obvious safety hazard.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards" or "Hazards.")

Missing/Broken Bulbs (Lighting)

Lamps are missing or broken from fixtures. May include incandescent, fluorescent, mercury vapor, or others.

Note: This does not include SITE Lighting. Site Lighting is covered under Site "Lighting.

Severity Defined

Minor: N/A.

Major: Between 10% and 50% of the fixtures surveyed have at least a single bulb visibly missing or broken.

Severe: Over 50% of the fixtures surveyed have at least a single bulb visibly missing or broken.

Comments

Major: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Damaged/Clogged Drains (Roofs)

The drainage system does not effectively remove water.

Note: Generally, this deficiency applies to flat roofs. This does not include gutters and downspouts. Refer to Building Exterior—Roofs—Missing Components from Downspouts/Gutters.

Severity Defined

Minor: N/A.

Major: Debris around or in a drain is observed with no evidence of ponding observed.

OR

Drain is damaged but still functions.

Severe: Debris around or in a drain is observed with evidence of ponding observed.

OR

Damage is such that drain no longer functions.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Damaged Soffits/Fascia (Roofs)

Soffit fascia and/or associated components are damaged. May provide visible opportunity for water penetration or other damage from natural elements.

Severity Defined

Minor: Damage to soffit/fascia is visible but no obvious opportunities for water penetration are observed.

Major: N/A.

Severe: Soffits/Fascia are missing (from where required) or damaged so that water penetration is visibly possible.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Damaged Vents (Roofs)

Damaged vents on or extending through the roof surface or components are damaged and/or missing. Vents may include, but is not limited to, ridge vents, soffit vents, gable vents, plumbing vents, or gas vent.

Severity Defined

Minor: The vents are visibly damaged but do not present an obvious risk to promote subsequent roof damage.

Major: N/A.

Severe: Vents are missing or visibly damaged to the extent that subsequent roof damage is possible.

Damaged/Torn Membrane/Missing Ballast (Roofs)

Visible rip or wear in the membrane. Includes punctures, holes, cracks, blistering, and separated seams.

Note: Includes flashing.

Severity Defined

Minor: N/A.

Major: Ballast has shifted and no longer performs function.

Severe: Visible damage to the membrane with visible signs of current damage and/or leaks.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of severity of the condition exists.

Missing/Damaged Components from Downspout/Gutter (Roofs)

Components of the drainage system are visibly missing. The system includes gutters, leaders, downspouts, splashblocks and drain openings.

Note: This does not include clogged drains. Refer to Building Exterior—Roofs—Clogged Drains.

Severity Defined

Minor: Splashblocks are missing or damaged.

Major: N/A.

Severe: Drainage system components are visibly missing or damaged providing opportunities for damage to the roof, structure, exterior wall surface, interior, or surrounding grounds.

Missing/Damaged/Shingles (Roofs)

The shingles are missing or damaged which includes, but is not limited to, cracking, warping, cupping or deteriorated.

Note: A square is defined as 100 square feet.

Severity Defined

Minor: N/A.

Major: Up to 2 squares of surface material or shingles are missing.

Severe: More than 2 squares of shingles are observed to be missing from surveyed roofing areas.

Ponding (Roofs)

Evidence of areas of standing water exists.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Evidence of standing water on roof causing potential or visible damage to roof surface or underlying materials.

Comments

Severe: Inspection by roofing specialist is recommended if doubt of the severity of the condition exists.

Cracks/Gaps (Walls)

Visible split, separation, or gap in the exterior walls.

Severity Defined

Minor: Crack that is less than 1/8 inch in width or depth.

Major: Crack that exceeds 1/8 inch in width or depth. May also provide opportunities for water penetration.

OR

Pieces, such as numerous bricks, that are separated from the wall.

Severe: Large crack or gap visibly estimated to exceed 3/8 inch in width or depth possibly indicating a serious structural problem.

OR

Crack that is the full depth of the wall and/or provides opportunity for water penetration.

OR

Wall sections that are broken apart.

Comments

Major: Request an inspection by a structural engineer if doubt about severity exists.

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Damaged Chimneys (Walls)

The chimney, including the portion extending above the roof line, has separated from the wall or has cracks, spalling, missing pieces, or broken sections.

Severity Defined

Minor: N/A.

Major: Surface of chimney is cracking, spalling, or otherwise showing visible surface damage.

Severe: Part or all of the chimney has visibly separated from the adjacent wall. Cracked or fallen pieces or sections may currently be present or there is a risk of falling pieces creating a safety hazard.

Missing Pieces/Holes/Spalling (Walls)

Deterioration, such as missing pieces, holes or spalling in the exterior wall surface. May also be attributed to rotting materials; or, concrete, stucco, or masonry wall is flaking, chipping, or crumbling.

Severity Defined

Minor: N/A.

Major: Any missing piece, such as, a single brick or section of siding, or hole.

OR

Deterioration that affects an area up to 8½" x 11".

Severe: Deterioration that causes any reinforcing material (re-bar) to be exposed.

OR

More than one missing piece, such as a few bricks, or section of siding or holes that affects an area larger than 8½" x 11".

OR

Any size hole that completely penetrates the exterior wall.

Comments

Major: Request an inspection by a structural engineer if doubt about severity exists.

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Missing/Damaged Caulking/Mortar (Walls)

Caulking designed to provide weather resistance or mortar is missing or deteriorated.

Note: This doesn't include caulking relative to doors and windows as they are covered in other areas. All other caulking, etc. should be addressed here.

Severity Defined

Minor: Mortar is missing around a single masonry unit.

OR

Deteriorated caulk is confined to less than 12 inches.

Major: Mortar is missing in around more than one contiguous masonry unit.

OR

Deteriorated caulking is evident in an area longer than 12 inches.

Severe: N/A.

Stained/Peeling/Needs Paint (Walls)

Paint is cracking, flaking, otherwise deteriorated. Water damage or related problems have stained the paint.

Note: This does not include walls that are not intended to have paint, such as most brick walls, etc.

Severity Defined

Minor: Visible observations estimate that less than 50% of a single building exterior wall is affected.

Major: Visible observations estimate that more than 50% of a single building exterior wall is affected.

Severe: N/A.

Broken/Missing/Cracked Panes (Windows)

Glass pane is broken, missing or cracked.

Severity Defined

Minor: Glass pane is cracked, but no sharp edges are present.

Major: N/A.

Severe: Glass pane is missing or broken.

Damaged/Missing Screens (Windows)

Screen is punctured, torn, is otherwise damaged or is missing.

Severity Defined

Minor: Screen has significant punctures, tears, is otherwise damaged or is missing.

Major: N/A.

Severe: N/A.

Damaged Sills/Frames/Lintels/Trim (Windows)

Window sills, frames, sash lintels, or trim are damaged by decay, rust, rot, corrosion, or other deterioration.

Severity Defined

Minor: N/A.

Major: Damage does not affect the window's intended operation.

Severe: Damage affects the window's intended operation.

Missing/Deteriorated Caulking/Glazing Compound (Windows)

Caulking or glazing compound to provide weather resistance is missing or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or glazing compound is confined to small areas with no evidence of damage to the window and/or surrounding structure.

Major: Missing or deteriorated caulk or glazing compound is consistently evident for the majority of the window with no evidence of damage to the window and/or surrounding structure.

OR

2 or more of the windows surveyed have minor deficiencies.

Severe: Evidence of leaks or damage to the window or surrounding structure.

Peeling/Needs Paint (Windows)

Paint covering the window assembly/trim is cracking, flaking, or otherwise failing; or window assembly/trim is not painted or is exposed to the elements.

Note: This does not include windows that are not intended to be painted.

Severity Defined

Minor: Peeling paint and/or a window in need of paint is observed.

Major: N/A.

Severe: N/A.

Security Bars Prevent Egress (Windows)

Security bars are damaged, constructed or installed, such that egress is severely limited or impossible.

Note: This does not include windows not designed or intended for egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

Deteriorated/Missing Caulking/Seals (Doors)

Sealant and stripping designed to provide weather resistance or caulking is missing or deteriorated.

Severity Defined

Minor: For a single window, missing or deteriorated caulk is confined to small areas with no evidence of damage to the door and/or surrounding structure.

Major: For a single door, missing or deteriorated caulk is consistently evident for the majority of the door with no evidence of damage to the door and /or surrounding structure.

OR

2 or more of the doors surveyed have minor deficiencies.

Severe: For at least one door missing or deteriorated caulking is evident along with evidence of leaks or damage to the door surrounding structure; or more than half of the total door surveyed have minor caulking deficiencies.

OR

The seal is missing.

Building Systems Inspectable Items

Items to inspect for "Building Systems" are as follows:

Domestic Water
Elevators
Exhaust System
HVAC
Electrical System
Emergency Power
Fire Protection
Sanitary System

Domestic Water (Building Systems)

Portion of the building system that provides potable water conditioning, heating, and distribution taking its source from outside the building and terminating in domestic plumbing fixtures. The system typically consists of water conditioners (filters and softeners), water heaters, transfer and circulating pumps, strainers, and connecting piping, fittings, valves, and supports.

Note: This does not include portion of water supply that connects to the heating and cooling system. Also, the delivery points of the system such as sinks and faucets in units or common areas.

This inspectable item can have the following deficiencies:

Central Hot Water Supply Inoperable
Misaligned Ventilation System
Rust/Corrosion on Heater Chimney
Rust/Corrosion on Central Water Components
Leaking Central Water Supply
Missing Pressure Relief Valve
Water Supply Inoperable

Electrical System (Building Systems)

Portion of the building system that safely provides electrical power throughout the building. Including equipment that provides control, protection, metering, and service.

Note: This does not include transformers or metering that belongs to the providing utility. Equipment that is part of any emergency power generating system. Terminal equipment such as receptacles, switches, or panelboards that are located in the units or common areas.

This inspectable item can have the following deficiencies:

Blocked Access/Improper Storage
Evidence of Leaks/Corrosion
Missing Breakers
Burnt Breakers
Frayed Wiring
Missing Covers

Elevators (Building Systems)

Vertical conveyance system for moving personnel, equipment, materials, household goods, etc.

This inspectable item can have the following deficiency:

Not Operable

Emergency Power (Building Systems)

Standby/backup equipment intended to supply illumination or power or both, (battery or generator set) during utility outage.

This inspectable item can have the following deficiencies:

Run-Up Records/Documentation Not Available

Exhaust System (Building Systems)

The system used to primarily exhaust stale air from the building. Primarily from the kitchen and bathroom areas.

Note: This does not include elements related to the HVAC system.

This inspectable item can have the following deficiencies:

Roof Exhaust Fans Inoperable

Fire Protection (Building Systems)

Building System designed to minimize the effects of a fire. May include the following: fire walls and doors, portable fire extinguishers, and permanent sprinkler systems.

Note: This does not include fire detection, alarm, and control devices.

This inspectable item can have the following deficiencies:

Missing Sprinkler Head
Missing/Damaged/Expired Extinguishers

HVAC (Building Systems)

Portion of the building system that provides ability to heat or cool the air within the building. Includes equipment such as boilers, burners, furnaces, fuel supply, hot water and steam distribution, and associated piping, filters, and equipment. Also includes air handling equipment and associated ventilation ducting.

This inspectable item can have the following deficiencies:

Boiler/Pump Leaks
Fuel Supply Leaks
General Rust/Corrosion
Gas Fired Unit—Missing/Misaligned Chimney

Sanitary System (Building Systems)

Portion of the building system that provides for the disposal of waste products with discharge to the local sewage system. Can include sources such as domestic plumbing fixtures, floor drains, and other area drains. Consists of floor drains and traps, collection sumps, sewage ejectors, sewage pumps, and collection piping, fittings, valves, and supports.

Note: This does not include site storm drainage. Refer to Site—Storm Drainage.

This inspectable item can have the following deficiencies:

Broken/Leaking/Clogged Pipes or Drains (Sanitary System)
Missing Drain/Cleanout/Manhole Covers

Central Hot Water Supply Inoperable (Domestic Water)

Hot water is unavailable.

Severity Defined

Minor: N/A.

Major: N/A.
Severe: After running for several minutes, water from hot water taps is not warmer than room temperature.

Leaking Central Water Supply (Domestic Water)

Water visibly leaking from any water system component. Includes valve flanges, stems, bodies, hose bibbs or from any domestic water tank or its pipe or pipe connections.

Note: This includes both hot and cold water.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Water is visibly leaking.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards".)

Misaligned Ventilation System (Domestic Water)

The ventilation system on a gas/oil fired water heater is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment/damaged which may cause improper or dangerous venting of exhaust gases.

Missing Pressure Relief Valve (Domestic Water)

Pressure relief valve on central hot water heating system is not present.

Note: This does not include the pipe from the PRV to the floor.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: No pressure relief valve present.

Rust/Corrosion on Central Water Components (Domestic Water)

The material condition of the equipment and/or associated piping shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.
Severe: Condition has rendered equipment and/or piping inoperable.

Rust/Corrosion on Heater Chimney (Domestic Water)

The material condition of the water heater chimney shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The water heater chimney shows evidence of flaking, discoloration, pitting or crevices which may result in holes, ultimately, allowing leaks of toxic gases from the chimney.

Water Supply Inoperable (Domestic Water)

Water is unavailable at unit or common area faucets.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Running water is unavailable within any area of the building.

Blocked Access/Improper Storage (Electrical System)

The placing of any object that will delay or prevent access to any panelboard or main power switch.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: One or more items are placed in front of the building systems' electrical panel.

Burnt Breakers (Electrical System)

Breakers having carbon on the plastic body, or plastic body is melted and scarred.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Evidence of Leaks/Corrosion (Electrical System)

Liquid stains, rust marks or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Frayed Wiring (Electrical System)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Missing Breakers (Electrical System)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Open breaker port.

Missing Covers (Electrical System)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing resulting in exposed visible electrical connections.

Not Operable (Elevators)

Elevator will not ascend or descend. Door will not open or close. Door opens without cab being present.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any elevator that is either inoperable or doors open without cab present.

Auxiliary Lighting Inoperable (Emergency Power)

Emergency lighting which provides illumination during periods of power outage.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Auxiliary lighting does not function.

Severity Defined

Minor: N/A.
Major: Current records (within the last 12 months) are lost but old records demonstrate proper use.
Severe: No records are available.

Roof Exhaust Fans Inoperable (Exhaust System)

The ventilation system to exhaust kitchen and/or bathroom air is inoperable.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Roof exhaust fan unit is inoperable.

Missing Sprinkler Head (Fire Protection)

Any sprinkler head connected to the central fire protection system is missing, visibly disabled, blocked, and/or capped.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any sprinkler head is missing, visibly disabled, blocked, and/or capped.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Missing/Damaged/Expired Extinguishers (Fire Protection)

A portable fire extinguisher is not in its proper location, is damaged or the extinguisher certification has expired.

Note: This includes fire hoses in fire cabinets.

Severity Defined

Minor: N/A.

Major: N/A.
Severe: Missing or damaged extinguisher, or expired extinguisher certificate is observed.

Boiler/Pump Leaks (HVAC)

Escaping of water/steam from unit casing or system piping.

Note: This does not include fuel supply leaks. See Building Systems—HVAC fuel supply leaks. Also, don't include steam escaping from pressure relief valves.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Visible leak is observed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Include but not limited to "Hazards.")

Fuel Supply Leaks (HVAC)

There is evidence of fuel escaping from a fuel storage tank or fuel line.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any leakage of fuel from the supply tank or piping.

Gas Fired Unit—Missing/Misaligned Chimney (HVAC)

The exhaust system on a gas/oil fired unit is misaligned.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any misalignment which causes improper or dangerous venting of gases.

General Rust/Corrosion (HVAC)

The material condition of the equipment and/or associated piping/ducting shows evidence of flaking, discoloration, pitting or crevices.

Severity Defined

Minor: N/A.
Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.
Severe: Condition has rendered equipment and/or piping inoperable.

Broken/Leaking/Clogged Pipes or Drains (Sanitary System)

Any visible leaks in sanitary system components or visibly clogged drains.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Visible active leaks are observed within or around the system components. Standing water, puddles, or ponding have occurred which is indicative of leaks or clogged drains.

Missing Drain/Cleanout/Manhole Covers (Sanitary System)

The protective covers are not present.

Note: This also includes covers observed while walking the site.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Include but is not limited to "Air Quality"; "Hazards.")

Common Areas Inspectable Items

Items to inspect for "Common Areas" are as follows:

Basement/Garage/Carport
Closet/Utility/Mechanical
Community Room
Day Care
Halls/Corridors/Stairs
Kitchen
Laundry Room
Lobby
Office
Other Community Spaces
Patio/Porch/Balcony
Pools and Related Structures
Restrooms/Pool Structures
Storage
Trash Collection Areas

Basement/Garage/Carport (Common Areas)

Basement: the lowest habitable story of a building, usually below ground level. Garage: a building or wing of a building in which to park a car. Carport: a roof projecting from the side of a building or free standing, used to shelter an automobile.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Closet/Utility/Mechanical (Common Areas)

An enclosed room or closet housing machines and/or equipment that service the building.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Community Room (Common Areas)

Meeting place used by members of a community for social, cultural, or recreational purposes.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches
Smoke Detector
Stairs/Hand Railings
Walls Damaged
Windows Damaged

Day Care (Common Area)

Place that provides daytime supervision, training, and medical services for preschool children or for the elderly.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Halls/Corridors/Stairs (Common Areas)

Passageway in a building, which organizes its rooms, apartments and staircases.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Graffiti
HVAC System Damaged
Lighting Damaged/Inoperable
Mailboxes Damaged
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Kitchen (Common Areas)

A place where food is cooked or prepared. The facilities and equipment used in preparing and serving food.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Kitchen
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Laundry Room (Common Areas)

Place where soiled clothes and linens are washed and/or dried.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Laundry Room
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Lobby (Common Area)

A foyer, hall, or waiting room at or near the entrance of a building.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Office (Common Areas)

Place in which business, professional, or clerical activities are conducted.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Other Community Spaces (Common Areas)

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Patio/Porch/Balcony (Common Areas)

Covered entrance to a building, usually with a separate roof or a recreation area that adjoins a unit.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Patio/Porch/Balcony
Stairs/Hand Railings Damaged
Walls Damage
Windows Damaged

Pools and Related Structures (Common Areas)

Swimming pools and related structures including fencing, etc.

This inspectable item can have the following deficiencies:

Pool and Related Structures—Damaged/Not Operational

Restrooms/Pool Structures (Common Area)

A room equipped with a water closet or toilet, tub and/or shower, sink, cabinet(s) and/or closet. This includes locker rooms or bathhouses associated with swimming pools.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Restrooms
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Storage (Common Areas)

A room in which items are kept for future use.

This inspectable item can have the following deficiencies:

Ceiling Damaged
Doors Damaged
Floors Damaged
HVAC System Inoperable
Lighting Damaged/Inoperable
Outlets/Switches Damaged
Smoke Detector Inoperable
Stairs/Hand Railings Damaged
Walls Damaged
Windows Damaged

Trash Collection Areas (Common Areas)

Collection areas for trash/garbage common pick-up.

This inspectable item can have the following deficiencies:

Trash Collection Areas

Electrical—Blocked Access/Improper Storage (Common Areas)

The placing of any object that will delay or prevent access to any panelboard or main power switch.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: One or more items are placed in front of the unit's electrical panel, impeding accessibility in time of an emergency.

Electrical—Burnt Breakers (Common Areas)

Breakers having carbon on the plastic body, or plastic body is melted or scarred.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Electrical—Evidence of Leaks/Corrosion (Common Areas)

Liquid stains, rust marks or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Electrical—Frayed Wiring (Common Areas)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

Electrical—Missing Breakers (Common Areas)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Open breaker port.

Electrical—Missing Covers (Common Areas)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing resulting in exposed visible electrical connections.

Ceiling—Bulging/Buckling (Common Areas)

Ceiling has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Ceiling—Holes/Missing Tiles/Panels/Cracks (Common Areas)

Punctures in the ceiling surface. May or may not penetrate completely. Panels or tiles may be missing or damaged.

Severity Defined

Minor: Small holes or missing tile/panel found in a ceiling, visually estimated at no larger than a sheet of paper (8½ x 11 inches). Hole does not fully penetrate into the area above (cannot see through it).

Major: A hole or missing tile/panel is found which is visually estimated to be larger than a sheet of paper (8½ x 11 inches) but does not fully penetrate into the area above (cannot see through it).

OR

A crack greater than ⅛" wide and a minimum of 11" long.

Severe: Any hole is found which fully penetrates into the area above (can see through the hole to upper space).

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Ceiling—Needs Paint (Common Areas)

Paint is peeling, cracking, flaking, otherwise deteriorated, or surface is not painted.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Ceiling—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single ceiling, visible indication of a leak, mold, or mildew, such as a darkened area, exists over a small area (less than 4 sq. ft.). Water may or may not be evident. Visual observations estimate that less than 10% of the ceiling surface area is affected.

Major: For a single ceiling, visible indication of a leak mold or mildew, such as a darkened area, exists over a large area (more than 4 sq. ft.). Water may or may not be evident.

OR

Visual observations estimate that 10% to 50% of the ceiling area has minor damage.

Severe: Visual observations estimate that a large portion (50% of its surface area) of one ceiling has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moist areas, mold, or mildew are evident. The ceiling surface may have failed.

OR

Cases where visual observations estimate that more than 50% of the ceiling area shows minor defined signs of damage, stains, mold, or mildew.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Air Quality.")

Doors—Broken/Missing Glazing/Glass (Common Areas)

The glass and/or compound/structure to support and hold glass or other materials within a frame are missing or broken.

Severity Defined

Minor: For one or more doors, glazing is inadequate to secure glass, but door is usable and presents no immediate security risk.

Major: N/A.

Severe: For at least one door, the operation, function, or security of the door is destroyed by the missing or broken glazing and/or glass. One door in this condition is sufficient to classify the door system as severe.

Doors—Damaged Surface (Holes/Paint/Rusting) (Common Areas)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security or privacy. Includes holes, peeling/cracking/no paint, or significant rust.

Note: A restroom, fire door, or entry door impacted is severe.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: if more than one building exterior door has minor surface damage as defined above.

OR

Any single door that has a hole or holes ranging in size from ¼ inch up to 1 inch diameter.

Severe: Any single door has a hole or holes larger than 1 inch in diameter or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

Doors—Damaged Frames/Threshold/Lintels/Trim (Common Areas)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

OR

Minor damage as defined above affects a restroom, entry, or fire door.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Doors—Damaged Hardware/Locks (Common Areas)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable due to damage to the door's hardware.

OR

Minor damaged as defined above affects a restroom, entry fire door.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Doors—Deteriorated/Missing Seals (Common Areas)

The seals and stripping around the door(s) designed to provide fire resistance are damaged or missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: For a single door the seals are missing.

Doors—Missing Door (Common Areas)

Door is absent.

Note: A restroom, entry or fire door impacted is severe.

Severity Defined

Minor: The missing door is not a restroom, entry, or fire door.

Major: Missing doors are not an entry, restroom, or fire door. They present no hazard and visual observation shows two doors or up to 50% of the doors are missing.

Severe: The missing door is a restroom, entry, or fire door.

OR

Visual observation estimates more than 50% of the doors are missing.

Comments

Severe: If condition is a health and safety concern it must be recorded manually. (Includes but not limited to "Hazards.")

Floors—Bulging/Buckling (Common Areas)

Floor has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floors—Floor Covering Damaged (Common Areas)

Damage to the carpet, tiles, wood, sheet vinyl, or other floor covering.

Severity Defined

Minor: For a single floor, floor covering may have stains, surface burns, shallow cuts, small holes, tears, loose areas or exposed seams. The covering is fully functional. Visual observation estimates that less than 10% of the floor area is affected. Does not present a safety hazard.

Major: For a single floor, covering may have burn marks, cuts, tears, holes, or large sections of exposed seams in traffic areas exposing the underlying material. The covering does not present a safety hazard. Visual observations estimate that 10% to 50% of the floors are affected.

Severe: For a single floor, large sections of the covering are damaged estimated at more than 50% of the floor area.

OR

Floor covering damage that exposes the underlying material.

OR

Covering that has failed in most traffic areas.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Floors—Missing Flooring (Common Areas)

Flooring such as terrazzo, hardwood, ceramic tile or other flooring material is missing.

Severity Defined

Minor: For a single floor small holes in areas of the floor surface. Visual observations estimate less than 10% of the floors surveyed are affected. No safety problems exist due to this condition.

Major: Visual observations estimate 10% to 50% of the floors have minor holes/damage. No safety problem exists due to this condition.

Severe: Visual observations estimate more than 50% of the floors are affected by minor holes/damage; or the holes are sufficient for safety to be compromised. One concern involving compromised safety is sufficient to classify the floor system as severe.

Floors—Needs Paint (Common Areas)

For floors that are painted, paint is peeling, cracking, flaking, or otherwise deteriorated.

Note: This applies to any painted floor surface, typically concrete.

Severity Defined

Minor: For a single floor, a peeling condition exists. Up to or less than 50% of the floor is affected.

Major: For a single floor, a peeling condition exists. More than 50% of the floor is affected.

Severe: N/A.

Floors—Rot/Deteriorated Subfloor (Common Areas)

Subfloor has decayed or is decaying.

Severity Defined

Minor: N/A.

Major: Condition is slightly noticeable. Small areas of rot or spongy flooring are found. Inspection observations estimate less than 10% of the floors are affected.

Severe: Large areas of rot are readily visible. Application of weight causes noticeable deflection. Inspection observations estimate more than 10% of floors are affected.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floors—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: N/A.

Major: Visible indication of a water stain, mold, or mildew, such as darkened area, exists over a small area (4 sq. ft. or less). Water may or may not be evident.

Severe: Visual observations estimate that a large portion of floor has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, mold, moist areas and flaking are evident. The floor surface may have failed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Air Quality," "Hazards.")

Lighting Damaged/Inoperable (Common Areas)

Lighting fixture is damaged, inoperable, or missing.

Severity Defined

Minor: N/A.

Major: The permanent lighting fixture is damaged, inoperable or missing.

Severe: N/A.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards," "Hazards.")

Outlets/Switches/Cover Plates—Missing/Broken (Common Areas)

The flush plate used to cover the opening surrounding a switch or outlet is damaged or does not exist. Switch or outlet is missing.

Severity Defined

Minor: Outlet or switch has broken cover plate which does not result in exposed wiring.

Major: N/A.

Severe: An outlet or switch is missing.

OR

A cover plate is missing or broken resulting in exposed wiring.

Smoke Detector—Missing/Inoperable (Common Areas)

Smoke detector will not activate, or is missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing or inoperable smoke detector is severe.

Stairs—Broken/Missing Hand Railing (Halls/Corridors/Stairs)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Stairs—Broken/Damaged/Missing Steps (Halls/Corridors/Stairs)

The horizontal tread or stair surface is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Step is broken, damaged or missing.

Mailbox Missing/Damaged (Halls/Corridors/Stairs)

Mailbox does not function properly due to deterioration, damage, or is absent.

Severity Defined

Minor: Mailbox is damaged, vandalized, or deteriorated, but functional.

Major: N/A.

Severe: Mailbox is damaged, vandalized, or deteriorated, and as a result, is not functional.

OR

Mailbox is missing.

Graffiti (Halls/Corridors/Stairs)

Visual observation of a crude, (not recognizable as an art form), inscription or drawing scratched, painted or sprayed on a building surface, retaining wall, or fence so as to be seen by the public.

Note: Do not count full wall murals and similar art forms as graffiti.

Severity Defined

Minor: Visual graffiti observed in at least one location/area.

Major: Graffiti observed in 2–5 locations/areas.

Severe: Graffiti observed in 6 or more locations/areas.

Walls—Bulging/Buckling (Common Areas)

Wall has bowed, deflected, sagged or has deviated from original vertical alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging/Buckling or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Walls—Damaged/Deteriorated Trim (Common Areas)

Cove molding, chair rail, base molding or other decorative trim is damaged or has decayed.

Severity Defined

Minor: Small areas of deterioration in the trim surfaces. Visual observations estimate that less than 10% of the wall area surveyed is affected.

Major: Large areas of deterioration in the trim surfaces. Visual observations estimate that 10% to 50% in any of the wall area surveyed is affected.

Severe: Significant areas of deterioration in the wall surfaces. Visual observations estimate that more than 50% of the wall area surveyed is affected.

Walls—Damaged (Common Areas)

Punctures in the wall surface. May or may not penetrate completely. Panels or tiles may be missing or damaged. Does not include small holes created by hanging pictures, etc.

Severity Defined

Minor: A hole missing tile/panel, or other damage found in a wall, visually estimated at no larger than 8½ x 11 inches. Hole does not fully penetrate into the adjoining room (cannot see through it).

Major: A hole missing tile/panel or other damage wall that is larger than a sheet of paper (8½ x 11).

OR

A crack greater than ⅛" in wide and a minimum of 11" long.

Severe: A hole of any size is found in one or more walls which fully penetrates into an adjoining room (can see through the hole).

OR

Two or more walls have major holes.

Walls " Needs Paint (Common Areas)

Paint is peeling, cracking, flaking, otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Walls—Water Stains/Water Damage/Mold/Mildew (Common Areas)

Walls are not watertight. Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single wall, visible indication of a leak, mold, or mildew, such as darkened area, exists over a small area. (less than 4 sq. ft. by visual estimate). Water may or may not be evident.

Major: For a single wall, visible indication of a leak exists over a large area (visually estimated at more than 4 sq. ft.). Water is probably evident.

Major: Visual observation estimates that a large portion (more than 50% of the surface) of one or more walls have been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moisture area, mold and flaking are evident. The wall surface may have failed. One occurrence of this condition is sufficient to classify the wall system as severe.

OR

Visual observations estimate that more than 50% of the wall surface in any one area shows signs of water damage, stains, mold, or mildew.

Windows—Cracked/Broken/Missing Panes (Common Areas)

Glass or pane is cracked, broken or missing.

Severity Defined

Minor: Cracked window pane is observed.

Major: N/A.

Severe: Glass pane is broken or missing.

Windows—Damaged Window Sill (Common Areas)

The horizontal member of the window that bears the upright portion of the frame is damaged.

Severity Defined

Minor: Sill is damaged but still present. The inside of the surrounding wall is not exposed. No impact to window operation or weather tightness is visually apparent.

Major: Sill is missing or damaged enough to expose the inside of the surrounding walls and/or compromise its weather tightness.

Severe: N/A.

Windows—Security Bars Prevent Egress (Common Areas)

Security bars are damaged, constructed or installed such that egress is severely limited or impossible.

Note: This does not include windows not designed or intended for egress.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

HVAC—Gas Fired Unit—Missing/Misaligned Chimney (Common Areas)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

HVAC—Inoperable (Common Areas)

The heating, cooling, or ventilation system is inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The HVAC does not function, providing neither necessary heating or cooling as designed. System does not respond when the controls are engaged.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

HVAC—Noisy/Vibrating/Leaking (Common Areas)

The HVAC distribution components, including fans, are the source of abnormal noise, unusual vibration, or leaks.

Severity Defined

Minor: N/A.

Major: The HVAC system exhibits or shows signs of abnormal vibration, other noise or leaks when engaged. The condition does not prevent the system from providing heating or cooling sufficient to maintain a minimum temperature range in the major living areas of the unit.

Severe: N/A.

HVAC—Radiator Covers Missing/Damaged (Common Areas)

Radiator cover is missing, damaged or inoperable.

Severity Defined

Minor: N/A.

Major: Radiator is damaged, impeding proper heating and cooling, but not creating any type of safety hazard.

Severe: Radiator is missing, damaged or substantially not installed to burn, fan or other potentially serious hazards.

HVAC—Rusted/Corroded (Common Areas)

The material condition of the equipment and/or associated piping/ducting shows evidence of flaking, discoloration or pitting.

Severity Defined

Minor: N/A.

Major: Significant formations of metal oxides are visible or a noticeable pit or crevice has developed.

Severe: Condition has rendered equipment and/or piping inoperable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Call-for-Aid Inoperable (Common Areas)

Call-for-Aid is inoperable.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: System does not function as intended.

Countertops—Missing/Damaged (Common Areas)

A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated.

Severity Defined

Minor: Counter-top surface is discolored; materials have begun to separate or minor scratching and chipping is present.

Major: Surface shows advanced stage of deterioration and/or scratching, chipping.

Severe: Countertop working surface is missing or deteriorated and/or damaged and does not provide a sanitary surface to prepare food.

Cabinets—Missing/Damaged (Common Areas)

A case, box or piece of furniture with sets of drawers or shelves, with doors, primarily used for storage, mounted on walls or mounted on floors.

Severity Defined

Minor: Cabinet is discolored; materials have begun to separate or minor scratching and chipping is present. Cabinet assembly is present; up to two cabinets may be only marginally functional.

Major: Several (up to 50%) cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Severe: A significant number (more than 50%) of cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Dishwasher/Garbage Disposal—Inoperable (Kitchen) (Day Care) (Other Community Spaces)

A dishwasher or garbage disposal, if provided, does not work.

Severity Defined

Minor: N/A.

Major: The dishwasher or garbage disposal does not work.

Severe: N/A.

Exhaust Systems—Excessive Grease/Inoperable (Kitchen)

Failure of apparatus to draw cooking exhaust.

Severity Defined

Minor: Accumulation of dirt threatens the free passage of air.

Major: N/A.

Severe: Exhaust fan is inoperable or flue may be completely blocked based on visual estimation.

GFI—Inoperable (Kitchen)(Restrooms/Pool Structures)

GFI is present and inoperable.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: GFI is present and is found inoperable.

Fencing—Damaged/Not Intact (Pools and Related Structures)

Fencing surrounding the swimming pool was observed to be damaged.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any damage that compromises the integrity of the fence.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Pool—Not Operational (Pools and Related Structures)

Pool was not in operation during the inspection.

Note: If not operational due to seasonal changes the observation should still be recorded that the pool was not in operation.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Pool was observed not to be operational.

Lavatory Sink—Damaged/Missing (Restrooms/Pool Structures)

Sink, faucet, or accessories are missing, damaged or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink is still usable.
Major: N/A.
Severe: Absence or failure of the sink and/or associated hardware. Sink is unusable.

Plumbing—Clogged Drains (Kitchen) (Restrooms/Pool Structures)

Water does not drain adequately in shower, sink, tub or basin.

Severity Defined

Minor: Water does not drain freely when stopper is disengaged. Sink is usable.
Major: N/A.
Severe: Drain is completely clogged or has suffered extensive deterioration. Sink is not usable.

Plumbing—Leaking Faucet/Pipes (Kitchen) (Restrooms/Pool Structures)

Sink faucet or piping leaks.

Severity Defined

Minor: Leak or drip that is contained by basin. Faucet is usable.
Major: N/A.
Severe: Faucet leak and surrounding area is adversely affected.
OR
Piping leaks and surrounding area is adversely affected.

Range/Stove—Missing/Damaged/Inoperable (Kitchen)

Unit is absent or damaged.

Severity Defined

Minor: Unit's surface is dented, chipped or scratched. Operation of doors or drawers is impeded but stove is operational. Burner is misaligned and flame is not distributed equally. Pilot light is out on one or more burners.
Major: N/A.
Severe: The unit is missing, or any burners and/or oven is inoperable.

Refrigerator—Missing/Damaged/Inoperable (Kitchen)

The refrigerator does not perform adequately.

Severity Defined

Minor: Refrigerator has excessive accumulation of ice.
OR
Seals around doors are deteriorated.
OR
Operation of doors or drawers is impeded but refrigerator is operational.
Major: N/A.
Severe: Refrigerator is missing or does not cool at all.

Sink—Damaged/Missing (Kitchen)

Sink, faucet or accessories are missing, damaged, or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink & hardware are still usable for food preparation.
Major: N/A.
Severe: Sink or hardware is missing or is totally unusable for food preparation.

Dryer Vent Missing/Damaged/Inoperable (Laundry Room)

Inadequate means is available to vent accumulated heat to outside.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Dryer vent is missing or is visually determined to be inoperable (blocked). Dryer exhaust is not effectively vented to the outside.

Baluster/Side Railings Damaged (Patio/Porch/Balcony)

Baluster or side railing on this exterior improvement is loose, damaged or inoperable, limiting the safe use of this area.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The baluster and/or side rails enclosing this area are loose, damaged or missing, impeding the safe use of this area.

Restroom Cabinet—Damaged/Missing (Restrooms/Pool Structures)

Damaged or missing cabinets, vanity tops, drawers, shelves, and doors to include medicine cabinets and vanities.

Severity Defined

Minor: One or more cabinets/vanities have missing and/or damaged shelves, vanity tops, drawers, and/or doors, but all cabinets are fully usable.
Major: N/A.
Severe: One or more cabinets are missing or are not usable for storage due to their poor condition.

Shower/Tub—Damaged/Missing (Restrooms/Pool Structures)

Shower/tub or components are damaged or non-existent.

Severity Defined

Minor: N/A.
Major: Presence of extensive discoloration and/or cracks in the basin. Shower/tub is usable.
Severe: Absence or failure of the shower, tub, faucets or drains and/or associated hardware. Shower or tub are unusable for any reason.

Ventilation/Exhaust System—Inoperable (Restrooms/Pool Structure)

Failure of apparatus to exhaust air.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Exhaust fan is inoperable or restroom window cannot be opened.

Water Closet/Toilet—Damaged/Clogged/Missing (Restrooms/Pool Structures)

Water closet/toilet is damaged or non-existent.

Severity Defined

Minor: N/A.
Major: Fixture elements, such as but not limited to the seat, the flush handle, the cover, etc., are missing or damaged.
Severe: Fractured or broken bowl will not retain water. Fixture may not exist or a hazardous condition exists. Absence of all flushing ability due to obstruction or other defect.

Chutes Damaged/Missing Components (Trash Collection Areas)

Structure that is utilized to direct garbage into the appropriate storage container. Components include but are not limited to the chute, the chute door.

Note: Do not evaluate the door that leads to the trash room.

Severity Defined

Minor: N/A.

Major: Substantially reduced capacity to dispose of refuse.

Severe: Broken or inadequate collection structure causes garbage to backup into chutes. Compactors or components have failed.

Unit Inspectable Items

Items to inspect for "Unit" are as follows:

Bathroom
Call-for-Aid
Ceiling
Doors
Electrical System
Floors
Hot Water Heater
HVAC System
Kitchen
Lighting
Outlets/Switches
Patio/Porch/Balcony
Smoke Detector
Stairs
Walls
Windows

Call-for-Aid (Unit)

System to summon help. May be visual, audible, or both. May be activated manually or automatically when pre-programmed conditions are met.

This inspectable item can have the following deficiency:

Inoperable

Ceiling (Unit)

The visible overhead structure lining the inside of a room or area.

This inspectable item can have the following deficiencies:

Bulging/Buckling
Holes/Missing Tiles/Panels
Needs Paint
Water Stains/Water Damage/Mold/Mildew

Doors (Unit)

Means of access to the interior of a unit, room within the unit, or closet. Doors provide privacy and security, control passage, provide fire and weather resistance.

This inspectable item can have the following deficiencies:

Damaged Surface Holes/Paint/Rusting
Damaged Hardware/Locks
Deteriorated/Missing Seals (Entry Only)
Damaged Frames/Threshold/Lintels/Trim
Damaged/Missing Screen/Storm/Security Door
Missing Door

Electrical System (Unit)

Portion of the building system that safely provides electrical power throughout the building. Includes equipment that provides control, protection, metering, and service.

This inspectable item can have the following deficiency:

Blocked Access to Electric Panel
Evidence of Leaks Corrosion
GFI Inoperable
Missing Covers
Burnt Breakers
Frayed Wiring
Missing Breakers

Floors (Unit)

The visible horizontal surface system within a room or area underfoot; the horizontal division between two stories of a structure.

This inspectable item can have the following deficiencies:

Bulging/Buckling
Missing Flooring
Rot/Deteriorated Subfloor
Floor Covering Damage
Needs Paint
Water Stains/Water Damage/Mold/Mildew

Hot Water Heater (Unit)

This inspectable item can have the following deficiencies:

Gas Fired Unit—Missing/Misaligned Chimney
Inoperable Unit/Components
Pressure Relief Valve Missing
Leaking Valves/Tanks/Pipes
Rust/Corrosion

HVAC System (Unit)

System to provide heating, cooling and ventilation to the unit.

This does not include building heating or cooling system deficiencies such as boilers, chillers, circulating pumps, distribution lines, fuel supply, etc., OR occupant owned or supplied heating sources.

This inspectable item can have the following deficiencies:

Inoperable
Rust/Corrosion
Convection/Radiant Heat System/Covers Missing/Damaged
Noisy/Vibrating/Leaking
Gas Fired Unit—Missing/Misaligned Chimney

Kitchen (Unit)

A place where food is cooked or prepared. The facilities and equipment used in preparing and serving food.

This inspectable item can have the following deficiencies:

Cabinets—Missing/Damaged
Plumbing—Clogged Drains
Plumbing—Leaking Faucets/Pipes
Range/Stove—Missing/Damaged/Inoperable
Refrigerator—Missing/Damaged/Inoperable
Dishwasher/Garbage Disposal—Inoperable
Range Hoods/Exhaust Fans—Excessive Grease/Inoperable
Countertops—Missing/Damaged
Sink—Missing/Damaged

Lighting (Unit)

System to provide illumination to a room or area. Includes fixtures, lamps, and supporting accessories.

This inspectable item can have the following deficiencies:

Missing/Inoperable Fixture

Outlets/Switches (Unit)

The receptacle connected to a power supply or method to control the flow of electricity. Includes two & three prong outlets, ground fault interrupters, pull cords, two & three pole switches, and dimmer switches.

This inspectable item can have the following deficiencies:

Missing
Missing/Broken Cover Plates

Patio/Porch/Balcony (Unit)

Adjoining patio, porch, or balcony.

This inspectable item can have the following deficiency:

Baluster/Side Railings Damaged

Smoke Detector (Unit)

Sensor to detect the presence of smoke and activate an alarm. May be battery operated or hard-wired to electrical system. May provide visual signal, audible signal, or both. Smoke detector must be located on every floor.

This inspectable item can have the following deficiencies:

Missing/Inoperable

Stairs (Unit)

Series of 4 or more steps or flights of steps joined by landings connecting levels of a unit. Includes supports, frame, treads, handrails.

This inspectable item can have the following deficiencies:

Broken/Missing Hand Railing
Broken/Damaged/Missing Steps

Walls (Unit)

The enclosure of the unit and rooms. Materials for construction include concrete, masonry block, brick, wood, glass block, plaster, sheet-rock. Surface finish materials include paint, wall-coverings.

This inspectable item can have the following deficiencies:

Bulging/Buckling
Damaged
Water Stains/Water Damage/Mold/Mildew
Damaged/Deteriorated Trim
Needs Paint

Windows (Unit)

Window systems provide light, security, and exclusion of exterior noise, dust, heat, and cold. Frame materials include wood, aluminum, and vinyl.

This inspectable item can have the following deficiencies:

Cracked/Broken/Missing Panes
Deteriorated/Missing Caulking/Seals
Peeling/Needs Paint
Damaged Window Sill
Inoperable/Not Lockable
Security Bars Prevent Egress

Bathroom Cabinets—Damaged/Missing (Bathroom)

Damaged or missing cabinets, vanity tops, drawers, shelves, and doors. Includes medicine cabinets and vanities.

Severity Defined

Minor: Cabinet or vanity has missing and/or damaged shelves, vanity tops, drawers, and/or doors, but is fully usable.

Major: N/A.

Severe: Cabinet is missing or is not usable for storage due to its poor condition.

Lavatory Sink—Damaged/Missing (Bathroom)

Basin (sink) that shows signs of deterioration, distress, and/or is non-existent.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink is still usable.

Major: N/A.

Severe: Absence or failure of the sink and/or associated hardware. Sink is unusable.

Plumbing—Clogged Drains (Bathroom)

Water does not drain adequately in shower, tub, or basin (sink).

Severity Defined

Minor: Water does not drain freely when stopper is disengaged; however, sink or tub is usable.

Major: N/A.

Severe: Drain is completely clogged or has suffered extensive deterioration. Sink or tub is not usable.

Plumbing—Leaking Faucet/Pipes (Bathroom)

Basin, shower, water closet, or tub faucet and/or associated pipes leak water.

Severity Defined

Minor: Leak or drip that is contained by basin. Plumbing fixture is usable.

Major: N/A.

Severe: Leak is steady and surrounding area is adversely affected.

OR

Piping leaks and surrounding area is adversely affected.

Shower/Tub—Damaged/Missing (Bathroom)

Shower/tub or components are damaged or non-existent.

Note: This does not include Leaks.

Severity Defined

Minor: N/A.

Major: Presence of extensive discoloration and/or cracks in the basin. Shower/Tub is usable.

Severe: Absence or failure of the shower, tub, faucets or drains and/or associated hardware. Shower or tub is unusable for any reason.

Ventilation/Exhaust System—Inoperable (Bathroom)

Failure of apparatus to exhaust air.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Exhaust fan is inoperable or bathroom window cannot be opened.

Water Closet/Toilet—Damaged/Clogged/Missing (Bathroom)

Water closet/toilet is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: Fixture elements, such as but not limited to the seat, the flush handle, the cover etc., are missing or damaged.

OR

Toilet runs constantly.

Severe: Fractured or broken bowl will not retain water. Fixture may not exist or a hazardous condition exists. Absence of all flushing ability due to obstruction or other defect.

Inoperable (Call-for-Aid)

The system does not function.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: System does not function as intended.

Bulging/Buckling (Ceiling)

Ceiling has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Bulging, bucking or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Holes/Missing Tiles/Panels (Ceiling)

Punctures in the ceiling surface. May or may not penetrate completely. Panels or tiles may be missing or damaged.

Severity Defined

Minor: Small holes or missing tile/panel found in a ceiling, visually estimated at no larger than a sheet of paper (8½ x 11 inches). Hole does not fully penetrate into the area above (cannot see through it).

Major: A hole or missing tile/panel is found which is visually estimated to be larger than a sheet of paper (8½ x 11 inches) but does not fully penetrate into the area above (cannot see through it).

OR

A crack greater than ⅛" wide and a minimum of 11" long.

Severe: Any hole is found which fully penetrates into the area above (can see through the hole to upper space).

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Needs Paint (Ceiling)

Paint is peeling, cracking, flaking, otherwise deteriorated, or surface is not painted.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Water Stains/Water Damage/Mold/Mildew (Ceiling)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single ceiling, visible indication of a leak, mold, or mildew, such as a darkened area, exists over a small area (less than 4 sq. ft.). Water may or may not be evident. Visual observations estimate that less than 10% of the ceiling surface area is affected.

Major: For a single ceiling, visible indication of a leak mold or mildew, such as a darkened area, exists over a large area (more than 4 sq. ft.). Water may or may not be evident.

OR

Visual observations estimate that 10% to 50% of the ceiling area has minor damage.

Severe: Visual observations estimate that a large portion (50% of its surface area) of one ceiling has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moist areas, mold, or mildew are evident. The ceiling surface may have failed.

OR

Cases where visual observations estimate that more than 50% of the ceiling area shows minor defined signs of damage, stains, mold, or mildew.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Air Quality.")

Damaged Surface—Holes/Paint/Rusting (Doors)

Damage in the door surface that may affect either the surface protection or the strength of the door, or it may compromise building security or privacy. Includes holes, peeling/cracking/no paint, or significant rust.

Note: A bathroom, bedroom, or entry door impacted is severe.

Severity Defined

Minor: Any one door has either: small holes (less than ¼ inch in diameter); cracking/peeling paint; and/or the door or its components are rusting.

Major: If more than one building exterior door has minor surface damage as defined above.

OR

Any single unit door except bathroom/bedroom and/or entry doors, has a hole or holes ranging in size from ¼ inch up to 1 inch diameter.

Severe: If any unit door has a hole or holes larger than 1 inch in diameter, or significant peeling/cracking/no paint or rust that affects the integrity of the door surface.

OR

If bathroom, bedroom and/or entry door has either minor or major damage as defined above.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged Frames/Threshold/Lintels/Trim (Doors)

The frame, header, jamb, threshold, lintels, or trim, is visibly warped, split, cracked, or broken in some manner.

Severity Defined

Minor: A single door's frame/threshold/lintel and/or trim is damaged but does not hinder door operation. The damaged door frame does not prevent door from being locked.

Major: More than one door has the minor damage defined above.

Severe: At least one door is rendered inoperable and/or unlockable due to damage to the door's frame/threshold/lintel and/or trim.

Damaged Hardware/Locks (Doors)

The attachments to a door to provide hinging, hanging, opening, closing, or security are damaged or missing. Includes locks, panic hardware, overhead door tracks, springs and pulleys, sliding door tracks and hangers, and door closures.

Severity Defined

Minor: A single door's hardware, as defined above, is damaged but does not hinder current door operation. The door functions, is lockable, and the door's panic hardware is operable.

Major: More than one building exterior door has minor damaged hardware as defined above.

Severe: A single door is rendered inoperable and/or unlockable due to damage to the door's hardware.

OR

A single building exterior door's panic hardware is not operable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Damaged/Missing Screen/Storm/Security Door (Doors)

Visible damage to surfaces including screens, glass, frames, hardware, and door surface.

Severity Defined

Minor: One or more screen/storm doors has damage or is missing screens/glass.

Major: One or more security doors has damage, but is still operational and the security door still serves its design purpose.

Severe: A single security door is inoperable or missing. (Missing only applies to those situations where a security door is supposed to be present but is observed not to be there.)

Deteriorated/Missing Seals (Entry Only) (Doors)

The seals and stripping around the entry door(s) designed to provide weather and fire resistance are damaged or missing.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: For a single entry door the seals are missing.

Deteriorated/Missing Caulking/Seals (Windows)

The caulking or seal is missing, poorly installed, or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or seals are observed. No evidence of damage to window or surrounding structure exists.

Major: Missing or deteriorated caulk or seals are observed, with some evidence of leaks or damage to the window or surrounding structure visible.

OR

A Thermopane or insulated window has failed. (Typically indicated by being fogged up.)

Severe: Missing or deteriorated caulk or seals are observed and the window is not weather-tight. Evidence of leaks or damage to the window or surrounding structure is readily apparent.

Missing Door (Door)

Door is absent.

Note: A bathroom, bedroom, or entry door impacted is severe.

Severity Defined

Minor: The missing door is not a bathroom, bedroom or entry door.

Major: Missing doors are not an entry, bedroom, or bathroom. They present no hazard and visual observation shows two doors or up to 50% of the doors are missing.

Severe: The missing door is a bathroom, bedroom or entry door.

OR

Visual observation estimates more than 50% of the unit doors are missing from areas other than the bathroom, bedroom, or entry door.

Blocked Access to Electric Panel (Electrical System)

The placing of any object that will delay or prevent the access to any panelboard or main power switch in an emergency and cause a fire hazard.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: One or more items are placed in front of the unit's electrical panel, impeding accessibility in time of an emergency.

Burnt Breakers (Electrical System)

Breakers having carbon on the plastic body, or plastic body is melted or scarred.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any signs of carbon residue or breaker is melted and/or has arcing scars.

Evidence of Leaks/Corrosion (Electrical System)

Liquid stains, rust marks, or other signs of corrosion are found on electrical enclosures or hardware.

Note: Do not address surface rust if it does not affect the condition of the electrical enclosure.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Any corrosion that affects the condition of the current carrying components. Stains and/or rust on the interior of electrical enclosures or evidence of water leaks are present in the enclosure or hardware.

Frayed Wiring (Electrical System)

Insulation may be frayed, stripped, or removed resulting in a potentially dangerous condition.

Note: This does not include any wires not intended to be insulated, such as grounding wires.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Nicks, abrasions or fraying of the insulation.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Electrical Hazards.")

GFI—Inoperable (Electrical System)

GFI is present and inoperable.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: GFI is present and inoperable.

Comments

Severe: This creates a health and safety concern.

Missing Breakers (Electrical System)

An open circuit breaker position in a panel-board, main panel board or other electrical box containing circuit breakers; not appropriately blanked-off.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Open breaker port.

Missing Covers (Electrical System)

Missing covers on any electrical device box, panel box, switch gear box, control panel, etc., where visible electrical connections are exposed.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Cover is missing resulting in exposed visible electrical connections.

Bulging/Buckling (Floors)

Floor has bowed, deflected, is sagging, or has deviated from original horizontal alignment.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Bulging, buckling, or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Floor Covering Damage (Floors)

Damage to the carpet tiles, wood, sheet vinyl or other floor covering.

Severity Defined

Minor: Floor covering may have stains, surface burns, shallow cuts, small holes or tears in non-traffic areas, loose areas, exposed seams. The covering is fully functional. Visual observation estimates that less than 10% of the floor area is affected. Does not present a safety hazard.

Major: Floor covering may have burn marks, cuts, tears, holes, or large sections of exposed seams exposing the underlying material. The covering does not present a safety hazard. Visual observations estimate that 10% to 50% of the floors are affected.

Severe: Large sections of the floor covering are damaged estimated at more than 50% of the floor area.

OR

Floor covering damage that exposes the underlying material.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but not limited to "Hazards.")

Missing Flooring Tiles (Floors)

Flooring such as VLT, sheet, vinyl, carpet or other flooring material is missing.

Severity Defined

Minor: For a single floor small holes in areas of the floor surface are missing. Visual observations estimate less than 10% of the floors surveyed are affected. No safety problems exist due to this condition.

Major: Visual observations estimate 10% to 50% of the floors have missing flooring. No safety problem exists due to this condition.

Severe: Visual observations estimate more than 50% of the floors are affected missing flooring; or the missing flooring is sufficient for safety to be compromised. One concern involving compromised safety is sufficient to classify the floor system as severe.

Needs Paint (Floors)

For floors that are painted, paint is peeling, cracking, flaking, or otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Rot/Deteriorated Subfloor (Floors)

Subfloor has decayed or is decaying.

Severity Defined

Minor: N/A.

Major: Condition is slightly noticeable. Small areas of rot or spongy flooring are found.

Severe: Large areas of rot are readily visible, application of weight causes noticeable deflection.

Comments

Severe: Request an inspection by a structural engineer if doubt about severity exists.

Water Stains/Water Damage/Mold/Mildew (Floors)

Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: N/A.

Major: Visible indication of a water stain, mold, or mildew, such as darkened area, exists over a small area (4 sq. ft. or less). Water may or may not be evident.

Severe: Visual observations estimate that a large portion of floor has been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, mold, moist areas and flaking are evident. The floor surface may have failed.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Air Quality", "Hazards.")

Gas Fired Unit—Missing/Misaligned Chimney (Hot Water Heater)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

Inoperable Unit/Components (Hot Water Heater)

Hot water supply is unavailable due to system or system component malfunction.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: After running for several minutes, water from the hot water taps is not warmer than room temperature.

Leaking Valves/Tanks/Pipes (Hot Water Heater)

Water visibly leaking from any hot water system component. Includes valve flanges, stems, bodies, or from any domestic hot water tank or its piping.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Water is visibly leaking.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Electrical Hazards.")

Pressure Relief Valve Missing (Hot Water Heater)

Valve that regulates the temperature and pressure of the water heater is missing.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: No pressure relief valve is present.

Rust/Corrosion (Hot Water Heater)

The material condition of the equipment and/or associated piping shows evidence of flaking, discoloration, reduction in wall thickness, pitting, or crevices.

Severity Defined

Minor: Patches of noticeable formations of metal oxides.

Major: Significant formations of metal oxides are visible and a noticeable pit or crevice has developed.

Severe: Equipment and/or piping integrity has been compromised, (e.g., leaks are visible).

Gas Fired Unit—Missing/Misaligned Chimney (HVAC)

The exhaust system on a gas fired unit is misaligned.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: Any misalignment which causes improper or dangerous venting of gases.

Inoperable (HVAC)

The heating or cooling system is inoperable in the unit.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The HVAC in the unit does not function, providing neither necessary heating or cooling as designed. System does not respond when the unit controls are engaged.

Noisy/Vibrating/Leaking (HVAC)

The HVAC distribution components in the unit, including fans, are the source of abnormal noise, unusual vibration, or leaks.

Severity Defined

Minor: N/A.

Major: The HVAC system in the unit exhibits or shows signs of abnormal vibration, other noise or leaks when engaged. The condition does not prevent the system from providing heating or cooling sufficient to maintain a minimum temperature range in the major living areas of the unit.

Severe: N/A.

Convection/Radiant Heat System Covers Missing/Damaged (HVAC)

Convection/Radiant heat system cover is missing or damaged.

Severity Defined

Minor: N/A.

Major: One or more covers are damaged, impeding proper heating, but not creating any type of safety hazard.

Severe: One or more covers are missing, or substantially not installed, enabling exposure to burn, fan or other potentially serious hazards. A single occurrence constitutes a safety hazard.

Rust/Corrosion (HVAC)

A component(s) of the system show visible deterioration due to oxidation or corrosion of system parts.

Severity Defined

Minor: N/A.

Major: Deterioration from rust and corrosion is observed on the HVAC units in the unit. The condition does not prevent the system from providing sufficient heating or cooling.

Severe: N/A.

Cabinets—Missing/Damaged (Kitchen)

A case, box or piece of furniture with sets of drawers or shelves, with doors, primarily used for storage, mounted on walls or mounted on floors.

Severity Defined

Minor: Cabinet is discolored; materials have begun to separate or minor scratching and chipping is present. Cabinet assembly is present; up to two cabinets may be only marginally functional.

Major: Several (up to 50%) cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Severe: A significant number (more than 50%) of cabinets are either missing, damaged, or lacking adequate doors and/or shelves.

Countertops—Missing/Damaged (Kitchen)

A flat work surface in a kitchen often integral to lower cabinet space is missing or deteriorated.

Severity Defined

Minor: Counter-top surface is discolored; materials have begun to separate or minor scratching and chipping is present.

Major: Surface shows advanced stage of deterioration and/or scratching, chipping.

Severe: Countertop working surface is missing or deteriorated and/or damaged and does not provide a sanitary surface to prepare food.

Dishwasher/Garbage Disposal—Inoperable (Kitchen)

A dishwasher or garbage disposal, if provided, does not work.

Severity Defined

Minor: N/A.

Major: The dishwasher or garbage disposal does not work.

Severe: N/A.

Range Hood/Exhaust Fans—Excessive Grease/Inoperable (Kitchen)

Failure of apparatus to draw out cooking exhaust due to excess dirt, excessive grease, and/or other operational problems.

Severity Defined

Minor: Accumulation of dirt or grease threatens the free passage of air.

Major: N/A.

Severe: Range hood/exhaust fan is inoperable or presents serious electrical hazard to health or property. Flue may be completely blocked based on visual estimation.

Plumbing—Clogged Drains (Kitchen)

Water does not drain adequately.

Severity Defined

Minor: Basin does not drain freely when stopper is disengaged.

Major: N/A.

Severe: Drain is completely clogged or has suffered extensive deterioration.

Inoperable/Not Lockable (Windows)

Window cannot be opened or closed due to frame damage, faulty hardware, or other reason.

Severity Defined

Minor: Window is inoperable, but can be secured. Other operable windows are present in the immediate area.

Major: N/A.

Severe: Window is inoperable and cannot be secured. No operable windows are present in the immediate area.

Cracked/Broken/Missing Panes (Windows)

Glass or pane is cracked, broken or missing.

Severity Defined

Minor: Cracked window pane is observed.

Major: N/A.

Severe: Glass pane is broken or missing.

Damaged Window Sill (Windows)

The horizontal member of the window that bears the upright portion of the frame is damaged.

Severity Defined

Minor: Sill is damaged, but still present. The inside of the surrounding wall is not exposed. No impact to window operation or weather tightness is visually apparent.

Major: Sill is missing, or damaged enough to expose the inside of the surrounding walls and/or compromise its weather tightness.

Severe: N/A.

Plumbing—Leaking Faucets/Pipes (Kitchen)

Basin faucet or drain connections leak.

Severity Defined

Minor: Leak or drip that is contained by basin/pipes. Faucet is usable.

Major: N/A.

Severe: Leak is steady. Surrounding area is adversely affected. Water supply must be turned off. The faucet/pipe is not usable.

Range/Stove—Missing/Damaged/Inoperable (Kitchen)

Unit is missing or damaged.

Severity Defined

Minor: Unit's surface is dented, chipped or scratched. Operation of doors or drawers is impeded but stove is operational. Burner is misaligned and flame is not distributed equally. Pilot light is out on one or more burners.

Major: N/A.

Severe: Unit is missing, or any burners and/or oven is inoperable.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Hazards.")

Refrigerator—Missing/Damaged/Inoperable (Kitchen)

The refrigerator is not present or does not cool adequately.

Severity Defined

Minor: Refrigerator has excessive accumulation of ice.

OR

Seals around doors are deteriorated.

OR

Operation of doors or drawers is impeded but refrigerator is operational.

Major: N/A.

Severe: Refrigerator is missing or does not cool or work at all.

Sink—Missing/Damaged (Kitchen)

Sink, faucet or accessories are missing, damaged, or inoperable.

Severity Defined

Minor: Presence of extensive discoloration and/or cracks in the basin. Sink & hardware are still usable for food preparation.

Major: N/A.

Severe: Sink or hardware is missing or is totally unusable.

Missing/Inoperable Fixture (Lighting)

Lighting fixture is missing, or does not operate normally. Malfunction may be with the total system or with individual components.

Severity Defined

Minor: Permanent lighting fixture is missing or inoperable, in one room in a unit, and switched outlet exists in the room.

Major: Permanent lighting fixture is missing or inoperable in two or more rooms, and no switched outlet exists in the room.

Severe: Two or more rooms have missing or inoperable permanent light fixtures, and do not have switched outlets within the rooms.

Missing (Outlets/Switches)

Outlet, switch or both are missing.

Note: This does not apply to empty junction boxes that were not intended to contain an outlet or switch.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: An outlet or switch is missing.

Comments

Severe: If condition is a health and safety concern, it must be recorded manually. (Includes but is not limited to "Electrical Hazards.")

Missing/Broken Cover Plates (Outlets/Switches)

The flush plate used to cover the opening surrounding a switch or outlet is damaged or does not exist.

Severity Defined

Minor: Outlets/switches has broken cover plate. The condition does not result in exposed wiring.

Major: N/A.

Severe: A broken or missing cover plate results in exposed wiring.

Baluster/Side Railings Damaged (Patio/Porch/Balcony)

Baluster or side railing on the porch/patio/balcony is loose, damaged, or inoperable, limiting the safe use of this area.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The baluster and/or side rails enclosing this area are loose, damaged or missing, impeding the safe use of this area.

Missing/Inoperable (Smoke Detector)

Smoke detector will not activate, or is missing.

Note: At least one smoke detector is required on each level.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: A single missing or inoperable smoke detector.

Broken/Missing Hand Railing (Stairs)

The hand rail is damaged or non-existent.

Severity Defined

Minor: N/A.

Major: N/A.

Severe: The hand-rail for four or more stairs is completely missing or damaged, loose or otherwise unusable.

Broken/Damaged/Missing Steps (Stairs)

The horizontal tread or stair surface is damaged or non-existent.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Step is broken, damaged or missing.

Bulging/Buckling (Walls)

Wall has bowed, deflected, sagged or has deviated from original vertical alignment.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: Bulging/Buckling or sagging is observed.

Comments

Severe: Request an inspection by a structural engineer, if doubt about severity exists.

Walls—Damaged/Deteriorated Trim (Common Area)

Cove molding, chair rail, base molding or other decorative trim is damaged or has decayed.

Severity Defined

Minor: Small areas of deterioration in the trim surfaces.

Major: Large areas of deterioration in the trim surfaces.

Severe: Significant areas of deterioration in the trim surfaces.

Damaged (Walls)

Punctures in the wall surface. May or may not penetrate completely. Panels or tiles may be missing or damaged. Does not include small holes created by hanging pictures, etc.

Severity Defined

Minor: A hole, missing tile/panel, or other damage found in a wall, visually estimated at no larger than 8½ x 11 inches. Hole does not fully penetrate into the adjoining room (cannot see through it).

Major: A hole, missing tile/panel or other damage is found in a wall that is larger than a sheet of paper (8½ x 11).

OR

A crack greater than 1/8" in width and a minimum of 11" long.

Severe: A hole of any size is found which fully penetrates into an adjoining room, (can see through the hole).

OR

Two or more walls have major holes.

Needs Paint (Walls)

Paint is peeling, cracking, flaking, otherwise deteriorated.

Severity Defined

Minor: Area affected is less than 4 square feet.

Major: Area affected is greater than 4 square feet.

Severe: N/A.

Water Stains/Water Damage/Mold/Mildew (Walls)

Walls are not watertight. Visible evidence of water infiltration, mold, or mildew exists. Damage such as saturation or surface failure may have occurred.

Severity Defined

Minor: For a single wall, visible indication of a leak, mold, or mildew, such as darkened area, exists over a small area. (less than 4 sq. ft. by visual estimate). Water may or may not be evident.

Major: For a single wall, visible indication of a leak exists over a large area (visually estimated at more than 4 sq. ft.). Water is probably evident.

Severe: Visual observation estimates that a large portion (more than 50% of the surface) of one or more walls have been exposed to substantial saturation or damage due to water, mold, or mildew. Visible cracks, moisture area, mold and flaking are evident. The wall surface may have failed. One occurrence of this condition is sufficient to classify the wall systems as severe.

OR

Visual observations estimate that more than 50% of the wall surface in any one unit show signs of water damage, stains, mold, or mildew.

Deteriorated/Missing Caulking/Seals (Windows)

The caulking or seal is missing, poorly installed, or deteriorated.

Note: This also includes Thermopane or insulated windows that have failed.

Severity Defined

Minor: Missing or deteriorated caulk or seals are observed. No evidence of damage to window or surrounding structure exists.

Major: Missing or deteriorated caulk or seals are observed, with some evidence of leaks or damage to the window or surrounding structure visible.

OR

A Thermopane or insulated window has failed. (Typically indicated by being fogged up.)

Severe: Missing or deteriorated caulk or seals are observed and the window is not weather-tight. Evidence of leaks or damage to the window or surrounding structure is readily apparent.

Peeling/Needs Paint (Windows)

Paint covering the window assembly/trim is cracking, flaking, or otherwise failing.

Severity Defined

Minor: Peeling paint and/or a window in need of paint is observed.

Major: N/A.

Severe: N/A.

Security Bars Prevent Egress (Windows)

Security bars are damaged, constructed or installed, such that ingress/egress is severely limited or impossible.

Note: This does not include windows not designed or intended for ingress/egress.

Severity Defined

Minor: N/A.
Major: N/A.
Severe: The ability to exit through the window is limited by security bars that do not function properly and, therefore, pose safety risks.

Health and Safety Inspectable Items

Items to inspect for "Health and Safety" are as follows:

Air Quality
Elevator
Flammable Materials
Hazards
Electrical Hazards
Emergency/Fire Exists
Garbage and Debris
Infestation

Air Quality (Health and Safety)

Indoor spaces must be free from high levels of sewer gas, fuel gas, mold, mildew, or other harmful pollutants. Indoors must have adequate ventilation.

The following deficiencies can be noted:

Mold and/or Mildew Observed
Propane/Natural Gas/Methane Gas Detected
Sewer Odor Detected

Electrical Hazards (Health and Safety)

Any hazard that poses a risk of electrical fires, electrocution, or spark/explosion.

The following deficiencies can be noted:

Exposed Wires/Open Panels
Water Leaks On or Near Electrical Equipment

Emergency/Fire Exits (Health and Safety)

All buildings must have acceptable fire exits that are also properly marked and operational. (This would include fire towers, stairway access doors, & external exits.) These can include operable windows on the lower floors with easy access to the ground or a back door opening onto a porch with a stairway leading to the ground.

Note: This does not apply to individual units.

The following deficiencies can be noted:

Emergency/Fire Exits Blocked/Unusable
Missing Exit Signs

Flammable Materials (Health and Safety)

Any substance that is either known to be combustible or flammable or is stored in a container identifying it as such.

The following deficiency can be noted:

Improperly Stored

Garbage and Debris (Health and Safety)

Accumulation of garbage and debris exceeding the capacity of the storage area or not stored in an area sanctioned for such use.

The following deficiencies can be noted:

Outdoors
Indoors

Hazards (Health and Safety)

Physical hazards that pose risk of bodily injury.

The following deficiencies can be noted:

Sharp Edges
Tripping
Other

Infestation (Health and Safety)

Presence of rats, or severe infestation by mice or insects such as roaches or termites.

The following deficiencies can be noted:

Insects
Rats/Mice/Vermin

Mold and/or Mildew Observed (Air Quality)

Evidence of mold and/or mildew; especially in such areas as bathrooms and air outlets.

Propane/Natural Gas/Methane Gas Detected (Air Quality)

Strong propane, natural gas, and/or methane gas odors detected that could pose risk of explosion/fire or health risk if inhaled.

Sewer Odor Detected (Air Quality)

Sewer odors detected that could pose risk if inhaled for prolonged periods.

Exposed Wires/Open Panels (Electrical Hazards)

Exposed bare wires or openings in electrical panels.

Water Leaks On or Near Electrical Equipment (Electrical Hazards)

Water is observed leaking, puddling, or ponding on or immediately near any electrical apparatus. Poses risk of fire, electrocution, or explosion.

Tripping (Elevator)

Elevator is misaligned (doesn't level properly) by more than ¾" with the floor. Presents tripping hazard during ingress/egress.

Emergency/Fire Exits Blocked/Unusable (Emergency/Fire Exits)

The exit is not useable or ingress/egress is limited due to conditions such as debris, storage, door or window nailed shut, broken lock or chained panic hardware.

Missing Exit Signs (Emergency/Fire Exit)

Exit signs must be present and clearly identify all emergency exits. Illumination in area of sign must be provided.

Improperly Stored (Flammable Materials)

Improperly stored flammable materials. Potential risk of fire/explosion is identified by the location or manner in which the substance is stored.

Indoors (Garbage and Debris)

An accumulation of garbage that visibly exceeds planned storage capacity or is located in an area not sanctioned for staging or storing garbage or debris.

Note: Please review for fire hazard effects.

This does not include garbage and debris improperly stored outside. See *Garbage and Debris—Outdoors* for this deficiency.

Outdoors (Garbage and Debris)

An accumulation of garbage that visibly exceeds planned storage capacity or is located in an area not sanctioned for staging or storing garbage or debris.

Note: this does not include garbage improperly stored indoors. See *Garbage and Debris—Indoors* for this deficiency.

Sharp Edges (Hazards)

Any physical defect that poses the risk of cutting or breaking human skin or other bodily harm, generally in commonly used or traveled areas.

Tripping (Hazards)

Any physical defect that poses a tripping risk, generally in walkways or other traveled areas.

Note: This does not include tripping hazards from elevators that do not level properly. See *Elevator—Tripping* under Health & Safety for these occurrences.

Other (Hazards)

Other general defects or hazards that pose risk of bodily injury. (Must be specified by the inspector.)

Note: This would include items not specifically defined elsewhere but pose a risk.

Insects (Infestation)

Infestation of insects including, but not limited to, roaches or ants are observed throughout the unit or room especially in food preparation and storage areas.

Note: This does not include infestation from rats/mice. See *Infestation—Rats/Mice/Vermin* under Health & Safety for these occurrences.

Rats/Mice/Vermin (Infestation)

The presence of rats or mice is indicated by sightings, rat or mouse holes, or droppings.

Note: This does not include infestation from insects. See *Infestation—Insects* under Health & Safety for these occurrences.

Appendix 3—Physical Inspection Summary Report

The Inspection Summary Report is designed to achieve two objectives:

1. Provide the Public Housing Agency or owner and/or owner agent (POA) with the background information i.e. addresses, phone numbers, building names, etc., collected during inspection of a given property so that any relevant discrepancies can be identified and resolved.

2. Inform the POA of the physical condition of their property captured during a REAC inspection.

The items described below introduce the information provided in the Inspection Summary Report and are intended to meet the objectives illustrated above.

Inspection Number: The inspection number is unique for each inspection conducted by REAC. Each time a property is inspected by REAC, a new inspection number is utilized. These unique numbers may be used to communicate with REAC on any matter concerning a particular inspection.

Property Information: Information related to a property is provided:

Property identification number (in parentheses)—a unique number in HUD databases
Property name
Status as a scattered site (Yes/No)
Relevant addresses, phone numbers, fax numbers, and e-mail addresses for property

Each of these should be checked carefully for accuracy. Any discrepancies should be reported to your contact in the HUD office having jurisdiction over your property.

Building Unit Count: The total number of buildings and units on the property are given, along with the number of buildings and units actually inspected by REAC

Scores: An overall numerical score is given as a value from zero to 100. Separate numerical scores are also given for each of five areas:

Site
Building exterior
Building systems
Common areas
Units

The five area scores range from zero to the maximum number of points possible for each area. The possible points for a given area are determined for a specific property based on the inspectable items actually present in each area. The sum of the area points identifies what the overall score would be if there were no health & safety (H&S) deficiencies. The overall numerical score is then calculated by subtracting the sum of deductions for H&S deficiencies from the sum of the individual "area points." Examples of overall scores are: 95c; 67b*; 84a*; 100b; 78a; and 43c*. The asterisk indicates that H&S deficiencies were found with respect to smoke detectors. The lower-case letter indicates whether or not other kinds of H&S deficiencies were observed, as follows:

The letter "a" is given if no health and safety deficiencies were observed other than for smoke detectors.

The lower-case letter "b" is given if one or more non-life threatening H&S deficiencies, but no exigent/fire safety H&S deficiencies were observed other than for smoke detectors.

The lower-case letter "c" is given if there were one or more exigent/fire safety (calling for immediate attention or remedy) H&S deficiencies observed.

Although all H&S deficiencies other than smoke detector problems affect the scores with appropriate deductions, the letters grades are added to highlight the serious nature of H&S deficiencies, all of which need to be addressed by the POA.

Health and Safety Counts: In addition to the counts of actual H&S deficiencies observed in the inspected buildings and units, the estimated number of H&S deficiencies that would have been found had all buildings and units been inspected is also given. This projected count gives a sense of the total H&S problem for the inspected property. The projection is calculated by dividing the counts actually observed in buildings or units by the proportion of buildings or units inspected. These projected counts for buildings and units are added to the actual counts for site to determine the total projection. The percent of buildings and units inspected is additionally given to show the basis for the calculations.

Participants/Buildings/Units: Information provided includes:

Relevant addresses, phone numbers, fax numbers, and e-mail addresses for participants;

Name, year built, number of units and address for each building on the property. Note: All buildings on the property should be listed.

As before, each of these should be checked carefully for accuracy and any discrepancies should be reported to your contact in the HUD office having jurisdiction over your property.

Inspectable Items: This portion of the report details all deficiencies found in the inspection. The main headings in the first column refer to the inspectable area—site, building exterior, building systems, common areas, unit, or health & safety, where the deficiency was observed. The entries are

"inspectable items" within which the deficiencies were found. Some items may not be present for a given property. In such cases, appropriate adjustments are made in the area weights used to obtain the overall score. Items present, but with no deficiencies found, are not listed. The potential inspectable items are:

Site: fencing & retaining walls, grounds, lighting, mail boxes/project signs, market appeal, parking lots/driveways, play areas & equipment, refuse disposal, roads, storm drainage, and walkways

Building Exterior: doors, fire escapes, foundations, lighting, roofs, walls, and windows

Building Systems: domestic water, electrical system, elevators, emergency power, fire protection, heating/ventilation/air conditioning, and sanitary system

Common Areas: basement/garage/carport, closet/utility/mechanical, community room, day care, halls/corridors/stairs, kitchen, laundry room, lobby, office, other community spaces, patio/porch/balcony, pools & related structures, restrooms, storage, and trash collection areas

Unit: bathroom, call-for-aid, ceiling, doors, electrical system, floors, heating/ventilation/air conditioning, hot water heater, kitchen, lighting, outlets/switches, patio/porch/balcony, stairs, walls, and windows

Health & Safety: emergency/fire exits, electrical hazards, flammable materials, garbage and debris, infestation, handrails, air quality, hazards, and elevator

NO/OD: The inspection protocol requires the inspector to check for the existence of certificates for certain items such as lead-based paint, elevators, etc. If all of the required certificates are verified by the inspector, the report will not include any certificate information. If any appropriate certificates are not present, the first inspectable item listed will be "certificates" and the designation "NO" will be listed for each unavailable certificate.

OD in this column refers to "observed deficiency" for the given item.

Observation: The column lists the specific deficiencies observed within a given inspectable item. Each deficiency has a definition, which specifies what must be observed for that deficiency to be recorded. Also noted in this column are observations about Health & Safety items. These are:

(LT)—Exigent/Fire Safety (calling for immediate attention or remedy)
(NLT)—Not Life Threatening
(SD)—Smoke Detector

Definitions for all deficiencies are given in the physical inspection section at REAC's web site on the Internet (www.hud.gov/reac/reaphyin.html).

Severity: Deficiencies differ by "severity." The definitions specify what must be recorded for a given deficiency under one of three possible severity levels—minor, major and severe. The severity level is given on the report to indicate which part of the definition actually applies for the specific deficiency observed. Severity levels are defined within a given deficiency and do not necessarily indicate which deficiencies are the worst. For more serious deficiencies, a major severity level may be more of a problem and may reduce the overall score more than less serious deficiencies with a severity level of "severe."

Location/Comments: Comments are required for all "severe" deficiencies.

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Inspection Summary Report -

Inspection No:
Property:

Inspection Date:
Phone:
Fax:
E-Mail Address:
ACC#: _____
CA#: _____

Scattered Site?: Yes

Building Unit Count

	#Total	#Inspected
Buildings	76	25
Units	148	23

Scores

	Possible Points	Area Points	H & S Deduction
Site	20.0	16.5	0.0
Bldg Ext	20.0	19.7	0.0
Bldg Sys	15.0	15.0	
CA	0.4	0.4	
Units	44.7	32.4	0.9
Overall	100.0	84.0	0.9
Final Score = Area Points - H & S Deduction			83 c*

Health and Safety Counts

Non-Life Threatening

	Site	Bldg	Unit	Total
Actual	0	0	2	2
%Inspected	---	33%	16%	---
Projected	0	0	13	13

Life Threatening

Actual	0	0	1	1
%Inspected	---	33%	16%	---
Projected	0	0	6	6

Smoke Detectors

Actual	0	0	5	5
%Inspected	---	33%	16%	---
Projected	0	0	32	32

Participants:

Management Agent	**Phone:**
	Fax:
	E-Mail Address:

Buildings/Units:

No	Name/Type/Reason Uninspectable		Year built	# Units	Address
1	B-1-OFFICE Common Building		1959	0	
2	B-2 Duplex *Not In Sample*		1959	2	
3	B-3 Duplex *Not In Sample*		1959	2	
4	B-4 Duplex *Not In Sample*		1959	2	
5	B-5 Duplex *Not In Sample*		1959	2	
6	B-6 Duplex *Not In Sample*		1959	2	
7	B-7 Duplex *Not In Sample*		1959	2	
8	B-8 Duplex		1959	2	
	427	3 Bedroom	Occupied		

Inspection Summary Report -

	66	B-66 Duplex	1959	2	Three pages deleted for illustrative purposes.
		318 2 Bedroom	Occupied		
	67	B-67 Duplex	1959	2	
		312 3 Bedroom	Occupied		
	68	B-68 Duplex *Not In Sample*	1959	2	
	69	B-69 Duplex *Not In Sample*	1959	2	
	70	B-70 Duplex *Not In Sample*	1959	2	
	71	B-71 Duplex *Not In Sample*	1959	2	
	72	B-72 Duplex	1959	2	
		305 2 Bedroom	Not Occupied		
	73	B-73 Duplex *Not In Sample*	1959	2	
	74	B-74 Duplex	1959	2	
		210 2 Bedroom	Occupied		
	75	B-75 Duplex *Not In Sample*	1959	2	
	76	B-76 Duplex *Not In Sample*	1959	2	

Inspectable Items:

Inspected Item	NO/OD	Observation	Severity	Location/Comments
Site				
Grounds	OD	Ponding/Site Drainage	Major	
Building 10 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 16 -				
Bathroom	OD	GFI - Inoperable	Severe	Location: BATH; Comments: GFI DID NOT TRIP
		Plumbing - Leaking Faucet/Pipe	Minor	
Building 18 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 28 - Unit				
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN; Comments: GFI DID NOT TRIP
Building 29 - Unit				
Ceiling	OD	Peeling/Needs Paint	Major	

Inspection Summary Report -

Building 35 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 35 - Unit				
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL. Comments: DETECTOR DID NOT ACTIVATE
Building 39 - Building Exterior				
Walls	OD	Missing or Broken Pieces/Holes	Major	
Building 39 - Unit				
Walls	OD	Holes/Missing Tiles/Panels	Major	
Building 39 - Unit - Health & Safety				
Infestation	OD	Insects (NLT)	Severe	Location: KITCHEN. Comments: ROACHES
Building 52 - Unit				
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN. Comments: GFI OUTLET NOT GROUNDED
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 57 - Unit				
Bathroom	OD	GFI - Inoperable	Severe	Location: BATH. Comments: GFI OUTLET NOT GROUNDED
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN. Comments: GFI NOT GROUNDED
Building 59 - Unit				
Bathroom	OD	GFI - Inoperable	Severe	Location: KITCHEN; Comments: GFI DID NOT TRIP
Building 60 - Unit				
Bathroom	OD	Water Closet - Damaged/Clogged	Major	
Kitchen	OD	GFI - Inoperable	Severe	Location: KITCHEN & BATH. Comments: GFI OUTLET NOT GROUNDED
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 60 - Unit - Health & Safety				
Infestation	OD	Insects (NLT)	Severe	Location: KITCHEN. Comments: ROACHES
Building 63 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 67 - Unit				
Hot Water Heater	OD	Gas Fired Unit-Miss'g/Misalign (LT)	Severe	Location: HALL; Comments: FLUE PIPE NOT CONNECTED TO HWH
Building 72 - Building Exterior				
Windows	OD	Damaged Screens	Minor	
Building 72 - Unit				
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE
Building 74 - Unit				
Bathroom	OD	GFI - Inoperable	Severe	Location: BATH; Comments: GFI OUTLET DAMAGED
Smoke Detector	OD	Inoperable (SD)	Severe	Location: HALL; Comments: DETECTOR DID NOT ACTIVATE

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Thursday
May 13, 1999

Part VI

Department of Housing and Urban Development

Public Housing Assessment System (PHAS) Technical Review of Physical Inspection Results and Appeals of PHAS Scores; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4509–N–03]

Public Housing Assessment System (PHAS); Technical Review of Physical Inspection Results and Appeals of PHAS Scores

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about the process for requesting and granting (1) technical reviews of the results of physical inspections of public housing properties conducted by HUD's Real Estate Assessment Center (REAC); and (2) appeals of PHAS scores. This notice does not apply to PHAS advisory scores.

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington, DC, 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800 877–8339. Additional information is available from the REAC Internet Site at http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

Purpose of this Notice

The purpose of this notice is to provide additional information about the process for requesting and granting (1) technical reviews of the results of physical inspections of public housing properties conducted by the REAC; and (2) appeals of PHAS scores. There are specific circumstances when the REAC will consider conducting a technical review of an individual property's inspections results, and when an appeal of a PHAS score may be granted. This notice describes those circumstances and provides examples under the discussion of "Material Errors".

Basis for Technical Review of Physical Inspection Results

For each property inspected, the REAC will provide the results of the physical inspection and a score for that property to the PHA. If the PHA believes that an objectively verifiable and material error (or errors) occurred in the inspection of an individual property, then the PHA may request a technical review of the inspection results for that property.

A request for technical review of a property's physical inspection results must be submitted in writing to the Director of the Real Estate Assessment Center and must be received by REAC no later than 15 days following the issuance of the physical inspection results to the PHA. The request must be accompanied by the PHA's clear and convincing evidence that an objectively verifiable and material error has occurred. A technical review of a property's physical inspection will not be conducted based on conditions that were corrected subsequent to the inspection, nor will the REAC consider a request for a technical review that is based on a challenge to the inspector's findings as to the severity of the deficiency (i.e., minor, major or severe).

The burden of proof rests with the PHA to provide evidence to the REAC that an objectively verifiable and material error has occurred to support its request for technical review of a property's physical inspection results. The documentation submitted by the PHA may be photographic evidence, written material from an objective source, such as a local fire marshal or building code official, or other similar evidence. The evidence must be more than a disagreement with the inspector's observations, or the inspector's finding regarding the severity of the deficiency.

Upon receipt of a PHA's request for technical review of a property's inspection results, the REAC will review the PHA's file and any objectively verifiable evidence produced by the PHA. If the REAC's review determines that an objectively verifiable and material error (or errors) has been documented, then the REAC may take one or a combination of the following actions: (1) undertake a new inspection; (2) correct the physical inspection report; (3) issue a corrected physical condition score; and (4) issue a corrected PHAS score.

In determining whether a new inspection of the property is warranted and a new PHAS score must be issued, the REAC will review the PHA's file and evidence submitted to determine whether the evidence supports that there may have been a significant contractor error in the inspection which results in a significant change from the property's original physical condition score and the PHAS designation assigned to the PHA (i.e., high performer, standard performer, or troubled). For a PHA to understand how the REAC may conclude that a significant change may result from a new inspection, the PHA may use REAC's document titled "Item Weights and Criticality Levels" to determine whether a significant change in the score may result from a new inspection. This document is included as Appendix 1 in the Notice of Physical Inspection Scoring, published elsewhere in today's **Federal Register**. The different severity levels of deficiencies (severe, major and minor) are defined in the REAC's "Dictionary of Deficiencies Definitions," which is included as Appendix 2 in the Notice of Physical Inspection Scoring. These two documents are also available on the REAC Internet Site at http://www.hud.gov/reac. If the REAC determines that a new inspection is warranted, and the new inspection results in a significant change from the original physical condition score, and the PHA's PHAS score and PHAS designation, the REAC shall issue a new PHAS score to the PHA.

Material Errors

Material errors are the only grounds for technical review of physical inspection results. Material errors are those that exhibit specific characteristics and meet specific thresholds. The three types of material errors are described below.

1. Building Data Error

A building data error occurs if the inspection includes the wrong building or a building that was not owned by the property, including common or site areas that were not a part of the property. Incorrect building data that does not affect the score, such as the address, building name, year built, etc., would not be considered material, but is of great interest to HUD and will be corrected upon notice to the REAC.

2. Unit Count Error

A unit count error occurs if the total number of units considered in scoring is incorrect. Since scoring uses total units, the REAC will examine instances where the participant can provide evidence that the total units used is incorrect.

3. Non-Existent Deficiency Error

A non-existent deficiency error occurs if the inspection cites a deficiency that does not exist.

A PHA's subsequent correction of deficiencies identified as a result of a property's physical inspection cannot serve as the basis for an appeal of the PHA's physical condition score.

Basis for Appeal of PHAS Score

If a PHA believes that an objectively verifiable and material error (or errors) exists in any of the scores for its PHAS Indicators, which, if corrected, will

result in a significant change in the PHA's PHAS score and its designation (i.e., as troubled, standard, or high performer), the PHA may appeal its PHAS score. A significant change in a PHAS score is a change that would cause the PHA's PHAS score to increase, resulting in a higher PHAS designation for the PHA (i.e., from troubled performer to standard performer, or from standard performer to high performer).

To request an appeal of its PHAS score, a PHA must submit its request in writing to the Director of the Real Estate Assessment Center and must be received by the REAC no later than 30 days following the issuance of the PHAS score to the PHA. The request for appeal must be accompanied by the PHA's clear and convincing evidence that an objectively verifiable and material error occurred. The REAC will review the PHA's file and the evidence submitted by the PHA to support that an error occurred. If the REAC determines that an objectively verifiable and material error has been documented by the PHA, the REAC may undertake a new inspection of the property, or a reexamination of the financial information, management information, or resident information (the components of the PHAS score), depending upon which PHAS Indicator the PHA believes that an error occurred in the scoring and the type of evidence submitted by the PHA to support its position that an error occurred.

Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99–11913 Filed 5–12–99; 8:45 am]

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May 13, 1999

Part VII

Department of Housing and Urban Development

Public Housing Assessment System; Financial Condition Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4509–N–04]

Public Housing Assessment System; Financial Condition Scoring Process

AGENCY: Office of the Director of the Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public about HUD's process for issuing scores under the Financial Condition Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, the Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center, 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

Purpose of This Notice

The purpose of this Notice is to provide additional information about the scoring process for PHAS Indicator #2, Financial Condition. Under the PHAS, the financial condition score is based on financial information reported to HUD according to generally accepted accounting principles (GAAP). GAAP classifies accounting data according to standard definitions. Of the total points available for a PHAS score, a PHA may receive up to 30 points under the PHAS Indicator #2. The financial condition score is included in the aggregate PHAS score.

The chart below shows the six components that constitute the Financial Condition Indicator and their assigned points.

FINANCIAL CONDITION INDICATOR

Scoring components	Measurement	Points
Quick Ratio (QR)	Short-term liquidity	9
Months Expendable Fund Balance (MEFB)	Adequacy of reserves	9
Days Receivable Outstanding (DRO)	Ability to collect payments of tenant receivables	4.5
Occupancy Loss (L)	Ability to realize potential rental income	4.5
Expense Management (EM)	Ability to control various expenses, including utilities, administrative, maintenance, general and non-routine expenses.	1.5
Net Income as a Percentage of Fund Balance (N)	Profitability against the current year's operations	1.5

The values of the six components of the Financial Indicator calculated from the financial data comprise the overall financial assessment of the PHA. The components and their relative importance to the total financial score are the result of studies of PHA financial performance and of industry portfolio management techniques to identify the most appropriate financial measures to gauge a PHA's financial position and financial management. These components represent measures that are appropriate benchmarks in any residential real estate environment. The scoring assigned within each component is based on the distributions of that component's values and the relative relationship between the components and the PHA's overall financial performance.

Under the PHAS, the components that make up the Financial Condition Indicator are approached in the same manner for GAAP as they were for non-GAAP financial information although the thresholds may change as a result of the conversion to GAAP. For example, a good Quick Ratio under the current basis of accounting (non-GAAP) for a small PHA may be 6 to 1 and receive the maximum 9 points. In contrast, under GAAP a good Quick Ratio may be 5 to 1 and also get the maximum 9 points. Thus, to the extent that a PHA's performance relative to its peers does not change, its score will not be affected by the conversion to GAAP. The GAAP conversion schedule by PHAs fiscal year end, shown below, is reprinted from the PHAS final rule published on September 1, 1999.

GAAP CONVERSION SCHEDULE

Fiscal year end dates for PHAs	Unaudited GAAP financial data to HUD by:	Audit reports due to HUD by:
9/30/99	11/30/99	6/30/00
12/31/99	2/28/00	9/30/00
3/31/00	5/31/00	12/31/00
6/30/00	8/31/00	3/31/01

GAAP Reporting Method

Financial data for GAAP scoring is currently collected in paper form from audited financial data submitted by PHAs and entered into a database by REAC staff. PHAs, with fiscal years ending September 30, 1999, and later, will submit their unaudited financial data electronically using the Financial Data Schedule (FDS), within 60 days of their fiscal year end. This submission will be reviewed by REAC for reasonableness. To the extent that an audit is required for a PHA under OMB Circular A–133, a PHA will submit its audited data using the FDS within nine months of the fiscal year end.

Program Funds

The PHAS financial assessment is based on the entity-wide operations of a PHA, which includes financial information on Section 8, Community

Development Block Grants, and other HUD funding in its calculations, as well as funds from non-HUD sources.

GAAP Scoring Approach

Under PHAS, the components of the PHAS Financial Indicator were developed that both fairly and accurately assess a PHA's financial performance and financial management. As part of the development, the components were tested to establish the correlation between PHA performance under each component and the fiscal health of a PHA. As part of the development, PHAs were evaluated and assigned scores based a PHA's performance relative to its peers. In other words, all PHAs as a group determine the mean score and each PHA is then ranked accordingly. This peer assessment approach, which was formulated following extensive economic and financial analysis, examination of well-accepted business principles, and discussions with PHA industry representatives and PHA staff, provides an equitable means of measuring the financial performance of PHAs.

Comparable Scoring Systems

HUD's financial scoring process is similar to those already undertaken in the mortgage housing and securities industries. Fannie Mae, the mortgage housing industry leader, developed an assessment system with financial indicators similar to those contained in HUD's financial assessment of PHAs, such as vacancy, reserve balances, and net income. Like HUD, Fannie Mae uses these indicators to rank properties and identify those which require further attention. In the securities area, Standard & Poors conducts peer assessment of a company's operational capabilities and cash flows relative to their peers. Among federal agencies, the Department of Health and Human Services (HHS) contracts with state and local entities to perform financial audits of nursing homes and hospitals participating in the federal Medicare program. Based on these financial audits, HHS determines the continued eligibility of these health service providers in the Medicare program.

GAAP Scoring Processes

GAAP-based scores are produced using data contained in the Financial Data Schedule (FDS). The GAAP-based financial data are first used to calculate six financial components that measure various aspects of financial health, such as short-term liquidity, expense management, and collection of receivables. Each PHA is awarded points for each component according to its performance relative to its peers. Peer groupings are established according to the size of the PHA, based on the number of public housing units operated. Peer groupings are as follows:

Very Small (0–49 units)
Small (50–249 units)
Low Medium (250–499 units)
High Medium (500–1249 units)
Large (1250 + units)

A PHA is assigned a score for each of the six components of the Financial Indicator based on its component value relative to its peers. The minimum number of points (zero) and the maximum number of points can each be achieved over a range of values. This system allows PHAs to target a range of values which they want to avoid and target one value which they should strive to achieve. Aside from these extremes, points are assigned to component values along a continuous linear function. This means that each component value will receive a different number of points. This system ("semi-continuous scoring") ensures that points are awarded equitably to PHAs along the distribution of component values because, in most cases, small differences in component values result in only small differences in the scores of the individual components. Therefore, two PHAs of a similar size whose values for its financial condition components are in close proximity will receive only slightly different scores to capture their performance relative to each other.

The number of points assigned to each component value or range of values is based on where the thresholds for that component are set. The thresholds separate distinct ranges of scores along the distribution of component values. The thresholds and their associated scores are estimated based on well-accepted business principles and statistical distributions of values within the peer groupings of the PHAs.

Business Principles

Scoring of certain of the components follows generally recognized business principles. These principles indicate that there are certain absolute thresholds below which component values are clearly financially unacceptable and component values below that point should result in a score of zero. These principles are used in scoring the Quick Ratio and Months Expendable Fund Balance components. For both of these components, a value of less than one is financially unacceptable, regardless of PHA size, and therefore merits a score of zero.

Statistical Distributions

The remaining thresholds are estimated by examining the distributions of component values by peer group. For the four most significant components (Quick Ratio, Months Expendable Fund Balance, Days Receivable Outstanding, and Occupancy Loss), thresholds are set such that approximately 50 percent of the distribution receives the maximum number of points, as long as 50 percent of the distribution have acceptable values for the component. Thus, the highest number of points are awarded to the PHAs whose financial measures are most reasonable both relative to their peers and in an absolute business sense. The specific percentiles that make up this 50 percent of PHAs are established by identifying natural breakpoints along the distributions. For example, for the Quick Ratio and Months Expendable Fund Balance, these breakpoints fall at approximately the 30th and 80th percentiles. The remaining two components (Expense Management and Net Income as a Percentage of Fund Balance) assign zero points to PHAs that fall only in the extreme outer ranges of the distribution of values, and award 1.5 points to the remaining PHAs.

Audit Information

The information collected from the annual audit report pertains to the type of audit opinion, details of the audit opinion, and the presence of reportable conditions and material weaknesses. This information will be used as a basis for accepting or adjusting financial component scores. If the auditor's opinion is other than unqualified, points will be deducted from the financial components to determine the PHA's financial score. The points have been established by REAC using a system that considers the seriousness of the audit qualification and limits the deducted points to a reasonable portion of the PHA's available score.

Reportable conditions and material weaknesses are considered to be audit flags, alerting REAC to an internal control weakness or an instance of noncompliance with Federal laws and regulations. These flags also have the potential to adjust the PHA's financial component scores, based on the seriousness of the reported issue. REAC will review the audit and internal control flags to determine the significance as it directly pertains to the assessment of the PHA's financial condition. If the flag has no effect on the financial components or the overall financial condition of the PHA as it

relates to the PHAS assessment, the score will not be adjusted.

There are two types of adjustments related to audited financial information. The first type deals with material differences between the unaudited and audited financial information reported to HUD. The second deals with the audit flags and reports that result from the audit itself.

The purpose of a comparison of the ratios and scores resulting from the current year's unaudited Financial Data Schedule submission to the ratios and scores resulting from the current year's audited submission is to:

- Identify material changes in ratio calculation results and/or scores from the unaudited submission to the audited submission;
- Identify PHA's that consistently provide materially different data from their unaudited submission to their audited submission;
- Assess or alleviate penalties associated with the inability to provide reasonably accurate unaudited data within the required time period.

This review process will only be performed for the audited submission. In addition, it is only applicable to PHAs whose overall PHAS designation (high, standard or troubled) was reclassified to a lesser designation based on the audited submission and the reclassification was necessary because of a material change in the reported financial data affecting one or more of the six components. Materiality for purposes of this review is based on a formula within PHAS and varies based on the size and funding level of the PHA. Therefore, the materiality threshold may vary from PHA to PHA, even within the same peer group.

REAC views the transmission of materially inaccurate unaudited financial data as a more serious condition than the late submission of unaudited data. Therefore, the penalties assessed for material differences between the unaudited and audited submission have been designed to encourage PHAs to assure financial data is as reliable as possible at the 60 day submission. The penalties to be assessed are based on the significance of the reclassification, assuming the financial data reported meets the materiality threshold. For each designation level that the PHA has been reduced, points will be deducted from the PHA's overall FASS score. The following table summarizes the point reductions.

Designation reclassification	Percent of FASS points deducted
High to Standard	1
High to Marginal	2
High to Troubled	3
Standard to Marginal	1
Standard to Troubled	2
Marginal to Troubled	1

The FASS system will automatically deduct the applicable points and this reduction will trigger the REAC analyst review.

The purpose of a review of the audit and internal control flags is to adjust the financial score as a result of the audit. These flags are collected by using the OMB A–133 Data Collection Form. This form is completed by the PHA both for the unaudited and audited submissions. At the time of the unaudited submission the form is used as a self-assessment tool and should reflect the PHA's knowledge of their financial and internal control condition and should acknowledge their understanding of what the auditor will report. In the PHAS final rule, HUD discussed the review of audit and internal control flags as follows, and also included the following chart. (See 63 FR 46607, September 1, 1998.)

As part of the analysis of the financial health of the PHA including assessment of the potential or actual waste, fraud or abuse at a PHA, HUD will look to the Audit Opinion to provide an additional basis for accepting or adjusting financial indicator scores. The following is a summary of the types of audit opinions and the number of total financial points that will be deducted if a PHA receives such an audit opinion from its IPA:

Type of flag	PHAS points deducted
Unqualified Opinion	0
No audit opinion	30
Adverse opinion	30
Disclaimer of opinion	30
Qualified opinion	*
Going concern opinion	30
Material weakness in internal control	*
Reportable condition	*
Findings of non-compliance and/or questioned costs	*
Indicator outlier analyses	*

*Note: See subsequent table titled "Audit Flags and Tier Classification" for FASS points to be deducted.

If the OMB A–133 Data Collection Form indicates that the auditor's opinion will be other than unqualified, PHAS will automatically deduct the appropriate points based on the above table. The points have been established by REAC using a three-tier system. The tiers are meant to give consideration to the seriousness of the audit qualification and to limit the deducted points to a reasonable portion of the PHA's total, actual score. The tiers, as established by REAC, are also defined below.

AUDIT FLAG TIERS

Tier	FASS points deducted
Tier 1	Maximum reduction: Lesser of 30 points or 100 percent of the PHA's total unadjusted FASS score.
Tier 2	Maximum reduction: 3 points or 10 percent of the PHA's total unadjusted FASS score.
Tier 3	Maximum reduction: 1.5 points or 5 percent of the PHA's total unadjusted FASS score. This maximum is cumulative and not to be assessed for each audit or internal control flag.

AUDIT FLAGS AND TIER CLASSIFICATIONS

Audit flag	Tier classification
Unqualified opinion	None
No audit opinion	Tier 1
Adverse opinion	Tier 1
Disclaimer of opinion	Tier 1
Qualified opinion:	
1. GAAP qualifications	
• Change in accounting principle	Tier 3

AUDIT FLAGS AND TIER CLASSIFICATIONS—Continued

Audit flag	Tier classification
• Change in accounting estimate	Tier 3
• Change in accounting method	Tier 3
• Departures from GAAP	Tier 2
• Financial statements using basis other than GAAP	Tier 1
• Exclusion of alternate accounting for an account or group of accounts	Tier 2
• Inconsistently applied GAAP	Tier 2
• Omissions/Inadequate Disclosure	Tier 2
2. GASS—Scope Limitations	Tier 2
• Imposed by management	Tier 2
• Imposed by circumstance	Tier 3
• Year 2000 (add back)	Tier 3
3. Report on major program compliance	Tier 3
4. Report on internal control	Tier 3
Accounting principles used caused the financial statements to be materially misstated	Tier 2
Inadequate records	Tier 2
Going concern	Tier 1
Material noncompliance disclosed	Tier 2
• Internal control weakness	Tier 3
• Compliance	Tier 3
• Opinion on Supplemental schedules	Tier 3
Reportable condition	
• Internal control	Tier 3
• Compliance	Tier 3

The graphs shown in Appendix 1 depict the approximate GAAP-based scoring functions used for each of the six components of the Financial Indicator.

Appendix 2 provides estimated GAAP-based threshold values and associated scores for each component and peer group, based on the data pool as of April 15, 1999. These GAAP thresholds are preliminary and are based upon financial data obtained for a limited number of PHAs currently reporting under GAAP. The thresholds established for GAAP-based scores will be re-assessed on a quarterly basis to ensure their statistical validity as the data collected indicates a shift in distributions and any modifications to the thresholds will be communicated through a Notice. However, the financial components and component calculations will remain the same and the component scores for a PHA will continue to be established on a peer assessment basis. Thus, if a PHA's performance remains consistent relative to its peers, the PHA's score will not be affected by threshold changes.

Dated: May 6, 1999.

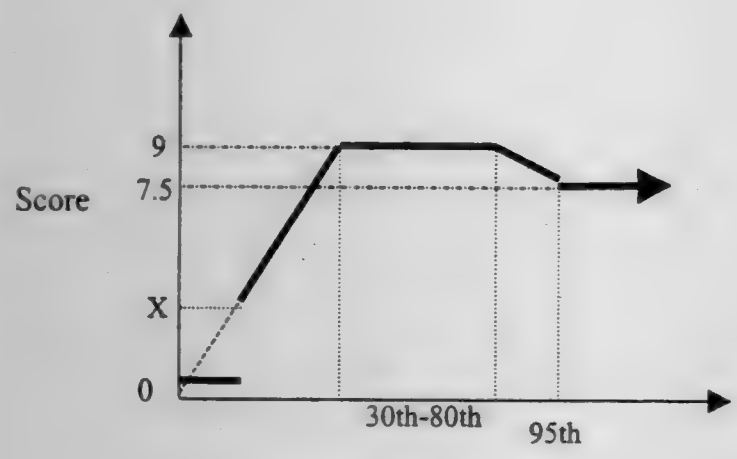
Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

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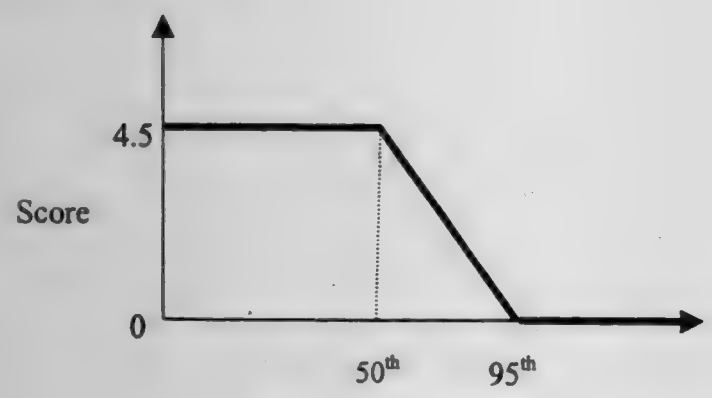
Appendix 1 – Graphs of GAAP-Based Financial Indicators

Graph 1: *QR & MEFB*



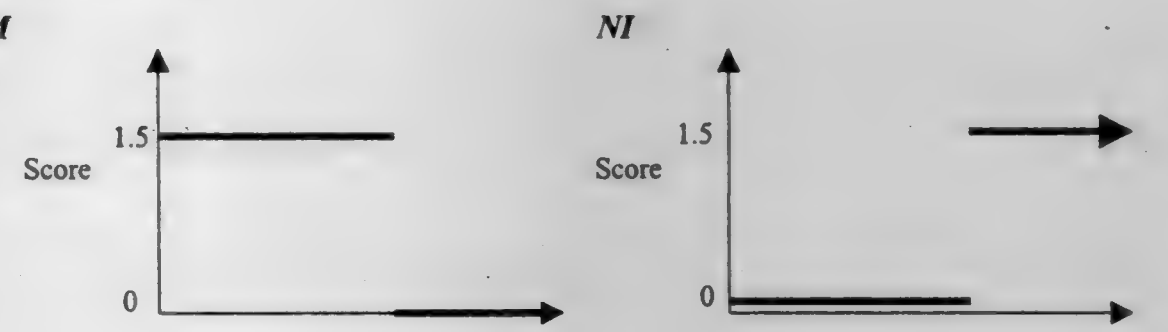
The scoring structure depicted above is established based on the distribution of data for each peer group. For both QR and MEFB, a PHA receives zero points for indicator values of less than one. With a value of one, they receive X points, which is determined by the distribution of the data, and, therefore, varies by size category. The maximum number of points is received between approximately the 30th and 80th percentiles. PHAs with values falling beyond the upper bound of this range receive incrementally fewer points because they have exceeded the acceptable levels of liquidity or reserves to operate optimally.

Graph 2: *OL & DRO*



For OL and DRO, the maximum number of possible points is 4.5, which is received up to approximately the 50th percentile. For values beyond approximately the 95th percentile, the PHA receives zero points.

Graph 3: ***EM & NI***



For both EM and NI, a PHA can receive either 1.5 or zero points. The threshold for EM is set at 1.645 standard deviations (approximately the 95th percentile) from the mean of each distribution (which means it is in the top five percent of values for that distribution), and thus varies by size category, whereas for NI it is set at –10% across all size categories.

Appendix 2 – Threshold Tables for GAAP Scoring

These tables can be interpreted in the following manner:

- o Identify a size category for an indicator;
- o The rows under that size category identify ranges of possible values for that indicator; and
- o The column to the right labeled "Score" identifies the score or range of scores that is awarded to each range of indicator values for that size category.

Quick Ratio (QR)*					
Very Small	**Score**	**Small**	**Score**	**Low Medium**	**Score**
QR<1	0	QR<1	0	QR<1	0
QR=1	2.6	QR=1	2.6	QR=1	2.6
1<QR<3.5	2.6<Score<9	1<QR<3.5	2.6<Score<9	1<QR<3.5	2.6<Score<9
3.5≤QR≤12	9	3.5≤QR≤8	9	3.5≤QR≤7.5	9
12<QR<15	9>Score>7.5	8<QR<13	9>Score>7.5	7.5<QR<11	9 >Score>7.5
QR≥15	7.5	QR≥13	7.5	QR≥11	7.5

High Medium	**Score**	**Large**	**Score**
QR<1	0	QR<1	0
QR=1	3	QR=1	3.6
1<QR<3	3<Score<9	1<QR<2.5	3.6<Score<9
3≤QR≤6.5	9	2.5≤QR≤5.5	9
6.5<QR<8	9 >Score>7.5	5.5<QR<7	9 >Score>7.5
QR≥8	7.5	QR≥7	7.5

MONTHS EXPENDABLE FUNDS BALANCE (MEFB)*					
VERY SMALL	**SCORE**	**SMALL**	**SCORE**	**LOW MEDIUM**	**SCORE**
MEFB<1	0	MEFB<1	0	MEFB<1	0
MEFB=1	1.3	MEFB=1	1.8	MEFB=1	2
1<MEFB<7	1.3<SCORE<9	1<MEFB<5	1.8<SCORE<9	1<MEFB<4.5	2<SCORE<9
7≤MEFB≤15	9	5≤MEFB≤13	9	4.5≤MEFB≤12	9
15<MEFB<20	9 >SCORE>7.5	13<MEFB<18	9 >SCORE>7.5	12<MEFB<15	9 >SCORE>7.5
MEFB≥20	7.5	MEFB≥18	7.5	MEFB≥15	7.5

HIGH MEDIUM	**SCORE**	**LARGE**	**SCORE**
MEFB<1	0	MEFB<1	0
MEFB=1	2	MEFB=1	3
1<MEFB<4.5	2<SCORE<9	1<MEFB<3	3<SCORE<9
4.5≤MEFB≤11	9	3≤MEFB≤11	9
11<MEFB<13	9 >SCORE>7.5	11<MEFB<13	9 >SCORE>7.5
MEFB≥13	7.5	MEFB≥13	7.5

Days Receivable Outstanding (DRO)*					
Very Small	Small	Low Medium	High Medium	Large	Score
DRO≤2	DRO≤3	DRO≤7	DRO≤8	DRO≤12	4.5
2<DRO<18	3<DRO<20	7<DRO<23	8<DRO<23	12<DRO<25	4.5>Score>0
DRO≥18	DRO≥20	DRO≥23	DRO≥23	DRO≥25	0

Occupancy Loss (OL)*					
Very Small	Small	Low Medium	High Medium	Large	Score
OL≤4.5%	OL≤4.5%	OL≤5.5%	OL≤5.5%	OL≤7%	4.5
4.5<OL<12%	4.5<OL<12%	5.5<OL<14.5%	5.5<OL<15%	7<OL<15%	4.5>Score>0
OL≥12%	OL≥12%	OL≥14.5%	OL≥15%	OL≥15%	0

Net Income (NI)*					
Very Small	Small	Low Medium	High Medium	Large	Score
NI<-10%	NI<-10%	NI<-10%	NI<-10%	NI<-10%	0
NI≥-10%	NI≥-10%	NI≥-10%	NI≥-10%	NI≥-10%	1.5

Expense Management

The components of the expense management are expressed in dollars per unit per month. The REAC is also examining the impact of seasonal and geographic variations on the expense indicators. If the REAC's analysis finds a significant impact on PHA expenses of these regional differences, regional peer groupings may be added to the scoring of the expense management indicator.

Thresholds for four of the six components of the expense management indicators are listed below. Thresholds for Tenant Services and Protective Services will be set as more information is submitted.

Administrative Expense (AE)*					
Very Small	Small	Low Medium	High Medium	Large	Score
AE<$81	AE<$75	AE<$65	AE<$71	AE<$82	1.5
AE≥$81	AE≥$75	AE≥$65	AE≥$71	AE≥$82	0

Utilities Expense (UE)*					
Very Small	Small	Low Medium	High Medium	Large	Score
UE<$74	UE<$93	UE<$110	UE<$120	UE<$135	1.5
UE≥$74	UE≥$93	UE≥$110	UE≥$120	UE≥$135	0

Ordinary Maintenance Expense (OE)*					
Very Small	Small	Low Medium	High Medium	Large	Score
OE<$89	OE<$88	OE<$94	OE<$106	OE<$129	1.5
OE≥$89	OE≥$88	OE≥$94	OE≥$106	OE≥$129	0

General Expense (GE)*					
Very Small	Small	Low Medium	High Medium	Large	Score
GE<$54	GE<$59	GE<$62	GE<$65	GE<$70	1.5
GE≥$54	GE≥$59	GE≥$62	GE≥$65	GE≥$70	0

* The estimated GAAP thresholds were based on data from financial information from a limited number of PHAs currently reporting under GAAP as of April 15, 1999. The PHA financial statements had fiscal year ends ranging between 1996 and 1998. As more data is entered into the system, these thresholds will be re-assessed to better reflect the data distributions.

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Thursday
May 13, 1999

Part VIII

Department of Housing and Urban Development

Public Housing Assessment System; Management Operations Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4509–N–05]

Public Housing Assessment System; Management Operations Scoring Process

AGENCY: Office of the Director, Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies and members of the public, regarding HUD's Management Operations process for issuing scores to PHAs under the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

1. Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #3, Management Operations. The purpose of the Management Operations assessment is to measure certain key management operations and responsibilities of a PHA for the purpose of assessing the PHA's management operations capabilities.

2. Changes From PHMAP to PHAS

The PHAS assessment of a PHA's management operations utilizes six of the eight current PHMAP indicators:

- Vacancies;
- Capital Fund;
- Rents uncollected;
- Work orders;
- Inspection of units and systems; and
- Security.

The adjustment for physical condition and/or neighborhood environment will be made under PHAS Indicator #1, Physical Condition. The same definitions and exemptions that apply to the PHMAP also apply to the PHAS. The current PHMAP indicator for financial management is assessed under PHAS Indicator #2, Financial Condition; and the current PHMAP indicator #7 for resident services is assessed under PHAS Indicator #4, Resident Service and Satisfaction.

There are certain differences between the PHMAP score and the PHAS score calculated for a PHA's management operations. Under the PHAS, modifications and exclusions no longer apply. PHAs will certify to sub-indicator #2, Capital Fund, and all PHAs will certify to and be scored on sub-indicator #6, Security, under PHAS Indicator #3.

3. Submission of Management Operations Certification

Under the PHAS, a PHA is required to electronically submit certification on its performance under each of the management operations sub-indicators. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, a PHA may go to the nearest HUD Public and Indian Housing program office and assistance will be given to the PHA to transmit its Management Operations certification. If circumstances preclude a PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its Management Operations certification manually. A PHA that seeks approval to submit its certification manually must ensure that the REAC receives a request for manual submission in writing 60 calendar days prior to the submission due date of its Management Operations certification. The written request must include the reasons why the PHA cannot submit its certification electronically. The REAC will respond to such a request and will manually forward its determination in writing to the PHA.

4. Elements of Scoring

The Management Operations Indicator score provides an assessment of each PHA's management effectiveness. The computation of the score under this PHAS Indicator utilizes data that was submitted for PHMAP and requires three main calculations, which are:

- Scores are first calculated for all of the components that have been submitted by the PHA;
- Based upon the component scores, a score is then calculated for each sub-indicator; and
- From the six sub-indicator scores, an indicator score is then calculated.

The three calculations are performed on the basis of the following:

- The weights of the six sub-indicators and/or components, which are listed in Table 1; and
- The grades assigned under PHMAP for each sub-indicator and/or component.

TABLE 1.—MANAGEMENT OPERATIONS SUB-INDICATORS AND COMPONENTS WEIGHTS

Sub-indicator	Sub-indicator weight	Component	Component weight
Vacancy Rate/Progress to Reduce (PHMAP Indicator #1)	8.0	Vacancy Rate	4.0
		Unit Turnaround Time	4.0
Capital Fund (PHMAP Indicator #2)	6.0	Unexpended Funds	1.0
		Timeliness of Fund Obligation	1.5
		Contract Administration	1.0
		Quality of Physical Work	2.0
		Budget Controls	0.5
Rents Uncollected (PHMAP Indicator #3)	4.0		
Work Orders (PHMAP Indicator #4)	4.0	Emergency Work Orders	2.0
		Non-Emergency Work Orders	2.0
Inspections of Units and Systems (PHMAP Indicator #5)	4.0	Inspection of Units	2.0
		Inspections of Systems	2.0
Security (PHMAP Indicator #8).	4.0	Tracking/Reporting Crime-Related Problems	1.0
		Screening of Applicants	1.0
		Lease Enforcement	1.0

TABLE 1.—MANAGEMENT OPERATIONS SUB-INDICATORS AND COMPONENTS WEIGHTS—Continued

Sub-indicator	Sub-indicator weight	Component	Component weight
		Grant Program Goals	1.0

If the PHAS Capital Fund sub-indicator (PHMAP Indicator #2) is not applicable, then the 6 points for that sub-indicator are redistributed among the other five sub-indicators. This is accomplished by multiplication of 30/24 or 1.25, which is 125 percent of the original weights. The new weight for the sub-indicator "Vacancy Rate/Progress to Reduce" would be 10.0, and the new weight for the other four sub-indicators would be 5.0.

The PHMAP grades for each sub-indicator/component are assigned values to indicate the percentage of the sub-indicator/component weight that will be awarded in the calculations. The assigned values for the PHMAP grades, which are listed in Table 2, are the same for each sub-indicator/component that is being assessed. For example, a PHA with an E for the component "Inspection of Units and Systems" would receive 30% of the component weight of 2, for a score of 0.6 for the component.

TABLE 2.—POSSIBLE GRADES

Grades	Value
A	1.00.
B	0.85.
C	0.70.
D	0.50.
E	0.30.
F	0.00.
NA—Data not submitted.	NA—No value assigned.

Calculations under the PHAS Management Operations Indicator are performed as follows:

Component Score. The component score equals its weight multiplied by the value of the grade for the PHA, unless no data exists for an assessment of the PHA for the component. For example, a PHA with an E for the component Inspection of Units and Systems would receive 30% of the component weight of 2, for a score of 0.6 for the component.

Sub-indicator Score. The sub-indicator score is the sum of the component scores with the weight of non-assessed (NA) sub-indicators being proportionately redistributed across sub-indicators that have been assessed.

If the Capital Fund sub-indicator (PHMAP indicator #2) is not applicable (the PHA does not have a Capital Fund Program), then the 6 points for that sub-indicator are redistributed among the other five sub-indicators in the calculation of the indicator score.

If no data was submitted for an assessment of the entire sub-indicator (excluding the Capital Fund sub-indicator), then for PHAS scores, the sub-indicator score is equal to the appropriate sub-indicator weight with an asterisk appended to it. The asterisk indicates the score is not a true assessment of the PHA's effectiveness for the sub-indicator.

Indicator Score. The Indicator score equals the sum of the sub-indicator scores. If the PHA does not have a Capital Fund Program, the indicator score equals the sum of the five other sub-indicator scores multiplied times 30/24 or 1.25, which is 125 percent of the original weight.

5. Examples of Score Computations

An Example of Computing a Sub-Indicator Score With a Non-Assessed Component.

The following provides an example for the calculation of a Capital Fund sub-indicator score and its component scores, when the Quality of Physical Work component has not been assessed. For this example, Table 3 provides the necessary information, which is:

- The weight of the Capital Fund sub-indicator components from Table 1;
- The sample grade for each component;
- The value of each grade from Table 2;
- The calculations for the component score; and
- The component scores.

The component score is calculated in this table by multiplying the weights by the values in Table 3. These scores are included in the PHAS Report. Note that for reporting purposes, all scores are rounded to one decimal place.

TABLE 3.—EXAMPLE ASSESSMENT OF THE CAPITAL FUND SUB-INDICATOR

Component	Weight	Grade	Value	Calculations	Score
#1 Unexpended Funds	1.0	A	1.0	(1.0) times (1.0) = 1.01.	1.0
#2 Timeliness of Fund Obligation	1.5	A	1.0	(1.5) times (1.0) = 1.5	1.5
#3 Contract Administration	1.0	C	0.7	(1.0) times (0.7) = 0.7	0.7
#4 Quality of Physical Work	2.0	NA	NA	NA	NA
#5 Budget Controls	0.5	F	0.0	(0.5) times (0.0) = 0.0	0.0

In this example, the 4th component has not been assessed for PHMAP indicator #2. Consequently, the weight of the non-assessed component needs to be redistributed proportionately across assessed components in order to calculate the Capital Fund sub-indicator score. This redistribution is accomplished by multiplying the sum of the component scores by 6 (the weight of the sub-indicator) and dividing this result by the sum of the weights of the components that have been assessed. This calculation for the Capital Fund sub-indicator score is provided below:

$$\text{Capital Fund Score} = \frac{(1.0+1.5+0.7+0.0) \text{ times } (6.0)}{1.0+1.5+1.0+0.5} = 4.8$$

An Example of Computing the Indicator Score for a PHA Without a Capital Fund Program and That Has Less Than 250 Units. For this example, the PHA's sub-indicator scores are:

- The Vacancy Rate/Progress to Reduce score equals 6.8;
- The Capital Fund sub-indicator was not assessed (NA);
- The Rents Uncollected score equals 4.0;
- The Work Orders score equals 2.8;
- The Inspection of Units and Systems score equals 3.7; and
- The Security score equals 4.0*.

For this PHA, the Indicator score is calculated by the following formula;

$$\text{Management Operations Indicator Score} = \frac{(6.8+4.0+2.8+3.7+4.0) \text{ times } (30.0)}{24} = 26.6$$

Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

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May 13, 1999

Part IX

Department of Housing and Urban Development

Public Housing Assessment System; Resident Service and Satisfaction Scoring Process; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR 4509–N–06]

Public Housing Assessment System; Resident Service and Satisfaction Scoring Process

AGENCY: Office of the Director, Real Estate Assessment Center, HUD.

ACTION: Notice.

SUMMARY: This notice provides additional information to public housing agencies, and members of the public, regarding HUD's process for issuing scores under the Resident Service and Satisfaction Indicator of the Public Housing Assessment System (PHAS).

FOR FURTHER INFORMATION CONTACT: For further information contact Wanda Funk, Real Estate Assessment Center, Department of Housing and Urban Development, 1280 Maryland Avenue, SW, Suite 800, Washington DC, 20024; telephone Customer Service Center at 1–888–245–4860 (this is a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339. Additional information is available from the REAC Internet Site, http://www.hud.gov/reac.

SUPPLEMENTARY INFORMATION:

1. Purpose of This Notice

The purpose of this notice is to provide additional information about the scoring process for PHAS Indicator #4, Resident Service and Satisfaction. The purposes of the Resident Service and Satisfaction assessment are to measure the level of resident satisfaction with living conditions at their public housing, to facilitate positive interaction and communication between public housing agencies (PHAs) and residents, and to guide PHAs in recognizing areas of concern identified by residents in survey responses. The Resident Service and Satisfaction assessment is an important indicator of a PHA's performance.

Of the total 100 points available for a PHAS score, a PHA may receive up to ten points under PHAS Indicator #4. Unlike PHAS Indicators #1, #2, or #3, PHAs will *not* be designated as "troubled" for a failing score under Indicator #4 in accordance with 24 CFR 902.67. The Resident Service and Satisfaction score, however, is included in the aggregate PHAS score.

2. Elements of Scoring

The score of the Resident Service and Satisfaction assessment for all PHAs will be based upon two components, plus a threshold requirement.

First Component

The first component will be the aggregate score of the survey results.

Second Component

The second component will be a score based on the PHA's certification that plans for survey implementation and follow-up corrective actions have been prepared by the PHA and have or will be acted upon. HUD's PHAS regulation at 24 CFR 902.53 provides that the second component will be a point score based on the level of implementation and follow-up or corrective actions based on the survey results.

Each of the components are worth five points, for a total of ten points, as outlined under Indicator #4 in the PHAS final rule (24 CFR 902.53). A PHA will receive a passing score if it receives at least six points of the available ten points. As noted earlier in this notice, however, a failing score under this Indicator will not cause a PHA to be designated as troubled.

Threshold Requirement

A PHA will not receive any points under PHAS Indicator #4 if the survey process is not managed as directed by HUD or the survey results are determined to have been altered. The threshold requirement is subject to verification.

The following chart shows the scoring components and point range.

Scoring components	Point range
Component One—Survey Results (5 points):	
Maintenance and Repair Section	0–1.
Communication Section	0–1.
Safety Section	0–1.
Services Section	0–1.
Neighborhood Section	0–1.
Component Two—Implementation/Follow-Up Plan (5 points):	
Survey Implementation Plan	0 or 2.
Survey Follow-up Plan	0 or 3.
Total Possible Score	10.

3. Scoring Process

The scoring process for the Resident Service and Satisfaction Indicator is dependent upon electronic updating, submission and certification of information by PHAs. Although this notice discusses these electronic steps in terms of requirements, HUD has made allowance for manual submission of information, as discussed later in the notice.

Unit Address Update and Verification

The scoring process for PHAS Indicator #4 begins with ensuring accurate information about the PHA's units. PHAs will be required to electronically update unit address information initially obtained by the REAC from the recently revised form HUD–50058, Family Report. The REAC will supply a list of current units (listed by development) to PHAs via the internet. PHAs will be asked to make additions, deletions and corrections to their unit address list. After updating the list, PHAs must verify that the list of unit addresses under their jurisdiction is complete. Any incorrect or obsolete address information will have a detrimental impact on the survey results. A statistically valid number of residents cannot be selected to participate in the survey if the unit addresses are incorrect or obsolete. If a PHA does not verify the address information within 30 calendar days of submission of the list of current units to the PHA by the REAC, and the address information is not valid, the REAC will not be able to conduct the survey at that PHA. Under those conditions, the PHA would not receive any points for the PHAS Resident Service and Satisfaction Indicator.

Electronic Update of Address List

The preferred method for updating a unit address list is electronic updating. If a PHA does not have this capability

in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, the PHA may go to the nearest HUD Public and Indian Housing (PIH) program office and assistance will be given to transmit the unit address information. The PIH office will assist the PHA in electronically updating and transmitting its unit address list to the REAC. If circumstances preclude a PHA from updating and submitting its unit address list electronically, HUD will consider granting approval to allow a PHA to submit the updated unit address list information manually. A PHA that seeks approval to update its unit address list manually must ensure that the REAC receives the PHA's written request for manual submission 30 calendar days before the submission due date. The written request must include the reasons why the PHA cannot update the list electronically. The REAC will respond to the PHA's request within 15 calendar days of receipt of the request.

Sampling

A statistically valid number of residents will be chosen to receive the Resident Service and Satisfaction survey. These residents will be randomly selected using a computerized program based on the total number of occupied and vacant units of the PHA. The Resident Service and Satisfaction assessment takes into account the different properties managed by a PHA by organizing the resident sampling based on the resident representation of each development in relation to the size of the entire PHA resident population. This procedure is known as selection with probability proportional to size. For example, if a PHA houses five percent of its residents in a given development, then five percent of the sample will be chosen from that development. A PHA's score, however, will represent the entire population within that agency.

Survey Distribution

The Resident Service and Satisfaction survey will be distributed to the randomly selected sample of residents of each PHA by a third party organization designated by HUD. The third party organization will also be responsible for collecting, scanning and aggregating results of the survey. The aggregate results will be transmitted to HUD for analysis and scoring. HUD will keep individual responses to the survey confidential.

Component One—Survey Results (5 Points)

The Resident Service and Satisfaction survey form, published in the **Federal Register** on November 23, 1998, with OMB approval No. 2535–0108, may be modified for nationwide implementation based on the pilot test currently underway at 32 public housing agencies. The modifications may include, but are not limited to, rewording of specific questions and possible elimination of some questions. No additional questions will be added to the existing Resident Service and Satisfaction survey. In addition, the basic content of the survey, as described in 24 CFR 902.53, will not be modified.

Once the survey form is finalized, weights will be assigned to individual questions. Answers to some questions on the survey will be used for informational purposes only and will not be calculated into the score for the PHA. For example, questions regarding overall satisfaction with the PHA will be used to confirm survey results and will not be calculated into the final survey score. The only questions that will be included in the score for the PHA will be questions that are directly related to compliance with the regulations or statutes applicable to the management of public housing. The score for the Resident Service and Satisfaction survey will be based on a total possible score of five points.

Five Survey Sections

There are five survey sections as follows:

(1) Maintenance and repair (e.g., work order response);

(2) Communication (e.g., perceived effectiveness);

(3) Safety (e.g., perception of personal security);

(4) Services (e.g., recreation and personal programs); and

(5) Neighborhood appearance.

Scores for each survey section will be calculated in the following manner. Each section will be given a score between zero and one. For example, if the maintenance and repair survey section has 83 percent of the possible points for that section, then it would be given a score of .83. The total survey score will be the sum of the five survey section scores. Thus, there are five possible points for the survey results. This part of the score will be presented in a numeric format with one decimal place (i.e., 4.3).

Component Two—Implementation and Follow-Up Plans (5 Points)

Points awarded for component two are based on the level of implementation of the survey and follow-up on the results of the survey, where necessary.

Survey Implementation Plan

Although as noted earlier, a third party organization will be responsible for distributing and collecting the survey results, the PHA will be responsible for disseminating information about the survey to its residents based on Survey Implementation Plan provided by HUD. The Survey Implementation Plan will explicitly outline required implementation activities. The PHA must certify to the dates the implementation activities are carried out. Activities will include, but are not limited to, displaying posters supplied by HUD; conducting meetings with residents and/or communicating with residents through a newsletter; and distributing flyers.

If the PHA certifies to having completed the above activities prior to the date set by HUD, the PHA will receive the full two points for this section. All implementation activities should take place prior to residents' receipt of the survey. HUD will set deadlines for electronic submission of Survey Implementation Plans by PHAs. All Survey Implementation Plans received past the deadline will not be considered, and the PHA will not receive any points for this component.

Survey Follow-up Plan

HUD will supply PHAs with an electronic template to develop a Survey Follow-up Plan based on the results of the survey. If a PHA scores 4.5 or higher on the resident survey, a follow-up plan will not be required and the PHA will receive the additional three points. The PHA will receive its aggregate survey results electronically prior to its PHAS Resident Service and Satisfaction certification due date. Once the PHA receives its survey results, the PHA must electronically access a template to be completed outlining any follow-up actions. The appropriate HUD Office will supply suggested actions to assist the PHA in completing its Survey Follow-up Plan. Follow-up actions will be directly related to the five survey sections listed above. The PHA will be able to develop its Survey Follow-up Plan based on areas identified by the survey which need improvement. As part of the Survey Follow-up Plan, the PHA will need to specify the following:

- Actions to be taken in the next fiscal year;
- The target date of completion;
- The funding source (if required) that will be utilized;

• The section of the survey being addressed with the action (i.e., communication, safety, etc.).

A PHA will receive the full three points for this section by completing its Survey Follow-up Plan and submitting a copy of it electronically to HUD/REAC by the due date. Survey Follow-up Plans will then be bundled and forwarded via the internet to the Public Housing Director in the appropriate HUD Field Office. Where appropriate, Field Office staff may offer technical assistance to a PHA regarding the Survey Follow-up Plan. Survey Follow-up Plans shall be retained for three years, and available for review at REAC or the PHA by HUD auditors. No points will be awarded for this component if a PHA fails to submit its Survey Follow-up Plan.

Audit

Where appropriate, the Survey Follow-up Plan will be subject to audit. If the auditor finds that the PHA is not following its plan in good faith, the PHA will not receive the three points for the Survey Follow-up Plan portion of the Resident Service and Satisfaction assessment score.

Submission of Resident Service and Satisfaction Certification

Submission to the REAC by the PHA of its Resident Service and Satisfaction certification brings a close to the scoring process for this PHAS Indicator. Through the Resident Service and Satisfaction certification, the PHA certifies that the resident survey process has been managed as directed by HUD. PHAs are required to electronically submit their Resident Service and Satisfaction certification. If a PHA does not have this capability in-house, the PHA should consider utilizing local resources, such as the library or another local government entity that has internet access. In the event local resources are not available, the PHA may go to the nearest HUD PIH program office and assistance will be given to the PHA to transmit its Resident Service and Satisfaction certification.

If circumstances preclude the PHA from reporting electronically, HUD will consider granting approval to allow a PHA to submit its Resident Service and Satisfaction certification manually. A PHA that seeks approval to submit the certification manually must ensure that the REAC receives the PHA's written request for manual submission 60 calendar days before the submission due date of its Resident Service and Satisfaction certification. The written request must include the reasons why the PHA cannot submit the certification electronically. The REAC will respond to the PHA's request and will manually forward its determination in writing to the PHA.

Technical Review of the Resident Survey

The REAC will consider conducting a technical review of a PHA's resident survey results in cases where the contracted third party organization can be shown by the PHA to be in error. The burden of proof, however, rests with the PHA to provide objectively verifiable evidence that a technical error occurred. Examples include, but are not limited to, incorrect material being mailed to residents; too few survey forms sent, which could render the sample size invalid; or the PHA's units addresses were incorrect due to the third party organization's error, such as unit numbers being omitted from the addresses. A PHA that does not update its unit address list as described, above, will not be eligible for a technical review based on incorrect addresses.

Dated: May 6, 1999.

Barbara L. Burkhalter,

Deputy Director, Real Estate Assessment Center.

[FR Doc. 99–11916 Filed 5–12–99; 8:45 am]

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Thursday
May 13, 1999

Part X

Department of the Interior

Office of Hearings and Appeals

Minerals Management Service

30 CFR Parts 208, 241, 242, 243, 250, and 290 and 43 CFR Part 4
Appeals of MMS Orders; Final Rule

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

Minerals Management Service

30 CFR Parts 208, 241, 242, 243, 250, and 290

43 CFR Part 4

RIN 1010–AC21

Appeals of MMS Orders

AGENCIES: Office of Hearings and Appeals (OHA) and Minerals Management Service (MMS), Interior.

ACTION: Final rulemaking.

SUMMARY: OHA and MMS are amending their rules governing the appeal of orders from MMS's Royalty Management Program and MMS's Offshore Minerals Management. This rule makes final parts of the proposed rule published on January 12, 1999. The rule also: implements certain provisions of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 governing how appellants in royalty appeals may demonstrate financial solvency instead of posting a surety, and provides for new regulations to collect processing fees in appeals from Offshore Minerals Management orders.

EFFECTIVE DATES: Effective on May 13, 1999, except that the amended provisions of 30 CFR parts 208, 241, and 243 will be effective June 14, 1999.

FOR FURTHER INFORMATION CONTACT: David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385, e-Mail David.Guzy@mms.gov.

SUPPLEMENTARY INFORMATION: The rule provides that 30 CFR parts 250 and 290 and 43 CFR subpart J will be effective immediately upon publication. Under the Administrative Procedure Act at 5 U.S.C. 553(d), an agency must find good cause to make a substantive rule effective sooner than 30 days after the date of publication. There are certain administrative appeals pending before the Department in which, under 30 U.S.C. 1724(h)(1), the Secretary must issue a final decision before May 13, 1999, which is less than 30 days after publication of this rule. (May 13, 1999, is 33 months after the date of enactment of the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, which enacted 30 U.S.C. 1724(h).) If there is no final departmental decision by that date, 30 U.S.C. 1724(h)(2) imposes a statutory rule of decision in those cases. Title 43 CFR part 4 subpart J resolves various issues involved in implementing the requirements of 30 U.S.C. 1724(h)(1) and (2). Its provisions apply to those cases in which the Secretary must issue a final decision by May 13, 1999, and the effect of the statutory rule of decision if the Department does not issue a final decision by that deadline. Title 30 CFR parts 250 and 290 contain provisions regarding appeals of orders that are part of the integrated changes to the orders and appeals scheme that includes the new 43 CFR part 4 subpart J. The Department therefore finds that good cause exists to make these provisions effective immediately upon publication. The remainder of this rule will be effective 30 days after publication.

I. Background

In May 1994, MMS began a comprehensive review of its administrative appeals process. As part of that review, MMS held several informal meetings with State, tribal, and industry representatives to discuss the problems and possible solutions regarding the appeals process. The principal problems identified included the length of the appeals process—sometimes taking several years to resolve a case—and the excessive costs of the process to both MMS and appellants.

In 1995, the Department of the Interior (DOI) established a Royalty Policy Committee (RPC) under the Minerals Management Advisory Board. At its first meeting in September 1995, the RPC established the Appeals and Alternative Dispute Resolution (ADR) Subcommittee. The Appeals and ADR Subcommittee was created to make recommendations to the RPC to improve the appeals and ADR processes. Membership in the Appeals and ADR Subcommittee included 11 representatives from industry, 5 representatives from States, and 2 representatives from Indian tribes. The Subcommittee agreed that the principal purpose of the MMS administrative appeals process should be the expeditious and independent review of appeals. The RPC made a recommendation (RPC Report) and submitted that recommendation to the Secretary of the Interior. The primary recommendation was to change the current two-step appeals process into a one-stage Interior Board of Land Appeals (IBLA) administrative appeal process. On September 22, 1997, the Secretary accepted the RPC report for consideration and proposal with some changes and clarifications.

On August 13, 1996, the President signed into law the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996, Pub. L. 104–185, as corrected by Pub. L. 104–200 (RSFA). RSFA amended portions of the Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA), 30 U.S.C. 1701 *et seq.* Before enactment of RSFA, there was no time limit on when DOI must issue decisions in appeals of orders involving royalty and other payments for Federal oil and gas leases. RSFA added a new FOGRMA section 115(h), 30 U.S.C. 1724(h), governing the time frame for DOI to process appeals of MMS orders or decisions involving royalties and other payments due on Federal oil and gas leases. For appeals involving Federal oil and gas leases covered by this new provision, DOI has 33 months from the date a proceeding is commenced to complete all levels of administrative review. If DOI does not decide the appeal within 33 months, the appeal is deemed decided either for or against DOI, depending on the type of order and the monetary amount at issue in the appeal. The 33-month deadline does not apply to appeals involving Indian leases or Federal leases for minerals other than oil and gas.

As a result of the MMS review of the appeals process and RSFA, MMS announced a proposed rule in the **Federal Register** on October 28, 1996 (61 FR 55607). The proposed regulation provided for amendments to the MMS appeals process at 30 CFR part 290. On December 31, 1997, MMS announced that it intended to withdraw the October 28, 1996, proposed rule when it published a revised notice of proposed rule (62 FR 68244). Accordingly the October 28, 1996, proposed rule was withdrawn when MMS proposed a revised appeals process on January 12, 1999 (64 FR 1930) that included most of the RPC Report recommendations.

Two portions of the proposed rule would have implemented the RPC recommendations. First, the new proposed 43 CFR part 4, subpart J, would have established a new procedure for appeals of royalty orders. That section would have replaced the current regulations at 30 CFR part 290 and 43 CFR part 4, subpart E, as they relate to appeals of royalty orders initially to the MMS Director and then to the IBLA. Second, the new proposed 30 CFR part 242, subpart B, would have established procedures for orders issued by MMS and delegated States. That subpart would have incorporated certain RSFA provisions regarding orders and orders to perform restructured accounting and for service of orders on lessees when orders are sent to their designees. In addition, subpart C of proposed part 242 would have established procedures for Indian lessors to formally request that MMS

take actions. Finally, subpart D of part 242 would have included the service requirements that currently are found at 30 CFR part 243.

We have decided not to go forward at this time with the entire appeals process that we proposed on January 12, 1999, for two major reasons. One, we received numerous negative written and oral comments regarding the proposed process. Two, the necessity to publish before May 13, 1999, a final rule implementing the RSFA appeals adjudication time requirements and the associated rule of decision under 30 U.S.C. 1724(h) for cases in which there is no final Departmental decision prevents us from conducting a thorough and reasoned review of all the comments we received on the appeals process. One commenter suggested that we withdraw the proposed rule, leave the current process in place, and only publish the portions of the proposed rule necessary to implement RSFA. Rather than withdrawing the proposed rule, we are making final only those portions of the proposed rulemaking necessary to implement RSFA, and the portions of the proposed rule which received few, if any, comments. Those portions of the rule that are part of this final rulemaking are as follows:

(1) The sections of proposed 43 CFR part 4, subpart J, necessary to implement the 33-month time period at 30 U.S.C. 1724(h), and allow joinder for lessees who receive notice of an order issued to their designee as required under 30 U.S.C. 1712(a);

(2) Proposed 30 CFR part 243, regarding stays pending appeal and bonding, and implementing 30 U.S.C. 1724(l) which allows lessees to demonstrate financial solvency in lieu of posting a bond or other surety instrument pending an administrative or judicial proceeding;

(3) Proposed 30 CFR part 290 regarding appeals of MMS Offshore Minerals Management Program (OMM) orders and related changes to 30 CFR part 250;

(4) Proposed 30 CFR part 241 regarding civil penalties authorized by FOGRMA; and

(5) Proposed changes to definitions in 30 CFR 208.2 and to 30 CFR 208.16 regarding appeals of contracting officers' decisions by purchasers of Federal royalty oil.

Because we are not finalizing the entire proposed rule, we will continue to require appellants to use the appeals procedures for royalty orders found at 30 CFR part 290 and 43 CFR part 4, subpart E, until we can publish a final rule on the appeals process. However, for royalty-related appeals to the MMS Director, the rules are now located at 30 CFR part 290, subpart B. That subpart is revised to contain appropriate headings and provisions of the proposed rule necessary to implement RSFA. Subpart A contains the procedures in the proposed rule for OMM appeals.

II. Comments on Proposed Rule

The proposed rulemaking provided a 60-day public comment period which ended March 15, 1999. On February 16, 1999, DOI held a public hearing in Houston, Texas, to receive oral comments on the proposed rule. That public hearing was announced in the **Federal Register** (64 FR 3262, January 21, 1999). Those attending included representatives of natural gas, oil, and coal producers, including representatives both of large integrated producers and of smaller independent producers. Participants in the public hearing had the opportunity to ask specific questions about the proposed rule and to provide comments on the proposed rule.

MMS received written comments from 13 commenters during the comment period. Two additional commenters submitted late comments, which we also accepted and considered. Thus, a total of 15 comments were accepted for review. One of the comments was from the State of California, 1 was from a mining association, 3 were from oil and gas trade associations, 8 were from industry, 1 was from an Administrative Law Judge and Attorney-Advisor, from the DOI Salt Lake City Office of the Hearings Division, Office of Hearings and Appeals, and 1 was from a law firm.

We reviewed and analyzed all of the comments pertaining to the sections that are part of this final rulemaking and, in some instances, revised the language of the final rule based on these comments. The following is a discussion of the specific comments we received and our response by section number.

III. Section-by-Section Analysis, 30 CFR Part 208

Comment—We received no comments on the proposed amendments to part 208.

Response—Although we received no comments regarding this part, we made some minor changes necessary to reflect that we are not making the entire proposed rule final at this time.

IV. Section-by-Section Analysis, 30 CFR Part 241 Civil Penalties

While the focus of the comments to this proposed rulemaking concerned the provisions of 43 CFR part 4, subpart J, several comments were received with reference to this part. Most of the comments concern sections of the rule in which no substantive change is proposed—where MMS has simply attempted to restate in plain language the rule under which MMS has operated for approximately 15 years. All comments received concerning this part were received from an association of oil and gas producers. Where we received more than one comment, the additional comments came from an individual oil and gas producer.

Section 241.50 What Definitions Apply to This Subpart?

Comments—We received two comments, which noted that the proposed rule has not defined "violation." Specifically they inquired whether, for example, when a company fails to report, is each line that should have been reported a violation or is it one violation for the entire report?

Response—MMS has operated under the current regulations for 15 years without a regulatory definition of violation. Any attempt to define the term to meet all possible circumstances would require an impractically exhaustive list. Violations could be any failure to comply with statutes, rules, lease terms or orders.

In response to the specific question asking whether each line would be a separate violation, MMS has always considered that each failure to report, or wrongly reporting a line that is required to be reported, is a violation. For example, if a company fails to report its production of natural gas, each line for which natural gas should have been reported on the production report is a violation, and each month and each lease for which it should have been reported constitutes an additional violation.

Section 241.51 What May MMS Do if I Violate a Statute, Regulation, Order, or Lease Term Relating to a Federal or Indian Oil and Gas Lease?

Comment—One commenter noted that this section does not provide for the appointment of an agent to receive service. It also believes that the Department is obligated to allow this designation under 30 U.S.C. 1719(h). In addition, the commenter also believes that the statute only allows notice by personal service or registered mail. However, it believes that although express mail and certified mail are not permitted, they should be.

Response—We agree that this section, as proposed, does not allow specifically for the appointment of an agent to receive service. However, it proposed to use the proposed provisions of 30 CFR

242.304 and 242.305, which provide for service to designated persons. For violations concerning a royalty report (Form MMS–2014), MMS will send the notice to the individual named by the lessee, designee, reporter or payor as the person to whom to direct correspondence. A similar provision was included for violations concerning production reports and audits. The proposed rule did not provide for designations of persons to be served with notices of violations committed by payors or designees of which the lessee receives notice. MMS has not traditionally sent notices of noncompliance to lessees that are not acting as reporters, designees or payors. For this reason, we did not consider this possibility when proposing these rules. We have now added provisions to section 241.51 clearly allowing the designation of an agent for the receipt of notices of noncompliance and civil penalty notices.

We also agree that we are limited in how we may serve notices under 30 U.S.C. 1719(h). While we also agree that we should be able to use other forms of service, we have clarified that service must be by registered mail or personal service, both in this section and in section 241.61.

Section 241.52 What If I Correct the Violation?

Comment—One comment was received, to the effect that this section conflicts with section 241.54, by implying that no review was possible in the case of a company that has complied with a notice of noncompliance within the statutory 20-day period to correct the violation.

Response—We believe that the language in proposed section 241.54 that allowed review "regardless of whether you correct the violations," clearly means that a party may seek a hearing on the record even if it complied with requirements stated in a notice of noncompliance. However, we have no record of any past case in which a violator corrected a violation and then requested a hearing.

Section 241.53 What If I Do Not Correct the Violation?

Section 241.54 How May I Request a Hearing on the Record on a Notice of Noncompliance?

Section 241.55 Does My Request for a Hearing on the Record Affect the Penalties?

Comments—We received two comments concerning these sections. These commenters believed that the rule should provide for: (1) a longer than 20-day period for the recipient of a notice to file its request for a hearing (preferably 40 days); (2) a separate opportunity for a hearing, even if no request for a hearing is made from the notice of noncompliance; (3) a mechanism for expedited review when there is a request for a stay to allow substantive review without the risk of incurring penalties; and (4) more specific regulatory criteria for determining the amount of penalties. The commenters reasoned that the purposes of 30 U.S.C. 1719, as well as all of FOGRMA, are to encourage voluntary compliance, and imply that the rule, as proposed, violates due process.

Response—Starting with how we determine the amount of penalties, we do not believe that it is necessary to provide the detailed standards for setting penalty amounts in regulatory form. MMS has written guidelines which set out, in ranges, appropriate penalties for a variety of circumstances. We do not believe it is possible to set out all the standards in advance in a permanent fashion by rule. FOGRMA requires only that "In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations." 30 U.S.C. 1719(i). This subsection neither requires, nor implies, that the determination be made through regulation, which would limit the flexibility of DOI in setting penalty amounts appropriate to the wide variety of possible circumstances that should be considered. However, to assist potential recipients of notices of noncompliance, the following table shows the current non-binding guidelines MMS uses:

Violation	Company size		
	Minor	Moderate	Major
Failure to report	$0–10	$0–25	$5–500
Failure to pay	0–20	2–50	10–500
Failure to provide information	0–100	2–200	20–500
Failure to comply with order to perform restructured accounting	0–15	2–35	10–500

Note: Amounts in Dollars per violation per month.

We also believe that the current regulations of the Hearings Division of the Office of Hearings and Appeals at 43 CFR 4.21 have proven more than adequate when an appellant petitions for a stay. We have used these procedures for 15 years without any complaints about an appellant's inability to have its petition timely and fairly reviewed by the Hearings Division. We therefore will not change the procedures to mandate a faster review of requests for stays of accrual of penalties.

As to the commenter's first two requests, FOGRMA grants the Secretary the discretion to set the time limits for an appellant to request a hearing. MMS has operated under rules requiring hearings to be requested within 20 days of the date of receipt of the notice of noncompliance for more than 15 years without complaint. In spite of this history, in the interests of increasing a violator's ability to request hearings, we have changed the proposed rule to allow 30 days from the date of receipt of the notice of noncompliance for an appellant to request a hearing on the record. MMS has a long history of using a 30-day period in other contexts (specifically for appeals from MMS orders), which allows ample time for appellants to decide whether to seek review in those cases.

We agree with the comment that the violator may still have need for redress concerning the amount of a civil penalty even though that violator did not contest the notice of noncompliance. We therefore have added new sections 241.56 and 241.64 that allow a violator, who did not request a hearing on the record on a notice on noncompliance, 10 days from the receipt of the Notice of Civil Penalty to request a hearing on the record limited to the issue of the amount of the penalty only. By not requesting a hearing on the record on the notice of noncompliance, the recipient waived the right to contest the underlying liability for penalties.

Section 241.60 May I Be Subject to Penalties Without Prior Notice and an Opportunity to Correct?

Section 241.61 How Will MMS Inform Me of Violations Without a Period To Correct?

Section 241.62 How May I Request a Hearing on the Record on a Notice of Noncompliance Regarding Violations Without a Period To Correct?

Section 241.63 Does My Request for a Hearing on the Record Affect the Penalties?

Comments—We received one set of comments that addressed these sections concerning penalties that may begin without a period to correct. The first issue involves the definition of violation. The commenter referred to FOGRMA, which provides for an

assessment of $25,000 per day for each day such violation continues. The commenter believes that MMS has been inconsistent by specifying a penalty calculated at $25,000 per day for each violation. The second issue is similar to the comments on sections 241.52 through 241.54 in that no separate right of review is granted as to the amount of the penalty and that the time to seek review is too short.

We also received one comment that addressed a statement in the preamble that MMS believes that the statutory provision for assessing penalties for "failure to permit entry, inspection or audit" applies to failure to provide MMS with documents that MMS has requested under authority of FOGRMA, the regulations or the leases. The commenter noted that MMS has argued in court that audit requests are voluntary and, for that reason, that they are not appealable agency actions. The commenter continued by saying that argument is inconsistent with making lessees subject to FOGRMA penalties without opportunity to correct for not complying with audit requests.

Response—As we explained in the response to comments on section 241.50, we believe MMS has been very clear over the past decade and one-half that each failure to comply with the mandates of law is a separate violation. We believe that while FOGRMA uses the word "such" rather than "each," their meaning is identical in the context of this regulation. "Such is a demonstrative word used to indicate the quality or quantity of a thing * * *." The definition of "each" is "Every (individual of a number) regarded or treated separately." The Compact Edition of the Oxford English Dictionary 823 Vol I and 3136, Vol. II (1971). In both cases the word signifies a quantity. In the context of FOGRMA, there is a separate violation, and thus a separate penalizable act with a separately accruing penalty, for each such violation. The regulation's meaning is identical to the statute's meaning.

As to the potential problem with a person wanting to appeal only the amount of the penalty, we have added a provision at section 241.64 allowing a hearing on that issue alone, paralleling the new section 241.56.

We continue to believe there are circumstances where a refusal to provide MMS, or a delegated State, or a Tribe operating under a cooperative agreement (or under a self-determination contract or compact), with documents during an audit would amount to a failure to permit lawful audit. The exact circumstances under which MMS may use this provision will be addressed in future proceedings when MMS believes an appropriate case has arisen.

Section 241.70 How Does MMS Decide What the Amount of the Penalty Should Be?

Comment—One comment was received that complained that the criteria articulated for determining the quantum of civil penalty are inadequate. The commenter demanded that more specific criteria be articulated to provide a reviewing officer and a court more objective criteria for determining the exercise of the agency's authority.

Response—MMS has operated under provisions similar to these for 15 years without complaint. Neither Administrative Law Judges, the Interior Board of Land Appeals, nor the Federal courts found any need for guidance in the form of a regulation. Indeed, FOGRMA only requires "In determining the amount of such penalty, or whether it should be remitted or reduced, and in what amount, the Secretary shall state on the record the reasons for his determinations." 30 U.S.C. 1719(i). As mentioned in the response to sections 241.53, 241.54 and 241.55, we intend to continue to articulate our reasons as part of the administrative record rather than attempting to do so in a rule.

Section 241.74 May I Seek Judicial Review of the Decision of the Interior Board of Land Appeals?

Comment—One comment was received to the effect that the regulation should include the 30 U.S.C. 1719(j) requirement that judicial review must be taken in the United States District Court for the judicial district in which the violation allegedly took place.

Response—We do not have the ability to determine jurisdiction or venue, or other rules concerning review by Federal courts. We have therefore simplified the regulation by making it a mere pointer to the proper section of the United States Code. We have retained the sentence informing the reader of the time limit to make it easier for readers of these regulations to comply within the statutory time limit.

Section 241.75 When Must I Pay the Penalty?

Comment—One comment was received repeating the request for separate review of the amount of the penalty.

Response—As mentioned above, we have added provisions allowing for hearings on the record limited to the amount of penalty assessed. Therefore, the paragraph within this section as proposed that prohibited such reviews has been removed.

Section 241.77 How May MMS Collect the Penalty?

Comment—One comment was received that complained that MMS has no statutory authority under FOGRMA for execution against a lease surety or to offset amounts the United States owes to the violator.

Response—FOGRMA specifically provides for offset: "The amount of any penalty under this section, as finally determined may be deducted from any sums owing by the United States to the person charged." 30 U.S.C. 1719(f). There is no specific statutory authority regarding collecting against lease sureties. They fall under the plenary regulatory authority of the Secretary under the mineral leasing laws. This regulation is sufficient authority under those provisions.

V. Section-by-Section Analysis, 30 CFR Part 242

We have decided not to finalize part 242 as proposed on January 12, 1999, at this time. However, we have reserved this part for future publication.

VI. Section-by-Section Analysis for 30 CFR Part 243 Suspensions Pending Appeal and Bonding—Royalty Management

General comments—We received two sets of comments that addressed this rule, one from an oil and gas producer and one from an association of oil and gas companies. The producer's comments were favorable to the proposed rule and referred to the association's comments for specific suggestions.

The association also welcomed the proposed rule and MMS's proposal to apply the rules even to situations where they are not mandated by RSFA, such as production from periods prior to September 1996 and to leases for minerals other than oil and gas. The commenter also responded to the question about whether the rules should apply to Indian leases as well as to Federal leases. That commenter stated that it believed that the rules should apply to all appeals, because Indian lessors as well as the Federal Government would be protected by the financial solvency provisions.

Response—We appreciate the favorable comments on the proposal. Upon considering the comment that the financial solvency provisions of the proposed rule should apply to Indian as well as Federal leases, we have decided that there are important reasons for having different sets of rules for Indian

and Federal leases. First, Indian lessors are not in a comparable position to the United States in their ability to absorb the risk of default by a person believed to be financially solvent but who later defaults on an appealed obligation. Indian lessors are much smaller, less diversified in their portfolio of risks than the United States, and are in a significantly less advantageous position than the United States. Second, the standards that we apply, and must apply, to Indian leases are different from those applied to Federal leases. We have a trust responsibility to Indian lessors and believe that requiring the protection of sureties for appeals of obligations on Indian leases is appropriate. Finally, Congress declined to extend the benefit of self-bonding by demonstration of financial solvency to lessees on Indian lands. For these reasons, we will keep the separation between Indian and Federal leases as it was in the proposed rule.

Section 243.3 What Definitions Apply to This Part?

Section 243.4 How Do I Suspend Compliance With an Order?

Comment—One commenter requested that definitions follow the RSFA definitions. In particular, "order" does not appear to include anything other than orders to pay monetary obligations. Therefore the rules seem only to permit the suspension of these orders.

Response—The purpose of the use of the word "order" in this part is to refer to the proper parts under which an appeal may be taken for which compliance may be suspended under this part. To avoid confusion we have deleted the reference to monetary obligation. We have clarified section 243.4 to provide that appeals of orders that do not require the making of a payment may be suspended without posting a surety or demonstrating financial solvency.

Section 243.5 May Another Person Post a Bond or Other Surety Instrument or Demonstrate Financial Solvency on My Behalf?

Comment—One commenter responded to our request for comments on whether any limitations are needed on who may post surety or demonstrate financial solvency on behalf of an appellant. That commenter does not believe any limitations are appropriate.

Response—We appreciate the comment, and we believe that the phrase "any other person" clearly places no limitation on who may post surety or demonstrate financial solvency on a lessee's behalf. Therefore, we have decided to leave the rule as proposed.

Section 243.6 When Must I or Another Person Meet the Bonding or Financial Solvency Requirements Under This Part?

Comment—One commenter believes this section should be amended to make it clear that only one bond or demonstration of financial solvency is required for any particular liability. The commenter does not believe MMS should require sureties from a lessee and its designee for the same liability. While the commenter believes, from our explanation in the preamble to the proposed rule, that only one guarantee is intended, it believes the rule itself should make clear that either the lessee or the designee, but not both, is required to post surety or demonstrate financial solvency.

Response—We have inserted the word *either* in this section to clarify that only one surety is required, regardless of the identity of the person or persons posting the surety or sureties.

Section 243.8 When Will MMS Suspend My Obligation To Comply With an Order?

Comment—One commenter applauded MMS's proposal to increase the minimum amount under appeal for which no bond or demonstration of financial solvency is required. It urged that the same rules apply to appeals with respect to Federal and Indian lands.

Response—As explained above, we believe it is appropriate to have different standards with respect to Federal and Indian lands, and we decline to change the standards here.

Section 243.10 When Will MMS Initiate Collection Actions Against a Bond or Other Surety Instrument or a Person Demonstrating Financial Solvency?

Comment—One commenter noted that the time period for MMS to initiate collection actions against the bond or other surety is inconsistent with the Mineral Leasing Act, 30 U.S.C. 226–2, which allows 90 days for an appellant to seek judicial review of an adverse decision by the Department. The proposed rule, by contrast, allowed MMS to call on the surety within 30 days of such an adverse decision.

Response—We agree that the proposed rule should track the time period in the Mineral Leasing Act with respect to oil and gas leases for cases in which there is a decision of the IBLA or an Assistant Secretary that is subject to judicial review. We therefore have increased the time to 90 days in the final rule for those cases.

Section 243.11 May I Appeal the MMS Bond-Approving Officer's Determination of My Surety Amount or Financial Solvency?

Comment—One commenter noted that it did not object to the proposal that there would be no administrative review of determinations of the Bond-Approving Officer, but requested that we clarify that the determinations are judicially reviewable.

Response—Whether a court would have jurisdiction to review these determinations is a matter of statute rather than regulation. Therefore, we are not amending the rule to specifically provide for judicial review.

Section 243.12 May I Substitute a Demonstration of Financial Solvency for a Bond Posted Before the Effective Date of this Rule?

Comment—One commenter urged that this section be amended to allow an appellant to replace a surety with a self-bond at any time, not just "when the surety instrument is due for renewal." The commenter's reason was that an appellant may have many bonds due for renewal at different times. "Depending on the circumstances, it may be more administratively convenient * * * to replace all of its bonds with a demonstration of financial solvency at the same time."

Response—It was not our intent to prevent an appellant from choosing between replacing its sureties individually as they expire, or replacing all sureties at once. To avoid confusion, we have amended this section to allow replacement of sureties at administratively convenient times.

Section 243.200 How Do I Demonstrate Financial Solvency?

Comment—One commenter noted that the proposed rule appears inconsistent with the preamble. The preamble noted that MMS could require updated financial statements to monitor demonstrations of financial solvency if the demonstrator files for bankruptcy. The regulatory language allows MMS to require updated financial statements upon request. The commenter urged MMS to specify the circumstances, other than bankruptcy filings, that might justify an appellant to redemonstrate financial solvency.

Response—We did not intend to narrow the rule by the preamble. The broader requirements of the rule will remain unchanged. We expect MMS to very rarely request an updated financial statement, but we believe the flexibility

is needed for circumstances that we cannot currently foresee.

VII. Section-by-Section Analysis 30 CFR Part 250

Comment—No comments were received on the proposed amendments to part 250.

VIII. Section-by-Section Analysis 30 CFR Part 290

Subpart A—Offshore Minerals Management Appeals Procedures

Section 290.2 Who May Appeal?

Comment—One commenter asked if an appeal from an order issued by an MMS Offshore Minerals Management (OMM) official would be appealable under the new 43 CFR part 4 subpart J, which is designed for appeals from orders issued by MMS Royalty Management Program (RMP) officials. Another commenter asked if we could do away with the exclusions listed in section 290.2.

Response—An order issued by an MMS OMM official is not appealable under the new 43 CFR part 4 subpart J. To clarify this matter, section 290.2 will specify that your appeal to IBLA is under 43 CFR part 4 subpart E. Adding the reference to subpart E is consistent with section 290.8(a) and should clarify the fact that appeals from orders issued by MMS OMM officials are appealed to IBLA under 43 CFR part 4 subpart E. The RSFA rule of decision provisions made final in 43 CFR part 4 subpart J do not apply to appeals of OMM orders.

Also, because we are not publishing a final rule on a new royalty appeals process at this time, we are dividing part 290 into two subparts to distinguish between appeals from orders issued from MMS's RMP and orders issued from MMS's OMM Program. Appeals of OMM orders will be under the rule at 30 CFR part 290 subpart A. Appeals of RMP orders will be under 30 CFR part 290 subpart B.

As for doing away with the exclusions listed in section 290.2, the exceptions listed for decisions concerning lease bids and deep water field determinations are based on current requirements in other sections of our rules (the sections were referenced in the proposed rule). The changes proposed to the current OMM appeals process were aimed at streamlining and simplifying the appeals process and do not affect any other MMS rules or requirements.

Section 290.5 How do I Pay My Processing Fee?

Section 290.6 How Will MMS Notify Me of Its Action on my Request?

Section 290.7 What is the Filing Date for My Appeal?

Comment—We received numerous comments criticizing the complexity of the proposed appeals rule.

Response—We believe it would be desirable to simplify this OMM appeals rule by removing the provisions in sections 290.5, 290.6 and 290.7 of the proposed rule.

We are deleting the requirement to pay the processing fee by electronic funds transfer, based upon conversations with officials in the Treasury Department. Therefore, you may pay by following the procedures in place at 30 CFR 218.51. We are also removing the parts dealing with a waiver of the $150 processing fee imposed on each appeal. The operators on the Outer Continental Shelf (OCS) are large enough that they would not be able to justify the need for a waiver of a $150 processing fee for their appeal. Also, because the amount of the fee is nominal, the waiver provision in the proposed rule is not needed to meet the requirements of the Small Business Regulatory Enforcement and Fairness Act or the Regulatory Flexibility Act.

The date the appeal is filed will continue to be, as in the past, the date the Notice of Appeal is received in the OMM office. The processing fee will be paid by check with the Notice of Appeal.

Subpart B—Appeals of Royalty Management Program and Delegated State Orders

Comments—We received no comments on this subpart because it was not separately proposed. The revisions made in this subpart incorporate portions of the proposed appeals rule that are necessary to implement certain provisions of RSFA, and to separate appeals of royalty-related orders from appeals of Offshore Minerals Management Program orders. The OMM-related appeals are few in number and under the new subpart A will go directly to the IBLA. We did receive comments on some of the definitions in the proposed appeals rule that are contained in this part. The revisions made in this subpart also rewrite the headings in former part 290 in "plain language," and clarify portions of former part 290.

In addition, we deleted former section 290.4 titled "Oral Argument" because they were rarely requested and rarely granted. This is also consistent with the proposed rule which did not provide for appellants to request oral argument before the IBLA.

Section 290.100 What is the Purpose of This Subpart?

Comments—We did not receive any comments on this section.

Response—The purpose of this subpart is to provide the procedures to appeal MMS or delegated State orders concerning reporting to the MMS's RMP and the payment of royalties and other payments due under leases subject to this subpart. Subpart A of this part applies to appeals of MMS's OMM program actions.

Section 290.101 What Leases Are Subject to This Subpart?

Comments—We received no comments on this subpart.

Response—This section is the same as proposed 43 CFR 4.902. We specifically note that the scope of this subpart is not limited to those orders that are subject to RSFA time of decision requirements in 30 U.S.C. 1724(h). This subpart covers all appeals of RMP or delegated State orders, including orders concerning Federal leases for minerals other than oil and gas, all Indian leases, orders to provide information, produce documents, etc., and is not limited to Federal oil and gas leases. Included in this subpart are some provisions specific to orders that RSFA covers.

Section 290.102 What Definitions Apply to This Subpart?

Comments—This section contains definitions that are similar to those found in proposed 43 CFR 4.903, for which we received comments to which we respond in our preamble discussion of 43 CFR part 4 subpart J in this final rulemaking. Please refer to the comments and responses to definitions in that subpart in this preamble. There are some differences in definitions because 43 CFR part 4 subpart J applies only to orders that are subject to RSFA time of decision and rule of decision requirements. The coverage of this subpart, in contrast, is broader. Those differences are apparent from the text of the definitions. For definitions included in this part that are not in 43 CFR part 4 subpart J there were no comments.

Section 290.103 Who May File an Appeal?

Comments—We received no comments on this section.

Response—We retained the requirement formerly found at 30 CFR 290.2 that you may appeal an order you receive if it adversely affects you or your lessee. We also added the provision

proposed as 43 CFR 4.904(b) allowing lessees that receive a Notice of Order to either appeal the order or join in their designee's appeal under § 290.106.

Section 290.104 What May I Not Appeal Under This Subpart?

Comments—We received no comments on this section.

Response—This addition to this subpart was proposed as 43 CFR 4.905(a) and (c).

Section 290.105 How Do I Appeal an Order?

Comments—We received no comments on this section.

Response—We combined the requirements found in former 30 CFR 290.3, 290.5 and 290.6, and rewrote them in plain language. We also eliminated 30 CFR 290.3(b) which required a field report. This is consistent with the agency's and industry's desire to accelerate the appeals process.

Section 290.106 How Do Lessees Join a Designee's Appeal and What is the Effect of Joinder?

Comments—We received no comments on this section.

Response—This section was proposed as 43 CFR 4.908. We made minor changes necessary to reflect that the appeal is to the MMS Director under this part, not the Office of Hearings and Appeals.

Section 290.107 Where are the Rules Concerning the Effect of the Department Not Issuing a Decision in My Appeal Within the Statutory Time Frame?

Comments—We received no comments on this section.

Response—This section was necessary to direct appellants to the rules concerning the effect of DOI not issuing a decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h). Those rules are located in 43 CFR part 4 subpart J.

Section 290.108 How Do I Appeal to the IBLA?

Comments—We received no comments on this section.

Response—This section was the former 30 CFR 290.7. We added a provision that directs appellants to 43 CFR part 4 subpart E.

Section 290.109 How Do I Request an Extension of Time?

Comments—See preamble discussion of 43 CFR 4.909.

Response—See preamble discussion of 43 CFR 4.909. This section was proposed as 43 CFR 4.958. We made minor changes necessary to reflect that the appeal is to the MMS Director under this part, not OHA, and to differentiate those appeals that involve extensions of the RSFA time of decision requirements from those that do not.

Department Hearings and Appeals Procedures

IX. Section-by-Section Analysis, 43 CFR Part 4—

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

Section 4.901 What Is the Purpose of This Subpart?

Comments—We did not receive any comments on this section.

Response—Even though we did not receive any comments on this section, we must amend the text because we are not finalizing the entire proposed rule at this time. The purpose of this subpart is revised to explain how the time limits of 30 U.S.C. 1724(h) apply to appeals subject to this subpart.

Section 4.902 What Appeals are Subject to This Subpart?

Comments—In the proposed rule, this section heading read, "What leases are subject to this subpart?" We received no comments on that section.

Response—Even though we did not receive any comments on this section, we must amend the text because we are not finalizing the entire proposed rule at this time. The section heading is changed to read, "What appeals are subject to this subpart?" We had to change the heading and content of this section to make clear what appeals this subpart applies to because the sole purpose of this subpart is to implement the time limits and rule of decision of 30 U.S.C. 1724(h). Because section 1724(h) only applies to appeals of orders involving Federal oil and gas leases, this section will state that the subpart applies only to appeals of orders or portions of orders involving the payment of royalties and other payments due, and the taking or delivery of royalty in kind, under Federal oil and gas leases. Moreover, it would make clear that its provisions apply to appeals to the MMS Director under 30 CFR part 290 before this rule became effective, appeals to the MMS Director under new 30 CFR part 290 subpart B after this rule became effective, and appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this rule. This section further specifies that this subpart does not apply to appeals of orders (or portions of orders) that involve Indian leases or Federal leases for minerals other than oil and gas, or that relate to Federal oil and gas leases but do not involve a monetary or nonmonetary obligation.

Section 4.903 What Definitions Apply to This Subpart?

Comments—We received several comments that the definition of "lessee" in the proposed rule should quote the definition in RSFA. The commenters believed that it was inconsistent with RSFA to define lessees to include persons to whom a lease interest is assigned.

Response—In the proposed rule, we decided not to quote the exact definition of "lessee" found in RSFA because the proposed rule applied to more than oil and gas leases subject to RSFA. Moreover, we do not believe that the additional language in the proposed rule is inconsistent with RSFA. The RSFA definition states that "lessee" includes "any person to whom operating rights have been assigned." The proposed rule defines "lessee" to include "any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned." We do not believe that it is inconsistent with RSFA, or any law, to define a "lessee" as a person to whom all or part of the lessee's interest has been "assigned," or, in other words, to whom all or part of the lessee's interest has been sold. To the contrary, it would be inconsistent with RSFA and prevailing law and regulations to state that assignees of leases are not lessees. Therefore, we are not changing the definition of "lessee" in the proposed rule.

Comments—We received several comments on the definition of "monetary obligation" in the proposed rule. Commenters for the State of California Controller's Office felt that the proposed definition "invited dispute" over what an "issue" is, because "a particular underpayment may be attributable to overlapping regulatory violations." Thus, the California Controller's Office suggested that it would be more administratively efficient if a monetary obligation was defined as the total amount stated or estimated in the order. Another commenter stated that the plain meaning of monetary is "payable in money," and by including orders to recalculate royalties, DOI is "attempting to circumvent" the default decision provisions of 30 U.S.C. 1724(h). Finally, two commenters believe that RSFA requires us to define monetary obligation as "the principal amount due on each lease for each month" because

that is what is required under the RSFA definition of an "order to pay."

Response—With respect to the California Controller's Office's comment that "monetary obligation" should be defined as the total amount of underpayments in an order, we do not believe that the definition was confusing. We believe that because orders identify the specific regulatory violation and the associated underpayment, there should be no confusion. For example, if an order stated an underpayment amount attributable to a lessee's failure to include tax reimbursements in its gross proceeds, and stated another underpayment amount attributable to an improper deduction from the lessee's gross proceeds, we believe it is clear that although both violations involve the gross proceeds rule, they stem *from different issues* and involve separate underpayments, and thus it is reasonable to consider them to be separate obligations.

We disagree with the inference drawn by the commenter who asserted that the only interpretation of "monetary" is "payable in money." We are not attempting to circumvent the default decision provisions of section 1724(h) by including orders to recalculate and pay in the definition of monetary obligation. First, as we stated in the preamble to the proposed rule, Congress did not define "monetary." However, both Webster's Dictionary and Black's Law Dictionary define monetary as "related to" money. We believe that orders to recalculate and pay are clearly related to money, and include a requirement to pay money, and as such are "monetary" in nature. Second, the only "obligation" of a lessee under RSFA that is *nonmonetary*, and not "related to money" is a lessee's duty to deliver royalty in kind. Therefore, we are not amending this definition to state that monetary obligations do not include orders to recalculate and pay.

We also disagree with the comments that because RSFA defines an "order to pay" as a written order that "specifically identifies the obligation by lease, production month and monetary amount of such obligation" we must define monetary obligation the same way. As stated above, Congress did not define monetary obligation. Congress did, however, define "obligation." Under RSFA, an "obligation" is a specified lessee duty "which arises from or relates to any lease * * * or any mineral leasing law * * * *" 30 U.S.C. 1702(25)(B). Therefore, we disagree with the commenters that an obligation must be limited to one lease. We also do not agree that an obligation must be limited to one month. Rather, RSFA implies that an "obligation" may be issue-specific ("related to any mineral leasing law," which includes regulations). Accordingly, we are not changing the proposed definition of monetary obligation in the manner the commenter requests.

We are revising the definition of monetary obligation as proposed to clarify that monetary obligation also includes the Secretary's duty to pay, refund, offset, or credit the amount of any obligation that a lessee, designee, or payor has asserted in a request for payment, refund, offset, or credit that MMS or a delegated State has denied. This follows from the definitions of "demand" and "obligation" in the new 30 U.S.C. 1702(23)(B) and (25)(A)(ii) as added to FOGRMA by RSFA section 2, 110 Stat. 1701. Administrative appeals of denials of requests by lessees, designees, or payors for refund, offset, credit, etc., are subject to the RSFA time of decision and rule of decision requirements of 30 U.S.C. 1724(h), which covers both "demands" and "orders issued by the Secretary or a delegated State" that are "subject to administrative appeal in accordance with the regulations of the Secretary."

Comments—Several commenters objected to our decision to include subsection (2)(i) in the definition of "order" which states that orders do not include nonmandatory valuation determinations. Some commenters felt that defining a valuation determination that does not have mandatory or ordering language to not be an appealable "order" conflicts with other sections of MMS valuation regulations that allow lessees to request valuation determinations, such as 30 CFR 206.257(f). The commenters felt that under the current regulations, all valuation determinations must be mandatory. One commenter stated that the definition creates "two types of valuation determinations, those that contain mandatory or ordering language and those that do not. Only those that contain mandatory or ordering language would be appealable." We received similar comments regarding our proposal to make nonmandatory policy determinations non-appealable. One commenter stated that subpoenas that do not meet the requirements of 30 U.S.C. 1724(d)(2) should be appealable.

Response—We have provided that an order is appealable only when the document "contains mandatory or ordering language"—in other words, when the disputed legal issues and the facts involved are sufficiently definite to allow for meaningful adjudication. As we stated in the proposed rule, we do not consider advice or guidance contained in a nonmandatory valuation determination to be an "order" because it does not compel anyone to take particular action. Likewise, general policy guidance contained in a letter to payors does not contain mandatory language requiring lessees to do anything. If the advice or guidance does not require the lessee to do anything, there is nothing to appeal.

For example, it is possible for a lessee to first receive a "Dear Payor" letter or valuation determination with general advice, next a request or subpoena for documents that would enable the Government to evaluate whether the lessee has followed that advice, and, finally, an order applying the Government's understanding of the law and facts that could be tested in an administrative appeal. Lastly, we do not believe that making nonmandatory valuation determinations non-appealable conflicts with other valuation regulations. Those regulations allow lessees to *request* a valuation determination. If MMS issues a binding determination under those rules in response to the request, then such a determination is appealable. Therefore, for the reasons explained above, we are not changing the definition of order to make nonmandatory advice and guidance appealable.

We disagree with the comment that we should define subpoenas as being appealable orders. As we stated in the preamble, subpoenas are enforceable directly by the United States Government in Federal district court under 30 U.S.C. 1717(b), and are not subject to administrative appeal. Nothing in section 1724(d)(2) changes that fact. Therefore, they also are not appealable "orders," and we are not changing the rule as the commenter suggested.

Because the purpose of this subpart is to implement the RSFA decision deadlines and rules of decision in 30 U.S.C. 1724(h)(1) and (2), and is not part of a general appeals provision as proposed, we have narrowed the definition of "order" for purposes of this subpart only. That definition makes clear that orders under this subpart are only those orders that involve either monetary obligations or nonmonetary obligations under Federal oil and gas leases and therefore subject to 30 U.S.C. 1724(h)(1) and (2) as enacted by RSFA.

We also have revised the proposed definition of order to clarify that order does not include a Notice of Noncompliance or Notice of Civil Penalty issued under the provisions of FOGRMA section 109, 30 U.S.C. 1719, and implementing regulations at 30 CFR

part 241. Nor does order include a decision of an administrative law judge following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty under FOGRMA section 109(e), 30 U.S.C. 1719(e), and associated regulations. Likewise, order does not include a decision of the IBLA on appeal from a decision of an administrative law judge following a hearing on the record. This follows from the first sentence of 30 U.S.C. 1724(h)(1), which establishes that the RSFA time of decision and rule of decision requirements cover "demands or orders issued by the Secretary or a delegated State" that are "subject to administrative appeal in accordance with the regulations of the Secretary." FOGRMA civil penalty assessments result from an entirely different process that is prescribed separately by statute.

Civil penalty assessments do not result from administratively appealable MMS or delegated State orders. Instead, FOGRMA section 109(e) prescribes that no civil penalty may be assessed until a person has been given an opportunity for a "hearing on the record"—*i.e.*, a formal trial-type hearing before an administrative law judge, which must be conducted under Administrative Procedure Act provisions at 5 U.S.C. 554, 556, and 557. The rules at 30 CFR part 241 implement the statutory requirements of those sections regarding adjudication and agency review.

It appears plain that Congress did not intend for the RSFA time of decision and rule of decision requirements to cover FOGRMA civil penalty proceedings. RSFA itself is primarily an amendment to FOGRMA with respect to Federal leases. Had Congress intended to change the statutory civil penalty procedures, it knew how to do so and could have done so. There is no mention of any intent to include civil penalty proceedings within the 30 U.S.C. 1724(h) requirements. Moreover, the purpose of section 1724(h) was to address perceived problems with MMS's administrative appeal process that are unrelated to civil penalty proceedings.

Comment—We did not receive any comments on the definition of "party."

Response—Even though we did not receive any comments, we revised the definition of "party" to delete the reference to persons who file intervention briefs and to make other changes necessary to reflect that we are not finalizing the entire proposed rule at this time.

Comments—We did not receive any comments on the definition of "notice of an order."

Response—Even though we did not receive any comments, we revised the definition of "notice of an order" to delete the reference to 30 CFR part 242 because we are not finalizing that part of the proposed rule at this time.

Comments—We received comments stating that we should include the RSFA definition of "demand" in our final rule.

Response—We disagree. The portions of the proposed rule that we are making final do not use the term "demand." The substance of what RSFA defines as a "demand" is encompassed within orders that are subject to this subpart. Therefore, it is not necessary to define "demand" separately in this rule.

Section 4.904 When Does My Appeal Commence and End?

Comments—Several commenters suggested that an appeal should commence, for purposes of calculating the beginning of the 33-month period under section 1724(h)(1), on the date an MMS order is received by the recipient. Some commenters stated that they believe that under administrative law principles, an agency order that directs a person to take action starts the person's appellate rights. Thus, they argue that our definition of "commence" discourages an appellant from exercising those rights and compromises administrative due process in order to delay commencement of an appeal until we receive all of the items required in the proposed rule. One commenter believes that the definition for "commencement" under RSFA applies to the appeals process.

Response—Although we are not finalizing the section of the proposed rule that these comments were directed to at this time, the comments are equally applicable to this section, which was proposed as section 4.971. We recognize both that the MMS order is effective when it is received and that a recipient may have to wait more than 33 months from that date for a decision by DOI because an appeal will not commence under this rule until MMS receives the notice of appeal and statement of reasons under former 30 CFR part 290, before the new revised 30 CFR part 290 subpart B, promulgated with this rulemaking, became effective. It is the recipient of the order who "commences" an appeal, not DOI. Until DOI has received a Notice of Appeal, there is no dispute to be adjudicated, and until DOI has received a Statement of Reasons giving some reasons for the appellant's disagreement with the order, it cannot evaluate whether the appellant's disagreement has any merit. Because the recipient of the order controls when these items are submitted, we believe it is a reasonable interpretation of section 1724(h)(1) that the 33-month period begins to run when MMS has received at least minimally sufficient documentation to begin the process of deciding the appeal. We also believe that this interpretation enhances the decision-making process.

We have remedied this problem under the new 30 CFR part 290 subpart B in section 290.109(b) and (c). Under the new subpart B, you may request an extension of time to file your statement of reasons if you agree to extend the RSFA time of decision requirement under 30 U.S.C. 1724(h)(1). (Under 30 CFR 290.105(b), there is no extension of time to file a notice of appeal.) MMS recognizes that different amounts of time may be necessary for appellants to prepare their written submissions in different cases, depending on the number and complexity of issues, the time needed to compile relevant facts and documents, etc. However, MMS believes that additional time needed in more complicated cases should not operate to the agency's prejudice. At the same time, it is in the interest of all parties to know relatively early if a lessee or designee plans to contest an order, and to provide a "bright line" for commencement of the appeal. Hence, after the effective date of the new 30 CFR part 290 subpart B and this section, your appeal commences for purposes of section 4.906 and 30 U.S.C. 1724(h) when you file your notice of appeal. If you then need further time to prepare your statement of reasons or briefs, you must agree to extend the 33-month period prescribed in 30 U.S.C. 1724(h)(1).

Before the adoption of this rule, however, MMS received numerous appeals in which various extensions of time to file statements of reasons were granted, but in which a corresponding agreement by the appellant to extend the RSFA 33-month period was not required and was not automatic. Hence, for the reasons described above, MMS believes the best reading of congressional intent is to regard the appeal as having commenced for RSFA purposes at the later of the date the notice of appeal was filed or the date the initial statement of reasons was received.

If MMS were to adopt the commenters' suggestion that an appeal "commenced" when the order was received, several weeks, or even months, of the 33-month period could be consumed without DOI being able to either decide the order was correct or grant relief if it decided otherwise. Especially in complicated cases, this

loss of time could seriously disadvantage DOI's ability to consider the merits of the appeal.

Moreover, we believe the commenter has misconstrued RSFA's definition of "commencement." As explained in the preamble to the proposed rule, RSFA did not define "commencement" for purposes of the time of decision requirement in 30 U.S.C. 1724(h)(1) applicable to "administrative proceedings." RSFA did define "commence" "with respect to a judicial proceeding" and "with respect to a demand." 30 U.S.C. 1702(20). However, the definition of "commence" under 1702(20) clearly does not encompass "administrative proceedings" under 30 U.S.C. 1724(h) or 1702(18). Rather, "commence" under section 1702(20) deals with the "commencement" of judicial proceedings or demands for purposes of the RSFA 7-year limitations period under section 4(a), 30 U.S.C. 1724(b). Accordingly, it is necessary for us in this proposed rule to define when your appeal "commenced" for purposes of section 1724(h).

We have therefore decided not to adopt the commenters' position.

Section 4.906 What If the Department Does Not Issue a Decision by the Date My Appeal Ends?

Comments—The only comments received regarding this section as proposed (section 4.956) (other than the comments regarding "commenced" and the definition of "monetary obligation" discussed above) were from the solid minerals industry. The trade association commenter and individual companies again requested that DOI make the RSFA rule of decision in this section applicable to appeals involving solid mineral leases.

Response—For the reasons set forth in the preamble to the proposed rule, we have decided not to make this section applicable to solid mineral leases. We do not believe that there is any benefit in imposing a mandatory decision where DOI has not been statutorily directed to do so.

We have, however, made changes necessary to reflect the fact that we are not publishing the proposed rule in its entirety at this time. Those changes would include provisions that refer to appeals to the MMS Director under 30 CFR part 290 before 30 CFR part 290 subpart B became effective, appeals to the MMS Director under the new 30 CFR part 290 subpart B (after this subpart became effective) and appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this subpart.

Section 4.908 What Is the Administrative Record for My Appeal If It Is Deemed Decided?

Comments—We received no comments on this section.

Response—Even though we did not receive any comments, we made changes necessary to reflect the fact that we are not finalizing the entire proposed rule at this time. Those changes would include provisions that refer to the record in appeals to the MMS Director under 30 CFR part 290 before 30 CFR part 290 subpart B became effective, appeals to the MMS Director under the new 30 CFR part 290 subpart B and the record in appeals to the IBLA under 43 CFR part 4 subpart E, both before and after the effective date of this rule.

Section 4.909 How Do I Request an Extension of Time?

Comments—We received one comment on this section (proposed section 4.958) from an industry representative and one from a trade association. The industry commenter felt that the rule should grant requests for extensions of time automatically, rather than leave it to the discretion of the official to whom the request is submitted. The trade association commenter felt that DOI should "freely" grant requests. The commenter also felt that we should make clear that parties could ask for extensions of time for any reason, including the filing of pleadings.

Response—We agree that parties should be able to request extensions of time for any reason, including for submissions of pleadings. It was not our intent in the proposed rule to restrict such requests. Therefore, to clarify that parties may request extensions for any purpose, we modified this section by eliminating the language in proposed paragraph (a) that stated parties could request an extension "to meet any filing requirement under this subpart, or for DOI to issue a final decision in your appeal." Section (a) now states:

> If you are a party to an appeal subject to this subpart before the IBLA, and you need additional time after an appeal commences for any purpose, you may obtain an extension of time under this section.

With respect to the comment about automatic extensions, although we expect that we will grant these requests liberally, we are not going to bind future officials to granting automatic extensions by rule. RSFA states that the 33-month period may be extended if the Secretary and appellant agree in writing. We do not know what circumstances may exist in any particular case that would lead us to not agree to a requested extension.

IX. Procedural Matters

Regulatory Planning and Review E.O. 12866

This document is not a significant rule and is not subject to review by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an annual effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule does not require the payment of additional revenues. This rule sets out how the Department will review MMS's implementation of royalty and OCS operations policy.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. The primary functions of appealable MMS orders are collecting royalties from the minerals industry and regulating operations of mineral leases on the OCS. Other agency functions do not cover these areas.

(3) This rule does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. The administrative appeals process has no impact on or relation to grants, user fees, loan programs, or the rights and obligations of their recipients.

(4) This rule does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. This rule was developed in consultation with States, tribes, and industry.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Accordingly, a Small Entity Compliance Guide is not required.

This rule will affect three groups of individuals or companies: (1) Indian lessors, (2) lessees and operators on offshore leases, and (3) lessees, payors, and designees on Federal and Indian leases (onshore and offshore). Indian lessors are either tribes or individuals. However, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act, and individuals do not fit the definition of small entities. As for the remaining groups, the majority of lessees, designees, payors, and operators on Federal and Indian onshore leases would be classified as small businesses

according to the definitions in the Small Business Administration Standard Industry Code (SIC). Changes in the rule that could have an economic effect on these groups are the establishment of processing fees for filing a Notice of Appeal and a Statement of Reasons (to the extent that any small businesses are operating on the OCS), posting a bond, and an increase in the maximum civil penalty to $25,000.

Bonding or payment is mandatory for appealed amounts above $10,000 on Federal leases and $1,000 for Indian leases. Appealed amounts less than $10,000 for Federal and $1,000 for Indian leases do not require bonding which typically provides relief to small entities. The ability to demonstrate financial responsibility provides relief of credit charges from surety companies.

The rule changes the maximum civil penalty to up to $25,000 per day for those acts for which FOGRMA allows such a penalty. A larger penalty should not have significant economic impacts because MMS assesses penalties only when business operations have reached a very poor level of conduct. Lessees and other payors may use a variety of remedies including ADR before the assessment of a penalty.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million or more;

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This is an administrative review process; there is no impact on these things. The rule sets a time limit on when an appealed issue must be resolved or decided, and gives relief from maintaining bonds in many instances.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State local or tribal governments or the private sector. This rule does not change the relationship between MMS, IBLA, and State, local, or tribal governments. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (E.O. 12630)

In accordance with Executive Order 12630, the rule does not have significant takings implications. The rule would not take away or restrict an entity's right to appeal or bond orders received from MMS or a delegated State. A takings implication assessment is not required.

Federalism (E.O. 12612)

In accordance with Executive Order 12612, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The rule does not change the role or responsibilities among Federal, State, and local governmental entities. The rule does not relate to the structure and role of States and will not have direct, substantive, or significant effects on States. A Federalism Assessment is not required.

Civil Justice Reform (E.O. 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of §§ 3(a) and 3(b)(2) of the Order. The rule has been reviewed and describes in clear language what is allowed and what is prohibited. The IBLA and MMS have drafted this rule in plain language and have consulted with the Department of the Interior's Office of the Solicitor, RPC Subcommittee, States, and tribes throughout the rulemaking process.

Paperwork Reduction Act

The Office of Management and Budget (OMB) approved the information collection requirements contained in this rule under 44 U.S.C. 3501 *et seq.*, and assigned OMB Control Numbers 1010–0121 and 1010–0122. The burden hours for the reporting requirements in 30 CFR part 290 are approved under OMB Control Number 1010–0121. Under the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. You may obtain a copy of the information collections by contacting the Bureau's Information Collection Clearance Officer at (202) 208–7744.

National Environmental Policy Act

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of 1969 is not required.

Clarity of This Regulation

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with this clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example § 4.904.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

List of Subjects

30 CFR Part 208

Continental shelf, Government contracts, Mineral royalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements, Small businesses, Surety bonds.

30 CFR Part 241

Continental shelf, Government contracts, Indian lands, Mineral royalties, Natural gas, Penalties, Petroleum, Public lands—Mineral resources, Reporting and recordkeeping requirements.

30 CFR Part 243

Coal, Continental shelf, Geothermal energy, Government contracts, Indian lands, Mineral royalties, Natural gas, Petroleum, Public lands—Mineral resources, Surety bonds.

30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Natural gas, Oil and gas development and production, Oil and gas exploration,

Oil and gas reserves, Penalties, Petroleum, Pipelines, Public lands—Mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

30 CFR Part 290

Administrative practice and procedure.

43 CFR Part 4

Administrative practice and procedures, Continental Shelf, Mineral royalties, Natural Gas, Petroleum, Public Lands—mineral resources.

Sylvia V. Baca,

Acting Assistant Secretary—Land and Minerals Management.

John Berry,

Assistant Secretary for Policy, Management and Budget.

Kevin Gover,

Assistant Secretary for Indian Affairs.

For the reasons set out in the preamble, MMS and OHA are amending 30 CFR Parts 208, 241, 243, 250, and 290; reserving 30 CFR part 242 and adding 43 CFR part 4, subpart J as follows:

TITLE 30—MINERAL RESOURCES

PART 208—SALE OF FEDERAL ROYALTY OIL

1. The authority citation for part 208 is revised to read as follows:

Authority: 5 U.S.C. 301 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 41 U.S.C. 601 *et seq.*; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

2. In § 208.2, new definitions are added in alphabetical order to read as follows:

§ 208.2 Definitions.

* * * * *

Contracting officer means the Director, his or her delegate, or the person designated under a royalty oil purchase contract.

* * * * *

Contracting officer's decision means an MMS order or decision that a contracting officer issues under this part to a purchaser of oil under a royalty oil purchase contract.

* * * * *

3. Section 208.16 is revised to read as follows:

§ 208.16 How to appeal a contracting officer's decision that you receive.

If you receive a contracting officer's decision, you may:

(a) Appeal that decision to the Board of Contract Appeals in the Office of Hearings and Appeals, Office of the Secretary, in accordance with the procedures provided in 43 CFR part 4, subpart C; or

(b) File an action in the United States Court of Federal Claims.

PART 241—PENALTIES

4. The authority citation for part 241 continues to read as follows:

Authority: 25 U.S.C 396 *et seq.*; 25 U.S.C. 396a *et seq.*; 25 U.S.C. 2101 *et seq.*; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351 *et seq.*; 30 U.S.C. 1001 *et seq.*; 30 U.S.C. 1701 *et seq.*; 43 U.S.C. 1301 *et seq.*; 43 U.S.C. 1331 *et seq.*; and 43 U.S.C. 1801 *et seq.*;

§ 241.20 [Removed]

5. Section 241.20 is removed and subpart A is reserved.

6. Subpart B is revised to read as follows:

Subpart B—Penalties for Federal and Indian Oil and Gas Leases

Definitions

241.50 What definitions apply to this subpart?

Penalties after a Period To Correct

241.51 What may MMS do if I violate a statute, regulation, order, or lease term relating to a Federal or Indian oil and gas lease?
241.52 What if I correct the violation?
241.53 What if I do not correct the violation?
241.54 How may I request a hearing on the record on a Notice of Noncompliance?
241.55 Does my request for a hearing on the record affect the penalties?
241.56 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

Penalties Without a Period To Correct

241.60 May I be subject to penalties without prior notice and an opportunity to correct?
241.61 How will MMS inform me of violations without a period to correct?
241.62 How may I request a hearing on the record on a Notice of Noncompliance regarding violations without a period to correct?
241.63 Does my request for a hearing on the record affect the penalties?
241.64 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

General Provisions

241.70 How does MMS decide what the amount of the penalty should be?
241.71 Does the penalty affect whether I owe interest?
241.72 How will the Office of Hearings and Appeals conduct the hearing on the record?
241.73 How may I appeal the Administrative Law Judge's decision?
241.74 May I seek judicial review of the decision of the Interior Board of Land Appeals?
241.75 When must I pay the penalty?
241.76 Can MMS reduce my penalty once it is assessed?
241.77 How may MMS collect the penalty?

Criminal Penalties

241.80 May the United States criminally prosecute me for violations under Federal and Indian oil and gas leases?

Subpart B—Penalties for Federal and Indian Oil and Gas Leases

Definitions

§ 241.50 What definitions apply to this subpart?

The terms used in this subpart have the same meaning as in 30 U.S.C. 1702.

Penalties After a Period To Correct

§ 241.51 What may MMS do if I violate a statute, regulation, order, or lease term relating to a Federal or Indian oil and gas lease?

(a) If we believe that you have not followed any requirement of a statute, regulation, order, or terms of a lease for any Federal or Indian oil or gas lease, we may send you a Notice of Noncompliance telling you what the violation is and what you need to do to correct it to avoid civil penalties under 30 U.S.C. 1719(a) and (b).

(b) We will send the Notice to your address of record as shown in the following table:

For notices of noncompliance to—	The addressee of record is—	And—
(1) A refiner or other party involved in disposition of Federal royalty taken in kind.	The position title, department name and address, or individual name and address in the executed royalty sale contract; or a different position title, department name and address, or individual name and address that the refiner or other party under the executed royalty sale contract identifies in writing for billing purposes; or an agent designated in writing to receive notices of noncompliance.	The refiner or other party must notify MMS in writing of all addressee changes.

For notices of noncompliance to—	The addressee of record is—	And—
(2) Any person required to report oil or gas removed from Federal or Indian leases to the RMP Production Accounting and Auditing System.	The most recent position title, department name and address, or individual name and address that RMP has in its records for the reporter/payor; or an agent designated in writing to receive notices of noncompliance.	The reporter/payor must notify RMP, in writing, of any addressee changes.
(3) A lessee, designee, reporter or payor whose records are subject to audit.	The position title, department name and address, or individual name and address the lessee, designee, reporter or payor identifies in writing at the initiation of the audit; or the most recent addressee that the lessee, designee, reporter or payor specified in writing; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor must notify MMS of any addressee changes.
(4) A reporter reporting on the "Report of Sales and Royalty Remittance" (Form MMS–2014).	The most recent position title, department name and address, or individual name and address that the lessee, designee, reporter or payor identifies in writing; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor is responsible for notifying RMP in writing of any addressee changes.
(5) A lessee, designee, reporter or payor who remits rental and bonuses from nonproducing Federal leases.	The most recent position title, department name and address, or individual name and address maintained in RMP records; or an agent designated in writing to receive notices of noncompliance.	The lessee, designee, reporter or payor is responsible for notifying RMP in writing of any addressee changes.

(c) We will serve Notices of Noncompliance by using registered mail or personal service.

§ 241.52 What if I correct the violation?

The matter will be closed if you correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice (or within a longer time period specified in the Notice).

§ 241.53 What if I do not correct the violation?

(a) We may send you a Notice of Civil Penalty if you do not correct all of the violations identified in the Notice of Noncompliance within 20 days after you receive the Notice of Noncompliance (or within a longer time period specified in that Notice). The Notice of Civil Penalty will tell you how much penalty you must pay. The penalty may be up to $500 per day, beginning with the date of the Notice of Noncompliance, for each violation identified in the Notice of Noncompliance for as long as you do not correct the violations.

(b) If you do not correct all of the violations identified in the Notice of Noncompliance within 40 days after you receive the Notice of Noncompliance (or 20 days following the expiration of a longer time period specified in that Notice), we may increase the penalty to up to $5,000 per day, beginning with the date of the Notice of Noncompliance, for each violation for as long as you do not correct the violations.

§ 241.54 How may I request a hearing on the record on a Notice of Noncompliance?

You may request a hearing on the record on a Notice of Noncompliance by filing a request within 30 days of the date you received the Notice of Noncompliance with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You may do this regardless of whether you correct the violations identified in the Notice of Noncompliance.

§ 241.55 Does my request for a hearing on the record affect the penalties?

(a) If you do not correct the violations identified in the Notice of Noncompliance, the penalties will continue to accrue even if you request a hearing on the record.

(b) You may petition the Hearings Division (Departmental) of the Office of Hearings and Appeals, to stay the accrual of penalties pending the hearing on the record and a decision by the Administrative Law Judge under § 241.72.

(1) You must file your petition within 45 calendar days of receiving the Notice of Noncompliance.

(2) To stay the accrual of penalties, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 243, subpart B, or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 243, subpart C, for the principal amount of any unpaid amounts due that are the subject of the Notice of Noncompliance, including interest thereon, plus the amount of any penalties accrued before the date a stay becomes effective.

(3) The Hearings Division will grant or deny the petition under 43 CFR 4.21(b).

§ 241.56 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

(a) You may request a hearing on the record to challenge only the amount of a civil penalty when you receive a Notice of Civil Penalty, if you did not previously request a hearing on the record under § 241.54. If you did not request a hearing on the record on the Notice of Noncompliance under § 241.54, you may not contest your underlying liability for civil penalties.

(b) You must file your request within 10 days after you receive the Notice of Civil Penalty with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

Penalties Without a Period To Correct

§ 241.60 May I be subject to penalties without prior notice and an opportunity to correct?

The Federal Oil and Gas Royalty Management Act sets out several specific violations for which penalties accrue without an opportunity to first correct the violation.

(a) Under 30 U.S.C. 1719(c), you may be subject to penalties of up to $10,000 per day per violation for each day the violation continues if you:

(1) Knowingly or willfully fail to make any royalty payment by the date specified by statute, regulation, order or terms of the lease;

(2) Fail or refuse to permit lawful entry, inspection, or audit; or

(3) Knowingly or willfully fail or refuse to notify the Secretary, within 5 business days after any well begins production on a lease site or allocated to a lease site, or resumes production in the case of a well which has been off

production for more than 90 days, of the date on which production has begun or resumed.

(b) Under 30 U.S.C. 1719(d), you may be subject to civil penalties of up to $25,000 per day for each day each violation continues if you:

(1) Knowingly or willfully prepare, maintain, or submit false, inaccurate, or misleading reports, notices, affidavits, records, data, or other written information;

(2) Knowingly or willfully take or remove, transport, use or divert any oil or gas from any lease site without having valid legal authority to do so; or

(3) Purchase, accept, sell, transport, or convey to another person, any oil or gas knowing or having reason to know that such oil or gas was stolen or unlawfully removed or diverted.

§ 241.61 How will MMS inform me of violations without a period to correct?

We will inform you of violations without a period to correct by issuing a Notice of Noncompliance explaining what the violation is and how to correct it. We also will send you a Notice of Civil Penalty stating the amount of the penalty. The Notice of Noncompliance and Notice of Civil Penalty may be issued simultaneously. We will send the Notice of Noncompliance and the Notice of Civil Penalty to your address of record under § 241.51(b) using the means of service specified under § 241.51(c).

§ 241.62 How may I request a hearing on the record on a Notice of Noncompliance regarding violations without a period to correct?

You may request a hearing on the record of a Notice of Noncompliance regarding violations without a period to correct by filing a request within 30 days after you receive the Notice of Noncompliance with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. You may do this regardless of whether you correct the violations identified in the Notice of Noncompliance.

§ 241.63 Does my request for a hearing on the record affect the penalties?

(a) If you do not correct the violations identified in the Notice of Noncompliance regarding violations without a period to correct, the penalties will continue to accrue even if you request a hearing on the record.

(b) You may ask the Hearings Division (Departmental) to stay the accrual of penalties pending the hearing on the record and a decision by the Administrative Law Judge under § 241.72.

(1) You must file your petition within 45 calendar days after you receive the Notice of Noncompliance.

(2) To stay the accrual of penalties, you must post a bond or other surety instrument using the same standards and requirements as prescribed in 30 CFR part 243, subpart B, or demonstrate financial solvency using the same standards and requirements as prescribed in 30 CFR part 243, subpart C, for the principal amount of any unpaid amounts due that are the subject of the Notice of Noncompliance, including interest thereon, plus the amount of any penalties accrued before the date a stay becomes effective.

(3) The Hearings Division will grant or deny the petition under 43 CFR 4.21(b).

§ 241.64 May I request a hearing on the record regarding the amount of a civil penalty if I did not request a hearing on the Notice of Noncompliance?

(a) You may request a hearing on the record to challenge only the amount of a civil penalty when you receive a Notice of Civil Penalty regarding violations without a period to correct, if you did not previously request a hearing on the record under § 241.62. If you did not request a hearing on the record on the Notice of Noncompliance under § 241.62, you may not contest your underlying liability for civil penalties.

(b) You must file your request within 10 days after you receive Notice of Civil Penalty with the Hearings Division (Departmental), Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203.

General Provisions

§ 241.70 How does MMS decide what the amount of the penalty should be?

We determine the amount of the penalty by considering the severity of the violations, your history of compliance, and if you are a small business.

§ 241.71 Does the penalty affect whether I owe interest?

(a) The penalties under this part are in addition to interest you may owe on any underlying underpayments or unpaid debt.

(b) If you do not pay the penalty by the date required under § 241.75(d), MMS will assess you late payment interest on the penalty amount at the same rate interest is assessed under 30 CFR 218.54.

§ 241.72 How will the Office of Hearings and Appeals conduct the hearing on the record?

If you request a hearing on the record under §§ 241.54, 241.56, 241.62 or 241.64, the hearing will be conducted by a Departmental Administrative Law Judge from the Office of Hearings and Appeals. After the hearing, the Administrative Law Judge will issue a decision in accordance with the evidence presented and applicable law.

§ 241.73 How may I appeal the Administrative Law Judge's decision?

If you are adversely affected by the Administrative Law Judge's decision, you may appeal that decision to the Interior Board of Land Appeals under 43 CFR part 4, subpart E.

§ 241.74 May I seek judicial review of the decision of the Interior Board of Land Appeals?

Under 30 U.S.C. 1719(j), you may seek judicial review of the decision of the Interior Board of Land Appeals. A suit for judicial review in the District Court will be barred unless filed within 90 days after the final order.

§ 241.75 When must I pay the penalty?

(a) You must pay the amount of the Notice of Civil Penalty issued under §§ 241.53 or 241.61, if you do not request a hearing on the record under § 241.54, § 241.56, § 241.62, or § 241.64.

(b) If you request a hearing on the record under § 241.54, § 241.56, § 241.62, or § 241.64, but you do not appeal the determination of the Administrative Law Judge to the Interior Board of Land Appeals under § 241.73, you must pay the amount assessed by the Administrative Law Judge.

(c) If you appeal the determination of the Administrative Law Judge to the Interior Board of Land Appeals, you must pay the amount assessed in the IBLA decision.

(d) You must pay the penalty assessed within 40 days after:

(1) You received the Notice of Civil Penalty, if you did not request a hearing on the record under either § 241.54, § 241.56, § 241.62, or § 241.64;

(2) You received an Administrative Law Judge's decision under § 241.72, if you obtained a stay of the accrual of penalties pending the hearing on the record under § 241.55(b) or § 241.63(b) and did not appeal the Administrative Law Judge's determination to the IBLA under § 241.73;

(3) You received an IBLA decision under § 241.73 if the IBLA continued the stay of accrual of penalties pending its decision and you did not seek judicial review of the IBLA's decision; or

(4) A final non-appealable judgment of a court of competent jurisdiction is entered, if you sought judicial review of the IBLA's decision and the Department or the appropriate court suspended compliance with the IBLA's decision pending the adjudication of the case.

(e) If you do not pay, that amount is subject to collection under the provisions of § 241.77.

§ 241.76 Can MMS reduce my penalty once it is assessed?

Under 30 U.S.C. 1719(g), the Director or his or her delegate may compromise or reduce civil penalties assessed under this part.

§ 241.77 How may MMS collect the penalty?

(a) MMS may use all available means to collect the penalty including, but not limited to:

(1) Requiring the lease surety, for amounts owed by lessees, to pay the penalty;

(2) Deducting the amount of the penalty from any sums the United States owes to you; and

(3) Using judicial process to compel your payment under 30 U.S.C. 1719(k).

(b) If the Department uses judicial process, or if you seek judicial review under § 241.74 and the court upholds assessment of a penalty, the court shall have jurisdiction to award the amount assessed plus interest assessed from the date of the expiration of the 90-day period referred to in § 241.74. The amount of any penalty, as finally determined, may be deducted from any sum owing to you by the United States.

Criminal Penalties

§ 241.80 May the United States criminally prosecute me for violations under Federal and Indian oil and gas leases?

If you commit an act for which a civil penalty is provided at 30 U.S.C. 1719(d) and § 241.60(b), the United States may pursue criminal penalties as provided at 30 U.S.C. 1720, in addition to any authority for prosecution under other statutes.

8. The heading of part 242 is revised to read as follows.

PART 242—ORDERS [RESERVED]

9. Part 243 is revised to read as follows:

PART 243—SUSPENSIONS PENDING APPEAL AND BONDING—ROYALTY MANAGEMENT PROGRAM

Subpart A—General Provisions

Sec.

243.1 What is the purpose of this part?
243.2 What leases are subject to this part?
243.3 What definitions apply to this part?
243.4 How do I suspend compliance with an order?
243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?
243.6 When must I or another person meet the bonding or financial solvency requirements under this part?
243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?
243.8 When will MMS suspend my obligation to comply with an order?
243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?
243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?
243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?
243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

Subpart B—Bonding Requirements

243.100 What standards must my MMS-specified surety instrument meet?
243.101 How will MMS determine the amount of my bond or other surety instrument?

Subpart C—Financial Solvency Requirements

243.200 How do I demonstrate financial solvency?
243.201 How will MMS determine if I am financially solvent?
243.202 When will MMS monitor my financial solvency?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C. 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart A—General Provisions

§ 243.1 What is the purpose of this part?

This part applies to you if you are a lessee or recipient of an order. This part explains:

(a) How you may suspend compliance with an order that you (or your designee if you are a lessee) have appealed under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, or under 30 CFR part 290, subpart b; and

(b) When you or another person acting on your behalf must submit a bond or other surety or demonstrate financial solvency.

§ 243.2 What leases are subject to this part?

This part applies to all Federal mineral leases onshore and on the Outer Continental Shelf (OCS), and to all federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands.

§ 243.3 What definitions apply to this part?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Designee means the person designated by a lessee under § 218.52 of this chapter to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease, or any person to whom all or part of the lessee's interest or operating rights in a lease has been assigned.

MMS bond-approving officer means the Associate Director for Royalty Management or an official to whom the Associate Director delegates that responsibility.

MMS-specified surety instrument means an MMS-specified administrative appeal bond, an MMS-specified irrevocable letter of credit, a Treasury book-entry bond or note, or a financial institution book-entry certificate of deposit.

Notice of order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Order means an order appealable under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, under 30 CFR part 290 subpart B, or under 30 CFR part 208.

Person means any individual, firm, corporation, association, partnership, consortium, or joint venture.

§ 243.4 How do I suspend compliance with an order?

(a) If you timely appeal an order, and if that order or portion of that order:

(1) Requires you to make a payment, and you want to suspend compliance with that order, you must post a bond or other surety instrument or demonstrate financial solvency under this part, except as provided in paragraph (b) of this section; or

(2) Does not require you to make a payment, compliance with that order is

suspended when you meet all requirements to file that appeal.

(b) You need not meet the requirements of paragraph (a) of this section if:

(1) The order is an assessment; or

(2) Another person agrees to fulfill these requirements on your behalf under § 243.5.

§ 243.5 May another person post a bond or other surety instrument or demonstrate financial solvency on my behalf?

Any other person, including a designee, payor, or affiliate, may post a bond or other surety instrument or demonstrate financial solvency under this part on behalf of an appellant required to post a bond or other surety instrument under § 243.4(a)(1).

§ 243.6 When must I or another person meet the bonding or financial solvency requirements under this part?

If you must meet the bonding or financial solvency requirements under § 243.4(a)(1), or if another person is meeting your bonding or financial solvency requirements, then either you or the other person must post a bond or other surety instrument or demonstrate financial solvency within 60 days after you receive the order or the Notice of Order.

§ 243.7 What must a person do when posting a bond or other surety instrument or demonstrating financial solvency on behalf of an appellant?

If you assume an appellant's responsibility to post a bond or other surety instrument or demonstrate financial solvency under § 243.5, you:

(a) Must notify MMS in writing at the address specified in § 243.200(a) that you are assuming the appellant's responsibility under this part;

(b) May not assert that you are not otherwise liable for royalties or other payments under 30 U.S.C. 1712(a), or any other theory, as a defense if MMS calls your bond or requires you to pay based on your demonstration of financial solvency; and

(c) May end your voluntarily-assumed responsibility for posting a bond or other surety instrument only after the appellant under this part either:

(1) Pays or posts a bond or other surety instrument; or

(2) Demonstrates financial solvency.

§ 243.8 When will MMS suspend my obligation to comply with an order?

(a) *Federal leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Federal mineral leases onshore or on the Outer Continental Shelf (OCS), and:

(1) If the amount under appeal is less than $10,000 or does not require payment of a specified amount, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Land Management for onshore leases, and MMS for OCS leases, as collateral for the obligation; or

(2) If the amount under appeal is $10,000 or more, MMS will suspend your obligation to comply with that order if you:

(i) Submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes; or

(ii) Demonstrate financial solvency under subpart C.

(b) *Indian leases.* Subject to paragraph (d) of this section, if you appeal an order regarding the payment and reporting of royalties and other payments due from Indian mineral leases subject to this part, and:

(1) If the amount under appeal is less than $1,000 or does not require payment, MMS will suspend your obligation to comply with the order. MMS will use the lease surety posted with the Bureau of Indian Affairs as collateral for the obligation; or

(2) If the amount under appeal is $1,000 or more, MMS will suspend your obligation to comply with that order if you submit an MMS-specified surety instrument under subpart B of this part within a time period MMS prescribes.

(c) Nothing in this part prohibits you from paying any demanded amount or complying with any other requirement pending appeal. However, voluntarily paying any demanded amount or otherwise complying with any other requirement when suspension of an order is otherwise available under these rules does not create judicially reviewable final agency action under 5 U.S.C. 704.

(d) Regardless of the amount under appeal, MMS may inform you that it will not suspend your obligation to comply with the order under paragraph (a) or (b) of this section because suspension would harm the interests of the United States or the Indian lessor.

§ 243.9 Will MMS continue to suspend my obligation to comply with an order if I seek judicial review in a Federal court?

(a) If you seek judicial review of an IBLA decision or other final action of the Department of the Interior regarding an order, MMS will suspend your obligation to comply with that order pending judicial review if you continue to meet the requirements of this part.

(b) Notwithstanding the provisions of paragraph (a) of this section, MMS may decide that it will not suspend your obligation to comply with an order. MMS will notify you in writing of that decision and the reasons for it.

§ 243.10 When will MMS collect against a bond or other surety instrument or a person demonstrating financial solvency?

(a) This section applies to you if, for an appeal of an order under this part, you:

(1) Maintain a bond or an MMS-specified surety instrument on your own behalf or for another person; or

(2) Have demonstrated financial solvency on your own behalf or for another person.

(b) MMS may initiate collection against the bond or other surety instrument or the person demonstrating financial solvency:

(1) If the MMS Director or the Deputy Commissioner of Indian Affairs decides your appeal adversely to you and you do not pay the amount due or appeal that decision to the IBLA under 43 CFR part 4, subpart E;

(2) If the IBLA, the Director of the Office of Hearings and Appeals, an Assistant Secretary, or the Secretary decides your appeal adversely to you, and you do not pay the amount due or pursue judicial review within 90 days of the decision;

(3) If a court of competent jurisdiction issues a final non-appealable decision adverse to you, and you do not pay the amount due within 30 days of the decision;

(4) If you do not increase the amount of your bond or other surety instrument as required under § 243.101(b), or otherwise fail to maintain an adequate surety instrument in effect, and you do not pay the amount due under the order within 30 days of notice from MMS under § 243.101(b);

(5) If the obligation to comply with an order or decision is not suspended under § 243.8 or § 243.9 and you do not pay the amount required under the order or decision; or

(6) If the MMS bond-approving officer determines that you are no longer financially solvent under § 243.202(c), and you do not pay the order amount or post a bond or other MMS-specified surety instrument under subpart B within 30 days of that determination.

§ 243.11 May I appeal the MMS bond-approving officer's determination of my surety amount or financial solvency?

Any decision on your surety amount under subpart B or your financial solvency under subpart C is final and is not subject to appeal.

§ 243.12 May I substitute a demonstration of financial solvency for a bond posted before the effective date of this rule?

If you appealed an order before June 14, 1999 and you submitted an MMS-specified surety instrument to suspend compliance with that order, you may replace the surety with a demonstration of financial solvency under this part at an administratively convenient time, such as when the surety instrument is due for renewal.

Subpart B—Bonding Requirements

§ 243.100 What standards must my MMS-specified surety instrument meet?

(a) An MMS-specified surety instrument must be in a form specified in MMS instructions. MMS will give you written information and standard forms for MMS-specified surety instrument requirements.

(b) MMS will use a bank-rating service to determine whether a financial institution has an acceptable rating to provide a surety instrument adequate to indemnify the lessor from loss or damage.

(1) Administrative appeal bonds must be issued by a qualified surety company which the Department of the Treasury has approved.

(2) Irrevocable letters of credit or certificates of deposit must be from a financial institution acceptable to MMS with a minimum 1-year period of coverage subject to automatic renewal up to 5 years.

§ 243.101 How will MMS determine the amount of my bond or other surety instrument?

(a) The MMS bond-approving officer may approve your surety if he or she determines that the amount is adequate to guarantee payment. The amount of your surety may vary depending on the form of the surety and how long the surety is effective.

(1) The amount of the MMS-specified surety instrument must include the principal amount owed under the order plus any accrued interest we determine is owed plus projected interest for a 1-year period.

(2) Treasury book-entry bond or note amounts must be equal to at least 120 percent of the required surety amount.

(b) If your appeal is not decided within 1 year from the filing date, you must increase the surety amount to cover additional estimated interest for another 1-year period. You must continue to do this annually on the date your appeal was filed. We will determine the additional estimated interest and notify you of the amount so you can amend your surety instrument.

(c) You may submit a single surety instrument that covers multiple appeals. You may change the instrument to add new amounts under appeal or remove amounts that have been adjudicated in your favor or that you have paid if you:

(1) Amend the single surety instrument annually on the date you filed your first appeal; and

(2) Submit a separate surety instrument for new amounts under appeal until you amend the instrument to cover the new appeals.

Subpart C—Financial Solvency Requirements

§ 243.200 How do I demonstrate financial solvency?

(a) To demonstrate financial solvency under this part, you must submit an audited consolidated balance sheet, and, if requested by the MMS bond-approving officer, up to 3 years of tax returns to the MMS, Debt Collection Section using:

(1) The U.S. Postal Service or private delivery at P.O. Box 5760, MS 3031, Denver, CO 80217–5760; or

(2) Courier or overnight delivery at MS 3031, Denver Federal Center, Bldg. 85, Room A–212, Denver, CO 80225–0165.

(b) You must submit an audited consolidated balance sheet annually, and, if requested, additional annual tax returns on the date MMS first determined that you demonstrated financial solvency as long as you have active appeals, or whenever MMS requests.

(c) If you demonstrate financial solvency in the current calendar year, you are not required to redemonstrate financial solvency for new appeals of orders during that calendar year unless you file for protection under any provision of the U.S. Bankruptcy Code (Title 11 of the United States Code), or MMS notifies you that you must redemonstrate financial solvency.

§ 243.201 How will MMS determine if I am financially solvent?

(a) The MMS bond-approving officer will determine your financial solvency by examining your total net worth, including, as appropriate, the net worth of your affiliated entities.

(b) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is greater than $300 million, you are presumptively deemed financially solvent, and we will not require you to post a bond or other surety instrument.

(c) If your net worth, minus the amount we would require as surety under subpart B for all orders you have appealed is less than $300 million, you must submit the following to the MMS Debt Collection Section by one of the methods in § 243.200(a):

(1) A written request asking us to consult a business-information, or credit-reporting service or program to determine your financial solvency; and

(2) A nonrefundable $50 processing fee:

(i) You must pay the processing fee to us following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments;

(ii) You must submit the fee with your request under paragraph (c)(1) of this section, and then annually on the date we first determined that you demonstrated financial solvency, as long as you are not able to demonstrate financial solvency under paragraph (a) of this section and you have active appeals.

(d) If you request that we consult a business-information or credit-reporting service or program under paragraph (c) of this section:

(1) We will use criteria similar to that which a potential creditor would use to lend an amount equal to the bond or other surety instrument we would require under subpart B;

(2) For us to consider you financially solvent, the business-information or credit-reporting service or program must demonstrate your degree of risk as low to moderate:

(i) If our bond-approving officer determines that the business-information or credit-reporting service or program information demonstrates your financial solvency to our satisfaction, our bond-approving officer will not require you to post a bond or other surety instrument under subpart B;

(ii) If our bond-approving officer determines that the business-information or credit-reporting service or program information does not demonstrate your financial solvency to our satisfaction, our bond-approving officer will require you to post a bond or other surety instrument under subpart B or pay the obligation.

§ 243.202 When will MMS monitor my financial solvency?

(a) If you are presumptively financially solvent under § 243.201(b), MMS will determine your net worth as described under §§ 243.201(b) and (c) to evaluate your financial solvency at least annually on the date we first determined that you demonstrated financial solvency as long as you have

active appeals and each time you appeal a new order.

(b) If you ask us to consult a business-information or credit-reporting service or program under § 243.201(c), we will consult a service or program annually as long as you have active appeals and each time you appeal a new order.

(c) If our bond-approving officer determines that you are no longer financially solvent, you must post a bond or other MMS-specified surety instrument under subpart B.

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

10. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331, *et seq.*

10a. Section 250.1409 is revised to read as follows:

§ 250.1409 What are my appeal rights?

(a) When you receive the Reviewing Officer's final decision, you have 60 days to either pay the penalty or file an appeal in accordance with 30 CFR part 290, subpart A.

(b) If you file an appeal, you must either:

(1) Submit a surety bond in the amount of the penalty to the Regional Adjudication Office in the Region where the penalty was assessed, following instructions that the Reviewing Officer will include in the final decision; or

(2) Notify the Regional Adjudication Office, in the Region where the penalty was assessed, that you want your lease-specific/area-wide bond on file to be used as the bond for the penalty amount.

(c) If you choose the alternative in paragraph (b)(2) of this section, the Regional Director may require additional security (*i.e.*, security in excess of your existing bond) to ensure sufficient coverage during an appeal. In that event, the Regional Director will require you to post the supplemental bond with the regional office in the same manner as under §§ 256.53(d) through (f) of this chapter. If the Regional Director determines the appeal should be covered by a lease-specific abandonment account then you must establish an account that meets the requirements of § 256.56.

(d) If you do not either pay the penalty or file a timely appeal, MMS will take one or more of the following actions:

(1) We will collect the amount you were assessed, plus interest, late payment charges, and other fees as provided by law, from the date you received the Reviewing Officer's final decision until the date we receive payment;

(2) We may initiate additional enforcement, including, if appropriate, cancellation of the lease, right-of-way, license, permit, or approval, or the forfeiture of a bond under this part; or

(3) We may bar you from doing further business with the Federal Government according to Executive Orders 12549 and 12689, and section 2455 of the Federal Acquisition Streamlining Act of 1994, 31 U.S.C. 6101. The Department of the Interior's regulations implementing these authorities are found at 43 CFR part 62, subpart D.

11. Part 290 of subchapter C is revised to read as follows:

PART 290—APPEAL PROCEDURES

Subpart A—Offshore Minerals Management Appeal Procedures

Sec.
290.1 What is the purpose of this subpart?
290.2 Who may appeal?
290.3 What is the time limit for filing an appeal?
290.4 How do I file an appeal?
290.5 Can I obtain an extension for filing my Notice of Appeal?
290.6 Are informal resolutions permitted?
290.7 Do I have to comply with the decision or order while my appeal is pending?
290.8 How do I exhaust my administrative remedies?

Subpart B—Appeals of Royalty Management Program and Delegated State Orders

290.100 What is the purpose of this subpart?
290.101 What leases are subject to this subpart?
290.102 What definitions apply to this subpart?
290.103 Who may file an appeal?
290.104 What may I not appeal under this subpart?
290.105 How do I appeal an order?
290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?
290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?
290.108 How do I appeal to the IBLA?
290.109 How do I request an extension of time?

Authority: 5 U.S.C. 301 *et seq.*; 43 U.S.C. 1331 *et seq.*

Subpart A—Offshore Minerals Management Appeal Procedures

§ 290.1 What is the purpose of this subpart?

The purpose of this subpart is to explain the procedures for appeals of Minerals Management Service (MMS) Offshore Minerals Management (OMM) decisions and orders issued under subchapter B.

§ 290.2 Who may appeal?

If you are adversely affected by an OMM official's final decision or order issued under 30 CFR chapter II, subchapter B, you may appeal that decision or order to the Interior Board of Land Appeals (IBLA). Your appeal must conform with the procedures found in this subpart and 43 CFR part 4, subpart E. A request for reconsideration of an MMS decision concerning a lease bid, authorized in 30 CFR 256.47(e)(3) and 281.21(a)(1), or a deep water field determination, authorized in 30 CFR 203.79(a) and 30 CFR 260.110(d)(2), is not subject to the procedures found in this part.

§ 290.3 What is the time limit for filing an appeal?

You must file your appeal within 60 days after you receive OMM's final decision or order. The 60-day time period applies rather than the time period provided in 43 CFR 4.411(a). A decision or order is received on the date you sign a receipt confirming delivery or, if there is no receipt, the date otherwise documented.

§ 290.4 How do I file an appeal?

For your appeal to be filed, MMS must receive all of the following within 60 days after you receive the decision or order:

(a) A written Notice of Appeal together with a copy of the decision or order you are appealing in the office of the OMM officer that issued the decision or order. You cannot extend the 60-day period for that office to receive your Notice of Appeal; and

(b) A nonrefundable processing fee of $150 paid with the Notice of Appeal.

(1) Identify the order you are appealing on the check or other form of payment you use to pay the processing fee.

(2) You cannot extend the 60-day period for payment of the processing fee.

(3) You must pay the processing fee to MMS following the requirements for making payments found in 30 CFR 218.51. You are not required to use Electronic Funds Transfer (EFT) for these payments.

§ 290.5 Can I obtain an extension for filing my Notice of Appeal?

You cannot obtain an extension of time to file the Notice of Appeal. See 43 CFR 4.411(c).

§ 290.6 Are informal resolutions permitted?

(a) You may seek informal resolution with the issuing officer's next level supervisor during the 60-day period established in § 290.3.

(b) Nothing in this subpart precludes resolution by settlement of any appeal or matter pending in the administrative process after the 60-day period established in § 290.3.

§ 290.7 Do I have to comply with the decision or order while my appeal is pending?

(a) The decision or order is effective during the 60-day period for filing an appeal under § 290.3 unless:

(1) OMM notifies you that the decision or order, or some portion of it, is suspended during this period because there is no likelihood of immediate and irreparable harm to human life, the environment, any mineral deposit, or property; or

(2) You post a surety bond under 30 CFR 250.1409 pending the appeal challenging an order to pay a civil penalty.

(b) This section applies rather than 43 CFR 4.21(a) for appeals of OMM orders.

(c) After you file your appeal, IBLA may grant a stay of a decision or order under 43 CFR 4.21(b); however, a decision or order remains in effect until IBLA grants your request for a stay of the decision or order under appeal.

§ 290.8 How do I exhaust my administrative remedies?

(a) If you receive a decision or order issued under chapter II, subchapter B, you must appeal that decision or order to IBLA under 43 CFR part 4, subpart E to exhaust administrative remedies.

(b) This section does not apply if the Assistant Secretary for Land and Minerals Management or the IBLA makes a decision or order immediately effective notwithstanding an appeal.

Subpart B—Appeals of Royalty Management Program and Delegated States Orders

§ 290.100 What is the purpose of this subpart?

This subpart tells you how to appeal Minerals Management Service (MMS) or delegated State orders concerning reporting to the MMS Royalty Management Program (RMP) and the payment of royalties and other payments due under leases subject to this subpart.

§ 290.101 What leases are subject to this subpart?

This subpart applies to:

(a) All Federal mineral leases onshore and on the Outer Continental Shelf (OCS); and

(b) All federally-administered mineral leases on Indian tribal and individual Indian mineral owners' lands, regardless of the statutory authority under which the lease was issued or maintained.

§ 290.102 What definitions apply to this subpart?

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under regulations at 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Indian lessor means an Indian tribe or individual Indian mineral owner with a beneficial or restricted interest in a property that is subject to a lease issued or administered by the Secretary on behalf of the tribe or individual Indian mineral owner.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a "lease," including any:

(1) Contract;

(2) Net profit share arrangement;

(3) Joint venture; or

(4) Agreement the Secretary approves under the Indian Mineral Development Act, 25 U.S.C. 2101 *et seq.*

Lessee means any person to whom the United States, or the United States on behalf of an Indian tribe or individual Indian mineral owner, issues a lease subject to this subpart, or any person to whom all or part of the lessee's interest or operating rights in a lease subject to this subpart has been assigned.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty-in-kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

(3) The obligations identified in paragraphs (1)(i) and (2)(i) of this definition are nonmonetary obligations. The obligations identified in paragraphs (1)(ii) and (2)(ii), including the requirement to compute the amount of such obligations, are monetary obligations.

Order for purposes of this subpart only, means any document issued by the MMS Director, MMS RMP, or a delegated State that contains mandatory or ordering language that requires the recipient to do any of the following for any lease subject to this subpart: report, compute, or pay royalties or other obligations, report production, or provide other information.

(1) Order includes:

(i) An order to pay or to compute and pay; and

(ii) An MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including a valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or

(iv) A Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal, and any person who files a Notice of Joinder in an appeal under this subpart.

§ 290.103 Who may file an appeal?

(a) If you receive an order that adversely affects you or your lessee, you may appeal that order except as provided under § 290.104.

(b) If you are a lessee and you receive a Notice of Order, and if you contest the order, you may either appeal the order

or join in your designee's appeal under § 290.106.

§ 290.104 What may I not appeal under this subpart?

You may not appeal:

(a) An action that is not an order, as defined in this subpart; or

(b) A determination of the surety amount or financial solvency under 30 CFR part 243, subparts B or C.

§ 290.105 How do I appeal an order?

(a) You may appeal an order to the Director, Minerals Management Service (MMS Director), by filing a Notice of Appeal in the office of the official issuing the order within 30 days from service of the order.

(1) Within the same 30-day period, you must file in the office of the official issuing the order a statement of reasons or written arguments or briefs that include the arguments on the facts or laws that you believe justify reversal or modification of the order.

(2) If you are a designee, when you file your Notice of Appeal you must serve your Notice of Appeal on the lessees for the leases in the order you appealed.

(b) You may not request and will not receive an extension of time for filing the Notice of Appeal.

(c) If the office of the official issuing the order does not receive the Notice of Appeal within the time provided in paragraph (a) of this section, the Notice of Appeal will be considered timely if the office of the official issuing the order receives:

(1) The Notice of Appeal not later than 10 days after the required filing date; and

(2) The officer with whom the Notice of Appeal must be filed determines that the Notice of Appeal was transmitted to the proper office before the filing deadline in paragraph (a) of this section.

(d) If the Notice of Appeal is filed after the grace period provided in paragraph (c) of this section and was not transmitted to the proper office before the filing deadline in paragraph (a) of this section, the MMS Director will not consider the Notice of Appeal and the case will be closed.

(e) The officer with whom the Notice of Appeal is filed will send the appeal and accompanying papers to the MMS Director.

(f) The MMS Director will review the record and render a decision in the case.

(g) If an order involves Indian leases, the Deputy Commissioner of Indian Affairs will exercise the functions vested in the MMS Director.

§ 290.106 How do lessees join a designee's appeal and how does joinder affect the appeal?

(a) If you are a lessee, and your designee files an appeal under § 290.103, you may join in that appeal within 30 days after you receive your designee's Notice of Appeal under § 290.105(a)(2) by filing a Notice of Joinder with the office or official that issued the order.

(b) If you join in an appeal under paragraph (a) of this section, you are deemed to appeal the order jointly with the designee, but the designee must fulfill all requirements imposed on appellants under this subpart and 43 CFR part 4, subparts E and J. You may not file submissions or pleadings separately from the designee.

(c) If you are a lessee and you neither appeal nor join in your designee's appeal under this section, your designee's actions with respect to the appeal and any decisions in the appeal bind you.

(d) If you are a designee and you decide to discontinue participation in the appeal, you must serve written notice within 30 days before the next submission or pleading is due on:

(1) All lessees who have joined in the appeal under paragraph (a) of this section;

(2) The office or officer with whom any subsequent submissions or pleadings must be filed, including the IBLA; and

(3) All other parties to the appeal.

(e) If you have joined in the appeal under paragraph (a) of this section, and if the designee notifies you under paragraph (d) of this section that it declines to further pursue the appeal, you become an appellant and must then meet all requirements of this subpart and 43 CFR part 4, subparts E and J, as the appellant.

§ 290.107 Where are the rules concerning the effect of the Department not issuing a decision in my appeal within the statutory time frame?

If your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, the rules concerning the effect of the Department not issuing a final decision in your appeal within the 33-month period prescribed under 30 U.S.C. 1724(h) are located in 43 CFR part 4, subpart J.

§ 290.108 How do I appeal to the IBLA?

Any party to a case adversely affected by a final decision of the MMS Director or the Deputy Commissioner of Indian Affairs under this subpart shall have a right of appeal to the IBLA under the procedures provided in 43 CFR part 4, subpart E.

§ 290.109 How do I request an extension of time?

(a) If you are a party to an appeal under this subpart, and you need additional time after the appeal commences under 43 CFR 4.904 for any purpose:

(1) You may obtain an extension of time under this section; and

(2) You must submit a written request for an extension of time to:

(i) The office or official with whom you must file a document before the required filing date; or

(ii) If you are not seeking an extension of time to file a document, to the office or official before whom the appeal is pending.

(b) If you are an appellant, and if your appeal involves monetary or nonmonetary obligations under Federal oil and gas leases, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under 30 U.S.C. 1724(h) and 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(c) If you are any other party to an appeal involving monetary or nonmonetary obligations under Federal oil and gas leases, the office or official with whom you must file the request may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under 43 CFR 4.906, by the amount of time for which you are requesting an extension.

(d) The office or official with whom you must file your request may decline any request for an extension of time.

(e) You must serve your request on all parties to the appeal.

43 CFR PART 4—DEPARTMENT HEARINGS AND APPEALS PROCEDURES

13. The authority citation for part 4 continues to read as follows:

Authority: R.S. 2478, as amended, 43 U.S.C. sec. 1201, unless otherwise noted.

14. In 43 CFR part 4, subpart J is added to read as follows.

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

4.901 What is the purpose of this subpart?
4.902 What appeals are subject to this subpart?
4.903 What definitions apply to this subpart?
4.904 When does my appeal commence and end?
4.905 What if a due date falls on a day the Department or relevant office is not open for business?

4.906 What if the Department does not issue a decision by the date my appeal ends?
4.907 What if an IBLA decision requires MMS or a delegated State to recalculate royalties or other payments?
4.908 What is the administrative record for my appeal if it is deemed decided?
4.909 How do I request an extension of time?

Authority: 5 U.S.C. 301 *et seq.*; 25 U.S.C. 396 *et seq.*, 396a *et seq.*, 2101 *et seq.*; 30 U.S.C. 181 *et seq.*, 351 *et seq.*, 1001 *et seq.*, 1701 *et seq.*; 31 U.S.C 9701; 43 U.S.C. 1301 *et seq.*, 1331 *et seq.*, and 1801 *et seq.*

Subpart J—Special Rules Applicable to Appeals Concerning Federal Oil and Gas Royalties and Related Matters

§ 4.901 What is the purpose of this subpart?

This subpart tells you how the time limits of 30 U.S.C. 1724(h) apply to appeals subject to this subpart.

§ 4.902 What appeals are subject to this subpart?

(a) This subpart applies to appeals under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B, and 43 CFR part 4, subpart E, of Minerals Management Service (MMS) or delegated State orders or portions of orders concerning payment (or computation and payment) of royalties and other payments due, and delivery or taking of royalty in kind, under Federal oil and gas leases.

(b) This subpart does not apply to appeals of orders, or portions of orders, that

(1) Involve Indian leases or Federal leases for minerals other than oil and gas; or

(2) Relate to Federal oil and gas leases but do not involve a monetary or nonmonetary obligation.

§ 4.903 What definitions apply to this subpart?

For the purposes of this subpart only:

Assessment means any fee or charge levied or imposed by the Secretary or a delegated State other than:

(1) The principal amount of any royalty, minimum royalty, rental, bonus, net profit share or proceed of sale;

(2) Any interest; or

(3) Any civil or criminal penalty.

Delegated State means a State to which MMS has delegated authority to perform royalty management functions under an agreement or agreements under 30 CFR part 227.

Designee means the person designated by a lessee under 30 CFR 218.52 to make all or part of the royalty or other payments due on a lease on the lessee's behalf.

IBLA means the Interior Board of Land Appeals.

Lease means any agreement authorizing exploration for or extraction of any mineral, regardless of whether the instrument is expressly denominated as a "lease," including any:

(1) Contract;

(2) Net profit share arrangement; or

(3) Joint venture.

Lessee means any person to whom the United States issues a Federal oil and gas lease, or any person to whom all or part of the lessee's interest or operating rights in a Federal oil and gas lease has been assigned.

Monetary obligation means a lessee's, designee's or payor's duty to pay, or to compute and pay, any obligation in any order, or the Secretary's duty to pay, refund, offset, or credit the amount of any obligation that is the subject of a decision by the MMS or a delegated State denying a lessee's, designee's, or payor's written request for the payment, refund, offset, or credit. To determine the amount of any monetary obligation, for purposes of the default rule of decision in § 4.906 and 30 U.S.C. 1724(h):

(1) If an order asserts a monetary obligation arising from one issue or type of underpayment that covers multiple leases or production months, the total obligation for all leases or production months involved constitutes a single monetary obligation;

(2) If an order asserts monetary obligations arising from different issues or types of underpayments for one or more leases, the obligations arising from each separate issue, subject to paragraph (1) of this definition, constitute separate monetary obligations; and

(3) If an order asserts a monetary obligation with a stated amount of additional royalties due, plus an order to perform a restructured accounting arising from the same issue or cause as the specifically stated underpayment, the stated amount of royalties due plus the estimated amount due under the restructured accounting, subject to paragraphs (1) and (2) of this definition, together constitutes a single monetary obligation.

Nonmonetary obligation means any duty of a lessee or its designee to deliver oil or gas in kind, or any duty of the Secretary to take oil or gas royalty in kind.

Notice of Order means the notice that MMS or a delegated State issues to a lessee that informs the lessee that MMS or the delegated State has issued an order to the lessee's designee.

Obligation means:

(1) A lessee's, designee's or payor's duty to:

(i) Deliver oil or gas royalty in kind; or

(ii) Make a lease-related payment, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, interest, penalty, civil penalty, or assessment; and

(2) The Secretary's duty to:

(i) Take oil or gas royalty in kind; or

(ii) Make a lease-related payment, refund, offset, or credit, including royalty, minimum royalty, rental, bonus, net profit share, proceeds of sale, or interest.

Order means any document or portion of a document issued by the MMS Director, MMS RMP, or a delegated State, that contains mandatory or ordering language regarding any monetary or nonmonetary obligation under any Federal oil and gas lease or leases.

(1) Order includes but is not limited to the following:

(i) An order to pay;

(ii) A MMS or delegated State decision to deny a lessee's, designee's, or payor's written request that asserts an obligation due the lessee, designee or payor.

(2) Order does not include:

(i) A non-binding request, information, or guidance, such as:

(A) Advice or guidance on how to report or pay, including valuation determination, unless it contains mandatory or ordering language; and

(B) A policy determination;

(ii) A subpoena;

(iii) An order to pay that MMS issues to a refiner or other person involved in disposition of royalty taken in kind; or

(iv) a Notice of Noncompliance or a Notice of Civil Penalty issued under 30 U.S.C. 1719 and 30 CFR part 241, or a decision of an administrative law judge or of the IBLA following a hearing on the record on a Notice of Noncompliance or Notice of Civil Penalty.

Party means MMS, any person who files a Notice of Appeal under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998, 30 CFR part 290 subpart B, or 43 CFR part 4, subpart E, and any person who files a Notice of Joinder in an appeal under 30 CFR part 290, subpart B.

Payor means any person responsible for reporting and paying royalties for Federal oil and gas leases for production before September 1, 1996.

§ 4.904 When does my appeal commence and end?

For purposes of the period in which the Department must issue a final decision in your appeal under § 4.906:

(a) If you filed your Notice of Appeal and initial Statement of Reasons with MMS before August 13, 1996, your appeal commenced on August 13, 1996;

(b) If you filed your Notice of Appeal or initial Statement of Reasons with MMS after August 13, 1996, under 30 CFR part 290, in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition, revised as of July 1, 1998, your appeal commenced on the date MMS received your Notice of Appeal, or if later, the date MMS received your initial Statement of Reasons;

(c) If you filed your Notice of Appeal under 30 CFR part 290, subpart B, your appeal commenced on the date MMS received your Notice of Appeal.

(d) Your appeal ends on the same day of the month of the 33rd calendar month after your appeal commenced under paragraph (a), (b), or (c) of this section, plus the number of days of any applicable time extensions under § 4.909 or 30 CFR 290.109. If the 33rd calendar month after your appeal commenced does not have the same day of the month as the day of the month your appeal commenced, then the initial 33-month period ends on the last day of the 33rd calendar month.

§ 4.905 What if a due date falls on a day the Department or relevant office is not open for business?

If a due date under this subpart falls on a day the relevant office is not open for business (such as a weekend, Federal holiday, or shutdown), the due date is the next day the relevant office is open for business.

§ 4.906 What if the Department does not issue a decision by the date my appeal ends?

(a) If the IBLA or an Assistant Secretary (or the Secretary or the Director of OHA) does not issue a final decision by the date an appeal ends under § 4.904(d), then under 30 U.S.C. 1724(h)(2), the Secretary will be deemed to have decided the appeal:

(1) In favor of the appellant for any nonmonetary obligation at issue in the appeal, or any monetary obligation at issue in the appeal with a principal amount of less than $10,000;

(2) In favor of the Secretary for any monetary obligation at issue in the appeal with a principal amount of $10,000 or more.

(b)(1) If your appeal ends before the MMS Director issues a decision in your appeal, then the provisions of paragraph (a) of this section apply to the monetary and nonmonetary obligations in the order that you contested in your appeal to the Director.

(2) If the MMS Director issues a decision in your appeal before your appeal ends, and if you appealed the Director's decision to IBLA under 43 CFR part 4, subpart E, then the provisions of paragraph (a) of this section apply to the monetary and nonmonetary obligations in the Director's decision that you contested in your appeal to IBLA.

(3) If the MMS Director issues a decision in your appeal, and if you did not appeal the Director's decision to IBLA within the time required under 30 CFR part 290 in effect prior to May 13, 1999 and contained in the 30 CFR, parts 200 to 699, edition revised as of July 1, 1998 (for appeals filed before May 13, 1999 or 30 CFR part 290 subpart B (for appeals filed on or after May 13, 1999 and 43 CFR part 4, subpart E, then the MMS Director's decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application.

(c) If the IBLA issues a decision before the date your appeal ends, that decision is the final decision of the Department and 30 U.S.C. 1724(h)(2) has no application. A petition for reconsideration does not extend or renew the 33-month period.

(d) If any part of the principal amount of any monetary obligation is not specifically stated in an order or MMS Director's decision and must be computed to comply with the order or MMS Director's decision, then the principal amount referred to in paragraph (a) of this section means the principal amount MMS estimates you would be required to pay as a result of the computation required under the order, plus any amount due stated in the order.

§ 4.907 What if an IBLA decision requires MMS or a delegated State to recalculate royalties or other payments?

(a) An IBLA decision modifying an order or an MMS Director's decision and requiring MMS or a delegated State to recalculate royalties or other payments is a final decision in the administrative proceeding for purposes of 30 U.S.C. 1724(h).

(b) MMS or the delegated State must provide to IBLA and all parties any recalculation IBLA requires under paragraph (a) of this section within 60 days of receiving IBLA's decision.

(c) There is no further appeal within the Department from MMS's or the State's recalculation under paragraph (b) of this section.

(d) The IBLA decision issued under paragraph (a) of this section together with recalculation under paragraph (b) of this section are the final action of the Department that is judicially reviewable under 5 U.S.C. 704.

§ 4.908 What is the administrative record for my appeal if it is deemed decided?

If your appeal is deemed decided under § 4.906, the record for your appeal consists of:

(a) The record established in an appeal before the MMS Director;

(b) Any additional correspondence or submissions to the MMS Director;

(c) The MMS Director's decision in an appeal;

(d) Any pleadings or submissions to the IBLA; and

(e) Any IBLA orders and decisions.

§ 4.909 How do I request an extension of time?

(a) If you are a party to an appeal subject to this subpart before the IBLA, and you need additional time after an appeal commences for any purpose, you may obtain an extension of time under this section.

(b) You must submit a written request for an extension of time before the required filing date.

(1) You must submit your request to the IBLA at Interior Board of Land Appeals, 4015 Wilson Boulevard, Arlington, Virginia 22203, using the U.S. Postal Service, a private delivery or courier service, hand delivery or telefax to (703) 235–8349;

(2) If you file a document by telefax, you must send an additional copy of your document to the IBLA using the U.S. Postal Service, a private delivery or courier service or hand delivery so that it is received within 5 business days of your telefax transmission.

(c) If you are an appellant, in addition to meeting the requirements of paragraph (b) of this section, you must agree in writing in your request to extend the period in which the Department must issue a final decision in your appeal under § 4.906 by the amount of time for which you are requesting an extension.

(d) If you are any other party, the IBLA may require you to submit a written agreement signed by the appellant to extend the period in which the Department must issue a final decision in the appeal under § 4.906 by the amount of time for which you are requesting an extension.

(e) The IBLA has the discretion to decline any request for an extension of time.

(f) You must serve your request on all parties to the appeal.

[FR Doc. 99–11816 Filed 5–12–99; 8:45 am]
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May 13, 1999

Part XI

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 1, 12, 23, and 52
Federal Acquisition Regulation; Pollution Control and Clean Air and Water; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 12, 23, and 52

[FAR Case 97–033]

RIN 9000–AI19

Federal Acquisition Regulation; Pollution Control and Clean Air and Water

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend the Federal Acquisition Regulation (FAR) to remove Subpart 23.1, 52.223–1, and 52.223–2. Improvements that are being implemented by the Environmental Protection Agency (EPA) will enable it to identify and provide more up-to-date information on facilities that, because of their involvement in criminal violations of the Clean Air Act (CAA) or Clean Water Act (CWA), may not be used in the performance of Government contracts. Although this amendment eliminates the certification burden on offerors and bidders, the proposed changes represent no change to longstanding Federal policy that until such time as EPA determines that the causes giving rise to criminal CAA or CWA violations have been corrected, a contracting officer must not award a contract to be performed by convicted persons at ineligible facilities.

DATES: Comments should be submitted on or before July 12, 1999, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVR), Attn: Laurie Duarte, 1800 F Street, NW, Room 4035, Washington, DC 20405.

E-mail comments submitted over Internet should be addressed to: farcase.97–033@gsa.gov.

Please cite FAR case 97–033 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 97–033.

SUPPLEMENTARY INFORMATION:

A. Background

Section 306 of the Clean Air Act (CAA), 42 U.S.C. 7606, and Section 508 of the Clean Water Act (CWA), 33 U.S.C. 1368, prohibit award of a Federal contract to any person who has been convicted of various violations under the Acts if the convicted person owns, leases or supervises the facility at which the violation(s) occurred, and any part of the contract will be performed at the violating facility. This ineligibility begins the moment a judgment of conviction is entered. The statutes provide that the ineligibility for contract award remains in effect until the EPA Administrator certifies that the conditions giving rise to the conviction have been corrected. To ensure that awards are made only to eligible facilities, FAR Subpart 23.1 provides at section 23.105, that an offeror must certify whether it proposes to use a facility that is on the EPA List of Violating Facilities and that it will notify the contracting officer before award, if it receives from EPA notice that EPA is considering listing the facility (FAR 52.223–1, Clean Air and Water Certification).

The FAR previously has considered different methods of enforcing the CAA and CWA ineligibility provisions. The Federal Acquisition Streamlining Act of 1994 (Pub. L. 103–355, Section 8301(g), 42 U.S.C. 7606 note) prohibited the use, in commercial item acquisitions, of a certification or a contract clause to implement the otherwise unchanged ineligibility provisions of the two statutes. Section 4301(b) of the Clinger-Cohen Act of 1996 (Pub. L. 104–106) required the Administrator for Federal Procurement Policy to issue for public comment a proposal to remove from the FAR those certification requirements that were not specifically imposed by statute. The FAR published a final rule in the **Federal Register** at 61 FR 233 on January 2, 1997 (FAR Case 96–312), implementing the CAA and CWA amendments for commercial items, but retained the certification for other acquisitions as the least burdensome and most effective means of ensuring that Government contracts were not awarded to a contractor proposing to use, for contract performance, a listed facility (62 FR 233).

This proposed rule would remove FAR Subpart 23.1, the certification at FAR 52.223–1, the contract clause at FAR 52.223–2, Clean Air and Water, and would provide agency contracting officers with a uniform procedure to determine a persons eligibility for award of a Government contract or subcontract. The same procedure would apply regardless of whether the acquisition is for a commercial item or not. FAR Subpart 9.4 requires that before awarding contracts and approving subcontracts, agency contracting officers must check the GSA List of Parties Excluded from Federal Procurement and Nonprocurement Programs (GSA List). Internet access to the GSA List is available (http://www.arnet.gov/epls). Excluded parties whose ineligibility is limited by reason of a CAA or CWA conviction are identified by the facility and conviction listing, the Cause and Treatment Code "H" annotation. The textual content of Code H is provided to GSA by the EPA Debarring Official, the Federal official with the delegated responsibility for determining when CAA and CWA-ineligible parties have corrected the conditions giving rise to their criminal convictions.

In the past, certifications served to ensure that bidders and offerors who were convicted of violations of the CAA and CWA identified themselves to Contracting Officers. This mechanism supplemented the GSA List which, because of occasional delays and lapses in communicating criminal conviction information to EPA officials, might not include an offeror or bidder with a recent CAA or CWA conviction. The EPA plans to improve its information systems with a view toward making the CAA and CWA ineligibility data in the GSA List as complete and timely as possible.

By improving its information systems and revising the Cause and Treatment Code, EPA believes that FAR Subpart 23.1 can be removed without having a detrimental effect on the Government's environmental policy. Reliance on the GSA List provides an adequate mechanism for ensuring that agency contracting officers do not award contracts to ineligible offerors. As a result of these developments, the necessity for a certification to achieve compliance with the CAA and CWA ineligibility provisions has been significantly diminished, if not eliminated.

This rule also would remove the contract clause at FAR 52.223–2. This clause states that the contractor agrees to comply with the CAA and CWA. Neither statute requires that such a clause be included in Federal contracts and subcontracts. The elimination of the clause in no way would diminish the Government's ability to enforce the CAA

and CWA requirements that apply to efforts performed under Federal contracts.

This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because generally less than 50 facilities a year are ineligible for contract award as a result of convictions for violations of the CAA or CWA. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610 of the Act. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 97–033), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*) is deemed to apply because the proposed rule would eliminate an information collection requirement approved under OMB Control Number 9000–0021. Accordingly, a request to remove the requirement will be submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 1, 12, 23, and 52

Government procurement.

Dated: May 7, 1999.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, 48 CFR Parts 1, 12, 23, and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 1, 12, 23, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

1.106 [Amended]

2. Section 1.106 is amended in the introductory text by removing the word "ten" and adding "10"; and in the table following the introductory paragraph by removing FAR segment "52.223–1" and its corresponding OMB Control Number, "9000–0021".

PART 12—ACQUISITION OF COMMERCIAL ITEMS

3. Section 12.503 is amended by revising the introductory text of paragraph (b); removing paragraph (b)(1); redesignating (b)(2) and (b)(3) as (b)(1) and (b)(2), respectively; removing paragraph (b)(4); and redesignating paragraph (b)(5) as (b)(3).

12.503 Applicability of certain laws to Executive agency contracts for the acquisition of commercial items.

* * * * *

(b) Certain requirements of the following laws are not applicable to executive agency contracts for the acquisition of commercial items:

* * * * *

12.504 Applicability of certain laws to subcontracts for the acquisition of commercial items.

4. Section 12.504 paragraph (b) is revised to read as follows:

* * * * *

(b) The requirements for a certificate and clause under the Contract Work Hours and Safety Standards Act, 40 U.S.C. 327, *et seq.*, (see Subpart 22.3) are not applicable to subcontracts at any tier for the acquisition of commercial items or commercial components.

* * * * *

PART 23—ENVIRONMENT, CONSERVATION, OCCUPATIONAL SAFETY, AND DRUG-FREE WORKPLACE

23.1 [Reserved]

5. Subpart 23.1 is removed and reserved.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.223–1 [Removed and Reserved]

6. Section 52.223–1 is removed and reserved.

52.223–2 [Removed and Reserved]

7. Section 52.223–2 is removed and reserved.

[FR Doc. 99–12154 Filed 5–12–99; 8:45 am]

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Part XII

Department of the Interior

Fish and Wildlife Service

Migratory Bird Hunting; Intent To Prepare an Environmental Impact Statement on White Goose Management; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Migratory Bird Hunting; Notice of Intent To Prepare an Environmental Impact Statement on White Goose Management

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: The U.S. Fish and Wildlife Service (Service or "we") is issuing this notice to advise the public that we are initiating efforts to prepare an Environmental Impact Statement (EIS) that considers a range of management alternatives aimed at addressing population expansion of lesser snow geese, Ross' snow geese, and greater snow geese (white geese). This notice describes possible alternatives, invites public participation in the scoping process for preparing the EIS, and identifies the Service official to whom questions and comments may be directed. Potential sites of public scoping meetings in important white goose migration and wintering areas are yet to be determined. A notice of public meetings with the locations, dates, and times will be published in the **Federal Register**.

DATES: Written comments regarding EIS scoping should be submitted by July 12, 1999, to the address below.

ADDRESSES: Written comments should be sent to the Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, ms 634—ARLSQ, 1849 C Street NW., Washington, DC 20240. The public may inspect comments during normal business hours in room 634—Arlington Square Building, 4401 N. Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Mr. Jonathan Andrew, Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, (703) 358–1714.

SUPPLEMENTARY INFORMATION: With regard to Mid-continent light geese, because of the high population levels and habitat destruction described below, we believe that management action is necessary. In fact, we promulgated regulations on February 16, 1999, (64 FR 7507; 64 FR 7517) that authorized additional methods of take of light geese and established a conservation order for the reduction of the Mid-continent Light Goose Population. In issuing those regulations, we indicated that we would initiate preparation of an EIS beginning in 2000 to consider the effects on the human environment of a range of long-term resolutions for the MCLG population problem. Those regulations were subsequently challenged in Federal District Court by several animal rights groups. Though the judge refused to preliminarily enjoin the program, he did indicate a likelihood that the plaintiffs might prevail on the EIS issue when the lawsuit proceeded. In light of our earlier commitment to prepare an EIS on the larger, long-term program and to preclude further litigation on the issue, we decided to withdraw the regulations and to begin preparation of the EIS now.

Mid-Continent Light Geese

Lesser snow (*Anser c. caerulescens*) and Ross' (*Anser rossii*) geese, that primarily migrate through the Central and Mississippi Flyways, are collectively referred to as Mid-continent light geese (MCLG) because they breed, migrate, and winter in the "Mid-continent" or central portions of North America. They are referred to as "light" geese due to the light coloration of the white-phase plumage form, as opposed to "dark" geese such as white-fronted geese or Canada geese. We include both plumage forms of lesser snow geese (white, or "snow" and dark, or "blue") under the designation light geese.

The total MCLG population is experiencing a high population growth rate and has substantially increased in size within the last 30 years. Potential reasons for this high growth rate include decreased harvest rates, availability of waste grains in agricultural areas, establishment of refuges, and higher survival rates. The total MCLG population is comprised of two population segments; namely the Mid-continent Population (MCP) and the Western Central Flyway Population (WCFP). We use operational surveys conducted annually on wintering grounds to derive a winter index to light goose populations. The winter index of MCP light geese has more than tripled within 30 years from an estimated 800,000 birds in 1969 to approximately 2.6 million birds in 1999 and has increased an average of 5% per year for the last ten years (Abraham et al. 1996, USFWS 1998). The 1999 MCP winter index of 2.6 million geese is comprised of approximately 2.4 million lesser snow geese and 147,000 Ross' geese. The winter index of WCFP light geese has quadrupled in 23 years from 52,000 in 1974 to 216,000 in 1997 (USFWS 1997), and has increased an average of 9% per year for the last ten years (USFWS 1998). Counts of light geese wintering in Mexico are obtained every 3 years, therefore 1997 represents the last year that a total WCFP count was made. The 1997 WCFP winter index of 216,000 geese is comprised of approximately 151,000 lesser snow geese and 65,000 Ross' geese.

The total MCLG population (MCP and WCFP combined), based on the 1997 and 1999 winter indices, is approximately 2.8 million geese (Table 1). In 1991, the Central and Mississippi Flyway Councils jointly agreed to set lower and upper management thresholds for the MCP of snow geese at 1.0 million and 1.5 million, respectively, based on the winter index. Therefore, the current winter index of MCP lesser snow geese far exceeds the upper management threshold established by the Flyway Councils. Segments of the total MCLG population have also exceeded North American Waterfowl Management Plan (NAWMP) population objectives, which are also based on winter indices. The MCP lesser snow goose winter index of 2.4 million birds far exceeds the NAWMP population objective of 1 million birds (USDOI et al. 1998). The lesser snow goose portion of the WCFP light goose winter index is estimated to be 151,000 birds, which exceeds the NAWMP population objective of 110,000 birds (USDOI et al. 1998). The estimate of the Ross' goose component of the total MCLG population winter index (WCFP and MCP combined) is approximately 212,000 birds. This exceeds the NAWMP Ross' goose population objective of 100,000 birds (USDOI et al. 1998). We compare current population levels to NAWMP population objectives to demonstrate that the total MCLG population has increased substantially over what is considered to be healthy population level.

TABLE 1.—COMPONENTS OF THE MID-CONTINENT LIGHT GOOSE POPULATION (MCLG) WINTER INDEX

Species	MCP[a]	WCFP[b]	Total MCLG	Flyway council goal[c]	NAWMP goal[d]		
					MCP	WCFP	Total MCLG
Lesser snow goose	2,429,000	151,000	2,580,000	1.0–1.5 million	1,000,000	110,000	1,110,000

TABLE 1.—COMPONENTS OF THE MID-CONTINENT LIGHT GOOSE POPULATION (MCLG) WINTER INDEX—Continued

Species	MCP[a]	WCFP[b]	Total MCLG	Flyway council goal[c]	NAWMP goal[d]		
					MCP	WCFP	Total MCLG
Ross' goose	146,800	65,000	211,800	N/A[e]	N/A	N/A	100,000
Total	2,575,800	216,000	2,791,800	N/A	N/A	N/A	1,210,000

[a] Mid-Continent Population (1999 index).
[b] Western Central Flyway Population (1997 index).
[c] Represents lower and upper management thresholds.
[d] North American Waterfowl Management Plan goals.
[e] Not applicable; goal not developed.

By multiplying the current MCLG December index of 2.8 million birds by an adjustment factor of 1.6 (Boyd et al. 1982), we derive an estimate of 4.5 million breeding birds in spring. This is corroborated by population surveys conducted on light goose breeding colonies during spring and summer, which suggest that the breeding population size of MCLG is in excess of five million birds (D. Caswell pers. comm.). The estimate of 4.5 million birds does not include non-breeding geese or geese found in unsurveyed areas. Therefore, the total MCLG population currently far exceeds 4.5 million birds.

We believe that the MCLG population has exceeded the long-term carrying capacity of its breeding habitat and must be reduced. These geese have become seriously injurious to their arctic and subarctic habitat and habitat important to other migratory birds. We have described previously (February 16, 1999; 64 FR 7517) how light geese have impacted breeding habitats through their feeding actions, which triggers a series of events that leads to long-term habitat destruction. Batt (1997) summarized the results of numerous studies that have investigated the dynamics of the MCLG population and the impacts it is having on breeding habitats. We believe that MCLG population reduction measures are necessary to prevent further habitat destruction and to protect the remaining habitat upon which numerous wildlife species depend.

Batt (1997) estimated that the MCLG population should be reduced by 50% by 2005. That would suggest a reduction from the 1999 MCLG winter index of approximately 2.8 million birds to approximately 1.4 million birds. Central and Mississippi Flyway Council management thresholds for MCP lesser snow geese (not including WCFP lesser snow or Ross' geese) rests between 1.0 and 1.5 million birds, based on the winter index. Therefore, our goal to reduce the MCLG population to 1.4 million birds by 2005 closely parallels those established by Flyway Councils and the scientific community. Using previously mentioned conversion factors, a winter index of 1.4 million would translate to a minimum estimate of 2.24 million breeding MCLG in spring. The estimate of 2.24 million birds does not include non-breeding geese or geese found in unsurveyed areas. Therefore, the total MCLG spring population would be much higher. We plan to carefully analyze and assess the MCLG reduction on an annual basis, using the winter index and other surveys, to ensure that the populations are not over-harvested.

Greater Snow Geese

Greater snow geese (*Anser c. atlanticus*) breed in the eastern Arctic of Canada and Greenland and migrate southward through Quebec, New York, and New England to their wintering grounds in the mid-Atlantic U.S. The greater snow goose population has expanded from less than 50,000 birds in the late 1960s to approximately 700,000 today. These estimates are based on operational spring surveys conducted on staging areas in the St. Lawrence Valley. With a growth rate of about 9% per year, the population is expected to reach 1,000,000 by 2002 and 2,000,000 by 2010 (Batt 1998).

Although the greater snow goose population has experienced a high growth rate, studies in the Arctic have not documented extensive damage to breeding habitats as of yet. It is estimated that the population is only about one-half of the carrying capacity of the site of the largest breeding colony on Bylot Island. However, high populations of greater snow geese are negatively impacting natural marshes in the St. Lawrence estuary and some coastal marshes of the Mid-Atlantic U.S (Batt 1998). The Arctic Goose Habitat Working Group recommended that the population be stabilized by the year 2002 at between 800,000 to 1,000,000 birds (Batt 1998). This strategy is intended to prevent the destruction of arctic habitat that is likely to occur if the population exceeds the carrying-capacity of breeding areas.

Past Management Actions

We have attempted to curb the growth of white goose populations by increasing bag and possession limits and extending the open hunting season length for white geese to 107 days, the maximum allowed by the Migratory Bird Treaty between the U.S. and Canada. However, due to the rapid rise in white goose numbers and low hunter success rates, the harvest rate (the percentage of the population that is harvested) has declined. The decline in harvest rate indicates that current harvest regulations are not sufficient to stabilize or reduce population growth rates.

In cooperation with our State partners, we have developed several Regional Action Plans (Gulf Coast, Midwest, and Northern Prairie) in the central U.S. to implement land management activities that will assist in reduction of the MCLG population. Such activities include land management, water management, increasing accessibility of State and Federal lands to hunters, and development of public outreach programs. We do not believe that Regional Action Plans alone can achieve MCLG population reduction goals. However, the plans will compliment the management alternative chosen as a result of the EIS process.

On February 16, 1999, we published two rules that authorized new methods of take for white geese (electronic calls and unplugged shotguns; 64 FR 7507), and established a conservation order for the reduction of the MCLG population (64 FR 7517). The new regulations were made available only to States in the Mississippi and Central Flyways. Several animal rights groups subsequently filed a legal challenge to the Environmental Assessment and Finding of No Significant Impact upon which the implementation of the rules were based. Although the judge refused to issue an injunction, he did indicate

a likelihood that plaintiffs might succeed on their argument that an EIS should have been prepared. In order to avoid further litigation, we have decided to withdraw those regulations and initiate preparation of an EIS. The regulations will be withdrawn in a separate rulemaking notice in the **Federal Register**.

Alternatives

We are considering the following alternatives as a result of public comments received on the Environmental Assessment. After the scoping process, we will develop the alternatives to be included in the EIS and base them on the mission of the Service and comments received during scoping. We are soliciting your comments on issues, alternatives, and impacts to be addressed in the EIS.

A. No Action Alternative

Under the No Action Alternative, no additional regulatory methods or direct population control strategies would be authorized. Normal white goose hunting regulations that existed prior to February 16, 1999, would remain in place.

B. New Regulatory Alternatives (Proposed Action)

This alternative seeks to provide new regulatory options to wildlife management agencies that will increase the harvest of white geese above that which results from existing hunting frameworks. This approach may include legalization of additional hunting methods such as electronic calls, unplugged shotguns, expanded shooting hours, and baiting. This alternative also includes establishment of a conservation order in the U.S. to reduce and/or stabilize white goose populations. A conservation order would authorize taking of white geese after the normal framework closing date of March 10, through August 31.

The intent of this alternative is to significantly reduce or stabilize white goose populations without threatening their long-term health. We are confident that reduction or stabilization efforts will not result in populations falling below either the lower management thresholds established by Flyway Councils, or the NAWMP population objectives. Monitoring and evaluation programs are in place to estimate population sizes and will be used to prevent over-harvest of these populations.

C. Direct Population Control on Wintering and Migration Areas in the U.S.

This alternative would involve direct population control strategies such as trapping and culling programs, market hunting, or other general strategies that would result in the killing of white geese on migration and/or wintering areas in the U.S. Some of these types of control measures could involve disposal of large numbers of carcasses.

D. Seek Direct Population Control on Breeding Grounds by Canada

This alternative, if successful, would involve direct population control strategies, such as trapping and culling programs, market hunting, or other general strategies, that would result in killing of white geese on breeding colonies in Canada. Some of these types of control measures could involve disposal of large numbers of carcasses. We do not have the authority to implement direct population control measures on migration or breeding areas in Canada. Therefore, this alternative would require extensive consultation with Canada in order to urge implementation of control measures on breeding areas. Such measures may or may not involve active U.S. participation.

Issue Resolution and Environmental Review

The primary issue to be addressed during the scoping and planning process for the EIS is to determine which management alternatives for the control of white goose populations will be analyzed. We will prepare a discussion of the potential effect, by alternative, which will include the following areas:

(1) White goose populations and their habitats.

(2) Other bird populations and their habitats.

(3) Effects on other species of flora and fauna.

(4) Socioeconomic effects.

Environmental review of the management action will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA), as appropriate. This Notice is being furnished in accordance with 40 CFR 1501.7, to obtain suggestions and information from other agencies, tribes, and the public on the scope of issues to be addressed in the EIS. A draft EIS should be available to the public in the fall of 1999.

Public Scoping Meetings

A schedule of public scoping meeting dates, locations, and times is not available at this time. Notice of such meetings will be published in the **Federal Register**.

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Authorship. The primary author of this Notice is James R. Kelley, Jr., Office of Migratory Bird Management.

Dated: May 7, 1999.

John G. Rogers,

Acting Director, U.S. Fish and Wildlife Service.

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S. 531/P.L. 106–26
To authorize the President to award a gold medal on behalf of the Congress to Rosa Parks in recognition of her contributions to the Nation. (May 4, 1999; 113 Stat. 50)

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